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IN THE SUPREME COURT OF THE STATE OF NEVADA

2
No. 82740

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JORGE MENDOZA,

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Appellant,

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Elizabeth A. Brown
Clerk of Supreme Court

vs.

THE STATE OF NEVADA,

Respondent.

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

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Dated July 25, 2021

BY /s/ DIANE C. LOWE

DIANE C. LOWE, ESQ

Nevada Bar #14573

1 in any -- in anymore because of the complication of and the
2 high use of data within the networks, they'll branch those
3 off.

4 So T-Mobile's -- T-Mobile's the one that takes that
5 traffic and then kind of loads it across, switches across the
6 entire country and that's why we see different phone switches
7 processing phone calls for T-Mobile calls.

8 Q So I could have -- I could make three phone calls in
9 ten minutes from standing in the same place and could see
10 different switches?

11 A Correct.

12 Q You talked about cell towers themselves
13 malfunctioning or breaking down or getting repaired. Do
14 switches do the same thing?

15 A I would say in T-Mobile's case that -- it could be a
16 possibility because the way that their network is distributed.
17 In the other companies, I've never seen it happen. It's --
18 their -- it's a major data -- data center building. If it --
19 if the -- if the switch went down, I guess, they would need to
20 load the -- load the -- I don't know. I guess it's a
21 possibility if they had a back-up, but I've never seen it
22 happen.

23 Q If a switch was down, maybe a power outage, who
24 knows, but what that mean I make no calls or it probably just
25 means I get routed elsewhere?

1 A I would assume the phone companies have -- I don't
2 know. They -- I would assume they have a back-up if a -- if a
3 switch went down that they could flip the traffic to somewhere
4 else.

5 Q Showing you 322 again, State's 322, I'll zoom in if
6 it's too hard to see, but one of the columns you talked about
7 on direct, the title of it is record source.

8 A Yes.

9 Q There's a few different ones listed even on this
10 first page such as toll unknown switch, yes?

11 A Yes.

12 Q What's that mean?

13 A So that -- that field is actually generated by me
14 when we -- when we put the records in there. And it's a field
15 that I can select to tell me where the records came from. So
16 sometimes, which I actually did with these records, is I'll
17 change variability between records. You'll see some that say
18 unknown and some that say switch. I did this in this case for
19 like the blue records, so I knew the ones that were coming off
20 the Inland Empire switch. So I knew whether I had to adjust
21 times once they were imported.

22 It's a way we can flag when we import to -- to just
23 kind of know.

24 Q So when you say you added it, that means you're
25 typing toll for the first line, you're typing toll for the

1 second line?

2 A No, there's a -- when we do the import, it asks us
3 what the record source is. A lot of times on a standard
4 record we'll put CDR toll for everything. If we're going to
5 do any time manipulation on -- on the records and they're in
6 the same case, like this one is, where we're actually running
7 a report with multiple numbers in it, we'll switch what it
8 says so that we can tell the records that we just imported
9 when we go back and run the -- run the -- there's a -- there's
10 drop down boxes. We can pick where the records came from for
11 the --

12 Q And a switch means it's a company that uses
13 switches?

14 A Yeah, correct, correct.

15 Q What's toll mean?

16 A Toll -- toll would mean toll records that we got
17 from the phone company.

18 Q What's that mean?

19 A That would be ones that were sent in. These are all
20 actually toll records that are in this -- that are in this
21 report.

22 Q So toll means no switch kind of?

23 A Toll means that it came from -- well, yeah, toll --
24 toll records would mean that they came from the phone company.

25 Q So all the switch records are also toll records?

1 A In this report?

2 Q Yeah.

3 A Yeah.

4 Q Like the toll records --

5 A All of these records came from CDR tolls.

6 Q But the records listed as tolls, no switches?

7 A No, they're all the same. I -- I selected switch on
8 this one so I knew the difference between -- so I knew the
9 difference between them when I was running this report. When
10 I put them all under that case number.

11 Q Let me ask it this way, and I'll try to zoom it in
12 close enough for the jury. Probably not. The very first
13 entry on this sheet, and please let me know if you can't see
14 it well enough, the target number is 762-1584, yes?

15 A Yes.

16 Q It shows record source toll?

17 A Correct.

18 Q If I'm looking at that and I want to know if you
19 adjusted it for a switch or a time zone or whatever, how would
20 I know?

21 A On this report you don't.

22 Q What report would I know that on?

23 A You would take and look at that record and compare
24 it to the hard copy on the -- from the phone company. That's
25 how you could tell if I had adjusted it that way. And that

1 one was a -- yeah, I did because that's a -- that would be a
2 Cricket record.

3 Q And you would know --

4 A 4923, so that one should have been adjusted negative
5 7.

6 Q And you would know you adjusted a Cricket record
7 because?

8 A Just because I had -- because I had done it for this
9 case.

10 Q And it's a Cricket record from at least that time
11 period --

12 A Yeah.

13 Q -- that's getting adjusted?

14 A Yeah, it should be.

15 Q Just let me go to the first unknown, which is the
16 third entry on the sheet. The target number is 542-1558?

17 A Correct.

18 Q And the record source is unknown?

19 A Correct.

20 Q What should I determine about the time change on
21 that one?

22 A That one was an -- no, it's a -- that's a T-Mobile.
23 That one was a T mobile, and it can't be inferred from this --
24 from this report what that switch was.

25 Q And then just going to the first switch and then

1 I'll be done with this, which I think is the very next entry.

2 A I mean, I can tell you any -- any of these that have
3 LACs and CIDs that have that IEP system identity on them, I
4 believe came off the Carolina switch and I did a three hour --
5 three hour adjustment on those from the original records.

6 Q That might be the answer to this question, then,
7 too. That -- that first entry that does list switch, which is
8 the fourth entry from the top, 542-1558, for the record source
9 it says switch.

10 A Correct.

11 Q Time change on that one?

12 A That one was -- IM LAC and CID and yeah, it should
13 have been.

14 Q A 7 or a --

15 A That one's --

16 Q I wasn't trying to take it out of your eyesight.

17 A No, that's fine. Yeah, that one should have been a
18 7. I believe for that number I imported two different -- two
19 different record sets for that one. One that had SMSs in it
20 and one that did not. That's how I denoted them different in
21 that record -- in that record field. But all the calls on
22 this report should have been adjusted if they needed to be.

23 MR. LANDIS: May I approach the clerk?

24 THE COURT: Yes.

25 BY MR. LANDIS:

1 Q If I can show you again State's 324, a few pages in.
2 Generally, it's -- you recall looking at that, yes?

3 A Yeah, um-h'm. Yes.

4 Q During your direct examination, the State zeroed in
5 on a measurement to help you determine lengths, right, on a
6 few of these?

7 A Yes.

8 Q I can't even tell you this was exactly one. And for
9 the record this is a Mendoza tower 7:22 a.m., so it's
10 somewhere around there, right?

11 A Yes.

12 Q If you know, what's that symbol under the
13 measurement guide?

14 A That's the date that the graphical satellite map
15 picture was taken in Google Earth, I believe.

16 Q So if it said 2002, 2002?

17 A That would mean that the aerial photo -- I -- I
18 believe, that that's what that means. Yeah, I'm not 100
19 percent sure, but --

20 Q And that would -- understanding you didn't make
21 those, I'm not necessarily --

22 A Correct.

23 Q -- expecting you to know. I appreciate that. Last
24 thing I just want to talk to you about, if you're trying to
25 estimate somebody's location based on a cell tower, it's

1 relevant to know what other cell towers are around?

2 A Correct.

3 Q And why is that so?

4 A So that you can judge how far you think the phone
5 would have gone from one cell tower, you know, to another cell
6 tower without handing off to that other cell tower.

7 Q And for instance, where we're standing here in the
8 Regional Justice Center, let's imagine cell provider has a
9 cell tower that faces this direction on Fremont Street. It's
10 possible that might be where I connect?

11 A Yes.

12 Q But it's also possible there's four closer towers?

13 A Possible, yes.

14 Q And whether or not those closer towers exist could
15 impact your best estimate as to my location?

16 A Correct.

17 Q In this case, did you do any analysis of that type?

18 A I looked -- I -- I actually did compare -- it's not
19 in the record -- on these maps to some of the maps that I was
20 doing when I was comparing to my -- to my data and I actually
21 did have all of the towers on there and they were -- they were
22 roughly, you know, pretty -- pretty close when it comes to the
23 -- nothing that was way beyond that I wouldn't say that it
24 could, you know, attach to that tower or not attach to that
25 tower.

1 Q And to return this conversation to the footprint
2 talk, would your opinion about the footprint of a tower change
3 depending on other towers nearby or no?

4 A Yes, yes.

5 Q How would it change?

6 A So it's typically you get that crossover area
7 between and it's -- you know, each company's a little bit
8 different, but you'll get at that cross over between. So the
9 more -- the more cell towers you have in an area, the less
10 that those cell towers are tuned out to -- to go or as far as
11 distances go. So they don't interfere with the other cell
12 towers.

13 Q So the footprint's smaller?

14 A Yeah, correct.

15 Q And the footprints, the green kind of circles we saw
16 on all these pictures, are estimates?

17 A Yes.

18 Q And they're estimates based on what?

19 A Based on -- based on location in the areas of the --
20 the towers, based on other -- other cell towers in the area.

21 Q Let me just get specific on one of those really
22 quick. If I could just zoom out a little bit. Showing you
23 again State's 324, the Mendoza tower of 3:31 a.m., do you know
24 the radius of the green circle we see on this?

25 A No.

1 Q Do you have an estimate?

2 A I would say based on the distance -- well, yeah, on
3 the distance thing down below, it's probably about a half
4 mile.

5 Q And the tower company we're dealing with with this
6 particular circle is what?

7 A T-Mobile.

8 Q I see a couple other T-Mobile towers on this map,
9 yes?

10 A Yes.

11 Q Can you tell me if all of the T-Mobile maps that
12 exist in this geographical area are displayed on this map?

13 A I do not know.

14 Q Without that information, is it difficult for us to
15 say what the footprint is?

16 A Without me knowing whether they're all on there or
17 not, yes.

18 Q And for instance, and I'll use my pen, let's say I'm
19 there close to the end of what this green circle is, your
20 prediction as to whether or not standing there I would use
21 that tower -- and for the record it's tower 6251, T-Mobile --
22 would depend a lot on what other towers were closer to me?

23 A Yes.

24 Q And it also depends on, I think you testified about
25 this, traffic of the towers?

1 A On the initial beginning call. It shouldn't really
2 depend on that.

3 Q If I'm in an urban area where there's a lot of
4 towers that potentially I could connect to, let's say I'm just
5 in my bed all day and I make ten phone calls, could I hit off
6 different towers --

7 A Yes.

8 Q -- or would I always hit off the same tower?

9 A No, you could hit different --

10 Q And what --

11 A -- different towers.

12 Q Sorry to cut you off. What would cause that?

13 A So even looking at this map right here, if you can
14 see there's -- we have a tower to the west of the tower that
15 has the circle around it. That -- that other tower there, if
16 you were somewhere between kind of in the middle part of those
17 two towers, you could hit them both. You could still -- you
18 could even hit both of those towers, any of these green towers
19 if you were in the footprint between those towers, for -- for
20 variability reasons.

21 So if you were even at -- you know, if you were at
22 -- there's a tower lower here, too, also --

23 Q Right.

24 A -- the one that's lower. So if you were in the
25 footprint of the northern tower, you could still hit the -- or

1 I'm sorry, of the -- yeah, of the northern tower facing south,
2 you could still hit the footprint of the tower that's south
3 facing north. So we try not to make calls to exact -- you
4 know, we could say it could hit any of those towers right
5 there within that footprint because -- because we've seen
6 that.

7 But I wouldn't say it wouldn't hit one that's, you
8 know, two miles down the road --

9 Q Right.

10 A -- with a bunch of other towers in between there.

11 Q It sounds to me like the sectors and towers you talk
12 about, can we anticipate a 360 degree coverage on every tower?

13 A Not on every single tower, but on most towers, yes.
14 I -- sometimes if there's -- if they're on buildings, no. If
15 in -- in large urban areas, no, or in there's mountains on the
16 sides of them, they don't put them. But 80 percent of them
17 have three sides on --

18 Q How would I determine that? How would I find that
19 out looking at a detail record?

20 A You could look at -- you would you look at the map
21 from the -- from the company and you would look at that LAC
22 and those CIDs -- the cell ID, the first part of the cell ID
23 and then you'll see the CIDs that are in sequential order at
24 that same GPS location. And then you can do down and you'll
25 see azimuths at, you know, zero degrees, 120 degrees, 240.

1 That -- that sort of thing and then you can see that you have
2 that -- that type of coverage.

3 Q And if I see a record that shows a sector 1 and
4 let's just assume we're dealing with a three sector 120 degree
5 tower, can I assume sector 1 points due north similar to what
6 I'm showing you right now on the overhead?

7 A No, no.

8 Q And to determine that I do what?

9 A You use the cell phone -- the cell site list from
10 the phone company and then it will tell you which direction
11 that it was facing.

12 Q Not safe to probably make any assumptions, then,
13 to --

14 A Not at all on these, no.

15 Q Referring to what's on the screen in front of you
16 right now, which is Mendoza tower 7:22 a.m., it appears that
17 this would be a call detail record where there was a sector
18 provided?

19 A Yes.

20 Q And a sector that points?

21 A Zero degrees north.

22 Q Due north, right?

23 A Due north, yes.

24 Q Based on your experience, if I was standing where
25 the word Mendoza is on the map, am I in play to be on that

1 sector of that cell phone tower?

2 A It's -- it's -- at that really close distance, it's
3 a possibility, but most likely no, you'd be on sector 3 on
4 that tower.

5 Q So if you're close enough to be nearly under or so
6 of the tower --

7 A That is a possibility, but at that -- even at that
8 distance where it says Mendoza, you would -- if -- if -- if
9 you were standing there at that intersection, you would most
10 likely be on sector -- yeah, sector -- sector 3. It's kind of
11 close to sector 2, too, but yeah, sector 3.

12 Q If I was let's just say 100 feet behind that tower,
13 is that far enough for you to comfortably say I wouldn't be on
14 sector 1?

15 A Yeah, most likely.

16 Q And I'm not faulting you for this, but because it's
17 technology, because it's computers, there's a lot of most
18 likely in this field?

19 A Yeah, it's radio waves, correct, yes.

20 Q Because it's predicting exactly what computers are
21 going to do every time is --

22 A Yeah.

23 Q -- a dangerous business, right?

24 A Yeah, radio waves, yes. Yeah, that --

25 Q And I'm almost done.

1 MR. LANDIS: Court's brief indulgence. I have no
2 further questions. Thank you, sir.

3 MS. MCNEILL: Thank you, Your Honor.

4 MR. LANDIS: Can I approach the witness and the
5 clerk to return the --

6 THE COURT: Yes, of course.

7 MR. LANDIS: Thank you, sir.

8 THE WITNESS: There you go.

CROSS-EXAMINATION

10 BY MS. MCNEILL:

11 Q My questions are going to be a lot less technical
12 than Mr. Landis'.

13 A Okay.

14 Q So, bear with me. You indicated when you were
15 looking at State's 322, when he was asking you about the
16 record source and you said the toll records in this case just
17 meant that the records came from the telephone company, right?

18 A All -- all of these records came from the -- from
19 the phone --

20 Q Okay.

21 A -- company, from CDRs.

Q Sorry, I didn't mean to talk over you.

23 A Oh, that's fine.

Q Versus where else would they come from?

25 A Oh, live intercepts.

1 Q Okay. So in this case, these were records that you
2 put in after getting them from the phone company?

3 A Correct.

4 Q Okay.

5 A Correct.

6 Q So the live intercept I wanted to talk to you about
7 that because I think Mr. DiGiacomo asked you some questions
8 about the radius and the physical locations from the towers
9 when you're doing that live intercept. When you're doing the
10 live intercept, what that means is you've gotten permission to
11 actually get people's tower information as they're making the
12 calls --

13 A Correct.

14 Q -- in real time?

15 A Correct, yes.

16 Q Okay. And when you're doing that, are you
17 transmitting that information to officers who are on the
18 streets?

19 A For the tower information, no. Typically, we're --
20 if fact, all the time, we're -- we're watching the computers,
21 the people in -- in our office. If we're looking to do that
22 live, we're the ones analyzing that data live as it's coming
23 in and then kind of feeding them that information.

24 Q Feeding it to an officer on the treat street?

25 A Correct, yes.

1 Q Okay. And I guess, I asked my question poorly
2 because that's what I meant so --

3 A Oh, okay. Yeah, yeah, no, we -- I mean, we don't
4 give them to -- we don't give it to them. When I said feeding
5 it to them, we -- we just tell them on the phone --

6 Q Right.

7 A -- where -- where we think it is and -- and we do it
8 that way. We don't actually give them like a photo of a cell
9 tower that says hey, it's here, it's here, it's here, it's
10 here type thing. We analyze it live for them.

11 Q Right. So you're actually giving them a physical
12 location where that tower is and they're --

13 A Correct.

14 Q -- able to physically get themselves in their police
15 car to that --

16 A Correct.

17 Q -- location? Okay.

18 A Correct.

19 Q So when Mr. DiGiacomo said when you find -- when the
20 officers find these people, they're generally in a radius
21 that's less than that two, two and a half mile radius from the
22 tower, correct?

23 A Correct, yeah.

24 Q And would you agree with me that might be you know
25 that because you're able to actually physically track those

1 people?

2 A That -- that leads into a lot of the knowledge on
3 how these work because we've tracked a lot of -- yeah, found a
4 lot of people.

5 Q Okay.

6 A Specifically, missing people is --

7 Q When you are not doing it live, when you're doing it
8 after getting the phone records, you really have no way of
9 knowing where the person is within that radius --

10 A Correct.

11 Q -- because you're getting it after the fact?

12 A Correct.

13 Q Okay. So for example, on State's 324, you have
14 these pinpoints for these tower locations. All you know about
15 this person's phone is that it was hitting off those towers?

16 A Correct.

17 Q So you have no way of knowing where in relation to
18 those towers this person was at any of these times?

19 A No, just in a general area of them, that's it.

20 Q And, in fact, this map doesn't actually indicate
21 what time any of these towers were hit, correct?

22 A Correct.

23 Q It's just a general time frame from over 12 hours,
24 right?

25 A Correct.

1 Q And so we don't know if this person was traveling
2 north, south, east, west, just at some point throughout this
3 over 12-hour period, these towers were hit?

4 A Correct.

5 Q Okay. The precise location information
6 Mr. DiGiacomo asked you about, you said that was similar to a
7 ping and that will give you an actual location, correct?

8 A Correct.

9 Q Okay. So if you pinged my cell phone, it would tell
10 you, I guess, the GPS coordinate that would indicate I was in
11 the courthouse?

12 A It would -- yeah, it would give us a coordinate and
13 then it gives us a -- a range of how big that is, depending
14 how good the signal was.

15 Q And that is obviously, much more precise in locating
16 someone than cell tower information?

17 A Most of the time.

18 Q Okay. What do you mean by that?

19 A Well, sometimes -- sometimes the ping radius is
20 actually larger than the cell tower range that the phone would
21 be in so you could get a hit that has 25,000 meter range in
22 the entire Las Vegas valley --

23 Q Okay.

24 A -- but at that point, you would look at the -- the
25 cell site and know that, okay, but he's on this cell site so

1 that's -- we can get a better location off a cell site than we
2 can off --

3 Q Okay.

4 A -- off a ping.

5 Q And so if you get a ping data that has that large
6 radius, you would then want to go to other information --

7 A Correct.

8 Q -- to narrow that down?

9 A Correct.

10 Q And you weren't given -- I think you've already
11 testified, you weren't -- you didn't do any precision location
12 information in this case?

13 A Correct.

14 Q Right? Okay. When Metro -- you indicated that can
15 utilize other task force units to do that for you?

16 A Correct.

17 Q When do you decide to use someone else to do it
18 instead of doing it yourself?

19 A That's usually up to -- whatever the investigative
20 unit that's doing it does it, they'll use those other units.
21 So a lot of times they'll use the CAT's team because they do
22 apprehensions and our unit doesn't do apprehensions.

23 Q Okay.

24 A So that's -- that's usually the main decider is
25 whether they're actually going to be bringing someone into

1 custody or not --

2 Q Okay.

3 A -- if we're going to do it or not.

4 Q So your understanding is that Metro will have say, I
5 think, the CAT team, which is criminal apprehension team --

6 A Correct.

7 Q -- is that through the FBI?

8 A It is a task force, yeah, that has the FBI agents
9 connected to it.

10 Q Okay. They'll utilize that when they say hey, when
11 you get there location, go arrest the person?

12 A Correct.

13 Q Okay. Are you involved in that process at all?

14 A Sometimes we are and be sometimes we aren't.

15 Q Okay. I want to talk a little bit about Cricket
16 phones. So you said in 2014, they were CDMA technology?

17 A During the -- yes, during -- the records we got
18 during that time period, they were on CDMA.

19 Q Okay. And forgive me for my ignorance, but what is
20 that?

21 A So there's -- there were two main deviations of cell
22 technology. So you had GSM phones and be CDMA phones. It's
23 just the -- the way that the radios and the cell phones
24 communicated with the phones.

25 Q Okay. And does that affect the -- your ability to

1 look at the records in any way?

2 A The records are different.

3 Q Okay.

4 A But they're -- they give you fairly the same amount
5 of information just it's presented in a different way.

6 Q Okay. When did Cricket switch from that technology?

7 A I believe, it was pretty close to after that.

8 Q Okay. So pretty close to after --

9 A If I --

10 Q -- that you mean --

11 A -- remember right.

12 Q -- the date of these records?

13 A Correct.

14 Q Okay. So maybe after September 21st of 2014?

15 A I -- yeah, I -- I -- I know based on these records
16 that we -- that we have there, that they were run by AT&T so
17 I'm assuming it was -- it's been within the last two years
18 that that switch happened so --

19 Q Okay.

20 A -- it was closer to 2014 than it was to today, I
21 guess, would be the best way to say that.

22 Q Okay. Obviously, cell phones have changed quite a
23 bit in the last few years --

24 A Yes.

25 Q -- right? We went from having flip phones to smart

1 phones?

2 A Yes.

3 Q Is there any difference in the accuracy of cell
4 tower information between a flip phone and a smart phone?

5 A Not really, no.

6 Q Okay. When you -- so you said that the Cricket
7 records were run. Do you know when those Cricket records were
8 run?

9 A No, I don't.

10 Q Okay. And if I could -- let me find it.

11 MS. McNEILL: May I approach your clerk?

12 THE COURT: You may.

13 MS. McNEILL: Thank you. May I approach the
14 (inaudible).

15 BY MS. McNEILL:

16 Q Showing you State's Exhibit 310, this is the Cricket
17 tower key, correct?

18 A Correct.

19 Q And there's nowhere on there it reflects the date it
20 was run, right?

21 A Correct.

22 Q And you didn't run this?

23 A No, I did not.

24 Q Okay.

25 A Not this one.

1 Q So we don't know if this is accurate for today,
2 right?

3 A Correct.

4 Q Okay. And we don't know if it was accurate for
5 September 2014?

6 A That -- that -- no, no, not that -- yeah, that
7 specific one, no.

8 Q Okay. And this switch over from the technology
9 would mean that Cricket may have had some changes in their
10 tower location?

11 A They actually, their network doesn't actually exist
12 anymore.

13 Q Okay. So --

14 A You can still buy a Cricket phone, but it -- that --
15 that network that's on that sheet doesn't exist.

16 Q Doesn't exist?

17 A No.

18 Q So the towers and again, forgive me for my
19 ignorance, the towers that would have -- Cricket would have
20 used in 2014, say July, for their CDMA just don't exist
21 anymore?

22 A The records, I believe, are still held by AT&T.

23 Q Okay. But the physical towers may not be exist
24 anymore or may have been converted?

25 A They're probably -- they would have most likely been

1 converted to AT&T --

2 Q Okay.

3 A -- towers.

4 Q And sometimes cell phone companies decommission
5 towers, correct?

6 A Yeah.

7 Q And that means they just shut it down?

8 A Yes.

9 Q Okay. So sometimes when you have these cell tower
10 location information is the best way to know if that tower
11 information is still accurate so to actually go to that
12 location?

13 A Yes.

14 Q Okay. Did do you that in this case?

15 A No.

16 Q Did you go visit the tower? Okay.

17 A No.

18 Q Just a few more questions. You -- are you familiar
19 with what a Pinger phone is?

20 A Yes.

21 Q And that's a phone that just uses wireless Internet,
22 right?

23 A Yeah, it uses the data on the phone to make a phone
24 call or an SMS text message using the data side of the phone,
25 not the phone company's phone side of the phone.

1 Q Okay. So you wouldn't be able to get cell tower
2 location for that type of phone because it doesn't use a cell
3 tower?

4 A You --

5 Q Right?

6 A You could.

7 Q You could, okay. How would that work?

8 A You -- would you have to get information from Pinger
9 of what phone that their app was associated with --

10 Q Okay.

11 A -- and then could you go back and do a -- and then
12 find out what -- so you would -- you would give a subpoena to
13 Pinger, and they would tell you what phone was using the app
14 and then you could go back and run records on the phone that
15 was using the app and then run its records that way.

16 Q Okay. And again, this is just, know, I'm not an
17 engineer of any sorts. On a Pinger phone, if it was connected
18 to a wireless network, you may also be able to get IP address
19 information?

20 A You can, correct.

21 Q Okay. And then you could subpoena that and figure
22 out where that IP address led to?

23 A Correct, yes.

24 Q Okay. And you weren't asked to do anything like
25 that on any Pinger phones in this case?

1 A I don't think so, no.

2 Q Okay. And, in fact, you weren't shown any records
3 that -- today that would reflect that you did that?

4 A I -- no, I don't think so. I don't think -- none
5 that I were -- I guess, I had a lot of records here, but no, I
6 -- none that connected with what I analyzed, no.

7 Q Okay. The --

8 MS. McNEILL: If I may approach the clerk?

9 THE COURT: Yes.

10 BY MS. McNEILL:

11 Q Showing you again, State's 322, this synthesized
12 sort of spreadsheet that you made. The phone numbers that are
13 on this sheet are the only phone numbers that you were given
14 to put into Pen Link to create this document, correct?

15 A Yeah, I was asked to do it based on those four
16 numbers, correct, yes.

17 Q Okay. Thank you.

18 MS. McNEILL: Court's indulgence. I think that's it
19 for me. Thank you.

20 THE COURT: Mr. Wolfbrandt.

21 CROSS-EXAMINATION

22 BY MR. WOLFBRANDT:

23 Q Good afternoon.

24 A Hey.

25 Q The best part of going last is the number of

1 questions get smaller and smaller.

2 A Yeah.

3 Q All right, all of that information is just
4 reflective of phone to phone, not -- in no way can you tell
5 who was actually operating --

6 A Correct.

7 Q -- any individual phone?

8 A Correct.

9 Q And I believe, you said it's the phones that seek
10 out the towers?

11 A Correct.

12 Q The tower seeks the phone?

13 A Yeah, the towers are passive. The phones seek them.

14 Q And Mr. Landis asked you a little bit of a question,
15 I want to kind of follow up just a little bit more. If I'm
16 standing right here where I am now, initiate a phone call,
17 it's going to --

18 A Okay.

19 Q -- catch a tower?

20 A Yeah.

21 Q And if I don't move from this spot, will that signal
22 have a possibility of moving from that first tower to another
23 tower?

24 A Yes.

25 Q Within that same phone call?

1 A Correct.

2 Q And then perhaps even to a third one?

3 A Correct.

4 Q Does that complicate the -- or compromise, rather,
5 the footprint pattern for each of those different towers?

6 A It actually makes it smaller sometimes for us. If
7 -- if it hits multiples, then we can do like a triangulation
8 almost on the phone.

9 Q But you don't recall any of those occurring with any
10 of the phone records that you analyzed in this case?

11 A I think there was one. I think there was -- if I
12 remember right, there was one or two in there that actually
13 had a -- had a multi-tower hit that -- that the phone was
14 right in between on the map.

15 Q Would that be in one of those maps where there were
16 two different --

17 A Where there were two coming right, and there was
18 crossed --

19 Q Okay.

20 A -- yeah, right -- right in there. That's -- yes.

21 Q All right. I'm most -- probably the least most
22 technical savvy here so help me out a little bit more
23 understanding when you get the records from the phone company
24 that you then are loading into or would you say importing
25 into --

1 A Pen Link, yes.

2 Q -- Pen Link?

3 A Yes.

4 Q Okay. When you get that is that in a electronic
5 format?

6 A Yes.

7 Q It's on a disk or do you --

8 A It's -- it's typically e-mailed in a secure e-mail
9 from the phone company.

10 Q Okay. And that's -- it's in a format that you could
11 open up and manipulate the data?

12 A Correct. It usually -- well, it's different for
13 every company so it -- yeah, sometimes it's in an easy to look
14 at and then an importable format. Each company has their own
15 way of sending it to us.

16 Q Well, is it sometimes when it comes from the phone
17 company in a -- what you say an importable format?

18 A I -- I guess as an example would be when AT&T gives
19 it to us, they'll give us a nice PDF spreadsheet that you can
20 look at and see the things as we looked at in court to
21 demonstrate what the AT&T records come in. And then they'll
22 also supply us with a comma delimited just huge text file that
23 has -- it's the exact same data so that when we import it into
24 our software, it goes in a little bit cleaner. It can read
25 that data easier than the PDF sheet.

1 Q Okay. But, I guess, what I'm getting at is it's --
2 are they -- no matter which form it comes from whichever
3 provider, do you still have to adjust say, for instance, the
4 time or the switch identifier?

5 A In most cases now, yes, because at least we have to
6 -- in the least we have to do a UTC negative 7 or negative 8
7 to bring it back to Pacific time zone.

8 Q And then once you've made that change on yours, then
9 you electronically submit that to was it Pen Link?

10 A Correct. Well, all -- actually, we actually import
11 it into Pen Link with the times and then we do the time change
12 in Pen Link.

13 Q I see, okay.

14 A And then Pen Link will actually stamp within the
15 records inside of the database. There actually is a -- there
16 actually is a stamp that shows that there was a time
17 adjustment on it -- on -- that it plugs into each record.

18 Q All right, now, we talked about all these different
19 cell towers, all right, and you've got maps, we've got lists
20 of them or whatnot. Are individual towers -- and by that I'm
21 talking about the contraption we --

22 A Got ya.

23 Q -- see that's supposed to look like a palm tree?

24 A Yes.

25 Q Are each of those towers unique to a carrier?

1 A No, not necessarily.

2 Q Okay. So you can have one physical tower that
3 has --

4 A Multiple companies on it, yes.

5 Q So they have they're, what, receiving whatever it
6 would be that -- the receiving end for the radio transmission
7 comes from a particular phone? Whatever, they have their own
8 software --

9 A Yeah, they --

10 Q -- somewhere within the towers?

11 A -- they put their own radios at the bottom and their
12 own antennas out there. It's a -- it's a real estate issue
13 for money. So, if they can get one spot in a certain area or
14 get permission from the city or county to put a cell tower in
15 a certain area. Some areas are harder to get permission to
16 put them in so they'll all share the cost of running that
17 tower. And then they'll all share -- and you look at them,
18 you'll see the different tiers of things on there.

19 And some of those are multiple technologies and then
20 some of them are different phone companies along with those
21 multiple technologies on there. They all use the different
22 frequency patterns that they -- that they own through the FCC
23 so they can put their antennas close to each other.

24 Q Okay. And so that they try not to interfere with
25 each other's signals?

1 A Yes.

2 Q All right. But there are occasions where they do,
3 in fact, interfere?

4 A Well, I -- I couldn't speak to that. I -- I -- they
5 spend billions for those frequencies. I don't know if they
6 do. I -- I guess, I -- I -- yeah, I can't speak to that one
7 at all.

8 Q Okay. Would you agree it's probably not fool proof?

9 A As far as interference goes?

10 Q Right.

11 A I don't know. Normally, the companies run fairly
12 sophisticated software that looks at frequencies and things
13 like that. So if there was a frequency issue between them and
14 another company with a co-located tower, they'd probably take
15 care of that pretty quick.

16 Q Well, I'm sure they'd find it, but it has to occur
17 for them to find it?

18 A Sure, yes.

19 Q Okay. All right, so when you talk about a
20 decommissioned tower, is that just where a company just -- it
21 takes their equipment off of a particular tower?

22 A Yes.

23 Q Okay. And the questions about the Pinger phone were
24 already asked, so thank you.

25 A Yeah.

1 Q That's all I have.

2 THE COURT: Redirect?

3 MR. DIGIACOMO: Yes.

4 (Mr. DiGiacomo/Clerk conferring)

5 REDIRECT EXAMINATION

6 BY MR. DIGIACOMO:

7 Q Officer Gandy, let me start with sort of Mr. Landis' cross-examination and ask you some questions relative to a number of things he asked you. There was a lot of questions about variables related to what tower's on, what tower's off, you know, how strong the phone is, how big the footprint's set, all those various things. Do you remember all those questions?

14 A Yes.

15 Q My question is this; at the end of the day, if you have a tower record showing that a phone connected to a particular sector on that tower, does that mean that that tower had to be on and that phone had to be within the footprint of that tower to connect to it?

20 A Yes.

21 Q So all of these variables out there at the end of the day, for example, what I have up here, the Mendoza tower that said zero degrees at 7:22 a.m., that phone had to be within the footprint of that tower to connect to it at 7:22 a.m.?

1 A Correct.

2 Q There was a number of questions being asked of you
3 about the Pen Link document that you created; do you remember
4 that?

5 A Yes.

6 Q And there was a whole lot of questions about a
7 couple of columns there about stuff you put in there to kind
8 of figure out which record was which records so that you could
9 normalize the information, correct?

10 A Correct, yes.

11 Q At the end of the day, is that a compilation of
12 records or is that an independent piece of evidence that you
13 can go look at and use for something?

14 A Those columns?

15 Q No, all of the -- the entire document, 322.

16 A I -- 322 was just to help show the data and show
17 its, you know, relevance to the phone calls between -- between
18 those -- between those phones. I guess, the hard data would
19 be on the CDRs themselves.

20 Q So if there's some dispute or if there's some -- and
21 I got to put this down because I'm looking right at it.
22 (inaudible) drop this for a second. If there is some
23 discrepancy between the Pen Link and/or the phone records, the
24 phone record is a piece of evidence, the Pen Link is something
25 to assist them in looking at the evidence to --

1 A Correct.

2 Q -- figure out what it means?

3 A Correct.

4 Q Okay. So let's talk about some of the questions
5 Mr. Landis asked about sort of -- or maybe it was Ms. McNeill.
6 In -- when the case is being investigated, there's court
7 orders sent and you receive the information or Metro does at
8 some point receives the information --

9 A Yes.

10 Q -- correct? And that information is provided
11 electronically, but then also printed as a hard copy to
12 maintain what information you receive, correct?

13 A Correct, yes.

14 Q And the information you get is as of 2014, correct?

15 A Correct.

16 Q Okay. If you get something in 2016, that is
17 downloading information from 2014, it should still be the 2014
18 information that T-Mobile has provided us?

19 A Correct.

20 MR. LANDIS: Objection. Leading.

21 THE COURT: Overruled.

22 BY MR. DIGIACOMO:

23 Q Now, Mr. Landis asked a lot of questions about a
24 particular LAC, and I believe it's the LAC that's associated
25 with the Mendoza home. So if you give me just a moment, I

1 think I can jump back there.

2 The LAC, and if I read this correctly, is the 24593
3 LAC; is that correct?

4 A Correct.

5 Q Now, in this particular case, item 275 was provided.
6 Looking at 275. Do you recognize that as a list of cell
7 towers here in Las Vegas for T-Mobile?

8 A Yes.

9 Q Now, 275, there is the LAC 25493 on there, but
10 there's no GPS or sector location, correct?

11 MS. MCNEILL: Objection. Leading.

12 THE COURT: Overruled.

13 THE WITNESS: Correct.

14 BY MR. DIGIACOMO:

15 Q Do you have the ability to go in and find where --
16 where in September of 2014 those cell towers -- those sectors
17 were?

18 A Yes.

19 Q And so the documents that are created here are based
20 on the records here, not necessarily on everything you could
21 possibly go find?

22 A Correct.

23 Q In fact, on two days ago did you and I go into the
24 FBI database and look to see if we could back up until before
25 those towers are dropped?

1 A Yes.

2 MR. LANDIS: Objection. Undisclosed investigation,
3 and expert testimony.

4 MS. McNEILL: And assumes fact not in evidence.

5 MR. DIGIACOMO: Well, it doesn't assume a fact not
6 in evidence.

7 THE COURT: Overruled.

8 BY MR. DIGIACOMO:

9 Q And so while that information's accessible, it
10 certainly isn't something that was discovered in case, and
11 thus, that's why we had this information?

12 A Correct.

13 Q Mr. Landis or maybe it was Ms. McNeill talked a
14 little bit about there having to be court orders for all of
15 this information, correct?

16 A There's some type of legal process, yes.

17 Q Now, there are exceptions in certain emergency
18 situations; would that be fair?

19 A Yes.

20 Q Okay. Where potentially, you get the information
21 before there's any sort of legal process or legal
22 determination about it, correct?

23 A Correct.

24 Q And so there is a way for that to happen?

25 A Correct, yes.

1 Q And have you ever done those before?

2 A Yes.

3 Q And what are they called?

4 A We call them exigent -- an exigent declaration.

5 Q And what is the -- well, I guess, there's probably
6 more than one, but at least as it relates to Metro, what is
7 the one exigency where you do them?

8 A The -- the immediate -- immediate eminent threat of
9 bodily harm or injury.

10 Q And thus, in a situation where there was a phone
11 outstanding, and you knew that you had a heavily bleeding
12 individual, would that be a situation where an emergency might
13 be declared?

14 A Yes.

15 Q The last thing I want to do is sort of jump to the
16 one example that Mr. Landis first put up, which is this 3:31
17 a.m., and you were looking at the particular record. Do you
18 still have the record in front of you?

19 A I don't believe so.

20 Q I should have brought my glasses how small the
21 originals are. Here you go.

22 A I think it was on --

23 Q And I'm going to --

24 A Yeah, it was on this one.

25 Q -- refer you to page 2 and then essentially, 135, so

1 I think it's probably halfway --

2 A Okay.

3 Q -- down the page. And so I'm going to first drop
4 this picture down and I'm going to put up -- the exhibit
5 number on the back of that, can you tell me what that is?

6 A 298.

7 Q And then I'm going to jump down to an entry --

8 THE COURT: Do you need a magnifying glass? I have
9 one.

10 MR. DIGIACOMO: No, I --

11 THE WITNESS: No -- no, I'm good. I think -- think
12 once he zooms it, I -- yeah, okay, that works.

13 BY MR. DIGIACOMO:

14 Q I'm trying to see if I can even read the date on
15 this one. This is 9/20 so that's not it yet. So let me back
16 out and do -- and jump down to -- down here and see if we're
17 jet at the location where I'm supposed to be. The 9/21 and
18 I'm just off a little bit. Yeah, these are hard.

19 If I just grab a little bit here, we'll be able to
20 tell. I might just have you read it into us, to be honest
21 with you.

22 THE COURT: Yeah, you want the magnifier?

23 THE WITNESS: Please.

24 BY MR. DIGIACOMO:

25 Q I'm looking for the A.M. Will you tell me where it

1 is on that document that the 6:31 a.m. on 9/21 is.

2 A There we go. It's about dead middle. It's that one
3 right there that you're going to see the --

4 Q Okay.

5 A -- the phone manufacturer on.

6 Q So now I want you to slide across that. So that
7 says 9/21/2014, it says it's 6:31 a.m., correct?

8 A Correct.

9 Q So if you would slide all the way over to the right
10 on that, can you tell me what the MSC location is for that
11 particular record?

12 A It was CRM, SS 345.

13 Q And thus, how many hours do you subtract from the
14 number?

15 A Three hours.

16 Q So now we're at 3:31 a.m., correct?

17 A Correct. The Carolina switch.

18 Q And then is there a tower number there?

19 A Yes. It's -- the LAC is 24593 and the CID is 52519.

20 Q On that record, is the sector identified?

21 A Yes.

22 Q Is the -- okay, what's the sector?

23 A It's 5251, sector 9.

24 Q Okay. Is the azimuth for that sector identified?

25 A On --

1 Q I can help you out.

2 A I don't think -- no, I don't think it is.

3 Q In fact, the azimuth isn't on that record at all,
4 correct?

5 A No, the azimuth isn't on these records. You have to
6 cross reference the --

7 Q And if you want to figure out what the azimuth is of
8 that particular tower, you'd have to go to this one --

9 A Correct.

10 Q -- correct?

11 A Correct.

12 Q And because it's 24593, do we have an azimuth?

13 A No.

14 Q Hence, why it is we're not sure which side of that
15 tower that phone was hitting, but it had to be within the
16 footprint of some sector on that tower; is that fair?

17 A Yes.

18 Q And that's what you would do with each one the
19 records that we've talked about here from the original?

20 A Correct.

21 Q And if you were to do t, you could then plot each
22 one of these phones as to which tower footprint they were in
23 at any given time that you have tower information for the
24 phone?

25 A Correct.

1 Q And that's all you did -- or that's all we've done
2 here, correct?

3 A Yes, correct.

4 Q Mr. Landis also suggested that if you need Pen Link
5 in order to figure out what these records mean, correct?

6 A Correct.

7 Q To your knowledge, does the DA's Office have Pen
8 Link?

9 A No.

10 Q So from looking at these records, do you know --
11 well, I think you've already said this. It's a Google Earth
12 image, correct?

13 A Correct.

14 Q And there's a distance on the bottom so you can
15 know, sort of, how far out the footprint was set, correct?

16 A Correct.

17 Q And then Mr. Landis suggested, well, what if I don't
18 even have a computer? I mean, latitude and longitude's been
19 around for substantially longer than computers; would you
20 agree?

21 A Correct.

22 Q And so even if you just had a piece of -- a pencil
23 and these records, you could figure out this information?

24 A With a good map, yes.

25 Q Thank you.

1 MR. DIGIACOMO: I have nothing further.

2 MR. LANDIS: For the record, when Mr. DiGiacomo was
3 close to the witness, he said then you'd have to go here, what
4 was that second document you referred to?

5 MR. DiGIAUCOMO: I'm sorry, it was Exhibit 275.

6 MR. LANDIS: Okay. Very briefly, if I can?

THE COURT: Of course.

RECROSS-EXAMINATION

9 | BY MR. LANDIS:

10 Q The call detail records we've seen in this case
11 contain incoming/outgoing calls?

12 A Correct.

13 Q Incoming/outgoing text messages?

14 A Most of them, I think, yes.

15 Q That's not the only time cell phones communicate
16 with towers, though, correct?

17 A Correct.

18 Q They also just check to see if maybe I have a new
19 e-mail?

20 A Yeah, correct.

21 Q Or there's a new Groupon --

A Data -- data transmissions, yes.

23 | Q Why aren't those on these records?

24 A So there were, especially in 2014, there were very
25 serious time discrepancies over the networks with their data

1 transmissions. Some networks wouldn't even give you the
2 information, but other networks had serious time reliability
3 issues with those records.

4 Q Something that's improved, it sounds like?

5 A Yes.

6 Q Thank you, sir.

7 MS. MCNEILL: Just briefly, Your Honor.

8 RECROSS-EXAMINATION

9 BY MS. MCNEILL:

10 Q You indicated that there were the time discrepancies
11 of the data transfer. I think you testified that the cell
12 phone records from the company, they don't keep for Metro or
13 for any law enforcement agency, right?

14 A Correct, no.

15 Q They keep them for their own records, for their own
16 whatever they need that information for?

17 A Well, yes. Well, I guess, from a global sense they
18 do keep some for law enforcement, but they don't change the
19 format, I guess, that they're in. But they do -- actually,
20 the main reason they do keep them is -- is for us, the stuff
21 with the cell towers.

22 Q Well, that they keep them, but they don't --

23 A Yeah.

24 Q -- collect that data for you guys?

25 A No.

1 Q They collect that data for their own business --

2 A Correct, correct.

3 Q -- purposes? Okay. And so the reliability of those
4 records that you get from the phone company is really based on
5 the reliability of the phone company keeping the records?

6 A Correct.

7 Q Okay. And then you testified a little bit about
8 this exigent declaration, and Mr. DiGiacomo asked you if
9 someone was bleeding and you needed to access his phone for
10 whatever reason, correct?

11 A Correct.

12 Q Okay. Are you aware if that happened in this case?

13 A I am not.

14 Q Okay. And then you testified that you went into
15 some sort of FBI database with Mr. DiGiacomo.

16 A Correct.

17 Q When was that?

18 A I think, a couple days ago.

19 Q Did you -- was there any type of information that
20 you gleaned from that?

21 A The LAC and the CID off of that -- the -- the
22 location of -- the location of that LAC and CID from that
23 call.

24 Q Okay. So prior to doing that, going into that
25 database, that information was not in any of these records?

1 A No.

2 Q Okay.

3 A I don't believe so, no.

4 Q You indicated that -- and correct me if I'm wrong,
5 it's been -- I know you've been here a long time.

6 A No, it's fine.

7 Q You said when you were putting this stuff into Pen
8 Link, you had to kind of go back and check all of these
9 different things to make sure that it had been input
10 accurately?

11 A Correct.

12 Q And you had created some of your own documents to do
13 that, correct?

14 A That -- that field that we were speaking about
15 earlier is the field that we use to denote sometimes the
16 differences, if we have different times in the same record
17 sheet.

18 Q Okay.

19 A And so that way we know that when I imported this
20 set of data, it was slightly different than the other set of
21 data. So yeah, it's -- it's for our own note-keeping more
22 than anything --

23 Q Okay.

24 A -- to know that we lined everything up right.

25 Q And I thought you also said that you had created

1 some of your own cell tower maps to go in and make sure that
2 they're --

3 A Yes.

4 Q -- because these maps only show certain cell towers,
5 right?

6 A Correct.

7 Q Did you keep those maps that you created?

8 A I -- I didn't print them out as such. I load all
9 the -- the cell site -- what I do is to check things is I'll
10 -- I'll actually go out to the cell site database, I find the
11 records from that date period from the phone companies, I load
12 all those records from that date period into Google Earth Pro,
13 and so I have a overlay of all the cell -- the cell sites of
14 all of them. There's a lot. Thousands of them. And -- and
15 then -- and then I go in and then I'll -- I actually can
16 create a Pen Link report that I can click on and it gives me
17 map variability.

18 So I can -- I can check what I've imported based on
19 what was hand done by another person.

20 Q Okay. And in any of those maps or reports or
21 anything, did you keep those?

22 A I -- no, because I was clicking through and -- and
23 checking --

24 Q Okay.

25 A -- but there -- there's no definitive report of

1 that.

2 Q Okay. So it's not something that you would have
3 printed out?

4 A No, no.

5 Q And one last set of questions.

6 MS. McNEILL: If I may approach the clerk?

7 THE COURT: Yes.

8 (Ms. McNeill/Mr. DiGiacomo conferring)

9 BY MS. McNEILL:

10 Q So looking at this document that's up here, which is
11 State's -- sorry --

12 MR. DIGIACOMO: 324.

13 BY MS. McNEILL:

14 Q -- 324. The address that's on there in yellow --

15 A Yes.

16 Q -- you didn't put that on there, correct?

17 A No.

18 Q Okay. And you didn't say okay, this is the address
19 I know this phone was at so I'm going to put that on this map?

20 A No. Yeah, I didn't generate this map, no.

21 MS. McNEILL: Nothing further.

22 THE COURT: Thank you. All right. May this witness
23 be excused? Wait, we've got questions? We've got a question,
24 looks like.

25 (Off-record bench conference)

1 THE COURT: So here's the question. I'm going to
2 read it just as it is. Does -- well, do you -- does the
3 witness know what percentage variable the inactive or down
4 cell towers would affect the outcome of the phone
5 records/details that have been reviewed and further more so in
6 relation to finding the area the phone was in? Do you
7 understand the question?

8 THE WITNESS: Yeah, I understand.

9 THE COURT: Okay.

10 THE WITNESS: I think. I -- I would say that in 15
11 years with the unit, I've -- I've personally never seen that
12 be the case, they're negligible as far as my experience goes.

13 MR. DIGIACOMO: Thank you. I have nothing to follow
14 up on.

15 MR. LANDIS: No follow up.

16 MS. MCNEILL: Nothing, Your Honor.

17 MR. WOLFBRANDT: Nothing.

18 THE COURT: May this witness now be excused?

19 MR. DIGIACOMO: Yes.

20 MR. LANDIS: Yes.

21 THE COURT: Thank you very much.

22 THE WITNESS: Thanks.

23 THE COURT: Ready for a break? All right. So
24 ladies and gentlemen, we're going to take a 15-minute break.
25 During this recess, it is your duty not to converse among

1 yourselves or with anyone else on any subject connected with
2 the trial or to read, watch or listen to any report of or
3 commentary on the trial by person connected with the trial or
4 by any medium of information, including without limitation,
5 newspaper, television, radio or Internet. You're not to form
6 or express an opinion on any subject connected with this case
7 until it's finally submitted to you. We'll be in recess until
8 10 minutes until 4:00.

9 THE MARSHAL: Rise for the jury, please.

10 (Jury recessed at 3:32 p.m.)

11 THE COURT: And the record will reflect the jury has
12 departed the courtroom. Any matters outside the presence?

13 MR. DIGIACOMO: Not from the State.

14 THE COURT: Defense, any matters?

15 MS. MCNEILL: No, Your Honor.

16 MR. LANDIS: No.

17 THE COURT: All right. We'll be in recess.

18 (Court recessed at 3:33 p.m. until 3:51 p.m.)

19 (Outside the presence of the jury)

20 THE COURT: All right. We're back on the record.
21 We're outside the presence of the jury. Record will reflect
22 the presence of all three defendants with their respective
23 counsel, the Chief Deputies District Attorney prosecuting the
24 case are present as are all officers of the court. And your
25 next witness is?

1 MS. LEXIS: Robert Figueroa.

2 THE COURT: And did you want to make some
3 representations about admonishments or --

4 MR. DIGIACOMO: Actually, as we discussed earlier,
5 much like Ms. Larsen, we'd ask the Court to admonish him.
6 He's been admonished that he's not supposed to bring up the
7 gang affiliations of these two -- or of two of the
8 individuals. He doesn't really know much about Mr. Mendoza.
9 Or any prior criminal history of those individuals. Either.

10 MR. LANDIS: Prison time.

11 MS. McNEILL: Or that they're cellies.

12 MS. LEXIS: And also -- yes, --

13 MR. DIGIACOMO: Or that they met as -- yeah, that's
14 right.

15 MS. LEXIS: Yeah.

16 THE COURT: Or that they were cell mates or --

17 MS. LEXIS: He won't mention that they were cellies,
18 but rather, that they were roommates for nine months.

19 THE COURT: I will do that. We'll pause for a
20 moment while they bring the witness in.

21 (Off the record at 3:53 p.m. until 3:53 p.m.)

22 (Outside the presence of the jury)

23 THE COURT: All right. We are back on the record
24 still outside the presence of the jury. Mr. Figueroa has now
25 been seated in the witness stand. And before you were sworn,

1 Mr. Figueroa, I just wanted -- I know that you've already
2 discussed this with the District Attorney and they've
3 admonished you, but I just want to make clear that during your
4 testimony in the presence of the jury, it's very important
5 that you don't mention certain things; any gang affiliation
6 references concerning the defendants, and also any knowledge
7 you might have of prior criminal records they might have, or
8 that you were a cell mate with any of the defendants, anything
9 like that.

10 THE WITNESS: Yes, ma'am.

11 THE COURT: All right, thank you. And so we'll
12 bring the jury in and then we'll have him sworn.

13 THE MARSHAL: All rise for the jury, please.

14 (Jury reconvened at 3:55 p.m.)

15 THE MARSHAL: Your Honor, all members of the jury
16 and the three alternates are present.

17 THE COURT: Thank you. Please be seated. And the
18 record will reflect the presence of all 12 members of the jury
19 as well as the three alternates and the State has called its
20 next witness. And for the record?

21 MS. LEXIS: Robert Figueroa.

22 THE COURT: All right. The clerk will swear the
23 witness.

24 THE CLERK: Please stand and raise your right hand.

1 ROBERT FIGUEROA, STATE'S WITNESS, SWORN

2 THE CLERK: Please be seated and then please state
3 and spell your first and last name for the record.

4 THE WITNESS: Robert Figueroa, R-o-b-e-r-t.
5 Figueroa, F-i-g-u-e-r-o-a.

6 THE CLERK: Thank you.

7 THE COURT: You may proceed.

8 MS. LEXIS: Thank you.

9 DIRECT EXAMINATION

10 BY MS. LEXIS:

11 Q Good afternoon, Mr. Figueroa.

12 A Yes.

13 Q Sir, do you have a criminal history?

14 A Yes, ma'am.

15 Q Are you a convicted felon?

16 A Yes, ma'am.

17 Q What are your felony convictions?

18 A Two burglaries and a possession with intent to sell.

19 Q Okay. Do you remember one of the burglary
20 convictions to be from 2009?

21 A I believe so.

22 Q And --

23 A Yes, ma'am.

24 Q -- the other burglary conviction to have been from
25 2010?

1 A Yes, ma'am.

2 Q And you indicated also a possession of controlled
3 substance with intent to sell?

4 A Yes, ma'am.

5 Q Okay. Do you remember that also being around 2009?

6 A Yes, ma'am.

7 Q Mr. Figueroa, I'd like to go through or start out
8 our talk with kind of a timeline of the events that led you to
9 be here right now, okay?

10 A Okay.

11 Q All right. So you were arrested for murder with use
12 of a deadly weapon along with robbery with use of a deadly
13 weapon and conspiracy to commit robbery back on October 20th,
14 2014; is that right?

15 A Yes, ma'am.

16 Q And the day that you were arrested, October 20th,
17 you were interviewed by detectives from the homicide division
18 of the Las Vegas Metropolitan Police Department; is that
19 right?

20 A Yes, ma'am.

21 Q At that time --

22 THE COURT: What year was that? I'm sorry to
23 interrupt you, but you didn't say the year. Was it still '14?

24 MS. LEXIS: Yes, Your Honor.

25 THE COURT: Thank you.

1 MS. LEXIS: 2014.

2 BY MS. LEXIS:

3 Q When you spoke with detectives on that particular
4 day, you had been taken into custody; is that right?

5 A Yes, ma'am.

6 Q Okay. You chose to speak with them?

7 A Yes, ma'am.

8 Q Did you tell the detectives the truth of what
9 happened on September 21st, 2014 when you spoke to them the
10 day you were arrested?

11 A No, ma'am.

12 Q After you were taken into custody, you were booked
13 into the Clark County Detention Center; is that right?

14 A Yes, ma'am.

15 Q Okay. And as of today you're still in the Clark
16 County Detention Center?

17 A Yes, ma'am.

18 Q After you were arrested and taken into the detention
19 center, did you appear in court a few days later?

20 A Yes, ma'am.

21 Q At the time, were you aware of the charges that you
22 were facing?

23 A Yes, the day of court, yes. Well, also before that
24 on -- on my booking sheet.

25 Q At the time that you appeared in court, sir, were

1 you aware of who else had been charged with the same offenses?

2 A At that time?

3 Q Correct.

4 A Based on news reports, all I knew of was Mendoza
5 being, you know --

6 Q Okay. You pointed --

7 A Being involved in the --

8 Q -- to an individual --

9 A -- situation. Huh?

10 Q You kind of gestured towards an individual when you
11 said Mendoza.

12 A Yes.

13 Q Do you see an individual today here in court that
14 you know as -- do you know the first name of Mr. Mendoza?

15 A Jose.

16 Q Do you see an individual you know as Jose Mendoza
17 here in court?

18 A The gentleman on the far right.

19 Q In the first or second row?

20 A Well, behind his lawyer, I -- I'm assuming.

21 Q Okay.

22 A Second row.

23 MS. LEXIS: Your Honor, please let the record
24 reflect identification of Jorge Mendoza.

25 THE COURT: It will.

1 MS. LEXIS: Thank you.

2 BY MS. LEXIS:

3 Q And so you appeared in court. After your first
4 appearance in court, did you indicate to some of the
5 correction officers that you wanted to speak to homicide
6 detectives?

7 A Yes, ma'am.

8 Q That same day, as your first appearance, did
9 homicide detectives, in fact, show up at the Clark County
10 Detention Center to speak with you?

11 A Yes, ma'am.

12 Q At that time, did you fully speak with detectives?

13 A No, ma'am.

14 Q As of the time that the detectives showed up at the
15 Clark County Detention Center, had you met your lawyer?

16 A Briefly for the first initial court date, he came
17 in, gave me his card and that was basically it.

18 Q Okay. That initial court date was the same date,
19 right?

20 A Yes.

21 Q Okay. Had you had discovery? Had you received
22 discovery on your case?

23 A No, ma'am.

24 Q That same day, did you indicate to detectives that
25 you wanted to speak to them; however, you wanted an attorney

1 present?

2 A Yes, ma'am.

3 Q And did you, in fact -- did the detectives leave?

4 A Yes.

5 Q And did you speak with your attorney that night?

6 A The following day I had spoke with him.

7 Q Okay. And so the following day, did Las Vegas

8 Metropolitan Police homicide detectives show back up at the

9 Clark County Detention Center to speak with you?

10 A Yes, ma'am.

11 Q And by this time, do you recall that date to be
12 October 24th, 2014?

13 A I believe so.

14 Q At that time, sir, was your lawyer present?

15 A Yes, ma'am.

16 Q And I mean during the interview with detectives?

17 A Yes, ma'am.

18 Q And that interview was recorded, correct?

19 A Yes, ma'am.

20 Q On October 24th, 2014, you gave a statement to
21 police?

22 A Yes, ma'am.

23 Q Okay. At that time, did your story change from the
24 story that you told them on October 20th, 2014?

25 MR. LANDIS: Objection. Can we approach?

THE COURT: Yes.

2 (Off-record bench conference)

3 THE COURT: All right. Is the objection withdrawn
4 given our conference?

5 MR. LANDIS: It is.

6 THE COURT: Thank you.

7 BY MS. LEXIS:

8 Q So sir, did your story that you told detectives on
9 October 24th, 2014 change from what you told them when you
10 were arrested on October 20th, 2014?

11 A Yes, ma'am.

12 Q At that point, or after that meeting, a few weeks
13 later, did you enter into an agreement with the State of
14 Nevada?

15 A Yes, ma'am.

16 Q After you entered into that agreement, did you, in
17 fact, speak with Las Vegas Metropolitan Police Detective Barry
18 Jensen and myself on January 25th, 2015 at the Clark County
19 Detention Center?

A Yes, ma'am.

21 Q And that was the first time you had spoken with a
22 prosecutor, correct?

23 A Yes, ma'am.

24 Q Four days later, January 29th, 2015, sir, did you
25 testify before the Grand Jury?

1 A Yes, ma'am.

2 Q And during that time, you told the Grand Jury what
3 happened on January 21st, 2014?

4 A Yes, ma'am.

5 Q After you testified before the Grand Jury on January
6 25th, 2015, were you, in fact, indicted for murder with use of
7 a deadly weapon, robbery with use of a deadly weapon,
8 conspiracy to commit robbery, along with four other -- or
9 three other defendants?

10 A Yes, ma'am.

11 Q Do you recall those other defendants being
12 Mr. Mendoza, an individual by the name of Summer Larsen, an
13 individual by the name of David Murphy?

14 A Yes, ma'am.

15 Q About three weeks later, did you, in fact, enter a
16 guilty plea on February 18th, 2015?

17 A Yes, ma'am.

18 Q And sir, what did you plead guilty to?

19 A To robbery with the use and conspiracy.

20 Q Conspiracy to commit robbery?

21 A Yes, ma'am.

22 Q As you sit here today, sir, you have not yet been
23 sentenced; is that right?

24 A Yes, ma'am.

25 Q And do you recall what the terms of the negotiations

1 were that you entered into with the State of Nevada?

2 A Basically, just robbery with the use and conspiracy
3 and that's it.

4 Q Okay want?

5 A It was an open-end.

6 Q Okay. Do you recall what position the State of
7 Nevada could take at sentencing?

8 A They could -- they -- they retained the right to
9 argue. They --

10 Q What do you understand? What do you say or what do
11 you understand the term "right to argue" to mean?

12 A They could give me any amount of time that they wish
13 to.

14 Q Okay. Do you understand that it is -- who
15 determines your sentence; do you know?

16 A Your Honor.

17 Q Okay. And certainly, Mr. DiGiacomo nor myself have
18 made any promises?

19 A No, ma'am.

20 Q And it's Judge Ellsworth's sole discretion, correct?

21 A Yes, ma'am.

22 Q Sir, pursuant to your guilty plea, did you also
23 enter into an Agreement to Testify?

24 A Yes, ma'am.

25 Q And you're here today pursuant to that agreement; is

1 that right?

2 A Yes, ma'am.

3 Q Mr. Figueroa, I'd like to turn your attention to
4 September 21st, 2014, during the early morning hours -- or the
5 morning, okay?

6 A Yes, ma'am.

7 Q Did you get a call that morning from someone you
8 knew?

9 A Yes, ma'am.

10 Q What did you get a call from?

11 A Joey Laguna.

12 Q You pointed or gestured towards an individual when
13 you said Joey Laguna. Could you please, again, point to that
14 person and describe something they're wearing or where they're
15 sitting?

16 A The gentleman in -- in the center row or in the
17 center, second row, black shirt, gray tie.

18 MS. LEXIS: Your Honor, please let the record
19 reflect identification of Joey Laguna.

20 THE COURT: It will.

21 BY MS. LEXIS:

22 Q Did you know Mr. Laguna -- or did you call him by
23 his name or do you know him by a nickname?

24 MS. McNEILL: Objection. Can we approach?

25 THE COURT: Sure.

1 (Off-record bench conference)

2 THE COURT: Okay. So ladies and gentlemen, you're
3 about to hear evidence of a nickname, and it's for purposes of
4 identification only. You're not to draw any inference from
5 that nickname other than it's for purposes of identification.

6 | Proceed.

7 MS. LEXIS: Thank you.

8 BY MS. LEXIS:

9 Q Mr. Figueroa, do you know Mr. Laguna by a nickname?

10 A Yes, ma'am.

Q What's his nickname?

12 A Montone (phonetic).

Q And is that what yo

14 refer to him as?

A res, ma att.

16 Q Approximately, what time did you receive this call
17 from Mr. Laguna?

A Probably around 6:00, 6:30, maybe 7:00.

19 Q Let me back up a little bit. How do you know
20 Mr. Laguna?

21 A He was my roommate.

Q How long was he your roommate?

23 A About eight, nine months.

24 Q And when was he your roommate? Do you recall the
25 year?

1 A Around, what, 2012, I believe.

2 Q After -- at some point you stopped being roommates?

3 A Yes, ma'am.

4 Q Do you maintain contact with Mr. Laguna?

5 A Yes, ma'am.

6 Q And did you develop a friendship with him?

7 A Yes, ma'am.

8 Q How often would you and Montone talk?

9 A About every two to three weeks.

10 Q Would he call you or would you call him?

11 A Mainly, I believe, he would call me.

12 Q So when he called, what time did you say, on
13 September 21st, 2014?

14 A Around 6:30. In between 6:00 and 7:00.

15 Q What is it that Montone said when he called you?

16 A Basically, he gots a lick lined up.

17 Q Okay. What's a lick?

18 A A robbery.

19 Q Okay. Did he tell you anything else about this lick
20 that he had lined up?

21 A At the time, he -- he gave me a real brief quick
22 rundown basically, saying, you know, some -- some marijuana,
23 some weed, and basically, yeah, and whatever else is in -- you
24 know, whatever else is in the house.

25 Q Okay. Did he tell you where it was? So it was a

1 house that he said he had planned to rob along with you?

2 A Yes.

3 Q So during this conversation, did he ask you to take
4 part in this lick or this robbery that he had planned?

5 A Yes.

6 Q Did he indicate to you who else was going to be
7 taking part in this robbery?

8 A Duboy.

9 MR. LANDIS: Objection. Can we approach? I'm
10 sorry.

11 (Off-record bench conference)

12 THE COURT: Overruled. You may proceed.

13 BY MS. LEXIS:

14 Q Sir, we left off with you saying that Mr. Laguna and
15 yourself were planning to commit a robbery.

16 A Yes, ma'am.

17 Q And the last question I asked you was did Mr. Laguna
18 or Montone tell you who else was going to be taking part of in
19 robbery?

20 THE COURT: If anyone.

21 BY MS. LEXIS:

22 Q If anyone.

23 A Yes.

24 Q And you --

25 A Duboy.

1 Q -- indicated Duboy?

2 A Yes, ma'am.

3 Q Okay. Do you see Duboy here in court today?

4 A Yes, the gentleman with the white shirt. White
5 button-up behind his lawyer, second row.

6 Q Thank you.

7 MS. LEXIS: Your Honor, please let the record
8 reflect identification of David Murphy.

9 THE COURT: It will.

10 MS. LEXIS: Thank you.

11 BY MS. LEXIS:

12 Q What else -- I mean, so he indicated that Duboy was
13 also going to take part in this robbery. What happens next?
14 What's the conversation about?

15 A Basically, just he -- he gives me a quick rundown of
16 what's -- what's going to be there.

17 Q And what did he say was going to be there?

18 A Marijuana. And basically, whatever -- whatever else
19 is in the house at the time, and -- and basically, he'll be
20 coming to get me shortly.

21 Q Okay. Did he indicate to you how much marijuana it
22 was that he anticipated being at this house?

23 A The -- about a hundred or two pounds.

24 Q A hundred or 200 or --

25 A Yes.

1 Q -- a hundred and two?

2 A A hundred or 200 pounds.

3 Q Of marijuana?

4 A Yes, ma'am.

5 Q And so after he tells you this plan, after he tells
6 you what it is that he hoped to find there, what happens next?

7 A They -- they come pick me up.

8 Q When you say "they", who do you mean?

9 A Montone and Mendoza.

10 Q Do you have a car?

11 A No, ma'am.

12 Q Okay. Did you have one at that time?

13 A No, ma'am.

14 Q So approximately, what time is it that they pick you
15 up?

16 A Around -- I would say around 7:30.

17 Q A.M.?

18 A Yes, ma'am.

19 Q And how is it -- or how many -- you indicated that
20 Montone called you once to tell you about this robbery or this
21 lick that was being planned. Did he call you again prior to
22 them picking you up?

23 A Basically, to let me know that they were there
24 waiting for me to come outside.

25 Q So once you get that call, what do you do?

1 A I -- I go -- I go to the car.
2 Q And once you get to the car, what happens?
3 A I get in the car and it's Montone and Mendoza at the
4 time.
5 Q Who's driving?
6 A Mendoza.
7 Q And where is Montone sitting?
8 A In the passenger seat.
9 Q What type of vehicle are they in?
10 A Like a Toyota type of -- Honda, older model.
11 Q What color?
12 A It's like a light brown, kind of champagne color.
13 Q Had you seen Mr. Mendoza before that particular
14 time?
15 A No, ma'am.
16 Q Did you know his name?
17 A No, ma'am.
18 Q Never met him before?
19 A No, ma'am.
20 Q How about Duboy? You mentioned Duboy a little while
21 ago. Did you know Duboy's real name at that time?
22 A At that time, no, ma'am.
23 Q So do you get in the car?
24 A Yes, ma'am.
25 Q Once you get in the car, what happens next?

1 A We start driving down to -- to the location.

2 Q Where was this location that you were driving
3 towards?

4 A Basically, the north -- northwest.

5 Q Northwest part of Las Vegas?

6 A Yes, ma'am.

7 Q Okay. Do you recall anything else about the
8 direction or where this particular location is?

9 A No, ma'am. I was -- I was in the back seat.

10 Q Okay. Where were you sitting?

11 A In the -- at this time, I was -- I believe, I was
12 behind the driver's seat at this time.

13 Q What sort of -- were there any conversations on the
14 drive over to this house that you all were going to rob?

15 A Basically, Duboy, he'll be there with a truck
16 waiting around the corner to pick up the marijuana after we
17 robbed that house.

18 Q About how long does it take for you to get -- after
19 they pick you up from your house, to get to the robbery
20 location?

21 A I would say about an hour.

22 Q And so once you get to this particular location,
23 what happens?

24 A Duboy's girlfriend, she's driving the car. She's
25 driving the car, and --

1 Q Which car?

2 A Mendoza's.

3 Q Let me ask you this; on your way to the robbery
4 location, was Duboy's girlfriend with you in the car that
5 Mendoza was driving?

6 A No, ma'am.

7 Q How is it that she then gets into your car or
8 Mendoza's car?

9 A We stopped and they switch out. Basically, Duboy
10 pulls up in his truck and she gets out. She gets out, and she
11 hops in, and Mendoza gets in the back seat behind the
12 passenger.

13 Q Okay. So Mendoza's name in the back seat with you?

14 A Yes, ma'am.

15 Q Okay. Can you describe Duboy's girlfriend?

16 A Mexican girl, dark hair, tattoos on her arm.

17 Q Okay. And the truck that Duboy was in, what kind of
18 truck was it?

19 A Ford Ranger, white.

20 Q When they pull up next to the car that you were in,
21 the one that Mendoza was initially driving, where were you in
22 the neighborhood or where were you in relation to the house
23 that you all were supposed to rob?

24 A Couple blocks down the street right -- basically,
25 right around the corner from it.

1 Q Okay. So once Duboy's girlfriend gets into the
2 driver's seat of the car that you were in, what happens?

3 A We drive down to the location to where -- where the
4 house is at. We kind of do like a quick little drive-by, then
5 we park, then we, you know, do -- do a little turnaround and
6 we park, and basically, there was a lot of people outside.
7 There was people mowing the grass, and there was just a lot of
8 movement -- a lot of movement outside and --

9 Q So what do you all do upon seeing that?

10 A Once we see that, Mendoza, he's like no, we're not
11 doing this.

12 Q Okay. Did anyone else in the car say anything?

13 A At that time, no. No, ma'am.

14 Q Do you recall, you just testified that you all did a
15 quick drive-by at this particular street --

16 A Yes, ma'am.

17 Q -- and then kind of turned around --

18 A And went -- yeah. Yes, and went -- went into the
19 cul-de-sac area where this house was located.

20 Q Okay. So it was in a cul-de-sac?

21 A Yes, ma'am.

22 Q It wasn't just like a straight street?

23 A No, ma'am.

24 Q Okay. And so Mendoza says, let's not do this. What
25 happens?

1 A We drive away and we regroup at Montone's house.

2 Q About what time is it, you think, that you make it
3 back to Montone's house?

4 A Around 10:00. In between 10:00 and 11:00.

5 Q Okay. And I forgot to ask you, as the car that you
6 were in, okay, was driving around or driving past that cul-de-
7 sac, past that house --

8 A Yes, ma'am.

9 Q -- where was Duboy?

10 A He was waiting around the corner in the white --
11 white pick up truck.

12 Q Okay. The corner -- can you tell me in relation to
13 -- where was this corner in relation to the house that was
14 supposed to be robbed?

15 A The house was at the end of the cul-de-sac, and he
16 was basically at the end of the street just riding around the
17 corner right there.

18 Q Was -- which part of Duboy's truck was facing the
19 house, if it was, in fact, facing the house?

20 A The -- at the first initial house, he was -- really,
21 I couldn't tell you because, like I said, the -- the house was
22 at the end of the cul-de-sac, and he was up the street and
23 parked right around the corner. So whichever way he was
24 facing, I was not completely aware.

25 Q Did Duboy tell you why it was that he was going to

1 be parked at that corner?

2 A So we could load the truck up with marijuana.

3 Q When you all arrived or when you got into the car
4 being driven by Mr. Mendoza, when they picked you up at your
5 house, were you armed?

6 A Yes, ma'am.

7 Q Okay. What did you have with you?

8 A A Ruger .40.

9 Q Is that a handgun?

10 A Yes, ma'am.

11 Q Did you see anyone else in your vehicle with
12 weapons?

13 A At the initial house, no, ma'am.

14 Q On the drive to that particular robbery location,
15 were there any phone calls that you know of between anyone in
16 the car that you were in and Duboy?

17 A I'm -- really, I'm not sure, but like I said, he --
18 he pulled up right beside us and we done a little swap around.

19 Q How is it that you and Mendoza and Montone and
20 Duboy's girlfriend know -- or how is it that you all identify
21 the house that's going to be robbed?

22 A Basically, from what -- from what Montone initially
23 told me that Duboy had the -- you know, it was through Duboy
24 that he knew of -- of the source. You know, he knew where
25 this house was and --

1 Q Once you got to that neighborhood, did Duboy point
2 out that house?

3 A Point out the house? I believe, his -- I believe,
4 him, his girlfriend and Mendoza all knew where that house was.

5 Q Prior to you arriving at that particular robbery
6 location in that cul-de-sac that you were talking about, did
7 you have any knowledge or indication that Duboy was already at
8 that location, essentially scoping it out?

9 A Yes.

10 Q Okay. What information did you have?

11 A Basically, that him and Mendoza, they -- they were
12 there just kind of scoping out the house throughout, you know,
13 the early hours of the night leading into the morning.

14 Q Okay. And so Mendoza was there with him prior to
15 Mendoza picking you up?

16 A Yes, ma'am.

17 Q And then bringing you back to that location?

18 A Yes, ma'am.

19 Q And so you said there was a lot of activity at that
20 house?

21 A Yes, ma'am.

22 Q Okay. What do you recall seeing?

23 A There was basically, people outside mowing the
24 grass. There was basically, a truck within the cul-de-sac,
25 you know, parked outside that house just waiting. Then as we

1 pulled up and parked, there was actually another car coming up
2 the street and, you know, they kind of seen us and done a
3 u-turn and kind of left.

4 Q Okay. And how did that -- well, how did that make
5 you feel in terms of, you know, carrying out the robbery at
6 that time?

7 A Uncomfortable.

8 Q What was the plan? Was there a plan in terms of how
9 that particular robbery was going to be carried out?

10 A No, ma'am, just go in through the front door and
11 basically, just go in through the front door. There wasn't no
12 plan set in stone or nothing.

13 Q Okay. But certainly, there was a truck waiting so
14 that you all could load the marijuana that you found in the
15 house?

16 A Yes, ma'am.

17 Q Okay. And was Duboy's girlfriend, did she remain in
18 the car, in the gold or champagne colored car or was the plan
19 for her to remain in that car?

20 A Yes, ma'am.

21 Q Okay. So you go back to Montone's house between
22 10:00 or 11:00?

23 A Yes, ma'am.

24 Q Where is Montone's house located; do you know?

25 A Off of, what, Cheyenne and Cimarron area.

1 Q When you say you all regroup there, what is it that
2 you do?

3 A We go back to his house and basically, we talk about
4 what happens a little bit. He -- basically, we decide that,
5 you know, we'll save that one for later, and Duboy, he brings
6 up another one -- another house that he knows of.

7 Q Okay. Was Duboy's girlfriend present during that
8 conversation?

9 A No, ma'am. She was -- she got back into the --
10 Duboy's vehicle, the -- the white truck and she was just
11 sitting there waiting.

12 Q Did that white truck have a camper or no?

13 A No. It -- it just regular, what, white Ford Ranger.

14 Q Okay. And so who all is present during the
15 regrouping when Duboy brings up another house to rob?

16 A Me, Montone, Duboy and Mendoza.

17 Q When Duboy brings up this other house, what does he
18 tell you?

19 A That this house had just -- they're going to be --
20 they're going to re-up off the original house that we had
21 planned to rob.

22 Q Okay. What does re-up mean?

23 A They're going to buy some -- some marijuana off the
24 original house.

25 Q Okay. So the individuals in the second house, you

1 all planned to rob that house because you all knew that the
2 individuals in the second house had just obtained marijuana
3 from the first house?

4 A Yes, ma'am.

5 Q And so how much marijuana did you all think or did
6 Duboy say would have been in the second house?

7 A Basically, anywhere from 30 to 50 pounds.

8 Q And that's of marijuana?

9 A Yes, ma'am.

10 Q During that conversation, do you find out how it is
11 that Duboy has knowledge of both houses, both the first house
12 and the second house?

13 A Yes, because I ask him, basically, how do you know
14 about all these houses? How do you -- and basically, he said
15 that through -- through a female friend, but through --
16 through the conversation I got, you know, I got the
17 impression, you know, it was the guy's -- the guy's girlfriend
18 or wife who he was getting this information from.

19 Q Okay. When you say it was through a female friend,
20 were they just friends based on your impression and what Duboy
21 told you?

22 A No. They -- they were sleeping together.

23 Q Okay. And throughout that conversation, you got the
24 impression that the girl that Duboy was sleeping with was in a
25 relationship with the individual who lived at the second house

1 that you all were going to rob?

2 A Yes, ma'am.

3 Q Okay. And does Duboy tell you anything -- what does
4 Duboy tell you about the relationship between the homeowner of
5 the second house and the girl that he's sleeping with that led
6 you to believe that?

7 A Basically, the homeowner of the second house is
8 having problems with -- with his girlfriend or wife, whatever
9 she is, and they're -- they're having a lot of issues at that
10 -- at that time and before that, I believe, and basically,
11 they're just not doing good at all.

12 Q This September 21st, 2014, do you recall that being
13 a Sunday?

14 A Yes, ma'am.

15 Q Okay. When Duboy is pointing out, you know, robbing
16 the first house and also the second house, does it come to
17 your attention or do you come to find out why it is that the
18 robberies were planned to occur on that particular day, that
19 Sunday?

20 A Because the girl knew that the original house had
21 just picked up some weed and that her boyfriend/husband,
22 whatever he is, is going to re-up off that house.

23 Q That same day, that Sunday?

24 A That same day, yes, ma'am.

25 Q Okay. And so in terms of when the robbery of the

1 second house was supposed to occur, does Duboy tell you when
2 you all were supposed to go to that second house?

3 A Yes, he basically says, you know, give it some time,
4 you know. Let him -- let him re-up first, you know, so we'll
5 go do it later on that night.

6 Q And during that part of the conversation, did you
7 have any knowledge at all as to who it was that was living in
8 that second house?

9 A No, ma'am.

10 Q And certainly, did you know the identity of the girl
11 that Duboy was sleeping with that had provided him this
12 information?

13 A At the time, no, ma'am.

14 Q Do you know an individual by the name of Summer Rice
15 or Summer Larsen?

16 A Through -- through my paperwork, yes, now I do.

17 Q Okay. But at the time, did you know it?

18 A No, ma'am.

19 Q So since the second robbery isn't supposed to happen
20 until later that night, what happens after you all regroup at
21 Montone's house?

22 A Mendoza -- Mendoza drops me back off at my house,
23 and I stay at my house until they pick me up later -- later on
24 that evening.

25 Q Around what time is it that Mendoza brings you back

1 to your apartment?

2 A What, I would say in the afternoon sometime,
3 probably 12:00, 12:30.

4 Q And so do you stay at your house -- do you stay at
5 your house until you leave to commit the second robbery?

6 A Yes, ma'am.

7 Q So between the time, once you get home, do you hear
8 from either Duboy, Montone or Mendoza?

9 A I -- I hear from Montone throughout that day.

10 Q And what was it that Montone was telling you?

11 A Basically, are you -- are you with it? Are you
12 going to go? Basically, just checking to make sure that I'm
13 still going to be participate.

14 Q Okay. You mentioned that with the first robbery --

15 A Um-h'm.

16 Q -- with that house and on the northwest side, you
17 were the only one that you saw with a weapon.

18 A Yes, ma'am.

19 Q Prior to Mendoza dropping you off at your apartment,
20 did Montone ask you to bring anything the next time that he
21 saw you?

22 A Yes, ma'am.

23 Q What did he ask you to bring?

24 A My other gun.

25 Q What type of other gun did you have?

1 A A .38.

2 Q And is that a semi-automatic, a revolver, what is
3 it?

4 A A .38 snub nose.

5 Q What's a snub nose?

6 A It's a -- a short type of gun, revolver.

7 Q And so when he asked you that, did you, in fact,
8 once you got home, did you locate that weapon?

9 A Yes, ma'am.

10 Q And so Montone calls you. At some point, do they
11 come and pick you up?

12 A Yes, ma'am.

13 Q About what time?

14 A They come pick me up around about 7:00 o'clock p.m.

15 Q And who is it that comes and picks you up?

16 A At this time, it's Mendoza and -- it's Mendoza at
17 this time, then we go to Montone's house and pick up Montone
18 and Duboy also.

19 Q Okay. When you Mendoza picks you up at your house
20 the second time, what is he driving?

21 A The same car he was originally driving, the Toyota
22 type of Honda car, older model.

23 Q And once he picks you up, do you all go straight to
24 Montone's house?

25 A Yes, ma'am.

1 Q And when you get to Montone's house, was Duboy
2 already there?

3 A Yes, ma'am.

4 Q What happens once you get to Montone's house?

5 A We all -- we all get in the car. I -- I give
6 Montone my .38 and --

7 Q And at this point, I forgot to ask, did you bring
8 your .40 caliber Ruger with you this time around?

9 A Yes, ma'am.

10 Q And did you see Mr. Mendoza with a weapon?

11 A He had a nine millimeter rifle.

12 Q What about Duboy?

13 A He was -- he was driving.

14 Q So at some point, Duboy and Mendoza switch who's in
15 the driver's seat?

16 A Once we got to Montone's house, you know, we pick
17 them up, Duboy's driving, Montone's in the, what, passenger
18 seat. I'm behind -- I'm behind passenger seat at this time,
19 and Mendoza's he's behind the driver's seat.

20 Q At some point, do you all make your way towards the
21 second location?

22 A Yes, ma'am.

23 Q Okay. What general direction are you all headed
24 towards?

25 A Charleston and Hualapai area.

1 Q During the car ride from Montone's house to this
2 Charleston and Hualapai area, is there conversation in the
3 car?

4 A There's a little bit of conversation talking about,
5 you know, just basically, how many people might be in the
6 house, what he might have in the house, and just basically,
7 how we're going to do this.

8 Q Okay. So let's start with how many people are
9 supposed to be in the car -- I mean, in the house, sorry.

10 A In the house, they said the homeowner and maybe one
11 or two other people.

12 Q Okay. Did whoever it was -- who said that?

13 A Duboy.

14 Q Okay. Did Duboy say whether they were going to be
15 male or female?

16 A He was -- male.

17 Q Okay.

18 A He said that they should all be male.

19 Q Okay. And in terms of discussion concerning what
20 would be found or what you all could take from that second
21 house, what was it, what was discussed?

22 A Basically, marijuana. There should be a couple
23 guns, maybe, and some money.

24 Q When you are -- when you get into the car, how are
25 you dressed?

1 A I'm dressed in a black shoes, dark blue jeans, black
2 hoodie, then I had some type of little -- little type of black
3 mask.

4 Q Okay. That mask that you had, did it cover your
5 entire face or what part of your face did it cover?

6 A It covered the lower half.

7 Q Okay. So like your nose down?

8 A Yes, ma'am.

9 Q And what color was this particular half mask or --

10 A Black.

11 Q Did you see how everyone else was dressed?

12 A They were all dressed in pretty much regular --
13 regular clothes.

14 Q At some point, do you make it to the area of
15 Charleston and Hualapai?

16 A Yes, ma'am.

17 Q About what time is it that you estimate getting
18 there?

19 A Around 8:00 o'clock.

20 Q What happens once you get to that general area?

21 A We drive by the house real quick and he points it
22 out.

23 Q Okay. When you say "he", who do you mean?

24 A Duboy.

25 Q Then what happens?

1 A He points it out, then we do a little turnaround and
2 basically, we get out the car, we -- we go up to the front
3 door, and I -- I hit open the front door with my shoulder, and
4 basically, as soon as I enter, I got shot in my face, then
5 that dropped me down be to the ground. I got up, I turned
6 around trying to run out the door, then I got shot in my side.
7 Then I kind of, you know, after that I scrambled out the door
8 and just kept on going -- trying -- trying to run away down
9 the street.

10 Q I'm going to publish State's Exhibit No. 6.
11 Mr. Figueroa, if you look at your screen, and I don't know if
12 you'll have the ability to kind of use your finger to draw on
13 parts of the screen, okay, but what we're publishing now is
14 State's Exhibit No. 6. Do you see on this particular exhibit
15 a house with a label or a tag that says 1661 Broadmere?

16 A Yes, ma'am.

17 Q Okay. Is that the location of the home that Duboy
18 pointed out for you all to rob the night of September 21st,
19 2014?

20 A Yes, ma'am, I believe so.

21 Q Okay. When you say that Duboy initially -- when you
22 all get to this particular location, you do a drive by of the
23 house, which direction are you all coming from?

24 A I believe, we go up the --

25 MS. LEXIS: Your Honor, can we approach? I'm sorry,

1 excuse me, Mr. Figueroa.

2 THE WITNESS: Yes.

3 MS. LEXIS: Can we approach?

4 (Off-record bench conference)

5 MS. LEXIS: For the record, we approached and asked
6 for permission for Mr. Mendoza to have use of one -- or excuse
7 me, Mr. Figueroa to have use of one of his hands so he may
8 draw on the exhibit.

9 BY MS. LEXIS:

10 Q Okay. So Mr. Figueroa --

11 A Yes, ma'am.

12 Q -- what direction do you all drive by the house that
13 you were supposed to rob?

14 A We do -- we do like a -- do a quick drive-by coming
15 up Broadmere.

16 Q Okay.

17 A Then I believe, he circles around the block -- he
18 circles around the block and we come right back up and this --
19 he drops us off right here then right there in front of the
20 house.

21 Q Okay.

22 A And --

23 Q Do you see where it is that Duboy goes after he
24 drops you off?

25 A He goes up to the corner right here. He goes up

1 to --

2 Q That corner?

3 A -- to the corner right there and does --

4 Q To the corner of Garamound and Broadmere?

5 A Yes, ma'am. And he does kind of a little u-turn and
6 faces the house.

7 Q Okay. So the front of that champagne colored car is
8 now facing 1661 Broadmere?

9 A Yes, ma'am.

10 Q Or would have a view of 1661 Broadmere?

11 A Yes, ma'am.

12 Q Okay. And so you just finished testifying getting
13 shot going in. Let's just go through that slowly, okay?

14 A Okay.

15 Q So you get dropped off where?

16 A Right in front of the house. Basically, right in
17 front of the driveway.

18 Q Okay. And who is dropped off at the driveway?

19 A Duboy.

20 Q Duboy drops who off?

21 A Me, Montone and Mendoza.

22 Q At that point, do you already have your mask on?

23 A Yes, ma'am.

24 Q Do you have your weapon out?

25 A No, ma'am, I have a holster.

1 Q So you had your weapon in a holster?

2 A Yes, ma'am.

3 Q At some point, do you draw your weapon?

4 A After -- afterwards, I -- after I get shot and run
5 -- run out, I grab it because it is bouncing in the holster.
6 So I grab it and yes --

7 Q Okay.

8 A -- I do have it in my hand.

9 Q How is it decided -- you indicated that you you're
10 the one who breaks the door or hits the door?

11 A Basically, at the time I -- I was pretty fit, and I
12 had a little bit of size on me so it -- it would have been, I
13 guess, easier for me break open the door.

14 Q How many tries does it take you to get the door
15 open?

16 A Two tries.

17 Q Once it's open, are you the first one in?

18 A Yes, ma'am.

19 Q Who is -- who's behind you?

20 A At this time, because I go in and once I -- once I
21 take two steps in the house, after hitting open the door,
22 like, two quick little steps and I'm already getting shot, and
23 so that kind of -- as far as who was exactly behind me, it --
24 I couldn't exactly tell you at that time.

25 Q Okay. So you're immediately hit in the face?

1 A Yeah, immediately.

2 Q Okay. And where does the bullet strike you on the
3 face?

4 A Right below my -- on the -- right below my lip on
5 the right side.

6 Q And you indicated that dropped you to the ground?

7 A Yes, ma'am.

8 Q Okay. And you're able to get back up?

9 A Yes, ma'am.

10 Q And as you turn around you're shot on your side?

11 A Yes.

12 Q Okay. Which side does the bullet enter?

13 A It -- it enters -- it enters on the backside of my
14 left -- back left side.

15 Q And where is it -- where are you when you're shot on
16 the -- on your back? Are you still in the house? Have you
17 made it outside?

18 A I'm right in the front entryway of the house trying
19 to get out the door.

20 Q And do you eventually make it out the door?

21 A Yes, ma'am.

22 Q And what do you do?

23 A I keep on running straight away from the house,
24 basically.

25 Q Can you show us the direction you ran? Okay. So

1 you made a mark coming -- going south on Broadmere and going
2 east on Long Cattle?

3 A Yes, ma'am.

4 Q Okay. At some point, do you have an opportunity to
5 look back at what's happening at 1661 Broadmere?

6 A Yes, ma'am. As, basically, I get, you know, a
7 couple houses down, what is that, Long Cattle, I look back and
8 Duboy's already driving up and picking up Montone from -- from
9 the front of the house.

10 Q Okay. And you see this?

11 A Yes, ma'am.

12 Q Okay. As you're running south on Broadmere and
13 turning onto Long Cattle, are you still hearing gunshots?

14 A Yes, ma'am.

15 Q Do you, when you're looking at 1661 Broadmere, do
16 you see Mendoza at all?

17 A No, ma'am.

18 Q So at some point, when you stop --

19 A Uh-huh.

20 Q -- and look back at 1661 Broadmere, is that the time
21 you drew your weapon?

22 A Basically, me trying to get out the house, that's
23 what I had pulled it out because, like I said, it -- it got to
24 flopping around a little bit and just basically, when I got
25 outside the house, I had pulled it out. I -- yeah.

1 Q As you're running away, are you bleeding?

2 A Yes, ma'am.

3 Q So what happens next?

4 A As, you know, I get a couple houses down the way, I
5 look back, and I see Duboy picking up Montone and then kind of
6 just driving off, and right then and there I knew well,
7 basically, you know, just keep on running.

8 Q And so do you keep running?

9 A Yes, ma'am.

10 Q Where do you run?

11 A I -- I continue, what, down Long Cattle over here,
12 and I end up on Shifting Winds and Homestretch.

13 Q Okay. So you're going east on Long Cattle and then
14 there's a small side street right here that you go south on
15 and then you go east towards Ranch Hand and then north on
16 Shifting Winds; is that right?

17 A Yes, ma'am.

18 Q At some point, do you stop running?

19 A Yes. Once I hit the corner of Homestretch and
20 Shifting Winds, I -- I stop running and I find a place to
21 hide.

22 Q Okay. I am going to publish State's Exhibit 7. So
23 do you find a place to hide near that intersection of Shifting
24 Winds -- would you say Shifting Winds and pretty much
25 Homestretch?

1 A Yes, ma'am.

2 Q Okay. On this particular map, are you able to see
3 where it is that you hit or do we need to zoom in?

4 A I can see where I head -- where I headed. It was a
5 house right on -- on the corner of Shifting Winds and
6 Homestretch, the --

7 Q Okay. Actually, I'm going to ask to go back and
8 publish State's Exhibit 6. This might be a better picture.
9 You indicated that you were on Homestretch and Shifting Winds.
10 Can you see the house where you hit at in this exhibit?

11 A Yeah, just barely.

12 Q Okay.

13 A The very corner house.

14 Q Okay. And where in that -- where do you hide in
15 that location?

16 A In -- in the backyard behind some tall bushes.

17 Q How do you get to that backyard?

18 A I hopped the wall.

19 Q And the bushes that were -- it was in the backyard?

20 A Yes, ma'am.

21 Q Is did it butt up against the wall?

22 A Yes, ma'am.

23 Q Okay. And do you have your phone with you at that
24 time?

25 A Yes, ma'am.

1 Q Do you remain in this particular hiding location for
2 a while?

3 A Yes, about eight to nine hours.

4 MS. LEXIS: Court's brief indulgence.

5 BY MS. LEXIS:

6 Q When you first got to this particular hiding spot,
7 Mr. Figueroa, were you able to assess your injuries?

8 A Yes, ma'am.

9 Q Okay. And so what did you see?

10 A I was missing teeth and my jaw was broken. I
11 realized that I had been shot in the side. I was bleeding,
12 pretty much a mess.

13 Q Okay. And one of the last questions I thought I was
14 asking was whether you had your phone on you.

15 A Yes, ma'am.

16 Q At some point in you're hidden in this particular
17 backyard, do you call someone?

18 A I call Montone's number, and keep on, I mean,
19 calling his number trying to, you know, see what happened, see
20 where my ride went.

21 Q Okay. And did Montone ever answer the phone?

22 A No, ma'am, but I did get another -- I got a incoming
23 call on a different phone number.

24 Q Was it a phone number that you recognized?

25 A No, ma'am.

1 Q Okay. You've testified to Montone calling you. Did
2 you have Duboy's phone number that day?

3 A No, ma'am.

4 Q Okay. Did you have Mendoza's phone number?

5 A He -- he had called me to meet him up at the -- the
6 -- at the second time, Mendoza had called me to come outside,
7 I'm here, off of his phone. As for me actually having his
8 phone number, no.

9 Q Okay.

10 A Yeah.

11 Q So this phone call that you received, did you
12 recognize the phone number?

13 A No, ma'am.

14 Q Okay. Did you recognize -- did you answer the
15 phone?

16 A Yes, ma'am.

17 Q Did you recognize the voice on the other end?

18 A Well, it wasn't Montone or Mendoza's. I believe --
19 I was assuming it was Duboy.

20 Q And what did -- what was the context of that
21 conversation?

22 A Basically, you know, I need a ride, I'm hurt, I'm
23 shot, I'm bleeding bad. And I -- I need a ride, and
24 basically, he told me that well, his wife is -- his wife or
25 someone is going to work and has to take the car.

1 Q Okay.

2 A So --

3 MS. LEXIS: This might be a good time to break, Your
4 Honor.

5 THE COURT: All right. So ladies and gentlemen,
6 we're going to be recessing. Of course, direct examination is
7 not concluded and there will be cross, but it's 5:00, and so
8 this is a stopping point that we'll take.

9 So we're going to be resuming. Remember, we're
10 taking Monday off. So we won't have court on Monday.
11 We'll be resuming on Tuesday, that's drug court, so we won't
12 be able to start until 1:30 on Tuesday.

13 So during this recess, it is your duty not to
14 converse among ourselves or with anyone else on any subject
15 connected with the trial or read, watch or listen to any
16 report of or commentary on the trial by any person connected
17 with the trial or by any medium of information, including
18 without limitation, newspaper, television, radio or Internet.
19 You're not to form or express an opinion on any subject
20 connected with this case until it's finally submitted to you.

21 I'll see you on Tuesday afternoon.

22 THE MARSHAL: All rise for the jury, please.

23 (Jury recessed at 5:03 p.m.)

24 THE COURT: The record will reflect that the jury
25 has departed the courtroom, and you may take the witness back.

1 We're done for the day so you can take him.

2 Are there any matters outside the presence?

3 MS. McNEILL: I think from the --

4 MR. DiGIACOMO: Not from State.

5 MS. McNEILL: Well, I think Mr. Landis had one.

6 MR. DiGIACOMO: Oh, he wants to put the objection on
7 the record.

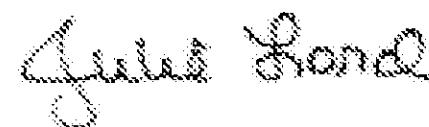
8 MR. LANDIS: Really quick. I objected to, I think,
9 the first statement Mr. Figueroa made about Joey Laguna saying
10 to him that Duboy was going to get involved based on
11 confrontation clause. Asked to approach, the Court overruled
12 it as a co-conspirator statement in furtherance of a
13 conspiracy.

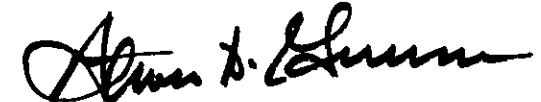
14 MS. LEXIS: Correct.

15 THE COURT: All right, all right. I only had one
16 inquiry, Ms. McNeill. Your client, I've been noticing that
17 he's -- seems to be having a hard time to -- am I remembering
18 that he had -- tried to get him glasses.

19 MS. McNEILL: We had tried to get him glasses but
20 the process of doing that because of his -- he had corneal
21 replacement, and there's just a lot going on and it just
22 didn't work out. So he's doing his best. He can -- I mean,
23 as long as it's close, he does fairly well.

24 THE COURT: I have like a whole drawer full of
25 reading glasses, some that are -- will those help?

1 DEFENDANT LAGUNA: Yeah, they won't work.
2 THE COURT: No?
3 MS. McNEILL: Yeah.
4 THE COURT: All right.
5 MS. McNEILL: So --
6 THE COURT: I thought I'd just offer.
7 MS. McNEILL: He's doing his best.
8 THE COURT: All right.
9 MS. McNEILL: He knows that discovery better than me
10 so --
11 THE COURT: Okay. All right, thank you. Anything
12 else before we recess for the weekend?
13 MR. LANDIS: No, thank you.
14 MS. McNEILL: No, Your Honor. Thank you.
15 THE COURT: I'll see you on Tuesday afternoon.
16 (Court recessed at 5:05 p.m. until Monday,
17 September 27, 2016, at 1:39 p.m.)
18 * * * * *
19 ATTEST: I hereby certify that I have truly and correctly
20 transcribed the audio/visual proceedings in the above-entitled
21 case to the best of my ability.
22
23 
24
25 JULIE LORD, INDEPENDENT TRANSCRIBER



TRAN

CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,	.	CASE NO. C-15-303991-1
Plaintiff,	.	CASE NO. C-15-303991-4
vs.	.	CASE NO. C-15-303991-5
	.	DEPT. V
JORGE MENDOZA,	.	TRANSCRIPT OF
DAVID MURPHY, a/k/a	.	PROCEEDINGS
DAVID MARK MURPHY,	.	
JOSEPH LAGUNA, a/k/a	.	
JOEY LAGUNA,	.	
Defendants.	.	
• • • • •	• • • • •	

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

JURY TRIAL - DAY 11

TUESDAY, SEPTEMBER 27, 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, TUESDAY, SEPTEMBER 27, 2016, 1:39 P.M.

2 (Outside the presence of the jury)

3 THE COURT: How you doing? All right. We're on the
4 record outside the presence of the jury. Three defendants are
5 present with their respective counsel. Where did Ms. McNeill
6 go?

7 MR. LANDIS: She's over here.

8 MS. MCNEILL: I'm here. I'm sorry, I was just
9 trying to get my exhibit.

10 THE COURT: Oh, there you are. I'm looking at the
11 wrong side of the room. And the Deputies District Attorney
12 prosecuting the case are present as are all officers of the
13 court.

14 So exhibits, make a record of the exhibits you've
15 enlarged, Mr. DiGiacomo.

16 MR. DIGIACOMO: Exhibits 305, 309, 310, 298 and 300
17 and 303 have all been placed on larger -- every one of them
18 with the exception of 308, every single thing on here with the
19 exception of the pagination is exactly the same. On 305,
20 there's one call detail, I think it's the very last one
21 because when this thing got paginated and printed, it's
22 9/23/2014; 11:05 p.m. is the last one. On the other record
23 it's 11:07 is the last record. I don't know why it's not on
24 there, but I did check to confirm that they're accurate and
25 these are going to be for demonstrative purposes and those are

1 going to be actual records.

2 So if there's any question about that call, which I
3 don't think any of the parties think is going to be relevant
4 because that's on the 8981 number. Obviously, the original
5 exhibits are in there. This is just for the jury to actually
6 be able to look at.

7 THE COURT: All right. But if the jury's going to
8 be looking at them, they have to actually be admitted.

9 MR. DIGIACOMO: Right.

10 THE COURT: And so the defense, are you objecting?
11 Do you want the opportunity to look at them and compare?

12 MR. LANDIS: I presume we don't need them for today?

13 MR. DIGIACOMO: I don't need them for anything. I
14 just want to make sure they're admitted before we rest, which
15 will happen after our next witness.

16 MR. LANDIS: Yeah, I'd like to just finger through
17 them. I mean, you could -- which I'll do before the end of
18 the day.

19 THE COURT: We'll do that maybe on the break.

20 MS. McNEILL: Right.

21 THE COURT: Okay.

22 MS. McNEILL: Thank you.

23 THE COURT: Otherwise, are we ready to bring the
24 jury in?

25 MS. McNEILL: Yes, Your Honor.

1 THE COURT: All right.

2 THE CLERK: Ms. Lexis?

3 MS. LEXIS: Yes, thank you.

4 THE COURT: Let's bring them in.

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

6 (Jury reconvened at 1:46 p.m.)

7 THE MARSHAL: Your Honor, all members of the jury
8 and the three alternates are present.

9 THE COURT: Thank you. Please be seated. And the
10 record will reflect the presence of all 12 members of the jury
11 as well as the three alternates. And of course, all three
12 defendants are present with their respective counsel. The
13 chief Deputies District Attorney prosecuting the case are
14 present as are all officers of the court. And Mr. Figueroa is
15 back on the stand. Sir, you're still under oath.

16 | THE WITNESS: Yes, ma'am.

17 THE COURT: And you may continue with your direct
18 examination.

19 MS. LEXIS: Thank you.

20 DIRECT EXAMINATION (RESUMED)

21 | BY MS. LEXIS:

22 Q Mr. Figueroa --

23 A Yes, ma'am.

24 Q -- we left off on Friday with you talking about what
25 happened on September 21st, 2014, the robbery that occurred

1 that night, but I'd like to back up a little bit, okay?

2 A Yes, ma'am.

3 Q On Friday last week, you identified Duboy.

4 A Yes, ma'am.

5 Q As having been with you in the morning robbery and
6 also -- or attempt robbery, and also the robbery that occurred
7 that night; is that right?

8 A Yes, ma'am.

9 Q Okay. Duboy, how many times -- had you met him
10 before that particular day?

11 A Yes, ma'am.

12 Q How many times had you been around him or had you
13 been with him?

14 A I've -- I've been around him probably on two, three
15 tops, no more than four occasions before that.

16 Q Okay. And you indicated on Friday also that you had
17 never met Mr. Mendoza prior to that particular day; is that
18 right?

19 A Yes, ma'am.

20 Q Okay. As you went through the day, September 21st,
21 with him, were you able to determine how it is that he was
22 brought into this particular plan?

23 A Basically, through Montone, Mr. Laguna, basically,
24 from what I gathered he -- he was the, you know -- you know,
25 he was pulling people, getting people.

1 Q Okay. So it was your understanding that Montone
2 pulled Mr. Figueroa in to take part in these robberies?

3 A Mendoza.

4 THE COURT: This is Mr. -- Mr. Figueroa.

5 BY MS. LEXIS:

6 Q I'm sorry, Mr. Mendoza --

7 A Yes, ma'am.

8 Q -- into the robberies; is that right?

9 A Yes, ma'am.

10 Q Okay. When you testified on Friday about running
11 out of the 1661 Broadmere house, at some point you testified
12 that you were standing and basically on the intersection of
13 Broadmere and Long Cattle and you recalled looking back
14 towards the house.

15 A Yes, ma'am.

16 Q Okay. As you were look being back, Mr. Figueroa,
17 towards 1661 Broadmere, do you recall still hearing gunshots?

18 A Yes, ma'am.

19 Q As you looked back, you indicated that you saw
20 Mr. Laguna being picked up by Mr. -- or by Duboy, Mr. Murphy;
21 is that right?

22 A Yes, ma'am.

23 Q Okay. As you looked back at 1661 Broadmere, at any
24 point did you see Mr. Mendoza outside of the home?

25 A My main focus was on the vehicle driving away, you

1 know, like yeah, Mendoza, I mean, I wasn't focused on him. I
2 was looking at the vehicle just Montone hop in the vehicle
3 and, you know, him and Duboy drive off.

4 Q Where exactly was Montone when the car pulled up and
5 picked him up?

6 A Basically, right at the end of the driveway where it
7 meets the street.

8 Q Okay. Okay. You also testified on Friday,
9 Mr. Figueroa, that you had your .40 caliber Ruger with you; is
10 that right?

11 A Yes, ma'am.

12 Q Okay. Sir, during what occurred at that home during
13 the evening hours, the robbery, did you at any time fire why
14 your weapon?

15 A No, ma'am.

16 Q When you stopped and looked when you were on the
17 intersection of Broadmere and Long Cattle, did you have your
18 weapon out?

19 A Yes, ma'am.

20 Q Okay. What were you doing with your weapon?

21 A Basically, as I turned around and started running,
22 it -- it started, you know, kind of flopping around, getting
23 in my way and I pulled it out, and basically, it -- it was
24 just basically in my hand, and that's when I was looking back,
25 looking at the car drive away. Then once it drove away,

1 continued to run down the street.

2 Q At any time while that's happening, do you ever
3 notice or do you have reason to believe that someone from your
4 party, meaning either Mr. Laguna or Mr. Mendoza, had fired
5 back at anyone in that home?

6 A Well, right as I was getting shot, I -- I don't know
7 exactly what was transpiring. My whole objective was trying
8 to get out the house and basically, as -- as I ran down the
9 street and kind of looked back, I heard gunshots, but my main
10 focus was on the car driving off.

11 Q Okay, okay. On Friday, before we broke --

12 A Um-h'm.

13 Q -- for the weekend, you talked about how you found a
14 hiding place and you highlighted that particular home for the
15 jury; do you remember that?

16 A Yes, ma'am.

17 Q Okay. You also testified to making several phone
18 calls while you were in the backyard hiding; do you remember
19 that?

20 A Yes, ma'am.

21 Q Okay. You've also already testified that you tried
22 to call Mr. Laguna several times; is that right?

23 A Yes, ma'am.

24 Q But that you did not call Duboy or Mr. Mendoza
25 because you didn't have their phone numbers?

1 A Yes, ma'am.

2 Q Okay. But that Mr. Mendoza had called you once
3 earlier that day to let you know that he was outside picking
4 you up, was it for the second robbery?

5 A Yes, ma'am.

6 Q Okay. Okay. And then you testified before the jury
7 that you did receive either was it a text message or a phone
8 call where -- who you believed to be from Duboy telling you
9 that they wouldn't be coming to get you?

10 A Yes, a phone call.

11 Q It was a phone call, okay. And it was a number that
12 you didn't recognize?

13 A Yes, ma'am.

14 Q Okay. At some point, do you call other people?

15 A Yes, ma'am.

16 Q Who else do you call?

17 A Basically, everybody in my phone.

18 Q Did you have roommates at the time?

19 A Yes, ma'am.

20 Q Did you call your roommates?

21 A Yes, ma'am.

22 Q What are their names? What were their names?

23 A Jeff -- Jeff -- I'm -- I'm not sure of his last
24 name. Then his girlfriend, her name was Cindy.

25 Q Did you have a girlfriend at the time?

1 A Yes, ma'am.

2 Q Okay. What's her name?

3 A Shandalaya (phonetic).

4 Q Did you call Shandalaya?

5 A Yes, ma'am.

6 Q And did anyone respond?

7 A No, ma'am.

8 Q At some point, did you stop making phone calls after
9 you heard the police sirens and police responding to that
10 particular location?

11 A Yes, ma'am.

12 Q Okay. And how long are you pretty much silent in
13 that particular backyard?

14 A Basically, about eight to nine hours.

15 Q Did you have a friend at that time that you often
16 hung out with by the name of Emanuel Barrientos (phonetic)?

17 A Yes, ma'am.

18 Q Okay. Did you call him while you were in that
19 backyard?

20 A Yes, ma'am.

21 Q Okay. And did he respond?

22 A He responded to texts, but as far as coming to get
23 me, no, ma'am.

24 Q Okay. About you made a physical phone call to him?

25 A I had made a -- I believe, a physical phone call and

1 a text.

2 Q Okay. But he never came out to get you?

3 A No, ma'am.

4 Q I'm sorry, how long were you in that backyard hiding
5 before you were able to get out of your hiding spot?

6 A About eight to nine hours.

7 Q And when is it that you felt it was clear for you to
8 start making phone calls again?

9 A Basically, when I got away, when I hopped -- you
10 know, got away from that one spot, hopped a couple walls and
11 found another vacant house --

12 Q Okay.

13 A -- further away.

14 Q Okay.

15 MS. LEXIS: I am going to ask Mr. DiGiacomo to
16 publish State's Exhibit 7.

17 BY MS. LEXIS:

18 Q And I know that the street names are a little bit
19 hard to see. Can you see that, Mr. Figueroa?

20 A Yes, ma'am.

21 Q Okay. Do you see where Shifting Winds is?

22 A Yes, ma'am.

23 Q Okay. And that's this street right here; is that
24 right?

25 A Yes, ma'am.

1 Q Okay. It's going like north to south. Can you tell
2 from this particular exhibit where it is that you hop the wall
3 and where you ended up?

4 A Right -- the back house that I was in is right here.

5 Q You -- okay.

6 A Right there.

7 Q Okay.

8 A Hopped -- I hopped these back walls and ended up in
9 that house right -- right there.

10 Q Okay. And let me see if I can clear that out. I'm
11 going to clear that, and it would appear as though you went
12 into a house labeled on Oedipus Avenue (phonetic); do you see
13 that? I know it's like in white lettering.

14 A Yes, ma'am.

15 Q Okay. And so once you get to that -- well, first of
16 all, was that house vacant or was it occupied?

17 A It was vacant.

18 Q Did you call someone or give someone an address to
19 come and pick you up from that house?

20 A Yes, ma'am.

21 Q And who did you call?

22 A I called my sister.

23 Q How old was your sister at the time?

24 A Twenty.

25 Q And what's her name?

1 A Elizabeth.

2 Q Around what time would you estimate it was when you
3 called Elizabeth and she responded?

4 A Early in the morning probably around somewhere about
5 6:00 o'clock.

6 Q 6:00 a.m. and we're now into September 22nd; is that
7 right?

8 A Yes, ma'am.

9 Q Okay. And so does Elizabeth come and pick you up?

10 A Yes, ma'am.

11 Q Okay. In a vehicle?

12 A Yes, ma'am.

13 Q And so what happens when she gets there?

14 A I -- she just pulls up, and I hop into the back seat
15 of the car. I sit down on the floor board and really I didn't
16 say nothing to her really. I just asked her to take me home.

17 Q Where was home back on that date?

18 A It was off of --

19 Q What were the cross streets; do you recall? How
20 about 3253 Casey Drive?

21 A Yes, ma'am.

22 Q And --

23 A Yes, ma'am.

24 Q -- was that an apartment?

25 A Yes, ma'am.

1 Q Does Apartment 101 sound right?

2 A Yes, ma'am.

3 Q Okay. So Elizabeth brings you to your apartment?

4 A Yes, ma'am.

5 Q At some point, does she see that you're injured?

6 A Yes, ma'am.

7 Q Okay. Were your roommates home?

8 A No, ma'am.

9 Q What happens once you get back to your apartment?

10 A I get back to my apartment, I go to the restroom to
11 look in the mirror to look at my injuries, and that's when my
12 little sister kind of realized like, what really happened to
13 you, and I just told her I -- you know, I've been shot a
14 couple times and I left it as that.

15 Q At some point, do you get medical attention?

16 A Yes, ma'am.

17 Q Where do you get medical attention?

18 A Loma Linda.

19 Q Where is that located?

20 A In California in, what, Palmdale.

21 Q And that's a hospital?

22 A Yes, ma'am.

23 Q How do you get there?

24 A My roommate, we -- we rented a car, me -- me, my
25 roommate, Jeff, Dustin and Shandalaya, they drive me to the

1 hospital.

2 Q Who's Dustin?

3 A My cousin's boyfriend.

4 Q And your girlfriend, they all drive you?

5 A To the hospital, yes, ma'am.

6 Q And do you receive medical attention for one or both
7 of your injuries?

8 A Just -- just for my mouth.

9 Q Was your jaw broken?

10 A Yes, ma'am.

11 Q What about the gunshot wound to your abdomen or to
12 your side, did you receive medical attention for that?

13 A No, ma'am, but I -- I know at the very end I had
14 told -- you know, I told the doctor, he kind of looked at it
15 and kind of just brushed it off like it was nothing. So I
16 don't think it was in any of the reports or nothing. He just
17 kind of put a Band-Aid over it and left it as that.

18 Q Okay. Do the police over from California or in
19 Palmdale respond to the hospital scene?

20 A At the -- at the first initial hospital I went to,
21 it was in Joshua Tree, and they responded to that. Then from
22 -- from there I got transferred to Loma Linda to where they
23 were able to put my jaw back together.

24 Q So over at Joshua Tree, the police department there,
25 did you tell them what happened to you?

1 A No, ma'am. I told them that it had ricocheted, hit
2 my jaw.

3 Q Okay. Once you get to Loma Linda Hospital and
4 they're able to give you medical care for the wound to your
5 jaw --

6 A Yes.

7 Q -- were they able to remove a bullet from that
8 injury?

9 A No, ma'am. It's -- it's in my neck still.

10 Q And obviously, the wound to your abdomen was it
11 through and through?

12 A Yes, ma'am.

13 Q On the car ride over to California, you mentioned
14 you were with Dustin, Jeff, your girlfriend, Shandalaya. Did
15 you at any point in time tell them how it was that you got
16 your injuries?

17 A Just basically, I had got shot. Just a home
18 invasion that went bad and I left it very brief and vague.

19 Q How long were you -- or when is it that you got --
20 that you went to California for medical attention?

21 A About two to three days later.

22 Q Two to three days after that robbery?

23 A Yes, ma'am.

24 Q The home invasion?

25 A Yes, ma'am.

1 Q So on October 20th, 2014, were you at your apartment
2 when police arrived?

3 A Yes, ma'am.

4 Q Tell us about that.

5 A I was at my apartment, and I was walking out my
6 apartment going up to the gym, and I was waiting for Manny
7 (phonetic) to come get me and we were just going to go hang
8 out.

9 Q What happened?

10 A Police, they came and they surrounded me, and
11 basically, arrested me for -- for -- for this -- for this
12 case.

13 Q Okay, okay. When they took you into custody, do you
14 recall them going into your apartment to search?

15 A Yes.

16 Q Okay. And do you recall having some telephones on
17 you when the police took you into custody?

18 A Yes.

19 Q How many phones did you have with you?

20 A I had two on me at the time, yeah.

21 Q And do you recall who -- who did the phones belong
22 to? The two phones that you had with you?

23 A One was mine and one I had just got from Shandalaya.

24 Q Do you recall the one -- well, when you were taken
25 into custody and after you spoke with police on October 24th,

1 2014, did you identify one of those phones as the phone that
2 you used the night of September 21st, 2014?

3 A Yes, ma'am.

4 Q Okay. And the phone number that you told the police
5 you were using that particular night, do you recall it being
6 702-241-1051?

7 A Yes, ma'am.

8 Q And the other phone number was the one that belonged
9 to Shandalaya; is that right?

10 A Yes, ma'am.

11 MS. LEXIS: Your Honor, may I approach?

12 THE COURT: Yes.

13 MS. LEXIS: I'd like to approach with what's been
14 previously marked as State's Proposed Exhibit 253 to 259 and
15 also 260 and 262.

16 THE CLERK: They've already been admitted?

17 MS. LEXIS: Proposed.

18 THE COURT: Proposed.

19 MS. LEXIS: May I approach?

20 THE COURT: Yes.

21 MS. LEXIS: Thank you.

22 BY MS. LEXIS:

23 Q Mr. Figueroa, I'm going to show you State's Proposed
24 Exhibits 259 -- or excuse me, sorry, 253 to 259 first, okay?
25 We're just going to thumb through them and take a look. Sir,

1 do you recognize what's been -- or what's depicted in State's
2 Proposed Exhibits 253 to 259?

3 A Yes.

4 Q What are they, sir?

5 A That's -- that's me during intake.

6 Q Okay.

7 A When they were taking photos of me.

8 Q Okay. Was this back on October 20th, 2014?

9 A Yes, ma'am.

10 Q When you were taken into custody?

11 A Yes, ma'am.

12 Q Do these photos fairly and accurately show how you
13 looked and the injuries that you had back on that day?

14 A Yes, ma'am.

15 MS. LEXIS: Your Honor, I'd move to admit State's
16 Proposed Exhibits 253 to 259.

17 MR. LANDIS: No objection.

18 MS. MCNEILL: No objection.

19 MR. WOLFBRANDT: No objection.

20 THE COURT: Those will be admitted.

21 (State's Exhibits 253 through 259 admitted)

22 MS. LEXIS: Thank you.

23 BY MS. LEXIS:

24 Q Sir, I'm also showing you State's Proposed Exhibits
25 260 through 262. Sir, first, do you recognize what's shown in

1 State's Proposed Exhibit 260?

2 A I believe -- I believe, that's from my roommate's
3 room.

4 Q Okay. Showing you State's 261, do you recognize
5 what's depicted in 261?

6 A Yes, two guns.

7 Q Okay. Are these your guns?

8 A No, ma'am.

9 Q And State's Exhibit 262, do you recognize what's
10 depicted there?

11 A Yes, that's my medical records.

12 Q Okay. And do they fairly and accurately depict 260
13 and 261 -- excuse me, and 261, do they fairly and accurately
14 depict what was taken from your roommate's area of the house
15 back on October 20th, 2014?

16 A Yes, ma'am.

17 Q And 262 fairly and accurately depict some hospital
18 paperwork that was found in your room on October 20th, 2014?

19 A Yes, ma'am.

20 MS. LEXIS: Your Honor, I'd move to admit State's
21 Proposed Exhibits 260 and 262 into evidence.

22 MR. LANDIS: No objection.

23 MS. McNEILL: No objection.

24 THE COURT: Not 261?

25 MS. LEXIS: And 261 as well.

1 THE COURT: Okay.

2 MR. LANDIS: No objection to 261.

3 MS. McNEILL: No objection.

4 MR. WOLFBRANDT: No objection.

5 THE COURT: Those will all be admitted.

6 (State's Exhibits 260 through 262 admitted)

7 MS. LEXIS: We'd like to publish State's 254.

8 THE COURT: All right.

9 BY MS. LEXIS:

10 Q Sir, do you recognize what's depicted here?

11 A Yes, ma'am.

12 Q Does this particular photograph of you show the
13 entry wound or the gunshot to the face?

14 A Yes, on -- on the lower right side --

15 Q Okay.

16 A -- of my lip.

17 Q All right. Could you circle? Can you see it in
18 that photo?

19 A Yes, ma'am.

20 Q And I'm going to show State's Exhibit No. 256. And
21 sir, what are we looking at here?

22 A The inside of my mouth, you could see a couple
23 missing teeth right there.

24 Q Okay. And were those teeth knocked out or
25 essentially removed from your mouth when you were shot in the

1 face?

2 A Yes, ma'am.

3 Q State's Exhibit No. 258, what are we looking at
4 here, sir?

5 A The gunshot wound to my side.

6 Q And where is it that the bullet entered; do you
7 recall?

8 A It entered through the back and came out through the
9 front side kind of.

10 Q Okay. And this is on the left side of your side?

11 A Yes, ma'am.

12 Q State's Exhibit No. 259, is that a closer view of
13 your gunshot wound to the abdomen side?

14 A Yes, ma'am.

15 Q Okay. And sir, the entrance was the one off of the
16 back right here; is that right?

17 A Yes, ma'am.

18 Q Okay. And so where's the exit wound?

19 A Right -- that's the exit wound, yes, ma'am.

20 Q And how about State's Exhibit 262? We're going to
21 just rotate it. Are these the hospital records that were
22 taken by the police from your room?

23 A Yes, ma'am.

24 Q Thank you. I'm going to show you State's Exhibit
25 261. And sir, we've already established that these were taken

1 from your roommate's room or from his possession. These are
2 not your weapons, are they?

3 A No, ma'am.

4 Q And how about State's Exhibit 260? Do you recognize
5 what's shown here? Were these also taken from your roommate's
6 room?

7 A I believe, my roommate's room.

8 Q Sir, prior to the police showing up on October 20th,
9 2014, did you get a visit from an individual by the name of
10 Gabriel Sotelo?

11 A Yes, ma'am.

12 Q How do you know Gabriel?

13 A Basically, I -- basically, I know him through Nino
14 (phonetic). I've known him for a couple years now.

15 Q Okay. Who's Nino?

16 A Manny, Emanuel.

17 Q Okay. So earlier when you said Manny, were you
18 talking about Emanuel Barrientos?

19 A Yes, ma'am.

20 Q Okay. And you also refer to him as Nino?

21 A Yes, ma'am.

22 Q How soon after -- I mean, you were treated at the
23 hospital in California; is that right?

24 A Yes, ma'am.

25 Q How many days did you stay over in the hospital in

1 California?

2 A I believe, three days.

3 Q Did you return to your apartment in Las Vegas?

4 A Yes, ma'am.

5 Q After that? Okay. And how soon after you returned
6 from the hospital did you get a visit from Gabriel Sotelo?

7 A Probably a week and a half to two weeks later,
8 maybe.

9 Q And while Gabriel -- during Gabriel's visit with
10 you, did you tell him what happened on September 21st, 2014?

11 A Basically, I gave him quick rundown of what
12 happened. As far as exact details, no, but --

13 Q Okay want?

14 A -- he -- he had a good basic idea.

15 Q Okay. So what rundown did you give him?

16 A Basically, a robbery that went bad. I had got shot
17 a couple times, and basically, he -- yeah, that -- that's
18 pretty much it.

19 Q It you tell him that you had committed the robbery
20 with other people?

21 A Yes, ma'am.

22 Q Okay. When Gabriel was visiting with you, was Manny
23 over at your house as well?

24 A Yes, ma'am.

25 Q Okay, okay. And did you -- how many people did you

1 tell Gabriel were involved in the robbery where you got shot?

2 A I told him a few people.

3 Q Did you give him any specific names?

4 A What, I think I mentioned Montone's name because he
5 -- he knows -- he -- he knows him.

6 Q When you say "he", Gabriel knows Montone?

7 A Yes, ma'am.

8 Q Anyone else by name?

9 A No, ma'am.

10 Q I want to talk a little bit about Manny, okay?

11 A Yes, ma'am.

12 Q At some point, did you obtain a firearm from Manny?

13 A Yes, ma'am.

14 Q What kind of firearm did you obtain from him?

15 A A .38 snub nose.

16 Q Now, you previously testified that before the
17 robbery during the nighttime on September 21st, at 1661
18 Broadmere, when they were dropping you off at your house or
19 your apartment, Manny asked you for a weapon; do you remember
20 that? Or excuse me, Montone asked you for a weapon; is that
21 right?

22 A Yes, ma'am.

23 Q Okay. And then you testified that you gave him a
24 .38 snub nose?

25 A Yes, ma'am.

1 Q Was the .38 snub nose that you gave to Montone,
2 Mr. Laguna, the same weapon that you had gotten from Manny?

3 A Yes, ma'am.

4 Q Or Emanuel Barrientos?

5 A Yes, ma'am.

6 Q During the time of September 21st, 2014, was Manny
7 around you a lot?

8 A We hung out all the time, but, I mean, prior to the
9 incident, I probably didn't see him for a little while.

10 Q Okay. What do you mean by a little while? How much
11 time are you talking?

12 A A few days.

13 Q And was Manny with you during the robbery and home
14 invasion over at 1661 Broadmere?

15 A No, ma'am.

16 Q So your only contact -- correct me if I'm wrong,
17 your only contact with him that particular day was you calling
18 him to see if he could pick you up after you had been shot?

19 A Yes, ma'am.

20 MS. LEXIS: Court's brief indulgence. Court's brief
21 indulgence.

22 BY MS. LEXIS:

23 Q Mr. Figueroa, you testified previously that during
24 the morning attempt robbery of the supplier's house over on
25 the northwest side, that Mr. Murphy had his girlfriend driving

1 the vehicle that you were in; is that right?

2 A Yes, ma'am.

3 Q Okay.

4 MS. LEXIS: Your Honor, I'd like to approach with
5 what's been previously marked as State's 234.

6 THE COURT: Is it admitted or just proposed?

7 MS. LEXIS: Proposed.

8 THE COURT: Thank you.

9 MS. LEXIS: May I approach?

10 THE COURT: Yes.

11 MS. LEXIS: Thank you.

12 BY MS. LEXIS:

13 Q Sir, I'm going to show you what's been previously
14 marked as State's Proposed Exhibits 234. Do you recognize
15 what's depicted in this photograph?

16 A That -- that's the lady who was driving the car in
17 the beginning --

18 Q Okay.

19 A -- during the first one.

20 Q And who else is in the photographs?

21 A Duboy.

22 Q Okay.

23 MS. LEXIS: Your Honor, I'd move to admit State's
24 Proposed Exhibits 234 into evidence.

25 MR. LANDIS: I object, and I can't believe State's

1 trying to put that into evidence, to be honest with you.

2 THE COURT: Approach.

3 (Off-record bench conference)

4 MS. LEXIS: Your Honor, may I approach with what's
5 now been marked as State's Proposed Exhibits 234?

6 THE COURT: Yes.

7 MS. LEXIS: Thank you.

8 BY MS. LEXIS:

9 Q Sir, I'm going to show you State's Exhibit 234,
10 Proposed. Do you recognize what's depicted in this
11 photograph?

12 A Yes. It's Duboy and the female that was driving the
13 car during the first incident.

14 Q Okay. That's the first attempted robbery on
15 September 21st, 2014?

16 A Yes, ma'am.

17 MS. LEXIS: Your Honor, I'd move to admit State's
18 Proposed Exhibits 234 into evidence.

19 MR. LANDIS: No objection to this 234.

20 MS. McNEILL: No objection.

21 MR. WOLFRANDT: No objection.

22 THE COURT: It will be admitted.

23 (State's Exhibit 234 admitted)

24 MS. LEXIS: Permission to publish on Elmo?

25 THE COURT: Granted.

1 MS. LEXIS: Thank you.

2 BY MS. LEXIS:

3 Q Sir, you previously testified that during the first
4 attempted robbery, on September 21st, that Sunday, Duboy had
5 his girlfriend, essentially, come out of the vehicle that he
6 was in once you all were near the house; do you remember that?

7 A Yes, ma'am.

8 Q Okay. So is it your testimony that the female
9 depicted in this particular photograph was the individual that
10 Duboy was with that particular day?

11 A Yes, ma'am.

12 Q And she was the same individual that arrived at that
13 particular location with Duboy?

14 A Yes, ma'am.

15 Q And she's the same person who came out of Duboy's
16 truck and went on to be the driver in the vehicle that you
17 were in?

18 A Yes, ma'am.

19 Q Mr. Mendoza's vehicle?

20 A Yes, ma'am.

21 Q Okay. And that when you all met back up at
22 Mr. Laguna's house, Montone's house, she got out of your
23 vehicle and went back into Duboy's vehicle?

24 A Yes, ma'am.

25 Q So Mr. Figueroa, during the beginning of your

1 testimony we kind of went over the timeline and the statements
2 that you gave the police.

3 I'd like to talk about the first time that you're
4 interviewed by detectives on October 20th, 2014.

5 A Yes, ma'am.

6 Q Okay. The same day that the photographs that I just
7 showed of you were taken; is that right?

8 A Yes, ma'am.

9 Q At that point, you were already taken into custody
10 and being booked on the charges in this particular case; is
11 that right?

12 A Yes, ma'am.

13 Q Okay. And you testified that you didn't exactly
14 tell the police the truth of what all happened that particular
15 night; is that right?

16 A Yes, ma'am.

17 Q Okay. What is it that you told detectives on
18 October 20th, 2014?

19 A When I initially got arrested?

20 Q Yes, sir.

21 A I told them I was going to this house to buy some
22 weed, and basically, as soon as I walked up, the door was
23 already kicked in, and basically, like, I heard like a
24 argument, then instantly like, as I was coming -- you know,
25 got to the front of the door, they started firing and I -- I

1 said that I had got shot.

2 Q Okay.

3 A And I turned around and ran.

4 Q And when you told detectives about the house --

5 A Yeah.

6 Q -- as you just testified right now, were you talking
7 about the house on Broadmere?

8 A Yes, ma'am.

9 Q Okay. So essentially that you had come across or
10 upon a home invasion and that's how you got shot?

11 A Yes, ma'am.

12 Q Then we talked about how you appeared in court on
13 October 23rd, 2014, your first appearance, and you told
14 detectives that you wanted to speak to him; do you remember
15 that?

16 A Yes, ma'am.

17 Q Okay. Fair to say that you didn't -- that you
18 didn't give a full, full interview that day when the
19 detectives showed up at the Clark County Detention Center?

20 A Yes, ma'am.

21 Q Okay. And you had just been appointed a lawyer that
22 particular day; is that right?

23 A Yes, ma'am.

24 Q Okay. And you didn't have access to discovery yet?

25 MS. MCNEILL: Objection. Leading and asked and

1 answered. We went over this last week.

2 THE COURT: I don't remember the asked and answered,
3 but that's sustained on leading.

4 MS. LEXIS: Okay.

5 BY MS. LEXIS:

6 Q Did you have any discovery back on October 23rd,
7 when the police showed up to the Clark County Detention
8 Center?

9 A No, ma'am.

10 Q And you gave a statement on October 24th, 2014 with
11 your lawyer present; is that right?

12 A Yes, ma'am.

13 Q Did you have any discovery at that time?

14 A No, ma'am.

15 Q What is it that you told the police on October 24th,
16 during your statement?

17 A Me, Duboy, Montone, Mendoza, that we went basically
18 to go rob this house. And I told him about the one before. I
19 told him about the girl driving the car. I told him how I got
20 shot, turned around and ran, how I hid in the backyard, then,
21 you know, after, what, eight, nine hours I hopped a couple
22 other walls then made a phone call to my sister and she came
23 and got me.

24 Q During that particular interview, October 24th --

25 A Yes, ma'am.

1 Q -- 2014, did you tell the detectives that you had a
2 .40 caliber Ruger with you during the robberies?

3 A Yes, ma'am.

4 Q Okay. And did you tell the police at that time
5 where it was that they could get the Ruger?

6 A Yes, ma'am.

7 Q And who had you given the Ruger to to hold?

8 A Shandalaya.

9 Q And did you tell detectives where she lived and that
10 they could retrieve it from her?

11 A Yes, ma'am.

12 Q So basically, on October 24th, 2014, did you tell
13 police the same thing that you have told the jurors here?

14 A Yes, ma'am.

15 Q The police also came back to the Clark County
16 Detention Center on January 25th, 2015, before you testified
17 before the Grand Jury; do you remember that?

18 A Yes, ma'am.

19 Q And I was present with the detective at that time?

20 A Yes, ma'am.

21 Q What did you tell the detective and myself during
22 that taped interview?

23 MR. LANDIS: Judge, I'm going to object to the
24 admission of prior consistent statements, which is what it
25 seems to me what they're doing.

1 MS. MCNEILL: And I would join the objection.

2 MR. WOLFBRANDT: I would join that as well.

3 MS. LEXIS: Do you want us to approach?

4 THE COURT: Yes.

5 (Off-record bench conference)

6 THE COURT: All right, the objection's sustained.

7 MS. LEXIS: Thank you.

8 BY MS. LEXIS:

9 Q Mr. Figueroa, do you recall the detectives coming to
10 see you at the Clark County Detention Center on December 10th,
11 2014, where they showed you some pictures?

12 A Yes, ma'am.

13 Q And do you recall them showing you a picture of an
14 individual they believed to be Duboy?

15 A Yes, ma'am.

16 Q Oak. When they presented you with that particular
17 photograph, what did you tell them?

18 A That wasn't -- that wasn't the Duboy -- Duboy I'm
19 talking about.

20 Q And at that time, did you give the police a
21 description of the Duboy that you were talking about?

22 A Yes, ma'am.

23 Q Okay. And what did you describe him as?

24 A Basically, what, six, two, heavy set, had something
25 wrong with his arm.

1 Q Which arm?

2 A At the time, I wasn't sure if it was the left or
3 right, but I -- I mean, you know, it was -- I knew he had
4 something wrong with his arm, and, you know --

5 Q Okay. And do you recall telling the detectives
6 about knowing an individual that went by the nickname of
7 Cornbread?

8 A Yes, ma'am.

9 Q Okay. And what was his relationship, if any, to
10 Duboy?

11 A His brother. Brother-in-law.

12 Q Okay. Do you see Cornbread here in court today?

13 A Yes, ma'am.

14 Q Okay. Can you point to him and describe what he's
15 wearing.

16 A The gentleman sitting in the far back row, bald
17 head, button-up T-shirt, kind of white. Looks like it got
18 stripes.

19 MS. LEXIS: Your Honor, please let the record
20 reflect identification of the individual Mr. Figueroa knows to
21 be Cornbread.

22 THE COURT: It will.

23 BY MS. LEXIS:

24 Q The individual in the photograph that the detective
25 showed you, the one that you indicated was the wrong Duboy,

1 what did he look like?

2 A Mexican guy, heavy set, bald head.

3 Q Do they at some point return with another set of
4 photographs?

5 A Yes, ma'am.

6 Q Okay. And this time, did the photographs contain
7 the right Duboy?

8 A Yes, ma'am.

9 Q Okay. And who were the -- who was the photograph
10 of?

11 A Mr. Murphy.

12 MS. LEXIS: I have no more questions for this
13 witness. Thank you.

14 THE COURT: Ms. McNeill?

15 MS. MCNEILL: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MS. MCNEILL:

18 Q Mr. Figueroa, I want to go back to September 2014
19 (inaudible), okay?

20 THE COURT: Wait a minute. Is there a microphone up
21 there?

22 MS. MCNEILL: I don't think so.

23 THE MARSHAL: It's over there.

24 (Pause in the proceedings)

25 BY MS. MCNEILL:

1 Q In September 2014, you indicated that after you got
2 shot, you called your sister to pick you up, correct?

3 A Yes, ma'am.

4 Q And you indicated that when your sister picked up,
5 you lied to her about what had happened to you, correct?

6 A Yes, ma'am.

7 Q Okay. And you knew that you couldn't go to a
8 hospital here with a gunshot wound, didn't you?

9 A Yes, ma'am.

10 Q Why was that?

11 A Basically, a shooting just happened, and there would
12 be, you know, basically, a police report going out or
13 something that's saying, you know, be on the lookout for
14 someone with a gunshot wounds or something of that sort.

15 Q Okay. So you knew that you needed to go out of
16 state?

17 A Yes, ma'am.

18 Q And that's why you chose California?

19 A Yes, ma'am.

20 Q And when you got to the hospital in California, you
21 lied to the hospital there about what happened to you?

22 A Yes, ma'am.

23 Q Okay. And I'm guessing that was for the same
24 reason, you didn't want law enforcement involved in it?

25 A Yes, ma'am.

1 Q In October of 2014, when you were back in Las Vegas,
2 after going to the hospital in Loma Linda, you knew that the
3 police might be looking for you, didn't you?

4 A Yes, ma'am.

5 Q And in fact, when the police arrested you, they
6 informed you what they were arresting you for?

7 A Yes, ma'am.

8 Q And one of those charges was murder?

9 A Yes, ma'am.

10 Q Right? And then when they gave you that -- when
11 they initially talked to you, remember Ms. Lexis said you told
12 them this story about going there to buy weed, correct?

13 A Yes, ma'am.

14 Q Do you remember when the police talked to you, they
15 were trying to get you to give them information, do you
16 remember the police telling you that one of the people
17 involved had snitched on you?

18 A Some -- somewhat like that.

19 Q Okay. And so the police are asking you questions to
20 try to get you to give information; remember that?

21 A Yes, ma'am.

22 Q You didn't want to give them information, did you?

23 A No, ma'am.

24 Q Right. So it was in that interview that you lied to
25 the police?

1 A Yes, ma'am.

2 Q And the police kept telling you that they had
3 evidence against you, correct?

4 A Yes, ma'am.

5 Q And the police were telling you that somebody else
6 involved had said that you planned this robbery, remember
7 that?

8 A Yes, ma'am.

9 Q And then they were telling you that it would be in
10 your best interest to talk to them?

11 A Yes, ma'am.

12 Q Right? And to tell them that it wasn't you that
13 planned it, correct?

14 A Yeah. I guess, yes, ma'am.

15 Q Okay. And after that interview is when you went to
16 court for your case, correct?

17 A Yes, ma'am.

18 Q And you knew that you were being charged with
19 murder?

20 A Yes, ma'am.

21 Q Right? And it was in court when you were facing
22 your murder charge that you got scared?

23 A Yes.

24 Q And that's when you indicated to officers that you
25 wanted to talk to them?

1 A Yes, ma'am.

2 Q Right? And they came to talk to you on October
3 23rd, right?

4 A Yes, ma'am.

5 Q Okay. And the police again are trying to get
6 information from you, correct?

7 A Yes, ma'am.

8 Q But you wanted a lawyer there?

9 A Yes, ma'am.

10 Q And you wanted a lawyer there because you wanted to
11 make sure you could get a good deal, right?

12 A I mean, yes, ma'am.

13 Q All right. That's why you were talking to them,
14 right?

15 A Yes, ma'am.

16 Q You didn't want to go down on a murder?

17 A No, ma'am.

18 Q Okay. And while you were talking to them, you
19 wanted to make sure you had a lawyer there so that you could
20 figure out what deal you were going to get, right?

21 A Yes, ma'am.

22 Q And in fact, do you remember asking the detectives
23 what kind of deal they could make you. You were concerned
24 about sentencing, remember that?

25 A Yes, ma'am.

1 Q Okay. And in fact, they told you that they'd have
2 to talk to the DA first?

3 A Yes, ma'am.

4 Q But that you would need to be cooperative?

5 A Yes, ma'am.

6 Q Do you remember saying that you needed to have your
7 lawyer there because you don't know about loopholes in the
8 law?

9 A Yes, ma'am.

10 Q And you were aware these were very serious charges?

11 A Yes, ma'am.

12 Q And it was after that interview that the police came
13 to you one more time with your lawyer there?

14 A Yes, ma'am.

15 Q Right? And in that interview is when you finally
16 tell the police about all the involvement of all the other
17 gentlemen, correct?

18 A Yes, ma'am.

19 Q And again, in that interview, you're indicating that
20 you don't want to do prison time. You're not trying to do a
21 lot of prison time, right? You remember saying that?

22 A I believe so.

23 Q And I'm guessing as you sit here today, you don't
24 want to do a lot of prison time?

25 A No, ma'am.

1 Q There's a big difference between a murder charge and
2 a robbery with use of a deadly weapon conviction, isn't there?

3 A Yes, ma'am.

4 Q In fact, do you know what the difference is?

5 A What, I believe, like second degree's like 2 to 25,
6 something like that.

7 Q Okay. Well did your lawyer explain to you that --

8 A I mean, 10 to 25.

9 Q -- on the robbery with deadly weapon you're looking
10 at 2 to 15 for the robbery?

11 A Okay.

12 Q Did your lawyer explain that to you when you entered
13 your plea?

14 A Yes, ma'am.

15 Q Right. You were informed of the sentencing range?

16 A Yes, ma'am.

17 Q And then a 1 to 20 for the deadly weapon, correct?

18 A Yes, ma'am.

19 Q Okay. And in fact, you were aware of that before
20 you entered the plea because you had discussed what kind of
21 deal you were going to get with the State?

22 A Yes, ma'am.

23 Q Right? Okay. I want to talk to you a little bit
24 about some of the things that you talked about today. Well,
25 first I want to go back to one of the interviews. The police

1 asked you in your interview -- one of your interviews with
2 them about Manny, remember that?

3 A Yes, ma'am.

4 Q And the police thought that Manny was involved?

5 A That -- that's what they were getting at.

6 Q Okay. And you indicated that Manny was just a
7 homeboy?

8 A Yes, ma'am.

9 (Cell phone ringing).

10 THE COURT: Okay, wait a minute.

11 MS. McNEILL: Yes.

12 THE COURT: Let's -- ma'am, have you got that phone
13 off?

14 JUROR NO. 2: Yes.

15 THE COURT: All right. Proceed.

16 MS. McNEILL: Thank you, Your Honor.

17 BY MS. McNEILL:

18 Q You testified before the Grand Jury in January of
19 2015, remember that?

20 A Yes, ma'am.

21 Q And is it fair to say that your testimony before the
22 Grand Jury contains a few more details than any of your
23 statements had prior to that date?

24 A I'm -- I don't got all the statements here to
25 compare them.

1 Q Okay.

2 A I mean --

3 Q Well, how about this --

4 A I don't got a photographic memory.

5 Q Okay. Well, that's fair. In your statements to the
6 police on December 24th, in that statement, did you tell the
7 police what time you had the phone calls from Mr. Laguna?

8 A Yes.

9 Q You did? Do you remember telling them a specific
10 time?

11 A A range of times.

12 Q A range of times? What time do you think you told
13 them?

14 A On which incident?

15 Q On December -- on October 24th, when you told the
16 police that Mr. Laguna called you, do you remember telling
17 them specifically what time?

18 A What, the phone calls in the morning?

19 Q Yes.

20 A Probably around 6:00, 7:00.

21 Q Would it surprise you that you just said in the
22 morning?

23 A I mean, no.

24 Q No? Okay. In your statement on January 25th, did
25 you tell the police what time Mr. Laguna called you?

1 A Probably.

2 Q Probably? Do you remember if you told them that?

3 A What, that he called me around 6:00 or 7:00-ish?

4 Q Yeah. Do you remember if you told them that?

5 A I think so.

6 Q Okay.

7 A I mean --

8 Q Do you remember everything you said in that
9 interview? If you don't remember, I can show you. That's why
10 I'm asking. It's --

11 A I mean --

12 Q -- just something we have to do. Do you remember
13 telling them specifically what time?

14 A Pretty much, I guess, yeah.

15 Q Okay. So what time did you tell them?

16 A Probably around 6:00, 7:00.

17 Q Okay. Would it surprise you to know that you did
18 not tell them what time that happened?

19 A I mean, is it surprising? No, not really. I
20 mean --

21 Q Okay. Let's go to your interview on -- or to your
22 statement before the Grand Jury. Do you remember testifying
23 then?

24 A Yes, ma'am.

25 Q Okay. And do you remember telling them specific

1 times --

2 MS. LEXIS: Objection, Your Honor. This line of
3 questioning assumes facts not in evidence.

4 MS. McNEILL: Well, if he's -- one, he's testifying
5 about his -- -- at the Grand Jury and he just said he
6 remembered telling them what time. And he testified to them
7 what time.

8 THE COURT: Overruled.

9 BY MS. McNEILL:

10 Q Do you remember testifying at the Grand Jury then as
11 to what time Mr. Laguna called you, correct?

12 A Yeah.

13 Q Okay. I'm going to ask you to look at your
14 statements from October 24th and January 25th, and ask if you
15 can show me where you told the detectives what time Mr. Laguna
16 called you. If I may approach?

17 THE COURT: Yeah, go ahead.

18 BY MS. McNEILL:

19 Q Is this a copy of your statement from October 24th?

20 A Yes, ma'am.

21 Q Okay. If you could just look through and tell me
22 where you told them specifically what time Mr. Laguna called
23 you.

24 A It doesn't look like I gave a real specific time.

25 Q Okay. And if you will look at -- is this a

1 transcript of your statement from January 25th?

2 A Yes, ma'am.

3 Q Okay. And if you could look through that and do the
4 same.

5 A It doesn't look like I gave a specific time.

6 Q Okay. So you would agree with me that the first
7 time you mentioned a specific time would be before the Grand
8 Jury?

9 A I believe so.

10 Q Prior to testifying at the Grand Jury, you spoke
11 with the district attorney, correct?

12 A Yes, ma'am. Or --

13 Q You remember testifying that at this first house
14 that you went to, that it was in the north northwest, correct?

15 A Yes, ma'am.

16 Q Do you remember where you told police it was when
17 you spoke to them on October 20 -- I'm sorry, I got my --
18 mixed up. October 24th, do you remember where you told them
19 it was?

20 A What, north northwest area, I believe.

21 Q Well, when you say you believe, does that mean maybe
22 you don't remember?

23 A I mean, on the way to the house, I mean, I was
24 smoking weed. I mean, I wasn't looking at every street.
25 Every --

1 Q Okay.

2 A But I believe it was in north northwest.

3 Q Okay. And I get that. And let me just kind of
4 explain this. When I ask if you don't remember, that's okay.

5 A Okay.

6 Q Then you can just say that, and then I can help you
7 try to remember what you said.

8 A Okay.

9 Q So I'm not asking you right now where is it. I'm
10 asking you do you remember telling the police when you spoke
11 to them on October 24th where it was? Do you remember what
12 you said?

13 A North northwest area.

14 Q So you believe that you told the police when asked
15 where that first house was that it was in the north northwest?

16 A Yes, ma'am.

17 Q Again, I'm going to ask you to look at your
18 statement.

19 MS. McNEILL: If I may approach the witness.

20 THE COURT: You may.

21 BY MS. McNEILL:

22 Q And tell me where it says north northwest.

23 A Yeah, on this page it doesn't say that.

24 Q Okay. Do you remember them asking where is this
25 other house at, right? And then your answer was, "I could

1 show you where this other house is at," right? That's what it
2 said on the paper?

3 A Yes.

4 Q Right. So it doesn't say north northwest, correct?

5 A Yes, ma'am.

6 Q And then when you spoke to them again on January
7 25th, and I think that was the interview where Ms. Lexis was
8 present, do you remember telling them where you told them this
9 other house was? Do you remember what you said then?

10 A What, the second house?

11 Q The first house.

12 A First house?

13 Q I'm talking about January 25th, when you spoke to
14 the police again --

15 A Yes.

16 Q -- and they asked you about this other house, do you
17 remember what you said, where it was?

18 A I guess, north northwest. I mean, that's --

19 Q Are you guessing that's what you said or do you
20 remember?

21 A Not exactly.

22 Q Okay. And --

23 A Not exactly.

24 Q If looking at your statement would help you
25 remember, I can approach.

1 MS. McNEILL: May I approach, Your Honor?

2 THE COURT: Would looking at your statement help you
3 remember?

4 THE WITNESS: Yes, ma'am.

5 THE COURT: Okay.

6 THE WITNESS: It's my statement.

7 BY MS. McNEILL:

8 Q Okay. If you read this area to yourself. Okay.

9 Does that help you remember?

10 A I said if you gave me a map, I could pinpoint it.

11 Q Okay. That's true. Did you say that. But when
12 they asked you where it was, you also said somewhere, right?

13 A Somewhere, if you gave me a map, I could pinpoint
14 it.

15 Q Okay. But you said uh, somewhere. Did they give
16 you a map to pinpoint it?

17 A Did they? No, ma'am.

18 Q No? Okay. At any point have they shown you a map
19 to pinpoint where that was?

20 A No, ma'am.

21 Q Have the police ever come to get you out of your
22 cell to take you to drive them to that house?

23 A No, ma'am.

24 Q Okay. You indicated that at that first location, it
25 was in the north northwest in a cul-de-sac, right?

1 A Yes, ma'am.

2 Q And that Duboy was parked down the street from the
3 house?

4 A Yes, ma'am.

5 Q Do you remember where he was parked?

6 A He was parked at the end of the street, you know.
7 The street, it comes down, it -- it meets with another street
8 and it would make a T, and he was, I guess, parked right --
9 right -- you know, right there, but right out of sight.

10 Q Okay. Could you see the car from where you were?

11 A No, ma'am.

12 Q Okay. And your testimony was that you were going to
13 take 100 to 200 pounds of marijuana?

14 A Yes, ma'am.

15 Q How familiar are you with marijuana?

16 A I'm pretty familiar with it.

17 Q I mean, you were a drug dealer, correct?

18 A Yes, ma'am.

19 Q And you sold marijuana?

20 A Yes, ma'am.

21 Q Okay. So you have some familiarity with it?

22 A Yes, ma'am.

23 Q Okay. How big is a pound of marijuana? Maybe a
24 foot long? Would you agree with me, for the record?

25 A I mean, give or take, yes.

1 Q Okay. And then maybe, I don't know, is that six
2 inches high?

3 A Yes, ma'am.

4 Q Okay. So kind of a brick?

5 A Yes, ma'am.

6 Q So there would be 100 to 200 of those that you would
7 be taking out of the house?

8 A That's what I was informed of, yes, ma'am.

9 Q You indicated today that Mr. Laguna asked you to
10 bring a .38, correct?

11 A Yes, ma'am.

12 Q Is that what you said? Okay.

13 A Yes, ma'am.

14 Q Okay. Have you ever told the police that before,
15 that Mr. Laguna asked you to bring a gun?

16 A No, ma'am.

17 Q And then you indicated that it was Manny who
18 provided this gun to you, the .38?

19 A It was -- it's been at my house for weeks before
20 that so as far as giving me the gun, no. It was there and
21 basically, I started claiming it.

22 Q Okay. Well, then I guess I'm confused, because I
23 thought you testified that Manny provided the gun to you
24 because Mr. Laguna needed one?

25 A No, ma'am.

1 Q Is that what you said?

2 A No, ma'am.

3 Q Okay. So at some date before this Manny had just
4 left a .38 at your house?

5 A Yes, ma'am.

6 Q You indicated that you were wearing a black mask
7 during the second incident on September 21st, remember that?

8 A Yes, ma'am.

9 Q Do you remember telling the police that you dumped
10 the mask when you were running?

11 A No, ma'am.

12 Q You don't remember telling them that? Would looking
13 at your statement refresh your recollection?

14 A Yes, ma'am.

15 (Ms. McNeill conference with District Attorneys)

16 MS. MCNEILL: If I may approach the witness?

17 THE COURT: Yes.

18 BY MS. MCNEILL:

19 Q If you'd just read this part to yourself. Does that
20 help you remember?

21 A And what was your question again?

22 Q Do you remember telling them that you dumped the
23 mask while you were running?

24 A I said in my statement if I would have dumped the
25 mask, I wouldn't want to be nowhere near it.

1 Q Okay. Okay. Do you remember when they asked you
2 where the mask was, you said, I would have dumped it while I
3 was running, right?

4 A I mean --

5 Q Is that what you said?

6 A Yes, that's what I said --

7 Q Okay.

8 A -- in the statement.

9 Q Where did you dump the mask?

10 A I never dumped the mask, though.

11 Q Okay. So where's the mask now?

12 A I got rid of it.

13 Q Okay. When?

14 A When? What, a couple days after.

15 Q Okay. So when you told the police that on October
16 24th, that you dumped it while you were running, that was a
17 lie?

18 A I never really said I dumped it, though.

19 Q Okay. All right. You indicated that your weapon
20 was holstered while you were inside the Broadmere house,
21 remember that?

22 A Upon entering, it was holstered.

23 Q Right.

24 A Yes, ma'am.

25 Q And the only time you took it out was when you were

1 running because it was sort of flopping around, remember that?

2 A Yes, ma'am.

3 Q Okay. Do you remember telling the police -- they
4 asked you if you ever fired your weapon, and you said that you
5 didn't ever fire it, right?

6 A Yes, ma'am.

7 Q And you remember telling them that it was because it
8 was on safety?

9 A Yes, ma'am.

10 Q Okay. But you didn't tell them that it was
11 holstered while you were in the house, correct?

12 A No, ma'am.

13 Q And you never fired your weapon on September 21st?

14 A No, ma'am.

15 Q You said that Duboy picked up Mr. Laguna at the end
16 of the Broadmere driveway, correct?

17 A Yes, ma'am.

18 Q Which direction did he drive away? Towards Long
19 Cattle or towards Garamound?

20 A I would -- towards the left so that would be south.

21 Q Maybe we can put up a picture for you. That might
22 help.

23 MR. DIGIACOMO: Court's indulgence for a second. I
24 have to go back to --

25 (Mr. DiGiacomo/Ms. McNeill conferring)

1 THE WITNESS: Yeah, south down Broadmere.

2 BY MS. McNEILL:

3 Q Okay. Well, if you could -- do you see the picture
4 up in front of you?

5 A Yes, ma'am.

6 Q Okay. So south down Broadmere, which direction did
7 he drive?

8 A To the left-hand side south down Broadmere if you're
9 facing the house.

10 Q Okay. So you can actually show us on the screen.
11 So he drove past the Broadmere house?

12 A Yes, ma'am.

13 Q Right? Past Long Cattle?

14 A Yes, ma'am.

15 Q Okay. Down to -- down to that long street on the
16 bottom, which is (inaudible) towards Ranch Hand?

17 A Yes, ma'am.

18 Q Right? Okay. You were shown some pictures that the
19 police took when they searched your apartment. If I could
20 approach you with Defense Proposed Exhibits B and C?

21 THE COURT: Is that D like David?

22 MS. McNEILL: B as in boy --

23 THE COURT: B as in boy.

24 MS. McNEILL: -- and C. If I may approach, Your
25 Honor?

1 THE COURT: Yes.

2 BY MS. McNEILL:

3 Q Showing you Proposed Exhibit B, do you know what
4 that is? Is that from your apartment the day that the police
5 took the pictures?

6 A Yes, ma'am.

7 Q Whose room is that?

8 A That's my room.

9 Q Okay. And showing you Defense Proposed Exhibit C,
10 that's another picture similar to the first one, correct?

11 A Yes, ma'am.

12 Q And that's your room?

13 A Yes, ma'am.

14 Q Okay.

15 MS. McNEILL: Your Honor, I would move for the
16 admission of Defense Exhibit B and C.

17 MS. LEXIS: No objection.

18 MS. McNEILL: And move to publish.

19 THE CLERK: Which ones were they?

20 THE COURT: So --

21 MS. McNEILL: B and C.

22 THE COURT: -- B and C are admitted, and you're
23 publishing first --

24 (Defendant Laguna's Exhibits B and C admitted)

25 (Mr. DiGiacomo/Ms. McNeill conferring)

1 MR. DIGIACOMO: For the record, I just put up B.
2 BY MS. MCNEILL:

3 Q Okay. Mr. Figueroa, you indicated that that was
4 your bedroom in your apartment at the time you were arrested,
5 correct?

6 A Yes, ma'am.

7 Q Can you tell me what's in those jars?

8 A That jar looks empty and that jar looks like it gots
9 one of those brown plastic bags where you get from Smith's.

10 Q Okay.

11 A For --

12 Q Which jar looks empty?

13 A The first one with the orange tag.

14 Q Okay. And what does the orange tag say? Can you
15 read it?

16 A I think it says Bubba.

17 Q Bubba? Do you know --

18 A Yes, ma'am.

19 Q -- what Bubba means?

20 A It's a type of marijuana.

21 Q Okay.

22 A Yes.

23 Q And it looks like to you that the second jar has a
24 grocery bag in it?

25 A Yes, ma'am.

1 Q Okay. It doesn't look like baggies of marijuana to
2 you?

3 A No, ma'am.

4 Q Okay. Back in October of 2014, you were selling
5 marijuana, weren't you?

6 A Yes, ma'am.

7 Q And in fact, when you say that you knew Gabriel
8 Sotelo, you knew Mr. Sotelo because you sold marijuana to him,
9 didn't you?

10 A Yes, ma'am.

11 Q And you indicated that you had a conversation with
12 Mr. Sotelo about the robbery?

13 A Yes, ma'am.

14 Q And you indicated that you told him, basically,
15 that it was a robbery gone wrong, right?

16 A Yes, ma'am.

17 Q And you told -- you said that you told Gabe that
18 there were a few people there, right?

19 A Yes, ma'am.

20 Q But you didn't give specific names? Or actually,
21 I'm sorry, you thought you mentioned Mr. Laguna's name?

22 A Yes.

23 Q You, in fact, told Mr. Sotelo that Manny was with
24 you during the robbery, didn't you?

25 A No, ma'am.

1 Q You told Mr. Sotelo that Manny went into the house
2 with you during the robbery?

3 A No, ma'am.

4 Q You told Mr. Sotelo that there was something else
5 with you named Orko (phonetic), right?

6 A No, ma'am.

7 Q Okay. You told Mr. Sotelo that you would buy weed
8 from the guy who lived in the house, didn't you?

9 A No, ma'am.

10 Q And that you told Mr. Sotelo that you went to
11 California to have your injuries treated?

12 A Yes, ma'am.

13 Q Do you remember the interview that you did with
14 police where your attorney was present? Your attorney told
15 you that you were doing yourself a big favor by giving
16 information to the police, correct?

17 A Yes, ma'am.

18 Q Do you believe that you did yourself a favor by
19 talking to the police?

20 A I mean, a peace of mind.

21 Q Okay. And would you agree with me that you did
22 yourself a favor when you lied to your sister about how you
23 got your injuries?

24 A Yes, ma'am.

25 Q And you did yourself a favor when you lied to the

1 hospital in Loma Linda about how you got your injuries?

2 A Yes, ma'am.

3 Q And you did yourself a favor when you lied to the
4 police during your first interview?

5 A Yes, ma'am.

6 Q Okay. You did yourself a favor by then telling the
7 COs when you went to court on your murder case that you wanted
8 to talk to them, right?

9 A Yes, ma'am.

10 Q And then you did yourself a favor by talking to the
11 police?

12 A Yes, ma'am.

13 Q In subsequent interviews? You did yourself a favor
14 by meeting with the District Attorneys?

15 A Yes, ma'am.

16 Q Right? And you did yourself a favor by testifying
17 before the Grand Jury?

18 A Yes, ma'am.

19 Q And you're doing yourself a favor by testifying
20 today, right?

21 A Yes, ma'am.

22 Q Okay. So you're all about doing yourself favors?

23 A I mean, after getting shot and yes, ma'am.

24 MS. MCNEILL: Nothing further.

25 THE COURT: Mr. Landis.

1 MR. LANDIS: Court's brief indulgence.

2 THE COURT: How's the jury doing? Need a break?

3 Hands, show of hands? No? Okay. How about court staff?

4 You're okay? Okay.

5 MR. LANDIS: My mind was in the same place as the
6 Court's and his is probably shorter. We were thinking maybe
7 he'd go before the break and then I'd jump in.

8 MR. WOLFBRANDT: That's fine.

9 THE COURT: Okay. Excuse me coughing. Vegas throat
10 this morning. Mr. Wolfbrandt.

11 CROSS-EXAMINATION

12 BY MR. WOLFBRANDT:

13 Q All right, Mr. Figueroa, the first interview you
14 gave with the police you told them that you -- you were there
15 but you hadn't even gotten near the house; is that correct?

16 A When the police arrested me, right? That first
17 initial interview --

18 Q Right.

19 A -- while they were arresting me?

20 Q Right. The one on October 24th?

21 A I told them I was coming around the corner and I had
22 seen a home invasion in progress and basically, as soon as I,
23 you know, got there, I had got shot and I turned around and I
24 ran.

25 Q And did you tell them why you were there in the

1 neighborhood?

2 A I told them I was going to buy some weed.

3 Q And just coincidentally as you were in that
4 neighborhood to buy weed and you were around the corner of the
5 house, some random home invasion happened and you got shot; is
6 that essentially what you told the police?

7 A Yes, sir.

8 Q All right. I'm going to go to the early morning of
9 September 27th, 2014.

10 A Okay.

11 Q Okay. Actually, it was prior to that. You get -- a
12 couple days before that. You get a phone call from somebody
13 that says they want you to be involved in, as you termed it, a
14 lick; do you recall that?

15 A What -- what -- on September what?

16 Q I backed up and said I think you said you got a call
17 a day or so before that day from somebody that wanted to have
18 you participate in what you called a lick.

19 A Yeah, I'm not sure about that.

20 Q Okay. Then let's go to September -- let me see, the
21 21st, the early morning hours. You testified on direct
22 examination on Friday that you had received a call from Joey
23 Laguna -- actually, you said that you received a phone call
24 from Montone --

25 A Yes, sir.

1 Q -- right? And that he wanted you to participate in
2 a lick.

3 A Yes, sir.

4 Q And you were more than willing to do that, weren't
5 you?

6 A Yes, sir.

7 Q Is that the first you had heard of this?

8 A What, this house, this location?

9 Q The whole topic of doing a lick.

10 A I mean, pretty much, yeah.

11 Q Pretty much or was it? Was that the first? You
12 roll out of bed, you get a phone call, says do you want to go
13 participate in a lick, and you go okay, okay, I'm in?

14 A Yes.

15 Q And you had no idea, no knowledge of a lick going to
16 happen on that morning prior to you getting that phone call;
17 is that what your testimony is?

18 A Yes, sir.

19 Q Now, that morning you had no idea who Jorge Mendoza
20 was, did you?

21 A No, sir.

22 Q Never seen him?

23 A Never even him.

24 Q Never met him?

25 A Never met him.

1 Q Never heard of his name before?

2 A Never heard of his name before.

3 Q So a little bit later that morning a car shows up to
4 your house --

5 A Yes, sir.

6 Q -- right? And who did you say was in that car?

7 A Montone and Mendoza.

8 Q Okay. But you didn't know it was Mendoza at the
9 time? Or you didn't know him by name?

10 A Yeah, I didn't know him by name.

11 Q So was there any conversation between -- not
12 between, but there at the house as you were getting picked up?

13 A No. I believe, they picked me up in front of my
14 apartment complex.

15 Q You got a phone call to say that they were there?

16 A Yes, sir.

17 Q Did you have any idea what car to be looking for?

18 A I was -- I walked to the front of my apartment
19 complex, it's pretty early in the morning, there ain't going
20 to be too many cars out there to where I recognize people
21 inside the car.

22 Q Okay. So the answer is you had no idea when you
23 walked out of the apartment what car you were looking for?

24 A Yes, but I knew the car was in front of my apartment
25 complex.

1 Q And you knew that because of a phone call you got?

2 A Yes, sir.

3 Q And you gotta call from Montone?

4 A Yes, sir.

5 Q All right. So you leave the apartment. It's you,

6 Mendoza and Duboy?

7 A Montone, sir.

8 Q Sorry, Montone, okay. So who's driving?

9 A Mendoza.

10 Q Did you have a weapon with you?

11 A Yes, sir.

12 Q What did you have?

13 A I had my .40.

14 Q That's that Ruger .40?

15 A Yes, sir.

16 Q It's a semi-automatic?

17 A Yes, sir.

18 Q Did Montone have a weapon?

19 A At that time, I don't believe so.

20 Q How about Mendoza?

21 A No, sir.

22 Q So you get picked up outside your apartment and go

23 where?

24 A We go -- we go to this house.

25 Q To Montone's house?

1 A No, sir. To where the first initial incident was
2 going to happen.

3 Q Okay. So is that up in the northwest part of town?

4 A Yes, sir.

5 Q Is that what you're saying?

6 A Yes, sir.

7 Q All right. And is that where you meet up with Duboy
8 in a truck?

9 A Yes, sir.

10 Q Do you see if Duboy has a weapon with him?

11 A I'm -- I'm not sure. He -- he's in the truck.

12 Q Okay. Okay. So and Duboy's girlfriend's in the
13 truck, you said --

14 A Yes, sir.

15 Q -- correct, when you first met up? And she gets out
16 of that truck and comes over to the car, according to your
17 testimony on Friday, and gets in the driver's seat of the car,
18 correct?

19 A Yes, sir.

20 Q Okay. And Mr. Mendoza then gets in the back seat of
21 the car where you're sitting, right?

22 A Yes.

23 Q Are you guessing or is that what happened?

24 A He gets in the back seat with me.

25 Q Do you recall whether she had a weapon?

1 A I don't -- I don't think so.

2 Q And the plan was that according to you, is that
3 Duboy was going to park around the corner with the truck,
4 correct?

5 A Yes, sir.

6 Q And that you guys were going to go rush the house
7 and start to steal 1 to 200 pounds of marijuana, correct?

8 A Yes, sir.

9 Q And if I understand now, based on your testimony,
10 you're the only one that had a weapon with you?

11 A Yes, sir.

12 Q Correct? And if I recall your direct testimony
13 correctly from Friday, correct me if I'm wrong, as you were
14 driving up and through the cul-de-sac, everybody noticed that
15 there was a lot of people around --

16 A Yes, sir.

17 Q -- correct? And that it was Mr. Mendoza that said
18 this isn't going to happen?

19 A Yes, sir.

20 Q Correct?

21 A Yes, sir.

22 Q So he's the one that called it off, if you will?

23 A Yes, sir.

24 Q Did you want to continue forward with it?

25 A No, sir.

1 Q So from when you leave that cul-de-sac, you know,
2 after you've called this thing off, you guys go to Montone's
3 house?

4 A Yes, sir.

5 Q Did you stop anywhere along the way?

6 A I don't believe so.

7 Q Okay. So the girl's driving, you're still in the
8 back seat with Mendoza, and Montone's in the right front seat?

9 A Yes, sir.

10 Q All right. When you get to Montone's house, then
11 does the pick up truck come there with Duboy?

12 A Yes, sir.

13 Q How long do you stay at Montone's house?

14 A About an hour.

15 Q Did you get something to eat?

16 A We smoked some marijuana.

17 Q Okay. When you say "we", who's we?

18 A Me -- me and Duboy.

19 Q Okay. Just you two?

20 A I believe, we were the main ones.

21 Q Okay. Fair enough. So when you left Montone's
22 house, do you go to your apartment?

23 A Yes, sir.

24 Q Okay. How did you get there?

25 A Mr. Mendoza drove me.

1 Q Okay. So just the two of you in the car?

2 A I -- I believe so. I believe so.

3 Q You went straight to your apartment, correct?

4 A Yes, sir.

5 Q No stops along the way?

6 A No stops.

7 Q At that point in the -- during that morning, had you
8 been given Mr. Mendoza's name? Had you ever -- were you
9 actually even introduced to him?

10 A Basically, you know, what, on the ride there a
11 little -- little bit of small talk. On the ride back, a
12 little bit of small talk. I mean, I know initially when I
13 hopped in the car, you know, Montone, he's there, hey, what's
14 up, and this is so and so and --

15 Q But he's not the one you knew?

16 A No, sir.

17 Q All right. Later that afternoon or later that
18 evening, I guess, is -- how did it come about for you to go
19 back to Montone's house?

20 A Basically, he set it up to where Mendoza was going
21 to come and get me from my house and go back to his house and
22 pick -- pick them up.

23 Q All right. So throughout that afternoon, before
24 going back to Montone's house, you have phone calls back and
25 forth with him, don't you?

1 A With Montone, yes.

2 Q With now, this is the apartment that you described
3 earlier. You've seen pictures earlier that you shared with
4 Manny, was it?

5 A The apartment?

6 Q Yeah.

7 A No, sir.

8 Q Who were your roommates again?

9 A Jeff and Cindy.

10 Q So picture of the guns that were recovered from that
11 apartment, those belonged to Jeff or Cindy?

12 A I believe, they were Jeff's.

13 Q Were you living with Jeff and Cindy in September of
14 2014?

15 A Yes, sir.

16 Q And that didn't change until the time you got
17 arrested in October?

18 A Yes, sir.

19 Q Right? How many other guns did you have in that
20 apartment that were yours in September of 2014? We've heard
21 about the Ruger .40 and then snub nose .38. Did you have any
22 other weapons?

23 A No, sir.

24 Q All right. So you guys end up leaving Montone's
25 house and you said Duboy's driving the car now?

1 A Yes, sir.

2 Q Okay. And you are where in the car?

3 A I'm in the back -- I'm in the back right seat behind
4 the passenger.

5 Q Okay. Let me ask you this; when Mendoza picked you
6 up at your house, your apartment --

7 A Yes, sir.

8 Q -- you brought with you then the .40 semi-automatic
9 and the .38 snub nose, right?

10 A Yes, sir.

11 Q Did Mendoza have a weapon with him at that time when
12 he picked you up that evening?

13 A He had that -- he had that rifle.

14 Q Are you sure he had the rifle with him?

15 A Yes, sir.

16 Q You don't recall that he didn't have any weapon with
17 him when he first picked you up?

18 A I don't think I seen it until after we picked up --
19 after we stopped at Montone's house, I don't think I seen it
20 until -- like, initially when I got in the car, no, I -- I
21 didn't know it was there.

22 Q You didn't see one, did you?

23 A But -- but -- no, sir, not initially.

24 Q When you got to Montone's house, do you recall
25 conversations that Mendoza didn't have a weapon with him?

1 A No, sir. He had -- he had his weapon with him.

2 Q Well, you didn't see it, did you?

3 A Not until we got to Montone's house.

4 Q All right. Then where did you see it?

5 A Him pulling it out.

6 Q He pulled it out and carried it into Montone's
7 house?

8 A I mean, during the little -- I mean, after we -- you
9 know, after we hop in the car, he pulls it out. I guess, it
10 was in the back seat kind of tucked, I don't know, but he --
11 he pulled it out.

12 Q There was never any driving over to Mendoza's house
13 for him to get a weapon, was there, that you recall?

14 A No, sir.

15 Q All right. So that evening of September 21st, you
16 and Mendoza arrive at Montone's house. Do you get out of the
17 car and go into Montone's house?

18 A No, sir.

19 Q And what happens, they -- people come out of
20 Montone's house and towards the car, and then get into the
21 car? @

22 A I believe they were standing in the driveway because
23 I -- yeah, I think they was standing in the driveway just kind
24 of -- just kind of waiting around.

25 Q I believe, you said on direct that Mendoza got out

1 of the driver's seat and Duboy got in and drove?

2 A Yes, sir.

3 Q Is that because Duboy knew where this place was?

4 A Yes, sir.

5 Q And to your knowledge, Mendoza had no idea where he
6 was going?

7 A Yeah, I don't -- I don't believe so.

8 Q Did you know where they were going?

9 A No, sir.

10 Q All right, so you get into the neighborhood there at
11 Broadmere, and on direct you testified that Duboy did a --
12 basically, a drive-by of the house then pointed it out to
13 you --

14 A Yes, sir.

15 Q -- is that correct? All right. And then this is
16 where I get a little fuzzy. Did he let you guys out of the
17 car and then drive around a corner, or did he park the car
18 around a corner, and you got out of the car there?

19 A He done a first initial drive-by, and he -- he let
20 us out right basically in front of the driveway, then he goes
21 up the street and kind of does like a little u-turn and parks
22 light there on the corner.

23 Q As you -- did you wait at the end of the driveway to
24 watch him park the car?

25 A I mean, yeah. I mean, the headlights are on, he

1 goes up, headlights go off, he parks the car right there. I
2 mean --

3 Q You saw where he parked, right?

4 A Yes, sir.

5 Q So you knew exactly where it was that that car was
6 as you were supposed to be going occupy the driveway?

7 A Yes, sir.

8 Q All right, now you're the first one to the door --

9 A Yes, sir.

10 Q -- of the house, right?

11 A Yes, sir.

12 Q You said you were a little bit bigger, and you were
13 the one to kind of throw your shoulder into the door to try to
14 break it open?

15 A Yes, sir.

16 Q The door flies open. It takes you a couple of times
17 to get it open, doesn't it?

18 A Yes, sir.

19 Q How many times do you remember?

20 A Two times.

21 Q So you hit it hard once, right?

22 A Yes, sir.

23 Q Then you hit it hard the second time and it breaks
24 free?

25 A Yes, sir.

1 Q And immediately you get shot?

2 A I basically, take two steps inside the house
3 because, you know, the first hit, boom, it was solid. The
4 second hit, it kind of threw the door forward and, you know,
5 kind of momentum pushed me, and basically, I take two steps
6 and immediately get shot.

7 Q And it's your testimony today that you did not
8 return fire?

9 A Yes, sir.

10 Q All right. And so as soon as you get shot in the
11 mouth, in the face --

12 A Yes, sir.

13 Q -- can you describe exactly how your body moved?

14 A It laid me straight down.

15 Q What do you mean laid you straight down?

16 A It knocked me straight -- just straight to the
17 ground.

18 Q All the way flat on the ground?

19 A Basically, as far as I can remember. I mean --

20 Q I mean, did you lose your feet and went completely
21 to the ground?

22 A Yes, sir.

23 Q All right. And then what happened?

24 A I got up. I got up. I turn -- well, you know,
25 getting up turning trying to make it out the door, I get shot

1 again.

2 Q Okay. And you were still inside the house?

3 A Yes. Right -- right where the threshold of the door
4 is.

5 Q The door is still wide open?

6 A Yes, sir.

7 Q And did you get up, then, and start to run out the
8 house?

9 A Yes, sir.

10 Q Was there any obstacle to you getting out the door?

11 A No, sir. No, sir.

12 Q And did you run into any of the other two that were
13 behind you?

14 A No, sir.

15 Q And I take it you weren't kind of walking, you were
16 on a dead run, weren't you?

17 A I was moving as fast as I can.

18 Q Did you see Mendoza when you turned around?

19 A No, sir.

20 Q You didn't see him at all?

21 A I mean, after getting shot in the face, I mean, I --
22 lights and blackness and all types of things is going on.

23 Q So you run out, you get to the end of the
24 driveway --

25 A Um-h'm.

1 Q -- and you keep running, correct?

2 A Yes, sir.

3 Q And you actually turn and ran away from where the
4 car was parked up and around the corner, didn't you?

5 A Yes, sir.

6 Q So when you got to the corner of Broadmere and Long
7 Cattle, you stopped and looked back, right?

8 A Yes, sir.

9 Q All right. And then that's when you saw the car --
10 a car that -- excuse me, that's when you saw the car come and
11 pick up who?

12 A Montone.

13 Q Did you wave at them? Did you want to get in that
14 car?

15 A Yes, sir.

16 Q Did you take any steps towards the car?

17 A I believe, I kind of, you know, done like a stutter
18 step, but, I mean, the car basically, never stopped. It was
19 pulled up, kind of door flew open, dives in and keeps on
20 rolling. I mean, I -- I do believe I was trying to yell, but
21 at that time, I couldn't -- I just got shot in my jaw and had
22 a bullet stuck in my neck.

23 Q Okay. Did you try to run towards the car?

24 A I done like a little stutter step. A little -- but
25 like I said, it done like a -- it never really stopped at all.

1 It just --

2 Q And as you're looking back -- at that point, as
3 you're looking back towards the house, you don't see anybody
4 else, correct?

5 A My main focus was on the car leaving me.

6 Q Okay. So the car leaves and drives -- it doesn't go
7 down Long Cattle where you are, does it?

8 A No, sir.

9 Q It goes -- just keep going further in the same
10 direction it was going, right?

11 A Yes, sir.

12 Q And is it your testimony that you did not fire any
13 shots from that corner of Broadmere and Long Cattle?

14 A Yes, sir.

15 Q Did you know Mendoza's phone number that day?

16 A He had called me during -- during the second
17 incident when he pulled up to my apartment, he had, what, he
18 had called me to come outside.

19 Q You weren't already out there waiting for him?

20 A No, sir.

21 (Mr. Wolfbrandt/Mr. DiGiacomo conferring)

22 BY MR. WOLFBRANDT:

23 Q All right. Do you see State's Exhibit 261 there on
24 the screen?

25 A Yes, sir.

1 Q Okay. Those are the guns that you said were your
2 roommate's guns that the police took when you got arrested on
3 October the 20th, 2014?

4 A Yes, sir.

5 Q Do you know what kind of guns those are?

6 A No, sir.

7 Q Well, do you know whether or not the one on the
8 right, as you look at that picture, is that a semi-automatic
9 or revolver?

10 A It looks like a semi-automatic.

11 Q How about the one that's laying in the case? What
12 does that look like to you?

13 A Revolver.

14 Q Okay. Have you ever handled those weapons before?

15 A Well, I believe, he showed me, yeah. I mean,
16 handling them, what do you mean?

17 Q Is the revolver that you took with you that day?

18 A Oh, absolutely not.

19 Q Well, what happened to the one that you took with
20 you on September 21st?

21 A I don't know. Montone hopped in the car with it and
22 took off.

23 Q All right. After you got picked up by your
24 girlfriend, later the next morning or at --

25 A My sister, sir?

1 Q -- early -- oh, it was your sister?

2 A Yes, sir.

3 Q Okay. At that point, did you ever have any other
4 conversation with Mr. Mendoza?

5 A After that incident?

6 Q Yep.

7 A Probably -- probably a couple weeks after that, I
8 called him up, you know, trying to figure out what's going on,
9 you know.

10 Q I'm talking about Mendoza.

11 A Oh, no, sorry, I meant Montone. Sorry about that.
12 My mistake. But, yeah, I never had no conversation with
13 Mendoza.

14 Q But you had some conversation with Montone, tried to
15 figure out what happened?

16 A Yes, sir.

17 Q Did you have any conversations with Duboy to figure
18 out what happened?

19 A No, sir.

20 Q Did you guys ever get together after that?

21 A No, sir.

22 MR. WOLFBRANDT: Court's indulgence.

23 BY MR. WOLFBRANDT:

24 Q All right, Mr. Figueroa, you testified you took
25 about -- as you hit that front door on Broadmere, that

1 momentum took you a step or two just inside the threshold of
2 the house, correct?

3 A Yes, sir.

4 Q All right. Nobody else got inside the threshold of
5 that house, did they?

6 A I don't believe so.

7 Q All right. You first come through the door and you
8 immediately get shot in the face; is that correct?

9 A Yes, sir.

10 Q How many shots did you hear coming from inside the
11 house to your direction, if you recall?

12 A Coming towards my direction as I entered?

13 Q As you go in the house, obviously, one came your
14 direction because you got hit in the face, right?

15 A I believe, that was the first initial bullet that
16 was fired that came at my face.

17 Q I agree.

18 A Yes.

19 Q How many other shots came at you, if you know?

20 A I'm not sure. I'm not sure.

21 Q Well, one other one came at you because it hit you
22 in the side, didn't it?

23 A Yes, sir, but the exact number of how many shots
24 actually came at me during that incident, I'm not -- I don't
25 know.

1 Q And it's your testimony you did not return fire?

2 A Yes, sir.

3 Q All right, thank you.

4 MR. WOLFBRANDT: That's all I have.

5 THE COURT: We're going to take a break right now.

6 This will be our afternoon break. So it's the only break
7 we're going to have until we recess for the evening.

8 So during this recess, it is your duty not to
9 converse among yourselves or with anyone else on any subject
10 connected with the trial or to read, watch or listen to any
11 report of or commentary on the trial by any person connected
12 with the trial or by any medium of information, including
13 without limitation, newspaper, television, radio or Internet.
14 You're not to form or express an opinion on any subject
15 connected with this case until it's finally submitted to you.
16 We'll be in recess for 15 minutes, so actually since it's just
17 past the half hour, I'll give you until 10 minutes to 4:00.

18 THE MARSHAL: All rise for the jury, please.

19 (Jury recessed at 3:31 p.m.)

20 THE COURT: And the record will reflect the jury's
21 departed the courtroom. Any matters outside the presence
22 before we take our recess?

23 MR. DIGIACOMO: Just one thing. We intend to offer
24 probably his entire 10/24 statement as well as his entire
25 Grand Jury transcript so I'd ask over the break if there's

1 anything they want redacted from it, to let us know up-front
2 so we can discuss that because we intend to offer both of
3 those considering particularly Ms. McNeill's cross at this
4 point.

5 THE COURT: Okay. And your response to that?

6 MR. LANDIS: Could the State clarify the basis to
7 admit the entire statement?

8 MR. DIGIACOMO: Well, yes, two of them. First of
9 all, the Grand Jury transcript comes in its entirety, and the
10 nature of the cross-examination is, you had a whole bunch more
11 specific information that you didn't say in the first one, and
12 you never said the time.

13 Well, they get to review the entire transcript and
14 see, did they ever ask him specifically what time was this
15 time called? Specifically, what was asked and what was
16 answered and compare it to the Grand Jury to see if there's
17 any difference between the two.

18 MR. LANDIS: I'm unaware of a rule that would allow
19 them to admit the entirety of the transcripts. I agree they
20 could admit inconsistent statements or even consistent
21 statements and they could also admit things used to refresh
22 his recollection, but I don't think that gives them the right
23 to admit the whole transcript whole cloth.

24 A lot of that stuff they can clean up on cross -- I
25 mean, on redirect, I apologize.

1 MR. DIGIACOMO: Well, for the record, the Grand Jury
2 transcript by statute is admissible in its entirety once he
3 testified. We could have put it in direct. On
4 cross-examination, the suggestion of the cross-examination is,
5 you had some information, but now you're telling more specific
6 information because it helps the State. The jury's entitled
7 to view what he said initially to see if he's really changed
8 anything that is actually substantial between the first
9 statement and the time in which he now has this motive to make
10 up more specific facts.

11 So thus, it's admissible one, as a prior consistent
12 statement. But two, it's also being offered for a non-hearsay
13 purpose, which is to corroborate the fact that he tells his
14 entire version of events on 10/24, and thus, any little
15 additional fact that he has now told is not substantive.

16 MR. LANDIS: My position is simply, the statements
17 that he made are proper questions. They can redirect him all
18 they want, but that doesn't mean the whole statement comes in,
19 the entire transcript.

20 MR. DIGIACOMO: Well, you -- they --

21 THE COURT: The way the -- you know, the way that
22 testimony, the cross, was done basically, to me, makes the
23 statement, a prior consistent statement. Now, I haven't seen
24 the statement so I don't know if there's anything. And that's
25 why I think why the prosecution is saying you need to make

1 sure there's nothing in there that you're going to
2 specifically object to because I haven't seen those statements
3 so I'm not aware.

4 MS. McNEILL: There's quite a bit.

5 THE COURT: Well, if there's something that in
6 particular you would want to argue is somehow prejudicial and
7 more prejudicial than probative given your cross-examination,
8 but since I've never seen those, I really can't --

9 MR. DIGIACOMO: Like, for example --

10 THE COURT: -- say.

11 MR. DIGIACOMO: -- I know that we're going to have
12 to take out the part where it says we were cell mates in Ely
13 or wherever they were cell mates. I can't remember what he
14 says. But, you know, that type of things. Cell mates we'll
15 have to change to roommates, but I actually have it in Word so
16 we can.

17 But other than that, is there anything else in there
18 that they want to remove in the sense that it's like a bad
19 act? I don't think so. I think that's really the only thing
20 in there is that Laguna's been in prison before.

21 MR. LANDIS: It's 58 pages. I've never looked
22 through it for purposes of redaction because I had no idea
23 that they were going to make that motion, and I've never heard
24 of a transcript coming in under these conditions. So I'm
25 happy to look through it, but I would hope the Court didn't

1 expect us to know that now.

2 MS. McNEILL: And, Your Honor, I understand what
3 your ruling was. Just for the record, I wanted to join
4 Mr. Landis's objection and indicate that I believe, as well,
5 that they could just ask him questions on redirect that would
6 then be prior consistent statements.

7 I agree, I don't -- I just -- I know there's a lot
8 of things in here in his various statements about them being
9 gang members together, about my client being a gang member,
10 about him being cellies. So there's going -- it's going to
11 take me some time to go through. And I know even in the Grand
12 Jury transcript, I think he indicates that they were cellies.

13 So there's going to be a few things that will need
14 to be taken out.

15 THE COURT: Right. Well, when you -- you know,
16 you've got to, obviously, take those kinds of things out, and
17 but the problem is when you ask somebody well, did you
18 specifically tell them the time, then that implies that he was
19 asked that. And so, I mean, yes, could the State ask that on
20 direct? Yes, they could, but they also have the right to
21 approach it in the way they wish to. It's their case as far
22 as how they want to respond. Just like I don't tell you how
23 to cross.

24 So they're offering the statement. So if you have
25 some specific objection or, you know, legal basis to keep it

1 out, it seems that it's probably going to be a consistent
2 statement. Although, as I say, obviously, not everything
3 whole cloth is going to come in, but I wish, you know, I had
4 the benefit of the statement, then I could look at it and
5 know. But I don't, unless you want to give me a copy.

6 MR. LANDIS: What would be Court's ruling be on
7 things in that statement that are inconsistent with what he
8 said today -- what -- are those going to be --

9 MR. DIGIACOMO: Certainly, that's admissible. It's
10 a prior inconsistent statement. It's substantively
11 admissible. So if it's inconsistent with his testimony, it
12 comes in. If it's consistent, now that he has a motive to
13 have changed, then it comes in.

14 I'm going through now, and I will have it done.
15 There is something about Duboy and everybody being gangsters
16 and they all have ties, which could easily be removed. But
17 we'll go through it at the break and I'll e-mail a copy to the
18 Court so that you have a copy for when we do have to address
19 it.

20 THE COURT: All right. Good, so -- because I'd like
21 to read it and then I can make more specific rulings. But in
22 the meantime, this is your time. We've only got ten minutes
23 left so let's use it. We're in recess.

24 (Court recessed at 3:38 p.m. until 3:53 p.m.)

25 (In the presence of the jury)

1 THE MARSHAL: Your Honor, all members of the jury
2 and the three alternates are present.

3 THE COURT: Thank you. Please be seated. And the
4 record will reflect that we're back within the presence of all
5 12 members of the jury as well as the three alternates, all
6 three defendants are present with their respective counsel.
7 Chief Deputies prosecuting the case are present as are all
8 officers of the court.

9 And Mr. Landis, are you ready?

10 MR. LANDIS: I am.

11 | CROSS-EXAMINATION

12 BY MR. LANDIS:

13 Q As of today, do you have an attorney representing
14 you in this case?

15 A Yes, sir.

16 Q What's his name?

17 A I know him by Lucas, Luke.

18 Q You've motioned over behind the DAs. Let me ask you
19 this, though, was your attorney here Friday when you were in
20 court?

21 A Yes, sir.

22 Q And as of today, he's been here?

23 A Yes, sir.

24 Q And he's been sitting behind the District Attorneys;
25 is that right?

1 A Yes, sir.

2 Q Is that the same attorney you've had since you were
3 arrested on this case?

4 A No, sir.

5 Q What was the name of your first attorney?

6 A David Brown.

7 Q When did you change attorneys?

8 A Probably, about a year ago. Probably a little bit
9 more than a year ago.

10 Q Was that your choice or Dave Brown's choice?

11 A Both of ours.

12 Q Fair to say you fired (sic) a motion to fire him?

13 A Yes, sir.

14 Q He filed a motion to fire you?

15 A Yes, sir.

16 Q And that's why you say it was both of yours?

17 A Yes, sir.

18 Q Before Friday afternoon, when was the most recent
19 time you sat down with these District Attorneys and talked to
20 them?

21 A Before -- before when?

22 Q Friday afternoon?

23 A Probably, just did, what, like a pretrial interview
24 time of deal.

25 Q You tell me.

1 A I said a pretrial interview, just -- just sat down.

2 Q When was that?

3 A Probably, a week -- probably about close to two
4 weeks ago.

5 Q Your attorney was there?

6 A Yes, sir.

7 Q In your view, Mr. Figueroa, is it ever okay to lie?

8 A No, sir.

9 Q You've admitted that you've lied a few different
10 times during the events you've testified to?

11 A Oh, yes, sir.

12 Q Why is it that you lied, even know it wasn't okay?

13 A Because initially, I mean -- initially, I came up
14 with -- with that story trying -- trying to, you know -- I
15 didn't want to have no involvement in this case, but I also
16 didn't want anyone else to be involved. That's how come I
17 came up with that initial story.

18 Q We'll get to that, but let me back it up a little
19 bit further. You get behind that big wall between the trees
20 and the wall that night shortly after you're shot, right?

21 A Yes, sir.

22 Q You know you're shot in the chin, right?

23 A Yes, sir.

24 Q Lost a tooth?

25 A Yes, sir.

1 Q You also realize you've got a gunshot wound to your
2 abdomen or your side, right?

3 A Yes, sir.

4 Q You're hurt?

5 A Yes, sir.

6 Q You're worried you're going to die?

7 A Yes, sir.

8 Q And you're bleeding?

9 A Yes, sir.

10 Q As you're sitting behind that wall for those hours,
11 eight plus hours, you can hear police officers around, right?

12 A Yes, sir.

13 Q You can even hear newscasters somewhere behind that
14 wall giving a news report, right?

15 A Yes, sir.

16 Q At one point you even think you hear the homeowner
17 of the house you're in step outside of the backyard to talk to
18 the police?

19 A Yes, sir.

20 Q You could hear the police walkie-talkies?

21 A Yes, sir.

22 Q You could have alerted them to you being there,
23 right?

24 A Yes, sir.

25 Q You've got to believe they would have provided you

1 medical assistance, right?

2 A Yes, sir.

3 Q At that point in time, though, you made the decision
4 that getting caught was worse than potentially dying?

5 A Yes, sir.

6 Q You get your sister to pick you up, and you lied to
7 your own sister about why you were injured?

8 A Yes, sir.

9 Q Flesh and blood, yes?

10 A Yes, sir.

11 Q Did you lie to her to protect her?

12 A Basically, to protect her and, you know, she don't
13 -- she -- she didn't -- I don't -- I didn't want her to know
14 about this incident or nothing about it. I didn't want her to
15 know.

16 Q Also lied to protect yourself?

17 A I mean, yes, sir.

18 Q You get home after your sister takes you, and
19 eventually, your roommates get home, right?

20 A Yes, sir.

21 Q And that's your roommate Jeff?

22 A Yes, sir.

23 Q And your roommate Cindy?

24 A Yes, sir.

25 Q How long had you been living with them?

1 A Probably, around July of, what, 2014 to the date I
2 got arrested.

3 Q You're still hurt at this point, correct?

4 A Yes, sir.

5 Q You're still bleeding?

6 A Yes, sir.

7 Q Are you still scared you might die?

8 A At that point, no. I mean, I was hurt. I knew I
9 was hurt bad, but, I mean, as far as dying, I mean, I figured
10 -- I figured I'd be all right.

11 Q It's obvious to the -- when they get home whenever
12 it is that day --

13 A Um-h'm.

14 Q -- they realize you're hurt, right?

15 A Yes, sir.

16 Q You don't tell them the truth about why you're hurt,
17 why?

18 A No, sir.

19 Q Your sister had begged you to go to the hospital?

20 A Yes, sir.

21 Q You didn't when she asked you to, correct?

22 A Yes, sir.

23 Q Initially, Jeff was asking you to go to the
24 hospital, correct?

25 A Yes, sir.

1 Q You didn't go initially, correct?

2 A Yes, sir.

3 Q Same with Cindy, right?

4 A Yes, sir.

5 Q You didn't tell them why you were unwilling to go to
6 the hospital?

7 A Yes, sir.

8 Q They keep begging you to go to the hospital for
9 days, right?

10 A Yes, sir.

11 Q Eventually, you agree to go, but only if it's to a
12 place in California?

13 A Yes, sir.

14 Q That was your idea?

15 A Yes, sir.

16 Q It was your idea to go to California, again, to
17 protect yourself?

18 A Yes, sir.

19 Q When you get to the Loma Linda Hospital in
20 California, the medical professionals there, the doctors, the
21 nurses, they're asking you what happened, right?

22 A Yes, sir.

23 Q They're not police, right?

24 A Yes, sir.

25 Q They're asking you what happened because they're

1 trying to treat you, correct?

2 A Yes, sir.

3 Q You lie to the people who are trying to treat you?

4 A Yes, sir.

5 Q You not only lie about how you got the gunshot wound
6 to your face, right?

7 A Yes, sir.

8 Q You even lie about the existence of the second
9 gunshot wound?

10 A Yes, sir.

11 Q When the San Bernardino Police Department comes to
12 that hospital and they interview you, do they suspect that you
13 were involved in a home invasion?

14 A No, sir.

15 Q You lied to them?

16 A Yes, sir.

17 Q You told them a story about a bullet ricocheting as
18 you guys were shooting guns?

19 A Yes, sir.

20 Q You didn't tell them you were from Nevada?

21 A Yes, sir.

22 Q You didn't tell them you were from Las Vegas?

23 A Yes, sir.

24 Q All of those lies to the San Bernardino Police
25 Department were to benefit you?

1 A Yes, sir.

2 Q Fair for us to assume, then, one occasion that
3 you'll lie is when it benefits you, at least back then?

4 A Okay.

5 Q If you don't think that's fair, tell me. I don't
6 want to put words in your mouth.

7 A Okay. I'm going along with it. Yes, sir.

8 Q Do you think that's true or not?

9 A I mean, yes.

10 Q Prior to the date that you were arrested, you
11 mentioned today that you told Gabriel Sotelo a brief rundown
12 about what happened, yeah?

13 A Yes, sir.

14 Q Who else in this world did you tell the truth to
15 about what you did before your arrest?

16 A I mean, there was -- I've never told the whole
17 exact. I just, you know, keep on giving -- gave people brief
18 little rundowns because, you know, they ask what happened,
19 I'll just -- just a home invasion that went bad. That's it,
20 basically.

21 Q Who did you tell that to?

22 A I mean, basically, to whoever had seen me who had --
23 whoever seen me hurt.

24 Q That include Jeff?

25 A Yes, sir.

1 Q Cindy?

2 A Yes, sir.

3 Q Your girlfriend?

4 A Yes, sir.

5 Q Manny?

6 A Yes, sir.

7 Q And Gabe or Gabriel?

8 A Yes, sir.

9 Q Can you recall anybody else you saw during that
10 period of time?

11 A What, sisters, brothers. I mean --

12 Q When you started running from 1661 Broadmere on
13 September 21st, besides yourself, you had no idea if anybody
14 else had been shot?

15 A Yes, sir.

16 Q Correct?

17 A No idea.

18 Q No idea if anybody died?

19 A No idea.

20 Q When you get home that next morning, after your
21 sister drives you there, you know the cops were called so you
22 know they're probably investigating it, but you don't know
23 it's a murder case?

24 A Yes, sir.

25 Q You're worried about getting caught?

1 A Yes, sir.

2 Q You start looking up the news reports and things
3 like that to see what they were publishing?

4 A Yes, sir.

5 Q And you find out that one person had been arrested,
6 yeah?

7 A Yes, sir.

8 Q You find out that it is a murder investigation?

9 A Yes, sir.

10 Q You find out that the police suspect there was more
11 than just the one person they caught involved, right?

12 A Yes, sir.

13 Q And you find out that they think that because there
14 was another blood trail that suddenly stopped?

15 A Yes, sir.

16 Q And at least in the police's opinion, as reported by
17 the news, they believed that somebody picked up the other
18 person who was leaving the blood trail?

19 A Yes, sir.

20 Q You knew that was your blood?

21 A Yes, sir.

22 Q Turning now to the day you were arrested, October
23 20th. You testified that you were just going out to go to the
24 gym or something with Manny?

25 A He -- he was picking me up from the gym, yes, sir.

1 Q So he drops you off at home?

2 A No. I mean, he -- the day I got arrested I was
3 walking to the gym that's right there by my apartment complex.
4 Well, it's part of my apartment -- it's my apartment's gym,
5 right? I was walking up there to go meet -- to go meet him.

6 Q You're still worried the police are looking for you
7 at that point, even though it's been a fair amount of time,
8 right?

9 A Yes, sir.

10 Q And you're still watching your back when you walk
11 down the street?

12 A Somewhat, yes.

13 Q You didn't necessarily expect to get arrested then
14 and there, right?

15 A No, sir.

16 Q Caught you by surprise, object?

17 A Yes.

18 Q The cops pick you up and they put you in a patrol
19 car or an unmarked car right there by your apartment?

20 A Yes, sir.

21 Q Do you recall which officer it is was that were in
22 there talking to you?

23 A Barry Jensen and, I believe, his -- his partner. I
24 think his last name was Wildman or Wilder or some -- something
25 of that sort.

1 Q Do you recall one of the first questions Detective
2 Jensen asked you was; do you remember my name?

3 A No, sir.

4 Q Would looking at your transcript refresh your
5 memory?

6 A Okay. Yes, sir. And we're talking about the -- the
7 day I got arrested?

8 Q We are.

9 MR. LANDIS: It's page 1 of 2. May I approach the
10 witness?

11 MR. DIGIACOMO: Which date, Counsel? 10/20 or
12 10/23?

13 MR. LANDIS: (Inaudible).

14 MR. DIGIACOMO: Okay.

15 BY MR. LANDIS:

16 Q (Inaudible).

17 A Okay. He said, "Robert, do you remember my name?"
18 I said, "No, sir." He says, "Barry Jensen." And I say,
19 "Barry Jensen?"

20 MR. LANDIS: May I approach the witness?

21 THE COURT: Yes.

22 BY MR. LANDIS:

23 Q My question to you is not, did you remember his
24 name. My question to you is do you recall him asking you
25 early on if you remembered his name? After looking at that,

1 does it refresh your memory?

2 A I mean, yeah, if it's on the transcript, yes.

3 Q Would you --

4 A I guess, he -- he did ask me.

5 Q As we sit here today, do you have any clue why he
6 asked you that?

7 A No, sir.

8 Q Had you ever seen that man before?

9 A No, sir.

10 Q It's clear, based on the environment, that you're
11 under arrest at that point, correct?

12 A Yes, sir.

13 Q You can put two to two together before those
14 officers ever speak and you know you're under arrest for that
15 event at Broadmere Street, right?

16 A Yes, sir.

17 Q You're scared?

18 A Yes, sir.

19 Q Had you ever been arrested for murder before that
20 day?

21 A No, sir.

22 Q Early on in that interview they tell you that they
23 have a buccal swab; do you remember that?

24 A Basically, they took a buccal swab on me.

25 Q Which meant scraping the inside of your cheek with a

1 kind of big Q-tip?

2 A Yes, sir.

3 Q And you knew why they did that, right?

4 A Yes, sir.

5 Q To get your DNA, right?

6 A Yes, sir.

7 Q And you knew with that DNA sample they'd be able to
8 match it up with the blood left at that longer blood trail at
9 the scene, right?

10 A Yes, sir.

11 Q Because you knew that was your blood, right?

12 A Yes, sir.

13 Q Do the police give you any indication in that first
14 interview in the car outside your apartment as to whether or
15 not they suspect you were involved?

16 A They said that they did -- they suspected me.

17 That's why they were there really, to pick me up is because
18 they --

19 Q And they made that clear real early, right?

20 A Yes, sir.

21 Q It didn't sound like they were neutral just trying
22 to figure out if you had any involvement, right?

23 A Yes, sir.

24 Q And after they accuse you of being involved, that's
25 when you tell them the story, right?

1 A Yes, sir.

2 Q About going up to the weed dealer's house and just
3 getting caught in the cross fire of a unrelated home invasion?

4 A Yes, sir.

5 Q After hearing that story, they tell you they don't
6 believe it?

7 A Yes, sir.

8 Q You had told them that you ran out as soon as you
9 got shot to the edge of the subdivision, right?

10 A Yes, sir.

11 Q But then had kind of came back in to get a car,
12 right?

13 A Yes, sir.

14 Q And they told you that made no sense because the
15 police were there 45 seconds after the first 911 call, right?

16 A Yes, sir.

17 Q And they also told you that there was no blood trail
18 that kind of doubled back into the subdivision, right?

19 A Yeah, that part I don't know about, but --

20 Q Do you recall them calling your bullshit?

21 A Yes, sir.

22 Q That was their word, yes?

23 A Yes, sir.

24 Q After telling you that they thought your story was
25 bullshit, they made it clear to you that it was important for

1 them to hear your side of the story, right?

2 A Yes, sir.

3 Q They tell you specifically they knew the home
4 invasion wasn't really you.

5 A Yes, sir.

6 Q In other words, not the real Robert Figueroa, right?

7 A Yes, sir.

8 Q They tell you, specifically, "I think some people
9 talked you into doing this because Rob, the story you told
10 me does not hold water. It's not the truth. You didn't go up
11 there. You didn't park your car there, and you didn't stumble
12 upon a home invasion, Rob." Do you recall that?

13 A Yes, sir.

14 Q They specifically told you sticking with your
15 original story was a bad move. Do you recall that?

16 A Yes, sir.

17 Q They told you specifically, "It was a bad move
18 because it makes it look that much more calculated and it
19 makes it look that much more vicious and it makes it look like
20 you planned it."

21 A Okay, yes, sir.

22 Q And that scared you?

23 A Yes, sir.

24 Q The idea that the police were believing that you
25 were the mastermind was something that was scary to you?

1 A Yes, sir.

2 Q They specifically let you know that they had caught
3 the other guy, right?

4 A Yes, sir.

5 Q And you had known that already because of news
6 reports?

7 A Yes, sir.

8 Q They told you this during that interview: "The
9 other guy we arrested, he realized quite early that he didn't
10 want to take the fall for this by himself, right? And
11 remember I told you that he was, you know, we're getting some
12 information and everybody's kind of minimizing their own play?
13 Well, he's saying that he's just a follower in this whole
14 thing, and you know who the mastermind was, Rob?" Do you
15 remember him asking you that?

16 A Yes, sir.

17 Q And they told you that he was saying the mastermind
18 was you.

19 A Yes, sir.

20 Q Right? Did that scare you?

21 A Yes, sir.

22 Q As we sit here today, Mr. Figueroa, have you seen
23 one shred of paper or other evidence that indicates that Jorge
24 or George Mendoza said that to the police?

25 A That I was the mastermind?

1 Q Yep.

2 A No, sir.

3 Q Have you seen any evidence, documents anything that
4 suggests Jorge Mendoza confessed to be involved in this in any
5 way prior to your arrest?

6 A No, sir.

7 Q So you believe the police were lying to you when
8 they said that, as we sit here today?

9 A Yes, sir.

10 MS. LEXIS: Objection. Relevance.

11 MR. LANDIS: Effect on the listener.

12 THE COURT: Overruled.

13 BY MR. LANDIS:

14 Q After they told you that the other guy was talking
15 and he was saying you were the mastermind, that's when you
16 ended the interview by requesting a lawyer, correct?

17 A What, several days later, yes.

18 Q No, I just want to talk about the day of your arrest
19 right now.

20 A Oh, the day I was arrested, I told them I needed a
21 lawyer.

22 Q Right. And that's how the interview ended, right?

23 A Yes, sir.

24 Q They were frustrated with you when you ended the
25 interview and didn't want to talk to them anymore, right?

1 A Yes, sir.

2 MS. LEXIS: Objection. Speculation.

3 BY MR. LANDIS:

4 Q Did they voice --

5 THE COURT: Yeah, I'm going to sustain the -- unless
6 you can lay a better foundation.

7 BY MR. LANDIS:

8 Q Did they voice frustration to you when you wanted a
9 lawyer and ended the interview?

10 A Yes, sir.

11 Q In response to you asking for a lawyer, do you
12 recall them saying you need a fantastic lawyer?

13 A Yes, sir.

14 Q And then they said you've been to prison before,
15 right?

16 A Yes, sir.

17 Q Implying that that's where you're headed again,
18 right?

19 A Yes, sir.

20 Q And these cops meant business, and that was clear to
21 you, right?

22 A Yes, sir.

23 Q You go to jail right after that. Don't get to talk
24 to anybody before you get to jail, right?

25 A Yes, sir.

1 Q Booked in on a murder charge?

2 A Yes, sir.

3 Q After you get booked in, you spend some time in the
4 booking area, right?

5 A Yes, sir.

6 Q You eventually get up to a cell, right?

7 A Yes, sir.

8 Q From the day of your arrest to the day of your first
9 court appearance a few days later, you're worried about what
10 this other guy's saying?

11 A Yes, sir.

12 Q You're worried that you're getting labeled the
13 mastermind?

14 A Yes, sir.

15 Q A lot of free time when you're in jail, right?

16 A Yes, sir.

17 Q Fair for me to assume that thought was on your mind
18 pretty consistently?

19 A What, thought that I mastermind this whole idea?

20 Q That this other guy was unfairly labeling you the
21 master mind?

22 A Yes, sir.

23 Q When you get to court on the 23rd, it's early in the
24 morning, right?

25 A Yes, sir.

1 Q And that's your first court appearance on this case,
2 right?

3 A Yes, sir.

4 Q You're brought in with other people who are in jail
5 for various other cases, correct?

6 A Yes, sir.

7 Q You're also brought in with the other guy they
8 arrested, right?

9 A Yes, sir.

10 Q Jorge Mendoza, right?

11 A Yes, sir.

12 Q You're handed what they call a criminal complaint,
13 right?

14 A Yes, sir.

15 Q Which lists the charges, right?

16 A Yes, sir.

17 Q And it also lists the names of the defendant?

18 A Yes, sir.

19 Q And you could see that you were charged, with Jorge
20 Mendoza, of committing these crimes?

21 A Yes, sir.

22 Q Was anybody else named as a defendant at that point
23 in time?

24 A No, sir.

25 Q At that point in time, as you're leaving the jail,

1 you tap a corrections officer, right? I mean, as you're
2 leaving the court, I apologize.

3 A Yes, sir.

4 Q And you let the corrections officer know, hey, get a
5 hold of the detectives on my case?

6 A Yes, sir.

7 Q And that same day, hours later, they're back at the
8 jail to talk to you?

9 A Yes, sir.

10 Q And was it the same officers who had talked to you
11 on the 20th when you were arrested?

12 A Yes, sir.

13 Q Up until that point, up until the interview on the
14 23rd afternoon, Dave Brown was your attorney, right, at that
15 point?

16 A Yes, sir. That --

17 Q You had met him in court that morning, right?

18 A Yeah, very briefly.

19 Q He came in, said hey, I'm here to represent you or
20 if -- right?

21 A Yes, sir.

22 Q Gave you a business card?

23 A Yes, sir.

24 Q And said what?

25 A I'll speak to you soon.

1 Q Do you recall him saying, don't worry, I'll take
2 care of this?

3 A Yes, sir.

4 Q That's what he said, right?

5 A Yes, sir.

6 Q Between that time when you guys are in court up and
7 to the point that the detectives are back there to talk to you
8 on the 23rd, had you seen Dave Brown at the jail?

9 A No, sir.

10 Q Had you had any private conversations with him at
11 the jail on the phone in any way?

12 A No, sir.

13 Q And you didn't know Dave Brown before the 23rd, fair
14 to say?

15 A Yes, sir, didn't -- didn't know him at all.

16 Q That's why when the cops came back the 23rd, even
17 though you indicated you wanted to talk to them, you were
18 uneasy to do so until your attorney was there?

19 A Yes, sir.

20 Q That's what you told them?

21 A Yes, sir.

22 Q I need to talk to my attorney first, right?

23 A Yes, sir.

24 Q Partially, that's because you're scared of these
25 guys, right?

1 A Yes, sir.

2 Q You don't trust them completely?

3 A Yes, sir.

4 Q They say fine, we'll be back, right?

5 A Yes, sir.

6 Q It was the next day that they come back, right?

7 A Yes, sir.

8 Q Pretty early in the morning, right?

9 A Yes, sir.

10 Q So less than 24 hours after they had left, right?

11 A Yes, sir.

12 Q Your interview that morning, the morning of the
13 24th, starts around 7:00, 7:30, 8:00 o'clock in the morning?

14 A Okay, yes, sir.

15 Q Does that sound correct?

16 A Yeah, that sounds about right.

17 Q When you -- how to you get to that room where the
18 interview takes place? Do you --

19 A A officer transports me and takes me to the room.

20 Q So they more or less say, hey, Figueroa, you got
21 somewhere to go, let's go, and they take you there?

22 A Yes, sir.

23 Q Do they give you a full picture as to exactly where
24 they're taking you?

25 A Basically, they didn't really say much, but, you

1 know, assuming that I was, you know, being brought down to
2 speak with them.

3 Q Did you expect an opportunity to speak with the
4 police again or your attorney, as you're walking there?

5 A As I'm walking there, I was basically, expecting to
6 see all them.

7 Q And when you get to the room, who do you see?

8 A The detectives and David Brown.

9 Q In the same room?

10 A Yes, sir.

11 Q And at that point that you see them in the same
12 room, you still have never had a private conversation with
13 Dave Brown?

14 A No, sir.

15 Q On the phone, face-to-face, neither?

16 A No, sir.

17 Q Do you then start talking to the police even though
18 you still haven't had that chance to talk to Mr. Brown?

19 A Yes, sir.

20 Q You were trusting him to help you with the law and
21 protect your rights?

22 A Yes, sir.

23 Q You're entrusting him with your defense?

24 A Basically, you know, to step in if -- you know, step
25 in, you know, assist me, give me his, you know -- you know,

1 assist me with his knowledge on, you know, what I should and
2 shouldn't do. That's why he was there. That's his purpose of
3 being there is to assist me.

4 Q Brown made it clear to you at some point that your
5 only option -- well, your only options were to either talk to
6 the police or receive a murder conviction, right?

7 A Yes, sir, basically. Yes.

8 Q What your lawyer told you at the time, right?

9 A Yes, sir.

10 Q Once you sit down in the room that morning, still
11 haven't talking to Brown privately, the police start
12 questioning you again, right? The detectives, they start
13 asking you questions again, right?

14 A Yes, sir.

15 Q And the first question they ask you that morning of
16 the 24th you're hesitant to answer it, right?

17 A Yes, sir.

18 Q You still don't trust these guys, right?

19 A Yes, sir.

20 Q You still haven't had much chance to talk to your
21 attorney about what you're doing, right?

22 A Yes, sir.

23 Q And that makes you hesitant the to answer the first
24 question?

25 A Yes, sir.

1 Q What caused you to go ahead and speak?

2 A Basically, I mean, like I said, he was there to
3 assist me, and I mean, if he allowed them to questioning me,
4 ask me whatever questions, you know, they wanted to, then I
5 was assuming it was okay with him so I -- you know, I thought
6 it was in my best interest.

7 Q Do you recall previously stating that Dave Brown
8 actually physically waved you onto get you talking; do you
9 remember that saying that?

10 A Yes, sir.

11 Q Is that true?

12 A Yes, sir.

13 Q And only after that, were you comfortable enough to
14 open your mouth?

15 A Yes, sir.

16 Q After that, you start telling them a different story
17 than you told them on the 20th, right?

18 A Yes, sir.

19 Q You told them a story that made it clear that you
20 were not the master mind of this plan?

21 A Yes, sir.

22 Q So what that other guy was telling them wasn't true,
23 right?

24 A Yes, sir.

25 Q One of the first things you tell them as you're

1 describing that day, when you're talking about September 21st
2 during your interview on October 24th --

3 A Yes.

4 Q -- they say well, how did this all start that
5 morning, yeah?

6 A Yes, sir.

7 Q You told them you got a call from Laguna or Montone?

8 A Yes, sir.

9 Q And specifically, you told them this: "Montone
10 says, come on, I know you're with it, implying you better be
11 with it?"

12 A Yes, sir.

13 Q That's not your testimony today, is it?

14 A What, he called me and let's go, and I went.

15 Q Today, correct me if I'm wrong, sir, you've
16 previously testified you were more than willing to
17 participate? Did you testify to that or no?

18 A I said yes to it, but there was a couple extra words
19 added, so yes.

20 Q But by telling the police on the 24th of October
21 that Montone said you'd better be with it, you'd agree with me
22 that that's letting them know that not only aren't you the
23 mastermind but also, your role was small, right?

24 A Yes.

25 Q And that wasn't you who does those kinds of things,

1 right?

2 A Yes, sir.

3 Q So what they told you on the 20th, about what they
4 believed about you, you told them on the 24th to be true?

5 A Yes, sir.

6 Q They're asking you a lot of detailed questions on
7 the 24th, right?

8 A Yes, sir.

9 Q And you're doing your very best to answer every
10 detailed question they have, right?

11 A Yes, sir.

12 Q Because this is kind of like your audition with
13 them, right?

14 A Yes, sir.

15 Q Do you remember telling them during that interview
16 on the 24th of October, 2014 that Montone and Mendoza were
17 related?

18 A That's what I believed, yes.

19 Q Do you remember specifically telling them that on
20 that day?

21 A Yes, that's what I believed at that time.

22 Q You, in fact, gave them more detail and you told
23 them that Laguna and Mendoza were brothers-in-law, do you
24 remember that?

25 A Yes, maybe through marriage or brother-in-law

1 somewhere down the line.

2 Q Months later, months later, January 29th, 2015
3 that's what you testified in front of that Grand Jury, right?

4 A Yes, sir.

5 Q That's the first time you raised your hand to take
6 an oath?

7 A Yes, sir.

8 Q On that date you tell the Grand Jury something
9 different about that relation, right?

10 A Yes, sir.

11 Q What do you tell them?

12 A I believed that he might have been related to maybe
13 Duboy through marriage, maybe brother-in-law, somewhere down
14 the line.

15 Q So you're saying --

16 A But one of the two maybe he's related to him down --
17 down the line somewhere.

18 Q Did you testify in front of the Grand Jury that
19 somebody was related or did you specifically testify that
20 Mendoza and Murphy were related?

21 A I believe -- I believe I said Murphy and Mendoza.

22 Q Your memory was so strong by then, do you remember
23 telling them that Mendoza married Murphy's cousin?

24 A Oh, I don't -- may -- maybe, maybe he married his
25 cousin through, you know, brother-in-law, sister-in-law

1 somewhere down the line, you know, some type of relationship.
2 As far as exactly what it is, I'm not sure.

3 Q Let me restate my question. Do you recall telling
4 the Grand Jury under oath on January 29th, 2015 that Mendoza
5 married Murphy's cousin?

6 A Maybe.

7 Q Your Honor, do you remember it or not? It's okay if
8 you don't. We can --

9 A Are those my exact words --

10 Q I can't answer that.

11 A -- I'm not sure, but it's somewhere along those
12 lines, probably.

13 Q Step back. Do you recall saying that or not?

14 A I'm not sure, no.

15 Q Would you like to look at the transcript to perhaps
16 refresh your memory?

17 A Okay.

18 MR. LANDIS: Can I approach the witness?

19 THE COURT: Yes, you may.

20 MR. LANDIS: I'll get you a page number in a second,
21 State.

22 (Mr. Landis conferring with District Attorneys)

23 BY MR. LANDIS:

24 Q I'm going to give you the full transcript right now,
25 which is pretty big. Give me a second, I'll get you a page

1 number. If you could flip to page 63, Mr. Figueroa. Are you
2 able to determine -- see the page numbers?

3 A Yes, sir. All right.

4 Q If you could just review that to yourself.

5 A (Witness reading transcript.) Okay, and what was
6 your question again?

7 Q Do you recall specifically telling the Grand Jury
8 that Mendoza married Murphy's cousin?

9 A No, sir. It says, "I believe, he's related to Duboy
10 through some sort of way like -- like down the line
11 somewhere."

12 Q Keep reading. Don't -- keep reading to yourself.
13 Keeping go to the next page, if you need to.

14 A Oh, go to the next page?

15 Q Keep talking about it, yeah. No, no the bottom of
16 63, sir. Like I said, bottom of 63.

17 A I'm having trouble finding it. If you could
18 actually point it out.

19 Q Bottom of 63, do you see where you said --

20 A What line, sir?

21 Q 24, 25.

22 MS. LEXIS: Your Honor, I would ask that, you know,
23 the full question and answer be read so that it's in context
24 as opposed to just this conversation back and forth about what
25 portions.

1 MR. LANDIS: I don't understand why they can't do
2 that on redirect. I mean, my question --

3 THE WITNESS: It says --

4 MR. LANDIS: -- is specific. It's not misleading.

5 THE WITNESS: -- "I think he was married" --

6 THE COURT: All right. Wait, there was an
7 objection. You can clean that up if you want on redirect.

8 MS. LEXIS: Okay, thank you.

9 BY MR. LANDIS:

10 Q So my question is this, specifically, after
11 reviewing that transcript, do you recall telling the Grand
12 Jury under oath that, "Mendoza was married to like his cousin
13 or something"?

14 A "I think he's married to like his cousin or
15 something," yes, sir.

16 Q Okay. Talking about Mendoza married to Duboy's
17 cousin or something?

18 A Yes, that I think he is.

19 Q Okay. That's what you told the Grand Jury?

20 A Okay, yes.

21 Q Did you wake up one day between October and January
22 and it just sprunged in your mind that it wasn't Laguna and
23 Mendoza who are related, instead it was Murphy and Mendoza?

24 A You know, you look back on conversation and you
25 start putting little pieces together, and maybe, you know,

1 maybe I had got mixed up, but I mean, it's still to my belief
2 that he's related to one or the other through -- through some
3 distant line of marriage.

4 Q So to the best of your memory today, you just looked
5 back on conversations you had with those guys and that's how
6 you remembered that?

7 A I mean, looked back and, you know, try to examine,
8 like think -- think back as hard as I can and, you know, try
9 to piece this whole thing together. I mean, as far as either
10 Montone or Duboy, who he's married, I'm still not sure. But I
11 still think he's related to them in some sort of way.

12 Q On October 24th, when you're talking to the police
13 and Attorney Brown's there --

14 A Yes, sir.

15 Q -- you tell the police that Duboy set up that first
16 early morning robbery attempt, right?

17 A Yes, sir.

18 Q When you first tell the police on October 24th, you
19 don't tell them at the same time that Duboy got that
20 information from Joey Larsen's girlfriend, correct?

21 A On the first initial interview?

22 Q 24th, the one with Dave Brown.

23 A Oh, no, I believe, I told him. I believe I told him
24 that he got that information from Summer Larsen.

25 Q Well, let me ask you this, when the interview

1 started on the 24th, did you know the name Summer Larsen?

2 A No, sir.

3 Q When you first told police in that interview on the
4 24th, that Duboy set up the first one, your memory is you also
5 told them what?

6 A That he set up the first one and the second one
7 through the girlfriend of the homeowner.

8 Q Who's the first one that during that interview on
9 the 24th, if you remember, who brought up that the homeowner
10 was -- had a girlfriend or a wife, do you remember? You think
11 it was you?

12 A I'm not sure.

13 Q But you believe the first time you said that about
14 Duboy setting up the first robbery, you told them that he set
15 it up because he knew information from this homeowner's
16 girlfriend?

17 A Yes, sir.

18 Q And he was explaining then the whole thing to you
19 about the other homeowner and all that?

20 A Yes, sir.

21 Q During that interview on October 24th, they actually
22 showed you a picture of Summer; do you remember that?

23 A Did they?

24 Q I'm asking you.

25 A No, I -- I don't remember.

1 Q Would looking at the transcript refresh your memory?

2 A Yes, sir.

3 MR. LANDIS: May I approach the witness?

4 THE COURT: Yes.

5 MR. LANDIS: Page 30 (inaudible).

6 BY MR. LANDIS:

7 Q Focus your attention to 30, but there's the whole
8 statement.

9 A (Witness reading transcript). Okay.

10 Q Do you recall them showing you a picture of Summer?

11 A Yes, that's what they said, that they're going to --
12 she -- they're going to show me a picture and --

13 Q Let's slow it down. Let's break it down. They show
14 you a picture, right?

15 A Yes, sir.

16 Q You don't recognize the person, right?

17 A I've never seen her before.

18 Q Then they tell you who she is, right?

19 A Okay. Yes, they say that's her wife -- that's his
20 wife, I'm sorry.

21 Q That's the homeowner whose house was invaded twice;
22 they tell you that, right?

23 A Yes, sir.

24 Q That didn't come from you before that, did it?

25 A No, sir.

1 Q That initially came from them in that interview?

2 A Yes, sir.

3 Q Before they showed you that picture during that
4 interview during the time before they showed you the picture,
5 do you ever mention the homeowner's girlfriend or wife at all?

6 A Oh, no.

7 Q You did say prior to them showing you that picture
8 that Duboy set it up, right?

9 A Yes, sir.

10 Q But you don't say anything about the information
11 coming from the homeowner's girlfriend or wife?

12 A No, sir.

13 Q After they show you that picture and after they tell
14 you that that picture is the wife of the homeowner, you bring
15 up that Duboy knows her for the first time, correct?

16 A Yes, sir.

17 Q After they show you that picture and after they tell
18 you who that woman is, you tell them for the first time that
19 Duboy was sleeping with her and that's how he knew about these
20 houses?

21 A Yes, sir.

22 Q They asked you where you got that information from
23 about Duboy sleeping with her an Duboy knowing all this stuff
24 through her, right?

25 A Yes, sir.

1 Q And they ask you that same day after they showed you
2 that picture, right?

3 A Yes, sir.

4 Q You told them that day that Duboy told Montone and
5 Montone relayed it on?

6 A Yeah, I'm not sure about that.

7 Q Go ahead and look at page 32.

8 A 2? (Witness reviewing transcript). Okay.

9 Q Do you recall how you told them you learned that
10 information during that October 24th interview?

11 A It -- it did say -- well, it did say that, what,
12 Montone relayed it to me.

13 Q It said or you said?

14 A I said.

15 Q To the police?

16 A Okay, yes.

17 Q Right?

18 A Okay.

19 Q That Montone relayed it to you that these things
20 about Duboy and his girlfriend or wife?

21 A Yes, sir.

22 Q Different than your testimony during this trial,
23 correct?

24 A Yes, sir.

25 Q As that interview on October 24th was getting

1 towards its end, do the police have the same attitude with you
2 that they had had at the end of the October 20th interview
3 when you were arrested?

4 A No, sir.

5 Q Were they still calling you a liar?

6 A No, sir.

7 Q Were they still angry?

8 A I don't know if they were angry or not.

9 Q Did they say anything to you that caused you to
10 believe that they were angry?

11 A No, sir.

12 Q Fair to say they appeared more willing to help you
13 at the end of the October 24th interview versus the October
14 20th interview?

15 A Yes, sir.

16 Q You noticed that, correct?

17 A Yes, sir.

18 Q And you started asking them for some favors because
19 you noticed they were more willing to help you than they were
20 previously, right?

21 A Yes, sir.

22 Q What favors did you ask them for?

23 A Basically, I'm worried about these charges and my
24 sentencing.

25 Q Were all the favors you asked them directly related

1 to charges and sentencing?

2 A I believe so.

3 Q Do you recall asking them if they'd release some
4 property to your girlfriend?

5 A Oh, yes, sir.

6 Q Specifically, what did you want them to release?

7 A My wallet, the phone and money.

8 Q And least as to the wallet and money, those
9 detectives said hey, no problem, Robert, we'll release those
10 to your girlfriend?

11 A Yes, sir.

12 Q At the end of that October 24th interview, right?

13 A Yes, sir.

14 Q You also wanted them to release one of the phones
15 that was on you when you were arrested, right?

16 A Yes, sir.

17 Q And initially they didn't want to release it because
18 they had to run some computer forensics on it, right?

19 A Yes, sir.

20 Q Do you remember telling them or them telling you
21 that?

22 A Yes, sir.

23 Q Even after they said that, though, you begged them
24 to release it and promised them it had nothing to do with
25 anything with this case, right?

1 A Yes, sir.

2 Q And did they then immediately release it to your
3 girlfriend?

4 A No, sir.

5 Q They didn't release it to her?

6 A Not immediately.

7 Q Did they tell you they were going to release it to
8 her during that interview?

9 A Yes, sir.

10 Q But you're telling me now that they didn't?

11 A No, it took months, months for me to get my wallet,
12 and as far as the phone, I still think they got the phone.

13 Q So at least they made promises, however they may
14 have been unfulfilled then at the end of that interview?

15 A I guess, I don't know.

16 Q They promised they'd immediately release the stuff
17 and they didn't, right?

18 A What, the -- no, I -- not immediately. Like I said,
19 it took months.

20 Q I know, but --

21 A Oh. Oh, they said that, yes, that they were going
22 to release it immediately.

23 Q You also asked them during that same interview
24 another favor. You ask them if they will keep other
25 co-defendants away from you if they end up getting put in the

1 same jail as you, right?

2 A Yes, sir.

3 Q They indicate no problem?

4 A Yes, sir.

5 Q You asked them, if you end up going to prison, using
6 your words, you say, "Would you be able to bump me up just to
7 get me out?" Do you remember asking that favor?

8 A Yes, sir.

9 Q Do you remember if they said whether or not they
10 would grant you that favor?

11 A They said that they have no control over that.

12 Q They said the prison's a whole different thing,
13 right?

14 A Yes, sir.

15 Q But then they said, "We'll do our best, our absolute
16 best."

17 A Okay, yes, sir.

18 Q Do you recall them saying that?

19 A I believe they did.

20 Q You also made it clear to them, as you said a few
21 moments ago and as you said during previous questioning, you
22 weren't looking to spend hella years in prison, that's your
23 words?

24 A Yes, sir.

25 Q Your attorney at that time, Mr. Brown, he told you

1 that you'd be getting a sentence of three to eight years in
2 this case, right?

3 A I mean, that's -- that's what I was assuming. I
4 mean -- I mean, did he -- I'm not even 100 percent sure if he
5 actually said that, but I know I was drawing -- I don't know.
6 I was probably drawing a conclusion.

7 Q So your answer is no, David Brown did not say that
8 to you?

9 A In those -- no.

10 Q When you filed that motion to fire Mr. Brown, you
11 recall it, right?

12 A Yes, sir.

13 Q And you handwrote the whole thing, right?

14 A Yes, sir.

15 Q Your handwriting?

16 A Yes, sir.

17 Q And it's long, right?

18 A Yes, sir.

19 Q Did you remember when you made that, you announced
20 that you were making it sworn under penalties of perjury,
21 right?

22 A Yes, sir.

23 Q And in that motion you specifically wrote under
24 penalty of perjury --

25 A To my belief.

1 Q -- that your attorney assured you you would get to a
2 three to eight?

3 A To my belief, yes.

4 Q That's what you wrote in that motion, right?

5 A Yes, sir.

6 Q In that same motion you also wrote that your
7 attorney told you the police and the prosecutor would speak at
8 your sentencing and ask for leniency?

9 A Yes, sir, I believe so.

10 Q You wrote that in your motion under penalty of
11 perjury, correct?

12 A Yes, sir.

13 Q You also stated in that same motion that your
14 attorney had told you that the State was not going to argue
15 against a three to eight year sentence?

16 A That State was not going to argue?

17 Q Against a three to eight year sentence?

18 A I'm not sure. Did I write that?

19 Q I can't answer questions, sir. Are any of those
20 things in your Guilty Plea Agreement in this case?

21 A No, sir.

22 Q That you'd get a three to eight, is that in your
23 Guilty Plea Agreement?

24 A No, sir.

25 Q That the police and prosecutor and speak at your

1 sentencing and ask for leniency?

2 A No, sir.

3 Q All of that information, then, came from where?

4 A Came from me.

5 Q Who told it to you before then?

6 A I mean, like I said, I was probably drawing too much
7 of a conclusion, but Mr. Brown.

8 Q On Friday, when the State was questioning you about
9 your Guilty Plea Agreement, do you remember testifying that
10 State could argue whatever they wanted?

11 A Yes, sir.

12 Q And that you had no idea what they were going to
13 argue for, right?

14 A Yes, sir.

15 Q Do you also remember on Friday that you testified
16 Laguna asked you to bring that .38 when you guys headed out
17 for that second robbery?

18 A Yes, sir.

19 Q Then today, adding to that testimony, you said that
20 Manny had lent you that .38 or had left it at your house.

21 A He left it at my house probably a couple weeks prior
22 to that incident in which I started claiming it.

23 Q Previous to Friday, when did you tell any prosecutor
24 or police officer that Laguna had asked you to bring that .38
25 to the second robbery?

1 A When did I bring that up?

2 Q Before Friday.

3 A Basically, at the pretrial hearing.

4 Q So the most recent time that you sat down with these
5 prosecutors?

6 A Yes, sir.

7 Q Was that recorded, if you remember?

8 A I'm not sure.

9 Q Have you seen a transcript from that day?

10 A No, sir.

11 Q And that was the first time you disclosed to them
12 that Laguna told you to bring the .38?

13 A Yes, sir.

14 Q That was two years after that night?

15 A Yes, sir.

16 Q Had you ever told the police or prosecutors prior to
17 your testimony in this trial that that was Manny's .38?

18 A No, sir.

19 Q In fact, when the police were interviewing on the
20 24th, and you were trying to say what they wanted you to say,
21 you -- they were asking you about Manny because they thought
22 he was involved, right?

23 A Yes, sir.

24 Q Specific questions about Manny, right?

25 A Yes, sir.

1 Q And you reassured them time after time that Manny
2 had nothing to do with this and had no involvement?

3 A Yes, sir.

4 Q Knowing at that point in time, that that .38 that
5 Laguna had belonged to Manny?

6 A I mean, it was at my house weeks prior to that
7 situation, and like I said, I started claiming the gun.

8 Q At that --

9 A I mean, as far as him giving it to me for this,
10 absolutely not.

11 Q And at that point in time, for all you knew, that
12 .38 could have been a murder weapon, correct?

13 A I mean, it -- it was a gun. Any gun could be a
14 murder weapon.

15 Q Especially the guns there, right?

16 A I mean, I guess, yeah.

17 Q The Ruger you had that night is a semi-auto with a
18 clip, yes?

19 A Yes, sir.

20 Q And you were familiar with that gun prior to that
21 night, correct?

22 A Yes, sir.

23 Q You said it was your gun, but that -- were you
24 legally allowed to possess guns as of September 2014?

25 A No, sir.

1 Q Because you have a felony, correct?

2 A Yes, sir.

3 Q So when you say that was your gun, it wasn't your
4 legal gun at least?

5 A Yes, sir.

6 Q How about Manny? Is Manny allowed to legally
7 possess firearms?

8 MS. LEXIS: Objection. Relevance, lack of firsthand
9 knowledge.

10 MR. LANDIS: It gets to him letting Manny leave a
11 gun there and then him saying there's nothing criminal about
12 it.

13 THE COURT: Sustained. I don't think it's relevant.

14 BY MR. LANDIS:

15 Q Did Manny know -- are you aware if Manny knew that
16 you had a felony conviction as of September 24th?

17 A Yes, sir.

18 Q He was a good friend, right?

19 A Yes, sir.

20 Q Your testimony during this trial, please correct me
21 if my notes are wrong, sir, I think it was Friday you
22 testified that as you were hunkered down behind that wall
23 behind those trees, Murphy called you from a number you didn't
24 recognize, right?

25 A Yes, sir.

1 Q And that call stood out in your memory, I'm sure,
2 right?

3 A Yes, sir.

4 Q It was the call from the guy you were hoping would
5 help you, right?

6 A Yes, sir.

7 Q As you're sitting there bleeding out worried you
8 were going to get arrested or even die?

9 A Yes, sir.

10 Q When the police talked to you on October 24th, they
11 specifically asked you, did Duboy call you that night after
12 the events; do you remember that?

13 A I think so.

14 Q Do you remember what your answer was?

15 A No, sir.

16 Q Page 35.

17 A (Witness reading transcript). Okay, yes, sir.

18 Q They specifically asked you, "Did Duboy call you,"
19 right?

20 A Yes, sir.

21 Q What was your answer?

22 A "No".

23 Q Anywhere during that October 24th interview, do you
24 remember telling them of any phone call from Duboy that night?

25 A I believe, I told them someone called me talking

1 about their wife has to take the car now, but she has to take
2 the car to go to work and will try to pick you up later.

3 Q In January, when you sat down with the did he get
4 Jensen and one of these prosecutors, do you recall during that
5 interview telling them that Duboy called you?

6 A Did I? I believe so. I think so, yes, sir. I
7 mean, I got a call from someone talking about -- I don't think
8 it was Montone or Mendoza. I know Montone's voice so, I mean,
9 it led me to believe that it might have been Duboy.

10 Q How about at the Grand Jury, what do you recall
11 telling them about phone calls from Duboy?

12 A I'm not sure.

13 Q Do you have any specific memory telling them that
14 Duboy called you?

15 A I'm not sure.

16 Q Are you confident that's something that you would
17 have told the Grand Jury?

18 A I think so.

19 Q Turn to page 54, if you would of that Grand Jury.

20 A (Witness reading transcript). Okay.

21 Q Did you tell the Grand Jury under oath that Duboy
22 called you, "yes" or "no"?

23 A Yes, sir.

24 Q Did you tell them that he called you?

25 A "Did you have contact with Duboy?" "Yes, he was

1 calling me off a -- well, he was texting me off a cell phone
2 for a little while, basically asking me where I am -- where
3 I'm at. I told him and nothing. Later on, he told me that
4 his wife had to go to work."

5 Q You guys text, is what you told the Grand Jury,
6 right?

7 A Okay, text, call, my mistake.

8 Q So your testimony today is that was just a
9 misstatement in front of the Grand Jury in January of 2015?

10 A Yes, sir.

11 Q And your memory of what you told this DA as well as
12 the police when they interviewed you in January was that you
13 told them about the call on that date, too, right? Not at the
14 Grand Jury, during the pre-Grand Jury interview they did with
15 you.

16 A That I told them about the phone call?

17 Q Yes. Or did you misstate it like you did at the
18 Grand Jury?

19 A I guess, yeah. I told them -- I told them.

20 Q Isn't it true that you told them again during that
21 interview that it was a text?

22 A I might have.

23 Q Would looking at the transcript refresh your memory?
24 I'm not trying to keep doing this, sir, but I want to make
25 sure your testimony's clear.

1 A Okay.

2 MR. LANDIS: Page 16, counsel. Can I approach?

3 THE COURT: Yes.

4 BY MR. LANDIS:

5 Q Focus on 16 (inaudible).

6 A (Witness reading transcript). Okay.

7 Q What did you tell the district attorney and the
8 police during that interview there?

9 A Told them to -- I said "um-h'm" to their question.

10 Q What was the question?

11 A "So on the 21st, when there's like 11 calls between
12 you and Dough, you and Joey Laguna?" "Um-h'm."

13 MR. LANDIS: May approach the witness?

14 THE COURT: Yes, again. You have many times.

15 BY MR. LANDIS:

16 Q They ask you specifically during that same
17 interview, "Did you ever call Duboy?"

18 A And Joey Laguna and I said "um-h'm."

19 Q They asked you -- this is the whole question -- "Did
20 you ever call Duboy?"

21 A And what's the other half of the question?

22 Q Would looking at the transcript refresh your memory?

23 A I just looked at it. It also says Laguna's name in
24 there also.

25 MR. LANDIS: I'm going to ask to read it in the

1 record, then, Judge.

2 THE COURT: Go ahead, ask -- read the question.

3 BY MR. LANDIS:

4 Q They ask you a complete question, every word, "Did
5 you will call Duboy," question mark, "yes" or "no"?

6 A And in that same sentence --

7 Q It's a "yes" or "no" question. Did you ever call
8 Duboy?

9 A Um-h'm.

10 Q Is that a question they asked you, "yes" or "no"?

11 A There was also Joey Laguna's name in there, though.

12 Q I'm going to ask to read it -- the transcript --

13 A Yes, sir.

14 Q -- in record.

15 A Okay.

16 THE COURT: All right, let me see it.

17 (Off-record bench conference)

18 THE COURT: Wait, wait. Come back, come back. I
19 need to talk to you about scheduling.

20 (Off-record bench conference)

21 THE COURT: All right. Ladies and gentlemen, we're
22 not going to be done with this witness today. I'm not
23 expecting the remainder of the testimony to be, you know,
24 extremely lengthy, but we can't delay. There are people that
25 need to pick up their children from daycare and I don't want

1 them scooped up by Child Haven, so that wouldn't be good.

2 And so we're going to let you go. It's 5 after 5:00
3 already, and I've got to prepare for my tomorrow's calendar,
4 which is 23 or 4 pages long. It's a very long calendar. On a
5 similar calendar on Monday we went until almost 1:00 o'clock.

6 So I don't believe we'll be able to get started
7 tomorrow until 1:30. So that's where I'm going to see you
8 back is tomorrow at 1:30.

During this overnight recess, it is your duty not to converse among yourselves or with anyone else on any subject connected with the trial or read, watch or listen to any report of or commentary on the trial by any person connected with the trial or by any medium of information, including without limitation, newspaper, television, radio or Internet. You're not to form or express an opinion on any subject connected with the case until it's finally submitted to you. I'll see you tomorrow at 1:30.

18 THE MARSHAL: All rise for the jury, please.

19 (Jury recessed at 5:05 p.m.)

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

23 MS. LEXIS: No, Your Honor.

24 MR. DIGIACOMO: Not from the State. I did redact
25 those. I'll forward them around by e-mail tonight and I'll cc

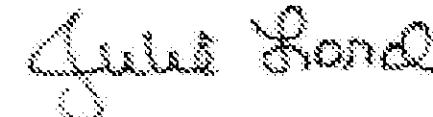
1 your law clerk so that we have the exhibits for tomorrow. I
2 think we will probably put in a number of them, more than just
3 those two at this point.

4 THE COURT: Okay. All right. I will see you
5 tomorrow, then, 1:30. Thank you.

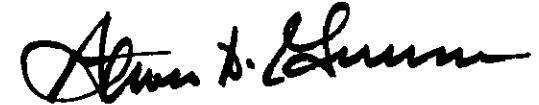
6 (Court recessed at 5:06 p.m. until Wednesday,
7 September 28, 2016, at 1:42 p.m.)

8 * * * *

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



12
13 JULIE LORD, INDEPENDENT TRANSCRIBER
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TRAN

CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,	.	CASE NO. C-15-303991-1
Plaintiff,	.	CASE NO. C-15-303991-4
vs.	.	CASE NO. C-15-303991-5
JORGE MENDOZA,	.	DEPT. V
DAVID MURPHY, a/k/a	.	
DAVID MARK MURPHY,	.	
JOSEPH LAGUNA, a/k/a	.	
JOEY LAGUNA,	.	
Defendants.	.	TRANSCRIPT OF PROCEEDINGS
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BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

JURY TRIAL - DAY 12

WEDNESDAY, SEPTEMBER 28, 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:

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District Court

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1 LAS VEGAS, NEVADA, WEDNESDAY, SEPTEMBER 28, 2016, 1:42 P.M.

2 (Outside the presence of the jury)

3 THE COURT: All right. We're on the record, and the
4 record will reflect that we are outside the presence of the
5 jury as well as the three alternates. All three defendants
6 are present with their respective counsel. Chief Deputies DA
7 prosecuting the case are present as are all officers of court.
8 And the witness is still on the witness stand.

9 Are there any matters outside the presence?

10 MS. MCNEILL: Your Honor, my client reminded me that
11 I'd been remiss in failing to make a record of a bench
12 conference -- the bench conference we had about his nickname.

13 So we could do it now or we can do it later. I just
14 wanted to make sure I put that on the record.

15 MR. LANDIS: And there was a few more yesterday that
16 we need to document. I don't think we need to do it now since
17 the jury's out there except for if I can just do one thing
18 because I think it will save a bench conference when the jury
19 gets here.

20 We approached during Mr. Figueroa's testimony, and
21 we were talking about the State's direct, they were trying to
22 do a consistent statement. We approached, I think. We didn't
23 argue about it and they conceded it was a consistent statement
24 that wasn't admissible at that time.

25 I just want it to be clear that to the extent they

1 intend to get into consistent statements, prior consistent
2 statements on redirect, I believe, all of Figueroa's
3 statements are after he had a motive to fabricate. Thus, I
4 don't think they're admissible.

5 THE COURT: All right.

6 MR. DIGIACOMO: If you --

7 THE COURT: Your response.

8 MR. DIGIACOMO: Oh, sorry. I'll get the mic, ma'am.
9 Briefly. The prior consistent statement, the basis for its
10 admission, that is not the only basis for which these records
11 are admissible. However, the suggestion from Mr. Landis,
12 which his cross-examination would have made them prior
13 consistent was, you know, you initially told one version of
14 events and now, you know, to essentially be more helpful,
15 you've now added details and added information that you didn't
16 provide before.

17 And thus, to see that essentially, he tells the
18 exact same story, and he just wasn't asked the questions that
19 he's provided the additional details to, is something that is
20 appropriate, one. Two, he gave a statement without a
21 negotiation, then after that he worked out an Agreement to
22 Testify and thus, that is the motive.

23 More importantly, both 47, I think it's 120 and
24 50.125, one talks about if any portion of a statement is put
25 in, then the adverse party, meaning us, can put in any other

1 relevant portion, and that's relevant to the proceeding, not
2 relevant to whatever portion that was asked.

3 In addition to that -- and that's the Dominguez
4 (phonetic) case. In addition to that, the 47.120 says if a
5 document is used to refresh the recollection of a witness, the
6 entire document can be placed into evidence.

7 All of these statements that we've now had marked
8 qualify under one of those exceptions multiple versions of
9 those bases for admission, and thus -- and obviously, I forgot
10 the Grand Jury transcript, that's by statute, 51.035. So for
11 all of those reasons, they're all admissible.

12 MR. LANDIS: And I wasn't each trying to address the
13 transcripts right now. I was really just trying to address
14 questions, but if we want to address it all at once, that's
15 fine.

16 As to the Grand Jury, I concur, the statute lets the
17 transcript come in, as to just his testimony, Mr. Figueroa's
18 testimony.

19 THE COURT: Well, I think what's clear is that, you
20 know, as to a hearsay objection, because that's where the
21 statute 51.035 is hearsay, it's not hearsay. And the statute,
22 that's what the statute says, it's not hearsay.

23 And so my recollection kind of was objection, may we
24 approach. So I don't know that a legal objection's been
25 placed on the record for me to -- I mean, if you want to say

1 objection, hearsay, then I'll address that objection and of
2 course, it's not hearsay, the Grand Jury transcript for that
3 reason, but --

4 MR. LANDIS: No, no, no.

5 THE COURT: -- I guess, I feel like I'm -- when you
6 make an objection, and then if you're going to approach, then
7 we need to put -- if we're going to put it on the record,
8 you've got to say what the legal objection was that I can rule
9 on that.

10 MR. LANDIS: Well, sorry, if I didn't explain it
11 well. My objection was I don't remember if I said hearsay or
12 prior consistent statement. I said one of the two. We ended
13 up approaching. They didn't --

14 THE COURT: You just this can't come in.

15 MR. LANDIS: No, no, that was the picture. This was
16 the picture.

17 THE COURT: Oh, yeah, okay. Maybe you're right.

18 MR. DIGIACOMO: I believe, during Ms. Lexis's direct
19 testimony --

20 MR. LANDIS: Yeah, right.

21 MR. DIGIACOMO: -- examination, they objected on a
22 prior consistent statement and when we approached, we conceded
23 it --

24 MR. LANDIS: Right.

25 MR. DIGIACOMO: -- like yes --

1 THE COURT: Right.

2 MR. DIGIACOMO: -- we'll move on, and we didn't go
3 there.

4 MR. LANDIS: Right.

5 THE COURT: Right.

6 MR. LANDIS: That's what I'm --

7 MR. DIGIACOMO: What I thought we were talking
8 about, and if we didn't, I'm sorry, is that at the break, I
9 suggested we were offering all these, we had an argument about
10 that. I've now redacted them and provided them to the parties
11 to make sure that there's nothing in there that they think
12 should additionally be redacted, and that's I thought's what
13 we were addressing at this point, not just the record --

14 THE COURT: I thought --

15 MR. DIGIACOMO: -- of we conceded objection.

16 THE COURT: I thought so, too.

17 MR. LANDIS: And no, I was talking specifically
18 about questions on redirect asking for prior consistent
19 statements, because I believe that any question about a prior
20 consistent statement made by Mr. Figueroa would be after he
21 had a motive to fabricate in this case.

22 And the motive to fabricate, in my opinion, came at
23 the crime, but at a minimum it started October 24th, when he
24 made a proffer.

25 MR. DIGIACOMO: That may be --