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IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL SAMUEL SOLID,

NO. 85189

Appellant,

vs.

STATE OF NEVADA,

Respondent.

FILED

MAY 19 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
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APPELLANT'S APPENDIX

VOL 4

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23-15937

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1 "Q So he is not good at math. So at the point of the
2 time the vehicle was traveling in the same direction, but
3 now you have delineated a pedestrian scuff versus just scuff,
4 so is this scuff much darker to a different degree?

5 "A It is.

6 "Q Okay.

7 "A And it's -- it's kind of a series of scuffs, like
8 when a body is sliding across the roadway there's different
9 parts of the body making contact with the roadway at any given
10 time. And so because that -- because that body has motion,
11 say over, you know, a period of a second, it will leave a
12 mark, you know, a very long mark. I mean, so that body has
13 motion and where the pieces of the body were making contact
14 with the road will be the line, wherever that is. And so
15 that -- those dark -- those darker marks and that they were
16 consistently going the same direction and they were parallel
17 with each other, that was consistent with what we typically
18 see on a regular vehicle versus pedestrian collision scene.

19 "Q So that was an additional 32 -- 32.79 feet?

20 "A Yes.

21 "Q Yes. Okay. So in its entirety, these scuffs
22 together are almost 90 feet?

23 "A Yes.

24 "Q Meaning that this vehicle is traveling while a
25 human being is attached one way or the other to it for almost

1 90 feet?

2 "A I believe so.

3 "Q Now, are you also able through formulas to
4 establish possible rates of speed?

5 "A Yes.

6 "Q And how are you able to do that?

7 "A Like I said before, we use proven scientific
8 methods and those methods are based off of just Newton's Laws,
9 laws of physics, laws of motion. Baseline is gravity.
10 Gravity is a constant. It's 32.2 feet per second per second
11 and that is -- that equals to one. So all the formulas that
12 we use are based off the acceleration of gravity and how much
13 -- like what percentage of gravity is being used at that time.

14 So in this particular circumstance when you have
15 something that's leaving friction marks on the roadway,
16 it's either accelerating or it's decelerating. So if it's
17 decelerating, it's a negative value. And what we do is we
18 have -- there's certain published friction rates. So for
19 a pedestrian or for a human body the friction rates are
20 .4 to .6 and then we'll use that in a formula with gravity
21 to determine if somebody slides on the roadway surface, and
22 for this distance then we can assume that they had this much
23 velocity.

24 "Q And did you do that formula in this case?

25 "A I did that formula in this case for the second

1 mark, the darker mark where I knew that a body was sliding
2 against the asphalt surface, under the assumption that the
3 body was sliding on assumed velocity, velocity that it had
4 assumed after being struck by a vehicle or carried by a
5 vehicle, or after that person could have alighted from the
6 vehicle. So assuming that we -- he had assumed velocity and
7 that was all just him with assumed velocity, I did a speed
8 analysis on that one section of 32.79 feet.

9 "Q Which turned out to be?

10 "A Roughly between, I believe, 22 to 24 miles per hour
11 of assumed velocity."

12 MR. PALAL: "Court's indulgence."

13 BY MR. PALAL:

14 "Q Now, a question for you about the -- you authored
15 a report in this case; is that correct?

16 "A I did.

17 "Q In that report it says that the 2002 Ford Explorer
18 could have reasonably achieved over 30 miles per hour by the
19 end of the first narrow scuff mark.

20 "A Correct.

21 "Q Is that correct?

22 "A Yes. If I may add?

23 "Q Yes.

24 "A That's based on Rebecca Shanahan's statement of
25 where the vehicle started from.

1 "Q When you do these types of investigation, is it
2 common for you to talk to lay witnesses and gather information
3 so you have as much information to base your investigation on?
4 Is that correct?

5 "A Yes, because vehicles don't always leave marks on
6 the roadway. Just because a vehicle was there doesn't mean
7 it's leaving a mark. We depend on witness statements
8 sometimes to get information that we wouldn't be able to tell
9 with just basic evidence alone.

10 "Q And you said that in speaking with Rebecca Shanahan
11 she provided you some information that you used in authoring
12 your report?

13 "A She did.

14 "Q And what was that?

15 "A That the vehicle started from the edge of the
16 median on the east side of the intersection, that the vehicle
17 was in the left turn lane at the -- right up to the edge of
18 the median.

19 "Q And so you said you wanted to explain something and
20 how that reflects on the 31 miles per hour that I just asked
21 you about.

22 "A Because it adds 22.47 feet.

23 "Q Okay. And the last question I'd like to ask you in
24 regards to the diagram with the marks that you're seeing here,
25 the first scuff mark and then the pedestrian scuff mark, would

1 that be a constant -- would that be consistent with someone
2 hanging onto a car and trying to keep up while running?

3 "A I believe that based on what was described to me
4 from the witness, I believe that that mark is his shoe
5 dragging alongside the vehicle. He was -- he was described
6 as clinging or being held into the car. That's what was
7 described to me. And because it was such a narrow and faint
8 mark and it was just long and consistent, I interpreted that
9 as his shoe or, you know, his feet dragging alongside the
10 vehicle when he couldn't keep up with the vehicle any longer.

11 "Q And then for the following almost 33 feet, when
12 the scuff becomes much greater, that's consistent with what?

13 "A That could be consistent with two things. One
14 could be that he alighted from the vehicle and assumed
15 velocity carried him another 32.79 feet. The other thing that
16 it could be consistent with is that he lost his grip and he
17 fell; like, he could have been hanging from the lower window
18 frame and his knees could have been being dragged on the
19 pavement alongside the vehicle. So he starts in the window
20 with his foot dragging alongside the vehicle, he drops down
21 and now his knees and his legs are now dragging on the
22 asphalt. And then he lets go of the window and then somehow
23 he has some portion of him struck by the vehicle and deflects
24 him out into that number two lane.

25 "Q So it basically signifies, in your opinion, that

1 more friction, more body contact with the road was occurring
2 than originally?

3 "A Absolutely.

4 "Q And that's what creates the greater body scuff?

5 "A Yes. There's more friction there and so it creates
6 a larger identifiable evidence.

7 "Q And I'd like to go through some pictures with you."

8 MR. PALAL: "Your Honor, these have been stipulated
9 into. They are marked State's Proposed 1 through 24."

10 THE COURT: "All right."

11 MR. PALAL: "I've shown them to defense counsel."

12 THE COURT: "I think one has already been admitted.
13 Any objection, Mr. Leventhal?"

14 MR. LEVENTHAL "No, Your Honor."

15 THE COURT: "All right. Those will all then be
16 admitted."

17 MR. PALAL: "Thank you."

18 (State's Exhibits 1 through 24 admitted)

19 BY MR. PALAL:

20 "Q Okay. I'm going to show you State's Exhibit 1 and
21 let me zoom out for you. Okay, what are we looking at here?

22 "A That looks like an east-facing view of Charleston
23 towards Torrey Pines. It looks like a photograph taken from
24 the center of the west median.

25 "Q And I'm showing you State's 3. What are we looking

1 at here?

2 "A This is a west-facing view of Charleston Boulevard
3 at the intersection with Scholl.

4 "Q Okay. So this black car here and there's a red car
5 next to it, those are two cars that were in your diagram; is
6 that correct?

7 "A Yes.

8 "Q And so this is the median here. That's the bottom
9 corner. That would be connected to the left-hand turn lane
10 where it was reported where you saw the SUV was?

11 "A Correct.

12 "Q When you do the measurements in your diagram, can
13 you tell us what the distance is from the sidewalk to the
14 median where the SUV would have been parked?

15 "A The straight line distance diagonally or straight
16 to the sidewalk from the edge?

17 "Q Yeah.

18 "A I would say between 36 and 40 feet.

19 "Q And so how many steps does it take for someone of
20 your size, or your height, I should say, to get from the
21 corner -- or, I'm sorry, the sidewalk to where the SUV was?

22 "A The end of the median or like -- if we're looking
23 for someone who will make it to the passenger side of the
24 vehicle, we'd have to add the width of the vehicle.

25 "Q Right. So I'm just asking how many steps it would

1 take someone of your height to walk from -- "
2 THE COURT: "How tall are you?"
3 THE WITNESS: "I'm 5'11."
4 THE COURT: "Okay."
5 THE WITNESS: "And the answer is about 13 steps."
6 BY MR. PALAL:
7 "Q Thirteen steps to the median?
8 "A Yes.
9 "Q Okay, thank you. Showing State's 5.
10 "A That is a south-facing view of the point of rest
11 for the victim. You can see his shoe is there in the
12 collision scene in the number one travel lane.
13 "Q And showing you State's 7, I know you just pointed
14 to the shoes, did you also see a headphone? And I can zoom in
15 if you can't see it.
16 "A Yeah, there's a headphone there.
17 "Q Can you please circle it?
18 "A (Witness indicates on screen).
19 "Q Thank you. Now I'm showing you State's 8. You
20 said that you saw a candy wrapper on the scene; is that
21 correct?
22 "A Yes.
23 "Q And that was located near the shoes and the
24 headphone?
25 "A Yes.

1 "Q Now I'm showing you State's 10. Excuse me,
2 State's 9. I apologize. Is this one of the shoes you
3 referenced?

4 "A Yes.

5 "Q As well as State's 10. Is that the other shoe?

6 "A Yes.

7 "Q And State's 11, is this a close-up of the
8 headphone?

9 "A Correct.

10 "Q Now, State's 13, can you explain for the ladies
11 and gentlemen here what we're looking at and what is the
12 significance of the cones?

13 "A When we identify evidence, the first thing we do
14 is we lay down cones. Then after we've laid down cones, then
15 we'll paint over it so that when we take photographs of it
16 later you can more -- you can see the evidence that we saw.
17 Like I said before, a lot of times this friction evidence on
18 the asphalt is really difficult to see, even for people who
19 have investigated accidents before. Now, this one, what we
20 did is we just placed the cones a few steps apart on the
21 evidence that we had found at the scene and then we did here
22 -- I believe we put them out early because the sun was going
23 down and we didn't want to wait any longer to put those cones
24 down. That's why you don't see the paint there alone with
25 the cones.

1 "Q So we see -- let me count briefly. We see nine
2 cones going in the diagonal to the right. So right before
3 these cones start, right where my pen is now, it should be the
4 general location where the SUV was. Correct? And on the left
5 side of these cones is where the SUV -- was when it was parked
6 near the intersection? Sorry, not the intersection, near the
7 turning lane median.

8 "A They originate in the left turn lane, yes.

9 "Q Thank you. And we see about 10, 11 cones going up
10 diagonally; is that correct?

11 "A Correct.

12 "Q And would those correlate with the original scuff
13 that you saw, the first scuff that we talked about that I
14 believe was about 55 feet --

15 "A Correct.

16 "Q -- is that correct? Now I'm showing you State's
17 14. As we look up, I'm going to zoom in for a second. After
18 we get past the diagonal cones that I just showed, we see six
19 cones laid down on their sides. What do those signify?

20 "A When we have different units in a collision scene,
21 we'll put cones up for one unit, cones down for another unit.
22 So the cones that are up, we believe that we have marked as
23 the pedestrian or the victim in this case. The cones down
24 would depict the vehicle involved in the case, so we believe
25 that the tire mark was made by the vehicle in this case.

1 "Q Okay. So now showing you State's 15, which would
2 be one from the opposite view. So this would be looking east;
3 is that correct?

4 "A That is correct.

5 "Q So we see the turn lane at the top. We see the
6 original scuff going diagonal. And then we see six cones on
7 their side where the tire mark is?"

8 THE READER: Can you zoom out?

9 MR. PALAL: Oh, I apologize. And just let me
10 repeat that.

11 BY MR. PALAL:

12 "Q So we see the turn lane up top. We see the
13 original scuff going diagonal. And then we see six cones on
14 their side and that's where the tire mark is?

15 "A Yes.

16 "Q And then showing you State's 16, these cones
17 starting at the top left going straight, those are
18 representing what?

19 "A Next to the shoes.

20 "Q No, I apologize. The ones, 1 and 2, about two
21 before the shoes.

22 "A Oh. That's body scuff.

23 "Q And then there's three after those?

24 "A Also body scuff.

25 "Q And then you stated those correlate with the final

1 resting place; is that correct?

2 "A Correct.

3 "Q Did you see -- did you get a close-up of the
4 victim's shoe, which is signified in State's 18? Is that
5 correct?

6 "A Yes.

7 "Q And you had previously looked at these photos?

8 "A I have.

9 "Q And did you find those consistent with those going
10 against the road, rubbing against the road?

11 "A I did.

12 "Q And then really quickly, I'd just like to show you
13 State's 19, which is after dark now. And now you've not only
14 used cones but spray paint; is that correct?

15 "A Correct.

16 "Q And what does the green spray paint signify?

17 "A Green was the color assigned to the suspect vehicle
18 and orange was the color assigned to the victim.

19 "Q So I'm going to show you State's 20. These are the
20 final -- these are the final set of cones; correct?

21 "A Yes.

22 "Q And these final three represent the thicker
23 pedestrian stuff that you delineated in the graph?

24 "A Yes. We also separated the marking with a solid
25 line instead of dashed line. Generally when we mark a scene,

1 when you see a solid line that could be friction, sliding
2 friction. A dotted line means either side slip or something
3 like it's being dragged. Something -- it's not a -- it's not
4 a sliding friction. Something that we wouldn't use, that we
5 wouldn't typically use a sliding friction formula on, so that
6 when we're looking at it in pictures later we'll note it to
7 sliding friction on a solid line.

8 MR. PALAL: "Thank you. That concludes my direct
9 examination."

10 THE COURT: "Defense, any cross-examination?"

11 MR. LEVENTHAL: "No, Your Honor. Thank you."

12 THE COURT: Ladies and gentlemen of the jury, this
13 is the time when I would generally ask you for questions.
14 However, because this is read testimony, that's not possible.

15 So at this time I will excuse Mr. DiGiacomo.

16 MR. DiGIACOMO: Thank you.

17 THE COURT: State, you may call your next witness.

18 MR. BINU: Thank you, Your Honor. The State calls
19 Jeffery Abell.

20 THE COURT: Jeffery Abell.

21 **JEFFERY ABELL**

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

24 THE CLERK: Thank you. Please have a seat. State
25 and spell your first and last name for the record.

1 THE WITNESS: It's Jeffery Abell. J-e-f-f-e-r-y.
2 A-b-e-l-l.
3 THE COURT: Thank you, sir.
4 State, your witness.
5 MR. PALAL: Thank you.
6 DIRECT EXAMINATION
7 BY MR. PALAL:
8 Q Sir, do you currently work for the Las Vegas
9 Metropolitan Police Department?
10 A No. I'm retired.
11 Q How long have you been retired for?
12 A Since 2016.
13 Q Did you fly out here to testify today?
14 A Yes.
15 Q Thank you for that. Back in 2013, were you working
16 for the Las Vegas Metropolitan Police Department?
17 A Yes.
18 Q In what capacity?
19 A I was a Robbery detective.
20 Q And were you -- in your capacity as a Robbery
21 detective, were you called out to a robbery on Torrey Pines
22 and Charleston?
23 A Yes.
24 Q Is that here in Clark County, Nevada?
25 A Yes.

1 Q And when a squad gets assigned to a robbery, are
2 there assignments divvied up?

3 A Yeah. We all take different roles on the scene.

4 Q Is it fair to say that somebody may be looking for
5 videos, somebody may be talking to witnesses, somebody may be
6 just looking for pieces of evidence?

7 A Correct.

8 Q And in this particular instance, what was your role
9 at the scene?

10 A I initially did a couple interviews. I interviewed
11 the responding officer and a couple witnesses.

12 Q Okay. While you were out at the scene, did you
13 learn that the victim in the case had passed away?

14 A Yes.

15 Q As a result of that, did the case get assigned from
16 Robbery to the Homicide Division?

17 A Yes, it did.

18 Q And you weren't part of the Homicide Division at
19 that point?

20 A No.

21 Q So that was on March 16th. On March 17th, did you
22 have a conversation with somebody assigned to the homicide
23 in this case?

24 A Yes.

25 Q Who was that?

1 A Detective Sanborn.

2 Q Okay. And when you talked to Detective Sanborn,
3 did he mention if somebody by the name of Michael Solid was
4 a possible suspect?

5 A Yes.

6 Q Did he also inform you that there was another
7 unknown white suspect as well?

8 A Yes.

9 Q And at some point did Detective Sanborn give you
10 some intelligence that Michael Solid was known to associate
11 with a white male that was named Patrick Deluise? (phonetic)

12 A Yes.

13 Q And as a result of the information that you
14 received from Detective Sanborn, did you do some surveillance?

15 A I did.

16 Q And was part of the surveillance that you did at
17 the known residence of Michael Solid?

18 A Yes.

19 Q And I'm going to --

20 MR. PALAL: Your Honor, by stipulation the parties
21 have agreed to admit State's Exhibits 108 and 109.

22 THE COURT: Any objection?

23 MR. LEVENTHAL: No, Your Honor.

24 THE COURT: So admitted. You may publish.

25 (State's Exhibits 108 and 109 admitted)

1 BY MR. PALAL:

2 Q I'm actually going to show you first State's
3 Exhibit 108. Showing you just the bottom part of State's 108.
4 There is an address marked on the map as 7467 Hawk Shadow.
5 Is that correct?

6 A Correct.

7 Q And what was the significance of that address?

8 A That was the address I had for Michael Solid.

9 Q Okay. And then if we zoom out we see north, just
10 north of Mr. Solid's residence we have 5599 Aleman Drive.
11 Is that correct?

12 A Correct.

13 Q Now I'm going to show you State's Exhibit 109. And
14 then in State's 109 we have 5503 Aleman Drive and 5599 Aleman
15 Drive. Is that correct?

16 A Correct.

17 Q Now, when you conducted your surveillance, what
18 were you looking for?

19 A I was looking for an address associated with
20 Patrick Deluise.

21 Q And was that address associated with Patrick
22 Deluise the 5503 Aleman Drive?

23 A Yes, it was.

24 Q And did you drive up there, did you conduct
25 surveillance?

1 A I did. I pulled in the subdivision to actually
2 look for the Ford Explorer.

3 Q So you were aware at this point that there was a
4 white Ford Explorer associated with the case?

5 A Yes.

6 Q And so what you're doing is you're looking at
7 possible people who you think may be involved and trying to
8 see if you can find the white Ford Explorer?

9 A Correct.

10 Q And we mentioned that the 5503 Aleman Drive address
11 was the address associated with Patrick Deluise. Did you go
12 there trying to see if you could find the white Ford Explorer?

13 A I did.

14 Q Did you see the white Ford Explorer near Mr.
15 Deluise's house?

16 A I seen one parked down at the end of the street in
17 the cul-de-sac.

18 Q And that would be -- would that be near the 5599
19 Aleman Drive address?

20 A It was right in front of the house. Yes.

21 Q When you saw what might be a possible suspect
22 vehicle, what did you decide to do?

23 A I drove down and see if I could get a plate off the
24 vehicle to see who it belonged to. There was no plates on it.
25 So I drove back up the street and then I parked my vehicle,

1 which is an unmarked car, and walked down the sidewalk and
2 looked around the vehicle for any damage or anything
3 associated with what happened at the incident. And then I
4 got the VIN number off because there was no plates on the car.

5 Q Okay. So there was no plates on the vehicle and
6 you go down to the vehicle. Are you dressed in a police
7 uniform?

8 A No, it's plain clothes.

9 Q So in a plain clothes capacity you go and you're
10 able to see the VIN; is that correct?

11 A Yes.

12 Q And did you run the VIN?

13 A I called dispatch and had them run it.

14 MR. PALAL: And, Your Honor, I'm going to move into
15 evidence what's been stipulated to by the parties as State's
16 Exhibit 104.

17 THE COURT: As it was stipulated to, I will admit
18 it. You may publish.

19 (State's Exhibit 104 admitted)

20 MR. PALAL: Permission to approach?

21 THE COURT: Granted.

22 MR. PALAL: I'll just publish, Your Honor.

23 BY MR. PALAL:

24 Q State's Exhibit 104 is a certified record from the
25 Department of Motor Vehicles. Sir, when you learned -- when

1 you had the VIN run, obviously I'm not going to -- I don't
2 think anybody expects you to remember the exact VIN number.

3 A Right.

4 Q But when you had it run, do you recall who the VIN
5 number returned that car being registered to?

6 A Yes. Richard and Jacob Dismont.

7 Q Okay. And we see it here, but do you recall the
8 address that the vehicle was associated with?

9 A It's the 5599 Aleman.

10 Q And so the vehicle was parked in front of 5599
11 Aleman and then was also associated with that specific
12 address?

13 A Yes.

14 Q So what did you do after that?

15 A I went back to my vehicle. Well, actually I was in
16 my vehicle already because I just called dispatch. So I just
17 sat there for awhile until a vehicle pulled out of the garage.
18 It was a silver, smaller vehicle. I followed it around the
19 neighborhood and out of the neighborhood so I could get the
20 plate off of it, just to make sure who lived at that address.

21 Q And just to stop you there. So you said you saw
22 a silver vehicle pull out. Are you talking about a silver
23 vehicle pulling out from the 5599 Aleman Drive?

24 A Yes.

25 Q Okay. So you decided to follow the silver vehicle

1 to see if maybe you could make an identification or the
2 address?

3 A Yes.

4 Q And what happened then?

5 A After I got the plate, I came back to set up
6 surveillance again between the two houses. And when I got
7 back in the neighborhood, the white SUV or the white truck,
8 Ford Explorer was gone. It was no longer there.

9 Q So what did you do?

10 A I drove around the neighborhood to see if I could
11 spot it because it had only been, you know, a minute or so, so
12 I could identify who was driving it, and I could not find it.

13 Q Then did you see anything else while you were out
14 in the neighborhood that got your attention?

15 A Well, after I couldn't locate the Ford Explorer,
16 I came back up Timber Creek back to the neighborhood. And as
17 I was going northbound on Timber Creek, I saw somebody jump
18 the wall just like at the side of the 5599 Aleman Drive
19 address. It was a white male.

20 Q So I'm going to zoom in on State's Exhibit 109. We
21 have the 5599 Aleman Drive, which is at the bottom end of the
22 cul-de-sac; correct?

23 A Yes.

24 Q And so you said you saw somebody jump the --

25 A Like the back yard wall.

1 Q The back yard wall. And, I'm sorry, could you
2 describe generally what that person looked like?

3 A It was a white male, late teens, early 20s, medium
4 build, 6'1", 6'2"-ish.

5 Q Okay. And then what did you see the person do?

6 A After he got over the wall, he reached back over
7 the wall and grabbed a bicycle and pulled it over the wall.

8 Q Was there anything distinct about the bicycle?

9 A It was -- as big as he was, it was tiny. It was
10 like a kid's bike, so I noticed that.

11 Q What did you do after you saw the person jump the
12 fence and get on a bicycle?

13 A Well, I was still driving north on Timber Creek and
14 I saw him ride his bike westbound towards Tenaya Way on like
15 a little path behind these apartment complexes.

16 Q And, sir, if I may interrupt you. There's a mouse.

17 A Oh, okay.

18 Q And if you use that, you should be able to show us.

19 A So he's riding his bike. I don't know if this is
20 a path or if that's a wash, but he rode just north of this
21 apartment complex towards Tenaya Way. So I turned around and
22 came back down and went westbound on Russell so I could try
23 to intercept and see which way he went. And as I came up
24 to Tenaya Way, he was right at Russell riding his bike
25 southbound.

1 Q And I'm going to zoom out further. So what did you
2 do after you saw him riding off?

3 A Well, I turned northbound because I didn't want to
4 be, like, right on him following him to spook him, and watched
5 him in my rearview mirror as he continued riding his bike
6 southbound and he turned into this neighborhood right here.

7 Q And at that time you started to say you lose visual
8 contact with him?

9 A Yes.

10 Q So do you do anything to try and regain visual
11 contact or figure out where he's gone?

12 A Yeah. I waited about 30 seconds and I turned back
13 around, came back down and I entered the same neighborhood he
14 entered and came back down towards actually Michael Solid's
15 house.

16 Q And did you have a visual of Michael Solid's house
17 from where you were positioned?

18 A I could see the front of it, yes.

19 Q So you couldn't see the front of the -- or you
20 couldn't see the actual house or the entrance, but you could
21 see the front yard, driveway area?

22 A Yes.

23 Q Okay. When you were there, did you see anything
24 that got your attention?

25 A Well, the same bicycle that the white male was

1 riding was in the driveway laying on its side.

2 Q About how long was the bicycle laying there?

3 A Five, ten minutes at the most.

4 Q And to be fair, you don't know what was going on

5 during that time period; do you?

6 A I have no idea.

7 Q At some point do you see the rider of the bicycle

8 leave Mr. Solid's residence?

9 A Yes. I could see him walk down the driveway and

10 get on his bike and then he started riding right towards me.

11 Q Okay. And when he was riding that bike towards

12 you, did you get a look at him?

13 A Yes, I did.

14 Q Now, previously you had said that Patrick Deluise

15 was the person that you were kind of scouting to see if he

16 had a Ford Explorer; correct?

17 A Yes.

18 Q Were you able to tell whether or not the person on

19 the bike was Patrick Deluise?

20 A It was not.

21 Q Did you make an attempt to figure out who was on

22 the bike?

23 A Not really. I just followed him. He went back up

24 Tenaya back towards the bike path up here and then I lost

25 sight of him, so I didn't know who he was.

1 Q Okay. At some point later did you run or pull up
2 a photo identification of Jacob Dismont?
3 A I did through DMV.
4 MR. PALAL: And this has been admitted per
5 stipulation, 53.
6 THE COURT: So admitted.
7 (State's Exhibit 53 admitted)
8 BY MR. PALAL:
9 Q And were you able to determine whether or not the
10 person riding the bike was Jacob Dismont or not?
11 A Yes, it was him.
12 MR. PALAL: I'm just going to publish State's 53.
13 BY MR. PALAL:
14 Q And this is the photo -- this is a photo of the
15 person that you pulled up?
16 A Yes, it was.
17 Q Okay. All right. At some point after that did you
18 assist in a search warrant of the 5599 address?
19 A Yes.
20 Q And was that on May 18th, 2013?
21 A Yes.
22 Q So when I say 5599, we're talking about the house
23 where the Ford Explorer was initially and where you saw the
24 bike and Mr. Dismont go to and from?
25 A Yes.

1 Q Okay. While at the scene, did you notice a bike
2 that was consistent with the bike you saw Mr. Dismont riding?
3 A Yes. It was in the back yard.
4 Q And I'm going to show you what's being admitted per
5 stipulation as State's Exhibit 152 -- or State's Exhibits 51
6 and 52.
7 THE COURT: So admitted.
8 (State's Exhibits 51 and 52 admitted)
9 BY MR. PALAL:
10 Q Is this the bike that we're referring to?
11 A Yes, it is.
12 Q And is it by the back yard wall?
13 A Yes, it is.
14 Q And I'm going to show you State's Exhibit 52. Is
15 that just another view of the same bike?
16 A Yes.
17 Q Now, when you saw the vehicle initially, the Ford
18 Explorer initially in front of Mr. Dismont's house, you said
19 it didn't have a driver's license; is that correct? I mean,
20 sorry --
21 A It didn't have a plate.
22 Q It didn't have a license plate. It didn't have a
23 license plate; is that correct?
24 A Correct.
25 Q So did you notice whether or not it had any decals

1 or stickers on it?

2 A I didn't see any.

3 Q So I'm going to show you what's being admitted by
4 stipulation State's Exhibit 34.

5 THE COURT: So admitted.

6 (State's Exhibit 34 admitted)

7 BY MR. PALAL:

8 Q So, State's Exhibit 34, we see the Ford Explorer
9 with a license plate. You're saying that was not on the
10 vehicle?

11 A It was not.

12 Q And we see some decals on the back window. Do you
13 recall if that was on the vehicle?

14 A They were not.

15 MR. PALAL: Okay. The State will pass the witness.

16 THE COURT: Defense.

17 MR. MARCHESE: No questions, Your Honor.

18 THE COURT: All right. Ladies and gentlemen of the
19 jury, do you have any questions for this witness?

20 Seeing none, you are free to go, Mr. Abell. Thank
21 you for being here.

22 THE WITNESS: Okay, thank you.

23 THE COURT: The State can call their next witness.

24 MS. BOTELHO: The State calls Travis Ivie.

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TRAVIS IVIE

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

THE CLERK: Thank you. Please have a seat. State
and spell your first and last name for the record.

THE WITNESS: My first name is Travis, T-r-a-v-i-s.
And my last name is Ivie, I-v-i-e.

THE CLERK: Thank you.

THE COURT: State, your witness.

MS. BOTELHO: Thank you.

DIRECT EXAMINATION

BY MS. BOTELHO:

Q Sir, how are you employed?

A I am employed currently with the Las Vegas
Metropolitan Police Department.

Q And how long have you worked for the police
department?

A Approximately 22 years.

Q Are you currently a detective?

A No, I'm not. I'm a sergeant.

Q Okay. Were you a detective in 2013?

A Yes, I was.

Q Specifically, May 16th of 2013?

A Yes, I was.

Q What unit were you assigned to?

1 A The Homicide section.

2 Q How long were you with Homicide?

3 A Approximately eight years.

4 Q On that particular day, May 16th, 2013, did you

5 have a partner when you were working with Homicide?

6 A Yes, I did.

7 Q Who was that?

8 A Detective Tate Sanborn.

9 Q And, sir, when you were working for the Homicide

10 Unit, did you work in teams or squads?

11 A Yes.

12 Q Okay. Was that the case on the date that I've been

13 asking you about?

14 A Yes.

15 Q At some point were you on that date and Detective

16 Sanborn and your squad assigned to investigate a case

17 involving the homicide of a 15-year-old boy by the name of

18 Marcos Arenas?

19 A Yes, we were.

20 Q Were you assigned as a lead detective, along with

21 your partner, Detective Sanborn?

22 A Yes.

23 Q That same day was your Homicide squad or your unit

24 called over or requested by Robbery detectives after Marcos

25 was pronounced dead?

1 A Yes, we were.

2 Q So prior to your unit, Homicide, being called in,
3 was Robbery working the case?

4 A Correct.

5 Q Okay. And is that protocol for Homicide to take
6 over once the victim passes away?

7 A Yes.

8 Q Was your first order of business, you and your
9 squad, to go to UMC, University Medical Center, to be briefed
10 by Robbery detectives?

11 A Yes.

12 Q And at some point once your Homicide squad assumed
13 responsibility for the investigation, did you all divide up
14 your tasks concerning the investigation?

15 A Yes, we did.

16 Q Detective, specifically were you assigned to
17 document Marcos's body?

18 A Yes, inside UMC.

19 Q And, of course, was there a crime scene analyst
20 that was present with you?

21 A Yes, there was.

22 Q And so were photographs taken and other
23 documentation provided?

24 A Yes.

25 Q Or done. The following day did you attend Marcos's

1 autopsy?

2 A Yes.

3 Q Is it typical for Homicide detectives to go and be
4 present at an autopsy?

5 A Yes, it is.

6 Q On May 17th of 2013, did you come into contact with
7 two individuals by the name of Desirie Jones and Robert
8 Taylor?

9 A Yes.

10 Q Did you call them or did they call you? How did
11 you make contact with these people?

12 A They actually phoned my office and they reported
13 to me.

14 Q Okay. And were they identified as witnesses in
15 terms of they had information concerning the suspects involved
16 in the homicide that you were investigating?

17 A Correct.

18 Q Specifically, had they watched some surveillance
19 footage and did they want to give information to Homicide?

20 A Yes. There was a media release where video was
21 released and they had information from that video that they
22 watched.

23 Q Okay. During your initial conversation with
24 Desirie Jones and Robert Taylor, were you provided a phone
25 number to the girlfriend of Michael Solid?

1 A Yes, I was.

2 Q Do you see Michael Solid here in court today?

3 A I do.

4 Q Could you please point to him and describe
5 something he's wearing?

6 A He's at the defendant's table wearing a black suit
7 and I believe a grey shirt.

8 MS. BOTELHO: Your Honor, please let the record
9 reflect identification of the defendant.

10 THE COURT: So reflected.

11 BY MS. BOTELHO:

12 Q Sir, was that phone number (702) 379-7494?

13 A Yes, it was.

14 Q And did those individuals, Desirie Jones and Robert
15 Taylor, give you the identity of the black male adult suspect
16 that they had seen on surveillance videos?

17 A Yes. They identified the defendant.

18 Q Did they also tell you where Mr. Solid lived?

19 A Yes.

20 Q At some point did you do a tape-recorded interview
21 with both Ms. Jones and Mr. Taylor?

22 A Yes, I did.

23 Q Did you and other Homicide detectives -- well,
24 actually, let me back up a little bit. After speaking with
25 both Ms. Jones and Mr. Taylor, did you convey the information

1 that you obtained from them to your partner?

2 A Yes. I gave that information to Detective Sanborn.

3 Q Okay. And is that common for Homicide detectives?

4 Of course you're investigating something as a squad. Would

5 you usually share information as you obtain it?

6 A Yeah, because basically me and Detective Sanborn

7 are the case agents. Our team or even other sections like

8 Robbery, we have to ascertain all that information from them

9 because inevitably we are the people responsible for the

10 investigation of the entirety of the investigation and case.

11 Q Okay. And so did you provide Detective Sanborn

12 specifically with the phone number to Michael Solid's

13 girlfriend, (702) 379-7494?

14 A I did.

15 Q Turning your attention to May 18th, 2013, at

16 approximately 7:30 hours, did you and other detectives respond

17 to a location, a home, 7434 (sic) Hawk Shadow Avenue?

18 A We did.

19 Q And there did you make contact with an individual,

20 the homeowner by the name of Kayrn Licari?

21 A Yes, I did.

22 Q Was a search warrant obtained by either you or

23 someone on your team to search 7467 Hawk Shadow Avenue?

24 A Yes. A search warrant was acquired.

25 Q And did you and other detectives assist in

1 executing that warrant?

2 A Yes.

3 Q Or executing -- actually searching that residence?

4 A Correct.

5 Q Showing you, Detective, what's been marked and

6 admitted as State's Exhibit Number 31, do you recognize what's

7 depicted in this exhibit?

8 A I do.

9 Q And what do you recognize it as?

10 A The inside of the Terrible Herbst at the corner of

11 Charleston and Torrey Pines.

12 Q Okay. Is this a still photo from the surveillance

13 from that Terrible's convenience store?

14 A Correct.

15 Q And does it show Mr. Solid --

16 A Yes.

17 Q -- inside the store?

18 A Yes, it does.

19 Q Calling your attention to this kind of white

20 reflective item here, were you and Detective Sanborn able to

21 ascertain what that was?

22 A We believed it to be a necklace with a Batman

23 symbol.

24 Q So when you searched the known residence of Mr.

25 Solid, 7467 Hawk Shadow Avenue, were you or other detectives

1 able to locate that Batman necklace?

2 A No, we were not.

3 Q Or a necklace similar to that?

4 A We found one that was similar. Correct.

5 Q But as it stands right now, are you sure or do you
6 know whether the necklace that you recovered was in fact what
7 he was wearing on the surveillance?

8 A No, I do not.

9 Q Okay. After the search of that residence, also
10 pursuant to a search warrant, did you get a sample of Jacob
11 Dismont's DNA?

12 A Yes, I did.

13 Q And how was that done?

14 A So it comes in a envelope and inside the envelope
15 there are several different parts. There are gloves. They're
16 a little folded box. There's also two sample -- for lack of
17 a better term, long --

18 Q Q-tips?

19 A Q-tips. That's the correct terminology. Along
20 with some instructions inside and a consent form. So
21 basically you open it up, you put your gloves on so everything
22 is sterile. You form out your box, you put your name on, the
23 person that you're taking the sample from. You then use the
24 Q-tips inside the defendant's mouth, depending on -- I always
25 do it for about 10 seconds, one on one side, to saturate it

1 with your saliva which has a large amount of DNA inside of
2 it. You then use the other one. You put it in the box.
3 You then use the other one, do the other side. You then
4 put that sample in the box. You close the box. You put it
5 in the envelope. You seal the envelope with a seal. And
6 then of course on the outside of it it has all kinds of
7 information, such as date, time, who you took the sample from,
8 and of course our information, the person that took it from
9 him.

10 MS. BOTELHO: Brief indulgence, please.

11 THE COURT: Sure.

12 BY MS. BOTELHO:

13 Q And, Detective, I just want to clarify. I need to
14 circle back real quick. When I asked you about responding to
15 an address on May 18th, 2013, I may have misspoken about 1730
16 hours. The address that I'm asking about is 7467 Hawk Shadow
17 Avenue, the known residence of Mr. Solid.

18 A Correct.

19 Q Is that the location that you searched?

20 A Yes.

21 Q And it was at that place that you located an
22 individual, the homeowner by the name of Kayrn Licari?

23 A Correct.

24 Q And that is the residence for which you or your
25 team acquired a search warrant?

1 A Correct.

2 Q And that is the location where you did not locate
3 a Batman --

4 MR. MARCHESE: Objection, leading. Asked and
5 answered.

6 MS. BOTELHO: I'm clarifying, Your Honor, because
7 I'm clarifying the record. I used two different addresses.

8 THE COURT: Okay. Overruled. I'll allow it for
9 that purpose.

10 MS. BOTELHO: Thank you.

11 BY MS. BOTELHO:

12 Q This is actually my final question. You were not
13 able to locate a Batman necklace at that location; correct?

14 A Correct.

15 Q Okay, thank you. So going back to -- you just
16 described for the jury how it is that a DNA sample is taken
17 and how you did it for Mr. Solid (sic). After you obtained
18 the sample, what do you do with it?

19 A Basically you seal it. You have a sealed envelope
20 with an evidence sticker on it. It stays in your custody so
21 chain of custody is not broken and you impound it at a drop
22 chute or evidence chute, which is a secured location at any
23 area command, or for us it would be headquarters right here
24 on MLK.

25 Q Okay. So when you say chain of custody is not

1 broken, are you meaning to say that for that particular buccal
2 swab prior to impound it was in your sole care, custody and
3 control?

4 A Correct.

5 Q And then you impounded it and stored it in a
6 location where, you know, not just everyone has access to it?

7 A Correct. It's almost like a mailbox. You put it
8 in and security can't get into it. Or you push a lock on
9 an actual. No one else can get into it except the evidence
10 technician when they come and clean out the evidence vault.

11 Q Okay. At some point did you also make contact
12 with the defendant, Mr. Solid, and obtain a search warrant
13 to obtain a buccal with his DNA?

14 A Yes, we did.

15 Q On May 19th of 2013, did you respond to the crime
16 lab with Detective Sanborn to process what you had identified
17 as Mr. Dismont's 2002 white Ford Explorer?

18 A Yes, we did.

19 Q And did you personally watch while crime scene
20 analysts processed the vehicle?

21 A Yes.

22 Q Did you assist in searching it as well?

23 A Yes, we did.

24 Q On May 22nd of 2013, did you interview an
25 eyewitness by the name of Christine Bullard?

1 A Yes.

2 Q And May 22nd of 2013, about twelve o'clock, did you
3 interview an individual by the name of Matthew Nicholas?

4 A Yes, we did.

5 Q That same day, later that day did you make contact
6 with an individual by the name of David Doyle?

7 A Yes, we did.

8 MS. BOTELHO: I have nothing further. Thank you,
9 Your Honor.

10 MR. MARCHESE: No questions, Your Honor.

11 THE COURT: Okay. Ladies and gentlemen of the
12 jury, any questions for this witness?

13 Seeing none, Mr. Ivie, you are excused. Thank you
14 so much. Have a great day.

15 THE WITNESS: Thank you.

16 THE COURT: The State may call their next witness.

17 MR. PALAL: Thank you, Your Honor. The State calls
18 Amy Nemcik.

19 **AMY NEMCIK**

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

22 THE CLERK: Thank you. Please have a seat. State
23 and spell your first and last name for the record, please.

24 THE WITNESS: Amy, A-m-y. Nemcik, N-e-m-c-i-k.

25 THE CLERK: Thank you.

1 THE COURT: Thank you. State, your witness.

2 MR. PALAL: Yes, Your Honor. Court's indulgence.

3 THE COURT: Of course.

4 DIRECT EXAMINATION

5 BY MR. PALAL:

6 Q Good morning, Ms. Nemcik.

7 A Good morning.

8 Q How are you employed?

9 A I am a senior crime scene analyst with the Las
10 Vegas Metropolitan Police Department.

11 Q Okay. And what does a crime scene analyst do?

12 A The main purpose of our position is to document in
13 a very neutral fashion scenes that we respond to. So we use
14 of photography. We also take copious notes and then generate
15 a report. And then I identify items of potential evidentiary
16 value.

17 Q All right. And do you have any specialized
18 training or experience in order to be a crime scene analyst?

19 A Personally, I have a bachelor's degree. We go
20 through a very extensive crime scene analyst academy and then
21 we also go through a field training program. The actual
22 number of weeks varies by academy. I've been on the job for
23 seventeen and a half years and throughout that time there's
24 continuing education that we go through continued training,
25 both hands on as well as academic. And we have constant

1 oversight from supervisors, co-workers, etcetera.

2 Q And you said you were a senior crime scene analyst.
3 What's the difference between the senior crime scene analyst
4 and a regular crime scene analyst?

5 A To promote to the position of senior crime scene
6 analyst you have to have a minimum of four years experience
7 with Metro and then you also go through a testing period,
8 as well as an additional probationary period. So there's
9 additional testing that goes on. Once you complete that
10 testing successfully, then you have additional training and
11 additional oversight for another year. And then this is the
12 highest ranking position in the field for crime scene
13 analysts.

14 Q And what are the duties of a crime scene analyst?

15 A As I mentioned earlier, documenting crime scenes,
16 preserving items of potential evidentiary value for further
17 analysis, and then presenting that information in this
18 setting.

19 Q On May 19th, 2013, were you called out to Metro's
20 crime processing lab in order to process a 2002 Ford Explorer?

21 A I was.

22 Q And do you work alone or do you work with somebody?

23 A I had another crime scene analyst with me by the
24 name of Erin Taylor.

25 Q And is it common for you when you're processing a

1 vehicle or other evidentiary items to work with a partner?

2 A It depends on the situation and the staffing. It's

3 -- it depends on the situation and the staffing. Sometimes

4 we're able to have someone else work with us, but not always.

5 Q And when you do have somebody with you, do you guys

6 divide up roles or how does that work?

7 A We do. We try and split it up just to make things

8 move more efficiently. So with this particular incident

9 that we're discussing, I was in charge of taking all the

10 photographs, generating the report. I did some fingerprint

11 processing. Erin impounded multiple items of potential

12 evidentiary value.

13 Q Okay.

14 MR. PALAL: Now, Your Honor, I believe that State's

15 Exhibits 34 through 48, photos from the processing, are being

16 admitted via stipulation.

17 MR. MARCHESE: That's a correct statement, Your

18 Honor.

19 THE COURT: All right. So admitted.

20 (State's Exhibits 34 through 48 admitted)

21 MR. PALAL: And then in addition to that there are

22 State's Exhibits 124 through 126. They're also photos from

23 the processing that I think are being admitted via stipulation

24 as well.

25 THE CLERK: You said 34 through 38?

1 MR. MARCHESE: No objection, Your Honor.

2 MR. PALAL: 124 through 126. I'm sorry.

3 THE COURT: And 34 through 38. Correct?

4 MR. PALAL: 34 through 48.

5 THE CLERK: 48. Thank you.

6 THE COURT: So admitted.

7 (State's Exhibits 124 through 126 admitted)

8 BY MR. PALAL:

9 Q So I'm going to show you State's Exhibits 34
10 through 36, and specifically I want to show you State's 35.
11 What are we looking at?

12 A That is the vehicle that was processed on that
13 date.

14 Q And --

15 A And that's in our garage.

16 Q So the car gets towed or the vehicle gets towed
17 from whatever its original location is to Metro's garage?

18 A Correct.

19 Q And transported there to assist in the ability to
20 process it for pieces of evidence?

21 A Depending on the case and the weather, we will
22 bring vehicles into our lab. Obviously an enclosed garage
23 is a lot more secure. We don't have to deal with wind, high
24 heat, lack of light. And we also will hold vehicles pending
25 search warrants as well. Our facility is a lot more secure

1 than a tow yard. So in this particular case this vehicle
2 came to our garage in this condition with those orange seals
3 in place.

4 Q And that was what I was going to get to next. I
5 see these orange sticker thingies on the vehicle. What are
6 those?

7 A Those are exactly that. They're big orange
8 stickers and on those stickers there's identifying
9 information, the detective that's in charge of the case, the
10 Event Number. And we place those over points of entry into a
11 vehicle or house; in this case obviously a vehicle. That way
12 we'll know if those seals have been broken that someone has
13 entered that vehicle illegally or without cause.

14 Q Okay. And then it appears when you get to the
15 vehicle the stickers are unbroken; is that correct?

16 A That is correct. All of those stickers were intact
17 when I first encountered this vehicle.

18 Q All right. And I'm going to show you State's
19 Exhibit 36. Is that just the same vehicle, just the other
20 side of it?

21 A Uh-huh. Yeah. That's the driver's side of the
22 vehicle.

23 Q And again, it has the unbroken stickers?

24 A Correct.

25 Q And then State's Exhibit 34, is that the same

1 vehicle?

2 A It is. That's the rear of the vehicle.

3 Q And also with the same sticker; correct?

4 A Yes, that is correct.

5 Q Okay. When you go -- in this instance when you

6 were going about examining the vehicle, what was the process

7 that you engaged in?

8 A The initial process was taking these initial photos

9 showing the overcall condition of the vehicle, that the

10 stickers were still intact. The stickers were then cut,

11 broken, and additional photos were taken of the interior of

12 the vehicle, documenting the items that were in there.

13 Fingerprint processing occurred, as well as a search for

14 potential evidence.

15 Q Okay. Now, I'm going to direct your attention to

16 State's Exhibit 37. You said one of the things you do is

17 look at the external aspects of the vehicle; is that correct?

18 A Yes.

19 Q And on State's Exhibit 37, are we looking at the

20 passenger side of the vehicle?

21 A We are. This is the passenger front door

22 primarily.

23 Q And you said on this particular case you were the

24 person taking photos; is that correct?

25 A That is correct.

1 Q Is there a particular reason why you documented
2 this particular area?

3 A I document everything, so there were multiple
4 photos taken. This just happens to be one of them.

5 Q I guess I'm going to direct your attention
6 specifically to what appears to be a defect in the passenger
7 -- I guess the rear passenger vehicle. Do you see that?

8 A I do.

9 Q And did you document that?

10 A I have it in the photograph. I don't -- I would
11 have to refer to my report if I did any additional
12 documentation on that.

13 Q Do you have your report on you?

14 A I do.

15 Q Would it refresh your recollection to look at your
16 report?

17 A Yes.

18 MR. PALAL: Any objection?

19 MR. MARCHESE: No objection.

20 THE WITNESS: Other than this photograph, it does
21 not appear that we did any additional work on that damage.
22 BY MR. PALAL:

23 Q Okay. But it was documented via photograph?

24 A Via photograph, yes.

25 Q Okay, perfect. So you took -- you said you take

1 external photos to document it, and then the next thing you
2 said is you look for latent prints?

3 A That is correct.

4 Q Can you tell us what a latent print is?

5 A Yes. So when you touch an object, the secretions
6 from your fingers leave fingerprints. Those aren't always
7 seen. You touch things all the time and you don't see
8 fingerprints all over the place. But, like, if you touch a
9 glass and then you kind of look at it with just the right
10 lighting, you can see that print. Latent simply means unseen.

11 So when we're looking for latent prints, we examine
12 a surface for suitability. Surfaces that are smooth and
13 somewhat clean are usually the best for being able to develop
14 and recover fingerprints because the ridges in your fingers
15 are so small, any surface with some texture or significant
16 amounts of dirt or debris will break up those lines that your
17 fingers leave when you touch a surface. So those surfaces
18 are not typically conducive for fingerprint development and
19 recovery. So when we refer to latent prints, there's
20 potential prints on pretty much every surface. What we do
21 is we add some powder to that surface to help visualize that
22 unseen print.

23 Q All right. And in this case did you develop latent
24 prints?

25 A We did. Both Erin Taylor and myself processed the

1 external sides of this vehicle for latent prints and we did
2 develop and recover some.

3 Q Okay. I'm going to show you what's been previously
4 admitted as State's Exhibit 41. What are we looking at here?

5 A That is the front passenger quarter panel. That's
6 the area right above the front passenger side wheel. And
7 there are a couple of pieces of tape there over what we
8 recovered and impounded as potential latent prints.

9 Q Now, it looks like it's kind of dirtier than when
10 we first saw the initial photos. What is that?

11 A That is the fingerprint powder that we use. We
12 typically look for color contrast, so black is the most common
13 color of powder that we use. And since this is a white
14 vehicle, the areas that we processed are going to look very
15 dirty, kind of like a graphite or coal color where that powder
16 has adhered to the surface.

17 Q Now, you said you use -- you put stickers on top of
18 that or tape on top of it?

19 A It's tape. It's clear tape.

20 Q And what do you do with the clear tape?

21 A As you can see, there's -- here --

22 Q We have a mouse now that you can --

23 A Oh, sorry. This area right here, you can see that
24 little number 2. What we do is once we put the tape down
25 over an area that we think has sufficient ridge detail or

1 fingerprint detail, we'll note a specific number, we'll assign
2 a specific number to that piece of tape to track it through
3 our evidence process. Then we'll photograph it in place so
4 we know where it came from, pull that tape off and lay it
5 onto a card. It's basically just a piece of card stock. That
6 then gets identification information from the case, the Event
7 Number, location, date, time, my information, and that then
8 gets impounded into our evidence vault.

9 Q And we've heard today that each event in -- at the
10 Las Vegas Metropolitan Police Department responds to gets an
11 individualized number. Is that correct?

12 A That is correct.

13 Q And back in 2013 you guys were using a system that
14 denoted the month, date and year; is that correct?

15 A That is correct.

16 Q And then you had a specific following -- trailing
17 four numbers that denoted the -- which number of event that
18 was for that day?

19 A That is correct.

20 Q And off the top of your head, do you remember what
21 the Event Number was in this case?

22 A No, I do not.

23 Q Would it refresh your recollection to look at your
24 report?

25 A Yes, please.

1 Q Can you please look at your report and tell us what
2 the Event Number was for this case?

3 A It was 130516-2758.

4 Q All right. So when you say you impound -- you put
5 it on card stock and you impound the print, you are doing this
6 under that Event Number?

7 A That is correct.

8 Q Are you the person that compares the fingerprint
9 to other known prints?

10 A No, I am not.

11 Q So you submit it and then presumably somebody else
12 comes along and they look at the prints that you develop and
13 they determine whether or not they can make a comparison?

14 A That is correct.

15 Q And when you're out in the field, do you -- you're
16 developing whatever prints you can, but you don't know if
17 they're going to be high enough quality necessarily for the
18 fingerprint analyst to use them; is that correct?

19 A That is correct. We do have policy in place. It's
20 called suitability guidelines. So we have -- if I'm out in
21 the field and I develop something that I think has enough
22 detail, I use that policy to determine whether or not that
23 amount of detail should be impounded and moved forward
24 through the system. That is the extent of what I do as far
25 as comparison or value assessment for those prints. All of

1 the rest of that, the actual comparison and analysis is done
2 by a latent print examiner.

3 Q I'm going to show you what's been admitted as
4 State's Exhibit 41. Can you please tell us what we're looking
5 at here?

6 A This is the rear passenger door. That's the door
7 handle. And directly above it there appears to be some latent
8 print tape on the door.

9 Q I'm going to zoom in. So again, these are -- was
10 this developed in a way similar to the other prints that we
11 were talking about?

12 A Yes.

13 Q And were they impounded in a similar way that the
14 other prints were impounded?

15 A Yes.

16 Q Now, beyond analyzing for prints, you had also
17 mentioned you all try and obtain some DNA samples as well?

18 A We look for other areas of potential evidentiary
19 value.

20 Q Okay. And what exactly does that mean?

21 A Depending on the information that we get from the
22 detective, as well as looking at the crime scene itself, our
23 expertise as crime scene analysts is based on seeing things
24 that maybe are a little bit out of place or are incongruous
25 or could potentially identify individuals or an area where

1 a vehicle was, so we look at a lot of different things. We
2 look for areas of DNA, body fluids, latent prints, as well as
3 property, weapons, footwear. It runs the gamut of things,
4 depending on the crime scene.

5 Q And in this case did you guys process the vehicle
6 in order to attempt to obtain DNA from the vehicle?

7 A We did take swabs of potential DNA.

8 Q Okay. And how do you go about taking the swabs?

9 A Basically we have really bit Q-tips or cotton-
10 tipped long swabs. We use distilled water or water from our
11 laboratory to slightly moisten the end of that cotton swab
12 and then we rub that over the area that we think might have
13 possible DNA. That is then capped so that swab is protected,
14 placed into an envelope and then that goes through our
15 evidence impound procedure as well. All of those also get the
16 same event number, the individual who is collecting the items,
17 their information, date; all of the additional information
18 that would be needed to identify where that came from.

19 Q Now, is it fair to say that in this particular
20 instance there are a number of areas where the vehicle was
21 swabbed in order to obtain potential DNA?

22 A Yes.

23 Q Off the top of your head, do you remember all those
24 areas?

25 A I could probably come pretty close --

1 Q Okay.

2 A -- but it would help to look back at my evidence
3 impound.

4 Q Okay. Do you mind looking at your --

5 MR. PALAL: Is there any objection to have her look
6 at the reports?

7 MR. MARCHESE: No, none.

8 BY MR. PALAL:

9 Q All right. So can you just look at it and just
10 tell us where the DNA was impounded from or obtained to be
11 collected from?

12 A We collected swabs from -- is it all right if I
13 continue to reference this?

14 Q Yes.

15 A Okay, thank you. We obtained swabs from the
16 exterior door handles of this vehicle, the exterior -- the
17 cargo lid in the back, the exterior handle of that, the
18 interior driver's door handle, the interior driver's armrest,
19 the steering wheel, the gear shifter, and then the interior
20 front passenger door handle, armrest and the grab handle,
21 which is that handle that's kind of up -- if you're sitting in
22 a vehicle it's up on kind of the corner. It kind of helps you
23 get in and out if it's a taller vehicle. The rear passenger
24 door handle on the inside, the interior rear passenger
25 armrest, the rear passenger grab handle again, and then there

1 was a water bottle, a Powerade bottle and a plastic travel mug
2 coffee cup that we swabbed as well.

3 Q And we had looked at some photos of the exterior of
4 the vehicle. I'm going to show you State's Exhibit -- what's
5 been admitted as State's Exhibit 124. You had mentioned that
6 DNA was obtained from some bottles inside the vehicle. Is
7 this the Aquafina bottle?

8 A Yeah, we recovered swabs. I do not know whether or
9 not they came back positive for DNA. That's, again, outside
10 of the realm of my job. But we did take swabs of the lip and
11 cap area of that bottle.

12 Q I'm sorry, I was being imprecise.

13 A That's okay.

14 Q So you grabbed this -- you swabbed the Aquafina
15 bottle that's depicted here?

16 A Erin did, but yes, it was swabbed for DNA.

17 Q Okay. And then similarly, you mentioned a Powerade
18 bottle and a blue plastic travel mug; is that correct?

19 A That is correct. Those are located in that rear
20 cup holder area there that's depicted in the photograph.

21 Q And as we mentioned before, you listed a really
22 long list of areas from which you swabbed, but you have no
23 idea whether or not DNA was obtained from those or any
24 particular swabs?

25 A That is correct.

1 Q Now, do you search the vehicle at all for -- do you
2 or Erin search the vehicle for any kind of presumptive blood?

3 A We did. We did an exam. We searched both the
4 interior and the exterior of the vehicle for blood and any
5 other body fluids that may be present.

6 Q And did you observe anything that you thought might
7 be presumptively blood?

8 A We did.

9 Q Where was that?

10 A That was on the undercarriage, so we had the tow
11 truck come back and lifted the vehicle for us so we could
12 actually look underneath the vehicle. On the passenger side,
13 I believe it was the running board, which is that little step
14 that's just on the outside that you step on to get into a
15 vehicle, there was an area that presumptively tested positive
16 for blood. And then there were some other areas on that
17 running board, as well as in the rear wheel well that we also
18 collected some swabs of some substance back there that we
19 thought may potentially have DNA.

20 Q Now, lastly, do you document items that are found
21 inside the vehicle?

22 A We do.

23 Q And I'm going to focus your attention on State's
24 Exhibit 42. Is it fair to say this is the glove compartment
25 in the front of the vehicle?

1 A Yes.

2 Q And I'm going to show you what's been admitted as
3 State's Exhibit 43. Is that a wallet recovered from the
4 vehicle?

5 A Yes, it is.

6 MR. PALAL: Court's indulgence. The State will
7 pass the witness, Your Honor.

8 THE COURT: Okay. Defense.

9 MR. LEVENTHAL: No questions. Thank you.

10 THE COURT: ladies and gentlemen of the jury, any
11 questions from this witness?

12 Seeing none, you are excused. Thank you so much
13 for being here, Ms. Nemcik.

14 THE WITNESS: Thank you.

15 THE COURT: Jurors, did you guys want to take like
16 a 10 minute break to stretch, get some food, or do you want to
17 just keep going through the witnesses and get to lunch? Raise
18 your hand if you want to take a break.

19 MR. PALAL: Your Honor, we need a break anyway, so.

20 THE COURT: All right, let's do that.

21 During the recess you are admonished not to talk or
22 converse amongst yourselves or with anyone else on any subject
23 connected with the trial, or read, watch or listen to any
24 report of or commentary on the trial of any person connected
25 with the trial by any medium of information, including without

1 limitation newspapers, television, the Internet or radio,
2 or form or express any opinion on any subject connected with
3 the trial until the case is finally submitted to you.

4 We'll have you guys back here at 10:10. Sorry,
5 11:10. There we go.

6 (Jury exits the courtroom)

7 THE COURT: For the record, the jury has exited
8 the room. The parties may be -- you may be seated. Is there
9 anything that we needed to address before we get to the next
10 witness or you just need to get some stuff together?

11 MR. PALAL: We have one witness who's coming from
12 the airport. He's on his way right now. And then we said
13 we had nine witnesses for today, I believe, and we are flying
14 through them --

15 THE COURT: Yes.

16 MR. PALAL: -- a little faster today than we did
17 yesterday. We have -- the rest of the witnesses are coming
18 around one-ish, around 12:30, I guess, so we may need to take
19 an early break, if that's okay.

20 THE COURT: So we have one more and then you want
21 to take a break --

22 MR. PALAL: Yes.

23 THE COURT: -- or are we good now? I guess I'm not
24 understanding.

25 MR. PALAL: Your Honor, I think we may need to take

1 a lunch break.

2 THE COURT: Just take the lunch break now --

3 MR. PALAL: Yeah.

4 THE COURT: -- and come back at 12:30? Are you
5 able to --

6 MR. LEVENTHAL: I have -- I actually have federal
7 court at 12:30.

8 THE COURT: Come back at 1:00?

9 MR. LEVENTHAL: I said that I could be there
10 because I thought we'd be at lunch today at 12:30.

11 THE COURT: Are we able to let the jurors know just
12 to come back at 1:00, --

13 MR. LEVENTHAL: 1:00 would be perfect. It should
14 be --

15 THE COURT: -- that we actually don't have a
16 witness? Sorry, I'm talking past you, Todd. I'm so sorry.

17 MR. LEVENTHAL: Oh.

18 THE COURT: Randy, are we able to just tell the
19 jurors to come back at 1:00, then? It's actually going to
20 convert to a lunch break at this time.

21 THE MARSHAL: Yeah, I can get them all together
22 again -- [inaudible].

23 THE COURT: Okay, sounds good. Does that work for
24 the parties?

25 MR. PALAL: Yes, Your Honor. Thank you.

1 MR. LEVENTHAL: It does. Yeah. I'm in front of
2 Brenda Wexler over there. It should be 20 minutes.

3 THE COURT: Okay. All right, perfect.

4 (Court recessed from 10:55 a.m. until 1:15 p.m.)

5 (Jury enters the courtroom)

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

8 MS. BOTELHO: The State does.

9 MR. LEVENTHAL: Defense so does.

10 THE COURT: All right. You may be seated. I think
11 we've got everyone in now. You can call your next witness.

12 MS. BOTELHO: Thank you. Your Honor, the State
13 calls Robert Taylor.

14 **ROBERT TAYLOR**

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

17 THE CLERK: Thank you. Please have a seat. State
18 and spell both your first and last name for the record.

19 THE WITNESS: My name is Robert Taylor. R-o-b-e-r-t
20 T-a-y-l-o-r.

21 THE CLERK: Thank you.

22 DIRECT EXAMINATION

23 BY MS. BOTELHO:

24 Q Good afternoon, sir.

25 A Good afternoon.

1 Q Sir, I'd like to turn your attention to May of
2 2013.
3 A Yes.
4 Q Were you dating a woman by the name of Desirie
5 Jones at that time?
6 A Yes.
7 Q And did you and Ms. Desirie live here in Las Vegas?
8 A Yes.
9 Q Did you live on a street called Hawk Shadow?
10 A Yes.
11 Q Did you live in a home?
12 A Yes.
13 Q Okay. During that time were you living there with
14 your family? Were there kids in your home as well?
15 A Yes.
16 Q Okay. I'd like to call your attention specifically
17 to May 17th of 2013 in the early morning hours.
18 A Yes.
19 Q Did you have an occasion at that time to be
20 watching TV with Desirie?
21 A Yes.
22 Q And did something come on the TV that caused you to
23 have to call the police or caused Desirie to call the police?
24 A Yes.
25 Q And what was it that happened?

1 A The news had showed two guys that had robbed a kid
2 and killed him.

3 Q Okay. And that particular news was on TV; right?

4 A Yes.

5 Q Did it include surveillance video?

6 A Yes.

7 Q And did you at that time watch the surveillance
8 video?

9 A Yes.

10 Q Okay. After watching the surveillance video, did
11 something about that video cause you concern?

12 A Yes.

13 Q Okay. And what was that?

14 A The person they showed was the neighbor that I used
15 to stay with. We used to stay right there on Hawk Shadow down
16 the street. It was my neighbor.

17 Q Okay. And did you know the name of this neighbor?

18 A Yes.

19 Q And what's his name?

20 A Michael.

21 Q Michael.

22 A Yes.

23 Q Okay. Did you know his last name?

24 A No, I don't know. At that time I didn't know his
25 last name. We called him Mike P. at the time.

1 Q Okay. Do you see that neighbor that you know as
2 Michael or Mike P. here in court today?

3 A Yes.

4 Q Can you please point to him and describe something
5 he's wearing?

6 A He's right here. He's wearing a black tie with a
7 black jacket, headphones on.

8 MS. BOTELHO: Your Honor, please let the record
9 reflect identification of the defendant, Michael Solid.

10 THE COURT: So reflected.

11 MS. BOTELHO: Thank you.

12 BY MS. BOTELHO:

13 Q I'm going to publish, Mr. Taylor, State's Exhibit
14 Number 31. It's been admitted. Do you recognize, sir, absent
15 this glare, the individual shown in this photograph?

16 A Yes.

17 Q And who do you recognize --

18 THE CLERK: Oh. That was me.

19 MS. BOTELHO: Sorry. I'm like, oh, I messed it up
20 already.

21 THE CLERK: No, that was me.

22 BY MS. BOTELHO:

23 Q And who do you recognize this individual to be?

24 A Mike P.

25 Q Okay. And so after watching the news and the video

1 and seeing that you identified or you recognized the
2 individual shown in the video, what, if anything, did you or
3 Desirie do?

4 A We called the detective or we called the police.

5 Q Okay. And did you have an opportunity to speak
6 with an individual by the name of Detective Travis Ivie?

7 A Yes.

8 Q Okay. Was the first conversation by phone or in
9 person?

10 A My girlfriend called him on the phone, but when
11 I talked to him it was in person.

12 Q Okay. And did you give a tape-recorded interview?

13 A I believe so.

14 Q Okay. You indicated the Mike P. or Michael was a
15 neighbor of yours; is that right?

16 A Yes.

17 Q While he was a neighbor over on Hawk Shadow, did
18 you have an occasion to hang out with him?

19 A Yes.

20 Q Would you have characterized yourself and him as
21 friends?

22 A Yes.

23 Q Okay. How often would the two of you hang out?

24 A We'd hang out every day, almost.

25 Q Okay. And when you would see Mike P., did you ever

1 see him with another -- like a white male adult?

2 A Yes.

3 Q Okay. And let me back up just a little bit. At

4 some point after you watched on the news the surveillance

5 video, did you come to find out that a white male adult, the

6 second suspect in the robbery and murder, had been apprehended

7 and located?

8 A Yes.

9 Q Okay. And while you were watching the news, also,

10 State's Exhibit Number 32, do you recognize what's depicted

11 in this photograph?

12 A Yes.

13 Q Okay. Did you know who this individual was?

14 A I didn't talk to him that much, but him and Mike P.

15 hung out a lot.

16 Q Okay. And so is it fair to say that when you --

17 sometimes when you would see Mike P. you would see him with

18 this individual?

19 A Yes.

20 Q Okay. Did you know his name?

21 A No. I really -- I don't.

22 Q Okay. Was there ever a time where the three of you

23 would hang out?

24 A No, not the three of us. Just me and Mike P. That

25 would be it.

1 Q Okay. How close of a neighbor was he; like, how
2 many houses?

3 A Like four houses down.

4 Q Okay. And so let me make sure I understand this.
5 Even though you weren't hanging out with Mike P. at any given
6 point in time, you'd have an occasion to see him and this
7 person in State's Exhibit Number 32 hang out pretty often and
8 consistently?

9 A Yes.

10 Q Okay. Had you ever had an occasion, sir, to see
11 a white 2002 Ford Explorer parked outside or near Mike P.'s
12 house?

13 A I remember a white car, but I don't remember what
14 type of car it was. But, yes, I remember a white car being
15 over there.

16 Q Okay. And at that time did you know his phone
17 number, Mike P.'s phone number?

18 A Yes. At that time I did.

19 Q Okay. And did you give that information to Desirie
20 or to the detective?

21 A Yes.

22 Q Was that phone number that you gave (702) 379-7494?

23 A It sounds familiar, yes.

24 Q Okay. But certainly you gave that information to
25 the detectives?

1 A Yes, I did.

2 Q Okay. I'm going to put again State's Exhibit

3 Number 31. Sir, I'd like to call your attention to this, kind

4 of a white, shiny thing, almost near the middle chest and

5 abdomen of the person you identified as Mr. Solid. Do you

6 recognize what that is?

7 A Yes. That's a chain he wore all the time.

8 Q Okay. And what is this? What is the shape or what

9 is that chain of?

10 A A Batman signal. Batman.

11 Q Batman. Okay.

12 A Yeah.

13 Q And you said he wore it all the time?

14 A All the time.

15 Q Okay. How long would you say you and Mr. Solid

16 were friends prior to this incident?

17 A I'd say a good four months.

18 Q Okay. And in those four months you would see him

19 wearing this?

20 A Yes.

21 Q Okay. That necklace?

22 A Yes.

23 MS. BOTELHO: I have no more questions. Thank you

24 so much, Mr. Taylor.

25 THE WITNESS: You're welcome.

1 THE COURT: Defense, any questions for this witness?
2 MR. LEVENTHAL: Court's indulgence.
3 THE COURT: Of course.
4 MR. LEVENTHAL: No questions.
5 THE COURT: Ladies and gentlemen of the jury, do
6 you have any questions for this witness? Seeing no hands.
7 Thank you so much for being here, Mr. Taylor. You
8 are excused.
9 THE WITNESS: Thank you.
10 THE COURT: The State may call their next witness.
11 MS. BOTELHO: The State calls Gayle Johnson.
12 **GAYLE JOHNSON**
13 [having been called as a witness and being first duly sworn,
14 testified as follows:]
15 THE CLERK: Thank you. Please have a seat. State
16 and spell your first and last name for the record.
17 THE WITNESS: It is Gayle, G-a-y-l-e. Johnson,
18 J-o-h-n-s-o-n.
19 THE CLERK: Thank you.
20 THE COURT: Go ahead.
21 MS. BOTELHO: Thank you.
22 **DIRECT EXAMINATION**
23 **BY MS. BOTELHO:**
24 Q Good afternoon.
25 A Good afternoon.

1 Q Ma'am, how are you employed?

2 A I am a forensic scientist for the Las Vegas

3 Metropolitan Police Department and I'm assigned to the Latent

4 Print Detail.

5 Q How long have you been employed with Metro and in

6 the Latent Print Detail?

7 A Well, in September I will be with Metro for 15

8 years, and in July I will be with the Latent Print department

9 for 11 years.

10 Q Okay. Were you employed in that capacity in 2013?

11 A Yes, I was.

12 Q And also 2015?

13 A I was.

14 Q Okay. So continuous employment?

15 A Correct.

16 Q Okay.

17 A I was promoted --

18 Q Okay.

19 A -- to the forensic scientist trainee.

20 Q Awesome. Thank you. What is it that a latent

21 print examiner does exactly?

22 A So there are quite a few different duties that we

23 are assigned. We are assigned cases where there is evidence

24 that has been submitted. We will look at the evidence to

25 determine if the information that is in that evidence will

1 allow us to do a couple of things. If it's a little bit more
2 limited information, we can do a comparison to a named
3 subject, but if it is very full of lots of rich data, which
4 makes me excited if they are that way, then I can enter these
5 types of information into a computer which has a database
6 that can help me find a subject that might belong to that
7 information.

8 Q Okay.

9 A Some of the other things we do is we will process
10 evidence to try to recover latent prints. We also will
11 generate reports. Obviously I'm testifying. I also will
12 technically review my co-workers' work to make sure that
13 everything that is in that report is following all of our
14 policies.

15 Q Okay. And so what sort of training, education and
16 background do you have such that you are qualified to hold
17 this position with Metro?

18 A Sure. I do have a Bachelor of Science in Natural
19 Science, with an emphasis in Chemistry. I have worked over
20 20 years in different chemistry type positions. And in 2011
21 I was promoted to a forensic scientist trainee, where I
22 entered into a very extensive program that lasted about two
23 years. That program consisted of learning first the basics of
24 what latent prints are, how to compare them, what to look for,
25 all the clues, and just to give me more time and experience

1 with that. And along the way I took many tests to prove my
2 skills, and at the very end of the program I passed my final
3 competency test so that I was able to do independent casework,
4 and that was in 2000 -- probably '12 -- or '13. I'm sorry.
5 Right about maybe in the fall of 2013.

6 Q Okay. Do you receive or do you have to undergo
7 continued education or training --

8 A Yes.

9 Q -- to maintain your accuracy or qualifications?

10 A Yes. Every year we have a proficiency test for
11 comparison to make sure that our skills are up to date and are
12 proficient. And then we also -- we'll go to conferences or we
13 will have classes. We have a class coming up in June. We are
14 going to learn some more about distortion and how to handle
15 different evidence that might present that way. And also,
16 I do teach classes. I teach introduction to latent prints
17 to the crime scene academies at Metro. So there's lots of
18 different areas that we use that can help to make our skills
19 or to help with our skills to keep them strong.

20 Q Wonderful. Can you tell the ladies and gentlemen
21 of the jury just some basic information about fingerprints,
22 what they are, if you can have the same fingerprint as another
23 individual, things like that.

24 A Sure. So I don't know if you've noticed, but we
25 have some very exciting things in our skin. On our hands and

1 our feet the types of skin that is there is called friction
2 ridge skin. It's not smooth like the rest of the skin on your
3 body. It actually has raised areas. And these raised areas
4 form these really interesting, very detailed patterns. It's
5 almost like an ink stamp. And so what you can -- if you want
6 to use that analogy, let's think of like a substance like
7 grease. If we would get grease or something oily on our
8 fingers, what happens is it deposits down into all those cool
9 little patterns. And then when you touch a surface, there's
10 a possibility that you could leave a reproduction of your
11 very specific pictures and patterns that are on your hands
12 or your feet.

13 And so what we can do as an examiner, those pieces
14 that are on surfaces can be recovered. And sometimes you
15 can't see them. That's why they're called latent, which means
16 it's not able to see by the -- just by the naked eye. But we
17 can use reagents or we can use powders, we can use chemicals
18 to visualize these pieces of skin that is left behind on
19 surfaces to make -- to decide information about what we see.
20 If there's enough detail in those reproductions, we can
21 actually compare them and make reliable decisions with those
22 types of -- with that information.

23 Q Okay. Can you -- when we were talking earlier
24 about processing, you said sometimes you'll process evidence.
25 How is it that prints are processed or developed?

1 A Well, what happens is, like I was talking about
2 the different substances, we can have -- we have reagents or
3 certain chemicals that target the specific substances, like
4 sweat, for example. So if there is an item of evidence, like
5 let's say a soda can or maybe it's -- I'm trying to think of
6 some things that I commonly work with -- or even if it's like
7 just a piece of broken glass, I can go ahead and process that.
8 And if any of that residue that was on someone's skin and then
9 they touched that surface was left behind, I can visualize it
10 with these different chemicals. And that's what I do with
11 processing. And then once I'm able to do that, I would
12 photograph it and then it's the photograph that I would work
13 with.

14 Q Okay. What about when, like on TV they use a
15 brush, crime scene analysts use a brush with powder?

16 A Right. They use powder. So what happens, again,
17 the powder is actually mixing with the residue and so then
18 whatever residue is left behind, the powder will stick to
19 that. And then, again, it will visualize and make it easier
20 to see that item. And then what they will do is they can use
21 tape. They can lift that off the surface and then they take
22 that tape and they put it back on a card. It's like a 4 by 6
23 glossy photo card. And so then with that they can book it
24 into evidence and that's how I usually receive a lot of that
25 type of evidence. And then I can look at that, what's there,

1 make my decisions and decide if I'm able to make a conclusion
2 about what I have.

3 Q And so is that what's called a latent lift card?

4 A That is correct.

5 Q Okay. And that's oftentimes how you receive that
6 type of evidence from let's say crime scene analysts --

7 A Correct.

8 Q -- from the scene?

9 A Yes.

10 Q Okay. Have you testified as an expert in latent
11 print detail or as a latent print examiner before?

12 A I have.

13 Q And have you done so here in the Eighth Judicial
14 District Court?

15 A Yes, I have.

16 Q Turning your attention to specifically May of 2015,
17 you indicated you were working as a latent print examiner for
18 Metro; correct?

19 A That is correct.

20 Q Okay. Did you have an occasion to conduct some
21 latent print comparisons under Event Number 130516-2758?

22 A I did.

23 Q Okay. Now, I just said latent print comparison.
24 Can you tell the jury what the comparison portion of that is?

25 A Sure. So when this case was assigned to me, there

1 were already some named subjects, so basically what I'm doing
2 when I'm looking at the evidence is it's a little bit -- the
3 criteria is not as strict. But what I am looking at is once
4 I see the evidence, I'm looking for finger marks or palm
5 marks, and if it's a finger it has to have at least eight
6 minutia, and a minutia is like a feature. Before when I was
7 telling you about how there's ridges and different pictures,
8 well, what happens is these ridges flow in different
9 directions. And sometimes they stop and start again and when
10 they do that that's what we call a feature.

11 So in this particular item of evidence I need to
12 have at least eight features for me to determine if it's
13 suitable. And I also need to know the orientation and I
14 need to know is it a finger or a palm. Once I know this
15 information, I can determine that it is suitable and then I
16 can go ahead and compare that information to the list of
17 subjects for -- that was in the request for me.

18 Q Okay. And so under the Event Number that I just
19 read off, you indicated that you already had some names of
20 individuals upon which you were to compare some of the latent
21 lift cards that you had received. Were one of those known
22 individuals an individual by the name of Michael Solid?

23 A Yes, that is correct.

24 Q And was another one an individual by the name of
25 Jacob Dismont?

1 A Yes.

2 Q And so you received, what, their exemplar prints?

3 A I did.

4 Q Okay. And so you have that. Did you then summon

5 or request the packets under the Event Number that I read

6 off?

7 A Well, the packet was assigned to me already.

8 Q Okay.

9 A So once it is assigned to me in our electronic

10 database, then I'm able to go to our 6-year storage and

11 retrieve that packet, and so that's what I did. And in this

12 particular case there was actually two packets.

13 Q Okay.

14 A One packet had six lift cards and the other packet

15 had three lift cards.

16 Q Okay.

17 A So I went and I retrieved both of those packets and

18 then I started my examination process.

19 Q Okay. And so tell us just kind of in general what

20 you do in terms of your examination process.

21 A Sure.

22 Q And then we'll talk about your results.

23 A Sure. So when I receive a packet, usually on the

24 outside of the packet it always has the inventory of how many

25 cards are in the packet. It has some other information on the

1 outside, but usually I'm interested in how many cards there
2 are. So then I open the packet and I will put my unique
3 markings on the packet so that it has documentation that I
4 did handle this. And then I will look at each card. I will
5 number each card with a unique marking. I try to match up
6 with the crime scene analysts so that we can keep it somewhat
7 similar, but if not then I just go ahead and I start with one.
8 So with this particular packet I had six cards. I marked them
9 Q1 through Q6. And then I will examine each card individually.
10 And I did have suitable latents on these cards. Some of the
11 cards did not.

12 But once I have determined they're suitable, then
13 I will do an analysis on each of those individual cards. What
14 I mean by analysis, what I'm doing there is I'm looking at
15 can I tell the pattern type. I didn't say this earlier, but
16 there's three very basic patterns. We either have loops,
17 swirls or arches. Most of the time I can tell, especially
18 after I have been doing this now for 11 years. When I'm
19 looking at just a little smudge, that is how it might appear
20 to you, I can tell what the pattern type is. So I look at
21 that. I look at different features to give me clues to help
22 me so that when I start my comparisons I'm starting at a
23 smarter place than just starting from nowhere.

24 So that is what I do. I will do the analysis for
25 each of the different marks that I have determined to be

1 suitable and then I will compare them side-by-side with the
2 known records that were given to me with the request.

3 Q Okay. And so did you that for the second packet?
4 Did you label the latent print cards Q7, Q8 and Q9?

5 A I did.

6 Q Okay. So a total of nine latent print cards --

7 A There was nine latent print cards.

8 Q -- spread out between two packets?

9 A Uh-huh. That is correct.

10 Q Okay. While you are doing your examination and
11 subsequently after you received your conclusions after your
12 examination, do you memorialize your findings in a report?

13 A Yes.

14 Q Okay. And did you do that in this case?

15 A Yes, I did.

16 Q Okay. Was that report distributed in 2015?

17 A Yes. May 29th.

18 Q Okay. I would like to publish State's Exhibit
19 Number 127, which is being admitted by way of stipulation.
20 And I would like to ask you to --

21 THE COURT: So admitted, if it wasn't previously.
22 (State's Exhibit 127 admitted)

23 THE COURT: Go ahead.

24 MS. BOTELHO: Thank you.

25 ////

1 BY MS. BOTELHO:

2 Q So this is State's Exhibit Number 127. Do you
3 recognize what this is, Ms. Johnson?

4 A Yes, I do.

5 Q What do you recognize it to be?

6 A This is what we call a chart. So as you can see
7 on the left side of that picture is marked Q1A. That latent
8 print came from the lift card that I had marked Q1. And then
9 on the right side of it is the record of the known record
10 that I had made the comparison to where I had enough agreement
11 between those two markings that I was able to make an
12 identification.

13 Q Okay.

14 (Colloquy regarding ELMO equipment)

15 BY MS. BOTELHO:

16 Q Maybe this one is just a little bit better. Okay.
17 And so using this, State's Exhibit Number 127 -- first of all,
18 it's labeled Q1A. What does that mean?

19 A Well, so when I -- like how I had said, when I
20 receive the packet and I will go through all the cards and
21 there were six cards in this packet, so this was the first
22 card that I labeled as Q1.

23 Q Okay. And did you compare the print on Q1A to
24 prints involving Michael Solid?

25 A Yes.

1 Q And did you, in fact, place on this chart Q1A and
2 Number 4, the right ring finger of Mr. Solid?
3 A I did.
4 Q Okay. And so --
5 A It's kind of hard to see, but it's kind of -- I
6 wish that I could -- if we had a little bit better visual,
7 I could kind of explain how I --
8 Q Yes.
9 A -- completed my analysis on that particular finger
10 mark.
11 MS. BOTELHO: I think I'm getting some help.
12 (The court recorder adjusts the ELMO)
13 MS. BOTELHO: Oh, perfect. Thank you.
14 COURT RECORDER: You're welcome.
15 MS. BOTELHO: Yes. Thank you, thank you. All
16 right. Wonderful.
17 THE WITNESS: Okay.
18 BY MS. BOTELHO:
19 Q Does that help?
20 A Yes, it does. It does.
21 Q Okay. Please tell the jury what you found.
22 A Okay. So let's focus first on the left side, which
23 is the unknown or the latent print. So as you can see, a lot
24 of what I like to use is the shape. You can see the basic
25 shape. It's very circular, so that I knew pretty much I had

1 the whole fingerprint. The only issue that makes it a little
2 bit difficult is I could only barely see the core, which is
3 the center of your print. I could only see that slightly.
4 But the one thing that was really helpful to me, as you walk
5 away from the core and walk to the edge, as I would explain
6 to you, walk down towards the Q1A --

7 Q I'm sorry, Ms. Johnson, I don't mean to interrupt,
8 but you can use the --

9 A I'm just not very efficient with that.

10 Q That's okay. You can use the mouse.

11 A I can try to like move --

12 Q To move around. And so --

13 A I will make -- I might make a mess of it, but I can
14 try.

15 Q Just at least so we know which loop you're talking
16 about.

17 A Okay. So this area here is what I would refer to
18 as the core. It is the center of your fingerprint. We use
19 that and why we want to know where it is is because we can use
20 that as a place-finder to talk about other parts of the area
21 of the fingerprint. So as you move down here, this area here
22 is called the delta, and what the delta represents is that
23 when your fingerprint patterns are forming, those ridges and
24 all that skin is coming in from three areas. It comes from
25 your nail bed, it comes from that joint, that bone, and also

1 another area that it just comes out into the finger. When all
2 of those three areas meet, it forms a triangle. That's called
3 a delta. So what we like to do is we like to count the ridges
4 from the core out to the delta.

5 As you can see now, if you look at the known
6 record, it's much easier for me to do because known records
7 are collected deliberately, so there's not any problems. We
8 don't have to worry about distortion. We don't have to worry
9 about as many errors, like accidental touches on surfaces.
10 So here already I can tell that that's very similar, that the
11 region from the core down to the delta, if I would count those
12 ridges I'm probably going to have the same amount. Like, I'll
13 just throw out a number 15. I think it's a little bigger,
14 which this one is a larger ridge count than most. Sometimes
15 the delta might be right next to the core. Then we would
16 call that a short ridge count.

17 Well, then the next thing that I did is if I focus
18 around -- sorry, I'm not using the mouse -- if I focus around
19 the delta there were lots of nice features there. It's hard
20 to see, but I marked those with a green dot. Those were all
21 the features. I can see that there's one, two, three, four,
22 five, six, seven, eight. Then I also traced the ridges out
23 with the colors, with the red and the blue. So then once
24 I find an area of ridges, I will go to the known print and
25 I will try to find in that same area those same features.

1 So that's what I did and then I marked that up into the known
2 print. And then I will move away from that target group to
3 try to increase how many areas are in agreement with each
4 other, so where I finally come to a place where the data is
5 so overwhelming and there are so many features in agreement
6 that it is very likely that these two markings came from the
7 same source. And that is what I did, and so I was able to
8 make the identification to the right ring finger of Solid,
9 of Michael Solid.

10 Q Okay. And that's as to Q1A?

11 A Correct.

12 Q Okay. Now, when you receive the latent prints from
13 evidence, do they normally contain a description of where the
14 specific lift card was taken from?

15 A Yes, they do.

16 Q Okay. And concerning this Q1A in State's Exhibit
17 Number 127, was that located on the exterior front passenger
18 door of Vehicle Number 1 above the window?

19 A Would you mind if I looked at my report so that
20 I could recall that information?

21 MS. BOTELHO: Your Honor, can she? May she?

22 THE COURT: Of course.

23 BY MS. BOTELHO:

24 Q Please.

25 A I do have it. It is from the exterior passenger

1 door of the vehicle.

2 Q Okay. Now, the vehicle, was that a 2002 Ford
3 Explorer with VIN Number 1FMZU62E32ZC25644?

4 A Yes. That is what I do have recorded in my report.

5 Q Thank you. And so there were several other lift
6 cards, specifically eight additional lift cards; is that
7 right?

8 A That is correct.

9 Q Okay.

10 A There was nine total.

11 Q Were all of the remaining lift cards, did they
12 contain -- did they all contain suitable latent prints?

13 A No, they did not.

14 Q Okay. How many were there no suitable latent
15 prints for?

16 A Q4 did not have any suitable latent prints. Q7 did
17 not have any and Q8 did not have any suitable prints. So the
18 rest of the cards --

19 Q What does that mean?

20 A That means that maybe I saw a ridge or two, maybe
21 I could tell that someone's hand or palm had touched the card,
22 but there wasn't enough information for me to be able to take
23 it and discover something reliable about what was present.

24 Q Okay. And what about the remaining -- for
25 instance, Q2, Q3, Q5, Q6, and Q8? Is it fair to say with the

1 remaining lift cards that none of those came back to Michael
2 Solid?

3 A That is correct.

4 Q And is it also fair to say that none of the
5 remaining cards that I just named out loud belonged to Jacob
6 Dismont?

7 A That's correct.

8 Q Now, can you date a print? Say if I, you know,
9 were to touch this -- what is this called, this lectern --

10 A Uh-huh.

11 Q -- and you recovered prints or a crime scene
12 recovered prints, could they tell -- could you tell when it
13 was that I left a particular print?

14 A We are unable to determine that at this time.
15 There's lots of research with trying to make discoveries with
16 that, but at this time we are unable to know exactly when the
17 print was left on surfaces. We just don't know that.

18 MS. BOTELHO: Okay. I have no more questions.
19 Thank you so much, Ms. Johnson.

20 THE WITNESS: Thank you.

21 THE COURT: Defense, cross-examination?

22 MR. MARCHESE: No questions, Your Honor.

23 THE COURT: Ladies and gentlemen of the jury, any
24 questions for this witness? Seeing none, Ms. Johnson, you are
25 free to go. Thank you so much for being here.

1 THE WITNESS: Thank you.

2 THE COURT: The State may call their next witness.

3 MR. PALAL: Yes, Your Honor. The State calls
4 Marjorie Davidovic.

5 **MARJORIE DAVIDOVIC**

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

8 THE CLERK: Thank you. Please have a seat.

9 THE WITNESS: Thank you.

10 THE CLERK: State and spell your first and last
11 name for the record.

12 THE WITNESS: My name is Marjorie Davidovic.
13 M-a-r-j-o-r-i-e D-a-v-i-d-o-v-i-c.

14 THE COURT: Thank you. Go ahead.

15 DIRECT EXAMINATION

16 BY MR. PALAL:

17 Q Good afternoon, Ms. Davidovic.

18 A Good afternoon.

19 Q How are you employed?

20 A I'm employed with the Las Vegas Metropolitan Police
21 Department in the forensic laboratory, where I am a Forensic
22 Scientist II, which is the highest level of a senior forensic
23 scientist we have, and I'm assigned to the Biology and DNA
24 Detail.

25 Q And what does somebody that works in the DNA Detail

1 actually do?

2 A We work with evidence as it pertains to a crime
3 scene or a location of a crime or something that could have
4 happened to an individual. So a detective or a district
5 attorney or even a defense counsel can request evidence to
6 be examined, and what I'm looking for is body fluids such as
7 blood, semen or saliva, or even what's known as touch DNA,
8 which is DNA that's handled. Like, if I touch this desk,
9 I might leave a few cells behind, or if you swab the collar
10 of my shirt I'll leave a lot of cells behind. But it's cells
11 that are sticking to or kind of grabbed onto any surface.
12 I also test DNA from body parts, bone, teeth, etcetera. And
13 then looking -- after testing these body fluids, looking to
14 generate a DNA profile to find the source of who it could
15 have come from.

16 Q All right. And do you have any specialized
17 education in order to play out your role here?

18 A Yes. There's an education requirement not only in
19 our lab but throughout the United States. I have a Bachelor's
20 of Science in Biochemistry from Stoneybrook University and
21 a Master's of Science in Forensic Examinations from Touro
22 College, which are both in New York.

23 Q And then do you have any specialized certifications
24 or trainings in order to facilitate your ability to examine
25 biological or DNA samples?

1 A Yes. There's an extensive amount of training that
2 we have to undergo. Even though I was a forensic scientist
3 in a previous laboratory, coming here to Metro the amount of
4 training I had to undergo before I was released to independent
5 casework was at least one year. There's a series of
6 competency and practical exams that we have to not only pass
7 but excel in before we can move on to the next stage of the
8 DNA training. And from there we have supervised casework
9 training, and once we've shown that we've passed a series of
10 oral boards, moot court, more written exams and practical
11 exams than I can count, then we can be released to independent
12 casework.

13 Q Now, with regards to your testimony here today,
14 you're aware that you're here to testify about certain DNA
15 results; is that correct?

16 A Correct.

17 Q Before we get to that, can you tell us exactly what
18 is DNA in this context?

19 A DNA is the biological blueprint of every living
20 organism. So a plant, a cow, a human, we all have DNA because
21 we're living organisms. But then our DNA is like a blueprint
22 that makes us a human. It gives us two arms, two legs, it
23 makes us male or female, tall or short. And as human beings,
24 almost all of our DNA is identical because we're all humans
25 baseline. But there's a very specialized amount of DNA that's

1 completely unique from one individual to the next, unless
2 you're an identical sibling. And we get half our DNA from our
3 mother and half our DNA from our father.

4 Q And so is it fair to say that unless you have an
5 identical twin, a person's DNA is unique to them?

6 A Identical twin or a triplet. Identical sibling.
7 But otherwise we have our own unique DNA profile.

8 Q Okay. Now, I'm going to direct your attention to
9 specifically the case that brings you here today. Did you
10 generate a report on September 2nd, 2015 regarding evidence
11 regarding this case?

12 A I did.

13 Q And would it help you -- would it facilitate your
14 testimony in order for you to refer to your report during your
15 testimony?

16 A Yes, it would.

17 THE WITNESS: Your Honor, may I sometimes refer to
18 my report to refresh my recollection?

19 THE COURT: If it would refresh your recollection,
20 of course. Go ahead.

21 THE WITNESS: Thank you.

22 BY MR. PALAL:

23 Q All right. Now, specifically referring to the
24 September 2nd, 2015 report, is each report that you do, each
25 case that you work on, is that given a -- does that have a

1 specific Event Number?

2 A Yes. Each case has its own unique Event Number.

3 Q And in this case do you recall the Event Number?

4 A I would have to refer to my report.

5 Q Could you, please?

6 A Yes.

7 THE WITNESS: Your Honor?

8 THE COURT: Go ahead.

9 THE WITNESS: The Event Number for this case was

10 130516-2758.

11 BY MR. PALAL:

12 Q And we've heard throughout the day that each event

13 that Metro has generates its own Event Number. Is that

14 correct?

15 A That's correct.

16 Q Okay. It's fair to say that the purpose of that is

17 when somebody like a CSA collects potential DNA and you test

18 it, we know we're talking about the same case?

19 A That's correct.

20 Q And specifically I want to ask you about how do you

21 go about comparing known DNA from a DNA swab that you don't

22 know from whom it originated or who it originates from?

23 A Starting from the beginning with the evidence?

24 Q Yes.

25 A So I'll obtain a laboratory examination request

1 from the investigator. Like I said, it could be a detective,
2 a district attorney or defense counsel as it pertains to a
3 case and they'll request certain items of evidence to be
4 tested. I'll recall the specific items from the Event Number
5 from the LVMPD Evidence Vault. An evidence technician will
6 then transport and bring the evidence to me, where I take it
7 into my custody.

8 And each person that has even touched any of this
9 evidence, from the CSA who collected it on the scene, to the
10 evidence technician who brought me the evidence, to when
11 I take it into my custody, we all have to follow a strict
12 electronic chain of custody. Once it's in my custody I have
13 a secure location in the Biology DNA Laboratory where the
14 items of evidence are placed until I can examine each one.

15 Q And when you do an examination or a comparison,
16 it's fair to say you generate a report; is that correct?

17 A Correct.

18 Q And in this particular case do you recall the date
19 on which the report was generated?

20 A When I first generated or when it was released to
21 the investigator?

22 Q When it was released to the investigators.

23 A That was September 2nd, 2015.

24 Q And when you say when you first generate it, is it
25 fair to say that before a report can be released there needs

1 to be some internal review in order to confirm your analysis?

2 A That's correct.

3 Q Okay. And so you generate a report, it gets a
4 technical review by a peer or a supervisor, and then not
5 until there's an agreement it gets released. Is that fair?

6 A Not exactly.

7 Q Then if you could explain it to us.

8 A After I'm done completing my case and have written
9 the report, not just the DNA report but also my entire case
10 file from how I examined the evidence, all of the
11 documentation and photos and descriptions I have of each item
12 of evidence, if I took cuttings or swabbings and what size and
13 portion, if I have any blood, semen or saliva or body fluid
14 or touch DNA, and from there every step and procedure that
15 I perform in the laboratory, it's very extensive, has to be
16 then fully examined by another qualified biology forensic
17 scientist and they make sure -- that's a technical review.
18 So they make sure that everything I'm doing is not only
19 technically and scientifically correct, but also follows our
20 standard operating procedures.

21 Once that review has been signed off, then another
22 DNA analyst will do what's known as an administrative review.
23 And again, this is for my report and my entire case file and
24 my notes and all my laboratory processing. So they'll make
25 sure that I'm reporting everything the way I'm supposed to

1 legally and scientifically and that my case file has all of
2 the necessary documentation and all of the work that I
3 performed and make sure that all of that is correct. Once
4 that's signed off then it can be released to the investigator.

5 Q And in this case that all occurred on September
6 2nd, 2015 where it could be released to the investigator?

7 A The reviews were done prior to that, but then the
8 report was released September 2nd.

9 Q Of 2015?

10 A Correct.

11 Q Okay. Now, looking at your report, on specifically
12 lab items 16, 20 and 19, we have reference standards from --
13 Lab Item 16 is a reference standard from Marcos Arenas. Lab
14 Item 20 is a reference standard from Michael Solid. And Lab
15 Item 19 is a reference standard from Jacob Dismont. Is that
16 correct?

17 A That's correct.

18 Q Can you tell us what a reference standard is?

19 A A reference standard is also known as a buccal
20 swab. So it looks basically like a Q-tip but it's in a
21 sterile packaging and we take a swabbing or the investigator
22 or CSA takes a swabbing of an individual's mouth, cheek, gums,
23 to collect the DNA and the cells from the person's mouth. A
24 reference standard is what we know as -- what we call a known
25 sample. This is as opposed to a questioned sample, which is

1 an item of evidence from the scene of the crime, as opposed
2 to a known standard which is a reference standard that we
3 know the individual that it came from. So once I generate
4 DNA profiles from different items of evidence in a case, those
5 are the questioned samples, I make comparisons of that profile
6 to the known profiles that are in the case.

7 Q And you had mentioned briefly earlier in your
8 testimony and just now touch DNA. And in this case we're
9 largely talking about touch DNA; is that correct?

10 A Correct.

11 Q So we're not -- you didn't review any blood or
12 semen in this case?

13 A I did testing for blood --

14 Q Yes. Okay.

15 A -- but I did also touch DNA.

16 Q Okay, that's correct. So, and specifically
17 referring to touch DNA, you had mentioned that touch DNA is
18 a lot like what it sounds like. If I touch something, I may
19 slough off some cells that leave my DNA; is that correct?

20 A Not only that, those cells have to hang on to that
21 item of evidence by the time it's collected. So sometimes
22 it depends on the substrate or the material of the item that
23 can hold on or adhere to cells a little bit better than, say,
24 another item. Sometimes if someone is a good slougher, as we
25 call it, depending if they're sweaty or super dry, they can

1 slough off a lot more DNA than another person, for example,
2 even if they touched an item for the same amount of time.
3 So touch DNA is very dependent on a lot of factors. It's
4 very variable. Sometimes there will be a rich DNA profile
5 with lots of cells, sometimes it won't. Again, it's whatever
6 cells happen to be hanging onto that item.

7 Q So as an example, Ms. Botelho and I, we've both
8 been at this podium today. We've both touched this podium.
9 There's a chance that my DNA may be on this podium, there's
10 a chance Ms. Botelho's DNA may be on this podium. There's
11 a chance that one or the other or neither will be on this
12 podium?

13 A That's all correct.

14 Q Okay. Now, specifically I'm going to direct your
15 attention to Lab Item Number 4. And in your report do you
16 write the description left by the person collecting the sample
17 so we have an idea what we're looking at when we're looking at
18 Lab Item Number 4?

19 A That's correct. I use my description as it
20 pertains to the item of evidence, which has a chain of custody
21 label on the outside that describes what's inside the bag.
22 But also, there is an evidence impound report, officers'
23 reports, scene reports, property reports that have all
24 documented with not only the Event Number but the impound
25 item and package numbers that identify what this evidence was

1 collected from. And that's the information I use to generate
2 my report.

3 Q Okay. And so where -- or what is the description
4 for Lab Item Number 4?

5 THE WITNESS: Your Honor, may I refer to my notes
6 for my recollection?

7 THE COURT: Yes.

8 THE WITNESS: Thank you. Lab Item Number 4 was a
9 swab from the exterior driver door handle of Vehicle Number 1.
10 BY MR. PALAL:

11 Q All right. And were you able to draw a conclusion
12 as to whether or not that DNA was consistent with any of your
13 reference standards?

14 A Yes, I was.

15 Q And what was that conclusion?

16 A First I obtain the questioned DNA profile and make
17 the analysis on the questioned. It's only after I make the
18 analysis on each item of evidence that a comparison is made
19 to the reference standards. And this is primarily to avoid
20 any level of bias and to make sure that all of our analysis
21 of the evidence is completely independent of the analysis of
22 the known samples. So in this case the partial DNA profile
23 from the swab from the exterior driver door handle of Vehicle
24 Number 1 was consistent with Michael Solid.

25 Q And then do you have -- do you generate a statistic

1 in order to help, I guess, clarify the validity of the
2 comparison?

3 A Yes. When there's an evidence profile that is
4 either a full profile or a partial or a mixture that matches
5 a known DNA standard, we calculate a type of statistic to
6 qualify how important or how significant is this match, and
7 so a DNA statistic was calculated here.

8 Q And what was the actual DNA statistic for the
9 conclusion that the DNA was consistent with Michael Solid?

10 A The probability of randomly selecting an unrelated
11 individual in the general population having a DNA profile
12 consistent with the partial DNA profile from the swab of
13 the exterior driver door handle from Vehicle Number 1 is
14 approximately 1 in 347 trillion.

15 Q Okay. And can you put that -- 347 trillion sounds
16 like a lot, but can you put that number in context for us
17 in any way?

18 A To give you an idea of how big that number is,
19 there are about 400 billion stars in the Milky Way galaxy.
20 A probability of hitting the Powerball in one shot is 1 in
21 292 million. So in this case the probability is approximately
22 1 in 347 trillion, which is actually a very small number.

23 Q Now I'm going to direct your attention to Lab Item
24 Number 6. You know, I'm going to -- sorry. Lab Item Number 5.
25 Did you obtain a partial DNA profile from Lab Item Number 5?

1 A That's correct.

2 Q And can you tell us what the description was where
3 that came from?

4 A Lab Item Number 5 was a swab from the exterior
5 front passenger door handle of Vehicle Number 1.

6 Q And were you able to draw a conclusion about where
7 that DNA came from?

8 A No, I was not.

9 Q And why are there some times where you're not able
10 to actually draw a conclusion?

11 A There are times where I have a full DNA profile or
12 partial that has either more quality DNA or we have to reach
13 a certain threshold or amount or type of DNA profile that is
14 sufficient enough for analysis. And only when we make the
15 analysis, then we can make a comparison. So like I was
16 stating earlier, a partial DNA profile -- I'm not looking for
17 the entire genetic code that makes you you. It's not like TV
18 where I can say that, you know, I found DNA here and it's a
19 guy that's 6 foot 4 and blonde hair and, you know, eats moose
20 or whatever. Not like this at all. It's actually a part of
21 DNA that's non-coding genes.

22 So it's a type of DNA that's not only done here
23 at Metro, but in forensic laboratories throughout the United
24 States and the world. We're looking for DNA from the nucleus
25 of the cell. So if you go back to high school Bio, you might

1 remember the nucleus is like the manager center of the cell.
2 We're looking for DNA that are in specific locations and
3 what's known as short tandem repeats. So this is non-coding
4 DNA. It doesn't tell us anything of what the person might
5 look like except for gender. And it's tiny, tiny repeated
6 units of DNA that go one after another after another in
7 fifteen -- at this time fifteen specific locations of non-
8 coding DNA. Even though it's non-coding, it's still highly
9 individual to each one of us.

10 So if I have a full profile, that's all fifteen
11 locations. And STRs or short tandem repeats I described are
12 a sequence of DNA that repeats itself over and over and over
13 at one location, and I got half from my mother, and in the
14 same location short sequence of DNA that repeated over and
15 over and over I got from my father. So putting these two
16 sequences together in one location of DNA, I'll have a profile
17 for that location. Then I look at all fifteen locations to
18 see if it's a full or a partial. Sometimes I have ten or
19 eleven or twelve locations that have DNA information.
20 Sometimes I'll only have three or four locations. And that's
21 not enough, even though both are partial profiles. I need
22 enough qualitative and threshold-meeting DNA in order to make
23 comparisons.

24 Q So in Lab Item Number 4 you were able to reach the
25 required threshold to reach a scientifically-based conclusion.

1 Lab Item Number 5, even though you do have a partial DNA
2 profile, it's not enough to make a scientifically valid
3 comparison?

4 A Those are both correct.

5 Q And I'm going to turn your attention to Lab Item
6 Number 6. Can you tell us the description of the area from
7 which this was taken?

8 A Yes. Lab Item Number 6 was a swab from the
9 interior driver door handle of Vehicle Number 1.

10 Q And were you able to make any comparisons with
11 regards to your -- the reference standards that we discussed
12 earlier?

13 A Yes, I was.

14 Q And what was your conclusion?

15 A For the questioned sample or for the reference?

16 Q I'm sorry. For the questioned sample were you able
17 to successfully compare it to any of the reference standards?

18 A Yes, I was.

19 Q And what was the conclusion?

20 A The DNA profile from the swab of the interior
21 driver door handle from Vehicle Number 1 is consistent with a
22 mixture of at least three individuals, with at least one being
23 male. The partial major DNA profile obtained was consistent
24 with Michael Solid.

25 Q And were you able to, just like the last or just

1 like Lab Item Number 4, were you able to generate a statistic
2 in order to quantify the validity?

3 A Yes, I was.

4 Q And what was the statistic that you generated?

5 A So the probability of randomly selecting an
6 unrelated individual from the general population having a DNA
7 profile consistent with that of the partial major component
8 of this mixture is approximately 1 in 37.1 billion.

9 Q So we're not in the trillions now, we're in the
10 billions?

11 A That's correct.

12 Q But would you say it's a fairly -- 37.1 billion is
13 still a fairly significant statistic?

14 A It is, especially since this was only a partial
15 major component.

16 Q I'm going to now direct your attention to Lab Item
17 Number 8. Can you tell us what the description was of Lab
18 Item Number 8?

19 A Item 8 was a swab from the mouth of a plastic
20 Aquafina bottle from the front driver cupholder of Vehicle
21 Number 1.

22 Q And similarly, were you able to draw any
23 conclusions with regards to that item?

24 A Yes, I was.

25 Q And what conclusions did you draw?

1 A In this case the swab from the mouth of the
2 Aquafina bottle was -- I obtained a full or complete single
3 source DNA profile.

4 Q And with whom was it consistent with?

5 A The DNA profile is consistent with Michael Solid.

6 Q And like I asked previously, was there a statistic
7 that you were able to generate in order to quantify the
8 validity of your finding?

9 A Yes, I did.

10 Q And what was the statistic that you generated?

11 A The probability of randomly selecting an unrelated
12 individual having a DNA profile consistent with the full
13 single source DNA profile from the swab of the Aquafina water
14 bottle is approximately 1 in 51.2 quintillion.

15 Q All right. Now, we talked about trillion and
16 billion. What's quintillion? Can you put that in context
17 for us?

18 A These are all huge numbers and we get, you know,
19 even larger numbers with these statistics and it's hard to
20 quantify in your head. So I like to count it as, well, first
21 you have a million, then a billion, then trillion, then
22 quadrillion, then quintillion.

23 Q Next I'm going to draw your attention to Lab Item
24 Number 9. Were you able to generate any conclusions with
25 regards to Lab Item Number 9?

1 A Yes, I was.

2 Q What conclusions were you able to draw?

3 A Lab Item 9 with a swab of the mouth of a plastic
4 Powerade bottle from the rear cupholder of Vehicle Number 1
5 was a full single source male DNA profile.

6 Q And who was that -- who was the source of the DNA
7 profile?

8 A It was consistent with Michael Solid.

9 Q And similarly I'm going to ask you, were you able
10 to generate a number to quantify the validity of that
11 finding?

12 A Yes, I was.

13 Q And what number was that?

14 A Just like the swab from the Aquafina bottle, the
15 probability of randomly selecting an unrelated individual from
16 the general population having a DNA profile consistent with
17 that of the swab from the Powerade bottle was approximately
18 1 in 51.2 quintillion.

19 Q And the last item I'm going to ask you about is
20 Lab Item Number 7. Can you tell us what the description was
21 for Lab Item Number 7?

22 A Yes. It was a swab from the interior front
23 passenger door of Vehicle Number 1.

24 Q And were you able to make -- draw any conclusions
25 with regards to that DNA sample?

1 A Yes. This profile was a mixture DNA profile of
2 at least three individuals, with at least one being male.

3 Q And were you able to determine any of the
4 contributors to that DNA profile?

5 A Yes. From this mixture I was able to calculate a
6 partial major contributor to this mixture profile, and it was
7 consistent with that of Michael Solid's DNA profile.

8 Q All right. And again, were you able to generate
9 a number in order to quantify the validity of your analysis?

10 A I'm sorry, if I could correct. It's not so much
11 the validity of the analysis. The analysis is valid. This
12 is just to quantify the significance of the match.

13 Q Okay. I'm sorry for being imprecise.

14 A Just because it's our mathematical calculations,
15 words have very specific symbols and meanings. So I can't
16 really change too much of that. It means something else
17 mathematically. Sorry about that.

18 Q That's fine. So let me take a step back. So can
19 you tell -- were you able to generate a statistic or quantify
20 the significance of that DNA -- of your finding in the DNA
21 profile?

22 A Yes, I was.

23 Q And what was that?

24 A The probability of randomly selecting an unrelated
25 individual from the general population having a DNA profile

1 consistent with that of the partial major contributor to this
2 mixture is approximately 1 in 241 trillion.

3 MR. PALAL: All right. The State will pass the
4 witness.

5 THE COURT: Defense, any questions?

6 MR. LEVENTHAL: No questions.

7 THE COURT: Ladies and gentlemen of the jury, any
8 questions for this witness? Seeing no hands.

9 Thank you, Ms. Davidovic, you are free to go.

10 THE WITNESS: Thank you so much.

11 THE COURT: The State may call their next witness.

12 MR. PALAL: Thank you, Your Honor. The State calls
13 Ryan Burke.

14 **RYAN BURKE**

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

17 THE CLERK: Thank you. Please have a seat.

18 THE WITNESS: Thank you.

19 THE CLERK: State and spell your first and last
20 name for the record.

21 THE WITNESS: Ryan Burke. R-y-a-n B-u-r-k-e.

22 THE COURT: Thanks, Mr. Burke.

23 Your witness, State.

24 MR. PALAL: Thank you, Your Honor. Your Honor,
25 per stipulation, the parties are going to admit State's

1 Exhibit 120, 121, 101, 100, 99, 98, 97 and 96.

2 MR. MARCHESE: That's correct, Your Honor. We've
3 reviewed those and we have no objection.

4 THE COURT: All right, sounds good. So admitted.

5 (State's Exhibits 96 through 101, 120 and 121 admitted)

6 MR. PALAL: And then the last one will be 128.

7 MR. MARCHESE: And same representations.

8 THE COURT: All right. So 120 you're going to
9 admit twice?

10 MR. PALAL: 128.

11 THE COURT: 128. Okay, got it. Let me make sure
12 I've got that number, though.

13 (State's Exhibit 128 admitted)

14 MR. PALAL: That's all.

15 THE COURT: Thank you.

16 DIRECT EXAMINATION

17 BY MR. PALAL:

18 Q Sir, how are you employed?

19 A I'm an FBI special agent.

20 Q And how long have you been with the FBI?

21 A Just about ten years now.

22 Q And what's your educational background?

23 A I have a Bachelor's Degree in Sociology and a
24 Master's Degree in Criminal Justice, both from the University
25 of Massachusetts.

1 Q And where are you currently assigned?

2 A I'm assigned to the FBI's New Hampshire office,
3 where I'm the coordinator for our drug and violent crime task
4 force.

5 Q And in 2016, where were you assigned?

6 A The FBI's Las Vegas division.

7 Q And what team are you assigned to?

8 A I'm also assigned to the FBI's Cellular Analysis
9 Survey Team, otherwise known as CAST.

10 Q Okay. And what kind of work does CAST do?

11 A CAST provides assistance to local, state and
12 federal investigators with the analysis of cellular records
13 in order to estimate where a cell phone was located when it
14 was used.

15 Q Okay. Do you assist other agencies with this type
16 of analysis?

17 A I do; regularly.

18 Q And how do you -- if somebody wants your help to
19 do this analysis, how does that happen?

20 A Investigators can either contact me personally,
21 they can contact FBI Headquarters, or oftentimes when they
22 reach out to the phone companies they're referred to the
23 CAST team.

24 Q And how many members does the CAST team have
25 nationwide?

1 A It fluctuates but it's somewhere between 60 and 70.
2 Q And is there some kind of qualification to become
3 on the CAST team?
4 A There is. There's a standardized curriculum of
5 350 hours of training and testing in the fields of records
6 analysis, radio frequency theory, cellular network
7 architecture, drive testing, and additionally we receive
8 training directly from the major cellular providers from
9 their records personnel and their radio frequency engineers.
10 Q And is it fair to say that when you complete 300
11 hours of training you're considered to be certified in this
12 area?
13 A Yes.
14 Q And with regards to Las Vegas specifically, back
15 in May of 2013 how many companies operated cellular networks
16 here in Las Vegas?
17 A There were four. AT&T, Sprint, Verizon and T-
18 Mobile.
19 Q And did you actually -- were you actually able to
20 obtain the towers for AT&T and Verizon from that time period?
21 A Yes.
22 MR. PALAL: Your Honor, permission to approach?
23 THE COURT: Granted.
24 BY MR. PALAL:
25 Q I want to show you what's been previously admitted

1 as State's Exhibit 129. Is this a CD of a tower list for
2 AT&T and Verizon?

3 A It is.

4 Q And is it for the tower list of May of 2013?

5 A Yes, it is.

6 Q All right, sir. So what do cell towers do?

7 A Generally speaking, cell towers broadcast a signal
8 in the form of radio waves in order for the network's
9 customers to be able to access the cellular network to make
10 voice calls, send text messages, browse the Internet and
11 other types of services that are available.

12 Q And what's the range of a cell tower?

13 A So it really varies, depending on the area where
14 the cell tower is located. The networks will essentially
15 construct towers, enough towers to serve the customers in
16 that immediate area. And so in a densely-populated area there
17 will be many more towers than a rural area. And in a densely-
18 populated area they're covering much smaller areas than, say,
19 outside the city limits. So it really depends from tower to
20 tower.

21 Q And can you explain to us what a sector of a tower
22 is?

23 A Sure. Most cell towers are split into three
24 sectors, and that's just a term that's used to refer to a set
25 of antenna on the tower. And so each of those sectors on the

1 particular tower are broadcasting a signal that's unique to
2 the other signal that's being broadcast from the sectors on
3 that tower.

4 Q So are cell towers responsible for providing
5 coverage to a particular area?

6 A They are. They generally provide to the immediate
7 area surrounding the tower.

8 Q And did you prepare a PowerPoint for -- to assist
9 in your presentation here?

10 A I did.

11 Q And it's been admitted as State's Exhibit 128. Do
12 you actually have the PowerPoint?

13 A Not with me.

14 Q Okay. Do you mind if I show it up on the screen?

15 A Sure.

16 Q All right, good. Okay. And this is the -- these
17 are the numbers that you analyzed for the case here today;
18 correct?

19 A They are.

20 Q And the analysis was completed on June 27th, 2016;
21 is that correct?

22 A Yes, it was.

23 Q And before we get to that, can you please explain
24 or summarize to the jury how a cell phone engages a cell
25 tower?

1 A So cell phones are constantly, so long as they're
2 powered on, constantly scanning their environment for a
3 detectable cell signal. And they do that so that -- there's
4 this sort of rolling list of the highest quality signal that's
5 available to the cell phone at all times, and it does that so
6 when you go to use your phone it automatically knows through
7 which cell tower it's going to connect. And then when you do
8 connect for a call or send a text message, etcetera, generally
9 the cell phone providers record a record of that activity that
10 includes the date, time, the duration and the cell tower and
11 sector that was utilized.

12 Q So do the cell towers record or have a record of
13 the activity of each customer?

14 A They do.

15 Q And what do you call the records that come with
16 each document for -- or that documents each person's cell
17 phone use?

18 A So they're billing records, but we generically
19 refer to them as call detail records.

20 Q And are they frequently abbreviated, particularly
21 in law enforcement, as CDRs?

22 A Yes, they are.

23 Q And in this case did you have an opportunity to
24 review CDRs for the Verizon number of (702) 379-7494?

25 A Yes, I did.

1 MR. PALAL: Permission to approach, Your Honor?
2 THE COURT: Granted.
3 BY MR. PALAL:
4 Q I'm showing you what's been admitted by stipulation
5 as State's Exhibit 120. Is this just a CD compilation of the
6 records from Verizon?
7 A Yes, it is.
8 Q And I'm going to approach you with State's Exhibit
9 121. Is this a compilation of records from AT&T for the phone
10 number of (702) 875-5700?
11 A Yes, it is.
12 Q Now, along with the records, do they tell you
13 who is the associated owner of the number and the address
14 associated with it?
15 A Yes.
16 Q And for the (702) 379-7494, do the records state
17 that Kayrn Licari was the owner of that phone number?
18 A Yes, they do.
19 Q And was that phone number associated with the
20 address of 7467 Shadow Hawk Avenue?
21 A Yes, it was.
22 Q And then with regards to State's Exhibit 121, the
23 875-5700 number, was that phone number registered to somebody
24 by the name of Richard Dismont?
25 A Yes, it was.

1 Q And was that the -- the address that was associated
2 with it, is it 5599 Aleman Drive?

3 A Yes.

4 Q Okay. So, do the cell providers also maintain
5 lists of where their towers are located?

6 A Yes. They all maintain tower lists and those tower
7 lists include the latitude and longitude coordinates of every
8 cell tower in their network, along with the orientation or
9 direction of each sector on all of their towers.

10 Q And how do you estimate -- so you're talking about
11 sectors. How do you estimate the coverage of a sector?

12 A So generally speaking, the signal from a tower is
13 contained within the area between it and the next closest
14 towers. And so without additional testing, we estimate that
15 the coverage is sort of within that area. It may extend
16 slightly past the next closest tower, it may not reach all
17 the way there, but it's in that sort of immediate vicinity
18 surrounding the tower.

19 Q And are you familiar with the term drive testing?

20 A Yes.

21 Q What is that?

22 A So drive testing is something that's done within
23 the cellular industry and it's also something that the CAST
24 team does where we use antennas and a passive scanner to go
25 out and drive around a particular area of interest in order

1 to collect measurements of the cellular signal, so that we can
2 then come back and process that information to see exactly
3 where the signal is present and where it's not present.

4 Q I'm going to change gears a little bit. So almost
5 all of us carry cell phones. Are you telling us that the
6 phone company knows where we are, the towers can tell us where
7 we are 24/7?

8 A Well, there aren't records that record that, but
9 the network generally knows what towers are -- your phone can
10 see in those times.

11 Q Okay. So the phone company does know that
12 information, they just don't keep that record?

13 A Correct. They don't have any business need to
14 maintain, you know, 24/7 continuous records for all their
15 customers. They essentially just record the activities that
16 they can bill you for because they're in business to make
17 money.

18 Q And so how do -- so what are the events that cause
19 a tower -- contact with a tower to actually be recorded by a
20 telephone company?

21 A So, it varies from provider to provider. For
22 Verizon during this time frame, at least, cell site
23 information or tower information was recorded only for voice
24 calls. And with AT&T, it was recorded during this time again
25 for voice calls, text messages, and for various data

1 connections when your phone is connecting to the Internet.

2 Q And it's fair to say in the intervening nine years
3 the technology associated with the towers has changed?

4 A It has.

5 Q Does a phone have to be within the coverage area of
6 a tower in order to actually use the phone?

7 A It does. And that's the most important thing.
8 That's sort of the basis of the analysis that we conduct. It
9 can't use a tower to make a voice call unless it's within that
10 tower's coverage area.

11 Q And so regardless of the phone selecting the
12 closest or slightly more distant tower, can you approximate
13 the area of where a phone was?

14 A Yes.

15 Q So you can't say -- is it fair to say you can't say
16 with specificity somebody is standing -- like I'm standing
17 right here at this podium, but you'd be able to say I'm in
18 this general area?

19 A Correct.

20 Q And you wouldn't have -- you know, as I stand here
21 today, you wouldn't have my phone pinging off in Summerlin or
22 Henderson if I had my phone on me?

23 A That's correct.

24 Q Do you use your -- do you regularly use cellular
25 telephone technology in your work?

1 A I do.

2 Q Have you ever provided instructions in the field
3 of historical cell site analysis?

4 A Yes, I have.

5 Q And have you ever been subject to -- actually,
6 strike that. Have you ever testified as an expert witness
7 as regards to historical cell site analysis in trial?

8 A I have, about 35 times.

9 Q And have you testified here in Nevada?

10 A I have.

11 Q And specifically the Eighth Judicial District
12 Court?

13 A Yes, I have, multiple times.

14 Q Okay. Now, specifically I want to turn your
15 attention from the general how phones work to what you did
16 in this case. Can you tell us what you did in this case?

17 A I was contacted in 2016 by the District Attorney's
18 Office with a summary of events related to this case. I was
19 provided with two sets of phone records and I was asked to
20 estimate the locations of those two phones for the times that
21 were relevant for the case summary that was provided to me.

22 Q And that's what we have -- the phone numbers we
23 have here are the -- you analyzed are the (702) 379-7494
24 number?

25 A Yes.

1 Q And then the (702)875-5700 number; is that correct?

2 A That's correct.

3 Q And this was -- as you said, this was completed in

4 2016; is that correct?

5 A Yes.

6 Q All right. And unfortunately I just have the black

7 and white, so we're going to work off that for now.

8 A That's okay.

9 Q What are we looking at here?

10 A So this is an overview of AT&T's cellular network

11 from 2013. All of the dots are locations where AT&T cell

12 towers were present. And like I spoke about earlier, you can

13 sort of see in a more densely populated areas, namely the

14 Strip, there's significantly more or a higher number of towers

15 than on the outskirts of town. And so those towers there on

16 the Strip are covering much smaller areas than, say, that one

17 in the far top left corner. That's sort of in the Centennial

18 Hills area.

19 Q So the dots we're looking at here are just towers

20 that AT&T had in place in 2013?

21 A Correct.

22 Q And what you're telling us is more populous areas

23 are going to have more towers?

24 A Yes.

25 Q Showing you page 3 of State's Exhibit 128, what are

1 we looking at here?

2 A The same thing, except this time for Verizon. The
3 dots on this map represent locations where Verizon cell towers
4 were located. It's important to mention a Verizon phone will
5 look for and use Verizon towers and similarly an AT&T phone
6 will only look for and use AT&T towers. And so the networks
7 are independent, unless we're in some scenario where a phone
8 is roaming, but that wouldn't take place within the valley,
9 at least.

10 Q Okay. So if I have a Verizon phone I'm only going
11 to -- and I'm in Clark County in 2013, I'm only going to be
12 hitting one of these towers; is that right?

13 A Correct. Yes.

14 Q And conversely, if I'm -- if I have an AT&T phone
15 back in 2013, I'd only be hitting the towers that you showed
16 us in the previous page?

17 A Yes.

18 Q And can you talk to us about examples of cellular
19 towers?

20 A Sure. So I'm sure we've all seen cell towers. On
21 the right you can see it as at least an attempt to camouflage
22 them. Those towers will work in the same way as the one on
23 the left that's uncamouflaged. The one on the left is also a
24 good example of sectors. You can see the triangular brackets
25 that are affixed to that pole and each face has a set of

1 antenna that's broadcasting. Again, a signal that's unique
2 compared to the other signal that's being broadcast from the
3 different sectors. And so the phone recognizes not only what
4 cell tower the signal is from, but what particular sector
5 it's being broadcast from.

6 Q All right. And if you want, you can use the mouse
7 on your -- there to delineate what you're talking about.

8 A Okay, thank you.

9 Q So when you're talking about sectors, you're
10 talking about each line of the triangle, each side of the
11 triangle up there?

12 A Yes. You can see that this set of antenna are
13 going to broadcast a signal in that direction. It's going to
14 be unique at least in the sort of, quote, unquote, eyes of
15 the cell phone in relation to the signal being broadcast and
16 the other sectors.

17 Q And I'm now going to show you page 5 of State's
18 Exhibit 128. Can you talk to us a little bit about sector
19 orientation?

20 A So I mentioned in the tower lists it contains
21 information related to what direction the sectors are facing
22 and what direction the signal is being broadcast. It's listed
23 using an azimuth, which is similar to a compass in that zero
24 degrees would be a sector or an antenna that's facing true
25 north, whereas 180 degrees is due south. And very simply for

1 our estimation purposes, a three sector tower, each sector is
2 covering 120 degrees or one-third of the circle surrounding
3 that area. And so when we represent the use of a sector,
4 we'll use a wedge that is 120 degrees centered on the azimuth
5 that's detailed in the records provided by the phone company.

6 Q So to put it a simpler way, when you look at the
7 records that you're getting, they're going to tell you which
8 one-third the tower -- the phone is hitting off of?

9 A Exactly. Yes.

10 Q I'm going to actually now move to State's Exhibit
11 101. We know it's 101 because we can see the 101 on the back
12 of it. All right. What are we looking at here?

13 A So this is the activity from the two sets of phone
14 records during the time frame of 2:41 to 2:51 p.m. on May
15 16th, 2013.

16 Q Sorry. I'm going to try and make that easier to
17 read.

18 A And up top you'll see this information here. This
19 is actually the information taken directly from the raw
20 records themselves that were provided. And just to, I
21 suppose, speak about these briefly, each company has their
22 own format of records, so the columns vary. But essentially
23 you'll have the number for which the records were requested,
24 the number that was in contact with that particular phone
25 number, what date and time the activity took place, how long

1 it lasted in seconds, and then we have information regarding
2 the cell tower and sector that was used. And so these up top
3 are Verizon records and these in the bottom are AT&T records.
4 Again, a different format, but the same basic information.

5 Q And the Verizon records are the ones associated
6 with the Licari address; is that correct?

7 A Yes.

8 Q And the bottom ones are the ones associated with
9 the Dismont address; is that right?

10 A Correct.

11 Q And then can you tell us what we're looking at here
12 in terms of we now see angles and a circle. What does that
13 mean?

14 A So then down below here this is the actual visual
15 representation of the towers that were used, as listed in the
16 records there above. And so these red sectors or wedges
17 represent activity on the Verizon phone, which again ends
18 in 7494. The blue phone -- or, excuse me, the blue sectors
19 represent activity for the AT&T phone ending in 5700. And so
20 what we see here, it's a little blurry at the bottom, but
21 essentially the beginning of this time frame, 2:41 to 2:45
22 p.m., both the Verizon and AT&T phone are using cell towers
23 and sectors -- the cell towers located next to each other,
24 sectors facing in the same direction. And so that would
25 indicate that the phones were sort of in this general

1 vicinity. And then later on in the time --
2 Q Sorry to interrupt.
3 A Sure.
4 Q And so the red represents the Verizon phone and the
5 blue represents the AT&T phone; correct?
6 A Yes.
7 Q And they wouldn't be -- as you mentioned before,
8 they wouldn't -- even if they're together, they wouldn't be
9 hitting off the same tower because they're different company's
10 phones?
11 A Correct.
12 Q And so you were saying that at this point for the
13 phone records at around 14:41 through 14:45, which is 2:41 to
14 2:45, if I get that right?
15 A Yes.
16 Q And then they are -- the phones are together or are
17 in the same vicinity?
18 A They're in the same area there. Yes.
19 Q Okay. And then is there anything that you see
20 that's different later on?
21 A Sure. Then later on in this time frame, I believe
22 this is 2:43 and then 2:51, you can see both phones have left
23 this initial area and have moved away.
24 Q Okay. Now, this is also for May 16th, 2013. I'm
25 sorry, this is State's Exhibit 97. This is May 16th, 2013,

1 but just the next minute, 2:52 through 3:08; is that correct?

2 A That's correct.

3 Q And what did you observe from your mapping of this?

4 A So between the two phones, three events that

5 recorded cell tower location. The first being here at 2:59

6 p.m. This is the Verizon phone using a tower along the 215.

7 And then a few minutes later at 3:08 using a tower sort of

8 further north along the 215. And then similarly at that same

9 time the AT&T phone was utilizing a tower in that same area.

10 So again, they had departed sort of the initial area down here

11 and then by 3:08 the phones were still in the same general

12 vicinity along 215 in that area.

13 Q So is it fair to say initially the phone were

14 together, they separate, and now at this point at this time,

15 3:08, they appear to be back together again?

16 A Correct.

17 Q Now I'm going to show you State's Exhibit 98. So

18 the last exhibit we looked at ended at 3:08 and now we're at

19 3:09 p.m. to 3:46 p.m.; is that correct?

20 A Yes.

21 Q All right. And then it appears to only show little

22 blue wedges; is that correct?

23 A Correct.

24 Q So what does that indicate? What are we to draw

25 from this?

1 A There was no Verizon cell tower usage during this
2 time frame, and so we were only able to estimate the location
3 of the AT&T phone.

4 Q Okay. And what are you -- after having mapped
5 this, what are your observations of the route of the phone
6 from 3:09 to 3:46 p.m.?

7 A So if you recall, the phones were down in this area
8 and now by 3:28 the AT&T phone is at Cheyenne and 215 and
9 then sort of moves east using cell towers along the road,
10 West Cheyenne, and then ultimately -- and this is sort of
11 in chronological order as you follow my mouse, begins to use
12 cell towers down by this area, the 95 and Summerlin Parkway.

13 Q And so we're clear, they were only going to
14 generate an actual record from the cell phone company if you
15 do an activity. And with the Verizon phone, that's just a
16 phone call, and with the AT&T phone during 2013 that could be
17 a phone call or a text?

18 A Yes.

19 Q So the fact that we are not seeing anything from
20 3:09 to 3:46 from the Verizon phone doesn't mean the Verizon
21 phone isn't in the area, it just means that no phone calls
22 were made with it during this time?

23 A Correct.

24 Q And the other thing I want to ask you, obviously
25 we're looking at from 3:09 to 3:46 traveling from Cheyenne

1 and the 215 all the way down to the area of 95 and Summerlin
2 Parkway; right?

3 A Yes.

4 Q And, sir, how long were you -- was your assignment
5 out here in Las Vegas?

6 A About four and a half years.

7 Q It's fair to say that a person is not going to be
8 walking from Cheyenne and the 215 to the 95 and Summerlin
9 Parkway, traveling that distance in a matter of 25, 30
10 minutes. Is that fair?

11 A That's fair.

12 Q Okay. So to you, would this indicate that the
13 person was in a vehicle?

14 A Yes.

15 Q Now I'm going to show you State's Exhibit 99. Now,
16 this is -- we left off at 3:46, so now we're at 3:47 p.m. to
17 4:11 p.m. on May 16th, 2013; is that correct?

18 A Correct.

19 Q And what phone activity do you see here?

20 A So, each phone recorded three records and all three
21 of those records for each phone utilized the towers in sectors
22 that you can see here. A tower -- out of the closest tower
23 at least equidistant to, you know, another tower here to what
24 is the crime scene at South Torrey Pines and West Charleston.
25 Additionally, two of those events for each phone were for

1 voice calls that occurred between the two phones. And so the
2 first being at approximately 4:09 p.m. for about 21 seconds
3 and then 4:11 p.m. for about 38 seconds. The two phones
4 were sort of co-located in the same area and talking to one
5 another.

6 Q All right. And so I understand it, at 4:09 and
7 4:11 these phones were communicating with each other?

8 A Correct.

9 Q And that was via a voice call?

10 A Yes.

11 Q And you had mentioned what's marked CS. What is
12 CS?

13 A Crime scene.

14 Q And that's at the corner of -- here you have it
15 marked at the corner of Torrey Pines and Charleston; is that
16 correct?

17 A Yes.

18 Q And you said that the towers that the phones
19 utilized are the ones closest or at least equidistant to the
20 next closest tower; is that correct?

21 A Correct.

22 Q So if someone was at the crime scene; it would not
23 surprise you at all that their phones would be hitting off
24 these towers?

25 A Not at all.

1 Q And you have -- we also have the duration of the
2 phone calls; is that correct?

3 A Yes.

4 Q And how long was the phone call made at 4:09
5 between the two phones?

6 A So, it was approximately 13 to 21 seconds,
7 depending on the record you look at.

8 Q Okay. So what's that about? Why does Verizon tell
9 us it's 21 seconds and AT&T says 13 seconds?

10 A Good question. So each network has their own
11 internal clock and so that varies, so that's one factor. And
12 then separately, it's up to each company when they hit go for
13 billing purposes when they start counting how many seconds
14 you're using on their network. And so from provider to
15 provider we always see slight variations in the duration.
16 That's all.

17 Q All right. So when you say go, so I'm calling
18 somebody and I hear the ring, right? You're saying that the
19 phone companies are going to charge me for the ring, whereas
20 other companies are only going to start after the person
21 picks up?

22 A Exactly.

23 Q Okay. And so it appears -- is it fair to say it
24 appears fairly consistent that the -- I'm sorry, the Verizon
25 number, the Verizon duration is about 8 seconds more than

1 the AT&T duration?

2 A Yes.

3 Q So, Verizon is the one charging the most out of
4 these two?

5 A They are.

6 Q So the longer -- I guess the longer version would
7 include however long it took to get from ring to call
8 conversation to hang up?

9 A Yes.

10 Q Okay. I'm now going to show you what's been
11 admitted as State's Exhibit 96. And so these are the next
12 records. We looked at from 3:47 to 4:11. Now we're looking
13 at 4:12 to 4:44; is that right?

14 A Yes, it is.

15 Q And it looks here -- a few exhibits ago we saw a
16 bunch of red -- we saw a bunch of blue wedges. Now we don't
17 see any blue wedges, we see a lot of red wedges; is that
18 correct?

19 A Correct.

20 Q And what are we looking at here in terms of the
21 timing and duration of these calls, or the significance of
22 these calls?

23 A So this is, again, just only the activity for the
24 Verizon phone during this time period. But chronologically we
25 see use of a tower and a sector here and then the phone moves

1 east, utilizing this tower and then these two towers here,
2 so moving away from that Torrey Pines/Charleston area.

3 Q Okay. And we had mentioned before that our crime
4 scene was designated by CS; is that correct?

5 A Yes.

6 Q So we have after 4:11, 4:12, around 4:00 -- I guess
7 the first thing we have is at 4:16; is that correct?

8 A Correct.

9 Q So we have -- going back to State's Exhibit 99, we
10 have two calls here, one at 4:09 and 4:11 east of -- or not
11 east of the crime scene, but the towers are east of the crime
12 scene; is that correct?

13 A Yes.

14 Q But the phones could very well -- you would expect
15 the phones, if they were at the crime scene, to be hitting off
16 these towers; correct?

17 A Correct.

18 Q And then once we get -- after that 4:11 call, we
19 are now west of the crime scene; is that correct?

20 A Yes.

21 Q And now we're at 4:16; is that correct?

22 A Yes.

23 Q And this is one the Verizon phone?

24 A Yes, it is.

25 Q And then you had said that you had noticed the

1 pattern chronologically of the phone after having moved west
2 of the crime scene, going -- it's now north and then east of
3 the crime scene; is that correct?

4 A Yes.

5 Q And lastly I'm going to show you State's Exhibit
6 100. Can you tell us what the significance of your
7 documentation of the cell records are here?

8 A So, 4:45 to 5:09 p.m., now we see that both phones
9 are yet again utilizing the cell towers in the same immediate
10 vicinity. This time close to Las Vegas Boulevard and I
11 believe that's Flamingo. It's a little bit blurry. Or Desert
12 Inn. Excuse me.

13 Q And again, certainly even though they're hitting
14 off -- you would expect them to be hitting off different
15 towers because they belong to different companies?

16 A Yes.

17 Q And they are -- the vector tells us which direction
18 the phone is going to be relative to the tower?

19 A Yes.

20 Q So with regards to the red vector or the red wedge,
21 we're looking at a phone that's going to be east of the red
22 wedge; correct?

23 A Correct.

24 Q And then with regards to the blue wedge, we're
25 expecting the phone to be west of that wedge; correct?

1 A Correct.

2 Q And that's what draws your conclusion that the
3 phones are within a vicinity of each other?

4 A Yes.

5 MR. PALAL: The State will pass the witness.

6 THE COURT: Defense.

7 MR. LEVENTHAL: Can we take a five minute break?

8 THE COURT: Sure.

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

18 We'll have you guys back here at -- let's do 2:55.

19 THE MARSHAL: Stand for the jurors.

20 (Jury exits the courtroom)

21 THE COURT: All right. The jury has exited the
22 room. You guys are at ease. Is there anything we needed to
23 discuss or did you just need a moment to --

24 MR. LEVENTHAL: We just need a moment to verify
25 something.

1 THE COURT: To look at some things.
2 MR. LEVENTHAL: Yeah.
3 THE COURT: Okay, perfect.
4 MR. PALAL: He was going to be our last witness for
5 the day.
6 THE COURT: Mr. Burke is?
7 MR. PALAL: Yes.
8 THE COURT: Okay. All right.
9 MR. PALAL: So I just wanted to give the Court a
10 heads up.
11 MR. MARCHESE: He's waiting for you to yell at him.
12 MR. PALAL: I just like to --
13 THE COURT: I thought we had one more, but.
14 MR. PALAL: We do. It's the -- we're off the
15 record?
16 THE COURT: Yeah.
17 (Court recessed from 2:48 p.m. until 3:02 p.m.)
18 (Jury is present)
19 THE COURT: Do the parties stipulate to the
20 presence of the jury?
21 MR. LEVENTHAL: Yes, Your Honor.
22 MR. PALAL: Yes, Your Honor.
23 THE COURT: All right. You may be seated.
24 Mr. Leventhal, your turn for cross-examination.
25 MR. LEVENTHAL: Just briefly. Thank you.

1 THE COURT: Of course.
2 CROSS-EXAMINATION
3 BY MR. LEVENTHAL:
4 Q Good afternoon.
5 A Good afternoon.
6 Q My name is Todd Leventhal. I represent Mr. Solid.
7 I just have a couple questions for you. So the original
8 9-1-1 call that came in was at 4:12. Were you aware of that?
9 A No.
10 Q Okay.
11 (Mr. Leventhal confers with Mr. Palal)
12 BY MR. LEVENTHAL:
13 Q Okay. So when you were asked to put together these
14 -- sort of these telephonic flow sheets, you were asked to
15 identify just two numbers; correct?
16 A Correct.
17 Q And I believe you testified that one of them would
18 have been 7494 and then 5700; right?
19 A Yes.
20 Q Okay. And the 7494 belonged to Ms. Licari or
21 registered to Ms. Licari?
22 A Correct.
23 Q Okay. That's not Michael Solid; right?
24 A Correct.
25 Q And the 5700 number, that was for Mr. Dismont;

1 correct?

2 A Yes.

3 Q Okay. And you weren't asked to identify any of the
4 other phone numbers that you listed. For example, if I go to
5 State's Proposed Exhibit 96, can you see that?

6 A Yes, I can.

7 Q Okay. And if I'm reading this correctly, the
8 right-hand side here, (702) 248-4784, Ms. Licari's phone,
9 that's the originating phone number; correct?

10 A Correct.

11 Q Okay. That number then contacted at 1616, which
12 is 4:16; correct?

13 A Yes.

14 Q On the 16th of May, 2013 contacted the (702) 379-
15 7494; correct?

16 A Correct.

17 Q Okay. And you don't know or you didn't determine
18 whose number that is; right?

19 A Well, that one is the phone number for which the
20 records were requested. But to answer your question for the
21 other number, which I think is different, I did not research
22 who that belonged to.

23 Q Okay. So that was an incoming call to that number?

24 A Correct. Yes.

25 Q Okay. So the 4784, we don't know whose number that

1 is, and the 7494 we do know whose number, that's Licari's
2 number?

3 A Yes, exactly.

4 Q Okay. So it originated from this and then on that
5 time came in here. Okay. Then moving on, again we've got the
6 7494, that's the originating number that you were asked to see
7 where that went; right?

8 A Yes.

9 Q And then that was at 4:25; correct?

10 A Yes.

11 Q And that was for 40 -- and those are seconds?

12 A Correct. Seconds.

13 Q And I understand what you said. It just depends on
14 how the provider determines their seconds. It could have been
15 more or less; right?

16 A Yes.

17 Q Okay. And that number was to -- that was called to
18 the -- last four is 9311; correct?

19 A Yes, it was.

20 Q Okay. And you sort of mapped this -- you sort of
21 mapped this with the CS, that being, as you indicated, the
22 crime scene; right?

23 A Yes, I did.

24 Q And then you have a cell tower here, which is the
25 (702) 379-7494. That's the first number, correct, that you

1 indicate is there?

2 A Yes, that's the Verizon phone.

3 Q Okay. Now, you don't know whether or not that call
4 -- well, you know where it originated and you know the cell,
5 but you don't know whether or not that call stayed at that
6 for any length of time; right?

7 A Correct. I do not.

8 Q Okay. So that call there -- so a vehicle or a
9 person could have gotten to that location, stopped, made the
10 phone call; right?

11 A Yes.

12 Q And stayed there because you don't know -- I mean,
13 eventually you know that that phone moved because of further
14 cell phone towers; right?

15 A Yes.

16 Q Okay. But you don't know how long that call was
17 at that tower itself; right?

18 A Correct.

19 Q Right. Okay.

20 MR. LEVENTHAL: Thank you very much. I have
21 nothing further. I appreciate it.

22 THE WITNESS: You're welcome.

23 REDIRECT EXAMINATION

24 BY MR. PALAL:

25 Q With regards to the records you obtained for the

1 379-7494 number, we talked about earlier that that phone
2 number was registered to a Brianna Licari; is that correct?
3 I'm sorry, Kayrn Licari.

4 A Correct.

5 Q Now, you said you've been doing work associated
6 with phones for a significant amount of time; right?

7 A I have.

8 Q And then when you -- in your experience, is it
9 unusual for a person to be using the phone of a member of
10 their household consistently as though it was their phone,
11 even though the phone is not registered in their name?

12 A That's common, yes.

13 Q And, in fact, the registered phone is -- who the
14 phone is registered to is just who the name is given to the
15 phone company; is that correct?

16 A Correct.

17 Q Now, you were asked questions about when a call
18 was made and whether or not you could tell if the person was
19 moving or not; correct?

20 A Yes.

21 Q Now, and I don't know this so I'm going to ask you,
22 do you -- if I want a, you know, five minute phone call and
23 it's one continuous phone call and I'm driving let's say
24 closer to the tower indicated in State's Exhibit 96 that's
25 at the intersection of 95 and Summerlin Parkway, right, so we

1 have a tower here; is that right?

2 A Yes.

3 Q And I'm initially closer to the tower that appears
4 to be used at 4:16, and if I move past this tower on a
5 continuous phone call, am I going to stay at this tower or am
6 I going -- is my phone going to start utilizing a different
7 tower as I drive past one tower and go to another tower?

8 A It will -- the network will pass your call off from
9 one tower to the next when you leave one coverage area and
10 enter another. And then those towers aren't all necessarily
11 recorded by the phone provider, and so Verizon generally
12 records the tower used at the beginning of a call and the end
13 of a call and nothing in-between. These towers and sectors
14 that we see in the maps are all of the originating cell towers
15 and sectors, so the ones used at the beginning of the call.

16 Q Okay. And then with regards to the duration of the
17 phone call you have, in regards to these exhibits, Verizon
18 calls them seizure durations; is that correct?

19 A Yes.

20 Q And then these are listed in seconds; is that fair?

21 A Yes.

22 Q And while it's not an exact amount of time, would
23 you agree with me that a Verizon -- if Verizon listed it at
24 27 seconds, it's probably not a five minute phone call?

25 A No, it's not.

1 Q And the plus or minus. What would you describe in
2 your training and experience seeing these phones, what the
3 general plus or minus or variation would be from the listed
4 seizure to maybe the actual duration?

5 A There's no real way to know that, but the call
6 certainly didn't last any longer than 27 seconds. Some of
7 that would have been the connection time. But, again, they're
8 in the business to make money, so they're not going to cut it
9 short.

10 Q Okay. So the maximum time -- the actual
11 conversation wouldn't be any longer than 27 seconds and then
12 the seizure portion or the discrepancy between companies is
13 whether or not the lead up to the call, the attempt to
14 connect, the ringing and maybe the back end of the hanging up
15 where it actually disconnects, it's on those fringes where
16 the time may vary between company to company?

17 A Yes. So the -- I mean, that 27 second seizure
18 duration would indicate that the conversation was just
19 slightly less than 27 seconds; no longer.

20 Q Okay. All right, the State will pass the witness.

21 THE COURT: Mr. Leventhal, any further -- any
22 recross?

23 MR. LEVENTHAL: Court's indulgence. I'm looking.

24 THE COURT: Of course.

25 MR. LEVENTHAL: Nothing further. Thank you.

1 Thank you, Detective.

2 THE COURT: Ladies and gentlemen of the jury, any
3 questions for this witness? Okay, go ahead and write your
4 question on a full sheet of paper with your name and juror
5 number on it.

6 Anyone else? Seeing no hands, parties approach.

7 (Bench conference begins)

8 THE COURT: This is a question from Esteban; 588.
9 Is there a maximum distance you could be before a signal
10 wouldn't reach or a minimum?

11 MR. PALAL: Sure, I think that's fine.

12 MR. LEVENTHAL: Yeah.

13 THE COURT: All right, I'll ask it.

14 (End of bench conference)

15 THE COURT: We have a question from a juror. Is
16 there a maximum distance that you could be before a signal
17 wouldn't reach or a minimum?

18 THE WITNESS: Well, a minimum, no, because I
19 suppose if you're right next to the tower then you'd certainly
20 be able to connect to it. Maximum, there would be a maximum
21 distance, but it really would come down to the way that the
22 tower is designed. There are towers, you know, on 95 that go
23 well north towards Reno, just along sort of the desert highway
24 that extends, you know, multiple miles. But then equipment
25 that's used on the Las Vegas Strip is designed specifically

1 not to broadcast that far. So I hate to sound like it's a
2 non-answer, but it really just depends on the tower itself,
3 in what area it's being used and the purpose for which the
4 network installed it.

5 THE COURT: Understood. Any follow-up based on
6 that, Mr. Palal?

7 MR. PALAL: Yes, Your Honor.

8 FURTHER REDIRECT EXAMINATION

9 BY MR. PALAL:

10 Q So I'm just going to use as an example State's
11 Exhibit 101. So when we're talking about distance to towers,
12 is the design for each company to try and have the closest --
13 the tower closest to the person typically be the tower that's
14 utilized on a phone call?

15 A Yes, in most cases.

16 Q And so we talked earlier about how if I'm driving
17 home on Summerlin Parkway, I'm on the phone, that -- my phone
18 call would be passed from tower to tower as I'm driving. Is
19 that fair?

20 A Correct.

21 Q And so is it based on the tower coverage -- for
22 instance, based on the tower coverage how close or far you're
23 going to be from a tower -- you could be from a tower to
24 actually be on that tower?

25 A Absolutely. Yes.

1 Q So the system is designed to pass you to the --
2 in most instances to pass you to the closest tower?

3 A Yes. And each tower is covering sort of the area,
4 you know, in-between it and the next closest tower, with a
5 little bit of overlap and no further. If the phone companies
6 could get away with constructing and only maintaining one
7 tower in the City of Las Vegas and just cover everyone they
8 would, but they can't because there's too many customers and
9 there would be too much interference. And so what they do is
10 they have to construct and maintain multiple towers, tilt the
11 antennas down so they cover, you know, a relatively small
12 area, and so there isn't a ton of overlap and they can serve
13 all the customers in the area.

14 So particularly within Las Vegas the signal from
15 one tower is going to be contained within that area between
16 it and the next closest tower. And so it's not going to go
17 miles. That example was sort of on the extreme end, in the
18 middle of the desert, and then within the city it's a
19 relatively smaller area.

20 Q And I guess to further clarify, in State's Exhibit
21 128 you have -- using Verizon as an example and it's page 3,
22 all the dots we're looking at here are all the towers in the
23 Las Vegas valley in 2013; right?

24 A Yes.

25 Q And so, again, we have a lot of towers in a place

1 where you're going to have a lot of people, a bigger populace
2 at one time?

3 A Correct.

4 Q And then they're a little bit more spread out where
5 you have the populace less dense?

6 A Yes.

7 MR. PALAL: Nothing further, Your Honor.

8 THE COURT: Any follow-up questions, Mr. Leventhal?

9 MR. LEVENTHAL: No, Your Honor.

10 Thank you, Detective.

11 THE COURT: All right. Thank you, you are excused.

12 THE WITNESS: Thank you, Your Honor.

13 THE COURT: Have a great day.

14 THE WITNESS: You, too.

15 THE COURT: Ladies and gentlemen, that is all the
16 witnesses we have for today.

17 During the recess you are admonished not to talk or
18 converse amongst yourselves or with anyone else on any subject
19 connected with the trial, or read, watch or listen to any
20 report of or commentary on the trial of any person connected
21 with this trial by any medium of information, including
22 without limitation newspapers, television, the Internet and
23 radio, or form or express any opinion on any subject connected
24 with the trial until you're back together in this room at
25 9:00 a.m. tomorrow morning. We'll see you then.

1 THE MARSHAL: Stand for the jury.
2 (Jury exits the courtroom)
3 THE COURT: For the record, the jury has exited the
4 room. You may be at ease.
5 Do the parties want to do instructions today or do
6 you want to hold off on that?
7 MR. LEVENTHAL: Do you want to do them today?
8 MR. MARCHESE: I mean, you've obviously given us a
9 copy and I did look them over I think last week, but maybe if
10 I can just do one quick run through. I don't anticipate it
11 being a major issue.
12 THE COURT: Okay.
13 MR. LEVENTHAL: I don't either.
14 THE COURT: If we can have them, then, I guess
15 tomorrow so that --
16 MR. MARCHESE: I'll be ready to go. I promise.
17 THE COURT: Any proposed ready tomorrow --
18 MR. MARCHESE: Okay.
19 THE COURT: -- so that we can I guess get going on
20 those. I don't know that we'll be done Friday. It doesn't
21 look likely anymore, but.
22 MR. PALAL: I don't know. We'll see.
23 MR. MARCHESE: When you say done, as in their case-
24 in-chief?
25 THE COURT: I just meant with, like, have the case

1 to the jury by Friday. I just don't see it happening.
2 MR. MARCHESE: Oh, no.
3 MR. PALAL: Oh, no, no. Yeah, that won't happen.
4 THE COURT: And closing. I don't see it happening.
5 MR. LEVENTHAL: Oh, no, no. If he testifies, it
6 won't be until Monday.
7 MR. MARCHESE: Yeah.
8 THE COURT: Okay. All right.
9 MR. LEVENTHAL: It won't get to the jury until
10 Monday.
11 THE COURT: All right.
12 MR. MARCHESE: I think the thought process was --
13 THE COURT: You know, while we're on the record I'm
14 going to read him the admonishment.
15 You don't have to give me an answer. I know you've
16 been read before, but just so you have something to think
17 about, Mr. Solid. Let me get to that.
18 Okay. Mr Solid, under the Constitution of the
19 United States and under the Constitution of the State of
20 Nevada, you cannot be compelled to testify in this case.
21 Do you understand that?
22 THE DEFENDANT: Can you say that one more time?
23 THE COURT: Of course. Under the Constitution of
24 the United States and under the Constitution of the State
25 of Nevada, you cannot be compelled to testify in this case.

1 Do you understand that?

2 THE DEFENDANT: Yes. Yes, Your Honor.

3 THE COURT: You may, at your own request give up
4 this right and take the witness stand and testify. If you do
5 that, you will be subject to cross-examination by the deputy
6 district attorney and anything that you may say, be it on
7 direct or cross-examination, will be the subject of fair
8 comment when the deputy district attorney speaks to the jury
9 in his or her final argument. Do you understand that?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: If you choose not to testify, the Court
12 will not permit the deputy district attorney to make any
13 comments to the jury because you have not testified. Do you
14 understand that?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: If you elect not to testify, the Court
17 will instruct the jury, if your attorney specifically
18 requests, as follows: The law does not compel a defendant
19 in a criminal case to take the stand and testify, and no
20 presumption may be raised and no inference of any kind may
21 be drawn from the failure of a defendant to testify.

22 Do you have any questions about these rights?

23 THE DEFENDANT: No, Your Honor.

24 THE COURT: You are further advised that if you
25 have a felony conviction and more than ten years has not

1 elapsed from the date you have been convicted or discharged
2 from prison, parole or probation, whichever is later, and the
3 defense has not sought to preclude that from coming before the
4 jury and you take the stand and testify, the deputy district
5 attorney in the presence of the jury will be permitted to ask
6 you the following: One, Have you been convicted of a felony?
7 Two, What was the felony? And three, When did it happen?
8 However, no details may be gone into. Do you understand that?

9 THE DEFENDANT: Yes. But can I ask my attorney?

10 THE COURT: Hang on one second.

11 Is there -- would there be anything that would
12 apply?

13 MS. BOTELHO: He has a petit larceny, which would
14 be a crime of moral turpitude.

15 THE COURT: Okay. Is it nine years old? Or --

16 MS. BOTELHO: No. That actually happened just a
17 few months before this.

18 THE COURT: So it's still within the ten years, is
19 what you're saying?

20 MS. BOTELHO: I think so.

21 THE COURT: Okay.

22 MS. BOTELHO: Plus, I think when it comes to crimes
23 of dishonesty, there isn't a ten year. It's a ten year on the
24 felony.

25 MR. PALAL: But regardless, Your Honor, I actually

1 looked this up recently. I believe it's August when he had --
2 the conviction is from August of 2013. He pled in that case
3 while he was in custody for this case, I think probably just
4 to clean that up while he was facing this.

5 THE COURT: Understood. Okay. So that is a
6 possibility that that would be the one that would be -- that
7 they would be allowed to ask about that petit larceny
8 conviction you have. Do you understand that?

9 MR. LEVENTHAL: Court's indulgence.

10 THE COURT: Yeah.

11 MR. LEVENTHAL: It could. I'd have to look up if
12 it's a crime of moral turpitude, whether it's in the ten year
13 statute, but it's a potential. It might be something that
14 they could ask. It will come out.

15 MR. MARCHESE: It's fine. We're going to talk
16 more. Just let the judge get to her admonition.

17 THE COURT: All right. Do you understand all these
18 rights?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: You had a question for me earlier.
21 What did you want to ask?

22 THE DEFENDANT: I don't remember.

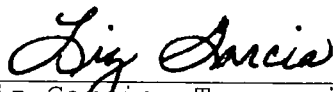
23 THE COURT: Nothing? Okay.

24 THE DEFENDANT: I don't remember.

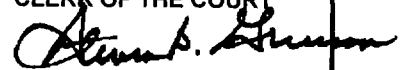
25 THE COURT: Are there any other questions about

1 your right to testify or your right not to testify?
2 THE DEFENDANT: No, Your Honor.
3 THE COURT: Okay. I'll let you converse with your
4 attorneys about this, right, and then we'll make a decision.
5 It looks like either end of the day Friday or Monday you'll
6 have to tell me what your decision on that is. Okay?
7 THE DEFENDANT: Definitely.
8 THE COURT: All right. Thank you, sir.
9 THE DEFENDANT: Thank you, Your Honor.
10 MR. LEVENTHAL: Thank you.
11 THE MARSHAL: Court is adjourned.
12 THE COURT: All right. Thank you.
13 (Court recessed at 3:23 p.m. until the following day,
14 Friday, May 20, 2022, at 9:00 a.m.)
15 * * * * *

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



Liz Garcia, Transcriber
LGM Transcription Service



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,)

Plaintiff,)

vs.)

MICHAEL SOLID,)

(AKA) MICHAEL SAMUEL SOLID,)

Defendant.)

CASE NO. C-13-290260-1
DEPT NO. II

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE CARLI KIERNY, DISTRICT COURT JUDGE

FRIDAY, MAY 20, 2022

TRANSCRIPT OF PROCEEDING RE:

JURY TRIAL - DAY 5

APPEARANCES:

FOR THE STATE:

BINU PALAL, ESQ.
AGNES BOTELHO, ESQ.
Chief Deputy District Attorneys

FOR THE DEFENDANT:

TODD M. LEVENTHAL, ESQ.
JESS MARCHESE, ESQ.

RECORDED BY: JESSICA KIRKPATRICK/VANESSA MEDINA, COURT
RECORDERS

TRANSCRIBED BY: JD REPORTING, INC.

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1 **LAS VEGAS, CLARK COUNTY, NEVADA, MAY 20, 2022, 9:15 A.M.**

2 * * * * *

3 (In the presence of the jury.)

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

6 MS. BOTELHO: The State does.

7 MR. LEVENTHAL: Yes, Your Honor.

8 THE COURT: You may be seated.

9 MR. LEVENTHAL: Can we approach real quick?

10 THE COURT: Oh, yes.

11 (The bench conference began.)

12 MR. LEVENTHAL: I was in the elevator coming up, and
13 one of the jurors was in there. She said good morning to me.
14 I said good morning. That was it. I just wanted to let you
15 know.

16 UNIDENTIFIED SPEAKER: It's fine.

17 THE COURT: Does the State have any concerns about
18 that interaction?

19 MS. BOTELHO: No.

20 THE COURT: Next time just smile and nod. It's in
21 the instructions.

22 MR. LEVENTHAL: (Indiscernible) because there's
23 jurors next door, and I just recognized her. That's my --

24 THE COURT: You're good.

25 (The bench conference was concluded.)

1 THE COURT: The State may call their next witness.

2 MS. BOTELHO: The State calls Joel Kisner.

3 THE CLERK: Please raise your right hand.

4 **JOEL KISNER**

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

7 THE CLERK: Thank you. Go ahead and be seated and
8 then, please state and spell your name for the record.

9 THE WITNESS: Joel Kisner. J-o-e-l, K-i-s-n-e-r.

10 THE CLERK: Thank you.

11 THE COURT: Thanks for being here, Detective.

12 Your witness.

13 MS. BOTELHO: Thank you.

14 **DIRECT EXAMINATION**

15 BY MS. BOTELHO:

16 Q Good morning, sir.

17 A Good morning.

18 Q Sir, turning your attention to May 16th of 2013, were
19 you employed with the Las Vegas Metropolitan Police Department?

20 A I was.

21 Q And what was your assignment at that time?

22 A I was in homicide at the time.

23 Q How long had you been in homicide leading up to 2013?

24 A I want to say it was six, seven years, somewhere
25 around that time.

1 Q Okay. And how long were you with Metro up until that
2 time?

3 A About 22 years, around that time.

4 Q Are you still employed with the Las Vegas
5 Metropolitan Police Department?

6 A I'm not. I left in 2017.

7 Q You're retired?

8 A I retired, yes.

9 Q Thank you for coming back.

10 A You're welcome.

11 Q Sir, I'd like to turn your attention again to that
12 date, May 16th of 2013. Did you become aware of an
13 investigation involving the death of a 15-year-old boy by the
14 name of Marcos Arenas?

15 A I did.

16 Q Were you and your squad, along with Detective Tate
17 Sanborn and Travis Ivie assigned to investigate that case?

18 A We were. It was our squad's turn, and it was Tate
19 and Travis's case to handle. We were assisting.

20 Q Okay. So Tate -- excuse me, Detective Sanborn and
21 Detective Ivie were the case agents?

22 A Yeah, they were.

23 Q Okay. And the rest of the squad kind of provided
24 support in the investigation?

25 A Correct. Yeah.

1 Q Okay. Now, this particular case didn't start out
2 with homicide; correct? It had been assigned over to robbery
3 and then turned over to you all?

4 A I'm pulling from memory. No, I remember robbery
5 being there first is what I was told. I don't know to what
6 level anymore. I can't recall.

7 Q That's okay. It was a long time ago.

8 But for this particular case, did you become involved
9 in executing several search warrants and also conducting
10 interviews?

11 A I did.

12 Q Okay. Turning your attention to specifically a
13 search warrant at the home of Michael Solid, 7467 Hawk Shadow,
14 did you take part in that search warrant?

15 A Yes.

16 Q Did you see -- excuse me, do you see Mr. Solid here
17 in court today?

18 A I do. He's in the dark suit with the headphones on
19 the far right of the defendant table.

20 MS. BOTELHO: Your Honor, please let the record
21 reflect the identification of the defendant.

22 THE COURT: So reflected.

23 MS. BOTELHO: Thank you.

24 BY MS. BOTELHO:

25 Q Sir, during the execution of that search warrant were

1 you or any members of your search team able to find a chain
2 with a Batman logo on it?

3 A I don't recall anything with a Batman logo. I
4 remember a chain, but I can't describe it to you now.

5 Q Okay. Did you recall at the time of the search
6 warrant making contact with an individual by the name of
7 Brianna Licari?

8 A Yes.

9 Q Mr. Solid's girlfriend?

10 A Yes. Yes. I remember the last name.

11 Q Okay. We're you present when Ms. Licari spoke with
12 the detectives about that Batman necklace that you all were
13 looking for?

14 A I don't believe so. I don't recall that I was there
15 for anything like that.

16 Q Okay. Later in that day, around 6:30, were you aware
17 that surveillance -- or a surveillance team had been set up
18 outside of what had been identified as the coconspirators
19 house, Jake Dismont's house?

20 A Yes.

21 Q And was that located at 5599 Aleman?

22 A That sounds; right.

23 Q Do you recall homicide or the purpose of homicide
24 going out to 5599 Aleman, Jacob Dismont's residence that night?

25 A As I recall, it's a street that ends in like a

1 cul-de-sac, and there's a dirt lot on the other side of it, and
2 surveillance saw a white Explorer that looked like the one used
3 in the incident, and they stopped and detained Jacob driving
4 that vehicle. That's what I remember.

5 Q Okay. Did you, yourself, go to that Aleman address?

6 A Yes.

7 Q And when you arrived at the residence, was the SUV
8 believed to be involved in the robbery and homicide, was it at
9 the residence?

10 A I believe it was in the driveway of the residence.

11 Q Okay. When you got to the residence and saw the SUV
12 parked in the driveway, did you notice whether or not it had a
13 license plate on the vehicle?

14 A I don't remember how many it had. I remember it had
15 a plate, but I remember it was cold plated, and cold plated
16 means it's a license plate that doesn't belong to the vehicle
17 that it's on.

18 Q Showing you what's been marked and admitted as
19 State's Exhibit Number 34, do you recall or do you know what's
20 depicted in this photograph?

21 A That is, at the time, the crime lab that Metro would
22 use to process larger items like vehicles. It's a two bay
23 where they pull the vehicles in. You can see the crime scene
24 tape where it was sealed the night of us taking this vehicle
25 from that address. That's the back of the vehicle.

1 Q And --

2 A I don't know who that is over on the driver side. It
3 might be Detective Sanborn.

4 Q Okay. Now, did looking at this exhibit, Exhibit
5 Number 34, refresh your memory as to whether there was a
6 license plate on the back of this Explorer?

7 A Yeah, that's the -- I remember the decals. They were
8 kind of odd to me to be on that vehicle, and that's the plate.
9 I do remember the one for two for some reason. I don't know
10 why.

11 Q Okay. And you noticed the decals. What was odd
12 about it?

13 A They didn't seem to be on the vehicle. They were
14 applied kind of not level and they had some wrinkles into
15 places of them and in places. So it was done very poorly.

16 Q Okay. And you indicated that the license plate that
17 was located on this vehicle, Jacob Dismont's vehicle was cold
18 plated. At some point did you and your team determine who that
19 particular license plate belonged to?

20 A From memory, I'm just -- I remember the Licari name
21 being attached to that plate at one point, but if I remember
22 right, it had gone through a couple of different registrations
23 to different vehicles over some time.

24 MS. BOTELHO: Okay. May I approach, Your Honor, with
25 State's Exhibit Number 105?

1 THE COURT: Yes.

2 MS. BOTELHO: And I believe it will be admitted by
3 way of stipulation.

4 MR. LEVENTHAL: That's true, Judge.

5 MS. BOTELHO: But I'm just going to approach to --

6 THE COURT: Okay.

7 MS. BOTELHO: -- give the detective an opportunity.

8 THE WITNESS: Yeah, it's a DMV report printout that
9 shows a vehicle registration for it looks like a 2003
10 Mitsubishi, which would be the license plate 142 UFB, which
11 would be union freight banker.

12 Q Okay.

13 A And that's a plate that's on the back of the Ford
14 Explorer.

15 Q Okay. And did this particular record --

16 MS. BOTELHO: And I'll move to admit by way of
17 stipulation and publish.

18 MR. LEVENTHAL: So stipulated.

19 THE COURT: So admitted.

20 (State's Exhibit Number(s) 105 admitted.)

21 MS. BOTELHO: Thank you.

22 BY MS. BOTELHO:

23 Q And so we're talking certified DMV records,
24 Mr. Kisner?

25 A Uh-huh.

1 Q And so just turning your attention to -- all right.
2 Here we go. Turning your attention to the middle of this page,
3 can you see that, or is it not focused?

4 A Well, it's either that or my eyes aren't -- there you
5 go.

6 Q Okay. There we go. All right.

7 And so was it, in fact, at some point registered to a
8 Karyn Dawn Licari?

9 A Yes, it was.

10 Q Okay. With the address of 7467 Hawk Shadow Avenue?

11 A Yes.

12 Q And that was the known residence of Mr. Solid back in
13 2013 in May; correct?

14 A I believe so, yes.

15 Q Okay. And turning your attention to kind of the top
16 part of this exhibit, does it show the expiration date of that
17 particular license plate?

18 A March 7th, 2010.

19 Q And what was the registration status as of that date?

20 A Surrendered.

21 Q Okay. Thank you.

22 Do you recall, sir, while you were at Mr. Dismont's
23 house making contact with his stepmother by the name of Jody
24 Faust?

25 A Yes.

1 What was the last name?

2 Q Faust.

3 A Yes.

4 Q Okay. Okay. So a search warrant was executed for
5 that home as well; correct, 5599 Aleman?

6 A I remember the vehicle being on the search warrant as
7 well.

8 Q Okay.

9 A But that's correct.

10 Q Thank you. And did you also see Mr. Dismont's
11 father, Richard Dismont at the residence?

12 A I did.

13 Q At some point were you able to have a conversation
14 with Jody Faust, Jacob's stepmother?

15 A With Jody, yes.

16 Q Okay. And at some point did she mention to you --
17 MR. LEVENTHAL: Judge, I'm going to object to
18 hearsay.

19 MS. BOTELHO: And, Your Honor, they are statements by
20 a coconspirator made in furtherance of the conspiracy. They're
21 not testimonial because they were still in furtherance of the
22 conspiracy.

23 THE COURT: So regarding --

24 MR. LEVENTHAL: This is --

25 THE COURT: Regarding -- the things Jody said?

1 MS. BOTELHO: Regarding the -- what Mr. Dismont said
2 to Jody.

3 MR. LEVENTHAL: That's double hearsay.

4 THE COURT: Correct. I agree that what she said
5 to -- so I don't think you can get over the level of hearsay of
6 what Jody said to this detective.

7 MS. BOTELHO: If -- okay.

8 THE COURT: Let's approach.

9 MS. BOTELHO: Okay. Sorry.

10 (The bench conference began.)

11 THE COURT: So where I'm at is what Mr. Dismont said
12 to his stepmother is not hearsay, the statement of a
13 coconspirator. What Jody has said to this Detective would be
14 hearsay. So how do you get over that.

15 MS. BOTELHO: Okay. I am going to have to make an
16 offer of proof then.

17 THE COURT: Okay.

18 MS. BOTELHO: Ms. Faust, back when she testified in
19 2016, she was actually an adverse witness to the State, and not
20 necessarily lied, but would not admit to the statements that he
21 is about to testify to. And so when we offered her -- when we
22 offered her testimony and Jacob's statements through Detective
23 Kisner at the time, it was an inconsistent statement.

24 MR. PALAL: And just so, Your Honor --

25 THE COURT: And so she hasn't testified yet. So I'm

1 not sure if that's what she's (inaudible).

2 MR. PALAL: Right. So we (indiscernible) I guess we
3 would need a stipulation to get it in, but as an aside,
4 Ms. Faust is coming today, but their schedule is kind of
5 reversed. And I can tell you that she's going to testify
6 similar to the way that she testified previously, can we just
7 have him -- rather than recall him because we just did it for
8 his schedule -- recall him after (indiscernible) to get the
9 small portion in?

10 MR. LEVENTHAL: Well, what's the foundation? When
11 did he (indiscernible) this conversation?

12 MR. PALAL: May 18th. May 18, 2015.

13 MR. LEVENTHAL: But if you're going to have her
14 anyway, what are you worried about whether or not he sort of
15 validates what she says if she's going to say it anyway?

16 MR. PALAL: No, she's going to deny it.

17 MS. BOTELHO: She's going to deny saying it. And so
18 it's an inconsistent statement as to her statements.

19 THE COURT: It's a preemptive --

20 MR. LEVENTHAL: It is, and I --

21 THE COURT: If you agree to it, we could do it, but
22 otherwise you guys are going to have to figure out how to do it
23 in the correct order.

24 MR. LEVENTHAL: It's just so important. I mean, I
25 haven't objected to much, but that's kind of important. So I'm

1 going to keep my objection there, but the hearsay, and we'll
2 bring her in.

3 Now, does that change your order?

4 MS. BOTELHO: No, but it's going to --
5 (indiscernible) going to have to come back.

6 (Multiple parties talking, indiscernible speech.).

7 UNIDENTIFIED SPEAKER: All he's going to do is
8 validate what she says is an inconsistent statement.

9 UNIDENTIFIED SPEAKER: No. No.

10 MS. BOTELHO: No. She's going to lie, Tom, and she's
11 going to say she never said that to the detectives, and she
12 never said that he tried to cover up the sticker and he never
13 tried to cold plate it, and he didn't even say that he didn't
14 want to drive the car.

15 THE COURT: (Inaudible) he could talk about that she
16 gave a statement to him and talked to him, and not what's in
17 the statement. And then once, like, she does say things that
18 are different, you can -- you know, you can agree that this is
19 the same statement that she had given to him, and that would
20 (inaudible).

21 MR. LEVENTHAL: Okay. Whatever the Court wants to
22 do. I'm standing by that this is hearsay.

23 THE COURT: I'll sustain your objection at this time.

24 MR. LEVENTHAL: Okay.

25 THE COURT: (Indiscernible) if you're not willing

1 (indiscernible).

2 (The bench conference was concluded.)

3 BY MS. BOTELHO:

4 Q Okay, Detective, did you have an opportunity to speak
5 with Jody Faust?

6 A I did.

7 Q And during that conversation, did she make certain
8 statements to you concerning the vehicle and Jacob's behavior?

9 A She did.

10 Q Okay. And specifically I'm talking about Jacob's
11 behavior after the murder of Marcos Arenas?

12 A Correct.

13 MS. BOTELHO: A brief indulgence, Your Honor.

14 THE COURT: Of course.

15 BY MS. BOTELHO:

16 Q Do you know -- did you make contact with Brianna
17 Licari back at Jacob -- excuse me, at Michael Solid's home?

18 A I believe so, but I cannot tell you in what capacity.

19 Q Okay. Were crime scene analysts present during the
20 search warrant of Michael Solid's home as well as Jacob
21 Dismont's home?

22 A Yes.

23 Q Is that standard protocol, particularly when the
24 police are executing search warrants?

25 A Yes.

1 Q Were the telephones of both defendant -- or excuse
2 me, the defendant Michael Solid and also Jacob Dismont's phones
3 taken into custody?

4 A I believe so, yes.

5 Q And we're talking about May 18th of 2013; correct,
6 Detective?

7 A I think so because we were talking after --

8 Q I'm sorry. May 18th. Yes, 2019?

9 A -- after midnight when we, yeah.

10 Q Okay. And were the funds belonging to Michael Solid
11 and also Jacob Dismont impounded?

12 A They were.

13 Q Before Jacob Dismont's cell phone being impounded
14 into custody, did you put it into airplane mode?

15 A I did.

16 Q And what was the purpose of that?

17 A To make sure there's no Internet connection to the
18 phone because sometimes people can delete their phones or
19 change a pass code, and it makes it a lot more difficult to
20 conduct the search on it later.

21 Q Okay. And were you able to scroll through the phone
22 or scroll through the home screen to see if there were any text
23 messages?

24 A I did.

25 Q And did you find -- in fact, find text messages that

1 were incriminating towards Mr. Dismont?

2 A Yes.

3 Q And were those particular text messages and exchange
4 between Jacob Dismont and then individual by the name of Brian
5 Goodwin?

6 A That name sounds right, yes.

7 Q Okay. Okay. Now, once the phones were impounded and
8 sent -- were they sent to the computer forensic lab for what's
9 termed a phone dump?

10 A Yes.

11 Q Or analysis?

12 A Yes.

13 MS. BOTELHO: Brief indulgence, Your Honor.

14 I have no more questions. Thank you.

15 THE COURT: Cross-examination, Mr. Leventhal or
16 Mr. Marchese.

17 MR. MARCHESE: No questions, Your Honor.

18 THE COURT: Ladies and gentlemen of the jury, any
19 questions for this witness?

20 Seeing no hands.

21 Detective, you are excused.

22 THE WITNESS: Thank you.

23 THE COURT: Thank you. Have a great day.

24 The State may call their next witness.

25 MS. BOTELHO: The State calls Nicholas Owens -- or

1 excuse me, Matthew Nicholas, and he will be read, his testimony
2 will be read by Michael Dickerson, Your Honor.

3 THE COURT: All right. Come on up.

4 MICHAEL DICKERSON

5 [having been called read the answers of the deponent as set
6 forth in the deposition in response to the questions therein
7 asked by counsel, read as follows:]

8 THE CLERK: Go ahead and be seated, and then state
9 and spell your name for the record.

10 THE READER: My name is Michael Dickerson.
11 M-i-c-h-a-e-l, D-i-c-k-e-r-s-o-n.

12 THE COURT: The State has called their next witness
13 to the stand, and the witness is.

14 THE READER: Matthew --

15 MS. BOTELHO: Matthew Nicholas.

16 THE COURT: All right. Mr. Nicholas, we've
17 already -- I will need you to stand up, please and face this
18 lady right here who will administer the oath to you,
19 Mr. Nicholas and raise your right hand.

20 And it looks like the State's witness was sworn.

21 **MATT NICHOLAS**

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

24 THE COURT: "Thank you. Please be seated."

25 "Please state and spell your full name for the

1 record."

2 THE WITNESS: Matt Nicholas. M-a-t-t,
3 N-i-c-h-o-l-a-s.

4 MS. BOTELHO: May I, Your Honor?

5 THE COURT: You may.

6 MS. BOTELHO: Thank you.

7 Deposition of MATT NICHOLAS read as follows:

8 DIRECT EXAMINATION

9 BY MS. BOTELHO:

10 "Q Mr. Nicholas, back in 2013, did you know an
11 individual that went by the name Mike P?

12 "A Yes.

13 "Q Okay. Do you see that person here in court
14 today?

15 "A Yeah.

16 "Q Could you please point to him and describe
17 something he's wearing.

18 "A He's wearing a white shirt.

19 MS. BOTELHO: Your Honor, please let the record
20 reflect identification of the defendant.

21 THE COURT: It will.

22 MS. BOTELHO: Thank you.

23 BY MS. BOTELHO:

24 "Q I want to turn your attention back to May
25 of 2013 specifically, okay.

1 So you knew the defendant Mike P?

2 "A Uh-huh.

3 "Q Would you consider yourself an acquaintance?

4 "A Yeah.

5 "Q Okay. Did you know Mike P to have a girlfriend?

6 "A Yeah.

7 "Q Okay. Did she go by the name of BB or Brianna?

8 "A I don't know her name, to be honest.

9 "Q Okay. Did you know him to hang out with a tall

10 white guy?

11 "A Yeah.

12 "Q Okay. Do you know that guy to refer -- to refer

13 to himself or to Mike P to have referred to him as J?

14 "A Yeah.

15 "Q Have you ever seen the two of them together,

16 Mike P and J?

17 "A Huh-uh.

18 "Q No?

19 "A No.

20 "Q Okay. What you -- what you knew about J, did

21 you learn from Mike P?

22 "A I had heard about him. A lot of people knew

23 about him, you know, because of the baseball and stuff

24 like that.

25 "Q Okay. So you knew him -- you didn't know him

1 personally though?

2 "A No, I never met him.

3 "Q Okay. So you had -- so you mostly had contact
4 with Mike P; is that fair to say?

5 "A Uh-huh.

6 "Q Is that a yes?

7 "A Yeah.

8 "Q Thank you, sir. I want to turn your attention
9 to particularly May 16th of 2013, okay. Would Mike P call
10 you before he would come over to your house?

11 "A Yeah.

12 "Q Okay. Did he call you on 5/16? That was a
13 Thursday. 5/16/2013, prior to wanting to come over to
14 your house?

15 "A Yeah.

16 "Q Okay. Was your number at that time
17 (702)503-3942?

18 "A Yeah.

19 "Q And so after Mike P called you -- well, first of
20 all, what time? Do you remember what time it was that he
21 first called you?

22 "A I don't.

23 "Q Okay. Do you remember him telling you where he
24 was when he was calling you?

25 "A No.

1 "Q Okay. At some point did Mike P come over to
2 your place?

3 "A Yeah.

4 "Q That same day, May 16th of 2013?

5 "A I mean, I don't remember the date like that.
6 Yeah.

7 "Q Okay. Okay. When he came over, was the sun
8 still out?

9 "A Yeah, I think so.

10 "Q Okay. What did he come over for?

11 "A I vaguely remember. I don't remember, to be
12 honest.

13 "Q You don't remember. Okay. Do you remember on
14 May 22nd, 2013, some Las Vegas Metropolitan Police
15 Department homicide detectives coming to your apartment?

16 "A On what day?

17 "Q May 22nd?

18 "A Yeah.

19 "Q 2013?

20 "A Yeah.

21 "Q The detectives were Travis Ivie or Detective
22 Travis Ivie and Tate Sanborn?

23 "A I vaguely remember that day. I was heavily
24 intoxicated.

25 "Q Okay. But do you remember doing a taped

1 interview with them?

2 "A No.

3 "Q Concerning an iPad that had been brought to your
4 apartment?

5 "A Vaguely.

6 "Q Okay. I'm going to show you, and you said you
7 don't remember; correct?

8 "A No.

9 "Q Whether the sun was still out when Mike P came
10 over?

11 "A Uh-huh.

12 MS. BOTELHO: Your Honor, may I approach with
13 page 2?

14 THE COURT: You may.

15 BY MS. BOTELHO:

16 "Q Sir, I'm going to show you page 2 of the
17 transcript of your statement with detectives, okay, and
18 I'm going to direct your attention to, like, the fourth
19 queue from the bottom. If you could just read from here
20 down and let me know when you're done. Just read it
21 silently.

22 Was that a -- okay. So did that refresh your memory
23 about what you told the detectives on May 22nd, 2013?

24 "A No. Like I said I was like heavily intoxicated.
25 I don't barely remember that date.

1 "Q Okay. But do you remember speaking with -- but
2 you remember speaking with detectives; is that right?

3 "A Yeah.

4 "Q Okay. Actually, do you remember calling for
5 homicide detectives Ivie and Tate to come and speak with
6 you about an iPad?

7 "A No.

8 "Q Okay. But you would have no reason to dispute
9 the fact that your statement to the detectives were
10 recorded and subsequently transcribed?

11 "A No.

12 "Q Okay. So fair to say that on page 2 of the
13 statement that I showed you, the transcript, the detective
14 asked you, did he bring the iPad to you.

15 MR. LEVENTHAL: Objection.

16 THE COURT: Basis?

17 MR. LEVENTHAL: Should we approach or -- is --
18 may we approach, Your Honor?

19 THE COURT: Approach."

20 MS. BOTELHO: And there was a conference at the
21 bench.

22 BY MS. BOTELHO:

23 "Q Okay. Sir, do you remember the detectives
24 telling you essentially, questioned -- or asking you a
25 question. It sounds like you know where it's at, and so

1 is that true? Is -- is Solid bringing that up to you?
2 When was that? Do you remember answering, like, Thursday?

3 "A No.

4 "Q Okay. But you read that on page 2 of the
5 transcript that I showed you?

6 "A Yes.

7 "Q Correct?

8 "A Yes.

9 "Q Okay. Do you recall the detectives asking
10 Thursday about what time did he bring the iPad to you, and
11 your response being, I don't know? Do you remember seeing
12 that on the transcript that I just showed you?

13 "A Yes.

14 "Q Do you remember the detectives asking day -- day
15 time, nighttime or your response being the sun was out?
16 Do you remember seeing that in the transcript?

17 "A Yeah.

18 "Q Okay. Okay. So when Mike P came over to your
19 apartment, what did he -- what did he want?

20 "A I don't even remember.

21 "Q Okay. Do you remember, would looking at the
22 transcript of your statement refresh your memory?

23 "A Maybe.

24 MS. BOTELHO: Okay. Page 9, Your Honor.

25 THE COURT: All right.

1 MS. BOTELHO: Or actually page 3.

2 BY MS. BOTELHO:

3 "Q Sir, I'm going to show you kind of the bottom
4 half of the page. Under answer I want you to read this
5 question 1 and down. Okay. And let me know when you're
6 done?

7 "A Yeah.

8 "Q Does that refresh your or at least does it --
9 does this transcript refresh your memory as to what you
10 told the detectives that particular day although you may
11 not remember it now?

12 "A Yeah.

13 "Q Okay. So did the detectives, in fact, ask you,
14 sir, why would he give you the iPad? Why would you come
15 to mind, like, and you responded he called me and asked me
16 if he could borrow \$80, and he told me that if I let him
17 borrow \$80 he'd give me an iPad. I told him to sell it to
18 me, and he said he didn't want to sell it. He said if I
19 let him borrow 80, then he'd leave the iPad, and he'd come
20 back the next day and give me a hundred dollars and get it
21 back.

22 Do you remember this being on the transcript that I
23 just showed you?

24 "A Yeah.

25 "Q Okay. Do you also remember the detectives

1 asking, and that's what he did? And you responded that's
2 what he did?

3 "A Yeah.

4 "Q And the detective is asking you so you gave him
5 \$80 in cash?

6 And you responded, Yeah?

7 "A Yeah.

8 "Q And the very last question there was you keep
9 the iPad. Do remember that on the transcript that I just
10 showed you?

11 "A Yeah.

12 "Q And I'm going to show you --

13 MS. BOTELHO: May we approach, Your Honor?

14 THE COURT: Sure.

15 BY MS. BOTELHO:

16 Q The first answer of page 4, and then going towards to
17 like --

18 "A Where?

19 "Q Just from the answer to the answer, the third A.
20 Just from the answer to this answer, the third A?

21 "A Yeah.

22 "Q Okay. So from the previous page, the question
23 was, you keep the iPad, and your response was uh-huh;
24 correct?

25 "A Yeah.

1 "Q And the detective that asked -- and then he was
2 supposed to come back and give you a hundred, that never
3 happened? And your response being no.

4 Do you remember seeing that on the transcript?

5 "A Yeah.

6 "Q Okay. And do you remember one of the detectives
7 asking you so what does -- what's the iPad look like? And
8 you saying just an iPad, like all of them look like.

9 "Q Do you remember seeing that on the transcript?

10 "A Yeah.

11 "Q Okay. So did that refresh your memory a little
12 bit about what it is that the defendant Mr. Solid came to
13 your apartment that Thursday for?

14 "A Yeah.

15 "Q Okay. And so you were -- so do you recall
16 giving him the \$80 for the iPad?

17 "A No.

18 "Q Okay. But you don't dispute that that's what
19 was shown here in the transcripts of you saying to the
20 detectives. You don't dispute that?

21 "A Yeah, that's what's in the transcript.

22 "Q Okay. Did Mike P come back the next day to get
23 the iPad?

24 "A I never saw him.

25 "Q You never saw him again?

1 "A No.

2 "Q Okay. So the police, you asked homicide
3 detectives to show up to your place on May 22nd, 2013;
4 correct?

5 "A Yeah.

6 "Q Okay. Other police officers were already there
7 for an unrelated reason; correct?

8 "A Yeah.

9 "Q Okay. You wanted to give homicide detectives
10 information concerning an iPad?

11 "A No, that's actually not what happened. What
12 happened was I -- when officers were raiding my house, I
13 thought they were -- they were looking for an iPad.

14 "Q Okay. When they showed up -- okay. I'm --
15 okay.

16 "A When they showed up, I told them there ain't no
17 iPad here. They called the homicide detectives. The
18 homicide detectives who came.

19 "Q Okay. But when they homicide -- excuse me.
20 When the other detectives first showed up, they didn't
21 specifically ask for an iPad; correct?

22 "A No.

23 "Q Okay. You kind of assumed that they were there
24 for this iPad?

25 "A Yeah.

1 "Q Okay. Had you heard stuff on the news about
2 this particular iPad?

3 "A Yeah.

4 "Q And Mr. Solid's involvement with this iPad?

5 "A Yeah.

6 "Q Okay. You had seen it on the news?

7 "A Yeah.

8 "Q I'm going to show you what's been marked and
9 admitted as State's Exhibit Number 31. If you look on
10 your screen, sir, do you recognize what's depicted in this
11 particular photograph?

12 "A Yeah.

13 "Q Okay. Is this a still photo similar or is this
14 one of the still photos from the video or photos that you
15 saw on the news?

16 "A Uh-huh.

17 "Q Is that a yes?

18 "A Yes.

19 "Q Okay. And you see how he's wearing like a
20 pendant here?

21 "A Yeah.

22 "Q Okay. Do you recall whether you've seen
23 Mr. Solid with that pendant before?

24 "A I think so.

25 "Q Okay. Do you recall telling detectives that

1 that was, like, shaped like a Batman?

2 "A No, I don't.

3 "Q Would look -- okay. Would looking at your taped
4 statement refresh your memory?

5 "A Maybe. Like I said, I was heavily under the
6 influence of drugs that day. I don't remember.

7 Q What kind of drug were you under the influence of at
8 that time?

9 A Trees, cocaine -- trees, codeine, cocaine and Xanax.

10 Q Okay. And, in fact, the first detectives who showed
11 up were actually, when you referred to a raid, they were
12 raiding your apartment for drugs; correct?

13 "A Yeah, for heroin.

14 "Q And also weapons and guns?

15 "A Uh-huh.

16 "Q Correct? Is that a yes?

17 "A Yes.

18 "Q Okay. And so when police first showed up to
19 your apartment, sir, you had heard about a 15-year-old boy
20 being killed over an iPad; correct?

21 "A Yes.

22 "Q And you subsequently or after that saw a photo
23 of the defendant Mr. Solid on TV; correct?

24 "A Yes.

25 "Q And you got rid of the iPad; correct?

1 "A Yes.

2 "Q You got rid of it that Sunday?

3 "A I don't remember when.

4 "Q Okay. Do you remember telling the detectives
5 that you got rid of it on Sunday prior to them being
6 there?

7 "A Sounds -- sounds about right.

8 "Q Okay. But I just want to be sure. I'm going to
9 approach you with page 26. It is the third question and
10 just the -- up until the answer following there.

11 "A Say what? What are you looking for?

12 "Q Okay. Does this refresh your memory or at least
13 on this particular page where I showed you, does it say
14 the date that you told detectives you had gotten rid of
15 the iPad?

16 "A Yeah.

17 "Q Okay. So on page 26 of your voluntary
18 statement, the detectives asked you when did you give
19 it -- give it to this guy? How many days after? Like the
20 Thursday Solid brings it over, when did you give it away?
21 And your response being, like, Sunday?

22 "A Yeah. I think I even at the time I wasn't sure,
23 but like I said somewhere.

24 Q Okay. But that's what it said on the transcript?

25 "A Yeah.

1 "Q Of your interview with the detectives?

2 "A Uh-huh.

3 "Q Is that a yes?

4 "A Yes.

5 "Q Okay. And the detective is asking Sunday. Why
6 is that? And your response being because I didn't want
7 that shit here.

8 Do you remember that?

9 "A Yeah.

10 "Q You didn't want that shit there because you knew
11 at some point, right, that the iPad that Mr. Solid brought
12 over was the iPad that had been taken from the 15-year-old
13 boy who was killed during the robbery; correct?

14 "A I seen some things on the news.

15 "Q Okay. But when detectives asked you, are you
16 even sure it's that iPad, the iPad that was all over the
17 news, you said that it was; correct?

18 "A Yeah.

19 "Q Okay. And you knew that that was the iPad
20 because of some things that the defendant Mike P told you
21 when he was bringing the iPad to you?

22 "A No. I knew because I turned it on, and it had a
23 picture, and I seen the picture on the news.

24 "Q Okay. And the picture on the news showed what?

25 "A It showed a little boy.

1 "Q Showed a little -- showed a little boy that had
2 been struck by --

3 "A Yeah, by a car.

4 "Q By a car during the course of a robbery?

5 "A Uh-huh.

6 "Q Okay. And you also saw the picture of Mike P;
7 correct?

8 "A Yes.

9 "Q And did you also see a picture of a tall white
10 guy that he had been arrested with?

11 "A Yeah.

12 "Q Okay. But at some point when the detectives
13 talked to you on May 22nd, I understand that you had
14 seen some stuff on the news, okay.

15 "A Uh-huh.

16 "Q But you remember telling them some things or
17 some statements that Mr. Solid had told you when he
18 brought the iPad to you on Thursday?

19 "A Yeah, but honestly he had never told me any of
20 that. Like at the time I was -- I was facing other
21 charges, and I was telling some. I told them some things.
22 I remember at the time thinking that I was seeking some
23 kind of leniency on my gun and my drug charges, but he had
24 never told me anything like that.

25 Q Okay. We'll talk about your motivations for calling

1 the police and your expectations of leniency in just a minute.
2 Okay?

3 "A Yeah.

4 "Q But what I'm asking you, sir, is do you remember
5 telling detectives statements that Mr. Solid told you?

6 "A No.

7 "Q Okay. Would looking at page 9 of your statement
8 refresh your memory?

9 "A Maybe.

10 "Q Can you just pretty much read that whole page?

11 "A Yeah.

12 "Q Okay. So this particular page talks about the
13 statements that you gave to detectives; correct?

14 A Uh-huh.

15 "Q Or things that Mike P told you when he brought
16 this iPad to you; correct?

17 "A Yeah, he never told me that.

18 "Q Okay. We'll go through it. Okay. The
19 detectives go, how do you know when they're asking you
20 about how do you know this is that iPad that 15-year-old
21 boy's iPad, and you say because I know. Do you remember
22 that on the top of page 9?

23 "A Yes.

24 "Q Okay. And then do you remember the detective
25 asking or did you see on the transcript the detective

1 asking, did he tell you or -- and your response being,
2 yeah. Right after he got here he told me. He's, like, I
3 think I'm going to be on the news later. I'm, like, why?
4 He's, like, man, because like I just robbed this Negra and
5 dah, dah, dah, dah, dah, and he didn't tell me, like, what
6 happened like that. And the detective asking you did he
7 say who he was with, and your response being he said he
8 tried to -- he tried to hang on the car, yeah, and he said
9 ummm.

10 Do you remember that being on the transcript?

11 "A Yeah.

12 "Q Okay. And another question from the detective
13 being, he say he hit that kid?

14 "A And your response being, yeah, but he didn't
15 explain it to me like that. He said after he got back in
16 the car, he's, like, the dude just jumped and tried to
17 grab the car. He never said that he -- they was hanging
18 on the iPad, and he dragged him. He said after he got
19 back in the car, dude tried to grab the car, and then
20 he's, like, so I just speeded up, and then he fell, but he
21 didn't tell me that he ran over and shit like that.

22 Do you remember that being on the transcript?

23 "A Yeah.

24 "Q Okay. And the detective asking you or saying,
25 yeah, and your response being, but he's, like, oh, and

1 then when I was leaving, I seen hella ambulances and
2 police coming. I don't even know how they came that fast.
3 I don't know what happened. I was, like, what are you
4 talking about, bro? Like wasn't paying attention or
5 paying attention. Do you remember that on the transcript?
6 "A Yeah.
7 "Q That I just showed you, okay. Do you remember
8 telling the detectives around that same -- or on that same
9 topic that Mike P pretty much told you everything about
10 the robbery and the iPad except that someone got hurt?
11 "A No.
12 "Q Do you remember telling detectives that? You
13 don't remember?
14 "A No.
15 "Q Okay. Would looking at page 28 of your
16 statement refresh your memory?
17 "A Maybe.
18 "Q Sir, did that refresh your memory, Mr. Nicholas?
19 "A Hold on. Yeah.
20 "Q Okay. So do you remember the detectives asking
21 you -- or actually your response the detectives saying,
22 yeah. When you're killing people, that's something
23 beyond, and your response being and -- and then a word
24 that couldn't be understood. So it's marked
25 unintelligible?

1 "A Yeah. Like I said, I don't -- I don't remember
2 any of the -- any of the what was really being spoken. I
3 see what's on the paper, but like I said, at the time I
4 was super high, and I was just making shit up as I was
5 going along.

6 "Q Okay. Okay. And this was you talking to the
7 detectives?

8 "A Yeah.

9 "Q Okay. And do you remember your response being
10 and I'm -- had no parts to it. He came over. He pretty
11 much, yeah, because I don't know. He told me everything
12 about the shit. He just didn't tell me that, like, they
13 got hurt. So I'm going to keep it real.

14 Do you remember saying that?

15 "A No.

16 "Q Okay. Do you remember seeing that on page 28?

17 "A Yeah.

18 "Q Of the transcript that I just showed you?

19 "A (No audible response.)

20 "Q Is that a yes?

21 "A Yes.

22 "Q Okay. So you talked about calling homicide
23 detectives over because you thought you were going to get
24 some leniency on your charges?

25 "A I didn't call no homicide detectives over. Like

1 I said, I thought they were there to recover the iPad, and
2 I told them the iPad wasn't there, and then the next thing
3 you know, the homicide detectives showed up.

4 "Q Okay. So you mentioned having information about
5 the iPad that had been taken from the 15-year-old boy?

6 "A The only thing I said, I told them, I was, like,
7 that's shits not up there. They were, like, what's not up
8 there? I'm, like, what you're looking for. He's, like,
9 what do you mean? I'm, like, it ain't up there. The iPad
10 ain't up there. That's all I said to them, and then I,
11 like I said, the homicide detective showed up.

12 "Q Okay. But your testimony is that you just made
13 all of this up so you could get some benefit or some
14 leniency from homicide detectives or from detectives in
15 general about the gun and drug charges that you were
16 facing?

17 "A Yeah.

18 "Q Is that right? Okay. But you ultimately were
19 never promised any kind of leniency; correct?

20 "A Yeah.

21 "Q You were not promised that?

22 "A No.

23 "Q Okay. And you never received any benefit in
24 this particular case; is that right?

25 "A No.

1 "Q Okay. In fact, you're in custody right now?

2 "A Uh-huh.

3 "Q Is that a yes?

4 "A Yes.

5 "Q Okay. And you were prosecuted by the federal
6 government for being an ex-felon in possession of a
7 firearm; correct?

8 "A Yeah.

9 "Q Okay. And at no time did the state of Nevada,
10 other DAs or myself have you testify on behalf of the
11 state in any other proceeding, but today; correct?

12 "A No.

13 "Q And you're actually serving a prison sentence at
14 this time; is that right?

15 "A Yeah.

16 "Q Okay. And while we're on this topic, you were
17 also convicted of a 2006 or 2007 possession of a
18 controlled substance; is that right?

19 "A Yeah.

20 "Q Is it fair to say, Mr. Nicholas, that while you
21 may have hoped to get some sort of leniency in exchange
22 for information, you never received it?

23 "A Yes.

24 "Q Okay. But you gave this information over to
25 detectives willingly and voluntarily; correct?

1 "A Yes.

2 "Q Okay. And you were concerned during your
3 statement about appearing like a snitch; correct?

4 "A No.

5 "Q Okay. You had no problem talking to the
6 detectives about Mike P's statements. Do you remember
7 telling the detectives, because killing a kid is a whole
8 nother game?

9 "A No, but the detectives were also telling me they
10 were talking about charging me with an accessory after the
11 fact.

12 "Q Okay. But you were never charged in connection
13 with this case; correct?

14 "A Uh-huh.

15 "Q Is that a yes?

16 "A Yes.

17 "Q Okay. And during the -- we can go through it
18 one by one in your statement, all the different ways and
19 times that the detectives told you that they could not
20 promise you any leniency?

21 "A Yeah.

22 "Q That they were not going to give you any kind of
23 benefit, but that they wanted you to help them recover the
24 iPad. Do you remember that?

25 "A Yeah.

1 "Q Okay. And you did so voluntarily; correct?

2 "A Yeah.

3 "Q You gave detectives information as to the
4 location of the stolen iPad; correct?

5 "A Yeah.

6 "Q And that was without any kind of promise of
7 leniency or benefit from them; correct?

8 "A Yeah.

9 "Q Mr. Nicholas, we transported you from federal
10 prison; correct?

11 "A Uh-huh. Yes.

12 "Q Is that a -- all right. You don't necessarily
13 want to be here to testify against your friend; correct?

14 "A We weren't friends.

15 "Q Okay. You don't want to be here to testify?

16 "A I mean, it doesn't really make a difference.

17 MS. BOTELHO: Okay. No further questions for
18 this witness."

19 THE COURT: All right. Thank you.

20 Cross?

21 MR. LEVENTHAL: Court's indulgence.

22 CROSS-EXAMINATION

23 BY MR. LEVENTHAL:

24 "Q Good morning, Matt?

25 "A Good morning.

1 "Q You said before the -- before you talked to
2 detectives, you saw this case on the news; right?

3 "A Yes.

4 "Q And that's where you got a lot of information
5 about the case; right?

6 "A Yes.

7 "Q And it's not what -- you didn't get the
8 information from what Mike told you; right?

9 "A No.

10 "Q It was mostly from what you saw on the news?

11 "A Yeah, and heard from other people.

12 "Q All right. And when the cops raided your house,
13 you were pretty desperate at that moment; right?

14 "A Yes.

15 "Q You said they raided your house for drugs;
16 right?

17 "A And guns.

18 "Q And guns?

19 "A Yeah.

20 "Q And then you -- were you ultimately charged for
21 the guns and drugs?

22 "A Yeah.

23 "Q All right. And when they raided your house,
24 were you thinking about, man, I have a lot of stuff in
25 here. I could be going to prison for a long time?

1 "A Yeah.

2 "Q And were you thinking of, hey, is there a way I
3 can help myself out?

4 "A Yeah.

5 "Q And you said, well -- is it correct that or
6 would you agree with me that when the initial officers
7 raided your house that they wanted you to give up
8 information on your dealers; right?

9 "A Yeah.

10 "Q And you refused to do that; right?

11 "A Yes.

12 "Q But then you offered information on a murder;
13 right?

14 "A Yeah, but not like that. What had happened,
15 like I said, I put myself in the middle of a situation I
16 really didn't have to be in because, like I said, I
17 thought that they were trying -- they were there trying to
18 recover the iPad due to the fact that I had seen on the
19 news that I'd seen everything that was happening, and then
20 I seen that they were in custody, and I believe it was
21 within 72 hours my house got raided. It was on an
22 unrelated drug incidence, but like I said, I had brought
23 it up to them, but at the time I had no intention of
24 telling on anybody, you know what I mean, but what
25 happened, like I said, then the homicide detective showed

1 up and started kind of, like, trying to tell me I was --
2 they could charge me with this and charge me with that.

3 So...

4 "Q So?

5 "A I told him.

6 "Q In addition to being worried about being charged
7 with all the drugs and guns, you were worried about also
8 being charged as an accessory to murder?

9 "A Yeah.

10 "Q And that's basically because you saw that Mike
11 was arrested for this; right?

12 "A Yeah.

13 "Q So, I mean, is it fair to say that you're
14 thinking they must have told on me. So now I'm going --

15 "A Yeah.

16 "Q -- to tell on them?

17 "A Yeah, that's what I thought.

18 "Q All right. So like you said, all that
19 information you got was from the news; right?

20 "A Yes.

21 "Q Okay. And at the time you said you were facing
22 some pretty serious charges; right?

23 "A Yeah.

24 "Q We're not talking about like you had just had a
25 little bit of drugs for personal use; right?

1 "A No. I was six guns and, like, a whole bunch of,
2 like, drugs.

3 "Q All right. And you testified that you were a
4 felon at the time they raided your house?

5 "A Yeah.

6 "Q That was you were convicted of -- this was 2011,
7 convicted of possession of a controlled substance?

8 "A Yeah.

9 "Q All right. So you're facing six counts of
10 ex-felon in possession of a firearm; right?

11 "A Yes.

12 "Q And were you aware that those carry about a one
13 to six years each?

14 "A Yeah.

15 "Q And then you were ultimately charged with
16 trafficking in methamphetamine; right?

17 "A Yes.

18 "Q And you're aware that that carried a big
19 sentence; right?

20 "A Yeah.

21 "Q 2 to 15?

22 "A 2 to 15, yeah.

23 "Q All right. And also charged with trafficking in
24 cocaine; right?

25 "A Yes.

1 "Q And also it was another big sentence you were
2 worried about?

3 "A 2 to 15, yeah.

4 "Q All right. And you were aware of this at that
5 time?

6 "A Yeah.

7 "Q And you were also charged with possession of a
8 controlled substance with intent to sell marijuana?

9 "A Yeah.

10 "Q All right. Was that a little bit less sentence
11 that you were facing for that?

12 "A I don't know what it carries. It was only like
13 5 ounces.

14 "Q So you had 5 ounces of marijuana in your house?

15 "A Yeah.

16 "Q But the big ones weighed on you; right, or
17 trafficking in methamphetamine or trafficking in cocaine;
18 right?

19 "A Yeah.

20 "Q All right. So it's fair to say that at the time
21 you're thinking you might be sitting in prison for decades
22 based on these drugs and guns; right?

23 "A Yeah.

24 "Q You testified that you weren't promised any
25 leniency; correct?

1 "A Yeah.

2 "Q Do you remember the detectives telling you --
3 page --

4 MR. LEVENTHAL: Court's indulgence --

5 BY MR. LEVENTHAL:

6 "Q On page 23 to 24, do you remember asking the
7 detective if you were going to go to prison for a minute
8 for the drugs and guns?

9 "A Like I said, that day, I don't even -- I
10 couldn't even tell you what those detectives looked like.
11 You know what I mean?

12 MR. LEVENTHAL: Can I approach, Your Honor?

13 THE COURT: You may.

14 MR. LEVENTHAL: Page 24 and 25. Court's indulgence.

15 BY MR. LEVENTHAL:

16 "Q Can you look at page 24, the second question and
17 read that to yourself?

18 "A Yeah.

19 "Q Okay. Do you remember the detectives telling
20 you, so either way, it's all about the numbers game when
21 it comes down to it; right? So either, okay, say you're
22 five. Say your minute is 5 or 15 years, okay, and you end
23 up giving us the iPad, and it becomes less than 5 or
24 10 years?

25 "A Yeah. They also told me that if I don't -- if I

1 didn't that I was looking at some 20 or something like
2 that with an accessory charge, that I'd be facing, like,
3 the same time they were.

4 "Q So you said if you didn't help, then you were
5 also going to do another 20 on top of everything?

6 "A No. They said that because I told them like
7 either way I was hit for all the drugs and guns, like 5 or
8 10, but they were, like, yeah, but without, you know, what
9 I mean, without this, then you're looking at it would be
10 right up there with them. He's, like, 5 or 10 is bad, but
11 something -- I can't remember. They told me something
12 that I was looking -- would be looking at, like the same
13 time as they were because they'd say they'd run an
14 accessory after the fact or whatever with the drugs and
15 all the guns and stuff.

16 "Q All right. So basically telling you you're
17 going to face a lot of time if you don't help us out;
18 right?

19 "A Yeah.

20 "Q All right. And were they inferring that if you
21 did help them out that you would face less time?

22 "A Yeah.

23 "Q Was your girlfriend Isabel (phonetic) present at
24 the time your house was raided?

25 "A Yeah.

1 "Q Okay. Did they make any promises that she
2 wouldn't go to jail if you helped out?

3 "A She wasn't facing any charges. She didn't do
4 anything.

5 "Q Do you recall them saying that they'll make sure
6 your girlfriend doesn't go to prison?

7 "A I don't recall that. She wouldn't have went to
8 prison anyways. She didn't do anything short of being
9 there. Like I said, she never committed any crime.

10 MR. LEVENTHAL: Page 6. May I approach, Your
11 Honor?

12 THE COURT: Yes.

13 BY MR. LEVENTHAL:

14 "Q Read Q1 down at the bottom to yourself.

15 "A Oh, yeah, I don't remember that.

16 "Q You don't remember that?

17 "A No.

18 "Q So is it fair to say that you read on the
19 transcript the detective saying, I'll make sure she don't
20 go to jail?

21 "A Yeah, but, like, again, I don't -- they couldn't
22 have taken her to jail for anything.

23 "Q I was just wondering when the first officers
24 came to speak to you or when they first raided your
25 apartment and you had conversations with them, was that

1 recorded at all?

2 "A I don't know.

3 "Q Okay. Were you aware when the homicide
4 detectives were recording your statement?

5 "A No.

6 "Q So you don't know. You're not aware at what
7 point they turned on the recorder or not?

8 "A I have no idea. I don't remember.

9 "Q All right. But during your statement, you said
10 that you were high?

11 "A Yeah.

12 "Q Well, like how high or you?

13 "A Like I said, I was heavily intoxicated. I had
14 been up, like, damn near all night. I was awake when that
15 happened.

16 "Q So you were on Xanax; right?

17 "A Yeah. Codeine, cocaine.

18 "Q Codeine?

19 "A And marijuana.

20 "Q Codeine and marijuana?

21 "A Yeah.

22 "Q All at the same time?

23 "A Yeah.

24 "Q So at some point you end up giving this iPad to
25 David Doyle; right?

1 "A Yeah.

2 "Q And I think there was testimony that you just
3 didn't want it in your house anymore?

4 "A Yeah.

5 "Q All right. Would it be fair to say that you
6 asked David Doyle to wipe that iPod clean?

7 "A Yeah.

8 "Q You wanted David Doyle to be able to make it so
9 new users -- so new users could be added?

10 "A I don't remember. I just wanted -- all I know,
11 I really just wanted to get rid of it.

12 "Q So you had him wipe it clean so that you could
13 get rid of it?

14 "A No. I just -- I don't know. I just didn't
15 really want it, period, but --

16 "Q So why did you ask him to wipe it clean? Was it
17 for your own benefit?

18 "A I don't even remember telling him that.

19 "Q So ultimately on your -- you were raided for the
20 guns and drugs; right?

21 "A Yeah.

22 "Q And you were charged with the six counts of
23 felony possession, the trafficking, possession of a
24 controlled substance, all of those; right?

25 "A Uh-huh.

1 "Q And that was in State court?

2 "A Yeah.

3 "Q And then that case was dropped; right?

4 "A Yeah.

5 "Q And then you were charged in federal court for
6 ex-felon in possession of a weapon; correct?

7 "A Yeah.

8 "Q The drug charges just disappeared?

9 "A I got enhancements for the drugs in the federal
10 court.

11 "Q Did you ever face the trafficking charges?

12 "A No.

13 "Q Were you ever sentenced on trafficking charges?

14 "A No.

15 "Q You said you got an enhancement in the federal
16 court?

17 "A Yeah.

18 "Q What was your sentence in federal court?

19 "A 37 months.

20 "Q 37 months.

21 MR. LEVENTHAL: Court's indulgence.

22 BY MR. LEVENTHAL:

23 "Q Just to clarify, so you got the iPad sometime
24 around May 16, 2013; correct?

25 "A Yeah, roughly.

1 "Q All right. And you didn't call the police to
2 report that; right?

3 "A No.

4 "Q Okay. So you didn't say anything about it until
5 your own house was raided for drugs and guns; right?

6 "A Yeah.

7 MR. LEVENTHAL: I would pass the witness, Your
8 Honor.

9 THE COURT: All right. Redirect.

10 MS. BOTELHO: Yes, Your Honor.

11 REDIRECT EXAMINATION

12 BY MS. BOTELHO:

13 "Q Sir, both on direct and also when I asked you
14 questions initially, I asked you about your feelings
15 concerning being a snitch?

16 "A Yeah.

17 "Q Do you remember that? Okay. First of all,
18 what's a snitch?

19 "A Somebody that tell on somebody.

20 "Q Somebody who tells on somebody. Okay. So when
21 the detectives made contact with you on May 22nd, 2013,
22 you didn't want to be a snitch on other drug connects;
23 correct?

24 "A Yeah.

25 "Q Okay. You didn't want to snitch on people who

1 may have been involved with guns or the gun trade with
2 you; correct?

3 "A Yeah.

4 "Q Okay. You didn't want to snitch on the person
5 that you gave the iPad to; correct?

6 "A Yeah.

7 "Q Okay. But do you remember telling detectives
8 that you didn't feel like it was snitching, and you wanted
9 to tell them and help them because the case with the iPad
10 was different?

11 "A I don't remember saying that, but realistically,
12 like I said, I felt like --

13 "Q Okay. But --

14 "A -- they implicated me in something --

15 "Q Mr. Nicholas --

16 "A -- that's why --

17 "Q -- just answer my question, okay. Do you
18 remember telling detectives --

19 "A No.

20 "Q Okay. I'm going to show you page 28 of your
21 statement and also page 25 so that we can save the back
22 and forth. We're going to go with page 28 first, and I
23 have the statement circled in red that I would like you to
24 read.

25 "A It says --

1 "Q Okay. No. Just read it silently, and then I'll
2 ask you some questions about it, okay.

3 Did that refresh your memory or at least did you get
4 to read what was on page 28 of your voluntary statement?

5 "A Yeah.

6 "Q Okay.

7 MS. BOTELHO: Your Honor, permission to question
8 from here?

9 THE COURT: Sure. That's fine.

10 MS. BOTELHO: For just a moment. Thank you.

11 BY MS. BOTELHO:

12 "Q Do you remember reading on page 28 where the
13 detective says, well, it's important. I mean, like I
14 said, that's all his dad's got now. I mean, he's got
15 pictures and an iPad, you know, the iPad. So, I mean,
16 it's important not only for us, but for the family, you
17 know, and your response being, I think they might ask me
18 to testify on that shit? Do you remember seeing that on
19 that page?

20 "A Yeah.

21 "Q Okay. And the detective saying they might, but
22 again, they're going to be helping you out? And your
23 response being, yeah, I already know. I'm going to get
24 real. Like I said, I told them. I'm, like, I wouldn't,
25 you know, snitch on nobody like that, but, like, that --

1 that's different shit. That's -- and the detective cuts
2 you off and says, yeah. When you're killing people,
3 that's something beyond, and you're saying, and I'm -- I
4 had no parts to it. He came over here. He pretty much,
5 yeah, because I don't know. He told me everything about
6 that shit. He just didn't tell me, like, that they got
7 hurt. So I'm going to keep it real.

8 Do you remember seeing that on page 28?

9 "A Yeah.

10 "Q Okay. I'm going to show you page 35 starting
11 with this question -- or with this answer all the way to
12 the end of the highlights. Okay.

13 Okay, sir. Did that refresh your memory as to
14 What --

15 "A Yeah.

16 "Q -- you told detectives. Okay. So do you
17 remember on page 35 or it shows on page 35 you say damn,
18 man, this shit fucking sucks. Boy, definitely I'm going
19 to get you guys the iPad right now. The detective's,
20 like, that's what I like to hear.

21 "Q And you say and see what they say, but I'm going
22 to keep it real because, like I'm telling them, I don't
23 snitch on them, but I'm going to keep it real. That shit
24 comes out. That shit, with Mike it'll be, like, fuck
25 that. You came to my house.

1 Do you remember saying that?

2 "A Yes.

3 "Q Okay. So as I asked you previously, you don't
4 want to snitch on other drug dealers, people with guns,
5 but you had no problem talking to detectives about this
6 stolen iPad that ended up in your possession because of
7 the defendant; correct?

8 "A Because also, like I said, what it said on the
9 thing too, you seen that it said that the detective said,
10 this is going to help you out.

11 "Q Okay.

12 "A In the first place, and then again on the -- on
13 the other one it said that is this the one I just read, it
14 said that -- I forgot. It said something that was, like I
15 said, that they was going to put me involved with it.

16 "Q Okay.

17 "A And, oh, and no, I said what I said on the other
18 one was that they had brought it to my house. Like I
19 said, I thought that they -- I thought that they had
20 intentionally sent police to my house. So I was, you
21 know, trying to tell them some shit like fuck them, you
22 know what I mean?

23 "Q Okay. Let me ask you this, Mr. Nicholas, okay.
24 When the detectives first showed up to your house, is it
25 fair to say that they were asking you to help them locate

1 the actual iPad?

2 "A Mmm.

3 "Q Because they knew that you knew where the iPad
4 was? They were trying to get the iPad back, fair?

5 "A Yeah.

6 "Q Okay. And you had already in the beginning of
7 your interview already told them that you knew where it
8 was; correct?

9 "A Yeah.

10 "Q Okay. And that's what they really wanted. They
11 wanted, just like in that statement that I just read to
12 you, the family wanted the iPad back. The detectives
13 wanted the iPad back, and you were going to help them with
14 that; correct?

15 "A Yeah.

16 "Q Okay. And earlier towards the interview, the
17 detectives ask you, how do you know that that is the iPad,
18 the one that was stolen from the kid that was killed
19 during the robbery. Do you remember that?

20 "A Yeah.

21 "Q Okay. And your response to that particular
22 question, How do you know that was the one?

23 Your response early in your statement, page 9,
24 as a matter of fact, bottom of page 8, going to page 9,
25 the question on page 8, the bottom, the bottom line, it

1 might not be the iPad, to be honest with you.

2 That's the detective telling you. And your
3 response is, It is.

4 Do you remember that?

5 "A Yeah.

6 "Q Okay. Page 9, the detectives asked you, how do
7 you know, and you say because I know.

8 "Q Do you remember that?

9 "A I told you I know because I turned it on. I
10 seen a picture of the kid that was on the news.

11 "Q Okay. And then the detectives ask, did he tell
12 you or -- and you say, yeah, right after he got here he
13 told me. He's like, I'm going to be on the news later.
14 I'm, like, why he's, like, man because, like, I just
15 robbed this nigga and dah, dah, dah, and he didn't tell
16 me, like, what happened like that. Do you remember that?

17 "A Yeah.

18 "Q Okay. So the detectives are asking you how it
19 is that you came -- that you know this is the stolen iPad,
20 and you volunteered that information; correct?

21 "A Yeah.

22 "Q Okay. And then the detectives asked, Did he say
23 who he was with?

24 And you say, He said he tried. He tried to hang
25 on the car. Yeah.

1 And he said, Hmmm. The Detective said -- he
2 says that he hit the kid.

3 You said, yeah, but he didn't explain it to me
4 like that. He said after he got back in the car he's,
5 like, the dude just jumped and tried to jump and grab the
6 car. He never said that he -- they were hanging onto the
7 iPad and he dragged him. He said after he got back in the
8 car dude tried to grab the car, and then he's like so I
9 just speeded up and then he fell, but he didn't tell me
10 that he ran over and shit like that.

11 Do you remember that being on this page?

12 "A Yeah.

13 "Q Okay. And the Detective said, yeah, and you
14 volunteered, but he's like, oh, and then when I was
15 leaving, I seen hell a ambulances and police coming?

16 MR. LEVENTHAL: Objection, Your Honor. This has
17 already been asked and answered on direct.

18 THE COURT: I think you did go over it, but
19 finish the question.

20 MS. BOTELHO: Thank you.

21 BY MS. BOTELHO:

22 "Q I seen hell a ambulances and police coming. I
23 don't even know how they came that fast. I don't know
24 what happened. I was, like, what are you talking about,
25 bro? Like, wasn't even paying attention. Do you see

1 that? Do see that on page 9 of this statement?

2 "A I see it on the page. And like I said --

3 "Q Okay.

4 "A -- I don't remember exactly that day because I
5 was, like, heavily under the influence, but I was
6 really --

7 "Q Okay. But, sir --

8 "A -- wasn't that high when he came.

9 "Q Okay. Mr. Nicholas --

10 "A -- that day.

11 MR. LEVENTHAL: Your Honor, he has a right to
12 finish and answer the question.

13 MS. BOTELHO: No, he doesn't, Your Honor. I
14 asked for a yes or no.

15 THE COURT: I think --

16 MS. BOTELHO: He was not being responsive.

17 THE COURT: I think his answer went beyond the
18 question that Ms. Botelho asked. You obviously can
19 follow up on recross.

20 MR. LEVENTHAL: Appreciate that, Your Honor, but
21 the questioning now is exceeding the scope of
22 cross-examination.

23 MS. BOTELHO: Credibility and motive is directly
24 at issue on cross.

25 THE COURT: Ms. Botelho, go on to your next

1 question.

2 MS. BOTELHO: Thank you.

3 BY MS. BOTELHO:

4 "Q Sir, when you were cross-examined by defense
5 counsel, you remembered certain things that the detectives
6 talk to you about pretty clearly; correct?

7 "A I like -- I don't even remember. I don't even
8 know who defense counsel is.

9 "Q Like how many years an accessory would have
10 added to your charges and things like that. Do you
11 remember the questioning that you just answered on cross?

12 "A You remember --

13 "Q You remember --

14 "A Sorry.

15 "Q You remember the part about potentially being
16 charged as an accessory, and that adding time to your
17 charges. Do you remember that?

18 "A Yeah.

19 "Q You remember that part of the conversation with
20 detectives; correct?

21 "A Like I said, I remember vaguely. He read it to
22 me just like you read it to me, but like I said, I
23 remember them implying that I was going to get more time.

24 "Q Okay. I'm going to show you because you talked
25 about the detectives talking to you about potentially

1 charging you or you being susceptible to charges for
2 accessory to murder.

3 Do you want to see page 21 of your transcript to
4 see exactly how that conversation came across? Would that
5 refresh your memory?

6 "A Not really.

7 "Q Okay. I'd like you to take a look at it.

8 "A Okay. Yeah.

9 "Q Okay. So this is page 21. Do you remember the
10 detectives saying if, if I, if we don't recover it today,
11 if you're not able to help us, I can almost guarantee what
12 those guys are going to say for us to do with you, and
13 that's charge you with accessory to murder for hiding it
14 and not letting us get to it. And then you'll be, you
15 know, right up there with Jake and Mike. I don't want to
16 do that. I want to call them and say, look, he helped us,
17 and we got it back. And your answer, I believe this might
18 be your girlfriend was in there at some point; correct?

19 "A Yeah.

20 "Q Do you remember Isabel saying and the person who
21 has it?

22 And the detective saying, No, I don't care who
23 has it.

24 So basically at this point, sir, would you agree
25 that the detectives are really trying to get the stolen

1 iPad back; correct?

2 "A Yeah.

3 "Q And this was -- this conversation about charging
4 you with accessory came much later in the interview than
5 all the times where you told the detectives everything
6 Mr. Solid told you about the murder; correct?

7 "A I have no idea.

8 "Q Okay. Mr. Solid's statements as you relayed
9 them to the detectives, do you have any reason to disagree
10 would have been on page 9 of your statement?

11 "A No. I don't know.

12 MS. BOTELHO: May I approach?

13 THE COURT: Sure.

14 BY MS. BOTELHO:

15 "Q So page 9 is all the statements that are read to
16 you; right?

17 "A Uh-huh.

18 "Q Okay. Is that a yes?

19 "A Yes.

20 "Q Okay. Everything that Mike P told you about the
21 robbery; correct?

22 "A Yes.

23 "Q Okay. And it wasn't until page 21, some 12
24 pages later that the detectives are trying to recover the
25 iPad, and they talk about charging you with accessory to

1 murder; correct?

2 "A Yes.

3 "Q And on page 23 do you remember asking the
4 detectives if you're going to prison for this shit?

5 "A No.

6 "Q Okay. Would looking at your statement refresh
7 your memory?

8 "A Maybe.

9 MS. BOTELHO: Your Honor, may I just bring --

10 THE COURT: You can -- just move freely.

11 MS. BOTELHO: Thank you.

12 THE COURT: You don't have to ask every time.

13 BY MS. BOTELHO:

14 Q Page 23, the line circled in red, please. Okay. Do
15 you remember?

16 "A Yeah.

17 "Q It's just a few lines?

18 "A Yeah.

19 "Q Did you have an opportunity to read it?

20 "A Yeah.

21 "Q Okay. So on page 23 of your statement, you
22 asked the detectives, I'm going to prison for this for a
23 minute?

24 And the detective says, I can't -- I'm -- that's
25 above my pay grade, man. I've seen different things. So I

1 can't tell you. I mean, you're an ex-felon; right?

2 So what are you an ex-felon for? And you say they
3 just told me I'm an ex-felon for prohibited person in
4 possession of a firearm, and then, I don't know, but the dude
5 told me, he said he was, like, you've got something good that's
6 in your favor. You're not a three-time felon. He said that's
7 usually when the feds pick up.

8 Do you remember reading that?

9 "A Uh-huh.

10 "Q Okay. And then on the next page do you remember
11 the detectives advising you that you're just going to have
12 to go through the normal course of negotiations or
13 negotiating your case?

14 "A Oh, I don't remember.

15 "Q Okay. I'm going to show you page 24, the line
16 circled in red, okay. Okay. Have you had an opportunity
17 to read that?

18 "A Uh-huh.

19 "Q Do you remember saying or the detective saying,
20 Yeah, I mean, there's -- you know how it goes, man, the
21 negotiations and everything like that.

22 And you say, All right, dude. I'm just saying
23 with all that shit you ever like what's --

24 The detective's saying, I know, they kind of
25 told us, but I'm like, I said, to me it's a no-brainer.

1 You're -- you're sitting there going, I'm going to have to
2 do some prison time or whatever, but you're going to have
3 to do more than that if you're going to keep yourself out,
4 you know. I mean, that's the bottom line. So either
5 way -- it's all about the number games, the number games,
6 right? Right when it comes right down to it.

7 So either -- okay. Say your minute is 5 or
8 10 years, okay, and you end up giving us the iPad, and it
9 becomes less than 5 or 10 years; I don't -- I can't, I
10 can't say one way or the other. I can't say, you know,
11 that's above who I am in abilities, you know, but I know
12 you know this case is really important. It's got national
13 news. I mean, it's important. So...

14 And your response is -- is that, They're going to tie
15 me to this shit too.

16 Do you remember the detective responding, I
17 don't -- well, because, you know, you know the guy.

18 You said, So I'm going to be dragged in.

19 And you say -- and they say, no, you're not
20 going to go in for that. If anything, they'll probably
21 have you testify or something, but that's -- that's --
22 cross that bridge when we get there, man.

23 And you say, I'm going to keep it real. I'd
24 rather -- I'd rather do that because it's like one of
25 those.

1 Do you remember reading that?

2 "A Yeah.

3 "Q Okay. Do you remember the detectives telling
4 you that they were not going to be charging you for
5 anything related to the iPad?

6 "A No.

7 "Q Okay. I'm going to ask you to read the
8 highlighted paragraph on page 27.

9 "A Yeah.

10 "Q Okay. Would you agree with me, Mr. Nicholas,
11 that during the last few pages that we've gone through,
12 the detective's the main purpose was to get the stolen
13 iPad back?

14 "A Yeah.

15 "Q And that's what this whole talk was about;
16 correct?

17 "A Yeah.

18 "Q You helping them get the stolen iPad?

19 "A Yes.

20 "Q And them telling you that they don't know if
21 they can help you because you had a lot of drugs and guns
22 in your house; correct?

23 "A Yes.

24 "Q Okay. So on page 27, you talk about why you
25 didn't just put the iPad in the mail box. Do you remember

1 that?

2 "A No.

3 "Q Okay. I'll show you page 27 again. I'm sorry.
4 Let's start. Just this?

5 "A Yeah.

6 "Q Okay. So you talked about just putting the iPad
7 in the mailbox and mailing it to police previously. Do
8 you remember that?

9 "A Yeah.

10 "Q And the detectives saying, I don't even know.
11 We need to have that, dude. I'm not -- because bottom
12 line again, it's like if you had it right now and they
13 were doing, say this all happened and it was in here,
14 bottom line, no questions asked. I don't -- I don't care.
15 Yeah, you could tell us that you got it from Solid and all
16 that stuff, but I'm not charging you with nothing, you
17 know what I mean? And I'm not going to charge whoever has
18 it with nothing. All I want to do is get that -- is get
19 it back because that is a very key piece of evidence
20 because it comes back to Solid and freaking Jake, you
21 know, and them going out and robbing somebody and killing
22 them. So, yeah, it's important, but if even, I mean,
23 say -- say you basically say no. We're in the same
24 predicament, man. We're not out there somewhere or
25 someplace, you know, but unfortunately you got caught

1 today.

2 Do you see that?

3 "A Yeah.

4 "Q Do you remember that?

5 "A No response.

6 "Q Okay.

7 "A No.

8 "Q They're wanting to get the iPad back; correct?

9 "A Yeah.

10 MS. BOTELHO: Court's brief indulgence.

11 THE COURT: Uh-huh.

12 BY MS. BOTELHO:

13 "Q Do you recall towards the end of your interview
14 telling the detectives after you had already told them in
15 the beginning all of the stuff that the defendant told
16 you? Do you remember telling the police page 35, I'm
17 going to help you get that iPad back?

18 "A No.

19 "Q Okay. I'm going to show you page 35.

20 "A Yeah. You already read this.

21 "Q Okay. Page 40. Can you read that page, please,
22 also the beginning part of page 41.

23 "A Yeah.

24 "Q Okay. And just so that we don't have to start
25 and stop again, sir, the rest of the circles, please, on

1 page 41.

2 "A Yeah.

3 "Q Okay. Fair to say, sir, that Detectives Ivie
4 and Sanborn were the two detectives who showed up. They
5 never made you any promises in terms of helping you with
6 your case; correct?

7 "A No.

8 "Q Okay. And when they were talking to you about
9 all the stuff towards the end of your interview, for
10 instance, you know, the time that you could get, whether
11 they could help you, that involved recovering the iPad;
12 correct?

13 "A Uh-huh.

14 "Q Okay. Is that a yes?

15 "A Yes.

16 "Q Okay. You told them all of the things that led
17 you to believe the iPad that you had gotten rid of was the
18 iPad taken from the 15-year-old boy and what Mr. Solid
19 told you much earlier in the interview; correct?

20 "A Yes.

21 "Q Okay. On page 40, pretty much this entire page,
22 so I don't have to read it all, would you agree with me
23 that it's the detectives saying -- you asking, I'm going
24 to get fucked, you know, because I have all these guns and
25 all these drugs.

1 And the detective's saying, Look, you know, we
2 don't know. It's hard to say. It depends on criteria.
3 It depends on whether the federal government takes it.
4 They're going to look at your history. They're going to
5 look at the amount of drugs they found.

6 Do you remember detectives telling you that?

7 "A Uh-huh.

8 "Q Okay. Is that a yes?

9 "A Yes.

10 "Q Do you remember the detectives telling you that
11 you're definitely not going home?

12 "A No.

13 "Q Whether you help them find the iPad or not. Do
14 you remember that?

15 "A No, I don't remember that.

16 "Q Did that refresh your memory?

17 "A No, not really, but --

18 "Q Okay. Do you remember the detectives telling
19 you that regardless of what happened with the interview or
20 with the iPad you were going to be prosecuted for the guns
21 and the drugs found in your home?

22 "A That's not exactly what he said, but --

23 "Q During the course of your interview with the
24 detectives, do you remember them saying that?

25 "A Like I said, I vaguely remember that day.

1 "Q Okay.

2 MS. BOTELHO: Court's brief indulgence.

3 THE COURT: Uh-huh.

4 / / /

5 BY MS. BOTELHO:

6 "Q Sir, when you told the police all the things
7 that Mr. Solid told you towards the beginning of the
8 interview, fair to say that you wanted to help in the
9 investigation of this 15-year-old boy who had been
10 murdered for the iPad that you were in possession of
11 previously?

12 MR. LEVENTHAL: Objection. Argumentative.

13 Number two, asked and answered, at least the part of
14 it that's not argumentative.

15 THE COURT: Overruled.

16 MR. LEVENTHAL: May we approach the bench?

17 THE COURT: Sure."

18 Conference at the bench begins and ends.

19 THE COURT: All right. Any recross?

20 RE CROSS-EXAMINATION

21 BY MR. LEVENTHAL:

22 "Q Matt, when you spoke to the police and you gave
23 them this information, you were doing it to help yourself;
24 right?

25 "A Yes.

1 "Q Okay. And you were upset because you thought
2 that Mike had given information against you; right?

3 "A Yes.

4 "Q And all the information that you had was based
5 upon what you saw on the news; right?

6 "A Yes.

7 "Q And maybe what else you might have heard on the
8 streets; right?

9 "A Yes.

10 "Q It did not come from Michael; right?

11 "A No, it did not.

12 "Q I know we just went through your statement over
13 and over again, but I just would like to know, I'd like to
14 ask you, do you remember in the beginning of your
15 statement asking the detectives if your cooperation was
16 going to help you out at all?

17 "A No, I don't remember.

18 MR. LEVENTHAL: May I approach, Your Honor?

19 THE COURT: Sure.

20 BY MR. LEVENTHAL:

21 "Q Showing you page 5 of your statement, can you
22 read from here, read down.

23 "A Yeah.

24 "Q Does that refresh your recollection? Do you
25 remember asking or telling the detectives that you don't

1 have much room to bargain, but is this going to help me at
2 all?

3 "A Yes.

4 "Q And do you remember the -- there was two
5 detectives interviewing you; right?

6 "A Yes.

7 "Q Do you remember one telling you that when you
8 talk to the DA and tell them you cooperated and then the
9 other detective saying it'll help, yeah, I mean, it's
10 going to help?

11 "A Yes.

12 "Q Okay. So they weren't inferring a benefit.
13 They told you your cooperation was going to help; right?

14 "A Yes.

15 "Q That was the beginning?

16 "A Yes.

17 "Q Of your statement; right?

18 "A Yes.

19 "Q Is it fair to say that this transcribed
20 statement does not -- wasn't a recording of your entire
21 contact with the police that night?

22 "A Yes.

23 "Q Because you said that the first people came to
24 raid your -- officers came to raid your house for drugs
25 and guns; right?

1 "A Yes.

2 "Q All right. And none of that, the actual raid,
3 none of that is reflected on this transcribed statement;
4 correct?

5 "A No.

6 "Q Okay. So there's no contact with police that
7 was not transcribed; right?

8 "A Yes.

9 "Q And you said throughout this statement it was in
10 your mind that the detectives were inferring that if you
11 cooperated that it would be a benefit to you; right?

12 "A Yes.

13 "Q And you said that you couldn't guarantee you
14 could help, but they kept, on the statement I just showed
15 you, they did definitively tell you that your cooperation
16 would help; right?

17 "A Yes.

18 "Q And as we went through your charges, you were
19 facing decades in prison for the guns and drugs; right?

20 "A Yes.

21 "Q And then you cooperated with the police; right?

22 "A Yes.

23 "Q And then your drug charges were dismissed;
24 right?

25 "A Yes.

1 "Q And all you had to face was the gun charges;
2 correct?

3 "A Yes.

4 "Q All right. So in the end, facing decades in
5 prison, you cooperate, and you end up doing 37 months in
6 federal prison; right?

7 "A Yes.

8 "Q All right. And your State case gone; correct?

9 "A Yes.

10 MR. LEVENTHAL: Court's indulgence.

11 Pass the witness.

12 THE COURT: Any re-redirect?

13 FURTHER REDIRECT EXAMINATION

14 BY MS. BOTELHO:

15 Q You accepted a plea bargain, sir; correct?

16 "A Yes.

17 "Q You were prosecuted by the federal government;
18 correct?

19 "A Yes.

20 "Q You were not prosecuted by Detectives Sanborn or
21 Ivie for the drugs or the guns found in your apartment;
22 correct?

23 "A Yes.

24 "Q An entirely different set of detectives;
25 correct?

1 "A Yes.

2 MS. BOTELHO: Nothing further.

3 THE COURT: Anything else, Mr. Leventhal?

4 MR. LEVENTHAL: Just very brief.

5 FURTHER RECROSS-EXAMINATION

6 BY MR. LEVENTHAL:

7 "Q You were never charged in federal court with the
8 drugs; right?

9 "A No.

10 "Q Okay. And then you were never recharged in
11 state with the drugs; right?

12 "A I was never charged with the drugs due to the
13 fact that I have received something that I said that they
14 weren't going to pursue. The State wasn't going to pursue
15 any drug charges due to the fact that they didn't want to
16 reveal the confidential informant that was in my case. So
17 they said they weren't going to pursue any drug charges.

18 "Q You weren't arrested for drugs?

19 "A I was arrested for drugs. When I went to court,
20 I got a letter in the mail.

21 "Q So you went to court for drugs; right?

22 "A Yeah.

23 "Q So there was charges for drugs; right?

24 "A Yeah.

25 "Q And then those charges disappeared; right?

1 "A Yeah.

2 MR. LEVENTHAL: Pass the witness, Your Honor.

3 / / /

4 / / /

5 FURTHER REDIRECT EXAMINATION

6 BY MS. BOTELHO:

7 "Q The charges, the drug charges in state court
8 disappeared because the State and the investigators did
9 not want to reveal the identity of the confidential
10 informant who would've led to your conviction and arrest;
11 correct?

12 "A Yes.

13 MS. BOTELHO: Nothing further.

14 THE COURT: Anything based just on that last
15 question, Defense?

16 MR. LEVENTHAL: Court's indulgence. No, Your
17 Honor."

18 THE COURT: This isn't really for you.

19 THE COURT: "But did we have any jury questions
20 for this witness?

21 No response.

22 All right. I see no further questions. Thank
23 you for your testimony. Don't discuss your testimony
24 with anyone else."

25 THE COURT: All right. Ladies and gentlemen,

1 obviously we can't ask questions of this witness because it is
2 a reading.

3 Mr. Dickerson, thank you for being here. You are
4 excused.

5 THE READER: Thank you, Your Honor.

6 THE COURT: The State may call their next witness.

7 MR. PALAL: Yes, Your Honor. The State calls Bradley
8 Berghuis.

9 (Pause in the proceedings.)

10 MS. BOTELHO: Okay. Actually the State calls Jordan
11 Travers.

12 THE COURT: Come on up, sir.

13 **JORDAN TRAVERS**

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

16 THE CLERK: Thank you. Go ahead and be seated. And
17 then, please state and spell your name for the record.

18 THE WITNESS: Jordan Travers. J-o-r-d-a-n. Travers,
19 T-r-a, V as in Victor, e-r-s.

20 MR. PALAL: Sir --

21 THE COURT: Thank you, Mr. Travers.
22 Go ahead.

23 MR. PALAL: I apologize, Your Honor.

24 THE COURT: You're fine.

25 DIRECT EXAMINATION

1 BY MR. PALAL:

2 Q Sir, how are you employed?

3 A I'm a police officer with Metro police.

4 Q And were you employed in that capacity on May 22nd,
5 2013?

6 A Yes, sir.

7 Q And in that capacity were you part of an
8 investigation into somebody by the name of Matthew Nicholas?

9 A Correct.

10 Q Sorry. Sorry, yeah. Matthew Nicholas?

11 A Nicholas. Correct.

12 Q What investigatory group were you assigned to back in
13 May 22nd, 2013?

14 A The problem-solving unit for Enterprise Area Command.

15 Q What does the problem-solving unit do?

16 A Basically we did street crimes in the area. Followed
17 up on dope and robberies.

18 Q Now, in that capacity you were investigating someone
19 by the name of Matthew Nicholas; correct?

20 A Correct.

21 Q And, in fact, had there been a coordinated effort to
22 get a confidential or a confidential informant to buy drugs
23 from Matthew Nicholas?

24 A Correct.

25 Q At that point were you aware of his involvement at

1 all with regards to a stolen iPad?

2 A No clue.

3 Q When you had -- did a confidential informant buy
4 drugs from Matthew Nicholas?

5 A Yes.

6 MR. MARCHESE: Objection. Hearsay. Relevance.

7 THE COURT: Your response?

8 MR. PALAL: One, he was part of the investigation;
9 but, two, it's just foundation for why he goes to the house on
10 May 22nd.

11 THE COURT: So it's not offered for the truth; it's
12 offered why he did next?

13 MR. PALAL: Yeah.

14 THE COURT: Okay. Overruled.

15 BY MR. PALAL:

16 Q All right. And then at some point after the --
17 there's some confidential informant buys at Matthew Nicholas's
18 house. Was there a search warrant executed for Matthew
19 Nicholas's house?

20 A Yes.

21 Q And again I'm going to ask you, and this was done on
22 May 22nd, 2013?

23 A I'd have to refer to my notes for the exact date.

24 Q Okay. But in May of 2013?

25 A Correct.

1 Q And in executing the search warrant, did you or did
2 you not have SWAT execute the search warrant?

3 A SWAT did serve it.

4 Q And when SWAT comes in to serve a search warrant, do
5 they gently knock on the door and ask for brown sugar, or do
6 they do something else?

7 A No, they utilize at least a 10-man element. They're
8 all armed with rifles or handguns. They went -- I believe it
9 was early in the morning, and, yeah, busted the door down and
10 quickly dispersed throughout the building or apartment.

11 Q And was Matthew Nicholas at the apartment?

12 A Correct.

13 Q And again at the time that this search warrant is
14 being executed, are you aware of Matthew Nicholas's connection
15 at all to a stolen iPad?

16 A No.

17 MR. MARCHESE: Judge, can we approach?

18 THE COURT: Yes.

19 (The bench conference began.)

20 MR. LEVENTHAL: I don't see the relevance at all to
21 this. I mean, I don't even think we have a report on this.

22 MS. BOTELHO: It's on the DOR. I mean, it's on the
23 officer's report.

24 MR. PALAL: The report was disclosed.

25 MR. LEVENTHAL: Yeah. My question is, is he just

1 vouching for what we just read through Mr. Nicholas that they
2 didn't have so that I can't bring in Mr. Nicholas, and I'm not
3 sure what -- because the relevance here is that he showed up to
4 Nicholas, never knew about the iPad, had some drug deal going
5 on with Nicholas; right?

6 MR. PALAL: Your Honor --

7 MR. LEVENTHAL: I just don't see --

8 MR. PALAL: (Indiscernible) laying the foundation so
9 that (indiscernible) impeach the testimony that he gave.

10 THE COURT: And specifically which testimony?

11 MR. PALAL: One that (indiscernible) homicide
12 (indiscernible).

13 THE COURT: Okay.

14 MR. PALAL: And that he's the one that provided the
15 information that he had, and he's the one that --

16 THE COURT: Got it.

17 MR. PALAL: Basically it's going to be no more than
18 (indiscernible) two or three minutes.

19 MR. LEVENTHAL: So the whole purpose for calling him
20 is to impeach (indiscernible).

21 (Multiple parties talking, indiscernible speech.)

22 MR. LEVENTHAL: -- read in the testimony, but I can't
23 recall him because he's not available.

24 MR. MARCHESE: At least in federal court you can't do
25 that. You can't call a witness (indiscernible).

1 MR. PALAL: Yeah, but here we can. It's a prior
2 inconsistent statement, and we can call a witness to impeach
3 him the same way that Detective Sanborn, when he has
4 (indiscernible) impeach the prior inconsistent statement.

5 THE COURT: So you've already confronted him with the
6 statement.

7 MR. PALAL: Yes.

8 THE COURT: And you're perfecting the impeachment.

9 MR. PALAL: Correct.

10 THE COURT: With the other person?

11 MR. PALAL: With the person that he --

12 THE COURT: Actually talks to?

13 MR. PALAL: Talked to.

14 THE COURT: Okay. Overruled. You can ask him.

15 MR. MARCHESE: And we'd like to make a record at the
16 break if possible.

17 THE COURT: Of course.

18 (The bench conference was concluded.)

19 BY MR. PALAL:

20 Q All right. So where we were at was the search
21 warrant was being executed, and it was totally unrelated to a
22 stolen iPad; correct?

23 A Correct.

24 Q Now, at some point did you come into contact with
25 Mr. Nicholas?

1 A Yes.

2 Q Okay. And did he mention something to you about an
3 iPad?

4 MR. LEVENTHAL: Objection. Hearsay.

5 MR. PALAL: Again, Your Honor. It's a prior
6 inconsistent statement.

7 THE COURT: Overruled.

8 BY MR. PALAL:

9 Q Did he mention something to you about an iPad?

10 A Yes.

11 Q Well, how did that come up?

12 A After confessing about the drugs possession, he said
13 to me, you know, this was a lot for just a -- for just drugs
14 and guns because that's what we located in the apartment. He
15 said why did you bring SWAT and all this? This is just
16 overkill for what he has. And from there I had no idea what he
17 was talking about. So I said, of course, we didn't just bring
18 SWAT for this. And then he voluntarily told me it's because I
19 have the iPad or I know where the iPad is.

20 Q And even at this point did you have a great
21 specificity about what he was talking about?

22 A No clue.

23 Q At some point during the conversation, did you
24 interrogate him regarding the iPad?

25 A I asked him a little further if, I can recall, about

1 the iPad on where it was.

2 Q And at some point did you become aware that this was
3 related to a homicide investigation?

4 A Correct.

5 Q And did Mr. Nicholas ask you to have homicide come
6 out so that he can talk to them specifically about the iPad?

7 A I believe when he advised me about the iPad I wasn't
8 a homicide detective. So then I notified homicide to do a
9 further investigation on that end.

10 Q Okay. So the substantive conversations were done
11 with homicide detectives, but you -- but he's the one that
12 brought up the iPad to you?

13 A Correct. And then I notified homicide.

14 Q Because you had no idea about the iPad?

15 A Correct.

16 MR. PALAL: All right. The State has nothing
17 further.

18 THE COURT: Cross-examination.

19 Will the parties actually approach.

20 (The bench conference began.)

21 THE COURT: Remind me about the testimony was that he
22 verified (indiscernible). So he confirmed -- and he confirmed
23 the Mr. Nicholas didn't say I want to help you (indiscernible).

24 MR. PALAL: That was not the answer. That was not
25 the answer I was expecting, Your Honor.

1 THE COURT: Okay.

2 MR. LEVENTHAL: So that's --

3 MS. BOTELHO: It's different.

4 MR. LEVENTHAL: Right.

5 THE COURT: (Indiscernible.) How do you all want to
6 proceed with that is (indiscernible).

7 MR. LEVENTHAL: We were just (indiscernible).

8 (Multiple parties talking, indiscernible speech.)

9 MR. LEVENTHAL: -- is what he said was
10 (indiscernible).

11 THE COURT: You generally (indiscernible) prior
12 inconsistent statement. The State just introduced a prior
13 inconsistent statement (indiscernible) is how I see it, but
14 it's up to you how do you want to proceed.

15 MR. LEVENTHAL: (Indiscernible.) I don't know. What
16 do you want to do?

17 (Multiple parties talking, indiscernible speech.)

18 THE COURT: Do you want to strike it? I can do that.
19 If you don't want to strike it (indiscernible).

20 MR. LEVENTHAL: No, (indiscernible).

21 THE COURT: Okay. Okay.

22 (The bench conference was concluded.)

23 MR. LEVENTHAL: Brief indulgence.

24 THE COURT: Of course.

25 (Pause in the proceedings.)

1 MR. LEVENTHAL: Nothing further, Judge.

2 THE COURT: Ladies and gentlemen of the jury, do you
3 have any questions for this witness?

4 Seeing none.

5 Thank you so much, Officer Travers. You are excused.

6 THE WITNESS: Thank you.

7 THE COURT: Do you guys need a moment, or are you
8 ready to call your next witness?

9 MR. PALAL: No, we can call someone.

10 THE COURT: Okay.

11 MR. PALAL: The State is going to call Jody Faust.

12 Your Honor, can we take a five-minute recess?

13 THE COURT: Yeah. Let's take a break so everyone can
14 stretch. I'll give you 15 minutes.

15 During the recess, you're admonished not to talk or
16 converse amongst yourselves or with anyone else on any subject
17 connected with the trial; or read, watch or listen to any
18 report of or commentary on the trial of any person connected
19 with the case by any medium of information, including, without
20 limitation, newspaper, television, the Internet and radio; or
21 form or express any opinion on any subject connected with the
22 trial until the case is finally submitted to you.

23 Please stand for the jury.

24 (Jury recessed at 10:45 a.m.)

25 THE COURT: For the record, the jury has exited the

1 room.

2 Mr. Marchese or Mr. Leventhal, did you want to make a
3 further record regarding the testimony of Mr. Travers? I know
4 you had said it previously, but it ended up coming in
5 differently than was expected.

6 MR. LEVENTHAL: So he was here to impeach, I assume,
7 well, Mr. Matthews's testimony -- or Nicholas's testimony, but,
8 in fact ended up saying exactly what Mr. Nicholas testified to.
9 So it wasn't a prior inconsistent statement. It was a prior
10 consistent statement; right?

11 THE COURT: Yes.

12 MR. LEVENTHAL: So the question now is do we want it
13 to be stricken? And no, we don't. We indicated that at the
14 bench --

15 THE COURT: I was just giving --

16 MR. LEVENTHAL: -- it came out the way it came out --

17 THE COURT: Mr. Marchese had made a -- had indicated
18 he wanted to make a further record, but I think that was before
19 it ended up being different than we expected.

20 MR. MARCHESE: Right. Right, Your Honor. Different
21 set of facts. So we'll just leave it as is.

22 THE COURT: Okay. Perfect. I just wanted to give
23 you an opportunity if you wanted to clear that up.

24 MR. MARCHESE: No, I appreciate it.

25 THE COURT: I'm going to give the State a few minutes

1 to figure out what's going on.

2 MR. PALAL: Yeah. Thank you.

3 (Proceedings recessed at 10:46 a.m., until 10:57 a.m.)

4 (Outside the presence of the jury.)

5 THE COURT: Do you need to wait for Mr. Leventhal?

6 You're good?

7 MR. MARCHESE: No, we're good?

8 THE COURT: All right. So there's an issue regarding
9 this witness and some things that were said in opening.

10 MR. MARCHESE: Okay. So it's my understanding that
11 the State is going to be entering some text messages, both from
12 my client and from Mr. Dismont's phone is what I believe the
13 offer of proof was.

14 With reference to Mr. Solid, I don't think we have
15 much of an argument there --

16 We're just waiting for our client.

17 THE COURT: Okay.

18 MR. MARCHESE: And he is, for the record, he's back
19 in the courtroom.

20 In reference to Mr. Solid, I don't think we have much
21 of a leg, so to speak, to stand on in reference to the ones for
22 him. I think it's only just like one day; right? It's pretty
23 minimal.

24 THE COURT: Okay.

25 MR. MARCHESE: However, in reference to Mr. Dismont,

1 who obviously is a coconspirator in this case, who's already
2 pled guilty, will not be testifying in this trial, we do object
3 to those. There's several pages. Many of the issues are that
4 they are conversations between Mr. Dismont and other people.

5 These other people are not witnesses. One of them I
6 believe is his brother, and it appears to be friends that are
7 giving Mr. Dismont advice, sayings things to the effect of we
8 need to get you out of here, don't talk to anybody, go talk to
9 your dad, things of that nature.

10 So to me, that is classic hearsay. They are not
11 available to be cross-examined. I do not believe that it's
12 appropriate, and I believe that those text messages should not
13 be allowed in evidence.

14 THE COURT: So I think the hearsay is addressed by
15 the fact that, you know, this is the coconspirator issue, but
16 the confrontation clause --

17 MR. MARCHESE: Correct.

18 THE COURT: -- still is at play.

19 MR. MARCHESE: Correct.

20 THE COURT: Because you won't be able to
21 cross-examine Mr. Dismont. You won't be able to cross-examine
22 the people that are involved in the other ends of the text.

23 MR. MARCHESE: And I do agree but I also disagree a
24 little bit because I don't think that we can make arguments
25 that Mr. Dismont's brother is a coconspirator or anything along

1 those lines. Obviously I know what the argument is, that
2 Mr. Dismont is.

3 THE COURT: Dismont is. Okay.

4 MR. MARCHESE: Yeah. I mean, they're on the same
5 complaint, indictment, et cetera.

6 THE COURT: Yes.

7 MR. MARCHESE: So I understand that, but when it
8 comes to these other people, I'm failing to see how the State
9 meets the threshold in reference to hearsay --

10 THE COURT: Sure.

11 MR. MARCHESE: -- or in reference to confrontation.

12 THE COURT: Understood.

13 State.

14 MR. PALAL: Okay. Your Honor, first of all, with
15 regards to the hearsay, it is a conversation between the
16 defendant -- codefendant, coconspirator and his brother
17 regarding how to further hide or conceal the identity of the
18 people that are involved in the crime; right. They're trying
19 to basically how do you change the appearance of the vehicle
20 and how to change Mr. Dismont's appearance, right. So when
21 you're trying to cover up a crime, that's still part of the
22 conspiracy. It's ongoing and that's I think pretty
23 black-letter law.

24 So then the question is, so he is not a
25 coconspirator. It is admissible as a coconspirator statement.

1 Initially, the statements are not being offered for
2 the truth of the matter asserted, right. I mean, if I was
3 trying to prove that Mr. Dismont should change the vehicle,
4 then that's being offered for the truth of the matter asserted.

5 THE COURT: Or that he did change it would be the
6 truth.

7 MR. PALAL: Or that he did. I'm not showing it --
8 I'm not entering this as evidence for the fact that he did
9 either, right, because we've got photos of that. I don't need
10 the statements to show that. What I think this shows is a
11 consciousness of guilt of the coconspirator and when you're
12 saying I need a -- it's relevant for that purposes, but in
13 terms of I'm not even offering it for the truth.

14 Whether Mr. Dismont should or should not have changed
15 his appearance does not matter. It's the fact that he is
16 engaging in a discussion about changing his appearance that is
17 relevant.

18 Whether or not the truck should or should not be
19 altered does not matter. I'm not offering it for the truth of
20 that. What I'm offering it for is that Mr. Dismont is engaging
21 in acts to further their conspiracy or to conceal the crime
22 which is in furtherance of the conspiracy.

23 MS. BOTELHO: In addition to that, Your Honor,
24 according to *Burnside versus State*, which is 131 Nevada 371, if
25 the challenged out-of-court statement by a nontestifying

1 codefendant is not testimonial, then *Bruton*, which held that
2 the admission in a joint trial of a nontestifying codefendant's
3 incriminating statements that expressly refers to the
4 defendant, well, in this case it doesn't expressly refer to
5 this defendant --

6 THE COURT: Give me the cite again.

7 MS. BOTELHO: Oh, sure. It is 131 Nevada 371.

8 THE COURT: That is not coming up. It's coming up
9 under Martin Elleren (phonetic).

10 MS. BOTELHO: 131 Nevada 371 or 352 P.3d 627.

11 THE COURT: 620.

12 MS. BOTELHO: Uh-huh. Okay. 352 P.3d 627.

13 THE COURT: Okay. Let me see if I can find that one.
14 *Burnside* got it. Thank you.

15 MS. BOTELHO: And, Your Honor, this is headnote 21.
16 So it's -- I got to the part where *Burnside* held that the
17 admission in a joint trial of a nontestifying codefendant's
18 incriminating statement that expressly refers to the defendant
19 violates the Sixth Amendment confrontation clause.

20 Number one, in this case, the statements we are
21 offering do not expressly refer to Mr. Solid. It really is to
22 show the cover-up, consciousness of guilt, and this is charged
23 aiding and abetting and conspiracy. The very heart of this
24 case involves whether or not Mr. Solid was engaged in a
25 conspiracy with Mr. Dismont.

1 It says, okay, so,

2 If the challenged out-of-court statement by
3 nontestifying codefendant is not testimonial,
4 then *Bruton*, which held that the admission in a
5 joint trial of a nontestifying codefendant's
6 incriminating statement that expressly refers to
7 the defendant violates the Sixth Amendment
8 confrontation clause even if the jury is
9 instructed to consider the confession only
10 against the nontestifying defendant has no
11 application because the confrontation clause has
12 no application.

13 So the State's position as it concerns this is,
14 number one, *Bruton* isn't invoked because the statements at
15 issue do not expressly refer to the defendant. And even if
16 they did, there's no application here because the statements
17 are not testimonial.

18 THE COURT: Okay. Any response to that?

19 MR. MARCHESE: Well, Judge, I would say that it still
20 does refer to the defendant because we're dealing with the
21 felony-murder rule basically in a coconspirator case where
22 basically even if you're just the lookout you still can be
23 charged with murder for the actions of the shooter. So I think
24 it's actually worse in that we're being held accountable for
25 the statements of Mr. Dismont and some other person who has

1 really nothing to do with this case criminally. And they're
2 not here. We have no ability to confront either of them.

3 And if looking at the text messages, it's kind of
4 hard to tell because it's not seeing who sent what, but at the
5 same time, on all of them, they're all on different pages, but
6 it's difficult to say who sent what. So you have to read it
7 and kind of contextualize and see -- try to make out who's
8 saying what, but at one point it seems to be this rapid fire
9 succession of text messages from one person who doesn't even
10 appear to be Mr. Dismont.

11 THE COURT: Okay.

12 MR. PALAL: But just so we're on the record, what's
13 clear is that Mr. Solid is not mentioned by name. It doesn't
14 refer to Mr. Solid. It doesn't refer to a coconspirator. It
15 is all about Mr. Dismont.

16 THE COURT: Okay. And so you can -- I apologize if
17 this is a replay. If you can replay for me again or explain to
18 me again then what would be the relevance if it has nothing to
19 do with Mr. Solid himself.

20 MR. PALAL: Because it shows the ongoing attempt to
21 cover up the robbery. It shows consciousness of guilt of a
22 coconspirator and the fact that the coconspirator is engaging
23 in the cover-up. We still have to prove, regardless of what
24 the defense concedes, we still have to prove as part of the
25 charging document that Mr. Dismont is part of the

1 coconspirator -- part of the conspiracy; right? So that's part
2 of what we're proving up is Mr. Dismont's role and his
3 consciousness of guilt.

4 THE COURT: And how are you getting these text
5 messages in through Ms. Faust?

6 MR. PALAL: Oh, it's not Ms. Faust. This is the
7 phone -- the forensic phone expert.

8 THE COURT: Okay.

9 MR. PALAL: That's what this argument is in
10 anticipation for.

11 THE COURT: Okay. Anything further? I'm still
12 looking through this *Burnside* case.

13 MR. MARCHESE: I mean, we've all been here. It's
14 kind of difficult to listen to argument and then try to digest
15 the case at the same time. So I'm kind of just letting you --

16 MR. PALAL: And so, Your Honor, if I --

17 MR. MARCHESE: -- do your thing there.

18 THE COURT: Okay. I appreciate it.

19 MR. PALAL: If I may make a suggestion, Your Honor,
20 the Court can hold -- Mr. Sanborn can also testify to these
21 particular texts, and he's after Mr. Berghuis. All
22 Mr. Berghuis does is download the phone.

23 If the Court wants to take time rather than make a
24 decision right this second, I can introduce them through Tate
25 instead while the Court contemplates whether to admit them.