

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

2 No. 82740

3
4 **JORGE MENDOZA,**

5
6 Appellant,

7
8 vs.

9 **THE STATE OF NEVADA,**

10 Respondent.

11
12 **Appeal from the Postconviction Denial of Relief for Writ of Habeas**
13 **Corpus - Eighth Judicial District Court, Clark County**
14 **The Honorable Judge Bita Yeager 8th Judicial District Court Judge**
15 **Department 1, Presiding, Findings of Fact, Conclusions of Law and**
16 **Order Issued April 2, 2021, District Court Case No. A-19-804157-W**

17
18 **APPELLANT'S APPENDIX VOLUME IV**

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Dated July 25, 2021
BY /s/ DIANE C. LOWE
 DIANE C. LOWE, ESQ
 Nevada Bar #14573

1 PROSPECTIVE JUROR NO. 729: I'm fine, thank you.

2 THE COURT: Good. Have you ever served as a juror
3 before?

4 PROSPECTIVE JUROR NO. 729: No, ma'am.

5 THE COURT: Good. Have you ever been in law
6 enforcement?

7 PROSPECTIVE JUROR NO. 729: No, ma'am.

8 THE COURT: Anyone in your family and closely
9 associated with you in law enforcement?

10 PROSPECTIVE JUROR NO. 729: No, ma'am.

11 THE COURT: Have you ever been the victim of a
12 crime?

13 PROSPECTIVE JUROR NO. 729: No, ma'am.

14 THE COURT: Anyone in your family closely associated
15 with you been the victim of what you would consider to be a
16 serious crime?

17 PROSPECTIVE JUROR NO. 729: No, ma'am.

18 THE COURT: Have you ever been accused of or
19 convicted of a crime?

20 PROSPECTIVE JUROR NO. 729: No, ma'am.

21 THE COURT: Anyone in your family closely associated
22 with you?

23 PROSPECTIVE JUROR NO. 729: No, ma'am.

24 THE COURT: No? You've heard all these questions
25 that have been asked over the course of the afternoon today

1 and we started yesterday asking some question itself, but
2 would you -- did you ever hear a question you thought oh, when
3 it's my turn, if it's my turn, I need to bring this to the
4 Court's attention because --

5 PROSPECTIVE JUROR NO. 729: No.

6 THE COURT: -- it's important?

7 PROSPECTIVE JUROR NO. 729: No.

8 THE COURT: Do you have any reason whatsoever that
9 you think you could not be a fair and impartial juror in this
10 case?

11 PROSPECTIVE JUROR NO. 729: No.

12 THE COURT: Tell us about yourself.

13 PROSPECTIVE JUROR NO. 729: I am retired military.
14 I spent 24 years in the Air Force, and I -- I was a single
15 parent for most of the time I was active duty. My daughter is
16 33 years old. She's a financial analyst. She's married to a
17 marine. I have two grandsons.

18 Right now, I still work with the military. I am an
19 instructor. I teach Air Force lab techs how to be lab techs.
20 It's a phase one and a phase two program. I teach the phase
21 two part. So obviously, I work in the hospital. I've been a
22 lab tech for 30 plus years. So I'm working on my second
23 retirement, I guess you could say.

24 THE COURT: All right. Very good. Would the State
25 like to require further?

1 MS. LEXIS: We'd pass for cause. Thank you.

2 THE COURT: Thank you. Defense.

3 MR. LANDIS: What does a lab tech for the Air Force
4 do? And I apologize for not knowing.

5 PROSPECTIVE JUROR NO. 729: We do the same thing
6 that any medical lab does. I do blood work. I work with the
7 medical side of it. So CBCs, like a complete blood count. I
8 -- we can do chemistries, your glucose level, BUN, lytes,
9 PSA --

10 MR. LANDIS: So I --

11 PROSPECTIVE JUROR NO. 729: -- that kind of stuff.

12 MR. LANDIS: Health-based, and I have no idea reason
13 why I was thinking more like --

14 PROSPECTIVE JUROR NO. 729: Oh, no.

15 MR. LANDIS: -- investigation-based. I don't know
16 why, but now that makes sense.

17 PROSPECTIVE JUROR NO. 729: It's -- it's health
18 based. I work in the hospital on the medical side.

19 MR. LANDIS: I understand. What caused you to start
20 working again?

21 PROSPECTIVE JUROR NO. 729: To start working in the
22 lab?

23 MR. LANDIS: Yeah, after you retired? What made you
24 to start working towards your second retirement?

25 PROSPECTIVE JUROR NO. 729: Well, I enjoy the

1 military -- because I was in the military for 24 years, it's
2 like a family. And when I worked downtown in a hospital, it
3 was a little strange for me because I was so used to, you
4 know, they care that you come to work and they look out for
5 you.

6 MR. LANDIS: Right.

7 PROSPECTIVE JUROR NO. 729: So as soon as my job --
8 what I did prior to retiring from the military -- opened up, I
9 went back to the base doing the same thing that I did the last
10 few years I was active duty.

11 MR. LANDIS: That makes sense, and I appreciate your
12 time. I'll pass for cause.

13 THE COURT: Thank you.

14 MS. McNEILL: I'll pass for cause, Your Honor.

15 MR. WOLFBRANDT: And I'll --

16 THE COURT: Okay.

17 MR. WOLFBRANDT: -- pass for cause.

18 THE COURT: All right. Thank you. And that things
19 us to the defense's final peremptory challenge.

20 MR. LANDIS: Court's brief indulgence.

21 (Defense counsel conferring)

22 MS. McNEILL: Your Honor, at this time, we would
23 thank and excuse Mr. Hart, Juror No. 720, who is seat 9. Can.

24 THE COURT: Seat 10.

25 MS. McNEILL: Seat 10. I'm --

1 THE COURT: Thank you. Call the next in order.

2 THE CLERK: Badge 730, Kevin McDaniel.

3 THE COURT: Hello, Mr. McDaniel. How are you?

4 PROSPECTIVE JUROR NO. 730: Hello, I'm fine, thanks.

5 THE COURT: Good. Have you ever served as a juror
6 before?

7 PROSPECTIVE JUROR NO. 730: No, I have not.

8 THE COURT: Have you ever been law enforcement?

9 PROSPECTIVE JUROR NO. 730: No, I have not.

10 THE COURT: Anyone in your family or closely
11 associated with you in law enforcement?

12 PROSPECTIVE JUROR NO. 730: I have a uncle who is
13 retired detective.

14 THE COURT: Here in Clark County?

15 PROSPECTIVE JUROR NO. 730: No. Columbus, Georgia.

16 THE COURT: How long did he retire?

17 PROSPECTIVE JUROR NO. 730: I think it was -- it was
18 I'd say 15, 20 years ago.

19 THE COURT: Okay.

20 PROSPECTIVE JUROR NO. 730: Long time ago, yeah.

21 THE COURT: So you must have been pretty young then
22 even when he retired?

23 PROSPECTIVE JUROR NO. 730: Yes.

24 THE COURT: Do you feel like your opinions of the
25 justice system are influenced by your uncle?

1 PROSPECTIVE JUROR NO. 730: No, no, they're not.

2 THE COURT: Okay. Do you have an opinion about the
3 justice system good or bad?

4 PROSPECTIVE JUROR NO. 730: No, I have no opinion.
5 No, no.

6 THE COURT: Have you ever been the victim of a
7 crime?

8 PROSPECTIVE JUROR NO. 730: No. No, I have not.

9 THE COURT: Anyone in your family closely associated
10 with you been the victim of what you would consider to be a
11 serious crime?

12 PROSPECTIVE JUROR NO. 730: No, no.

13 THE COURT: Have you ever been accused of or
14 convicted of a crime?

15 PROSPECTIVE JUROR NO. 730: No, I have not.

16 THE COURT: How about anyone in your family or
17 closely associated with you?

18 PROSPECTIVE JUROR NO. 730: No, no.

19 THE COURT: Any reason at all that you could think
20 of that you could not be a fair and impartial juror in this
21 case?

22 PROSPECTIVE JUROR NO. 730: I could be a fair --
23 fair.

24 THE COURT: All right. Tell us about yourself.

25 PROSPECTIVE JUROR NO. 730: I've been living in

1 Clark County for nine years. I moved from Atlanta, Georgia.
2 I'm single. I live alone, and I work for Hooters Casino
3 Hotel. I'm a gaming audit supervisor.

4 THE COURT: So you supervise, then, a team of --

5 PROSPECTIVE JUROR NO. 730: Yes.

6 THE COURT: -- people?

7 PROSPECTIVE JUROR NO. 730: I -- I supervise a team
8 of ten.

9 THE COURT: What caused you to move from the --

10 PROSPECTIVE JUROR NO. 730: My -- my parents --

11 THE COURT: -- south to up here?

12 PROSPECTIVE JUROR NO. 730: -- they've been retired
13 for quite a while. They fly out here once a month so I wanted
14 to move out here and so we can all spend time together.

15 THE COURT: Oh, that's nice.

16 PROSPECTIVE JUROR NO. 730: Um-h'm.

17 THE COURT: And how do you like it as compared --
18 it's obviously, the desert. You came from --

19 PROSPECTIVE JUROR NO. 730: Right.

20 THE COURT: -- the south where it's --

21 PROSPECTIVE JUROR NO. 730: Yeah, it's --

22 THE COURT: -- hot and humid.

23 PROSPECTIVE JUROR NO. 730: -- hot and humid, yeah.

24 THE COURT: Here it's hot and dry.

25 PROSPECTIVE JUROR NO. 730: I -- I love the desert a

1 lot better.

2 THE COURT: You like it --

3 PROSPECTIVE JUROR NO. 730: Yeah.

4 THE COURT: -- better than -- okay. And not as many
5 bugs, right?

6 PROSPECTIVE JUROR NO. 730: Yeah, right, right.

7 THE COURT: Okay. All right. What is your
8 education background that qualifies you for that position?

9 PROSPECTIVE JUROR NO. 730: I have a associate
10 degree, actually, in audio and video so I don't have a degree
11 in the auditing.

12 THE COURT: Um-h'm.

13 PROSPECTIVE JUROR NO. 730: So it was basically,
14 on-the-job training and I just worked my way up. I've been
15 there for nine years so I got the job when I moved here.

16 THE COURT: Oh, okay.

17 PROSPECTIVE JUROR NO. 730: So --

18 THE COURT: So they -- did they hire you into that
19 position?

20 PROSPECTIVE JUROR NO. 730: No. I was a -- just a
21 regular food and beverage auditor and then I worked my way up
22 to the gaming side so.

23 THE COURT: And then eventually, became the
24 supervisor --

25 PROSPECTIVE JUROR NO. 730: Yeah, the supervisor.

1 THE COURT: -- of that department.

2 PROSPECTIVE JUROR NO. 730: Yes. Uh-huh.

3 THE COURT: Well, that's a real success story then,
4 isn't it?

5 PROSPECTIVE JUROR NO. 730: Yeah.

6 THE COURT: All right. Thank you. Would the State
7 like to inquire further?

8 MR. DiGIACOMO: No, thank you.

9 PROSPECTIVE JUROR NO. 730: Okay.

10 MR. LANDIS: Two very quick questions.

11 PROSPECTIVE JUROR NO. 730: Um-h'm.

12 MR. LANDIS: The Judge asked if you could be fair
13 and impartial. You said yes, I can be fair. I'm not trying
14 to pick on you, but did you have something more to say about
15 the --

16 PROSPECTIVE JUROR NO. 730: No.

17 MR. LANDIS: -- impartial part?

18 PROSPECTIVE JUROR NO. 730: I don't have anything
19 more to say. I can be fair. Oh, yeah.

20 MR. LANDIS: Okay. (Inaudible) concerned about
21 that. And then --

22 PROSPECTIVE JUROR NO. 730: Okay.

23 MR. LANDIS: -- as a gaming auditor supervisor, what
24 are you trying to make happen or prevent happening?

25 PROSPECTIVE JUROR NO. 730: You're basically trying

1 to prevent -- you have to run a lot of reports, look at
2 numbers to make sure no funny business is going on with the
3 slot machines and tables and things like that so.

4 MR. LANDIS: To determine cheating?

5 PROSPECTIVE JUROR NO. 730: Right, exactly.

6 MR. LANDIS: Thank you, sir.

7 PROSPECTIVE JUROR NO. 730: Sure.

8 MR. LANDIS: I'll pass for cause.

9 THE COURT: Thank you. Ms. McNeill.

10 MS. McNEILL: I'll pass for cause, Your Honor.

11 THE COURT: Thank you. Mr. Wolfbrandt.

12 MR. WOLFBRANDT: Likewise, I would pass for cause.

13 THE COURT: All right. So ladies and gentlemen,
14 everybody's exercised their peremptory challenges. This is
15 our jury. We are going to select, because the case is going
16 to go on tomorrow as well as could possibly go for another two
17 weeks, we want to make sure that we have alternate jurors.
18 Alternates serve a very important function because life
19 happens, even while people are serving on juries.

20 You know, we had one juror in a case who got hit by
21 a bus in his car on the way to the courthouse to serve, and so
22 and his car was totaled. He was fine as it turned out, but we
23 had to put an alternate in. I've had alternates that needed
24 to be placed even after the jury has deliberated. So
25 alternates serve a very, very important purpose because at any

1 time they could end up having to serve and take the place of a
2 juror who's already on the jury.

3 And so sometimes people think oh, an alternate
4 doesn't really have any job, but they often do. Probably 50
5 percent of the cases that I've tried in this courthouse, we've
6 had to use an alternate juror at some point in time. So it's
7 really important.

8 So what we're going to do is I'm going to call eight
9 names -- they're in the order -- to fill these chairs. We're
10 going to start -- the first person is going to go into that
11 first seat. And we're going to fill all eight of those and
12 then I'm going to be asking you general questions that you'll
13 respond by a show of hands.

14 So let's call those folks.

15 THE CLERK: Badge 732, Melissa Coyle. Badge 743,
16 Amanda Baumgardener. Badge 747, Jason Giddy. Badge 753,
17 Alisha Williams. Badge 754, Diana Villegas. Badge 758,
18 George Clark. Badge 765, Anita Van Thiel. And Badge 779,
19 Frank Dieterich.

20 THE COURT: All right. So this is how this is going
21 to work. We've got -- the microphone is in the hand of one
22 person, but we're going to -- I'm going to be asking you some
23 general questions and I would like you -- show of hands.
24 Okay.

25 So is there anyone who has served as a juror before?

1 Please raise your hand. And the record will reflect a
2 negative response.

3 Is there anyone who has served in law enforcement?
4 Please raise your hand. We have one. Pass the microphone all
5 the way down there. And that's Badge No. 758, George Clark?

6 PROSPECTIVE JUROR NO. 758: Yes.

7 THE COURT: Mr. Clark, you've served in law
8 enforcement? In what capacity?

9 PROSPECTIVE JUROR NO. 758: I was an international
10 police officer in Europe. I worked for the International
11 Criminal Court.

12 THE COURT: Oh, wow, that's very exciting. How long
13 did you do that?

14 PROSPECTIVE JUROR NO. 758. Three-and-a-half years.

15 THE COURT: How did you come upon getting that -- I
16 mean, I've never heard of anyone --

17 PROSPECTIVE JUROR NO. 758: Well, how did I get it?

18 THE COURT: Yeah.

19 PROSPECTIVE JUROR NO. 758: It's a pretty long drawn
20 out story.

21 THE COURT: Okay.

22 PROSPECTIVE JUROR NO. 758: My sponsor was Henry
23 Kissinger.

24 THE COURT: All right.

25 PROSPECTIVE JUROR NO. 758: It was a new program.

1 They lost a few people.

2 THE COURT: Okay.

3 PROSPECTIVE JUROR NO. 758: The qualifications were
4 I couldn't have been in the military at any time. Could not
5 have been a police officer. I had to have a clean criminal
6 record. Those were the three main.

7 THE COURT: Okay. Did you have training?

8 PROSPECTIVE JUROR NO. 758: Yes, we were trained by
9 British soldiers.

10 THE COURT: And --

11 PROSPECTIVE JUROR NO. 758: SAS.

12 THE COURT: And that lasted a fairly short period of
13 time, you said. Three, three-and-a-half years.

14 PROSPECTIVE JUROR NO. 758: You're only allowed two
15 -- two tours in 13 months.

16 THE COURT: Oh, okay.

17 PROSPECTIVE JUROR NO. 758: I was a captain. I more
18 or less elected by a 28 man team. I was the only -- only
19 American, and most of the people were from South America,
20 Argentina, Brazil, Peru, some Europeans.

21 THE COURT: What were your duties?

22 PROSPECTIVE JUROR NO. 758: Well, I worked for three
23 of the Judges for criminal court. There were 16 all together.
24 People were convicted in absentia, already convicted, on the
25 land. We were giving them warrants. Their last known

1 presence. They -- they didn't care how we got them. Wanted
2 dead or alive.

3 THE COURT: Okay.

4 PROSPECTIVE JUROR NO. 758: Most of them were Nazis,
5 war criminals.

6 THE COURT: I see.

7 PROSPECTIVE JUROR NO. 758: Yes, ma'am.

8 THE COURT: All right. And how ago did you serve in
9 that capacity?

10 PROSPECTIVE JUROR NO. 758: I served from 1974 until
11 1977. A little thereafter.

12 THE COURT: So has that experience impacted your
13 thoughts on the criminal justice system?

14 PROSPECTIVE JUROR NO. 758: That's a -- it with as a
15 different system. I -- I went to court one time on a -- on a
16 killing charge and was one of my own people. We actually let
17 the guy live and go to trial. And there was a lot of people
18 didn't -- didn't want to do that. I happen to have been in
19 charge, and my word was, it or they were gone. I'd put them
20 on the plane, they're gone.

21 THE COURT: Okay.

22 PROSPECTIVE JUROR NO. 758: I was given complete
23 control with the Judges.

24 THE COURT: So we're going to have some law
25 enforcement officers that may testify in this case. If they

1 take the stand and testify, will you be able to judge their
2 testimony in the same way you would any other witness?

3 PROSPECTIVE JUROR NO. 758: Yes, I would.

4 THE COURT: Do you think that could be a fair and
5 impartial juror even with that background?

6 PROSPECTIVE JUROR NO. 758: I could.

7 THE COURT: Okay. Thank you. And next question,
8 again, to the general panel. Anyone who has anyone in their
9 family or closely associated with them in law enforcement?
10 All right. Pass the microphone all the way down here. And
11 this is Badge No. 743, and it's Amanda Baumgardener.

12 PROSPECTIVE JUROR NO. 743: Yes.

13 THE COURT: Who is in your family?

14 PROSPECTIVE JUROR NO. 743: The majority actually of
15 my family are Metro or retired Metro.

16 THE COURT RECORDER: Could you -- could you hold
17 (inaudible) closer.

18 PROSPECTIVE JUROR NO. 743: Oh, I'm sorry.

19 THE COURT RECORDER: Thank you.

20 THE COURT: So the majority of your family has been
21 in Metro?

22 PROSPECTIVE JUROR NO. 743: Yes.

23 THE COURT: Some are retired?

24 PROSPECTIVE JUROR NO. 743: Yes.

25 THE COURT: Okay. And do you still think that you

1 could be fair and impartial in this case?

2 PROSPECTIVE JUROR NO. 743: No.

3 THE COURT: All right. You just can't serve as a
4 fair and impartial juror? You already know that?

5 PROSPECTIVE JUROR NO. 743: Yeah. I -- I believe
6 just from growing up the whole mindset of don't live life
7 through rose colored glasses. It looks like a duck, walks
8 like a duck, hangs out with a duck, it's a duck.

9 THE COURT: All right, you're dismissed. Thank you.

10 THE CLERK: Which number is that?

11 THE COURT: 743, Amanda Baumgardener. Let's call
12 the next to fill that seat. Well, actually, everybody move
13 down one. Yeah. Is that okay?

14 THE CLERK: Yeah, I just -- yeah.

15 THE COURT: Yes.

16 THE CLERK: We're just not going to replace any at
17 this point?

18 THE COURT: No, we're just going to put them at the
19 end.

20 THE CLERK: Okay.

21 THE COURT: Next at the very end.

22 THE CLERK: Oh, okay. So I am --

23 THE COURT: Yeah.

24 THE CLERK: -- calling someone else.

25 THE COURT: I am, yeah.

1 THE CLERK: So --

2 THE COURT: I am.

3 THE CLERK: Yeah, that's going to throw me off. Is
4 that going to be eight now?

5 THE COURT: Yeah, that's going to be eight.

6 THE CLERK: So then --

7 THE COURT: All right, I'm sorry, I'm throwing
8 everybody off. Move back to your original seats and leave the
9 one -- sorry. I don't want to throw everybody off. All
10 right.

11 THE CLERK: Okay.

12 THE COURT: Let's fill that seat.

13 THE CLERK: Badge 789, Tammy Ishibashi.

14 THE COURT: All right. Ms. Ishibashi, do you --
15 give her the microphone for a moment. Have you ever served as
16 a juror before?

17 PROSPECTIVE JUROR NO. 789: No.

18 THE COURT: Have you ever been in law enforcement?

19 PROSPECTIVE JUROR NO. 789: No.

20 THE COURT: Anyone in your family or closely
21 associated with you in law enforcement?

22 PROSPECTIVE JUROR NO. 789: No.

23 THE COURT: All right, thank you. Let's pass the
24 microphone down to the number 7 seat and that's Badge No. 765,
25 Anita Van Thiel. You said that you have family in law

1 enforcement?

2 PROSPECTIVE JUROR NO. 765: Yes, my stepfather
3 retired from LAPD in about --

4 THE COURT: How long ago did he retire?

5 PROSPECTIVE JUROR NO. 765: 1999, approximately.

6 THE COURT: So quite a while ago?

7 PROSPECTIVE JUROR NO. 765: Yes.

8 THE COURT: And did you ever talk to him about his
9 job?

10 PROSPECTIVE JUROR NO. 765: Yes. He tells us a lot
11 of stories.

12 THE COURT: A lot of stories?

13 PROSPECTIVE JUROR NO. 765: Yes.

14 THE COURT: Funny stories, sad stories, both?

15 PROSPECTIVE JUROR NO. 765: Funny stories and --
16 both, yes.

17 THE COURT: Okay. Do you think that you could judge
18 the testimony of a law enforcement officer the same way you
19 would other individuals, if you --

20 PROSPECTIVE JUROR NO. 765: Not quite, but I also
21 have a first cousin on Las Vegas Metropolitan Police
22 Department.

23 THE COURT: Okay. Same question, though.

24 PROSPECTIVE JUROR NO. 765: Yeah. I kind of had the
25 same opinion as looks like a duck, walks like a duck.

1 THE COURT: Okay. But you haven't heard any
2 evidence about whether we have ducks --

3 PROSPECTIVE JUROR NO. 765: No.

4 THE COURT: -- or not ducks.

5 PROSPECTIVE JUROR NO. 765: No, but --

6 THE COURT: Right?

7 PROSPECTIVE JUROR NO. 765: No, ma'am.

8 THE COURT: Okay. Are you saying you just have
9 already formed an opinion in this case?

10 PROSPECTIVE JUROR NO. 765: I actually did when I
11 came in, yes.

12 THE COURT: All right. So even though there's no
13 evidence, you've already formed an opinion?

14 PROSPECTIVE JUROR NO. 765: Yes, because I've been a
15 victim before, and I -- it's difficult to look at it with an
16 open mind.

17 THE COURT: So you can't be fair?

18 PROSPECTIVE JUROR NO. 765: I can try my hardest,
19 but I do --

20 THE COURT: No, I need to know yes or no can you be
21 fair?

22 PROSPECTIVE JUROR NO. 765: I don't think so, no.

23 THE COURT: All right, you're dismissed. Thank you.
24 Call the next one to fill that seat.

25 THE CLERK: Badge 792, Carla Turner.

1 THE COURT: Dr. Turner, have you ever been a juror
2 before?

3 PROSPECTIVE JUROR NO. 792: Yes, I have.

4 THE COURT: How long ago was that?

5 PROSPECTIVE JUROR NO. 792: In the '90s, when I was
6 a resident in Texas.

7 THE COURT: Okay. And when you sat on a jury, was
8 it a criminal case or a civil case?

9 PROSPECTIVE JUROR NO. 792: It was a mental health
10 evaluation like a commitment.

11 THE COURT: Okay, so --

12 PROSPECTIVE JUROR NO. 792: It was very simple.

13 THE COURT: -- but it was a jury?

14 PROSPECTIVE JUROR NO. 792: It was a jury.

15 THE COURT: Okay. That's interesting. All right.
16 So I don't know what the burden of proof might be in something
17 like that. Did you actually -- how many people served on a
18 jury?

19 PROSPECTIVE JUROR NO. 792: I don't remember.

20 THE COURT: Okay.

21 PROSPECTIVE JUROR NO. 792: It was a one-day trial.

22 THE COURT: Okay. All right. So you'll set that
23 aside, obviously.

24 PROSPECTIVE JUROR NO. 792: Yes.

25 THE COURT: That would be relevant. Okay. Have you

1 ever been in law enforcement?

2 PROSPECTIVE JUROR NO. 792: No.

3 THE COURT: No one in your family or closely
4 associated with you in law enforcement?

5 PROSPECTIVE JUROR NO. 792: No.

6 THE COURT: Okay. All right. Just hold on to the
7 microphone for now. General questions. Has anybody seated
8 there ever been the victim of a crime? Raise your hand. And
9 the record will reflect a negative response. Anyone who was a
10 family member, close associate, friend that has been the
11 victim of what you consider to be a serious crime? Okay. We
12 have two, but we're going to hand the microphone over to Seat
13 No. 4, which is Badge No. 753, Alisha Williams. Ms. Williams,
14 tell me what that was.

15 PROSPECTIVE JUROR NO. 753: I have a cousin that was
16 murdered by her boyfriend about ten years ago back home in
17 Minnesota, and in the same incident, two of my other cousins
18 were shot, but they left -- they -- they lived.

19 THE COURT: Oh, my goodness. All right. How old
20 were you when that happened?

21 PROSPECTIVE JUROR NO. 753: I was 22, 23.

22 THE COURT: And were you living there?

23 PROSPECTIVE JUROR NO. 753: I lived here. I've been
24 in Las Vegas for almost 20 years now.

25 THE COURT: Okay. So did you learn about that from

1 other family members?

2 PROSPECTIVE JUROR NO. 753: Yes.

3 THE COURT: Okay. Anything about that circumstance
4 that makes you think that you could not be fair and impartial
5 in this case?

6 PROSPECTIVE JUROR NO. 753: No.

7 THE COURT: Thank you. Pass the microphone over.
8 Sir.

9 PROSPECTIVE JUROR NO. 758: My wife was a victim
10 of --

11 THE COURT: And your name --

12 PROSPECTIVE JUROR NO. 758: -- an armed robbery.

13 THE COURT: Your name and badge number just for the
14 record again. It's George Clark, 758, right? Okay, go ahead.

15 PROSPECTIVE JUROR NO. 758: My wife was a victim of
16 a armed robbery in Albertsons shopping center, and my daughter
17 was stabbed by a drug dealer.

18 THE COURT: Was that here in Clark County?

19 PROSPECTIVE JUROR NO. 758: Yes.

20 THE COURT: How long ago?

21 PROSPECTIVE JUROR NO. 758: My wife -- it's -- that
22 must have been about 15 years on Thanksgiving Day. I remember
23 it quite well. My daughter right next door to our house was a
24 cooking meth, and everybody in the neighborhood knew but us
25 because we had just moved in. The realtor didn't tell us, you

1 know, owner didn't tell us and the owner was assistant chief
2 of detectives. I didn't find out until later.

3 She went over to assist somebody that was in trouble
4 medically, and she come back, and the guy that was -- that
5 owned the house, accused her of stealing \$700 from him. She
6 didn't take any -- she didn't have it. So when I heard her
7 scream because I'm in the kitchen, it's just right -- right
8 one door from the garage. I heard her scream.

9 And I went out in the garage, and evidently she had
10 put her hand up to block the stab, it went right through her
11 hand.

12 THE COURT: Oh, my goodness.

13 PROSPECTIVE JUROR NO. 758: I -- I normally have a
14 gun around the house, and at the time, I didn't. So I just
15 got the golf club that was sitting up next near the door, and
16 I went after him. He took off down the street, and my wife
17 called the cops.

18 It didn't take them very long to get there. Came
19 pretty quick. There were a number of people -- there were
20 over 30 people in that house. They were cooking on the second
21 floor and the first floor.

22 THE COURT: Okay.

23 PROSPECTIVE JUROR NO. 758: A lot of them were
24 illegal. I don't think the police department -- they just
25 checked IDs, turned them loose. But there was two guys, they

1 were armed. They disarmed them.

2 THE COURT: Okay. Did they catch the person that
3 stabbed your daughter?

4 PROSPECTIVE JUROR NO. 758: Yes, ma'am, they did.
5 They -- it was down at the -- oh, what is that -- the Orange
6 Coast right there on Flamingo, running back, and had me
7 identify him on the -- told them that's the guy that did. My
8 daughter was being attended by the paramedics that showed up,
9 and they just took my word for it.

10 The police officers during the time they were
11 searching for the guy, about 20, 25 minutes, they had me sit
12 on my hands in the front yard because the owner was notified,
13 and he said -- he said watch out, he's -- he's armed. He's
14 got several weapons the police department would like to have.
15 And made me sit on my hands until they brought him up.

16 And sat there with five -- five police officers
17 watching me.

18 THE COURT: Okay. So do you think you could be a
19 fair and impartial juror in this case?

20 PROSPECTIVE JUROR NO. 758: Oh, I think I could,
21 yes.

22 THE COURT: Okay. So you can set aside that
23 experience as well as the -- you said your wife was robbed?

24 PROSPECTIVE JUROR NO. 758: I could, yes.

25 THE COURT: Okay. All right. And Doctor, did you

1 have also?

2 PROSPECTIVE JUROR NO. 792: My father was accused of
3 murder, and it was later reduced to manslaughter.

4 THE COURT: Okay. So --

5 PROSPECTIVE JUROR NO. 792: It was maybe four years.

6 THE COURT: -- that was going to be the next
7 question.

8 PROSPECTIVE JUROR NO. 792: Maybe four years ago.

9 THE COURT: That was going to be the next question,
10 of course, was anybody accused of a crime. So you said your
11 father --

12 PROSPECTIVE JUROR NO. 792: Yes.

13 THE COURT: -- was accused of murder and --

14 PROSPECTIVE JUROR NO. 792: He was involved in a
15 shooting.

16 THE COURT: Okay. Was that --

17 PROSPECTIVE JUROR NO. 792: It was a self-defense --

18 THE COURT: -- here?

19 PROSPECTIVE JUROR NO. 792: -- type of a thing, but
20 it was reduced. It wasn't murder one, but got manslaughter
21 and he ended up get probation, but --

22 THE COURT: Was that here in Clark County?

23 PROSPECTIVE JUROR NO. 792: Yes.

24 THE COURT: And did the District Attorney's Office
25 prosecute that case?

1 PROSPECTIVE JUROR NO. 792: Yes.

2 THE COURT: Did you feel he was treated fairly?

3 PROSPECTIVE JUROR NO. 792: No.

4 THE COURT: All right. So do you bear a grudge
5 against the District Attorney's Office for pursuing that case?

6 PROSPECTIVE JUROR NO. 792: No, but --

7 THE COURT: Why do you feel he wasn't treated
8 fairly?

9 PROSPECTIVE JUROR NO. 792: It was a long story.
10 I'd really rather not go into the details.

11 THE COURT: Okay, but was it -- did you know the
12 what had occurred?

13 PROSPECTIVE JUROR NO. 792: Yes. It was --

14 THE COURT: Were you present?

15 PROSPECTIVE JUROR NO. 792: No, I wasn't present at
16 the time of the -- the shooting.

17 THE COURT: So did you learn what had happened from
18 your dad?

19 PROSPECTIVE JUROR NO. 792: Later after he was out
20 of the jail.

21 THE COURT: Okay. But is that the reason you formed
22 the opinion that you didn't think he was treated fairly or was
23 it for some other reason?

24 PROSPECTIVE JUROR NO. 792: The -- the police
25 officers also made some assumptions initially as well, and I

1 don't think he was treated properly.

2 THE COURT: All right. As a result of that, do you
3 think you could be a fair and impartial juror in this case?

4 PROSPECTIVE JUROR NO. 792: No.

5 THE COURT: Okay. If you can't be fair and
6 impartial then you'll have to be excused. Thank you very
7 much. You're excused. Call the next in order.

8 THE CLERK: Badge 794, Edna Aroche.

9 THE COURT: All right. Ms. Aroche, you have the
10 microphone. Have you ever served as a juror before?

11 PROSPECTIVE JUROR NO. 794: No.

12 THE COURT: Have you ever been in law enforcement?

13 PROSPECTIVE JUROR NO. 794: No.

14 THE COURT: Anyone in your family closely associated
15 with you in law enforcement?

16 PROSPECTIVE JUROR NO. 794: No.

17 THE COURT: Have you ever been the victim of a
18 crime?

19 PROSPECTIVE JUROR NO. 794: Yes.

20 THE COURT: What was that?

21 PROSPECTIVE JUROR NO. 794: Domestic violence.

22 THE COURT: Okay. How long ago was that?

23 PROSPECTIVE JUROR NO. 794: It was from 1992 to
24 1999.

25 THE COURT: A long time.

1 PROSPECTIVE JUROR NO. 794: Yes.

2 THE COURT: And did you report this to the police?

3 PROSPECTIVE JUROR NO. 794: Yes, but they never did
4 nothing about him. He's still doing the same thing.

5 THE COURT: To -- not to --

6 PROSPECTIVE JUROR NO. 794: Somebody else.

7 THE COURT: To somebody else. Okay. Back in the
8 '90s, things were not treated the same and laws weren't quite
9 the same.

10 PROSPECTIVE JUROR NO. 794: No, they -- he kept on
11 saying that I was a -- that I was hysterical, that I was crazy
12 so they believed him.

13 THE COURT: Okay. All right. And how do you know
14 he's still doing the same thing?

15 PROSPECTIVE JUROR NO. 794: Because he just got
16 married. He's getting divorced. He's going through court
17 right now, and the -- he's been harassing the woman that he
18 was married to.

19 THE COURT: Okay. And are you friends with her?

20 PROSPECTIVE JUROR NO. 794: My daughters are friends
21 with her because they lived with their father for a while.

22 THE COURT: Okay. So that's how you know what's --

23 PROSPECTIVE JUROR NO. 794: Yes.

24 THE COURT: -- going on? All right. Okay. So
25 you'd call the police and then they never --

1 PROSPECTIVE JUROR NO. 794: They never -- he only
2 got arrested once, but his friends bailed him out so nothing
3 happened. Every time they came to the house, he would say
4 that I was hysterical, that I lost -- that I'd lose it and
5 gone crazy so they believed him.

6 THE COURT: Okay. So do you bear ill will against
7 the police?

8 PROSPECTIVE JUROR NO. 794: No.

9 THE COURT: No? Do you think you could be fair and
10 impartial?

11 PROSPECTIVE JUROR NO. 794: No, because right now my
12 daughter tells me I still got issues with him, what he did to
13 me, so I have to go seek counseling again because I do got
14 issues with him. You know, it still hurts what he did to me.

15 THE COURT: Okay. But so you can't set that aside
16 and --

17 PROSPECTIVE JUROR NO. 794: No, because it's been a
18 -- the abuse was really bad so it just keeps on come back, and
19 I used to have dreams about what he did to me so.

20 THE COURT: Okay. So you can't be fair in this
21 case?

22 PROSPECTIVE JUROR NO. 794: No.

23 THE COURT: All right. You're dismissed. Call the
24 next in order.

25 THE CLERK: Badge 801, Linda Zutell.

1 THE COURT: Hello, Ms. Zutell, how are you?

2 PROSPECTIVE JUROR NO. 801: Good. How are you?

3 THE COURT: Very well, thank you. Have you ever
4 been a juror before?

5 PROSPECTIVE JUROR NO. 801: No, ma'am.

6 THE COURT: Have you ever been in law enforcement?

7 PROSPECTIVE JUROR NO. 801: No, ma'am.

8 THE COURT: Anyone in your family in law
9 enforcement?

10 PROSPECTIVE JUROR NO. 801: No, ma'am.

11 THE COURT: No close associates in law enforcement?

12 PROSPECTIVE JUROR NO. 801: No, ma'am.

13 THE COURT: Have you ever been the victim of a
14 crime?

15 PROSPECTIVE JUROR NO. 801: Yes.

16 THE COURT: What's that?

17 PROSPECTIVE JUROR NO. 801: When I moved here in
18 2014, my -- my apartment was broken into. They kicked in the
19 front door and took -- I was just moving from Virginia so I
20 didn't have a lot so they took what I had.

21 THE COURT: Did you call the police?

22 PROSPECTIVE JUROR NO. 801: Absolutely.

23 THE COURT: Did they respond?

24 PROSPECTIVE JUROR NO. 801: Yes.

25 THE COURT: And did they ever catch the person who

1 did it?

2 PROSPECTIVE JUROR NO. 801: Not to my knowledge.

3 THE COURT: All right. Did you feel like they did
4 everything they could to try and figure out who did it?

5 PROSPECTIVE JUROR NO. 801: I mean, I don't -- you
6 know, in those apartment complexes and stuff a lot of times
7 there's just not a lot you can do.

8 THE COURT: Do you bear any ill will towards the
9 police department --

10 PROSPECTIVE JUROR NO. 801: Absolutely not.

11 THE COURT: -- because they couldn't figure it out?

12 PROSPECTIVE JUROR NO. 801: No.

13 THE COURT: Okay. Anyone in your family or closely
14 associated with you been the victim of what you've considered
15 to be a serious or violent crime?

16 PROSPECTIVE JUROR NO. 801: No.

17 THE COURT: All right. So next question is to the
18 entire panel. Have any of you been ever accused of or
19 convicted of a crime? And pass the microphone all the way
20 down to the end. And that's Badge No. 732, Melissa Coyle.

21 PROSPECTIVE JUROR NO. 732: Yes.

22 THE COURT: What were you convicted of or accused
23 of?

24 PROSPECTIVE JUROR NO. 732: Shoplifting when I was
25 17.

1 THE COURT: Okay. And were you arrested for that or
2 did they just give you a warning, call your folks, what
3 happened?

4 PROSPECTIVE JUROR NO. 732: We -- it was in a mall
5 so we went to the police station actually had like a little
6 station in there. Went there, they called my mom, and then I
7 had to go through two different days of --

8 THE MARSHAL: Hold the mic closer, please.

9 PROSPECTIVE JUROR NO. 732: Sorry. Two different
10 days of basically going to court with a bunch of other kids,
11 minors.

12 THE COURT: Okay. And how long ago was that?

13 PROSPECTIVE JUROR NO. 732: I was 17 and I'm 33 now
14 so quite a while ago.

15 THE COURT: A long time ago.

16 PROSPECTIVE JUROR NO. 732: Yeah.

17 THE COURT: All right. And was that here in Clark
18 County?

19 PROSPECTIVE JUROR NO. 732: No, Orange County.

20 THE COURT: Okay. Did you feel like you were
21 treated fairly?

22 PROSPECTIVE JUROR NO. 732: Yeah.

23 THE COURT: So aside from that, nothing -- no other
24 problems?

25 PROSPECTIVE JUROR NO. 732: No.

1 THE COURT: Okay.

2 PROSPECTIVE JUROR NO. 732: I was scared straight
3 so.

4 THE COURT: Yeah, that would be quite the experience
5 for a young girl. All right. Again, show of hands anyone had
6 anyone in their family or closely associated with them accused
7 of or convicted of a serious crime? All right. We've got
8 two. Pass the microphone down. Okay.

9 That's Seat No. 4, Badge No. 753, Alisha Williams.
10 What was that?

11 PROSPECTIVE JUROR NO. 753: One of my older siblings
12 that I did not grow up with, his oldest son was convicted of
13 murdering two girls in Tulsa, Oklahoma.

14 THE COURT: Okay. Was he convicted of?

15 PROSPECTIVE JUROR NO. 753: Yes.

16 THE COURT: You said he was accused. And did he go
17 to trial?

18 PROSPECTIVE JUROR NO. 753: Yes, he's in prison.

19 THE COURT: Okay. Do you know anything about the
20 details?

21 PROSPECTIVE JUROR NO. 753: Nope. I never -- I seen
22 him when I was very little.

23 THE COURT: Okay.

24 PROSPECTIVE JUROR NO. 753: Don't really have too
25 much -- not a lot of interaction with him.

1 THE COURT: And so you don't really have any opinion
2 as to whether they -- he was treated fairly or unfairly
3 because you don't know enough or do you have an opinion?

4 PROSPECTIVE JUROR NO. 753: I really don't have an
5 opinion on it. I just wanted to bring it up that it did
6 occur.

7 THE COURT: All right. Thank you very much. And
8 pass the microphone over. And this is Badge No. 754, Diana
9 Villegas. Ms. Villegas, tell us what --

10 PROSPECTIVE JUROR NO. 754: Yes. Yes, my father was
11 in a domestic dispute with his ex-wife. He was arrested and
12 accused. I'm not sure if he was charged. He did have to get
13 a lawyer and go through court, but he never really talked
14 about it, but that did happen so.

15 THE COURT: How was it you found out that that
16 happened?

17 PROSPECTIVE JUROR NO. 754: He was in jail when he
18 called us to call someone to get him out.

19 THE COURT: Okay.

20 PROSPECTIVE JUROR NO. 754: Yeah.

21 THE COURT: So he never talked to you about it then?

22 PROSPECTIVE JUROR NO. 754: No.

23 THE COURT: So you don't know anything?

24 PROSPECTIVE JUROR NO. 754: We knew he had a lawyer.
25 We would -- he would get letters from the lawyer, but we never

1 really talked about it.

2 THE COURT: So did you have an overall opinion as to
3 whether he with as treated fairly or not?

4 PROSPECTIVE JUROR NO. 754: Well, like, he -- he
5 didn't really talk about it. I'm sure if he was treated
6 unfairly, he would have said something. So overall I think
7 everything went fairly.

8 THE COURT: Good. All right. So now, general
9 question to the panel. Is there anyone who feels that they
10 could not be fair and impartial jurors in this case? Raise
11 your hand. And the record will reflect a negative response.

12 All right. We're going to pass the microphone all
13 the way down here to Melissa Coyle, Badge No. 732. Melissa
14 Coyle, tell us about yourself.

15 PROSPECTIVE JUROR NO. 732: I moved here in 2000,
16 shortly after that incident just to kind of get away from
17 friends and my dad lived out here. So I work for United
18 Healthcare. Been there about five-and-a-half years in prior
19 authorizations. Single. I rent a room so I live alone so.

20 THE COURT: No kids.

21 PROSPECTIVE JUROR NO. 732: No kids.

22 THE COURT: All right. Thank you. Would the State
23 like to inquire further of Ms. Coyle?

24 MS. LEXIS: Ma'am, can you consider the three
25 different forms of punishment that we've talked about?

1 THE COURT: Oh, is there a microphone for you?
2 There you go.

3 MS. LEXIS: Hi. Can you consider --

4 PROSPECTIVE JUROR NO. 732: Yes, I would be able to.

5 MS. LEXIS: Okay. And you remember what those three
6 options were?

7 PROSPECTIVE JUROR NO. 732: Sure.

8 MS. LEXIS: You could consider all three?

9 PROSPECTIVE JUROR NO. 732: Yes.

10 MS. LEXIS: Okay. Is there anything while you've
11 been sitting here listening for the entire afternoon and some
12 parts of yesterday that we should know about you in terms of
13 how we could assess your ability to be fair and impartial?

14 PROSPECTIVE JUROR NO. 732: No. I believe I'd be
15 able to be fair and impartial and hear you guys out, and I
16 understand that they don't have to speak or say anything.
17 It's not their job to defend themselves. It's your guys's job
18 to give us all the facts so we can hear the case.

19 MS. LEXIS: Do you want to be a juror?

20 PROSPECTIVE JUROR NO. 732: Yeah.

21 MS. LEXIS: Why?

22 PROSPECTIVE JUROR NO. 732: I think it would be
23 interesting. Definitely different viewpoint on things, on the
24 law or the police side of things so, the investigation.

25 MS. LEXIS: Okay. Court's brief indulgence.

1 Nothing further. Thank you.

2 THE COURT: Thank you. If you'll pass the
3 microphone -- oh, no, hold on to the microphone. Did the
4 defense also have questions of this --

5 MS. McNEILL: Just very brief, Your Honor. Ms.
6 Coyle, do you -- now that you know that you're an alternate,
7 will you stay pay as much attention to the case as you would
8 in you were on the main jury?

9 PROSPECTIVE JUROR NO. 732: Of course. Especially,
10 since the Judge said that about 50 percent of the time the
11 alternates can get used.

12 MS. McNEILL: Okay. So you -- so knowing that you
13 might actually be used, you're going to pay attention and take
14 notes and listen to everything?

15 PROSPECTIVE JUROR NO. 732: Yes. I would take it as
16 seriously as being a juror.

17 MS. McNEILL: Okay. I'll pass for cause, Your
18 Honor.

19 THE COURT: Thank you.

20 MR. LANDIS: Mr. Murphy and I will pass for cause.

21 THE COURT: Thank you.

22 MR. WOLFBRANDT: I'd pass for cause.

23 THE COURT: Thank you. Pass the microphone over.
24 And we have now Badge No. 789, and that's Tammy Ishibashi.

25 PROSPECTIVE JUROR NO. 789: Yes.

1 THE COURT: All right. Tell us about yourself.

2 PROSPECTIVE JUROR NO. 789: From Las Vegas.

3 Attended UNLV. Have a bachelor's of arts degree. Work for a
4 health plan. Married, have a child.

5 THE COURT: Your bachelor's degree is in?

6 PROSPECTIVE JUROR NO. 789: English.

7 THE COURT: English? And you work for --

8 PROSPECTIVE JUROR NO. 789: A health plan.

9 THE COURT: And doing what?

10 PROSPECTIVE JUROR NO. 789: Vice president of
11 professional operations.

12 THE COURT: Of?

13 PROSPECTIVE JUROR NO. 789: Professional operations.

14 THE COURT: Oh, okay. And what are your duties in
15 that?

16 PROSPECTIVE JUROR NO. 789: Negotiate contracts with
17 doctors, provider compensation methodologies, utilization
18 management, quality management.

19 THE COURT: And married, single, divorced?

20 PROSPECTIVE JUROR NO. 789: Married.

21 THE COURT: Married? What does your husband do?

22 PROSPECTIVE JUROR NO. 789: He's a retail
23 administrator.

24 THE COURT: What is a retail administrator?

25 PROSPECTIVE JUROR NO. 789: Corporate retail for a

1 large company. Part auditing. Ensuring inventory control.

2 THE COURT: Any kids?

3 PROSPECTIVE JUROR NO. 789: One.

4 THE COURT: What age?

5 PROSPECTIVE JUROR NO. 789: Twelve.

6 THE COURT: Twelve, all right. Thank you. Would
7 the State like to inquire further?

8 MR. DiGIACOMO: Do you think you'd be a fair and
9 impartial juror?

10 PROSPECTIVE JUROR NO. 789: Yes.

11 MR. DiGIACOMO: Thank you very much.

12 THE COURT: Defense?

13 MR. LANDIS: I'll pass for cause.

14 MS. McNEILL: I'll pass for cause, Your Honor.

15 THE COURT: Mr. Wolfbrandt.

16 MR. WOLFBRANDT: Yeah, I'll pass.

17 THE COURT: All right. And pass the microphone over
18 to Badge No. 747. And that's Jason Giddy. Mr. Giddy, tell us
19 about yourself.

20 PROSPECTIVE JUROR NO. 747: I'm originally from
21 Jamestown, New York, which is a small town south of Buffalo.
22 I've been out in Clark County for 12 years. I worked for an
23 architectural firm when I moved here about two -- a year-and-
24 a-half, and switched to a construction company where I work
25 now. I do construction design and project management.

1 I have two kids, two and three. I'm married. My
2 wife, she works at the Mirage as a bartender at a pool. And I
3 do have -- to answer some of the questions that were answered
4 earlier, I do have firearms in my home. I have my concealed
5 carrier permit in Nevada.

6 My company only pays for three days of jury service.
7 I'm willing to take that hit to be on the full juror, but for
8 not too for an alternate.

9 THE COURT: Well, alternate jurors, you could be,
10 and you have to listen in the same way. I mean, the duties of
11 an alternate juror are really no different other than it's not
12 a certainty that you'll deliberate, but you serve just as an
13 important -- you know, like I say, I've had so many cases
14 where even two days into deliberation, three days into
15 deliberation, something's happened, a death in the family, a
16 serious illness.

17 I had one juror had a nervous breakdown. I mean,
18 anything can happen and you have to be ready and so your job
19 is just as important and as anybody else, and so it's just the
20 same.

21 PROSPECTIVE JUROR NO. 747: I understand, Your
22 Honor. I just wanted to put it on the record that it is a
23 financial burden for me.

24 THE COURT: All right. Okay, thank you. And if the
25 State would like to inquire further.

1 MS. LEXIS: We have no questions. Thank you, sir.

2 THE COURT: Defense.

3 MR. LANDIS: I'll pass for cause.

4 MS. McNEILL: I'll pass for cause.

5 MR. WOLFBRANDT: I'll pass.

6 THE COURT: All right. Pass the microphone over.

7 And we have Alisha Williams, Badge No. 753. Tell us about
8 yourself.

9 PROSPECTIVE JUROR NO. 753: I am a mother of two. I
10 have a 12-year-old and a 2-year-old. I am engaged to be
11 married so I do have a significant other. He is a auto
12 detailer. He works for his brother.

13 I work at the Excalibur Hotel. I've been employed
14 with the company for 17 years, since I was a teenager, and I'm
15 not impartial to anything. I think I could serve on the jury
16 as an alternative, if needed.

17 THE COURT: As an alternate juror, if you could.

18 PROSPECTIVE JUROR NO. 753: Yes.

19 THE COURT: Okay. What do you do for the company?

20 PROSPECTIVE JUROR NO. 753: My current position is
21 I'm a finance food and beverage cashier assistant manager.

22 THE COURT: Oh, that's a long title. Okay. Do you
23 supervise people?

24 PROSPECTIVE JUROR NO. 753: Yes. I have -- I had
25 15, one just retired. So I have 14 employees so we just

1 furnish the cashiers to the food and beverage outlets that are
2 in the casino.

3 THE COURT: So you've worked your way up the ladder
4 in the company and had --

5 PROSPECTIVE JUROR NO. 753: Yes.

6 THE COURT: -- on-the-job training --

7 PROSPECTIVE JUROR NO. 753: Yes.

8 THE COURT: -- all that time?

9 PROSPECTIVE JUROR NO. 753: Actually, I do take
10 online classes. I am on a break right now. I will obtain any
11 associates in business administration in August.

12 THE COURT: Thank you. Would the State like to
13 inquire further?

14 MR. DiGIACOMO: No, Judge. Thank you.

15 THE COURT: Defense.

16 MR. LANDIS: I'll pass for cause.

17 MS. McNEILL: I'll pass for cause, Your Honor.

18 THE COURT: Mr. Wolfbrandt.

19 MR. WOLFBRANDT: I'll pass for cause.

20 THE COURT: Okay. Thank you. If you'll pass the
21 microphone over to Badge No. 754, Diana Villegas. Tell us
22 about yourself.

23 PROSPECTIVE JUROR NO. 754: I have been living here
24 in Las Vegas for over 18 years, almost 20 years. I have two
25 jobs. I work at the school district, assistant librarian at

1 elementary school, and I just got a job as a part-time tutor
2 at Boys & Girls Club. I have a boyfriend. I still live with
3 my mother. I graduated UNLV with a bachelor's in sociology.
4 Yeah.

5 THE COURT: And what does your mom do?

6 PROSPECTIVE JUROR NO. 754: My mother works room
7 service at the Bally's Casino and my boyfriend a security at
8 the New York/New York Casino.

9 THE COURT: And are you thinking of continuing your
10 education further?

11 PROSPECTIVE JUROR NO. 754: Yes. I wanted to go
12 back for my master's in library science.

13 THE COURT: Okay. Very well.

14 PROSPECTIVE JUROR NO. 754: Yeah.

15 THE COURT: Would the State like to inquire further?

16 MS. LEXIS: No, thank you.

17 THE COURT: Defense?

18 MR. LANDIS: I'll pass.

19 MS. McNEILL: I'll pass, Your Honor.

20 THE COURT: Mr. Wolfbrandt.

21 MR. WOLFBRANDT: Yeah, I'll pass.

22 THE COURT: Thank you. Hand the microphone over to
23 Badge No. 758, George Clark. Mr. Clark, tell us about
24 yourself.

25 PROSPECTIVE JUROR NO. 758: I was born in New York.

1 Lived in California for many years. My formal schooling's all
2 in California. I have two degrees from Cal State Fullerton.
3 Physics and nuclear chemistry. After discharged from the
4 International Criminal Court, I came here in December of '77,
5 met my wife, got married. We had a couple of kids. My son
6 now is 36. My daughter's 29.

7 I worked in hotels for 30 years. Teamster pension.
8 The Fremont Hotel. I'm retired. I retired in 2010. And I'm
9 here.

10 THE COURT: What did you do for the hotel?

11 PROSPECTIVE JUROR NO. 758: Receiving. I had a
12 little bit of purchasing when I was a police officer about
13 certain things that they liked, and I got hired right off the
14 bat.

15 THE COURT: Okay. All right. Thank you. Would the
16 State like to inquire further?

17 MR. DiGIACOMO: No, Your Honor.

18 THE COURT: Defense.

19 MR. LANDIS: I'll pass.

20 MS. McNEILL: I'll pass, Your Honor.

21 MR. WOLFBRANDT: I'll pass.

22 THE COURT: Thank you. And the microphone over to
23 Badge No. 801, Linda Zutell. Tell us about yourself.

24 PROSPECTIVE JUROR NO. 801: I'm originally from
25 California. I grew up in Kingman, Arizona. I spent 20 years

1 in the United States Air Force. Since then, I've been working
2 for the same company, HD Supply, as a distribution center
3 manager. I recently got promoted and moved out here from
4 Newport News, Virginia. I have two children. One is 21, and
5 he's attending Old Dominion University in Virginia. And my
6 daughter lives in Albuquerque, New Mexico, and she works at a
7 car dealership.

8 THE COURT: What was your job in the military?

9 PROSPECTIVE JUROR NO. 801. I was in -- worked in
10 logistics and then I retired as a first sergeant.

11 THE COURT: Thank you. Would the State like to
12 inquire further?

13 MS. LEXIS: Lots of questions. No, just kidding.
14 No, no questions.

15 MR. LANDIS: I'll pass.

16 MS. McNEILL: I'll pass, Your Honor.

17 THE COURT: Mr. Wolfbrandt.

18 MR. WOLFBRANDT: Yeah, I'll pass.

19 THE COURT: All right. Thank you. If you'll hand
20 the microphone over, Badge No. 779, Frank Dieterich. Tell us
21 about yourself.

22 PROSPECTIVE JUROR NO. 779: Retired state employee
23 from Pennsylvania. Moved back to Las Vegas a couple years
24 ago. Currently a substitute teacher in the Clark County
25 School District. And retired, other than that.

1 THE COURT: Okay. What did you do for State of
2 Pennsylvania?

3 PROSPECTIVE JUROR NO. 779: Social worker.

4 THE COURT: And you did that for your whole career?

5 PROSPECTIVE JUROR NO. 779: For about 20 years, yes.

6 THE COURT: Were you a caseworker?

7 PROSPECTIVE JUROR NO. 779: Um-h'm, yes.

8 THE COURT: Was there any area? Was it like mental
9 health? Substance abuse? Children, adults what --

10 PROSPECTIVE JUROR NO. 779: The welfare department.

11 THE COURT: Welfare, okay. Are you married, single,
12 divorced?

13 PROSPECTIVE JUROR NO. 779: Single.

14 THE COURT: Single. Ever been married?

15 PROSPECTIVE JUROR NO. 779: Once.

16 THE COURT: And long time ago or recent?

17 PROSPECTIVE JUROR NO. 779: Quite a while ago.

18 THE COURT: Quite a while ago? Kids?

19 PROSPECTIVE JUROR NO. 779: No.

20 THE COURT: Thank you. Would the State like to
21 inquire further?

22 MR. DiGIACOMO: No, Your Honor.

23 MR. LANDIS: I'll pass.

24 MS. McNEILL: I'll pass, Your Honor.

25 MR. WOLFBRANDT: I would pass.

1 THE COURT: All right. So each side gets two
2 peremptory challenges. We're going to do that or you can
3 exchange a paper, you know, since we have all cleared for
4 cause. All right. Got a paper you want to use.

5 MR. LANDIS: I'll donate a piece.

6 THE COURT: Thank you.

7 MR. DiGIACOMO: I'm a little electronic here so.

8 MR. LANDIS: You guys go first, too.

9 (PEREMPTORY CHALLENGES MADE BY ATTORNEYS)

10 MR. LANDIS: Would the Court like me to approach
11 with them?

12 THE COURT: Sure. That would be very nice of you.

13 MR. LANDIS: The bad handwriting is theirs, so.

14 THE COURT: Okay. That's very good.

15 All right. So I'm going to read the names of the
16 folks who were excused by peremptory challenge, and those are
17 Badge No. 747, Jason Giddy; Badge No. 758, George Clark; and
18 Badge No. 754, Diana Villegas; and Badge No. 753 is Alisha
19 Williams. And the remainder will make up our alternate
20 jurors. So Melissa Coyle will be Alternate No. 1; Tammy
21 Ishibashi will be Alternate No. 2; Linda Zutell will be
22 Alternate No. 3; and Frank Dieterich will be Alternate No. 4.
23 And we'll let you move into the comfortable seats tomorrow.

24 Counsel approach regarding scheduling. The rest of
25 you that are in the back, you're -- you've escaped.

1 (Off-record bench conference)

2 THE COURT: Thank you. All right. Ladies and
3 gentlemen, we're going to take an overnight recess. When you
4 come back tomorrow, which is going to be at 9:00 tomorrow.
5 We're not going to start at 8:30, we'll start at 9:00, and
6 since you've worked late today, and so we'll start a little
7 later, 9:00 o'clock's a more civilized hour to start.

8 Fridays are pretty quiet at the courthouse so you
9 shouldn't have any trouble getting here, you know, as -- on a
10 Monday things are really busy, and that will be a different
11 thing when we start on Monday. Although, on Monday, of
12 course, we're going to start in the afternoon. So really,
13 your travel to and from the courthouse is going to be a lot
14 better than most jurors because of the times you'll be coming
15 in.

16 So ladies and gentlemen, during this overnight
17 recess, it's your duty not to converse among yourselves or
18 with anyone else on any subject connected with the trial or to
19 read, watch or listen to any report of or commentary on the
20 trial or by any medium of information, including without
21 limitation, newspaper, television, radio or Internet.

22 You're not to form or express an opinion on any
23 subject connected with the case until it's finally submitted
24 to you. We'll be swearing the jury in tomorrow. And one
25 other thing for those of you who are kind in our second wave,

1 I didn't get a chance to tell you this because, you know, I
2 did this with our first group, and that is, in this courthouse
3 we have open hallways, elevators.

4 Sometimes the lawyers are taking the public
5 elevators. You might see them in the hall. If you do, please
6 go by them and, you know, don't speak with them. I was going
7 to say treat them like Californians would treat you, but
8 that's not true because I -- I was -- I grew up and was raised
9 in California, and I'm a very friendly person, but you can't
10 talk to me either if you see me in the hallway.

11 The reason for that is that it might look improper
12 for anybody to engage the jury in conversation. So of course,
13 they're all very kind and generous people and courteous.
14 Under normal circumstances if you saw them in the elevator and
15 you greeted them, they would respond in kind and chat with you
16 about the weather and pass the time and whatnot. They aren't
17 allowed to do that.

18 So please don't make them feel bad because they're
19 under directions if that should happen to not only ignore you
20 and not talk to you, but also then to have to report it to me
21 and then we'd have to have a hearing and we don't want to deal
22 with that. So just if you happen to see any of the lawyers or
23 any of court staff, just go on past them and that will just
24 solve that problem.

25 The same will be true during the trial if you see

1 any witnesses in the hall that you've seen testify. If
2 they're leaving and you're on a break or something, don't try
3 and engage them in any way, and I will see you tomorrow at
4 9:00 o'clock.

5 THE MARSHAL: All rise for your jury, please.

6 (Prospective jurors recessed at 5:51 p.m.)

7 THE COURT: Record will reflect that the venire has
8 -- or the -- yeah, they're still venire, actually -- has
9 departed the courtroom. We will swear them in first thing
10 when they get here tomorrow morning when we start at 9:00.

11 Any matters outside the presence?

12 MR. LANDIS: Just really, really quick.

13 THE COURT: Okay.

14 MR. LANDIS: We talked about the Summer Rice's phone
15 records the other day. The Court was inquiring as to numbers.
16 I do have those numbers and I was going to put them on the
17 record.

18 THE COURT: Okay.

19 MR. LANDIS: The number of phone calls provided was
20 739. I can say that's an exact number. The time I'm
21 estimating, so I can't say it's exact, but within a few hours
22 plus or minus, 167.

23 THE COURT: Okay. Time is 167 --

24 MR. LANDIS: Hours.

25 THE COURT: -- hours, okay. All right. And were

1 you provided with all of the calls?

2 MR. LANDIS: All of those were provided by
3 Mr. DiGiacomo Saturday, which I think we already put on the
4 record.

5 MR. DiGIACOMO: Yeah, I did it from the time of her
6 arrest, which was December 9th. I believe they had some of
7 other earlier calls. I don't know that all 739 are new, and
8 in the last year, I believe, there's less than 15 or 20 hours,
9 all pretty much on front end stuff. But otherwise, his
10 representation seems about accurate to me.

11 THE COURT: Okay. And --

12 MR. DiGIACOMO: I also did provide them the kites to
13 all three transcripts as well.

14 THE COURT: Okay. And as well, of course, anything
15 that would be exculpatory in that, I know I don't need to
16 remind you, that you would obviously have pointed that out to
17 the defense, so that's it. All right.

18 MR. LANDIS: Thank you.

19 THE COURT: Thank you.

20 (Court recessed at 5:53 p.m. until Friday,
21 September 16, 2016, at 9:16 a.m.)

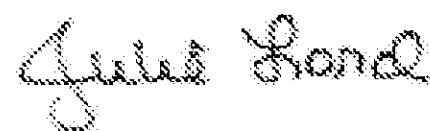
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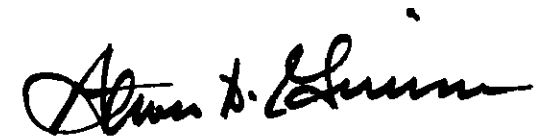
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1 ATTEST: I hereby certify that I have truly and correctly
2 transcribed the audio/visual proceedings in the above-entitled
3 case to the best of my ability.

4 

5
6

7 JULIE LORD, INDEPENDENT TRANSCRIBER



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,

Plaintiff,

vs.

JORGE MENDOZA,
DAVID MURPHY, a/k/a
DAVID MARK MURPHY,
JOSEPH LAGUNA, a/k/a
JOEY LAGUNA,

Defendants.

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CASE NO. C-15-303991-1
CASE NO. C-15-303991-4
CASE NO. C-15-303991-5

DEPT. V

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

JURY TRIAL - DAY 5

FRIDAY, SEPTEMBER 16, 2016

APPEARANCES:

FOR THE STATE:

MARC P. DiGIACOMO, ESQ.
AGNES M. LEXIS, ESQ.

FOR DEFENDANT MENDOZA:

WILLIAM L. WOLFBRANDT, ESQ.

FOR DEFENDANT MURPHY:

CASEY A. LANDIS, ESQ.

FOR DEFENDANT LAGUNA

MONIQUE A. McNEILL, ESQ.

COURT RECORDER:

LARA CORCORAN
District Court

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1 LAS VEGAS, NEVADA, FRIDAY, SEPTEMBER 16, 2016, 9:16 A.M.

2 (In the presence of the jury)

3 THE MARSHAL: Your Honor, all members of the jury
4 are present and accounted for.

5 THE COURT: Thank you, please be seated. And this
6 is Case No. C-303991, State of Nevada versus Jorge Mendoza,
7 Joseph Laguna and David Murphy. The record will reflect the
8 presence of all 12 members of the jury as well as the 4
9 alternates. All three defendants are present with their
10 respective counsel. The Chief Deputies District Attorney
11 prosecuting the case are present, as are all officers of the
12 court.

13 Good morning, ladies and gentlemen.

14 THE JURY: Good morning.

15 THE COURT: I apologize that we got a little bit of
16 a late start but, as usual, we had an equipment failure and
17 needed to swap out a monitor and so there was no sense in
18 bring you in here to wait around while we had technicians in
19 here doing that. So, we'll get started now.

20 The first thing we're that we're going to do is the
21 Clerk is going to swear you in.

22 (THE CLERK SWEARS THE JURY AND ALTERNATES)

23 THE CLERK: You may be seated.

24 THE COURT: Thank you. All right. So ladies and
25 gentlemen, I'm going to read to you a statutory admonition,

1 then I'm going to explain what it means.

2 So, ladies and gentlemen, no juror may declare to
3 his fellow jurors any fact relating to the case as of his own
4 knowledge and if any juror discovers during the trial or after
5 the jury has retired that he or any other juror has personal
6 knowledge of any fact in controversy in the case, he shall
7 disclose such situation to the judge outside the presence of
8 other jurors.

9 So what does that mean? Well, we asked you if you
10 knew any of the witnesses in the case, but a lot of the names
11 that were read to you, you didn't have the full name. So you
12 may not think that you knew anybody, and later determine that
13 you knew a witness. Or you may find out that you had some
14 knowledge of this case that you didn't realize you knew
15 before. And if something like that happens, at any point in
16 the process, what you need to do is let the Marshal know and
17 then we'll handle that in court outside the presence of the
18 other jurors to determine what effect, if any, it would have.

19 So that would include even if you were, say, in
20 deliberation, and this happened, actually, in a trial, so
21 that's why I'm telling you about it. You know, I've already
22 told you, you can't do any investigation of the case on your
23 own, and I would expect that all of you would follow that
24 directive. It's a court order and, of course, you've now
25 taken on oath to try the case properly.

1 But I had a juror one time who went out, you know,
2 totally disregarded that and did investigation on his own
3 regarding certain aspects of the jury instructions and court
4 personnel and attorneys and then tried to tell the other
5 jurors about it during deliberations.

6 Well, all of those jurors did the right thing. They
7 said oh, stop, you know, do not say another word. They
8 segregated him, you know, basically made him wait in the hall,
9 got the Marshal. We were able to deal with it and then move
10 on with the trial and replace that juror who had, you know,
11 violated his oath.

12 So that jury handled it exactly properly, and that's
13 what I'm talking about. And so the language of that statute,
14 which you was put into our law in 1967. It's a little
15 antiquated, maybe, and uses some kind of difficult language,
16 but that's what that means. All right?

17 So now, ladies and gentlemen, now I'm going to give
18 you some introductory comments that kind of lets you know how
19 the trial's going to progress, a little bit about our process.
20 This is fairly informal. Later at the end of the case, you're
21 going to get formal written instructions, which have been
22 carefully prepared for you, and they're in writing. I'll read
23 them to you, and then you'll also have them in the jury
24 deliberation room, but this is less formal because it's not
25 the written final instructions.

1 So now, this is a criminal case that, of course, is
2 brought by the State of Nevada against the defendants in this
3 case, and it's based upon a charging document, in this case,
4 an Indictment, a Superseding Indictment. And the Clerk, or
5 actually, the Court Recorder is going to read that charging
6 document to you and then state to you the pleas of the
7 defendants.

8 (THE COURT RECORDER READS THE SUPERCEDING INDICTMENT)

9 THE COURT: Thank you. And ladies and gentlemen,
10 you should understand, of course, that this is just a charging
11 document. It is not evidence of any kind. It doesn't prove
12 anything. So the defendants are presumed to be innocent
13 unless and until the State proves otherwise.

14 Now, this is a criminal case. There are two basic
15 rules that you should keep in mind first. The defendants are
16 presumed innocent unless and until the State proves otherwise
17 beyond a reasonable doubt, and the defendants are not required
18 to present any evidence or prove their innocence. The law
19 never imposes upon a criminal defendant in a criminal case the
20 burden of calling any witnesses or introducing any evidence.

21 Now, secondly, to convict, the State must prove
22 beyond a reasonable doubt that the crime was committed and
23 that the defendants that are named committed the crimes.

24 Now, it will be your duty as jurors to decide from
25 the evidence that's presented to you whether the defendants,

1 and each of them, are guilty or not guilty. And of course,
2 that's a separate burden as to each defendant. You are the
3 sole judges of the facts. And you will decide the facts and
4 what the facts are from the evidence that's going to be
5 presented to you in this case.

6 The evidence consists of the testimony of witnesses
7 and documents or other things that are received into evidence
8 as exhibits. Now, you must apply the facts as you determine
9 them to be to the law that I will give you and then in that
10 way reach your verdict.

11 It's very important that you perform your duty of
12 determining the facts diligently and conscientiously, because
13 normally there is no way of correcting an erroneous
14 determination of facts by the jury.

15 Now, you should not take anything that I say or may
16 do during the trial as indicating my opinion as to how you
17 should decide the case or to influence you in any way in your
18 determination of the facts. At times, I might ask a question
19 of a witness. If I did that, it would be to bring something
20 out that should be brought out, or to clarify something, but
21 it's not for the purpose of indicating my opinion about the
22 facts or to indicate the weight or value you should give to
23 the testimony of any witness.

24 Now, you are going to be able to ask questions in
25 this trial. Now, you do -- you will be given that opportunity

1 after the lawyers have examined the witness. And the way you
2 will do that is you're going to be given pads. Have you been
3 given pads yet? You already have them, okay.

4 You'll have to write out the question on your pad
5 and you'll give it to the Marshal. The Marshal will give it
6 to me. The lawyers and I will consult outside your presence
7 at the bench and decide whether the question is a proper legal
8 question, whether it can be asked at all, whether it needs to
9 be phrased -- we may have to ask for further clarification if
10 we don't understand what the question is and, at any rate, we
11 decide, but this is the methodology for you asking questions.

12 After questions are asked by the jury, that the
13 lawyers are given an additional opportunity to ask any
14 follow-up questions that may arise as a result of any question
15 posed by the jury.

16 Now, pursuant to your note-taking as well as this
17 question where you have to write it out, what I want to make
18 sure is that you don't let either your note-taking during the
19 trial or your writing of questions distract you from your
20 primary job, which is to listen to the evidence because you're
21 the people that are going to make the decision as to the facts
22 and then applying those facts to the law, come up with your
23 verdict.

24 So as you are I'm sure aware, sometimes when we're
25 taking note about something, that takes away from our

1 listening, and then if that happens, if you're taking an
2 extensive note about something that really struck you, well,
3 all the questioning doesn't stop at that point, it continues.

4 And so if you're taking a lengthy note on something,
5 you're not listening to or hearing the answers of the
6 following -- you know, the questions that are occurring while
7 you're doing that note-taking. So what I would ask you, if
8 you're taking notes is to try and keep this brief so it just
9 triggers the memory of what you remember, rather than
10 distracting you from your listening.

11 And the same with the writing out a question. You
12 may be writing out a question and, actually, it's a question
13 that's being asked at the very moment our writing out your
14 question and you're not hearing the answer. And if that
15 happens, if your question has already been asked and answered,
16 it will not be repeated. So that's the other thing.

17 So that's not to discourage you, if you think that a
18 question hasn't been asked and it's important to you, but it's
19 really important that you listen.

20 All right. Now, in deciding the facts of the case,
21 you might have to decide which witnesses to believe and which
22 witnesses not to believe. And now, you may believe everything
23 a witness says or only part of it or none of it. And in
24 considering the weight or the value to give to the testimony
25 of any witness, you may consider a number of things; the

1 appearance, attitude and behavior of the witness when they're
2 testifying and other things. Those include the witness's
3 ability to see or hear or know of the things about which the
4 witness is testifying; the quality of the witness's memory,
5 the inclination of the witness to speak truthfully; whether or
6 not the witness has any interest in the outcome of the case or
7 any motive, bias or prejudice; whether the witness is
8 contradicted by anything that the witness said or wrote before
9 the testimony that you're hearing; how reasonable is the
10 witness' testimony when it's considered with other evidence
11 which you do believe.

12 Now, in deciding whether or not to believe a
13 witness, please keep in mind that people sometimes forget
14 things and you need to consider whether a contradiction is an
15 innocent lapse of memory or an intentional falsehood, and that
16 might depend on whether it has to do with an important fact or
17 just a small detail.

18 Now, the weight or the value of any evidence doesn't
19 necessarily depend on the number of witnesses testifying on
20 one side. As I've told you, the defense isn't obligated to
21 call any witnesses and witnesses that are called by the State
22 may and probably will be cross-examined by the defense, and
23 you could glean information from that as well.

24 So just because the State calls more witnesses than
25 the defense doesn't mean that you need to give more weight or

1 value to that side that calls the more witnesses.

2 Now, there are two kinds of evidence; direct and
3 circumstantial. And you may have preconceived notions of what
4 circumstantial evidence is from television and so I want to
5 explain that because I think that you may have improper
6 understanding of what those types of evidence are.

7 So direct evidence is testimony about what the
8 witness personally saw or heard or did. Circumstantial
9 evidence is indirect evidence. It's proof of one or more
10 facts from which you can find another fact. And so let me
11 give you an example.

12 So as I say, direct evidence is about a personal
13 knowledge, but about personal knowledge of the commission of
14 the crime. Okay. So here's direct -- an example of direct
15 evidence, not of a crime, but just of something, and
16 circumstantial evidence.

17 So, say you woke up in the morning, say it was this
18 morning, and you looked out your window and you noticed as you
19 looked out the window that there was water dripping off the
20 eaves of your house and you looked further and you noticed
21 that your driveway was all wet, and you went on to then look
22 further town the street and noticed that as far as you could
23 see down your street, the road looked wet, you could smell the
24 smell of rain, okay, what you know to be from your experience
25 to be the smell of what it smells like when it's rained.

1 And you notice that there's water running down the
2 gutters on your street. All right. So from those facts that
3 you've observed, those facts, you can infer from those facts
4 that it rained during the night before you got up. @

5 Now, what would happen if during the night you heard
6 a noise on your roof, and you maybe heard some thunder and you
7 decided that you were going to go and investigate. And you
8 went out, out your front door, and you actually stood outside
9 and you looked up in the sky and you saw clouds and water
10 falling from the sky. And you felt the rain on your hands and
11 your face and you actually saw that it was raining. So that
12 would be direct evidence that it was raining in the night.
13 Okay. That's the difference.

14 Now, the law doesn't give any greater weight to
15 circumstantial evidence or direct evidence. The law permits
16 you to weigh both circumstantial and direct evidence in the
17 same way. But, of course, it's up to you to give weight or
18 the amount of weight or value you give to any evidence, it's
19 for you to decide.

20 Now, certain things, however, are not evidence and
21 must not be considered by you in deciding the facts of the
22 case. So statements and arguments by the lawyers, that's not
23 evidence. Questions and objections are not evidence. A
24 question is only valuable insofar as it gives meaning to the
25 answer, right? You've got to have a question to get an

1 answer.

2 The answer that a witness gives, that's evidence.
3 But the question that's posed independently by the lawyer in
4 and of itself isn't evidence. Any testimony that I instruct
5 you to disregard is not evidence that can be considered by
6 you.

7 If I tell you that you are to disregard some
8 evidence, or I strike an answer from a witness and tell you to
9 disregard it, then you're not to consider that. So if you're
10 taking notes, and I tell you to -- you've taken a note about
11 something, and I tell you, you must disregard it, I would ask
12 you to physically strike through that in your notepads so that
13 you don't inadvertently think that you were allowed to
14 consider that.

15 Now, another thing that's not evidence would be
16 anything that you might see or hear outside this court or even
17 in the courtroom, if court is actually not in session, even if
18 what you see or hear is said or done by one of the parties to
19 the case or by one of the witnesses.

20 So remember, evidence is sworn testimony by a
21 witness on the witness stand while court's in session and
22 documents and other exhibits which are received by the Court
23 into evidence.

24 Now, there are rules of law which control what can
25 be received into evidence. So when a lawyer asks the question

1 or offers an exhibit into evidence, and the lawyer on the
2 other side thinks that it's not permitted by the law or the
3 rules, then that lawyer might object, and it's -- in fact,
4 it's their duty to do so.

5 Now, if I overrule an objection to a question or
6 piece of evidence, then that question may be answered and the
7 evidence may be received, the exhibit, for instance. But if I
8 sustain the objection, then the question cannot be answered
9 and the exhibit cannot be received.

10 So sometimes what happens is a question is asked,
11 the objection is made by the other side, but the witness on
12 the stand answers the question because it happens so quickly.
13 If that happens, then the lawyer who made the objection may
14 ask that the answer be stricken. That they would move to
15 strike the answer. If they do that, then you will be told to
16 disregard the answer if, in fact, I've sustained the objection
17 after it -- after the answer's been received, they can then
18 move to strike that answer. And if I do strike it, again, you
19 disregard it.

20 Now, if, however, the question's asked, the
21 objection is made and I sustain it before the answer is given,
22 you're not to speculate about what the answer might have been
23 because the question was deemed to be improper. And so
24 whenever I sustain an objection to a question, just ignore
25 that question. Don't try and guess what the answer might have

1 been.

2 Now, it's the duty of lawyers to object in a case to
3 questions or evidence that they think is improper, violates
4 the rules of evidence and is not permitted. So you should not
5 be prejudiced in any way against a lawyer who makes an
6 objection that's their job and they're expected to do that.
7 So you shouldn't be holding it against any lawyer that makes
8 objections.

9 Additionally, occasionally, I might find it
10 necessary to remind a lawyer about rules or admonish them
11 about rules, or the law, and if I do that, that's my job. And
12 I don't want you to hold it against the lawyers that I've had
13 to remind them or admonish them in any way. Certainly, you
14 should never hold any admonishment like that against a client,
15 and so just because I found it necessary to admonish a lawyer.

16 Now, in this case, except for the murder charge, you
17 are not to concern yourself in any way with the sentence that
18 you might -- that a defendant might receive if you should find
19 a defendant guilty. Your function in the case is to decide
20 whether the defendant is guilty or not guilty of the charge
21 that excepting for the murder charge. And then if and only if
22 a defendant is convicted on the other charges by you, then it
23 would become the duty of the Court to sentence on those
24 charges.

25 Now, only if you find the defendant guilty of first

1 degree murder will the jury decide what the sentence is that
2 the defendant might receive and we've already discussed that
3 at length as to the potential penalties there. A separate
4 penalty hearing would be done after that where you would hear
5 additional evidence.

6 Now, at the end of the trial, you're going to have
7 to make up why you are decision in this case and make up your
8 minds based upon what you recall of the evidence. You're not
9 going to have a written transcript to consult, and it's
10 difficult and time-consuming for the recorded testimony to be
11 played back, especially if it's lengthy testimony. So I urge
12 you to pay close attention to the testimony while it's being
13 given.

14 And as I've stated to you, don't let your note-
15 taking distract you. You should rely upon your own memory of
16 what is said and don't be overly influenced by the notes of
17 other jurors.

18 Now, until the case is finally submitted to you,
19 don't talk about the case to each other or to anyone else
20 about -- or anybody that has anything to do with it until the
21 end of the case when you go into the jury room to deliberate.

22 Now, when I say don't talk to anybody else about the
23 case or anyone that has anything to do with it, who do I mean?
24 Well, anyone else includes the members of your family and your
25 friends who will be very interested to learn that you were in

1 a jury trial -- in a criminal jury trial. They're probably
2 going to ask you about it and want to ask you about your
3 thoughts, what happened, those kinds of things because it's an
4 experience they're not having.

5 You may not discuss it with them at all. And so if
6 someone asks you, just tell them you can't discuss it. You'll
7 be happy to discuss it when you're released by the judge from
8 your duty not to discuss the case and you've been discharged
9 as jurors. But until then, you're not going to discuss it at
10 all. So don't let anyone try and influence you.

11 Somebody might even try to talk to you in general
12 terms about their theories of the criminal justice system or
13 their opinions about it in general. Don't listen to that.
14 Just tell them, no, I'm a juror. You stay away from me, don't
15 talk to me about that stuff. And if someone persists in
16 trying to get you to talk about things, then report it to me
17 and through the Marshal. The Marshal is your contact with the
18 Court. And report it to the Marshal, and I will take care of
19 it.

20 Now, don't read any news stories, listen to any
21 radio broadcasts, watch any television reports or blogs on the
22 Internet about this case or anybody who has anything to do
23 with the case.

24 Now, we're not necessarily expecting this case to
25 get media coverage. I haven't gotten a media request for

1 cameras in the courtroom. But our courtrooms are open to the
2 public. So anybody can come in, watch the proceedings and, of
3 course, with the Internet, anybody can write anything they
4 want at all times on the Internet and post it for God and the
5 world. All right?

6 So you need to be really careful about that. So
7 don't go on the Internet looking for this case to see if you
8 can find some posting about what's happened. You know, if
9 you've read the newspaper or read things on the Internet, then
10 you're completely aware that a very goodly part of what gets
11 printed in newspaper stories or what gets posted on the
12 Internet is true, or there's mistakes in it.

13 And you will know exactly what's happened because
14 you'll be here firsthand and you're getting everything you
15 need to know here in this courtroom while court's in session,
16 and that's what your decision should be based upon, nothing
17 else.

18 Don't do any research on your own or go by any of
19 the scenes or areas that may be discussed during the
20 presentation of evidence in the case. This is Las Vegas, and
21 as you know, if you've driven around town at any time, things
22 change quickly here. Roads get torn up and put in completely
23 differently, new construction happens.

24 If you went and you visited an area where things are
25 alleged to have occurred, you might get an erroneous

1 impression of what the scene looked like, so don't do that.
2 Please avoid going anywhere near the locations that may be
3 mentioned in this trial during the trial.

4 And I think I've told you about communicating any
5 concerns you might have to the Marshal. He is your contact.
6 However, you may not discuss the case with the Marshal either.
7 And so if you try to do that, he would have to report it to me
8 and we'd have to have a hearing. So don't try and discuss the
9 case with the Marshal. What kinds of things can you ask the
10 Marshal about? Parking, what time court is supposed to start,
11 when you should be here to assemble.

12 You could complain to him about the temperature in
13 the room, and he'll be sympathetic and he'll probably -- you
14 know, he will also tell me about it, and I'll be sympathetic,
15 but we can't really do anything about it. Those things that
16 look like thermostats that might be controls on the wall, I
17 don't know if they're even connected to anything. We really
18 -- we could complain about things. We had a breakdown in a
19 air handler earlier in the week and it got very hot in this
20 courtroom for all afternoon. It was pretty awful and we
21 brought fans in.

22 Usually, it's cold. So I would just encourage you
23 to dress in layers. That way you can always remove a layer,
24 sweater what have you, jacket, if you gets cold, but you have
25 the ability to put on layers. So bring a sweater. I haven't

1 had time to finish my Afghans for the jury and so -- all
2 right.

3 Please don't make up your mind about what the
4 verdict should be until after you've gone to the jury room to
5 decide the case and you and your fellow jurors have had the
6 opportunity to discuss all of the evidence. It's very
7 important that you keep an open mind.

8 Now, the trial's going to proceed in the following
9 manner: One of the Chief Deputy District Attorneys is going
10 to make an opening statement. Now, an opening statement,
11 basically, is an outline of what the evidence, what that
12 attorney or that side expects the evidence to show. And it's
13 designed basically, to help you understand how the trial
14 progresses and the evidence.

15 Because evidence comes in a piece at a time,
16 somewhat like a jigsaw puzzle. And so your duty then at the
17 end is to take all those pieces and decide whether it puts
18 together a complete picture of what the State says they're
19 going to prove.

20 And so an opening statement's sort of like that --
21 the cover on your jigsaw puzzle box and it gives you sort of
22 an overview and an understanding of where the individual
23 pieces should fit in.

24 Now, opening statements, as I say, will be first
25 made by the State and then the defense will have an

1 opportunity, each defendant's lawyer has an opportunity to
2 give an opening statement of what that attorney believes the
3 evidence would show. The defense doesn't have to make an
4 opening statement immediately after the State does. They can
5 choose to reserve their opening statement for later or waive
6 making one entirely. It's completely up to the lawyer to
7 decide with the client.

8 Now, after all of -- after the opening statements
9 have been completed, then the State is going to present
10 evidence and call witnesses. And after they have examined the
11 witnesses that they have called, then each of the defense
12 lawyers may cross-examine those witnesses that are called by
13 the State.

14 And then, of course, the defense isn't obligated to
15 do so. It's up to them as to whether they wish to question
16 witnesses. And then after the State has presented all of its
17 evidence and rests, then the defense may, but is not obligated
18 or required to, present any evidence or call any witnesses.
19 They may.

20 Now, if the defense does call a witness to the stand
21 and testify, then the State will be allowed to cross-examine
22 those witnesses, just as the defense had cross-examined the
23 State's evidence.

24 After the defense has concluded its case or if they
25 rests without presenting any evidence, then the State would

1 have the opportunity to present rebuttal evidence, if it
2 wishes to. And the same thing happens, examination,
3 cross-examination. If no rebuttal case is presented, then you
4 will hear closing arguments. This is generally done after you
5 have been instructed on the law. I will be reading you those
6 carefully prepared jury instructions and then you would hear
7 the arguments of the attorneys.

8 These arguments are that it's a summarization of the
9 evidence, sometimes also explaining to you how the evidence
10 applies to the law that you've been given in the jury
11 instructions. What is said in closing arguments by the
12 lawyers is not evidence. It's just designed to, again,
13 summarize to you what the evidence has been, how it applies to
14 the law and giving you the opportunity then to hear those
15 summaries of that evidence.

16 After the arguments have been completed, now the
17 State opens those arguments, and gets to close those
18 arguments. The reason for that is that the State has the
19 burden of proof in the case.

20 After the arguments have been made, then you're
21 going to retire to deliberate on your verdict. Now, during
22 the course of the trial, as I've told you before, both sides,
23 all court personnel, other than the Marshal, may not converse
24 with you. And again, these individuals aren't being
25 antisocial, they're just required by the rules not to speak

1 with you because it might contaminate your verdict.

2 So ladies and gentlemen, the -- before we begin the
3 opening statements, does anybody need a break before we start?
4 All right. We're going to start with the State.

5 MR. DiGIACOMO: Can we have one moment for the
6 screen, Judge?

7 THE COURT: Can everyone see the screen here? It
8 should also come up on this monitor here.

9 MR. DiGIACOMO: May I proceed, Judge?

10 THE COURT: Yes.

11 STATE'S OPENING STATEMENT

12 MR. DiGIACOMO: The 26th president of the United
13 States once said no one is above the law, no one is below it,
14 and we do not ask someone's permission when we ask them to
15 follow it.

16 The reason that I put this quote up here, is because
17 at the end of this case you may not like Joey Larsen. May
18 decide that Joey Larsen engages in some very risky behavior.
19 You may even think that Monty Gibson made some very poor
20 choices, both on the day that he died, and maybe in the days
21 lead up to his death.

22 But the end of the day their choices are going to
23 pale in comparison to the actions of the three defendants that
24 are sitting over on the other side of the room.

25 Their actions caused a shootout in one of our local

1 communities. Here it's called Peccole Ranch at Hualapai and
2 Charleston. The type of shootout that you would see in some
3 sort of movie. And it was one that happened at 8:00 o'clock
4 in the evening on a Sunday night in September of 2014.

5 The crime scene is located at 1661 Broadmere. The
6 resident of that location is actually Joey Larsen or Joseph
7 Larsen. He looks even younger than he actually is, but he's a
8 kid in his 20s. His dad actually owns the house. He has a
9 roommate, Monty Gibson. And that's Monty on the far side of
10 the screen over there, and Monty is actually in the process of
11 preparing to move out to move in with his girlfriend. But at
12 least at this point in time, the two of them are living at
13 this residence in Peccole Ranch. And Joey has a estranged
14 wife.

15 In fact, he's still married to her today. Although,
16 he's trying to get a divorce at this point. She has been out
17 of the house for some period of time and there's an ongoing
18 domestic disturbance between them. She would come over the
19 house, cause problems, throw rocks through the windows or cans
20 or whatever if was. She's burglarized the house previously
21 and stolen stuff from it. And Joey's pretty fed up with the
22 situation with Summer by September 21st.

23 It is what happens that night to Monty Gibson, is
24 put in motion by Summer, whether intentionally or
25 unintentionally, that results in the death of Monty Gibson.

1 Sometime before 8:00 o'clock at night on the 21st, Steve
2 Larsen, who is the gentleman with the gray beard up there, he
3 receives information that Joey's house is about to get hit
4 again. It's going to be robbed again, and he believes that
5 Summer is going to be the reason why the house is being
6 robbed.

7 And so he calls Joey and asks Joey to get out of
8 there because he doesn't want there to be a problem. He
9 doesn't want Joey to get in trouble. He doesn't want him to
10 have to be -- to defend himself and potentially get injured.
11 And so Steve suggests to Joey get out of the house and Joey
12 does not take his father's advice.

13 Instead, Joey gets two of his guns, a .38 caliber
14 revolver and a Glock .40 caliber firearm. He tells Monty
15 what's going on. They decide that they're going to order a
16 pizza and watch the ball game, and if somebody comes over,
17 then Joey intends to defend his residence. And it's about
18 five minutes after that pizza happens -- the pizza arrives
19 when at least two individuals kick in the front door to this
20 residence.

21 And when they do so, Joey doesn't wait. Joey just
22 starts shooting. So Gibson is back here, Monty is back in the
23 living room area, and Joey Larsen is right there by where that
24 pizza box is. He's first got his .38 caliber revolver. He
25 fires that twice in the direction of the first guy through the

1 door. That guy turns and starts running. And then the second
2 individual that he sees, they start exchanging gunfire back
3 and forth.

4 After the gunfire ends, Monty decides he's going to
5 slide up and close the front door because the front door is
6 wide open. And what I think neither Monty nor Joseph realized
7 at this point, is that this individual was severely injured
8 and couldn't flee the scene, and he's sitting in the middle of
9 the street.

10 And so when Monty goes to the front door to close
11 the front door, he fires two rounds out of a 9 millimeter
12 rifle and he strikes Monty Gibson twice. Once is a temple
13 shot that automatically instantaneously kills Monty. The
14 second one enters his shoulder and exits out his back and
15 actually winds up in one of the walls inside the residence.

16 When the police are called, and the first call is at
17 approximately 8:10 p.m., from a woman who lives in the
18 residence behind, who hears gunshots and sees an individual
19 sitting on the -- on his backside in the middle of the street
20 and sliding with a rifle on his lap, down towards this street
21 here, which is call Long Cattle. And you'll hear from people
22 who live here, who live here, and who live here, who all see
23 various things that happen at this crime scene. But pretty
24 much everyone will agree that there's at least one guy who's
25 sliding on his butt all the way down Long Cattle with a long

1 rifle.

2 So the police follow that initial blood trail and
3 they find this pick up truck with the back down. Inside the
4 pick up truck is a 9 millimeter rifle. It's actually a
5 handgun round. It's a 9 millimeter Luger handgun round. It's
6 a 9 millimeter Luger handgun magazine, but it's in a rifle.
7 There's a pair of gloves thrown in the back of the truck and
8 there's an electrician's work shirt that's found just at the
9 base of the truck.

10 Right behind this truck there is a black vehicle
11 parked in a driveway. When the police get to that vehicle,
12 they realize that there's an individual in the driver's seat
13 of this vehicle. The seat is lowered. He's laying down
14 inside that vehicle and they begin to give commands to that
15 individual to get out of the vehicle.

16 It turns out that that vehicle is that homeowner's
17 vehicle and the door just happened to be unlocked. So the
18 individual that slid down that street with that rifle in an
19 orange ski mask, is hiding inside this vehicle with a severe
20 gunshot wound to his thigh, so bad that Joey Larsen's .40
21 caliber firearm shattered the thigh -- or the femur in half.
22 And as Mr. Mendoza sits here today, he has a very long metal
23 rod that replaces his femur.

24 They get Mr. Mendoza eventually, out of the vehicle.
25 Inside the vehicle there's -- it looks like there's a homemade

1 tourniquet that Mr. Mendoza was trying to apply to himself,
2 and Mr. Mendoza is telling the initial officers that are
3 trying to have contact with him, a story that doesn't seem to
4 make much sense to them. And you'll hear sort of they're
5 trying to figure out what it is that he's trying to tell them.

6 There isn't going to be any question that one of the
7 individuals that entered this house is Jorge Mendoza. You
8 will find out that that rifle has his DNA on it. That mask
9 has his blood, with his DNA on it. That it is his vehicle
10 that's used to go to and from the scene, and he's captured
11 immediately after the crime. That's not going to be a
12 question in this case.

13 The problem was, is that the police have just
14 Mendoza, and they know that Larsen said that there was two
15 guys that came through, and he thinks he hit both of them. So
16 they begin by researching Mr. Mendoza, because it seems
17 somewhat impossible that Steve Larsen could get tipped off
18 that Summer Larsen is going to have this house robbed on the
19 night of the 21st, and shortly after he makes that phone call,
20 somebody comes over to rob that place. It seems like Summer
21 Rice has got to be involved.

22 And they do a lot of research into Mr. Mendoza, and
23 they can find no link between Mr. Mendoza and Summer Larsen,
24 also known as Summer Rice. And they try as best as they can,
25 they can't figure it out. They go to his house. His house is

1 over by 15 and Spring Mountain area. His vehicle is there.
2 It's a 1995 gold Nissan Maxima. The vehicle has no blood in
3 it. He has firearms related evidence inside his house, but
4 the only thing that really ties to the 9 millimeter Luger is a
5 rifle case that's empty and a whole bunch of 9 millimeter
6 Luger rounds.

7 They can't figure out what it is that Mr. Mendoza
8 knew from Summer Rice. But they do know that there is at
9 least one more suspect. And they know that because after the
10 crime occurs, the witness that's in here, Gene Walker, who
11 sees this individual sliding down the street, says I see that
12 individual sliding. He's got the orange mask on and a car.
13 And he thinks it's a white car, but it's actually a champagne
14 colored Nissan Maxima, pulls up, and there is communication
15 between Mr. Mendoza and the people inside this vehicle.

16 And Mr. Mendoza is clearly not capable of standing
17 up and getting into this vehicle at this point, and this
18 vehicle isn't waiting around. It drives off, and it leaves
19 Mr. Mendoza in the middle of the street. So now they know
20 there's two suspects.

21 As they're processing the scene, they come across
22 something unusual. Mr. Mendoza's not very mobile, and he's
23 taken into custody in that black vehicle right there, but
24 they've got two-tenths of a mile of another blood trail.
25 They've got a blood trail that comes all the way down Long

1 Cattle, out this small road here, turns down here, although,
2 there's a break in it, and then the blood picks right back up
3 down this street. Now the police know there's three suspects
4 because that suspect that was bleeding like that, no way he
5 made it to here by the time Gene Walker sees a vehicle parked
6 right here next to Jorge Mendoza. So now they're looking for
7 three people.

8 Almost a month goes by, and they have no leads.
9 They have nothing from -- information that the cops gathered
10 from Jorge that led them to anybody else that could be a
11 suspect in this case.

12 Finally, in mid-October, an individual comes forward
13 and tells the police that potentially Robert Figueroa is
14 involved in this crime. So the police do some research on
15 Robert Figueroa, and they learn that he may have a gunshot
16 wound to his face. So then they set up some surveillance on
17 him. And at first, they don't really see a gunshot wound to
18 his face, but ultimately, they make the decision to execute a
19 search warrant at his residence.

20 And when they execute the search warrant at his
21 residence, he actually has two gunshot wounds. You can't see
22 it very well because it's healed really good, but there's one
23 just below his jaw line on the right side of his face, and
24 then he has an entrance and an exit as if he came through that
25 front door, he got hit in the face, turned, got shot once in

1 the back as he goes to run away.

2 They find a police report and some medical reports
3 from a couple days after. So September 23rd, from a hospital
4 in Loma Linda, California, where he went and reported not the
5 GSW to his torso, but just the GSW to his face because his
6 neck had gotten swollen with air. And even to this day,
7 Mr. Figueroa still has one of those .38 rounds that Joey
8 Larsen fired still stuck in his C4 vertebrae.

9 He gets treated for the neck wound in Loma Linda and
10 the San Bernardino cops are called, and they respond to the
11 hospital. And Mr. Figueroa says I was out in the desert
12 shooting with my friends, and there was a ricochet that hit me
13 in the mouth. Now, I can't imagine that the San Bernardino
14 Police actually believed him, but they had no crime within
15 their jurisdiction that indicated that there should be
16 somebody with a GSW to their face, and thus, they took a
17 report and they let him go.

18 Mr. Figueroa is taken into custody. He's read his
19 Miranda warnings and he tells a ridiculous story of hey, I was
20 over at the Peccole Ranch address. I was going there to buy
21 weed from the guy who owns the house. Well, what's his name?
22 I have no idea. Well, what happened? Well, as I was walking
23 up, someone started shooting and I got hit in the face and I
24 ran. And he acknowledges that it's going to be his blood
25 trail that goes all the way down, but that's my story and I'm

1 sticking to it. So he gets arrested. That's on October 20th
2 of 2014.

3 The police do some investigation between October
4 20th and October 24th, to try and link these three
5 individuals. They can find no link between Mr. Mendoza and
6 Mr. Figueroa. Now, somewhere down the line you will learn
7 that there is a single phone contact between them at 6:46 the
8 night of the crime. But other than that, at least by October
9 of 2014, there's zero connection between these two.

10 We've already talked about no connection between
11 these two. Well, there's no connection between Figueroa and
12 Summer Rice. And the police for several days are very
13 confused by how the heck did Mr. Mendoza and Mr. Figueroa
14 wound up hitting a house on the same day that Summer Rice is
15 saying that the house is going to be hit? They can't figure
16 it out.

17 Well, Mr. Figueroa comes to court on October 23rd,
18 his first court appearance, and he says to the corrections
19 officers, I think I better talk to the homicide detectives.
20 And so immediately thereafter, the homicide detectives go down
21 to talk to him, and he says, look, I want to talk to you, but
22 I need a lawyer. He has no discovery. He doesn't know what
23 we know.

24 And so the next day, on October 24th, when his
25 lawyer who got appointed on the 23rd, learns that he wants to

1 talk, his lawyer and two homicide detectives go down and talk
2 to Mr. Figueroa. And there's an agreement between them, which
3 is hey, what you tell us we won't use against you because he
4 don't really need it because you're going to have a very long
5 DNA blood trail running from the scene. Tell us the truth and
6 perhaps, maybe we'll be able to work something out. And his
7 lawyer instructs him the exact same thing, and he decides to
8 tell the story.

9 And when you hear this story, what he will tell you
10 is -- and you will hear this from him, and what he tells the
11 police that day is, look, I'm friends with a guy named Joey
12 Laguna. Joey Laguna and I go way back, we used to roommates.
13 We're pretty close friends, and like at 6:30 in the morning on
14 September 21st, Joey Laguna calls me and says, hey, I've got
15 this dope house that we can hit. I know you're down for it,
16 let's go.

17 And Mr. Figueroa says, I agree to go. I get my
18 Ruger .40 caliber firearm, and they come over approximately,
19 an hour later, and Mr. Laguna is in a vehicle with some guy
20 I've never met before, but he's the guy who was left at the
21 crime scene with the bullet hole in his leg, Mr. Mendoza.

22 And Mr. Mendoza's driving a vehicle, it's like this
23 champagne colored foreign make vehicle like a Toyota or
24 something. And while it looks a lot like a Toyota in this
25 photograph -- and this is not actually the vehicle, it's just

1 a 1995 champagne colored vehicle -- Toyota, Nissan, whatever,
2 he says, they come, they pick me up.

3 We then drive and we meet an individual that I've
4 met a couple of times before, a guy named "Duboy" and he
5 describes Duboy.

6 MR. LANDIS: Objection. I'm sorry to interrupt.
7 Can we approach?

8 THE COURT: Yes.

9 (Off-record bench conference)

10 MR. DiGIACOMO: And so that we're clear, that's not
11 actually Duboy's white Ford Ranger either. That's just a
12 picture I pulled off the Internet to represent a white Ford
13 Ranger. You will hear that Duboy's, or Mr. Murphy's, as it
14 turns out, has a camper on the back of it, but it's a white
15 Ford Ranger.

16 So, Mr. Figueroa says this guy, Duboy, I've met him
17 a couple times. He's a bigger guy. He's got a problem with
18 his right arm from a previous injury. He's good friends with
19 Laguna. He lives near Laguna but, you know, Laguna lives
20 near, he says Cheyenne and Cimarron. It turns out that
21 Mr. Laguna lives at Gowan and Cimarron, but close enough.

22 But he lives sort of directly across, but it's
23 across the freeway, and it turns out that that's where
24 Mr. Murphy lives. But he describes this individual, Duboy,
25 and he says Duboy in this white Ford Ranger has this Hispanic

1 female with tattoos. And the one thing no one's ever going to
2 confuse Summer Rice for is -- or Summer Larsen for is a
3 Hispanic female with tattoos.

4 And he says that we meet up and sometime after 7:45
5 in the morning, and when we meet up, the Hispanic female gets
6 into Mr. Mendoza's vehicle, she's driving, leaving Duboy alone
7 in his white truck. And we drive off to this -- the alleged
8 lick, which is going to be the dope house, the stash house, up
9 in the northwest part of town. I'm not really sure where we
10 were going. But the idea was the three of us were going to go
11 hit the dope dealer, she was driving this vehicle, and he had
12 the pick up truck so we could throw the hundreds of pounds of
13 weed we're allegedly going to get out of this stash house into
14 Duboy's vehicle.

15 And he says, that's where we go is up north. And
16 you will see from the map of the Valley that essentially what
17 this is at the top of the map is 215, and this is about where
18 Jones is, and this is the -- the freeways through town here.
19 And you will see that, you know, the crime scene on Hualapai
20 is way over here. Mr. Laguna's residence and Mr. Murphy's
21 residence are on either side of the 95 over there.
22 Mr. Mendoza's way over here by the 215, and Mr. Figueroa is
23 way down south in the Valley.

24 He says when they get up to this location that
25 they're at, they pull into the area where this alleged dope

1 house is, and there is a lawn maintenance crew out there. He
2 doesn't know really what the plan is, but there's four of them
3 sitting in a car. There's a guy sitting outside this house
4 who has a truck that they're concerned about. The car pulls
5 into this cul-de-sac area, sees these four people sitting in
6 the car and pulls out. And so there's a decision made this
7 isn't going to work. And Laguna contacts Murphy and they
8 decide this isn't going to work. And so they head back to
9 Mr. Laguna's residence.

10 At that point, the Hispanic female gets back into
11 the white Ford Ranger, and the four of them have a
12 conversation that happens in the driveway of Laguna's
13 residence. And basically, what happens is that Duboy say,
14 look, you know, yeah, that's not a great place to try and rob,
15 but I know the guy, or I know who the guy is that we can hit
16 later on tonight who re-ups from this guy.

17 And what you will learn in this case -- I'm not sure
18 if Joey's going to admit it to you -- he's a small time weed
19 dealer. And when you look at the crime scene evidence and
20 Mr. Larsen's room, Joey Larsen's room, there's not going to be
21 much doubt about that. There's all kinds of little bits of
22 marijuana laying on a table with a plastic bag sealer on the
23 side.

24 And so you will hear that Figueroa at that point
25 learns that Duboy says, look, we can go later tonight since

1 he'll have re-upped from the supply house by then, and we can
2 hit this guy's house. And Figueroa says to Duboy, well, how
3 is it that you know this place? And Duboy says, probably not
4 in this nice a language, basically, I'm having sex with the
5 homeowner's wife, and she tells me all the time about him
6 calling her up and crying over the fact that they're not
7 together and, you know, she doesn't like him. And thus, she
8 told me where the supplier's house was, and that's Joey's
9 supplier up there, or that's the guy's house that we're going
10 to hit tonight, up there, and you know, I know that we can go
11 hit this house later on that night.

12 And so, Mr. Figueroa says, okay. At that point, he
13 says -- Mr. Laguna says, hey, do you have an extra gun? And
14 Mr. Figueroa says, yeah, I've got another .38 back home. And
15 he says, well, can you bring it with you when you come? And
16 then they all split up, and it's Mr. Mendoza takes
17 Mr. Figueroa home and everybody leaves.

18 Later, once they find out which house they hit, we
19 now know what the connection to Summer Rice is. It's Duboy.
20 And what the connection to the dope supplier house is that
21 it's Larsen's dope supplier, and his wife happens to know who
22 his dope supplier is.

23 And so now the police want to find Duboy. And so
24 they take the description that they have of Duboy and they're
25 looking for associates of Mr. Laguna. And I'm sure that the

1 homicide detective who comes up here and has to testify to
2 this, is not going to be proud of the language he used in a
3 report, but initially, he doesn't notify the right guy. I
4 mean, they don't arrest him, they don't go do anything, but
5 there's a police report out there where it has the wrong guy's
6 name. This Jesus Velendez-Mendez (phonetic) or something like
7 that.

8 They do issue an arrest warrant for Summer Larsen.
9 And when they issue an arrest warrant for Summer Larsen for
10 conspiracy to commit robbery, she has fled to Utah. They want
11 the warrant to grab her so maybe they can talk to her.

12 Eventually, she comes back to Las Vegas. She's down
13 on the Strip, and she gets into a domestic argument Joey, who
14 knows she's back in town, knows there's an allegation she's
15 involved in the killing of his friend, and he doesn't call the
16 police until she starts yelling at him one day and then the
17 police are called and she winds up getting booked on her
18 warrant in early December.

19 And when she gets booked on her warrant in early
20 December, she does some things that lead us to who the real
21 Duboy is. Let's talk about what Mr. Figueroa's going to say
22 happened this night. He says that Duboy's the driver when
23 they go over to the residence. They drive by the residence
24 once or twice. Duboy points out the residence to him, and
25 he's driving Mendoza's gold Toyota, Nissan, whatever it is.

1 He says that they're stacked up at the door. He's
2 first, Mendoza's second, Laguna's third, and when you look at
3 the crime scene photographs, there's sort of a pillar here,
4 the door is here, so they're kind of stacked up this way
5 hence, why Mr. Larsen only sees two individuals.

6 He says his job's to hit the door. He has a black
7 mask pulled up over his face, and he has a .40 caliber Ruger
8 in his hand. He says Mr. Mendoza has a rifle of some sort in
9 his hand and Mr. Laguna has his .38 caliber revolver.

10 He hits the door, gets shot. Mendoza goes up, gets
11 shot. He goes down, and the last thing Figueroa sees as he's
12 running away, is Laguna getting into Mendoza's vehicle. And
13 then he never sees -- and he's running around this whole thing
14 -- he doesn't see any car come by him. So he runs so fast and
15 down here that he winds up jumping some houses, jumping some
16 walls trying to hide from the police, and he eventually winds
17 up in the corner here over on Homestretch in a guy's backyard.

18 And he sits there for the better part of 12 hours.
19 And you will learn in this case that the phone records show
20 that's exactly what happens. He's got a gunshot wound to his
21 torso, he's got a gunshot wound to his face, and he is
22 bleeding to death and trying to find someone to come get him.
23 Eventually, gets his sister to come get him. He doesn't
24 really tell her what's going on, but I can imagine that she
25 kind of sort of figured it out.

1 And eventually he goes home, and it's not the side
2 that's the problem, it's the neck. He's filling up with air.
3 It's swelling up. He thinks he's going to die and thus his
4 roommate drives him to Loma Linda and that's how he gets fixed
5 up.

6 So, Summer's in jail, and she starts making phone
7 calls. And the thing about phone calls is they're all
8 recorded. And she starts calling a guy that she's calling
9 Dough and Doughy and she's telling this guy, hey, you know,
10 the police got me. They're -- they talked to me, but they
11 didn't bring you up. They didn't say anything about you. And
12 so the police are like, hum, I wonder who this guy is.

13 And at one point in the phone calls, Dough or Doughy
14 says, 6637 and that tips the police off because they're
15 talking about an address. They have a David Murphy who lives
16 at 6637 Delphinium Ave, Las Vegas, Nevada that was one of the
17 people that they thought fit the Duboy description from
18 before.

19 And thus, they go and they figure out that Duboy is
20 David Murphy. David Murphy does have a girlfriend like
21 Figueroa says. Not Summer Larsen who he's having sex on the
22 side with. He's got a Hispanic female girlfriend who has
23 tattoos by the name of Maricella Turango (phonetic). And he
24 has a picture of her on his Facebook account.

25 David Murphy, it turns out -- oh, I should probably

1 mention that Mr. Figueroa says Mr. Mendoza is cousins to
2 somebody in this group. It may be Mr. Laguna, but he's
3 cousins with someone. Well, it turns out that David Murphy is
4 tied. David Murphy and Amanda Mendoza consider themselves
5 cousins. It's not actually blood, but they are both cousins.

6 And Amanda Mendoza is married to Jorge Mendoza, and
7 now the crime starts to make sense. David Murphy and Summer
8 Rice, they grew up together. They grew up with Joey Larsen as
9 well. He dated her before Joey and then after she left Joey,
10 she started having sex with him again, and ultimately, she
11 gives up Joey's drug supplier to get robbed. But when that
12 doesn't go, Mr. Murphy decides, we're going to go hit Joey
13 Larsen's house.

14 And now the crime makes complete sense. Now we know
15 why everybody's there. Because David Murphy's there. David
16 Murphy and Joey Laguna are very close friends and you will
17 learn that through the course of this trial, along with having
18 evidence that's undisputable about that fact.

19 Mr. Laguna recruits Mr. Figueroa. Mr. Figueroa
20 generally knows who Duboy is, but not well enough to know his
21 name. He has no idea who Mr. Mendoza is. And Mr. Murphy is
22 tied to Mr. Mendoza, and thus, the entire scenario now
23 suddenly makes sense why it is that when Steve Larsen got
24 tipped off that Summer was going to be involved in the robbery
25 that these four individuals are the ones that are involved.

1 But you're not going to have to take Mr. Figueroa's
2 word for it because after Mr. Figueroa, and even before
3 Mr. Laguna ever gets arrested, because nobody wants to arrest
4 somebody based solely on the word of a co-conspirator.
5 Mr. Figueroa probably has a lot of motive to blame the crime
6 on a whole bunch of people.

7 And thus, you don't want to take his word for it.
8 So after they talk to Mr. Figueroa, they first wind up
9 identifying the cell phone number that Mr. Murphy was using
10 back in September of 2014. And let me tell you, that all of
11 these people are using a lot of cell phones. And so the
12 numbers, you will hear will lots and lots of phone records
13 that the police had to collect and gather throughout this
14 case.

15 But eventually, they find a pawn receipt by David
16 Murphy in September of 2014, it's about a week before the
17 crime, in which he provides a cell phone number. Because when
18 you pawn something, you provide your driver's license and your
19 cell phone number, and they get that cell phone number. They
20 talk to Mr. Figueroa and they say, hey look, you got tons of
21 phones. Which one of these were you using at the time of the
22 crime? He identifies his cell phone number.

23 Mr. Mendoza's phone number was identified very early
24 on in the case. And then it took them a long period of time,
25 but late in January of 2015, from an analysis of the phone

1 records, they eventually identified Mr. Laguna's phone number.
2 And when Mr. Laguna is asked about that, he acknowledges that
3 while it's in Anthony Flores's name at his address, he's
4 married to Darcy Flores, that that's his phone. That
5 sometimes he and his wife used it, but if it's calling the
6 numbers that are listed on these exhibits, that that's him
7 using that phone.

8 And so then you go through those phone records and
9 the entire thing makes sense. This is September 21st. It's
10 3:31 in the morning. And Mr. Murphy is contacting -- he's
11 calling Mendoza, Mendoza's calling him, and there's phone
12 calls going back and forth for the better part of an hour.

13 And when those phone calls are going back and forth
14 for a better part of an hour, they stop about 4:38. But
15 there's a couple of numbers in here that aren't listed because
16 they're not the individuals we talked about involved directly
17 in the crime. There's one unknown number here that's never
18 been tied to anybody. And then that number, which will become
19 important later, the 705-8111, is Amanda Mendoza's --

20 THE COURT: Mr. --

21 MR. DiGIACOMO: -- phone number.

22 THE COURT: -- DiGiacomo, the Court Recorder -- I'm
23 sorry to interrupt you, but she's saying she's not hearing you
24 because you're in kind of the dead zone area.

25 THE COURT RECORDER: When you get way over there.

1 If you could just (inaudible).

2 MR. DiGIACOMO: You want me to pull this with me?

3 THE COURT: Yeah.

4 THE COURT RECORDER: Absolutely.

5 THE COURT: Good.

6 MR. DiGIACOMO: So they have a series of phone calls
7 that happen early in the morning. And then just like
8 Mr. Figueroa says, about 6:30 in the morning the phone calls
9 start. Murphy's calling Laguna. Then he's calling that
10 unknown number. Then he's calling Mendoza. Then Laguna calls
11 Figueroa. Then Murphy's calling Mendoza. And this goes back
12 and forth from 6:30 to 7:00 o'clock in the morning, you see a
13 series of phone calls back and forth between the
14 co-conspirators.

15 Then from 7:07 to 7:59 a.m., the phone calls are
16 going back and forth, including this one, the 7:44 a.m. one,
17 which we'll talk about in a little bit, between Laguna and
18 Figueroa. But there's a series of phone calls until 8:00 in
19 the morning.

20 And if you will notice, Mr. Figueroa's going to say
21 6:30, I first got the first call. Maybe 7:30-ish, I got
22 picked up. By 8:00 o'clock, 8:15, we're up in the area where
23 the stash house is. And Mr. Murphy's in his own car and
24 Mr. Laguna is in my car and the two of them are communicating
25 back and forth about what's going to happen.

1 When you look at the phone records from 8:15 to 8:59
2 the only two co-conspirators talking is Murphy and Laguna to
3 each other. Then jump forward later that evening. So now
4 they've gone back to the house. They've decided, we're going
5 to go hit Joey Larsen's house that night. And you go to their
6 phone records, and it starts up again shortly before 6:00 p.m.
7 Mendoza calling Murphy, Murphy calling Laguna, Laguna calling
8 Figueroa, Mendoza calling Murphy, Laguna -- it's all back and
9 forth.

10 And then you see, the only phone call you're going
11 to see, any contact between Mendoza's phone and Figueroa's
12 phone, it's at 6:42. And what Figueroa says to the police is,
13 this second time that we're going to go do this nighttime
14 robbery, when I'm picked up, it's Mendoza alone in the vehicle
15 who picks me up. We then drive up to Laguna's house and from
16 Laguna's house we go to the crime scene.

17 Phone records fully corroborate that Mendoza calls
18 Figueroa saying, I'm here. And boom, he gets into the car and
19 they go up to Laguna's house.

20 The first 911 call is at 8:10 p.m. Start the
21 records at 8:10 p.m., what's Mr. Figueroa doing? He is trying
22 to call Laguna to get the car back here because it's the only
23 phone number among the conspirators that he knows. And he's
24 calling and he's not getting answers. Call, call, call, call,
25 call, call.

1 Then Murphy tries to call Mendoza, and maybe he
2 realizes at that point that Mendoza's phone is still in that
3 vehicle, because it's certainly not on Mr. Mendoza and it's
4 certainly not left in the area of the crime scene. And then
5 when that doesn't work, then Figueroa starts calling everybody
6 he knows and he keeps getting voicemail. Keep going, keep
7 going and he finally hooks up with Mr. Laguna's phone
8 eventually about 8:30 at night.

9 And he will tell you that the car couldn't come back
10 for him or at least that's what someone's saying to him on the
11 phone, because the wife of the owner of the car, Mr. Mendoza's
12 wife had to go to work. And when you look at the phone
13 records, you'll see that right about the same time period that
14 this phone call happens, shortly thereafter, Ms. Mendoza,
15 Amanda Mendoza starts calling Jorge Mendoza to get the car
16 back because she's got to go to work.

17 The thing about cell phones, it's not just records.
18 We all own cell phones. We all know that there's probably a
19 record of every call we make. Sometimes the phone companies
20 will keep the text messages. Sometimes, you'll learn in this
21 case that at least Mr. Murphy's text messages, the phone
22 company as of yet has been unable to provide us.

23 But depending on the phone, you might get some geo
24 location information from the phones. And if you were to
25 combine all four co-conspirators' phone records, you can draw

1 some conclusions from the geo location information on the
2 phones.

3 So, for example, most text messages are not going to
4 hit a cell tower. Well, they are going to hit a cell tower,
5 the company's just not going to tell you what cell tower it
6 is. But if you use your cell phone, everybody knows you've
7 got to be near a cell tower.

8 And they've gotten to the point now where it's a
9 particular side of the cell tower. So they could tell you
10 what side of what cell tower you are, you're generally hitting
11 the closest tower to you, and you're generally hitting, you
12 know, within a mile or three miles of the tower depending on
13 how many towers are in that general location.

14 So basically, it's a tracker. And not every phone
15 for every time period is going to have a call on it. But when
16 you put them all together, you can draw the conclusions that
17 between 7:00 and 7:22, Mendoza, Murphy and Laguna are all up
18 by Laguna's residence, but Mr. Figueroa's still down at his
19 residence down here.

20 By 7:46 a.m., just like Mr. Figueroa says, it's
21 actually off Mr. Laguna's cell phone, Mr. Laguna's phone is
22 hitting right by Figueroa's house; thus, Mendoza, Figueroa and
23 Laguna are getting in the vehicle, and Mr. Murphy is already
24 way up here by the 215 in the area of the stash house.

25 Between 8:00 and 9:15, those phones that have

1 location information show they're all up there by the 215.
2 And by 10:40 they're back down at the location of Mr. Laguna's
3 residence. At 6:43 p.m., remember I told you there was one
4 phone call from Mr. Mendoza's phone to Mr. Figueroa's phone?
5 Where do you think Mr. Mendoza is? He's picking up
6 Mr. Figueroa. Mr. Laguna and Mr. Murphy are up by Laguna's
7 residence.

8 At 8:10 a.m., three of the four phones show in the
9 location of the crime scene. There's no phone call on
10 Mr. Mendoza's phone. But we know he's there because the
11 police took him into custody with a bullet in his leg. All
12 three of these phones during this time period show hitting off
13 a tower that services the crime scene in this case.

14 And then after 8:43 p.m., and it's sort of a long
15 period of time, you'll see that Mr. Figueroa's phone stays in
16 the area of that crime scene until sometime after 6:00 a.m.
17 the next morning. Mr. Mendoza's phone winds up at
18 Mr. Laguna's residence. Mr. Laguna winds up at the residence
19 and Mr. Murphy takes the car back down to Amanda Mendoza's
20 house and parks the car there without any blood on it by the
21 time the cops get there at 4:30 in the morning on the 22nd.

22 When we are done presenting the evidence in this
23 case, there isn't going to be any question that these three
24 individuals conspired with other individuals to rob Joey
25 Larsen's house. And during the course of that they engaged in

1 a wild west shootout that resulted in the death of Monty
2 Gibson. And they end of this case, we're going to ask you on
3 behalf the State of Nevada and the victims to hold them
4 accountable for their actions. Thank you.

5 THE COURT: Ladies and gentlemen, we're going to
6 take a 15-minute recess for our morning break here. That will
7 g I've you a chance, for everybody, to use the restroom,
8 stretch, et cetera.

9 So ladies and gentlemen, I'm going to read you the
10 admonition. During this 15-minute recess, it is your duty not
11 to converse among yourselves or with anyone else on any
12 subject connected with the trial or read, watch or listen to
13 any report of or commentary on the trial by any person
14 connected with the trial or by any medium of information,
15 including without limitation, newspaper, television, radio or
16 Internet.

17 You are not to form or express an opinion on any
18 subject connected with this case until it's finally submitted
19 to you. We'll be in recess until 5 minutes after 11:00.

20 THE MARSHAL: All rise for the jury.

21 (Jury recessed at 10:49 a.m.)

22 THE COURT: The record will reflect that the jury
23 has departed the courtroom. Are there any matters outside the
24 presence?

25 MR. DiGIACOMO: No, Your Honor.

1 MR. LANDIS: No.

2 MR. WOLFBRANDT: No.

3 MS. McNEILL: No.

4 THE COURT: Do you want to make a record of what
5 occurred during the objection that was made during opening and
6 we approached for the bench?

7 MR. LANDIS: I'm happy to, if the Court would like.
8 I don't think it's necessary at this point, based on the
9 representations that were made at the bench. My guess is the
10 issue will come up again, and we'll be addressing it. But
11 unless the Court wants me to, I don't have anything.

12 THE COURT: All right.

13 MR. DiGIACOMO: Yeah.

14 THE COURT: State.

15 MR. DiGIACOMO: That's correct. Just for the
16 record, and I left my court exhibit on my printer, so I'll
17 bring it after lunch, both the 1995 Nissan -- champagne
18 colored Nissan as well as the picture of the white Ford Ranger
19 are not exhibits. They were just representative, instead of
20 writing the words of what they were on the page, and thus, I'm
21 not asserting that those are pictures of either one of these
22 suspects' vehicles.

23 THE COURT: Correct. And that's -- there was an
24 objection made at the bench thinking that, perhaps, that's
25 what Mr. DiGiacomo was going to suggest, that it was

1 Mr. Murphy's car. That was clarified at the bench, and we
2 were able to move on because you withdrew your objection at
3 the bench.

4 MR. LANDIS: I agree.

5 THE COURT: All right. Thank you very much. We'll
6 be in recess until 5 after.

7 (Court recessed at 10:51 a.m. until 11:07 a.m.)

8 (In the presence of the jury)

9 THE MARSHAL: Your Honor, all members of the jury
10 are present.

11 THE COURT: Thank you. Please be seated. And the
12 record will reflect we are back within the presence of all 12
13 members of the jury as well as the four alternates. All three
14 defendants are present with their respective counsel. Chief
15 Deputy District Attorneys prosecuting the case are present, as
16 are all officers of the court.

17 The Marshal indicated to me at the break that one of
18 the jurors had wanted to ask a question. This is not the
19 time. Opening statements, no questions are done because this
20 isn't evidence. I think I explained that to you in the
21 introduction. This is -- you get the opportunity to ask
22 questions of witnesses. So, after a witness has testified and
23 the questioning has been done by the lawyers, you may have the
24 opportunity to write a question at that time, not during
25 opening statements.

1 When you do, if you do write a question, please put
2 your badge number on the question so we can have a record of
3 who made the question.

4 Also, when we are in recess, and you depart the
5 courtroom, do not come back in until the Marshal asks you to.
6 Do not set a toe into this courtroom. Don't try and open the
7 door and get in here before the Marshal brings you in, all
8 right? Thank you.

9 All right. So it is now the time for the defense
10 opening statements if they wish to make one at this time,
11 reserve, et cetera. And so Mr. Landis, did you have any
12 preference about the order?

13 MR. LANDIS: We've settled on an order, if that's
14 okay.

15 THE COURT: That would be fine.

16 MR. WOLFBRANDT: That's why I'm up. I'm going to go
17 first.

18 THE COURT: Okay. That's fine. Mr. Wolfbrandt.

19 MR. WOLFBRANDT: Thank you.

20 THE COURT: Please begin.

21 DEFENDANT MENDOZA'S OPENING STATEMENT

22 MR. WOLFBRANDT: Good morning, ladies and gentlemen.
23 First off on behalf of Mr. Mendoza, I want to thank all of you
24 for responding to the jury summons and sitting through the --
25 some of you through four days of jury selection. Others for

1 just the two days. But it's a -- of course, you realize it's
2 a very important aspect of our society and, I suspect, and I
3 know this because of previous trials that I've done, that
4 you'll find this to be one of the most significant events that
5 will occur in your lifetime. So again, you know, thank you
6 very much for that.

7 Now, it's time for the real work to begin. Okay?
8 Obviously, you've been told over and over again, I'll just
9 reiterate, that what you just heard from the statement is not
10 evidence. That's what they think the evidence is going to
11 show. And I know you were all paying attention to it.

12 But the significance of it is, is they tell you
13 certain things that they think they're going to prove at the
14 end of the case, then you're going to have to decide whether
15 they actually proved those. Okay?

16 Now, throughout the course of this case, there's
17 going to be a lot of facts and you'll find that many of the
18 facts, as they come out are not really -- they're not in
19 dispute, okay? What you'll find from our perspective,
20 certainly on behalf of Mr. Mendoza, is the significance of the
21 various facts and events.

22 As I had mentioned during part of the jury
23 selection, I don't know if all of you heard that, the term
24 "homicide" in and of itself is not a crime. The fact that
25 Mr. Gibson, he died at the hands of another. At the end it's

1 going to be your determination as to whether or not he die as
2 a result of a crime.

3 We're going to try to convince you that he died as a
4 result of self-defense, Mr. Mendoza's self-defense. So I know
5 you guys -- you'll be paying a good attention to it. You're a
6 very diverse jury. So at the end of the case, we'll be
7 talking to you a whole lot more in the summation. But that's
8 -- I'm expecting you to bring all your collective life
9 experiences, your education and opinions together and then
10 we'll decide at the end, you know, what really happened here.
11 Thank you.

12 THE COURT: Thank you. Ms. McNeill?

13 MS. MCNEILL: Thank you, Your Honor.

14 DEFENDANT LAGUNA'S OPENING STATEMENT

15 MS. MCNEILL: You're not going to hear from me a lot
16 during this trial because, frankly, much of what the State's
17 going to present to you has nothing to do with Joey Laguna.
18 The State going to bring in Summer Larsen who does not know
19 Joey Laguna. Joey Larsen is not going to say he saw Joey
20 Laguna in his house that day.

21 None of the DNA, fingerprints, blood, any of those
22 forensic pieces of evidence that the State's going to present
23 to you, none of that is going to tie Joey Laguna to this
24 crime.

25 There's phone records, as the State indicated.

1 There's phone calls. There's phone calls between Mr. Laguna
2 and people that he knows. And then there's cell tower
3 location information about Mr. Laguna's phone. That location
4 information is about his phone. We all know we aren't always
5 in possession of our phone. A phone is not attached to our
6 body. So the cell tower location information is about
7 Mr. Laguna's phone, not necessarily Mr. Laguna.

8 So why is Mr. Laguna sitting over here at this table
9 charged with these crimes? That's because when the police
10 talked to Mr. Laguna, he kept his mouth shut. What he knew
11 and when he learned it, he kept that to himself. Because you
12 don't rat on a friend.

13 And he's sitting here because Robert Figueroa
14 couldn't keep his mouth shut. Robert Figueroa was savvy
15 enough to know he couldn't go to a hospital here with his
16 gunshot wounds or the police would be involved. He was smart
17 enough to go out of state to California.

18 Robert Figueroa, you heard the police were looking
19 for him. And when the police arrested him and told him he was
20 being charged with murder, Mr. DiGiacomo said, when he came
21 into court on that murder charge, he was more than willing to
22 talk to the cops.

23 Cops aren't the only people that Robert Figueroa
24 talked to, though. Robert Figueroa told other people about
25 what happened that day. Strangely enough, when he was talking

1 to those people, Mr. Laguna was never involved. When he was
2 talking about it with friends, there was another person
3 involved. And oddly enough, those phone records that you saw,
4 that person's phone number shows up.

5 So it's interesting that the version of events that
6 Robert Figueroa gives to his friends is very different from
7 the version of events that he gives to the police. When he's
8 talking to the police, he knows he's got to save himself from
9 a murder charge. And Robert Figueroa's going to tell you,
10 he's not convicted of murder. He didn't plead to murder. He
11 didn't plead to anything close to a murder charge.

12 He chose to save himself, but he also choose to save
13 the other person who was with him that day. So the only piece
14 of evidence that the State's going to present to you that
15 Mr. Laguna is involved in this, that can actually put
16 Mr. Laguna at Joey Larsen's house that day is Robert Figueroa.

17 When you listen to Robert Figueroa and all of his
18 reasons and all of his incentive to save himself and his
19 friend from a murder charge, that's reasonable doubt. You're
20 going to know after you hear all of the things that the State
21 presents to you, and after you get to listen to Mr. Figueroa,
22 and after you hear the things that he told people who couldn't
23 cut him a deal, you'll know that Mr. Laguna is not guilty.

24 THE COURT: Thank you. Mr. Landis?

25 DEFENDANT MURPHY'S OPENING STATEMENT

1 MR. LANDIS: Folks, on behalf of David Murphy, what
2 we're asking you to do throughout this case is one
3 straightforward task. We're asking you to do one
4 straightforward thing that you're asked to do most days of
5 your lives. What David Murphy and I ask you to do throughout
6 this case is your job. Please do your job.

7 What that means in this case; that means follow the
8 instructions from the Court. That means, protect my client's
9 constitutional rights. That is your primary job throughout
10 this trial. And that's all that we ask you to do. Hold them
11 to their burden. Presume him innocent. If any of you have a
12 single thought in your mind as we sit here now that makes you
13 inclined to think my client's guilty, you're not doing your
14 job because we haven't heard a shred of evidence.

15 If the way my client looks makes you think he's
16 guilty, and you allow that thought to into your deliberations,
17 you're not doing your job because that's not evidence. If you
18 look at the fact that both of us need a haircut and you worry
19 that that might indicate that we're less than kosher before
20 you, you're not doing your job.

21 Hold the State to what you must. David Murphy is
22 presumed innocent. He's presumed innocent, and I'm going to
23 use a phrase we've already heard this week, unless and until
24 they prove to each one of you beyond a reasonable doubt that
25 he's guilty of what they claim.

1 And folks, the thing about that phrase, "unless and
2 until", I think that phrase, the use of the word "unless and
3 until" underscores what makes the job we're asking you to do
4 throughout this trial difficult. Is it straightforward? Yes.
5 Is it easy? No. And the reason why I submit to you is this;
6 all of our minds can easily find comfort in the presumption
7 that the police arrest guilty people.

8 It's easier to sleep at night when we lay our heads
9 on the pillows believing that our government only prosecutes
10 guilty people. It's those natural inclinations that we all
11 have that make the job of following the instructions for this
12 case so difficult. You must listen to each piece of evidence
13 not wanting to find a way to convict my client. Not wanting
14 them to be right. Not wanting to make the State right.

15 Independent objective analysis of every single
16 witness who testifies through this trial, that's what we ask
17 of you. Just because evidence comes in in this case, doesn't
18 mean it's evidence against my client. Just because they put
19 forth 50 witnesses doesn't mean they put forth a shred of
20 evidence against my client. Pay attention to what they're
21 admitting and what it has to do with my client, please.

22 Pay attention to the witnesses on the witness stand,
23 and before you give any weight to anything they say, ask
24 yourselves, is that worthy of my trust? Are these people
25 worthy of my trust?

1 Allowing your independent judgment to rely on the
2 decisions of the prosecutors, the arresting decisions of the
3 police officers in this case, will lead you to an unreliable
4 verdict and I promise you that. This case is not as
5 straightforward as they make it seem. And as a starting
6 point, let me say this; September 21st, 2014. That's the date
7 of this crime.

8 And I'll even submit to you guys, they're probably
9 going to prove a home invasion occurred in this case. They're
10 probably going to prove a murder occurred in this case. Them
11 proving that in and of itself doesn't prove that my client's
12 guilty of anything.

13 September 21st, the police get calls, violent crime,
14 potentially a dead body. They respond as we'd all expect them
15 to, heavily. Multiple detectives are on scene that night.
16 Dozens of uniformed police officers are on scene. Multiple
17 crime scene investigators or on scene. They're taking this
18 case serious because they should. They're combing all the
19 evidence. Their case isn't close that night, as we've heard,
20 so the investigation extends over the next days and over the
21 next weeks.

22 Multiple detectives are still assigned to the case.
23 Crime scene analysts are doing tests in the labs that we'll
24 hear about. Forensic analysts are analyzing evidence.
25 They're trying to find out who's responsible. One month

1 passes -- more than one month passes between the date of the
2 offense, September 21st, when the lead homicide detective
3 assigned to this case, a gentleman named Barry Jensen, who
4 we'll hear from, he decides to summarize this month of
5 investigation conducted by these many, many employees of Las
6 Vegas Metropolitan Police Department.

7 Barry Jensen, one of Metro's finest, a 20-year
8 homicide vet, puts together an official officer's report, 28
9 pages. David Murphy's name's not in it. He does conclude
10 there was a getaway driver. He concludes it was an individual
11 named Jesus Mendez-Martinez. And he states that. And he
12 says, Mendez-Martinez, who goes by Duboy, was in a dated
13 relationship with Summer Larsen, aka Summer Rice.
14 Mendez-Martinez recruited the other individuals involved in
15 this crime.

16 That's the official conclusion of an experienced Las
17 Vegas Metropolitan Police Department homicide detective after
18 a month plus investigation. They glossed over it. I ask you
19 not to. Ask yourselves from that date, from the date of that
20 report until we stand here today, what's changed in terms of
21 the evidence? What's brought to you that should change
22 anything from what Detective Jensen decided a month after the
23 crime?

24 And the sad reality is, folks, the evidence that's
25 changed isn't going to be evidence you need to rely on. And

1 what I mean by that is this; two individuals in this case will
2 amount to 99 percent of the evidence against my client. These
3 two individuals who are going to testify, Robert Figueroa,
4 Summer Larsen, both of them do not deserve your trust.

5 Neither of the facts they're going to claim in front
6 of you should weigh in your decision in this case. And to
7 that end, let me take a step back. The law in Nevada, which
8 the judge will instruct you about at the end of this case,
9 talks about accomplices, co-conspirators, call them what you
10 will. Somebody who was involved in a crime, has culpability,
11 and they want to talk about other people's involvements. And
12 here's what the law says, it says, you can't base a conviction
13 based on accomplice testimony alone. There has to be
14 independent evidence beyond the accomplice's testimony before
15 you can even consider it to convict a defendant.

16 So based on that law, which understand I'm not
17 suggesting you follow, that is your duty to follow throughout
18 this case, the State could parade 20 accomplices up during
19 this case. Twenty people could take that stand. They could
20 come off to you as the most believable people you have ever
21 heard talk. They could stand there and tell stories that
22 match --

23 MR. DiGIACOMO: Judge, I apologize. I let him go
24 for a while, but I object, argumentative at this point.

25 THE COURT: Sustained. You've been arguing a lot in

1 this, and you know that's not the purpose of opening
2 statement.

3 MR. LANDIS: Understood. The law will state that
4 witnesses on this witness stand who are accomplices must be
5 corroborated. There must be other independent evidence. You
6 will see that Summer Larsen and Robert Figueroa, besides the
7 fact that they're inherently unreliable, because they're
8 accomplices, the evidence will show that their stories have
9 changed over time. The evidence will show that even after
10 they made negotiations with the State, in order to testify,
11 their stories have changed over time.

12 And the thing about the truth, folks, as we all
13 know, it doesn't change over time. And Ms. McNeill touched on
14 this, but just so it's clear today going forward, Robert
15 Figueroa gets arrested. Robert Figueroa knows he's caught.
16 Robert Figueroa doesn't know who else is arrested. He doesn't
17 know what else is going on.

18 Robert Figueroa is scared. Robert Figueroa is
19 presented with an option, which is, tell the police what they
20 want to hear. And you're a murder charge that you're facing,
21 Robert Figueroa, with a potential life sentence, Mr. Figueroa,
22 we'll give you a chance of walking out of this case with a
23 sentence of three years in prison. It's those kinds of
24 incentives that you must keep your mind on throughout this
25 trial. And it's those kind of incentives that should make you

1 question these people's testimony.

2 After those incentives are provided, after his
3 testimony is purchased, he tells the police a story. And it's
4 even after that story that that police report's written with
5 the name, Mendez-Martinez. Robert Figueroa talks to the
6 police again a few weeks later and his story changes in
7 significant aspects. And I'm not going to go through them all
8 because I trust that you will pay attention. But the bottom
9 line is, from the date he decided to cooperate with the police
10 until the date he testifies in this case, his story's evolving
11 to fit with their theory of prosecution.

12 October 2014, that's the time frame that Robert
13 Figueroa makes these decisions. At that point, you'll see
14 that even the State is concerned enough about their case that
15 they're continuing to try to develop more evidence against my
16 client. At that point in time, their investigation's not
17 closed, which could tell you, the evidence will show, a lot
18 about the strength of their case up until the point of October
19 2014.

20 As this case progresses through the court system, as
21 it gets close to trial, the State makes a decision to offer
22 Summer Rice a deal she can't refuse. Again, she's charged
23 with murder, potential life sentence, and they say, hey, if
24 you can help our case, we will provide you with the
25 negotiation where you could walk away with probation at

1 sentencing in this case.

2 And with that in mind, weeks before this trial we're
3 here for today, weeks, they procure new evidence in the form
4 of Summer Larsen's testimony. Again, accomplice testimony you
5 must view with some suspicion.

6 More concerning, the fact that the majority of the
7 evidence you're going to hear in this case against my client
8 amounts to that, two purchased testimonies. Their testimony
9 doesn't match. What Robert Figueroa's going to say to you and
10 what Summer Larsen says to you, they don't match. They
11 contradict.

12 But at the end of the day, the State wants you to
13 hear David Murphy's name on that stand, not pay attention to
14 the details, and to convict him based on that comfort in your
15 minds. Again, folks, all I'm asking you to do is your job in
16 this case, which isn't easy, but it's important and it's
17 necessary for my client's well-being. Follow the law.

18 If you're honestly and objectively convinced at the
19 end of this trial that he is guilty, find him guilty, please.
20 But do your job. And if you do your job, I'm confident you
21 will find that he's not guilty. Thank you.

22 THE COURT: Thank you. All right, ladies and
23 gentlemen, we're going to take our lunch recess now. Counsel
24 approach.

25 (Off-record bench conference)

1 THE COURT: All right. So ladies and gentlemen, we
2 are going to allow you a break until 1:00 o'clock so that at
3 1:00 we'll be ready to begin with our first witness. That way
4 the Clerk can mark things ahead and it will move more slowly
5 and we'll be doing that for a half an hour before you need to
6 be here. So we'll just get the paperwork done so once we
7 start the trial, it will flow smoothly with what the Clerk has
8 to do for her job.

9 And so we're going to take recess. It's now about
10 11:33. We're going to be taking a recess until 1:00 o'clock.
11 You may synchronize your watches with this clock on the wall.
12 And ladies and gentlemen, during this recess, it is your duty
13 not to converse among yourselves or with anyone else on any
14 subject connected with the trial or to read, watch or listen
15 to any report of or commentary on the trial by any person
16 connected with the trial or by any medium of information,
17 including without limitation, newspaper, television, radio or
18 Internet. And you are not to form or express an opinion on
19 any subject connected with this case until it's finally
20 submitted to you. I'll see you at 1:00 o'clock.

21 THE MARSHAL: All rise for the jury.

22 (Jury recessed at 11:33 p.m.)

23 THE COURT: And the record will reflect that the
24 jury has departed the courtroom. Any matters outside the
25 presence?

1 MS. LEXIS: No, Your Honor.

2 MS. McNEILL: No, Your Honor.

3 MR. DiGIACOMO: No, Judge.

4 THE COURT: Thank you. We're in recess.

5 (Court recessed at 11:34 a.m. until 1:21 p.m.)

6 (In the presence of the jury)

7 THE MARSHAL: All members of the jury are present,
8 Your Honor.

9 THE COURT: Thank you. Please be seated. And the
10 record will reflect that we are back within the presence of
11 all 12 members of the jury as well as the four alternates.
12 The record will reflect the presence of the three defendants
13 with their respective counsel, the Chief Deputies District
14 Attorney prosecuting the case and all officers of the court.
15 The State may call its first witness.

16 MS. LEXIS: Your Honor, the State calls Gene Walker.

17 (Pause in the proceedings)

18 GENE WALKER, STATE'S WITNESS, SWORN

19 THE CLERK: Please be seated. And then please state
20 and spell your first and last name for the record.

21 THE WITNESS: It's Gene Walker, G-e-n-e,
22 W-a-l-k-e-r.

23 THE CLERK: Thank you.

24 MS. LEXIS: May I, Your Honor?

25 THE COURT: You may.

1 MS. LEXIS: Thank you.

2 DIRECT EXAMINATION

3 BY MS. LEXIS:

4 Q Good afternoon, Mr. Walker.

5 A How are you doing, Agnes?

6 Q I'm fine. Thank you for asking. Mr. Walker, I'd
7 like to turn your attention to September 21st of 2014. Were
8 you living in Las Vegas, Clark County, Nevada at that time?

9 A Yes, ma'am.

10 Q And where were you living, sir?

11 A 1701 Broadmere Street.

12 Q Okay. And what are the cross streets for that
13 particular --

14 A Long Cattle and Broadmere.

15 Q Long Cattle and Broadmere?

16 A Yes.

17 THE COURT: Wait a minute. I'm having trouble
18 hearing the witness. So we'll --

19 MS. LEXIS: Okay, Your Honor.

20 THE COURT: There we go. Thank you.

21 MS. LEXIS: All right. Sir, speak into that
22 microphone, okay?

23 THE WITNESS: Okay.

24 MS. LEXIS: Because everything you say --

25 THE WITNESS: Sorry.

1 MS. LEXIS: -- and everything I say is going to be
2 recorded.

3 BY MS. LEXIS:

4 Q Okay. So the intersections of -- is this a home?

5 A Yes.

6 Q Were you living at a home at that time?

7 A That's correct.

8 Q Okay. And so the intersections were Broadmere and
9 Long Cattle?

10 A Yes, that's correct.

11 Q What are the major cross streets so we can
12 orientate --

13 A I guess --

14 Q -- in terms of side of town?

15 A -- the major would be Charleston and Hualapai.

16 Q Okay, all right. And so you were living in a home?

17 A Yes.

18 Q Who were you living there with?

19 A My wife.

20 Q Turning your attention to about 8:00 o'clock on
21 September 21st, 2014, do you recall that being a Sunday night?

22 A Yes.

23 Q Okay. What were you doing at about 8:00 o'clock?

24 A I was in bed.

25 Q Was your wife with you?

1 A Yes.

2 Q Okay. Did something happen a little bit later, a
3 little past 8:00, that caused you to have to call 911?

4 A Yes. I heard a loud banging.

5 Q Did you --

6 A Loud pops.

7 Q Okay. The banging, where did you hear it coming
8 from?

9 A I was almost asleep, so I couldn't really tell
10 exactly where it was had originated from, but it was so loud
11 it got me out of bed.

12 Q Okay. And your bedroom, where is it located? Is
13 your house a one-story --

14 A It faces Long Cattle.

15 Q Okay.

16 A It's on Broadmere facing Long Cattle.

17 Q Okay. Is it a one or two-story home?

18 A Two.

19 Q And is your bedroom up on the first or second floor?

20 A Second.

21 Q Okay. And so this loud noise, this banging, caused
22 you to become alert?

23 A Yes, I got up out of bed. I looked out my window
24 out of my bedroom. Then I went downstairs and I looked out
25 the window out -- out down below downstairs. Then I looked

1 out my peephole, and then I actually walked out my front door.

2 Q Okay. And what did you see when you stepped out
3 your front door?

4 A When I first stepped out, I didn't see anything. I
5 have a -- my stoop has a wall right here. So when I looked
6 left, I didn't see anything, but when I looked right, I saw my
7 neighbor.

8 Q Okay.

9 A And we made eye contact so.

10 Q And your neighbor, where is his house located?

11 A His house is catty corner from mine. It's actually
12 on Long Cattle.

13 Q Okay.

14 MS. LEXIS: Your Honor, I'd like to ask
15 Mr. DiGiacomo to bring up what's been marked as State's
16 Proposed Exhibit No. 6.

17 MR. DiGIACOMO: Do you want to show the witness it?

18 MS. LEXIS: Oh, yeah. May I approach?

19 THE COURT: Yes.

20 BY MS. LEXIS:

21 Q Sir, I'm showing you what's been marked as State's
22 Proposed Exhibit No. 6. Do you recognize what's depicted in
23 this particular exhibit?

24 A Yes.

25 Q What do you recognize it to be?

1 A It's where I live.

2 Q Okay. Is it a satellite view of a map of the
3 area --

4 A Yes.

5 Q -- where your home is located?

6 A It's a satellite view, yes.

7 Q Okay. And is this where your home was located on
8 September 21st, 2014?

9 A Yes.

10 Q Okay. And would referring to this particular
11 exhibit aid you during your testimony?

12 A Yes.

13 Q Okay.

14 MS. LEXIS: Your Honor, I'd move to admit State's
15 Proposed Exhibit No. 6 into evidence.

16 MR. LANDIS: No objection on behalf of Mr. Murphy.

17 MR. WOLFBRANDT: No objection.

18 MS. McNEILL: No objection, Your Honor.

19 THE COURT: It will be admitted.

20 (State's Exhibit 6 admitted)

21 MS. LEXIS: And at this point, I'll ask
22 Mr. DiGiacomo to pull up it so I may publish.

23 THE COURT: You may.

24 MS. LEXIS: With your permission.

25 BY MS. LEXIS:

1 Q Okay. Mr. Walker, do you see State's Exhibit No. 6
2 on your computer screen?

3 A Yes, I do.

4 Q Okay. And sir, it's like Monday night football
5 where the commentators can circle on the screen, it will
6 actually show up on the TV and on the monitors at both counsel
7 tables. So if you could please circle where your house was
8 located on September 21st, 2014.

9 A Oh, I'm sorry. I drew a line right there.

10 Q Okay. So you pretty much covered up your house
11 with --

12 A Yes, I did.

13 Q -- the yellow print?

14 A Yes.

15 Q Or highlight? Okay. And so you were describing for
16 the ladies and gentlemen of the jury how your bedroom
17 overlooks Long Cattle Avenue. Do you see --

18 A Yes.

19 Q -- Long Cattle Avenue in this particular State's
20 Exhibit 6?

21 A Yes, I do.

22 Q Okay. If you could just draw a line down Long
23 Cattle. Okay. And so your bedroom from where you circled
24 your home overlooks Long Cattle?

25 A It does, yes.

1 Q Okay. And so does your front door also --

2 A Yes.

3 Q If you were standing --

4 A Faces Long Cattle.

5 Q Okay. If you were standing in front of your front
6 door, would you be looking out towards Long Cattle?

7 A Yes.

8 Q Okay. So when you went out onto your stoop, did you
9 look out towards Long Cattle?

10 A I did. Yes.

11 Q And you mentioned that you saw your neighbor. Do
12 you know your neighbor's name?

13 A His name is Roger Day.

14 Q Okay. Where is Mr. Day's home?

15 A His home is --

16 Q Could you put an X?

17 A Oh, sorry. It's kind of -- it's drawing beside
18 where I'm actually --

19 Q Okay.

20 A -- trying to mark.

21 Q Is it --

22 A His house is next to the X.

23 Q It's next to the X?

24 A Yes.

25 Q Is it the one with the --

1 A It's on the corner.

2 Q The corner, okay.

3 A Yes.

4 Q So you see Mr. Day. Where did you see him?

5 A He's standing out in -- on the sidewalk, which if I
6 could mark it right. It's still not -- right -- right in
7 there on that last dot.

8 Q Okay. And so that's --

9 A He's standing out on the sidewalk there.

10 Q The sidewalk kind of in front of his house?

11 A Right. It's actually on Broadmere, the sidewalk he
12 was on, but his house is Long Cattle and Broadmere.

13 Q Okay. And so do you make eye contact with Roger?

14 A Yes, I do.

15 Q Okay. What do you do next?

16 A Then I walk back in thinking, you know, I didn't
17 know what the noise was. I locked my door, I walked to my
18 kitchen and then I heard a pop, pop, pop, pop, pop, pop.

19 Q And at that point, did you recognize --

20 A I realized that was gunshots.

21 Q Okay. So what did do you?

22 A I went back to kind of stoop down and went back to
23 my front window and I looked out to the left where I heard the
24 noise, and I saw a man out in the street wearing a orange ski
25 mask.

1 Q Okay.

2 A And he had a semi-automatic rifle.

3 Q Okay. And where did he have the rifle?

4 A It was -- at that time, it was across his lap, but
5 he was actually moving it towards his side as well as he was
6 scooting.

7 Q Okay. And as you said the word, scooting, you kind
8 of motioned with your hands.

9 A Correct.

10 Q Now, this individual that you saw on the street,
11 let's start out with where on the street did you see him?

12 A He was right in front of --

13 Q We're going to clear this, State's Exhibit 6.

14 A So he was like -- see, it's not drawing where I'm --

15 Q It's not very accurate. Okay.

16 A Right. That's about where he was at right there.

17 Q Where the arrow is?

18 A Yes.

19 Q Okay. So kind of towards the front of the house
20 which has been labeled 1661 Broadmere?

21 A Correct.

22 Q Okay. Do you know who lives at 1661 Broadmere?

23 A I didn't know them personally.

24 Q Okay.

25 A You know, I had made -- I had said hello to them

1 going to the mailbox, but that was about it.

2 Q Okay. And so in front of 1661 Broadmere you see
3 someone with a orange ski mask --

4 A Correct.

5 Q -- and a rifle?

6 A Correct.

7 Q Okay. Was this person standing, seated?

8 A He was --

9 Q How was this person positioned?

10 A -- he was sitting on his butt.

11 Q Sitting on his butt?

12 A Yes.

13 Q Okay. And you indicated he had his rifle on his
14 lap?

15 A At that time, yes, but then he started moving so he
16 moved the rifle to the side --

17 Q Okay.

18 A -- and started scoot out -- I don't know how to
19 describe it. He was scooting on his hands.

20 Q Okay. So he's seated on his butt?

21 A Yes.

22 Q And he's using his -- both of his hands to kind
23 of --

24 A Both of his hands, with a rifle in one hand, to
25 move.

1 Q To move --

2 A Yes.

3 Q -- across the street?

4 A Yes.

5 Q Okay. And so once you saw this, what did you do?

6 A I was calling for my wife to dial 911. You know,
7 she was a little panicked and couldn't get it done, so I
8 actually had to break contact. I watched him for a few
9 minute, then I broke contact and went upstairs and dialed 911.

10 Q Okay. And when -- you met with me; is that correct,
11 correct?

12 A Yes, I did.

13 Q To go over your testimony for this particular case?

14 A Yes, I did.

15 Q And at that time, did I allow you to listen to your
16 911 call?

17 A Yes, you did.

18 Q The one that you made from September 21st, 2014?

19 A Yes, you did.

20 Q Okay. And when you listened to it, did it comport
21 with your memory of what you said --

22 A Yes.

23 Q -- on September 21st, when you reported what you had
24 seen?

25 A It absolutely did.

1 Q Okay.

2 MS. LEXIS: Your Honor, at this time I move to
3 publish what's been admitted into evidence by way of
4 stipulation, State's Exhibit No. 1.

5 THE CLERK: It was admitted by stip?

6 MS. LEXIS: Yes.

7 THE CLERK: Okay.

8 THE COURT: All right. So just for the record; is
9 that correct?

10 MR. LANDIS: Yes.

11 THE COURT: All right. So it's admitted by
12 stipulation and you may publish.

13 (State's Exhibit 1 is admitted)

14 (States Exhibit 1, 911 recording, played)

15 BY MS. LEXIS:

16 Q Mr. Walker, was that the 911 call you made?

17 A That was it.

18 Q Okay. Let's go back to some of the things that you
19 talked about in the 911 call, okay?

20 A Okay.

21 Q You mentioned that this person that you saw in the
22 middle of the street had an orange mask.

23 A Correct.

24 Q Okay. Was this -- what type of mask was this?

25 A It seemed to be a bright orange, like hunter's ski

1 mask that was full faced. It was over his face. I -- I
2 couldn't see his face.

3 Q Okay. So completely over his face?

4 A Yes.

5 Q What part of the person's face was visible, if any?

6 A There was no part of his face visible at that time
7 until that car pulled up.

8 Q Okay. And you say that car pulled up.

9 A Correct.

10 Q Were you -- when you said on the 911 call someone
11 was coming up the street, I hope --

12 A Correct.

13 Q -- they don't shoot him, what were you referring to?

14 A I was hoping he didn't shoot at them because he had
15 a rifle and had a ski mask on.

16 Q Okay. This car that you saw coming up that you were
17 describing on the 911 call, where was it located?

18 A It was -- when I first saw it, it was at the bottom
19 of Long Cattle.

20 Q Okay. And at some point, after you make the 911
21 call or during your 911 call, do you go back to a window or to
22 a position where you're able to see what's going out on the
23 street?

24 A I was actually moving up and down my stairs looking
25 out my bedroom window and my -- my front living room window to

1 get the best views.

2 Q Okay. And at that point --

3 A I was actually -- when the car stopped, I was
4 downstairs.

5 Q Okay, all right. And so you see this car coming up
6 Long Cattle.

7 A Um-h'm.

8 Q I'm going to ask Mr. DiGiacomo to again publish,
9 please, State's Exhibit No. 6. Okay. So where is the car
10 that you see coming up when you first see it?

11 A So when I first see it, it's -- let's see where Long
12 Cattle is -- it right down -- it's on the street, though,
13 okay?

14 Q Okay. It's on the actual street?

15 A Right.

16 Q Okay. And it's going up towards the direction of --

17 A It's coming up towards -- towards my house.

18 Q Okay. And at some point, I mean, when you first see
19 that car coming up, where is the individual with the orange
20 ski mask?

21 A He is -- he ends up right here. It's at the end of
22 that.

23 Q Okay.

24 A So he was actually on Long Cattle, but he had
25 actually gone across Broadmere and just went on to Long

1 Cattle. So he was right on the corner of both streets, but on
2 Long Cattle.

3 Q Okay. And do you see the car driving up towards
4 Long Cattle?

5 A I saw the car driving up towards him, yes.

6 Q Towards him, meaning --

7 A Yes.

8 Q -- the person with the orange ski --

9 A Correct.

10 Q -- mask?

11 A Yes.

12 Q Okay. And at some point, does the car get to where
13 the person with the orange ski mask is?

14 A Correct. He -- he drives up to the -- to the person
15 in the street, sitting in the street and stops, okay? And as
16 soon as he stops, the guy pulled his ski mask off.

17 Q When the car stopped, could you see how far away it
18 was from the person wearing the orange --

19 A They were right --

20 Q -- ski mask?

21 A -- next to each other.

22 Q Okay. Okay. And what do you see next?

23 A The guy pulled his ski mask off. And then, you
24 know, I didn't have a watch or anything at the time. It
25 seemed like maybe 15, 20 seconds or so, and then the car had

1 stopped and then it just sped off.

2 Q Okay. And when it sped off, which direction did it
3 go?

4 A It actually went Broadmere this way.

5 Q Okay. And so it went towards the direction of
6 Broadmere located towards 1661 --

7 A He turned onto Broadmere, yes.

8 Q -- Broadmere, okay. North as this map would
9 indicate?

10 A Correct, north.

11 Q Okay. When the car was making contact with the
12 individual with the orange ski mask, what side of the car, if
13 there was a side, made --

14 A So he was --

15 Q -- contact --

16 A He --

17 Q -- made the most contact with the individual with
18 the orange ski mask?

19 A It was the passenger side of the car that he was on.

20 Q Okay. And could you hear anything, any
21 conversations?

22 A Never a word, no.

23 Q Okay. When you say, never a word, does that include
24 -- let me just ask you, did the person with the orange ski
25 mask that you saw scooting on the street, did that person ever

1 say anything?

2 A Never a word. Never heard a moan, never a word. He
3 just -- the whole time he scooted on his butt, I never heard
4 anything.

5 Q Okay. This car -- or after the person with the
6 orange ski mask removed the mask, were you able to determine
7 whether or not this person on the street was a male or female?

8 A Yeah, he was a male.

9 Q Okay. And were you able to get a look at his face
10 or his coloring to make a guess at his race?

11 A I just -- I knew he was either Caucasian or
12 Hispanic. That's about -- and black hair. That's about all I
13 could tell. But the actual headlights of the car were shining
14 in my eyes, so I couldn't get a look, a description of him.

15 Q Okay. So the headlights pointed directly --

16 A Directly --

17 Q -- at your house?

18 A Directly into my window, yes.

19 Q Okay. But this car, could you tell whether it was a
20 four-door, two-door?

21 A It was a four-door, a white car. I couldn't tell
22 the make or model of it.

23 Q Okay. Okay.

24 A You know, because it was pointing towards me and the
25 headlights were on and then he just sped away so --

1 Q Okay. Are you sure about the color of the car?

2 A It was white.

3 Q Okay.

4 A I saw it was white.

5 Q Four-door?

6 A Yes.

7 Q Okay.

8 MS. LEXIS: Court's brief indulgence.

9 BY MS. LEXIS:

10 Q So after the car that stops near the person with the
11 white -- or with the orange ski mask speeds off on to
12 Broadmere, what do you see the person with -- that had the ski
13 mask and the rifle do?

14 MR. WOLFBRANDT: I'm going to object to the form of
15 the question, and she's leading when she used the term "speeds
16 off".

17 THE COURT: Right.

18 MS. McNEILL: And I would join. There's a lot of
19 leading going on.

20 THE COURT: Well, is your objection leading?

21 MR. WOLFBRANDT: Yes.

22 THE COURT: All right. Sustained.

23 MS. LEXIS: I'll rephrase.

24 MR. WOLFBRANDT: And it -- I believe, it
25 mischaracterizes earlier testimony. I don't recall him saying

1 that the car sped off.

2 THE COURT: All right. So when you make the
3 objection to form, you actually just need to make the
4 objection itself, but form isn't an objection. So if it's
5 two-fold, leading, I'll sustain that.

6 MR. WOLFBRANDT: Okay.

7 THE COURT: And rephrase your question.

8 MS. LEXIS: And I'll -- I'll clarify.

9 BY MS. LEXIS:

10 Q Sir, when the car that you saw made contact with the
11 person with the orange ski mask, what it drove off, away from
12 that person, could you characterize the way in which it drove
13 off?

14 A It sped off.

15 Q Thank you. After that car sped off, what did you
16 see the person who had the orange ski mask do next?

17 A So then I watched him scoot on his butt all the way
18 down, probably halfway down the street, maybe like right in
19 here. There was a pick up truck, okay? So he scooted on his
20 butt all the way down that street and he got behind that pick
21 up truck and that's where I kind of lost sight of him.

22 Q Okay. After you lost sight of him, did you continue
23 to look out your window?

24 A I actually grabbed a pair of binoculars when he got
25 down a little ways. I forgot I had a small pair of

1 binoculars. So I was kind of following him to make sure I
2 knew where he was at when the police arrived.

3 Q Okay.

4 A So, yes.

5 Q And at what point did -- did police ever make
6 contact with you?

7 A Well, it was very brief contact. When they pulled
8 up, they were in a unmarked car but in uniform. I came out my
9 front door and I had actually told them where the gentleman
10 was. I said he's right down there behind that pick up truck
11 somewhere. That he couldn't run. That he looked wounded to
12 me. And, you know, I went back in my house after that, of
13 course.

14 Q Okay. And in your 911 call you say something to the
15 effect of, he can't get up. At any time that you saw this
16 individual on the street, whether it be Broadmere or Long
17 Cattle, did you ever see this individual stand up?

18 A No.

19 Q And did you -- do you recall seeing him at any time
20 after he passed the truck that you just testified about?

21 A I -- after he got behind the truck, I couldn't see
22 him anymore.

23 Q Okay.

24 MS. LEXIS: Court's brief indulgence.

25 BY MS. LEXIS:

1 Q Sir, the car that you described, could you see how
2 many people were in the car?

3 A I could not, because of the headlights. I could not
4 tell how many people were in it.

5 Q Okay.

6 MS. LEXIS: I have no more questions for Mr. Walker.
7 Thank you, sir.

8 THE WITNESS: Thank you.

9 THE COURT: Thank you. Cross.

10 MS. McNEILL: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MS. McNEILL:

13 Q Hi, Mr. Walker.

14 A How you doing?

15 Q I just have just a couple questions for you. When
16 you were looking out on to the street, you didn't see anyone
17 other than the man with the orange mask, correct?

18 A That's correct.

19 Q And you didn't see anyone running down the street at
20 any point?

21 A That's correct.

22 Q Okay.

23 MS. McNEILL: Nothing further.

24 THE COURT: Thank you.

25 CROSS-EXAMINATION

1 BY MR. LANDIS:

2 Q Hello, sir.

3 A Hi.

4 Q I'm going to ask you to make some time estimates,
5 and I know that's very difficult because it was a frantic
6 situation and it's been a fair amount of time. So
7 understanding that, you're near falling asleep when you hear
8 the first pop?

9 A Correct. Several pops. It wasn't just one.

10 Q Was there two different times when you heard --

11 A Yes.

12 Q So you've got a first series of pops that --

13 A Correct.

14 Q -- arises you from bed?

15 A Yes.

16 Q To the best of your memory, how long is it from that
17 point in time to when you call 911?

18 A It was probably a couple of minutes.

19 Q How long between that time first series of pops and
20 the second series of pops?

21 A Well, actually, it was a couple of minutes from the
22 second series of pops that I called 911, okay, because I was
23 actually looking at the person at the time. The first series
24 of pops -- could you ask that one more time?

25 Q Sure.

1 A Sorry.

2 Q How long was it between the first series of pops and
3 the second series of pops?

4 A It had to be maybe, I don't know, I'm just guessing,
5 maybe a couple minutes, two minutes tops.

6 Q And you've talked about --

7 A Three.

8 Q -- two different windows that you -- sorry to cut
9 you off.

10 A That's okay.

11 Q You talked about two different windows you used as
12 vantage points through this.

13 A Correct.

14 Q One, a bedroom on the second floor, and the first
15 one, a first floor window, correct?

16 A Correct.

17 Q Both of those faced forward out of your house the
18 same way your door does, your front door?

19 A Correct.

20 Q From either of those windows, or both, you don't
21 have the best vantage point of the front door of 1661
22 Broadmere, correct?

23 A No, I don't have a view of their door.

24 Q A very good view from both windows, I presume,
25 though, of that intersection of Broadmere and Long Cattle?

1 A Correct.

2 Q Between the time that you get up from bed until the
3 end of the 911 call, how long do you lose sight of this
4 individual you've been talking about? Combined time.

5 A From the time I get out of bed?

6 Q To when you call 911, yes.

7 A Maybe a minute tops.

8 Q I'm going to talk to you a little bit about that car
9 you saw pull up, but talking about the time before that only
10 right now, did you notice any other moving cars?

11 A No.

12 Q And that would apply both to the intersection and
13 everywhere --

14 A Correct.

15 Q -- you could see? You didn't see any other
16 individuals on foot?

17 A No.

18 Q Do you recall when your 911 call started?

19 A The specific time?

20 Q Right.

21 A No, I don't.

22 Q Would looking at your --

23 A Because it roused me out of bed so --

24 Q I understand. Would looking at a transcript of it,
25 perhaps, refresh your memory as to when that call started?

1 A Yeah.

2 MR. LANDIS: Can I approach the witness?

3 THE COURT: Yes.

4 BY MR. LANDIS:

5 Q Just go ahead and look at that to yourself to the
6 extent it refreshes your memory.

7 A So it looks like 8:13.

8 MR. LANDIS: May I approach the witness?

9 THE COURT: Yes.

10 BY MR. LANDIS:

11 Q After looking at that, is it fair to say to the best
12 of your memory 8:13 is when the call started?

13 A The call to 911?

14 Q Yes.

15 A Yes.

16 Q Is it fair to say, then, that all of the events
17 we've talked about, all the events they asked you about
18 occurred after 8:00 p.m.?

19 A Right around or a little shortly after.

20 Q Towards the end of that 911 call, we hear you first
21 make a comment about this car, right?

22 A Correct.

23 Q And that's the same car that you saw at the end of
24 Long Cattle?

25 A Correct.

1 Q How long do you think it was from the time that you
2 first see that car until it's next to the individual who's
3 scooting on his butt?

4 A Maybe 15 seconds to drive up the street, 10 seconds.

5 Q And the whole time it's -- sorry. That whole time
6 he's coming up Long Cattle, headlights are in your eyes
7 somewhat, right?

8 A Yeah, more so when he got to the top of the street,
9 but yes.

10 Q And at that time, they were stopped next to this
11 individual, headlights definitely in your eyes?

12 A Correct.

13 Q Thereafter, the car turns, though, right?

14 A Correct.

15 Q Turns north. No more headlights in your face?

16 A Correct.

17 Q You're still looking at the car somewhat at that
18 point?

19 A It's -- it just sped away, so yeah, it wasn't very
20 long of a view but --

21 Q Sure. You don't recall the make and model exactly?

22 A I don't, no.

23 Q You do remember, though, believing it to be a
24 potential Ford or Buick?

25 A Ford or Buick, white, four-door.

1 Q You also estimate that it was a larger car?

2 A Yes.

3 Q You also estimate that it was a older model?

4 A It seemed to be older, yes.

5 Q What would you define as older?

6 A Just the kind of curves of it made it look older to
7 me.

8 Q '50s or '80s?

9 A Oh, no, no. '80s, '90s, somewhere around there.

10 Q Are you much of an automobile person?

11 A No, not really.

12 Q Are you a gun person? And I'm basing that on your
13 ability to identify the gun you saw.

14 A I have a CCW.

15 MR. LANDIS: Court's brief indulgence. I have no
16 further questions. Thank you, sir.

17 THE WITNESS: Thank you.

18 THE COURT: Redirect?

19 MS. LEXIS: We do not have any redirect.

20 MR. LANDIS: Mr. Wolfbrandt didn't go, I'm sorry.

21 MR. WOLFBRANDT: And I have no questions.

22 THE COURT: Oh, I'm sorry. Thank you,
23 Mr. Wolfbrandt. Sorry. Are we going to have a specific order
24 so I --

25 MR. LANDIS: If the Court wants one, we can.

1 MS. McNEILL: We can if that's easier for the Court.

2 THE COURT: Okay. That would be easier for me
3 because I lose track of who's gone. All right.
4 Mr. Wolfbrandt, did you have questions?

5 MR. WOLFBRANDT: No, I didn't.

6 THE COURT: All right. Thank you.

7 MR. WOLFBRANDT: They asked all the ones I wanted
8 to.

9 THE COURT: All right. Thank you very much. Was
10 there any redirect? No.

11 MS. LEXIS: No, Your Honor. Thank you.

12 THE COURT: Jury, questions? Seeing none, may this
13 witness be excused?

14 MS. LEXIS: Yes, Your Honor.

15 THE COURT: Thank you very much --

16 THE WITNESS: Thank you.

17 THE COURT: -- for your testimony, sir. You may
18 call your next witness.

19 MS. LEXIS: State calls Matt Kovacich.

20 (Pause in the proceedings)

21 OFFICER MATTHEW KOVACICH, STATE'S WITNESS, SWORN

22 THE CLERK: Please be seated, and please state and
23 spell your first and last name for the record.

24 THE WITNESS: The first name's Matthew,
25 M-a-t-t-h-e-w. Last name's Kovacich, K-o-v-a-c-i-c-h.

1 MS. LEXIS: May I, Your Honor?

2 THE COURT: You may.

3 MS. LEXIS: Thank you.

4 DIRECT EXAMINATION

5 BY MS. LEXIS:

6 Q Sir, how are you employed?

7 A With the Las Vegas Metropolitan Police Department.

8 Q How long have you been so employed?

9 A A little over eight-and-a-half years.

10 Q Okay. Are you assigned to a particular unit?

11 A Patrol.

12 Q Have you been in patrol all eight-and-a-half years?

13 A Yes, ma'am.

14 Q Okay. Officer, I'd like to turn your attention to
15 September 21st, 2014. Were you employed with Metro at that
16 time?

17 A Yes, ma'am.

18 Q Were you a patrol officer?

19 A I was.

20 Q Was there a particular area command that you were
21 assigned to?

22 A At the time it was Spring Valley -- or Enterprise
23 Area Command.

24 Q Okay. These area commands, is that how Metro
25 officers are kind of stationed?

1 A Correct.

2 Q And Enterprise Area Command, does that cover the
3 area of Hualapai and Charleston?

4 A It does.

5 Q At that time, were you working as a patrol officer,
6 meaning uniformed?

7 A I was.

8 Q Were you working alone or with someone else?

9 A I was actually a field training officer at the time,
10 so I had a -- a trainee riding with me.

11 Q Okay. So you were in a trainer capacity?

12 A Correct.

13 Q On that particular day?

14 A Yes, ma'am.

15 Q How are you employed now? What part of Metro?

16 A I work in our community policing division.

17 Q At some point, Officer Kovacich, did a call come out
18 a little after 8:00 p.m.?

19 A I believe so.

20 Q And what was the nature of the call?

21 A I think the original call was a -- an illegal
22 shooting call.

23 Q And where were you when this call came out?

24 A I believe, I was at Fort Apache and Desert Inn.

25 Q And was your trainee with you?

1 A They were.

2 Q And who was your trainee at the time?

3 A His first name's Stacy and his last name Giles.

4 Q So was Officer Giles actually an officer already at
5 that time?

6 A She is.

7 Q Okay. And so you are -- is that near the area of
8 Charleston and Hualapai?

9 A Correct, it's not too far.

10 Q And so you said it's an illegal shooting. Did the
11 call give you information concerning what area of town this
12 occurred at?

13 A It gives you a -- a cross streets typically or an
14 actual sector beat of -- of our area command.

15 Q And so what information did you receive?

16 A Well, the first thing that comes across is the area
17 -- or the sector beats, which once you know where the sector
18 beats are, you know how to drive, which way to drive and then
19 it actually will pop up on your screen and tell you the actual
20 caller's address or the address of the call. But I believe
21 this day actually didn't -- my computer wasn't working. I
22 think I was manual mode.

23 Q Okay. Manual mode, is that what you just said?

24 A Correct.

25 Q Okay. So what does that mean when you're in manual

1 mode?

2 A Typically, if I don't have a -- either my computer
3 isn't working or the -- the laptop that's in the car will have
4 to do everything just based off the radio.

5 Q And so what area of town were you dispatched to?

6 A Hualapai and Homestretch.

7 Q And that's here in Las Vegas, Clark County, Nevada?

8 A It is.

9 Q Okay. So are you in a marked patrol vehicle at this
10 time?

11 A I am.

12 Q Are you driving or is your trainee?

13 A I couldn't recall.

14 Q Okay. Do you make your way towards Homestretch?

15 A Initially, we -- there were -- I believe there was a
16 couple unit that either got assigned to the call or jumped the
17 call so we were trying to just listen for more radio traffic
18 to see if there was more than one call or to see what the
19 validity of the actual call was.

20 Q And were there multiple callers?

21 A Essentially, there was.

22 Q And were they all pointing to the same area?

23 A They were.

24 Q And at some point, when we say you're dispatched to
25 a call is that because when someone calls 911, the operator

1 then relays information to marked patrol officers like
2 yourself?

3 A It goes to a call taker, then a dispatcher, and the
4 dispatcher is on our specific channel of Enterprise and then
5 they dispatch it to either a clear unit or if somebody's in
6 that area.

7 Q And that's how the information's disseminated?

8 A Correct.

9 Q At some point, is the call updated with more
10 information?

11 A It is. I think there was a couple different
12 addresses used initially so.

13 Q So as you're making your way towards the area of the
14 call, what are you expecting to find based on the information
15 that's been given to you?

16 A People actually performing illegal shooting.

17 Q Okay. Once you get to that area, do you immediately
18 go to where the 911 callers are or what is it that you do?

19 A Basically, we -- we held short. We were directed by
20 our sergeant at the time to hold short, which basically you
21 stay around the corner until you get more information or have
22 enough officers there to make it safe and then go in. So we
23 actually formulated a four-man element prior to driving into
24 the -- into the area of where the shooting was.

25 Q Okay. Officer Kovacich, I'd like you to look at

1 your computer screen. What's on there right now is State's
2 Exhibit No. 6. Do you recognize what's shown in this
3 particular exhibit?

4 A It's a, like a Google image or Google map of the
5 overview of the area.

6 Q Okay. So would looking at or referring to this
7 particular exhibit aid you during your testimony?

8 A Absolutely.

9 Q Okay. So when you say that you hold short, per
10 orders from your sergeant, where is that you hold short?

11 A Just practically where it says Homestretch Drive
12 right where the -- the D and the r are --

13 Q Okay.

14 A -- on the -- so it's basically Homestretch east of
15 Hualapai.

16 Q Can you circle the area where you're at --

17 A Absolutely. Just --

18 Q -- on your screen?

19 A -- touch it?

20 Q Yep. Like Monday night football.

21 A Oh, even better.

22 Q Okay. And so for the record you made -- you circled
23 like the western most -- almost the western most part of
24 Homestretch Drive; is that right?

25 A It is.

1 Q Okay. And so what's going on in that particular
2 area when you're holding short or when you're staging?

3 A We're being updated. As far as us, we're -- we're
4 holding short until either our sergeant gets there, or like I
5 said, until we're, you know, basically instructed to go into
6 the actual area of the crime. But we're also retrieving -- or
7 receiving more information from multiple callers that are
8 calling in.

9 Q Okay. And at this point, do you recall what type of
10 information you were receiving?

11 A I believe, there was some clothing description
12 described. Like I said, there was a couple different
13 addresses that were relayed to us initially. So that was our
14 -- our initial concern was trying to figure out where the
15 target location was because nobody wants to drive into a --
16 either an ambush style situation or, you know, drive in the
17 wrong direction and put yourself tactically at a disadvantage.

18 Besides the clothing description, I want to say
19 there was descriptions of the suspects involved.

20 Q Okay. Do you know whether or not the individuals or
21 the suspects involved or described had any weapons?

22 A I -- are you asking if it was told to us over the
23 radio --

24 Q Yes.

25 A -- that they had weapons? It -- it was. Somebody

1 had stated that somebody had a long gun.

2 Q Okay. And when you say long gun, what do you --

3 A Like a -- a rifle or a shotgun style weapon.

4 Q Okay. And so at some point does your sergeant allow
5 you to do what you describe as a four-man element?

6 A We do.

7 Q What does that mean? What's a four-man element?

8 A Typically, you'll put two officers in the front,
9 you'll have a driver, a passenger, and then in the rear seat
10 where the prisoner's usually go, you'll actually set two
11 officers back there so that when you arrive on the -- when you
12 arrive into the actual location, there's four officers in one
13 car instead of two cars, three cars or four cars.

14 Q Okay. And so is that what you do? You all get into
15 one patrol --

16 A We do.

17 Q -- or one patrol car?

18 A We do.

19 Q And then which way do you go?

20 A Do you want me to draw it again?

21 Q Yes, please.

22 A So like I said, we're -- we're actually where the --
23 where the circle is now, we head east down Homestretch, maybe.
24 There we go. I can't -- and then once get to Shifting Winds,
25 we come in the backside off of Shifting Winds and then west on

1 Ranch Hand and then north on Broadmere.

2 Q Okay. So fair to say that you do -- you make kind
3 of a rectangle?

4 A Correct.

5 Q Okay. Headed back towards the area with you
6 initially circled where Metro did the staging?

7 A Correct.

8 Q Okay. And so once you make it -- well, first of
9 all, while you're making that rectangular shaped -- making
10 your way towards this particular neighborhood, do you see
11 anybody?

12 A We do not.

13 Q Okay. So you don't come into contact with any of
14 the described suspects?

15 A We do not.

16 Q Okay. So once you make it to the end of your
17 drawing towards Broadmere, the corner of Broadmere and Long
18 Cattle, what, if anything, do you do next?

19 A At the same time we had started east down
20 Homestretch, and two officers in a plain car, I believe, they
21 were track officers, went in through the north side at this
22 entrance right there, and we actually met up with them on
23 Broadmere Street right where my drawing stopped.

24 Q Okay. And for the record, that's right where Long
25 Cattle and Broadmere --

1 A Correct.

2 Q -- meet? Okay. What happens next?

3 A They were able to get eyes on the -- on the target
4 house determine the actual valid address versus what came in
5 to the multiple address. Like I said, it's a dispatch. And
6 they relayed the message to us that according to one of the
7 witnesses, the suspect was last seen going down, I believe,
8 it's Long Cattle.

9 Q Okay. And just so we know where Long Cattle's
10 located, pursuant to, you know, what you've already drawn, can
11 you just draw a line down Long Cattle.

12 A (Witness draws on screen).

13 Q Okay. So you did arrows?

14 A Uh-huh.

15 Q No, that's fine. So what do you do next?

16 A We actually picked up a blood trail right at the
17 corner. After -- after talking with the traffic units that
18 arrived first, we noticed a blood trail right there at the
19 corner of Broadmere and Long Cattle. That's when all four of
20 us exit the patrol vehicle and proceed to walk east down Long
21 Cattle following the trail.

22 Q And are you still in the four-man element formation?

23 A We actually added a fifth. One of the traffic
24 officers that we met up at Broadmere joined our -- our
25 element. So technically, there was five of us walking east.

1 Q Okay. And could you just tell the ladies and
2 gentlemen of the jury what, if anything, occurred as you're
3 making your way -- as you and your unit are making your way
4 going east on Long Cattle.

5 A Once we're walking east, we -- I noticed probably
6 four -- four or five houses in, there with as a pick up truck
7 with the tailgate down. I noticed a rifle or long gun laying
8 in the back of the pick up truck bed.

9 Q Did that catch your attention?

10 A Absolutely.

11 Q Okay. And so what did you do upon seeing that?

12 A I relayed the message over to our command, which I
13 believe was set up at the top where the initial staging area
14 was. Proceeded to sweep the area looking for, you know,
15 following the blood trail and then continued on east down Long
16 Cattle following the blood trail.

17 Q And after you -- where does the blood trail end?

18 A I believe, we lose it up just south of Homestretch
19 on the -- the Shifting Winds.

20 Q Intersection?

21 A Just -- just south of like right here.

22 Q I'm sorry, where was it?

23 A I don't know why I keep doing arrows.

24 Q Okay. So the intersection of Homestretch and
25 Shifting Winds?

1 A Correct. Just -- just south of there on the actual
2 sidewalk, I believe.

3 Q Okay. And so I want to talk a little bit about the
4 truck that you saw and what you found in the bed of that
5 truck, okay, as you just testified to?

6 A Okay.

7 Q So I'm going to approach with what's been previously
8 marked as State's Proposed Exhibits 173 through 179.

9 MS. LEXIS: For the record, I'm showing defense
10 counsel.

11 May I approach Your Honor?

12 THE COURT: You may.

13 MS. LEXIS: Thank you.

14 BY MS. LEXIS:

15 Q Officer, I'm showing you what's been previously
16 marked as State's Proposed Exhibits 173 through 179. Could
17 you please just look through the photographs?

18 Officer, do you recognize what's depicted in State's
19 Proposed Exhibits 173 to 179?

20 A It's the -- the truck that I -- or the truck that I
21 noticed the rifle was in.

22 Q Okay. Do the photographs that I just showed you
23 fairly and accurately depict what you saw on September 21st,
24 2014, near the truck and that was located therein?

25 A It does.

1 MS. LEXIS: Your Honor, I'd move to admit State's
2 Proposed Exhibits 173 to 179 into evidence.

3 MR. LANDIS: No objection.

4 MS. McNEILL: No objection.

5 MR. WOLFBRANDT: No objection.

6 THE COURT: All right. They'll be admitted.

7 (State's Exhibits 173 to 179 admitted)

8 MS. LEXIS: Permission to publish, Your Honor?

9 THE COURT: Granted.

10 MS. LEXIS: Thank you. Mr. DiGiacomo, if I could
11 please get 173 up.

12 BY MS. LEXIS:

13 Q Okay, Officer. Obviously, September 21st, 2014,
14 when the call came out it was nighttime, correct?

15 A It was.

16 Q And these photographs were taken during the day; is
17 that right?

18 A They were.

19 Q Okay. Absent that -- or with that change, you know,
20 when it was taken, does this particular photo show fairly and
21 accurately where the truck was located when you saw it the
22 night of September 21st, 2014?

23 A It does.

24 Q Okay. And you can't really tell from the
25 photograph, but was that truck located in front of a house

1 numbered 10013? Can you see that, Officer?

2 A I believe that's the address.

3 Q Okay.

4 MS. LEXIS: Mr. DiGiacomo, could we please switch to
5 174?

6 BY MS. LEXIS:

7 Q So Officer, can you tell the ladies and gentlemen of
8 the jury what it is that they're looking at here and what
9 caught your attention, if anything?

10 A Well, initial, the -- this is actually the truck,
11 just a different angle of the same truck with the -- the rifle
12 and a pair of gloves in the back of the truck and then the
13 pair of clothing on the ground.

14 Q Okay. Could you circle where the rifle is and where
15 the gloves are and also where the item of clothing is that you
16 were describing?

17 A (Witness draws on screen).

18 Q So for the record, you're circling a beige clothing
19 item, kind of towards the back of the truck on the ground and
20 also towards the right bed area of the truck?

21 A Correct.

22 Q Okay.

23 MS. LEXIS: Thank you. And I'm going to ask,
24 please, to bring up State's Exhibit No. 176.

25 BY MS. LEXIS:

1 Q Okay, Officer, can you describe for the ladies and
2 gentlemen of the jury what they're looking at in State's
3 Exhibit 176.

4 A It's just a closer version of the same bed of the
5 truck with the same rifle -- or same long rifle -- or long gun
6 and gloves.

7 Q Okay. And -- okay. So you see this, you're with
8 the -- you're in a five-man element. After you see this, you
9 call it out and you make your way -- you continue east towards
10 Long Cattle; is that correct?

11 A Correct.

12 Q Okay.

13 MS. LEXIS: Mr. DiGiacomo, could we please bring 006
14 back up? And Your Honor, it's already been admitted.

15 THE COURT: Correct.

16 MS. LEXIS: Okay.

17 BY MS. LEXIS:

18 Q And so you continue east on Long Castle (sic). You
19 find the end of the blood trail as you've just testified on
20 Homestretch and Shifting Winds. What do you do next?

21 A We were actually waiting for canine to show up. We
22 -- basically, we set up a perimeter knowing that somebody was
23 still bleeding. You know, we're still trying to determine if
24 it was a suspect or if we -- you know, if it's a victim. So
25 we set up a perimeter, brought canine out to try and search

1 the area. And then essentially, while they ended up doing
2 their search, I go back over to relieve the traffic unit at
3 the -- the truck.

4 Q Okay. So you go back to secure and keep eyes on the
5 truck where the long rifle was found?

6 A Correct.

7 Q Okay. And that -- a traffic unit had been keeping
8 an eye on it?

9 A I believe so.

10 Q Okay. So when you make your way back to the green
11 truck that we were just looking at, what, if anything,
12 happens?

13 A Just typical crime scene preservation on our part.
14 We set up crime scene tape. It was pretty static at the time.
15 Some -- some of our homicide units had showed up. So
16 typically, what you'll do is you'll either check in or check
17 out with them so they have all your information so that
18 they're not calling you at 3:00 or 4:00 in the morning asking
19 you questions and waking you up.

20 So I had actually been relieved by another officer
21 to go back over to where the debrief area was just north of
22 the target house, that Broadmere, and was waiting, and had
23 been briefed with the -- was briefing with the homicide units.

24 Q Okay. At some point, while you're out on scene, and
25 after you go back towards the green truck, is your attention

1 ever called back to that area where the green truck is
2 located?

3 A It is. Like I said, we -- we went and debriefed
4 with all the units just north of the Broadmere target house,
5 and the officer that had relieved me at the location of the --
6 the gun in the truck had actually got on the radio and stated
7 he saw movement in the vehicle next to the truck.

8 Q Okay. And just -- and the vehicle that was near the
9 truck, what color was it?

10 A Black.

11 Q And was it -- what type of vehicle was it?

12 A I couldn't tell you the make and model. It was like
13 a two-door little Sedan.

14 Q Okay.

15 MS. LEXIS: Mr. DiGiacomo, could we please publish
16 174?

17 BY MS. LEXIS:

18 Q Okay, Officer Kovacich, do you see the vehicle, the
19 Sedan, or the two-door vehicle that you just described, in
20 this particular photograph?

21 A I do. It's just to the -- the right side of the bed
22 of the truck.

23 Q Okay. And so your attention is called back to this
24 particular area and in particular this vehicle, correct?

25 A That is correct.

1 Q So what happens next?

2 A The officer had been sitting over here waiting for
3 crime scene and the detectives to come over. Like I said, he
4 got on the radio and said he observed movement inside the
5 vehicle. We went over, brought a patrol -- or another officer
6 brought a patrol vehicle over and began to give verbal
7 commands to the occupant inside the back seat of the black
8 car.

9 Q And what are you doing while this is occurring?

10 A I'm sitting right there with them.

11 Q Okay. Weapons drawn?

12 A Correct.

13 Q Okay. And eventually, does someone from your unit
14 go towards the vehicle?

15 A Once we -- we still had the air unit above us so we
16 had the air unit try and look in the windows to see if we
17 could see anything to give us any further information. And
18 then essentially, we end up having to pull the male occupant
19 out of the vehicle.

20 Q Okay. And the male occupant that was pulled out of
21 the vehicle, do you see him here in court today?

22 A I do.

23 Q Could you please point to him and describe something
24 he's wearing.

25 A Wearing a black shirt.

1 Q Well, can you get up and point?

2 A (Witness stands and points).

3 Q Okay. And what color shirt?

4 A Black.

5 Q Okay. And is he in a suit or --

6 A Now I'm confused, I'll be honest with you.

7 Q Okay. So --

8 MR. LANDIS: I'm sorry to interrupt. Can the
9 record --

10 BY MS. LEXIS:

11 Q -- do you not see the person you're --

12 MR. LANDIS: Sorry to interrupt. Can the record
13 reflect --

14 THE COURT: The record will reflect that no one has
15 been identified, at this point, unless you can be more
16 specific to the --

17 THE WITNESS: Correct. No, I apologize. Now I'm --
18 I'm trying to recall at night and --

19 THE COURT: Were you pointing at someone earlier
20 because -- were you pointing at a person earlier?

21 THE WITNESS: Just now?

22 THE COURT: Yeah, just now.

23 THE WITNESS: Yes, ma'am.

24 THE COURT: That's what I'm trying to clarify --

25 THE WITNESS: Yes, ma'am.

1 THE COURT: -- the record. Who did you point out?

2 THE WITNESS: The gentleman on the right.

3 THE COURT: All right. The record will reflect that
4 he pointed at Mr. Laguna.

5 MR. LANDIS: Thank you.

6 BY MS. LEXIS:

7 Q Okay. Are you sure that he was the person pulled
8 out of the vehicle?

9 A I wouldn't be 100 percent sure because it was, like
10 I said, it was at night and the only thing we're using at the
11 time is flashlights.

12 Q Okay. Were you the actual person who pulled the
13 individual out of that black car?

14 A I couldn't -- I couldn't tell you for sure.

15 Q Okay.

16 MS. LEXIS: Your Honor, permission to approach with
17 what's been previously marked as State's Exhibits 185 and then
18 189 through 198.

19 THE COURT: 185 and 189 through 198?

20 MS. LEXIS: Yes, Your Honor. And I'm showing
21 defense counsel. Thank you. Permission to approach?

22 THE COURT: Granted.

23 MS. LEXIS: Thank you.

24 BY MS. LEXIS:

25 Q Officer, I'm going to show you first, what's been

1 marked as State's Exhibit 185. Do you recognize what's
2 depicted in that photograph?

3 A Both the black car and the green truck?

4 Q Okay. Does it fairly and accurately show the
5 location of both vehicles on September 21st, 2014, when you
6 observed it?

7 A It does.

8 Q Okay. And then I'm going to show you what's been
9 previously marked as State's Proposed Exhibits 189 through
10 198. Let me just make sure here. Could you please look
11 through those photographs.

12 A (Witness looking at photographs).

13 Q Do you recognize what's depicted in these
14 photographs?

15 A Just the vehicle, not the items inside the vehicle.

16 Q Okay. So I am only going to ask to admit State's
17 Exhibits 185 and 189, and 190 with this particular witness.

18 MR. LANDIS: No objection.

19 MR. WOLFBRANDT: No objection.

20 MS. McNEILL: No objection.

21 THE COURT: All right. Exhibits 185, 189 and 190
22 will be admitted.

23 (State's Exhibits 185, 189 and 190 are admitted)

24 MS. LEXIS: Thank you. And Mr. DiGiacomo, could we
25 please publish 185?

1 BY MS. LEXIS:

2 Q Okay, Officer, so where is the black vehicle where
3 the suspect was challenged from or out of?

4 A Where's it -- you just want me to circle the
5 vehicle?

6 Q Yeah. Thank you. And do you recall what side of
7 the particular vehicle the subject was pulled out from?

8 A The driver's side where the door's open.

9 Q Okay.

10 MS. LEXIS: I'm going to ask Mr. DiGiacomo to
11 publish State's Exhibit 190.

12 BY MS. LEXIS:

13 Q And is that what's depicted in this particular
14 photograph, sir?

15 A It is.

16 Q Okay. And so the suspect was pulled out of this
17 vehicle. Did you have an opportunity to observe him?

18 A I did.

19 Q Was he injured at all? Did you notice any injuries?

20 A We noticed and he was explaining to us that he had
21 an injury.

22 Q Okay. And where was the injury located?

23 A I don't remember which leg. It was one of his upper
24 thighs, like -- like a femur area.

25 Q Okay. And was this individual able to walk on his

1 own?

2 A No.

3 Q Okay. Did officers have to assist him out of the
4 vehicle?

5 A We did.

6 Q At some point were paramedics called?

7 A They were already staging at the staging area, but
8 yes, they were called over to render aid.

9 Q And what, if anything else, do you do at this
10 particular scene?

11 A After he's placed in handcuffs basically nothing.
12 We had to go back, re-debrief, and basically, talk to the
13 detectives.

14 MS. LEXIS: Court's brief indulgence. I have no
15 more questions for this witness. Thank you, sir.

16 THE COURT: Cross.

17 (Pause in the proceedings)

18 CROSS-EXAMINATION

19 BY MR. LANDIS:

20 Q Do you recall seeing any signs of forced entry on
21 that black Sedan?

22 A The one I just circled?

23 Q Correct.

24 A No, I don't.

25 Q You talked some about that staging area or stop

1 short area you were at that was on the top of the map that's
2 now on the screen, yes?

3 A Yes, sir.

4 Q Do you know what time you arrived at that location?

5 A I couldn't begin to tell you.

6 Q Can you say in relation to the dispatch notification
7 you got how long it was?

8 A From the time the initial came out?

9 Q To when you get to the shortstop station?

10 A Seven minutes, five minutes.

11 Q To the best of your memory, how long would you say
12 it was from when you first station yourselves there until when
13 you enter the subdivision?

14 A Probably another five, seven minutes.

15 Q How many different patrol vehicles are located at
16 that location?

17 A At the staging area?

18 Q Yes.

19 A Numerous. So probably eight, nine of us.

20 Q So many that the street's stopped -- blocked?

21 A No, because we actually all parked on the south
22 shoulder, the south side of the road.

23 Q You didn't see any cars speeding away?

24 A I did not.

25 Q How long would you say it was from when you first

1 enter the subdivision, so you leave the staging area, until
2 when you first find this individual in the car? How long are
3 you in the subdivision?

4 A Once again, I wouldn't be able to tell you, but it's
5 a prolonged period.

6 Q More than ten minutes; is that fair?

7 A Yes, sir.

8 MR. LANDIS: I have no further questions. Thank
9 you, sir.

10 THE COURT: Thank you. Mr. Wolfbrandt.

11 CROSS-EXAMINATION

12 BY MR. WOLFBRANDT:

13 Q Good afternoon, Officer Kovacich?

14 A Yes, sir.

15 Q Got it right the first time. I'll be darned. All
16 right. That staging area there on Homestretch, that's on the
17 outside of the housing development?

18 A It is.

19 Q Appearing there's a block wall that goes almost the
20 entire length of Homestretch along, save and except for that
21 north entrance?

22 A Yes, sir.

23 Q All right. And then so but you entered by going
24 past that north entrance and then worked your way all the way
25 around?

1 A Correct.

2 Q Okay. Now, you talked earlier on direct about you
3 found a blood trail starting -- well, when you first picked it
4 up was at the corner of Broadmere and Long Cattle?

5 A Yes, sir.

6 Q And then that was going --

7 A East.

8 Q -- east on Long Cattle? All right. So I believe,
9 you also said that you -- that -- did you follow the blood
10 trail all the way to Soaring -- what was it Soaring Winds?

11 A Soaring Winds. We did. There was -- like I said,
12 there was five of us that -- that followed it.

13 Q Okay. What I'm trying to figure out is did you
14 follow that blood trail all the way up to where you -- where
15 it ended --

16 A To the end --

17 Q -- before --

18 A -- just south of Homestretch.

19 Q -- before or after you found the gun and the truck
20 and the person in the car?

21 A After we found the gun, before we found the person.

22 Q Okay. So how long did it take between the time you
23 found the gun and you found the person in the car?

24 A Once again, I wouldn't be able to tell you. I --
25 I'd say 45 minutes.

1 Q Okay. Because there's enough time for to you leave
2 the area, secure the area where the gun was, follow the rest
3 of the blood trail or what you saw the blood trail, all the
4 way up to Soaring -- what was that Soaring Winds just --

5 A Shifting Winds.

6 Q -- south of -- well, Homestretch?

7 A Correct.

8 Q Is it and from there is when -- then you went to the
9 staging area to debrief?

10 A You're talking about from --

11 Q The one on Broadmere?

12 A You're talking from when we stopped at -- when we
13 lost the blood trail on Shifting Winds?

14 Q Right. Yeah, what did you do after you lost the end
15 of that -- that blood trail?

16 A At the time, we -- we were pretty much done on our
17 end because the -- the scene is dynamic -- or excuse me,
18 static.

19 Q Static, right?

20 A So that's why standard operating procedure is you go
21 back, you know, the people that were in the actual scene get
22 -- you know, have to go debrief and tell their side of the
23 story and we'll meet with the detectives and tell our side of
24 the story.

25 Q I guess, that's kind of what I was getting at. When

1 you got to the end of what you determined was the end of the
2 blood trail, you thought your part was over?

3 A I did.

4 Q You went to the debriefing area there on Broadmere?

5 A I did.

6 Q And then that's when you learned of a --

7 A That's when the officer -- the officer that was by
8 the vehicle, the green truck, got on the radio and said that
9 he needed other units.

10 Q Were there any gaps in that blood trail?

11 A I'm not sure what you mean by gaps. It wasn't like
12 a solid line, if that's what you're asking.

13 Q But to your recollection for the start of where you
14 first saw blood at Broadmere and Long Cattle, you followed a
15 continuous blood trail, let's see, east on Long Cattle, south
16 on whatever what little street was, and then east again?

17 A Correct. I'm not -- I'm not -- I don't know what
18 you're classifying continued, but we were able to follow
19 blood spots all the way around. I don't know the distance
20 between --

21 Q Well, okay, yeah, well, let's clear that up, too.
22 When I said blood trail, let's -- usually, it's just drips of
23 blood --

24 A Correct.

25 Q -- going -- and it's not like a one steady smear?

1 A Correct.

2 Q Okay. But let me ask, from the corner of Broadmere
3 and Long Castle (sic) towards that truck, was it more of a
4 smear type blood trail and then eventually ended up in drops?

5 A From what I can recall, I believe, there was some
6 smear marks right at that northeast corner of Long Cattle and
7 Broadmere.

8 Q Okay.

9 A But as far -- how long they were or how often they
10 occurred, I couldn't -- I cannot recall.

11 Q Okay. All right. Now, after the -- after the
12 person was removed from that black car, and then medical came
13 to treat him, is that when you cleared the scene or shortly
14 thereafter?

15 A Shortly thereafter. We had to go re-debrief and
16 make sure everything was said and done on our end.

17 Q All right. And then that concluded your
18 involvement?

19 A It is.

20 Q Okay, great. Thank you.

21 A Thank you, sir.

22 MS. McNEILL: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MS. McNEILL:

25 Q Officer, you used the word a few times, dynamic, so

1 I just want to make sure the jury understands that. A dynamic
2 situation is something that there's a lot go on and it
3 requires you to be paying close attention, correct?

4 A Absolutely.

5 Q And so a shots fired call would be considered a very
6 dynamic situation?

7 A Correct.

8 Q Okay. That's something that Metro would take very
9 seriously and that you would rely on all of the training and
10 experience you have as an officer, correct?

11 A Yes, ma'am.

12 Q Okay. So you would be paying a lot of attention to
13 what was going on at that scene, correct?

14 A For the most part, yes.

15 Q Okay. And you indicated that at the time you
16 arrived at the staging area, you believe there was about eight
17 other police cars there?

18 A No, no, no. Total. I was, I think, the second
19 person arrived.

20 Q Okay. So you were the second person arrived. And
21 when you arrived there was already another police car there?

22 A Correct.

23 Q And that was a marked police car?

24 A It was.

25 Q Okay. And as far as you know, there were police

1 cars coming from kind of all directions to that screen,
2 correct?

3 A Yes, ma'am.

4 Q And you are aware that an air unit was actually
5 called in as well, correct?

6 A I don't know when they were called, but they were
7 called.

8 Q Okay. So at some point you recall seeing an air
9 unit arrive?

10 A Um-h'm.

11 Q And that's a helicopter?

12 A Yes, ma'am.

13 Q Okay. And those have the bright lights that shine
14 down?

15 A They do.

16 Q Okay. You indicated that you believed it was the
17 person all the way to the right that was the person in the
18 car, correct?

19 A Yes, ma'am.

20 Q The person who was in the car was actually arrested
21 then, right then at that scene?

22 A Are you talking about once -- once they were removed
23 from vehicle?

24 Q Yes.

25 A Correct.

1 Q Right. You didn't let him go? I mean, officers
2 were paying attention to him, had taken them into their
3 custody?

4 A I -- I -- I wouldn't know because, like I said, I
5 didn't do the actual arrest. So once the dynamic scene of
6 getting somebody out of a vehicle and they were placed in
7 handcuffs, we're not just going to sit, you know, seven eight
8 cops around and just, you know, watch if somebody -- if we're
9 not needed, we're going to go back to where we were, where we
10 came from.

11 Q All right, fair enough. And I guess, it was a bad
12 question on my part. Just a difference of terms. You said
13 that he was placed in handcuffs. So the individual that was
14 brought out of the car was actually handcuffed?

15 A I believe so.

16 Q Right, okay. And so he as far as you know was
17 turned over to other officers?

18 A Correct.

19 Q And so if I told you that this gentleman all the way
20 on the right was not arrested at the scene, you would agree
21 with me you would be incorrect about who you identified?

22 A Yes, ma'am.

23 Q Do you recall seeing other officers arrive from --
24 and I don't know how to -- sort of the other direction along
25 Homestretch from where you were?

1 A During like the initial --

2 Q Right, during the initial call --

3 A -- staging?

4 Q Yes. When officers are arriving.

5 A I couldn't tell you. Most of us came off of -- most
6 the ones I saw came off of Hualapai to Homestretch.

7 Q Okay. But you were aware from dispatch that the
8 address of the caller was inside that subdivision, correct?

9 A Correct.

10 Q And so you would have been paying attention to any
11 cars or people that were coming out?

12 A Essentially, yes.

13 Q Okay.

14 MS. McNEILL: Nothing further.

15 THE COURT: Redirect?

16 MS. LEXIS: No redirect, thank you.

17 THE COURT: Thank you. Does the jury have any
18 questions?

19 THE MARSHAL: Do you have them written down with
20 your juror number?

21 THE COURT: And make sure your badge number's on it.

22 (Pause in the proceedings)

23 THE COURT: Counsel approach.

24 (Off-record bench conference)

25 THE COURT: Already. Officer, if you know, tell us

1 how many exit ways in or out are there to this subdivision?

2 THE WITNESS: Prior to looking at this, I wouldn't
3 have even known other than the actual major cross streets of
4 Homestretch and Hualapai, I wouldn't know the area, like the
5 actual neighborhood because we had 110 ten square mile sector
6 beat.

7 But given the map, at least two, maybe three
8 depending on what's on the south end.

9 THE COURT: Okay. So you don't know of your own
10 independent knowledge? You'd have to look at this map?

11 THE WITNESS: I would.

12 THE COURT: Is that what you're saying? Okay.
13 Questions as a result of the jury's question?

14 MR. LANDIS: No, ma'am.

15 MS. LEXIS: No, Your Honor.

16 MS. McNEILL: No, Your Honor.

17 THE COURT: May this witness be excused?

18 MS. LEXIS: Yes.

19 THE COURT: Thank you. You may call your next
20 witness.

21 MR. DiGIACOMO: Crimes Scene Analyst Adam Felabom.

22 ADAM FELABOM, STATE'S WITNESS, SWORN

23 THE CLERK: Please be seated. And then place and
24 state and spell your first and last for the record.

25 THE WITNESS: My name is Adam Felabom, A-d-a-m,

1 F-e-l-a-b-o-m.

2 THE CLERK: A-b as in David or boy?

3 THE WITNESS: Boy.

4 THE COURT: You may proceed.

5 MR. DiGIACOMO: Thank you, Judge. Now, I'm a little
6 short.

7 DIRECT EXAMINATION

8 BY MR. DiGIACOMO:

9 Q Sir, how are you employed?

10 A I am a crime scene analyst with the Las Vegas
11 Metropolitan Police Department.

12 Q What does that mean you do?

13 A I am tasked with responding to crime scenes and
14 investigating those crime scenes using various methods
15 including, taking photographs, writing reports, sometimes
16 drawing diagrams, collecting evidence, looking for
17 fingerprints.

18 Q Now, I'm -- how long you been with the Las Vegas
19 Metropolitan Police Department?

20 A I've been with the police department for 11 years.

21 Q And during that time period, have you always worked
22 in the crime lab?

23 A No.

24 Q What have you done?

25 A I started out as a police officer and then from

1 there I transitioned over to the dispatch center, and then
2 from there I transitioned over once more to a crime scene
3 analyst.

4 Q And could you describe for the ladies and gentlemen
5 of the jury your training, education and background that you
6 have to do the job.

7 A I have my bachelor's degree in criminal justice. I
8 also have taken multiple hours of training in various subjects
9 such as photography, various methods of fingerprint
10 processing, difference (sic) methods of collecting evidence
11 for various types of evidence. Also, some bloodstain
12 documentation classes as well as shooting reconstruction
13 classes.

14 Q Now, on September 21st of 2014, were you one of the
15 crime scene analysts that was assigned to a homicide event
16 that occurred at 1661 Broadmere Ave. here in Clark County, Las
17 Vegas, Nevada?

18 A I was.

19 Q And when -- I say one of the crime scene analysts --
20 how many crime scene analysts usually respond to a homicide
21 situation?

22 A Usually, there's two, plus a supervisor, but because
23 of the size of this scene, we ended up bringing four plus a
24 supervisor.

25 Q And when you arrived on the scene, what was the

1 condition of the screen at that point?

2 A The scene had been secured by multiple patrol
3 officers blocking off the residential area, and there were
4 some cones up to block people from certain areas as well.

5 Q Now, when you worked with the team to process this
6 scene, do you work solely with crime scene analysts or do you
7 work with other individuals from the department?

8 A No, for an investigation like this, we'll also work
9 with the homicide detectives. They'll come out and it will be
10 a joint investigation.

11 Q And can you describe first the duties of the various
12 crime scene analysts at this particular scene? Did you divide
13 up the work in a particular way?

14 A We did. I was primarily responsible for the
15 evidence collection. We had another crime scene analyst who
16 was primarily responsible for taking notes of the general
17 screen and photographing the scene. We had a -- the third
18 crime scene analyst was responsible for drawing a rough sketch
19 of the scene so that we could later create a diagram, and
20 taking measurements so that we could plot items of evidence
21 inside the screen. And then the fourth crime scene analyst
22 was tasked with primarily documenting a blood trail within the
23 crime scene.

24 Q Now, when you were working this scene, do you
25 remember, approximately, what time you would have arrived?

1 A I arrived shortly after 11:00 o'clock, but I was not
2 the first crime scene analyst there. The others -- some of
3 the others arrived about 10:40, I believe.

4 Q And when crime scene analysts first arrive on scene,
5 what information is provided to the analysts to decide, hey,
6 what are we going to do, what aren't we going to do?

7 A Typically, on crime scenes such as homicides, we'll
8 wait for everyone to arrive, including the detectives. And
9 then we will have a -- a mass briefing all together so that
10 we're all getting the same information at the same time so
11 there's not any miscommunications. And that will be provided
12 by first responding officers and any preliminary detectives
13 that had arrived on the scene that had done any preliminary
14 investigation prior to the homicide detectives arriving.

15 Q And we've been using the term "scene". Would you
16 describe this as one scene or multiple scenes?

17 A It was multiple scenes spread out over a residential
18 neighborhood.

19 Q So essentially, the neighborhood was the scene --

20 A Correct, but there were --

21 Q -- and you concentrated in areas?

22 A Correct. There were multiple key areas within the
23 neighborhood that we focused on.

24 Q And you mentioned that the documentation occurs both
25 by photography, some notes, and crime scene diagrams and then

1 also collection of physical pieces of evidence?

2 A Correct.

3 Q Have you had an opportunity to review the
4 photographs, the crime scene diagrams -- obviously, you've
5 collected the evidence yourself -- in order to familiarize
6 yourself so you can kind of sort of describe this scene to the
7 ladies and gentlemen of the grand jury -- or the ladies and
8 gentlemen of the jury?

9 A I have.

10 Q I'm going to start with --

11 (Pause in the proceedings)

12 BY MR. DiGIACOMO:

13 Q I'm going to grab just sort of the aerial
14 information as well as crime scene diagrams, and we'll start
15 there while Ms. Lexis puts the photographs back in order for
16 us.

17 MR. DiGIACOMO: May I approach, Judge?

18 THE COURT: You may.

19 BY MR. DiGIACOMO:

20 Q You can go ahead pour yourself some water. You're
21 going to be up here a little while so you might as well. I'm
22 first going to show you what's been marked as State's Proposed
23 Exhibits 7, 8 -- 7 through 11 and ask you if you generally
24 recognize the area depicted in those photographs?

25 A I do.

1 Q And just you might as well look at them because I do
2 them all at once for us. One of them -- let's take that one
3 out, and this one out. So, let me rephrase. Look at 7, 8 and
4 11 and tell me if you recognize what's depicted in those
5 aerial photographs.

6 A These three I do, yes.

7 Q And what is depicted in those three photographs?

8 A These are satellite images of the -- the residential
9 neighborhood.

10 Q Basically, an overhead of some sort of map of the
11 residence -- or of the area?

12 A Correct.

13 Q And they're at different heights, I guess would be
14 the reference I would say.

15 A Correct.

16 MR. DiGIACOMO: Move to admit 7, 8 and 11, I believe
17 it is.

18 THE COURT: Any objection?

19 MR. LANDIS: No objection.

20 MR. WOLFBRANDT: No objection.

21 MS. McNEILL: No objection.

22 THE COURT: Those will be admitted.

23 (State's Exhibits 7, 8 and 11 admitted)

24 BY MR. DiGIACOMO:

25 Q I'm just going to put up 7 here for the ladies and

1 gentlemen of the jury. They've kind of seen a closer-up view
2 of this, but this is more backed out now. And there is a tag
3 on here that says 1661 Broadmere Avenue. What is -- why is
4 that location or is that location significant to you?

5 A That is the scene where the actual shooting
6 occurred.

7 Q Okay. And now I'm going to show you State's
8 Proposed Exhibits 12 through 15 and ask you to flip through
9 those four exhibits, and ask you if you recognize what's
10 depicted in those photographs?

11 A I do.

12 Q Well, it's not photographs. What are they?

13 A These are four diagrams that were created from the
14 rough sketch that was taken at the scene.

15 Q And are they true, fair and accurate representations
16 of the physical evidence that was collected, and the locations
17 that it was collected from?

18 A Yes.

19 MR. DiGIACOMO: Move to admit 12 through 15.

20 MR. LANDIS: No objection.

21 MR. WOLFBRANDT: No objection.

22 MS. McNEILL: No objection.

23 THE COURT: Those will be admitted.

24 (State's Exhibits 12 through 15 admitted)

25 BY MR. DiGIACOMO:

1 Q So I'm actually going to start at the back here and
2 just go with, for the ladies and gentlemen of the jury,
3 State's Exhibit No. 15. And it, of course, came up upside
4 down so let me just rotate that for us.

5 Okay. So what are we looking at here?

6 A This is an aerial view of the neighborhood with
7 these circled areas. Those are denoting where we've kind of
8 made other diagrams much closer so that you can easily see
9 what's inside those areas. And there's a red line running
10 through the scene, which denotes a blood trail that we found
11 within the neighborhood.

12 Q And then if we were to zoom in a little bit for the
13 ladies and gentlemen, I guess, kind of a part of this red
14 line, you could see little BT numbers. Can you tell us what
15 the BT numbers represent.

16 A The BT numbers represent areas where we marked the
17 trail so for later for me to collect swabs of that blood so
18 that we could later, if we needed to, test it and see who it
19 belonged to.

20 Q And you would have been the individual that actually
21 physically did the swabbing of those various locations?

22 A Correct.

23 Q I'm going to leave it upside down for just a second
24 because it will take too much time to fix it, but so you said
25 there's two circled areas of other diagrams, this one and that

1 one, and I want to talk about -- I'm going to start with the
2 one that's right up here at the top of -- what is it that that
3 circle is depicting?

4 A That circle is depicting the 1661 Broadmere address
5 as well as the street in front of it.

6 Q So now I'm going to go to State's Exhibit No. 14.
7 Rotate it around for the ladies and gentlemen of the jury and
8 say, what are we looking at?

9 A Here we're looking at the 1661 Broadmere address.
10 You have the street here, and this would be the ground floor
11 attached to the street. And then separately, you have the
12 second floor of the residence off to the north side of that
13 diagram. In truth, that upstairs obviously, would be right on
14 top of the ground floor, but to make things clear, we just
15 split them up like that.

16 Q And then would it be a fair characterization to say
17 the overwhelming majority of the physical evidence was on the
18 ground floor of this crime scene?

19 A Correct.

20 Q And was there some limited evidence that was found
21 upstairs as well?

22 A There was.

23 Q And was the entire residence both inside and outside
24 documented by photographs as well as the diagram and other
25 ways of doing so?

1 A It was.

2 Q And due to the fact that there was more evidence
3 downstairs, did you guys create -- and I'll put up State's
4 Exhibit 13. And, of course, every one of these is going to
5 come up upside down for me this afternoon. Let's flip it
6 around. Did you guys do a more detailed or a closer-up
7 version of the downstairs area to represent the various pieces
8 of evidence that were collected?

9 A Correct. This is just the ground floor and the
10 driveway. It allows us to zoom in a little closer so that you
11 can get better detail on where the multiple pieces of evidence
12 are.

13 Q So let me start at the top because I haven't asked
14 this for any of other photographs. Right underneath the word
15 "homicide" there's a number 140921-3020. What does that mean?

16 A That is an event number. Whenever someone calls the
17 police and requests us to come out on something or any time
18 police officer performs a traffic stop, or any sort of event
19 in which we respond to or involved in, it's given what we call
20 an event number.

21 And that is basically, the first six numbers, the
22 140921 are the dates with the first two numbers being the
23 year, the second two numbers being the month, and then the
24 last two numbers being the day. Then you have the little dash
25 and then four more numbers, and those last four numbers are

1 unique. Only one event will ever have that number. So we
2 just start at 0001 and then progress throughout the day up
3 until we get to midnight and then it switches over to the next
4 day's events.

5 Q And so by the time that this event gets called into
6 911, and I think at least the record so far is that there was
7 at least one call by 8:13 p.m., there is 3,020 other calls for
8 service into Metro at that point?

9 A Well, this would be the 3,020th, but yes.

10 Q So that's 3,019, I guess

11 A Yes.

12 Q -- prior to this event?

13 A Correct.

14 Q Once you have that unique identifying number for
15 this homicide, what should happen as it relates to further
16 investigation that occurs in the case?

17 A All further investigations that are related
18 specifically to this event number would be all reported under
19 the same event number, that way you can track it all. All the
20 evidence would be marked with this event number so that we
21 knew that it was related to this case. All reports would be
22 marked with this event number so that we know those reports
23 are specifically for that case. And if there were to be any
24 follow-up investigations later down the road, we would use the
25 same event number so that it's all tied together.

1 Q Now, I think that much of the rest of this fairly
2 self-explanatory, but at the bottom there's a "K. Meckler" and
3 number and then there's a five digit number after that. What
4 is that?

5 A K. Meckler is the crime scene analyst who actually
6 completed the -- or was responsible for doing the computer
7 generated diagram here. So that's her first initial, her last
8 name and her personnel number.

9 Q Explain just probably more for the record, but it's
10 color coded, so the legend that's on right-hand side, could
11 you explain what each of those is?

12 A The colors or --

13 Q Yeah, for example, it starts out with evidence and
14 there seems to be a whole bunch of green items listed there
15 that's 1 through 10. Can you tell me what all -- well, I
16 guess, it's 1 through 8 and 10 -- what those nine numbers are
17 referenced as.

18 A Those darker grown items, the 1 through 8 and the
19 item 10 are all marked as the 9 millimeter cartridge cases
20 that we found. And then the lighter -- it's a little hard to
21 see, but the lime green type color, those are all the -- the
22 items 11 through 14 are the .40 caliber cartridge cases that
23 we found. We kind of split it up a lot of times by color that
24 way when you're looking at the diagram, it's easier to
25 differentiate between the different calibers.

1 Q Okay. And then so there's some other items of
2 evidence that are listed there, and then when you get to the
3 bottom, there's kind of AB1 to AB2 and BT1 and -- to BT3. So
4 what's AB1 to AB2 mean?

5 A AB1 and AB2 are both apparent bloodstains that we
6 found on the, I guess, the porch or the stoop, whatever you
7 want to call it, that we thought were of interest. So we
8 marked those for collection later on. The same as we did for
9 BT, with I is the blood trail. And it's just a way for us to
10 distinguish between the blood trail and the other random drops
11 that we collected.

12 Q And so maybe this is self-explanatory; if you were
13 to take the green 1 and you were to find on this diagram where
14 the green 1 was on the diagram, and I'm not sure actually,
15 even the green 1's on here, so let's start with the green 4.
16 Why don't we start with the green 4 and just kind of show the
17 ladies and gentlemen of the jury where is 4 in relationship to
18 on the diagram?

19 A Yes. Number 1 through 3 are actually out in the
20 street, and I guess, they just didn't catch that when they
21 made the diagram. But number 4 is right here at the front of
22 the, I guess, the sidewalk, the walkway leading up to the
23 front door. Then you have the 5, 6, 7 and 8 are on the
24 sidewalk and on the north side of the sidewalk. North is to
25 the top of the diagram, to the north of the house -- the top

1 of the house. And then number 10 is actually just inside the
2 doorway right there.

3 Q And it is -- even that TV, the nice big TV is a
4 little small, so let me just grab kind of this area that you
5 just talked about. So basically, from this diagram if you go
6 to the photographs, you should be able to find item 4, it
7 should be outside the house near the stoop area and it should
8 be a 9 millimeter cartridge case, essentially?

9 A Correct. Correct.

10 Q If all of this is accurate and it works out?

11 A Correct.

12 Q And based upon your review, it appears that this is
13 accurate in relationship to the physical evidence you
14 collected?

15 A Yes.

16 Q When you arrived on -- or when crime scene analysts
17 arrived on scene, were there two individuals that were
18 photographed at the scene by other members of the crime scene?

19 A Yes.

20 Q And showing you State's Proposed Exhibit 16 and 17.
21 Are those two individuals that were photographed at the scene?

22 A Yes.

23 Q And if you know, if you don't know, do you know the
24 name of either one much those individuals?

25 A I believe, that's Steven Larsen and Joseph Larsen.

1 Q Okay. And that appears to accurately reflect what
2 they look like at the scene that night?

3 A Yes.

4 MR. DiGIACOMO: I'd move to admit 16 and 17.

5 MR. LANDIS: No objection.

6 MR. WOLFBRANDT: No objection.

7 MS. McNEILL: No objection.

8 THE COURT: Those will be admitted.

9 (State's Exhibits 16 and 17 are admitted)

10 BY MR. DiGIACOMO:

11 Q Now, in the process of processing a scene or
12 photographing a scene, is there sort of a sequencing of events
13 that occurs?

14 A Yes. Typically, ideally, if at all possible, we
15 want to photograph the scene before anything has changed or
16 placed inside the scene such as any markers or cones. That
17 way we get an accurate representation of what the scene looked
18 like before we started placing things in there, and to show
19 how we found the scene.

20 After we've done that, we'll typically start adding
21 markers so it's easier to determine what items of evidence
22 we're actually collecting and that way you can see like, No.
23 15 and then look on the evidence impound report and say, okay,
24 this is what that is.

25 Q I'm going to show you State's Proposed Exhibits 18

1 through 79 and ask you to briefly flip through those and tell
2 me if those appear to be overall photographs taken before any
3 processing was done by the crime scene analysts. I could hold
4 the first half for you.

5 A (Witness reviewing photographs). Yes. They are the
6 photos taken before we placed markers.

7 Q Okay. So and they fairly and accurately depict the
8 scene, the overall scene before any processing was done?

9 A Yes.

10 MR. DiGIACOMO: Move to admit 18 through 79.

11 MR. LANDIS: No objection.

12 MR. WOLFBRANDT: No objection.

13 MS. McNEILL: No objection.

14 THE COURT: Those will be admitted.

15 (State's Exhibits 18 through 79 are admitted)

16 BY MR. DiGIACOMO:

17 Q Now, Mr. Felabom, I'm going to go through sort of
18 maybe not every one of these, but I'm going to basically, walk
19 you and the jury through the scene and I'm going to you to
20 sort of describe for the record the various exhibits that I
21 put up so that we have some sort of record about what it is
22 that we're showing the jury, okay?

23 A Okay.

24 Q Thank you. I'm going to start with State's Exhibit
25 No. 18. What are with he looking at?

1 A This is directly in front of the residence. The
2 photographer is standing in the middle of the street basically
3 are on the opposite of the street and photographing towards
4 the west.

5 Q And moving closer then with State's Exhibit 20.
6 What are we looking at?

7 A This is the same side -- the same direction, they've
8 just moved closer to the residence and are just focusing more
9 on the entryway door.

10 Q And the entryway door, this may seem obvious, but
11 was there an individual that was lying in that doorway?

12 A There was.

13 Q And was that individual eventually identified?

14 A I believe, he was, yes.

15 Q So let me move in a little bit closer. I'm actually
16 going to turn to the side here on State's Exhibit No. 24.
17 What are we looking at?

18 A So now they are standing on the driveway. They're
19 looking north and that's the porch area right in front of the
20 front door.

21 Q And moving in closer now, State's Exhibit No. 25.
22 What are we looking at?

23 A This is looking down at the porch/stoop area in the
24 front entryway door, and that is where we found the dead body.

25 Q And I'm going to put 27 up just for reference for

1 the ladies and gentlemen of the jury. That's just the backed
2 out photograph of the sort of door frame; is that correct?

3 A Correct. They've just reoriented their camera and
4 kind of changed positions a little bit, but they're still
5 looking at the stoop area. They're just more looking inward
6 towards the door and then inside the house a little bit more.

7 Q And then as we focus in closer, did there appear to
8 be damage to the entranceway of the residence?

9 A There did.

10 THE COURT: And which number is this, just for the
11 record.

12 MR. DiGIACOMO: 28. I apologize. It's Exhibit 28.

13 BY MR. DiGIACOMO:

14 Q And could you just show that the ladies and
15 gentlemen of the jury?

16 A The damage is right here. You can see the back half
17 of the -- there should be wood back here to stop the dead
18 bolt, but that -- that is no longer there.

19 Q And is there a piece of evidence on the floor sort
20 of in the pool of blood associated with the victim in this
21 case that is consistent with what that piece of wood should
22 have been?

23 A There is. There is some of the molding and the door
24 frame on the floor just inside the door.

25 Q So now I'm going to walk my way into the crime scene

1 a little bit. State's Exhibit No. 32. Just quickly for the
2 record, if you could tell us what it is we're looking at.

3 A This is -- they're standing on the walkway leading
4 up to the porch area and it's just a view looking down at the
5 front porch.

6 Q And if we were to go down here by the feet of the
7 victim in this case, what are with he looking at?

8 A That is a cartridge case.

9 Q Okay. And so then in order to look at that and then
10 pull up State's Exhibit No. 15 again -- oops. Read that
11 wrong. It's 13. If we were to pull up sort of the leg of the
12 victim, that number 8 would represent, generally, the
13 cartridge case?

14 A Correct.

15 Q So moving inside the residence, State's Exhibit 33.
16 What are we looking at?

17 A This is the entryway of the residence standing just
18 outside the front door looking inside off to the right as what
19 we were calling the weight room, there were weight benches and
20 stuff inside there. And then a tile floor leading back to the
21 back of the photograph into the kitchen and dining room.

22 Q And State's Exhibit No. 34 is the opposite angle of
23 that?

24 A Correct. They basically walked inside. They're at
25 the opposite end of the hall -- the entryway. They've turned

1 around and they're now photographing back in towards the front
2 door.

3 Q Okay at some point, does the coroner arrive or does
4 somebody arrive, I guess, and locate an identification for the
5 individual in the -- that's in that doorway?

6 A They did.

7 Q And can you read that identification for the record?

8 A Monty Charles Gibson.

9 THE COURT: And what exhibit was that?

10 MR. DiGIACOMO: And that's State's Exhibit 37.

11 BY MR. DiGIACOMO:

12 Q So now I'm just going to sort of walk you around the
13 downstairs and start with State's Exhibit No. 38. What are we
14 looking at?

15 A So they are now standing in that weight room area
16 that I was describing. They're on the north side of the
17 entryway and they're looking back towards the east, southeast
18 towards the front door. You can see the tiled entryway along
19 the right-hand side of the photograph.

20 Q And so now I'm just going to slowly turn us around
21 here and State's Exhibit 40, we've just sort of panned right
22 from the last photograph?

23 A Yes. They've repositioned towards -- this -- this
24 right here would be the front door on the other side of that
25 wall and so they're looking now towards the -- the southwest.

1 Q And 41. What are we looking at?

2 A Now they're standing in the weight room area, but
3 they're standing just to the right of the front door. The
4 front door would be down over here a little bit. And they're,
5 again, looking back into the house further with the dining
6 room, and the living room, and the kitchen in the back.

7 Q And this railing up here represents what?

8 A Be that is the stairway to the second floor.

9 Q And then back behind this wall, what would we expect
10 to find?

11 A That is where the kitchen and the dining room were.

12 Q And if you were to come back this hallway and go to
13 the left, what would you find?

14 A That is where the living room was.

15 Q And now I'm going to go to State's Exhibit No. 45.
16 What are we looking at here?

17 A In this photograph, they are taking picture --
18 they're standing in the carpeted living room. You can see
19 that delineation there on the floor. So they're in the living
20 room and they're looking north towards the dining room area
21 and the kitchen.

22 Q And then if you were to flip around, State's Exhibit
23 No. 49. Oops, I guess, that's probably farther in, but which
24 direction are we looking now?

25 A Now we're standing in the kitchen and we're looking

1 south towards the living room area in the background there.

2 Q Now, on the counter on this kitchen, you can see it
3 slightly in this photograph, but in State's Exhibit No. 53,
4 does it look to be some uneaten food sitting there?

5 A Yes, there was some food and some drink on the -- on
6 the countertop island there.

7 Q And then way back in this region in the back, if I
8 were to pull State's Exhibit No. 54, what is over in that back
9 area on the kitchen counter?

10 A On the left-hand side of this photograph here is a
11 Taurus revolver.

12 Q Now I'm going to sort of quickly go through the
13 upstairs. So let's start first with 56. This might have been
14 self-explanatory for the other photographs, but how do you get
15 upstairs in this house?

16 A The stairway is right on the south side of the
17 entryway -- on the south side of the weight room area on the
18 south side of the entryway walkway tiled area.

19 Q And so when you get to the top of the stairs, what's
20 to your right?

21 A At the top of the stairs to the right is what we
22 were calling the master bedroom.

23 Q So then I'm going to put up State's Exhibit 59.
24 What is it that we're look at here?

25 A This is a view of the master bedroom with the -- the

1 bed and a desk.

2 Q And then if we were to turn and 61 -- well, let me
3 back up for just a second here. You said the desk is -- what
4 I just circled there is sort of a desk area off to the side of
5 the master beds?

6 A That's correct.

7 Q And then there's a closed foot locker at the base of
8 the bed?

9 A Correct.

10 Q 61. Are we still within the master?

11 A We are. We've moved to the side of the bed. We're
12 looking towards the back. There's an attached bathroom and
13 closet area.

14 Q So while we're still in the master bedroom, I want
15 to focus in on that desk we showed you before, State's Exhibit
16 No. 66. Did you take some close-ups of the items that were
17 contained on this desk?

18 A Yes, there were some closer photographs, yes.

19 Q And let's start with 67. What is that item on the
20 left side of the desk?

21 A It's like a vacuum type food sealer machine.

22 Q And 68. What is it you're attempting to document in
23 that photograph?

24 A Here, we found a residue of a green leafy substance.
25

1 Q Now, did you do any actual testing on that green
2 leafy substance?

3 A We did not.

4 Q Did it appear to be consistent with anything you've
5 seen before in your career?

6 A Yes.

7 Q And what did it appear to be consistent with?

8 A It was consistent with marijuana.

9 Q Other than on this desk, was there some on the floor
10 as well?

11 A There was.

12 Q Let's go to that foot locker, State's Exhibit 69.
13 What's contained within that foot locker?

14 A Inside is some ammunition and, I believe, a gun
15 case.

16 Q And I'll just quickly through the rest of this. If
17 you come out of the master bedroom, State's Exhibit No. 72,
18 you're now on just -- well, what are we looking at?

19 A Here you're standing in the doorway to the master
20 bedroom looking to the northwest-ish, and directly across from
21 the -- this will be straight across the hallway from the
22 master bedroom doors is another bedroom door, and then you
23 have a closet, small closet here, a bathroom here and then
24 another bedroom all the way on the lefthand side.

25 Q So item 74, the one directly across the way, is that

1 the bedroom we're talking about?

2 A Correct.

3 Q And did there appear to be anything of evidentiary
4 value within that room?

5 A No.

6 Q I'll put up the hallway for -- so they can -- so now
7 if you're at the top of the stairs, where is the master
8 bedroom if I'm the cameraman right now?

9 A Here, the master bedroom would be on the left-hand
10 side of the photograph and the bedroom that we just looked at
11 would be on the right-hand side.

12 Q And you said there's a bathroom and then there is
13 two more bedrooms?

14 A Correct.

15 Q So, State's Exhibit No. 78, is -- which bedroom is
16 this? Is this the first one or the last one?

17 A This will be the -- the -- the northwest bedroom,
18 the one that you could see in that previous photo, the
19 doorway.

20 Q And then 79.

21 A And this is the west bedroom, which is next to the
22 -- the northwest bedroom, the south side of that picture.

23 MR. DiGIACOMO: May we approach, Judge?

24 THE COURT: Yes.

25 (Off-record bench conference)

1 THE COURT: Ladies and gentlemen, we're going to
2 take our afternoon break, 15 minutes, until 3:30, around the
3 witness will also be able to take a break. And -- but he'll
4 come back to the stand to continue. He's not done yet.

5 So ladies and gentlemen, during this recess, it is
6 your duty not to converse among yourselves or with anyone else
7 on any subject connected with the trial or read, watch or
8 listen to any report of or commentary on the trial by any
9 person connected with the trial or by any medium of
10 information, including without limitation, newspaper,
11 television, radio or Internet. You are not to form or express
12 an opinion on any subject connected with this case until it's
13 finally submitted to you. We'll be in recess until 3:30.

14 THE MARSHAL: All rise for the jury, please.

15 (Jury recessed at 3:12 p.m.)

16 THE COURT: All right, the record will reflect the
17 jury has departed the courtroom. And any matters outside the
18 presence?

19 MR. DiGIACOMO: Not from the State.

20 MR. LANDIS: No, ma'am.

21 MS. McNEILL: No, Your Honor.

22 MR. WOLFBRANDT: No.

23 THE COURT: We'll be in recess until 3:30.

24 (Court recessed at 3:13 p.m. until 3:34 p.m.)

25 (In the presence of the jury)

1 THE MARSHAL: Your Honor, all jurors and alternates
2 are present.

3 THE COURT: Thank you. Please be seated. And the
4 record will reflect that we are in the presence of all 12
5 members of the jury as well as the 4 alternates. All three
6 defendants are present with their respective counsel. The
7 Chief Deputies District Attorney prosecuting the case are
8 present, as are all officers of the court.

9 And Mr. DiGiacomo, you may resume your direct.

10 MR. DiGIACOMO: Thank you. And for the record,
11 right now on the top half of the screen is State's Exhibit No.
12 13, and I'm going to --

13 BY MR. DiGIACOMO:

14 Q Now, during the course of your processing of the
15 scene, did you notice what appeared to be defects in the -- in
16 various locations associated with what appeared to be gunfire?

17 A We did.

18 Q Okay. And did you document that in some manner?

19 A We did.

20 Q I'm going to show you State's Proposed Exhibits 80
21 through 140. I'm not going to ask you to look at every one of
22 them, but if you'd just briefly flip through them. Having
23 previously shown counsel, I think they'll agree those were, in
24 fact, the photographs showing the various defects concerning
25 the various gunshots.

1 THE WITNESS: Correct.

2 MR. DiGIACOMO: Okay. I'd move to admit 80 to 140.

3 MR. LANDIS: No objection.

4 THE CLERK: What? sorry.

5 THE COURT: 80 through 140.

6 MR. DiGIACOMO: 80 through 140.

7 MR. WOLFBRANDT: No objection.

8 MS. McNEILL: No objection.

9 THE COURT: They'll be admitted, 80 through 140.

10 (State's Exhibits 80 through 140 are admitted)

11 BY MR. DiGIACOMO:

12 Q So in order to -- so we don't have to go through
13 whatever that is, 60 some odd photographs --

14 A Um-h'm.

15 Q -- I'm going to put up maybe we just start with A
16 since it's simple, so you can sort of describe how this works
17 and then the jury can sort of figure it out and then maybe
18 we'll just go through each one of the trajectories you were
19 able to find.

20 A Okay.

21 Q So let's start with State's Exhibit 80, which is
22 going to look very similar to something that was put up
23 before. And of course, I made the mistake of not putting that
24 one on the -- so let me just put this one on the bottom and
25 we'll leave it there so that the jury can see it. So on the

1 bottom is State's Exhibit No. 13 and on the top is State's
2 Exhibit No. 80. And if I were to zoom in on something --
3 well, let me ask you this, are the cones at all associated
4 with firearms?

5 A No, those are marking some areas of blood.

6 Q So when they go through the crime scene diagram --
7 or the crime scene photographs, what are these little pink
8 things that we're going to see throughout the crime scene?

9 A When we're documenting bullet holes, we typically
10 will use these little colored stickers and on the stickers are
11 an arrow and a scale so that when you're looking at the
12 photograph, you can have a reference to how big the hole
13 actually is. And then we'll mark on the sticker itself
14 giving it a unique letter and number to denote what series we
15 believe the bullet holes are all a part of.

16 Q So if I were to put up State's 82, what is it that
17 we're looking at?

18 A Here, we're looking at the east side of the little
19 pillar that's on the south end of the -- of the porch area, so
20 right here, sort of. Right in there. We found a bullet hole
21 there. And I described, you have the arrow sticker with the
22 scale and the unique letter and number of A1 denoting the
23 series.

24 MR. DiGIACOMO: Because these screens are not very
25 accurate when you put your fingers on it, can I ask witness to

1 step up and use the large screen?

2 THE COURT: Sure, but we'll give him a handheld
3 microphone so we'll be able to pick him up.

4 MR. LANDIS: Can I reposition to see what he's --

5 THE COURT: Of course.

6 (Pause in the proceedings)

7 BY MR. DiGIACOMO:

8 Q So if you're looking at 13 on the bottom here and
9 you want to show the jury sort of the direction that the
10 bullet traveled and what it struck in A1, could you just kind
11 of show that to them?

12 A So on A1, it struck right down here on the front
13 side of this pillar, this black -- this black block here is a
14 pillar that supports the roof over the -- over the porch area.
15 It struck that pillar, but because we only had one hole there,
16 you can't draw a straight line through just one point of
17 reference. You have to have two points of reference to be
18 able to get a line.

19 So we couldn't really put a trajectory rod in there
20 to get a reference from what angle it came at, but it
21 obviously had to come somewhere from the east side of this
22 pillar because there was no hole on the backside of the
23 pillar.

24 Q So generally, it came from the front yard, street,
25 that direction? It couldn't have come from inside the house

1 out?

2 A Correct.

3 Q Okay. Now, A1, did you -- or did you make a
4 decision as to whether or not you were going to tear that
5 pillar apart to find that particular bullet?

6 A We chose not to. It would have caused significant
7 damage to the house to destroy that pillar to find the bullet
8 because we didn't know if it was right behind there or did it
9 fall down to the bottom, in which case we would have been
10 knocking off all the stucco and ripping it apart.

11 Q And did you recover a number of other pieces of
12 firearms related evidence from inside the house?

13 A We did.

14 Q And in your experience, is the representative sample
15 of evidence sufficient for to you draw certain conclusions
16 later on?

17 A Correct. It's sort of a balance between how much
18 damage are you going to do to the property versus the
19 evidentiary value of that one specific item.

20 Q And ultimately, at the end of the day, if there were
21 some really significant evidentiary value that later came up,
22 it's locked within that cement thing that you could go back
23 later and grab it?

24 A Correct. Any repairs, most likely, this would just
25 patch the hole. They wouldn't actually try to recover the

1 bullet out of it.

2 Q So let's move inside Exhibit No. 83. Maybe this is
3 a little small and maybe for some of these we don't have to
4 worry about the bottom, so let's just make it a little bit
5 bigger, and show us, do you see essentially, what you guys
6 marked off as B?

7 A B, I believe, is this one right here. You can see
8 the sticker and you can actually see some little bit of --

9 Q The bottom one that I'm do here with? This one?

10 A Correct.

11 Q Okay. And the path of that bullet, did you guys try
12 and determine what that path was?

13 A We did. We eventually ended up pulling the carpet
14 up and tried to look for the bullet, and you could actually
15 see the path it took underneath the carpet.

16 Q So then we stick up State's Exhibit No. 86. What
17 are with he looking at there?

18 A Here you're looking -- the carpet has been pulled
19 back. The padding is still down, and then you can actually
20 see where there's some damage to the -- to the padding here
21 and you can see some more stickers down there in the back.

22 Q And then if we were to go to -- you actually found
23 the bullet underneath that carpet?

24 A We did. We found the bullet. It was between -- it
25 was on top of the padding but underneath the carpet, and it

1 was that little sticker that you saw in the background of that
2 previous photograph.

3 Q And thus, that --

4 THE COURT: And for the record --

5 BY MS. LEXIS:

6 Q -- bullet also came --

7 THE COURT: For the record, which photo is this
8 because you didn't say.

9 MR. DiGIACOMO: Did I not say it was --

10 THE COURT: The close-up.

11 MS. LEXIS: 87.

12 MR. DiGIACOMO: 87.

13 THE COURT: 87, thank you.

14 BY MR. DiGIACOMO:

15 Q On 87, the bullet, B3, as I'll call it, was that
16 also apparently from the front of the house towards the back
17 of the house?

18 A Correct.

19 Q So now, C, and I will put up 88, is this similar to
20 the trajectory pattern for B?

21 A It is. It's along the same angle. It appeared to
22 be coming from the front entry doorway in towards the back of
23 the house. And you can see there's a couple areas of defect
24 involved in this specific letter.

25 Q Now, when you first marked that item as C, did you

1 intend to keep that path C and travel as far as you could
2 until you either found the bullet or couldn't go any farther?

3 A We did.

4 Q And initially, what was your belief as it related to
5 that bullet pattern?

6 A Initially, we felt that the bullet was most likely
7 going to be under the carpet as well, but that turned out to
8 not be the case.

9 Q And thus, had you already marked where you believed
10 to be this bullet ricocheting too within the seam?

11 A We had. We had already marked all of the other
12 bullet holes and what we determined happened was the bullet
13 actually ricocheted off the floor, underneath the carpet, came
14 out and struck another hole on the west wall of the weight
15 room area, and we had already marked that and photographed it
16 as E1, so we chose rather than redoing all the photographs, we
17 just chose to note that.

18 Q So if I were to follow C along, and now jump it into
19 E, when you're talking about the wall, that pink sticker right
20 there, is that the E1 sticker that we're talking about?

21 A It is. And then basically, all the weight room area
22 would be back basically, where you're all sitting right now.

23 THE COURT: And which photo is that?

24 MR. DiGIACOMO: And that is 90.

25 BY MR. DiGIACOMO:

1 Q And so if I were going to follow E, and then I'd
2 stick up State's Exhibit No. 96, where are we now?

3 A So now we're in the kitchen, but on that wall that
4 had the E1 on the backside -- on the kitchen side was a pantry
5 area. So what you're looking at is your standing in the
6 kitchen, the kitchen area is basically back behind where I'm
7 at, and this is the wall in common with that weight room area.
8 And the bullet has come all the way through and it's come in
9 through the pantry area.

10 Q And then State's Exhibit 98, if we keep following
11 that bullet, what happens to it?

12 A So if you remember on the diagram there was that
13 kitchen island in the center of the kitchen. That was right
14 next to the pantry. So the bullet traveled across the kitchen
15 through the pantry and then actually struck the island and it
16 went through the door. There's actually another sticker on
17 the other side of this door, but it goes all the way through
18 the door and then it goes into this NuWave hot plate.

19 Q And eventually, we get to State's Exhibit No. 101.
20 Was that recovered?

21 A It was. This is actually the inside of that hot
22 plate. Once it's out of the bag, the -- the glass cover of it
23 was shattered. We picked the piece out, dumped it out, and we
24 found this bullet inside among all the -- all the innards of
25 it.

1 Q And the trajectory of C and E, is that consistent
2 with the same as A and B being front of the house, the back of
3 the house?

4 A Correct.

5 Q So let's move on to F, and that's State's Exhibit
6 No. 95. Is F contained on -- or sorry, let me jump back. Let
7 me jump back to D since I'm going in alphabetical order here
8 and do 91. So where does D strike?

9 A So D again, strikes down in the carpet, like B and C
10 did. And you can see where the E is up there at the top.

11 Q And then 94, do you recover a firearms related
12 evidence associated with D?

13 A We did. Again, we pulled the carpet and we're
14 looking. We didn't find it, so we pulled up the padding and
15 underneath the padding, this is the little tack strip that
16 your carpet gets tacked down to, and this is that wall right
17 below where the E hole was, the E1, and we found a bullet on
18 the -- on the -- on the base floor.

19 Q Once again, maybe obvious, consistent with front of
20 the house to back of the house?

21 A Correct.

22 Q That would be the fourth shot front to back?

23 A Correct.

24 Q Now I'm going to jump to F, and I think since the
25 jury has seen one overall of that, let's just jump to 102.

1 What are we looking at?

2 A This is that west wall of the weight room area. So
3 the -- the E1 marker is over in this area, and then this is an
4 F1 marker. It's on the -- to the north of the E1 marker.

5 Q And if you go to 103.

6 A So again, this is the pantry. We're looking --
7 we're in the kitchen. We're looking at that wall in common
8 with the weight room, and down here you can see the E2 hole
9 where the bullet came through from the E series. And then up
10 at the top here, you can see where the F2 is on the opposite
11 side of that wall.

12 Q State's Exhibit 105, it's mashed as F3, why is that?

13 A This is the island countertop inside the kitchen. I
14 don't know if you noticed it on the photograph where we were
15 showing the NuWave, but this is that cabinet door right down
16 here where the E bullet went through the door and hit the
17 NuWave. So right above that, this is that -- that northeast
18 corner of that island. The bullet struck here and basically
19 bounced off after damaging that countertop.

20 Q And 106, was the F bullet recovered?

21 A Correct. And this is on the floor right at the --
22 by the northeast corner of that island countertop.

23 Q And I'm not going to go through all of these, but
24 where you could, did you put trajectory rods in so you could
25 sort of see the trajectory of the bullets?

1 A We did.

2 Q And for 107, State's Exhibit 107, is there a
3 trajectory rods there for both the E and the F holes that were
4 in that west wall?

5 A There are.

6 Q So let's move on to G, State's Exhibit No. 108.
7 What are we looking at?

8 A So you're standing in that entryway hallway area.
9 Off to the right is that carpeted weight room area. You have
10 the stairway over here on the left, and then you have what
11 normally would be a wall, but they've obviously, opened it up
12 so you can get into the dining room, the kitchen area. And on
13 this little drop down area from the ceiling, we found a bullet
14 hole.

15 Q And that's marked by G1?

16 A Correct.

17 Q And on the backside of that, if I were to put up
18 State's Exhibit No. 110, what are we looking at?

19 A Now, we're standing in the dining room area and
20 we're looking back towards the front door. The -- you can
21 actually see a little bit of the -- the hole -- or the -- the
22 sticker from the G1. It's hanging down here. And the bullet
23 came all the way through that little support beam or drop down
24 wall and came out through the other side into the dining room
25 area.

1 Q And 113. What do we got?

2 A So here we're standing back a little bit. We're in
3 the dining room area. We're facing the west. This is that
4 sliding glass door that was in the dining room area. And this
5 is where the bullet that went through that beam above the
6 doorway, it came through and struck the ceiling and went into
7 the ceiling of the dining room area.

8 Q And eventually, in 115, were you able to dig that
9 item out?

10 A We were.

11 Q And like all the ones we've talked about previously,
12 is this from front of the house to back of the house?

13 A Correct.

14 Q And H, I'll start with 112. And I may have to zoom
15 in, about you just as sort of to orient us first, and then
16 I'll zoom in sort of to this area here. What are we looking
17 at?

18 A This is that back wall of the dining room area
19 between the -- between the kitchen and the sliding glass door.
20 You could see the -- the -- the G series hole in the ceiling.
21 You could see the kitchen to the -- to the right-hand side and
22 just in that back wall we found another bullet hole in that
23 west dining room wall.

24 Q Now, did you make some efforts to see if you could
25 recover that bullet?

1 A We did. We initially knocked out a part of this
2 wall up here to find if -- if it had gone in and fallen or if
3 it was still in there maybe in the insulation or like that.
4 We didn't see it up in the top, so then we went down to the
5 baseboards. We knocked more of the wall down at the bottom
6 and we couldn't find it there either.

7 Q And so at least when you left after processing the
8 scene, H had yet to be recovered?

9 A Correct.

10 Q Once again, though, there's no hole in the exterior
11 wall of the home, so this firearm -- or this shot must have
12 occurred from front of the house to back?

13 A Correct. And in the backyard we did look at the
14 exterior of the wall. There was no hole. So the bullet
15 didn't pass through and it didn't come through from the west
16 side.

17 Q I, State's Exhibit No. 118. Maybe if I turn this
18 slightly. Well, no, I guess that's oriented correctly.

19 A Yeah, that's fine.

20 Q Can you tell what we're looking at?

21 A So now we're standing, basically, with the doorway
22 will be behind where I'm at, and you're looking down. Down in
23 here would be the dining room. The kitchen is off to here.
24 The weight room is off to where you're -- you're sitting. And
25 we found a bullet in the -- or a bullet hole in the ceiling

1 right above the -- the entry walkway, that tiled entry
2 walkway.

3 Q And then following it up, 121. Did you find an exit
4 wound on the carpet below?

5 A Correct. We're now up on the second floor in the
6 hallway on the second floor. The bullet actually went all the
7 way through the floor and actually came out right here. You
8 can see a little bit of the carpet fiber defects.

9 Q Following that trajectory 122, do you follow where
10 it goes?

11 A So we're still standing in that hallway. We're
12 facing west. So the master bedroom would be over here off to
13 our left. And down here would be the doorway to the west
14 bedroom, and you can see up here where we've marked the
15 bullets continued going at an upward angle through the floor
16 and then went into the bedroom door.

17 Q For orientation purposes, 124. And it's hard to
18 see. Could you see it on that photograph or do you know the
19 trajectory of that bullet from the door that's in the hallway
20 to the --

21 A Yeah.

22 Q -- rest of the room?

23 A Yeah, I can see it. Now we're inside that west
24 bedroom and we're looking north. So on the left-hand side you
25 have a little closet area and you have that doorway to the

1 hallway that we just showed with the bullet hole in it. And
2 right up in here, you can see where the bullet actually came
3 through the door and we have that marked with a little pink
4 arrow, and it traveled across -- up and across this little
5 entryway and went into the -- the closet wall.

6 Q Did you make efforts to recover the "I" bullet as
7 well?

8 A I believe, we did.

9 Q Now -- oh, I guess I should ask for the record, I,
10 once again, it's front to back of the house, but at a steeper
11 angle, I guess?

12 A Correct. It was at a -- it was at an upward angle,
13 which is why it went through the floor, and then continued
14 upward, and hit the top of the door and then went into the
15 closet.

16 Q So now I want to go from back of the house to front.
17 And I'm going to start with J, which is 127. Can you see J on
18 there? Do you want me to put up a close-up of it?

19 A No, I see it. So J, we're standing, basically,
20 here's what little archway between the entryway and the dining
21 room, which is where we would all be right now. And this is
22 the stairway leading up, and you can see the hole right here
23 next to those steps.

24 Q And so, 128. That is a close-up of that particular
25 hole, correct?

1 A Correct.

2 Q And was there a trajectory rod placed to see if it
3 was sort of from back of the house to front of the house in
4 State's Exhibit No. 129?

5 A Correct. This is where we placed a couple more
6 trajectory rods, yes.

7 Q And so that gunshot appears to have occurred from
8 sort of somewhere in the area of the kitchen towards the front
9 of the house or maybe a little bit to the side because it
10 wound up in the side of that stairs?

11 A Correct. It would be -- it would have come
12 somewhere from the -- most likely the -- the west end of the
13 -- of the residence.

14 Q So let me jump to K, which is 131. What are we
15 looking at here?

16 A So here we're standing in the entryway. You have
17 the front door right here. And this is actually a little
18 closet that goes underneath the stairway, and you can see
19 right here we found a bullet hole and it's just to the -- to
20 the right side or the west side of that closet door.

21 Q And 132 is a close-up of an effort to try and
22 recover that bullet. Were you ever able to -- or did you
23 decide to recover that bullet?

24 A Once we saw that it went into the door frame and the
25 stud, we decided that it could cause too many damage to -- to

1 cut into that to recover that bullet.

2 Q Based upon the entrance at K1 and the striking of
3 that stud, though, were you able to make a determination if
4 that's, once again, from back of the house to front of the
5 house?

6 A Correct.

7 Q State's Exhibit No. 135, what are we looking at?

8 A So now we're standing in that entryway, that tiled
9 entryway. You have the carpeted weight room over here to the
10 left and you have the stairway over to right. You have the
11 front door right there. So right to the left-hand or the
12 north side of the doorway we found a bullet hole and we
13 labeled that L1.

14 Q 136, was there an exit wound or an -- I guess, exit
15 wound -- but an exit point for that shot?

16 A Correct. So this is we're on the opposite side of
17 that wall that we just looked at and we're standing on the --
18 the little porch area and can see where it has come out
19 through the -- the wall and disrupted all this stucco around
20 that area.

21 Q And if you were to follow the path of that
22 particular bullet, did it appear to be consistent with 138, M,
23 on the wall across the street?

24 A Correct. Across the street from the residence there
25 were more houses, and their -- their backyards had walls, the

1 cinder block walls all the way around. So this is, we're
2 looking straight out from the residence basically from the
3 front of the residence across the street and we found two
4 bullet strikes up here in the wall.

5 Q And the one that's on that column, M, the one
6 that's, I guess, lower on that wall, did you draw any
7 conclusions about L2 and M?

8 A After sticking a trajectory rod through the L1 and
9 be L2 hole on the side of the doorway there, we saw that it
10 pointed fairly consistently with -- with this impact over in
11 M1, so we were fairly certain that M1 was actually a
12 continuation of the L series.

13 Q And then 140. That's N?

14 A Correct.

15 Q Which appeared to be consistent with a bullet
16 strike?

17 A Correct. And that was the one that was higher up on
18 the wall to the right of the M series that we just looked at.

19 Q Now, we talked briefly about sort of there's
20 physical evidence there at the scene. Do you mark the
21 photographs of the physical evidence with any sort of
22 identifying feature after now you've done overalls and now
23 you've shot trajectories, do you then start marking or maybe
24 in between start marking pieces of evidence?

25 A Correct. We have little tent markers. They have

1 numbers on them so that they correspond with whatever we're
2 going to number the items of evidence and they also have a
3 scale to -- so that when we take pictures, we have a reference
4 to -- to how big they -- the items that we're looking at
5 actually are.

6 Q And these items should be consistent with the crime
7 scene diagram, these placards that we're looking at?

8 A Correct.

9 Q I'm going to show you -- State's Proposed Exhibit
10 141 through 169 and ask you if this appears to be placards for
11 -- (inaudible) for you.

12 THE MARSHAL: Sir, we we need a mic on you.

13 MR. DiGIACOMO: I'm going to talk into this one.

14 THE COURT RECORDER: Oh, he's got that one.

15 THE MARSHAL: Thank you.

16 THE COURT RECORDER: He just took it.

17 THE COURT: Are we looking at 141 through 160?

18 MR. DiGIACOMO: 169, I believe.

19 THE COURT: Oh, 169.

20 THE CLERK: Oh, 141?

21 THE COURT: Yep. Thank you.

22 MR. DiGIACOMO: (Inaudible) back here.

23 BY MR. DiGIACOMO:

24 Q So now looking at 141 through 169, does that appear
25 to be true, fair and accurate pictures of basically the

1 locations of the yellow placards marking your evidence?

2 A It does.

3 MR. DiGIACOMO: Move to admit 141 to 169.

4 THE COURT: Any objection?

5 MR. LANDIS: No objection.

6 MR. WOLFBRANDT: No objection.

7 MS. McNEILL: No objection.

8 THE COURT: Those will be admitted.

9 (State's Exhibits 141 through 169 are admitted)

10 BY MR. DiGIACOMO:

11 Q So let's start with -- let's also orient it with
12 142. Do you see item placards 1, 2 and 3 in that photograph?

13 A I do.

14 Q And those two orange cones that are kind of the
15 larger cones, do you know what those are?

16 A Those are traffic cones. When the first responding
17 officers arrived, they found these cartridge cases in the
18 street, and part of their responsibility is just to preserve
19 the crime scene until others can arrive.

20 So in order to preserve these cartridge cases, make
21 sure no one ran over them, no one kicked them or anything like
22 that, they place these traffic cones on both sides to warn
23 people that there's something on the ground because they can
24 be small and not easily visible at times, especially at night.

25 Q Instead of putting up one of each one, but 1, 2 and

1 3 and I'm going to put up State's Exhibit 144, those are all 9
2 millimeter cartridge cases?

3 A They are.

4 Q So let's jump forward to 4, 5 -- just 4, 5 right
5 now. So, 145. So as you walk closer into the location, you
6 now have 4, 5 and I guess you could see 8 on this photograph
7 as well; is that correct?

8 A Correct. 7 is there as well, but because of the
9 position of it, it -- the marker couldn't fit where it needed
10 to be, so we just kind of placed it there. But you can see 7
11 is right there. So we have 4, 5, 7 and 8.

12 Q And 4, 5, 7 and 8 are all 9 millimeter cartridge
13 cases as well?

14 A They are.

15 Q And, 147, we can show where 6 is. Where is 6?

16 A 6 is on the inside of this little planter area,
17 which is why you couldn't see it in the previous photo. You
18 have these little decorative concrete things blocking the
19 view. But from this view you can see its orientation to 5, 7
20 and 8. And 5 is actually down in between these two blocks
21 here.

22 Q So before I get to 9, I'm going to jump to 10 for
23 just a second, and that's 152. It's Exhibit 152. 10 is
24 actually inside the residence?

25 A It is.

1 Q And 10 is what?

2 A 10 is also a 9 millimeter cartridge case.

3 Q So let me jump back to 9 on State's Exhibit 141. Do
4 you see where 9 is located in this photograph?

5 A I do. Number 9 is down here at the bottom
6 right-hand side of the screen. So we're basically on the
7 opposite of the street to 1661 Broadmere. We're looking
8 across the street. You can see the 1, 2 and 3 cartridge cases
9 over here. You have the front of the residence here. You
10 have the number 9 here, which is a bullet fragment, and then
11 like right behind us where the block wall would be is where
12 you would have the -- the bullet strikes that we marked as M1
13 and N1.

14 Q So there's a small bullet fragment there consistent
15 with the bullet strikes that you had right behind you?

16 A Correct.

17 Q Okay. So now let's jump to 11 and 12 and it's 154.
18 11 and 12 are within the residence and closer now to the
19 kitchen area?

20 A Correct. So we're standing in the entryway tiled
21 area again. And you have the -- the carpeted weight room area
22 over here to the right, the stairway's here to the left. Back
23 here you have the -- the dining room area and you have two .40
24 caliber cartridge cases marked by numbers 11 and 12 here on
25 the floor.

1 Q And, 157. We have items 13 and 14. What do we got?

2 A So now we're standing in the living room area.
3 That's where the carpeted area is. And we're looking into the
4 kitchen and the dining room area. Over here they're side way
5 to us now, but those are the previous two markers with the .40
6 caliber cartridge cases that we found. And we now have 13 and
7 14, which are also .40 caliber cartridge cases.

8 Q So, 11 through 14 are four .40 caliber cartridge
9 cases?

10 A Correct.

11 Q And the 9 millimeters, 1 through 8 and 10 there are
12 basically nine 9 millimeter cartridge cases located at the
13 scene that is the house?

14 A Correct.

15 Q And then number 15, and I'm going to put up for you
16 161, that is the .38 caliber revolver?

17 A Correct. This is, if you remember from earlier, on
18 the kitchen island next to call the food and drink, it was on
19 the north side of the island.

20 Q 162, did you check if the gun was loaded?

21 A We did.

22 Q And what did you find?

23 A We found that it was loaded with two cartridge
24 cases. You can see they've both been fired and then one
25 cartridge and it has two empty cylinders.

1 Q So it's a five shot revolver?

2 A Correct.

3 Q And then if I go to 163, are those the two cartridge
4 cases and the cartridge that was found within that weapon?

5 A Correct. This is where we've -- we've removed those
6 three items to just ensure that they actually were cartridge
7 cases and that they had actually been fired.

8 Q 164, item 16 is inside the residence next to sort of
9 the weight room?

10 A Correct. So the weight room over -- be over here on
11 the left. You have the stairway over on the right-hand side
12 and then 16 is on the floor right here on the tile floor and
13 it turned out to be a tooth.

14 Q 165, looks like a tooth within the residence?

15 A Correct. This is a closer view just to show the
16 size. You have the little scale here. These are centimeters.
17 And it's just a top down view of it.

18 Q I don't have a close-up of item number 17, but do
19 you recall what item number 17 is?

20 A I believe, that was the molding from the doorway.

21 Q Correct. That -- well, I guess I could show you 13
22 so I don't testify, but in State's Exhibit 13 if I were to
23 inform you that, sorry, item 17 is identified as broken
24 molding, is that that piece of wood that we saw lying over the
25 blood pool at the front door?

1 A Correct.

2 Q So now I'm going to go sort of outside and put up
3 166. Well, maybe I'll put up 167 instead, and we can do it
4 all with one photograph. Is there an item number 18 inside
5 this photograph?

6 A There is. It's right over here on the left-hand
7 side of the screen. It's a little hard to read these signs,
8 but this here is Broadmere going this direction and this
9 street here, I believe, is Long Cattle.

10 Q Okay. Did you collect a .40 caliber Glock firearm
11 somewhere within the neighborhood crime scene?

12 A We did.

13 Q And showing you State's Exhibit 170, what are we
14 looking at?

15 A This is a Dodge Challenger parked in front of the
16 residence, and you can -- you can see the entryway door here.
17 The garage door's been opened, and you can see some of those
18 smaller orange cones that -- that were visible in some of the
19 previous photos.

20 Q And 171.

21 THE COURT: Okay, wait a minute. I don't think
22 we've -- we had admitted --

23 MR. DiGIACOMO: Oh, did I not offer this?

24 THE COURT: -- beyond 169.

25 MR. DiGIACOMO: I'd better do those three then.

1 BY MR. DiGIACOMO:

2 Q Sir, I'm going to show you 170, 171 and 172 and ask
3 you if those appear to be photographs taken of a Glock .40 in
4 a vehicle that was associated with the scene.

5 A They are.

6 THE COURT: All right.

7 MR. DiGIACOMO: Move to admit 170 to 172.

8 MR. LANDIS: No objection.

9 MR. WOLFBRANDT: No objection.

10 MS. McNEILL: No objection.

11 THE COURT: All right. But we couldn't hear what
12 those were when you said that because the microphone was away.

13 THE WITNESS: My apologies.

14 THE COURT: That's all right.

15 (State's Exhibits 170, 171, and 172 are admitted)

16 BY MR. DiGIACOMO:

17 Q So why don't I go back to 170 just for the record.
18 Is that a Dodge Charger that was located at the scene?

19 A Correct. We're at the front of the residence. You
20 can see the front entryway with some of the smaller orange
21 cones that were mark the blood trail in the driveway.

22 Q Then throwing up 171, that's in the trunk of that
23 vehicle. Did you recover a .40 caliber Glock firearm?

24 A I did.

25 Q Now, some but not all of these have been previously

1 admitted.

2 MR. DiGIACOMO: I have to get to your microphone
3 before I talk.

4 THE COURT RECORDER: It doesn't pick both of you up

5 MR. DiGIACOMO: I'm going to do one at a time.

6 THE COURT RECORDER: Okay, thank you.

7 BY MR. DiGIACOMO:

8 Q I'm going to show you what's been marked as -- well,
9 I think were admitted for some of these. How about marked as
10 180 through 198, with the exception of anything else that's
11 been admitted previously, which I think there's three of them.
12 But go ahead and flip through those. And now I'm going to
13 show you what's previously been admitted as 173 through 179
14 just so you can briefly look at those.

15 I'm going to stand here by this mic so that you can
16 hold that mic and ask you; does this appear to be photographs
17 taken of a secondary scene down on Long Cattle that involved a
18 rifle as well as some bloody items?

19 A Correct.

20 Q As they've already seen these, they haven't seen the
21 diagram, though, so let me put up first Exhibit No. 12 and ask
22 you -- after I flip it over -- to just, for the ladies and
23 gentlemen of the jury so they understand what we're looking at
24 when they're looking at State's Exhibit 12.

25 A This is a enlarged version of that larger

1 residential map. If you remember there were the two circled
2 areas. This is that second circled area that was south and to
3 the east of the original scene. This is Long Cattle Avenue
4 right here along the top and then we have two residences,
5 10013 and 10019, which is on the east side. And there were
6 also two vehicles involved, a Honda Accord parked in the
7 driveway and a Ford F150 in the street.

8 MR. DiGIACOMO: And Judge, I'm going to offer the
9 remaining unadmitted exhibits from 180 to 198, which I believe
10 there's one or two within there that have been previously
11 admitted, but I'd offer them all.

12 MR. LANDIS: No objection.

13 MR. WOLFBRANDT: No objection.

14 MS. McNEILL: No objection.

15 THE COURT: Those will be admitted.

16 (State's Exhibits 180 through 198 are admitted)

17 BY MR. DiGIACOMO:

18 Q I'm not going to go back and show the jury the
19 pictures of the items within the truck, but just so that we
20 know what we're talking about here, 179, those are the gloves?

21 A Yes, there were a pair of gloves in the truck bed
22 that -- that we found back there.

23 Q And then item 19, it doesn't have a placard, but it
24 may be self-explanatory. I'm going to put up 181. I guess we
25 could rotate it if we had to here.

1 A This is a Hi-Point rifle that we found in the truck
2 bed as well along with the gloves, and it's a 9 millimeter.

3 Q And the work shirt that's item 21 found on the
4 ground, State's Exhibit 184, did you lay it out and photograph
5 it?

6 A Correct. This we found on the ground, on the street
7 right at the back of the truck by the truck bed door.

8 Q And if I were to zoom in on it, it looks like it's
9 an electrician's work shirt?

10 A Correct. That appeared to be some form of a uniform
11 type shirt.

12 Q On the ground near the black vehicle, State's
13 Exhibit 187, were there some bloody clothes?

14 A Correct. The vehicle that was parked in the
15 driveway just at the end of the driveway there was a pair of
16 pants here, which is marked as item 22 as well as a pair of
17 shoes.

18 Q And did you document whether or not there was any
19 defect in the pants consistent with the bullet hole?

20 A We did.

21 Q And is that indicated on this photograph?

22 A Correct. Again, we used the little sticker with the
23 arrow on it and a little scale here. And if you look kind of
24 closely this little really dark area, you can see that's
25 actually a hole in the fabric.

1 Q And I want to jump inside that black vehicle that's
2 in the driveway, 192. Within the vehicle first, when you guys
3 arrived is that seat leaned down like that when you were
4 processing the scene?

5 A Yes, this is how we found the car. It's -- the door
6 was open, the seat was laid back like that, and you can see
7 some of the -- the blood on the door handle.

8 Q And did there appear to be a significant amount of
9 blood within that vehicle, and I'll put up 193 as sort of a
10 representation of it. This area here, what are you attempting
11 to document?

12 A This we believed to be blood kind of wiped off a
13 little bit onto the fabric. They're fabric seats, they're not
14 leather, so they kind of absorb.

15 Q And then 194, what is that item there?

16 A That item there is actually a sock, and it's red
17 because it's got a bunch of -- it soaked up a lot of blood.

18 Q On the floor of this vehicle down here, do you
19 collect that item and lay it out in State's Exhibit No. 198?

20 A I do. That's a ski mask. That was that orange ski
21 mask which was on the floor board of the vehicle, and we found
22 it, and it -- it was like this. We found it inside out.

23 Q My final area of pictures for this afternoon is
24 State's Proposed Exhibits 199 to 216. Did you document with
25 both photography and swabbing the blood trail all the way from

1 Broadmere all the way to the end of Shifting Winds when the
2 blood trail ran out on our diagram?

3 A We did.

4 Q And showing you 199 to 216, is that a true, fair and
5 accurate depiction of the blood trail?

6 A Yes, it is.

7 MR. DiGIACOMO: I'd move to admit 199 to 216.

8 MR. LANDIS: No objection.

9 MR. WOLFBRANDT: No objection.

10 MS. McNEILL: No objection.

11 THE COURT: Those will be admitted as well.

12 (State's Exhibits 199 to 216 are admitted)

13 BY MR. DiGIACOMO:

14 Q And I'm certainly not going to put up the entire
15 blood trail here, but let's start with 200 just so you can
16 sort of describe. We those two -- those are the same two
17 orange cones that had the cartridge cases by them; is that
18 correct?

19 A That is correct. We're -- we're standing in front
20 of the Broadmere address. You can see the -- the driveway
21 here with the smaller cones that were visible in some of the
22 other photos. Then you have the two larger traffic cones that
23 were placed there. The only thing that's missing is we
24 haven't placed out the -- the small numbered yellow placards
25 yet.

1 Q As you turn to your left in 201, and if I were to
2 zoom in on these, those cones don't appear to be standing up.
3 Why is that?

4 A Typically, if we are looking at a blood trail and we
5 can determine by the shape of the blood drops which direction
6 the trail is traveling, we will tip the cones over in the
7 direction that it's traveling. It gives you a nice visual
8 representation. Whereas, if you just had a bunch of standing
9 cones, you wouldn't necessarily be able to determine whether
10 it's going north to south, south to north.

11 Q And that blood trail, does it turn down at Long
12 Cattle on State's Exhibit No. 204?

13 A It does. Here we're standing basically in the
14 intersection. This is Broadmere at the bottom of the screen
15 and then Long Cattle is going down this direction, and all the
16 way back here you can see the -- the truck and then the car
17 parked in the driveway.

18 Q And when you get down Long Cattle -- 206 -- is there
19 not just the trail, but there appears to be sort of a section
20 off to the left of where those cones are. Did you mark that
21 and take a swab of that location?

22 A We did.

23 Q And if we do a close-up of that swab, 207, does that
24 reference BT10 for later on if a crime scene analyst were to
25 -- or sorry, a DNA analyst were to testify, I processed

1 Mr. Felabom's BT -- item BT10 from this particular event
2 number 3020 on September 21st of 2014, we'd know it's that
3 blood spot?

4 A Correct. The marker number in the photograph is the
5 same item number that I gave it on the evidence impound
6 report. It's the same that you see in the photographs. It
7 keeps it all consistent. It makes it a lot simpler to be able
8 to track.

9 Q At some point, on the blood trail -- and I think
10 it's item 12 -- or Exhibit -- nope. Let's try Exhibit 15, and
11 I'm going to actually flip it just once so it's sort of
12 consistent with the way we see, but at the top here is the
13 Broadmere address up on top?

14 A Correct.

15 Q And then this is the blood trail that runs down Long
16 Cattle. Is there a break at the end of sort of whatever Long
17 Cattle here turns into without my glasses on, but is there a
18 break between sort of this corner and then the -- a blood
19 trail that starts down on this corner and runs down Shifting
20 Winds?

21 A Correct. We were able to track the blood trail down
22 Long Cattle. It was along the sidewalk and then it curved
23 south along Walrus. It crossed the street and then right
24 around in here, right at the -- the northeast corner of the
25 intersection here, because north is this way. This is north

1 -- the north side of the resident area -- it disappeared, and
2 we weren't able to find any other blood until we came down
3 here at the -- what would be the -- the northwest corner of
4 Shifting Winds, which is this street running north/south down
5 here, and this is Ranch Hand right here running east/west.

6 Q And when you got to that location, 215, where the
7 blood trail appears to pick back up, there's sort of a large
8 splotch of blood that's on that sidewalk there?

9 A Correct.

10 Q And that splotch was sampled, State's Exhibit 216,
11 as BT20?

12 A Correct.

13 Q Now, prior to -- you can retake your seat now.
14 Prior to coming here to court today, were you requested to
15 bring -- not just yours, but did you bring essentially all of
16 your firearms related evidence that you collected?

17 A Correct.

18 Q Did I ask you to leave behind the items of bloody
19 stuff, like clothing and gloves and that kind of stuff?

20 A Correct.

21 MR. DiGIACOMO: If I could grab the rifle.

22 (Mr. DiGiacomo/Clerk conferring)

23 BY MR. DiGIACOMO:

24 Q When you brought all these items down to here today,
25 were they all still sealed in the condition you picked them up

1 at the vault either today or yesterday in?

2 A They were.

3 Q Okay. And so I'm not going to do this with every
4 single one of these, but I'm going to ask you to sort of
5 explain some of the items of evidence that we have here. So
6 let me start with -- I'm just going to start with 221 and ask
7 you, do you recognize this package?

8 A I do.

9 Q What is it?

10 A This is the package that I impounded some of the
11 cartridge cases from the scene, from the original shooting
12 scene.

13 Q And that label that's affixed to it, what kind of
14 information can you gather from that label?

15 A On this label it has a lot of pertinent information.
16 It has the date, the time that we arrived at the scene. It
17 also has that event number that I explained, too, at the
18 beginning. The -- with the date at the beginning and then the
19 individual four numbers at the end so that we can track it and
20 associate everything inside this package with this -- with
21 this shooting.

22 It also has my -- my initials and P number as well
23 as my signature to show that I'm the one that impounded this
24 evidence.

25 Q And when you do a package like this, do you do any

1 sort of security measure in sealing it to determine so that
2 someone can later on determine whether or not it's been opened
3 since you sealed the items in it?

4 A Correct. On the backside we actually -- there's a
5 little metal clasp that holds the flap down, but then over
6 that we put evidence tape, which it's fairly fragile, you can
7 tear it, but it just shows that no one's opened up the package
8 through -- through breaking the seal. And on the top I date
9 when I actually sealed the package and I initial on it to show
10 that no one pulled the tape off and just put another piece
11 down.

12 Q Now, there's some, looks like, bar codes on here.
13 Do you have any idea what the bar codes are?

14 A Those bar codes are from our evidence vault. They
15 have their own tracking system. And so for every piece of --
16 every item of evidence within that package they put a little
17 bar code sticker and that way when they're transferring it
18 from one person to another, they can just scan it. It's a lot
19 faster than them having to type out everything for the
20 paperwork that they need to do.

21 So it's just a tracking system for the evidence
22 vault.

23 Q And then on the bottom of this kind of seal that you
24 have here, out of the label on front, is there sort of an area
25 to track anybody who opened this, kind of like a chain of

1 custody?

2 A There is. There's a chain of custody section at the
3 bottom of the label where whenever someone receives that
4 package, they have to sign it, say that they -- that he had it
5 and whether they opened it and when they returned it.

6 Q And I'm going to just make an assumption here, but
7 that blue label was not on here when you put this into the
8 vault a day or two after you collect it at the crime scene?

9 A Correct. We typically use red crime -- or not crime
10 scene tape, but evidence tape and then typically, the forensic
11 lab, they'll use a blue tape a lot of times to -- to seal up
12 after they've opened up the package.

13 Q Is it unusual for you to come to court and see a
14 blue seal on the bottom of a package that indicates where
15 there may be forensic processing done?

16 A Not at all.

17 Q Okay. With the exception of the blue seal that's
18 placed upon here and the fact that the Clerk opened these at
19 this point, is this package in substantially the same or
20 similar condition as when you picked it up or when you put it
21 into the vault as well as I guess, when you pick it had up?

22 A It is.

23 Q Okay. And if you were to open this package, what
24 would you expect to find inside?

25 A I would expect to find cartridge cases, 9 millimeter

1 cartridge cases.

2 Q How many?

3 A In this package there would be eight.

4 MR. DiGIACOMO: Judge, I move to admit 221 and its
5 content, which would be A through H.

6 THE COURT: Any objection?

7 MR. LANDIS: No objection.

8 MS. McNEILL: No objection.

9 MR. WOLFBRANDT: No.

10 THE COURT: Those will be admitted.

11 (State's Exhibits 221, 221-A through 221-H are admitted)

12 BY MR. DiGIACOMO:

13 Q So now we can quickly do each one of the other
14 packages. So, 222, assuming that all those predicate
15 questions I asked you on the last one are the same, what would
16 you expect to find inside there?

17 A Inside this package I would expect to find one more
18 9 millimeter cartridge case and four .40 caliber cartridge
19 cases.

20 MR. DiGIACOMO: So I offer 222 and its contents
21 which is 222-A through E.

22 MR. LANDIS: No objection.

23 MR. WOLFBRANDT: No objection.

24 MS. McNEILL: No objection.

25 THE COURT: That will be admitted.

1 (State's Exhibits 222, 222-A through 222-E are admitted)

2 BY MR. DiGIACOMO:

3 Q 220, is that package in the same or similar
4 condition as the other packages --

5 A It is.

6 Q -- that you brought down here?

7 A It is.

8 Q And what would you expect to find inside there?

9 A Inside of here I would expect to find two Glock
10 pistol magazines, .40 caliber magazines as well as some
11 cartridges.

12 Q And now this has a big thing on the front that says
13 chem processed, what does that mean?

14 A That's just a warning for people to let them know
15 that I've chemically processed the items inside this package.
16 We'll chemically process items, but then we won't clean them
17 up so it's just a warning for them you probably don't want to
18 handle it without gloves on.

19 Q And --

20 MR. DiGIACOMO: Well, I'll move to admit 220 and its
21 contents, which should be 220-A through D.

22 MR. LANDIS: No objection.

23 MR. WOLFBRANDT: No objection.

24 MS. McNEILL: No objection.

25 THE COURT: That will be admitted as well.

1 (State's Exhibits 220, 220-A through 220-D admitted)

2 BY MR. DiGIACOMO:

3 Q 223, what is in there?

4 A In this package I would expect to find a bullet
5 fragment and six bullets.

6 Q And one again, all my predicate question that I --
7 first time I went through all those questions apply to 223?

8 A Correct.

9 MR. DiGIACOMO: I offer 223 and its contents, which
10 would be 223-A through G.

11 MR. LANDIS: No objection.

12 MR. WOLFBRANDT: No objection.

13 MS. McNEILL: No objection.

14 THE COURT: That will be admitted.

15 (State's Exhibits 223, 223-A through 223-G admitted)

16 BY MR. DiGIACOMO:

17 Q Now, I'm going to give auto box, but it is no
18 different, I guess, than the bag, which is marked as 219.
19 This one is open so you can pretty much tell us what is in
20 there.

21 A This one has a Glock 27. It's a .40 caliber pistol
22 as well as a -- the magazine for the pistol and nine
23 cartridges.

24 Q And once again, the predicate questions I asked for
25 the first package is the same for 219?

1 A Correct.

2 MR. DiGIACOMO: Move to admit 219 and its contents
3 and I believe, it's going to be marked A through D so --

4 MR. LANDIS: No objection.

5 MR. WOLFBRANDT: No objection.

6 MS. McNEILL: No objection.

7 THE COURT: So 219.

8 MR. DiGIACOMO: 219 and 219-A through D because
9 there appears to be four items inside.

10 THE COURT: And that will be admitted.

11 (State's Exhibits 219, 219-A through 219-D admitted)

12 BY MR. DiGIACOMO:

13 Q Now, you've got gloves. I probably should have told
14 you that that was processed. The item you have in your hand,
15 did it come in a box just like we've been, sort of a bigger
16 box version of this?

17 A Yes, a much bigger box. Yes.

18 Q Okay. And contained within that box, was there
19 something other than just that rifle?

20 A Yes, there was the magazine for the rifle.

21 Q And that still remains within the box or apparently
22 it's not here, correct?

23 A That is not in the -- in the rifle, correct.

24 Q And that weapon has been rendered safe by way of a
25 zip tie through the receiver?

1 A Correct. There's a zip tie going through so you
2 can't even get the magazine in and the bolts won't function.

3 Q And that is the 9 millimeter firearm that you
4 recovered down out of the bed of that pick-up truck off Long
5 Cattle?

6 A It is.

7 MR. DiGIACOMO: And I'm sorry, Judge, but I think
8 the evidence marker was on the box so I need the number.

9 THE CLERK: It was 217.

10 MR. DiGIACOMO: Oh, there it is. I'm sorry, I
11 didn't see it on the bottom. So I would offer 217 and its
12 contents, which would be 217-A and B in for the record. A is
13 the rifle, B is the magazine.

14 MR. LANDIS: No objection.

15 MR. WOLFBRANDT: No objection.

16 MS. McNEILL: No objection.

17 THE COURT: That will be admitted.

18 (State's Exhibits 217, 217-A and 217-B admitted)

19 BY MR. DiGIACOMO:

20 Q My final question is, is I know I've spent a better
21 part of probably two hours asking you questions. How long did
22 it take you, your three partners and your supervisor, how long
23 were you out at the scene?

24 A At the scene it took over ten hours. We got there
25 -- well, some of us got there shortly before 11:00 and we

1 didn't leave until after 9:00 a.m.

2 Q And then even after you leave the scene, how much
3 time do you have to spend to get all of this in a condition
4 where I only spend a few minutes talking about it?

5 A For me, personally, it took me, I believe, two days
6 to impound all of the evidence, to get it all packaged up,
7 processed, what I needed to process and everything signed off
8 on.

9 Q Thank you, sir.

10 MR. DiGIACOMO: Judge, I'd pass the witness.

11 THE COURT: Thank you. Mr. Landis?

12 CROSS-EXAMINATION

13 BY MR. LANDIS:

14 Q Fair for me to assume that amounts to a detailed and
15 thorough investigation in your eyes?

16 A Yes.

17 Q You weren't rushed in any way?

18 A No.

19 Q You weren't prevented from examining or looking at
20 something that in your judgment you should?

21 A Not that I recall, no.

22 Q Sometime during your direct testimony you talked
23 about the integrity of a crime scene or preserving a crime
24 scene, if I can use those terms. In any crime scene analyst
25 perfect world, a crime scene would freeze the moment the