

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

JOSE MONAY-PINA,

Appellant,

v.

STATE OF NEVADA,

Respondent.

Docket No. 84321

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**APPELLANT'S APPENDIX  
VOL. II**

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By:           /S/ Monique McNeill            
MONIQUE MCNEILL  
State Bar # 9862

1 please --

2 BY MR. SCHWARTZ:

3 Q And do you know what his name is?

4 A I do not remember.

5 Q He was the suspect near the bushes?

6 A Correct.

7 Q Okay.

8 MR. SCHWARTZ: Your Honor, could you -- the record please

9 reflect that the witness has identified the Defendant?

10 THE COURT: The record will so reflect.

11 MR. SCHWARTZ: Okay. And that being the Defendant on the  
12 far left of the table if you're looking at the table.

13 MR. GILL: [Indiscernible] clean. Okay.

14 THE COURT: Yes.

15 MR. GILL: Thank you.

16 BY MR. SCHWARTZ:

17 Q And you mentioned that in that area of the bushes,  
18 you located a couple different items --

19 A Correct.

20 Q -- is that correct? I'm showing you State's Exhibit  
21 35. Does that appear consistent with what you recall  
22 observing in that area?

23 A It does.

24 Q Let's go through these quickly. 36. What does that  
25 appear to be to you?

1 A A black ski mask.

2 Q Number 38. And let me zoom out for you here.

3 A That was the victim's wallet from the home at 504  
4 Brush, a knife, a phone -- I'm sorry, two knives, a phone, and  
5 a set of keys.

6 Q Was there more than one wallet recovered from that  
7 area?

8 A There was.

9 Q Okay. So if we're looking sort of adjacent to that  
10 in the bushes, I'm showing you State's Exhibit 43. Do you  
11 recognize that?

12 A Yeah. I'm sorry. I misspoke. That is the victim's  
13 wallet --

14 Q Okay.

15 A -- along with a wad of cash.

16 Q And you said the victim, Javier Colon?

17 A Correct.

18 Q Colon. Do you recall what the other wallet was?

19 A I believe that was the Defendant's wallet.

20 Q Okay. And that was this wallet we were looking at,  
21 46, the -- with the XMen Wolverine different comic book on  
22 that?

23 A That's correct.

24 Q And then State's Exhibit 47, looking inside that  
25 wallet? Is that consistent with the Defendant, Mr. --

1 A Correct.

2 Q -- and that was Mr. Monay-Pina was the suspect in  
3 the bushes?

4 A Yes.

5 Q Okay. And you testified the other wallet that was  
6 recovered, as well, State's 50, that was in the bushes, and  
7 that was Mr. Javier --

8 A Correct.

9 Q -- Colon's wallet. And there was that -- we saw the  
10 picture with the wad of cash that was separate from the  
11 wallet; is that correct?

12 A Correct.

13 Q And just sort of a close-up picture of that on 53.  
14 Consistent with your recollection of what you saw, Officer?

15 A Yes, it is.

16 Q Do you recall there being a clothing item over  
17 there, as well? Another clothing item?

18 A The ski mask.

19 Q Okay. Showing you State's Exhibit 42. Recall  
20 seeing that item in the top part of the picture?

21 A No.

22 Q So you don't recall seeing that black glove there?

23 A No.

24 Q Okay. Let's move on to the other suspect that you  
25 helped apprehend with Officer Carter. Do you see him in the

1 courtroom today?

2 A I do.

3 Q And can you please point to him and describe an  
4 article of clothing he's wearing?

5 A He is sitting in the middle of the Defendant's desk  
6 with a white shirt, and he's got a moustache.

7 Q Okay.

8 MR. SCHWARTZ: Your Honor, could the record please  
9 reflect that the witness has identified Defendant Venegas?

10 THE COURT: The record will so reflect.

11 BY MR. SCHWARTZ:

12 Q And in that area where he was apprehended, you had  
13 occasion to look around, as well.

14 A Correct.

15 Q And what items -- do you recall locating a couple  
16 weapons over there?

17 A I did. I remember seeing --

18 MR. GILL: Your Honor, may we approach very briefly?

19 THE COURT: Come up.

20 [Bench Conference Begins]

21 MR. GILL: I'm trying to let the leading go a little bit,  
22 but there's an awful lot of leading him right what was at the  
23 scene. I'd rather it be asked that --

24 THE COURT: Uh-huh.

25 MR. GILL: -- what he found, if he knows because there

1 was some things that he's forgotten about, and he did admit  
2 it, but the objection is leading.

3 THE COURT: Okay. Sustained.

4 MR. GILL: Thank you.

5 [Bench Conference Ends]

6 BY MR. SCHWARTZ:

7 Q And, again, we're talking about the -- in the area  
8 where Defendant -- the suspect -- Defendant Venegas was taken  
9 out from the shed area. What items --

10 A Correct.

11 Q -- do you recall seeing over there?

12 A I remember there were a few knives, like, hunting  
13 knives in their sheaths, as well as set of red gloves. I  
14 think that there was another ski mask there and two handguns  
15 or replicas.

16 Q And you said "handguns or replicas". What do you  
17 mean?

18 A Because at the time as soon as I noticed what they  
19 potentially could be, I started making sure that -- to keep  
20 the integrity of the scene, just taping off and getting other  
21 officers to kind of move away from the area.

22 Q I'm showing you State's Exhibit 68. Is that  
23 consistent with your recollection of --

24 A It is.

25 Q -- those two guns? You mentioned, like, a replica



1 hunting knife. I show you State's Exhibit 67. What are we  
2 seeing in that photo?

3 A The two guns and the hunting knife, the sheathed  
4 hunting knife.

5 Q And State's Exhibit 74. Is that just a close-up of  
6 that hunting knife?

7 A It is.

8 MR. SCHWARTZ: Court's indulgence. I apologize.

9 BY MR. SCHWARTZ:

10 Q You mentioned also that you observed another ski  
11 mask and red gloves.

12 A I did.

13 Q Showing you State's 62. Is the location of those  
14 items consistent with your recollection?

15 A It is.

16 Q State's 63. Just a closer-up angle of those?

17 A It is.

18 Q Officer, once you sort of surveyed the back yard of  
19 510 Brush Street, what's the next thing you did?

20 A Once I knew that it was static, and I set an officer  
21 there for site security, then maintained the integrity of the  
22 scene to ensure that nobody, including the residents that  
23 actually occupied the residence, wouldn't trample over the  
24 evidence or contaminate it. So once I ensured that, I went to  
25 the front of -- the front of the residence to ensure that all

1 the proper steps were being taken place in order to facilitate  
2 the arrest, which means one show-up and reports.

3 Q You said "static" a couple times. When you keep --  
4 when you want to keep a scene static, what does that mean?

5 A Means just rendering it safe, make sure there's  
6 nothing out of the ordinary or anything dynamic happening that  
7 could jeopardize the -- the scene, meaning that there's no --  
8 there's -- there's nobody being taken into custody, there's  
9 nobody running around in the scene. We're just making sure  
10 that everything is just, I guess, calmed down.

11 MR. SCHWARTZ: Court's brief indulgence.

12 No further questions at this time, Your Honor.

13 THE COURT: Okay. Mr. Gill?

14 MR. GILL: You can leave it right there for now.

15 CROSS-EXAMINATION

16 BY MR. GILL:

17 Q Okay. And, Sergeant, let's start with this  
18 photograph here.

19 A Okay.

20 Q This is State's 63. This -- you were one of the  
21 first on the scene, correct?

22 A Not to this one.

23 Q Not to --

24 A I was with -- approximately the third officer there.

25 Q Okay.

1           A     Oh, the primary unit was a two-man unit, and I was  
2 the third person there on the scene.

3           Q     The two-man unit was Spurling and?

4           A     Officer Ivan Duron.

5           Q     And can you spell?

6           A     It's I-V-A-N, last of D-U-R-A-N [sic].

7           Q     Okay. But you had testified when Mr. Schwartz was  
8 asking you questions that you essentially were either  
9 contemplating --

10          A     Uh-huh.

11          Q     -- hopping -- and let me just finish my question.

12          A     Okay.

13          Q     You were contemplating hopping, but you went around  
14 510 and went into the back yard, correct?

15          A     Right.

16          Q     Then the suspects were apprehended, for lack of a  
17 better term, arrested.

18          A     One was. Yes.

19          Q     And you witnessed somebody crawling out of a shed?

20          A     Yes.

21          Q     And then from there my question is is this how they  
22 were left or did somebody kind of manipulate them into this  
23 photograph?

24          A     I don't know.

25          Q     Okay. And you didn't take the photograph?

1 A No.

2 Q This crime scene analyst appear --

3 A Correct.

4 Q -- and then take photographs, correct?

5 A Correct.

6 Q So you don't know whether or not the scene itself --

7 and also showing now 62, which is kind of a farther out view  
8 of the same gloves --

9 A Correct.

10 Q -- and hat or mask, you don't know if those were  
11 moved in some way, correct?

12 A Correct.

13 Q You didn't move them?

14 A No.

15 Q Okay. Same with State's 67, correct?

16 A Correct.

17 Q And when I say "correct", we're asking whether or  
18 not if you know if they were moved or not.

19 A No. No. I do not know.

20 Q You do not?

21 A I do not know if they were moved.

22 Q Okay.

23 A As far as I'm aware, everything was taken -- the  
24 pictures that were taken were in place and nothing was moved.

25 Q Well, I mean --

1 A As far as I know.

2 Q So do you know or not know whether or not these  
3 items were moved?

4 A I don't know.

5 Q And, again, that's the same with 68. Those --  
6 that's a close-up of 67. And this is 42, and I know we're  
7 skipping around just a bit, but 42 has wallet and money in the  
8 bottom left corner --

9 A Correct.

10 Q -- and then a black something in the top of the  
11 picture by the wall.

12 A Correct.

13 Q And I think you said you weren't sure what that was.

14 A Right.

15 Q Okay. Same with Number 43. Another wallet and some  
16 cash. Did you see that there?

17 A No.

18 Q Okay. And then on Number 38, we see the wallet with  
19 the cartoon characters or comic characters, two knives, keys,  
20 and a phone, correct?

21 A Correct.

22 Q You don't know if these were moved before being  
23 photographed.

24 A If I remember correctly when I came around the  
25 corner and Jim -- while Officer Spurling was taking him into

1 custody, he was doing a cursory search of his immediate area,  
2 of the suspect's immediate area --

3 Q Okay.

4 A -- or the Defendant's, and some of those items may  
5 have been in that person -- on his person --

6 Q Okay.

7 A -- and were removed.

8 Q So Spurling may have put them on the floor or on the  
9 ground --

10 A Right. Right.

11 Q -- during that search. And then 36 is a -- what  
12 looks like a black mask. Do you know if that was moved or  
13 part of the search?

14 A I don't know.

15 Q You don't know? And then this is just a -- kind of  
16 an outer view. This is State's 35 of those same items,  
17 correct?

18 A Correct.

19 Q Now, take you back just a little bit to --

20 MR. GILL: Court's indulgence here.

21 BY MR. GILL:

22 Q Your testimony at the beginning of Mr. Schwartz's  
23 questioning was that -- and I wrote it down. That you got  
24 information that the suspects -- and this is from 7-Eleven.

25 A Uh-huh.

1 Q Suspects were last seen on foot heading east on  
2 Charleston. Do you recall that testimony?

3 A Right.

4 Q Where did you get that information?

5 A I believe it was from the clerk.

6 Q Okay. So the clerk told you that they were on foot.

7 A Either it was the -- correct. It would have been  
8 the clerk.

9 Q That they headed east?

10 A Yes.

11 Q And that they didn't have a car?

12 A Correct. Well, no. We don't know that.

13 Q Okay. And that's why I'm trying to clarify because  
14 your statement was that you have information that they were on  
15 foot and headed east on --

16 A Last seen on foot. Right. Unknown if they had a  
17 vehicle or not.

18 Q Unknown if they had a vehicle, and then heading east  
19 on Charleston.

20 A Right.

21 Q And when -- and I hate to parse this up so much, but  
22 when you get the information that they're heading east in an  
23 unknown vehicle -- but you don't know if they're walking or  
24 driving, correct?

25 A No.

1 Q You do not?

2 A No. We do not know.

3 Q Now, the State showed you 91, which is the map.

4 A Uh-huh.

5 Q Right? And it does have a blue -- kind of a blue  
6 dot, correct?

7 A Correct.

8 Q And it has these -- I'm going to call them  
9 guesstimates on walking, correct?

10 A Approximations.

11 Q Did you create this map?

12 A No.

13 Q Okay. Do you know who did?

14 A As far as I'm aware, it's Google.

15 Q Google did. Okay.

16 A Some algorithm.

17 Q And do you know if the suspects took the blue route?

18 A No.

19 Q Took the bottom route that has some grey on it --

20 A Alpine.

21 Q -- and I'm pointing to the bottom of the exhibit.

22 A Right. It would be Alpine Place. No. I don't know  
23 if they took --

24 Q Okay.

25 A -- that as opposed to the other --



1 Q Okay.

2 A -- route.

3 Q Okay. Or Alta (phonetic), right? You don't know.

4 A Or Alta.

5 Q So -- and do you know how Google makes these  
6 estimates on time?

7 A No.

8 Q Okay. You don't know if they're accurate or not?

9 A No.

10 Q You've never walked from 5700 West Charleston to 504  
11 Brush Street, correct?

12 A No.

13 Q And I believe Mr. Schwartz showed you 93, as well,  
14 and I'll zoom out just a bit. Can you describe that?

15 A That's an aerial view of 504 Brush.

16 Q Okay. And then we can see 504 Brush in the --

17 A Right.

18 Q -- kind of top middle of that. And 510 Brush --

19 A Is to the south.

20 Q -- our indicator is not working. Well, indicator's  
21 not working, so I can't have you touch the screen and have it  
22 show up --

23 A Okay.

24 Q -- but is this a north -- as if we were looking at  
25 this from above, is north at the top of the picture?

1 A It is.

2 Q And south is the bottom of the picture?

3 A The bottom. Correct.

4 Q So 510 Brush is where on that?

5 A The south of the picture.

6 Q Okay.

7 A I'm sorry. Bottom of the picture.

8 Q Bottom of the picture. One or two houses away from

9 504 Brush?

10 A One.

11 Q So next door.

12 A No. Two -- two houses down. So I'm sorry. So it's  
13 not the --

14 Q And if you can see me, we're going 504 Brush, 510  
15 Brush, right?

16 A Yes.

17 Q The last from the bottom full picture of a home on  
18 the map?

19 A Correct.

20 Q All right. Give me --

21 MR. GILL: Court's brief indulgence.

22 BY MR. GILL:

23 Q All right. Sergeant, I'm showing you what's been  
24 marked as State -- or admitted as State's 20. You recognize  
25 this, correct?

1 A Correct.

2 Q And what is that?

3 A That's the entryway into the addition to the house  
4 where the victim was residing.

5 Q At 504 Brush, right?

6 A Right.

7 Q So -- and, again, I wish we had the indicators, but  
8 where my pen is is the doorway, right?

9 A Yes.

10 Q And then you had testified regarding this axe that's  
11 here.

12 A Right.

13 Q And that's out in front of what looks like a  
14 sidewalk of some sort or a --

15 A Right. It basically leads into the driveway.

16 Q Okay. So that is cement behind this?

17 A Yes.

18 Q And when you arrived on scene, this is where the axe  
19 was?

20 A Yes.

21 Q Okay. And you were third on scene?

22 A Yes.

23 MR. GILL: Court's brief indulgence.

24 Nothing further, Your Honor. Thank you.

25 THE COURT: Mr. Boley?

1 MR. BOLEY: Briefly.

2 CROSS-EXAMINATION

3 BY MR. BOLEY:

4 Q Bear with me for just a moment, Sergeant. I want to  
5 point out some specific things here.

6 THE COURT: Mr. Boley, the side of the lectern comes up  
7 if you all need --

8 MR. BOLEY: Sure.

9 THE COURT: -- a little room to --

10 [Pause]

11 BY MR. BOLEY:

12 Q Sergeant, I'm going to show you State's Exhibit 43  
13 and 38. Well, I'll show you -- I'll start with Exhibit 38.

14 We already talked about the wallet with the comic  
15 book characters on it.

16 A Right.

17 Q And you testified that Officer Spurling had already  
18 possibly moved that wallet from where it was when you arrived.

19 A Correct.

20 Q And the same applies to the wallet in State's  
21 Exhibit 43, right?

22 A As far as I remember that was a little bit farther  
23 away from where he actually was taken into custody, so I  
24 wouldn't -- I wouldn't say that.

25 Q Okay. So the wallet with the comic book characters

1 on it was closer to the suspect than the black wallet?

2 A Correct.

3 Q That's accurate. Okay. So it's possible that one  
4 was in his possession and the other one wasn't --

5 A It's possible.

6 Q -- when he was taken into custody? Okay.

7 Were either -- when both suspects were taken into  
8 custody, was one of these weapons on either of them?

9 A No.

10 Q Were there any weapons on them?

11 A I can't testify for the first suspect that was --  
12 that was in the bushes. I could say that for the second  
13 suspect that he didn't have any weapons on him. Not that I  
14 remember.

15 Q Fair. And you testified that -- I believe it was,  
16 and forgive me, I'm paraphrasing. That the suspects from the  
17 7-Eleven were last seen heading east down Charleston.

18 A Correct.

19 Q Do you know where that information was collected?

20 A Again, I think I -- I testified as being the  
21 clerk -- the clerk. I'm sorry.

22 Q The clerk from the --

23 A The clerk.

24 Q -- 7-Eleven? Okay.

25 A From 7-Eleven.

1 MR. BOLEY: Thank you. No further questions.

2 MR. SCHWARTZ: Just a couple things, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. SCHWARTZ:

5 Q In going through these different photos of these  
6 items, you didn't move any of the items when you were on  
7 scene, correct?

8 A No.

9 Q And as far as you know, you didn't see anyone -- did  
10 you see anyone move any of the items?

11 A No.

12 Q The map that Mr. Gill showed you that has the  
13 different Google tracks through it, you said that you haven't  
14 walked that path, right?

15 A Correct.

16 Q Do you have any reason to believe that that's an  
17 inaccurate representation of how long it would take to walk?

18 A No.

19 Q But you did drive from 7-Eleven to 504?

20 A Yes.

21 Q Sorry. One more photo I want to show you. I just  
22 want to be clear about one thing. Showing you State's 34.  
23 Can we see on this photo the bushes that you observed Officer  
24 Spurling interacting with -- that's the other suspect in this  
25 photo?

1 A Yes.

2 Q Okay. And can you describe for me which bushes on  
3 the screen?

4 A The -- looks like five bushes --

5 Q So right here these --

6 A -- and they're -- they're either along the wall.  
7 Yeah.

8 Q Do you recall kind of where in these five bushes he  
9 would --

10 A It would have been in between the -- if I'm counting  
11 from the right, the -- the -- the first and the second bushes,  
12 in between.

13 Q Kind of right here?

14 A Yes.

15 Q Okay. And is that what's sort of represented in  
16 this photograph on page -- on State's 35?

17 A It is.

18 Q And when you walked this area after, that's where  
19 you found the majority of those items we looked at pictures  
20 of?

21 A Correct.

22 MR. SCHWARTZ: Nothing further, Your Honor. Thank you.

23 THE COURT: Anything else?

24 RECROSS-EXAMINATION

25 BY MR. GILL:

1 Q Give me one second, Sergeant. I'm just trying to  
2 find a -- State's 91. Okay. We're back on the map. Now, the  
3 State asked you do you have any reason to believe that these  
4 numbers are wrong? Do you remember that question?

5 A Yes.

6 Q You don't have any reason to believe they're right,  
7 do you?

8 A No.

9 Q Or wrong?

10 A No.

11 Q No knowledge as to how long it takes to walk that,  
12 correct?

13 A To walk it? No.

14 MR. GILL: Nothing further, Your Honor.

15 THE COURT: Mr. Boley?

16 MR. BOLEY: Just want to clarify one thing.

17 RECROSS-EXAMINATION

18 BY MR. BOLEY:

19 Q Sergeant, I'm going to draw your attention to  
20 State's Exhibit 35. You testified earlier that these items  
21 were in that position when you arrived.

22 A Correct.

23 Q And you're not aware if another officer,  
24 specifically Officer Spurling, had repositioned those items?

25 A No.



1 Q Okay.

2 MR. BOLEY: That's all.

3 THE COURT: All right. Any questions from the jury?

4 Counsel approach.

5 [Bench Conference Begins]

6 THE COURT: Okay.

7 MR. SCHWARTZ: I was going to say --

8 THE COURT: [Indiscernible].

9 MR. SCHWARTZ: Thank you.

10 THE COURT: [Indiscernible].

11 MR. SCHWARTZ: Sweet. Sweet. Why didn't he hide under  
12 the shed? Did that make you feel manly about hiding under the  
13 shed. The denominations of currency and the wad of cash  
14 specifically, were there 20s or were there large  
15 denominations? I mean I'm sure that's going to come out.  
16 There's [indiscernible], right?

17 MR. GILL: Yeah.

18 MR. SCHWARTZ: The CSA guy.

19 MS. HOLTHUS: [Indiscernible].

20 MR. SCHWARTZ: [Indiscernible].

21 MR. GILL: Yeah. I don't think he knows, but --

22 [Bench Conference Ends]

23 THE COURT: Okay, sir. I'm going to ask you questions.

24 I'm going to ask you to look at the jurors when you answer so  
25 they can hear you.

1 THE WITNESS: Okay.

2 THE COURT: What were the denominations of currency for  
3 the wad of cash? Specifically, were there 20s or were they  
4 lower denominations?

5 THE WITNESS: I don't remember -- I don't know. As I --  
6 I saw the wad of money, I didn't go through the money. All  
7 I -- as far as I could see, there was a couple fives in -- on  
8 the top that I could actually see the denomination, but I  
9 didn't -- again, I didn't fan it out. I didn't do anything  
10 like that. I think that was crime scene analysts that did  
11 that after they took pictures of where everything was found.

12 THE COURT: Any follow-up?

13 MR. SCHWARTZ: No, Your Honor. Thank you.

14 THE COURT: Any follow-up?

15 MR. GILL: No, Your Honor.

16 THE COURT: All right. Thank you, sir. You are --

17 THE WITNESS: Thank you.

18 THE COURT: -- free to go. Okay, folks. We're going to  
19 go ahead and break for lunch. We will break until 1:30.

20 During this break you are admonished not to talk or  
21 converse among yourselves or with anyone else on any subject  
22 connected with this trial or read, watch, or listen to any  
23 report of or commentary on the trial or any person connected  
24 with this trial by any medium of information, including,  
25 without limitation, newspaper, television, Internet, and radio

1 or form or express any opinion on any subject connected with  
2 the trial until the case is finally submitted to you.

3 We'll see you back at 1:30. Have a good lunch.

4 THE MARSHAL: Please rise for the jury. Folks, leave  
5 your clipboards. Take all your personal items with you.

6 [Jury Exits]

7 THE COURT: All right. Anything that we need to take  
8 care of outside the presence of the jury?

9 MR. SCHWARTZ: Not from the State, Your Honor.

10 MS. HOLTHUS: Not from the State.

11 THE COURT: All right. Do we have jury instructions yet?

12 MR. SCHWARTZ: Almost.

13 THE COURT: Whenever I can get them, I'd appreciate it.  
14 If you also could email them to my JEA? Normally, we do that  
15 to the law clerk but we're not doing that in this case.

16 So if you could email them to my JEA because we do  
17 the final set so we can make copies for all the jurors and  
18 stuff.

19 MR. SCHWARTZ: Absolutely.

20 THE COURT: Okay. Fantastic. Do you have -- you can get  
21 her email.

22 MR. SCHWARTZ: What's her name?

23 THE COURT: Tina Hurdt.

24 MR. SCHWARTZ: Tina Hurdt. Yes. Oh, yes.

25 THE COURT: So it's Hurdt --

1 MR. SCHWARTZ: I have it.

2 THE COURT: -- H-U-R-D-T --

3 MR. SCHWARTZ: Yes. I have that.

4 THE COURT: Okay. All right. And any proposed  
5 instructions. Also, if you could email those, as well, I  
6 would really appreciate it.

7 [Recess at 12:27 p.m.]

8 THE COURT: We're ready, right? Ready for the jury? Are  
9 we ready for the jury?

10 MR. SCHWARTZ: One second maybe.

11 THE COURT: All right. You want to go get them? Like,  
12 gather them up and --

13 THE MARSHAL: They're lined up.

14 THE COURT: Oh, all right. They're lined up waiting for  
15 you all.

16 If you're talking about scheduling, you might want  
17 to include me because I might --

18 MS. HOLTHUS: I'm going to include you.

19 THE COURT: -- have an opinion.

20 MS. HOLTHUS: No. I was going to include you. I just  
21 wanted to clear it with them to see if they were the same.

22 MR. GILL: I don't think we're changing a thing --

23 MS. HOLTHUS: Here --

24 MR. GILL: -- Your Honor.

25 MS. HOLTHUS: Here was my request, Judge, is that I think

1 we're going to finish tomorrow --

2 THE COURT: Yes.

3 MS. HOLTHUS: -- and so I don't care when, but I was  
4 hoping to have a couple hours, either start later or ideally  
5 we'd like to finish tomorrow but agree not to close until  
6 Thursday morning so that we could work on our closings after  
7 close of evidence.

8 THE COURT: When are you going to finish tomorrow?

9 MR. SCHWARTZ: We --

10 MR. GILL: Should be all day with all -- I mean I don't  
11 speak for you --

12 MS. HOLTHUS: I don't think so --

13 THE COURT: You have three witnesses --

14 MR. SCHWARTZ: I think we anticipate two to three  
15 witnesses tomorrow --

16 MS. HOLTHUS: I think it's going to be, like, a half day  
17 tomorrow. That's why I was saying maybe we could --

18 MR. SCHWARTZ: And that would be -- it'd be the DNA  
19 analyst --

20 MS. HOLTHUS: Assuming it goes as fast as we think it  
21 will today.

22 MR. SCHWARTZ: -- the detective --

23 THE COURT: Well, let's see where we are. I mean what  
24 I'd rather do is just take a longer lunch and close  
25 tomorrow --

1 MR. GILL: Close tomorrow?

2 THE COURT: -- if we're going to be done in the morning.

3 MS. HOLTHUS: Just my request.

4 THE COURT: I know.

5 MS. HOLTHUS: I'm not real good with my PowerPoints and  
6 until we know exactly where everything is going and stuff,  
7 it's --

8 THE COURT: Right. I appreciate that, but I'd rather get  
9 it done and get the jurors out of here. All right.

10 MS. HOLTHUS: Could we at least get a 10:00 start?

11 THE COURT: Tomorrow?

12 MS. HOLTHUS: As far as target?

13 THE COURT: No. I have to do court in the morning.

14 MS. HOLTHUS: Okay.

15 THE COURT: Okay. All right. Bring them in.

16 [Pause]

17 THE MARSHAL: Please rise for the jury.

18 [Jury In]

19 THE MARSHAL: Please be seated.

20 THE COURT: Back on the record in Case Number 313118,  
21 State of Nevada versus Venegas and Monay-Pina.

22 Let the record reflect the presence of all of the  
23 jurors, Defendants, and counsel.

24 State, please call your next witness.

25 MS. HOLTHUS: Javier Colon.

1 MR. SCHWARTZ: Your Honor, may I approach your clerk?

2 THE COURT: Sure.

3 THE MARSHAL: Please raise your right hand, face the  
4 clerk to be sworn in.

5 JAVIER COLON, PLAINTIFF'S WITNESS, SWORN

6 THE COURT: Good afternoon, sir. Go ahead and have a  
7 seat.

8 THE WITNESS: Thank you, ma'am.

9 THE COURT: And if you'd state your name and then spell  
10 it for the record?

11 THE WITNESS: Okay. Javier Colon, J-A-V-I-E-R, Colon, C-  
12 O-L-O-N.

13 THE COURT: Thank you, sir. Whenever you're ready.

14 MS. HOLTHUS: Thank you.

15 DIRECT EXAMINATION

16 BY MS. HOLTHUS:

17 Q Javier, directing your attention to January 12th of  
18 last year, where were you living?

19 A I was living -- it was Brush Street. That was at  
20 4 -- I don't remember the -- the number --

21 Q Okay.

22 A -- when I get attack when I was sleeping.

23 Q Okay. Who were you living with?

24 A With my sister.

25 Q And what's your sister's name?

1 A Adriana Colon.

2 Q Can you kind of describe to me what the house living  
3 situation was?

4 A Yeah. I living in -- in the garage, and that was,  
5 like, 12 -- I mean 9 when these guys came --

6 MR. GILL: Your Honor, objection.

7 THE WITNESS: -- to the garage.

8 THE COURT: Okay. Let me just -- or do you want to go  
9 ahead and make your objection?

10 MR. GILL: Nonresponsive.

11 THE COURT: Sustained.

12 BY MR. GILL:

13 Q I just want to talk about who lived at the Brush  
14 Street address, okay?

15 A Uh-huh.

16 Q It was you in the garage.

17 A Yes.

18 Q Who lived in the house?

19 A My sister and her three kids.

20 Q And what are their names?

21 A Lizbeth Avina and Samantha Avina, Cesar Avina.

22 Q How long had you been living there?

23 A Probably for a little -- three months with her.

24 Q You moved in with your sister and her kids --

25 A Yes.



1 Q -- basically?

2 A Yes.

3 Q And obviously you know what we're here for. You  
4 wanted to start talking kind of about what happened that  
5 night, correct?

6 A Yeah. I'm a --

7 Q At the time were you working?

8 A I'm working in the -- in the mornings.

9 Q Okay. What --

10 A Yeah.

11 Q -- were you doing? What do you --

12 A I -- I'm working for this guy selling in cubicles in  
13 a -- for the hospital center, clinics.

14 Q Selling?

15 A Cubicles. Yeah.

16 Q Cubicles?

17 A Yeah. Cubicles. Yeah.

18 Q For --

19 A I sell the -- I sell the cubicles for -- for a guy  
20 for -- for the clinics.

21 Q For the -- and I'm sorry. I'm not --

22 A For the clinic. A clinic.

23 Q Clinics.

24 A Yeah. The clinics.

25 Q Clinics.

1 A Yeah.

2 Q Got it.

3 A Yeah.

4 Q Okay. Sorry about that.

5 A Okay. No problem.

6 Q So that's what you were doing, but that just in the  
7 mornings?

8 A Yes.

9 Q And so sometime that evening did something happen or  
10 that early morning, I guess it would be, that night you said.

11 A Uh-huh. Yeah. So I'm in there sleeping when these  
12 two guys came to the garage, and they attack me. They hit me  
13 with a pistol first right in my head.

14 Q Where were you when they attacked you?

15 A Asleep and in my bed.

16 Q What woke you up?

17 A The guy that opened the -- when he opened the door,  
18 that wake me up.

19 Q That woke you up?

20 A Uh-huh.

21 Q Yes?

22 A Yes.

23 Q Did they say anything to you?

24 A He only -- he came to screaming and say, "Javier,  
25 get up, get up".

1 Q You said there were two guys there.

2 A Yeah. There was two guys but one talk. One of the  
3 guys.

4 Q Did you know them?

5 A One? Yes.

6 Q Which one did you know?

7 A Casimiro Venegas.

8 Q Do you see Casimiro Venegas here in court?

9 A Yes.

10 Q Can you --

11 A No.

12 Q -- point to him and tell me where he's sitting and  
13 what he's wearing?

14 A He right here in front of me.

15 MS. HOLTHUS: Record reflect identification of Defendant.

16 THE COURT: The record will so reflect.

17 BY MS. HOLTHUS:

18 Q Did you know the other individual?

19 A I seen it -- I see before when -- because he  
20 working -- he working with us, too, before in -- in the  
21 landscaping.

22 Q In what?

23 A That he worked with us in the -- for landscaping  
24 before with me.

25 Q Okay. In housekeeping?

1           A     Yeah. But on that day I -- I -- I don't know if  
2 that was him because he got the face covered.

3           Q     So you -- did you get his -- did you get a look at  
4 him that day?

5           A     No. I don't -- I only -- I don't see his -- his  
6 face.

7           Q     Okay. So do you see the second individual here in  
8 court today?

9           A     Yes.

10          Q     And where -- can you point to that individual?

11          A     Right here.

12          Q     Which one? Describe something they're wearing --  
13 he's wearing.

14          A     That's -- that one -- that one with the white shirt  
15 right there.

16          Q     There's two guys at the table in white shirts.  
17 Well, I guess one you said was Casimiro Venegas --

18          A     Yeah. That was Casimiro Venegas and Jose was our  
19 fellow right here. Jose.

20          MS. HOLTHUS: Record reflect identification of Monay-  
21 Pina?

22          THE COURT: The record will so reflect.

23          BY MS. HOLTHUS:

24          Q     Now, you said he had his face covered. How do  
25 you -- how were you able to tell it was him?

1 A Because I know -- after that, I know because that  
2 was him, the one with him.

3 Q Did you see him that night?

4 A No. I don't see his face.

5 Q Do you see any part of his face?

6 A No.

7 Q So how was it that you're able to tell us that  
8 that's who was there that night?

9 A Because somebody tell me that that was him.

10 Q Okay. You didn't actually see that individual?

11 A No. I don't see the -- I don't see his face.

12 Q Was Venegas, his face was not covered?

13 A No. Not him.

14 Q So they come in, they yelled "Javier, get up".

15 A Yes.

16 Q Did you get out of bed?

17 A No. I never did.

18 Q What happened then?

19 A So he came onward inside, and he started hitting me  
20 with the pistol in my head.

21 Q Who? Which one?

22 A Casimiro --

23 Q Okay.

24 A -- Venegas.

25 Q He was hitting you. What was he hitting you with?

1           A     He hitting me in the -- in the head with the -- with  
2 the -- with a pistol.

3           Q     Where did he hit you? Where in the head?

4           A     He hit me probably like ten times all around on my  
5 head.

6           Q     And what were you doing while this was happening?

7           A     Nothing. I just stayed right there in my -- in --  
8 in my bed.

9           Q     Did you have any weapons?

10          A     Uh-uh. Who? Me? No.

11          Q     What were you wearing?

12          A     Just -- just my -- my shirt and my pants that day.

13          Q     And what was -- while Casimiro was hitting you with  
14 the pistol in the head, what was the other individual doing?

15          A     He pointed it to -- to my -- to my family with the  
16 other pistol, right to -- from -- through the windows.

17          Q     Where was your family?

18          A     Inside of the house.

19          Q     When you say "through the window", were the windows  
20 between the house and the garage?

21          A     Yes.

22          Q     So were you able to see your family inside the house  
23 from the garage?

24          A     Uh-huh. Yes. For the -- for the windows. Yes.

25          Q     And you're saying the other individual, who you

1 identified here, was aiming the pistol at them?

2 A Yes.

3 Q Was he saying anything to them?

4 A No.

5 Q Were you saying anything?

6 A No. I can see -- you know, I just told him to stop  
7 hitting me and just never, you know, stop. He never listen.

8 Q Okay. Then what happened?

9 A Then -- yeah. So he put --

10 Q Did he hit you with anything else?

11 A Yeah. Yeah. After that, with a -- he hit me -- he  
12 saw -- I got a axe next to me because I'm going to do a side  
13 job the next day, so I sharpen it, and he saw it, and he  
14 started hitting me with the -- with the thing. He grabbing it  
15 and started hitting me with the -- with the axe.

16 Q At the time that he was -- was he hitting you with  
17 the head of the axe with the blade?

18 A Yes. With the -- with the blade.

19 Q At the time he was hitting you, were you still in  
20 your bed?

21 A Yes.

22 Q Were you lying down, sitting up?

23 A No. Laying down.

24 Q You're still laying down?

25 A Yes.

1 Q Did you ever, at any point, get up during this?

2 A No. I never tried to get up because he -- he  
3 never let --

4 Q Where did he strike you with the axe?

5 A He hit me the first time in my leg, and he hit me  
6 one more time in my ribs, and the third one, he tried to hit  
7 me right in my head. Now, I -- I just put my -- I put my  
8 hand, and he hit me in my hand, so he cut me all right here in  
9 my --

10 Q Let's start with the first one. The first cut in  
11 the leg, did -- the first time he hit you in the leg, did he  
12 cut your leg?

13 A No. Because I got all my blankets, and they're --  
14 so, like, the blankets, they cover me.

15 Q What about the time in the ribs?

16 A No.

17 Q Also covered by blankets?

18 A Yeah. Yes.

19 Q And then the time that he went for your head, but  
20 you put your hand up --

21 A Yeah. I put my hand so -- and that hit me in  
22 this -- it went -- they -- they cut me right in my hand.

23 Q And you still to this day have the scars there for  
24 that?

25 A Yes. Still got that one.



1 MS. HOLTHUS: I don't know. Can we have him put his hand  
2 under this thing?

3 THE COURT: Sure.

4 THE MARSHAL: Come up here, sir.

5 MS. HOLTHUS: Javier, would you come up here?

6 I got -- is it on?

7 MR. SCHWARTZ: Uh-huh.

8 THE COURT: Yeah.

9 MS. HOLTHUS: Okay.

10 BY MS. HOLTHUS:

11 Q And now if you could show the jury, if you will,  
12 what you're showing is the end -- where the cut was.

13 A Right here.

14 Q Okay. And that's what got cut open?

15 A Yes.

16 Q Thank you.

17 A You're welcome.

18 Q What -- how did it start -- stop?

19 A When he saw the -- the police came, he -- he run  
20 away.

21 Q And why do you say that -- why do you think that  
22 that's what stopped it? Did you see the police?

23 A No. I -- I don't seen it. I don't seen it. I  
24 never seen it. No. I seen it when -- when that was inside  
25 already.

1 Q Okay. Did you hear the police come up?

2 A No.

3 Q Did you see any lights or anything?

4 A I -- I seen the lights.

5 Q And as soon as the lights came, that's when they ran  
6 away?

7 A Yeah. That's when they run away.

8 Q So what happened then?

9 A After that, the -- the officers, they came, and they  
10 saw me all full in blood, and he told me hey, you okay --

11 MR. GILL: Objection.

12 THE WITNESS: -- you okay? I said no.

13 THE COURT: Hang on a second, sir.

14 MR. GILL: Objection as to hearsay, Your Honor.

15 THE COURT: Sustained.

16 BY MR. GILL:

17 Q Just kind of tell me what was happening.

18 A Okay. So when the police, they came, and he saw me  
19 all -- all full and blood, and he told what happened, what  
20 happened?

21 MR. GILL: Objection, Your Honor, as to hearsay as to  
22 what the officer said.

23 MS. HOLTHUS: Not offered for the truth of the matter  
24 asserted. It's what -- the officer's kind of checking out  
25 what's going on. That's also excited utterance as his

1 response. He's just been axed in his bed.

2 MR. GILL: Would you like me to just respond here or at  
3 the bench, Your Honor?

4 THE COURT: The bench would be great.

5 [Bench Conference Begins]

6 MR. GILL: I know she is not trying to elicit anything  
7 from him, but it seems like he wants to give the description  
8 that the officer gave to him when he arrived, and I don't  
9 think it qualifies as an excited utterance.

10 Plus, they have the officers coming in to testify.

11 THE COURT: What the officer said is not an excited  
12 utterance.

13 MR. GILL: I'm not --

14 MS. HOLTHUS: We're not sure what you're objecting to.  
15 His answers to the officers or the answers to --

16 MR. GILL: The answer to your question is fine. He's  
17 about to say what all the officer said to them when they came  
18 up, and that's something that the officers can testify to.

19 MS. HOLTHUS: I thought he was going to say what he told  
20 the officers.

21 MR. GILL: No. And maybe just without saying what the  
22 officer's said, you know, maybe just give him the -- that  
23 head's up.

24 MS. HOLTHUS: What are you thinking the officer said?

25 MR. GILL: I have no idea what he's about to say.

1 THE COURT: All right. It's sustained just ask him  
2 something else.

3 [Bench Conference Ends]

4 BY MS. HOLTHUS:

5 Q Javier, did you tell the officer that got there what  
6 happened?

7 A Yes.

8 Q And then what happened with you?

9 A They take me to the hospital.

10 Q Did you go in an ambulance?

11 A Yes.

12 Q What happened to you at the hospital?

13 A The -- they -- they just all over in my head,  
14 stitches and staples all over in my -- in my head, and I got  
15 stitches in my hand.

16 Q How did your head feel?

17 A Not to the hundred percent, though, that's all  
18 right.

19 Q It's all right now?

20 A Yeah.

21 Q Did you have any pain?

22 A Not pain pill. I -- I don't move my fingers like --  
23 like before, you know, but that's all right.

24 Q But even now because of that you can't move your --

25 A Yes.

1 Q -- fingers like you used to?

2 A Yes.

3 Q Did Casimiro and the other individual take anything  
4 from you that night?

5 A Yes. He -- he take my wallet. They take one -- one  
6 camera, my MP3, and two knives, two collection knives.

7 Q How tall are you?

8 A Huh?

9 Q How tall are you?

10 A How tall is me?

11 Q How tall are you?

12 A Yeah. How tall? Like 5 feet.

13 Q And what do you weigh?

14 A Excuse me? Like a hundred-forty-two pounds.

15 MS. HOLTHUS: Court's indulgence.

16 BY MS. HOLTHUS:

17 Q Did you ever see either of the two individuals speak  
18 to your sister or your family?

19 A Yeah. Well, Casimiro just screaming to my sister,  
20 too, don't do anything, don't do anything, we're going to kill  
21 you, too.

22 Q And was that before, during, or after the other  
23 individual was pointing the pistol at them?

24 A Yes. It's not -- that was when it was -- he just  
25 keep pointing to -- to my -- to the family, too.

1 Q I'm showing you Exhibit 10. Is that the house that  
2 you were staying with on Brush Street?

3 A Yes.

4 Q What's that a picture of?

5 A My axe.

6 Q That's your axe? Is that the axe that was used on  
7 you that night?

8 A Yes.

9 Q That's Exhibit 13.

10 A Yes.

11 Q Exhibit 27.

12 A Yes.

13 Q What is that?

14 A Some more blood.

15 Q That's your blood. Is that your bed?

16 A Yes. My bed.

17 Q And 28. That's more of your bed?

18 A Yes.

19 Q Same with 29?

20 A Yes.

21 Q And 31.

22 A Okay. Yes.

23 Q And 32.

24 A And 32. Okay. Yes.

25 Q Is that your pillow with the blood on it?

1           A     Yes. Blood on my pillow. And that was me right  
2 there.

3           Q     Still in the hospital?

4           A     Yes.

5           Q     And that's Exhibit 79.

6           A     Uh-huh. That's my hand.

7           Q     After it was sewed up?

8           A     After -- after it was sewed up. Yeah.

9           Q     Close-up?

10          A     Yes. Yeah.

11          Q     And, again, this is the injury that you got when you  
12 put your hand up to protect your head?

13          A     Yes. Yeah.

14          Q     Another view.

15          A     Yes. Another view right there.

16          Q     That was 82. 83.

17          A     Yeah.

18          Q     And what's this? 34?

19          A     I don't know. I think that -- I think was  
20 scratched. I don't know. I don't remember those.

21          Q     That's your other arm, though?

22          A     Yes. With my hand.

23          Q     What about 85?

24          A     Oh, because I put -- when -- when he hitted [sic] me  
25 in the -- in the head with the pistol, I put my hands, too, to

1 -- to block my head, so they hit me with the pistol in my  
2 right hand -- my hands, too.

3 Q Okay. So that's an injury from the -- getting --

4 A Yes.

5 Q -- hit with the pistol?

6 A Yes.

7 Q And that's a close-up of your face that night?

8 A Yes.

9 Q And that's State's Exhibit 86.

10 A Uh-huh.

11 Q Here's 87.

12 A Yeah. See on my head, open right there?

13 Q Yeah. I -- stitches here. This is from --

14 A Yes.

15 Q -- what?

16 A From -- from the pistol. When he hit me with the  
17 pistol.

18 Q And here?

19 A Yes. And that one right there, too.

20 Q That's from the pistol?

21 A Yes.

22 Q And what about right here? Did you get stitches in  
23 your ear, as well?

24 A Yes. I got stitches all over right there, too.

25 Q Is there any other stitches in your hair?



1           A     And they got -- they put me staples right in my  
2 hair.  Yes.

3           Q     88.  That's a close-up of the ear?

4           A     Uh-huh.  Yeah.  The stitches right there in my  
5 head -- in my ear.

6           Q     89.

7           A     Yes.  You can see that -- the staples in my head.

8           Q     Where were the staples in your head be?

9           A     That's looking right here in front.  Yes.  One right  
10 there where you pointed.  There's one a little bit up, like,  
11 a -- probably like an inch.

12          MS. HOLTHUS:  Which -- we didn't fix that.

13          THE CLERK:  I think it is.

14          MS. HOLTHUS:  Oh, is it fixed?  See if -- touch the  
15 screen.

16          THE WITNESS:  Yeah.  Okay.  There's one right there.

17          MS. HOLTHUS:  There we go.

18          THE WITNESS:  And there's, like, three right there.

19 BY MS. HOLTHUS:

20          Q     And State's Exhibit 90.  Those are the close-up of  
21 the stitches that you got --

22          A     Okay.  Yeah.

23          Q     -- on your forehead?

24          A     Yes.  One, two, three, four, five, six in the front  
25 there, and a -- like, four in the top -- in the top.  Yeah.

1 Q Do you recognize State's Exhibit 74?

2 A Yes. That's one of my knives.

3 Q That's one of your knives?

4 A Yes.

5 Q Did anyone have permission to take that knife?

6 A No.

7 Q What about 58?

8 A Yes. One of my hunting knives.

9 Q And, again, did anybody have permission to take it?

10 A No. That was my wallet.

11 Q And where was your wallet that night before they  
12 came in?

13 A That was a -- I think, on top of my -- on one of the  
14 speakers that -- from my stereo.

15 Q And that was Exhibit 50. I don't know if I said.  
16 Exhibit 39? Recognize that?

17 A Yeah. That was my camera and cell phone.

18 Q And lastly, Exhibit 38. Do you recognize anything  
19 in that picture?

20 A Well, yes. That's my two knives right there, my  
21 cell phone, and I don't know the rest.

22 Q Which two knives?

23 A The -- the -- the brown one and the black one right  
24 there.

25 Q And can you point to them with --

1 A The black right here.

2 Q Which one?

3 A This one. The little one.

4 Q That one and which other one?

5 A Yeah. And this one.

6 Q I think if you tap bottom that'll go away.

7 A Oh. I see one more on the bottom. I can see.

8 Yeah. Right here on the bottom.

9 Q Where?

10 A Right here.

11 Q Is that yours, as well?

12 A Yeah. Yeah. That was for --

13 Q Those were all your knives?

14 A Yeah. Because I buy all that once in a -- for a  
15 collection -- collection knives.

16 Q And where were they before Casimiro and the other  
17 guy came in that night?

18 A I don't remember where was it.

19 Q Were they in the garage somewhere?

20 A Yeah. That was in the garage.

21 MS. HOLTHUS: Court's indulgence.

22 BY MS. HOLTHUS:

23 Q Do you still have scars left the staples and the  
24 stitches?

25 A Yes.

1 Q Had you ever had a problem with Casimiro that would  
2 have caused him to come over like this that night?

3 A I don't know. He -- she -- he came to say that I --  
4 I give flat tire -- and the flat tires for his sister or  
5 something -- something like that.

6 Q He was accusing you having something to do with his  
7 sister's flat tire?

8 A Yes. Yes.

9 Q And did you, in fact?

10 A No. I never did it.

11 Q Did you have any idea what he was talking about?

12 A No.

13 MS. HOLTHUS: Thank you. We'll pass the witness.

14 THE COURT: Mr. Gill?

15 MR. GILL: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. GILL:

18 Q Now, Mr. Colon, I'm going to ask you some questions,  
19 but I'm going to ask you to wait till I finish asking the  
20 question before you answer, and then I'll wait until you're  
21 finished, as well. Okay?

22 A Yes.

23 Q Now, let's --

24 MR. GILL: Did you leave them all up here?

25 MS. HOLTHUS: I did.

1 MR. GILL: Court's brief indulgence. We do have quite a  
2 bit of these, Your Honor.

3 BY MR. GILL:

4 Q Now, the State just showed you --

5 MS. HOLTHUS: I left them in piles, by the way.

6 MR. GILL: Oh, good. Good. Yeah.

7 BY MR. GILL:

8 Q Showed you 38, and you had pointed out three knives,  
9 correct?

10 A Yes.

11 Q And why do you have three knives?

12 A Because I -- I've always -- the two black ones,  
13 they -- they came with my -- with my knives collect -- with my  
14 collection knives.

15 Q Okay. So it -- and, again, you can -- I can see two  
16 black ones. These -- if you can touch the monitor?

17 A Yes. This is one right here, and one right here.

18 Q Okay.

19 A That -- that was too little but this big.

20 Q And do that again.

21 A But this big.

22 Q Three inches or so?

23 A Yeah. That was the two big -- about this big.

24 Q Okay. So those two black ones are about three  
25 inches?

1 A Yeah. Yeah.

2 Q And you got those from a knife collection?

3 A Yeah. For -- for the knife collections. Yeah. I  
4 buy it in a -- for a TV.

5 Q Okay. So you purchased something on the television?

6 A Yes.

7 Q Those came free with whatever you purchased.

8 A Yes.

9 Q And what you purchased was a knife?

10 A Yes.

11 Q Okay. And what about this knife? Where did you get  
12 that knife?

13 A That one I buy it in a North Dakota when -- when I  
14 lived over there.

15 Q You bought it in North Dakota?

16 A Yes.

17 Q And it's -- it looks to be about twice the size, is  
18 that fair, as the other two knives?

19 A That was -- yeah. That was four inches. Probably  
20 not even.

21 Q Four inches?

22 A Yes.

23 Q Okay.

24 A Yeah. That was a --

25 Q And --

1 A And that was a legal -- legal knife.

2 Q Little?

3 A Legal.

4 Q Legal.

5 A Legal knife.

6 Q I'm sorry to repeat. I just want to make sure --

7 A No problem.

8 Q -- we understand.

9 A Uh-huh.

10 Q Legal knife?

11 A Yes.

12 Q And what do you mean by "legal knife"?

13 A Because it's -- we -- we can grab it and -- it was  
14 a -- that -- that pocket knife. You can have it in your  
15 pocket all the time.

16 Q Okay. And when -- we're just still talking about  
17 the knife with the wooden handle in State's 38, correct?

18 A Yes.

19 Q Okay. And you described that as legal, correct?

20 A Yes.

21 Q Now, State's 74, how big is that knife?

22 A No. That was a big one.

23 Q Okay. Is that legal, as well?

24 A No. Not that. I think that was not a legal -- it's  
25 a collection knives. You know?

1 Q Okay. And how big is the blade on that one,  
2 approximately, if you know?

3 A I don't know. Probably like six, seven inches,  
4 probably.

5 Q And it's obviously -- in State's 74 it's sheathed,  
6 correct?

7 A Yes.

8 Q And State's 58, did -- what's that one?

9 A Another knife.

10 Q And it's also sheathed, correct?

11 A Yes.

12 Q And how big is that one?

13 A Probably like 6 inches.

14 Q Okay. So would you describe that as another illegal  
15 knife?

16 MS. HOLTHUS: I'm going to object to the -- I know it's  
17 belated, but -- because he's been asking, but I'm going to  
18 object to the --

19 THE COURT: Sustained.

20 MR. GILL: Your Honor, could -- I want to understand the  
21 objection, whether or not they're legal or illegal?

22 MS. HOLTHUS: Correct. That's the objection.

23 MR. GILL: Can we approach?

24 THE COURT: Sure.

25 [Bench Conference Begins]



1 MR. GILL: I mean he's the one classified them as legal  
2 or illegal based on their size.

3 MS. HOLTHUS: I don't even know what it means. You --

4 MR. GILL: Well, I can ask him what it means.

5 MS. HOLTHUS: I mean sometimes [indiscernible]. It's not  
6 just to own them.

7 MR. GILL: Well, I think --

8 MS. HOLTHUS: They carry them on a person or what --

9 MR. GILL: Okay.

10 MS. HOLTHUS: -- are you talking about?

11 MR. GILL: Okay.

12 MS. HOLTHUS: I don't think they're [indiscernible].

13 MR. GILL: Yeah. I think he's talking about the size of  
14 the blade, but I can ask him --

15 MS. HOLTHUS: But in terms of what?

16 MR. GILL: -- what his understanding is.

17 MS. HOLTHUS: We can have big blades in our home. We  
18 just can't carry them in your pocket, right?

19 MR. GILL: Yeah. I mean I can ask him what he means or I  
20 can stop. Whatever the Court --

21 THE COURT: [Indiscernible].

22 MR. GILL: It was his own clarification, so --

23 THE COURT: [Indiscernible].

24 MR. GILL: Okay.

25 MS. HOLTHUS: Yeah. I think -- I don't think he has it.

1 Honestly, I have to give up, so I know he doesn't know.

2 MR. GILL: Okay. I can move on.

3 MS. HOLTHUS: [Indiscernible].

4 MR. GILL: It was originally sustained. I'll move on.

5 [Bench Conference Ends]

6 BY MR. GILL:

7 Q Now, Mr. Colon, again, we're looking at 58, I  
8 believe. 58. And I'm sorry. Did you say this was about six  
9 inches?

10 A Yes.

11 Q And that's -- we're describing the blade, correct?

12 A Yes.

13 Q And Ms. Holthus had shown you a couple -- a picture,  
14 which is 39, and you described that as your cell phone and  
15 camera, correct?

16 A Yes.

17 Q And then in 38 is a cell phone, as well.

18 A Yeah. That one took -- that was not -- not a  
19 collect.

20 Q I'm sorry?

21 A That was not -- that was not a collected -- not --  
22 not collect. That was of --

23 Q I'm --

24 A -- the cell phone right there? That white one?

25 Q Right. And I'm just having a hard time

1 understanding you. I apologize. It was not --

2 A The -- that one not -- not collected. Not collect.

3 THE COURT: It was not collected?

4 THE WITNESS: Uh-huh.

5 BY MR. GILL:

6 Q By the police it was not collected?

7 A No. No. No, sir. The -- that was of -- and they -  
8 - they don't got no -- no phone number.

9 Q Oh, it wasn't activated.

10 A Yeah. Activated. Thank you.

11 Q Okay.

12 A Sorry.

13 Q Okay.

14 A Sorry.

15 Q That's okay. So it wasn't -- it was in your area  
16 there in the brush.

17 A Yes. Yes.

18 Q But the phone that worked for you is the one  
19 depicted in 39.

20 A Uh-huh. Yes.

21 Q And then the phone depicted, which I think it has T-  
22 Mobile, and it's a Samsung in State's 38 was not activated.

23 A Not activated.

24 Q Okay. So no number assigned to it?

25 A No.

1 Q Now, you had described kind of this instance where  
2 two guys walk in and essentially them coming in wakes you up,  
3 correct?

4 A Yes.

5 Q Did you have any lights on in the room?

6 A No.

7 Q And it's about what time; do you think?

8 A Around 12 -- I mean night.

9 Q Around 12 midnight?

10 A Yes.

11 Q Late?

12 A Yeah. That was late.

13 Q And what were you working -- were you working the 6  
14 a.m. shift?

15 A Yes.

16 Q So you were asleep, correct?

17 A Yes.

18 Q And it was dark in your area in the garage?

19 A Yes.

20 Q Both men were wearing something on their face or  
21 just one?

22 A Just one.

23 MR. GILL: Court's brief indulgence. Just trying to --

24 BY MR. GILL:

25 Q You had testified previously in this case, correct?

1 A Yes.

2 Q And that was sometime last year? About this time  
3 last year?

4 A That was one -- yeah. Like a -- one year and a  
5 couple months.

6 Q Okay. And if I told you it was March of 2016, would  
7 that sound about right?

8 A Yes.

9 Q And the testimony you gave them, you described then  
10 the axe attack, if you will, correct?

11 A Yes.

12 Q Okay. And you described kind of the way that went  
13 down. Do you recall that line of testimony?

14 A Yeah. I recall it.

15 Q Okay. And you described then -- well, strike that.  
16 Today when Ms. Holthus was asking you questions, you  
17 described the leg, correct?

18 A Yes.

19 Q And then you had stated, and correct me if I'm  
20 wrong, but you stated that they didn't hit your leg, correct?

21 A No. They hit me with the -- in my -- in my -- in my  
22 leg.

23 Q Okay. You were hit in the leg, it was just under  
24 covers?

25 A Yes.

1 Q And then what about your rib?

2 A They hit me, too, in my rib, too.

3 Q You were hit in your rib?

4 A Yes.

5 Q Okay. Did you have any stitches in your rib?

6 A No. Because the blanket is there that cover my --  
7 my skin --

8 Q Okay. So --

9 A -- in open -- never -- they never open.

10 Q Okay. So you didn't have any pictures taken of your  
11 ribs or your leg?

12 A No.

13 Q Now, from the time that you woke up and the time  
14 that there was some talking going on, how long did that last  
15 before any strike with a pistol or an axe?

16 A He hit me with the pistol first.

17 Q Okay. But you guys spoke before that, correct? Or  
18 he spoke, correct?

19 A Correct.

20 Q And you didn't say anything.

21 A I don't say anything.

22 Q Not stop, nothing. You said nothing.

23 A No.

24 Q All right. And you did hear him say something to  
25 your sister, correct?

1 A Yes.

2 MR. GILL: Court's indulgence.

3 BY MR. GILL:

4 Q Now, before Ms. Holthus sat down, she asked you  
5 about if there were any issues that you and Casimiro had had.  
6 Do you remember that question earlier?

7 A [No verbal response].

8 Q And you had mentioned something about the tires.

9 A Oh, about the tires. Yes.

10 Q Okay. So -- and you got that information that  
11 night, correct?

12 A Yes.

13 Q Had there ever been anything else other than these  
14 tires between you and Casimiro?

15 A No.

16 Q Did you have any knowledge between anything him and  
17 your sister?

18 A No.

19 Q And you lived with your sister for a few months,  
20 correct?

21 A Yes.

22 Q At this time?

23 A Yes.

24 Q And you guys didn't talk about any problems with Mr.  
25 Venegas?

1 A No.

2 Q And you personally didn't have any?

3 A No.

4 MR. GILL: Court's indulgence.

5 BY MR. GILL:

6 Q Now, you had described the pistols.

7 A Uh-huh.

8 Q I think the was the term you used.

9 A Yes.

10 Q What color were the pistols?

11 A I don't know. That was dark. I think black.

12 Black.

13 Q I'm sorry.

14 A I think that was blacks.

15 Q Black?

16 A Black.

17 Q But you also said that you don't know, it was dark.

18 A Because no because that was dark.

19 Q So are you guessing that they were black?

20 A Yes.

21 Q Okay. So you don't know what color --

22 A I don't know what the color is.

23 MR. GILL: Nothing further, Your Honor. Thank you.

24 THE COURT: All right.

25 MR. BOLEY: Yes.



1 THE COURT: Mr. Boley?

2 CROSS-EXAMINATION

3 BY MR. BOLEY:

4 Q Mr. Colon, we won't be repetitive here, but I want  
5 to draw your attention to the person that you said was with  
6 Casimiro Venegas.

7 A Uh-huh.

8 Q You testified that his face was covered through the  
9 entire incident.

10 A Yes.

11 Q Did he speak to you?

12 A No. He never did.

13 Q He never did. Did he get close to you?

14 A No.

15 Q Did he strike you?

16 A No.

17 Q Now, you knew Jose Monay-Pina before this incident,  
18 right?

19 A Yes.

20 Q Would he have any reason to attack you?

21 A No.

22 Q So in reality, you don't know it was Jose Monay-Pina  
23 that attacked you that night?

24 A No.

25 MR. BOLEY: Thank you.

1 THE COURT: Any redirect?

2 MS. HOLTHUS: Court's indulgence.

3 [Pause]

4 MS. HOLTHUS: Nothing else. Thank you.

5 THE COURT: Any questions from the jury?

6 [Pause]

7 THE COURT: Counsel approach.

8 [Bench Conference Begins]

9 MR. SCHWARTZ: [Indiscernible] the Defendant if he did  
10 not see his face? [Indiscernible]?

11 Did you see this one? [Indiscernible].

12 MR. BOLEY: I'm going to object to this one.

13 MR. SCHWARTZ: No. Thanks. Judge Bell did not write in  
14 the bottom there, just for the record [indiscernible]. Goes  
15 to the substantial part.

16 MR. BOLEY: Not whether or not you work or find  
17 employment --

18 MR. SCHWARTZ: But if it is -- is his -- I mean --

19 THE COURT: I don't care [indiscernible].

20 MR. BOLEY: Okay. Thank you.

21 MR. SCHWARTZ: [Indiscernible] Mr. Venegas before this  
22 issue happened, did you ever have any problems with him?

23 [Indiscernible] something wrong? Was the tougher guy wearing  
24 gloves?

25 THE COURT: [Indiscernible].

1 MR. SCHWARTZ: We'll object to Number 2. I have no  
2 problem if you don't want to ask [indiscernible]. See how  
3 that works. It's a good one. There's some very interesting  
4 [indiscernible] or was it unlocked?

5 MR. GILL: [Indiscernible]. I think you guys have  
6 somebody to testify later about the lock and something else,  
7 so I don't care.

8 THE COURT: [Indiscernible].

9 MR. SCHWARTZ: That's all I have [indiscernible].

10 THE COURT: [Indiscernible].

11 MS. HOLTHUS: Yeah. I think he answered somebody told  
12 him.

13 MR. BOLEY: What's that?

14 MS. HOLTHUS: He answered somebody told [indiscernible]  
15 from his eyes.

16 MR. BOLEY: [Indiscernible].

17 MR. GILL: That was what he said today. Yeah.

18 MR. BOLEY: [Indiscernible].

19 THE COURT: [Indiscernible].

20 MR. BOLEY: [Indiscernible].

21 MR. SCHWARTZ: But the question itself, if the Judge --  
22 it's almost a follow-up question because --

23 THE COURT: [Indiscernible].

24 MS. HOLTHUS: Correct.

25 MR. SCHWARTZ: We don't want --

1 MS. HOLTHUS: No. I'm fine [indiscernible] agree that  
2 they don't want it --

3 MR. SCHWARTZ: They don't want it.

4 MS. HOLTHUS: -- to come in.

5 THE COURT: [Indiscernible].

6 MS. HOLTHUS: I mean if they want it, though, I don't  
7 mind.

8 MR. BOLEY: We don't want it.

9 MS. HOLTHUS: 1 and 3 are fine. Are you going to go find  
10 that? Okay.

11 MR. SCHWARTZ: [Indiscernible].

12 MS. HOLTHUS: [Indiscernible].

13 MR. SCHWARTZ: [Indiscernible] with that pen.

14 MR. GILL: I think [indiscernible].

15 MS. HOLTHUS: When you're saying "cover guy", the guy  
16 that's holding the guy --

17 MR. GILL: [Indiscernible].

18 MS. HOLTHUS: That's what he's talking about.

19 MR. GILL: [Indiscernible]. I'd say no.

20 MS. HOLTHUS: He doesn't want it, so we're fine without.

21 THE COURT: What?

22 MS. HOLTHUS: He doesn't want it, so we're fine without.

23 THE COURT: Okay.

24 MR. GILL: Thank you. I mean I think it is, but that's  
25 fine. We're not going to --

1 THE COURT: [Indiscernible].

2 MR. SCHWARTZ: Goes to substantial bodily harm, but --

3 THE COURT: [Indiscernible].

4 MR. SCHWARTZ: That's fine. It's fine, Your Honor.

5 THE COURT: That's fine?

6 MR. SCHWARTZ: I think so. Yeah.

7 THE COURT: [Indiscernible].

8 MR. SCHWARTZ: That's your call. I don't care.

9 MS. HOLTHUS: That's fine. It's kind of speculative.

10 THE COURT: [Indiscernible].

11 MR. SCHWARTZ: That's -- it's actually [indiscernible]  
12 incredibly speculative. Why did [indiscernible].

13 MS. HOLTHUS: You could ask is -- are they valuable, I  
14 suppose. I don't know.

15 MR. BOLEY: Relevance then.

16 MR. SCHWARTZ: [Indiscernible].

17 THE COURT: [Indiscernible].

18 MR. SCHWARTZ: Correct.

19 MS. HOLTHUS: I'm just --

20 MR. SCHWARTZ: Thank you.

21 [Bench Conference Ends]

22 THE COURT: Sir, I'm going to ask you a couple  
23 questions --

24 THE WITNESS: Okay.

25 THE COURT: -- and ask you to look at the jury -- you're

1 going to look at me. I'm going to ask you look at the jurors  
2 when you answer so that they can hear you. All right?

3 Did the men kick or break through your door down or  
4 was it unlocked?

5 THE WITNESS: I don't remember whether it was locked or  
6 not.

7 THE COURT: Look at the jurors so they can hear.

8 THE WITNESS: Okay. I -- I don't know [indiscernible].  
9 I don't remember.

10 THE COURT: Okay. Did you know Mr. Venegas before this  
11 issue happened?

12 THE WITNESS: Yes.

13 THE COURT: And was the cover guy wearing gloves?

14 THE WITNESS: Yes.

15 THE COURT: Any follow-up from the State?

16 MR. SCHWARTZ: Court's brief indulgence.

17 MS. HOLTHUS: Court's indulgence, Judge. We're looking  
18 for something.

19 [Pause]

20 REDIRECT EXAMINATION

21 BY MS. HOLTHUS:

22 Q Javier, you just -- you said the cover guy -- we're  
23 talking about the second guy as the cover guy had gloves on,  
24 correct?

25 A Yes.

1 Q And you also said he had something covering his  
2 face?

3 A Yes. He got -- I don't know -- probably a -- a  
4 beanie, bandana, something. I don't know.

5 Q But at the -- earlier in your testimony, you  
6 identified him as being the individual here in the courtroom.

7 A Yes.

8 Q And you said that was somebody that told you that?

9 A Yes.

10 Q Had you also previously testified that, in fact, you  
11 were able to see and recognize his eyes?

12 A Yes. Because I saw -- I saw his eyes when -- when  
13 he came. I don't -- I don't know. I don't see his face.

14 Q But are you -- when you identified him earlier, was  
15 it just because someone told you or were you recognizing any  
16 part of him, as well?

17 A Because somebody told me.

18 Q Okay. Do you, in fact, recognize his eyes from that  
19 night?

20 A Yes. I saw his eyes. Yes. I recognize the eyes,  
21 too.

22 Q And so do you see the eyes here in court that were  
23 with the second individual?

24 A Yes.

25 Q And who were -- who's eyes are those?

1 A Jose Pina.

2 MS. HOLTHUS: Thank you.

3 THE COURT: Mr. Gill

4 MR. GILL: Thank you.

5 RECROSS-EXAMINATION

6 BY MR. GILL:

7 Q You said somebody had gloves on, correct? That I  
8 think you --

9 A Yes.

10 Q -- described him as the cover man or --

11 A Yes.

12 Q What color were those gloves?

13 A That was black and red.

14 Q Black and red gloves on the cover man?

15 A Yes.

16 Q What about the coat?

17 A Black.

18 Q And what about --

19 A And -- huh? Excuse me?

20 Q No. I -- go ahead and finish.

21 A Oh. Yeah. Not -- not -- that was coal black.

22 Yeah.

23 Q Okay. So when I say "cover man", that was kind of  
24 how the question was written, we're talking about the person  
25 not speaking to you, correct?



1 A Yes.

2 Q So you said red and black gloves?

3 A Yes.

4 Q Black coat?

5 A Yes.

6 Q Did you get a color of the pants or shorts, whatever  
7 they were wearing?

8 A No. No. I don't remember.

9 Q Okay. And what about -- can you describe the  
10 covering, the -- or bandana? Do you know what color that was?

11 A I think that was green. I think so. Yeah.

12 Q Green?

13 A Green.

14 Q Okay. What about the other person?

15 A The other one --

16 Q And nothing to be specific. The other person not  
17 wearing a mask, correct?

18 A No.

19 Q What about the color of that person's coat?

20 A I don't remember.

21 Q Okay. And what about that person's gloves? The  
22 color specifically?

23 A About him? I don't -- I don't see that color  
24 because that was dark. The other one I saw because that light  
25 that came from outside.

1 Q All right.

2 A They -- they get him --

3 Q Okay.

4 A -- with the lights, so --

5 Q So if I ask you any other questions about the other  
6 person, you're not going to know the color; you didn't it?

7 A No. Because it was too dark.

8 MR. GILL: Thank you, Your Honor. Nothing further.

9 RE CROSS-EXAMINATION

10 BY MR. BOLEY:

11 Q Okay, Mr. Colon. You testified just a moment ago  
12 that you saw Mr. Pina's eyes.

13 A Yes.

14 Q What color are his eyes?

15 A That's brown.

16 Q Brown eyes?

17 A Yes.

18 Q What color is his eye brows? Could you see those?

19 A No.

20 Q You could not see his eye brows; just his eyes?

21 A Yes.

22 Q And you remember those eyes from working with him.

23 A Because -- yeah. In -- in --

24 Q What kind of work did you do when you were working  
25 with him?

1 A Landscaping.

2 Q Housekeeping?

3 A Landscaping.

4 MR. GILL: Landscaping.

5 MR. BOLEY: Landscaping. I'm sorry.

6 BY MR. BOLEY:

7 Q Okay. You testified also about some things that  
8 were stolen from your home. What else was stolen?

9 A I don't know. I don't know. No. I don't know  
10 what's -- what is still lost.

11 MR. BOLEY: Okay. Nothing further.

12 THE COURT: Anything else from the State?

13 FURTHER REDIRECT EXAMINATION

14 BY MS. HOLTHUS:

15 Q Had you seen gloves like those before?

16 A Yes.

17 Q Which -- where had you seen them?

18 A In -- in the land -- land -- landscaping company  
19 that keep for us.

20 Q That keep what -- and what color are the gloves you  
21 have at the landscaping company?

22 A Red and blacks.

23 MS. HOLTHUS: Nothing else.

24 BY MS. HOLTHUS:

25 Q Well, is that the same company that some --

1 A Yes.

2 Q -- you worked at. And who else worked there?

3 A Casimiro and Jose.

4 Q Thank you.

5 FURTHER RECROSS EXAMINATION

6 BY MR. GILL:

7 Q And just so we're clear, the, quote, unquote, cover  
8 man had the red gloves on?

9 A Yes.

10 MR. GILL: Nothing further.

11 THE COURT: Mr. Boley, anything else?

12 MR. BOLEY: [No verbal response]

13 THE COURT: All right. Thank you, sir. You are --

14 MR. BOLEY: Nothing further.

15 THE COURT: Thank you, sir. You're free to go.

16 THE WITNESS: All right. Thank you.

17 THE COURT: State, please call your next witness.

18 MS. HOLTHUS: Adriana Colon.

19 THE COURT: Good afternoon, ma'am. If you could kind of  
20 raise your right hand, turn and face the clerk? The clerk's  
21 going to swear you in.

22 ADRIANA COLON, PLAINTIFF'S WITNESS, SWORN

23 THE COURT: Good afternoon, ma'am. Go ahead and have a  
24 seat.

25 THE WITNESS: Thank you.

1 THE COURT: If I could get the interpreter's name for the  
2 record?

3 THE INTERPRETER: Noel Tatton. T-A-T-T-O-N.

4 THE COURT: Thank you, ma'am.

5 THE INTERPRETER: Interpreter's oath, Your Honor? No?

6 THE COURT: [No verbal response].

7 THE INTERPRETER: Cool.

8 THE COURT: Are you --

9 THE INTERPRETER: I'm certified.

10 THE COURT: [Indiscernible].

11 THE INTERPRETER: Yes.

12 THE COURT: Ma'am, could you state your name and then  
13 spell it for the record, please?

14 THE WITNESS: Adriana Colon. Adriana Colon, A-D-R-I-A-N-  
15 A C-O-L-O-N.

16 THE COURT: Thank you.

17 Whenever you're ready.

18 DIRECT EXAMINATION

19 BY MS. HOLTHUS:

20 Q Adriana, directing your attention to back in January  
21 of 2016, were you living at 504 Brush Street in Las Vegas,  
22 Clark County, Nevada?

23 A Yes.

24 Q How long had you been living there?

25 A For six months.

1 Q Were you owning, renting?

2 A We were renting.

3 Q Who did you live there with?

4 A Just my three children and myself.

5 Q What are the names and ages of your children?

6 A Lizbeth. She's 16 years old. Samantha is 14, and  
7 Cesar is ten.

8 Q And you'd been living there six months?

9 A Yes.

10 Q Were you working at the time?

11 A Yes.

12 Q Where were you working?

13 A I was cleaning houses.

14 Q Did there come a time when your brother came to live  
15 with you?

16 A Yes. He was living there. I had him living there  
17 because he was not working, and he had no place to live.

18 Q Okay. So where -- how was the house set up? Who  
19 lived where in the house?

20 A Well, he was living in sort of the garage.

21 Q Okay. How many bedrooms were in the house?

22 A Three bedrooms.

23 Q And who had the bedrooms in the house?

24 A Well, Lizbeth had one bedroom. The other one I was  
25 in, and the other one, the third one, Cesar and Samantha lived

1 in that one.

2 Q Adriana, directing your attention to January 12th,  
3 2016, in the early morning hours, did something happen?

4 THE INTERPRETER: Interpreter requests repetition. Early  
5 in the morning or late at night?

6 MS. HOLTHUS: Early in the morning.

7 THE WITNESS: Well, it was 4:00 in the morning, and I  
8 heard Javier yell at me or scream at me that someone was  
9 threatening him. So then I went up to the window, and I was  
10 told to shut up. There were two men outside.

11 BY MS. HOLTHUS:

12 Q And who told you to shut up?

13 A I don't know which one it was. Well, they -- I  
14 don't know which one it was, but they were telling -- they  
15 were telling Javier to tell me in Spanish and in English to  
16 shut up.

17 Q Okay. And so they were telling you to shut up.

18 A Yes. Yes. Because if I wouldn't that they were  
19 going to break me, too.

20 Q Is that what they said to you?

21 A Yes.

22 Q Did they have any weapons?

23 A Yes. They were both pointing pistols at both  
24 windows.

25 Q And who was in the windows?

1           A     Well, they thought, I guess, that there was two  
2 windows and then there was where Javier was, and they were  
3 pointing the -- the guns at both windows like that.

4           Q     Was anybody in the windows?

5           A     Well, when I saw that they were pointing pistols at  
6 both windows, I told my children that no one should get up  
7 into the windows, that they needed to stay low.

8           Q     Were the guns pointed at you -- the pistols pointed  
9 at you?

10          A     Well, it was hard to see. I don't think they could  
11 see me because it was very dark, but they were pointing the  
12 pistols at both the windows because they knew that people were  
13 inside both of the windows.

14          Q     And were you inside the windows?

15          A     Yes.

16          Q     Were you able to see out there?

17          A     Yes.

18          Q     What did you see?

19          A     They were telling him to stand up. They were  
20 screaming at him to stand up, and that they wanted him to come  
21 outside. And I told them to leave. I didn't want my children  
22 -- I -- I had -- kept telling them to leave, that I didn't  
23 want my children to see this, and I kept saying leave, come  
24 on, just leave.

25          Q     And what happened? Did they leave?



1           A     No. They didn't leave, and you could hear that he  
2 was getting beaten up.

3           Q     Did you actually see them beating him up?

4           A     No. I was on the floor. I wasn't looking outside  
5 anymore.

6           Q     You got down after you saw the guns?

7           A     Yes. We were sitting on the floor.

8           Q     What was -- what did you hear that made you believe  
9 Javier was getting beaten?

10          A     You could hear that they were hitting him really  
11 hard. I don't know what they were hitting him with, but you  
12 could definitely hear it.

13          Q     So you could hear something contacting his body?

14          A     Yes.

15          Q     Was he saying anything? Javier?

16          A     No.

17          Q     When you last saw Javier --

18          A     I don't think so.

19          Q     When you last saw Javier before you ducked down,  
20 where was he?

21          A     He was lying down, and I didn't see him get back up.

22          Q     What happened then? You hear Javier getting beaten.  
23 Your -- you and your kids are down. What happens now?

24          A     My daughter, Lizbeth, she said, mommy, you know,  
25 we've got to call the cops.

1 Q Had you called the cops at that point?

2 A No. Lizbeth was the one that dialed them. I -- I  
3 didn't know what to do.

4 Q So when you first saw that, you didn't call the  
5 police?

6 A No.

7 Q Why not?

8 A I was afraid.

9 Q Did you go to your brother's aid?

10 A No. Well, no. We didn't go outside. The police  
11 came, like, five minutes later, and my daughter was still on  
12 the phone with the police when they arrive -- when they  
13 arrived with the off -- my daughter was still on the phone  
14 with the operator when the police arrived outside.

15 Q So you didn't help your brother. Were you afraid to  
16 go out and help your brother?

17 A No. The operator told us not to go outside.

18 Q What did -- what happened -- so it was Lizbeth who  
19 decided to call the police and actually called?

20 A Yes. She dialed them on her phone.

21 Q Were you there when she dialed?

22 A Yes.

23 Q How soon after she dialed did the police respond?

24 A They came right away. Five minutes.

25 Q Were the two individuals still in the garage with

1 Javier when the police first got there?

2 A No. No. They weren't there when the police  
3 arrived. They must have seen -- I mean I can only imagine  
4 that maybe they saw some lights or something, and they just  
5 took off.

6 Q So when you say that, are you saying that there were  
7 the lights of the police and the two individuals took off  
8 right about that same time?

9 A I would say so. Yes.

10 Q Did you recognize either of the individuals in the  
11 room with Javier?

12 A Well, one of them had -- had -- had his face  
13 covered. The other one, it wasn't very easy to see him  
14 because it was very dark.

15 Q So were you able to see either one?

16 A I just saw one's face. The other guy had -- had his  
17 face covered.

18 Q Do you see that -- the one that you saw in the  
19 courtroom today?

20 A I think that's him.

21 Q Can you point to the individual and tell me which  
22 person it is?

23 A He has a -- he has a white shirt on. He's in the  
24 middle.

25 MS. HOLTHUS: Record reflect identification of Defendant

1 Venegas.

2 THE COURT: The record will so reflect.

3 MS. HOLTHUS: Thank you.

4 BY MS. HOLTHUS:

5 Q Had you seen that person before?

6 A No.

7 Q Did you see Javier after this?

8 A Yes. I went to take my children over to my mother's  
9 house, and he left in the ambulance.

10 Q At the time that the individuals pointed the guns at  
11 you, who was with you?

12 A I was -- I was with my three children. We're always  
13 together. We take walks together. We're always together.

14 Q And were -- so were your three children with you  
15 when the men pointed their guns at you?

16 A Yes. They were pointing -- yes. They were pointing  
17 the pistols at us, and they were telling us that we needed to  
18 stay quiet and not say anything or they were going to break  
19 us.

20 Q "Break" you was the word?

21 A Yes.

22 Q Eventually the police came, and did you stay there  
23 that night?

24 A Yes. We stayed there until -- yes. They -- we  
25 stayed there until the ambulance took him away, and there were

1 a lot of policemen still in the area. We stayed there that  
2 night, and they said we could go to the hospital. There was a  
3 lot of people -- a lot of police in the area checking things  
4 out.

5 Q So did you go to the hospital?

6 A Yes.

7 Q After this night, did you continue to live in the  
8 home?

9 A We weren't able to.

10 Q Why not?

11 A We were too afraid.

12 Q So did you guys all move?

13 MR. GILL: Objection as to relevance.

14 THE WITNESS: Yes.

15 THE COURT: Hang on just a second.

16 THE INTERPRETER: Sorry.

17 MS. HOLTHUS: You want to approach?

18 THE COURT: Sure.

19 [Bench Conference Begins]

20 MS. HOLTHUS: I told you -- to her credibility. She's  
21 not making up this thing. She's not making it like it's  
22 something that she knew what was going on. Something horrible  
23 happened so bad that she uprooted the children and took them  
24 away, and that's --

25 MR. GILL: The testimony stands for itself as to what

1 happened. I don't see how them moving or not moving --

2 MS. HOLTHUS: If you're making up --

3 MR. GILL: -- is relevant.

4 MS. HOLTHUS: -- a lie, you don't usually life change  
5 event after the lie. Do you know what I mean? It's  
6 corroborative of what she's telling you happened that night.

7 THE COURT: I'll sustain the objection.

8 [Bench Conference Ends]

9 THE COURT: Objection is sustained.

10 MS. HOLTHUS: Nothing else. We'll pass the witness.

11 THE COURT: Mr. Gill?

12 MR. GILL: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. GILL:

15 Q Ms. Colon, you stated earlier that this all happened  
16 around 4 a.m.?

17 Q Yes.

18 A And you heard Javier shouting or calling out for  
19 you, correct?

20 Q Yes.

21 A And then you responded by going to that window; is  
22 that correct?

23 Q Yes.

24 MR. GILL: And Court's brief indulgence.

25 Judge, I'm going to ask for the Court's indulgence.

1 I'm just going to find a couple photos here.

2 [Pause]

3 BY MR. GILL:

4 Q And, Ms. Colon, I'm showing you what's been admitted  
5 as State's 24. Do you recognize that photograph? And if you  
6 could look on the screen just to your left?

7 A Yes. That's where Javier was.

8 Q Okay. That's in your house at 504 Brush?

9 A Yes.

10 Q And is the window that you went to depicted in that  
11 photograph?

12 A Yes. It's right there.

13 Q And if you actually touch it, it'll make a mark.  
14 Did you touch the -- oh, okay. So above the television?

15 A Yes.

16 Q And is -- it looks like there's a set of blinds  
17 there; is that correct?

18 A Yes.

19 Q And then I don't know what it is, and I don't know  
20 if you can see it, but there's some covering underneath those  
21 blinds. Is that also correct?

22 A Yes. There was a towel up there.

23 Q Okay. And what color is that towel?

24 A I don't remember the color. I think it was white,  
25 but I don't remember.

1 Q Lighter colored? Is that fair to say?

2 A Yes.

3 Q And then there looks to be, and just correct me if  
4 I'm wrong, but some other sort of covering. It might be on  
5 the garage side of that window. Is that depicted in that  
6 photograph?

7 A It's on this side.

8 Q On the garage side, correct?

9 A Yes.

10 Q And what is that?

11 A I don't know.

12 Q But in the photograph, you can see it, and it looks  
13 to be some sort of plastic?

14 A Could be.

15 Q Okay. And then what's on top of the television?

16 A I think I see a dog and a virgin.

17 Q Okay. It's statues or porcelain dolls?

18 A Yes.

19 Q And which side of that window were you looking out  
20 of? Does that make sense? And you can touch the screen  
21 again.

22 A Here.

23 Q So if we're looking straight at it in the photo,  
24 you're talking about the right side?

25 A Yes. Correct.



1 Q Closest to the water bottle, which is also depicted  
2 on the right side of the photograph?

3 A [No verbal response].

4 Q You see that big water bottle there in the front?

5 A Yes.

6 Q So when you're on the side of the window that's  
7 closest to that; is that right?

8 A Yes. Yeah. We were looking through the windows --  
9 well, on the other side.

10 Q Okay. And when you say "we", you're talking about  
11 your three children?

12 A Yes. Yes. Of course. My three children.

13 Q Did they ever look out the window?

14 A No. I told them that I didn't want them to look out  
15 the window. I think we were looking through -- I think I had  
16 pulled the blinds up on the window.

17 Q Kind of the way they're depicted now?

18 A Yes.

19 Q But the children -- I'm assuming they're not tall  
20 enough to look out that window; is that correct?

21 A I -- I have my bed there, and I had gotten out of my  
22 bed, and my -- and -- and I had jumped on my bed to see out  
23 there. It's -- it's a tall window.

24 Q Okay. So if we're in the garage, it's fairly tall,  
25 but on the other side is a bed, correct?

1           A     Yes. My bed -- my bed is on the other side, and  
2 that's when I got up on the bed, but then on the other window,  
3 there's no bed there, but it's easier to see out.

4           Q     Okay. And then when you say "other window", is that  
5 depicted -- is that other window depicted here?

6           A     Not in this one. No.

7           Q     Okay.

8           MR. GILL: And Court's brief indulgence.

9 BY MR. GILL:

10          Q     Now, I don't know that we have a photograph of the  
11 other window. Are you saying that off to the right of this  
12 photo is another window?

13          A     Yes.

14          Q     Okay. You're looking out the window depicted in  
15 State's 24, correct?

16          A     Yes.

17          Q     And only you --

18          A     At the beginning.

19          Q     -- correct?

20          A     Yes.

21          Q     Now, you said that -- you testified earlier that  
22 they kept pointing pistol -- the pistols at the windows. Do  
23 you remember that statement?

24          A     Yes.

25          Q     And --

1           A     They were pointing at this window, and then they  
2 were pointing at the other window in the bedroom.

3           Q     Okay. But you're at this window, correct, that's in  
4 State's 24?

5           A     In the beginning.

6           Q     In the beginning. Correct. But that's the window  
7 you're at, the one depicted here, correct?

8           A     Yes.

9           Q     And then you can hear what's being said in the room,  
10 correct? Miss --

11           THE INTERPRETER: Hold on.

12           MR. GILL: Go ahead.

13 BY MR. GILL:

14           Q     I asked if you could hear what was being, not what  
15 was being said.

16           A     Yes, you could hear it.

17           Q     And that's from both the two men and your brother,  
18 correct?

19           A     Yes.

20           Q     And, again, without saying what anyone actually  
21 said, was Javier speaking to the two men?

22           A     Yes. They -- he was telling them to get out.

23           Q     And, again, ma'am, without saying what anyone said  
24 -- okay? I -- the question was simply were they speaking to  
25 one another and was Javier speaking to them? He was speaking

1 to them? Yes or no?

2 A Yes.

3 Q Were they having any kind of conversation?

4 A I remember he would tell them that he hadn't done  
5 anything.

6 Q Okay. And, ma'am, I hate to keep repeating myself,  
7 but when I'm asking these questions, I'm just asking if they  
8 actually spoke, not what they said.

9 Was there back and forth between the men?

10 A Yes. They were talking to each other, and that's  
11 when he -- he started yelling for me, I would imagine.

12 Q Okay. And you heard that, and, again, we  
13 established that once you heard that you came to that window,  
14 correct?

15 A Yes. That's when I started looking out the window,  
16 got up into the window.

17 Q And, ma'am, I'm going to show you State's 20. You  
18 recognize that photo?

19 A Yes.

20 Q And what -- that shows the side of the house or the  
21 back of the house?

22 A Side. It's the side of the house.

23 Q In this opening here, this doorway that's open, what  
24 is that?

25 A That's the door to get into Javier's place.

1 Q It's the one and only door to get into Javier's  
2 place, correct?

3 A Yes.

4 Q There's no other way in or out of that converted  
5 garage, correct?

6 A No.

7 Q And I zoomed in a little bit on State's 20. You can  
8 see kind of the TV in the window, correct?

9 A Yes.

10 Q Those are the same that were depicted in 24,  
11 correct?

12 A Yes.

13 Q Now, you were asked by Ms. Holthus if you recognize  
14 anyone in the courtroom. Do you remember that question?

15 A Yes.

16 Q And your response was that you think it's this  
17 gentleman that sits to my right; is that correct?

18 A No. Yes. Yes. Because his face, I recognize his  
19 face. The other one had his face covered.

20 Q Okay. And, again, your statement was that you think  
21 it's him.

22 A Yes.

23 MR. GILL: Court's brief indulgence.

24 BY MR. GILL:

25 Q And, Ms. Colon, if you know, do you know what was

1 taken from Javier's room?

2 A No.

3 Q Did you know what he kept in his room?

4 A No. I -- I wouldn't go in there.

5 MR. GILL: Okay. Nothing further, Your Honor. Thank  
6 you.

7 THE COURT: Mr. Boley?

8 MR. BOLEY: No questions.

9 REDIRECT EXAMINATION

10 BY MS. HOLTHUS:

11 Q There was that -- the one picture was of the one  
12 window, and then you're saying there's another window?

13 A Yes.

14 Q So after you were looking out the one window, then  
15 you -- then did you move to the other window?

16 A Yes.

17 Q So this is the first window you were looking out on  
18 State's Exhibit 24?

19 A Yes.

20 Q And then would this be the other window you were  
21 looking in?

22 A Yes.

23 Q And that's Exhibit 25. Now, on 24, this window you  
24 said is your bedroom and your bed's underneath it?

25 A Yes.

1 Q What's on the other side of this window?

2 A That was the room where Lizbeth used to sleep.

3 Q And when you were looking out that window, where  
4 were the children?

5 A We were all at the window. We weren't right in the  
6 window, but we were a certain distance away from the window,  
7 all three -- all of us.

8 Q Were you able to see out the window?

9 A Yes.

10 Q Were the guns pointed at you from that window?

11 A Yes. They would point the guns at both windows.

12 Q And did they say anything to you when you were  
13 standing in this window?

14 A Yes. I was -- that was when I told them that I  
15 didn't want them there and to please leave. I didn't want my  
16 children to see any of this.

17 Q And did -- what did they say?

18 A They would tell me to shut up, and then they tell  
19 Javier you tell her to shut up, otherwise tell her we're going  
20 to break her.

21 Q Is this water cooler in both these exhibits the  
22 same?

23 A Yes.

24 MS. HOLTHUS: I have one more question, but I can't  
25 remember it, so just wait two minutes. One minute even. Oh.

1 BY MS. HOLTHUS:

2 Q The picture with this -- State's Exhibit 20, this  
3 is -- this open door is the only way in and out of Javier's  
4 room, the garage?

5 A Yes.

6 Q So you said it was the garage. Was the garage door  
7 sealed off?

8 A Well, it's supposed to be a garage, but I don't  
9 know. Here is -- in -- in this other door here, that's the  
10 laundry.

11 Q In here?

12 A Uh-huh.

13 Q Okay. So is there -- this is separated, though,  
14 right?

15 A Yes.

16 Q Does this door to Javier's room lock?

17 A Yes.

18 Q Do you know if it was locked that night or not?

19 A Well, I would imagine that, yes, it would have been  
20 locked. I know my gate was locked, and they must have jumped  
21 over.

22 Q Did you see any damage to the door or the doorway?

23 A No. I didn't see anything else. You know, we all  
24 went over to my mother's house. You could say that we were  
25 traumatized. We didn't want to look at anything. I didn't



1 want to go back to the house. We didn't even want to go back  
2 and get our clothes.

3 Q So you have no idea how they got in there.

4 A No.

5 Q Other than it had to be somehow through this door  
6 because it's the only way in or out.

7 A There's no other way.

8 Q Okay. Thank you.

9 THE COURT: Mr. Gill, anything?

10 MR. GILL: No. Nothing else. Thank you.

11 THE COURT: You were done, right?

12 MS. HOLTHUS: I'm sorry.

13 THE COURT: You were done, Ms. Holthus, right?

14 MS. HOLTHUS: I'm done.

15 THE COURT: Okay.

16 RE CROSS-EXAMINATION

17 BY MR. GILL:

18 Q Now, you didn't -- and I know Ms. Holthus touched on  
19 this on 20 with the door.

20 You didn't lock that door that night, correct?

21 A No. I didn't sleep in there. He was the one that  
22 slept in there.

23 Q Okay. So you know you didn't lock it, correct?

24 A No.

25 Q And you don't know if he did, correct?

1 A I don't know.

2 Q And then these -- the laundry room that you're  
3 talking about, it looks like there's a cement pathway there.  
4 Where does that cement pathway go? And that's right in the  
5 middle of the picture. You can kind of see a closed door.

6 A Well -- well, there's sort of like on one side  
7 there's a carport, and that's where I used to put my car, and  
8 then continuing in, that's where you go to the entrance to the  
9 house.

10 Q Okay. So if somebody were to come out of the open  
11 door there, they would just kind of wrap around there. Then  
12 they could eventually get to a -- an area where they could be  
13 enter -- where they could enter the house, correct?

14 A Yes.

15 Q Now, on 25, this is that other window we were kind  
16 of discussing earlier, correct?

17 A Yes.

18 Q And at the time that was Lizbeth's room?

19 A Yes.

20 Q Now, where do you enter Lizbeth's room?

21 A Well, through the main entrance. You go down a  
22 hall.

23 Q So inside the house?

24 A Yes.

25 Q And you could enter and exit through her bedroom

1 door, correct?

2 A Yes. Yes.

3 Q And then -- and in this photo, are those -- those  
4 blinds appear to be closed; is that correct?

5 A Yes.

6 Q So did you just push them aside when you looked  
7 through that window?

8 A Yes. Yes. When we looked through the window.

9 Q And then you said both guns were pointed at you,  
10 correct?

11 A Yes.

12 Q What kind of guns were they?

13 A Small. They weren't very big.

14 Q Well, do you know -- do you have an idea how big?

15 A I really have no idea, but they appeared to be about  
16 like this.

17 Q And like this, would agree, about six or seven  
18 inches? Is that what --

19 A Uh-huh.

20 Q Okay. So you agree, six or seven inches?

21 A Yes.

22 Q Is that both guns?

23 A Yes. You could tell that both of them looked pretty  
24 much the same size.

25 Q Were they revolvers?

1           A     Well, I don't really know too much about guns. I've  
2 never liked them. And even for my son, I would never even buy  
3 him a toy gun.

4           Q     Okay. So you don't know if they were revolvers or  
5 not, correct?

6           A     Uh-huh.

7           Q     And you only saw two of them, correct?

8           A     Yes.

9           Q     And what color were the guns?

10          A     I don't know.

11          Q     Do you know what caliber the guns were?

12          A     No.

13          Q     And what part of your body were the guns pointed?

14          A     They're -- they were pointing them up towards -- up,  
15 like, to your head. They were pointing them toward the top.

16          Q     But you kind of did a -- you held up your fingers --  
17 your finger and your thumb as if it were a pistol, correct?

18          A     Yeah. Like, they were pointing them.

19          Q     Okay. And you had it up in the air, but they  
20 weren't pointed up in the air, correct?

21          A     No, they weren't.

22          MR. GILL: Court's indulgence.

23 BY MR. GILL:

24          Q     Now, you said both guns were pointing at -- pointed  
25 at you at the same time, correct?

1           A     They were pointing them both at the same time to the  
2 both windows.

3           Q     Okay. And so they weren't -- at that particular  
4 time, they were not pointed at Javier, correct?

5           A     Well, they -- I imagine that they were --

6           MR. GILL: Your Honor, I'm going to object to anything  
7 that's going to be speculation. I know that we haven't had a  
8 statement, but we have a preface of "I imagine".

9           THE COURT: Sustained. Ma'am, just if you know.

10          THE INTERPRETER: The interpreter requests a repetition  
11 of the question.

12          MR. GILL: The original question was if they were pointed  
13 at her or they were not pointed at Javier? And I believe  
14 her --

15          THE WITNESS: No. They were pointing the pistols at me,  
16 and they told me to shut up.

17          MR. GILL: Thank you, Your Honor.

18          THE COURT: Mr. Boley?

19          MR. BOLEY: No questions.

20          THE COURT: All right. Any questions from the jury?

21                 Approach, please.

22                 [Bench Conference Begins]

23          MR. GILL: This is my favorite part. It's a nice simple  
24 one. That's my favorite part.

25          THE COURT: [Indiscernible] know what's going to happen.

1 MR. GILL: If we stand up here, we're going to -- maybe  
2 we can get some more.

3 MR. SCHWARTZ: Do you think the -- any of these two men  
4 have ever been over to your house before? And did you know  
5 any of Javier's friends that visit him?

6 MR. GILL: I don't care.

7 MS. HOLTHUS: It's fine to me.

8 MR. GILL: Thank you.

9 [Bench Conference Ends]

10 THE COURT: Ma'am, do you think that any of these two men  
11 had ever been over to your house before?

12 THE WITNESS: I never saw them come to the house before,  
13 I don't think. I pretty much dedicate myself to going to  
14 work, and then after work, I come home, and I go inside my  
15 house.

16 THE COURT: Did you know any of Javier's friends that  
17 visited him?

18 THE WITNESS: Well, I never really saw in any of -- any  
19 of them come over. They always had -- they'd always come into  
20 the separate entrance, and sometimes if they did come through,  
21 I would be at work, so I wouldn't see them.

22 THE COURT: Any follow-up from the State?

23 MS. HOLTHUS: No thank you.

24 THE COURT: Mr. Gill?

25 MR. GILL: Very briefly, Your Honor.

1 FURTHER RECROSS EXAMINATION

2 BY MR. GILL:

3 Q So you've never seen any -- you've never seen these  
4 two men at the house previously; is that fair?

5 A I had not seen them before.

6 Q And what about any of Mr. Venegas's relatives? Do  
7 you know anybody that is related to Mr. Venegas?

8 A No. I don't know anybody.

9 MR. GILL: Thank you. Nothing further, Your Honor.

10 THE COURT: Mr. Boley? All right. Any follow-up on  
11 that? No.

12 Thank you, ma'am. You are free to go.

13 THE WITNESS: Thank you.

14 THE COURT: And thank you, madam interpreter, for your --

15 THE INTERPRETER: You're welcome, Your Honor.

16 THE COURT: -- help today.

17 THE INTERPRETER: Were there any other witnesses that  
18 require a Spanish interpreter?

19 THE COURT: Not that I'm aware of.

20 MR. SCHWARTZ: No, Your Honor.

21 THE COURT: Let's go ahead and take a break, and then we  
22 will call the State's next witness up.

23 All right. Folks, we're going to go ahead and take  
24 a 15-minute break. During this break, you're admonished not  
25 to talk or converse among yourselves or with anyone else on

1 any subject connected with this trial or read, watch, or  
2 listen to any report or any commentary on the trial or any  
3 person connected with this trial by any medium of information,  
4 including without limitation newspaper, television, internet,  
5 and radio or form or express any opinion on any subject  
6 connected with the trial until the case is finally submitted  
7 to you. And we'll be back at 3:37.

8 THE MARSHAL: Please rise for the jury.

9 [Jury Exits]

10 [Recess at 3:23 p.m.]

11 THE MARSHAL: Please rise for the jury.

12 [Jury In]

13 THE COURT: Back on the record in Case C31318 -- 118,  
14 State of Nevada versus Venegas and Monay-Pina.

15 Let the record reflect the presence of all the  
16 jurors, Defendants, and counsel.

17 State, please call your next witness.

18 MR. SCHWARTZ: Your Honor, the State's next witness is  
19 Lizbeth Colon.

20 THE MARSHAL: Please remain standing and raise your right  
21 hand.

22 LIZBETH AVINA, PLAINTIFF'S WITNESS, SWORN

23 THE COURT: Good afternoon. Go ahead and have a seat.

24 THE WITNESS: Okay. Thank you.

25 THE COURT: And then if you could state your name and



1 then spell it for the record?

2 THE WITNESS: Okay. Lizbeth Avina, L-I-Z-B-E-T-H A-V-I-  
3 N-A.

4 THE COURT: Thank you. Go ahead.

5 MR. SCHWARTZ: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MR. SCHWARTZ:

8 Q Lizbeth, how old are you?

9 A I'm 17.

10 Q Seventeen? And directing your attention about a  
11 little over a year ago, January 12th, 2016, do you remember  
12 where you were living?

13 A Yeah. We were at 504 Brush Street.

14 Q Okay. And at that point, about how long had you  
15 guys lived there?

16 A I think it was like six months.

17 Q And who lived there with you?

18 A My mom, my brother, my sister, and my uncle.

19 Q Mom, brother, sister, and uncle. What are your  
20 brother and sister's name?

21 A Samantha and Cesar.

22 Q And do you still live there today?

23 A No.

24 Q Okay. Did something happen on January 12th, 2016,  
25 that causes you not to live there anymore?

1 MR. GILL: Your Honor, objection. I think we went -- if  
2 we can approach?

3 THE COURT: No. I'm sorry. Sustained. If you could  
4 just rephrase the question?

5 MR. GILL: Okay.

6 BY MR. SCHWARTZ:

7 Q If I could direct your attention to January 12th,  
8 2016, what happened that day?

9 A I woke up to my mom yelling stop, and I got up, and  
10 I asked her what was happening? She said that there is --

11 MR. GILL: Objection as to hearsay, Your Honor.

12 MR. SCHWARTZ: And, Your Honor, the response would be  
13 that it's an excited utterance, but I can lay some more  
14 foundation if you'd like.

15 THE COURT: Sure.

16 BY MR. GILL:

17 Q Okay. Let's break that down a little bit what you  
18 said. You said you woke up to your mom saying something to  
19 you. What was the tone of her voice like?

20 A I know it was, like, scared. She was just kind of  
21 yelling and -- for help, I guess, really.

22 Q And so what was it that she was saying to you?

23 A She wasn't telling me. She was screaming out to her  
24 window saying stop, stop.

25 Q After you heard her saying stop, stop, did you hear

1 her say anything else right at that point?

2 A I remember it was, like, just kind of, like, softly,  
3 my kids are here.

4 Q And you said you woke up. Were you sleeping in your  
5 room?

6 A Yes.

7 Q And how many different rooms are there in that  
8 house?

9 A Inside the house there's three rooms.

10 Q Your room?

11 A Yes.

12 Q And what about the other two rooms?

13 A One's my mom -- one was my mom's and the other one  
14 was my brother and my sister's.

15 Q And then your uncle, where did -- where was his  
16 room?

17 A He was in -- there's a shed in the outside of the  
18 house, and he was there.

19 Q So you're inside your room when you are awoken by  
20 your mom. And what is the first thing you do when you hear  
21 your mom screaming stop, stop?

22 A I got up, and I went to where her room was, and I  
23 asked her what was going on.

24 Q And where was it in the house that she was located?

25 A She was in her room.

1 Q And when you went in there, what, if anything, was  
2 she doing?

3 A I know she was, like -- I think she was, like,  
4 opening her curtains, and then her window was duct taped so  
5 that there was no really way of seeing in and -- in or out,  
6 but there was, like, small cracks, so I know she was trying  
7 to, like, look through there and telling them to stop.

8 Q And so when you look through that window in your  
9 mom's room, what room does it look into?

10 A The shed.

11 Q And that's where you said your uncle stays?

12 A Uh-huh.

13 THE COURT: Ma'am, could you answer yes or no for me,  
14 please?

15 THE WITNESS: Oh, yes.

16 THE COURT: Thank you.

17 THE WITNESS: Uh-huh.

18 BY MR. SCHWARTZ:

19 Q Okay. She has to type down everything you're  
20 saying, so -- when you went in there and you saw your mom sort  
21 of looking through the window, did she say anything else at  
22 that point?

23 MR. GILL: Your Honor, in -- as to the objection, did you  
24 rule whether or not he laid a proper foundation?

25 THE COURT: He -- I didn't, but he did, so I'm going to

1 allow it as an excited utterance --

2 MR. GILL: And just --

3 THE COURT: -- so the objection's overruled.

4 MR. GILL: Thank you, Your Honor.

5 THE WITNESS: I remember her just kind of saying stop, my  
6 kids are here, I don't want them seeing this.

7 BY MR. SCHWARTZ:

8 Q And when you arrived to the room, saw your mom doing  
9 that, what did you do?

10 A I told her let's call the police, and she said no  
11 because they're going to shoot, and I kept telling her let's  
12 call the police, let's call the police.

13 Q Could you see that your mom -- how was your mom  
14 appearing to you when you were speaking to her?

15 A She was just very out of it. She didn't know what  
16 to do.

17 Q Could you hear anything happening inside the shed  
18 area?

19 A That I remember not really.

20 Q So you told your mom let's call the police. What  
21 happens next?

22 A After that, she said no, and I know my siblings got  
23 up, and I told them to stay in their room, and she had me go  
24 to the dining room to record anyone who was going to come out,  
25 and I was, like, no, what if they don't come out? And I

1 winded -- she winded up just dropping, like, in the hallway,  
2 and she said she didn't know what to do, and that's when I  
3 called the police.

4 Q So did you, at any point, look outside of your mom's  
5 window?

6 A No.

7 Q Is there a window in your room?

8 A Yes.

9 Q Did you, at any point, look outside that window into  
10 the shed?

11 A No.

12 Q So you never saw what was happening inside the shed?

13 A No.

14 Q You only heard what your mom was saying to you?

15 A Uh-huh.

16 Q And you said your mom sort of fell -- sat down in  
17 the hallway?

18 A Yes.

19 Q Is that -- would that be -- so she left her -- did  
20 you leave her room with her, and you guys were in the hallway?

21 A Yes.

22 Q Is that a hallway between her room and your room?

23 A Yes.

24 Q And it's at that point that you called 9-1-1?

25 A Yes.

1 Q And where were your brother and sister at that  
2 point?

3 A At that point, they were with us in the hallway.

4 Q So they were in their room originally, and they  
5 joined you when you guys were in the hallway?

6 A Yes.

7 Q And did you guys go anywhere from the hallway after  
8 that?

9 A The lady on the phone call of the 9-1-1, she said to  
10 go somewhere where most likely we wouldn't be but a -- like,  
11 the safest place, so we went to the living room because that  
12 wasn't -- that didn't have any windows to the shed, and we  
13 were waiting next to the living room on the floor.

14 MR. SCHWARTZ: If I could approach your clerk, Your  
15 Honor?

16 THE COURT: Yeah.

17 MR. SCHWARTZ: Thank you.

18 BY MR. SCHWARTZ:

19 Q I think I might have asked you this. You said you  
20 didn't hear any voices coming from inside the shed; is that  
21 correct?

22 A I could hear voices, but I didn't make out what was  
23 happening.

24 Q What was being said.

25 A Uh-huh.

1 Q Okay. Could you tell if they were, like, male  
2 voices versus female voices?

3 A Yes.

4 Q Yes to which?

5 A Yes, it was male voices.

6 MR. SCHWARTZ: Your Honor, at this point I would request  
7 to publish State's Exhibit 105.

8 THE COURT: Go ahead.

9 [Counsel confer]

10 [Audio media published for jury]

11 BY MR. SCHWARTZ:

12 Q So Lizbeth, when you're on the phone with 9-1-1,  
13 were you kind of talking to them and to your mom?

14 A Yes.

15 Q You mentioned on the 9-1-1 call that you had looked  
16 out your window. Is that -- do you remember looking out your  
17 window?

18 A I think I was talking about my mom because I don't  
19 remember looking out a window.

20 Q Did your mom look out your window, as well?

21 A Yes.

22 Q And your window would be in the room next to her  
23 room?

24 A Yes.

25 Q And as you were talking to the lady on the 9-1-1



1 call, you said the "police are here now". How did you know  
2 that the police were there?

3 A You could see out through the window of the living  
4 room.

5 Q Did you see their light -- the lights?

6 A Yes.

7 Q Okay. At the time the police were there when you  
8 saw the lights, did the noises in the shed stop?

9 A We were in the living room, so I don't know.

10 Q You couldn't hear anything?

11 A Uh-huh.

12 Q After the police arrived, did you have a chance to  
13 talk with your Uncle Javier?

14 A No. We put him in the ambulance.

15 Q And what did you do after that happened?

16 A I went inside my mom's car, and we went to my  
17 grandma's house.

18 Q And did you later go visit Javier at the hospital  
19 that night?

20 A No. My mom and my grandma did.

21 Q And you stayed at your grandma's house?

22 A Yes.

23 MR. SCHWARTZ: Nothing further at this time, Your Honor.  
24 Thank you.

25 THE COURT: Mr. Gill?

1 MR. GILL: No questions, Your Honor. Thank you.

2 MR. BOLEY: No questions.

3 THE COURT: Anything from the jury? No? Okay.

4 Thank you. You are free to go.

5 THE WITNESS: Thank you.

6 THE COURT: State, please call --

7 MR. SCHWARTZ: Your Honor, I think he is --

8 THE COURT: Oh --

9 MR. SCHWARTZ: -- raising his hand.

10 THE COURT: Oh, gosh. I'm so sorry. I'm sorry. Hang on  
11 a second.

12 MR. SCHWARTZ: If I could approach your clerk, Your  
13 Honor?

14 THE COURT: Uh-huh. Counsel approach, please.

15 [Bench Conference Begins]

16 MR. GILL: This makes me feel we're not doing our jobs  
17 [indiscernible]. As you were on the 9-1-1 call, you mentioned  
18 being scared because of popped tires. Can you elaborate? The  
19 popped tire.

20 MS. HOLTHUS: [Indiscernible].

21 MR. GILL: Okay. [Indiscernible].

22 [Bench Conference Ends]

23 THE COURT: All right. I'm going to ask you to look at  
24 the jurors so they can hear your answer, okay?

25 THE WITNESS: Okay.

1 THE COURT: As you were on the 9-1-1 call, you mentioned  
2 being scared because of popped tires. Can you elaborate?

3 THE WITNESS: The week before we had popped -- we had --  
4 I had woken up to -- my mom was taking me to work -- to  
5 school, sorry. When she was taking me to school, we noticed  
6 that the tires were flat on my mom's car, and she thought it  
7 was just normal for them to be flat, but then we looked around  
8 on the other side of the car, and all four tires were flat,  
9 and then we looked at my mom's van, and all four tires were  
10 flat, too, and I had told her that the -- they looked popped.  
11 And we looked, and there was all eight tires were popped.

12 THE COURT: Mr. Schwartz?

13 MR. SCHWARTZ: Nothing from the State, Your Honor. Thank  
14 you.

15 THE COURT: Mr. Gill?

16 MR. GILL: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. GILL:

19 Q And you don't know who popped the tires on that day,  
20 right?

21 A No.

22 Q And that was a week before?

23 A Yes.

24 Q And you've never seen these gentlemen at the table  
25 here with me before?

1 A Not that I recall.

2 Q So you're not saying you think it was them that  
3 popped the tires. It was just something that came to your  
4 mind.

5 A Yes.

6 MR. GILL: Nothing further, Your Honor.

7 MR. BOLEY: No questions.

8 THE COURT: Anything else? All right. Now you can go.  
9 Thank you.

10 THE WITNESS: Okay. Thank you.

11 THE COURT: State, please call your next witness.

12 MR. SCHWARTZ: Samantha Avina, Your Honor.

13 THE MARSHAL: Remain standing and raise your right hand  
14 and face the clerk. She's going to swear you in. Okay?

15 SAMANTHA AVINA, PLAINTIFF'S WITNESS, SWORN

16 THE COURT: Good afternoon. Go ahead and have a seat.  
17 Would you please state your name and then spell it for the  
18 record?

19 THE WITNESS: Samantha Avina, S-A-M-A-N-T-H-A A-V-I-N-A.

20 THE COURT: Thank you, Ms. Holthus, whenever you're  
21 ready.

22 MS. HOLTHUS: Thank you.

23 DIRECT EXAMINATION

24 BY MS. HOLTHUS:

25 Q Samantha, how old are you?

- 1 A Almost 15.
- 2 Q I'm sorry?
- 3 A Fifteen.
- 4 Q You go to school?
- 5 A Yes.
- 6 Q What school?
- 7 A Spring Valley High School.
- 8 Q What grade are you in?
- 9 A Ninth.
- 10 Q Have you been there all for -- for all of ninth  
11 grade?
- 12 A Yes.
- 13 Q Who do you live with?
- 14 A My mom, my sister, and my brother.
- 15 Q And that was your mom and sister that just left the  
16 courtroom?
- 17 A Yes.
- 18 Q And your brother's out in the hallway yet?
- 19 A Yes.
- 20 Q You kind of know why you're here, right?
- 21 A Yes.
- 22 Q On January 12th of last year, 2016, where were you  
23 living?
- 24 A In Brush Street.
- 25 Q With the same people?

1 A Yes. Including Javier.

2 Q Who's Javier?

3 A My uncle.

4 Q And can you just kind of tell me what was the  
5 sleeping situation in the house?

6 A In one room -- me and my brother were sleeping in  
7 one room, and my mom was sleeping in her room, and my sister  
8 was sleeping in her room.

9 Q And kind of how were they laid out?

10 A Oh. Well, my brother, he went to go sleep with my  
11 mom, and it was a bed -- it was my bed and then my brother's  
12 bed, and then my mom has her own bed, and my sister has her  
13 own bed.

14 Q That was a terrible question because I don't even  
15 know what I was asking.

16 But are they all in a hallway, all three bedrooms?

17 A Yes. One is in the right side, one is in the other  
18 side, and then one is in the middle.

19 Q Who's on the right side?

20 A Me and my brother.

21 Q Who's on the left side?

22 A My sister.

23 Q And in the middle is your mom?

24 A Yes.

25 Q Sometime early that morning, did something happen?

1 A Yes.

2 Q What happened?

3 A Well, I just hear -- I woke up to my mom screaming,  
4 like, to stop, and then I saw that my brother wasn't in his  
5 room, and then I -- I -- I wasn't --

6 Q There's a Kleenex right next to you. You said you  
7 saw your brother wasn't in his room because he was supposed to  
8 be in your room, right?

9 A Yes.

10 Q So you noticed he wasn't in his bed?

11 A And then I went to my mom's room, and she was  
12 yelling at the window, and then I told my sister what was  
13 going on, and she told me to go to our room with my brother,  
14 so then I went, and I saw that -- I heard my mom to -- and  
15 telling them to stop, and then my sister said that they had  
16 guns, and that they were pointing to the window --

17 MR. GILL: Your Honor, objection as to hearsay.

18 MS. HOLTHUS: I believe the circumstances itself justify  
19 excited utterance.

20 THE COURT: Objection's overruled.

21 THE WITNESS: And then I went to the hallway, and then I  
22 saw my mom trying to -- like, telling them to stop, that she  
23 was going to call the police, and they told her that if they  
24 (sic) call the police, they would shoot at us, and they would  
25 shoot at the window, and so my mom didn't want to, and my

1 sister said she had to do something. We were all in the hall  
2 -- we were all in the hallway and -- and then my sister told  
3 my mom that she had to call the police --

4 MR. GILL: Your Honor, can we approach, please?

5 THE COURT: Sure.

6 [Bench Conference Begins]

7 MR. GILL: And I don't know if it was a blanket  
8 overruling, but it's continuous, and it's getting to be multi-  
9 layered where the two of them, the mother and the older  
10 sister, are talking, so same objection as to hearsay.

11 MS. HOLTHUS: They're all woken up in the middle of the  
12 night screaming stop, telling someone to get out of their  
13 house, the guns, [indiscernible] --

14 MR. GILL: But --

15 MS. HOLTHUS: -- it's excited utterance [indiscernible]  
16 impression that it's a combination [indiscernible]. It can't  
17 get any more contemporaneous. It can't get any more excited.  
18 She's --

19 MR. GILL: But --

20 MS. HOLTHUS: -- [indiscernible] and she's excited for  
21 them. Her sister [indiscernible] and her mother was excited  
22 [indiscernible]. Her testimony is corroborated  
23 [indiscernible].

24 MR. GILL: But we've already heard from mom and older  
25 sister, and now we're hearing from another sister who never



1 saw anything, so we're hearing mom's descriptions --

2 MS. HOLTHUS: Mom [indiscernible].

3 MR. GILL: -- through the older sister now to her, and  
4 then -- and so on, but that's the layers I'm talking about.

5 We're getting information from an older sister who  
6 didn't see anything.

7 MR. SCHWARTZ: And I think if each layer is justified by  
8 the exception, which is excited utterance, it's -- it can be --  
9 -- it can come in under that ruling would be my response, but I  
10 understand Mr. Gill's point, but each layer of hearsay is  
11 accepted by the excited utterance.

12 MR. GILL: And present sense --

13 MS. HOLTHUS: Is it just hearsay?

14 MR. GILL: Well, it's not present sense impression  
15 because --

16 MS. HOLTHUS: [Indiscernible] present sense impression  
17 announcing that they've got guns, and she says they've got  
18 guns. That's a present sense impression --

19 MR. GILL: But it's --

20 MS. HOLTHUS: -- with regard to what you're saying at the  
21 time that you're saying it --

22 MR. GILL: But she's not.

23 MS. HOLTHUS: No. But that's how mom's gets the sister  
24 if -- assuming you don't like present -- assuming you don't  
25 like excited utterance, but I think they're all -- I don't

1 know how they can be more excited utterance [indiscernible]  
2 than all being what they're saying and screaming at the time,  
3 but [indiscernible] --

4 MR. BOLEY: [Indiscernible] over and over again  
5 [indiscernible].

6 THE COURT: [Indiscernible].

7 MS. HOLTHUS: [Indiscernible].

8 MR. GILL: In our -- and I'll join, you know, Mr.  
9 Boley's -- I think objection that it is cumulative and that it  
10 is overly prejudicial.

11 MR. BOLEY: [Indiscernible].

12 MS. HOLTHUS: [Indiscernible].

13 THE COURT: [Indiscernible].

14 MR. GILL: That's just the jury with one more witness who  
15 is crying.

16 THE COURT: [Indiscernible].

17 MS. HOLTHUS: It's one more victim that was in the house  
18 [indiscernible].

19 MR. BOLEY: [Indiscernible] what's already been testified  
20 to.

21 MS. HOLTHUS: It is prejudicial. I agree with that.  
22 It's just not unfairly prejudicial. Most -- [indiscernible]  
23 prejudicial, but it --

24 MR. GILL: And we understand that. That's why I said it  
25 was overly prejudicial.

1 THE COURT: Yes. [Indiscernible].

2 MR. GILL: And then as to the next -- her testimony and  
3 the next witness, you're going to make a ruling at this time?

4 THE COURT: [Indiscernible].

5 MR. GILL: Okay. Thank you, Your Honor.

6 [Bench Conference Ends]

7 MS. HOLTHUS: Ms. Holthus, whenever you're ready.

8 MS. HOLTHUS: Okay.

9 BY MS. HOLTHUS:

10 Q And you were kind of explaining what was going on.

11 So mom is -- mom doesn't want to call the police  
12 because she's saying they're going to kill -- shoot us.

13 A Yeah.

14 Q Lizbeth is saying we need to call the police. And  
15 you said somebody said they have guns. Who said that?

16 A My sister.

17 Q Lizbeth?

18 A Yes.

19 Q What happened then?

20 A And then we had went to the room, and we didn't know  
21 what to do. Then my sister --

22 Q Which room did you go to?

23 A To our room. To my -- my only sister -- mine and my  
24 brother's room.

25 Q So that's the room on the --

1 A On the right side.

2 Q On the right side. Is there a window into the shed  
3 or the garage from there into Javier's room?

4 A Yes. There's two. One from my sister's room and  
5 one from my mom's room.

6 Q Okay. Not from your room, though?

7 A No.

8 Q So you guys went to the -- to your room without  
9 windows?

10 A Yes.

11 Q Okay.

12 A And then my sister had called the police, and then I  
13 just kept hearing the guys, like, yelling, cussing to my uncle  
14 telling him -- like, just kind of like bad words, some of them  
15 were in Spanish. Most of them was English, and --

16 Q You understand Spanish?

17 A Yes.

18 Q Can you tell us exactly what you remember them  
19 saying? And then so even if they're bad words?

20 A Well, it was -- I'm not sure what, like, Spanish  
21 word because I don't know how to say it, but they kept calling  
22 him that word, and --

23 Q They kept calling him what word?

24 A With the P.

25 Q Is it an English word or a --

1 A It's a Spanish word.

2 Q Spanish word. And you don't know what the word is?

3 A No. I don't know how to say them. And --

4 Q But you know it to be a bad word?

5 A Oh, yes.

6 Q Do you know what it means?

7 A No. I don't know what it is in English.

8 Q Okay. But you know it's a bad word in Spanish?

9 A Yes. And then --

10 Q Do you know anything else specifically that they  
11 called you?

12 A No.

13 Q Can you say the word in Spanish?

14 A It's the -- I'm not sure.

15 Q Can you spell the word in Spanish?

16 A P-U-T-O.

17 Q Was there anything else specifically that they said  
18 that you heard?

19 A No.

20 Q Did you hear -- the voices that you heard saying the  
21 bad words in English and Spanish, were they voices that you  
22 recognized?

23 A No.

24 Q Did you hear your uncle, Uncle Javier, saying  
25 anything?

1           A     No. Not really. I just heard him, like, in the  
2 beginning to, like, stop, to, like, do this. Like -- well,  
3 they were, like, telling him to go outside, but he didn't want  
4 to.

5           Q     So you heard that yourself?

6           A     Yes.

7           Q     And then you said you heard him saying stop?

8           A     Yes.

9           Q     Did you hear any noises other than voices from the  
10 garage -- or is it a garage, a shed? What do you call it?

11          A     A shed pretty much.

12          Q     Did you hear any noises from the shed?

13          A     No. Just the gun -- just the guy voices.

14          Q     Okay. Did you, at one point, say that you heard  
15 punching the wall?

16          A     Yes. When the -- I'm not sure who it was, but I  
17 just heard, like, the wall. Like, someone, like, punching it.

18          Q     Banging on the wall?

19          A     Yes.

20          Q     But you didn't see what exactly was going on?

21          A     No. Because it was dark.

22          Q     So then what happened?

23          A     And then we had went to the living room, all four of  
24 us, and my sister was calling the -- the police, and -- and  
25 then, like, once they heard the sirens, I'm guessing that they

1 left.

2 Q And why do you think that?

3 A To, like, not get caught.

4 Q Okay. But that -- what I'm saying is did the -- you  
5 say you think that they heard the sirens, and then they left.  
6 Did the noise in the garage -- the shed stop --

7 A Yeah.

8 Q -- as soon as you heard the sirens? Is that yes?

9 A Yes.

10 Q But it didn't stop until till then?

11 A No.

12 Q Did you actually look out and see them at all?

13 A I only saw one of their faces when they were getting  
14 put in the police car.

15 Q Okay. So before that you didn't see anything?

16 A No.

17 Q Did you see any of the guns?

18 A Yes. The -- when the police had them.

19 Q Okay. But not before that. Had you seen the  
20 individual that you saw once the police came, had you seen him  
21 before?

22 A Because my -- like, before we -- me and my brother  
23 lived -- I mean slept in the other room, and we slept in the  
24 room that my mom was at, and we would hear, like, different  
25 types of voices. And then one time we looked, like, from the

1 window, and I recognized his face.

2 Q And so you think you saw one of the people before?

3 A Yeah.

4 MS. HOLTHUS: Nothing else. Thank you. Pass the  
5 witness.

6 MR. GILL: Nothing, Your Honor. Thank you.

7 MR. BOLEY: No questions.

8 THE COURT: All right. Thank you. From the jury?

9 [Bench Conference Begins]

10 MR. SCHWARTZ: Does the situation still effect you in  
11 your everyday life since this accident?

12 Adam was shaking before he even read the question.  
13 (Indiscernible).

14 MR. SCHWARTZ: [Indiscernible].

15 MR. GILL: I would object, Your Honor.

16 MS. HOLTHUS: [Indiscernible].

17 THE COURT: [Indiscernible].

18 MR. BOLEY: [Indiscernible].

19 THE COURT: Okay.

20 MR. GILL: And then, Judge, just so we don't have to come  
21 back up, just I know the Court note my objection that --  
22 regarding Cesar's testimony.

23 THE COURT: [Indiscernible].

24 MR. GILL: I know we haven't heard it, but if Your Honor  
25 would at least allow me to make a standing objection as to his



1 testimony for cumulative purposes or do you want me to  
2 approach when --

3 THE COURT: Well, no [indiscernible] that you think is  
4 objectionable.

5 MR. SCHWARTZ: I think he's objecting to the whole --

6 THE COURT: [Indiscernible].

7 MR. SCHWARTZ: Yeah.

8 MR. GILL: Okay. Then I will.

9 THE COURT: [Indiscernible].

10 MR. GILL: Yes.

11 THE COURT: [Indiscernible] you think is cumulative or  
12 objectionable, then just --

13 MR. GILL: Thank you.

14 THE COURT: [Indiscernible].

15 MR. GILL: Thanks.

16 THE COURT: All right.

17 [Bench Conference Ends]

18 THE COURT: Okay, ma'am. You are free to go. Thank you.

19 State, please call your next witness.

20 MR. SCHWARTZ: State's going to call Cesar Avina.

21 [Pause]

22 THE MARSHAL: You're going to stand up there. Raise your  
23 right hand, face her right there. She's going to swear you  
24 in. Stand up.

25 CESAR AVINA, PLAINTIFF'S WITNESS, SWORN

1 THE COURT: Just do me a favor and have -- go ahead and  
2 have a seat.

3 Good afternoon. Can you scootch on up there so  
4 you're close to the table? And then say your name.

5 THE WITNESS: My name is Cesar.

6 THE COURT: And can you say your last name?

7 THE WITNESS: My last name is Avina Colon.

8 THE COURT: And can you spell all of that for me?

9 THE WITNESS: C-E-S-A-R A-V-I-N-A.

10 THE COURT: Great.

11 DIRECT EXAMINATION

12 BY MS. HOLTHUS:

13 Q All right. I just want -- let me just double check.  
14 So the Avina is A, B as in boy?

15 A No. V.

16 Q V.

17 A Yes.

18 Q Okay. As in Victor?

19 A Yes.

20 Q And then it's I --

21 A Yes.

22 Q -- N --

23 A Yes.

24 Q -- A? Okay. Cesar, how old are you?

25 A Eleven.

1 Q What grade are you in?

2 A [No verbal response].

3 Q What grade are you --

4 A Fifth grade.

5 Q What school do you go to?

6 A Dondero Elementary.

7 Q Did you have to skip school to come to court today?

8 A Yes.

9 Q And you know kind of why you're here, right?

10 A Yes.

11 Q Did -- was there a time you used to live over on  
12 Brush Street?

13 A Yes.

14 Q Would that have been back in January of 2016?

15 A Yes.

16 Q And you kind of know why you're here.

17 A Uh-huh.

18 Q Tell us the first thing you remember about what  
19 happened that brings you here to court today.

20 A When I was -- when I -- the first thing that I  
21 remember is my uncle knocking on the window and yelling my  
22 mother's name, and --

23 Q Do you know where that happened?

24 A In my mother's room.

25 Q Had you kind of gone in there to sleep with her?

1 A Yes.

2 Q Were you asleep when you first heard it? Did it  
3 wake you up?

4 A A little.

5 Q So was it a soft knocking or a loud knocking?

6 A It was sort of loud.

7 Q And what was he saying?

8 A He was saying this in Spanish. He was yelling my  
9 mother's name and he was saying help, help.

10 Q And what happened then?

11 A Like, my -- I woke -- my mom told me to go in my  
12 sister's and our living room, and we were just staying there,  
13 and my mom said that the -- the two men were pointing the guns  
14 at my uncle and my mother.

15 MR. GILL: And, Your Honor, just for the record, I want  
16 to launch the same objection. I know you've ruled on it  
17 previously.

18 THE COURT: All right.

19 BY MS. HOLTHUS:

20 Q Okay. And that was what mom said, correct?

21 A Yes.

22 Q Was she upset when she was saying -- was she scared?

23 A Yes.

24 Q Did you ever look out and see any of that?

25 A No. My mom told me not to look through the window.

1 Q So you went -- did you stay there with mom?

2 A She told me to stay with my sisters.

3 Q So you left that room then?

4 A Yes.

5 Q Did mom stay there?

6 A Not very long.

7 Q Then what happened?

8 A Then we went, and we were all together in the living  
9 room until the police came.

10 Q Did you hear anything else coming from out in your  
11 uncle's room?

12 A He was yelling, and they were -- the two men were  
13 just yelling at my uncle and telling him to be quiet.

14 Q And what was your uncle yelling?

15 A He was -- he -- I didn't hear him yell much, but all  
16 I heard is -- was him yelling my mom's name and saying help.

17 Q So he was saying help and that's when they were  
18 telling him to be quiet?

19 A Yes.

20 Q And then eventually the police came?

21 A Yes.

22 Q Thank you, Cesar.

23 A Okay.

24 THE COURT: Mr. Gill?

25 MR. GILL: No, Your Honor.

1 MR. BOLEY: No questions.

2 THE COURT: All right. Any questions from the jury? No?

3 All right. Thank you, Cesar. You can go.

4 THE WITNESS: Okay.

5 THE MARSHAL: Right this way.

6 THE COURT: State, please call your next witness.

7 MS. HOLTHUS: Thank you.

8 MR. SCHWARTZ: State's going to call Officer Duron.

9 THE MARSHAL: Duron?

10 MR. SCHWARTZ: Yes.

11 [Pause]

12 THE MARSHAL: Raise your right hand and face the clerk to  
13 be sworn in, please.

14 IVAN DURON, PLAINTIFF'S WITNESS, SWORN

15 THE COURT: Good afternoon, sir. Go ahead and have a  
16 seat.

17 THE WITNESS: Thank you.

18 THE COURT: If you could please state your name and then  
19 spell it for the record?

20 THE WITNESS: First name Ivan, I-V-A-N, last name Duron,  
21 D-U-R-O-N.

22 MR. BOLEY: Your Honor, can we approach, please?

23 THE COURT: Sure.

24 [Bench Conference Begins]

25 MR. SCHWARTZ: I'm not sure if we needed to approach for

1 this, but we're going to call our other officer first in the  
2 event that we run out of time because he, outside, is not  
3 available tomorrow.

4 MS. HOLTHUS: [Indiscernible].

5 MR. SCHWARTZ: We were --

6 MS. HOLTHUS: -- [indiscernible].

7 THE COURT: [Indiscernible].

8 MR. SCHWARTZ: Can we please call him first? Yeah.

9 MS. HOLTHUS: That's fine.

10 THE COURT: All right.

11 MR. SCHWARTZ: Thank you.

12 THE COURT: So a false start?

13 MS. HOLTHUS: False alarm.

14 MR. SCHWARTZ: Thanks.

15 [Bench Conference Ends]

16 MR. SCHWARTZ: Sorry, Officer Duron.

17 THE WITNESS: Hi.

18 MR. SCHWARTZ: We're going to call Officer Spurling to  
19 the stand.

20 THE WITNESS: All right.

21 MR. SCHWARTZ: At least he spells your name right.

22 [Pause]

23 THE MARSHAL: Raise your right hand. Face the clerk to  
24 be sworn in, please.

25 JUSTIN SPURLING, PLAINTIFF'S WITNESS, SWORN

1 THE COURT: Good afternoon, sir. Go ahead and have a  
2 seat.

3 Could you please state your name and spell it for  
4 the record?

5 THE WITNESS: Sure. It's Justin Spurling, J-U-S-T-I-N.  
6 Spurling is S-P-U-R-L-I-N-G.

7 MR. SCHWARTZ: Court's brief indulgence while I organize  
8 some stuff here.

9 [Pause]

10 DIRECT EXAMINATION

11 BY MR. SCHWARTZ:

12 Q Officer Spurling, how are you employed?

13 A I work for the Las Vegas Metropolitan Police  
14 Department.

15 Q And how long have you been with Metro?

16 A Approximately eight and a half years.

17 Q And in the eight and a half years, has it been all  
18 with patrol?

19 A No.

20 Q Okay. What were the different assignments?

21 A I've been assigned to the neighborhood engagement  
22 team, and then I'm currently back on patrol now as a field  
23 training officer.

24 Q And directing your attention to January 12th, 2016,  
25 were you operating as patrol that day?



1 A Yes, sir.

2 Q And were you a field training officer at that time,  
3 as well?

4 A No, sir.

5 Q Did you have occasion to respond to a 504 Brush  
6 Street address?

7 A Yes, sir. I did.

8 Q And what was the nature of that call?

9 A We received details that somebody was being beaten  
10 by two men with handguns.

11 Q Were you the first to arrive at that 504 Brush  
12 Street address?

13 A Yes, sir. My partner and I.

14 Q Who's your partner?

15 A Officer Ivan Duron.

16 Q The gentleman that just walked back out?

17 A Yes, sir.

18 Q As you arrived at that address, what's the first  
19 thing that happened?

20 A I exited my patrol car, turned down my radio, and I  
21 told my partner I heard screaming coming from the side of the  
22 house.

23 Q And if I'm showing you State's Exhibit 9 --

24 MR. SCHWARTZ: If we could switch over, please, to the  
25 over?

1 BY MR. SCHWARTZ:

2 Q Is that 504 Brush Street right there?

3 A Yes, sir.

4 Q And when you arrived to this address, you mentioned  
5 that you had heard screaming?

6 A Yes, sir.

7 Q So did you follow the screams?

8 A Yes.

9 Q Okay. Where'd you go?

10 A It's hard to see, but if I could point out?

11 Q Okay. Yeah. Put -- you can draw on the screen.

12 A We -- there's a dark shadow right here. Wow.  
13 That's way off.

14 Right next to the garage port, there's an -- a  
15 doorway that leads around to the north side of this house, and  
16 along the outside of this carport, there's, like, a little  
17 attachment to this house. We walked over there, and we saw an  
18 open door. We entered that --

19 Q And let me stop you right there. So if I'm showing  
20 you this State's Exhibit 11, does that kind of clear up a  
21 little bit what we're talking about?

22 A Yes. That's the carport, and that dark shadow to my  
23 left of that green line is the doorway. Sorry.

24 Q Okay. And when you go through that doorway, what  
25 are you going to see once you go through there?

1           A     You're going to immediately see a fence in front of  
2 you, and to your right is going to be that door I was talking  
3 about.

4           Q     And then going through that door -- you go through  
5 this doorway, you see a doorway on your right. That's where  
6 you ended up going?

7           A     Yes, sir.

8           Q     Okay. And what was in that room?

9           A     There was a bed, a bunch of other items stacked  
10 along the wall. I noticed a gentleman on the bed bleeding  
11 pretty badly from his face, as well as blood spatter on the  
12 wall behind there.

13          Q     Did you have any kind of -- and just so we're not  
14 talking just in words. Page -- State's Exhibit 20, that's the  
15 doorway you were talking about, right?

16          A     Yes, sir.

17          Q     Okay. So did you have any contact with the  
18 gentleman that was on the bed?

19          A     Very briefly.

20          Q     What was his demeanor like?

21          A     Definitely in pain, screaming.

22          Q     Did he say anything to you at that point?

23          A     Naw. He was mostly crying.

24          Q     Okay. What, if anything, did you do next?

25          A     Well, I had heard screaming, like I said. It

1 sounded like more than one person, so there's a -- a block  
2 wall that runs just north of this house that leads to  
3 buildings. I ended up jumping that wall, which is out onto  
4 Alta in back of those businesses.

5 Q So at this point, Officer, is it fair to say you're  
6 trying to locate anyone else who might be involved?

7 A Yes, sir.

8 Q Okay. I'm showing you State's Exhibit 92. Does  
9 that help sort of orient what you were just talking about --

10 A Yes, sir.

11 Q -- about Alta Avenue or Alta Drive? So if you could  
12 draw on the screen? Put an X kind of -- or could draw a  
13 little line as to the direction you went from that room?

14 A Sure. I'll -- I'll try my best.

15 Q Try to do it.

16 A Yeah. The block wall I'm talking about is right  
17 here. Wow.

18 Q And I can reset it for you and give you another  
19 shot.

20 A All right. I'm really terrible at this, apparently.  
21 I'll try this. Okay. It's -- it's that same wall. It's just  
22 further up.

23 Q So this wall that we're talking about right here is  
24 the block --

25 A Right.

1 Q -- wall you're indicating?

2 A Yes, sir.

3 Q Right behind the Brush Street --

4 A Yes.

5 Q -- address?

6 A Yes, sir.

7 Q And that's the wall you went over?

8 A Yes, sir.

9 Q Okay. What'd you do once you went over that wall?

10 A I just kind of looked around, scanned the area to  
11 which I started looking to the south. As soon as I did that,  
12 2 yards to the south, which is correct --

13 Q Two houses down?

14 A Yes, sir. I saw an individual standing in the  
15 middle of that back yard.

16 Q Okay. So if we're looking two houses down from  
17 Brush Street, the center of that back yard?

18 A Yes, sir.

19 Q Okay. What did you see?

20 A I saw an individual with a black stocking cap. We  
21 made eye contact, and as soon as he saw me and I saw him, he  
22 immediately ducked down, which is not a normal thing.

23 Q Did he have the stocking cap covering his whole  
24 head?

25 A No, no. Just the top.

1 Q Okay.

2 A It was kind of pulled up.

3 Q And once he ducked down, what did you do next?

4 A I immediately got on the radio and notified my  
5 resources coming to me that I potentially located suspects in  
6 the back yard.

7 Q And at that point had you only seen one of the  
8 potential suspects?

9 A Yes, sir.

10 Q Okay. After you notified on your radio, did you  
11 proceed into that back yard?

12 A Not immediately into the back yard where the suspect  
13 was. I walked down the wall and jumped into the one that is  
14 just south of the victims and just north of the potential  
15 suspects.

16 Q So if we're at the wall from 504 Brush Street, you  
17 went -- you were over that wall, and you --

18 A Correct.

19 Q -- went south kind of towards this big parking lot,  
20 and you went into the house just -- the back yard just south  
21 of 504 Brush?

22 A Yes, sir.

23 Q Okay. What did you do once you were in that back  
24 yard?

25 A Well, I jumped that back yard. I un-holstered my

1 firearm, and I began giving verbal commands to the gentleman  
2 in the back yard of the -- back yard to my south.

3 Q Okay. And did it appear to you that he was  
4 complying with those verbal commands?

5 A No.

6 Q Could you see him?

7 A Yes.

8 Q Okay. And so what did you do as he did not comply  
9 with your commands?

10 A I got back on the radio and let them know which yard  
11 I was talking about and set up a perimeter so that these  
12 gentlemen wouldn't escape or this gentleman wouldn't escape if  
13 he bolted over this wall.

14 Q Okay.

15 A After doing that, I continued to give verbal  
16 commands to that same subject. This time as I did, instead of  
17 staying in the front yard -- or I'm sorry, in the back yard  
18 toward the center, he came back. It's -- it's hard to see.  
19 If you could zoom in?

20 Q Sure.

21 A And then just a little bit lower. There we go.

22 There's some bushes along this wall that runs into  
23 the -- for a lack of a better business name, the Arizona  
24 Charlie's parking lot where some of the employees park.

25 Q Okay. So we're talking about the back wall of the

1 back yard at this house over the wall?

2 A Yes, sir. Almost right where your pen is pointing.  
3 To the north where you see those green shadows is some trees  
4 and sticks and bushes, things like that. The gentleman ran  
5 and tried to hide behind what I'd describe as a Charlie Brown  
6 Christmas tree.

7 Q Okay. So probably not the best hiding place?

8 A Terrible.

9 MR. GILL: Your Honor, objection as to relevance.

10 THE COURT: Sustained.

11 BY MR. SCHWARTZ:

12 Q And as you observed him hiding in those bushes area,  
13 what was it that you were doing?

14 A I had moved closer and was using the wall to the  
15 north as cover.

16 Q So you're still in the house that's just south -- if  
17 I back up a little -- just south of the 504 address?

18 A Yes, sir.

19 Q And so you're along the wall that's dividing that  
20 house from the house where you observed the suspect?

21 A Yes, sir.

22 Q Okay. And as you're proceeding to that wall, what  
23 is it that you -- are you still issuing commands?

24 A I am. I'm issuing commands at him and scanning for  
25 the potential second suspect, who I have not located yet.



1 Q Did he -- after you were scanning for the other  
2 suspect, did you ultimately make your way into that back yard?

3 A Yes, sir, I did.

4 Q Okay. And how did you get into the back yard?

5 A I jumped that wall almost right in the middle. It  
6 was just to the west of this giant shed in the back yard where  
7 the suspect was.

8 Q And correct me if I'm wrong, but you're saying "just  
9 to the west" as in this way? This --

10 A Yes, sir.

11 Q -- kind of area?

12 A Yes, sir.

13 Q That's where you cleared the wall?

14 A Yes, sir.

15 Q What happened when you were in that back yard?

16 A I was still alone in the back yard with this  
17 subject, who's not listening to me, so I kind of crept along  
18 the back of this house using that as my back -- backdrop so  
19 nobody could sneak up on me. As I began to close in on the  
20 suspect, that's when he finally started listening to my  
21 commands, went down on his stomach.

22 Q And is that what you'd been asking him to do? What  
23 were the commands you were issuing?

24 A Get down on the ground, that kind of thing.

25 Q And as you -- you testified that as you're kind of

1 approaching this back of this house, he eventually gets down  
2 on the ground.

3 A Yes, sir.

4 Q And what is it that you do at that point?

5 A I sweep back around because he's now -- his head is  
6 facing to the north, and his feet are to the south, so I  
7 continue to sweep around as I search the rest of this back  
8 yard. As I clear the rest of the back yard to make sure  
9 nobody's going to sneak up on me as I take him into custody, I  
10 end up putting one of my knees across his back, and then I  
11 look to the north, and I spot a second subject lying  
12 underneath the shed.

13 Q Okay. So -- and to orient myself, I guess, north --  
14 you're saying you're looking back towards the shed?

15 A Yes, sir.

16 Q Okay. So let me show you a couple other pictures to  
17 make sure we're on the same page.

18 What you were describing as the Charlie Brown  
19 Christmas tree in State's Exhibit 34, is that what we're  
20 looking at here?

21 A Yes, sir.

22 Q So can you try to circle as best you can sort of the  
23 area where he was hiding and got down on the ground?

24 A Yeah. I want to say it was somewhere right in here.

25 Q And you said that as he on the ground, you were able

1 to eventually approach him, and you said you placed your knee  
2 on his back?

3 A Yes, sir.

4 Q And then you were scanning the rest of the yard --

5 A Yes, sir.

6 Q -- for what had happened? And where was it that you  
7 looked to see someone else?

8 A Directly to the north.

9 Q And that was in the vicinity of a shed you  
10 mentioned?

11 A Yes, sir. It was --

12 Q State's Exhibit 61, is that what we're looking at  
13 here?

14 A Yes, sir.

15 Q Where about in this picture did you observe someone?

16 A I'll try and circle it. It's -- oh, geez. Right  
17 under there, tucked down. Actually underneath the structure  
18 itself.

19 Q So I don't -- tell me kind of when to stop the  
20 picture.

21 A Right in there.

22 Q Okay. So it's about center of the shed underneath  
23 it?

24 A Yes, sir.

25 Q And what do you start doing once you see that person

1 there?

2 A I start issuing him verbal commands, as well,  
3 because at this point I can't see his hands.

4 Q Does it appear to you that he's complying with the  
5 commands?

6 A No.

7 Q So what are you doing at that point?

8 A I'm now pointing my firearm at him while shining a  
9 flashlight that's attached to my handheld -- handgun and  
10 getting on the radio allowing my other resources to know that  
11 I found both subjects in this back yard and that I'm going to  
12 need some more resources in the back yard with me.

13 Q The suspect that is under your knee, does he appear  
14 to be complying with you at this point?

15 A Yes, sir.

16 Q Do you do anything else with regards to him while  
17 you're also watching this other person or is he just kind of  
18 staying put?

19 A He's just kind of staying put with his arms  
20 stretched out in front so I could keep track of him.

21 Q So with regards to the suspect that was at the shed,  
22 what happened next?

23 A That's when I'm joined up in the back yard with  
24 Sergeant O'Greary (phonetic) and Officer Matt Carter. I let  
25 them know that I am on top of one suspect and the other

1 suspect is underneath the shed not complying with our  
2 commands.

3 Q At this point are you still maintaining, I guess, a  
4 light or a visual on the suspect under the shed?

5 A Yes, sir. We all were.

6 Q So what happens at that point?

7 A We start issuing him verbal commands to put his  
8 hands out in front of him, kind of Army crawl his way out.

9 Q Does he comply?

10 A No. He hesitates. And at one point, he reaches his  
11 hands down to his waist, and I remember being very close to  
12 pulling my trigger. Kind of made me nervous.

13 Q And what was -- what made you nervous about that?

14 A In my experience, in the eight and a half years I've  
15 been on, when people have firearms, they keep them in their  
16 waistline or in their jacket pockets.

17 Q To be clear, you didn't up discharging your firearm.

18 A No, sir.

19 Q So what -- did he eventually end up complying with  
20 your guys' commands?

21 A Yes.

22 Q And is it at that point that Sergeant O'Greary and  
23 Officer Carter were able to apprehend him?

24 A Yes, sir.

25 Q So at that point, is it fair to say that you are

1 focusing then on the person that's below your leg?

2 A Yes, sir.

3 Q So what happens with that?

4 A I put my hand -- my handgun away, and I'm now  
5 telling him to put his hands behind his back. As -- as I do  
6 that, and I'm placing handcuffs on him, he goes -- he makes a  
7 statement to me saying that you don't understand. We were a  
8 victim, I believe, tire slashing, and we made a report, but  
9 you guys didn't listen. At that point, I placed handcuffs on  
10 him.

11 Q Once you placed handcuffs on him, did you do any  
12 type of pat-down or anything of that nature with regard to  
13 that suspect?

14 A Yes. I checked his immediate area of access, which  
15 would be the waistline area and pulled out big, bulky items  
16 from his pocket to make sure they weren't weapons.

17 Q And where were those items discarded at that point?

18 A On the ground next to him.

19 Q So if I'm showing you State's Exhibit 35, is that  
20 consistent with what you recall sort of discarding from his  
21 person?

22 A Yes, sir.

23 Q And what items were those; if you recall?

24 A These items here.

25 Q Okay.

1 A It's really --

2 Q Is it also including some of these items off to the  
3 side? Is everything in this picture what was taken off his  
4 person?

5 A No. Just these items that are circled here. Those  
6 items in the bushes here were -- were already there, and that  
7 was the bush that he was hiding behind.

8 Q And was this article, this dark cloth material, was  
9 that something that was on the suspect when you first  
10 approached him?

11 A Yes, sir.

12 Q Okay. Where was it?

13 A That was the beanie on top of his head.

14 Q Once you were able to place handcuffs on that  
15 individual and pat him down for any other weapons, what did  
16 you do next?

17 A I stood my suspect up, and I brought him to the  
18 front yard so we could try and identify him.

19 Q And were you able to eventually able to identify  
20 that individual?

21 A Yes, sir.

22 Q And do you see him in the courtroom today?

23 A Yes, sir.

24 Q Could you please point to him and describe an  
25 article of clothing he's wearing?

1           A     Yes, sir. That's going to be this gentleman here  
2 with the white shirt and black slacks.

3           Q     And what side of the table is he sitting on?

4           A     He's going to be on my left --

5           Q     Okay.

6           MR. SCHWARTZ: Your Honor, could the --

7           THE WITNESS: Their right.

8           MR. SCHWARTZ: -- record please reflect that the witness  
9 has identified the Defendant, Mr. Jose Monay-Pina?

10          THE COURT: The record will so reflect.

11 BY MR. SCHWARTZ:

12          Q     Showing State's Exhibit 77. Is this consistent with  
13 what you recall Defendant looking like that day?

14          A     Yes, sir.

15          Q     And, again, that's the Defendant Monay-Pina?

16          A     Yes, sir.

17          Q     At that point, what did you do after you had taken  
18 him out to the vehicle?

19          A     I handed him off to another officer.

20          Q     What was the rest of your responsibilities at the  
21 scene at that time?

22          A     Well, I went back and looked at the items that were  
23 back there that I had taken out of his pocket.

24          Q     Okay. So you went back to the back yard and scanned  
25 the area that items had been placed on the ground?



1 A Yes, sir.

2 Q Okay. Did you pick those items up at all?

3 A No, sir.

4 Q And, again, we're showing State's Exhibit 35. Okay.

5 So you didn't touch or move these items?

6 A No, sir.

7 Q You mentioned that there were items in the bushes  
8 that you did not take off him.

9 A Yes, sir.

10 Q Did you get a closer look at those?

11 A Yes, sir.

12 Q Showing you State's Exhibit 43. Do you recall what  
13 those were?

14 A Yes. It was a wad of cash and what appeared to be  
15 the victim's wallet from the beating that I had seen in the  
16 bedroom when I first responded.

17 Q Did you pick up either of those items?

18 A No, sir. I did not.

19 Q Okay. Did you also go look at the area where the  
20 other suspect had been apprehended?

21 A Yes, sir.

22 Q And do you recall what you saw over there?

23 A Yes, sir. I remember --

24 Q I'm sorry. Let me back-track you for one second.

25 Do you recall seeing in that back yard sort of a

1 circle, like, planter?

2 A Yes. There were several of them in that back yard.

3 Q Okay. Do you recall seeing anything when you were  
4 back there looking at these different items anything of note  
5 in the circle planter?

6 A Yes. There was a circle planter, I believe, to the  
7 south of the suspect I placed my knee on. In that planter, if  
8 I recall correctly, I remember seeing a replica firearm, as  
9 well as a knife and a sheath.

10 Q Showing you State's Exhibit 56. Is that what we're  
11 looking at here?

12 A Yes, sir.

13 Q If I show you a close-up of that, State's 57?

14 A Yes, sir.

15 Q And, again, you just looked at these items. You  
16 didn't pick up or move these in any way?

17 A Correct.

18 Q Okay. So now in reference -- and you -- I  
19 apologize. You said this was near where Mr. Monay-Pina was  
20 apprehended by yourself?

21 A yes, sir.

22 Q Just south, meaning just a little bit closer to the  
23 house than where you guys were?

24 A No. In a direction away from the second suspect.

25 Q Okay.

1           A     If that makes sense.

2           Q     Let me give you a different picture to look at --

3           A     Sure.

4           Q     -- just so I understand that. So if we're looking  
5 at State's 50 -- 34, which direction from there?

6           A     I took him into custody somewhere in this area here,  
7 and I believe the planter is somewhere right around here.

8           Q     Okay. Thank you.

9           A     Yes, sir.

10          Q     In reference to the other suspect who was  
11 apprehended under the shed, do you recall observing items of  
12 interest to you over there?

13          A     Yes, sir.

14          Q     What items were those?

15          A     I believe we found another replica firearm, as well  
16 as another sheath with a knife.

17          Q     And if I'm showing you State's Exhibit 67?

18          A     Yes, sir.

19          Q     Those items were what you observed when you went  
20 over in this corner area, which is -- where is this in  
21 location to the shed?

22          A     That's just north of and just a little bit to the  
23 east of.

24          Q     So is this the corner of the back yard?

25          A     Yes, sir.

1 Q Okay. And the shed would be almost as if I was  
2 standing at the shed taking a picture of this?

3 A Yes, sir.

4 Q Okay. Did you notice anything of interest under the  
5 shed?

6 A Yes. I believe there were some gloves underneath  
7 the shed.

8 Q Showing you State's Exhibit 62.

9 A Yes, sir.

10 Q Consistent with your recollection of what you  
11 observed?

12 A Yes, sir.

13 Q This is a close-up of 63. And so if we're looking  
14 at 62, the Defendant was underneath the shed at this point --

15 A Yes.

16 Q -- crawling out the other end?

17 A Yes. No. Crawling out towards, I believe. Wait.  
18 Hold on.

19 Q And I can show you the shed again if that helps.

20 A Yeah. If you could show me that, the zoomed out  
21 version? I believe that was to the side of the shed.

22 Q Okay. So if we see the red sort of step here -- I'm  
23 showing you State's Exhibit 61 if that helps orient you.

24 A Yeah. So if I remember correctly, I remember seeing  
25 those gloves and that hat on the side that's closest to that

1 block wall.

2 Q Okay. And that suspect that we've been talking  
3 about that was apprehended under the shed, do you see him in  
4 the courtroom today?

5 A Yes, sir.

6 Q Could you please point to him and describe an  
7 article of clothing he's wearing?

8 A Yes, sir. He's sitting in the center of the table  
9 with a white shirt on.

10 MR. SCHWARTZ: Your Honor, would the record please  
11 reflect identification of Defendant Casimiro Venegas?

12 THE COURT: Which person with the white shirt, sir?

13 THE WITNESS: I don't want to be rude. The gentleman  
14 with no hair.

15 THE COURT: All right. Got it. Thank you.

16 The record will so reflect.

17 MR. SCHWARTZ: Thanks, Your Honor.

18 BY MR. SCHWARTZ:

19 Q And showing you State's 75. Is that what you recall  
20 the Defendant, Mr. Venegas, looking like on that day?

21 A Yes, sir.

22 Q Did you have any other interactions with the two of  
23 them after this point?

24 A I remember standing next to him for the show-up, but  
25 I don't remember speaking to either one of them after that.

1 Q So another officer had brought someone to do a show-  
2 up with these gentlemen?

3 A Yes, sir.

4 Q Okay.

5 MR. SCHWARTZ: Court's indulgence?

6 BY MR. SCHWARTZ:

7 Q A couple more questions, Officer.

8 A Sure.

9 Q Would you describe all three of the firearms you  
10 observed as replica guns?

11 A Yes, sir.

12 Q And correct me if I'm wrong. I'm not sure exactly  
13 what is a replica gun.

14 A Replica firearm is a firearm that uses gas to expel  
15 a bullet, sort of like a BB, but it's not an actual --

16 Q Okay. So it would be --

17 A Yeah.

18 Q Is it fair to say then -- correct me if I'm wrong,  
19 please -- the way the replica gun works, the mechanics of it,  
20 is consistent with how, like, a BB gun would work in the way  
21 that it expels a bullet using gas or other air pressure?

22 A Yes, sir.

23 Q Okay. Is that something you can tell by looking at  
24 a gun if you're experienced with guns?

25 A You have to get pretty close to --

1 Q Okay.

2 A -- determine.

3 Q But you were able to look at these and determine  
4 that they were replica guns?

5 A Yes, sir.

6 MR. SCHWARTZ: Court's indulgence.

7 BY MR. SCHWARTZ:

8 Q And as far as these guns, let me just show you just  
9 so we're talking about the same ones. 57 and 68. Sorry.  
10 It's kind of a weird angle there, but BB gun, replica gun, is  
11 that also consistent with what's referred to as a pneumatic  
12 gun?

13 A Yes, sir.

14 Q Just to clarify, as well. I'm sorry. The -- there  
15 was a -- like a red digital camera and a phone that was kind  
16 of in the area --

17 MR. GILL: Your Honor, objection. It misstates his  
18 testimony. I don't think he testified as to a camera or  
19 any --

20 MR. SCHWARTZ: I'd be happy to rephrase it, Your Honor.

21 THE COURT: All right.

22 BY MR. SCHWARTZ:

23 Q State's 35 --

24 MR. GILL: And, Your Honor, this is now leading.

25 MR. SCHWARTZ: Well, I'll withdraw any other -- any

1 question that I just said and ask --

2 THE COURT: I don't know that there was -- all right. Go  
3 ahead, Mr. Schwartz. Ask a question.

4 BY MR. SCHWARTZ:

5 Q I just want to know which items were not removed  
6 from Defendant Monay-Pina's person, other than the ones you  
7 mentioned already in the bushes.

8 [Counsel confer]

9 MR. SCHWARTZ: Court's indulgence. Could I --

10 MS. HOLTHUS: You're good now.

11 MR. SCHWARTZ: -- look at the monitor to make sure --

12 MS. HOLTHUS: You're good now.

13 MR. SCHWARTZ: -- I can see the same things he can see?

14 MS. HOLTHUS: It's okay now, Ryan. I moved it up.

15 THE COURT: Okay.

16 MR. SCHWARTZ: That appears that we can see the same  
17 thing.

18 BY MR. SCHWARTZ:

19 Q All right, Officer. Last question. Were any of  
20 these items that I'm referring to not the ones in the bushes?

21 A No.

22 Q Were any of these not taken off of Mr. Monay-Pina's  
23 person?

24 A I believe all those items, except for the ones you  
25 mentioned in the bush, were taken off his person.



1 Q Thank you.

2 MR. SCHWARTZ: No further questions at this time, Your  
3 Honor.

4 THE COURT: Okay. Mr. Gill?

5 MR. GILL: Thanks, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. GILL:

8 Q Now, Officer Spurling, you testified that you first  
9 got the call and then responded, and the first thing you did  
10 was tell -- and I believe it was your partner -- that you were  
11 hearing screaming; is that correct?

12 A Yes, sir.

13 Q And was it male voices, female voices? What was the  
14 hearing -- or the screaming that you were hearing?

15 A Just high-pitched screaming, like somebody was in  
16 pain.

17 Q Okay. You -- could you tell if it was a male or  
18 female voice?

19 A No, sir.

20 Q But you could hear it from the 504 Brush?

21 A Yes, sir.

22 Q And then you said that you walked kind of towards  
23 that, and I'll find the -- if you can give me just one second?

24 MR. GILL: Court's indulgence, Your Honor.

25 BY MR. GILL:

1 Q Okay. I suppose we can use the overhead. This is  
2 State's 93. So you see 504 Brush is labeled there, correct?

3 A Yes, sir.

4 Q And then there's a car -- truck there with a shadow  
5 of a light pole is what that looks like, correct?

6 A Yes, sir.

7 Q Is that approximately where you parked your car?

8 A Yes. I believe I parked right in front of the  
9 driveway.

10 Q Okay. So you do see the driveway there, and you  
11 guys pull up. Are you driving the car?

12 A Yes, sir.

13 Q And who is it that's with you?

14 A Officer Ivan Duron.

15 Q Okay. The gentleman who popped in before you?

16 A Yes, sir.

17 Q And you hear screaming, and you tell him I'm going  
18 to walk up or you just start walking up?

19 A No. Well, we walked to the fence, which was closed.

20 Q Okay. And so -- and I don't mean to interrupt you,  
21 but this -- there's a fence on the sidewalk.

22 A Yes, sir. It's a chain link fence that I believe  
23 roles open and closed to cover the driveway.

24 Q Okay. So you walked up to the fence.

25 A Yeah. We couldn't open it, so we jumped it.

1 Q Okay. And how high was that fence?

2 A If I were to guesstimate, about 3 and a half, 4  
3 feet, maybe.

4 Q So standard chain link?

5 A Yes, sir.

6 Q And then where'd you go?

7 A We walked -- this -- the gray vehicle that's parked  
8 here in the dirt, it actually, I believe, an SUV or a van.

9 Q Okay. That gray vehicle, was it there at the time?

10 A Yes, sir.

11 Q Okay. And then did you walk to that side of the  
12 house?

13 A Yes, sir.

14 Q Being the northwest side?

15 A Yes, sir.

16 Q Because the house kind of sits on an angle?

17 A Yeah.

18 Q So you walked to the northwest side. You go in the  
19 back. You don't see anybody when you go into that back room,  
20 correct, other than the gentleman on the bed?

21 A Correct.

22 Q And did you have an opportunity to speak to him?

23 A No.

24 Q But you -- I'm sorry. I'm just trying to find a  
25 picture of that room. You went inside that room, correct?

1 A Yes, sir.

2 Q Was Duron with you at this time?

3 A Yes, sir.

4 Q Did either of you stay with him or did you both kind  
5 of go in/go out?

6 A Officer Duron stayed with him.

7 Q And then you went out searching, you said, for the  
8 suspects?

9 A Yes, sir.

10 Q Now, when you -- now, I'll get 93 back up.

11 You get to -- you exited in kind of the same wall  
12 that that SUV, correct? Is that where you hopped to go  
13 into -- to get away from this 504 Brush or did you hop the  
14 other wall in the rear?

15 A I -- I jumped the one to -- that I would -- I don't  
16 how to describe it without -- I'll just attempt to draw a line  
17 there for you.

18 Q Yeah.

19 A There's a brown wooden fence that connects this --  
20 this corner. Oh, geez.

21 Q Is the calibration off?

22 A Yeah. It's pretty far off. There's a brown fence  
23 right here, sir.

24 Q Okay. The rear corner of the house?

25 A Yes, sir. I would -- I would call that the

1 northeast for argument's sake.

2 Q Yeah.

3 A Maybe.

4 Q North. North tip?

5 A North. Sure. And I was going to originally jump  
6 that fence to check the back yard and make sure nobody was in  
7 it, but I didn't think it could support my weight at the time.  
8 I was a little bit heavier, so I ended up jumping that block  
9 wall.

10 Q Okay. And when you say "that block wall", same  
11 block wall where the fence is?

12 A Correct.

13 Q Okay. And how high is that wall?

14 A Maybe six feet on my side and maybe like four feet  
15 or four and a half feet on the actual back side of the  
16 business.

17 Q Okay. So you're going up and then not as high --  
18 not as far down on the other side?

19 A Yes, sir.

20 Q And is it from there that you looked into 510  
21 Brush -- what ends up being 510 Brush?

22 A Yeah. I -- I remember walking right around over  
23 here.

24 Q So your testimony is it's four feet on that side,  
25 and you can kind of see over it?

1 A Yes, sir.

2 Q And let's talk specifically. You get in that yard,  
3 and you've got your knee on one suspect, and then you  
4 testified that you put your flashlight and your gun on another  
5 suspect, right?

6 A Yes, sir. My weapon-mounted flashlight.

7 Q I'm sorry. Your -- you have both, I think you  
8 testified. You had the weapon -- or the flashlight on the  
9 weapon?

10 A Correct. The one that's mounted to my flash -- to  
11 my handgun --

12 Q Right.

13 A -- you flip the switch on.

14 Q So when you said my flashlight, it's one action?

15 A Yes, sir.

16 Q And that was someone under the shed, correct?

17 A Yes, sir.

18 Q Now, you stated that you almost fired, but you  
19 didn't, obviously, correct?

20 A Yes, sir.

21 Q And how tall is that? And I'm trying to find a good  
22 picture of it, but there's -- that shed has a little bit of  
23 a -- it's raised off the ground, correct?

24 A Yes, sir.

25 Q And how high? I mean what's the width -- what's the

1 distance between the ground and the bottom of that shed? And  
2 I'll try and find --

3 A I -- I would guesstimate maybe 2, 2 and a half, 3 at  
4 the most --

5 Q Feet?

6 A -- raise -- raised off -- yes, sir.

7 Q Okay.

8 MR. GILL: Court's indulgence.

9 BY MR. GILL:

10 Q And this is State's 61. And that kind of depicts  
11 what you're talking about, correct?

12 A Yes, sir.

13 Q Now, I don't know if we were entirely clear. When  
14 you were -- when you had your knee on the other suspect, and  
15 you were pointing your flashlight and gun this way, where was  
16 that second suspect?

17 A Underneath the center of that shed.

18 Q Okay. So he's in the middle, and I think you did  
19 try and draw -- and maybe Mr. Schwartz had moved this over,  
20 but kind of center on every angle, no matter which way you  
21 look at it? He's just smack in the center?

22 A Pretty close. Yes, sir.

23 Q Okay. And you can see him -- at least you can see  
24 his arms, right?

25 A Yes, sir.

1 Q You can see his hands?

2 A For the most part, yes, sir.

3 Q Okay. Or lack of hands at some point, correct?

4 A Yes, sir.

5 Q And then -- and you eventually apprehend him, right?

6 A Yes, sir.

7 Q So he kind of had to do an Army crawl to get out of  
8 there?

9 A Yes, sir.

10 Q And you could, at that point, at least see his  
11 hands?

12 A Yes, sir.

13 Q So after you apprehend him, you took the guys out.  
14 You did a what you call a show-up or at least you were there  
15 when they did they show-up --

16 A Yes, sir.

17 Q -- correct? Then you went back and looked at the  
18 back yard, correct?

19 A No, sir.

20 Q When was it that you went back to check out the back  
21 yard? At least the items in the back yard?

22 A Immediately after passing them off to the officers  
23 in the front yard.

24 Q Okay. So you didn't really stick around. You said  
25 here, and then you went back?



1           A     Correct. It took a few minutes for the show-up to  
2 actually have it.

3           Q     Okay. But you didn't stick around for that?

4           A     I did. Yes, sir.

5           Q     Okay. And then right after that you went back?

6           A     No, sir. Well, I'm confused. What was your  
7 question?

8           Q     I'm just trying to get a time frame of how long you  
9 were out in the front yard before you returned to the back.

10          A     Okay. Yeah. So we ended up bringing them to the  
11 front fence, which you had to -- we had to get the homeowners,  
12 I believe, to open the side gate so we could get the suspects  
13 out.

14          Q     And that's at 510 Brush, right? The home depicted  
15 in the southern portion of this overhead?

16          A     Yes, sir.

17          Q     Okay.

18          A     Well, I --

19          Q     It's okay.

20          A     -- can only see -- I can only see -- there we go.

21                 There's a carport right -- golly, this is off --  
22 right around here, and towards this back opening there's what  
23 I want to call a wrought iron fence, maybe for a third-wheel  
24 parking or something so that they can get back there.

25          Q     And you had to wait for that gate to be open to go

1 out front?

2 A Yes, sir.

3 Q And then once you get out front, how long are you  
4 out there?

5 A Seconds.

6 Q Okay.

7 A Minutes.

8 Q And then it's back to the back yard?

9 A Yes, sir.

10 Q And at some point you made it over to the shed,  
11 correct?

12 A Yes, sir.

13 Q Now, State's 63, you were -- you testified regarding  
14 those, correct?

15 A Yes, sir.

16 Q And those items are the -- their gloves and it looks  
17 like either a hoodie or a beanie or a scarf, mask, whatever  
18 you want to call it, correct?

19 A Yes, sir.

20 Q They were in that position when you came back there?

21 A Yes, sir.

22 Q You hadn't touched them --

23 A No, sir.

24 Q -- nor had you seen anyone touch them?

25 A Correct.

1 Q They were just like that?

2 A Yes, sir.

3 Q And in relation to -- I'm going to see if there's  
4 anything on this. In relation to the shed as we see it --  
5 and, again, as we see it in State's 61, it is essentially  
6 somebody standing at the back of the house looking towards the  
7 back yard, correct, when they take that photo?

8 A Yes, sir.

9 Q So where were those gloves and that scarf in  
10 relation to this photograph? Are they on that back wall or  
11 near that -- nearest to that back wall?

12 A They're on that side nearest to the wall.

13 Q Okay. So the opposite side of what we're looking  
14 at?

15 A Correct.

16 Q Okay. And is that where the suspect came out of  
17 from underneath the shed, that side?

18 A I'm sorry. What -- what -- what are you asking?

19 Q So he crawled out.

20 A Yes, sir.

21 Q Which side of that shed did he crawl out of?

22 A He crawled out to the side that has the overhang.

23 Q Okay. Where it looks maybe a front door?

24 A Yeah.

25 Q Opposite of these little red stairs?

1 A Correct.

2 Q Kind of front where the --

3 A Correct. This --

4 Q -- awning is?

5 A -- direction.

6 Q Okay. Now, you testified kind of towards the end of  
7 your questioning with Mr. Schwartz regarding these replica  
8 guns. Do you recall that testimony?

9 A Yes, sir.

10 Q And you have eight and a half years of training and  
11 experience with firearms, correct?

12 A Yes, sir.

13 Q Part of your training at Metro is obviously  
14 firearms. You carry one.

15 A Yes, sir.

16 Q And it's not uncommon or out of the realm of  
17 possibilities for you to be able to look at a firearm and tell  
18 the caliber, correct?

19 A Sometimes. Yes, sir.

20 Q I mean, you know, you know what a .9 is and a .45 is  
21 generally?

22 A Yes, sir.

23 Q And you were able to -- and I believe he showed you  
24 this, and this is 57. Showed you that one, and you were able  
25 to kind of look at it and say that's a replica gun or a BB

1 gun, correct?

2 A Yes, sir.

3 Q And what about it led you to that conclusion?

4 A It's hard to tell in the photo.

5 Q I'll try to zoom it in a little bit. I don't know  
6 if that'll help you, but I'll do my best.

7 A Yes, sir. That little writing right there on the  
8 barrel or I'll try and circle it here.

9 Q Okay. All down the side of that barrel?

10 A Yes, sir. If you shine enough light on it and get  
11 it close enough, you can -- you can read it, and it says  
12 warning, don't point it.

13 Q Okay. So --

14 A It pretty much tells you --

15 Q -- is it common for, say, like, a -- the .9 you  
16 carry, for instance, to have writing down the side of it?

17 A No, sir.

18 Q More common in a replica gun?

19 A Yes, sir.

20 Q And, again, if we say BB gun, are we being  
21 inaccurate?

22 A No, sir.

23 Q And there were two others found, and I'm showing you  
24 State's 68, and I'll zoom out a little bit. You saw those  
25 back in the back yard, as well, correct?

**CERTIFICATE OF ELECTRONIC TRANSMISSION**

The undersigned hereby declares that on September 24, 2018, an electronic copy of the foregoing APPELLANT'S APPENDIX VOLUME III was sent via the master transmission list with the Nevada Supreme Court to the following:

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AA000421

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

JOSE FERNANDO MONAY-PINA, )  
 )  
 Appellant, )  
 )  
 vs. )  
 )  
 THE STATE OF NEVADA, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

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1 A I can only --

2 Q I'm sorry?

3 A Sorry. I can only see half of the handgun.

4 Q Sorry.

5 A Oh, there you go. Yes, sir.

6 Q So those were positioned, I think, back by the five  
7 bushes, correct, when you saw them? Those five bushes --

8 A Those five --

9 Q -- the Charlie Brown tree in the back against the  
10 wall?

11 A No, sir. Those are positioned in the north corner  
12 towards --

13 Q Okay. So I was backwards.

14 A The other side --

15 Q Behind the shed.

16 A -- of the shed. Yes, sir.

17 Q Got you. And were you able to determine that these  
18 were replica guns, as well?

19 A Yes, sir.

20 Q And how did you do that? Let's start with the gun  
21 that's depicted in the lower portion of State's 68.

22 A I can look at that one and tell because I -- I don't  
23 believe there's a barrel on any firearm that that -- is that  
24 long outside of maybe a revolver.

25 Q Okay. So the length of the barrel tips you off?

1 A Yes, sir.

2 Q And then what about the BB gun that's positioned in  
3 the top part of that, 68?

4 A I could -- I could see the plastic that it was made  
5 out of.

6 Q Okay. So when you came up, you could see it was  
7 made of all plastic?

8 A Yes, sir.

9 Q Okay. And just for clarification because I screwed  
10 up, this is 67. That's the corner yard, correct?

11 A Yes, sir.

12 Q The two firearms I just showed you in 68 -- or the  
13 two BB I just showed you in 68 were the ones positioned in the  
14 corner yard here in 67?

15 A Yes, sir.

16 Q And the solo, State's 57, the first one we went over  
17 with the writing on it, that was in the planter, correct?

18 A Correct. South of where the person I had my knee  
19 on.

20 Q Okay. Just want to make sure we get everything  
21 mapped out. So fairly near you, at least when you apprehended  
22 the first suspect?

23 A Yes, sir.

24 MR. GILL: Court's brief indulgence.

25 [Counsel confer]

1 MR. GILL: Nothing further, Your Honor. Thank you.

2 MR. BOLEY: Yes.

3 CROSS-EXAMINATION

4 BY MR. BOLEY:

5 Q Officer, I want to show you some of the exhibits  
6 here. Bear with me.

7 A Sure.

8 Q I am going to go through these and find what I'm  
9 looking for.

10 [Pause]

11 BY MR. BOLEY:

12 Q Okay. I want to just clarify. You approached and  
13 apprehended Mr. Pina, correct?

14 A Yes, sir.

15 Q You testified about that. And there were some items  
16 found near him and on his person. And I just want to clarify  
17 with you which ones were found on his person and which ones  
18 were found near him. So you testified earlier that there were  
19 these items in some bushes that were fairly near him, right?

20 A Yes, sir.

21 Q Okay. But these were not on his person?

22 A Correct.

23 MR. BOLEY: So just for the record, I'm showing the  
24 Officer State's Exhibit 43, and they're referring to the  
25 victim's wallet and the wad of cash.



1 BY MR. BOLEY:

2 Q Now, I'm going to refer to State's Exhibit 35. I'm  
3 going to try to zoom in here so you get can a little more  
4 specific. So is this the area where Mr. Pina was apprehended  
5 or should I say the first subject?

6 A Yes.

7 Q The first subject was apprehended. Where in that  
8 photo was he apprehended?

9 A Lying right there in that -- that dirt that's open  
10 or do you want me to circle it or --

11 Q Yeah. Go ahead and circle it if you could.

12 A I'll try. Yeah. Right in here.

13 Q So -- and I'll zoom out for this question a little  
14 bit. Where was the wallet and wad of cash found from the  
15 photo from before?

16 A You can't really see it from here, but it's east --  
17 east of all the other property that I pulled out of his  
18 pocket.

19 Q Okay. So what -- of the items that were found on  
20 Mr. Pina -- what was found on Mr. Pina's person is the best  
21 way to ask that?

22 A From my recollection, all the items that were out in  
23 the dirt surrounding where he was taken into custody were  
24 items that I pulled out of his pocket.

25 Q Do you remember specifically what those items were?

1 A I don't.

2 Q Okay. Do you remember testifying at the preliminary  
3 hearing in this matter?

4 A I don't remember. It was awhile ago.

5 Q You don't. If I showed you part of the transcript,  
6 would that refresh your recollection?

7 A Yes, sir.

8 MR. BOLEY: Permission to approach the witness.

9 THE COURT: Uh-huh.

10 BY MR. BOLEY:

11 Q Officer, I've sort of delineated a portion of Page  
12 69 there. If you could just read it to yourself?

13 A Is it specifically where this little --

14 Q Yes.

15 A Just that area there, sir?

16 Q That is what I'm referring to.

17 A I see. Yes, sir.

18 Q Okay. Does that help refresh your recollection  
19 about what exactly you found on Mr. Pina?

20 A Yes, sir.

21 Q All right. So there was -- there were two knives  
22 found near Mr. Pina; is that correct?

23 A I believe there was a sheath in a --

24 Q Sheath.

25 A -- in a planter found by -- to the south.

1 Q Okay. But that's not in this photo. That's to the  
2 south.

3 A Correct.

4 Q Were there any knives found on Mr. Pina?

5 A I believe just the folding knife that's right there.

6 Q The folding knife? So could you --

7 MR. BOLEY: Can we clear that screen still?

8 MR. SCHWARTZ: Yeah.

9 BY MR. BOLEY:

10 Q Could you gesture towards or, you know, circle  
11 somehow that knife? I'll zoom a little bit so we can get a  
12 little more specific.

13 A I guess there's two here, and then there's also one  
14 here that I just noticed.

15 Q So those were all three on Mr. Pina's person?

16 A I believe so. Yes, sir.

17 Q You believe so. What about the other items in that  
18 stack? It looks like a lighter. Were those found -- was that  
19 found near or near Mr. Pina's person or on him?

20 A As I said before, I believe all these items that  
21 were found out here were items I took out of his pocket.

22 Q Okay. What about the ski mask that was previously  
23 referred to? Was that on his head when you apprehended him?

24 A Yes, sir.

25 Q I'm going to show you what's been marked as State's

1 Exhibit 36. I'm going to zoom out. Is that the ski mask that  
2 you pulled off Mr. Pina's head when you apprehended him?

3 A Yes, sir.

4 Q All right. Now, you described to Mr. Gill the --  
5 sort of the situation as you were combing through this  
6 neighborhood. Where were you standing when you -- you  
7 described earlier in your testimony a gentleman with a black  
8 stocking cap on that was peaking over a wall and then  
9 disappeared down into -- behind the wall; is that correct?

10 A He wasn't peaking. He was standing in the middle of  
11 the -- the back yard over here with all the circles you can  
12 see. He was -- my gosh. This is so far off. I'm sorry.

13 He was right in this area here when I first observed  
14 him from --

15 Q Okay.

16 A -- somewhere up here.

17 Q And you can just see over that wall you saw him and  
18 he hit the dirt immediately when he saw you?

19 A Yeah. He ducked -- sorry. He ducked down.

20 Q Was he wearing a ski mask?

21 A All I could see from that distance was a black cap  
22 on top of his head.

23 Q Okay.

24 MR. BOLEY: Pass the witness.

25 MR. SCHWARTZ: Your Honor, the State doesn't have any

1 further questions.

2 THE COURT: Okay. Anything from the jury?

3 Counsel approach, please.

4 [Bench Conference Begins]

5 THE COURT: Is that the only one?

6 MR. SCHWARTZ: What suspect said you don't understand?

7 The one that was in the bushes or in the shed?

8 MS. HOLTHUS: Oh, all right.

9 THE COURT: Okay.

10 MR. SCHWARTZ: That's fine.

11 THE COURT: Yeah.

12 MS. HOLTHUS: Do you want to answer that?

13 THE COURT: Let me see.

14 MR. SCHWARTZ: Oh, well, he's good.

15 THE COURT: [Indiscernible].

16 MR. GILL: What'd you say?

17 [Bench Conference Ends]

18 THE COURT: All right, sir. I'm going to ask you this  
19 question. I want you to look at the jurors when you answer  
20 this so they can hear you all right.

21 THE WITNESS: Yes, sir. Sorry. Yes, Your Honor.

22 THE COURT: Which suspect said you don't understand, the  
23 one that was in the bushes or the shed?

24 THE WITNESS: Oh, I'm sorry. The what?

25 THE COURT: What suspect said you don't understand, the

1 one that was in the bushes or the one that was in the shed?

2 THE WITNESS: It was the one that was originally hiding  
3 behind the Charlie -- Charlie Brown Christmas tree that I put  
4 my -- my knee on his back.

5 THE COURT: All right. Any follow-up from the State?

6 MR. SCHWARTZ: No, Your Honor.

7 THE COURT: Mr. Gill?

8 MR. GILL: No, Your Honor.

9 MR. BOLEY: Nothing.

10 THE COURT: All right. Thank you, sir. You are free to  
11 go.

12 THE WITNESS: Thank you, Your Honor.

13 THE COURT: Uh-huh. Folks, we are going to go ahead and  
14 break for the evening. During this break you are admonished  
15 not to talk or converse among yourselves or with anyone else  
16 on any subject connected with this trial or read, watch, or  
17 listen to any report or commentary on the trial or any person  
18 connected with this trial by any medium of information,  
19 including without limitation to newspapers, television,  
20 Internet, and radio or form or express any opinion on any  
21 subject connected with the trial until the case is finally  
22 submitted to you.

23 We'll see you tomorrow at 9:00. Thank you.

24 THE MARSHAL: And, folks, if you will please rise for the  
25 jury? Leave your clipboards on your seats. Take all your

1 personal items.

2 [Jury Exits]

3 THE COURT: All right. When should I anticipate getting  
4 the jury instructions from anyone?

5 MR. SCHWARTZ: Your Honor, I will send you the jury  
6 instructions this evening.

7 THE COURT: All right.

8 MR. GILL: I do have something I want to address just to  
9 make something clear, Your Honor. I did --

10 THE COURT: All right. Hold on --

11 MR. GILL: Okay.

12 THE COURT: -- before we move on to that.

13 Mr. Gill or Mr. Boley, are you going to be proposing  
14 any additional jury instructions?

15 MR. GILL: I talked to Mr. Schwartz about what I would  
16 like to see in there. I'm sure he'll put those in. If he  
17 doesn't, Your Honor, I will add those, but I have spoken to  
18 him before [indiscernible], and I did [indiscernible].

19 THE COURT: Great. Because I'd like to be able to get  
20 you -- I will come in early tomorrow so I can get you a draft  
21 right after that.

22 MR. SCHWARTZ: We'll get them done, Your Honor.

23 THE COURT: Mr. Gill?

24 MR. GILL: And, Judge, I just wanted to clarify one of my  
25 objections. I said I -- I think my comment was I'm objecting

1 as to the same thing. I wanted to make it clear that that was  
2 not a bench conference objection that -- regarding cumulative  
3 with --

4 THE COURT: It was the ongoing hearsay objection? That's  
5 what I understood it to be.

6 MR. GILL: Thank you. I just wanted --

7 THE COURT: -- as the thing I had already ruled on was  
8 that it was an excited utterance.

9 MR. GILL: Thank you very much, Your Honor. It wasn't --  
10 I did not object to Cesar's testimony.

11 THE COURT: Okay. Great. Thank you.

12 Anything else?

13 MR. SCHWARTZ: Not from the State, Your Honor. What --

14 MR. GILL: Thank you, Your Honor.

15 MR. SCHWARTZ: What time tomorrow, 9?

16 THE COURT: 9. Great. We'll see you in the morning.

17 MR. GILL: Thank you, Your Honor.

18 [Proceedings adjourned]  
19  
20  
21  
22  
23  
24  
25

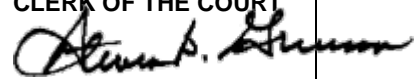


ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video recording in the above entitled case to the best of my ability.



DEBRA PARMER  
Transcriber





RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

CASE NO. C313118-1  
C313118-2

v.

DEPT. VII

CASIMIRO VENEGAS,  
JOSE FERNANDO MONAY-PINA,  
AKA JOSE FERNANDO MONAYPINA

Defendants.

BEFORE THE HONORABLE LINDA MARIE BELL, DISTRICT COURT JUDGE

TUESDAY, MARCH 15, 2017

**RECORDER'S TRANSCRIPT  
JURY TRIAL DAY 3**

APPEARANCES:

For the Plaintiff: MARY KAY HOLTHUS, ESQ., ESQ.  
RYAN SCHWARTZ, ESQ., ESQ.  
Clark County District Attorney's  
Office

For the Defendant ADAM L. GILL, ESQ.  
Venegas: Aisen, Gill & Associates LLP

For the Defendant THOMAS D. BOLEY, ESQ., ESQ.  
Monay-Pina: Boley & AlDabbagh

RECORDED BY: RENEE VINCENT



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Defendant's:

None

1 WEDNESDAY, MARCH 15, 2017 AT 9:06 A.M.

2 THE COURT: We good? So you have three witnesses this  
3 morning?

4 MR. SCHWARTZ: Yes, Your Honor.

5 THE COURT: Yes?

6 MR. SCHWARTZ: Yes.

7 MS. HOLTHUS: Yeah.

8 THE COURT: Okay. And how long do you anticipate?

9 MR. SCHWARTZ: I would anticipate each one being 20  
10 minutes.

11 THE COURT: Okay. So we're going to be done by --

12 MR. GILL: 10:30.

13 MR. SCHWARTZ: The third witness was coming around 10:15,  
14 10:30, so --

15 THE COURT: Okay. So we'll be done by --

16 MR. SCHWARTZ: I gave 30 minutes for each one.

17 THE COURT: -- by 11 or so?

18 MR. SCHWARTZ: Yes.

19 THE COURT: And then we need to settle the jury  
20 instructions. I need to -- oh, but I haven't talked to -- let  
21 me -- you know what? Before we bring -- do have additional  
22 witnesses?

23 MR. GILL: No, Your Honor.

24 THE COURT: Are you anticipating that your clients are  
25 going to testify?



1 MR. GILL: No. But if you're going to admonish them now,  
2 can I just have a minute? A second?

3 THE COURT: Yeah. I was going to maybe just do that  
4 right now.

5 MR. GILL: Okay. Just --

6 THE COURT: Okay.

7 MR. GILL: Just a brief moment.

8 THE COURT: Yeah.

9 [Pause]

10 THE COURT: Under the Constitution of the United States  
11 and under the Constitution of the State of Nevada -- you can  
12 sit. It's all right.

13 MR. GILL: Thank you, Your Honor.

14 THE COURT: Sit down. You cannot be compelled to testify  
15 in this case. Do you understand that?

16 DEFENDANT VENEGAS: Yes, ma'am.

17 THE COURT: And you may, at your own request, give up  
18 this right and take the witness stand and testify. If you do,  
19 you will be subject to cross-examination by the District  
20 Attorney, and anything you say, be it on direct examination by  
21 your attorney or cross-examination from the District Attorney,  
22 will be the subject of fair comment when the District Attorney  
23 speaks to the jury in his or her final argument. Do you  
24 understand that, sir?

25 DEFENDANT VENEGAS: Yes, ma'am. I do.

1 THE COURT: And if you choose not to testify, I will not  
2 allow the -- either of District Attorneys to make any comments  
3 to the jury because you have not testified. Do you understand  
4 that? So they wouldn't be able to say, you know, why didn't  
5 he get up and --

6 DEFENDANT VENEGAS: Right. Yes.

7 THE COURT: -- tell you. I know. Why didn't he get up  
8 and tell his side of the story? Do you understand that?

9 DEFENDANT VENEGAS: Yes, ma'am.

10 THE COURT: Okay. If you elect not to testify, I will  
11 instruct the jury but only if your attorney specifically  
12 requests that the law does not compel a defendant in a  
13 criminal case to take the stand and testify, and no  
14 presumption may be raised and no inference of any kind can be  
15 drawn from the failure of the Defendant to testify. Do you  
16 understand that?

17 DEFENDANT VENEGAS: Yes, ma'am.

18 THE COURT: Okay. Do you have any questions about these  
19 rights?

20 DEFENDANT VENEGAS: No, ma'am.

21 THE COURT: You are further advised that if you have a  
22 felony conviction, and I understand that you have some prior  
23 felony convictions, and more than ten years have not elapsed  
24 from the date you have been convicted or discharged from  
25 prison, parole, or probation, whichever is later, and the

1 defense has not sought to preclude that from coming before the  
2 jury, and you elect to take the stand and testify, the  
3 District Attorney in the presence of the jury would be  
4 permitted to ask you the following: have you been convicted of  
5 a felony? What was the felony? And when did it happen?  
6 However, no details would be gone into.

7 So if you did testify, your record to the extent that any  
8 of your felonies were less than ten years old -- and what I  
9 mean by less than ten years old, ten years when you  
10 finished --

11 DEFENDANT VENEGAS: Right.

12 THE COURT: -- serving the sentence completely. Those  
13 would be able to -- those would come in, in front of the jury.  
14 Okay. Do you understand that, sir?

15 DEFENDANT VENEGAS: Yes, ma'am.

16 THE COURT: Do you have any questions at all about that?

17 DEFENDANT VENEGAS: No, ma'am.

18 THE COURT: All right. And Mr. Monay-Pina?

19 DEFENDANT MONAY-PINA: Yes, ma'am.

20 THE COURT: Okay. Sir, under the Constitution of the  
21 United States and under the Constitution of the State of  
22 Nevada, you cannot be compelled to testify in the case. Do  
23 you understand that?

24 DEFENDANT MONAY-PINA: Yes, ma'am.

25 THE COURT: And you may, at your own request, give up



1 this right and take the witness stand and testify. If you do,  
2 you will be subject to cross-examination by the District  
3 Attorney, and anything you say, be it on cross-examination or  
4 direct examination, will be the subject of fair comment when  
5 the District Attorney speaks to the jury in his or her final  
6 argument.

7 Do you understand that?

8 DEFENDANT MONAY-PINA: Yes, ma'am.

9 THE COURT: If you choose not to testify, I will not  
10 allow the District Attorney to make any comments to the jury  
11 because you have not testified. Do you understand that, sir?

12 DEFENDANT MONAY-PINA: Yes, ma'am.

13 THE COURT: If you elect not to testify, I will instruct  
14 the jury but only if your attorney specifically requests that  
15 the law does not compel a defendant in a criminal case to take  
16 the stand and testify, and no presumption may be raised and no  
17 inference of any kind can be drawn from the failure of a  
18 defendant to testify. Do you understand that, sir?

19 DEFENDANT MONAY-PINA: Yes, ma'am.

20 THE COURT: Do you have any questions about these rights?

21 DEFENDANT MONAY-PINA: No, ma'am.

22 THE COURT: You are also advised that if you have a  
23 felony conviction -- you have prior convictions as well, sir?

24 DEFENDANT MONAY-PINA: No, I do not.

25 THE COURT: You don't have any prior convictions. All

1 right. But if you did a prior felony, and more than ten years  
2 have not elapsed from the date you have been convicted or  
3 discharged from prison, parole, or probation, whichever is  
4 later, and the defense has not sought to preclude that from  
5 coming before the jury, and you elected to take the stand and  
6 testify, the deputy District Attorney in the presence of the  
7 jury would be permitted to ask you: have you been convicted of  
8 a felony? What was the felony? When did it happen? However,  
9 no details would be able to be gone into. Do you understand  
10 that, sir?

11 DEFENDANT MONAY-PINA: Yes, ma'am.

12 THE COURT: All right. Do you have any questions about  
13 that at all?

14 DEFENDANT MONAY-PINA: No, ma'am.

15 THE COURT: All right. Okay. Anything else we need to  
16 take care of right now?

17 MR. SCHWARTZ: Not from the State, Your Honor.

18 THE COURT: Okay. So we're going to have about -- so  
19 we'll done about 11. We need to settle jury instructions. So  
20 I'll probably just bring the jury back about 1:30, something  
21 like that?

22 MS. HOLTHUS: Yeah. We would -- we'd appreciate as much  
23 time as we can, just a extra [indiscernible].

24 THE COURT: Okay. All right. And yeah. And then --  
25 because we got to finalize the jury instructions. We got to

1 make copies for everybody. You guys need to get a final copy.  
2 You need to get your closings done and -- all right. Okay.  
3 That will work. 1:30 or 2:00. Let me -- I'm going to think  
4 about that. Okay. Go ahead and bring them in.

5 MR. SCHWARTZ: Your Honor, could I grab some photos real  
6 quick? Thank you.

7 THE COURT: Can you ask the witness about that axe,  
8 before we open that box?

9 MR. SCHWARTZ: The axe? Yes.

10 THE COURT: Thank you. Sorry.

11 [Pause]

12 THE MARSHAL: Please rise for the jury.

13 [Jury In]

14 THE MARSHAL: Please be seated.

15 THE COURT: Good morning, everyone.

16 GROUP RESPONSE: Good morning.

17 THE COURT: Back on the record in case number C313118,  
18 State of Nevada v. Venegas and Monay-Pina. Let the record  
19 reflect the presence of all of our jurors, Defendants, and  
20 counsel.

21 State, please call your next witness.

22 MS. HOLTHUS: Adam Felabom.

23 THE MARSHAL: Ready for him?

24 MS. HOLTHUS: Um-hum.

25 THE MARSHAL: Please remain standing, and raise your

1 right hand, and face the clerk to be sworn in.

2 ADAM FELABOM, PLAINTIFF'S WITNESS, SWORN

3 THE COURT: Good morning, sir. Go ahead, and have a  
4 seat. If you could state your name and then spell it for the  
5 record, please.

6 THE WITNESS: Adam Felabom. A-D-A-M F-E-L-A-B-O-M

7 DIRECT EXAMINATION

8 BY MS. HOLTHUS:

9 Q What do you do?

10 A I'm a crime scene analyst with the Las Vegas  
11 Metropolitan Police Department.

12 Q And could you, for the jury, explain your education,  
13 experience, and training in the area?

14 A I have my bachelor's degree in criminal justice. I  
15 also have a few hundred hours of training over various courses  
16 including fingerprint processing, evidence collection, prints  
17 and photography, and subjects like that.

18 Q Kind of describe for us the protocol. A crime is  
19 committed in Las Vegas; what happens? How do you get  
20 involved?

21 A Typically what happens is patrol officers will  
22 respond to the scene first. And then if they determine that  
23 we could assist them in their investigation, they will make a  
24 request either over the radio or over the phone to our office.

25 Q Direct your attention to January 12th, 2016. Did

1 you respond to 510 Brush Street, about 5 a.m. --

2 A I did.

3 Q -- 5:05? Actually, the exact time was -- what time  
4 did you get there?

5 A 5:05 a.m.

6 Q And what did you find when you got there?

7 A When I first arrived there, there were multiple  
8 patrol officers on the scene, and they had a couple different  
9 scenes in the area. My main concern was in the backyard of  
10 510 Brush Street.

11 Q And why was that your main concern?

12 A There were two scenes, but they were two houses  
13 apart. So another crime scene analyst came out, and she  
14 focused on the other residence, while I focused on the 510  
15 address. That way, we could split up the work, get it done a  
16 little faster.

17 Q So yours was basically where the suspects were  
18 found; is that correct?

19 A Correct.

20 Q So what did you do?

21 A First, I photographed two subjects that the police  
22 had in custody, to document any injuries or lack of injuries  
23 that they had. I then went into the backyard of 510 Brush  
24 Street and began taking notes about the layout, any items of  
25 evidence that I saw back there. And then I began taking

1 photographs to document the scene as I found it, and then,  
2 after that, I began collecting any evidence that I thought  
3 would be pertinent to the case.

4 Q Are you also guided to evidence by the officers that  
5 are at the scene, as well?

6 A Yes. As the primary officers on scene, when they  
7 first get there, part of their job is to search for evidence.  
8 And then, once I get there, they'll direct me to anything  
9 they've found. I'll continue to search to see if there's  
10 anything else that I might have seen that they didn't see.

11 Q And obviously, protocol is they -- nobody touches  
12 anything; is that fair to say?

13 A Typically, they will leave the scene as they found  
14 it, unless for some extenuating circumstance -- if they felt  
15 that the evidence was going to become damaged due to weather,  
16 or maybe the sprinklers were about to go off or something like  
17 that. They will typically leave everything where they find  
18 it, unless there's some exigent circumstance for them to move  
19 it.

20 Q Were you made aware of any exigent circumstances?

21 A I was not.

22 Q So as far as you know, nobody told you they moved  
23 anything?

24 A Correct.

25 Q Would they normally tell you if something had to be

1 moved?

2 A Yes.

3 Q In addition to photographing all of the evidence,  
4 did you collect it and impound it, as well?

5 A I did.

6 Q Did you do that -- how did you do that? I mean, do  
7 you do it in a way that you preserve the integrity of the  
8 evidence?

9 A Yes. I will take each individual item of evidence  
10 that I'm collecting. I'll photograph it, just to document its  
11 overall condition. Then, depending on what type of evidence  
12 it is, I'll package it in its own container, whether it be a  
13 bag or an envelope, and then I will sort it and package it in  
14 larger packages to be deposited in the evidence vault.

15 Q Let me take you through your photograph chronology  
16 of the area. Is that the area that you first responded?

17 A Yes. This is the front of the residence of 510  
18 Brush Street.

19 Q And that was Exhibit 33. Exhibit 34?

20 A Now, we're in the backyard of the residence. And  
21 you can see there are some planters along the walls of the  
22 backyard, and the rest is kind of like a dirt gravel.

23 Q 35?

24 A This is closer towards the wall. There's some --  
25 there's a lot of property on the ground around here. There's

1 some items in the bushes at the top.

2 Q Can you point to that? If you circle that? There  
3 you go.

4 A There's some items up here in the bush, and then  
5 there's also a bunch of cell phones, pocket knives, as well as  
6 a mask on the ground, and a wallet down in the dirt area, down  
7 in here.

8 Q And by way of -- where on this picture are those  
9 items?

10 A Those items are down over in this area, up here.

11 Q Showing you State's Exhibit 36?

12 A This is a blue ski mask that I found on the ground.  
13 It was in the previous photo, next to the planter area.

14 Q Close up of that?

15 A Correct.

16 Q And again, all of these items were impounded by you?  
17 This was impounded?

18 A That was impounded. Not all of the items that were  
19 on the ground there were impounded by me.

20 Q Okay. Which ones? Do you know which ones were?

21 A The mask was. There is a -- actually, a glove back  
22 in the planter area, back here. That was impounded by me.  
23 The rest of the property, if I recall correctly, was either  
24 returned to -- was returned to its owners.

25 Q And I think 37 is just another view?



1           A     Yes. I put down a clean brown paper bag, and then  
2 laid the mask out, so you could see a little easier what it  
3 was.

4           Q     And 40?

5           A     These are some items that were found on the ground  
6 right there, next to the planter. Some cell phones and a  
7 camera.

8           Q     Again laid out on the brown paper?

9           A     Correct.

10          Q     State's 41?

11          A     Again, this is just more of all of those items that  
12 were piled together, next to planter area. It's just some  
13 keys, a lighter, and some pocket knives that were -- that I  
14 laid out on the brown paper, just to spread them out, give you  
15 a nice clean background to see what they are.

16          Q     And again, we're still -- these are still kind of  
17 closeups and clarifications of these items, correct?

18          A     Correct. All of the items down by the planter area.

19          Q     State's Exhibit 46?

20          A     This a wallet that was also found among that  
21 property.

22          Q     47?

23          A     That's the inside of that wallet, once it's been  
24 opened up. And that's the driver's license that I found  
25 inside.

1 Q State's Exhibit 43?

2 A So back when I was talking about that planter area  
3 and there were some items inside the bush, this is a closer up  
4 of the items inside the bush. There's a wallet, as well as --  
5 there's a wad of money.

6 Q And in this picture, approximately where would that  
7 be?

8 A It would be the same as the other area, back in  
9 back, up in here.

10 Q 49?

11 A This is that wallet that I found inside the bush.

12 Q And 50?

13 A And once again, I've opened up the wallet, and you  
14 can see the identification card inside.

15 Q Indicating Javier Colon?

16 A Correct.

17 Q State's 53?

18 A This is that wad of cash that you saw inside the  
19 bush. Once I pulled it out, I placed it on a brown bag.

20 Q 54?

21 A This is that same wad of cash. I'm just spreading  
22 out -- laying it out, so that, when I take a photo of it, you  
23 can actually count it if you wanted to.

24 Q And are so all of the bills -- all of the fives and  
25 the twenties are reflected there?

1 A Correct.

2 Q One 20 and the rest fives?

3 A Correct. There should be another photograph with  
4 more bills, because they wouldn't all fit into one frame.

5 Q This one, maybe? 55?

6 A Correct.

7 Q And those were just -- those were the ones?

8 A Those are the ones. Correct.

9 Q And so is that the total amount of the moneys in the  
10 wad that was in the bushes?

11 A Yes. I counted \$138.

12 Q Exhibit 42?

13 A So down in the bottom left of the screen, you can  
14 see that wad of cash and the wallet that we were just looking  
15 at in the other photos. And then up in the top, here, is that  
16 little black spot. That's actually a black knit glove.

17 Q 44?

18 A And that's the glove, once I've laid it out on the  
19 paper.

20 Q And 45?

21 A Again, that's the glove. The previous photograph,  
22 it was kind of like, once you pull it off, the fingers kind of  
23 get stuck inside themselves. So once I've like pulled the  
24 fingers out and made it look like a glove again, that's just  
25 to show the overall condition of it.

1 Q State's Exhibit 56?

2 A This is a little, kind of like, circular planter  
3 area. They were throughout the backyard, but one, of the ones  
4 down in the southeast corner of the backyard, had -- there was  
5 a BB gun in the planter area. You can see it there.

6 Q I'm going to go back for just a minute. And State's  
7 Exhibit 48?

8 A Yes.

9 Q What is that? Are you able to tell?

10 A That is the money that I found in -- if I recall  
11 correctly, I believe it was inside --

12 Q Would it be inside --

13 A I believe it was the one with -- yes. That one,  
14 there.

15 Q So the moneys that you took out, you would  
16 photograph with the wallet from which it came?

17 A Correct.

18 Q 57?

19 A This is the photo of that planter area, that  
20 circular planter area that they just showed a photo of. And  
21 you can see the BB gun here, and then there's also a knife  
22 next to it.

23 Q Ultimately, did you impound the BB gun?

24 A I did. Yes.

25 Q Specifically, what kind of gun was that one?

1 A It was a Beretta.

2 Q Beretta?

3 A A 90TWO. Nine zero T-W-O.

4 Q What does that mean?

5 A That's like to model of it.

6 Q Of the BB gun?

7 A Of the BB gun. Yes.

8 Q 58?

9 A That is the knife that I found next to the Beretta.

10 Q 59?

11 A And then, this would be a photograph of the BB gun,  
12 itself. Once again, I've laid it out on the brown paper to  
13 give a cleaner background, just to show its overall condition.

14 Q And 60?

15 A This is the same BB gun. I've just turned it over  
16 to photograph the other side.

17 Q And the BB gun is also a pneumatic gun; is that  
18 correct?

19 A Yes.

20 Q State's Exhibit 61?

21 A In the northeast corner of the backyard, there was  
22 this shed. It's kind of raised up. It's on little stilts,  
23 and there's the block wall in the background of the photo.  
24 All the items that we were just looking at would be over to  
25 the right-hand side. If it was a larger photo, they would be

1 over here on the right-hand side.

2 Q 62?

3 A This is a photo, closer up towards that raised shed  
4 and looking underneath it, below the floorboards of it. You  
5 can see these items here, which are a pair of gloves and a  
6 hat.

7 Q 63?

8 A This is a closer photo. Again, you can see the red  
9 and the black gloves as well as the knit hat on the ground  
10 next to them.

11 Q 64?

12 A This is that knit hat that was on the ground. I've  
13 laid it out on some paper. Once I had done that, I noticed  
14 that the top of the hat had been cut, so that there was a hole  
15 in it. So it was more of a tube than an actual hat.

16 Q 65?

17 A And this is a photograph of the red and the black  
18 gloves that were in the previous photos.

19 Q And 66?

20 A This is the same gloves. I've just turned them over  
21 to photograph the palms of the gloves.

22 Q The palms are black?

23 A Yes.

24 Q And 67?

25 A What we're looking at here is, actually, the

1 northeast corner of the backyard. So it'd be on the back side  
2 of that shed that we showed. On the ground, you can see a few  
3 items. There's two BB guns, up in here, as well as a knife,  
4 down here.

5 Q State's 69?

6 A This is one of those BB guns that I found on the  
7 ground in the planter area.

8 Q 70?

9 A And that's the other side. I've just turned it  
10 over, and you can see that it's missing the left-hand grip.

11 Q And what type of BB gun is that?

12 A That's a Daisy Powerline.

13 Q 71?

14 A This is the other BB gun that I found back there.  
15 It was next to the Daisy Powerline.

16 Q 72?

17 A Once again, it's the same BB gun. I've just turned  
18 it over, photographing the other side.

19 Q And that -- what type of BB gun is that one?

20 A The only markings that I saw on it were DX17.

21 Q And these stuff on the gun, did you determine what  
22 that was?

23 A There was a bunch of dirt on the gun. On these  
24 photos, I'm not sure if you can see very well, at least with  
25 the glare. But there is -- up towards the nose of the gun,

1 there is blood on the gun.

2 Q And 73 is just a zoom in of that?

3 A Correct. And here, you can see some of the blood,  
4 these little red dots, down in here.

5 Q And 74?

6 A And this is that knife that was also found in that  
7 back-northeast corner of the backyard.

8 Q And then you also indicated that you photographed  
9 the two suspects at the scene?

10 A Yes.

11 Q And I can't show you head to toe, so I'm going to  
12 show you in two pieces. Head and toe. That would be one of  
13 the suspects?

14 A Yes.

15 Q Exhibit 75. Yeah, 75. And State's Exhibit 77,  
16 second individual?

17 A Yes.

18 Q Did you also, at our request, bring one of the items  
19 of evidence with you?

20 A I did. I brought an item from the other residence,  
21 from the 504 Brush Street. Yes.

22 Q That was impounded by the second -- the other CSA?

23 A Correct.

24 Q And none of these -- these items are all -- the  
25 majority of these are in evidence if needed, but for the time



1 being, we just have the photographs; is that correct?

2 A Correct.

3 Q Now, I'm showing you State's Exhibit 107. Do you  
4 recognize that?

5 A It's the box that I brought in yesterday.

6 Q Okay. And how is it that you know that?

7 A It has, on the front, a label. It has the event  
8 number and the labeling information for what I picked up  
9 yesterday.

10 Q And is it currently in a sealed condition?

11 A Yes.

12 Q Do you recognize the initials on the seals?

13 A I recognize Brenda Vaandering's. I don't know what  
14 the -- I don't recognize the blue ones. I'm assuming that's  
15 from the forensics lab.

16 Q From the what?

17 A Forensic lab.

18 Q When forensics are done on it?

19 A Yes. They use blue seals, typically, over at the  
20 lab, and we use red seals.

21 Q And just for jury's information, when evidence is in  
22 a sealed condition and it's opened, it's then resealed with  
23 someone's initials or name on it, so that we know who got into  
24 it, correct?

25 A Correct. Every time -- whenever it's initially

1 sealed, we'll put these little red pieces of tape over the  
2 corners or the edges, and then we'll initial and date to show  
3 when we sealed it. Anytime someone breaks those seals and  
4 they put new seals on, they also do the same thing to show  
5 their initials and P number, their personnel number, to show  
6 who was -- who had that item and also what date they sealed it  
7 back up.

8 Q And so the blue tags, you recognize to be lab tags  
9 from the forensic lab?

10 A Correct.

11 Q And then the red ones, you said were Brenda  
12 Vaandering? Was she that CSA at the 504 Brush Street --

13 A Correct.

14 Q -- address? Okay. If you could open those?

15 MS. HOLTHUS: Do you want to see it all sealed up first?

16 MR. GILL: No.

17 MS. HOLTHUS: Judge, let me go ahead and move for  
18 admission at this point.

19 MR. GILL: We have no objection, Your Honor. We  
20 discussed it earlier.

21 THE COURT: All right. So it's 107?

22 UNIDENTIFIED SPEAKER: Yes.

23 THE COURT: 107 will be admitted.

24 [Plaintiff's Exhibit 107 Received]

25 THE COURT: Are we going to separately mark the contents

1 as A?

2 MS. HOLTHUS: We're kind of waiting to see what the  
3 content -- I mean, we know -- I know, generally --

4 THE COURT: Yeah.

5 MS. HOLTHUS: -- what the contents are, but how the  
6 contents are packaged.

7 THE COURT: All right.

8 THE WITNESS: There should be only one item here.

9 BY MS. HOLTHUS:

10 Q Right. Is there bags within a bag within a bag or?

11 A I'm assuming it's just zip tied in, but --

12 Q And for the record, there -- is there an indicator,  
13 on the front, of what's in that?

14 A Yes. On the label, it lists everything that's  
15 inside the box.

16 Q And what's inside the box?

17 A She described it as one axe with a double-edged  
18 blade, a wooden handle, and apparent blood. Did you want me  
19 to show it or?

20 Q Yes, please. Very good. Now, so is it tied to the  
21 box?

22 A Yes. These zip ties are holding it into the box.  
23 Yes.

24 Q Can we remove the brown thing at the top?

25 A The paper?

1 Q Right. Is that where the --

2 THE COURT: How is it -- can I see how it's in there?  
3 All right.

4 MS. HOLTHUS: Do you want to mark that separately or  
5 because it's attached to the box or?

6 THE COURT: No. I don't think we need to mark it  
7 separately since it's attached to the box.

8 MS. HOLTHUS: Thank you. The State rests.

9 MR. GILL: Thank you, Your Honor. And if we want, Judge,  
10 I'm not going to be asking any questions about the axe. If we  
11 want to maybe put that back?

12 THE COURT: Yeah. Thank you.

13 CROSS-EXAMINATION

14 BY MR. GILL:

15 Q Mr. Felabom, how are you this morning?

16 A Doing well. Thank you.

17 Q Now, when you're asked to process a scene -- well,  
18 specifically, this scene -- you arrived about 5:05 or at  
19 5:05 --

20 A Correct.

21 Q -- a.m.?

22 A Correct.

23 Q And you -- I mean, for lack of a better term -- you  
24 don't have an interest in parties, necessarily? You're there  
25 to process the scene, correct?

1 A Correct.

2 Q And part of that includes photographing?

3 A Correct.

4 Q And then do you do any finger -- or fingerprint  
5 work?

6 A It all it depends on the -- on a case by case.

7 Q And before --

8 A In this specific case, I did.

9 Q You did?

10 A Yes.

11 Q Okay. So you're trained to collect the fingerprints  
12 and then send them for analysis; is that fair?

13 A Correct.

14 Q Did you collect any fingerprints in this case?

15 A I collected in the sense that I photographed it. I  
16 chemically processed a number of items from the scene. And  
17 instead of actually lifting those fingerprints with a piece of  
18 tape, I photographed them with the camera for comparison,  
19 printed out those photographs at a one-to-one scale, and then  
20 submitted those to be examined.

21 Q And that's common. You're not going -- you're not  
22 necessarily going to do the comparison. You're going to  
23 submit them to somebody with Metro to do that comparison,  
24 correct?

25 A Correct. We have a specific lay and print detail.

1 That's pretty much all they do is the fingerprint comparisons.  
2 We don't -- we do the field work, and then they do the  
3 analysis work.

4 Q In part of that field work, you don't determine  
5 whether the print is comparable, for lack of a better term, or  
6 the quality of the print?

7 A The standard we look for is if we feel it's suitable  
8 for recovery. Just because we feel it's suitable for  
9 recovery, i.e., meaning, suitable to be either lifted with  
10 tape or to be photographed -- just because we feel it's  
11 suitable to be recovered, doesn't necessarily mean it's going  
12 to be determined to be suitable for comparison later on, down  
13 the road, by the lay and print detail.

14 Q And you know that from experience, correct?

15 A Correct.

16 Q And probably training?

17 A Yes.

18 Q So you submitted how many fingerprints in this case?

19 A I developed --

20 Q Or photographs of fingerprints? I apologize.

21 A I developed one fingerprint.

22 Q And where did you develop that from?

23 A That was on the magazine that was found inside that  
24 Beretta BB gun in the backyard.

25 Q And I'll find that -- I believe it's -- I'll find

1 that specific gun. Give me one moment. Was the State -- I'm  
2 showing you State's 56. The one in the planter was the  
3 Beretta; is that correct?

4 A Correct.

5 Q And you can see it on the left of the circle  
6 planter?

7 A Correct.

8 Q Now, when you say Beretta, you also described it as  
9 a pneumatic gun. Can you tell the jury what you mean by that?

10 A It's operated by, basically, compressed air. It's  
11 not a typical firearm where you have the cartridge with  
12 gunpowder in it. It's a BB gun or an airsoft type gun where  
13 you charge some air into there, and then you -- when you pull  
14 the trigger, it releases that air, and the air is used as the  
15 propellant to propel the projectile.

16 Q Okay. And that's what is known as a pneumatic gun?

17 A Yes.

18 Q And then there were two others and -- State's 72  
19 shows yet another that you recovered, correct?

20 A Correct.

21 Q And specifically -- this is a pneumatic gun, as  
22 well, correct?

23 A Yes. They all were.

24 Q All three that you recovered?

25 A All three appeared to be. Yes.

1 Q And you described some -- I think you said blood and  
2 dirt, correct?

3 A Correct.

4 Q Now, the jury will have this when they go back,  
5 because I do understand the -- this screen is -- well, you  
6 described it kind of on the tip of the weapon, there, or the  
7 barrel, correct?

8 A Yes. There's -- I thought there may have been a  
9 photo better of it.

10 Q And there might be.

11 A But you can also see --

12 Q Oh, there is. You know --

13 A You can see it right there, as well.

14 Q I've got a better one. 73 is the better photo. I'm  
15 sorry. Same photo -- same gun, correct? Same BB gun?

16 A Same gun. It's just a much closer photo, and you  
17 can see areas down in here, and then you can see also up in  
18 here.

19 Q Now, did you do any testing on what you thought was  
20 the blood?

21 A I did perform a presumptive test on -- to see if it  
22 was blood, and it came back positive.

23 Q Did you do any determinations on whose blood it  
24 might be?

25 A No. I did not. Again, that's something where I do



1 the field work, and then we have forensic scientists over in  
2 the lab. They're the ones that perform the actual DNA  
3 testing, if that's requested to be done.

4 Q Okay. So your role, out in the field, was to do a  
5 presumptive test? Came back positive?

6 A Correct.

7 Q And you move it along?

8 A Correct. I collected a sample of the blood off the  
9 gun and impounded that, prior to fingerprint processing it.

10 Q Now, I'm showing you 62. And you described that  
11 as -- and I'll zoom out a little bit. You described that as  
12 the shed in that backyard at 510 Brush, correct?

13 A Correct.

14 Q And underneath is a pair of gloves and a -- it was  
15 the one that's not quite the hoodie, correct? Almost a scarf?  
16 Is that what we're seeing there?

17 A Correct. It's the hat that has the hole cut in the  
18 top, so that is more of tube shaped than a hat.

19 Q Tube shape is the phrase you used. Okay. So were  
20 these items in this condition, or did you have to move them to  
21 photograph them?

22 A This photograph is how I found them.

23 Q When you arrived and processed the scene?

24 A Correct.

25 Q Now, I know I moved the axe, but you had read, from

1 the list on the box, what the contents were, correct?

2 A Correct.

3 Q And you said axe, wood handle, correct?

4 A Yes.

5 Q And with apparent blood?

6 A Yes.

7 Q Now, I know you didn't process -- well, let me ask  
8 you. Did you process the axe?

9 A No. I had nothing to do with the axe until  
10 yesterday when I picked it up.

11 Q Okay. So you're going off notes from another CSA?

12 A I'm going off strictly what I just read off that  
13 label.

14 Q Well, and who would put that label on? Would that  
15 be --

16 A That would be Brenda Vaandering, the other crime  
17 scene analyst.

18 Q Okay. And is she the same crime scene analyst who  
19 processed 504?

20 A Yes.

21 Q And that's what you were describing earlier with  
22 spread up duties or separate duties and get the scenes  
23 processed more quickly?

24 A Correct.

25 MR. GILL: Court's brief indulgence.

1 BY MR. GILL:

2 Q Well, let's go to State's 35. So and this is more  
3 of a general question, but we'll use 35 as our example. You  
4 come on a scene, and you photograph. And these are the items  
5 listed in 35 that are phones, knives, keys, wallets. This  
6 shows quite a bit of items, correct?

7 A Correct.

8 Q You don't know who these belong to, correct? Well,  
9 let me ask a better question. When you first arrive, are you  
10 told by detectives who this stuff belongs to or simply to  
11 photograph it?

12 A I will get basic information from patrol officers  
13 and detectives. In this particular case, I was told that they  
14 had taken one of the subjects into custody right there, and  
15 when they patted him down, they just pulled everything out of  
16 his pockets and dumped it right there.

17 Q Okay. And that's essentially all the information  
18 you're given before --

19 A Correct.

20 Q -- processing?

21 MR. GILL: Court's brief indulgence.

22 [Pause]

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

24 THE COURT: Mr. Boley?

25 MR. BOLEY: Yes, ma'am.

## CROSS-EXAMINATION

BY MR. BOLEY:

Q Briefly, I'll try not to be duplicative. Let me show you what's been marked as State's Exhibit 35. I think you discussed this at length, already. When you showed up at the scene -- and I know Mr. Gill sort of led into this -- were these items separated at all, like some of the items were taken off the person of one of the subjects and some were not?

A That was my understanding. Yes.

Q Okay. So some of them were not on the person of the subject taken into custody there?

A That was my initial understanding. I didn't have any firsthand knowledge. It was just what I was told.

Q Okay. So you're not personally aware of what was on the person of that subject?

A Correct.

Q Okay. One second. I'm looking for a specific -- I'm going to show you what's been marked as State's Exhibit 73, a BB pistol with the marking DX17. This is the gun that was found with blood on the tip, right?

A Correct.

Q Where in the yard was that found?

A That was found in the planter area at the northeast corner of the backyard, so in that area behind the shed.

Q Behind the shed? So let me be more specific here,

1 if I can find the right exhibit. I apologize.

2 A No worries.

3 Q Oh, I think I can use the more zoomed in photo. I'm  
4 showing you what's been marked as State's Exhibit 62. That's  
5 a photo of the shed you're referring to, right?

6 A Correct.

7 Q So behind that was found the gun with blood on it?

8 A Correct.

9 MR. BOLEY: Thank you.

10 THE COURT: Anything else from the State?

11 MS. HOLTHUS: Just a couple things.

12 REDIRECT EXAMINATION

13 BY MS. HOLTHUS:

14 Q And I don't recall. I apologize if I asked you this  
15 already, but I just want to make sure. On the red and black  
16 work gloves, did you also find apparent blood stains on those?

17 A I did. Yes.

18 Q And did you test those?

19 A I did that presumptive test, again, to see if it was  
20 blood, and it came back positive. I didn't do any  
21 identification type DNA testing on it though.

22 Q Then the only other question I wanted to ask -- the  
23 axe, it's marked biohazard, and that's because of the apparent  
24 blood on it?

25 A Yes.

1 Q You put gloves on with it. If I were to pick it up  
2 later to show it to the jury or the jury were to want to look  
3 at it in the room, handling it with gloves, is that what you  
4 recommend? Well, there's no danger to the axe sitting there,  
5 right? There's nothing air born or anything?

6 A Yeah. I would assume there wouldn't be. I don't --  
7 I wouldn't wear gloves. I don't know if any of it was  
8 collected off of there --

9 Q Okay. So --

10 A -- or how much, or if it was all collected, or part  
11 was left on there.

12 Q Okay.

13 A So I would definitely recommend wearing gloves  
14 just --

15 Q So you just wear the gloves for -- as a precaution?

16 A Correct.

17 Q And that is the reason for it is the biohazard of  
18 any time there's apparent blood?

19 A Correct.

20 MS. HOLTHUS: That's all. Thank you.

21 THE COURT: All right. Anything else, Mr. Gill?

22 MR. GILL: Very briefly.

23 RECROSS-EXAMINATION

24 BY MR. GILL:

25 Q But again, you don't know whose blood?

1 A Correct.

2 Q You just know it's human blood or blood?

3 A I know it's blood. I -- the presumptive testing  
4 that we do is not specific enough to tell whether it is human  
5 blood or animal blood.

6 MR. GILL: Nothing further, Your Honor.

7 MR. BOLEY: Briefly.

8 RECROSS-EXAMINATION

9 BY MR. BOLEY:

10 Q Sir, you talked about two sets of gloves, and  
11 forgive me. I'm going to show you State's Exhibit 62. The  
12 State asked you was there blood found on the gloves. Are  
13 these the gloves you were talking about?

14 A Yes.

15 Q And there was another set of gloves that were black.  
16 Just trying to find that one. There was another set of gloves  
17 that were black that were found?

18 A It was just a single glove, but yes.

19 Q Just a single glove?

20 A Yes.

21 Q Was there blood on that glove?

22 A No. There was not.

23 MR. BOLEY: Okay. Thank you.

24 MS. HOLTHUS: Nothing further.

25 THE COURT: Anything from the jury?

1 Counsel approach.

2 Officer Walker, I got it.

3 THE MARSHAL: Okay.

4 THE COURT: I'll take care of it. Thank you.

5 [Bench Conference Begins]

6 MR. SCHWARTZ: You described the gloves in the bush as  
7 knit gloves. How would you describe the material in the red  
8 gloves? Garden gloves, knit gloves, ski gloves? I guess he  
9 could say, how would describe it?

10 MS. HOLTHUS: [Indiscernible] gloves.

11 MR. SCHWARTZ: Do you know whose fingerprints are on the  
12 gun found with blood on it, also on the axe?

13 MR. GILL: He already said no.

14 MS. HOLTHUS: Anybody can ask anything. He obviously  
15 missed it.

16 MR. GILL: Sorry.

17 MR. SCHWARTZ: Was the other black glove found at the  
18 scene? If so, where? Okay. We said that a million times.

19 MR. GILL: Yeah. The last two are kind of asked and  
20 answered, but I don't care.

21 THE COURT: [Indiscernible].

22 MR. GILL: I don't care. I mean, I have no preference  
23 for it, but I don't care if they missed it.

24 THE COURT: I don't not ask questions that are asked and  
25 answered with jury questions, because it could be they just



1 missed it.

2 MR. BOLEY: That have been asked?

3 MR. GILL: That's right.

4 MR. BOLEY: That's fine.

5 MS. HOLTHUS: [Indiscernible] my request.

6 MR. SCHWARTZ: So then if -- do we --

7 THE COURT: [Indiscernible].

8 MR. SCHWARTZ: Oh, we aren't. Okay.

9 MS. HOLTHUS: All right.

10 MR. GILL: Thank you.

11 MR. SCHWARTZ: Thank you.

12 [Bench Conference Ends]

13 THE COURT: All right. Sir, I'm going to ask you  
14 questions. I'm going to ask you to look at the jury so they  
15 can hear you when you answer.

16 THE WITNESS: Okay.

17 THE COURT: You described the gloves in the bush as knit  
18 gloves. How would you describe the material of the red gloves  
19 pictured?

20 THE WITNESS: Those were more of like gardening type  
21 gloves. Whereas, the ones that I described as knit gloves are  
22 more like those stretchy winter type gloves with like -- I  
23 mean, they're a knit type pattern. Whereas, the red and black  
24 ones were -- the palms were more of like -- I'm not sure I'd  
25 say leather, but kind of like a leather like type -- the rough

1 leather, like work gloves.

2 THE COURT: Was the other black glove found at the scene?  
3 If so, where?

4 THE WITNESS: No. We did not find a second black glove.

5 THE COURT: Do you know whose fingerprints are on the gun  
6 found with the blood on it, also on the axe?

7 THE WITNESS: I -- I'm sorry. Could you ask that one  
8 more time?

9 THE COURT: Yes. Do you know whose fingerprints are on  
10 the gun found with the blood on it, also on the axe?

11 THE WITNESS: As for the axe, I had nothing to do with  
12 that, so I don't even know if that was fingerprint processed  
13 or not. As for the gun with the blood on it, I fingerprint  
14 processed it, but I did not find any fingerprints on that gun.

15 THE COURT: Follow up from the State?

16 FURTHER REDIRECT EXAMINATION

17 BY MS. HOLTHUS:

18 Q The only fingerprint was found on a magazine from  
19 one of the guns; is that right?

20 A Correct. The only fingerprint I found was on  
21 magazine found in the magazine well of the Beretta gun that  
22 was down at the south end of the yard.

23 Q And of everything you processed, that was the only  
24 print you found?

25 A Correct.

1 Q You don't know if it matched anything, because  
2 that's not your job?

3 A Correct.

4 MS. HOLTHUS: Nothing else.

5 MR. GILL: No, Your Honor.

6 THE COURT: Mr. Boley?

7 MR. BOLEY: No, thank you.

8 THE COURT: All right. Thank you, sir. You are free to  
9 go.

10 State, please call your next witness.

11 MS. HOLTHUS: Detective Smith.

12 [Pause]

13 THE MARSHAL: Please remain standing. Raise your right  
14 hand. Face the clerk to be sworn in.

15 TRACY SMITH, PLAINTIFF'S WITNESS, SWORN

16 THE CLERK: Thank you.

17 THE COURT: Good morning, ma'am. Go ahead and have a  
18 seat.

19 THE WITNESS: Morning.

20 THE COURT: If you could state your name and then,  
21 please, spell it for the record.

22 THE WITNESS: My name is Tracy Smith. T-R-A-C-Y. Smith,  
23 S-M-I-T-H.

24 THE COURT: Thank you. Whenever you're ready.

25 MS. HOLTHUS: Sorry.

1 DIRECT EXAMINATION

2 BY MS. HOLTHUS:

3 Q What do you do?

4 A I'm a police detective for the Las Vegas  
5 Metropolitan Police Department.

6 Q And how long have you been with Metro?

7 A Coming up on 21 years.

8 Q Are you assigned to a particular bureau? How does  
9 it work now?

10 A Yes, ma'am. I am currently assigned to Bolden Area  
11 Command. I'm a -- we call them PD detectives, police  
12 detectives. We're -- we handle basically everything except  
13 for homicide and sex crimes.

14 Q And so what is the -- what's the procedure in the  
15 detective bureau? How do you get involved in a case?

16 A I get involved in a case when I get a call from a  
17 patrol sergeant. Some of the patrol officers will call us if  
18 they have questions. Usually, on our high -- I guess -- high  
19 violent type crimes, we'll go out and help with the -- at the  
20 scene.

21 Q So you don't drive around in a car and respond to  
22 calls?

23 A No, ma'am. I don't.

24 Q You said --

25 A Well, actually, not like a patrol officer, but we do

1 have our detective cars. But we are at our desks, and we do  
2 go out to crime scenes when asked to.

3 Q Okay. So you leave your desk with a destination?

4 A Yes, ma'am.

5 Q What's your education, experience, and training in  
6 the area of law enforcement?

7 A I have gone to -- I've been to two colleges. I  
8 don't currently have a degree. I have enough credits, because  
9 I transferred. I went to UNLV, and then I went to Cal State,  
10 Long Beach, and then when I transferred back when I got hired  
11 here. I am a retired OSI agent. I spent twenty-two and half  
12 years in the military. An OSI agent is Airforce Office of  
13 Special Investigations, where we handle all felony crimes  
14 within the Airforce. I don't currently have a degree, but I  
15 have quite a bit of schooling.

16 Q Okay. And you've been on the job for twenty --

17 A In our department, for almost twenty-years.

18 Q And prior to that, you said then?

19 A I was in the Airforce.

20 Q Did you become involved in a case with Richard  
21 DeCamp as victim, as well as Javier Colon?

22 A Yes, ma'am. I did.

23 Q How did you become involved in that one?

24 A I was called out by -- I believe the patrol sergeant  
25 called my sergeant, and my sergeant -- I was on call that

1 particular morning, and my sergeant called me out to go assist  
2 on a robbery that had occurred at a 7-Eleven. And they found  
3 out that it also had something that to do with a home invasion  
4 that occurred, I think, about twenty minutes later.

5 Q Was that -- first of all, was that on January  
6 12th --

7 A Yes, ma'am.

8 Q -- 2016?

9 A January 12th.

10 Q And approximately what time did you respond?

11 A I know it was early in the morning. I believe it  
12 was about 3:30 maybe 4:00 in the morning that I was called.

13 Q And where did you respond first?

14 A I initially responded to the house on Brush Street  
15 where the victim, Colon, was the victim of the home invasion.  
16 And I believe my partner had gone to the 7-Eleven.

17 Q And who is your partner?

18 A That morning, I believe was Detective Eric Toms  
19 [phonetic].

20 Q And that's how you would do it, you -- with two  
21 crime scenes, obviously, you had to split?

22 A Yes, ma'am.

23 Q So what did you do at your scene?

24 A At my crime scene, I had kind of gotten a  
25 walkthrough. I get a briefing from the patrol officer,

1 because they had -- the crime scene was no longer a dynamic  
2 scene. The suspects were in custody. He gave me a  
3 walkthrough of the crime scene that had occurred at the home  
4 invasion and then where the suspects were later located in the  
5 backyard, approximately two houses away.

6 Q And just basically, what did you observe at the home  
7 invasion site.

8 A The home invasion, I remember initially walking into  
9 like the carport that kind of turned into a garage. I --  
10 first thing I noticed was a bloody axe. I had gone into the  
11 bedroom where Mr. Colon had been, I guess, sleeping. And  
12 really, I don't walk actually in. I -- because our crime  
13 scene investigators come in to do the overall pictures, and I  
14 don't want to, you know, add stuff to the crime scene.

15 So I just kind of gave a look around, which is actually a  
16 garage that's made into a bedroom. So I mean, it doesn't  
17 have, you know, air conditioning or heating or anything like  
18 that. I noticed it was very dark, and I noticed that there  
19 was a window from the garage/carport/bedroom, a window with  
20 miniblinds that goes into the house. I noticed that it looked  
21 kind of disheveled. And then the police officer took me to  
22 the house two doors down that had where the suspects were  
23 later taken into custody. The --

24 Q And what did you see there?

25 A I saw there that there were puffy jackets. There

1 were actually three firearms or three guns that looked like  
2 firearms which later were BB guns. Money, there was money  
3 kind of wrapped in a wad. There was a red hat and, I believe,  
4 some gloves. And it was all similar items that were also  
5 involved in the 7-Eleven. Because I remember the description  
6 of the 7-Eleven robbery, so when I saw the items in the  
7 backyard, it matched the exact description of the 40- -- the  
8 robbery at the 7-Eleven.

9 Q And so what did you do then?

10 A I instructed -- I believe, around the same time that  
11 I got there, our crime scene investigator also there. And she  
12 is the one that takes the overall pictures of the crime scene.  
13 She takes pictures of where the items were located, before she  
14 actually takes them and processes them in as evidence.

15 Q And that was done, according to Mr. Felabom, by  
16 Vaandering at the home invasion and by him at the suspect  
17 arrest point?

18 A Yes, ma'am. Yes.

19 Q Ultimately -- let me -- you testified that there was  
20 a lot of money found --

21 A Yes, ma'am.

22 Q -- correct? Did you impound that?

23 A I believe I did. Yes, I did.

24 Q I'm showing you what's been marked -- well, do you  
25 know exactly the -- how much money and exactly the break down



1 without looking?

2 A No. I -- that I do not. I believe it was \$138, and  
3 I don't recall the exact denominations. But it was \$138, I  
4 believe.

5 Q I'm showing you State's -- what's proposed Exhibit  
6 108. Do you recognize that?

7 A Yes. That's my writing.

8 Q And what is that?

9 A That is our money accounting report. Whenever money  
10 is recovered from a crime scene or when it's actually evidence  
11 in a crime, we impound it on -- this is our LVMPD form 131,  
12 and it's required for us to fill out the exact denominations  
13 of what was recovered as evidence. And it also has to go  
14 through my chain when it's money.

15 Q That's kept in the ordinary course of business and  
16 used and relied upon by Metro?

17 A Yes, ma'am.

18 MS. HOLTHUS: Move to admit.

19 MR. GILL: No objection, Your Honor.

20 THE COURT: That's 108?

21 MS. HOLTHUS: Pardon?

22 THE COURT: 108?

23 MS. HOLTHUS: Yes.

24 THE COURT: 108 will be admitted.

25 [Plaintiff's Exhibit 108 Received]

1 MS. HOLTHUS: Thank you.

2 BY MS. HOLTHUS:

3 Q And so now, looking at that -- and this -- there's a  
4 difference between moneys impounded as evidence, i.e. found at  
5 a crime scene, versus say moneys found in a suspect in his  
6 wallet which would be not impounded, but -- right?

7 A That would not be impounded. That would actually be  
8 part of his property when he's taken to jail.

9 Q Okay. So this \$138 was impounded as evidence taken  
10 at the scene in that wad of money?

11 A Yes. Taken at the scene of the backyard.

12 Q And what was the breakdown of those moneys?

13 A There were twenty-three \$1 bills. There were  
14 nineteen \$5 bills, and one 20.

15 Q Did you -- would you also be responsible to submit  
16 items of evidence for testing, forensic testing and -- do you  
17 know if testing was done in this case?

18 A I do believe -- I know I was, I believe, at a  
19 conference, and my partner had to get a buccal swab search  
20 warrant for one of the suspects. So I believe they did some  
21 testing, but that usually -- I know, usually, the DA's office  
22 asks for that through our lab, but I'm not --

23 Q Okay.

24 A -- sure what exactly was done.

25 Q But in this case, buccal swabs were taken from the

1 two suspects; is that correct?

2 A The two suspects and our victim, also.

3 Q And that's for purposes of checking against any  
4 evidence that's recovered?

5 A Yes, ma'am.

6 Q Also, to the extent any fingerprints were recovered  
7 from the scene, would that also have been submitted for  
8 testing?

9 A Yes. Yes, it would have. It would have gone  
10 through our lab.

11 Q I'm showing you what's been marked as State's  
12 proposed 109 for identification. See if you recognize that.

13 A I do recognize that, but I'm not sure. Is there a  
14 second page to this?

15 Q Well, I'm only -- we're only concerned with this  
16 page --

17 A Okay.

18 Q -- for now. To the extent that there's other lab  
19 reports out there, we'll address that.

20 A Yes. Oh, I'm sorry. Yes. Okay. I read that, none  
21 listed. Yes.

22 Q All right. And is this, in fact, a report of the  
23 testing of the latent print that was recovered in this case?

24 A Yes, ma'am.

25 Q And as the case agent, you would have all of this

1 information, ultimately?

2 A Yes. I would print it. If it was done, usually,  
3 the crime lab makes a report, if there's any latent prints  
4 found at the scene, whether it be at the 7-Eleven or at the  
5 home invasion. And I would print that and add it to my file.  
6 Yes.

7 Q And so in this case, the latent print that was  
8 recovered was, in fact, tested and found that it was not  
9 suitable for comparison; is that correct?

10 A Yes, ma'am.

11 MS. HOLTHUS: Move to admit State's proposed 109.

12 MR. GILL: I believe we stipulated that earlier, Your  
13 Honor, but no objection.

14 MR. BOLEY: No objection.

15 THE COURT: All right. 109 will be admitted.

16 [Plaintiff's Exhibit 109 Received]

17 MS. HOLTHUS: Thank you. Pass the witness.

18 THE COURT: Mr. Gill?

19 MR. GILL: Thank you, Your Honor. Thank you.

20 CROSS-EXAMINATION

21 BY MR. GILL:

22 Q Detective Smith, how are you today?

23 A I'm okay. Thank you. How are you?

24 Q Now, we just talked about 109, correct? The latent  
25 print examination? What she just had --

1 A Yes. Yes.

2 Q -- shown you. What Ms. Holthus -- and I'm showing  
3 it there.

4 A Yes, sir.

5 Q And you're very familiar with these, correct?

6 A I get them added to my report once it's processed  
7 through our lab. Yes.

8 Q And in this case, you were kind of the lead  
9 detective; is that fair?

10 A Yes. Yes, I was.

11 Q So when you say your report, you're getting a lot of  
12 information that comes in?

13 A Correct.

14 Q In this one, again, it says that there was -- well,  
15 you tell me. How many prints were examined in this report?  
16 Can you read it okay? Do you want me to zoom in?

17 A No. I can't read it at all. Sorry.

18 MR. GILL: Your Honor, can I approach the witness --

19 THE COURT: Absolutely.

20 MR. GILL: -- with the exhibit?

21 BY MR. GILL:

22 Q Does that refresh your recollection as to how many  
23 prints were examined?

24 A Just one.

25 Q Okay. Thank you. And again, the results of that

1 were that it was not suitable, correct?

2 A Yes.

3 Q What does that mean, or what could that mean?

4 A I guess it means -- it's another word for  
5 inconclusive.

6 Q Okay. So it could mean, for instance, it didn't  
7 have enough ridges? And I don't want to --

8 A Ridges and -- right. It did not have enough. I  
9 mean, if it was just a partial, and they -- it was not  
10 suitable to actually get the proper amount of numbers and  
11 ridges to compare to another like full print.

12 Q And in this instance, do you know which -- whose  
13 prints it was compared to or --

14 A I do not.

15 Q And based on that, we don't either, correct?

16 A No, sir.

17 Q Now you'd also mentioned that you --

18 MR. GILL: Court's brief indulgence.

19 THE COURT: Um-hum.

20 BY MR. GILL:

21 Q Ms. Holthus had asked you about 108, and I'm kind of  
22 showing it to you there, correct?

23 A Yes. That's the money counting report.

24 Q The breakdown of the money, right?

25 A Yes, sir.

1 Q Did you count the money out?

2 A Yes. I did and --

3 Q So it was your -- I'm sorry. I didn't mean to cut  
4 you off.

5 A I was going to say and you have to have a witness,  
6 too.

7 Q Okay. So you've got somebody with you. You count  
8 the money out. You -- do you know where the money came from  
9 before you got it?

10 A Before I got it, it was actually in -- I'd have to  
11 exactly look at the crime scene photos, but I remember it was  
12 in -- on the ground in the backyard.

13 Q Okay. What about when you came in contact with it?  
14 Where was that, or when was that?

15 A When I actually counted it?

16 Q Correct.

17 A After the scene was processed and photographed by  
18 our CSIs -- the CSIs do not -- or I'm sorry -- our crime scene  
19 investigators, they do not impound money. They'll -- they  
20 impound every -- basically everything else. And I, I believe  
21 particularly in this case, impounded the money, and I  
22 impounded the sheaths, the knives that were taken from the  
23 home invasion.

24 Q Okay. And then counted it out and filled out the  
25 sheet, correct?

1 A Yes, sir. Yes, sir.

2 Q Now you also mentioned that there were some items  
3 that looked like firearms but were BB guns. Do you recall  
4 that statement?

5 A They ended up turning out to be BB guns. Yes, sir.

6 Q Otherwise known as a pneumatic weapon?

7 A Otherwise known as what? I'm sorry.

8 Q Pneumatic. Would you describe them that way or know  
9 that phrase?

10 A Yes. That is -- yes. That is another term for it.

11 MR. GILL: Okay. Court's brief indulgence.

12 BY MR. GILL:

13 Q Now as far as the axe, were you ever in contact with  
14 the axe in this case?

15 A I did not touch that axe by any means, but it was  
16 laying just outside -- actually, it was standing just outside  
17 of Mr. Colon's -- I guess -- his bedroom, right outside the  
18 garage, right there.

19 Q Okay. And you saw it?

20 A That was the first thing that I saw as I approached  
21 the initial crime scene.

22 Q And you were -- because you went from, essentially,  
23 504 to 510, correct?

24 A Yes, sir. Yes, sir.

25 MR. GILL: Nothing further, Your Honor. Thank you.



1 THE COURT: All right.

2 MR. BOLEY: Nothing from us.

3 THE COURT: Any from the State?

4 MR. SCHWARTZ: No, Your Honor.

5 MS. HOLTHUS: No, thanks.

6 THE COURT: Anything from the jury? No?

7 Thank you, ma'am. You are free to go.

8 THE WITNESS: Okay.

9 MR. SCHWARTZ: Your Honor, could we please approach?

10 [Bench Conference Begins]

11 MR. SCHWARTZ: We do have one more witness. I think  
12 she's outside. Could we have a five-minute bathroom break?

13 THE COURT: Yeah, sure.

14 MR. SCHWARTZ: Okay. Thank you. Sorry.

15 THE COURT: For you or for --

16 MS. HOLTHUS: It's for him. I ask [indiscernible].

17 MR. SCHWARTZ: It's for me.

18 MR. GILL: [Indiscernible] your bladder.

19 MR. SCHWARTZ: Yeah. I just -- I got too excited  
20 earlier.

21 THE COURT: You're so young for that. Usually, it's the  
22 old guys that have to go every five seconds.

23 MR. GILL: That's the cool guys. I'm not cool. I never  
24 have to go to the bathroom.

25 MR. SCHWARTZ: Yeah. That's not cool. Not cool at all.

1 THE COURT: [Indiscernible] the old guys have to go like  
2 every -- I'm not kidding -- like --

3 MR. SCHWARTZ: They're a nervous bunch.

4 MS. HOLTHUS: One of the old guys.

5 THE COURT: -- every 20 minutes.

6 MS. HOLTHUS: I get it.

7 THE COURT: It's terrible.

8 MR. SCHWARTZ: Thank you, Your Honor.

9 [Bench Conference Ends]

10 THE COURT: All right, folks. We're just going to take a  
11 short break.

12 [Judge Admonishes Jury]

13 THE COURT: Let's just come back at 10:30. We're just  
14 going to take a quick restroom break.

15 THE MARSHAL: Please rise for the jury.

16 [Jury Exits]

17 [Recess at 10:22 a.m.]

18 [Jury In]

19 THE COURT: Back on the record in case number C313118 --

20 THE MARSHAL: Please be seated.

21 THE COURT: -- State of Nevada v. Venegas and Monay-Pina.  
22 Let the record reflect the presence of all of our jurors, Mr.  
23 Venegas, and Mr. Monay-Pina, and all of the counsel.

24 All right. State, please call your next witness.

25 MR. SCHWARTZ: State calls Kim Dannenberger. Can I

1 approach your clerk, Your Honor?

2 THE COURT: Sure.

3 THE MARSHAL: Please raise your right hand. Face the  
4 clerk to be sworn in.

5 KIMBERLY DANNENBERGER, PLAINTIFF'S WITNESS, SWORN

6 THE CLERK: Thank you.

7 THE COURT: Good morning, ma'am. Go ahead and have a  
8 seat.

9 THE WITNESS: Thank you.

10 THE COURT: And if you could, please state your name and  
11 then spell it for the record.

12 THE WITNESS: Kimberly Dannenberger. K-I-M-B-E-R-L-Y  
13 D-A-N-N-E-N-B-E-R-G-E-R.

14 MR. SCHWARTZ: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY MR. SCHWARTZ:

17 Q Ma'am, how are you employed?

18 A I'm employed with the Las Vegas Metropolitan Police  
19 Department's forensic laboratory in the biology DNA detail.

20 Q And what are your general responsibilities in that  
21 job?

22 A I look at items of evidence and take samples for  
23 possible DNA analysis. I then will interpret any data that I  
24 obtain, write reports, do statistics. I also do reviews,  
25 testimony.

1 Q And what type of educational background and training  
2 do you have to make you qualified for that position?

3 A I have a bachelor's of science degree from the  
4 University of Nevada, Las Vegas in cell and molecular biology.  
5 As well, I completed an approximate sixteenth month --  
6 sixteen-month training program within the biology DNA detail.

7 Q And how long have you been a forensic analyst at the  
8 Las Vegas Metropolitan Police Department?

9 A I've been in the DNA section for approximately six  
10 years. Sixteen months of that was in a training program.

11 Q And just in general, you said you -- do you deal  
12 exclusively with DNA?

13 A Yes. I am only assigned to the DNA section.

14 Q Okay. Can you tell us a little bit, just generally,  
15 what DNA is and where we can find DNA?

16 A DNA is basically your genetic blueprint. It is what  
17 makes you who you are, the codes for your hair color, your eye  
18 color, your height. We get half of our DNA from our mom and  
19 half of our DNA from our dad. And between two individuals,  
20 approximately 99.9 percent of us will share the same DNA.  
21 It's that .1 percent that makes us unique, makes us  
22 individuals. So within that .1 percent is what we're looking  
23 at to obtain DNA profiles from very specific locations. The  
24 exception being, identical siblings will share the same DNA  
25 profile. DNA profile is found on various bodily fluids as

1 well as skin cells that can be sloughed off.

2 Q And in your role at the Metro Police Department, how  
3 does it -- how do you become involved in a case? What's the  
4 first thing that happens where you get assigned a case?

5 A The first thing that happens is that a request comes  
6 into the laboratory. And then, as an analyst, when I'm ready  
7 for a new batch of cases, I will go to management, and they  
8 actually assign me the cases to work.

9 Q And a request would come in from a police officer,  
10 the District Attorney's Office asking the lab to make a  
11 comparison; is that fair to say?

12 A Yes.

13 Q Okay. And then once you are assigned a case, what's  
14 the -- what do you do?

15 A I look at the items of evidence. The first thing  
16 I'll do is see if there's any possible biological fluids on  
17 the items of evidence, depending on what the evidence is. The  
18 fluids that we can test for in house are going to be blood,  
19 semen, and saliva. So depending on the case, depending on the  
20 evidence, I will do testing to determine if there's possibly  
21 those fluids there.

22 Q Is there also something that you can do in the lab  
23 that's called a presumptive test?

24 A Yes. So the first step in testing, for a biological  
25 fluid or a bodily fluid, is going to be what we call a