

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Respondent.

APPELLANT'S APPENDIX VOLUME XII PAGES 2676-2925

Docket 84724 Document 2023-04826

INDEX
MARIO BLADIMIR TREJO
Case No. 84724

	<u>PAGE NO.</u>
Defendant's Motion for Setting of Reasonable Bail with House Arrest Based on the Changed Circumstances Brought About by the COVID-19 Crisis filed 03/31/20 Date of Hrg: 04//06/20.....	90-100
Defendant's Motion to Suppress Evidence filed 04/06/22 Date of Hrg: 04/11/22.....	738-758
Defendant's Response to State's Motion to Preclude Irrelevant Argument filed 04/13/22 Date of Hrg: 04/11/22.....	831-838
District Court Minutes from 10/04/18 through 06/15/22	909-958
Indictment filed 10/04/18	1-6
Indictment Warrant filed 10/04/18	7-8
Indictment Warrant Return filed 10/05/18	9-13
Instructions to the Jury filed 05/03/22.....	845-885
Judgment of Conviction (Plea of Guilty) filed 06/16/22.....	898-903
Jury List filed 04/21/22.....	844
Jury List filed 05/04/22.....	886
Media Request and Order Allowing Camera Access filed 10/10/18.....	14-15
Motion for Medical O.R. or to set Reasonable Bail (Pro Se) filed 04/20/21 Date of Hrg: 04/26/21	130-150
Motion for Pro Per In-Court Disability Adjustment filed 09/23/21	243-247
Motion for Setting of Reasonable Bail filed 11/28/18 Date of Hrg: 12/05/18.....	16-23
Motion for Setting of Reasonable Bail with Electronic Monitoring filed 01/14/19 Date of Hrg: 01/23/19.....	24-29
Motion to Appeal Decision on May 10 th , 2021 filed 06/17/21.....	185-224
Motion to Appeal to the Jan. 3 rd 2022 Decision on Dismissal of Case filed 01/21/22.....	490-536
Motion to Dismiss Case/Prosecutorial Misconduct and Perjury filed 12/13/22 Date of Hrg: 01/03/22.....	432-449
Motion to Dismiss Counsel filed 03/02/21 Date of Hrg: 03/24/21	117-120

1	Motion to Dismiss Standby Counsel filed 09/23/21	
2	Date of Hrg: 10/18/21	240-242
3	Motion to Dismiss State’s Motion of Opposition filed 05/11/21	
4	Date of Hrg: 06/02/21	178-184
5	Motion to Suppress Digital Evidence filed 05/06/21	
6	Date of Hrg: 06/02/21	171-177
7	Motion to Suppress Evidence filed 03/01/22	538-549
8	Motion to Suppress Witness Testimony/Impeachment of Witnesses filed 11/19/21	
9	Date of Hrg: 12/13/21	258-269
10	Motion to Withdraw as Attorney of Record filed 03/15/21	
11	Date of Hrg: 03/24/21	121-128
12	Notice of Appeal filed 05/12/22	892-894
13	Notice of Appeal filed 06/28/22	904-908
14	Notice of Hearing filed 10/01/19.....	80
15	Notice of Hearing filed 04/01/20.....	101
16	Notice of Hearing filed 03/15/21	129
17	Notice of Hearing filed 03/31/22.....	684
18	Notice of Hearing filed 04/07/22.....	159
19	Notice of Rescheduling Hearing filed 01/12/22	487-489
20	Notice of Vacated Hearing filed 04/07/22.....	760-761
21	Order Denying Defendant’s Motion to Dismiss Case/Prosecutorial Misconduct and Perjury filed 01/04/22	
22	Date of Hrg: 01/03/22	481-483
23	Order Denying Defendant’s Motion to Suppress Witness Testimony/Impeachment of Witnesses filed 01/04/22	
24	Date of Hrg: 12/13/21	484-486
25	Order Denying Defendant’s Motion to Suppress Evidence filed 03/29/22	
26	Date of Hrg: 03/23/22.....	667-669
27	Order Denying Defendant’s Motion to Suppress Evidence filed 06/09/22	
28	Date of Hrg: 04/18/22.....	895-897
	Order Granting Defendant’s Expenditure Request for Expenditure Allowance filed 04/15/22.....	839-841
	Order to File Ex Parte Application for Order Under Seal filed 06/17/20.....	115
	Order to File Ex Parte Order under Seal filed 06/17/20	116

1	Order to Show Cause: Contempt filed 04/19/22	842-843
2	Pre-Trial Motion to Suppress Evidence filed 03/18/22	652-662
3	Receipt of Copy filed 07/08/21	225
4	Receipt of Copy filed 08/05/21	226
5	Receipt of Copy filed 10/19/21	253
6	Receipt of Copy filed 02/03/21	537
7	State's Fourth Supplemental Notice of Witnesses and/or Expert Witnesses filed 04/05/22	733-738
8		
9	State's Notice of Exhibits for Opposition to Defendant's Fifth Motion for Own Recognizance Release filed 04/22/21 Date of Hrg: 04/22/21	170
10		
11	State's Notice of Exhibits for Opposition to Defendant's Motion to Suppress Evidence filed 03/07/22	622-627
12	State's Notice of Expert Witnesses filed 03/06/19	30-38
13	State's Notice of Motion and Motion in Limine to Preclude Defendant from Making Irrelevant Arguments filed 03/30/22	670-683
14		
15	State's Notice of Motion and Motion to Admit Audiovisual Testimony at Trial on an Order Shortening Time filed 03/16/22 Date of Hrg: 03/21/22	641-651
16		
17	State's Opposition to Defendant's Fifth Motion for Own Recognizance Release filed 04/22/21 Date of Hrg: 04/26/21	151-169
18		
19	State's Opposition to Defendant's Motion for Setting of Reasonable Bail with House Arrest filed 04/02/20 Date of Hrg: 04/06/20	102-114
20		
21	State's Opposition to Defendant's Motion to Suppress filed 04/01/22 Date of Hrg: 04/11/22	685-732
22	State's Opposition to Defendant's Motion to Suppress Evidence filed 03/07/22 Date of Hrg: 03/23/22	556-621
23		
24	State's Opposition to Defendant's Motion to Suppress Evidence filed 04/07/22 Date of Hrg: 04/27/22	762-830
25	State's Opposition to Defendant's Supplemental Motion for Setting Reasonable Bail with House Arrest filed 10/07/19 Date of Hrg: 10/09/19	81-89
26		
27	State's Response to Defendant's Motion to Dismiss Case/Prosecutorial Misconduct and Perjury filed 12/21/21 Date of Hrg: 01/03/21	450-480
28		

1	State's Response to Defendant's Motion to Suppress Witness Testimony/Impeachment of Witnesses filed 12/02/21	
2	Date of Hrg: 12/13/21	270-431
3	State's Second Supplemental Notice of Witnesses and/or Expert Witnesses filed 10/07/21	248-252
4	State's Supplemental Notice of Expert Witnesses filed 09/15/21	227-239
5	State's Third Supplemental Notice of Witnesses and/or Expert Witnesses filed 03/15/22	628-640
6	Supplemental Motion for Setting Reasonable Bail with House Arrest filed 10/01/19 Date of Hrg: 10/09/19	40-79
7	Supreme Court Judgment filed 10/21/21	254-257
8	Supreme Court Judgment filed 03/23/22	663-666
9	Verdict filed 05/04/22	887-891
10	Widdis/Expenditure Allowance Motion filed 03/01/21 Date of Hrg: 03/23/21	550-555
11		
12		
13		

TRANSCRIPTS

14	Recorder's Transcript Jury Trial Day 1 Date of Hrg: 04/18/22	1285-1452
15	Recorder's Transcript Jury Trial Day 2 Date of Hrg: 04/19/22	1453-1688
16	Recorder's Transcript Jury Trial Day 3 Date of Hrg: 04/20/22	1689-1925
17	Recorder's Transcript Jury Trial Day 4 Date of Hrg: 04/21/22	1926-2036
18	Recorder's Transcript Jury Trial Day 5 Date of Hrg: 04/22/22	2037-2234
19	Recorder's Transcript Jury Trial Day 6 Date of Hrg: 04/25/22	2235-2345
20	Recorder's Transcript Jury Trial Day 7 Date of Hrg: 04/26/22	2346-2502
21		
22		
23		
24		
25		
26		
27		
28		

1	Recorder's Transcript Jury Trial Day 8	
2	Date of Hrg: 04/27/22.....	2503-2611
3	Recorder's Transcript Jury Trial Day 9	
4	Date of Hrg: 04/28/22.....	2612-2771
5	Recorder's Transcript Jury Trial Day 10	
6	Date of Hrg: 04/29/22.....	2772-2918
7	Recorder's Transcript Jury Trial Day 11	
8	Date of Hrg: 05/02/22.....	2919-3029
9	Recorder's Transcript Jury Trial Day 12	
10	Date of Hrg: 05/03/22.....	3030-3142
11	Recorder's Transcript Jury Trial Day 13	
12	Date of Hrg: 05/04/22.....	3143-3170
13	Recorder's Transcript All Pending Motions	
14	Date of Hrg: 03/23/22.....	1256-1263
15	Recorder's Transcript All Pending Motions	
16	Date of Hrg: 04/11/22.....	1264-1268
17	Recorder's Transcript All Pending Motions	
18	Date of Hrg: 04/18/22.....	1272-1284
19	Recorder's Transcript Calendar Call	
20	Date of Hrg: 01/20/21.....	1100-1102
21	Recorder's Transcript Calendar Call	
22	Date of Hrg: 05/17/21.....	1168-1170
23	Recorder's Transcript Calendar Call	
24	Date of Hrg: 01/12/22.....	1192-1196
25	Recorder's Transcript Calendar Call	
26	Date of Hrg: 01/19/22.....	1197-1202
27	Recorder's Transcript Central Calendar Call	
28	Date of Hrg: 04/13/22.....	1269-1271

1	Recorder's Transcript Defendant's Motion for Setting of Reasonable Bail with Electronic Monitoring	
2	Date of Hrg: 01/23/19	1097-1099
3	Recorder's Transcript Evidentiary Hearing	
4	Date of Hrg: 02/03/22	1203-1233
5	Recorder's Transcript Evidentiary Hearing	
6	Date of Hrg: 02/04/22	1234-1247
7	Recorder's Transcript Motion for Medical or to Set Reasonable Bail	
8	Date of Hrg: 04/26/21	1140-1142
9	Recorder's Transcript Motion for Medical or to Set Reasonable Bail	
10	Date of Hrg: 04/28/21	1143-1147
11	Recorder's Transcript Motion for Medical or to Set Reasonable Bail	
12	Date of Hrg: 05/05/21	1148-1150
13	Recorder's Transcript Motion for Medical or to Set Reasonable Bail	
14	Date of Hrg: 05/10/21	1151-1167
15	Recorder's Transcript Motion to Dismiss Counsel	
16	Date of Hrg: 03/24/21	1103-1108
17	Recorder's Transcript Motion to Dismiss Standby Counsel; Motion for Proper in Court Disability; Calendar Call	
18	Date of Hrg: 10/11/21	1174-1179
19	Recorder's Transcript Motion to Dismiss State's Motion of Opposition	
20	Date of Hrg: 06/02/21	1171-1173
21	Recorder's Transcript Motion to Dismiss the Case for Prosecutorial Misconduct and Perjury	
22	Date of Hrg: 01/03/22	1187-1191
23	Recorder's Transcript Motion to Suppress Witness Testimony/Impeachment	
24	Date of Hrg: 12/13/21	1180-1186
25	Recorder's Transcript Motion to Withdraw as Counsel	
26	Date of Hrg: 03/31/21	1109-1139
27	Recorder's Transcript Order to Show Cause	
28	Date of Hrg: 05/10/22	3171-3173

1	Recorder's Transcript Sentencing	
2	Date of Hrg: 06/15/22.....	3174-3197
3	Recorder's Transcript State's Motion to Admit Audiovisual Testimony at Trial on OST; Calendar Call	
4	Date of Hrg: 03/21/22.....	1248-1255
5	Reporter's Transcript Preliminary Hearing	
6	Date of Hrg: 10/03/18.....	959-1096
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
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1 BY MR. TREJO:

2 Q Did the mask have holes in it?

3 A From what I can see in this picture, yes.

4 Q Are they eye holes?

5 A I do not know. They are holes.

6 Q Would you assume, based on the fact you called it a
7 mask and your observations when collecting it, that they were
8 -- they are for the eyes?

9 A I called it a face mask but it could be used as a
10 covering to cover a face. Where the holes go, if somebody
11 were to put it on, is up to the person wearing it.

12 Q And now, in your opinion how much of a person's face
13 would this mask reveal if worn as a mask?

14 A It depends on how the person's wearing the mask. It
15 depends on how much of their face they want to cover. It was
16 less than -- somewhere around a foot long, close to a foot,
17 approximately. But I don't -- I don't know how much of a
18 face it would cover.

19 Q The bullet impact that you processed at the scene,
20 specifically the one on the floor allegedly made by the
21 defendant, is there a specific process for determining if, in
22 fact, that was a bullet impact and not just wear and tear
23 damage from another source?

24 A I didn't process a bullet hole on the ground. We
25 took a photo of a bullet hole on the ground. There is a test

1 that we can do with -- it's called a bullet hole testing kit
2 that we can do to determine if something might be an impact,
3 but based on my experience in this job, that was a bullet
4 impact.

5 Q Were you able to find the projectile that might have
6 allegedly caused that bullet impact?

7 A There were pieces of bullet within the scene, but I
8 can't tell you if it was for that impact or for another one.

9 Q So the projectile or bullet that was allegedly fired
10 by the defendant, was it ever found and collected?

11 A I do not know.

12 Q Okay. Thank you. Now, you were the one that looked
13 -- that booked the Sub 2000 carbine into evidence, and you
14 didn't -- and you did mention I had a magazine --

15 THE INTERPRETER: Oh, okay. A correction has been
16 made. I will now read it again.

17 BY MR. TREJO:

18 Q Okay. Thank you. Now, you were the one that booked
19 the Sub 2000 carbine into evidence, and you did mention it
20 had a magazine with cartridges in it, but it was -- but was
21 it ever actually chambered?

22 A Not that I recall. I recall only the magazine being
23 seated in the magazine well.

24 Q Are you familiar with that sub 2000 and its firing
25 mechanism?

1 A Aside from the minimal interaction I had with it on
2 scene, no, I've never seen a weapon that way -- like that
3 before.

4 Q So from your interaction with it, was it -- was that
5 form in which you presented it in its standard configuration
6 or was it folded?

7 A The firearm was folded. You can see it in the
8 photographs from the scene.

9 Q And do you know if it can be fired in its folded
10 form?

11 A I do not believe that it can, but I have never fired
12 that type of weapon before.

13 Q And so it not being chambered and it being folded,
14 can it be fired at all?

15 A As I said previously, I do not believe so, if it
16 cannot be fired while it's folded. So I do not believe so.

17 MR. TREJO: And that will be it. Thank you, Mrs.
18 Paine. No further questions.

19 THE WITNESS: You're welcome.

20 THE COURT: Ms. Heap, anything?

21 MS. HEAP: No, Your Honor. The State has no
22 further questions.

23 THE COURT: Okay. Do the ladies and gentlemen of
24 the jury have any questions for this witness? Yes? Okay.

25 (Bench conference)

1 THE COURT: Before we get the questions, I'm just
2 thinking we should probably just take our lunch break when
3 we're done with the questions from the jury on this one,
4 unless you guys have follow-up.

5 MR. HENRY: Yeah.

6 THE COURT: Okay. Just to clarify from an earlier
7 question, you took a buccal swab from Adriane.

8 MR. SCHWARTZER: That's fine.

9 MS. HEAP: That's fine.

10 THE COURT: Yeah, that's fine.

11 MR. SCHWARTZER: Yeah.

12 THE COURT: Oh, wait, there's more. Okay. Sorry.
13 What --

14 MR. SCHWARTZER: Does that have the juror's name on
15 it?

16 THE COURT: Yeah, Jenny Gong. What is the full
17 capacity of the magazine of the Glock handgun?

18 That seems fine.

19 MR. SCHWARTZER: Yeah.

20 THE COURT: Mr. Trejo? Yes.

21 How many rounds were in the magazine that was in the
22 Glock pistol when you discovered from the crime scene?

23 MR. SCHWARTZER: Um-h'm.

24 THE COURT: And so that seems fine. I'm going to
25 say recovered instead of discovered.

1 MR. SCHWARTZER: Um-h'm.

2 THE COURT: And number three, you mentioned that
3 the slide of the Glock wasn't at the original position. Does
4 it mean it was fired previously?

5 MR. SCHWARTZER: I think you can ask that.

6 THE COURT: I think I can ask that.

7 MR. SCHWARTZER: Yeah.

8 THE COURT: Mr. Trejo? Okay. And he's not nodding
9 his head in agreement, since the interpreter isn't up here.
10 Can you just, Ms. Interpreter, whether he's agreeing to all
11 four of the questions?

12 MR. TREJO: Can I see them?

13 THE COURT: Can you say what he just said?

14 MR. TREJO: That's right.

15 THE COURT: I think he said fine. Is it --

16 MR. TREJO: It's fine. I'm sorry.

17 THE MARSHAL: We've got one more here.

18 THE COURT: Oh, now there's another one. Okay.

19 Thank you. And this one is, how is DNA retrieved from a
20 magazine or pistol grip? So I think that's a fine question.

21 MR. SCHWARTZER: That is.

22 THE COURT: Mr. -- I'm sorry, Ms. Heap?

23 MR. TREJO: I agree.

24 MR. SCHWARTZER: And how is DNA what?

25 THE COURT: How is DNA retrieved?

1 MR. SCHWARTZER: Oh, okay. Yeah.

2 THE COURT: And then the second one, what is the
3 carrier skin, blood, et cetera?

4 MR. SCHWARTZER: I mean, that might be a fair
5 question for the DNA expert --

6 MS. HEAP: Yeah.

7 MR. SCHWARTZER: -- that's later today.

8 THE COURT: Okay. So I'll -- I'll skip that one.
9 And --

10 MR. SCHWARTZER: I mean, she might know.

11 THE COURT: Oh, do you want me to ask it? I'll ask
12 it. She might know.

13 MR. SCHWARTZER: Can you ask, if you know?

14 THE COURT: Yeah. Are you fine with that?

15 MR. TREJO: Yes.

16 THE COURT: Okay.

17 (End of bench conference)

18 THE COURT: Okay. Ma'am, just to clarify from an
19 earlier question, you took a buccal swab from Adriane; is
20 that correct?

21 THE WITNESS: Yes.

22 THE COURT: Then, what is the full capacity of the
23 magazine of the Glock handgun?

24 THE WITNESS: If I can refer to my report, I can
25 let you know.

1 THE COURT: Yes.

2 THE WITNESS: It's a 15 capacity magazine.

3 THE COURT: How many rounds were in the magazine
4 that was in had the Glock pistol when you recovered it from
5 the crime scene?

6 THE WITNESS: 13.

7 THE COURT: You mentioned that the slide of the
8 Glock wasn't at the organize position. Does that mean it was
9 fired previously?

10 THE WITNESS: In order for the stovepipe
11 malfunction to have occurred, the -- a cartridge would have
12 had to have been fired. So the cartridge is a full round of
13 ammunition, including the bullet, the powder, the cartridge
14 case and the primer, which is on the bottom of the cart case.
15 It's the little round button on the bottom.

16 So all that was left behind for a stovepipe
17 malfunction is just the cartridge case with the primer on the
18 bottom. So the firearm would have had to have been fired at
19 some point for a stovepipe malfunction, or could have fired
20 at some point for a stovepipe malfunction. He hope that
21 answers that question.

22 THE COURT: How is DNA retrieved from a magazine or
23 pistol grip?

24 THE WITNESS: So that's two separate items. So the
25 firearm magazine we would take a swab just like we did before

1 with the distilled water, have the gloves, have the mask, all
2 that's the same. Then we take the swab and we try to obtain
3 DNA from what's called the feed lips or the feeding part of
4 the top of the magazine and also at the base.

5 We also sometimes swab the entire magazine. As for
6 as the grips of the firearm, I think was the other --

7 THE COURT: Yes.

8 THE WITNESS: -- part of the question. We just
9 take the swab and we just really aggressively swab the grips
10 of the firearm to see what we can get.

11 THE COURT: And this one is, if you know, what is
12 the carrier, skin, blood, et cetera?

13 THE WITNESS: The carrier of the DNA? I can tell
14 you what we're trying to get from DNA swabs. Any DNA.
15 Generally, when we're swabbing a particular item and we don't
16 see something visible like blood, then it's just what we
17 would call touch DNA, which in that case, you'd be looking
18 for possibly epithelial cells, which are skin cells, but any
19 kind of DNA is what we're looking for when we swab something.

20 I hope that answered that question.

21 THE COURT: Okay. Ms. Heap, anything based on
22 that?

23 MS. HEAP: No, Your Honor.

24 THE COURT: Mr. Trejo, anything based on those
25 questions?

1 MR. TREJO: No, Your Honor.

2 THE COURT: Okay. Thank you.

3 Ms. Paine, you are excused, and please don't discuss
4 your testimony with anyone. Thank you so much.

5 THE WITNESS: Of course.

6 THE COURT: And ladies and gentlemen, we're going
7 to take our lunch recess.

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

17 We'll be back at 1:15. Thank you.

18 (Outside the presence of the jury)

19 THE COURT: Anything outside the presence?

20 MS. HEAP: Not from the State.

21 MR. TREJO: No, Your Honor.

22 THE COURT: Okay. Thank you. So I'll see you all
23 back in a little bit more than an hour.

24 MR. SCHWARTZER: Thank you, Your Honor.

25 (Court recessed at 11:56 a.m. until 1:18 p.m.)

1 THE COURT RECORDER: We are on.

2 THE COURT: Okay. So we are back on the record an
3 Case No. C-18-335315-1, State of Nevada versus Mario Trejo.
4 Mr. Schwartzer and Ms. Heap from the State are present.
5 Mr. Trejo is present, along with the interpreter and Mr. Alex
6 Henry from the Clark County Public Defender's Office, who is
7 acting as standby.

8 Is there anything we need outside the presence?

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

10 MS. HEAP: Not from the State.

11 MR. TREJO: No, Your Honor.

12 THE COURT: Okay. Great. I'm going to just give
13 Mr. Schwartzer a minute to get whatever his --

14 MR. SCHWARTZER: I'll be ready in a minute, Your
15 Honor.

16 THE COURT: Yeah. Just let me know.

17 MR. SCHWARTZER: All right. I think I'm good.

18 THE COURT: I was like I'm reading a search
19 warrant, so --

20 THE MARSHAL: We'll still waiting on one juror.

21 THE COURT: Oh.

22 THE MARSHAL: I mean, he'll probably pop up any
23 second.

24 THE COURT: Okay.

25 (Pause in the proceedings)

1 THE MARSHAL: All the jurors are here, Judge.

2 THE COURT: Okay. So all the jurors are here, so
3 we can go ahead and get started. So you can bring them in.

4 (Pause in the proceedings)

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

7 MR. TREJO: Yes, Your Honor.

8 MR. SCHWARTZER: Yes, Your Honor.

9 THE COURT: Thank you. So Mr. Schwartzer, call
10 your next witness.

11 MR. SCHWARTZER: State calls Crime Scene Analyst
12 Browning.

13 CLAIRE BROWNING, STATE'S WITNESS, SWORN

14 THE CLERK: Can you please state and spell your
15 name for the record.

16 THE WITNESS: It's Claire Browning, C-l-a-i-r-e.
17 Last name, B-r-o-w-n-i-n-g.

18 THE CLERK: Thank you.

19 THE COURT: You may proceed, Mr. Schwartzer.

20 MR. SCHWARTZER: Thank you. Your Honor.

21 DIRECT EXAMINATION

22 BY MR. SCHWARTZER:

23 Q Good afternoon.

24 A Good afternoon.

25 Q Can you tell the ladies and gentlemen of the jury

1 what you do for a living?

2 A I'm a crime scene analyst with Las Vegas
3 Metropolitan Police Department.

4 Q And they've heard just a couple hours ago from Crime
5 Scene Analyst Paine. You're familiar with Tabatha?

6 A Yes, I am.

7 Q So they already heard a brief description about what
8 you guys do, but since you're a different crime scene
9 analyst, can you tell the ladies and gentlemen of the jury
10 what you do as a crime scene analyst?

11 A Yeah. Whenever we are requested to a scene, we
12 respond, we get a briefing from the detectives and then we
13 document the scene through notes, photography, a diaphragm,
14 if necessary, collecting the evidence and processing for
15 latent prints.

16 Q Do you go through any type of training and education
17 in order to do your job?

18 A Yes. We go through a 12-week CSA academy and also a
19 12-week field training evaluation program.

20 Q Okay. And I can see right now, for the record,
21 you're wearing a LVMPD CSI vest; is that correct?

22 A That's correct.

23 Q Could you stand up and show the ladies and gentlemen
24 of the jury what you're wearing? Lots of pockets, lots of
25 things to put stuff into. Can you just briefly describe what

1 that vest is and what you have on it?

2 A This is mostly just a placeholder for all of my
3 equipment. So I have extra pens, pencils, gloves, knives,
4 whatever else I could possibly need.

5 Q Okay. Thank you. Now, I want to direct your
6 attention to September -- excuse me -- September 3rd of 2018
7 under event number 180903-1848.

8 Were you involved in a crime scene investigation
9 that originally occurred at 1150 South Rainbow?

10 A I don't recall the original address, but it was an
11 officer-involved shooting investigation.

12 Q Okay. Do you recognize that event number?

13 A Yes, I do.

14 Q That 180903-1848?

15 A Yes.

16 Q Okay. And now the reason why you don't recall the
17 location is did you actually go to the location where the
18 shooting occur?

19 A No, I did not.

20 Q Okay. Did you have a different responsibility in
21 this crime scene investigation?

22 A Yes, I did.

23 Q And what was your responsibility -- what was your
24 responsibility?

25 A I processed the vehicle that was at the original

1 scene location. We took it back to the CSI garage and
2 processed it at the garage.

3 Q Okay. Why would you want to do the investigation of
4 the vehicle at the garage versus at the scene?

5 A It's just a little bit more of a controlled
6 environment so that we can take everything out of the
7 vehicle, document everything in the vehicle and process it as
8 necessary.

9 Q Okay. And in order to do your investigation into
10 the vehicle, did you have a search warrant?

11 A Yes, we did.

12 Q Okay. And you say "we," was there another person
13 with you as well?

14 A Yes, there was.

15 Q Okay. Can you tell the ladies and gentlemen of the
16 jury who was with you.

17 A We had another crime scene analyst, the name was
18 Krissy Thomas (phonetic), and we also had a detective, his
19 name was Blake Penny.

20 Q Okay. And Detective -- excuse me, Detective Penny
21 is a FIT detective; is that correct?

22 A That's correct.

23 Q And the ladies and gentlemen of the jury already
24 heard what he does. So it was just the three of you at the
25 CSI garage?

1 A I believe so, yes.

2 Q Okay. And the garage is kind of a static
3 environment where you're able to kind of look through the
4 evidence as necessary?

5 A That's correct.

6 Q And it allows you to impound evidence and search
7 through the evidence; is that correct?

8 A That's correct.

9 Q Okay. Okay. Since there's multiple CSAs there, you
10 and Ms. Thomas, who does what? What's the response -- how
11 are the responsibilities divided up?

12 A We usually divide the responsibilities by one person
13 documenting the car or the scene through notes and reports as
14 well as photographs. The other person typically does
15 evidence.

16 MR. SCHWARTZER: And Your Honor, I'm going to ask
17 to be able to publish stipulated Exhibits 121 through 138
18 during the course of this testimony.

19 THE COURT: Sure.

20 MR. SCHWARTZER: Thank you, Your Honor.

21 BY MR. SCHWARTZER:

22 Q Who was -- who was in charge of documenting and
23 recording the evidence?

24 A I was in charge of photographing the evidence.

25 Q Okay. Did you also write the report as well?

1 A I did.

2 Q Okay. So the words in the report are words that you
3 decided to use?

4 A That's correct.

5 Q Okay. So I'm going to start from the beginning,
6 when you say photographs, so you can explain to the ladies
7 and gentlemen of the jury what you're doing. I'll -- I'm
8 going to start with Exhibit 121.

9 Do you recognize that photograph?

10 A Yes, I do.

11 Q Okay. What is this a photograph of?

12 A This is a photograph the -- the Hyundai that was
13 towed from the scene back to the CSI garage. You can see
14 that there's secure seals over the doors that the -- and
15 actually the trunk as well.

16 Q And what's the purpose of those seals?

17 A That's to show that nothing inside the vehicle was
18 tampered with.

19 Q Okay. And you also described what the vehicle is in
20 your report as well, is that correct?

21 A That's correct.

22 Q So do you remember the year and model and all that
23 stuff?

24 A I think it's a 2016 Hyundai Elantra, but I'm not a
25 hundred percent.

1 Q Would it be help refresh your memory?

2 A Yes.

3 Q Okay.

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

5 THE COURT: Yes.

6 BY MR. SCHWARTZER:

7 Q Does that refresh your memory what year it was?

8 A Yes. It's a 2015.

9 Q Okay. So in order to do the -- to execute that
10 search warrant on this vehicle in order to obtain whatever
11 evidence you're going to find, you have it cut those seals?

12 A That's correct.

13 Q Okay. I'm going to show you Exhibit 122. Is this
14 that same vehicle?

15 A Yes, it is.

16 Q And this is kind of the back of that vehicle?

17 A Yes, it is.

18 Q And specifically, we can see the license plate here;
19 is that correct?

20 A That's correct.

21 Q And I'm going to show you photograph 123. Is that
22 the photograph of the actual license plate?

23 A It's a photograph of the license plate that was on
24 the vehicle, yes.

25 Q That was attached to the vehicle?

1 A Yes.

2 Q On the back --

3 A Yes.

4 Q -- that we just saw in the previous Exhibit 122?

5 A Yes.

6 Q What state is this license plate from?

7 A Utah.

8 Q And what's the number on it?

9 A Easy 478 William Charlie.

10 Q Okay. So E478WC, for us, without that lingo?

11 A That's correct.

12 Q Okay. Thank you. Now, you make a description
13 regarding the license plate in your report; is that correct?

14 A That's correct.

15 Q Do you recall the term you use for the license
16 plate?

17 A The term is cold plated.

18 Q What is cold plated?

19 A It means that the plate that is on the vehicle is
20 not actually associated with the VIN that's associated with
21 that vehicle.

22 Q Okay. And we'll get into that a little bit more,
23 but do you eventually find the license plate that belongs to
24 that vehicle?

25 A Yes.

1 Q Okay. So first, I guess we'll start with the back.
2 Showing you Exhibit 124. Do you recognize this photograph?

3 A Yes.

4 Q Okay. What are you -- what are you showing in this
5 photograph?

6 A This appears to be the rear seat compartment of that
7 same vehicle.

8 Q Was there anything of note found in that rear part
9 of the vehicle?

10 A Yes, there was a rifle on the right rear floorboard
11 as well as a rifle magazine.

12 Q Okay. Do you recall what kind of firearm it was?

13 A I think it was a Zastava. I'm not sure about the
14 pronunciation of that rifle.

15 Q And sure. Part of it -- part of what you would do
16 is record what kind of firearm it is, you said it was a
17 Zastava?

18 A Yes.

19 Q And that's for the record, Z-a-s-t-a-v-a?

20 A That's correct.

21 Q Okay. And you also would record the serial number
22 as well; is that correct?

23 A Yes.

24 Q And that's something that you would write down
25 because you're not going to remember every serial number from

1 every firearm that you recover; is that correct?

2 A That's correct.

3 Q Okay. So in order to remember that -- the -- that
4 serial number, you would have to read it off your report?

5 A That's correct.

6 Q Okay.

7 MR. SCHWARTZER: Your Honor, I would ask to
8 approach and have her read it in as recorded recollection.

9 THE COURT: Any objection, Mr. Trejo?

10 MR. TREJO: No objection.

11 THE COURT: Proceed.

12 MR. SCHWARTZER: Okay. And for the record, I'm
13 showing her page 2 of her report.

14 THE COURT: Thank you.

15 THE WITNESS: Would you like me to read this?

16 BY MR. SCHWARTZER:

17 Q Yes, please.

18 A It's Mary 92 Paul Victor 025593.

19 Q Okay. And obviously, when you're using words like
20 Mary, that's for M?

21 A That's correct.

22 Q Showing you what's been marked as Exhibit 125. Is
23 this just a close-up of that same Zastava?

24 A Yes.

25 Q Okay. When firearms are collected as evidence, is

1 there some type of processing done on them?

2 A Yes.

3 Q Specifically, looking for other additional evidence
4 you can obtain from that item?

5 A That's correct.

6 Q Specifically, what kind of evidence are you -- what
7 do you do in order to collect that type of evidence?

8 A Typically, we are looking for DNA and fingerprints
9 on the firearm.

10 Q In this case, we heard from CSA Paine about swabbing
11 weapons or firearms specifically for DNA; is that correct?

12 A I believe so.

13 Q Okay. Well, I guess you wouldn't know. You weren't
14 there. But that's something that's typically done with
15 firearms; is that correct?

16 A Yes.

17 Q In this case, was swabbing done of the firearms?

18 A Yes.

19 Q Okay. For specifically this Zastava that we're
20 looking at right now?

21 A Yes.

22 Q All right. And that would -- whatever swab would be
23 actually impounded under the same event number that we talked
24 about, the 180903-1848?

25 A That's correct.

1 Q Okay. I'm going to show you what's been marked as
2 Exhibit 126. What are we looking at here?

3 A This is the right front seat compartment of that
4 vehicle.

5 Q Was there anything of note found in that right front
6 seat compartment?

7 A Yes. There is a green satchel that's actually on
8 the floorboard there.

9 Q Okay. Showing you what's been marked as 127. Is
10 that just a closer up of that photograph -- of that satchel?

11 A Yes, it is.

12 Q And was there something of importance or something
13 of note that is found in that satchel?

14 A Yes, there were two .40 caliber magazines inside the
15 satchel.

16 Q Okay. And they were loaded with actual cartridge?

17 A Yes.

18 Q Okay. Or bullets?

19 A Yes.

20 Q Okay. Showing you what's been marked as 128. What
21 are we seeing here in the -- in this vehicle that you did the
22 search on?

23 A This is the center console cup holders, so there's a
24 cell phone and another .40 caliber magazine in the cup
25 holder.

1 Q Okay. Was the magazine recovered?

2 A Yes, it was.

3 Q Were they both inside that as well?

4 A Yes.

5 Q Was the phone recovered?

6 A It was not recovered by us. It was actually
7 recovered by FIT Detective Blake Penny.

8 Q Okay. And -- but you noted what kind of phone it
9 was; is that correct?

10 A Yes.

11 Q Do you recall what phone it was?

12 A It was a Samsung Galaxy S9, I believe.

13 Q Okay. I'm going to show you what's been marked as
14 Exhibit 129. What are we looking at here?

15 A This is the trunk of the vehicle, and you can see
16 the registered plate to that vehicle inside the trunk.

17 Q Okay. For some reason it got grainy.

18 THE COURT: I was going to say, can you fix the
19 lighting on that?

20 MR. SCHWARTZER: I will try, Your Honor. We're
21 reaching the end of my technical skills right now.

22 THE COURT: Bill, can you maybe help?

23 (Pause in the proceedings).

24 BY MR. SCHWARTZER:

25 Q So unfortunately, I think this is what we have right

1 here. Would it -- that's fairly hard to read. Would it be
2 better to approach you with the exhibit?

3 A Yes, please.

4 Q All right. I'm approaching you with Exhibit 129.

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

6 THE COURT: Yes.

7 BY MR. SCHWARTZER:

8 Q And so we'd show this to the ladies and gentlemen of
9 the jury. What are we looking at here?

10 A This is the trunk of the vehicle with the registered
11 license plate in the trunk.

12 Q By registered license plate, registered to what?

13 A This vehicle, the VIN.

14 Q Okay. And if you could read that plate number for
15 us.

16 A It is 979 easy 05.

17 Q And what state is that from?

18 A Nevada.

19 Q Thank you.

20 A Um-h'm.

21 Q After locating the pieces of evidence that we just
22 showed, do you do something else with the evidence after it's
23 photographed in place?

24 A After it's photographed in place, we photograph it
25 again for identification just to see a closer view of each

1 item, and then additional processing can be done on some of
2 the items, like I said, DNA and fingerprint processing.

3 Q If you're going to do additional processing like you
4 did with the -- the group that you did (indiscernible) how
5 about do you wear gloves in order to protect potential
6 spoliation of the evidence?

7 A Yes.

8 Q Okay. Was that done in this case? Were gloves
9 worn?

10 A Yes.

11 Q Okay. Showing you Exhibit 130. Okay. So what are
12 you showing here in this photograph?

13 A This is just documenting or showing the
14 identification of the items that were in the center console
15 cup holder.

16 Q Okay. And specifically, that was that clear
17 magazine you were talking about that was loaded with bullets?

18 A Yes.

19 Q Okay. And the phone, the Galaxy S9?

20 A Yes.

21 Q Okay. Showing you 131. This is just a close-up of
22 that magazine?

23 A Yes.

24 Q Showing you Exhibit 132. What are we looking at
25 here?

1 A This the backside of the Galaxy S9.

2 Q Okay. And showing you Exhibit 133. What is this?

3 A This is the screen of that same cell phone.

4 Q Did the screen kind of pop on when you were taking
5 the photograph?

6 A Yes.

7 Q So we can kind of see messages that were being sent?

8 A Yes.

9 Q Okay. Specifically a message from a Matt PH?

10 A Yes.

11 Q Okay. Showing you Exhibit 134. Moving to a
12 different area, what are we seeing here?

13 A These are the items that were on the right rear
14 floorboard. So that's going to be the Zastava and also the
15 spare magazine that was on the floorboard.

16 Q Okay. Which was processed for DNA?

17 A Yes.

18 Q Showing you Exhibit 135.

19 A This is a close-up of the green satchel that was on
20 the right front floorboard.

21 Q Okay. And then showing you 136. Did you take a
22 photograph of what was inside that green satchel?

23 A Yes.

24 Q And is that what was shown here in 136?

25 A Yes.

1 Q Is that a hand with a glove pulling it open; is that
2 correct?

3 A Yes.

4 Q So again, when you're processing this evidence,
5 you're wearing gloves?

6 A Yes.

7 Q Showing you Exhibit 137. What are we looking at
8 here?

9 A These are the two magazines that were inside the
10 satchel.

11 Q Okay. And these -- the ammunition for this, was it
12 different than the ammunition that was found in the center
13 console?

14 A No, these were actually all the -- the same caliber,
15 the .40 caliber.

16 Q Okay. So these -- these two were .40 caliber?

17 A Yes.

18 Q And the one in the center counsel -- console was
19 also a .40 caliber?

20 A Yes.

21 Q So you have three full magazines with .40 caliber
22 ammunition?

23 A That's correct.

24 Q Okay. And I just want to make a note of this ruler
25 right here. Do you recognize this ruler?

1 A Yes.

2 Q Whose ruler is that?

3 A That is mine.

4 Q How do we know that?

5 A It has my P number and initials on it.

6 Q So C is your first name?

7 A Yes.

8 Q Initial, obviously. And then this is your P number?

9 A That's correct.

10 Q It's upside down, so let's do it this way. So I
11 just flipped over the exhibit. And then the last letter is B,
12 which is your last name?

13 A That's correct.

14 Q Initial for your last name?

15 A Yes.

16 Q And finally, we talked about that plate belonged --
17 the Nevada plate being the actual plate for the vehicle; is
18 that correct?

19 A That's correct.

20 Q So showing you what's been marked as 138. Did you
21 take a photograph -- did you take this photograph?

22 A Yes, I did.

23 Q Okay. And does this show the VIN number for the
24 vehicle that you did the search on?

25 A Yes.

1 Q And it shows -- and this is -- what is this for the
2 record?

3 A This is the registration for the vehicle.

4 Q Okay. Whose name is the registration in?

5 A Matthew Jason, I believe it's Mongeau.

6 Q And can you just spell that for the record?

7 A The last name?

8 Q Yes, please.

9 A M-o-n-g-e-a-u.

10 Q Okay. And looking at this registration, are you
11 able to tell what the license plate was supposed to be on the
12 vehicle?

13 A Yes.

14 Q Where would we look for that?

15 A That is the top left box.

16 Q The one that says decal number -- decal number, I
17 guess.

18 THE COURT: It says license number.

19 THE WITNESS: License number.

20 MR. SCHWARTZER: Oh, sorry.

21 THE COURT: Do you need glasses, Mr. Schwartzer?

22 THE WITNESS: It's also under decal number.

23 MR. SCHWARTZER: There's two, but I probably do need
24 glasses.

25 //

1 BY MR. SCHWARTZER:

2 Q So on the top left you have the license number; is
3 that correct?

4 A That's correct.

5 Q And then just for my own benefit, there's also a
6 decal number there as well; is that correct?

7 A That's correct.

8 THE COURT: Which is on the bottom close to the
9 right.

10 MR. SCHWARTZER: Right.

11 BY MR. SCHWARTZER:

12 Q And can you read that number for me?

13 A It's 979 easy 05.

14 Q Okay. And the plate background, what does that
15 mean?

16 A That's the -- the license. The type of license
17 plate. So it's not a speciality license plate.

18 Q That's what that all means, Nevada means, correct?

19 A Yes.

20 Q Okay. So that license plate that we were talking
21 about in Exhibit 129 matches up to the registration?

22 A That's correct.

23 Q Okay. So the phone was not impounded by you, it was
24 given to Detective Penny?

25 A That's correct.

1 Q And then the firearm and the magazines, they were
2 impounded by -- by crime scene analyst -- by a different crime
3 scene analyst or yourself?

4 A By a different crime scene analyst.

5 Q And that would be Crime Scene Analyst Thomas?

6 A That's correct.

7 Q Okay. But she did -- from your observation, she
8 followed all the methods that you do in order to do
9 (indiscernible) evidence?

10 A Yes.

11 Q Besides that, did you have any other participation
12 in this investigation at all?

13 A I don't believe so, no.

14 Q Thank you, ma'am.

15 MR. SCHWARTZER: I have no further questions of this
16 witness.

17 THE COURT: Mr. Trejo.

18 CROSS-EXAMINATION

19 BY MR. TREJO:

20 Q Hi, Ms. Browning. I just have a couple of
21 questions. In regard to the plates you found on the vehicle
22 in question, did you process them for fingerprints and DNA?

23 A The Utah plate that was in -- that was attached to
24 the backside of the vehicle was actually impounded as
25 evidence, and we processed it for latent prints.

1 Q Do you know what the results were in regards to
2 prints or was that handled by another individual?

3 A Another CSA actually did the latent print
4 processing. She -- as far as I recall from my report, she
5 developed, I think, five latent prints.

6 Q Was the same done for the plate in the trunk?

7 A The -- I do not believe that the plate in the trunk
8 was processed for latent prints.

9 MR. TREJO: And that will be it. Thank you, Ms.
10 Browning.

11 THE COURT: Anything based on that, Mr. Schwartzer?

12 MR. SCHWARTZER: No, Your Honor.

13 THE COURT: Okay. Questions from the jury? Okay.
14 We've got some questions.

15 (Bench conference)

16 THE COURT: Number one, does CSI have a time limit
17 to how long a vehicle can stay in CSI garage? I don't know
18 that that's relevant.

19 MR. TREJO: I don't care if it gets asked.

20 MR. SCHWARTZER: I don't think it's relevant.

21 THE COURT: I don't think it's relevant, so I'm not
22 going to ask that. Number two, do you have a timeframe all
23 findings and reports have to be turned in? Again, I also
24 don't think that's relevant.

25 Mr. Trejo? I can't hear him so you're going to need

1 to say it.

2 MR. TREJO: That's a good question.

3 THE COURT: But it's not relevant as to the time --

4 MR. SCHWARTZER: I mean, they can talk about
5 whatever report was produced or anything like that. I mean, I
6 guess we can go down that route but I don't see how it's
7 relevant.

8 THE COURT: I don't -- I don't see the relevance of
9 it at all, so I'm not going to ask either of these questions.
10 And then we've got some other ones. Thank you.

11 And then what type of vehicle was the Utah license
12 plate registered to? I don't think that's relevant either.

13 MR. SCHWARTZER: They'll find out on Friday.

14 THE COURT: Oh, okay. And then had that plate for
15 the vehicle, it was registered to, been reported as stolen?

16 MR. SCHWARTZER: I believe we'll find that out on
17 Friday as well.

18 THE COURT: Okay.

19 MR. HENRY: Find out who? What did you say?

20 MR. SCHWARTZER: Find that out on Friday as well.

21 MR. HENRY: Oh, okay.

22 THE COURT: Okay. So this is not the right witness.
23 Okay. Anything you wanted to add, Mr. Trejo?

24 MR. TREJO: That's it.

25 THE COURT: Okay. Thank you.

1 (End of bench conference)

2 THE COURT: Okay. Thank you, ma'am. You are
3 excused and please don't talk about your testimony with
4 anyone. Thank you.

5 Mr. Schwartzer and Ms. Heap, your next witness.

6 MR. SCHWARTZER: State calls Christine Whittle.

7 CHRISTINE WHITTLE, STATE'S WITNESS, SWORN

8 THE CLERK: Can you please state and spell your name
9 for the record.

10 THE WITNESS: Christine Whittle, C-h-r-i-s-t-i-n-e,
11 W-h-i-t-t-l-e.

12 THE CLERK: Thank you.

13 MR. SCHWARTZER: May I proceed, Your Honor?

14 THE COURT: Yes.

15 MR. SCHWARTZER: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY MS. SCHWARTZER:

18 Q Ms. Whittle, can you tell the ladies and gentlemen
19 of the jury what you do for a living?

20 A I work for the Las Vegas Metropolitan Police
21 Department as a forensic scientist in the DNA section.

22 Q What's a forensic scientist?

23 A A forensic scientist is who looks at items of
24 evidence from crime scenes tries to advise the courts in legal
25 matters.

1 Q Okay. And you're -- you're employed by LVMPD; is
2 that correct?

3 A Yes.

4 Q But to be clear, you don't make any like extra money
5 if you find DNA that incriminates someone versus DNA that
6 excludes somebody; is that correct?

7 A My paychecks cash the same either way.

8 Q Okay. So in order to be a forensic scientist, you
9 sit in the DNA section; is that correct?

10 A Yes.

11 Q So there's multiple other sections as well?

12 A Yes.

13 Q Such as latent fingerprints?

14 A Yes. Firearms.

15 Q Firearms?

16 A Toxicology, chemistry, crime scene.

17 Q So in order to be a forensic scientist in the DNA
18 section, is there any type of training or background that you
19 need?

20 A You're required to have a certain amount of course
21 work in biology, statistics, and genetics by the FBI, and by
22 Metro because of it. And so everyone has a similar background
23 in molecular biology, genetics, and statistics.

24 Q Okay. Can you tell the ladies and gentlemen of the
25 jury about your background?

1 A I have a bachelor's of science in microbiology and I
2 also started a master's degree in genomics in January.

3 Q Okay. Is -- besides your education, is there other
4 type of training that you went through in order to be a
5 forensic scientist?

6 A So before I was a forensic scientist at Metro, I
7 started in 2015 with Metro, I was a forensic scientist for
8 about ten years for the Florida Department of Law Enforcement.

9 When I started with the Florida Department of Law
10 Enforcement, I was a person that looked at items of evidence
11 for blood, semen and saliva. And so I went -- underwent a
12 six-month training program for that initially there. And
13 after doing that for two years, I was promoted and underwent a
14 14-month training program in the DNA process and then was a
15 DNA analyst for them up until 2015.

16 I underwent another year-long training process when
17 I went to Metro for all of their policies, procedures, and the
18 ways they do things this their laboratory. And we're required
19 to have at least eight hours of yearly training from the FBI.

20 Q Now I want to talk a little bit about the training
21 you experienced in Florida.

22 A Um-h'm.

23 Q You said you did a similar job in Florida as well;
24 is that correct?

25 A Yes.

1 Q Did you ever testify in the Florida courts regarding
2 your role as a forensic scientist in DNA?

3 A Many times in the course and many times in sworn
4 depositions that are outside courts that are court
5 proceedings.

6 Q And that's specifically as your role of a forensic
7 scientist as a -- for DNA?

8 A Yes. Yeah.

9 Q Okay. Additionally, since 2015, you said --

10 A Yes.

11 Q -- you've been here in Nevada?

12 A Yeah.

13 Q You've been working here at Las Vegas Metropolitan
14 Police Department?

15 A Um-h'm.

16 Q Have you testified --

17 THE COURT: I'm sorry.

18 BY MR. SCHWARTZER:

19 Q Yes, you have to say --

20 A Yes.

21 THE COURT: Yes?

22 MR. SCHWARTZER: Thank you.

23 THE COURT: Thank you.

24 BY MR. SCHWARTZER:

25 Q That kind of gets into the question of have you

1 testified in -- over the last seven years in the courts here
2 in Clark County?

3 A I have testified here in Clark County. The amount
4 of testimonies I've done here in Clark County, I don't know
5 the specific number. I do know it was greatly decreased by
6 COVID, so the last time I testified in Clark County, I think I
7 testified twice in 2020.

8 Q Okay. Both those times as your role as a forensic
9 scientist --

10 A Yes.

11 Q -- in the DNA section?

12 A Yes.

13 Q Is there any type of certifications that you hold or
14 certificates --

15 A We're --

16 Q -- regarding your role?

17 A We're certified to do our job by Metro. I also
18 belong to professional organizations, one forensic scientist
19 organization and one forensic genetics organization to stay
20 current on literature in the field and discoveries --
21 scientific discoveries that develop.

22 Q Perfect. Now I want to talk about where you work.
23 When you work in the DNA section, what is that? Is that like
24 a giant lab? Is it an office building? Can you describe what
25 it is.

1 A It's an office building that has been modded
2 (phonetic) out to be a lab, and it's about a medium size. I
3 would say the laboratory portion of it is approximately three
4 times of this room, and then the office portion is probably
5 one and a half times this room.

6 Q Okay. Does the lab itself, does that -- does it
7 have any certifications or any type of --

8 A Yes.

9 Q -- certificates?

10 A Yeah, the laboratory is accredited by ANAB, which is
11 the American -- it was originally the American Society of
12 Crime Laboratory Directors Laboratory Accreditation Board, but
13 they merged, and it's now known as ANAB, and this laboratory
14 here in Las Vegas has been accredited since 2003.

15 Q Okay. And a lab has to do certain things in order
16 to stay accredited; is that correct?

17 A Yes. And it's constantly surveilled internally and
18 externally to make sure we're up to standards in our field of
19 performance, and that any new technology we bring on has met
20 the standards in our field.

21 Q Thank you, Ms. Whittle. Now I want to get into DNA.
22 What is DNA?

23 A DNA stands for deoxyribonucleic acid. It's the
24 blueprint for all of your body's organization, metabolism,
25 anything that goes on in your body. You inherit half from

1 your mother and half from your father. And at the point of
2 conception, it's determined, and it's consistent throughout
3 your life.

4 What makes it useful in forensics is that anything I
5 take from your body, your blood, your hair, your saliva, has
6 that same DNA profile that we look at. So it makes it really
7 useful for comparisons.

8 Q Is DNA unique to an individual?

9 A With the exception of identical twins, yes.

10 Q So myself and Ms. Heap, we wouldn't have the same
11 exact DNA?

12 A No.

13 Q There's no -- outside specific twins, you said?

14 A Identical twins.

15 Q Identical twins. So not even non-identical twins.
16 Outside of identical twins, no two people should have the same
17 DNA?

18 A Correct.

19 Q Okay. Now, specifically, you said in the very
20 beginning of your testimony, your role is to make comparisons
21 analysis regarding DNA found at -- or potential DNA found at
22 crime scenes; is that correct?

23 A Yes, yes.

24 Q Okay. How does one shed DNA? What are the -- and
25 further on that rate, what are the different types of DNA?

1 A So DNA can be found, like I was saying, in any of
2 your bodily fluids. So blood, semen, and saliva we commonly
3 look for. It's also found in your skin cells, and so it's
4 commonly -- we commonly test for items of touch, and that
5 would be DNA that would be shed off of your hands or off of
6 your body, on your clothes, onto items that people handled.

7 Q Okay. And that's something that's called touch DNA?

8 A Yes.

9 Q Now, if you can see me using my left hand grabbing
10 the jury podium over here; is that correct?

11 A Yes.

12 Q And I lift up my hand and you look for DNA, are you
13 going to absolutely get my DNA?

14 A No.

15 Q Okay. Why is that?

16 A There's something called shedder status in DNA, and
17 certain people have a tendency to shed a lot of DNA from their
18 hands and from their body, and certain people are more stingy
19 with their DNA and don't shed as much.

20 So in general, people who are considered shedders,
21 they could do what we just did and touch that and leave a
22 solid DNA profile, and maybe one of us who wasn't such a large
23 shedder of DNA would do that and not get another DNA profile,
24 not get our DNA profile. So there's that factor.

25 And then, in general, the longer and more frictional

1 contact you have with an item, the more likely it is that you
2 are going to shed DNA.

3 For example, if you would look at my steering wheel,
4 I have contact with that multiple times a day. I'm holding it
5 pretty tight, and I am consistent depositing DNA on that, so I
6 would expect to see my DNA on my steering wheel.

7 Q Does the surface that the person's touching also
8 matter when it comes to try and collect DNA?

9 A Yes and no. Usually ridge surfaces, if there's
10 frictional contact with them, have a better shot at collecting
11 more DNA just because you're kind of almost exfoliating your
12 hand or having more frictional contact with your hand where
13 you could leave more DNA cells. But again, that is sometimes
14 a factor of your shedder status, if you're a person who sheds
15 a lot or if you don't.

16 Q Okay. Now going back to the example where I was
17 holding the jury podium over here. If you wanted to see if I
18 left my DNA here, how do you go about collecting DNA? What's
19 the best way to do so?

20 A What we would do is take sterile water on a sterile
21 cotton swab and swab that entire area that he just touched,
22 and then take it through the DNA process in our lab attempting
23 to generate a profile and then comparing it to you, to see if
24 it was you.

25 Q How would you know what my profile is?

1 A I would take a swab from your mouth for comparison
2 separate from the swabbing that was taken of the bench and
3 then that would be used for comparison, just like we do in
4 cases.

5 Q Now, the swab of my mouth, is that -- is there a
6 term that people use for that?

7 A It's generally called a buccal swab or a reference
8 standard because it's used to compare to the question samples
9 in the case that we don't know the origin of.

10 Q So why do you use someone's mouth -- or inside of
11 someone's mouth in order to collect DNA cells?

12 A It's -- you have easy access to it and there's a lot
13 of DNA inside your mouth. So it's a good collection point.

14 Q Okay. So typically, when you're making comparisons
15 regarding evidence found at a crime scene, to someone's DNA
16 profile, you're doing it from a buccal swab or what you call a
17 reference standard as well?

18 A Yes.

19 Q Okay. Now, how do you know that that piece of
20 evidence is associated with the crime that you're taking to
21 make the comparison of?

22 A So they come to us -- they're collected and they
23 come through a chain of custody. They're requested to be
24 examined by usually detectives or officers and then they're
25 stored in our evidence vault, and then once we request them to

1 be examined, they come and there's a digital chain of custody,
2 that follows the items of evidence through the laboratory and
3 before, of whose possession they go through and who has these
4 items. So that's how we know where they're coming from.

5 And they each get assigned a unique identifying
6 number when they're at the laboratory, when they're at the
7 evidence vault, and at the laboratory.

8 Q Do all evidence for a specific matter fall under one
9 unique number?

10 A Sometimes, yes. Sometimes, no.

11 Q Okay. Do you know when an event number is?

12 A Yes.

13 Q Okay. Is an event number something that's used in
14 order to associate with an item of a specific incident?

15 A Yes.

16 Q So event number, would that be unique to a incident?

17 A Yes.

18 Q Okay. Now, there could be multiple incidents that
19 would produce multiple event numbers; is that correct?

20 A Yes. And be they would be sometimes investigated
21 all together as one, but would have separate event numbers.

22 Q And you would put all those event numbers in
23 whatever report you would generate?

24 A They would be listed at the top of the report that
25 it was from multiple places and they would be referenced.

1 Q Okay. So a event number is a way to keep the chain
2 of custody?

3 A Event number is a way to identify the evidence and
4 start the chain of custody and let everyone know where items
5 of evidence are coming from, what event, and basically track
6 them through the process, along with other identifying
7 information that are evidence vault places, and also that the
8 laboratory places.

9 Q And that's -- I wanted to get into that right now as
10 well. So there's also impound item numbers; is that correct?

11 A Yes.

12 Q And impound item numbers would be what a person who
13 collects evidence, that would be the number they use while
14 collecting the evidence; is that correct?

15 A Yes.

16 Q So in a crime scene if someone's picking up a
17 firearm, it would be -- and it was impounded under an event
18 number, there would be an impound item number associated with
19 it?

20 A Yes.

21 Q Along with that impound item number is there also a
22 description?

23 A Yes.

24 Q So you can -- so if someone actually took that
25 impound item and looked at it, they could compare it to the

1 description?

2 A Yes.

3 Q Okay. Additionally, along with the impound item
4 number, there's an impound package number as well; is that
5 correct?

6 A Yes.

7 Q Because in some crime scenes, you can't just collect
8 anything in one box and call it a day, right?

9 A Yes. And sometimes evidence is small and it's
10 collected together so multiple items could be housed in one
11 larger package. So sometimes one large package would contain
12 a bunch of swabs that were all collected in a similar place.

13 Q Okay. And then the last thing you mentioned in your
14 previous answer was lab item numbers.

15 A Yes.

16 Q Who assigns those lab item numbers?

17 A They're assigned by the laboratory when items of
18 evidence come in, and it's a way for us to uniquely identify
19 the items separately from those identifiers we also talked
20 about. So we look at those, and we check those against ours,
21 but we also report our own lab item numbers, as well, and
22 that's what's found in our report along with the impound item
23 numbers.

24 Q Okay. And so when you're making a report eventually
25 on your determination of a DNA comparison, you would include

1 the lab item number?

2 A Yes.

3 Q You would include the impound item number?

4 A Yes.

5 Q And you would include the description as well?

6 A The description, yes, and also at the top of the
7 report generally is the event number that all of these fall
8 under or any associated events if there's multiple ones.

9 Q And perfect. That's the -- and I was just going to
10 get into that. So you would also have the event number
11 generally on the top --

12 A In the header.

13 Q -- so -- okay. On top of that, you would also
14 include other information like who requested items; is that --
15 or --

16 A Yes.

17 Q -- requested the comparison, I guess?

18 A Yes.

19 Q And the type of incident?

20 A Yes.

21 Q And then there would also be a lab case number as
22 well; is that correct?

23 A Yes.

24 Q What's a lab -- where do you get the lab case number
25 from?

1 A They're generated just consecutively per year by the
2 laboratory. Those are our unique identifiers along with the
3 lab item numbers that the laboratory specifically assigns.

4 Q Additionally, with DNA reports do you also include
5 subjects that were compared as well?

6 A Yes.

7 Q Okay. And that would also be kind ever right below
8 the header as well?

9 A Yes. And sometimes subjects listed there we don't
10 have buccal swabs for comparisons, so sometimes they were
11 listed as people of interest, or eliminations, or victims, but
12 we don't have their buccal swab. So that's indicated outside
13 of what we would do, and it's not necessarily reflective of
14 what we received.

15 Q But inside your report you would have -- know who
16 actually had buccal swabs and what standards were actually
17 compared to?

18 A Yes.

19 Q Okay. Additionally, some of the processing of swabs
20 could be done from another analyst in your lab; is that
21 correct?

22 A Yes.

23 Q Now, as someone who -- as a forensic scientist in
24 the DNA section, is that something that's typically done in
25 your field where you would rely upon processing them by

1 another DNA analyst?

2 A Yes.

3 Q Something that's done, again, in your accredited lab
4 with your certifications?

5 A Yes.

6 Q Okay. So that would be typical for your field?

7 A Yes. And it's done -- it's been done in our
8 laboratory since, I believe, 2018 or 2017, to try and increase
9 the productivity of the lab, and get cases through laboratory
10 faster.

11 Q But -- and I hate to keep harping on it, it's
12 something that you would rely upon -- it would be typical in
13 your field to rely on that, other people's processing?

14 A Yes.

15 Q Okay. As long as it's done in the same accredited
16 lab?

17 A Yes.

18 Q Okay. All right. Ms. Whittle, that brings they to
19 event number 180903-1848. Were you asked to do some
20 comparisons to evidence in that case?

21 A Yes.

22 Q Specifically, did you receive two reference
23 standards?

24 A Yes.

25 Q One in the name of Mario Trejo?

1 A Yes.

2 Q And one in the name of Adriane Serrano?

3 A Yes.

4 Q So you had those -- you had those DNA profiles to
5 compare to evidence that was recovered from the scene?

6 A Yes.

7 Q And specifically there were certain items that you
8 asked to look -- certain swabs that were processed that you
9 were asked to look at; is that correct?

10 A Yes.

11 Q Now, you -- now there's a limit to the amount of
12 evidence you can look at; is that correct, per lab policy?

13 A So for lab policy for productivity purposes,
14 depending on the kind of case it is, we like to limit the
15 sample number that's originally requested. But after the
16 initial reports are generated, if questions still remain,
17 additional requests can be made for additional evidence to be
18 examined.

19 Q Okay. I imagine you guys have a lot of analysis to
20 be done?

21 A A lot, yes.

22 Q And there's how many forensic scientists in your
23 lab?

24 A In the DNA section, there's approximately 20 of us
25 in different stages of processing, I think. Totally, the

1 forensic lab, in total, I believe is around 100 people.

2 Q Okay. But you have 20 analysts going through all
3 DNA requests in all of Clark County?

4 A Yes. And that's not just people who do the DNA
5 reporting like me. That's people who are in the laboratory
6 doing the processing and generating data to be recorded to.

7 Q So there's even less people to actually do the
8 reporting like you do?

9 A Oh, yeah.

10 Q Okay.

11 A Yeah.

12 Q And again, this is --

13 A Maybe half that. Maybe -- yeah, maybe half that.

14 Q So roughly about ten people?

15 A Probably, yeah.

16 Q For all of the crime and all of the analysis you
17 need to do in Clark County?

18 A Yeah.

19 Q Okay. So that's one of the reasons why there's a
20 policy limit for the initial stages of this?

21 A Yes, and just to make good use of the resources that
22 we have and provide better quality of service to the citizens.

23 Q Perfect. All right. So we had previously
24 established that you had developed DNA profiles for Mario
25 Trejo?

1 A Yes.

2 Q And for Adriane Serrano?

3 A Yes.

4 Q Okay. Were you asked to look at DNA processing done
5 on what was listed as impound item number 31, which is
6 described as a swab from the slide -- slide serrations of a
7 Glock 35 semi-automatic handgun?

8 A May I refer to my report?

9 MR. SCHWARTZER: Your Honor, I would ask, based on
10 the, you know, the technical amount of information in her
11 report that this expert's allowed to look at her report
12 throughout the testimony.

13 THE COURT: Mr. Trejo, any objection?

14 MR. TREJO: No objection.

15 THE WITNESS: Thank you.

16 THE COURT: That will be allowed.

17 MR. SCHWARTZER: Thank you, Your Honor.

18 THE WITNESS: So impound item 31?

19 BY MR. SCHWARTZER:

20 Q Yes, ma'am.

21 A Yes.

22 Q Okay. And so that would be listed as impound number
23 31, but in your report, you also would refer to it as lab item
24 10; is that correct?

25 A Yes.

1 Q And you were asked to compare it to, again,
2 Mr. Trejo and Ms. Serrano?

3 A Yes.

4 Q Okay. Can you tell me what your comparison ended
5 up? What was your conclusion?

6 A For lab item 10, referring to my report, I was able
7 to generate a DNA mixture of three individuals with at least
8 one male, individually included was Mario Trejo with a
9 statistic of approximately 4.48 times 10 to the 24th.
10 Inconclusive in that comparison was Adriane Serrano.

11 And reading the probability statement that we have,
12 the probability of observing the mixture DNA profile is
13 approximately 4.48 septillion, which is the 10 to the 24th
14 number I read, times more likely it originated from Mario
15 Trejo and two unknown random contributors that if it
16 originated from three unknown random contributors.

17 Q So what does that number mean? That -- and that
18 seems like a very large number, septillion.

19 A So the items that we're giving are giving you an
20 indication of how best the evidence is explained. And what's
21 being compared on the top of the fraction is how well that
22 evidence is explained, given this one person's profile and
23 what's being explained on the bottom of that fraction is
24 basically if it's just random people.

25 So it's giving you an indication of how well the

1 evidence is explained by this person's profile and two other
2 unknown random individuals than if it was just a random group
3 of three people.

4 Q So it's 4.48 septillion more likely to become --
5 come from Mr. Trejo than an unknown individual?

6 A No, the probability of observing the mixture profile
7 is 4.48 septillion times more likely if it originated from
8 Mario Trejo, and two unknown random contributors than if it
9 originated from three unknown random contributors.

10 So it's -- it's -- that kind of confuses whether or
11 not we're putting a statistic of how likely it is to be him
12 versus an explanation of the evidence itself.

13 Q Okay. Now, but essentially, Mr. Trejo's DNA is
14 likely the DNA found on that firearm?

15 A The mixture is better explained that many more times
16 more likely with his profile and two unknown random people
17 versus three unknown people.

18 Q Okay. And that's for the -- what's been described
19 as a black Glock 35 semi-automatic handgun?

20 A Yes.

21 Q Now, did -- you also did a comparison regarding a
22 swab from the slide serrations, trigger, grip and magazine
23 release from that same black Glock 35, which is lab -- or
24 impound item 32, lab item number 11.

25 A Yes.

1 Q What was your -- what was the result of your
2 analysis on that?

3 A Reading from my report, the number of contributors
4 were three. There was at least one male. So that means it
5 was a DNA mixture originating from more than one person.
6 Individually included was Mario Trejo with a stat of
7 approximately 23.2 times 10 to the 24th. Inconclusive was
8 Adriane Serrano.

9 And reading our probability statement, again, the
10 probability of observing the mixture DNA profile is
11 approximately 23.2 septillion, which is the 10 to the 24th
12 number, times more likely if it originated from Mario Trejo
13 and two unknown random contributors than if it originated from
14 three unknown random contributors.

15 Q Okay. And that's the -- okay. And then I'm going
16 to go actually now to lab item 12, which is impound item
17 number 33, which is the swab from the base and feed lips of
18 the black Glock .40 caliber 15 capacity pistol magazine.

19 So this is a swab from an actual magazine; is that
20 correct?

21 A Yes.

22 Q Okay. And what was the result of that?

23 A The number of contributors on that DNA profile was
24 one. It was a male profile. Individually included was Mario
25 Trejo, with a stat of 312 times 10 to the 24. He was

1 individually included. Excludes was Adriane Serrano. The
2 probability of observing this DNA profile is approximately 312
3 septillion, 10 to the 24th, times more likely if it originated
4 from Mario Trejo than if it originated from an unknown random
5 contributor.

6 Q Now, the next person -- the next -- so that's all I
7 want to do with the Glock .40 that you were asked to compare
8 it to -- or the Glock 35, .40 caliber that you were asked to
9 make the comparisons of.

10 Now I want to move into the impound item number 34,
11 which is lab item number 13, which is described as the swab
12 from the grip, trigger, stock and handrail of a black Kel-Tec
13 Sub 2000 semi-automatic rifle.

14 Were you asked to make a comparison regarding the
15 reference standards of Adriane Serrano and Mario Trejo to that
16 firearm?

17 A Yes.

18 Q And what was the result of that?

19 A For this one again, it was a DNA mixture from three
20 contributors with at least two male contributors.

21 Individually included was Mario Trejo with a statistic of 2.85
22 times 10 to the 18th. Excluded was Adriane Serrano. The
23 probability of observing the mixture DNA profile is
24 approximately 2.85 quintillion, which is the 10 to the 18th,
25 times more likely if it originated from Mario Trejo and two

1 unknown random contributors than if it originated from three
2 unknown random contributors.

3 Q Okay. So unlike lab item 12, where we have just one
4 DNA profile here, you have a mixture again, but again,
5 Mr. Trejo is included?

6 A Yes.

7 Q Okay. And that was actually the only swab that you
8 were asked -- from the Kel-Tec that you were asked to look at;
9 is that correct?

10 A From the notes that I have in my report, yes.

11 Q Okay. Now, I want to move on to swabs taken from it
12 says Tava arm semi-automatic (phonetic) with the seal number
13 of M92PB025593. Did you receive two swabs regarding that
14 firearm? Well, I guess, one from that firearm and then from
15 the magazine.

16 A Yes.

17 Q So specifically I want to talk about lab item 8,
18 which is impounded item 9. Were you asked to make that
19 comparison that -- and that's the swab from the -- that says
20 Tava arm semi-automatic rifle itself; is that correct?

21 A Yes.

22 Q And you made a comparison with that with Mr. Trejo
23 and Ms. Serrano?

24 A Yes.

25 Q And what was the result of that?

1 A Again, that was a DNA mixture. The number of
2 contributors were two. There was at least one male.
3 Individually included was Mario Trejo with a statistic of
4 approximately 385 times 10 to the 18th. Excluded was Adriane
5 Serrano. The probability of observing the mixture DNA profile
6 is approximately 385 quintillion, the 10 to the 18th exponent,
7 times more likely if it originated from Mario Trejo and one
8 unknown random contributor than if it originated from two
9 unknown random contributors.

10 Q Okay. So in the one, two, three, four, five swabs,
11 I asked you to go through, in all five of them, Mario Trejo
12 was included?

13 A Yes.

14 Q Okay. Now, there was two other swabs that were done
15 that you were not able to get -- you were not able to make a
16 comparison; is that correct?

17 A Yes.

18 Q Okay. Specifically, lab item 9, which is a swab
19 from a feeding area of a black rifle magazine.

20 A Yes.

21 Q And what was the result of the processing of the DNA
22 on that?

23 A No DNA profile was obtained from that item.

24 Q So when someone's swabbing the rifle in this case --
25 or the rifle magazine in this case, they can't tell whether

1 they get DNA or not; is that correct?

2 A No. DNA is invisible. So until you're actually
3 processing it and tagging it with fluorescent tags that we tag
4 to make it visible to us, you can't see it.

5 Q And then lab item 14, which is described as a swab
6 from the base and feed lips of a black Glock .40 caliber, 22
7 capacity pistol magazine.

8 A Yes.

9 Q So this is a swab from a magazine for impound item
10 number 35, lab item 14; is that correct?

11 A Yes.

12 Q And that's under, again, the same event number --
13 these are all under the same event number of 180902-1848.

14 A Yes. Contained in the same report.

15 Q Okay. In that case, there was a DNA profile
16 obtained, but you were unable to make a comparison. Can you
17 tell the ladies and gentlemen of the jury why.

18 A So sometimes with DNA profiles you get really robust
19 information and you get a good answer. Sometimes with DNA
20 mixtures you have really robust contributors and you can see
21 all the people in the mixture, and sometimes you don't.

22 And the analogy I like to explain it to myself with,
23 and to other people, is that it's like being in a room in a
24 giant party. You can hear the people next to you really well,
25 but maybe these people far off in the back of the room you

1 can't hear as well.

2 Sometimes in DNA mixtures, it's just kind of a
3 sampling of what's going on in the back of the room and you
4 can't really make out the conversations enough to tell who's
5 in the mixtures. And that's what this sample is like. It's a
6 low-level sampling of multiple people, and due to its limited
7 components, we can't really make a good comparison between
8 people and give you an answer yes or no of who's in it.

9 Q And that's what happened with that specific item
10 we're talking about?

11 A Yes.

12 Q There's too much noise, I guess, or too far away.

13 A It's basically like a sprinkling of information or
14 whispers of information, but not a robust enough conversation
15 to say anything substantial about.

16 Q Okay. So to sum up your testimony, you were asked
17 to look at seven swabs taken from the crime scene related to
18 your 180903-1848?

19 A Yes.

20 Q Out of those seven -- and you were given two
21 reference standards to look at for those seven swabs?

22 A Yes.

23 Q Out of the seven swabs, five of them included Mario
24 Trejo?

25 A Yes.

1 Q And two of them you were unable to make a comparison
2 one way or another?

3 A Yes.

4 MR. SCHWARTZER: No further questions, Your Honor.
5 I'll pass this witness.

6 THE COURT: Mr. Trejo.

7 MR. TREJO: No questions.

8 THE COURT: Any questions from the jury? There
9 being no questions, ma'am, you're excused.

10 THE WITNESS: Thank you.

11 THE COURT: Please don't discuss your testimony to
12 anyone -- with anyone.

13 State's next witness?

14 MR. SCHWARTZER: Your Honor, could we approach?

15 THE COURT: Sure.

16 (Bench conference)

17 MR. SCHWARTZER: Do you want me --

18 THE COURT: Hold on.

19 MR. SCHWARTZER: Okay.

20 THE COURT: (Indiscernible).

21 Do you want me to put on the record that he's doing
22 this under -- certification under my guidance or --

23 THE COURT: I think you have to.

24 MR. SCHWARTZER: Okay.

25 THE COURT: Okay.

1 MR. SCHWARTZER: I don't have the -- do you have the
2 rule on you?

3 MR. TARAR: Yeah, 49.3. I have my certificate, so.

4 MR. SCHWARTZER: Okay.

5 THE COURT: Okay. Yeah, I think you have to, just
6 for the record, so --

7 MR. SCHWARTZER: Yeah. Okay.

8 THE COURT: Thank you.

9 (End of bench conference)

10 MR. SCHWARTZER: Your Honor, under Nevada Supreme
11 Court Rule 49.3 Afan Tarar, is going to take the next witness
12 under my guidance. I am part of his certification, and
13 therefore, his questioning is under the certification of the
14 Supreme Court 49.3.

15 With the Court's permission, we'll call our next
16 witness.

17 THE COURT: Okay. You have the Court's permission.
18 So, go ahead.

19 MR. SCHWARTZER: Giovanni.

20 MR. TARAR: Can we get Giovanni?

21 MS. HEAP: Your Honor, may I approach?

22 THE COURT: Yes.

23 GIOVANNI ANDINO, STATE'S WITNESS, SWORN

24 THE CLERK: Can you please state and spell your name
25 for the record.

1 THE WITNESS: Giovanni Andino, G-i-o-v-a-n-n-i.
2 Andino, A-n-d-i-n-o.

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

4 THE COURT: And you can proceed. And I'm sorry, I
5 forgot your last name, sir.

6 MR. TARAR: Tarar.

7 THE COURT: Tarar. Okay.

8 MR. TARAR: Yes.

9 DIRECT EXAMINATION

10 BY MR. TARAR:

11 Q Good afternoon, Giovanni. Do you mind if I call you
12 Gio?

13 A Um-h'm.

14 Q Okay. And when --

15 THE COURT: I'm sorry -- yeah.

16 BY MR. TARAR:

17 Q Okay. I was just going to say when you answer
18 questions, can you please say yes or no

19 A Yep.

20 Q -- because we're recording this. We're going to
21 have to --

22 A Yeah.

23 Q -- have it for the record? Okay. Perfect. So can
24 you please tell members of the jury what you do for a living?

25 A As of now, I'm an assistant manager at SuperPawn.

1 Q And is this the SuperPawn at 1150 South Rainbow?

2 A Yep.

3 Q And were you working at that SuperPawn back in
4 September 2018?

5 A Yes.

6 Q And were you an assistant manager then?

7 A No, I was a pawnbroker then.

8 Q And what does a pawnbroker do?

9 A Pretty much deals with more, the customers, actually
10 pawns the items and more of the front stuff.

11 Q And were you working on September 3, 2018?

12 A Yes.

13 Q And who was working with you that day?

14 A It was me, Adriane, Ivan, Jonathan, Carla, Julie and
15 Melani.

16 Q Okay. And who was the manager on duty that day?

17 A Adriane.

18 Q So do you remember what you were doing around 1:00
19 p.m. on September 3, 2018?

20 A We were -- I was helping Adriane in the office doing
21 jewelry paperwork, categorizing, stuff like that.

22 Q Okay. So -- and where -- where exactly is this
23 office in the pawn store?

24 A In the back, the back.

25 Q Okay.

1 MR. TARAR: And Your Honor, permission to publish
2 previously admitted Court Exhibit Number 9.

3 THE COURT: Yes.

4 BY MR. TARAR:

5 Q So just a couple more -- while this video loads,
6 just a couple more questions. Was that a busy day for you
7 guys at that pawn store?

8 A It was average. It wasn't necessarily busy.

9 Q It was average? There -- there were some customers
10 in the store at the time?

11 A Yeah, there was a few.

12 Q There were a few customers. Okay.

13 MR. TARAR: And Court's brief indulgence.

14 (Pause in the proceedings)

15 MR. TARAR: And just for the record, we're going to
16 be expanding angle 14 in Exhibit 9.

17 THE COURT: Okay.

18 MR. TARAR: And we're going to be fast forwarding
19 the video to 13:07, starting at that point.

20 THE COURT: Okay.

21 BY MR. TARAR:

22 Q Okay. So is this -- on this video, is this the
23 office that you were talking about --

24 A Yeah.

25 Q -- in -- previously?

1 A Yes.

2 Q And do you see yourself in this video?

3 A Yes.

4 Q Can you tell members of the jury who -- in this
5 video, can you point to yourself?

6 A Um-h'm.

7 Q Or let us know --

8 A Yes.

9 Q -- where you are. Yeah.

10 THE COURT: You can use the mouse.

11 MR. TARAR: Yeah.

12 THE COURT: Click on the --

13 MR. TARAR: Permission to --

14 THE COURT: -- the red and then you can circle --

15 THE WITNESS: Oh.

16 THE COURT: -- yourself.

17 THE WITNESS: Okay.

18 THE COURT: Yeah.

19 MR. SCHWARTZER: And Your Honor, for the record, we
20 stopped at 13:06:56.

21 THE COURT: Thank you. I can't see that at all,
22 so --

23 MR. SCHWARTZER: Okay.

24 MR. TARAR: And for the record, Your Honor, the
25 witness circled himself, the individual on the top left-hand

1 of the -- of the video of the still. Appears to be wears
2 glasses in front of a -- in front of a monitor.

3 THE COURT: And he's the individual sitting --

4 MR. TARAR: Yes.

5 THE COURT: -- as opposed to the one standing.

6 MR. TARAR: Yes.

7 BY MR. TARAR:

8 Q And who is the other person sitting down you next to
9 you?

10 A Next to me is Adriane.

11 Q Is Adriane? Okay. And you -- she's the manager you
12 said of the --

13 A Yes.

14 Q Okay. Perfect. And then could you please click the
15 -- if you go on the mouse, can you please click the arrow? Do
16 you see the arrow on the bottom left?

17 A This one?

18 Q Yes. Thank you.

19 THE COURT: You restarted the --

20 MR. TARAR: Yes.

21 THE COURT: -- video.

22 (Video playing)

23 MR. TARAR: We've restarted the video.

24 MR. SCHWARTZER: I did at 13:06:56, Your Honor.

25 //

1 BY MR. TARAR:

2 Q So at this --

3 THE COURT: Can you state where you paused it.

4 MR. SCHWARTZER: Paused at 13:08:08.

5 BY MR. TARAR:

6 Q Gio, at this point, we see someone come in to that
7 back room. Who is that person that comes in?

8 A Juliana.

9 Q Juliana. And what is -- does she say anything to
10 you guys?

11 A Yeah. She ran in frantically and she yelled 210.

12 Q And what does 210 mean?

13 A It's pretty much our code to like warn if there's
14 any type of, you know, robbery or stealing or any type of just
15 strange behavior.

16 Q Okay. And -- and after that, after Juliana comes
17 in, we see everyone. What do you do next?

18 A We get up to see what's going on, and then we see a
19 man walk in with a handgun on him.

20 Q And can you describe this person with the handgun,
21 what they were wearing, what they had on?

22 A He walks in, motorcycle helmet, from what I
23 remember, all black clothing, padding, kind of like combat
24 pants, combat boots. He had a handgun on -- carrying and then
25 one strapped -- one longer one strapped to him.

1 Q Okay.

2 MR. TARAR: Oh, sorry. Court's grief indulgence.

3 And we're restarting the video at 13:08:11, Your
4 Honor, just for the record.

5 THE COURT: Thank you.

6 (Video playing)

7 MR. TARAR: And Your Honor, we're going to be moving
8 to a different viewpoint, a viewpoint from the counter.

9 THE COURT: Okay. Just say what camera angle it is.

10 MR. TARAR: Yeah. I will let you know.

11 And this is the loan counter, viewpoint number 2,
12 loan counter 2 -- or sorry. It's viewpoint number 4. I
13 apologize. For the record.

14 THE COURT: Viewpoint 4, loan counter number 2.

15 MR. TARAR: Yeah. And --

16 MR. SCHWARTZER: Starting at 13:08:36.

17 MR. TARAR: I'm sorry. We're starting at 13:08:36.

18 (Video playing)

19 MR. TARAR: And we're stopping the video, Your
20 Honor, at 13 -- or 3 -- 13:09:02.

21 THE COURT: Okay.

22 BY MR. TARAR:

23 Q So Gio, we played this video. We see you come out
24 of the room; that's correct, right?

25 A Yeah.

1 Q And you appear to have your hands up in the air?

2 A Yes.

3 Q And how were you feeling at that time?

4 A Scared.

5 Q And this might seem like a silly question, but why
6 were you scared?

7 A Because a man came in in all black and a helmet
8 pointing a gun, not very inviting.

9 Q And we see you, along with others, being directed to
10 one side of the -- of the pawn shop; is that correct?

11 A Yeah.

12 Q And you comply with this person's orders?

13 A Yes.

14 Q And again, I'm going to ask you, why do you comply
15 with these person's orders?

16 A Out of fear. Not knowing what he would do if I
17 didn't listen.

18 Q Okay. So we see you, along with others, go move to
19 the side of the room. What were you directed to do?

20 A We were first directed to lay on our stomach with
21 our hands out, which we did. But then he didn't want us
22 inside of the door, so we moved more towards the -- the side
23 of the store.

24 Q And so -- and you -- you -- as we've seen, you --
25 did you comply with those directions?

1 A Yes.

2 Q And while you had -- and while you were facedown on
3 the floor, were you able to hear or see anything?

4 A Yes.

5 Q And what did you hear and see -- or see?

6 A Well, from the start when we first got moved, he
7 directed Adriane to zip tie the door shut. And as we were
8 there, he told her to get the money from the safe.

9 Q And I'm going to stop you there. The money from the
10 safe, where is the safe? What safe is he talking about?

11 A In the office in the back room --

12 Q Okay.

13 A -- on the bottom.

14 Q And there's a safe, and there's presumably money --

15 A Yeah.

16 Q -- in that safe? Okay.

17 A Yes.

18 Q And then the zip ties, does he -- how does -- does
19 he give her the zip ties? What -- how -- what -- do you see
20 how the zip ties get transferred?

21 A Yeah, he -- he gives her the zip tie and she goes in
22 and ties the door.

23 Q Okay. And then what else do you hear and see as
24 this event goes on while you're on the floor?

25 A So he directs her to the safe, but the safe can't

1 open automatically.

2 Q And -- and why is that?

3 A Just for safety, for incidences like this.

4 Q Okay.

5 A It needs a certain amount of time before it actually
6 opens after we put a certain code in.

7 Q Do you know roughly the amount of time?

8 A Around like ten minutes, I think.

9 Q Something like that? Okay.

10 A Yeah, five to ten minutes, I think.

11 Q Okay.

12 A So obviously, they had to wait. So from there, I
13 remember him hearing him direct her to the jewelry and I heard
14 a bag being dropped on the counter and him telling her to put
15 jewelry in the bag.

16 Q And I'm going to stop you right there. When you say
17 him directing her, who is the her in this?

18 A Adriane.

19 Q Adriane.

20 A Yes.

21 Q And the him is the gentleman in the motorcycle
22 helmet?

23 A Yes.

24 Q Okay. And then what else do you hear while you're
25 then on the floor?

1 A From there, I hear him, he kind of always keeps an
2 eye on us on the floor, and he always continues to say he
3 doesn't want to hurt anybody, and it will be fast, it will be
4 quick. And then after some jewelry is put in, he goes back to
5 the safe, but it's still not -- it's still locked.

6 Q Okay.

7 A So he then tells her to -- tells Adriane to get the
8 money from each cash register.

9 Q Okay.

10 A But I also remember hearing that he said that he
11 didn't want -- because there was a certain tracker in our --
12 one of the registers, and he didn't want that one. He already
13 knew that there was one in there. And he took the rest of
14 them down --

15 Q So he specifically directed Adriane not to take the
16 money or the money from the cash register that had --

17 A Yeah.

18 Q -- the tracker in it?

19 A Yes.

20 Q Okay. And then at some point, does this person --
21 do you hear whether or not they get the cash?

22 A I can hear every, you know, drawer opening.

23 Q Okay.

24 A I can only assume that, yeah, she is putting the
25 money in the bag.

1 Q Okay. And at some point, does this person leave the
2 store? The person with the motorcycle helmet?

3 A Yes.

4 Q And does he go by himself?

5 A No. He takes Adriane with him --

6 Q Okay.

7 A -- by the back, like grabs the back of her shirt to
8 go out.

9 Q And --

10 A Because I believe he sees -- realizes that the cops
11 have shown up.

12 Q And so when he leaves, what do you guys -- what do
13 you guys -- what do you do?

14 A We all didn't really know what to do. We kind of
15 just stood there -- or we're still laying there. We heard the
16 door open, and then leave, and we were kind of skeptical to
17 get up because we still didn't know what was going on.

18 Q And did you -- did you -- did you hear anything
19 after that, after the person left?

20 A There was multiple gunshots. There was one
21 initially and then a few after. And then I remember we are
22 kind of looked up from there and we just see Adriane running
23 back in the store and locking the door and running back behind
24 the counter.

25 Q And what do you do when Adriane's back in the store,

1 runs back in?

2 A After we realized that she's the only one -- that's
3 she's the one ran back and the door's locked, we get up and we
4 kind of all go behind the counter and just kind of hug each
5 other and console each other.

6 Q And at some point, after all this happens, do the
7 police come into the pawn shop?

8 A Yes.

9 Q And do the police take you guys anywhere, the group
10 of you?

11 A They took us out to the front first for a bit and
12 then they told us to go to an AutoZone next door and we just
13 kind of waited there until further instructions pretty much.

14 Q And how long were you guys in the AutoZone, roughly?

15 A It had to have been like maybe a few hours
16 (indiscernible).

17 Q And what was the mood like in that AutoZone from
18 your perspective?

19 A It was very gloomy. We were all just kind of, I
20 mean, thankful that none of us got hurt, but we were all just
21 kind of in shock that this happened and kind of figuring out
22 how our heads were and what to do.

23 Q Right. And at any point -- at some point, did you
24 give a statement to police?

25 A Yes.

1 Q And where did you give that statement?

2 A A detective took me to a car and it was just us two
3 in the car.

4 Q Okay. And Gio, the statement -- the testimony that
5 you're providing here today, this is from your recollection of
6 the events that occurred that day, correct?

7 A Yes.

8 Q Okay.

9 MR. TARAR: Court's brief indulgence.

10 BY MR. TARAR:

11 Q So we're going to back up just a little bit, Gio.
12 You said that you believed that, you know, the -- when --
13 that the person believed that the police were there, the
14 person in the motorcycle helmet, why did you -- why did you
15 say that?

16 A Just the way that his -- his actions kind of changed
17 from, in a sense, him being in control and then realizing that
18 he has to move faster because --

19 Q Right.

20 A -- the police are out there.

21 Q And then you stated that this person took Adriane
22 out with him -- or with -- with him, when they -- when they
23 left the store. From your perspective, from what you
24 observed, did you believe that she was going willingly?

25 A No.

1 Q And why do you say that?

2 A Because he grabbed her by the back of the shirt and
3 was pointing a gun at her to walk out with him.

4 Q And -- and finally, when Adriane -- when she came
5 back, you said you guys all hugged her.

6 A Yes.

7 Q And what was her emotional state that you observed?

8 A Just shock, hysterical, just I know she -- I
9 remember she was panting and she couldn't really speak just
10 because it was just a lot of emotion. Just scared, fearful.

11 Q Thank you.

12 MR. TARAR: Court's brief indulgence. All right.
13 The State will pass the witness, Your Honor.

14 THE COURT: Mr. Trejo?

15 MR. TREJO: I will need a few minutes, Your Honor.
16 May we take a break?

17 THE COURT: Yes. Ladies and gentlemen of the jury,
18 during the recess, you're admonished not to talk or converse
19 amongst yourselves or with anyone else on any subject
20 connected with this trial or read, watch or listen to any
21 report of or commentary on the trial of any person connected
22 with this trial by any medium of information, including
23 without limitation, newspapers, television, the Internet and
24 radio or form or express any opinion on any subject connected
25 with the trial until the case is finally submitted to you.

1 Ten minutes, Mr. Trejo? Ten minutes? Ten minutes.
2 So it is 2:45. We'll come back at 2:55. Thank you.

3 And Mr. Andino, if you can just wait in the
4 vestibule room. Thank you.

5 (Outside the presence of the jury)

6 THE COURT: Anything outside the presence?

7 MR. SCHWARTZER: No, Your Honor. Just this is our
8 last witness.

9 THE COURT: Okay.

10 MR. SCHWARTZER: We don't have anyone else waiting
11 right now.

12 THE COURT: Okay. We're going to end at -- early
13 today because you have the childcare --

14 MR. SCHWARTZER: Yes.

15 THE COURT: -- issues anyway, so --

16 MR. SCHWARTZER: Thank you, Your Honor.

17 THE COURT: Okay. Mr. Trejo, anything outside the
18 presence?

19 MR. TREJO: Nothing, Your Honor.

20 THE COURT: Okay. Thank you.

21 (Court recessed at 2:44 p.m. until 3:03 p.m.)

22 (Outside the presence of the jury)

23 THE COURT: So we are back on the record on Case No.
24 C-18-335315-1, Mario Trejo -- sorry -- State of Nevada versus
25 Mario Trejo.

1 And I wanted to put on the record that I am going to
2 send an e-mail to Lieutenant Williams, who is the person who I
3 spoke to about you not being brought over too early for court.
4 I'm going to e-mail her and make sure that your surgery
5 doesn't interfere with the trial, since we were already in
6 progress.

7 Is that okay, Mr. Trejo?

8 (Pause in the proceedings - Mr. Trejo writing)

9 THE COURT: Mr. Trejo, that was a yes or no
10 question. I mean --

11 MR. TREJO: (Through Interpreter) Just a second. I
12 generally would not challenge that, Your Honor. The issue is
13 that these surgeries have to be in sequence. It's one
14 surgery, 30 days later, they downsize my trach -- trach --

15 MR. HENRY: Trach.

16 THE INTERPRETER: Trach.

17 THE COURT: Trachea.

18 THE INTERPRETER: Okay. Sorry. Trach. Trach.
19 Trach.

20 MR. TREJO: (Through Interpreter) So that I can
21 talk, then 30 days later supposed to get removed.

22 THE INTERPRETER: In November?

23 MR. TREJO: In November, I was in the talking phase.
24 The jail did not meet the appointment required and I ended up
25 having to wait until February of this year. My surgeon has

1 warned me that if I -- if this keeps up, I may end up like
2 this for life, and that my situation should have been handled
3 over two years ago.

4 It takes medical too long to get my appointments,
5 and the reason they are moving how they are supposed to now is
6 because my surgeon, Dr. Weinseik (phonetic) --

7 THE COURT: Okay. But, so I understand. But we
8 have a jury out right now. Do you not want me to -- to
9 contact her? I mean, because then we don't know if you're
10 going to be not brought for trial.

11 MR. TREJO: I will say no. Just maybe give the
12 jurors a break on that day. It's a one-day surgery. I'll be
13 back the following day.

14 THE COURT: Okay. So I'm not going to contact
15 Lieutenant Williams. And I guess we'll just find out if we
16 find out if he's not being brought. We will have no way of
17 knowing. Okay.

18 So are we ready to proceed?

19 MR. SCHWARTZER: Yes, Your Honor. From the State,
20 we are.

21 (In the presence of the jury).

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

24 MS. HEAP: The State does.

25 MR. TREJO: I do, Your Honor.

1 THE COURT: Okay. Please be seated.

2 Mr. Trejo, please proceed.

3 CROSS-EXAMINATION

4 BY MR. TREJO:

5 Q Hi, Giovanni. Thank you for being here. So when
6 the events of September 3, 2018, began, you were in the
7 office?

8 A Yes.

9 THE COURT: Can you please speak up?

10 THE WITNESS: Sorry. Yes.

11 BY MR. TREJO:

12 Q Did someone alert you of what was happening? Who
13 were --

14 A Yeah. Juliana came in.

15 Q Who were you with?

16 A In the office, I was with Adriane, who was sitting
17 next to me.

18 Q How did Adriane react?

19 A When Juliana came in?

20 Q Yes.

21 A We both were -- didn't really know what was going on
22 until we stepped outside and saw the man come in.

23 Q Do you recall stating the man had, quote/unquote,
24 "padding and a helmet?"

25 A Yes.

1 Q And that comment about padding was on your recorded
2 statement, right?

3 A Yes.

4 THE COURT: Again, can you please speak up.
5 BY MR. TREJO:

6 Q Did he point a weapon at people?

7 A Yes, he did.

8 Q Did he make threats to harm you and your coworkers?

9 A He did say that it would be fast and he wouldn't
10 have to harm anybody if he didn't need to.

11 Q I believe you stated before the break that he said,
12 quote, "I don't want to hurt anybody," end of quote.

13 A Yes.

14 Q Do you recall claiming that Ivan Jaquez pressed his
15 panic button during your recorded statement?

16 A Ivan didn't press the panic button. There was an
17 alarm behind the counter that he pushed down.

18 Q Okay. So do you recall stating something along that
19 line during your recorded statement?

20 A That he pushed the panic button? Yes.

21 Q Yes. Do you know where he was when he did so?

22 A He was right outside of the office behind the
23 counter at that first window.

24 Q Do you recall in your statement claiming Melani
25 Howard called the police?

1 A Yes.

2 Q Do you know where she was?

3 A After the fact, she was behind the counter of the
4 jewelry.

5 Q Did you personally see these two individuals hit
6 panic buttons or call the police?

7 A I didn't see them actually hit it, but with the
8 panic buttons, they're -- you can see when they're pushed
9 down.

10 Q Did you also claim to have witnessed Jonathan
11 Rivera-Sandoval activate his panic button?

12 A Yes.

13 Q Did you witness this yourself?

14 A I didn't witness him actually push it, no.

15 Q Where was Jonathan when the event began?

16 A He was closer to the front door.

17 Q Let's talk about the quote/unquote "padding." Why
18 did you pick that specific word in your statement?

19 A It's just what it seemed like what it looked. He
20 was wearing gloves, from what I remember. You could tell that
21 there was something -- there was some type of padding under.

22 Q Did you believe that any point the individual had
23 some type of body armor?

24 A Based on looking, yeah.

25 Q Did anybody else that witnessed the event express

1 their belief that this individual had quote/unquote "padding"
2 or body armor?

3 A Not that I --

4 MR. TARAR: Objection, Your Honor. Hearsay.

5 THE COURT: Mr. Trejo?

6 MR. TREJO: I'm asking as to his personal experience
7 as if he witnessed someone express that they believed the same
8 as he did.

9 THE COURT: So that would be calling for hearsay
10 because that would be on out-of-court statement by someone who
11 is not here. So I'm going to sustain that objection.

12 MR. TARAR: Thank you, Your Honor.

13 MR. TREJO: Withdrawn.

14 THE COURT: Thank you.

15 MR. TREJO: Court's indulgence.

16 THE COURT: Sure.

17 MR. TREJO: May I please see the Defense Exhibits A
18 through J?

19 THE COURT: Yes.

20 MR. TREJO: May I approach?

21 THE COURT: Yes.

22 MR. TREJO: Thank you.

23 (Mr. Trejo and Interpreter approach Clerk)

24 BY MR. TREJO:

25 Q If I show you a photo, can you tell me where you

1 were laying while on the floor?

2 A Sure.

3 THE COURT: Which exhibit, Mr. Trejo?

4 MR. TREJO: A.

5 THE COURT: Sure. And you have permission to
6 publish. I don't know if the Elmo is on. Can you see?

7 THE MARSHAL: It should be fine, Judge.

8 THE COURT: Yeah, okay.

9 BY MR. TREJO:

10 Q Could you please use the mouse to point out your
11 alleged position, Mr. Andino?

12 A You want me to just point to it or use the mouse?

13 THE COURT: Use the mouse and draw a circle or --

14 THE WITNESS: Okay.

15 THE COURT: -- somewhere on it, yeah.

16 THE WITNESS: Oh, it was about --

17 THE COURT: And the record will reflect he drew a
18 circle on the left side of the photograph. It's about halfway
19 down. It's in front of the off white glass fronted cabinet
20 and also in -- near the orange and black wheeled -- I'm not
21 even sure what that is, maybe a generator or something like
22 that. Would you agree that that's the location, Mr. Trejo and
23 Mr. -- I'm sorry, State?

24 MR. TARAR: Tarar.

25 THE COURT: Tarar. Mr. Tarar?

1 MR. TARAR: State agrees, Your Honor.

2 MR. TREJO: Defense agrees.

3 THE COURT: Okay. Thank you.

4 BY MR. TREJO:

5 Q Which way was your head facing?

6 A Towards the front door.

7 THE COURT: And which way would that for -- on this
8 photograph?

9 THE WITNESS: My head would be about this area.

10 THE COURT: Okay. And so for the record, he is
11 indicating closer to the glass fronted cabinet that is on the
12 left portion of the area that I just described.

13 BY MR. TREJO:

14 Q Okay. Giovanni, from this position here, can you
15 see the front door?

16 A Yeah.

17 Q How about the sales floor around that cubicle?

18 A Where the jewelry is?

19 MR. TREJO: Permission to publish another exhibit.

20 THE COURT: Which one?

21 And can you clear out the --

22 THE WITNESS: Yeah,

23 THE COURT: -- drawing on that? Thank you.

24 Which one is it?

25 MR. TREJO: Exhibit -- Defendant's Exhibit B.

1 THE COURT: Okay. Absolutely.

2 BY MR. TREJO:

3 Q How about the sales floor surrounding the center
4 cubicle with the musical equipment by it?

5 A From where I was laying, if I turned my head, yeah,
6 I could see it.

7 Q Did that DVD rack block your view at all?

8 A Parts of the sales floor, but not the door nor the
9 jewelry.

10 Q Did you stand up at any point?

11 A No.

12 Q Do you recall claiming the suspect made Adriane put
13 gold chains into the bag during your recorded statement?

14 A Yes.

15 Q In relation to your position, could you see this?

16 A If I turned my head, yeah.

17 Q Did you actually see it?

18 A Yes.

19 Q I do recall that you mentioned before the break that
20 you only heard a bag get dropped on the counter. Could you
21 correct me if I'm wrong?

22 A I heard the bag, but I also saw the bag.

23 Q And if I do recall, you did mention only hearing
24 this during Mr. Tarar's examination?

25 THE COURT: Tarar.

1 BY MR. TREJO:

2 Q Tarar. Tarar's examination?

3 A Yes.

4 Q Do you recall stating that the suspect took Adriane
5 into the office?

6 A She didn't take her to -- I mean, she (sic) directed
7 her to the office.

8 Q The office is out of view to you at that point,
9 correct?

10 A While I'm on the ground, yes.

11 Q Is the office enclosed?

12 A It's enclosed, but the door was open.

13 Q Was there a counter in between the office and
14 yourself?

15 A Yes.

16 Q Do you recall stating in your recorded statement
17 that Adriane and the suspect were having a conversation in the
18 office?

19 A A conversation in -- and he was telling her to open
20 the safe. I don't know if you'd call that a conversation.

21 Q As in, they were having dialogue?

22 A Yes.

23 Q Did you also claim in your statement that Adriane
24 took money out of the registers?

25 A Yes.

1 Q And could you see the registers from your position?

2 A See them, no.

3 Q But you could hear it, right?

4 A Yes.

5 Q If you could only hear but not see, then how do you
6 conclude that Adriane was the one taking the money and not the
7 suspect?

8 A Based on where the voices were coming from.

9 Q So let's talk about this for a second. You could
10 hear -- you could hear about what exactly? You could hear at
11 that point what exactly?

12 A Him directing her to take the money out of the
13 registers and every register down the line, opening and
14 closing.

15 Q Okay. Mr. Andino, do you recall claiming that at
16 one point during the robbery, someone tried to open the front
17 door?

18 A Yes.

19 Q Do you recall mentioning something about zip ties
20 and how many -- and how they weren't that strong because the
21 door still opened?

22 A Yes.

23 Q Mr. Andino, do you recall claiming on your statement
24 that a customer, quote/unquote, tried to come in, but the door
25 felt like it was kind of restraining?

1 A Yes.

2 Q Do you recall the gentleman who tried to come in?

3 A Like, what he looks like? Or who he was?

4 Q Just if you encounter that -- the individual.

5 A Yeah, I heard them come in, or try to come in, yeah.

6 Q Did you actually witness them try to come in?

7 A I didn't witness them, but I did hear them.

8 Q I noticed that in that statement you described
9 someone else's experience when you explained how the door
10 felt. It was being restrained. How do you get inside --

11 MR. TARAR: Objection, Your Honor. Argumentative
12 Putting his own narrative into the -- into the question.

13 THE COURT: Yeah. Mr. Trejo, you need to -- if
14 you're going to try that question, you need to rephrase it.
15 BY MR. TREJO:

16 Q How did you know what the person who tried to enter
17 the shop, experienced with the door?

18 A You could hear the door not open properly because of
19 the zip tie, and then you hear the zip tie snap off. And then
20 he states that -- tries to get them to come in, which they
21 don't.

22 Q Your language in that statement was specifically
23 mentioning how the door felt, not so much what it sounded
24 like. Would you like to refresh your memory with the
25 statement?

1 MR. TARAR: Objection, Your Honor. The witness is
2 -- I mean, I'm sorry -- Mr. Trejo is testifying in that
3 question, being argumentative.

4 THE COURT: I don't think that's the proper --

5 MR. TARAR: And facts not in evidence.

6 THE COURT: Yeah. That's -- that's actually what I
7 was thinking of.

8 So based on that Mr. Trejo, you're -- you're asking
9 him basically to speculate as to what somebody else is doing,
10 and you're doing it with facts that haven't been presented to
11 the jury.

12 And so I'm going to sustain that objection and I'm
13 not really sure where you're trying to go, but if there is a
14 way that you can do it without it being speculative and
15 calling for facts not in evidence, you can try it again.

16 BY MR. TREJO:

17 Q Before the break, you claimed that the suspect have
18 your manager open the drawers; is that correct?

19 A The register drawers? Yes.

20 Q When you were -- oh, when were you hired with
21 SuperPawn?

22 A It was March 2018.

23 Q Do you remember where -- do you remember when the,
24 quote, "tracker," unquote, was installed as a security
25 measure?

1 A I do not. It was there before I was hired.

2 Q All right. After the event, you said they took you
3 to AutoZone, right?

4 A Yes.

5 Q You stated you were there for hours; is that
6 correct?

7 A Give or take, yeah.

8 Q And you mentioned the mood was gloomy?

9 A Yeah.

10 Q Did you guys vent while at AutoZone?

11 A Not really. I mean, me personally, my phone was
12 still in the store, so I spent half the time trying to
13 remember my parents' phone number to call them to make sure to
14 tell them I was okay.

15 Q Do you recall if the gentleman who tried to open the
16 door was also at AutoZone?

17 A I believe he was, yeah.

18 Q Did he talk about his experience?

19 A No. I mean, if he did, I didn't hear it.

20 Q How about your manager, did she talk about her
21 experience being that she was very upset?

22 A No. We were more of just, relief, and thankful that
23 we were still breathing and still there, no one was hurt.

24 MR. TREJO: That will be it. Thank you, Mr. Andino.

25

1 THE COURT: Anything based on that, Mr. Tarar?

2 MR. TARAR: No, Your Honor.

3 THE COURT: Okay. Questions from the jury?

4 There being no questions from the jury.

5 Ladies and gentlemen of the jury, we are going to
6 end today. We were going to go until 4:30. I thought this
7 would be enough witnesses, but we don't have anybody else, and
8 we're just going to come back tomorrow at 9:00 o'clock.

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

18 See you tomorrow morning at 9:00 a.m.

19 Mr. Andino, you are excused. Do not discuss your
20 testimony with anyone.

21 THE WITNESS: Thank you.

22 THE COURT: Ms. Heap, would you bring those -- thank
23 you. (Indiscernible) work.

24 (Outside the presence of the jury)

25 THE COURT: Anything by any parties outside the

1 presence of the jury?

2 MR. SCHWARTZER: And, Your Honor, just for
3 scheduling, we also have five witnesses for Friday and then we
4 have two on Monday. One is probably going (indiscernible) so
5 much. So I would suggest Mr. Trejo have his witnesses ready
6 Tuesday.

7 THE COURT: Okay. Mr. Trejo is writing something so
8 I assume there's something else outside the --

9 MR. HENRY: Do you want your --

10 THE COURT: No, there's not? Okay.

11 And have you told him his -- the witnesses for
12 tomorrow?

13 MR. SCHWARTZER: I'm going to do that right now.

14 THE COURT: Okay. Thank you.

15 MR. HENRY: We don't have contact information for
16 Officer Verduzco (phonetic)? Okay. But he's telling me to
17 cancel him now.

18 MR. SCHWARTZER: Okay.

19 MR. HENRY: So we'll have to call him.

20 MR. SCHWARTZER: Do you want me to -- when was his
21 subpoena for, the (indiscernible)?

22 MR. HENRY: Yeah. (Indiscernible).

23 MR. SCHWARTZER: I'll call him. I'll get his
24 number.

25 MR. HENRY: (Indiscernible).

1 (Mr. Trejo, Mr. Henry, and District Attorneys conferring)

2 THE INTERPRETER: Your Honor, am I free to go?

3 THE COURT: I'm sorry?

4 THE INTERPRETER: Am I free to go?

5 THE COURT: You don't have anything else for the
6 record, Mr. Trejo?

7 MR. HENRY: Do we need -- should we put that on the
8 record? (Indiscernible).

9 MR. SCHWARTZER: Well, I guess we do have one thing.
10 Is it -- are we still on the record?

11 THE COURT: Yes.

12 MR. SCHWARTZER: So my understanding from standby
13 counsel is Mr. Trejo has cut one of his witnesses, so I guess
14 just have the other witness ready Tuesday morning.

15 I don't want to get into too long of an argument,
16 but would notice that we didn't have a notice of expert or a
17 notice of witnesses in this case. I'm fine, based on the fact
18 that Mr. Henry, standby counsel, told me that this witness was
19 one of the people that he was -- Mr. Trejo was looking to
20 call.

21 I'm not going to argue that Dr. Kinsey (phonetic)
22 cannot -- I mean, she can testify, but I'm -- I don't think
23 she can testify as an expert. I don't know whether she's
24 going to testify, but I don't think she can testify as an
25 expert without notice of an expert.

1 MR. TREJO: Just the witness.

2 MR. HENRY: Not an expert.

3 MR. SCHWARTZER: Zachary Baughman, Matthew -- Keenan
4 Graham, Matthew, your friend, (indiscernible) call.
5 (Indiscernible). Matthew Mongeau. Keenan Graham. I'm trying
6 to think of his first name. Brian Farrington -- Brian
7 Farrington, and Jonathan Sandoval.

8 (Mr. Trejo, Mr. Henry, District Attorneys conferring)

9 (Pause in the proceedings)

10 (Court recessed for the day at 4:07 p.m.)

11 * * * * *

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

15

16

Julie Lord |

17

18

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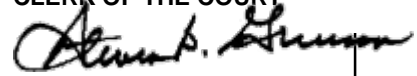
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RTRAN

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

FRIDAY, APRIL 29, 2022

RECORDER'S TRANSCRIPT OF PROCEEDING:
JURY TRIAL - DAY 10

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.
STEVEN M. ALTIG, ESQ.
Standby Counsel

ALSO PRESENT:

Afan Tarar
With District Attorneys Office

Marie Bacquerie
Spanish Interpreter

RECORDED BY: AIMEE CURAMENG, COURT RECORDER
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INDEX

<u>STATE'S WITNESSES:</u>	<u>PAGE</u>
SERGEANT ZACHARY BAUGHMAN	
Direct Examination by Mr. Schwartz	4
Cross-Examination by Mr. Trejo	26
Redirect Examination by Mr. Schwartz	31
Recross-Examination by Mr. Trejo	32
<u>MATTHEW MONGEAU</u>	
Direct Examination by Heap	35
Cross-Examination by Mr. Trejo	48
<u>OFFICER BRIAN FARRINGTON</u>	
Direct Examination by Ms. Heap	58
Juror Questions	82
<u>JONATHAN RIVERA-SANDOVAL</u>	
Direct Examination by Ms. Heap	84
Cross-Examination by Mr. Trejo	109
Juror Questions	113
<u>OFFICER KEENAN GRAHAM</u>	
Direct Examination by Mr. Schwartz	114
Cross-Examination by Mr. Trejo	140
Redirect Examination by Mr. Schwartz	141
<u>LIST OF EXHIBITS</u>	
<u>STATE'S EXHIBITS:</u>	
139	77
142	136
143	10

1 LAS VEGAS, NEVADA, FRIDAY, APRIL 29, 2022

2 (Case called at 9:06 a.m.)

3 (Outside the presence of the jury.)

4 THE COURT: Case No. C-18-335315-1, State of Nevada
5 versus Mario Trejo. State is present represented by
6 Mr. Schwartzer and Ms. Heap. Mr. Trejo is present
7 representing himself with his standby counsel, Alex Henry and
8 the interpreter.

9 Is there anything we need to do outside the
10 presence?

11 MR. TREJO: No. Your Honor.

12 MS. HEAP: Not from the State.

13 MR. SCHWARTZER: Not from the State. Your Honor.

14 THE COURT: Okay. Bill, you said everybody was here
15 so we can go ahead and grab the jury.

16 THE MARSHAL: Okay.

17 THE CLERK: Madam Interpreter, can I have your name
18 for the record, please?

19 THE INTERPRETER: Yes. It's Marie, the last name is
20 B-a-c-q-u-e-r-i-e.

21 (Pause in the proceedings)

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

24 MR. SCHWARTZER: State does, Your Honor.

25 MR. TREJO: The defense does.

1 THE COURT: Thank you. Please be seated.

2 Mr. Schwartzer and Ms. Heap, your next witness.

3 MR. SCHWARTZER: Sergeant Zachary Baughman.

4 SERGEANT ZACHARY BAUGHMAN, STATE'S WITNESS, SWORN

5 THE CLERK: Thank you. Be seated. And once you're
6 settled, please state and spell your name for the record.

7 THE WITNESS: Yes. Zachary Baughman, Z-a-c-h-a-r-y.
8 Baughman, B-a-u-g-h-m-a-n.

9 THE CLERK: Thank you.

10 MR. SCHWARTZER: May I proceed, Your Honor?

11 THE COURT: Yes.

12 DIRECT EXAMINATION

13 BY MR. SCHWARTZER:

14 Q Sergeant, can you tell the ladies and gentlemen of
15 the jury what you do for a living?

16 A So, I'm a police sergeant with Las Vegas
17 Metropolitan Police. I've been on the job for about 14 and a
18 half years. The last four years I've been flying the police
19 helicopters.

20 Q Okay. In order to fly those police helicopters, do
21 you have to go through any type of special training?

22 A Yes, we have a 27 -- 27-week program roughly for the
23 tactical flight officer portion, which is like the police
24 officer portion of the helicopter, those roles. So we do
25 that program, and then we also have about a year-long program

1 to actually be -- be able to fly the helicopters on patrol as
2 well, so.

3 Q And when you go up in the air in the helicopter, do
4 you go by yourself or do you go with someone else?

5 A We always go with a partner. It's a two-man crew.

6 Q And why do you have that protocol?

7 A So for the pilot, he's flying, his primary
8 responsibility is to fly the aircraft just to make sure
9 safety of flight is paramount. And then his secondary role
10 would be support the TFO.

11 For the TFO, I indicate towards the right side of a
12 ship. That's where the TFO sits. That responsibility as in
13 like for that day it was to be a police officer in the sky.
14 My primary function is communicate with ground units to
15 coordinate assets and do things like that so.

16 Q You said TFO. What's that?

17 A Tactical flight officer.

18 Q Okay.

19 A So that's just again, like the police officer in the
20 sky broadcasting observations, just reporting what we see,
21 and trying to guide resources to make sure everybody's life
22 is respected, we're making sure the safest outcome is
23 achieved on the calls as best as possible so.

24 Q Now, while you're acting as a TFO, is there any
25 devices that you use while you're up in the helicopter to aid

1 your role?

2 A Yeah. So we have -- we have mapping system. That
3 mapping system also pairs up with a video system so we can
4 overlay so we can actually see, okay, this is the video feed,
5 this is what the camera was -- is seeing, what it's
6 recording, and then it overlays a map as well.

7 In addition to that, at night, we would use, you
8 know, a spotlight as well, if we want to, we have binoculars
9 as well so a lot -- plus radio systems, of course, so.

10 Q And now, you said at nighttime you would use a
11 spotlight. Can you also use something that's called FLIR
12 camera?

13 A Yep. So a FLIR is like a brand name, but it's a
14 infrared camera, so that camera just records heat
15 information. So it differentiates between hot and cold, and
16 from that, it presents a -- an image, so.

17 Q Okay. And that's something you would use at night
18 when you don't have a clear image?

19 A Yeah, we use them mostly at night, but it can be
20 used during the day. But for -- for day shift primarily it's
21 just a day shift camera and a day shift sensor.

22 Q Okay. While you're taking video with your camera up
23 in the sky, is sometimes, is those videos used in order to
24 make like aerial photographs to aid in investigations?

25 A Absolutely.

1 MR. SCHWARTZER: Your Honor, permission to publish
2 photographs that have previously been admitted.

3 THE COURT: Yes.

4 BY MR. SCHWARTZER:

5 Q You specifically talked about that day. Are you
6 talking about September 3rd of 2018?

7 A Yes.

8 Q Okay. And that's -- you were subpoenaed to come to
9 court for a specific incident; is that correct?

10 A That is correct.

11 Q And that was under event number 180903-1848.

12 A I don't remember off the top of my head, but I trust
13 that you were reading it correctly, yes.

14 Q Okay. Well, let me give you some context. An
15 incident that occurred at 1150 South Rainbow.

16 A Yes. That is the event.

17 Q Okay. So I'm going to show you what's been marked
18 as Exhibit 71. Do you recognize that photograph?

19 A That photograph, yes.

20 Q Is this like a -- one that -- shots you would have
21 taken from your camera up in the sky?

22 A We do take similar shots. This particular one may
23 have been from a drone; however, our footage, we do provide
24 the orbits and have very similar images.

25 Q Okay. So you think -- so that shot you're not sure

1 or you think it's actually from a drone?

2 A I believe that one is from a drone.

3 Q Okay.

4 A Yes.

5 Q Do you see the -- the subject copy on here?

6 A I do. I see the -- like on the -- it's in the
7 center of the screen almost. I don't know how to describe it
8 for your transcriber, but there is a SuperPawn there at the
9 business -- or at the location.

10 Q So you're talking about in the center of Exhibit 71?

11 A Yes. There's a large truck that is kind of
12 pointing down towards the bottom of the screen. To the left
13 of that truck would be where the SuperPawn is at.

14 Q Okay. Now, the videos that you take while you're
15 up in the sky, that's something you said is recorded?

16 A It is.

17 Q And that's something that's downloaded to a system
18 in order for other people -- other law enforcement
19 (indiscernible) to access?

20 A Yes.

21 Q Also to provide to the District Attorney's office?

22 A Correct.

23 Q And also so the District Attorney's office can
24 provide it to the defense?

25 A Absolutely.

1 Q Okay.

2 MR. SCHWARTZER: Your Honor, I'm just going to play
3 a portion of Exhibit 143.

4 THE COURT: Proposed?

5 MR. SCHWARTZER: Proposed Exhibit 143 in order to
6 lay the foundation.

7 THE COURT: Yes.

8 MR. SCHWARTZER: Switching over.

9 (Video/Audio played)

10 BY MR. SCHWARTZER:

11 Q All right. Sergeant, do you recognize this video?

12 A Yes. Yes, this is the -- this would be the video
13 that I started recording on this particular day in September.

14 Q So the recording from the incident occurring at
15 1140 (sic) South Rainbow on September 3, 2018?

16 A That is correct.

17 Q And is it a true and accurate reflection of that?

18 A It is.

19 Q From what you were able to observe from up in the
20 sky?

21 A Yes. And with that particular video, I'm the one
22 that actually recorded it, removed my USB flash drive and put
23 it into a department computer and uploaded it into the
24 system.

25 MR. SCHWARTZER: Your Honor, I'd move for admission

1 of Exhibit 143.

2 THE COURT: Any objection, Mr. Trejo?

3 MR. SCHWARTZER: He has that ongoing objection.

4 THE COURT: I thought this one wasn't part of that.

5 Do we need to approach? I didn't -- I thought this one
6 wasn't a part of that.

7 MR. SCHWARTZER: I'm sorry, Your Honor, I didn't
8 mean to interfere.

9 THE COURT: No, I'm just -- I didn't think this was
10 part of it, so --

11 (Bench conference)

12 THE COURT: Mr. Trejo, you can stay there until you
13 finish writing, but then approach.

14 MR. TREJO: I saw parts of the air unit. Not --
15 not the whole video. Objection stands.

16 THE COURT: Okay.

17 MR. SCHWARTZER: And obviously, for the record,
18 this has been provided over three years ago.

19 THE COURT: Okay. Thank you.

20 (End of Bench Conference.)

21 THE COURT: I apologize, Mr. Trejo. I didn't
22 realize that this was part of the objection so your objection
23 is noted and overruled, and this is going to be admitted over
24 objection.

25 (State's Exhibit 143 admitted.)

1 MR. SCHWARTZER: Thank you, Your Honor. Permission
2 now to publish in its entirety?

3 THE COURT: Yes.

4 BY MR. SCHWARTZER:

5 Q Sir, I'm going to bring it back to the beginning.

6 A Yeah.

7 (Playing, State's Exhibit 143, video/audio)

8 BY MR. SCHWARTZER:

9 Q Okay. I'm going to pause it right there, six
10 seconds into the video.

11 A Okay.

12 Q And I just want you to explain to the ladies and
13 gentlemen of the jury some of the things that we're seeing on
14 the screen in Exhibit 143.

15 MR. SCHWARTZER: Your Honor, may I approach?

16 THE COURT: Yes.

17 BY MR. SCHWARTZER:

18 Q Sir, in order to help, this mouse should work.

19 A Okay.

20 Q There you go. Press this pen right here. It will
21 allow you to make marks, although, it's kind of the stuff
22 that we want. So we'll go -- and then you can make marks.
23 When you're done with the marks, I would ask you to go back
24 to the screen and go to this arrow right here, it will clear
25 everything.

1 A Okay.

2 Q Okay.

3 A So marker and then arrow that.

4 Q Thank you.

5 A Got it.

6 Q All right. So in Exhibit 143, we see various
7 numbers on the right corner of the screen; is that correct?

8 A Correct.

9 Q Can you explain those numbers to the ladies and
10 gentlemen of the jury?

11 A Yep. So this number with the feet indication,
12 that's just an altitude that we're at. The distance, .2
13 miles, is the distance that the camera is looking away from.
14 So in this particular moment, the -- the camera is in what's
15 called the forward position. So I'm not actively using it.
16 I'm not tracking anything. I'm not manipulating the camera.
17 So it's just in the forward position. So it's just looking
18 down and off to like the -- my field of view, to my right and
19 low.

20 The -- the other numbers would be just lat and long
21 of where that -- where those indications are actually at.
22 Essentially, when we're flying around, it's seldomly even
23 important for us in the ship, so.

24 Q And so that's all numbers and things we see on the
25 screen of Exhibit 143 on the bottom right corner of the

1 screen; is that correct?

2 A That is correct.

3 Q Now, on the top left corner there's also another
4 thing be put on the screen. It looks like a compass of some
5 sort. Can you explain that?

6 A Yes. So that's a compass. It is indicating the
7 direction of north. So for us we were flying to the south
8 and west that day. So the -- it kind of helps the TFO
9 understand the orientation of the camera. So if we are
10 looking at the camera screen and we're doing our orbits in
11 patrol, that helps as a tool to kind of recognizing which
12 direction is which so we don't have to actually look out of
13 the aircraft the whole time.

14 Q Now, the camera you're using, are you able to
15 narrow in on subjects or images of stores?

16 A Yes. So there's -- there's a like a traditional
17 actual zoom where there's like the mechanical adjustment and
18 there's also a digital zoom as well. It allows us to further
19 enhance that image to zoom.

20 Q So while you -- go ahead, I'm sorry.

21 A I was just going to say to zoom by enhance.

22 Q Okay. So can you use that to help yourself in like
23 zooming into objects as well?

24 A Absolutely.

25 Q Okay. Are you looking through the camera or are

1 you looking with your own eyes?

2 A It just depends on -- on what's actually occurring
3 at ship. A lot of times it's in and out of the aircraft, so
4 we'll use peripheral for both. But, you know, on certain
5 cases, if it's -- if I can keep the camera on the incident
6 that's occurring, I use that, that will be my primary role.
7 Again, we want evidence, you know, to be -- to be presented
8 and so we can try our best to capture as much as we can on
9 what's -- what's relevant.

10 Q And what's -- and just to make it clear, you're
11 acting as the TFO in this case; is that correct?

12 A Correct, yes.

13 Q So you're not the pilot? You're not doing the
14 camera and flying at the same time?

15 A Correct, right. I'm -- I'm manipulating the radio
16 communications, the camera systems and communicating with
17 folks on the ground.

18 MR. SCHWARTZER: I will continue the video of
19 Exhibit 143 at 6 seconds, Your Honor.

20 THE COURT: Thank you.

21 MR. SCHWARTZER: I'm going to start over because
22 the sound wasn't on for some reason.

23 (Playing video)

24 MR. SCHWARTZER: Oh, it's frozen.

25 BY MR. SCHWARTZER:

1 Q Sorry Sergeant, sometimes get kicked off the
2 system.

3 A No worries. It happens to us, too.

4 Q Starting from the beginning.

5 (Playing video/audio)

6 BY MR. SCHWARTZER:

7 Q So stopping at 58 seconds.

8 A Yes.

9 Q Obviously, you were hearing radio traffic?

10 A Yes.

11 Q So you were getting information regarding this
12 incident as you're arriving onto the scene?

13 A That's correct.

14 Q And now as we're approaching at 58 seconds into the
15 video on Exhibit 143, is this the SuperPawn that becomes the
16 subject of your investigation?

17 A It is.

18 Q Okay.

19 (Video/audio plays)

20 MR. SCHWARTZER: Starting at 58 -- excuse me, Your
21 Honor. Starting at 58 seconds.

22 (Video/audio plays)

23 BY MR. SCHWARTZER:

24 Q So you start zooming in here; is that correct?

25 A Yes.

1 Q Why did you start zooming --

2 MR. SCHWARTZER: And I stopped the video at 1:23.

3 BY MR. SCHWARTZER:

4 Q Why are you zooming in at this point?

5 A So when we first arrive, well, again, we're taking
6 information, we're trying to see is there a motorcycle
7 related, is there not, is there any -- anything suspicious in
8 nature that stands out. So I'm using a little bit of the
9 camera, a lot of out of the ship. The pilot is also doing
10 the same.

11 I see two people walking out. And a lot of times
12 the first thing I see is movement. So that just kind of
13 caught my eye. I see it, and then I recognize out of the
14 ship what's happening. So that's where, okay, let me zoom in
15 and actually get a better closer up of the ship.

16 Q But what are you observing at this point?

17 A So what I observed is a male subject, appeared to
18 be a male subject walking out with a helmet on. He had a
19 firearm to a woman's head and she was walking out towards,
20 what appeared to be towards this white vehicle. So my
21 initial thought was that that was going to be the attempted
22 escape from the incident.

23 Q Okay. And was the white female doing anything with
24 her hands?

25 A I -- I want to say she has her hands up or

1 something like that. At one point in time, there was a
2 tussle, for lack of a better word, over the firearm where it
3 seemed like she was trying to disarm the male, and you'll see
4 in the video, it's very hard and maybe difficult with this
5 screen with the a pixilation, but you can actually see a
6 round discharged and the dust kick up off the ground as she
7 was struggling to take away the -- the firearm.

8 Q And also, I want to note there's a -- what appears
9 to be on officer in the bottom left corner of Exhibit 143 at
10 1:23.

11 A Yep, he's on the -- that would be the west side, I
12 believe, of a dumpster area.

13 Q Okay. Does it appear that the person with the
14 motorcycle helmet has that white female between himself and
15 the police officer?

16 A Yes, it does.

17 Q Thank you.

18 A My (indiscernible) on that, it appeared that she
19 was a hostage is what it appeared to me from my experience.

20 Q Thank you, sir.

21 MR. SCHWARTZER: I'm going to continue at 1:23,
22 Your Honor.

23 THE COURT: Yes.

24 (Video/audio plays)

25 BY MR. SCHWARTZER:

1 Q Okay. So I'm going to back it up a little bit
2 there. So at 1:32. Okay. So at that point --

3 THE COURT: And you stopped it at 1:35.

4 MR. SCHWARTZER: Thank you, Your Honor.

5 BY MR. SCHWARTZER:

6 Q So at that point, you hear over the radio that
7 shots are fired?

8 A Correct.

9 Q And you said from -- you said from at least from
10 your standpoint, you were able to see a discharge from the
11 defendant's weapon?

12 A Yes.

13 Q Or not defendant, excuse me. The suspect, the
14 motorcycle helmet's weapon?

15 A Right.

16 Q After that, what did the person in the motorcycle
17 helmet do?

18 A He -- I'm not exactly sure when he was struck by --
19 by rounds, but he did appear to back up. He kind of separate
20 -- like, no longer used that original firearm and he had
21 transitioned to another firearm that had been slung across
22 his body.

23 Q And where did he -- and we can kind of see a little
24 bit here on 1:35. Where did he aim that firearm toward?

25 A So he ends up attempting to get that firearm, I

1 believe, pointed at the officers towards the -- which would
2 be towards the west.

3 Q Okay.

4 A Over the white car.

5 MR. SCHWARTZER: I'm going to start again at 1:35,
6 Your Honor.

7 (Video/audio plays)

8 MR. SCHWARTZER: And I'm stopping at 1:44.

9 BY MR. SCHWARTZER:

10 Q Who's that voice we're hearing right now?

11 A That's me.

12 (Video/audio plays)

13 MR. SCHWARTZER: All right. I'm going to pause it
14 right there at 8:42.

15 BY MR. SCHWARTZER:

16 Q First off, this might be a silly question, but you
17 can tell with the camera that there's circling going on. And
18 why is that?

19 A Yes. So for -- we fly the orbits because if we
20 lose an engine and we're in the orbits, our air speed can be
21 transferred into rotor RPM, which then we could use to create
22 a lift. So if we, for example, if we're plying around at 500
23 feet, we lose our engine, that orbit gives us an extra like
24 five seconds before we actually contact the ground.

25 So we're looking at, you know, 15 seconds before we

1 contact. So that five seconds is critical for us. If we
2 didn't fly the orbit and we're just holding that altitude or
3 that position, then if we lose our engine, we're contacting
4 the ground in about 10 seconds, just that -- where we're at
5 so -- and that's if we do it right. So that's why we fly the
6 orbits.

7 So you heard some communication with the pilot and
8 myself saying, hey, I've lost visual because of the orbit.
9 Letting him know he's also seeing it as well. He's a very
10 experienced pilot, and so he's like let me bring you over
11 here. So we just kind of coordinate those thing.

12 Q And at one point you start zooming in with the
13 camera toward the suspect?

14 A Correct.

15 Q You say something like he's more mobile or
16 something in order to get a closer look, something to that
17 effect. Does that sound right?

18 A Yes, that's correct.

19 Q Why do you do that?

20 A So I'm just communicating to him that -- so there's
21 obviously a lot of moving pieces. We talked -- you heard the
22 chatter about cops coming around the corner, we want to
23 prevent any kind of blue on blue incident if we did have to
24 exchange gunfire that we don't hit one of our own or anything
25 like that. So we're coordinating a lot of assets, same thing

1 with medical. Medical's arriving to stage up to render aid.
2 We want to make sure that they are put in a safe place and
3 that they can get to render aid as soon as possible. So
4 we're watching that.

5 But at the same time, I don't want to lose
6 evidentiary value or something else. If there was another
7 firearm, if there was some explosive, I mean, any -- whatever
8 it may be. I want to make sure that I can see as much as
9 possible. So for that regard, I communicate to my -- to my
10 pilot and say, hey, I'm going to stay focused on this so my
11 vision's going to be narrowed to that. I need him to help
12 support me in those other roles outside of that field of
13 view.

14 Q So just to sum it up, when you zoom in like that
15 when the pilot starts helping you with more broader things,
16 are you doing it, A, for evidentiary value?

17 A Yes.

18 Q And B, in case what -- the individual has a weapon
19 or is going to use something, you're able to let your
20 officers know about that?

21 A Correct, yeah.

22 Q And by evidentiary value, one of the things you're
23 looking for is -- and you can kind of see this in the shot
24 that I paused at 8:42, you're also looking to get a face as
25 well; is that correct?

1 A That is correct.

2 MR. SCHWARTZER: I'm going to as the result playing
3 again at 8:42, Your Honor.

4 THE COURT: Yes.

5 MR. SCHWARTZER: And we're going to play to about
6 another five minutes or so after they arrest him.

7 (Video/audio plays)

8 MR. SCHWARTZER: I'm going to pause right there at
9 12:34.

10 BY MR. SCHWARTZER:

11 Q So officer, the suspect in the motorcycle helmet
12 gets taken into custody, as we see from your video, we hear
13 someone tell you, Sergeant, could you zoom out to get the
14 scene; what's the purpose of that?

15 A Just to kind of -- well, a lot of that stuff is for
16 us on the backside. So when they go in there and look at the
17 use of force, we're able to assess, okay, where were the
18 vehicles at, where did they approach, could we have done
19 something better. And Metro's actually really good about
20 trying to improve like that. And I say that humbly.

21 So that's one the primary focuses. But also again,
22 evidence. We don't know, what we don't know initially about
23 the call. We could find out later on that, hey, there was a
24 vehicle here that's no longer there, so we think about those
25 things as well to capture evidence that we may not be aware

1 that's necessary.

2 MR. SCHWARTZER: And I'm just going to just play
3 one more minute and then we'll --

4 (Video/audio plays)

5 MR. SCHWARTZER: Pause it again at 13:08. I
6 started the video again at 12:38, for the record.

7 THE COURT: 12:34.

8 MR. SCHWARTZER: 12:34. Thank you, Judge.

9 BY MR. SCHWARTZER:

10 Q So I paused it here because we saw a red vehicle
11 start moving toward the crime scene. I'll --

12 A What I shot was a (Indiscernible) looking forward.
13 Sorry, man.

14 Q It's fine. It's on the left side portion --

15 A Oh.

16 Q -- entering into the driveway portion of the
17 business.

18 A Oh, it looks like City Fire.

19 Q Okay. It appeared to me that it was waiting behind
20 a couple of police cars before it started driving.

21 A Right.

22 Q Is that fair?

23 A Yeah, it is.

24 Q And what is that?

25 A So that's a City Fire Department. They're waiting

1 for us to make sure that the safe -- the area's safe. Like,
2 we wouldn't want to be engaging a suspect and have medical
3 rushing in, and now they're potentially victims of, you know,
4 exchange of gunfire of are or something like that. So that's
5 just them waiting for our cue to come in and render aid.

6 Q So when you guys were saying, you know, bring in
7 medical, is that medical?

8 A That is medical.

9 Q Okay.

10 MR. SCHWARTZER: This is 13:08, Your Honor. That's
11 when we'll start again.

12 (Video/audio plays)

13 MR. SCHWARTZER: And ladies and gentlemen, we'll
14 your full video when they go back to deliberations.

15 I'm going to stop it there at 13:35.

16 I appreciate your time here. I will pass the
17 witness, Your Honor.

18 THE COURT: Mr. Trejo?

19 MR. TREJO: I'm going to need a few minutes to
20 prepare.

21 THE COURT: Okay. So do you want me to give the
22 jury a break about five minutes? Ten minutes? Okay.

23 It is 9:45, ladies and gentlemen. We are going to
24 take about a ten-minute break. During the recess, you are
25 admonished not to talk or converse among yourselves or with

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

8 We will be back here about five minutes to 10:00.

9 (Outside the presence of the jury)

10 THE COURT: And Sergeant, would you just wait in
11 the vestibule for a few minutes. Thank you.

12 THE WITNESS: Yes, ma'am. Yes, Your Honor.

13 THE COURT: Just checking, anything outside the
14 presence before we give Mr. Trejo the break to get his
15 questioning together?

16 MR. TREJO: Not from --

17 MR. SCHWARTZER: Not from the State, Your Honor.

18 MR. TREJO: Not from the defense.

19 THE COURT: Okay. Thank you. I'll be in the back
20 and I -- if anybody needs me.

21 (Court recessed at 9:46 a.m. until 10:00 a.m.)

22 (Outside the presence of the jury.)

23 THE COURT: -- record -- I'm sorry. Outside the
24 presence before we bring the Sergeant back?

25 MR. SCHWARTZER: Not from the State, Your Honor.

1 THE COURT: Mr. Trejo, anything outside the
2 presence before we put the sergeant back on?

3 MR. TREJO: No, ma'am.

4 THE COURT: Okay. So Bill, if you can grab him.
5 And if you can grab the jury. Thank you.

6 (Pause in the proceedings)

7 (In the presence of the jury)

8 THE COURT: Will the parties stipulate to the
9 presence of the jury?

10 MR. SCHWARTZER: Yes, Your Honor.

11 MR. TREJO: Yes, Your Honor.

12 THE COURT: Okay. Wait, yeah. Okay. Yeah, I was
13 like let me make sure they're all in the right place. Okay.

14 So please be seated.

15 And, Mr. Trejo?

16 CROSS-EXAMINATION

17 BY MR. TREJO:

18 Q Hi, Sergeant Baughman.

19 A Yes.

20 Q I just have a couple questions.

21 A Um-h'm.

22 Q So we just all saw the video you produced. Does it
23 appear to you that the suspect is holding the woman by the
24 neck at minute 23 -- at minute 1:23 --

25 THE COURT: Do you need to --

1 BY MR. TREJO:

2 Q -- when you make visual contact?

3 THE COURT: Do you need to see that?

4 THE WITNESS: If I can, but I mean, just from my
5 raw memory, it appeared that he was guiding her. He was --
6 you know, it was against her will and he was escorting her
7 over towards the vehicle.

8 MR. SCHWARTZER: I'm just fast forwarding it to
9 minute 23, Your Honor.

10 THE COURT: Sure. Thank you.

11 (Video/audio plays)

12 THE COURT: And he played at 1:23 just for the
13 record. He paused it at 1:23, I mean.

14 MR. SCHWARTZER: 1:23, Your Honor?

15 THE COURT: Yeah. I said he paused it. I just --
16 I said played and I meant to say pause.

17 MR. SCHWARTZER: Oh, thank you, Your Honor.

18 THE COURT: Yeah.

19 MR. SCHWARTZER: And this is Exhibit -- oh, you
20 already -- okay.

21 BY MR. TREJO:

22 Q Specifically, is he wrapping his arm around her
23 neck?

24 A I don't believe so, but it appeared that, you know,
25 like he was reaching in that area and escorting her over

1 against her will, is what it appeared to me.

2 Q At minute 1:50, when the suspect is hit and falls,
3 does he remove a helmet from his head?

4 A I'd have to replay that moment. At some point in
5 time, he does -- the helmet does come off at some point in
6 time, you know, a firearm is there as well, but that's all I
7 have, I guess, to answer that question. I apologize.

8 MR. SCHWARTZER: Mr. Trejo asked me to fast forward
9 to 1:50.

10 THE COURT: Okay.

11 (Video/audio plays)

12 MR. SCHWARTZER: Right there. Is that what he
13 wants?

14 MS. HEAP: It's hard to say, because you're time's
15 not moving.

16 THE COURT: Mr. Trejo, is that --

17 MR. TREJO: Yes.

18 THE COURT: That's the right place, Mr. Schwartzer.

19 MR. SCHWARTZER: That's the right place?

20 MR. TREJO: Yes.

21 THE COURT: Yes. So it's at 1:50. And do you want
22 him to play it, Mr. Trejo, yes or no? Yes.

23 (Video/audio plays)

24 THE COURT: Can you stop it.

25 MR. SCHWARTZER: And Your Honor, for the record, it

1 wasn't -- it was actually at 1:46, and I played it to 1:56.

2 THE COURT: Okay.

3 BY MR. TREJO:

4 Q At minute 1:50, when the suspect was hit and fall,
5 does he remove a helmet from his head?

6 A Yes.

7 Q When the helmet comes off, does his face appear to
8 be fully covered with something?

9 A It -- well, I couldn't tell if he was fully covered
10 or not. It didn't appear to be fully covered from -- from
11 what I saw from the sky and from the video.

12 MR. SCHWARTZER: Where do you want me to play,
13 Mr. Trejo?

14 THE COURT: I think, yeah, 1:46.

15 MR. TREJO: 1:46 to --

16 MR. SCHWARTZER: 1:46 again?

17 THE COURT: Yeah.

18 MR. TREJO: -- 1:56.

19 MR. SCHWARTZER: I'll just play it from 1:38, Your
20 Honor --

21 THE COURT: Sure.

22 MR. SCHWARTZER: -- to 1:56. Playing Exhibit 143.

23 (Video/audio plays)

24 MR. SCHWARTZER: Stopping at two minutes, Your
25 Honor. Unless Mr. Trejo wants me to continue.

1 BY MR. TREJO:

2 Q When the helmet comes off, does his face appear to
3 be fully covered with something?

4 A It didn't appear to be fully covered to me, no.

5 Q Did he appear to pull down a mask after the helmet
6 comes off?

7 A I -- I didn't notice that. When we're flying and
8 we're recording, I'm looking for a lot of things, a lot of
9 specific details, so I'm not looking for every -- everything
10 to recall from memory later on. So I didn't particularly
11 notice that movement, again, because I'm looking for
12 firearms, I'm looking for other things, I'm looking for
13 injuries and, you know, where my officers are at as well.

14 Q I understand your reasoning, but as we played the
15 video just now, did you notice the motion and item he pulls
16 off his face?

17 A It did appear like there may have been like
18 something on the lower portion of the face, but again, I
19 can't exactly make out what it is or if it was intended to
20 cover a face or not.

21 MR. TREJO: That will be all, Sergeant. Thank you.

22 THE WITNESS: Thank you.

23 THE COURT: Any questions from the jury for this
24 officer? Okay.

25 MR. SCHWARTZER: Your Honor, just --

1 THE COURT: Oh, sorry.

2 MR. SCHWARTZER: -- I do have -- I do have a
3 question.

4 THE COURT: You did have a question.

5 MR. SCHWARTZER: I do.

6 THE COURT: You had a question based on his --
7 sorry, sorry.

8 MR. SCHWARTZER: I do, I do.

9 THE COURT: Out of order. I'm doing too many
10 things at once. Go ahead, Mr. Schwartz.

11 MR. SCHWARTZER: It's fine, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. SCHWARTZER:

14 Q Sergeant, I'm just -- because this question's on
15 the mask, again, you weren't paying attention to -- I mean,
16 you were paying attention, but there was a lot of details
17 going on at the time and you're trying to get --

18 A Yes.

19 Q Commands out and direction out to the officers on
20 the scene as well?

21 A Correct. A lot of details have to be observed, and
22 you kind of look at maybe even subconsciously and through
23 training as well, just process what needs to be relevant at
24 that time and what needs to get out there, so --

25 Q Okay. So I'm going to -- right now I have it

1 paused at 4:57. I'm just going to play it from this spot.

2 Okay? And I just want you to watch.

3 (Video/audio plays)

4 BY MR. SCHWARTZER:

5 Q All right. Starting at 5:11, do you see the
6 individual pull something off around from his neck and then
7 throw it?

8 A Yes, I did see that.

9 Q You did?

10 A I did see that.

11 Q Okay.

12 MR. SCHWARTZER: That's it, Your Honor.

13 THE COURT: Okay. Sorry. Now, did you have
14 anything based on that?

15 RECROSS-EXAMINATION

16 BY MR. TREJO:

17 MR. SCHWARTZER: 4:46?

18 MS. HEAP: 1:46.

19 MR. TREJO: 1:46.

20 MR. SCHWARTZER: 1:46.

21 (Video/audio plays)

22 MR. SCHWARTZER: I don't know what he's asking.

23 MR. TARAR: He's going to ask.

24 THE INTERPRETER: He's going to ask in a second.

25 MR. SCHWARTZER: Okay.

1 THE COURT: I think he was just trying to find the
2 place that you were at, Mr. Schwartzer.

3 MR. SCHWARTZER: I stopped -- Mr. Trejo asked me to
4 go to 1:46. I'm at 1:45. I'll stop there.

5 THE COURT: Okay.

6 BY MR. TREJO:

7 Q I'm sorry, Sergeant. The -- that last video was
8 played at around five minutes. I do understand you were
9 paying attention to certain aspects and not necessarily
10 paying attention to seemingly important details -- oh,
11 seemingly unimportant details. I'm going to have
12 Mr. Schwartzer play these few seconds. Please pay attention
13 to the suspect's face, when the helmet comes off, and tell me
14 what you see.

15 THE COURT: Starting at one forty (indiscernible).

16 (Video/audio playing)

17 THE COURT: Stopping at 1:56.

18 BY MR. TREJO:

19 Q What did you see, Sergeant?

20 A During that time I saw what appeared to be a facial
21 covering of some sort on the lower portion of the person's
22 face, and there was some movement up towards that face almost
23 as if to pull that -- that item down.

24 MR. TREJO: Okay. That will be all.

25 MR. SCHWARTZER: I have nothing further, Your

1 Honor. Thank you.

2 THE COURT: Okay. We still have jury questions, so
3 sorry, if you all can approach.

4 (Bench conference)

5 THE COURT: She's just ask him about the zoom
6 function. Is the zoom function used to capture video from
7 the helicopter a digital function or a mechanical function?

8 MR. SCHWARTZER: If he knows I'm --

9 THE COURT: Yeah.

10 MR. TREJO: Okay.

11 THE COURT: Okay.

12 (End of bench conference)

13 THE COURT: Officer -- I'm sorry, Sergeant, if you
14 know, is the zoom function used to capture video from the
15 helicopter a digital function or a mechanical function?

16 THE WITNESS: So I referenced that earlier. It was
17 just to -- I'm not the expert on the cameras so I don't know.
18 There's lenses that move, like physically move is what I
19 meant by that, that gives us that zoom, just like, you know,
20 your Canon cameras, and what. And then there's also the
21 digital enhancement that we can get just for video
22 processing. So that's what I meant by that. So just one
23 feed, one recording, you know, of it all. But, yeah, we just
24 have the ability to zoom with those actual devices or lenses
25 moving, and then the digital enhancement so, that's all.

1 MR. SCHWARTZER: Nothing further, Your Honor.

2 THE COURT: And you didn't have anything based on
3 that? Mr. Trejo, did you have anything based on that?

4 Nothing further.

5 MR. TREJO: No, Your Honor.

6 THE COURT: Thank you.

7 So, Sergeant, you are excused. Thank you for your
8 testimony. Do not discuss your testimony with anyone else.

9 THE WITNESS: Yeah. Of course.

10 THE COURT: State, next witness.

11 MS. HEAP: The State will call Matthew Mongeau.

12 THE CLERK: Raise your right hand.

13 MATTHEW MONGEAU, STATE'S WITNESS, SWORN

14 THE CLERK: Thank you. Go ahead and be seated.

15 And once you're settled, please state and spell your name for
16 the record.

17 THE WITNESS: Matthew Mongeau, M-a-t-t-h-e-w,
18 M-o-n-g-e-a-u.

19 THE COURT: Please proceed.

20 DIRECT EXAMINATION

21 BY MS. HEAP:

22 Q Thank you, sir. May I call you Matthew?

23 A Sure.

24 Q Thanks for being here today, Matthew. Do you know
25 a man by the name of Mario Trejo?

1 A Yes.

2 Q How do you know this person?

3 A A friend, family.

4 Q He was a family friend?

5 A Yeah.

6 Q Okay. Do you see the person that you know as Mario
7 Trejo here in the courtroom today?

8 A Yes.

9 Q Can you please point to that person and describe an
10 article of clothing they're wearing.

11 A Purple shirt sitting at the desk.

12 MS. HEAP: May the record reflect the
13 identification of the defendant?

14 THE COURT: Yes.

15 MS. HEAP: Thank you.

16 BY MS. HEAP:

17 Q You said he's a family -- he was a family friend?

18 A Um-h'm.

19 Q When did you know him?

20 THE COURT: I'm sorry.

21 MS. HEAP: Sorry.

22 THE COURT: Instead of saying um-h'm or um-um,
23 because everything's being recorded, if you could say yes or
24 no, please.

25 THE WITNESS: Okay.

1 THE COURT: Also, you haven't done this yet, but
2 just because lots of people do because the way we talk in
3 conversation is not the way we need you to do in court to be
4 recorded. If you can wait until Ms. Heap or Mr. Trejo asks
5 all of their questions before you answer, even if you know
6 the answer.

7 THE WITNESS: Okay.

8 THE COURT: Thank you.

9 MS. HEAP: Thank you, Your Honor.

10 BY MS. HEAP:

11 Q How long ago did you meet the defendant?

12 A Five years ago.

13 Q I want to direct your attention to Labor Day,
14 September 3rd of 2018. Do you remember that day?

15 A Yes.

16 Q Did you speak with the defendant that day?

17 A Yes, in the morning.

18 Q Do you recall what time?

19 A Around 10:00-ish.

20 Q Okay. Did he call you or did you call him?

21 A He called me.

22 Q Why did he call you?

23 A To borrow my car.

24 Q What kind of car did you have?

25 A A white Hyundai Elantra.

1 Q Okay. Do you recall what year it was?

2 A 2015.

3 Q Was this usual for the defendant? Had he borrowed
4 your car before?

5 A Yes.

6 Q Okay. He called you, you said, around 10:00 a.m.?

7 A Correct.

8 Q Did you lend him your vehicle?

9 A Yes.

10 Q Did he tell you where -- or why he needed the
11 vehicle?

12 A Yes.

13 Q What did he tell you?

14 A He told me he was going to pick up his two
15 daughters and his girlfriend from her mother's house.

16 Q How did he get your vehicle that day?

17 A I picked him up, drove back to my house, had him
18 drop me off, and I gave him the key.

19 Q I'm going to show you some exhibits.

20 MS. HEAP: Your Honor, permission to publish
21 stipulated exhibits?

22 THE COURT: Yes.

23 BY MS. HEAP:

24 Q Showing you State's Exhibit 121, sir. Do you
25 recognize the vehicle depicted in this photograph?

1 A Yes.

2 Q And what vehicle is that?

3 A That would be my car, my 2015 Hyundai.

4 Q Did it have any stickers on it when you lent it to
5 the defendant?

6 A No.

7 Q Approximately, what time did he get your vehicle
8 that day?

9 A By 11:00, I think. It was early. It wasn't long
10 after he called me.

11 Q Okay. And you said he dropped you off back at
12 home?

13 A Um-h'm.

14 Q Do you recall what time you --

15 THE COURT: I'm sorry, can you answer --

16 MS. HEAP: Sorry, Your Honor.

17 THE COURT: -- yes or no?

18 THE WITNESS: Yes.

19 MS. HEAP: Thank you.

20 BY MS. HEAP:

21 Q Do you recall what time he dropped you back off at
22 home?

23 A 20 minutes after I picked him up. It wasn't long.
24 So I'd say he left before 11:00.

25 Q Okay. Did you -- did he give you your car back

1 that day?

2 A No.

3 Q How long was he supposed to have your car? Do you
4 remember?

5 A Long enough to drive to Henderson and back.

6 Q So you expected maybe a couple hours at most?

7 A Exactly.

8 Q Do you recall what time -- or actually, did you ask
9 him for the vehicle back that day?

10 A Yes.

11 Q Did you do that by phone or text?

12 A Both.

13 Q Did you speak with him?

14 A No.

15 Q Do you recall what time you started reaching out to
16 him?

17 A Probably six hours afterwards, five hours
18 afterwards, something like that.

19 Q Did you just reach out to him one time?

20 A No.

21 Q Do you have any idea how many times you tried to
22 contact him?

23 A Probably 20.

24 Q Were you doing that by phone and by text message?

25 A Yes.

1 Q How would you describe your feelings as the day
2 went on?

3 A Irritated.

4 Q You wanted to your car back; is that fair to say?

5 A Yes.

6 Q Did you ever speak with him that day to get your
7 car back?

8 A No.

9 Q Did he ever respond to your text messages or
10 communications to give you your car back?

11 A No.

12 Q When you went to bed that night, did you have your
13 car back?

14 A No.

15 Q And when did you get information regarding your
16 vehicle?

17 A 8:00 a.m. the following day.

18 Q And who contacted you regarding your vehicle?

19 A Detectives.

20 Q When you lent your vehicle to Mr. Trejo, did you
21 have any idea he was going to go commit a robbery?

22 A No.

23 Q Would you have lent him your vehicle if that had
24 been the case?

25 A No.

1 Q Showing you State's Exhibit 122. Is that another
2 -- sorry.

3 MS. HEAP: Sorry, Your Honor. I don't know what I
4 did.

5 THE COURT: Bill?

6 (Pause in the proceedings)

7 BY MS. HEAP:

8 Q Matthew, when you gave the defendant your vehicle,
9 did you -- what license plate did you have on it? What
10 state?

11 A Nevada.

12 Q Did you have any other license plates in the
13 vehicle?

14 A Yes. I had a Utah plate from my former car in
15 there.

16 Q And where was that Utah plate?

17 A In the trunk.

18 Q But affixed to the vehicle, you had a Nevada plate
19 on there; is that correct?

20 A Pardon me?

21 Q On the vehicle itself, you had your Nevada plate on
22 there?

23 A Correct.

24 Q Okay.

25 THE MARSHAL: It takes just a second. Yeah.

1 (Indiscernible) little button to reset it (indiscernible).

2 (Pause in the proceedings)

3 MS. HEAP: May approach the witness with the
4 exhibit, Your Honor?

5 THE COURT: Yes. Yes.

6 BY MS. HEAP:

7 Q Showing you State's Exhibit 122. Do you recognize
8 the license plate that's attached to that vehicle?

9 A It has a Utah plate, yeah.

10 Q Was that the Utah plate that was in your trunk?

11 A I'm pretty sure it was.

12 Q And if I show you State's Exhibit 123, do you
13 recognize that Utah plate?

14 A Yes.

15 Q And was that the plate that was in your truck --

16 A Yeah.

17 Q -- or in your trunk?

18 A Um-h'm.

19 THE COURT: And you said uh-huh again. Can you
20 please say yes or no.

21 THE WITNESS: Yes. I'm sorry.

22 THE COURT: No, no problem.

23 THE WITNESS: It's not the way we talk, so --

24 MS. HEAP: Your Honor, I'll just hold it up for the
25 jury, if that's okay.

1 THE COURT: Okay.

2 MS. HEAP: State's Exhibit 122, the witness
3 indicated there was a Utah plate attached to the vehicle.
4 State's Exhibit 123, he indicated that it was the Utah plate
5 in the trunk of the vehicle.

6 BY MS. HEAP:

7 Q Sir, when you gave the defendant your vehicle, when
8 you let him borrow that, did you have your vehicle
9 registration inside the vehicle?

10 A Yes.

11 Q And where was that located?

12 A Glove box.

13 Q The glove box. Okay.

14 MS. HEAP: May I approach the witness again, Your
15 Honor?

16 THE COURT: Yes.

17 BY MS. HEAP:

18 Q Showing you State's Exhibit 138. Do you recognize
19 what's in this photograph?

20 A Yes.

21 Q And what is that?

22 A It's the registration.

23 Q And that's the --

24 A For the Hyundai.

25 Q That's the registration for your 2015 Hyundai --

1 A Um-h'm.

2 Q -- that you left the defendant borrow?

3 A Yes.

4 Q And does that registration indicate what license
5 plate should have been on the vehicle?

6 A Yes, it does.

7 Q And what license plate was on your vehicle?

8 A 979E05.

9 Q And showing you State's Exhibit 129, do you
10 recognize the license plate in that photograph?

11 A Yes.

12 Q And it's fair to say that license plate is in the
13 trunk of that vehicle?

14 A Yes.

15 Q Is that where that license plate was when you gave
16 the defendant your vehicle?

17 A No.

18 MS. HEAP: And just for the record, showing the
19 jury State's Exhibit 138, vehicle registration, and State's
20 Exhibit 129, a Nevada plate in the trunk of the vehicle.

21 BY MS. HEAP:

22 Q Sir, when you lent the defendant your vehicle, did
23 you have any firearms in there?

24 A No.

25 Q Did you have any filled firearm magazines?

1 A No.

2 Q Magazines filled with bullets?

3 A No.

4 Q Showing you State's Exhibit 124, is that your
5 firearm that's in the back seat?

6 A No.

7 Q Showing you State's Exhibit 125, is that your
8 firearm?

9 A No.

10 MS. HEAP: Your Honor, just for the record,
11 publishing to the jury State's 124 and State's Exhibit 125.

12 BY MS. HEAP:

13 Q You indicated those are not your firearms, correct?

14 A Correct.

15 Q And did you have -- you said you didn't have any
16 magazines in the vehicle --

17 A No.

18 Q -- is that correct? Showing you State's Exhibit
19 127. Is that your satchel with firearm magazines inside?

20 A No.

21 Q And showing you State's Exhibit 128, is that your
22 firearm magazine (indiscernible)?

23 A No.

24 MS. HEAP: For the record, showing the jury State's
25 Exhibit 127 and State's Exhibit 128.

1 BY MS. HEAP:

2 Q Now, sir, when you were texting and calling the
3 defendant that day, were you calling from your personal cell
4 phone?

5 A Yes.

6 Q And do you recall what your phone number was at
7 that time?

8 A 702-559-9691.

9 Q And you were indicating that you were texting him
10 from your phone number that ends in 9691. What kinds of
11 things were you texting him? What was the purpose?

12 A To get my car back.

13 Q Okay. Would you recognize a text message that you
14 sent if I showed it to you?

15 A Sure.

16 Q Showing you State's Exhibit 133. Do you recognize
17 anything or any messages depicted on that phone?

18 A Yes.

19 Q And what do you recognize?

20 A My name and I'm calling the police and reporting my
21 car stolen.

22 Q Do you recall sending that message to the
23 defendant?

24 A Yes.

25 MS. HEAP: For the record, showing the jury Exhibit

1 -- State's Exhibit 133, the text messages on the phone.

2 I'll pass the witness, Your Honor. Thank you.

3 THE COURT: Questions, Mr. Trejo?

4 CROSS-EXAMINATION

5 BY MR. TREJO:

6 Q Hey, Matt. It's good to see you. How are you
7 doing today?

8 A Okay.

9 Q So I have to ask you a few questions. I'll do my
10 best to be as smooth -- as fast as possible given the
11 circumstances. Smooth and fast as possible.

12 THE INTERPRETER: The interpreter is asking the
13 question again.

14 BY MR. TREJO:

15 Q So I have a few questions to ask you. I'll do my
16 best to be as smooth and fast as possible given the
17 circumstances.

18 Do you recall giving a recording statement to Detective
19 Blake Penny on September 4, 2018?

20 A Yes.

21 Q Prior to September 3, 2018, how long did we know
22 each other?

23 A At least two years.

24 Q Were we friends?

25 A Yes.

1 Q How well did we know each other?

2 A Pretty good.

3 Q So you had a pretty good idea of what my life was
4 like prior to September 3, 2018?

5 A Yes.

6 Q Do you recall mentioning in your recorded statement
7 another incident that happened prior to September 3, 2018?

8 MS. HEAP: Your Honor, I'm going to object as to
9 relevance, and may we approach?

10 THE COURT: Sure.

11 (Bench conference)

12 MS. HEAP: The objection is relevance. If he's
13 getting into another incident, this could, one, be another
14 robbery that he's been suspected of, or two, when he was shot
15 previously, the only reason to bring that up is to garner
16 sympathy from the jury.

17 THE COURT: Okay.

18 MS. HEAP: And it's not relevant to whether this
19 guy lent him the car at this -- to commit this robbery.

20 THE COURT: Okay. Thank you.

21 Come up closer.

22 MR. TREJO: It was in the recorded statement. The
23 witness mentions it throughout the statement. These
24 questions are to establish background on our relationship,
25 not to garner sympathy.

1 THE COURT: Right, but the --

2 MS. HEAP: And it's -- it's irrelevant.

3 THE COURT: -- this -- there's no -- come closer.

4 There's no relevance on establishing background on your
5 relationship, like the whole point of this witness is just to
6 -- is just to establish whether or not you had his car, the
7 one that was there. So I don't see the relevance of your
8 relationship with him.

9 If you have something else --

10 MR. SCHWARTZER: I mean, I guess, unless he's going
11 to say that it's a contentious relationship where he would
12 come here and lie against him or something like that.

13 THE COURT: Wait, what?

14 MR. SCHWARTZER: If he's going to argue it was like
15 a contentious relationship, maybe.

16 THE COURT: I don't -- I still wouldn't see the
17 point of that.

18 MR. SCHWARTZER: No. But I think it should be
19 explained to Mr. Trejo just because it's in a statement
20 doesn't make it relevant for trial.

21 MR. TREJO: It actually involves why he loans me
22 the vehicle. It ties into the --

23 THE COURT: Well, does -- hold -- hold on. But the
24 why of -- why he lent you the vehicle doesn't matter. The
25 fact that he did lend you the vehicle is the only thing

1 that's relevant to this. I mean, so I understand that you're
2 trying to say, you know, that the whole relationship is
3 relevant, but for a trial it's not.

4 So, I mean, you can finish reading what his
5 response was, but I'm just going to explain it to him -- go
6 ahead. You can finish reading it, but --

7 MR. TREJO: Why he loans me the vehicle. It ties
8 into the fact my vehicle was out of commission and why. It
9 also ties into why he trusted me to borrow -- to borrow the
10 vehicle.

11 THE COURT: But none of those things are relevant
12 for a trial.

13 Go ahead. Tell her so we can get it on the record.
14 Is relevance 53.015? I think it's 53.015. I was just going
15 to read that into the record.

16 MR. SCHWARTZER: It's 40 --

17 MR. HENRY: (Indiscernible).

18 MR. SCHWARTZER: 48.015.

19 THE COURT: 48.015? No, that's --

20 MS. HEAP: That -- there it is.

21 THE COURT: -- yeah, there it is. Relevant
22 evidence defined. Okay. I'm going to read this to him.

23 MR. HENRY: Okay.

24 MR. SCHWARTZER: What was the statute number?

25 THE COURT: 48.015. I knew it was 015. I couldn't

1 remember which one.

2 MR. SCHWARTZER: Impressed myself. That's all.
3 Don't ask me any other statute numbers for the rest of this
4 trial.

5 THE COURT: I'm sorry?

6 MR. SCHWARTZER: Don't ask me any other statutes
7 for the rest of this trial.

8 MR. TREJO: His reason for being here is the
9 vehicle. Obviously, the relevance is how we got to the point
10 of him loaning me the car, allegedly used in a crime. I just
11 want to follow up on why he had loaned vehicle. Those
12 questions weren't really delved into by State.

13 THE COURT: Mr. Trejo, come closer. So I'm going
14 to read you the statute on relevance. Okay? It's NRS 48.015
15 and it says: As used in this chapter, relevant evidence
16 means evidence having any tendency to make the existence of
17 any fact that is of consequence to the determination of the
18 action or more or less probable than it would be without the
19 evidence.

20 So it has to be of consequence to the action. The
21 fact that he lent you -- lent you the car is of consequence,
22 but not why, or any of those other things, because it doesn't
23 make the fact that he lent you the car any more or less
24 probable. Okay? Thank you.

25 MR. SCHWARTZER: Thank you, Your Honor.

1 MS. HEAP: Thank you.

2 (End of bench conference)

3 THE COURT: And Ms. Heap, I'm going to have to
4 sustain that objection.

5 So Mr. Trejo, if you can just move along.

6 MS. HEAP: Thank you, Your Honor.

7 BY MR. TREJO:

8 Q Do you recall in your statement mentioning
9 Michelle?

10 A Yes.

11 MS. HEAP: Objection. Relevance.

12 MR. TREJO: It's actually part of the reason the
13 that car was loaned this person while not named a few minutes
14 ago during examination, was mentioned by Matt when the State
15 asked about aspects of September 3, 2018.

16 THE COURT: Right. But again, Mr. Trejo, the
17 statute that I read to you on relevance, this doesn't make
18 any -- any fact of consequence more or less relevant. So I'm
19 going to sustain that objection.

20 MS. HEAP: Thank you, Your Honor.

21 THE COURT: I just realize I didn't say that. I
22 said it in my head.

23 MS. HEAP: Thank you, Your Honor.

24 BY MR. TREJO:

25 Q On September 3, 2018, Matt, did you notice anything

1 out of the norm about me when you were in contact with me?

2 A Maybe a little tired, but nothing struck me as
3 outstandingly weird.

4 Q When you say "tired," what exactly do you mean?

5 A Just seemed tired, rundown.

6 Q And you stated that you knew me well. Was there
7 anything that was out of the norm in the times leading up to
8 September 3, 2018, about me?

9 MS. HEAP: Your Honor. Objection. Relevance.

10 THE COURT: Mr. Trejo, can we approach?

11 (Bench conference)

12 THE COURT: I don't want to admonish you in front
13 of the jury again, but these are all questions that don't
14 lead to effect that's of consequence to whether or not you --
15 these crimes were committed and that you were the one who
16 committed it or were -- happened. So these are all not
17 relevant. I understand that you want to tell the jury your
18 side of the story, but this witness isn't how you do it.
19 Okay?

20 So I don't want to keep admonishing you in front
21 ever the jury. Okay? Do you understand? Okay. Thank you.

22 (End of bench conference)

23 THE COURT: Sustained.

24 MS. HEAP: Thank you, Your Honor.

25 (Mr. Henry/Mr. Trejo conferring)

1 BY MR. TREJO:

2 Q Seems all relevant questions have been Matt. It's
3 good to see you, Matt. Thank you for coming.

4 A Thank you.

5 THE COURT: Anything based on that, Ms. Heap?

6 MS. HEAP: No, Your Honor.

7 THE COURT: Okay. Questions from the jurors?

8 There are no questions from the jury.

9 So Mr. -- I don't want to mispronounce your name.

10 Mongeau?

11 THE WITNESS: That's good.

12 THE COURT: Okay. Mr. Mongeau, thank you for your
13 testimony. You are excused. Please do not discuss your
14 testimony with any -- anyone else.

15 THE WITNESS: Okay.

16 THE COURT: Thank you. Call your next witness.

17 MS. HEAP: Thank you, Your Honor. The State will
18 call --

19 MR. SCHWARTZER: Your Honor -- I'm sorry. I didn't
20 mean to interrupt, Ms. Heap, but I want to make sure our --

21 THE MARSHAL: Your Honor, we did get this to
22 function, but --

23 THE COURT: Okay.

24 THE MARSHAL: -- I wanted to make sure that it was
25 going to focus properly and it seemed to struggle with that.

1 If you don't mind, I can take a second and --

2 THE COURT: Okay.

3 THE MARSHAL: -- see if I can (indiscernible) this.

4 THE COURT: Yeah. Yeah, let's just go on a quick
5 break. It is 11:01.

6 Ladies and gentlemen, during the recess, you are
7 admonished not to talk or converse among yourselves or with
8 anyone else on any subject connected with this trial or read,
9 watch or listen to any report of or commentary on the trial
10 of any person connected with this trial by any medium of
11 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
14 case is finally submitted to you.

15 Let's come back at 11:05. That's only three
16 minutes? Wait, no, then 11:10. Okay.

17 (Pause in the proceedings)

18 (Outside the presence of the jury)

19 THE COURT: Anything outside the presence? I'm
20 going to go run to the restroom.

21 MS. HEAP: Not by the State.

22 MR. TREJO: No, Your Honor.

23 THE COURT: Okay. I'm going to run to the
24 restroom. I'll be back.

25 (Court recessed at at 11:02 a.m., until 11:13 a.m.)

1 (Outside the presence of the jury)

2 THE COURT: Everybody ready to go?

3 MR. TREJO: Yes, Your Honor.

4 MR. SCHWARTZER: Yes, Your Honor.

5 THE COURT: Apparently, it's working, so we're
6 good. So, yeah, if you could bring in 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: Yes, Your Honor.

11 MR. SCHWARTZER: Yes, Your Honor.

12 MR. TREJO: Yes, Your Honor.

13 THE COURT: Thank you. State, call your next
14 witness.

15 MS. HEAP: Brian Farrington.

16 OFFICER BRIAN FARRINGTON, STATE'S WITNESS, SWORN

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

19 THE WITNESS: Brian Farrington, B-r-i-a-n. Last is
20 Farrington, F, as in Frank, a-r-r-i-n-g-t-o-n.

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

22 THE WITNESS: Thank you.

23 THE COURT: Please proceed.

24 MS. HEAP: Thank you, Your Honor.

25 DIRECT EXAMINATION

1 BY MS. HEAP:

2 Q Sir, can you tell the ladies and gentlemen of the
3 jury where you are employed?

4 A I'm employed by Las Vegas Metropolitan Police
5 Department as a police officer.

6 Q And how long have you been a police officer?

7 A I've been employed as a police officer now for
8 eight years.

9 Q Do you have a specific assignment?

10 A Currently, I'm assigned as a Detective in Northwest
11 Area Command Investigation Section.

12 Q How long have you been a detective?

13 A For just about four months.

14 Q I want to direct your attention back to September
15 3rd of 2018. Were you a detective then?

16 A No, I was not. I was a patrol officer.

17 Q Patrol officer. And what did you wear as a patrol
18 officer?

19 A My regular uniform, tan shirt, tan pants, duty
20 belt, body-worn camera --

21 Q What kind of --

22 A -- badge, patches.

23 Q What kind of vehicle did you drive?

24 A A marked black and white SUV.

25 MS. HEAP: Permission to publish stipulated

1 exhibits.

2 THE COURT: Yes.

3 MS. HEAP: Thank you, Your Honor.

4 BY MS. HEAP:

5 Q Sir, I'm going to show you State's Exhibit 98. Do
6 you recognize the person in this photograph?

7 A That is me.

8 Q And does this accurately describe how you would
9 have looked on September 3rd of 2018?

10 A That is correct.

11 Q Now, on that day, were you working with anyone?

12 A Officer Keenan Graham.

13 Q Okay. And why were you working with Officer
14 Graham?

15 A It was our assigned training day. We were out as a
16 directed patrol unit. We were out just being proactively
17 enforcing anything within the Area Command.

18 Q And what Area Command is that?

19 A Spring Valley Area Command.

20 Q What is the general area of Spring Valley Area
21 Command?

22 A At that time, it was Charleston was the northern
23 border, Durango was the western -- correction. To the
24 mountain was the western border. The eastern border was down
25 to the 95 and we went as far south as Tropicana.

1 Q Now, you said you were out doing patrol that day?

2 A That is correct.

3 Q And you were riding together?

4 A That is correct.

5 Q Who was driving?

6 A I was driving.

7 Q And I'm sorry, I didn't catch it. Did you say why
8 you were with Officer Graham?

9 A It was our training day.

10 Q Who was training?

11 A As a squad, every other week our squad is
12 designated as training, whether it be in-service training or
13 on this day we were, like I said, directed patrol. We were
14 directed to go out and simply be proactive within the area
15 command.

16 Q Okay. Now, I want to direct your attention to a
17 little after 1:00 p.m., did you respond to a call at 1150
18 South Rainbow here --

19 A Initially --

20 Q -- in Las Vegas?

21 A Initially, it came out as a 407A, which is a
22 robbery alarm. It basically, a silent holdup or a silent
23 alarm from the business.

24 Q And how do those silent alarms come in; do you
25 know?

1 A They go through dispatch. Typically, it's a button
2 push as far as I'm aware, but how they actually work, I do
3 not know.

4 Q Okay. Do you recall where you and Officer Graham
5 were when you heard that initial call?

6 A We had just finished a car stop at Decatur and
7 Charleston at the bank on the corner.

8 Q And did you head towards that call?

9 A Initially, we did not. When it initially came out
10 routinely, unfortunately, we get a lot of 407As that are not
11 actual robberies. It's just somebody accidentally pushes a
12 button. However, there was a call shortly after the 407A
13 robbery alarm came out that a PR called and said she was
14 hiding under a counter, and there was a man with a gun
15 robbing the business.

16 Q Okay. So as you were moving along or driving, you
17 got more information?

18 A That is correct.

19 Q And then did you head towards that business?

20 A Yes, we did.

21 Q And is that business a SuperPawn?

22 A Yes, it is.

23 Q When you were headed towards that business, did you
24 have your lights and sirens on?

25 A Yes, I did.

1 Q Did you have lights and sirens on the entire way
2 until you got to the business?

3 A We turned the lights and sirens off at roughly
4 Charleston and Torrey Pines.

5 Q Why is that?

6 A Because we don't -- we -- we were taught to turn
7 our sirens off to not alert the suspect that we're in the
8 area or arriving in the area so it doesn't put them on
9 immediate defense.

10 Q Okay. So at this point, you said you're near
11 Charleston and Torrey Pines?

12 A That is correct.

13 Q So what direction were you heading?

14 A Heading west on Charleston.

15 Q Okay. And what route did you take to get to the
16 SuperPawn?

17 A We went from Decatur, west on Charleston. At
18 Rainbow we stopped. My partner wasn't able to tell me which
19 direction to go on our computer tablet we have in our car we
20 can pull up where the call is at. I pulled it up and
21 realized that the business was directly to the left.

22 We made the left-hand turn onto Rainbow and then
23 immediate -- the first immediate left into the parking lot of
24 SuperPawn.

25 Q Do you recall where you parked when you got to this

1 business?

2 A Almost on the sidewalk as we entered the business
3 pulling into the parking lot in front of SuperPawn.

4 Q I'm showing you State's Exhibit 40. Do you
5 recognize what's depicted in this photograph?

6 A That's the vehicle we were driving.

7 Q And when you say that's the vehicle --

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

9 THE COURT: Yes.

10 BY MS. HEAP:

11 Q So sir, you can actually -- well, today you can't.
12 If you could just use in mouse to circle the vehicle that you
13 indicated was yours.

14 A Right here in the lower corner there should be an
15 SV and a number, which indicate which car we were driving.

16 MS. HEAP: And for the record, he indicated the
17 patrol vehicle right in the center of the photograph.

18 THE COURT: Yes.

19 MS. HEAP: Thank you.

20 BY MS. HEAP:

21 Q So it appears you're sort of the in the street; is
22 that correct?

23 A Correct.

24 Q Okay. And showing you State's Exhibit 41. Is that
25 just another angle of your patrol vehicle?

1 A That is correct.

2 Q And for the record, your patrol vehicle is the one
3 on the left-hand side of the photograph?

4 A It's the marked black and white SUV.

5 Q Thank you. When you got there, what did you see?

6 A As -- shortly before I make the left-hand turn, I'm
7 looking towards the SuperPawn, I see a male dressed in all
8 black wearing a black helmet, possibly with a black backpack.
9 It looked like he was pulling a female out with him, kind of
10 as a human shield. As he moved from the front of the
11 SuperPawn, in this picture he would have gone right over
12 towards a parked car.

13 As we pulled up into the parking lot, the male with
14 his right arm punched out, and when I say punched out, he
15 brought his hand out as if he had a gun in his hand. Shortly
16 after we get out of the car, the female grabs his arm and a
17 shot is fired that goes down the passenger side of the car.

18 Q Okay. So let me back up just a little bit. When
19 you got to this business, did you have updates that the
20 suspect robbing the business had a firearm?

21 A Yes, we did.

22 Q Okay. So when you got there and you observed him,
23 I believe you described it as punching out, did you believe
24 he had a firearm at that time?

25 A Yes, I did.

1 Q And you described for the record he was pulling a
2 female and you sort of put up one arm. Which way was he
3 pulling her?

4 A So he had his left hand on what appeared to be
5 other fore -- or excuse me, her bicep area, and he's pulling
6 her with him as he's walking in this picture right to left.

7 Q All right. So --

8 A Pulling her across.

9 Q Okay. So was he slightly behind her because you
10 described it as a human shield?

11 A I believe he was more in front of her and he's
12 pulling her as he's walking left.

13 Q So he's on the side of her, then?

14 A Correct.

15 Q And you said he punched his hand out, and you
16 believed he had a firearm. Which way did he punch his hand
17 out?

18 A Directly -- pointing directly at me.

19 Q At you? Was Officer Graham there as well?

20 A Correct. He was pointing direct at the car, and at
21 this time Officer Graham and I are still both inside the car
22 until it stops and we're able to get out of the car.

23 Q Were you scared he might shoot you at that point?

24 A Yes. We had already had one round discharged in
25 our direction. At that point, the fight was on.

1 Q So when you're getting out and you see him pull,
2 when did -- when did he just discharge the firearm towards
3 your direction? You said one fire -- or one round went off.

4 A As we were pretty much exiting the vehicle, I think
5 I was putting the car in park, like I said, she grabs his arm
6 and the round goes off as we're stepping out of the car.

7 Q And at that point, you were in fear of what might
8 happen to you or the other -- or the officers there?

9 A And the victim, yes.

10 Q Where did you go when you got out of the vehicle?

11 A I initially stepped out toward the front of the end
12 of the car between the car and that initial -- that first
13 palm tree in the picture. From that angle, the suspect and
14 the victim were still fighting over the gun. I then moved up
15 to the white Hummer that's in the picture just to the
16 driver's side. I stopped at the hood area of the vehicle and
17 then turned and then I discharged my weapon three times.

18 Q Okay. Why did you move from the palm tree to the
19 vehicle?

20 A From the palm tree where I'm at, they're fighting.
21 I have no clear shot. I'm unable to assist her in any
22 manner. We are taught to do a tactical L when we encounter a
23 suspect. I already know that Officer Carrigy is to the right
24 of my vehicle.

25 My partner steps out, so I assume he's to the right

1 as well. So I -- I -- I perform a tactical L by moving up to
2 the Hummer so that suspect isn't able to keep his attention
3 on both of us at one time.

4 Q As you move up to the Hummer prior to, I believe
5 you said you fired your weapon; is that correct?

6 A That is correct.

7 Q Prior to firing your weapon, what did you -- what
8 did you observe?

9 A I observed them still struggling. He's pulling her
10 from the SuperPawn more out towards a parked car. As I'm
11 running up, I announce on the radio shots fired, and I
12 continue to move up to the Hummer because it is -- provides
13 some kind of cover, concealment for me in the event he starts
14 shooting at me again.

15 Q And then you indicated --

16 THE COURT: Can -- do you need a break? You're
17 okay? You sure? Okay.

18 BY MS. HEAP:

19 Q You indicated you fired your weapon when you got up
20 to the Hummer. Why did you fire your weapon?

21 A At that point, it appeared -- as I'm running up to
22 the Hummer, I hear shots being fired over on the other side
23 of the Hummer. I don't look because I don't have cover, and
24 once I get to cover, I make my right-hand turn, I look,
25 there's separation between the male suspect and the female

1 victim, and it appears he's taking a shooting stance.

2 He's lowering his waist. He's bringing his hands
3 up together, which is an indication to me he's taking a
4 firing stance and he's drawing a weapon up.

5 MR. HENRY: Judge, can we take a break?

6 THE COURT: Yes. Yeah, absolutely. We're just
7 going to take our lunch break. It is 11:27.

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

17 We'll come back at -- we should come back at 1:00
18 o'clock. I want to make sure he's okay, so please exit. We
19 need to make sure he's okay.

20 (Outside the presence of the jury)

21 THE COURT: Yeah. Thank you, Officer. Yeah, I
22 said 1:00 o'clock because we're leaving early today. Yeah.
23 If you guys -- I just want to make sure he's okay. Thank
24 you, Alex. I didn't -- I wasn't looking at him so I couldn't
25 see he was in distress, so --

1 MR. SCHWARTZER: We can make (indiscernible) the
2 record when we come back then.

3 THE COURT: Yeah, it will -- oh, hey. We just went
4 on break. So ya'll can go straight to -- ya'll can -- we
5 just went on break. Ya'll can go.

6 MR. SCHWARTZER: Hi, mom and dad.

7 (Pause in the proceedings)

8 THE COURT: So we'll make a record of anything when
9 we come back. You guys can just take him and go ahead and --

10 (Court recessed at 11:28 a.m., until 1:08 p.m.)

11 (Outside the presence of the jury)

12 THE COURT: -- of Nevada versus Mario Trejo Case
13 No. C-18-335315-1. Mr. Schwartz and Ms. Heap present on
14 behalf of the State. Mr. Trejo and standby, Mr. Altig are
15 present along with the Spanish interpreter. Did we have any
16 -- oh, wait, your witness is here. Do we need him to go out?
17 Did we have anything outside the presence?

18 MR. SCHWARTZER: If we have something outside, I'll
19 have him move, but we don't have anything else for the
20 record.

21 THE COURT: Okay. Did you have anything outside
22 the record? No? Okay.

23 MR. TREJO: No, ma'am.

24 THE COURT: I thought we said we were going to do
25 -- okay.

1 MR. SCHWARTZER: Oh, yeah, regarding -- do you want
2 -- I didn't know if you wanted to make a record regarding
3 what happened while he was testifying.

4 THE COURT: Okay. So while -- yeah, I should. So
5 while Mr. Trejo was -- I'm sorry, while -- while Officer
6 Farrington --

7 MR. SCHWARTZER: Detective.

8 THE COURT: -- was testifying -- detective. I was
9 like, I couldn't remember. I'm not good with those --

10 MR. SCHWARTZER: It's fine.

11 THE COURT: -- ranks. While Detective Farrington
12 was testifying, Mr. Trejo started having some issues with his
13 trachea tube. It sounded like it needed to be cleared. Is
14 that what the issue was or was it something different,
15 Mr. Trejo?

16 MR. TREJO: Nothing serious. Just needed a new
17 cannula.

18 THE COURT: Okay. And so Mr. Trejo started having
19 a medical issue. I had asked him a couple times if he was
20 all right. He thought he was, but then it seemed as if was
21 getting a little bit worse, and so Mr. Henry brought it to my
22 attention that we needed to take a break, and so we took the
23 lunch break early at 11:30.

24 So, again, I'm glad you're all right, Mr. Trejo.
25 Anything anybody wanted to add to that?

1 MR. SCHWARTZER: No, Your Honor.

2 THE COURT: Okay. So we can get the witness back
3 in and then we'll get the jury.

4 Thank you, Detective. And sorry for the
5 interruption.

6 THE WITNESS: It's okay, Your Honor.

7 (In the presence of the jury)

8 THE COURT: Will the parties stipulate to the
9 presence of the jury?

10 MS. HEAP: State does, Your Honor.

11 MR. TREJO: I do, Your Honor.

12 THE COURT: Thank you. Please be seated.

13 Please proceed, Ms. Heap.

14 MS. HEAP: Thank you.

15 BY MS. HEAP:

16 Q Detective, just to bring us back to where we were.
17 You testified prior to the break, and let me know if I make
18 any mistakes, but you pulled up, you already -- when you
19 pulled up, you observed a man in a motorcycle helmet pulling
20 a woman towards his left or towards the vehicles with a gun
21 to her head and then a shot went off?

22 A The gun was not at her head.

23 Q Oh.

24 A The gun was pointed towards my vehicle, my partner
25 and myself, and then the gun went off down the passenger side

1 of our vehicle.

2 Q Thank you for that correction.

3 And you proceeded up towards, I believe, you
4 indicated a palm tree; is that correct?

5 A I was between my car and a palm tree, and then I
6 moved forward up to a white Hummer that was parked directly
7 in front of the business.

8 MS. HEAP: Permission to publish, Your Honor?

9 THE COURT: Yes.

10 BY MS. HEAP:

11 Q And showing you State's Exhibit 13. Just for the
12 record, can you indicate where your vehicle was?

13 A My vehicle is on the far left-hand side picture.
14 You can see the front tire of that vehicle.

15 Q Thank you.

16 MS. HEAP: And for the record, he indicated the
17 patrol vehicle, that the one on the far left side.

18 THE COURT: Okay.

19 BY MS. HEAP:

20 Q When you ran up, you indicated, did you stop at the
21 palm tree or did you continue right away?

22 A I stopped in between my car and the palm tree,
23 weapon drawn. I think I might have pulled it up to see if I
24 could get a clear firing line, but I did not. So I bounded
25 up, moved up to the white Hummer.

1 Q And when you got to the Hummer, I believe you were
2 showing the jury what you were observing, how the person in
3 the helmet was moving when you got up to that Hummer. Can
4 you please explain what you were referring to?

5 A And, I -- it's simpler if I stand up and show it.

6 MS. HEAP: Permission to do that, Your Honor?

7 THE COURT: Yes.

8 THE WITNESS: So we're taught a stable firing
9 position is to drop your hips kind of almost in a -- almost
10 squatting, and then you bring your hands up to your target
11 before you shoot. And what I see is a suspect dipping his
12 butt down and bringing his hands up. I can't tell whether
13 there's a gun in his hand, but to me, this is a firing
14 position that you're going to start shooting somebody towards
15 -- towards something or somebody.

16 BY MS. HEAP:

17 Q And did you -- sorry. Did you --

18 THE COURT: And for the record, I'm just going to
19 try --

20 MS. HEAP: Sure.

21 THE COURT: -- and describe that. Detective
22 Farrington was in a partial squat position with his arms
23 raised in front of him both together. Is that a fair
24 description?

25 MS. HEAP: Yes, Your Honor. Thank you.

1 THE COURT: Okay. Thank you.

2 BY MS. HEAP:

3 Q And did you believe he had a firearm at that point?

4 A Yes, I did.

5 Q And did you fire your weapon at that time?

6 A I did. I fired three times.

7 Q Did you believe that he was going to fire at you or
8 at other officers or where did you think he was going to
9 fire?

10 A I wasn't sure if he was going to shoot at the
11 victim, who was in front of him, or my officers, who were
12 further down range from where he was at.

13 Q Showing you State's Exhibit 107. Do you recognize
14 the area in this photograph?

15 A Yes, I do.

16 Q And what do you recognize about it?

17 A The paper bag is where I was standing. The paper
18 bag just outside the Hummer's front left wheel is where I was
19 standing. And then there's a paper bag in the backdrop,
20 which is where I believe the suspect was standing.

21 Q And showing you State's Exhibit 108. Is that the
22 paper bag where you believed the suspect was standing?

23 A That is correct.

24 Q Okay. When you got to that Hummer after you
25 indicated you fired your weapon --

1 A Yes, I did.

2 Q -- do you know how many times?

3 A I fired three times.

4 Q And what type of weapon do you carry?

5 A A Glock nine millimeter.

6 Q Once you fired your weapon, you were at the front
7 of that Hummer, did you move anywhere after that?

8 A After I fired, the victim ran across my field of
9 fire, I raised my gun up, brought it back down on the suspect
10 who was then laying on the ground. I moved up to a cement
11 pillar and then maintained that position until other officers
12 arrived to take him into custody.

13 Q Did you give any verbal commands during that time?

14 A I did. I gave some. Typically, we are told when
15 one officer's giving verbal commands, everybody else don't.
16 I gave, I think, show us your hands or something along those
17 lines.

18 Q Were you part of the arrest team?

19 A I was not.

20 Q And is it fair to say when you discharge your
21 weapon as an officer, there's other procedures that need to
22 happen after?

23 A There are procedures that happen thereafter, yes.

24 Q Okay. And is it because you discharged your weapon
25 that you weren't part of that arrest team?

1 A Partially that. Partially the -- when other
2 officers responded to the scene, they stacked -- they lined
3 up against the brick wall and then moved forward from that
4 brick wall, along with canine, to take him into custody.

5 Q Did you have any other parts in this investigation
6 after he was taken into custody?

7 A No, I did not.

8 Q Were you separated to another area?

9 A I was separated -- once the other officers moved
10 up, I holstered my weapon and then moved away from the scene
11 and then eventually I was removed from the entire scene
12 altogether.

13 Q Were you -- you -- were you wearing a body camera
14 that day?

15 A Yes, I was.

16 Q And was it recording?

17 A Yes, it was.

18 Q Did you have an opportunity to review that body
19 cam?

20 A Yes, I have.

21 MS. HEAP: And Your Honor, permission to publish
22 State's Proposed Exhibit 139 for identification.

23 THE COURT: Yes.

24 BY MS. HEAP:

25 Q And when you reviewed that, was that video a fair

1 and accurate recording of the events that you observed and
2 experienced on September 3rd of 2018?

3 A Yes, it was.

4 Q Do you recognize this video.

5 (Video playing)

6 A Yes.

7 BY MS. HEAP:

8 Q And is that your body-worn camera video from
9 September 3, 2018?

10 A Yes, it is.

11 Q And specifically, do you see the arm in the
12 left-hand side of the video?

13 A Yes, I do.

14 Q Whose arm is that?

15 A That's my arm.

16 Q Okay.

17 MS. HEAP: Permission -- actually, the State would
18 move to admit Proposed Exhibit 139.

19 THE COURT: Understanding Mr. Trejo's standing
20 objection, I'm going to admit it over objection.

21 (State's Exhibit 139 admitted)

22 MS. HEAP: Thank you, Your Honor. And permission
23 to publish?

24 THE COURT: Yes.

25 MS. HEAP: Thank you.

1 (Video/Audio playing)

2 MS. HEAP: And Your Honor, we're going to move --
3 skip just a little bit of the video. And we're going from --
4 we'll stop the video at 22 seconds. And we're going to start
5 the video again at 1:34.

6 (Video/Audio playing)

7 THE COURT: You stopped it at 4:07.

8 MS. HEAP: Thank you, Your Honor.

9 BY MS. HEAP:

10 Q So Officer Farrington, when -- I'm sorry, Detective
11 Farrington, when you arrived, it appeared that you stopped
12 your vehicle rather than pull right in. Why was that?

13 A There was a vehicle blocking me from actually just
14 turning into the drive-thru or to the driveway of the parking
15 complex.

16 Q When you were stopped for when that vehicle was
17 blocking you, could you see where any officers were or what
18 could you observe at that time?

19 A I saw Officer Carrigy, who would have been right in
20 front of me at the end of the brick wall that's in the
21 backdrop. He was standing there with an eye on the door.
22 He's the only officer I saw. I know Officer Fulwiler was
23 there somewhere. She was talking to a witness, I believe.

24 Q But you didn't see her when you first arrived?

25 A I didn't see her, no.

1 Q You just made a visual on one officer?

2 A Correct, correct.

3 Q Okay. And as you pulled in, did you have visual on
4 the suspect and the hostage?

5 A Yes, I observed -- at one point in the, I'm kind of
6 pawing at the door handle because I see the suspect and the
7 female both come out of SuperPawn and then him starting
8 pulling her towards the parked car there.

9 Q Okay.

10 MS. HEAP: And Your Honor, I want to restart the
11 video at -- it should be 3 minutes and 38 seconds. And we'll
12 just pause it when we get there.

13 (Video/Audio playing)

14 BY MS. HEAP:

15 Q And was this when you were pulling in and you could
16 see the suspect?

17 A Yes.

18 Q Do you see them in this video?

19 A They're the black figure just to the right of the
20 palm tree to the right of the white vehicle.

21 Q And you said give us a red. What does that mean?

22 A It means hold all radio traffic for dispatchers to
23 broadcast on our channel. It's for emergency traffic only.
24 That way nobody's calling out a car stop while we're trying
25 to handle a dynamic situation.

1 Q And you also testified that the female hostage ran
2 by you and you made a motion with your hands. Explain what
3 happened there.

4 A After I discharged my weapon, she's running from my
5 right to left so I pull my -- the muzzle of my gun up so that
6 the muzzle of the gun is not pointed at her as she runs past
7 in front of me. Once she clears my view, I bring the muzzle
8 of the gun back down onto the suspect.

9 Q And I will restart the video. Actually, we'll just
10 let it play starting at 3:38 and pause it hopefully about
11 3:52.

12 (Video/Audio playing)

13 BY MS. HEAP:

14 Q And did you see yourself lift the muzzle of your
15 firearm in that video?

16 MS. HEAP: And for the record, we stopped at 3:52.

17 THE WITNESS: In the video do I see myself doing
18 it?

19 BY MS. HEAP:

20 Q Yes. Right.

21 A Yes. In this video I see myself doing it, yes.

22 Q Okay. And that was the -- the woman in the black
23 that we see in the video, that was the female hostage that
24 the suspect had pulled out the pawnshop; is that correct?

25 A That is correct.

1 Q We're going to continue the playing the video for a
2 moment, starting at 3:52.

3 (Video/Audio playing)

4 MS. HEAP: Your Honor, we're stopping the video at
5 4:37.

6 THE COURT: Thank you.

7 BY MS. HEAP:

8 Q Detective, what did you mean by he's got one on him
9 and one he dropped?

10 A I was talking about the guns. I -- at this
11 position, I looked to my right and on the ground you could
12 see one gun and then we knew that he had another gun that was
13 slung on his person that was -- when he was down, we saw the
14 other gun.

15 Q And is it --

16 A So --

17 Q Oh.

18 A So I'm just communicating with Officer Graham, who
19 is the person at the rear of the white vehicle, that way he's
20 aware that the suspect still has a gun.

21 Q Is it fair to say you hold this position pretty
22 much until the end of the event and the suspect's taken into
23 custody?

24 A That is correct.

25 MS. HEAP: I'll pass the witness, Your Honor.

1 THE COURT: Questions, Mr. Trejo?

2 MR. TREJO: No questions, Your Honor.

3 THE COURT: Okay. Thank you.

4 Questions from the jury for this witness? There
5 is, yeah. Don't forget your pad.

6 (Bench conference)

7 THE COURT: Thank you. At any point during this
8 situation, were you aware of any other gunshots made by the
9 suspect or your fellow officers?

10 I mean, I think he can --

11 MS. HEAP: We can ask it and maybe clarify.

12 THE COURT: -- we can ask it. I'm not sure what's
13 his --

14 MS. HEAP: I can ask him a follow-up to clarify, if
15 that helps.

16 THE COURT: Yeah. Okay.

17 MR. TREJO: That's fine.

18 THE COURT: Okay.

19 MS. HEAP: Okay.

20 (End of bench conference)

21 THE COURT: Detective, at any point during this
22 situation, were you aware of any other gunshots made by the
23 suspect or your fellow officers?

24 THE WITNESS: As I previously stated, as I was
25 bounding or moving forward to that white Hummer, I heard

1 other gunshots. Where they were coming from, who was
2 shooting, I don't know. I know the suspect had a gun that
3 the victim eventually tried to take from him or wrestle from
4 him. I'm not sure if he was shooting or if my partners were
5 shooting, but as I made the front of the Hummer, I could see
6 him taking up that shooting position. So, again, I just
7 assumed or believed that he was armed with a handgun and was
8 getting ready to shoot more.

9 THE COURT: Ms. Heap, do you have anything to
10 follow up on that?

11 MS. HEAP: No, Your Honor.

12 THE COURT: Mr. Trejo, do you have anything to
13 follow up on that?

14 MR. TREJO: No questions.

15 THE COURT: Okay. Thank you.

16 Detective, you are excused. Please do not discuss
17 your testimony with anyone. Thank you.

18 THE WITNESS: All right. Thank you, Your Honor.

19 THE COURT: State's next witness.

20 MS. HEAP: The State will call Jonathan Sandoval.

21 THE CLERK: Please raise your right hand.

22 JONATHAN RIVERA-SANDOVAL, STATE'S WITNESS, SWORN

23 THE CLERK: Can you please state and spell your
24 name for the record?

25 THE WITNESS: Jonathan, J-o-n-a-t-h-a-n,

1 Rivera-Sandoval, R-i-v-e-r-a dash -- hyphenated Sandoval,
2 S-a-n-d-o-v-a-l.

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

4 THE COURT: Thank you.

5 Ms. Heap?

6 MS. HEAP: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MS. HEAP:

9 Q Good afternoon.

10 A Good afternoon.

11 Q Is it okay if I call you Jonathan?

12 A By all means, yes.

13 Q Thank you. Jonathan, can you tell the ladies and
14 gentlemen of the jury where you work?

15 A SuperPawn and MedMen Dispensary.

16 Q What do you do at SuperPawn?

17 A I am a pawnbroker.

18 Q And what's a pawnbroker?

19 A I give out loans, sell, help out customers,
20 customer service.

21 Q Okay. Do you work at the SuperPawn at 1150 South
22 Rainbow?

23 A Correct.

24 Q I want to direct your attention back to September
25 3rd of 2018. Were you working at SuperPawn that day?

1 A Yes.

2 Q And were you a pawnbroker at that time?

3 A Yes.

4 Q Do you recall that day?

5 A I do.

6 Q Was it is a holiday?

7 A It was.

8 Q Who was working with you that day?

9 A Adriane -- my manager, Adriane, Gio, Julie, Ivan
10 and Carla, and Melani.

11 Q Okay. Was it a busy day?

12 A Not really. It was pretty -- pretty steady.

13 Q Okay. And just for the record because I know this
14 is going to come up, when I ask you questions, just say yes
15 or no. Okay?

16 A Yes.

17 Q Because we're recording everything, that way the
18 recording's clear.

19 A My apologies.

20 Q Thank you. So around 1:00 p.m., did you have a
21 specific duty?

22 A Yes.

23 Q And what -- what was that?

24 A To guard the door, to watch -- watch the door.

25 Q Watch the door? Is there a special name for that

1 position?

2 A Floor general.

3 Q Floor general?

4 A Um-hum.

5 Q Okay. And when you guarded the door, what did you
6 have to do?

7 A Just be on the lookout, see if any suspicious
8 activities, greet the customers, direct them to where they
9 need to go, et cetera, et cetera.

10 Q Okay. I want to show you State's Exhibit 52.

11 MS. HEAP: Permission to publish, Your Honor.

12 THE COURT: Yes.

13 BY MS. HEAP:

14 Q Jonathan, do you recognize that entryway?

15 A Yes. That is the door to the -- to the store.

16 Q Is that the SuperPawn you work at?

17 A Yes.

18 Q Showing you State's Exhibit 53. Do you recognize
19 what's depicted in this photograph?

20 A Yes.

21 Q And is that the jewelry area when you first walk in
22 to the right?

23 A Yes.

24 Q I'm showing you State's Exhibit 56. Do you
25 recognize this angle?

1 A Yes.

2 Q And does this angle look out towards the front
3 door?

4 A Correct.

5 Q Okay. And as the floor -- floor general, I believe
6 you called it, do you sort of kind of hang out in that area
7 or --

8 A Correct, yes.

9 Q Yes?

10 A Yes.

11 Q Jonathan around 1:08 or 1:07 p.m. that day on
12 September 3rd, what happened?

13 A So that day it was going on regular as usual, and
14 then I noticed a man with a helmet, motorcycle helmet come on
15 in.

16 Q Where did you first notice him?

17 A Right by the door coming in like heading towards
18 the door.

19 Q So did -- was he actually out of the store when you
20 first noticed him?

21 A Out of the store, yes, walking towards the door,
22 correct.

23 Q And he was walking towards the door?

24 A Correct, yes.

25 Q Could you see what he was wearing?

1 A It was all black, boots, helmet.

2 Q Is -- is that unusual that someone walks towards
3 the door with a helmet on?

4 A Yes.

5 Q What did you think about that?

6 A Red flag just right off the bat.

7 Q What did you do?

8 A We have a pendant, an alarm pendant, I pressed it
9 right off the bat.

10 Q Okay. So did you press that alarm or that pendant
11 before that suspect even walked in?

12 A Yes, I definitely -- I definitely tried to at least
13 and then I pressed it again afterwards.

14 Q And you pressed it because why?

15 A Nobody walks into the store with a helmet on, a
16 motorcycle helmet on.

17 Q So is that was suspicious to you already?

18 A Right off the bat, yes.

19 Q What happened after -- or did he walk in the store?

20 A Walked in the store, starting telling everybody
21 that he just wanted money and directed us towards the jewelry
22 counter. And then from there he changed his mind and
23 directed us towards the -- the counter where the computers
24 are.

25 Q When he walked in, was he holding anything?

1 A Yes. He was holding a -- some sort of gun.

2 Q Do you recall any details about the gun?

3 A I wouldn't recall. I know it was a handgun, but
4 I'm not too sure what kind of gun.

5 Q So you recall it being a handgun?

6 A Yeah. He had in his right hand.

7 Q Okay. What did he do with the gun?

8 A Pointed it at us and directed us towards the
9 jewelry counter first and directed us towards the end.

10 Q So when you say he pointed it at us, did he point
11 it at you?

12 A Yes.

13 Q And did he point it at the people that you named
14 that were working with you?

15 A Yes. And also, I think it was three customers.

16 Q There were three customers that day, too?

17 A Yes.

18 Q You indicated that he first moved you towards the
19 jewelry counter. Showing you State's Exhibit 53. Do you see
20 the area where he first moved you towards in this photograph?

21 A It would be towards the counter where the -- like
22 the left side of where the music stuff is at. I don't know
23 how to explain it. Where the big amp on the left is, kind of
24 like in that direction, that area.

25 Q You said by the music instruments. Do you mean --

1 A Yeah, by the -- let's say we're looking at it right
2 here, the amp on the left.

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

4 THE COURT: Yeah. I was just going to ask if the
5 pointer's working.

6 THE WITNESS: My apologies.

7 BY MS. HEAP:

8 Q You -- okay. So you can actually mark the --

9 A Oh, perfect.

10 Q If it works.

11 A Oh, nice.

12 Q Well, it doesn't look like it's going to work for
13 marking, but you can take the mouse and --

14 A Okay. And --

15 (Indiscernible cross-talking)

16 THE WITNESS: Somewhere around this area.

17 MS. HEAP: And for the record, he indicated the
18 area below the keyboard and to the right of the keyboard and
19 to the left of the taller amp on the left-hand side.

20 THE WITNESS: Okay.

21 MS. HEAP: Is that fair?

22 THE COURT: Yeah.

23 MS. HEAP: Thank you.

24 BY MS. HEAP:

25 Q You can go ahead and clear that, Jonathan.

1 So where did he move you after that?

2 A Afterwards he moved us towards -- well, if you're
3 looking at it like this, towards the left towards the
4 computers, the counters.

5 Q Showing you State's Exhibit 60. Do you recognize
6 this area?

7 A Yes.

8 Q And is that the area he moved you -- moved you
9 towards?

10 A Yes.

11 Q Do you recall anything he was saying during this
12 time?

13 A I remember he kept saying, I just -- he wanted
14 money, just wanted money.

15 Q What did he have you do when you got to that area?

16 A I remember he told us to get on our -- like
17 facedown, get object our knees and put our hands up.

18 Q Okay. Did you do that?

19 A Of course, yes.

20 Q Why did you do that, Jonathan?

21 A He was pointing a gun at us. It was, you know,
22 fear -- a little scared --

23 Q Were you scared?

24 A -- we were scared a little bet, yeah, definitely.

25 Q Did you feel threatened?

1 A Yes.

2 Q Did you follow his commands that day?

3 A Yes.

4 Q Why didn't you try and stop him?

5 A I mean, I'm never going win towards a gun really.

6 Q Did you think he might hurt you with that gun --

7 A Yes.

8 Q -- if you didn't follow his commands?

9 A Yes.

10 Q Once you were -- actually before that, when you saw
11 him, could you see if he was carrying anything else? I know
12 you indicated the firearm and the helmet. Was he carrying
13 anything else?

14 A I noticed something across his back. I also
15 noticed things in his back pocket or like on his side like
16 knives or something like that, (indiscernible).

17 Q Something appeared to be another weapon?

18 A Yeah. Correct.

19 Q Could you see what you described as kind of on his
20 back? Were you able to see that or what did that appear to
21 be to you?

22 A Kind of like a satchel almost. Kind of looked like
23 a satchel. Kind of had it around -- around him.

24 Q Okay. When he had you get down on the floor, could
25 you hear what he was saying?

1 A Kind of, yes. He was definitely wanting to go in
2 the -- in the safe. I also remember wanting Adriane to open
3 like the jewelry cases.

4 Q Okay. And when you say you remember him --

5 A And so --

6 Q -- wanting to go to the safe and the jewelry cases,
7 could you hear him making commands?

8 A Yes. I remember him saying that he wanted -- he
9 wanted Adriane to open the safe or put the code in or
10 something like that. And then I do remember him also wanting
11 money from the -- from the drawers, the tills.

12 Q When you are on the ground, are you hearing most of
13 this or could you see some of it as well?

14 A Mostly hearing it from where I was at. Mostly
15 hearing it.

16 Q Did it sound like the man in the motorcycle helmet
17 stood in one place or did he move about the store?

18 A It definitely sounded like he was moving about.

19 Q Could you hear any items being removed from any
20 areas?

21 A Yes. The jewelry. I definitely remember hearing
22 the jewelry and grabbing jewelry.

23 Q You indicated that you -- you remember him wanting
24 money. Did you hear where any money came from or was he
25 given any money?

1 A I do remember like the tills opening up. I do
2 remember the safe. That's pretty much the main thing.

3 Q And by the tills, where were those tills located?

4 A Right behind us where he had us like facedown right
5 behind us are the computers, right underneath the computer
6 are the tills.

7 Q Showing you State's Exhibit 60. Do you -- can
8 explain where that area is on this picture?

9 A Yes. So it would be below here. So underneath the
10 computers, in each one. I don't remember them all being
11 opened that day. I just remember there being like maybe one
12 or two of them opened.

13 Q A couple of them. Okay.

14 MS. HEAP: And for the record, he marked each
15 individual computer area.

16 THE WITNESS: Yes.

17 BY MS. HEAP:

18 Q And are the tills on the backside of that counter
19 where we can't see --

20 A Yes.

21 Q -- in the photograph?

22 A Exactly. I don't remember which ones were open. I
23 just --

24 Q You just remember --

25 A Yeah.

1 Q -- some? Okay. When -- when the man in the
2 motorcycle helmet was demanding jewelry, did you hear him
3 talk about any type of jewelry?

4 A Not that I remember, no.

5 Q Did you hear him make any statements about the
6 jewelry cases?

7 A Yes. He did mention to not grab a -- to not grab a
8 specific piece. That specific piece at the time was in a
9 case where he was at. It was pretty much a security -- an
10 alarmed one. So when you lift it up, it triggers the police
11 or calls the police.

12 Q Okay.

13 A I do remember him saying that he didn't want a
14 specific one.

15 Q Okay. And is -- I guess can you describe what a
16 security piece is in the jewelry area?

17 A Sure. So in one of the drawers we have a -- on
18 where we set the rings inside, where we display it, and one
19 of those, when you lift it up, it's an alarm, so it triggers
20 it. So pretty much you lift it up and automatically it goes,
21 it calls the alarm.

22 Q And you recall him saying he didn't want that one?

23 A I recall him saying he didn't want something, and
24 I'm going to assume it was that because that's the only thing
25 that would make sense.

1 Q Okay. During this time did you --

2 MR. TREJO: That's speculation.

3 MS. HEAP: And Your Honor --

4 THE COURT: Oh, so he -- so go ahead, Ms. --

5 MS. HEAP: And I was talking about his experience
6 with that jewelry area and what was special about one of the
7 (indiscernible).

8 THE COURT: I am going to -- think that sounds like
9 speculation, so -- so I'm going to direct the ladies and
10 gentlemen not to -- to strike that and not to -- to -- to
11 disregard what his answer was to that.

12 MS. HEAP: Thank you.

13 BY MS. HEAP:

14 Q So you didn't see what he -- you weren't
15 visualizing what he was picking up? You just heard those
16 words; is that correct?

17 A Correct.

18 Q Is that fair?

19 A Everything hearing, yeah.

20 Q When you were down on the ground, did -- did you
21 see or hear anyone come to the store?

22 A I do remember somebody pulling the door. I heard
23 it.

24 Q You heard it?

25 A I heard somebody pull the door.

1 Q Okay. Did you see who pulled the door?

2 A No, I couldn't see who pulled the door.

3 Q Did you see the man in the motorcycle helmet or did
4 you hear him leave the store?

5 A At one point, yes, but that wasn't until he had
6 Adriane with him.

7 Q What do you mean he had Adriane with him?

8 A Well, he -- I remember he grabbed her and was
9 walking out with her.

10 Q Did you see that or did you hear that?

11 A A little bit of both. I saw a little bit once --
12 since they were heading that way, I caught -- I caught a
13 glimpse of it, for sure.

14 Q Showing you State's Exhibit 60 again. Do you
15 remember where you were when you were down on the ground?

16 A Yes. Somewhere in this area right here.

17 MS. HEAP: So for the record, he drew a circle
18 below the orange like generator in that center -- towards the
19 center of the photograph.

20 THE COURT: Okay.

21 MS. HEAP: Okay.

22 THE COURT: That's fair.

23 BY MS. HEAP:

24 Q Now, you said you heard and saw him grab Adriane or
25 you said a little bit of both; is that correct?

1 A I definitely heard -- I definitely heard it more
2 than he saw it. Once I looked up, they were already walking
3 -- they were already walking out.

4 Q Did you see how they were walking out?

5 A Not necessarily, no. I just saw them both like
6 towards the door pretty much.

7 Q What did you do when they got to the door?

8 A Not nothing really. Kind of just stayed in place.
9 Kind of trying to stay calm, really.

10 Q Did you hear them leave the store?

11 A Yes. I heard them -- I heard the door open, yes.

12 Q Did you hear anything after they left the store?

13 A Definitely heard a couple gunshots. I'm not too
14 sure exactly how many, but right after that, I heard her
15 running towards the door to what she came in.

16 Q And --

17 A Adriane, I mean.

18 Q Adriane came back in?

19 A Yeah. She was the -- the footsteps I heard
20 running. She was running back inside. That's all I really
21 heard.

22 Q Okay. You heard them leave the store and you heard
23 some gunshots?

24 A Correct.

25 Q You heard footsteps coming back and then you heard

1 Adriane come in?

2 A Correct.

3 Q Did you see her come in?

4 A Correct, yeah, I saw her come in.

5 Q Okay. Where did Adriane go when she came back in?

6 A She went towards the -- past the blue rays towards
7 our little section where we pass -- where we pass by to open
8 the -- the -- where we, the employees, enter. So
9 (indiscernible).

10 Q Enter what area?

11 A Where the jewelry area is. That -- there's like a
12 little door handle right there we open.

13 Q Showing you State's Exhibit 57. Do you see that
14 area in this photograph?

15 A Yes.

16 Q Could you circle that?

17 A Come around here.

18 MS. HEAP: And for the record, he marked the
19 area --

20 THE WITNESS: Past the (indiscernible) --

21 MS. HEAP: -- near the blue counter and the white
22 square in the center.

23 THE COURT: And --

24 MS. HEAP: Right above that.

25 THE COURT: And it's also to the left of the black

1 folding chair that's on the right side of the photo.

2 THE WITNESS: Correct.

3 MS. HEAP: Thank you, Your Honor.

4 BY MS. HEAP:

5 Q Does that area lead you towards the back office and
6 the --

7 A Yes.

8 Q -- managers office?

9 A Yes.

10 Q Does it also -- is it also the area where you would
11 go in to go around to the tills?

12 A Yes. Yeah. Correct, so.

13 Q So does it lead you -- I'm showing you State's
14 Exhibit 59. Does it lead you to the other side of the
15 counter where the computers are?

16 A Yeah, correct. Yes.

17 Q What did you do when Adriane came back in?

18 A We all kind of ran towards her and just comforted
19 her, gave her a big hug. That's pretty much it.

20 Q How was she when she came in?

21 A She was distraught, crying. Just hyperventilating,
22 just breathing heavy, really, trying to couple down.

23 Q How were the other employees that were in the store
24 still?

25 A About the same. Kind of the same feelings. Shook

1 up. I mean, definitely tears on some faces. Just long faces
2 on others.

3 Q Do you remember -- do you remember seeing Carla?

4 A Yes.

5 Q What was Carla's demeanor like?

6 A Definitely one of the crying faces. Definitely one
7 of the very crying faces, saying a lot prayers. I do
8 remember that.

9 MS. HEAP: And permission to play State's Exhibit
10 9, Your Honor.

11 THE COURT: Yes.

12 MS. HEAP: And it's a surveillance video, for the
13 record.

14 THE COURT: Yes.

15 (Video played)

16 BY MS. HEAP:

17 Q Jonathan, do you recognize the person in that
18 video?

19 A Yes.

20 Q Who is that?

21 A That is me.

22 Q It's you?

23 THE COURT: And this is a blowup of camera one
24 entry.

25 MS. HEAP: Yes. Thank you. And we're starting the

1 video at 13:06:16.

2 (Video played)

3 MS. HEAP: Your Honor, we're stopping the video at
4 13:08:08.

5 BY MS. HEAP:

6 Q Did you see yourself in that video? Do you -- can
7 you see yourself in that video?

8 A Yes.

9 MR. SCHWARTZER: 13:8:03 I'll play it through.

10 MS. HEAP: 13:8:03 we'll start it from.

11 (Video played)

12 BY MS. HEAP:

13 Q Where -- where are you in that video?

14 A Bottom right-hand corner.

15 Q So the bottom right-hand corner?

16 A Correct.

17 MS. HEAP: We'll let it play. 13:08:06 we'll play.

18 (Video played)

19 MS. HEAP: Camera two -- this will be camera two.

20 THE COURT: Yeah. Camera two --

21 MS. HEAP: The exit camera.

22 THE COURT: -- right at the exit, yeah.

23 MS. HEAP: We are at 13:08:16.

24 BY MS. HEAP:

25 Q Is this where he moved you near the jewelry counter

1 by the instruments?

2 A Yes.

3 Q And you indicated you didn't stay there for very
4 long?

5 A Correct.

6 Q At this point in the video, at 13:08:53, are you in
7 that far area laying down in front of the computers at this
8 point?

9 A Yes.

10 MS. HEAP: We'll paused -- or stop the video at
11 13:09:12. Your Honor, I want to go back to 13:08:05 in that
12 area.

13 BY MS. HEAP:

14 Q Is this another angle looking towards the front
15 door, Jonathan?

16 A Correct.

17 Q So do you see yourself in this camera angle?

18 THE COURT: And which one is that, for the record?

19 MS. HEAP: This is camera angle 3, loan counter 1.

20 THE COURT: Thank you.

21 THE WITNESS: Yes.

22 BY MS. HEAP:

23 Q Where do you see yourself?

24 MS. HEAP: And for the record, he circled the
25 figure that is at the top of the screen, the right-hand

1 person next to the person walking through the door.

2 We'll start the video again at 13:08:06.

3 THE COURT: Thank you.

4 (Video played)

5 BY MS. HEAP:

6 Q Now, at this point in the video, 13:09:10, this is
7 when you were down on your belly in front of the loan
8 counters?

9 A Yes.

10 Q Did you stay in that area until Adriane came back
11 in?

12 A Yes.

13 MS. HEAP: Your Honor, I want to fast forward the
14 video until approximately 13:15:45.

15 THE COURT: Okay.

16 (Video played)

17 MS. HEAP: We'll restart it at 13:15:23.

18 (Video played)

19 BY MS. HEAP:

20 Q Now, the person who just entered the video frame
21 from the front door is -- who was that?

22 A That's Adriane.

23 Q And who is that that just came behind the counter?

24

25 A That's Adriane.

1 Q And Jonathan, what's happening in the video now?

2 A This is where we are talking to her and trying to
3 calm her down.

4 Q And you said that was you, Ivan, Giovanni, Carla?

5 A Yes. And Julie as well.

6 Q And Juliana?

7 A Correct. And that's Melani.

8 Q And that's Melani right there?

9 A Correct.

10 Q What is Melani doing at that time? Do you know?

11 A At the time, I didn't know.

12 Q Okay.

13 A I don't know.

14 MS. HEAP: And for the record, we stopped it at --
15 the video at 13:17:14.

16 BY MS. HEAP:

17 Q After you all consoled Adriane, you indicated at
18 this time several of the employees were crying, and --

19 A Yes.

20 Q -- did you guys leave the store eventually?

21 A Leave the store?

22 Q Um-h'm.

23 A Eventually, yes. We went to -- they took us to
24 AutoZone next door.

25 Q Okay. Did the police come and get you?

1 A Yes. Yeah.

2 Q From the store?

3 A Yes.

4 Q Did they take you over there?

5 A Correct.

6 Q Okay. Where did you go in the AutoZone?

7 A In like the -- their far back area. Maybe like an
8 employee area. I'm not too sure, but far back in the store.

9 Q Was it everyone who was in the store with you that
10 day?

11 A Correct, yes.

12 Q Do you remember if anyone else was there, too?

13 A Oh, my store manager, my boss, Jen. She eventually
14 showed up later, but she wasn't working that day.

15 Q Okay. How long do you think you were at the
16 AutoZone, do you know?

17 A How long? I'm not too sure. Maybe like an hour,
18 two hours.

19 Q Okay.

20 A I'm not too sure.

21 Q How did you feel after this?

22 A Confused, a little bit angry, upset.

23 Q Why were you angry?

24 A I mean, just seeing everybody's faces, the whole
25 situation happening, not being able to do anything about it.

1 It's a little -- a little upsetting.

2 Q When you were at the AutoZone, what were you doing
3 over there?

4 A Just waiting for the -- waiting for the -- our
5 testimonies. They were -- they were calling us one by one.
6 And we were just sitting there waiting, really. I mean, we
7 were just quiet. I was talking to my mom on the phone.

8 Q What were -- and what were you thinking about over
9 at that time when you were in the AutoZone?

10 A Just my mom.

11 Q You -- did you give a statement that day?

12 A I did.

13 Q Where did you give a statement?

14 A We walked over to the -- the parking lot. And we
15 did a statement inside a -- the detective's vehicle.

16 Q And was anybody with you when you did that
17 statement?

18 A Yeah, just myself and the detective.

19 Q Jonathan, are you testifying today based on the
20 events as you remember them?

21 A Yes.

22 Q And that you experienced them?

23 A Yes.

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

25 THE COURT: Mr. Trejo.

1 MR. TREJO: I need just a few minutes to prepare,
2 Your Honor.

3 THE COURT: Okay. We can -- do you guys want to
4 just take a break, then?

5 MR. SCHWARTZER: How much time does he need?

6 THE COURT: How much? Ten minutes. Yeah, we'll
7 give them a break.

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

17 We will be back at 2:10.

18 Mr. Rivera, just wait in the little room in the
19 vestibule. Thank you.

20 (Outside the presence of the injury)

21 THE COURT: Anything outside the presence?

22 MS. HEAP: Not by the State.

23 MR. TREJO: No, Your Honor.

24 THE COURT: Okay. I will be back.

25 (Court recessed at 2:02 p.m., until 2:11 p.m.)

1 (Outside the presence of the jury)

2 (Pause in the proceedings)

3 THE COURT: You're going to have Adriane and who on
4 Monday?

5 MR. SCHWARTZER: Detective Jason Leavitt.

6 (Pause in the proceedings - Mr. Trejo writing)

7 THE COURT: Are you ready?

8 MR. TREJO: Yes.

9 THE COURT: Okay. Do we have anything else outside
10 the presence?

11 MR. SCHWARTZER: No.

12 THE COURT: Okay.

13 (In the presence of the jury)

14 THE COURT: Will the parties stipulate to the
15 presence of the jury?

16 MS. HEAP: State does, Your Honor.

17 MR. TREJO: I do, Your Honor.

18 THE COURT: Thank you. Please be seated.

19 Mr. Trejo, go ahead.

20 CROSS-EXAMINATION

21 BY MR. TREJO:

22 Q Hi, Jonathan. Okay. So I want to ask about
23 September 3, 2018. You said a man in a motorcycle helmet
24 came in, right?

25 A Yes.

1 Q Let's talk about what he looked like or wore. Do
2 you remember in your statement claiming you remember padding?

3 A I remember some black padding, yes.

4 Q When you said, quote, "padding," what did you mean
5 by that?

6 A I'm not exactly sure how to describe it. Maybe it
7 was a part of his jacket. I'm not too sure, but it just all
8 one black suit.

9 Q And what made you use the word padding to describe
10 what you -- what you thought you saw?

11 A It didn't look like any skin on there, everything
12 just looked black and covered up.

13 Q You mentioned he said he wanted money earlier. Did
14 he make any threats along with that?

15 A I don't remember off the top of my head.

16 Q I'm sorry, I didn't catch that.

17 A I said I only heard him, like, the money, pretty
18 much. I don't remember him saying anything off the top of my
19 head. I don't remember.

20 Q And when he came into the store, were you the
21 closest to the front door?

22 A Yes.

23 Q Do you recall where Mrs. Melani Howard was at when
24 he came?

25 THE INTERPRETER: I'm going to reask that question.

1 BY MR. TREJO:

2 Q Do you recall where Mrs. Melani Howard was when he
3 came in?

4 A I don't recall.

5 Q So during the robbery, did you press the panic
6 button?

7 A Yes.

8 Q Were you holding the panic button in your hand or
9 somewhere else?

10 A Must have been around my neck.

11 Q Did you mention to anyone else at some point after
12 this event that you activated your panic button?

13 A Not that I recall.

14 Q Now, Jonathan I recall you mentioned that you,
15 quote, "heard more than saw," end quote, when Adriane and the
16 suspect walked out of the store. Did you actually see the
17 suspect with Adriane?

18 A I saw a glimpse of them kind of just walking
19 together, but that's as good as I saw.

20 Q Do you recall what time the police moved you to
21 AutoZone?

22 A I don't.

23 Q Was it within minutes after the police secured the
24 area?

25 A More or less, like 30 minutes-ish, 20 minutes-ish.

1 Q So within the 1:00 o'clock hour on September 3,
2 2018?

3 A What was the question?

4 THE COURT: I couldn't hear your --

5 THE WITNESS: What was the question.

6 THE COURT: Okay. Sorry.

7 BY MR. TREJO:

8 Q You had answered that the police moved you to
9 AutoZone within 30 minutes after securing the scene. The
10 question is if that would fall within the 1:00 o'clock hour?

11 A I don't remember.

12 Q And do you recall the time you were pulled out of
13 your -- for your recorded interview?

14 A I don't remember the time.

15 MR. TREJO: All right. That will be it, Jonathan.
16 Thank you for your time and patience.

17 THE COURT: Ms. Heap?

18 MS. HEAP: The State has no more questions, Your
19 Honor.

20 THE COURT: Questions from the jury?

21 Okay. We've got a couple, so --

22 (Bench conference)

23 THE COURT: Sorry. Number one, did any of the
24 officers or detectives instruct you to not discuss your
25 experience among your group or with each other?

1 What do you --

2 MS. HEAP: I guess, I don't really have a --

3 MR. SCHWARTZER: Yeah.

4 MS. HEAP: -- objection. You can ask it.

5 MR. TREJO: That's okay.

6 THE COURT: Okay. Okay. So I'll ask that one.

7 And two, did you ever see the suspect without the motorcycle
8 helmet and/or without the face mask?

9 MS. HEAP: Okay.

10 THE COURT: That's fine.

11 MR. TREJO: That's (indiscernible).

12 THE COURT: Okay.

13 (End of bench conference)

14 THE COURT: Did any of the officers or detectives
15 instruct you to not discuss your experience among your group
16 or with each other?

17 THE WITNESS: I don't remember exactly.

18 THE COURT: Okay. Did you ever see the suspect
19 without the motorcycle helmet and/or without the face mask?

20 THE WITNESS: No, I never saw him without it.

21 THE COURT: Okay. Thank you.

22 And so thank you very much for your testimony and
23 being here this afternoon. And please don't discuss your
24 testimony with anyone else. You are excused.

25 THE WITNESS: Thank you very much, Your Honor.

1 THE COURT: Thank you.

2 State?

3 MR. SCHWARTZER: State calls Officer Keenan Graham.

4 THE MARSHAL: And if you will remain standing.

5 Please face the Clerk. She's going to swear you in.

6 THE CLERK: Please raise your right hand.

7 OFFICER KEENAN GRAHAM, STATE'S WITNESS, SWORN

8 THE CLERK: Can you please state and spell your
9 name for the record.

10 THE WITNESS: Keenan Garsen (phonetic) Graham,
11 K-e-e-n-a-n. Graham, G-r-a-h-a-m.

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

13 THE COURT: Please proceed.

14 MR. SCHWARTZER: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY MR. SCHWARTZER:

17 Q Mr. Graham, can you tell the ladies and gentlemen
18 of the jury what you do for a living.

19 A I am a police officer employed with the Las Vegas
20 Metropolitan Police Department on patrol at Spring Valley.

21 Q How long have you been a police officer?

22 A Coming up on five years now.

23 Q And have you always been in Spring Valley?

24 A I've been in Spring Valley for almost four years
25 now?

1 Q Okay. And can you tell the ladies and gentlemen of
2 the jury what is Spring Valley Area Command?

3 A Spring Valley Area Command is a precinct, if you
4 will, in a city that includes China Town and some of the
5 western most portions beyond the 15.

6 Q And would that also include Rainbow and Charleston
7 area?

8 A At the time of the incident yes, it went all the
9 way up to Rainbow and Charleston.

10 Q Okay. And you're here specifically regarding an
11 incident regarding -- that occurred on September 3rd of 2018;
12 is that correct?

13 A Yes, sir.

14 Q And eventually had the event number of 1808 --
15 180903-1848?

16 A I don't remember the event number.

17 Q That's fine.

18 A It was a long time ago.

19 Q But -- but it's an incident that occurred at a
20 business at 1150 South Rainbow?

21 A Yes.

22 Q Okay. Now, I want to bring your attention to that
23 day, September 3rd of 2018. That was a holiday, correct?

24 A I don't remember, sir.

25 Q That's fine. Do you recall if you were partnered

1 up or not that day?

2 A Yes. It was our training day, so we try to go out
3 and do proactive work. I was partnered up with Officer Brian
4 Farrington. We didn't even really know each other, but we
5 were riding together that day.

6 Q Okay. And what is -- like's what a training day?

7 A A training day is usually a day we take to knock
8 out some of the legal required training like firearms
9 qualifications, training in mental illness, stuff like that.
10 And once you've completed that stuff, you go out and you try
11 to do some proactive police work, stopping crime before it
12 happens rather than being reactive like you are on patrol.

13 Q Okay. And while you were out in the field doing
14 this proactive police work, are you wearing any type of
15 uniform?

16 A Yes. I was in my tan LVMPD issued uniform with
17 patches, badge, full duty belt, including online non-lethal
18 and lethal tools in a marked patrol car.

19 Q And -- and does that uniform show badges or
20 anything else that show that you are a member of law
21 enforcement?

22 A The badge itself does, and both patches on either
23 shoulder indicate that I am a law enforcement officer. Also,
24 the marked patrol car that we were utilizing that day says
25 police across the side, big bold letters.

1 Q And obviously, you already previous referenced and
2 I've already previously referenced, you were involved in an
3 incident that occurred on September 3rd of 2018?

4 A Yes, sir.

5 Q Based on that incident, was a photograph taken of
6 what you were wearing that day?

7 A Yes.

8 MR. SCHWARTZER: Your Honor, can I publish exhibits
9 that have been previously admitted or stipulated to?

10 THE COURT: Yes.

11 BY MR. SCHWARTZER:

12 Q I'm going to show you what's been marked as Exhibit
13 99. Okay. Officer, is -- do you recognize that individual?

14 A Yes, that's me.

15 Q Okay. Is that what you were wearing that day?

16 A Yes, it was.

17 Q Okay. Now, can you show the jury areas that -- on
18 your uniform that indicate that you were a member of law
19 enforcement?

20 A So on my left breast just above the pocket.

21 Q Hold on one sec, Officer Graham.

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

23 THE COURT: Yes.

24 BY MR. SCHWARTZER:

25 Q Sir, I'm going to show you a way to mark on the

1 picture.

2 A Oh.

3 Q Just click on that pen right there. It allows you
4 to circle while you're holding down the mouse. When you're
5 done, I'm going to ask you to clear it by using this arrow
6 key right here.

7 A Okay.

8 Q All right.

9 A So my badge indicates I'm a law enforcement
10 officer, and then either patch on the shoulders here.

11 Q Okay. So for the record, you circled the badge
12 that's on your chest on this exhibit as well as patches on
13 both -- both your right and left shoulder are also circled as
14 well in this exhibit, which -- is that correct?

15 A Yes, sir.

16 Q Okay. Additionally is this uniform itself
17 something that's recognized as a LVMPD uniform?

18 A Yes, sir. This is the standard uniform of one of
19 the largest agencies in our Valley.

20 Q You as well also have a utility belt on you?

21 A Yes.

22 Q With all the gear you would have as a law
23 enforcement officer?

24 A Yes, sir.

25 Q You would also have a radio on you?

1 A Yes, sir. It's -- in this picture, it's mounted on
2 my belt in the back and the lapel mic comes around the front.

3 Q Okay. And then additionally, you would have a body
4 camera on you as well?

5 A Yes, sir. It's mounted -- you could -- it's hard
6 to tell because of the contrast of the picture, but here is
7 my body camera mounted to my collar.

8 Q And for the record, you just circled a device on
9 your left shoulder; is that correct?

10 A Yes, sir.

11 Q Okay. All these things would identify you to the
12 general public as a member of law enforcement; is that
13 correct?

14 A Yes, sir.

15 Q Okay. Now let's get into that incident around
16 September 3rd of 2018. Now, could you clear that picture for
17 me?

18 Roughly around 1:00 o'clock, what were you doing?

19 A Around 1:00 o'clock, we were in the area of
20 Charleston and Decatur, myself and Officer Farrington.

21 Q What were you and Officer Farrington doing?

22 A I believe we had just come off lunch. I'm not a
23 hundred percent sure, though.

24 Q Okay. It's okay if you don't remember. Just let
25 me know. Now at some point, is there a call that leads you

1 to that business of 1150 South Rainbow?

2 A Yes, sir. A tone alert came out for a robbery
3 call.

4 Q Okay.

5 A Indicating that it was happening at Charleston and
6 Decatur, which is -- or I'm sorry, Rainbow and Charleston,
7 which is not very far, when we were almost a straight shot
8 towards it.

9 Q Now, these tone alerts, what are those?

10 A So broadcast over the channel that your listening
11 to on your radio while you're on patrol, they'll do a little
12 tone alert. It's like (indicating). It keys in your
13 attention. And then the dispatcher will give info on a hot
14 call. So something that's inherently dangerous or felonious
15 that requires immediate attention of any officers in the
16 area.

17 Q Okay. Did you -- did you and officer Farrington
18 decide to go to that call?

19 A Yes, sir. I believe we self-dispatched.

20 Q Okay. And again, you're in a proactive law
21 enforcement duty at this time?

22 A Yes, sir.

23 Q So you're not being assigned to a call. You're
24 assigning yourself to calls?

25 A Yes, sir. We assigned ourselves because of our --

1 our close proximity and because of the volatile nature of it.

2 Q Okay. Did you get any further details about this
3 call while you're driving toward the business, about anyone
4 inside the business?

5 A Yes, sir. While we were en route going down
6 Charleston, about halfway, details came out that one the
7 employees was calling from underneath a counter and that
8 somebody was armed.

9 Q Okay. So I imagine that's unusual?

10 A We get a lot of tone alerts for robberies and hot
11 calls all day long, and you head to them like you're serious,
12 you treat them like they're serious because they very well
13 could be, but a lot of false alarms come out and that
14 information definitely, you know, indicated that this was --
15 this was the real deal and severe.

16 Q Okay. And additionally, you heard about a suspect
17 with a firearm?

18 A Yes, sir.

19 Q And something covering their head?

20 A Yes, sir.

21 Q Okay. How do you get there?

22 A So we went from Charleston and Decatur, cut
23 westbound on Charleston, and we rolled code three with our
24 lights and sirens our marked patrol vehicle down Charleston
25 westbound until we hit Rainbow and we proceeded southbound.

1 The issue arose when we realized that the median on
2 Charleston and Rainbow doesn't break until right in front of
3 the business. We had to cut -- actually, drive over the top
4 of the median because of the angle, we couldn't just hop it
5 earlier on, and circumvent three cars that were in the only
6 break in the median, and ended up parking right in front of
7 the business, pointed at it.

8 Q Okay. I'm going to show you Exhibit 13. Do you
9 recognize that?

10 A Yes, sir.

11 Q Do you see your vehicle in this photograph?

12 A The nose of the vehicle is in the photograph right
13 here.

14 Q Okay. And you just circled the very left portion
15 of the exhibit with -- which shows the front of the vehicle.

16 A Yes, sir.

17 Q Now, when you -- when -- who's driving, you or
18 Officer Farrington?

19 A Officer Farrington was driving.

20 Q When Officer Farrington pulls to the left -- drives
21 to the left and faces the business, do you see anything?

22 A Not until I start to exit my vehicle.

23 Q Are you exiting the vehicle when the car is parked
24 or are you --

25 A It's still kind of rolling when I was getting out.

1 Q Why do you get out so quickly?

2 A Because it was an exigent circumstance. We knew
3 people were in danger. Right as we got closer, we heard --
4 heard that there's people in the business, Officer Carrigy
5 and Officer Fulwiler were -- we were getting updates from
6 people that had exited the business and headed southbound.

7 Q Okay. So when you get out of the vehicle, what do
8 you see?

9 A As my foot's hitting the ground exiting the
10 vehicle, I see Mario Trejo exiting the vehicle -- or I'm
11 sorry, exiting the business.

12 MR. TREJO: Objection.

13 THE COURT: Do you want to approach?

14 (Bench conference)

15 THE COURT: Okay.

16 MR. SCHWARTZER: I know what his objection is.

17 THE COURT: Mr. -- Mr. Trejo -- if --

18 (To Court Recorder) Can you take it off?

19 (End of bench conference)

20 THE COURT: Mr. Trejo, Mr. Schwartzer said that he
21 was going to correct what you were going to object to.

22 BY MR. SCHWARTZER:

23 Q Sir, well, we'll get into what happens. Officer,
24 you were involved in an officer-involved shooting; is that
25 correct?

1 A Yes, sir.

2 Q After the shooting, did you take a position with
3 the individual that you engaged with --

4 A Yes, sir.

5 Q -- where you could see that person?

6 A Yes, sir.

7 Q Did the person remove what was covering his face?

8 A Yes, sir.

9 Q Were you in close proximity and were able to see
10 that individual's face?

11 A Yes, sir, I was very close.

12 Q Do you see that person in the courtroom today?

13 A Yes, sir.

14 Q Can you point to that person and identify a piece
15 of his clothing.

16 A The gentleman in the purple shirt over there.

17 Q Is that the same person that you were talking about
18 at the front door of the business that you were previously
19 talking about in my last questions?

20 A Yes, sir.

21 Q Okay. So instead of referring to him by his name,
22 Officer Graham, I'll just ask you to refer to him as the
23 defendant this time.

24 A Yes, sir.

25 Q Because did you not find out -- did you find out

1 his name at that time or did it take -- when did you find out
2 -- I guess, when did you find out the defendant's name?

3 A I found out the -- the -- the name later from the
4 Union.

5 Q Okay. But you personally observed the defendant
6 that day after all this occurred?

7 A Yes.

8 Q Okay. And that's the same person who we were
9 talking about at the business?

10 A Yes.

11 Q Okay.

12 A One in the same.

13 Q Okay. So I'm going to go back now. So again,
14 refer to him as the defendant, if you can.

15 A Yes, sir.

16 Q Thank you. Okay. So when you get out of the
17 vehicle and you look at -- look toward the business, go ahead
18 and tell the ladies and gentlemen of the jury what you see.

19 A As I was exiting the vehicle, right at the same
20 time as my foot was hitting the ground, the defendant was
21 exiting the business dragging a civilian with one arm and
22 pointing the firearm at her with the other.

23 He dragged her into the parking lot. He got
24 partway into the parking lot and a struggle ensued between
25 the two of them. Then I heard a -- a gunshot go off you. I

1 wasn't sure if he was firing at her or firing at us. I ran
2 for the cover, the cinder block wall of the dumpster
3 enclosure over -- oh, never mind. Over here. There's a red
4 dumpster enclosure. I ran for --

5 Q And for the record, you marked on Exhibit -- I
6 believe this is Exhibit 13 -- Exhibit 13, a red mark to the
7 very right of the photograph, which indicates a -- a brick
8 wall, which you had previously described to us.

9 A Yes. There's like a cinder block dumpster
10 enclosure. I ran for cover there because I didn't know if I
11 was getting shot at or -- or what was going on. I just saw
12 them struggling over the firearm.

13 And then the civilian and the defendant broke
14 apart, so I changed direction and started heading for the --
15 the red vehicle you can see right next to the dumpster over
16 here, and --

17 Q Okay. Let me stop you there. So you see the
18 defendant drag this female out to the -- to that alleyway or
19 that street; is that correct?

20 MR. TREJO: Objection.

21 MR. SCHWARTZER: Facts in evidence.

22 MR. TREJO: Improper characterization.

23 THE COURT: And --

24 MR. SCHWARTZER: How so?

25 THE COURT: -- Mr. Trejo --

1 MR. SCHWARTZER: Sorry.

2 THE COURT: -- he used the exact words that the
3 witness used so I'm going to overrule that objection.

4 Go ahead, Mr. Schwartzer.

5 MR. SCHWARTZER: Thank you, Your Honor.

6 BY MR. SCHWARTZER:

7 Q Did it appear that the -- this woman was going with
8 him willingly?

9 A No. It -- he was dragging -- she seemed like she
10 was fighting for her life. He was dragging her with one arm
11 with -- if he had had the opportunity, I guarantee you he
12 would have used two arms because she was fighting back pretty
13 hard. And then they started struggling with the firearm.

14 Q Okay. Roughly, do you recall where they were
15 during the struggle for the firearm?

16 A So they -- they came out from behind the farthest
17 pillar here, and they were headed for, well, one of the --
18 -- I believe there was three vehicles over here. And about
19 halfway in between, maybe a little closer to the vehicles,
20 they started to struggle.

21 Q Okay. And during the struggle you hear a gunshot
22 come off from where the defendant is located?

23 A Yes.

24 Q Okay. And that's when you took cover?

25 A Yes, sir.

1 Q Okay. And from that cover after that gunshot, what
2 did you do?

3 A I changed my -- my course because they had broke
4 apart as I was running towards the cinder block wall.

5 Q Why did you change your course?

6 A Because not -- an opportunity presented itself to
7 intervene. Before, the reason I didn't use deadly force on
8 an armed subject was because I was -- the risk of hitting the
9 civilian that he had as a hostage.

10 So when they broke apart and he still had the
11 firearm, I knew that this was my opportunity to engage and
12 prevent him from taking any more people hostage or hurting
13 the people we were around because it was a high density
14 populous environment.

15 Q Okay. While you were running toward the
16 defendant's location, did you see the defendant do anything?
17 Was he doing anything with his hands or body?

18 A So the defendant was -- I had the car in between me
19 and his hands, but he was fumbling with something. What I
20 thought had happened is he was trying to --

21 Q I don't want to get -- I don't want you to
22 speculate, but what -- just describe what he was doing with
23 his hands.

24 A I saw -- saw him fumbling and then right before I
25 fired, I saw his arm start to come up.

1 Q When his arms was coming up, what kind of position
2 would you call that?

3 A I believed he was presenting a weapon.

4 Q Okay. Like a shooting position?

5 A Yes, sir.

6 Q Okay. And when he was fumbling something, you
7 believe he had an item in his hand?

8 A I believe he had his handgun that he had earlier.

9 Q Okay. So you believe when he was coming up with
10 his hands that a gun was being pointed in your general
11 direction?

12 A Yes, sir.

13 Q And based on that, what did you do?

14 A I fired five rounds in his direction.

15 Q And why did you fire?

16 A To neutralize an armed subject.

17 Q Did you believe you would be harmed if you didn't
18 fire?

19 A Most definitely.

20 Q Okay. Do you believe you'd be shot if you didn't
21 fire?

22 A Yes, sir.

23 Q Do you believe officers around you could have been
24 shot?

25 A Yes, sir.

1 Q Did you believe the victim might have been shot?

2 A Yes, sir.

3 Q After you fired, what happened?

4 A The subject fell to the ground. We -- I advanced
5 another car and maintained my aim on the subject. He still
6 had a rifle slung on his back and a large buoy knife and his
7 belt was sticking out, and I at that time thought that was
8 another handgun tucked into his waistband.

9 Q From your position, were there other officers
10 around that took positions around him?

11 A Yes, sir. Officer Farrington was to my left and
12 took cover on this column. Officer Carrigy advanced and used
13 a vehicle as cover as well --

14 Q Okay. And you --

15 A -- on my right.

16 Q Thank you, Officer. And for the record, you just
17 marked a red line on the -- on Exhibit 13 on the Roman column
18 closest to the --

19 A South.

20 Q -- south side -- thank you -- south side of the
21 street and the business being 1150 Rainbow, previously
22 identified.

23 So from that position, was the defendant given any
24 orders regarding trying to get away from the -- you know, any
25 orders?

1 A Yes, sir. Myself and Officer Fulwiler gave
2 numerous orders to roll away from the firearm and enter a
3 felony prone position. It's where we lay them on their belly
4 and stick their arms out and bring their feet to their butt
5 so they can't access weapons. We also told him to unstring
6 his rifle, but he just continued for a very long time to roll
7 back forth in the vicinity of -- with his -- his rifle still
8 slung on him.

9 We attempted to give commands in Spanish. Because
10 of his lack of response, we thought maybe he didn't speak
11 English. Also Fulwiler is fluent in Spanish and she was able
12 to give those commands.

13 Eventually, once Sergeant Collins (phonetic) and --
14 and an action team arrived on scene, other officers that were
15 formed into an action team by Sergeant Colons, he started to
16 acquiesce with commands and remove -- had had removed the
17 motorcycle helmet he was wearing. He removed the -- the
18 rifle and crawled towards the wall.

19 He still didn't enter the kneeling or prone
20 positions that we -- we tried to get him to go into, and we
21 had to utilize canine to use a bite in order -- and let the
22 action team move up and take him into custody.

23 Q Were you part of that action team?

24 A No, I was not.

25 Q Did he still have that utility belt on him when the

1 action team was used?

2 A Yes, he did.

3 Q And that's the action belt -- or excuse me, the
4 utility belt that you're talking about that had a knife and
5 you weren't be sure if he had another firearm or not?

6 A Yes, sir.

7 Q Okay. You said he -- the helmet was removed?

8 A The helmet was removed --

9 Q So --

10 A -- initially, almost, when he fell down.

11 Q Okay. And so for a decent amount of time were you
12 able to get a -- a good view at him?

13 A Yes, sir.

14 Q Okay. After you -- after the defendant was taken
15 into custody, what did -- what -- what happened with you?

16 A Per Department policy, I was removed, because I was
17 an officer involved in a shooting, and they have to make sure
18 that stories don't get messed up and that, you know, you're
19 -- you're pretty -- pretty amped, so they have to remove you
20 from the situation.

21 You're stuck with a -- a -- I don't remember the
22 exact term. Someone watches -- another officer watches over
23 you, makes sure you get water, whatever you need and cool
24 down.

25 Q They separate you from the other officers involved?

1 A Yes.

2 Q So that way everyone gives their version of events?

3 A Yes, sir. You don't want to --

4 Q Okay.

5 A -- pollute your -- your story with other people's
6 perception.

7 Q Okay. Additionally, at some point, do you walk the
8 scene with members of the FIT team as well as the CSA?

9 A Yes, sir. The field investigation team has you
10 point out which direction you shot and stuff like that. You
11 -- you walk through the scene and give them a brief and
12 limited synopsis so that they can investigate --

13 Q And then --

14 A -- make sure no one else is hurt, make sure they
15 have a good idea what happened.

16 Q Thank you. And during that time do they have you
17 indicate where you were during the shooting as well as where
18 the suspect was?

19 A Yes, sir.

20 Q Okay. And then you tell them so they can mark it
21 and -- and document it; is that correct?

22 A Yes, sir.

23 Q Okay. Showing you Exhibit 109. Could you hit the
24 arrow on your -- thank you.

25 Now I'm going to show you Exhibit 109. Okay. So

1 this is the way they would mark where you were positioned?

2 A Yes, sir, and the traffic cone.

3 Q Okay. So this would be your -- the way you would
4 -- this would be your position during the time of the
5 officer-involved shooting?

6 A Yes, sir.

7 Q And then, additionally, they want you to -- they
8 would want to see your perspective; is that correct?

9 A Yes, sir.

10 Q So then showing you Exhibit 111. Is that your
11 perspective as you marked for the FIT detectives?

12 A Yes, it was.

13 Q And then 112 as well?

14 A It's a better view.

15 Q Okay. And that's again, your perspective?

16 A Yes.

17 Q And to be clear, this is during the shooting; is
18 that correct?

19 A It's during -- during the actual firing of my
20 handgun.

21 Q Okay. You might have gone into a closer position
22 while you -- you know, after the shooting, but this would be
23 your position while you were doing the shooting?

24 A Yes, sir. I moved up to the white vehicle
25 afterwards.

1 Q Thank you, Officer. Now, we already mentioned that
2 body camera.

3 Thank you.

4 Before we get into the body camera, what kind of
5 firearm are you using at the time?

6 A A Glock 19, Gen 4.

7 Q Well, what kind of caliber ammunition is used on
8 that?

9 A Nine millimeter.

10 Q Okay. Now, you previously mentioned you were
11 wearing body-worn camera; is that correct?

12 A Yes, sir.

13 Q And that body-worn camera was functional?

14 A Yes, sir.

15 Q And you would be able to authenticate it if I
16 showed you a brief glimpse of it?

17 A Yes, sir.

18 Q Okay.

19 MR. SCHWARTZER: Your Honor, I would move to
20 publish a brief portion of Exhibit -- Proposed Exhibit 142 in
21 order to have this witness authenticate it.

22 THE COURT: Yes.

23 BY MR. SCHWARTZER:

24 Q I'm going to go about 30 seconds in because for the
25 first 30 seconds we do not hear sound.

1 (Video/audio played)

2 BY MR. SCHWARTZER:

3 Q Okay. Do you recognize this video?

4 A Yes, sir.

5 Q Do you recognize the person to the left of the
6 video?

7 A Yes, sir.

8 Q Who is that?

9 A That's Officer Farrington.

10 Q Do you recognize what perspective this is?

11 A Yes, sir.

12 Q Whose perspective is it?

13 A This is my perspective.

14 Q Does this body-worn camera a true and accurate
15 reflection of what you observed and saw the day of September
16 3, 2018, during your engagement with the defendant?

17 A Yes, sir.

18 MR. SCHWARTZER: Move for admission of Exhibit 142.

19 THE COURT: Mr. Trejo, understanding -- I recognize
20 you're standing objection and I'm going to admit this over
21 your standing objection. And so it's admitted.

22 (State's Exhibit 142 admitted)

23 MR. SCHWARTZER: Thank you, Your Honor.

24 I'm going to fast forward it a little bit.

25 All right. So I'm going to restart the video at

1 2:55 in Exhibit 142, Your Honor.

2 (Video/audio played)

3 MR. SCHWARTZER: Stopping at 3:51.

4 BY MR. SCHWARTZER:

5 Q Officer, we see you open the door while the car is
6 still kind of rolling; is that -- yes?

7 A Yes, sir.

8 Q Okay.

9 A Sorry.

10 Q And that's what you previously testified to as
11 well. Now, at some point you duck down; is that correct?

12 A Yes, sir.

13 Q Why are you ducking down?

14 A Because I thought there was rounds coming my way.

15 Q Okay. And it appears you actually used the vehicle
16 as your cover; is that correct?

17 A For a second, and then it occurred to me that the
18 door was nothing but paper to a bullet. So that's why I
19 moved for better cover.

20 Q Thank you.

21 MR. SCHWARTZER: I'm going to go back a little bit,
22 Your Honor. Okay. So, we're at 3:34. Actually, I'm going
23 to go a tiny bit back. All right.

24 THE COURT: 3:30.

25 MR. SCHWARTZER: 3:30. Thank you, Your Honor.

1 BY MR. SCHWARTZER:

2 Q So we're getting a view from your body cam right
3 now. Is -- we see two people in the middle of that street
4 area to the south of the business; is that correct?

5 A Yes, sir.

6 Q Is that the female that you previously were talking
7 about that was being dragged?

8 A Yes, sir.

9 Q And the person behind that female, is that the
10 person that you later were able to identify as the defendant?

11 A Yes, sir.

12 MR. SCHWARTZER: Start from 3:30, Your Honor.

13 (Video/audio played)

14 MR. SCHWARTZER: And we're off the system.

15 Okay. So now it's 3:29. I'll play it through,
16 Your Honor.

17 And the reason why I went back was because it was
18 playing when the -- when my computer was not hooked up to the
19 court system.

20 (Video/audio played)

21 BY MR. SCHWARTZER:

22 Q All right. So is the jury's going to have this
23 whole video for them to review in -- while during the
24 deliberations, but I do want to bring up a couple of things
25 before he end our questioning here, Officer.

1 THE COURT: And you stopped at 5:49.

2 MR. SCHWARTZER: Thank you, Your Honor.

3 BY MR. SCHWARTZER:

4 Q You're about three parking spots, is that fair to
5 say, from this -- from the defendant?

6 A Yes, sir.

7 Q Okay. And during the course of your engagement
8 with him, he is moving around; is that correct?

9 A Yes, sir.

10 Q He does? I know initially you can see him pop his
11 head up a little bit, but there's other times where he pops
12 his head up a little bit?

13 A Yes, sir.

14 Q Okay. Again, getting a clear look at him?

15 A Yes, sir.

16 Q Okay. And you hold that position again until he's
17 arrested -- until they take him into custody?

18 A Until the hooks are on and they're walking him
19 away.

20 Q Okay. So -- and when he's eventually arrested,
21 where is he -- where is he positioned?

22 A When he's arrested --

23 Q Yeah.

24 A -- he's closer to the -- the wall --

25 Q Okay.

1 A -- off to the -- the right of the perspective
2 showing the video right now.

3 Q At some point, is he sitting up on that wall?

4 A Yes, he is.

5 Q Again, face toward you?

6 A Yes, sir.

7 Q Okay.

8 MR. SCHWARTZER: Thank you, Officer Graham. I have
9 no further questions of this witness.

10 THE COURT: Mr. Trejo.

11 CROSS-EXAMINATION

12 BY MR. TREJO:

13 Q Good afternoon, Officer Graham. I just have a few
14 questions for you. You mentioned earlier that when an
15 officer-involved shooting occurs, there is a procedure that
16 must be followed; is that correct?

17 A Yes.

18 Q Did you also mention that eventually you are taken
19 to a monitor vehicle? Can you explain what that means?

20 A I'm not taken into a monitor vehicle. I'm just
21 separate and placed with a monitor officer, wherever --
22 wherever secluding is available at the time.

23 Q And is there a specific reason for that?

24 A As previously mentioned to the District Attorney,
25 the reason for that is so that you're not contaminating your

1 perspective with that of another officer or somebody else who
2 arrived on scene. It's to preserve the integrity of your
3 testimony.

4 Q So the situation on September 3, 2018, I believe
5 you called a high octane. What did you mean by that term?

6 A I don't remember using the word octane, but it was
7 a high stress situation. Any time you're employing the use
8 of a firearm, there's, you know, danger involved.

9 Q So in a high stress situation, are officers
10 separated to avoid the sharing of details?

11 A Yes. To preserve your statement.

12 Q And is that the main objective of the removal and
13 monitoring?

14 A Yes.

15 MR. TREJO: That will be all, Officer Graham.
16 Thank you for your time.

17 THE WITNESS: Yes, sir.

18 THE COURT: Anything based on that Mr. Schwartzer?

19 MR. SCHWARTZER: I do. I'll be brief.

20 REDIRECT EXAMINATION

21 BY MR. SCHWARTZER:

22 Q Officer Graham, when you're involved in a
23 officer-involved shooting, you're subject to investigation;
24 is that correct?

25 A Yes, sir.

1 Q Your subject to a criminal investigation?

2 A Both criminal and against policy.

3 Q Correct. So being a subject of an investigation,
4 they want to make sure you're not misstating things, right?

5 A Exactly like we would do with any investigation.
6 We separate the witnesses and victims and any involved
7 parties.

8 Q Okay. So you're separate -- so specifically
9 regarding the separation of officers -- and this might be a
10 better question for FIT detectives, but the reason why you're
11 specifically separate is because you are the subject of an
12 investigation?

13 A Yes, sir.

14 Q Okay. Which you were in this case because all
15 officer-involved shootings involve a criminal investigation
16 and a policy investigation?

17 A Every time.

18 Q Okay.

19 MR. SCHWARTZER: That's it. That's all he have,
20 Your Honor.

21 THE COURT: And anything based on that, Mr. Trejo.

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

23 THE COURT: Questions from the ladies and
24 gentlemen? Okay.

25 (Bench conference)

1 THE COURT: Are there any departmental guidelines
2 as to an appropriate number of shots fired per situation or
3 just until the officer feels the immediate threat is
4 neutralized.

5 MS. HEAP: No. That's --

6 THE COURT: I don't think that's relevant.

7 MR. TREJO: (Indiscernible)

8 MR. SCHWARTZER: That's -- I mean, that's not --
9 that's not relevant.

10 THE COURT: Yeah. Not relevant, so I'm not going
11 to ask that. Thank you.

12 (End of bench conference)

13 THE COURT: So Officer, you're going to be excused
14 at this time. Thank you so much --

15 THE WITNESS: Thank you.

16 THE COURT: -- for your testimony. Do not discuss
17 your testimony with anyone else.

18 THE WITNESS: Yes, ma'am. You have a good day.

19 MR. SCHWARTZER: Your Honor, at this point, the --
20 for the jury, the State only has two more witnesses before we
21 rest, but those two witnesses have to go on Monday as opposed
22 to right now. So we're going to ask for the jury and the
23 Court's brief indulgence to let us get our witnesses for
24 Monday and hopefully we'll rest on Monday.

25 THE COURT: Thank you.

1 So the jury's going to be excused at this time.

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

11 I have a calendar on Monday. I think it will be
12 about 11:00 o'clock when we start.

13 JUROR NO. 11: Thank you.

14 THE COURT: So, thank you. Have a nice weekend.

15 (Outside the presence of the jury)

16 THE COURT: Anything outside the presence?

17 MR. SCHWARTZER: Your Honor, we will -- yes, I
18 guess. So, like -- like I said, we have two more witnesses.
19 I'll tell Mr. Trejo what they are. I don't think there's any
20 surprise. It's Adriane Serrano and case agent Jason Leavitt.

21 Detective Leavitt does have a -- a PFFR in the
22 morning, a public fact finding review in the morning. I
23 don't think it should interfere with him getting here, but
24 just so the Court's aware, we might need a -- maybe -- with
25 the lunch break, I don't think it's going to be an issue, but

1 we might need a little time to get him here just because he's
2 coming from the county building.

3 THE COURT: I am not 100 percent sure I'm going to
4 be done. I mean, the calendar got things added to it,
5 because now we're doing all of our own arraignments. So some
6 things got added to it that I didn't think were going to be
7 on it. And I'm not 100 percent sure we'll be starting at
8 11:00. I'm just -- that's my best guess, so --

9 MR. SCHWARTZER: Thank you, Your Honor.
10 Additionally, as a bit of housekeeping, we will get jury
11 instructions to you Monday, when we start. We will provide
12 them to Trejo. That gives him the night to review. We would
13 obviously ask him to present any instructions he intends to
14 offer at that time as well so we can review them on our own.

15 And then, again, I would ask -- if he's going to
16 have any witnesses, I would have them ready for, I guess,
17 Tuesday. next Tuesday.

18 THE COURT: Yeah. Just because Monday, I don't
19 think we're going to start until probably 11:30, then the
20 lunch break and then if Adriane's one of the witnesses, I
21 don't think we're going to get through -- I don't know if the
22 detective's going first and then that will be quick and then
23 we start on Adriane and then --

24 MR. SCHWARTZER: We're doing Adriane and then the
25 detective.

1 THE COURT: Okay. Then your detective -- there's
2 no way you're going to need him before he gets here. So
3 Adriane, I think, will take probably most of the day that
4 we've got and then we'll finish up with that witness, then he
5 should have his witnesses on Tuesday, then, yeah.

6 MR. SCHWARTZER: Sounds great.

7 THE COURT: Okay. Just -- we don't need to be on
8 the record for this.

9 (Pause in the proceedings)

10 THE COURT: Yeah. And Mr. Trejo, did you have
11 anything outside the presence?

12 He has one thing.

13 MR. TREJO: One question, Mr. Schwartzer.

14 THE COURT: Oh, you have a question for
15 Mr. Schwartzer? Does it need to be on the record, or no?

16 MR. TREJO: Yes.

17 THE COURT: Okay.

18 MR. TREJO: So, are you not having Detective Patton
19 on?

20 MR. SCHWARTZER: Not unless you want to take the
21 stand.

22 (Court recessed for the day at 3:29 p.m.)

23 * * * * *

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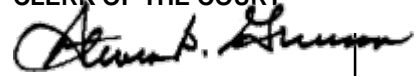
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ATTEST: I hereby certify that I have truly and correctly
transcribed the audio/visual proceedings in the above-
entitled case to the best of my ability.



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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

MONDAY, MAY 2, 2022

**RECORDER'S TRANSCRIPT OF PROCEEDING:
JURY TRIAL - DAY 11**

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

RECORDED BY: SUSAN SCHOFIELD, COURT RECORDER
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INDEX

INDEX OF WITNESSES

STATE'S WITNESSES:

PAGE

ADRIANE SERRANO-BORJORQUEZ

Direct Examination by Mr. Schwartzer 11

Cross-Examination by Mr. Trejo 60

Redirect Examination by Mr. Schwartzer 75

DETECTIVE JASON LEAVITT

Direct Examination by Mr. Schwartzer 78

Cross-Examination by Mr. Trejo 98

LIST OF EXHIBITS

(No exhibits admitted)

1 LAS VEGAS, NEVADA, MONDAY, MAY 2, 2022

2 (Case called at 11:10 a.m.)

3 (Outside the presence of the jury.)

4 THE COURT: C-18-335315-1, State of Nevada versus
5 Mario Trejo. Mr. Schwartzer and Ms. Heap are present for the
6 State -- the State. Mr. Trejo is present pro per, along with
7 Mr. Henry and the Court Interpreter.

8 Is there anything that we need outside the presence?

9 MR. SCHWARTZER: Your Honor, I had -- have the jury
10 instructions. We will forward them to yourself. I'm handing
11 them over to Mr. Trejo right now. These are our jury
12 instructions. I'll ask him if he wants *Carter* instruction
13 regarding the right of a defendant to testify. If he want
14 that we can put that in.

15 We'd also ask for obviously any proposed
16 instructions that he has today.

17 MR. HENRY: Also, Judge, there may be a scheduling
18 conflict with Mr. Trejo's witness, Allison McNickle
19 (phonetic). She's only available to testify today or Friday.
20 I'm still not sure if he wants her to testify today, and
21 that's a decision he's going to have to make. I would just
22 ask the Court to inquire as to whether or not he's going to
23 have his witness testify.

24 THE COURT: Okay. Mr. Trejo -- and you said her
25 name was Allison --

1 MR. HENRY: McNickle.

2 THE COURT: -- McNickle? Okay. So Ms. McNickle is
3 only available today or Friday and I don't think we'll still
4 be going by Friday, Mr. Trejo. So did you need to have your
5 witness testify out of order today?

6 MR. HENRY: And what Mr. Trejo also told me was that
7 his medical records are in his cell and it's an entire process
8 to have him get dressed out, go back to CCDC, grab his stuff,
9 and then come back. I don't know if that's something that
10 could be expedited today, if he was to have his witness
11 testify today. I'm not sure how that would work out.

12 CORRECTIONS OFFICER: I don't really understand your
13 question.

14 MS. HEAP: How are they relevant?

15 MR. SCHWARTZER: I don't really even understand your
16 question.

17 MR. HENRY: If he needed to grab something from his
18 cell is that possible?

19 CORRECTIONS OFFICER: (Indiscernible) it up.
20 Because then we'd have to go back, change him out, and the
21 thing is we only have one hour, right? And during that time
22 he's got to eat and everything. So unless we get like a two-
23 hour break, we could get it done.

24 THE COURT: I mean, we can take a two-hour break at
25 some point, but --

1 MR. SCHWARTZER: I also have an issue with that. I
2 have saying from go, to Mr. Trejo, that if he was going to use
3 medical records he needs to provide them to us because we do
4 not have the medical records. Mr. Trejo -- in fact, in one of
5 my responses, I said, this is reciprocal discovery if you're
6 going to use it in your case-in-chief.

7 If he is using his medical records in his case-in-
8 chief, which it sounds like he's trying to do, they needed to
9 be provided to us before trial. That obviously has not
10 occurred. So we would object to any of these records coming
11 in.

12 THE COURT: He's writing something so I'm just
13 waiting for his response.

14 MR. SCHWARTZER: Sure.

15 MR. TREJO: I am not prepared to examine today. I
16 was actually expecting her to testify tomorrow. I don't think
17 today is at all possible.

18 And in regards to the State's objection, I actually
19 only have one copy of these medical records. I have no way to
20 provide the State with their own copies.

21 MR. SCHWARTZER: Well, Your Honor at this point,
22 based on the fact that Mr. Trejo didn't notice this doctor,
23 the fact that he hasn't provided reciprocal discovery, based
24 on the fact that he doesn't have his witnesses, I mean, I'll
25 obviously -- at any point, I would have allowed her to go out

1 of order. But this is the first time we're hearing of it and
2 now she won't be available until Friday, which will extend the
3 trial for at least three days.

4 I'm going to object to having this doctor testify.
5 Plus, I'm also not a hundred percent sure why she's relevant,
6 on top of all of that.

7 THE COURT: So Mr. Trejo, you're not available for
8 her today. She's not available until Friday. I don't know
9 that we can have the jury come back after we're done. Is that
10 what you wanted to try and do?

11 MR. TREJO: I'm not sure what the process would be,
12 Your Honor. There's also the possibility of me having surgery
13 this week. So I, myself, am not clear on what would happen if
14 they send me out tomorrow or Wednesday.

15 THE COURT: Okay. But so what I'm asking you is, are
16 you prepared to not have -- is it Dr. McNickle? Ms. McNickle?
17 I'm not sure.

18 MR. TREJO: Doctor.

19 THE COURT: Are you prepared to not have Dr. McNickle
20 testify, because you have not provided the State with
21 reciprocal discovery and she's not available until Friday?

22 MR. TREJO: Her testimony would be in support of my
23 defense based on her contact with me directly after the
24 incident. I do want her to testify. Aside from the medical
25 records not being provided to -- provided to the State, I

1 believe Dr. McNickle can provide crucial testimony.

2 Perhaps the medical records aren't necessary as
3 evidence if the Doctor can recall certain details.

4 MR. SCHWARTZER: What I'm hearing here is, he didn't
5 secure his witness when we told him on Thursday that he needed
6 to bring this witness by Tuesday. I'm hearing -- I'm not
7 hearing anything regarding relevancy. But that's fine. If he
8 wants to wait until his case-in-chief or explain to you
9 outside the State's presence, that's fine.

10 He's saying now that records that were not provided
11 as reciprocal discovery might become important, even though we
12 have asked multiple times for those records. And then he has
13 yet to address the fact that this -- this person wasn't even
14 noticed.

15 And the fact that they're going to use medical
16 testimony makes me worry he's going to use her as an expert
17 for -- in her field as a doctor versus a fact witness. And
18 there's -- there was -- not only is there not a notice of
19 witness, there's not a notice of expert.

20 And we have said from go, that if they're going to
21 use an expert they'd better -- if Mr. Trejo was going to use
22 an expert he has to notice that expert, which has not
23 happened. And we're now week three of this trial.

24 Based on all that, Your Honor, I'm going to ask you
25 to exclude this witness.

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MARIO TREJO,) No. 84724
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 Appellant,)
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 v.)
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 THE STATE OF NEVADA,)
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 Respondent.)
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