

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

KENYA SPLOND,

Appellant,

v.

STATE OF NEVADA,

Respondent.

Docket No. 82989

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**APPELLANT'S**

**APPENDIX Volume 3**

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<b><u>Document</u></b>	<b><u>Volume.</u></b>	<b><u>Page Nos.</u></b>
Appendix Vol. 1	1, 2	31-283
Appendix Vol. 2	2, 3	284-536
Appendix Vol. 3	3, 4	537-788
Appendix Vol. 4	4	789-884
Exhibits in Support of Supplemental Brief	5	1072-1095
Findings of Fact	5, 6	1245-1291
Minutes Dec. 16, 2019	5	1029
Minutes Feb. 2, 2021	5	1143
Notice of Appeal	6	1340-1342
Notice of Entry of Findings of Fact		1292-1339
Opening Brief	1	1-30
Pet. Reply in Support of Petition	5	1129-1142
Proper Person Petition for Writ Of Habeas Corpus	4, 5	937-1003
Respondent's Answering Brief	4	885-933
Respondent's Appendix	4	934-936
Second Supp. Brief in Support of Pet.	5	1153-1197
State's Response to Pro Per Petition	5	1004-1028
State's Response to Pet. Supp. Brief	5	1096-1128
Supplemental Brief in Support of Petition	5	1030-1071

<b><u>Document</u></b>	<b><u>Volume.</u></b>	<b><u>Page Nos.</u></b>
Transcript, Hearing Feb. 1, 2021	5	1144-1152
Transcript, Hearing April 15, 2021	5	1198-1244

### **CERTIFICATE OF SERVICE**

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AARON FORD                      MONIQUE MCNEILL  
STEVEN WOLFSON

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

Kenya Splond

By:       /S/ Monique McNeill

1 the Defendant to that indictment.

2 [Indictment read]

3 THE COURT: Ladies and gentlemen, this case is based  
4 on the indictment which has been read to you by the clerk.  
5 You should distinctly understand the indictment is simply  
6 a charge and it is not in any sense evidence of the  
7 allegations it contains.

8 The Defendant has pled not guilty to the  
9 indictment. The State therefore has the burden of proving  
10 each of the essential elements of the charges beyond a  
11 reasonable doubt. As the Defendant sits here now, he is  
12 not guilty.

13 The purpose of this trial is to determine whether  
14 the State will meet that burden. It is your primary  
15 responsibility as jurors to find and determine the facts.  
16 Under our system of justice, you are the sole judge of the  
17 facts. You are to determine the facts from the testimony  
18 you hear and the other evidence, including exhibits,  
19 introduced in court. It is up to you to determine if the  
20 inferences which you feel may be properly drawn from the  
21 evidence.

22 At times I may sustain objections or direct that  
23 you disregard certain testimony or exhibits. You must not  
24 consider any evidence to which an objection has been

1       sustained or which I have instructed you to disregard.  
2       Anything you may have seen or heard outside the courtroom  
3       is not evidence and must also be disregarded.

4               You must not be influenced in any degree by any  
5       personal feeling of sympathy for or prejudice against the  
6       State or the Defendant. Both sides are entitled to the  
7       same fair and impartial consideration.

8               In considering the weight and value of the  
9       testimony of any witness, you may take into consideration  
10      the appearance, attitude, and behavior of the witness; the  
11      interest of the witness in the outcome of the case, if  
12      any; the relation of the witness to the Defendant or the  
13      State; the inclination of the witness to speak truthfully  
14      or not; and the probability or improbability of the  
15      witness's statements and all of the facts and  
16      circumstances in evidence. Thus, you may give any piece  
17      of evidence just such weight as you believe it deserves.

18              There are two kinds of evidence: Direct and  
19      circumstantial. Direct evidence is testimony by a witness  
20      about what that witness personally saw or heard or did.  
21      Circumstantial evidence is testimony or exhibits which are  
22      proof of a particular fact from which, if proven, you may  
23      infer the existence of a second fact.

24              You may consider both direct and circumstantial

1 evidence in deciding the case. The law permits you to  
2 give equal weight to both. But it is for you to decide  
3 how much weight to give to any particular piece of  
4 evidence.

5 Opening statements and closing arguments of the  
6 attorneys are intended to help you in understanding the  
7 evidence and applying the law. But they are not evidence.

8 Until this case is submitted to you, you must not  
9 discuss it with anyone, even with your fellow jurors.  
10 After it is submitted to you, you must discuss it only in  
11 the jury room with your fellow jurors. It is important  
12 that you keep an open mind and not decide any issue in the  
13 case until the entire case has been submitted to you under  
14 instructions from me.

15 If you cannot hear a witness, please raise your  
16 hand as an indication. If you need to use the restroom or  
17 if you feel ill, please raise your hand as an indication.  
18 I usually try and take a break every 90 minutes or so. If  
19 you'd like to bring a snack or a drink into the courtroom,  
20 that's okay as well. And we do have a refrigerator, if  
21 you want to bring your lunch during the week, as we  
22 progress.

23 I may, during the trial, take notes of the  
24 witnesses' testimony and you will see me working on my

1 computer. You are not to make any inference from that  
2 action. I'm required to prepare for legal arguments of  
3 Counsel during the trial. And for that reason, I may take  
4 notes and will work on my computer.

5 You will not have a transcript to consult at  
6 close of the case. However, you will be furnished with  
7 notepads and writing utensils and will be allowed to take  
8 notes. Kevin will pass those out in just a minute.

9 The trial will proceed in the following manner:  
10 The Deputy District Attorney will make an opening  
11 statement, which is an outline to help you understand what  
12 the State expects to prove. Next, the Defendant may, but  
13 does not have to make an opening statement. Opening  
14 statements are not evidence but serve as an introduction  
15 to the evidence which the party making the statement  
16 intends to prove.

17 The State will then present its evidence and  
18 Counsel for the Defendant may cross-examine the witnesses.  
19 Following the State's case, the Defendant may present  
20 evidence and the deputy to the District Attorney may  
21 cross-examine those witnesses. However, as I've said, the  
22 Defendant is not obligated to present any evidence.

23 You will be given the opportunity to ask written  
24 questions of any of the witnesses called to testify in

1       this case. You are not encouraged to ask large numbers of  
2       questions, because that is the primary responsibility of  
3       the parties. Questions may be asked only in the following  
4       manner: After both sides have had the opportunity to ask  
5       questions of a witness and before I let the witness leave  
6       the room.

7               If you would like to ask the questions, if you  
8       would please write your question on the yellow pads that  
9       are sitting on the bar in front of you. One question per  
10      sheet of paper. The marshal will then bring the questions  
11      to me. I will make a determination with Counsel as to  
12      whether the question is legally appropriate. If the  
13      question is legally appropriate, I will then go ahead and  
14      ask it on your behalf.

15             You are not to -- you are not to place undue  
16      weight upon any question that is submitted by the jury.  
17      Nor are you to draw any inferences if I do not permit a  
18      question by the jury.

19             After all of the evidence has been presented, I  
20      will then instruct you on the law. After the instructions  
21      on the law have been read to you, each side has the  
22      opportunity to present oral argument.

23             What is said in closing argument is not evidence.  
24      The arguments are designed to summarize and interpret the



1 evidence. Since the State has the burden of proving the  
2 Defendant guilty beyond a reasonable doubt, the State has  
3 the right to open and close the arguments.

4 After the arguments have been completed, you will  
5 retire to deliberate on your verdict. Let me remind you  
6 that until this case is submitted, do not talk to each  
7 other about it or about anyone who has anything to do with  
8 it until the end of the case, when you go to the jury room  
9 to decide on your verdict.

10 Do not talk with anyone else about this case or  
11 about anyone who has anything to do with it until the  
12 trial has ended and you've been discharged as jurors.  
13 "Anyone else" includes members of your family and your  
14 friends. You may tell them you're a juror in a criminal  
15 case, but don't tell them anything else about it until  
16 after I've discharged you.

17 Do not let anyone talk to you about the case or  
18 about anyone who has anything to do with it. If someone  
19 should try to talk to you, please report it to me  
20 immediately by contacting the marshal.

21 Do not read any news stories or articles or  
22 listen to any radio or television reports about the case  
23 or about anyone who has anything to do with it. And do  
24 not visit the scene of any of the incidents mentioned

1 during the trial or undertake any investigation or  
2 research on your own. Please do not do any posting or  
3 communications on any social networking sites or do any  
4 independent research, including Internet research.

5 How long do you anticipate your opening to be?

6 MR. PALAL: About 15 minutes, Your Honor.

7 THE COURT: Okay. So would you like to proceed now?  
8 It's 11:30 or do you want me -- I'm gonna have to break it  
9 by 1:45. So I would have to split the openings if we  
10 break now.

11 MR. PALAL: Court's pleasure.

12 THE COURT: Okay. Ladies and gentlemen, we're gonna  
13 go ahead and break. I have a meeting I have to be at in  
14 Summerlin at noon. So I'm gonna go there and I'll be back  
15 here by 1:15.

16 During this recess, you are admonished not to  
17 talk or converse among yourselves or with anyone else on  
18 any subject connected with this trial or read, watch, or  
19 listen any report of or commentary on the trial or any  
20 person connected with this trial by any means of  
21 information including, without limitation: Social media,  
22 text, newspaper, television, the Internet, radio or form  
23 or express the opinion on any subject connected with the  
24 trial until the case is finally submitted to you.

1           If you need a letter for your employer to tell  
2   them where you're gonna be for the rest of the week, as  
3   you go out the door, let the marshal know. He will then  
4   have a letter prepared for you. If you have a fax number  
5   you want it to go to, or if you have an e-mail address you  
6   want it to go to, my assistant can get those sent off for  
7   you.

8           In addition, the marshal should have additional  
9   parking information for you to move to the garage that is  
10   closer to the courthouse. If you would like to move your  
11   car during the lunch hour, you may; okay? We'll see you  
12   at 1:15.

13           You have a new door you go in and out of now.

14           [Outside the presence of the jury]

15           THE COURT: Thank you. Counsel, is there anything  
16   outside the presence?

17           MR. CLAUS: No, Your Honor.

18           MR. PALAL: Nothing from the State.

19           THE COURT: I just wanted to confirm that I did ask  
20   before I excused the additional jurors that there were no  
21   issues about the use of peremptory challenges. I don't  
22   know if I said it loud enough to hit the record or not.  
23   Sometimes I forget to say it loud enough. Did we say it  
24   loud enough Jill?

1 THE CLERK: [Inaudible]

2 THE COURT: Yeah. Just that it was on there.

3 Sometimes I do it at the bench with you guys and it  
4 doesn't make the record.

5 Anything else outside the presence?

6 MR. PALAL: Nothing from the State.

7 THE COURT: How long do you anticipate your opening  
8 is?

9 MR. CLAUS: Usually I reserve, Your Honor.

10 THE COURT: Okay.

11 MR. CLAUS: But I haven't seen the State's, so --

12 THE COURT: All right. So you're gonna play that by  
13 ear. I just didn't want to put you in the position of  
14 splitting them. And then so we'll have our first witness  
15 probably about 2:00-ish --

16 MR. PALAL: Yes.

17 THE COURT: -- 1:45.

18 MR. PALAL: Yep.

19 THE COURT: Okay. We're a little behind schedule, but  
20 not much.

21 MR. PALAL: All right.

22 THE COURT: Okay?

23 MR. PALAL: Thank you, Your Honor.

24 THE COURT: See you after lunch.

1                   [Recess at 11:31 a.m.; proceedings resumed at  
2                   1:25 p.m.]

3                   [Outside the presence of the jury]

4                   MR. CLAUS: I apologize for our tardiness. I thought  
5                   it was 1:15 -- 1:30.

6                   THE COURT: Okay. Bring them in, Kevin.

7                   THE BAILIFF: Yes, Your Honor.

8                   THE COURT: [Inaudible]

9                   THE BAILIFF: [Inaudible]

10                  THE COURT: Bring in the jury, please.

11                  [Discussion off the record]

12                  [In the presence of the jury]

13                  THE BAILIFF: Jurors are present.

14                  THE COURT: Good afternoon, ladies and gentlemen.

15                  Counsel, stipulate presence of the jury?

16                  MR. PALAL: Yes, Your Honor.

17                  MR. CLAUS: Yes, Your Honor.

18                  THE COURT: You can be seated.

19                  Ladies and gentlemen, if you have it write any  
20                  jury questions, I need you to write your seat number on  
21                  the sheet of paper that you submit. [Juror No. 1], you're  
22                  number one. [Juror No. 7], you're number seven. So you  
23                  can number yourselves in between. [Juror No. 8], you're  
24                  number eight. And [Juror No. 14], you're number 14; okay?

1           You're opening statement.

2           MR. PALAL: Yes, Your Honor.

3           Good afternoon ladies and gentlemen. As was  
4 mentioned earlier, when reading our introduction, in this  
5 case the State has charged the Defendant with a series of  
6 burglaries and robberies occurring in late January and  
7 early February of 2014.

8           Specifically, the Defendant is charged with three  
9 events. Event number one, January 22nd, 2014, at a  
10 Cricket Wireless. Event number two, January 28th, 2014,  
11 at a Metro PCS. And event three, February 2nd, 2014, at a  
12 Star Mart.

13           And, ladies and gentlemen, what the evidence will  
14 show in this case is that the Defendant entered all three  
15 of these establishments with a gun and robbed the three  
16 individual cashiers who were -- who were working that day  
17 in each respective establishment.

18           First, I'm gonna talk to you about event number  
19 one, but I want to take a step back and let you know that,  
20 you know, one of the things with trial is that we don't  
21 get the witnesses, necessarily, in the order we would  
22 like. So while these are the chronological events of the  
23 case, you may be hearing from witnesses in a  
24 nonchronological order.

1           The first event occurs on January 22nd, 2014, at  
2     the Cricket Wireless store. What you're gonna do is  
3     you're gonna hear from Samuel Echeverria. And he will  
4     testify that he saw the Defendant enter the store and he  
5     waited -- the Defendant waited while Mr. Echeverria  
6     attended to another customer.

7           And what you see at the bottom of the screen is a  
8     video still of the -- of the robbery as it occurred.

9           The -- Mr. Echeverria will also say that the  
10    Defendant asked for a specific battery. That  
11    Mr. Echeverria went to go get the battery. And when he  
12    comes back, the Defendant then pulls out a gun and tells  
13    him to take the money out of the register.

14          And, you know, you'll also hear that there some  
15    fingerprints taken from the door outside of the -- outside  
16    the Cricket Wireless store. And you'll hear from a crime  
17    scene analyst. And they'll tell but how they try and get  
18    fingerprints. And that those were the only fingerprints  
19    taken were from the door. And that one set of  
20    fingerprints belonged to the clerk and the other set of  
21    fingerprints belonged to somebody unrelated to this case.  
22    They don't belong to of the Defendant.

23          You're gonna hear about the second event. And  
24    you'll hear from Graciela Angles. And she'll justify that

1 she saw the Defendant enter the store, asking to buy a  
2 cell phone. She'll say the Defendant asking for a  
3 specific phone -- I believe it's the Galaxy Mega. That  
4 she went to get the phone to ring the Defendant up and  
5 that the Defendant pulled a gun out and told her to take  
6 all the money out of the register and give it to him.

7 And here, again, you'll also hear -- what you're  
8 looking at is the crime -- video still of the events at  
9 the Metro PCS.

10 You'll also hear that, yes, there were some  
11 fingerprints taken from the store. The only fingerprints  
12 taken from the store were from a display case. And they  
13 didn't belong to either the clerk or the Defendant.

14 You're -- the third event, you'll hear from  
15 Brittany Slathar. She was the person who was acting as  
16 the cashier at the Star Mart. And she'll testify she saw  
17 the Defendant enter the store. He grabbed some candy and  
18 he went to the register where he asked for two Newport  
19 cigarettes. Two packs of Newport cigarettes.

20 She'll say that while she's ringing up the  
21 transaction, the Defendant pulls out of a gun out of his  
22 sweatshirt, threatens her and tells her to give him the  
23 money. She'll testify the Defendant's wearing a black  
24 sweatshirt, gloves and a spotted brown beanie.



1           And that's -- you'll hear that's important  
2           information. Because minutes after this occurs, you're --  
3           and that's a still of the video of the actual robbery.  
4           Minutes after this occurs, Officer Rowberry is driving,  
5           responding to the scene, and he sees a gray sedan about a  
6           half-mile away from the Star Mart.

7           And what he's gonna tell you is he saw the damage  
8           to the back of the vehicle, it's the only car in  
9           proximity. There was nobody on the street. And he  
10          decides to pull the car over. And when he pulls the car  
11          over, he'll tell you that he had -- it was a black female  
12          driving.

13          And he'll tell you that he asked the black female  
14          to roll down the rear window. And the reason why, he'll  
15          say, is because he was told that somebody just had a  
16          firearm in the area. He couldn't see into the back of the  
17          car. So for officer safety, he wanted to make sure if  
18          there's anybody in the back of the car, he could see them.

19          And he'll tell you the person in the back of the  
20          car was the Defendant. And as a result of -- after some  
21          talking, asking the Defendant to show his hands and the  
22          Defendant refusing to comply, both the female in the front  
23          and the Defendant are -- are asked to exit the vehicle.

24          And when the female front exits the vehicle, what

1       you'll hear is, on the front seat are two Newport  
2       cigarettes and a pack of gum. The same items taken from  
3       the Star Mart.

4                You'll hear the back seat, where the Defendant  
5       was, is a black hoodie sweatshirt. The same clothing worn  
6       by the person who robbed the Star Mart. You'll hear that  
7       in the back seat is a grayish camouflage hoodie. The same  
8       type -- I'm sorry. Beanie. The same type of beanie worn  
9       by the person who robbed the Star Mart.

10               And you will hear in the back seat, where the  
11       Defendant was found, found a small revolver. The same  
12       type of gun Brittany Slathar's gonna tell you was used  
13       when she was robbed.

14               As a result of this event on February 2nd, you'll  
15       hear from Detective Kavon. Now, he's now retired, but he  
16       was working then. And he'll tell you that, now, they have  
17       developed a subject with a similar MO as the first two  
18       robberies, he decides to go back to the cashiers who were  
19       robbed in event one and event two. And he presents to  
20       them what's -- what they often refer to as a six-pack.  
21       It's a photo array of six people.

22               And he asks Sam Echeverria -- he reads the  
23       instructions. And he asks them, you know, "Can you  
24       identify somebody?"

1           And Mr. Echeverria, way back in 2014 says, "Yes,  
2       that's the person. That's the person. That's the  
3       Defendant."

4           And then, at a separate event, Detective Kavon  
5       also goes back and backtracks with the cashier at the  
6       Metro PCS. And she's given a photo array, six different  
7       people. And she circles the Defendant.

8           And what you'll hear from both of them, and what  
9       you'll see from the six-pack instructions, is that they're  
10      asked to write the percentage of how sure they are that  
11      this is the person that committed the robberies. And  
12      you'll hear from these two people, independently, they say  
13      that person that they circled that they -- the name that  
14      they signed, they are 100 percent sure that that is the  
15      person that robbed them with a firearm.

16           Ladies and gentlemen, at the end of this case,  
17      the State expects that it will have proved its case beyond  
18      a reasonable doubt. And we'll ask you to find the  
19      Defendant guilty of all charges. Thank you.

20           THE COURT: Thank you. Would you like to make your  
21      opening or wave?

22           MR. CLAUS: I'll be reserving, please, Your Honor.

23           THE COURT: Okay. First witness.

24           Would you like to invoke the exclusionary rule?

1 MR. CLAUS: Please, Your Honor.

2 THE COURT: If there's anyone in the courtroom who  
3 anticipates being called as a witness, please wait in the  
4 hallway.

5 Mr. Marshal, if anybody should come into the  
6 courtroom, please inquire whether a witness. If they are,  
7 please ask them to wait in the hallway.

8 THE BAILIFF: Yes, Your Honor.

9 MR. LEXIS: State calls Samuel Echeverria.

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

13 THE CLERK: Thank you. Please be seated.

14 Please state and spell your name for the record.

15 THE WITNESS: My name is Samuel Echeverria.

16 THE COURT: And if you could spell that, please.

17 THE WITNESS: Oh, sorry. S-A-M-U-E-L. Last name's  
18 E-C-H-E-V-E, double "R," I-A.

19 THE COURT: How you doing today, sir?

20 THE WITNESS: Doing good, ma'am.

21 THE COURT: You will notice there are M&Ms in that  
22 dispenser. If would you like some while you're a witness,  
23 you may have some. There's also a pitcher of water there.  
24 If you should need some coffee, let the marshal know.

1 THE WITNESS: Thank you.

2 THE COURT: You may proceed.

3 DIRECT EXAMINATION OF SAMUEL ECHEVERRIA

4 BY MR. LEXIS:

5 Q Good afternoon, sir.

6 A Good afternoon.

7 Q On January 22nd, 2014, where were you working?

8 A I was working at Cricket Wireless on  
9 4343 North Rancho Drive.

10 Q Were you working around 4:35 p.m.?

11 A Yes, I was.

12 Q And is that address, 4343 North Rancho Drive, is that  
13 in Clark County, Las Vegas, Nevada?

14 A Yes, it is.

15 Q Did anything unusual happen around that time?

16 A Yes, it did. A black male came in with a black  
17 hoodie, a black baseball cap, black shirt, black shoes,  
18 regular blue jeans. First made himself to be a customer,  
19 came in and robbed me at gunpoint.

20 Q Let's take it piece by piece, sir. When did you  
21 first notice him coming in?

22 A Um, I would say about 20 minutes before it  
23 happened.

24 Q Were you having a conversation with this man?

1           A     No, I was not.

2           Q     But you clearly saw him.

3           A     Clearly saw him.

4           Q     What was -- was he waiting for another customer?

5           A     Yeah, he was waiting around for me to finish up  
6 with the customers I was with.

7           Q     And this happened over a period of 20 minutes, you  
8 say?

9           A     He was in the store waiting. And it didn't take  
10 long for him to rob me.

11          Q     So tell me, did he wait for this other person to  
12 leave or was that person still in the store?

13          A     That person left.

14          Q     Immediately after that person leaving, what did he  
15 do?

16          A     He came up to the register and asked me for a  
17 specific battery for his girlfriend. I told him I was  
18 gonna go check if I had it. I walked up to the front to  
19 see if I had it. I walked back behind the desk to grab  
20 the keys so I could unlock the holsters.

21                And when I was ringing him up for the battery, I  
22 was looking down as I was scanning it in. I looked up,  
23 and he pulled out a black gun and said, "Give me all the  
24 money before I blow your brains out."

1           Q     While you're going to get the battery, are you  
2     conversing with this individual?

3           A     Uh, a little small chitchat there. But don't  
4     really remember what we talked about.

5           Q     Are you continuing to see him in the face?

6           A     Yes.

7           Q     And how soon after did he pull out the gun, when you  
8     went back behind the counter?

9           A     He waited for me to scan in the battery in the  
10    system.

11          Q     When you saw that firearm, were you scared?

12          A     Yes, I was.

13          Q     Describe that firearm for me.

14          A     It looked like a black revolver. Like a  
15    six-shooter. I really don't know much about guns. But  
16    I've seen them enough.

17          Q     Did you comply with his demands?

18          A     Yes, I did.

19          Q     Sir, did you call the police?

20          A     Yes, I did.

21          Q     Did they come?

22          A     Yes, they did.

23          Q     Did they mark off the area?

24          A     Yes, they did.

1           Q     Did they eventually show up some other time? Did a  
2     detective approach you about a month later with a photo  
3     lineup?

4           A     Yes, a detective did.

5           MR. LEXIS: Your Honor, let the record reflect I'm  
6     showing Defense Counsel State's Proposed Exhibit 9.

7           THE COURT: Proposed 9?

8           MR. LEXIS: Yes, Your Honor.

9           THE COURT: Thank you.

10          MR. LEXIS: May I approach, Your Honor?

11          THE COURT: You may.

12     BY MR. LEXIS:

13          Q     Sir, I'm showing you what has been marked as  
14     State's Proposed Exhibit 9. Do you recognize that?

15          A     Yes, I do.

16          Q     Is that your handwriting at the bottom?

17          A     Yes, it is.

18          Q     Is there set of instructions at the top?

19          A     Yes, there is.

20          Q     And did either the police officer read that to you or  
21     did you read it to yourself?

22          A     Both.

23          Q     He read it to you and then you read it yourself?

24          A     Yes, I did.



1 Q Did you follow those instructions?

2 A Yes, I did.

3 Q Did you then look at the six-pack photo lineup?

4 A Yes, I did.

5 Q Would you please flip the page. Is there a circle on  
6 that page?

7 A Yes, there is.

8 Q Did you make that circle?

9 A Yes, I did.

10 Q And did you write below that photo?

11 A Yes, my signature's there.

12 Q Did you also write on the first page?

13 A Yes, sir, I did.

14 Q And what did you write on the first page?

15 A I wrote that I was, basically, 100 percent  
16 accurate that this was the man that came in that night and  
17 robbed me.

18 Q What is your exact wording, sir?

19 A I take -- "I took a look at the pictures. The  
20 number 2 fit the description on the photo. I'm  
21 100 percent sure that that was the man that came in that  
22 night and robbed me at gunpoint."

23 MR. LEXIS: Your Honor, State moves to admit  
24 State's Proposed Exhibit 9.

1 THE COURT: Any objection to 9?

2 MR. CLAUS: No, Your Honor.

3 THE COURT: 9 be admitted.

4 [STATE'S EXHIBIT 9 ADMITTED]

5 MR. PALAL: Let the record reflect that I'm showing  
6 Defense Counsel State's Proposed 1 through 5.

7 THE COURT: 1 through 5?

8 MR. LEXIS: Yes, Your Honor.

9 THE COURT: Thank you.

10 MR. LEXIS: May I approach, Your Honor?

11 THE COURT: You may.

12 BY MR. LEXIS:

13 Q Sir, I'm showing you what has been marked as  
14 State's Proposed 1 through 5. Can you please flip through  
15 those photographs.

16 Sir, are those all true and accurate representations  
17 of what the store looked like on that day?

18 A Yes, they are.

19 MR. LEXIS: Your Honor, I move to admit State's 1  
20 through 5.

21 THE COURT: Any objection?

22 MR. CLAUS: No, Your Honor.

23 THE COURT: 1 through 5 will be admitted.

24 [STATE'S EXHIBITS 1-5 ADMITTED]

1 BY MR. LEXIS:

2 Q Sir, prior to coming to court today, did you meet  
3 with the District Attorneys involved in this case?

4 A Yes, I did.

5 Q And did -- during that meeting, did you go over  
6 video?

7 A Yes, I did.

8 Q And was it a true and accurate rendition of what  
9 happened on that day?

10 A Yes, it was.

11 MR. LEXIS: The record reflect that I'm showing  
12 Defense Counsel State's Proposed 39.

13 [Discussion off the record]

14 MR. LEXIS: Your Honor, may I approach?

15 THE COURT: Sure.

16 BY MR. LEXIS:

17 Q Sir, after you reviewed that video, did you sign the  
18 CD?

19 A Yes, I did sign the CD.

20 Q Is that your signature?

21 A Yes, it is.

22 MR. LEXIS: Judge, I move to admit State's Proposed 39  
23 and ask to play it.

24 THE COURT: Any objection?

1 MR. CLAUS: Based on the representations of the State,  
2 Your Honor, no.

3 THE COURT: Be admitted.

4 [STATE'S EXHIBIT 39 ADMITTED]

5 THE COURT: And you may publish.

6 MR. LEXIS: Thank you.

7 THE COURT: And, sir, it should come up on the screen  
8 next to you here, if all the technology works.

9 MR. LEXIS: Mr. [Inaudible] could you start  
10 [inaudible].

11 UNIDENTIFIED: Yeah, sorry. Give it a second to warm  
12 up.

13 [Video played]

14 BY MR. LEXIS:

15 Q Sir, can you describe for us who was behind that  
16 counter.

17 A That is me, Sam Echeverria.

18 Q Okay. Can you describe for me who was standing up in  
19 that frame as well, to the right, in front of you?

20 A That is the -- the robber.

21 Q What's going on right here, sir?

22 A I was finishing wrapping up the refund I just  
23 did. He asked me for the battery. As I was doing it, at  
24 the same time, I walked to the front, to check if I had

1 the specific battery he demanded.

2 Q And you said earlier you're maintaining some  
3 chitchat. Is that going on right now?

4 A No, not until he walks -- right there.

5 Q Now it is?

6 A Yeah.

7 Q At this point, everyone left the store?

8 A Yes.

9 Q It's just you and him?

10 A Only us two.

11 Q Is that you, sir?

12 A Yes, it is.

13 Q Is that the same man?

14 A Yes, it is.

15 Q Why are you leaving again, sir?

16 A I walked to the back to grab the keys so I could  
17 walk back to the front to unlock the holster to take out  
18 the battery.

19 Q What's going on now?

20 A Uh, I sat the battery down. So I'm ringing it  
21 up. As I was scanning it in, I'm not really paying  
22 attention. Then he walked up right there and he said,  
23 "Give me all the money before I blow your brains out."

24

1 MR. LEXIS: Can you pause it right there, please.

2 BY MR. LEXIS:

3 Q Sir, I saw you step back.

4 A Yeah.

5 Q With your arm did -- did you put your arms out?

6 A Yes, I did.

7 Q And why did you do that?

8 A Because I hesitated. I was afraid. In fear of  
9 my life.

10 Q Did you see something at that point?

11 A Yeah, that's when I saw the gun.

12 Q What's going on now, sir?

13 A I popped open the register and gave him all the  
14 money.

15 Q Is that him putting the gun back in his pocket and  
16 leaving with the cash?

17 A Yes.

18 Q What are you doing now?

19 A Close the register. Waited for him to walk out  
20 the front door so I could start calling the cops.

21 Q You immediately called the cops?

22 A Yes, I did.

23 Q Sir, do you see that person who robbed you in court  
24 today?

1           A     No, I do not.

2           Q     This happened two years ago, sir?

3           A     Yes, sir.

4           Q     And did you make your photo lineup identification  
5     about a month later?

6           A     Yes, I did.

7           Q     Sir, we're seeing another angle on the camera.  You  
8     recognize that?

9           A     Yes, I do.

10          Q     Who's that?

11          A     That is me behind the register.

12          Q     Okay.  And who is in front of you?

13          A     The same man that robbed me.

14          Q     What's going on, sir?

15          A     That's when he demanded the money, he'll blow my  
16     brains out.  I stepped back, opened the register, handed  
17     him the money.

18               MR. LEXIS:  Let the record reflect I'm showing Defense  
19     Counsel State Proposed 36.

20                     Your Honor, may I approach?

21               THE COURT:  You may.

22     BY MR. LEXIS:

23           Q     Sir, I'm showing you what's been marked as  
24     State's Proposed 36.  What is that?

1           A     That is him approaching with a gun in his hand.

2           Q     Is that a true and accurate representation of what  
3 occurred on that day?

4           A     Absolutely.

5           MR. LEXIS: Your Honor, State moves to admit  
6 State's Proposed 36.

7           THE COURT: Any objection?

8           MR. CLAUS: No, Your Honor.

9           THE COURT: Be admitted.

10                   [STATE'S EXHIBIT 36 ADMITTED]

11 BY MR. LEXIS:

12          Q     Sir, I'm showing you State's Exhibit 9. Do you  
13 recognize this, sir?

14          A     Yes, I do.

15          Q     And is the person in the number 2 spot right there --

16          A     Yes, it is.

17          Q     -- is that who you circled?

18          A     Yes, I did.

19          Q     Is that your signature underneath it?

20          A     That's my signature.

21          Q     Is that the person you stated on the first page --

22          A     That is the person I stated --

23          Q     -- that you're 100 percent --

24          A     Yes, I did.



1           Q     And to this day, you still maintain that you are  
2     100 percent that guy in the number 2 spot is the person --

3           A     Absolutely.

4           Q     And you made this identification about less than a  
5     month or a few days after -- a month and a few days after you  
6     were robbed?

7           A     Yes, I did.

8           MR. LEXIS:   Nothing further, Your Honor.

9           THE COURT:   Any cross-examination?

10          MR. CLAUS:   Yes, Your Honor.

11                   CROSS-EXAMINATION OF SAMUEL ECHEVERRIA

12          BY MR. CLAUS:

13           Q     Mr. Echeverria, you also wrote a voluntary statement  
14     for the police. You hand wrote one. Do you remember doing  
15     that?

16           A     Yes, I did.

17           Q     Okay. And do you remember that at the end of that  
18     voluntary statement you indicated that the individual who  
19     robbed you turned and walked out the door using his hand to  
20     open it?

21           A     Yes, I did.

22           Q     And, in fact, you remember the specific part of the  
23     door that he'd used to open -- the specific part of the door  
24     that he touched to open it; correct?

1           A     Uh, not really, no more. I just do remember  
2     him --

3           Q     Not anymore, but at the time you remembered.

4           A     Uh-huh.

5           Q     Okay. And at the time of the robbery, when you gave  
6     the -- or I'm sorry -- directly after the robbery, when you  
7     gave your voluntary statement, you told the police where that  
8     area was; correct?

9           A     Yes.

10          Q     And at the time, you identified it. The police went  
11     and they took fingerprints from that area of the door;  
12     correct?

13          A     Yes, they did.

14          Q     And, to your knowledge, at that time, they didn't --  
15     they didn't get the wrong area of the door. That was the  
16     right area of the door. That was where you told them the  
17     perpetrator's hands had been; correct?

18          A     Correct.

19          Q     Okay. Now, the person who robbed you, was he wearing  
20     any gloves?

21          A     No.

22          Q     Okay. So that's why you -- and the police, did they  
23     ask you if he'd pressed on anything with his hands or did you  
24     supply that to them yourself?

1           A     I supplied that to them myself.

2           Q     Okay. So you did that expecting that based upon how  
3 much they pressed on that glass that there should be  
4 fingerprints there.

5           A     Absolutely.

6           Q     Now, after the individual robbed you left the store,  
7 did anyone else come into the store?

8           A     No.

9           Q     In fact, you locked the doors.

10          A     Yes, I did.

11          Q     Okay. And during the space of time in which the  
12 person was robbing you or you were interacting with that  
13 person, there was no else in the store; correct?

14          A     No one else.

15          Q     It was just you and the person who robbed you.

16          A     Correct.

17          Q     So from the time we look at this video that's been  
18 shown to you, to the time that you, literally, hand the person  
19 the cash, there's nobody else in the store, nobody else tries  
20 to come in; correct?

21          A     Right.

22          Q     After the person leaves, nobody else tries to come  
23 in.

24          A     Right.

1           Q     Okay. And the hand print you identified was on the  
2     inside of the door; correct?

3           A     Correct.

4           Q     Now, prior to doing the six-pack lineup in February,  
5     had the police asked you to conduct any sort of identification  
6     prior to that point?

7           A     No, that was the first time.

8           Q     Had you given a description of the -- of the  
9     individual who robbed you?

10          A     When that lineup was handed to me, yes, I did  
11     give my description.

12          Q     Okay. Prior to you giving your description -- prior  
13     to you doing that lineup, had you given the police a  
14     description?

15          A     Yes, I did.

16          Q     Okay. And that description was -- do you remember  
17     what that description was?

18          A     I told them it was a male. He was a black male,  
19     black baseball cap, black hoodie, light blue jeans, black  
20     boots, had a lot of acne in his face.

21          Q     Okay. Now, you had a chance to review the video  
22     before you testified today; is that correct?

23          A     Yes, I did.

24          Q     Okay. And you had -- did you have a chance to look

1 at your handwritten voluntary statement?

2 A Yes, I did.

3 Q Were there any other statements that you gave to the  
4 police in written or -- that were written or recorded?

5 A Not that I recall.

6 MR. CLAUS: Court's indulgence for just a moment.

7 THE COURT: Sure.

8 MR. CLAUS: Pass the witness, Your Honor.

9 THE COURT: Any redirect?

10 REDIRECT EXAMINATION OF SAMUEL ECHEVERRIA

11 BY MR. LEXIS:

12 Q Sir, were you working graveyard?

13 A Yes, I was working a graveyard.

14 Q This was about 4:45, 4:35 p.m.?

15 A It was.

16 Q Was it a busy day?

17 A It was a busy day.

18 Q There was a lot of people in and out?

19 A Yes.

20 MR. LEXIS: No further questions, Your Honor.

21 THE COURT: Anything further?

22 RECROSS-EXAMINATION OF SAMUEL ECHEVERRIA

23 BY MR. CLAUS:

24 Q So was it light out when this crime occurred?

1 A Oh, um, I honestly don't remember at the --

2 Q Okay.

3 A I honestly --

4 Q The store was well -- I'm sorry. Go ahead. I didn't  
5 mean to interrupt you. Were you saying?

6 A I honestly don't remember, to be honest.

7 Q Okay. But the store was well lit; correct?

8 A Yes, it was.

9 Q Okay. Any -- any problems with seeing in the store?

10 A No.

11 Q Do you have corrective -- do you need any corrective  
12 lenses? Any contact lenses?

13 A Yes, I do, but I see pretty good.

14 Q Okay. Were they in that day?

15 A No.

16 Q They were not in that day. Were they in for seeing  
17 far away or for seeing close up?

18 A For seeing close up.

19 Q Okay. So -- and you got a good look at this person  
20 both far away and close up?

21 A Yes, I did.

22 Q Okay.

23 MR. CLAUS: Pass the witness.

24 THE COURT: Any further direct examination? Any

1 questions from the jurors?

2 MR. LEXIS: Judge, I do have a couple --

3 THE COURT: Oh, okay. Sorry.

4 FURTHER REDIRECT EXAMINATION OF SAMUEL ECHEVERRIA

5 BY MR. LEXIS:

6 Q Just showing you State's 59. Did his hair look like  
7 that?

8 A It really did, but he did have a baseball cap on.

9 Q Okay. It was short?

10 A Yes.

11 MR. LEXIS: Nothing further.

12 THE COURT: Anything else?

13 MR. CLAUS: We'll pass the witness, Your Honor.

14 THE COURT: Thank you, sir. We appreciate your time.  
15 Have a very nice afternoon. Thank you for our -- your  
16 patience with us.

17 THE WITNESS: Thank you, ma'am.

18 THE COURT: Next witness.

19 MR. LEXIS: State calls Alisa Williams.

20 ALISA WILLIAMS,

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

23 THE CLERK: Thank you. Please be seated.

24 Please state and spell your name for the record.

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

---

**No. 72545**

---

**KENYA SPLOND**  
Appellant,

vs.

**STATE OF NEVADA**  
Respondent.

---

Appeal from a Judgment of Conviction  
Eighth Judicial District Court, Clark County  
The Honorable Elizabeth Gonzalez, District Court

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**APPENDIX VOL 3**

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000537



## TABLE OF CONTENTS

Transcript of Jury Trial Day 2.....	AA-000501-AA-000563
Transcript of Jury Trial Day 3.....	AA-000564-AA-000750

1 THE WITNESS: Alisa J. Williams.

2 THE COURT: And could you spell your name, please.

3 THE WITNESS: A-l-i-s-a.

4 THE COURT: Williams, the typical spelling?

5 THE WITNESS: Yes, Williams.

6 THE COURT: All right. Ma'am, there are M&Ms in that  
7 dispenser next to you. There is water in the pitcher next  
8 to you. If you should need some coffee, let the marshal  
9 know.

10 You may proceed.

11 MR. PALAL: Thank you, Your Honor.

12 DIRECT EXAMINATION OF ALISA WILLIAMS

13 BY MR. PALAL:

14 Q Ms. Williams, do you remember being, or talking to  
15 the police about January 22nd, 2014?

16 A Not quite.

17 Q Yeah. Well, do you remember seeing somebody leave --  
18 saying -- saying that you saw somebody leave a Cricket store  
19 January 22nd, 2014?

20 A Yes. Yes.

21 Q And what were you doing that day?

22 A I was getting out of work.

23 Q Where did you work?

24 A At Wild Hair.

1 Q And is that in the same complex as the Cricket store?

2 A Next door.

3 Q Right next door. All right. And did anything strike  
4 you as unusual about the person leaving the Cricket store?

5 A No, he just ran and jumped into the back of a  
6 car.

7 Q Okay. And could you -- was the person white? Asian?  
8 Black?

9 A Black American.

10 Q Okay. And was he skinny or was he --

11 A Pretty skinny.

12 Q Okay. And then, did you happen -- can you describe  
13 the vehicle that the person went in to.

14 A It was a silver car. I don't know what kind of  
15 model it was, no. It was silver.

16 Q Was it a truck or a sedan?

17 A It was a silver car.

18 Q Okay.

19 A Yeah.

20 Q It's a regular car, then?

21 A Yeah.

22 Q Not a truck.

23 A No.

24 Q Not a SUV.

1           A     No.

2           Q     Okay.  Do you recall if the windows were tinted at  
3     all?

4           A     I don't remember, no.

5           Q     Did -- do you recall -- can you describe the person  
6     who was driving the car.

7           A     She's a light-skinned black female, young, and  
8     she had white shades on.

9           Q     Okay.  And so the -- the African American male who  
10    left -- who kind of -- who you said ran out of the Cricket  
11    store, did he go into the front seat or the back seat?

12          A     Jumped in the back seat.

13          Q     At some point later -- at some point later, did a  
14    detective come speak to you about this incident?

15          A     Yes.

16          Q     And did he provide you a photo array of people to see  
17    if you could recognize that person?

18          A     No.

19          Q     You don't remember him doing that?

20          A     I don't remember doing that, no.

21          MR. PALAL:  All right.  Court's indulgence.

22                 Your Honor, for the record, I showed Defense  
23    Counsel State's Proposed Exhibit Number 41.

24                 May I approach the witness?

1 THE COURT: You may.

2 BY MR. PALAL:

3 Q Now I'm gonna show you what's been previously marked  
4 as State's Proposed Exhibit Number 41. I'm gonna ask you to  
5 take a look at it. Is that your name on the top?

6 A Yes, it is.

7 Q Do you see your signature?

8 A Yes, I do.

9 Q Is that your writing?

10 A Yes, it is.

11 Q All right. Now, I'm gonna ask you to take a look at  
12 the second page. Do you see your initial?

13 A Yes.

14 Q Okay.

15 MR. PALAL: Your Honor, at this time the State's gonna  
16 move State's Exhibit 41 into evidence.

17 THE COURT: Any objection?

18 MR. CLAUS: Not at this point, Your Honor.

19 THE COURT: 41 be admitted.

20 [STATE'S EXHIBIT 41 ADMITTED]

21 BY MR. PALAL:

22 Q Now, in fairness ma'am -- [inaudible]. In fairness,  
23 ma'am, so do you now recall having -- being given a photo  
24 array by detectives some time later?

1 A Not really, no.

2 Q But you do recognize your handwriting?

3 A Yeah. Yeah. Everything else, I remember, yeah.

4 Q Everything else you recognize.

5 A Yeah.

6 Q And in fairness, when looking at the photo array, you  
7 were not able to identify the person, were you?

8 A I just saw his scar on his face. That's all I  
9 saw and had a hat on his head.

10 Q So you saw scars on his face, hat --

11 A On the -- on the jaw, cheek.

12 Q On the jaw.

13 A Yeah.

14 Q What kind of scars are you talking about?

15 A It was just a scar like a burn or something. I  
16 don't know. Like a knife cut or something. A burn. I  
17 don't know.

18 Q Could they be consistent with acne scars?

19 A No. No.

20 Q Okay. And you weren't able to pick the person out of  
21 the six-pack.

22 A Um --

23 Q I'm sorry. Out of the photo array.

24 A Um, that second one looks like it may be. I'm

1 not sure. He had a scar on his face.

2 Q So the second one looks like it might be, but you  
3 aren't sure and you weren't sure back then.

4 A I just remember a scar on the face and a hat. He  
5 had a hat over his head.

6 Q Okay.

7 A All right.

8 MR. PALAL: Okay. State will pass the witness.

9 THE COURT: Any examination?

10 CROSS-EXAMINATION OF ALISA WILLIAMS

11 BY MR. CLAUS:

12 Q As part of your -- as part of looking at the photo  
13 array, you told the detective you couldn't identify anyone; is  
14 that correct?

15 A No, just remember the scar and the hat. That's  
16 all I remember. That's what he had on. That's it.

17 Q But as part of the photo array and the photo array  
18 that you'd been given, you told the officer, "I looked and the  
19 photos and didn't recognize any of the people"; correct?

20 A Uh-huh.

21 Q And you didn't indicate that one looked closer than  
22 the others; correct?

23 A One looks closer on there, yeah.

24 Q But you didn't indicate that to the officer; correct?

1           A     No.

2           Q     Okay.  And is this first time you're telling this to  
3     someone today?

4           A     Yeah.

5           Q     And have you met with the District Attorneys prior to  
6     testifying today?

7           A     No.

8           Q     How did you come to testify today, then?

9           A     They called me yesterday -- well, last week.

10          Q     Okay.  And you were given a subpoena?

11          A     No, he just called me, actually.  I -- I had one  
12     previous, couple years earlier, but nothing ever happened  
13     of it.

14          Q     Okay.  And when you talked with this person on the  
15     phone, did you talk about what you'd done on the photo array?

16          A     No.

17          Q     Okay.  So your testimony that number two kind of  
18     looks like the scar guy is --

19          A     Wait.  If you bring up, I can show you which one  
20     it is.  I don't know --

21          Q     I have an idea which one it is.  What I'm just trying  
22     to clarify is, this is the first time you've said that to  
23     anybody.

24          A     Yeah.



1           Q     Okay. Today in court. You didn't say it back then.  
2     You didn't write it down. Is your memory better today than it  
3     was three years ago?

4           A     Better today? No, not really.

5           Q     Okay.

6           A     It's been a long time.

7           Q     Tends to be worse; yes?

8           A     Yeah.

9           Q     Okay. And as part of this photo array, you were also  
10    shown a photo arrays of women; correct?

11          A     Yeah.

12          Q     And you weren't able to identify anyone as that -- as  
13    part of that photo array; correct?

14          A     No.

15          Q     Okay. Now, this vehicle that you said was -- the  
16    folks were getting into, there was nothing else that stood out  
17    about it to you; correct?

18          A     No, just silver, newer model car. I don't know  
19    what kind of car it was either, no.

20          Q     Okay.

21          MR. CLAUS: Court's indulgence for just a moment,  
22    please.

23          THE COURT: Sure.

24          BY MR. CLAUS:

1           Q     And at the time of this incident, you also gave a  
2     written voluntary statement to the police.

3           A     Yes.

4           Q     Do you remember doing that?

5           A     Yes.

6           Q     Okay. Have you had a chance to review that --

7           A     No.

8           Q     -- before you testified today?

9           A     No. No.

10          Q     Do you remember on that voluntary statement that you  
11     didn't describe any damage to the vehicle.

12          A     No.

13          Q     Nothing else stood out -- stood out about the vehicle  
14     to you?

15          A     No.

16          Q     Okay.

17          A     It just parked in the opposite way the -- the  
18     people go out of the parking lot. You know, not -- not  
19     backed into -- it was backed into the parking lot,  
20     actually.

21          Q     Okay.

22          A     Parking spot. That was it.

23          MR. CLAUS: Thank you. Pass the witness, Your Honor.

24          THE COURT: Any redirect?

1 MR. PALAL: Briefly, Your Honor.

2 REDIRECT EXAMINATION OF ALISA WILLIAMS

3 BY MR. PALAL:

4 Q Mr. Claus referred to your voluntary statement that  
5 you wrote immediately after the event.

6 A Yes.

7 Q And you haven't seen it since the 2/2014?

8 A Nope.

9 Q Do you recall if you told the police that the silver  
10 car had tinted windows?

11 A No, I don't remember at all.

12 Q Would it refresh your recollection if I showed you  
13 the statement you wrote in 2014?

14 A Okay.

15 MR. PALAL: Your Honor, may I approach the witness?

16 THE COURT: You may.

17 Anybody want it marked for record purposes?

18 MR. PALAL: Not for the State, Your Honor.

19 MR. CLAUS: Just as part of the Court's record,  
20 Your Honor, perhaps.

21 THE COURT: We'll mark it as Court's one at the break.

22 [COURT'S EXHIBIT 1 MARKED.]

23 BY MR. PALAL:

24 Q Do you recognize your handwriting here?

1 A Yes.

2 Q Is that your name on the top?

3 A Yes.

4 Q Can you just read quietly to yourself.

5 A 'Kay.

6 Q And now, having -- and is this, in fact, a copy of  
7 the written statement you wrote in 2014?

8 A Yes.

9 Q And does it refresh your recollection as to whether  
10 or not you told the police officer that the silver car had  
11 tinted windows?

12 A No, I don't remember that now, really.

13 Q Do you -- having seen this, do you -- did you see  
14 that you wrote --

15 A Yeah.

16 Q -- "the car had tinted windows."

17 A Yeah.

18 Q So at that time, in 2014, you believe that the car --

19 A Yeah.

20 Q -- had tinted windows.

21 A Yeah.

22 MR. PALAL: All right. State will pass the witness,  
23 Your Honor.

24 THE COURT: Anything else, Mr. Claus?

1 MR. CLAUS: No, Your Honor.

2 THE COURT: Any questions from the jury?

3 Thank you, ma'am. We appreciate your time.

4 Thank you with your -- for your patience with us.

5 THE WITNESS: Okay.

6 THE COURT: Have a nice day.

7 THE WITNESS: Thank you.

8 THE COURT: Next witness.

9 MR. PALAL: State calls --

10 THE COURT: And we will need a copy of the statement  
11 to mark as Court's 1, at the break. So don't let it  
12 leave.

13 MR. LEXIS: State calls Brittany Slathar.

14 BRITTANY SLATHAR,  
15 [having been called as a witness and being first duly  
16 sworn testified as follows:]

17 THE CLERK: Thank you. Please be seated and please  
18 state and spell your name for the record.

19 THE WITNESS: Brittany Slathar, B-R-I-T-T-A-N-Y,  
20 S-L-A-T-H-A-R.

21 THE COURT: And, ma'am, there is a dispenser with M&Ms  
22 in it, if you should need some. There's water in the  
23 pitcher. I saw you brought some of your own. If you  
24 should need some coffee, let the marshal know.

1 THE WITNESS: Okay. Thank you.

2 THE COURT: You may proceed, Counsel.

3 MR. LEXIS: Thank you, Your Honor.

4 DIRECT EXAMINATION OF BRITTANY SLATHAR

5 BY MR. LEXIS:

6 Q Ma'am, on February 2nd, 2014, were you working at  
7 Star Mart?

8 A Yes.

9 Q Was that around 2:45 in the morning?

10 A Yes.

11 Q Is that here in Las Vegas, Clark County?

12 A Yes, it is.

13 Q And is that at 5001 North Rainbow?

14 A Yes.

15 Q What were you doing there?

16 A I was a cashier, graveyard.

17 Q Did anything out of the ordinary happen around 2:45  
18 in the morning?

19 A Yes, a gentleman came in and robbed me at  
20 gunpoint.

21 Q Okay. Let's take it step by step, ma'am. When did  
22 you first notice this person and where were you?

23 A Oh, I was sitting at the tables on the -- in --  
24 like, on the side, doing crossword puzzles. It's really,

1       like, dead on graveyard. And when someone walks in a  
2       "ding" -- like a bell dings. And I saw him go to the gum.  
3       And when he walked to the counter, I got up and walked to  
4       the counter.

5           Q       Do you know what kind of gum he got?

6           A       Wrigley spearmint gum.

7           Q       And was there anyone else at the store?

8           A       No.

9           Q       And then once he approached the register, is that  
10       when you approached the register?

11          A       Yes.

12          Q       What happened next?

13          A       I asked if he needed anything else. He said two  
14       packs of Newport 100s. So the cigarettes were behind me.  
15       I turned around. I grabbed the cigarettes. And as I was  
16       ringing them up, he pulled the gun out and told me to give  
17       him all the -- tell me give him all the money.

18                I told him once I was in a transaction, I could  
19       not open my register. And I was just -- kept telling him  
20       I couldn't open it. He said, keep -- kept saying, "Give  
21       me the money. Give me the money. I'm gonna kill you.  
22       You're gonna die." And I kept -- calling me names,  
23       telling me, "Give me the money dumb white bitch." Told me  
24       I was stupid. And just kept telling me, continuously,

1 "Give me the money. Give me the money."

2 Q And you did not open the register.

3 A No, I did not.

4 Q Okay. And why didn't you open the register?

5 A I didn't know that -- I was under the assumption  
6 I had to pay that money back. So I wasn't gonna give him  
7 the money. So I didn't give it to him. And it was very  
8 stupid.

9 Q When you saw this gun, ma'am, were you in fear?

10 A Yes. I actually stepped back because I was very  
11 shocked and, you know, I was not expecting that.

12 Q Does it affect you to this day?

13 A Yes.

14 Q And was he getting frustrated when you kept telling  
15 him this?

16 A Very.

17 Q And what was he doing?

18 A He just -- he was holding the gun on the counter,  
19 pointing at me. And just was standing there and he would,  
20 like, hide the gun and then put it back. And he just kept  
21 telling me, "Give me the money. Give me the money."

22 Q Did he eventually leave?

23 A Yes, he told me that he'd be back. I was lucky.  
24 And I -- he'd be back.



1 Q And did he grab anything?

2 A Yes, the cigarettes. Well, the gum was on the  
3 counter. And I had put the cigarettes to the right of my  
4 register to not -- try not to give them to him and he  
5 eventually reached over the counter and grabbed them and  
6 then he left.

7 Q What did you do?

8 A I turned around and I called Metro. And once I  
9 got off the phone with Metro, I went around and locked the  
10 front doors because he said he'd be back. So I had locked  
11 the front door so he couldn't get back in. And so nobody  
12 else could come in as well.

13 Q Did Metro immediately respond?

14 A Yeah, I had saw a car drive by with the lights on  
15 and then another bunch of cop pulled in shortly after.

16 Q Soon thereafter, did they take you to a certain  
17 scene?

18 A Yes, they did.

19 Q And did they give you what's called a Show Up Witness  
20 Instruction Sheet?

21 A Yes, they did.

22 MR. LEXIS: Let the record reflect that I'm showing  
23 Defense Counsel State's Proposed Exhibit 19.

24 Your Honor, may I approach?

1 THE COURT: You may.

2 BY MR. LEXIS:

3 Q Ma'am, I'm showing you what has been marked as  
4 State's Proposed Exhibit 19.

5 A Uh-huh.

6 Q Do you recognize that, ma'am?

7 A Yeah, this is the form the police officer gave me  
8 before I went to that location where the suspect was.

9 Q Is there instructions at the top?

10 A Yes.

11 Q Did either the officer or you read those  
12 instructions?

13 A Yes, they told me to read them before.

14 Q And did you do that?

15 A Yes.

16 Q And then did you make an identification?

17 A Yes, I did.

18 Q And what specifically did you put down?

19 A You want me to read this?

20 Q Yes.

21 A "The male in front of the police car was the man  
22 who robbed me at the -- robbed me at gunpoint. He was  
23 wearing blue jeans, red T-shirt, and black tennis shoes.  
24 When he came in the store he was wearing blue jeans, a

1 black hooded sweatshirt and a beanie light," slash, "dark  
2 brown spots." It was a camouflage beanie.

3 Q And your identification was 100 percent?

4 A Yes. He was right in front of my face and I  
5 can't -- you can't -- he didn't cover his face, so I saw  
6 his face.

7 MR. LEXIS: Your Honor, the State moves to admit  
8 State's Proposed Exhibit 19.

9 THE COURT: Any objection?

10 MR. CLAUS: No, Your Honor.

11 THE COURT: Be admitted.

12 [STATE'S EXHIBIT 19 ADMITTED]

13 MR. LEXIS: Let the record reflect I'm showing Defense  
14 Counsel State's Proposed 25.

15 May I approach Your Honor?

16 THE COURT: You may.

17 BY MR. LEXIS:

18 Q Ma'am, I'm showing you what has been marked as  
19 State's Proposed Exhibit 25.

20 A Okay.

21 Q What is that?

22 A This is the property that he stole from the  
23 store.

24 Q Do you recognize that?

1           A     Yes.

2           Q     And what is it?

3           A     It is Wrigley spearmint gum and two packs of  
4     Newport 100s. One open; one not.

5           Q     And were those returned to the store?

6           A     Yes, they were.

7           MR. LEXIS: Your Honor I move to admit  
8     State's Proposed Exhibit 25.

9           THE COURT: Any objection?

10          MR. CLAUS: No, Your Honor.

11          THE COURT: 25 be admitted.

12                 [STATE'S EXHIBIT 25 ADMITTED]

13          MR. LEXIS: Let the record reflect I'm showing Defense  
14     Counsel State proposed 38.

15                 May I approach, Your Honor?

16          THE COURT: You may.

17     BY MR. LEXIS:

18           Q     Ma'am, I'm showing you what has been marked as  
19     State's Proposed Exhibit 38. Do you recognize that photo  
20     photograph?

21           A     Yes, I do.

22           Q     Who was in that photograph?

23           A     I am behind the register and he is in front of  
24     me.

1 Q And at what point in the occurrence is this?

2 A In the middle of the robbery, when he has the gun  
3 in his hand and he's just telling me, "Give me the money,"  
4 at some -- at some point.

5 MR. LEXIS: Your Honor, State moves to admit  
6 State's Proposed 38.

7 THE COURT: Any objection?

8 MR. CLAUS: No, Your Honor.

9 MR. PALAL: Permission to publish, Your Honor?

10 THE COURT: 38 be admitted.

11 [STATE'S EXHIBIT 38 ADMITTED]

12 THE COURT: You may.

13 MR. LEXIS: Thank you.

14 BY MR. LEXIS:

15 Q Is this you on the right, ma'am?

16 A Yes.

17 Q That's him on the left?

18 A Yes.

19 Q And is the firearm in his hand?

20 A Yes, you can slightly see it, not very well. But  
21 you can kind of see there's something in his hand.

22 Q And describe for me that firearm.

23 A It was a black revolver. I knew it was a  
24 revolver, not a -- like a handgun. It had no clip. But

1       it was a black revolver. It was very small.

2           Q     Ma'am, prior to this date, did you also recognize  
3       this man?

4           A     Yes.

5           Q     And how is that?

6           A     He -- he had been in my store before, as a  
7       customer.

8           Q     So as soon as he walked in the store, did you  
9       recognize him automatically --

10          A     Yes.

11          Q     -- from someone you previously dealt with?

12          A     Yeah. I have a very good memory. I knew it  
13       was -- he was a previous customer.

14          Q     Prior to this date, did you meet with the  
15       District Attorney's office?

16          A     Yes, I have.

17          Q     At one point, did you go over the video?

18          A     Uh --

19          Q     Were you shown video of this --

20          A     Oh, yes.

21          Q     -- of this occurrence?

22          A     Yes.

23           MR. LEXIS: Your Honor, let the record reflect State's  
24       showing proposed Exhibit 40 to Defense Counsel.

1           May I approach Your Honor?

2           THE COURT:   You may.

3       BY MR. LEXIS:

4           Q     Ma'am, I'm showing you what has been marked as  
5       State's Proposed Exhibit 40.  Do you recognize that CD?

6           A     Yes, it's the video of the robbery.

7           Q     Okay.  After we showed you that video, did one of the  
8       District Attorneys pop it out and have you sign that exact CD?

9           A     Yes.

10          Q     Is that your signature on that CD?

11          A     Yes, it is.

12          MR. LEXIS:  Your Honor, State moves to admit  
13       State's Proposed Exhibit 40.

14          THE COURT:  Any objection?

15          MR. CLAUS:  Your Honor, can we lay a better foundation  
16       for this, please?

17          THE COURT:  What part of the foundation do you have a  
18       problem with?

19          MR. CLAUS:  Just if she viewed the entire video --

20          THE COURT:  Okay.

21          MR. CLAUS:  -- and [inaudible] --

22          THE COURT:  You could --

23       BY MR. LEXIS:

24          Q     Did we play this video in the entirety to you on --

1       what's contained on this CD?

2           A     Yes.

3           Q     And did you particularly observe every aspect --

4           A     Yes.

5           Q     -- of this?

6           A     Yes.

7       MR. LEXIS: Your Honor, I move to admit.

8       MR. CLAUS: No objection.

9       THE COURT: Be admitted.

10               [STATE'S EXHIBIT 40 ADMITTED]

11       THE COURT: You may publish.

12       MR. LEXIS: Thank you, Your Honor.

13       BY MR. LEXIS:

14           Q     Now, sir -- excuse me -- ma'am, do you see that  
15       person who robbed you in court today?

16           A     Yes, I do.

17           Q     Could you please point to him and identify for me the  
18       color shirt he's wearing.

19           A     He's right there in a white shirt.

20       MR. LEXIS: Your Honor, let the record reflect the  
21       witness has identified the Defendant.

22       THE COURT: Record will so reflect.

23               [Video played]

24       /



1 BY MR. LEXIS:

2 Q Ma'am, what are we looking at?

3 A You're looking at the store. I'm over -- I'm on  
4 the right doing crossword puzzles. And this is the aisle  
5 with the chips and the candy on it. It's not the entire  
6 store, but most of it. You see the ding -- like the -- I  
7 look up because I heard the ding from the door

8 Q And what's going on right now?

9 A He's grabbing a pack of gum. It's a gum aisle,  
10 candy aisle.

11 Q And is that the Wrigley gum that you identified  
12 earlier?

13 A Yes, it is.

14 Q What's going on now?

15 A He walks up to the counter. So I see him, so I  
16 walk up to the counter as well.

17 Q You recognize that person, ma'am?

18 A Yes, that is me.

19 Q What are you doing?

20 A I am grabbing the pack of gum to ring it up. And  
21 that's when he says he wants the two packs of Newports.  
22 So I turn around because they were behind me. And I grab  
23 the Newports and I start ringing them up.

24 Q Same Newports as you identified earlier?

1           A     Yes, Newport 100s. And he pulls the gun, so I  
2     step back.

3           MR. LEXIS: Will you pause it right there.

4     BY MR. LEXIS:

5           Q     So at that point, when you see that gun, are you in  
6     fear, ma'am?

7           A     Immediately.

8           Q     And is that why you step back?

9           A     Yes.

10          Q     And what are you doing -- what's the next thing  
11     you're doing?

12          A     I just -- I rang cigarettes and that's when he  
13     starts saying, "Give me the money." And that's when I  
14     start pleading with him that I can't open my drawer.

15          Q     You're lying to him --

16          A     Yes.

17          Q     -- and acting like you can't --

18          A     Yeah. And I put the cigarettes to the right to  
19     try to not get him to take them. And he grabs the gum.

20          Q     Is that you --

21          A     And the gun's right there on the counter.

22          Q     And you prevented him from taking it and he grabbed  
23     them from you?

24          A     Yep.

1           Q     Now, you're still playing at acting like you can't  
2     open the register?

3           A     Yes.

4           Q     Is that a "yes," ma'am?

5           A     Yes. And I turn -- I even turn my computer to  
6     show him.

7           Q     What's he saying to you at this point?

8           A     "Open the register. I know you can open it.  
9     Just open it. Give me the money." And then that's when  
10    he gets frustrated and leaves, tells me he'll be back.

11          Q     He threatened your life several times?

12          A     Yes.

13          Q     What are you doing at this point now?

14          A     I turn around to call Metro.

15          Q     What are we watching here, ma'am?

16          A     Another video of him at the register. Me ringing  
17    him up. Just a different angle. And I'm grabbing the  
18    cigarettes, once again. And he, in just a second, pulls  
19    out the gun. And there it is. And he's shaking his head,  
20    "Give me the money."

21          Q     Pointing that gun right at you?

22          A     Yep. It's under his hand. He's wearing gloves.  
23    But it is pointed at me, yes.

24          Q     Is he continuing talking to you this entire time?

1           A     Yes.

2           Q     What's he doing here?

3           A     Grabbed the cigarettes from the other side of my  
4     register. You can see he's getting frustrated, shaking  
5     his head. You see he puts the gun back in his sweatshirt.  
6     And then he points it at me again through the sweatshirt.

7           Q     Were you able to give the police a general  
8     description of where he left?

9           A     Kind of. I -- there's a -- you can see a camera  
10    up here. I can see different angles. And I could see  
11    which way he ran through the glass. But I don't know  
12    exactly where he went, but I could tell you what direction  
13    he went.

14          Q     And did you relay that to 9-1-1?

15          A     Yes, I did.

16          Q     And you didn't go out to run after this guy?

17          A     No.

18          Q     So you basically just stayed there, waited for police  
19    to arrive?

20          A     Yes, I did.

21          Q     And gave them a general description of where he was  
22    headed.

23          A     Yes.

24          Q     And it was pretty much minutes later, after you did

1 the show up?

2 A Yeah. I mean, they came in. They talked to me  
3 and asked me what had happened. And then they told me  
4 that they may or may not have a suspect somewhere close  
5 by.

6 MR. LEXIS: May I approach, Your Honor?

7 THE COURT: You may.

8 MR. LEXIS: State's Proposed Exhibit 19.

9 THE CLERK: 19's already admitted.

10 MR. LEXIS: Yeah.

11 BY MR. LEXIS:

12 Q Now showing you [inaudible] State's Exhibit 19.  
13 Could you tell me those instructions that were read.

14 A You want me to read it?

15 Q Yes.

16 A Okay. "In a moment I'm going to show you a  
17 person who is being detained. This person may or may not  
18 be a person who committed the crime now being  
19 investigated. The fact that this person is detained  
20 should not cause you to -- to believe or guess that he or  
21 she is guilty. You do not have to identify anyone. It is  
22 just as important to free innocent persons from suspicion  
23 as it is to identify those who are guilty.

24 "Please keep in mind that clothing can be easily

1 changed. Please do not talk to anyone, other than the  
2 police officers, while viewing this person. You must make  
3 up your own mind and not be influenced by other witnesses,  
4 if any.

5 "When you have viewed the person, please tell me  
6 whether or not you can make identification. If you can,  
7 tell me in your own words how sure you are of the  
8 identification. Please do not indicate in any way to other  
9 witnesses that you have or have not made identification.  
10 Thank you."

11 Q You read those instructions before you made the  
12 identification; correct?

13 A Yes, before they even drove me over there.

14 Q And you were of the understanding that you didn't  
15 have to pick anybody.

16 A Yes.

17 Q But yet, you identified this man as 100 percent?

18 A Yes, I knew right -- right when -- I knew  
19 instantly.

20 Q And to this day, are you certain 100 percent?

21 A Yes.

22 MR. LEXIS: Nothing further, Your Honor.

23 THE COURT: Cross-examination?

24 /

1 CROSS-EXAMINATION OF BRITTANY SLATHAR

2 BY MR. CLAUS:

3 Q Ms. Slathar, there was a significant period of time  
4 between when you originally given the admonition and when you  
5 ultimately wrote what your feelings were about the  
6 identification; correct?

7 A Yes.

8 Q About 25 -- 24 minutes.

9 A Yes.

10 Q Okay. And during that time period, were you at the  
11 scene or were you -- well, I'm sorry. Were you at the scene  
12 where the person was located or were you at the Star Mart?

13 A Star Mart.

14 Q Okay. What was -- what was being waited for?

15 A They were waiting -- I was -- they were talking  
16 to me about -- asked me what had happened and they were  
17 waiting for something at the scene. They were waiting for  
18 something they were doing there. I don't -- I'm not sure.

19 Q Okay.

20 A I didn't ask questions. I was just -- they were  
21 the cops. They were in charge.

22 Q When you first showed up to the scene, did you tell  
23 anyone that you didn't believe that was the one who has robbed  
24 you based upon the difference in his clothes?

1           A     No.  I -- he had changed his clothes, but I saw  
2     his face.

3           Q     Okay.  So the police officers never told you that he  
4     had changed his clothes --

5           A     No --

6           Q     -- you told them --

7           A     -- I said that.

8           Q     -- the officers.

9           MR. CLAUS:  Court's indulgence.

10                Pass this witness, Your Honor.

11           THE COURT:  Any redirect?

12           MR. LEXIS:  Yes, Your Honor.

13           THE COURT:  Questions from the jury?

14           MR. LEXIS:  Judge, I have some more questions.

15           THE COURT:  I know.

16           MR. LEXIS:  Oh, sorry.

17           THE COURT:  I'm doing two things at once while you're  
18     walking.

19           MR. LEXIS:  Sorry.

20           THE COURT:  It's okay.

21           MR. LEXIS:  The record reflect I'm showing Defense  
22     Counsel State's Proposed Exhibit 33.

23                May I approach Your Honor?

24



1 THE COURT: You may.

2 REDIRECT EXAMINATION OF BRITTANY SLATHAR

3 BY MR. LEXIS:

4 Q Ma'am, I'm showing you what has been marked as  
5 State's Proposed Exhibit 33.

6 A Uh-huh.

7 Q Do you recognize that photograph?

8 A Yes.

9 Q What is it?

10 A It is the man who robbed me on February 2nd.

11 Q True and accurate representation of what he looked  
12 like?

13 A Yes.

14 Q Is that what he was wearing when you did your show  
15 up?

16 A No -- yes, when he -- when he did the show up,  
17 yes, not when he robbed me.

18 Q Okay. What was he wearing when he robbed you?

19 A He was wearing a black sweatshirt, blue jeans,  
20 and a camouflage beanie.

21 MR. LEXIS: Your Honor, State moves to admit  
22 State's Proposed 33.

23 THE COURT: Any objection?

24 MR. CLAUS: No, Your Honor.

1 THE COURT: 33 will be admitted.

2 [STATE'S EXHIBIT 33 ADMITTED]

3 MR. LEXIS: Permission to publish, Your Honor.

4 THE COURT: You may.

5 BY MR. LEXIS:

6 Q So when you stated earlier he had on different  
7 clothing to the officer, is this what you meant?

8 A Yes.

9 Q That he had a red shirt on at the time --

10 A Yes.

11 Q -- that you did your show up?

12 A Yes.

13 Q And his hair, obviously, it was very  
14 close-to-the-head cut.

15 A Yes.

16 Q Very different from what he has on today?

17 A Yes.

18 Q Wasn't wearing glasses then either?

19 A No.

20 Q In addition, his goatee is very more pronounced now?

21 A Yes.

22 MR. LEXIS: Nothing further, Your Honor.

23 THE COURT: Anything further, Mr. Claus?

24 MR. CLAUS: Yes, Your Honor.

1                   RE CROSS-EXAMINATION OF BRITTANY SLATHAR

2           BY MR. CLAUS:

3           Q       When you -- when you said the individual who robbed  
4           you, he was wearing gloves; correct?

5           A       Yes.

6           Q       Okay. Were they big thick leather gloves? Do you  
7           remember specifically what --

8           A       They just looked like -- they don't look leather.  
9           They just look like black, I guess, cloth gloves. I mean,  
10          I wasn't really concentrating on the gloves. I was  
11          concentrating on the gun.

12          Q       Good enough. Thank you.

13          MR. CLAUS: Pass the witness, Your Honor.

14          THE COURT: Counsel, can you approach? I have a  
15          question from the jury.

16                   [Bench conference]

17          THE COURT: Ma'am, I have a question from the jurors.

18          THE WITNESS: Okay.

19          THE COURT: Did you tell 9-1-1 or responding officers  
20          the direction you saw him go from your position within the  
21          store?

22          THE WITNESS: Yes, I did.

23          THE COURT: Does anybody want to follow up?

24

1           FURTHER REDIRECT EXAMINATION OF BRITTANY SLATHAR

2       BY MR. LEXIS:

3           Q     Do you remember which direction, ma'am?

4           A     To the left of my store. It was on Rainbow. I  
5     don't really know, like, north, south, east, west, but I  
6     could tell you he went left up Rainbow. Because if you go  
7     right, there's a casino right there. So you can't really  
8     go right. So he went left, out my doors.

9           Q     Out your doors and to the left?

10          A     Uh-huh.

11          MR. LEXIS: Nothing further, Your Honor.

12          THE COURT: Anything further?

13          MR. CLAUS: No, Your Honor.

14          THE COURT: Thank you, ma'am. We appreciate your  
15     time. Thank you for your patience. You may have a nice  
16     afternoon.

17          THE WITNESS: You, too. Thank you.

18          THE COURT: Next witness.

19          MR. PALAL: Your Honor, may we approach?

20          THE COURT: You can.

21                 [Bench conference]

22          THE COURT: Ladies and gentlemen, we're gonna take a  
23     break for personal convenience.

24                 During this recess, you are admonished not to

1 talk or converse among yourselves or with anyone else on  
2 any subject connected with this trial or read, watch, or  
3 listen to any report of commentary on the trial or any  
4 person connected to this trial by any means of  
5 information, including without limitation: Social media,  
6 text, newspaper, television, Internet, radio or form or  
7 express any opinion on any subject connected with the  
8 trial until the case is finally submitted to you.

9 We give you about ten minutes. If anybody needs  
10 coffee, please let the marshal know and he will be happy  
11 to get you some.

12 Hear that part, Kevin?

13 THE BAILIFF: Yes, I do, Judge.

14 THE COURT: Okay.

15 THE BAILIFF: Folks, can you [inaudible] your chairs  
16 [inaudible] Your Honor?

17 THE COURT: Yes, please.

18 [Outside the presence of the jury]

19 THE COURT: I ascribe to the Stu Bell Rule of trial.  
20 So you run out of witnesses and I use those words.

21 So do you rest?

22 MR. PALAL: Fair enough, Your Honor.

23 THE COURT: With a smile on my face. But I'm always  
24 happy to give you a break for personal convenience.

1 MR. PALAL: Thank you. Appreciate it.

2 MR. CLAUS: Thank you, Your Honor.

3 THE COURT: How are we doing on time? We're moving at  
4 a faster clip than you'd thought, huh?

5 MR. PALAL: Much faster. We have one witness here.  
6 We're just trying to -- he's gonna be -- he's gonna be  
7 short. So we're trying just [inaudible] the rest.

8 THE COURT: Move them up. Got another two and a half  
9 hours.

10 [Recess at 2:38 p.m.; proceedings resumed at  
11 2:48 a.m.]

12 [Outside the presence of the jury]

13 THE BAILIFF: Want me to get them, Judge?

14 THE COURT: Uh-huh. I'd really like to finish the  
15 trial tomorrow.

16 THE CLERK: Mr. Palal?

17 MR. PALAL: Yes.

18 THE CLERK: Do you guys have 19?

19 THE COURT: In addition to 19, we need the statement  
20 that was used to refresh the recollection of Miss -- was  
21 it Williams?

22 MR. PALAL: Yes.

23 THE COURT: Which we'll mark as Court's 1.

24 [Discussion off the record]

1 [In the presence of the jury]

2 THE BAILIFF: Jurors are present.

3 THE COURT: Counsel, state the presence of the jury.

4 MR. PALAL: Yes, Your Honor.

5 MR. CLAUS: Yes, Your Honor.

6 THE COURT: Your next witness.

7 MR. LEXIS: State calls Jeffrey Haberman.

8 JEFFREY HABERMAN,

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

11 THE CLERK: Thank you. Please be seated.

12 Please state and spell your name for the record.

13 THE WITNESS: Jeffrey Bruce Haberman, J-E-F-F-R-E-Y,  
14 B-R-U-C-E, H-A-B, as in "bravo," E-R-M-A-N.

15 THE COURT: Sir, you will notice there is a dispenser  
16 of M&Ms there, if you should need them. There's water in  
17 the pitcher next to you. And if you'd like some coffee,  
18 the marshal can assist you.

19 THE WITNESS: Thank you.

20 THE COURT: You may proceed.

21 MR. LEXIS: Thank you, Your Honor.

22 DIRECT EXAMINATION OF JEFFREY HABERMAN

23 BY MR. LEXIS:

24 Q Sir, do you own a 38-caliber Colt revolver?

1           A     I did. It was stolen.

2           Q     When was it stolen?

3           A     October 2013.

4           Q     And how was it stolen?

5           A     Somebody broke into my home, stole the entire gun  
6 safe.

7           MR. LEXIS: Let the record reflect that I'm showing  
8 opposing Counsel State's Exhibit -- Proposed Exhibit 29  
9 and 30.

10                  May I approach, Your Honor?

11           THE COURT: You may.

12           BY MR. LEXIS:

13           Q     Sir, I'm showing you what has been marked as  
14 State's Proposed Exhibit 29.

15           A     Yes.

16           Q     Do you recognize that firearm?

17           A     Yes, I do.

18           Q     Does it appear to be your -- true and accurate  
19 representation of your firearm?

20           A     Yes, it does. Colt Detective Special.

21           Q     Showing you what has been marked as State's Proposed  
22 Exhibit 30. Do you recognize that?

23           A     Yes.

24           Q     True and accurate representation --



1 A Yes.

2 Q -- of what your firearm looks like?

3 A Yes, sir.

4 MR. LEXIS: Your Honor, I move to admit  
5 State's Proposed 29 and 30.

6 THE COURT: Any objection to 29 and 30?

7 MR. CLAUS: No, Your Honor.

8 THE COURT: 29 and 30 be admitted.

9 [STATE'S EXHIBITS 29 AND 30 ADMITTED]

10 BY MR. LEXIS:

11 Q When did you buy this firearm, sir, or how did you  
12 come in --

13 A Um, I inherited it from my father, basically.

14 Q Okay.

15 A He bought it in Los Angeles.

16 Q And what did you do when you got it?

17 A Uh, registered in my name.

18 MR. LEXIS: Let the record reflect I'm showing  
19 opposing Counsel State's Proposed 42.

20 May I approach?

21 THE COURT: You may.

22 BY MR. LEXIS:

23 Q Sir, I'm showing you a certified copy from the  
24 Metropolitan Police Department for a gun registration. Do you

1 recognize that document?

2 A Looks familiar. Yes, I do.

3 Q Does that include your name?

4 A Yes, it does.

5 Q What else does it include?

6 A My mother's name, her address, my address, the  
7 serial number of the gun, manufacturer, and model.

8 Q Is all that information true and correct?

9 A Yes, it is, sir.

10 Q The serial number?

11 A Um, yes, sir.

12 MR. LEXIS: Your Honor, I move to admit

13 State's Proposed 42.

14 THE COURT: Any objection to 42?

15 MR. CLAUS: Well, Your Honor, I think he only talked  
16 about the first page; correct? Not the second?

17 MR. LEXIS: Talked about the second page. The first  
18 page is a certified document from the Metropolitan Police  
19 Department saying that it is true and accurate and it is  
20 from Custodian of Record of Metro.

21 MR. CLAUS: No, Your Honor.

22 THE COURT: Be admitted.

23 THE CLERK: Mr. Lexis, can you staple that?

24 MR. LEXIS: Yes.

1 [STATE'S EXHIBIT 42 ADMITTED]

2 MR. LEXIS: May I publish, Your Honor?

3 THE COURT: You may.

4 BY MR. LEXIS:

5 Q Here I'm showing you the second page of State's 42.  
6 That's your name? That's your serial number you're referring  
7 to, sir?

8 A Yes, sir.

9 Q Sir, I'm showing you State's 29. Is that the firearm  
10 the gun registration was referring to?

11 A Yes, sir, it is.

12 Q Tell me exactly how it was stolen.

13 A I came home one day, the back door had been  
14 pry -- my patio door had been pried open. Somebody  
15 entered the house, stole the entire gun safe, ripped the  
16 front -- I had a double dead bolt on the front door. That  
17 was ripped out of the door and then went right out.  
18 There's still drag marks on the concrete from the safe.

19 Q You know a person named Kenny Splond?

20 A No, sir.

21 Q The man sitting at Counsel table, with the white  
22 shirt and the striped tie.

23 A No, sir.

24 Q Have you ever seen that man before?

1           A     I don't believe so.

2           Q     Did you ever give that man permission to go in your  
3 house?

4           A     No, sir.

5           Q     Did you ever give that man permission to borrow your  
6 firearm?

7           A     No, sir.

8           Q     Did you ever give permission to any of his friends,  
9 relatives, et cetera, to ever have your gun?

10          A     No, sir.

11          Q     Did you ever give permission for anyone to have this  
12 gun at issue?

13          A     No, sir.

14          Q     Did you ever fire this weapon, sir?

15          A     No, sir.

16          MR. LEXIS: Let the record reflect I'm showing  
17 opposing Counsel State's Proposed 28.

18                May I approach, Your Honor?

19          THE COURT: You may.

20          BY MR. LEXIS:

21          Q     Sir, I'm showing you what has been marked as  
22 State's Proposed 28. What is that a picture of?

23          A     My colt with four rounds in it.

24          Q     True and accurate representation of your firearm?

1           A     Yes.

2           MR. LEXIS:   Your Honor, I move to admit

3       State's Proposed 28.

4           THE COURT:   Any objection?

5           MR. CLAUS:   Yes, Your Honor.   Foundation.   I mean --

6           THE COURT:   Overruled.

7                       [STATE'S EXHIBIT 28 ADMITTED]

8           MR. LEXIS:   May I publish, Your Honor?

9           THE COURT:   You may.

10       BY MR. LEXIS:

11           Q     Is that your firearm, sir?

12           A     Yes, sir.

13           Q     With rounds in the chamber?

14           A     Yes, sir.

15           Q     Did you keep rounds in the chamber?

16           A     No, sir.

17           Q     This gun was empty when it was stolen?

18           A     Yes, sir.

19           MR. LEXIS:   Nothing further, Your Honor.

20           THE COURT:   Cross-examination?

21                       CROSS-EXAMINATION OF JEFFREY HABERMAN

22       BY MR. CLAUS:

23           Q     Mr. Haberman, were you there when this photograph was

24       taken?

1 A No, sir.

2 Q Do you know when this photograph was taken?

3 A No, sir.

4 Q Do you know anything about the surrounding  
5 circumstances of this photograph?

6 A No, sir.

7 Q Do you know anything about the ammunition that  
8 purports to be in that gun?

9 A No, sir.

10 Q Do you know whether that's live or empty ammunition,  
11 could be fired? I'm not asking you to speculate. I'm asking,  
12 if you know, sir.

13 A Three rounds, look like they're live. One round  
14 looks like it's been fired.

15 Q I'm not asking you to speculate, sir --

16 A No, sir --

17 Q -- I'm asking do you know.

18 A -- I'm looking at -- I'm looking at the photo of  
19 the primer.

20 Q Yes, Your Honor -- yes, sir. I -- I guessed that.  
21 What I'm asking you is not to speculate. I'm asking --

22 A I'm --

23 Q -- do you know anything about those cartridges --

24 A No, sir, I don't.

1           Q     Okay.  So you're guessing, based upon what you think  
2     the character --

3           A     Well, the primer --

4           MR. LEXIS:  Judge, I'm gonna object to --

5           THE COURT:  Mr. Claus, you have to let him finish.

6           MR. CLAUS:  Yes.

7           THE COURT:  Okay.

8     BY MR. CLAUS:

9           Q     So you are guessing based upon that --

10          A     No, sir -- well, actually, sir, when you fire a  
11     center-fire cartridge, the primer will show an  
12     indentation.

13          Q     Under most circumstances; correct?

14          A     Under all circumstances, sir.

15          Q     Okay.

16          A     I used to sign off on an FFL in Los Angeles.

17          Q     But you don't know if there are bullets on the other  
18     ends of those cartridges; correct?

19          A     No, sir, I don't.

20          Q     You don't know anything about those cartridges;  
21     correct?

22          A     No.

23          Q     So you don't know whether they're live, whether  
24     there's gun powder in them, you don't know anything about that

1 photograph; correct?

2 A No, sir.

3 Q Okay.

4 MR. CLAUS: Repeat my objection to the admission of  
5 this photograph.

6 THE COURT: I already ruled, Counsel. You may  
7 proceed.

8 MR. CLAUS: Yes, Your Honor.

9 Your Honor, at this point, all I'd ask for is an  
10 admonition to the jury --

11 THE COURT: Counsel, if you would please proceed.

12 MR. CLAUS: Pass witness.

13 THE COURT: Cross-examination -- or redirect?

14 MR. LEXIS: Yes, Your Honor.

15 REDIRECT EXAMINATION OF JEFFREY HABERMAN

16 BY MR. LEXIS:

17 Q What is FFL, sir?

18 A Federal Firearm License.

19 Q And how do you obtain that?

20 A I worked for somebody who had one. I worked in a  
21 gun store in Los Angeles.

22 Q Okay.

23 MR. LEXIS: Nothing further.

24 THE COURT: Anything else, Mr. Claus?



1 MR. CLAUS: No, Your Honor.

2 THE COURT: All right.

3 Thank you, sir. We appreciate your time. Have a  
4 very nice afternoon.

5 THE WITNESS: Thank you.

6 THE COURT: Next witness.

7 MR. CLAUS: Your Honor, may I approach, please?

8 THE COURT: Yep.

9 [Bench conference]

10 THE COURT: Ladies and gentlemen, Counsel and I have a  
11 brief legal issue to resolve and then we will get back to  
12 you.

13 During this recess, you are admonished not to  
14 talk or converse among yourselves or with anyone else on  
15 any subject connected with this trial or read, watch, or  
16 listen to any report of or commentary on the trial or any  
17 person connected to this trial by any means of  
18 information, including without limitation: Social media,  
19 text, newspaper, television, Internet, radio or form or  
20 express any opinion on any subject connected with the  
21 trial until the case is finally submitted to you.

22 Hopefully it will only take us about five  
23 minutes. But if it takes you longer, you need a restroom  
24 break or something, please take advantage of the time.

1                   [Outside the presence of the jury]

2           THE COURT: The last time that I had one of those  
3 instructions, Mr. Claus, was in the Koony case. I'm gonna  
4 look to see if I have it. But otherwise, I will need all  
5 of you to talk to me about the -- because I use it as a  
6 limiting instruction, usually. And I understand sometimes  
7 it's different. 'Cause, frequently, the bad acts are  
8 admitted only for limited circumstances. So I'm looking  
9 for it right now.

10          MR. PALAL: Your Honor --

11          THE COURT: Mind your witnesses, guys.

12          MR. PALAL: Yeah, we're --

13          THE COURT: I'm not waiting for half hour, 45 minutes  
14 for somebody to drive for the lab from the other side of  
15 town.

16                Okay. Here is the one I used last. And it's  
17 been a couple years. And it was under some different  
18 circumstances: "Evidence the Defendant committed offenses  
19 other than that for which he is on trial, if believed, was  
20 not received and may not be considered by you to prove  
21 that she is a person of bad character or prove she has a  
22 disposition to commit crimes.

23                "Such information was foreseen and may be  
24 considered by you only for the limited purpose of proving

1 the Defendant's opportunity, attempt, mode, plan,  
2 knowledge, identity or the absence of mistake or accident.  
3 You must weigh this evidence in the same manner as you do  
4 all other evidence in the case."

5 MR. CLAUS: Well, that doesn't quite work, Your Honor.  
6 I -- I can --

7 THE COURT: Okay.

8 MR. CLAUS: -- get a different cut at it. But  
9 essentially, Your Honor, all I'd be asking for is that  
10 evidence of another crime, which the Defendant has not  
11 committed, has been induced here at trial. That cannot  
12 weigh into your deliberations --

13 THE COURT: Write -- write yours down and then I will  
14 type. How's that?

15 MR. CLAUS: Yes, Your Honor.

16 And, Your Honor, I can't remember, but did the  
17 State include the standard instruction, whether or not the  
18 Defendant includes -- intends to testify?

19 THE COURT: It did.

20 MR. CLAUS: Okay.

21 THE COURT: Yeah, I also have a voluntariness  
22 instruction in here.

23 How do you spell the last witness's name?

24 MR. PALAL: That was --

1 MR. CLAUS: Haberman.

2 THE COURT: H-A-B-E-R-M-A-N?

3 MR. CLAUS: Yes, Your Honor.

4 How about this, Your Honor --

5 THE COURT: To them?

6 MR. CLAUS: Oh, I have not. Here you go.

7 [Discussion off the record]

8 MR. PALAL: It's fine. I have no objection to that.

9 THE COURT: Okay. Here's what I started with, which  
10 is a little different, because I'm trying to make it  
11 specific.

12 MR. CLAUS: Yes, Your Honor.

13 THE COURT: And I like that language you have. But I  
14 added, "Evidence that someone committed a burglary to whom  
15 Mr. Haberman was not received and may not be considered by  
16 you to prove the Defendant had any involvement in that  
17 burglary. Such information was received and will be  
18 considered by you only for the limited purpose of proving  
19 the weapon was stolen. You must weigh this evidence in  
20 the same manner as you do all other evidence in the case."

21 But I also want to add the line about "you may  
22 not consider this for the guilt."

23 MR. CLAUS: Okay. Thank you.

24 THE COURT: So I'm trying to tailor it to the incident

1       for my limitation.

2           MR. CLAUS:   Sorry.   I tried to keep it a little more  
3       general.

4           THE COURT:   I know.   But when it's a limiting  
5       instruction, I try to make it as specific as possible.

6           MR. CLAUS:   Yes, Your Honor.

7           THE COURT:   Wow, your handwriting's bad.

8           MR. PALAL:   Should have been a doctor.

9           THE COURT:   Uh -- you want me to say "guilt or  
10       innocence" or just "guilt"?

11          MR. CLAUS:   "Guilt," Your Honor.

12          THE COURT:   So here's my amalgamated instruction:  
13       "Evidence was introduced by the State of other crimes that  
14       the Defendant is not charged with.   Evidence that someone  
15       committed a burglary at the home of Mr. Haberman was not  
16       received and may not be considered by you to prove the  
17       Defendant had any involvement in that burglary.

18                "Such information was received and may be  
19       considered by you only for the limited purpose of proving  
20       the weapon was stolen.   That information cannot be used by  
21       you in determining the guilt of the Defendant in this  
22       case.   You must weigh this evidence in the same manner as  
23       you do all over evidence in this case."

24                What do you think?

1 MR. CLAUS: [Inaudible], Your Honor. I like it.

2 THE COURT: Is that okay?

3 MR. PALAL: Works for the State, Your Honor.

4 THE COURT: Okay. So I will read that to the jurors  
5 as they come back in, once they sit down.

6 How we doing on witnesses?

7 Mr. Claus, here you go. Thank you for your  
8 efforts. Good job.

9 MR. PALAL: We've called, literally, every witness --  
10 even witnesses we weren't planning on calling -- just so  
11 they could fill the time. And they are all within  
12 30 minutes, but nobody [inaudible]. We even called  
13 Brittany Slathar to have her -- have her -- recall her for  
14 the sake of the jury's entertainment. And -- and she's --

15 THE COURT: I probably -- I probably wouldn't let you  
16 recall her for the sake of the jury's entertainment. So  
17 what's your plan?

18 MR. LEXIS: Your Honor, the expert's on the way. It's  
19 my fault. I was in charge of getting all the witnesses,  
20 and given the previous -- I thought we were gonna have  
21 more, lengthier direct and cross of these people.

22 THE COURT: Okay.

23 MR. PALAL: If -- if it's the Court's pleasure, we can  
24 do one of two things: We can beg of the Court to wait the

1 expert to get here. She said [inaudible] should be here  
2 in about 15 to 20 minutes or we could recess early today  
3 and, thus, given the pace we're going, we could get  
4 through -- State's confident it would rest for either late  
5 Wednesday --

6 THE COURT: I don't want to leave the jury sitting out  
7 there in the hallway for half hour, 40 minutes while  
8 people get here, park, come up the elevators. You know,  
9 that's just wrong.

10 MR. PALAL: Okay.

11 THE COURT: So, Mr. Claus?

12 MR. CLAUS: We're ready to proceed, Your Honor.

13 THE COURT: Okay. So I'm going to -- how many more  
14 witnesses you got?

15 MR. PALAL: In total?

16 THE COURT: Uh-huh.

17 MR. PALAL: Court's indulgence. About -- about this  
18 amount of time or less than the -- the previous witnesses.

19 THE COURT: So I'm gonna grant your request to recess  
20 early today with the understanding you're gonna finish  
21 your evidence and close tomorrow.

22 MR. PALAL: We'll finish our evidence tomorrow.

23 THE COURT: Mr. Claus, do you have any additional  
24 instructions, other than this one we just talked about

1       that you want to offer?

2           MR. CLAUS: At this point, Your Honor, I also had made  
3       an objection to the foundation that was being laid for  
4       just the handgun, the picture of the cartridges. I do  
5       expound upon that, Your Honor.

6           Again, this witness -- and the State knew this.  
7       This witness knew nothing about that photograph, knew  
8       nothing about the circumstances of it, couldn't verify  
9       anything about the cartridges there. Simply, the witness  
10      was allowed to make some inferential leaps and testify as  
11      to those matters.

12          THE COURT: We didn't do that on the State's  
13      questioning. He -- his only comments on the State's  
14      questioning was, "Do you recognize what's in this  
15      picture?"

16           "Yes, that's my handgun with ammunition in it."

17          MR. CLAUS: Understood, Your Honor.

18          THE COURT: Under the circumstances, I think he can  
19      testify to that. That's why I overruled your objection.

20           Now, I understand your comments about the state  
21      of the ammunition. And, certainly, that was different  
22      than what I usual have happen. Because I don't usual have  
23      people with Federal Firearms Licenses here testifying  
24      about their own personal weapons, but things happen.



1 MR. CLAUS: Yes, Your Honor.

2 THE COURT: So all right. So I'm gonna read this  
3 instruction to the jury. I'm gonna let them go and have  
4 them back here at 10:30 tomorrow, as long as you all tell  
5 me you'll be done tomorrow.

6 MR. PALAL: State will be done tomorrow.

7 THE COURT: Okay. There is, in this package, a  
8 voluntariness instruction. Mr. Claus, I currently have  
9 not heard anybody testify about the statement. I don't  
10 know if anybody's gonna testify about the statement. But  
11 I'm gonna encourage you to think about it.

12 MR. CLAUS: Yes, Your Honor.

13 THE COURT: I lost my own marshal.

14 MR. CLAUS: Your Honor, we're starting tomorrow at --  
15 at 10:30.

16 THE COURT: 10:30 is the hope.

17 MR. CLAUS: I've got a 10:00 o'clock murder  
18 arraignment. I'll try to get that taken care of very  
19 quickly, Your Honor, in lower level.

20 THE COURT: What department?

21 MR. CLAUS: It's in lower level.

22 THE COURT: You ready?

23 MR. CLAUS: But I've asked for some leeway from the  
24 Court, if necessary.

1           THE COURT: Well, my problem is different. I've  
2 got -- my criminal calendar's tomorrow and the CO and I  
3 are hoping that I'm gonna be able to do 10:30. He's  
4 thinking 11:00, but I'm thinking 10:30. So we're gonna  
5 see what works out. We're gonna do our best 'cause I  
6 can't do two things at once with a bunch of inmates.

7           MR. CLAUS: Yes, Your Honor.

8           THE COURT: And sometimes I have to wait for the swap.

9           MR. CLAUS: One other question, Your Honor. I've  
10 been getting the State's witnesses as they've come today.  
11 If we're gonna give them continuance to gather their  
12 witnesses together, I'd like to have a list of all those  
13 witnesses that they intend on calling tomorrow.

14          THE COURT: Guys, can you tell him all the witnesses  
15 you're gonna call tomorrow before we leave, just so he  
16 knows?

17          MR. PALAL: Sure. Right now -- right now or --

18          THE COURT: No, before we leave. I'm gonna read this  
19 instruction to the State -- or read this instruction to  
20 the jurors before I let them go home.

21                 [Discussion off the record]

22                 [In the presence of the jury]

23          THE BAILIFF: Jurors are present.

24          THE COURT: Counsel, stipulate to the presence of the

1 jury.

2 MR. PALAL: Yes, Your Honor.

3 MR. CLAUS: Yes, Your Honor.

4 THE COURT: You may be seated.

5 Ladies and gentlemen, I have an instruction to  
6 read for you: Evidence was introduced by the State of  
7 other crimes that the Defendant is not charged with.  
8 Evidence that someone committed a burglary at the home of  
9 Mr. Haberman was not received and may not be considered by  
10 you to prove that Defendant had any involvement in that  
11 burglary.

12 Such information was received and may be  
13 considered by you only for the limited purpose of proving  
14 the weapon was stolen. That information cannot be used by  
15 you in determining the guilt of the Defendant in this  
16 case. You must weigh this evidence in the same manner as  
17 you do all other evidence in this case.

18 Counsel, do we still have a scheduling problem?

19 MR. PALAL: Yes, Your Honor.

20 THE COURT: Okay. Ladies and gentlemen, we have a  
21 slight scheduling problem. But the good news is we also  
22 will be done a day early. It means that, based upon the  
23 pace at which we were proceeding today, we will done on  
24 Thursday rather than Friday.

1           But I'm gonna also let you go rather than have  
2   you sit here and wait while the witness travels and  
3   doesn't get here for half an hour, 40 minutes. So if I  
4   could see you tomorrow morning at 10:30, outside courtroom  
5   14A.

6           During this recess, you are admonished not to  
7   talk or converse among yourselves or with anyone else on  
8   any subject connected with this trial or read, watch, or  
9   listen to any report of commentary on the trial or any  
10   person connected with this trial by any means of  
11   information, including without limitation: Social media,  
12   text, newspaper, television, Internet, radio or form or  
13   express any opinion on any subject connected with the  
14   trial until the case is finally submitted to you.

15           So we'll see you tomorrow morning at 10:30.

16           Counsel, if you would remain, please.

17           [Outside the presence of the jury]

18           THE COURT: Okay. Kevin, thank you.

19           So, Counsel -- you can sit down. I'm gonna print  
20   for you the version of the instructions that I've been  
21   able to create. Except I think I just exited without  
22   saving. And so I'll have these for you. If you could  
23   look at them quickly, tell me if you see anything obvious.

24           Where do you want your limiting instruction in

1       your stack?

2           MR. CLAUS: Court's pleasure.

3           THE COURT: I'm gonna put it after the conspiracy and  
4 before the stolen weapon.

5           Kevin?

6           THE BAILIFF: Yes, Your Honor.

7           THE COURT: Can you go grab me -- oh, it will only  
8 print to that printer. Never mind. I'll take care of it.  
9 I'll have the juror instructions for you in just a second.

10           [Recess at 3:23 p.m.; proceedings resumed at  
11 3:28 p.m.]

12           [Outside the presence of the jury]

13           THE COURT: This is yours. So I got to fix the  
14 caption. I got to fix the page formatting. See if you  
15 think there's anything else obvious missing. If you want  
16 to wait and tell me in the morning, that's okay.

17           MR. CLAUS: I'd like to wait to tell you in the  
18 morning, Your Honor.

19           THE COURT: The problem is that if you tell me in the  
20 morning, you got to tell me quick.

21           MR. CLAUS: Well, what I'll try and do, Your Honor,  
22 with your -- with your permission is I'll try to e-mail it  
23 tonight.

24           THE COURT: You know my assistant's e-mail?

1 MR. CLAUS: It's lawclerk11 --

2 THE COURT: That'll work.

3 MR. CLAUS: Or lawclerkdepartment11 or something like  
4 that. It's the standard.

5 THE CLERK: DEPT11LC.

6 MR. CLAUS: There you go. It's -- it's --

7 THE COURT: Yeah. That's the law clerk e-mail. Yeah,  
8 that one.

9 MR. CLAUS: All the law clerks have that same e-mail  
10 [inaudible].

11 THE COURT: They do.

12 Well, I'm gonna fix the caption right now before  
13 I forget.

14 MR. CLAUS: I'll come and get you all the changes  
15 before we start court at 10:30 tomorrow morning.

16 THE COURT: Anything else?

17 MR. CLAUS: No, thank you.

18 THE COURT: Don't let anybody else know that I gave  
19 you a break 'cause I'm not supposed to be nice about this  
20 being here on time.

21 MR. CLAUS: I see, Your Honor.

22 MR. PALAL: I will keep it a secret, Your Honor.

23 MR. CLAUS: Having been on the receiving end of this  
24 Stu Bell treatment, I was expecting --

1           THE COURT: You want the ID number in the caption? I  
2 know some people don't like it in there.

3           MR. CLAUS: I prefer not to have it in there,  
4 Your Honor.

5           THE COURT: I'm gonna take it out. I understand why  
6 you don't want it in there and it's okay with me to take  
7 it out.

8           Okay. You guys can leave. I'm just gonna work  
9 on this for a minute, since I'm at this computer. See if  
10 I can get these. I'll see you guys at 10:30 in the  
11 morning or soon thereafter as I can get done with my  
12 regular calendar, get the Defendant here, and be ready to  
13 go.

14                       PROCEEDING CONCLUDED AT 3:30 A.M.

15                               \*\*\*\*\*

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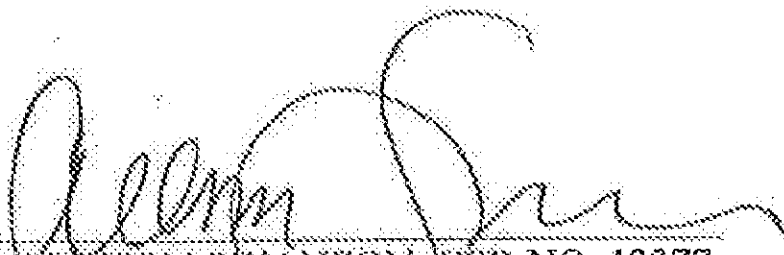
24

CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

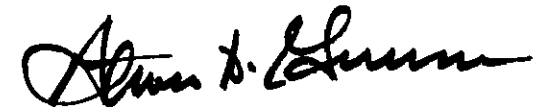
I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

  
ALLISON SWANSON, CSR NO. 13377  
CERTIFIED SHORTHAND REPORTER  
FOR THE STATE OF CALIFORNIA



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CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,	)	
	)	
Plaintiff,	)	CASE NO. C-14-296374-1
	)	
vs.	)	
	)	DEPT. NO. XI
KENYA SPLOND, aka Kenny Splond,	)	
#1138461 KELLIE ERIN CHAPMAN,	)	
#1681308,	)	
	)	
Defendants.	)	

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BEFORE THE HONORABLE ELIZABETH GONZALEZ,

DISTRICT COURT JUDGE

Wednesday, March 23, 2016

RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 3

APPEARANCES:

For the Plaintiffs:	BINU PALAL
	CHAD LEXIS

	Deputy District Attorneys
For the Defendants:	AUGUSTUS CLAUS

TRANSCRIBED BY: ALLISON SWANSON, CSR No. 13377

1 LAS VEGAS, NEVADA, WEDNESDAY, MARCH 23, 2016 10:46 A.M.

2 \*\*\*\*\*

3 [Outside the presence of the jury]

4 THE COURT: -- Court's Exhibit 4, yesterday.

5 MR. CLAUS: Yes, Your Honor, I did. I spoke with the  
6 State. There was some question about a voluntariness  
7 instruction. I didn't see one included.

8 THE COURT: There is one. It is -- well, let's see  
9 where it is. Maybe I'm wrong. Maybe it wasn't there.  
10 Apparently you guys were right and I'm wrong.

11 MR. CLAUS: I would never repeat that outside of this  
12 courtroom, Your Honor.

13 THE COURT: Well, you know, it's on the record.

14 MR. CLAUS: In any event, that being said, I've spoken  
15 with the State. They don't intend on introducing any of  
16 Mr. Swan's statements. So I don't think we need a  
17 voluntariness instruction at this point.

18 THE COURT: Okay.

19 MR. PALAL: Your Honor, the other -- the other  
20 question, we noticed that -- that you moved one  
21 instruction -- I mean, it's perfunctory --

22 THE COURT: Moved it?

23 MR. PALAL: Removed it, which was "that any person who  
24 conspires to commit robbery is guilty of conspiracy to

1       commit robbery."

2           THE COURT: I didn't remove it on purpose.

3           MR. CLAUS: Well, I didn't -- I thought it was in  
4       there.

5           MR. PALAL: Yeah, we didn't see it in there.

6           THE COURT: Hold on. Let's see. Unfortunately, I  
7       forgot to number the pages, so you'll have to tell me what  
8       instruction it's behind, if you find it first.

9           MR. CLAUS: Here it is. It's after the -- the "use of  
10       deadly weapon" instruction.

11          MR. PALAL: Okay.

12          MR. CLAUS: "Person who conspires to commit robbery is  
13       guilty of conspiracy to commit robbery."

14          MR. PALAL: Oh, perfect. All right. Thank you. It  
15       actually was in there. That's our mistake.

16          THE COURT: You okay?

17          MR. PALAL: Yes. And then, beyond that, the State had  
18       no --

19          THE COURT: Is there anything else that you guys  
20       wanted added? Changed? Language issues? Anything like  
21       that before I give you a set that we're gonna use to  
22       [inaudible] jury instructions when we get to that point?

23          MR. CLAUS: No, Your Honor.

24          MR. PALAL: Court's indulgence.

1           THE COURT: This is what I call a "working set." I  
2       guess nobody else does it this way.

3           MR. PALAL: No, Your Honor.

4           THE COURT: Okay. And I will print the working set  
5       and then we'll settle them when we get a chance.

6           [Discussion off the record]

7           [Recess at 10:49 a.m.; proceedings resumed at  
8       10:50 a.m.]

9           [Outside the presence of the jury]

10          [Discussion off the record]

11          THE COURT: Are we then gonna be ready to go?

12          MR. PALAL: Yes, Your Honor.

13          THE COURT: All the jurors are here and ready?

14          THE BAILIFF: Yes, Judge.

15          THE COURT: Give us a minute.

16          THE BAILIFF: Yes, Judge.

17          [Discussion off the record]

18          [In the presence of the jury]

19          THE BAILIFF: Jurors are present.

20          THE COURT: Good morning ladies and gentlemen.

21                Counsel, you can be seated.

22                Ms. Clerk, if you'd please take the roll of the  
23       jury.

24          THE CLERK: Yes, Your Honor.

1 [Jury roll call]

2 THE COURT: Counsel, stipulate the presence of the  
3 jury.

4 MR. PALAL: Yes, Your Honor.

5 MR. CLAUS: Yes, Your Honor.

6 THE COURT: Next witness.

7 MR. PALAL: Your Honor, the State calls  
8 Joshua Rowberry to the stand.

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

12 THE CLERK: Thank you. Please be seated and please  
13 state and spell your name for the record.

14 THE WITNESS: Joshua Rowberry, J-O-S-H-U-A,  
15 R-O-W-B-E-R-R-Y.

16 THE COURT: Sir, you will notice that there are M&Ms  
17 in the dispenser next to you, a pitcher of water up there.  
18 And if you should need some coffee, let the marshal know.  
19 You may proceed.

20 MR. PALAL: Thank you, Your Honor.

21 DIRECT EXAMINATION OF JOSHUA ROWBERRY

22 BY MR. PALAL:

23 Q Mr. Rowberry, how are you employed?

24 A Las Vegas Metropolitan Police Department.

1 Q And in what capacity are you employed with Metro?

2 A Police officer.

3 Q All right. And do you have a specific assignment?

4 A Patrol, northwest.

5 Q Do you have a specific shift?

6 A Graveyard.

7 Q And were you working graveyard this week?

8 A This week?

9 Q Yeah. This week?

10 A Yes.

11 Q Were you working graveyard on February 2nd, 2014?

12 A Yes.

13 Q On February 2nd, 2014, did you get a call regarding a  
14 robbery?

15 A Yes.

16 Q Where was that call?

17 A 5001 North Rainbow.

18 Q All right.

19 MR. PALAL: Your Honor, may I approach the witness?

20 THE COURT: You may.

21 MR. PALAL: For the record, I've shown Defense Counsel  
22 State's Proposed Exhibit Number 45.

23 BY MR. PALAL:

24 Q Officer Rowberry, can you take a look at what's

1 depicted as State's Proposed Exhibit Number 45. Do you  
2 recognize -- do you recognize what's on this -- what's  
3 depicted in this exhibit?

4 A Yes.

5 Q What is depicted in this exhibit?

6 A It's an aerial map of the address of the  
7 community store.

8 Q And are you familiar with this particular area?

9 A Yes.

10 Q Is this the area that you are on patrol on  
11 frequently?

12 A Yes.

13 Q And does this fairly and accurately depict the  
14 area -- the area around 5001 North Rainbow Boulevard?

15 A Yes.

16 MR. PALAL: Your Honor, at this time, the State's  
17 going to move into evidence State's Proposed Exhibit 45.

18 THE COURT: Any objection?

19 MR. CLAUS: No, Your Honor.

20 THE COURT: Be admitted.

21 [STATE'S EXHIBIT 45 ADMITTED]

22 MR. PALAL: Permission to publish?

23 THE COURT: You may.

24 /

1 BY MR. PALAL:

2 Q Okay. Now, you said you were called out to  
3 5001 North Rainbow; is that correct?

4 A Yes.

5 Q And what's located at 5001 North Rainbow?

6 A It's a gas station.

7 Q Is that --

8 THE COURT: Hold on a second. Kevin, the witness  
9 needs the mouse.

10 THE BAILIFF: Ah, yes.

11 THE COURT: Sir, we have new technology in this  
12 courtroom. You don't draw on the monitor with your finger  
13 anywhere. You're supposed to try and use this mouse.  
14 And, unfortunately, somebody took my controller where I  
15 can erase the marks.

16 THE CLERK: Click it first.

17 THE COURT: Okay.

18 BY MR. PALAL:

19 Q All right. So we'll try to work this out. Why don't  
20 we practice by circling 5001 North Rainbow.

21 THE COURT: I see a little mark.

22 THE WITNESS: There it goes.

23 MR. PALAL: And for the record, the witness has  
24 circled a round marking [inaudible] 5001 North Rainbow.



1 BY MR. PALAL:

2 Q All right, sir. Now, did you have any information,  
3 at that time, as to which direction the suspect was headed?

4 A North.

5 Q All right. And can you draw on the map the direction  
6 that -- the information that you had that the Defendant was at  
7 the -- the Defendant was headed.

8 All right. So that's an arrow facing to the top of  
9 the screen on Rainbow.

10 A Correct.

11 Q Now, did you actually stop at 5001 North Rainbow?

12 A No.

13 Q Why not?

14 A The information that I was given, the suspect was  
15 already -- left the store and was traveling northbound  
16 Rainbow. When a arrived in the area, he was no longer at  
17 the store, so I had proceeded to drive north on Rainbow to  
18 begin looking for anybody in the area.

19 Q And do you recall approximately what time the armed  
20 robbery was called in?

21 A At 2:57 a.m.

22 Q And what -- you recall what time that you got into  
23 this area?

24 A It was probably 3:00 a.m.

1 Q So shortly thereafter.

2 A Uh-huh.

3 Q Is that a "yes"?

4 A Yes.

5 Q All right. So when you're driving up North Rainbow,  
6 are your -- are you driving in a patrol vehicle?

7 A Yes.

8 Q Are your lights and sirens on?

9 A No.

10 Q Do you see -- in that area, are you looking for  
11 pedestrians?

12 A Yes.

13 Q Do you see any pedestrians?

14 A No.

15 Q Are you looking for other vehicles?

16 A Yes.

17 Q Do you see other vehicles?

18 A I see one vehicle. It's north of -- ahead of me,  
19 north -- I'm traveling north. It's a few -- a little ways  
20 up ahead of me.

21 Q All right. And can you mark on the map the  
22 approximate area that you saw the vehicle.

23 Now, when the report came in, were you told the --  
24 that the person who committed the robbery was leaving on foot

1 or by car?

2 A On foot.

3 MR. CLAUS: Your Honor, I'm going to object to hearsay  
4 at this point.

5 THE COURT: Overruled.

6 BY MR. PALAL:

7 Q I'm sorry. What was your answer?

8 A On foot.

9 Q Okay. On foot. Now, prior to the events that  
10 occurred on February 2nd, 2014, how long had you been a patrol  
11 officer?

12 A At that time, five to six years.

13 Q Have you -- did you -- had you had an opportunity to  
14 respond to robberies, previous to this?

15 A Yes.

16 Q In your training and experience, five years out there  
17 responding to robberies, has -- have you ever had an  
18 experience where a getaway driver was parked away from where  
19 the actual robbery occurs?

20 A Yes.

21 Q Is that something that happens frequently?

22 A Yes.

23 Q So did -- what was the significance to you of seeing  
24 the car north on Rainbow?

1           A     It's the only vehicle in the area. It's in close  
2     proximity to where the robbery occurred. And it's heading  
3     northbound, away from where the robbery occurred.

4           MR. PALAL: Your Honor, may I approach the witness?

5           THE COURT: You may.

6     BY MR. PALAL:

7           Q     I've shown opposing counsel and now I'm gonna show  
8     the witness State's Proposed Exhibit 21. Sir, can you take a  
9     look at this photo and tell us what it depicts? Do you  
10    recognize what it depicts?

11          A     Yes.

12          Q     What does it depict?

13          A     It's the vehicle that I saw traveling northbound  
14    that pulled off of Rancho Santa Fe.

15          Q     Does it fairly and accurately depict the video as --  
16    the automobile, as you saw it, on February 2nd, 2014?

17          A     Yes.

18          MR. PALAL: Your Honor, at this time the State's gonna  
19    move for State's Proposed Exhibit Number 21 to be entered  
20    into evidence.

21          THE COURT: Any objection?

22          MR. CLAUS: No, Your Honor.

23          THE COURT: 21 be admitted.

24                [STATE'S EXHIBIT 21 ADMITTED]

1 MR. PALAL: Your Honor, may I publish?

2 THE COURT: You may.

3 Can I take the marks off of the map?

4 MR. PALAL: Yes, please.

5 THE COURT: Okay. Where do I point this special  
6 clicker, Jill?

7 THE CLERK: Just hit "trash."

8 THE COURT: I'm hitting "trash," but where do I point  
9 it towards?

10 MR. PALAL: Oh, we got it.

11 THE CLERK: Sorry.

12 THE COURT: It's okay.

13 BY MR. PALAL:

14 Q I'm showing you what's now been admitted as  
15 State's Proposed -- State's Exhibit 21. This is the vehicle  
16 we were talking about?

17 A Yes.

18 Q And now, this vehicle, obviously, has some damage to  
19 the back; is that correct?

20 A Correct.

21 Q Now, in stopping the vehicle, did that -- why did you  
22 stop the vehicle?

23 A One, the vehicle leaving the area of the robbery;  
24 two, it drew my attention because of the -- the damage to

1 the rear of the vehicle. I didn't know if any -- if it  
2 was just involved in an accident, if anything was falling  
3 off this vehicle.

4 Q So you -- so you had stopped the vehicle for two  
5 reasons, essentially.

6 A Yes.

7 Q Now, did you -- did you stop the vehicle immediately  
8 upon seeing it or did you follow it for a while?

9 A I followed it a short distance, trying to see its  
10 reaction to me being behind it. Maybe if it was gonna  
11 take off, if it was gonna pull over, do something else.

12 Q And now showing you, again, what's been admitted as  
13 State's Exhibit 45. Can you tell -- can you show us on the  
14 map the route that the vehicle took.

15 MR. PALAL: We don't have the cursor anymore,  
16 Your Honor.

17 THE COURT: Click the mouse.

18 MR. PALAL: Thank you, Your Honor.

19 BY MR. PALAL:

20 Q So upon you following it, is it fair to say -- well,  
21 strike that.

22 For the record, you've marked going up Rainbow and  
23 then taking a side street that leads to the corner of  
24 Flora Spray and Fruit Flower Avenue; is that correct?

1           A     Correct.

2           Q     So upon you following the vehicle, the vehicle then  
3 decide -- then pulls into a residential neighborhood?

4           A     Yes.

5           Q     At that time, do you -- at some point during that  
6 time, do you decide to turn on your lights and sirens?

7           A     Yes.

8           Q     And do you turn on --

9           A     Yes.

10          Q     And do you -- does the car in front of you stop?

11          A     Yes.

12          Q     All right. What do you do then?

13          A     I exit my vehicle and approach this vehicle on  
14 the driver's side. When I get to the driver's side rear  
15 passenger door, the window was up, windows are tinted  
16 dark.

17          Q     Could you see into the back window?

18          A     No.

19          Q     All right. So it was of note to you that the back  
20 windows were darkly tinted.

21          A     Yes.

22          Q     Did you proceed to the -- proceed to the driver --  
23 front driver's side of the vehicle?

24          A     No, I stayed at that spot right behind the rear

1 door.

2 Q Why?

3 A For officer safety issues. I can't see in the  
4 back seat. I don't know if anybody's back there.

5 Q And does the fact that you were just told an armed  
6 robbery come into -- an armed robbery occurred come into play?

7 A Yes.

8 Q Does the person in the front seat roll down the  
9 window or is the window up?

10 A The window was down. I don't remember if she  
11 rolled it down while I was there or as I was walking up.

12 Q All right.

13 MR. PALAL: Your Honor, may I approach the witness?

14 THE COURT: You may.

15 MR. PALAL: I've shown opposing counsel and I'm now  
16 going to show the witness what's been marked as  
17 State's Proposed Exhibit Number 4 -- 44.

18 BY MR. PALAL:

19 Q Sir, can you take a look at that. Do you recognize  
20 what is -- or whom is depicted in State's Exhibit 44?

21 A Yes.

22 Q Does it fairly and accurately show the person -- show  
23 a person that you recognize?

24 A Yes.



1 MR. PALAL: Your Honor, at this time, State's gonna  
2 move State's Proposed Exhibit 44 into evidence.

3 THE COURT: Any objection?

4 MR. CLAUS: No, Your Honor.

5 THE COURT: 44 be admitted.

6 [STATE'S EXHIBIT 44 ADMITTED]

7 MR. PALAL: Permission to publish?

8 THE COURT: You may.

9 See if I can throw these in the trash. So I got  
10 to point them at the Elmo? Okay.

11 BY MR. PALAL:

12 Q Who's the person in State's Proposed --  
13 State's Exhibit Number 44?

14 A It's the driver, Kelly Chapman.

15 Q And you're talking about the driver of the vehicle  
16 that we were talking about that --

17 A Yes.

18 Q Did you give Ms. Chapman any instructions?

19 A To roll the back window down.

20 Q Did she comply?

21 A Yes.

22 Q Did you notice anything in the back of the vehicle  
23 after she had rolled down the rear window?

24 A Yes.

1 Q What did you notice?

2 A There was a black male adult laying in the back  
3 seat, covered up by a blanket, and breathing very heavily.

4 Q Could you see his hands?

5 A No.

6 Q Was that significant to you?

7 A Yes.

8 Q Why was that significant?

9 A I can't see his hands. I don't know if he's  
10 armed with anything. So --

11 Q Do you give him any instructions?

12 A I gave him several instructions to "let me see  
13 your hands." And he failed to comply to those commands of  
14 me asking him to show his hands.

15 Q By "failing to comply," do you mean he never showed  
16 you his hands?

17 A Correct.

18 Q Do you see the person in the courtroom today that you  
19 gave the instructions on February 2nd, 2014?

20 A Yes.

21 Q Can you please point that person out and describe an  
22 article of clothing they're wearing?

23 A He's sitting right here. Male with glasses, gray  
24 shirt and tie.

1           MR. PALAL: Your Honor, may the record reflect that  
2 the witness has identified the Defendant?

3           THE COURT: The record will so reflect.

4 BY MR. PALAL:

5           Q     Well, so now with -- so now there's no compliance in  
6 the back seat, what do you do?

7           A     I -- I initiated code red on my channel.

8           Q     What does a code red mean?

9           A     [Inaudible] let's the area command or the other  
10 officers working in my area or my channel know that I have  
11 something going on, that I need the radio for myself. No  
12 one else can get on there and talk, except for me. And it  
13 also alerts them that I may need some help. So they start  
14 heading towards me.

15          Q     And by "they," you mean other officers?

16          A     Right.

17          Q     Do you do anything at this point?

18          A     I pull out my firearm and keep both subjects,  
19 driver and the passenger, in the -- in the vehicle. I  
20 step back and just keep initiating verbal commands to, you  
21 know, "Don't move," and wait for other officers to arrive.

22          Q     Do other officers ultimately arrive?

23          A     Yes.

24          Q     At that point, do you give any instructions to the

1 occupants of the vehicle?

2 A Yes.

3 Q What instructions do you give?

4 A We have the driver step out of the vehicle and  
5 walk back towards the officers, where she was taken into  
6 custody. And then we initiate verbal commands to the  
7 passenger of the vehicle to step out of the vehicle.

8 Q And did they comply?

9 A Yes.

10 MR. PALAL: Your Honor, may I approach the witness?

11 THE COURT: You may.

12 BY MR. PALAL:

13 Q I'm gonna show you what's been previously marked as  
14 State's Proposed Exhibit 20. Do you recognize what's depicted  
15 in the exhibit?

16 A Yes.

17 Q Does it fairly and accurately depict the area?

18 A Yes.

19 MR. PALAL: Your Honor, State's gonna move  
20 State's Exhibit 20 into evidence.

21 THE COURT: Any objection?

22 MR. CLAUS: No, Your Honor.

23 THE COURT: 20 be admitted.

24 [STATE'S EXHIBIT 20 ADMITTED]

1 MR. PALAL: Permission to publish?

2 THE COURT: You may.

3 BY MR. PALAL:

4 Q And just -- what is State's Exhibit 20 -- Exhibit 20  
5 depict?

6 A It's the cross streets of where the vehicle  
7 finally came to rest.

8 Q So once the Defendant and Ms. Chapman exit the  
9 vehicle, do you have -- are the doors open or closed?

10 A Open.

11 Q Do you have an ability to see what's inside the  
12 vehicle?

13 A Yes.

14 Q And while Mr. Claus is looking at that, on the radio,  
15 were you informed of the contents that was taken from the  
16 store on the robbery?

17 A Yes.

18 Q You recall what the contents were reported?

19 A Two packs of Newport cigarettes and a spearmint  
20 Wrigley's gum.

21 MR. PALAL: Your Honor, may I approach the witness?

22 THE COURT: You may.

23 BY MR. PALAL:

24 Q I'm gonna show -- I've shown Defense Counsel, and I'm

1       gonna show you what's been previously marked as  
2       State's Proposed exhibits 31 -- well, let me do it the other  
3       way -- 22, 23, 24, 26 and 31.

4           THE COURT: 22 through 26 and 31?

5           MR. PALAL: Yes.

6           THE COURT: Okay.

7       BY MR. PALAL:

8           Q     Officer, can you look through these exhibits. Do you  
9       recognize what these photos depict?

10          A     That's the inside of the vehicle after both  
11       subjects were taken into custody.

12          Q     Does it fairly and accurately depict the vehicle on  
13       February 2nd, 2014?

14          A     Yes.

15          MR. PALAL: Your Honor, at this time, the State's  
16       gonna move the proposed -- move 22, 23, 24, 26 and 31 into  
17       evidence.

18          THE COURT: 22 through 24, 26 and 31. Any objection?

19          MR. CLAUS: No, Your Honor.

20          THE COURT: They'll be admitted.

21                [STATE'S EXHIBITS 22-24, 26, AND 31 ADMITTED]

22          MR. PALAL: Permission to publish?

23          THE COURT: You may.

24       /

1 BY MR. PALAL:

2 Q Showing you State's Exhibit 22, can you tell us what  
3 this is.

4 A It's the driver's side rear door, looking into  
5 the vehicle.

6 Q Now, it appears as though the front seat is angled  
7 very far down. Is -- is that accurate?

8 A Yes.

9 Q Did you move the front seat down at all?

10 A No.

11 Q Is that how -- when you stopped Ms. Chapman, is that  
12 the condition that the seat was in?

13 A Yes.

14 Q Did that strike you as unusual?

15 A Yes.

16 Q Why?

17 A That she may have been laying down, waiting,  
18 where she didn't want to be seen in the vehicle.

19 Q I'm gonna show you, now, State's Exhibit 23. Can you  
20 tell us what we're looking at?

21 A It's the driver's seat of the vehicle. You  
22 can -- it's two packs of Newports and Wrigley's spearmint  
23 gum.

24 Q And what was the significance of that?

1           A     The details of the call that was given by the  
2     victim in this is that these were the items taken.

3           MR. PALAL:   And then I'm gonna publish  
4     State's Exhibit 24.

5     BY MR. PALAL:

6           Q     Can you tell us what State's Exhibit 24 depicts?

7           A     Same thing, driver's seat.   Just the closer view  
8     of the front seat and the evidence.

9           Q     I'm gonna show you State's Exhibit 26.   Can you tell  
10    us what that depicts?

11          A     It's the passenger's side rear door.   And  
12    there's -- this is the floor of the back seat with a black  
13    sweater.

14          Q     And what was the significance of the black sweater?

15          A     Description given of the male running northbound  
16    on foot was wearing a black sweater.

17          Q     I'm gonna show you what's been -- State's Exhibit 31.  
18    Do you recognize what's in State's Exhibit 31?

19          A     Yes.

20          Q     Can you tell us what it is?

21          A     Passenger's side back seat, floor, and a  
22    camouflage beanie.

23          Q     Do you take the black sweatshirt out of the car?

24          A     Yes.



1 Q Why?

2 A To look for anything else, see if there's  
3 anything inside the sweater.

4 Q Do you photograph the black sweatshirt out of the  
5 vehicle?

6 A I didn't personally photograph it, no.

7 Q Okay. Did you see the black sweatshirt out of the  
8 vehicle?

9 A Yes.

10 Q Okay. Did you notice anything inside the black  
11 sweatshirt when you pulled it out?

12 A Yes.

13 Q What was inside -- what did you notice inside the  
14 black sweatshirt?

15 A The handgun.

16 Q And by "the handgun," what do you mean?

17 A It was a revolver that was also stated in the  
18 details, when I was arriving, that the suspect was -- had  
19 a -- had a handgun.

20 Q Did you take out the -- the, I guess, the camouflage  
21 beanie out of the vehicle?

22 A Yes.

23 Q And did you take out the two Newports and the  
24 spearmint -- the spearmint gum out of the vehicle?

1           A     Yes.

2           MR. PALAL:  Permission to approach the witness,  
3     Your Honor?

4           THE COURT:  You may.

5     BY MR. PALAL:

6           Q     I've shown opposing counsel and I'm now gonna show  
7     you State's Proposed exhibit -- oh, I'm sorry.  
8     State's Proposed exhibits 27 and 32.  Can you take a look at  
9     these exhibits and say -- see if you recognize them.

10          A     Yes.

11          Q     What do they depict?

12          A     The black sweater that was laid out on the hood  
13     of the car and a camouflage beanie.

14          Q     And do they fairly and accurately depict the items  
15     after you had pulled them out of the vehicle?

16          A     Yes.

17          MR. PALAL:  Your Honor at this time, State's going to  
18     move to admit 27 and 32.

19          THE COURT:  Any objection?

20          MR. CLAUS:  No, Your Honor.

21          THE COURT:  27 and 32 be admitted.

22                     [STATE'S EXHIBITS 27 AND 32 ADMITTED]

23     BY MR. PALAL:

24          Q     Okay.  I'm going to show you State's Exhibit 27.  Is

1       this the sweatshirt you had pulled out of the vehicle?

2           A     Yes.

3           Q     Now, I -- I have to -- I notice that it looks lighter  
4       here than it did in the back of the car; is that fair?

5           A     Yes.

6           Q     Do you recall what kind of lighting you used when  
7       this photo was taken?

8           A     Flashlights.

9           Q     Was it dark outside?

10          A     Extremely dark.

11          Q     What time -- what time was this about?

12          A     3:00 -- after 3:00 a.m. 3:04, 3:03.

13          Q     All right. And I'm gonna show you  
14       State's Exhibit 32. Is this the camouflage hat that was  
15       previously depicted inside the vehicle?

16          A     Yes.

17          Q     Now, you had mentioned that you pulled out a firearm  
18       from the vehicle. I'm gonna show you what's been admitted as  
19       State's Exhibit 29. Do you recognize what's depicted in  
20       State's Exhibit 29?

21          A     Yes.

22          Q     What is it?

23          A     It's a revolver.

24          Q     And it's the -- was it the revolver you found in the

1       sweatshirt?

2           A     Yes.

3           Q     Now, where exactly in the sweatshirt did you find the  
4       revolver?

5           A     It was in the pocket. In the front -- front  
6       pockets of the hooded sweatshirt.

7           Q     I'm gonna show you State's Exhibit 28. Do you  
8       recognize what's depicted in State's Exhibit 28?

9           A     Yes.

10          Q     What is it?

11          A     It's the same revolver showing that, out of six  
12       possible rounds, there's four rounds in the -- in the  
13       revolver.

14          Q     I'm gonna show you State's Exhibit 30. Can you tell  
15       us what that is?

16          A     It's the revolver, showing the manufacturer's  
17       name on the barrel.

18          Q     I'm gonna show you State's Exhibit 25. Can you tell  
19       us what that is?

20          A     The two packs of Newports and spearmint Wrigley  
21       gum.

22          Q     And is that the Newports and spearmint gum that was  
23       in the front seat of the car?

24          A     Yes.

1           Q     Now, at -- during this time, is the Defendant  
2     detained or is he free to roam about?

3           A     He's detained.

4           MR. PALAL: Your Honor, may I approach the witness?

5           THE COURT: You may.

6     BY MR. PALAL:

7           Q     So I'm gonna show you -- sir, I'm gonna show you  
8     what's been previously marked as State's Proposed Exhibits 34  
9     and 35. Can you take a look at them.

10          A     Yes.

11          Q     Do you recognize what's depicted in  
12     State's Exhibits -- Proposed Exhibits 34 and 35?

13          A     Yes.

14          Q     What do they depict?

15          A     The suspect that was in the back seat of the  
16     vehicle.

17          Q     And --

18          MR. PALAL: All right. Your Honor, at this time, the  
19     State's gonna move State's Proposed exhibits 34 and 35  
20     into evidence.

21          THE COURT: Any objection?

22          MR. CLAUS: No, Your Honor.

23          THE COURT: 34 and 35 be admitted.

24                 [STATE'S EXHIBITS 34 AND 35 ADMITTED]

1 MR. PALAL: Permission to publish?

2 THE COURT: You may.

3 BY MR. PALAL:

4 Q Showing you State's Exhibit 35. Can you tell us what  
5 this is?

6 A The suspect that was taken into custody.

7 Q Is that suspect the same person in here, court today?

8 A Yes.

9 Q Show you what's been previously admitted as  
10 State's Exhibit 33. Can you tell us what that is?

11 A The same subject.

12 Q And the same person that's in the courtroom today?

13 A Yes.

14 Q I'm gonna show you State's Exhibit 34. Can you tell  
15 us what this is?

16 A It's the back of the same subject.

17 Q Now, it looks, from the back -- from the photo, at  
18 least -- there are some black dots on this shirt. Did you  
19 notice that on February 2nd, 2014?

20 A Yes.

21 Q And what was the significance to you about the black  
22 dots on the back of the shirt?

23 A They were small fibers of cotton where would  
24 sometimes, you know, when you take off a hooded sweatshirt

1       you might get those lint particles or whatever that's  
2       still left on your shirt.

3           Q       So to your observation, is it fair to say that, to  
4       your observation, these are lint particles from the black  
5       sweatshirt?

6           A       Yes.

7       MR. PALAL:   Court's indulgence.

8               Your Honor, the State would pass the witness.

9       THE COURT:   Cross-examination?

10               CROSS-EXAMINATION OF JOSHUA ROWBERRY

11       BY MR. CLAUS:

12           Q       These lint particles, Officer Rowberry, did you  
13       [inaudible] any of those?

14           A       Did I maintain any of them?

15           Q       Yes --

16           A       No.

17           Q       -- did you gather any of them? Did you maintain any  
18       of them?

19           A       No.

20           Q       Did you document them here?

21           A       I believe I documented them in my report.

22           Q       Okay. Did you take these photographs?

23           A       I didn't personally take the photographs, no.

24       MR. CLAUS:   Court's indulgence.

1 THE COURT: Sure.

2 BY MR. CLAUS:

3 Q The -- and I want to be clear. The Wrigley spearmint  
4 gum, the Newports, they were found inside the driver's seat?

5 A Yes.

6 Q In the condition that the photographs show. They  
7 weren't inside of a purse, they weren't anywhere else, other  
8 than in that seat.

9 A Correct.

10 Q So they were being sat upon, essentially.

11 A Well, I don't believe they were being sat on.  
12 But when the driver exited the vehicle, if they were on  
13 the side of her, then when she got out, they fell over.

14 MR. CLAUS: Court's indulgence.

15 Pass the witness, Your Honor.

16 THE COURT: Any redirect?

17 MR. PALAL: No, Your Honor.

18 THE COURT: Any questions from the jurors? Nobody's  
19 writing?

20 Okay. Thank you, sir. We appreciate your time.  
21 Have a nice afternoon.

22 Next witness.

23 MR. LEXIS: State calls Officer Landers.

24 JEREMY LANDERS,



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

3 THE CLERK: Please be seated.

4 THE WITNESS: Thank you.

5 THE CLERK: Please state and spell your name for the  
6 record.

7 THE WITNESS: It's Officer Jeremy Landers,  
8 J-E-R-E-M-Y, L-A-N-D-E-R-S.

9 THE COURT: Sir, you will notice there are M&Ms in the  
10 dispenser there, if you should need some during the  
11 examination. And there is water in the pitcher. If you  
12 need some coffee, let the marshal know.

13 THE WITNESS: Perfect.

14 THE COURT: Please proceed.

15 THE WITNESS: Thank you, Your Honor.

16 THE COURT: Uh-huh.

17 DIRECT EXAMINATION OF JEREMY LANDERS

18 BY MR. LEXIS:

19 Q Where do you work, sir?

20 A I'm a police officer with Las Vegas Metropolitan  
21 Police Department.

22 Q How long have you worked there?

23 A September will be 13 years.

24 Q Were you working on February 2nd, 2014?

1           A     I was, sir.

2           Q     Were you dispatched to the area of  
3     5001 North Rainbow, Clark County, Las Vegas, Nevada?

4           A     Yes, I was.

5           Q     What was the nature of the dispatch?

6           A     It was a robbery with a deadly weapon at a  
7     convenience store.

8           Q     Is it the Star Mart?

9           A     It is.

10          Q     What happened upon arrival?

11          A     I made contact with the victim, began to get her  
12     statement. As I was getting her statement, I was apprised  
13     that Officer Rowberry had conducted a traffic stop on what  
14     he deemed was a suspicious vehicle in the area, not too  
15     far away, that was possibly related.

16          Q     Do you remember what time you arrived?

17          A     I don't. It's -- it's indicated in the CAD  
18     record. I'd be -- it's been some time. So I'd have to  
19     refresh my memory.

20          Q     Would it refresh my memory if I showed you your CAD?

21          A     It would, sir.

22          MR. LEXIS: May I approach, Your Honor?

23          THE COURT: You may.

24                 Anybody like the CAD record marked for precision

1 of the record only?

2 MR. CLAUS: Please, Your Honor, for the Court's  
3 record, please.

4 MR. LEXIS: Would you like it marked now, Your Honor?

5 THE COURT: As Court's Exhibit.

6 THE CLERK: It will be Court's 5.

7 THE COURT: Okay.

8 [COURT'S EXHIBIT 5 MARKED.]

9 THE COURT: And then make sure you give it back to her  
10 when you're finished.

11 MR. LEXIS: Yes, Your Honor.

12 THE COURT: Thank you.

13 MR. LEXIS: May I approach?

14 THE COURT: You may.

15 BY MR. LEXIS:

16 Q Officer, please read that to yourself. Don't say  
17 anything. Let me know when you're done.

18 A Okay.

19 Q Did that refresh your memory, officer?

20 A It does.

21 Q What time did you arrive?

22 A 03:11 hours, as indicated by the CAD record. I  
23 was operating as marked patrol unit one "X-ray."

24 Q And soon thereafter, were you advised that a suspect

1 had been taken into custody?

2 A I was.

3 Q Is that when you took the victim to the location?

4 A Yes.

5 Q Was she cooperative?

6 A Our victim? Yes.

7 Q Yes.

8 A Yes, she was.

9 Q Her name Brittany Slathar?

10 A Yes.

11 MR. LEXIS: May I approach, Your Honor?

12 THE COURT: You may.

13 BY MR. LEXIS:

14 Q Sir, I'm showing you what has been marked as  
15 State's Exhibit 10. What is that?

16 A This is a -- this is commonly known as a show up  
17 form or Show Up Witness Instructions.

18 Q Did you follow that procedure?

19 A I did.

20 Q What did you do?

21 A Okay. A show up -- you may have seen it in the  
22 movies, on TV, that type of thing. It's generally  
23 conducted within a short time following a crime, where a  
24 suspect is -- potential suspect has been located and

1       stopped, where we would transport our victim or witness to  
2       that location to -- to make an identification whether or  
3       not that is or is not the suspect that committed the  
4       crime.

5           Q       Are there instructions on that sheet --

6           THE COURT:   Hold on a second, Counsel.  I think the  
7       exhibit you're referring to is Exhibit 19.  Can you just  
8       confirm that's what it says.

9           THE WITNESS:  That is correct.

10          THE COURT:  Thank you.

11          THE WITNESS:  I had my glasses on --

12          MR. LEXIS:  Sorry, Your Honor.

13          THE WITNESS:  -- I can actually read that.

14          THE COURT:  It's Dulce.  She wants to make sure you're  
15       doing it right, Counsel.

16       BY MR. LEXIS:

17           Q       And, sir, is there an admonishment on there?

18           A       There is.

19           Q       And was the victim advised of that admonishment?

20           A       Yes.

21           Q       And can you please read that admonishment to the  
22       jury.

23           A       Yes.  We would have filled out this top half and  
24       I would have admonished the victim, prior to actually

1 going over to the location where the suspect was stopped.  
2 I would have read this verbatim. In fact, I did. And it  
3 goes as -- as, and I, quote, "In a moment I'm going to  
4 show you a person who is being detained. This person may  
5 or may not be the person who committed the crime now being  
6 investigated. The fact that this person is detained  
7 should not cause you to believe or guess that he," slash,  
8 "she is guilty. You do not have to identify anyone. It  
9 is just as important to free innocent persons from  
10 suspicion as it is to identify those who are guilty.

11 "Please keep in mind that clothing can easily be  
12 changed. Please do not talk to anyone, other than the  
13 police officers, while viewing this person. You must make  
14 up your own mind and are not to be influenced by other  
15 witnesses, if any.

16 "When you have viewed the person, please tell me  
17 whether or not you can make an identification. If you  
18 can, tell me in your own words how sure you are of your  
19 identification. Please do not indicate in any way to  
20 other witnesses that you have or have not made an  
21 identification. Thank you."

22 Q And she was advised of that prior to your arrival of  
23 where the suspect was at?

24 A Correct, sir.

1           Q     And tell me her demeanor and her reaction once she  
2     saw this individual?

3           A     She made a very rapid identification. And as  
4     soon as she saw him, that -- that was the guy.

5           Q     And did she also fill out that bottom part?

6           A     She did.

7           Q     And that's after she made the identification?

8           A     Correct, sir.

9           Q     And what did she state on that?

10          A     Her statement is, "The male in front of the  
11     police car was the man who robbed me at gun point. He was  
12     wearing blue jeans a red T-shirt and black tennis shoes.  
13     When he came into the store, he was wearing blue jeans, a  
14     black hooded sweatshirt and a beanie, light," slash, "dark  
15     brown spots." I assume that was the beanie.

16          MR. LEXIS: No further questions, Your Honor.

17          THE COURT: Cross-examination?

18                   CROSS-EXAMINATION OF JEREMY LANDERS

19     BY MR. CLAUS:

20          Q     You said that, initially, Ms. Slathar made a very  
21     rapid identification. If there was -- was there any  
22     equivocation about the identity of individual?

23          A     By "equivocation" you mean she -- did she wobble  
24     at all?

1 Q Yes, because of the change of clothes.

2 A No.

3 Q And no officer would have told her that he could have  
4 changed his clothes from the time that the robbery occurred?

5 A Actually, it says in the admonishment that the  
6 clothes may have been changed.

7 Q Okay. Did you say that at the scene as well?

8 A No, I read her the admonishment, I drove her to  
9 the scene, and let her make the decision from there.

10 MR. CLAUS: Pass the witness, Your Honor.

11 THE COURT: Any further examination, Counsel?

12 MR. LEXIS: No, Your Honor.

13 THE COURT: Any questions from the jurors?

14 Thank you, sir. We appreciate your time. Have a  
15 nice afternoon.

16 THE WITNESS: Thank you, Your Honor.

17 THE COURT: Next witness.

18 Can you give the exhibit -- Court's Exhibit to  
19 Dulce? Thank you.

20 Who's our next witness?

21 MR. PALAL: Graciela Angles.

22 THE COURT: Thank you.

23 GRACIELA ANGLES,

24 [having been called as a witness and being first duly



1 sworn testified as follows:]

2 THE CLERK: Thank you. Please be seated and please  
3 state and spell your name for the record.

4 THE WITNESS: Graciela Angles, G-R-A-C-I-E-L-A. Last  
5 name, Angles, A-N-G-L-E-S.

6 THE COURT: And, ma'am, there are some M&Ms in the  
7 dispenser next to you, if you should need those. And then  
8 if you would like, there's some water in the pitcher. And  
9 if you would like some coffee, the marshal can help you  
10 with that, too.

11 All right. You may proceed, Counsel.

12 DIRECT EXAMINATION OF GRACIELA ANGLES

13 BY MR. LEXIS:

14 Q Good morning, ma'am.

15 A Morning.

16 Q On January 28, 2014, were you working at the  
17 Metro PCS?

18 A Yes, I was.

19 Q Is that at 6663 Smoke Ranch?

20 A Yes.

21 Q Is that here in Las Vegas, Clark County, Nevada?

22 A Yes.

23 Q Around 2:00 o'clock, did anything out of the ordinary  
24 happen?

1           A     Yes, it did.

2           Q     What happened?

3           A     Uh, an African American guy came in and did a  
4 robbery on the store, took money and took a phone.

5           Q     Let's take it piece by piece, ma'am.

6           A     Okay.

7           Q     When you first saw him come in, did you notice  
8 anything out of the ordinary?

9           A     No.

10          Q     What is the first thing you saw this man do?

11          A     Went to look at the phones and ask me about the  
12 plans.

13          Q     Asked you about the plans?

14          A     Yes.

15          MR. LEXIS: Your Honor, may the record reflect I'm  
16 showing opposing counsel State's Proposed 32, 14, 13, 12,  
17 and 11.

18                May I approach, Your Honor?

19          THE COURT: 11 through 14 and 32.

20          MR. LEXIS: Correct, Your Honor.

21          THE COURT: All right. You sure it's 32?

22          THE CLERK: 32 [inaudible].

23          MR. LEXIS: Looks like a three --

24          THE CLERK: [Inaudible]

1 MR. LEXIS: Is that a seven? 32?

2 THE CLERK: 37, yeah.

3 MR. LEXIS: 37.

4 THE COURT: That's Dulce's fault. Not yours, Counsel.

5 MR. LEXIS: Your Honor, it's fine.

6 BY MR. LEXIS:

7 Q Ma'am, please take a look through those photos. Are  
8 those true and accurate representations of what the store  
9 looked like on that day?

10 A Yes.

11 MR. LEXIS: Your Honor, I move to admit these  
12 exhibits.

13 THE COURT: 11 through 14 and 37. Any objection?

14 MR. CLAUS: No, Your Honor.

15 THE COURT: Be admitted.

16 [STATE'S EXHIBITS 11-14 AND 37 ADMITTED]

17 BY MR. LEXIS:

18 Q Ma'am, I'm showing you State's Exhibit 11. What is  
19 that a picture of?

20 A Of the front of the store.

21 Q True and accurate representation?

22 A Yes.

23 Q And is there some tape around there? Does that look  
24 like a police vehicle to you?

1 A Yes, it is.

2 Q [Inaudible] did this occur off the police got there?

3 A Yes.

4 Q And did they try to tape around the scene?

5 A Yes, they did.

6 Q Did they let anybody in and out?

7 A No.

8 Q I'm showing you State's Exhibit 12. What are we  
9 looking at there?

10 A The inside of the store.

11 Q And where were you when the robbery took place?

12 A I was behind the counter.

13 Q Showing you State's Exhibit 13. What is this a  
14 picture of?

15 A It's behind the counter.

16 Q That's where you were?

17 A Yes.

18 Q Showing you State's Exhibit 14. What is this a  
19 picture of?

20 A That's a phone, a display. The Omega.

21 Q And what's the significance of this phone?

22 A [Inaudible]

23 Q Was he trying to buy this phone? Was he looking at  
24 this phone --

1           A     Yes, he was.

2           Q     -- what's the significance of this?

3           A     It's a -- yeah, he was looking at that phone.

4           Q     I'm showing you State's Exhibit 37. What is that a  
5 picture of?

6           A     While the robbery was taking place.

7           Q     That's exactly where you were behind the counter?

8           A     Yes.

9           Q     Where the register is?

10          A     Yes.

11          Q     And in that picture is, does he appear to be holding  
12 a firearm?

13          A     Yes, it is.

14          Q     So ma'am, explain to us, after you see him come in,  
15 he inquires about a phone, you say?

16          A     Yes.

17          Q     What happens next?

18          A     I explain to him about the plans. He asked me  
19 about a Galaxy S4, how much would be the total. I pull up  
20 the phone from the back. I scan it. I give him the  
21 total. And then he asks me about a different phone, which  
22 it was the Omega. And I take the Galaxy S4 back, bring  
23 the Omega out and scan it and give him the total and ask  
24 him if he was gonna pay cash or debit.

1           Q     So you have several facial interactions with this  
2     person.

3           A     Yes, I did.

4           Q     Okay. After that happened, what happened next?

5           A     He actually pulled out the gun, asked me to step  
6     back and give him the money.

7           Q     Were you in fear?

8           A     I gave him the money.

9           Q     Were you in fear? Were you afraid?

10          A     Yes.

11          Q     And so you complied with his demands?

12          A     Yes.

13          Q     And did you grab all the cash out of the draw?

14          A     Yes.

15          Q     And while you were doing this, was the gun pointed at  
16     you?

17          A     Yes, it was.

18          Q     Appear to be a small gun?

19          A     Yes, it was a small --

20          Q     What did he do?

21          A     He just asked me to give him the money. He took  
22     the -- the Omega that was next to me and he took out.

23          Q     Soon thereafter, ma'am, did a police officer arrive  
24     with Metro about a month later and show you some pictures?

1           A     Yes, sir.

2           Q     Is that a "yes"?

3           A     Yes.

4           MR. LEXIS: Your Honor, let the record reflect I'm  
5 showing opposing counsel State's Proposed Exhibit 16.

6           THE COURT: 16?

7           MR. LEXIS: Yes, Your Honor.

8           THE COURT: Thank you.

9           MR. LEXIS: May I approach, Your Honor?

10          THE COURT: You may.

11          BY MR. LEXIS:

12          Q     Ma'am, I'm showing you State's Proposed 16. What is  
13 the first page of that?

14          A     It's a -- array about the state -- about the  
15 picture that it was showed to me and there was writing  
16 where the police officer read to me.

17          Q     Okay. Is there instructions on that first sheet?

18          A     Yes, there is.

19          Q     Before you were given the pictures, were you advised  
20 of the instructions?

21          A     Yes, I was.

22          Q     And was that by the police officer or was that by you  
23 reading that?

24          A     No, that was by the police officer.

1           Q     After that admonishment was read to you, were you  
2 then shown the photographs?

3           A     Yes, I was.

4           Q     Can you please turn it to page 2. Are those the  
5 photographs you were shown?

6           A     Yes.

7           Q     And what did you do?

8           A     I circle number 2 and write my name under.

9           Q     Did you then indicate on page 1 how sure you were?

10          A     Yes, I did.

11          Q     Can you please turn to page 1 and tell us what you  
12 put.

13          A     "I identified the number 2. I'm 100 percent sure  
14 that he robbed me at Smoke Ranch. Nothing is change.  
15 It's still -- it's still the same. Only the difference is  
16 that he's not wearing a hat."

17          MR. LEXIS: Your Honor, State moves to admit  
18 State's Proposed Exhibit 16.

19          THE COURT: Any objection to 16?

20          MR. CLAUS: No, Your Honor.

21          THE COURT: 16 be admitted.

22                 [STATE'S EXHIBIT 16 ADMITTED]

23          MR. LEXIS: Permission to publish, Your Honor?

24



1 THE COURT: You may.

2 BY MR. LEXIS:

3 Q Ma'am, is this the instruction sheet?

4 A Yes, it is.

5 Q Is these the instructions that were read to you?

6 A Yes.

7 Q And you read those -- or somebody read those to you  
8 before seeing the photographs?

9 A They read them to me.

10 Q Before seeing the photographs?

11 A Yes.

12 Q Were you then shown the photographs?

13 A Yes, I was.

14 Q And is that the circle you put?

15 A Yes.

16 Q And is that your writing underneath number 2?

17 A Yes.

18 Q And to this day, do you still indicate, 100 percent,  
19 number 2?

20 A Yes.

21 Q Was his features similar in this picture as they were  
22 when he robbed you?

23 A Yes, they were.

24 Q Was the hair short?

1 A Yes.

2 Q Was the facial hair short?

3 A Yes.

4 Q Was he wearing glasses or not wearing glasses?

5 A He was not wearing glasses.

6 Q Was he wearing ordinary casual clothes or was he  
7 wearing like I'm wearing?

8 A He was wearing casual clothes.

9 Q You see that person in court today?

10 A Yes, I do.

11 Q Can you please point to him and identify for me the  
12 color shirt he's wearing.

13 A I'm sorry. What was that?

14 Q Can you please point to that person and identify for  
15 me the color shirt he is wearing.

16 A Gray.

17 MR. LEXIS: Your Honor, let the record reflect the  
18 witness has identified the Defendant.

19 THE COURT: The record will so reflect.

20 BY MR. LEXIS:

21 Q Ma'am, did you also go over a video that was taken  
22 during this incident at the District Attorney's office?

23 A Yes.

24 Q After that video was shown to you, was the video then

1 popped out, the CD, and did you sign it immediately?

2 A Yes.

3 MR. LEXIS: Let the record reflect I'm showing  
4 opposing counsel State Proposed 43.

5 May I approach, Your Honor?

6 THE COURT: You may.

7 BY MR. LEXIS:

8 Q Ma'am, I'm showing you State's Proposed Exhibit 43.  
9 Do you recognize that CD?

10 A Yes, I do.

11 Q Do you recognize the signature on that CD?

12 A Yes, I do.

13 Q Is that your signature?

14 A Yes, it is.

15 MR. LEXIS: Your Honor, I move to admit  
16 State's Proposed 43.

17 MR. CLAUS: Your Honor, can we have further foundation  
18 laid, please.

19 THE COURT: Counsel, can you establish she watched the  
20 whole thing.

21 MR. LEXIS: Yes, Your Honor.

22 BY MR. LEXIS:

23 Q Did you watch all the video that is on this CD?

24 A Yes, I did.

1           Q     And does it truly and accurately depict what happened  
2     on that day?

3           A     Yes.

4           Q     And what you saw on that day?

5           A     Yes.

6           MR. LEXIS: Your Honor, I move to admit  
7     State's Proposed --

8           THE COURT: Any additional objection?

9           MR. CLAUS: No, Your Honor.

10          THE COURT: Be admitted.

11                 [STATE'S EXHIBIT 43 ADMITTED]

12          THE COURT: And which number was that?

13          MR. CLAUS: 43, Your Honor.

14          THE COURT: Ma'am, it's gonna show up on this monitor  
15     here.

16          THE WITNESS: [Inaudible]

17     BY MR. LEXIS:

18          Q     Ma'am, can you tell us what we are looking at.

19          A     I was looking at the computer. I was watching a  
20     movie.

21          Q     Is this the suspect coming in right now?

22          A     Yes, it is.

23          Q     And what is going on right now?

24          A     He's asking me about the phones. I'm explaining

1 to him the plans on the phones and what kind of promotions  
2 we have going on.

3 Q What's going on right now?

4 A It's -- it's -- we're still talking about the  
5 phones.

6 Q Still chitchat over the phones?

7 A About the phones, what's the difference between  
8 them.

9 Q Where are you going?

10 A He's asking me about the total of the Galaxy S4.  
11 So I went to get it so I can bring him up and give him the  
12 total.

13 Q You have the phone now?

14 A Yes, I do.

15 Q What are you talking about now?

16 A I'm scanning the phone to bring -- to bring the  
17 total up.

18 Q Is he still acting like he's trying to buy the phone?

19 A Yes.

20 Q Do you remember what this conversation is about? Or  
21 the same thing?

22 A It's still about the same thing. About what kind  
23 of plan he wants.

24 Q What is he looking at over there?

1           A     He's --

2           Q     Do you have phones in those cases?

3           A     We have phones. We have different type of phones  
4     on that circle.

5           Q     And next to him, is there a display?

6           A     Yes, there is. It's the Galaxy Mega.

7           Q     That's the Galaxy Mega?

8           A     That's the Galaxy Mega.

9           Q     Are you the only employee in the store at the time?

10          A     Yes, I was.

11          Q     Is he the only customer in the store at this time?

12          A     Yes, he was.

13          Q     During the robbery, were you the only employee?

14          A     Yes.

15          Q     And was he the only customer?

16          A     Yes.

17          Q     What's going on now, ma'am?

18          A     He asked me what's different between the  
19     Galaxy S4. So he -- the Galaxy S4 and the Mega. So I  
20     went to take the Galaxy S4 back and bring him the Mega  
21     out.

22          Q     The Mega's a bigger, better phone?

23          A     It's a -- it's a bigger phone, bigger screen.

24          Q     During this exchange, are you looking at him several

1 times in the face?

2 A Yes.

3 Q What's going on now, ma'am?

4 A I'm putting the phone together to show it to him,  
5 so he could hold it and play with it. Display the phone  
6 to him.

7 Q So you're taking it out to make it operational, out  
8 of the box?

9 A Yes.

10 Q And he's waiting for you to do that?

11 A He -- yes.

12 Q What are you doing now, ma'am?

13 A I'm scanning the case to get him the total with  
14 the phone, the case, and the plan.

15 Q At this point, you've made the phone operational?

16 A Yes.

17 Q What's going on right now, ma'am?

18 A I turn on the phone. I ask him if he was gonna  
19 pay cash or debit. And he pulled out the gun.

20 MR. LEXIS: Can you pause it right there?

21 BY MR. LEXIS:

22 Q So is he pointing the firearm at you?

23 A Yes.

24 Q Was he pointing the firearm at you the entire time he

1 was demanding the money?

2 A Yes.

3 Q And you were in fear?

4 A Yes.

5 Q And you said you complied with his demands?

6 A I did comply with them.

7 Q What's going on right now?

8 A I'm giving him the money from the register.

9 Q You step back. Why you stepping back?

10 A He asked me to step back.

11 Q Did he immediately, then, leave the store?

12 A Yes, he did.

13 Q What are you doing right now?

14 A I'm calling 9-1-1.

15 Q Did you immediately call 9-1-1?

16 A Yes, I did.

17 Q And the phone you made operational, he took that as  
18 well?

19 A Yes, he did.

20 MR. LEXIS: No further questions, Your Honor.

21 THE COURT: Cross-examination?

22 MR. CLAUS: Court's indulgence for just a moment,  
23 please.

24 THE COURT: Okay. Counsel, what was the exhibit



1 number of the video?

2 MR. PALAL: 43, Your Honor.

3 THE COURT: 43. Thank you.

4 MR. CLAUS: Your Honor, I'll pass this witness.

5 THE COURT: And may I have the jury questions, please.

6 Counsel, can you approach?

7 MR. CLAUS: Oh, actually, Your Honor, I'm sorry. I  
8 did have one question of this witness, if I may.

9 THE COURT: Ask.

10 CROSS-EXAMINATION OF GRACIELA ANGLES

11 BY MR. CLAUS:

12 Q The firearm that was produced, do you remember if it  
13 was an automatic firearm?

14 A I honestly don't know.

15 Q Okay.

16 A I don't know about firearms.

17 Q You don't know the difference between automatic or  
18 revolver.

19 A No.

20 MR. CLAUS: Okay. Thank you, Your Honor.

21 THE COURT: Counsel, can you approach? I have  
22 questions from the jury.

23 MR. LEXIS: Judge, may I follow up on that, too?

24 THE COURT: After we ask the questions from the jury.

1 [Bench conference]

2 THE COURT: I have a couple questions from the jurors.

3 THE WITNESS: Uh-huh.

4 THE COURT: Did you have to leave the floor at the  
5 store to get the phones or were they on the floor?

6 THE WITNESS: They are on the -- they are on the  
7 store, they're on the floor.

8 THE COURT: And did you see him put away the gun to  
9 grab the phone with his right hand before exiting the  
10 store?

11 THE WITNESS: No.

12 THE COURT: Okay. Thank you.

13 Counsel, would you like to follow up?

14 MR. LEXIS: Court's indulgence.

15 Nothing from the State, nothing further.

16 THE COURT: Anything else, Mr. Claus?

17 MR. CLAUS: Just a moment, Your Honor. Pass the  
18 witness, Your Honor.

19 THE COURT: Okay. Thank you. We appreciate your  
20 time. Have a very nice afternoon.

21 Ladies and gentlemen, at this time we're gonna  
22 take our lunch recess until 1:15.

23 During this recess, you are admonished not to  
24 talk or converse among yourselves or with anyone else on

1 any subject connected with this trial or read, watch, or  
2 listen to any report of commentary on the trial or any  
3 person connected to this trial by any means of  
4 information, including without limitation: Social media,  
5 text, newspaper, television, Internet, radio or form or  
6 express any opinion on any subject connected with the  
7 trial until the case is finally submitted to you.

8 We'll see you at 1:15. If you could gather  
9 outside 14A.

10 [Outside the presence of the jury]

11 THE COURT: Counsel, if you could come up here, one of  
12 you. I don't care which one. You're the hander-outer.  
13 There's two for each side.

14 So this is now -- we're past your working set.  
15 If it's okay, I'll go ahead and take one more shot at it,  
16 see if there's anything else that's missed. I've made the  
17 corrections we talked about yesterday. I will then, if  
18 you tell me after lunch that these look good, I will then  
19 number them and give you a new set that has the  
20 handwritten numbers on it.

21 MR. PALAL: All right. Thank you, Your Honor.

22 THE COURT: Okay? And I'm just trying to make sure  
23 we've done our parts.

24 Anything else before I see you guys at 1:00-ish?

1 MR. PALAL: Nothing from the State.

2 THE COURT: You guys at 1:00-ish.

3 MR. PALAL: Okay.

4 MR. CLAUS: No, Your Honor.

5 THE COURT: Okay.

6 MR. PALAL: Thank you.

7 THE COURT: Uh-huh.

8 [Recess at 11:58 a.m.; proceedings resumed at  
9 1:09 p.m.]

10 [Outside the presence of the jury]

11 [Discussion off the record]

12 THE COURT: So as soon as I have juries all here, I'm  
13 ready to go. Do you need the list of them?

14 THE BAILIFF: Uh, you have a list of them?

15 THE COURT: I got a list.

16 THE BAILIFF: I'll take a list. [Inaudible]

17 THE COURT: Here you go. They should be in front of  
18 14A.

19 THE BAILIFF: I'll go see what I can [inaudible].

20 THE COURT: There should be 14 of them.

21 THE BAILIFF: 14 of them?

22 THE COURT: In front of 14A.

23 THE BAILIFF: Yes, ma'am.

24 THE COURT: Thank you.

1                   Good afternoon, gentlemen. How are you?

2           MR. LEXIS: Not too bad. And you?

3           THE COURT: I'm great. So while we're doing that,  
4   Mr. Splond, you understand that under the Constitution of  
5   the United States and under the constitution of the  
6   State of Nevada, you cannot be compelled to testify in  
7   this case; correct?

8           THE DEFENDANT: Yes.

9           THE COURT: You may, at your own request, give up this  
10   right and take the witness stand and testify. If you do,  
11   you'll be subject to cross-examination by the  
12   District Attorney. And anything you may say, be it on  
13   direct or cross-examination, will be subject to fair  
14   comment when the District Attorney speaks to the jury in  
15   final argument. Do you understand that?

16          THE DEFENDANT: Yes.

17          THE COURT: If you choose not to testify, the Court  
18   will not permit the District Attorney to make any comments  
19   to the jury because you've not testified. You understand  
20   that?

21          THE DEFENDANT: Yes.

22          THE COURT: If you elect not to testify, the Court  
23   will instruct the jury that only if your attorney  
24   specifically request, generally, the law does not compel a

1 Defendant in a criminal case to take the stand and testify  
2 and no presumption may be raised, no inference of any kind  
3 may be drawn that from the failure for the Defendant to  
4 testify. Do you have any questions about these rights?

5 THE DEFENDANT: No.

6 THE COURT: Okay. You're further advised that if you  
7 have a felony conviction, more than ten years has not  
8 elapsed from the date you've been convicted or discharged  
9 from prison, parole, or probation, whichever's later, the  
10 Defense has not stopped to preclude that coming before the  
11 jury, you elect to take the stand and testify, deputy's  
12 attorney [inaudible] may [inaudible] ask you the  
13 following: Have you been convicted of a felony? What was  
14 the felony? When did it happen? However, they can't ask  
15 you any questions about the details. You understand those  
16 rights?

17 THE DEFENDANT: Yes.

18 THE COURT: The jury instruction I did mention about  
19 the not testifying is in the packet currently. During  
20 lunch break, we did notice one error in the packet of  
21 information. The two captions between the instructions  
22 and the verdict form did not match. We've corrected that.  
23 So it would be "Kenny" on both the instructions and the  
24 verdict because that matches the amended indictment.

1 THE BAILIFF: Judge, [inaudible].

2 THE COURT: Great. Thank you.

3 [Discussion off the record]

4 [In the presence of the jury]

5 THE BAILIFF: Jurors are present.

6 THE COURT: Thank you, Kevin.

7 THE BAILIFF: You're welcome, Judge.

8 THE COURT: Counsel, stipulate the presence of the  
9 jury.

10 MR. PALAL: Yes, Your Honor.

11 MR. CLAUS: Yes, Your Honor.

12 THE COURT: You may be seated.

13 Good afternoon, ladies and gentlemen.

14 You're next witness.

15 MR. PALAL: State calls Crime Scene Analyst Spoor.

16 MONTE SPOOR,

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

19 THE CLERK: Thank you. Please be seated.

20 Please state and spell your name for the record.

21 THE WITNESS: It's Monte Spoor. First name,

22 M-O-N-T-E. Last name Spoor, S-P-O-O-R.

23 THE COURT: Thank you, sir. Sir, you will notice  
24 there's a dispenser with M&Ms near you. There is a

1 pitcher of water. If you'd like some coffee --

2 THE WITNESS: Thank you.

3 THE COURT: -- the marshal can help you with that,  
4 too.

5 You may proceed.

6 DIRECT EXAMINATION OF MONTE SPOOR

7 BY MR. PALAL:

8 Q Sir, how are you employed?

9 A Employed with the Las Vegas Metropolitan Police  
10 Department as a Senior Crime Scene Analyst and a  
11 Quality Assistant.

12 Q Okay. And what does a crime scene analyst do?

13 A A crime scene analyst investigates crime scenes.

14 Q All right. And how long have you worked for  
15 Las Vegas Metropolitan Police Department?

16 A Little over 26 years.

17 Q And is -- have you been working as a crime scene  
18 analyst for all of those 26 years?

19 A Yes, sir, I have.

20 Q What kind of training, education, experience do you  
21 have as a crime scene analyst?

22 A A lot. Twelve-page SOQ, which you've problem  
23 seen. Twenty-six years of training, on-the-job training  
24 for that college. Before that, high school. Lots.



1           Q     What kind of degree -- what degree did you get in  
2 college?

3           A     I don't have a degree.

4           Q     Okay.

5           A     Yeah.

6           Q     What did you study in college?

7           A     I studied biology and criminal justice.

8           Q     Okay. And what kind of -- do you take any kind of  
9 continuing education?

10          A     All the time. Yes, sir.

11          Q     What types of continuing education?

12          A     If you allow me, I can pull out my SOQ and --

13          Q     Just --

14          A     -- read out -- everything from crime scene  
15 investigations on basic, intermediate, and advanced  
16 levels; bloodstain on basic and intermediate levels;  
17 photography on basic, intermediate, and advanced levels;  
18 anything that pertains to my job in general.

19          Q     Per se, you've had a lot of hours of training.

20          A     Well over 1800.

21          Q     Hours of training?

22          A     Hours of training, yeah.

23          Q     All right. Were you operating in your capacity as a  
24 Senior Crime Scene Analyst on January 22nd, 2014?

1           A     Yes, I was.

2           Q     And where were you called out to?

3           A     I was called out a robbery.

4           Q     And do you -- what physical location were you called  
5 out to?

6           A     It would have been 4343 North Rancho Drive.

7           Q     And it seems to me that you are referring to  
8 something in front of you --

9           A     Yes.

10          Q     -- what are you referring to?

11          A     This is my report. Help me remember, since it  
12 was number of years back.

13          Q     Now, on January 22nd -- I'm sorry. What was the  
14 address that you're --

15          A     4343 North Rancho Boulevard, Number 104.

16          Q     And is that here in Clark County, Nevada?

17          A     Yes, sir, it is.

18          Q     When you get to a scene of a possible robbery, what  
19 do you do?

20          A     Basically, I make contact with the officers that  
21 have previously arrived before me or the detectives that  
22 have previously arrived before me. Gather information  
23 about the scene, what had happened, how did it happen.  
24 From there, I make my notes. And from there I conduct my

1       photography. And from there I do my processing.

2           Q       And when you say "processing" what do you mean?

3           A       Generally, processing for latent fingerprints,  
4       the recovery there of any evidence that is left behind.

5           Q       And in this case, is that the procedure you took?

6           A       Yes, sir, it was.

7       MR. PALAL: Your Honor, may I approach the witness?

8       THE COURT: You may.

9       BY MR. PALAL:

10          Q       Sir, I'm gonna show you previously admitted Exhibits  
11       1, 2, 3, 4, and 5. Can you take a look at those?

12          A       Yes, sir.

13          Q       Do you recognize what's State's Exhibits 1 through 5  
14       are?

15          A       Yes, sir, I do.

16          Q       What are they?

17          A       They're photographs of the location that I  
18       previously identified. They're the documentation portion  
19       of my crime scene investigation.

20          Q       All right. I'm also now going to show you  
21       State's Proposed Exhibits 6 through 8. Can you please take a  
22       look at them. Do you recognize what's depicted in  
23       State's Exhibits 6 through 8?

24          A       Yes, sir, I do.

1 Q What do they depict?

2 A They depict two latent fingerprint lifts  
3 embodying the tape that is left on the interior sides of  
4 the north facing doors to the business.

5 Q And do they fairly and accurately depict the door, as  
6 you viewed it on January 22nd, 2014, after you had processed  
7 it?

8 A Yes, sir.

9 MR. PALAL: All right. Your Honor, State's gonna move  
10 State's Exhibits 7 through 9 into evidence.

11 THE COURT: Any objection?

12 MR. PALAL: And I apologize. That's 6 through 8.

13 THE COURT: 6 through 8? Any objection?

14 MR. CLAUS: No, Your Honor.

15 THE COURT: 6 through 8 will be admitted.

16 [STATE'S EXHIBITS 6-8 ADMITTED]

17 MR. PALAL: Permission to publish the exhibits?

18 THE COURT: You may.

19 BY MR. PALAL:

20 Q I'm showing you State's Exhibit 1. What is this?

21 A That's the north facing portion of the business  
22 that I responded to, suite number 104.

23 Q And is there a business next to it?

24 A Yes, sir, there are two business that adjoin it.

1           Q     Can you tell us what the businesses that adjoin it  
2     are.

3           A     Adjoining to the west would be a  
4     Luscious Boutique and adjoining to the east or right would  
5     be fresh -- or Baja Fresh, I think is what it was.

6           Q     Thank you. I want to show you know what's been  
7     admitted as State's Exhibit 2. Can you tell us what this is.

8           A     Yes, sir. You're looking at the exterior north  
9     facing entry doors to suite number 104.

10          Q     Now, there appears to be some yellow tape in front of  
11     the door.

12          A     Yes, sir.

13          Q     Can you tell us what that is?

14          A     Yes, sir. More than likely, the first responding  
15     officers, once they arrived and then got the story,  
16     cordoned off the area so that no one would enter an area  
17     that may contain potential evidence.

18          Q     I'm gonna show you State's Exhibit 3. Can you tell  
19     us what this is.

20          A     Yes, sir. Basically, you're looking from north  
21     to south into the interior of the business. And at the  
22     very south end of the business is a north facing customer  
23     service counter.

24          Q     And why did you take a -- why did you document that

1 area?

2 A The suspect had removed money from the cash  
3 register draw, which is located on the clerk side or on  
4 the south side of that customer service counter.

5 Q I'm now showing you what's been admitted as  
6 State's Exhibit 4. Can you tell us what we're looking at.

7 A Yes, sir. You're looking at the south side of  
8 that customer service counter. And in particular, you're  
9 looking at this area right here.

10 Q All right.

11 A Yeah, it's not drawing today.

12 THE COURT: Sir, you got to use the mouse, now.

13 THE WITNESS: Oh, gotta use the mouse now.

14 THE COURT: We have new technology.

15 THE WITNESS: Okay.

16 THE COURT: So click the mouse --

17 MR. PALAL: Yeah, click it once.

18 THE COURT: -- till you get a cursor.

19 THE WITNESS: There we go.

20 THE COURT: And now draw.

21 THE WITNESS: Okay. So you're -- you're looking at  
22 this area right here. In particular, this, which is the  
23 cash register drawer.

24 MR. PALAL: And for the record, you've drawn a circle

1       around, I guess, the center of the photo.

2               THE WITNESS: Kind of a "B."

3       BY MR. PALAL:

4               Q       I'm now gonna show you what's been admitted as  
5       State's Exhibit --

6               THE COURT: May I remove the marks?

7               MR. PALAL: Yes, please. Thank you, Your Honor.

8       BY MR. PALAL:

9               Q       I'm now gonna show you what's been admitted as  
10       State's Exhibit 5. Can you tell us what we're looking at.

11              A       Yeah. Yes, sir. Now you're at the south end of  
12       the business and you're looking back north to the north  
13       entry doors.

14              Q       And so is this -- what is this a perspective from?

15              A       This is a perspective from back where that  
16       counter was located, looking back towards the north front  
17       of the business. When you saw that last picture, the  
18       first picture that we looked at, showed the north front.  
19       This is the interior side of the business, looking back to  
20       that direction.

21              Q       Now, in the process -- in processing this scene, did  
22       you -- it obviously appears you took photos to document it.

23              A       Yes, sir.

24              Q       Did you attempt to recover latent fingerprints?

1           A     I did.

2           Q     Where did you attempt to recover latent  
3 fingerprints --

4           A     Latent fingerprints --

5           Q     -- fingerprints from. Sorry.

6           A     Sorry.

7           Q     I was just trying to get latent paint fingerprints  
8 from.

9           A     The cash register drawer itself and the interior  
10 of the two north facing doors.

11          Q     Were you able to get any latent fingerprints from the  
12 cash register area?

13          A     No, sir, I was not.

14          Q     Does that mean nobody touched the cash register area?

15          A     No, sir, that doesn't.

16          Q     Were you able to develop latent fingerprints from the  
17 door?

18          A     Yes, sir, I was.

19          Q     Can you tell us what latent -- can you tell us what  
20 latent fingerprints are.

21          A     Latent fingerprints -- the word "latent" means  
22 "hidden, not visible to the naked eye." So when a person  
23 touches a surface, depending on the condition of the  
24 surface and what is being secreted on the palm or surfaces



1 of the hands, it can leave an impression of the ridge  
2 detail that's on the palm or surfaces of our hands.

3 We have this ridge detail because if we didn't,  
4 we went to pick something up, it'd slide right out of our  
5 hands. It helps us grip and hold.

6 So, basically, what the latent is, is it's  
7 hidden. It's not visible to the naked eye. So in order  
8 to render that visible, or to search for these hidden  
9 prints, I use a powder and a glassine [phonetic] fiber  
10 brush. And I apply this powder to these surfaces. And it  
11 helps adhere to the substrate that's left behind from the  
12 palm or surfaces of our hands onto the surfaces in which  
13 we're processing. And that helps me see them.

14 Then once that I'm able to see them, I can  
15 recover them with a latent tape, like you saw in the  
16 photos previously shown. And that helps me pull them from  
17 the surface. And to put them on to a contrasting  
18 background. Because we use black powder, our contrasting  
19 background is white. That enables us to see what we've  
20 lifted. So we've taken something hidden and we've made it  
21 visible.

22 Q What are the factors in determining if a latent print  
23 has been left? Or what are the factors that cause a latent  
24 print to be left?

1           A     Factors that cause a latent print to be left is  
2     somebody touched a surface with the palm or surfaces of  
3     their hands or the plant or surfaces of their feet. That  
4     leaves the distinguishable marks that we are looking for  
5     to make identifications.

6           If somebody were to lean up against something  
7     with their arm, we would see that too, but it would be  
8     more of a hair/pore structure. It doesn't give us a whole  
9     lot of identification.

10          Q     Are there factors regarding individuals and whether  
11     or not they would leave a mark?

12          A     Oh, sure. You can touch something and because  
13     your fingerprints are individualized to you and you  
14     only -- even identical twins do not share the same  
15     fingerprints. Share the same DNA, but they do not share  
16     the same fingerprints. Because you touch something, you  
17     could possibly leave that detail behind. And then again,  
18     you may not.

19          Q     And what are the factors in determining whether or  
20     not -- what are the factors that go into whether a latent  
21     print is left or not?

22          A     There are many factors. The type of surface. Is  
23     the surface smooth? Is it textured? Is it clean? Is it  
24     dirty? Is the person secreting out of the pore structures

1 of the palm or surfaces of their hands?

2 We secret 99 percent water or moisture,  
3 perspiration. The other two -- the other one percent, it  
4 could be fatty acids, lipids, amino acids, salts.  
5 Everything our body produces, we push out of our pores.

6 If you look at the little ridges on your fingers,  
7 you'll see if you're -- you're good enough and you have  
8 nice little readers like me, you can actually see little  
9 round pores on the top of those ridges. That's pores.  
10 And those push out that stuff.

11 We could also pick up other stuff. Say we're  
12 working on our car. We get a little oil on our hands and  
13 we touch something. We can leave that impression behind.  
14 There's many factors that determine whether something is  
15 left and something isn't. You just don't know until you  
16 process. The process helps you render that visible. And  
17 you may not render anything visible.

18 Q So it's possible for somebody to touch something and  
19 not render anything.

20 A That is correct.

21 Q And now, you talked about types of surfaces. And one  
22 thing you mentioned was clean or dirty surfaces.

23 A Yes.

24 Q What -- can you tell us what that -- what are you

1 talking about specifically?

2 A Well, my experience -- say we have a window. Say  
3 the window goes to the house or in the back yard. And you  
4 look at that window and that window has a lot of alkali on  
5 it because the sprinkler hits it. That would be  
6 considered a dirty window. That might not necessarily be  
7 able to allow the substrate from the hand to transfer.

8 Another instance would be, say you have a dusty  
9 window. We touch that dusty window, but what happens is  
10 the dirt transfers to our hands and the substrate from our  
11 hands don't transfer to the surface. A clean surface, a  
12 nice, smooth, clean surface, we can transfer our  
13 substrate.

14 But what if we're not secreting? What if we're  
15 in the sweating? What if we don't have the substrate on  
16 our hands? We might not leave anything at all. It's  
17 really difficult to say somebody will or will not leave  
18 something. It's also difficult to say a surface is good  
19 or bad until you actual process that surface and see what  
20 it's rendering.

21 Q And are some people more inclined than others to  
22 leave fingerprints?

23 A Sure, if somebody's sweating. They're nervous or  
24 sweating, they might be more inclined. But then again, if

1       they're sweating too much, we might not get a ridge  
2       pattern. We might get a blob. If somebody is a good  
3       secreter, like I like to say, but they're touching a  
4       surface that's been touched by ten people previously, we  
5       might not get anything because we have a build up of  
6       substrate, where we can't isolate the substrate that we're  
7       leaving behind.

8               There is, literally, a million and one factors on  
9       why you can and can't leave prints. And each situation is  
10      unique within itself.

11             Q       Now, let's focus back on the event on  
12      January 22nd, 2014. You said you were able to develop some  
13      latent prints. I'm gonna show you what's been admitted as  
14      State's Exhibit 6. Can you tell us what we're looking at.

15             A       Basically, you're looking at the inside of the  
16      double north facing doors that allow access to that  
17      business. So you have the -- let me do a little thing  
18      here.

19               So this would be -- let's just do this. This  
20      would be the west side door. And this would be the east  
21      side door. Put a big "E" there. So located on the west  
22      side door -- and you can actually see all the fingerprint  
23      powder that was applied. You can see all this black  
24      that's all over these doors.

1           So basically, on the west side door I was able to  
2   develop latent detail right there. And on the east side  
3   door, I was able to develop latent detail right there.  
4   It's denoted by the two pieces of latent fingerprint tape  
5   that are located on the actual detail that I was able to  
6   render visible using my powder process that I explained  
7   earlier.

8           If you look at a closer photo, you're gonna see a  
9   "1" and a "2." I'll denote each one of those fingerprints  
10   as "latent fingerprint lift 1," "latent fingerprint lift  
11   2."

12          Q    All right. Now, you'd mentioned that there's dirt  
13   that -- or not dirt but I guess -- what is the --

14          A    Our black powder.

15          Q    Black powder --

16          A    Black processing powder.

17          Q    Black processing powder on the door. Now, it appears  
18   there are portions where your tape's not at but that the black  
19   powder is stuck to the door.

20          A    Yes, sir.

21          Q    What does that indicate?

22          A    It indicates, basically, I'm very thorough. I  
23   processed everything I could possible process if somebody  
24   were to make haste and go out those doors. But that

1 doesn't mean that I'm gonna get that latent detail. For a  
2 variety of reasons that I explained earlier. Might not be  
3 secreters, might have had gloves on, might never have been  
4 there. There's a variety of factors. Might not hit the  
5 door in that area.

6           You know, unless somebody tells me specifically,  
7 "Hey, they hit the door in this area," I do everything.  
8 Because I don't want to eliminate one little area. I want  
9 to do it all and see what I come up with.

10           Q     And the black powder, it sticks to moisture, is  
11 that -- is that correct or --

12           A     It will adhere to the substrate left behind.  
13 Substrate can be anything that I described earlier. Could  
14 be moisture, could be acids, could be lipids. Could be  
15 salts. It could be sebaceous oils which we pick up when  
16 we rub our heads. If we rub our hair, you'll feel the oil  
17 gets on your fingers. It could be a lot of different  
18 things. Could be the -- the car grease that you had on  
19 your hand from working on your car.

20           Q     And so the black powder on the door, there's --  
21 that's -- it's sticking to the door because of substrates on  
22 the door.

23           A     It can do that or it could also stick to the  
24 minor imperfections in the glass, too. You know, if you

1 look at glass up close, sometimes glass looks like it has  
2 scratches or striations. It will fill in those holes.

3 But what we are looking for is that actual detail  
4 that we see on the palm or surfaces of our hands. If I  
5 don't see that detail, it's not useful for me.

6 Q And so where the black powder's on the door, where  
7 you don't have the tape, there is something there, but it's  
8 not detailed enough for you to develop a latent print.

9 A Right. It could be substrate on top of substrate  
10 on top of substrate that has no detail. You're not seeing  
11 those ridges. You're not seeing those furrows. You're  
12 not seeing that pattern detail. So it is useless,  
13 basically.

14 Q And fair to say that this is the ingress and egress  
15 of the business, the enter -- how you enter and how you exit  
16 from the business.

17 A This is the customer.

18 Q Okay. Customer --

19 A Yes.

20 Q -- and --

21 A Because --

22 Q The way the customer enters and exits.

23 A Yes.

24 Q And so in a business, you would expect to have a



1 number of people coming in and coming out using the door.

2 A If they're successful.

3 Q At opening the door.

4 A Yes.

5 Q And -- or if the business is successful.

6 A If the business is successful, yes.

7 Q All right. And that can affect -- it sounds like  
8 that affects your ability to develop prints.

9 A That very well could be. If the -- if the  
10 business doesn't clean the doors on a regular basis and  
11 people are going in and out, touching the handles,  
12 touching the bars, touching the vertical metal, touching  
13 the glass, and nobody's cleaning that, you just get build  
14 ups of substrate on top of substrate on top of substrate.  
15 So, basically, what you have is a bunch of blah. You  
16 don't have anything that's identifiable.

17 Q I'm going to show you State's Exhibit 7. You'd  
18 mentioned you number your --

19 MR. PALAL: Your Honor, can you clear it?

20 THE COURT: I'm trying to. I've got -- I'm learning,  
21 too.

22 BY MR. PALAL:

23 Q All right. So you'd mentioned earlier that tape --  
24 you number your tape. Is this an example -- it's -- I'm

1       sorry. Let me clear up the record -- State's Exhibit 7 depict  
2       an example of you numbering your tape?

3           A       Yes, sir, it does.

4           Q       And the tape there indicates what?

5           A       I numbered this as latent print -- or "latent  
6       lift 1," basically.

7           Q       And that's an actual latent print you were able to  
8       lift from the door.

9           A       Yeah. You couldn't -- I don't know if you guys  
10       have as great a view as I do, but -- let me see here. I  
11       can -- I'm very computer savvy. I love computers, but  
12       this is frustrating. There we go. I got it.

13                   So you can kind of see one latent here. It's  
14       rounded. And you can kind of see another latent here.  
15       It's rounded. So if you look -- the first one, if you  
16       look above the rounded section, you'll see one. And the  
17       second one, if you look below it you'll see a rounded  
18       area. Those are the latents. You don't see them very  
19       well until they're pulled off that surface and put on a  
20       contrasting background.

21           Q       All right. I'm now gonna show you State's Exhibit 2.  
22       I mean -- I'm sorry. State's Exhibit 8.

23           A       That is my "latent print lift number 2." I had  
24       two. One from the west door, one from the east door.

1 Both on the interior side.

2 This is a great example of applying powder and  
3 not getting anything but blah. If you can look on the  
4 vertical metal beams where it says "push," you can see  
5 it's just -- it's convoluted.

6 Q And also, it appears that the bottom right of the  
7 photo, there seems to be a lot of -- a lot of powder there as  
8 well?

9 A Yes.

10 Q And would that be more, I guess as you put it, blah?

11 A It could be that or can could be a wear in the  
12 glass where the powder's adhering as well. So --

13 Q All right. What do you do with the latents when  
14 you're done with -- when you've -- after you've put the tape  
15 on the door?

16 A The latents are recovered. They're put on a  
17 contrasting background, which in this case would be a  
18 latent print card. And on that latent print card, there's  
19 some information that needs to be filled out: The event  
20 number of the case; the person that's recovering the  
21 latent, which would be myself; the event number; and the  
22 location from which -- obviously, the location of where  
23 we're at; the victim's name; and the location of which or  
24 where that latent was recovered from.

1           Q     And can you tell us what the event number was for  
2     this case?

3           A     It was 1401222866.

4           Q     And does each event -- does each Metro event assigned  
5     its own number?

6           A     Yes, each -- each call that Metro receives or  
7     responds to is assigned an event number for that day. So  
8     this was event number 2866 of that day.

9           MR. PALAL: Court's indulgence.

10          THE COURT: Sure.

11          MR. PALAL: State will pass the witness, Your Honor.

12          THE COURT: Cross-examination?

13                   CROSS-EXAMINATION OF MONTE SPOOR

14     BY MR. CLAUS:

15           Q     Officer Spoor --

16           A     Yes, sir.

17           Q     -- you've had direct interaction with the employee,  
18     then, or were you interacting with other Metro officers to get  
19     your direction on where to take the latent print?

20           A     Interacting with Detective Pasos [phonetic].

21           Q     And he told you where to get these prints from.

22           A     Yes, sir.

23           Q     And so based upon those interactions that you had  
24     with the detective, you believe that the prints that you were

1       able to develop at both the 1 and 2 tape locations were  
2       relevant to the investigation.

3           A       They would be relevant in that the information I  
4       was given is the suspect came to enter -- entered and left  
5       out those doors. Yes, sir.

6           Q       And you preserved those for analysis?

7           A       Yes, sir, I did.

8           MR. CLAUS: Okay. Thank you. No further questions.

9           MR. PALAL: Nothing --

10          THE COURT: Anything else from the State?

11          MR. PALAL: No, Your Honor.

12          THE COURT: No questions from the jury?

13                 Thank you very much, sir. We appreciate your  
14       time. Have a nice afternoon.

15          THE WITNESS: Thank you.

16          THE COURT: Next witness.

17          MR. LEXIS: State calls Analyst Fletcher.

18          THE COURT: Ladies and gentlemen, we are just trying  
19       this new technology for the first time. So we apologize  
20       for our hiccups as we try to make it work. We used to  
21       have touch screens like Howard Cosell used 20 years ago.  
22       But those were, apparently, no longer the state of the art  
23       or even working very well.

24                         SHAWN FLETCHER,

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

3 THE CLERK: Thank you. Please be seated.

4 Please state and spell your name for the record.

5 THE WITNESS: It's Shawn Fletcher. It's S-H-A-W-N and  
6 F-L-E-T-C-H-E-R.

7 THE COURT: You will see there are some M&Ms in the  
8 dispenser. There's water in the pitcher. If you would  
9 like some coffee, the marshal can help you with that.

10 THE WITNESS: Thank you.

11 MR. LEXIS: May I proceed, Your Honor?

12 THE COURT: You may.

13 DIRECT EXAMINATION OF SHAWN FLETCHER

14 BY MR. LEXIS:

15 Q Where do you work, ma'am?

16 A I work for Las Vegas Metropolitan Police  
17 Department as a Senior Crime Scene Analyst.

18 Q How long have you worked there?

19 A Nineteen and a half years.

20 Q What do you do?

21 A I'm a Senior Crime Scene Analyst. The crime  
22 scene analyst respond to the crime scenes, usually at  
23 patrol officers' or detectives' request. We process the  
24 crime scenes, which means we do all the photography, all

1 the evidence collection, and all the latent print  
2 processing that needs to be done on the scene.

3 Q What kind of training and experience have you  
4 received over the years?

5 A I have a bachelor's degree in cardiac rehab and  
6 nutrition and I have an associate's degree in criminal  
7 justice. We go through a crime scene analyst academy when  
8 we get hired. And then we have an extensive field  
9 training program.

10 We often get sent to classes and retraining in  
11 photography; any type of crime scene processing; latent  
12 print processing, which is the fingerprint processing;  
13 death investigations; fire investigations; trauma  
14 investigations. And then a lot of it's on-the-job  
15 training. We do a lot of in-house training. And then  
16 every day, basically, crime scene after crime scene.

17 Q And what is a latent print?

18 A A latent print is basically a fingerprint that's  
19 left behind on a surface. You secrete different things --  
20 amino acids, fatty acids -- you touch your face, anything  
21 that will get stuck to your finger that you can transfer  
22 onto a surface is going to leave a latent print.

23 And "latent print" just means it's a hidden  
24 print. "Latent" means "hidden." So we need to usually do

1 something to that print to make it visible so that we can  
2 recover it.

3 Q Okay. What type of factors go into determining  
4 whether or not you could recover a suitable print?

5 A Well, a lot of people have dry hands. So if your  
6 hands are really dry, you probably not gonna have any of  
7 that moisture. Most of the fingerprint is just water. So  
8 it evaporates very quickly.

9 If you're touching your forehead a lot or your  
10 arms, you may get some oils on there. And, you know, you  
11 can leave behind oils. So any type of powder that we  
12 would use is gonna react with some of those moisture  
13 things.

14 But there's a lot of things that can affect that.  
15 If you have dry hands, you're probably not gonna leave a  
16 print. If you have a rough surface, it's probably not  
17 gonna maintain a print either. People wear gloves, if  
18 you've got something over your hands, you're not gonna  
19 leave a print. If you're sweating too much, you might not  
20 leave a print because you're gonna have a lot of  
21 distortion and we're just gonna kind of see the water  
22 marks from the print.

23 Anything like that can kind of not help anybody  
24 leave prints. And sometimes people don't -- they just



1       don't touch anything in the right way. If you don't grab  
2       something and you're swiping or just pushing it you can  
3       smudge prints. And then a lot of times if something's  
4       handled quite often, you're gonna get prints on top of  
5       prints on top of prints. And they can't do a whole lot  
6       with that because it's hard to separate the prints.

7           Q       So it's more difficult in, say, a commercial  
8       establishment to find a print, given the amount of people that  
9       go in and out?

10          A       Yes, it's usually more difficult.

11          Q       And let's say, for example, you're in a room of 12  
12       people, is it possible for all 12 people to leave a suitable  
13       print?

14          A       It's possible for all 12 people to leave a print.  
15       It's possible that none of them would leave a print.

16          Q       So it's also possible that none of them leave a  
17       print.

18          A       Correct.

19          Q       Ma'am, were you dispatched on January 28th, 2014, to  
20       the Metro PCS store at 6663 Smoke Ranch?

21          A       Yes.

22          Q       Is that here in Las Vegas, Nevada, Clark County?

23          A       It is.

24          Q       I'm showing you what is marked as State's Exhibit 11.

1       What is that a picture of, ma'am?

2           A       That's the front of the store. The west -- this  
3       is gonna be the west -- can you draw on this one?

4           THE COURT: You can. You have to use the mouse.

5           THE WITNESS: Oh, okay.

6           THE COURT: It's new technology. So you're not the  
7       only one having trouble today.

8           THE WITNESS: Well, the only door you see, that's the  
9       west door.

10                   Oh, I see. How's that? Okay. This is the west  
11       door. Right here. Oops. Okay. That's touchy.

12       BY MR. LEXIS:

13           Q       Okay. For the record, you put a circle over --

14           A       Yes.

15           Q       -- what you're saying is the west door?

16           A       Correct.

17           Q       Okay. Is that a Metro police car outside?

18           A       Yes.

19           Q       And is that tape to preserve the area?

20           A       That's correct. That's the crime scene tape.

21           Q       Ma'am, I'm showing you what is marked as  
22       State's Exhibit 12. What is that a picture of?

23           A       This is the inside of the store and the service  
24       counter and lobby area.

1 Q Is that also tape on there to preserve the area?

2 A Yes.

3 Q Did you examine these areas?

4 A Yes.

5 Q What areas did you examine?

6 A Normally, I look at everything. I'll usually get  
7 some guidance from either the detective or the officer and  
8 then also sometimes from the employees, as to the areas  
9 that the suspect was in or touched or handled or anything  
10 like that.

11 Q Any particular area you lifted a print off of?

12 A This -- lost it again. The demo phone at the end  
13 of the --

14 Q I think you need to click it again, ma'am, for the --

15 A Oh, there we go. This demo phone right here, I  
16 got prints on.

17 Q For the record, you're putting a circle over the demo  
18 phone?

19 A Yes. It's attached to the countertop there.

20 Q Okay. Ma'am, I'm showing you State's Exhibit 14.  
21 What is that ma'am?

22 A That's just a close-up of the same phone.

23 Q At the exact location that you circled previously?

24 A Yes, except the south end of the service counter

1       there.

2           Q     And I'm showing you State's Exhibit 13. What is this  
3       a picture of, ma'am?

4           A     This is from behind the counter. So this area  
5       over here -- I'm not very good at this. The area at the  
6       far left, that's going to be where that phone is. And  
7       this is just the -- you can see the cash drawer in the  
8       middle there. That is the drawer that was disturbed.

9           Q     So fair to say, where I'm pointing over here --

10          A     Yes.

11          Q     -- is where the demo phone was?

12          A     Yes, it's right up on that top counter.

13          Q     Showing you what is --

14          A     Sorry.

15          Q     -- excuse me.

16          A     How are you doing that? Okay. I'm probably  
17       doing the wrong way. Okay.

18          Q     Go ahead, ma'am. Now you can circle it for us.

19          A     That phone is going to be right down here, but on  
20       the customer side of the counter.

21          Q     All right. For the record, you're making a circle  
22       where that demo phone was.

23          A     Yes.

24          MR. LEXIS: Let the record reflect I'm showing

1 opposing counsel State Proposed 15.

2 May I approach, Your Honor?

3 THE COURT: You may.

4 BY MR. LEXIS:

5 Q Ma'am, I'm showing you what has been marked as  
6 State's Proposed Exhibit 15. What is it?

7 A This is the cell phone. This is the demo cell  
8 phone.

9 Q True and accurate representation of what it looked  
10 like on that day?

11 A Yes.

12 Q And is that your stuff on there?

13 A It is.

14 MR. LEXIS: Your Honor, I move to admit --

15 THE COURT: Any objection?

16 MR. CLAUS: No, Your Honor.

17 THE COURT: Be admitted.

18 [STATE'S EXHIBIT 15 ADMITTED]

19 MR. LEXIS: And this one published, Your Honor?

20 THE COURT: You may.

21 BY MR. LEXIS:

22 Q And describe for us what that is.

23 A This is the phone. This is my fingerprint tape,  
24 all these different pieces that you see here, with the

1 corresponding numbers. The way the process works is it's  
2 a powder that I was using in this particular case. And  
3 it's applied with a brush to the phone with the hopes that  
4 the powder is gonna adhere to the moisture that's left  
5 behind in the fingerprint.

6 Once we see that something -- that powder has  
7 adhered to that area, we use just a piece of tape. It's  
8 basically Scotch Tape. But it's a forensic fingerprint  
9 tape. And we will place that over the individual prints.

10 So in this particular case, I saw five specific  
11 areas that had fingerprints. And so they got numbered  
12 accordingly, just to keep it consistent with tracking and  
13 the photography, so they could identify them later. And  
14 once that tape gets adhered down, I take this picture,  
15 showing the locations of them. And then I will remove  
16 those individual pieces of tape and they get placed on a  
17 white fingerprint card.

18 And the contrast, you'll be able to see my black  
19 fingerprint powder in the shape of the ridge detail of the  
20 fingerprint on the card. And that's how the fingerprints  
21 get lifted. That's how we call that we recovered them or  
22 we lifted them.

23 Q This is the demo phone?

24 A Yes.

1 Q Safe to say many people have touched this phone?

2 A I would assume so, yes.

3 Q And how many prints were you able to lift off this  
4 phone?

5 A I got five different lifts. So there may be a  
6 couple prints on each lift. But there were five lifts.

7 Q So only five lifts?

8 A Yes.

9 Q And when someone picks up the phone, does it also  
10 take into consideration a problem that might occur when --  
11 whether or not you're gonna find a print as far as how you  
12 hold a phone?

13 A Yes, how you hold it. With these phones, you  
14 know, they're smart phones, so you're sliding and moving  
15 around on the screen. So that can obscure a lot of the  
16 prints or smear the prints. They're actual quite fragile,  
17 most of the time. So if I, you know, were to grab this  
18 phone right now and do something with it, I may be swiping  
19 and moving around and just smudging my own prints.

20 In this particular case, you know, I -- I -- most  
21 of the front of the phone had prints on it. So there are  
22 prints there that were recovered. But they're -- you  
23 know, they may or may not be smudged or they may or may  
24 not be identifiable. And they may also be several prints

1 on top of prints. And sometimes that's difficult.

2 Q And is that on top of the sweat factor or how dry  
3 your hands are?

4 A Yes, all of that will come into play with that  
5 too.

6 Q Including how dirty the phone is?

7 A Yes.

8 Q Including how the person touched the phone?

9 A Correct.

10 Q Including the surface factor?

11 A Yes.

12 Q Just because you get a suitable print, is that always  
13 a good enough print for the expert to analyze?

14 A No.

15 Q And why do you say that?

16 A Well, the -- we will get, sometimes, just real  
17 tiny small portions of a print. And it may be nice and  
18 clear but it may not be enough to actually identify it to  
19 any specific person. If we get a nice, full, complete  
20 print, a lot of times that can be run through what we call  
21 our AFI system, which is our Automated Fingerprint System.

22 And we can sometimes get a hit on a person that's  
23 already in the system. But that takes a really good,  
24 pretty much a full print. So sometimes there's just not



1 enough there to actually identify it to a specific person.  
2 There's just not enough detail.

3 Q Did you try to recover any other prints, ma'am?

4 A I believe I printed the door.

5 Q And did that lead to anything?

6 A No, it did not.

7 Q Does that surprise you?

8 A No.

9 Q Why do you say that?

10 A Well, in the businesses, quite frequently,  
11 especially busy businesses like cell phone places, you  
12 know, they're not cleaning the doors every five minutes.  
13 The clerks are busy. So unless somebody's going out and  
14 cleaning these doors, a lot of times we have a really hard  
15 time getting prints on the doors because they're touched  
16 so often.

17 It also depends on the type of handle that's on  
18 the doors. The handles that are on the outside that, you  
19 know, when you pull open, you know, they're out in the  
20 weather all day. They're getting beat up by the sun. So  
21 those surfaces are usually not very good because they're  
22 worn and rough. That metal on door handles gets worn and  
23 it gets pitted. So a lot of the door handles -- the push  
24 handles, the pull handles -- a lot of those aren't very

1 good.

2 People don't often push open the glass, but they  
3 do. And where they do, that kind of gets -- happens in  
4 the same spot every time, so you -- prints over prints  
5 over prints. So the doors are just -- you know, they're  
6 used all day long, in and out, and they're never cleaned.

7 MR. LEXIS: Thank you, ma'am. No further questions.

8 THE COURT: Cross-examination?

9 CROSS-EXAMINATION OF SHAWN FLETCHER

10 BY MR. CLAUS:

11 Q Ms. Fletcher, do you remember any of the specifics of  
12 the doors in this particular location?

13 A Specifics --

14 Q How the door handles were pitted? Were they worn?  
15 Were they --

16 A I don't recall.

17 Q -- you know [inaudible] any print?

18 A I don't recall specifically in this case, no.

19 Q And indeed, generally speaking, when prints are  
20 gathered from individuals that are being processed by Metro  
21 for one reason or another, glass is a preferred medium to have  
22 them place their palms or fingers upon to gain the best  
23 possible print; correct?

24 A Yes. Glass can be very good, especially if it's

1 clean.

2 Q In fact, it is the preferred medium. It is what  
3 Metro uses to gather prints; correct?

4 A They may. I don't go down there and do that part  
5 of the job. So not quite sure how they're recovering the  
6 prints nowadays. But --

7 Q And you don't have any independent knowledge of the  
8 crime scene investigation. You basically show up and then  
9 print what you're told to print.

10 A Yeah, usually it's -- it's kind of a  
11 collaborative effort. The detectives or the officers will  
12 tell us what they found out. They're usually there quite  
13 a bit before we get there. They'll do their investigation  
14 and they'll pass on whatever information they gleaned. A  
15 lot of times I'm able to talk to the victims or to the  
16 clerk and I may get a little bit more. And then sometimes  
17 we have video.

18 And I don't believe I saw video in this  
19 particular case. So I would have gained my information  
20 either from the clerks or the detectives and the patrol  
21 officer.

22 Q Do you remember, specifically, how you gained your  
23 information in this case?

24 A I don't remember exactly, with this. I had, you

1 know, generally, again, it's the patrol officer who I'm  
2 usually dealing with.

3 Q So if there was video in this case, is it possible  
4 you might have gathered your information from that --

5 A It's possible, yes.

6 Q And based upon wherever you were getting this  
7 information from, you decided that you needed to -- or it  
8 was -- it was decided -- who makes the final decision of what  
9 you attempt to get latent prints from and what you don't?

10 A Oh, I do.

11 Q Okay.

12 A Yeah.

13 Q So you decided to get latent prints from the demo  
14 phone and from the doors; correct?

15 A Correct. I did not recover any from the door.  
16 But I do believe I processed the door.

17 Q Okay.

18 MR. CLAUS: No further questions, Your Honor.

19 THE COURT: Anything else?

20 MR. LEXIS: No, Your Honor.

21 THE COURT: From the jury?

22 Thank you, ma'am. We appreciate your time. Have  
23 a good afternoon.

24 Next witness.

1 MR. PALAL: Your Honor, State calls  
2 Heather Gouldthorpe to the stand.

3 HEATHER GOULDTHORPE,  
4 [having been called as a witness and being first duly  
5 sworn testified as follows:]

6 THE CLERK: Please be seated.

7 Please state and spell your name for the record.

8 THE WITNESS: My name's Heather Gouldthorpe. Heather,  
9 H-E-A-T-H-E-R, and Gouldthorpe, G-O-U-L-D-T-H-O-R-P-E.

10 THE COURT: And, ma'am, you will notice there are some  
11 M&Ms in the dispenser next to you. There's water in the  
12 pitcher. If you should need some coffee, let the marshal  
13 know.

14 THE WITNESS: Thank you.

15 THE COURT: You may proceed.

16 DIRECT EXAMINATION OF HEATHER GOULDTHORPE

17 BY MR. PALAL:

18 Q Ms. Gouldthorpe, how are you employed?

19 A I'm a forensic scientist in the Latent Print Unit  
20 at the Las Vegas Metropolitan Police Department Forensic  
21 Lab.

22 Q And do you -- do you have any education to have that  
23 job?

24 A I have my bachelor's degree in sociology and my

1 master's degree in forensic science.

2 Q All right. Do you have any training for your job?

3 A Yes. I started out at the laboratory as a  
4 Forensic Lab Technologist, where I learned the basics of  
5 fingerprint comparisons. I learn how to analyze latent  
6 prints, enter them into our AFI system, which is our  
7 Automated Fingerprint Identification System. Search that  
8 system. And then also to recover latent prints from items  
9 of evidence.

10 I then went on to promote to Forensic Scientist  
11 Trainee, where I spent a year studying how to do more  
12 complex comparisons, how to issue conclusions with the  
13 comparisons that I did, and how to render reports.

14 Q All right. And how long have you been working in  
15 this capacity?

16 A I've been at the laboratory as a technologist  
17 for -- or since I was a technologist for, like, nine  
18 years. Sorry.

19 Q Now, we've already heard testimony as to what a  
20 latent print is. Can you briefly tell us what a latent print  
21 is.

22 A Yes. You'll notice the skin on the hands of  
23 your -- the palms of your hands and the soles of your  
24 feet. It's a different type of skin than the rest of your

1 skin. This is called friction ridge skin. Residue coats  
2 these ridges. And if you happen to touch a surface, you  
3 have the potential to leave behind a replication of those  
4 ridges. And that often has to be either chemically or  
5 powder processed to be visualized.

6 Q Now, to be clear, you're not the person that goes out  
7 and processes the prints.

8 A No.

9 Q Ma'am, in your experience -- looking around this  
10 courtroom, there's about 25 people in this courtroom. Would  
11 you be surprised if everybody in this courtroom left a latent  
12 print in this courtroom?

13 A Would I about surprised if they did?

14 Q If they did.

15 A If they did, yes.

16 Q Would you be surprised if nobody left a latent print  
17 in this courtroom?

18 A No, I wouldn't be surprised at that either.

19 Q What makes you come to those conclusions?

20 A Not every time you touch a surface are you gonna  
21 leave behind a latent print. There's several factors to  
22 this. Part of it is the condition of your skin. Are your  
23 hands dry? Are they oily? What type of -- how much  
24 residue is on that skin?

1           And then there's surface factors. What type  
2           and -- surface are you touching? Is it textured? Is it  
3           too small to recover something off of? And then how you  
4           touch it. Do you just lightly touch it like you would  
5           hold every day object or do you put your hand and move it  
6           around so it's distorted?

7           And then there's also environmental factors. So  
8           if you leave something out in the desert or in the heat of  
9           the summer, obviously, the heat will dry up any water  
10          residue that would be there. And latent prints and sweat  
11          and all that is primarily made of water. So --

12          Q     Now, in -- while performing your job duties, were you  
13          assigned a packet of latent prints related to a robbery series  
14          from requester named Jeffrey Smith?

15          A     Yes, I was.

16          Q     Now, what do you do when you get assigned prints to  
17          examine?

18          A     The first thing we do is we pull the evidence  
19          from our secured location. We move it into our custody to  
20          maintain the chain of custody that we have. Then we  
21          inventory each packet to make sure that what is said that  
22          is in that packet is truly indeed in there. Then we  
23          screen the latent prints to determine whether or not they  
24          are suitable for us to make a comparison with.



1 Q And did you go through that process for this case?

2 A I did.

3 Q Or for that particular packet?

4 A Correct.

5 Q And what were your conclusions or what did you do  
6 when you got the packet? What -- were you able to draw any  
7 conclusions from opening the packet of latent fingerprints?

8 A Which --

9 Q I'm sorry. It's for --

10 A -- which event is this --

11 Q I'm sorry. For lab case number 14-01721.

12 A May I refer to my report?

13 Q Yes.

14 THE COURT: If that will assist you in refreshing your  
15 recollection, please feel free to do so.

16 THE WITNESS: Thank you. And that was 14-1 -- 01721?

17 BY MR. PALAL:

18 Q 01721, yes.

19 A Okay. In that packet, there were two lift cards.  
20 I've entered the prints that were in those, that were  
21 suitable, I entered those into our AFI system, which is  
22 our Automated Fingerprint Identification System. I then  
23 got a positive hit in our system.

24 And what that is, is it's a searching tool. So

1       there's a database of fingerprints that we search against.  
2       And I entered the print. I manually encode it. So I tell  
3       the system what to look for. I then get a candidate list  
4       back and then I have to go one by one on each candidate  
5       list and look at the candidate list.

6               And in this particular case, I did get a  
7       potential hit. What I do is then I take the ID number  
8       that's assigned to that latent print or to that candidate  
9       list. I take that ID number and then I go and pull the  
10      prints.

11             And then I get a hard copy of the latent print or  
12      the fingerprint exemplars and then I do a manual side by  
13      side comparison. So I'm looking at ridge -- at the ridge  
14      detail in the latent prints and then I'm comparing that,  
15      side by side, against the ridge detail in the exemplar  
16      print. And in this case, I did get identification.

17             Q     And for whom did you get an identification for?

18             A     Samuel Echeverria.

19             Q     All right. Now, that was the first lift card. Was  
20      there a second lift card as well?

21             A     There was, yes.

22             Q     And did you try to -- did you analyze that  
23      fingerprint? I'm sorry.

24             A     I did. It did not belong to -- I excluded

1 Samuel Echeverria and I entered that into the AFI system  
2 and I did not get a -- any -- I got a negative hit. So it  
3 means I did not hit to any candidates on that list.

4 Q I am now going to turn your attention to lab case  
5 number 14-07126. Did you go through a similar process in  
6 analyzing fingerprints recovered for that lab case?

7 A I did.

8 Q And what were the results?

9 A Initially, there was no prints in there that were  
10 able to be put through our AFI system. So then I had  
11 received a request to compare Kenny Splond against the  
12 prints that were in that case.

13 Q Did -- I'm sorry. Did any of the prints match  
14 Mr. Splond?

15 A I excluded Kenny Splond from three of the five  
16 prints that were in there. Two of the five prints were  
17 not suitable for comparison purposes.

18 Q And what is "not suitable for a comparison" mean?

19 A We have to have enough information in the latent  
20 prints. So we need to have enough -- the quantity, the  
21 quality, and the specificity of information has to be  
22 there. A lot of times they'll recover bits and pieces of  
23 ridge detail. And it's just not enough information for us  
24 to confidently carry on to our comparison process.

1           Q     So even if somebody actually does leave a latent  
2     print, that may not be good enough to compare.

3           A     That's correct.

4           Q     And people may touch items and not leave a latent  
5     print.

6           A     Correct.

7           MR. PALAL: Court's indulgence.

8                     State will pass the witness.

9           THE COURT: Cross-examination?

10          MR. CLAUS: Yes, Your Honor.

11                     Court's indulgence.

12                     CROSS-EXAMINATION OF HEATHER GOULDTHORPE

13          BY MR. CLAUS:

14           Q     Ms. Gouldthorpe, in fact, in -- let's -- let's talk  
15     first about lab case number 14-01721. You said that there was  
16     a candidate list that was generated there.

17           A     That's correct.

18           Q     Okay. And do you keep track of which candidates are  
19     generated by AFIS?

20           A     No, we do not.

21           Q     Do you remember who those candidates were?

22           A     No, I do not.

23           Q     Do you remember about how many people are in the  
24     candidate list that was generated by AFIS?

1           A     The candidate list that we request is about 15  
2 candidates.

3           Q     Is that a duplicatable candidate list, then. So if  
4 you wandered down to your lab and did the same search, would  
5 AFIS then generate that same candidate list?

6           A     Not to my knowledge. Given the fact that new --  
7 new people enter the system every day. If somebody  
8 searches it in a different way than I search it -- because  
9 I am manually encoding it -- another analyst might  
10 manually encode it slightly different than me to get a  
11 different set of candidate -- candidates on that list.

12          Q     I'm sorry. Maybe my question was imprecise. If you  
13 went down to your lab today and did the same search that you  
14 did on -- let's see here -- on or about February 5th of 2014,  
15 would it generate the same list of people or would it be a  
16 bigger list of people, potentially?

17          A     It would be the same number of candidates. The  
18 number of candidates is -- is something that we determined  
19 as a laboratory that we would search. Given that we have  
20 a new system, it's got new algorithms, so the list would  
21 be different.

22               Also, there's other people that enter the system  
23 since 2014, when I did this case, that could potentially  
24 be on that candidate list.

1           Q     Does anyone every leave that system, to your  
2 knowledge?

3           A     Not -- well, if they have their records sealed.  
4 Then their records would be pulled out of there.

5           Q     So that would be the only way?

6           A     Correct.

7           Q     My understanding of those was AFIS was a federal  
8 database; is that incorrect?

9           A     There are different levels. They have the local  
10 level, which is controlled by the Las Vegas Metropolitan  
11 Police Department. Then we have the state level, which  
12 is, basically, the State of Nevada and it's -- it's  
13 located within the Western Identification Network, which  
14 is the State of Nevada, the State of Idaho, Alaska,  
15 Oregon, Washington, and Utah. And then we have the  
16 California State database that we can search. And then we  
17 do have the federal level that we can search through  
18 IAFIS.

19                 In this particular case, at the time, we weren't  
20 searching IAFIS. So it was not a federal search at this  
21 point.

22           Q     So this was just a local search.

23           A     This was just a local search.

24           Q     Okay. How do you make a determination which of the

1 candidates you're going to compare manually?

2 A Well, like I said, on screen, I determine whether  
3 or not I get a positive hit or a negative hit. What I do  
4 on screen is do an on-screen comparison. I see if I have  
5 enough information on there that I think is a -- I can  
6 call it a positive. Then I will pull that record to  
7 manually compare.

8 If I look and I don't see enough information to  
9 say it was a positive hit, it would then be a negative  
10 hit. And in this case, that I was -- the case I was  
11 talking about, I did get a negative hit in the cases.

12 Q So the very first time you ran the search, the -- you  
13 didn't get any positive results?

14 A The first -- no, on one of the lift -- one of the  
15 latent prints, when I ran it into the system, I got  
16 negative results on that. And it was --

17 Q Okay.

18 A -- excluded from both Samuel Echeverria and  
19 Kenny Splond.

20 Q Okay. There were -- there were two lift cards that  
21 you ran reports for; correct?

22 A Correct. On this case, yes.

23 Q Okay. And both of those lift cards would have  
24 generated separate candidate lists; correct?

1           A     Correct.

2           Q     And you didn't keep a listing of those candidates  
3     that were generated.

4           A     No, we didn't.

5           Q     And you don't remember who those candidates were that  
6     were generated.

7           A     No, I didn't.

8           Q     Okay. And to the extent that they were generated,  
9     I'm talking about Q1 on the very first lift card --

10          A     One?

11          Q     -- okay?

12          A     Right.

13          Q     And, to your knowledge, there is no way of  
14     regenerating those exact results today.

15          A     No.

16          Q     And as you sit here, you don't remember how many  
17     positive results you got back for Q1.

18          A     I identified it to Samuel Echeverria. That was  
19     the positive result that I got. That was the one I ran,  
20     got a positive hit. And then I compared -- on lift card  
21     Q1, there was actually three suitable latent prints on  
22     that card.

23                 I -- once I got that positive association, I then  
24     compared it, identified it to one of the fingers of



1 Samuel Echeverria. Sorry if I'm really blowing his name.  
2 And then I also identified the other two latent prints in  
3 that case to Samuel Echeverria.

4 Q With the belief that they'd been formed at the same  
5 time; is that correct?

6 A Correct.

7 Q And then the third print, it was suitable for entry  
8 into your AFIS database?

9 A The --

10 Q I'm sorry. The second print. Pardon me.

11 A The -- the second -- Q2?

12 Q I'm getting myself confused.

13 A Yes, it was. I excluded Samuel Echeverria, also  
14 excluded Kenny Splond. And then I did search it through  
15 our AFI system with negative results.

16 Q And not trying to confuse you, but do you remember  
17 that you actually ran the report two different times and  
18 generated two different -- well, two different reports of  
19 examinations?

20 A Yes, I did.

21 Q Okay. And so the first time that you ran it through  
22 the AFI system, obviously you felt it had enough points to be  
23 entered into the AFI system for a search?

24 A Correct.

1           Q     What's a minimum criteria for an entry into the AFIS  
2     database?

3           A     It's the -- the minimum criteria? We have  
4     guidelines that are set by our laboratory. It's something  
5     that we came up with as a laboratory standard for us only.  
6     And our criteria was, at that time, 12 minutiae points and  
7     distal determination of up and then we have to determine  
8     whether or not it has either a focal point, which is  
9     either a core, which is like the middle part of the print,  
10    or a delta area, which is basically a triangle area in the  
11    print.

12          Q     What is a minutiae point for the purposes of this  
13    discussion?

14          A     So our ridges, they're not straight up and down,  
15    they're not horizontal. They do -- they have a flow to  
16    them. And when you trace that ridge out, it either does  
17    something. It either stops, which would be a ridge  
18    ending, or it merges into another ridge or divides into  
19    two ridges. And those would be bifurcations. Or it's a  
20    small ridge, so it has a short ridge. Those would be  
21    minutiae points that we plot.

22          Q     And so this second print had enough of those minutiae  
23    points and enough -- I'm sorry. What was the secondary  
24    characteristic that made it eligible for entry into the AFIS

1 database?

2 A It has to -- we have to have distal orientation  
3 known and a focal point. So either a core or delta or  
4 something that we can have a focal point there.

5 Q So the first time that you wrote a report of your  
6 examination, you just ran the print through your AFIS database  
7 and you return a negative results.

8 A Correct.

9 Q Okay. But the second time you were specifically  
10 requested to do an examination for Mr. Splond.

11 A Correct.

12 Q Okay. And that was approximately two months later,  
13 month and a half later; is that correct?

14 A I believe so. Something like that.

15 Q Would it help to refresh your recollection to show  
16 you a copy of your report or do you have it in front of you?

17 A I have the -- the second -- secondary report. I  
18 don't have the first report.

19 Q May I approach and see what you've got up there --

20 THE COURT: You may.

21 MR. CLAUS: -- as well, please? Thank you.

22 Thank you, Your Honor.

23 BY MR. CLAUS:

24 Q And so you were specifically requested to do a

1 comparison with Mr. Splond. Was this an automated comparison  
2 or was this a manual comparison you did yourself?

3 A It's a manual comparison that I did.

4 Q Okay. And you had Mr. Splond's fingerprints.

5 A Yes.

6 Q Okay. And you came to the conclusion that Mr. Splond  
7 could be excluded from that fingerprint labeled "Q2."

8 A Correct.

9 Q So, to your knowledge, of all the fingerprints that  
10 were taken from your lab -- from -- from -- I suppose we could  
11 say this would be -- do you know where these were taken from,  
12 these -- these lifts?

13 A I have what was reported on the lift card. Every  
14 time we get a lift card in, it has a description of where  
15 it came from. And on there it says it was taken from the  
16 interior west side of the north facing glass entrance  
17 door.

18 Q Does it say whether these were taken from a  
19 Cricket Wireless for from a Metro PCS?

20 A It does on the outside of the packet, which is  
21 contained in my notes, but I don't --

22 Q And --

23 A -- reflect that. If I look at my notes --

24 Q Would you like to look at your notes to refresh your

1 recollection?

2 A Could I -- yeah.

3 Q Would it help you to do so?

4 A Thank you.

5 MR. CLAUS: Your Honor, with the State's permission,  
6 we'll just enter into a stipulation that these lift cards  
7 [inaudible] Cricket Wireless.

8 THE COURT: Right. You accept that stipulation?

9 MR. PALAL: Yes, Your Honor.

10 THE COURT: Okay. Both cards came from the Cricket.

11 BY MR. CLAUS:

12 Q Now, moving on, you also wrote in a -- a report of  
13 examination for latent prints, lab case number 14-01726. Can  
14 we just call it 726 for sake of brevity?

15 A Yes.

16 Q Okay. And in that report, you had -- did you write  
17 two reports there as well?

18 A I did. The first report that I wrote, it was a  
19 report that said that the latent prints in this packet  
20 were not suitable for an AFIS search. And if a manual  
21 comparison was needed at some point in time, to submit a  
22 request for that. And that happened. I was asked to  
23 request -- to compare against Kenny Splond.

24 Q Okay. And ultimately, you decided that three of

1       those five prints were suitable for comparison purposes.

2           A       That's correct.

3           Q       Now, as part of that comparison, you go through and  
4       you create notes, bench notes for yourself; correct?

5           A       That's correct, yes.

6           Q       And in these bench notes, you document where these  
7       lifts came from; is that correct?

8           A       Right. What our -- what we do with the notes is,  
9       basically, we make a copy of the outside of the lift card.  
10       So on the lift card, it documents where they came from,  
11       which is written by the crime scene analyst who recovers  
12       the latent prints.

13                   And then it also has my documentation on there  
14       saying what I numbered it. Because I number them Q1, Q2,  
15       Q3, Q4, and Q5, along with my initials. And then if I  
16       determine a latent print is suitable, I will make mark it  
17       with a designator. In this case it's a fingerprint. So  
18       it's an arch over the finger with the letter "A."

19           Q       Okay. And showing you State's Exhibit Number 15,  
20       this is -- have you seen this photograph before?

21           A       I have not.

22           Q       Okay. Directing your attention -- let's -- let's  
23       zoom in here a little bit. Generally speaking, even though  
24       you don't know the specifics of this photograph, what are we

1 generally looking at here?

2 A From my knowledge, this is what the crime scene  
3 analysts take a picture of. So their 1, 2, 3, would be in  
4 relation to what their lift cards would be. So when they  
5 take off tape lift number 1, they put it on a card and  
6 then that card is their "1." And then same with 2, 3, and  
7 4 or how many ever is on that photograph. I see 1, 2, and  
8 3 right there.

9 Q Well, and we can -- we can move it up, if that makes  
10 it a little easier.

11 A Yeah. So all five of those, to my knowledge,  
12 would correspond to the lift cards that were turned into  
13 the -- on this case.

14 Q All right. This seems to be [inaudible]. It's a  
15 wonderful thing, technology.

16 Okay. Can you see all the numbers there?

17 A I do.

18 Q Actually, there we go. I think we can see all the  
19 numbers there; right?

20 A Correct.

21 Q Okay. So the idea is, is that when the crime scene  
22 analyst takes these latent fingerprints and put them on these  
23 tape, they're going to box them up, send them off to you. And  
24 then you're going to analyze them. And you're going to try to

1 use the same numbering scheme that they did; correct?

2 A Correct.

3 Q Okay. So wherever we see "1" on a piece of tape for  
4 your purposes of your report, that's where you're going to be  
5 talking about "Q1"; correct?

6 A Correct.

7 Q Okay. And where you see "2" on the tape, it's going  
8 to correspond to "Q2," and so on and so forth until we get  
9 down to 5 on the -- on the number 5 on the tape on the screen.  
10 And then in your report that's going to be "Q5"; correct?

11 A Yes.

12 Q All right. So in your report, you found that there  
13 were no suitable latent prints for your comparison purposes in  
14 2 and 3; correct?

15 A Correct.

16 Q So can you take a -- you have that little mouse in  
17 front of you.

18 A Uh-huh.

19 Q Can you kind of --

20 THE COURT: Ma'am, you're gonna have to click it to  
21 try and get the indicator to come off, come up for you.  
22 There you go.

23 MR. CLAUS: Brave new world.

24 BY MR. CLAUS:



1           Q     Okay. So can you show us where the Q2 and Q3 tapes  
2 would be, then.

3           A     This would be Q2. Sorry about that. And Q3.

4           Q     You are very detail oriented. With that being said,  
5 let's -- and, in fact, you have a diagram of that in your  
6 notes. You tried to mirror that as well; correct?

7           A     We try to correspond what their number 1 is to  
8 our Q1, yes.

9           Q     Okay. And in your notes, you actually say where that  
10 lift came from; correct?

11          A     Right. We have a copy of the lift card attached  
12 to our notes.

13          Q     Okay. And what I'm -- what I'm -- I suppose what I'm  
14 trying to get at is even though you've got the numbers around  
15 the side, the latent print comes from somewhere on the phone;  
16 correct?

17          A     Correct.

18          Q     And it doesn't necessarily correspond to exactly  
19 where that tape is.

20          A     Um --

21          Q     Well, no, that's -- that's badly phrased. That  
22 tape -- the tapes appear to be overlapping; right? So you  
23 actually, when you're doing your notes, would identify, based  
24 upon where that tape is and how it was photographed, where you

1 think the latent prints were on the phone itself; correct?

2 A What we get is a -- it's basically an index card  
3 looking -- it looks like an index card with the piece of  
4 tape on it. And whatever images are contained, or latent  
5 prints are contained in that tape area is what we look at.

6 Q That's good enough. And so what you did is, based  
7 upon that, you -- you -- you tried to create a -- apology -- I  
8 map, essentially, of where these latent prints were on the  
9 phone itself; is that correct?

10 A Well, we don't necessarily do that. We just look  
11 at what's on that lift card. And we see what's in that  
12 tape area that they turned in. And then we determine  
13 whether or not there's information that -- on that latent  
14 to carry on to our comparison process.

15 Q Then maybe I'm not understanding. Maybe I can get a  
16 little more specific for you.

17 MR. CLAUS: Splond 42, please.

18 Your Honor, may I approach the witness?

19 THE COURT: You may. Can I remove the marks off the  
20 photo on the monitor?

21 MR. CLAUS: Uh --

22 THE COURT: No? Okay.

23 MR. CLAUS: Let's leave them where they are, please,  
24 just right now, Your Honor.

1 /

2 BY MR. CLAUS:

3 Q Showing you a document. Does -- does this document  
4 look to be your work product?

5 A Yes. And the diagram that you're showing me is  
6 on the back of that lift card. So it's something that the  
7 crime scene analyst annotated on the back of their lift  
8 cards.

9 Q Okay. So this is not something that you did, but it  
10 goes into your report to tell you where the fingerprints are  
11 coming from.

12 A Correct. It's -- it's what the crime scene  
13 analyst -- it's part of their designations. And we  
14 contain it within our notes as part of our note taking  
15 process to show what they collected in their notes.

16 Q Okay.

17 A Or what they turned into us.

18 Q And so to the extent that you wrote your report,  
19 then, the fingerprints -- the actual location of the latent  
20 prints would correspond with the numbers in this page?

21 A Yeah.

22 Q Okay. And did that comport with your own findings,  
23 when you were going through the tape?

24 A What --

1           Q     As you were going through the tape to identify the  
2     latent prints, did -- did the numbers that you've put here in  
3     your report correspond with where the prints were located on  
4     the phone, essentially?

5           A     We don't really look at that. What we look at is  
6     whether or not there's latent print evidence on that tape.  
7     We don't necessarily -- we just document what's on the  
8     cards, their diagrams, for purposes of note taking. But  
9     it doesn't have any bearing on whether or not a latent  
10    print is suitable or not suitable for comparison.

11          Q     Okay. Then maybe come at this another way. Does  
12    this document -- is this document, then, an accurate  
13    reflection of the information that you received about the  
14    location of the latent prints on the page?

15          A     Yes. Yes, it was.

16          Q     Okay.

17          MR. CLAUS: Your Honor, I'm going to mark this as  
18    Defense A.

19          THE COURT: Okay.

20          MR. CLAUS: Move for its admission.

21          MR. PALAL: No objection.

22          THE COURT: Objection? Be admitted.

23                         [DEFENDANT'S EXHIBIT A MARKED AND ADMITTED]

24          MR. CLAUS: Permission to publish to the jury.

1 THE COURT: You may. I've erased the marks.

2 MR. CLAUS: I was wandering around [inaudible].

3 THE COURT: It's okay.

4 BY MR. CLAUS:

5 Q So now that we can look at the photograph together,  
6 this -- this purports to be a sort of diagram of the Galaxy  
7 phone, where the prints were taken off of; correct?

8 A Correct.

9 Q Okay. And we can see that the numbers now -- one,  
10 two, three, four, five -- are now distributed around the  
11 diagram of the phone itself; correct?

12 A Correct.

13 Q And so is it your understanding that these numbers --  
14 one, two, three, four, five -- are meant to correspond with  
15 approximately where the latent prints were found on the  
16 device?

17 A That's correct.

18 Q Okay. Long way. You know what? I'm gonna leave  
19 that up there for us to talk. I'm gonna leave that up there  
20 for us to talk. Or perhaps with can do this: If I put this  
21 exhibit in front of you, can you take this exhibit and, to the  
22 best of your ability, try and transpose these numbers on to  
23 what we're looking at on [inaudible].

24 A Um --

1           Q       I know, the [inaudible] --

2           THE COURT:   You want her to write the numbers on the  
3   screen?

4           MR. CLAUS:   Yes, Your Honor.

5           THE COURT:   Okay.

6           THE WITNESS:  Oh, sorry.

7           THE COURT:   Hold on.  Let me erase.

8   BY MR. CLAUS:

9           Q       Thank you.  Now, in your report -- so this -- this  
10   would also correspond to the Q1 through Q5 in your --  
11   referenced in your report; correct?

12          A       Correct.

13          Q       All right.  And in your report, you had indicated  
14   that Q1 was a suitable latent print and you compared that  
15   against the known prints of Mr. Splond and you excluded him as  
16   a match; correct?

17          A       I did, yes.

18          Q       Okay.  Now, Q2 and Q3 -- 2 and 3 -- you said were the  
19   unsuitable prints; correct?

20          A       Correct.

21          Q       Okay.  But number 4, you identified as being a  
22   suitable print.  And you also excluded Mr. Splond from number  
23   4; is that correct?

24          A       Correct.

1           Q     All right. And Q5, you did a manual examination  
2     there as well and excluded Mr. Splond from that print.

3           A     Correct.

4           Q     And that was a suitable print as well.

5           A     It was.

6           Q     Okay. Now, lots of reasons why you might not leave a  
7     fingerprint. But obviously, on this device, there were a  
8     series of fingerprints that were taken off of this device.

9           A     Correct.

10          Q     And in your experience, if you're the last person to  
11     speak -- to touch such a device and there's no one else that  
12     touches it after you, is it reasonable to expect that you  
13     might leave a print behind?

14          A     Not necessarily. Like I said before, every time  
15     you touch something, you're not necessarily gonna leave  
16     behind a latent print.

17          Q     But if you do develop prints from that phone, so that  
18     there's not so much gunk on the phone that all the prints are  
19     obscured and you are the last person to touch this phone,  
20     would it be reasonable to expect that you would be one of the  
21     prints found?

22          A     Like I said, not necessarily. If you think of it  
23     as like a door to your favorite restaurant. Anyone that  
24     touches that door from the time that restaurant door was

1       cleaned to the time that somebody comes and processes it,  
2       anyone that enters that door to your favorite restaurant  
3       can potentially leave behind a latent print.

4           Q     Is this a door to a restaurant?

5           A     No, but it's --

6           Q     Do you know how many people touched this device?

7           A     I do not.

8           Q     Okay. And you did, in fact, get fingerprints off of  
9       it; correct?

10          A     Yes.

11          Q     And you were able to make an examination from those  
12       fingerprints.

13          A     Correct.

14          Q     And so what you're telling the jury is that it's very  
15       reasonable that the last person to have touched a phone that  
16       has five different latent prints that have been pulled off of  
17       it, it's very reasonable, very probable that that person  
18       wouldn't have left a fingerprint.

19          A     Can you say that again?

20          Q     That it's very probable and very reasonable that  
21       person would not have left a fingerprint.

22          A     It's possible. It's not necessarily always --  
23       any time you touch a surface, you're not necessarily  
24       always gonna leave behind a latent print.



1 Q Indeed, anything is possible. But is it probable?

2 A It's possible, but, like I said, any time you  
3 touch a surface, not all the time will you leave behind a  
4 latent print.

5 Q All right. Let's -- let's deal with some of the  
6 technicals of it: You're familiar with how the fingerprints  
7 are gathered by Metro.

8 A Correct.

9 Q And they use glass to do that; correct?

10 A How --

11 Q They use a glass device to gather the prints;  
12 correct?

13 A The platens that are finger -- that are -- yes.

14 Q Okay. In fact, glass is the preferred method for  
15 gathering fingerprints; correct?

16 A It's -- it's a -- definitely a suitable surface,  
17 yes.

18 Q Not -- not -- perhaps not the perfect surface. Is  
19 there a perfect surface?

20 A No.

21 Q Okay. Does -- does glass rank up there as being one  
22 of the best surfaces to get fingerprints from?

23 A When you're talking about -- like, electronically  
24 taking your fingerprints, they do use glass plate --

1 platens to take those because glass is easibly (sic)  
2 cleanable. So when you do roll a surface, you can easily  
3 clean it for the next person so you don't get overlap on  
4 that. So --

5 Q And now-a-days they're not even having people put,  
6 you know, the black -- the black ink on their fingers when  
7 they take their fingerprints -- correct -- they're just  
8 rolling them across the -- across the glass.

9 A Yeah.

10 Q Okay.

11 A For the most part.

12 Q Okay. Were you asked to compare these fingerprints  
13 to any anyone else?

14 A Outside of -- I was only requested to compare  
15 them to Kenny Splond.

16 Q And again, both at the -- the Cricket and the Metro  
17 PCS, your results were negative.

18 A Correct.

19 Q Thank you.

20 THE COURT: May I remove the marks?

21 MR. PALAL: Yes, Your Honor. May I --

22 THE COURT: Redirect.

23 MR. PALAL: Thank you.

24 REDIRECT EXAMINATION OF HEATHER GOULDTHORPE

1 BY MR. PALAL:

2 Q All right. Ms. Gouldthorpe, Mr. Claus mentioned that  
3 when Metro takes prints of people, they use glass. It seemed  
4 to me that you wanted to say something about why the process  
5 of using glass. Do they clean the surface of glass after  
6 taking fingerprints?

7 A Yes. Every time at the Fingerprint Bureau, when  
8 they do take somebody's prints, what they do is they take  
9 the prints and then afterwards, they'd use a glass cleaner  
10 and then they clean it. So then the next person that  
11 comes behind them, they won't get overlap of latent -- of  
12 prints in the system.

13 Q Now, it probably wouldn't be a good way to collect  
14 prints to just not clean it and just lay a print over print.

15 A No.

16 Q Now, are you aware of whether they put any kind of  
17 liquid or water on prints prior to taking the prints?

18 A Occasionally, I know -- because I'm one of those  
19 people, I have really dry hands. So they put, like, a  
20 lotion on the hands to moisten them up before taking  
21 prints.

22 Q And why -- why is that?

23 A Like I said, I'm one of those people, I have dry  
24 skin. I leave behind really bad latent prints. I know

1       this because as part of our -- when we process evidence,  
2       we have to make QC prints. And in order for me to get a  
3       print that I can say will react positively, I have to  
4       really load my fingers up.

5               So what that means is I have to either touch the  
6       back of my hair line or rub my forehead, which is the  
7       oiliest part on my skin, to be able to produce a print  
8       that would -- that I could process that I can recover a  
9       latent from.

10       Q       So even using Metro's equipment on a clean glass  
11       surface, surface that -- that's cleaned after every use, when  
12       you put your hand on there, you don't develop good latent  
13       prints.

14       A       Correct.

15       Q       One last thing, do you have to actually touch the  
16       item for you to leave a print or does hovering above it leave  
17       a print?

18       A       Well, you have to touch -- in order for the  
19       latent be developed, you have to actually touch the print.  
20       Because it's a -- you're actually leaving behind a  
21       replication of your skin. So in order to leave behind  
22       that replication, you have to actually touch the surface.

23       Q       So to leave a latent print, just, generally, even  
24       beyond that, you have to touch the item.

1           A     Yep.

2           Q     So like -- because I've been looking at this Elmo a  
3     lot.  If I haven't touched it, I'm not gonna leave a print.

4           A     Correct.

5           MR. PALAL:  No further.

6           THE COURT:  Redirect -- or recross?

7           MR. CLAUS:  Please, Your Honor.

8                   RECROSS-EXAMINATION OF HEATHER GOULDTHORPE

9     BY MR. CLAUS:

10          Q     So you fingerprinted yourself and checked -- tried to  
11     check your own fingerprints and had difficulty with that.

12          A     I do.

13          Q     Okay.  And is it in getting any fingerprints, getting  
14     suitable fingerprints, or getting perfect fingerprints?

15          A     Getting any -- getting any latent to develop.  If  
16     I just touch a surface, I know that I have -- I won't  
17     leave any prints that I can develop to positively call a  
18     latent print.  So that's why I have to, myself, load my  
19     fingers with oily sebaceous sweat, in order to develop a  
20     latent print.

21          Q     Now, this is an individual characteristic; correct?

22          A     It is, yes.

23          Q     Are you aware of any statistics of what pocket -- of  
24     what percentage of the population has this same difficulty?

1           A     No.

2           Q     And you perspire through your hands; correct?

3           A     Correct.

4           Q     All right. And you put oils out through your hands;  
5 correct? And that is a universal characteristic.

6           A     It is.

7           Q     Okay. And when you're under stress, you'll perspire  
8 more; correct?

9           A     Correct.

10          Q     And in order to leave a fingerprint, you don't have  
11 to have held an item for five minutes, ten minutes, you can  
12 just touch it and that will leave a fingerprint; correct?

13          A     Correct.

14          MR. CLAUS: Pass the witness, Your Honor.

15          MR. PALAL: Nothing from the State.

16          THE COURT: Anything further?

17          MR. PALAL: No, Your Honor. I apologize.

18          THE COURT: Any questions from the jury?

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

21                Next witness.

22          MR. LEXIS: State calls Detective Kavon.

23          THE COURT: How long do you think he's gonna be?

24          MR. PALAL: Twenty-five minutes.

1           THE COURT: Ladies and gentlemen, we're gonna take an  
2           afternoon recess before we start with a longer witness.

3           During this recess, you're admonished not to talk  
4           or converse among yourselves, with anyone else on any  
5           subject connected with this trial or read, watch or listen  
6           to any person connected with this trial by any medium of  
7           information including, without limitation: Social media,  
8           text, newspaper, television, Internet, radio or form or  
9           express any opinion on any subject connected with the  
10          trial until the case is finally submitted to you.

11          See you in about ten minutes outside courtroom  
12          14A.

13          [Outside the presence of the jury]

14          THE COURT: By my count, as we all know, is not  
15          necessarily accurate, this will be your seventh witness of  
16          the day. And yesterday you told me you had seven more  
17          witnesses.

18          MR. PALAL: That's correct.

19          THE COURT: And I can draw a conclusion from that.

20          MR. PALAL: Yes, you are.

21          THE COURT: Okay. So I have numbered the instructions  
22          for you. Who's my hander-outer?

23          MR. PALAL: I got it, Your Honor.

24          THE COURT: Two per side. Now they have numbers on

1       them.

2           MR. PALAL:   Thank you.

3           THE COURT:   So these will be the set we settle from.

4           MR. CLAUS:   Thank you.

5           THE COURT:   You guys can have five minutes or so for  
6       break.

7           MR. PALAL:   Is the jury --

8           MR. CLAUS:   Front or back?

9           MR. PALAL:   Yeah, where's the -- is the jury in front  
10       or back?

11          THE COURT:   Jury should be out by 14A.

12          MR. PALAL:   Okay.

13          THE COURT:   They're in the front.   You guys are going  
14       in the back.

15                       [Recess at 2:46 p.m.; proceedings resumed at  
16       2:46 p.m.]

17                       [Outside the presence of the jury]

18                       [Discussion off the record]

19          THE COURT:   Do you have the machine that we're gonna  
20       give the jury to watch the videos?

21          MR. PALAL:   Yes.

22          THE COURT:   Your clean computer?

23          MR. PALAL:   Yes.

24          THE COURT:   So Mr. Claus, this is how I do it:   Once



1 we finish everything and I send the jury back, we then  
2 have a clean laptop, typically provided by the DA's  
3 office. I have you check that laptop with them to make  
4 sure that it appears to you to be a clean laptop, before I  
5 send it back. And then we rely upon that laptop to be the  
6 one the jury uses.

7 MR. CLAUS: Okay.

8 THE COURT: So if that's okay with you, that'll be the  
9 process I follow.

10 MR. CLAUS: A-okay with me.

11 THE COURT: Great. It's so nice to talk to lawyers  
12 who actually are agreeable as to one close to the other  
13 ones that are talking to my people in the back hallway.

14 MR. CLAUS: And I only try to disagree on the really  
15 important things, Your Honor.

16 THE COURT: Lovely. That's good.

17 MR. CLAUS: Something's going on here.

18 THE COURT: There's apparently some suspicious  
19 activity outside the building. So I will arrange for the  
20 jurors to be accompanied to the garage, if they stay late.  
21 Not sure what the suspicious activity is. But don't want  
22 to run [inaudible].

23 MR. PALAL: Actually, that brings up with a good  
24 point, Your Honor. How long do you have the -- do you

1 send the jurors home or do they -- give them time to  
2 deliberate?

3 THE COURT: My general rule is -- and as it's a  
4 general rule, that means sometimes I depart from it -- is  
5 I send jurors home by 6:30, whether they like it or not.  
6 But I let them pick the time they come back.

7 MR. CLAUS: So we're gonna be sticking around till  
8 6:30.

9 THE COURT: Well, probably not, but it's possible.

10 [Discussion off the record]

11 MR. PALAL: Your Honor, my submit of 25 minutes  
12 included cross, so --

13 THE COURT: I -- I've already said you guys are  
14 getting done today. I've got the instructions ready to  
15 go. They're numbered; you got them. I'm ready to go at  
16 the next break to settle jury instructions and be gone.

17 MR. PALAL: Okay. Perfect.

18 THE COURT: Unless you want to settle --

19 MR. PALAL: Thank you.

20 THE COURT: -- now. Have you looked at them?

21 MR. CLAUS: Yes, Your Honor.

22 THE COURT: Okay. Has the State had the opportunity  
23 to review the Court's proposed jury instructions numbered  
24 1 through 30?

1 MR. PALAL: Yes, Your Honor.

2 THE COURT: Does the State object to the giving of  
3 those instructions?

4 MR. PALAL: No, Your Honor.

5 THE COURT: Does the State have any additional  
6 instructions to propose?

7 MR. PALAL: No, Your Honor.

8 THE COURT: Has the Defense had the opportunity to  
9 look at the Court's proposed instructions numbered 1  
10 through 30?

11 MR. CLAUS: Yes, Your Honor.

12 THE COURT: Do you object to the giving of any of  
13 those instructions?

14 MR. CLAUS: No, Your Honor.

15 THE COURT: Do you have any additional instructions to  
16 propose at this time?

17 MR. CLAUS: No, Your Honor.

18 THE COURT: Have both of you had the opportunity to  
19 look at the proposed form of verdict that the clerk has  
20 placed on a blue backer, in which --

21 MR. CLAUS: Yes.

22 THE COURT: -- has the same name as the instructions?  
23 Does anyone object to the verdict form?

24 MR. CLAUS: No, Your Honor.

1 MR. PALAL: No, Your Honor.

2 THE COURT: Okay. You both want me to instruct the  
3 jury before closing arguments.

4 MR. PALAL: Yes, Your Honor.

5 MR. CLAUS: Yes, Your Honor.

6 THE COURT: Okay. So Kevin, I'm going to give these  
7 to Dan to make the copies while we're hearing the last  
8 witness.

9 THE BAILIFF: Okay.

10 THE COURT: I'll do it. You line them up.

11 [Discussion off the record]

12 THE COURT: Is it okay with you guys if we give the  
13 jurors a verdict form too?

14 MR. PALAL: [Inaudible]

15 THE COURT: Sometimes we give them a verdict form and  
16 sometimes we don't. Do you want them to have a verdict  
17 form or not?

18 MR. CLAUS: A copy.

19 MR. PALAL: Oh, yes, please.

20 MR. CLAUS: Yeah.

21 THE COURT: Here. Here, Dan.

22 MR. PALAL: Do some people actually request that jury  
23 instructions be read after closings?

24 THE COURT: The statute requires it.

1 MR. PALAL: I didn't know that.

2 THE COURT: This is why I ask it and nod my head so  
3 you know the right answer.

4 MR. PALAL: Oh, okay. The statute mandates it after.  
5 And we just --

6 THE COURT: Believe so.

7 MR. PALAL: -- we stipulate it to go before.

8 THE COURT: Because we've all learned it, after isn't  
9 the best time for you to explain the jury instructions.

10 MR. CLAUS: That would explain why some judges do it  
11 after.

12 THE COURT: Those of us who were actually trial  
13 lawyers know why it's important the judge do it first.

14 [In the presence of the jury]

15 THE BAILIFF: Jurors are present.

16 THE COURT: Counsel, stipulate the presence of the  
17 jury.

18 MR. CLAUS: Yes, Your Honor.

19 MR. LEXIS: Yes, Your Honor.

20 THE COURT: You may be seated.

21 Your next witness.

22 MR. LEXIS: Detective Kavon.

23 MR. CLAUS: Detective who?

24 MR. LEXIS: Kavon.

1 SCOTT KAVON,

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

4 THE CLERK: Thank you. Please be seated.

5 Please state and spell your name for the record.

6 THE WITNESS: My name is Scott Kavon, S-C-O-T-T,  
7 K-A-V, as in "Victor," O-N.

8 THE COURT: Sir, you will notice there is a dispenser  
9 with M&Ms next to you. There's a pitcher with water in  
10 it. And if you should need some coffee, let the marshal  
11 know. He'd be happy to help you out.

12 THE WITNESS: Thank you.

13 THE COURT: You may proceed.

14 DIRECT EXAMINATION OF SCOTT KAVON

15 BY MR. LEXIS:

16 Q Where do you work, sir?

17 A I currently am retired.

18 Q Where did you work?

19 A I used to work with the Las Vegas Metropolitan  
20 Police Department.

21 Q For how many years?

22 A I did a little less than 25 years with the police  
23 department.

24 Q And when did you retire?

1           A     I retired a little less than eight months ago.  
2     Approximately 236 days ago.

3           Q     Sir, in 2014, what division were you assigned to?

4           A     I was assigned to the robbery/homicide section,  
5     concentrating in the Robbery Division. And I had been  
6     assigned there for approximately ten years.

7           Q     In early 2014, were you assigned to investigate a  
8     string of robberies that occurred at the Cricket store at  
9     4343 North Rancho, the Metro PCS store at 6663 Smoke Ranch,  
10    and the Star Mart at 5001 North Rainbow?

11          A     Yes, I was.

12          Q     And how were you assigned that?

13          A     In the -- in the Las Vegas Metropolitan Police  
14    Department, in the robbery section, specific, the city or  
15    Clark County, actually, is broken down into sections.  
16    Geographical areas, substations, for patrol cover those  
17    sections. And then the detectives are also assigned  
18    sections of the city to work.

19                I was assigned a northwest part of the valley, at  
20    that time, being the northwest substation encompasses that  
21    area of town that you describe.

22          Q     Did each of those three robberies occur in the  
23    northwest part of this valley?

24          A     Yes, they did.

1 Q Here in Clark County, Las Vegas?

2 A Yes, they did.

3 Q And what did you do when you were assigned this  
4 investigation?

5 A Initially, the calls are generated and uniformed  
6 officers respond. They take crime reports. They take  
7 voluntary statements. They do a preliminary  
8 investigation. From there, the case is assigned to a  
9 detective. And in this instance, these cases were  
10 assigned to me.

11 I received these cases in a computer database,  
12 which we call a queue, in the queue, along with other cases  
13 from the northwest. And I begin to sort through them and  
14 investigate them. I look at them for commonalities and  
15 things like that.

16 Q Were you able to obtain videos from these locations?

17 A I was. I reviewed the video for both the Cricket  
18 store and the Metro PCS.

19 Q Did there come a time where you eventually were able  
20 to develop a suspect?

21 A Yes, there did. Ultimately, I looked at these  
22 three cases, in chronological order, as I received them, I  
23 looked at them. And I noted that the -- the case was --  
24 the case -- the suspect in these cases was very similar.



1           He had a similar method of operation or the way  
2       he would conduct his crimes. He had a similar physical  
3       description and physical build. It was distinctive  
4       because the witnesses and victims in these crimes  
5       described him as having some sort of scarring on his  
6       cheeks, either pock mark or acne scarring or something  
7       like that.

8           The suspect utilized a revolver in -- in two of  
9       out of these three cases. And he also utilized a silver  
10      car as a getaway car, silver four-door car. And in -- in  
11      two -- two of the cases, witnesses saw a female driving  
12      the getaway car away. So --

13           MR. CLAUS: Objection. [Inaudible]

14           THE COURT: Overruled.

15           BY MR. LEXIS:

16           Q     Go ahead.

17           A     So ultimately, when I looked at all these cases  
18      together, I noted that on the -- the Star Mart convenience  
19      store that was robbed, uniformed officers had made two  
20      arrests in that case, arresting a Kenneth Splond or  
21      Kenny Splond.

22           Q     And you're aware that a firearm was used on all three  
23      robberies?

24           A     Yes, it was described as a revolver in at least

1 two of the robberies.

2 Q And so, after that third event, on February 2nd at  
3 the Star Mart, Metro actually had a suspect in custody.

4 A That's correct.

5 Q Showing you what is State's Exhibit 33. You  
6 recognize that photograph, sir?

7 A Yes, I do.

8 Q And who is that?

9 A That's a photograph of Kenny or Kenneth Splond.

10 Q You see that person in court today?

11 A Yes, I do.

12 Q Would you please point to him, identify for me the  
13 colored shirt he is wearing.

14 A He's sitting there at the Defendant's table.  
15 He's wearing a gray shirt with a gray tie.

16 MR. LEXIS: Your Honor, let the record reflect the  
17 detective has identified the Defendant.

18 THE COURT: Record will so reflect.

19 BY MR. LEXIS:

20 Q I'm also showing you states Exhibit 35. You  
21 recognize that photograph, sir?

22 A Yes, I do.

23 Q Is it the same person?

24 A That is also Kenny Splond, yes.

1           Q     Can you describe for me his appearance, his facial  
2 features.

3           A     He's an African American or a black male. He  
4 has -- he has short, dark, close-cropped hair in that  
5 picture. He has a light mustache and maybe a little bit  
6 of a light beard that's going on. He appears to have some  
7 sort of scarring on his cheeks and maybe his neck area  
8 there.

9           Q     What is he wearing?

10          A     He's wearing an orange-ish colored shirt from --  
11 I mean, I can only see, obviously, from the -- from the  
12 shoulders up. But with a -- possibly a darker shirt  
13 underneath.

14          Q     Is he wearing glasses?

15          A     He is not wearing glasses, no.

16          Q     You see the Defendant in court today?

17          A     I do. I do.

18          Q     Can you please describe me any characteristics, if  
19 any, that are different from this photograph.

20          A     To me, his appearance is substantially different,  
21 sitting here in court today, as it is from back in  
22 January, February of 2014. His hair is much longer now  
23 and done up in some type of braid. He's wearing glasses  
24 right now. And it appears that he's grown out his facial

1 hair, his goatee, and it's got a little gray in it, just  
2 like mine.

3 Q And what is he wearing?

4 A He's wearing a gray button down dress shirt with  
5 a gray pattern tie or silver pattern tie.

6 Q Now that you had a suspect in custody, and after you  
7 paired up those videos, what did you do next?

8 A What I always do in a case like this is I -- the  
9 suspect's in custody. I review a photograph of the  
10 suspect and then compare that to the video, to make sure  
11 that it -- it's consistent.

12 If not -- if you're not able to make a complete  
13 identification from the video and the photograph, which in  
14 almost every case you're not, you at least want to make  
15 sure it's consistent with characteristics and build and  
16 appearance and that sort of thing.

17 After I did that, I determined that it was time  
18 to create a photo lineup or photo array, as we call it.

19 Q And how many of these photo arrays have you  
20 conducted, rough estimate?

21 A In the little less than 25 years as a detective  
22 and an officer in Metro, I've conducted hundreds and  
23 hundreds of these photo arrays.

24 Q And can you explain for us how you go about getting

1 the photographs.

2 A Sure. Metro Police Department has a database, a  
3 database of photos that are in this database. Hundreds  
4 and hundreds and thousands of photographs are in this  
5 database. These photographs are separated into categories  
6 by race, by gender, that sort of thing, by age.

7 It's data inputted in when the photograph was  
8 taken. You know, they put in the age of the person, their  
9 name and their ID number and, you know, how tall they are  
10 and how much they weigh and that's all in the database.

11 When we create a photo array or sometimes it's  
12 referred to as a six-pack, you go into this database and  
13 you input the information for the known person that you  
14 want included in there. In this case, I input the  
15 information for Kenny Splond. Then that pulls  
16 Kenny Splond's picture out of the database.

17 And then you also put in criteria of what you  
18 want to match with that. You -- you put in, obviously,  
19 you wouldn't want to put in female with a male suspect.  
20 So you eliminate all the females. You eliminate Caucasian  
21 or -- or white -- white people. You eliminate all sorts  
22 of various things. You make sure the ages are close and  
23 the height and weights are close.

24 And when that computer program or that database