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IN THE SUPREME COURT OF THE STATE OF NEVADA

MARIO TREJO,)	No. 84724	
)		Electronically Filed
Appellant,)		Feb 16 2023 01:46 PM
)		Elizabeth A. Brown
v.)		Clerk of Supreme Court
)		
THE STATE OF NEVADA,)		
)		
Respondent.)		
)		

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Case No. 84724

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1 front doors, which are also locked, which you have to unlock
2 in the mornings.

3 Q Is there certain protocol regarding opening the
4 store that requires more than one person there?

5 A Yes. You have to have a minimum of at least one
6 other person besides you. At that location, we would always
7 have three people.

8 Q Okay. And by "that location," what location are you
9 talking about?

10 A It's 1150 South Rainbow Boulevard.

11 Q And that's here in Clark County, Nevada?

12 A Yes, it is.

13 Q And that -- you were a manager there in August of
14 2018?

15 A Yes, I was.

16 Q And if -- so you need more than one person to open?

17 A Yes.

18 Q If the person -- if you -- a person's not there when
19 you get there, do you have to wait for the additional person?

20 A Yes, I do.

21 Q Okay. So you know why you're here, right?

22 A Yes, I do.

23 Q We sent you a subpoena, and we've talked about this
24 case; is that correct?

25 A Um-hum. Correct.

1 Q So I want to talk to you specifically about August
2 4th of 2018. That date, was that a weekend?

3 A I believe it was a Saturday.

4 Q Okay. So was the traffic getting there -- was it
5 like weekend traffic, a little less so than weekdays?

6 A It's usually pretty light on the weekend.

7 Q Okay. And did you go to -- were you opening that
8 day?

9 A Yes, I was.

10 Q Okay. Do you plan on who's going to meet you at the
11 store when you do opening?

12 A Yes. I have a schedule out in advance so they all
13 know.

14 Q And you're the boss, so you get to do the
15 scheduling?

16 A Correct.

17 Q Okay. On August 4th, do you recall who was supposed
18 to meet you there for opening?

19 A Yes. It was Ivan and Julie.

20 Q Okay.

21 A Juliana.

22 Q And do you know Ivan's last name?

23 A Yeah, Jaquez.

24 Q That's better than I have been able to do.

25 A Yeah. And then Julie --

1 Q Was that the individual that just left the courtroom
2 today?

3 A Yes, it was.

4 Q And do you know Julie's last name?

5 A Saldana.

6 Q Okay. Now, if they get there before you, do they
7 have to wait for you?

8 A Yes, they do.

9 Q Okay. So, even though Julie and Ivan are two people
10 -- so, therefore, under protocol, you need two people to open,
11 right?

12 A Correct.

13 Q But you still need a manager there as well?

14 A Correct.

15 Q So they're not able to open the store without you?

16 A No. They don't have keys or access.

17 Q Okay. I'm going to start showing you some
18 photographs.

19 A Okay.

20 MR. SCHWARTZER: And, Your Honor, permission to
21 publish previously admitted exhibits?

22 THE COURT: Yes.

23 BY MR. SCHWARTZER:

24 Q And just to help you tell your version of events,
25 okay?

1 A Um-hum.

2 Q So do you recall about what time you arrived at the
3 store?

4 A It was, I want to say, about 8:10 in the morning.

5 Q What time would SuperPawn typically open?

6 A We open our doors at 9:00 o'clock. We usually come
7 in at 8:00 o'clock, but I know Ivan had told me that he was
8 running a little bit late, so I ran a little bit late as well.

9 Q Okay. I'm going to show you what's been marked as
10 Exhibit 1. Do you recognize what's shown in this photograph?

11 A Yes. It's the front of my -- my store.

12 Q Okay. And this is -- this is taken of the -- I
13 guess, the north end of the store?

14 A Yes.

15 Q Okay. Do you recall if you arrived first, second,
16 or third?

17 A I was the last person to arrive.

18 Q Okay. Do you recall where you parked?

19 A Yes. I -- I would have parked over on the north
20 side of that store.

21 MR. SCHWARTZER: May I approach, Your Honor?

22 THE COURT: Yes.

23 BY MR. SCHWARTZER:

24 Q So, during our conversation, Jennifer --

25 A Um-hum.

1 Q -- you can mark things using this pen right here if
2 you want to show the jury what you're talking about, okay?

3 A Okay.

4 Q And then, when we're done, I'm going to ask you to
5 hit that arrow, and that allows me to change the photographs.

6 A Okay.

7 Q Okay? Thank you.

8 A Um-hum.

9 Q So, Jennifer, could you let me know where you parked
10 that day, if you recall?

11 A Yeah. It would have been down here.

12 Q Okay. And --

13 THE COURT: Can you describe that for the record,
14 Mr. --

15 MR. SCHWARTZER: Absolutely, Your Honor. So, she's
16 showing the north-end parking spots. She's showing the -- she
17 circled around the parking spot that is to the left of the
18 handicap parking sign.

19 BY MR. SCHWARTZER:

20 Q Is that -- would that accurately reflect what you're
21 circling?

22 A That's around the area, yes.

23 Q Okay. Now, that -- now, that specific spot, do you
24 know if you were in that specific spot or just around that
25 spot?

1 A I was around that spot.

2 Q Okay. So you don't know if it's necessarily that
3 one that you have circled or the one next to it?

4 A Correct.

5 Q Okay. I assume it wasn't in the handicap spot?

6 A No, it was not.

7 Q Okay. So, when you parked, did you see vehicles
8 that you recognized, like, of your employees?

9 A Once I actually got into that parking area, yes. It
10 was the two employees' vehicles.

11 Q Okay. Do you see one of their vehicles in that --
12 or maybe both of the vehicles in this photograph?

13 A Yes. I know for sure that the Jeep Liberty, that is
14 Julie's vehicle.

15 MR. SCHWARTZER: And that is the Jeep Liberty that
16 is in the central part of Exhibit 1, Your Honor.

17 THE WITNESS: Yes.

18 MR. SCHWARTZER: Okay.

19 BY MR. SCHWARTZER:

20 Q And you're not -- and do you recognize Ivan's
21 vehicle, or no?

22 A From this picture, it -- it looks like his vehicle,
23 but I cannot say for 100 percent certain that that's his in
24 that picture.

25 Q And which vehicle are you talking about?

1 A That's his right there, is what I'm --

2 Q Okay.

3 A It looks like his car.

4 Q And you're pointing to the car on Exhibit 1 that is
5 to the left of the Jeep Liberty on the left side of photograph
6 -- of Exhibit 1?

7 A Correct.

8 Q Okay. Now, did you park next to Ivan, or next to
9 Julie, or between them, or how did you park?

10 A I -- I believe it was between them.

11 Q Okay.

12 A And Julie was on the far -- she was the very last
13 vehicle.

14 Q Okay. So, Ivan -- it was Ivan's vehicle, your
15 vehicle, Julie's vehicle?

16 A Correct.

17 Q Okay. Now, when you were pulling into your -- hit
18 that arrow for me.

19 A Um-hum.

20 Q Thank you. When you were pulling into that parking
21 lot, did you notice anything?

22 A Yes.

23 Q What did you notice?

24 A I immediately noticed there was a black Acura that
25 was -- it had blackout windows, and it had a silver sun

1 screen, like a solar screen, that was backed in there.

2 Q And where was it backed into?

3 A It was backed into --

4 Q You're going to have to go back to that pen.

5 A Yeah. Sorry. It was in this vicinity --

6 Q Okay.

7 A -- on that side of the store. So it would be the
8 south end of the store.

9 Q Can you hit that arrow for me again?

10 A Um-hum.

11 THE COURT: And for the record, she --

12 MR. SCHWARTZER: Thank you.

13 THE COURT: -- circled where one of the police SUVs
14 are, the one that's furthest to the left of that photograph,
15 so the one where we only see the back end of it.

16 MR. SCHWARTZER: Thank you, Your Honor.

17 BY MR. SCHWARTZER:

18 Q And I'm going to show you Exhibit 5. Maybe this
19 will give you a better way of showing us. So, now, do you
20 recognize this photograph of Exhibit 5?

21 A Yes, I do.

22 Q And this is, again, your store?

23 A Correct.

24 Q And now we're seeing kind of a view from the south
25 -- from the north side, looking south, and we see a brick

1 wall; is that fair?

2 A Yes.

3 Q Okay. Where in -- does this help kind of tell the
4 jury where you saw that black Acura?

5 A It would have been along -- along that brick -- that
6 red brick wall.

7 Q Okay. So you drew a line, partially hits the
8 column, partially --

9 A Um-hum.

10 Q -- hits the brick wall and the -- brick wall, excuse
11 me, in the middle of Exhibit 5?

12 A Correct.

13 Q And you're saying that that car was parked in a
14 parking spot along the brick wall?

15 A Yes, it was backed up.

16 Q And it was backed up?

17 A Um-hum.

18 Q So the driver-side passenger -- driver and passenger
19 front area would be able to look into the store?

20 A Correct.

21 Q Okay, thank you. And why did that car draw your
22 attention?

23 A We didn't open for almost another 50 minutes. It
24 was completely blacked -- the windows were completely
25 blacked-out, tinted. There's no reason for that vehicle to be

1 there. It was an August day, which is very hot. It did not
2 appear the car was running either. So it's suspicious that
3 any vehicle would be parked there. And we're the only store
4 open on that end of the building, so there was really no need
5 at all for it to be there.

6 Q Okay. So you noted it before anything occurred?

7 A Yeah. I tried to drive -- I drove close to it but
8 still where I could get away, and I tried to look in to see if
9 I could see a driver or see anybody in there, and the windows
10 were so dark, you could not see anybody.

11 Q Okay. Okay, so you ended up parking on that north
12 side of the parking lot, as we talked about?

13 A Correct.

14 Q Okay. And could you hit that arrow for me again?

15 A Um-hum.

16 Q I'm going to go back to Exhibit 2 here. Now, how
17 did you go about opening the store once you parked in the
18 parking spot between Ivan and Julie?

19 A I got out of the car first. They still were getting
20 out of their car. I went to go open the store, and I went to
21 the furthest -- the furthest lock first, but I was keeping an
22 eye on that car in my peripheral vision and still trying to
23 keep an eye for Julie and Ivan when they came up. So I was
24 more concerned about that car and what they were doing.

25 Q So, by "the furthest lock," are you talking about

1 the lock on the south end of the front door?

2 A Yes.

3 Q Okay. Showing you Exhibit 3. Does this give you a
4 -- is this a better view of what you did?

5 A Yes.

6 Q Is that a yes? Okay. So, by "furthest," could you
7 just, again, use that red pen and point where you were?

8 A So the lock that -- this right here is a gate. The
9 lock would be right here. So I would have to bend down, I
10 would have to unlock it, and I unlocked that side first before
11 I -- I have to unlock both of them, and then I would have to
12 roll up the gate.

13 Q So, when you were unlocking -- so the lock, if I'm
14 clear, is on the bottom of the door?

15 A Yes.

16 Q Okay. And then the door --

17 THE COURT: And do you want to just -- yeah, do you
18 want to describe what she --

19 MR. SCHWARTZER: I will. You're right. Sorry, Your
20 Honor.

21 BY MR. SCHWARTZER:

22 Q So this -- you -- just to describe what you've
23 circled, you circled on the bottom of the doorframe of Exhibit
24 3. You did a circle of the bottom right corner of Exhibit 3
25 by the doorframe. Additionally, you drew a line on the top

1 right part of the doorframe on Exhibit 3, indicating a gate?

2 A Correct.

3 Q Okay. Now, the door lock is on the bottom right
4 corner of the doorframe?

5 A When I roll the gate down, inside the gate, there is
6 a bar that comes out, and then we attach the lock to the
7 outside --

8 Q Okay.

9 A -- of that.

10 Q Now, where is that lock?

11 A That -- so it's -- the lock that we attach is a
12 freestanding lock that you can move, but that metal bar is
13 right under where I circled on top.

14 Q Okay.

15 A So, once I have the gate down, I push that out.

16 Q Okay.

17 A And then I'm able to secure the door from the
18 outside of the gate.

19 Q So, if you're opening it, where -- where do you
20 start with unlocking?

21 A Down here.

22 Q Okay, so --

23 A Right down here.

24 Q So in the circle that you previously put on the
25 bottom right corner?

1 A Yes. I have to squat down and unlock it.

2 Q While you're doing that, are you looking in that
3 south direction where that vehicle -- that black Acura is?

4 A Yeah.

5 Q Okay. So you're paying attention to that vehicle?

6 A Yes.

7 Q Are you able to unlock that door?

8 A I unlock that one.

9 Q Okay. While you're unlocking that door, do you see
10 anything going on with the black Acura?

11 A No, I don't at that time.

12 Q Where's Julie and Ivan at this time, if you know?

13 A They're standing at the very north end of the curb,
14 waiting --

15 Q Okay.

16 A -- because I had them wait there.

17 Q Okay. And then, from there, what do you do?

18 A I start walking to the north side to unlock the
19 other lock, which would be right here.

20 Q Okay. The photo kind of flipped there, but --

21 A Yeah.

22 Q Here. Why don't we just use that arrow, and then
23 we'll have you just redraw. Use the arrow again.

24 A Okay.

25 Q Okay. Now, redraw where you went to after unlocking

1 the first lock.

2 A I bend down to unlock that one.

3 Q Okay. While you're doing that, where are you
4 facing?

5 A I'm facing the store.

6 Q Okay. So you're looking at the store?

7 A Yes.

8 Q Okay. Does something catch your attention while
9 you're doing that?

10 A I just had a feeling to look to my right.

11 Q And your right, that would be the south end where
12 the black Acura is?

13 A Correct.

14 Q And what do you -- what do you see when you look to
15 your right?

16 A When I squatted down to start and I look to my
17 right, I see a -- I see somebody charging me.

18 Q Okay. Describe what charging means to you.

19 A They start running. They have their head down.
20 They're pretty stocky. They have a full motorcycle helmet on
21 that's completely black, and they just start running towards
22 me --

23 Q Okay.

24 A -- in a aggressive manner to tackle. It looked like
25 they were going to tackle me.

1 Q Did that scare you?

2 A Yeah, I was petrified.

3 Q What did you do?

4 A I screamed. I screamed for Ivan and Julie to run.

5 I screamed twice for Ivan and Julie to run. I told them,

6 we're getting robbed, run.

7 Q Okay. Why did you feel like you were getting

8 robbed?

9 A I knew that's why they were there.

10 Q By the actions of this person?

11 A Yeah, I mean, he was -- he was gunning for me.

12 Q Now, to be fair, you couldn't see anyone's face?

13 A No, but they had something on underneath. It looked

14 like body armor or something on, so you could tell it wasn't

15 just their body. They had -- it looked like hard padding on

16 underneath their clothes.

17 Q And were their arms covered up?

18 A Yeah, everything was completely covered.

19 Q Legs covered up?

20 A Everything.

21 Q And this is, you said August?

22 A This is August.

23 Q So it's really -- I assume it's really hot?

24 A It's hot.

25 Q Okay. So this person in the motorcycle helmet

1 charges you?

2 A Yes.

3 Q You yell "run" to Julie and Ivan?

4 A Um-hum.

5 Q Is that yes?

6 A Yes.

7 Q Okay, just because everything's recorded.

8 A Sorry. Um-hum.

9 Q After you run -- do you run yourself?

10 A I wait until they take off, and then --

11 Q Who's "they"?

12 A Ivan and Julie. Once Ivan and Julie start running,
13 then I go to run.

14 Q Okay. Where do you guys run to? Where did you,
15 Ivan, and Julie run to?

16 A We ran to -- we ran around the store. And Julie's
17 car was the furthest, and it's the highest, so we hid behind
18 her car.

19 Q Okay. And by "behind her car," are you like by the
20 trunk? On the driver's side?

21 A We're on the driver's side. She was trying to get
22 her keys because I told her to get in the car. She's trying
23 to get her keys, and I have Ivan down. I'm there, too, and
24 then she's trying to get her keys to unlock it.

25 Q Did Julie appear scared, too?

1 A Yeah, she was petrified.

2 Q Okay. Was she having problems with the keys?

3 A She was, and under those circumstances, I think she
4 did amazing getting everything out and getting into the
5 vehicle, because I don't even think I could have done a good
6 of job as Julie did, but, yeah.

7 Q Okay. So, once you guys get to the driver's side of
8 Julie's vehicle, what do you do? What do you see?

9 A Julie gets in the driver's side. I have Ivan get in
10 the back -- back passenger, and then I get in behind him.

11 Q Okay. So you and Ivan are both in the back seat?

12 A Yes.

13 Q And Julie's in the driver's seat?

14 A Correct.

15 Q Do you see anything at this point?

16 A At that point, no. At that point, I was just trying
17 to get away.

18 Q Okay. So, once everyone gets into the -- Julie's
19 Jeep Liberty --

20 A Um-hum.

21 Q -- what do you guys do next?

22 A I get -- I have a panic button that sends an alarm,
23 so I press my -- I get my panic, and I keep pressing my panic.
24 I tell Ivan to get on the phone to 911, and he starts to call
25 911.

1 Q Okay. How about Julie? What does Julie do?

2 A Julie's driving. So we went out the only way. She
3 backs up and goes out on Charleston. We can only go make a
4 right once we go there, and I tell her, just drive.

5 Q Okay. Do you mind hitting that arrow again?

6 A Um-hum.

7 Q I'm going to show you what's been marked as 148. Do
8 you recognize this Google Map?

9 A Yes.

10 Q Okay. All right. So, on 148 -- and to be clear,
11 did you see anything in this motorcycle-helmet person's hands?

12 A I was focusing on one of his hands because he was --
13 it's like he was building speed to get me, so I was only
14 focused on one hand. So, after that, my mind just went to
15 Julie and Ivan and getting them out of there.

16 Q I just want to be clear to the jury. You didn't see
17 any firearms --

18 A No.

19 Q -- yourself, personally?

20 A No.

21 Q Okay. But you were just focused on that one hand
22 and getting to safety?

23 A Getting -- I'm -- I was more concerned at that point
24 about Julie and Ivan. They're kids, they're teenagers, so I
25 wanted them to get out.

1 Q Okay. So I want to show you -- so this is 148. And
2 you -- do you recognize this area right here?

3 A Yes.

4 Q And that's your SuperPawn?

5 A Correct.

6 THE COURT: Can you describe what area you're --

7 MR. SCHWARTZER: Sure. I'm pointing to the top --
8 or not top -- bottom left corner of Exhibit 148 where there's
9 a red flag that reads 1150 South Rainbow Boulevard, Las Vegas,
10 Nevada, 89146.

11 THE COURT: Thank you.

12 MR. SCHWARTZER: Okay.

13 BY MR. SCHWARTZER:

14 Q Now, recognizing that this is your pawn shop, can
15 you show the ladies and gentlemen of the jury with the arrow
16 how you -- how Julie drove away from the scene?

17 A Okay. She was parked about here, so she went down
18 here and made a right.

19 Q Okay.

20 MR. SCHWARTZER: And for the record, the witness
21 drew an arrow from the red flag that was previously described
22 in a straight line from bottom to top toward West Charleston,
23 and then made a right on West Charleston.

24 Is that fair, Judge?

25 THE COURT: Yes.

1 MR. SCHWARTZER: Thank you. Okay.

2 BY MR. SCHWARTZER:

3 Q While you're doing so, you said Ivan calls 911; is
4 that correct?

5 A Yeah.

6 Q Now, does Ivan actually talk to 911, or does someone
7 else take over?

8 A I took over the 911 call.

9 Q Why did you take over?

10 A I just wanted -- I wanted him -- because I wasn't --
11 I didn't even know where my phone was at that point, I wanted
12 him to get on really quick, where I could hit my panic, and we
13 were all doing something active at that point.

14 Q Okay. Once you get onto West Charleston, do you
15 start -- Julie starts heading east toward Torrey Pines?

16 A Yes.

17 Q Okay. Now, once -- while that's happening, do you
18 notice anything else?

19 A Yeah. I kept looking behind, and I see a car start
20 bailing towards us, that same black Acura coming towards us.

21 Q How do you know it's the same black Acura?

22 A Traffic was really light, and they were -- we were
23 speeding to get away, and they started speeding, and they
24 started catching up to us.

25 Q Okay. And by catching up to you, where was the

1 vehicle? Where was this black Acura?

2 A It was behind us.

3 Q So this black Acura sped up and got behind you?

4 A It got behind us, and I told Julie -- we kept going
5 down. Julie kept changing lanes. So I wanted to make sure
6 that was the same car. So she kept changing lanes. That car
7 kept changing lanes where we changed lanes.

8 Q Okay. Now, that black Acura, was it similar -- was
9 it like the car you saw by the parking lot by the brick wall?

10 A It was the exact same one.

11 Q It was blacked-out --

12 A Yes.

13 Q -- tint? Same make, model, appearance?

14 A Correct.

15 Q Okay. And you said traffic was light?

16 A Traffic was light.

17 Q Okay. And you said that car even sped up to get
18 behind you?

19 A Yes.

20 Q Did you tell that to 911?

21 A I -- I'm pretty -- I don't recall, but I'm almost
22 positive -- yes, I did, because 911 was trying to get me to
23 pull over, and I said, absolutely not, they're right behind
24 us.

25 Q Okay. How long -- I mean, I'm sure it felt like a

1 long time, but --

2 A Um-hum.

3 Q -- how long do you think this was going on?

4 A We started getting down to Jones, and it was getting
5 too far away from the store. So I told Julie, I go, you --
6 make a U-turn, we got to start getting back, because traffic
7 was lighter down there. So I wanted to get back into where
8 there was more businesses, I'm more familiar with the area,
9 and there's people around.

10 Q Somewhere safer?

11 A Back towards the store, because I was telling 911
12 what our location was. So I was -- I thought by the time we
13 got back there, we would have officers there. So --

14 Q Did Julie make -- oh.

15 A I'm sorry.

16 Q I didn't mean to interrupt you.

17 A So, once we started getting -- and I saw it was
18 Jones, I told her to make a U-turn, and she made a U-turn.

19 Q Okay. What about that black Acura?

20 A It made a U-turn right with us.

21 Q Okay. Did it keep following you, or did it go off
22 somewhere else?

23 A No, it kept following us. We kept going down. We
24 got to Torrey Pines where there's a McDonald's and a Chevron
25 gas station there. And then the light was red there, so we

1 were going to be stuck.

2 Julie instinctually put on her blinker to turn
3 right. And I told her, don't turn down there, it's
4 residential. I told her, stay away from the residential area.
5 So she goes to back up to do another U-turn because of the red
6 light, and that car was cutting us off through the
7 Chevron/McDonald's parking lot. So, instead of us going
8 right, it went right, I guess assuming we were going to go
9 that way --

10 Q Okay.

11 A -- because of her blinker.

12 Q But that's just like -- that's just you speculating?

13 A That's me speculating, but it's pretty coincidental.

14 Q Okay. So, to be clear, this car was changing lanes,
15 followed behind you, sped up to get behind Julie --

16 A Um-hum.

17 Q -- and then, at some point, at least to you, appears
18 to try to cut you off?

19 A Yeah. It did a U-turn on Jones with us.

20 Q Okay. Now, once you -- once the car goes off on
21 Torrey -- was it around Torrey Pines, you said?

22 A Torrey Pines. Um-hum.

23 Q Once that happens, what -- where do you, Julie, and
24 Ivan go?

25 A We end up -- I told the 911 operator I knew the BMW

1 dealership should have been open, and there should have been
2 people there at this point. So they kept trying to get me to
3 pull over, and I'm like, I don't know if there's more people,
4 I don't know who's following us, if there's other -- other
5 people there. So I told her the BMW dealership should be
6 open. I said, have officers meet us there.

7 Q And do you end up at that BMW dealership?

8 A Yes, we do.

9 Q And do officers meet you there?

10 A Yes.

11 Q Okay. While you're on the 911 call, which we'll get
12 to in a second --

13 A Um-hum.

14 Q -- are you relaying information that's also being
15 told to you by Julie and Ivan?

16 A Yes, I am.

17 Q Okay. Now, while the call was made using Ivan's
18 phone, do you believe you would recognize your voice?

19 A Correct.

20 MR. SCHWARTZER: Your Honor, permission to publish
21 Exhibit 6 briefly in order to lay down foundation?

22 THE COURT: And what is the exhibit number? Sorry.

23 MR. SCHWARTZER: Exhibit 6, Your Honor.

24 THE COURT: 6. Yes.

25 MR. SCHWARTZER: And I'm sorry, Julie [sic]. It's

1 just taking a little while for me to connect to the system
2 here.

3 (Audio is played.)

4 MR. SCHWARTZER: Can you guys hear that?

5 MR. TREJO: Objection, Your Honor. May we approach?

6 THE COURT: Sure.

7 (Bench conference)

8 MR. TREJO: I actually did not receive this audio
9 nor the logs. Alex can't recall receiving this either. I
10 think the only call logs I have are September 3rd, 2018, none
11 for August 4th, 2018.

12 MR. SCHWARTZER: (Indiscernible) --

13 THE COURT: Did you ever receive the --

14 MR. HENRY: I'd have to check the file again, Judge.
15 I don't remember those directly.

16 THE COURT: Okay.

17 MR. SCHWARTZER: I mean, all the 911 calls were
18 provided.

19 MR. HENRY: Yeah, I mean, he handed me a bunch of
20 stuff. I just don't -- I can't recall those specifically.

21 THE COURT: Okay. I'm going to allow it because I'm
22 sure he provided that to Mr. Henry, so I'm going to allow this
23 right now. If there's any -- if Mr. Henry comes back and
24 tells me he didn't have that, then we're going to have to get
25 a mistrial, but I'm going to allow it to go forward right now.

1 MR. SCHWARTZER: There's also -- I also provided the
2 CAD recently -- not recently, but (indiscernible) --

3 MR. HENRY: I thought -- yeah, I thought I sent him
4 the CAD logs.

5 MR. SCHWARTZER: Yeah. And then on top --

6 MR. HENRY: He's saying that's for the September 3rd
7 one, not the --

8 MR. SCHWARTZER: No, they're both.

9 MR. HENRY: Okay.

10 MR. SCHWARTZER: They're CAD logs for both.

11 MR. HENRY: So I remember one of the CAD logs.

12 THE COURT: Okay.

13 MR. HENRY: I just don't remember the audio calls.

14 THE COURT: Okay. So we'll need to make a record of
15 that tomorrow --

16 MR. HENRY: Okay.

17 THE COURT: -- before we start. Just look through
18 your records, Mr. Henry.

19 MR. HENRY: I'll bring the files tomorrow.

20 THE COURT: Okay, thank you.

21 MR. SCHWARTZER: I mean, now I'm worried.

22 THE COURT: I don't -- I'm sure you provided it.

23 MR. SCHWARTZER: I'm sure I handed it over to you.

24 THE COURT: I'm sure you provided it. I just --

25 MR. SCHWARTZER: I mean, does he want to listen to

1 it outside of the presence, and then we can talk about that?

2 THE COURT: We can do that, sure.

3 MR. SCHWARTZER: Let's do that just to be safe.

4 THE COURT: Okay. Yeah, let's do that.

5 MR. SCHWARTZER: Okay.

6 THE COURT: Okay.

7 (End of bench conference)

8 THE COURT: Ladies and gentlemen, we're going to
9 take a recess.

10 During the recess, you're admonished not to talk or
11 converse among yourselves or with anyone else on any subject
12 connected to this trial, or read, watch, or listen to any
13 report of or commentary on the trial by any person connected
14 with this trial, by any medium of information, including,
15 without limitation, newspapers, television, the internet, and
16 radio, or form or express any opinion on any subject connected
17 with the trial until the case is finally submitted to you.

18 It is 3:05. I think it'll be about, what, 15
19 minutes?

20 MR. SCHWARTZER: It'll be -- it's an eight -- okay.

21 THE COURT: Right, but --

22 MR. SCHWARTZER: Fifteen minutes is fine.

23 THE COURT: So about 15 minutes?

24 MR. SCHWARTZER: Yeah.

25 THE COURT: Yeah. 3:05, so 3:20.

1 (Outside the presence of the jurors)

2 THE COURT: And, Ms. Incinas [sic], would you just
3 step into the room in the vestibule?

4 MR. SCHWARTZER: Okay. And before we play this,
5 Your Honor, I just want to make a record.

6 I did do a ROC, not when Mr. Henry had the case, but
7 because the CAD logs look a little differently when I get them
8 from LVMPD dispatch, not that they're -- they're duplicates,
9 they just -- they're formatted a little differently. So,
10 about a month ago, and it should be filed with the Court,
11 there was an ROC filed where I did hand over all the CAD and
12 the disc for the CAD to Mr. Trejo directly through our
13 investigator, Mr. Rafalovich.

14 THE COURT: Okay.

15 MR. SCHWARTZER: Oh, they didn't give him the disc?

16 So CCDC apparently took the disc. So, apparently,
17 he didn't get the disc, but he obviously has all the CAD
18 reports that would have what's in the 911 call and stuff like
19 that.

20 THE COURT: Right. And Mr. Henry -- this case is
21 pretty old, so I'm assuming Mr. Henry also probably had it.

22 MR. SCHWARTZER: Right. I mean, there was a disc
23 provided with, like, all the 911 calls on it.

24 THE COURT: Okay.

25 MR. SCHWARTZER: So.

1 THE COURT: Okay.

2 MR. SCHWARTZER: But I'll --

3 THE COURT: And so we'll just have Mr. Henry -- like
4 I said, we'll just have Mr. Henry just make sure that he had a
5 copy of that and so that we know that it was provided to
6 defense counsel before he got off the case as well.

7 MR. SCHWARTZER: Okay.

8 THE COURT: Okay. Mr. Trejo was writing something.
9 Did you have something to say before we play the
10 911?

11 MR. TREJO: I don't see the point in hearing the
12 audio at trial. Hearing now will not allow for appropriate
13 defense. Just want to say that for the record.

14 THE COURT: Okay. I understand, but we're just
15 going to play it for you right now so that you know what's
16 going on. And like I said, we'll make a record of it before
17 tomorrow.

18 MR. SCHWARTZER: Well, I mean, I guess there's --
19 what would -- we'll play it. I don't think there's any
20 prejudice to him hearing it now and being able to form a
21 cross-examination, but let's play it.

22 (Audio is played.)

23 THE COURT: Okay.

24 MR. SCHWARTZER: So here's where we're at, Your
25 Honor. So we just played the phone -- the whole 911 call. I

1 mean, I don't think there's a dispute whether it has
2 evidentiary value or not.

3 Here's my worry, is, because the initial discovery
4 was mostly focused on September 3rd, I'm not sure if this 911
5 call was in the initial discovery. I know I tried providing
6 all the 911 calls and the CAD printouts to Mr. Trejo before
7 trial and sent Mr. Rafalovich over there to do so, including a
8 disc that involved all this stuff. I'm being told that he
9 couldn't handle the disc, so maybe he never got -- he probably
10 never got the disc, so all he got is the CAD printout.

11 But he did get the CAD printout of this phone call,
12 which describes exactly what's in this phone call. On top of
13 that, the 911 call, there's nothing in that that's different
14 from her statement, so there's no surprise or anything like
15 that. Now he's got -- he's gotten to listen to it. If he
16 needs extra -- I mean, there's nothing that's different
17 between this and her statement.

18 So I still believe it should come in even if he
19 hasn't been able to listen to it -- listen to it before just
20 now because of the CCDC policy of taking away these CDs, I
21 guess, when they get them, because there's nothing new in the
22 actual 911 call.

23 What I don't want -- and this is abundance of
24 caution, because there's a chance that it was provided. I
25 think there's a pretty good chance it was provided.

1 What I don't want is to be wrong about this specific
2 911 call being provided and then having a mistrial after we've
3 done eight days of testimony.

4 So that's -- so I would submit at this point that
5 now that he's listened to the 911 call, he can prepare his
6 cross-examination however he wants. It doesn't -- the fact
7 he's had this information already, and he's already had the
8 CAD printout for this that I'm very confident he does, and
9 that it should come in. But, obviously, if the ruling is
10 different, I'd rather not play this and avoid a mistrial than
11 have a mistrial.

12 THE COURT: The other thing that I have to say is
13 that Mr. Trejo did a Brady motion that was heard on August --
14 I'm sorry, on March 28th. In it, he notes that he -- let me
15 just say -- he says that he has all the testimonial,
16 Cellebrite, photographic, and crime scene investigation
17 evidence on paper.

18 When we had argument on that on March 28th, he
19 didn't mention that he was missing anything. And if there was
20 something, he should have been notified via the -- the CAD log
21 that there was a 911 call and could have brought it to the
22 Court's attention instead of saying that in the middle of
23 trial. I just -- I don't -- I don't see how the State can be
24 held responsible for that when we had a hearing and he didn't
25 say what -- that he was missing that as well.

1 But if he doesn't have it and objects to it, do you
2 -- would you rather just have her not do the 911 call?

3 MR. SCHWARTZER: Yeah, I mean, look, I would -- I
4 mean, look, again, I think it should still come in based on
5 the fact that it's information he's already had, at the very
6 least, the CAD printout that would provide the information
7 that Jennifer provided.

8 So I admit I think it should -- I mean, I would
9 propose that it should still come in even if he didn't get to
10 listen to it because of CCDC's policy of not giving him a
11 compact disc, but, again, that's up to Your Honor regarding
12 that. I mean, now, again, he's had time to listen to it.
13 It's literally nothing different than her statement, so --

14 THE COURT: I honestly don't think that it's any
15 different, but I don't want this whole case to come back and
16 have to be retried again. So, in an abundance of caution, I
17 personally think we should just skip it --

18 MR. SCHWARTZER: Okay.

19 THE COURT: -- just because I don't want -- I mean,
20 you saw how long it took us to pick a jury and to get people
21 who were going to be able to be here for this whole time. I
22 actually think we should just not put this in.

23 And I think you're right, Mr. Schwartzer, that it
24 should come in because of all the information being there, but
25 I just don't want to retry this.

1 MR. SCHWARTZER: That's fine.

2 THE COURT: So, Mr. Trejo, you understand we're just
3 going to skip the 911 call?

4 MR. TREJO: Yes.

5 THE COURT: Okay.

6 MR. SCHWARTZER: I don't want to risk that because
7 CCDC doesn't give them.

8 THE COURT: Right. I just -- I don't either. So we
9 are not going to admit State's Proposed 6.

10 MR. SCHWARTZER: That's fine. Now, if he gets into
11 questions regarding that 911 call that he just heard, and
12 there -- and questions her veracity during that, I think then
13 it comes in as a consistent statement if he's trying to argue
14 there's some type of inconsistent statement.

15 THE COURT: Yes.

16 MR. SCHWARTZER: So I'm putting him on notice right
17 now that if he gets into that line of questioning about any
18 911 call where he questions her veracity, I think it does come
19 in.

20 THE COURT: And I agree with that as well.

21 Mr. Trejo, anything to add?

22 MR. TREJO: I will not use 911 call.

23 THE COURT: Okay, thank you.

24 Are we ready?

25 MR. SCHWARTZER: Yes, Your Honor.

1 THE COURT: Okay. Can we -- Bill, can you get the
2 witness?

3 (In the presence of the jurors)

4 THE COURT: Will the parties stipulate to the
5 presence of the jury?

6 MR. SCHWARTZER: Yes, Your Honor.

7 MR. TREJO: The defense stipulates.

8 THE COURT: Thank you.

9 Continue, Mr. Schwartzer.

10 MR. SCHWARTZER: Thank you.

11 BY MR. SCHWARTZER:

12 Q Jennifer, you were the one that did the talking in
13 the 911 call, correct?

14 A Yes.

15 Q Did you inform the dispatcher what was happening?

16 A Yes, I did.

17 Q That there was a black Acura following you?

18 A Correct.

19 Q That a person attempted to rob you at the SuperPawn?

20 A Correct.

21 Q Super --

22 A SuperPawn, um-hum.

23 Q Thank you.

24 A Yes.

25 Q And that other people told you that there was a

1 firearm involved?

2 A Other people, yeah.

3 Q Right. You can't directly testify that you saw a
4 firearm?

5 A I can't directly.

6 Q Were you in fear?

7 A I was in fear.

8 Q Were you in fear when this person in the motorcycle
9 helmet approached you?

10 A Yes, I was.

11 Q Were you in fear when the Acura followed behind you?

12 A Yes.

13 Q And were you in fear until the police got there?

14 A Yes, even after that. You know, it still affects me
15 to today. You know, it's not something that's ever going to
16 go away.

17 MR. SCHWARTZER: Thank you. I have no further
18 questions, Your Honor.

19 THE COURT: Mr. Trejo? Yes. Just leave it. Yeah,
20 that's fine. Thank you.

21 CROSS-EXAMINATION

22 BY MR. TREJO:

23 Q Good afternoon, Ms. Incera. Thank you for being
24 here. I just have a few questions, just as a recap.

25 You just mentioned the man you saw outside of 1150

1 South Rainbow Boulevard, according to other witnesses, had a
2 firearm; is that correct?

3 A I'm sorry. Can you re --

4 Q Good afternoon, Ms. Incera. Thank you for being
5 here. I just have a few questions, just as a recap.

6 You just mentioned the man you saw outside of 1150
7 South Rainbow Boulevard, according to other witnesses, had a
8 firearm; is that correct?

9 A According to other witnesses, yes.

10 Q And can you recall who saw the said firearm?

11 A I know positively Juliana saw the firearm.

12 Q And did you see a firearm?

13 A I'm not going to testify that I did, no.

14 Q Okay. Do you recall the testimony you gave back on
15 October 3rd of 2018? It was testimony at a grand jury hearing
16 for the indictment of this case.

17 A Yes, I remember.

18 Q Do you recall the claims made during this testimony,
19 ma'am?

20 A Yes, I remember.

21 Q Do you recall the prosecutor asking you what you did
22 when the man in the helmet approached -- helmet approached?

23 A Yes, I remember.

24 Q Do you recall stating, "I turned to the two people
25 with me, and I yelled for them to run"?

1 A I remember saying that.

2 Q Do you recall what you said right after that?

3 A I told for them twice to run, run, we're getting
4 robbed, run.

5 Q Do you recall stating that, quote, "That's when --
6 that's when he had the shotgun, and he pumped it," end of
7 quote?

8 A Yeah, I remember saying that. And that's after a
9 conversation, too, when I learned he had it. That's why Julie
10 and Ivan ran, because they saw the shotgun.

11 Q So that wasn't your actual witness testimony, then?

12 A No, and I never said in the grand jury statement
13 that I saw it. After conversations with Julie and Ivan, I
14 asked them -- I told them, why didn't you guys run when I told
15 you to run? And Julie said, when I saw him pump the shotgun
16 is when I ran, and I realized -- that's what went off in my
17 head, that we're getting robbed.

18 Q Would you like to see a portion of the transcript of
19 the grand jury indictment to help refresh your memory on the
20 context -- of the context, Ms. Incera?

21 A If you can show before and after so I think everyone
22 can get the full understanding of the whole conversation.

23 MR. SCHWARTZER: What pages?

24 MR. TREJO: I have page 11, 12, and 13, which covers
25 the entire context of that statement.

1 Permission to approach, please?

2 THE COURT: Mr. Schwartzer, those -- those pages
3 correct?

4 MR. SCHWARTZER: I have no objection to him --

5 THE COURT: Okay. Go ahead and approach.

6 MR. TREJO: It's 11, 12 --

7 MR. SCHWARTZER: And 13? Did -- he said 11, 12, and
8 13, right?

9 THE COURT: He said, "and 13."

10 MR. SCHWARTZER: Okay.

11 THE COURT: She didn't repeat that. Yeah.

12 THE WITNESS: Can I put them in logical order?

13 MR. TREJO: Of course, of course.

14 THE WITNESS: Do you want me to read starting from
15 11?

16 THE COURT: You're not going to read those into the
17 record. He's just using that to refresh your recollection.

18 THE WITNESS: Okay.

19 THE COURT: So just take a look at it and see if
20 that refreshes your recollection.

21 THE WITNESS: It's exactly what I said, and I never
22 said in here -- in these statements that I saw it. It's
23 saying that they reacted to the shotgun and they ran. So it's
24 the exact same thing I said. Because I mentioned in there
25 they reacted to the shotgun.

1 BY MR. TREJO:

2 Q Actually, ma'am, you stated that you were paying
3 attention to one hand because he was trying to rush you, then
4 that you turned your head towards the other two people with
5 you, then state that later on -- then stated that later on,
6 you found out that there was a second person.

7 The prosecutor followed up with a question asking
8 what you did next. That's when you said that you yelled at
9 the two people with you to run, and then you state that,
10 quote, "That's when he -- that's when he had the shotgun, and
11 he pumped it," end of quote, as if it's your own testimony.

12 Is that an accurate depiction of the transcript you
13 just read?

14 A Except for the last part. That seems to twist the
15 words. And I'll dispute that last part because in the
16 beginning of your question, I even said I was focused on one
17 hand; I turned and yelled, run, run. And by that time I made
18 that, I had two people tell me there was a shotgun.

19 Q I'm just reading the transcript, ma'am. Even so,
20 after this statement, the prosecutor asked for clarification.

21 He asked, quote, "When you said" -- "When you" --
22 "When you said he had a shotgun, you're talking about the
23 person in the black helmet?" End of quote.

24 You then answer, "Yes."

25 The prosecutor asked if he racked it or cocked it.

1 You answer, quote, "Yes, he pumped it," end of
2 quote.

3 Ms. Incera, I am not twisting any text here. I'm
4 simply reading the plain English of this transcript.

5 MR. SCHWARTZER: Your Honor, I'm going to object to
6 any type of narrative within his own questions.

7 THE COURT: And I'm going to agree with that, Mr.
8 Trejo. So do you just want to just ask? Just get to the
9 point of the question.

10 MR. SCHWARTZER: Thank you, Your Honor.

11 BY MR. TREJO:

12 Q So the point of the question is, did you testify at
13 grand jury indictment for this case information that you are
14 now contradicting?

15 A I'm not contradicting. In the beginning of the
16 statement, it said I was focused -- I was focused on one hand.
17 I turned, I yelled for them twice to run, run, we're getting
18 robbed, run, and then I said when he pumped the shotgun is
19 when Julie reacted in that testimony. That is what I'm
20 speaking to.

21 Q Okay. So, when you were asked if he racked the
22 shotgun or cocked it, do you recall answering, quote, "Yes, he
23 pumped it," end of quote?

24 A I answered that, yes, because in the whole frame of
25 everything, that's what caused Julie and Ivan to react, and I

1 know that at that point when I was testifying to that. And in
2 the beginning of that, again, I said I was focused on his
3 hand.

4 Q Final question on the subject. The statement,
5 quote, "Yes, he pumped it," end of quote, is an answer to a
6 question being asked by the prosecutor to clarify your
7 testimony; is that right?

8 A Because I know that's what happened, and that's why
9 at the beginning I said I was focused on his hand, at the
10 beginning of that statement. And at the end, I said that's
11 why Julie reacted, in that same testimony, because when he
12 pumped the shotgun is when they reacted. They didn't react to
13 my screaming; it was that. I clearly said I focused on the
14 hand.

15 Q Ma'am, can you please answer the question? I just
16 want to clarify that you responded to that, is all. I just
17 want to clarify what you responded to that. That is all.

18 A I clarified I focused on the hand, and I will not
19 have my words twisted.

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

21 THE COURT: Based on that, Mr. Schwartzer?

22 MR. SCHWARTZER: Court's indulgence.

23 THE COURT: Sure.

24 MR. SCHWARTZER: Okay. No further questions, Your
25 Honor.

1 THE COURT: Questions from the jurors? Go ahead.
2 Just write it down, yeah.

3 Mr. Trejo?

4 (Bench conference)

5 THE COURT: The first question I don't think is
6 clarified. It said, "Would you say that you are very familiar
7 with this area in relation to the streets and roads?" And I
8 don't know what area he's talking about.

9 MR. SCHWARTZER: Yeah.

10 THE COURT: Number 2, "How far down the road from
11 the gas station is the location where you had Julie make a
12 U-turn?" I guess we can ask that.

13 MR. SCHWARTZER: Sure.

14 THE COURT: Number 3, "How many other opportunities
15 are there to make a U-turn on this section of road?" And I --

16 MR. TREJO: (Indiscernible).

17 MR. SCHWARTZER: The chase doesn't matter for the
18 elements of the crime, but sure.

19 THE COURT: None of this matters.

20 MR. SCHWARTZER: Yeah.

21 THE COURT: So I'm going to ask 2 and 3. Okay. Oh.

22 MR. TREJO: (Indiscernible).

23 THE COURT: Can you -- I couldn't hear you.

24 MR. TREJO: (Indiscernible).

25 THE COURT: He has no objections to what?

1 MR. HENRY: To any of the questions.

2 MS. HEAP: No objection to any of them.

3 THE COURT: Okay, thank you.

4 (End of bench conference)

5 THE COURT: Ma'am, how far down the road from the
6 gas station is the location where you had Julie make a U-turn?

7 THE WITNESS: We made a U-turn on Jones, and the gas
8 station is on Torrey Pines, so it's a full city block.

9 THE COURT: Okay. Number -- I'm sorry.
10 How many other opportunities are there to make a
11 U-turn on that section of road?

12 THE WITNESS: There's several opportunities.

13 THE COURT: Okay, thank you.

14 Anything based on that, Mr. Schwartzer?

15 MR. SCHWARTZER: No, Your Honor.

16 THE COURT: Anything based on that, Mr. Trejo?

17 MR. TREJO: No.

18 THE COURT: Okay, thank you.

19 THE WITNESS: Okay.

20 THE COURT: Ma'am, you're excused, and please don't
21 talk about your testimony with anyone. Thank you.

22 THE WITNESS: Okay, thank you.

23 MR. SCHWARTZER: Your Honor, could we approach,
24 actually --

25 THE COURT: Sure.

1 MR. SCHWARTZER: -- very briefly about this?

2 (Bench conference)

3 (Pause in the proceedings.)

4 MR. SCHWARTZER: Never mind, Your Honor.

5 THE COURT: Okay.

6 (End of bench conference)

7 THE COURT: And the State's next witness?

8 MS. HEAP: Melani Howard.

9 THE COURT: Thank you.

10 MS. HEAP: May I approach the clerk, Your Honor?

11 THE COURT: Yes.

12 THE MARSHAL: All right, ma'am. We got a couple
13 steps for you to get up there, and stay standing and face the
14 clerk. She's going to swear you in.

15 THE CLERK: Please raise your right hand.

16 MELANI HOWARD, STATE'S WITNESS, SWORN

17 THE CLERK: Can you please state and spell your name
18 for the record?

19 THE WITNESS: Melani Howard. M-e-l-a-n-i,
20 H-o-w-a-r-d.

21 THE CLERK: Thank you. You can have a seat.

22 MS. HEAP: May I proceed, Your Honor?

23 THE COURT: Yes.

24 DIRECT EXAMINATION

25 BY MS. HEAP:

1 Q Good afternoon, ma'am.

2 A Hi.

3 Q May I call you Melani?

4 A Um-hum.

5 THE COURT: Ma'am, before we get started, I know
6 it's not the way we talk, but we're recording everything. So,
7 instead of saying "uh-huh" or "uh-uh," can you please --

8 THE WITNESS: Okay, okay.

9 THE COURT: -- say "yes" or "no"? And also, you
10 haven't done anything like this yet. I'm just going to tell
11 you. Can you wait until everyone finishes their question
12 before answering --

13 THE WITNESS: Okay.

14 THE COURT: -- even if you know the answer? Thank
15 you.

16 BY MS. HEAP:

17 Q Melani, where do you work?

18 A SuperPawn.

19 Q And is that the SuperPawn located at 1150 South
20 Rainbow Boulevard here in Las Vegas?

21 A Yes.

22 Q Okay. How long have you worked there?

23 A Three and a half years.

24 Q Okay. Were you working at that SuperPawn in
25 September of 2018?

1 A Yes.

2 Q What is your position there?

3 A Assistant manager right now.

4 Q Right now? How long have you been the assistant
5 manager?

6 A A year.

7 Q Back in September, specifically, on September 3rd of
8 2018, what was your position?

9 A A pawn broker.

10 Q And what does a pawn broker do?

11 A Help the customers when they come into the store.

12 Q Okay. Now, I want to direct your attention
13 specifically to September 3rd of that year. Do you recall
14 that being a holiday?

15 A Yes.

16 Q And were you working that day?

17 A Yes.

18 Q Okay. Who were you working with?

19 A Six other employees.

20 Q Do you remember their names?

21 A Adriane, Carla, Ivan, Julie, Gio. There's one more.
22 And Jonathan.

23 Q Okay. Who was the manager that day?

24 A Adriane.

25 Q Adriane? Around 1:00 p.m. that day, what were you

1 doing?

2 A Helping a customer.

3 Q Okay. Do you recall what area of the store you were
4 in?

5 A The jewelry area where the music is.

6 MS. HEAP: Permission to publish previously admitted
7 exhibits?

8 THE COURT: Yes.

9 BY MS. HEAP:

10 Q Ma'am, I'm showing you State's Exhibit 52. There's
11 a computer right in front of you, or you can look at the TV.

12 Do you recognize this front door?

13 A Yes.

14 Q Is that the front of the SuperPawn you were working
15 at on September 3rd, 2018?

16 A Yes.

17 Q And when you walk into the store -- you indicated
18 you were near the jewelry or the music area. When you walk
19 in, is that towards the right or the left?

20 A The right.

21 Q Showing you State's Exhibit 53. Is that a
22 photograph of that area?

23 A Yes.

24 MS. HEAP: And may I approach the witness, Your
25 Honor?

1 THE COURT: Yes.

2 BY MS. HEAP:

3 Q Melani, you can actually mark on here. If you take
4 this mouse and click here, you can make marks, okay, on the
5 screen.

6 Can you show me approximately where you were working
7 that day, where you were at that time?

8 MS. HEAP: And for the record, she's marked the area
9 sort of right in the middle of the photograph, looks like
10 above the drums back by that counter.

11 THE COURT: Yes.

12 BY MS. HEAP:

13 Q Showing you State's Exhibit 54. Is that just the
14 right side of that area?

15 THE COURT: And, ma'am, if you hit the garbage can
16 on there, that'll get rid of that mark. Thank you.

17 BY MS. HEAP:

18 Q Is that that same jewelry counter, sort of looking
19 towards the right?

20 A Yes.

21 Q Showing you State's Exhibit 55. Is that that same
22 -- same area, just to the left-hand side?

23 A Yes.

24 Q Showing you State's Exhibit 61. Is that a close-up
25 of the area you were standing in?

1 A Yes.

2 Q And can you please mark on that area on that
3 photograph?

4 MS. HEAP: For the record, she's marked towards the
5 left-hand side, right next to what appears to be a mirror on
6 the counter.

7 THE COURT: Yes.

8 BY MS. HEAP:

9 Q When you were helping that customer a little after
10 1:00 p.m., what happened?

11 A When I was helping him --

12 Q Yes.

13 A -- a guy burst through the door with a gun raised.

14 Q Okay. You said he burst through the door. Can you
15 describe that? How was he walking, or why do you say "burst"?

16 A Because you can hear the door push open hard.

17 Q Okay. So was it a forceful entry?

18 A Yes.

19 Q Okay. And you said he had a firearm?

20 A Yes.

21 Q Was he wearing anything that got your attention?

22 A A helmet.

23 Q What did the helmet look like?

24 A It was black.

25 Q Was it a motorcycle helmet or a bicycle helmet?

1 A Yes, a motorcycle helmet.

2 Q Motorcycle? Do you remember anything that he was
3 wearing, any of his clothing?

4 A Black.

5 Q A black top?

6 A Yeah, black top.

7 Q Do you remember anything about his pants or shoes?

8 A I believe all of it was black.

9 Q Can you describe -- you said he had a firearm. Can
10 you describe what you saw?

11 A The firearm, or?

12 Q If you recall. The firearm.

13 A I mean, it --

14 Q Do you remember anything about it?

15 A No, just --

16 Q Okay. Do you remember if it was a big firearm or a
17 little one?

18 A It was a handgun.

19 Q A handgun? Okay. Did you hear anything at that
20 point?

21 A Yeah, I heard him say, don't push the panic buttons.

22 Q Okay. Did you hear any of your coworkers say
23 anything?

24 A No.

25 Q Okay. What did you do when he burst in there with a

1 firearm?

2 A I dropped to the floor.

3 Q Why did you do that?

4 A I don't know, instinct.

5 Q Were you scared?

6 A Yes.

7 Q Were you fearful of what might happen?

8 A Yes.

9 Q Once you dropped to the floor, where did -- what did
10 you do?

11 A Crawl back that way.

12 Q Okay.

13 MS. HEAP: And for the record, she indicated she
14 crawled back towards the right of the photograph.

15 BY MS. HEAP:

16 Q Is that correct?

17 A Yes.

18 Q By the counter? Why were you crawling in that
19 direction?

20 A I think I tried to get under one of these cabinets
21 behind here, but they were full, so I kept moving backwards.

22 Q What were you trying to do by getting under that
23 cabinet?

24 A To hide.

25 Q Hide? Okay. While you were crouched down, trying

1 to hide, did you hear the person in the motorcycle helmet with
2 a gun say anything to you or say anything to anyone?

3 A I mean, I could hear him, but I don't know what the
4 words were. I could just hear him saying --

5 Q Do you remember the context?

6 A No.

7 Q Kind of what they were talking about? Did he -- was
8 he looking for anything specific? Was he asking for anything?

9 A Yeah, he was asking for money.

10 Q Could you hear whether he was getting any money?

11 A No. I didn't know what was going on, because I got
12 to the other cabinet --

13 Q Okay.

14 A -- and got inside.

15 Q Okay. Did you hear people moving around in the
16 store?

17 A Yes.

18 Q Do you recall anything that you heard during the
19 time they were moving around?

20 A No.

21 Q Now, you said you -- you got into the cabinet.
22 What'd you do when you got inside the cabinet?

23 A Called 911.

24 Q When you were on -- when you called 911, were you on
25 the phone the entire time you were in the cabinet?

1 A Yes.

2 Q And did you hear other things that were going on
3 outside of the cabinet?

4 A I can hear him banging and say, I'm watching you
5 guys.

6 Q Okay. So you heard him at some point bang --

7 A Yeah.

8 Q -- and say, I'm watching you?

9 A Um-hum.

10 Q But you couldn't see him at that time --

11 A No.

12 Q -- correct?

13 A No.

14 Q So you don't know who he was talking to?

15 A No.

16 Q You just heard him bang?

17 A Yeah.

18 Q Did you hear anyone come near you when you were in
19 that cabinet?

20 A A little bit later, I could hear somebody talking,
21 so I thought he was coming around. I thought he was on the
22 side of the jewelry cases.

23 Q Where you were?

24 A Yeah.

25 Q Okay. Did you hear anyone with him when you thought

1 --

2 A I heard Adriane.

3 Q Okay. So you heard the person in the motorcycle
4 helmet and Adriane come around the jewelry?

5 A Yes.

6 Q Did you hear what they -- could you hear what they
7 were doing?

8 A I could hear him telling Adriane to get some chains.
9 That back wall was full of jewelry.

10 MR. TREJO: Objection, speculation.

11 THE COURT: I didn't hear any --

12 MS. HEAP: She didn't speculate. She could -- she
13 said she could hear --

14 THE COURT: Yeah, that --

15 MS. HEAP: -- but she couldn't see.

16 THE COURT: That didn't sound -- yeah. So I'm going
17 to overrule that, Mr. Trejo.

18 BY MS. HEAP:

19 Q And I'm showing you State's Exhibit 62. You
20 indicated there were some chains --

21 A So, where --

22 Q -- in the cabinet?

23 A Where the purses are, that used to be full of
24 jewelry, chain.

25 MS. HEAP: And for the record, she indicated the

1 purse area, the purses, which are kind of in the middle of the
2 photograph.

3 BY MS. HEAP:

4 Q And showing you State's Exhibit 63. Is that a
5 close-up of that area?

6 A Yes.

7 Q And when you say there used to be chains there, are
8 -- where did there used to be chains?

9 A In that whole case. It was full. It was probably
10 about 200 chains.

11 Q So, prior to this person coming in, and coming in at
12 gunpoint, and demanding items, this was full of jewelry, this
13 --

14 A Yes.

15 Q -- this cupboard?

16 MS. HEAP: And for the record, we're referring to
17 State's Exhibit 63.

18 BY MS. HEAP:

19 Q After you heard Adriane and this person around the
20 jewelry cabinet or around that chain area, did you hear them
21 move away from that area?

22 A Yes.

23 Q Okay. Did you hear them -- could you hear where
24 they went?

25 A No.

1 Q At any time, did you hear anyone leave the store?

2 A I didn't hear them leave the store. I just heard
3 the first gunshot.

4 Q So you heard a gunshot?

5 A Yes.

6 Q What were you thinking about when you heard that
7 gunshot? What -- what were you feeling?

8 A Wondering who -- who shot.

9 Q Were you worried for your coworkers?

10 A Yes.

11 Q Were you worried for yourself?

12 A Yes.

13 Q After that first gunshot, what did you do?

14 A I asked the operator, somebody's shooting, and she
15 told me the police was outside.

16 Q Did you hear anything after that first gunshot?

17 A Multiple gunshots after that.

18 Q After that, did you hear anything else when you were
19 in the cabinet?

20 A No.

21 Q Did you eventually get out of that cabinet?

22 A Yes.

23 Q Were you still on the phone with 911 when you exited
24 that cabinet?

25 A Yes.

1 Q Did you stay on the 911 call for several minutes
2 after you got out of the cabinet?

3 A Yes.

4 Q When you got out of the cabinet, did you observe
5 your coworkers?

6 A Yes. I was checking on them, and then I saw Adriane
7 run back in.

8 Q Okay. How did she seem?

9 A Upset.

10 Q What --

11 A Terrified.

12 Q What did she do when she ran back in?

13 A Collapsed on the floor.

14 Q Was she crying?

15 A Yes.

16 Q And you said she was -- she seemed terrified?

17 A Yes.

18 Q What about the other coworkers -- your other
19 coworkers?

20 A They were -- some of them was crying. Everybody was
21 upset.

22 Q Okay. And were there also customers in the store?

23 A It was three customers.

24 Q And what was their demeanor like at that time?

25 A The same thing, upset.

1 Q Ms. Howard, can you push the little trash button on
2 there for me?

3 After Adriane came back in, did -- how long -- I
4 guess, did the police come into the store after Adriane came
5 back in?

6 A Probably a few minutes later, because she opened the
7 -- she locked the door when she came back.

8 Q Did you observe her open the door --

9 A No, I opened it.

10 Q -- or unlock the door? Oh, you unlocked it? Okay.

11 A I unlocked it.

12 Q So do you have to unlock it to let the police in?

13 A Yes.

14 Q After the police came in, were you, and your
15 coworkers, and the other customers taken anywhere?

16 A Next-door to AutoZone.

17 Q Where in AutoZone did you go?

18 A To their back room.

19 Q Did you sit in there with your coworkers and the
20 other customers?

21 A Yes.

22 Q At that time, what was everyone's demeanor like?
23 Were they still upset?

24 A Yes, and scared. Yes.

25 Q And is it fair to say you all experienced a very

1 traumatic event?

2 A Yes.

3 Q Did you share your experiences or try to console
4 each other during that time?

5 A I think we was just trying to console each other.

6 Q Okay. At some point, did the -- did you -- were you
7 asked to give a statement?

8 A Yes.

9 Q And where did you give that statement?

10 A In a car with a detective.

11 Q Okay. And was that statement done around other
12 people?

13 A No.

14 Q It was just you and the detectives, or you and the
15 police?

16 A Yes.

17 Q Okay. When you were -- when you and your coworkers
18 were consoling each other, was that done to influence your
19 testimony in any way or influence what you saw --

20 A No.

21 Q -- or what you heard?

22 A No.

23 Q Anything that was said there, was that done in a
24 manner to, I guess, just take care of each other and share any
25 experience --

1 A Yes.

2 Q -- that you had?

3 A Um-hum.

4 Q Is what you testified to today what -- based off
5 your own memory of that event?

6 A Yes.

7 Q And for the record, again, you were inside a
8 cabinet, right? So most of what happened, you heard and did
9 not see; is that correct?

10 A Yes.

11 MS. HEAP: I'm going to -- permission to publish
12 Admitted Exhibit 12, Your Honor, State's 12?

13 THE COURT: Yes.

14 BY MS. HEAP:

15 Q While that's coming up, you were working there in
16 September. As part of your employment, were you aware that
17 something similar had occurred in August?

18 A Yes.

19 Q And were you there during that August event?

20 A I was supposed to, but I told her I'm going to come
21 in later.

22 Q Okay. But working there, had you, in your
23 employment, talked about what had happened that day? Did you
24 have some information regarding the suspect or the events of
25 August 4th?

1 A Yes.

2 Q Okay. So you had a general idea of what the suspect
3 in that case may have been wearing?

4 A Yes.

5 Q And when this happened in -- on September 3rd, did
6 you recognize any -- any similar facts?

7 A Yes.

8 Q And what specific fact was that?

9 A The attire he had on with the helmet.

10 Q Thank you. Melani, I'm going to -- I'm showing you
11 State's Exhibit 12. Do you recognize yourself in this
12 exhibit?

13 A Yes.

14 Q Okay. And where do you see yourself?

15 MS. HEAP: And for the record, she marked under
16 Camera 7 -- 7, Jewelry 1. She marked herself, which she's
17 facing out towards the -- out from behind the counter on the
18 sort of left-hand side.

19 THE COURT: So, just to make it a little clearer,
20 there are two people on one side of the counter and one person
21 on the closest side of the counter to the camera, and she
22 marked herself as the closest person on the one side of the
23 counter.

24 BY MS. HEAP:

25 Q Do you see yourself in the other frame, Camera 9?

1 A Yes. Um-hum.

2 Q And then, can you just make a mark on there?

3 MS. HEAP: And for the record, she marked -- she
4 marked that she is the furthest person to the right-hand side
5 of Camera Angle 9, Jewelry 3.

6 THE COURT: And, again, she's the only person on one
7 side of the counter, there being two people on the other side,
8 one person with a backpack, and another -- it looks like bald
9 man directly in front of her.

10 MS. HEAP: Thank you, Your Honor. I'm going to play
11 the exhibit now.

12 (Video is played.)

13 BY MS. HEAP:

14 Q And, Melani, what just happened there? Why did you
15 bend down?

16 A He came through the door.

17 Q Okay. Melani, can you hit the garbage link? Yeah.
18 Thank you.

19 So that's right when you saw him; is that correct?

20 A Yes.

21 Q And you said he bust in, and you saw the firearm at
22 that point, too?

23 A Yes.

24 Q And is that where you said you attempted to get into
25 a cabinet, but you couldn't?

1 A Yes, because it was full.

2 THE COURT: And that was at about 30 seconds in.

3 MS. HEAP: Yes, at approximately 13:08:21.

4 BY MS. HEAP:

5 Q So now I'm switching over to Jewelry 3, Camera 9.

6 Is that another angle of how you -- you said you crawled down
7 the cabinet and found an empty one?

8 A Yes.

9 Q And you actually were able to crawl in that cabinet?

10 A Yes.

11 THE COURT: And that's at 13:08:35, which is
12 approximately 45 seconds in.

13 BY MS. HEAP:

14 Q Now, were you able to shut the door of the cabinet?

15 A Not all the way.

16 Q And once you're in there, you call 911; is that
17 correct?

18 A Yes.

19 Q You indicated you could hear people moving
20 throughout the store; is that correct?

21 A Yes.

22 Q I'm going to fast-forward the video just a little
23 bit.

24 MS. HEAP: Court's brief indulgence for me.

25 BY MS. HEAP:

1 Q And you said -- you indicated that at some point,
2 you could hear Adriane and the man come around the jewelry
3 counter, and that -- is this when you're hearing that?

4 A I could hear them close to me, yes.

5 Q Okay, and this is approximately 13:10:42. And you
6 can't see this; you can only hear this, correct?

7 A I could only hear, yes.

8 Q And you indicated that you could hear them at the
9 jewelry section where the chains were?

10 A Yes.

11 Q And for the record, this is 13:11:09. Is this the
12 area where the chains are --

13 A Yes.

14 Q -- where Adriane is right now?

15 A Where Adriane is.

16 Q And this whole time, are you on with 911, or do you
17 hang up?

18 A No, I'm on the phone with them.

19 Q Okay. Do you know if they can hear you or not, they
20 being Adriane and the man in the motorcycle helmet?

21 A I assume they didn't hear me.

22 Q Were you whispering, or were you talking loudly?

23 A Yeah, I was whispering.

24 Q How long do you think you were on the phone with
25 911?

1 A It seemed like forever, but I don't know, maybe
2 five, 10 minutes. I'm not sure.

3 Q Okay.

4 MS. HEAP: Court's brief indulgence. It looks like
5 we got kicked off. Just for the record, we're restarting the
6 video at 13:12:28.

7 THE COURT: Okay, thank you.

8 BY MS. HEAP:

9 Q And then, could you hear when the man in the
10 motorcycle helmet and Adrian moved away from the jewelry
11 counter? Could you hear when they walked away?

12 A No, because I don't remember.

13 Q Okay.

14 MS. HEAP: And for the record, we just
15 fast-forwarded to 1316, 20 seconds.

16 BY MS. HEAP:

17 Q And to confirm, you're still on the phone with 911,
18 correct?

19 A Yes.

20 Q And do you exit the cabinet approximately 13:16:54?

21 A Yes.

22 Q And after you walk off-screen there, where did you
23 go --

24 A To --

25 Q -- when you got out of that cabinet? Sorry.

1 A To the front to check on everybody.

2 Q So you went and met up with everyone?

3 A Yes.

4 Q Now, you indicated you made a 911 call, correct?

5 A Yes.

6 Q Okay.

7 MS. HEAP: And, Your Honor, may --

8 THE COURT: Can we approach?

9 MS. HEAP: Permission to publish State's Proposed
10 Exhibit 8 for the purpose of identification?

11 THE COURT: Can we approach?

12 (Bench conference)

13 THE COURT: I just want to see if we're going to
14 have the same issue.

15 MS. HEAP: I certainly hope not.

16 THE COURT: I just want to preemptively check. I
17 just want to preemptively check and see if we're going to have
18 the same issue with this 911 call. Have you heard this one?

19 MR. TREJO: (Indiscernible).

20 THE COURT: Have you -- I couldn't hear you. Could
21 you --

22 MR. HENRY: (Indiscernible) gave him.

23 MR. TREJO: I haven't heard it.

24 MR. SCHWARTZER: No, he's -- this one, I'm --

25 MS. HEAP: Four years ago.

1 MR. SCHWARTZER: This one, I'm confident we gave
2 four years ago.

3 THE COURT: So --

4 MR. SCHWARTZER: This was in the original discovery.

5 MR. HENRY: Which I believe is true, but I thought
6 he also said he gave him the CAD reports documents.

7 MR. SCHWARTZER: (Indiscernible).

8 MR. HENRY: So that --

9 MS. HEAP: This was with the (indiscernible).

10 MR. HENRY: Yeah, the 911 calls (indiscernible) each
11 line.

12 MR. SCHWARTZER: Yeah.

13 THE COURT: So we've got this one?

14 MR. HENRY: But he had the --

15 MR. TREJO: I haven't heard it.

16 MR. HENRY: But he read it.

17 THE COURT: But he read it? Okay.

18 So, Ximena, can you just come a little closer to
19 make sure it's on? So he has -- he --

20 MR. TREJO: I haven't heard it.

21 THE COURT: -- hasn't heard it, but he has received
22 it, and that one was received four years ago.

23 MR. TREJO: The second one.

24 MR. SCHWARTZER: (Indiscernible) I sent the CAD
25 ones, and then I sent the -- all the 911s again. But the ones

1 for September 3rd, you got in your original discovery.

2 THE COURT: Okay. And you're confident of that, Mr.
3 Henry?

4 MR. HENRY: I'm pretty sure there is, but --

5 THE COURT: Okay.

6 MR. HENRY: -- that they're -- that I received it.

7 THE COURT: Okay.

8 MR. HENRY: But, again, I just don't specifically
9 remember, because I don't remember listening to it, what, four
10 years ago if I did (indiscernible).

11 THE COURT: Okay. So I'm going to let this one in.
12 I just wanted to preemptively check. Okay, thank you.

13 (End of bench conference)

14 THE COURT: So, proceed, Ms. Heap.

15 MS. HEAP: Thank you, Your Honor.

16 BY MS. HEAP:

17 Q And, Melani, I'm going to play a little bit of a
18 call. Would you recognize your voice --

19 A Yes.

20 Q -- if you heard it?

21 (Audio is played.)

22 BY MS. HEAP:

23 Q Melani, do you recognize that voice?

24 A Yes.

25 Q Is that you?

1 A Yes.

2 Q Is that from when you made the 911 call from inside
3 that cabinet?

4 A Yes.

5 Q And you recall listening to this call in our office;
6 is that correct?

7 A Yes.

8 Q And was that a fair and accurate recording of your
9 911 call that day?

10 A Yes.

11 MS. HEAP: The State would move to admit Proposed
12 Exhibit 8.

13 THE COURT: Any objection, Mr. Trejo?

14 MR. TREJO: No objection.

15 THE COURT: And that'll be -- which one was that?
16 8?

17 MS. HEAP: 8, Your Honor.

18 THE COURT: Okay. So Exhibit 8 will be admitted.

19 (State's Exhibit 8 is admitted.)

20 MS. HEAP: And permission -- permission to publish?

21 THE COURT: Yes.

22 MS. HEAP: Thank you.

23 (Audio is played.)

24 BY MS. HEAP:

25 Q Melani, is it fair to say you stayed on the line for

1 a few more minutes after that?

2 A Yes.

3 Q And you stayed on the line until they told you it
4 was okay to hang up?

5 A Yes.

6 Q After that incident, after you got out of the
7 cabinet, and after you hung up with 911, did you see the
8 person who came into the store with a helmet on and his gun
9 out? Did you see him later that day?

10 A Yes.

11 Q Okay. At this time, were you able to see his face?

12 A Yes.

13 Q So was his helmet removed?

14 A Yes.

15 Q Where was he when you saw him?

16 A On the gurney.

17 Q Okay. Was he being loaded into an ambulance if he's
18 on a gurney?

19 A Yes.

20 Q Okay. Was that right outside in the parking lot?

21 A Yes.

22 Q Do you see that person that you saw on the gurney in
23 the courtroom here today?

24 A Yes.

25 Q Can you please point to that person and describe

1 what they're wearing?

2 A The guy in the middle.

3 Q And what color is his shirt?

4 A I can't see it. The monitor's in the way.

5 Q But you said the guy in the middle?

6 MS. HEAP: May the record reflect identification of
7 the defendant?

8 THE COURT: Yes.

9 MS. HEAP: I'll pass the witness.

10 THE COURT: And it being a quarter to 5:00, I think
11 we're probably just going to need to start again in the
12 morning.

13 The calendar has how many things on it tomorrow?
14 Fourteen? Fifteen?

15 THE CLERK: Fifteen.

16 THE COURT: So, 11:00 o'clock?

17 MS. HEAP: May I approach the witness, Your Honor?

18 THE COURT: Yes. Okay, so we'll be back tomorrow at
19 11:00.

20 Ms. Howard, you are excused for now. Please be back
21 tomorrow. Do not discuss your testimony with anyone.

22 Ladies and gentlemen --

23 THE WITNESS: Okay.

24 THE COURT: -- of the jury, during the recess, you
25 are admonished not to talk or converse among yourselves or

1 with anyone else on any subject connected to this trial, or
2 read, watch, or listen to any report of or commentary on the
3 trial of any person connected with this trial, by any medium
4 of information, including, without limitation, newspapers,
5 television, the internet, and radio, or form or express any
6 opinion on any subject connected with this trial until the
7 case is finally submitted to you.

8 See you tomorrow morning. Thank you.

9 (Outside the presence of the jurors)

10 THE COURT: We are outside the presence of the jury
11 and the witness.

12 Is there anything that the State needs to put on the
13 record or Mr. Trejo?

14 MR. SCHWARTZER: Not by the State, Your Honor.

15 THE COURT: Mr. Trejo? Sure.

16 MR. TREJO: Just one.

17 THE COURT: While he's continuing to walk, I'm going
18 to go to the restroom -- continuing to write.

19 (Pause in the proceedings.)

20 THE COURT: Okay. He's still writing. Okay, cool.
21 Okay.

22 MR. TREJO: I was wondering the other day, due to
23 the presumption of innocence and comment a friend made,
24 yesterday, I noticed one of the jurors looked on my wrist --
25 wrist, which had cuff marks. Then, I thought that the two

1 officers here are never addressed. They kind of just flank
2 me.

3 THE COURT: Flank. Flank.

4 MR. TREJO: Flank me. I know two of these jurors
5 have been on jury before -- on a jury before. I feel like the
6 presumption of innocence is kind of shot by now. I just
7 wanted to voice this issue. Not sure if it's important. I
8 just don't want to risk mistrial.

9 THE COURT: Okay. So, as to that, I don't know that
10 a juror would necessarily know what a -- what the marks on
11 your wrists are. Anybody can have marks on their wrists at
12 any time.

13 Also, as to the officers being in court, the jurors
14 literally never know what they are for. Every time I've ever
15 spoken to juries afterwards as an attorney, they always ask if
16 the defendant was in or out, so they never know. I've had
17 clients who've been both in and out when I was a defense
18 attorney, and they -- the jurors never know.

19 As long as you're not walking out, you know, with
20 them, and they understand that we're all still talking here
21 after they leave, and so they always ask, so they never know.
22 Those are not things that I believe have any bearing on your
23 right to be presumed innocent at this point.

24 Anything you'd like to add, Mr. Schwartzer?

25 MR. SCHWARTZER: Yes, Your Honor, and I appreciate

1 that.

2 Number one, Mr. Trejo has chosen to roll up his
3 sleeves multiple times in this trial, so that's his own
4 choosing to do so.

5 But I agree that something like marks on your wrists
6 -- like, I have marks on my wrists, too, all the time from the
7 various sports activities I do. So, like, I don't think that
8 plays into any -- I don't -- that's -- you would have to be
9 really close and really know what you're doing to that -- for
10 that to matter. And every individual who is in jury trial
11 here that's in custody has the same thing.

12 THE COURT: Right.

13 MR. SCHWARTZER: Number two, I think "flank" is an
14 inappropriate word to use when the jury's inside the
15 courtroom. Both officers -- and we've had the same two
16 officers for most of the time -- quite frankly, have been
17 really out of the way. One officer is always by the door,
18 sitting down in the chair. The other one is away from the
19 defense counsel's desk, also sitting down kind of by the
20 marshals.

21 So it's not like they -- I don't want the record to
22 indicate that you have two individuals basically surrounding
23 Mr. Trejo during the jury trial. Both officers are quite a
24 bit a ways from him, and have not intruded in the proceedings
25 at all, and have been quiet and very professional the whole

1 time.

2 THE COURT: That is an absolute fair statement of
3 where they've been sitting and how they've been acting. And,
4 again, because Bill is a marshal and is wearing a uniform
5 that's similar to the COs here, I believe that most jurors
6 think that they are just other officers in the court. And so
7 just because, having been an attorney and having done numerous
8 jury trials, I don't think that's an issue, Mr. Trejo.

9 MR. SCHWARTZER: Thank you, Your Honor.

10 THE COURT: Also, for the record, there were high
11 school students here earlier today, and I came out and talked
12 to them at the lunch break, and they all asked if he was in
13 custody or out as well.

14 MR. HENRY: What did you say?

15 THE COURT: They're high school students. I told
16 them yes because they are not --

17 MR. HENRY: Yeah.

18 THE COURT: -- the members of the jury.

19 MR. HENRY: Understood. I was curious. Maybe, you
20 know, I might be in that position one day.

21 THE COURT: Yeah, I answered all of their questions
22 honestly.

23 MR. TREJO: I don't mean by me, just like on my side
24 of the room. That is also why I kept my sleeves down today.
25 Usually, I roll them up because I overheat.

1 THE COURT: Okay. So just -- we have made a record
2 of it, and I don't think that it's an issue, Mr. Trejo. So
3 there is -- there is an actual court record of it, though.

4 And did you guys give him your witnesses for
5 tomorrow?

6 MS. HEAP: I'm going to do that right now.

7 THE COURT: Okay. Thank you.

8 (Pause in the proceedings.)

9 MS. HEAP: And, Your Honor, just to let you know,
10 obviously, the one witness is coming back at 11:00. We
11 scheduled two more for tomorrow. We thought that that would
12 be enough.

13 THE COURT: Okay.

14 MS. HEAP: Is that okay?

15 THE COURT: Yes. Thank you.

16 MS. HEAP: Thank you.

17 MR. SCHWARTZER: Thank you, Your Honor.

18 THE INTERPRETER: Thank you. Bye.

19 THE COURT: Goodbye.

20 (Court recessed for the day at 4:57 p.m.)

21 * * * * *

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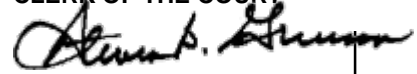
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ATTEST: I hereby certify that I have truly and correctly
transcribed the audio/visual proceedings in the above-entitled
case to the best of my ability.

A handwritten signature in blue ink, reading "Julie Lord", is enclosed in a thin black rectangular box.

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RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,)	CASE NO. C-18-335315-1
)	
Plaintiff,)	DEPT NO. XXIV
vs.)	
)	
MARIO BLADIMIR TREJO,)	
)	
Defendant.)	
_____)	

BEFORE THE HONORABLE ERIKA BALLOU, DISTRICT COURT JUDGE

WEDNESDAY, APRIL 27, 2022

**RECORDER'S TRANSCRIPT OF PROCEEDING:
JURY TRIAL - DAY 8**

APPEARANCES:

FOR THE STATE:	HILARY L. HEAP, ESQ. MICHAEL J. SCHWARTZER, ESQ. Chief Deputy District Attorneys
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FOR THE DEFENDANT:	MARIO BLADIMIR TREJO, Pro Se
--------------------	---------------------------------

ALEXANDER C. HENRY, ESQ.
Standby Counsel

ALSO PRESENT:

Marie Bacquerie
Spanish Interpreter

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1 LAS VEGAS, NEVADA, WEDNESDAY, APRIL 27, 2022

2 (Case called at 11:07 a.m.)

3 (Outside the presence of the jury)

4 THE COURT: So, on the record on the State of Nevada
5 versus Mario Trejo, Case Number C-18-335315-1. Mr. Schwartz
6 and Ms. Heap are present on behalf of the State. Mr. Trejo is
7 present pro se, and he is using the help of the Spanish
8 interpreter, but not for Spanish, obviously, and also, Mr.
9 Henry from the public defender's office is present on his
10 behalf.

11 Is there anything we need to do outside the
12 presence?

13 MR. SCHWARTZER: Not by the State, Your Honor.

14 MR. TREJO: No, Your Honor.

15 THE COURT: Okay. So then -- and is your witness --

16 MS. HEAP: She's here.

17 THE COURT: Okay. So if we can -- Bill, do you want
18 to get Ms. Howard before we --

19 THE MARSHAL: Sure.

20 THE COURT: Then bring in the jury.

21 Thank you, Ms. Howard.

22 (In the presence of the jurors)

23 THE COURT: Will the parties stipulate to the
24 presence of the jury?

25 MS. HEAP: The State does, Your Honor.

1 MR. TREJO: Yes, Your Honor.

2 THE COURT: Thank you. Please be seated.

3 And, Mr. Trejo, you had questions for Ms. Howard?

4 CROSS-EXAMINATION

5 BY MR. TREJO:

6 Q Good morning, Ms. Howard. Let's start at 1:07 p.m.
7 on the day of September 3rd, 2018. Yesterday, you stated you
8 were helping a customer at the time when someone burst in; is
9 that correct?

10 A Yes.

11 Q I recall you also stated you immediately ducked out
12 of instinct?

13 A Yes.

14 Q How long would you say you had the man in the helmet
15 in sight?

16 A What do you mean?

17 Q Approximately how long was the person who burst in
18 your line of sight?

19 A Probably a few seconds.

20 Q Did you see a weapon?

21 A Yes.

22 Q Can you identify any characteristics of the weapon?

23 A No.

24 Q Do you recall giving a recorded statement to
25 detectives on September 3rd, 2018?

1 A Yes.

2 Q Do you recall what you said during your recorded
3 statement you gave on September 3rd, 2018?

4 A Some of it.

5 MS. HEAP: I'm going to object as to vague. Is
6 there something specific in that statement?

7 THE COURT: And, yeah. Mr. Trejo, can you just be
8 more specific?

9 BY MR. TREJO:

10 Q Do you recall if you gave a description of the gun
11 you said you saw on September 3rd, 2018 statement?

12 A No.

13 Q Would you like to see a portion of your statement to
14 refresh your memory, Mrs. Howard?

15 A Yes.

16 THE COURT: What page are you going to --

17 MR. TREJO: Page 4.

18 MS. HEAP: No objection.

19 THE COURT: Okay. And you can approach.

20 Ms. Interpreter, you probably need to go with him.
21 He probably is going to say something up there.

22 THE WITNESS: Okay. Okay, I know it was just black.

23 BY MR. TREJO:

24 Q After looking at your statement, Mrs. Howard, do you
25 recall describing the gun as a, quote, "Glock"?

1 A I mean, I don't recall. I thought I just said a
2 handgun.

3 Q So, when this individual came in, you ducked out of
4 instinct. Did you have time to do anything else other than
5 hide?

6 A No.

7 Q All right. And when you were behind the counter,
8 could you tell approximately where in the store he was at
9 within the first 10 seconds or so?

10 A No.

11 Q Could you make out any words he was saying while you
12 were ducked behind the counter?

13 A All I can hear him say is telling the other people
14 to get down, get over here.

15 Q I recall you stated yesterday you heard him bang
16 something and state, quote, "I'm still watching," end quote.
17 Is that correct, Mrs. Howard?

18 A Yes, I heard that.

19 Q Do you know where he was when this allegedly
20 occurred?

21 A No.

22 Q Do you recall on your recorded statement claiming
23 hearing the individual tell someone, quote, "I don't want the
24 dye pack money," end quote?

25 A Yes.

1 Q Do you know where he said this?

2 A I don't know where he was.

3 Q Do you know to whom he said it?

4 A Adriane.

5 Q So around how long did it take it -- did it take you
6 to get into the cabinet?

7 A I don't know. Ten seconds, something like that. I
8 was crawling backwards.

9 Q Did it become harder to make out words or context
10 once you were in the cabinet?

11 A A little bit.

12 Q So, at any point, did you hear him threaten or make
13 promises to hurt anyone if they resisted?

14 A I didn't hear anything.

15 Q Just to be clear, when you say you didn't hear
16 anything, do you mean you didn't hear any threats?

17 A No.

18 Q So yesterday, when you mentioned you did hear
19 certain phrases from this individual, was he close to you?

20 A I'm not sure, because I was under a cabinet.

21 Q Okay, Mrs. Howard. After the scene was secure, did
22 Metro officers move you and the rest of your group somewhere?

23 A Yes.

24 Q Where to?

25 A AutoZone.

1 Q Around what time were you all moved?

2 A I'm not sure.

3 Q Was it minutes after the incident was over?

4 A No.

5 Q Approximately how long afterwards? Minutes? Hours?

6 A Of what?

7 Q How much time elapsed from the point the events of
8 that day were over until Metro moved yourself and your group
9 to AutoZone?

10 A I couldn't tell you the exact time. I don't know.

11 Q Just an approximate answer is fine, whether it was
12 minutes or hours later.

13 A Maybe 10 minutes. I'm not sure.

14 Q And aside from your group of 10 people that were in
15 the pawn shop, did officers place any other witnesses in the
16 AutoZone?

17 A Yes.

18 Q Do you recall who the additional witnesses were?

19 A A lady and a man.

20 Q Do you know if those two additional witnesses
21 claimed to have seen any events you or your group didn't see?

22 A I don't know.

23 Q What was the general mood in the AutoZone, Mrs.
24 Howard?

25 A Sad.

1 Q Were people venting by talking about their
2 experiences or frustrations?

3 A No.

4 Q Did Adriane Serrano-Borjorquez talk about her
5 experience with your group while at AutoZone?

6 A No.

7 Q Did anyone else talk about their experience?

8 A Not that I can recall.

9 Q Mrs. Howard, did you learn any new details about the
10 alleged events during your time at AutoZone?

11 A No.

12 Q May I show you a picture in order to verify a couple
13 of details?

14 A Yes.

15 MR. TREJO: Permission to publish a stipulated
16 exhibit, please?

17 THE COURT: Which one?

18 MR. TREJO: I'm not sure which one, but --

19 THE COURT: Just --

20 MR. TREJO: -- it's one of the ones labeled A
21 through -- A through J.

22 THE COURT: Okay, sure.

23 Thank you, Mr. Schwartz.

24 MR. TREJO: It's Exhibit D and E.

25 THE COURT: Okay, thank you. And which one is this

1 first, Mr. Trejo?

2 MR. TREJO: Exhibit E.

3 BY MR. TREJO:

4 Q Mrs. Howard, was this your approximate view at
5 around 1:07 p.m. on September 3rd, 2018?

6 A Yes.

7 Q And is that the door the man in the helmet entered
8 through?

9 A Yes.

10 Q You did mention that you only held him in your line
11 of sight for seconds; is that accurate?

12 A Yes.

13 Q In your experience, is the distance from where you
14 were standing to where the door is at is a substantial
15 distance?

16 A No.

17 Q So you read the portion of the transcript I
18 presented to you, correct?

19 A My statement? Yes.

20 Q In it, you describe the alleged gun as a Glock or 9
21 millimeter or something. You also stated that when this man
22 entered the place, you immediately ducked. In that statement,
23 it would appear that you had more -- a more detailed
24 description of the alleged weapon. Ma'am, with all these
25 factors in play, how did you get these details to be able to

1 give them in a recorded statement?

2 A I had enough time to see the gun, that it was a
3 handgun.

4 Q What about the details concerning the make and
5 caliber?

6 A I didn't say.

7 Q It's actually in the recorded statement. You
8 clearly called the weapon a Glock and said it was a 9
9 millimeter, but I'll move on from this subject for now.

10 When you were at the AutoZone, do you recall what
11 time detectives pull you out to begin your recorded statement?

12 A No.

13 Q Would 4:10 p.m. ring true and accurate?

14 A I'm not sure what time it was.

15 Q Do you recall if you spent minutes or hours at
16 AutoZone prior to having your statement recorded?

17 A I'm sure it was hours.

18 MR. TREJO: That will be all, Ms. Howard. Thank
19 you. No further questions.

20 THE COURT: Ms. Heap?

21 MS. HEAP: Thank you. Just a few questions, Your
22 Honor.

23 REDIRECT EXAMINATION

24 BY MS. HEAP:

25 Q Hi, Melani.

1 A Hi.

2 Q When Mr. Trejo was asking you regarding your
3 testimony, you reviewed page 4 of your recorded statement; is
4 that correct?

5 A Yes.

6 Q And do you recall what you just read, or would you
7 like to see it again?

8 A I mean, I don't remember saying it.

9 Q Okay.

10 A But --

11 MS. HEAP: May I approach the witness, Your Honor?

12 THE COURT: Yes.

13 BY MS. HEAP:

14 Q Now, ma'am, is it accurate that rather than making a
15 definitive statement, you tried to describe it as best you
16 could?

17 A Yes.

18 Q And rather than saying, yes, it was a Glock 9
19 millimeter, you indicated that it was a Glock or something, a
20 9 millimeter or something, it was black?

21 A Yes.

22 Q So you were just doing your best to try and
23 remember; is that correct?

24 A Yes.

25 Q Now, on cross-examination, you indicated that you

1 didn't hear any specific threats; is that correct?

2 A Yes.

3 Q But you do recall someone pounding on a counter,
4 saying, get down -- or get -- I'm sorry, pounding on a
5 counter, saying, I'm still watching you?

6 A Yes.

7 Q And you heard statements when this person walked in
8 saying, get down, get over here?

9 A Yes.

10 Q Okay. And you also today remembered after your
11 recollection was refreshed that you heard him making specific
12 demands; is that correct?

13 A Yes.

14 Q Such as, I don't want the dye pack money?

15 A Yes.

16 Q Okay. And when this man walked in, his gun was
17 drawn; is that correct?

18 A Yes.

19 Q Okay. So it wasn't in a holster like he was
20 open-carrying?

21 A No.

22 Q Okay. It was -- when you say it was -- can you show
23 me, I guess, for the record how it was being held? Was it up
24 or in a down position?

25 MS. HEAP: Okay, and for the record, her arm is

1 extended straight out.

2 BY MS. HEAP:

3 Q So you saw the gun when he walked in?

4 A Yes.

5 Q Was that threatening to you?

6 A Yes.

7 Q Were you scared when you saw that gun?

8 A Yes.

9 Q Is that why you hid?

10 A Yes.

11 MS. HEAP: Nothing further.

12 THE COURT: Anything based on that, Mr. Trejo? If
13 it's only a couple questions, you can stay there if you want.

14 RECROSS-EXAMINATION

15 BY MR. TREJO:

16 Q When the person allegedly stated the comment
17 regarding the dye pack money, based on your experience, where
18 would that dye pack money be?

19 A In one of the drawers.

20 Q Would that be by the office?

21 A All the drawers are by the office, yes.

22 Q And at the time you heard this, were you in the
23 cabinet?

24 A I'm not sure.

25 Q At all times during this event, were you behind the

1 jewelry counters farthest from the office, correct?

2 A Yes.

3 Q And you claimed yesterday that you couldn't hear a
4 lot of the context except when the individual was close to
5 you; is that correct?

6 A I mean, I don't know where he was at when I heard
7 stuff.

8 Q According to yesterday's testimony, you only heard
9 him clearly when he entered and was in your vicinity. So then
10 how did you clearly hear something that allegedly happened out
11 of your auditory range?

12 MS. HEAP: Your Honor, I'm going to --

13 MR. SCHWARTZER: Speculation.

14 MS. HEAP: I'm going to object. It misstates the
15 testimony, and it also is speculation.

16 THE COURT: Yeah, that -- I don't think that's -- I
17 think it's speculation. I'm not sure if it misstates the
18 testimony, I don't remember that, but it's for sure
19 speculation. So you need to change that question if you want
20 to ask it at all.

21 MR. TREJO: No further questions, Your Honor.

22 THE COURT: Do the members of the jury have any
23 questions for this witness? No questions.

24 And it is 12:02, so we're going to take our lunch
25 break. Ladies and gentlemen of the jury, during the recess,

1 you are admonished not to talk or converse among yourselves or
2 with anyone else on any subject connected with this trial, or
3 read, or watch, or listen to any report of or commentary on
4 the trial of any person connected with this trial, by any
5 medium of information, including, without limitation,
6 newspapers, television, the internet, and radio, or form or
7 express any opinion on any subject connected with the trial
8 until the case is finally submitted to you.

9 We'll be back at 1:15.

10 Ms. Howard, you are excused. Please do not discuss
11 your testimony with anyone.

12 THE WITNESS: (Indiscernible). Thank you.

13 THE COURT: Ms. Heap, can you do me a favor and
14 bring those over? Thank you.

15 (Outside the presence of the jurors)

16 THE COURT: Anything outside the presence?

17 MR. SCHWARTZER: A couple things, Your Honor --

18 THE COURT: Sure.

19 MR. SCHWARTZER: -- regarding scheduling.

20 THE COURT: Yes.

21 MR. SCHWARTZER: We told Mr. Trejo about a witness
22 that was supposed to come at 1:00 o'clock. That person is
23 sick, so we have replaced him with Officer, Detective now,
24 Maria Fulwiler. Because I'm not sure how long law enforcement
25 cross-examination's going to go, I do have CSA Claire Browning

1 waiting at 3:00 o'clock.

2 If Mr. Trejo doesn't think we'll get through both
3 Fulwiler and Carrigy, I have no problem calling out -- calling
4 off CSA Browning, but that -- I would obviously need more
5 information because I don't -- I obviously don't know the
6 extent of his cross-examination.

7 THE COURT: Okay. Mr. Trejo? Oh. Yeah, no, I'm
8 just wondering if you need to go clear that before we finish.

9 MR. SCHWARTZER: Did you say 1:15, Your Honor?

10 THE COURT: I said 1:15, yes. I remember how hard
11 it was for me to get back to my office to get to food and then
12 be back like in an hour.

13 MR. SCHWARTZER: No, I --

14 THE COURT: So that's why I do an hour and 15
15 minutes.

16 MR. SCHWARTZER: It is awesome to have someone who
17 used to be a trial attorney as a Judge because you're
18 absolutely correct. I mean, sometimes, they'd give me like 45
19 minutes.

20 THE COURT: Yeah, yeah. If we had stuff to talk
21 about, it would only give you like -- sometimes, it would be
22 20.

23 MR. SCHWARTZER: Less, yeah.

24 THE COURT: Yeah. So, no.

25 MR. SCHWARTZER: No, I do really appreciate the

1 Court's schedule because I get hangry as well.

2 THE COURT: Oh, I get so hangry. And I'm just going
3 to the back, so I'm trying to be, you know, good to you guys.
4 And then they've got to take him and get him food, and you
5 guys, and you're not in this building. I think you are,
6 though.

7 MR. SCHWARTZER: Across the street.

8 MS. HEAP: I am now.

9 THE COURT: Yeah, yeah. So, like, getting away from
10 the building is hard.

11 Yes, go ahead.

12 MR. TREJO: Excuse me. I'd like to hear their
13 testimony first. If I cross-examine, it'll be maybe 20
14 minutes a piece.

15 THE COURT: Okay.

16 MR. SCHWARTZER: I'll have CSA Browning ready.

17 THE COURT: Okay, great. Thank you. Anything else
18 outside the presence?

19 MS. HEAP: Not by the State.

20 MR. SCHWARTZER: Not by the State.

21 THE COURT: Mr. Trejo?

22 MR. TREJO: No, Your Honor.

23 THE COURT: Okay, thank you.

24 (Court recessed at 12:05 p.m. until 1:22 p.m.)

25 (Outside the presence of the jurors)

1 MR. TREJO: No, Your Honor.

2 THE COURT: Okay.

3 MR. SCHWARTZER: Court's indulgence. Okay.

4 So the next two witnesses are both officers at the
5 scene. One is in -- one officer's involved in the shooting.
6 The other one is her -- is his partner. They both -- we do
7 intend to -- as stated in our opening, intend to include the
8 body camera from both of those individuals.

9 Body cam -- we've already had a lengthy discussion
10 about this during my opening, but we just want to preempt any
11 type of objection to this. The body cameras were provided
12 almost four years ago while Mr. Trejo had an attorney. It's
13 been in their possession, you know, since that period of time.
14 So we think there should be no, obviously, discovery issues or
15 issues that have come up since the 911 calls.

16 So, in order to avoid a lengthy objection and where
17 we would have to get the jury out while we discuss it, we just
18 want to bring that issue up to you right now, Your Honor.

19 THE COURT: Okay, thank you.

20 Mr. Trejo, anything you'd like to say on that?

21 Bill, are all the jurors out there? Okay.

22 Go ahead.

23 MR. TREJO: I still stand as I did Friday the 22nd.
24 I've made my objections before this Court on record. I have
25 nothing more to add at the moment.

1 MR. SCHWARTZER: Okay.

2 THE COURT: Okay, thank you. So we will proceed,
3 and we can go ahead and get the jury in.

4 (Pause in the proceedings.)

5 (In the presence of the jurors)

6 THE COURT: Will the parties stipulate to the
7 presence of the jury?

8 MS. HEAP: The State does.

9 MR. TREJO: I do, Your Honor.

10 THE COURT: Okay, thank you. Please be seated.
11 State, call your next witness.

12 MS. HEAP: Detective Maria Fulwiler. May I approach
13 the clerk, Your Honor?

14 THE COURT: Yes.

15 THE MARSHAL: We'll have you take those two steps.
16 Stay standing and face the clerk. She's going to swear you
17 in.

18 THE CLERK: Please raise your right hand.

19 MARIA FULWILER, STATE'S WITNESS, SWORN

20 THE CLERK: Can you please state and spell your name
21 for the record?

22 THE WITNESS: Maria Fulwiler. That's Mary, Adam,
23 Robert, Ida, Adam. Fulwiler, it's F as in Frank, Union,
24 Lincoln, William, Ida, Lincoln, Easy, Robert.

25 THE CLERK: Thank you.

1 THE WITNESS: Um-hum.

2 THE COURT: Have a seat.

3 Ms. Heap, please proceed.

4 MS. HEAP: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY MS. HEAP:

7 Q Ma'am, can you tell the ladies and gentlemen of the
8 jury where you're employed?

9 A I'm employed with Las Vegas Metropolitan Police
10 Department as a police officer.

11 Q And what is your current assignment?

12 A Currently, I'm assigned to the special
13 investigations section where I investigate businesses with
14 privileged or regulated business licensing. That's either
15 with the strip clubs, night clubs, liquor licensing, tobacco,
16 various different businesses.

17 Q And what's your specific title?

18 A I'm a detective.

19 Q Okay, Detective, thank you.

20 I want to direct your attention back to 2018. Were
21 you a detective back then?

22 A No, ma'am.

23 Q What was your assignment back then?

24 A At that time, I was a police officer, but I was
25 under ACIO, which is the area command intelligence officer.

1 My assigned role at that time was providing intelligence to
2 the officers working in Spring Valley Area Command. Spring
3 Valley Area Command's located off of Sahara and just west of
4 Durango area.

5 And so, at the time, I was pulling numbers,
6 statistics of what were considered hot spots in the
7 neighborhoods where crime was occurring. Anytime we saw like
8 robberies, patterns, burglaries, we would direct -- deploy our
9 officers in those regions and have them saturate the areas,
10 and hopefully, we would, you know, catch the bad person or,
11 you know, those committing crimes within the community or
12 businesses.

13 Q So, for a normal day when you worked -- I think you
14 called it the ACIO?

15 A Yes, ma'am.

16 Q Did you work out on the streets or just in the
17 office?

18 A Primarily, we worked in the office, but on that
19 particular day, I was assigned to work outside in my patrol
20 uniform because we can do various roles of working in the
21 office, and also wearing our uniform, and going back out, and
22 doing enforcement as officers.

23 Q And you said that particular day. Are you referring
24 to September 3rd of 2018?

25 A Correct.

1 Q Okay. And was that a holiday?

2 A It was Labor Day.

3 Q And you said you were working on -- out in the
4 community or out in the streets that day?

5 A Yes. I was in my assigned patrol uniform with my
6 marked badges -- or my badge, my patches, full uniform, and a
7 black and white Metro police car.

8 And directed patrol activity means when we go out
9 there, and we go into the hotspot areas where crime is
10 occurring within the area. So we're doing person stops, car
11 stops pretty much where violent crime is occurring, and we're
12 trying to reduce crime and capture people that are committing
13 the crimes and take them to jail.

14 Q And were you doing that type of work because it was
15 a holiday that day?

16 A Yes. There tends to be a lot more crime when we
17 have the holiday weekend. So, at that time, they put more
18 officers out there, so that way, we could protect the
19 community.

20 Q And you said you were in a black and white patrol
21 car; is that correct?

22 A A SUV.

23 Q SUV? Oh, okay.

24 A Yes, ma'am.

25 Q Were you working or riding with anyone that day?

1 A I was. I was working with my fellow officer. He
2 was my partner also. He was a area command intelligence
3 officer. We both were doubled up that day, and he was the
4 driver, and I was the passenger.

5 Q Okay.

6 A And --

7 Q So what was his name?

8 A His name is Officer Carrigy. That's Charlie, Adam,
9 Robert, Robert, Ida, George, Yellow.

10 Q Thank you. And how was he dressed that day?

11 A He was also wearing his patrol uniform, identify
12 badge, patches, and duty belt, readily identifiable.

13 MS. HEAP: Permission to publish previously admitted
14 exhibits?

15 THE COURT: Yes.

16 MS. HEAP: Thank you.

17 BY MS. HEAP:

18 Q Ma'am, I'm showing you State's Exhibit 100. Do you
19 recognize this photo?

20 A Yes, ma'am.

21 Q Is this how you were dressed on September 3rd, 2018?

22 A Yes.

23 Q And this is your full uniform; is that correct?

24 A Correct.

25 Q And your partner, Officer Carrigy, would he have

1 worn a similar uniform to this?

2 A Yes.

3 Q Thank you. Now, I want to direct your attention to
4 around 1:00 p.m. that day. Did you respond to a SuperPawn at
5 1150 South Rainbow?

6 A Yes.

7 Q Okay. And why did you respond there?

8 A At that time, we had a tone alert saying there was a
9 Priority 0 call. That means it's a robbery in progress.

10 Q Where were you coming from?

11 A We were coming from, I believe, Sahara and Decatur
12 area.

13 Q So, from Sahara and Decatur, which way is the
14 SuperPawn?

15 A The SuperPawn would have been, traveling from that
16 side, we would go westbound on Sahara towards Rainbow.

17 Q Okay. And you hear this call. Does this come out
18 over a police radio?

19 A Yes. It comes over our marked patrol police radio.

20 Q Okay. Do you assign yourself to that call, or do
21 you get told to go there?

22 A At that time, because we're doing directed patrol
23 activity, we are not assigned to calls. We self-dispatch
24 ourselves. And so, when we heard that tone alert, that's a
25 high priority. It's in progress. My partner, Officer

1 Carrigy, was like, hey, that's really close by, let's respond
2 to it, and that's why we ended up jumping the call.

3 Q Okay. So, as you're on your way, do you get any
4 more information about the call?

5 A Yes. At the time, as we're traveling there, I'm
6 telling Officer Carrigy the address of the SuperPawn. And the
7 dispatcher's coming through, and you can hear her voice that,
8 hey, the person reporting, the employee, she's inside the
9 SuperPawn, and she's under the cabinet whispering, and there's
10 somebody in there with a firearm, and it's -- they're
11 currently getting robbed.

12 Q Did you make it to that SuperPawn?

13 A Yes, we did. We made it to the SuperPawn.

14 Q Okay. Did you pull right up to the SuperPawn, or
15 where did you go?

16 A No. We tactically slowed down because we wanted to
17 make sure -- for our vantage point for us as officers, we want
18 to be the safest as possible, and we parked just one business
19 over from the SuperPawn.

20 And as we exited, that's when we were confronted
21 with the person reporting, who observed -- they observed -- it
22 was a male and female. They were the ones that called, and in
23 the call, saying that they saw the defendant, our suspect,
24 wearing all --

25 Q I'm going to stop you right there.

1 A Sorry.

2 Q I'm going to show you State's Exhibit 40. Do you
3 recognize what's depicted in this photograph?

4 A Yes.

5 Q Okay. And on the left-hand side of the photograph,
6 is that the SuperPawn you responded to?

7 A Yes.

8 Q Okay. And you said you parked kind of near the next
9 building over. Are you referring to the AutoZone in that
10 picture?

11 A Yes.

12 Q Now showing you State's Exhibit 42. Do you
13 recognize this picture?

14 A That is our vehicle where we parked.

15 Q So that's the vehicle you and Officer Carrigy were
16 riding in?

17 A Yes.

18 Q And showing you State's Exhibit 43. Is that another
19 view of your vehicle and where you stopped?

20 A Yes.

21 Q Once you stopped and you got out, you said you
22 talked to a few people; is that correct?

23 A Yeah.

24 Q And --

25 A A male and female.

1 Q A male and female? Okay. And then where did you go
2 from there?

3 A From there, I start updating the radio because they
4 gave us details of what they observed. They were really
5 concerned. They said they saw a male go in in all dark
6 clothing, wearing hand gloves, and he had a firearm, and they
7 saw him go inside the SuperPawn and hadn't seen him exit out.

8 Q Okay. Now, where did Officer Carrigy go?

9 A Officer Carrigy went up to the pony wall just north,
10 just behind that SUV.

11 Q Showing you State's Exhibit 40. Do you see the area
12 --

13 A Yes.

14 Q -- in that photograph?

15 A Yes.

16 Q And approximately where? And you can actually --

17 MS. HEAP: May I approach the witness, Your Honor?

18 THE COURT: Yes.

19 MS. HEAP: You can actually make a mark where you're
20 referring to. Thank you.

21 And for the record, Detective marked the area just
22 under what appears to be a blue umbrella in front of a red
23 wall.

24 THE COURT: And it's to the right side of the marked
25 patrol SUV.

1 MS. HEAP: Thank you, Your Honor.

2 THE COURT: Yes.

3 BY MS. HEAP:

4 Q And can you actually hit that little arrow next, and
5 that will clear it?

6 A Little arrow.

7 Q Perfect. Now, as he went to the pony wall, and you
8 are with the two people you described, do you hear any other
9 officers arriving?

10 A I could hear sirens coming.

11 Q Do you hear anybody giving commands?

12 A At that time, we hear on the radio, I believe, Tom
13 or Officer Carrigy and dispatch came through saying that a
14 female had approached the door of the business and made a
15 weird face, something wasn't usual, she didn't feel
16 comfortable and had walked away from the door. So that was
17 alarming when we heard -- when I heard that broadcasted as
18 well. And --

19 Q Did you eventually make your way over to where
20 Officer Carrigy had gone?

21 A I do. It's once -- as I'm talking to the person
22 reporting, the two -- the male and female who observed the
23 suspect inside, as I'm giving the details over the radio, at
24 that time, I'm describing he's wearing a motorcycle helmet,
25 and he's dressed in all black and gloves. And at that time,

1 that came to mind that there was a similar series going on
2 within the Valley with people committing robberies that were
3 wearing motorcycle helmet.

4 As I'm broadcasting this stuff over the radio, the
5 two people that I was speaking to, citizens, they said, he's
6 coming out. I look over to my -- at that time was the left,
7 which would be north of me, and Tom is broadcasting we have a
8 hostage barricade.

9 At this time, as I see our defendant, he is
10 sidestepping. He has a hostage in his hand. He has his left
11 hand wrapped around her neck as he has a firearm to the right
12 side of her, and she's not cooperative at all, not a willing
13 participant. And he's sidestepping to the south where there's
14 two vehicles parked in the parking lot.

15 Q Okay. I'm going to back up a little bit.

16 As your -- as part of your job at the ACIO, you get
17 information --

18 A Yes.

19 Q -- from what's going on in the Valley; is that
20 correct?

21 A Yes, ma'am.

22 Q And when you got to this specific call and you heard
23 the detail of the motorcycle helmet, did that spark a memory
24 that you had learned that there was an attempted robbery at
25 this exact SuperPawn approximately a month prior that involved

1 a motorcycle helmet?

2 A Yes.

3 Q Okay. And is that why you made that statement?

4 A Yes.

5 Q Okay. So now you've kind of gone all the way to the
6 wall at this point. Did you get to the wall in time to see
7 that hostage come out?

8 A With the suspect?

9 Q Correct.

10 A Yes.

11 Q Okay. And you said she wasn't a willing
12 participant?

13 A No, she was not.

14 Q Okay. Did you see -- can you describe how he was
15 dressed?

16 A He was wearing a dark motorcycle helmet, dark -- all
17 dark clothing, looked like mechanic or motorcycle gloves. He
18 had a firearm with a strap on. And then he had a utility belt
19 that had, like, magazines, couple magazines, and it looked
20 like another firearm holder. And then he had, like, sharp
21 objects, looked like for burglary tools, a hammer, a pickaxe,
22 several other dangerous tools that could be used in a violent
23 manner.

24 Q So, when you head that way, what do you do?

25 A So I'm heading that way. I'm trying to get to the

1 pony wall, and other officers are arriving on scene. At this
2 time, Officer Carrigy and my fellow officers are giving verbal
3 command to the suspect, telling him to drop their weapon, let
4 go of the person. Several times, they're given him verbal
5 command, and he's disobeying. At this time, I hear a round
6 being fired from the defendant -- coming from the defendant
7 side, and --

8 Q Let me stop you right there.

9 A Sorry.

10 Q So you hear a round being fired. Do you mean you
11 hear a gunshot?

12 A Yes, ma'am.

13 Q And where do you think that gunshot's coming from?

14 A I'm hearing it from the suspect or defendant.

15 Q And do you believe that's coming towards officers?

16 A Yes.

17 Q Okay. At this point, are you in fear for your
18 safety?

19 A Yes. I ended up trying to get cover from the wall,
20 and I end up slipping because, as that round pops off, for me,
21 it kind of caught me off-guard, and I fell. And I instantly
22 get back up, and I hear other two rounds going off.

23 Q When you say you went to a wall where you fell down,
24 do you see the wall in that photograph?

25 A Yes, it's the same pony wall that Officer Carrigy

1 was at.

2 Q Okay. So the red wall that you marked --

3 A Yes.

4 Q -- previously?

5 MS. HEAP: And that's, for the record, State's
6 Exhibit 40. Okay.

7 BY MS. HEAP:

8 Q Once you heard that first shot go off, and it kind
9 of startled you, when you got back up, what did you see?

10 A At that time, I see that our victim, she's no longer
11 -- she's gone. And I assumed at that time that she had ran
12 northbound, and she had escaped from the -- our suspect. The
13 suspect was down, and he still had the firearm close to him
14 and the utility belt. Officers are now up on the farthest
15 vehicle and giving verbal commands to the suspect not to touch
16 the firearm that's close to him and were issuing verbal
17 commands to him.

18 Q When you were able to see what was going on, did you
19 see how many firearms there were at that time?

20 A At that time, I thought there was at least two that
21 I knew of.

22 Q Okay. And was the suspect following these commands?

23 A No, he was not. It was -- he was going back and
24 forth.

25 Q Before that, did any additional gunshots occur?

1 A The officers'.

2 Q Okay. When did the officers' gunshots occur?

3 A It was right after that first initial round went
4 off, and then it was like simultaneously, I heard two or
5 three.

6 Q Okay. And then, after the gunshots, officers are
7 giving commands --

8 A Yes, ma'am.

9 Q -- is that fair to say? Do you approach the scene
10 closer?

11 A Yes.

12 Q And what do you do when you approach the area?

13 A I end up getting cover by the dumpster area, and
14 then I eventually move up to the next vehicle that's in front
15 of the dumpster, and then I end up moving to the last vehicle
16 with my fellow officers.

17 Q During this time, is the suspect, who's on the
18 ground now, following -- or being cooperative or following
19 commands?

20 A No, he's not.

21 Q Okay. Do you attempt to give commands?

22 A Yes.

23 Q Do you give commands in English?

24 A Yes.

25 Q Do you also give commands in Spanish?

1 A Yes.

2 Q Okay, and why do you do that?

3 A At that time, I thought maybe he wasn't
4 understanding English, maybe he spoke another language, and I
5 was trying to give him other options to comply with our
6 commands.

7 Q As officers are giving commands, is this suspect
8 moving around on the ground?

9 A Yes, he's constantly moving towards the firearm.

10 Q Okay. Does he eventually start taking off items
11 that he's wearing?

12 A Yes, he does.

13 Q And does he take that helmet off?

14 A Yes.

15 Q Okay. And at some point, does he move away from one
16 of the firearms?

17 A Yes, he does.

18 Q Does he have any weapons, from what you could tell,
19 still on him?

20 A Possibly he still had some weapons on him. It's
21 unknown.

22 Q Okay. And you mentioned earlier that you thought he
23 had some -- a sharp object on him?

24 A Yes.

25 Q Could you see that sharp object at that point?

1 A Yes, he still had stuff on him.

2 Q Okay. Did you continue to try to give commands?

3 A I gave commands for several -- it felt like minutes,
4 over in English and Spanish. And I was hoping -- sometimes he
5 would listen; the other times, he wouldn't.

6 Q Did you indicate to him that you wanted to get
7 medical treatment for him?

8 A I did. I asked him -- we wanted to help him, render
9 aid, you know, because he was -- had sustained an injury. So
10 we want to get medical there as fast as possible, but we also
11 have to be safe.

12 Q Okay. Now, when he wasn't -- when he didn't comply
13 with officers and all of these commands, was there another
14 tactic that was used to get him to comply?

15 A Yes. We developed an arrest team, and we got K-9 to
16 come out and assist us to take him into custody.

17 Q And eventually, is that suspect taken into custody?

18 A He is.

19 Q Okay. And do you have an opportunity to try to
20 assist in that arrest team?

21 A Once the arrest team went up to the suspect and took
22 him into custody, I then went up and rendered medical aid.
23 And then I had my gloves on and everything like that, trying
24 to see where he had sustained his injuries and to get medical
25 there as soon as possible, and I asked who his name was just

1 to kind of keep him calm.

2 Q So you asked his name?

3 A Yes.

4 Q Did he tell you his name eventually?

5 A He did. He said Mario Trejo.

6 Q Okay. And that person that you rendered aid to that
7 day on September 3rd, do you see that person in the courtroom
8 today?

9 A I do.

10 Q Can you please point to that person and describe
11 something they're wearing?

12 A I can't --

13 Q Maybe the location?

14 A All black top, button-up blouse, and gray pants.

15 MS. HEAP: For the record, will the record reflect
16 identification of the defendant?

17 THE COURT: Yes.

18 MS. HEAP: Thank you.

19 BY MS. HEAP:

20 Q After the incident, did the CSAs take additional --
21 or take photographs?

22 A Yes.

23 Q Was some of those photographs done as perspective
24 shots?

25 A Yes.

1 Q Okay. And what is a perspective shot?

2 A At that time at the scene, how the scene was left,
3 what we were observing at that time from that -- where we
4 arrived, what our meet point would have been.

5 Q So they want to take photographs of where you were
6 standing and how -- the areas where you would have been
7 observing the scene; is that correct?

8 A Yes.

9 Q Okay. And how do they take the photographs? Do you
10 tell them where you were?

11 A We do.

12 Q Okay. And do you walk with them and show them where
13 you were?

14 A We do a complete walk-through of every spot --
15 location we were at.

16 Q And do they make marks?

17 A They do leave markings on the ground.

18 Q And showing you State's Exhibit 116. Is this one of
19 the perspective shots that was taken from your vantage point?

20 A Yes.

21 Q Now, you talked about a utility belt that the
22 suspect had on him. Showing you State's Exhibit, I believe,
23 35. Do you recognize what's in this photograph?

24 A Yes, I do.

25 Q And is that the belt the suspect was wearing that

1 day?

2 A That's the belt he was wearing that day.

3 Q Okay. And you indicated you weren't sure if there
4 were additional weapons on that belt; is that correct?

5 A Yes.

6 Q And is it because you were observing these items?

7 A Yes.

8 Q Do you know what these items are?

9 A There's three magazine pouches, the left is a
10 holster, and then to the right looks like a holder or strap.
11 I can't see what that one on the right is.

12 Q Okay, thank you. And at the time he exited the
13 building, when you first observed him, he was actually wearing
14 this; is that correct?

15 A Correct.

16 Q And eventually, he took that off; is that correct?

17 A Yes.

18 Q Now, Detective, were you wearing a body-worn camera
19 that day?

20 A I was.

21 Q Did you have an opportunity to review that body-worn
22 camera or recording?

23 A Yes.

24 Q Was that recording a fair and accurate copy of your
25 camera recording that day?

1 A Yes.

2 MS. HEAP: The State would move to admit Proposed
3 Exhibit 141.

4 THE COURT: Mr. Trejo, understanding I know your
5 objection, anything to add to it?

6 MR. TREJO: Not at the moment.

7 THE COURT: Okay. That's going to be admitted over
8 objection.

9 (State's Exhibit 141 is admitted.)

10 MS. HEAP: Thank you. And permission to publish
11 Exhibit 141?

12 THE COURT: And you said it's 141?

13 MS. HEAP: Correct.

14 THE COURT: Thank you. Yes. Sorry, I'm just trying
15 to keep track of these.

16 (Video is played.)

17 BY MS. HEAP:

18 Q And, ma'am, is it common for the body-worn cameras,
19 the first 30 seconds, there not to be sound?

20 A Correct.

21 Q And how does the body camera work? How do you turn
22 it on?

23 A You have to manually hit it to activate it when
24 you're en route to a call.

25 Q You have to manually hit it to activate it?

1 A Yes.

2 Q Okay.

3 (Video is played.)

4 MS. HEAP: Pause it for just a second.

5 BY MS. HEAP:

6 Q Ma'am, did you hear your voice on the recording?

7 A Yes.

8 Q Okay. And that's your body-worn camera?

9 A Correct.

10 Q And whose hands do we see on the driver -- on the
11 steering wheel?

12 A That is Officer Carrigy's.

13 Q Okay, thank you.

14 (Video is played.)

15 MR. SCHWARTZER: Is there something going on with
16 the system that keeps kicking me off? Okay.

17 MS. HEAP: And, Your Honor, just for the record, the
18 video paused itself at --

19 THE COURT: 4:04.

20 MS. HEAP: -- 4 -- yeah, 4:04:04. 4:04.

21 (Video is played.)

22 THE COURT: And before you start, Ms. Heap, for the
23 record, the video was restarted at three minutes and 59
24 seconds because it cut off at four minutes and four seconds.

25 MS. HEAP: Thank you, Your Honor.

1 THE COURT: Okay.

2 BY MS. HEAP:

3 Q Detective, when we watched the video, towards the
4 beginning when you approach the scene, you're giving several
5 commands; is that correct?

6 A Yes.

7 Q Are some of the commands that you're giving directed
8 at some of the officers there?

9 A Yes.

10 Q So when you made statements or commands such as,
11 "Get back," or, "Wait for the shield," who were those
12 statements directed to?

13 A To the officers.

14 Q And why were you making those commands?

15 A The air unit was saying that the gun was still
16 underneath him. And sometimes we get tunnel vision as
17 officers, and sometimes we want to just approach and take the
18 person into custody. And for safety reasons, I just wanted
19 them to stay back because you start seeing them inching
20 closer, and just reminding them, hey, slow it down, we got
21 time, so.

22 Q And what's the shield? You said, "Wait for the
23 shield."

24 A That's another tactical SWAT uses. It's a
25 protective shield. I don't know how to describe it. It's

1 like a metal guard, and the first officer will hold it. In
2 case he has another weapon, we have some type of defense
3 mechanism in front, and it's to protect everybody that's in
4 that line stacked up. So we're just making sure we're going
5 to make it in a safe manner to take him into custody.

6 Q Okay. And then there were also several commands
7 given to the suspect; is that correct?

8 A Several commands. He had multiple opportunities to
9 comply.

10 Q Okay. And sometimes you would say, "Don't get up,"
11 or, "Lay flat on your stomach." Was he, from your vantage
12 point when you were giving those commands, moving towards a
13 weapon?

14 A Yes. He would be rolling, and then, at some point,
15 he sat up, and then he'd go back onto his stomach, so was
16 constantly moving everywhere, and there was no control of him.
17 I didn't know if he understands English or Spanish, though.
18 At one point, he's just flopping on his stomach, on his side,
19 and sitting back up.

20 Q And that was in the direction of where those weapons
21 would have been?

22 A Yes.

23 Q And you wanted him to roll towards the wall?

24 A I wanted him to roll away from them.

25 MS. HEAP: Your Honor, I'll pass the witness. Thank

1 you.

2 THE COURT: Mr. Trejo?

3 MR. TREJO: I will cross-exam. Can I have
4 five-minute break prior, please?

5 THE COURT: Absolutely.

6 Ladies and gentlemen, during the recess, you're
7 admonished not to talk or converse among yourselves or with
8 anyone else on any subject connected to this trial, or read,
9 or watch, or listen to any report of or commentary on the
10 trial of any person connected with this trial, by any medium
11 of information, including, without limitation, newspapers,
12 television, the internet, and radio, or form or express any
13 opinion on any subject connected with the trial until the case
14 is finally submitted to you.

15 It is 2:15. We'll come back at 2:20.

16 Detective, if you'd not talk to anybody related to
17 this case on anything related to this case, and just wait in
18 that vestibule unless you need to use the restroom.

19 THE WITNESS: I'm okay. I'll wait.

20 THE COURT: Okay.

21 THE WITNESS: Thank you, ma'am.

22 THE COURT: Thank you.

23 (Outside the presence of the jurors)

24 THE COURT: Jury's out. Did we have anything
25 outside the presence?

1 MS. HEAP: Not from the State.

2 MR. TREJO: I just wanted a few minutes to prepare a
3 few questions and use the bathroom.

4 THE COURT: Okay, go ahead.

5 MR. SCHWARTZER: Thank you, Your Honor.

6 MS. HEAP: Thank you.

7 (Court recessed at 2:14 p.m. until 2:28 p.m.)

8 (Outside the presence of the jurors)

9 THE COURT: Do we have anything we need to do
10 outside the presence?

11 MS. HEAP: Not by the State.

12 THE COURT: Are you ready, Mr. Trejo? Yeah, that's
13 fine.

14 (Pause in the proceedings.)

15 MR. TREJO: Your Honor, I'm ready.

16 THE COURT: Okay.

17 (In the presence of the jurors)

18 THE COURT: Will the parties stipulate to the
19 presence of the jury?

20 MS. HEAP: Yes, Your Honor.

21 MR. TREJO: The defense does.

22 THE COURT: Thank you. Please be seated.

23 Mr. Trejo, you may proceed.

24 CROSS-EXAMINATION

25 BY MR. TREJO:

1 Q Hi, Detective Fulwiler. Thank you for coming.

2 Let's begin with the two witnesses you made contact
3 with. Did they tell you they saw this man in a -- in the
4 helmet go into business -- go into the business?

5 A Yes, they saw him inside.

6 Q And you stayed back, speaking with the two
7 witnesses, right?

8 A The two witnesses, the male and the female, yes.

9 Q When did you begin to actually approach the business
10 at 1150 South Rainbow Boulevard?

11 A What exactly is he asking? I don't know the time,
12 or I have to look at the timestamp on the BWC.

13 Q Did something prompt you at one point in this event
14 on September 3rd, 2018, to begin approaching the business at
15 1150 South Rainbow Boulevard while you were making contact
16 with two witnesses?

17 A What specifically are you asking on the BW -- on my
18 body-worn camera? Can you re-clarify? Do you want to play a
19 video or -- I'm not understanding.

20 Q At one point in the video you just viewed, you were
21 talking to two witnesses. This is prior to you actually
22 approaching the business at 1150 South Rainbow. What prompted
23 you to begin approaching the pony wall Thomas -- the pony wall
24 Thomas Carrigy was at?

25 A I came because I saw -- at that time, the two

1 persons reporting, the witnesses, they said, he's coming out.

2 And that's when you're coming out with the
3 motorcycle helmet, and dark clothing, and gloves, and have a
4 hostage, the female victim, the employee from the SuperPawn.
5 That's why I am prompted to go that direction.

6 Q That actually isn't shown on the video. Did you
7 have visual contact with the front door from your position on
8 the street?

9 A Can you re-read that for me?

10 Q That actually isn't shown on the video. Did you
11 have visual contact with the front door from your position on
12 the street?

13 A You were coming out. You sidestepped into the
14 parking lot, holding the victim with your left arm, and I got
15 your visual.

16 Also, the air unit body-worn camera depicts what I
17 was also observing from my angle, which you don't see on my
18 body-worn camera. You have a better viewpoint of it from the
19 air unit, what I was seeing, but I'm shorter. My body camera
20 hits at a different angle, so you don't capture exactly where
21 my eyes are at. My body camera is looking at a different
22 viewpoint, so you're not seeing what I'm seeing exactly, so.

23 Q That's not the question, ma'am. Did you actually
24 have visual contact with the front door? From my
25 understanding, there is a wall, which your partner is at.

1 Based on your position in front of the neighboring business,
2 could you actually see the front door?

3 A From that angle, no, just off the walkway in the
4 vicinity of the business.

5 Q When you heard the gunshot, where were you,
6 Detective?

7 A I was running up towards the pony wall when I heard
8 that first round come from the defendant's side. So I was on
9 -- I was on the movement.

10 Q Okay. So, at that point, was your view still
11 obstructed because of the wall?

12 A Yeah, well, as I was running, I saw you with the
13 hostage that was uncooperative. You were sidestepping, going
14 towards the car. I was running on a angle. And when that
15 first round popped off, that's when I was ducking for cover, I
16 fell, all happened. It happened in a split-second. It's
17 different depiction on BWC. It just gives you --

18 Q How tall are you, Detective?

19 A I'm 5'1.

20 Q So, in the video, I noticed that you were moving
21 within the bounds of the sidewalk where there's gravel or some
22 dirt path. Is that where you claim to have slipped?

23 A Where the gravel was.

24 Q Okay. And would that be in between the sidewalk and
25 the blacktop of the AutoZone's parking lot?

1 A No, it's by the pony wall in front of the SuperPawn,
2 to the right on the photo that was depicted earlier.

3 Q So that pony wall is tall enough to conceal your
4 partner, being that he used --

5 THE INTERPRETER: Apologize. I'm going to re-read
6 it again.

7 BY MR. TREJO:

8 Q So that pony wall is tall enough to conceal your
9 partner, being that he is using it as a -- as cover, right?
10 Correct?

11 A He used it as cover, ducking up and down so he
12 wouldn't give away his placement of concealment. So we use
13 the wall as a concealment and cover, so there's a difference.

14 Q So, if you were approaching the wall that is between
15 yourself and the front door of the SuperPawn because you had
16 to make your way from the two witnesses to the pony wall, and
17 you didn't make it to said wall because a shot was fired and
18 you slipped, then wouldn't that mean that by the end -- by the
19 time you were able to clear that wall, the defendant was
20 already down on the ground?

21 A You're already down on the ground.

22 Q So then you didn't clear the wall till the suspect
23 was down, correct?

24 A I'm not really understanding what you're trying to
25 ask.

1 Q The pony wall, on the video, it shows you didn't get
2 past it in time to view the suspect get to the parking lot.
3 It's a simple question. Were you able to clear the wall
4 before the suspect was shot?

5 A Clear the wall?

6 Q As in getting past it, Detective. As in get past
7 it, Detective.

8 A Run past the wall? It's not very clear what you're
9 asking me.

10 Q As in getting past the wall in time to view the
11 suspect get shot.

12 A Did I view the suspect? As I was approaching,
13 running up, I did see you with the hostage. As I -- the first
14 shot rang out, and then I fell. And at that point, I lost the
15 visual for a second, and I came right back up, and I went to
16 the dumpster.

17 Q I don't know if I'm not being clear. There was a
18 wall that is tall enough to block your view prior to getting
19 past it. Would you like to replay the video to refresh your
20 memory, Detective?

21 A Play the video.

22 MR. TREJO: Permission to play the video up until
23 the Detective Fulwiler enters the parking lot, 1150 South
24 Rainbow Boulevard?

25 THE COURT: Sure.

1 MS. HEAP: No objection.

2 THE COURT: Okay. Do you guys need to --

3 MS. HEAP: May I approach, Your Honor?

4 THE COURT: Yes.

5 MR. SCHWARTZER: Do you want me to fast-forward to
6 any spot, Mr. Trejo?

7 MR. TREJO: When she makes contact with the two
8 witnesses.

9 MR. SCHWARTZER: Will do. Is this okay?

10 MR. TREJO: Yes.

11 MR. SCHWARTZER: Okay.

12 THE COURT: And for the record, I'll just put on, as
13 soon as you start it, where it --

14 (Video is played.)

15 THE COURT: So that is at two minutes and 34 seconds
16 into the video.

17 MR. SCHWARTZER: Exhibit 141.

18 THE COURT: Exhibit -- which one?

19 MS. HEAP: 141.

20 THE COURT: 141. Thank you.

21 (Video is played.)

22 THE COURT: And for the record, we're stopping it at
23 four minutes and 26 seconds.

24 BY MR. TREJO:

25 Q So, as you saw, ma'am, that front entrance is at

1 least for the most part obscured as it blocks your view.

2 There was palm trees and the wall. It also appears that you
3 might have been in a crouching run. Is that fair and
4 accurate?

5 A What was the last part of that sentence? It didn't
6 make sense.

7 Q It also appears that you might have been in a
8 crouching run. Is that fair and accurate?

9 A A crouching run?

10 Q As in running while partially ducking in order to
11 make yourself a smaller target.

12 A When that first round that came from your side, yes.

13 Q And at that point, you had made -- made it past the
14 wall -- and at that point, you hadn't made it past the wall?

15 A No.

16 Q So did you have a clear and unobstructed view of the
17 suspect and alleged hostage?

18 A Yes, I did. As I was running, when the -- both
19 witnesses said, he's coming out, you were sidestepping with
20 the victim, the employee, out. And you had your hand wrapped
21 -- left arm wrapped around her neck, and you had a firearm
22 pointed at her, and I had my gun up.

23 And because I'm -- even though I'm 5'1, I wear
24 boots, combat boots that give me two to three inches of
25 height, so that changes my level of heightness as well. So,

1 because I was further away, I had a different angle, and I
2 could see over the pony wall and saw you coming out with the
3 hostage that was unwilling to be with you.

4 Q So that pony wall did nothing to obscure your view?

5 A I saw you. I knew I couldn't take the shot. You
6 had a helmet on. I saw you with the hostage. As I was
7 running up, that first round popped off that was coming from
8 your side. I was in fear for my life at that point when that
9 round came from his direction. And that's when I ducked, and
10 then the other two rounds from the officers, and then our
11 victim was able to escape out of his hands.

12 Q Ma'am, you're going past the question. I'm simply
13 asking if that wall didn't obscure your view. You made the
14 statement that the alleged hostage had a hand around her
15 throat -- a hand -- hostage had a hand around her throat, but
16 as the video shows, you are obscured by wall and a good
17 distance away. The video does not support that you were able
18 to fully see this.

19 MS. HEAP: Your Honor, I'm going to object at this
20 point. First off, it's asked and answered, and secondly, he
21 appears to be testifying. But the witness has testified
22 multiple times that she could see over or past that pony wall
23 at that time.

24 THE COURT: And, Mr. Trejo, any response to that?
25 Because I'm inclined to sustain it.

1 MR. TREJO: No response, Your Honor. Moving on.

2 THE COURT: Okay, sustained. Please move on.

3 MR. SCHWARTZER: Your Honor, I'm sorry. Can we
4 approach?

5 THE COURT: Sure.

6 MR. SCHWARTZER: It has nothing to do with this
7 question.

8 (Bench conference)

9 MR. SCHWARTZER: Again, because we didn't know how
10 long the cross-examination was going to go, and now it's gone
11 obviously longer than 20 minutes, can I excuse the crime scene
12 analyst that's been sitting out there since 2:30? I have
13 another witness after this one.

14 THE COURT: Yeah, the one that -- you had one more
15 -- yeah.

16 MR. SCHWARTZER: Yeah.

17 THE COURT: Absolutely.

18 MR. SCHWARTZER: Okay. I just -- because I said I
19 was going to have her here, I just wanted permission.

20 THE COURT: Yeah.

21 MR. SCHWARTZER: Okay.

22 MR. HENRY: He said he has about five or six
23 questions left.

24 THE COURT: Right, but he has another witness.
25 There are two of them waiting.

1 MR. HENRY: Oh, there's two?

2 THE COURT: Yeah.

3 MR. SCHWARTZER: Waiting.

4 MR. HENRY: Oh, okay. (Indiscernible).

5 MR. SCHWARTZER: Okay.

6 THE COURT: Yeah.

7 MR. SCHWARTZER: We're good?

8 THE COURT: Yeah.

9 MR. SCHWARTZER: Thank you, Your Honor.

10 (End of bench conference)

11 BY MR. TREJO:

12 Q How about when you said that she was unwilling? Is
13 that an assumption?

14 A You had a gun to her head. She was not a willing
15 participant. You're in -- she -- employee called, whispering
16 that there was a robbery in progress. You took an employee
17 out of a store without her will or wanting her to go with you
18 willingly with the firearm pointing at her head. I don't
19 think that's a willing participant.

20 Q Detective Fulwiler, are you experienced in dealing
21 with witnesses of crimes?

22 A Yes.

23 Q How about eyewitness testimony?

24 A Eyewitness testimony? Yes.

25 Q Is there a reason why it's not a good -- it's not

1 good to allow a witness to receive information prior to giving
2 a statement?

3 A I'm not sure what you're asking.

4 Q Why don't detectives give witnesses information
5 prior to collecting statements?

6 A At that time, I wasn't a detective, so I'm unsure of
7 how you -- what you're asking me. If you can clarify.

8 Q I'm just asking based on your experience.

9 A What was the question?

10 Q Why don't detectives give witness -- witnesses
11 information prior to collecting statements?

12 A Say it again. I'm sorry.

13 Q Why don't detectives give witnesses information
14 prior to collecting statements?

15 A Why don't detectives give information prior to --
16 prior to --

17 Q Collecting statements.

18 A Collecting statements? I can interpret that many
19 different ways. So there's verbal statements, there's written
20 statements, there's -- I'm not sure exactly what he's asking.

21 Q Eyewitness testimony in general, ma'am. Why are
22 witnesses not given information prior to recorded interviews,
23 for example, being -- for example, being collected?

24 A Are you referring to the two people -- the two
25 witnesses I spoke to?

1 Q No, ma'am. This question has more to do with your
2 personal recollection of events.

3 A What's your question?

4 Q Eyewitness testimony in general, ma'am. Why are
5 witnesses not given information prior to recorded interviews,
6 for example, being collected?

7 A The question's not very clear. There's -- you can
8 rephrase it or ask in a different manner.

9 Q In your personal experience, would giving a witness
10 info prior to giving a statement or testimony contaminate a
11 person's memory?

12 A So, witnesses, we ask them what they observe.
13 They'll either give us the verbal statement, and then they
14 write it on a written document. We don't ever -- they provide
15 us all the details.

16 Q Well, I'm just asking all this based on the video
17 and what you testified to. It seems like you're speculating
18 on what occurred outside of your view, being that the factors
19 in place -- being that there -- being that there are factors
20 in place that don't support what you're claiming.

21 MS. HEAP: Your Honor, I'm going to object at this
22 point. It's argument.

23 THE COURT: Mr. Trejo, don't continue with the
24 question, because it does seem argumentative. It seems like
25 you're testifying. So can you respond to that?

1 MR. TREJO: I'll withdraw.

2 THE COURT: Okay, thank you.

3 THE INTERPRETER: Your Honor, may we
4 (indiscernible)?

5 THE COURT: If you're withdrawing it, then don't
6 read it, no. It's a different question?

7 MR. TREJO: It's nothing to do with the question.

8 THE COURT: Okay.

9 MR. TREJO: But that'll be it for my question,
10 Detective Fulwiler. Thank you.

11 THE COURT: Okay. Ms. Heap, anything based on --

12 MS. HEAP: No, Your Honor.

13 THE COURT: Okay. Any questions from the jury for
14 this witness? There are some, so we'll just wait a second.
15 If the parties can approach.

16 (Bench conference)

17 THE COURT: The first question is, "In the video
18 captured on your body cam, you referred to a 407 series. Will
19 you explain what that is?" I'm not going to ask that.

20 MR. SCHWARTZER: (Indiscernible).

21 THE COURT: That's the robbery series.

22 Number 2, "You appeared to struggle with some
23 emotions when asked to identify the alleged suspect. Will you
24 share with us why?" I'm not going to ask that one.

25 3A, it says, "Have you been involved in other

1 officer-related shootings?" That's not relevant.

2 3B, "If so, was there anything unique about this
3 situation, or was it fairly standard?" I'm not going to ask
4 any of these questions.

5 MS. HEAP: Okay.

6 MR. SCHWARTZER: No objection to the Court's ruling.

7 THE COURT: Okay.

8 (End of bench conference)

9 THE COURT: And, Detective, you're going to be
10 excused. Please do not talk about your testimony with anyone.

11 And we -- it is 3:30. I just need a quick break, so
12 about five minutes.

13 MR. SCHWARTZER: You run the court, Your Honor.

14 THE COURT: I'm sorry?

15 MR. SCHWARTZER: You run the court.

16 THE COURT: About five minutes.

17 During the recess, you are admonished not to talk or
18 converse among yourselves or with anyone else on any subject
19 or -- connected to this trial, or read, watch, or listen to
20 any report of or commentary on the trial of any person
21 connected with this trial, by any medium of information,
22 including, without limitation, newspapers, television, the
23 internet, and radio, or form or express any opinion on any
24 subject connected with the trial until the case is finally
25 submitted to you.

1 It is 3:36. We'll come back at 3:40 --

2 MR. SCHWARTZER: Thank you, Your Honor.

3 THE COURT: -- like, 1. Yeah. Thank you.

4 THE WITNESS: Thank you, ma'am.

5 THE COURT: Thank you.

6 (Outside the presence of the jurors)

7 THE COURT: If there is anything outside the
8 presence, I will take care of it after I come back from a
9 bathroom break.

10 MR. SCHWARTZER: Of course, Your Honor.

11 THE COURT: So --

12 MR. SCHWARTZER: Thank you.

13 (Court recessed at 3:38 p.m. until 3:43 p.m.)

14 (Outside the presence of the jurors)

15 (Pause in the proceedings.)

16 MR. SCHWARTZER: He just asked me for a statement,
17 and everything I do is electronically, so.

18 THE COURT: He said --

19 MR. SCHWARTZER: Mr. Trejo was asking me for
20 Carrigy's grand jury transcript. I don't -- I only have my
21 electronic version, but we're getting him a -- Ms. Heap, who's
22 always prepared, has the transcript here.

23 THE COURT: Okay, thank you.

24 MR. SCHWARTZER: Here you go.

25 (Pause in the proceedings.)

1 THE COURT: Is everybody ready?

2 MR. SCHWARTZER: State is, Your Honor.

3 THE COURT: Mr. Trejo?

4 MR. TREJO: Yes.

5 THE COURT: Okay.

6 (In the presence of the jurors)

7 THE COURT: Will the parties stipulate to the
8 presence of the jury?

9 MR. SCHWARTZER: State does, Your Honor.

10 THE COURT: Mr. Trejo?

11 MR. TREJO: The defense does.

12 THE COURT: Thank you. Please be seated.

13 Mr. Schwartzer, your next witness?

14 MR. SCHWARTZER: The State will call Officer Thomas
15 Carrigy.

16 THE MARSHAL: Couple of steps for you there, sir.
17 If you can remain standing and face the clerk, she's going to
18 swear you in.

19 THE CLERK: Please raise your right hand.

20 THOMAS CARRIGY, STATE'S WITNESS, SWORN

21 THE CLERK: Could you please state and spell your
22 name for the record?

23 THE WITNESS: It is Thomas Carrigy. My first name's
24 spelled T-h-o-m-a-s. My last name's spelled C-a-r-r-i-g-y.

25 THE CLERK: Thank you. You can have a seat.

1 THE COURT: Please proceed, Mr. Schwartz.

2 MR. SCHWARTZER: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY MR. SCHWARTZER:

5 Q Officer Carrigy, can you tell the ladies and
6 gentlemen of the jury what you do for a living?

7 A I'm an officer with the Las Vegas Metropolitan
8 Police Department.

9 Q How long have you been an officer?

10 A Approximately 15 years.

11 Q What's your current assignment?

12 A I'm currently assigned to the Fusion Watch section
13 of the Southern Nevada Counter-Terrorism section.

14 Q What is Fusion Watch?

15 A It's the technical operations of SNCTC. We deal
16 with public safety cameras, LPR, work-ups on critical
17 incidents, things like that.

18 Q Okay. So, like, these -- those cameras we see with
19 all those blinking lights that are in like a box around town,
20 is that you guys?

21 A Yes.

22 Q Okay. So, but that -- was that what you did in
23 2018?

24 A No, it's not.

25 Q What did you do in 2018?

1 A I was assigned to Spring Valley Area Command. I was
2 the -- I was one of the area command information officers.

3 Q Okay. Is Maria Fulwiler another individual that was
4 in -- a information officer?

5 A She is -- or she was.

6 Q She was? Okay. And did you work with her in Spring
7 Valley Area Command?

8 A I did.

9 Q Okay. So, on September 3rd of 2018, were you
10 working as an information officer for Spring Valley Area
11 Command?

12 A I was.

13 Q And does that area command cover Rainbow between
14 Sahara and Charleston?

15 A It does.

16 Q Okay. So, September 3rd, that's a holiday?

17 A Yeah, it was Memorial Day.

18 Q And on September 3rd, were you --

19 THE COURT: For the record, it was Labor Day.

20 MR. SCHWARTZER: Labor Day.

21 THE WITNESS: Labor Day. I'm sorry.

22 THE COURT: Um-hum.

23 THE WITNESS: Labor Day.

24 BY MR. SCHWARTZER:

25 Q I was just going to move it along, but the Judge got

1 you.

2 A Yeah.

3 Q So, September 3rd, based on being a holiday, did you
4 go out in the field?

5 A I did.

6 Q Okay. When you go out in the field, do you wear a
7 uniform?

8 A I do.

9 Q Do you wear a body-worn camera?

10 A I do.

11 Q Do you show -- is there stuff on your uniform that
12 indicates that you're a member of Las Vegas Metropolitan
13 Police Department?

14 A Yes. There's a badge with LVMPD. I was wearing the
15 standard summer uniform, the brown shirt with the brown pants
16 with the stripe down the leg.

17 Q Perfect. And in fact, based on what we're going to
18 talk about today, a picture of what you were wearing that day
19 was actually taken; is that correct?

20 A It was.

21 Q And if I showed you that picture, you should be able
22 to recognize yourself, right?

23 A I will.

24 Q All right. Showing you --

25 MR. SCHWARTZER: Your Honor, can I have permission

1 to publish all stipulated exhibits?

2 THE COURT: Yes.

3 MR. SCHWARTZER: Thank you, Your Honor.

4 BY MR. SCHWARTZER:

5 Q I'm going to show you what's been marked as Exhibit
6 97 here. Who is this person?

7 A That's me.

8 Q Is that what you were wearing on September 3rd of
9 2018?

10 A Yes.

11 Q Could you show the ladies and gentlemen of the jury
12 --

13 MR. SCHWARTZER: And may I approach, Your Honor?

14 THE COURT: Yes.

15 BY MR. SCHWARTZER:

16 Q So this -- we're going to be using this throughout
17 your testimony, sir. Go over here. There's the mouse. Click
18 on the pen there. You can make markings. When you're done,
19 I'm going to ask you to use the arrow to clear everything,
20 okay?

21 A Okay.

22 Q Thank you. Can you point out to the ladies and
23 gentlemen of the jury some of the markings you had that showed
24 that you were a law enforcement or a police officer?

25 A Yeah. There's the -- the badge on the upper left.

1 And then on each shoulder was the LVMPD patch. And then the
2 standard Metro name tag is right there. And then that was my
3 body-worn camera.

4 Q All right. So, for the record, we have four red
5 circles. We have --

6 THE COURT: Five.

7 MR. SCHWARTZER: Five. Thank you. Thank you.

8 So we have five red circles. We have one in -- on
9 the right arm, upper shoulder/upper arm area. It appears to
10 be a partial patch of sort that you've indicated what it is.

11 On your left upper arm/shoulder, you made another
12 red circle indicating another patch, which you indicated is a
13 badge as well.

14 You circled a badge that's on your chest, on the
15 left part of your chest by the radio right below your neck.

16 You've circled the name tag on the right part of
17 your chest that also has other information on it as well.

18 Additionally, you circled on your left shoulder a
19 body-worn camera instrument.

20 Is that all correct, Your Honor?

21 THE COURT: Yes.

22 MR. SCHWARTZER: Thank you.

23 BY MR. SCHWARTZER:

24 Q So, and this -- again, this is all -- these are --
25 besides the body-worn camera, the four circles are indications

1 of you as a sworn police officer?

2 A Yes.

3 Q All right. Thank you, sir. Can you hit the arrow,
4 please?

5 A Okay.

6 Q Thank you. Additionally, were you driving a Las
7 Vegas Metropolitan Police Department vehicle?

8 A I was. It was a black and white SUV.

9 Q And was that vehicle also have indications that it
10 was a law enforcement vehicle?

11 A Yeah, it was the standard Las Vegas LVMPD
12 black-and-white. It had LVMPD on it. It has the black and
13 white; lights and siren up on top.

14 Q Perfect. Okay.

15 So, on September 3rd, 2018, I want to bring your
16 attention to about 1:00 p.m. Were you out in the field?

17 A I was.

18 Q Do you roughly remember what area you were?

19 A Yeah, it was -- I was at Jones and Desert Inn.

20 Q Okay. And that's in the Spring Valley Area Command?

21 A That's in Spring Valley Area Command, too.

22 Q Okay. Did you get a call that brings you to court
23 today?

24 A I did. I went to a robbery attempt at a -- I
25 believe it was at SuperPawn.

1 Q Okay. How were you informed by that?

2 A By dispatch.

3 Q Okay. And was anyone else with you in that vehicle?

4 A Yeah, Maria Fulwiler was in the passenger seat.

5 Q Was she wearing the same type of uniform?

6 A She was.

7 Q Okay. And she was, again, in this black and white
8 vehicle as well?

9 A She was.

10 Q Okay. And so she was there when this radio dispatch
11 went out as well?

12 A Correct.

13 Q Okay. What were the details of -- to the best of
14 your knowledge, what was the details of that radio traffic
15 that caused you to respond?

16 A It first came in as a panic alarm, like a robbery
17 alarm. And then, as we were headed towards it, there were
18 additional details. I remember there were -- somebody was in
19 a cabinet, whispering that they were currently being robbed,
20 and gave a description of a subject with a motorcycle helmet.
21 And then there was, I believe, another PR that was outside
22 that had called in the similar details.

23 Q Okay. Now, you've been a law enforcement officer
24 for 15 years?

25 A At this point now, yes.

1 Q Okay. And you've been out in the field a decent
2 amount of time?

3 A Correct.

4 Q Okay. Those panic alarms, does that happen often
5 when you're out on your shift?

6 A Yeah, probably once a shift.

7 Q Okay. Do those always turn out to be robberies?

8 A No, they -- this is actually the only one that I've
9 been on that -- well, not the only one, but I would say
10 probably 97 percent are accidental. I was going to put money
11 in the counter, and I hit the wrong button, or something along
12 those lines.

13 Q So the majority of the ones, something -- you said
14 -- 97 percent, you said?

15 A Yeah, I mean, if I was to give a -- basically, a
16 guesstimate of my career.

17 Q Okay, turn out not to be actual robberies?

18 A Correct.

19 Q So, when you get this first indication that it's the
20 panic alarm, while you're responding, is there a sense of
21 urgency?

22 A There is.

23 Q Okay. Why does it turn into a sense of urgency if
24 you -- if this is very common?

25 A Well, the alarm itself is very common, but the

1 details saying that there's actually a robbery in progress are
2 not common. So, once I start going there, and we get the
3 details where it's a robbery, I start coming up with a plan
4 how to -- containment, trying to picture the business in my
5 head, the area. It's a felony crime, so that ups the response
6 level.

7 Q Okay. And so it's just based on the additional
8 information you receive on dispatch regarding the -- you said
9 the person was whispering or something?

10 A Yeah. It was -- she was in the -- I believe she was
11 in the cabinet, whispering that they were currently being
12 robbed.

13 Q And that makes it a more serious event in your mind?

14 A Yeah, because we got additional information that
15 this is actually currently occurring as opposed to what was
16 probably going to be an accident.

17 Q How do you get to this business?

18 A I made a westbound turn on Desert Inn. I got to
19 Rainbow. I made a northbound turn onto Rainbow, and then I
20 started going over the 100 blocks to make sure I parked
21 appropriately coming up on the business.

22 Q Okay. Are you running lights and sirens?

23 A I was.

24 Q Is that also known as code?

25 A Code 3, yes.

1 Q Okay. And that's in order for traffic to move aside
2 so you're able to respond to this emergency?

3 A Quicker, yes.

4 Q Okay. And were vehicles doing that for the most
5 part?

6 A I'm sorry?

7 Q Were vehicles doing that for the most part?

8 A I believe so. I think there were probably some that
9 were hesitant, but they eventually moved over, yeah.

10 Q Okay. Las Vegas drivers.

11 So you were -- when you got to the area, where did
12 you end up parking?

13 A I parked just south of the pawn shop. There was a
14 auto business on the south end. I parked there to get some
15 cover for when I was approaching the business, so if there --
16 if the robbery was still in progress, that they -- whoever was
17 inside wouldn't know I was there yet.

18 Q Okay. I'm going to show you Exhibit 75. We'll zoom
19 this out a little bit. All right. So do you recognize this
20 area?

21 A I do.

22 Q Do you see in this map -- well, first off, let me --
23 tell me what area this is.

24 A This is the area -- this is Rainbow. Then this
25 section up here is the SuperPawn that was robbed.

1 Q Okay. And that's 1157 (sic) Rainbow?

2 A Correct.

3 Q Okay. Do --

4 THE COURT: And, Mr. Schwartzer, can you just say
5 which section he just pointed to on the map --

6 MR. SCHWARTZER: Thank you, Your Honor.

7 THE COURT: -- for the record?

8 MR. SCHWARTZER: Yes. He's pointing to Exhibit 75,
9 and he's pointing to the building that is left-center of the
10 photograph.

11 THE COURT: Thank you.

12 BY MR. SCHWARTZER:

13 Q Do you see where your vehicle was parked?

14 A I do.

15 Q Okay. Can you make a circle around that?

16 A Okay.

17 MR. SCHWARTZER: For the record, Officer Carrigy
18 circled what appears to be a police vehicle on the very right
19 portion -- bottom right portion of Exhibit 75.

20 THE COURT: Thank you.

21 MR. SCHWARTZER: Okay.

22 BY MR. SCHWARTZER:

23 Q So, once you arrived at that area, why -- describe
24 again why you decide to park there as opposed to in front of
25 the pawn shop.

1 A Well, standard practices are to park at least two --
2 like, if we're on a call, it's two houses down on the same
3 side of the street. That's so you can get cover and
4 concealment as you're making your approach to the -- to where
5 you're going for officer safety, one.

6 And in this situation, if the robbery was still in
7 progress, I was worried about there being a -- forcing a
8 hostage situation. I would rather the subject leave, and
9 nobody get hurt, and we find him later than cause a situation
10 where whoever was inside now had multiple hostages.

11 Q Okay. So, just for -- to clear that up for me, you
12 don't want the person inside to necessarily see that the
13 police are there?

14 A Correct.

15 Q Okay. You'd rather see them come out without an
16 individual and apprehend them than create what you called a
17 hostage situation?

18 A Correct.

19 Q So you were worried if they see you and see your
20 vehicle that they might stay in the store and take hostages?

21 A Correct.

22 Q Okay. So, once you park in that area, do you come
23 in contact with any individuals?

24 A Yeah, shortly. There was a male and female. To the
25 best of my recollection, the second circle that I'm drawing,

1 they were standing on the street right there, and I believe
2 the female was still on the phone with dispatch.

3 Q Okay. Do --

4 THE COURT: And can you describe that for the
5 record, Mr. Schwartzer?

6 MR. SCHWARTZER: Thank you, Your Honor. I
7 appreciate that. So, Mr. -- Officer Carrigy did another
8 little red circle right above the red circle he showed on his
9 -- about his police vehicle, right bottom of the photograph
10 that is Exhibit 75.

11 THE COURT: Thank you.

12 BY MR. SCHWARTZER:

13 Q And that's where you believe roughly where those --
14 one -- at least one of the people reporting this robbery was?

15 A Correct. I didn't know that until after I parked
16 and got out of the car, but yes.

17 Q Okay. Did you make contact with those individuals,
18 or did your partner make contact with those individuals?

19 A Maria Fulwiler made main contact with them. I did
20 ask them a quick question. I asked if he was -- if the
21 subject was still inside the pawn shop. They said yes, and
22 then I -- I jogged over to the -- where the pawn shop was.

23 Q Why did you ask them that question?

24 A I wanted to know if the -- if the robbery was still
25 in progress, and we -- I could give updates to responding

1 units.

2 Q Okay. And then, after you had that information, why
3 did you move -- could you draw an arrow to the way you moved
4 toward the business?

5 A Yeah. So I moved through the street, and then I
6 took a position of cover behind this trash receptacle here.

7 Q Okay. For the record, you drew a line from the
8 patrol vehicle on the bottom right that you previously circled
9 to the pony wall, trash, garbage area in the center of Exhibit
10 75.

11 Now, are you able to see over that wall when you're
12 standing up?

13 A I was.

14 Q Okay. Are you able to get a pretty good view of the
15 front door area from that area?

16 A I was.

17 Q Okay. When you're in that area, do you see anything
18 of note?

19 A Everything the -- the business door was closed.
20 There was a -- what I believed to be a female that walked
21 where this truck is parked. I told her to leave the area. At
22 that point, she looked at the store, looked back at me, and
23 then she left again, which was unusual.

24 Normally -- to be honest, like, normally, on calls
25 like that, people don't listen. They just kind of keep going

1 along their way. They don't necessarily -- she -- when she
2 left, she left in kind of a hurry.

3 Q Okay.

4 A So it keyed me in that there was -- it was -- she
5 had seen something that had spooked her.

6 Q Okay.

7 THE COURT: And just for the record, do you want to
8 describe where he marked?

9 MR. SCHWARTZER: Yes, Your Honor.

10 So, again, Exhibit 75. You marked a red line in
11 front of the business that you previously identified as 1150
12 South Rainbow. There's a red line that's in a -- that's on
13 top of a vehicle parked facing north, right in the center of
14 Exhibit 75.

15 THE COURT: It's a little to the left of center, but
16 --

17 MR. SCHWARTZER: Left of center. Thank you, Your
18 Honor.

19 THE COURT: No problem.

20 BY MR. SCHWARTZER:

21 Q So, did you -- did you update or make any -- or make
22 any reports to the dispatch regarding what you saw with that
23 female?

24 A Yes. I got on -- I got on my radio and advised that
25 she had seen me, she had left, and she seemed -- I forget the

1 exact terminology I used, but she had left in kind of a hurry
2 like there was something -- there was something going on.

3 Q And did that create more concern for you?

4 A Yeah, because it -- it just keyed me in more that
5 this was still what was in -- it was something that was
6 actually still in progress.

7 Q Okay. What else did you see from that viewpoint
8 after that?

9 A There was another female -- or there was another
10 person that had walked up to the front of the store, and same
11 thing. I kind of had told them to leave the area, and, again,
12 they -- whoever it was quickly left again northbound out of
13 the -- out of the area.

14 Q Okay. So, for the record, on Exhibit 75 again, you
15 marked right in front of the business previously identified as
16 1150 South Rainbow. In the center part of that business, you
17 made a dot and then a line heading north to the end of the
18 sidewalk, which would be on the north side of the business.

19 Okay. Again, does that create some concern for you?

20 A Yeah. Again, same as before. It's just more --
21 more evidence to me that there's still an incident going on
22 inside the store.

23 Q At this point, is there anyone besides you or
24 Officer Fulwiler there?

25 A No. So it's just -- at this point, it's still just

1 me behind this pony wall, and then Officer Fulwiler was
2 talking to the person reporting by my car and giving updates
3 over the radio.

4 Q Okay. What happens after that?

5 A There was a -- the front door had opened. Shortly,
6 a subject in a motorcycle helmet and a -- looked like a puff
7 -- like a puffy jacket came out to the front of the store and
8 then quickly walked back inside.

9 Q So you saw a person with a motorcycle helmet, kind
10 of the front door area, look -- I guess exit or look out and
11 then --

12 A He --

13 Q -- go back in the store?

14 A Correct.

15 Q Okay. Based on the description you got from the
16 dispatch, did that create concern for you?

17 A Correct, yeah, that was the general suspect
18 description of the call while I was arriving --

19 Q Okay.

20 A -- and what Maria was giving out over the radio.

21 Q Okay. And so, once that person looked out, did you
22 report that over the radio as well?

23 A I tried. I was going to call it a hostage
24 barricade, so I got on my radio. I got three denial tones,
25 which it's this loud like beep, beep, beep, which basically

1 means somebody else is using the radio and I'm not
2 transmitting. So I wasn't able to give that update over the
3 radio.

4 Q Okay. So, while you tried to do so, you just kept
5 getting the denial beeps?

6 A Correct.

7 Q But you kept coverage on that front door?

8 A I did.

9 Q And why did you take the position where you took by
10 that -- how would you describe that? A pony wall? A
11 dumpster? Like --

12 A Yeah, it was like the trash area. So, if -- it's
13 kind of grainy, but you can see it. It's a like little
14 rectangle. Like, there was a trash receptacle area. It looks
15 like it's the -- like the trash bin for the complex.

16 The reason I took that was, for my approach, it was
17 the best place to get cover and concealment from the front of
18 the business. The way the parking lot is set up, you can't
19 tell from the photo, but the sidewalk area sits a little
20 higher elevation than the store. And there was no other --
21 without me coming up right on the side of the wall of the
22 store, there was no way to get a visual of the front of the
23 store without making myself apparent.

24 Q Why did you want cover?

25 A The -- during -- in the details, it said that the

1 subject was armed. So, for officer safety, I wanted to make
2 sure I was relatively safe. And it's the best place if they
3 did come out, at least before I was able -- before I would
4 confront them to get them away from the store so they couldn't
5 go back inside.

6 Q Do you mind hitting that arrow for me?

7 A I'm sorry? Oh, hit the arrow?

8 Q Hit the arrow for me. Thank you, Officer. I'm
9 trying to make it a little less grainy.

10 So now I'm showing you what's been marked as Exhibit
11 13. Do you recognize what you're looking at here?

12 A Yes, that's the SuperPawn that we've been talking
13 about.

14 Q Okay. So this is obviously a street-level -- is it
15 fair to say this is a street-level view versus the aerial view
16 that we saw in the previous Exhibit 75?

17 A Correct.

18 Q Okay. So, here, could you draw where you were? And
19 for the record, you've made a red spot on the right central
20 portion of the Exhibit 13 by the trash enclosure red wall to
21 the south of the business previously identified as 1150 South
22 Rainbow. Okay.

23 So, and here, we can kind of see that -- what you're
24 talking about with the sidewalk is a little elevated?

25 A Raised a little, yeah.

1 Q Okay. Okay. So, after the man or person with the
2 motorcycle helmet peeks out of the front door, what happened
3 -- what's the next thing that happens?

4 A I got my -- I got on the radio. I got my three
5 denial tones. At that point, that same subject came out,
6 except he had a female in front of him this time.

7 Q Did the -- did you get a look at the female?

8 A I did.

9 Q How did she appear to you?

10 A Scared. It seemed like she was being forced to walk
11 by the -- the person with the motorcycle helmet behind her.

12 Q Was the person with the motorcycle helmet having
13 physical contact with her?

14 A He did. He had his arm -- I don't know necessarily
15 if it was around her neck, but it was around her neck,
16 collarbone area, kind of like that.

17 THE COURT: Can you --

18 BY MR. SCHWARTZER:

19 Q Did you see any firearms in that person with the --

20 THE COURT: Mr. Schwartzer, can you describe what
21 the "like that" was for the record?

22 MR. SCHWARTZER: Thank you, Your Honor.

23 You were holding your left arm around the neck area
24 of your -- your neck area, grabbing at your shoulder, and then
25 you also kind of grabbed at your neck and at your collar as

1 well.

2 Is that fair, Your Honor?

3 THE COURT: Yes.

4 MR. SCHWARTZER: Thank you.

5 BY MR. SCHWARTZER:

6 Q So, while he has an arm around his neck, does he
7 have anything else in his other hand?

8 A Yeah, he had a handgun in his other hand.

9 Q Where was that handgun aimed at?

10 A Originally, it was out to the side. When they start
11 coming out, I'd originally taken that kneeling position, so
12 when I -- I stood up and had given the command to show me your
13 hands, at which point the firearm came up and pointed at my
14 head.

15 Q What did you do when the firearm was pointed at your
16 head?

17 A I ducked down behind the wall again.

18 Q Okay. Are you able to see what's going on when you
19 duck down?

20 A No. As I -- I couldn't see what happened, but as I
21 ducked down, I heard a gunshot.

22 Q Okay. What happens? Do you get back up?

23 A I do.

24 Q What happens when you get back up? What do you see?

25 A So, instead of standing up -- so the first time, my

1 head -- like, I (indiscernible) right where my head would have
2 been right above the wall. This time, I came back around the
3 side, so just a little bit to the north. At that point, the
4 two subjects are closer to the vehicles right here, and then I
5 see the female and the person in the motorcycle helmet in a
6 struggle.

7 Q Okay. And I'm just going to, for the record, point
8 -- make a record of where you put the red marks. You put a
9 red mark above your previous position on Exhibit 13, right
10 above that red brick trash enclosure. Additionally, you made
11 a bigger red circle to the north of your previous red marks in
12 the alleyway, right to the north of what appears to be a red
13 vehicle on Exhibit 13.

14 THE COURT: And, Mr. Schwartzer, just because this
15 is a little unclear for the record, which red mark describes
16 which of his statements where he was, where they were? And so
17 just so --

18 MR. SCHWARTZER: Sure.

19 THE COURT: -- that's a little clearer. Thank you.

20 MR. SCHWARTZER: Thank you, Your Honor.

21 BY MR. SCHWARTZER:

22 Q Officer Carrigy, correct me if I'm wrong about any
23 of this. The slight red mark above the red wall on the trash
24 enclosure is when you stood back up to observe what was going
25 on?

1 A That was -- that was my original -- when I stood up
2 the first time, that's where my head was as the subjects were
3 coming out of the store when I gave the verbal commands to
4 show me your hands.

5 Q Okay.

6 A I then ducked back down. And then, when I left the
7 enclosure again the second time, that's that middle red mark.
8 So that's the -- that's basically the route I left because I
9 didn't -- I didn't stand just straight back up. I came around
10 the side of the enclosure the second time, and then --

11 Q So, hold on, hold on. So that middle red mark is
12 right to the north of that red enclosure dumpster area --

13 A Correct.

14 Q -- is that fair?

15 A Yeah.

16 Q And then you have a bigger red mark even more to the
17 north of that red mark?

18 A Yeah, and it would have been back to the east, and
19 that's where the -- I saw the two subjects in a struggle.

20 Q Okay. And that red mark is just to the left or just
21 north of the red vehicle?

22 A Correct. And then, in reality, though, it's north
23 and then back to the -- I believe that's eastbound. So they
24 were further back behind that white car --

25 Q Okay.

1 A -- when they were --

2 Q So then, so when you see these two are in a
3 struggle, what's -- could you describe that to the ladies and
4 gentlemen of the jury?

5 A Yeah, it seemed like it was kind of a wrestling
6 match. It was very quick. They were -- looked like they were
7 struggling over something, and I thought her life was in
8 danger.

9 Q Whose life in danger?

10 A The female that had come out with the arm around her
11 neck.

12 Q Okay. What happens to the struggle? How does it
13 end?

14 A As I -- as I'm running up, I see her break away, and
15 then she ran northbound.

16 Q Okay. So you just made a line from the last red
17 mark we talked about back toward the business previously
18 identified as 1150 South Rainbow, which you have just -- as
19 you just described, is northbound.

20 As she heads northbound, what does the individual
21 with the motorcycle helmet do?

22 A The individual with the motorcycle helmet went back
23 a little bit behind that white car. And then the view -- my
24 view was partially blocked, so about half of that person was
25 visible. And then they seemed to be tucked down, manipulating

1 something.

2 Q What did you believe he was manipulating?

3 A A firearm.

4 Q What happened after that?

5 A When I approached, I got closer, and then we ended
6 up in a officer-involved shooting.

7 Q Now, did you --

8 A I did --

9 Q -- believe that individual was pointing a firearm
10 toward your direction?

11 A I believe that their intent was to take a firearm
12 and continue shooting at me, yes.

13 Q And when you fired, did you believe that you were in
14 danger?

15 A I did.

16 Q Did you believe that you were going to be shot if
17 you did not fire?

18 A I did.

19 Q And that's based on the positioning of the person
20 with the motorcycle helmet?

21 A Their positioning. They had already shot at me.
22 They had -- there was a -- like a utility belt almost like I
23 was wearing in that first photo. And then they had a sling,
24 which I believed to be another firearm on their back.

25 Q Now, and this -- since we just got into that, the

1 utility belt, did there appear to be other weapons on that
2 utility belt?

3 A I believe so, yes.

4 Q Okay. At that time, did you believe so?

5 A I did.

6 Q Okay. And now, you said that there was -- you said
7 the strap?

8 A Yeah, there was like a sling.

9 Q A sling. Thank you. That sling, what did the sling
10 appear to be?

11 A It's the same type of sling you would use to -- as a
12 -- to cover like a shotgun or a rifle.

13 Q Okay. So you believed that sling would be attached
14 to another weapon as well?

15 A I did.

16 Q So, as that -- and you said the person was crouched
17 down like --

18 A And looked like they were manipulating something on
19 -- down below the car. So I couldn't see their hands, but
20 they were -- they seemed to be fumbling with something.

21 Q Did the person start coming up during the gunfight?

22 A Quickly, and then ended -- after the -- after the
23 shooting, was on the -- ended up on the ground.

24 Q Okay. So the person came up with what you believe
25 was going to be a firearm?

1 A Uh-huh, yes.

2 Q You fire. Did other officers fire at this point as
3 well?

4 A Yes, two other officers.

5 Q And we'll get into when they got there in a little
6 bit. And then, after the firing, that person fell to the
7 ground?

8 A Yes.

9 Q Okay. Now, let me ask you this. At this -- during
10 this whole conversation, we just talked about you and Officer
11 Fulwiler. When did other officers get there? When did you
12 realize other officers got there?

13 A I realized other officers were there basically once
14 the shooting was over. What had happened was once -- as I was
15 coming around the wall, this car on the far north, I believe
16 -- well, I believe -- I'm sorry, I believe it's their car, was
17 carrying two other officers. They arrived just as the shot
18 had gone off.

19 Q The first shot, you're talking about?

20 A The first shot, yes. And they -- they were running
21 up behind me. I just didn't -- I didn't realize that until
22 after the shooting -- the shooting had been over, and then I
23 looked to my side, and I had seen that there were two other
24 officers there with me.

25 Q So, just to clarify -- and let me make a record

1 first. You just made a half-circle around a vehicle in
2 Exhibit 13, police vehicle, left -- the very left part of the
3 exhibit center area, which shows a front part of what appears
4 to be an LVMPD SUV.

5 I just want to be very clear. You didn't realize
6 other officers were there until after you engaged your own
7 firearm or until the first shot went off?

8 A After I -- after -- until after I engaged my own
9 firearm.

10 Q Okay. So, at this -- at the point that you engaged
11 in this gun battle, did you believe it was just basically you
12 and him?

13 A I did.

14 Q You and the guy with the motorcycle helmet?

15 A Correct.

16 Q Okay. It wasn't until after the firing you realized
17 there were other -- two other officers there?

18 A Correct.

19 Q Okay. Once the man with the motorcycle helmet goes
20 down, does his motorcycle helmet get removed?

21 A It does when we were taking him into custody.

22 Q Okay. Did you ever get a look at the individual who
23 you got into this gunfight with?

24 A I did.

25 Q Do you see that person in the courtroom today?

1 A I do.

2 Q Can you point to him and identify a piece of his
3 clothing?

4 A Yeah. It's the subject there with a blue -- I think
5 it's a button-up with the collar open. I'm sorry. He's
6 sitting at this desk right in front of me.

7 Q Okay.

8 MR. SCHWARTZER: Let the record reflect
9 identification of the defendant, Your Honor?

10 THE COURT: Can he do that a little bit better?
11 Because the blue person --

12 THE WITNESS: Yeah, I know. Sorry. So it's the --
13 the subject with a -- it looks like a medical device by his
14 throat, if that --

15 THE COURT: Okay. Now it will, yeah.

16 MR. SCHWARTZER: Okay.

17 THE WITNESS: Okay.

18 MR. SCHWARTZER: Okay.

19 BY MR. SCHWARTZER:

20 Q So now I'm going to refer to the guy in the
21 motorcycle helmet as defendant.

22 A Okay.

23 Q Could you clear the photograph?

24 During this gun battle, did you move toward the
25 suspect, toward those vehicles that we kind of see in Exhibit

1 13?

2 A I did.

3 Q Okay. I'm going to show you what's been marked as
4 Exhibit 19. Maybe. All right. Do you recognize that?

5 A I do.

6 Q Do you know where you took a position at?

7 A I ended up taking a position of cover, again, right
8 here by the engine block of the red car.

9 Q Okay. Now, you said the individual -- previously,
10 you --

11 THE COURT: Hold on.

12 MR. SCHWARTZER: Oh, thank you, Your Honor.

13 THE COURT: I did appeals for way too long, so not
14 going to let you get away with that, Mr. Schwartzer.

15 MR. SCHWARTZER: I appreciate you saving the record.

16 BY MR. SCHWARTZER:

17 Q So you just made a red mark, a rather large red mark
18 behind a red vehicle that's shown in this exhibit by the front
19 --

20 THE COURT: Passenger.

21 BY MR. SCHWARTZER:

22 Q -- passenger-side wheel area. Is that fair?

23 A Yes, sir.

24 Q Okay. I'm just going to make sure. That would be
25 Exhibit 19.

1 THE COURT: Thank you.

2 MR. SCHWARTZER: All right.

3 BY MR. SCHWARTZER:

4 Q You took that -- did you see where other officers
5 took positions at this time as well?

6 A Yes. So, I -- one officer was here, and then the
7 other officer, I believe, was behind this pole.

8 Q Okay. So you made a red mark behind -- again,
9 Exhibit 19, behind the back passenger wheel for one officer.
10 And then you made a red mark behind one of the --
11 behind a Roman column attached to the business of 1150
12 Rainbow. I would guess it would be the column closest to the
13 alleyway in Exhibit 19.

14 THE COURT: Thank you.

15 BY MR. SCHWARTZER:

16 Q Now, you said earlier, while he was -- he -- while
17 the defendant was dragging the hostage, he was dragging to a
18 vehicle. Did you -- what vehicle did he appear to be dragging
19 that woman to?

20 A Exactly which one, I wasn't sure, but it was -- it
21 was these -- he was headed towards these two vehicles.

22 Q Okay. And now you take cover by the red vehicle,
23 and that's why we talked about --

24 A Correct.

25 Q -- the front wheelbase of the passenger side of that

1 red vehicle. What do you do at that point?

2 A The air unit had gotten on the radio and said not to
3 approach, that the defendant was still armed. So I started
4 giving -- I started giving him verbal commands to have him, as
5 safely as possible, remove the rifle from his back.

6 Q Does he listen to you at first?

7 A No, not very well.

8 Q Okay. Does he appear to be listening to any of the
9 commands you're giving initially?

10 A No.

11 Q Okay. This goes on for a little bit?

12 A It does.

13 Q Okay. Eventually, does the defendant remove the
14 sling from -- or the gun from his body?

15 A He does.

16 Q Okay, but is he still listening to the commands as
17 given?

18 A Not very well, but slowly.

19 Q Is there another officer also giving commands as
20 well?

21 A Yes. When Maria -- Maria Fulwiler arrived, and then
22 she took another position also back by the trunk of this
23 vehicle, so this second line.

24 Q Was she giving a command to the --

25 THE COURT: Just for the record --

1 MR. SCHWARTZER: Thank you, Your Honor.

2 BY MR. SCHWARTZER:

3 Q You just drew another red mark behind the
4 passenger-side back wheel of the red vehicle, and this -- it's
5 kind of a more U mark.

6 THE COURT: It's closer to the trunk than the front
7 door, so that's the second mark where Officer Fulwiler was.

8 MR. SCHWARTZER: That's -- I think that's a proper
9 reflection of the record -- or of the description, Your Honor.

10 THE COURT: Thank you.

11 BY MR. SCHWARTZER:

12 Q Officer Fulwiler, was she giving directions in a
13 different language as well?

14 A Yeah, she started giving directions in Spanish.

15 Q Okay. Did the defendant appear to be responding to
16 those directions?

17 A Yeah, he responded to those much better.

18 Q Okay. Eventually, where does the defendant end up?

19 A We -- he eventually takes the unslings the rifle
20 from his back, and then we have him crawl over to this area on
21 the south side.

22 Q Now, does he still have that rifle sling to him at
23 this point?

24 A No. He had -- he had left the rifle slung behind
25 this white car towards its trunk where he had originally

1 fallen.

2 Q Okay. And you just made a red mark in the front
3 area of the white vehicle, behind the driver-side front area
4 of the white vehicle by one of the parking blocks right behind
5 the white vehicle.

6 Now, while he doesn't have that -- while the
7 defendant doesn't have that rifle on him, were you afraid he
8 might have other weapons on him?

9 A I was.

10 Q And why is that?

11 A He had that -- the belt on. I thought I had seen
12 the handle to another handgun in his waistband, and then there
13 was a long serrated -- a long knife in a pouch on the belt.

14 Q So did you believe it was safe to approach him at
15 that point?

16 A No, I did not.

17 Q And that's based on not having any knowledge that
18 there might be -- you believed there was a knife weapon or a
19 blade weapon?

20 A Yeah, there was -- I could verbally -- I could, I'm
21 sorry, visually see a knife weapon on his belt.

22 Q Were you also afraid there might also be another
23 firearm?

24 A I was.

25 Q Okay. So, in order to make a safe approach, does a

1 plan come up to take this -- to take the defendant into
2 custody?

3 A There was.

4 Q Okay. What was the plan?

5 A There's a vehicle that we have called a tactical
6 vehicle that has a ballistic shield that's the same as our
7 vests, so Level 3A. It'll stop a 9 millimeter, .40, .45
8 millimeter bullet. And then we were waiting for K-9 to
9 approach as -- or K-9 to arrive as well.

10 Q Okay. So you wanted to both have a ballistic shield
11 and a K-9?

12 A Correct.

13 Q Okay. And why would you use a K-9 partner for this?

14 A A K-9's a low-lethal tool, similar like you would
15 think of like as a Taser. Obviously, though, it's a living
16 dog. And then, they're -- it's a good tool to make sure that
17 deadly force doesn't need to be used again.

18 Q Okay. If the K-9's engaged with a suspect, they're
19 less likely to use a firearm?

20 A Correct. Normally, once the K-9's engaged,
21 everybody focuses on the dog and doesn't focus on anything
22 else.

23 Q And that allows you to get hands-on with the
24 suspect?

25 A Correct.

1 Q In this case, the defendant?

2 A Correct.

3 Q Okay. And what -- I'm using lingo. What does
4 hands-on mean?

5 A Literally, that. Like, be able to handcuff them,
6 search them, make everything safe, make sure there's no more
7 weapons.

8 Q Okay. Did you end up being part of the arrest team?

9 A I did.

10 Q Okay. How many people were in the arrest team?

11 A Off the top of my head, there were four or five of
12 us --

13 Q Okay. Do you --

14 A -- including a sergeant.

15 Q Okay. Do you guys assign roles to each other, like
16 who's going to do what?

17 A We do. The sergeant will assign roles.

18 Q Okay. Do you recall what your role was?

19 A I was one of the hands-on officers with another
20 officer.

21 Q Okay. By hands-on, what were you going to do once
22 you got up to the suspect, or, in this case, the defendant?

23 A We were going to handcuff him and then search him
24 for more weapons.

25 Q Okay. So your goal -- your goal and responsibility

1 was to get him in custody and then remove any weapons from
2 him?

3 A Correct.

4 Q Okay. Did you guys engage in this arrest plan?

5 A We did.

6 Q Was the K-9 used?

7 A It was.

8 Q Was the ballistic shield used?

9 A It was.

10 Q Did you end up going hands-on with the defendant?

11 A I did.

12 Q Did you end up removing items from him?

13 A Yeah, we took off the belt and his shoes.

14 Q Okay. Could you hit that arrow for me again?

15 A Yes, sir.

16 Q I'm going to show you what's been marked as Exhibit
17 49. Do you recognize that?

18 A I do.

19 Q What is that?

20 A That is the belt the defendant was wearing that day.

21 Q Okay. I'm going to show you Exhibit 50. Do you
22 recognize what this is?

23 A I do.

24 Q And what is that?

25 A Those were two magazines and a knife that was on his

1 belt.

2 Q Okay. So that's stuff that was removed from his --
3 from the defendant's belt?

4 A Correct.

5 Q Okay. And showing you Exhibit 34. Do you recognize
6 what we're seeing here?

7 A Yes. That's the knife and the magazines that were
8 shown on the last slide. That's the belt he was wearing, and
9 those are the boots that we removed.

10 Q Okay. And for the record, you're using the cursor
11 to point to items throughout Exhibit -- I believe it's 34.
12 Let me check. 34. Items flush against the brick wall as well
13 as two boots that are a little further forward from the brick
14 wall.

15 THE COURT: Thank you.

16 MR. SCHWARTZER: All right.

17 BY MR. SCHWARTZER:

18 Q Once that's done, as an officer involved in an
19 officer-involved shooting, does something happen with you?

20 A It does.

21 Q Can you tell the ladies and gentlemen of the jury
22 about that?

23 A Yeah. So, once an officer-involved shooting's
24 completed, and the scene is static or safe, I got moved to
25 what's called a monitor car. What that means is, I sit in a

1 car with another officer. He -- the other officer, it was a
2 male in this case, makes sure I don't talk about the
3 officer-involved shooting with anybody else, any other
4 officers, until I talk with the Force Investigation Team,
5 which are the detectives that handle the case and do the
6 investigation for the use of force or the use of deadly force.

7 Q And when you just get -- and when you use a firearm,
8 that's considered deadly force, I assume?

9 A It is, yes.

10 Q Okay. Additionally, do you point out where you
11 were, your positioning during the shooting?

12 A Yes. The Force Investigation detectives and the
13 lieutenant, they come, they talk to you, they show you the --
14 your body-worn camera video for the incident. And then you do
15 what's called a walk-through, so basically what I just
16 described to you all; how I parked, where I went, which
17 direction I fired in.

18 And then you give other details like if I think any
19 -- they need to check to see if anybody might have gotten
20 hurt, if there was any other shooting back behind me, if there
21 -- other evidence that they need that they should go collect.

22 Q Okay. And they have you kind of mark where you were
23 during the shooting?

24 A Correct, yeah, each step.

25 Q Showing you Exhibit 113. And is this -- do you

1 recognize that name and number?

2 A Yeah, that's my last name, and that's my P number.

3 Q And so that would be where you said you were during
4 the shooting?

5 A Correct.

6 Q Okay. And showing you Exhibit 114. Would this be
7 your viewpoint of the suspect?

8 A It was.

9 Q Okay. You said you were wearing a body-worn camera
10 during this incident; is that correct?

11 A I was, yes.

12 Q And it was on during this event; is that correct?

13 A Yes, it was.

14 Q You've had the chance to review your body-worn
15 camera?

16 A I did.

17 Q And I asked you to review it again for the purposes
18 of trial; is that correct?

19 A I did.

20 Q And does it truly and accurately reflect what you
21 observed and saw at the time of this event?

22 A Yes.

23 MR. SCHWARTZER: I would move for admission of
24 Exhibit 140, Your Honor.

25 THE COURT: Yes.

1 (State's Exhibit 140 is admitted.)

2 BY MR. SCHWARTZER:

3 Q Now, Officer Carrigy, the ladies and gentlemen of
4 the jury are going to have this full video when they go
5 deliberate, so I'm only going to show you sections of it.

6 A Okay.

7 Q We'll play about two minutes of it, okay?

8 THE COURT: And just for the record, I'm also going
9 to note that Mr. Trejo had objected on this -- to this a while
10 back ago, and this is going to be admitted over his objection.
11 And I should have said that instead of just saying yes.

12 MR. SCHWARTZER: Thank you, Your Honor.

13 So I'm going to just fast-forward to the first 30
14 seconds where we can hear the sound.

15 (Video is played.)

16 MR. SCHWARTZER: Okay. So I'm stopping at 33
17 seconds in.

18 BY MR. SCHWARTZER:

19 Q Do you recognize what this is a view of, who this
20 person is, all that?

21 A Yeah. So the arm that you just saw come out of view
22 was my left hand. That's -- so that's going to be my view of
23 me driving the police vehicle to the call.

24 Q Thank you.

25 (Video is played.)

1 MR. SCHWARTZER: Just trying to get to 2:30. All
2 right, so I'm going to start it now at two minutes and 19
3 seconds into Exhibit 140.

4 (Video is played.)

5 BY MR. SCHWARTZER:

6 Q That's -- those beeps, beeps, beeps --

7 A Yeah, that's the denial tone I was talking about
8 before.

9 Q Okay.

10 MR. SCHWARTZER: And I paused the video at 5:31,
11 Your Honor. I'm going to continue playing now.

12 THE COURT: Thank you.

13 (Video is played.)

14 BY MR. SCHWARTZER:

15 Q So the voice that we're hearing that's giving you --

16 THE COURT: Just for a second.

17 MR. SCHWARTZER: Oh, I'm sorry, Your Honor.

18 THE COURT: You're pausing it at 7:11.

19 MR. SCHWARTZER: Thank you, Your Honor.

20 BY MR. SCHWARTZER:

21 Q So the voice that we just heard over the radio and
22 we've heard kind of throughout this body cam after the
23 shooting, do you recognize the voice?

24 A Yeah, that was the air unit.

25 Q Okay. So that's the -- by "air unit," is that like

1 a helicopter?

2 A The helicopter. Yes, sir.

3 Q And so they have a -- obviously, a different
4 viewpoint than you have?

5 A Yes, they do.

6 Q And they're the ones instructing you regarding what
7 the defendant has on him?

8 A Yes, sir.

9 Q And do you recall them just saying right there,
10 well, that he still had the long gun attached to him?

11 A Correct.

12 Q And that, well, the magazine was empty -- the
13 magazine holder was empty?

14 A I believe they said the holster was empty.

15 Q Holster was empty.

16 A But they weren't sure if the -- the firearm was
17 underneath him or not or if he had it somewhere on his -- on
18 his person.

19 Q Okay. And that was what I was going to ask you. So
20 you were being given information that he at least has one gun
21 -- the defendant at least has one gun attached to him as well
22 as there might be another gun somewhere on his body?

23 A Correct.

24 Q Thank you. Continue playing.

25 (Video is played.)

1 MR. SCHWARTZER: Stop it there at 8:21.

2 BY MR. SCHWARTZER:

3 Q Why are you radioing to another vehicle?

4 A Well, there's that car you could see at the very end
5 of the SuperPawn. It's coming in, what would be creating a
6 crossfire situation where he would be in danger -- or he or
7 she would be in danger. So I wanted them to stay where they
8 were but just back behind that wall.

9 Q And now we've heard about a minute of you issuing
10 commands; is that correct?

11 A Correct.

12 Q Well, a specific command for the last minute; is
13 that correct?

14 A Correct.

15 Q What are you trying to get the defendant to do?

16 A I wanted the defendant to get away from the rifle
17 and as far away as possible, so which would have been -- I
18 still don't know the technical term for that yellow parking
19 concrete portion, but I wanted him to crawl that way to
20 separate him from the -- from the rifle so we could take him
21 into custody and get him medical attention.

22 Q And during this period of time, he is not listening
23 to you?

24 A Correct.

25 Q Okay. I'm going to fast-forward to the -- again,

1 the jury will have this whole video for their deliberation.
2 I'm going to fast-forward to the arrest team.

3 (Video is played.)

4 THE COURT: Mr. Schwartzer, just say where you're
5 starting.

6 MR. SCHWARTZER: I will, Your Honor.

7 THE COURT: Thank you.

8 MR. SCHWARTZER: Okay, I'm going to start at 12:57,
9 Your Honor.

10 THE COURT: Thank you.

11 (Video is played.)

12 MR. SCHWARTZER: Stopping it at 13:26.

13 BY MR. SCHWARTZER:

14 Q The individual that's directly in front of your body
15 cam right now, the person who appears to be giving commands,
16 who is that person?

17 A That was Sergeant Collins (phonetic).

18 Q Okay. So he'd be -- when you talked about it's the
19 sergeant's job to give responsibilities during the arrest
20 team, that would be Sergeant Collins? That was his
21 responsibility?

22 A Correct.

23 Q Starting again at 13:26.

24 (Video is played.)

25 MR. SCHWARTZER: All right, I'm going to stop it

1 there. Shortly after this -- and I'm stopping it at 15:04.

2 Thank you, Ms. Heap.

3 THE COURT: Thank you.

4 BY MR. SCHWARTZER:

5 Q Shortly after this, you're removed from the scene as
6 one of the officers involved; is that correct?

7 A Correct, I was.

8 Q What type of firearm were you using?

9 A It was a Glock 17.

10 Q Okay. And what kind of ammunition is that?

11 A 9 millimeter.

12 MR. SCHWARTZER: Officer Carrigy, thank you for your
13 testimony. I will pass the witness.

14 THE COURT: It is a quarter to 5:00, and we need to
15 stop at 5:00, so I'm just going to go ahead and call it for
16 the night.

17 So, Mr. Trejo, we will continue on with this in the
18 morning. Tomorrow is Thursday. We will start at 9:00 a.m.

19 So, Officer Carrigy, you are excused for the
20 evening, and please don't talk about your testimony with
21 anyone. We'll see you tomorrow morning --

22 THE WITNESS: Okay. Thank you, Your Honor.

23 THE COURT: -- at 9:00 a.m. Thank you.

24 Ladies and gentlemen, during the recess, you are
25 admonished not to talk or converse among yourselves or with

1 anyone else on any subject connected to the trial, or read,
2 watch, or listen to any report of or commentary on the trial
3 of any person connected with this trial, by any medium of
4 information, including, without limitation, newspapers,
5 television, the internet, and radio, or form or express any
6 opinion on any subject connected with the trial until the case
7 is finally submitted to you.

8 We'll see you here at 9:00 a.m. Thank you.

9 (Outside the presence of the jurors)

10 THE COURT: You can go, Officer. Thank you.

11 THE WITNESS: Thank you.

12 MR. SCHWARTZER: Sorry.

13 THE COURT: Yeah.

14 MR. SCHWARTZER: It's the third day I'm making him
15 come back.

16 THE WITNESS: It's okay.

17 MR. SCHWARTZER: Sorry. Appreciate it, though.

18 THE COURT: Yeah, sorry.

19 (Pause in the proceedings.)

20 THE COURT: Anything outside the presence?

21 MR. SCHWARTZER: Not from the State, Your Honor.

22 MR. TREJO: Not from the defense.

23 THE COURT: Okay, thank you.

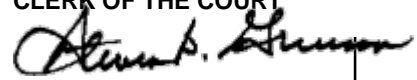
24 (Court recessed for the day at 4:46 p.m.)

25 * * * * *

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

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DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,)	CASE NO. C-18-335315-1
)	
Plaintiff,)	DEPT NO. XXIV
vs.)	
)	
MARIO BLADIMIR TREJO,)	
)	
Defendant.)	
)	

BEFORE THE HONORABLE ERIKA BALLOU, DISTRICT COURT JUDGE

THURSDAY, APRIL 28, 2022

RECORDER'S TRANSCRIPT OF PROCEEDING:
JURY TRIAL - DAY 9

APPEARANCES:

FOR THE STATE:	HILARY L. HEAP, ESQ. MICHAEL J. SCHWARTZER, ESQ. Chief Deputy District Attorneys
FOR THE DEFENDANT:	MARIO BLADIMIR TREJO, Pro Se
	ALEXANDER C. HENRY, ESQ. Standby Counsel

ALSO PRESENT:

Afan Tarar
With District Attorneys Office

Marie Bacquerie
Jeanette Encinas
Ximene Fiene
Spanish Interpreters

RECORDED BY: AIMEE CURAMENG, COURT RECORDER
TRANSCRIBED BY: VERBATIM DIGITAL REPORTING, LLC

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**(With Mr. Schwartzter, District Attorney's Office)*

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1 LAS VEGAS, NEVADA, TUESDAY, APRIL 28, 2022

2 (Case called at 9:23 a.m.)

3 (Outside the presence of the jury.)

4 THE COURT: Okay. So we are on the record in Case
5 Number C-18-335315-1, State of Nevada versus Mario Trejo.

6 Case Number -- oh, I just said that.

7 We have Mr. Schwartz and Ms. Heap for the State.
8 Mr. Trejo is here with Mr. Henry for standby counsel and also
9 the Spanish interpreter.

10 Is there anything that we need to handle outside the
11 presence?

12 MS. HEAP: Not from the State.

13 MR. SCHWARTZER: Not from the State, Your Honor.

14 THE COURT: Thank you.

15 MR. TREJO: Just one thing.

16 THE COURT: Okay.

17 MR. HENRY: I have something, Judge. Tomorrow is my
18 other doctor's appointment. I don't know if you knew that.

19 THE COURT: We have Steve Altig.

20 MR. HENRY: Okay. Awesome. Thank you.

21 THE COURT: And what were the times again so we can
22 make sure that that's when Steve's coming? I think this one
23 was earlier. This one was like 2:00 o'clock -- I mean, 1:00
24 o'clock.

25 MR. HENRY: Yeah, 1:00 to like 3:30 or 4:00.

1 THE COURT: 1:00 to 4:00. Okay.

2 MR. HENRY: Yeah. I figured that'S lunchtime, so
3 he'll -- he'll show up like 1:15.

4 (Pause in the proceedings)

5 THE INTERPRETER: Your Honor --

6 THE COURT: Yes.

7 THE INTERPRETER: Okay.

8 THE COURT: Mr. Schwartz and Ms. Heap.

9 MR. TREJO: I had an EKG yesterday, wasn't sure why
10 I -- wasn't why. I spoke to medical at night. I was told I
11 have an upcoming surgery scheduled. I just don't know the
12 date. But I -- I assume it will be soon, maybe within a week.

13 THE COURT: Okay. Well, just keep us informed
14 because there's not really a lot we can do without a date.

15 MR. HENRY: And Judge, I believe they won't tell us
16 the date because of the security measures that CCDC has for
17 transporting people to take to surgery.

18 THE COURT: And the COs are all nodding their heads
19 in agreement, so I don't -- I don't know what we can do then
20 if they're still in trial. Do the COs have any ideas?

21 CORRECTIONS OFFICER: I know from experience, they
22 usually will put surgeries off --

23 THE COURT: Okay.

24 CORRECTIONS OFFICER: -- if we're in trial.

25 THE COURT: Okay.

1 CORRECTIONS OFFICER: As far as times and locations,
2 we don't even know until the day of.

3 MR. TREJO: It will be out of the blue. I want to
4 know -- I won't know until I get isolated the night prior.

5 THE COURT: Okay.

6 MR. TREJO: And I do believe my surgeon is pressing
7 for -- to try and (indiscernible) me -- (indiscernible) me.
8 This process has to be done within a certain time frame. So
9 I'm not sure when it will happen. As you saw, I was in phase
10 one last year when I began speaking.

11 THE COURT: Okay. So I don't know what we can do
12 about it. Again, we'll just have to keep it -- I mean, we'll
13 keep it in mind. Thank you. Are we ready?

14 MR. TREJO: Yes.

15 THE COURT: Thank you.

16 (In the presence of the jury)

17 THE COURT: Will the parties stipulate to the
18 presence of the jury?

19 MR. SCHWARTZER: Yes, Your Honor.

20 MR. TREJO: I do, Your Honor.

21 THE COURT: Thank you. Please be seated. Then,
22 Mr. Trejo, you can proceed with Officer Carrigy. Sorry, if
23 I'm mispronouncing your name.

24 THE WITNESS: You're fine, Your Honor. Thank you.

25 //

1 OFFICER THOMAS CARRIGY, STATE'S WITNESS, PREVIOUSLY SWORN
2 CROSS-EXAMINATION

3 BY MR. TREJO:

4 Q Good morning, Officer Carrigy. I just have a few
5 questions. The first is about when you mentioned that a
6 female approached the business at one point; do you recall?

7 A I do.

8 Q You said she made a weird face; is that correct?

9 A I do.

10 Q Why do you believe it was?

11 A When I -- I was telling her to get away, and then
12 she looked in the store, so I believe that she looked in the
13 store and saw the robbery taking place and then looked at me
14 and then that's when she left.

15 Q Could it be possible that it had something to do
16 with you waving her away from the building and the position
17 of cover you were taking?

18 A Possibly. I never got to talk to her.

19 Q Do you remember what the front of the store looked
20 like?

21 A Yeah, like your general supermarket.

22 Q Do you recall if the doors were mirrored, as in
23 mirrored like reflective layer that keeps sun out but also
24 makes it difficult to see through those types of finishes?

25 A I couldn't see in from where I was standing. I

1 don't know if you're able to see if in from a different
2 angle. I never got to the front of the store.

3 Q Okay. Do you recall where was Maria Fulwiler?

4 A At what point?

5 Q When you first took position of cover by the wall up
6 until you gave warning that, quote, "He's coming out," end
7 quote?

8 A Yeah. She was just south of where my location was
9 in front of are the AutoZone with the person recording.

10 Q Do you believe you had the best vantage point out of
11 Detective Fulwiler and yourself?

12 MR. SCHWARTZER: I'm going to object to
13 speculation.

14 THE COURT: Mr. Trejo, what's your response to
15 that, it sounds speculative?

16 MR. TREJO: I'm just asking based on position and
17 his personal belief. Not asking to speculate what someone
18 else saw, Your Honor.

19 THE COURT: Right. But that -- that is the --
20 that's what the question asks for, it's for minimum to
21 speculate as to if he could see better than she could, and so
22 he has no way of knowing whether or not she could see -- or
23 what she could see, and so that is speculation. So I'm going
24 to sustain that objection.

25 MR. SCHWARTZER: Thank you, Your Honor.

1 BY MR. TREJO:

2 Q Did you give warning to Detective Fulwiler when you
3 made visual contact with the suspect?

4 A I did. I said, he's coming out, or you're coming --
5 yeah, I said, he's coming out.

6 Q Was that through radio or just by yelling?

7 A I yelled to her that you were coming out of the
8 store, and then I don't remember if I got on the radio and
9 said I think -- actually, I believe she dialed the radio and
10 said that you had come out of the store.

11 Q After you shot the suspect prior to the arrest with
12 the assistance of K-9, did he seem rational, based on your
13 observation?

14 MR. SCHWARTZER: I'm going to object to
15 speculation.

16 THE COURT: I don't actually think that one's
17 speculation because it's his observation of how the suspect
18 seemed. So I'm going to overrule that one.

19 MR. SCHWARTZER: Thank you, Your Honor.

20 THE COURT: So Officer, you can answer that, if the
21 suspect seemed rational?

22 THE WITNESS: Yes, Your Honor. You seemed like you
23 were in pain. I don't know if I could -- if that makes you
24 irrational or not, but you did seem in pain at the time.

25 //

1 BY MR. TREJO:

2 Q So aside from you observing him in pain, did you
3 notice, perhaps, he was saying or doing things that people
4 would normally do?

5 THE INTERPRETER: I'm going to reask the question.

6 BY MR. TREJO:

7 Q So aside from you observing him in pain, did you
8 notice perhaps, he was saying or doing things that people
9 wouldn't normally do?

10 A I guess, I don't understand the question. I -- I
11 mean, obviously, we had shot you, you were on the floor. You
12 were in pain, but I don't know -- that's not a situation that
13 I've been in before, or after, like the -- I don't -- there's
14 not a standard this is what happens when somebody gets shot.

15 Q You couldn't hear any peculiar language coming from
16 the suspect?

17 A There was yelling. I remember you telling us you
18 were dying, and that's when I told you that if -- we couldn't
19 come up there to save you until you took the rifle off your
20 back. As far as anything else goes, I don't remember. There
21 was obviously yelling, like you sounded like you were in
22 pain, but I don't -- I don't remember hearing words.

23 Q Did the suspect refuse to obey commands that would
24 have helped speed up the process of rendering aid?

25 A You didn't verbally refuse to follow commands, you

1 just didn't follow commands. So when -- over the course of,
2 I believe it was a minute or so, I had been telling you to
3 take the rifle off, using your hand, the further away from it
4 on the sling, take it over your head and to crawl away from
5 it.

6 You didn't do any of that until Maria started
7 talking to you.

8 Q Do you recall any additional things the suspect
9 might have said to you, Officer Carrigy?

10 A No, I don't.

11 MR. TREJO: No further questions. Thank you,
12 Officer.

13 THE COURT: Anything based on that, Mr. Schwartzer?

14 MR. SCHWARTZER: Just briefly, Your Honor. I can
15 just do it from here.

16 REDIRECT EXAMINATION

17 BY MR. SCHWARTZER:

18 Q Officer Carrigy, when you -- before the shooting
19 occurred, when you were taking a position by the wall near
20 the pawn shop, where was your focus at?

21 A My focus was on the front door of the pawn shop.

22 Q And why is that?

23 A That's the -- the most likely route I expected the
24 suspect to come out of. So I wanted to get the best view in
25 front, and then it's standard, once responding units know

1 where the first officer sets up, the next units, to the best
2 of their ability, would arrive towards the back, so then we
3 would have a 360 coverage of the store.

4 So I was expecting the next officers to take the --
5 the backside.

6 Q Okay. So your focal point is at that front door?

7 A It is.

8 Q That's where the person you later identified as the
9 defendant was, where you saw him look out the door, correct?

10 A Correct.

11 Q And that's where the danger was?

12 A Correct.

13 Q So you weren't necessarily sure where Maria was at
14 all times, were you?

15 A That's correct. The last time I had seen her was in
16 front of the AutoZone, but she could have moved. I never
17 looked back to see where she was.

18 Q And the best person to ask where she was would be to
19 Maria, right?

20 A Correct.

21 Q And by Maria, I'm talking about Detective Fulwiler?

22 A Yes, sir.

23 Q Okay.

24 MR. SCHWARTZER: No further questions.

25 THE COURT: Anything based on that, Mr. Trejo?

1 MR. TREJO: Just one question.

2 RECROSS-EXAMINATION

3 BY MR. TREJO:

4 Q Officer Carrigy, when you said you saw him look out
5 the door, did you just see someone peek out of the window or
6 exit out of the -- exit out of the door?

7 A I saw you wearing the motorcycle helmet, open the
8 door, come up through the door frame and then head back
9 inside.

10 Q You saw the door open?

11 A I don't remember if it was fully, but the door
12 opened, you came up with the -- wearing the motorcycle helmet
13 and the same clothing as when you left the second time and
14 then went back inside.

15 Q Did you believe he saw you?

16 A I did. That's why I thought he went -- you went
17 back inside.

18 MR. TREJO: That will be it. Thank you.

19 THE COURT: Ladies and gentlemen of the jury, does
20 anyone have any questions for this -- we have some questions
21 so we'll break for a second.

22 Mr. Trejo?

23 (Bench conference)

24 THE COURT: Was the bullet fired from defendant's
25 weapon ever recovered? Where did it strike?

1 MS. HEAP: That's not really for this witness, but.

2 MR. TREJO: (Indiscernible).

3 THE COURT: That probably isn't for this witness.

4 And can -- Alex, can you say what he just said because I
5 couldn't hear it.

6 MR. HENRY: What did you say?

7 He thinks it's for the CSA.

8 THE COURT: Okay. So yeah, we'll just leave it,
9 and I guess you guys can ask it of the CSA.

10 MR. SCHWARTZER: Sure.

11 THE COURT: Thank you.

12 (End of bench conference)

13 THE COURT: And did I see anybody else writing?
14 No? Okay. Officer, Carrigy, thank you for your testimony,
15 and you are excused. Please do not discuss your testimony
16 with anyone.

17 THE WITNESS: Yes, Your Honor. Thank you.

18 THE COURT: Thank you. Next witness.

19 MS. HEAP: The State will call Tabatha Paine.

20 TABATHA PAINE, STATE'S WITNESS, SWORN

21 THE CLERK: Can you please state and spell your
22 name for the record.

23 THE WITNESS: Yes, Tabatha Paine. First name
24 Tabatha, T-a-b-a-t-h-a. Last name Paine, P-a-i-n-e.

25 THE CLERK: Thank you. You can have a seat.

1 THE WITNESS: Thanks.

2 THE COURT: And please proceed, Ms. Heap.

3 MS. HEAP: Thank you.

4 DIRECT EXAMINATION

5 BY MS. HEAP:

6 Q Ma'am, can you please tell the ladies and gentlemen
7 of the jury where you are employed?

8 A Yes. I am a crime scene analyst supervisor for the
9 Las Vegas Metropolitan Police Department.

10 Q Okay. And how long have you been a -- or working in
11 the crime scene analyst department?

12 A Almost -- just over eight years. I started in 2014.

13 Q How long have you been a supervisor?

14 A I've been be a supervisor since May 1st of last
15 year.

16 Q Prior to that, what was your position?

17 A Senior crime scene analyst. I was promoted in 2018.

18 Q Okay. And what does a crime scene analyst do?

19 A A crime scene analyst responds to crime scenes tore
20 the purpose of documenting a crime scene through notes,
21 photography and reports, diagrams and then processing for and
22 collecting physical evidence and latent prints.

23 Q To be a crime scene analyst, do you have to have any
24 specialized training or experience?

25 A Yes. You have to meet certain education

1 requirements. I myself, have a bachelor of science in
2 criminal justice, emphasizing in crime scene investigations,
3 and I also am almost complete with my master of forensic
4 science, and then you have to attend a crime scene analyst
5 academy, which is approximately 12-13 weeks.

6 After that, then you go into the field training
7 program, and then once you pass field training, you can go on
8 your own in field.

9 Q Now, I want to direct your attention back to 2018.
10 You said that's when you were promoted?

11 A I was promoted in March of 2018, yes.

12 Q So in September of 2018, what was your position?

13 A Senior Crime Scene Analyst.

14 Q And I want to specifically direct you to September
15 3rd of 2018. Were you dispatched to 1150 South Rainbow
16 Boulevard, the SuperPawn there?

17 A Yes.

18 Q And did you go there alone or did you go with other
19 crime scene analysts?

20 A I went with other crime scene analysts.

21 Q What was the nature of the call that you were
22 responding to?

23 A We were responding to an officer-involved shooting.

24 Q Okay. And when you get to a scene, I guess any
25 scene in general, how do you proceed?

1 A When we first get to the scene, there's usually
2 multiple personnel around. The first thing we do is respond
3 to the first officer that's at the scene kind of collecting
4 information. And then we basically wait until we can get a
5 briefing.

6 Then for this particular case -- so this an
7 officer-involved shooting -- it's going to be multiple
8 different staff that meet together for this briefing. So we
9 wait, then we all get together, and all of us get briefed at
10 the same time by one person. It's basically information
11 collection.

12 So witnesses, location, event number, and then a
13 brief synopsis of what occurred.

14 Q And that was specific to this officer-involved
15 shooting, correct?

16 A Yes.

17 Q Okay. When you go to any scene, I guess, is there a
18 standard operating procedure, how you process a scene?

19 A There's a general game plan, if you want to call it
20 that, for how we respond, when we get to scenes. We always
21 get briefed and from there, we do a walk-through with an
22 officer or a detective of the scene, so we can see what we
23 have, look for items of evidence and that sort of thing, then
24 we proceed into the documentation.

25 Q And how do you document the scene?

1 A First, we take notes about what we see, describe the
2 scene, the structure, everything that we can immediately see
3 without moving or touching anything. Then we take
4 photography. Once we're done with photography, then we can
5 proceed to searching other -- searching things within the
6 scene after we can move them. Then we take more photography
7 and then collect any evidence from that point forward.

8 Q Okay. And do you mark any evidence and then take
9 pictures as well?

10 A Most crime scenes evidence gets marked, yes.

11 Q Okay. And how do you impound evidence?

12 A Depending on the item depends on a different way
13 that way impound that evidence, but all the evidence, we wear
14 our personal protective equipment, so we wear gloves when we
15 collect our evidence. Then our evidence gets put into a
16 proximal container, which just means like an interior package
17 to keep each item separated from each other.

18 Then those items that are like items that can go
19 together in separate packages, will go together in their
20 package, be sealed, and have our P number, initials, and a
21 date on the seal. Then on the front of the package will have
22 a label. That will label will indicate the event number, the
23 location that we were at, the type of call, our personnel
24 number and our name and signature and then the contents of
25 that package.

1 Q And do you take any different or additional steps if
2 the item that you're impounding may need to be later tested
3 for DNA or fingerprints or any biological testing?

4 A Yes. If an item -- there's essentially two ways
5 that we can collect items that are for -- to be processed for
6 -- and usually it's just going to be DNA or fingerprints. We
7 document the item as-is at the scene, obviously. Then if
8 we're going to collect possible DNA from the item before it
9 is sealed up in the package and dropped, we will collect a
10 swab of DNA from that item.

11 If it's an item that is booked as what we call
12 original surface, for then the DNA personnel in the forensic
13 lab to process, then as I said before, it gets into a
14 proximal container inside of the evidence package with other
15 items in and then dropped as evidence.

16 Q If you're going to collect a swab of DNA off an item
17 of evidence, would you do that swabbing at the scene or would
18 you do that swabbing somewhere else?

19 A Generally, we will do that swabbing in what we call
20 a controlled environment, which is usually the CSI section.
21 We want to limit the amount of times we're handling an item.
22 So generally, we will do that processing at the CSI lab.

23 There's on occasion sometimes where people will
24 doing swabbing at the scene, but generally, for items of
25 evidence, the item won't be swabbed until it's taken back to

1 a controlled environment.

2 Q Thank you. And now, on September 3, 2018, you
3 indicated that you responded to the SuperPawn at 1150 South
4 Rainbow; is that correct?

5 A Yes.

6 Q Showing you State's Exhibit --

7 MS. HEAP: Your Honor, permission to publish
8 exhibits that are already admitted?

9 THE COURT: Yes.

10 MS. HEAP: Thank you.

11 BY MS. HEAP:

12 Q Showing you State's Exhibit 13. Do you recognize
13 this SuperPawn?

14 A Yes.

15 Q And is that where you were called out on September
16 3rd of 2018?

17 A Yes.

18 Q You indicated that you would get a briefing first.
19 Did that happen in this case?

20 A Yes.

21 Q And do you recall who you got a briefing from? Was
22 it the detectives, robbery detectives, do you recall?

23 A I do not recall an officer or a detective.

24 Q Okay. And is it fair to say there were several law
25 enforcement personnel at the scene?

1 A Yes.

2 Q And is that common in an officer-involved shooting?

3 A Yes.

4 Q Okay. Do you -- it seems like this, do you ever
5 watch any body-worn camera?

6 A Yes, we do, generally. If we're able, we do.

7 Q Do you recall whether or not you did at this
8 particular scene?

9 A I do not recall.

10 Q And did you do a walk-through of the scene?

11 A Yes.

12 Q And when you do a walk-through, do you walk through
13 the outside as well as the inside of a store?

14 A Yes.

15 Q And you indicated you do to look for items of
16 evidentiary value?

17 A Yes.

18 Q Showing you State's Exhibit 17. Is this an area you
19 would have walked around to look at the evidence?

20 A Yes. To look for evidence, yes.

21 Q Okay. And in this photograph do you see any items
22 that you would have documented later?

23 A Yes.

24 Q And where do you see those items?

25 A Just to the -- this is, to give you direction, the

1 AutoZone is south. Just to the east of the vehicles and just
2 to the north of the vehicles from this perspective.

3 MS. HEAP: And Your Honor, may I approach the
4 witness?

5 THE COURT: Yes.

6 BY MS. HEAP:

7 Q If you could just circle that for the record.

8 A Okay. I can see some evidence here, and I can see
9 some evidence here.

10 MS. HEAP: And for the record, she made two red
11 circles in the center of the photograph on items that appear
12 to be on the pavement.

13 THE COURT: And just -- to just make it a little
14 clearer, the first circle she made is closer to the what
15 appears to be like the front of the parking lot in front of
16 that Roman like pillar to the right of it, and the other
17 circle, the smaller circle is further back in the photograph
18 behind the white Sedan that's not the Jeep.

19 MS. HEAP: Thank you, Your Honor.

20 THE COURT: Is that a fair description?

21 MS. HEAP: Yes, Your Honor.

22 THE COURT: Okay. Thank you.

23 THE WITNESS: Do you want them cleared?

24 MS. HEAP: Yes, please.

25 Your Honor, I'm just going to attempt to make it

1 less grainy.

2 (Pause in the proceedings)

3 BY MS. HEAP:

4 Q So you had circled two -- two items -- or two areas
5 where you would have collected evidence.

6 Showing you State's Exhibit 20. That circle that
7 you had made that was closest to the left of the photograph,
8 is this a close-up of those items that were closer to the
9 store?

10 A Yes.

11 Q And do you recall what those items were?

12 A Yes. A semi-automatic firearm and a magazine, a
13 pistol magazine.

14 Q And showing you State's Exhibit 25, is this another
15 angle of those same items?

16 A Yes.

17 Q Okay. And does this show where they were in
18 relation to the two vehicles, the red and white vehicle
19 parked on scene?

20 A Yes.

21 Q Now, you described the semi-automatic firearm.

22 Showing you State's Exhibit 22. Is this a close-up of that
23 firearm?

24 A Yes.

25 Q And in this firearm, can you see, I guess, anything

1 unusual about the top of the firearm?

2 A Yes.

3 Q And what is that?

4 A This is what we call a stovepipe malfunction. So if
5 you look -- I'm going to use the little pointer here. If you
6 look near the top of the photograph at this area right here,
7 this long piece of metal on the top of the firearm is called
8 a slide. The slide is usually completely forward. That's
9 why you can see a part of the barrel sticking out here
10 because it's not completely forward.

11 So this little section that I circled near the top
12 of the firearm is called the ejection port. The ejection
13 port is where the cartridge case comes out after what people
14 would call a round of ammunition. We call it a cartridge.
15 After a cartridge is fired, this is where the cartridge case
16 would come out of the firearm.

17 Now, if you have a stovepipe malfunction, that
18 means that the cartridge case is stuck in the ejection port.
19 So there's a cartridge case in here stopping the slide from
20 completely going back into battery.

21 THE COURT: Can you describe those?

22 MS. HEAP: Yes. For the record, Your Honor,
23 towards the top right-hand side of the photograph what is
24 circled the area where there's a void, for lack of a better
25 word, or a space on the top of the firearm. And on the very

1 left side of the photograph she circled the silver part
2 sticking out of the firearm. Is that fair?

3 THE COURT: Yes.

4 BY MS. HEAP:

5 Q And showing you State's Exhibit -- oh, actually,
6 could you clear that?

7 A Oh.

8 Q You did. Thank you.

9 A Yeah, I did.

10 Q Showing you State's Exhibit 23. Is this a
11 photograph of the magazine that was found near that firearm?

12 A I do believe so.

13 Q I don't want to try and zoom out. I'm sorry.

14 A That's okay. I can tell it's a pistol magazine,
15 yes.

16 Q And showing you State's Exhibit 24. Is this an area
17 where you would have also documented and recovered evidence?

18 A Yes.

19 Q And do you see in this photograph items that you
20 later documented and collected?

21 A Yes.

22 Q And where do you see those items?

23 A On the left side of the picture you'll see a parking
24 space with a helmet and another firearm with a sling. Then
25 in the back of the photo or the top of the photo, you'll see

1 a couple -- there's some boots and a belt, and then to the
2 right, you'll see a black -- almost looks like a blob.
3 That's going to be a backpack.

4 Q Showing you State's Exhibit 26. Is this another
5 angle of those same pieces of evidence?

6 A Yes.

7 Q And in this photograph at the top right-hand corner,
8 do you also see that pistol and magazine that we've looked at
9 a few slides ago, slide -- I'm sorry, photograph State's
10 Exhibit 25?

11 A Yes. The previous semi-automatic firearm.

12 Q Showing you State's Exhibit 30, is this a close-up
13 photograph of the helmet and the firearm on the sling you
14 referred to?

15 A Yes.

16 Q And is there also another item in this photograph
17 that you would have recovered?

18 A Yes.

19 Q And where is that?

20 A The top left-hand corner, there's another item of
21 evidence.

22 Q And do you know what that item is?

23 A Yes, it's a face mask.

24 Q Okay. Showing you State's Exhibit 31, is this just
25 a close-up of that same firearm with a sling?

1 A Yes.

2 Q Do you recall what type of firearm is?

3 A Yes, it's a -- a rifle, sorry.

4 Q Showing you State's Exhibit 34. Is this a
5 photograph of the items -- of items that you also collected?

6 A Yes.

7 Q And showing you State's Exhibit 35, is that a
8 close-up of one of the items you collected?

9 A Yes.

10 Q And which item is that?

11 A That's a tactical belt.

12 Q And you talked about, a few slides ago, a black
13 blob. Showing --

14 A Yes.

15 Q -- you State's Exhibit 36. Do you recognize this,
16 what's in this photograph?

17 A Yes, that would be the backpack I was referred to.

18 Q Now, I noticed in those photographs, there were no
19 markings or placards. Would those photographs have been
20 taken prior to marking the evidence?

21 A Yes.

22 Q Showing you State's Exhibit 45. Do you see the
23 evidence or any evidence having been already marked in this
24 photograph?

25 A Yes.

1 Q And can you please explain what is marked.

2 A Yes. There's a couple cones. There's one to the
3 right of the photo, you'll see just behind the red vehicle.
4 So you'll see a cone and a placard. The placard is going to
5 be of the little yellow tent card and then there's a little
6 orange cone. Then you'll see another tent placard and orange
7 cone just next to the rear passenger side tire of the white
8 vehicle.

9 Then you will see the semi-automatic firearm and
10 the magazine both with a tent placard. Then in the left side
11 kind of centrally of the photo, you'll see another cone over
12 by the other firearm.

13 Q Now, that first firearm that we talked about, the
14 pistol, did you impound that as item number one?

15 A Yes.

16 Q And was that a -- what type of firearm was it, do
17 you recall?

18 A A Glock.

19 Q What caliber?

20 A A .40.

21 Q And was that a Glock 35?

22 A Yes.

23 Q And as item two, what did you recover as item two?

24 A I believe that was the magazine.

25 Q The magazine that was in close proximity --

1 A Yes.

2 Q -- to that firearm?

3 A Yes.

4 Q And when you impounded -- or when you collected
5 items one and two, did you do additional testing on those
6 items?

7 A I did additional evidence collection from those
8 items, yes.

9 Q Thank you. What additional evidence collection did
10 you do on those items?

11 A I collected a swab for possible DNA from each of the
12 items.

13 Q Okay. And specifically, on item one, where did you
14 swab that?

15 A I swabbed the firearm on what we call the abrasive
16 surfaces, so that would be the trigger, the slide serrations,
17 the grip and the magazine release.

18 Q So when you swab an item, in particular this item,
19 what do you do with that swab?

20 A That swab is a sterile swab that I put distilled
21 water on, I collect it. Then after I collect the possible
22 DNA, that swab goes into its own separate envelope. That
23 envelope is then sealed. The case information and where the
24 swab was recovered from is on the front of the envelope.
25 That envelope is considered the proximal container, like I

1 referred to earlier, for that particular swab.

2 Then that swab will go with other like items, if
3 applicable, into another package. That package with each
4 proximal container separate on the inside will then get
5 sealed, again, with my P number, initials, and the date. It
6 will get another evidence label on the front, and that
7 evidence label will have all the case information, as
8 discussed previously, and the contents of that package.

9 Q And when you impound all of these items, whether
10 it's items you find at the scene or additional swabs that you
11 do, do you impound them all under the same event number?

12 A Yes.

13 Q And in this case, is that event number 1809031848?

14 A Yes.

15 Q And is that done so you know that all of the
16 evidence went to this particular crime scene?

17 A Yes.

18 Q Thank you. So getting back to items -- to item one,
19 any additional swabbing you did, with the swabs, did you
20 actually do two swabs from this item?

21 A From which item?

22 Q From item one. Did you do two DNA swabs?

23 A I believe one DNA swab was from that item.

24 Q Okay. And --

25 A Item one's the firearm, correct?

1 Q Correct. You believe you only did one?

2 A I believe. But I do have my report.

3 Q Would it refresh your recollection to review your
4 report?

5 A Yes.

6 MS. HEAP: May the witness review her report, Your
7 Honor?

8 THE COURT: Yes.

9 THE WITNESS: Oh, no, I took two.

10 BY MS. HEAP:

11 Q You did two swabs --

12 A I took two.

13 Q -- of item one?

14 A Yes.

15 Q Okay. And when you impounded those, were those
16 impounded under items number 31 and 32?

17 A Yes.

18 Q Okay. Now, item two you said was the magazine; is
19 that correct?

20 A Yes.

21 Q Okay. And did you swab that magazine for DNA?

22 A Yes.

23 Q And was that swab of DNA impounded as item 33?

24 A Yes.

25 Q Showing you State's Exhibit 31. You indicated that

1 you impounded this rifle from that pavement area; is that
2 correct?

3 A Yes.

4 Q Okay. And did you impound this as item number
5 three?

6 A Yes.

7 Q Did you also swab this piece of evidence for DNA?

8 A Yes.

9 Q Okay. And where did you swab on this item?

10 A This particular item, it would have been the same
11 locations on this item as the semi-automatic firearm, but
12 also including the -- the stock of the firearm, so the --
13 well, the -- where your hand would go further up on the
14 firearm.

15 Q And from the firearm, item number three, did you
16 impound that swab as item number 34?

17 A Yes.

18 Q And did you also swab the magazine that was inserted
19 in this firearm?

20 A Yes.

21 Q And was that swab impounded as item 35?

22 A Yes.

23 Q Okay. When you, I guess, viewed this item, when you
24 first saw it, did it have the magazine inserted in the item?

25 A Yes. You can actually see it in the picture.

1 Q Okay. And unlike the first one, the magazine was
2 separate; is that correct?

3 A Yes.

4 Q Did you also swab additional items found -- or
5 recovered at the scene for DNA?

6 A Yes.

7 Q And what other items?

8 A I also swabbed two other firearm magazines and a
9 handle of a knife.

10 Q Okay. Showing you State's Exhibit 50. Can you
11 explain what's in this photograph?

12 A Yes. There's an extended firearm magazine in the
13 right, and you can see that it's sitting on a placard labeled
14 five. Then there's another pistol magazine on the left-hand
15 side of the picture with a placard number four. And then
16 underneath the extended magazine you can see a knife that is
17 being indicated by placard number six.

18 Q Okay. So let's start with item number four. What
19 is that?

20 A It's a pistol magazine.

21 Q Okay. And did you swab that for DNA?

22 A Yes.

23 Q Did you impound that swab as item 36?

24 A Yes.

25 Q Okay. And looking at item number five, what is

1 that?

2 A Another pistol magazine.

3 Q And did you swab that for DNA?

4 A Yes.

5 Q And was that impounded as item 37?

6 A Yes.

7 Q The swab?

8 A Yes, the swab.

9 Q And item number six? And I know we can all see
10 this, but we have to do it for the record.

11 A Um-h'm.

12 Q Item number 36 -- sorry, item number six, what is
13 that?

14 A The knife.

15 Q Okay. And did you swab that for DNA?

16 A Yes.

17 Q Did you impound that swab as item 38?

18 A Yes.

19 Q Okay. Did you also obtain a buccal swab from anyone
20 at the scene that day?

21 A Yes.

22 Q Do you recall who that was?

23 A Adriane -- would you mind if I refer to my report so
24 I can try to pronounce her last name?

25 Q If that will refresh --

1 A Yes.

2 Q -- your recollection.

3 A Adriane Serrano-Bojorquez.

4 Q Okay. And did you impound that buccal swab as item
5 39?

6 A Yes.

7 Q I'm going to show you item 51. Do you recognize
8 what's depicted in this vehicle?

9 A Yes. This is the white vehicle that was seen in the
10 previous photos.

11 Q Okay. And would it be normal for this car to have
12 all those orange stickers?

13 A No.

14 Q What are those?

15 A Those are LVMPD vehicle seals.

16 Q And why do CSAs seal vehicles?

17 A We seal a vehicle if it is pending a search warrant.
18 So after detectives obtain a search warrant, then the seals
19 will be breached for further documentation inside of the
20 vehicle.

21 Q And do you know whether this vehicle was ultimately
22 searched?

23 A I do know eventually it was, yes.

24 Q Was that done at the scene or somewhere else?

25 A At the CSI lab.

1 Q And did you do that?

2 A No.

3 Q When you impound or process the firearms, what do
4 you specifically do with that? How do you impound those?

5 A When we collect a firearm from a scene, we have a
6 specific process in how we handle the firearm. So the first
7 thing is to photo it in place, obviously. Then after we
8 photo the firearm in place, we have clean gloves on, and we
9 put a mask on, then take the firearm and place it on a clean,
10 neutral background.

11 We photograph the firearm as it is to show its
12 condition on both sides. Then in order to continue any
13 further evidence collection from that firearm, we have to do
14 what's clearing the firearm and make it safe. So we have to
15 remove the magazine, remove any applicable cartridges that
16 are still in the chamber.

17 After that's done, we photo the -- the firearm as
18 -- after it's been cleared to show what was inside. Then if
19 we're still on scene and we're going to later do possible DNA
20 collection, then this firearm will go into its proximal
21 container separate of the cartridge that was in the chamber,
22 separate of the magazine, and the magazine also gets what's
23 called downloaded.

24 So we take the cartridges out of magazine and they
25 are separate of the magazine. So everything's in its own

1 package. And then that he gets secured and then secured
2 further into one of our crime scene vehicles locked up so
3 that it can't be accessed.

4 Q Showing you State's Exhibit 84. Is that a
5 photograph of item one that you collected?

6 A Yes.

7 Q And looking at the bottom left of the photograph, do
8 you see a ruler, correct?

9 A I do.

10 Q And what are -- what the writing on the ruler?

11 A That would be my P number and initials.

12 Q That indicated you were processing this evidence --

13 A Yes.

14 Q -- is that correct? And you indicated that item one
15 had a stovepipe or something stuck in it; is that correct?

16 A Yes.

17 Q Showing you State's 85. Is that a photograph of the
18 stovepipe?

19 A Yes.

20 Q And did you remove that item that was stuck?

21 A Yes.

22 Q And showing you State's 86. Is that a photograph of
23 what was inside of that firearm?

24 A Yes.

25 Q And is in this photo you can still see your name and

1 P number on there?

2 A Yes.

3 Q Showing you State's Exhibit 87. Is this a magazine
4 that was collected as item two?

5 A Yes.

6 Q And you indicated you removed all the items that are
7 within the magazine; is that correct?

8 A Yes.

9 Q And showing you State's Exhibit 88. Are those the
10 bullets that were removed from that magazine?

11 A Yes. Those are the cartridges inside.

12 Q And I might say bullet or just correct me if I'm
13 using the wrong terminology.

14 A That's okay.

15 Q Showing you State's Exhibit 89. That's the firearm
16 that you had it as item three?

17 A Yes.

18 Q And this one shows the magazine actually inserted in
19 the firearm?

20 A Yes.

21 Q Showing you State's Exhibit 90. Is that the
22 magazine removed?

23 A Yes.

24 Q And again, you have a ruler with your name and P
25 number in the photograph?

1 A Yes.

2 Q Showing you State's Exhibit 91. Is that a
3 photograph of that magazine with the bullets removed?

4 A Yes. After you move it around, I can see it, yes.

5 Q Thank you. And you already indicated that Exhibit
6 -- I'm sorry, item number five was another magazine. Showing
7 you Exhibit 93. Is that a photograph of another magazine?

8 A Yes.

9 Q And showing you -- State's Exhibit 94. Is that a
10 photograph of the bullets taken out of that magazine?

11 A Yes.

12 Q And State's Exhibit 95, is that the knife you
13 impounded as item number six?

14 A Yes.

15 Q And State's Exhibit 96, you indicated there was also
16 a mask. Is that a photograph of the mask that was recovered?

17 A Yes.

18 Q And is that the mask that was sort of balled up in
19 the photographs on the pavement?

20 A Yes.

21 Q And for the record, was that mask impounded as item
22 number 26?

23 A Yes, I believe so.

24 Q Inside of the magazines that were near these
25 firearms that you recovered, what caliber were the bullets?

1 A The cartridges were .40 caliber.

2 Q Cartridges, thank you. And those are the cartridges
3 in both -- or actually, all three of the magazines that were
4 separated from firearms?

5 A All of the magazines were .40 caliber.

6 Q So even the rifle; is that correct?

7 A Yes.

8 Q And did you also impound that tactical belt as item
9 20?

10 A I believe so, yes.

11 Q While I look for a photograph, did that utility belt
12 -- showing you State's Exhibit 35. Do you know what these
13 items are on the left-hand side that are attached -- I'm
14 sorry, the right-hand side attached to the belt?

15 A They look like holster -- magazine holsters.

16 Q And was anything -- were there any magazines
17 actually in those holsters?

18 A From what I recall, no.

19 Q And then on the left-hand side of that belt, what
20 was that?

21 A A firearm holster.

22 Q Did you observe bullet impacts anywhere on the
23 scene?

24 A Yes.

25 Q Do you recall where?

1 A Yes. There was one in the pavement just north,
2 approximately north of the white vehicle. Then there were
3 three in the rear passenger side of that white vehicle, as
4 well as one on the rear driver's side of that white vehicle,
5 the Sedan. Then there were it three into the north face of
6 that south wall, the wall that was in front of that white
7 vehicle.

8 And then two more further east in the parking lot
9 into more cinder block wall.

10 Q Showing you State's Exhibit 46. You indicated there
11 was one on the payment; is that correct?

12 A Yes.

13 Q Do you see that bullet impact in this photograph?

14 A Yes.

15 Q And where do you see it?

16 A Almost central in the -- in the photo, you can see
17 what looks like a little dot with a little linear,
18 rectangular scale next to it.

19 Q And do you mark bullet impacts separate from other
20 pieces of evidence?

21 A Yes.

22 Q And showing you State's Exhibit 47, is that that
23 same bullet impact?

24 A Yes.

25 Q And showing you State's Exhibit 48, is that that

1 same bullet impact?

2 A Yes.

3 Q And is it fair to say this is marked with a light
4 green or a yellow sticker?

5 A Yes.

6 Q And it's labeled A1?

7 A Yes.

8 Q Now, as part of processing a scene, an
9 officer-involved shooting scene, do you also take what are
10 called perspective photographs?

11 A We do, yes.

12 Q And can you explain to the ladies and gentlemen of
13 the jury who those are?

14 A Perspective photographs are photos taken with our
15 cameras set on a tripod at a focal length of 34, which is the
16 approximate view that we would have with our own eyes. The
17 purpose of perspective photographs is to show what a person
18 may have seen based on where they said they were within a
19 scene.

20 So what they would have seen with their eyes when
21 they were within a crime scene. So we take the photographs,
22 and we do what's called panning. So we'll go from one side
23 and then we'll take a picture in essentially a half circle or
24 sometimes a full circle, so from left to right generally,
25 taking different pictures so that we can attempt to show what

1 somebody may have seen when they were at that particular
2 location.

3 Q And I have to back up one second. I apologize. I
4 missed -- I missed one issue. When you were collecting
5 evidence near the cars, did you collect any empty cartridge
6 cases?

7 A Yes.

8 Q And by that, like the bullet had been fired,
9 correct?

10 A Yes.

11 Q Okay. And where did you collect those empty cases?

12 A There were some between the two cars. There were
13 some across the parking lot. There's a hummer parked there.
14 There were some on the hummer and near the hummer. They were
15 basically in a couple areas of the parking lot there.

16 Q And were all of those empty cartridge cases the same
17 caliber of firearm or the same caliber of bullet?

18 A All of the cartridge cases, aside from the one I
19 recovered from the semi-automatic -- semi-automatic handgun
20 were all the same caliber.

21 Q And what caliber was that?

22 A Nine millimeter.

23 Q So all those were nine millimeter and the one you
24 recovered that had stove -- stovepipe -- stovepiped in the
25 gun was a .40; is that correct?

1 A Yes.

2 Q Thank you. Now we'll move on to the perspectives
3 then. Showing you State's Exhibit 73. Do you recognize this
4 photograph?

5 A I do.

6 Q All right. And what is being depicted in this
7 photograph?

8 A This photograph is showing two crime scene analysts
9 -- I believe one of them is me -- standing at locations where
10 we were told are approximate locations of people that were
11 within that crime scene at the time of the event.

12 Q So you're documenting different people where they're
13 standing during the shooting; is that correct?

14 A Yes.

15 Q Is that fair to say? And I see the person that's
16 standing appears to be center of the photograph, the top --
17 top center of the photograph, you see a person there; is that
18 correct?

19 A Yes.

20 Q And directly in front of them on the ground, what is
21 that?

22 A That is a typical orange cone with a paper bag on
23 top of it.

24 Q And looking --

25 THE COURT: And Ms. Heap, I'm just going to do a

1 better description of that for the record.

2 And so the person is standing closest to the white
3 Sedan vehicle, and it is just to the right of where you see
4 the words short term loans; is that -- would you say that's a
5 fair description?

6 MS. HEAP: Yes, Your Honor. Thank you.

7 THE COURT: Okay. Thank you.

8 BY MS. HEAP:

9 Q So you used the cone and the paper bag to mark where
10 someone was standing?

11 A Yes. Where we were told someone was standing.

12 Q And showing you State's Exhibit 74. Is that a
13 photograph of that same cone where that person was standing
14 just without the person?

15 A Yes.

16 Q Showing you State's Exhibit 106. What's marked on
17 this paper bag?

18 A This is an officer's last name and his personnel
19 number.

20 Q So this is where, to the best of your knowledge,
21 Officer Farrington would have been standing during the
22 shooting?

23 A Yes.

24 Q And you wanted to look at what he was looking at,
25 correct?

1 A Yes.

2 Q So showing you State's Exhibit 107, do you see that
3 same paper bag with an overall view?

4 A Yes.

5 Q And for the record, the same paper bag would be the
6 right driver's side wheel of the hummer; is that correct?

7 A Yes. Just adjacent to.

8 Q And the paper bag and cone that are to the top
9 left-hand side of the hummer, that's where another person
10 would have been standing. Is that correct?

11 A Yes. Just to the left of the front end of that
12 hummer in the picture.

13 Q Okay. And was that paper bag marked "suspect?"

14 A Yes.

15 Q So this would have been Officer Farrington's view of
16 the suspect at the time; is that correct?

17 A This would have been showing where each of them
18 were.

19 Q Okay.

20 A This would not have been his view.

21 Q Thank you. Showing you State's Exhibit 108, is that
22 just a closer view of the -- where the suspect would have
23 been standing?

24 A Yes.

25 Q And you also did perspectives for Officer Graham; is

1 that correct?

2 A Giselle (phonetic) did, yes.

3 Q And you were present --

4 A Yes.

5 Q -- during that time? And you observed them?

6 A Yes.

7 Q Okay. Showing you State's Exhibit 109. Is this the
8 placard for Officer Graham?

9 A Yes.

10 Q And showing you State's Exhibit 111, is this what
11 Officer Graham would have seen at that location?

12 A Yes.

13 Q And -- now, you see in this photograph someone's
14 actually holding a paper bag, instead of it being on a cone,
15 correct?

16 A Yes, that's me.

17 Q And why?

18 A Because as you can tell, our cones are not very
19 tall, and a regular human is not the same height as a traffic
20 cone. So the only way that we would be able to show
21 perspectives from each of these locations would be if we had
22 a person actually holding the bag with the name or the
23 information on the bag while the photographer was taking the
24 perspective images.

25 Q I'm showing you State's Exhibit 12. Is that just a

1 better view?

2 A Yes.

3 Q Okay. And you also for a perspective was also done
4 for Carrigy; is that correct?

5 A Yes.

6 Q Showing you State's Exhibit 113. Is that Officer
7 Carrigy's placard?

8 A Yes.

9 Q And showing you State's Exhibit 141, would that have
10 been Officer Carrigy's view in relation to the suspect?

11 A One of them, yes.

12 Q And you also conducted or took photographs from
13 Officer Fulwiler perspective photographs; is that correct?

14 A I do believe so, yes.

15 Q And showing you State's Exhibit 115, would that have
16 been her marker?

17 A Yes.

18 Q Her being Officer Fulwiler?

19 A Yes.

20 Q And showing you State's Exhibit 116, would that have
21 been her view where that marker was?

22 A Yes.

23 Q Okay. And again, it appears that somebody is
24 standing up holding this paper bag; is that correct?

25 A Yes.

1 Q And showing you State's Exhibit 117, is that just a
2 close-up of the suspect's placard?

3 A Yes.

4 Q Showing you State's Exhibit 118, is this an angle
5 from where the suspect was standing towards the white hummer?

6 A Yes.

7 Q Okay. Again, and someone is holding the paper bag
8 rather than it being on the ground; is that correct?

9 A Yes.

10 Q So you could see it?

11 And showing you State's Exhibit 119, is this a view
12 from that placard marked "suspect" looking out towards the
13 street where officers indicated they were standing?

14 A Yes.

15 Q And then did you also have an opportunity to go
16 inside the store?

17 A Yes.

18 Q Showing you State's Exhibit 52. Do you recognize
19 that as the SuperPawn you entered that day?

20 A Yeah. That's the front entry.

21 Q Showing you State's Exhibit 53, do you recognize
22 that as being inside of the store?

23 A Yes.

24 Q And did you collect any items of evidentiary value
25 inside the store?

1 A Yes.

2 Q And what area did you collect that evidence from?

3 A Just inside the front door on the ground.

4 Q And do you recall what the item was?

5 A Two zip ties, one broken and one attached.

6 Q Showing you State's Exhibit 68, is this a view from
7 inside the store looking out the front door?

8 A Yes.

9 Q And do you see the item -- do you see the item that
10 you collected from inside the store?

11 A I do.

12 Q And where do you see that?

13 A It is just to the right of the wheel of this popcorn
14 machine that is in the center of the picture.

15 Q Showing you State's Exhibit 69, is that just a
16 closer view of that zip tie?

17 A Yes.

18 Q And showing you State's Exhibit 70, is that the same
19 zip tie at another time?

20 A Yes.

21 Q Where was this photograph taken?

22 A This was taken, I believe, at the scene.

23 Q And what is the purpose of this photograph?

24 A Just to show the item since when it's in place
25 within the scene you can't see the entire thing, so we take a

1 picture of the item as-is and then it's taken with a scale so
2 you can get an approximate size of the item.

3 Q Thank you. So we talked a little bit about a
4 backpack that was recovered from outside?

5 A Yes.

6 Q Were the contents of that backpack taken out?

7 A Yes.

8 Q And was that done outside where the backpack was
9 initially seen?

10 A No.

11 Q Where did you -- or where was that backpack -- where
12 were the items taken out of that backpack?

13 A We took the backpack inside of the SuperPawn so that
14 we had a controlled environment and then took the contents
15 outside.

16 Q Showing you State's Exhibit 76. Is that the
17 backpack?

18 A Yes.

19 Q Showing you State's Exhibit 77. You said you took
20 the backpack inside?

21 A Yes.

22 Q Is that depicted in this photograph?

23 A Yes.

24 Q Can you actually see the backpack sitting on the
25 jewelry counter there?

1 A Yes.

2 Q Did you -- did CSAs go through each level of that
3 backpack?

4 A Yes.

5 Q And what is depicted in this photograph?

6 A A wire cutter inside one of the pockets.

7 Q Okay. Showing you State's Exhibit 78. Did you
8 observe the contents of that backpack?

9 A Yes.

10 Q And what were they?

11 A U.S. currency and jewelry.

12 Q Were those items taken out of that backpack?

13 A Yes.

14 Q Showing you State's Exhibit 79. What do you see in
15 this photograph?

16 A Miscellaneous items of jewelry.

17 Q And is it hard to tell what items are there in that
18 photograph?

19 A Yes.

20 Q Okay. So do you sort of spread them out so you can
21 see what each piece is?

22 A Yes.

23 Q Showing you State's Exhibit 80, is that a photograph
24 of all of those items that were within that backpack?

25 A Yes.

1 Q And it also appeared there was cash in that
2 backpack; is that correct?

3 A Yes.

4 Q Showing you State's Exhibit 82, is that the pile of
5 cash that came from the backpack?

6 A Yes.

7 Q Okay. And was that cash also spread out so you can
8 determine how much there was?

9 A Yeah.

10 Q Okay. Showing you State's Exhibit 83, is that that
11 same cash laid out?

12 A Yes.

13 Q Now, did you impound the jewelry and cash?

14 A No.

15 Q Was that given back to the owner of the pawn shop?

16 A It was given to the detectives to return to the
17 owner of the pawn shop, to my knowledge.

18 MS. HEAP: Court's brief indulgence. May approach
19 the clerk, Your Honor?

20 THE COURT: Yes.

21 (Ms. Heap approaches Clerk)

22 MS. HEAP: My approach the witness, Your Honor?

23 THE COURT: Yes.

24 BY MS. HEAP:

25 Q Ma'am, do you recognize what this State's Proposed

1 Exhibit 144 is?

2 A I recognize my handwriting and I recognize the items
3 on there, yes.

4 Q Okay. And what items are in there?

5 A A black Glock 35, .40 caliber semi-automatic handgun
6 and a black Glock .40 caliber 15 capacity pistol magazine.

7 Q Okay. And does this indicate that this was item --
8 which items that you recovered?

9 A One and two.

10 Q And just flipping it over, can you show the ladies
11 and gentlemen of the jury what these are -- things are on the
12 back.

13 A Yes. So earlier when I was describing how we
14 package evidence, this tape and the red tape, I should say,
15 at the top where the bag is folded over would have been the
16 tape I initially put on there when the item was impounded.
17 Then additional tape on here with my P number and initials,
18 the red tape, indicates that it was somebody from CSI, and
19 seeing that my P number and initials are on here, I was the
20 person from CSI that put the tape there.

21 Now, there's also tape here that is blue on the
22 left side of the bag, but that is not my tape.

23 Q And you indicated this was items one and two that
24 you recovered?

25 A Yes.

1 MS. HEAP: Your Honor, the State will move for
2 admission of Proposed Exhibit 144, and ask for permission to
3 open the item.

4 THE COURT: Any objection?

5 MR. TREJO: No objection.

6 THE COURT: That will be admitted and you also have
7 the permission.

8 (State's Exhibit 144 admitted).

9 (Pause in the proceedings).

10 BY MS. HEAP:

11 Q And ma'am, do you recognize this item?

12 A Yes.

13 Q Okay. And what do you recognize of that item to be?

14 A I recognize the event number, my P number and
15 initials and item one, which indicates to me that it is a
16 Glock semi-automatic firearm inside that bag.

17 Q And the second smaller bag?

18 A Is item two with the same evidence -- or I'm sorry,
19 event number and my P number and initials, which indicates to
20 me that this is the magazine.

21 MS. HEAP: Court's brief indulgence.

22 THE COURT: Um-hum.

23 BY MS. HEAP:

24 Q And you expect this to be item number two, the
25 magazines, that was impounded as evidence?

1 A Yes.

2 Q And do you recognize this item?

3 A I do.

4 Q And how do you recognize it?

5 A I recognize this item because there's what we call a
6 wire tag on here, and on the back of this wire tag, it is the
7 same event, P number, initials and item number one as I
8 indicated before. And also, it's -- looks the same as I saw
9 it when I booked it as evidence.

10 Q Okay. And I don't know, if you could show the
11 ladies and gentlemen of the jury, there's what appear to be
12 zip ties in this firearm. Did those -- were those there when
13 you impounded it?

14 A Yes.

15 Q And did you --

16 A Or at least there was -- yeah, the black one was.

17 Q Did you put those on there?

18 A Yes.

19 Q And I don't know if you saw her open it, but was
20 this the item that was in the smaller package as item two?

21 A Yes.

22 Q And when you first observed this item -- what is
23 this first of all?

24 A That's a pistol magazine.

25 Q Okay. And when you first observed it, was it full

1 of bullets?

2 A Yes. Of cartridges.

3 Q Cartridges. Thank you.

4 A Yep.

5 (Ms. Heap confers with Clerk)

6 BY MS. HEAP:

7 Q Ma'am, I'm showing you State's Proposed Exhibit 145.
8 Do you recognize this exhibit?

9 A Yes, I do.

10 Q And what do you recognize that to be?

11 A The Kel-Tec Sub 2000 sub-carbine .40 caliber rifle
12 and the magazine that was inside the rifle.

13 Q Okay. And what item was that impounded as?

14 A Item three would be the rifle, and item 3A was the
15 magazine.

16 Q And showing you the ladies and gentlemen of the
17 jury, can you explain the markings on the bag as well?

18 A Same as before, the red tape would indicate the
19 crime scene analyst booking the item, and I can see my P
20 number and initials. And then at the bottom here you can see
21 some blue tape that would indicate somebody else accessed the
22 package.

23 Q So you would expect this bag to cover that larger
24 firearm that you recovered from the scene?

25 A Yes.

1 MS. HEAP: And the State would move to admit
2 Exhibit -- Proposed Exhibit 145 and permission to open.

3 THE COURT: Mr. Trejo, any objection?

4 MR. TREJO: No objection.

5 THE COURT: So that will be admitted and permission
6 to open.

7 (State's Exhibit 145 admitted)

8 (Pause in the proceedings).

9 THE COURT: Hilary, do you have the numbers?

10 MS. HEAP: I'm sorry?

11 THE COURT: It's the -- it's the last State exhibit.

12 MS. HEAP: The numbers?

13 THE COURT: Yeah.

14 MS. HEAP: 144 and 145.

15 THE COURT: Thank you.

16 THE COURT: (Indiscernible).

17 BY MS. HEAP:

18 Q Ma'am, do you recognize this item?

19 A Yes, I do.

20 Q And how do you recognize it?

21 A I recognize it because of my P number and initials,
22 the item number and the event number and also the seal on the
23 back of this that has my P number and initials.

24 Q Okay.

25 A And this is the rifle that I recovered from the

1 scene.

2 Q As item number 3?

3 A Yes.

4 Q And this rifle actually had a magazine in it,
5 correct?

6 A Yes.

7 Q Which was full of cartridges?

8 A Cartridges.

9 Q Thank you.

10 JUROR NO. 15: Excuse me, Judge. I'm getting
11 really nauseated. I've got to go.

12 (Juror Number 15 exits the courtroom)

13 THE COURT: Yeah. So ladies and gentlemen of the
14 jury, we're just going to take a break.

15 During the recess, you're admonished not to talk or
16 converse amongst yourselves or with anyone else on any
17 subject connected with this trial or read, watch or listen to
18 any report of or commentary on the trial or any person
19 connected with this trial by any medium of information,
20 including without limitation, newspapers, television, the
21 Internet and radio. Or form or express any opinion on any
22 subject connected with the trial until the case is finally
23 submitted to you.

24 It is 10:58 we'll take like ten minutes.

25 (Outside the presence of the jury)

1 THE COURT: And for the record, Juror 15 left
2 before I read the admonishment, so just -- I don't think that
3 should be an issue since I've been reading it every other
4 time, but I don't --

5 MR. SCHWARTZER: I think maybe before lunch we just
6 make a record that she didn't talk to anybody and followed
7 the admonished that she's heard 50 times by the
8 (indiscernible).

9 THE COURT: Okay. Okay. Thank you. And ma'am,
10 you can also leave if you need to go to the restroom or
11 anything like that.

12 THE WITNESS: I'm okay, unless you want me to.

13 THE COURT: I was going to see if there's anything
14 that the parties needed outside the presence so --

15 THE WITNESS: Okay.

16 THE COURT: -- I need you to -- yeah.

17 THE MARSHAL: And Judge, I was going to give her a
18 minute and then I'll check with that juror to see how she is.

19 THE COURT: Okay. Thank you. And is there
20 anything that the parties need outside the presence?

21 MS. HEAP: Not by the State.

22 THE COURT: Mr. Trejo?

23 MR. TREJO: Not by the defense.

24 THE COURT: Okay. Then we will be at recess for a
25 couple minutes.

1 (Court recessed at 11:00 a.m. until 11:16 a.m.)

2 (Outside the presence of the jury)

3 THE COURT: The -- Juror No. 15, Dina Cochran, is
4 an alternate, and she's the one who had to leave. Bill came
5 back in and said that they said that she's not feeling well.
6 She woke up this morning not feeling well. And she's okay
7 now, you said?

8 THE MARSHAL: She said she feels a little better,
9 but she did -- she just was nauseous --

10 THE COURT: Okay.

11 THE MARSHAL: -- and wasn't sure how she was going
12 to feel.

13 THE COURT: So I wanted to check with you all and
14 see if -- I mean, she's 15. We still have two more
15 alternates. Do you guys want to just let her go?

16 MR. SCHWARTZER: The State would, Your Honor.

17 MR. TREJO: I agree.

18 THE COURT: Okay. So if you can bring her in,
19 we'll just --

20 THE MARSHAL: Sure.

21 THE COURT: -- excuse her.

22 MR. SCHWARTZER: Can we just make a record that she
23 didn't talk anyone about the case outside?

24 THE COURT: Okay.

25 MR. SCHWARTZER: Thank you, Your Honor.

1 (Juror Number 15 is present)

2 THE COURT: Ms. Cochran, you -- I'm sorry, you're
3 not feeling well.

4 JUROR NO. 15: Yeah.

5 THE COURT: You left before I was able to do the
6 recess admonishment. I wanted to make sure that you didn't
7 speak to anyone about the case or do anything related to the
8 case after you left, before you came back in here.

9 JUROR NO. 15: No.

10 THE COURT: Okay. I -- I don't want you to be here
11 when you're not feeling well, so -- so we're going to go
12 ahead and excuse you now from the jury.

13 JUROR NO. 15: Okay.

14 THE COURT: Okay? So thank you so much for your
15 time. I'm sorry you weren't able to see it through, and I
16 hope you feel better.

17 JUROR NO. 15: Thank you.

18 THE COURT: Thank you.

19 JUROR NO. 15: Sorry.

20 THE COURT: No, no problem.

21 (Juror Number 15 exits the courtroom.)

22 THE COURT: Today's day nine? We excused her on
23 day nine?

24 MR. SCHWARTZER: We're at day nine.

25 THE COURT: Okay. Okay. So we will go and grab

1 the rest of the jury. Anything else outside -- oh, the
2 witness first, but anything outside the presence?

3 MS. HEAP: Not by the State.

4 MR. TREJO: Not by the defense.

5 THE COURT: Okay. So yeah, if we can get the
6 witness in and then the jury.

7 (In the presence of the jury)

8 THE COURT: Will the parties stipulate to the
9 presence of the jury?

10 MS. HEAP: The State does.

11 MR. TREJO: Yes, Your Honor.

12 THE COURT: Thank you. Have a seat. Ladies and
13 gentlemen of the jury, you will notice that Juror No. 15 is
14 no longer with us. She became ill. That's the reason we
15 have so many alternates, on such a long trial. So if anyone
16 else, you know, is gone, we're going to have a problem. But
17 -- so thank you all for being here.

18 So you can continue, Ms. Heap.

19 MS. HEAP: Thank you, Your Honor. May I approach?

20 THE COURT: Yes.

21 BY MS. HEAP:

22 Q Ma'am, right before we left, we were discussing
23 State's Exhibit 145 that had just been admitted. Inside of
24 that package was that larger firearm and the smaller package.
25 Do you -- do you recognize this package?

1 A Yes.

2 Q And what do you expect that package to be?

3 A I expect that to be a firearm magazine.

4 Q And do you expect this to be the magazine that was
5 actually inserted in that larger firearm --

6 A Yes.

7 Q -- when you impounded it?

8 MS. HEAP: And permission to open, Your Honor.

9 THE COURT: Yes.

10 BY MS. HEAP:

11 Q Ma'am, can you open the contents of that bag for the
12 ladies and gentlemen of the jury? Is that the magazine that
13 was inserted in that larger firearm?

14 A Yes.

15 Q And when you impounded that, that was also full of
16 cartridge cases?

17 A Cartridges.

18 Q Cases? Cartridges. I'll get it right by the end.

19 MS. HEAP: And I will pass the witness, Your Honor.

20 THE COURT: Mr. Trejo?

21 CROSS-EXAMINATION

22 BY MR. TREJO:

23 Q Good morning, Mrs. Paine.

24 A Good morning.

25 Q I just had a few questions.

1 MR. TREJO: To the Court, may I please see the
2 exhibits just used by the State for reference?

3 THE COURT: Yes. Yeah. Yes. The photos.

4 (Mr. Trejo/Interpreter confer with Clerk)

5 BY MR. TREJO:

6 Q The first question is about the mask, Exhibit 96.
7 The face mask you recovered, do you recall exactly what it
8 would cover on the person's face at first glance?

9 A I don't quite understand what you're asking me.

10 Q Did the mask have holes in it?

11 A From what I recall, yes, but I'd have to look at it
12 again. It's been a little while.

13 THE COURT: Can you please state what -- the
14 exhibit number.

15 MR. TREJO: Exhibit 96.

16 THE COURT: Thank you.

17 BY MR. TREJO:

18 Q So based on your observations, ma'am, what are the
19 holes presented in this photo for?

20 MS. HEAP: I'm going to object as to speculation.

21 THE COURT: I don't actually even see any holes in
22 the photo, so I'm not exactly sure what your question is
23 about. Can you be a little bit more specific as to if she
24 even sees any holes, or?

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MARIO TREJO,) No. 84724
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Appellant,)
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v.)
)
THE STATE OF NEVADA,)
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Respondent.)
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