

# IN THE SUPREME COURT OF THE STATE OF NEVADA

CEASAR SANCHAZ VALENCIA,  
Appellant(s),

vs.

THE STATE OF NEVADA,  
Respondent(s),

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Elizabeth A. Brown  
Clerk of Supreme Court

Case No: C-16-315580-1

Docket No: 85694

# RECORD ON APPEAL VOLUME 4

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1 Officer Jacobitz will drive and Officer Houston will work the radio and the  
2 computer.

3 They see this. They decide to go check out that moped that's  
4 racing through the alleyway. As they do that, they see that moped come  
5 down Wilson Avenue and blow through the stop sign in the area of 10th  
6 and Wilson. They get behind it, ready to light it up to do a traffic stop,  
7 you'll hear that's going to be putting on their lights and sirens.

8 As they get into the apartment complex right here -- there's an  
9 apartment complex at 11th and Wilson. You'll hear that there's a parking  
10 lot right there. And that's where the moped pulled in. There, that moped  
11 pulls up to a gate that's located right towards the -- the front of the  
12 apartment complex. The rider, still on the moped, is fumbling with the  
13 gate. That's when they hit the air horn.

14 Officer Houston, Officer Jacobitz immediately see this  
15 individual turn around, Ceasar Valencia. At that point in time, they see  
16 his face. It's very clear, he's wide-eyed like a deer in headlights. He just  
17 had an air horn hit on him in this parking lot. And that's when he takes  
18 the opportunity to turn back around and drive that moped right back  
19 up 9th Street -- or back Wilson.

20 So he goes westbound on Wilson and then makes a left. And  
21 as he makes that left, he comes down 10th Street. Coming down 10th  
22 Street, southbound, he goes into another parking lot, this time the  
23 parking lot of 610 10th Street. Here in the parking lot of 610 10th Street,  
24 the defendant, Ceasar Valencia, dumps that moped that he's on and  
25 starts running.

1 He runs into an alleyway that's located right here at 610  
2 North 10th Street. You'll see it highlighted right there. That alleyway, it's  
3 a pretty thin entryway. And you'll hear that Officer Jacobitz is the first  
4 out. As Officer Jacobitz pulls in, his driver's side is closer to the  
5 entryway of this alley. Officer Jacobitz, out of the vehicle, running,  
6 Officer Houston coming around from the passenger side.

7 So Officer Jacobitz gets right about to this point, looking down  
8 the alleyway, as he notices the defendant, Ceasar Valencia, turning with  
9 a gun in his hand. It's right there where Ceasar Valencia was standing,  
10 right near that yellow cone and that fence post. The firearm that he  
11 pulled out was a .38 Special Taurus revolver.

12 As he turns, Mr. Valencia pointing the gun at Officer  
13 Jacobitz -- Officer Jacobitz will tell you at this point in time, he has his  
14 service weapon out, he's putting the gun up and his finger is getting on  
15 that trigger. He's thinking, I'm going to be shot, I'm going to shoot. It's a  
16 split second, and maybe the luckiest split second of his life.

17 Next thing that happens, the defendant, Ceasar Valencia's  
18 arm, as he's turning around, hits that metal fence post that had been  
19 stuck there that -- apparently from an old fence, that they didn't pull the  
20 fence post out, but they took the fence post down. By the grace of God,  
21 that gun dropped right there on the ground.

22 Ceasar Valencia keeps running. The gun is on the ground.  
23 Officer Jacobitz, holstering his weapon, realizing, I almost just got shot, I  
24 almost just shot somebody, stands by the gun as his partner, Officer  
25 Houston runs past following Ceasar Valencia.

1           You'll hear that that gun's on the ground. This is in a  
2 neighborhood, as you saw. Officer Jacobitz knows right then his focus is  
3 staying with that gun. He doesn't want to move it. He's going to stay  
4 right where it is and not touch it, but this means that he has to separate  
5 from his partner. Well, it is what it is. He can't leave the gun there and  
6 he wants to preserve the evidence. So he stays there. Officer Houston  
7 keeps running after Ceasar Valencia.

8           Officer Houston, chasing the defendant, Ceasar Valencia, gets  
9 into the area of 623-625 North 10th Street. It's in this area where he  
10 ends up losing the defendant, Ceasar Valencia. You'll hear that the  
11 address of 625 North 10th Street is Ceasar Valencia's address. That's  
12 where he lives.

13           In the meantime, back there at 610 North 10th -- excuse  
14 me, 610 North 10th Street, Officer Jacobitz is standing by with the gun.  
15 This is extremely dynamic. Now we have officers coming in from around  
16 the area command, hearing that they're in a foot pursuit. What goes on  
17 at this point in time is you're going to hear that radio goes on a Code  
18 Red, which means than only emergency traffic can come out. They  
19 cleared everything for these two officers who are in the middle of a very  
20 dynamic situation.

21           As Officer Jacobitz is standing back there in the alley at 610  
22 North 10th Street just making sure that nobody comes and grabs this  
23 gun, somebody comes and grabs that moped, two individuals. You'll  
24 hear that it's an individual by the name of Eric Gilbert and another  
25 individual -- individual by the name of Anibal Rivera.

1           They see a moped on the ground and they go and they pick it  
2 up. Now, I don't know what it is, if they're just really good citizens or just  
3 really dumb, but that's what they decided to do that night. You'll hear  
4 that both of them end up going to jail. But this is just the next thing that  
5 Officer Jacobitz has to react to.

6           Officer Jacobitz now seeing that these two individuals are  
7 picking up that moped that Ceasar Valencia dropped on the ground,  
8 goes and confronts these two. Again, he takes these two at gunpoint,  
9 realizing they're stealing the moped and taking a potential piece of in  
10 evidence the -- a crime that is possibly occurring here. And as he has  
11 them there, his partner, Officer Houston, still on the other side of the  
12 neighborhood. The situation is even more dynamic than it was before.

13           You'll hear that Officer Jacobitz gets on the radio, is asking for  
14 other people to come down. Ultimately, other people -- other officers  
15 come down to assist him and he takes those two individuals into  
16 custody. There, they still have the moped. These two are there. They  
17 end up going to jail that night.

18           But in the meantime, the officers set up what they call a  
19 perimeter. Pretty obvious what a perimeter is, but a perimeter is just  
20 where officers set up around the neighborhood at the corners and watch  
21 to see if anybody is trying to exit the perimeter. That way they can  
22 contain the area, bring a K-9 in and search for whoever was running  
23 from them. That's exactly what they do here.

24           So that perimeter is set up. And while this perimeter is set up,  
25 people -- officers that are involved in this are hearing the description of

1 this individual and hearing that address, 625 North 10th Street, realizing  
2 it's -- hey, that's Ceasar Valencia. A picture is ultimately sent to Officer  
3 Jacobitz of Ceasar Valencia. He confirms, Yeah, that's the guy.  
4 That's 100 percent the guy.

5 And at that point in time, K-9 hasn't found anything. The  
6 officers on scene haven't been able to find anybody running out of the  
7 perimeter or hiding under a bush or a trash can or anywhere else that  
8 you might find somebody hiding. And because of that, they end up  
9 breaking the perimeter down. But they know who the guy is. So that's  
10 something that they can take solace in, and they do. They know that  
11 they have the opportunity to still catch him.

12 So it's approximately 11:18 p.m. on Friday, May 20th, 2016.  
13 Then that's when detectives have started their surveillance operation of  
14 Mr. Ceasar Valencia's home, 625 North 10th Street. There, officers  
15 stake out the area. You'll hear that there's officers on a balcony or a  
16 rooftop and they're watching and officers around the neighborhood, all  
17 plainclothes, just staking it out to see if they can find the guy who they've  
18 identified as being the one who pulled a gun on a police officer just the  
19 night before.

20 Couple hours go by into the next morning, Saturday,  
21 May 21st, 2016, approximately 1:30 a.m. they see movement from 625  
22 North 10th Street. That movement is in the form of individuals leaving in  
23 a vehicle. It's a Ford Mustang with -- with Florida plates. Officers that  
24 are on the surveillance operation, once again, in plainclothes, tail the  
25 vehicle.

1           They tail the vehicle over here from 625 North 10th Street up  
2 into the West Monroe Avenue area. In the process of tailing the vehicle,  
3 they know that there's an individual in that vehicle matching the  
4 description of Ceasar Valencia. It appears to be him. Ultimately, in the  
5 area of that West Monroe address, that vehicle stops. That vehicle is  
6 there for some time. Officers have contained that area, trying to stake it  
7 out. And they're setting up stuff back at 625 North 10th Street, having  
8 officers go into that area just in case somehow the vehicle gets back  
9 there without them seeing it.

10           Well, the vehicle doesn't get back there without them seeing it.  
11 Ultimately, they pick that vehicle back up in the west side area and they  
12 stop it right here in the area of Main and Washington. That vehicle's  
13 taken down in what's called a felony stop. It's multiple officers on scene  
14 pulling the occupants out at gunpoint. That's what happens.

15           You'll hear that the driver of that vehicle is an individual by the  
16 name of Nicholas Harris. That's his car. He's the one driving it.  
17 Passenger, Ceasar Valencia. So Ceasar Valencia is brought out of that  
18 vehicle. They search Ceasar Valencia.

19           At that point in time, you'll hear that he has on him 11.6 grams  
20 of heroin, 2.67 grams of methamphetamine, and 2.4 grams of cocaine.

21           That's it, ladies and gentlemen. It's very straightforward. And  
22 because of that, at the end of this case, I'm going to ask you to find the  
23 defendant guilty of all counts. Thank you.

24           THE COURT: Counsel approach, please.

25           [Bench conference transcribed as follows:]

1 THE COURT: Mr. Dickerson, during your opening statements  
2 you used visual aids. I want those visual aids reduced to a paper  
3 format.

4 MR. DICKERSON: Absolutely.

5 THE COURT: Provide them to me and I'm going to make it a  
6 court exhibit.

7 MR. DICKERSON: Absolutely.

8 THE COURT: Okay. When -- when will you do that?

9 MR. DICKERSON: I can do that tomorrow morning.

10 THE COURT: Okay. So if you could bring it with you before  
11 court tomorrow --

12 MR. DICKERSON: Yeah. I can do that.

13 THE COURT: All right. Thank you.

14 [End of bench conference.]

15 THE COURT: All right. Counsel for the defense, are you  
16 going to present an opening statement at this time?

17 MR. COYER: Court's indulgence, please.

18 [Pause in proceedings.]

19 MR. COYER: Your Honor, the defense is going to opt to defer  
20 its opening statement at this time.

21 THE COURT: Thank you, counsel.

22 Is the State prepared to call their first witness?

23 MR. LEXIS: State calls Officer Houston.

24 THE COURT: Thank you.

25 **CHRISTOPHER HOUSTON**



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

3 THE CLERK: Please be seated. Will you please state and  
4 spell your name for the record?

5 THE WITNESS: My name is Christopher Houston. It's  
6 C-H-R-I-S-T-O-P-E-R, Houston is H-O-U-S-T-O-N.

7 **DIRECT EXAMINATION**

8 BY MR. LEXIS:

9 Q Sir, where you do you work?

10 A I work for the LVMPD.

11 Q How long have you worked there?

12 A I hit my 10-year mark in March here.

13 Q Tell us about your training and experience and where you've  
14 been.

15 A My training and experience is basically in patrol. I've been  
16 working as patrolman in the Downtown Area Command for my entire  
17 career.

18 Q What kind of training did you have to go through as far as an  
19 academy and so forth?

20 A I went to the academy, standard six-month academy. I had  
21 a 20-week field training program. And then various classes and  
22 certifications that you take in the regular course of your patrol work  
23 maintaining your status as a post-certified officer.

24 Q You said you worked at Downtown Area Command your entire  
25 time?

1           A     That's correct.

2           Q     So are you very familiar with the area and where this incident  
3 took place?

4           A     I am.

5           Q     On May 19th, 2016, were you in -- working in the capacity as a  
6 police officer?

7           A     I was.

8           Q     And were you working around 7:45 p.m.?

9           A     I was.

10          Q     Did something happen around that time which caused you to  
11 be in court today?

12          A     It did.

13          Q     What happened, sir?

14          A     About that time I was riding as a directed patrol unit with  
15 another officer. And a directed patrol unit is just a -- a unit that's set  
16 apart that day to do proactive work in the area to suppress crime in the  
17 Downtown Area Command, geographic boundaries. So we were just  
18 out looking for stops to enforce.

19                 At that time, approximately, there was a -- a moped driving at  
20 what appeared to be -- okay. Sorry about that. There was a moped that  
21 appeared to be going at a pretty high rate of speed through the alley  
22 between 9th and 10th Street, which is actually just straight east of our  
23 station.

24          Q     Let me stop you there. Did you guys come from a barbecue?

25          A     We did.

1 Q Where was that at?

2 A It was at the station.

3 MR. COYER: Objection, relevance.

4 THE COURT: He can answer.

5 BY MR. LEXIS:

6 Q Sir, was that barbecue at the Downtown Area Command?

7 A Yes. Yeah. We had just finished eating lunch.

8 Q And when you pulled out, is that pretty much -- this incident  
9 took place right around the Downtown Area Command?

10 A Yes. Yeah. We were able to see a moped as we were  
11 leaving the exit gate of the station, which faces east, going through the  
12 alley directly east of 9th Street, which the station is on.

13 Q Pretty much instantaneously after you pulled out?

14 A Correct.

15 Q All right.

16 MR. LEXIS: May I approach, Your Honor?

17 THE COURT: Counsel --

18 MR. LEXIS: May I approach the witness, Your Honor?

19 THE COURT: Are you going to show the witness an exhibit?

20 MR. LEXIS: Yes.

21 THE COURT: Before you publish an exhibit, you need to  
22 show it to opposing counsel and have it admitted.

23 MR. LEXIS: I'm going to do that, Judge.

24 MR. DICKERSON: And for the record, Your Honor, opposing  
25 counsel has reviewed all of our exhibits that we intend to admit today.

1 THE COURT: Okay. And is the -- I can't see that screen. Is  
2 that screen blank?

3 MR. DICKERSON: It's up with the ELMO.

4 THE COURT: Is there anything on that screen right now?

5 MR. DICKERSON: There's nothing.

6 THE COURT: Okay. Thank you.

7 MR. LEXIS: May I approach, Judge?

8 THE COURT: Are you moving to admit the exhibit?

9 MR. LEXIS: No, Your Honor. I want to approach the witness  
10 and establish foundation first.

11 THE COURT: That's fine.

12 BY MR. LEXIS:

13 Q Officer, I'm showing you what has been pre-marked as State's  
14 Exhibit 9, State's Exhibit 10, and State's Exhibit 11; are you familiar with  
15 these photographs?

16 A Yes.

17 Q Are they a true and accurate representation of the area that  
18 this incident occurred?

19 A Yes, it is.

20 Q And that -- essentially overhead map areas?

21 A Yes. That's what it looks like.

22 MR. LEXIS: Your Honor, I move to admit the following three  
23 exhibits.

24 THE COURT: Any objection by the defense?

25 MR. COYER: No, Your Honor.

1 THE COURT: The exhibits will be admitted.

2 [State's Exhibit Nos. 9, 10, and 11 admitted.]

3 MR. LEXIS: Permission to publish.

4 THE COURT: Yes.

5 BY MR. LEXIS:

6 Q Sir, I'm showing you State's Exhibit 9; do you recognize this  
7 photograph?

8 A Yes.

9 Q Do you see Downtown Area Command on there?

10 A I do.

11 Q Can you circle it?

12 A Actually, can you -- it's -- it's a little bit out of -- out of my  
13 picture.

14 Q There you go.

15 A Yeah, there you go. So this is going to be our -- it's off from  
16 where my finger's at by about an inch.

17 Q Okay.

18 A This is -- that's going to be about an inch away from where my  
19 area commend is.

20 Q All right. And did you have anybody else in your patrol car  
21 that day?

22 A I did. Officer Jacobitz was riding with me that day.

23 Q Who was driving and who was the passenger?

24 A I was passenger.

25 Q Where did you guys go when you pulled out of Downtown

1 Area Command?

2 A Would you like me to show you on the screen here?

3 Q Yes.

4 A So we pulled out of the exit gate, which I believe is right here  
5 on the -- anyways, right around the address. I don't know if I can show  
6 you there, about right there. We went northbound on 9th Street,  
7 following the direction of the moped that I had told you I saw. We saw  
8 the driver turn eastbound on Wilson, so we followed him.

9 As we were getting close to the moped, at approximately --  
10 when he -- when he arrived at Wilson and 11th Street, he -- he had a  
11 stop sign there and he failed to stop. So at that point, we --

12 Q Let me stop you right there, sir. Let me get a closer view.  
13 Showing you State's Exhibit 10; do you recognize this photograph, sir?

14 A Yes.

15 Q Is that pretty much just a closer view of this area?

16 A Yes.

17 Q Okay. Can you tell us, again, where is this moped blowing  
18 through the -- the stop sign?

19 A All right. So okay, about -- about right there. So the moped  
20 was headed eastbound on Wilson and there's a stop sign right there to  
21 prevent it from crossing 11th street without stopping.

22 Q After you saw that, what did you and your fellow officer decide  
23 to do?

24 A At that time, we were going to initiate a vehicle stop on the  
25 moped. We were going to turn on our lights and sirens and conduct a

1 stop.

2 Q Did you do that right away or did you wait until you came up  
3 close?

4 A It -- you know, it would have been all about the same moment,  
5 because mopeds typically don't go that fast. So we were gaining on him  
6 pretty good. And right about the corner of Wilson 11th, we were starting  
7 to catch up to him to try to initiate the stop as he kind of headed south  
8 on 11th Street.

9 Q So right when you were gaining up to him?

10 A Yeah.

11 Q And you activated your lights and sirens?

12 A Yes.

13 Q And what did he do?

14 A He turned into this parking lot over here. See if I can get my  
15 bearings here from your map. So he went down and kind of turned to  
16 this parking lot right here and proceeded to what appeared to be, like, a  
17 gate into a courtyard or a row of apartments right there. Kind of pulled  
18 up next to the gate sideways with -- while he was still on the moped.

19 Q And what did you and Officer Jacobitz do?

20 A As I said, we had already initiated the stop with lights and  
21 sirens. So at that point, we felt like he was probably going to run or flee.  
22 That's why he was trying to open the door. So we started to exit the  
23 vehicle and we're yelling commands to stop. At that time --

24 Q And let me ask you this, so might be common sense, but  
25 describe your demeanor, your attention to detail, et cetera, as you and

1 Jacobitz are getting out of this vehicle.

2 A Anytime you're going to get behind --

3 MR. COYER: Objection to the form --

4 THE WITNESS: -- a vehicle --

5 MR. COYER: -- of the question, Judge.

6 THE COURT: I'm sorry?

7 MR. COYER: Objection to the form of the question.

8 THE COURT: Restate the question.

9 BY MR. LEXIS:

10 Q Describe your demeanor as you're getting out of this vehicle.

11 A Any time you go to stop a vehicle that doesn't stop or makes  
12 an unusual movement, like, pulls up to the gate of an apartment  
13 complex, immediately you're going to be at a higher state of awareness,  
14 looking -- watching hands, trying to decide if this person is going to run,  
15 what's their route going to be, what action is it going to take beginning  
16 right then to either flee or evade you. So my -- my demeanor was of  
17 attentiveness and getting ready for action.

18 Q And did Jacobitz -- did he appear to be under the same  
19 awareness?

20 A Yes.

21 Q And when you guys got out of the vehicle, approximately how  
22 far were you from the -- the suspect?

23 A I would say between 5 and 8 feet.

24 Q Were you able to get a description of what items of clothing he  
25 was wearing?



1       A     Yes.

2       Q     And what was that?

3       A     That he was wearing a dark hat, a -- a shirt with, like, a red  
4 shirt with red horizontal stripes, and some dark blue pants.

5       Q     And was this suspect looking at you at one point?

6       A     He looked directly at me.

7       Q     His whole body turned?

8       A     I don't know if his whole body was turned, but -- because he  
9 was still on the moped, but I -- his face was looking right at me.

10      Q     And you said approximately how far away?

11      A     Maybe 5 to 8 feet.

12      Q     And this is as you're out of the vehicle?

13      A     Yeah. This was as I was getting out of the vehicle, as I said,  
14 preparing to take whatever necessary action if he was going to flee or  
15 whatever he was going to do.

16      Q     Was there anything obstructing your view of the suspect's  
17 face?

18      A     No.

19      Q     What did you do next?

20      A     At that point, he got -- he kind of backed the moped away from  
21 the door and started to head north again towards Wilson. So he left -- I  
22 can't -- I can't get my bearing on your map here. Hang on a second.

23      Q     Let me clear it for you, sir.

24      A     All right.

25      Q     And we understand that this is off a little bit.

1           A     Yeah. Because it's off by a little ways. He started to head  
2 north through the parking lot towards Wilson again and -- taking off from  
3 us. So we -- we both got back in the vehicle. I jumped back in my side  
4 and Officer Jacobitz got back in the driver's seat and we proceeded to  
5 follow him.

6           Q     Let me stop you there. When you say taking off from you, is  
7 he on the moped?

8           A     Correct. Yeah. He -- he was still on the moped. And then he  
9 rode it away northbound towards Wilson from the parking lot we were in.

10          Q     And what kind of commands are you shouting out at the  
11 suspect?

12          A     To stop.

13          Q     Is Officer Jacobitz doing the same thing?

14          A     You know, I don't -- I don't recall exactly what he was saying.  
15 It was pretty loud with the sirens and myself yelling, so I'm not sure  
16 exactly what he was yelling.

17          Q     Okay. And he takes off on the moped?

18          A     Correct.

19          Q     And go ahead and draw on there where --

20          A     So he headed north to Wilson, and then back west, and then  
21 cut down the alley here between 10th and 11th Street to about -- right to  
22 this -- I can't get to it, this spot over here, 610 North 10th Street in the --

23          Q     And --

24          A     -- on the east side of the alley.

25          Q     Are you guys on him pretty good?

1           A     Yeah. We were catching up to him pretty well, because, like I  
2 said, mopeds aren't very fast. So we were able to get pretty good  
3 ground on him.

4           Q     Still lights and sirens?

5           A     Correct.

6           Q     What happens next?

7           A     At -- at that address on the east alley behind 610 North 10th  
8 Street, there's a parking area. As he reached the parking area, he -- he  
9 threw the moped down and took off on foot.

10          Q     Will you circle that parking lot area?

11          A     I don't know if your map is going to comply with me here. So  
12 about right there.

13          Q     And you and Jacobitz are obviously in the vehicle?

14          A     We were in our -- we were in our vehicle.

15          Q     Okay. And what do you guys do?

16          A     So as he's throwing the moped down and taking off on foot,  
17 we're pulling up into the parking lot near where he dropped the moped  
18 and kind of at an angle in the rear parking area. At that time, we both  
19 get out of the vehicle and we're going to proceed to chase him on foot.

20                 Officer Jacobitz happened to be closer to where this  
21 gentleman was at when he dropped the moped, just because he was  
22 driving. And so he was on him first, as I was coming around the door of  
23 my side of the vehicle and the front of the vehicle. We were towards the  
24 south side of the building, 610 North 10th. And on the south side of the  
25 building, there is like a -- a narrow passageway for the apartments and

1 the residents to get in and out.

2 The subject ran up the -- the passageway and Officer Jacobitz  
3 was close to him. As I was getting out of the car, I heard Officer  
4 Jacobitz yell, Gun. Loud. As I was coming around the front of the car  
5 and running down the east side of the building, I came around the corner  
6 and Officer Jacobitz is standing there. And I could see our -- our subject  
7 that we had been chasing running westbound through the -- the  
8 passageway out towards 10th Street.

9 Q Okay. Let me stop you right there. What is Officer Jacobitz's  
10 demeanor when you hear him yell, Gun?

11 A He sounded stressed. I mean, he was yelling -- he yelled,  
12 Gun, really loud.

13 Q And when you guys stopped the vehicle, Metro police vehicle,  
14 did he immediately start giving chase to the -- to the suspect?

15 A Yes. We -- we were both getting out of the vehicle as fast as  
16 we could.

17 Q Okay. Why did you have to go around to the other side to give  
18 chase?

19 A Just the way that -- that we end up parked in the parking  
20 space, just due to the way that -- where the location of the moped was  
21 laid down and the way we had to park in the parking area and kind of  
22 how we came in from the alley. We were at an angle, so that took me a  
23 little bit to get around.

24 Q When Officer Jacobitz yelled, Gun, was there anything  
25 obstructing your view of Officer Jacobitz?

1           A     I could see Officer Jacobitz standing at the -- kind of at the  
2 entry to the walkway, but I couldn't see the subject we were chasing at  
3 all. There was a building and a -- in my way. 610 North 10th was in my  
4 way. Or 620 -- yeah, 610 North 10th.

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

6           THE COURT: Yes.

7 BY MR. LEXIS:

8           Q     Officer, I'm showing you what has been marked as State's  
9 Proposed Exhibits 17 and 26; do you recognize these photographs?

10          A     Yes. This would have been the -- the alley -- the passageway  
11 I was describing on the south side of 610 North 10th.

12          Q     True and accurate representation of what the -- that alley  
13 looked like on that day?

14          A     Yes. At the time it was -- it was lighter, but yes, it's the  
15 same -- same location.

16          MR. LEXIS: Your Honor, I move to admit.

17          THE COURT: Any objection from the defense?

18          MS. PLUNKETT: No, Judge.

19          MR. COYER: No, Your Honor.

20          MS. PLUNKETT: Sorry.

21          THE COURT: Exhibits 17 and 26 will be admitted.

22                 [State's Exhibit Nos. 17 and 26 was admitted.]

23 BY MR. LEXIS:

24          Q     Sir, I'm showing you State's Proposed -- excuse me, State's  
25 Exhibit 17; do you recognize this photograph?

1 A Yes.

2 Q What is it?

3 A That's the passageway or walkway I was describing at 610  
4 North 10th Street.

5 Q Okay. And is that where you're describing as giving chase?

6 A Yes.

7 Q Showing you State's 26; do you recognize that?

8 A Yes. This is the same location, just a little further in.

9 Q Going back to the previous map; can you circle on this map for  
10 the ladies and gentlemen of the jury where that alley is? It's pretty small.

11 A About right there.

12 MR. LEXIS: Can you clear that, Mike?

13 MR. DICKERSON: Yeah.

14 BY MR. LEXIS:

15 Q Can you do it again, Officer?

16 A Yes. It's about right there.

17 Q So sir, when your -- essentially partner, Officer Jacobitz,  
18 immediately gives chase and yells, Gun, you're somewhere behind the  
19 vehicle?

20 A I was coming around from the passenger side door, just  
21 coming around the front of the vehicle, running over to him.

22 Q Were you moving quick as well?

23 A As quick as I could. Yes, sir.

24 Q Okay. But you had an obstructed view of the suspect?

25 A Correct.

1 Q Okay. Now, you says that, basically, the gun was on the  
2 ground?

3 A By the time I got up to Officer Jacobitz, we were both running  
4 up the -- the passageway there. He stopped and -- at -- at a location  
5 maybe not very far up the -- the walkway there. And I looked down.  
6 There was -- there was a gun on the ground. So he stayed with the gun  
7 and --

8 Q Let me stop you right there. Is that common practice with  
9 Metro, where when you have a piece of evidence like that, especially a  
10 firearm on the ground, for an officer to stay with that firearm?

11 A Yes. Standard practice to protect evidence, especially  
12 something potentially dangerous as a firearm and potentially as  
13 important for evidence.

14 Q Was this also a residential area?

15 A It was.

16 Q Did that also play into the facts of whether or not to stay with  
17 the gun or not?

18 A It did. I mean, you can't leave a firearm like that in a place  
19 where people are going to have access to it.

20 Q So he stayed with the firearm?

21 A He did.

22 Q What did you do?

23 A I gave chase to the subject we were chasing.

24 Q What did you do?

25 A I ran out onto 10th Street where I had a visual contact with him

1 again. And we ran northbound on 10th Street.

2 Q Let me pull it up again, sir. Okay.

3 A You want me to mark on here?

4 Q Yes.

5 A All right. So I came out of the alley, the walkway there and ran  
6 northbound on 10th Street to approximately this residence here, 625  
7 North 10th Street. At that residence on the north side is -- is where the  
8 driveway is for the house. The subject ran up the driveway towards the  
9 backyard and I followed him. He ran to what appeared to be some kind  
10 of shed and paused for a moment, looked back at me. And then as I got  
11 closer, he took off again.

12 Q Let me stop you right there. When you said he looked back at  
13 you again?

14 A Yes.

15 Q And how far away from you are him?

16 A He was at the shed and I was probably in the driveway, so I'd  
17 say 40 feet maybe.

18 Q And again, facial contact?

19 A Yes.

20 Q And again, your demeanor as far as level of attention?

21 A High. I mean, I wanted to catch any details I could to help us  
22 catch the person we were chasing.

23 Q What happened next?

24 A When he saw that I was close enough to where he couldn't --  
25 what -- what I suppose is close enough he couldn't pause for too long,



1 he took off from me again, ran under some clotheslines in the yard, and  
2 went out into the alley west of the residence, about -- about right there.  
3 He went around a building. I'm not sure what the exact address was. It  
4 was within two -- two or three buildings of where he came out of. And I  
5 didn't see him again.

6 Q And you lost contact at that point?

7 A I lost visual contact and I didn't see him again while I was  
8 chasing him.

9 Q And at some point is a Code Red called as well?

10 A Yes. As -- as I was running through the alley, I called out that  
11 I was in a foot pursuit and that was immediately given the channel. The  
12 dispatcher automatically gives you Code Red.

13 Q And explain to the ladies and gentlemen of the jury what a  
14 Code Red is.

15 A When you are in a volatile incident that's dynamic and the  
16 dispatcher knows that you're going to need any radio space to give out  
17 traffic, they will give you a Code Red. That means that the channel is  
18 secure for you. So only you and maybe another officer that's involved in  
19 the incident can give out radio traffic and everybody else has to hold  
20 their traffic for the meantime.

21 Q Is it safe to say other officers are trying to race to the scene as  
22 soon as possible as well?

23 A Yes.

24 Q But at the time, were you the only officer in a foot pursuit with  
25 this individual?

1           A     That's correct.

2           Q     Jacobitz stayed behind the entire time?

3           A     He was watching the -- the firearm.

4           Q     Do you know if the air unit was eventually called and K-9 and  
5 other officers?

6           A     Standard practice in a foot pursuit is to call for K-9, air unit,  
7 and other officers. I spoke with the K-9 unit on the incident. I know he  
8 was there. I can't -- I can't recall exactly if I remember seeing the air unit  
9 or not, but I believe there were there.

10          Q     Did you have multiple units there at some point?

11          A     Yes. Yeah. There was a perimeter established. So any  
12 available unit came to help secure the area.

13          Q     And was that successful in locating the suspect?

14          A     It was not.

15          Q     Was there -- there was obviously an investigation conducted  
16 immediately?

17          A     There was.

18          Q     And were pictures being sent back -- back and forth of  
19 possible suspects, and eventually shown to you?

20          A     There were. I was shown a few pictures of potential suspects  
21 that matched the description that I had given on the radio. And then  
22 eventually I was shown a picture of Ceasar Valencia and I knew 100  
23 percent that that was him.

24          Q     Do you see Ceasar Valencia in court today?

25          A     I do.

1 Q Can you please point to him and identify for me the color shirt  
2 he's wearing?

3 A He's sitting right there wearing a dark-colored shirt. I can't tell  
4 if it's kind of gray or purple.

5 MR. LEXIS: Your Honor, let the record reflect the officer's  
6 identified the defendant.

7 THE COURT: The record will so reflect.  
8 BY MR. LEXIS:

9 Q Okay. And sir, you stated that when you were shown that  
10 picture, you were immediately identifying that man as the man who you  
11 gave chase to?

12 A 100 percent.

13 Q You were aware of a surveillance operation that eventually  
14 took place the following day, and the day after that?

15 A There was a lot of detective work done. I'm not sure of the  
16 specifics. I know they were running an operation to potentially catch the  
17 Ceasar Valencia suspect that we had identified.

18 Q Was the defendant eventually apprehended on  
19 May 21st, 2016?

20 A He was.

21 Q And were you able to make facial contact with Ceasar  
22 Valencia on that day?

23 A I was. The operation ended up finishing in Downtown Area  
24 Command again, and near my location. And we went to make visual  
25 confirmation again.

1 Q And how sure were you on that date that that man was the  
2 man that you gave chase to on -- in that alley?

3 A I was just as sure as when I saw the picture, 100 percent. I  
4 knew it was him.

5 Q You were not primary on that day; is that correct, sir, as far as  
6 the day he was apprehended?

7 A No, I wasn't.

8 Q You were one of several officers to assist in the  
9 apprehension?

10 A That's correct. I was just working in the area and we heard  
11 the operation coming towards us and thought there might be a need for  
12 a perimeter due to propensity of for -- what we believe, propensity for the  
13 subject to flee again.

14 MR. LEXIS: May I approach, Your Honor?

15 THE COURT: Yes.

16 BY MR. LEXIS:

17 Q Officer, I'm showing you what has been marked as State's  
18 Proposed Exhibit 8; do you recognize that picture?

19 A I do.

20 Q Is that a true and accurate representation of what the  
21 defendant looked like on the day of the apprehension?

22 A It is.

23 MR. LEXIS: Your Honor, I move to admit State's Proposed  
24 Exhibit 8.

25 THE COURT: Any objection by the defense?

1 MR. COYER: No objection.

2 THE COURT: Exhibit 8 is admitted.

3 [State's Exhibit No. 8 was admitted.]

4 BY MR. LEXIS:

5 Q Sir, you previously stated that you made facial contact again  
6 when he was apprehended on May 21st, 2016; is that correct?

7 A Yes.

8 Q And was a picture taken of him on that day?

9 A I'd imagine there was when he was booked.

10 Q Okay. Showing you State's Exhibit 8; is that a true and  
11 accurate representation of what he looked like on the day that you gave  
12 chase?

13 A Yes.

14 Q Same individual that you stated previously you were 100  
15 percent sure that was the man?

16 A Yes. That's correct.

17 Q Then the same person that you identified not only in the photo,  
18 but here in court, as Ceasar Valencia?

19 A Yes.

20 MR. LEXIS: Court's indulgence.

21 No further questions.

22 THE COURT: At this time, ladies and gentlemen, we're going  
23 to take our afternoon recess. It will be a 15-minute recess.

24 During this recess you're admonished not to talk or converse  
25 among yourselves or with anyone else on any subject connected with

1 this trial, or read, watch, or listen to any report of or any commentary  
2 on -- on the trial or any person connected with this trial by any medium  
3 of information, including, without limitation, social media, text,  
4 newspapers, televisions, the Internet, and radio; do not visit the scene of  
5 any of the events mentioned during the trial or undertake any  
6 investigation. Do not do any posting or communications on any social  
7 networking sites or do any independent research, including Internet  
8 searches, or form or express any opinion on any subject connected with  
9 the trial until the case is finally submitted to you.

10 We'll be in recess.

11 [Court recessed at 4:00 p.m. until 4:14 p.m.]

12 [Outside the presence of the jury.]

13 THE COURT: Please be seated. Let the record reflect the  
14 presence of counsel for the State, counsel for the defense, and the  
15 defendant. This is a continuation of *State vs. Valencia*.

16 Bring the jury in, please.

17 [Jury reconvened at 4:15 p.m.]

18 THE COURT: Let the record -- let the record reflect the  
19 presence of the jury.

20 Defense, are you prepared to go forward with  
21 cross-examination at this time?

22 MR. COYER: Yes, Your Honor.

23 THE COURT: You may proceed.

24 MR. COYER: May I approach the podium, Judge?

25 THE COURT: Yes.

1 MR. COYER: Could we get the ELMO back on?

2 **CROSS-EXAMINATION**

3 BY MR. COYER:

4 Q Good afternoon, Officer. My name is Gregory Coyer. You  
5 know I represent Mr. Valencia?

6 A Yeah.

7 Q So I wanted to take you back to that day that you were just  
8 speaking about on direct examination, specifically, the day of the  
9 May 19th, 2016. Okay?

10 A Yes, sir.

11 Q As you testified on direct, that is the day that you and Officer  
12 Jacobitz -- did I say that right?

13 A I believe so.

14 Q Okay. You guys were on a, what you called a directed patrol  
15 unit, correct?

16 A That's correct.

17 THE COURT: Counsel, is --

18 MR. DICKERSON: Your Honor --

19 THE COURT: -- your piece of paper appearing on the  
20 screen?

21 MR. COYER: Yeah. Sorry about that.

22 THE COURT: Thank you.

23 BY MR. COYER:

24 Q What -- describe again for me what a directed patrol unit is.

25 A Directed patrol simply means that instead of doing regular

1 patrol duties where you are responding to calls for service, you're in a  
2 proactive capacity enforcing crimes that you see first person within the  
3 geographic boundaries of the station.

4 Q So you're not getting calls to go out to respond to crime  
5 scenes?

6 A Normally, no. Normally, you don't go to your typical calls for  
7 service.

8 Q So as you testified, Officer Jacobitz was driving and you were  
9 passenger, correct?

10 A That's correct.

11 Q Okay.

12 MR. COYER: Your Honor, I'm going to ask to republish what's  
13 been -- already been entered as State's 11.

14 THE COURT: Proceed.

15 MR. COYER: Okay.

16 BY MR. COYER:

17 Q Can you see that okay, Officer, on your screen?

18 A Yeah. I can see it.

19 Q Okay. So --

20 THE COURT: Counsel, I -- I apologize. What exhibit are you  
21 publishing?

22 MR. COYER: State's 11.

23 THE COURT: Has State's 11 been admitted?

24 MR. COYER: Yes.

25 THE COURT: It has?



1 MR. LEXIS: If not, we have no objection to it being admitted.

2 THE COURT: Very good.

3 MR. COYER: Okay.

4 BY MR. COYER:

5 Q And this is oriented with the compass, correct, where -- toward  
6 the top of the page is north and the bottom of the page is south, correct?

7 A That looks correct.

8 Q Okay. And this is the area, general area, that you see on this  
9 map here where, as you testified, you and Officer Jacobitz encountered  
10 this moped, correct?

11 A Correct.

12 Q Okay. And do you see where my -- the tip of my pen is  
13 pointing on that -- on that picture? Can you see that?

14 A 11th Street and Wilson? Yeah.

15 Q I'm sorry?

16 A On 11th Street and Wilson?

17 Q Yes. And that is the corner you testified where the moped you  
18 said failed to stop at a stop sign, correct?

19 A Correct, sir.

20 Q Okay. Now, did the moped blow right through the stop sign or  
21 did it simply slow down, but fail to stop?

22 A As I recall, he -- he slowed down, also probably because he  
23 was making a 90-degree turn, and then rolled through the stop sign.

24 Q So he did slow down?

25 A Correct.

1 Q Was the blinker activated?

2 A I don't recall if there was a blinker or not, to be honest.

3 Q Okay. And I believe you testified this is a parking lot also on  
4 the southwest corner of Wilson and 11th, correct?

5 A It is.

6 Q Okay. Now, when the moped rider failed to stop, that's when  
7 you and Officer Jacobitz made the decision to attempt to pull him over,  
8 correct?

9 A To initiate a stop with lights and sirens, that's correct.

10 Q I was just about to ask you. When -- when you initiate a stop,  
11 what does that exactly mean? So lights come on, sirens go on, correct?

12 A That's correct.

13 Q Okay. Now, you mentioned on direct that you were calling out  
14 commands for him to stop?

15 A That was after he had stopped and it appeared that he wasn't  
16 going to comply with our traditional traffic stop. He wasn't going to pull  
17 to the right and wait for us to contact him. He was -- it appeared that he  
18 was trying to get through a gate at the apartment complex there.

19 Q Okay. And were you calling out commands just verbally out  
20 the window, or were you using, like --

21 A I was stepping out of the car.

22 Q Were you using --

23 A Yelling with my voice, yeah.

24 Q Sorry, we can't talk over each other, because they're taking  
25 down everything we say.

1           A     Oh, okay.

2           Q     Were you using, like, the announcement, the PA system in the  
3 car?

4           A     No.

5           Q     Okay. Now, at some point when that moped is in the area  
6 of 11th and Wilson, is what you said you got a good look at the rider,  
7 correct?

8           A     I got a really good look at him when he was stopped at -- in  
9 front of this apartment complex right there at the door.

10          Q     Okay. Now, I don't want to confuse the jury. So are you  
11 talking about up on this court?

12          A     These ones you just described -- this thing is off by, like, an  
13 inch whenever I touch it. Sorry.

14          Q     That's all right.

15          A     Like, right there.

16          Q     We'll get through it. Okay. Now, this is what you mean when  
17 you say when he stopped by those apartments, right?

18          A     We were at the side of the apartments. The moped was  
19 parked right at the side of the apartment next to a door. And we were  
20 just behind him.

21          Q     So I don't want to confuse anybody. There's a little bit of  
22 action related to the moped here, correct?

23          A     Correct.

24          Q     And then down here is where the foot pursuit takes place,  
25 correct?

1           A     That's correct.

2           Q     Okay. So we'll get to the foot pursuit. I'm just asking you  
3 about up here at these apartments right now. All right.

4           A     Okay.

5           Q     Up here is when you said you got a good look at the rider,  
6 correct?

7           A     Yes.

8           Q     And, essentially, somewhere in this parking lot near these  
9 apartments, correct?

10          A     Yes.

11          Q     Okay. And you said you got your good view at  
12 approximately 5 to 8 feet?

13          A     That's correct.

14          Q     Okay. And you said there was nothing obstructing the view of  
15 the face?

16          A     No.

17          Q     Okay. And is that the time when you developed the  
18 description of the suspect that ultimately went out over the audio  
19 dispatch?

20          A     From -- from what I can recall, it would have been at least the  
21 clothing on the upper body and then his physical features.

22          Q     Okay. At this corner up here, where we're talking about  
23 encountering the moped, we're not Code Red yet, correct?

24          A     At that particular moment, not yet.

25          Q     Okay. So are -- is it -- I don't want to put words in your mouth.

1 Is it fair to say that you were not calling things out over the -- the secure  
2 dispatch that's only reserved for Code Red?

3 A No. At that point, sir, we're still trying to conduct the stop.  
4 And we couldn't be on the radio and issuing commands at the same  
5 time.

6 Q Okay. So you try to initiate the stop there and the rider  
7 doesn't stop, correct?

8 A Correct.

9 Q Okay. Proceeds out up here west on Wilson, and then  
10 south -- sorry, south down this alley, right?

11 A Yes.

12 Q Okay. I just want to make sure that we're oriented -- we're on  
13 the same page here. So we get down here, you and Officer Jacobitz,  
14 you get down here to the -- the alley at approximately 610 North 10th  
15 Street, correct?

16 A Correct.

17 Q And that's where you said the rider dumps the moped?

18 A Yes.

19 Q Okay. And proceeds to flee on foot, right?

20 A Yes.

21 Q Okay. At that point, did you also get a look at the suspect's  
22 face?

23 A You know, I don't know -- I don't recall if I saw his face directly  
24 when he was running right there at that particular moment. I was on the  
25 opposite side of the car from where he had parked.

1 Q Okay. Now, when you first got your look at the suspect, okay,  
2 Jacobitz was driving, correct?

3 A Yes.

4 Q Okay. And he was, you know, presumably not crashing the  
5 vehicle he was driving, you know, intentionally, correct?

6 A Yes.

7 Q Okay. Do you recall whether or not Officer Jacobitz got a view  
8 of the suspect or said anything to suggest to you that he got a view of  
9 the suspect when you're -- and specifically up here, at Wilson and 11th?

10 A We didn't really have a conversation about it at the time. I  
11 would suppose that his view was just as good as mine.

12 Q Okay. And I don't want you to speculate. I'm just curious if he  
13 maybe said something that caused you to think he saw him as well.

14 A At the time, we're more concerned with radio traffic and  
15 direction of travel and those type of things, sir.

16 Q Okay. So now, we've established the moped flees down this  
17 alley and dumps the moped -- the rider dumps the moped here in this  
18 area, 610 North 10th, right?

19 A Correct.

20 Q Now, Officer Jacobitz was the first person out of the vehicle,  
21 correct?

22 A I don't know if he was the first person out, but he was  
23 definitely the first person to engage, once again, with the -- the subject  
24 we were chasing.

25 Q Okay. You had to go around the vehicle?

1           A     I had to go around it. I was on the opposite side of the vehicle  
2 from where the moped was at.

3           Q     Because of the way it was parked, right?

4           A     Correct.

5           Q     Okay. Were you wearing a body-worn camera at the time?

6           A     I was not issued a body-worn camera yet.

7           Q     Okay. Do you know if Officer Jacobitz was?

8           A     I'm pretty sure he hadn't been issued a camera yet either.

9           Q     Okay.

10           MR. COYER: So I'm going to request permission to publish  
11 what's been previously entered, Judge -- admitted, rather, as State's 17.

12           THE COURT: May publish.

13           MR. COYER: May I publish freely or should I request every  
14 time?

15           THE COURT: No. You can publish -- once it's admitted you  
16 can -- you can publish.

17           MR. COYER: Okay.

18           BY MR. COYER:

19           Q     And Officer Houston, do you know how to take that red mark  
20 off the screen there?

21           A     I have no idea how to take that red mark off the screen.

22           Q     Okay. Touch the lower, right-hand corner, yeah. There you  
23 go. Okay.

24                     Now, what we're looking at here is the entryway to the  
25 walkway that goes essentially down the south side of the residence

1 at 610 South 10th, correct?

2 A Yes.

3 Q Okay. And that's where the driver of the moped fled on foot,  
4 right?

5 A Correct.

6 Q Okay. Now, you stated on direct that this fairly and accurately  
7 depicts what it looked like on May 19th, 2016, but that it was lighter?

8 A That's correct, sir.

9 Q Okay. Can you describe how light it was?

10 A It was still pretty light outside. I would -- I would -- I guess I  
11 would call it dusk. Like, the sun was down but it's still pretty bright. You  
12 could see really well.

13 Q Okay. Obviously, this picture -- in this picture, the sky is dark,  
14 correct?

15 A That's correct.

16 Q And you'd agree this is probably, like, a flash from somebody  
17 who took the picture, right?

18 A That's what it looks like.

19 Q Okay. But when the foot pursuit occurred, we're talking about  
20 dusk, right? It was about 7:00, what 7:45, something like that?

21 A That's correct.

22 Q Is that to your recollection?

23 A Yes.

24 Q Okay. You did not see the suspect point a gun at Officer  
25 Jacobitz, correct?



1           A     That was while I was still running around the car.

2           Q     Okay. And your knowledge of -- of -- your belief that that  
3 happened comes from Officer Jacobitz?

4           A     That and some of the things I saw at the scene.

5           Q     Okay. Like the gun, you mean?

6           A     The gun itself would corroborate that there was a gun present.  
7 Yes, sir.

8           Q     Okay. But you didn't see how the gun got to the ground; is  
9 that fair to say?

10          A     I didn't, no.

11          Q     Okay. How was it determined who would stay with the gun  
12 and who would continue the foot pursuit?

13          A     To be honest, sir, it was just one of those organic things that  
14 happen. Officer Jacobitz ended up staying and I ended up running. I  
15 don't know that we had a real conversation about it.

16          Q     Okay.

17          A     I was running up the -- that -- whatever you want to call this,  
18 the passageway here. And he was already at the firearm. I saw it on  
19 the ground and I don't know -- even know if I waited for him to tell me to  
20 stay or go. I just went. I went running. I went chasing after the subject.

21          Q     You never stopped along with Jacobitz?

22          A     Not for any lengthy period of time to make a plan or discuss  
23 anything.

24          Q     Okay. So you don't have a good memory of exactly where the  
25 gun was located at this point in time; is that fair to say?

1           A     If I had to go back here and point to the exact spot in the dirt,  
2 I -- I wouldn't be able to do it, sir. I just know it was in this alleyway, an  
3 approximation of where it was at.

4           Q     Sure. And you continued on chasing the suspect?

5           A     That's correct.

6           Q     Okay. And then eventually, the suspect is lost and in some  
7 area nearby, right?

8           A     The last place I saw him was in the alleyway between 9th  
9 and 10th Street.

10          Q     And at that point, once you lost visual, you -- you stopped  
11 chasing the suspect?

12          A     At that point, was -- a perimeter set up and we were trying to  
13 do containment to hopefully catch up to the subject that got away from  
14 us.

15          Q     Okay. Now, we talked about -- or rather you answered some  
16 questions about, on direct examination, these photographs that you  
17 looked at to try to identify the suspect?

18          A     That's correct, sir.

19          Q     Do you recall that? How many pictures were you shown on  
20 the evening of May 19th, 2016?

21          A     I would have to estimate now, but I'd say probably three  
22 pictures.

23          Q     Okay. And how did those pictures come to you?

24          A     To be honest, I'm not sure. Other officers brought them to me  
25 through their own detective work. I'm not -- I don't know the details

1 behind them. Just based on the description I'd given, people brought  
2 pictures of approximations of that description.

3 Q Okay. Do you recall if these photographs were in digital  
4 format or paper or --

5 A I think there was a mix. Some were digital and some were  
6 paper.

7 Q Okay. And this would have been based on the description  
8 that was called out over the -- the radio?

9 A Correct.

10 Q Because the other officers could be listening in, they  
11 presumably would have heard this description?

12 A That's correct.

13 Q Okay. Would you recognize that -- that radio traffic if you  
14 heard it?

15 A I could recognize my own voice, yes, sir.

16 Q Okay. Would you be able to recognize the voice of Officer  
17 Jacobitz?

18 A Yes.

19 Q Okay. Would that audio -- that captured audio most  
20 accurately reflect what was said along the radio traffic on that evening?

21 A If you're -- you're asking if the radio traffic would reflect the  
22 radio traffic? Yes, sir.

23 Q Well, what I'm asking is, would it accurately reflect -- would it  
24 most accurately reflect everything that was said?

25 A On the radio?

1 Q Correct.

2 A Yes, sir.

3 Q Okay. And fair to say, this is over a year ago, you probably  
4 don't remember exactly everything that you said on that evening?

5 A I don't remember word for word, sir, no.

6 Q But you would recognize it if you heard it?

7 A Correct.

8 Q Okay.

9 MR. COYER: So Your Honor, at this time I move for the  
10 admission of Defense Proposed 1. It's been -- or Defense A, excuse  
11 me. It's been pre-marked. It is a CD containing the radio traffic.

12 THE COURT: Any objection by the State?

13 MR. LEXIS: No, Your Honor.

14 THE COURT: Will be so admitted.

15 [Defense Exhibit No. A admitted.]

16 MR. COYER: And may I publish the audio?

17 THE COURT: You can.

18 MR. COYER: Okay.

19 THE COURT: And why don't you identify for the jurors exactly  
20 what you're publishing.

21 MR. COYER: Okay. I just want to make sure I'm on the mic.  
22 So what I'm going to be publishing is the audio that is going back and  
23 forth --

24 MR. DICKERSON: And Your Honor, I would just ask that that  
25 come out through the witness instead of having counsel testify.

1 THE COURT: He's just describing what the exhibit is. What  
2 is the exhibit that has been admitted into evidence?

3 MR. COYER: It -- it is a recording of the audio of dispatch,  
4 so --

5 THE COURT: On what date?

6 MR. COYER: On May 19th of 2016.

7 THE COURT: And --

8 MR. COYER: That captures this event that he already  
9 testified about on direct.

10 THE COURT: Okay. Sir, is that a correct description of the  
11 audio? It's audio capturing the events that occurred between you and  
12 Jacoby [sic] and dispatch?

13 THE WITNESS: If it's the radio traffic, yes, sir. That's what it  
14 would be.

15 THE COURT: Okay. All right.

16 MR. COYER: May I?

17 THE COURT: And what's the date of this event?

18 MR. COYER: The event is May 19th, 2016.

19 THE COURT: Thank you, counsel.

20 [Audio played.]

21 MR. COYER: Judge, I'd like to inquire if the jury can hear this  
22 adequately.

23 THE COURT: That's what I -- can the jury hear that or does  
24 he need to move it closer? Or make it louder?

25 MR. COYER: All right. I'm at full volume on this machine and

1 the microphone is right up next to the speaker, so I think we're as loud  
2 as we can go.

3 THE COURT: Okay. If any of the jurors cannot hear it, please  
4 raise your hand. We'll stop and try to make it as loud as we can.

5 [Audio played.]

6 BY MR. COYER:

7 Q Officer, did you recognize that voice?

8 A That sounds like my voice, sir.

9 Q Okay. And you had -- you had stated there's a guy on a  
10 moped running from us?

11 A Correct.

12 Q As you sit here today, do you recall at what point in the  
13 incident which we're at right now; are we up there at the corner of 11th  
14 and Wilson or are we down at 610 South 10th?

15 A Sounds like we're between those two places.

16 Q Okay.

17 [Audio played.]

18 Q Did you recognize that voice?

19 A Sound like the dispatcher, sir.

20 Q Okay. And you heard Code Red called out, right?

21 A Affirmative. Yep. That's what I heard.

22 Q Okay. And at that point, you would initiate the process that  
23 you described on direct where that line is now reserved for people who  
24 are involved with this event, right?

25 A That's correct.

1 Q Okay.

2 [Audio played.]

3 Q Did -- did you recognize that voice?

4 A That sound like Officer Jacobitz, sir.

5 Q Okay. And you heard what he said, right?

6 A I -- I can't really hear it that well from here, to be honest.

7 THE COURT: Okay. Counsel, can you move it --

8 THE WITNESS: I heard something about a firearm.

9 THE COURT: -- closer to the witness and the jury? Is that  
10 attached to the table or --

11 MR. COYER: It's not attached to the table, but it's the  
12 microphone for the court's audio that's picking up what's coming out of  
13 my computer.

14 THE COURT: Is there a microphone that's -- that we can use  
15 closer to the jurors and the witness?

16 [Audio played.]

17 BY MR. COYER:

18 Q That a little better, Officer?

19 A I can hear a little better, yes.

20 Q Okay.

21 [Audio played.]

22 Q Okay. You heard Officer Jacobitz say, be advised the crime is  
23 he dropped a firearm, correct?

24 A That's what it sounded like, correct.

25 Q Okay. Now, do you recall whether or not this was before or

1 after he yelled to you I thought something about a firearm?

2 A I believe that would be after, sir.

3 Q Okay. You would agree that, at that point, what that -- what  
4 we just heard, he didn't mention anything about the gun being pointed at  
5 him?

6 A That's not what he said on the radio, sir.

7 [Audio played.]

8 Q Now, that's your voice kind of winded in a foot pursuit,  
9 correct?

10 A That's correct.

11 Q Okay. And you're calling out what's happening to the audio  
12 dispatcher, correct?

13 A That's correct.

14 Q Okay.

15 [Audio played.]

16 Q Now, was that the voice of the dispatcher there that we heard  
17 asking for a description?

18 A Yes. That sounds like dispatcher asking for a description.

19 Q And then did -- would you have given the dispatcher at that  
20 point the description of the suspect that you had seen?

21 A I believe so.

22 Q Okay.

23 [Audio played.]

24 Q Okay. HMA, dark hat, red-striped shirt, correct?

25 A Yes.



1 Q HMA would be Hispanic male adult?

2 A That's correct.

3 Q Okay.

4 [Audio played.]

5 Q Okay. Dark pants, 5'7", 100 -- about 160 pounds, right?

6 A That's what I said.

7 Q Okay. So you're giving a pretty detailed description all the  
8 way down to height, weight, and clothing description, correct?

9 A That's correct.

10 Q Okay. No mention of facial hair in this description, correct?

11 A Not at that point, sir.

12 Q Okay.

13 [Audio played.]

14 Q Okay. So you can hear what -- we're talking about a  
15 perimeter on the audio now, right?

16 A That's what it sounds like. Yes, sir.

17 Q And that's because at that point we've lost visual and we're  
18 now -- you guys, the police, are now setting up a perimeter to try to  
19 contain the suspect, correct?

20 A That's correct.

21 Q Okay. Now, were you, at some point in this investigation,  
22 directed to 625 North 10th?

23 A I was chasing the suspect to 625 North 10th, sir.

24 Q After you lost visual on the suspect were -- did you then go  
25 back to 625 North 10th?

1 A I was standing on property 625 North 10th when I lost visual.

2 Q So did you then search that property?

3 A I didn't search it. No, sir.

4 Q Okay.

5 MR. COYER: Can I get the ELMO back up?

6 Q I'm going to publish what's been already entered as State's 8.

7 Now, you testified that this is what Mr. Valencia looked like on

8 May 21st, 2016, correct?

9 A Correct.

10 Q And that's two days after May 19th, 2016, correct?

11 A Correct.

12 Q Okay. So if you had gotten a good look at this man's face on  
13 May 19th, 2016, this would have been the face that you saw?

14 A Yes.

15 Q Okay. Now, this amount of facial hair, you would agree, is -- is  
16 pretty noticeable on his face, correct?

17 A Yes.

18 Q But there's no mention of facial hair on the audio we just  
19 heard, correct?

20 A No, there's not.

21 Q So that would be a detail about his face that you did not  
22 include in the description that went out over the radio?

23 A I had just been at a dead sprint, sir, so I didn't get all the  
24 details out that I probably could have.

25 Q Okay. What was your involvement in the investigation after

1 May 21st?

2 A After May 21st?

3 Q Yeah. Well, let me -- let me lay a couple foundation  
4 questions.

5 Mr. Valencia was arrested on May 21st, correct?

6 A As far as I know, yes.

7 Q And you said you kind of happened to be in the area, but you  
8 weren't directly involved with taking him into custody; is that right?

9 A I wasn't part of the operation that took him into custody, but  
10 there was a -- a vehicle stop, as I remember, that ended within the  
11 boundaries of my area command and I happened to be free and able to  
12 help with containment or anything else that was going on.

13 Q Okay. So my question is, I understand you work patrol. But  
14 my question is did you have any further involvement with this  
15 investigation after May 21st, 2016?

16 A Not that I remember, sir. If it would have been anything, it  
17 would have just been a question that a detective asked me about the  
18 previous incident. But as far as I remember, I don't -- I didn't have  
19 anything to do with the investigation outside of subpoenas for court and  
20 things of that nature.

21 Q Did you draft any reports?

22 A After that day?

23 Q At any time --

24 A After the 21st?

25 Q Let me be clear. At any time after May 19th, 2016, did you

1 draft any reports?

2 A After May 19th?

3 Q Correct.

4 A Regarding this case, no, sir. Not that I can remember.

5 MR. COYER: Nothing further, Judge.

6 THE COURT: Thank you.

7 State, any redirect?

8 MR. LEXIS: Yeah.

9 **REDIRECT EXAMINATION**

10 BY MR. LEXIS:

11 Q Sir, it was brought out through defense counsel about  
12 questions regarding radio traffic. And your response to that as far as the  
13 primary purpose is direction of travel; do you remember that?

14 A Yes.

15 Q Okay. In other words, location. Is that one of the primary  
16 reasons for radio traffic?

17 A Absolutely.

18 Q Okay. So it does -- does it surprise you at all that Officer  
19 Jacobitz called out he dropped the firearm at that particular location,  
20 since he stayed at that location?

21 A It doesn't surprise me. No, sir.

22 Q And in fact, would that be something important to tell dispatch,  
23 since he is now staying at the location?

24 A I believe so.

25 Q You were asked a question regarding body cam. Back

1 in 2016 on this particular date, it was not standard issue, correct?

2 A No, sir.

3 Q And only a select few of Metro had body cam at that time?

4 A As far as I understand.

5 Q And you did not have it?

6 A I did not, no.

7 Q You listened to the radio traffic. And is it safe to say that that's  
8 not in realtime?

9 A No. That was not realtime.

10 Q Okay. So when you're getting a -- when it comes in a CD as  
11 far as radio traffic, it's pretty much -- it could be an expanded period of  
12 time, 30 minutes, an hour, et cetera, and it's going to come in back to  
13 back to back?

14 A That's what it sounded like on the recording, sir.

15 Q Okay. So that was not in realtime is what -- is that accurate?

16 A That was not realtime.

17 Q Now, your familiar with CAD, correct?

18 A Yes.

19 Q And is that pretty much a synopsis of what was said over the  
20 radio as well?

21 A The computer-aided dispatch is entered by the dispatcher at  
22 the time. So whatever you say on the air is what they're going to put into  
23 the CAD system.

24 Q And that's going to come from an officer at the scene, correct?

25 A That's correct.

1 Q Okay. And do you recall in the CAD for this event, it does  
2 mention soon thereafter that:

3 Subject turns and points a gun at me.

4 Do you recall that? Or I can refresh your memory.

5 A Could you refresh my memory of that?

6 MR. LEXIS: Your Honor, may I approach?

7 THE COURT: Yes.

8 BY MR. LEXIS:

9 Q First of all, sir, do you recognize this?

10 A That looks like a printout of a -- a CAD incident.

11 Q True and accurate representation of what the CAD was on this  
12 particular event?

13 A Yes, sir.

14 Q With regards to my previous question, don't say anything out  
15 loud, just read this to yourself and tell me if that refreshes your memory.

16 A [Witness complies.] Yes, sir.

17 Q Does that refresh your memory as to what CAD said regarding  
18 this particular event, with regards to subject pointing a firearm at a unit?

19 A Yes, sir. It said there was a 413 pointed at a unit. 413 is  
20 our 400 code for a firearm.

21 Q And specifically pointed at a unit?

22 A That's correct.

23 Q And that was, of course, must have been addressed over  
24 radio traffic, since it's in the CAD?

25 A That's correct.

1 Q And is it surprise you at all that when you're giving a  
2 description of a suspect when you're running after him, that your primary  
3 description over the radio traffic is his clothing?

4 A Not at all.

5 Q Just a couple other housekeeping matters, sir. This occurred  
6 in Clark County, correct?

7 A Yes.

8 Q And on this particular day, you stated earlier that you were in a  
9 marked patrol unit; were you also in a uniform?

10 A Yes, I was, sir.

11 Q And is it a standard issue uniform that you're wearing today?

12 A Exactly like the one I'm wearing today, sir.

13 Q Okay. Was Officer Jacobitz also in a Metropolitan Police  
14 Department uniform?

15 A Yes, he was.

16 Q Thank you.

17 MR. LEXIS: Nothing further, Your Honor.

18 THE COURT: Any recross by the defense?

19 MR. COYER: Briefly, Judge.

20 **RECROSS EXAMINATION**

21 BY MR. COYER:

22 Q So, Officer Houston, I want to make sure I understand. The  
23 difference between the audio that we heard and the CAD is that  
24 someone's listening on the audio and writing what -- the CAD, that's how  
25 we get the CAD; is that right?

1           A     Yes, sir. As far as I understand, dispatchers listen to the radio  
2 and then they update the computer-aided dispatch system.

3           Q     Okay. And the CAD, specifically, was the paper that you  
4 looked at, right?

5           A     Yes, sir.

6           Q     Now, the -- you also testified that the audio might not be  
7 realtime?

8           A     There's no way I run that fast, sir.

9           Q     Can you expand on that a little bit, as far as the audio not  
10 being realtime?

11          A     I -- to be honest, I don't how evidentiary audio is handled with  
12 dispatch. But I can tell you from listening to it that that was definitely not  
13 the realtime incident.

14          Q     Would the CAD most accurately reflect in realtime the amount  
15 of time that passes between something going out over the audio, the  
16 amount of time between --

17          A     I would say CAD should be more accurate, because the  
18 dispatcher is going to timestamp some of the comments that are in  
19 there.

20          Q     Okay. So we heard on the audio you stating that you were in  
21 a foot pursuit, correct?

22          A     Yes, sir.

23          Q     Do you have a copy of the CAD there in front of you?

24          A     I -- I don't have a copy of anything, no.

25          Q     No? Okay. Would -- would you agree that -- that that call



1 went out with the timestamp of 1946?

2 A For the time of the initial stop?

3 Q No, the time of the foot pursuit.

4 A Oh, the foot pursuit? That sounds like it would be accurate,  
5 sir.

6 Q And 1946 being military time for 7:46 p.m., right?

7 A That's correct.

8 Q Okay. And the foot pursuit would have occurred after this  
9 firearm was allegedly pointed at Officer Jacobitz, correct?

10 A Yes.

11 Q Your foot pursuit, to be clear?

12 A Yes.

13 Q Okay. Would you agree that the first entry in the CAD where  
14 there's a mention of a gun being pointed at a unit is 2002?

15 A You know, I didn't see that specifically for the timestamp,  
16 but --

17 Q That's okay. I -- I can refresh.

18 A Okay.

19 Q Just take a second.

20 MR. COYER: May I approach?

21 THE COURT: You can.

22 BY MR. COYER:

23 Q Does that refresh?

24 A That -- that will be correct, sir.

25 Q So the first entry into CAD talking about a gun being pointed at

1 a unit happens at 2002, right?

2 A That's what it appears to be on CAD, sir.

3 Q And mathematically that would be 16 minutes after --

4 A 15, 16 minutes, correct.

5 Q 16 minutes after 7:46 p.m.?

6 A Yes.

7 Q Okay.

8 MR. COYER: No further questions.

9 THE COURT: Counsel, can this witness be excused at this  
10 time?

11 MR. LEXIS: No, Your Honor. I move to admit the CAD. It's  
12 not been marked, but it would be State's proposed exhibit, whatever the  
13 next exhibit is.

14 THE CLERK: 53.

15 THE COURT: Any objection by the defense?

16 MR. COYER: Yes, Judge. I -- I -- there are some redactions  
17 that probably need to be made before it's admitted.

18 MR. LEXIS: And the State would have no objection to the  
19 redactions that are relevant that need to be made by the defense.

20 THE COURT: Okay. But we need to do the redactions first  
21 and then have it admitted.

22 MR. LEXIS: May we approach, Judge?

23 THE COURT: Sure.

24 [Bench conference transcribed as follows:]

25 THE COURT: What --

1 MR. LEXIS: We're not -- we're not going to put up  
2 [indiscernible.] I mean, if we want to redact it afterwards, I mean, they  
3 pretty much want the warrants lined out. I have no objection to that,  
4 Judge.

5 THE COURT: Okay. So your objection based on that the --  
6 that the exhibit either contains not relevant information or it's -- it's  
7 prejudicial --

8 MS. PLUNKETT: Prejudicial.

9 THE COURT: -- and effects substantially outweighs any  
10 probative value. He wants to admit it at this point without your  
11 redactions.

12 MR. LEXIS: No, Judge --

13 MR. DICKERSON: Also, I think it's fair to note that already in  
14 evidence is the audio that they've admitted, which contains all the same  
15 information --

16 THE COURT: Okay. Here's my concern.

17 MR. COYER: That's fair.

18 THE COURT: If there is redactions you want to make and  
19 he's moving to admit, I'm not going to let him publish until the redactions  
20 are made. He can question from it --

21 MR. COYER: Yeah.

22 THE COURT: And I -- but I'm not going to let him publish it to  
23 the jury if you're objecting to it. I need to see what the redactions are.

24 MR. LEXIS: Then you know what I'll do, Judge --

25 MR. DICKERSON: That's fine.

1 MR. LEXIS: -- we'll bring this in through Jacobitz.

2 MR. DICKERSON: You're fine. He can admit it right now.  
3 That's fine. You can talk to him about it, just don't publish it.

4 THE COURT: Okay. So problem is, I don't know what his  
5 redactions are. He's just telling me there's going to be redactions, make  
6 an objection. Before I can admit it, I have to rule on his objections. So  
7 did you know this was going to be admitted?

8 MR. COYER: I didn't know that the CAD -- I mean, you can  
9 always assume --

10 THE COURT: Right.

11 MR. COYER: -- that it might be, but I did, in fairness --

12 THE COURT: So --

13 MR. COYER: -- admit the audio.

14 MR. LEXIS: To be honest with you, he had an -- we had an  
15 agreement among ourselves too that we're going to allow them to redact  
16 the prejudicial stuff off of the audio, and it's already admitted.

17 MR. DICKERSON: Now it's already admitted.

18 MR. COYER: Yeah, so I --

19 MR. LEXIS: So -- but we want -- we have no objection -- I  
20 mean, we do that all the time.

21 THE COURT: All right. But he's made an objection. I have to  
22 rule on the objection. So --

23 MR. COYER: I think --

24 THE COURT: -- are you objecting to it coming in as it is?

25 MR. COYER: No. I'm objecting the publishing. I wasn't going

1 to publish the prejudicial stuff in the audio. I'm fine with it coming in and  
2 we can redact it later. I just don't want to publish the prejudicial part.

3 THE COURT: That's why I said, I can admit it, but you can't  
4 publish it to the jury at this time.

5 MR. LEXIS: No problem.

6 THE COURT: You can ask questions from it. He can look at  
7 it. But until it's redacted, I won't let -- I'm not going to let you publish it.  
8 Is that --

9 MR. LEXIS: No problem.

10 THE COURT: -- is that agreeable?

11 MS. PLUNKETT: Yeah.

12 MR. DICKERSON: Yeah. Absolutely.

13 MS. PLUNKETT: Yes.

14 THE COURT: Okay. So I'm going to admit it -- admit it, but --  
15 and he can ask questions from it and the witness can review it.

16 MR. DICKERSON: Sure.

17 THE COURT: But at this point, until you do your redactions,  
18 we're not going to publish. When are you going to redact -- when are  
19 you going to provide a redacted copy to be -- because he may want to  
20 publish it at some point.

21 MR. COYER: Well, whenever you -- I mean, you guys have  
22 Wite-Out tape.

23 MR. LEXIS: Judge, we could do it after we --

24 MR. COYER: Yeah.

25 MR. LEXIS: -- finish --

1 THE COURT: All right. So I'm going to make my ruling.  
2 MR. DICKERSON: Yeah. Just run the Wite-Out over it.  
3 MR. COYER: Yeah. Or I can do it, whatever.  
4 THE COURT: What exhibit is it?  
5 MR. LEXIS: It's going to be State's --  
6 MR. DICKERSON: Can we have the --  
7 MR. LEXIS: I forget what he said.  
8 THE COURT: What are you doing?  
9 MR. DICKERSON: This right here?  
10 MR. COYER: Yeah. That's -- we're not worried about that,  
11 but --  
12 THE COURT: All right. Do you need to publish it today?  
13 MR. DICKERSON: Is this good right here?  
14 MR. COYER: Yeah.  
15 MR. DICKERSON: Is that all?  
16 THE COURT: They're doing something. I just want --  
17 MR. DICKERSON: Then I'll white out --  
18 MS. PLUNKETT: Well, what about the -- does it refer to him  
19 as a troublemaker in there?  
20 MR. COYER: That's a great question. Let's look at that real  
21 quick.  
22 MS. PLUNKETT: We might be mixing up --  
23 MR. LEXIS: We can do this later, guys. I'm not going to  
24 publish is.  
25 MS. PLUNKETT: Yeah. I'll just --

1 MR. COYER: Okay.

2 MS. PLUNKETT: I'll look at it now.

3 THE COURT: All right.

4 MR. DICKERSON: I think that's it.

5 THE COURT: Okay.

6 MR. COYER: Think so.

7 THE COURT: Is that the redacted -- let me see it real quick.

8 MR. COYER: That's not -- that's not the redacted. That just

9 shows where the redactions are going to go.

10 THE COURT: Okay. So I'm still doing what I -- what we said?

11 MR. COYER: Yes.

12 MS. PLUNKETT: Yes.

13 THE COURT: We're going to admit it. He can ask questions

14 from -- the witness can look at it. Until it's redacted, it won't be

15 published.

16 MR. LEXIS: Yeah.

17 MR. COYER: We're all on the same page.

18 THE COURT: Okay.

19 [End of bench conference.]

20 THE COURT: At this time I'm going to admit Exhibit 53,

21 subject to the limitations that was discussed at the bench conference.

22 [State's Exhibit No. 53 admitted.]

23 BY MR. LEXIS:

24 Q Officer, is it safe to say that the audio you heard was an

25 extremely redacted version, that the defense counsel played?

1           A     It seemed very short, sir.

2           Q     And the CAD is a more comprehensive and a time figure of  
3 when certain radio traffic was done?

4           A     That's correct.

5           Q     Primarily for location purposes?

6           A     I -- what was that?

7           Q     Primarily for location purposes?

8           A     For the information on there?

9           Q     Yes.

10          A     Most of it. Yes, sir.

11          Q     And you were asked a question regarding, I believe, did you  
12 say 17 minutes? How many minutes?

13          A     I think it was 16.

14          Q     16 minutes. Does it surprise you, sir, given the gravity of the  
15 situation, the amount of adrenaline in the situation at hand, was 17  
16 minutes that long of a time to further start developing additional facts?

17          A     Given the dynamics of the situation, I would say no, especially  
18 out of the fact that there was further incident regarding the moped at the  
19 initial scene that would have also delayed the -- the timelines for  
20 additional investigation of the primary incident.

21          Q     And is that moped incident the fact that two other subjects  
22 went to try to take that as Officer Jacobitz was -- stayed with the  
23 firearm?

24          A     That's correct. As I was chasing the subject and --

25               MR. COYER: Objection, foundation.



1 THE COURT: Restate the question.

2 MR. LEXIS: Sure.

3 BY MR. LEXIS:

4 Q You said that there was also a delay in certain aspects of this  
5 investigation due to other individuals taking the moped?

6 A The investigation was delayed by two subjects that went and  
7 picked up the moped and proceeded to walk away with it during the --  
8 while we were still trying to contain the scene with a perimeter and while  
9 Officer Jacobitz was still trying to hang on to the primary evidence, the  
10 firearm.

11 MR. COYER: Your Honor, this witness doesn't have personal  
12 knowledge of that. That's why I objected to foundation.

13 THE COURT: It sounds like this is a -- counsel, was that a  
14 foundational question or were you asking for personal knowledge?

15 MR. LEXIS: It foundation and affect on the listener, Your  
16 Honor. And it goes to --

17 THE COURT: I'm going -- it was a foundational question  
18 regarding timeframes. So I'm going to allow to -- the answer to stand.

19 MR. LEXIS: No clue.

20 THE COURT: I'm going to overrule your objection.

21 MR. LEXIS: No further questions, Judge.

22 THE COURT: Any -- any redirect? I'm sorry, any -- any  
23 additional questions by the defense?

24 MR. COYER: No, Your Honor.

25 THE COURT: Okay. Can this -- and again, Exhibit 53 is

1 conditionally admitted subject to the limitations discussed at the bench  
2 conference.

3 Can this witness be excused?

4 MR. LEXIS: Yes, Your Honor.

5 THE COURT: Defense?

6 MR. COYER: Yes. We have nothing else for this witness,  
7 Judge.

8 THE COURT: Okay. Ladies and gentlemen, at this time  
9 we're going to take our evening recess.

10 During this recess you're admonished not to talk or converse  
11 among yourselves or with anyone else on any subject matter connected  
12 with this trial, read, watch, or listen to any report or commentary on the  
13 trial or any person connected with this trial by any medium of  
14 information, including without limitation, to social media, text,  
15 newspapers, television, the Internet, and radio; do not visit the scene of  
16 any of the events mentioned during the trial or undertake any  
17 investigation; do not do any posting or communications on any social  
18 networking sites or do any independent research, including Internet  
19 searches, or form or express any opinion on any subject connected with  
20 the trial until the case is finally submitted to you.

21 We'll reconvene tomorrow at 11:30.

22 Officer, you are excused.

23 THE WITNESS: Thank you.

24 THE COURT: Thank you.

25 And for the jury's edification, I intend to go to 5:00 o'clock

1 tomorrow. Thank you.

2 [Jury recessed at 4:59 p.m.]

3 THE COURT: Is there any housekeeping matters?

4 MR. LEXIS: Not from us, Your Honor.

5 THE COURT: Okay. The court's in recess until 11:30  
6 tomorrow.

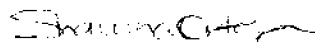
7 MR. COYER: Thank you.

8 MS. PLUNKETT: Thank you, Judge.

9 MR. LEXIS: Thank you.

10 [Proceedings concluded at 5:00 p.m. until November 29, 2017,  
11 at 11:30 a.m.]

12  
13  
14  
15  
16  
17  
18  
19 ATTEST: I do hereby certify that I have truly and correctly  
20 transcribed the audio/video proceedings in the above-entitled case to the  
21 best of my ability.

22 

23 \_\_\_\_\_  
24 Shawna Ortega, CET\*562  
25



1 **RTRAN**

2  
3 **DISTRICT COURT**  
4 **CLARK COUNTY, NEVADA**

5  
6  
7 **THE STATE OF NEVADA,**

8 **Plaintiff,**

9 **vs.**

10 **CEASAR SANCHAZ VALENCIA,**

11 **Defendant.**

} **Case No. C-16-315580-1**

} **DEPT. XVIII**

12  
13 **BEFORE THE HONORABLE MARK B. BAILUS, DISTRICT COURT JUDGE**

14  
15 **WEDNESDAY, NOVEMBER 29, 2017**

16 ***TRANSCRIPT OF PROCEEDINGS RE:***  
17 **JURY TRIAL - PHASE I - DAY 3**

18 **APPEARANCES:**

19 **For the Plaintiff:**

**MICHAEL DICKERSON, ESQ.**

**(Deputy District Attorney)**

**CHAD N. LEXIS, ESQ.**

**(Deputy District Attorney)**

22 **For the Defendant:**

**GREGORY E. COYER, ESQ.**

**ALEXIS ANNE PLUNKETT, ESQ.**

24 **RECORDED BY: ROBIN PAGE, COURT RECORDER**

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2 Page No.

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5 JEREMY JACOBITZ

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15 EXHIBITS

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1                   **LAS VEGAS, NEVADA, WEDNESDAY, NOVEMBER 29, 2017**

2                   [Proceedings commenced at 11:41 a.m.]

3  
4                   [Outside the presence of the jury.]

5                   THE COURT: You may -- you may be seated. This is  
6 continuation of the trial in Case No. C-16-315580, *State vs. Valencia*.

7                   I want to advise counsel that this morning, my chambers were  
8 contacted by a juror advising that he was ill today. I think he spoke to  
9 the marshal. Do you recall the juror's name?

10                  THE MARSHAL: It's Xavier Antheaume.

11                  THE COURT: And he advised that he was vomiting and he  
12 was sick. Apparently -- I was in -- I was on -- in court at the time and  
13 apparently my marshal advised him that he still needed to come today.  
14 If he's present, I was going to bring him in and have you ask him some  
15 questions, make a determination if you want to continue the trial a day or  
16 so or do you want to use an alternate.

17                  MR. DICKERSON: I think that -- I think that just preliminarily,  
18 with where we're at in the trial and given the fact that we have a short  
19 day tomorrow, the State wouldn't be inclined to ask to continue the trial a  
20 day, but I think that it'd be worth bringing him in to talk to him to see  
21 where he's at.

22                  THE COURT: All right. Is he here?

23                  THE MARSHAL: Yes.

24                  [Juror No. 5 entered courtroom.]

25                  THE COURT: Sir, state your name and badge number.

1 JUROR NO. 5: Xavier Antheaume. I believe it's 993.

2 THE COURT: Okay. And it's my understanding you  
3 contacted my chambers this morning and talked to my marshal and  
4 advised him that you were ill today, that you vomiting; is that correct?

5 JUROR NO. 5: Yes, sir.

6 THE COURT: And --

7 JUROR NO. 5: I vomited four times, once getting here.

8 THE COURT: Okay. And -- and what are your symptoms?  
9 Vomiting, fever?

10 JUROR NO. 5: Just bad, like, a real bad headache and I was  
11 throwing up. I think I overexerted myself yesterday. I'm kind of -- like  
12 the hour that I spent out front, I'm starting to come back to life a little bit,  
13 so to speak.

14 THE COURT: Okay. Do you feel like --

15 JUROR NO. 5: I'd like to.

16 THE COURT: -- you're too ill to serve as a juror today?

17 JUROR NO. 5: I'm -- if it's possible, I'd like to try to fight  
18 through it to see if I can continue to serve my duty.

19 THE COURT: Well, I don't want you to fight through it. I need  
20 you to advise me, do you -- are you too ill to serve as a juror today  
21 because of your illness?

22 JUROR NO. 5: I want to do my best, sir, if possible.

23 THE COURT: Okay. I'm going to let the attorneys ask you a  
24 couple of questions.

25 JUROR NO. 5: Okay.

1 THE COURT: Does the State or defense wish to ask this juror  
2 any questions?

3 MR. DICKERSON: Would it be fair, sir, given what you've just  
4 said, that you'd be willing to sit through today and then if it continues to  
5 get worse, then you'll let us know?

6 JUROR NO. 5: Yes, sir. Like I said, I'm -- I'm starting to feel  
7 better, the -- the time, the hour I think I spent out here, was able to kind  
8 of breathe and the head is not pounding as much and I don't need a feel  
9 to -- about two hours ago, though, I was hurting.

10 MR. DICKERSON: When did it start?

11 JUROR NO. 5: Early this morning. I -- I just think I did too  
12 much yesterday. I had a late night at school and --

13 MR. DICKERSON: Yeah.

14 JUROR NO. 5: -- early -- I went back early this morning. And  
15 I just probably shouldn't have done all that.

16 MR. DICKERSON: Yeah. Have you felt like this before?

17 JUROR NO. 5: It's been a while a -- a long time ago. I just --  
18 when I overexert myself and --

19 MR. DICKERSON: And so that's what it was before --

20 JUROR NO. 5: Yeah.

21 MR. DICKERSON: -- just the same thing?

22 JUROR NO. 5: Yes, sir.

23 MR. DICKERSON: So do you think it's -- what do you think it  
24 is specifically?

25 JUROR NO. 5: I just, like I said, just overexertion, trying to do



1 too much in a short amount of time. I've got piles of things on my desk  
2 that have just kind of put some stress on me.

3 MR. DICKERSON: Okay.

4 JUROR NO. 5: And -- but I think, like I said, I think I can try to  
5 power through. I think that hour spending just eyes closed, just resting I  
6 think did me some good.

7 MR. LEXIS: Do you think you'll be able to pay attention as we  
8 start today?

9 JUROR NO. 5: I believe so.

10 MR. LEXIS: And then if something happens where you --  
11 you're not being able to pay attention, you'll let us know?

12 JUROR NO. 5: Absolutely.

13 MR. DICKERSON: Were you diagnosed with anything in the  
14 past?

15 JUROR NO. 5: No.

16 MR. DICKERSON: Okay. You don't have any -- any sort of  
17 reoccurring medical disorder or anything like that? Okay.

18 JUROR NO. 5: I think I'm generally pretty strong, except the  
19 cholesterol is a little high on occasion.

20 MR. DICKERSON: Okay.

21 THE COURT: Defense, do you have any questions of this  
22 juror?

23 MS. PLUNKETT: Do you believe that you might be  
24 contagious?

25 JUROR NO. 5: No.

1 MS. PLUNKETT: What time did you arrive here today?  
2 JUROR NO. 5: 10:25, 10:30.  
3 MS. PLUNKETT: Have you vomited since you arrived here at  
4 the --  
5 JUROR NO. 5: Not since I've been in this building.  
6 MS. PLUNKETT: And when is the last time you vomited  
7 today?  
8 JUROR NO. 5: About 10:15, when I parked my car. I was  
9 real happy getting that parking spot.  
10 MS. PLUNKETT: Where did you vomit?  
11 JUROR NO. 5: In the parking lot.  
12 MS. PLUNKETT: In the parking lot?  
13 JUROR NO. 5: Yes.  
14 MS. PLUNKETT: Anything?  
15 MR. COYER: I don't have any questions.  
16 THE COURT: And, sir, as you stand here today, you feel that  
17 you are competent and feeling well enough that you could listen to the  
18 testimony and be able to -- to understand everything that's going on?  
19 It's very important to us that --  
20 JUROR NO. 5: No. I'm not -- and I -- that's why I --  
21 THE COURT: -- you understand everything.  
22 JUROR NO. 5: -- I made that call. Like I said, about an  
23 hour -- when I -- when I made that call, I was, like, there's no way that I  
24 can -- I need to lay down.  
25 THE COURT: But as you stand here today, you said you're

1 feeling better and you feel that you could -- you're feeling well enough  
2 that you could understand everything that's going on? You're not going  
3 to drift off or anything like that?

4 JUROR NO. 5: I believe so. And I'll be the first one to raise  
5 my hand and speak with the marshal, let him know --

6 THE COURT: Ok.

7 JUROR NO. 5: -- like, hey, I need a time out or I can't do it.

8 THE COURT: Okay. All right. But there's nothing -- it's -- it's  
9 just that you overexerted yourself? Is that --

10 JUROR NO. 5: Absolutely.

11 THE COURT: -- what it is? It's not like you have the flu --

12 JUROR NO. 5: No. I --

13 THE COURT: -- or anything like that? You just --

14 JUROR NO. 5: Yeah.

15 THE COURT: -- overexerted yourself and you're starting to --

16 JUROR NO. 5: I'm going home after this --

17 THE COURT: Okay.

18 JUROR NO. 5: -- and go take a nice, quality nap.

19 THE COURT: Okay. All right. Thank you, sir. If you could  
20 just step outside --

21 JUROR NO. 5: All right. Sorry, everybody.

22 THE COURT: Thank you.

23 [Juror No. 5 exited courtroom.]

24 THE COURT: Counsel, what's your position?

25 MR. COYER: Judge, I will, you know, defer to the court's

1 decision as to Mr. Antheaume's answers. My strategic position is I  
2 wouldn't hate a -- a day of continuance, because I've been trying to see  
3 if it's possible to get some subpoenas served on some forensic scientists  
4 with Metro. My investigator, who I consulted with this morning, believed  
5 that one day was not enough time to get that done. There's an  
6 administrative process you have to go through when you're trying to  
7 subpoena somebody like a forensic scientist as opposed to an officer.

8 THE COURT: All right. But my bailiff told me there was some  
9 housekeeping matters. Is this one of the housekeeping matters?

10 MR. COYER: No. This -- this just popped into my head when  
11 you thought -- when you suggested maybe we should continue the trial a  
12 day.

13 THE COURT: Well, I wasn't suggesting. That's always an  
14 alternative if somebody is ill. If it's a short-term illness, you know, you  
15 can give them a day to recover rather than put an alternate in their  
16 place. Usually, I'll do what the -- the parties agree to.

17 MR. COYER: And that's why I want to be candid with the  
18 court.

19 THE COURT: I understand your -- your issues with the  
20 subpoena, but that's not my issue right now.

21 MR. COYER: I understand.

22 THE COURT: My issue right now is do you see a basis for  
23 excusing this juror and using an alternate based on what he's  
24 represented to me in open court? Are you --

25 MR. COYER: To be quite -- again, to be candid with the court,

1 I think what he described sounded like a hangover to me. I think he'll  
2 probably be fine in an hour or two.

3 THE COURT: Okay. I'm not going to make that assumption,  
4 but I will tell you his demeanor when he was addressing the court, he  
5 responded quickly, he responded to my questions. He -- he seemed to  
6 be understanding everything. I am going to indicate to him that if in any  
7 way he gets worse or anything of that nature, to immediately let me  
8 know, you know, and we'll stop.

9 What's the State's position; do you want to go forward with this  
10 juror or do you want me to --

11 MR. DICKERSON: State's position at this --

12 THE COURT: -- seat an alternate?

13 MR. DICKERSON: At this point in time, I think we can go  
14 forward with this juror. He's under the understanding that if this -- he  
15 has a flare-up of this illness later on today or it gets so bad he can't  
16 handle it, that he knows that he can alert the court.

17 THE COURT: Did you -- does counsel agree with my  
18 assessment of this juror --

19 MR. DICKERSON: I do.

20 THE COURT: -- based on his representations? Is that  
21 correct, counsel?

22 MR. DICKERSON: Yeah. He --

23 THE COURT: Mr. Coyer?

24 MR. COYER: Yes.

25 MR. DICKERSON: He seemed coherent.

1 THE COURT: Bring him back in for one second. And then  
2 we'll address the housekeeping. I literally just finished my law motion  
3 calendar --

4 MR. DICKERSON: That's what we understand.

5 THE COURT: -- to come over here. I have to give my staff a  
6 little bit of a break, so we're probably --

7 MR. DICKERSON: Absolutely.

8 THE COURT: -- going to take a lunch break about 1:00, 1:30,  
9 to be honest with you.

10 MR. DICKERSON: Okay.

11 [Juror No. 5 reentered the courtroom.]

12 THE COURT: Sir, if you could just come back where you  
13 were before.

14 JUROR NO. 5: Yes.

15 THE COURT: The parties feel that you can proceed forward  
16 as a juror. But I just want to make it clear to you, if you in any way feel  
17 that you are starting not to understand or hear things or lose your train of  
18 thought or anything like that, you need to notify me immediately.

19 JUROR NO. 5: Yes, sir.

20 THE COURT: Or if you are feeling ill in any way, lightheaded,  
21 nauseous, anything, please notify me immediately.

22 JUROR NO. 5: Yes, sir.

23 THE COURT: Raise your hand, I'll stop. It's very important  
24 that you remain attentive through these entire proceedings. If you  
25 cannot do that, I need to know immediately.

1 JUROR NO. 5: Yes, sir.

2 THE COURT: Okay. All right. So for right now, we'll seat you

3 as a juror and we'll go forward with the trial.

4 JUROR NO. 5: Yes, sir.

5 THE COURT: But please don't feel like this is something you

6 are required to do. If you are ill, I want you to take care of your illness.

7 Okay.

8 JUROR NO. 5: Like I said, two hours ago for sure, I --

9 THE COURT: Okay.

10 JUROR NO. 5: -- would have -- I would have told you --

11 THE COURT: All right. Well, based on your responses to

12 me --

13 JUROR NO. 5: -- I'm going to fight through it.

14 THE COURT: -- both myself and counsel agree you -- you

15 appear to be well enough and understand everything and that you could

16 be seated as a juror today.

17 JUROR NO. 5: Okay.

18 THE COURT: All right. Thank you, sir.

19 JUROR NO. 5: Thank you, sir.

20 THE COURT: If you could go just out in the hallway. Don't --

21 don't go too far.

22 JUROR NO. 5: Got it.

23 [Juror No. 5 exited courtroom.]

24 THE COURT: And what are the housekeeping matters?

25 MR. LEXIS: None from the State.

1 MR. DICKERSON: Well, the -- the parties have taken care of  
2 the redactions on the -- the audio that was introduced yesterday. So the  
3 State has redacted all the portions that we were generally discussing  
4 with defense counsel yesterday. Mainly things having to do with Ceasar  
5 Valencia having outstanding warrants, no-bail warrants, and specific  
6 references to the moped, in fact, being stolen, or possibly being stolen.  
7 Absent not redacting things about, like, a shaved VIN.

8 So it should be all what we talked about. There's several  
9 redactions. And we have that prepared for the court in disc format. I  
10 think that it would be the stipulation of the parties that we use that as the  
11 piece of evidence that's going to go back with the jury instead of the full  
12 audio, which is currently the disc --

13 THE COURT: What about the -- the paper document; did you  
14 redact that?

15 MR. DICKERSON: The paper document, we -- we did redact  
16 that. We provided that yesterday at the end -- at the close of the  
17 session.

18 THE COURT: Okay.

19 MR. DICKERSON: It's been redacted, the same portions that  
20 we had discussed with defense counsel, specifically having to do with  
21 references to stolen and warrants.

22 THE COURT: Okay.

23 MR. LEXIS: We did both of these at the benefit of the  
24 defense. So if they have any other issues with either one of them, then  
25 they need to bring that to everyone's attention.



1 MS. PLUNKETT: And can I ask if you introduced the full CAD  
2 or only the CAD regarding the assault with a deadly weapon?

3 MR. LEXIS: The full CAD.

4 MS. PLUNKETT: Both CADs. Okay.

5 MR. DICKERSON: Well, no. Not the -- not both CADs. Only  
6 for the event number that -- that the audio had been moved in for.

7 THE COURT: Okay. Have you had -- have you reviewed the  
8 redactions? Are they satisfactory to the defense?

9 MR. COYER: Yes. We -- with respect to the CAD and audio  
10 related to the May 19th event. What my co-counsel was asking about is  
11 the May 21st event. I think that's a different CAD.

12 MR. LEXIS: That wasn't proffered.

13 THE COURT: Okay. That's not --

14 MR. COYER: Just wanted to clarify that.

15 THE COURT: -- before the court. It was whatever one -- I  
16 don't have my notes in front of me.

17 MR. DICKERSON: The event number beginning in 160519.

18 THE COURT: I'm looking for the -- but in any event,  
19 yesterday was the CAD that you said -- I conditionally admitted it subject  
20 to the redactions. And it's my understanding counsel has provided with  
21 my clerk the redactions. I'm going to -- I'll look them over the next break  
22 and then if both parties have agreed to them, then it will just be admitted  
23 as an exhibit.

24 MR. DICKERSON: And we would -- I think that as we get  
25 moving forward here, especially with this next witness, we anticipate

1 using this. So we would just ask that --

2 THE COURT: All right. Let me -- do you have it? Did they  
3 provide you with the exhibit -- the redacted exhibit?

4 Counsel approach. All right. You know what, there's nobody  
5 here. You don't have to approach. I just wanted to mention -- all right.  
6 So this is State's Exhibit 53. And there's a small redaction on the  
7 second page.

8 Counsel -- defense counsel, you see that's the small redaction  
9 there.

10 MR. COYER: Right. That one was already there for the  
11 record, Judge.

12 THE COURT: There's the next small redaction on the next  
13 page. And that appears to be the only redactions. Is that correct?  
14 Here, counsel. Look at it.

15 MR. DICKERSON: I believe there were --

16 MR. COYER: Judge, there's a little --

17 MR. DICKERSON: I believe there were three total.

18 THE COURT: Well, show them to opposing counsel. Before I  
19 admit it, I want to make sure it's --

20 MR. DICKERSON: First was --

21 THE COURT: -- the parties agree to it.

22 MR. DICKERSON: -- at time stamp 19:51:06.

23 The next one is going to be on the second page at time  
24 stamp 19:58:17, after Ceasar Valencia, obviously about his criminal  
25 record and/or warrants.

1 Next one is going to be at, same second page, 20:05:53,  
2 reference to the moped likely being stolen.

3 And that looks like the totality of the redactions.

4 THE COURT: Okay. And there's no reference to anything  
5 about his -- any prior convictions in here at all?

6 MS. PLUNKETT: No, Judge.

7 THE COURT: Okay.

8 MR. DICKERSON: Yeah. And the black marks were actually  
9 part of the original document, Your -- Your Honor. The redactions that  
10 we have are simply -- they're Wite-Out, and I -- we would just ask that  
11 we have -- we'll prepare an instruction for the jury that references this.  
12 It's that there may be some audio and documents that have been  
13 redacted. That's done at the request of the court and by agreement of  
14 the parties.

15 THE COURT: Okay. Does the defense have any objection to  
16 State's Exhibit 53 with redactions?

17 MR. COYER: No, Your Honor.

18 THE COURT: It will be admitted.

19 [State's Exhibit No. 53 admitted.]

20 THE COURT: Anything else, counsel?

21 MR. DICKERSON: So my thought is this, for the audio, is that  
22 we allow the audio disc that was moved in by defense counsel without  
23 redactions to be marked as a court's exhibit for reference. And I'll make  
24 a record of the redaction times that have -- have been redacted for the  
25 defense by the State. And then we use that audio going forward.

1           The State would have no objection, as discussed with defense  
2 counsel, with defense counsel playing a copy of the audio from their  
3 computer instead of using that disc just as a -- as a demonstrative, but it  
4 does match up, if that's --

5           THE COURT: I'm -- I just want a clarification. The defense  
6 played portions of an audio; is that correct? Yesterday, you didn't play  
7 the entire audio?

8           MR. COYER: Correct.

9           THE COURT: Is that correct? So we're going to give the jury  
10 the portions that he played during the examination of the officer; is that  
11 correct?

12          MR. DICKERSON: No. It's going to be the entire audio,  
13 absent the same type of references that were redacted from the CAD,  
14 that being references to stolen and references to criminal history and/or  
15 warrants.

16          THE COURT: And what's the defense position on that?

17          MR. COYER: We agree with that. The -- you're going to hear  
18 a lot more of the audio today with the next witness.

19          THE COURT: Okay.

20          MR. COYER: But what I think needs to be done specifically,  
21 and I think the State would agree, is that Defense Exhibit A, the physical  
22 disc exhibit should be replaced be the redacted disc that the State  
23 proffered. And I will take -- my co -- opposing counsel's representations  
24 that those were the portions that were redacted. I haven't reviewed it,  
25 but I'm fine with that.

1 THE COURT: Okay.

2 MR. COYER: And then I'm going to publish just the portions I  
3 want to play with the witness.

4 THE COURT: So what you want me to do is take Exhibit A,  
5 make it a court exhibit, and then substitute the redacted audio as  
6 Exhibit A; is that correct?

7 MR. COYER: Correct.

8 MR. DICKERSON: Correct, Your Honor.

9 MS. PLUNKETT: Correct.

10 THE COURT: Mr. Clerk, do you understand what we're doing  
11 here? Okay.

12 So the unredacted version will now become the court's exhibit,  
13 and then Exhibit A will be the redacted version. Make sure my clerk has  
14 the correct one.

15 MR. DICKERSON: Here's the redacted version.

16 THE COURT: And that's the version that will go back with the  
17 jury.

18 MS. PLUNKETT: Correct.

19 THE COURT: As Exhibit A.

20 MS. PLUNKETT: Correct.

21 THE COURT: Defense Exhibit A, okay. Anything else  
22 counsel?

23 MR. COYER: Not from the defense, Judge.

24 MR. DICKERSON: Nothing from the State at this time, Your  
25 Honor.

1 THE COURT: Are you prepared to call your first witness this  
2 morning?

3 MR. DICKERSON: State is.

4 THE COURT: Who is it?

5 MR. DICKERSON: It's Officer Jacobitz.

6 THE COURT: Oh, you know what, I guess we should bring  
7 the jury in first.

8 [Jury reconvened at 12:01 p.m.]

9 THE COURT: And let the record reflect that counsel for the  
10 State, counsel for the defense, the defendant, and the jury are present.

11 I just want to remind the jurors that you do have the right to  
12 ask questions after the end of testimony of any witness. If you want to  
13 ask a question, again, write it on a full-length piece of paper, raise your  
14 hand, make sure my bailiff sees you before the witness is excused.  
15 Okay.

16 But in our state, jurors have the right to ask certain types of  
17 questions. And then I review them with counsel and make a  
18 determination whether it's an appropriate question or not. But a lot of  
19 jurors, when we first start the trial, they don't realize that. I know it was  
20 part of that lengthy preliminary admonishments I gave you. So again. If  
21 you -- and that, you know, if it's something you thought should have  
22 been asked or is relevant, you certainly may -- write it on a full-length  
23 piece of paper. And make sure my bailiff sees it before I excuse the  
24 witness. Okay? All right. Thank you.

25 State call your first witness, please.

1 MR. DICKERSON: State's next witness is going to be Jeremy  
2 Jacobitz.

3 THE COURT: Thank you.

4 **JEREMY JACOBITZ**

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

7 THE CLERK: Please be seated. Would you please state and  
8 spell your name for the record.

9 THE WITNESS: First name is J-E-R-E-M-Y. Last name is  
10 Jacobitz, J-A-C-O-B-I-T-Z.

11 MR. DICKERSON: May I approach the witness briefly, Your  
12 Honor?

13 THE COURT: Yes.

14 MR. DICKERSON: Thank you. If there's anything you need  
15 to reference, just let me know.

16 **DIRECT EXAMINATION**

17 BY MR. DICKERSON:

18 Q How are you employed, sir?

19 A With Las Vegas Metropolitan Police Department.

20 Q And judging by your uniform, it's probably obvious, you're a  
21 police officer?

22 A Yes, sir.

23 THE COURT: Counsel, can you approach, please?

24 [Bench conference transcribed as follows:]

25 THE COURT: You need to ask questioning from the podium. I don't

1 want you wandering around the courtroom.

2 MR. DICKERSON: Okay. So --

3 THE COURT: So if you could -- unless you have to approach  
4 the witness or publish something to the jury.

5 MR. DICKERSON: I have to stay at the podium?

6 THE COURT: Pretty close. I mean, I don't want you  
7 wandering all over the courtroom.

8 MR. DICKERSON: Okay.

9 THE COURT: All right.

10 MR. DICKERSON: All right.

11 THE COURT: Thank you.

12 [End of bench conference.]

13 BY MR. DICKERSON:

14 Q What is your current assignment, sir?

15 A With the Downtown Flex and PSU team.

16 Q And what is that?

17 A It's mainly gangs and violent crimes.

18 Q That's the specific mission of Flex and PSU?

19 A Yes, sir.

20 Q So that's not what you're here for though, right?

21 May 19th, 2016, you were with a different unit?

22 A Yes, sir.

23 Q What were you doing then?

24 A I was on patrol.

25 Q Patrol officer?



1           A     Yes, sir.

2           Q     How long have you been employed by the Las Vegas  
3 Metropolitan Police Department?

4           A     12 years.

5           Q     And how long were you on patrol for?

6           A     Approximately 10 of that.

7           Q     Where have your various assignments been?

8           A     Downtown. Everything's been downtown. Prior to that,  
9 training's been in northwest and southeast. And I was currently with  
10 PSU in DTAC prior to this as well.

11          Q     DTAC, is that Downtown Area Command?

12          A     Yes, sir.

13          Q     That's just, like, the abbreviation that's commonly used?

14          A     Yes, sir.

15          Q     So pretty much your whole career is spent downtown?

16          A     Yes, sir.

17          Q     You said there was two different parts in training that were  
18 spent at different area commands?

19          A     Yes, sir.

20          Q     How does that work?

21          A     That's typical of all new trainees. They usually start out in  
22 different commands until they're assigned to a specific one.

23          Q     Okay. Is that what's called field training?

24          A     Yes.

25          Q     And how -- what is field training like?

1           A     Field training is where you learn to be a patrol -- patrol officer  
2 out on the streets.

3           Q     And how does that work?

4           A     You ride around with a field training officer and they show you  
5 the ropes.

6           Q     Somebody obviously more senior?

7           A     Yes, sir.

8           Q     That comes after you go to the police academy?

9           A     Yes.

10          Q     And how long is the police academy?

11          A     I'd be guessing if I told you, but it's a little while.

12          Q     About five months, six months, something like that?

13          A     Approximately.

14          Q     And after you do that, then you go and you get assigned to an  
15 area command and you can work solo?

16          A     Yes.

17          Q     And you were assigned to Downtown Area Command?

18          A     Yes.

19          Q     Now, you can work solo, but do you always work solo?

20          A     No.

21          Q     Tell me about that; how does that work?

22          A     There are special assignments, as far as directed patrol  
23 activities, that the -- the higher-ups hand down to senior officers. And  
24 we typically go out and look for high-crime areas or -- or wanted  
25 subjects. There's -- there's many different assignments.

1 Q So if I understand you correctly, a directed patrol activity  
2 would be an assignment where you're with another officer?

3 A Yes.

4 Q So you're partnered up?

5 A Yes.

6 Q In the same vehicle?

7 A Yes.

8 Q And did -- throughout your career, have you often been  
9 partnered up with people?

10 A Yes.

11 Q Does it work where you're always partnered up with the same  
12 person?

13 A No, it doesn't.

14 Q How does it work?

15 A Like I said, it's -- it's assigned by the higher-ups. Typically you  
16 got to get along with other people.

17 Q Okay.

18 A So it's one of those -- those type of assignments.

19 Q Officer Houston, you were assigned with him on  
20 May 19th, 2016; isn't that right?

21 A Yes, sir.

22 Q And that would have been something that was done by the  
23 higher-ups?

24 A Yes.

25 Q Now, when we say higher-ups, how does that work? Is there

1 a command structure?

2 A There is.

3 Q What is that?

4 A You got your basic patrol officers, on up to sergeant,  
5 lieutenant, captain, and even higher --

6 Q And that's actually --

7 A -- all the way up to the sheriff.

8 Q And that's actually the order up?

9 A That's the chain of command, yeah.

10 Q So the line supervisor would be the sergeant?

11 A Yes.

12 Q Above the sergeant would be the lieutenant?

13 A Yes.

14 Q Above the lieutenant would be the captain?

15 A Yes.

16 Q And your sergeant, is -- is that someone who's out in the field  
17 with you?

18 A Yes.

19 Q Okay. So the higher-ups dictate that May 19th, 2016, you're  
20 going to be working, partnered up, directed patrol, with Officer Houston?

21 A Yes.

22 Q And had you worked with Officer Houston before as a partner?

23 A A lot, yes.

24 Q Yeah. Pretty common?

25 A Yes.

1 Q So how does your shift get started on May 19th, 2016?

2 A So we were having a station-wide yearly barbecue put on by  
3 the -- the local chaplain from one of the churches. They -- they do it  
4 yearly to a -- it's cop appreciation thing. And we were eating steaks or  
5 whatever it was that day, I don't really recall. In either case, being as full  
6 as we were, we were just talking about we really don't want to get into  
7 anything before we -- as we left the station. And sure enough, the  
8 second we pull out of the station -- do you want me to go into the details  
9 of --

10 Q Sounds like you're kind of talking about --

11 A We got into something.

12 Q -- some sort of cop's Murphy's Law about eating a lot of food  
13 and then you're going to get in a foot chase?

14 A Yes, sir.

15 Q Okay. Well, it turns out, you guys finish up this meal?

16 A Yes.

17 Q Then you're leaving the station?

18 A Yes.

19 Q This is the Downtown Area Command?

20 A Yes.

21 Q Specifically, where is the Downtown Area Command located?

22 A At 621 North 9th Street. So it's 9th Street and Bonanza.

23 Q And I'm going to show you, just for reference here, what's  
24 been admitted as State's Exhibit 10, with permission of the court.

25 MR. DICKERSON: May I publish, Your Honor?

1 THE COURT: Yes.

2 MR. DICKERSON: May I have the continuing ability to  
3 publish?

4 THE COURT: Yes.

5 MR. DICKERSON: Thank you.

6 BY MR. DICKERSON:

7 Q Showing you here --

8 THE COURT: Any -- any exhibits that have been admitted,  
9 you have -- you may have continuing publish as to both the State and  
10 defense.

11 MR. DICKERSON: Thank you very much, Your Honor.

12 BY MR. DICKERSON:

13 Q This area right here, it's the lower left-hand corner of the  
14 exhibit as it's published on the screen; is that the Downtown Area  
15 Command?

16 A It is, sir.

17 Q And if we can zoom in there, is there a portion back here -- is  
18 this the parking lot?

19 A It is.

20 Q Is that secure for officers only?

21 A It is supposed to be for officers only, yes. And it is gated.

22 Q It is gated?

23 A Yes.

24 Q And so is this the gate to exit that?

25 A It is.

1 Q Is that where you were coming out of?

2 A Yes.

3 Q And what happened as you were exiting that exit gate,  
4 Downtown Area Command?

5 A While still sitting in that -- that outer driveway to turn onto 9th  
6 Street, I noticed straight in front of me, which is east, you could see  
7 this -- this dirt lot that's -- that's completely empty here. I could see right  
8 across into the dirt lot. I could see a moped traveling in the alleyway just  
9 east of there, northbound, at a high rate of speed towards Wilson, which  
10 is the street north of.

11 Q So what did you do as a result of that?

12 A Followed it.

13 Q You were driving?

14 A Yes.

15 Q So Officer Houston was passenger?

16 A Yes.

17 Q How does that work? Is there any sort of roles that you guys  
18 do?

19 A There are, which only tends to work when you work together  
20 for a little while.

21 Q As you and Officer Houston had?

22 A Yes.

23 Q So he's passenger; what's his job?

24 A His job is, typically, he'll make contact if we pull somebody  
25 over, with a subject. He'll -- he'll run them in the systems. He'll make

1 most of the contact in a lot of cases. It doesn't always work that way. It  
2 just depends on the situation.

3 Q When you're in the vehicle, does he work the radio?

4 A Yes.

5 Q And the computer?

6 A Yes.

7 Q There's a computer actually in the patrol vehicle?

8 A Yes.

9 Q So this day you guys are in a patrol vehicle?

10 A Yes.

11 Q That's marked?

12 A Yes.

13 Q Does it -- has the -- the big badges on the side?

14 A Yes.

15 Q Specifically, what kind of vehicle is it?

16 A I don't want to -- I can't remember if I was in a -- in a SUV or a  
17 sedan. I don't recall at this point, but it was one of the two.

18 Q Okay.

19 A It was a marked patrol vehicle.

20 Q Black and white?

21 A Yes.

22 Q With red and blue lights on top?

23 A Yes.

24 Q And says Metro Police on it?

25 A Yes.



1 Q Very distinctual?

2 A Yes.

3 Q Are you wearing a uniform?

4 A I am.

5 Q Is Officer Houston wearing a uniform?

6 A Yes.

7 Q What kind of uniform?

8 A Much like the -- the gentleman in the back, the tan uniform.

9 Q Okay. So not this green one that you're wearing here today?

10 A No.

11 Q A standard tan Metro Police uniform?

12 A Yes.

13 Q And that's what both you and Officer Houston are wearing?

14 A Yes.

15 Q And as you go after -- out of the Downtown Area Command to

16 follow this moped, where do you guys go?

17 A We end up northbound on 9th Street, eastbound on Wilson.

18 And we pass 10th Street. And as we start to light it up -- or actually

19 not --

20 Q When you say light it up, what do you mean?

21 A I'm not there yet. I'm -- I thought we were at 11th Street here

22 for some reason, even though I said 10th.

23 Q I can back it up a little bit.

24 A Yeah. It's hard to see here.

25 Q Is that a little better?

1           A     It is. So we head eastbound on Wilson. We pass 10th Street,  
2 still high rate of speed on him. We hit 11th Street where there's a stop  
3 sign. He rolls past the stop sign and turns southbound on 11th. And  
4 he -- and we lit him up. So we -- we turn on the lights and -- and sirens  
5 at 11th. He came to a -- he started to come to a stop as he pulled into  
6 that parking lot and right up against the -- the building there at 11th and  
7 Wilson.

8           Q     Talking about the southwest corner?

9           A     It is southwest corner, yes.

10          Q     Now, you can touch that screen. It's kind of like Monday night  
11 football.

12          A     Okay.

13          Q     You can circle and point to things.

14          A     This one here?

15          Q     This one that's right in front of you.

16          A     Okay.

17          Q     If you could just touch the parking lot?

18          A     It's a little bit off calibration.

19          Q     Okay.

20          A     However --

21          Q     So let me try that again.

22          A     It's -- it's a little bit -- there you go.

23          Q     Okay.

24          A     Let me go up here.

25          Q     There you go. Is that it?

1           A     Yeah. My finger's way off of that, but yeah, it works.

2           Q     Okay. Works now that you got an idea of the calibration?

3           A     Yeah.

4           Q     So where that red dot is on the screen, is that the parking lot

5     that you're talking about?

6           A     Yes.

7           Q     And that's where the moped pulls in?

8           A     Yeah.

9           Q     What happens at that point in time?

10          A     He pulls all the way up against the building there on the -- the

11     east side of the building and stops his wheel on the -- a gate in between

12     the two buildings there.

13          Q     And so you said that you had your lights and sirens on?

14          A     Yes.

15          Q     And what are you guys doing now?

16          A     A vehicle stop. A traffic stop, in reference to him blowing the

17     stop sign.

18          Q     And here we are zoomed in on 11th and Wilson on that

19     southwest corner; is that the parking lot we're talking about, right there in

20     the center of the screen?

21          A     Yes.

22          Q     And you indicated that the moped rider had pulled up to a gate

23     there?

24          A     Yeah. You want me to show you?

25          Q     Sure.

1           A     So it's right -- it's right there, in between the two buildings it's  
2 gated.

3           Q     I see.

4           A     So he pulled up, his front fire stopped on that. And that's  
5 where he stopped.

6           Q     So you're indicating this area in between the two buildings is  
7 where that gate is?

8           A     Yes.

9           Q     And where do you pull up?

10          A     Right behind him.

11          Q     How close?

12          A     I'm facing -- I'm within 10 -- 10 feet of him.

13          Q     Okay. And what happens as you're there within 10 feet of this  
14 moped that's at the gate?

15          A     He -- he stops, hesitates, looks back and quickly gets back on  
16 the bike and starts taking off.

17          Q     So he looks at you? He looks at Officer Houston?

18          A     Yes.

19          Q     Do you see him?

20          A     I do.

21          Q     What's he look like?

22          A     Like the guy sitting over here.

23          Q     You pointed and you said -- you pointed over my left shoulder  
24 and said the guy sitting over here. Are you identifying somebody here in  
25 the courtroom today?

1 A Yes.

2 Q If you could, please indicate what that individual is wearing.

3 A A light green or whitish dress shirt.

4 Q Okay.

5 A Shaved head.

6 MR. DICKERSON: The record will reflect the witness has  
7 identified the defendant, Ceasar Valencia.

8 THE COURT: It will so reflect.

9 BY MR. DICKERSON:

10 Q So you see Ceasar Valencia right there?

11 A Yes.

12 Q At 11th and Wilson?

13 A Yes.

14 Q And you're how close to him?

15 A Within 10 feet approximately.

16 Q Okay. And what does Mr. Valencia do?

17 A At first he's on the bike. He bumps that tire up against the  
18 fence, looks over his shoulder, and mount -- he mounts it again and  
19 takes off on it. So he takes off back westbound on Wilson and down this  
20 nearest alleyway southbound behind the -- the same building. I was  
21 already approaching him at the time, so I was probably even closer  
22 than 10 feet --

23 Q Is that right?

24 A -- away from the vehicle.

25 Q You were out of your vehicle?

1           A     Yeah.

2           Q     And is this area right here depicting where Mr. Valencia fled  
3 to?

4           A     It appears it would be a little bit further down if we're talking  
5 about the final place, a little further down southbound. There you go.

6           Q     It's --

7           A     So right -- right where it says 610 North 10th Street --

8           Q     Right.

9           A     -- there's a little lot right under that.

10          Q     Okay. So I want you to talk to me about where he flees from,  
11 from the southwest corner of Wilson and 11th Street.

12          A     Okay.

13          Q     Where do you follow him?

14          A     First of all, took me a -- I don't know how long. It took me  
15 some time to get back to my vehicle and us get back in the vehicle so I  
16 can actually drive off and follow him. But I came around -- I followed him  
17 around this way through the alleyway, and stopped in -- stopped in here.  
18 It's not doing anything now.

19          Q     Okay.

20          A     That's all right. There's the arrow.

21          Q     That back parking lot of 610 North 10th Street?

22          A     Yes.

23          Q     An Mr. Valencia, was he on the moped?

24          A     Yes.

25          Q     And you were in your vehicle?

1           A     Yes.

2           Q     Driving?

3           A     Yes.

4           Q     Officer Houston riding passenger?

5           A     Passenger.

6           Q     And what happens as you reach 610 North 10th Street?

7           A     He -- he dismounts the bike, dumps it in the general vicinity

8 here in the lot near the dumpster, which would be -- there's a little too

9 much there.

10          Q     I'm going to zoom in for you. Okay.

11          A     Thank you. It would be right in this general vicinity up here, in

12 the lot there.

13          Q     Okay.

14          A     So he dumps --

15          Q     I'm actually going to publish State's Exhibit 11. It's a little bit

16 closer for you. Do you see 610 North 10th Street depicted here?

17          A     Yes.

18          Q     And if you could indicate, generally, where it was that

19 Mr. Valencia hopped off that moped?

20          A     It's a little bit north of that. So it's behind that vehicle that's

21 sitting in the -- on the map.

22          Q     And you're talking about the vehicle that's depicted in this

23 actual --

24          A     Yeah.

25          Q     -- map here?

1           A     Yeah. It's -- well, where my red dot is, it's a little bit north of  
2 that where he actually dumped the -- the bike. So just out of alleyway.

3           Q     Safe to say that this map is from another time, not that  
4 particular day?

5           A     Yes.

6           Q     But it does depict that area fairly and accurately?

7           A     Yes.

8           Q     That vehicle wasn't there that day?

9           A     I don't believe so, no.

10          Q     And where do you pull up in reference to the moped?

11          A     I just catty-corner right out of the alleyway, so I'm coming this  
12 direction and I stop in this general vicinity up here.

13          Q     Okay. And then what happens?

14          A     I -- I start -- we both start foot pursuit. So Ceasar runs through  
15 this alleyway here and I start foot pursuit behind him.

16          Q     What does this alleyway look like?

17          A     It's tight, dirt that starts with some -- several stairs. There's a  
18 chain-link gate that was -- I believe it was open. It was open for me.

19          Q     On the way down that alley, you guys had gotten on your  
20 radio; is that right?

21          A     Yes.

22          Q     And that was at approximately 7:48 p.m.?

23          A     Yes.

24          Q     7:48 p.m., May 19th, 2016, what's the lighting like?

25          A     The light -- it's -- it's starting to get dark out. It's beginning of --



1 of it getting dark.

2 Q Okay.

3 A When this started, there was -- there was light.

4 Q Okay. And so at this point in time, when you're following him  
5 into the back alley, there's sunlight still out?

6 A Yes.

7 Q And what happens as you get towards that back alley?

8 A Well, he's -- he's still got a little ways in front of me, as I start  
9 foot pursuit. He makes it up through these -- the stairs, which start right  
10 about here. It's like three or four stairs. And then takes off westbound  
11 through the alleyway. As I get to the stairs --

12 Q I'm going to go ahead and pull that.

13 A Yeah.

14 Q So he's up the -- the small set of stairs before you are?

15 A Yes.

16 Q And he's made it somewhere to the midpoint of that alleyway?

17 A Yes.

18 Q Where are you at this point in time?

19 A I'm just hitting the stairs.

20 Q Okay. What do you see?

21 A I see Valencia, high rate of speed on foot. Basically, he's  
22 turning around -- I don't know how to tell you this without -- something I  
23 need to show you or --

24 Q Would it be easier to explain it if you showed me?

25 A I think so, yeah.

1 Q Okay.

2 MR. DICKERSON: Your Honor, with the court's permission,  
3 may the witness step off the stand to demonstrate?

4 THE COURT: That's fine.

5 MR. DICKERSON: Thank you.

6 Right here, sir. That's good.

7 THE WITNESS: All right. I'm chasing him down the alley.  
8 There's a few steps here. As I'm hitting the -- the -- as I'm starting at the  
9 steps looking off seeing him in -- in between the alleyway and he's still at  
10 a high rate of speed moving, and he's turning around like this, as he's  
11 moving and stumbling. So he's --

12 BY MR. DICKERSON:

13 Q And he's turning around towards you?

14 A Yes.

15 Q What are you doing at that point in when you see him turning  
16 around?

17 A I'm -- I'm trying to stabilize myself, trying to get my hand on my  
18 weapon.

19 Q Do you pull your weapon out?

20 A I do.

21 Q How do you pull your weapon out?

22 A I pulled the weapon out and hold it in front of me, finger on the  
23 index and --

24 Q What do you see Ceasar Valencia doing as he's turning?

25 A I see him stumbling, still moving, hand at the hip, and that's

1 when I see a firearm.

2 Q You see a firearm in his hand?

3 A Yes.

4 Q And what's happening in your mind at this point in time?

5 A At this point I'm thinking I got to -- I got to defend myself, he's  
6 going to try to shoot me. It's all really, really quick.

7 Q And your gun is coming up?

8 A Yes.

9 Q Your finger --

10 A My gun is up. I'm still trying to stabilize myself on the stairs.  
11 And I can't -- I -- moving up those stairs, I mean, it's one of these  
12 numbers. And it's -- I'm not stable yet.

13 Q Are you worried you're going to be shot?

14 A Yes. Absolutely.

15 Q So what -- what are you doing with your trigger finger?

16 A I'm starting to put it on the trigger and pull.

17 Q What happens as you're doing that?

18 A I don't know any other way to describe this other than the  
19 words I used in my mind was divine intervention. I've never seen  
20 anything like it. But as he's turning, there's -- there must have been a  
21 chain-link fence up prior to, up against the wall. And there were still  
22 several poles in the wall, four or five of them, I'm not really sure at this  
23 point. He turns, and just as he gets right here, the gun's pointed towards  
24 me. He hits his elbow on the pole and the gun flies out of his hand. So  
25 right as I was pulling this out.

1 Q You can go ahead --

2 THE COURT: Officer, you can return to your seat.

3 THE WITNESS: Yes, sir.

4 BY MR. DICKERSON:

5 Q When that gun drops out of his hand, what happens?

6 A It's still in forward momentum with him westbound in the dirt  
7 on the alleyway. He's still moving. He's turning around trying to grab it.  
8 He's reaching down for it. He's still moving. The gun is still moving. He  
9 just decides to leave without it.

10 Q So he takes off?

11 A Yes.

12 Q Gun's on the ground?

13 A Yes.

14 Q Where are you?

15 A I -- I stop on the firearm.

16 Q Do you say anything as this is happening?

17 A I do. I mention something about a firearm so my partner  
18 knows.

19 Q Is there something -- some way you're trained to do that?

20 A Yes. We want everybody to know that there's a firearm  
21 involved.

22 Q And so how do you do it? What do you say?

23 A Just depends on the situation. But I usually say that -- I try to  
24 call -- lot of them like us to use codes. I like everybody to know what  
25 we're talking about. So I say gun or firearm involved.

1 Q So what did you say on May 19th, 2016, as you see Ceasar  
2 Valencia down the alleyway pointing a gun at you?

3 A What do I say on the radio?

4 Q What do you say to your partner?

5 A I don't recall exactly, but I mentioned a firearm.

6 Q Okay. You tell him that there's a gun?

7 A Yes.

8 Q You said sometimes they like you to use codes?

9 A Yes.

10 Q But you don't use codes?

11 A Rarely.

12 Q Would that code have been 413?

13 A Yes.

14 Q So instead of using 413, you would have said gun?

15 A Yes.

16 Q And as that happens, do you see where Officer Houston is?

17 A Officer Houston -- Houston is in the same alleyway as me.  
18 And I -- I signal to him to continue the foot pursuit while I will stay on the  
19 gun.

20 Q Is this after the gun has already fallen on the ground?

21 A Yes.

22 Q Okay. So you yell gun, and then Officer Houston comes up  
23 into the alleyway with you?

24 A Yes.

25 Q You stop on the gun?

1           A     Yes.

2           Q     Do you have a conversation that, hey, I'm waiting here with  
3 the gun? Or does this just happen organically?

4           A     This -- it was dynamic. It was seconds. If there was  
5 conversation, it was just enough to let him know to continue the pursuit.  
6 He sees the firearm, just like I see it, so.

7           Q     On the ground?

8           A     Yes.

9           Q     What happens at this point in time?

10          A     I hold short on the firearm and I turn the radio over to Officer  
11 Houston so that he can continue in the foot pursuit.

12          Q     What's going on, on the radio?

13          A     Like everything else, we're calling for back up and perimeters  
14 and -- and direction of travel and descriptions.

15          Q     But the radio, it's at a Code Red at this time; is that right?

16          A     Yes.

17          Q     And would you describe for the ladies and gentlemen of the  
18 jury what a Code Red is?

19          A     A Code Red is just to notify everybody that -- to hurry, we  
20 need -- we need assistance over here, or to get to a violent call. It's  
21 the -- it's -- it's when you see us rolling with red lights and sirens, that's a  
22 Code Red.

23          Q     So does that mean that only traffic, emergency radio traffic,  
24 can be on that radio?

25          A     Specific to me at the time, or to our incident.

1 Q Specific to that Code Red?

2 A Yes.

3 Q That you guys had called out?

4 A Yes.

5 Q And when you say you gave Officer Houston the radio, what  
6 does that mean?

7 A I didn't want it -- because he is now after suspect, where there  
8 is one firearm, there's typically two. So I didn't want to put him in danger  
9 by taking up his radio time. So I completely gave him control of the radio  
10 and allowed him to do what he needed to do as he continued the foot  
11 pursuit and I was holding on the gun.

12 Q You said something right there, where there's one gun there's  
13 usually two; what is that? Where is that from?

14 A It's pretty typical just from not only training and experience, but  
15 you come into contact with somebody who has one firearm, it's fairly  
16 common that they're going to have two. Case in point, I've got one right  
17 here and one right here.

18 Q Okay.

19 A It's typically a backup or -- or whatever it is.

20 Q So this is something that you, as a long-time police officer, are  
21 thinking about when you see a gun?

22 A Yes.

23 Q When you saw that gun there on the ground after it had been  
24 left by Ceasar Valencia, you're thinking there's possibly another gun?

25 A Yes.

1 Q Now --

2 A Or that -- sorry. Or that he may go back to an area that --  
3 where he can have access to that type of stuff, is the thought.

4 Q Okay. And so at this point in time we have a dynamic  
5 situation. You're separated from your partner. Is that an ideal position  
6 to be in?

7 A No.

8 Q Why not?

9 A In all reality, I'd like to be with my partner to make sure -- two  
10 of us is better than one. I can watch his back, he can watch mine.

11 Q And --

12 MR. DICKERSON: If I may publish Defense Exhibit A?

13 THE COURT: And Defense Exhibit A has been admitted; is  
14 that correct?

15 MR. DICKERSON: It has, Your Honor.

16 THE COURT: Then you may publish.

17 MR. DICKERSON: Thank you very much.

18 BY MR. DICKERSON:

19 Q So this alleyway there, 610 North 10th Street, that's located  
20 here in Las Vegas, Clark County, Nevada?

21 A Yes.

22 Q Just blocks from Downtown Area Command?

23 A Not blocks. It's like half a block.

24 Q Half a block. Your neighbor?

25 A Yes.



1 Q So with that, are you pretty familiar with this area?

2 A Extremely familiar with the area.

3 Q And, generally, when this is happening, you guys are putting  
4 out this radio traffic which we're going to hear shortly. And I want -- I'm  
5 going to stop at certain points. I want you just to identify first Officer  
6 Houston, then yourself, or vice versa. Okay?

7 A Yes, sir.

8 [Audio played.]

9 A Houston, Officer Houston.

10 Q The one that just said, Control 3DP40, we got a guy on a  
11 moped running from us?

12 A Yes.

13 Q That's Officer Houston?

14 A Yes.

15 Q So I understand the part, we got a guy on a moped running  
16 from us. What's the other part, Control 3DP40?

17 A DP40 is direct patrol 40. So that's just like I was telling you in  
18 the beginning about what type of a unit we were.

19 Q So that day you're directed patrol?

20 A Yes.

21 Q Is that a call sign that you go by on the radio?

22 A Yes.

23 Q Okay. So 3DP40?

24 A Yes.

25 Q 3 directed patrol 40?

1 A Yes.

2 Q What is the 3 for?

3 A As far as shift.

4 Q Okay.

5 A So swing shift.

6 Q Swing shift. So that's -- the first number designates your

7 shift?

8 A Yes.

9 Q And then -- so all the shifts have a different number?

10 A Yes.

11 Q What's graveyard?

12 A 1.

13 Q And day shift?

14 A 2.

15 Q Then swing shift is 3?

16 A Yes.

17 Q And then you're directed patrol, so you're DP?

18 A Yes.

19 Q And then 40 is what?

20 A It's just a number indicator.

21 Q Okay.

22 A Each squad is -- is allowed a certain range of numbers and

23 that's just the one that we're in the -- we're in the 40s, so we're the

24 senior. So we start with 40.

25 Q Okay. Let's listen to this. I'm playing it now from 6 seconds.

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[Audio played.]

Q Stopping right there at 20 seconds. We heard a beep and then we heard someone say Code Red. What is that?

A That's dispatch getting back to us and -- and telling us that they have us in Code Red.

Q So that's when dispatch is --

A Acknowledgment.

Q -- acknowledging a Code Red on the radio?

A Yes.

Q Like we talked about with the emergency radio traffic?

A Yes.

Q What was that beep we heard?

A The beep is just -- is -- is dispatches -- it comes from dispatch. So it shows that we are in Code Red. That's just part of the -- the tone.

Q So that specific beep is done when there's a Code Red on the channel?

A It keeps other people from jumping in on the radio that could hear that beep.

Q Okay. And do you know how often those beeps come up?

A Seconds. I don't know, 10. I'm guessing, like, 10 seconds, 5 seconds in between, something like that.

Q Approximately 5 or 10 seconds those beeps come up --

MR. COYER: Objection. Speculation.

MR. DICKERSON: That was his testimony. I'm just confirming.

1 THE COURT: Restate the question.

2 BY MR. DICKERSON:

3 Q How often do those beeps come out on the radio?

4 A Within seconds of each other.

5 Q Okay. Is there usually some dead time if there's no radio  
6 traffic between the beeps?

7 A Yes.

8 Q Okay. And those beeps are just an indicator to let everyone  
9 know, hey, there's a Code Red going on?

10 A Yes.

11 Q Start it back from there.

12 [Audio played.]

13 Q I'm stopping it right there at 32 seconds. Do we hear multiple  
14 officers there?

15 A Officers are starting to arrive. There's at least two of us there  
16 at that point.

17 Q Do we hear you on that last portion?

18 A Yes.

19 Q What did you say?

20 A Subject dropped a firearm. I couldn't really understand it all  
21 that well.

22 Q Okay. The -- the crime is he dropped a firearm; is that fair?

23 A Yes.

24 Q And so where are you at this point in time?

25 A At that point in time, I'm still in the area of the firearm.

1 Q Okay. Firearm is on the ground?

2 A Yes.

3 Q You're standing over it?

4 A Yes.

5 Q Next thing we hear is Officer Houston; is that right?

6 A Yes.

7 Q Playing it there from 32 seconds.

8 [Audio played.]

9 Q Pausing it there at 34 seconds. That voice we just heard, is  
10 that Officer Houston?

11 A That's him in foot pursuit, running. Yes.

12 Q And with that, you say you're over this firearm. You've now  
13 notified everybody that he dropped a firearm?

14 A Yes.

15 Q The part where you said the crime is he dropped a firearm,  
16 is -- is there a crime for dropping a firearm?

17 A No. My intention was to tell -- to -- to tell other officers arriving  
18 on the scene that he did drop a firearm.

19 Q Okay. Does that go back to that, when there's one gun,  
20 there's two?

21 A Yes.

22 Q So you want to let everyone know there's a gun involved  
23 here?

24 A Yes.

25 Q Now, Officer Houston's separated from you at this point in the

1 radio traffic?

2 A Yes.

3 [Audio played.]

4 Q 38 seconds.

5 [Audio played.]

6 Q Right there, is that Officer Houston followed by the  
7 dispatcher?

8 A Yes.

9 Q Do you see Officer Houston at this point in time?

10 A No.

11 Q So what are you doing?

12 A Well, I'm -- I'm stuck watching the firearm. So we have -- not  
13 only is this a little alleyway, but it's always a multiunit complex with doors  
14 that face the alleyway. The reason I chose to stay on the firearm, we  
15 didn't know exactly what we were investigating at that point, whether it  
16 was a stolen moped or what. We didn't know. We didn't know why he  
17 was running. So first off, we got to preserve the scene.

18 Second off, we have -- people were coming out of their  
19 doorways to see what's going on. I leave that firearm, and it's not going  
20 to be there anymore when I come back. So that's the reason I stayed on  
21 the firearm.

22 Q Is that just your experience in the neighborhood?

23 A Yes.

24 Q So have you picked up the firearm or you're just standing  
25 there?

1 | | A I'm standing there over it.

2 Q Is there a reason for that?

3           A     Yes. I may want to keep it for prints. So that's the reason I  
4     stood over it instead of just securing it and taking it with me.

5 Q Okay. And now, what happens in the following minutes as  
6 you're standing there?

7 A In the following minutes, several people are coming out to -- to  
8 look to see what's going on. Officer Houston is still in foot pursuit. He's  
9 trying to get a perimeter around a location just across the way where he  
10 believes suspect has gone. Arriving units are setting up perimeters.  
11 Arriving units are coming to help me.

12 Q I'm going to start the -- the audio right here from 50 seconds.

13 [Audio played.]

14 Q Stopping right there at one minute six seconds. We heard a  
15 description there. Was that given by Officer Houston?

16	A	Yes.
----	---	------

17 Q And now, just to be clear, we have here State's Exhibit 53. If I  
18 may switch back to this, just briefly. So I'm going to show you here  
19 State's Exhibit 53. Are you able to see that? You can see that?

20                    A        Yes, sir.

21	Q	Okay.
----	---	-------

22	A	Most of it.
----	---	-------------

23 Q What is this that we're looking at?

24 A It is the CAD report.

25	Q	What is a CAD report?
----	---	-----------------------

1           A     It's the -- the log of radio traffic.

2           Q     How does this develop?

3           A     There's a clerk or a law enforcement specialist that -- that  
4 shorthands this stuff while -- while radio traffic is coming out.

5           Q     Okay. And --

6           A     It's a timeline of events.

7           Q     Going on back at Metro dispatch?

8           A     Yes.

9           Q     Specifically, Metro works off of event number; is that right?

10          A     Yes.

11          Q     One traffic stop would be one event number?

12          A     Yes.

13          Q     This event number that this CAD is referenced to is an event  
14 number LLV 160519003387; is that right?

15          A     Yes.

16          Q     That's the event number for this traffic stop, foot pursuit, gun,  
17 everything, right?

18          A     For the entire event, yes.

19          Q     And just to have reference for the members of the jury, the  
20 event has some significance as far as date and when the call came out?

21          A     Yes.

22          Q     Can you explain that to the members of the jury?

23          A     Yes. LLV is nothing more than just a filler. 16 is the year. 05  
24 is the month. 19 is the day. 00 is just a filler. 3387 is the number of  
25 events in each day.



1 Q Okay. So, obviously, the call directly before you anywhere in  
2 valley would have been 3386?

3 A Yes. Yes.

4 Q That's why this is 3387 and the call after you would be 3389?

5 A Yes.

6 Q Or 3388, I'm sorry.

7 A Yes.

8 Q And you said that the LLV and those two 0s are just fillers?

9 A Yes.

10 Q So at times we might see that event number written with  
11 just 160519-3387?

12 A Yes.

13 Q Okay. So just for time reference of what we're -- what we're  
14 listening to, we're able to see when the initial call comes out here; is that  
15 right?

16 A Yes.

17 Q And that's at 19:46:08; is that correct?

18 A 19:46:08 is correct.

19 Q And then when we have that first description that comes out  
20 from Officer Houston, it looks like that's at 19:47:17; is that correct?

21 A Yes.

22 Q Okay. So this initial radio traffic is -- is going very quickly?

23 A Yes.

24 Q And what we have next is you still on the firearm, Officer  
25 Houston separated from you. You said there's a perimeter being set

1 up?

2 A Yes.

3 Q What is a perimeter?

4 A Perimeter is several arriving units taking nearby corners to  
5 block in whatever area it is that we needed, which was the area of where  
6 Valencia was alleged to -- to run towards or to.

7 Q Where Officer Houston saw him running towards?

8 A Yes. The -- the final area.

9 Q Okay. And setting up the perimeter, is that something that we  
10 hear on the radio?

11 A Yes.

12 Q Are we going to hear that?

13 A I don't recall.

14 Q Okay. I'm playing it here from 1:06.

15 MR. DICKERSON: Oh, I'm sorry, if I could switch back to this.

16 I got to give you more notice. There we go.

17 Q Playing it from one minute six seconds.

18 [Audio played.]

19 Q Stopping it there at one minute 30 seconds. What was it that  
20 we just heard?

21 A Officer Houston called -- asked for a perimeter. The closest  
22 unit took initiative, which sounded like it was Officer Aaron Perez got on  
23 and he initiated locations for the perimeter. And dispatch got back and  
24 acknowledged perimeter.

25 Q Okay.

1 MR. DICKERSON: And Madam Recorder, if I could just  
2 switch back to the ELMO. Thank you, ma'am.

3 Q Now, just to illustrate what we're listening to in the time  
4 periods, we had just heard right before playing that, the description of  
5 the suspect; is that right?

6 A Yes.

7 Q So Officer Houston described Mr. Valencia as -- at 19:47:17,  
8 HMA, dark red hat, striped shirt, dark pants, 5'7", about 160; is that  
9 right?

10 A No. You said it backwards. HMA, dark hat, red striped shirt,  
11 dark pants.

12 Q Dark pants. There you go. And that's at 19:47:17?

13 A Yes.

14 Q That's --

15 A Yes.

16 Q That's 7:47 p.m.?

17 A Yes.

18 Q And then the traffic that we immediately heard proceeding  
19 that, or right after that, was that perimeter being called out; is that  
20 correct?

21 A Yes.

22 Q And we actually see that here in the CAD, don't we?

23 A Yeah.

24 Q At 19:48:42?

25 A Can you move that a little bit right, I think?

1 Q Yeah.

2 A Right. What did you say, 19:48:42? Which one is it -- yes.  
3 Those are the locations that they started the perimeter.

4 Q And that's the radio traffic that we just heard?

5 A Yes.

6 Q So the time stamp for that is a minute and a half difference,  
7 right?

8 A Approximately, yes.

9 Q But -- but we don't have a minute and a half difference on this  
10 radio, correct? It's just traffic after traffic?

11 A Yes.

12 Q That's not how it sounded that day, obviously?

13 A Right.

14 Q That's just the audio as it exists in this form; is that correct?

15 A Yes.

16 Q So it's not in real time as we're hearing it today?

17 A Right.

18 Q Okay. And as you're there, perimeter is being set up. What  
19 happens when you're in that alleyway?

20 A As I look back towards the moped, two people are walking off  
21 with the moped.

22 Q Two people are walking off with the moped. What do you do?

23 A Secure the firearm in my waistband, disregarding any need for  
24 prints on it anymore, and heading back to secure that moped and take  
25 those two into custody.

1 Q So you have to pick up the gun off the ground?

2 A Yes.

3 Q And you do that -- you're not wearing gloves?

4 A No.

5 Q You just have to react?

6 A Yes.

7 Q Just putting it in your waistband?

8 A Yes.

9 Q And where do you go from there after putting the gun in your

10 waistband?

11 A I go straight over to the moped that's being pushed off

12 southbound through the alleyway. Two separate people, one on each

13 side, pushing it southbound. And I take them into custody and go from

14 there.

15 Q So you put that out over the radio?

16 A I do believe so.

17 Q I'm going to play it here, that radio audio, again, from 1 minute

18 and 30 seconds.

19 [Audio played.]

20 Q Pausing it right there, two minutes 58 seconds.

21 That audio portion started off with your traffic; is that correct?

22 A Sounded like it, yes.

23 Q You said 3DP40A?

24 A Yes.

25 Q What's the A?

1           A     So now we're trying to do time management, time  
2 management between the two incidents. And because I'm senior, I'm A  
3 and he's B.

4           Q     He being officer --

5           A     DP40A and DP40B.

6           Q     So Officer Houston, DP40B?

7           A     Since we are separated, yeah.

8           Q     When you're together, DP40 and -- 3DP40. Now that you're  
9 separated, 3DP40 A and B?

10          A     Yes.

11          Q     That's how it should work?

12          A     Yes.

13          Q     And that's why you're using A there?

14          A     Yes.

15          Q     And that's how we know it's you in that radio traffic?

16          A     Yes.

17          Q     And I want to just show you that State's Exhibit 53 here again.  
18 Looks like it would be 19:48:42 seconds; is that correct?

19          A     Yes.

20          Q     So that's immediately after we hear that radio traffic about the  
21 perimeter being called out; is that correct?

22          A     Yes.

23          Q     You get on the radio?

24          A     Yes.

25          Q     And what is it that we heard you say?

1           A     Something to the effect that I have two people taking off with  
2 the moped and I need somebody to come help me.

3           Q     Ultimately, that audio that we heard ends with your radio traffic  
4 as well --

5           A     Yes.

6           Q     -- is that correct?

7           A     Yes.

8           Q     Once again, 3DP40A?

9           A     Yes.

10          Q     What is it that you said there at the end?

11          A     I don't remember right now. If you could refresh me.

12          Q     Code 4?

13          A     Yes.

14          Q     Two in custody?

15          A     Yes.

16          Q     What is Code 4?

17          A     That means I'm okay, I'm good.

18          Q     Safe?

19          A     Yes.

20          Q     And we see that here on the CAD, State's Exhibit 53  
21 at 19:50:14; is that correct?

22          A     Yes.

23          Q     So, generally, less than two minutes between when you first  
24 called that out and then when you're calling out, hey, I'm okay --

25          A     Yes.

1 Q -- is that right?

2 A Yes.

3 Q So well -- we hear that here. What do you do now that you  
4 have these two individuals in custody?

5 A Now I have to worry about arrest paperworks on them, just  
6 handling that end of it. I'm still worried about Chris and the perimeter  
7 and what's going on over there. Really, that's all being handled so I  
8 don't need to get involved in it. But I'm -- I'm back at my car at this point  
9 dealing with a whole separate arrest, two other people.

10 Q And your car is back where it was, right in that back parking lot  
11 of 610 North 10th Street?

12 A The alleyway, yes.

13 Q Is that moped still close to where your vehicle is?

14 A It is. It's bushed a little further southbound, now in the  
15 alleyway, but it's -- its basic vicinity, yes.

16 Q What do you do with those two individuals who you now have  
17 in custody?

18 A Place them in cuffs and I try to finish the investigation.

19 Q On them?

20 A Well, now I'm dealing with them too. So it's completely  
21 separate. I don't know if it's involved or if it's completely separate. I -- I  
22 don't know at the -- that time.

23 Q Where is that firearm that Ceasar Valencia pulled on you?

24 A I secured it somewhere. I had it on --

25 Q It's --



1           A     -- on me, you know, I'm typically not going to leave it in here,  
2 because I don't want to go off. But usually I'll put it on the dashboard  
3 inside my car or on the -- the passenger seat. Just depends.

4           Q     You secured it?

5           A     I secured it myself.

6           Q     With yourself?

7           A     Right.

8           Q     So your focus shifted from the foot pursuit to the firearm to  
9 now these two guys stealing the moped?

10          A     Yes.

11          Q     And do you ultimately arrest those two guys?

12          A     I do.

13          Q     Is that an individual named Eric Gilbert and Anibal Rivera?

14          A     Yes.

15          Q     Later that night, end up booking them into city jail?

16          A     Yes.

17          Q     But for the time being, this event is still dynamic?

18          A     Yes.

19          Q     So as we continue on to it, sounds like at some point in time  
20 you're able to identify who the defendant is, specifically who he is?

21          A     Yes.

22          Q     And that starts to occur on the radio?

23          A     Yes.

24          Q     I'm going play it here from two minutes and 58 seconds.

25                               [Audio played.]

1 Q We heard that radio traffic come out, an HMA matching that  
2 description has a residence?

3 A Yes.

4 Q Who were they talking about?

5 A About Ceasar Valencia.

6 Q Are -- do you now know today that they were talking about that  
7 625 North 10th Street address?

8 A Yes.

9 Q And as that develops, do you -- are you contacted by other  
10 officers?

11 A At one point or another, I was.

12 Q I'm going to play the audio right here from six minutes and two  
13 seconds.

14 [Audio played.]

15 Q We just heard the name Ceasar Valencia come out on the  
16 radio; is that correct?

17 A Yes.

18 MR. DICKERSON: And if I could, ma'am? Thank you.

19 Q I'm going to show you here again State's Exhibit 53. We first  
20 see --

21 A Thank you.

22 Q -- on first page at 19 minutes and 51 seconds, 3DP41. It says  
23 HMA matching that description, residence 10th Street?

24 A Yes.

25 Q That's what we listened to just before hearing Ceasar

1 Valencia's name?

2 A Yes.

3 Q And Ceasar Valencia's name that came out, the residence  
4 matching the HMA's description is at 1951, that's 7:51 p.m.?

5 A Yes.

6 Q Ultimately, when we hear his name on the radio, is that him  
7 being ID'd as the suspect?

8 A Yes.

9 MR. COYER: Objection. Foundation. Speculation.

10 THE COURT: Sustained.

11 BY MR. DICKERSON:

12 Q What is it that we hear in his name on the radio?

13 A I'm sorry, what are you asking?

14 Q We heard Ceasar Valencia's name stated over the radio?

15 A Right.

16 Q All right. I'm going to show you here State's Exhibit 53; is that  
17 occurring at 19:58:17?

18 A Yes.

19 Q So that's 7:58?

20 A Yes.

21 Q And that would be indicating what?

22 A That would be indicating that somebody has identified him and  
23 is giving out his actual description.

24 Q You're still there on scene?

25 A Yes.

1 Q 7:58 p.m., where are you?

2 A I'm now back with two suspects and the moped back at my  
3 vehicle in the alleyway between 10th and 11th, just north of Bonanza.

4 Q Okay. And, ultimately, we have radio traffic from you to your  
5 sergeant at approximately 8:02 p.m.; is that correct? Do you recall that?

6 A Yes.

7 Q I'm going to play the audio starting here at eight minutes and  
8 six seconds.

9 [Audio played.]

10 Q What was that that we just heard?

11 A Me getting back on and -- and updating the information, telling  
12 other officers in dispatch that he actually pointed the gun at me and  
13 dropped it as he ran from me.

14 Q And who was it that you were speaking to at that time?

15 A I don't -- I don't recall other than dispatch, but I'm -- I'm talking  
16 to everybody.

17 Q Let me play it for you from eight --

18 A I want everybody to know at that point.

19 Q Okay. Eight minutes and seven seconds.

20 [Audio played.]

21 A I can't understand that.

22 Q 705, is that what you said?

23 A I think so, yeah.

24 Q What would 705 be?

25 A 705 is my sergeant.

1 Q Okay. So you're telling your sergeant on the radio?

2 A Yes.

3 Q And for everyone else to hear?

4 A For everyone else to hear is the main thing.

5 Q From eight minutes and nine seconds, playing.

6 [Audio played.]

7 Q Okay. And again, looking at State's Exhibit 53, we actually

8 see that here as well on CAD; is that right? At 8 -- at 20:02:05,

9 that's 8:02 p.m.; is that correct?

10 A Yes.

11 Q Says:

12 705, 3DP40, when Ceasar turned while running, pointed 413

13 at unit, but dropped it?

14 A Yes.

15 Q That's your radio traffic now in this CAD?

16 A Yes.

17 Q And I want you to look up to 19:58:39; do you see that?

18 A Yes.

19 Q Says what there?

20 A 618K, channel clear for now.

21 Q What does that mean?

22 A 618K, I think, is 618 K-9 on here.

23 Q Okay.

24 A So that's notifying several sergeants of what's going on.

25 Q That would be K-9 sergeant?

1           A     I think so, yeah.

2           Q     And that'd be calling off the Code Red?

3           A     Yes.

4           Q     So at that point in time, just mere minute or so before you get  
5 back on the radio, the Code Red had ended?

6           A     Yes.

7           Q     So the emergency traffic had come to an end, and what does  
8 that mean?

9           A     That means radios are open for all units.

10          Q     And then that's when you get on and tell your sergeant?

11          A     Yes. The first chance I get to give actual details.

12          Q     As you're sitting there in the back alley, do you get any sort of  
13 pictures or anything?

14          A     I recall seeing a picture. I don't know where it came from or  
15 where it was. I -- I have no clue. I remember seeing something.

16          Q     I'm going to play this for you and you tell me what it is; eight  
17 minutes and 32 seconds.

18                               [Audio played.]

19          Q     Did that say copy a text of a picture?

20          A     I think so. I -- I -- hard -- can't hear all that well.

21                               [Audio played.]

22          A     Yes.

23                               [Audio played.]

24          Q     And was that radio traffic directed at who?

25          A     At me from -- from Officer Aaron Perez.

1 Q Is that 3DP41?

2 A Yes.

3 Q The other directed patrol unit?

4 A Yes.

5 Q Okay. And does that refresh your recollection about how you

6 got a picture?

7 A Yes.

8 Q How is it that you got the picture?

9 A By text message.

10 Q Okay. I'm going to play this radio audio here from eight

11 minutes and 51 seconds.

12 [Audio played.]

13 Q What was it that we just heard there?

14 A Acknowledging that that's the person that ran from me.

15 Q Is that you?

16 A Yes.

17 [Audio played.]

18 Q One more time from eight minutes 47 seconds.

19 [Audio played.]

20 Q Again, that was your radio traffic to your sergeant?

21 A Yes.

22 Q You're identifying -- identifying -- excuse me, identifying

23 Ceasar Valencia?

24 A Yes.

25 Q That was specifically at -- located here at CAD -- on the CAD

1 at -- I may show you State's Exhibit 53.

2 MR. DICKERSON: If I could, ma'am. Thank you.

3 Q Is that at 8:04 p.m.; is that correct?

4 A Yeah, it's marked as 2004. Yeah.

5 Q 2004, marked as 2004, 8:04 p.m. What does it say there?

6 A 705/3DP40 per picture texted will be Ceasar Valencia.

7 Q That individual that you saw in that picture that day, is that the  
8 same individual you see here in court today?

9 A Yes.

10 Q Same one you've identified?

11 A Yes.

12 Q The defendant?

13 A Yes.

14 Q Same individual who pointed the gun at you?

15 A Yes.

16 Q And as this process goes on, where does the rest of the night  
17 go for you on May 19th, 2016?

18 A The rest of the night is -- I have to book the -- the two that took  
19 off with the moped. This is all pretty much turned over to detectives at  
20 that point.

21 Q So detectives come down ?

22 A [No audible response.]

23 Q Is that a yes?

24 A Yes.

25 Q Does crime scene investigations come down?



1 A Yes.

2 Q And what do crime scene investigators or crime scene  
3 analysts do?

4 A They preserve the scene and collect things for court.

5 Q Do you have contact with the crime scene analyst that comes  
6 down to the scene?

7 A Yes.

8 Q What, if any, contact -- what contact is it that you have with the  
9 crime scene analyst?

10 A I give her a rundown of what the -- of what occurred and the --  
11 the area that it occurred in.

12 Q Was that Crime Scene Analyst Olivia Klosterman?

13 A Yes.

14 Q So you tell her your experience?

15 A Yes.

16 Q She take photos?

17 A Yes.

18 Q Photos of the scene?

19 A Yes.

20 Q Photos of you?

21 A Yes.

22 Q Photos of the gun?

23 A Yes.

24 Q I want to show you --

25 MR. DICKERSON: If I may approach, Your Honor?

1 THE COURT: Is this to lay the foundation for seeking  
2 admission of the photos?

3 MR. DICKERSON: It would be.

4 THE COURT: You may approach.

5 MR. DICKERSON: Thank you very much.

6 THE COURT: Have you shown the photos to opposing  
7 counsel?

8 MR. DICKERSON: I have shown these photos to opposing  
9 counsel previously when we first started the trial. Same photos that  
10 existed before. All right.

11 BY MR. DICKERSON:

12 Q Officer Jacobitz, I have here State's exhibits, several of them,  
13 that I want you to identify. Several of these have been admitted, but I  
14 just want to make sure that we have everything admitted through you  
15 and that you are verifying exactly what it was that you saw here.

16 THE COURT: And, counsel, why don't we have him lay the  
17 foundation for each exhibit and then move to admit as to each exhibit.

18 BY MR. DICKERSON:

19 Q So I have here State's Exhibits 18 through 26; will you please  
20 take a look through those?

21 A Yes, sir. [Witness complies.]

22 Q And also State's Exhibit 17. You had an opportunity look  
23 through each one of those exhibits?

24 A Yes.

25 Q Do you recognize what was depicted in those exhibits?

1 A Yes.

2 Q What was it?

3 A That was the -- the alleyway and the -- the building where he  
4 dropped the firearm.

5 Q There at 610 North 10th?

6 A Yes.

7 Q And these all fairly and accurately depict that alleyway as it  
8 appeared?

9 A Yes, except for the time of day or the darkness.

10 Q What do you mean by that?

11 A I mean, it's -- the -- the analyst that came to take pictures, this  
12 was much later, so it's quite a bit darker.

13 Q Okay. So we'd probably be able to tell from CAD what time  
14 she actually arrived; is that right?

15 A Yes.

16 Q Okay. Again, those have all been admitted. I want you to  
17 take a look now at the State's Proposed Exhibit 16 -- 15 and 16; do you  
18 recognize those two images, sir?

19 A Yes.

20 Q How is it that you recognize them?

21 A It's the same location.

22 Q The back alley or the side alley of 610 North 10th Street?

23 A Yes.

24 Q So those fairly and accurately, save for darkness time of day,  
25 reflect 610 North 10th Street, that alleyway, as it appeared on

1 May 19th, 2016?

2 A Yes.

3 MR. DICKERSON: State's going to move for the admission of  
4 State's Exhibits 15 and 16. And also, for the record purposes to make  
5 sure that we are okay with all State's Exhibits 17 through 26, which have  
6 already been admitted, we're going to make sure that we move for  
7 admission of all of those exhibits at this time as well.

8 MR. COYER: No objection.

9 BY MR. DICKERSON:

10 Q Officer Jacobitz, I also want you to take a look at --

11 THE COURT: Counsel. So Exhibits 15 and 16, you're moving  
12 for admission; is that correct?

13 MR. DICKERSON: That's correct.

14 THE COURT: Okay.

15 MR. DICKERSON: And to clear up any confusion that we  
16 may have had as far as the other exhibits, 17 through 26, I just want to  
17 make sure that they are moved for admission at this point in time so the  
18 record is clear.

19 THE COURT: Okay. So 15 and 16 are admitted, hearing no  
20 objection from defense counsel. Exhibits 17 through 26 have previously  
21 been admitted, but to the extent they may not have been, hearing no  
22 objection from defense counsel, they are also admitted.

23 [State's Exhibit Nos. 15 through 26 admitted.]

24 BY MR. DICKERSON:

25 Q Then here, looking at State's Proposed Exhibits 27

1 through 30, take a look at those and tell me if you recognize those items  
2 here.

3 A [Witness complies.] Yes, sir.

4 Q How is it that you recognize State's Proposed Exhibits 27  
5 through 30?

6 A It's the same alleyway.

7 Q 610 North 10th Street?

8 A Yes, sir.

9 Q Except for the time of day, the lighting, does that fairly and  
10 accurately depict that alleyway at 610 North 10th Street as it appeared  
11 on May 19th, 2016?

12 A Yes, sir.

13 MR. DICKERSON: State moves for the admission of State's  
14 Proposed Exhibits 27 through 30.

15 THE COURT: Counsel, any objection?

16 MR. COYER: No. No objection.

17 THE COURT: Exhibits 27 through 30 are admitted.

18 [State's Exhibit Nos. 27 through 30 admitted.]

19 BY MR. DICKERSON:

20 Q Since we are talking about it, as far as being able to tell when  
21 the crime scene analyst arrived, do crime scene analysts have a  
22 distinctive call sign?

23 A They do.

24 Q It'd be a C followed by a number usually?

25 A I believe so, yes.

1 Q I want to show you, publishing again, State's Exhibit 53. Here  
2 at 23:36:44 hours, says USAR, is that arrived?

3 A Yes.

4 Q C23?

5 A Yes.

6 Q And that's there at 10th Street?

7 A Yes.

8 Q Which was the -- the place of the call?

9 A Yes.

10 Q 625 North 10th Street?

11 A Yes.

12 Q Which would have been the location for any arriving unit that  
13 said they were arriving at that time?

14 A Yes.

15 Q So that time period, 2336, that's 11:36?

16 A Yes.

17 Q So the crime scene analyst arrived several hours after this  
18 event that's occurred?

19 A Yes.

20 Q So those pictures that we just saw that you just looked at, for  
21 example, State's Exhibit 16, these depict the lighting as it appeared just  
22 before midnight?

23 A Yes.

24 Q Not at 7:48 p.m.?

25 A Yes.

1 MR. DICKERSON: Permission to approach, Your Honor?

2 THE COURT: Yes.

3 BY MR. DICKERSON:

4 Q Officer Jacobitz, if you could, please take a look at these  
5 exhibits, Proposed Exhibits 40 through 45, and tell me if you recognize  
6 those proposed exhibits.

7 A [Witness complies.] I look tired. Yes.

8 Q How it is that you recognize State's Proposed 40 through 45?

9 A That's me.

10 Q That's you?

11 A Yes, sir.

12 Q As you appear on May 19th, 2016?

13 A Yes.

14 Q Do those photos fairly and accurately depict you that evening?

15 A Yes.

16 MR. DICKERSON: State moves for the admission of State's  
17 Proposed 40 through 45.

18 THE COURT: Any objection?

19 MR. COYER: No, Your Honor.

20 THE COURT: So admitted.

21 [State's Exhibit Nos. 40 through 45 admitted.]

22 BY MR. DICKERSON:

23 Q Publishing State's Exhibit 40; this is you?

24 A Yes.

25 Q This was taken by the Crime Scene Analyst Olivia

1 Klosterman?

2 A Yes.

3 Q This is depicting your uniform that you're wearing that  
4 evening?

5 A Yes.

6 Q That's, in fact, what you were wearing when you got into this  
7 whole foot pursuit and everything started?

8 A Yes.

9 Q Throughout the night?

10 A Yes.

11 Q During the entire event?

12 A Yes.

13 Q Standard issue tan Las Vegas Metropolitan Police Department  
14 uniform?

15 A Yes.

16 Q And in addition to taking those pictures, she took those scene  
17 pictures, and were there some that have a cone in them?

18 A Yes.

19 Q Tell me about that.

20 A The cone is going to indicate where the weapon was dropped.

21 Q Okay.

22 A Or where it was found, or where I pointed it out to be at that  
23 time.

24 Q And so you showed that to the crime scene analyst?

25 A Yes.



1 Q Showing you State's Exhibit 27, now admitted; do you see that  
2 cone in here?

3 A Yes.

4 Q Is it right there at the center of the photograph?

5 A Yes.

6 Q State's Exhibit 28, does that also depict that same cone?

7 A Yes.

8 Q You indicated that this is where the firearm was?

9 A Yes. Keep in mind, that's an approximate area --

10 MR. COYER: Objection. It misstates the previous  
11 testimony --

12 THE WITNESS: -- of where I brought the analyst back to --

13 THE COURT: I'm sorry -- counsel.

14 An objection is being made --

15 THE WITNESS: Sorry.

16 THE COURT: -- so you have to hold your testimony.

17 What's the objection, counsel?

18 MR. COYER: It misstates the previous testimony where he  
19 gave three answers to what the cone represented.

20 THE COURT: Restate your -- before I rule --

21 MR. DICKERSON: I -- I'll restate, Your Honor.

22 THE COURT: Okay. Restate your question.

23 BY MR. DICKERSON:

24 Q What does that orange cone right there represent?

25 A Where the firearm was located.

1 Q Okay. Ceasar Valencia's firearm?

2 A Yes.

3 Q Where it ultimately landed?

4 A Yes.

5 Q Okay. And now, there was another cone, as well, laid out; is  
6 that correct?

7 A I believe so.

8 Q Showing you here State's Exhibit 22; do you see that cone?

9 A Yes.

10 Q The bottom of State's Exhibit 22; what is this location we're  
11 looking at?

12 A Represents my location when I observed Ceasar Valencia  
13 with the firearm.

14 Q So the cone at the bottom of the stairs represents your  
15 location?

16 A Yes.

17 Q And the other cone that we looked at in the alleyway or this  
18 walkway represents the area where the gun was?

19 A Yes.

20 Q Showing you State's Exhibit 29; does that appear to be that  
21 area where you indicated the gun was, looking backwards?

22 A Yes.

23 Q Again, these photos were taken just before midnight?

24 A Yes.

25 MR. DICKERSON: Permission to approach, Your Honor.

1 THE COURT: Yes.

2 BY MR. DICKERSON:

3 Q Officer Jacobitz, please have a look at State's Proposed  
4 Exhibits 31 through 39; tell me if you recognize what's depicted there.

5 A [Witness complies.] Yes.

6 Q You do recognize what's depicted in State's Proposed  
7 Exhibits 31 through 39?

8 A Yes.

9 Q How is it that you recognize what's depicted in these exhibits?

10 A That's the firearm I'm talking about.

11 Q The firearm that you recovered?

12 A Yes.

13 Q And these photos fairly and accurately depict that firearm that  
14 Ceasar Valencia pointed at you and dropped on May 19th, 2016?

15 A Yes.

16 MR. DICKERSON: State moves for the admission of State's  
17 Proposed Exhibits 31 through 39.

18 THE COURT: Any objection?

19 MR. COYER: No, Your Honor.

20 THE COURT: Exhibits 31 through 39 will be admitted.

21 [State's Exhibit Nos. 31 through 39 admitted.]

22 MR. DICKERSON: Thank you, Your Honor.

23 BY MR. DICKERSON:

24 Q Showing you State's Exhibit 31; that's the firearm?

25 A Yes.

1 Q It's a revolver?

2 A Yes.

3 Q State's Exhibit 33, what is that we're seeing there, sir?

4 A It's a .38 Special. That's the caliber of round, the serial  
5 number, where it's made, and the manufacturer.

6 Q Specifically --

7 A That's the front of the firearm.

8 Q The front of the firearm, indicating the caliber of the gun is  
9 a .38 Special?

10 A Yes.

11 Q And State's Exhibit 38, what is that, sir?

12 A That's a measurement of the firearm with the rounds that were  
13 inside.

14 Q So this gun was loaded?

15 A Yes.

16 Q With five live rounds?

17 A Yes.

18 Q Officer Jacobitz, did you bring any evidence with you to court?

19 A Yes.

20 Q Yesterday?

21 A Yesterday, yes.

22 Q I have here State's Proposed Exhibit 4 and State's Proposed  
23 Exhibit 1.

24 MR. DICKERSON: May I approach, Your Honor?

25 THE COURT: Yes.

1 BY MR. DICKERSON:

2 Q First, State's Proposed Exhibit 4, is this an item of evidence  
3 that you brought to court?

4 A This one is -- is an item that I brought, yes.

5 Q Okay. Specifically, an item that is in a Metropolitan Police  
6 Department evidence bag?

7 A Yes.

8 Q But you didn't impound this item?

9 A No.

10 Q You just checked it out from the evidence vault to bring it to  
11 court?

12 A Yes.

13 Q Okay. And this -- does this appear in the same fashion as it  
14 was when you picked it up from the evidence vault?

15 A Yes.

16 Q Okay. State's Proposed Exhibit 1, I want you to have a look at  
17 that and tell me if you recognize that.

18 A Yes.

19 Q What do you recognize that to be?

20 A It's my packaging of the firearm.

21 Q The firearm that we just saw the photos of?

22 A Yes.

23 Q Did you actually impound that firearm?

24 A Yes.

25 Q And how do you know that you impounded it, other than

1 maybe recalling?

2 A Because the -- the stamp on here is in my writing.

3 Q And do you have personal knowledge of you impounding this  
4 firearm?

5 A Yes.

6 Q You said the stamp on here; what is it that you're talking  
7 about, the stamp on here?

8 A There's a label indicating what's inside the package.

9 Q Okay. And what does it say?

10 A Las Vegas Metropolitan Police Department Evidence. And it's  
11 LVMPD 133. That it would be the document number.

12 Q Okay. And this particular package is, in fact, the packaging  
13 that you wrote up for impounding that Taurus revolver?

14 A Yes.

15 Q From May -- that you collected that was pointed at you from  
16 May 19th, 2016?

17 A Yes.

18 MR. DICKERSON: State moves for the admission of State's  
19 Proposed Exhibit 1 as packaged. And we'll move to open it and  
20 individually mark the items inside.

21 THE COURT: Any objection, counsel?

22 MR. COYER: No.

23 THE COURT: No objection. State's Exhibit 1 is admitted.

24 [State's Exhibit No. 1 admitted.]

25 BY MR. DICKERSON:

1           Q     Okay. Showing this to the ladies and gentlemen of the jury,  
2 can you explain to them what it is that you've labeled here and how you  
3 labeled it?

4           THE COURT: You know, counsel, how much longer do you  
5 have with this witness?

6           MR. DICKERSON: I'd say we can take a lunch break right  
7 now, Your Honor.

8           THE COURT: Okay. Why don't we do our afternoon lunch  
9 break right now. And this will be a one-hour lunch break.

10           During this recess you are admonished not to talk or converse  
11 among yourselves or with anyone else on any subject connected with  
12 this trial, or read, watch, or listen to any report or commentary on the trial  
13 or any person connected with this trial, by any medium of information,  
14 including, without limitation, the social media, text, newspapers,  
15 television, the Internet, and radio; do not visit the scene of any of the  
16 events mentioned during the trial, undertake any investigation; do not do  
17 any posting or communications on any social networking sites or do any  
18 independent research, including Internet searches, or form or express  
19 any opinion on any subject connected with the trial until the case is  
20 finally submitted to you.

21           We'll be in recess for one hour.

22           [Jury recessed at 1:26 p.m.]

23           THE COURT: We'll be in recess for one hour.

24           [Court recessed at 1:27 p.m. until 2:35 p.m.]

25           [Outside the presence of the jury.]

1 THE COURT: Please be seated. Is there any housekeeping  
2 matters we need to take care of?

3 MR. DICKERSON: Nothing from the State, Your Honor.

4 THE COURT: Defense?

5 MR. COYER: No, Your Honor.

6 THE COURT: All right.

7 MR. COYER: You're still going on direct, right?

8 MR. DICKERSON: Yeah.

9 MR. COYER: I'll just want a little time to set up the courtroom  
10 before our cross, Judge. Just to --

11 THE COURT: Before the cross?

12 MR. COYER: Just to get the exhibits in order --

13 THE COURT: Okay.

14 MR. COYER: -- and things like that.

15 THE COURT: All right. That's fine. How much longer do you  
16 think you have with this witness, Mr. --

17 MR. DICKERSON: 15 minutes probably.

18 THE COURT: That's fine. I'm going to bring the jury in. And  
19 can everybody hear me?

20 MR. DICKERSON: Yes.

21 THE COURT: I'm trying to speak into the microphone.

22 [Jury reconvened at 2:36 p.m.]

23 THE COURT: Sir, I remind you you're still under oath.

24 THE WITNESS: Yes, sir.

25 THE COURT: Thank you.



1 MR. DICKERSON: May I continue, Your Honor?

2 THE COURT: Yes.

3 MR. DICKERSON: May I approach?

4 THE COURT: Yes.

5 **DIRECT EXAMINATION (CONT.)**

6 BY MR. DICKERSON:

7 Q Officer Jacobitz, I have in my hand what's now been admitted  
8 as State's Exhibit 1. You indicated that this was the Taurus .38-caliber  
9 revolver that you impounded on May 19th, 2016; is that correct?

10 A Yes.

11 Q And that's what's contained here in this bag?

12 A Yes.

13 Q If you could please explain to the ladies and gentlemen of the  
14 jury how it is this bag is marked and what we're seeing here?

15 A Yes, sir. Numerically ordered, No. 1 will be the revolver --  
16 actually, let's start up top there. We got the date, the time it was -- or the  
17 type -- time in possession, event number, evidence of a felony crime  
18 was marked, my initials and --

19 Q If you could turn this way so the people at the end can see you  
20 as well.

21 A Yes, sorry. My initials and Chris's initials, my signature.  
22 Suspect is listed as Ceasar Valencia, his ID number, charge is assault  
23 with a deadly weapon on a police/ex-felon in possession of firearm.

24 Q Can you sit down --

25 THE COURT: Counsel, you need to take a --

1 MR. DICKERSON: And can we --

2 THE COURT: We need to take a five-minute recess.

3 MR. DICKERSON: Can we have a brief bench conference,  
4 Your Honor?

5 THE COURT: No. We're going to take a five-minute recess.

6 Ladies [sic], we're going to take a short recess at this time.  
7 During this recess, you're admonished not to talk or converse among  
8 yourselves or with anyone else on any subject connected with this trial,  
9 or read, watch, or listen to any report or any commentary on the trial or  
10 any person connected with this trial by any medium of information,  
11 including without limitation through social media, text, newspapers,  
12 television, the Internet, and radio; do not visit the scene of any of the  
13 events mentioned during the trial or undertake any investigation; do not  
14 do any posting or communications on any social networking sites or do  
15 any independent research, including Internet searches, or form or  
16 express any opinion on any subject connected with the trial until the  
17 case is finally submitted to you.

18 We'll be in a 10-minute recess, please.

19 [Jury recessed at 2:40 p.m.]

20 THE COURT: Officer, sir, could you please hand me that bag,  
21 please?

22 THE WITNESS: Yes, sir.

23 THE COURT: Thank you. I apologize.

24 During this officer's testimony regarding the State's Exhibit 1, it  
25 was -- I heard him say that on the marking on the front of the package,

1 ex-felon in possession of firearm. Did I hear that correctly?

2 MS. PLUNKETT: That's what I heard, Judge.

3 MR. DICKERSON: I don't know, Your Honor. I -- that's what  
4 it says on the package. I assume that that's what he read.

5 THE COURT: Okay. Did I hear that correctly, counsel?

6 MR. DICKERSON: I assume so --

7 THE COURT: Is that what he --

8 MR. DICKERSON: -- Your Honor.

9 THE COURT: -- just testified to, ex-felon in possession of a  
10 firearm?

11 MR. DICKERSON: Your Honor, there's been no evidence that  
12 the defendant is an ex-felon, that he has any --

13 THE COURT: Okay. Counsel --

14 MR. DICKERSON: -- felonies.

15 THE COURT: -- I'm asking a question.

16 MR. DICKERSON: It is, yes.

17 THE COURT: Was that his testimony before this jury ex-felon  
18 in possession of firearm?

19 MR. DICKERSON: I believe so, Your Honor.

20 THE COURT: Okay. What's the defense's position on this?

21 MR. COYER: Judge, may I approach and take a glance at the  
22 label, please?

23 THE COURT: Sure.

24 MR. COYER: Thank you, Judge.

25 MR. DICKERSON: I would note, Your Honor, that this is

1 already admitted into evidence, this bag, that label, what he read.

2 There's no evidence that Ceasar Valencia is a felon. That's not what he  
3 said.

4 THE COURT: Okay. Counsel, you need to look at an appeal  
5 called *State vs. Courtney*. In that particular appeal, inadvertently on the  
6 jury instructions, I believe, that were sent back to the jury, somebody  
7 had written Mr. Courtney's two prior convictions. The supreme court  
8 reversed saying that was impermissible, was prejudicial to the  
9 defendant.

10 MR. DICKERSON: It's very different than what we're seeing  
11 here, Your Honor.

12 THE COURT: No. What we're seeing here is we just notified  
13 the jury that ex-felon in possession of a firearm. That's what we've just  
14 heard testimony from.

15 First of all, I'm -- I'm not understanding -- we've gone to great  
16 lengths to file a second amended information specifically so the jury  
17 doesn't know about this charge.

18 MR. DICKERSON: That piece of evidence is in evidence.

19 THE COURT: Okay.

20 MR. DICKERSON: It's been admitted, Your Honor, without  
21 objection. All right. So we're already there. So what was said is just  
22 what's on that label. Now, the question is, do we not give that bag back  
23 to the jury?

24 THE COURT: No. That's not the question, counsel. The  
25 question is do I declare a mistrial. That's the --

1 MR. DICKERSON: There's no grounds --  
2 THE COURT: -- question.  
3 MR. DICKERSON: -- for a mistrial at this time.  
4 THE COURT: Okay.  
5 MR. DICKERSON: That's an admitted piece of evidence  
6 without objection, Your Honor. And there's no evidence that's been  
7 introduced that Ceasar Valencia is a felon, okay. So we -- we haven't  
8 even come to --  
9 THE COURT: What were you reading from on this -- I  
10 apologize, sir. You did nothing wrong.  
11 THE WITNESS: Yes, sir.  
12 THE COURT: You're just -- was responding to a question.  
13 But I need to know on the front of this package where does it say --  
14 because I can't see it and I apologize.  
15 THE WITNESS: These are anticipated charges right here.  
16 THE COURT: Right.  
17 THE WITNESS: So this is just going to the evidence vault so  
18 they know what we're looking into, the -- the crimes that we're  
19 anticipating.  
20 THE COURT: So -- and this is what you were testifying to?  
21 THE WITNESS: Yes. I was just reading directly off of there.  
22 THE COURT: Counsel for defense.  
23 MR. COYER: Yes, Your Honor.  
24 THE COURT: You made no objection to this exhibit; is that  
25 correct?

1 MR. COYER: Judge, what I understood the exhibit to be was  
2 the gun.

3 THE COURT: Okay.

4 MR. COYER: Okay. That's why when I was asked by the  
5 State to approach and open the bags in my possession for chain of  
6 custody -- not my possession, by my presence for chain of custody  
7 purposes, I thought the exhibit was the gun. I don't know why a bag  
8 would be an exhibit. I don't -- that doesn't make any sense to me. So  
9 my understanding is the gun is the exhibit, not the bag.

10 MR. DICKERSON: They were never opened, Your Honor.  
11 And so the way that evidence is introduced is first the --

12 THE COURT: I know how evidence is introduced, counsel.

13 MR. DICKERSON: Yes, Your Honor. For the record --

14 THE COURT: Okay.

15 MR. DICKERSON: -- I mean, that's -- this is my mindset and  
16 this is why we're at the point we are. That evidence is introduced by  
17 introducing the entire package and then opening it and marking the  
18 pieces. And that's --

19 THE COURT: You're correct. But --

20 MR. DICKERSON: -- what we had here.

21 THE COURT: -- the -- the exhibit is the gun, not the bag.

22 MR. DICKERSON: And --

23 THE COURT: The bag is just to be used to demonstrate  
24 chain of custody, to show that this is the same gun that this officer  
25 secured at the scene. And sometimes forensics has to open the bag

1 and has to run tests and things of that nature. But the bag itself is not  
2 the exhibit. The exhibit is what's contained in the bag, the gun.

3 MR. DICKERSON: With all due respect, Your Honor, it's an  
4 exhibit. It is an exhibit in this case and it is an exhibit in basically every  
5 criminal case where you have evidence impounded.

6 THE COURT: Okay.

7 MR. LEXIS: Your Honor, if I --

8 THE COURT: Where -- what's the State's position?

9 MR. DICKERSON: State's position is that we proceed and if  
10 you feel the need to have a -- an instruction that they disregard that, I  
11 think that that could cure it. But at this point in time, there's been no  
12 evidence that Ceasar Valencia is, in fact, a felon. There's been no  
13 evidence of his bad character. And with that, Your Honor, I think that  
14 the -- the only other thing we could do is not send the bag back to the  
15 jury.

16 MR. LEXIS: Your Honor, that bag has been admitted in  
17 evidence. The only thing that has been done is a portion of the bag has  
18 been read that is in evidence. That's -- that -- nothing is -- that is a  
19 mistrial when something is in evidence -- it's already in evidence.  
20 There's no mistrial that can arise out of that. Again, though, if they want  
21 to cure it with instruction, no objection.

22 THE COURT: Okay. Defense, they make a -- a correct  
23 statement. Were you shown this bag prior to it being admitted?

24 MS. PLUNKETT: I was not seen the -- shown the bag.

25 THE COURT: Mr. Coyer?

1 MR. COYER: I was shown the bag. And like I previously  
2 stated, my understanding was the gun was in the bag, and that the gun  
3 was the exhibit.

4 THE COURT: Okay.

5 MR. COYER: I did not even read the label, quite frankly, Your  
6 Honor.

7 THE COURT: All right. What's your position? Their -- their  
8 position, mistrial is not necessary, a curative instruction would -- any  
9 prejudice incurred by your -- by your client would be cured by a limiting  
10 instruction.

11 MR. COYER: I don't believe that that's true. I believe that's  
12 why we bifurcated the case to begin with, to have the ex-felon in  
13 possession charge separate. And it -- if the State wants to take the  
14 position that I somehow made a mistake by, you know, agreeing to  
15 admit a bag when I thought I was admitting a gun, you know, that's the  
16 record that the State is left with. At this point, I took a moment while the  
17 jury was leaving to discuss it with my client. And we are of the same  
18 mindset, that at this point, we have to request a mistrial, Judge.

19 THE COURT: Okay.

20 MR. DICKERSON: And --

21 THE COURT: We'll be in -- I'm sorry, counsel, is there  
22 anything in addition you'd like to argue?

23 MR. DICKERSON: Yes, Your Honor. First of all, it's not the  
24 State's position that Mr. Coyer made a -- a mistake. It's the State's  
25 position that it was just strategic in that he was agreeing to -- or not



1 objecting to the gun coming into evidence.

2 Now, it has -- it hasn't come in with objection and it hasn't  
3 come in -- and all that's been read is what's already in evidence. At this  
4 point in time, we don't have any basis to have a mistrial, because there's  
5 nothing prejudicial as far as Ceasar Valencia himself saying that he's a  
6 felon.

7 Here -- here's what it is, Your Honor. The fact of the matter is  
8 that merely because that is written on the bag, that can be cured with a  
9 curative instruction, absolutely. There's no undue prejudice to him  
10 because the reason for bifurcation is so that his priors are not introduced  
11 into this proceeding.

12 THE COURT: No, counsel.

13 MR. DICKERSON: His priors have not been introduced. And  
14 just like the case that you had mentioned, Your Honor, that issue was  
15 the defendant's priors being given to the jury at -- with the jury  
16 instructions. That is not what we have here.

17 MR. LEXIS: Here we have an individual reading off an exhibit  
18 that has been admitted into evidence.

19 THE COURT: Okay. I'm going to take a brief recess.

20 [Court recessed at 2:48 p.m. until 2:59 p.m.]

21 [Outside the presence of the jury.]

22 THE COURT: Court's back in session. Let's get the  
23 defendant, please.

24 Let the -- shucks. Let the record reflect the presence of  
25 counsel for the State, counsel for the defense, and the defendant, and

1 the jury is not present at this time.

2 Mr. Dickerson, you're one of the attorneys that practice in front  
3 of me regularly; is that correct?

4 MR. DICKERSON: I am.

5 THE COURT: Mr. Coyer, is that also correct?

6 MR. COYER: That is also correct.

7 THE COURT: And have you heard me at pretrial conferences  
8 and calendar call say -- ask for counsel to get together and go over  
9 exhibits and see if there's any issues with the exhibits? Do I say that  
10 regularly in my courtroom?

11 MR. COYER: I -- I have heard that many times, Judge.

12 THE COURT: Mr. Dickerson?

13 MR. DICKERSON: Yes. And we provided defense counsel  
14 opportunity to view all of our exhibits in this case.

15 THE COURT: Okay. And Mr. Dickerson, were you aware that  
16 the front of this document says ex-felon -- or it's abbreviated, but  
17 ex-felon in possession of a firearm?

18 MR. DICKERSON: I was not aware of that, Your Honor.

19 THE COURT: Well, I'm not mad. I'm not blaming anybody. I  
20 just want to point this out to counsel.

21 Mr. Coyer, did you review the front of the exhibit prior to it  
22 being admitted?

23 MR. COYER: I laid eyes on it, but I did not read the label.

24 THE COURT: Okay. Well, here's the problem, Mr. Coyer,  
25 quite frankly. Where we are right now is the bag has been admitted

1 without objection. Once the bag is opened, then the gun is going to be  
2 admitted. Okay. I -- in -- in some jurisdictions it's Exhibit 1 and 1A.  
3 Okay. If you had had an objection to the bag, you needed to have made  
4 your objection. Or if you had wanted to redact it, you needed to have  
5 made your objection.

6 Now, my procedure, typically, is after the officer opens the  
7 bag, I'm going to have -- I have my bailiff secure the weapon and make  
8 sure it's cleared. And I -- I don't know, in this jurisdiction, do you put a --  
9 a lock on it?

10 MR. DICKERSON: I -- I would imagine that there, at this point  
11 in time, may already be a zip tie in it.

12 THE COURT: I would imagine, but I know in some  
13 jurisdictions they actually put a -- a trigger lock on it. But if there is a zip  
14 tie, that's fine too. But I -- once he opens the bag and pulls it out, I'm  
15 going to have my bailiff -- I'm sorry, I'm going to have my marshal secure  
16 it. And then you can have him identify the weapon and move for its  
17 admission.

18 The weapon will be -- if -- if it's admitted, the weapon itself will  
19 be Exhibit 1A.

20 I'm denying your Motion for a Mistrial, counsel. Okay. I'm not  
21 going to declare --

22 MR. COYER: Judge --

23 THE COURT: -- a mistrial. Here's your options. You're --

24 MR. COYER: May I be heard --

25 THE COURT: I'm going to give you --

1 MR. COYER: -- on that issue --

2 THE COURT: -- some options.

3 MR. COYER: -- additionally?

4 THE COURT: This was a passing comment by the officer. I  
5 didn't let him -- here's what I'm going to rule. I will give a curative  
6 instruction if you request one. I'm not going to let the officer expand on  
7 his testimony. It was a -- I'm not going to let the State comment on it  
8 during closing argument. And I -- if you request, I will not have the bag  
9 itself go back with the exhibits. Okay.

10 So I don't know if you need a few minutes. But I'm going to  
11 deny your Motion for Mistrial. So here's what you need to decide, do  
12 you want a curative instruction? I've give one right -- well, I'll give one  
13 right now. You need to draft a curative instruction that you want. You  
14 need to -- obviously, if you go -- if you open the door and you go into it  
15 over -- on cross-examination, then I'm going to let the State expand on  
16 their -- on the testimony. But right now, I am anticipating I'm not allowing  
17 the State to ask any additional questions regarding that or comment in  
18 closing argument.

19 And then number two, do you want the bag itself to go back to  
20 the jury? Now, typically, it's always my understanding as to the gun -- as  
21 to the weapon itself, if the jury wants to see the weapon itself, the  
22 marshal will take it back to the jury and be present while they inspect it.  
23 Okay. That's how it -- I've always understood it to be. We just don't  
24 send the weapon back with the exhibits.

25 So I'm going to give you a few minutes to discuss it with your

1 client and co-counsel. If you want a curative instruction, give me -- write  
2 up something, have the State review it, and I'll give a curative  
3 instruction. If not, we'll -- you know, I don't know if you want to highlight  
4 it or not. But I am willing to give a curative instruction. So I'm going to  
5 give a -- give you a few minutes to discuss it and then let me know. But  
6 at this point I'm going to deny your Motion for a Mistrial.

7 [Court recessed at 3:05 p.m. until 3:08 p.m.]

8 [Outside the presence of the jury.]

9 THE COURT: One more thing, counsel.

10 Mr. Dickerson --

11 MR. DICKERSON: Yes, Your Honor.

12 THE COURT: -- the bag's been admitted. You don't need to  
13 go over everything on the front of the bag. I don't want to highlight  
14 anything on the bag, because it's not going to go back to the jury room.  
15 So I don't want them to wonder about the bag.

16 MR. DICKERSON: There will be no more comment on the  
17 bag.

18 THE COURT: All right. Mr. Coyer.

19 MR. COYER: Judge, the court, when this originally happened,  
20 entertained some argument and then you left the bench pretty quickly. I  
21 would like to complete the record on my --

22 THE COURT: Absolutely, counsel.

23 MR. COYER: -- Motion for Mistrial.

24 First of all, I would note that today is the first day that we were  
25 handed this exhibit list that was created by the court. Between 11:30

1 and today, and now, whatever time it is now, 3:10, I have not looked at  
2 this, because I have -- was familiar with -- thought I was familiar with the  
3 exhibits. Okay.

4 This exhibit list states that Exhibit No. 1 is the bag containing  
5 Exhibits 2 and 3, and Exhibit 2 is the gun. Okay. In every trial I have  
6 done, it's been done just like Your Honor described, where an evidence  
7 bag will be 1 and the contents will be 1A, 1B, whatever. Okay. The  
8 contents are what's relevant. The contents is typically what comes into  
9 evidence.

10 I did not read that label. And I did not know that I was  
11 approving that that bag would be going into evidence. So to the extent  
12 that we proceed, I think we need to proceed under the -- the true, you  
13 know, fact that if you want to say that I agreed to the bag coming in,  
14 that's fine. But I just want the record to be clear --

15 THE COURT: Yeah. What I said is you made no objection to  
16 the bag coming in. I have asked -- on each exhibit, I've asked have you  
17 had an opportunity to review the exhibit before its admission. I'm -- and  
18 you said that you had, that you had reviewed this bag before its  
19 admission. You then made no objection to the admission of the bag.

20 As far as what the exhibit list said, until it's actually admitted,  
21 it's informative. So if the gun becomes Exhibit 1A, that will be reflected  
22 on the exhibit list. I don't know how it's -- how it's proposed right now, or  
23 the gun could be Exhibit 2. It can be either one.

24 But from what I can tell to the -- my recollection is what has  
25 been admitted at this point has been the bag itself. Once the bag is

1 opened -- and I'm assuming the reason the bag has been admitted by  
2 the State is to demonstrate chain of custody. Okay. Then once the bag  
3 is opened, the -- whatever content is in the bag, in this particular case a  
4 firearm, that the State is then going to move for the admission of the  
5 firearm. It can be Exhibit 1A, it can be Exhibit 2, it can be whatever  
6 State marks it as.

7 But the State is not going to open this bag until he moves for  
8 admission. In other words, until the bag itself has been admitted, then  
9 he can -- he'll -- typically the State opens it, so --

10 MR. COYER: Your Honor, you're -- Your Honor is -- is saying  
11 that the exhibit has been admitted.

12 THE COURT: No.

13 MR. COYER: It -- it has not.

14 THE COURT: No, I'm not. That is not what I said counsel. I  
15 said the bag has been admitted --

16 MR. COYER: Right. That's --

17 THE COURT: -- as an -- as Exhibit 1.

18 MR. COYER: Right. That's what I meant. But the -- the  
19 reality of our exhibit list says that that's not true. Okay. It says it has not  
20 been admitted. So, you know, what I'm trying to get the court to  
21 understand is we had talked about these --

22 THE COURT: Okay. Hold on.

23 MR. COYER: -- items up here at the --

24 THE COURT: Mr. --

25 MR. COYER: -- at the bench --

1 THE COURT: Mr. Castle, has Exhibit 1, State's Exhibit 1  
2 been admitted into evidence?

3 THE CLERK: Yes, Your Honor.

4 THE COURT: According to my clerk, State's Exhibit 1 has  
5 been admitted.

6 MR. COYER: Okay. So --

7 THE COURT: Which is the bag.

8 MR. COYER: Right. And we'll --

9 THE COURT: With no objection from you.

10 MR. COYER: Okay. Then that's an error on my part, quite  
11 frankly. Let's be blunt about it.

12 THE COURT: At this point I -- I don't -- I --

13 MR. COYER: Okay.

14 THE COURT: I'm just trying -- my -- you wanted to make a  
15 more complete record.

16 MR. COYER: I do.

17 THE COURT: And I -- I want you to make as complete a  
18 record as you deem necessary.

19 MR. COYER: Thank you. So the second point that I want to  
20 make is when -- and Officer Jacobitz can verify this -- when he brought  
21 this evidence in off the record, the parties were at your clerk's bar there,  
22 he specifically asked, do you want me to open this now? And counsel  
23 said no, you know, we -- whoever decided not to do it at that point, that's  
24 why it wasn't done at that point.

25 THE COURT: I actually said I did not want it opened at that



1 time.

2 MR. COYER: Okay.

3 THE COURT: Counsel, Mr. Dickerson asked -- I think all  
4 parties were present, Do you want us to open it now or when the witness  
5 testifies? Something along that line. And my preference was to do it  
6 when the witness testified.

7 MR. COYER: Okay. And so the -- the third point --

8 THE COURT: Is that correct, Mr. Dickerson?

9 MR. DICKERSON: Correct, Your Honor.

10 THE COURT: I have a recollection of conversation to that  
11 effect. I don't know if it was on the record or not.

12 MR. DICKERSON: That is correct. I -- I don't know if it was  
13 on the record. I believe it probably was. But that was the conversation  
14 yesterday when the evidence came in yesterday and -- and we viewed  
15 the evidence all together yesterday.

16 THE COURT: All right. And again --

17 MR. COYER: I just have one more point to make, Your  
18 Honor.

19 THE COURT: And you can make it.

20 MR. COYER: To bring it full circle, okay, the third point deals  
21 with the prejudice of -- of what's happened. Okay. I don't care about the  
22 bag. Okay. I don't want the bag to go back to the jury, right, obviously.

23 THE COURT: Uh-huh.

24 MR. COYER: But the prejudice is that this witness, whose  
25 credibility is, quite frankly, on trial here, has told the jury by reading this

1 label --

2 THE COURT: Right.

3 MR. COYER: -- that my client is an ex-felon. It's not the bag.  
4 I don't care about the bag. What I care about is the words ex-felon  
5 came out of Officer Jacobitz's mouth.

6 THE COURT: All right.

7 MR. COYER: That's the prejudice here.

8 THE COURT: And there's case law that talks about passing  
9 comment, that if it's a passing comment in -- in relationship to prejudice.  
10 And that's why I'm giving you the option of asking for a curative  
11 instruction or not. In other words, if I give the curative instruction, you  
12 know, it will -- may highlight that testimony. If I don't give the curative  
13 instruction, it's a passing comment to which I'm not going to allow either  
14 party to expound on either in examination of the witness or in closing  
15 arguments.

16 So that's why I gave you the option, counsel. Do you want a  
17 curative instruction? And if yes, what do you want me to tell the jury  
18 as -- as a limiting instruction?

19 MR. COYER: And I am prepared to answer that question,  
20 Judge. I believe that the prejudice is so great that if we're not given a  
21 mistrial, I do not want either a curative instruction or a jury instruction,  
22 because it will draw attention to what is already, I believe, unfair  
23 prejudice.

24 THE COURT: Okay.

25 MR. DICKERSON: For the record, Your Honor, the only thing

1 I proposed to defense counsel for them to consider is that there could be  
2 a curative instruction along the lines of police officers' charging decisions  
3 are legal conclusion that cannot be considered as evidence by the jury  
4 for any purposes whatsoever.

5 THE COURT: Right. I'm inclined to give a curative  
6 instruction, but not a specific -- something along the lines what  
7 Mr. Dickerson just suggested.

8 Do you have some language you're proposing, Mr. Dickerson?

9 MR. DICKERSON: We could draw something up, Your  
10 Honor.

11 THE COURT: Why don't you do that. Again, this was a  
12 passing comment. So I don't think the prejudice is so great -- I don't  
13 want reference to the ex-felon in possession of a firearm, though.

14 MS. PLUNKETT: And, Judge, can I just add one more thing?

15 THE COURT: Sure.

16 MS. PLUNKETT: I believe it is a passing comment if this is a  
17 chain of custody witness. This is the complaining witness, a police  
18 officer, and the alleged victim here in this case. His -- Ceasar's guilt or  
19 innocence hinges on what the jury believes that comes out of Officer  
20 Jacobitz's mouth.

21 THE COURT: Okay. But --

22 MS. PLUNKETT: And they've heard him state that Ceasar is  
23 an ex-felon.

24 THE COURT: But counsel, I don't want to be mean, but  
25 neither you or Mr. Coyer objected to the testimony. When he made that

1 statement, you did not object.

2 MS. PLUNKETT: I --

3 THE COURT: That's why I recessed.

4 MS. PLUNKETT: I went to --

5 THE COURT: That's why I stopped it.

6 MS. PLUNKETT: -- stand up, but I was not -- I'm not the one  
7 who's going to be doing the cross on Officer Jacobitz.

8 THE COURT: Okay. You know what, I have not -- there's an  
9 old saying, you know, a lot of judges don't like frick-and-frack type of  
10 objections. And I've allowed both counsel to argue. Both Mr. Lexis and  
11 Mr. Dickerson have both done what we used to call frick and frack. I  
12 haven't -- I would -- I haven't stopped them, because I want both parties  
13 to make as good a record as they can.

14 But I stopped -- I took an immediate recess because neither --  
15 neither -- nobody objected to the testimony. And I didn't want him to ask  
16 a follow-up question. So that's why I took the recess, so I could address  
17 this issue with counsel.

18 So is there anything additional that you want to put on the  
19 record, counsel?

20 MR. COYER: Just with respect to the court's last comment  
21 about not objecting. And that is, I've had this case since 2016 and I've  
22 known the entire time my client was charged with that. Okay. So for me  
23 to hear that doesn't trigger anything too exciting in my mind as the  
24 defense attorney who's been representing this man for over a year. But  
25 when the jury hears that, it has a different effect. And I didn't object

1 because I didn't think twice about it, quite frankly, because I've known  
2 that for so long. And so that's the reason I didn't object.

3 THE COURT: And I'm not picking on either of you. I -- I --  
4 you may have had a strategic reason for not objecting. I don't know.  
5 You -- you know, I don't know why. But when I didn't hear an objection,  
6 that's when I immediately stopped the trial and -- and took a recess,  
7 because I didn't want any follow-up questions. All right.

8 MS. PLUNKETT: And just -- just one more thing. As I went to  
9 stand, I let out a sigh and my eyes met yours. And before I could  
10 indicate to Mr. Coyer, you had kind of gone through the recess. I believe  
11 Mr. Dickerson realized what happened immediately. We all kind of -- I  
12 thought it was a collective understanding. And I believed that you were  
13 taking the recess to not draw -- to not have us draw further attention.

14 THE COURT: That's not why I took the recess, counsel. I  
15 appreciate your observation. When I did not hear an objection, I did not  
16 want Mr. Dickerson to ask a follow-up question. And so I took a recess.  
17 I wanted -- I wanted it to be -- I was trying to limit the testimony the best I  
18 could.

19 Mr. Dickerson?

20 MR. DICKERSON: If Your Honor would like language for the  
21 court's --

22 THE COURT: Just hand it to me. I'm going to be in recess for  
23 a minute.

24 [Court recessed at 3:20 p.m. until 3:28 p.m.]

25 [Outside the presence of the jury.]

1 THE COURT: Remain seated.

2 Mr. Coyer.

3 MR. COYER: Yes, Your Honor.

4 THE COURT: The State has provided me with a curative  
5 instruction. What the State has proposed is as follows:

6 A law enforcement officer's charging decision is a legal  
7 conclusion that shall not be considered as evidence.

8 I actually believe this is a -- an -- a very favorable curative  
9 instruction, because it doesn't highlight the ex-felon in possession of a --  
10 in possession of a firearm. I believe it's a correct statement.

11 However, if you -- I am inclined to give this curative instruction.  
12 But if you do not want it, I will not give it.

13 MR. COYER: And, Your Honor, I -- I want to be as clear as I  
14 can for the record. Okay. And I had previously stated my position with  
15 respect to the curative instruction. Having heard the State's proposal, I  
16 don't believe it's sufficient to cure the prejudice. So I have to just submit  
17 it to the court whether or not you want to give that instruction.

18 THE COURT: Do you have a curative instruction that you  
19 want to offer?

20 MR. COYER: I don't believe it's possible to offer one that can  
21 cure the taint, Your Honor.

22 THE COURT: Okay. So the answer to my question is, do you  
23 want me to give the proposed curative instruction proffered by the State?

24 MR. COYER: And again, I will leave that to the court  
25 because --

1 THE COURT: No. That's not --

2 MR. COYER: -- I can't --

3 THE COURT: My -- if -- here -- it's -- it's a direct question,  
4 counsel. I will give this instruction if you request it. If you do not agree  
5 to this instruction, I am not going to give it. So do you want me to give  
6 the following curative instruction:

7 A law enforcement officer's charging decision is a legal  
8 conclusion and shall not be considered as evidence.

9 Do you want me to give that instruction or not?

10 MR. COYER: We are not requesting a curative instruction.

11 THE COURT: Thank you. Make this a court's exhibit, please.

12 Okay. So when we reconvene with the jury, the police officer  
13 will be on the stand. Mr. Dickerson, you'll continue your examination.  
14 No further highlighting the evidence bag. You're going to have him open  
15 the bag. I'm going to have my marshal be sure that the gun is -- the  
16 weapon is cleared. And then you can have him testify, lay the  
17 foundation as to the weapon, and move for the admission of the weapon  
18 itself.

19 MR. DICKERSON: Yes, Your Honor.

20 THE COURT: Now, you need to tell me if you are -- if you  
21 want to offer the State's Exhibit 1A or how you want to offer it, but we're  
22 going to have to tag it.

23 MR. DICKERSON: And it's State's position when I move in  
24 the bag, it's the bag and the contents, obviously, since they can't be  
25 separated at that point in time. So I would ask that, first of all, everything

1 in there be admitted into evidence, which I -- I would have asked that it  
2 already is. And then mark them A, B, C.

3 THE COURT: 1A, 1B? All right.

4 MR. DICKERSON: Yes.

5 THE COURT: But the contents have not been admitted yet.  
6 The only thing that has been admitted at this point is the bag, because  
7 the bag has not been opened yet. Do you agree with that, counsel?  
8 Well, whether you agree with it or not, that's my --

9 MR. DICKERSON: Correct.

10 THE COURT: -- that's how I perceive it. The only thing that's  
11 been admitted at this point is the bag. Once you open the bag, you have  
12 to lay the foundation based on the officer's personal knowledge and then  
13 move for the admission of the contents of the bag.

14 MR. DICKERSON: Yes, Your Honor.

15 THE COURT: Sir, do you understand what's going on, sir?

16 THE WITNESS: I'm learning.

17 THE COURT: Okay. So you're not going to testify any further  
18 or make any further comments regarding the evidence bag; is that  
19 understood?

20 THE WITNESS: Yes, sir.

21 THE COURT: Okay. And -- or any reference regarding  
22 ex-felon in possession of a firearm.

23 THE WITNESS: Yes, sir.

24 THE COURT: Is that understood, sir?

25 THE WITNESS: Yes, sir.



1 THE COURT: Thank you. Let's call the jury. Bring the jury in,  
2 please.

3 [Jury reconvened at 3:33 p.m.]

4 THE COURT: Let the record reflect the presence of counsel  
5 for the State, counsel for the defense, the defendant, and the jurors.

6 Mr. Dickerson, you may proceed.

7 MR. DICKERSON: Thank you, Your Honor.

8 **DIRECT EXAMINATION (CONT.)**

9 BY MR. DICKERSON:

10 Q Officer Jacobitz, do you have a pair of scissors up there?

11 A Yes.

12 Q Using those scissors, will you go ahead and open up, on a  
13 fresh seam, State's Exhibit 1.

14 A Yes.

15 Q For the record, have you cut what appears to be the bottom of  
16 State's Exhibit 1?

17 A Yes. It's not all the way through either.

18 Q Will you please remove the contents of State's Exhibit 1?

19 A Yes.

20 THE COURT: Mr. Stevenson, can you make sure the weapon  
21 is cleared?

22 THE MARSHAL: Yes, sir. It's clear.

23 THE COURT: Thank you.

24 BY MR. DICKERSON:

25 Q And it appears that there is a firearm and a manila envelope;

1 is that correct?

2 A Yes.

3 Q Do you recognize these two items?

4 A Yes.

5 Q What do you recognize these two items to be?

6 A The firearm used in the crime, and there's -- there's rounds in  
7 the envelope.

8 Q That envelope contains live rounds?

9 A Yes.

10 Q And will you go ahead and open that envelope, the manila  
11 envelope; what is it that that manila envelope contained?

12 A Five rounds.

13 Q Now, are these the rounds and the firearm that you  
14 impounded on May 19th, 2016?

15 A Yes.

16 MR. DICKERSON: State moves for the admission of the  
17 contents of State's Exhibit 1, being the gun as State's Exhibit 1A, and  
18 the rounds individually as 1B, 1C, 1D, 1E, and 1F.

19 THE COURT: Any objection from defense?

20 MR. COYER: No objection to the contents of the bag.

21 THE COURT: Okay. So --

22 MR. DICKERSON: And I would also ask for just purposes of  
23 having it here, that we mark the -- and admit the manila envelope that  
24 the bullets were contained in as an exhibit of -- of this State's Exhibit 1,  
25 as well, Your Honor.

1 THE CLERK: Can we just do it collectively, the bullets back in  
2 the envelope and make that 1B?

3 THE COURT: Can we do -- does any -- does the defense or  
4 the State have any objection that the round -- that the five rounds of  
5 ammunition be -- be placed back in the small manila envelope and that  
6 be Exhibit 1B, and the weapon be Exhibit 1A?

7 MR. DICKERSON: I have no objection to that as long as we  
8 can secure the bag and the bullets in a separate evidence bag for the  
9 court, like a plastic bag.

10 THE COURT: Defense, do you have any objection to that?

11 MR. COYER: No, Your Honor.

12 THE COURT: That will -- that will be the order.

13 MR. DICKERSON: Thank you.

14 THE COURT: So the weapon will be Exhibit 1A and the five --  
15 and the envelope containing the five rounds of ammunition will be  
16 designated as 1B, recognizing that it's the five rounds of ammunition,  
17 which is the exhibit.

18 [State's Exhibit 1A and 1B admitted.]

19 MR. DICKERSON: Okay.

20 THE COURT: That's fine. Okay. Thank you, counsel.

21 MR. DICKERSON: Thank you, Your Honor.

22 BY MR. DICKERSON:

23 Q Show you this firearm. This is .38-caliber firearm?

24 A Yes.

25 Q Same one we saw in the pictures?

1           A     Yes.

2           Q     The same one that was pointed at you at 610 North 10th  
3 Street?

4           A     Yes.

5           Q     By Ceasar Valencia?

6           A     Yes.

7           Q     And those bullets were the bullets that were in that weapon?

8           A     Yes.

9           Q     Thank you.

10           THE COURT: Can you return the exhibit to my clerk, please?

11           MR. DICKERSON: Yes, Your Honor.

12           THE COURT: And -- and the rounds of ammunition.

13           MR. DICKERSON: Will you please pick those up and put  
14 those in the bag.

15           THE COURT: There are five rounds?

16           MR. DICKERSON: Thank you.

17           THE WITNESS: Yep.

18           MR. DICKERSON: State will pass the witness.

19           THE COURT: Cross-examination by the defense.

20           MR. COYER: Yes, Your Honor. May I just take a moment to  
21 acquire some exhibits?

22           THE COURT: Yes.

23                     [Pause in proceedings.]

24           MR. COYER: May I proceed, Your Honor?

25           THE COURT: Yes, please.

1 **CROSS-EXAMINATION**

2 BY MR. COYER:

3 Q Officer -- is it Jacobitz?

4 A Yes.

5 Q Good afternoon. I want to take you back to the barbecue,  
6 May 19th, 2016. Okay?

7 A [No audible response.]

8 Q You have to answer audibly.

9 A Yes.

10 Q Okay. So you and Officer Houston are leaving the barbecue  
11 with full bellies of food, correct?

12 A Yes.

13 Q And you hadn't even really gotten out of the parking lot and  
14 you look right in front of you, and you see through the houses a moped  
15 going down an alleyway; is that fair?

16 A Yes.

17 Q Is it going -- is it traveling south or north?

18 A North.

19 Q Can you see that, sir?

20 A It's a little small. Yeah.

21 Q I think this is the closest zoomed-in one we have.

22 A It's okay.

23 Q So was it the alley between 9th and 10th where you saw the  
24 moped?

25 A It is.

1 Q Is that where my -- the tip of my pen is there?

2 A Yeah. If you back it up -- or if you bring it down south.

3 Q Okay.

4 A And move it up north just one. There you go.

5 Q So that's about where you and --

6 A Approximately, yes.

7 Q Approximately where you and Officer Houston would have

8 seen the moped traveling north?

9 A Yes.

10 Q Okay. Now, you testified on direct that it was traveling at a

11 high rate of speed, correct?

12 A Yes.

13 Q Okay. Now, what, in your description, is a high rate of speed

14 for a moped?

15 A It was just based on -- just based on -- on looks. It looked like

16 it was going pretty fast.

17 Q Okay.

18 A It's --

19 Q You didn't have time to, you know, point a radar at it or clock it

20 or anything, right?

21 A No.

22 Q Sorry?

23 A No.

24 Q Okay. And do alleyways have speed limits posted in them?

25 A No.

1 Q Okay. So you and Officer Houston pulled out and came up  
2 and eventually turned onto Wilson; is that right?

3 A Yes.

4 Q Okay. And at that point, you see the moped again; is that  
5 right?

6 A Yes.

7 Q Okay. Where was it the second time you saw it?

8 A Somewhere in between 10th and 11th street on Wilson,  
9 heading eastbound.

10 Q Somewhere in this area here where my pen is?

11 A Yes.

12 Q Okay. Now, this area here, the corner -- the southwest corner  
13 of Wilson and 11th is the area where you and Officer Houston attempted  
14 to do a vehicle stop, correct?

15 A Yes.

16 Q Okay. And this building in here that we're talking about is the  
17 apartments where you testified that the driver of the moped pulled in and  
18 stopped at a gate, right?

19 A Yes. That general vicinity, yes.

20 Q Okay. At which point would you say -- now, you're driving the  
21 vehicle; let's start there, right?

22 A Yes.

23 Q Officer Houston is riding passenger and doing radio duties,  
24 correct?

25 A Yes.

1 Q Okay. So since you're driving, you obviously have to see  
2 where you're going, correct?

3 A Yes.

4 Q You have to watch where you're going, correct?

5 A Yes.

6 Q At what point from this right-hand turn into this parking lot here  
7 do you get your best look at the driver of the moped? And specifically,  
8 I'm talking about the driver's face.

9 A On the turn onto 11th, as well as the stop in front of the  
10 apartment.

11 Q Okay. So the moped stopped in front of the apartment?

12 A Yeah. Remember, this calibration is off here.

13 Q Yeah, I know.

14 A Okay.

15 Q But I -- I'm going to go by my -- the tip of my pen just so we  
16 can both agree on where -- where we're looking. Okay?

17 A Uh-huh.

18 Q So the moped stopped at some point and then went into this  
19 apartment?

20 A Yes. Pulled into the parking lot there.

21 Q Okay. And so where was your patrol vehicle at the time that  
22 that occurred?

23 A Right behind it. Also in the parking lot.

24 Q Okay. On 11th or in the parking lot here?

25 A Well, when we came to a complete stop and actually stopped



1 the vehicle, we were -- I was in the parking lot with -- with Ceasar.

2 Q Okay. Were you directly behind the driver of the moped?

3 A Excuse me?

4 Q I'm trying to figure out how you saw his face.

5 A Well, he's on a moped. He just turned around and looked  
6 over his shoulder and I was directly behind him.

7 Q Okay. So is your testimony that the best view you got of the  
8 driver's face in this area is --

9 A Yes.

10 Q -- when he looked over his shoulder?

11 A Yes.

12 Q Okay. And at that point, you could see the clothing the driver  
13 was wearing, correct?

14 A Yes.

15 Q Okay. And you could see that the driver had a hat on,  
16 correct?

17 A Yes.

18 Q Okay. Were you able to tell the height at that point when he  
19 was still seated on the moped?

20 A Approximate height, yes.

21 Q Okay. Same thing with weight?

22 A Approximate.

23 Q Okay.

24 A Everything is a guess when it comes to that.

25 Q I'm sorry?

1           A     Everything is a guess based on your -- my training and  
2 experience.

3           Q     We talked a little bit about the lighting around this time of day.  
4 And you testified that it was get -- starting to get dark; is that right? But it  
5 was still light out?

6           A     It was approaching dark, right.

7           Q     Okay. Would you say it was dusk?

8           A     Sure.

9           Q     Okay. If you were driving a vehicle, would you have your  
10 headlights on?

11          A     Not necessarily.

12          Q     Okay. Would you pull someone over if they did not have their  
13 headlights on?

14          A     Only if it's actually dark out.

15          Q     Well, I know. I'm talking about based on the lightness that it  
16 was during the timeframe we're talking about.

17          A     No.

18          Q     Okay. And you got within 10 feet of the moped when it  
19 stopped at this apartment gate up here, right?

20          A     What was the first part of your question?

21          Q     You got within 10 feet of it, was your testimony?

22          A     Approximate, yeah.

23          Q     Okay. And did -- did you get out of the car at that point?

24          A     Yes.

25          Q     Okay. Did you, like, just step out of the door? Did you

1 actually leave the vehicle and --

2 A I remember being approximately halfway between the car

3 and -- and him.

4 Q Okay.

5 A I was approaching him to talk to him.

6 Q Okay. And then at that point, the moped went north, correct?

7 A Yes.

8 Q Up here to -- to Wilson, right?

9 A Yes. It had to go around that brick -- brick retainer wall and

10 then back onto the street or the sidewalk.

11 Q Is there a wall here where my pen is?

12 A No. That's not --

13 Q My pen is --

14 A That's not a wall. But you see where the apartment is? All

15 around the wall to the sidewalk is -- right where -- all around the

16 apartment to the sidewalk is a wall.

17 Q Is where my pen -- follow my --

18 A Yeah.

19 Q -- the head of my pen, is that a wall?

20 A Yes, sir. It's like a two, three-foot wall.

21 Q Okay. So it went around that onto Wilson and then came

22 down this alley between 10th and 11th; is --

23 A Yes.

24 Q Is that right?

25 A Yes.

1 Q And, obviously, at some point we get down to here, which is  
2 clearly marked on the map, which is 610 North 10th Street, right?

3 A Yes.

4 Q Okay. And so you're following -- you're -- you're following the  
5 head of my pen here. This is the area we're talking about here, right?

6 A Yes.

7 Q Okay. This is where the driver of the moped dumped the  
8 moped and got off the moped, correct?

9 A Approximate area, yes.

10 Q Okay. So where in this square -- and I know it's tricky  
11 because your screen is not calibrated right, but where in this square  
12 approximately was the moped dropped?

13 A Just east of the vehicle that's on the screen.

14 Q This vehicle here where my pen head is?

15 A Yes. Yes. Just off the alleyway and -- and behind the vehicle.

16 Q So about here?

17 A Somewhere in that vicinity, maybe a little north of, just barely.

18 Q Okay. So where did you pull the patrol vehicle in -- in?

19 A Back -- let me see here, if I can do this. It's -- so somewhere  
20 in between these two with the hood pulled into this -- this parking lot. So  
21 it was catty-corner in the alleyway, facing southbound.

22 Q Okay. So is -- is this about the right area where my pen head  
23 is?

24 A I would go a little more east -- more -- close -- right in there.  
25 That's -- that's probably better area right there.

1 Q Okay. And the vehicle's pointed south. So you'd be on the  
2 driver's side here and Houston would be over here, right?

3 A Yes.

4 Q Okay. Driver of the moped drops the moped, starts running  
5 toward this area here, right?

6 A Yeah. He drops the moped while it's rolling right -- right there.  
7 Yeah.

8 Q Okay. Now, you mention that he dropped it near dumpsters;  
9 are these dumpsters here?

10 A If -- if you follow the wall, the south wall, all the way towards  
11 the alleyway --

12 Q Uh-huh.

13 A -- you see the little square closest to the alleyway?

14 Q Right here --

15 A That's a -- that's an --

16 Q -- where I'm --

17 A -- indent for a --

18 Q Where I'm --

19 A -- dumpster.

20 Q -- where I'm circling?

21 A Yes.

22 Q Okay.

23 A Indent for a dumpster right there.

24 Q How far would you say the driver got away from you before  
25 you left the vehicle and engaged in the pursuit?

1           A     When I left the vehicle, he was approximately in the area of  
2 the stairs to the alleyway.

3           Q     Okay. Given that we can't really see the stairs on this picture,  
4 can you estimate for me the actual distance between where he was and  
5 when you got out of the vehicle?

6           A     That approximate distance is going to be somewhere  
7 around 20, 30 feet.

8           Q     Okay. You proceeded to engage in a foot pursuit, correct?

9           A     Yes.

10          Q     Did you call out over the radio traffic at that point that you  
11 were in a foot pursuit and give a description or anything like that?

12          A     I don't recall if it was me or Officer Houston, but yes.

13          Q     Okay. Somebody did?

14          A     Somebody did.

15          Q     Okay. I'll -- I'll represent to you we heard Officer Houston  
16 testify that he was a little bit behind you because he had to get out of the  
17 passenger side and go around. Does that --

18          A     Yes.

19          Q     -- comport with your recollection?

20          A     Yes.

21          Q     Okay.

22          A     I do believe there were also cars in there, but I -- I can't  
23 really -- I think there were cars parked in there also that he had to go  
24 around.

25          Q     Here -- in this area here?

1 A Somewhere, yeah.

2 Q This parking lot?

3 A Yeah. Yes. North, right -- right up in the north corner there.

4 Q Okay.

5 A So he got stuck in there a little bit.

6 Q All right. So now, this is what's been previously admitted as

7 State's 23, I believe; you recognize this, right?

8 A Yes.

9 Q Okay. And you testified a little bit about what that orange

10 cone represented. Do you recall that?

11 A Yes.

12 Q What does that represent?

13 A The approximate distance when I encountered Ceasar with

14 the firearm.

15 Q Okay. And I know you -- you -- you're making a special effort

16 to keep saying Ceasar, you know, and I'm saying the suspect. This is

17 when you first saw the gun?

18 A It was somewhere in this vicinity. I -- I believe I was stepping

19 onto the steps, but that's where they put the cone.

20 Q This is the approximate area --

21 A Approximate.

22 Q -- where you first saw the gun? Okay. Now, this cone wasn't

23 there when this incident occurred, right, obviously?

24 A No.

25 Q Okay. When -- were you present when these cones and

1 things were placed?

2 A I don't believe I was, no.

3 Q Okay. So how would the person who placed these cones  
4 know where to place them?

5 A They were given a run-through of -- of basically what  
6 happened, of the situation.

7 Q And is that the person you mentioned on direct who goes by  
8 the name of Olivia Klosterman?

9 A Yes.

10 Q Did you speak with her personally?

11 A About what?

12 Q About where to put cones and what to take pictures of?

13 A I don't recall if -- if we actually talked about that or if it was  
14 passed down to her. I don't recall.

15 Q Okay. Who would -- who would it have been passed down to  
16 her from?

17 A I don't know. I don't know if I directly talked to her about  
18 where to place cones or anything like that. I don't recall it at all.

19 Q You have no memory of talking with Ms. Klosterman about  
20 where to place cones?

21 A Not a whole lot of it. I didn't -- I don't think I had -- had that  
22 much interaction with her.

23 Q Okay. Would the CSI person normally be the person to place  
24 the cones when they're taking photographs?

25 A Yes.



1 Q Okay. As you sit here today, you don't recall talking to her at  
2 all?

3 A I -- I don't recall how in depth our conversation was or how -- I  
4 don't really recall --

5 Q Okay.

6 A -- the interaction at all.

7 Q Okay. Let's just do one step at a time. Do you recall speaking  
8 with her at all on May 19th, 2016?

9 A I -- I don't really recall it.

10 Q Okay.

11 A I don't really remember it.

12 Q Now, this is what's been previously entered as State's 17.  
13 This is, basically, the same area, but we're, like, up a little higher looking  
14 down the little breezeway or whatever you want to call that, right?

15 A Yes.

16 Q Okay. So that's from the bottom of the stairs. And that, at the  
17 very bottom of this picture here, is the top stair; is that right?

18 A Yes.

19 Q Okay. Now, there's obviously a fence here, correct?

20 A Yes.

21 Q Okay. And based on State's 23, there appears to even be,  
22 like, a little pony wall where the three steps go up, correct?

23 A Yes.

24 Q Okay. And then we see up here, in the upper right-hand mid  
25 corner, what appears to be a structure, a residence, right?

1           A     Yes.

2           Q     It's got the number 61 up at the top of it?

3           A     Yes.

4           Q     Okay. Now, you mentioned that it was perhaps divine  
5 intervention that you didn't get shot that night, correct?

6           A     Yes.

7           Q     Okay. If you were here in the approximate area of this orange  
8 cone and you saw a firearm, couldn't you have just moved over in this  
9 area behind this residence and protected yourself?

10          A     If it wasn't for my forward momentum, maybe. I was in full foot  
11 pursuit. We try to -- it's hard to stop.

12          Q     Okay. So you were, however, facing a set of stairs, right?

13          A     Yes.

14          Q     And you did proceed up those stairs, correct?

15          A     Yes.

16          Q     Okay. And you even testified on direct, you remember you  
17 had already drawn your -- your gun and it was kind of moving up and  
18 down, because you were going upstairs, right?

19          A     Right.

20          Q     Correct?

21          A     That and running, yes.

22          Q     Okay. Would you agree that from here, from this angle here  
23 that we're looking at in State's 23 and based on the lighting, we can't see  
24 those posts that, at one point, probably supported a chain-link fence like  
25 the one in the picture, correct?

1           A     You talking about the ones on the south wall or?

2           Q     Yes. The south wall.

3           A     Right. Yeah. They're a little hard to see from here.

4           Q     Can you see them at all in this picture?

5           A     Can't see much in this picture.

6           Q     Okay.

7           A     It's a little blurry.

8           Q     I'll show you State's 17; can you see those posts in

9     State's 17?

10          A     Still hard to see.

11          Q     But in fairness, it was a little lighter when you were actually

12     there in that area, correct?

13          A     Yes.

14          Q     Okay. Do you recall how many posts there were going down

15     that south wall?

16          A     I know there were at least three, but I'm guessing there were

17     around five.

18          Q     Okay. I'm going to show you State's 29 for the record; can

19     you see that okay?

20          A     I see it, yes.

21          Q     Okay. So in this -- in this picture here, State's 29, you can see

22     at least three of those metal posts that you're talking about, right?

23          A     Yes.

24          Q     Okay. And there's an orange cone there situated next to the

25     one that's toward the front of the picture, correct?

1           A     Yes.

2           Q     Now, this angle is looking down toward where you were --  
3 where you were standing, correct?

4           A     This is looking back towards the alleyway.

5           Q     Right.

6           A     Yes.

7           Q     Because you referred to this as the south wall, correct?

8           A     Yes.

9           Q     Okay. And on this picture, the wall is on the other side,  
10 correct?

11          A     Yes.

12          Q     Okay. So this is, obviously, looking back toward where you  
13 were standing, right?

14          A     Yes.

15          Q     All right. The firearm that you were shown and that you were  
16 asked about, that was a revolver, correct?

17          A     Yes.

18          Q     Okay. Was it a single action or double-action revolver?

19          A     It's a double action.

20          Q     Is that a guess or are you certain?

21          A     I'm guessing. You -- you pull the -- the hammer back, double  
22 action.

23          Q     What's the difference between single action and double  
24 action?

25          A     I -- I wouldn't be able to explain it to you right now.

1 Q Okay. Did you hear the suspect pull the trigger back and cock  
2 the gun?

3 A No.

4 Q Okay. When you were demonstrating to the jury the physical  
5 maneuverings of the suspect, you kept your hand down at your hip to  
6 describe where the gun was when you saw it, correct?

7 A Yes.

8 Q Okay. So the suspect never raised his arm up high like he  
9 was pointing it intentionally out in front of his face, correct?

10 A No.

11 Q Okay. And you've been trained in firearms, correct?

12 A Yes.

13 Q Okay. At -- at any of your training, have you ever shot from  
14 the hip?

15 A Yes.

16 Q Okay. Are you a good shot from the hip?

17 A No.

18 Q Okay. It's harder to shoot from the hip than from pointed out  
19 in the front of you, correct?

20 A Yes.

21 Q Okay. And in addition to the gun being in the hip area, this  
22 person that you saw was running away from you, correct?

23 A Yes.

24 Q Okay. How fast were you running?

25 A I don't know. That -- I was in a sprint.

1 Q Okay. So --  
2 A As fast as I possibly could at the time.  
3 Q Close to full speed?  
4 A Yes.  
5 Q Okay. And were you gaining on the suspect or was he  
6 getting --  
7 A Yes. Yes.  
8 Q -- away from you?  
9 A Yes.  
10 Q You were gaining on him?  
11 A Yes.  
12 Q Okay. So he was at -- at a run as well, correct?  
13 A Yes.  
14 Q Okay. And you stated that this person turned around to their  
15 left, correct?  
16 A Yes.  
17 Q And the gun was in their right hand, correct?  
18 A Yes.  
19 Q So is it accurate -- if I can sort of recreate it, that his body  
20 position, as you saw the gun, would have been about like this, with the  
21 gun at this level?  
22 A Yes.  
23 Q Okay. Kind of the back -- kind of toward you and kind of his  
24 side toward you, correct?  
25 A Yes.

1 Q Okay. And the gun was about hip level, correct?

2 A Yes.

3 Q Okay. Obviously if the gun had been up high, he wouldn't

4 have hit his arm on one of those low posts, right?

5 A Possibly.

6 Q Okay. So the elbow hits the post and the gun comes out,

7 right?

8 A Yes.

9 Q Did you ever hear a shot go off?

10 A No.

11 Q Okay. Did you ever hear any threats like, I'm going to shoot

12 you?

13 A No.

14 Q You testified that the gun continued moving after it left his

15 hand?

16 A Yes.

17 Q And that it was continuing to move in the direction that he

18 was --

19 A Him and the gun.

20 Q -- running; is that right?

21 A Yes. Yes.

22 Q Okay. So I want to take you back to State's 29. Okay. You

23 didn't put that cone there, right?

24 A No.

25 Q That cone appears in that picture to be directly in front of or

1 beside the post, correct?

2 A Yes.

3 Q Okay. So fair to say that's not an accurate depiction of where  
4 the gun would have been located after it fell out of the suspect's hand?

5 A No. It's general vicinity.

6 Q Okay. And again, you don't know how the person who put  
7 that cone there, you don't know why they put it there, correct? Or who  
8 told them to put it there?

9 A No. That's -- no.

10 Q Okay. Because as you recall, you didn't have a conversation  
11 with Ms. Klosterman, right?

12 MR. DICKERSON: Misstates testimony.

13 THE COURT: Counsel, restate your question.

14 BY MR. COYER:

15 Q You don't recall having a conversation with Ms. Klosterman,  
16 correct?

17 A No.

18 Q Okay. And, specifically, I mean on May 19th, 2016?

19 A Right.

20 Q Okay. Now, we heard some of the audio dispatch when you  
21 were testifying on direct exam, correct?

22 A Yes.

23 Q Okay. And we heard somebody call out a description of this  
24 suspect who ran on the moped and dumped the moped and -- right?

25 A Yes.



1 Q And the first voice that we heard was Officer Houston,  
2 correct?  
3 A Yes.  
4 Q And the description was HMA, right, part of it -- the first part  
5 was HMA, right?  
6 A Yes.  
7 Q And you know what that means, right?  
8 A Yes.  
9 Q Hispanic male adult?  
10 A Yes.  
11 Q Dark hat or black hat, right?  
12 A Yes.  
13 Q Red striped shirt, correct?  
14 A Yes.  
15 Q Dark pants, correct?  
16 A Yes.  
17 Q 5'7" ?  
18 A Yes.  
19 Q 160 pounds approximately?  
20 A Yes.  
21 Q Okay. Was there any other details given of that description  
22 that you recall?  
23 A Not that I recall.  
24 Q No mention of facial hair or goatees, correct?  
25 A I don't recall.

1 Q Okay. Do you recall hearing the audio from about an hour and  
2 a half ago?

3 A What we just talked about, yeah, the description that you just  
4 gave.

5 Q Okay. And there was no mention of facial hair, correct?

6 A I don't remember.

7 Q Okay.

8 MR. COYER: Court's indulgence.

9 Q Did you have the ability to state something over the audio  
10 while it was in a Code Red situation?

11 A Did I have the ability? Yes. Was it the right thing to do --

12 Q That's not what I asked you.

13 A -- and get on with my partner -- I'm let -- I'm allowing my  
14 partner to -- to use the radio traffic, considering he's out -- he's now  
15 chasing the suspect. So I don't want to interrupt that. Did I have the  
16 ability physically? Yes.

17 Q Do you recall the question?

18 A Yes.

19 Q Did you have the ability to do it?

20 A Yes.

21 Q Okay. We'll get into why you chose not to.

22 A Right.

23 Q But you had the ability to, correct?

24 MR. DICKERSON: Asked and answered.

25 THE COURT: Counsel, move on.

1 BY MR. COYER:

2 Q You heard Officer Houston give that description, correct?

3 A I may have, may have not. I was involved in my own incident  
4 on the other end.

5 Q Okay. You didn't tell anybody over the air at that point in time  
6 that this suspect had pointed a gun at you, correct?

7 A I don't recall.

8 Q Do you think that's useful information that your fellow officers  
9 would have like to have heard?

10 A I know we've said over the air. I don't know at what point, but I  
11 do know that I told him that there was a gun involved. And that was out  
12 there, so.

13 Q Okay. Once you saw the firearm, you stopped to retrieve it,  
14 correct? I'm sorry -- bad --

15 A I didn't --

16 Q Bad question. Once you saw the firearm hit the ground, you  
17 stopped pursuing so that you could stay with the firearm; is that --

18 A Preserve evidence, yes.

19 Q Okay. But then at some point that changed, correct?

20 A Yes.

21 Q At some point you decided to pick up the firearm, correct?

22 A Yes.

23 Q And go intervene with what you described as two people  
24 appeared to be stealing or drive -- or pushing away the moped; right?

25 A Yes.

1 Q Okay. So you said that that was based on training, to  
2 preserve a crime scene?

3 A Correct.

4 Q Well, the gun would have been laying in a crime scene of  
5 assault on a police officer, correct?

6 A Yes.

7 Q Okay. So my question to you is, you chose not to continue the  
8 pursuit with Officer Houston, because you stayed back to preserve the  
9 crime scene, correct?

10 A Yes.

11 Q And Officer Houston is potentially chasing someone who has  
12 a firearm, according to you, right?

13 A Yes.

14 Q Maybe one, maybe two guns, right?

15 A Yes.

16 Q So your partner is pursuing a possibly armed subject and you  
17 decide not to disturb this crime scene?

18 A Yes.

19 Q But when you see two guys in an alley stealing a moped, you  
20 choose to disrupt the crime scene and go intervene on the moped?

21 A No. My job was to contain the entire crime scene and that's  
22 what I did. My -- I did the best job I could by returning and getting that  
23 moped back as well.

24 Q You didn't pick up the firearm to go help Officer Houston  
25 chase the guy, correct?

1           A     No.

2           Q     You did pick up the firearm to go stop the moped from being  
3 stolen, correct?

4           A     Yes.

5           Q     Now, at some point over this audio that we discussed 3DP41  
6 says that -- that he knows an HMA matching that description. You heard  
7 that --

8           A     Yes.

9           Q     -- this afternoon, correct?

10          A     Yes.

11          Q     Okay. And who is 3DP41?

12          A     Officer Aaron Perez.

13          Q     Okay. So Perez comes over the air and says he knows an  
14 HMA matching that description that actually -- that lives in the area,  
15 correct?

16          A     Yes.

17          Q     Okay. And the description at that point is HMA, 5'7", black  
18 hat, red white -- red-striped shirt, dark pants, 160 pounds, right?

19          A     Yes.

20          Q     You've been in DTAC your whole career, right?

21          A     Most of it, yes.

22          Q     Doesn't that description fit an awful lot of people in that area?

23          A     Yes.

24          Q     And is it from Officer Perez that you hear the name Ceasar  
25 Valencia come over the air?

1           A     Yes.

2           Q     And it's at that point that not only you, but your fellow officers  
3 begin referring to the suspect as Ceasar Valencia, correct?

4           A     Yes.

5           Q     And then a little further along, at some point, somebody texts  
6 you a picture, right?

7           A     Yes.

8           Q     And do you recall who texted you that picture?

9           A     No.

10          Q     Do you recall if it was Officer Perez?

11          A     It may have been, but I'm not for sure. There were a lot of  
12 people involved at that point.

13          Q     Did he just text you the one picture?

14          A     I don't recall how many pictures he actually sent me. I just  
15 remember seeing a picture.

16          Q     Okay. Did you know when he sent you the picture that he was  
17 sending you the picture of -- that the person that he knew as Ceasar  
18 Valencia?

19          A     Say it again?

20          Q     When you got the picture from Officer Perez --

21          A     Uh-huh.

22          Q     -- did you know that he was sending you a picture of the  
23 person that he, Officer Perez, knew as Ceasar Valencia?

24          A     Yes.

25          Q     Okay. And then at that point, you stated that the picture you

1 saw on your cell phone was, indeed, the person who had pulled the  
2 firearm and pointed it at you, correct?

3 A Yes.

4 Q Okay. Now, from that point on, the name that's used over the  
5 airwaves is Ceasar Valencia, correct?

6 A Yes.

7 Q People are just using his name at that point; all of the officers  
8 involved begin using the name Ceasar Valencia, right?

9 A Yes.

10 Q Okay. He becomes the suspect, right?

11 A Yes.

12 Q Okay. And, in fact, at some point shortly after you identify the  
13 picture as the person who pulled a gun on you, another officer comes on  
14 over the air and says, We've got somebody down the street that meets  
15 that description, right?

16 A I don't recall.

17 Q You don't recall that?

18 A No. Possibly.

19 Q Would you recall it if you saw the CAD or heard the audio?

20 A Yes.

21 Q Okay.

22 MR. COYER: Court's indulgence.

23 May I approach, Your Honor?

24 THE COURT: Yes.

25 BY MR. COYER:

1 Q I'm approaching you, Officer, with State's 53, which is the  
2 CAD. I'll direct your attention to the top of the page there. Sorry, it's --

3 A That's okay. Which one? Okay.

4 Q Does that refresh your recollection?

5 A No.

6 Q Okay.

7 MR. COYER: Judge, I'm going to ask for the court's  
8 indulgence. I'm going to publish the audio that's been previously  
9 admitted at this time.

10 THE COURT: That's fine.

11 BY MR. COYER:

12 Q All right. I'm going to play some of audio from that evening.  
13 Okay?

14 A Yes.

15 [Audio played.]

16 MR. COYER: Hold on, back up.

17 [Audio played.]

18 Q All right. You heard that, right?

19 A Yes.

20 Q Okay. And that voice said, Be advised you have a BMA  
21 walking towards you. And he said, Red-striped shirt, dark hat, right?

22 A Yes.

23 Q Okay. Now, that fits at least part of the description that Officer  
24 Houston read out over the audio, correct?

25 A Yes.



1 Q I mean, dark hat, red-striped shirt, right?

2 A Yes.

3 Q But this person that was walking down the street in the area  
4 happened to be a BMA instead of an HMA, right?

5 A Yes.

6 Q And at that point, everybody already knew they were looking  
7 for Ceasar Valencia, right?

8 A Yes.

9 Q Have you ever had any difficulty distinguishing a light-skinned  
10 black male from a Hispanic male?

11 MR. DICKERSON: Relevance, Your Honor.

12 THE COURT: You can answer that question. Overruled.

13 THE WITNESS: No.

14 BY MR. COYER:

15 Q You recall my questions about being texted a photograph,  
16 right?

17 A Yes.

18 Q Okay. You were already referring to the suspect as Ceasar  
19 Valencia even before you got that photograph, right?

20 A I don't recall.

21 Q Because Officer Perez had said, I know a guy that lives in that  
22 area, and he gave you that name, right?

23 A Possibly.

24 Q Okay. Are you not sure or do you recall whether or not you  
25 were using the name -- not you, but the name Ceasar Valencia was

1 being bandied about before you saw the photograph?

2 A It could have been. I just don't recall.

3 Q Okay. Would looking at the CAD refresh your recollection?

4 A Possibly.

5 Q Okay.

6 MR. COYER: May I approach?

7 THE COURT: Yes.

8 THE WITNESS: Yes.

9 BY MR. COYER:

10 Q Does that refresh your recollection?

11 A Yes.

12 Q So the name Ceasar Valencia was being used on the  
13 airwaves even before you were texted the photograph, correct?

14 A Yes.

15 Q In your training and experience, what's the most suggestive  
16 kind of identification procedure?

17 A Procedure? I don't know what you're asking.

18 Q A show-up, right?

19 A Right.

20 Q You know what a show-up is, right?

21 A Yes.

22 Q What is it?

23 A It's when you -- you drive a suspect up in front of another  
24 vehicle who has the victim inside of it and they identify.

25 Q Someone is trying to make an identification and they only

1 have one option, right? Is this the guy?

2 A Yes.

3 Q That's a show-up, right?

4 A Yes.

5 Q That's essentially what you did with the photograph that was  
6 texted to you, right?

7 A Yes.

8 Q Eventually went back and you arrested the two individuals  
9 who appeared to be stealing the moped, right?

10 A Yes.

11 Q And then you took them to the city jail, right?

12 A Yes.

13 Q And you were at the city jail booking them in when the crime  
14 scene investigator arrived back at the original scene of 610 North 10th,  
15 correct?

16 A Possibly, yeah.

17 Q And that's why you weren't there, because you were booking  
18 two guys in at city jail, right?

19 A Could have been, yes.

20 Q Okay. Were you involved in the subsequent arrest of  
21 Mr. Valencia that happened a couple of days after May 19th, 2016?

22 A I did show up at the final arrest spot.

23 Q I'm sorry, at the what?

24 A I showed up at the final arrest location.

25 Q Okay. And for what purpose?

1           A     At this point, it was a -- it was a big operation as far as  
2     detectives and -- and officers from Downtown Area Command.  
3     Everybody was looking for him in reference to the crime.

4           Q     Everybody was looking for Ceasar Valencia, right?

5           A     Yes.

6           MR. COYER: Court's indulgence.

7           Q     So you did state that at one point you did show up at the  
8     May 21st arrest of Mr. Valencia, correct?

9           A     If that's the day it was, I -- yeah. Yes. That's the second  
10    event, yes.

11          Q     I'm going to show you State's 8; can you see that?

12          A     Yes.

13          Q     And is that what Mr. Valencia looked like on the day he was  
14    arrested?

15          A     Yeah. I don't recall if he had facial hair that long or not, but he  
16    looks like that, yeah.

17          Q     Would you agree, based on your experience of being a male,  
18    that that's more than two days of facial hair growth?

19          A     Yes.

20          Q     Okay. So if this face had a goatee on May 21st, this face  
21    would have had a goatee on May 19th, right?

22          A     Likely.

23          Q     Okay.

24          MR. COYER: We'll pass, Judge.

25          MR. DICKERSON: May we --

1 THE COURT: State have any redirect?

2 MR. DICKERSON: May we approach very briefly, Your  
3 Honor?

4 [Bench conference transcribed as follows:]

5 MR. DICKERSON: Just on the subject of -- I believe the  
6 door's been opened to us at least asking two questions. Were you  
7 familiar with Ceasar Valencia before this event, and had you ever seen a  
8 picture of Ceasar Valencia before this event. Given the fact that his  
9 name is being used on the radio, that's what they elicited, prior to ID, I  
10 think it becomes absolutely relevant to show how he had any knowledge  
11 of Ceasar Valencia.

12 MS. PLUNKETT: There was other officers.

13 THE COURT: I don't believe he opened the door. So I'm not  
14 going to allow any questioning on how he knew about Ceasar Valencia  
15 prior to the arrest. So I do not believe he opened the door. I'm not  
16 going to allow the questions.

17 MR. DICKERSON: Okay. Thank you, Your Honor.

18 [End of bench conference.]

19 **REDIRECT EXAMINATION**

20 BY MR. DICKERSON:

21 Q Officer Jacobitz, there was some talk about a -- a BMA,  
22 red-striped shirt; do you remember that?

23 A I don't really recall it. But now with the --

24 Q The conversation that you just had with defense counsel?

25 A Yes. Yes.

1 Q Showing you -- I'm sorry.

2 MR. COYER: Sorry, which way is the exhibit? Yeah, I  
3 probably have all of them. Yeah.

4 MR. DICKERSON: Thanks.

5 BY MR. DICKERSON:

6 Q Showing you State's Exhibit 53. Publishing that. I want to  
7 draw your attention to 20:08:37; do you see that there?

8 A Yes.

9 Q And what does that say?

10 A 3DP41/3 Baker 2, BMA, red-striped shirt is negative, 20 --  
11 2008 hours.

12 Q What does that indicate to you?

13 A That means that he -- the BMA was not who -- who they --  
14 who we were looking for.

15 Q And so we know HMA is Hispanic male adult; what's BMA?

16 A Black male adult.

17 Q Is -- are there other codes that are used to abbreviate race?

18 A Yes.

19 Q What else?

20 A WMA, white male adult; AMA, Asian male adult.

21 Q Okay. So in this case, this would be talking about a black  
22 male adult wearing a striped shirt?

23 A Yes.

24 Q Who checked negative?

25 A Right.

1 Q In fact, the description of the person was actually an HMA,  
2 Hispanic male adult?

3 A Yes.

4 MR. COYER: Objection. Foundation. This isn't the witness  
5 that made that call.

6 MR. DICKERSON: It was testified to at length on  
7 cross-examination.

8 THE COURT: What's your question, counsel?

9 MR. DICKERSON: In fact, the description of the person was  
10 an HMA.

11 THE COURT: You can answer.

12 THE WITNESS: Yes.

13 BY MR. DICKERSON:

14 Q And the person that pointed a gun at you in that back alley  
15 of 610 North 10th Street was what race?

16 A Hispanic male adult.

17 Q In fact, who was the person that pointed the gun at you at 610  
18 North 10th Street?

19 A Ceasar Valencia.

20 Q How sure are you of that?

21 A 100 percent.

22 MR. DICKERSON: State will pass the witness.

23 THE COURT: Any recross?

24 MR. COYER: Court's brief indulgence.

25 Briefly recross, Judge.

1 **RECROSS EXAMINATION**

2 BY MR. COYER:

3 Q Again, on May 19th, 2016, the first time you heard the name  
4 Ceasar Valencia --

5 MR. DICKERSON: Outside the scope, Your Honor.

6 THE COURT: You can ask the question. Overruled.

7 MR. COYER: Just foundational.

8 BY MR. DICKERSON:

9 Q Was when -- was when Officer Perez said that name out over  
10 the air, right?

11 A I believe so.

12 Q Okay. At 2002, which is 8:02, you came on the air and stated  
13 that the suspect had pointed a gun at you, right?

14 A I think it was around there, yeah.

15 Q But you didn't use those words. You said, Ceasar turned  
16 around and pointed a gun at me, right?

17 A I don't remember what I said on the radio that -- in reference  
18 to that.

19 Q Would looking at the CAD --

20 A Possibly. Possibly.

21 Q Would looking at the CAD refresh your memory?

22 A Yes.

23 THE COURT: You may approach.

24 MR. COYER: Sorry?

25 THE COURT: You may approach.



1 MR. COYER: Thank you. And this is State's 53, for the  
2 record.

3 THE WITNESS: What time are we looking at? This is 705  
4 saying it to me, or -- no, wait. I guess that's just the way that they're  
5 saying it, dispatch. But yes.

6 BY MR. COYER:

7 Q Does that appear to be an accurate reflection of what you  
8 said?

9 A Yeah. It could have been, yes.

10 THE COURT: Sir, did that refresh your recollection?

11 THE WITNESS: Not --

12 THE COURT: Yes?

13 THE WITNESS: Not really, but -- no.

14 MR COYER: Okay. Judge, I'll publish the audio at this time,  
15 with the court's permission.

16 THE COURT: That's fine.

17 [Audio played.]

18 BY MR. COYER:

19 Q That's your voice, right, Officer?

20 A Yes. Yes.

21 Q And this was at 2002, as reflected in the CAD --

22 A Yes.

23 Q -- that I just showed you, correct?

24 A Yes.

25 Q And it's 8:02 p.m., correct?

1           A     Yes.

2           Q     And that was after your fellow Officer Perez had used the  
3 name Ceasar --

4           A     Yeah.

5           Q     -- Valencia?

6           A     Yes.

7           MR. COYER: Pass.

8           THE COURT: Any additional questioning?

9                   **FURTHER REDIRECT EXAMINATION**

10          BY MR. DICKERSON:

11          Q     This occurred how close to Downtown Area Command?

12          A     Less than half a block.

13          MR. DICKERSON: No further questions.

14          THE COURT: Can this witness be excused?

15          MR. DICKERSON: Yes.

16          THE COURT: Defense?

17          MR. COYER: Yes, Your Honor. Oh, actually, Judge, may we  
18 approach?

19          THE COURT: Yes, you can.

20                   [Bench conference transcribed as follows:]

21          MR. COYER: Before we excuse the witness, I didn't see if the  
22 jury had any questions. I wanted to make sure --

23          THE COURT: Good point.

24          MR. COYER: -- to check.

25          THE COURT: Very good point.

1 MR. DICKERSON: I think that they -- they would need to  
2 raise their hand and indicate.

3 THE COURT: Yeah. And --

4 MR. DICKERSON: I don't think they need to be prompted.

5 MR. COYER: Yeah. I'm just not sure if --

6 THE COURT: Yeah. I don't see any hands.

7 MR. COYER: I'm not sure if they were told to raise their  
8 hands.

9 THE COURT: Let me -- okay.

10 MR. DICKERSON: Yeah, he'd be gone.

11 THE COURT: I don't see any hands.

12 [End of bench conference.]

13 THE COURT: Marshal -- oh, counsel approach. I'm sorry.

14 [Bench conference transcribed as follows:]

15 THE COURT: Okay. Just want to verify, you're watching the  
16 jurors and none of the jurors are raising their hands with any questions;  
17 is that correct?

18 THE MARSHAL: Yeah, they have -- not one of them has  
19 raised their hand, no.

20 THE COURT: Okay. I just want to put that on the record.  
21 None of the jurors have raised their hand indicating they want to ask a  
22 question. So I'm going to excuse the jury -- excuse the jury -- excuse  
23 the witness.

24 MR. DICKERSON: Thank you, Your Honor.

25 THE COURT: Thank you.

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[End of bench conference.]

THE COURT: Sir, thank you. And you are excused.

THE WITNESS: Thank you, sir.

MR. LEXIS: Judge, may we approach for a second?

THE COURT: Sure.

MR. LEXIS: Mr. Coyer.

MR. COYER: I'm sorry.

[Bench conference transcribed as follows.]

MR. LEXIS: Judge, my -- my next witness is going to be very quick and actually he needs to testify today. But I told Mr. Coyer too that I'm not going to go in depth in the second envelope. I'm basically going to lay the foundation that this belongs to this event and go straight to opening up. Because I'm assuming that Mr. Coyer doesn't want that second big manila envelope going back, like the first one's not going back, that way it can be paying attention on why the first one's --

THE COURT: What's in the second envelope?

MR. LEXIS: It's the drugs.

THE COURT: It's the what?

MR. LEXIS: It's the drugs. We're going to have the expert come in, obviously, to testify that it's meth, heroin, cocaine, but --

THE COURT: Is -- what's on the front of the envelope?

MR. COYER: And I -- again, I don't know the answer to that.

MR. LEXIS: It's just -- it's not -- there's nothing -- there's nothing bad on the front of the envelope, Judge. It's just the matter of the fact that if the first one is -- I'm -- I'm just saying for the defense --

1 THE COURT: No, no. I understand that.

2 MR. LEXIS: -- if the first one's not going back, then the

3 shouldn't -- the second one shouldn't be going back.

4 THE COURT: And -- okay. So in other words, when we send

5 the evidence back, we're not going to send either envelope back so as

6 to not highlight --

7 MS. PLUNKETT: Correct.

8 THE COURT: -- that one of the envelopes --

9 MS. PLUNKETT: No. Yes.

10 MR. LEXIS: Yes.

11 THE COURT: Is that agreeable, counsel?

12 MR. COYER: Yes.

13 THE COURT: Okay.

14 MS. PLUNKETT: Yes.

15 MR. DICKERSON: Absolutely.

16 THE COURT: And what is this witness's testimony going to

17 be? He's going to --

18 MR. LEXIS: Basically, he was there when the drugs were

19 found on the defendant. And I'm going to say that he saw them --

20 THE COURT: Okay. Let me --

21 MR. LEXIS: -- be [indiscernible] --

22 THE COURT: Let me see the front of the envelope, just --

23 okay. I'm going to conclude at 5:00 today. Can you get it -- are we

24 going to be able to get him in by 5:00?

25 MR. LEXIS: He -- I'm going to take 15 minutes. He just

1 needs to be done by today because he's --

2 THE COURT: Okay. Well, we'll -- we'll go a little beyond if --  
3 to try to get him in.

4 MR. LEXIS: Thank you very much.

5 MS. PLUNKETT: Who is it? Chad, who is it?

6 MR. LEXIS: What's that?

7 MS. PLUNKETT: Which officer?

8 MR. LEXIS: Milewski.

9 MS. PLUNKETT: Milewski.

10 [End of bench conference.]

11 THE COURT: State -- I'm sorry. State, call your next witness,  
12 please.

13 MR. LEXIS: Officer Milewski.

14 **DAVID MILEWSKI**

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

17 THE CLERK: Please be seated. Sir, will you please state and  
18 spell your name for the record?

19 THE WITNESS: David Milewski. D-A-V-I-D M-I-L-E-W-S-K-I.

20 **DIRECT EXAMINATION**

21 BY MR. LEXIS::

22 Q Sir, where do you work?

23 A I'm a sergeant with LVMPD's Gang Unit.

24 Q How long have you worked with Metro?

25 A 11 years.

1 Q Give us an overview of where you've been.

2 A I spent nine years of my career at Downtown Area Command  
3 working patrol, and spent two of those years in the Problem Solving Unit.

4 Q What's the Problem Solving Unit, sir?

5 A It's a plain-clothes squad that addresses crimes in each  
6 particular area command.

7 Q Where did you after that?

8 A After that, I promoted and was a patrol sergeant at Bolden  
9 Area Command.

10 Q And now you're in the Gang Unit?

11 A Yes, sir.

12 Q Back on May 21st, 2016, were you employed as a police  
13 officer and acting in the capacity as a police officer around 2:48 in the  
14 morning?

15 A Yes, sir.

16 Q And were you conducting some type of surveillance on  
17 someone known as a Ceasar Valencia around that time?

18 A I wasn't the one conducting the surveillance. But yes, I was --  
19 I was aware of the surveillance that was going on.

20 Q And did you eventually assist in the takedown of Ceasar  
21 Valencia?

22 A Yes, sir.

23 Q And did that ultimately conclude in a felony car stop at around  
24 Washington and Main Street?

25 A That's correct, sir.

1 Q And was he the passenger in that vehicle?

2 A Yes, sir.

3 Q Do you see Ceasar Valencia in court today?

4 A Yes, sir.

5 Q Can you please point to him and identify for me the color of  
6 the shirt he's wearing?

7 A Gentleman sitting right there at the table wearing a light-blue  
8 button-up shirt.

9 MR. LEXIS: Your Honor, let the record reflect the officer's  
10 identified the defendant.

11 THE COURT: The record will so reflect.

12 BY MR. LEXIS::

13 Q Were you then near another officer named Officer Lefebvre --

14 A Lefebvre.

15 Q -- however you -- how do you say it, sir?

16 A Lefebvre.

17 Q Lefebvre. Were you next to Officer Lefebvre at the time when  
18 he approached the defendant?

19 A Yes, sir.

20 Q And was a search incident to an arrest conducted on the  
21 defendant?

22 A Yes, sir.

23 Q And did you observe that search incident to an arrest?

24 A Yes, sir.

25 Q And what did you observe?



1           A     Officer Lefebvre retrieved purported methamphetamine,  
2 heroin, and cocaine from the subject's pocket, as well as a large sum of  
3 money.

4           Q     Okay. And did the narcotics come from the right jean pocket?

5           A     I believe the purported controlled -- at that time, purported  
6 control substance came from the right pants pocket, and the money was  
7 in the left pants pocket.

8           Q     And then -- did that money total around \$946?

9           A     I believe that's approximately how much it was.

10          MR. LEXIS: May I approach, Judge?

11          THE COURT: Yes.

12          BY MR. LEXIS::

13          Q     Sir, I'm showing you what has been marked as State's  
14 Proposed Exhibit 4; is that an evidence bag from Metro?

15          A     Yes, sir.

16          Q     And is there an event number on all these bags to identify,  
17 basically, that it's related to a particular event?

18          A     That's correct, sir.

19          Q     Sir, I'm showing you what has already been admitted into  
20 evidence as State's Exhibit 53 that's pertaining to this particular event;  
21 do you recognize this as a CAD?

22          A     Yes, sir.

23          Q     And can you state the event number on this CAD?

24          A     160519003387.

25          Q     And with regards to the evidence bag, as you stated, there's

1 also a place on the evidence bag for the event number?

2 A That's correct, sir.

3 Q As well as the contents of what's in the bag?

4 A Yes, sir.

5 Q Okay. After you take a look at that CAD event number, does it  
6 match up with the event number on the proposed exhibit, the evidence  
7 bag that you have in front of you?

8 A Yes, sir.

9 Q And is that indicated that it came from the same event?

10 A Yes, sir.

11 MR. LEXIS: Your Honor, may we get a scissors and some  
12 gloves?

13 THE COURT: Mr. Lexis?

14 MR. LEXIS: Yes.

15 BY MR. LEXIS:

16 Q Officer, can you please open that bag using a area where it's  
17 not already been resealed?

18 A [Witness complies.]

19 Q Can you open up that bag? Just dump and take out the  
20 contents, sir.

21 A [Witness complies.]

22 Q Sir, does there appear to be baggies inside the main bag?

23 A Yes, sir.

24 Q And does one of the substance appear to be a powdery, white  
25 substance?

1           A     Yes, sir.

2           Q     Does another substance appear to be a crystal-like  
3 substance?

4           A     Yes, sir.

5           Q     And does another substance appear to be a black tar-like  
6 substance?

7           A     Yes, sir.

8                 MR. LEXIS: Sir -- Your Honor, I would move to admit State's  
9 Proposed Exhibit 4 and its contents as A and B. I'll note for the record,  
10 C. There's -- is basically one big baggie, one folded-up baggie, and one  
11 smaller baggie.

12                THE COURT: All right. So --

13                THE CLERK: Which one is which?

14                THE COURT: Huh?

15                THE CLERK: I need an A, B, and C --

16                THE COURT: Right. I am. Thank you. All right.

17                So the bag itself will be Exhibit 4A. You said there's three  
18 baggies there?

19                MR. LEXIS: Yes, Your Honor.

20                THE COURT: There's one with -- can you --

21                MR. LEXIS: Black tar-like substance.

22                THE COURT: Okay. That will be Exhibit 4B. The next one?

23                MR. LEXIS: The white powdery-like substance.

24                THE COURT: That will be Exhibit 4C.

25                MR. LEXIS: White crystal-like substance.

1 THE COURT: And that will be Exhibit -- marked as  
2 Exhibit 4D.

3 Mr. Clerk, did you -- Mr. Castle, did you hear that?

4 THE CLERK: Yes, Your Honor.

5 THE COURT: Okay. Anything else, counsel?

6 MR. LEXIS: Yes, Your Honor.

7 THE COURT: You've moved to admit.

8 Defense, do you have any objection?

9 MR. COYER: No objection to the contents, Your Honor.

10 MR. LEXIS: Sergeant, can you please put those items --

11 THE COURT: Let me --

12 MR. LEXIS: -- back in the --

13 THE COURT: Exhibits 4A, 4B -- hearing no objection,  
14 Exhibits 4A, 4B, 4C, and 4D are admitted into evidence.

15 [State's Exhibit Nos. 4A, 4B, 4C, and 4D admitted.]

16 BY MR. LEXIS::

17 Q Okay. Sergeant, just to be thorough, Officer -- how do you  
18 pronounce his name again?

19 A Lefebvre.

20 Q Lefebvre -- did you see him then hand off those items to  
21 Officer Vallad [phonetic], who then impounded those items?

22 A I believe it was Detective Vallad. Yes, sir.

23 Q Detective Vallad.

24 A Yes, sir.

25 Q Thank you. And, sir, this event, as far as the initial event on

1 May 19th and then subsequent investigations, do those produce multiple  
2 event numbers?

3 A Yes, sir. If it's an event that occurred on two different dates,  
4 they'll be two different event numbers.

5 Q Okay. And then if May 19th event is the lead event leading up  
6 to it, is that when you're going to have a situation like this, where the  
7 contents, even though it was found on May 21st on the defendant, it's  
8 going to be related to the original CAD, matching up to the original  
9 evidence bag?

10 A I'm sorry, I'm --

11 Q Okay. So in this particular case where there's multiple event  
12 numbers --

13 A Right.

14 Q -- and the initial lead event number is the CAD, as previously  
15 shown to you, State's 53, and matching up with the event number on  
16 that baggie right there, is it not uncommon to correlate those with the  
17 lead event number?

18 A Yes, sir.

19 Q Okay.

20 MR. LEXIS: Court's indulgence.

21 Q Again, Officer, just to be thorough, again, were those items  
22 that were admitted into evidence are true and accurate representations  
23 of what you saw come out of the defendant's pocket?

24 A Yes, sir.

25 MR. LEXIS: No further questions, Your Honor.

1 THE COURT: Defense, any cross-examination?  
2 MS. PLUNKETT: No, Judge.  
3 THE COURT: Counsel, can this witness be excused?  
4 MR. LEXIS: Yes, Your Honor.  
5 THE COURT: Thank you.  
6 Sir, thank you. And you are excused.  
7 THE WITNESS: Thank you, Your Honor.  
8 THE COURT: Counsel approach.  
9 I'm sorry? Oh, we don't have the bag?  
10 Could you -- counsel, can you have the bag returned to the  
11 clerk, please?  
12 THE WITNESS: Thank you, sir.  
13 THE COURT: Thank you.  
14 Counsel approach.  
15 [Bench conference transcribed as follows:]  
16 THE COURT: Do you have any other witnesses for today?  
17 MR. DICKERSON: No. We got them all.  
18 THE COURT: Okay. Then we'll take our evening break. I  
19 can only go to 3:30 tomorrow.  
20 MR. DICKERSON: Okay.  
21 THE COURT: So I'm going to tell the jury that. Why don't we  
22 take one break. We'll take a lunch break. And we'll try to begin  
23 at 11:30. I don't know if you're -- I have my law motion calendar at 9:00.  
24 So I'm going to --  
25 MR. DICKERSON: Would it be more beneficial to start at

1 noon and -- would you be able to have your staff have a break before  
2 that time?

3 THE COURT: You know my calendar. We've been going  
4 to 12:00 --

5 MR. DICKERSON: That's criminal, yeah.

6 THE COURT: -- 12:15.

7 MR. DICKERSON: Yeah.

8 THE COURT: So there's a good chance we'll hopefully get  
9 through it by 11:30.

10 MR. DICKERSON: Okay. Great.

11 THE COURT: Assuming everybody shows up. Part of my  
12 issue is waiting for all the attorneys to come at the same time. So I'm  
13 going to tell them --

14 MR. LEXIS: We'll have witnesses ready to go.

15 THE COURT: I'm going to tell them 11:30. We'll go to 3:30,  
16 take a lunch break. Try to get as much as we can and then it's my intent  
17 we can go a full day Friday. Okay.

18 MR. DICKERSON: Thank you, Your Honor.

19 THE COURT: All right. Thank you.

20 MS. PLUNKETT: Thank you.

21 [End of bench conference.]

22 THE COURT: Ladies and gentlemen, at this time we're going  
23 to take our evening recess. Tomorrow we're only going to go to 3:30.  
24 So what I plan is we'll hopefully start by 11:30, if you can be back here  
25 tomorrow by 11:30, then we'll take some evidence. I intend to take our

1 lunch break about 1:30. It'll be an hour lunch break. And then we're  
2 going to conclude tomorrow at 3:30. And then on Friday, we're going to  
3 go a full day. So we'll try to start earlier in the morning, either -- I'll talk to  
4 counsel as far as availability, probably around 9:00-10:00 and go  
5 till 5:00.

6           So at this time we'll be in recess. We're going to take our  
7 evening recess. And during this recess you're admonished not to talk or  
8 converse among yourselves or with anyone else on any subject  
9 connected with this trial, or read, watch, or listen to any report of or any  
10 commentary on the trial or any person connected with this trial by any  
11 medium of information, including, without limitation, the social media,  
12 text, newspapers, television, the Internet, and radio; do not visit the  
13 scene of any of the events mentioned during the trial, undertake any  
14 investigation; do not do any posting or communications on any social  
15 networking sites or do any independent research, including Internet  
16 searches, or form or express any opinion on any subject connected with  
17 the trial until the case is finally submitted to you. Thank you. We'll be in  
18 recess.

19                           [Jury recessed at 4:48 p.m.]

20           MR. DICKERSON: Thank you, Your Honor.

21           THE COURT: Anything further, counsel?

22           MR. DICKERSON: Nothing from the State at this time.

23           THE COURT: We'll be in recess.

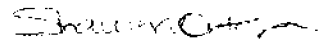
24           MS. PLUNKETT: Thank you, Judge.

25           [Proceedings concluded at 4:49 p.m. until November 30, 2017,



at 11:30 a.m.]

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.



Shawna Ortega, CET\*562



1 **RTRAN**

2  
3 **DISTRICT COURT**  
4 **CLARK COUNTY, NEVADA**

5  
6  
7 **THE STATE OF NEVADA,**

8 **Plaintiff,**

9 **vs.**

10 **CEASAR SANCHAZ VALENCIA,**

11 **Defendant.**

} **Case No. C-16-315580-1**

} **DEPT. XVIII**

12  
13 **BEFORE THE HONORABLE MARK B. BAILUS, DISTRICT COURT JUDGE**

14  
15 **THURSDAY, NOVEMBER 30, 2017**

16 ***TRANSCRIPT OF PROCEEDINGS RE:***  
17 **JURY TRIAL - PHASE I - DAY 4**

18 **APPEARANCES:**

19 **For the Plaintiff:**

**MICHAEL DICKERSON, ESQ.**

**(Deputy District Attorney)**

**CHAD N. LEXIS, ESQ.**

**(Deputy District Attorney)**

22 **For the Defendant:**

**GREGORY E. COYER, ESQ.**

**ALEXIS ANNE PLUNKETT, ESQ.**

24 **RECORDED BY: ROBIN PAGE, COURT RECORDER**

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1                   **LAS VEGAS NEVADA, THURSDAY, NOVEMBER 30, 2017**

2                   [Proceedings commenced at 11:33 a.m.]

3  
4                   [Outside the presence of the jury.]

5                   THE COURT: Good morning, ladies and gentlemen.

6                   MR. DICKERSON: Morning, Your Honor.

7                   THE COURT: This is the continuation of the trial in Case No.  
8                   C-16-315580, *State of Nevada vs. Ceasar Sanchaz Valencia*.

9                   Counsel, state your appearances, please.

10                  MR. DICKERSON: Michael Dickerson and Chad Lexis for the  
11                  State.

12                  MR. COYER: Gary Coyer and Alexis Plunkett on behalf of the  
13                  defense.

14                  THE COURT: And the defendant is present.

15                  Is there any housekeeping matters we have to take care of?

16                  MR. LEXIS: No, Your Honor.

17                  THE COURT: Okay. We're going to go to 1:30, take our  
18                  lunch break for an hour, and then we'll go to 3:30. So that's the plan for  
19                  today.

20                  If you could bring the jury in, please.

21                  [Jury reconvened at 11:34 a.m.]

22                  THE COURT: Let the record reflect the presence of the  
23                  jurors.

24                  State, are you prepared to call your next witness?

25                  MR. LEXIS: Yes, Your Honor. State calls Detective Vallad,

1 V-A-L-L-A-D.

2 **JASON VALLAD**

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

5 THE CLERK: Please be seated. Would you please state and  
6 spell your name for the record?

7 THE WITNESS: First name is Jason, J-A-S-O-N. Last is  
8 Vallad, V-A-L-L-A-D.

9 **DIRECT EXAMINATION**

10 BY MR. LEXIS:

11 Q Sir, where do you work?

12 A Currently, I'm working at Convention Center Area Command  
13 patrol investigations.

14 Q How long have you been with Metro?

15 A 10 years.

16 Q And can you take us through where you've been in Metro and  
17 your training and experience?

18 A I did patrol, Bolden Area Command, field training officer  
19 Bolden Area Command, field training officer at Downtown Area  
20 Command, and also a temporary transfer to Downtown Area Command,  
21 patrol investigations. And then now at a permanent position of patrol  
22 investigations at Convention Center.

23 Q As a detective?

24 A Correct.

25 Q Back on May 20th, 2016, at night rolling into May 21st, 2016,

1 in the morning, were you working in the capacity as a police officer?

2 A Yes.

3 Q And where -- where was this at?

4 A Downtown Area Command.

5 Q Okay. Was -- were you and other officers given information  
6 regarding an assault with a deadly weapon on an Officer Jacobitz that  
7 occurred on May 19th, 2016?

8 A Yes.

9 Q And was a team of Metro, including yourself, trying to conduct  
10 surveillance on one Ceasar Valencia?

11 A Yes.

12 Q And do you see that person in court today?

13 A Yes, I do.

14 Q Can you please point to him and identify for me the color shirt  
15 he's wearing?

16 A He's sitting over there wearing a blue shirt.

17 MR. LEXIS: Your Honor, let the record reflect the detective  
18 has identified the defendant.

19 THE COURT: The record will so reflect.

20 BY MR. LEXIS:

21 Q Detective, on May 20th, 2016, at nighttime, did this  
22 surveillance start at 625 North 10th Street?

23 A Yes.

24 Q And why that address?

25 A Through investigative means, we determined that that was

1 where the defendant was currently living.

2 Q So what did the team do?

3 A We set up kind of a surrounding area of any possible areas of  
4 exit. So at every corner that they possibly could leave if they got mobile,  
5 we would then do that. And then one person would have an eye on the  
6 house to see if anyone left the house or the residence.

7 Q Is this team in marked uniform, marked police cars? How is it  
8 operated?

9 A We'll operate in plain cars that blend in with the area, and also  
10 just plain clothes.

11 Q And is that for obvious reasons, so your cover is not blown?

12 A Correct.

13 Q What did you do next?

14 A I set up south of the residence on 10th Street near Bonanza  
15 and waited for radio traffic to hear if the subject -- or the defendant got  
16 into the vehicle or got -- got -- left the residence.

17 Q Regarding this radio traffic, is it recorded into CAD or is there  
18 a different means as far as traffic among other people?

19 A No. When we use -- doing surveillance amongst the team, it's  
20 easier to just use a channel that's devoted to that, that is just  
21 conversation between everyone involved in the operation so that it  
22 doesn't hold up air time with area units.

23 Q So CAD -- the surveillance team is not linked into CAD?

24 A No.

25 Q That's for marked patrol units?

1           A     Correct.

2           Q     Okay. So at that point, what do you guys do next?

3           A     I overheard over radio traffic that there was two subjects  
4 leaving the back of the residence, one of which matched the description  
5 of the defendant. They were walking towards a dark-colored Ford  
6 Mustang and were entering the vehicle. So that at that time we were  
7 getting ready to go mobile and conduct rolling surveillance.

8           Q     So what did the team decide to do next?

9           A     Once the subjects got in the vehicle, they relayed the direction  
10 of travel, at which time they went south on 10th Street towards Bonanza.  
11 And at that time, we conducted rolling surveillance.

12          Q     What is rolling surveillance?

13          A     Rolling surveillance is a tactic of unmarked cars and  
14 unmarked plain-clothes detectives that will covertly follow the vehicle,  
15 maintain eye contact to see where it goes without being detected, and  
16 relay information as to possibly if -- to identify subjects of the vehicle,  
17 where they're going, incidents like that.

18          Q     And what is bubbling?

19          A     Bubbling is tactics where you're not right next to the vehicle,  
20 but, like, on adjacent streets, so that if one turns, then someone in rolling  
21 surveillance can continue so they're not identified, and then someone on  
22 the next street over gets radio traffic and then that vehicle will pick it up.

23          Q     And was that all that done during this investigation?

24          A     Yes.

25          Q     What happened next?



1           A     We continued westbound on Bonanza, continuing rolling  
2 surveillance. As we did, we approached H Street. Once we're on H  
3 Street, we continued north on H Street, and at which time we determined  
4 that the defendant was in the passenger seat and a -- at the time, an  
5 unknown white male was driving the vehicle.

6                   As we continued, a tactic that subjects that we're conducted  
7 rolling surveillance on will sometimes do a tail check move, which is  
8 they'll make abrupt turns to see if, okay, is this person following me. At  
9 which time that -- if you're following, you continue on. That's when the  
10 bubble tactic comes in. Around Madison Street, I believe a tactic like  
11 that may have been used. He kind of abruptly turned left, parked in an  
12 alley in that area, and then got out of the vehicle.

13          Q     Okay. Did the team stay put on him?

14          A     Yeah. At that time we then conducted up a mobile  
15 surveillance tactic to bubble around there. So we started up kind of  
16 similar to how we did back on 625 10th Street.

17          Q     Did the team eventually make a visual?

18          A     Yes.

19          Q     And did the subject -- or the defendant then get back in the  
20 vehicle?

21          A     Yes.

22          Q     And what side of the vehicle?

23          A     The passenger seat again.

24          Q     And did the vehicle continue to move?

25          A     Yeah. At that point, we had already notified the air unit

**PLEADING  
CONTINUES  
IN NEXT  
VOLUME**