

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 82918

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Elizabeth A. Brown
Clerk of Supreme Court

SHELBE RIVERA

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

Appeal from Guilty Verdict
Eighth Judicial District Court, Clark County
The Honorable, District Court Judge Michelle Leavitt
District Court Case No. C-18-333893-1

APPELLANT'S APPENDIX - VOLUME TWO

JESS R. MARCHESE, ESQ.
Nevada Bar No. 8175
601 Las Vegas Blvd. South
Las Vegas, NV 89101
702-385-5377
Marcheselaw@msn.com
Attorney for Appellant Shelbe Rivera

Steven Wolfson, Esq.
Clark County District
Attorney 200 Lewis Ave
Las Vegas, NV 89101

Aaron D. Ford
Nevada Attorney General
100 North Carson Street
Carson City, Nevada 89701

Counsel for Respondent

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DATED this 14th day of September, 2021

/s/

JESS R. MARCHESE, ESQ.

Nevada Bar No. 8175

601 Las Vegas Blvd. South

Las Vegas, NV 89101

702-385-5377

Marcheselaw@msn.com

Attorney for Appellant Shelbe Rivera

1 A Yes, ma'am, on my -- on my drive to the call.

2 Q Okay. And then when do you turn it off?

3 A As soon as I clear from my call and I put in a disposition of closing my
4 call out and then I -- I pretty much close it and my camera.

5 Q Okay.

6 MS. MOORS: And just for the record, we're starting the camera at 12:27.

7 [Video plays]

8 MS. DUNN: Where did we stop the video?

9 MS. MOORS: And for the record, the video stopped at 21:25.

10 MS. DUNN: Thank you.

11 BY MS. DUNN:

12 Q So, again, that's a smaller portion of the video and the jury will have it to
13 watch the entire thing when they deliberate if they want, but I want to talk about a
14 couple things that we saw in the video. I know we just watched it, but the record
15 doesn't record who's saying what in the video, so I'm going to ask you a couple
16 specific questions.

17 After watching that did it refresh your recollection as to where he said
18 the blood on his pants came from?

19 A Yeah. I believe he said it was a fight with some random guy.

20 Q Okay. Did he indicate anything about a nosebleed in that fight?

21 A Yeah, that just he was bleeding and stuff, but he didn't look injured, but
22 I still asked him if he needed medical or if he was hurt any where.

23 Q And did he say that he was injured or needed medical?

24 A No. He said he just wanted to get back to Barstow.

25 Q Okay. Did you ask him if he had any mental health problems?

1 A I did.

2 Q And what did he tell you?

3 A He said he was schizophrenic but he was taking his medications.

4 Q Did he indicate that the medication was working?

5 A Yes.

6 MS. DUNN: Okay. Court's brief indulgence.

7 BY MS. DUNN:

8 Q So, again, the jury's going to have the rest of that body cam to watch,
9 but can you just kind of briefly fill us in about what happened with the rest of your
10 interaction with him?

11 A I believe that the gentleman had brought a shirt from Ross and he put it
12 on.

13 Q And when you say "he," do you mean the defendant put it on?

14 A Yeah, the gentleman had bought it -- had bought him a shirt and then
15 the defendant put it on. And then after that -- after I asked him more questions and
16 if he needed any medical, I made a couple of phone calls for some resources, some
17 shelters that could help him with shelter for the night and then see if I can get him
18 resources to get him a bus back to Barstow where he wanted to go. And I think all
19 they needed to check was if the residence or the address was accurate or if there
20 was relatives that lived there so that he could go, but I'm not sure if that went any
21 further.

22 And I think I ended up taking him to Burger King and got him a
23 hamburger and a drink and fries so that he could eat because he was hungry.

24 Q Is that where your interaction with him ended?

25 A I believe that's where it ended. I remember calling my sergeant to see

1 if I could take him to the shelter. But I can't remember if I was able to or if I did -- if I
2 did or if I didn't, I couldn't remember. I know I'd asked my sergeant before, I'm like,
3 hey, do you mind if we're kind of running thick on the squad, can I just take him
4 down myself and get him checked in and stuff, but I can't remember.

5 Q If you did or not.

6 MS. DUNN: Pass the witness, Your Honor.

7 THE COURT: Cross-examination.

8 **CROSS EXAMINATION OF OFFICER CHRISTINA MARTINEZ**

9 BY MR. MARCHESE:

10 Q Good morning, Detective.

11 A Good morning.

12 Q I'm just going to be brief. I have a couple questions.

13 So the interaction we just saw the body camera of, that was from
14 July the 2nd, 2018, correct?

15 A Yes, sir.

16 Q And that's in the vicinity of Charleston Boulevard and the 215 freeway;
17 is that right?

18 A Yes.

19 Q Okay. And at that time you were actually just a patrol officer, correct?

20 A Yes, sir.

21 Q And since then you've graduated or gotten a promotion or whatever you
22 want to call it up to detective?

23 A Yes, sir.

24 Q Congratulations.

25 A Thank you.

1 Q So you get this call, you're not actually -- you're not actually physically
2 present at the call, you just go off of whatever information you are given by dispatch,
3 correct?

4 A Correct.

5 Q So you don't actually know what transpired before you got there,
6 correct?

7 A Just details of what the caller that calls in information.

8 Q Sure. So in this particular case, as you've previously testified to, you
9 didn't issue a citation to Mr. Rivera or anything like that, correct?

10 A Not that I can recall.

11 Q Yeah. And he obviously wasn't arrested as you testified to, correct?

12 A Correct.

13 Q It was just basically he was trying to get in Best Buy and he had no shirt
14 on?

15 A Right.

16 Q As we saw?

17 A Right.

18 Q And then the nice gentleman with the red shirt and the bottles of water
19 later bought him a shirt to put on, right?

20 A Right.

21 Q So you had the opportunity to speak with him, I don't know, I think the
22 body camera's about 45 minutes or so, give or take, right?

23 A Yes, sir.

24 Q And you were in contact with him that -- the majority of that time, right?

25 A Yes.

1 Q Throughout the course of your conversation you're just asking him
2 questions, trying to get information so that you can assist him getting back to
3 Barstow, correct?

4 A Correct.

5 Q And as you can see from the body camera, he said on several
6 occasions he wanted to get back to Barstow, right?

7 A Right.

8 Q Even when you wouldn't even ask him about Barstow he would bring up
9 Barstow.

10 A Right.

11 Q He seemed fixated on getting back to Barstow for whatever reason.

12 A Right.

13 Q And I think he said something at one point it was -- his baby mama was
14 there, correct?

15 A Right. He had a child that wasn't born yet --

16 Q Right.

17 A -- that he wanted to get back to.

18 Q And then at one point he even said that the child wasn't born, right, that
19 she was pregnant, correct?

20 A Correct.

21 Q He never actually you a name of that individual, correct?

22 A He did not.

23 Q Didn't give you a -- didn't even say he had her phone number, right?

24 A Right. He said it was his phone and it was -- his phone was dead.

25 Q Right. And then he said he knew where -- he knew that -- where she

1 stayed, correct?

2 A Correct.

3 Q Right. And his phone didn't have a charge on it, right?

4 A Correct.

5 Q And do you remember you bought him the charger?

6 A I did not.

7 Q You did.

8 A But I think I remember and I had -- we had driven up to Ross and I ran
9 in -- I think -- I don't know if I did or if somebody else ran in for me. I gave them
10 money to get a charger.

11 Q Yeah, you gave -- you gave a total stranger your debit card.

12 A I did?

13 Q Yes. But I think you got it back and I think you also had a little bit of
14 authority so she didn't want to mess with you.

15 Just one last line of questioning and I'll get you out of here. You were
16 speaking to him about his mental health status, right?

17 A Yes, sir.

18 Q And he said that he's schizophrenic, right?

19 A Yes.

20 Q And you asked him about medications, right?

21 A Yes.

22 Q And he said he was taking them, right?

23 A Correct.

24 Q At that point you didn't see him take any medications, right?

25 A I did not.

1 Q You just took him for his word, right?

2 A Right.

3 Q He wasn't really more so of a suspect at that point as just a citizen in
4 need I guess.

5 A Correct.

6 Q Would that be a right way to define it?

7 And from what you see in the body camera that was everything he had
8 with him, right?

9 A That's it.

10 Q Okay. He didn't have a backpack or a garbage bag, nothing like that,
11 right?

12 A Just a cell phone.

13 Q Okay. And throughout the course of your interaction with him you didn't
14 actually see any medications on his person?

15 A Not that I can recall.

16 Q Okay. Was there ever a point in time, I didn't see it, but was there ever
17 a point in time where you ever had to, just frisk him, just for officer safety, just to
18 make sure that, you know, he doesn't have anything he's not supposed to that might
19 harm you?

20 A I think I did once I put him in my car. I checked him just to make sure.

21 Q Okay.

22 A And then I put him in my patrol car.

23 Q All right. And at that point there was nothing that you remember that
24 you saw?

25 A Not that I can recall.

1 Q Okay.

2 MR. MARCHESE: Thank you. No further questions.

3 THE COURT: Any redirect?

4 MS. DUNN: No, Your Honor.

5 THE COURT: Okay. Thank you very much for your testimony today. You
6 may stop down and you are excused from your subpoena.

7 THE WITNESS: Thank you, ma'am.

8 THE COURT: And the State may call their next witness.

9 MS. DUNN: Megan Madonna.

10 Your Honor, may I approach your clerk while we're waiting for the next
11 witness?

12 THE COURT: Absolutely.

13 MS. DUNN: Thank you.

14 **MEGAN MADONNA,**

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

16 THE CLERK: You may be seated. Please state and spell your first and last
17 name for the record.

18 THE WITNESS: My name is Megan Madonna, M-E-G-A-N, M-A-D-O-N-N-A.

19 **DIRECT EXAMINATION OF MEGAN MADONNA**

20 BY MS. DUNN:

21 Q Good morning, Ms. Madonna. Can you please tell us how you are
22 employed?

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

25 Q How long have you been in that position?

1 A As a senior or as a crime scene analyst?

2 Q Both.

3 A I've been a crime scene analyst for approximately four years and a
4 senior crime scene analyst for approximately four months.

5 Q Okay. So in 2018 were you a crime scene analyst?

6 A Correct.

7 Q Okay. What sort of education do you have that helps you hold that
8 position?

9 A I have a bachelor's in biology and anthropology from the University of
10 Illinois in Chicago and I have a master's in biology from the University of
11 Indianapolis.

12 Q What are some of your job duties as a crime scene analyst?

13 A As a crime scene analyst I arrive on scene to collect, identify, and
14 preserve items of evidence. And I do that primarily through photography, notes,
15 reports, and sometimes even diagrams.

16 Q Directing your attention to July 10th of 2018, were you asked to collect
17 any evidence from somebody named Shelbe Rivera?

18 A I was.

19 Q Okay. Where did you go to collect that evidence?

20 A I was requested to go to LVMPD headquarters at 400 South MLK Drive.

21 Q And when you arrived, you said it's at headquarters, how did you
22 decide what to collect?

23 A Typically we discuss with the detectives of what's going to be collected
24 from individuals that we process at headquarters.

25 Q And did you do that in this case?

1 A I did.

2 Q What did you end up collecting in this case?

3 A I ended up collecting a buccal swab kit from the individual as well as a
4 cell phone with ear buds, a watch with apparent blood, a pair of shoes, and then the
5 swab of apparent blood got impounded as well.

6 Q And when you say the swab of apparent blood where -- where was that
7 swab from?

8 A The swab of apparent blood I took from the back of the watch.

9 Q Where was the watch when you first saw it?

10 A It was on the individual.

11 Q And when you say "the individual" is that Shelbe Rivera?

12 A Correct.

13 Q I'm showing you what has previously been admitted by stipulation of the
14 parties as Exhibit Number 27. Is this the watch that you're talking about?

15 A It is the watch.

16 Q Okay. And I'm now showing you what was previously admitted by
17 stipulation of the parties as Exhibit Number 28. Is this a closer view of the watch?

18 A It is.

19 Q Okay. Now, you told us that there was apparent blood on it. Are you
20 able to see that in this photo?

21 A Yes, on the right side of the back of the watch.

22 Q Is that here?

23 A Correct. A little bit up. Right there.

24 Q Right there. Okay.

25 So when you saw that what did you decide to do?

1 A Well, when I originally looked at the watch I saw that it was a reddish
2 brown stain so I wanted to test it with phenolphthalein to see if it actually was human
3 blood or if it was rust because I originally thought it was rust.

4 Q And what is phenolphthalein?

5 A Phenolphthalein is a presumptive test that we do to test for the
6 presence of hemoglobin which is found in blood in both humans and animals.

7 Q Okay. So what do you -- what do you do when you want to test and
8 see if it's rust or blood?

9 A The first thing that I would do is I would take my positive and negative
10 controls to make sure that my chemicals are working correctly. Phenolphthalein is a
11 two-step process. There's a Step A and a Step B. So I would take a swab from the
12 watch and then I will put a drop of Step A on to the swab and wait approximately 10
13 to 15 seconds. I would then put an additional drop of Step B on to the swab and if it
14 turns pink or purple within 5 to 10 seconds it's indicative of it being blood.

15 Q So when you swab the surface initially is that a dry swab? Is there
16 anything on it?

17 A To collect the blood off the watch?

18 Q Yes.

19 A I typically will moisten the swab with a drop or two of molecular water to
20 swab up the -- the sample from whatever item we're sampling.

21 Q And you said you use Step A and Step B are those chemicals? Are
22 they water? What are they?

23 A They're actually chemicals, but they are maintained and stocked by the
24 forensic lab so they would know better exactly what is in those chemicals.

25 Q But it's your common practice when you're doing a presumptive blood

1 test to use the Step A and the Step B?

2 A Correct.

3 Q Okay. And I noticed that you said you start with doing positive and
4 negative controls. What does that mean?

5 A So in order to use the chemicals for case work we have to ensure that
6 our chemicals are working properly so in order to do a positive control and a
7 negative control, the negative control I would take a blank swab or a sterile swab
8 that we have at the lab and I would put Step A and Step B on to that swab and there
9 should be no reaction since there's no blood on the sterile swab.

10 Q And when you say no reaction do you mean it should not pink or
11 purple?

12 A It should not turn pink or purple.

13 Q Okay.

14 A And then on the positive -- the positive control we use blood standard
15 that is also maintained and stocked by the forensic lab of known blood and we'll do
16 the same thing. We will take a drop of Step A and Step B, complete it, and it should
17 absolutely turn pink since we know that it is blood.

18 Q So you perform both of those controls before you do any presumptive
19 blood tests from the watch?

20 A Correct.

21 Q Okay. So you did those controls then you -- and then you swabbed the
22 watch?

23 A Correct.

24 Q Okay. Then Step A and Step B and what was the result?

25 A So when I tested the sample for this particular swab it came out pink.

1 Q It came up pink.

2 A So it was positive reaction.

3 Q And what does that mean?

4 A That it's a positive reaction for blood for the presence of hemoglobin.

5 Q So what did you do with that swab once it turned pink?

6 A Well, that was just the sample so that one got discarded and I then
7 swabbed the rest of the sample off of the watch to impound it.

8 Q Okay. So you swabbed it to impound it. What do you do when you
9 impound something?

10 A So in order to impound our evidence we will package it appropriately.
11 We will then seal it with the date that we packaged it as well as our name and
12 P number to show who packaged it, and then it gets logged on a evidence log and
13 then it gets dropped down into a evidence shoot which is -- it's secure and only the
14 evidence vault personnel can access it.

15 Q And do you do anything else with it after that or are you done at that
16 point?

17 A At that point we are -- we are finished.

18 Q Okay.

19 MS. DUNN: Court's brief indulgence.

20 Pass the witness, Your Honor.

21 THE COURT: Cross-examination.

22 MR. MARCHESE: No questions for this witness, Your Honor.

23 THE COURT: Okay. Thank you very much for your testimony here today.
24 You may step down. You are excused from your subpoena.

25 And the State may call their next witness.

1 MS. MOORS: Your Honor, we don't have any witnesses prepared until after
2 the lunch hour.

3 THE COURT: Okay. All right. We're going to recess for lunch. During this
4 recess you must not discuss or communicate with anyone including your fellow
5 jurors in any way regarding the case or its merits either by voice, phone, e-mail, text,
6 Internet or other means of communication or social media; or read, watch, or listen
7 to any news or media accounts or commentary about the case; or do any research
8 such as consulting dictionaries, using the Internet or using reference materials or
9 make any investigation, test a theory of the case, re-create any aspect of the case,
10 or in any other way investigate or learn about the case on your own or form or
11 express any opinion regarding this case until it's finally submitted to you by the
12 Court, and we'll be in recess until 1:15. Thank you.

13 THE MARSHAL: Thank you. All rise for the exiting jurors please. Jurors.

14 [Recess at 11:53 p.m.; proceedings resumed at 1:25 p.m.]

15 [In the presence of the jury panel]

16 THE COURT: Does the State --

17 THE MARSHAL: Jurors, when you come in you can sit down right away.
18 We're all standing for you.

19 THE COURT: Does the State stipulate to the presence of the panel?

20 MS. MOORS: Yes, Your Honor.

21 THE COURT: And the defense?

22 MR. MARCHESE: Yes, Your Honor.

23 THE COURT: Thank you. The State may call their next witness.

24 MS. MOORS: Thank you. The State calls Amanda Wright.

25 Your Honor, may I approach your clerk?

1 THE COURT: Absolutely.

2 MS. MOORS: Thank you.

3 **AMANDA WRIGHT,**

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

5 THE CLERK: You may be seated. Please state and spell your first and last
6 name for the record.

7 THE WITNESS: Amanda Wright, A-M-A-N-D-A, W-R-I-G-H-T.

8 MS. MOORS: May I proceed?

9 THE COURT: You may.

10 MS. MOORS: Thank you.

11 THE COURT: Thank you.

12 **DIRECT EXAMINATION OF AMANDA WRIGHT**

13 BY MS. MOORS:

14 Q Good afternoon, Ms. Wright. Could you tell the members of the jury
15 how you're employed?

16 A I'm currently a forensic scientist trainee in the firearms section of the
17 forensic lab of the Las Vegas Metropolitan Police Department.

18 Q And I want to direct your attention back to July of 2018. At that point in
19 time how were you employed?

20 A I was a senior crime scene analyst for the Las Vegas Metropolitan
21 Police Department.

22 Q And at that point in time, back in 2018, how long had you held that
23 position?

24 A 11 and a half years.

25 Q What are some of your duties as a senior crime scene analyst?

1 A My responsibilities were to arrive on crime scenes, document those
2 crime scenes as I saw them using notes and photography and collecting any
3 evidence that I saw at the crime scenes.

4 Q And specifically, ma'am, I want to talk about July 11th, 2018. Were you
5 working in that capacity on that date?

6 A Yes, I was.

7 Q And did you ultimately have occasion to be called out with regards to
8 the case that brings us here today?

9 A Yes, I did.

10 Q And why were you called out?

11 A I was called out as a follow-up to a homicide case to recover some
12 evidence.

13 Q And specifically was that evidence located here in Clark County,
14 Nevada?

15 A Yes, it was.

16 Q And was it your understanding that evidence was in fact a -- an article
17 of clothing?

18 A Yes.

19 Q I'm going to show you what has previously been stipulated to and
20 admitted as State's Exhibit 29.

21 THE MARSHAL: Do you need to zoom out or --

22 MS. MOORS: Yeah, zoom out. There we go.

23 BY MS. MOORS:

24 Q Okay. And what are we seeing in this photograph?

25 A So in this photograph, this is the north side embankment of the 95

1 interstate. This is the interstate up there and you see the embankment, down at the
2 bottom would be Mesquite Road, and right here is the article of clothing that I
3 recovered.

4 Q Okay. So just for the record in terms of what we're looking at, you said
5 towards the top of this exhibit is where the 95 runs, correct?

6 A Correct.

7 Q And then I guess the bottom left-hand area you said would be a road
8 known as Mesquite?

9 A Correct.

10 Q And then right in the center you circled what appears to be a yellow
11 article of clothing; is that correct?

12 A That's correct.

13 Q And if you tap --

14 MS. MOORS: Is it the lower right-hand corner will erase it?

15 THE MARSHAL: Yes.

16 THE RECORDER: Lower left.

17 THE MARSHAL: Lower left.

18 MS. MOORS: Lower left, I apologize. Thank you.

19 BY MS. MOORS:

20 Q I'm also going to show you what's previously been marked and
21 stipulated to and admitted as State's Exhibit 30. Does this just appear to be a
22 close-up of that same photograph?

23 A Yes, it does.

24 Q And then State's Exhibit 31 has been admitted and stipulated to. Is this
25 a further close-up of this article of clothing?

1 A Yes.

2 Q And specifically what type of clothing are we looking at?

3 A It's a yellow polo-type shirt, short sleeved.

4 Q And then I'm going to also show you State's Admitted Exhibit 32. Does
5 this just appear to be a -- a same photograph of that shirt back later at the lab?

6 A Yes. That's just an overall photo of the shirt when I got back to the lab,
7 folded out so I could see the shirt in its entirety.

8 Q Okay. And after you ultimately recovered this piece of evidence, did
9 you have further involvement with it or did it go into the evidence vault?

10 A After I brought the shirt back to the lab, I could see stained areas on the
11 shirt, like a reddish brown stain. So when we see those areas we don't know what
12 they are. Are they a food stain? Are they apparent blood? So to test to see if
13 they're apparent blood we use a test called phenolphthalein. It's a two-part test.
14 We use a swab with molecular grade water to swab areas of the stain to lift the stain
15 up off the shirt on to the swab. Then we use the first part which is the
16 phenolphthalein, we drop it on to the swab, we wait a few seconds, drop the second
17 part of the test which is hydrogen peroxide.

18 If that test, if the swab turns a pink color that will indicate to us that it's a
19 positive presumptive test for the presence of blood and I will mark on the shirt the
20 areas that I tested and it will say "positive PH" for positive phenolphthalein
21 presumptive test and that way when the DNA biologist and the forensic lab get that
22 shirt for evidence, they know the areas that I've already tested for the presumptive
23 test as a indicator for them to test those further.

24 Q Okay. And you said specifically you noticed on that shirt, I believe the
25 verbiage you used was a reddish brown spot.

1 A Correct.

2 Q Why is that color significant?

3 A It's significant because that's a color that we commonly associate with
4 blood stains because I don't know that it's blood, I can't say it's blood. So we
5 typically refer to what we think are blood stains as reddish brown because before I
6 test that with phenolphthalein it could be barbeque sauce, it could be ketchup, it
7 could be any number of stains. So because we don't know what that is we refer to it
8 as reddish brown.

9 Q Okay. And then the test that you just discussed with us regarding the
10 presumptive blood was that something that you conducted on this shirt?

11 A Yes.

12 Q And what ultimately was your conclusion based on that presumptive
13 test?

14 A That the stains were positive presumptive for the presence of blood so
15 we could then at that point call it apparent blood.

16 Q Okay. And did you have any further involvement with that particular
17 piece of evidence after you were done with your presumptive tests?

18 A Yes. So when I'm done with all those tests, I use another piece of that
19 paper underneath called butcher paper to roll it up to protect the stains from
20 overlapping with each other or touching each other. The shirt is then put in a bag for
21 evidence collection. It's sealed. The outside of the bag has an evidence label that
22 has the information regarding the case, so the event number, the date, my
23 signature, what's included in the bag for a description of the shirt, and that is all
24 submitted into evidence and put in a secure location for our evidence vault
25 technicians to pick up.

1 Q And then once you're done with all of that process that you just
2 described, did you have any further involvement with this particular case?

3 A No.

4 MS. MOORS: I have no further questions for this witness.

5 THE COURT: Cross-examination.

6 MR. MARCHESE: No, Your Honor.

7 THE COURT: Okay. Thank you very much for your testimony here today.
8 You may step down and you are excused from your subpoena.

9 THE WITNESS: Thank you.

10 THE COURT: Thank you for being here.

11 And the State may call their next witness.

12 MS. MOORS: Thank you, Your Honor. The State calls Tracy Bish.

13 **TRACY BISH,**

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

15 THE CLERK: You may be seated. Please state and spell your first and last
16 name for the record.

17 THE WITNESS: Tracy Bish, T-R-A-C-Y, B-I-S-H.

18 MS. MOORS: May I proceed?

19 THE COURT: You may. Thank you.

20 MS. MOORS: Thank you.

21 **DIRECT EXAMINATION OF TRACY BISH**

22 BY MS. MOORS:

23 Q Good afternoon, Ms. Bish.

24 A Good afternoon.

25 Q Could you tell the members of the jury how you're employed?

1 A I'm a Forensic Scientist II at the Las Vegas Metropolitan Police
2 Department forensic laboratory in the biology/DNA detail.

3 Q And what is your educational background that qualifies you for this job?

4 A I have a bachelor's of science degree in -- with a major in chemistry
5 from Emory & Henry College in Emory, Virginia. And I've also attended graduate
6 class -- or coursework in forensic science from Cedar Crest College in Allentown,
7 Pennsylvania.

8 Q And how long have you been in this particular area of work?

9 A Sorry, can you repeat that?

10 THE COURT: Are you okay?

11 THE WITNESS: I've just got a tickle in my throat all of a sudden.

12 THE COURT: Okay. Do you need some water?

13 THE WITNESS: Do you have some?

14 THE COURT: Can you spare a little water?

15 THE WITNESS: Sorry.

16 THE COURT: No, you're fine.

17 Thank you. But I think Hawkes is going to be able to get it.

18 [Pause in the proceedings]

19 BY MS. MOORS:

20 Q Okay. So I think my question had been what -- how long have you
21 been in this type of job field.

22 A I previously worked at the Armed Forces DNA Identification Laboratory
23 in Dover, Delaware, in support of the identification of fallen soldiers using DNA
24 testing, and then I started there in December 2010, and in August 2016, I started
25 working for the Las Vegas Metropolitan Police, Forensic Laboratory.

1 Q And during the entirety of that time have you been working, I guess,
2 with regards, like, working with DNA?

3 A Yes.

4 Q Do you have to complete any sort of continuing education or anything
5 like that to make sure that you're apprised of -- of what's happening, I guess, in the
6 DNA field?

7 A Yes. Due to our accreditation, we have to do at least eight hours of
8 continuing education in DNA testing each year.

9 Q Okay. Now, in working -- in your working for Metro, is it customary that
10 you, say, would get a request to work on a piece of evidence and that request might
11 be associated with what would be known as a Metro event number?

12 A Yes, ma'am.

13 Q And in addition to that, does the lab come up with its own number to
14 identify a set of reports that you might create?

15 A Yes, it does.

16 Q So specifically I want to direct your attention back to 2018. Well,
17 actually, I take that back, to September, 2020, of this year, did you have occasion to
18 conduct a DNA analysis on some evidence with regards to the case that brings us
19 here today?

20 A I amended a report in September, 2020. But I had previously issued
21 the original report in May of 2019.

22 Q Did you say 2019?

23 A Yes.

24 Q Okay. So can you describe for us what happens when a DNA request
25 comes to the lab. Does it go through several processes or how do we ultimately get

1 to the report stage?

2 A At first the detective will put a request in for DNA testing and they will
3 pick the items that they want tested and that gets approved by the DNA manager
4 and then the case gets randomly assigned to one of the analysts in the laboratory.
5 In this case it was assigned to an F.L.T. for processing and then I picked it up at the
6 data interpretation phase and wrote the report.

7 Q Okay. And let me ask you this question, you said, was it F.S.T.?

8 A F.L.T.

9 Q F.L.T.

10 A Which is --

11 Q And what does that stand for?

12 A That's a forensic laboratory technologist.

13 Q And is it your understanding that they would customarily do some tests
14 on items before it comes to you for the analysis stage?

15 A Yes.

16 Q And is that something in your history that you have conducted in, say, in
17 other cases?

18 A Yes. In -- during my general job duties I can do everything that the
19 F.L.T. does in addition to some additional responsibilities. So the entire DNA
20 process would be screening and then DNA testing and then DNA analysis, report
21 writing, and then testifying. So I can do each part of that process.

22 Q Okay. But let's -- I think I want to back up a little bit actually. Can you
23 just explain for members of the jury what DNA is?

24 A Yes. DNA stands for deoxyribonucleic acid. It's the genetic information
25 in your body that tells your body how to function and makes you who you are. So

1 it's responsible for hair color and the things that, like, you have ten fingers, ten toes,
2 it's responsible for that. It's genetically inherited which means you get half of your
3 DNA from your biological mother and half of your DNA from your biological father.
4 And DNA is considered to be unique; therefore -- with the exception of identical
5 siblings; therefore, it's important in forensics because it's unique and because we
6 can use it to potentially identify a contributor to DNA We could identify DNA left
7 behind at a crime scene potentially.

8 Q What types of bodily fluids traditionally contain DNA?

9 A Some good sources of DNA would be blood, semen, saliva.

10 Q And is there -- is there a shelf life for DNA in terms of when it needs to
11 be tested based on, say, when, if I cut my finger and leave a piece of blood right
12 here, would it need to be tested immediately?

13 A As long as the DNA is still there we can collect it and test it.

14 Q Okay. Now, let's talk a little more about the tests that brought us here
15 today. So you indicated that there was some preliminary testing done and then as a
16 result of that it comes to you for an analysis stage.

17 A Yes, it does.

18 Q Okay. So what physically comes to you? Is it the items of evidence or
19 is it a piece of paper or what shows up on your desk to do an analysis?

20 A So in this case the F.L.T. would have handled the physical evidence
21 and performed the testing in the laboratory and they would have taken it to a stage
22 where data was generated. So it's like peaks on a graph and they would pass that
23 off to me for interpretation and report writing.

24 Q And when you say peaks on a graph, I just kind of want to get a visual
25 of that, is that sort of what it would look like, say, on a, like, a heart rate monitor or

1 something at a hospital that would go up and down and you would kind of see this
2 vantage point of -- of higher points and then lower points?

3 A Yes, essentially.

4 Q Okay. And then once you get this information how do you go about
5 starting your comparison?

6 A Well, I would look at the profiles from the evidence, first, and determine
7 the potential number of contributors for each potential profile. And then I would look
8 at the reference profiles which are samples from a known person or a known source
9 and then perform comparisons utilizing a statistical software tool.

10 Q Okay. So in this particular case did you and I have a chance to talk
11 about your report before trial?

12 A Yes.

13 Q And was it your understanding when you were doing your analysis that
14 there specifically was a piece of evidence that included swabbing from five clippings
15 of both sides of a right-hand fingernail?

16 A Yes.

17 Q And was it your under -- what was the result of a DNA test on that item?

18 A This was Lab Item 3 which was the swabbing of all five clippings on
19 both sides from the right-hand fingernail clippings. This was taken from the body of
20 Juan Miguel Rincon; therefore, it's reasonable to assume that his DNA would be
21 present on this item. So assuming Juan Miguel Rincon was a contributor to the
22 DNA profile obtained, there was no foreign -- foreign DNA results obtained.

23 Q Okay. And then did you also receive specifically Lab Item Number 4
24 which was swabbing from all five clippings on both sides of a left-hand fingernail
25 clipping?

1 A Yes.

2 Q Did you ultimately reach the same conclusion with regards to that piece
3 of evidence?

4 A Yes. Assuming Juan Miguel Rincon was a contributor to the DNA
5 profile obtained, no foreign DNA results were obtained. One additional allele was
6 detected above the interpretation threshold; however, with such limited data
7 available we couldn't make any conclusions on that.

8 Q So basically you weren't able to ascertain whether or not there was
9 anyone else's DNA with regards to -- to either or those pieces of evidence?

10 A No.

11 Q Did you also have a chance to examine some swabbings from
12 ultimately what was listed as a yellow polo shirt, size medium?

13 A Yes.

14 Q Now, when you get, say, a larger piece of evidence that is a shirt, which
15 I'm assuming could have various points of interest, how do you as an analyst know
16 which particular areas you want to focus on to -- to do a comparative analysis?

17 A So if we get an item that is stained quite heavily, we would want to take
18 a representative sampling documenting all the areas of staining. However, we might
19 only take three areas of interest forward for DNA testing, so something from the
20 front, something from the back, maybe something from the inside just to represent
21 the sample.

22 Q And is that something that was done in this particular case?

23 A Yes.

24 Q So directing your attention to ultimately Lab Item 6.1 that would have
25 been swabbings from the interior collar and armpit area of the shirt that we've been

1 discussing. When you do your analysis do you ultimately try to figure out if there are
2 potentially more than one contributor?

3 A We would collect the sample and then analyze the data and make that
4 determination of how many contributors were there when we were doing data
5 analysis.

6 Q So with regards to this particular area from the interior collar and the
7 armpit area of this shirt how many contributors did you determine were present?

8 A We obtained a mixture profile of two contributors with at least one being
9 male and the approximate mixture proportions for the sample were 64 and 36. And
10 then I compared the two reference standards that were included for this case and
11 they were both individually included. And then I made a comparison of whether or
12 not both individuals can be included together and I got the statistic of the probability
13 of the observed -- of observing the mixture DNA profile was approximately
14 174 quintillion -- or sorry -- quadrillion times more likely that it originated from
15 Juan Miguel Rincon and Shelbe Rivera than if it originated from two unknown
16 random contributors.

17 Q Okay. So I -- I'm not going to lie, that's a lot for me, so I'm going to --
18 I'm going to ask a little follow-up on that. So you said there were two contributors at
19 least one being male, right?

20 A Yes.

21 Q And you have been making reference to these reference standards.
22 One of them was Juan Miguel Rincon which was your understanding was the
23 person who had died?

24 A Yes.

25 Q Okay. And then the other you mentioned was a Shelbe Rivera; is that

1 right?

2 A Yes.

3 Q And so these are provided to you, they're essentially samples of both of
4 these two people's DNAs?

5 A Yes, known samples.

6 Q Known samples, okay, so we know for sure that they came from that
7 person because they're a known sample to use for comparison purposes?

8 A Yes.

9 Q And then when you said in this particular area that we're talking about,
10 interior collar and the armpit area, I heard you say the mixture proportions were 64
11 to 36, which if I do math really quick that gets me to 100.

12 A Yes.

13 Q Which I'm assuming was the goal. What do those numbers represent?

14 A Essentially mixture proportions represent how much of the mixture
15 profile that each contributor gave.

16 Q Okay. So the larger number, the 64, was that attributable to Mr. Rincon
17 or Mr. Rivera?

18 A In this case the best fit was with Shelbe Rivera.

19 Q Okay. With Shelbe Rivera, so that was the 64 you said, right? So
20 we're speaking in percentages; is that correct?

21 A Yes.

22 Q And then the smaller number, that 36, was attributable to Mr. Rincon?

23 A Yes, it best fit Mr. Rincon.

24 Q Best fit, okay. Now, once you ascertain this number, then we got to
25 some numbers that you indicated that I don't even know how to pronounce, seeming

1 like they were large.

2 A Yes.

3 Q Fair to say?

4 A They're very large numbers.

5 Q Okay. So once you -- you know this percentage and then you're testing
6 against the two representative samples that was when, I think, you came up with the
7 quadrillion number that you mentioned to us; is that correct?

8 A Yes. That's the probability of including both individuals at the same
9 time.

10 Q Okay. So let's first just talk about Mr. Rincon, the victim, what was the
11 likelihood that that was his DNA present on the shirt?

12 A The probability of observing the mixture DNA profile is approximately
13 193,000 times more likely if it originated from Juan Miguel Rincon and an unknown
14 random individual than if it originated from two unknown random individuals.

15 Q Okay. And then so you're saying it's -- the chance of finding someone
16 that matched that particular DNA that wasn't Juan Rincon is essentially 1 in
17 193,000; is that -- am I understanding that correctly?

18 A It's comparing the possibility that this -- that Mr. Rincon and an
19 unknown individual over two unknown individuals.

20 Q Okay. Because this is a mixture profile?

21 A Yes.

22 Q Now then what was the -- the number that you ascertained with regards
23 to Shelbe Rivera?

24 A The probability of observing the mixture DNA profile was approximately
25 398 million times more likely if it originated from Shelbe Rivera and an unknown

1 random contributor than if it originated from two unknown random contributors.

2 Q Okay. Now, is there a way that you then compare the two -- the
3 probability of those two mixtures being present? Because I think that was a different
4 number that you mentioned.

5 A The probability of observing the mixture DNA profile is approximately
6 174 quadrillion times more likely if it originated from Juan Miguel Rincon and
7 Shelbe Rivera than if it originated from two unknown random contributors.

8 Q Okay. So when you say "quadrillion" what -- how many zeros are we
9 talking about?

10 A Quadrillion is a number followed by 15 zeros.

11 Q Okay. And that original number that you had was 174; is that right?

12 A Yes.

13 Q So remind me again, you said 15 zeros?

14 A Yes. So if you are thinking about the proportion of the number, a
15 thousand is 1 followed by 3 zeros; a million is 1 followed by 6 zeros; a trillion is 1
16 followed by 12 zeros and so forth, so on; and then you get to quadrillion which is 1
17 followed by 15 zeros.

18 Q Okay. So that's a lot of zeros?

19 A Yes.

20 Q All right. Now, in doing -- in doing your analysis that was, as we
21 discussed, that had at least two contributors. Did you analyze other areas of this
22 particular shirt that we've been discussing?

23 A There were six stains noted on the yellow polo shirt. They were located
24 at the exterior right armpit; the exterior right shoulder; the interior left collar; the back
25 exterior left sleeve; the exterior right sleeve; and the exterior right upper back.

1 Q Okay. So I want to direct your attention, we just talked about Lab Item
2 6.1, but I want to direct your attention to Lab Item 6.2.1 which appears to be cuttings
3 from the reddish brown staining on the exterior right armpit of the shirt that we've
4 been discussing. How many contributors did you ascertain contributed to this
5 particular sample?

6 A One male contributor.

7 Q Okay. And did you -- were you able to come up with a probability with
8 regards to this contributor?

9 A Juan Miguel Rincon was individually included and Shelbe Rivera was
10 excluded. And the probability of observing this DNA profile is approximately
11 105 septillion times more likely if it originated from Juan Miguel Rincon than if it
12 originated from an unknown random contributor.

13 Q Okay. So now that is another word that I'm not familiar with, "septillion."
14 How many zeros is that?

15 A Septillion is a number followed by 24 zeros.

16 Q 24 zeros. Okay. I'm not even going to write that, that's going to take
17 too long.

18 So what exactly does that number mean? Like, can you explain that a
19 little more? Because I'm hearing it and I'm knowing this is a big number, but what
20 specifically does that mean with regards to your analysis?

21 A So in this case I'm reporting what's known as a likelihood ratio which is
22 a comparison of two possible explanations for the DNA profile that's observed from
23 this evidence. So in this instance I'm saying the -- the probability of observing this
24 DNA profile is 105 septillion times more likely that it's Juan Miguel Rincon than an
25 unknown random contributor.

1 Q Okay. All right. So very, very high number, it would be essentially, I
2 guess, more likely that it is Juan Miguel Rincon based on that probability number
3 that you've given us as compared to someone else, it's 1 in 105 septillion; is that
4 right?

5 A Yes.

6 Q Okay. So on that sort -- you've got now two areas that we've discussed
7 within this shirt, I want to direct your attention specifically to the next item which is
8 Lab Item 6.4.1, which is a cutting from the reddish brown staining on the interior left
9 collar of this particular shirt, were you able to conduct an analysis of this area as
10 well?

11 A Yes.

12 Q And how many contributors did you locate?

13 A We obtained a DNA profile originating from one male and
14 Juan Miguel Rincon was individually included and Shelbe Rivera was excluded.
15 And the probability of observing this DNA profile was approximately 105 septillion
16 times more likely if it originated from Juan Miguel Rincon than if it originated from an
17 unknown random contributor. In this instance two additional alleles above the
18 interpretation threshold were detected in this sample. However, due to that limited
19 data we couldn't make any comparisons regarding the source of these alleles.

20 Q Okay. So this number that you just told us, this 105 septillion which
21 would be 105 and 24 zeros, that's the same probability number that you described
22 from the previous area of the shirt; is that correct?

23 A Yes.

24 Q Okay. So I want to move on to Lab Item 6.7.1 which is cutting from the
25 reddish brown staining on the exterior right upper back of this shirt. What did you

1 conclude based on this piece of evidence?

2 A We obtained a DNA profile originating from one male. Juan Miguel
3 Rincon was individually included. Shelbe Rivera was excluded. And the probability
4 of observing this DNA profile was approximately 105 septillion times more likely if
5 originated from Juan Miguel Rincon than if it originated from an unknown random
6 contributor.

7 Q And so I'm understanding correctly, that's that same number we have
8 heard now two times previously which is the 105 septillion?

9 A Yes.

10 Q Okay. So that's 105 followed by 24 zeros?

11 A Yes.

12 Q Moving on to Lab Item Number 8 which is a swab from the back of a
13 damaged watch, what did you conclude based on this piece of evidence?

14 A Obtained a DNA profile originating from one male and Juan Miguel
15 Rincon was individually included and Shelbe Rivera was excluded. And the
16 probability of observing this DNA profile was approximately 412 million times more
17 likely if it originated from Juan Miguel Rincon than if it originated from an unknown
18 random contributor.

19 Q Okay. So this number, a million, right, so that's at least something I can
20 conceptualize, you said it was 412 million times more likely that it originated from
21 Juan Rincon?

22 A Yes.

23 Q Okay. So that number, obviously, is a lot smaller than the previous
24 numbers that we've been discussing, was there a reason for that?

25 A The difference in statistics has to do with how much information is

1 obtained from the DNA. So during our testing we test 23 different locations plus a
2 sex determining location, and therefore, that allows for a different number of
3 combinations to mathematically be included in the statistic. Therefore, it would
4 result in -- since there was less information, it would result in a smaller number.

5 Q Okay. So in, say, terminology that you might use, would it be fair to say
6 on this piece of evidence we're discussing, this watch, that there was a partial DNA
7 profile present?

8 A Correct.

9 Q And on the other ones that we talked about with that 105 with 24 zeros,
10 that was a full profile?

11 A Yes.

12 Q Hence why that number is quite larger?

13 A Yes.

14 Q I want to direct your attention to Lab Item 13 which is a swab from the
15 blade of the knife from the Dumpster. Did you have occasion to do an analysis with
16 regards to this piece of evidence?

17 A Yes.

18 Q And what were your conclusions with regards to this piece of evidence?

19 A We obtained a DNA profile from one male. Juan Miguel Rincon was
20 individually included and Shelbe Rivera was excluded. And the probability of
21 observing this DNA profile is approximately 105 septillion times more likely if it
22 originated from Juan Miguel Rincon than if it originated from an unknown random
23 contributor.

24 Q And so now this is back to that 105 septillion, so 105 with 24 zeros?

25 A Yes.

1 Q Would it be fair to say that this as well was a full DNA profile?

2 A Yes.

3 Q Moving on to Lab Item Number 14 which is a swab from the handle of
4 the knife from the Dumpster, were you able to conduct an analysis with regards to
5 this piece of evidence?

6 A Yes.

7 Q And what were your results?

8 A Obtained a DNA profile from one male and Juan Miguel Rincon was
9 individually included and Shelbe Rivera was excluded. And the probability of
10 observing this DNA profile was approximately 26.3 septillion times more likely if it
11 originated from Juan Miguel Rincon than if it originated from an unknown random
12 contributor.

13 Q Okay. So here we have a different number. We're still dealing with this
14 septillion which is the 24 zeros. But the number before it is 26.3 as opposed to what
15 we had seen previously, that 105. Is there a reason for this different number?

16 A It would be the same reason, it's a partial profile, therefore, less
17 information was available.

18 Q Okay. Were there other items of evidence that ultimately you -- well, I
19 guess that wouldn't have been you, but when you were done with comparing all of
20 these -- all of this data is it ultimately a report that you then draft to forward back to
21 detectives investigating the case?

22 A Yes.

23 Q Do you have further involvement with the case once you've conducted
24 your analysis?

25 A No. I just perform the DNA analysis and report my findings and testify if

1 need be.

2 Q Okay. And speaking of which, I didn't ask you this earlier, but have you
3 testified in court before with regards to DNA?

4 A Yes, I have.

5 Q How often have you done that?

6 A I have testified in district court, grand jury, justice court, and Nye
7 County.

8 MS. MOORS: Court's indulgence.

9 I have no further questions for this witness.

10 THE COURT: Thank you.

11 Cross-examination.

12 MR. MARCHESE: No questions, Your Honor.

13 THE COURT: Okay. Thank you very much for your testimony here today.

14 THE MARSHAL: We have one question, ma'am.

15 THE COURT: I'm sorry, what?

16 THE MARSHAL: I have one question.

17 THE COURT: We have -- okay. If you don't mind staying for a moment.

18 [Bench conference transcribed as follows:]

19 THE COURT: Okay. The record will reflect that the hearing is taking place
20 outside the presence of the jury panel. Counsel for both sides are here. And I have
21 marked Court's Exhibit Number 3, a question from the juror, and it's: No DNA of
22 knife handle from Shelbe, question mark.

23 MS. MOORS: Lindsey Moors for the State. I think that it's a little bit
24 confusing as it reads. I think the intention of the question would be to ask is there
25 any DNA from Shelbe, the defendant, on the knife handle. I think she already

1 answered that question, and also I don't think that I can really quite understand the
2 way that it's worded.

3 THE COURT: Is that an objection to the Court asking the question?

4 MS. MOORS: I mean, I guess I don't have an objection to it because I think
5 that it could be clarified with a question. That's my understanding of what is being
6 asked.

7 THE COURT: Okay.

8 MR. MARCHESE: I would just say it's vague, number one, and asked and
9 answered.

10 THE COURT: Okay. I don't like the way she writes questions at all. What I
11 would like to do is just mark this and have the sides -- I always give you an
12 opportunity to do any follow up if you want to.

13 MS. MOORS: I think that would be better.

14 THE COURT: Even if I don't allow the question.

15 MS. MOORS: I think that would be great.

16 THE COURT: Okay. All right. Anything else?

17 MS. MOORS: Nothing from the State.

18 MR. MARCHESE: No, Your Honor.

19 [Bench conference ends]

20 THE COURT: Does the State stipulate to the presence of the jury panel?

21 MS. MOORS: Yes, Your Honor, the State does.

22 THE COURT: And the defense?

23 MR. MARCHESE: Defense does, Your Honor.

24 THE COURT: Okay. Thank you.

25 Court's Exhibit Number 3 is marked and it will be made part of the

1 record. The Court is not going to ask the question. But I'll allow the State and
2 defense to do any follow up.

3 MS. MOORS: Thank you, Your Honor.

4 BY MS. MOORS:

5 Q Okay. Just to go back to a little of what we were talking about before, I
6 know we were talking about various pieces of evidence and specifically Lab Item 13
7 we talked about swabs from the blade of a knife from a Dumpster; is that right?

8 A Yes.

9 Q And with regards to that I think you previously told me there was one
10 male contributor; is that right?

11 A Yes.

12 Q And that someone that was included, as in could potentially be a
13 contributor, was Juan Rincon; is that right?

14 A Yes.

15 Q Was there any other person that was excluded?

16 A Shelbe Rivera was excluded.

17 Q Okay. So when you say "excluded" that means his DNA was not
18 present?

19 A Not the contributor for this DNA profile.

20 Q Okay. So the DNA profile that was obtained was not contributed by
21 Shelbe Rivera?

22 A Correct.

23 Q And the same question then with regards to Lab Item Number 14 which
24 is a swab from the handle of the knife from the Dumpster, how many number of
25 contributors did you ascertain?

1 A One male.

2 Q And who was included within that?

3 A Juan Miguel Rincon was individually included.

4 Q Okay. And who was excluded?

5 A Shelbe Rivera.

6 Q Okay. So same thing similar to that previous piece of evidence,

7 Shelbe Rivera was excluded as a contributor?

8 A Yes.

9 MS. MOORS: Okay. I have no further questions, Your Honor.

10 THE COURT: Okay. Anything from the defense?

11 MR. MARCHESI: Not based upon that line of questioning, Your Honor.

12 THE COURT: Okay. Thank you very much for your testimony here today.

13 You may step down and you are excused from your subpoena. Thank you very
14 much for being here.

15 The State may call their next witness.

16 MS. MOORS: Thank you, Your Honor. The State calls Detective Eric Ravelo.

17 **ERIC RAVELO,**

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

19 THE CLERK: You may be seated. Please state and spell your first and last
20 name for the record.

21 THE WITNESS: Eric, E-R-I-C, last name is Ravelo, R-A-V-E-L-O.

22 MS. MOORS: Thank you.

23 **DIRECT EXAMINATION OF ERIC RAVELO**

24 BY MS. MOORS:

25 Q Good afternoon, sir. Can you tell the members of the jury how you're

1 employed?

2 A With the Las Vegas Metropolitan Police Department.

3 Q And in what capacity do you work for Metro?

4 A In Homicide as a detective.

5 Q How long have you been in law enforcement?

6 A 22 years.

7 Q Can you tell me -- so we've heard from some patrol officers, we've
8 heard from some C.S.A.s, can you tell me the difference between, say, what a patrol
9 officer does and what a detective does?

10 A Patrol officers handles the day-to-day calls for service that come
11 through our dispatch center. They do enforcement. Also out on the streets, they're
12 the ones that drive the black-and-white vehicles. Detectives do cases, they do
13 follow ups, they do submittals. They make arrests based on evidence that we find
14 throughout those cases.

15 Q Okay. So you said that specifically you're within the Homicide detail; is
16 that right?

17 A Yes.

18 Q Would it be fair to say that every -- I guess, I think that's my question --
19 would it be fair to say that every homicide would be assigned a detective?

20 A Yes.

21 Q Describe for me that process, like, how did you end up becoming
22 involved in the case that brings us here today?

23 A So we have a total of 24 detectives in Homicide with 6 sergeants
24 assigned to those detectives. We have a squad of 6 each. That lead detective is
25 rotated within the squad and as these events come out.

1 Q Okay. So you sort of are rotated to being the person that would be
2 assigned a case and then get assigned to that case and then go back into the, sort
3 of, rotation wheel to get more cases so that it's, sort of, evenly distributed?

4 A Yes.

5 Q Now, I want direct your attention back to 2018, at that point in time were
6 you also a Homicide detective?

7 A Yes.

8 Q And did you have occasion to become involved in a homicide that
9 occurred on July 1st of 2018?

10 A Yes.

11 Q Describe for me how you first became involved.

12 A I was notified by my sergeant at the time of a call that was generated
13 and to respond to that address.

14 Q And ultimately did you respond to a location here in Clark County?

15 A Yes.

16 MS. MOORS: Your Honor, may I approach your clerk?

17 THE COURT: You may.

18 MS. MOORS: Thank you.

19 BY MS. MOORS:

20 Q I'm going to show you, Detective, what has previously been marked and
21 admitted as State's Exhibit 3. I'm going to zoom in and hopefully make it less glary.

22 MS. MOORS: Am I allowed to take them out of the sleeves or not?

23 THE CLERK: No.

24 MS. MOORS: No? Okay.

25 THE CLERK: Sorry.

1 BY MS. MOORS:

2 Q All right. Sorry. I'm just going to hold it so that it's not super glary.

3 Sir, I want to direct your attention to, if you can tell, there are three little,
4 I guess, computer-created thumbtacks. If you look towards the top you see a red
5 one. Do you see that kind of in the center?

6 A Yes.

7 Q And does that also say next to it 418 West Mesquite Avenue?

8 A I think so.

9 Q Right? I'm sorry.

10 A Oh, I can see it here. Sorry. It's a little blurry.

11 Q Just -- it's not very legible. Okay. Was -- was 418 West Mesquite
12 Avenue your understanding of where the -- the dead body was located at?

13 A Yes.

14 Q Okay. So is that the first place that you then go to when you begin your
15 investigation?

16 A Yes.

17 Q Once you get to the location are there other officers that are already
18 there?

19 A Yes.

20 Q And when you do that would that be patrol officers, say, that were
21 there?

22 A Sometimes it's a mixture of patrol officers, patrol detectives, other units
23 that will brief us on what they know up to that point.

24 Q Okay. And on this particular date when you got there, was the scene
25 already sort of quarantined off?

1 A Yes.

2 Q What was the first thing that you did when you got there?

3 A We gathered with the officers that were there and obtained a brief of the
4 circumstances up to that point. We had to learn how the call had come out, where
5 the victim was located, and also the potential person reporting, or P.R., and any
6 witnesses, if there was any, we would get briefed at that moment.

7 Q Okay. So fair to say when you first arrived at this particular scene you
8 didn't have any idea on a potential suspect?

9 A Correct.

10 Q Now, when you arrive at a scene is it also customary that there would
11 be crime scene investigators that would come out and document the scene with
12 photographs?

13 A Yes.

14 Q So I'm going to show you what has been admitted as State's Exhibit 4.
15 Does this also appear familiar to you?

16 A Yes.

17 Q I wish there was a way I could have that not be blurry. I don't know if
18 there is. I'm trying to, like, lift it up because it's just, it's, like, so hard to see and then
19 when I dim it, it doesn't -- I like that.

20 Okay. So it's a little more yellow, but at least we can see it. And does
21 this appear to be the crime scene that we had just been discussing?

22 A Yes.

23 Q And if you look right in the center there does that actually say 4-1-8 on
24 that building?

25 A Yes.

1 Q Okay. Showing you State's Exhibit 5, is this sort of a closer photo of
2 what we're seeing here in this -- this crime scene?

3 A Yes.

4 Q Where -- describe for me where the body is located.

5 A I'm sorry?

6 Q Can you describe for me where the body is located?

7 A The body is located there just outside of the south wall or the fence of
8 that business at 418 West Mesquite. If you can --

9 Q Okay. So within the photograph is it towards the left?

10 A Yes.

11 Q And then do we also see a Dumpster to the right?

12 A Yes.

13 Q Was there anything that you noticed that was significant about the
14 Dumpster?

15 A Eventually I looked in the Dumpster and located a large knife.

16 Q Okay. I'm going to show you State's Exhibit 7. Does this appear to be
17 just sort of a, I guess, the backside view of that Dumpster?

18 A Yes.

19 Q And what else is significant that we see in this photograph?

20 A There's the -- a fishing pole leaning there against the fence; there's a
21 couple of buckets; a suitcase, a black suitcase; and a pink and, I believe, grey
22 backpack.

23 Q Okay. So once you're -- once you're at the scene you're sort of finding
24 some items of evidence and interviewing witnesses, what did you do after that?
25 Like, did you have a suspect on this day, on July 1st?

1 A No.

2 Q So what's your next step?

3 A So we start processing the scene. We start documenting the scene,
4 also looking at the evidence that we have out there, we start looking at it and
5 documenting the body of the victim also. And, of course, considering the -- the
6 luggage, we start looking through the luggage just to see if there's anything of
7 evidence inside of that luggage.

8 Q Okay. And with regards to the luggage, did you have occasion to go
9 through the pink backpack?

10 A Yes.

11 Q And I'm showing you State's Exhibit 8, does this appear to be a
12 photograph of that pink backpack?

13 A Yes.

14 Q And when you got within that backpack tell me what you found.

15 A I found paperwork that belonged to or had the name of Shelbe Rivera
16 on it.

17 Q And fair to say this would have been located then on July 1st; is that
18 right?

19 A Yes.

20 Q Showing you what has been marked as State's Exhibit 15. What do we
21 see in this photograph?

22 A It's a package with a shipping label and at the top you'll the -- the ship
23 to name is Shelbe Rivera.

24 Q And does that show as being in Victorville, California?

25 A Yes.

1 Q Was this something that was located within that pink backpack?

2 A Yes.

3 Q And what about on State's Exhibit 16?

4 A A composition notebook with also the name of -- well, it's Rivera,
5 Shelbe on it.

6 Q Okay. And what about State's Exhibit 17?

7 A It's a close-up of the same -- same notebook.

8 Q And what do we see in State's Exhibit 18?

9 A I believe this is S.S.I. benefits or Social Security Administration benefits
10 that has the name of Shelbe Rivera on it with an Apple Valley, California, address.

11 Q And just to be clear, all of these documents that we've been discussing
12 they were found in that pink backpack?

13 A Yes.

14 Q Okay. And what about State's Exhibit 21, what do we see here?

15 A This is medical paperwork related -- or medical-related paperwork that,
16 same thing, has the name of Shelbe Rivera on it.

17 Q Does this also have a date of birth on it?

18 A Yes. It's --

19 Q And what do you show that date of birth as?

20 A September 16th, 1994.

21 Q And what do we see in State's Exhibit 22?

22 A Same paperwork with -- with a label that showed Rivera, Shelbe; date
23 of birth of 9-16-1994.

24 Q I'm showing you State's Exhibit 23. What do we see in this exhibit?

25 A A Verizon, either receipt or a bill showing a -- a phone number and it

1 says, Thank you, Shelbe, right at the top.

2 Q And just to be clear, on all of the pieces of evidence that we've been
3 discussing has the name Shelbe Rivera been spelled the same way on all of those
4 documents?

5 A Yes.

6 Q Can you spell that for me?

7 A S-H-E-L-B-E, and then Rivera's R-I-V-E-R-A.

8 Q Now I want to show you State's Exhibit 24, what do we see in this
9 exhibit?

10 A Numerous different types of cards or card holders, on the top you'll see
11 a debit card, I'm not sure what the company is but I think it's Direct Express and it
12 has Shelbe Rivera's name on it.

13 Q Okay. And all of those items were ultimately located in this pink
14 backpack; is that right?

15 A Yes.

16 Q So when you find all of this information, at this point is Shelbe Rivera a
17 suspect or is he just a person of interest?

18 A He's a person of interest.

19 Q What else do you continue to direct in terms of processing the scene so
20 that you can come up with a suspect?

21 A The C.S.A.s know to document the scene and also collect any evidence
22 that's there possibly for either latent prints or DNA analysis later on, so that's some
23 of the things that we did out there. We also conducted interviews with the person
24 that called in the call and anyone around that area that we could find that's nearby.

25 Q And in terms of interviews, were you able to speak with anyone that had

1 actually observed what happened?

2 A No.

3 Q Now, when you're unable to find an eyewitness would it also be
4 customary to see if there were potential video surveillance anywhere nearby?

5 A Yes.

6 Q And were you successful in locating any surveillance?

7 A No. Not -- not in the immediate area.

8 Q Okay. Did you locate any surveillance, I guess, in the non-immediate
9 area?

10 A Yes.

11 Q Where did you locate that at?

12 A The Molasky Building.

13 Q So we've been talking about this a little bit, but I want to clarify it further.
14 So this is that photograph where we had talked about how the red thumbtack is the
15 murder scene at 418 West Mesquite. I then see -- see a yellow thumbtack that I'm
16 going to come back to in a little bit, but I see a green one down here that says 100
17 North City Parkway. Are you familiar with that area?

18 A Yes.

19 Q And is that the Molasky Building that you were discussing?

20 A Yes.

21 Q What is the Molasky Building?

22 A It's a business building. I'm not sure how many stories it is. But it's got
23 several -- several different corporate offices for different businesses, and there's
24 also, on the bottom floor there's a Jason's Deli.

25 Q Right. Okay. I think there used to be a 24 Hour Fitness too?

1 A Yes.

2 Q Okay. So you are able to go to that location, how do you determine
3 whether or not there is video surveillance there?

4 A We talked to one of the security guards that was there on duty at the
5 time, made contact with him, and asked him to go back to the day of the incident
6 and just pull video from that -- from that day and basically we would watch it.

7 Q Okay. And when does this happen? If the murder occurs on July 1st,
8 when did we get to the Molasky video surveillance?

9 A I believe we pulled it on the 9th.

10 Q The 9th? Okay.

11 A July 9th.

12 Q Okay. And when you did that did you notice anything interesting on the
13 video?

14 A Yes.

15 MS. MOORS: Court's indulgence.

16 If we can switch over to the computer? My intent would be this is a
17 piece of evidence that has already been admitted and specifically it would be State's
18 Exhibit Number 2.

19 MS. DUNN: And just for the record, there are two video files on this disk.
20 This one is labeled "Molasky 1." And we are starting it at the timestamp, the video
21 timestamp of 8:28.

22 MS. MOORS: Okay. And just one sec before we start it.

23 BY MS. MOORS:

24 Q What, I guess, what am I seeing in terms of this area? What does this
25 show?

1 A This is the -- the west portion of that building, and this is looking at that
2 City, I believe, City Parkway --

3 Q Okay.

4 A -- street, which travels north and south. If you continue traveling
5 northbound on this street it would go underneath the -- some of the 95. And then
6 right directly on the other side of that would be Mesquite. That's where that's
7 located.

8 MS. MOORS: Okay. And if we can go ahead and play that video.

9 [Video plays]

10 MS. MOORS: Can you pause it for me, Ann?

11 BY MS. MOORS:

12 Q Okay. What did you see that was of significance to you in this video?

13 A The first thing that stuck out to me was I noticed the, what we later
14 identified as the victim, obviously, walking with those two buckets that we had found
15 at the scene, that orange and white bucket. It was the first thing I noticed right off
16 the bat. And I noticed that he was -- that individual was wearing the same clothing
17 that the victim was wearing later when we found him.

18 The second subject is pulling that black luggage that's there at the
19 scene. And also, kind of hard to see from the video, but he's got the pink backpack
20 on his back.

21 Q Okay. Were you also able to ascertain that -- so the man on the right
22 holding the bucket is the victim; is that right?

23 A Correct.

24 Q And the man on the left with the pink backpack on is the defendant?

25 A Yes.

1 Q Okay. And what color of shirt was the defendant wearing?

2 A Yellow or light-colored shirt, yes.

3 Q Okay.

4 MS. MOORS: We can finish playing it.

5 MS. DUNN: It was paused at 8:32, and I'm starting from the same position.

6 [Video plays]

7 MS. MOORS: You can go ahead and stop it at 8:53. And then if we can pull
8 up the other vantage point.

9 [Video plays]

10 MS. MOORS: And we're -- just so the record is clear both of these video
11 surveillance clips in their entirety are on the disk. We're just showing the relevant
12 portions. So at the conclusion of evidence the entirety will be on the disk if the jury
13 would like to look at it. For the record, we are currently paused at 8:07 and about to
14 start that view on this Molasky 2.

15 [Video plays]

16 MS. MOORS: Can you pause it, Ann? Maybe put the clicker towards the
17 center of the screen? Okay. There we go.

18 BY MS. MOORS:

19 Q And what did you see of significance on this particular vantage point?

20 A So from the first video the -- the defendant was wearing yellow pants
21 that matched the yellow shirt. Watching this video, I observed a male wearing
22 yellow pants on the opposite side of the street. This time he's walking by himself, he
23 has no shirt on, and none of the items that he was carrying initially.

24 Q Okay. So he had no buckets?

25 A Correct.

1 Q He had no fishing pole? Is that a "yes"?

2 A That's correct, yes.

3 Q And he had no pink backpack?

4 A Correct.

5 Q Okay. So I know we kind of jumped around on some dates. We have
6 the murder date of the 1st --

7 MR. MARCHESI: I'm going to object as to classification and calling it a
8 murder.

9 THE COURT: I'm sorry, you're -- the objection is to?

10 MR. MARCHESI: Classification as a murder rather than a homicide.

11 THE COURT: The objection --

12 MS. MOORS: I mean, I can rephrase. I'm not trying to --

13 THE COURT: Pardon?

14 MS. MOORS: I can rephrase.

15 THE COURT: Okay.

16 MS. MOORS: I'm not trying to cause any issues.

17 THE COURT: Thank you.

18 BY MS. MOORS:

19 Q So we have July 1st is the day that you found Mr. Rincon dead?

20 A Yes.

21 Q Correct?

22 A Yes.

23 Q And the video that we were just discussing, remind me the date that
24 you think you found that.

25 A The 9th.

1 Q The 9th. Okay. Now, in between those two times, so between the 1st
2 and the 9th, how, officially, did Shelbe Rivera become a suspect?

3 A The first was a video that was obtained through our body-worn camera
4 system. Our officers, our patrol officers wear that camera that records everything,
5 every interaction that they have. And we obtained a video from the -- a stop that
6 occurred at the Best Buy on West Charleston. The patrol officer, a female patrol
7 officer came in contact with an individual who, again, had no shirt on, had yellow
8 pants on as the video depicted, who identified himself as Shelbe Rivera. Through
9 that conversation, the officer had asked the individual what was on his --

10 MR. MARCHESE: I'm going to object as to hearsay and cumulative.

11 THE COURT: Right. The objection's sustained.

12 BY MS. MOORS:

13 Q So we can move on from that. We actually already heard from this
14 particular officer. But specifically I wanted to ask you --

15 MS. MOORS: And if we could switch it back to the Elmo here, that would be
16 great.

17 BY MS. MOORS:

18 Q I want to show you State's Exhibit 25. What do we see here?

19 A The two buckets that were collected.

20 Q Okay. So the two buckets that you found at the scene?

21 A Yes.

22 Q And was it your understanding that these buckets were ultimately
23 dusted for prints?

24 A Yes.

25 Q I'm showing you State's Exhibit 26. Is that what we see in that

1 photograph?

2 A Yes.

3 Q Now, when you have a case like this where you don't have a suspect
4 upfront, would it be fair to say that you might rush some things like fingerprint
5 analysis?

6 A Yes.

7 Q And was that done in this case?

8 A Yes.

9 Q Did the results of that actually come back on the 6th of July?

10 A Yes.

11 Q And who, was it your understanding, fingerprints were on this bucket?

12 A Shelbe Rivera.

13 Q I know you discussed there was some body-worn camera regarding the
14 defendant and you were able to see that; is that right?

15 A Yes.

16 Q And to your knowledge what date did that encounter occur?

17 A The first one was on the 2nd.

18 Q When you say "the 2nd" is that July 2nd?

19 A July 2nd, yes.

20 Q And you said the first one, was there another encounter?

21 A Yes. On the -- on July 3rd.

22 Q And that was a body-worn camera encounter with the defendant?

23 A Yes.

24 Q And you were able to view both of those body cams?

25 A Yes.

1 Q Now, if you at this point have a suspect, how do you then go about
2 trying to locate the suspect?

3 A So we -- contact usually will contact our Criminal Apprehension Team,
4 we will give them either an active warrant or we'll give them what's called a probable
5 cause statement. And at that point they would try to locate that individual.

6 Q And specifically what is a Criminal Apprehension Team?

7 A It's a task force that's a group of officers from Las Vegas Metro and
8 also F.B.I. agents.

9 Q And in this case how did you let them know that you were looking for
10 Shelbe Rivera?

11 A I'm not sure if I notified them over the phone, usually that's what we do
12 or through e-mail or both.

13 Q Okay. Well, I was asking because I think you said it could be an arrest
14 warrant or you said a probable cause statement.

15 A Statement, yeah.

16 Q It was a statement?

17 A I don't remember if we had the warrant at the time or if we had done the
18 P.C. statement.

19 Q Okay. Do you ultimately become aware of where you believe
20 Mr. Rivera's location is?

21 A Yes.

22 Q And where was that at?

23 A At 1640 East Flamingo which is a homeless youth center.

24 Q So in your duties as a detective would -- would you make the arrest or
25 would this Criminal Apprehension Team make the arrest?

1 A The Criminal Apprehension Team.

2 Q And was that done in this particular case?

3 A In where? I'm sorry.

4 Q Did the Criminal Apprehension Team arrest Mr. Rivera in this case?

5 A Yes.

6 Q And on what date did that happen?

7 A That was on July 10th.

8 Q July 10th? Okay. I want to direct your attention -- on this date did you
9 have occasion to speak with Mr. Rivera?

10 A Yes.

11 Q And when you were speaking with him is that something that would be
12 audio recorded?

13 A Yes.

14 Q Do you read him his *Miranda* rights?

15 A Yes.

16 Q Is that from memory or is that from a card?

17 A From a card.

18 Q And specifically when you're speaking with him, after you spoke with
19 him, did you have a C.S.A. come to the location you were at to take some
20 photographs of Mr. Rivera?

21 A Yes.

22 Q Why did you have that happen?

23 A Just to document if -- to see if he had any injuries, any markings that
24 would be related to this incident.

25 Q Okay. Would it also be something that you would customarily do is

1 maybe get a DNA sample from a suspect?

2 A Yes.

3 Q And was that done on this date as well?

4 A Yes.

5 Q I want to show you State's Exhibit 38. What do we see in this
6 photograph?

7 A It's Mr. Rivera. He is in one of our interview rooms. This is one of --
8 one of the photographs that the C.S.A. would have taken.

9 Q Okay. When you say one of our interview rooms, where are these
10 inter -- excuse me -- interview rooms located?

11 A In our building, they're Building A, they're located downstairs and
12 there's several different ones.

13 Q Okay. And where is your building I guess is my question.

14 A I'm sorry. It's at 400 South Martin Luther King.

15 Q Okay. And I'm showing you State's Exhibit 39. What do we see in this
16 photograph?

17 A Side profile of Mr. Rivera.

18 Q State's Exhibit 40, what do we see in this photograph?

19 A The back-end.

20 Q What about State's Exhibit 41?

21 A His right side profile.

22 Q And State's Exhibit 42?

23 A His shirt lifted up just showing any -- no signs of any injuries.

24 Q And I'm showing you State's Exhibit 43. What do we see here?

25 A His back, same reason.

1 Q And so far with the photos we've discussed of the defendant, have you
2 been able to observe any injuries?

3 A No.

4 Q And I guess you were actually there on that particular day, did you see
5 any injuries on Mr. Rivera on that date?

6 A No.

7 Q Directing your attention to State's Exhibit 44, what do we see in this?

8 A The -- the top of Mr. Rivera's hands, again documenting the lack of
9 injuries.

10 Q What do we see on his right hand?

11 A A watch.

12 Q And was that watch ultimately impounded?

13 A Yes.

14 Q Showing you State's Exhibit 45, what do we see in this photo?

15 A The inside of his hands, the palms.

16 Q So I know you mentioned this earlier and I -- I just wanted to ask, but
17 you said something about the defendant coming into contact with patrol at a -- at a
18 Best Buy; is that right?

19 A Yes.

20 Q I'm going to show you State's Exhibit 47. It's another map, and if I can
21 direct your attention to the upper right-hand corner, see that repeated red thumbtack
22 as the location on Mesquite where you found Mr. Rincon.

23 A Yes.

24 Q And then over to my left, and I apologize this coloring is terrible, it's
25 better in person, I see a blue thumbtack, what does that represent?

1 A That's going to be the Best Buy on West Charleston.

2 Q Okay. So this is the Best Buy that's located sort of at West Charleston
3 and the 215 in Summerlin?

4 A Yes.

5 Q And based on your understanding, that's where the defendant came
6 into contact with patrol officers on several occasions?

7 A Yes.

8 Q Okay. So once you are speaking with the defendant and you have
9 Mirandized him, what -- what do you ask him about?

10 A I asked him if, obviously, his involvement in the crime. I asked him if he
11 was with the victim at the time, where was he from, how did he get to Las Vegas,
12 how long he's been here, what was he doing the day of, was he present, those --
13 those kinds of questions.

14 Q Did -- were there any statements about where the defendant lived? Do
15 you remember where he said he lived?

16 A He said he was from -- coming from California.

17 Q Okay. And since he had been within Las Vegas had he sort of
18 permanently moved to Las Vegas? Or was he only temporary there?

19 A I believe he was here temporarily, but he -- he mentioned he was here
20 from -- from there.

21 Q And when you're speaking with him are there any discussions regarding
22 a pink backpack?

23 A Yes.

24 Q What did you ask him about a pink backpack?

25 A I believe the color of it and he added that it was pink and grey.

1 Q Okay. So when you say that, I guess, what would you have asked him?

2 A If it's his.

3 Q Okay.

4 A If the stuff inside was his because I had located, obviously, paperwork
5 that was his and he acknowledged that it was.

6 Q And this is that backpack that we saw previously that was pink that had
7 a bunch of documents in it?

8 A Yes.

9 Q You indicated that he added further descriptors about the backpack,
10 what did he say?

11 A Well, I called it a -- a pink backpack and he corrected and said it was
12 pink and grey.

13 Q And he admitted that that backpack was his?

14 A Yes.

15 Q Did he also admit to meeting Juan Rincon?

16 A Yes.

17 Q When did he say that he had met him?

18 A I believe he said that same day.

19 Q And that day would have been?

20 A July 1st.

21 Q Of?

22 A 2018.

23 Q Okay. Thank you. What did he indicate that him and Mr. Rincon were
24 planning on doing that day?

25 A He said he wanted to go fishing initially. Later on they agreed to smoke

1 some marijuana together. They were walking downtown.

2 Q Did he, with regards to the fishing, did he indicate that's why he had the
3 buckets as well as the fishing pole with him?

4 A Yes.

5 Q Did you ask him about the pants that he would have been wearing in
6 the body cam footage from Best Buy?

7 A Yes.

8 Q What did the defendant say about that?

9 A He said that he had them on when he went to the homeless youth
10 center, that he stuck them in the laundry, but never got them back, never retrieved
11 them.

12 Q So he indicated that he no longer had those pants?

13 A Correct.

14 Q Did you ask him about the shirt that he was seen wearing in the
15 Molasky video?

16 A Yes.

17 Q What did he tell you about that shirt?

18 A He said he threw it nearby.

19 Q Okay. When he said he threw it nearby, nearby what?

20 A The -- where the crime scene occurred.

21 Q Okay. Did he give you a description of that location?

22 A Yes.

23 Q Based on that description were you able to go to that location?

24 A Yes.

25 Q And when you went to that location were you able to find a shirt?

1 A Yes.

2 Q Did that shirt match what you had seen in the video?

3 A Yes.

4 MS. MOORS: Court's indulgence.

5 BY MS. MOORS:

6 Q Directing your attention to State's Exhibit 29, what do we see in this
7 photo?

8 A In the center, there in the dirt hill you could see the -- the yellow shirt
9 laying there.

10 Q Okay. And this was the location that the defendant indicated the shirt
11 would be at?

12 A Yes.

13 Q And is this just a close-up that was see of that photograph within State's
14 Exhibit 30?

15 A Yes.

16 Q Okay. I'm sorry, it's so terrible, the lighting. But I -- this right in here?

17 A Yes.

18 Q Okay. Did you enlist the services of a C.S.A. to be able to bring that
19 into evidence?

20 A Yes.

21 Q And when that was done did you request that it be tested for DNA?

22 A Yes.

23 Q Now, when you were speaking further with Mr. Rivera, he told you
24 about the shirt, what did he tell you happened that day on July 1st?

25 A He stated that -- that him and Mr. Rincon had been sitting near that

1 Dumpster and that while they were sitting there that they had smoked marijuana or
2 were smoking marijuana at the time, that Mr. Rincon had asked to see his knife, and
3 that when he said I want -- he wanted to see the knife, that Mr. Rincon had given
4 Mr. Rivera a funny look. At that point Mr. Rivera felt that Mr. Rincon was scheming
5 and that he took the knife out of the backpack and began stabbing him.

6 Q Okay. And did he indicate whether or not he knew how many times he
7 had stabbed Mr. Rincon?

8 A His reply was that he didn't count but that it was more than once.

9 Q Okay. Did he also tell you about his interaction with law enforcement at
10 Best Buy?

11 A Yes.

12 Q And what did he tell you about that?

13 A The female officer was very nice, got him food, clothing, and that some
14 other officers took him to a shelter.

15 Q And did he make any comments about the female officer seeing the
16 blood on his pants?

17 A Yes.

18 Q What did he say that he replied with?

19 A He had told the officer that he had been in a fight, but he was -- he
20 didn't say where the blood came from.

21 Q And then where did he tell you that that blood came from?

22 A He said probably from the victim.

23 Q And when you were talking about smoking weed earlier and you said
24 that the defendant and the victim were smoking weed together, did the defendant
25 tell you, I guess, whose weed it was?

1 A I don't remember if he did.

2 Q Okay. So he didn't say if it was Mr. Rincon's weed or if it was his
3 weed?

4 A I believe it was his weed.

5 Q Okay, "him" being the defendant?

6 A Now that you say that, yeah.

7 Q So just so I'm clear, sorry, did -- I forget what you said previously, did
8 the defendant indicate how many times he stabbed the victim?

9 A He said more than once.

10 Q And did he say where he first stabbed him?

11 A He indicated chest and neck area.

12 Q Did you ask him if the victim fought back?

13 A Yes.

14 Q And what was his response?

15 A No.

16 Q I'm going to show you a couple more photographs. On -- so if the
17 incident occurred on July 1st of 2018, when was the autopsy?

18 A The next day.

19 Q The next day? So July 2nd?

20 A Yes.

21 Q And is that something that you would customarily go to as a Homicide
22 detective?

23 A Yes.

24 Q And did you in this case?

25 A Yes.

1 Q Showing you State's Exhibit 34. What do we see in this photograph?

2 A So a picture of the body of the victim and you could see the multiple
3 stab wounds around the upper torso on the right side.

4 Q Okay.

5 A And some in the neck area.

6 Q And I'm showing you State's Exhibit 35. What do we see in this
7 photograph?

8 A That would be the victim's, I believe, left shoulder there with multiple
9 stab wounds.

10 Q And what about State's Exhibit 36?

11 A That would be his right forearm with a large stab wound or incised
12 wound.

13 Q And what about State's Exhibit 37?

14 A I believe that's the same arm with a large cut there.

15 Q Okay. So this -- does this comport with what you observed when you
16 were at that autopsy?

17 A Yes.

18 Q Okay. Did the defendant make any comments about what he had done
19 with his belongings after the stabbing?

20 A He said he left them all there.

21 Q Did he indicate how he ultimately got to Best Buy that was located quite
22 some distance away?

23 A He stated that he walked.

24 Q Did you kind of clarify with him further what happened with regards to
25 how the stabbing occurred?

1 A I'm sorry, can you repeat that?

2 Q I guess my question is did -- what did the defendant ultimately tell you
3 was the reason why he stabbed Mr. Rincon?

4 A He said he gave him a -- a dirty look or a mean look, something to that
5 extent. It was just a funny look to him and that was enough.

6 Q Now, was there any comments that you discussed with the defendant
7 during the course of this statement about where the defendant was from versus
8 where the victim was from?

9 A Yes. He stated that he's from New York, east coast, and that the victim
10 was from the west coast.

11 Q Did it seem like that had some sort of interplay into his reasoning?

12 MR. MARCHESI: Objection. Speculation as to --

13 THE COURT: Sustained.

14 MR. MARCHESI: -- his mindset.

15 BY MS. MOORS:

16 Q I think earlier you indicated that the defendant said to you that
17 Mr. Rincon was scheming; is that right?

18 A Yes.

19 Q And that was his exact words?

20 A Yes.

21 Q That was also in relation to why he stabbed him?

22 A Yes.

23 Q Did he make any comments about the bucket indicating whether or not
24 it was his or Mr. Rincon's?

25 A I don't remember if he indicated if it was his or not.

1 Q Did you talk to him at all about his -- his mental health?

2 A Yes.

3 Q And what did he indicate to you were his mental health issues?

4 A He said he was diagnosed with schizophrenia.

5 Q Did he also make any comments as to why he told a different story to
6 the female cop about the blood on his pants?

7 A I don't remember if -- if he told me that.

8 Q If -- was there a copy of this interview -- was it ultimately transcribed?

9 A Yes.

10 Q And if I showed you a copy of that would that help refresh your
11 recollection?

12 A Yes.

13 MS. MOORS: Court's indulgence.

14 May I approach the witness?

15 THE COURT: You may.

16 BY MS. MOORS:

17 Q And directing your attention, sir, to page 37 of the statement, if you could
18 just read it and when you're done, look up.

19 A Can I see the page before that?

20 Q Sure.

21 A At the bottom of it.

22 "But you didn't tell her" --

23 Q No, no, no, don't read it out loud. Just read it.

24 A I'm sorry.

25 Okay.

1 Q And after reading that does that refresh your recollection?

2 A Yes.

3 Q Let me get back to my notes.

4 So to ask my question again, did the defendant indicate to you why he
5 essentially lied about the blood on his pants to the female officer at Best Buy?

6 A Because it would get him in trouble.

7 Q Okay. Now, we talked a little bit about the knife in this case. Did the
8 defendant indicate what he had done with the knife after he had used it?

9 A Yes.

10 Q And what did you ask him?

11 A I asked him if he had thrown the knife in a trash can.

12 Q And what was the defendant's response?

13 A His -- he corrected me and reminded me that it was a Dumpster.

14 Q And was that ultimately where you did locate the knife?

15 A Yes.

16 Q Showing you what has been marked as State's Exhibit 10, what do we
17 see in that photograph?

18 A It's a picture from inside the Dumpster. That's the, I guess at this time,
19 would have been the west side of it, I guess, the closest part of the Dumpster to the
20 victim, and inside of that you'll see the -- the knife with a wooden handle laying
21 there.

22 Q Okay. And I'm also going to show you what's marked as State's
23 Exhibit 12. What do we see in this photograph?

24 A That's the same knife with the -- the wooden handle.

25 Q And when we were -- when you were speaking with Mr. Rivera on the

1 10th and we saw the photographs of his person, did you ultimately have the watch
2 that he was wearing impounded as well?

3 A Yes.

4 Q And what am I seeing here in State's Exhibit 27?

5 A That's that watch that he was wearing.

6 Q And what about State's Exhibit 28?

7 A Close-up, same watch.

8 MS. MOORS: Court's indulgence.

9 BY MS. MOORS:

10 Q Were there any discussions between you and the defendant about the
11 weed that they were smoking? And specifically my question is, I think before did
12 you say that it was the defendant's weed or the victim's weed?

13 A Defendant's weed.

14 Q The defendant's weed, okay. Did he make any comments about the
15 victim smoking his weed?

16 A Yes.

17 Q What did he say?

18 A He made a comment reference to the victim smoking too much of his
19 weed and I gave -- if I remember correctly he gave a percent, like he smoked 50
20 percent of my weed or more than 50 percent of my weed or something to that effect.

21 Q Okay. And was he indicating that that upset him?

22 A Yes.

23 MS. MOORS: Court's indulgence.

24 BY MS. MOORS:

25 Q Now, I think I asked this previously, but if I didn't, I want to make sure

1 that I ask it. When we were talking about the shirt that ultimately the defendant told
2 you where it was located, we see it here in Exhibit 31, what date and time did you
3 and the C.S.A. go out to get that shirt?

4 A I believe that was on July 11th, the day after the arrest.

5 Q Okay.

6 MS. MOORS: Court's indulgence.

7 BY MS. MOORS:

8 Q So I asked you this question previously, we were talking about all of the
9 items that you located within this pink backpack that we've been discussing, and I
10 actually had you point out a birth date that was listed on one of those documents.
11 Do you remember those questions?

12 A Yes.

13 Q Okay. I'm going to find them here if I can. One of those examples
14 would have been State's Exhibit 22, and then remind me again what it says for a
15 date of birth on that exhibit.

16 A I believe it's September 16th of 1994.

17 Q And in the process of, I guess, drafting all of your reports and your
18 investigation in this case, did you ascertain the birthday of Shelbe Rivera?

19 A Yes.

20 Q And was it that same birthday?

21 A Yes.

22 Q Do you see Shelbe Rivera in court here today? Feel free to stand up
23 and look around.

24 A Yes, I do.

25 Q Can you please tell me where he is seated, pointing towards him, and

1 identify an article of clothing he's wearing.

2 A Grey shirt sitting next to Mr. Marchese.

3 Q When you say grey shirt is he also wearing a mask?

4 A Yes.

5 Q What color mask is that?

6 A Light blue.

7 Q Light blue?

8 MS. MOORS: May the record reflect identification of the defendant?

9 THE COURT: So reflected.

10 MS. MOORS: Thank you.

11 Court's indulgence.

12 I have no further questions for this witness.

13 THE COURT: Okay. At this time we are going to take --

14 Mr. Marchese, are you going to have questioning for the detective?

15 MR. MARCHESE: No, I will, definitely.

16 THE COURT: Okay. So we're just going to take a recess first.

17 MR. MARCHESE: Yes, please.

18 THE COURT: We're going to take a 15-minute recess. During this recess
19 you are not to discuss or communicate with anyone including fellow jurors in any
20 way regarding the case or its merits either by voice, phone, e-mail, text, Internet or
21 other means of communication or social media; or read, watch, or listen to any news
22 or media accounts or commentary about the case; or do any research such as
23 consulting dictionaries, using the Internet or using reference materials or make any
24 investigation, test a theory of the case, re-create any aspect of the case, or in any
25 other way investigate or learn about the case on your own or form or express any

1 opinion regarding this case until it's finally submitted to you, and we'll be in recess
2 until for the next 15 minutes. Thank you.

3 THE MARSHAL: Thank you. All rise for the exiting jurors please. Jurors.

4 [Recess at 2:58 p.m.; proceedings resumed at 3:24 p.m.]

5 [In the presence of the jury panel]

6 THE COURT: Does the --

7 THE MARSHAL: Thank you. Please be seated.

8 THE COURT: What is this?

9 THE MARSHAL: She had her hand up right at the -- at the break.

10 THE COURT: But we're not done with the witness.

11 THE MARSHAL: I know.

12 THE COURT: Okay. Give it back. Let me -- I'm going to give it back to you
13 because I -- I only allow questions after both sides are done. We're not done with
14 this witness. But I promise when both sides are done if you still want me to ask that
15 question, the court marshal will come get it. So thank you.

16 Does the State stipulate to the presence?

17 MS. MOORS: Yes, Your Honor.

18 THE COURT: And the defense?

19 MR. MARCHESE: Yes, we do, Your Honor.

20 THE COURT: Okay. Cross-examination.

21 MR. MARCHESE: Thank you, Your Honor.

22 **CROSS-EXAMINATION OF ERIC RAVELO**

23 BY MR. MARCHESE:

24 Q Good afternoon, Detective, how are you?

25 A Good, sir, how are you?

1 Q Excellent. All right. Hopefully we can get you out of here soon. But I
2 do have some questions for you first, sir. So just to kind of go over your direct
3 examination a little bit, you were the lead detective on this particular case, correct?

4 A Yes.

5 Q And the way that works is you're on a particular team and you're on call
6 and you just get a call and you go to that particular scene, right?

7 A Yes.

8 Q All right. So in this case you got a call, was it on the 1st?

9 A Yes.

10 Q Of July? Okay. And then you made it there and when you got there
11 you were already -- the scene was already kind of roped off, if you will, right?

12 A Yes.

13 Q Okay. And I'm showing you what's been marked as State's Exhibit 4.
14 This is the, just a general, kind of back picture of the crime scene; is that correct?

15 A Yes.

16 Q All right. And then we're going to go a little closer up and that -- this
17 one will be State's Exhibit 5. And this is the decedent laying there, correct?

18 A Yes.

19 Q And then there's some items of -- that later became of interest such as
20 this pink backpack, correct?

21 A Yes.

22 Q And you've got the infamous bucket and the pole, correct?

23 A Yes.

24 Q And then the -- the black suitcase, the rolling luggage, correct?

25 A Yes.

1 Q And then lastly this -- the Dumpster or trash can, whatever you want to
2 call it?

3 A Yes.

4 Q And State's Exhibit 6, this is just a closer-up view of the prior two
5 photographs I had just shown you, correct?

6 A Yes.

7 Q Okay. Now, through the course and scope of your investigation you
8 started canvassing the scene and you found certain items of interest such as State's
9 Exhibit 10?

10 A Yes.

11 Q And that was found in that Dumpster, correct?

12 A Yes.

13 Q Very close in proximity to the decedent's body, correct?

14 A Correct.

15 Q Now, you were the one who found this, I believe, correct?

16 A Correct.

17 Q Did you have to do any major searching in order to find it?

18 A No.

19 Q You didn't have to Dumpster dive, for lack of a better term?

20 A No.

21 Q It was just laying right there, right out in the open, right?

22 A Yes.

23 Q You just looked over the side of the Dumpster and there it was?

24 A Yes.

25 Q Now, also through the course and scope of your investigation you found

1 certain items which were linked to one Shelbe Rivera, correct?

2 A Yes.

3 Q Such as State's Exhibit 15?

4 A Yes.

5 Q Where was that found, if you remember?

6 A If I remember correctly, it was in the backpack.

7 Q It was in that pink-and-grey backpack?

8 A Yes.

9 Q And we'll get to that in a little bit, but that pink-and grey backpack, that
10 was an item that after you found the surveillance you believed that Mr. Rivera was in
11 fact wearing it on the date in question, correct?

12 A Yes.

13 Q And later on when you interviewed Mr. Rivera he actually admitted to
14 having that backpack in his possession on the date in question, correct?

15 A Yes.

16 Q Okay. And turning your attention to State's Exhibit 17, that's a
17 composition book with the name Shelbe Rivera; do you recognize that?

18 A Yes.

19 Q And where was that found?

20 A Backpack.

21 Q Okay. And State's Exhibit 18, another piece of documentation with
22 Shelbe's name on it, was that in the backpack as well?

23 A Yes.

24 Q Okay. And, lastly, State's Exhibit 21, another item with Shelbe's date of
25 birth and his name on it, right?

1 A Yes.

2 Q Also in the backpack?

3 A Yes.

4 Q And not to belabor the point, there were also some other items such as
5 a cell phone bill, correct?

6 A Yes.

7 Q And some bus paperwork I believe as well, correct?

8 A Yes.

9 Q Okay. And these items, just to go back, I guess, were -- this is
10 Exhibit 6, State's 6 -- left directly next to the decedent's body, very close in
11 proximity, three four feet away, right?

12 A Yes.

13 Q Now, you get to the scene and you testified on direct examination that
14 after processing the scene you didn't have any suspects, correct?

15 A No.

16 Q Shelbe Rivera was what you had classified as a person of interest,
17 right?

18 A Yes.

19 Q And that is mainly based upon the items that were left at the scene,
20 correct?

21 A Yes.

22 Q But that's not enough to elevate him to be a suspect because for all you
23 know those items could have been stolen by someone and just left there, right?

24 A Yes.

25 Q Okay. You canvassed the area, you tried to find some independent

1 witnesses, correct?

2 A Yes.

3 Q And for those members of the jury that aren't familiar with that area,
4 would I be accurate in classifying the area as industrial, correct?

5 A Yes.

6 Q Okay. Not a lot of residences nearby?

7 A That's correct.

8 Q And based on your investigation you weren't found -- you weren't able
9 to find anyone that actually saw what had transpired, correct?

10 A That's correct.

11 Q Okay. So based upon your investigation, eventually you get to the
12 name Shelbe Rivera?

13 A Yes.

14 Q And that was based upon a multitude of things, whether it be the
15 backpack and the items left there; the Christina Martinez body cam; all those things
16 that you found?

17 A Yes.

18 Q And eventually on Jan -- July, excuse me, the 10th, you're actually able
19 to locate Mr. Rivera at the homeless youth center, correct?

20 A Yes.

21 Q And I believe, correct me if I'm wrong, you had got the Molasky video
22 just before that?

23 A Yes.

24 Q Okay. And that was also another item that went into your calculation if
25 Mr. Rivera was a suspect?

1 A Yes.

2 Q Okay. Now, I'm not going to play it again, but if we can just kind of go
3 over it again. In reference, that's State's Exhibit 2, on the first Molasky video you
4 see two individuals whom you believe to be Mr. Rincon and Mr. Rivera walking, I
5 believe it's north, together, correct?

6 A Yes. Yes.

7 Q And you were able to identify them by items that they were carrying
8 such as the fishing bucket, correct?

9 A Yes.

10 Q And then some of the luggage and the bags that they had had on their
11 persons, right?

12 A Yes.

13 Q As well as their clothing?

14 A Yes.

15 Q And then fast forward later on to the second clip which was shown to
16 you on direct examination, and the difference there was that this time only
17 Mr. Rivera is walking in a southerly direction by himself, correct?

18 A Yes.

19 Q And at this point in time he's not carrying anything with him, correct?

20 A Correct.

21 Q There's no fishing pole, right?

22 A Right.

23 Q There is no luggage with him, correct?

24 A Right.

25 Q No backpack? Yes?

1 A No.

2 Q And no shirt, correct?

3 A No shirt, correct.

4 Q It's a little hard to tell from the video, but from what you're able to
5 ascertain it appears that he's wearing yellow clothing, correct?

6 A Yes.

7 Q Okay. Now, when you interview Mr. Rivera, he's taken into custody,
8 he's taken down to the -- to an interview room; is that fair to say?

9 A Yes.

10 Q Okay. And he's in custody, correct?

11 A Yes.

12 Q And he -- and you used the term on direct examination *Miranda*
13 warnings, correct?

14 A Yes.

15 Q And you do that so you let people know or anyone, any suspect or
16 anyone you're talking to that if they make any incriminating statements, that they
17 have the right to remain silent and it can't be used against them, right?

18 A That's correct.

19 Q And you read Mr. Rivera his warnings and he agreed to speak to you
20 on that day, correct?

21 A Yes.

22 Q Okay. And throughout the course and scope of that interview you start
23 with just getting some basic information, right?

24 A Yes.

25 Q And that's something that you would normally do, right?

1 A Yes.

2 Q Just find out who you are, maybe some personal identifiers, things of
3 that nature, right?

4 A Yes.

5 Q And would it be fair to say you try to build a little bit of a rapport with
6 the -- with the individual, right?

7 A Yes.

8 Q It's not like sometimes you might see on a TV show where you start
9 yelling at them or anything like that? That's not an effective way to do an interview
10 typically, right?

11 A That's correct.

12 Q Okay. And, if I may -- well, we'll get to that in a second.

13 So at first you started asking him some questions about why he's there,
14 right?

15 A Yes.

16 Q And would you consider him at first to maybe be a little bit evasive with
17 you?

18 A Yes.

19 Q Okay. And then you started getting into some specific facts about the
20 case, right?

21 A Yes.

22 Q And then he started to make some admissions; is that fair to say?

23 A Yes.

24 Q Okay. Now, on direct examination you were asked about why this
25 happened, right, because you asked him why did you do this, right?

1 A Yes.

2 Q Based on the -- your investigation, would it be accurate to say that
3 money was not a motivator here, correct?

4 A That's correct.

5 Q As a matter of fact, the decedent had a few dollars in his pocket when
6 he was found, correct?

7 A Yes.

8 Q Wasn't a substantial sum, but I believe it was maybe, like, \$4.00 or
9 something along those lines?

10 A Correct.

11 Q And based on your investigation you were never able to find any sort of
12 relationship between those two individuals, correct?

13 A That's correct.

14 Q By Mr. Rivera's admission, the relationship consisted of meeting him in
15 a -- by a tunnel, I believe, earlier that day; is that accurate?

16 A That's correct.

17 Q So the two of them were traveling in a northbound direction and I
18 believe Mr. Rivera said he wanted to go fishing, right?

19 A Yes.

20 Q And that was going to be with Mr. Rincon, right?

21 A Yes.

22 Q All right. So at some point in time Mr. Rivera admits to stabbing
23 Mr. Rincon multiple times, correct?

24 A Yes.

25 Q I don't believe he gave an exact number, but he clearly admits that he

1 did in fact stab him, right?

2 A Yes.

3 Q And based upon that, you tried to ascertain what, if any, was the motive
4 for him doing it, correct?

5 A Yes.

6 Q And we went over it a little bit on direct examination, but I wanted to just
7 go over it in detail a little bit more. So one of the things that he said was that the
8 decedent gave him a funny look, correct?

9 A Yes.

10 Q Were you ever able to get any further information as to what that funny
11 look was?

12 A No.

13 Q Okay. And you clearly asked him if he was -- if he had -- "he" being
14 Mr. Rincon -- had disrespected Shelbe; do you remember that line of questioning?

15 A Yes.

16 Q And Mr. Rivera said, no, he wasn't disrespecting him?

17 A Correct.

18 Q And that's a "yes"?

19 A Yes.

20 Q Okay. And it seemed that Mr. Rivera was also very concerned at the
21 fact that Mr. Rincon asked Mr. Rivera to see Mr. Rivera's knife; do you remember
22 that?

23 A Yes.

24 Q And the thing that made Mr. Rivera concerned from what he had
25 gathered, was that he was upset or concerned that Mr. Rincon knew he had a knife,

1 correct?

2 A Yes.

3 Q He expressed some concern to you as how did he know that I had a
4 knife, correct?

5 A Yes.

6 Q There was also a line of questioning, and I believe you got into on direct
7 examination, about Mr. Rincon being from Cali or California and that Mr. Rivera was
8 from New York, right?

9 A Yes.

10 Q And that Mr. Rivera, I don't fuck with them no more, that being people
11 from California, 'cause they did me dirty, correct?

12 A Yes.

13 Q Were you ever able to ascertain what exactly that meant, them --
14 people from California doing Mr. Rivera dirty?

15 A No.

16 Q Okay. Now, in reference to that knife in his bag, isn't it true Mr. Rivera
17 said Mr. Rincon knew about that knife because he gotta be talking to someone; do
18 you remember that?

19 A Yeah, I do.

20 Q Okay. And that he immediately, when he pulled the knife out, that is
21 Shelbe, pulled the knife out of his bag, he immediately started stabbing Mr. Rincon,
22 correct?

23 A Yes.

24 Q And through the course and scope of your investigation you never
25 found any weapon on Mr. Rincon, correct?

1 A That's correct.

2 Q And just so the jury is aware, was there a lighter found at the scene?

3 A Yes.

4 Q Okay. And describe that lighter to jury so that they understand what
5 exactly I'm referring to.

6 A It -- it -- it was lighter in the shape of a gun, a small one.

7 Q It obviously didn't fire, right? It just made a flame, correct?

8 A Correct.

9 Q And if you can just show to the jury, like, approximately how big it is?

10 A I'm guessing --

11 Q Yeah.

12 A -- but perhaps about that big.

13 Q And that lighter never came up in the course and scope of your
14 interview, correct?

15 A That's correct.

16 Q And that he -- when you asked him that he immediately started to stab
17 him, he did it because he was giving me that look, correct?

18 A Yes.

19 Q That look that we were never able to really understand or ascertain
20 what that look was or it meant, right?

21 A Yes.

22 Q Okay. And that he felt like he was scheming, correct?

23 A Scheming.

24 Q Scheming, scheming. And that was actually the word that you used
25 when you asked him the question. You asked him -- well, actually, he -- I'm sorry, I

1 apologize. He said, Like, you know, somebody scheming, right?

2 A Yeah.

3 Q And did you -- were you ever able to understand exactly what he meant
4 by scheming?

5 A No.

6 Q Okay. He never explained it for you too much?

7 A No.

8 Q Now, you also asked him about the shirt, correct?

9 A Yes.

10 Q Now, we've seen pictures of the shirt, it was entered into evidence.
11 That shirt was found on an embankment the next day after you interviewed Shelbe
12 on just -- would that be north of the 95?

13 A Yes.

14 Q Okay.

15 A Yeah.

16 Q And actually, Shelbe was kind of the one who told you the general
17 vicinity to look in, correct?

18 A Yes.

19 Q Your team had already canvassed the area and you hadn't found that
20 shirt previously, right?

21 A Correct.

22 Q Approximately how far was that shirt from Mr. Rincon's body?

23 A Ballpark figure, somewhere between, like, 80 to 100 yards roughly.

24 Q Okay. And you asked Mr. Rivera about that shirt and disposing of it
25 obviously, correct?

1 A Yes.

2 Q And he had indicated that he got rid of the shirt because he wanted to
3 be clean, right? Is that the terminology that he used?

4 A I believe, yes, yeah.

5 Q Okay. In addition, it did come up, Mr. Rivera's mental affliction?
6 Particularly he told you that he's schizophrenic, correct?

7 A Yes, sir.

8 Q And that it -- it had been some days that he had been on his meds,
9 correct?

10 A Yes.

11 Q And when you say "some days," he didn't really give a number, correct?

12 A No, he did not.

13 Q All right. Now, throughout the course and scope of the interview, would
14 you describe Mr. Rivera's demeanor toward you as flat? He didn't give a lot of
15 emotion?

16 A Correct.

17 Q He's not somebody -- he didn't yell at any point in time, correct?

18 A No.

19 Q Okay. He wasn't crying or anything along those lines?

20 A No.

21 Q Just all pretty much, you know, one note, I guess, if you will, the entire
22 time?

23 A Yes.

24 Q Tends to be a very monotone individual?

25 A Yes.

1 Q And after you talked to Mr. Rivera and asked him his version of the
2 events for this incident, you had C.S.I. come in and take some pictures of him,
3 correct?

4 A Yes.

5 Q And I think we saw some of those pictures already on direct
6 examination, right?

7 A Yes.

8 Q And that's something that you would typically do in any investigation in
9 order to, just, you know, document the individual, correct?

10 A Yes.

11 Q You're looking for things such as injuries, right?

12 A Yes.

13 Q And then obviously you can use it for identification purposes if we ever
14 get to this point and have a trial, right?

15 A Yes.

16 MR. MARCHESE: And I believe there is no objection to Defense Exhibit U,
17 as in umbrella, coming into evidence.

18 MS. MOORS: That's correct, Your Honor, no objection.

19 MR. MARCHESE: Okay. And if -- permission to publish?

20 THE COURT: Okay. Exhibit U is admitted.

21 **[DEFENSE EXHIBIT U ADMITTED]**

22 BY MR. MARCHESE:

23 Q And, Detective, you were present on the day that this photo was taken,
24 correct?

25 A Yes.

1 Q You didn't actually take it, but you were there, right?

2 A Yes.

3 Q And it's a fair and accurate depiction of Mr. Rivera on the date when
4 you interviewed him on July 10th of 2018, correct?

5 A Yes.

6 Q All right. Thank you, Detective, for your time. I appreciate it.

7 A Thank you.

8 MR. MARCHESE: No further questions.

9 THE COURT: Any redirect?

10 MS. MOORS: Yes, Your Honor.

11 **REDIRECT EXAMINATION OF ERIC RAVELO**

12 BY MS. MOORS:

13 Q When you were talking to Mr. Rivera he indicated that both him and
14 Mr. Rincon had smoked some weed; is that right?

15 A Yes.

16 Q And remind me again whose weed that was.

17 A His. Mr. Rivera's.

18 Q Mr. Rivera's, okay. And I know that Mr. Marchese just asked you about
19 how the defendant was concerned that the victim knew that he had a knife. Let me
20 ask you this, was it also your understanding that the weed that the defendant had
21 with him, he had gotten out of his backpack to share with the defendant -- or with the
22 victim, Mr. Rincon?

23 A I don't remember if he ever told me where he retrieved it from.

24 Q Okay. Mr. Marchese also asked you about a lighter that was shaped
25 like a gun; is that right?

1 A Yes.

2 Q Did the defendant ever mention anything about this lighter to you?

3 A Not at all.

4 Q Did he ever say, oh, he had a gun so I pulled a knife on him?

5 A No.

6 Q Was there any mention whatsoever of this lighter?

7 A No.

8 Q Okay. It just happened to be something that was found at the scene?

9 A Correct.

10 Q Do we even know if it was the defendant's?

11 A No.

12 Q Do we know if it was the victim's?

13 A No.

14 Q And Mr. Marchese also asked you about your discussion with the
15 defendant about his schizophrenia; is that right?

16 A Yes.

17 Q And I think that the direct quote was the defendant indicated that hadn't
18 taken his medication for, I believe it was, some days; is that right?

19 A Yes.

20 Q I just want to make sure I'm understanding timeline-wise, this is when
21 you're speaking to him on July 10th, correct?

22 A Yes.

23 Q And the death of Mr. Rincon happened on July 1st; is that right?

24 A Yes.

25 Q Okay. And was it also your understanding that on July 2nd that the

1 defendant told Officer Martinez that he had been on his medication?

2 MR. MARCHESE: Objection. Hearsay and leading.

3 MS. MOORS: It's in the evidence.

4 THE COURT: I'm sorry, will you state the question again?

5 MS. MOORS: I can withdraw the question, Your Honor.

6 THE COURT: Okay.

7 BY MS. MOORS:

8 Q So fair to say there had been at least nine days that had passed since
9 the time the death of Mr. Rincon happened and ultimately the interview that you had
10 with the defendant?

11 A Yes.

12 Q Correct? Okay.

13 MS. MOORS: I have no further questions.

14 THE COURT: Any recross?

15 MR. MARCHESE: No redirect, Your Honor.

16 THE COURT: Okay. Do you still have your question? Okay.

17 Oh, Hawkes, you have another one, Mr. Okeefe, Number 2.

18 [Bench conference transcribed as follows:]

19 THE COURT: Okay. The record will reflect that the hearing is taking place
20 outside the presence of the jury panel. Counsel for both sides are present.

21 Court's Exhibit Number 4: Was he questioned about having any other
22 drug in his system besides marijuana when he was questioned that would -- I'm --
23 invoke rage against the victim because he wasn't arrested as of yet as I stated
24 above?

25 Apparently she wants to know if he had any other drugs in his system.

1 Was he questioned about -- oh, okay. Was he questioned about it not whether he
2 was tested.

3 And then Number 5 is: Why hasn't the lighter tested for DNA?

4 What's the State's position?

5 MS. MOORS: Lindsey Moors for the State. So I think that Question 9 -- oh, I
6 apologize, Court's Exhibit Number 4 is a little bit confusing because she references
7 her previous statement that's crossed off, and so for that reason I don't believe that
8 it could be asked. I'm happy to do some follow-up. But I would object to it as written
9 because it doesn't make sense.

10 With regards to Exhibit 5, Why wasn't the lighter tested for DNA, I think
11 that can be asked and it was swabbed and I can ask a follow-up. So I don't have an
12 objection.

13 THE COURT: Okay. This wouldn't be the appropriate witness.

14 MS. MOORS: No, it wouldn't be.

15 THE COURT: Right. Would he even -- would the detective even be able to
16 answer that question?

17 MS. MOORS: He might know that -- if it was swabbed. Lindsey Moors for the
18 State. He might know if it was swabbed for DNA.

19 THE COURT: Okay. Mr. Marchese.

20 MR. MARCHESE: In reference to Question 4, I agree with the State, it's -- it's
21 confusing. I'm not even sure, I think I know what she's getting at, but I don't want to
22 start speculating and asking questions in reference to that.

23 And then in reference to Number 5, you know, I agree with the Court in
24 that I'm not sure if this is the witness for that. But I think Ms. Moors can probably
25 ask it in a different way and I'll leave it up to her. So I would object to that particular

1 question being asked, but --

2 THE COURT: Okay. So you're objecting to both 4 and 5?

3 MR. MARCHESE: Yes.

4 THE COURT: And the State's objecting to at least 4 but not 5?

5 MS. MOORS: That's correct, Your Honor. But I'm not going to -- it just raises
6 some questions that I would then like to ask. So I don't necessarily have an
7 objection to 5. But I'm not intending to fight about it.

8 THE COURT: Okay. So they'll be marked and made part of the record and I
9 won't ask it. I think what she's trying to get at was did he ever mention any other
10 drugs during his interview?

11 MS. MOORS: No.

12 THE COURT: That's what I think she's getting at.

13 MS. MOORS: I agree.

14 MR. MARCHESE: I think so too.

15 THE COURT: Okay.

16 MS. DUNN: And the timing.

17 MS. MOORS: Oh, and then --

18 MR. MARCHESE: Oh, yeah.

19 MS. MOORS: -- we -- this is the last witness that we have for today. We
20 actually only have one more witness, Dr. Gavin, our coroner, who -- in our
21 case-in-chief. We have a rebuttal expert against his expert. And she's available --
22 she's not available 'til 10:00 tomorrow. So this would conclude us for the evening.
23 But we would literally be done with our case-in-chief after Dr. Gavin tomorrow
24 morning.

25 THE COURT: Okay. So we can't come 'til 10:00 because that's when

1 Dr. Gavin will be here?

2 MS. MOORS: Correct.

3 THE COURT: And then is Dr. Chambers going to be ready to go?

4 MR. MARCHESE: I -- he is California right now, that's why I think Your Honor
5 had approved the -- the BlueJeans and I don't think the State objects. But he has
6 asked me Thursday, he can do BlueJeans; Friday he can do in person. I'm good
7 either way. We'll be done Friday. And they -- and their expert also has some time
8 constraints because he's coming from Reno.

9 THE COURT: Okay. But tomorrow's Wednesday.

10 MR. MARCHESE: Yeah.

11 THE COURT: I don't want to have a big gap.

12 MR. MARCHESE: No. I'm -- I'm with you. I just didn't know --

13 THE COURT: Okay.

14 MR. MARCHESE: -- we were going to be done so soon.

15 THE COURT: Right. But Dr. Chambers would be ready tomorrow, but he's
16 going to testify via BlueJeans?

17 MR. MARCHESE: He -- I have been emailing with him. He is currently in a
18 federal trial in California. He has been served with a subpoena and I believe I set it
19 for tomorrow at 1:00. But he told me any time Thursday, in person Friday was what
20 he told me his availability is.

21 THE COURT: So is he saying he can't testify tomorrow?

22 MR. MARCHESE: He -- I think the verbiage he used was it would be very
23 hard for me to get away. Because one of the other issues with this trial was if -- you
24 probably remember, it was set last week.

25 THE COURT: Uh-huh.

1 MR. MARCHESE: So that's when I told him and then obviously courtrooms
2 are at a premium, you know, and we all just have to figure it out and juggle it. So we
3 got bumped a week.

4 THE COURT: Okay. Well, let's go back in and we can talk more about this.
5 Because that's, like, I mean, one witness tomorrow then done?

6 MS. MOORS: No, I totally get it, Your Honor, and I think what happened was
7 is I -- I was originally told by the court system that if for some reason jury selection
8 went into Tuesday there was no way we could start on Tuesday if jury selection
9 went into Tuesday because it was something to do with transporting the defendant.
10 So we kind of based our schedule around the thought that we probably wouldn't be
11 presenting until Wednesday and I told Mr. Marchese that and so it was kind of -- and
12 then I literally called and checked with Tierra's JEA, she told me that that's not the
13 case, we got done faster than we thought we would. My expert isn't available until
14 Thursday, and so if that would work, it was just, you know coordinating Dr. -- our
15 coroner's schedule as well as the two experts. We could do both of our experts
16 Thursday, still 100 percent be closing, if not Thursday, Friday. Like, there's no way
17 we go longer than that. I know it's super weird in terms of scheduling and I
18 apologize. I just don't know -- I didn't know how to get around it with Dr. --
19 Dr. Gavin's schedule as well as our expert.

20 MR. MARCHESE: Those darn experts.

21 MS. MOORS: Yeah, basically.

22 THE COURT: I know, but I just hate with --

23 MS. MOORS: No, I totally agree.

24 MR. MARCHESE: No, I agree.

25 THE COURT: -- the courtroom sitting there empty, especially with the jury

1 impaneled.

2 MS. MOORS: Yeah.

3 THE COURT: Okay. Let's go deal with this and then -- and this is your last
4 witness for today?

5 MS. MOORS: Correct.

6 MR. MARCHESE: And I, I mean, I can -- maybe something happened,
7 maybe they had a mistrial, I don't know.

8 [Bench conference ends]

9 THE COURT: Does the State stipulate to the presence of the panel?

10 MS. MOORS: Yes, Your Honor.

11 THE COURT: And the defense?

12 MR. MARCHESE: Yes, we do, Your Honor.

13 THE COURT: Okay. At this time the Court has received the questions.
14 They've been marked as Court's Exhibit 4 and 5. The Court is not going to ask
15 them, but they'll be marked and made part of the record.

16 Does the State have any follow-up?

17 MS. MOORS: Yes, Your Honor.

18 BY MS. MOORS:

19 Q Detective, when you were speaking with the defendant, Shelbe Rivera,
20 you indicated that he had told you that he had smoked marijuana; is that right?

21 A Yes.

22 Q Did he make any other comments or statements about using any other
23 substance on the day in question?

24 A No, he did not.

25 Q And I want to divert our attention to that lighter that we had discussed.

1 Now, you indicated that it was located at the crime scene; is that right?

2 A Yes.

3 Q To your knowledge, was it impounded?

4 A I don't remember if we did.

5 Q Okay.

6 MS. MOORS: The State would have no further questions.

7 THE COURT: Okay. Thank you.

8 Mr. Marchese.

9 BY MR. MARCHESE:

10 Q In reference to that lighter, that really wasn't a major issue to you in the
11 course and scope of your investigation, correct?

12 A Correct.

13 Q There was never any point in time where there was an allegation where
14 Mr. Rivera envisioned that lighter being an actual gun, correct?

15 A Correct.

16 Q He never even mentioned that he even saw the lighter, correct?

17 A Correct.

18 Q From the best that you could ascertain, Mr. Rivera had the knife and
19 just immediately pulled it out and started stabbing Mr. Rincon, correct?

20 A Correct.

21 Q I mean, we can argue about the motive all day long, but the motive was,
22 from your investigation, never pointed towards that lighter that was shaped like a
23 firearm, a pistol, whatever you want to call it, correct?

24 A That's correct.

25 MR. MARCHESE: No further questions.

1 THE COURT: Okay. Thank you.

2 Anything else for this witness?

3 MS. MOORS: Nothing from the State.

4 THE COURT: Okay. Detective, thank you very much for your testimony.

5 THE WITNESS: Thank you.

6 THE COURT: Thank you for being here. You may step down and you are
7 excused from your subpoena.

8 THE WITNESS: Thank you.

9 THE COURT: All right. We don't have any more witnesses today and I've
10 spoken to the parties. We have a few more witnesses that have to testify and I think
11 the next three are all expert witnesses. So tomorrow we have the medical
12 examiner, Dr. Gavin, correct?

13 MS. MOORS: Yes.

14 THE COURT: And Dr. Gavin can't come until 10:00 o'clock, so I'm just going
15 to ask you to meet at 9:45 a.m. We'll start at 10:00. And then as soon as we're
16 done with the doctor's testimony, we'll conclude for the day. And then on Thursday
17 we will finish the other two witnesses. So tomorrow it'll just be one witness, so the
18 morning, and by lunchtime you'll have the afternoon off and then Thursday we'll be
19 able to finish.

20 During this recess you must not discuss or communicate with anyone
21 including fellow jurors in any way regarding the case or its merits either by voice,
22 phone, e-mail, text, Internet or other means of communication or social media; or
23 read, watch, or listen to any news or media accounts or commentary about the case;
24 or do any research such as consulting dictionaries, using the Internet or using
25 reference materials or make any investigation, test a theory of the case, re-create

1 any aspect of the case, or in any other way investigate or learn about the case on
2 your own or form or express any opinion regarding this case until it's finally
3 submitted to you by the Court. We're in recess and we'll see you tomorrow morning
4 at 9:45. Thank you.

5 THE MARSHAL: Thank you. All rise for the exiting jury please. Jurors.

6 [Outside the presence of the jury panel]

7 THE COURT: Okay. The record will reflect that the hearing is taking place
8 outside the presence of the jury panel. Have the parties submitted jury instructions
9 yet?

10 MS. MOORS: We have not, Your Honor.

11 THE COURT: Okay. Because we could do jury instructions tomorrow
12 afternoon.

13 MR. MARCHESI: Yeah, I had spoken to them about that. I don't think I'm
14 going to have any specials. I'll take a second look. I would -- I've talked to Shelbe
15 about his right to testify. We can probably maybe canvass him tomorrow too.

16 THE COURT: Okay.

17 MR. MARCHESI: Over the weekend before trial he -- I don't think he wants
18 to testify.

19 THE COURT: Okay.

20 MR. MARCHESI: Based on my advice, but we can go over that too. And if
21 he doesn't I'd like the instruction.

22 THE COURT: You -- if he doesn't testify you'd want the *Carter* instruction?

23 MR. MARCHESI: Please. Yeah.

24 THE COURT: Okay. So if you could submit your instructions so we can at
25 least settle them as much as possible tomorrow, that would be helpful. Because I'm

1 assuming you're going to ask for some lesser-included?

2 MR. MARCHESE: Yes.

3 THE COURT: Okay. And the -- and the State has the not guilty by reason of
4 insanity instructions, correct?

5 MS. MOORS: Yes.

6 THE COURT: Okay. Perfect. Then we'll do instructions after Dr. Gavin.
7 How long do you think Dr. Gavin will take?

8 MS. MOORS: I mean, a half an hour maybe, I don't think very long at all.

9 MR. MARCHESE: It's not going to be a long cross, if there is one.

10 THE COURT: So probably not more than an hour? You think more than
11 hour?

12 MS. MOORS: No, I think a half an hour.

13 THE COURT: With both?

14 MS. MOORS: I mean, it's pretty straightforward.

15 MR. MARCHESE: No, I don't think the cross, if there is one, is going to be
16 super long.

17 THE COURT: Okay. All right. And then on Thursday, how long will Dr. -- I
18 mean, I'm assuming Dr. Chambers might be somewhat long?

19 MR. MARCHESE: Yeah, no, I mean, I think we could, I mean, with BlueJeans
20 I think that's going to extend it because I have to talk slower to allow for, you know,
21 the transmission. So, I mean, I don't know how long they would go, I would say two
22 hours total, maybe a little more.

23 THE COURT: Okay. But then your witness would be ready to go right after?

24 MS. MOORS: Yes.

25 THE COURT: And, now, who's your witness?


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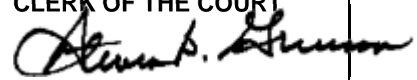
MS. MOORS: Dr. Herbert Coard.
THE COURT: Okay. From -- and from UNR?
MS. MOORS: Yes.
THE COURT: But he's coming here, correct?
MS. MOORS: Correct, he'll be here.
THE COURT: Okay. All right. We'll see you in the morning.

PROCEEDING CONCLUDED AT 4:04 P.M.

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-video recording of this proceeding in the above-entitled case.


SARA RICHARDSON
Court Recorder/Transcriber



DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

SHELBE RIVERA,

Defendant.

CASE NO. C-18-333893-1

DEPT. NO. XII

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

WEDNESDAY, MARCH 3, 2021

RECORDER'S TRANSCRIPT OF PROCEEDINGS
JURY TRIAL - DAY 3

APPEARANCES:

For the State:

LINDSEY D. MOORS
Chief Deputy District Attorney
ANN M. DUNN
Deputy District Attorney

For the Defendant:

JESS R. MARCHESE, ESQ.

RECORDED BY: SARA RICHARDSON, COURT RECORDER

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1 LAS VEGAS, NEVADA, WEDNESDAY, MARCH 3, 2021, 10:13 A.M.

2 * * * * *

3 [In the presence of the jury]

4 THE COURT: Does the State of Nevada stipulate to the presence of the jury
5 panel?

6 MS. MOORS: Yes, Your Honor.

7 THE COURT: And the defense?

8 MR. MARCHESE: Yes, Your Honor.

9 THE COURT: Thank you.

10 And you may call your next witness.

11 MS. MOORS: Thank you, Your Honor. The State calls Dr. Lisa Gavin.

12 THE MARSHAL: And if you'll please remain standing, raise your right hand,
13 and face the clerk.

14 **DR. LISA GAVIN,**

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

16 THE CLERK: You may be seated.

17 THE WITNESS: Thank you.

18 THE CLERK: Please state and spell your first and last name for the record.

19 THE WITNESS: Good morning. I'm Dr. Lisa Gavin, L-I-S-A, G-A-V-I-N.

20 THE COURT: Go ahead.

21 MS. MOORS: Thank you.

22 **DIRECT EXAMINATION OF DR. LISA GAVIN**

23 BY MS. MOORS:

24 Q Good morning, Dr. Gavin. Could you tell the members of the jury how
25 you're employed?

1 A I'm a forensic pathologist, medical examiner at the Clark County
2 Coroner's Office here in Las Vegas.

3 Q And what type of education did you have to go through to get to this
4 position?

5 A I went to medical school at the University of Connecticut, School of
6 Medicine. I did a pathology residency at Hartford Hospital in Connecticut. I did a
7 surgical pathology fellowship at Hartford Hospital in Connecticut. I came to the
8 Office of the Medical Investigator in New Mexico where I did a forensic pathology
9 fellowship. Then I came here to Clark County. I have a medical license to practice
10 here in the state of Nevada. And I'm board certified in anatomic pathology and
11 forensic pathology.

12 Q And how long have you worked at the Coroner's Office here in
13 Las Vegas?

14 A A little over 11 years.

15 Q Could you tell the members of the jury what a typical duties are in -- in
16 your daily life?

17 A I determine the cause of death and manner of death in sudden,
18 unexpected deaths here in Clark County as well as for several other adjacent
19 counties.

20 Q Okay. So fair to say that not everyone, say, that passes away in Clark
21 County is going to come through the Coroner's Office?

22 A Correct.

23 Q Just those that you said were sudden or unexpected?

24 A Correct.

25 Q And as a course of your employment have you also testified in trial

1 regarding cause and manner of death?

2 A Yes.

3 Q Approximately how many times?

4 A About 250.

5 Q And in the course of your employment does it sometimes happen, say,
6 a coroner might leave your office to move to another jurisdiction?

7 A Yes.

8 Q And when that happens is it customary -- well, not customary, but could
9 it be part of your job duty to review his or her report and testify to that at trial?

10 A Yes.

11 Q And in this particular case was it your understanding that Dr. Jennifer
12 Corneal used to be a coroner at the Clark County Coroner's Office?

13 A Correct.

14 Q And is it your understanding she is no longer at that office?

15 A Correct.

16 Q And as a result of that were you asked by myself to conduct a review
17 of -- of her autopsy report?

18 A Yes.

19 Q Okay.

20 MS. MOORS: Permission to approach your clerk?

21 THE COURT: You may.

22 MS. MOORS: Thank you.

23 BY MS. MOORS:

24 Q And, ma'am, and part of reviewing that report did you also have
25 occasion to review some photographs?

1 A Yes.

2 Q When -- when you customarily conduct an autopsy is it normal to take
3 photographs during that autopsy?

4 A Yes.

5 Q And who would be the one taking those photographs?

6 A In general, we have forensic technicians that we designate to take the
7 photographs and we'll -- they'll do it by our instruction.

8 Q Okay. Now, when -- when you're doing an autopsy, if, say, it's a
9 potential homicide, is it customary to have Homicide detectives there as well?

10 A They may be present at the exam.

11 Q Okay. And when a case comes to you is there a specific number that is
12 given to that case that relates directly to the Coroner's Office, like, does it have a
13 certain ID number?

14 A Yes.

15 Q And in this particular case, the one that I asked you to review, was that
16 number 1806792?

17 A Yes.

18 Q And when you're -- have photographs taken during an autopsy, is there
19 something that you might refer to as an ID card that you use?

20 A Yes. Each photograph will generally have an identification card
21 associated with it. The only time that you won't see that card is if we're trying to get
22 a close-up shot of something that we have that we want to take a photo of, so first
23 we'll take a perspective shot that may have the card present within it, and then we'll
24 take the close-up shot without the card, that's because the camera will tend to focus
25 on the card rather than what we're trying to demonstrate. But overall you'll see a

1 sequence of photos that have those cards in them.

2 Q Okay. I want to show you State's Exhibit 33. Do you recognize this
3 photograph?

4 A Yes.

5 Q And what do we see in this photograph?

6 A This is the decedent and -- as he came into the office in the body bag.
7 Once the body is -- body bag is opened, this is how he was found at the scene. At
8 the scene in which he was found he'll be placed on to a clean, white sheet and then
9 that sheet will be lifted and put into the body bag. And this is how he was when he
10 was received.

11 Q Okay. And then in that lower, right-hand corner is that what we were
12 talking about with regards to an ID card?

13 A Correct.

14 Q Now, in the course of reviewing -- when you're asked to do something
15 like I asked you to do, what do you customarily review with regards to the case?

16 A I'll review all of the photographs associated with the case. I'll review the
17 radiographs associated with the case. I will review the investigation report, the
18 autopsy report, and the toxicology report.

19 Q I'm going to show you what has previously been marked as State's
20 Exhibit 34. Is this also a photograph that you recognize?

21 A Yes.

22 Q And this would have been one of the photos that you reviewed prior to
23 today?

24 A Yes.

25 Q In reviewing the autopsy that Dr. Corneal conducted, did you have

1 occasion to -- obviously it looks like there are quite a few wounds, did you have
2 occasion to count how many stab wounds that you could ascertain from the report?

3 A Yes.

4 Q And how many did you ascertain?

5 A There's approximately 28 stab wounds and approximately 14 incised
6 wounds.

7 Q Could you tell us what the difference is between a stab wound and an
8 incised wound?

9 A A stab wound is deeper into the body than it is long on the skin surface.
10 An incised wound is longer on the skin surface than it is deep into the body.

11 Q Did you also have occasion to review State's Exhibit 36?

12 A Yes.

13 Q And what do we see in this photograph?

14 A This is an incised wound of the right forearm, ventral forearm.

15 Q Okay. In the base -- or in the course of your review of Dr. Corneal's
16 report and all of the other evidence that you ultimately reviewed, did you come to a
17 conclusion with regards to cause and manner and death?

18 A Yes.

19 Q And what did you find to be the cause and manner?

20 A He died of multiple sharp force injuries and the manner of death is
21 homicide.

22 Q Could you explain to the members of the jury certainly the multiple
23 sharp force injuries seems kind of common sensical, but when you say "homicide,"
24 what could have been another potential option? Like, what does that mean to you
25 as a coroner?

1 A Homicide in the simplest sense means death at the hands of another.

2 Q Okay. I want to talk a little bit about the -- all of the injuries that you had
3 a chance to -- to read about in the autopsy. Did you notice within the autopsy that
4 there were injuries to the lungs and the head?

5 A Yes.

6 Q And could those injuries in and of themselves have been fatal?

7 A Yes.

8 Q Did you also notice in the autopsy report that there were listed left-side
9 injuries?

10 A Can you repeat that?

11 Q There were listed as left-side injuries.

12 A Yes.

13 Q And based on your understanding of anatomy, what did that say to
14 you?

15 A The left side of the body where these injuries are, you have the lung as
16 well as the heart. You have the diaphragm, the spleen, the stomach. All of those
17 areas are on -- are associated with where those stab wounds are seen on that body.

18 Q And was it your understanding that there were damages to the liver,
19 stomach, and diaphragm?

20 A Yes. And the liver is predominantly towards the right side. There are
21 also stab wounds present on the right aspect of the back, chest area. So you also
22 have injuries to the right lung and injuries to the liver and diaphragm as well.

23 Q So you mentioned an injury to the right lung, could that have been fatal
24 in and of itself?

25 A Yes.

1 Q Did you also notice that there were -- whether or not there were head
2 and neck injuries to the decedent?

3 A Yes.

4 Q And would those or could those have been fatal in and of themselves?

5 A Yes.

6 Q Was there any damage that you noticed, based on reading the report,
7 to the brain stem?

8 A Yes, the -- one of the stab wounds of the neck entered into the neck
9 soft tissues and went into the cervical spine and then also went up into the base of
10 the skull right where it meets up with your spine and went through the brain stem.

11 Q And could that have been fatal in and of itself?

12 A Yes.

13 Q And I want to redirect our attention to State's Exhibit 36, could this type
14 of wound been characterized as a defensive wound?

15 MR. MARCHESI: I'm going to object as to speculation.

16 THE COURT: Right. I mean, I would like you to lay a little more foundation.

17 MS. MOORS: Okay.

18 BY MS. MOORS:

19 Q So in the course of your employment as a coroner when you're going
20 through an autopsy, well, I guess, let me ask you this, how many autopsies have
21 you done?

22 A Approximately 3,000.

23 Q And of those autopsies, do you have any idea on how many similar type
24 cases like this that involved a sharp object, how many types of those cases would
25 you have done?

1 A Actually the percentage of cases that involve sharp force injuries is
2 fairly small. Most people tend to use firearms. So the sharp force injuries are a
3 smaller percentage of them. They'd probably be around 10 percent or so, probably
4 a little bit less than that.

5 Q Okay. And in the course of the autopsies that you've done that relate
6 specifically to homicide, so to death at the hands of another person, are there
7 injuries that you customarily see on the hands or the forearm area of -- of a
8 decedent?

9 A Yes. You can see them on the hands, the forearms, sometimes you
10 can see them on the legs as well.

11 Q And when you see injuries like that is that significant to you based on
12 your training and experience?

13 A Yes.

14 Q Why?

15 A They can suggest that there was interaction where the person was
16 trying to be defensive towards the weapon and trying to put their extremities in front
17 of the weapon in some way or grab on to the weapon to try to prevent injury to their
18 torso, their main portion of their body.

19 Q And approximately how many times would you say that you've seen
20 these defensive type wounds in the autopsies that you've done?

21 A They vary. It would be a much smaller percentage. Not every body is
22 going to have them, so it would be even smaller percentage of the total of sharp
23 force injuries.

24 Q Okay. But you certainly have seen them over the course of your 11
25 year employment at the Clark County Coroner's Office?

1 A Yes.

2 Q And based on that experience, could this wound that we observe in this
3 exhibit potentially be a defensive wound?

4 A It could be either defensive or part of the offense, the assault that was
5 occurring to the individual.

6 Q Okay. Great.

7 MS. MOORS: I have no further questions for this witness.

8 THE COURT: Thank you.

9 Cross-examination.

10 **CROSS-EXAMINATION OF DR. LISA GAVIN**

11 BY MR. MARCHESE:

12 Q Doctor, I'm showing you again what's been marked as State's Exhibit
13 36. At the end of your direct examination we had a line of questioning in reference
14 to this exhibit, do you remember those questions?

15 A Yes.

16 Q And those had to do with defensive wounds in the course and scope in
17 your experience doing autopsies, correct?

18 A Correct.

19 Q And what would be, in your experience, something that would show as
20 a defensive wound?

21 A In general, you can have them on the outer aspects of the arms or the
22 anterior aspects of the front of the legs, anything that the person can move to try to
23 block or interfere with a weapon that's being -- they're being assaulted with.

24 Q Okay. And you said on the exterior of the arm, correct?

25 A Yes.

1 Q Okay. And just show the jury where -- what you would mean by the
2 exterior of the arm.

3 A The outer aspects of the arm, so the back portions of the arms, in
4 general.

5 Q Okay. And would you agree with me that this particular wound is
6 actually on the inside of the arm just maybe couple inches above the wrist?

7 A Yes.

8 Q Okay.

9 MR. MARCHESE: No further questions.

10 THE COURT: Any redirect?

11 MS. MOORS: No redirect, Your Honor.

12 THE COURT: Okay. All right. We have a question from a juror.

13 [Bench conference transcribed as follows:]

14 THE COURT: Okay. The record will reflect that the hearing's taking place
15 outside the presence of the jury panel. The attorneys for both sides are present. I
16 received a note from Juror Number 7, it's been marked as Court's Exhibit Number 6.
17 It says, Toxicology of victim, question mark. What was determined at time of attack,
18 question mark.

19 What's the State's position? It's your witness.

20 MS. MOORS: Well, Your Honor, I -- I think that we can't ask the question as it
21 is written because it doesn't make sense. So the State would object to that
22 question.

23 THE COURT: Does -- I'm assuming the autopsy report contains this.

24 MS. MOORS: It does. So it could be asked correctly.

25 MR. MARCHESE: And she --

1 THE CLERK: You guys, one at a time.

2 THE COURT: Okay. Sorry.

3 MR. MARCHESE: Are you done? Sorry.

4 THE COURT: Mr. Marchese.

5 MR. MARCHESE: And she did reference in her direct examination. I can
6 clear it up on recross I guess it would be.

7 THE COURT: Okay. So both sides are objecting to the question; is that
8 correct?

9 MS. MOORS: I think so, yes, Your Honor. And I can -- Lindsey Moors for the
10 State -- I can clear it up on direct because there would be no recross unless I did
11 redirect, so, yeah.

12 MR. MARCHESE: That's true.

13 THE COURT: Okay.

14 MR. MARCHESE: Well, yeah, no, I know what you're saying. I just -- I was
15 just going off of what the Judge had said previously in reference to if there's a
16 question we can kind of go into it in order to clarify it. So if -- I don't have an
17 objection, but if the State does, I can ask a more pointed question or the State can.

18 THE COURT: Okay. So what I'll do -- I always, when there's questions like
19 this, I always allow both sides to follow up because I think it's only fair. So Court's
20 Exhibit Number 6 won't be asked, but I will allow the State and the Defense to follow
21 up on this. What was it?

22 MS. MOORS: I think there was some amphetamine and some THC.

23 THE COURT: Okay.

24 MS. MOORS: Typical --

25 MR. MARCHESE: I mean, technically, in my --

1 THE COURT: Okay. We're off the record.

2 [Bench conference ends]

3 THE COURT: Does the State stipulate to the presence of the jury panel?

4 MS. MOORS: Yes, Your Honor.

5 THE COURT: And --

6 MR. MARCHESE: And the Defense does, Your Honor. Thanks.

7 THE COURT: Thank you.

8 At this time, ladies and gentlemen, Court's Exhibit Number 6 will be
9 marked and made part of the record. However, I am going to allow both sides to
10 follow up with their questioning.

11 So the State of Nevada may question Dr. Gavin.

12 MS. MOORS: Yes, Your Honor. Thank you.

13 BY MS. MOORS:

14 Q So just backing up a little bit, Dr. Gavin, you previously mentioned that
15 in reviewing the autopsy you review the autopsy report as well as photographs, and
16 I think you said the radiology reports as well as a toxicology report; is that correct?

17 A Yes.

18 Q And in your review of the toxicology report of the victim in this case
19 what did you learn?

20 A There was methamphetamine and marijuana as well as metabolites of
21 both.

22 Q And when you say "metabolites of both," what does that mean?

23 A That means that the apparent drug was taken and then they had time to
24 metabolize some of that drug.

25 Q And based on what you saw with regards to those levels, it wasn't

1 ever -- was that ever considered to be part of the cause of death?

2 A No. I don't think that that is part of the cause of death.

3 Q Okay. So you still maintain your position with regards to cause and
4 manner?

5 A Yes.

6 MS. MOORS: The State has no further questions.

7 THE COURT: Thank you.

8 Mr. Marchese.

9 MR. MARCHESE: And nothing based on that follow-up, Your Honor.

10 THE COURT: Okay. Anything else for Dr. Gavin? Yes?

11 UNIDENTIFIED JUROR: No, I [inaudible.]

12 THE COURT: Okay. All right. Okay, Dr. Gavin, thank you very much for your
13 testimony here today. Thank you for coming this morning and you are excused from
14 your subpoena.

15 THE WITNESS: Thank you.

16 THE COURT: I just want to make sure before I excuse the jury,
17 Mr. Marchese, we'll be ready to go tomorrow morning at 9:00 a.m., correct?

18 MR. MARCHESE: I thought it was 10:00. I was told 10:00 a.m., but we can --
19 we can adjust it. That's fine.

20 THE COURT: Well, I just don't want to have the jury sitting here for an hour.

21 MR. MARCHESE: Yeah. Just the BlueJeans link was sent at -- for 10:00
22 because I thought there was a-- an issue pretrialing a witness for the State.

23 THE COURT: Okay. But both sides agree with 10:00?

24 MS. MOORS: So -- that's fine with the State, yes, Your Honor.

25 MR. MARCHESE: Yeah.

1 THE COURT: Okay. All right. Ladies and gentlemen, we don't have any
2 more witnesses for today, so I'm going to excuse you. But we will start tomorrow
3 morning at 10:00. I just ask that you be here at 9:45 so Officer Hawkes can
4 accomplish what he needs to do before we come in the courtroom.

5 And during this recess you must not discuss or communicate with
6 anyone including fellow jurors in any way regarding the case or its merits either by
7 voice, phone, e-mail, text, Internet or other means of communication or social
8 media; read, watch, or listen to any news or media accounts or commentary about
9 the case; do any research such as consulting dictionaries, using the Internet or
10 using reference materials or make any investigation, test a theory of the case, re-
11 create any aspect of the case, or in any other way investigate or learn about the
12 case on your own or form or express any opinion regarding this case until it is finally
13 submitted to you.

14 Thank you very much and we'll see you tomorrow morning at 9:45.

15 THE MARSHAL: Thank you. All rise for the exiting jury.

16 Jurors.

17 [Outside the presence of the jury panel]

18 THE COURT: Okay. The record will reflect that the hearing's taking place
19 outside the presence of the jury panel. I know Pam indicated that the State sent
20 their instructions this morning. We're going to have to do instructions down here just
21 because of all the restrictions. I mean, normally I like to go back and settle them
22 informally then formally. But I think we're going to have to do it in here just because
23 of the protocols.

24 MS. MOORS: Okay.

25 THE COURT: Mr. Marchese, did you send -- did you have any instructions

1 you were going to propose?

2 THE CLERK: He sent them.

3 MR. MARCHESE: Yeah. Okay. Just making sure they got there.

4 THE COURT: Okay.

5 THE CLERK: Yeah, Pam got them.

6 THE COURT: And they were sent to Pam?

7 THE CLERK: Yeah.

8 MR. MARCHESE: Yeah. I think it was at 10:02. I'm sorry.

9 THE COURT: Okay.

10 MR. MARCHESE: It was a little bit late. I didn't see the e-mail. But I
11 forwarded them on.

12 THE COURT: Okay.

13 MS. MOORS: He didn't get them in on time. I'm just saying.

14 THE COURT: Okay. So I'm going to go get copies of them and bring them
15 down so we all have the same set. And we'll start going through instructions.

16 MS. MOORS: Fantastic.

17 MR. MARCHESE: Great.

18 MS. MOORS: Thank you.

19 THE COURT: Thanks.

20 [Recess at 10:37 a.m.; resumed at 11:44 a.m.]

21 [Outside the presence of the jury panel]

22 THE COURT: Okay. The record will reflect that the hearing is taking place
23 outside the presence of the jury panel.

24 The State of Nevada has indicated that they are going to rest when the
25 jury comes back tomorrow. So you understand, Mr. Rivera, you have heard all of

1 the evidence that the State intends to present against you; you understand that?

2 THE DEFENDANT: Say that again?

3 THE COURT: Okay. You have now heard -- you have now heard all of the
4 evidence that the State of Nevada intends to present against you; do you
5 understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: Did you say "yes"?

8 THE DEFENDANT: Yes.

9 THE COURT: Okay. And you understand that under the Constitution of the
10 United States and under the Constitution of the State of Nevada that you cannot be
11 compelled to testify in this case; do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: So no one can call you to the stand except you; you
14 understand that, correct?

15 THE DEFENDANT: Yes. Yes.

16 THE COURT: Okay. And you may, at your own request, give up this right
17 and take the witness stand and testify. If you do, you'll be subject to cross-
18 examination by the Deputy District Attorney and anything that you may say, be it on
19 direct or cross-examination, will be the subject of fair comment when the Deputy
20 District Attorney speaks the jury panel in her final argument; do you understand
21 that?

22 THE DEFENDANT: Yes.

23 THE COURT: So if you take the stand, then the District Attorney has the right
24 to ask you questions; you understand that, correct?

25 THE DEFENDANT: Yes.

1 THE COURT: Okay. If you choose not to testify, I will not permit the Deputy
2 District Attorney to make any comments to the jury because you have not testified;
3 do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: Okay. If you elect not to testify, I will instruct the jury, but only
6 if your attorney specifically requests, as follows: The law does not compel a
7 defendant in a criminal case to take the stand and testify and no presumption may
8 be raised and no inference of any kind may be drawn from the failure of a defendant
9 to testify. Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: And your attorney did indicate that he would want the Court to
12 give that instruction if you decide not to testify; do you understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: Okay. You're further advised that if you have a felony
15 conviction and more than 10 years has not elapsed from the date you have been
16 convicted or discharged from prison, parole, or probation, whichever is later, and the
17 defense has not sought to preclude that from coming before the jury and you elect to
18 take the stand and testify, the Deputy District Attorney in the presence of the jury will
19 be permitted to ask you the following: Have you been convicted of a felony? What
20 was it? And when did it happen? However, no details may be gone into.

21 Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: Does the defendant have any prior felonies that would be
24 relevant?

25 MS. MOORS: He does have one prior felony, Your Honor, within the time

1 frame.

2 THE COURT: Say that again.

3 MS. MOORS: He has one prior felony within the time frame.

4 THE COURT: Okay. For?

5 MR. MARCHESE: I believe it was assault, Your Honor.

6 THE COURT: Pardon?

7 MS. MOORS: It was assaulting a police officer in New York.

8 THE COURT: Okay. All right. So, Mr. Rivera, you understand that if you did
9 take the stand and testify, the State would be able to ask you about that prior felony
10 including what was it; do you understand that?

11 THE DEFENDANT: Do I have to answer that now?

12 THE COURT: Do you have to answer what? Yeah, you have to answer it
13 right now whether you understand it or not.

14 THE DEFENDANT: Like, if you, like, I'm not testifying, but I'm saying that I
15 think in my life that I have more than one felony. I don't know, you understand?

16 THE COURT: Okay. Well, the District Attorney has -- there are certain rules,
17 they can only ask about a felony that's within 10 years. So the District Attorney has
18 indicated if you took the stand and testify, that she would only ask about that one
19 felony, the assault on the -- assault on a police officer. Okay. Do you understand
20 that?

21 THE DEFENDANT: You clear enough to repeat it, yes, I understand now.

22 THE COURT: Okay. All right. And you understand that the decision as to
23 whether to testify is your decision and yours alone; and you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: And you understand that it should be made after consulting

1 with your attorney; you understand that, correct?

2 THE DEFENDANT: Yes.

3 THE COURT: And you've talked to Mr. Marchese about whether you should
4 testify or not; is that correct?

5 THE DEFENDANT: That's correct.

6 THE COURT: And has he answered all of your questions?

7 THE DEFENDANT: Yes.

8 THE COURT: Did you say "yes"?

9 THE DEFENDANT: Yeah.

10 THE COURT: Okay. Do you have any questions of the Court?

11 THE DEFENDANT: No.

12 THE COURT: Okay. But, again, I just want to make sure you understand
13 that, you know, whatever Mr. Marchese says, it's still your decision and your
14 decision alone as to whether you should testify; do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: Okay. Have you made a determination as to whether you're
17 going to testify or not?

18 THE DEFENDANT: Yes.

19 THE COURT: Are you going to testify?

20 THE DEFENDANT: I believe not.

21 THE COURT: Okay. Thank you, Mr. Rivera.

22 Okay. So I guess Mr. Chambers?

23 MR. MARCHESE: Yes. He should be available in the morning, ready to go.

24 THE COURT: Oh, he's going to be here in person?

25 MR. MARCHESE: No. Well, actually, well, when I say, "here," it'll be via

1 BlueJeans, but I've already got the link and I've already forwarded it to him.

2 THE COURT: Today's Thursday, right?

3 THE CLERK: Today's Wednesday.

4 THE COURT: Today's Wednesday, I'm so confused. I'm thinking today's
5 Thursday and I know you said he could be here Friday. Okay. So tomorrow at
6 10:00 o'clock, and then you'll just make sure we get a copy of those --

7 MR. MARCHESE: I'll get it by 5:00 today. It shouldn't be a problem.

8 THE COURT: All right, perfect. Anything else before we conclude?

9 MS. MOORS: Nothing from the State, Your Honor.

10 MR. MARCHESE: When do you -- when do you want us to close? We were
11 talking about that. I mean, I'll be ready either way, but leave it up to the Court.

12 THE COURT: Well, I'd love it if it was tomorrow. But I just, sometimes these
13 expert witnesses take a long time.

14 MR. MARCHESE: Yeah, I understand.

15 THE COURT: I mean, how long do you think Chambers is going to be on
16 direct?

17 MR. MARCHESE: I might pare his direct down quite a bit. The State has
18 been gracious enough to stipulate to a lot of evidence.

19 THE COURT: Oh, good.

20 MR. MARCHESE: I just don't want to bombard them with, well, he said on
21 this day and that day, you know, I can literally keep us here all day. But I think I'm
22 just going to streamline it and then highlight it in my close.

23 THE COURT: Okay.

24 MR. MARCHESE: So it'll be quicker, I think. But I don't know how much they
25 want to go into --

1 THE COURT: And then, yeah, usually the cross-examination is extensive too.

2 MS. MOORS: Yeah, and I -- I can't say for certain right now. I'm going to
3 work on it a lot more tonight. What I'm thinking, at least for tomorrow, would be we
4 could have Chambers done in the morning and then call our expert after lunch.

5 THE COURT: Okay.

6 MS. MOORS: And then I just don't know how long that would take, if it --
7 because obviously we would like all of the closings to be in one day.

8 THE COURT: Uh-huh.

9 MS. MOORS: And I don't know if there would be quite enough time for all of
10 them tomorrow, maybe, if not, certainly first thing Friday morning.

11 THE COURT: No, I like closings to be all in the same day too. So if we can't
12 do it tomorrow, we won't. But I don't know.

13 And your expert will be ready to testify by 1:00, 1:30?

14 MS. MOORS: He will be -- he's arriving on a flight at 9:45 from Reno
15 tomorrow.

16 THE COURT: Okay.

17 MS. MOORS: In the morning.

18 THE COURT: Well, if not tomorrow, we'll finish it on Thursday morning.

19 MS. MOORS: Friday morning.

20 THE CLERK: Friday morning.

21 THE COURT: Friday morning, oh, geez, Friday morning.

22 MR. MARCHESE: This week.

23 THE COURT: This week, we'll be done this week. I'm so nervous that we're
24 not going to be done this week, that I keep getting confused.

25 MR. MARCHESE: Yeah, no, we --

1 MS. MOORS: Yeah, we --

2 MR. MARCHESE: Barring a juror not showing up or something, we'll be done
3 this week.

4 MS. MOORS: Yes.

5 THE COURT: Why would you say something like that? Knock on some
6 wood.

7 MR. MARCHESE: Barring a juror forgetting they have to take their mom to
8 the hospital for their COVID test.

9 MS. MOORS: Yeah, and then not telling us.

10 MR. MARCHESE: Yes.

11 THE COURT: I know, that was so rude.

12 THE RECORDER: We're off the record, right?

13 THE COURT: Yeah, we're done.

14 PROCEEDING CONCLUDED AT 11:51 A.M.

15 * * * * *

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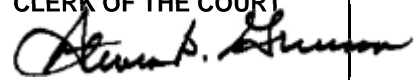
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22 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-
23 video recording of this proceeding in the above-entitled case.

24

25


SARA RICHARDSON
Court Recorder/Transcriber



DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

SHELBE RIVERA,

Defendant.

CASE NO. C-18-333893-1

DEPT. NO. XII

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

THURSDAY, MARCH 4, 2021

RECORDER'S TRANSCRIPT OF PROCEEDINGS
JURY TRIAL - DAY 4

APPEARANCES:

For the State:

LINDSEY D. MOORS
Chief Deputy District Attorney
ANN M. DUNN
Deputy District Attorney

For the Defendant:

JESS R. MARCHESE, ESQ.

RECORDED BY: SARA RICHARDSON, COURT RECORDER

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1 LAS VEGAS, NEVADA, THURSDAY, MARCH 4, 2021, 10:15 A.M.

2 * * * * *

3 [Outside the presence of the jury panel]

4 THE COURT: Okay. The record will reflect that the hearing's taking place
5 outside the presence of the jury panel. The defendant is present.

6 Mr. Marchese.

7 MR. MARCHESE: Yes, Your Honor. So the short story at this juncture is he
8 is not on BlueJeans and I believe, based on Dr. Chambers' representations, is that
9 he is testifying currently in California. So what I can -- probably should make just a
10 quick record, God forbid this goes to a place which none of us want it to go.

11 THE COURT: You know, Mr. Marchese, you just mind coming up to the
12 podium?

13 MR. MARCHESE: Sure. Sure.

14 So we were originally start to set this trial on March the 1st, last week,
15 and then obviously with COVID, with trial space at a premium, another trial was
16 given our slot and we were moved to this week. I talked to Dr. Chambers, I let him
17 know that situation, he said that he had to be in California testifying on another case.
18 I said, That's fine, just let me know and I will, you know, I will accommodate your
19 schedule. I'm just going to need you for a few hours.

20 Out of an abundance of concern, I had a subpoena issued. It was
21 served by my process server, Bill Schoen, on 9:06 a.m., telephonically, on February
22 the 25th, 2021, that's a.m. He had tried to serve him personally at both his office and
23 at his home, but his home is in a gated community. He waited outside the gated
24 community and then -- with no avail, and then he got him on his personal cellular
25 phone where he identified himself as an investigator, told him he needed to be

1 present in court. Mr. Chambers also identified himself or Dr. Chambers identified
2 himself so that wasn't a problem. Then he also texted him a screenshot of the
3 subpoena showing the case number, the court, the time, and the department
4 number, and Dr. Chambers responded at 9:10 via text message, Okay, thanks.

5 So I've been in e-mail contact with him the majority of the week, trying
6 to find out a good time for him. Monday obviously was jury selection, so that wasn't
7 an issue. I did e-mail with him on Tuesday. I said, We probably can get you in
8 tomorrow, if that's okay. He said, No, I can't do tomorrow.

9 THE COURT: Which would have been yesterday?

10 MR. MARCHESE: Right.

11 THE COURT: Correct?

12 MR. MARCHESE: That would have been yesterday, which we had obviously,
13 a little bit of a break later in the day in which we might have been able to get him in,
14 had he been available. So then I said Thursday, and then he said probably. So that
15 is when the Court sent me a BlueJeans link that was forwarded to him on Tuesday
16 after court. I heard no response, so I assumed that everything was fine. I made the
17 representations in court, and then yesterday at approximately 10:30 p.m., he had
18 e-mailed me stating that he could not be here at 10:00 a.m. this morning to testify
19 because he would be testifying in Federal Court and he's the last witness and he
20 cannot -- he's going last.

21 So we have been contacting him today, going back and forth. I'm not
22 really getting any definitive answers that I can give to the Court. The last I had
23 heard was that maybe at 11:00, and I can read the text message or the screenshot
24 of the text message that my investigator sent me, into the record. He said, I can't be
25 in two places at once and this Federal trial was set long before the Rivera trial date

1 and when your subpoena was issued. I might be able to appear around 11:00, but
2 not sure yet. I will keep you apprised.

3 And then my investigator responded, Okay. Thanks.

4 And I said, Please let me know as soon as you hear something.

5 So those are my representations. He said he should be able to go this
6 afternoon in an earlier e-mail was my recollection. But, once again, I know the Court
7 wants an answer, and I can -- I'm just giving you probably, maybe, possibly. So
8 those are the representations I can make.

9 THE COURT: I mean, does he understand we are literally at a standstill?

10 MR. MARCHESE: I --

11 THE COURT: And that we've already taken one day off? This would be the
12 second day. You know, I --

13 MR. MARCHESE: I impressed upon him --

14 THE COURT: I'm shocked.

15 MR. MARCHESE: -- how important it is, you know, if this was a year ago
16 we'd be having a much different conversation. But I'm sure that five other judges
17 need this courtroom on Monday.

18 THE COURT: Yes.

19 MR. MARCHESE: Well, that they need it now, really, let's be honest. So I let
20 him know that, I said, you know, it's just COVID times, we can't be as flexible as we
21 normally are. So --

22 THE COURT: Right, I mean, this courtroom is at a premium.

23 MR. MARCHESE: Yes, I completely understand. And I understand his
24 scheduling concern as well. But I've got more than reasonable D.A.s and I've tried
25 many cases in front of you and you've always been more than reasonable about

1 these kinds of things, so I said, Just let me know and we'll try to fit you in where we
2 can.

3 THE COURT: So he hasn't let us know and he's out of the jurisdiction?

4 MR. MARCHESE: Yes, the -- and that's -- we had discussed this last week,
5 where the State was fine with it, the Court was fine with it, where he would appear
6 via BlueJeans.

7 THE COURT: Yeah.

8 MR. MARCHESE: And I have the link, it's been sent to him. It's just a matter
9 of clicking on it and appearing.

10 MS. MOORS: And, Your Honor, if I could make some representations.

11 THE COURT: Sure.

12 MS. MOORS: I'm -- so our expert got here this morning --

13 THE COURT: Okay.

14 MS. MOORS: -- around -- I think he landed at 9:42. It's -- the way that I sort
15 of look at the case is he a rebuttal -- he's a rebuttal expert, but what I would be
16 willing to do if this could help accommodate the Court, is we could get the majority of
17 his testimony in in my case-in-chief because I know I have not rested yet, to try to
18 get us into the afternoon. I would still want to keep him on call because I would still
19 want to call him as a rebuttal, but it would be much shorter and that might allow us
20 then to hopefully get to Dr. Chambers this afternoon. But Dr. Coard is leaving this
21 evening, so I could still get to him for maybe 15, 20 minutes at the tail-end if needed.
22 I don't know if that's helpful. I was just trying to think of some sort of way to help
23 accommodate and make use of the time that we have.

24 THE COURT: Okay. So you're asking if you can call your expert in your
25 case-in-chief?

1 MS. MOORS: I mean, I'm trying to make an accommodation on behalf of
2 defense. Like, that's not my preference, but I --

3 THE COURT: Sure.

4 MR. MARCHESE: I mean, I don't object to that. I mean, I -- I can only control
5 me. I'll be here whenever Dr. Chambers graces us with his presence, so.

6 THE COURT: Geez, well, do you think it'll even be today? I mean, I've
7 never, you know, Dr. Chambers testifies a lot. This is --

8 MR. MARCHESE: Yeah.

9 THE COURT: -- a little bit out of character. I don't -- I don't understand it.

10 MR. MARCHESE: I believe so, but I have never gotten an answer that I will
11 be ready on this date and time. He told me that --

12 THE COURT: Because I'm worried we put the State's expert and then you
13 get a message, oh, it's 11:00 o'clock, I'm here. Well, I guess we could stop and --

14 MR. MARCHESE: Yeah.

15 THE COURT: But are you going to have any objection to the State calling
16 their expert in their case-in-chief?

17 MR. MARCHESE: No. I have no problem with that.

18 THE COURT: Okay. I guess we could do that. I didn't even think that was
19 an option because you had identified him as a rebuttal witness, but --

20 MS. MOORS: I mean, he was noticed properly to be used in -- in either side.

21 THE COURT: Okay.

22 MS. MOORS: And we have all of the -- everything was done correctly. It's
23 not my preference, I'm just trying to, like, I think both Mr. Marchese and I have been
24 working really well together to try to accommodate various schedules, and this was
25 the only thing I could think of that might help.

1 THE COURT: Okay. I mean --

2 MR. MARCHESE: Yeah, I just --

3 THE COURT: -- I hope that he'll be able to testify today.

4 MR. MARCHESE: I mean, I still am very confident that worst-case scenario, if
5 he -- that we will still finish tomorrow, that I think --

6 THE COURT: Okay.

7 MR. MARCHESE: -- I can say that with a lot of confidence. So there at least
8 is that that we can fall back on. I just hate to have these jurors here and have a
9 wasted courtroom, but, you know.

10 THE COURT: I know. Okay.

11 [Colloquy between the Court and the Clerk]

12 THE COURT: So your expert's out in the hallway? Can we bring the panel in
13 and call your expert?

14 MS. MOORS: We were just -- we're waiting on confirmation, Your Honor.

15 THE COURT: Okay.

16 MS. MOORS: I was told that he landed at 9:42. So he might not be here just
17 yet. If I -- if we could break, I can give him a call.

18 THE COURT: Sure.

19 If you could just let the jury know, we're going to probably take about a
20 10-minute break. And you can tell them we're just waiting for a witness to get here.

21 THE MARSHAL: Yes, Your Honor.

22 [Recess at 10:24 a.m.; matter resumed at 10:43 a.m.]

23 [In the presence of the jury panel]

24 THE MARSHAL: All rise for the jury.

25 The jury is all present and accounted for, Your Honor.

1 THE COURT: Thank you.

2 Does the State stipulate to the presence of the jury panel?

3 MS. MOORS: Yes, Your Honor.

4 THE COURT: And the defense?

5 MR. MARCHESE: Yes, Your Honor.

6 THE COURT: Thank you very much.

7 The State may call their next witness.

8 MS. MOORS: Thank you.

9 MS. DUNN: Dr. Herbert Coard.

10 THE COURT: Do you need something? Are you looking for a pen?

11 THE MARSHAL: Anybody else need a pen?

12 THE COURT: Okay.

13 **HERBERT F. COARD, III,**

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

15 THE CLERK: You may be seated. Please state your and spell your first and
16 last name for the record.

17 THE WITNESS: My first name is Herbert, H-E-R-B-E-R-T, middle initial F,
18 last name Coard, C-O-A-R-D, Roman numeral number three.

19 **DIRECT EXAMINATION OF HERBERT F. COARD, III**

20 BY MS. DUNN:

21 Q Good morning, Dr. Coard.

22 A Good morning.

23 Q Can you please tell the jury what you do for a living?

24 A I'm a psychologist.

25 Q What -- do you have a particular focus of psychology?

1 A Yes, I'm a forensic psychologist.

2 Q And what is your educational background?

3 A I have a doctoral degree from the University of Missouri in St. Louis, a
4 post-doctoral specialization as a clinical psychologist, and then I trained as a
5 forensic psychologist with the Federal Bureau -- with the Federal Bureau of Prisons
6 serving as a forensic psychologist with them.

7 Q And what sort of training do you have?

8 A So I have a -- I have a doctoral degree, done an internship in clinical
9 psychology, and then I have practiced for approximately 20 years doing forensics in
10 clinical psychology.

11 Q Have you ever testified as an expert witness before?

12 A I have.

13 Q Approximately how many times?

14 A I think I'm getting to close to about a hundred times.

15 Q About a hundred times? Is that generally for the prosecution or the
16 defense or --

17 A I actually work, kind of, both sides. Down here in Clark it's primarily
18 working for the District Attorney's Office. Up in Northern Nevada, which is where I --
19 which is where I live, I primarily work for the defense.

20 Q Were you hired as an expert witness in this case?

21 A I was.

22 Q So are you getting paid to be here?

23 A I am.

24 Q Does that impact your determination?

25 A Not at all.

1 Q In fact, have you -- have you ever written a report that went against
2 what the person hiring you wanted you to say or would have liked you to say?

3 A Yes. Actually here in Clark County I was hired by the District Attorney's
4 Office probably about 18, COVID kind of makes things a little screwy here, probably
5 18 to 24 months ago. I wrote an opinion finding someone being insane at the time
6 of the alleged offense, and the District Attorney didn't like it as a result.

7 Q Okay. And then in this case, just kind of procedurally, were you hired
8 after the defendant in this case pled not guilty by reason of insanity?

9 A I believe that -- I believe that that's the circumstances of the timeline.

10 Q Okay. So at that point he had already hired an expert and then you
11 were hired to kind of review things as well?

12 A That's correct.

13 Q Okay. So what records did you review as part of your evaluation in this
14 case?

15 A So my standard practice is to request all of the available records in the
16 case. This case has a lot of records that includes the interview, includes the
17 autopsy, the investigation associated with the death. There is also an interview that
18 occurred with the defendant that I had an opportunity to review. There's also the
19 Public Defender, or the defense counsel in this case also had other records that
20 had -- that outlined his -- the defendant's significant history of psychiatric
21 hospitalization that was also provided as part of my evaluation.

22 Q Did you also have an opportunity to review the defense expert's report,
23 Dr. Chambers, his report in this case?

24 A I did.

25 Q Okay. And did you have sufficient access to the material to form an

1 opinion in this case?

2 A I did.

3 Q I heard you say that you interviewed the defendant. What date did you
4 interview him?

5 A November 13th.

6 Q Of what year?

7 A 2020.

8 Q And approximately how long did that interview last?

9 A It's over two -- it's two-plus hours.

10 Q And then when did you author your report in this case?

11 A It was a quick -- quick turnaround. I believe I authored the report on the
12 15th of November, 2020.

13 Q Now, before I get into the specifics of this case, let me ask you some
14 general questions.

15 Do different states have different ways of determining whether
16 someone is legally insane?

17 A Yes.

18 Q And what way does Nevada use to make that determination?

19 A Nevada uses something called the modified M'Naghten -- modified
20 M'Naghten

21 Q Okay. Are you familiar with the *Finger* case out of Nevada?

22 A I am.

23 Q And what's the holding of that case?

24 A Well, basically, it was -- it was an appeal -- well, at one point in time the
25 State of Nevada chose to eliminate the insanity defense for defendants which was

1 found to be unconstitutional. But within the context --

2 MR. MARCHESE: I'm going to object to as relevance.

3 THE COURT: Right. The objection's sustained.

4 MS. DUNN: Okay.

5 BY MS. DUNN:

6 Q So you said that Nevada uses a modified M'Naghten?

7 A That's correct.

8 Q Can you explain what that means?

9 A So basically there are -- there are three components to think about.

10 The first component has to do with the fact that an individual suffers from type --
11 some type of delusion. A delusion is a fixed false belief that can't be challenged.

12 So the best way to think about this is that you believe something and no matter what
13 information you're provided, you still believe it. The next -- the next element has to
14 do with this idea of do you appreciate -- do you appreciate the surroundings or the
15 circumstances and the wrongfulness of the actions that you may take.

16 Q So can you break that down a little bit more for me? You said that there
17 needs to be a delusional state.

18 A Yes.

19 Q And then these two other things. Is a delusional state always required?

20 A Yes.

21 Q Are both of the other things always required?

22 A Yes.

23 Q Both of them are?

24 A Yes.

25 Q Okay. Is there a difference between being mentally ill and being

1 criminally insane?

2 A There's a big difference.

3 Q Can you explain to me what that difference is.

4 A So there's -- I mean, mental illness is something that's present that we
5 see. In this case we're talking about a diagnosis of schizophrenia which, you know,
6 happens at about one percent of the pop -- about one percent of the population. But
7 in that one percent of the population, many of those -- less than 30 percent of those
8 individuals actually at any one point in time with a diagnosis of schizophrenia
9 actually come in contact with the legal system. Most of the time their contact with
10 the legal system is usually accidental or as a result of conflicts that they may have
11 with others.

12 And so the being mentally ill versus being insane is a -- is a whole
13 different type of thing. Just because you're mentally ill, I examine a number of
14 individual who've had very severe, very persistent mental illness, who can definitely
15 appreciate the wrongfulness of their act, who understand that their -- that -- and
16 have the ability to conform their behavior to the expectations of the law.

17 So that really is the difference and when we think about forensic
18 psychology it really is the combination of both psychology and --

19 MR. MARCHESE: Objection. Nonresponsive.

20 THE COURT: The objection's sustained.

21 If you could just redirect your witness.

22 MS. DUNN: Yes, Your Honor.

23 BY MS. DUNN:

24 Q So you were saying that the difference between being mentally ill and
25 being criminally insane is in part being able to understand the wrongfulness of your

1 actions.

2 A Correct.

3 Q So someone who's mentally ill, does that mean that they necessarily do
4 not understand the wrongfulness of their actions?

5 A No.

6 Q If someone is mentally ill, does that mean that they necessarily do not
7 understand what they're doing?

8 A No.

9 Q And if someone is mentally ill does that mean that they are necessarily
10 in a delusional state?

11 A No.

12 Q So you -- you said before that a delusion is a fixed false belief that
13 cannot be challenged.

14 A Correct.

15 Q And in this case did you determine that the defendant was in a
16 delusional state at the time of the killing?

17 A I believe that based off of the evidence that I reviewed that he was
18 experiencing a paranoid type of delusion.

19 Q So would you classify his delusion as paranoid? Am I understanding
20 that right?

21 A Yes.

22 Q Could using marijuana cause a delusional state such as this?

23 A Heavy use of marijuana, yes. The combination of marijuana with a
24 historical diagnosis of schizophrenia, probably very likely.

25 Q Did -- in this case did you review a transcript of defendant's interview

1 with police?

2 A I did.

3 Q And was there discussion of his backpack in that interview?

4 A There was.

5 Q What was your interpretation reading that? Did he seem willing to
6 discuss it or not?

7 A He seemed to avoid any discussion about the backpack.

8 Q Did you ask him about that?

9 A I did.

10 Q And what was his response?

11 A He was also somewhat elusive with me in talking about the backpack.
12 But at that point in time he recognized that one of the things that was contained in
13 that backpack was his identification.

14 MR. MARCHESE: Your Honor, I'm going to object. Can I get some more
15 foundation as to when? Is this the voluntary? Is this an interview? I'm a little
16 confused here.

17 THE COURT: Right. Would you back up and lay some foundation?

18 MS. DUNN: Sure.

19 BY MS. DUNN:

20 Q So you had an interview with the defendant, you said --

21 A I did.

22 Q -- on November 13th?

23 A Correct.

24 Q And then before you interviewed him did you have chance to read the
25 transcript from when he was interviewed by police?

1 A I did.

2 Q In that transcript was there discussion of his backpack?

3 A There was.

4 Q And when you read that transcript did it seem to you that defendant was
5 reluctant or not reluctant to discuss the backpack with police?

6 A I -- I would -- I think I would say -- I have to say something before that.
7 Just because I've read something in the transcript --

8 MR. MARCHESE: Objection. Nonresponsive.

9 THE COURT: Right. If you can't answer the question, that's okay. I'll just
10 ask the District Attorney to ask another one.

11 Thank you. Go ahead.

12 BY MS. DUNN:

13 Q You can answer the question, sir.

14 THE COURT: I'm sorry?

15 MS. DUNN: No, I'm sorry. So I thought you said he could answer it and then
16 I could ask a follow-up. But I can redirect at this point.

17 BY MS. DUNN:

18 Q Before you read the transcript was there something else that caught
19 your eye about the backpack?

20 A Yes. That the evidence that had been processed by the police had
21 identified that there was identification of the defendant in the backpack.

22 Q And did that lead you to discuss the backpack with the defendant in
23 your interview?

24 A It -- it resulted in me developing a different hypothesis about what
25 happened and how the ID was in the backpack. Yes.

1 Q Okay. So when you reviewed that transcript you were already aware
2 that his identification had -- or documents in his name had been found in that
3 backpack?

4 A I was.

5 Q So then when you read the transcript of his interview with the police, did
6 you notice anything significant about their discussion about the backpack?

7 A That he seemed to be very avoiding of talking about the backpack.

8 Q And then when you spoke with him did you bring that up that he had
9 been avoiding talking about the backpack with the police?

10 A Yes. Initially he was -- he continued to be somewhat evasive, not as
11 much as what I observed in the transcript, in that conversation with him. I actually
12 believe in the circumstances that I actually pulled out the transcript and there was a
13 component of the transcript that him and I talked about related to the fact that there
14 was a issue about the color of the backpack and whether or not -- he was like, well,
15 no, I don't have a that-color backpack and then went back and forth with that. And
16 then finally at the end I said, you know, you said at the end that it was your
17 backpack. Was it your backpack? And he said yes.

18 Q Did -- did you ever ask him why he seemed to be reluctant to discuss
19 the backpack with police?

20 A I'm sorry, I didn't hear the first part of the question.

21 Q Did -- in your interview with him did you ever ask him why he seemed to
22 be reluctant to discuss the backpack with the police?

23 A I don't know if -- I don't know if we had that specific of a -- of
24 conversation about what was the reason that he avoided talking about the
25 backpack.

1 Q Would reviewing your report refresh your recollection?

2 A It would.

3 MR. MARCHESE: Objection. This -- he didn't say he doesn't remember.

4 THE COURT: I mean, he indicated he didn't recall so. What are you going to
5 refresh his recollection with?

6 MS. DUNN: His report.

7 THE COURT: Okay. You may.

8 MS. DUNN: May I approach the witness?

9 THE COURT: You may.

10 MS. DUNN: Thank you.

11 MR. MARCHESE: And, counsel, where -- what page?

12 MS. DUNN: I apologize. It's page 11 of his report, the very top.

13 MR. MARCHESE: I got it.

14 MS. MOORS: And it's also page 10.

15 MS. DUNN: It does bleed over, yes.

16 MR. MARCHESE: Is it page 10 or 11? I'm sorry.

17 MS. DUNN: The specific part when -- it bleeds over on to page 11. It begins
18 at the bottom --

19 MR. MARCHESE: Okay.

20 MS. DUNN: -- of page 10, it bleeds over to page 11.

21 BY MS. DUNN:

22 Q Please read this silently to yourself and let me know when you're done.

23 A Okay.

24 Q Did that refresh your recollection?

25 A Yes.

1 Q Did you ever ask the defendant why he seemed reluctant to discuss his
2 backpack with the police?

3 A Yes. Because he's -- because the ID was in the backpack.

4 Q Because the ID was in the backpack; is that what you said?

5 A Yes.

6 Q Thank you. During your interview did the defendant tell you whether
7 the victim had a weapon?

8 A He denied that the victim had a weapon.

9 Q During your interview did the defendant tell you whether the victim was
10 doing anything to threaten him?

11 A He indicated that the victim was not threatening him, other than by
12 looking at him funny.

13 Q During your interview did the defendant tell you whether he thought the
14 victim was going to kill him?

15 A He actually -- he actually stated that he did not believe that the victim
16 was going to kill him.

17 Q Did you ever ask the defendant if he could have escaped the situation?

18 A I did.

19 Q And what was his response?

20 A He said he could.

21 Q During your interview did you ever ask the defendant whether other
22 people had looked at him that way?

23 A I did.

24 Q And what did he say?

25 A He said yes.

1 Q Did you ask a follow-up to that?

2 A I did. I asked whether or not any of those people who have looked at
3 him that way had done him harm.

4 Q And what was his response?

5 A "No."

6 Q Did you ever ask him if he had hurt people in response to looking at him
7 that way?

8 A Yes.

9 Q And what was his response?

10 A "No."

11 Q Did you ever ask the victim if he knew that it was wrong -- I'm -- excuse
12 me, ask the defendant if he knew that it was wrong when he stabbed the victim?

13 A I did.

14 Q And what was his answer?

15 A He said that he did know it was wrong and he apologized.

16 Q So I want to go --

17 A He said he was sorry. I should be more accurate.

18 Q Thank you. I want to go back a little bit to this modified M'Naghten. So
19 you said a delusional state is required and you determined that the defendant was
20 likely in a delusional state.

21 A Correct.

22 Q You also said that he had to know or understand the capacity of his
23 actions; is that correct?

24 A That's correct.

25 Q Did you come to a conclusion about whether he understood the nature

1 and capacity of his actions?

2 A I did.

3 Q What was your conclusion?

4 A That he did.

5 Q And what led you to that conclusion?

6 A His behavior after the -- after the stabbing of the victim in this case. He
7 immediately fled the scene and disposed of the knife and -- disposed of the knife in
8 a Dumpster and then also took off his shirt that was bloody -- that had been bloodied
9 by the victim -- by the victim's blood.

10 Q And you've reviewed Dr. Chambers' report, the defense expert, he
11 actually agrees with you on that point, right?

12 A He does.

13 Q Now, were you able to form an opinion about whether the defendant
14 appreciated that his conduct was wrong?

15 A Yes.

16 Q Meaning -- I'm sorry?

17 A Yes.

18 Q Yes? And what was your opinion on that?

19 A I believe that he -- that he understood that his conduct was wrong. I
20 think his apology that he was sorry for what he did and the fact that he made great
21 attempts to try to avoid detection from the police, not talking about the backpack, is
22 a -- is an example of, obviously, what, you know, if there wasn't this problem, you
23 know, if he wasn't delusional in doing this to protect himself or some other reason,
24 then why hide you identity? Or, you know, why not say, yeah, I was there and he
25 did X? That didn't happen. That wasn't the facts in this case.

1 Q Now, let me ask you something. If -- if someone is suffering from a
2 delusion and they act in response to that delusion, in order to be considered
3 criminally insane, do their actions have to be justified within their delusion?

4 A It does.

5 Q So an example that I've heard, and you tell me where, you know, your
6 thoughts on this, if someone believes that they are a soldier and they shoot
7 somebody else believing that that person is also a soldier on the battlefield and we
8 assume that this is all true and that's how it was in their mind, would they be
9 considered criminally insane?

10 A Well, they -- well, we know at least they -- we know that it's not true, so
11 it's a delusion. And so in that circumstance you potentially have somebody who
12 could be insane because of that. Yes.

13 Q Now, let me switch it a little bit. That same person thinks that they're a
14 soldier, and they shoot somebody else but in their delusional state they think that
15 that other person is a civilian who is just walking down the street, would that person
16 be legally insane in that situation?

17 A No, they would not.

18 Q And why not?

19 A Because the first action of a soldier who believes that they're in combat
20 and that this is the enemy trying to get them, so they're getting them before the
21 enemy gets them would make a whole lot of sense. You know, as a -- as a formal
22 Naval officer, we don't just go around killing civilians. That's not something that we
23 do. That's not part of the process, the laws of war. So in that circumstance the
24 person would -- would not -- would be sane.

25 MS. DUNN: Court's brief indulgence.

1 BY MS. DUNN:

2 Q So I just want to clarify a little bit what we were talking about, our
3 hypothetical there. So in order to be considered legally insane, are you saying that
4 the facts as the person suffering from the delusion, the facts as they believed them
5 would have to be justifiable within the delusion?

6 A Yes.

7 Q And if they're not justifiable within the delusion then that person would
8 not be insane?

9 A That's correct.

10 Q Okay. So shooting -- soldiers shooting each other, that is justifiable?
11 That makes sense within the delusion, so that would be legally insane?

12 A Correct.

13 Q Soldier shooting civilian, not justifiable because that's not what you
14 would do as a soldier, so not legally insane?

15 A Correct.

16 MS. DUNN: Pass the witness.

17 THE COURT: Cross-examination.

18 MR. MARCHESE: Yes. Thank you, Your Honor. Just give me a moment
19 here.

20 Before we get going, Doctor, do you have a copy of your report with
21 you?

22 THE WITNESS: I do.

23 MR. MARCHESE: Okay. It may or may not come up. I'm just kind of letting
24 you know. Because with COVID I don't want to give you mine and all that. Just
25 give me -- bear with me, Doctor.

1 THE WITNESS: No worries.

2 MR. MARCHESE: I'm tried to get all this stuff squared away.

3 Is this yours?

4 MS. DUNN: The binder? No.

5 MR. MARCHESE: Are you sure? With all these tabs?

6 MS. DUNN: It's not mine.

7 MR. MARCHESE: It's not mine.

8 MS. MOORS: No, not mine.

9 MR. MARCHESE: Oh, you know what, it's a completely separate case. I've
10 got enough work as is.

11 Do we have the exhibits?

12 THE CLERK: Uh-huh. Yours or the State's?

13 MR. MARCHESE: The State's.

14 THE CLERK: Okay. You'll just need some gloves.

15 MR. MARCHESE: Thank you.

16 THE CLERK: Gloves.

17 MR. MARCHESE: Oh, got you.

18 Oh, actually, you know what, we were out over there.

19 MS. MOORS: Do you need gloves? I have some here, Jess.

20 MR. MARCHESE: I got some. Thank you.

21 **CROSS-EXAMINATION OF HERBERT F. COARD, III**

22 BY MR. MARCHESE:

23 Q All right, Doctor, I'm finally ready here. Thank you for your patience.

24 So I just want to go a little bit into some of the things, just some

25 background and things you discussed on direct examination. So you testified

1 approximately 100 times you said in court give or take?

2 A Give or take, yes.

3 Q Okay. And how many times for the prosecution, if you know?

4 A Well, my early experience was working in the federal system. So in the
5 federal system it isn't necessarily the defense or the prosecution. So all those times
6 that I've testified, probably 30 to 40 percent of those times it was appointed by the
7 court to conduct the evaluation.

8 In my practice, probably, so that leaves probably about, say, 50,
9 probably about 20 of those times I've -- for the district attorney's office or
10 prosecution and the rest for the defense.

11 Q Okay. So in this particular case you were contacted by the District
12 Attorney's Office in order to conduct your evaluation, correct?

13 A That is correct.

14 Q And that particular evaluation would be a not guilty by reason of insanity
15 evaluation, right?

16 A That is correct.

17 Q And in the course and scope of your evaluation you reviewed many,
18 many records and what's at your disposal, correct?

19 A There -- yes, there are quite a few records in this case.

20 Q Okay. Now in reference to the records that you went through, I'm not
21 going to list all of them, but you did reference some of them on your direct
22 examination, you did go over a voluntary statement conducted by the Las Vegas
23 Metropolitan Police Department with Mr. Rivera, correct?

24 A I did.

25 Q And I believe that was about nine days after the date of the offense.

1 A I believe that -- I believe you are correct.

2 Q Would July -- July the 10th sound approximately right?

3 A Yeah.

4 Q And the date of the offense here was July 1st, 2018, right?

5 A Correct.

6 Q And you go over not only just the medical records, which were
7 provided, you're going to go over also the reports as well, correct?

8 A Correct.

9 Q Did you go over the pictures from this particular case?

10 A Yes.

11 Q Okay. So when I say the pictures, not just -- there's autopsy pictures,
12 you went over those?

13 A I believe I saw autopsy photos too.

14 Q Okay. And then the crime scene --

15 A Crime scene photos, yes.

16 Q -- photos as well? Okay.

17 And numerous records as well. So you -- I have down that you did your
18 evaluation of Mr. Rivera sometime before November 15th, 2020?

19 A Yeah, it was that Friday -- it was that Friday before.

20 Q Okay. And I believe the 15th was a Sunday if that --

21 A Correct.

22 Q -- my recollection serves me.

23 A Yeah, that -- there was a very short time frame the district attorney
24 wanted to have things done, so I did the evaluation on Friday and then wrote the
25 report on the weekend.

1 Q That just happens to be my birthday. I don't have that good of a
2 memory.

3 So do you go in there and just tell the jury, what would be the normal
4 course of action when you do your interview. How does that work?

5 A So the -- the initial part of any interview is developing rapport. The
6 previous -- the previous history, I had reviewed all that history and I just wanted to
7 have a -- I know that -- I know that individuals who suffer from -- from schizophrenia,
8 schizoaffective disorder sometimes have a difficult time establishing a trusting
9 relationship with an examiner. So I end up spending a lot -- I try to usually spend a
10 lot of time initially not talking a whole lot about the case and just talking about them
11 and how they're doing and what progress they've been making to try to build a
12 rapport with them so that they see that I'm interested in them as a person versus I'm
13 interested in them just as a case.

14 Q Right. And you would do that so that way they open up a little bit more
15 with you, correct?

16 A Absolutely. I want to get the best result.

17 Q Especially in a case like this when you're dealing with a paranoid
18 schizophrenic, right?

19 A Correct.

20 Q Now, we might not agree on everything, but you would agree that
21 Mr. Rivera is a paranoid schizophrenic, correct?

22 A I think there's -- there's records dating back to his late -- late
23 adolescence with that consistency of a diagnosis. I think that that's -- that is
24 definitely something that Mr. Rivera suffers from.

25 Q Sure. And if you can just maybe just orient the jury if they're not -- what

1 is the definition of a paranoid schizophrenic?

2 A So paranoia -- the official diagnosis is schizophrenia. But underneath --
3 underneath schizophrenia we typically describe characteristics of the individual and
4 paranoid is really one of the primary ones. It's the largest group of individuals have
5 schizophrenia. But basically what schizophrenia is, it's a brain disorder in which the
6 brain has an inability to regulate something called dopamine which is a
7 neurotransmitter. A lot of us don't understand dopamine, we -- but we know -- we
8 heard about depression, we hear about something called serotonin.

9 Well, dopamine is another neurotransmitter but when you have too
10 much of dopamine in your brain, you end up developing some conditions, delusions
11 and hallucinations. So a delusion is that fixed false belief. And then hallucinations
12 are those false perceptions that you have from a sensory perspective. You see
13 something that's not there, you hear something, tactically -- you feel something
14 that's not present.

15 So in order to have schizophrenia, you have to have those two
16 components. You have to have the delusion and then you have to have
17 hallucinations. So paranoid is just kind of this determination of what -- how that
18 delusional presentation is. So a paranoid delusion is basically feeling like
19 someone's out to get you. Other types of delusions, you can have what are called
20 somatic delusions. So a delusion about there's something wrong in my body and I
21 can't do anything with it. You know, maybe aliens have invaded my body and that's
22 a somatic delusion. You can have something called an erotic delusion which you
23 believe that you're fixated on someone who's your love interest because you passed
24 them in the hallway and they said -- you said hi to them.

25 So -- but paranoid is the largest group and it is this fixed false belief

1 with the delusions that people might be out to get them. People in general,
2 sometimes it's the F.B.I., sometimes it's just general. But it is basically a delusional
3 belief that someone's out to get them with a --- with the hallucination.

4 Q Okay. And in this case you, as we've established, you have gone over
5 several medical records of Mr. Rivera's past, correct?

6 A I -- I think there's more than, like, ten different -- I think there's, like, ten
7 different hospital --

8 Q Sure.

9 A -- or ten different sources of records associated with his psychiatric
10 diagnosis.

11 Q And those are some of the sorts of things that you saw in Mr. Rivera's
12 past in reference to those paranoid delusions, correct?

13 A Absolutely.

14 Q Just, I won't get into all of them, but people were on the street looking
15 for him, you remember things of that nature?

16 A Yes.

17 Q That a "yes"? And then that he supposedly snitched on someone and
18 that he needed to leave town, things along those lines, right?

19 A Correct.

20 Q There were also some allegations that he had some religious things,
21 that the Holy Spirit was talking to him, and that he had heard from God, and things
22 along those lines, right?

23 A Right. And just because we say paranoid delusion doesn't necessarily
24 preclude that there may be other elements, so, like, that kind of grandiosity that
25 sometimes can be associated with of -- that was a delusion of, like, I'm better than

1 the world, like, I'm God of I'm the devil. Sometimes they kind of intermix. So it's
2 hard to say, like, okay, it's just paranoid. When we talk, when we make that
3 diagnosis that it's paranoid, it's the prominent feature.

4 Q Right. It wouldn't necessarily -- in this case, you didn't see anything
5 where Mr. Rivera was necessarily had thought that he was better than anyone else,
6 that he was -- had a narcissistic personality, right?

7 A There was no evidence of any personality disorder. This is a straight-
8 up schizophrenia, paranoid schizophrenia.

9 Q So we'll just move on from that because, like I said, we agree, so we'll
10 get to the rest.

11 So you conduct your interview approximately -- so -- so July 1st is the
12 date of the offense, November the 13th is your report, so that's a little over a year
13 and a half later, correct?

14 A I believe it's long -- I believe it's longer than that.

15 Q Okay. So even longer?

16 A Yeah.

17 Q Just -- year and three-quarters, regardless, it was a long time, right?

18 A It -- it's a significant period of time, that's correct.

19 Q Now, you can only do what you're asked to do, right?

20 A Absolutely.

21 Q In your mind, based upon the timeline of this case, does that cause you
22 any concern in reference to the accuracy of the information that you would get?

23 A It can. I -- when I work on the defense side, my -- my response to the
24 defense attorney is like they'll do a consultation and want to know, like, when do
25 we -- when do you want to see they guy? And I'll go, As soon as possible. Because

1 the closer you are to the crime, the better the quality of the information that you're
2 going to get about the mental status of the -- of an individual.

3 Q Sure. Because that's what this is all about, it's not about
4 Shelbe Rivera's mental state on November the 13th, 2020, it's July 1st, 2018?

5 A That's correct.

6 Q Now, through the course and scope of your evaluation, we are going to
7 make a determination into Mr. Rivera's IQ.

8 A Yes. I did not do IQ testing with him. One of the records that was
9 available was a previous evaluation that had reliable information to suggest that
10 Mr. Rivera probably is functioning in the intellectual disability category, what we
11 would refer to as mild.

12 Q Okay. And why would you say mild?

13 A Well, we categorize -- we categorize intellectual disability in kind of
14 three buckets, if you want to think about it, mild, moderate, and kind of severe or
15 profound. So moderate is that lower level. It's -- it's the individual who has the
16 ability to generally function fairly well in society. They don't need a whole lot of extra
17 support, but they're not completely capable of doing everything independently. A lot
18 of times those individuals end up in, like, group homes or have family members who
19 provide some assistance with them or, like, financial arrangements, things like that.
20 Versus someone who is moderately -- has moderate intellectual disability, those are
21 individuals who really need almost -- need almost 24/7, they can do some less than
22 24/7 support. So we -- we as psychologists think, breaking intellectual disability into
23 categories helps us better understand the condition in order for us to look at what
24 types of things, at what type of difficulties they may have.

25 Q And I apologize, maybe I wasn't listening to my own question, did you

1 say that he was in the mild or the moderate category?

2 A Mild.

3 Q Okay. And the mild would be the individuals that can actually function
4 in society would be your --

5 A Yeah. Generally speaking, they need some support here or there,
6 usually it turns out usually it's financial. It usually has to do with, kind of, when legal
7 issues become -- come in play or understanding what their rights are can sometimes
8 be problematic for them.

9 Q Sure. In this particular case you saw records that Mr. Rivera has
10 basically been homeless for the last six or so years?

11 A Yes.

12 Q Okay. And you also saw records that he's never really had any sort of
13 job, correct?

14 A Yeah, that's true.

15 Q And you saw also records that Mr. Rivera was on social security
16 disability, correct?

17 A That's correct.

18 Q That was his main source of income?

19 A It was.

20 Q So we could both agree that he wasn't exactly functioning in society the
21 time frame that we're talking about here, July 1st, 2018?

22 A Yeah. I think that, to be fair, it's the combination of the two, the
23 schizophrenia and the intellectual disability, I mean, just having intellectual disability
24 is one element, but then putting on -- superimposing mental illness on top of
25 intellectual disability makes it even more challenging for an individual like

1 Mr. Rivera.

2 Q Correct. Okay.

3 Now, in turning to this -- the event, so you go in there and you ask him
4 about what transpired in the event, right? The July 1st, 2018.

5 A Well, I don't know if I'm that direct about it, but at some point in time,
6 yeah, we're talking about the event.

7 Q Okay.

8 A I mean, I started off --

9 THE COURT: Okay. Just a minute, can you -- you can take your drink and
10 then -- I apologize -- you're going to have to put your mask back on. Thank you.

11 THE WITNESS: Sorry, Your Honor.

12 THE COURT: No, you're fine.

13 THE WITNESS: I, so, basically, the -- the first part, how I usually introduce it
14 is, like, after I've built that rapport component, then my next step is usually going in
15 and talking about, so what brings you here to talk to me today, what is, you know,
16 what did you talk to your attorney about in this matter, why are -- what brings you
17 here, why am I interviewing you, can you tell me a little bit about, you know, what's
18 going on and what am I being asked to -- to do. So I really want to put it on their
19 terms to see what happens versus, you know, on July 1st this and this happened. I
20 start with a very open-ended position to allow them to tell me what's they think is
21 important for me to know.

22 BY MR. MARCHESE:

23 Q Okay. And he didn't know why you were there?

24 A He did.

25 Q Okay. Now, if we're going to back up a little bit, are you familiar with

1 Lake's Crossing?

2 A I am.

3 Q And what is Lake's Crossing?

4 A So Lake's Crossing is the State facility that's responsible for conducting
5 competency to stand trial evaluations and also restoration. So if someone's found
6 incompetent to stand trial, they can't appreciate the charges, understand how to
7 conform their behavior to the court, they can be sent to Lake's Crossing for a period
8 of time for the purposes of what we call restoration, which is education and
9 sometimes pharmacological intervention to assist the individual to be restored to
10 competency. So in a way they can face the charges that they have.

11 Q And based on your knowledge of this case, Mr. Rivera was actually
12 sent to Lake's Crossing at one point, correct?

13 A He was.

14 Q Have you ever conducted an evaluation in order to send someone to
15 Lake's Crossing?

16 A For competency to stand trial?

17 Q Yes.

18 A Yes.

19 Q That's a "yes"?

20 A Yes.

21 Q Okay. And so we don't confuse the jury, can you just explain the
22 difference between the evaluation that you did in this case and a competency to
23 stand trial evaluation, because they're not the same thing, right?

24 A They're absolutely completely different.

25 Q Okay.

1 A So what actually transpired in a competency to stand trial evaluation is
2 almost irrelevant except for the charges that the individual faces. What exactly
3 happened is really irrelevant in a competency to stand trial. Its primary purpose is to
4 ascertain whether or not a defendant can appreciate -- appreciate what they did,
5 what the might -- consequences might be, i.e., going to prison, probation, et cetera,
6 that they can conform their behavior to the court. So they understand how the court
7 works, they understand the roles of different players, and then there's this kind of
8 broader, deeper understanding, understanding what to do and what not to do within
9 the context of that.

10 But in a competency to stand trial evaluation, I really almost never,
11 other than asking the -- asking the defendant, can you tell me what you're charged
12 with, that's it. I don't really care what happened. It's irrelevant to the competency to
13 stand trial evaluation.

14 Q All right. So in this case, on August the 24th, 2018, Mr. Rivera was
15 interviewed by Dr. Colosimo and Dr. Harder and found incompetent to stand trial at
16 that time, correct?

17 A That's correct.

18 Q And then for an extended period of time he was at Lake's Crossing from
19 approximately September of 2018 to January of 2020; does that sound about right?

20 A That sounds correct.

21 Q Okay. And just so we can kind of wrap it up into a bow, I guess, if you
22 will, make it as simple as possible for the jury to understand, that evaluation to stand
23 trial, it's just basically whether or not he can assist his attorney and understand the
24 legal process, right?

25 A Yeah. It's assisting the attorney, understanding how the, you know,

1 what might be the consequences of his actions and conform his behavior to the
2 court.

3 Q They don't really get into the offense or anything like that?

4 A They shouldn't.

5 Q All this --

6 A It's irrelevant.

7 Q All those things that you just went over on direct examination with
8 Ms. Dunn in reference to, you know, the M'Naghten -- the modified M'Naghten test,
9 right?

10 A Correct. That's a different evaluation. That's the not guilty by reason of
11 insanity. Was insanity present at the time of the alleged offense?

12 Q Okay. Now, you have -- based on your investigation, you felt that
13 Mr. Rivera, you already got to this, he was under the delusion, right? But the issue
14 is is you felt that he knew the difference between right and wrong, correct?

15 A That's -- that's correct.

16 Q And part of that goes into this pink backpack, right?

17 A Yes.

18 Q All right. Now, this pink backpack, you saw that in his voluntary
19 statement to Las Vegas Metropolitan Police detectives, you felt that he was being
20 evasive in his responses to the officers, correct?

21 A It appeared, based off of my -- my experience in reviewing a number of
22 other investigative -- interviews or interrogations of subjects, that he was being
23 evasive about the backpack.

24 Q Okay. Right. But we're -- everyone's different, right?

25 A It's possible, absolutely.

1 Q The biggest problem with what you do is that it's very subjective, right?

2 A The things that we do as psychologists have -- sometimes can be
3 viewed as subjective. I think the -- the question is that -- what a psych -- what a
4 forensic psychologist brings to this is that I bring hypothesis testing which is the idea
5 that I develop my hypothesis and look for evidence to either support or to discard a
6 hypothesis. In this case, I looked at the interview that was done with the defendant
7 and looked a variety of different options, not just one, but I ended up coming to the
8 conclusion that I believed that he was being evasive based off of that pattern of what
9 I observed in that original report.

10 Q Okay. But let me ask it to you this way, your job is not as easy as, say,
11 an orthopedic surgeon who could just simply look at an x-ray and tell if the leg is
12 broken or not, right?

13 A That is absolutely true.

14 Q And that's when you start having to use all these other tools and
15 mechanisms in order to come to your conclusions and thought process, right?

16 A Right. Because it's not only just that one component, I mean, this
17 whole case for me, when doing -- when doing an evaluation like this, it's about
18 looking at generating alternative hypothesis. It's not just looking at this interview, it's
19 looking at the crime scene and what matches the crime scene versus what he said
20 and what statements he's made, how consistent are those things. So it's -- it's
21 looking at all of the evidence together and then for you to use the idea tying it up like
22 a bow, it comes down to the interview that I conduct with the individual, the
23 defendant in this case, to determine what I, you know, how do I interpret all of the
24 pieces of information that I had an opportunity to observe.

25 Q So based on the defendant's interview, it was your understanding in the

1 reports in this case that the incident occurs on July 1st, 2018, correct?

2 A Correct.

3 Q And that he had arrived in Las Vegas a very short period of time before
4 that at the bus station, correct?

5 A Yeah, it appears that same day or the day before.

6 Q Correct.

7 A That seems --

8 Q Now, in reference to that interview, the detectives kind of start in a
9 similar fashion as you do, they just start with some background information, correct?

10 A Yeah.

11 Q Start kind of throwing out, you know, just some general questions in
12 order to build that rapport that you were referring to earlier on cross-examination,
13 right?

14 A Yes.

15 Q Okay. So in that particular interview the detectives ask him, you know,
16 when it was that he arrived, correct?

17 A That's correct.

18 Q Would you agree with me that Mr. Rivera was a little bit misunderstood
19 in his time frame in it?

20 A Yes, I would.

21 Q That specifically, like, when he came in contact with the officer that
22 ordered him the Burger King and went to the shelter and whatnot, he was a little
23 confused, correct?

24 A Yes, he was confused.

25 Q Okay. Now, in reference to --

1 MR. MARCHESE: And this is on the middle of page 11, counsel.

2 BY MR. MARCHESE:

3 Q They say that you got there, into Vegas and they let him know that
4 there's a camera on every corner; remember that line of questioning?

5 A I do.

6 Q Okay. And they said, You're on camera at the Greyhound station with
7 some sort of luggage; do you remember that? Do you remember that?

8 A I do.

9 Q And then Mr. Rivera denies having a suitcase at the Greyhound station.

10 A Correct.

11 Q Do you agree?

12 A Yep.

13 Q And then they said that they have a video of him carrying a suitcase or
14 a backpack; do you remember that?

15 A Yes. I believe that they --

16 Q Okay.

17 A -- expanded it beyond just luggage.

18 Q I'm sorry?

19 A They expanded it beyond just luggage. They then added --

20 Q Suitcase or a backpack.

21 A -- backpack.

22 Q Yes. And it is true that at some point in time, I don't know if you've
23 seen this, but there was an actual video of Mr. Rivera with a suitcase and a
24 backpack allegedly, right?

25 A Yes.

1 Q And that was on July 1st --

2 A Yes.

3 Q -- 2018.

4 A Yes.

5 Q That video, however, is not at the Greyhound station, correct?

6 A Yeah, that's -- that's my understanding it's not at the Greyhound station.

7 And I'm not exactly sure where it was.

8 Q Yeah, and I'm -- I'm not trying to do a trick question, I just remembered
9 you're from Reno, so, but it's not at a bus station, I think we could all agree what a
10 bus station typically looks like, right?

11 A Correct.

12 Q And Mr. Rivera asked to see the video, right?

13 A Yes.

14 Q And they said that you're not walking by yourself, you know that, do you
15 remember that? And he gets a little evasive and says, I was walking with a lot of
16 people that day, right?

17 A Yeah.

18 Q Okay. At no point in time -- at this time, have the police spoken about
19 him walking down the street not at a bus station, correct?

20 A That's correct.

21 Q Okay. And they say, At one point you're walking with this gentleman,
22 and Shelbe says, That gentleman. They haven't identified anyone yet at this point;
23 remember that?

24 A Yeah.

25 Q Okay.

1 A I remember the generals, yes.

2 Q All right. And then it says, You're carrying your luggage, you have a
3 backpack on; and Shelbe allegedly says, I don't have a luggage, I ain't have a
4 luggage that day. So he -- he just says, I didn't have anything with me, right?
5 That's a "yes"?

6 A Yes.

7 Q Okay. And once again the off -- the detectives go back and say, You
8 remember pulling a black, uh, luggage, like, a black suitcase, it's got wheels on it.
9 And then Shelbe says, Oh, you're referring to -- and then now he remembers having
10 the luggage, correct?

11 A Yes.

12 Q And then the detectives ask him, So you remember the black suitcase
13 that you were pulling; and he agrees, right?

14 A Yes.

15 Q And then they say, Do you remember carrying a pink backpack?
16 Shelbe asks, A pink backpack? And he says, Uh-huh, assuming that he meant
17 "yes." He doesn't say "yes" or "no," he just says "uh-huh."

18 Now, in reference to that pink backpack, showing you what's been
19 marked as State's Exhibit 6, you've seen this picture before, correct?

20 A I have.

21 Q And that is the decedent, Mr. Rincon, correct?

22 A That is.

23 Q And that would be a pink backpack right there?

24 A It's hard for me to discern the color on the screen, but --

25 Q Yeah, it's a little muted, I would agree with you there. It's a backpack,

1 we'll agree with that?

2 A It is a backpack and it appears to be the genre of or the scheme of
3 something reddish or pinkish, yes.

4 Q Sure. And a black rolling suitcase, I'm sorry, there's a little bit of a glare
5 there, but --

6 A Yes.

7 Q -- kinda -- there, that's a little better.

8 A Yes.

9 Q Okay. And those particular -- those two particular items had
10 Mr. Rivera's identifying information in it, correct?

11 A They did.

12 Q Several items of information, correct?

13 A That's correct.

14 Q And they were right next to the decedent's body, correct?

15 A They were.

16 Q And based on your reading of the reports, there were no independent
17 witnesses, correct?

18 A There's no witnesses to this incident.

19 Q No one saw this occur?

20 A No.

21 Q Yet Shelbe Rivera allegedly left bills with his name, identifications with
22 his name, a notebook with his name on it and his own handwriting at the crime
23 scene, right next to the body that nobody saw happen, correct?

24 A That is correct.

25 Q Okay. And there was a knife that was recovered at the scene, correct?

1 A Yes, there was.

2 Q And that knife -- it's a little bit dark here, but it's up in this upper-hand
3 corner -- was found in this Dumpster, correct?

4 A Yes.

5 Q Right out in the open, right on top, very close proximity to this
6 individual's body, correct?

7 A That is correct.

8 Q In addition, you had a mentioned a bloody shirt; do you remember that?

9 A Yes.

10 Q Have you seen that bloody shirt?

11 A I believe I have.

12 Q Do you know where that bloody shirt was located?

13 A I be -- I believe it was the kind of route of exit as he was going down the
14 alley or down the -- I don't know if it was an alley or a -- a street.

15 Q Sure. Basically just on the side of the road, correct?

16 A Yes.

17 Q I'm going to show you what's been marked as State's Exhibit 29. And I
18 think you can see it right there in the middle.

19 A Yes.

20 Q A little closer of it, but where my finger is, right there in the middle of it --

21 A Yes.

22 Q -- that would be that yellow shirt, correct?

23 A That's correct.

24 Q Now that particular shirt, well, actually, let me back up for a second,
25 you -- you -- I'm sorry, have you seen the videos of him coming and going?

1 A I don't think I've reviewed -- I don't think I saw the video of him --

2 Q Fair enough.

3 A -- coming and going.

4 Q I think that might have come out a little bit later, so. That's not fair for
5 me to ask you about that.

6 So now, based on your reading of the reports, there was no association
7 whatsoever, that you know of, between Mr. Rincon and Mr. Rivera, other than a very
8 brief encounter earlier that day, correct?

9 A Yeah, even reported by the defendant, it was, yeah, we got together,
10 we were going to smoke some marijuana and then we're going to go get something
11 to eat.

12 Q Right. And go fishing?

13 A And go fishing.

14 Q Yes. Now, there was no weapon on Mr. Rincon, to your knowledge?

15 A That's correct.

16 Q Okay. What about this knife, though, did you read anything in
17 Mr. Rivera's voluntary statement with the Las Vegas Metropolitan Police Department
18 about the knife? It came up, right?

19 A It did.

20 Q Okay. Was there a point in time when Shelbe became paranoid that
21 Mr. Rincon wanted to see his knife?

22 A Yes.

23 Q Okay. And he became paranoid because he wanted to know how
24 Mr. Rincon knew he had a knife because he hadn't showed it to him yet, right?

25 A That is correct.

1 Q And there was a weird dynamic there about California versus
2 New York; do you remember that?

3 A Yeah.

4 Q Okay. Explain that to the jury if you can.

5 A I think it's kind of this mantra that we talk, sometimes more hear about
6 like, you know, the Bloods and Crips, you know, was kind of the frame in which he
7 talked about people from California versus people from New York, him being from
8 New York, that there's some type of bias or some type of threat if he -- if he knows if
9 he's from New York.

10 Q Right. But to be fair, the word Blood or Crip, there's nothing gang
11 related that was brought up?

12 A No.

13 Q Yeah. He just said he was from Cali and that -- Mr. Rincon was from
14 Cali and Mr. Rivera was from New York, and there was some sort of beef, maybe,
15 between the two, right?

16 A East -- yeah, some east-west thing was --

17 Q Yeah.

18 A -- was how it was described.

19 Q And Mr. Rivera said something to the effect of, you know, people doing
20 him dirty, right? Do you remember that?

21 A Yeah. I do.

22 Q Okay. He didn't really elaborate on doing him dirty, he just said
23 something to the effect of doing him dirty, right?

24 A That's correct.

25 Q Okay. Do you need more water by the -- by the way?

1 A If I could, Your Honor.

2 Q Yeah, no problem. Do you want me to stop questioning you?

3 A No, you're fine. I'm just --

4 Q You're good? All right. Playing hurt, I like it.

5 He also referred to Mr. Rincon as that he was scheming, right?

6 A I'm sorry, I didn't hear the question.

7 Q He was talking -- Mr. Rivera referred to Mr. Rincon in that he was

8 scheming, right?

9 A Yes.

10 Q And that he probably wanted to stab him, right?

11 A Yes.

12 Q Even though he didn't have a knife or a weapon, the evidence does not

13 show that, right?

14 A Correct.

15 Q He also talked about they were smoking marijuana together, right? And

16 based on the autopsy report, which I assume that you have reviewed, Mr. Rivera did

17 in fact, or Rincon, excuse me, did in fact have marijuana in his system, correct?

18 A He did.

19 Q Also methamphetamine as well, correct?

20 A Yes.

21 Q There was no indication, however, that Mr. Rivera had used

22 methamphetamine that day, right?

23 A Nothing -- nothing in the record that I reviewed.

24 Q Right. Just the marijuana?

25 A Just -- just the marijuana as self-reported by the defendant.

1 Q And Mr. Rivera, we're talking about while they were smoking together,
2 he said something to the effect of it was just how he was smoking, you know how
3 they give you that look, eye fucking him; you remember that line of questioning?

4 A I do.

5 Q Okay. And there was never any point in time in which that was clarified
6 what -- what that look actually is?

7 A Correct.

8 Q Okay.

9 A In the interview.

10 Q Now, in your interview, in your report, towards the end of it, you started
11 asking him questions in reference to, you know, his mental state, Mr. Rivera's
12 mental state and what he was thinking at the time of the offense.

13 A That's correct.

14 Q Do you remember that? Basically whether he was able to understand
15 the nature and capacity of his action, right?

16 A Yeah. My interview was going from kind of open-ended questions to
17 very directed questions.

18 Q Right. Right. For example, you write, Mr. Rivera reported that the
19 alleged victim looked at me that way, right?

20 A Yes.

21 Q Okay. And then you asked, Well, what did that mean, and he answered
22 that he was going to harm me, right?

23 A That's correct.

24 Q Okay. And then you asked him, Was he doing anything to threaten
25 you?

1 A Yes.

2 Q And he said no at that time, correct?

3 A Yes.

4 Q Would you agree with me that that was in direct contradiction of what
5 he had told the police earlier in his much more recent interview with the Las Vegas
6 Metropolitan Police Department to the offense?

7 A It has a different quality to it, yes.

8 Q Okay. I mean, he flat-out told the police, I felt like he was going to kill
9 me, right? He told the police that?

10 A I don't remember him specifically saying that. I'm not saying he didn't.
11 I --

12 Q Sure. And if I was to show you a copy of that voluntary statement,
13 would that refresh your recollection?

14 A It would.

15 MR. MARCHESE: Page 37, counsel.

16 MS. DUNN: Thank you.

17 BY MR. MARCHESE:

18 Q And please don't answer until you're -- just take a look at this and then
19 read it silently to yourself and if your memory has been refreshed, let me know.

20 I can just show it to you, that way you don't have to --

21 A Okay. As long as I can see it, it's --

22 Q Yeah. It's about midway down.

23 A Okay. I saw the statement.

24 Q And, Doctor, that does refresh your recollection?

25 A It does.

1 Q And you would now agree with me that he did in fact make that
2 statement that I felt like he was going to kill me?

3 A The only -- this only issue that I would have is that that statement
4 actually says after -- afterwards, the notation in the transcript is "unintelligible."

5 Q Okay. So we don't know what he said after that?

6 A I mean, I have to give weight to that's what was transcribed, but then
7 you have a statement that says it's unintelligible. I don't know how you get to
8 something that says unintelligible with a statement like that.

9 Q Right. But he could have just grunted.

10 A Okay.

11 Q Correct?

12 A That's correct.

13 Q Whatever it was that the trans -- the recorder -- that the interview
14 recorded and what the transcriptionist heard was they were unable to write down.

15 A That's correct.

16 Q Okay. And after that the detective didn't ask him, What'd you just say,
17 correct?

18 A That's correct.

19 Q So it didn't appear that he said anything of substance, he just said
20 "unintelligible"?

21 A Correct.

22 Q Okay. You also asked him, Was he going to threaten you, and he said,
23 No, correct?

24 A I asked him if he was threatening him, yes.

25 Q Yes. And Mr. Rivera later said, on page 38 of that same interview with

1 the detectives, he was going to kill him if he gave him that knife because he's from
2 New York?

3 A That's true.

4 Q And he also indicated on that same page, page 38, that Mr. Rivera
5 wasn't scared, correct?

6 A That's correct.

7 Q And that he just walked away, correct?

8 A That's correct.

9 Q Was there ever a point in time in your interview in which you asked
10 Mr. Rivera about self-defense?

11 A I was -- those were the questions that I was asking -- asking about,
12 whether or not he thought he was in harm, whether or not he took any action, yes.

13 Q Okay. I'm almost done here, Doctor.

14 And based on your investigation and reading of the reports, were you
15 ever able to discern a motive for the incident?

16 A My job in conducting a not-guilty-by-reason-of-insanity evaluation does
17 not examine motivation.

18 Q Okay. And so that would be a "no"?

19 A That is a no.

20 Q All right. Hey, thank you for your time, sir. I appreciate it.

21 MR. MARCHESE: Your witness, counsel.

22 THE COURT: Any redirect?

23 MS. DUNN: Thank you, Your Honor.

24 ///

25 ///

1 **REDIRECT EXAMINATION OF HERBERT F. COARD, III**

2 BY MS. DUNN:

3 Q All right, sir, so in the cross-examination, Mr. Marchese was talking to
4 you about how this event occurred July 1st of 2018, and your interview with the
5 defendant was November 13th of 2020.

6 A Yes.

7 Q In your interview with him were you asking him about his mental state
8 on November 13th of 2020, or about his mental state on July 1st of 2018?

9 A About his mental state on July 1st, 2018.

10 Q So when he told you that the victim didn't have a weapon, that he didn't
11 think he was going to be killed, that he wasn't being threatened, all of those
12 statements, he was referring to his mental state on July 1st, 2018?

13 A That's correct.

14 Q There was also discussion about how the defendant told police that the
15 victim asked to see his knife and he didn't know how the victim knew that he had a
16 knife.

17 A Correct.

18 Q Did you and the defendant discuss whether or not the defendant had
19 taken the knife out of his backpack at all?

20 A Yeah, there's an indication that he took the knife out and put it on the
21 backpack.

22 Q On the backpack? Did he indicate to you whether this -- whether this
23 was before or after the stabbing? Or, like, how far in advance it would have to be
24 before, I suppose.

25 A One of the things that -- with individuals who have schizophrenia or --

1 MR. MARCHESE: Object as to nonresponsive.

2 THE COURT: Right. I mean, why don't you ask the question again. You
3 need to answer the question that the District Attorney asks.

4 BY MS. DUNN:

5 Q Did the defendant indicate to you how far in advance of the stabbing he
6 took the knife out of his backpack?

7 A No.

8 Q However, you indicated that he put it on top of the backpack?

9 A That's correct.

10 Q And it appears that you were going to have a follow-up to my -- to my
11 question, can you please tell me what you were going to say?

12 A I believe that the temporal duration with people with serious mental
13 illness sometimes is very skewed, and so the amount of time that transpired in
14 between, it certainly isn't hours, but, you know, him being able to say it was five
15 minutes or three minutes or things like that would be very difficult based off of my
16 experience working with long, chronic individuals who have schizophrenia.

17 Q And are you saying that that would be difficult for the defendant to tell
18 you the time frame?

19 A Yes.

20 Q Now did the defendant ever admit to you how many times he stabbed
21 the victim?

22 A Yes. I believe he said -- the word 30 jumped to my mind. I think he
23 said he did it 30 times.

24 Q And there was discussion that the defendant and the victim met and
25 had, I believe the words were a brief encounter that morning, did the defendant tell

1 you what he and the victim did before the killing?

2 A They were -- they rolled up some marijuana that he brought from
3 California, they were smoking it, and then were going to get lunch.

4 Q So did the defendant admit to being under the influence of cannabis?

5 A He did.

6 Q Now, there was also a line of questioning about the defendant's time at
7 Lake's Crossing while he was awaiting a competency determination.

8 A Correct.

9 Q And he was there from September 2018 through January 2020.

10 A Correct.

11 Q Did you review those records as part of your evaluation?

12 A I did.

13 Q So let me ask you, were you surprised by the length of time he spent
14 awaiting the competency determination?

15 A Well, I don't think he was waiting the competency determination. I think
16 the time to restore him was a long -- a long period of time, yes.

17 Q And was there anything in the records that led you to believe why it took
18 a longer time to restore him to competency?

19 A I believe that he had gone long periods of time of not being treated. We
20 know that that refractory -- that individuals who have schizophrenia who have this
21 kind of refractory schizophrenia, i.e., untreated, take a lot longer to kind of restore,
22 to bring -- not even just restoration for legal purposes, but to actually get control of
23 their delusions of hallucinations. It also appears that he has been tried on numerous
24 medications and actually the medication that ultimately was used -- that ultimately
25 was used and he was found competent is actually kind of the end of the line, it has a

1 lot of side effects associated with it.

2 But ultimately that medication, something called Clozaril, was what
3 allowed him to be able to be restored to competency and that would not have been
4 the first medication that they would have pulled out of the box and they would have
5 tried. So think they -- it appears from the record that they tried a couple different
6 medications, and then in order to be able to use this medication, Clozaril, it usually
7 requires that you use at least two medications, two antipsychotic medications before
8 you can use that medication. That appears to be he failed two medications, they
9 started him on another one, and then his response, after being on that medication,
10 seemed to be fairly consistent with, you know, within four or so months, four or five
11 months, he was certainly returned and functioning and was not suffering from the
12 severe symptoms of his schizophrenia.

13 Q Okay. So let me ask you some follow-ups there because you said --
14 you said a lot. Let me just make sure that I'm understanding. So you said before he
15 can get on the Clozaril?

16 A Clozaril.

17 Q He would have had to go through two medications prior to that; is that
18 right?

19 A That's usually the standard practice when we talk about Clozaril use,
20 yes.

21 Q So tell me, when somebody starts a medication to treat schizophrenia,
22 how soon are you able to determine whether it's working or not?

23 A Usually -- usually we'll -- in an in-patient setting, usually within five days
24 or so we can start seeing some evidence. To actually get kind of decent control of
25 the delusions and the hallucinations, you're usually looking at three or four weeks.

1 And lot of times what we do is that, you know, we start off with the lowest dose
2 possible to get the effect and the control. Because these medications, these
3 antipsychotic medications have significant long-term consequences, so -- and lower
4 the dose, and we don't necessarily know, it's not like everybody has a operating
5 instruction, give X amount of medicine and you'll get control. So we start low and so
6 it's not unusual to take a couple months and kind of titrate a medicine up to see
7 whether or not it's going to work or not before you abandon it and go to a different
8 medication.

9 Q And if a certain medication isn't working for someone can they just -- is
10 it recommended that they just stop taking it cold turkey or is there a weaning off
11 period?

12 A It depends -- it depends on the medication. We typically -- there's a
13 process what we call cross-taper where we'll start another med -- a new medication
14 and we'll go up and we'll bring the other one down as we continue going up. So that
15 is a process that, you know, can take a couple -- it can take a couple weeks to a
16 month.

17 Q Thank you.

18 MS. DUNN: Pass the witness, Your Honor.

19 THE COURT: Any recross?

20 **RECROSS-EXAMINATION OF HERBERT F. COARD, III**

21 BY MR. MARCHESE:

22 Q Doctor, I just have one last question in reference to that knife, I was a
23 little confused on redirect, did Mr. Rivera indicate that he had shown him the knife,
24 Mr. Rincon the knife, before he pulled it out or did he not?

25 A My recollection of what he said to me was that he had taken the knife

1 out and put it on the backpack.

2 Q Okay. So the conclusion there or the possibility would be that
3 Mr. Rincon had seen the knife before he stabbed him, correct?

4 A I don't know what the victim saw.

5 Q Correct. But at least he had it out?

6 A Yes.

7 Q I could have -- well, I don't have a knife, but if I have a knife right now, if
8 you're looking at me you could have seen it, right?

9 A Correct.

10 Q Okay. But that's what he told you over a year and a half or after the
11 alleged incident, correct?

12 A That is correct.

13 Q And he told the police something much different on July --

14 A 10th.

15 Q -- 10th, 2018 --

16 A Yes.

17 Q -- correct?

18 A That is correct.

19 Q He was concerned that Mr. Rincon knew he had a knife, yet he never
20 told him about it or showed it to him, correct?

21 A That is correct.

22 MR. MARCHESE: No further questions.

23 THE COURT: Anything else for this witness?

24 MS. DUNN: No, thank you.

25 THE COURT: We may have a question from the juror. She's ready.

1 [Bench conference transcribed as follows:]

2 THE COURT: Okay. The record will reflect the hearing's taking place outside
3 the presence of the jury panel. Court's Exhibit Number 8: Did you see police video,
4 Best Buy, 7-2? If so, what was your evaluation at that time of his behavior?

5 MS. MOORS: Lindsey Moors for the State, Your Honor. I think that that
6 question can be asked and he did not see the video.

7 MR. MARCHESE: Yeah, I mean, it's kind of asked and answered.
8 Remember I said you -- I don't think you've seen it and I'll move on? But --

9 THE COURT: You were talking about the Best Buy video?

10 MR. MARCHESE: Yeah.

11 MS. MOORS: Oh, I thought you were talking about -- Lindsey Moors for the
12 State, I thought you were talking about Molasky.

13 MR. MARCHESE: Oh, no, I'm sorry.

14 THE CLERK: One at a time.

15 MS. MOORS: Yeah, Lindsey Moors for the State. I thought that
16 Mr. Marchese was talking about Molasky.

17 MR. MARCHESE: You're right. I misunderstood the question. I don't have a
18 problem if she wants to --

19 THE COURT: Okay. Then I will ask Court's Exhibit Number 8 then.

20 Court's Exhibit Number 7, these are from Juror Number 2: Is it possible
21 after time passed he realized it was wrong but didn't know at the time of the incident
22 it was wrong? That's the first question.

23 Is it even remotely possible he was insane at the time of the crime?

24 Question Number 3: Still not clear on what determines if someone is
25 insane. Can you explain again?

1 Number 4: Is insanity always a permanent condition or can it be a
2 temporary condition? Can insanity be triggered?

3 There's more. Could the defendant accurately speak to their mental
4 state in the distant past? What -- what it determined if he was -- oh, was it
5 determined if he was on his medication at the time of the incident?

6 So there are six questions. Clearly he's having a hard time with this
7 proposition of law which is probably normal.

8 MS. MOORS: Sure. Lindsey Moors for the State, Your Honor. I think that
9 the Number 1 question can be asked. I believe that it's proper and it hasn't been
10 asked. The Number 2 question I believe cannot be asked because it goes to the
11 ultimate issue, so I would object to that. Number 3 I believe can be asked and I
12 think we would welcome follow-up on that question because it appears to be
13 confusion. I think Number 4 also can be asked and I think that it's not objectionable.

14 And then with regards to the next page, I would say that Number 5
15 could be asked as well. And then I think also Number 6 could be asked. So I guess
16 the only one I have an objection to is Number 2.

17 MR. MARCHESE: Yeah, I object to Number 2 as well. Can I -- can I flip it
18 over?

19 THE COURT: Absolutely. Absolutely. They're not bad questions. He's
20 clearly --

21 MS. MOORS: No, they're --

22 THE COURT: -- trying to understand.

23 MS. DUNN: Yes.

24 MR. MARCHESE: Yeah, I don't -- those are all fine questions, Your Honor,
25 except Number 2.

1 THE COURT: Okay. So the Court will ask Court's Exhibit 7 and 8 but on
2 Number 7 I won't ask Question Number 2. Okay. We're off.

3 [Bench conference ends.]

4 THE COURT: Does the State stipulate to the presence of the jury panel?

5 MS. MOORS: Yes, Your Honor.

6 THE COURT: And the defense?

7 MR. MARCHESE: Yes, Your Honor.

8 THE COURT: Okay. I have what has been marked as Court's Exhibit
9 Number 7, and the jury has some questions. The first one is, Is it possible after time
10 passed he realized it was wrong but didn't know at the time of the incident it was
11 wrong?

12 THE WITNESS: It would be possible that over the course of time that he
13 could have appreciated that the conduct that he was doing was wrong. That is
14 possible.

15 THE COURT: Okay. The next one: Still not clear on what determines if
16 someone is insane. Can you explain again?

17 THE WITNESS: Sure. So when we talk about insanity, you have to have this
18 delusional belief, you have to have this idea of -- that appreciation of the
19 circumstances, and then understand that your conduct or what you did was not --
20 was against the law. So the best way to think about this is kind of the descriptions
21 that were used. I might -- I might do the descriptions just a little bit differently maybe
22 to help -- so the two -- the idea that you were delusional in a state, believing that you
23 were at war here in downtown Las Vegas and you believe that people were shoot --
24 that the people were out -- the other side was against you. That makes a whole lot
25 of sense, right? You know, you're trying to protect yourself, you're trying to protect

1 your family. You're trying to do something to protect yourself.

2 So the other scenario that's -- they use was this idea that you had this
3 delusional belief that you're at war and you were -- and that you shot, you know, a
4 tourist. Well, in that circumstance that wouldn't conform to the law because the law
5 is pretty clear that we don't go around shooting tourists. It's not what we could --
6 that's not what we would do in being able to appreciate that, I think is a better way of
7 thinking about it.

8 The -- it also really has to do with, like, what is that level of threat that
9 you perceive. You know, if they're going to just leave you alone, do you really, you
10 know, what was the danger if you're just walking down the street as a soldier and
11 you believe that you were a soldier. Well, lots of delusional people walk down the
12 street believing that they're a soldier, but they don't act out violently against anyone.
13 They're just trying to get away. And so in that circumstance you've got the
14 delusional belief but you don't see a threat and you conform your behavior to the
15 law, i.e., you don't hurt someone because you don't see them as a threat.

16 THE COURT: Okay. Thank you.

17 Is insanity always a permanent condition or can it be a temporary
18 condition? Can insanity be triggered?

19 THE WITNESS: There's a couple points there, Your Honor.

20 THE COURT: Okay. I'll ask the first one. Is insanity always a permanent
21 condition or can it be a temporary condition? So permanent versus temporary.

22 THE WITNESS: So it usually is a -- usually it is a temporary condition. It is
23 the -- it is the exacerbation of the mental illness, in this case schizophrenia, to the
24 point in which someone can't appreciate the wrongfulness of their acts.

25 THE COURT: Okay. Can insanity be triggered?

1 THE WITNESS: I kind of go back to the same idea that I think when we think
2 about -- when we think about mental illness, serious, persistent mental illness like
3 schizophrenia, we -- we talk about something called the diathesis stress model
4 which is is that when an individual was under more stress, that stress can tend to
5 exacerbate those delusions or those hallucinations. So can it be triggered from
6 increased stress or circumstances or the use of drugs? Absolutely.

7 THE COURT: Okay. Could the defendant accurately speak to their mental
8 state in the distant past?

9 THE WITNESS: Yes.

10 THE COURT: Okay. The next, Was it determined if he was on his
11 medication at the time of the incident?

12 THE WITNESS: It does not appear that he was medication compliant.

13 THE COURT: Okay. And Court's Exhibit Number 8: Did you see police
14 video, Best Buy, July 2nd? If so, what was your evaluation at that time of his
15 behavior?

16 THE WITNESS: I did not see the video. I read a report of the occurrence.

17 THE COURT: Okay. Any follow-up from the State of Nevada?

18 MS. DUNN: Yes, Your Honor.

19 BY MS. DUNN:

20 Q So I want to touch on -- on the definition of legal insanity again to make
21 sure that we're all on the same page. So under the modified M'Naghten, you need a
22 delusional state?

23 A Correct.

24 Q And that has to be caused by a disease or a defect of the mind?

25 A Correct.

1 Q In addition to that, you need either, A, to know and understand what
2 you're doing; or to know that what you're doing was wrong?

3 A Correct.

4 Q And in this case you determined that the defendant was likely under a
5 delusional state?

6 A Correct.

7 Q So to be legally insane you need to be in the delusional state?

8 A Correct.

9 Q That needs to be caused by a disease or defect of the mind?

10 A Correct.

11 Q To be legally insane you have to not know that what you're doing is
12 wrong?

13 A Correct.

14 Q Or you have to not understand what you're doing?

15 A Correct.

16 Q So in this case you determined that the defendant was in a delusional
17 state?

18 A Yes.

19 Q And that that was likely caused by a disease or defect of the mind?

20 A Yes. Schizophrenia.

21 Q Did you reach a conclusion about whether he understood the capacity
22 of his actions? That is that he knew what he was doing?

23 A I did.

24 Q And your -- what was your conclusion?

25 A That he did.

1 Q That he did know. And in order to be legally insane he would have to
2 not know?

3 A Correct.

4 Q Also, the other option would be to be legally insane, he would have to
5 not know that what he was doing was wrong?

6 A Correct.

7 Q In this case, in your expert opinion, did he know that what he was doing
8 was wrong on July 1st, 2018?

9 A I believe that he understood what he was doing was wrong. He didn't
10 conform his behavior to the conduct -- or of the -- to the law.

11 Q Thank you.

12 THE COURT: Thank you.

13 MR. MARCHESE: No recross.

14 THE COURT: Okay. All right. Anything else for this witness? Okay. Thank
15 you very much for your testimony here today. You may step down. I don't think
16 you're excused from your subpoena. I would just ask you to speak to the attorney
17 that subpoenaed you here today because they may want to recall you

18 THE WITNESS: Yes, Your Honor.

19 THE COURT: But thank you very much for your testimony.

20 At this time we are going to recess for lunch. During this recess you
21 are admonished to not discuss or communicate with anyone including fellow jurors
22 in any way regarding the case or its merits either by voice, phone, e-mail, text,
23 Internet or other means of communication or social media; or read, watch, or listen
24 to any news or media accounts or commentary about the case; or do any research
25 such as consulting dictionaries, using the Internet or using reference materials or

1 make any investigation, test a theory of the case, re-create any aspect of the case,
2 or in any other way investigate or learn about the case on your own or form or
3 express any opinion regarding this case until it is finally submitted to you.

4 And we'll be in recess until 1:30. Thank you.

5 THE MARSHAL: All rise for the jury.

6 [Outside the presence of the jury panel]

7 THE COURT: And you think he'll be revved up -- Dr. Chambers will be ready
8 to go on the computer at 1:30?

9 MR. MARCHESE: As soon as I hear something --

10 THE COURT: Okay.

11 MR. MARCHESE: -- to the contrary, I'll let you know.

12 THE COURT: All right. Will you just make sure someone on Department 12
13 staff knows? And thank you.

14 MR. MARCHESE: Yeah.

15 THE COURT: Thank you very much.

16 MS. MOORS: Thank you, Your Honor.

17 [Recess at 12:15 p.m.; proceedings resumed at 2:30 p.m.]

18 [Outside the presence of the jury panel]

19 THE COURT: Okay. The record will reflect the hearing is taking place
20 outside the presence of the jury panel. And the defendant is present.

21 Go ahead.

22 MS. MOORS: Thank you, Your Honor. Lindsey Moors on behalf of the State.
23 So it's -- my question is a little bit confusing, but I know yesterday we canvassed the
24 defendant and I believe Your Honor said that he had heard everything the State
25 intended to present in their case-in-chief.

1 THE COURT: No, I'm going to canvass him again.

2 MS. MOORS: Okay. We just didn't know if that needed to happen again.

3 That was the only question that the State had because our procedural posture had
4 kind of changed today in that we had more of our case-in-chief.

5 THE COURT: Have you rested?

6 MS. MOORS: We have not, Your Honor. So we do need to rest because I
7 just need to inquire about the status of the exhibits and then we will be resting.

8 THE COURT: Okay. Do you want to start inquiring about the exhibits?

9 MS. MOORS: Sure.

10 THE COURT: While we're just -- while we're waiting for --

11 MS. MOORS: Yes, Your Honor. I believe we had agreed that all of the
12 State's proposed exhibits except for two that we had initially pulled would be
13 admitted by stipulation. I just wanted to make sure that the record was correct and
14 all of those exhibits had been admitted even if not all of them had been published to
15 the jury.

16 THE CLERK: Yes. That is Exhibit 1 through 19 and 21 through 48 were all
17 admitted by stipulation.

18 MS. MOORS: Fantastic. And then based on that, Your Honor, we would --
19 the State would be resting.

20 THE COURT: Okay. When the jury comes back in I'll allow you to rest.

21 MS. MOORS: Okay.

22 THE COURT: In front of the jury.

23 So, Mr. Rivera, if you don't mind standing up.

24 I know that I talked to you yesterday about -- about whether you were
25 going to testify or not. And I just want to ask you again today because the State had

1 one more witness. Have you had an opportunity to discuss with your lawyer
2 whether you're going to testify?

3 THE DEFENDANT: Yes.

4 THE COURT: Okay. And is your decision still the same that you wish to
5 remain silent?

6 THE DEFENDANT: Yes.

7 THE COURT: Okay. Do you have any questions about that?

8 THE DEFENDANT: No.

9 THE COURT: Okay. Thank you.

10 [Pause in the proceedings]

11 [In the presence of the jury panel]

12 THE MARSHAL: All rise for the jury.

13 THE COURT: Does the State stipulate to the presence of the jury panel?

14 MS. MOORS: Yes, Your Honor.

15 THE COURT: And the defense?

16 MR. MARCHESE: Defense does, Your Honor.

17 THE COURT: Thank you. And thank you, ladies and gentlemen, for your
18 patience. We do have the witness available and, Mr. Marchese -- let's see,
19 Ms. Moors, is the State going to rest?

20 MS. MOORS: Yes, Your Honor, at this point in time the State would be
21 resting.

22 THE COURT: Okay. Mr. Marchese, you may call your first witness.

23 MR. MARCHESE: Yes, Your Honor, and then pursuant to stipulation between
24 the parties, the defense would move to admit into evidence Exhibits A, B, C, D, E,
25 and F. We would not be admitting G. We will be admitting H. We will not be

1 admitting I. We will be admitting J and then we will be admitting K through O, not P
2 and Q, and then we will also be admitting --

3 THE COURT: Can you hear?

4 THE CLERK: No.

5 THE COURT: Okay. Mr. Marchese, we can't hear. We can't hear. So I don't
6 know what we're going to have to do. Maybe you can come up closer.

7 MR. MARCHESE: Yeah, no problem.

8 THE COURT: So the clerk and I can both hear. Or I hate to --

9 MR. MARCHESE: And I'll speak up.

10 THE COURT: Yeah, you're going to have to start over. Just a minute.

11 Sara, can we mute him until -- because maybe that will help.

12 Okay. Thank you, go ahead.

13 MR. MARCHESE: Thank you. And then pursuant to stipulation between the
14 parties, the defense would move for Exhibits A through F. We will not be admitting
15 Exhibits G and I. We will be admitting H. We will then be moving to admit J through
16 O, not P and Q, and we will also be moving to admit S, as in Sam, and I believe we
17 already admitted Exhibit U. And with that, Your Honor, I am ready to call my
18 witness.

19 MS. MOORS: What about R?

20 THE CLERK: Was T included in there because I didn't hear anything about T.

21 THE COURT: So, what about Exhibit T?

22 MR. MARCHESE: T as in Tom?

23 THE COURT: T as in Tom.

24 MR. MARCHESE: We will not be admitting T.

25 THE COURT: Okay.

1 MR. MARCHESE: And we will be admitting R. Is that what you have?

2 THE CLERK: Yes, to R?

3 THE COURT: And yes to R?

4 MR. MARCHESE: R as in Ronald, yes.

5 THE COURT: Okay.

6 THE CLERK: Thank you.

7 THE COURT: Okay. And that's a correct statement of the stipulation?

8 MS. MOORS: Yes, Your Honor, that is correct.

9 THE COURT: Okay. They are all admitted.

10 **[DEFENSE EXHIBITS A THROUGH F ADMITTED]**

11 **[DEFENSE EXHIBIT H ADMITTED]**

12 **[DEFENSE EXHIBITS J THROUGH O ADMITTED]**

13 **[DEFENSE EXHIBIT S ADMITTED]**

14 **[DEFENSE EXHIBIT R ADMITTED]**

15 THE COURT: And you may begin.

16 MR. MARCHESE: And then defense would call Dr. Mark Chambers to the
17 stand.

18 THE CLERK: Mr. Chambers, can you please raise your right hand? Can you
19 see me?

20 THE WITNESS: Yeah, no, ma'am.

21 THE CLERK: Is it okay, Judge?

22 THE COURT: Yeah.

23 **MARK CHAMBERS,**

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

25 THE CLERK: Can you please state and spell your first and last name for the

1 record.

2 THE WITNESS: Mark Chambers, M-A-R-K, C-H-A-M-B-E-R-S.

3 MR. MARCHESE: May I proceed?

4 THE COURT: Yes, you may.

5 **DIRECT EXAMINATION OF MARK CHAMBERS**

6 BY MR. MARCHESE:

7 Q Mr. Chambers, what is it that you do for a living?

8 A I'm a clinical and forensic psychologist.

9 Q And if you could just explain briefly to the jury exactly what that is.

10 A Sure. The clinical psychologist is the one you typically think of when
11 you think of someone who provides you with counseling services, help with issues
12 like depression or anxiety, problems with family or relationships. We also do
13 psychological testing and diagnosis in addition to providing therapy services and
14 treatment. A forensic psychologist is a professional who uses psychological
15 research and principles and applies them to the -- to court-related settings. So
16 essentially they provide information to usually the trier of fact, a judge or the jury,
17 with psychological information that might be helpful to them in making up their --
18 their minds about a particular case in front of them.

19 Q Do you have any specialized education in order to be a psychologist --
20 forensic psychologist?

21 A Yes, of course.

22 Q And what would that be?

23 A Well, I did my undergraduate studies at Stanford University. I
24 graduated from there with a major in psychology and a minor in biology. I graduated
25 with distinction, Phi Beta Kappa. I also went on to earn a master's degree at

1 Stanford in education, then went on to complete my doctoral studies at
2 Northwestern University where my focus was clinical psychology. But I also
3 received some degree of forensic training there as well. So I graduated with a Ph.D.
4 in clinical psychology from Northwestern.

5 Q And can you explain to the jury a timeline as to when you got these
6 degrees?

7 A Yes. I graduated from Stanford with my bachelor's degree in '79, my
8 master's degree was in '80, and my Ph.D. was in '88.

9 Q And did you receive some sort of licensure?

10 A Yes. I was originally licensed in California, which was where I was first
11 employed after earning my Ph.D., and then I moved to Nevada in 1993, and I think I
12 obtained my license in Nevada either later in '93 or in '94. I don't remember for
13 sure. But I've been licensed in Nevada ever since.

14 Q And have you been working as a forensic psychologist ever since
15 you've been licensed?

16 A I have. Well, I've been working as a psychologist, as a clinical
17 psychologist since -- since 1988. I gradually moved into the forensic field after
18 starting a private practice in 1999. But for the past, I'd say, 10 or 15 years, forensic
19 psychology has been my primary focus in my practice.

20 Q Have you ever testified in court before?

21 A Oh, yes, I have, many times.

22 Q When you say "many times," how many would that be approximately?

23 A Over a hundred.

24 Q And of those hundred times, give us some examples of who you've
25 testified for.

1 A Well, I've testified in District Court like this one on numerous occasions.
2 For a time I did a fair amount of work for Family Court and so I would often be
3 involved in cases there. I've also testified in Federal Court both in Nevada but also
4 all over the country. I contract -- and this is what I'm doing now, so I apologize for
5 making everybody wait, but I'm involved in a Federal case, actually it's a military
6 court martial in California, but that work for the military actually takes me all over the
7 world.

8 Q So you've testified for the defense before, correct?

9 A Yes, sir.

10 Q And have you ever testified for the prosecution?

11 A Yes. Most of the work that I do for the prosecution ends up being in
12 these military cases I just referred to. But as far as those cases are concerned, my
13 work is fairly evenly split between the prosecution and the defense.

14 Q And when you testified in Family Court, what was the nature and
15 circumstances of that?

16 A Usually those cases involved an issue of child custody. So either I had
17 conducted a child custody evaluation with the intent of trying to determine the
18 custodial arrangement that would be in the best interest of the child. But also I have
19 done psychological evaluations on the parties who were involved in a child custody
20 dispute. So sometimes the psychological stability or parenting ability of one or both
21 of the parents has been called into question and then I will be asked to conduct
22 psychological evaluations on those individuals and then provide a report and
23 conclusion.

24 Q And you've testified as an expert in all those particular situations
25 whether it be court martial, Family Court, District Court, Federal Court?

1 A Yes, sir.

2 Q Do you know the name Shelbe Rivera?

3 A I do.

4 Q And how do you know that name?

5 A Well, I was asked to participate in this case shortly after his arrest in
6 2018, specifically I was asked to conduct an evaluation, a psychological evaluation
7 to determine his mental state at the time of the event in question in the case.

8 Q And when you talk about this evaluation, describe to the jury exactly
9 what you do in these evaluations.

10 A To begin with I will review all of the available documents in the case
11 which usually includes the charging sheet, the arrest reports in a -- in a case like this
12 there might be an autopsy report as well, sometimes there are interviews with the
13 relevant parties, for instance, the defendant himself or witnesses. I don't believe
14 there are any other witnesses, but I think there was a brief interview that was done
15 with the defendant. So I will review those materials first and usually also confer with
16 the defense attorney to get some background and to understand what the issues
17 are.

18 In this case I also reviewed fairly extensive medical records, primarily
19 psychiatric records, from various psychiatric hospitals and facilities so that I could
20 get an idea about the defendant's mental health history. And all of that helps to
21 prepare me to go in and meet with the defendant so I know what the background is
22 and I know, essentially, what questions I will need to ask.

23 Q And in this case did you go and interview the defendant?

24 A I did.

25 Q And when was that, if you remember?

1 A I don't remember the exact date. I believe that it was around July or -- I
2 can look it up real quick if you want -- July or August of 2018. One second. It was
3 August, early August of 2018.

4 Q And that would be August 2nd, 2018?

5 A Yes, sir.

6 Q Okay. And the date of the allegation in this offense -- or this case, that
7 would have been July 1st, 2018?

8 A That is correct, yes.

9 Q Okay. So you interviewed him approximately a month after the date in
10 question?

11 A That's right.

12 Q Okay. And when you go and interview Mr. Rivera, you stated
13 previously that you would review the case file, right?

14 A Correct.

15 Q And you did that in this case, right?

16 A Yes.

17 Q And when you say that you were contacted by the attorney that would
18 actually have been me, right?

19 A Yes, sir.

20 Q Okay. And you did go to interview him on August the 2nd, 2018, right?

21 A Correct.

22 Q Okay. So when you get to the -- to interview Mr. Rivera, what's the first
23 thing you did?

24 A Well, I introduce myself. I explain why I'm there, who I am, what I am,
25 that I'm a forensic psychologist. I explain that I was essentially contacted to

1 participate in the case by his attorney, which would have been you, and I explain
2 essentially what I'm there to do which is to assess his mental state. I also advise
3 the defendant as to his rights and what he'd expect in the interview. So I let him
4 know that I might be writing a report based on the information that he provides me
5 and that that report could eventually be seen by the Court so that he knows that
6 anything that he says might be revealed to the Court and then I also advise him that
7 he is under no obligation to answer any specific question that I ask or that he can
8 terminate the interview at any time. So I -- that's how I start off the introduction.

9 Q Okay. And did Mr. Rivera interview with you?

10 A He did. I recall him being reasonably cooperative and doing his best to
11 answer the questions that I asked him.

12 Q What would be the first topic that you started asking Mr. Rivera about?

13 A Well, I can take a couple of different approaches when I do these
14 evaluations. Sometimes I'll just get some general background information first and
15 then talk about the incident or I may do it the other way around. In a case like this,
16 with something that's as sensitive and as important as the charge that he's facing in
17 this case, I like to talk about the background first so I can kind of -- with him a little
18 bit, get some compliance with him by answering easy questions first and hopefully
19 he can feel a little bit more comfortable with me where we just kind of talk about who
20 he is and where he's from and what his history and background is and that also
21 helps me to get a little bit more information about his mental history.

22 So we'll get into that eventually because ultimately that's maybe the
23 most important aspect of his history is knowing if he had mental health issues prior
24 to the incident in question and exactly what those were. So as I recall that was the
25 order of events. So I try to essentially go through the individual's biography in a

1 rather chronological fashion, so starting with where he was born and family he grew
2 up in, how he did in school, and then moving along to his adult life and his
3 employment history, relationships, and prior criminal history, history of drug abuse
4 and then once we've kind of gone through all of that and gotten all that background,
5 talk about his mental health problems and what he can remember of that, and then
6 finally we talked about the incident itself, get the background, what led up to it, and
7 most importantly to get a sense of his thought processes when the incident
8 occurred.

9 Q Now, in reference to background, you stated that you asked him
10 questions about his background, was there anything of note that you heard as the
11 evaluator in this particular case?

12 A Well, yes. The -- the most important part, obviously, is the mental
13 health history and -- and it became clear that he had had mental health problems for
14 a long time and it seems now, knowing everything that I know now because we
15 always get more information afterwards, especially given that it's been almost three
16 years since I saw him, but, you know, he -- he reported a mental health history going
17 back to about 2013. But now it appears to me that it goes back even farther than
18 that, but even with what he told me and multiple mental health hospitalizations and
19 been on a number of different psychiatric medications and had displayed various
20 symptoms indicative of a psychosis, a psychotic psychiatric disorder.

21 Q And what would that psychiatric order be?

22 A My conclusion was and it's consistent with most of the psychiatric
23 records, is that he suffers from schizophrenia.

24 Q And we've already heard testimony as to what schizophrenia is, so I
25 won't go too far in depth into that, but in reference to other than this mental health

1 history, was there anything else in his background that you found of note as the
2 evaluator?

3 A Well, he had issues in school. I believe that he received special
4 education services starting in the sixth grade and then ended up dropping out of
5 school in the ninth grade. So obviously there are some issues with intelligence and
6 education. He had a fairly extensive criminal history, lots of arrests. Although, it
7 seems like some of those were at least for fairly minor things. And then he had a
8 couple of head injuries that he reported due to accidents. Well, actually, I think one
9 was an accident; one was a fight. And then -- and then we talked about his drug
10 use history and he reported that -- that he had been using marijuana on a fairly
11 regular basis going back to I think about the age of 13.

12 Q Now, in reference to his intelligence, were you ever able to ascertain his
13 IQ?

14 A Yes. I eventually did see some reports indicating results of IQ testing,
15 and if I recall, his IQ was in the high 60s which is generally -- we don't use the term
16 mental retardation any more, but generally an IQ in the high 60s would be
17 associated with mild mental retardation.

18 Q Now, that's information that you get prior to coming into your interview
19 with Mr. Rivera, correct?

20 A Some of it, yes, I didn't have all of -- all of the records at the time that I
21 saw him. I received records since, but I certainly reviewed everything that I had
22 available to me at the time that I saw him.

23 Q Now, when you're evaluating someone who is found to be with a lesser
24 IQ, as it is in this case, how, if at all, does it affect your interview process?

25 A The main way is just in the language that you choose and it heightens

1 your awareness of a possibility that the person you're interviewing might not
2 understand the questions that you ask. So you take a little bit more care, I think, in
3 choosing more fundamental words and explaining very clearly what you mean and
4 testing the interviewee, which means you kind of ask him, Do you know what I
5 meant; do you understand that; can you repeat it back to me; doing things like that,
6 and I believe I did that with him a few times.

7 Q So you're going to talk slower?

8 A Yes.

9 Q You're going to use smaller words?

10 A Correct.

11 Q And you might ask the same thing twice just so that the individual
12 understands?

13 A If I have any reason to believe that he might not have understood either
14 by his facial expression or the answer that he gave, then, yes, I try to, you know, to
15 somehow confirm that he's understood the question or what I told him if I'm giving
16 him information.

17 Q During the course and scope of your interview, did that ever become an
18 issue that you felt he wasn't understanding the questions?

19 A I don't believe so. I think most of the time the answers that he gave me
20 were appropriate to the questions asked. There were times when the answer that I
21 gave -- that I received was less than satisfying. But that was, I don't think, because
22 of a misunderstanding of the question, but more just a difficulty on his part
23 articulating his answer, particularly when it came to his mental processes. He had
24 trouble at times, kind of, describing how he was feeling and thinking at certain points
25 along the way, particularly with respect to the, you know, the incident in question.

1 That's not unusual for people that have schizophrenia. So you do the best you can
2 to try to help them understand what you're asking by asking it several different ways.
3 But that only goes so far and sometimes you just have to accept whatever answer
4 you get.

5 Q Now, you've kind of -- that's a perfect segue, you've talked about the
6 incident in question and how you interviewed Mr. Rivera about it, correct?

7 A Yes.

8 Q Okay. So when you asked him about it, how did you start? What kind
9 of questions did you ask?

10 A I believe I said to him, okay, now we're going to talk about the incident
11 that's the reason you're here, the reason that you got arrested. I want you to just
12 kind of recount for me what happened that day. And I'll kind of get them started on
13 the story and then intervene several times as they're telling it. So I said, you know,
14 what -- how did that day start I think I asked or something to that effect, which is
15 when described to me that he had taken a bus into Las Vegas from -- from
16 California, Victorville, I believe, in California, and that soon after he got off the bus
17 he met the victim and -- and I clarified with him that this was not something --
18 someone he knew before or had any prior dealings with, that this was essentially a
19 stranger that he encountered, you know, after arriving here.

20 Q Okay. And was he able to tell you where he met him?

21 A Not exactly. You know, he had gotten off the bus and walked from the
22 bus station. I don't think he was real familiar with Las Vegas so it was difficult for
23 him to describe, like, streets or areas or locations. I think he just met this gentleman
24 on the street, they talked for a bit. At some point apparently, they discussed
25 smoking marijuana together. I think the victim indicated that he had some on him,

1 and so as I understood it, he kind of followed the other gentleman to the location
2 where they ended up. But he couldn't say much more about it other than it was
3 behind a building and that there was -- I think he said there was dirt if I remember
4 right, so.

5 Q Okay. So when they get to the area behind this unknown location by
6 the building, were there any indications that Mr. Rivera was suffering from any
7 delusions?

8 A Yes. He had mentioned that as he and this other gentleman were
9 talking, that he had reasons to believe that this individual either knew him or knew
10 people that knew him, that there was some sort of a connection between the two of
11 them. And, you know, he found that to be somewhat concerning, somewhat
12 suspicious. So I think even before they sat down to -- they start smoking marijuana
13 together, his guard was up a little bit from what I understood he told me.

14 Q Now, based on your review of the records in the case file, were you
15 aware of any connection between Mr. Rincon and Mr. Rivera?

16 A To the best of my knowledge, there was none prior to that day.

17 Q Now, the two individuals, they sit down, they're behind this building,
18 they're smoking marijuana, what happened then?

19 A Well, they were -- they were talking about where they were from and he
20 said that he told the -- the victim that he was from New York. And -- and so they
21 started smoking marijuana he said, and then he described the victim looking at him,
22 I'll quote him to make it easier who I'm talking about, he said that the victim, quote,
23 Looked at me like he was about to do something, unquote.

24 Q Now, were you able to clarify what that mean, that he was about to do
25 something, quote?

1 A No. You know, I asked what it was about his -- the other man's
2 expression that made him think that and this is -- gets to what I was talking about
3 before, that he had difficulty articulating his thought process beyond that, other than
4 just to say he looked like -- he looked at me like he was about to do something and I
5 tried several different ways to get more explication of that, couldn't really get
6 anything more than that was just the feeling that he had.

7 Q So you tried to clarify, but you couldn't get an answer, basically?

8 A I did. Yes.

9 Q Did he talk to you about a knife?

10 A Yes.

11 Q And could you elaborate on what he told you about the knife?

12 A Yes. He said that as they were talking the -- the other gentleman
13 suddenly said to him, Let me see your knife. And that was significant to him
14 because he said to me that he had never mentioned to this man that he had a knife.
15 And so the presumption of the man that didn't say, hey, do you have a knife, or, hey,
16 any chance you can give me a knife, he just said, Let me see your knife, and so
17 Mr. Rivera found that to be suspicious and alarming because to him, as he
18 described to me, how did this guy know I had a knife.

19 Q Was there anything else, based on your interview, at the time that
20 Mr. Rivera was with Mr. Rincon, that you remember, that Mr. Rivera found, in your
21 words, suspicious and alarming?

22 A Well, he -- he talked about this thing that he called the east coast/west
23 coast dispute as if these are rival gangs from two parts of the country. And it was --
24 and this goes back to what I said a moment ago about how they first met he seemed
25 to think the victim might know him. I think one of the things he had said was that the

1 victim approached him and was friendly to him in a way as he had implied that they
2 knew each other even though he said he didn't and -- and then he -- Mr. Rivera
3 makes a reference to this east coast/west coast dispute as if this guy is associated
4 with the west coast group or gang or whatever, whereas Mr. Rivera is part of the
5 east coast crowd and that maybe this man that he's just met who's being friendly to
6 him, seems to act like he knows him, is, you know, checking him out, stalking him,
7 spying on him. He doesn't say those words, but that's implication that I got from his
8 discussion about that, that this guy -- I think what he said was that -- that the way in
9 which the victim was acting towards him made him think that the victim knew him
10 and therefore, he concluded that this person might be planning to do some harm to
11 him.

12 Q So in this case based on your evaluation, you have this background,
13 knowledge of paranoid schizophrenics, why is it of note to you this east coast/west
14 coast issue, New York/California, he's looking at him in a certain way and he knows
15 about this -- this knife; why is that of note to you, if at all?

16 A Well, it's of note because he -- he is characteristic of a particular
17 symptom that is commonly associated with schizophrenia which is called ideas of
18 reference. And I can explain that more if you'd like.

19 Q Yes, please.

20 A Okay. So the concept behind an idea of reference is that certain people
21 with mental illness, particularly schizophrenia, but there are a few other diagnoses
22 that feature it as well, see things around them, neutral, unrelated things around them
23 as being referenced to them in some way. So to give you an example, a person
24 with schizophrenia who experiences ideas of reference might watch a news program
25 on the TV but believe that the newscaster is speaking directly to them and that there

1 are coded words in the broadcast that are meant specifically for them and are
2 sending some sort of a message to them.

3 So it goes hand in hand with the paranoia that these people often
4 experience as well. So they're paranoid and that's heightened paranoid -- paranoia,
5 excuse me, causes them to feel like everything around them is somehow relating to
6 them, even though most of us would just see them as normal, ordinary, neutral kinds
7 of things going on. So you see several examples of that just up to this point that we
8 had described where, you know, he -- this guy is friendly to him and then his mind
9 takes this giant leap to he must be part of the east coast/west coast dispute and he's
10 here to harm me or he's spying on me or following me, in other words, it's all about
11 him when it's really just a stranger he meets on the street, probably another
12 homeless guy who says, hey, you know, you want to smoke a joint with me.

13 And -- and then, you know, the expression that he says the victim had
14 while they were sitting together smoking marijuana is another example of that, you
15 know, well, the guy -- he couldn't describe exactly how the victim was looking at him,
16 just like -- just that he was looking at me in a way that, you know, made me nervous,
17 made me think that -- that he was planning to do something when most of us, most
18 of us who don't suffer from this kind of disorder, wouldn't see anything unusual in
19 that expression.

20 So it's hard for somebody who's never experienced this to understand
21 how that -- the mind works when these ideas of reference are occurring, but it's
22 just -- it's a fairly common symptom of this disorder.

23 Q You said the phrase planning to do something, was there ever a point in
24 time where Mr. Rivera indicated that Mr. Rincon was planning to do something to
25 Mr. Rivera?

1 A Yes.

2 Q And what would that be?

3 A Well, when -- after the knife request, so the victim Mr. -- is it Rincon, is
4 that how you say that?

5 Q Correct.

6 A Yes. Where Mr. Rincon was, you know, had asked for the knife and as
7 I've mentioned already, he had heightened his fear or paranoia about this -- this
8 man and, you know, who he was and what he was planning because how in the
9 world did he know that I had a knife, even though most of us would just think, you
10 know, it was just a lucky guess or a reasonable guess given, you know, the fact he's
11 carrying around a backpack and somewhat transience.

12 But Mr. Rivera stated to me that as he was reaching into his backpack
13 to take out the knife that the victim had asked for, that he started thinking in his head
14 that the man was going to do something. He never said specifically what he thought
15 the man was going to do and that was another time when I asked, several times for
16 some clarification, what did you think he was going to do; what was your
17 expectation; and he couldn't articulate it any further than that. But he had articulated
18 clearly that in that moment he got scared, those were the words that he used, and
19 that he just reacted in doing what he did next.

20 Q And when you say "got scared," what did you take it he was scared of?

21 A Well, I mean, later when I asked -- tried to clarify a little bit more as to,
22 you know, why he reacted that way and, you know, what his thought process was,
23 he did tell me that he -- he thought that he, again, this is a quote, He needed to kill
24 him to protect myself. So that suggested to me that he felt like the victim was going
25 to do him harm in some way, and that he had to protect himself by -- by stabbing

1 him with the knife.

2 Q And you've kind of led into my next question, you said that he had a
3 reaction, what was that reaction when he thought that --

4 A Yeah, the reaction was him stabbing Mr. Rincon repeatedly with the
5 knife.

6 Q And when you say "repeatedly," did you ask him how many times he did
7 it?

8 A I did. He -- he only told me that he had been told it was more than 30
9 times, but it didn't seem like that was coming from his direct recollection, but rather
10 either what -- what he had been told by -- by police or read in the reports or you had
11 told him or I didn't -- didn't determine exactly where he had been told that. But -- but
12 he made it sound as though that -- that number 30 came from an alternative source
13 not from his own memory.

14 Q Now, when you --

15 A I did -- let me clarify that, sorry. I did ask him, well, do you remember it
16 as being different than that, and he said, no, he says that that could be correct. So
17 he didn't dispute that that -- that that number could have been accurate.

18 Q Now, after Mr. Rivera stabbed Mr. Rincon, what actions did Mr. Rivera
19 take, if any?

20 A Well, he -- he described to me that he put the knife in a Dumpster and
21 left behind his backpack. I think -- I think everything that was in his backpack stayed
22 there, and then he also took off the shirt that he was wearing and left it on the
23 ground. And then -- then he -- he left the area.

24 Q After he left the area where did he go, if you know?

25 A Well, he eventually ended up at a nearby Best Buy store. Along the

1 way he said he encountered what he described as a waterfall, I'm not sure what --
2 what he was referring to. But he said he tried to kind of wash up in the waterfall and
3 then continued walking. He mentioned being near a highway at some point and
4 then the police officer had asked him to leave the roadway and then it was some
5 time after that that he ended up at this Best Buy, tried to get in the store, the store
6 wasn't open, so he sat on the bench outside the store and fell asleep.

7 Q And he has no -- none of his possessions at this point is your
8 understanding?

9 A I don't believe so, no, correct.

10 Q Was there ever a point in time during your interview where the name
11 Nicki Minaj came up?

12 A Yes. I believe so, not in -- I don't believe it was in association with this
13 incident. Oh, here it is, yes, yes. Yeah, later, I'm trying to think how that came up,
14 oh, this goes back to the issue of -- of ideas of reference. He had -- so the police
15 had picked him up before he got arrested and taken him to a shelter and -- and then
16 he said that we got to the shelter that he -- he noticed a woman there at the shelter
17 who wore grey pants which was significant to him because the shirt that the victim
18 was wearing was also grey.

19 So here's another example of what I'm talking about with respect to
20 ideas of reference. Okay, grey is not a particularly noteworthy color, lots of people
21 wear grey. But to him somehow it was significant that this woman had grey pants
22 and his, you know, the victim of the case was wearing a grey shirt. They weren't
23 even the same piece of clothing, but nevertheless that was significant to him and
24 then -- and then he told me something about a video by Nicki Minaj that he said was
25 made about me. So, once again, we have these -- this idea of reference that there's

1 a video, you know, made for public consumption that he believes that it's directed
2 towards him.

3 Q Now, through the course --

4 A And I should say one more thing about that, if I can, excuse me. I don't
5 mean to interrupt but --

6 Q Yeah.

7 A [Indiscernible] one of the things that -- that I will do when people
8 describe delusional beliefs to me is I will try to assess their assessment of how
9 reasonable that belief is. Sometimes I'll say, yeah, I know it's crazy, but this is just
10 what I think but in his case these things such as the Nicki Minaj video being about
11 him to him seemed perfectly reasonable and normal and he didn't see anything, you
12 know, unusual about that.

13 Q Now, through the course and scope of your interview, there came a
14 point in time and you even referenced it a little bit already, about marijuana usage,
15 do you remember that?

16 A Yes. Yes.

17 Q And how does that change the evaluation here if at all?

18 A Well, there has been, in the scientific literature, some discussion about
19 the possibility of an association between certain psychotic symptoms, symptoms of
20 psychosis and marijuana use. The literature is somewhat undecided on the
21 cause-effect relationship of those two things. In other words, people with
22 schizophrenia seem to use more marijuana than people who don't have
23 schizophrenia, but it still becomes a cause-effect problem and so are they smoking
24 more marijuana because they're schizophrenic or are they schizophrenic because
25 they're smoking more marijuana. So it can be difficult to make that -- that

1 conclusion because we can't do a normal scientific experiment to answer that
2 question.

3 To do that what we'd have to do is gather a bunch of people randomly
4 divide them into two groups and give one group marijuana for 20 years and the
5 other group not use marijuana and see who has more schizophrenia. We can't do
6 that obviously. So the best we can do is use the natural data that's already out
7 there and as I said, that data does seem to indicate that there's a connection
8 between the two, but we don't know for sure if it's causal.

9 But let's, just for the moment, assume that maybe there is some causal
10 connection between marijuana use and schizophrenia and, okay, Mr. Rivera was
11 using marijuana the day of the incident, as best as I can tell from my interview, that
12 was the only marijuana he had used that day and I didn't get a real accurate sense
13 of how much they used, but I think the two of them shared a joint or maybe they
14 each had one, so I don't think that it was a whole lot that they had consumed before
15 this happened. The other issue is the potency of the marijuana and obviously I don't
16 have any information about that. But there does seem to be some indication in the
17 literature that more potent marijuana is more likely to produce psychotic symptoms.

18 However, we have to look at this individual, meaning Mr. Rivera, his
19 overall history. And first of all, we know that his psychosis goes back quite a few
20 years and even though, yes, he started using marijuana at the age of 13, you know,
21 he has had problems with psychosis on and off for a good portion of his adulthood.

22 The other thing though, the thing that's most significant to me with
23 respect to this question, which I think you implied, maybe didn't ask directly, could
24 the marijuana have caused him to experience this psychosis, these ideas of
25 reference, this paranoia that he clearly experienced during the incident, and to

1 answer that question, all we have to do is go and look back at his other psychiatric
2 history and we have plenty of examples of times that he exhibited psychotic
3 symptoms when he was in what we called controlled environments and didn't have
4 access to marijuana, specifically in jail and in -- in the hospital.

5 So, you know, when -- I'm sure it's already come out in court that he
6 was sent to Lake's Crossing back in 2018 after having a couple of competency
7 evaluations find him not competent to stand trial and as I assume the jury knows by
8 now, he was there well over a year, which is unusual in and of itself. But even at the
9 time that he was seen by those two competency evaluators he had already been
10 jailed for months.

11 MS. MOORS: And, Your Honor, I'm going to object at this point to
12 nonresponsive.

13 THE COURT: Okay. Just a -- Dr. Chambers, I mean, Dr. Chambers, I have
14 an objection.

15 Can you mute him?

16 THE WITNESS: So any effects of acute --

17 MR. MARCHESI: Doctor --

18 THE COURT: Sorry. Sorry, see this is hard. I have an objection. So I didn't
19 get to hear it, so go ahead.

20 MS. MOORS: The objection is nonresponsive, Your Honor. He's way off.

21 THE COURT: Okay. Maybe you can redirect the doctor.

22 MR. MARCHESI: No problem.

23 THE COURT: And you can unmute him. He may continue.

24 BY MR. MARCHESI:

25 Q And, Doctor, you were just talking about Lake's Crossing and

1 competency evaluations. We'll get to that. I did have another question in reference
2 to drug usage. Was there ever a point in time throughout your review of the case in
3 which saw anything referencing Mr. Rivera using any other illicit substance or drug, I
4 should say, than marijuana?

5 A No. I didn't -- I've never seen any reference to any other drug that he's
6 either admitted to or tested positive for. It seems like marijuana has always been his
7 drug of choice.

8 Q Now, through the course and scope of your interview, do you take
9 malingering into account?

10 A Yes. I mean, it's something any time when you're in a forensic setting
11 such as this one, that you want to consider.

12 Q And did you do that here?

13 A I did.

14 Q And what did you see, if anything, that was of note?

15 A Again, that's why we have the records, the history because that's a big
16 part of -- of either ruling in or ruling out malingering. If an individual has a long
17 history of psychotic symptoms outside of the forensic setting, in other words, he's
18 been hospitalized when he hasn't been accused of a crime and he's shown
19 evidence of auditory hallucinations and paranoia and all of the things that we've
20 been talking about, then that would certainly indicate that this is somebody who is
21 truly mentally ill.

22 And I will say also that, you know, his presentation with me was a level
23 of higher functioning than has been documented in many of the other psychiatric
24 records that I reviewed and I believe that's because by the time I saw him he was on
25 some medication, some psychiatric and psychotic medication.

1 So he has -- he has been worse than he was when I saw him so that
2 would certainly indicate that he wasn't trying to impress me with how sick or
3 psychotic or mentally ill he was. But -- but the real answer to that question comes
4 from the psychiatric records.

5 Q And just to be clear, when you say "malingering," you mean faking it?

6 A Yes, pretending to be mentally ill when you're not usually with, in a case
7 like this, with the specific intent of trying to avoid responsibility for your action.
8 That's what we mean by malingering.

9 Q And how, if at all, would an individual with a lower IQ, how would that
10 factor into your assessment if someone is malingering or not?

11 A Well, if somebody who has a low IQ usually is not a very good
12 malingerer. I mean, they're not very good at faking the symptoms of mental illness,
13 and, frankly, really nobody is even higher IQ people because most people don't
14 really have a good idea of how the typical psychotic patient presents themselves.
15 But you have to take into account, certainly, is his mental functioning and his ability
16 to understand questions and factor that into your assessment of his overall mental
17 health. So being aware of that is important for sure.

18 Q Okay. Now, just to shift a little bit, early you had mentioned
19 Lake's Crossing. Do you remember that?

20 A Yes.

21 Q And you've reviewed some records from Lake's Crossing in this case?

22 A Yes, I did.

23 Q Okay. And just to re-acclimate the jury to it, what is Lake's Crossing?

24 A Lake's Crossing is the -- the forensic psychiatric hospital where
25 individuals who have been found to be not competent to stand trial are sent to be

1 treated and rehabilitated and hopefully restored to competency so that they can, you
2 know, resume their case and -- and go to trial if necessary.

3 Q And you would get to Lake's Crossings by having a competency
4 evaluation done?

5 A Correct. If the Court, based on usually concerns expressed by the
6 defense attorney, has reason to believe that there might be an issue with the
7 defendant's competency, then -- then the Court will order an evaluation, actually,
8 two evaluations since the standard method for the court is to assign two different
9 evaluators to see the defendant independently to make sure that they're not just
10 relying on one opinion. And if both of those evaluators agree that the individual is
11 not competent to stand trial, but that there is a reasonable chance that they can be
12 restored to competency with the appropriate treatment or education, then typically
13 the Court will send that individual to Lake's Crossing, which is in Northern Nevada,
14 we now have another facility here -- there in Southern Nevada where -- where most
15 of them are going these days. But -- but Lake's Crossing was the first and the
16 primary facility of its kind.

17 Q Have you ever done one of those evaluations for competency?

18 A I have done many, many of those evaluations, yes.

19 Q Okay. And one was done to Mr. Rivera in this case, right?

20 A Yes, two, two evaluations were done.

21 Q And that would be Dr. Harder and Dr. Colosimo?

22 A Correct.

23 Q And Mr. Rivera was initially found incompetent to stand trial, correct?

24 A By both of them, yes.

25 Q And just so we're clear, that's not -- that evaluation is not the same

1 thing as the evaluation that, say, yourself or Dr. Coard did in this case?

2 A It is not. The focus is different than -- than what it is here. Obviously,
3 mental illness is at issue in both types of evaluations, but -- but the specific question
4 that's being asked and answered is different.

5 Q Okay. And to your recollection how long was Mr. Rivera at
6 Lake's Crossing?

7 A It was over a year if I recall correctly. I don't remember exactly how
8 many months, but -- but I think it was more than 12.

9 Q Okay. And you had stated that that was a long time.

10 A It was. The typical hospitalization for an individual that gets sent to
11 Lake's Crossing is three to six months.

12 Q Now, in reference to medications, did you have occasion to see the
13 medications that Mr. Rivera was on at the time of the incident?

14 A At the time of the incident? I don't believe he was taking any
15 medication at the time of the incident. I don't think I was able to determine with any
16 degree of accuracy how -- how long it had been since his last dose of medication.
17 But, you know, as I mentioned earlier, he's been off and on a variety of psychiatric
18 medications for many years.

19 Q And would it be fair to say that if someone is off of their medication then
20 that might exacerbate the symptoms of their affliction?

21 A Of course, and I think that that's been demonstrated fairly clearly with
22 Mr. Rivera because the records show repeatedly he goes to the hospital, he's
23 having floridly psychotic symptoms, they medicate him, he gets stabilized, they
24 release him, and then this same cycle seems to keep repeating itself over and over
25 again with him is that once he gets back out in the real world, especially when he's

1 homeless or doesn't have resources, then he falls off his medication and has a
2 relapse. And that's not uncommon for individuals with schizophrenia.

3 Q Now, I want to focus specifically on your report and the fact that you did
4 the -- a test for legal insanity. You did that in this case?

5 A An evaluation, I would call it an evaluation more than a test.

6 Q Okay. And I apologize. So this evaluation, just speak in general terms,
7 don't get into specifics, what exactly the prongs are, the elements, whatever you
8 want to call it, that you're looking for in the questions you're asking.

9 A Certainly. Okay. Well, here in Nevada, it's a little different in each
10 jurisdiction, so different states have different standards for what constitutes insanity,
11 although they're mostly the same. But in any case, here in Nevada, the standard is
12 that -- that at the time of the incident, whatever crime it is that the individual was
13 accused of, that -- that the -- the defendant was in a delusional state, is the wording
14 of the statute, at the time of the offense, due to a disease or defect of the mind such
15 that he either, so one of the two of these things has to be present, that he either did
16 not know or understand the nature and capacity of his act, or that he was unable to
17 appreciate that his conduct was wrong, meaning that it was not authorized by law.

18 So that's what we're looking for when we do an evaluation for insanity.
19 First of all we have to determine if there was a disease or defect of the mind, which
20 means just generally a psychiatric disorder of some kind; that the defendant was in
21 a delusional state at the time of the offense, and that because of that delusional
22 state that either he didn't, essentially, know what he was doing or that he didn't
23 know that what he was doing was against the law.

24 Q Okay. Now, in reference to a disease or a defect of the mind, that was
25 the entire [indiscernible] in this case, correct?

1 A I'm sorry, you're cutting out just a little bit, my connection isn't great.
2 Could you repeat the question, please?

3 Q And in reference to a disease or a defect of the mind, that would have
4 been paranoid schizophrenia in this case?

5 A Correct.

6 Q Okay. Now, in reference to the delusional state, what indicators, if any,
7 did you find that he was in a delusional state?

8 A That goes back to the paranoia and ideas of reference that we talked
9 about already, so I've given examples of the ideas of reference that he was
10 demonstrating, that he believes that -- that all this stuff is going on around him in his
11 environment that is specifically oriented towards him, including what most people
12 would probably regard as fairly, you know, neutral or not noteworthy facial
13 expressions and behaviors. And that he has this ongoing paranoia that -- that
14 somebody, something, some force is out to harm him or -- or do him wrong in some
15 way. And I think it's fairly clear that those conditions were present at the time of the
16 incident. And I think even Dr. Coard, based on his report, would agree with that.

17 Q Now, in reference to Mr. Rivera's knowing and understanding the
18 nature and capacity of his act, what indicators did you see whether he was or he
19 was not able to understand?

20 A Let me first kind of explain what I interpret that to mean so that my
21 answer will make a little bit more sense. I think that that prong is referring to
22 whether you actually know what it is that you're doing. So if you're hitting somebody
23 on the head with a hammer but you actually think that you're hammering a nail, then
24 that's, I think, what is imagined by that prong of the test, that is you're performing
25 one act but you think you're actually doing something else. And so we determine

1 that by having the -- the client, the defendant explain what he remembers about the
2 incident and what he perceived himself as doing. So mostly that's just going to
3 come from the individual's ability to describe, you know, what they were doing, and
4 then -- then you can make the determination from that, you know, whether they were
5 fully able to appreciate the nature of the act that they were -- that they were
6 performing.

7 Q And based upon that, what -- what indicators were there that he was
8 able to appreciate his acts or not appreciate them?

9 A He was able to describe what happened in a way that seemed
10 consistent with the other information available to me, primarily the police report, the
11 description of the condition of the body, the -- the evidence that was found at the
12 scene including his backpack and other belongings, the knife that they found. So all
13 of that evidence was consistent with his report that he pulled the knife out and
14 began stabbing the victim and he stabbed the victim, you know, multiple times. So
15 that indicated to me that -- the he was aware that he was stabbing the victim and not
16 cutting an apple or something like that.

17 Q Okay. Now, in reference to him, being Mr. Rivera, appreciating that his
18 conduct was wrong or unlawful, what indicators did you find during the course of
19 your interview either way, whether he appreciated or did not appreciate it?

20 A That gets a little trickier because he obviously knew that he was
21 stabbing a man, that he stabbed a man to death. So I tried to probe as much as I
22 could the thought processes that were going on at the time that he made the
23 decision to stab the victim and as he was stabbing the victim. And I think it's
24 important for me to note here that, you know, we have to realize, we're dealing with
25 a psychotic individual. And so because his mental processes are so garbled, so

1 abnormal, it's somewhat unreasonable for us to expect that he can describe in a
2 rational, understandable way what he was thinking. A lot of times people who are
3 actively psychotic have no memory of the events that they are involved in or the acts
4 they commit when they are in that state.

5 But he was able to do that to some degree. But -- but only to the point
6 where he essentially was able to say I was in fear, I believed that he was about to
7 do something, and I think those two statements taken together, would suggest that
8 he believed that he was in fear of some harm from this individual and that he said, I
9 felt like I had to do what I did in order to keep him from harming me.

10 Q Okay. Were you, during the course and scope of your -- the interview,
11 ever able to find a rational motivation for the act?

12 A No. And that's a good question because that's another part of the
13 analysis that I think is important and sometimes overlooked. When we're trying to
14 decide why a person did something and any time we're doing an insanity evaluation,
15 that's essentially what we're tasked to do, to try to explain why did this act happen, I
16 think one of the first questions they try to answer is whether there are alternative
17 motive besides the mental illness that might explain the actions of the individual. So
18 if the individual had something to gain such as a robbery, if he took the victim's
19 watch or wallet or some other possessions, then that might indicate a motive for
20 doing what he did. If there was reason to believe that there was some sort of a
21 dispute or conflict between the two of them and this individual just overreacted to his
22 anger at that dispute and, you know, stabbed the other person or hurt the other
23 person in some sort of blind rage, then, you know, that -- that would be an
24 alternative explanation.

25 So I tried to probe in various ways that theory that maybe there was

1 something else that would have motivated the stabbing, both from the police reports
2 and from my interview of the defendant and couldn't see anything to indicate that.
3 There was nothing in the police report to suggest that anything was taken or
4 removed from the victim. As said before, there was no prior history with these
5 individuals. The defendant described the victim as being friendly. Never at any
6 point in our discussion did he indicate that the tone of their conversation turned
7 hostile or threatening or -- or aggressive in any way. He openly admitted that the --
8 that the victim had never threatened him or -- or articulated intention to do harm to
9 him. So I was at a loss to find anything else that would explain this extreme
10 behavior other than mental illness.

11 Q Thank you, Doctor. I have one last line of questioning. When you
12 conduct these interviews is it better to interview the patient, I guess in this
13 circumstance or individual, closer in proximity to the date of the alleged offense or
14 farther away from the date of the alleged offense?

15 A That's -- that's a very good question and there's two answers to that,
16 and I don't mean to be equivocating, but I'll explain my answers. Generally, the
17 answer is the former that the closer we are in time to the incident the clearer both
18 the defendant's memory and his understanding of the incident is going to be. And
19 the second kind of infers the first that it's understandable [indiscernible] have to
20 remember what we're thinking and feeling and all of that, so the closer you are to
21 the incident the better, you know, handle you're going to have on that -- that stuff.

22 However, we have to also keep in mind that, you know, if this is the
23 result of a psychotic episode, the closer we are in time to the episode, the more
24 likely it might be that the individual is still in a psychotic state, and as I mentioned
25 already, somebody who is in that state is not going to be clear of mind and so they

1 may have a great deal of difficulty articulating, you know, what they were thinking in
2 a rational way. And even now I don't think he's totally able to do that. But with the
3 passage of time, since time has gone on, I'm sure he's thought about the incident
4 quite a bit, and may have, you know, of course and he's talked about it with who
5 knows how many people by now, and, you know, all of those things, the passage of
6 time and conversations with other people about an incident are going to change
7 your memory and perception of an incident, so generally you're better off
8 interviewing somebody in a situation like this as close in time to the incident as
9 possible.

10 Q And how, if at all, would an individual spending over a year at
11 Lake's Crossing change your evaluation?

12 A Well, as I said, you know, you're going to be telling the story a number
13 of times, you know, and in addition to the two competency evaluators he saw before
14 he went to Lake's Crossing, he had at least three, maybe four, different evaluations
15 at Lake's Crossing, and so every time that he's evaluated pretty much, he's going to
16 retell the story at some level and especially somebody who's mentally unstable as
17 he is and he seemed to have been unstable at Lake's Crossing for some time before
18 they got him stabilized, so, you know, that's going to affect the way that he tells he
19 story and the way he tells the story is going to then affect his memory each time
20 down the line.

21 Also, at Lake's Crossing there's, you know, a program of legal
22 education that they go through to help restore them to competency and so there's
23 discussion about legal concepts that they may not be that familiar with prior to going
24 to Lake's Crossing, and certainly at the time that the incident occurred, so that can,
25 you know, further contaminate the way in which they view or see the incident so that

1 could be a problem as well.

2 Q Dr. Chambers, thank you for your time. I believe my colleague might
3 have some questions for you.

4 MR. MARCHESE: Thank you, Your Honor. Pass the witness.

5 THE COURT: Thank you very much.

6 Cross-examination.

7 MS. MOORS: Thank you.

8 **CROSS-EXAMINATION OF MARK CHAMBERS**

9 BY MS. MOORS:

10 Q Good afternoon, Dr. Chambers.

11 A Good afternoon.

12 Q So I want to direct your attention to your -- obviously I think you maybe
13 have been referencing your report as you've been talking and I want to talk a little bit
14 about just a couple things. So when you -- when you interviewed the defendant, you
15 talked to him about some of his past psychiatric issues; is that correct?

16 A Yes.

17 Q Okay. And in so doing, he in fact told you that oftentimes he hears
18 voices and that they, in quotations, pop up when he is smoking marijuana; isn't that
19 correct?

20 A He did say that, yes.

21 Q Okay. Now, we talked a little bit about his medication and you indicated
22 you were unable to ascertain when was the last time he had taken medication based
23 on your interview with him; is that correct?

24 A Yes.

25 Q And in fact when he was speaking with you I think he asked you -- God,

1 I can hear myself on there, sorry -- so when you were speaking with him, he in fact
2 actually indicated that he did not take his medication on the day in question because
3 sometimes it makes him sleepy; is that correct?

4 A I do recall that, yes.

5 Q Okay. And then the reason why he didn't want to take that because it
6 made him sleepy is that he didn't have anywhere to sleep on that particular day,
7 July 1st, here in Las Vegas?

8 A That's right.

9 Q Okay. Now, when you were reviewing his medical records, it sounds
10 like there were quite a few to go through, was it your understanding that he was
11 admitted to Lincoln Medical Center in the Bronx, New York, with substance induced
12 psychosis in 2015?

13 A I do remember him getting that -- that diagnosis, yes.

14 Q Okay. And in fact it's actually listed in your report, correct?

15 A Correct.

16 Q And Mr. Marchese talked about it and we've kind of been on a mental
17 health kick today, but your -- you diagnosed him, I believe, with paranoid
18 schizophrenia; is that correct?

19 A Yeah, I think I just said schizophrenia but the subtype would be
20 paranoid schizophrenia, yes.

21 Q Okay. So I want to talk a little bit about what the defendant told you
22 about what happened back on July 1st, is it -- it's your understanding that he
23 indicated to you that he had just come to Las Vegas on July 1st of 2018, correct?

24 A I believe that's what he told me, yes.

25 Q And he in fact mentioned that he met the victim, Mr. Rincon, when he

1 was heading to a local homeless shelter; is that right?

2 A That sounds familiar, yes.

3 Q He also told you that he got into a conversation with Mr. Rincon and
4 that Mr. Rincon indicated he had some marijuana rolling papers that he would share
5 with them if the defendant would share with him his marijuana; is that correct?

6 A I don't remember it happening that way, but if I could actually check my
7 report real quick? I'll confirm that for you.

8 Yeah, the way -- the way I have it written in my report is that the -- the
9 victim asked him for rolling papers -- wait, oh, no, I'm sorry, that the defendant
10 asked the victim for some rolling papers and that the victim said that he had some
11 and invited him to smoke marijuana with him. So I interpreted that to mean that the
12 victim had the marijuana also. But I don't -- I don't recall now for sure if that's what
13 he said.

14 Q Okay. Because I was just clarifying because on direct you said that it
15 was the defendant's -- or the victim's marijuana, but the way that I read your report
16 was that it was the victim's marijuana.

17 A Yeah, and that's always been my understanding is that the victim
18 provided it, but I could have gotten that wrong.

19 Q Okay. And you said that, furthermore, when speaking with defendant
20 he indicated that him and Mr. Rincon ultimately ended up near sort of an alley, I
21 believe you said there was dirt on the ground and that this is where they decided to
22 smoke the marijuana; is that right?

23 A Yeah, I got the impression that it was like an alley or something, yes.

24 Q Now, when you were speaking with the defendant, and I think you kind
25 of went over this in direct quite a bit, but specifically he indicated that, and I'm

1 quoting from your report, that the victim looked at me like he was about to do
2 something; is that what he told you?

3 A Yes.

4 Q And I think you even said that on direct that that was an exact quotation
5 from him, and you further said that you kind of tried to probe him a little more about
6 this look but you were unable to get any further clarification; is that correct?

7 A Correct.

8 Q You also indicated in your report that the defendant had told you the
9 victim specifically said, in quotations, let me see your knife; is that correct?

10 A That's right.

11 Q And furthermore, the defendant told you specifically that he thought the
12 victim was going to, in quotations, do something; is that correct?

13 A Right.

14 Q And you later went on to discuss with him what that something was and
15 he apparently -- the defendant told you that he got scared and he just reacted; is
16 that correct?

17 A That's right.

18 Q And the defendant then ultimately told you that his reaction was to stab
19 the victim multiple times, correct?

20 A I'm sorry, you cut out for part of that, say that again, please.

21 Q That the defendant ultimately told you his reaction in this regard was to
22 stab the victim multiple times.

23 A Yes.

24 Q You also indicated further on direct that the defendant didn't specifically
25 give you a number of the stabbing; is that correct?

1 A That's -- he had been told that it was more than 30 times. When I
2 asked him, you know, do you remember how many times you stabbed the victim, he
3 said, well, they told me that it was more than 30 times, and then I asked him, Do you
4 think that's about right; and he said, Yeah, he didn't -- he didn't dispute that number.

5 Q Okay. So fair to say he didn't -- he didn't take issue with that number,
6 he just didn't give you the number of his own recollection?

7 A That's correct.

8 Q Now, in speaking with the defendant, isn't it also true that he told you he
9 intended to kill the victim when he stabbed him?

10 A Yes. And he told me in doing that that I thought I needed to kill him to
11 protect myself, those are the words that he used.

12 Q Okay. And that was sort of around the time where he was discussing
13 this east coast/west coast issue with you with regards to the victim?

14 A Yes. It was after that that I -- I was trying to get more information
15 because of the vagueness of his description and his thought processes. As I said
16 before, I was trying to do anything I could to clarify where this -- this concern, this
17 fear of this incident, the dread or threat was coming from, and so as I questioned
18 him more then that's when he -- he came up with this east coast/west coast thing.

19 Q So that was in response to -- to your further questioning about why he
20 might have felt threatened, is that correct?

21 A That's correct, yes.

22 Q Isn't it also true that when you spoke with the defendant he admitted to
23 you that he had disposed of the knife in a nearby Dumpster?

24 A Correct.

25 Q Isn't it also true that he admitted to you that he left this scene and he

1 left all of the belongings that he had brought with him to the scene?

2 A That is correct, yes.

3 Q And I believe you said this on direct, but I want to clarify, the defendant
4 further told you that after leaving the scene that he ultimately removed his shirt and
5 threw it on the ground; is that correct?

6 A Yes. I'm not sure exactly when that happened, if that happened before
7 he left the scene or after, but at some point, yes, he took off his shirt and left it
8 behind on the ground.

9 Q And I think he also said something to the effect of he tried to wash up
10 by using a waterfall; is that right?

11 A Right. Correct.

12 Q Okay. Did -- what did you take that to mean?

13 A I don't know. I mean, it might have been a fountain or something like
14 that. But he found some source of running water and used that to clean up.

15 Q Isn't it also correct, sir, that he -- when he was speaking with you he
16 admitted that he had lied to patrol officers about the blood that was still located on
17 his pants?

18 A Yes. Yeah, he said that he had gotten into a fight.

19 Q And I think specifically he indicated to you that he told patrol officers
20 that he had gotten into a fight and the blood was his own blood, it was from his
21 nose?

22 A That's correct, yes.

23 Q So I want to touch just briefly on -- I know that Mr. Marchese talked
24 about -- we talked about a competency standard and then we talked about a insanity
25 standard; is that correct?

1 A Yes.

2 Q And so just to be clear, today we're here and our discussion is based
3 on an insanity standard; is that right?

4 A Yes.

5 Q And I want to discuss that standard, and I think I'm understanding you
6 correctly, but please correct me if I'm wrong, the first step would be, I guess, is there
7 a disease or a defect of the mind; is that fair to say?

8 A That is right.

9 Q And in this case, it's your belief that the defendant has the disease or
10 defect of schizophrenia?

11 A Yes.

12 Q And I -- and I'm -- actually, I don't know, have you had a chance to
13 review Dr. Coard's report as well?

14 A I have.

15 Q Okay. And in fact that was Dr. Coard's analysis as well that the
16 defendant suffers from the disease or defect of schizophrenia?

17 A That was my understanding, yes.

18 Q Okay. So then once we go from that first prong, we go to whether or
19 not there was a delusion; is that correct?

20 A Yes. The law says a delusional state, which, you know, might be
21 interpreted a number of ways, but that's the wording in the statute.

22 Q Okay. And specifically with regard to this individual, what did you
23 believe his delusion was?

24 A Well, his delusion, essentially, was that the -- that the victim was
25 intending to harm him in some way.

1 Q Okay. And in fact in Dr. Coard's report, he basically agreed that there
2 was some sort of delusional state, correct?

3 A He did, yes.

4 Q And it seems like both of you agree on the fact that the delusional state
5 was due to this disease or defect of the mind; is that correct?

6 A Yes, I think it is.

7 Q Okay. So, so far we're in agreement at this point, fair to say?

8 A Right. Yes.

9 Q Okay. So then we get to, sort of, I guess the next prong, and the way
10 that you describe that is it was an "or" standard, right? So it's either A or B, and if
11 one of those is true then we get to a point of -- of insanity, correct?

12 A Correct.

13 Q Okay. Would you please tell me what that first prong was again?

14 A The first prong is essentially whether the individual understood the
15 nature of his act. So does he know that what he's doing is really what he's doing
16 is -- is essentially what that means.

17 Q And the way that you described --

18 A So if he's --

19 Q Oh, I apologize. Sorry, I didn't mean to interrupt you.

20 A No, no, no. Go, no, go ahead. You're heading in the right direction, so
21 go ahead and ask your question.

22 Q So the way that you described [indiscernible] was that, say, if someone
23 believes if I'm hammering someone in the head, and in my brain I think that I'm
24 hammering a nail, certainly I don't understand the nature of my conduct; fair to say?

25 A That's right.

1 Q And it was your conclusion, based on reviewing everything and
2 speaking with the defendant, that in fact the defendant did know the nature of his
3 act?

4 A Yes.

5 Q Essentially that he was stabbing into a human being not, say, some
6 other inanimate object?

7 A Correct. And also that he -- he understood that that could result in that
8 other person's death.

9 Q Okay. So it's your testimony that he could understand that that could
10 result in death as well?

11 A Yes, that was my impression.

12 Q And in fact that's actually another area of agreement, right, where
13 Dr. Coard agreed with you, he believed that the defendant understood the nature of
14 his act, correct?

15 A Correct.

16 Q So if we move on to that second prong, could you again tell me what
17 the second prong states with regards to insanity?

18 A Second prong states that -- that the -- the person does not understand
19 that his behavior is illegal essentially.

20 Q Okay. And so specifically, when we talk about that standard, the word
21 "illegal" is -- is located, or I guess, I think it's actually "not authorized by law," is
22 located within that standard?

23 A That's right.

24 Q So whether or not something is legal is a relevant consideration sort of
25 at this step?

1 A Yes, it is.

2 Q And your contention is that the defendant did not know that his acts, of
3 which he knew what they were, he did not know that they were illegal or wrongful?

4 A Yes. It's -- it's complicated, but the simple answer to that question is
5 yes, that's right.

6 Q Okay. And so that's where we sort of find our divergence with
7 Dr. Coard because he ultimately found that the defendant knew that the nature of
8 his conduct was illegal or that it was harmful and unlawful; is that fair to say?

9 A Yes. Except that that's not what Dr. Coard says in his report.

10 Q Okay. Well, you're disagreeing -- in his report his conclusion was that
11 the defendant knew the nature of his act and that he knew that it was unlawful. Are
12 you disagreeing with that?

13 A I don't think so. I don't think so. I think what he says is that when he
14 questioned the defendant and asked the defendant did you know that it was wrong
15 what you did, that he answered yes. I don't think the word "unlawful" or "law" or
16 "legal," according to his report, was ever used in that conversation. If he used it, he
17 didn't mention it in his report.

18 MS. MOORS: Court's indulgence just one moment.

19 THE WITNESS: I can refer you to the page if you'd like.

20 BY MS. MOORS:

21 Q Yeah, if you wouldn't mind.

22 A It's on page -- page 11. At the very top, the question, When asked
23 when you stabbed the alleged victim, did you know it was wrong? Answer: Yes.

24 Q Okay. So you're essentially just taking issue with my stating that he
25 mentioned law in his report; is that correct?

1 A Yes. He didn't ask him if he -- if he thought it was illegal. He asked him
2 if he thought it was wrong. And the statute specifically clarifies that wrong means
3 that it's not authorized by law.

4 Q Correct, but also with --

5 A So -- so there's a distinction there that I don't think he clarified with --
6 with the defendant.

7 Q You know, I understand, sir. But I guess the way the statute is written
8 is ultimately it doesn't -- it's silent on whether or not the defendant needs to know
9 whether it was lawful or unlawful, correct?

10 A I'm sorry, would you say that again? Again, I lost a little part of your
11 question.

12 Q Yeah. No problem. So the question is that in the standard that we're
13 discussing, the way that it's stated is that it says the defendant does not know that
14 his conduct was wrong and then as, you know, further elaborated that it's prohibited
15 by law. But there's no mention in the standard that the defendant know whether or
16 not the conduct is prohibited or allowed by law, correct?

17 A Okay. I'm a little confused by your question.

18 Q Basically, I can paraphrase it for you --

19 A Appreciate -- appreciate is the word that's used in the statute not
20 "know." So I suppose we could debate about what exactly that means, but I would --
21 I would submit that it means essentially the same thing. That did he understand that
22 his conduct was not authorized by law would be, I think, a reasonable paraphrase of
23 that prong of the test.

24 Q Certainly, and I -- I apologize, sir, I understand that you weren't here
25 because Dr. Coard has already testified, so I won't ask you about what he

1 specifically said, but I guess the gist of it is is on that second prong is where you and
2 Dr. Coard disagree; would that be fair to say?

3 A That's certainly fair to say. Yes.

4 MS. MOORS: Okay. Court's indulgence.

5 THE WITNESS: I just don't want to endorse something that's not -- that I
6 don't believe is correct, and what you said was not what my understanding was, so.

7 BY MS. MOORS:

8 Q I do want to clarify just briefly when you talked about sort of what got
9 you to your conclusion on that second prong, and you mentioned a comment that
10 the defendant made to you about people wearing grey pants, and he thought that
11 that was relevant to the fact that the victim had a grey shirt; do you remember that
12 comment?

13 A Yeah.

14 Q And that was specifically made, I believe, a day or two after -- or the
15 instance where he saw the grey shorts was a day or two after the incident in
16 question; is that correct?

17 A I don't remember exactly when it was. It was that day or the next day.
18 He apparently found his way to some sort of a halfway house or something like that
19 and that was -- that was an individual that he saw at -- at that -- that home.

20 Q Okay. And furthermore, the -- the discussion about Nicki Minaj and the
21 video, that was also made at a later date when he was at this homeless shelter; is
22 that correct?

23 A Yes. I mean, he didn't -- he made a comment to me when I was talking
24 to him, but he -- he -- the story that he told was about something that happened at
25 the shelter

1 Q And just to clarify, I wrote some notes when you were on direct
2 examination that you indicated the defendant told you that the victim had never
3 threatened him; is that correct?

4 A Never -- didn't overtly threaten him verbally, no.

5 Q And he also indicated to you that the victim, he described the victim as
6 being friendly; is that correct?

7 A At least initially, yeah. He never told me otherwise, in other words, he
8 never said anything about the -- the tone of the conversation changing in any way.

9 MS. MOORS: I have no further questions, Your Honor.

10 THE COURT: Any redirect?

11 **REDIRECT EXAMINATION OF MARK CHAMBERS**

12 BY MR. MARCHESE:

13 Q You were asked some questions on direct examination about marijuana
14 and it possibly triggering psychosis.

15 A And I'm sorry, you'll have to repeat that, say that again please.

16 Q You were asked some questions on direct examinations about
17 marijuana and it possibly triggering psychosis, particularly the Lincoln Medical
18 Center reports.

19 A Yes.

20 Q And you've reviewed all the reports in this case as we established on
21 direct examination, correct?

22 A Everything I was given, yes.

23 Q Was there ever a point in time in your review of the records where
24 Mr. Rivera showed psychosis but yet he was -- could not have been under the
25 influence of marijuana?

1 A Yes. Many times, both in his hospitalizations and during the times that
2 he was incarcerated.

3 Q So, basically if he's incarcerated for an extended period of time it's
4 highly likely they're not giving him marijuana while in custody, right?

5 A You would think not. I think the best example of that is the competency
6 evaluations that were performed prior to Lake's Crossing. Both of those individuals
7 found him to be actively psychotic. Those evaluations were done more than a
8 month after he was arrested. So chances are that he was not under the influence of
9 marijuana at the time that those evaluations were done.

10 Q On cross-examination you were asked some questions about
11 Dr. Coard's report; do you remember those?

12 A Yeah.

13 Q How do you --

14 A Yes.

15 Q -- disagree with Dr. Coard?

16 A Well, I'm not sure that Dr. Coard has established that that second prong
17 was not met. But I also think it's also important to understand that it can be very
18 difficult for somebody who is psychotic to -- to re-create the mental processes that
19 are taking place at the time of the psychotic episode. Understand that when both
20 myself and Dr. Coard interviewed him, he was likely medicated with antipsychotic
21 medications. So his whole point of view, his perspective is going to be very different
22 than it was at the moment that this incident occurred.

23 Even if a few seconds after the stabbing he realizes, oh, my gosh, I did
24 something terrible, I shouldn't have done that because that guy wasn't -- really didn't
25 do anything to me, that doesn't necessarily reflect how he was thinking at the point

1 that he raised that knife and began stabbing. And as I mentioned already, there's
2 no other explanation for it. There's nothing else to make sense out of why he did
3 what he did, you know, at least in my mind.

4 MR. MARCHESE: Thank you, Your Honor. No further questions.

5 THE COURT: Any recross?

6 **RECROSS-EXAMINATION OF MARK CHAMBERS**

7 BY MS. MOORS:

8 Q I want to touch on that last sentence you just said, you said there was
9 no other explanation for what you could make sense out of why the defendant
10 murdered the victim; is that correct?

11 A I did say that, yes.

12 Q Is it your contention that there's always a rational answer as to why
13 someone is murdered?

14 A There's usually some motive. People don't just kill people randomly.
15 And if -- if they do it just for sport, they generally, you know, do it more than once.
16 And then, again, there's nothing to indicate that. The only thing that he describes is
17 consistent with a psychotic delusional thought process that made him believe he
18 needed to do this to protect himself.

19 Q And that was based on the fact that there was this east coast/west
20 coast feud as well as the fact that the victim gave him a weird look, is that correct?

21 A And also that he asked for a knife that he -- he supposedly didn't know
22 that he had, so it doesn't take much. You know, we're trying to apply rational
23 standards to an irrational brain and -- and that doesn't work.

24 Q But just to clarify that, that's the extent of the delusion that we've been
25 discussing, correct?

1 A The delusion was that he believed that if he didn't stab the victim first
2 that the victim was going to harm him in some way.

3 Q No further questions, sir.

4 THE COURT: Okay. Anything --

5 MR. MARCHESE: Nothing, Your Honor.

6 THE COURT: -- else for this witness?

7 All right. Thank you very much for your testimony here today.

8 MR. MARCHESE: I think we have one, Your Honor.

9 THE COURT: Wait, sorry. Sorry, I have to keep you here. I have a question.

10 [Bench conference transcribed as follows:]

11 THE COURT: The record will reflect the hearing is taking place outside the
12 presence of the jury panel. The attorneys for both sides are here. Court's Exhibit
13 Number 9: Do you think the -- I'm assuming murder happened -- I don't even know
14 what that word is --

15 MS. MOORS: It says "in the moment."

16 THE COURT: -- in the moment because he was triggered? Do you think he
17 planned this event in advance when he agreed to hang out with the victim? I don't --
18 I don't think it's an appropriate question, but --

19 MS. MOORS: Lindsey Moors for the State, I agree. I think that both
20 [indiscernible] call for speculation. It's essentially a compound speculative question.

21 MR. MARCHESE: I would object as well. Jess Marches.

22 THE COURT: Okay. And you saw Question Number 2, [indiscernible]
23 professional psychologist evaluate a patient in a case -- why would you want to
24 know this -- like to do determine sanity versus how many might have a majority -- I
25 don't even know what a majority versus a minority opinion is. And what's the

1 chance 100 would all agree? Absolutely zero.

2 MR. MARCHESE: I don't even think we're going to get to [indiscernible].

3 MS. MOORS: Yeah, Lindsey Moors for the State. I don't understand the
4 question and it's inappropriate.

5 MR. MARCHESE: Agreed.

6 MS. MOORS: So I would object.

7 MR. MARCHESE: Jess Marchese, object.

8 THE COURT: Okay. So we'll just mark it and we won't ask it.

9 [Bench conference ends.]

10 THE COURT: Does the State stipulate to the presence of the panel?

11 MS. MOORS: Yes, Your Honor.

12 THE COURT: And the defense?

13 MR. MARCHESE: Yes, Your Honor.

14 THE COURT: Okay. The question has been marked as Court's Exhibit
15 Number 9. The Court is not going to ask the question. Is there anything else from
16 the State?

17 MS. MOORS: Court's indulgence.

18 No, Your Honor, there is not.

19 THE COURT: Anything else from the defense?

20 MR. MARCHESE: No, Your Honor.

21 THE COURT: Okay. Dr. Chambers, thank you very much for your testimony
22 here today and you are excused.

23 THE WITNESS: Thank you, Your Honor.

24 THE COURT: Have a good day.

25 Mr. Marchese, do you have any further witnesses that you intend to call

1 in this matter?

2 MR. MARCHESE: No, Your Honor, and the -- my exhibits were admitted,
3 correct?

4 THE CLERK: Correct.

5 THE COURT: Yes.

6 MR. MARCHESE: Okay. I thought we did it, but just making sure. Then
7 based upon that, Your Honor, the defense rests.

8 THE COURT: Okay. Does the State have any witnesses in rebuttal?

9 MS. MOORS: Yes, Your Honor. The State would be recalling Dr. Herbert
10 Coard in rebuttal.

11 THE CLERK: Can you please raise your right hand?

12 **HERBERT F. COARD, III,**
13 [having been called as a rebuttal witness and first duly sworn, testified as follows:]

14 THE CLERK: You may be seated. Please state and spell your first and last
15 name for the record.

16 THE WITNESS: Herbert F. Coard, III, H-E-R-B-E-R-T, middle initial F, last
17 name is C-O-A-R-D, Roman numeral number three.

18 THE COURT: You may proceed.

19 MS. DUNN: Thank you, Dr. Coard.

20 **DIRECT EXAMINATION OF HERBERT F. COARD, III, IN REBUTTAL**

21 BY MS. DUNN:

22 Q So defendant told the defense expert, Dr. Chambers, that at the time of
23 the incident he was being prescribed medication but he just did not take it on the
24 day in question. Do you recall the name of that medication that he was being
25 prescribed?

1 A Seroquel.

2 Q Can you please tell the jury what the effect would be of not taking that
3 medication for one day?

4 A Probably would not observe any measurable change in his level of
5 delusion or hallucination.

6 Q In your review of the records in this case were you able to ascertain
7 when the defendant was arrested?

8 A I was.

9 Q And what date was that?

10 A He's arrested ten day -- ten days after the event.

11 Q So would that be July 10th of 2018?

12 A July 10th, correct.

13 Q And also in reviewing your -- the records, is it your understanding that
14 he did not have any medications with him when he was arrested?

15 A Yeah, there is nothing in the -- there's nothing in the property report
16 suggesting that when he was brought into custody that he had medication.

17 Q So it could have been ten days since he had last been medicated at the
18 time?

19 A Ten or eleven, somewhere around there.

20 Q Okay. Now, you reviewed the transcript with police?

21 A Correct.

22 Q And that -- the date of that interview, do you recall the date of that
23 interview?

24 A That's the July 10th.

25 Q July 10th, so nine days after the killing?

1 A Correct.

2 Q Now, I know that you can't quantify it or put a number to it, but in your
3 review of that transcript, in your opinion, how delusional was the defendant at that
4 point?

5 A I mean, there -- there clearly is evidence of delusion --

6 MR. MARCHESE: I'm going to object as to lack of personal knowledge. That
7 is not --

8 THE COURT: I'm going to sustain the objection but just ask you to rephrase
9 the question.

10 BY MS. DUNN:

11 Q Have you reviewed transcripts from other cases before?

12 A I have.

13 Q And based on your training and experience, do you have an
14 understanding of what a person suffering from a delusion, how they may answer
15 questions in an interview?

16 A Yes.

17 Q And based on your training and experience, would their answers or the
18 types of answers they give vary based on kind of how delusional they are at that
19 moment?

20 A Absolutely.

21 Q Can you tell us some of the differences that we might see?

22 A So on the -- so I think on the severe end, I mean, we would see that he
23 wouldn't necessarily even be following, if he's -- has this paranoid thing he would be
24 very distrustful of everything that the police are saying, everything that's going on in
25 the environment. You probably would see behavior, if you were -- if you have video

1 of it, you probably would see evidence of what we call hyper vigilance. You could
2 see that potentially in the -- in testimony, even written testimony, you know, like,
3 questioning like why are we here, what's going on, so kind of that hyper vigilance
4 would probably be the higher end of a delusional state.

5 On a non-delusional state you may have, you know, kind of over-valued
6 thoughts in the mild category, just kind of mild paranoia associated with the
7 questions that are asked, maybe even some evasiveness about answering
8 questions, especially if they are related to your paranoia, the thing that is driving the
9 delusional thought. So I think you can definitely look at what his behavior looks like
10 over -- over an interview.

11 Q And when you reviewed the transcript of the interview with police from
12 this case what signs, if any, did you notice regarding his delusional state of mind?

13 MR. MARCHESI: I'm going to object. He doesn't have personal knowledge
14 of this as he was not -- all he's done is read a transcript. He did not -- he was not
15 hired to do an evaluation of a transcript. He was hired to do an evaluation for not
16 guilty by reason of insanity on July 1st.

17 THE COURT: Right. I'm just concerned about what -- because you're talking
18 about the day -- you're talking about ten, eleven days later when he's speaking to
19 the police, correct?

20 MS. DUNN: Correct, Your Honor.

21 THE COURT: What's the relevance of that?

22 MS. DUNN: To indicate -- there were questions regarding his medication
23 status and I think that it would be relevant for the jury to hear that --

24 MR. MARCHESI: Judge, I'd like a bench conference.

25 THE COURT: Okay.

1 [Bench conference transcribed as follows:]

2 THE COURT: The record will reflect the hearing's taking place outside the
3 presence of the jury panel. The attorneys for both sides are here. There's an
4 objection by Mr. Marchese.

5 MR. MARCHESE: Yes, Your Honor. I'm going to object as to relevance. I
6 don't think it's relevant to the issue at hand. I also don't think there's proper
7 foundation or he has the ability to testify to this given the facts and everything that
8 he's testified to so far.

9 THE COURT: Okay. Maybe you can just explain to me a little bit better what
10 you're getting at because I was wondering why you were asking him about the
11 transcript.

12 MS. DUNN: Sure. Absolutely. Ann Dunn on behalf of the State. So in the
13 defense's case-in-chief they went into a lot about how defendant not being on
14 medication could have affected whether he had a delusion or not. Dr. Coard was
15 hired as an expert to review all of the records in this case and I think that it's
16 relevant to the jury to hear that not being on medication for approximately ten days,
17 his delusional state still was not very severe, which is what he's going to testify to.
18 And the fact that the defense has basically implied, and I anticipate they will argue in
19 closing, that he wasn't on medication and therefore he was in a severe delusional
20 state, I think it's relevant for the jury to hear that after ten days of not being on
21 medication he was still in a mild delusional state.

22 THE COURT: Okay. Anything further?

23 MR. MARCHESE: Well, I think he's already answered the question in
24 reference to him being on his medication. It's also come out through other
25 witnesses. I would argue that it's been ten days. There's was other testimony, but