

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
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CEASAR SANCHAZ VALENCIA,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Case No: C-16-315580-1

Docket No: 85694

RECORD ON APPEAL VOLUME 5

ATTORNEY FOR APPELLANT
CEASAR VALENCIA # 94307,
PROPER PERSON
P.O. BOX 208
INDIAN SPRINGS, NV 89070

ATTORNEY FOR RESPONDENT
STEVEN B. WOLFSON,
DISTRICT ATTORNEY
200 LEWIS AVE.
LAS VEGAS, NV 89155-2212

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1 because we had determined that we were going to take the vehicle
2 down. So we notified the air unit, at which time while the vehicle was
3 stationary, the air unit was set up a distance away, so it wasn't to be
4 identified, and waited for radio traffic once the car got mobile again,
5 which then proceeded back south on H Street. We notified the air unit.
6 And the vehicle then continued south and east on Washington.

7 Q Okay. And what did the team decide to do next?

8 A We decided to identify a good spot to stop the vehicle, which
9 was determined in a area of Washington and Main Street.

10 Q Why that location?

11 A Because just west of that location is an area where the --
12 where the road dips down and there's walls on all side, which would
13 eliminate an area of escape for anyone, occupants of the vehicle.

14 Q Was the felony car stop successful?

15 A Yes.

16 Q And explain to me what a felony car stop is.

17 A Felony car stop is conducted in high-risk situations, especially
18 with anything involved with crimes that we're investigating the use of a
19 weapon, where we -- the officers stay at a safe vantage point back at the
20 vehicle and stop the vehicle and call the persons of the vehicle out one
21 at a time and then draw them back to us with their hands up.

22 Q Does the surveillance team conduct the felony car stop or do
23 marked patrol units?

24 A No. So the surveillance team will radio to marked patrol units
25 and uniform officers that are in the area standing by for us to do it. We

1 advise them where we wanted it done. Then they came in, they got
2 behind the vehicle and -- and the marked patrol units conduct the stop.

3 Q Okay. Is that what happened in this case?

4 A Yes.

5 Q And is that also for officer safety, why you would have a
6 marked patrol unit stop that vehicle?

7 A Officer safety, suspect safety, any -- any -- everyone's safety
8 in it, because you want to make sure they're not confused about who's,
9 you know, stopping them.

10 Q And at the time this felony car stop, as well, you said the air
11 was involved?

12 A Yes.

13 Q Was the defendant successfully taken into custody?

14 A Yes.

15 Q And your role that day, were you taking an active role that day
16 or a light-duty role?

17 A I was an -- I was in light duty.

18 Q And why was that?

19 A I had broke my leg in February, so I was not able to have any
20 suspect contact until they're taken into custody.

21 Q Okay. So you didn't take any physical-type activity during the
22 takedown of the defendant?

23 A Correct.

24 Q Okay. Did you eventually make your way over to the
25 defendant?

1 A Yes.

2 Q And who was there?

3 A Officer Lefebvre and Officer Milewski.

4 Q And what did you observe?

5 A At that point, they had the occupants of the vehicle back at the
6 patrol car. Officer Lefebvre and Milewski were -- Officer Lefebvre was
7 conducting a search after he was placed -- the defendant was placed in
8 handcuffs, and Milewski was in a role of a contact.

9 Q Were the drugs out of the -- out already by the time you got
10 there?

11 A Yes. There was -- the drugs were on the hood of the car, and
12 some money.

13 Q Did you take custody at that point of the narcotics?

14 A Yes.

15 Q Why?

16 A Because in my capacity at that time, being light duty, I was
17 tasked with doing the things that doesn't take an officer a full-duty thing,
18 so the full-duty officers in capacity could get back on the streets or have
19 suspect contact.

20 Q Was the money that was retrieved from the defendant also
21 out?

22 A Yes.

23 Q And did you take custody of that as well?

24 A Yes.

25 Q Did you place the narcotics in a evidence bag?

1 A Yes, I did.

2 MR. LEXIS: And may I approach, Your Honor?

3 THE COURT: Counsel approach. Mr. Coyer?

4 [Bench conference transcribed as follows:]

5 THE COURT: Have you reviewed all the evidence bags and

6 make sure there's nothing on the front of any of the evidence bags

7 before they're --

8 MR. COYER: I've reviewed this one.

9 THE COURT: Okay. I just want to be sure.

10 MR. COYER: Yeah. And there's a reference to a warrants

11 on --

12 THE COURT: Huh?

13 MR. COYER: There's a reference to warrants on it. I think

14 we're going to leave the bag out --

15 MR. LEXIS: I'm going to lead him through this.

16 THE COURT: Okay. You're not going to do -- go through it --

17 MR. LEXIS: No, sir. No, sir.

18 THE COURT: Okay. Thank you. Okay. So --

19 MR. LEXIS: Just -- just solidifying the chain of custody,

20 Judge.

21 THE COURT: Okay. Thank you.

22 [End of bench conference.]

23 MR. LEXIS: May I approach, Judge?

24 THE COURT: Yes.

25 BY MR. LEXIS:

1 Q Sir, I'm showing you what has already been admitted as
2 State's Exhibit 4; do you recognize this bag?

3 A Yes, I do.

4 Q Is it the bag that you impounded on that night?

5 A Yes.

6 Q Do you see your initials on that bag?

7 A I do.

8 Q Can you please open this bag? I'll give you a scissors. Hold
9 on. The bag's open? Okay.

10 Appears the bag's already been opened. So will you please
11 take what's out of the bag. Appear to be three baggies inside that bag,
12 sir?

13 A Yes.

14 Q Sir, I'm showing you State's Exhibit 4D; is that one of the bags
15 that you saw on the hood standing next to Officer Lefebvre, Officer
16 Milewski, and the defendant on the night in question?

17 A Yes.

18 Q And is that a crystal-like substance?

19 A Yes.

20 Q Showing you State's Exhibit 4C; do you recognize that, sir?

21 A Yes, I do.

22 Q Is that also one of the baggies that was found next to the
23 defendant, Officer Lefebvre, and Officer Milewski on the night in
24 question?

25 A Yes.

1 Q And is that a white, powdery substance?

2 A Yes, it is.

3 Q I'm showing you what has been marked as 4B; do you
4 recognize that, sir?

5 A Yes, I do.

6 Q Is that substance black tar-like substance that was found by
7 you on the hood next to Officer Lefebvre --

8 A Yes.

9 Q -- officer Milewski, and the defendant on the night in question?

10 A Correct.

11 Q And, sir, is that a large amount of heroin?

12 A It's a very large amount of heroin.

13 Q And explain to it, in your terms, as a detective for however
14 many years you've been working -- how many years?

15 A I've been in the department 10 years and capacity of detective
16 for two. In the street level of narcotics, when you come into heroin,
17 usually you see a heroin user with maybe .2 grams, a small amount, a
18 useable amount. Now, as a detective in the capacity that I have, this is
19 a large amount that I come across. You know, so I mean, that's -- in the
20 two years I've been a detective, that's the most amount I've ever
21 impounded.

22 Q Please put those baggies back in the bag.

23 Officer, you also state that next to the narcotics also, there
24 was also present nearby the defendant, Officer Milewski, and Officer --
25 excuse me, Lefebvre, was a pile of cash?

1 A Yes.

2 Q Do you remember how much?

3 A The total amount was \$946.

4 Q Do you remember the breakdown, sir?

5 A It was multiple denominations. I don't remember the exact.

6 Q Sir, as part of your duties as an officer in this case, did you

7 conduct a property report, since you were the impound officer?

8 A Yes.

9 Q Will it refresh your memory if I showed you your property

10 report?

11 A Yes.

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

13 THE COURT: Yes.

14 BY MR. LEXIS:

15 Q Please read that to yourself, sir. Don't say anything. Let me

16 know when you're done.

17 A [Witness complies.] All right.

18 Q Did that refresh your memory, sir?

19 A Yes.

20 Q What was the breakdown?

21 A There was 41 twenties, 19 fives --

22 MS. PLUNKETT: Object to relevance.

23 THE COURT: Restate the question, please.

24 MR. LEXIS: What was the breakdown?

25 THE COURT: Counsel, approach.

1 [Bench conference transcribed as follows:]

2 THE COURT: A relevance instruction requires -- requires a
3 speaking objection. That's why I've asked you to approach. Why isn't it
4 relevant?

5 MS. PLUNKETT: Object to the relevance of the denomination
6 of the money, because we've already established how much he had on
7 him. And any breakdown is going to lead to a prejudicial insinuation that
8 he's some type of drug dealer, that he had just done these cash
9 transactions. And I believe that the relevance is the total amount of
10 money as opposed to the breakdown.

11 THE COURT: State, response?

12 MR. LEXIS: We've got to prove that he had possession of it
13 and that -- and one of the charges is trafficking. It's -- it's highly relevant
14 with this type of --

15 MS. PLUNKETT: One of the charges is not --

16 THE COURT: Let -- let him finish.

17 MS. PLUNKETT: Sorry.

18 THE COURT: Go ahead.

19 MR. LEXIS: It's highly relevant, Judge, that someone who just
20 is not going to have -- these drugs just miraculously appeared in my
21 pocket. No. When you have drugs and that type of money and those
22 denominations, that all absolutely is relevant to the fact that this man
23 moved these drugs.

24 THE COURT: Okay. Response?

25 MS. PLUNKETT: And one of the charges is not any kind of

1 possession with intent to sell.

2 THE COURT: Okay.

3 MS. PLUNKETT: It's a simple trafficking charge.

4 THE COURT: Okay. Thank you.

5 [End of bench conference.]

6 THE COURT: The objection is overruled. You may answer.

7 THE WITNESS: Honestly, I'd have to refresh my memory
8 again.

9 MR. LEXIS: May I approach?

10 THE WITNESS: Yes.

11 THE COURT: Yeah.

12 BY MR. LEXIS:

13 Q Please read this to yourself, sir. Don't say anything. Let me
14 know when you're done.

15 A [Witness complies.] All right.

16 Q What denominations, sir?

17 A There's 31 one-dollar bills, 19 five-dollar bills, and 41
18 twenty-dollar bills.

19 MR. LEXIS: Court's indulgence.

20 Nothing further, Your Honor.

21 THE COURT: Cross-examination by the defense?

22 MS. PLUNKETT: Yes, Judge.

23 **CROSS-EXAMINATION**

24 BY MS. PLUNKETT:

25 Q Good morning, Officer.

1 A Good morning.

2 Q Mr. Lexis refreshed your recollection of the property impound
3 report right now, correct?

4 A Correct.

5 Q Do you -- you should be refreshed on the fact that you took a
6 DNA buccal swab of Mr. Valencia's DNA, correct?

7 A Yes.

8 Q And for what purpose would that DNA swab be taken?

9 A For comparison to any other evidence that may have been in
10 contact with the defendant.

11 Q And you, yourself, impounded that DNA?

12 A I did.

13 Q To be provided to another officer for DNA comparison?

14 A To the forensic lab.

15 Q Thank you.

16 MS. PLUNKETT: The court's indulgence.

17 That's all, Judge.

18 THE COURT: Any --

19 **REDIRECT EXAMINATION**

20 BY MR. LEXIS:

21 Q Detective, is that standard procedure when you have
22 recovered a gun in this situation?

23 A Yes.

24 MR. LEXIS: Thank you.

25 THE COURT: Any recross?

1 MS. PLUNKETT: No, Judge.
2 THE COURT: Can this witness be excused?
3 MR. LEXIS: Yes, Your Honor.
4 THE COURT: Thank you, Detective.
5 THE WITNESS: Thank you.
6 THE COURT: You're excused.
7 State, call your next witness.
8 MR. DICKERSON: State's next witness is Crystal May.

9 **CRYSTAL MAY**

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

12 THE CLERK: Please be seated. Can you please state and
13 spell your name for the record?

14 THE WITNESS: My name is Crystal May, C-R-Y-S-T-A-L
15 M-A-Y.

16 MR. DICKERSON: May I proceed, Your Honor?

17 THE COURT: Yes.

18 MR. DICKERSON: Thank you.

19 **DIRECT EXAMINATION**

20 BY MR. DICKERSON:

21 Q What do you do for a living, ma'am?

22 A I am a forensic scientist within the Biology DNA Detail of the
23 Las Vegas Metropolitan Police Department Forensic Laboratory.

24 Q What are your general duties in that capacity?

25 A As a forensic scientist in the DNA Detail, I examine evidence

1 for the absence or presence of DNA evidence. I take those samples on
2 through a chemical laboratory process to isolate the DNA and develop a
3 DNA profile. Once I develop a profile from the evidence, I can then
4 develop a profile from reference standards also submitted in the same
5 case for comparison. I write a report with my conclusions and
6 comparisons, as well as statistics, issue the report, and help review
7 other people's cases as well.

8 Q What sort of training and experience do you have that got you
9 to this position that you hold today?

10 A I currently hold a Bachelor of Science in Biology from St. Mary
11 of The Woods College in Terre Haute, Indiana. I also hold a Master a
12 Science in Forensic Science from the University of New Haven in
13 Connecticut.

14 Upon being hired on as a forensic scientist within the LVMPD
15 Forensic Lab, I was put forth into an 18-month extensive training
16 program that covered tons of topics, including written articles, practical
17 samples, practical tests, and evidence sample -- or samples that closely
18 mimicked those that we would find in evidence. I was also put through a
19 moot court. We are regularly proficiency tested. Once I got out of the
20 training program, I've been doing this for 16 -- or 16 -- 6 years.

21 Q And just enlighten us a little bit; what is DNA?

22 A DNA stands for deoxyribonucleic acid. And it's the basic
23 building block of all living things. You get half of your DNA from your
24 mother, half from your father. We like it in forensic testing, because the
25 DNA in your hair is the same as the DNA in your toes. It doesn't change

1 from birth to death.

2 THE COURT: Counsel, approach please.

3 MR. DICKERSON: Yes, Your Honor.

4 [Bench conference transcribed as follows:]

5 THE COURT: Are you having this witness testify as an expert
6 witness?

7 MR. DICKERSON: Yes.

8 THE COURT: Okay. So what -- do you want -- take a while
9 and voir dire as to her qualifications?

10 MR. COYER: No. We'll stipulate to her expertise.

11 THE COURT: You're going to stipulate? In what area of
12 expertise is she going to testify in?

13 MR. DICKERSON: It's noticed. We've noticed her as a --

14 THE COURT: Okay. So I'm going to accept her as an expert.
15 I'm going to ask you if you have any opposition. You can say you
16 stipulate.

17 MR. COYER: We'll stipulate to her qualifications, yes.

18 THE COURT: Okay. So do I have to notify the jury that she's
19 testifying -- because you're going to have a jury instruction on expert
20 witnesses. I --

21 MR. DICKERSON: No. I -- I don't think it's necessary, Your
22 Honor.

23 THE COURT: I usually have the jury know that she's
24 testifying as an expert.

25 MR. DICKERSON: We can --

1 MR. LEXIS: If something that's --
2 MR. DICKERSON: Sure.
3 MR. LEXIS: -- we don't care either way.
4 MR. DICKERSON: Sure.
5 THE COURT: Okay.
6 MR. LEXIS: But if you want it, Judge --
7 THE COURT: No, no. I'm just trying to make a clean record
8 here.
9 MR. LEXIS: Okay.
10 MR. DICKERSON: Yeah.
11 THE COURT: So I just -- so I -- I'll just announce I'm going to
12 accept her as an expert.
13 MR. DICKERSON: Okay.
14 THE COURT: And what -- what is her area of expertise? Do
15 you remember?
16 MR. DICKERSON: It's DNA analysis.
17 THE COURT: Huh?
18 MR. DICKERSON: DNA analysis. I have the -- I would have
19 to get the language from the notice.
20 THE COURT: I'll just accept her as an expert --
21 MR. DICKERSON: DNA testing.
22 THE COURT: -- in DNA.
23 MR. LEXIS: I -- I don't think we need to announce it.
24 MR. DICKERSON: I --
25 THE COURT: Just announce --

1 MR. DICKERSON: I don't think we need to announce that.

2 THE COURT: Just accept her as an expert?

3 MR. DICKERSON: I think that -- I think that we can just go
4 forward and just let the qualifications --

5 THE COURT: All right.

6 MR. DICKERSON: -- stand with the jury.

7 THE COURT: All right.

8 MR. LEXIS: Yeah. And, quite frankly --

9 THE COURT: So you don't want me to --

10 MR. DICKERSON: Yeah. I don't want to risk any -- any
11 prejudice that we may be borderline on by -- I mean, that's why in this
12 jurisdiction we don't ask you to qualify --

13 THE COURT: Because you've offered a jury instruction --

14 MR. DICKERSON: Right.

15 THE COURT: -- about expert --

16 MR. DICKERSON: I think that --

17 THE COURT: -- testimony. You're going to withdraw that jury
18 instruction?

19 MR. DICKERSON: And I think we can still -- no. We can still
20 say, hey, she's testified as -- as an expert, obviously, by her giving that
21 opinion. Because if you read the jury instruction, we'll say anybody who
22 testifies in this capacity --

23 THE COURT: Okay. So I am going to accept her -- based on
24 the stipulation of the parties, I am going to accept her as an expert, as
25 noticed.

1 MR. DICKERSON: Okay.

2 THE COURT: Okay?

3 MR. DICKERSON: Thank you, Your Honor.

4 THE COURT: Thank you.

5 [End of bench conference.]

6 BY MR. DICKERSON:

7 Q So, ma'am, you're a forensic scientist with the forensic lab?

8 A Correct.

9 Q And it -- your specific role is for DNA?

10 A Correct.

11 Q Are there other outlets in the forensic lab, other areas of
12 study?

13 A There are. Our particular laboratory also does controlled
14 substances, toxicology, firearms, and latent print examinations.

15 Q But your specialty is DNA?

16 A It is.

17 Q So we're getting there, tell me about DNA. Everybody has
18 DNA; does everybody have different DNA?

19 A Yes. 99.9 percent of our DNA is identical. It's that .1 percent
20 that actually makes you different than the person sitting next to you. It's
21 what gives you your brown eyes versus your blue eyes. It's what gives
22 you the blonde hair versus the red hair. We only look at a fraction of
23 that .1 percent that makes you different. But in that .1 percent, using 21
24 different markers, we can distinguish between two individuals.

25 Q So how is it that you look for DNA?

1 A Again, through my extensive training, we've learned how to
2 examine items of evidence. In particular, you know, if we're examining a
3 case and we're asked to look for blood, blood is pretty easy to spot,
4 right? You've seen blood. You've bled. If I have a white t-shirt and I'm
5 looking for blood, that's going to be pretty easy to identify.

6 We then have some follow-up chemical tests that we can use
7 to help indicate whether or not it could be blood, or it could just be
8 ketchup. In some cases, we just know that there is DNA going to be on
9 that sample. If you have a water bottle, think about how you drink a
10 water bottle. Your lips are going to be on the ridges of the water bottle,
11 your tongue is going to be on it. We know that there's DNA inherent in
12 your mouth so we can actually just take a swabbing of it.

13 And by swabbing, I mean, just take a really long Q-tip, the
14 same ones you use to clean out your ears, just a little bit longer, moisten
15 the swab, and just get up there and swab the ridges.

16 Once we identify those samples, like I said, we can take them
17 through a laboratory procedure in which we develop a DNA profile that
18 gives us a graphical representation of what your DNA looks like that we
19 can use then for comparisons to those reference standards we obtain.

20 Q So you mentioned, basically, saliva from the mouth; is that
21 correct?

22 A I did, yes.

23 Q Blood on a t-shirt --

24 A Yeah.

25 Q -- or anywhere?

1 A Correct.

2 Q These are both bodily fluids; is that right?

3 A Yes.

4 Q So are bodily fluids the -- generally the best place to find
5 DNA?

6 A There are lots of places to find DNA. But yes, those are going
7 to be more rich in DNA.

8 Q More rich. So better chance of getting a good sample?

9 A Yes.

10 Q So is there another DNA that you can do just by not having
11 bodily fluid?

12 A There -- there is one type of DNA that we call touch DNA. As
13 far as touch DNA is concerned, it's just the DNA that's actually sloughed
14 off from your hands, from your skin cells. The more you handle an item,
15 the more you're prone to leaving behind skin cells that contain your DNA
16 on that item.

17 Q Okay. So how is it that you do an analysis for DNA?

18 A As far as the laboratory procedure?

19 Q Yeah. As far as the laboratory procedure for a comparison
20 from one item to known reference sample?

21 A Uh-huh. So let's start with, again, for a touch DNA sample,
22 like I mentioned, the water bottle, I will swab the water bottle, I'll cut the
23 little cotton tip off the end of it, I'll shove it down into a little tube, I'll add
24 the chemicals to it that help to -- to isolate the DNA and get rid of the
25 rest of the other junk. If you think back to your high school biology, you

1 don't need the mitochondria and the ribosomes and none of that
2 matters. We're focusing on the DNA.

3 So once we get rid of the other junk, we can actually put it
4 onto a genetic Xeroxing machine that makes millions upon millions of
5 copies of it. Once we have those millions of copies, we can then put it
6 onto an instrument that I mentioned makes a graphical representation of
7 the DNA profile. It looks like just a bunch of peaks. But where those
8 peaks lie tells us a -- a lot of information about your particular profile.

9 I will do the same with a reference standard. So you're asking
10 what a reference standard is. I take that same swab, not the one I took
11 from the water bottle, but we'll take a swab and swab the inside of your
12 cheek. Okay. The inside of your cheek contains the same types of cells
13 that you have on your hand. So I will then do the same thing. Cut the
14 little cotton swab, put it in a tube, isolate the DNA, get rid of the rest of
15 the junk, and make millions of copies of it.

16 Now, I have a profile that I can definitely say is your profile
17 and compare it back to the one I got from the evidence. I can either
18 make an inclusion or an exclusion.

19 Q So an inclusion or an exclusion; is there any other result that
20 you might get?

21 A We do have an inconclusive, which means I can never make
22 any conclusions on it, ever. We have internal thresholds that we have to
23 meet. And if the profile doesn't meet those thresholds, it's just, basically,
24 a bunch of information that's either too complex or too limited for us to
25 be able to call.

1 Q So what might cause an inconclusive result?

2 A Like I said, there's either too much -- it's too complex or
3 there's too much DNA. Even though your DNA is different than the
4 person sitting next to you, we know that people -- there's only a certain
5 amount of markers available each different location. So one of you may
6 have a 14 and the other one may have a 14. I can't tell who donated
7 that 14 marker at that location.

8 So if there's too much information, I can't distinguish between
9 individuals. If there's too little information, sometimes there's just not
10 enough DNA present in the sample for us to be able to get a profile
11 that's useable and -- and we just don't end up with any peaks
12 whatsoever.

13 Q Okay. So maybe too much DNA from too many people?

14 A Correct.

15 Q So if we passed a pen around this jury box, it would possibly
16 get a lot of DNA on it?

17 A I wouldn't even want to process it.

18 Q Okay.

19 A Yeah.

20 Q And so specifically here, you did an analysis?

21 A I did.

22 Q On the gun that was found; is that right?

23 A On a revolver, correct.

24 Q A Taurus revolver?

25 A Yes.

1 Q And you swabbed that whole gun?

2 A I swabbed portions of the gun.

3 Q Which portions?

4 A So I swabbed the grips, the trigger, the hammer and the
5 cylinder release. Those are all going to be areas that are a little bit more
6 rigid that would be able to cling to the skin cells that were sloughed off
7 the hand. And then those skin cells tend to get a little bit more stuck in
8 those rough areas. And then those are going to be good sources for us
9 to swab to be able to get the DNA out of there.

10 Q And then you did a comparison of that against the known
11 profile of Ceasar Morales -- or Ceasar Valencia; is that right?

12 A I did.

13 Q That was a reference standard comparison, Ceasar Valencia
14 to the swab from the revolver?

15 A Yes.

16 Q And what result did you come out with there?

17 A I obtained a mixture of -- sorry, a mixture of four individuals on
18 that particular gun, with at least one being male. Because there is a lot
19 of information on there, I was only able to conclude that there is a partial
20 major DNA profile consistent with a single, unknown female.

21 Q Okay. So the major profile found was a female?

22 A Correct.

23 Q How do you determine that?

24 A When we take a look at a profile, again, I told you it's a bunch
25 of peaks. There's a lot of information in those peaks that can tell us

1 about the DNA profile. So the higher the peak, the more DNA. If we've
2 got three or four peaks, depending on how they're balanced, if this peak
3 is really high and this peak is really low, the higher peak is going to be
4 attributed to the one with more DNA. So more DNA equals major profile.
5 But I wasn't able to obtain a DNA profile at all of the places that we look
6 at, so it's partial. Partial major profile.

7 Q Okay. So major profile would be the one that you get the
8 information on?

9 A The -- that was the one I was able to make conclusions on,
10 yes.

11 Q Okay. The other three minor profiles -- is that fair?

12 A Yes.

13 Q Okay. The other three minor profiles, can you make any
14 conclusions about those?

15 A No. That is what we call inconclusive, which means it doesn't
16 meet our internal thresholds to be able to do anything with, so we just
17 have to call it inconclusive and walk away from it.

18 Q Okay. So you -- only thing you can tell me is that there was --
19 at least one of the individuals in the minor profile was male?

20 A Correct.

21 Q And the major profile was female?

22 A Correct.

23 Q Potentially with that major profile, if you had a reference
24 standard, would you be able to identify that to a female?

25 A Yes.

1 Q Okay. But can you do anything with those three minor
2 profiles?

3 A Never.

4 Q Okay. So can you tell me whether one of those minor profiles
5 was Ceasar Valencia?

6 A I cannot.

7 Q You can't tell me whether it is?

8 A I cannot.

9 Q You can't tell me whether it isn't?

10 A Correct.

11 Q Can you tell me whether one of those minor profiles was
12 Officer Jeremy Jacobitz?

13 A I cannot.

14 Q You can't tell me whether it is?

15 A I cannot.

16 Q You can't tell me --

17 A Correct.

18 Q -- whether it isn't? Can you tell me if one of those profiles is
19 Donald Trump?

20 A I cannot.

21 Q You can't tell whether it is?

22 A I cannot.

23 Q You can't tell me whether it isn't?

24 A Correct.

25 Q Okay. I -- I get it. Is there something called the donor effect

1 with DNA?

2 A There is a lot of research around that, yes. And what that
3 means is there's a theory that there are some people who are prone to
4 shedding and leaving behind more DNA than others. The person sitting
5 next to you may just be sloughing off cells at a greater rate than you are.
6 There are a lot of things that come into effect when this happens though.

7 It depends on -- you know, things can change. The
8 environment can have an effect on this. Right now, I'm a little warm,
9 right. So I'm sweating a little bit more. So I'm going to tend to probably
10 shed a few more cells, you -- you know, under the sweat. It depends on
11 how much pressure is applied to an item. So if you're talking about
12 touch DNA, if I handle it for a long time versus a short time, that's going
13 to depend on how much DNA is left behind. Again, pressure, if I just
14 push on this, depending on how humid it is, how dry it is, if I've just
15 washed my hands, there are a lot of facts that can contribute to this. So
16 one person may be sloughing off cells at a higher rate, but depending on
17 the environment the other person is in, they may also have variability.

18 Q So at this point in time, you're the only female that we've
19 heard about in this case.

20 A Correct.

21 Q Is that your DNA?

22 A It is not.

23 Q How do you know?

24 A Every time we obtain an unknown profile, we check. Every
25 time we obtain an unknown profile in regards to evidence, we actually

1 maintain a staff database, which is just a database of the staff internally.
2 Because we know it is possible to leave ours behind. We're all up in the
3 samples and we're in -- we're in the evidence.

4 As a condition of employment for everyone in the criminalistics
5 bureau, which includes our crime scene, our forensic scientists and the
6 evidence vault, so the people that transport our evidence back and forth
7 for us, they are required to give us a reference standard to populate the
8 database so in the event that we find an unknown, we check against that
9 database to ensure that those of us that handle it on a regular basis
10 aren't actually contaminating it.

11 Q Isn't it true that you generally find this mixture issue with
12 guns?

13 A It is true, yes.

14 Q Very common?

15 A It's common. We either see no DNA, because the -- just the
16 nature of the beast. Maybe it's been cleaned, because you're supposed
17 to clean it, right, for proper firearm handling. Or they get passed around
18 a lot. So either don't have enough information or too much information.

19 Q So with what we have on this particular -- these results on this
20 Taurus revolver, are you able to tell me whether only four people
21 touched that gun or could it have been more than that?

22 A It could have potentially been more than that. The absence of
23 DNA doesn't mean that they didn't handle it. It just means that there
24 wasn't enough left behind for me to detect. A few of the peaks that I got
25 in this profile were so low that there could potentially be some a little bit

1 lower that our instrumentation just can't detect. And again, a reason
2 why those three smaller peaks are peaks associated with the three
3 smaller people, we just don't make conclusions on.

4 Q Thank you.

5 MR. DICKERSON: State will pass the witness.

6 THE COURT: Defense, any cross-examination?

7 MS. PLUNKETT: Yes, Judge. May I approach your clerk?

8 THE COURT: Yes.

9 **CROSS-EXAMINATION**

10 BY MS. PLUNKETT:

11 Q Good afternoon, ma'am.

12 A Good afternoon.

13 Q You determined that there were at least -- there were four
14 individual DNA profiles on that weapon, correct?

15 A Correct.

16 Q If there were more than four, you would also be able to
17 determine that as well?

18 A No. We -- our -- our limit of validation is for four individuals.
19 His question was potential. And like I said, there were lots of little peaks
20 that I couldn't make any conclusion on, so there could be some that I
21 can't even see.

22 Q So you have no ability to determine if there are more than four
23 DNA profiles?

24 A I just -- I reported out that that is mixture of four individuals.

25 Q Is there a time when you cannot determine a partial major

1 DNA?

2 A Yes.

3 Q But --

4 A Quite often.

5 Q But here you did determine a partial DNA?

6 A Yes, I did.

7 Q And you excluded Ceasar Valencia as being the donor of that
8 partial DNA?

9 A I did.

10 Q Did you compare the DNA profile to a sample from Officer
11 Jeremy Jacobitz?

12 A I did not.

13 Q You mentioned touch DNA?

14 A I did.

15 Q Is touch DNA different than sweat DNA?

16 A No. The DNA is the same. It's just a different transport for the
17 cells and how they got there.

18 Q And you mentioned that more sweat would lead to more DNA
19 being left on an object?

20 A Could potentially, yes, depending on the individual. And
21 again, if I've just washed my hands, there's going to be less cells for me
22 to slough off, because I just washed them away. But if you haven't
23 washed your hands in a couple hours and you're sweating, you could
24 potentially leave more of those cells when the sweat drains off.

25 Q I'm going to reintroduce State's Exhibit Number 32; is this the

1 weapon that you swabbed for DNA?

2 A Yes, it is.

3 Q As you are looking at that weapon, particularly the handle
4 appears to have a lot of various grooves on it; is that correct?

5 A Correct.

6 Q Would those grooves increase the probability of finding a
7 useable DNA profile?

8 A Yes, they would. Which is why that was one of the areas that
9 I chose to swab in order to get the DNA profile.

10 MS. PLUNKETT: Court's indulgence.

11 Q Is this weapon the only item that you swabbed for DNA?

12 A This was the only one requested, yes.

13 Q You were never provided with a moped to swab for DNA?

14 A I was not.

15 Q You were never provided with the moped handles to swab for
16 DNA?

17 A I was not.

18 Q Would you agree that you could obtain DNA from the handles
19 of a moped or bicycle?

20 A It's potential.

21 MS. PLUNKETT: Thank you.

22 THE COURT: Any redirect?

23 MR. DICKERSON: Just briefly, Your Honor.

24 **REDIRECT EXAMINATION**

25 BY MR. DICKERSON:

1 Q Would it have mattered if you had a reference sample that you
2 compared to Officer Jeremy Jacobitz?

3 A It would not, because the partial major profile obtained in this
4 case is a unknown female.

5 Q Okay. And the profile that you had for Ceasar Valencia shows
6 he's a male?

7 A Correct.

8 MR. DICKERSON: Thank you.

9 THE COURT: Any recross?

10 MS. PLUNKETT: No, Judge.

11 THE COURT: May this witness be excused?

12 MR. DICKERSON: Yes, Your Honor.

13 THE COURT: Thank you, ma'am. You are excused.

14 THE WITNESS: Thank you, sir.

15 THE COURT: State's next witness, please?

16 MR. DICKERSON: Can I have a -- just a few minutes, Your
17 Honor? I just need to see if they're out there.

18 THE COURT: We'll be in recess --

19 MR. DICKERSON: Thank you.

20 THE COURT: -- for five minutes. I'm going to request that the
21 jury remain in the box. We're just going to take a real short recess.
22 Thank you.

23 [Court recessed at 12:18 p.m. until 12:20 p.m.]

24 [In the presence of the jury.]

25 MR. DICKERSON: May we approach briefly, Your Honor.

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THE COURT: Yes.

[Bench conference transcribed as follows:]

MR. DICKERSON: I apologize. The time that I had set up is I thought we were going to take a 12:30 break. So I -- when you announced at the start of the day that we are going to be going till 1:30, I called them in. The next witness left the forensic lab at -- at noon, so he should be here just shortly. We just ask for a short -- short recess.

THE COURT: How long, 10 minutes?

MR. DICKERSON: Yeah. 10, 15.

THE COURT: 15 --

MR. DICKERSON: 15 would be great.

THE COURT: Let's see -- I've still got to take -- my staff is going to have to have a lunch break --

MR. DICKERSON: Absolutely.

THE COURT: -- so I'm going to take it at 1:30.

MR. DICKERSON: And -- and we're fine with that. We plan on --

THE COURT: Okay.

MR. DICKERSON: -- only putting on one witness after that anyway.

THE COURT: All right. So a 15-minute break?

MR. COYER: Is that Sahota?

MR. DICKERSON: Yeah, Sahota.

THE COURT: All right.

MR. COYER: We can -- Judge, while we're here --

1 THE COURT: Huh?

2 MR. COYER: While we're here, we can probably short circuit
3 and save some time. We're willing to stipulate to Mr. Sahota's
4 credentials as well as an expert. The next witness that -- that
5 Mr. Dickerson is talking about is Eric Sahota, who is a fingerprint expert.

6 THE COURT: Right.

7 MR. COYER: And we are willing to stipulate to his expertise
8 as well.

9 THE COURT: So if they're willing to stipulate, you don't have
10 to call that witness.

11 MR. DICKERSON: No. I think they're just trying to get past
12 the -- the point where we're going to come and have a bench conference
13 where we announce that he's an expert or not.

14 THE COURT: Oh, I see what you're saying --

15 MR. DICKERSON: Or challenge it --

16 THE COURT: So you're stipulating -- I'm sorry, I
17 misunderstood.

18 MR. COYER: That's -- yeah. That's okay.

19 THE COURT: You're stipulating to his qualifications?

20 MR. COYER: Like we did with Ms. May.

21 THE COURT: Okay. No. I -- I --

22 MR. COYER: We're happy to stipulate --

23 THE COURT: -- appreciate that.

24 MR. COYER: Yeah.

25 MR. DICKERSON: And I'll still get into them for the edification

1 of the jury, but yeah.

2 THE COURT: Okay. So I'm going to -- what's the
3 gentleman's name?

4 MR. DICKERSON: Eric Sahota, S-A-H-O-T-A.

5 THE COURT: Okay. I'm going to -- based on the stipulation
6 of the parties, I'm going to accept Mr. Sahota as an expert, a fingerprint
7 expert and let him testify, that is, to his opinion.

8 MR. DICKERSON: Thank you, Your Honor.

9 THE COURT: Case --

10 MR. LEXIS: We might as well take of the other guy too.

11 MR. DICKERSON: Jason Altnether?

12 MR. LEXIS: He's here, and you guys have the --

13 MR. DICKERSON: He's the chemist.

14 MR. LEXIS: [Indiscernible.]

15 MR. DICKERSON: Yeah.

16 MS. PLUNKETT: Oh, yeah.

17 MR. COYER: Yeah. We'll stipulate as well.

18 THE COURT: And what's his name?

19 MR. DICKERSON: Jason Altnether.

20 THE COURT: Say it again.

21 MR. DICKERSON: A-L-T-N-E-T-H-E-R, I believe.

22 THE COURT: Okay. And what's his expertise?

23 MR. DICKERSON: His expertise in controlled substance
24 analysis.

25 THE COURT: Okay. Based on the stipulation of the parties,

1 I'll accept this officer --

2 MR. DICKERSON: Forensic Scientist Jason Altnether.

3 THE COURT: Forensic Scientist Jason Halnetter --

4 MR. DICKERSON: Yeah, I know.

5 MR. COYER: It's tough.

6 MR. DICKERSON: Mr. Lexis had a tough time with it too.

7 THE COURT: -- as a expert --

8 MR. COYER: It's not as hard as Lefebvre.

9 THE COURT: -- and let -- and allow him to give an opinion.

10 MR. DICKERSON: Thank you, Your Honor.

11 MR. COYER: Very good.

12 THE COURT: All right. Thank you.

13 MR. DICKERSON: Very much appreciate it.

14 MS. PLUNKETT: Thank you.

15 [End of bench conference.]

16 THE COURT: Ladies and gentlemen, we're going to take
17 a 15-minute recess. During this recess you're admonished not to talk or
18 converse among yourselves or with anyone else on any subject
19 connected with this trial, or read, watch, or listen to any report or -- or
20 commentary on the trial or any person connected with this trial by any
21 medium of information, including without limitation, the social media,
22 text, newspapers, television, the Internet, and radio; do not visit the
23 scene of any of the events mentioned during the trial or undertake any
24 investigation; do not do any posting or communications on any social
25 networking sites or do any independent research, including Internet

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

3 We're in a 15-minute recess.

4 [Court recessed at 12:23 p.m. until 12:41 p.m.]

5 [Outside the presence of the jury.]

6 THE COURT: This is continuation of the trial of *State of*
7 *Nevada vs. Ceasar Valencia*. Let the record reflect the presence of
8 counsel for the State, counsel for the defense, and the defendant.

9 Bring the jury in, please.

10 [Jury reconvened at 12:42 p.m.]

11 THE COURT: Let the record reflect that the jury is present in
12 the jury box.

13 State, call your next witness, please.

14 MR. DICKERSON: State's next witness will be Eric Sahota.

15 **ERIC SAHOTA**

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

18 THE CLERK: Please be seated.

19 THE WITNESS: Thank you.

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

22 THE WITNESS: Eric Sahota, E-R-I-C S-A-H-O-T-A.

23 MR. DICKERSON: May I proceed, Your Honor?

24 THE COURT: Yes.

25 **DIRECT EXAMINATION**

1 BY MR. DICKERSON:

2 Q How are you employed, sir?

3 A I'm a forensic scientist employed by the Las Vegas
4 Metropolitan Police Department assigned to the Forensic Laboratory
5 Section, Latent Print Detail.

6 Q And how long have you been employed in that capacity?

7 A Approximately 10 and a half years.

8 Q What training experience do you have that allows you to hold
9 this position?

10 A I have bachelor of arts degrees -- excuse me, bachelor of arts
11 degree in the natural sciences from the Johns Hopkins University.
12 Following my degree, I worked for the Department of Neuroscience at
13 the Kennedy Krieger Institute as a research assistant, where I did bench
14 work in cell biology and biochemistry.

15 Following that, I spent 18 months with the Baltimore City
16 Police Department in their crime laboratory as a crime lab technician.
17 That's equivalent to a crime scene analyst or a CSI here in Las Vegas.
18 My duties -- my training and duties included responding to crime scenes,
19 documenting evidence, taking photographs. And that included the
20 development and recovery of latent prints.

21 And then in 2007, I came to Las Vegas as a forensic scientist
22 trainee where I started an 18-month intensive training program in latent
23 print recovery analysis and comparison. And, basically, that -- that
24 training program consisted of both academic and -- and practical
25 exercises. There was book work and papers I had to write, tests I had to

1 take. And then practical -- practical training and practical tests in the
2 development and recovery analysis of latent prints.

3 Following the -- the completion of my training program, I took
4 a competency test and began doing case work. And then we're tested --
5 we're proficiency tested on an ongoing basis in minimum once per year.

6 Q And what is a latent print?

7 A So the easiest way to understand what a latent print is, is to --
8 is to look at the palm of your hand. And if you look at the skin on your
9 hand, you'll notice that it's not smooth. There's some different features
10 on there. You'll see some dark lines around the knuckles of your fingers
11 and in various places on your palm. We call those flexion creases. And
12 if we look a little bit more closely, and we look at the skin in between
13 those flexion creases, we'll notice that skin isn't smooth either, but
14 consists of a series of ridges.

15 And these ridges aren't straight, continuous lines. They
16 exhibit different features, different -- different patterns. So if we take one
17 ridge and we start tracing it, we'll notice that it might split into two ridges
18 or it might -- might abruptly end, or you might have some very -- some
19 small ridges where you can see both ends in different places.

20 These ridges then form what we call ridge arrangements. So
21 we look at these ridges in sequence and we look at the -- we look at the
22 shapes and the features in sequence, in a -- in a series of ridges. And
23 we use that for what we call its -- its discriminating power, meaning that
24 the variability in these ridge arrangements allow us to distinguish
25 between skin impressions from two different people.

1 Q And does everyone have fingerprints?

2 A Everyone who's medically -- otherwise normal, and medically
3 healthy has -- has fingerprints, yes.

4 Q Okay. And how is that people leave fingerprints?

5 A So, basically, the way a -- the way a fingerprint or a latent
6 impression -- and we call it latent, because it's not visible to the naked
7 eye. We have to use some sort of chemical or physical process to make
8 it visible. But the way you make a latent impression is -- best way to
9 think about that is to think of an ink stamp.

10 So basically, an ink stamp, you have the -- you have the
11 template. You have that rubber template. You have the transfer
12 medium, which is typically ink. And then you have the surface that
13 you're -- that you're transferring that template onto. And so by taking
14 the -- taking the stamp with the medium, with the ink or whatever it is,
15 and then you place that on a sheet or paper or some other surface,
16 when you take it away, you've now left behind an impression of -- of
17 what -- whatever was on that stamp.

18 The friction ridge skin, or the ridge skin on your -- on your
19 hands and your fingers behaves in much the same way. But in this
20 case, the template are those ridge arrangements that are on your skin.
21 The medium is typically going to be something like sweat or some other
22 skin residue, but it can be other things. It can be oil from the, you know,
23 greasy hamburger you had from lunch, or it could be blood or ink or
24 paint, or -- or anything.

25 And then when you have those residues on your skin and you

1 touch a surface or you touch an item, you could potentially leave behind
2 an impression of those ridge arrangements on your skin.

3 Q So what factors go into there being latent prints on an object?

4 A So again, if we think about that -- that analogy of the ink
5 stamp, that when you're making an impression, it's the interaction of
6 three materials; it's the template, it's the transfer medium, and it's -- it's
7 the receiving surface. So if a have a problem in any -- any one or all
8 three of those areas, that can affect the ability to leave -- leave an
9 impression at all. It could also affect the ability to leave an impression
10 that can be -- can be recovered.

11 So number one, the skin -- your skin can be damaged. One of
12 the things we found, you know, certain -- certain individuals that do a lot
13 of manual work, they don't leave -- they don't leave fingerprints as well
14 as people that have normal, healthy skin. It depends on what kind of
15 residue or that transfer medium that's on the skin.

16 So there's couple of different types of skin secretions that we
17 can find in latent prints. One is what we call eccrine, eccrine secretions.
18 But, basically, that just means that the eccrine secretions have a high
19 water content. They're mostly water and they don't tend to be persistent
20 over time. Basically, the water just evaporates and then that -- that
21 impression is gone.

22 And then there's another type of skin residue that we call
23 sebaceous, which is quite a bit more oily or more fats and oils. And
24 those sebaceous secretions tend to be a little bit more persistent. Now,
25 what -- what secretions you have on your skin and in what combination

1 can be highly variable between -- between different individuals.

2 And then, of course, there's the surface that we're trying to
3 leave the impression on. So we have what we call ideal surfaces and
4 nonideal surfaces. Ideal surfaces are going to be things that are going
5 to be smooth and shiny. So clean, undamaged glass, clean -- clean
6 painted surfaces, whether it be wood or metallic. And then the nonideal
7 surfaces are going to be the -- the opposite things that are going to be
8 rough and textured, not -- not smooth and shiny.

9 So maybe an easy example to -- to provide is something like
10 sandpaper. Sandpaper would be highly undesirable or unproductive
11 surface for us to try to recover latent prints off. And then, of course, you
12 have the entire spectrum in between.

13 Q So is it safe to say by that, that not everybody leaves the
14 same type of latent print --

15 A It --

16 Q -- or the same quality?

17 A It -- it would be. There's -- there's something that we -- we
18 refer to as the -- as the donor effect. So they -- they discover this first in
19 DNA. They found that some individuals are good DNA donors and some
20 just aren't. And -- and our own internal study, we found, is that the same
21 seems to be true for latent prints, is that some people are good
22 fingerprint donors. Some people are good at leaving latent prints
23 behind, and some aren't. Even under -- even under ideal conditions,
24 there are some individuals that just either don't leave latent -- latent
25 prints or they don't leave latent prints than we can -- we can recover and

1 then use for comparison purposes.

2 Q How does timing of the print factor into -- or multiple prints, I
3 should say, possibly, factor into your analysis and your ability to recover
4 prints?

5 A Can I clarify? Are you talking about -- are you just talking
6 about the period of time or are you talking about the number of touches
7 on a -- on a surface?

8 Q I'm talking about the number of touches on a surface over
9 time.

10 A Yes. That can definitely have an impact. So if you think
11 about -- if you just think about a muddy field, you're walking through a
12 muddy field and you turn around and you look behind you, and you'll see
13 perhaps an impression of your -- the sole of your shoe. Turn that around
14 and now say, okay, now there's 150 people behind you that now walk
15 through that same muddy field. And then what you end up with is a big
16 jumbled mess of mostly unrecognizable shoe impressions.

17 So both the -- the length of time and the number of touches
18 over that period of time can -- can have an impact. Where time can
19 become a contributing factor, again, has to do with the persistency of the
20 latent print residue. So depending on the composition of the -- of the
21 sweat or the skin secretions, they may or may not be persistent over
22 time. So if we're looking at a -- at an item or piece of evidence after
23 significant period of time has elapsed, then that potentially could inhibit
24 our ability to recover latent prints.

25 Q And so when you get a latent print from an object along those

1 same lines of what you just discussed, would you expect to find a latent
2 print more likely of good quality from the person who last touched it as
3 opposed to the people who touched it before that person?

4 A That would be my expectation. But that may or may not
5 actually be what happens.

6 Q Okay. And how would contact -- outside contact -- with the
7 surface that you're analyzing possibly affect those prints?

8 A So when we're -- we're talking about developing and
9 recovering latent prints, again, we're talking about -- we're talking about
10 some sort of residue that's on the -- on the surface of an item. I mean,
11 it's -- three dimensionally, it's very, very small. I mean, it doesn't --
12 doesn't look three dimensional, but you're actually talking about a
13 physical residue on top of another -- on top of another surface. So
14 anything that comes into contact with that -- with that residue, whether
15 it's another individual, an animal, another -- another item or object, any
16 kind of contact has the potential for disturbing -- disturbing those --
17 disturbing or removing those residues from the surface.

18 Q Say shoving that item into the waistband, what expect would
19 you -- what would you expect that to do to the prints?

20 A I would say that would -- that would qualify as that surface
21 coming into contact with another -- another object or surface. And
22 there's the potential that it could disturb any residues that are on there.

23 Q In this particular case, you were asked to do an analysis?

24 A I was -- yes, I was.

25 Q And the examination specifically had to do with a Taurus

1 Model 85 .38 Special revolver?

2 A That's correct.

3 Q And you were comparing that to the known fingerprints of
4 Ceasar Valencia?

5 A That's correct.

6 Q And Jeremy Jacobitz?

7 A That's correct.

8 Q And let's take a look at that -- that gun.

9 Publishing for members of the jury State's Exhibit 32.

10 This revolver here, Taurus .38 Special revolver, where are the
11 good surfaces, if at all, to find prints on this gun -- or latent prints on this
12 gun?

13 A So this is -- this is a pretty small gun. And I can't tell you the
14 exact -- I didn't measure the barrel length, but it's -- might be a -- might
15 be an inch and a quarter or inch -- inch and a half. But what we have
16 over -- well, I guess what we can do is we can talk about what's -- what
17 are not good surfaces. So now if I touch this, will it --

18 Q It will.

19 A Okay. So this portion here, it's a -- it's a texture -- textured
20 rubber grip. Generally from based on my experience in the -- and our
21 own internal -- internal case reviews, we have found that textured
22 rubber -- textured rubber surfaces, textured plastic surfaces typically
23 aren't going to be -- aren't going to be very good.

24 The trigger area is just, again, it's a very small surface area.
25 There's just not a lot of room to leave -- to leave an impression. So even

1 not in this case, but in other cases where we have developed
2 fingerprints on -- on triggers, there's just simply not enough information
3 for us to do anything. So our expectation of finding anything useful there
4 is pretty low.

5 The hammer in the back, again, small area and it tends to
6 be -- tends to be textured to improve grip.

7 And then now, if I tap this, will they go away or?

8 Q Let's go ahead and change the color.

9 A Okay.

10 Q So we'll change the color. And point out what, if anything, you
11 might find a latent print on.

12 A Okay. So generally -- generally based directly on my
13 experience processing firearms, and specifically revolvers, where I tend
14 to recover latent prints are on the frame, the frame -- frame area over
15 here, and on the -- on the cylinder. Those -- those tend to be the areas
16 that, in most cases, they'll be enough space where it's -- you have a
17 smooth, metal surface and you can -- you can leave a viable latent print.

18 Q This particular firearm, were you able recover any latent prints
19 from it?

20 A I was able to recover one.

21 Q Just one?

22 A Just one.

23 Q And were you able to analyze that or compare that to the
24 known prints that you were looking at?

25 A I was, yes.

1 Q And what were your results and conclusions?

2 A If I recall correctly -- may I refer to my report to refresh my
3 recollection?

4 Q Yes, if that would refresh your recollection.

5 A Thank you. So that impression, I identified, to the right thumb
6 of Officer Jacobitz.

7 Q Officer Jeremy Jacobitz?

8 A Jacobitz, yes.

9 Q And, specifically, where was it that you found that latent print?

10 A That would be on the cylinder. That would be this area that I
11 circled in blue on the monitor.

12 Q Go ahead and just indicate again. The cylinder is --

13 A Cylinder is that part there.

14 Q Okay. No other latent prints on that firearm?

15 A No. I didn't find any -- any other -- any other latent
16 impressions, not even a little bit, any other part of the gun.

17 Q Okay. And on this particular gun, is it surprising to you that
18 you only found one?

19 A No, I'm not surprised.

20 Q The size of it and the texture of that grip isn't very conducive
21 to prints?

22 A No. Actually, I was surprised that I developed anything.

23 Q Oh. So you're surprised that you even had one print?

24 A Generally, the -- our experience is with firearms evidence in
25 general, not even necessarily specifically handguns, is that we're

1 recovering latent prints less than 14 percent of the time.

2 Q Just so I'm clear, that's less than 14 percent of the time you
3 look at handguns do you recover latent prints from them?

4 A Correct. Yeah. And from -- based on -- based on our
5 cumulative experience as a laboratory, the -- processing firearms is
6 generally so unproductive that we don't even -- we don't even routinely
7 look at firearms anymore. We won't process firearms unless it's by
8 special request. Have to be special circumstances for us to even look at
9 those items anymore.

10 Q Okay. Sir, let's say 10 people walk into a room. They all
11 touch something in that room. Is it possible to recover prints from all 10
12 people?

13 A It's possible.

14 Q Say those same 10 people walk into same room another time,
15 room is clean, they all touch something in that room; is it just as possible
16 not to recover any prints?

17 A That's also possible.

18 Q Also possible?

19 MR. DICKERSON: State will pass the witness.

20 THE COURT: Any cross-examination by the defense?

21 MS. PLUNKETT: May I approach your clerk, Judge?

22 THE COURT: Yes.

23 **CROSS-EXAMINATION**

24 BY MS. PLUNKETT:

25 Q Good afternoon, sir.

1 A Good afternoon.

2 Q I just want to clear this up. When -- when we are describing
3 prints, it's most common to think of fingerprints, correct?

4 A Most commonly.

5 Q But prints, like you said, can be obtained from the middle of
6 the finger, the palm, the entire hand, basically?

7 A They can.

8 Q And you stated that anyone who is medically normal will have
9 fingerprints?

10 A Correct.

11 Q And I just want to make it clear that Ceasar Valencia is
12 medically normal --

13 MR. DICKERSON: Objection. Calls for speculation.

14 THE COURT: Overruled. You can answer the question.

15 MS. PLUNKETT: I -- I wasn't done yet, but --

16 THE COURT: Okay. State your question.

17 BY MS. PLUNKETT:

18 Q He had fingerprints that you could compare to what you
19 obtained from the weapon, correct?

20 A Actually, I can't -- at the -- whatever -- I actually can't really
21 say anything about the -- about the -- the skin of Mr. Valencia. I mean, I
22 haven't examined his skin. I -- I couldn't tell you.

23 Q When you performed this analysis, you had a sample from
24 Mr. Valencia in which to compare what you obtained from the gun?

25 A That's correct. I can give you the date on that, if you -- if that's

1 helpful.

2 THE COURT: No.

3 MS. PLUNKETT: No.

4 THE COURT: Just listen to the question --

5 THE WITNESS: Oh, sorry.

6 THE COURT: -- and answer the question. Thank you.

7 THE WITNESS: Apologies.

8 MS. PLUNKETT: Thank you.

9 BY MS. PLUNKETT:

10 Q You said that an ideal surface to obtain fingerprints from is
11 one that is smooth and shiny, correct?

12 A That's correct.

13 Q I'm going to show and publish -- republish State's Exhibit 38.
14 When looking at this photo, do you see anything else in the photo that
15 you would describe as smooth and shiny?

16 A I would describe the cartridges as smooth, and they do reflect
17 light, although they're -- they're not quite as -- there are degrees of
18 shininess. So they have a degree of shininess to them, yes.

19 Q The cartridges are something from which you could obtain
20 fingerprints?

21 A Possibly.

22 Q But those cartridges were not tested for fingerprints, correct?

23 A No. That's against our policy now actually.

24 Q At the -- when you say now, when did that policy go into
25 effect?

1 A Well, that was a few years ago. I don't recall the exact date,
2 but it's -- it's been some time. So that, again, because we found that
3 processing cartridges, that meaning the -- these bullets and bullet
4 casings maybe you might be more familiar as referring to them, again,
5 we just found it to be so unproductive that we just -- we stopped
6 processing cartridges, again, except under special circumstances. And
7 then later we expanded that to all firearms and -- completely.

8 Q You stated that processing cartridges for fingerprints is
9 unproductive, correct?

10 A That's correct.

11 Q How does that comport with the fact that an ideal surface is
12 smooth and shiny?

13 A Ideal surface, even -- even on ideal surfaces, that doesn't
14 necessarily mean that you're always going to find prints on ideal
15 surfaces. So the firearms are a little bit of a -- little bit of a different
16 animal, partly because of the way -- partly because of they're handled,
17 partly because of their -- they're stored. You know, you can put -- you
18 can take cartridges out of a gun, but those cartridges could have been
19 there for months, years, or -- or even longer. I can tell you that in, you
20 know, my personal firearm, I don't think -- I don't think those cartridges
21 have been touched in probably 18 to 24 months. I mean, there's just no
22 reason to go in and handle -- handle those areas.

23 So is that a potential explanation for why we're not finding very
24 many prints on cartridges? It could be. I can't tell you why we don't find
25 more latent prints on cartridges. I can just tell you that as we've studied

1 the actual output of processing hundreds and thousands of cartridges,
2 we're recovering prints in a extremely small percentage of those cases.
3 So those -- that's the real-world reality of how that works.

4 Q And you stated that placing a firearm into someone's
5 waistband could possibly corrupt potential fingerprints, correct?

6 A Sure. Any -- any contact -- any contact with the surface can --
7 could disrupt or remove residues that are on there.

8 Q Doing that same action would not corrupt the surface of the
9 cartridges though, correct?

10 A Presumably not.

11 Q And in only 14 percent of cases you're able to obtain useable
12 prints off of weapons?

13 A We were -- we were recovering latent prints in less than 14
14 percent of the cases and -- but not all of those that we recovered were --
15 were suitable for comparison. Meaning we recovered something and
16 then when we got back to the lab bench and we did our more detail
17 analysis and we determined that the latent print wasn't suitable for
18 comparison, meaning I -- I couldn't render a conclusion using that
19 information.

20 Q Can you give me a percentage of the times that you would find
21 latent prints on cartridges in the same way that you gave the 14 percent
22 on revolvers -- on firearms?

23 A Specifically -- specifically, no. I just know that the -- the stat I
24 remember from that retrospective case study was that looking -- looking
25 at all firearms evidence together, the overall recovery rate was less

1 than 14 percent. I can assure you that if the recovery rates were
2 significantly higher for -- for cartridges, then we would still be doing
3 them. I mean, we're a data-driven organization.

4 Q You -- as part of your job, you do still perform fingerprint
5 testing on firearms, correct?

6 A Under special circumstances, yes.

7 Q In those cases, if it is requested, is the firearm along with the
8 cartridges requested?

9 A So if I may -- if I may explain briefly the -- the way we actually
10 get around to doing examinations is that some party, whether it's a
11 detective or it's an attorney, they send us, basically, a -- basically, a
12 work order. They gave a -- they send over some documentation that
13 says we want you to perform these tests on these items of evidence.
14 And so what happens is, sometimes the cartridges are packaged with
15 the firearm. Sometimes they're packaged separately. Regardless,
16 whatever -- whatever evidence we receive in the package, we test
17 what's specified in the work order.

18 So there could be 10 items in a -- in an evidence package. If
19 they only request testing on one item, we just test the one item. That's --
20 that's how our laboratory system works. That's how our accreditation
21 system works. That -- we do the scope of work that's put in by the
22 requester.

23 Q And here, the requester did not ask for the cartridges to be
24 tested for fingerprints?

25 A I don't specifically recall. So what would happen is with our

1 sample limits policy, if someone requested an examination of something
2 that we normally wouldn't do, say for example, cartridges and cartridge
3 cases, then my manager or someone higher up in my chain of command
4 will have that conversation with the person that's requesting to
5 determine whether it's needed or not. I don't see any of that part of the
6 conversation. I just see the output, which is I'm either told to process
7 cartridge cases or I'm -- or I'm not. And I don't know how those
8 decisions get made.

9 Q And the only person that you can determine touched this
10 weapon is Officer Jeremy Jacobitz?

11 A That's correct.

12 MS. PLUNKETT: Thank you. That's all.

13 THE COURT: Any redirect?

14 MR. DICKERSON: No, Your Honor.

15 THE COURT: Can this witness be excused?

16 MR. DICKERSON: Yes.

17 THE COURT: Thank you, sir. You're excused.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: State, call your next witness.

20 MR. LEXIS: Next one will be here at 2:15, Judge.

21 THE COURT: Okay. All right. Ladies and gentlemen, at this
22 time we're going to take our lunch recess.

23 During this recess you -- you are admonished not to talk or
24 converse among yourselves or with anyone else on any subject
25 connected with this trial, or read, watch, or listen to any report of or

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

9 We'll be in recess to 2:15?

10 MR. LEXIS: Yes.

11 MR. DICKERSON: That would be great, Your Honor.

12 THE COURT: We'll be in recess to 2:15. Thank you.

13 [Jury recessed at 1:09 p.m.]

14 THE COURT: Mr. Dickerson, when do you believe the State's
15 going to rest?

16 MR. DICKERSON: I believe that we may request to rest
17 tomorrow morning. And whether or not we -- we call somebody I think
18 will be to be determined. But we would ask that we rest tomorrow
19 morning, and ultimately expect to close tomorrow, absent a lengthy case
20 by the defense.

21 THE COURT: I just wanted to notify defense counsel, be
22 prepared to present witnesses sometime tomorrow.

23 MR. COYER: Certainly.

24 THE COURT: Okay.

25 MR. DICKERSON: Thank you, Your Honor.

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THE COURT: Okay. Thank you, counsel.

MS. PLUNKETT: Thank you, Judge.

THE COURT: We'll be in recess.

[Court recessed at 1:10 p.m. until 2:19 p.m.]

[Outside the presence of the jury.]

THE COURT: Thank you. Please be seated. This is continuation of the trial of *State of Nevada vs. Ceasar Valencia*. Let the record reflect counsel for the State, counsel for the defense, and the defendant are present.

Are we ready to bring the jury in?

MR. DICKERSON: We are, Your Honor.

THE COURT: Okay. Please bring the jury in, please.

[Jury reconvened at 2:20 p.m.]

THE COURT: Let the record reflect the presence of the jury. State, are you prepared to call your next witness?

MR. LEXIS: State calls Jason Altnether.

JASON ALTNETHER

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

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

THE WITNESS: Jason Altnether, J-A-S-O-N
A-L-T-N-E-T-H-E-R.

DIRECT EXAMINATION

BY MR. LEXIS:

1 Q Where do you work, sir?

2 A I work for the Las Vegas Metropolitan Police Department
3 Forensic Laboratory.

4 Q How long have you worked there?

5 A Approximately eight years now.

6 Q Talk about your education and training and experience.

7 A Well, I graduated from Arizona State University with a degree
8 in chemistry. After I graduated, I was hired by the Mesa Police
9 Department Forensic Laboratory in Mesa, Arizona, where I began
10 training in the analysis of controlled and noncontrolled substances. I
11 worked -- was in training for approximately six months there, working
12 with senior members of the staff and receiving additional outside training
13 from agencies like the FBI and the DEA in such analysis.

14 I worked for the Mesa Police Department for approximately
15 five years. I've been in Las Vegas for approximately eight years where
16 I've been doing pretty much the same job, analyzing evidence for the
17 presence of controlled and noncontrolled substances.

18 Q So you pretty much analyze controlled substances?

19 A That's the short answer, yes.

20 Q Is heroin a controlled substance?

21 A Yes, it is.

22 Q Is methamphetamine a controlled substance?

23 A Yes, it is.

24 Q Is cocaine a controlled substance?

25 A Yes, it is.

1 Q How do you test such substances?

2 A Through our analytical scheme, what I use is a series of
3 chemical color tests, just to sort of give me an idea of what I'm working
4 with, usually followed up -- and in this case, I did so, instrumental
5 analysis which gives me a confirmatory data as to the identity of what
6 that substance is.

7 Q Talk about some of the general acceptable methods in testing
8 controlled substances.

9 A The -- the methods of analysis that I mentioned, controlled --
10 color test, instrumental analysis. In this particular instance, I used a gas
11 chromatograph mass spectrometer. These are all analytical routes that
12 are approved methods that are used across nations -- across the county.

13 Q They're generally accepted in the scientific community?

14 A Yes, they are.

15 Q Okay. What type of safeguards do you guys use to ensure the
16 accuracy of these tests?

17 A Well, the -- the color test, what we do is we do -- once we
18 prepare these reagents in the laboratory, they undergo an initial quality
19 control check, which is with both a positive and negative control on it.
20 They're then followed up if they are a -- every month thereafter they are
21 checked. And then before they're disposed of, they are checked once
22 more.

23 For the instrumental, I ensure that every week, at least every
24 week, that the instrument that I'm using is what we call tuned, meaning it
25 is testing itself against a known standard to make sure that it is in proper

1 working order.

2 I also run what is known as a column test check, which means
3 it is a known concentration with known substances in the sample that I
4 run on this instrument, and that they come out at the appropriate
5 retention time and have the appropriate fragmentation that I'm looking
6 for.

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

8 THE COURT: Yes.

9 BY MR. LEXIS:

10 Q Sir, I'm showing you State's Exhibit 4; do you recognize this
11 bag?

12 A Yes, I do.

13 Q Does it have your initials on it?

14 A It does have my initials. It has my signature, along with my
15 employee number, or P number, along with the date I sealed it, the time
16 I sealed it, and an additional seal where I cut into the bag, which is
17 marked both again with my employee number, and the date on which I
18 sealed it.

19 Q Is that essentially to preserve the evidence for chain of
20 custody purposes?

21 A Yes, it is.

22 Q What is chain of custody?

23 A Chain of custody is, again, just to maintain the integrity of the
24 evidence to show who it's been transferred along the way. Our official
25 chain of custody is held within a software program known as WinAce or

1 Windows Active Control Evidence. This chain of custody on the front of
2 the package --

3 THE COURT: Sir.

4 Has that been admitted yet? Has the bag been admitted into
5 evidence?

6 MR. LEXIS: Yes, Your Honor.

7 THE COURT: Okay. That's fine.

8 THE WITNESS: This chain of custody is just to show who's
9 actually been inside the package. And in this case, it's been me.

10 BY MR. LEXIS:

11 Q Can you open -- well, it's already been opened. Sir, can you
12 pull out what's inside?

13 A Okay.

14 Q Do you see three purported controlled substances there?

15 A I see three packages that have what we call the event
16 number, along with the lab -- lab-assigned case number, and a
17 lab-assigned item numbered on each of these, and each of these appear
18 to bear my initials and the date on which I prepared them.

19 Q Signifying that you tested each one of those baggies?

20 A Yes.

21 Q And what's inside of it?

22 A Yes.

23 Q I see what you have in front of you right there is a black
24 tar-type substance?

25 A Yes. This one is marked as No. 4.

1 Q Will you please hold that up for the jury? Thank you.
2 Will you pick up one of the other baggies?
3 A Would you like me to take it outside this bag --
4 Q And that baggie, for the record, is marked State's Proposed
5 Exhibit 4C.
6 Does that appear to be a white, powdery type substance?
7 A Yes, it does.
8 Q Will you please up hold that up for the jury? Thank you.
9 Baggie 4D, can you please hold that up to the jury as well.
10 Does that appear to be a white, crystal-like substance?
11 A Yes, it does.
12 Q You stated that you tested each one of those items, sir?
13 A Yes, I did.
14 Q Following the general accepted principles through your
15 training and experience with Metro?
16 A Yes, I did.
17 Q And that are accepted in scientific community?
18 A Yes, they are.
19 Q Okay. What were your results?
20 A For the item that is marked 4D, identified methamphetamine.
21 If I remember -- if I may refer to my -- my report, Your Honor.
22 THE COURT: Will that refresh your recollection?
23 THE WITNESS: Yes, it would, Your Honor.
24 THE COURT: That's fine.
25 THE WITNESS: It was 2.67 grams. The next bag, which is

1 marked --

2 BY MR. LEXIS:

3 Q Let's go back -- hold on, sir, before you stick that --

4 A Sure.

5 Q You -- the bag that you say marked 4D --

6 A Correct.

7 Q -- can you hold that up again to the ladies and gentlemen of
8 the jury. And you say that that came back as 2.67 grams?

9 A Correct.

10 Q Of methamphetamine?

11 A Identified methamphetamine in the sample, yes.

12 Q The crystal-like substance?

13 A Yes.

14 Q Okay. Next baggie?

15 A This one is marked 4C.

16 Q All right. And is that the white, powdery substance?

17 A Yes, it is.

18 Q All right. And what did that come back as?

19 A That was 2.400 grams, in which identified cocaine in this
20 sample.

21 Q The last baggie, sir.

22 A This one is marked 4B. And again, if I may refer to my notes?

23 Q And is that the black tar-like substance --

24 A Yes, it is.

25 Q -- that you held up earlier?

1 A This is it.

2 Q All right.

3 A And this sample identified heroin at 11.60 grams.

4 Q As part of your conclusions, do you generate a business
5 record with your findings?

6 A We generate a report. Yes, we do.

7 Q Okay. Does it also have on there the verified event number,
8 the subject impound number, and the results?

9 A It does contain those -- those things, yes.

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

11 THE COURT: Yes.

12 BY MR. LEXIS:

13 Q Sir, I'm showing you what has been marked State's Proposed
14 Exhibit 54; do you recognize that?

15 A I do.

16 Q Does that event number match up with the event number that
17 is on State's Exhibit 4?

18 A Yes, it does.

19 Q And does it comport with what you testified earlier with
20 regards to each one of those baggies, the weight, and the result?

21 A Yes, it does.

22 Q True and accurate representation?

23 A It appears so, yes.

24 MR. LEXIS: Your Honor, I'd move to admit State's Exhibit --
25 Proposed Exhibit 54.

1 THE COURT: Could I see it, counsel.
2 Any objection by the defense?
3 MR. COYER: No objection, Your Honor.
4 THE COURT: This will be admitted.
5 [State's Exhibit No. 54 was admitted.]
6 MR. LEXIS: Court's indulgence.
7 Nothing further, Your Honor.
8 THE COURT: Any cross-examination by the defense?
9 MS. PLUNKETT: No, Judge.
10 THE COURT: Can this witness be excused?
11 MS. PLUNKETT: Yes, Judge.
12 THE COURT: Sir, thank you. And you are excused.
13 THE WITNESS: Thank you, Your Honor.
14 THE COURT: Is State prepared to call their next witness?
15 MR. DICKERSON: Yes, Your Honor. State's next witness is
16 Keith Bryant.

17 **KEITH BRYANT**

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

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

22 THE WITNESS: It's Keith Bryant, K-E-I-T-H B-R-Y-A-N-T.

23 MR. DICKERSON: May I proceed, Your Honor?

24 THE COURT: Yes, please.

25 MR. DICKERSON: Thank you.

1 **DIRECT EXAMINATION**

2 BY MR. DICKERSON:

3 Q Sir, how are you employed?

4 A I am a detective with the Las Vegas Metropolitan Police
5 Department.

6 Q Do you have a specific assignment as a detective?

7 A Basically, investigate area crime from simple misdemeanors
8 all the way up to homicide, prior to Homicide taking over.

9 Q Okay. And where are you working -- what unit are you
10 working out of right now?

11 A I am currently assigned to the Convention Center Area
12 Command.

13 Q Where is Convention Center Area Command?

14 A It's -- it incorporates all of the major Strip properties on the Las
15 Vegas strip.

16 Q Okay. And where were you between May 19th and
17 May 21st, 2016?

18 A I was actually assigned as a detective at the Downtown Area
19 Command.

20 Q And what area does the Downtown Area Command cover?

21 A It incorporates a lot of the downtown, like Fremont Street area,
22 the -- kind of Las Vegas Boulevard, Fremont Street.

23 Q And does it also have residential neighborhoods?

24 A A lot of residential neighborhoods, yes. It spans quite a good
25 distance.

1 Q Quite a good distance? Do you know generally the
2 parameters of Downtown Area Command?

3 A I know, I want to say, like, the 15 is to the west. And I think it
4 goes as far as -- I want to say Eastern to the -- to the east.

5 Q Okay.

6 A I believe the north is Las Vegas Boulevard and Sahara. And
7 then the south go -- I'm sorry, I got that backwards. The south is -- is
8 Sahara. North is going to be, I want to say, past -- just say Washington.

9 Q Okay.

10 A Not 100 percent.

11 Q So pretty big area?

12 A Yes.

13 Q The area of 10th Street between Wilson and Bonanza, that's
14 just a very small area of Downtown Area Command's jurisdiction?

15 A Correct.

16 Q Okay. And so May 19th, 2016, you were working as a
17 detective?

18 A Yes, I was.

19 Q And do you respond to a call there in the area we just talked
20 about on 10th Street?

21 A I did.

22 Q What was the purpose of your responding to that call?

23 A An officer, Officer Jacobitz, had broadcast an incident where
24 they had -- him and another officer, Officer Houston, had attempted to
25 stop a subject on a moped. The subject fled. They got in a foot pursuit.

1 At some point during that time, a firearm was pointed at Officer Jacobitz.

2 Q And so what was your reason for responding to that as a
3 detective?

4 A As detectives assigned to the area command at that time,
5 we're the ones responsible for the follow-up investigation. We're going
6 to go out there, conduct our investigation, interview anybody that's a
7 witness, kind of go with the CSI, find out what evidence they have, and
8 then conduct follow-up from that point and hopefully make an arrest.

9 Q Now, am I correct in my understanding that you didn't arrive
10 on scene until about 9:47 p.m.?

11 A Correct.

12 Q And that was sometime -- approximately two hours after the
13 actual event occurred?

14 A Correct.

15 Q Is that usual? Is that normal?

16 A No. Normally we arrive pretty quick after the event is initiated.
17 But, unfortunately, that night we were involved in another -- another
18 incident going on at the police memorial. So we're -- we're on the other
19 side of town at that time, so it took us some time to get down there.

20 Q Okay. By the time you get down there, what does the scene
21 look like?

22 A It's pretty static at that time. Majority of all the officers that
23 were there that had set up perimeters and things like that had already
24 been cleared. Officer Jacobitz, Officer Houston were still there. I
25 believe their sergeant was there, and then my squad was there as well,

1 which -- my sergeant and a couple other detectives.

2 Q Okay. So no more perimeter going on?

3 A No.

4 Q No K-9 searching around?

5 A They'd all been cleared.

6 Q Okay. What do you do when you first arrive?

7 A I make contact with Officer Jacobitz, kind of get a briefing
8 about exactly what happened, as much details as I can about the
9 incident, who was involved and things of that nature.

10 Q Do you request for any sort of crime scene analysis?

11 A We eventually, because of everything that happened, we
12 ended up calling ID to come out, crime scene analysis to come out and
13 do their kind of analysis of the scene and -- and the situation.

14 Q So we heard a couple terms there, ID, crime scene analysis.
15 Explain that for us.

16 A They're the same. It's just CSI, crime scene analysis. We
17 also call them ID. They -- it's same -- it's just different ways to call the
18 same --

19 Q Okay. And what is their job?

20 A They come out and they basically look at the evidence. They
21 take photographs. They document distances, things like that. They end
22 up -- usually, if there's a weapon involved, for the most part, they'll
23 couple out and impound it. They -- any kind of -- any kind of evidence at
24 the scene that's going to be connected to the crime, they'll come out and
25 impound it and take custody of that and document it.

1 Q And that crime scene analyst that arrived that night was a
2 crime scene analyst by the name of Olivia Klosterman?

3 A Yes.

4 Q She arrived sometime just before 11:00; is that right?

5 A Correct.

6 Q And approximately 10:55 p.m.; is that right?

7 A Correct.

8 Q And she didn't leave that scene until just before
9 midnight, 11:42 p.m.?

10 A Correct.

11 Q When she arrived on scene, what, if anything, did you do?

12 A I went with her and also Officer Jacobitz so he could walk --
13 walk us through the location where the firearm was pointed at him and
14 kind of get an idea exactly where it was at and what took place.

15 Q Okay. So where do you do this walk through?

16 A It was down there at the 610 10th Street, I believe it was, if my
17 recollection is correct. It's an alleyway between a building and a wall
18 and some stairs, just to the west of that alley.

19 Q I'm going to show you here what's been admitted as State's
20 Exhibit 18; do you recognize this to be that alleyway?

21 A Correct.

22 Q And so you actually do a walkthrough with Officer Jacobitz?

23 A Correct.

24 Q And CSA Klosterman?

25 A Correct.

1 Q And what is a walkthrough? How would it work in this sort of
2 situation?

3 A Basically, you take the officer that was involved and they'll --
4 they'll kind of walk you through the whole scene, show us their location,
5 the suspect's location, any evidence, where that evidence was picked up
6 at or where the evidence was left at, anything that's going to be pertinent
7 to the investigation. We kind of do a walkthrough and basically just kind
8 of get an idea exactly what happened at the time the incident took place.

9 Q Now, didn't Officer Jacobitz have two prisoners in his custody?

10 A Yes, he did.

11 Q And so where were they at this time?

12 A They were in another patrol car up on 10th Street, I believe it
13 was.

14 Q Okay. So he has these guys in his car and -- and you're doing
15 a walkthrough with him?

16 A Correct.

17 Q Okay. And does he show you, in fact, where he was?

18 A Yes, he did.

19 Q I want to show you here State's Exhibit 23; do you recognize
20 this, sir?

21 A My screen just went out. Yes. Oh, went out again. There you
22 go.

23 Q What do you recognize this to be?

24 A This is the stairwell that if you're coming through the alley,
25 this -- if -- if you keep going up this stairwell and keep walking west, that

1 gets you back out onto 10th Street. The -- the stairwell was the area
2 that Officer Jacobitz advised he was at when the subject turned around
3 and pointed the firearm at him.

4 Q Okay. And --

5 MR. COYER: Counsel, will you identify the exhibit?

6 MR. DICKERSON: I'm sorry, yeah. Absolutely. That's State's
7 Exhibit 23. I think I did. I just --

8 BY MR. DICKERSON:

9 Q I'm going to further publish for you State's Exhibit 26; do you
10 recognize this image, sir?

11 A Correct. That's going to be if you just walked up those steps
12 we just looked at, that's going to be up in the alleyway continuing to
13 head back west towards 10th Street.

14 Q So this would have been right at the top of the steps,
15 basically?

16 A Correct.

17 Q And I want to -- here in the center of the photo, do you see a --
18 an orange cone over there?

19 A I do.

20 Q Was this part of your walkthrough?

21 A Correct.

22 Q And what was that?

23 A That was to document the actual metal pole where the subject
24 had turned around and hit his elbow before the gun was discharged from
25 his -- or dislodged from his arm.

1 Q Okay. And so in your capacity, you're -- you're working as the
2 investigator, officer Jacobitz is a witness?

3 A Correct.

4 Q A victim?

5 A Correct.

6 Q And the crime scene analyst, Olivia Klosterman, is kind of
7 assisting you with your investigation?

8 A Yeah. She's there to document the location so that she can
9 put it into her report.

10 Q Okay. And is this what you remember being documented at
11 that time?

12 A Correct.

13 Q Did you have then the opportunity to go back to that point --
14 showing you here State's Exhibit 20 -- and look back at the area where
15 Officer Jacobitz was standing --

16 A Yes.

17 Q -- when this gun was pointed at him?

18 A Yes, I did.

19 Q And you also had the opportunity to stand where Officer
20 Jacobitz was standing?

21 A Yes, I did.

22 Q What was your assessment of the size of this area?

23 A It was very close, very easily -- if a firearm would have been
24 discharged, very easily would have struck Officer Jacobitz.

25 MR. COYER: Objection. Speculation. Foundation.

1 THE COURT: Sustained.

2 BY MR. DICKERSON:

3 Q You have --

4 THE COURT: Disregard that last answer -- shucks.

5 BY MR. DICKERSON:

6 Q Do you have --

7 THE COURT: Disregard that last answer by the witness.

8 BY MR. DICKERSON:

9 Q Do you have training in firearms?

10 A Yes, I do.

11 Q And do you have training in dangerous situations as a police
12 officer?

13 A Yes, I do.

14 Q And when you see this situation right here, specifically what
15 we're looking at in State's Exhibit 20, what do you see?

16 A What I have here is what we call a fatal funnel. Basically, the
17 best way to describe that --

18 MR. COYER: Object to the relevance of this testimony,
19 Judge.

20 MR. DICKERSON: It's absolutely relevant, Your Honor.

21 THE COURT: Wait, counsel. Approach.

22 [Bench conference transcribed as follows:]

23 THE COURT: Okay. What is your objection, relevancy?

24 MR. COYER: Relevance.

25 THE COURT: Why isn't it relevant?

1 MR. COYER: Because it has no purpose other than to
2 attempt to increase the danger level that is portrayed in this incident.
3 This officer was not a part of the incident. And so if there is any
4 relevance whatsoever, the unfair prejudice would outweigh any potential
5 relevance, Judge. So my objection is twofold.

6 THE COURT: Okay. Counsel, why -- why is it relevant?

7 MR. DICKERSON: It's -- it's relevant to the fact of the entire
8 incident. This is the lead investigator. It's giving his personal
9 assessment of what he saw at the crime scene from the ground level.
10 The assessment of the crime scene is 100 percent relevant to how this
11 act occurred, where the parties were standing, what he sees at that
12 area. He is there and able to get first-hand knowledge, outside of what
13 the witness testified to, of what this area looks like, which is incredibly
14 relevant.

15 THE COURT: Okay. He's not offering lay opinion testimony.
16 So the only way it could come in is expert opinion. So at this time, I'm
17 going to sustain the objection.

18 MR. DICKERSON: But that wasn't the objection.

19 MR. COYER: Thank you, Judge.

20 THE COURT: Well, that's my ruling.

21 MR. DICKERSON: Well, I don't -- I think it is lay opinion
22 testimony, given the fact that this area -- his -- his observation, what he
23 sees the area is just a lay opinion. I mean, he's just --

24 THE COURT: Okay. But you're --

25 MR. DICKERSON: -- telling us --

1 THE COURT: -- asking him to -- given the -- I mean, he can
2 describe the area. And what is the opinion you want to elicit from this
3 witness?

4 MR. DICKERSON: And he did describe the area --

5 THE COURT: Okay.

6 MR. DICKERSON: -- but then --

7 THE COURT: What is the opinion that -- the lay opinion that
8 you want to elicit from this witness?

9 MR. DICKERSON: What he observed from the area when he
10 saw it.

11 THE COURT: But that's not what you're asking him. He --
12 you're asking for an opinion. What's the actual opinion that you're
13 asking him to give?

14 MR. DICKERSON: What -- I -- what he -- I'm not asking an
15 opinion. I'm asking what he saw of this area, what was his assessment.

16 THE COURT: Okay. I thought I heard him say something
17 like -- something funnel, he views it --

18 MS. PLUNKETT: Fatal funnel.

19 THE COURT: What was it?

20 MS. PLUNKETT: Fatal funnel. Which is a --

21 THE COURT: Huh?

22 MS. PLUNKETT: A fatal funnel, which is --

23 THE COURT: Okay.

24 MS. PLUNKETT: -- highly prejudicial.

25 MR. COYER: Right. It's an improper characterization.

1 THE COURT: All right. I'm not going to let him say fatal
2 funnel.

3 MR. DICKERSON: So we can agree it's relevant?

4 THE COURT: All right. I'm not going to let him give an
5 opinion --

6 MR. DICKERSON: Okay.

7 THE COURT: -- that this is a fatal funnel.

8 MR. DICKERSON: Okay.

9 THE COURT: You can -- this goes to the issue of Count 1
10 Assault with -- upon a police -- peace officer with a deadly weapon,
11 correct? And you want him -- the relevancy is that you want to give his
12 assessment of the alleyway. Okay. I'll let him give his assessment of
13 the alleyway.

14 What I'm having problems with -- this is an assault. He's using
15 the term fatal funnel. Okay. If this was a different charge, I might have
16 let it in. But that's the -- I apologize, counsel. I know it better as
17 Rule 403. I think it's 48.035 or 48.045 in State court. But that's the
18 prejudicial effect that outweighs -- let's see, the prejudicial effect
19 outweighs its --

20 MR. DICKERSON: Probative value.

21 THE COURT: -- probative value. Okay. So that's the
22 concern I have with the phrase fatal funnel. So let him give testimony.
23 You're right. He did not object --

24 MR. DICKERSON: Okay.

25 THE COURT: -- as far as opinions. So I'm --

1 MR. DICKERSON: Yeah.

2 THE COURT: -- not going to consider that. I just consider the
3 relevancy. And so if he can do it without that type of terminology, I'll let it
4 in.

5 MR. DICKERSON: Absolutely. Thank you, Your Honor.

6 MR. COYER: Should -- should the court instruct the witness
7 not to use that term?

8 THE COURT: That's a good point.

9 MR. DICKERSON: I'll -- I'll try to avoid that.

10 THE COURT: Huh?

11 MR. DICKERSON: I'll try to avoid that. I'll -- I'll make a
12 concerted --

13 THE COURT: Yeah. But my concern is that's how he's going
14 to term --

15 MR. DICKERSON: I'll say -- I'll -- I'll start off my question,
16 without --

17 THE COURT: Wait, wait, wait. Let me --

18 MR. DICKERSON: Without using any -- any explicit
19 terminology. That's --

20 THE COURT: I need to -- can -- see, I'm used to have a
21 sidebar, and I don't have a sidebar here.

22 MR. DICKERSON: I think I can get him through this.

23 THE COURT: Can I instruct him -- can I bring him around
24 here and instruct him --

25 MR. DICKERSON: Yeah. Sure.

1 THE COURT: Okay.
2 Sir, could you come up in the front, please.
3 THE WITNESS: Yes, sir.
4 THE COURT: I'm going to allow your testimony to question --
5 this line of questioning. But I don't -- this is an assault upon a peace
6 officer with a deadly weapon. I don't want you to use a phrase like fatal
7 funnel --
8 THE WITNESS: Okay.
9 THE COURT: -- or things of that nature. I don't want -- I know
10 that's probably the jargon that's used --
11 THE WITNESS: Right.
12 THE COURT: -- but you can -- you can answer his questions,
13 but don't use that type of language --
14 THE WITNESS: Okay.
15 THE COURT: -- if you would.
16 THE WITNESS: Okay.
17 THE COURT: Okay.
18 THE WITNESS: Yes, sir.
19 THE COURT: Thank you.
20 THE WITNESS: Yes, sir.
21 MS. PLUNKETT: Thank you, Judge.
22 MR. DICKERSON: Thank you, Your Honor.
23 THE COURT: Thank you, counsel.
24 [End of bench conference.]
25 MR. DICKERSON: May I proceed?

1 THE COURT: Yes.

2 MR. DICKERSON: Thank you very much.

3 BY MR. DICKERSON:

4 Q Detective Bryant, having stood in this alley and looking at it
5 here today, what, if anything, did you take note of as being significant to
6 your assessment of the scene?

7 A Just how close the pole where the subject was when he
8 turned around towards Officer Jacobitz, how close he was to Officer
9 Jacobitz. And then just how close everything was in -- you know, usually
10 when you have, say, like, an open field, it's going to take a little bit
11 longer to -- to pick up your -- your target. In a situation like this, it's such
12 a close -- closed environment, that it's going to be -- all he has to do is
13 basically aim -- point the gun and aim and he's going to get a good shot
14 off on the --

15 MS. PLUNKETT: Objection --

16 THE WITNESS: -- officer.

17 MR. COYER: Object --

18 MS. PLUNKETT: -- speculation.

19 MR. COYER: Relevance, and prejudicial effect.

20 THE COURT: What's your objection, counsel? Speculation?

21 MR. COYER: Speculation, relevance, and prejudice, Judge.

22 MR. DICKERSON: And this would just be a lay opinion, Your
23 Honor, that he's --

24 THE COURT: I'm going to allow it. It's overruled.

25 MR. DICKERSON: Thank you, Your Honor.

1 BY MR. DICKERSON:

2 Q So once you had the opportunity to observe this crime scene,
3 specifically this enclosed alleyway, what did you do next?

4 A Stayed with ID, let them process the scene. They did their
5 measurements and -- and documented any of their evidence that was on
6 scene. And then we basically walked back over to -- to 10th Street and
7 kind of started wrapping up the investigation.

8 Q Did Officer Jacobitz leave that scene at some point in time?

9 A Yes, he did.

10 Q And where did he go?

11 A I believe he transported the -- Gilbert and Rivera down to -- to
12 their -- I think to the City --

13 Q Is that Eric --

14 A -- City Jail.

15 Q -- Gilbert and Anibal Rivera?

16 A Yes.

17 Q The two individuals that he had in custody?

18 A Correct.

19 Q So from there, you're on scene, you've done your
20 walkthrough; what happens next in your investigation?

21 A We determine at that point there was really nothing further to
22 follow up on that night. So we returned back to our station and kind of
23 decided what kind of game plan we wanted to go forth at that point.

24 Q And, ultimately, do you proceed with your investigation the
25 next day?

1 A Yes, we did.

2 Q That was May 20th?

3 A Yes.

4 Q 2016?

5 A Yes, sir.

6 Q A Friday?

7 A Yes, sir.

8 Q Specifically that evening, did you take any investigative steps?

9 A Yes, I did. I responded to City Jail and conducted an interview

10 with Eric Gilbert.

11 Q Eric Gilbert was one of the individuals that was arrested by

12 Officer Jacobitz?

13 A Correct.

14 THE COURT: Counsel approach, please.

15 [Bench conference transcribed as follows:]

16 THE COURT: We're not going to get in here -- there's not

17 going to be any testimony about anything dealing with this person having

18 any type of criminal background or how Eric Gilbert knew him or

19 anything of that nature, correct?

20 MR. DICKERSON: No.

21 THE COURT: I mean, no insinuation of --

22 MR. DICKERSON: Just his investigative steps.

23 THE COURT: Huh?

24 MR. DICKERSON: Just his investigative steps. That's it.

25 THE COURT: Okay. But --

1 MR. DICKERSON: We're not talking about hearsay, anything
2 like that.

3 THE COURT: No, no. But what I'm saying is, first of all, I
4 don't -- where is this testimony going?

5 MR. DICKERSON: We're just talking about his investigation
6 here, Your Honor.

7 THE COURT: Okay. I understand. But where is it going?
8 Why -- why is the interview with Eric Gilbert relevant to this --

9 MR. DICKERSON: Just to show --

10 THE COURT: -- prosecution?

11 MR. DICKERSON: -- what he's done in his investigation. And
12 it's probative of the thoroughness that he's gone through and where
13 we're at now and how --

14 THE COURT: Okay. You --

15 MR. DICKERSON: -- he gets there.

16 THE COURT: -- can't just jump over up to his investigation
17 led to --

18 MR. DICKERSON: Sure.

19 THE COURT: Something like that?

20 MR. DICKERSON: Absolutely.

21 THE COURT: I mean, that would be my preference.

22 MR. DICKERSON: Okay. Absolutely, Your Honor.

23 THE COURT: I mean, you can say you investigated this,
24 there come a time -- whatever. But just jump over to where -- I assume
25 we're talking -- talk the -- how they arrested Mr. --

1 MR. DICKERSON: Absolutely.

2 THE COURT: Okay. All right. That will be my preference.

3 MR. DICKERSON: Great. Thank you, Your Honor.

4 THE COURT: Thank you.

5 [End of bench conference.]

6 BY MR. DICKERSON:

7 Q That was approximately 9:20 p.m.; is that right?

8 A Correct.

9 Q Two hours later, you decide there's another step in your

10 investigation; is that right?

11 A Correct.

12 Q What's the next step of your investigation?

13 A Well, we had the individual identified as Ceasar Valencia. So

14 we knew where his address was, 625 North 10th Street. So we decide

15 to set up a surveillance on the residence to see if we can get him either

16 coming or going.

17 Q It -- you'd actually learned that the night before?

18 A Correct.

19 Q And Officer Jacobitz confirmed it to you?

20 A Correct.

21 Q And so approximately 11:18 p.m. on May 20th, 2016, do you

22 start that surveillance?

23 A We did.

24 Q How is it that you start the surveillance?

25 A We had some other detectives at our area command had

1 helped us. And they set up perimeters around 625 North 10th Street.

2 And myself and my sergeant actually got on the balcony at 620

3 North 9th Street, which was basically just one house to the west of the

4 alley right behind 625 North 10th Street.

5 Q I'm going to show you here, just so you can show us, State's
6 Exhibit 10; do you see the address 625 North 10th Street here?

7 A I do.

8 Q If you can just -- it's right there in the middle of the screen; is
9 that fair?

10 A Correct.

11 Q So can you describe for the members of the jury how you set
12 up this surveillance operation?

13 A Myself and my sergeant, if you look just to the house that's
14 just west of that location, there -- is off a little bit, that -- where the white
15 dot is --

16 Q We've been hearing that all week.

17 A Yeah. There's a --

18 Q I'll -- I'll clear it for you.

19 A Okay. It's 620 North 9th Street. This house, there's a balcony
20 on the north side of that street that myself and my sergeant actually set
21 up on with binoculars and we actually had a good eye visual of the
22 backyard of 629 -- 625 North 10th. And then we had -- we had other
23 officers and detectives that were set up in different locations -- there was
24 one that was, I believe, at Wilson and 10th -- to keep a visual on 10th
25 Street. And then we also had some set up on Bonanza and -- and 10th,

1 just south of Bonanza. And then there were other officers actually in the
2 parking lot of Downtown Area Command as well, just kind of keep, what
3 we call, a perimeter around the area, so if he ends up getting mobile, we
4 have some way -- somebody set up at different locations to be able to
5 pick them up, so we're not trying to backtrack and locate him at that
6 point in time.

7 Q So the surveillance operation starts in the late evening hours
8 of Friday, May 20th. What do you do when you're on this surveillance
9 operation? What's your role?

10 A We basically -- what we call having the eye on the residence.
11 We -- me and my sergeant had visual of the backyard with binoculars.
12 So we're the ones that are communicating with the rest of the detectives
13 that are out on the outside of perimeter, letting them know if we have
14 any movement, anybody coming or going or anything of that nature.

15 Q And just so we're clear, you said you're on the north side.
16 North would be up towards the top of this photograph --

17 A Correct.

18 Q -- is where we're looking at?

19 A Back where the 625 is, that just -- right in that area, that little
20 gray -- my -- my finger is all messed up. Kind of that area there.

21 Q Okay. And how good was your view from there?

22 A It was perfect. We had a direct shot right into the backyard.

23 Q So how long do you wait before you see anything?

24 A I would probably say a couple hours.

25 Q Was it approximately 1:31 a.m. the next morning?

1 A The next morning, correct.

2 Q That -- what happened?

3 A As I was looking through the binoculars, I actually saw --
4 there's a shed in the backyard of 625 North 10th Street. And we had
5 some intel that that's where he was actually staying at. As I was --

6 Q He being who?

7 A Mr. Valencia.

8 Q And you indicated with the slight point just now, are you
9 identifying someone here in the courtroom today?

10 A Yes, I am.

11 Q If you could please identify that person by pointing and
12 identifying a piece of clothing that you see them wearing here?

13 A He's the gentleman sitting at the desk right there and he's got
14 a long -- long-sleeved blue shirt on.

15 MR. DICKERSON: If the record could reflect that the witness
16 has identified the defendant, Ceasar Valencia.

17 THE COURT: The record will so reflect.

18 BY MR. DICKERSON:

19 Q So, specifically, the defendant is the individual that you were
20 looking for this night?

21 A Correct.

22 Q Tell me about that, 1:31 a.m.

23 A I was looking through the binoculars. I observed a subject
24 exit -- it was actually a male and a female exit from the shed in the
25 backyard of 625 North 10th Street. Fit the same description, Hispanic

1 male, bald, around 5'6", 5'7". I broadcast -- actually, my sergeant
2 broadcast on the radio that we had movement in the backyard, kind of
3 notified the rest of the detectives in the area that, hey, we could possibly
4 have somebody leaving the house that -- that's going to match the
5 description of our subject.

6 Q Then what happens?

7 A The female and -- end up being Valencia, ends up walking
8 back towards North 10th Street through, like, a gate. And then we lost
9 visual at that time. There were other detectives that were setting up on
10 the perimeter on 10th, had visual. They actually updated that there was
11 a black Mustang that was parked in the driveway of 625 North 10th
12 Street, and that they saw the male and the female get into that vehicle.

13 Q Okay. And then what do you do?

14 A At that time, my sergeant and I had actually climbed back
15 down the roof and down the balcony and tried to make it back over to his
16 vehicle, which was parked over at Downtown Area Command, front
17 parking lot.

18 Q And that's there --

19 A That's -- yeah.

20 Q -- to the left of the screen?

21 A Yeah. It's just right in there. Yes, sir.

22 Q So what happens from this point in time after you get that
23 vehicle?

24 A We -- on radio traffic, we're getting updates that the -- the
25 vehicle is mobile. It's taken off. And it's actually leaving the 625

1 North 10th Street and heading south on 10th Street towards Bonanza.

2 Q Okay. I'm going to approach, with the court permission, and
3 show you a couple items.

4 THE COURT: You can approach.

5 BY MR. DICKERSON:

6 Q I have in my hand State's Proposed Exhibits 12, 13, and 14. I
7 just want you take a look at these three exhibits, tell me if you recognize
8 them and if they're fairly -- fair and accurate depictions of the areas that
9 you traveled that evening during your surveillance operation?

10 A Get my bearings here. That's where we ended up. That's
11 correct.

12 Q All three of these exhibits fairly and accurately depict those
13 areas?

14 A Correct.

15 MR. DICKERSON: State moves for the admission of 12
16 through 14.

17 THE COURT: Any objection from the defense?

18 MR. COYER: Not to 12 through 14, Judge.

19 THE COURT: Counsel, let me see them for just one second.

20 MR. DICKERSON: Yes, Your Honor.

21 BY MR. DICKERSON:

22 Q So where did you go --

23 THE COURT: I'm sorry, counsel. Exhibits 12, 13 and 14 are
24 admitted.

25 [State's Exhibit Nos. 12 through 14 admitted.]

1 MR. DICKERSON: Thank you.

2 THE WITNESS: We get in the -- my sergeant's vehicle and
3 we pull out onto 9th Street. We approach Bonanza and 9th Street. At
4 that moment, we got updated that the vehicle initially was going east on
5 Bonanza. So we turned left and started heading east on Bonanza.

6 MR. DICKERSON: Okay. May I publish, Your Honor?

7 THE COURT: Yes.

8 MR. DICKERSON: Thank you.

9 BY MR. DICKERSON:

10 Q I'm going to show you here State's Exhibit 12; have your
11 bearings on this one?

12 A I'd have to -- let's see it. Yes.

13 Q Okay. If you could indicate as we go through this generally
14 where we're -- where we're going, what we're looking at.

15 A Okay.

16 Q So you head east on Bonanza?

17 A Correct.

18 Q And then what happens?

19 A As soon as we started heading east, another detective gets on
20 the radio and -- and broadcasts the --

21 MR. COYER: Objection. Hearsay.

22 MR. DICKERSON: It would be a present-sense impression,
23 Your Honor.

24 THE COURT: Are you offering for the truth of the matter
25 asserted --

1 MR. DICKERSON: I --

2 THE COURT: -- or the effect on the listener?

3 MR. DICKERSON: I'm offering for the truth of the matter
4 asserted as a present-sense impression, Your Honor.

5 THE COURT: Okay. Counsel, what's your position on
6 present-sense impression?

7 MR. COYER: I think that the best evidence of that would be
8 whatever was actually broadcast or reflected in the CAD, not necessarily
9 this witness's recollection, Judge.

10 MR. DICKERSON: I'm not having him testify to what the CAD
11 says. That would be a best evidence rule objection. Here, I'm just
12 having him testify to what he heard, Your Honor, which would be a
13 statement from somebody else that was a present-sense impression of
14 what that individual was seeing at the time.

15 THE COURT: Did you -- lay the foundation.

16 MR. DICKERSON: Absolutely, Your Honor.

17 BY MR. DICKERSON:

18 Q You guys have radios?

19 A Correct.

20 Q How do those work?

21 A We have vehicle radios and pack sets that we communicate
22 back and forth with.

23 Q Who's involved in this operation that you're communicating
24 with?

25 A It was our detective section at DTAC and then we had some

1 what we call problem solving unit, detectives who are also assigned to
2 us.

3 Q How many detectives and officers in total?

4 A I'd probably say total maybe, like, eight to 10 on that --

5 Q Are you guys working off a -- a normal dispatch radio
6 channel?

7 A In the cars, some of them are -- are to the radio station -- or
8 the actual DTAC station. But we also have what we call detective
9 channels that just interact with detectives.

10 Q So --

11 A And yeah, nobody else hears that except for the -- if you're
12 actually logged into that channel.

13 Q Okay. No dispatch --

14 A No.

15 Q -- or just a couple of you guys?

16 A Yeah. It's almost like a walkie-talkie kind of situation.

17 Q And is that what you were using to communicate this night?

18 A Correct.

19 Q During this surveillance operation?

20 A Correct.

21 Q And specifically what you were just about to testify to, is that
22 how you were receiving this information?

23 A Correct.

24 Q Is this from officers who were on scene?

25 A It was detectives that were on the scene that were following

1 the vehicle. Yes, sir.

2 Q Okay. And you're -- and what was it --

3 THE COURT: Go ahead, counsel.

4 BY MR. DICKERSON:

5 Q -- that those officers told you or those detectives told you over
6 the radio as you turned east onto Bonanza?

7 A They said the Mustang had actually did a U-turn and was now
8 heading back west on Bonanza.

9 Q Okay. And do you see Bonanza here on the map that we
10 have in front of us?

11 A I do.

12 Q If you could just please indicate just a simple point of which
13 street it is.

14 A Just right --

15 Q I see.

16 A Just -- just above the arrow -- the arrow right there.

17 Q I'm going to change the color. White's a little hard. So that's
18 Bonanza that you've indicated on the map?

19 A Correct.

20 Q And what happens when you get that information that the
21 vehicle has now made a U-turn?

22 A The vehicle actually passes us. We're heading east, it's
23 heading west. It drives right past us.

24 Q What does the vehicle look like?

25 A It's a black Mustang.

1 Q And what do you do then?

2 A We immediately turn around and get right behind the vehicle.

3 Q Do you notice what kind of plates that vehicle had?

4 A It had a Florida plate.

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

6 THE COURT: Yes.

7 BY MR. DICKERSON:

8 Q I'm showing you here State's proposed 46 through 52. If you'll
9 just take a look at these photographs and tell me if you recognize them,
10 number one?

11 A Yes. This is the Mustang.

12 Q How is it that you recognize these photos?

13 A That was the vehicle we were behind.

14 Q Okay. Do these photos all -- all relate to this surveillance
15 operation that you were conducting --

16 A Correct.

17 Q -- on May 20th, 2016?

18 A Correct.

19 Q Okay. And these are all fair and accurate depictions of those
20 events as depicted that day?

21 A Yes.

22 MR. DICKERSON: State moves for the admission of State's
23 Proposed 46 through 52, Your Honor.

24 THE COURT: Counsel, let me see the exhibits, please.

25 Thank you.

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Counsel approach.

[Bench conference transcribed as follows:]

THE COURT: It's my understanding you have no objection to any of these exhibits?

MR. COYER: No. That's not accurate.

THE COURT: Okay. You do have objections?

MR. COYER: I do to at least one of them.

THE COURT: This one?

MR. COYER: Yes.

THE COURT: Okay.

MR. COYER: 52, I think -- I think that's 52.

THE COURT: I'm not -- State, what's your position on Exhibit 52?

MR. DICKERSON: I don't know what the objection is.

THE COURT: What's the objection?

MR. COYER: The objection is -- is twofold. One is the relevance of the picture, because it's just of an individual that's not related to this case we're here on.

THE COURT: Yeah.

MR. COYER: And secondly, the fact that he's holding search warrant paperwork --

THE COURT: Uh-huh.

MR. COYER: -- indicates, obviously, that a search warrant was done. My problem with that is it's unfair to the defense because this officer -- this officer did not apply for the warrant, so I can't cross this

1 officer on whether the warrant was valid. And there's some
2 misrepresentations in the warrant that I would like to point out, if we're
3 going to talk about a warrant.

4 THE COURT: Okay.

5 MR. COYER: So I don't think it's fair. It's prejudicial. Those
6 are the reasons.

7 THE COURT: Hold on a second.

8 MR. DICKERSON: Nothing -- first of all, as to the warrant,
9 nothing that we're introducing was found during the warrant search. The
10 relevance or the validity of the warrant is something that should have
11 been challenged pretrial, if that was the concern of defense counsel and
12 not here. It has nothing to do with this exhibit. This picture of this
13 individual is absolutely relevant, Your Honor, given that this was the
14 driver of the vehicle, Nicholas Harris.

15 It's relevant to show the identification by the officers of the
16 defendant as they're driving, identifying Nicholas Harris as the driver,
17 and identifying the defendant as the passenger, so as not to conflate the
18 two saying, hey, maybe it was Nicholas Harris who actually had the gun,
19 because they look alike. It's going to be absolutely probative to my
20 identification of the defendant for me to show Nicholas Harris to the jury
21 and say, yeah, you guys can see him for yourself. This is him.

22 MR. COYER: As an offer of proof, I don't intend to make that
23 argument.

24 THE COURT: I'm sorry?

25 MR. COYER: As an offer of proof, I don't intend to make that

1 argument that counsel is concerned about.

2 THE COURT: Okay.

3 MR. DICKERSON: I don't think that should --

4 THE COURT: Without further foundation, I'm not going to let
5 Exhibit 52 in. The remainder of the exhibits will be admitted.

6 MS. PLUNKETT: Thank you, Judge.

7 MR. DICKERSON: And it's because foundation?

8 THE COURT: It's because I don't also, at this point, see the
9 relevancy. This is a picture of unidentified individual holding paperwork
10 which has been represented to be a search warrant. Defense counsel
11 has argued that he is not going to make the argument that you're
12 concerned about.

13 MR. DICKERSON: But that shouldn't preclude --

14 THE COURT: I am not going to let him make that argument.
15 So --

16 MR. DICKERSON: That shouldn't preclude me from admitting
17 the matter.

18 THE COURT: I'm not letting it in, counsel.

19 MR. DICKERSON: Okay.

20 THE COURT: Thank you.

21 MR. DICKERSON: Thank you, Judge.

22 MS. PLUNKETT: Thank you.

23 THE COURT: So exhibits -- we can go back on the record.

24 [End of bench conference.]

25 THE COURT: Exhibit -- Exhibits 47 through 51 will be

1 admitted.

2 [State's Exhibit Nos. 47 through 51 admitted.]

3 MR. DICKERSON: Thank you, Your Honor.

4 BY MR. DICKERSON:

5 Q Detective Bryant, did you have the opportunity to see these
6 two individuals that were in the vehicle?

7 A I saw the front-seat passenger, yes.

8 Q Did you also see the driver?

9 A Yes.

10 Q Did these two people look anything alike?

11 A No.

12 Q No? Who was the front seat passenger?

13 A Hispanic male, shorter shaved head.

14 Q Did you later identify that individual?

15 A I did.

16 Q And who was it?

17 A Ceasar Valencia.

18 Q Who was the driver?

19 A He -- what --

20 MR. COYER: Objection. Relevance.

21 MR. DICKERSON: Same thing that we just discussed, Your
22 Honor.

23 THE COURT: He can identify -- overruled. He can identify
24 the driver.

25 THE WITNESS: I didn't make any contact with him, so I -- I

1 honestly can't remember, without looking at my record -- report, his
2 name.

3 BY MR. DICKERSON:

4 Q What did he look like?

5 A I believe he was, like, a white male, dark hair, kind of thick
6 hair.

7 Q Nothing like Ceasar Valencia?

8 A No.

9 Q And did you prepare a report in this case?

10 A I did.

11 Q Would the report that you prepared in this case have the
12 identification and name of that driver?

13 A It would.

14 Q Would looking at that report help refresh your recollection?

15 A Yes, it would.

16 THE COURT: You may approach the witness.

17 MR. DICKERSON: Thank you, Your Honor.

18 BY MR. DICKERSON:

19 Q I have in my hand a declaration of arrest
20 Event No. 1605193387; is this your report, sir?

21 A Yes, it is.

22 Q If you could please take a look at it, just see if that happens to
23 refresh your recollection.

24 THE COURT: Read it to yourself, please.

25 THE WITNESS: Yes, sir.

1 BY MR. DICKERSON:

2 Q And when you're done, just flip it over and look up at me.

3 A [Witness complies.]

4 Q Did that refresh your recollection?

5 A Yes, it did.

6 Q And were you able to identify that driver of the vehicle?

7 A Yes, I was.

8 Q Who was the driver of that vehicle?

9 A Nicholas Harris.

10 Q Okay. So as you get behind the vehicle, you see that it's a
11 black Mustang?

12 A Correct.

13 Q Florida plates?

14 A Yes.

15 Q Specifically showing you --

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

17 THE COURT: Yes.

18 BY MR. DICKERSON:

19 Q State's Exhibit 47; these are the plates that you see when you
20 pull up behind it?

21 A Correct.

22 Q And this was at Bonanza and Las Vegas Boulevard?

23 A Correct.

24 Q More specifically, State's Exhibit 49, is this the vehicle you
25 see?

1 A Yes, it is.

2 Q So what do you do from this point in time at Las Vegas
3 Boulevard and Bonanza?

4 A We broadcast that we had a -- a vehicle with a potential in the
5 side -- in the passenger side. We started doing what we call rolling
6 surveillance, kind of watching the vehicle, waiting to try to get a
7 black-and-white marked unit there to -- to do a car stop.

8 Q And so from -- showing you here State's Exhibit 21; still have
9 your bearings with this one?

10 A Yes, I do.

11 Q Where is it that you go from there, following this black
12 Mustang?

13 A We continue to head west on Bonanza. We pass Las Vegas
14 Boulevard and approach the -- the 215 underpass.

15 Q The 15?

16 A I'm sorry, the 15. I apologize.

17 Q And is that depicted here in this photograph?

18 A Yes, it is. Right there.

19 Q And then what happens?

20 A As we're following the vehicle, it takes a quick right-hand turn,
21 I believe it was on H Street, and started heading north. And we didn't
22 want to burn our vehicle, so we kept going west and let another vehicle
23 try to pick him up from behind us.

24 Q Okay. H Street, is that located right here on the map?

25 A Correct.

1 Q It's one of the topmost streets?

2 A Yes. It's a major thoroughfare.

3 Q At this point in time, what happens?

4 A Other units in the area that were behind us were broadcasting
5 that they had a vehicle continuing north on H. Myself, and I was with my
6 sergeant at the time, he was driving, we continued to go up another
7 street further west and try to backtrack to see if we can pick him back up
8 again.

9 Q Did you ultimately locate that vehicle?

10 A We did not, but other officers and other detectives that were
11 there located it in an alleyway by, like, H and West Monroe.

12 Q We see a marking over here, West Monroe and H, is that that
13 intersection right here?

14 A Correct.

15 Q And is that vehicle occupied when it's located up there?

16 A No, it's not.

17 Q Specifically showing you here State's Exhibit 14; does that
18 appear to be that general area?

19 A Yes, it does.

20 Q And then what happens?

21 A The detectives that saw the vehicle unoccupied sat -- this is
22 an alleyway between Monroe and Madison in this area. They kind of set
23 up on the vehicle, kept -- again, keeping an eye on the vehicle to see if it
24 got occupied. We just -- we had no idea where the occupants went to at
25 that moment.

1 Q Then it's some time, approximately an hour, before this
2 vehicle is moving again?

3 A Correct.

4 Q What happens then?

5 A We actually called air support in to help us with this. When
6 they arrived, they updated and advised us that the vehicle was now
7 occupied and was now heading back south on H Street.

8 Q And H Street, depicted here in State's Exhibit 12, as we saw
9 before?

10 A Correct.

11 Q Near the top of the screen?

12 A Correct.

13 Q That side -- at the left side of the screen. Where does the
14 vehicle go then?

15 A It goes down H Street and then makes a left-hand turn and
16 starts heading back east on Washington.

17 Q What happens from that point in time?

18 A We had already set up our black-and-white marked units in
19 the area of Washington and the 15. So when they approached that
20 area, they -- if it -- what they did is they conducted what we call a car
21 stop, and they -- they pulled the vehicle over and detained the subjects
22 inside the vehicle.

23 Q You had marked patrol units do that?

24 A Correct.

25 Q That's for a specific purpose?

1 A Yeah. Just for officer safety and so there's no confusion or
2 anything like that, so they know that it's actually the police stopping
3 them.

4 Q Okay. Showing you here State's Exhibit 13; does that appear
5 to be the intersection of Main and Washington?

6 A Correct.

7 Q And -- how -- is this the intersection where that car stop took
8 place?

9 A I want to say it was a little bit further up, possibly closer to this
10 location up here. I know there was a big wall, like a barrier wall, where
11 we stopped them.

12 Q And that location that you indicated there on the screen, are
13 there big walls on both sides?

14 A I know there's a big wall on -- which would be the south side. I
15 know that for a fact.

16 Q Okay.

17 A That's where the vehicle was stopped.

18 Q I'm showing you here State's Exhibit 48; is that that vehicle at
19 that stop?

20 A Correct.

21 Q At that point in time, did you make contact with -- with the
22 occupants of that vehicle?

23 A Patrol had already stopped the vehicle, so by the time my
24 sergeant and I got there, they were already bringing the passenger back
25 to -- in front of the patrol vehicle.

1 Q And you've already testified as to who those individuals were?

2 A Correct.

3 Q That was Ceasar Valencia was the passenger?

4 A Correct.

5 Q Nicholas Harris is the driver?

6 A Correct.

7 Q And so at that point in time, was Mr. Valencia taken into
8 custody?

9 A He was.

10 Q Now, there was a moped involved in this case; is that right?

11 A Correct.

12 Q Did you request testing on that moped?

13 A No, I did not.

14 Q Is there any reason why you didn't request testing on at that
15 moped?

16 A One of main reasons was we had the Officer Jacobitz, who
17 actually witnessed Valencia driving the -- the moped that night and
18 actually dumping the moped before he took off on foot. And then right
19 after that, within seconds, two other individuals had already picked up
20 the moped and started pushing it away. So in my opinion, just wasn't
21 necessary to -- to go through the DNA process when we had a good
22 eyewitness being the officer who actually saw Valencia driving the
23 moped.

24 Q Are mopeds, at least then in May 2016, registered vehicles?

25 A They weren't --

1 MR. COYER: Objection. It's outside the --
2 THE WITNESS: -- required to be registered.
3 MR. COYER: -- scope of this witness's --
4 THE COURT: Sustained.
5 MR. COYER: Thank you.
6 MR. DICKERSON: I don't believe it's outside the scope, if I
7 may be heard, Your Honor. Can we have a bench conference?
8 THE COURT: Sure.
9 [Bench conference transcribed as follows:]
10 MR. DICKERSON: Not going to get into the vehicle being
11 stolen, simply to show that, hey, look at that investigative step, whether
12 he could ID the person who was driving it by it being registered to that
13 person. In fact, they weren't registered at that time. And there's no
14 mopeds registered.
15 THE COURT: Does he know -- was this moped, this
16 particular -- your question was as --
17 MR. DICKERSON: There will be.
18 THE COURT: -- to all mopeds. Does he know if this moped
19 was registered?
20 MR. DICKERSON: Yeah.
21 THE COURT: I mean, if he --
22 MR. DICKERSON: He will.
23 THE COURT: If it wasn't registered, he can testify to that,
24 whether --
25 MR. DICKERSON: Yeah.

1 THE COURT: But your question was are mopeds registered,
2 general -- generally. So you need --

3 MR. DICKERSON: As a rule.

4 THE COURT: Right. If you -- if you want to ask him, was this
5 moped registered? And he says no, and then --

6 MR. DICKERSON: Okay.

7 THE COURT: -- you can say, so wouldn't have been -- do you
8 any good type of thing.

9 MR. DICKERSON: Okay. Absolutely.

10 THE COURT: It's as to this specific moped, you can ask him.

11 MR. COYER: Judge, I hope I'm getting picked up. As -- as an
12 offer of proof, where this is headed is they're going to get into the fact
13 that the VIN is shaved off the moped and I think that's --

14 THE COURT: Huh?

15 MR. COYER: They're going to get into the fact that the VIN is
16 shaved off the moped. And I think that's irrelevant and prejudicial.

17 THE COURT: Are you going to get the fact that the VIN is
18 shaved off the moped?

19 MR. DICKERSON: Absolutely. It's absolutely relevant to the
20 identification of the driver.

21 THE COURT: Why is it relevant to the -- if it's --

22 MR. DICKERSON: Because --

23 THE COURT: Is he going to testify it was registered to
24 somebody?

25 MR. DICKERSON: No. It's --

1 THE COURT: Okay.

2 MR. DICKERSON: -- not registered to anybody.

3 THE COURT: Okay. Then why would the VIN being shaved

4 off -- because the implication is that the moped itself is stolen --

5 MR. DICKERSON: Right.

6 MS. PLUNKETT: Right.

7 THE COURT: -- because the VIN is shaved off. I am not

8 going to let you get into it that -- he's not on trial for the moped.

9 MR. DICKERSON: Right.

10 THE COURT: I don't know if --

11 MR. LEXIS: Judge, this case is all about, on the front end, it's

12 all about identification. It's going to look like he is not doing his job as

13 an -- as a detective.

14 THE COURT: No, no, no, no. That's not what we're talking

15 about.

16 MR. DICKERSON: Absolutely, Your Honor.

17 THE COURT: Okay. We're going to take a brief recess. I've

18 got to leave at 3:30. So are we going to finish this witness or not?

19 MR. DICKERSON: I'll be very brief.

20 MS. PLUNKETT: And he --

21 THE COURT: Okay.

22 MS. PLUNKETT: -- he has already stated that Officer

23 Jacobitz saw Ceasar Valencia on the moped. So I don't --

24 THE COURT: I'm sorry?

25 MS. PLUNKETT: He already stated that Officer Jacobitz saw

1 Ceasar Valencia on the moped, got a good ID.

2 THE COURT: Right.

3 MS. PLUNKETT: So I don't think we need to go into the VIN
4 being shaved off, as it's --

5 THE COURT: I am not --

6 MS. PLUNKETT: -- part of --

7 THE COURT: -- going to let you go into that the --

8 MR. DICKERSON: And it's already in evidence, by the way,
9 You Honor, in the audio that they admitted.

10 THE COURT: Okay. I'm not going to let you have him testify
11 that the VIN was shaved off the moped.

12 MR. DICKERSON: Okay. All right.

13 THE COURT: Wait, is there any other -- do you understand
14 my ruling?

15 MR. DICKERSON: I do.

16 THE COURT: You can ask this officer was this moped
17 registered? It's not registered, that whole line of questioning,
18 establishing whatever he needs to establish as far as the investigative
19 procedures. But he -- you cannot ask him and he cannot testify to that
20 the VIN was shaved off the moped or anything about the VIN.

21 MR. DICKERSON: Okay.

22 THE COURT: Okay. Thank you, counsel.

23 MR. DICKERSON: Okay. Thank you, Your Honor.

24 MR. LEXIS: Thank you.

25 [End of bench conference.]

1 BY MR. DICKERSON:

2 Q Detective Bryant, this moped was not registered; is that right?

3 A Correct.

4 Q And in 2016, there was no DMV registration for mopeds?

5 A Correct.

6 Q So there was no way for you to track the owner of this moped?

7 A Correct.

8 MR. COYER: Objection. Speculation. Foundation.

9 THE COURT: Overruled.

10 MR. DICKERSON: Thank you, Your Honor.

11 State will pass the witness.

12 THE COURT: Any cross-examination by the defense?

13 MR. COYER: Your Honor, we do have cross-examination, but
14 obviously none that can be completed in 10 minutes. Would the court
15 prefer if I start or defer till our next session?

16 THE COURT: Okay. Counsel approach, please.

17 [Bench conference transcribed as follows:]

18 THE COURT: How long -- do you -- we've got about 10
19 minutes. So you think it's going take longer than 10 minutes?

20 MR. COYER: I do.

21 THE COURT: Then you're probably going to -- I mean, he's
22 going to have to come back tomorrow. I'm not going to be able to --

23 MR. DICKERSON: We might as well start.

24 THE COURT: All right. Well, what -- what we'll do is go for 10
25 minutes.

1 MR. COYER: Okay.
2 THE COURT: Go as far as you can go. He's going to have to
3 come -- I was hoping to get him out today, but --
4 MR. COYER: Understood.
5 THE COURT: -- he took longer than anticipated. So let's go
6 for 10 minutes and then we'll start tomorrow at 10:00.
7 MR. COYER: Understood.
8 THE COURT: All right.
9 MR. DICKERSON: Thank you, Your Honor.
10 THE COURT: Thank you, counsel.
11 MR. COYER: Very good.
12 [End of bench conference.]
13 MR. COYER: May I approach the clerk to set up some --
14 THE COURT: Yes.
15 MR. COYER: -- exhibits?

16 **CROSS-EXAMINATION**

17 BY MR. COYER:
18 Q Good afternoon, Detective.
19 A Good afternoon.
20 Q I want to start here by going back to your testimony about the
21 walkthrough.
22 A Okay.
23 Q Okay. You testified that you and Officer Jacobitz and a CSA,
24 crime scene analyst, did a walkthrough of the crime scene, correct?
25 A Correct.

1 Q Your 100 percent sure it was the three of you?

2 A As far as I can recollect, yes.

3 Q Okay. And the CSA was Olivia Klosterman?

4 A I believe so, yes.

5 Q Okay. Do you -- you understand what a CAD is, right?

6 A Yes.

7 Q Okay. And you understand how to read one of those, right?

8 A Yes.

9 Q Okay. We've -- we've previously heard testimony that on the

10 evening of May 19th, 2016, that Officer Jacobitz was operating

11 as 3DP40 with an Adam, or A, designation because his partner was B; is

12 that right?

13 A Correct.

14 Q Okay. And you understand what that means, right?

15 A Correct.

16 Q What was your identifying designation, as it would -- as it

17 would appear on the CAD that evening?

18 A I was 199PD.

19 Q 199P --

20 A PD199, yes.

21 Q Sorry, 1 --

22 A It's either 199 or PD199.

23 Q Okay. I just don't want to talk over each other --

24 A Yeah.

25 Q -- so that the -- the recorder picks up everything.

1 And would somebody, like a crime scene analyst like
2 Ms. Klosterman, also have a -- an identifying, you know, call sign, for
3 lack of a better term?

4 A Correct.

5 Q What would hers be?

6 A It would start with a C.

7 Q Okay. And then beyond that, do you know how she was
8 identified on that evening?

9 A I -- I will maybe say 23.

10 Q Okay. Now, when we're looking at a CAD, okay, the printout,
11 the paperwork I'm talking about here, there are some letters that indicate
12 some information about the officer, correct?

13 A Correct.

14 Q And the letters can indicate several things, like when they're
15 en route or when they've arrived on a scene, right?

16 A Correct.

17 Q Okay. So would you agree that, theoretically, the CAD would
18 show when you arrived on the scene?

19 A Correct.

20 Q And theoretically, it should show when Ms. Klosterman or -- I
21 don't know if it's officer or Ms. Klosterman, arrived on the scene?

22 A Correct.

23 Q Okay. If I show you the CAD, would you be able to recognize
24 those designations on -- on this exhibit?

25 A I would.

1 Q Okay.

2 MR. COYER: May I approach, Your Honor?

3 THE COURT: Yes.

4 MR. COYER: Okay.

5 THE WITNESS: [Witness reads document.] Okay.

6 BY MR. COYER:

7 Q That -- that information in that CAD looks familiar to you, looks
8 like a regular CAD, right?

9 A Correct.

10 MR. DICKERSON: Okay. Can I get the ELMO? Or is it on
11 already?

12 THE CLERK: Uh-huh.

13 MR. DICKERSON: Okay.

14 BY MR. DICKERSON:

15 Q Can you see that, sir?

16 A Yes, I can.

17 Q Going to zoom in here so that the jury can see it with us. All
18 right. Now, you discussed previously that the CSA -- and again, I'm
19 sorry, is it -- should I refer to her as Ms. Klosterman or is she Officer
20 Klosterman?

21 A Ms. Klosterman is fine.

22 Q Okay. She's C -- C23, right?

23 A Correct.

24 Q Okay. And is where my pen tip is, is that the first entry of C23
25 that we see on this CAD?

1 A I believe so, yes.

2 Q The letters out here to the left say USAS, correct?

3 A Correct.

4 Q What does that mean?

5 A The AS stands for assigned.

6 Q Okay. So that doesn't mean that she's on scene, correct?

7 A Correct.

8 Q Okay. Let me move this up so it's still on the screen. Okay.

9 So this is USAS C23, correct?

10 A Correct.

11 Q And then if we go down a little further, we see C23 again,

12 correct?

13 A Correct.

14 Q Yes?

15 A Yes.

16 Q Okay. Just have to answer audibly. Okay?

17 A Yeah. I did.

18 Q And then out there to the left, we see the -- the letters USAR,

19 right?

20 A Correct.

21 Q Now, AR is shorthand for arrived?

22 A Correct.

23 Q So this would indicate that she, Ms. Klosterman, arrived at this

24 time out here, which is 2255, correct?

25 A Correct.

1 Q And that's --
2 A 10:55.
3 Q 10:25 --
4 A In the evening.
5 Q 10:25 p.m., correct?
6 A Correct.
7 Q Or 10 --
8 A 10:55.
9 Q -- 10:55, excuse me. And then we've got an address here
10 of 625 North 10th Street, correct?
11 A Correct.
12 Q Okay. Now, that is not the area where the purported assault
13 on an officer occurred, correct?
14 A Correct.
15 Q Okay. Were you present at 625 North 10th Street when
16 Ms. Klosterman arrived?
17 A Correct.
18 Q Were you -- the question is were you present?
19 A Yes, I was.
20 Q Okay. So she shows up and you met with her there at 625
21 North 10th?
22 A Correct.
23 Q Okay. Continue on down the page a little bit here and you'll
24 see where my pen tip is, okay, we're at -- what time is that?
25 A 2336.

1 Q And in regular people time?

2 A It's 11:36 p.m.

3 Q Okay. And we've got another USAR, right?

4 A Correct.

5 Q Which is arrived, and we've got C23 again, right?

6 A Correct.

7 Q Same address, 625 North 10th Street?

8 A Correct.

9 Q Can you explain those discrepancies?

10 A A lot of times with the -- the computer system we have, it's a

11 touch-based computer system. We have arrived and en route buttons

12 on our computers. And sometimes if you -- and I've done it myself

13 hundreds of times -- if you go to push one, like, to pull up -- to query

14 something, I've hit arrived, I've hit cleared before on CAD several times.

15 So it's -- it's easily a mistake that happens quite often, honestly.

16 Q So you are presuming that this entry of 2336 is perhaps a

17 mistake?

18 A Correct.

19 Q Okay. And your testimony on direct was that she, in fact,

20 arrived at 10:55, right?

21 A Correct.

22 Q On direct, okay? Not the CAD. On direct examination when

23 you said she arrived at 10:55, did you mean 625 North 10th Street

24 or 610 North 10th Street?

25 A We all arrived at 625. That's where we were holding kind of

1 our briefing at, at that location.

2 Q Okay. So just going to take you back to the CAD here and go
3 one entry down --

4 A Uh-huh.

5 Q -- to 2342. Can you see that?

6 A Yes, I can.

7 Q And we see USCL and C23, right?

8 A Correct.

9 Q What is CL?

10 A That stands for clear.

11 Q Okay. So when does an officer normally clear themselves
12 or -- or --

13 A When we're done with the scene.

14 Q Okay.

15 A When we're leaving.

16 Q So would this entry suggest that Ms. Klosterman was done
17 with her work at 2342, or left the scene, rather?

18 A I would say left the scene, yes.

19 Q Okay. That's it.

20 THE COURT: Is there anything else you're going to ask about
21 this CAD?

22 MR. COYER: Yes.

23 THE COURT: How much longer?

24 MR. COYER: Probably five minutes or so.

25 THE COURT: All right.

1 MR. COYER: Okay.

2 THE COURT: Go ahead.

3 BY MR. COYER:

4 Q I'm just going to take you back up the page. Are you following
5 my -- my pen tip?

6 A Yes.

7 Q Okay. You see this entry here, 3DP40, right?

8 A Correct.

9 Q 2310, right?

10 A Correct.

11 Q Okay. Now, the -- over here it says City Jail?

12 A Correct.

13 Q Okay. What's -- what is that? What's that going to indicate to
14 you?

15 A That he's transporting somebody to the city jail.

16 Q That this person --

17 A The TO stands for to other.

18 Q Okay. 3DP40 is -- is transporting to jail?

19 A Correct.

20 Q Now, is that going to be Officer Jacobitz or Officer Houston?

21 A They were together, so it was both of them.

22 Q They both transported the two prisoners to jail together?

23 A They're -- they should have been both in the same vehicle.

24 That's why the A and the B.

25 Q Right.

1 A They were assigned the same vehicle.

2 Q Okay. So if we assume Ms. Klosterman arrived at 625
3 North 10th at, what is that, 10:37, correct?

4 A Correct.

5 Q No, no. I'm sorry, that's assigned. We assume she arrived
6 at 10:55, correct?

7 A Correct.

8 Q And this would indicate that Officer Jacobitz left to take the
9 prisoners to the city jail at 2310, right?

10 A Correct.

11 Q Okay. So why is there no indication in this CAD of anybody
12 doing the walkthrough down at 610 North 10th, where the crime scene
13 was?

14 A We wouldn't necessarily document it on radio. It's something
15 we do on scene. We just walk down there and kind of go over what --
16 what happened.

17 Q Okay.

18 A It's nothing that really needs -- needs to be documented on
19 CAD.

20 Q Okay. Did the CSA's work with you continue after Officer
21 Jacobitz left to transport the prisoners?

22 A They were finishing up and we usually try to stay on scene
23 with them, just for safety issues.

24 Q Okay. You were not present during the alleged assault on --
25 on Officer Jacobitz, correct?

1 A No, I was not.

2 Q Okay. So any information you would have about that crime,
3 including the details of the crime scene, would have come from Officer
4 Jacobitz, correct?

5 A Correct.

6 Q Okay. All right.

7 MR. COYER: Judge, I don't have anything further on the
8 CAD, but I do have still have additional cross-examination.

9 THE COURT: No, I understand.

10 MR. COYER: Okay.

11 THE COURT: We're going to take our evening recess at this
12 time.

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

24 At this time, the jury is excused. We will reconvene tomorrow
25 at 10:00.

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[Jury recessed at 3:31 p.m.]

THE COURT: And it's my understanding the State expects to rest sometime tomorrow?

MR. DICKERSON: We do, Your Honor.

THE COURT: Okay. So I --

MR. LEXIS: Your Honor, can we meet in your chambers at 9:00 to finalize jury instructions?

THE COURT: Well, I don't want to finalize them yet. I want to see what --

MR. LEXIS: There's a lot we could -- even not finalizing, there's --

THE COURT: Okay. We're not going to do jury instructions until after the defense presents their case.

MR. COYER: Thank you.

THE COURT: Because some of the instructions are theory of defense instructions. So that's why I'm -- so, counsel, the defense should be prepared to go forward sometime tomorrow.

MR. COYER: Sure. I'll prepare Mr. Valencia for the canvass about whether he wants to testify as well.

THE COURT: Very good, counsel. So we'll be in recess until tomorrow 10:00. Thank you.

MR. DICKERSON: Thank you very much.

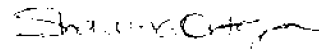
MS. PLUNKETT: Thank you, Judge.

MR. COYER: Thank you, Your Honor.

[Proceedings concluded at 3:32 p.m. until December 1, 2017,

at 10:00 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 **FRIDAY, DECEMBER 1, 2017**

16 ***TRANSCRIPT OF PROCEEDINGS RE:***
17 **JURY TRIAL - PHASE I - DAY 5**

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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EXHIBITS

DESCRIPTION

ADMITTED

No exhibits offered.

1 **LAS VEGAS, NEVADA, FRIDAY, DECEMBER 1ST, 2017**

2 [Proceedings commenced at 10:04 a.m.]

3
4 [Outside the presence of the jury.]

5 THE COURT: Please be seated. This is the continuation of
6 the trial in Case No. C-16-315580, *State of Nevada vs. Ceasar Sanchaz*
7 *Valencia*. Let the record reflect the presence of counsel for the State,
8 counsel for the defense, and Mr. Valencia.

9 Are the parties ready to proceed this morning?

10 MR. DICKERSON: We are, Your Honor, on behalf of the
11 State.

12 MR. COYER: Yes, Your Honor.

13 THE COURT: I'm going to bring the jury in at this time.

14 [Jury reconvened at 10:05 a.m.]

15 THE COURT: Is the State ready to proceed?

16 MR. DICKERSON: Yes, Your Honor. We would begin back
17 up with the defense cross-examination of witness Keith Bryant.

18 **KEITH BRYANT**

19 [having been recalled as a witness and previously sworn, testified as
20 follows:]

21 THE COURT: Sir, I remind you that you're still under oath.

22 THE WITNESS: Yes, sir.

23 THE COURT: Thank you. Have a seat.

24 You may proceed.

25 MR. COYER: May we proceed? Thank you, Judge.

1 Appreciate it.

2 **CROSS-EXAMINATION (CONT.)**

3 BY MR. COYER:

4 Q Morning, Detective Bryant.

5 A Good morning.

6 Q If you will recall, we had started the cross-examination
7 process yesterday evening before we adjourned at about 5:00
8 yesterday, right?

9 A About 3:30.

10 Q Three -- oh, you're right. That was early -- early day
11 yesterday --

12 A Yes.

13 Q -- 3:30. And as the judge -- or the clerk instructed, you're still
14 under oath; you understand that, right?

15 A Yes, I do.

16 Q Did you discuss your testimony with anybody from 3:30
17 yesterday until this morning?

18 A No.

19 Q Okay. So just to kind of recap briefly, yesterday we were
20 talking a little bit about the -- the CAD, the paper log that shows the
21 times and the entries that come out over the radio, right?

22 A Correct.

23 Q And we had established that you were assigned at
24 approximately 9:12 p.m., right?

25 A Correct.

1 Q Okay. And that you had arrived at 625 North 10th at
2 around 9:47 p.m., right?

3 A Correct.

4 Q And you pretty quickly, almost immediately, requested ID, or
5 what we call the CSA, crime scene analyst, correct?

6 A Correct.

7 Q And that person was Crime Scene Analyst, or CSA, Olivia
8 Klosterman, right?

9 A Correct.

10 Q Okay. And we established that she arrived, excuse me, at
11 approximately 10:55 p.m.?

12 A Correct.

13 Q And that was at 625 North 10th Street where she arrived?

14 A Correct.

15 Q Okay. Officer Jacobitz left that scene at
16 approximately 11:10 p.m. to transport prisoners to City Jail, right?

17 A Correct.

18 Q So there's about 15 minutes there where presumably
19 Ms. Klosterman would have had opportunity to discuss the incident with
20 Officer Jacobitz, correct?

21 A That's correct.

22 Q Okay. And you talked about the walkthrough that the three of
23 you did together?

24 A Correct.

25 Q Okay. At some point later that evening, did you leave the

1 scene and go back to the Downtown Area Command?

2 A I did.

3 Q Do you recall when that was?

4 A With the CAD, but it was probably after 11:30.

5 Q Okay. Does 11:34 sound right?

6 A That sounds about right, yeah.

7 Q That's good -- that was a good estimate. Now, during that
8 time when you were not at the scene, were you being made aware of
9 what was happening at the scene?

10 A No. Because my recollection, everything was pretty much
11 wrapped up at that point.

12 Q Okay. So I want -- I want to go back and sort of clarify the
13 timeline. Okay?

14 A Okay.

15 Q Because you had given some testimony on direct examination
16 about some surveillance being conducted on the residence at 625
17 North 10th Street, correct?

18 A Correct.

19 Q Okay. So my question to you is, I know you didn't personally
20 stay in visual contact with that residence, because you went back to -- to
21 DTAC, but was the residence under surveillance continually from the
22 time of the late evening of May 19th till the early morning hours of
23 May 21st when we talked about that Mustang, that black Mustang,
24 appearing at the residence?

25 A Once we cleared from the -- the residence on the 19th, as far

1 as my recollection, there was no other kind of surveillance done on the
2 residence until we set it back up again later that night.

3 Q Later which night?

4 A On the 20th.

5 Q Okay. So because we're talking about the late night hours of
6 May 19th?

7 A Correct.

8 Q At some point, officers go back to 620 -- the -- the residence
9 area of 625 North 10th Street on the 20th, the following day?

10 A Correct.

11 Q What time of day was that surveillance set up?

12 A That would have been later that night, around 11:18, I believe,
13 is when we set up the initial event.

14 Q So --

15 A 11:12.

16 Q Excuse me, I just didn't -- I didn't want to speak over you.

17 A Yeah. So I think like 11:12 I think is what the CAD had, or
18 something like that.

19 Q So approximately, give or take, about 24 hours, almost a full
20 day after you left the -- the scene?

21 A Correct.

22 Q Okay. Are you aware of whether or not any K-9 officers had
23 ever come to the scene on May 19th in the late hours when you were
24 actually there?

25 A The original event when the initial foot pursuit ensued, a K-9

1 was requested and responded out there for part of the perimeter on the
2 initial set up of the perimeter, yes.

3 Q Okay. So that wasn't something that you specifically
4 requested?

5 A No, sir.

6 Q Okay. Were you made aware of whether or not the K-9 officer
7 or officers did a -- a walk around with the dogs at the residence of 625
8 North 10th?

9 A I know they walked around the -- the perimeter aspect of it
10 on 10th and also the alleyway where the subject was last seen hopping
11 over the wall heading west through the alleyway, which is normal
12 practice. We basically go back and have the last officer who saw the
13 subject running, we'll have K-9 start at that location and kind of do a
14 walkthrough in the general area to see if the dog can pick up a scent.

15 Q Dog's got to pick up the scent, right?

16 A Correct.

17 Q And then hopefully, in a perfect world, the dog can pick up the
18 scent later in another location?

19 A Correct.

20 Q Thus giving officers a lead on where to search?

21 A Correct.

22 Q Okay. In this incident, were you ever made aware that a dog
23 had given any indication, or an alert as they call it, at the residence
24 of 625 North 10th Street?

25 A No. That night, no, there was no pick up of any scent of

1 anything.

2 Q Okay. What about the following night?

3 A We did not have K-9 with us the -- the next night during
4 surveillance.

5 Q Okay. So the surveillance that's set up about 24 hours later,
6 this is when you described it as being, like, up on the balcony of the
7 house across the way, right?

8 A Correct.

9 Q And you guys had a good line of sight down into the backyard
10 of 625 North 10th Street, right?

11 A Correct.

12 Q Okay. Mr. Valencia is arrested on the actual date of May 21st,
13 right?

14 A Correct.

15 Q But it's, like, the early morning hours, like 2:00, 3:00 a.m.?

16 A It was, like, 2:52.

17 Q Okay. So from the -- the initial assault on Officer Jacobitz is
18 about, what, 7:45 p.m.?

19 A Correct.

20 Q Till Mr. Valencia's arrest, we're talking about, like, 30 hours,
21 give or take?

22 A Roughly, yes.

23 Q Okay. So I want to talk to you now about the surveillance of
24 that black Mustang we talked about. Were you part of the surveillance
25 team that was up on that balcony looking down into the backyard of the

1 residence at 625?

2 A Yes, I was. Myself and my sergeant.

3 Q Okay. Did you see a black Mustang arrive at that residence or
4 was it always there from the time you started surveilling?

5 A It was not there when we started it. We were advised by the
6 units that were on the other side of the surveillance on -- on 10th Street
7 that the Mustang had arrived.

8 Q So you're looking at the back of the residence?

9 A Correct.

10 Q Another officer tells you that a Mustang has just arrived at the
11 front of the residence?

12 A Correct.

13 Q You can't see the front -- the front of the residence where
14 you're at?

15 A Correct.

16 Q Okay. So you don't see who gets into that Mustang, correct?

17 A Correct.

18 Q You only see people leave the area where you understand to
19 be Mr. Valencia's dwelling?

20 A That's correct.

21 Q Okay. And that's a male and a female?

22 A Correct.

23 Q Okay. Does anybody ever see male and a female get into the
24 Mustang?

25 A It was updated they saw subjects getting in the vehicle,

1 correct.

2 Q Now, by the time Mr. Valencia is arrested, there's not a male
3 and a female in the -- in the Mustang, right?

4 A Correct.

5 Q Two males, right?

6 A That's correct.

7 Q No female, right?

8 A Correct.

9 Q Okay. So between the time when the Mustang leaves the
10 residence and when it's ultimately pulled over in that area we discussed,
11 surveillance is lost on the Mustang?

12 A For a very short period of time, yes.

13 Q About how long?

14 A I'd say a matter of seconds.

15 Q Okay. And when I say lost, I mean, nobody involved in the
16 surveillance operation is able to see the Mustang at some point?

17 A Correct.

18 Q Okay. And then sometime later, you said a few seconds I
19 guess, the vehicle is relocated, right?

20 A Correct.

21 Q But now it's unoccupied?

22 A That's correct.

23 Q Okay. And that's over in that area closer to where the arrest
24 occurred, right?

25 A Correct.

1 Q Okay. You were the lead detective on this?

2 A I was.

3 Q I say incident; it's really kind of two incidents, right? There's
4 the assault incident and then there's the arrest incident, right?

5 A Yeah. Usually when you have a case like that, it kind of
6 carries over. It all becomes kind of wrapped up into one case.

7 Q But as far as the totality of all that, you're eventually assigned
8 as the lead detective?

9 A That's correct.

10 Q Okay. And so you would have drafted a -- some kind of
11 report, like an declaration or an arrest report?

12 A Correct. Actually both.

13 Q Okay. Now, you didn't personally the witness assault, right?

14 A No, I did not.

15 Q You weren't even there, right?

16 A Correct.

17 Q Okay. So any information you would have put in your report
18 would have come from, presumably, either Officers Jacobitz or Houston,
19 correct?

20 A That's correct.

21 Q Okay. Because they were the only ones on the scene when
22 the original gun-pulling incident happened, right?

23 A Correct.

24 Q Okay. And in your report, you reiterated the description of that
25 suspect as it was called out contemporaneously in realtime when it

1 actually happened, right?

2 A Correct.

3 Q And that description that you put in your report was Hispanic
4 male adult?

5 A Correct.

6 Q Dark hat?

7 A Correct.

8 Q Red striped shirt?

9 A Correct.

10 Q Dark pants?

11 A Yes.

12 Q Approximately 5'7"?

13 A Correct.

14 Q Approximately 160 pounds?

15 A Correct.

16 Q Okay. That's exactly what you put in your report?

17 A Correct.

18 Q You would have also incorporated into your report some of the
19 data that Ms. Klosterman would have put together through her
20 photographs and measurements and things, correct?

21 A That's correct.

22 Q Okay. And the distance from the suspect with the gun and
23 Officer Jacobitz ended up being about 64 feet; do you recall that?

24 A That sounds about right.

25 Q Okay. And does that sound about right based on your

1 personal visualization of the actual scene after the fact?

2 A Yes.

3 Q Okay. You also put in your report that the subject that was
4 witnessed leaving, what was believed to be Ceasar's residence, was
5 bald; do you recall that?

6 A Correct.

7 Q And fit the description of our target subject, Valencia, right?

8 A Correct.

9 Q Okay. Now, the description that went out was never that this
10 person was bald, correct?

11 A He had a hat on.

12 Q Right?

13 A Right.

14 Q So you wouldn't even be able to tell if somebody was bald or
15 not if they had a hat on presumably, right?

16 A Yes, correct.

17 Q Okay. And certainly if this person was bald and Officer
18 Jacobitz had witnessed that, that's something you would have expected
19 him to convey or at least tell you after the fact so that you could put it in
20 your report, right?

21 A Correct.

22 Q Hair style, that's the kind of detail you want in a description of
23 a suspect, right?

24 A Of course, yes.

25 Q So by the time that the -- what we're referring to as the

1 take-down operation, the arrest of Mr. Valencia, pictures had been
2 circulated at this point, right?

3 A Correct.

4 Q Everybody involved knows what Ceasar Valencia looks like
5 now, right?

6 A Correct.

7 Q Right. And turns out, Ceasar Valencia has a shaved head or
8 is bald, right?

9 A Correct.

10 Q Okay. And there's another reference in your report to
11 someone seeing the passenger of the black Mustang, right?

12 A Correct.

13 Q And again, the reference is, oh, that person is bald, he fits the
14 description of our target, correct?

15 A Correct.

16 Q Okay. And the target is Ceasar Valencia, right?

17 A Correct.

18 Q But bald doesn't necessarily fit the description of an HMA with
19 dark hat, does it?

20 A He's wearing a hat. So, yeah, no.

21 Q Okay.

22 MR. COYER: May I have the court's indulgence to acquire
23 some exhibits?

24 THE COURT: Yes.

25 BY MR. COYER:

1 Q I'm going to show you what's been pre-admitted as State's 15.
2 Zoom out so we can actually see the whole thing, if that's all right. Can
3 you see that, sir?

4 A Yes, I can.

5 Q Okay. Got it all on your screen there?

6 A Yes, I do.

7 Q Okay. You recall seeing this photograph from yesterday,
8 right?

9 A Correct.

10 Q Okay. This depicts sort of the opening of the area that is the
11 walkway on the south side of 610 North 10th Street, correct?

12 A Correct.

13 Q Okay. And, obviously, the gate is pushed half closed in this
14 picture. But my question to you is, this area right here in front of this
15 gate, in front of these steps, is the area where you believed Officer
16 Jacobitz to be standing when he saw a firearm, correct?

17 A Correct.

18 Q Okay. And would you agree that from this point, there is both
19 a little pony wall right here beside the stairs?

20 A Correct.

21 Q And there's the backside of what appears to be a structure
22 right here, correct?

23 A Correct.

24 Q So reasonable to infer that Officer Jacobitz could have, if he
25 needed to, have taken cover in either one of these positions, correct?

1 MR. DICKERSON: Speculation, Your Honor.

2 THE COURT: Restate the question, counsel.

3 BY MR. COYER:

4 Q So it's reasonable to infer, based on where Officer Jacobitz
5 was in this picture, that he could have taken cover behind either of these
6 two locations if he needed to, correct?

7 MR. DICKERSON: Speculation, Your Honor.

8 THE COURT: Did you finish your question, counsel?

9 MR. COYER: I did.

10 THE COURT: I'll sustain the objection.

11 MR. COYER: Okay.

12 BY MR. COYER:

13 Q During the approximately 30 hours or so --

14 THE COURT: I apologize, counsel. Approach.

15 [Bench conference transcribed as follows:]

16 THE COURT: I just want to verify something. Have we
17 allowed this witness to give lay opinion testimony or either -- or to give
18 opinion regarding either as a lay witness or an expert witness
19 previously?

20 MR. COYER: Not as --

21 MR. DICKERSON: Not as an expert.

22 THE COURT: Okay.

23 MR. LEXIS: Plus, he's not even giving a lay opinion. He's just
24 trying to [indiscernible] of what somebody else --

25 THE COURT: Would have been an opinion based on his

1 many years as a police officer if -- but he hasn't been qualified as an
2 expert, therefore --

3 MR. DICKERSON: Correct.

4 THE COURT: -- I'm going to sustain the objection.

5 MR. DICKERSON: Sure.

6 MR. COYER: I'll move on.

7 THE COURT: Okay.

8 MR. DICKERSON: Thank you, Your Honor.

9 THE COURT: Thank you.

10 [End of bench conference.]

11 BY MR. COYER:

12 Q All right. Officer, you -- excuse me, Detective, you were here
13 in this area in the hours following the incident with Officer Jacobitz,
14 correct?

15 A Yes, I was.

16 Q Okay. So you actually personally laid eyes on this area,
17 correct?

18 A I did, yes.

19 Q Even though you didn't necessarily take these photographs,
20 correct?

21 A Correct.

22 Q Okay. While we can't see, obviously, what's beyond the
23 photograph here, naturally, as you recall personally seeing this area,
24 were there any obstructions between where these steps are and the
25 area behind this wall or behind this wall?

1 A No.

2 Q Okay. During the approximately 30 or so hours between the
3 time of the incident and the time the surveillance began, did you request
4 for CSA or any ID to go back to the scene and try to get additional
5 photographs at about the same time, so that we could actually see what
6 the lighting looked like, given that it was kind of a dusky kind of not quite
7 day, not quite night situation?

8 A No, I did not.

9 Q Okay. Do you think that would have useful evidence to have?

10 A Possible, but I mean, we felt like we had a good identification
11 of the subject and that was our follow-up there, just trying to locate him,
12 because of the incident itself.

13 Q Right. By then you already had a target in mind, right?

14 A We knew who it was, yes.

15 Q Okay. You've seen this photograph before, correct?

16 A Yes, I have.

17 Q Okay. And this -- is it your understanding that this is the
18 booking photograph of when Mr. Valencia was arrested on
19 May 21st, 2016?

20 A I believe so, yes.

21 Q Okay. When you saw Mr. Valencia -- well, let me ask you -- a
22 previous question. Was May 21st, the day he was arrested, the first day
23 you had seen him?

24 A Yes, it was.

25 Q Okay.

1 A In person.

2 Q Right. When you saw him, wasn't wearing a hat, right?

3 A No.

4 Q Okay. So he looked more like this, right?

5 A Correct.

6 Q Okay. Did you, at that time, have any concerns that Officer

7 Jacobitz had mistakenly identified Mr. Valencia?

8 A No.

9 Q Did you have any concerns that not only Officer Jacobitz, but

10 Officer Houston had omitted the detail that Mr. Valencia has facial hair?

11 A No.

12 Q Okay. Do you agree that a show-up is a suggestive

13 identification procedure?

14 A When you're dealing with a regular victim, but police work, we

15 don't usually do that with another officer, no.

16 Q Okay. Police officers can't make mistakes?

17 A They can.

18 Q Okay. If you had had concerns whether or not we had the

19 right suspect, would you have done additional follow-up investigation?

20 A Yes, I would have.

21 Q And what would that have consisted of?

22 A Speaking with both officers again, just to reconfirm that they --

23 that they saw and believed who it was, be able to -- to identify him

24 correctly.

25 Q Maybe order some additional forensic work?

1 A Possible.

2 Q Okay. And we had talked a little bit about the black Mustang.
3 I'm going to publish what's been admitted State's 49. Does that vehicle
4 look familiar to you?

5 A Yes, it does.

6 Q And is that the black Mustang that was eventually pulled over
7 by a marked patrol unit, in which Ceasar Valencia was riding as a
8 passenger?

9 A Correct.

10 Q Okay. When Mr. Valencia was arrested, your report indicates
11 he was taken into custody "without incident"?

12 A Correct.

13 Q Okay. Without incident is a term of art that's commonly used
14 in arrest reports and declarations of arrest, correct?

15 A Correct.

16 Q And that term, without incident, is used to describe a
17 by-the-book, smooth arrest procedure, correct?

18 A What -- the subject didn't fight or run or anything like that, yes.

19 Q Mr. Valencia made no attempt to resist arrest?

20 A No.

21 Q Mr. Valencia made no attempt to flee?

22 A No.

23 Q No attempt to run away?

24 A No.

25 Q Mr. Valencia made no attempt to assault anyone?

1 A No.

2 Q If any of those things had happened, you would have
3 documented those in your report?

4 A Correct.

5 MR. COYER: We'll pass, Judge.

6 THE COURT: Any redirect by the State?

7 MR. DICKERSON: Yes, Your Honor. Thank you.

8 **REDIRECT EXAMINATION**

9 BY MR. DICKERSON:

10 Q Detective Bryant, you said that if you were dealing with regular
11 victims, like citizens --

12 A Correct.

13 Q -- you -- you might do a show-up?

14 A Correct.

15 Q What's the difference here?

16 A It -- an officer, we're -- we're trained a little bit more from day
17 one to be able to pick up certain descriptors, certain height, weight,
18 things like that, that maybe a normal citizen who isn't dealing with this on
19 a daily basis wouldn't even think about to -- to look at. So an officer --
20 it's kind of normal practice to sit there, and if we have a photo, and show
21 them realtime, hey, is this who you saw running? And they can identify it
22 right away. Whereas a citizen usually needs a little bit more time and a
23 little bit of understanding of what they're looking for.

24 Q Because an everyday part of your job as police officers is
25 identifying people you've never seen before?

1 A Correct.

2 Q There was some attention paid by defense counsel to the fact,
3 showing you State's Exhibit 8, Mr. Valencia was bald?

4 A Correct.

5 Q But he was wearing a hat the night of the 19th?

6 A Correct.

7 Q In your investigation, were you able to determine that he was
8 bald before setting up that surveillance operation?

9 A Yes, I was.

10 Q So that's a fact you knew beforehand?

11 A Correct.

12 Q Okay. And there was some attention paid to the -- the
13 under-beard thing that Ceasar Valencia has going on here on the 21st of
14 May 2016?

15 A Correct.

16 Q You said that during the cross-examination that it wasn't
17 concerning to you that that wasn't part of the initial pursuit description?

18 A Correct.

19 Q And why is that?

20 A Unless it's something of significant nature, I mean, unless he
21 has like something that's sticks out, like a handlebar mustache, or a --
22 really, a full-growth beard, those details, a small mustache and a little bit
23 of a goatee, is not going to be anything of significant information at -- at
24 that point in time.

25 Q You would agree with me that there's -- there's no hair on the

1 sides of his face?

2 A Correct.

3 Q And his mustache is very wispy?

4 A Correct.

5 Q But he does have some undergrowth down here?

6 A Correct.

7 Q Now, as far as your description that defense counsel touched
8 on in your report, it's the exact same description that was in the details
9 of the call?

10 A Correct.

11 Q Where did you get that description from?

12 A The -- from the calls from the officer on scene that actually
13 witnessed the subject running from -- eye -- eyewitness account of
14 what -- what he looked like and height and weight and everything.

15 Q And that was specific -- was that taken specifically from the
16 details of the call?

17 A Correct.

18 Q So the CAD that we have?

19 A Correct.

20 Q So you just looked at the CAD on your computer?

21 A Yeah. We'll do that, just to make sure we get the correct
22 information that was broadcast at the time of the incident.

23 Q Okay. And so that's what you were documenting at that time?

24 A Correct.

25 Q That evening on the 19th when you arrived on scene and you

1 spoke to Officer Jacobitz and Officer Houston, had Ceasar Valencia
2 been identified?

3 A Yes, he had.

4 Q As 100 percent being the suspect?

5 A 100 percent from Officer Jacobitz, yes.

6 Q And when he was subsequently taken into custody on
7 the 21st, was that by way of a felony stop?

8 A Yes. We call it, like, a high-profile car stop.

9 Q Is there more than one officer out there?

10 A Yeah. We usually have multiple officers out there, try to have
11 the air unit available.

12 Q This night in particular, how many officers were out there?

13 A With all of our detectives and then with the marked patrol,
14 maybe 12 to 15, if I was -- if I had to guess. There was quite a few out
15 there.

16 Q 12 or 15 officers?

17 A Correct.

18 Q Are guns out during a felony stop?

19 A Yes.

20 Q Most officers have guns out?

21 A Usually the officers that are up on the front line actually
22 making contact with the vehicles and the occupants in the vehicle, they
23 usually have their -- their guns drawn just in case, yes.

24 Q Okay. And again, the driver of this vehicle was not
25 Mr. Valencia?

1 A No, he was not.

2 Q Okay. So by the time that vehicle stopped, where were all
3 these officers?

4 A They were parked up behind the vehicle. Usually they'll have
5 some officers on to the side kind of blocking traffic so there's no citizens
6 that can be of any danger passing. Then there will be officers parked
7 behind the vehicle as well, strategically.

8 Q And the location of the stop here in the case had some
9 significance?

10 A Yes.

11 Q How so?

12 A Because it was close from the location that he just left and
13 picked him up from the air unit. So it was a very close distance from the
14 time they got in the vehicle to the time we made a stop.

15 Q In that area of Washington, is it kind of under the train tracks?

16 A Correct.

17 Q So are there routes to get away? I mean --

18 A There's -- there's multiple locations. It's almost -- the
19 intersection itself is almost like a huge intersection, almost like an X.
20 There's different avenues to -- to flee and different vehicles and citizens
21 and dangers and things like that.

22 Q But the specific area where this vehicle was stopped was
23 before Main Street?

24 A Correct.

25 Q Kind of in the -- the dip, where there's walls for the --

1 MR. COYER: Objection. Leading.

2 MR. DICKERSON: What --

3 THE COURT: Sustained.

4 BY MR. DICKERSON:

5 Q What was the area --

6 THE COURT: Restate your question.

7 BY DICKERSON:

8 Q -- where this vehicle was stopped --

9 A Yeah.

10 Q -- west --

11 A Yeah. It had the Main Street. Had the wall off Washington.
12 Had the big wall on the right-hand side.

13 Q I'm going to show you for reference State's Exhibit 13. Is this
14 the area right here that we're talking about?

15 A Correct. It's going to be up just a little bit past the -- let me get
16 by -- just up past that right there, in that location a little bit further up.

17 Q Okay. There was also previously some testimony on
18 cross-examination about the computer aided dispatch report and the
19 arrival time of the crime scene analyst?

20 A Correct.

21 Q No doubt she arrived at about 10:55 p.m.?

22 A Correct.

23 Q And the second arrival time right before her clear time --

24 A Correct.

25 Q -- approximately -- was that approximately six minutes before

1 her clear time?

2 A Correct.

3 Q Is it possible for her to complete the work that she did in six
4 minutes?

5 MR. COYER: Objection. Speculation.

6 THE COURT: Sustained.

7 BY MR. DICKERSON:

8 Q Did you see her complete the work that she did in six
9 minutes?

10 A She didn't complete in six minutes, no.

11 Q How long did you see her out there?

12 A She's out there for the full time we were, so it was about --
13 over an hour, hour and a half.

14 Q And she took the photos out there at that scene?

15 A Correct, she did.

16 Q Including what's depicted here in State's Exhibit 31, the
17 firearm?

18 A Correct.

19 Q And all the other photos of that firearm?

20 A Correct.

21 Q What's depicted here in State's Exhibit 17, the scene?

22 A Correct.

23 Q And all those exhibits of the scene?

24 A Correct.

25 Q As well as what's depicted here in State's Exhibit 45?

1 A That's a photo of Officer Jacobitz's name badge.
2 Q And all the photos of Officer Jacobitz?
3 A Correct.
4 Q That CSA took?
5 A Correct.
6 Q One piece of testimony that was touched on on
7 cross-examination was, was it possible that there was -- if there was
8 some uncertainty about Ceasar Valencia being the suspect, you might
9 conduct other forensic testing?
10 A Correct.
11 Q Is there any other forensic testing that you think would be
12 viable to conduct in this case?
13 A Not of this --
14 MR. COYER: Objection. Calls for an expert opinion.
15 THE COURT: Sustained.
16 MR. DICKERSON: I -- may I be heard, Your Honor?
17 THE COURT: Approach.
18 [Bench conference transcribed as follows:]
19 THE COURT: Speak low.
20 MR. DICKERSON: He's opened the door on this, because he
21 asked that specific question, would you conduct any other forensic
22 testing. So he's -- actually entitled to clear that up, what other forensic
23 testing would you conduct.
24 MR. COYER: The question that's been objected to is
25 regarding the viability of any forensic testing, and that's not a proper

1 opinion from this witness.

2 THE COURT: Okay. What I -- restate the question --

3 MR. DICKERSON: Okay.

4 THE COURT: -- restating his question, and then asking is
5 there any other forensic --

6 MR. DICKERSON: Great.

7 THE COURT: In other words, you're -- you're following up on
8 his question. You need to follow up with a question. Restate his
9 question and then what was -- what was the -- do you remember the
10 question he asked?

11 MR. DICKERSON: Yeah. I'll -- I'll restate it, Your Honor.

12 THE COURT: Okay. But don't ask about viability --

13 MR. DICKERSON: Great.

14 THE COURT: -- things like that.

15 MR. DICKERSON: Thank you, Your Honor.

16 THE COURT: Thank you.

17 [End of bench conference.]

18 BY MR. DICKERSON:

19 Q Detective Bryant, having considered that, is there any other
20 forensic testing that you would have ordered in this case?

21 A No.

22 Q And May 19th, 2016, you knew exactly who the suspect was
23 you were looking for?

24 A Correct.

25 Q Ceasar Valencia?

1 A Correct.

2 Q See that individual here in the courtroom today?

3 A I do.

4 Q Could you please point to him and identify a piece of clothing

5 he's wearing?

6 A He's over --

7 MR. COYER: Objection. Asked and answered.

8 BY MR. DICKERSON:

9 Q The defendant?

10 A Correct.

11 THE COURT: If --

12 BY MR. DICKERSON:

13 Q Thank you.

14 THE COURT: Wait a minute. Has you previously identified

15 the defendant before --

16 THE WITNESS: Yes, Your Honor.

17 THE COURT: -- in your testimony? And you identified him as

18 Ceasar Valencia?

19 THE WITNESS: Yes, Your Honor.

20 THE COURT: I mean -- sustained.

21 BY MR. DICKERSON:

22 Q The defendant?

23 A Yes, sir.

24 Q Thank you.

25 MR. DICKERSON: State will pass the witness.

1 **RECROSS EXAMINATION**

2 BY MR. COYER:

3 Q Officer, you testified just now on redirect that police officers,
4 unlike civilians, receive training, to use your words, to identify
5 descriptors --

6 A Correct.

7 Q -- correct? Descriptors would include someone's race?

8 A Correct.

9 Q Perhaps their build?

10 A Correct.

11 Q In some cases, clothing?

12 A Correct.

13 Q And identifiable traits, physical traits, right?

14 A Correct.

15 Q Like tattoos --

16 A Yes.

17 Q -- right? Scars?

18 A Correct.

19 Q Facial hair --

20 A Correct.

21 Q -- right? Hair in general, right?

22 A Correct.

23 Q Okay. These are all things that officers receive training on, so
24 that when they see these things in the field, they mention them, because
25 they're important, right?

1 A Sometimes, yes.

2 Q They're sometimes important and sometimes not important?

3 A Sometimes they mention them, sometimes they don't.

4 Q Okay. In a situation like the one we have here, where 30 or so

5 hours has gone by between incident and arrest, clothing is not that

6 important anymore, is it?

7 A Correct.

8 Q Because clothing can be changed, right?

9 A Correct.

10 Q Okay. So in a situation like that, where clothing becomes

11 irrelevant, physical descriptors become the most important features,

12 right?

13 A Correct.

14 Q Okay. Now, I want to clarify the timeframe of

15 Ms. Klosterman's involvement, okay.

16 A Okay.

17 Q Because you said it was about an hour, hour and a half?

18 A Roughly, yes.

19 Q Okay. Would you agree that the CAD indicates she was there

20 for 47 minutes?

21 A That's close to an hour, yeah. Correct.

22 Q You say that's close to an hour?

23 A Yeah. I'd say it's close to an hour.

24 Q Okay. But it's 47 minutes, right?

25 A Okay. Yes.

1 Q Do you have any reason to disagree with that?

2 A No.

3 Q Would you defer to the CAD on that?

4 A I'm fine.

5 Q Sorry?

6 A I'm fine. CAD says it's 47 minutes, I just -- I was just
7 estimating.

8 Q Okay.

9 MR. COYER: Pass, Judge.

10 THE COURT: Mr. -- do you have any --

11 MR. DICKERSON: May I briefly, Your Honor?

12 THE COURT: Briefly.

13 **FURTHER REDIRECT EXAMINATION**

14 BY MR. DICKERSON:

15 Q Some talk about your -- the descriptors?

16 A Yes.

17 Q You ended up actually booking Ceasar Valencia into jail on
18 the 21st; is that right?

19 A Correct.

20 Q As part of that, you have to determine a couple things,
21 identifiers about the individual?

22 A Correct.

23 Q How tall is Ceasar Valencia?

24 A 5'7".

25 Q How much does he weigh?

1 A 185, I believe.

2 Q Thank you.

3 THE COURT: Counsel, can this witness be excused?

4 MR. COYER: Yes.

5 THE COURT: The State?

6 MR. DICKERSON: Yes.

7 THE COURT: Sir, thank you.

8 THE WITNESS: Thank you, Your Honor.

9 THE COURT: You are excused.

10 And before -- and I've had my bailiff watching to make sure
11 nobody wanted to ask any questions of any of the witnesses. So again,
12 I want to remind you that if there -- you do want to ask any witnesses
13 question, please write it out on a full-length piece of paper before the
14 witness is excused, make sure you provide it to my bailiff and we'll
15 review it and make a determination whether it's a question that should or
16 not be asked. Okay? Thank you.

17 State?

18 MR. DICKERSON: Can we have a brief recess, Your Honor?

19 THE COURT: How long would you like, counsel?

20 MR. DICKERSON: 5, 10 minutes.

21 THE COURT: At this time we're going to take a 10-minute
22 residence, ladies and gentlemen.

23 During this recess you're admonished not to talk or converse
24 among yourselves or with anyone else on any subject connected with
25 this trial, or read, watch, or listen to any report or commentary on the trial

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

9 We'll be in recess for 10 minutes.

10 [Jury recessed at 10:45 a.m.]

11 THE COURT: Counsel?

12 MR. DICKERSON: Your Honor.

13 THE COURT: Is there anything you need to bring to my
14 attention?

15 MR. DICKERSON: Not at this moment. I just need to speak
16 with my co-counsel and we'll work it out here.

17 THE COURT: Okay. Thank you.

18 MR. DICKERSON: Thank you very much.

19 THE COURT: We'll be in recess.

20 [Court recessed at 10:45 a.m. until 10:54 a.m.]

21 [Outside the presence of the jury.]

22 THE COURT: This is continuation of the trial of *State vs.*
23 *Ceasar Valencia.*

24 State, how many more witnesses do you have?

25 MR. DICKERSON: State will rest, Your Honor.

1 THE COURT: Okay. Defense, are you planning on
2 presenting any witnesses?

3 MR. COYER: Your Honor, as of yesterday afternoon I had
4 discussed with Mr. Valencia whether he wanted to testify. If he does, he
5 would be our only witness. So I don't believe we have any, but I know
6 the court has to go through the process with Mr. Valencia --

7 THE COURT: Okay.

8 MR. COYER: -- personally.

9 THE COURT: Did you want me to admonish him -- give him
10 the admonishment now or -- and take some time to discuss it with him?
11 Or when do you want me to give Mr. Valencia the admonishment?

12 MR. COYER: It -- court's pleasure. I -- I spoke with him at
13 length yesterday. I assume his mind hasn't changed. So we can do it
14 now, and that's fine, Your Honor.

15 THE COURT: Okay. So what -- we're going to bring the jury
16 back in. The State is going to rest. And then I'm going to ask you are
17 you going to present any witnesses, and you're going to rest?
18 Depending on what -- if Mr. Valencia testifies, then that will be your only
19 witness. If not, you're going to rest; is that correct?

20 MR. COYER: That's correct. But I think -- I think the court
21 should probably admonish Mr. Valencia before bringing the jury in.

22 THE COURT: No. I'm going to admonish him now.

23 MR. COYER: Okay. Okay.

24 THE COURT: I'm trying to --

25 MR. COYER: I didn't know.

1 THE COURT: -- tell you procedure.

2 MR. COYER: Yeah.

3 THE COURT: So if you rest, if Mr. Valencia decides not to
4 testify, then I was going to excuse the jurors and we'll -- we'll go over the
5 jury instructions.

6 MR. COYER: Very good.

7 THE COURT: Okay.

8 MR. LEXIS: Just so the court's aware, we pretty much have
9 agreed on most everything. There's only going to be argument really as
10 to one jury instruction.

11 THE COURT: Okay.

12 MR. LEXIS: So we should be able to --

13 THE COURT: Well, we'll take a little bit of time and then we'll
14 put it on the record.

15 MR. LEXIS: Yes.

16 THE COURT: Okay. Thank you, counsel.

17 All right. So at this time, I'm going to bring the jury -- oh, no,
18 I'm sorry. At this time I'm going to admonish Mr. -- Mr. Valencia
19 regarding his right to testify.

20 Mr. Valencia, under the Constitution of the United States and
21 under the Constitution of the State of Nevada, you cannot be compelled
22 to testify in this case; do you understand that, sir?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: You may, at your own request, give up this
25 right and take the witness stand and testify. If you do, you will be

1 subject to cross-examination by the Deputy District Attorney and
2 anything that you may say, be it on direct or cross-examination, will be
3 the subject of fair comment when the Deputy District Attorney speaks to
4 the jury in his final argument; do you understand that, sir?

5 THE DEFENDANT: I understand.

6 THE COURT: If you choose not to testify, the court will not
7 permit the Deputy District Attorney to make any comments to the jury
8 because you have not testified; do you understand that, sir?

9 THE DEFENDANT: Yes. I understand.

10 THE COURT: If you elect not to testify, the court will instruct
11 the jury, but only if your attorney specifically requests, as follows:

12 The law does not compel a defendant in a criminal case to
13 take the stand and testify, and no presumption may be raised and no
14 inference of any kind may be drawn from the failure of a defendant -- of
15 a defendant to testify.

16 Do you have any questions about these rights, sir?

17 THE DEFENDANT: No. None at all.

18 THE COURT: You're further advised that if you have a felony
19 conviction and more than 1- years has not elapsed from the date you
20 have been convicted or discharged from prison, parole, or probation,
21 whichever is later, and the defense has not sought to preclude that
22 coming before the jury, and you elect to take the stand and testify, the
23 Deputy District Attorney in the presence of the jury will be permitted to
24 ask the following questions:

25 1. Have you been convicted of a felony?

1 2. What was the felony? And

2 3. When did it happen?

3 However, no details may be gone into before -- no details may
4 be gone into; do you understand that, sir?

5 THE DEFENDANT: I understand.

6 THE COURT: Do you have any questions of the court
7 regarding anything I just -- regarding anything I have just advised you
8 of?

9 THE DEFENDANT: None.

10 THE COURT: Okay. I'm going to take a very short recess
11 that will allow you confer with your attorney. And then I'm going to come
12 back on the bench and -- but I want you to take -- I know you've already
13 talked to him previously. But now that I have admonished you, I want to
14 give you the opportunity to speak with him in private. Okay?

15 THE DEFENDANT: All right.

16 THE COURT: All right. Thank you.

17 We'll be in short recess.

18 Mr. Coyer, let me know when you want to reconvene.

19 MR. COYER: Thank you, Your Honor.

20 MS. PLUNKETT: Thank you, Judge.

21 THE COURT: Thank you.

22 [Court recessed from 10:59 a.m. until 11:02 a.m.]

23 [Outside the presence of the jury.]

24 THE COURT: Mr. Valencia, have you had sufficient time to
25 discuss with your counsel regarding the admonishment I just gave you?

1 THE DEFENDANT: Yes, sir.
2 THE COURT: And what is your decision?
3 THE DEFENDANT: Not to testify.
4 THE COURT: I'm sorry, sir, I didn't --
5 THE DEFENDANT: Not to testify.
6 THE COURT: Not to testify?
7 Do you concur, Mr. Coyer?
8 MR. COYER: I concur.
9 THE COURT: Thank you. That he had -- I mean, concur that
10 he had sufficient time to speak with you and you answered all his
11 questions?
12 MR. COYER: Yes, Your Honor.
13 THE COURT: Okay.
14 MR. COYER: And we discussed the possible jury instruction
15 that you mentioned as well, Judge.
16 THE COURT: And are you requesting that the instruction be
17 given?
18 MR. COYER: Yes, Your Honor.
19 THE COURT: Okay. Thank you.
20 Is that correct, Mr. Valencia, you're requesting that instruction
21 be given to the jury?
22 THE DEFENDANT: Yes. That's correct.
23 THE COURT: Thank you, sir.
24 What I'll do then is I'll bring the jury in, ask the State is there
25 any additional witnesses, the State will then rest. I'll ask Mr. Coyer is he

1 going to call a witness. He'll rest. Then we'll probably have them come
2 back at 1:00. Okay?

3 MR. COYER: Great.

4 THE COURT: And then we'll settle jury instructions over the
5 lunch break. Is that satisfactory to counsel?

6 MR. DICKERSON: It is, Your Honor.

7 THE COURT: Mr. Coyer?

8 MR. COYER: Yes, sir.

9 THE COURT: Thank you. Bring the jury back in, please.

10 [Jury reconvened at 11:04 a.m.]

11 THE COURT: Let the record reflect the presence of the jury.

12 Mr. Dickerson, is there any additional witnesses the State are
13 going to call?

14 MR. DICKERSON: No additional witnesses at this time, Your
15 Honor. I would just like to confirm with Your Honor and your clerk that
16 State's Exhibits 1 through 51 have been admitted, and 53 and 54 have
17 been admitted, as well as Defense Exhibit 1.

18 THE CLERK: That's correct.

19 THE COURT: Okay.

20 MR. DICKERSON: At this time, Your Honor, the State rests.

21 THE COURT: Mr. Coyer, is the defense going to call any
22 witnesses?

23 MR. COYER: Your Honor, no additional witnesses from the
24 defense. And at this time, the defense would rest as well.

25 THE COURT: Thank you, counsel.

1 Ladies and gentlemen, there's some housekeeping matters
2 that counsel and myself have to take care of. We're going to take our
3 lunch break at this time. Please return at 1:00. Yes. Wait, I have to
4 give you my admonishment.

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

16 We'll be on our lunch recess at this time. Thank you.

17 [Jury recessed at 11:07 a.m.]

18 THE COURT: Counsel, we'll settle jury instructions in the jury
19 room, and then whatever the results are we'll on the record afterwards.

20 MR. DICKERSON: Thank you, Your Honor.

21 [Court recessed at 11:08 a.m. until 1:07 p.m.]

22 [Outside the presence of the jury.]

23 THE COURT: This is a continuation of the trial of *State of*
24 *Nevada vs. Ceasar Sanchaz Valencia*, Case No. 16 C -- I'm sorry,
25 Case No. C-16-315580. Let the record reflect counsel for the State,

1 counsel for the defense, and Mr. Valencia are present.

2 This is time set for settling of jury instructions. Are the parties
3 prepared to go forward at this time?

4 MR. LEXIS: Yes.

5 MR. COYER: Yes.

6 THE COURT: Okay. The State has submitted a proposed set
7 of jury instructions and the defense has also submitted a proposed set of
8 special instructions. It's my understanding that as to many of these
9 instructions, that they're agreed to; is that correct?

10 MR. LEXIS: Correct.

11 MR. COYER: Correct.

12 THE COURT: As to Instruction No. 1, are -- are the parties in
13 agreement that that should be given?

14 MR. LEXIS: Yes.

15 MR. COYER: Yes.

16 THE COURT: As to Instruction No. 2?

17 MR. LEXIS: Yes.

18 THE COURT: Mr. Coyer?

19 MR. COYER: Yes.

20 THE COURT: Okay. Instruction No. 3, are the parties in
21 agreement that that should be given?

22 MR. LEXIS: Yes.

23 MR. COYER: Yes.

24 THE COURT: And these are the State's proposed
25 instructions.

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MR. LEXIS: Yes.

THE COURT: As to Instruction No. 4, are the parties in agreement that should be given?

MR. LEXIS: Yes.

MR. COYER: Yes.

THE COURT: As to Instruction No. 5, are the parties --

MR. LEXIS: Yes.

THE COURT: -- in agreement that it should be given?

MR. LEXIS: Yes.

MR. COYER: Yes.

THE COURT: Mr. Coyer?

MR. COYER: Yes.

THE COURT: As to Instruction No. 6, are the parties in agreement it should be given?

MR. LEXIS: Yes.

MR. COYER: Yes.

THE COURT: As to Instruction -- State's Proposed Instruction No. 7, are the parties in agreement it should be given?

MR. LEXIS: Yes.

MR. COYER: Yes.

THE COURT: As to State's Proposed Instruction No. 8, are the parties in agreement it should be given?

MR. LEXIS: Yes.

MR. COYER: Yes.

THE COURT: As to State's Proposed Instruction No. 9, are

1 the parties in agreement it should be given?

2 MR. LEXIS: Yes.

3 MR. COYER: Yes.

4 THE COURT: Okay. As to Instruction -- Proposed -- State's
5 Proposed Instruction No. 10, are the parties in agreement it should be
6 given?

7 MR. LEXIS: Yes.

8 THE COURT: I thought --

9 MR. COYER: Yes.

10 THE COURT: -- this one was going to modified.

11 MR. LEXIS: Not -- that's not the one that's modified.

12 THE COURT: Okay. What about -- hold on, counsel. Let me
13 just look at my notes.

14 MR. LEXIS: Oh, I apologize, Judge. I -- I was thinking about
15 the lesser included. Yes, that's the one that we're going to incorporate
16 the -- the assault definition.

17 THE COURT: Okay. And this is the one that -- Defendant's
18 proposed jury instructions is going to be modified to include a portion of
19 Defendant's Proposed Instruction No. 1; is that correct?

20 MR. COYER: Correct.

21 MR. LEXIS: And that was over the State's objection, but due
22 to -- due to we believing that does not apply to this particular statute.

23 THE COURT: Okay. But in any event, I'm going to give the --
24 a modified version of Instruction No. 10. It's my understanding that it's
25 going to read:

1 A person who knowingly intends to use physical force against
2 the person of another -- person of another --

3 After the word another, we're going to modify that sentence to
4 include:

5 Mere menace is not enough, there must be an effort to carry
6 the intention the execution.

7 And then the sentence will continue:

8 Or intentionally place another person in reasonable
9 apprehension of immediate bodily harm is guilty of assault .

10 Is that correct, counsel?

11 MR. LEXIS: That's my understanding of the court's ruling over
12 the State's objection.

13 MR. COYER: Correct.

14 THE COURT: Is that correct, Defense?

15 MR. COYER: Correct, Your Honor.

16 THE COURT: Okay. As to State's Proposed Jury
17 Instruction No. 11, are the parties in agreement it should be given?

18 MR. LEXIS: Yes.

19 MR. COYER: Yes.

20 THE COURT: And as to State's Proposed Jury
21 Instruction No. 12, are the parties in agreement it should be given?

22 MR. LEXIS: Yes.

23 MR. COYER: Yes.

24 THE COURT: State's Proposed Instruction No. 13, are the
25 parties in agreement it should be given?

1 MR. LEXIS: Yes.

2 MR. COYER: Yes.

3 THE COURT: And on State's Proposed Instruction No. 14, it's
4 my understanding that that instruction is going to be modified; is that
5 correct?

6 MR. LEXIS: Correct.

7 MR. COYER: Correct.

8 THE COURT: And the modification is that the offense of
9 traffic -- essentially, will be adding that the offense of trafficking in a
10 controlled substance is a lesser offense --

11 MR. LEXIS: Yes.

12 THE COURT: -- of possession -- I'm sorry.

13 MR. LEXIS: I believe the wording that we were going to use
14 was possession of controlled substance is a lesser-included offense of
15 trafficking.

16 THE COURT: That's correct, counsel. And with that
17 modification, the parties are in agreement that State's Proposed
18 Instruction No. 11 should be given?

19 MR. LEXIS: Yes.

20 THE COURT: Okay.

21 MR. COYER: We're talking about 14, but yes.

22 THE COURT: Did I say 12? I apologize. It's State Proposed
23 Instruction No. 14 with that modification should be given?

24 MR. LEXIS: Yes.

25 MR. COYER: Yes.

1 THE COURT: Thank you. State's Proposed
2 Instruction No. 15, this is the one that I believe we were going to take
3 out -- hold on.

4 MR. LEXIS: I believe that fourth paragraph was going to be
5 taken out.

6 THE COURT: That's my understanding, the paragraph that
7 begins with the word knowingly.

8 MR. LEXIS: That's correct.

9 THE COURT: And it's covered by another instruction; is that
10 correct?

11 MR. LEXIS: Correct.

12 MR. COYER: Correct.

13 THE COURT: Okay. So with that modification, that the
14 paragraph beginning with the words, knowingly imports a knowledge,
15 that paragraph will be deleted. Is there any -- do the parties agree with
16 that modification, State's Proposed Instruction No. 15 should be given?

17 MR. LEXIS: Yes.

18 MR. COYER: Yes.

19 THE COURT: Instruction -- State's Proposed
20 Instruction No. 16, the parties in agreement it should be given?

21 MR. LEXIS: Yes.

22 MR. COYER: Yes.

23 THE COURT: And then on State's Proposed
24 Instruction No. 17, it's my understanding that the State is withdrawing
25 that instruction?

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MR. LEXIS: Yes.

THE COURT: And then on State's Proposed Instruction No. 18, are the parties in agreement it should be given? And this is State's Proposed Instruction No. 18.

MR. LEXIS: Yes.

MR. COYER: Yes.

THE COURT: Thank you, counsel. And then are the parties in agreement that State's Instruction No. 19 should be given?

MR. LEXIS: Yes.

MR. COYER: Yes.

THE COURT: Thank you. And on State's Instruction No. 20, are the parties in agreement that that instruction should be given?

MR. LEXIS: Yes, Your Honor. And it looks like Instructions 21 through -- all right. Never mind, my mistake. Keep going, Judge. Sorry.

MR. COYER: We'll get through it.

THE COURT: So as to Proposed Jury Instructions 21 through 23, are the parties in agreement that those should be given?

MR. LEXIS: Yes.

MR. COYER: Yes.

THE COURT: Okay. As to Jury Instruction No. 24, are the parties in agreement that instruction should be given?

MR. COYER: Yes, Judge. And for the record, this is the instruction we requested about the defendant not being required to testify.

1 THE COURT: Correct.

2 MR. COYER: Yes.

3 MR. LEXIS: Yes.

4 THE COURT: And so the defense is specifically requesting
5 that we -- that that instruction be given, correct?

6 MR. COYER: Correct.

7 THE COURT: Okay. And is it -- is the State's Proposed
8 Instruction No. 25, are they requesting that be withdrawn?

9 MR. LEXIS: Yes.

10 THE COURT: That will be withdrawn and not given.

11 And then as to State's Proposed Instructions 26 through 29,
12 are the parties in agreement that those instructions should be given?

13 MR. COYER: Yes.

14 MR. LEXIS: Yes.

15 THE COURT: Okay. And then as to the defendant's
16 proposed jury instructions, I have numbered them. So the first one is
17 Defendant's Proposed Instruction No. 1. Counsel, do you have those in
18 front of you?

19 MR. COYER: I don't, but I know what it is. It's the Wilkerson
20 instruction.

21 THE COURT: Okay.

22 To constitute the crime of assault, mere menace is not
23 enough, there must be an effort to carry the intention to execution.

24 We have included mere menace is not enough. There must
25 be an effort to carry the intention to execution as part of the instruction

1 regarding the definition of assault.

2 MR. COYER: Correct.

3 THE COURT: Okay. So because of it's covered by other
4 instructions, I'm not going to give Defendant's Proposed
5 Instruction No. 1, as it's already covered by another instruction.

6 MR. COYER: Agreed.

7 THE COURT: And then as to Defendant's Proposed
8 Instruction No. 2, this is one that states:

9 If you find the State has failed to prove beyond a reasonable
10 doubt any one element of a charged offense, you must find
11 Defendant not guilty of that offense.

12 What's the defense position on giving that instruction?

13 MR. COYER: I believe Your Honor had decided to
14 incorporate that language into the reasonable doubt instruction.

15 THE COURT: Well, I believe the State opposed that and I
16 was going to give it as separate instruction --

17 MR. LEXIS: Correct.

18 MR. DICKERSON: Oh.

19 THE COURT: -- following the reasonable doubt instruction.
20 So I will give that and it will follow -- it'll be the next instruction after the
21 reasonable doubt instruction.

22 And then as to the Defense Proposed Jury Instruction No. 3:

23 An act is not a crime if the act was committed through
24 misfortune or by accident, when it appears that there was no evil
25 design, intention, or culpable negligence.

1 What's the defense position on that instruction?

2 MR. COYER: I stand by it. I thought it was going to be given
3 by the court.

4 THE COURT: State?

5 MR. LEXIS: It was duplicative of a version that we already
6 had in there.

7 THE COURT: And I was -- and I am going to give that
8 instruction. And I was going to give it after Jury Instruction No. 20 that
9 deals with intent. Okay. All right.

10 As to Defendant's Proposed Jury Instruction No. 4, it's my
11 understanding that you're withdrawing that instruction, counsel?

12 MR. COYER: Correct.

13 THE COURT: Okay. That instruction will not be given and is
14 withdrawn.

15 And as to Defense Proposed Jury Instruction No. 5?

16 MR. COYER: That language was incorporated into a -- sort of
17 an omnibus lesser-included instruction.

18 THE COURT: Okay. And so you're satisfied by the
19 modification of the lesser included; are you withdrawing this instruction?

20 MR. COYER: Yes, Your Honor.

21 THE COURT: Okay. Okay. This instruction will not be given.
22 And then as to the Defense Proposed Jury Instruction No. 6?

23 MR. COYER: Same -- same issue. It's a lesser included.

24 THE COURT: Right. So are you withdrawing Defense
25 Proposed Instruction No. 6?

1 MR. COYER: Yes.

2 THE COURT: Then it will not be given.

3 What I'll do, counsel, is I'm going to attach as a court exhibit
4 the -- Mr. Coyer.

5 MR. COYER: Judge, I just wanted to verify one thing real
6 quick --

7 THE COURT: Okay.

8 MR. COYER: -- so that we can finalize the --

9 MR. LEXIS: Because we sent Mr. Dickerson up to do a right
10 to testify instruction. I'm believing it's not in here, but I believe it actually
11 is in here --

12 MR. COYER: There was a 20 -- Number 24.

13 MR. LEXIS: Number 24.

14 THE COURT: I thought it was in here too.

15 MR. LEXIS: It's in No. 24. I was -- we were just verifying that.

16 THE COURT: Okay. In any event, what I was advising
17 counsel is I was going to attach as a court exhibit your proposed -- the
18 defense and the State's proposed jury instructions with citations. I -- I
19 wasn't going to -- I wasn't going to attach the ones without the citation.
20 Is that agreeable to the parties?

21 MR. LEXIS: Sounds good.

22 MR. COYER: Yes.

23 THE COURT: Okay. All right. So we'll be in a short recess.
24 When the modifications have been made, provide them to defense
25 counsel. If the parties are in agreement, that will be the jury instructions

1 I will give to the -- to the jury. And then it's my understanding that we're
2 going to bring the jury in. The State is going to rest. The defense is
3 going to rest. I then am going to give the jury instructions and we'll do
4 closing arguments; is that correct?

5 MR. COYER: Both parties have already rested, but
6 everything else --

7 THE COURT: I'm sorry. Did they?

8 MR. COYER: Everything else is correct.

9 THE COURT: I apologize.

10 MR. COYER: That's all right.

11 THE COURT: All right. So all we have to do, once the jury
12 instructions are finalized is, I will read the instructions to the jury and
13 then we'll do closing arguments, correct?

14 MR. COYER: Very good.

15 MR. LEXIS: Correct.

16 THE COURT: Thank you.

17 [Court recessed at 1:22 p.m. until 1:26 p.m.]

18 [Outside the presence of the jury.]

19 THE COURT: Again, this is continuation of *State vs. Valencia*.
20 Let the record reflect that counsel for the State, counsel for the defense,
21 and Mr. Valencia are present.

22 I just wanted to go over a few housekeeping matters with
23 counsel.

24 First, I want to verify, State, is there any additional proposed
25 jury instructions at this time.

1 MR. LEXIS: No, Your Honor.

2 THE COURT: Defense is there any additional proposed jury
3 instructions at this time?

4 MR. COYER: No.

5 THE COURT: And then the other housekeeping matter is I
6 want to verify with counsel that we weren't going to send the evidence
7 envelopes back to the jury, because of the issue that came out earlier in
8 the trial. And that I was just going to send pictures of the gun back and
9 advise them if they want to actually look at the gun itself, that my
10 marshal would bring it back and they could inspect it. Is that correct,
11 counsel?

12 MR. LEXIS: The State stipulated to that at the request of the
13 defense and the court.

14 THE COURT: Okay. And is that correct, counsel?

15 MR. COYER: That's all -- all fine, yes.

16 THE COURT: Okay.

17 MR. LEXIS: And just so you know too, Judge, the -- even
18 though the whole thing was admitted, the bag containing the drugs,
19 there was also a bag of -- I believe the ODBs are in there as well. They
20 don't need that. So, I mean, if you just want to send back the baggies
21 with the drugs, that's all the State really is --

22 THE COURT: Is that agreeable to the defense?

23 MR. COYER: To remove the ODB sheets? Yes.

24 THE COURT: Okay.

25 MR. COYER: Yes.

1 THE COURT: Mr. Clerk, you heard the -- what we're going to
2 do? Okay. Thank you.

3 MR. LEXIS: Just the three baggies of drugs.

4 THE CLERK: Just the three baggies.

5 THE COURT: All right. Well, I just -- we'll wait until we have
6 the -- we'll be in a short recess. Once we have the finalized jury
7 instructions, if counsel can review them and if they are what we -- what
8 we -- were agreed upon, then -- do we have them? All right. I'm going
9 to be in short recess.

10 [Court recessed at 1:29 p.m. until 1:45 p.m.]

11 [Outside the presence of the jury.]

12 THE COURT: This is the continuation of the trial in *State vs.*
13 *Valencia*, Case No. C-16-315580.

14 Have the parties had an opportunity to review the proposed
15 jury instructions?

16 MR. DICKERSON: We have, Your Honor.

17 MR. COYER: Yes.

18 THE COURT: Is -- I did notice one thing. I think I misspoke at
19 the -- when we were settling instructions. On Jury Instruction No. 11, I
20 thought I said when -- that we were going to add the phrase, mere
21 menace is not enough. There must be an effort to carry the intention
22 into execution, I put it in the first sentence. Apparently, it's in the -- it's
23 been added to the third -- on line 6 and 7. And it reads:

24 To constitute an unlawful -- an unlawful attempt to use
25 physical force against a person of another, mere menace -- mere

1 menace is not enough. There must be an effort to carry the intention
2 into execution.

3 Is that agreeable to the parties where it's in the instruction,
4 counsel?

5 MR. DICKERSON: That's -- yes. State --

6 MR. COYER: It's agreeable to the defense.

7 THE COURT: I'm sorry, counsel?

8 MR. COYER: It's agreeable to the defense.

9 THE COURT: What about to the State?

10 MR. DICKERSON: Yes.

11 THE COURT: Okay. So the parties have a copy of the
12 instructions?

13 MR. COYER: Yes.

14 THE COURT: Thank you.

15 So Instruction No. 1 begins: It is now my duty to judge or
16 instruct you.

17 Instruction No. 2 will be -- begins with: If in these instructions
18 any rule, direction, or idea.

19 Instruction No. 3: An information is but a formal method.

20 Instruction No. 4 begins: To constitute the crime charged.

21 Instruction No. 5 begins: The State has -- the State -- the
22 defendant is presumed innocent.

23 Instruction No. 6 begins: If you find that the State has failed to
24 prove.

25 Instruction No. 7 begins: You are here to determine the guilt

1 or innocence of the defendant.

2 Instruction No. 8 begins: The evidence which you are to
3 consider in this case.

4 Instruction No. 9 begins: The credibility or believability of a
5 witness.

6 Instruction No. 10 begins with: A witness who has special
7 knowledge, skill, and experience.

8 Instruction No. 11 begins with: A person who unlawfully
9 attempts to use physical force.

10 Instruction No. 12 begins: As used in the instructions, a
11 deadly weapon means.

12 Instruction No. 13 in -- begins with: In order to use a deadly
13 weapon.

14 Instruction No. 14 begins: The State is not required to have
15 recovered the deadly weapon.

16 Instruction No. 15 begins with: When it is impossible to
17 commit a particular crime.

18 Instruction No. 16 begins with: Any person who knowingly or
19 intentionally.

20 Instruction No. 17 begins with: A person who knowingly,
21 intentionally possesses a controlled substance.

22 Instruction No. 18, in order -- begins with: In order to prove
23 the commission of trafficking in controlled substance.

24 Instruction No. 19 begins with: A person is a person -- repeat.
25 A person is in possession of an article or object.

1 Instruction No. 16 -- shucks. I apologize, counsel.

2 Instruction No. 20 begins with the phrase: The intent of a

3 person or the knowledge that a person.

4 Instruction No. 21 begins with: An act is not a crime.

5 Instruction No. 22 begins with the phrase: The flight of a

6 person with -- after the commission of a crime.

7 Instruction No. 23 begins with: Although you are to consider

8 only the evidence.

9 Instruction No. 24 begins with: In your deliberation you may

10 not discuss.

11 Instruction No. 25 begins with the phrase: It is the

12 Constitutional right -- Constitutional right of a defendant.

13 Instruction No. 26 begins with: When you retire to consider

14 your verdict.

15 Instruction No. 27: During the course of this trial.

16 Instruction 28 begins with: If during your deliberation you

17 should desire.

18 Instruction No. 29 begins with the phrase: Now you will listen

19 to the arguments of counsel.

20 And the verdict form is attached to -- to the back. And it's my

21 understanding that there's no objection to the verdict form from defense;

22 is that correct?

23 MR. COYER: Correct.

24 THE COURT: As to the State, no objection?

25 MR. DICKERSON: No objection, Your Honor.

1 THE COURT: All right. So that will be the jury instructions.
2 So -- and also my -- my bailiff -- my marshal has advised me that
3 counsel has agreed as to the actual drugs themselves, we will only send
4 those back if they're requested by the jury also --

5 MR. LEXIS: Correct.

6 THE COURT: -- as the same as with the gun -- with the
7 weapon; is that correct, counsel?

8 MR. LEXIS: Yes, Your Honor.

9 MR. COYER: Correct.

10 THE COURT: Okay. Are we ready to bring --

11 MR. DICKERSON: And you're just going to advise the jury of
12 that, Your Honor, orally?

13 THE COURT: At the end, yeah.

14 MR. DICKERSON: Okay.

15 THE COURT: If I don't, kind of --

16 MR. DICKERSON: Yeah. I'll let you --

17 THE COURT: -- let me know.

18 MR. DICKERSON: Yeah. Definitely.

19 THE COURT: And it's also, Mr. Dickerson, it was also my
20 understanding we weren't going to send the evidence bags back also?

21 MR. DICKERSON: We would request those don't --

22 THE COURT: Yeah.

23 MR. DICKERSON: -- be sent back.

24 THE COURT: And that -- and that was my understanding
25 also.

1 MR. DICKERSON: And if they request those bags, if you
2 could just contact counsel, as, like, a jury question, and we could talk
3 about it at that time?

4 THE COURT: Yeah. I --

5 MR. COYER: That's agreeable.

6 THE COURT: -- agree. All right. So I'm going to bring the
7 jury in. I'm going to read them the instructions. And then we're going to
8 do closing arguments, correct?

9 MR. DICKERSON: Yes, Your Honor.

10 MR. COYER: Correct.

11 THE COURT: All right. Thank you, counsel.

12 [Jury reconvened at 1:53 p.m.]

13 THE COURT: Ladies and gentlemen, thank you for your
14 patience in this matter. The State and defense have rested and -- and I
15 am about to instruct you upon the laws that applies in this case. I would
16 like to instruct you orally without reading to you. However, these
17 instructions are of such importance, it is necessary for me to read to you
18 these carefully prepared written instructions.

19 The instructions are long and some are quite complicated. If
20 they not -- are not especially clear when I read them to you, please keep
21 in mind that when you go back to the jury room, you'll be able to take
22 these -- you will be able to take these carefully prepared written
23 instructions with you so you can read them and consider them carefully.

24 [Jury instructions read.]

25 THE COURT: Counsel are you prepared to -- for closing

1 arguments?

2 MR. LEXIS: Can you switch us over, Judge?

3 MR. DICKERSON: We are, Your Honor. We would just
4 request the -- to have the monitor up.

5 Thank you very much, ma'am.

6 MR. LEXIS: Folks, what's the state of mind of a man who's
7 willing to flee from the police on a moped with two patrol officers after
8 him in a marked patrol unit in uniform? Or better yet, take off on foot?
9 Or turn around with a gun in his hand and point at an officer placing that
10 officer in danger, him in danger, and everyone else around in a
11 residential area? Or better yet, someone with three of the most potent
12 narcotics on the street when he's eventually caught? That's the type of
13 man you're dealing with, a man who has zero regard for this community
14 or for the safety of others.

15 Folks, you have a jury instruction, and this is straight from the
16 jury instructions that says use your common sense. This case was over
17 two days ago. Although you are to consider only the evidence in this
18 case in reaching a verdict, you must bring to the consideration of that --
19 of the evidence your everyday common sense and judgment as
20 reasonable men and women. What's that telling you? Follow the law
21 and use your common sense.

22 You also have a jury instruction that the judge mentioned, and
23 one of the only ones that he mentioned prior to this trial starting and at
24 the end. And it's regarding direct and circumstantial evidence.

25 At the beginning of this case I told you, and the law allows, if

1 we just had one witness and that witness has a host of baggage, gang
2 member, drug addict, you name it, and that person takes the stand, if
3 you judge their credibility to be credible and believe them beyond a
4 reasonable doubt, the State's entitled to a guilty verdict.

5 In addition, sometimes we're left with just circumstantial
6 evidence, which we'll talk about in a second. Let's say somebody
7 breaks in somebody's home. They hear somebody. They call the cops.
8 And a -- some witness sees that somebody -- running down the street.
9 The only description they could give is a white male wearing all black.
10 The cops show up, comb the neighborhood, and eventually see
11 somebody hiding in the corner.

12 Sure enough, this person is wearing all black, a white male.
13 They go back to the scene and they see that a window is broken and
14 there's -- the spigot's busted and water spewing out of it. Must have
15 tried to jump up on the spigot in order to get into the house. And this
16 suspect that they caught also, you know, has some shreds of glass on
17 him. And lo and behold, their right leg is soaked.

18 That's all we have. No viable prints left behind. No viable
19 DNA left behind. They bring it back to the person and the person can't
20 make a positive identification, other than he was weighing black clothes
21 and white male.

22 Do we have those cases? Absolutely. Do we prosecute those
23 cases? Absolutely. Are we entitled to a guilty verdict if you find beyond
24 a reasonable doubt that the defendant committed that crime?
25 Absolutely.

1 Now, on the far other side of the spectrum, you have cases
2 like this where you have both direct and circumstantial evidence, where
3 your witnesses are cops. Folks, your instructions states there are two
4 types of evidence, direct and circumstantial evidence. The law makes
5 no distinction between the weight to be given to either direct or
6 circumstantial evidence. Therefore, all of the evidence in the case,
7 including circumstantial evidence should be considered by you in
8 arriving at your verdict.

9 What is that telling you? You don't look at each event in
10 isolation. You don't look at each particular statement by every particular
11 witness on this stand in isolation. Or each event, the one on the 19th
12 and the one on the 21st, in isolation. No. The law instructs you to use
13 everything combined to come to your conclusions on each and every
14 charge.

15 What's the direct evidence in this case? Well, you have
16 Officer Jacobitz telling you 100 percent that's the man. That's the man.
17 Also, giving you a detailed account with his demonstration right here on
18 how that man pulled that gun, brought it out, pointed it at him, and then it
19 flew out of his hand when he hit the pole. That is direct evidence.

20 You have any other direct evidence to support his account?
21 Yeah. Officer Houston also tells you 100 percent that's the man. Does
22 he support Jacobitz's account? Absolutely. When they stop, he says
23 Jacobitz runs after him. Houston gets out of the car, has to run around.
24 As he's going around the car, he hears Jacobitz yell, Gun. He has an
25 obstructed view of the defendant so he can't see the defendant at that

1 point in time, but he sees Jacobitz has now stopped. Runs over.
2 Jacobitz is now with the gun as he continues to proceed. Keep in mind
3 too he was also there the 21st when he told you, again, that man 100
4 percent was the man both on the 21st and on the 19th.

5 Any other direct evidence? Yeah. There's a firearm. You
6 think we're not going to proceed on this case if there wasn't a firearm?
7 No. And there's a jury instruction on that too. We don't need to recover
8 the firearm. It's common sense tells you why. Crooks take off with the
9 firearm. However, there was a firearm in further support of Jacobitz's
10 accounts of the events.

11 Is there other direct evidence? Obviously, on the 21st,
12 multiple officers observed the takedown of the defendant where those
13 drugs were right in his pocket, that large amount of cash right in his
14 pocket.

15 Again, the law makes no distinction between the weight to be
16 given to either direct or circumstantial evidence. The State can convict
17 somebody 100 percent on direct evidence or 100 percent on
18 circumstantial evidence.

19 What circumstantial evidence do you have in this case? What
20 a coincidence, the location of the incident compared to where he lives,
21 right next to him. What a coincidence, that's exactly where he fled.
22 What a coincidence -- and we'll talk more about this later -- he's caught
23 on the 21st with three of the most potent street drugs there are.

24 And the fact that he ran from the police. You actually have a
25 separate jury instruction on this, which tells you the flight of a person

1 immediately after the commission of a crime or after he's accused of a
2 crime is not sufficient in itself to establish his guilt, but is a fact which, if
3 proved, may be considered by you in light of all the other proof, facts in
4 deciding the question of his guilt or innocence. Essentially, more
5 circumstantial evidence against this man.

6 When you combine the two, folks, when you combine the two,
7 there is a mountain of evidence against this man where he is boxed into
8 a corner where there's no way out, period. So what does the defense
9 do? There is no surprise what happened, no surprise whatever.

10 When you're dealing with amount -- this amount of evidence,
11 this is what goes on. Blame the cops. Blame other people. Blame
12 everybody other than the defendant. Really? Well, why take out the
13 gun in the first place? We know for a fact the man's gun is laying on the
14 ground. Why take it out in the first place? What's your common sense
15 tell you about that?

16 Think he just run away from the cop and oh, he's -- he's just
17 going to stop, pull his gun out and hand it to him? No. He already fled
18 on his moped. Now, he's fleeing from them on foot. That's further
19 circumstantial evidence of this man pulling his gun out and pointing it at
20 that cop.

21 Motive, drugs, firearm. Further circumstantial evidence.
22 Further circumstantial evidence. You have a jury instruction and this is
23 it, verbatim. You're not mind readers, folks. We're not tasking you to be
24 mind readers. Motive is not an element of the crime charged and the
25 State is not required to prove motive. We don't need to prove motive on

1 the part of the defendant in order to convict. However, you may
2 consider the evidence of motive or lack of motive as circumstance in this
3 case, more circumstantial evidence.

4 And ask yourself, this man who's caught two days later on
5 the 21st, a man you know, number one, carries a firearm, and number
6 two, carries with him large amounts of cash along with heroin, meth, and
7 cocaine. The police department doesn't take that lightly and neither
8 does the District Attorney's office. There is no surprise to nobody that
9 this man is running from the cops. No surprise. And willing to do an
10 extreme measure, as pulling a firearm, putting everyone in danger
11 including himself, the officer, and the public.

12 Monday night quarterback. What do I mean by that? You
13 know what I mean by that, folks. It's easy the next day to say, you know
14 what, they shouldn't have -- on that fourth down they should have
15 punted it, they shouldn't have went for it. On the eighth inning when
16 they pulled out the pitcher, ah, dumb move the next day. He should
17 have just kept with it. That's easy.

18 When you're in the heart of the moment, it's a totally different
19 ball game. And you don't get anymore of the heart of the moment. Your
20 common sense tells you what's going on here. This officer is going after
21 a suspect in a neighborhood where he was at, and then in an alley
22 having a firearm pulled on him, and had to react. So what -- what do we
23 do, right? What do we do? Attack the police, right?

24 First, we're going to go and Metro in general. First, the
25 forensic evidence, right? Well, as those people came up here and told

1 you, it's no surprise to them. Sometimes they do get hits, sometimes
2 they don't get hits, whether it's a viable print or viable DNA. Right?

3 Do you have other direct evidence in this case? Absolutely.
4 We just went over it. So when that doesn't work, what do you do? You
5 keep doing it, right? What's next?

6 They stated -- the cops stated that he dropped the gun, crime
7 is drop the gun, right? Folks, you heard the significance of that. You
8 heard these officers tell you the primary purpose of CAD is to give
9 location -- their location and a description of the suspect. You have the
10 CAD. Listen to me, this is not a full account of every detail that
11 happened now. It's no police report. It's no submission to the District
12 Attorney's office.

13 What was the significance of that, of he dropped the gun?
14 Because he stayed still. That's what his updated location was, as his
15 partner continued to flee after the man. Not to mention the fact, folks,
16 this -- the CAD started at 1946. When things finally calmed down a little
17 bit, at 2002, he actually makes a statement then. That's when he gives
18 a more detailed report that the man pointed a gun at me.

19 Oh, God forbid this man in this type of situation waits until he's
20 dealing with one crime, then sees two other people commit another
21 crime and has to take care of that situation and then gives the -- another
22 description over the CAD about what particularly happened.

23 When that doesn't work, what's next? They attack the
24 description, right? Again, God forbid this man who has just experienced
25 a situation where he almost had to be involved in an officer-involved

1 shooting, right, he just had a gun pointed at him, he gives a description
2 of the suspect. What's your common sense tells you that officers are
3 going to give a description of? Their general clothing, what they're
4 wearing, whether they're black, Hispanic, white, Asian, exactly what he
5 did.

6 What does the defense want to harp on? Oh, well, he didn't
7 mention the facial hair at the bottom. Folks, you'll have the CAD. Again,
8 it started at 1946. At 1958, less than 20 minutes later, they know
9 Ceasar Valencia's name. They know who they're looking for, that man
10 right there. Again, when that's doesn't work -- what -- what do we
11 continue to do?

12 The cones. Attack the cones all you want. We spent probably
13 an hour combined on cones. Jacobitz told you, I'm not positive who I
14 particularly was with, who I told exactly where to place those cones, but
15 yeah, those look like a true representations of where it occurred, where I
16 first saw that man and where he was placed. Initially testimony, he's
17 about 20 feet away. And at the time of the actual encounter, the -- the
18 measurement was about 60 feet.

19 Attack these people all you want that are in the heart of the
20 moment, all you want. It doesn't change the fact that that man pointed a
21 firearm at that officer. And there we go, right, it's more and more and
22 more.

23 You going to attack him. The defense wants you to believe,
24 well, Officer Jacobitz, you should have kept running after the suspect.
25 You were willing to go to the -- the moped, but you should have kept

1 running. First of all, what does that have to do with anyone -- anything?

2 Folks, you know what, in hindsight, who knows, right? Officer
3 Jacobitz had no idea there was going to be two more bozos trying to
4 steal the evidence that he was also trying to secure, the moped, along
5 with the gun. Who knows? Monday night quarterbacking. Maybe he
6 would have done something different and picked -- if he knew he was
7 going to have to pick up the gun, maybe he would have picked up the
8 gun and ran after him. Doesn't change the fact that that man pointed a
9 firearm at Jacobitz.

10 And then another good one that we spent time on with both
11 the detective and Jacobitz, okay, this -- this man has a full uniform on
12 and you saw a picture of him in full gear. And they're telling you that
13 he's in a full sprint after this man. The only reason he didn't shoot him,
14 states he's wobbly. He's not stable. Why? Because you see the cone
15 where he tells you he was standing where he first saw him. And then
16 he's proceeding to run up these stairs after him.

17 Defense counsel, well, you should have jumped out of the
18 way. Even if he should have jumped out of the way, it doesn't matter.
19 He -- that doesn't change the fact that that man pointed a firearm at him.
20 And that's not what they're trained to do. Ridiculous.

21 Fabricate. Folks, ask yourself when you're judging the
22 credibility, what motivation does this man have to come in here and
23 fabricate what he's telling you? This is not a situation in a trial where it's
24 a business contract gone bad, domestic disturbance gone bad where
25 you have child custody issues at play and maybe somebody is

1 overexaggerating something else. No.

2 You have officers trying to do their job and apprehend a
3 suspect. This case is not about who did it or whether or not he pointed a
4 firearm at that man. It's not. It's about what crimes did that man commit.

5 Assault. What is assault? A person who unlawfully attempts
6 to use physical force against the person of another, or intentionally
7 places another person in reasonable apprehension of immediate bodily
8 harm is guilty of assault. Folks, pay attention to the or language. Okay.

9 Let me first focus on the top part. A person who unlawfully
10 attempts to use physical force against the person of another. If I get
11 mad at Mike right now and Mike starts walking out that door, and I take
12 this clicker and I chuck it at him, I try to hit him, and I miss, the first part
13 applies. I unlawfully attempted to use physical force against him. Now,
14 if I hit him that would be a battery, totally separate thing. But as assault,
15 I intentionally try to use physical force against him.

16 Also, for the first point to apply, this applies, to constitute an
17 unlawful attempt, and it only applies to the first part, to use physical force
18 against another person, mere menace is not enough. There must be an
19 effort to carry out the intention into execution. Okay.

20 Are we trying to tell you that this man shot at Officer Jacobitz
21 and missed? No. No. What applies, folks, is the second part:
22 Intentionally place another person in reasonable apprehension of
23 immediate bodily harm is guilty of an assault. I just bolded it here. It's
24 the same definition, intentionally placing another person in reasonable
25 apprehension of immediate bodily harm.

1 Go up to Mike, I'm mad at him. And I act like I'm going to hit
2 him, placing him in reasonable apprehension of bodily harm. Guilty of
3 assault. If I actually hit him, it's a battery. That's the difference.

4 When a weapon is involved, go up to some old lady at a
5 mailbox and pull out a knife, and go ahead and give me your mail,
6 ma'am, placing her in fear of bodily harm. It's assault with a deadly
7 weapon. There is no better example of an assault with a deadly weapon
8 than what you just heard on the stand. A firearm is the ultimate.

9 Officer Jacobitz told you how he felt. He thought his life was
10 in danger. He thought he was going to have to shoot this man. He
11 described it as divine intervention.

12 In addition, to constitute an assault, it is not necessary that
13 any actual injury been inflicted. We'll not see that again when we talk
14 about deadly weapon. If he would have shot and hit that man, Jacobitz,
15 we'd be dealing with a whole host of other charges. All we're dealing
16 with is an assault with a deadly weapon, him pulling out that gun, placing
17 Jacobitz in reasonable apprehension of immediate bodily harm. That is
18 an understatement. He placed that man in extreme apprehension of
19 immediate bodily harm. He told you his finger was on the trigger.

20 A person who commits an assault upon a police officer during
21 the performance of his duties as a police officer is guilty of assault on a
22 protected person, period. You know that these men were acting as
23 police officers, hence the charge.

24 The person who commits an assault upon a police officer by
25 or through the use of a deadly weapon is guilty of assault upon a

1 protected person with use of a deadly weapon. Now, the common
2 sense tells you a firearm is a deadly weapon, but let's go look at the
3 statutes, just to show you how broad it is.

4 As used in these instructions, a deadly weapon means any
5 instrument which, if used in the ordinary manner contemplated by its
6 design or construction, will or is likely to cause substantial bodily harm or
7 death. A hammer, a rock, a gun, a knife, a crowbar, and we can go on
8 and on and on. Just to show you how broad this statute is, it has an or.
9 Any weapon, device, instrument, material or substance, which under the
10 circumstances of which it's used, attempted to be used, or threatened to
11 be used is capable of causing substantial bodily harm or death. I grab
12 this pen and I go up to Mike and, Give me your stuff or I'm going to stab
13 you in the neck. Assault with a deadly weapon. A pen can be a deadly
14 weapon. A string can be a deadly weapon. We can go on and on.

15 You are instructed, flat out in this case, that a firearm is a
16 deadly weapon, period. Firearm is a deadly weapon whether loaded or
17 unloaded, operable or inoperable. In order to use a deadly weapon,
18 there may not be conduct which actually produces harm, but only
19 conduct which produces a fear of harm or force by means of display of
20 the deadly weapon in aiding the commission of the crime. Again, just to
21 show you how broad this statute is, you do not need to use the weapon.
22 Simply conduct which produces a fear of harm.

23 The State is not required to have recovered the deadly
24 weapon used in the alleged crime, or to produce the deadly weapon in
25 court to establish that the deadly weapon was used in the commission of

1 the crime. You have the luxury of having it in this case. There are a lot
2 of cases where the State does not have it. And your common sense
3 tells you why.

4 Possession. Folks, it's obvious. There's no better example of
5 possession than when stuff is in somebody's pocket, period. Just to
6 show you how broad possession is though, I want to go over the law
7 with you. Obviously, we're talking about the trafficking charge and the
8 possession of a controlled substance.

9 The law recognizes two types of possession. Actual
10 possession and constructive possession. You don't need both. You can
11 only need one. A person who has -- knowingly has direct physical
12 control over a thing at any given time is in actual possession of it. Again,
13 no better example than when you're carrying around a bag, a suitcase, a
14 backpack, drugs in your pocket.

15 A person who, although not in actual possession, not only has
16 both the power and the intention in any given time to exercise dominion
17 and control over a thing either directly or through another person is in
18 constructive possession. That just goes to show you how broad this
19 statute is. A cop pulls you over and you don't have any drugs on you but
20 they're in your glove compartment, they're in your middle console,
21 they're in your trunk. So defense come in here and say, hey, ain't on
22 me, you can't convict me. No.

23 Constructive possession. It can go even broader than that.
24 We got a line of cocaine on your kitchen table at home and you're at
25 work. The cops execute a search warrant on the house, constructive

1 possession.

2 A law -- the law recognizes also that possession maybe sole
3 or joint. If one person alone has actual or constructive possession of a
4 thing, possession is sole, two or more persons show actual or
5 constructive possession of a thing, possession is joint. Again, just to
6 show you how broad it is.

7 Two people have a -- share an apartment. They're
8 roommates. And again, line of cocaine on the kitchen sink. Cops come
9 in. They're not home. People can't come in here and say, hey, not, on
10 me, I'm not even -- I'm not even in the state. No. Constructive
11 possession. Again, there's no better example of possession in this case,
12 when pulled straight from the man's pocket.

13 Trafficking. A -- any person who knowingly or intentionally is
14 in actual or constructive possession of a scheduled or controlled
15 substance or any mixture of -- any mixture which contains a scheduled
16 or controlled substance, the quantity of which weighs or is represented
17 by that person to weigh four or more grams is guilty of trafficking a
18 controlled substance.

19 You heard from the expert. You actually have her sheet telling
20 you that these substances were positive for cocaine, meth, and heroin.
21 Officer Vallad actually told you that that -- in his years and years on the
22 street, that's the most he's even seen from a suspect. You're flat out
23 instructed that heroin is a Schedule 1 controlled substance. And again,
24 it was over 11 grams, almost three times that amount. All that -- all
25 that's needed is four.

1 Again, you have that. That was the -- not only the testimony
2 from the experts, you have the sheet telling you how many grams it was.
3 In addition, the phrase four grams or more refers to the aggregate
4 weight of the entire mixture, rather than the weight of the controlled
5 substance that is contained in the mixture. It is not necessary for the
6 State to prove that the defendant was aware of the amount of the
7 controlled substance he possessed.

8 What's that tell you? Obviously, he can't get caught and say,
9 oh man, I -- I only thought I had just a possession of controlled
10 substance amount, less than four. No. It's the actual weight you have
11 on you.

12 Possession of controlled substance. Any person who
13 knowingly or intentionally possesses a controlled substance unless the
14 substance was obtained directly from or pursuant -- through some legal
15 means. Yeah, no. Folks, what other two controlled substances did this
16 man have on him? And you're flat out instructed, and your common
17 sense tells you, cocaine and methamphetamine are controlled
18 substances.

19 The amount of evidence in this case, folks, is overwhelming.
20 Blame the cops all you want. The evidence came from right here. It's
21 no question. That's your man. And the facts demonstrate, he pointed a
22 firearm at that man, causing him a reasonable apprehension of bodily
23 harm, extreme apprehension of bodily harm. And then was caught two
24 days later with three types of controlled substances on his person.

25 With that, the State asks you find the defendant guilty of

1 assault on a protected person with use of a deadly weapon, trafficking a
2 controlled substance, and two counts of possession of a controlled
3 substance. Thank you.

4 THE COURT: Defense?

5 MR. COYER: Your Honor, I don't recall exactly how long
6 we've been going, but I wasn't sure if the court wanted to take a break?
7 I'm happy to go either way.

8 THE COURT: Counsel approach.

9 [Bench conference transcribed as follows:]

10 MR. COYER: I know you told them every 90 minutes, but I'm
11 not sure if we've been going --

12 THE COURT: Yeah. I think --

13 MR. LEXIS: They want us to keep going.

14 THE COURT: Let me ask counsel.

15 How long do you think it's going to be?

16 MR. COYER: Probably 15 minutes.

17 THE COURT: All right.

18 MR. COYER: It's pretty short.

19 THE COURT: We'll probably do your closing and then we'll
20 take a break. Do Mr. -- I assume you're doing rebuttal? Unless you
21 think it's going -- we -- we came back on the bench about a quarter
22 till 2:00, if I recall. Closer --

23 MR. DICKERSON: Yeah, if they --

24 THE COURT: Between quarter till 2:00.

25 MR. DICKERSON: Yeah.

1 MR. COYER: Yeah.

2 MR. DICKERSON: I think we can keep going --

3 THE COURT: So I was -- huh?

4 MR. DICKERSON: I think we can keep going, unless

5 anyone's asking for a break.

6 THE COURT: You want to go straight through?

7 MR. LEXIS: Yes. I want -- let's keep going.

8 THE COURT: All right.

9 MR. COYER: Do you want to --

10 THE MARSHAL: The jury would like to go.

11 MR. COYER: Okay. Perfect.

12 MS. PLUNKETT: Well, that answers that.

13 MR. COYER: That settles it.

14 [End of bench conference.]

15 THE COURT: Mr. Coyer?

16 MR. COYER: Thank you, Judge. May I approach the clerk to

17 gather some exhibits?

18 THE COURT: Yes.

19 MR. COYER: Can everybody hear me okay? Ladies and

20 gentlemen, thank you for your patience in this matter. We do appreciate

21 your time and your service.

22 The representative from the State just came out here and

23 made his first argument to the jury here about their case. I tried to count

24 the number of times that he described his case as circumstantial, but I

25 lost count after about five or six.

1 The State accused us, the defense, of doing one of these, and
2 then proceeded to spend 15 minutes explaining to you what possession
3 means. And he spent about 30 seconds talking about the forensic
4 evidence in this case, which exonerates our client.

5 State likes to argue that they have to prove two things in a
6 criminal case. That, one, that a crime was committed, and two, that the
7 defendant committed the crime. For some of you, you may not even
8 have to look passed the first part. Some of you may be more of the
9 cynical type, like my esteemed colleague who said that we were
10 suggesting that things were fabricated.

11 Some of you may think that I'm going to come out here and
12 say that Officer Jacobitz planted that gun, because he's the only one
13 whose fingerprint's on it. I'm not going to do that. I'm not going to attack
14 the police.

15 Officer Jacobitz admitted that he doesn't remember all the
16 details from that evening. It's not an attack to point out the truth. Officer
17 Jacobitz admitted that he didn't provide any details about seeing facial
18 hair. It's not attacking the police to point out the truth. Officer Jacobitz
19 admitted that he doesn't remember even meeting with the CSA,
20 Ms. Klosterman, the crime scene analyst. We know he did. She took
21 pictures of him. It's not attacking the police to point out a fact.

22 Officer Jacobitz testified to what each and every one of you
23 heard in the audio, which is that the first thing he sent out to his fellow
24 officers was, "Be advised the crime is he dropped a firearm." Not he
25 assaulted me, not he tried to shoot me. He dropped a firearm. Is it

1 possible that from 64 feet away maybe he didn't see what he later
2 thought he saw? That's for you to answer.

3 There's about 100 pictures up there and they all look like this,
4 dark sky. They're not very useful. Nobody went back and took a picture
5 of what the scene should have looked like in the right light.

6 I'll tell you what, I will assume half of the State's case for you.
7 I will assume that Officer Jacobitz was assaulted on May 19th, 2016. I
8 am willing to do that. I am willing to assume that a gun was pulled out
9 from a fleeing perpetrator and pointed at Officer Jacobitz.

10 So let's simplify this. I will concede all of that, because I'm not
11 here to defend whoever committed that crime on May 19th, 2016. I'm
12 not here to defend the Hispanic male adult that was driving the moped.
13 I'm not here to defend the man who ran from the police. And I'm sure as
14 hell not here to defend the man who pulled a gun on Officer Jacobitz.

15 I'm here to defend Ceasar Valencia. Ceasar Valencia is the
16 guy who just happens to live about two houses down from where this
17 occurred. This case is not about whether Officer Jacobitz was assaulted
18 or not. This case is about whether or not the State has proved beyond a
19 reasonable doubt that Ceasar Valencia assaulted Officer Jacobitz. This
20 case is about what happens when a rush to judgment takes the place of
21 a neutral careful investigation.

22 Let's talk about the evidence. You heard the judge instruct
23 you already that the things that I say, the things that Mr. Lexis says,
24 things that Mr. Dickerson says, things that Ms. Plunkett says, these
25 things are not evidence. This is argument. I'm arguing. Evidence

1 comes from up here. Okay? The witness stand.

2 So let's talk about the evidence. Again, tons of photographs.
3 Tell me how useful most of them are. Does looking down this alley tell
4 you that Officer Jacobitz was assaulted or not? No. We're -- we're not
5 even sure if the CSA put the cones in the right place because she only
6 spent 15 minutes with Officer Jacobitz. Who cares about the cones?
7 The point is, the State put in dozens and dozens of these photographs
8 and they're useless. But we're accused of doing this.

9 By the time these photos were taken, every single officer on
10 that scene knew who their suspect was. Every single officer was
11 convinced, Ceasar Valencia. Ceasar Valencia is the guy. These photos
12 don't show Ceasar Valencia is the guy. These are just photographs.
13 You've got in -- in the evidence for you what we keep calling the CAD,
14 okay, computer aided dispatch, the printout of the things that get
15 inputted into the computer system, and you've even got the audio.
16 You've got the audio of what the officers said back and forth to one
17 another while this event was unfolding.

18 These pieces of evidence, ladies and gentlemen, are like a
19 crystal ball. You can look back and see exactly what happened. Don't
20 take my word for it. Look at the evidence. Because you'll hear it in the
21 audio, and you'll see it in the CAD. At 7:47 p.m. the description goes
22 out, right? HMA, Hispanic male adult, 5'7", 160 pounds, dark hat,
23 red-striped shirt. That's it. HMA, 5'7", 160, dark shirt -- dark hat, excuse
24 me, red-striped shirt. That's it.

25 One minute later, at 7:48, one minute, Officer Jacobitz is

1 distracted by these two clowns trying to steal this moped from a crime
2 scene. You know how that works in your own life experiences. You're
3 focused on something, you're trying to remember something, and then
4 you're distracted and it's out of your mind. Everybody's been there.

5 Does that make Officer Jacobitz a bad guy? Does that make
6 him a liar? No. Makes him human. You got to see Officer Jacobitz as a
7 human being before you see him as a police officer. That's why we
8 spent so much time in jury selection asking about those questions, over
9 and over, about whether you might have an implicit bias toward a law
10 enforcement officer. Because Officer Jacobitz is a human being before
11 he is a law enforcement officer.

12 At 7:51 p.m. -- don't take my word for it, look at the CAD, listen
13 to the audio -- at 7:51 p.m., four minutes after the description has gone
14 out, Officer Perez, who Officer Jacobitz identified his call sign as 3DP41,
15 you'll see it in the CAD, he says over the radio, there's an HMA matching
16 that description that has a residence in that area on 10th Street. Right
17 then and there, at that moment, the investigation shifted from neutral
18 toward Ceasar Valencia.

19 At 7:58 p.m., 11 minutes after the description first went out,
20 HMA, 5'7", 160 pounds, 11 minutes later we hear the name Ceasar
21 Valencia come across the radio. And from that moment on, there are no
22 other suspects to this crime. There are no other leads. There is nothing
23 else that anybody is interested in doing, except getting Ceasar
24 Valencia. 11 minutes it took.

25 By 8:02 p.m., 15 minutes after the description went out, Officer

1 Jacobitz comes over the radio. He's now using the name Ceasar
2 Valencia to describe the crime that had occurred. When Ceasar pulled a
3 gun on me. Now the victim has become convinced that the suspect is
4 Ceasar Valencia.

5 At 8:04 p.m., two minutes later, Officer Jacobitz gets texted a
6 picture of Ceasar Valencia. Jacobitz is already using Ceasar Valencia's
7 name to describe the crime.

8 And try to imagine what the scene looks like at this point, 15
9 minutes in. Okay? We've got a perimeter set up. Suspect has got
10 away, right? There's a perimeter. There's countless officers involved.
11 There's an air unit. There's dogs coming in. This is a big scene.
12 Officers are being pulled away from the barbecue. They're being pulled
13 away from the memorial. This is a big deal happening down in the
14 DTAC right now. Okay. Because Officer Jacobitz has been assaulted.

15 And his fellow officers say, hey, Ceasar Valencia lives in that
16 area. He's an HMA. He's about 5'7". He's about 160. Must be Ceasar
17 Valencia. Then Officer Jacobitz gets a picture, hey, Officer, here's
18 Ceasar Valencia. What's Jacobitz going to say at that point? Honestly,
19 what's he going to say? Is he going to say no, no guys, no, call it off,
20 call off the perimeter, no, go back to what you were doing. That's --
21 that's not him, that's not our guy. Does anybody really think that's going
22 to happen at that point?

23 He's using Ceasar Valencia's name before he ever even sees
24 a picture of him, ladies and gentlemen. One picture. One. Okay. This
25 is what we call a positive feedback loop. Hey, the suspect is Ceasar

1 Valencia. Ceasar Valencia is an HMA. Here's a picture of Ceasar
2 Valencia. Is that the suspect? Yeah. The suspect is Ceasar Valencia.
3 Okay. That's what's happening here.

4 By 8:08 p.m., these officers are so focused on Ceasar
5 Valencia that an individual is spotted in the area walking down the street
6 wearing a red-striped shirt and a dark hat, but it's a BMA, so that can't
7 be the guy. Can't be the guy. It can't be the guy because the guy is
8 Ceasar Valencia. It always has been. It has been from the first time
9 they heard that name. They all became convinced that that was the guy.
10 Can't be the BMA that meets the clothing description, nope. Got to be
11 Ceasar Valencia.

12 Look at the CAD. You know who says the BMA is not your
13 guy? It's Officer Perez, the one who suggested that maybe Ceasar
14 Valencia was a suspect in the first place. This rush to judgment leads to
15 the police ruling out someone who is wearing the same clothes as the
16 suspect within 21 minutes. 21 minutes. That's how fast the
17 investigation focused on Ceasar Valencia.

18 Is that reasonable doubt? You better believe it. Is tunnel
19 vision reasonable doubt? Is a poor investigation reasonable doubt?
20 You better believe it. That doesn't mean that we're attacking the police.
21 That means we're doing our job as citizens, as jurors, and we're holding
22 the State to their burden to make sure that they prove a case against
23 someone beyond a reasonable doubt.

24 Let's talk about the forensics. Fingerprints, we heard about
25 fingerprints. They get about 14 percent hit rate on fingerprints. That's

1 not really very useful, is it? You know, but Jacobitz's fingerprint was on
2 that gun. That's a little bit of a head scratcher, right? We know he
3 picked it up. Right? We know he put it in his pants and eventually
4 secured it. His fingerprint's still on the gun. And they know their target
5 is Ceasar Valencia, but they don't bother to test any of the cartridges.
6 And you'll remember there were five. You'll remember the fingerprint
7 guy said smooth, metal surfaces are generally the best for finding
8 fingerprints. And there you have five smooth, metal surfaces that
9 weren't tested. That is five reasonable doubts, ladies and gentlemen,
10 right there.

11 Let's talk about the DNA. This gun that's located at the scene,
12 it goes on a little bit of a wild ride that night, right? It's in the suspect's
13 hand, eventually goes flying out of the suspect's hand, lands in the dirt.
14 Lays in the dirt for a little bit. Eventually gets picked up by Officer
15 Jacobitz, goes in Officer Jacobitz's waistband is what he said. From
16 there, Officer Jacobitz goes and arrests two idiots stealing a moped from
17 a crime scene, and then eventually the firearm goes into Jacobitz's
18 vehicle, somewhere in the vehicle, and is eventually secured and
19 impounded.

20 And after going through all of that, a forensic scientist is still
21 able to pull at least four individuals' DNA off that gun. A mixture profile
22 is what they call that. And there's a major profile and there's a minor
23 profile. And the major profile -- the major profile DNA is a female. And
24 Ceasar Valencia is excluded -- excluded -- as a contributor to the major
25 profile. Ladies and gentlemen, this is not evidence that can be ignored.

1 That DNA evidence is way more than reasonable doubt.

2 Let's talk about the burden of proof a little bit. Because we
3 asked a lot about that during jury selection. And I wondered in jury
4 selection, was there anybody here who thought Cesar was guilty the
5 moment we heard -- they heard the charges read? What about now?
6 Now that you've heard the evidence, do you feel more convinced that
7 he's guilty? Do you feel less convinced? Because we were supposed to
8 start from zero, remember?

9 Refer to the reasonable doubt jury instruction. It's No. 5. If
10 there's questions in your mind, if you have unanswered questions, okay,
11 whether or not those are reasonable doubt questions, you look at that
12 jury instruction. It will guide you. Okay.

13 Does anyone here still think Ceasar has to prove his
14 innocence now that you've heard the evidence? We know he doesn't.
15 We know the State carries the burden of proof. State said it countless
16 times in jury selection and opening statements. What would he do on
17 these facts? What do you think he would do to prove his innocence?
18 Take the stand? What's he going to -- what's he going to say? I wasn't
19 there. I was somewhere else.

20 MR. DICKERSON: Objection, Your Honor.

21 THE COURT: Counsel approach.

22 [Bench conference transcribed as follows:]

23 THE COURT: What's the basis of your objection?

24 MR. DICKERSON: Basis of the objection is that he's telling
25 them what his client would say if he testified. He can't do that.

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THE COURT: Okay.

MR. LEXIS: Absolutely. He absolutely can't do it --

THE COURT: I heard -- okay.

Mr. Coyer, what is your response to the objection?

MR. COYER: That I'm demonstrating to them the impossibility of proving a negative, which is part of the burden of proof.

THE COURT: But you're saying what he would have said if he had testified.

MR. COYER: Well --

THE COURT: So I'm going to sustain the objection, ask the jury to disregard your last comment.

MR. COYER: Okay.

THE COURT: Thank you.

MR. DICKERSON: Thank you, Your Honor.

[End of bench conference.]

THE COURT: The objection is sustained. The last comment by counsel is to be disregarded by the jury.

MR. COYER: How does Ceasar Valencia prove his innocence? He lives two houses away from where this happened. Of course he's an HMA in the area with a residence. He lives right up the street. How would he possibly prove his innocence? That is why the State carries the burden of proof, ladies and gentlemen. That is why, in our system, we require the State to prove their case beyond a reasonable doubt. This case is a great example of why that's so important, because you cannot prove a negative, no matter what you do

1 or don't do. You cannot prove that you weren't somewhere. It can't be
2 done.

3 You know, you heard some questions from the State directed
4 at the forensic experts, right? Like, is it possible that you maybe don't
5 get some DNA off of a firearm? Or is it possible that you don't get some
6 fingerprints off of it? Sure. It's -- all that stuff is possible. Right? Is it
7 possible that Ceasar Valencia is the guy? Sure. I'll concede that. But
8 that's not the question. Okay. That's not the question.

9 But if you're going to ask those questions, you need to direct
10 yourself to the reasonable doubt jury instruction. Okay. Because
11 speculation, fanciful things, okay, those are not proper areas of inquiry
12 for reasonable doubt.

13 Is it probable that this face is not the face that Officer Jacobitz
14 saw on May 19th, 2016? You better believe it. Because Officer
15 Jacobitz, just like Officer Houston, has training. He has experience.
16 He's been through the police academy. And on that evening, he was
17 very clear. Both officers could not have been clearer in their testimony,
18 that they were alert, they were attentive, they were paying attention to
19 details.

20 And you look at this face and you're not even going to mention
21 that he's got that patch of hair under his chin? Are you kidding me? The
22 State can stand up here and say that that's ridiculous all day. You guys
23 get to decide what matters in this case.

24 Has the State proved beyond a reasonable doubt that that
25 face is the face that was seen by Officers Jacobitz and Houston on

1 May 19th, 2016? No way. They saw the suspect's face at a different
2 location, followed him, then they got split up. Okay. Remember? Split
3 up. They're in different areas, so they didn't have time to, like, you
4 know, pow-wow with each other. And not one of them, neither one of
5 those officers says, oh, by the way, guy's got a big, huge goatee under
6 his skin. Not one of them at any point ever says that. That is significant.

7 They specifically testified that they're trained to recognize
8 characteristics, physical traits, clothing, height, weight, all those things.
9 But what gets pointed out? HMA, 5'7", 160 pounds.

10 What about the drugs? Ceasar had drugs in his pocket. On
11 May 21st, Ceasar had drugs in his pocket. But did the State prove to
12 you beyond a reasonable doubt that he had drugs in his pocket on
13 May 19th? Not even close. Look at Jury Instruction No. 3. The charge
14 is for May 19th.

15 I'm not going to tell you how to fill out a verdict form. I know
16 you guys can figure that out on your own. I'm going to ask you for a
17 favor though. Because the State carries that burden of proof, they get to
18 come back up here and argue some more. And I would just like you to
19 ask yourselves, whatever argument you're about to hear, is he talking
20 about argument or is he talking about evidence? Did I hear that
21 evidence come from this chair? And I ask you to keep that in mind now,
22 and when you're deliberating. Thank you, ladies and gentlemen.

23 THE COURT: Mr. Dickerson, are you ready to go forward?

24 MR. DICKERSON: Yes, Your Honor.

25 Bottom line, ladies and gentlemen, when we talk about

1 Instruction No. 3 and the drugs, obviously, they're conceding the drugs,
2 that yeah, he had drugs on him, heroin, cocaine, meth, those are all his.
3 Instruction No. 3 in that argument is not proper. What -- what we have
4 here, Instruction No. 3, is the information. And here in the State of
5 Nevada, it's notice pleading. So notice pleading is on or about
6 May 19th, 2016, he had drugs on him. On or about May 19th, 2016, the
7 defendant had drugs on him. He's guilty of that, no doubt about it.
8 May 21st, 2016. This event started on May 19th, 2016. Here we are.

9 May 19th, 2016, do we need cartridges to tell us who pointed
10 the gun? Do we need the gun itself to tell us who pointed the gun? No
11 way. Ladies and gentlemen, we have two officers up here, Officer
12 Houston and Officer Jacobitz. They both told you, yeah, that guy who I
13 saw running from us there at 11th and Wilson, that was the defendant.
14 Ceasar Valencia, yeah, that's his face. I know that face.

15 Well, then the guy gets off the moped running. Who's that
16 guy? That's Ceasar Valencia. That's him. I know that face. They
17 confirm it that night, less than half an hour into this perimeter being set
18 up in an area of downtown being cordoned off. 100 percent confirmed
19 looking at a photo, that's the guy that just ran from us. When it's
20 freshest in their mind right there on scene, right after this guy runs from
21 them, yeah, that's the guy who run -- who just ran from us.

22 Think about their motive, here and then. Who wants to catch
23 the right guy more than the guy who was just victimized by Ceasar
24 Valencia? Officer Jacobitz and Officer Houston. Do you think that they
25 want to look at a picture of a guy that's not him and say, yeah, that's him,

1 knowing that the guy who just pointed the gun at him got away? Come
2 on, these guys are police officers. Their job is law enforcement. They
3 knew what they saw.

4 Bottom line, ladies and gentlemen, is if you believe the
5 witnesses, you find the defendant guilty. You need nothing else. Do we
6 have it? Yeah. We know there is a gun out there. That's circumstantial
7 evidence that corroborates everything they're saying. The gun was on
8 the ground. We have the gun.

9 In addition, we have the forensic testing that was completed
10 showing the thoroughness of the investigation. That's why you guys
11 heard about it, to hear that, hey, the buck doesn't just stop, right? It
12 doesn't just stop with breakdown the perimeter, go find the guy. We
13 present that to you so you see the full scope of everything. We have
14 nothing to hide. Nothing. Because it's clear, 100 percent, Ceasar
15 Valencia is the person who pointed a gun at Officer Jacobitz in that back
16 alley of 610 North 10th Street.

17 What you see from the DNA evidence is pretty interesting
18 information, actually. I think that most people don't realize the scope
19 and breadth of what we get from DNA evidence and how it can be
20 applied. But you heard from Crystal May that that evidence can only go
21 so far. And what we have is a solid identification to a female. We don't
22 know who the female is, so we can't say which female it is. We know it's
23 not her, because she tested that. But we could only tell who that female
24 was if we compared it to anybody else.

25 The other folks on there, males, at least three of them. She

1 told you she can't do more than three, right? Three is the maximum that
2 their standards will let them -- or I'm sorry, four is the maximum that
3 their -- their standards at the lab will allow them to do. After -- could
4 it be 40? Could be. All she can do is four.

5 Why is that? She told you that too. Guns are notoriously bad
6 for that reason for DNA analysis, because, obviously, as we've seen with
7 this gun and the amount of DNA on it, they pass through multiple hands.

8 The fingerprints, exactly what we'd expect to find, without a
9 doubt. Exactly what you'd expect to find on that gun is after that
10 small .38 revolver, the only metal part is shoved into the waistband of
11 Officer Jacobitz's fairly tight duty belt, we would have damage to the
12 prints on there. And so that's ultimately pulled out of his pants with
13 gloves -- or without gloves and secured in his car before it's impounded
14 into that bag and kept just like that. The last person that touched it was
15 Officer Jacobitz. And the fact that we got a fingerprint off of it is
16 surprising in the first place, but of course it's his.

17 None of that says that Ceasar Valencia didn't have that gun.
18 None of that evidence says that. And you're instructed here -- I really
19 want you to look at this. The reasonable doubt instruction that says,
20 specifically, reason --

21 MR. COYER: Objection. I'm objecting to presenting
22 highlighted portions of the jury instructions to the jury.

23 MR. DICKERSON: That's not an objection, Your Honor.

24 THE COURT: Okay. Wait, counsel. Approach.

25 [Bench conference transcribed as follows:]

1 THE COURT: Okay. What's your objection, counsel?
2 MR. COYER: It's improper argument to -- to present
3 highlighted --
4 THE COURT: And why is it --
5 MR. COYER: -- portions of the jury instructions --
6 THE COURT: -- improper argument?
7 MR. COYER: Because the jury has already been instructed to
8 review them as a whole and not draw --
9 THE COURT: Okay.
10 MR. COYER: -- any special inferences from one particular --
11 THE COURT: Stop.
12 MR. COYER: -- instruction or another.
13 THE COURT: Okay. What's your response, counsel?
14 MR. DICKERSON: It's argument, Your Honor. And I can
15 point to any areas of the jury instructions I want to.
16 THE COURT: Okay. All right.
17 MR. LEXIS: That's why I just did it --
18 THE COURT: All right. Just stop.
19 All right, counsel. He's reviewing the jury instructions with the
20 jury. The jury instructions have been read. He's allowed to make
21 argument based on the jury instructions. Your objection is overruled.
22 MR. DICKERSON: Thank you, Your Honor.
23 [End of bench conference.]
24 MR. DICKERSON: Thank you.
25 So the part is specifically here. Doubt to the reasonable must

1 be actual, not mere possibility or speculation. Possibility or speculation.
2 That's all defense counsel's argument leaves us with. Is it possible that
3 it's not him? No. We know it's him. And whatever they're asking you to
4 consider, whatever questions they're asking you to answer in your mind,
5 what do those questions call for? Speculation, possibility, things that
6 you can't consider when considering reasonable doubt.

7 It's, frankly, without a doubt that Ceasar Valencia is guilty of
8 the crime of assault with a deadly weapon on a protected person. The
9 only thing that they're arguing is not that Officer Jacobitz didn't get a gun
10 pointed at him, not that Officer Jacobitz isn't a police officer. They're
11 saying just wasn't Ceasar Valencia. Well, of course it was Ceasar
12 Valencia.

13 Regardless of everything we've talked about, about him 100
14 percent being ID'd by both police officers, experienced police officers at
15 that, the night of, what other facts do we know? Well, we know Ceasar
16 Valencia is a neighbor to Downtown Area Command. He may live closer
17 than almost anybody. And when these officers are coming out of their
18 home command post, a place where they spend a lot of time, and that
19 day just finishing up eating, where do they see the moped first? The
20 alley right behind Ceasar Valencia's house. Is that a coincidence? No.
21 No doubt, that's not a coincidence.

22 Where is it coming from? Well, it's coming from that alleyway
23 right behind his house. As that moped takes off going to opposite
24 direction away from the house and officers finally get behind it, pulls into
25 that area at 11th and Wilson. There, they try to conduct the traffic stop.

1 He looks back at them. They absolutely see it's him, for the first time
2 seeing the face and being able to recognize it. But that's not what I'm
3 talking about right now.

4 What I'm talking about is where does he go? He doesn't try to
5 go back down away, the same direction that he was originally heading.
6 Where do people go when they're scared? They go to a place that they
7 know, a place of safety. And where does Ceasar Valencia go? He goes
8 back towards his house, right? Right away. He turns up Wilson. He
9 comes down that alley. He lives in the neighborhood. Reasonable
10 inference, he knows that area. And where does he go? Right into the
11 back alley of 610 North 10th Street, an area that just so conveniently has
12 open access right to 10th Street. Who knows that area? Ceasar
13 Valencia knows that area.

14 And where does he go? He goes through that alley after
15 pointing the -- pointing the gun at Officer Jacobitz, continues. At that
16 time end of that alley, does he go left away from 625 North 10th Street,
17 his home? No. He goes right towards it, right towards his area of
18 safety, his home because that's where people flee when they're scared
19 and they want to get away.

20 Judging by Ceasar Valencia's actions that night, that's exactly
21 what he wanted to do. He did not want those officers to stop him and he
22 was willing to stop at nothing. Where does he end up? Right there, right
23 at his house. It's right where officers lose track of him, surprising
24 enough.

25 Once again, ladies and gentlemen, who knows that area?

1 Ceasar Valencia. In a neighborhood that you're familiar with, that a
2 person is familiar with, who knows it better than that person themselves.
3 And that's circumstantial evidence to support and corroborate the
4 overwhelming direct evidence that establishes that Ceasar Valencia is
5 the person that committed assault with a deadly weapon upon a
6 protected person, that being Officer Jacobitz.

7 But ladies and gentlemen, we don't have to stop there. We
8 don't have to stop there, because, I think very important to
9 understanding what we have in front of us is we have a clear opportunity
10 for Ceasar Valencia to get away; and he does. And when do we see
11 him reemerge?

12 Well, we have the surveillance operation started. It's several
13 hours in until we see him in the late evening hours, or the -- I guess the
14 early morning of Saturday, a time when, hopefully, no one is around.
15 What does that vehicle do as it's driving down the street? You heard
16 that it tail checked. We know that -- that Ceasar Valencia wasn't driving.
17 But it tail checked the surveillance team. Consider it. It's evidence for
18 you to consider.

19 Where does it go? They lose it for a brief second. They pick it
20 up unoccupied. Ultimately, later on, or an hour later, they get Ceasar
21 Valencia. This time he's not driving. He's not operating the vehicle so
22 he can't run. There's a whole slew of police officers, approximately 15 or
23 so, with guns in an area that's enclosed on Washington and Main Street.
24 There's nowhere to go.

25 He was caught, at least right then. And that's why he tells

1 you, well, the -- yeah, drugs were in my pocket. Right? That's why the
2 defense tells you that. But he's good for that. He's guilty of all of it.

3 Ladies and gentlemen, when you go back to that jury
4 deliberation room, just consider the first thing I said here, that if you
5 believe the witnesses, that's it. Ceasar Valencia is guilty. And what do
6 we have here, divine intervention.

7 MR. COYER: Objection, Your Honor. Prejudicial argument.

8 THE COURT: Counsel approach.

9 [Bench conference transcribed as follows:]

10 THE COURT: Speak low. What's the base --

11 MR. COYER: Judge --

12 THE COURT: What's your objection, counsel?

13 MR. COYER: This a reference to religion. It's completely
14 improper. It's inflammatory. It's totally improper argument to mention
15 divine intervention, and I objected when that testimony came in as well
16 from Officer Jacobitz.

17 THE COURT: Counsel?

18 MR. DICKERSON: It's proper comment on the testimony of
19 the officer.

20 THE COURT: Okay. His objection is sustained. I'm going to
21 have the jury disregard your last comment.

22 MR. DICKERSON: Okay.

23 [End of bench conference.]

24 THE COURT: The objection is sustained. I instruct the jurors
25 to disregard counsel's last comment.

1 MR. DICKERSON: Ladies and gentlemen, I don't have to tell
2 you anything. I don't have to tell you what it was, how scary that
3 situation was for Officer Jacobitz. He stood here and he told you. And
4 just the idea of an old fence post being the thing that stopped him from
5 getting shot, and God forbid, having to shoot somebody else that night,
6 that's what stopped this. That's what gets us here today, an assault with
7 a deadly weapon on a protected person, not something much worse.

8 Officer Houston and Officer Jacobitz, they more than anybody
9 else want to catch the right man. We're not here on a misidentification.
10 We're here on a 100 percent positive identification of both officers. They
11 know what they saw. There's no doubt about it.

12 When you consider the fact that these officers aren't telling us
13 a line of baloney to try bolster each other's stories up. If that was the
14 case, Officer Houston would have been telling us a story about how he
15 saw. He was -- he was standing right next to Officer Jacobitz when this
16 happened. No. They're just telling you what they saw. That's it.

17 Take it all into consideration, ladies and gentlemen. I submit
18 to you, if you believe the witnesses, that's all you need. Ceasar
19 Valencia is guilty. Please find him guilty of all counts. Thank you.

20 THE COURT: Counsel approach, please.

21 [Bench conference transcribed as follows:]

22 THE COURT: Okay. At this point, I'm going to have the
23 officers sworn in. I'm just going to have the marshal take the jurors back
24 to the deliberation room, advise them that they're going to get the
25 exhibits, the jury instructions, save and except the weapon, the

1 ammunition, and the -- the drugs. And if they want to inspect it, request
2 the marshal to bring it back.

3 I was going to have my JEA, Ms. Fagin, take the alternates to
4 my chambers. I'm not going to let them leave the building in light of --

5 MR. COYER: Because they have a --

6 THE COURT: -- the bifurcation issue.

7 MR. COYER: Yes.

8 THE COURT: So I'm not going to let them just -- I don't want
9 to take the chance that -- so I'm just going to have Ms. Fagin keep them
10 either in a separate isolated area. And then, you know, we'll be in
11 recess.

12 MR. DICKERSON: Okay.

13 MS. PLUNKETT: Okay.

14 MR. COYER: Thank you.

15 THE COURT: Thank you, counsel.

16 [End of bench conference.]

17 THE COURT: The clerk will now swear in the officers to take
18 charge of the jurors and the alternates -- alternate jurors. There's two of
19 them.

20 [Officers sworn.]

21 THE COURT: At this time, ladies and gentlemen, the -- the
22 jurors -- and the jurors are the first 12 seats in the jury box, the marshal
23 is going to take you to -- don't leave yet. The marshal is going to take
24 you to the jury room for deliberation. You also will be brought the
25 exhibits, which have been introduced into evidence, and the jury

1 instructions.

2 By agreement of the parties, we're not going to send back the
3 weapon, the ammunition, or the drugs. However, if you want to inspect
4 the weapon, the ammunition, or drugs, please inform the marshal and he
5 will bring them to you so you could inspect them.

6 At this time, the marshal is going to take the jurors to the jury
7 room for deliberation.

8 THE COURT: If the alternate jurors would just remain seated
9 for one second.

10 [Jury recessed for deliberation at 3:38 p.m.]

11 THE COURT: While the jury is deliberation, my judicial
12 executive assistant, Ms. Fagin, is going to take you to my chambers and
13 you're going to remain at my chambers while the jury deliberates. Once
14 the jury returns with a verdict, then you'll be brought back to the
15 courtroom. All right. Thank you.

16 Ms. Fagin? Ms. Fagin.

17 THE JEA: Yes.

18 THE COURT: Please?

19 THE JEA: Sure.

20 THE COURT: Where do you want to put them? I mean --

21 THE JEA: I was going to put them in the room.

22 THE COURT: But you have to stay there with them.

23 THE JEA: Yeah.

24 THE COURT: Okay. So right now let's just put them in the
25 courtroom, we'll make -- we'll put up a spot in chambers. All right. So

1 stay --

2 THE JEA: Do they need a break?

3 THE COURT: They can go to the bathroom. And I mean, you
4 just got to make sure nobody talks to them. Okay. Thank you. Thank
5 you.

6 THE JEA: You're welcome.

7 THE COURT: All right. All right. Before counsel leave the
8 courtroom, please provide my clerk with a telephone number where you
9 can be reached once the jury returns a verdict. Please do not -- please
10 be within 30 minutes of the courthouse.

11 MR. DICKERSON: Thank you, Your Honor.

12 MS. PLUNKETT: Thank you, Judge.

13 THE COURT: Court is in recess.

14 [Court recessed at 3:40 p.m. until 4:26 p.m.]

15 [Outside the presence of the jury.]

16 THE COURT: Please be seated. This is continuation of the
17 trial of *State of Nevada vs. Ceasar Sanchaz Valencia*, Case No.
18 C-16-315580.

19 Counsel, I've been advised that the jury has reached a verdict.
20 They're bringing the jury in with the alternates. And then what I'm going
21 to do is excuse them for today, advise them that this was a bifurcated
22 trial, there's an additional charge that needs to be tried.

23 MR. DICKERSON: I think it will probably take about 15
24 minutes, Your Honor, if we could just try to get it in.

25 THE COURT: Well, you told me I read to read the preliminary

1 instructions, correct?

2 MR. LEXIS: That's correct.

3 THE COURT: Have the parties agreed on the jury instruction?

4 MR. DICKERSON: Yes.

5 MR. LEXIS: Yes.

6 THE COURT: Is that correct, counsel?

7 MR. COYER: Yes.

8 THE COURT: All right. Where are they? Where are the
9 preliminary -- so as to the jury -- Proposed Jury Instruction No. 2,
10 regarding the -- have you filed an amended --

11 MR. DICKERSON: We have it prepared, Your Honor. It's up
12 there with your clerk.

13 THE COURT: Do you have it, Clerk? Because you're going
14 to have to read it.

15 THE CLERK: Yes.

16 THE COURT: So hopefully my glasses were not going to fog
17 up.

18 MR. DICKERSON: Thank you.

19 THE COURT: I'm making no promises though.

20 MR. DICKERSON: Okay. We'll try.

21 THE COURT: And so I'm going to read them the preliminary
22 instructions, correct? It's the same ones we had before; is that correct?

23 MR. DICKERSON: Yes, Your Honor.

24 THE COURT: And then you're going to present whatever
25 evidence you're going to present, whatever cross, this and that. And

1 you're going to do -- then I'm going to read the jury instructions to them?

2 MR. DICKERSON: Yes, Your Honor.

3 THE COURT: And then you're going to do closing arguments
4 again?

5 MR. DICKERSON: Yes, Your Honor. It should be very quick.

6 THE COURT: Okay.

7 MR. DICKERSON: I'm -- I'll tell you what we're going to do is
8 we're going to just admit the certified judgments of conviction as
9 evidence of his prior felonies. And then we'll have the opportunity for
10 closing arguments where I'll probably just say hey, here's the certified
11 judgments --

12 THE COURT: All right. Well, here's --

13 MR. DICKERSON: -- of convictions.

14 THE COURT: -- the deal, it's 4:30. I'm not going to keep
15 them -- keep them much past 5:00.

16 MR. DICKERSON: Okay.

17 THE COURT: I'm going to let you know that right now.

18 MR. LEXIS: I -- I --

19 MR. DICKERSON: Yeah.

20 MR. LEXIS: It's obvious the court's call, but I -- I have a
21 feeling if you poll them, they're going to want to get this over with,
22 especially if they know that they're not going to have to come back, but
23 court's --

24 THE COURT: Do you want me --

25 MR. LEXIS: -- whatever court's --

1 THE COURT: -- to do that, poll them, see if they want to stay?
2 And why don't I do that. If they want -- or do they want to come back
3 Monday. I'll tell them it's been advised it's -- the presentation is going to
4 take approximately an hour.

5 MR. DICKERSON: Presentation should take approximately --

6 THE COURT: All right. Well, let's get a --

7 MR. DICKERSON: -- 15 to 30 minutes, at most.

8 THE COURT: All right. If they want to stay, I'll stay, but I'm
9 going to keep them much past 5:00. I'm going to --

10 MR. LEXIS: Thank you.

11 MR. DICKERSON: Thank you, Your Honor.

12 THE COURT: Is that agreeable to the -- let's go through the
13 jury instructions. All right. As to Proposed Jury Instruction No. 1, do the
14 parties agree it can be given?

15 MR. COYER: Yes.

16 THE COURT: State?

17 MR. DICKERSON: State submits on all of them.

18 THE COURT: Okay. So let's do this then.

19 MR. COYER: Defense will submit on all as well.

20 THE COURT: Okay. As to Proposed Jury -- as to the State's
21 Proposed Jury Instructions 1 through 17, do the parties agree that
22 State's Proposed Jury Instructions 1 through 17 can be given?

23 MR. DICKERSON: State agrees, Your Honor.

24 MR. COYER: Agreed.

25 THE COURT: And as to the verdict form that's attached to the

1 back, this is -- parties agree that that verdict form can be used by the
2 jurors?

3 MR. LEXIS: Yes, Your Honor.

4 MR. COYER: Agreed.

5 THE COURT: Okay. All right. Why don't you bring the jurors
6 in.

7 [Jury reconvened at 4:31 p.m.]

8 THE COURT: Let the record reflect counsel for the State,
9 counsel for the defense, Mr. Valencia, and the jury is present. I've been
10 advised that the jury has returned a verdict; is that correct?

11 Who is your foreperson?

12 Could you please stand?

13 Is that correct, sir?

14 JUROR NO. 5: Yes, sir.

15 THE COURT: And what is your name?

16 JUROR NO. 5: My name is Xavier Antheaume.

17 THE COURT: Okay. And you've been selected as the
18 foreperson?

19 JUROR NO. 5: Yes, sir.

20 THE COURT: And can you hand the verdict form to my -- to
21 my marshal, please?

22 If the clerk could read the verdict, please.

23 THE CLERK: District Court, Clark County, Nevada, Case No.
24 C-16-315580-1, State of Nevada, Plaintiff, Ceasar Sanchaz Valencia,
25 Defendant. Verdict:

1 We, the jury, in the above-entitled case find the defendant as
2 follows:

3 Count 1, assault on a protected person with use of a deadly
4 weapon: Guilty of assault on a protected person with use of a deadly
5 weapon.

6 Count 2, trafficking in controlled substance, heroin: Guilty of
7 trafficking in controlled substance.

8 Count 3, possession of controlled substance, cocaine: Guilty
9 of possession of controlled substance.

10 Count 4, possession of controlled substance: Guilty of
11 possession of controlled substance.

12 Dated this 1st day of December, 2017, Xavier Antheaume,
13 Foreperson.

14 Ladies and gentlemen of the jury, are these your verdicts as
15 read, so say you one, so say you all?

16 COLLECTIVE JURY: Yes.

17 THE COURT: Does either counsel want the jury polled?

18 MR. DICKERSON: State does not wish to.

19 MR. COYER: Defense would ask that they be polled.

20 THE COURT: Mr. Clerk, please poll the jurors.

21 THE CLERK: Juror No. 1, is this your verdict as read?

22 JUROR NO. 1: Yes.

23 THE CLERK: Juror No. 2, is this your verdict as read?

24 JUROR NO. 2: Yes.

25 THE CLERK: Juror No. 3, is this your verdict as read?

1 JUROR NO. 3: Yes.
2 THE CLERK: Juror No. 4, is this your verdict as read?
3 JUROR NO. 4: Yes.
4 THE CLERK: Juror No. 5, is this your verdict as read?
5 JUROR NO. 5: Yes.
6 THE CLERK: Juror No. 6, is this your verdict as read?
7 JUROR NO. 6: Yes.
8 THE CLERK: Juror No. 7, is this your verdict as read?
9 JUROR NO. 7: Yes.
10 THE CLERK: Juror No. 8, is this your verdict as read?
11 JUROR NO. 8: Yes.
12 THE CLERK: Juror No. 9, is this your verdict as read?
13 JUROR NO. 9: Yes.
14 THE CLERK: Juror No. 10, is this your verdict as read?
15 JUROR NO. 10: Yes.
16 THE CLERK: Juror No. 11, is this your verdict as read?
17 JUROR NO. 11: Yes.
18 THE CLERK: Juror No. 12, is this your verdict as read?
19 JUROR NO. 12: Yes.
20 THE COURT: Thank you.
21 Ladies and gentlemen of the jury, this was a bifurcated trial.
22 There's an additional charge that needs to be tried. I've been informed
23 by counsel that the actual presentation of evidence probably will take
24 less than a half hour. However, it is the -- the same as the trial that we
25 just completed. I have to do the preliminary instructions, there is a

1 presentation of evidence, I have to read you the jury instructions, and
2 then you would have to deliberate. The parties have left it up to you
3 whether you want to start it today or come back on Monday at 10:00 to
4 hear the testimony on the additional charge. It's late in the afternoon, so
5 I will go for a while.

6 So if you could advise -- Mr. Foreperson, if you could discuss
7 with your jurors if they want to continue or come back on -- on Monday?

8 Oh, counsel?

9 MR. DICKERSON: Just -- and just for the record, Your Honor,
10 we don't expect any additional testimony, just two pieces of evidence to
11 be admitted.

12 THE COURT: Okay. But we still -- is that correct, counsel?
13 We still have to do the preliminary instructions --

14 MR. DICKERSON: Yes.

15 THE COURT: -- presentation of evidence, instruct the jury on
16 the law, and then closing arguments?

17 MR. DICKERSON: Yes. And I believe, it -- the State's side
18 will be very brief.

19 THE COURT: So we can come -- yes, sir?

20 JUROR NO. 5: Like to know the approximate time this will
21 take so that we can all come up with a quality decision for you for this
22 evening.

23 THE COURT: Okay. Well, I would suspect it's going to take,
24 to do everything, at least -- based on the representation of counsel, at
25 least 45 minutes to an hour.

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[Pause in proceedings.]

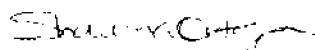
JUROR NO. 5: Sir, we will stay.

THE COURT: Okay. The problem -- I will advise you, I have
a court staff and I need to --

Can we go past 5:00? How much past?

[Phase I proceedings concluded at 4:36 p.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 **FRIDAY, DECEMBER 1, 2017**

16 ***TRANSCRIPT OF PROCEEDINGS RE:***
17 **JURY TRIAL - PHASE II**

18
19 **APPEARANCES:**

20 **For the Plaintiff:**

MICHAEL DICKERSON, ESQ.
(Deputy District Attorney)
CHAD N. LEXIS, ESQ.
(Deputy District Attorney)

21
22
23 **For the Defendant:**

GREGORY E. COYER, ESQ.
ALEXIS ANNE PLUNKETT, ESQ.

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

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EXHIBITS

<u>DESCRIPTION</u>	<u>ADMITTED</u>
State's Exhibit Nos. 55 and 56	16

1 **LAS VEGAS, NEVADA, FRIDAY, DECEMBER 1ST, 2017**

2 [Proceedings commenced at 4:36 p.m.]

3
4 [Outside the presence of the jury.]

5 THE COURT: Okay. All right. Ladies and gentlemen, at your
6 request we will now try the bifurcated count -- bifurcated charge, I'm
7 sorry.

8 MR. DICKERSON: Yes, Your Honor. We've provided your
9 clerk with, I believe, third amended information with the charge. We
10 would ask that that be filed at this time.

11 THE COURT: That's fine.

12 Any objection, counsel?

13 MR. COYER: No, Your Honor.

14 THE COURT: We will now do the preliminary admonishments
15 to the jury.

16 Ladies and gentlemen, you are admonished that no juror may
17 declare to a fellow juror any fact relating to the case after -- this case of
18 his knowledge. And if any juror discovers during the trial or after the trial
19 has retired that he or any other juror has personal knowledge of any fact
20 of controversy in this case, he shall disclose that situation to me in the
21 absence of other -- of the other jurors.

22 This means that if you learn during the course of the trial that
23 you are acquainted with the facts of this case or the witnesses or have
24 not previously told us of that relationship, you must declare that fact to
25 me.

1 The way you communicate with the court throughout the trial
2 is through my marshal. My marshal is Randy Stevenson. He is present
3 at all times while we are in session.

4 During the course of the trial, the attorneys for both sides,
5 court personnel, other than the marshal, are not permitted to talk with
6 you. If that's not -- it's not that we are antisocial, it's simply that we are
7 all bound by ethics and the law not to speak with you, because to do so
8 might contaminate your verdict. We are not even allowed to say hi to
9 you if we should pass you in the hall or be in the elevator together.

10 If you should recognize a witness or be familiar with the facts
11 of the case when the witness is testifying, please make a little note on
12 your jury pad that you recognize such-and-such a witness, and how it is
13 that you recognize that witness. At the next break in the trial, please
14 hand that note to the marshal and he will present it to the court and
15 counsel.

16 Frequently people do not recognize witnesses by names, but
17 may recognize them by when they come into the courtroom to testify. If
18 that should happen in this case, please make a note of that as the
19 witness is testifying, and then -- and at the next break, give that note to
20 the bailiff.

21 You're admonished additionally that you are not to visit the
22 scene of any of the acts or occurrences made mention of during the trial
23 unless specifically directed to do so by the court. The reason that we do
24 not want you going to any particular scene or location referenced during
25 the trial is not because we do not want you to know everything that there

1 is to know about the location, but simply there is no guarantee that the
2 intersection, street, apartment complex, the restaurant, or whatever
3 looks the same today as it did at the time of the incident. Usually photos
4 are taken at the time of the incident or shortly thereafter and we will use
5 those photos during the trial, rather than going to the site to look at first
6 hand.

7 This case is a criminal case commenced by the State of
8 Nevada. I may refer to as *State vs. Ceasar Sanchaz Valencia*. The
9 case is based upon -- is it a third amended -- based upon a third
10 amended information. The clerk will now read that third amended
11 information to you and state the plea of the defendant.

12 [Information read.]

13 THE COURT: This case is based upon the -- that third
14 amended information which has just been read to you by the clerk. You
15 should distinctly understand that a third amended information is simply a
16 charge and that it is not in any sense evidence of the allegations that it
17 contains.

18 The defendant has pled not guilty to the charge. The State
19 therefore has the burden of proving each of the essential elements of the
20 charge in the third amended information beyond a reasonable doubt.
21 The purpose of this trial is to determine whether the State will meet that
22 burden.

23 It is your primary responsibility as jurors to find and determine
24 the facts. Under our system of criminal procedure, you are the sole
25 judge of the facts. You are to determine the facts from the testimony

1 you hear and the other evidence, including exhibits, introduced in trial. It
2 is up to you to determine the inference which you -- which you feel may
3 properly draw from the evidence.

4 If during the examination of witnesses some questions occur
5 to you, be patient. The answers will probably be given before the
6 witness is excused. If not, write your questions on a slip of paper, hand
7 it to the marshal. He will then give it to me and if the question is a
8 proper one under the law, I will see that it is answered. Any questions
9 must be factual in nature and designed to clarify information already
10 presented. If your question is asked, you may not place undue weight
11 on the answer to the question.

12 The parties may sometimes present objections to some of the
13 testimony or other evidence. At times I may sustain those objections or
14 direct that you disregard certain testimony and exhibits. You must not
15 consider evidence to be -- to which an objection has been sustained or
16 which I have instructed you to disregard.

17 It is the duty of the lawyer to object to evidence which he
18 believes may not properly offered. And you should not be prejudiced in
19 any way against the lawyer who makes the objection on behalf of the
20 party which he represents.

21 I may also find it necessary to admonish the lawyers. If I do,
22 you should not show prejudice towards the lawyer or his clients because
23 I found it necessary to admonish him.

24 Throughout the trial, if you cannot hear a question asked by
25 the attorney or the answer given by a witness, please raise your hand as

1 an indication. If I don't see your hand, please say excuse me, I don't -- I
2 didn't hear that, and we will ask that the question be repeated or that the
3 answer be repeated.

4 If you wish, you may take notes to help you remember what
5 any witness has said. If you do take notes, please keep those notes to
6 yourself until you and your fellow jurors go to the jury room to decide the
7 case. Do not let note taking distract you so that while you are writing
8 down the answer to one question, three or four questions are asked and
9 answered and go right past you and have no reflection -- recollection of
10 those answers. You should rely upon your own memory of what was
11 said and not to be overly influenced by the notes of other jurors when
12 you go back to deliberate.

13 This case will proceed in the following order: First, the State
14 will make an opening statement outlining the case. The opening
15 statement is like roadmap or outline. During the opening statement, the
16 State will be telling you what they expect the evidence to show -- will be.
17 After the State opens, the defendant has a right to make an opening
18 statement if he or she wishes to. Neither party is required to make an
19 opening statement.

20 After the opening statements, the State will first introduce
21 evidence. At the conclusion of State's evidence, the defendant has a
22 right to introduce evidence. However, please remember, the defendant
23 is not obligated to present any evidence or to prove this -- to prove his
24 evidence. The law never imposes upon the defendant in a criminal case
25 the burden of calling any witnesses or introducing any evidence. The

1 defendant and his attorneys can sit through -- through the trial and do
2 nothing, not ask any questions, not call any witnesses, do nothing at all,
3 because the defendant has no burden of proof in a criminal trial.

4 As we already discussed, the State has to prove two things to
5 you. First, the State has to prove to you beyond a reasonable doubt that
6 a crime occurred. And second, the State has to prove to you beyond a
7 reasonable doubt the defendant did it.

8 At the close of the defense -- defendant's case, if any, the
9 State may introduce rebuttal evidence. At the conclusion of all the
10 evidence, I will instruct you on the law. You must not be concerned with
11 the wisdom of any rule of law stated in these instructions or the
12 instructions which I will read to you after the evidence is in. Regardless
13 of any opinion you have as to what the law ought to be, it would be a
14 violation of your oath to base a verdict upon any other view of the law
15 than that given to you by the court. Now, please understand, ladies and
16 gentlemen, the court does not make the law. The law in each state is
17 created by the state legislature -- legislature.

18 After the instructions on the law are read to you, each party
19 has the opportunity to argue orally to -- in support of his case. This is
20 called closing arguments or summation. While -- what is said in closing
21 is not evidence, the arguments are designed to summarize and interpret
22 the evidence for you and show you how the evidence and the law relate
23 to one another. Since the State has the burden of proving the defendant
24 beyond the -- guilty beyond a reasonable doubt, the State has the right
25 to both open and close the arguments, which means at the end of the

1 trial, the State gets to argue to you twice and the defendant gets to
2 argue to you once.

3 After the attorneys have presented their argument, you will
4 retire to select a foreperson to deliberate and arrive at your verdict.
5 Faithful performance by you of your duties is vital to the administration of
6 justice. It is your duty to determine the facts and determine them from
7 the evidence and the reasonable inferences arising from such evidence.
8 And in so doing, you must not indulge in guess -- guesswork or
9 speculation.

10 The evidence which you are to consider consists of the
11 testimony of witnesses and the exhibits admitted in evidence. The term
12 witness means anyone who testifies in person or by way of deposition
13 and may include the parties to the lawsuit. A deposition is simply an
14 examination of the witnesses at a prior date under oath with the attorney
15 present where the testimony is taken down in written form and those
16 written questions and answers will be read to you during the trial.

17 Admission of evidence -- evidence in court is governed by
18 rules of law. From time to time, it may be the duty of the attorneys to
19 make an objection. And any objection as -- to make an objection and
20 my duty as the judge to rule on those objections and decide whether a
21 certain question may be answered and whether certain evidence may be
22 admitted. You must not concern yourself with the objections made by
23 the attorneys or with a court's reasons for its rulings.

24 You may -- you must not consider testimony or exhibits to
25 which an objection has been sustained or which has been ordered

1 stricken. Further, you must not consider anything which you may have
2 seen or heard when the court is not in session, even if you see or hear
3 it -- see or hear it said or done by one of the parties or by one of the
4 witnesses.

5 While you are here in the courtroom, please always wear the
6 badge the marshal gave you or you will -- or gave you. When you come
7 in in the morning and during the breaks, during the daytime or during the
8 noon recess, when you are in the elevator or walking around in the
9 hallway, I always tell my jury panels to please only chit-chat with people
10 wearing a badge which indicates they are jurors.

11 When you came in through the metal detector this morning -- I
12 want to read this part. I always delete it, but -- when you came in
13 through the metal detector this morning, the guards down there did not
14 have orange cans of paint and did not paint -- spray paint a big W on
15 people who are going to be witnesses, so the witnesses in the and all
16 the rest -- and all the rest of the trials that are going on today in the
17 building are not identified in any way. You will not know if you are
18 carrying on a conversation with a witness in -- in this trial until it's too late
19 and they see -- and they come and take the witness stand and are
20 sworn. Therefore, I would urge you not to talk to anyone in the building
21 unless they are identified as a juror, because if they are identified as a
22 juror, you know that they are not going to have anything to do with this
23 case.

24 In -- in every case there are two types of evidence, direct
25 evidence and circumstantial evidence. Direct evidence is testimony by

1 witness without the -- without -- about what that witness saw or heard or
2 did. Circumstantial evidence is testimony or exhibits which are proof of
3 a particular fact from which, if that fact is proven, you can infer the
4 existence of a second fact. You may consider both direct and
5 circumstantial evidence in deciding this case.

6 The law permits you to give equal weight to both types of
7 evidence, but it is up to you to decide how much weight to give to any
8 particular piece of evidence. Opening statements and closing
9 arguments are intended to help you in understanding the evidence and
10 in applying the law. But please understand the attorneys will -- what the
11 attorneys tell you is not evidence. They are not witnesses, they have no
12 firsthand information, and therefore, what they tell you is not evidence.

13 You are not to concern yourself in any way with the sentence
14 which a defendant might receive if you should find him guilty. Your
15 function is solely to decide whether the State has proven to you beyond
16 a reasonable doubt the defendant is guilty of the crime charged. If, and
17 only if, you find him guilty, then it becomes the duty of the court at a later
18 date to pronounce sentence.

19 You must not be influenced in any degree by any personal
20 feeling of sympathy for or prejudice against any party to the lawsuit.
21 Each party is entitled to the same fair and impartial consideration. No
22 statement, ruling, remark, or facial expression which I may make during
23 the course of the trial is intended to indicate my opinion as to what the
24 facts are. I don't get to decide the facts. You are the ones who
25 determine the facts.

**PLEADING
CONTINUES
IN NEXT
VOLUME**