

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAEKWON ROBERTSON,

Appellant,

v.

STATE OF NEVADA,

Respondent.

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CASE NO: 85932

APPELLANT'S APPENDIX

Volume 4

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1 A Yes.

2 Q Okay, and then the number's higher. It's gone from
3 1.76 to 2.56?

4 A Yes.

5 Q Okay. Now, he is individually included from that
6 sample, and then are all the rest, again, excluded?

7 A Yes, they were.

8 Q Okay. Now, moving to Lab Item 35 -- your Lab Item
9 35, does that come from the interior right rear door above the
10 handle?

11 A Yes.

12 Q Okay. And then, was this a mixture, or just one?

13 A This was actually deemed to be -- only have one
14 contributor present in this sample.

15 Q Okay. And then, were you able to include anybody?

16 A Yes, DeShawn Robinson was individually included.

17 Q And then, what was the likelihood ratio for this
18 one?

19 A So the probability of observing this DNA profile is
20 at least one septillion times more likely if it originated
21 from DeShawn Robinson than if it originated from an unknown
22 random contributor.

23 Q I think you told us earlier a septillion is with 24
24 zeros?

25 A Yes.

1 Q So it's less than the octillion?

2 A Correct.

3 Q But it still has 24 zeros after the number?

4 A Correct.

5 Q Okay. And then, as far as exclusion, were all of

6 the known reference samples, all the others that we've

7 mentioned, excluded?

8 A Yes, they were.

9 Q Okay. And that's the information that you have for

10 this particular report, correct?

11 A Yes.

12 Q All right. Before we move onto the next report --

13 you have a second report, correct?

14 A Correct.

15 Q All right. Before we move onto that, when we're

16 talking about these numbers and we're talking about DNA, is

17 there a way to date DNA, meaning a time frame?

18 A No.

19 Q Okay. I could touch this lectern a year ago, and I

20 could touch it now; you could potentially get my DNA from a

21 year ago?

22 A Yeah, we don't determine time -- time, space. We

23 just answer what DNA is -- is there. We don't answer how it

24 got there, when it got there, why it got there. We just are

25 there to say what's actually there.

1 Q Even though you can't necessarily date it, is it
2 true that there are environmental variables that can affect
3 DNA?

4 A Yes.

5 Q What are those?

6 A So if you leave something out in the sun for too
7 long, the sun has the potential to break down DNA. Let --
8 let's say after -- after a day, janitors come in and clean all
9 of the different spaces, that's potential to wipe up the DNA,
10 depending on the cleaner they use, like bleach or something
11 like that. So those can have an effect on the remaining DNA
12 present in a particular location. All of those things can
13 have an effect on the presence of DNA.

14 Q Can rain, wind, things of that -- that nature?

15 A Yes.

16 Q Okay. All right. Looking at your -- your other
17 report, did you also have a report of an item that was
18 impounded or swabbed by -- impounded and swabbed by a P number
19 13771?

20 A Yes.

21 Q Okay. Those items were your numbers 38 and 39,
22 correct?

23 A Yes.

24 Q And do they correspond to that individual P number's
25 Package 1, Items 1 and 2?

1 A Yes.

2 Q And then, did number 1 come from a swab from a
3 Taurus handgun?

4 A Yes, it did.

5 Q And number 2 come from a swab from a magazine?

6 A Yes.

7 Q Okay. And then, did you do the same analysis that
8 you've spoken of earlier from your first report?

9 A Yes, I did.

10 Q All right. What did you find out from your Lab Item
11 38, which is a swab from a Taurus handgun?

12 A So from the handgun, I obtained another mixture DNA
13 profile of two contributors; at least one of those
14 contributors was a male.

15 Q Okay. And then, did you have the same known
16 profiles you were comparing with?

17 A Yes, I did.

18 Q And what did you find out from those comparisons?

19 A So in this particular item, Raekwon Robertson was
20 individually included as being a part of this mixture DNA
21 profile.

22 Q What was the likelihood ratio?

23 A So the probability of observing this mixture DNA
24 profile is at least 33.3 million times more likely if it
25 originated from Raekwon Robertson and one unknown random

1 contributor than if it originated from two unknown random
2 contributors.

3 Q All right, so he was individually included based on
4 those numbers?

5 A Correct.

6 Q And then were you able to exclude anybody of the
7 remainder of individuals?

8 A Davontae Wheeler was excluded as being a part of the
9 mixture.

10 Q All right, but were you able to exclude everybody
11 else?

12 A No. The remaining individuals, so that would be
13 Anthony Robinson, DeShawn Robinson, DeMario Lofton-Robinson,
14 Johnquiel Brown, Gabriel Valenzuela -- think I got them all.

15 Q Yeah.

16 A They were all deemed as inconclusive.

17 Q What does that mean?

18 A So for each individual, that likelihood ratio is
19 calculated. There is this window where there isn't a lot of
20 support that a person can be included or excluded, and that's
21 based on the work that we do during validation of our
22 procedures, and all of those individuals had likelihood ratios
23 that were calculated within that range. And so, when they're
24 within that range, we call them inconclusive because we can't
25 definitively say either way.

1 Q Okay. So you can't say they're included, and you
2 can't say they're excluded?

3 A Correct.

4 Q All right, so it's just inconclusive as to those
5 individuals?

6 A Yes.

7 Q All right. And then, Lab Item 39, the swab from the
8 magazine, was it one contributor?

9 A Yes.

10 Q Because earlier, the Taurus handgun was two
11 contributors, correct?

12 A Correct.

13 Q All right. So, on the magazine, was it one male
14 contributor?

15 A Yes.

16 Q All right. And then, did that match to any of the
17 other known samples?

18 A Everybody was excluded.

19 Q Okay. So all the list of people that you spoke of
20 earlier were excluded from that particular item?

21 A Correct.

22 MR. PESCI: Court's indulgence. Pass the witness.

23 THE COURT: Mr. Sanft, cross?

24 MR. SANFT: Yes, Your Honor.

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CROSS-EXAMINATION

BY MR. SANFT:

Q Good afternoon, Ms. Rubino.

A Good afternoon.

Q I just want to get to the point. I represent Mr. Robertson that's over here, Raekwon. The testing that you did in this case, and what you've testified to this jury on, out of all the tests that you've done, is the last portion of your testimony specific to Mr. Robertson with regards to the Taurus handgun?

A The testimony is just based on what was then requested for processing, and then all of the reference standards that were present in that case that were compared to every other samples from that first report are automatically compared to all of any additional items in the case.

Q So with regards to the other items that we talked about; the car, for instance, and so forth, was there any DNA that you found with regards to my client being in that car?

A From the -- he was excluded from those items.

Q Okay. And specifically, going back again to the Taurus handgun, your testimony was that he was included on the Taurus handgun, but you can't tell the jury how that DNA was found -- or how it was placed on that handgun, correct?

A Correct.

Q Okay. Now, you had said that there were two

1 contributors; one of them was at least male?

2 A Correct.

3 Q Meaning that, potentially, out of the two
4 contributors that had DNA on that handgun, the other person
5 could have been male as well?

6 A Correct.

7 Q Okay. Now, and we've gone through this octillion
8 thing, and I want to make sure we're clear here. The State
9 says -- or says that it's a number followed by -- I don't know
10 how many zeros. 27 zeros for an octillion? Really?

11 A Yeah, one octillion.

12 Q That's a lot.

13 A That is a lot.

14 Q Is there a presumption that, the higher that number,
15 the more accurate, or the more -- less probability that it
16 could have come from somebody else? Is that how that works?

17 A Well, it also is based on essentially kind of the
18 quality of the DNA profile. We see a lot of different
19 profiles in the lab. Some -- when -- if we just talk about
20 maybe a single-source profile, we can get -- if we get data at
21 every single location that we test at, we're going to get a
22 high number because we have all of this information for
23 comparison and we have all this information to calculate
24 statistics with.

25 When we have -- when we start to lose some of that

1 information, and maybe some of that information is missing
2 where we only have maybe a partial profile and we don't have
3 as many locations, that statistic will naturally be less
4 because there are less areas of comparison. So, a lot of the
5 time, some of the statistics is based on just how much
6 information is there for comparison.

7 Q I'm -- because I'm not -- obviously, you are very
8 smart with this, because these numbers are -- I don't know how
9 to begin to even describe them. But in terms of -- just
10 breaking it down to it's bare tacks for this jury, the bigger
11 the number, the more sure; the lesser the number, the less
12 sure, right?

13 A Personally, it doesn't have anything to do with
14 being sure or not sure. It's based on the profile that we
15 have and how -- how that can be compared to the reference.
16 It's sometimes -- I guess it's not -- for me, not a personal
17 "this is more sure than this." It's just, for certain items,
18 I have more data to work with and compare to, so that will
19 give me a higher number than maybe some of the other items
20 that may not have as much information, or some of the other
21 people that may not have as much information present.

22 So, for me, it's not, I'm more sure of this DNA
23 profile than I am of this DNA profile; it's the numbers are
24 what they are based on the quality and quantity of data I have
25 for comparison.

1 Q Okay. So, I guess, then what's the point? What's
2 the point of talking about 27 zeros after a number, versus,
3 like, for instance, in this case, with my client, Mr.
4 Robertson, the DNA sample that was located was 33.3 million,
5 which is six zeros? I mean, do we say here, well, his DNA,
6 because it was six zeros -- I mean, what's the point? What's
7 the point of putting a number behind something and talk about
8 the number of zeros that are behind the number?

9 A The point for us is when we make our comparisons, we
10 want to attribute a weight to that comparison. And that
11 weight is not for me to make any further conclusions; it's to
12 inform any -- the reader, the jurors, anybody that is taking
13 those -- that information into account, it's to give them the
14 weight of that particular item.

15 Q Okay. And the other item that you swabbed with
16 regards to the Taurus handgun, you had one contributor that
17 was male, and none of the people, including Raekwon Robertson,
18 was identified as that male?

19 A Everyone was excluded. Correct.

20 Q Okay. Now, going back again to the Taurus handgun,
21 you had said as well that everyone that was inconclusive, that
22 also included Gabriel Valenzuela?

23 A Yes.

24 Q As a possible contributor to whatever the DNA was on
25 the actual Taurus handgun?

1 A They're compared, but that person -- Gabriel
2 Valenzuela was inconclusive.

3 MR. SANFT: Okay. I have no further questions, Your
4 Honor. Thank you.

5 THE COURT: Mr. Ruggeroli?

6 CROSS-EXAMINATION

7 BY MR. RUGGEROLI:

8 Q Good afternoon, Ms. Rubino.

9 A Good afternoon.

10 Q I represent Davontae Wheeler; he's present on your
11 right. You had a number of known reference samples, correct?

12 A Correct.

13 Q And a couple of names were mentioned, and I just
14 want to touch on this. You did have a reference sample from
15 Anthony Robinson?

16 A Yes.

17 Q And a reference sample from Johnquiel Brown?

18 A Yes.

19 Q But you did not have a reference sample from Adrian
20 (phonetic) Robinson?

21 A No, I did not.

22 Q And you went through a number of items, but just
23 briefly, there were two cigarette butts?

24 A Correct.

25 Q You were able to get a source without a linking

1 identity?

2 A Essentially, yes.

3 Q And then, you had the swab from the handgun and the
4 magazine, correct?

5 A Correct.

6 Q From inside the vehicle, correct?

7 A Yes, correct.

8 Q Yeah, a couple other items?

9 A Yes.

10 Q And as far as Mr. Wheeler, the wind-up is that Mr.
11 Wheeler has been excluded from all of the items?

12 A All of those items -- all of the items, yes.

13 Q And then, the second package, Report number 2, was
14 the Taurus handgun, and he was excluded from that as well?

15 A Correct.

16 Q And from the magazine?

17 A Correct.

18 Q So, in total, no DNA evidence from these items
19 regarding Mr. Wheeler?

20 A He was excluded from all items where conclusions
21 could be made.

22 MR. RUGGEROLI: Thank you. Nothing further.

23 THE COURT: Any redirect?

24 MR. PESCI: You know, sometimes --

25 THE COURT: Just a minute. It's when both sides are

1 done --

2 UNKNOWN SPEAKER: Okay.

3 THE COURT: -- questioning the witness. Go ahead.

4 MR. PESCI: Sorry. Thank you.

5 REDIRECT EXAMINATION

6 BY MR. PESCI:

7 Q Sometimes with lawyers, words can be semantics, so
8 I'm going to try not to go that route, but I'll probably get
9 there anyway. We just heard from defense counsel that his
10 client was excluded from all of the evidence, correct?

11 A Where conclusions were made, yes.

12 Q Okay. So some people might put a weight to that,
13 because you were just asked, what's the purpose; why are we
14 going into numbers? That information -- those numbers told
15 you that person was excluded from touching that item?

16 A Correct.

17 Q All right. We could attribute a weight to that in
18 the sense that there's nothing to connect him via DNA to that
19 item?

20 A So when someone's excluded, a number is also
21 calculated for them, and we don't generally report them;
22 they're just excluded. But when we're talking about a
23 likelihood ratio in those two different conclusions, it would
24 essentially be saying that the probability, it's a certain
25 amount times more likely that the profile originated from two

1 unknown random contributors than if it originated from a
2 particular person and one unknown random contributor. So it's
3 just not likely that that DNA is there.

4 Q And it's not likely because that number, because
5 there's actually a number associated, is so low?

6 A It -- it's deemed -- it's in our excluded.

7 Q So there's a point to these numbers, right?

8 A Sure, yes.

9 Q Because when it gets so low, somebody's excluded?

10 A Correct.

11 Q Would you agree then, when it gets higher, it points
12 to your conclusions of individual inclusion?

13 A Yes.

14 Q And then, if I heard you correctly, I thought maybe
15 you were being asked, or you thought you were being asked your
16 personal belief about this. You're talking about numbers; not
17 your personal belief?

18 A Correct.

19 Q Okay. So setting aside any personal belief, the
20 numbers that you have, when we've got 27 zeros, is that based
21 on you having more information to deal with?

22 A Yes.

23 Q More DNA data?

24 A Correct.

25 Q And that number makes your ratio go higher?

1 A Correct.

2 Q In the inverse of the person who's absolutely
3 excluded?

4 A Correct.

5 Q So there is a weight to those numbers?

6 A Yes.

7 MR. PESCI: Thank you.

8 THE COURT: Mr. Sanft, any recross?

9 MR. SANFT: Yes, Your Honor, just one question.

10 RE CROSS-EXAMINATION

11 BY MR. SANFT:

12 Q So I -- going back again to these numbers, the idea
13 of information, the more information you have, the bigger the
14 number; the less information you have, the lesser the number?

15 A That will also depend on the comparison of that
16 individual to that profile. So if we're talking about a
17 single -- if we're talking about the single-source profile,
18 the more information we have from that single-source evidence
19 profile if we have someone that's included, that weight, that
20 likelihood ratio, is going to go higher and higher with the
21 more information we have, if they're actually included. If
22 somebody is excluded, more often than not, we're going to get
23 actually a number of zero because that person has no chance of
24 being part of that DNA profile.

25 So when we -- it gets a little more complicated when

1 we're dealing with mixtures. Generally, when you have more
2 information and good quality information to work with, you'll
3 see higher likelihood ratios. When you start to get
4 lower-quality DNA profiles and have less DNA, you're generally
5 going to see sometimes lower DNA -- lower likelihood ratios.

6 Q Okay. So if someone's on the inclusive, what's the
7 threshold for that?

8 A So our threshold, it has to be ten to the fourth, so
9 10,000, in order for someone to be determined as individually
10 included.

11 Q Right. So anything below ten to the fourth would be
12 inconclusive?

13 A So anything between ten to the third, so 1,000, down
14 to ten to the minus-three, so that's 1,000th, so it's .001,
15 that's our -- that's what we call our inconclusive zone. And
16 it's based on our validation where certain people may have
17 been, during the course of a validation, falsely included and
18 excluded. By increasing our inclusion section to ten to the
19 four, it's giving us this cushion where, as a laboratory, we
20 are confident that anybody reported as included is actually
21 included.

22 Q Is that the national standard, or is that a standard
23 that you've set here in Nevada?

24 A It's based on the validation that we've done at the
25 laboratory.

1 Q Okay. But once again, my question is, is that the
2 national standard? Is there a national standard across the
3 board with regards to that validation?

4 A Every laboratory does their own internal validation
5 and develops their own way of interpreting and reporting
6 samples.

7 MR. SANFT: No further questions. Thank you.

8 THE COURT: Mr. Ruggeroli?

9 MR. RUGGEROLI: No further questions. Thank you.

10 THE COURT: Okay, we have a question.

11 (Bench conference)

12 THE COURT: You can approach. If the attorneys will
13 approach.

14 MR. PESCI: She doesn't know. Well, I'll ask her,
15 but I don't think she knows.

16 THE COURT: Okay. I usually will allow both sides
17 to follow up if you have any questions after this.

18 MR. RUGGEROLI: Sure, okay.

19 THE COURT: So do you want me to ask her, or do you
20 just want to follow up?

21 MR. PESCI: Whichever way. Do you mind asking,
22 because (indiscernible)?

23 THE COURT: No, I don't.

24 MR. PESCI: Okay.

25 (End of bench conference)

1 THE COURT: Okay. The question has been marked as
2 Court's Exhibit number 3. Which Taurus handgun, the .45 or
3 the PT22?

4 THE WITNESS: That I actually -- I don't know. I go
5 based on what's on the package, and the package referred to a
6 Taurus -- Taurus handgun. That's something that would be
7 found on maybe other information from the individual who
8 swabbed it, or in the Evidence Impound Report that would be
9 generated.

10 THE COURT: Any follow up from the State?

11 MR. PESCI: Yes, please.

12 FOLLOW-UP EXAMINATION

13 BY MR. PESCI:

14 Q Ma'am, that information, as you're indicating, comes
15 from the crime scene analyst that impounded that particular
16 item, correct?

17 A I believe that -- those particular swabs were taken
18 by one of the firearms analysts.

19 Q Okay. And are we taking you somewhat out of order
20 because you're flying out of town?

21 A Correct.

22 Q All right. So, eventually, we're going to get that
23 information; we're just trying to get to yours so -- so you
24 can get out of town?

25 A Correct.

1 MR. PESCI: Okay, thank you.

2 THE COURT: Any follow up from Mr. Sanft?

3 MR. SANFT: No, Your Honor. Thank you.

4 THE COURT: Mr. Ruggeroli?

5 MR. RUGGEROLI: No, Your Honor.

6 THE COURT: Okay. Thank you very much for your

7 testimony here today. You may step down, and you are excused

8 from your subpoena. You may call your next witness.

9 MR. PESCI: John Relato. May I approach your Clerk?

10 THE COURT: Yes.

11 THE MARSHAL: I'm sorry, what was the last name?

12 MR. PESCI: Relato. Can I approach?

13 THE COURT: Uh-huh.

14 THE MARSHAL: Straight ahead. Please step up into

15 the witness stand. Remain standing, raise your right hand,

16 and face the Clerk, please.

17 JOHN RELATO, STATE'S WITNESS, SWORN

18 THE CLERK: You may be seated. Please state and

19 spell your first and last name for the record.

20 THE WITNESS: First name, John, J-o-h-n. Last name,

21 Relato, R-e-l-a-t-o.

22 MR. PESCI: May I proceed, Your Honor?

23 THE COURT: You may.

24 MR. PESCI: Thank you.

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DIRECT EXAMINATION

BY MR. PESCI:

Q Sir, I want to direct your attention to August 8th, and then to August 9th of 2017. Where did you live back then?

A I lived at 5536 West Dewey Drive.

Q Is that here in Las Vegas?

A Yes, sir.

Q All right. Now, when -- back on August 8th into August 9th of 2017, who lived there with you?

A My mother, father, sister, and my cousin.

Q What was your cousin's name?

A Legal name is Gabriel Valenzuela, but his friends and I call him Kevin.

Q Okay. And so, Kevin, what did he do back then? What was his -- was he going to school? Was he working?

A Yes, he was a nursing student.

Q Okay. Do you know where he was going to nursing school?

A College of Southern Nevada.

Q Okay. And then, how many people total was that? It was you; did you say your sister?

A My sister, mother, step-father, and my cousin.

Q So five of you total?

A Yes, sir.

Q How many cars were associated with the house?

1 A About four.

2 Q Okay. Was there a lot of movement amongst all of
3 you as far as driving in and out?

4 A Yes, sir.

5 Q All right. And did you have -- did you have a
6 garage that covered, and part that's not covered?

7 A I have a garage that's covered, and we also park the
8 cars on, like, driveways. Like sloped, ramped, like,
9 driveways.

10 MR. PESCI: May I approach the witness?

11 THE COURT: You may.

12 MR. PESCI: Your Honor, I'm showing to the witness
13 Exhibits 11, 12, and 14, previously shown to defense counsel.
14 I believe there's no objection to their admission.

15 MR. SANFT: No, Your Honor.

16 MR. RUGGEROLI: That's correct.

17 THE COURT: Okay, they're admitted.

18 (State's Exhibits 11, 12, and 14 are admitted)

19 THE WITNESS: That's correct.

20 MR. PESCI: May I --

21 THE WITNESS: I'm sorry.

22 MR. PESCI: -- move for their admission and ask to
23 publish?

24 THE COURT: They're admitted, and you may publish.

25 MR. PESCI: Okay.

1 BY MR. PESCI:

2 Q So, I apologize. I was asking about the parking at
3 that location. To your right, there's a computer. So are we
4 looking at the garage that's, you said, covered, correct?

5 A Yes, sir.

6 Q Would that be as you're facing the house on the
7 lefthand side?

8 A What do you mean by that?

9 Q So if you were standing here where the picture was
10 taken, is the garage furthest to the left the one that's
11 covered?

12 A Yes, this is the one that's covered.

13 Q Okay, and is there one to the right of that one that
14 is uncovered?

15 A Yeah, this is uncovered.

16 Q Okay. And then, you just talked about another
17 location where cars are parked. Where is that?

18 A This one here, usually.

19 Q Okay. And you said -- was -- is there a slant?

20 A This is -- I mean, it's like a slope, you know?

21 Q Okay. So that --

22 A The driveway.

23 Q That driveway area -- let's show you Exhibit 14. Is
24 that reflective of that slant? Is it higher where the car is,
25 and gets lower down to the street?

1 A Yes, sir.

2 Q Okay. So, on that night, were you home?

3 A Yes, sir.

4 Q Did something happen that brings you here to court?

5 A There was the murder of my cousin --

6 Q Okay.

7 A -- that night.

8 Q Do you remember or do you know when your cousin came

9 home?

10 A I don't know the exact time, but I know it was

11 around midnight; around 12:00 o'clock.

12 Q Okay. So in the late hours of the 8th, going into

13 the early hours of the 9th?

14 A Yes, sir.

15 Q Okay. Was it normal for him to usually come home

16 this late?

17 A Usually, he comes home a little later. But yeah,

18 usually, he doesn't -- like, no earlier than this.

19 Q Okay. And then, speaking of normal -- what's done

20 normally, was there something that your cousin would do with

21 the mail? Is he the one that would pick up the mail?

22 A Yes, sir.

23 Q Okay. And then, where is the mail in relation to

24 your house?

25 A It's -- it's a little more towards this way. It's

1 like in my neighbor's side of the -- I mean, like, going --
2 you know, if you keep going down this sidewalk.

3 Q Okay.

4 A Just keep going, and there's like --

5 Q So the direction that you're pointing now is kind of
6 going to the left of that photograph, correct?

7 A Yes, sir.

8 Q All right. We're going to get you an aerial in just
9 a second that you can kind of point that out. And so, if I'm
10 understanding correctly, your cousin would be the one who
11 would go pick up the mail?

12 A Yes, sir.

13 Q All right. And then, is this something he did
14 routinely?

15 A Yes.

16 Q And what would happen when he did it? Would he go
17 through that mail?

18 A Yeah. He usually picks it up, make -- like, he
19 drives over there, like in front of the mailbox, picks it up.

20 Q Let me stop you.

21 A Oh, yeah, sorry.

22 Q Looking at 3.

23 A Yeah. Usually, he comes in from here, drives to the
24 mailbox right around this area here.

25 Q I'm going to move this up so that it can be seen a

1 little better.

2 A Sure. It's not showing on the picture, but there's

3 a mailbox for the -- the neighborhood.

4 Q I'll show you Exhibit 4. Let's see if you can get

5 to the mailbox.

6 A Yes, okay. So, usually, he comes in over here. The

7 mailbox is around this area here. He usually drives over

8 there, picks up the mail, makes a U-turn, and parks the car at

9 the parking over here.

10 Q Okay. And speaking of that, we'll go back to

11 State's Exhibit 14. Is the car that's depicted in State's 14

12 your cousin's car?

13 A Yes, sir.

14 Q The car that he would drive?

15 A Yes.

16 Q Okay. And so, was there a routine as far as what he

17 would do as far as going through the mail?

18 A Usually, he just grabs the whole stack, sits around

19 this area over here --

20 Q When you say this area over there, is there kind of

21 a little --

22 A The retaining wall.

23 Q A retaining wall? Okay.

24 A Yes, sir.

25 Q Sits there, and then goes through the mail?

1 A Yes, because that's where the lighting is. He can
2 do it in the car while it's -- it's well-lit in this area.

3 Q Okay. And so, on that particular night, did you
4 hear something that got your attention?

5 A Gunshots.

6 Q Okay. Do you recall how many gunshots?

7 A I recall two.

8 Q Okay. And then what did you do based on hearing
9 gunshots?

10 A First, I went to -- I went to check -- I went
11 upstairs.

12 Q All right, let me show you State's Exhibit 12.
13 Maybe that could help us orient to where you're saying
14 upstairs.

15 A I went upstairs to kind of check out the
16 neighborhood. So I went to --

17 Q When you say -- let me interrupt.

18 A Sorry.

19 Q I apologize. When you say upstairs, were you
20 already inside the house?

21 A Yes, sir.

22 Q Okay. So you went from the inside downstairs to the
23 upstairs?

24 A Yes.

25 Q So you could try to have a better vantage point?

1 A Um-hum.

2 Q Is that a yes?

3 A Yes.

4 Q Okay, and then what happened?

5 A I tried to check out the window over here, but it
6 was -- there was like no view. Like, it's very, like,
7 obstructed by this here. There's like nothing around, so I
8 tried to go to another window.

9 Q Let me stop you for a second.

10 A Go.

11 Q I'm going to show you State's Exhibit 1. You talked
12 about it being obstructed. Are there some trees in your yard
13 in that area?

14 A Yes, sir. Those are the trees that obstructed my
15 view.

16 Q Okay. So did you move based on that?

17 A Yes. I moved -- I moved over here by this window,
18 like in the -- this room over here.

19 Q Okay.

20 A I did see the car, but -- and I did see something --
21 something shiny, which turned out to be the blood.

22 Q Okay. What did you do based on seeing the car and
23 seeing what was shiny on the ground?

24 A What was, I guess, out of character for him was that
25 the door was open. Usually, he doesn't leave the door open.

1 Q To his car?

2 A To his car. Whenever he leaves, you know, to like
3 pick up the mail, usually, he just leaves -- he just closes
4 it.

5 Q Okay, let me stop you for a second. Speaking of
6 doors, where is -- as we look at State's Exhibit 12, where is
7 the front door?

8 A The front door is behind this car over here.

9 Q Okay. So what's the normal way of entry into the
10 home?

11 A Usually, through the garage.

12 Q Okay. So now, you were speaking about how the door
13 being opened seemed strange to you, and what did you do?

14 A Could you repeat the question?

15 Q You said that the door being open seemed strange to
16 you, so what did you do?

17 A Oh, sorry. The car door. I did see the car. I saw
18 the car door was open --

19 Q Yes.

20 A -- his car door.

21 Q Yeah, I apologize, you're right. The car door. So
22 what did you do?

23 A I immediately started calling my cousin --

24 Q Okay.

25 A -- like through his cell phone.

1 Q And do you know when you called your cousin?

2 A I believe it was like 12:09, somewhere around that

3 time.

4 Q When this happened back in August of 2017, did you

5 relay the information to the police when they eventually got

6 there as far as when you had actually called?

7 A Yes, sir. I called 911, and they started coming in.

8 Q Okay. So, first, you called your cousin?

9 A Yes, sir.

10 Q What happened?

11 A Oh. After I started calling him, I wanted to check

12 out what's going on, because I mean, the car is there; that

13 means he's there. So I went out the front door, and I just

14 saw him lying there.

15 Q Okay. Did you see anybody else in the area?

16 A I did not.

17 Q Okay. Anytime that you had been looking outside to

18 see what's going on after hearing the shots, did you see

19 anybody?

20 A I did not.

21 Q Okay. When you saw your cousin, where were you when

22 you first saw him?

23 A I was over here. I came out of the front door.

24 Q Okay.

25 A I walked a little further, because he was lying in

1 the ground over here.

2 Q Okay.

3 A And this retaining wall is obstructing my view, so
4 as I kept walking, I just saw his -- I just saw him there.

5 Q And what did you do?

6 A I immediately called 911.

7 Q And then did 911 tell you to do anything?

8 A Yes. They told me to -- I informed them of where
9 the gunshot, like, is; where the wound is. And they told me
10 to -- the first thing I should do is stop the bleeding. And
11 in order to do that, I needed -- they preferred I use a clean,
12 like, cloth. However, I was unable to get back inside because
13 of a jammed door, which is why I had to use my own t-shirt to
14 try to stop the bleeding.

15 Q All right. Did you take your t-shirt off?

16 A Yes, sir.

17 Q All right. And then did you try to stop the
18 bleeding of your cousin with that t-shirt?

19 A Yes.

20 Q Okay. When you ran outside, what were you wearing?

21 A I was wearing a -- I was wearing like basketball
22 shorts and a white t-shirt.

23 Q Okay, and did you have anything on your feet?

24 A I did not, because I usually -- like, we -- we
25 usually entered mostly through the garage, so we don't leave

1 anything like in the front, like, steps.

2 Q Okay.

3 A Like, we don't leave slippers, shoes there.

4 Q So you took your shirt off when you were trying to
5 stop the bleeding, and then what happened?

6 A I was mostly speaking with the 911 operator. Oh,
7 well, first, when -- I'm sorry, I have to go back a little
8 bit.

9 Q Okay.

10 A After I spotted him, I decide to call 911. They --
11 they told me to find a clean, like, cloth, right? I attempted
12 to go back inside. I couldn't get back inside because the
13 door was like jammed, as -- it was just jammed. So I was
14 ringing the doorbell, trying to call more of my family members
15 outside for help. And I went back down here, and then used my
16 shirt to stop the bleeding.

17 Q Okay.

18 A In the meanwhile, I was speaking to the 911
19 operators. Some of my neighbors did come out, and I
20 instructed them to try to -- try to go to like the opposite --
21 like, I told one of them to go over here, another one to go
22 somewhere over here, and instructed them to try to pin down
23 the officers, just to -- just so they can easily spot the
24 streets.

25 Q Try to flag the officers?

1 A Exactly.

2 Q Okay, all right. And then, based on you ringing the
3 doorbell, did anybody from your family come out?

4 A Yes, sir. My -- the rest of my family did.

5 Q Okay. What did they do when they got out?

6 A My mother was crying. So was my -- my sister and my
7 step-dad were in distress.

8 Q Okay. And did you stay with your cousin?

9 A Yes, I did.

10 Q And did you continue to try to put pressure?

11 A Yeah, I continually held the -- the t-shirt there.

12 Q All right. And then, your family members, did they
13 come nearby --

14 A Yes, sir.

15 Q -- to where you were?

16 A Yes.

17 Q You described them as distressed?

18 A Yes.

19 Q Okay. And then did the police make it to the scene?

20 A Yeah, I believe the police officer was there first,
21 then the ambulance.

22 Q Okay. What did the police officer do when he got
23 there?

24 A He instructed me to continue, like, holding the --
25 holding the t-shirt, like, onto my cousin's head, again, to

1 try to stop the bleeding.

2 Q And then did the paramedics arrive?

3 A Yes.

4 Q Okay. Did they come and take over for you?

5 A Yes.

6 Q What did they do?

7 A I -- the guy -- one of the paramedics just -- one of

8 the paramedics took hold of the T -- like, the pressure for

9 me, and I'm not really sure exactly what the details were

10 after that.

11 Q Okay.

12 A I kind of just backed away.

13 Q And when you backed away, did the paramedics take

14 over?

15 A Yes, pretty much.

16 Q Okay. Did you eventually get yourself a t-shirt?

17 A Yes, I did. I instructed my sister to get me a

18 t-shirt and a slipper. At the same time, I kind of didn't

19 want her to see anything; the scene, I guess.

20 Q And what was your concern about your sister? Why

21 were you concerned about your sister?

22 A She's autistic --

23 MR. SANFT: Your Honor --

24 THE WITNESS: Sorry.

25 MR. SANFT: I'm going to object to this line of

1 questioning as being irrelevant and highly prejudicial.

2 THE COURT: Do you want to approach?

3 MR. SANFT: Yes.

4 (Bench conference)

5 MR. SANFT: I don't understand the relevance of what
6 we're getting in here about -- I mean, it's nothing to do
7 about whodunit; it's not about preserving evidence. I'm not
8 quite clear why we hear about an autistic --

9 MR. PESCI: Well, I don't know where the defense is
10 going. And in the body-worn camera, there's evidence of
11 people acting understandably very emotionally, and I think
12 that that's an added layer to the emotional reaction that's
13 based on her condition, and, you know, that's why I'm trying
14 to get that out, so.

15 MR. SANFT: But I think that's more prejudicial than
16 probative in terms of what exactly you're trying to do with
17 that. I don't understand what the purpose of that is. How
18 does that go back to the issue of who did what in terms of
19 this person dying?

20 MR. PESCI: Because he's trying to get her out of
21 the scene, and so we've got tons of people in the scene that
22 are not responding right away. If you remember the video, the
23 officer's telling them repeatedly to move back, and some don't
24 move back right away. And so that can be some explanation as
25 to -- but I'm not going to stand up and say, convict him

1 because his sister's autistic.

2 THE COURT: Right. Okay, I'm going to allow it.

3 Does anybody else want to say anything?

4 MR. RUGGEROLI: No, Your Honor.

5 THE COURT: Okay.

6 (End of bench conference)

7 THE COURT: Okay, you may proceed.

8 MR. PESCI: I'm sorry, Your Honor?

9 THE COURT: You may proceed.

10 MR. PESCI: Okay, thank you.

11 BY MR. PESCI:

12 Q Did you -- if I heard it correctly, did you say your

13 sister brought out to you a shirt?

14 A Yes, sir.

15 Q And did you say sandals?

16 A Yes, slippers.

17 Q Kind of like slippers for --

18 A Flip-flops, yes.

19 Q Okay, all right. And then were there other officers

20 that arrived?

21 A I believe so.

22 Q Okay. Did officers speak with you and with your

23 family members outside in the area in front of the parked

24 cars?

25 A Mostly around this area here. I believe their main

1 concern was to preserve the evidence, as I recall them telling
2 me.

3 Q That was my point. Did they move you away from the
4 area where your cousin was to a different location to the
5 side?

6 A Yes.

7 Q In fact, eventually, didn't they ask you to even --
8 to go -- did they ask permission to go into your house --

9 A Yes, they did.

10 Q -- to speak with you?

11 A Yes.

12 Q And did they speak with you inside?

13 A Yes, sir.

14 Q All right. And in speaking with you, did you
15 recount to them some of the things that you've just told us?
16 Did you tell them about the things that you just told the
17 jury?

18 A Oh, yes, yes.

19 Q Okay. And did they ask to see some things based on
20 what you had told them?

21 A Yes, sir.

22 Q Okay. So I'm going to show you what's been
23 previously shown to defense counsel as exhibits -- try and get
24 them in order. Okay, so 30, 31, 32, 35, 36, 72, 76, 77, and
25 78.

1 MR. PESCI: I don't believe that there are any
2 objections.

3 MR. SANFT: No, Your Honor.

4 MR. RUGGEROLI: No, Your Honor.

5 MR. PESCI: Move for the --

6 THE COURT: They're admitted.

7 (State's Exhibits 30, 31, 32, 35, 36, 72, 76, 77, and 78 are
8 admitted)

9 MR. PESCI: Thank you.

10 BY MR. PESCI:

11 Q I'm going to show you these in the same way we did
12 that, okay? So earlier, you talked about your cousin going
13 through the mail in the car. Showing you State's Exhibit 30,
14 do you recognize that car?

15 A Yeah, this is the CRV --

16 Q Okay, is that --

17 A -- we still have.

18 Q Is that the car your cousin drove?

19 A Yes, sir.

20 Q Looking at State's 31, is that the back seat area of
21 your cousin's car?

22 A Yes, sir.

23 Q And then, kind of focusing in on State's 32, is that
24 a close-up of some of the items on the ground or the
25 floorboard in the backseat area?

1 A Yes.

2 Q All right. And then, showing you Exhibit 35, do you
3 recognize that?

4 A Yes, that's his ID.

5 Q Okay. And that's your cousin, Gabriel?

6 A Yes, sir.

7 Q That you refer to as Kevin?

8 A Yes.

9 Q All right. And then, showing you State's Exhibit
10 36, do you recognize that item?

11 A Yes, I saw this a couple days after.

12 Q Okay. What is -- is it Fukumimi Ramen?

13 A It's a ramen shop -- restaurant --

14 Q Okay.

15 A -- by Eastern.

16 Q And was your cousin someone who would go there
17 often?

18 A Yes, yes.

19 Q All right. And then, this receipt's dated on August
20 the 8th of 2017 at about 8:59 P.M.?

21 A Yes.

22 Q Is that correct? Okay. Showing you Exhibit 78.
23 When you were out there working on your cousin, did you see
24 items of mail that had been ripped?

25 A Yes. He often does that with -- with junk mail.

1 Q Okay. And then, showing you State's 77, next to the
2 items that are ripped, whose glasses are those?

3 A Those are his glasses.

4 Q Okay. And then, showing you State's 76, whose phone
5 is that?

6 A That's his iPhone.

7 Q All right. Now, earlier, you spoke of a retaining
8 wall. Is that where this iPhone is located?

9 A Yes, sir.

10 Q All right, so is that down the slope of that third
11 parking area where the CRV was parked?

12 A Yes.

13 Q Okay. And that's your cousin's?

14 A Yeah, it's his phone.

15 Q Did you see how it got there?

16 A I remember it was -- I was still calling -- no.
17 After I rang the doorbell, I believe my mother or someone in
18 the family started calling his phone. It was still in his
19 hand. It was -- it was ringing --

20 Q Okay.

21 A -- while I was holding the -- his wound.

22 Q So when you were working on your cousin, you saw
23 this phone in your cousin's hand?

24 A Yes, sir.

25 Q And so, when people inside were calling, your

1 cousin's phone was ringing?

2 A Yes.

3 Q All right. Do you know how it got from your

4 cousin's hand to that retaining wall?

5 A I remember it got -- like, the paramedics picked him

6 up on the stretcher, and I recognized it, like, just drop, and

7 someone bent over to pick it up and place it on the retaining

8 wall.

9 Q Okay. Showing you -- speaking of phone -- phones,

10 State's 72, do you recognize that phone?

11 A That's -- yes. That's my aunt -- his aunt, my

12 mother, calling him. That's -- this is me calling him.

13 Q Okay. So that's a screenshot of your cousin's

14 phone?

15 A Yes.

16 Q Okay. And so you -- you said that -- JP, is that a

17 nickname that you have?

18 A Yes, that's my initials for --

19 Q Okay.

20 A It's my first and middle.

21 Q And you were calling your cousin at 12:10 A.M.?

22 A Yes, sir.

23 Q All right. And then, this is pictures being taken

24 on Wednesday, August 9th at 4:51 A.M.?

25 A Yes.

1 Q So the police are talking to you, and they're
2 getting this information from your phone -- or from your
3 cousin's phone?

4 A Yeah, from my cousin's phone.

5 Q Right. But that's based on the information that you
6 gave to them that you had called him and that your aunt had
7 called him?

8 A Yes. My mother, his aunt.

9 Q I'm sorry. Your mother, his aunt. I apologize.
10 And then did you speak to the police and tell them all these
11 various things that you've been telling us here today?

12 A Yes, sir.

13 Q Okay.

14 MR. PESCI: Court's indulgence.

15 BY MR. PESCI:

16 Q I want to go back to Exhibit 31. Do you recognize
17 what any of those items are in the back seat?

18 A He usually plays the -- those tabletop games, like,
19 you know, Dungeons and Dragons, Warhammer 40K, all that.

20 Q Okay.

21 A And those are just figurines. There's like a lot of
22 them. That's -- what do you call it? That's like -- that's
23 like foam to like keep -- it usually cuts as a shape just to
24 keep like those things secure.

25 Q Okay.

1 A Like -- yeah.

2 Q So those items in the car, this foam, and this is

3 the -- the tabletop games that you referred to?

4 A Yeah, the figurines.

5 Q Okay, and that's what you knew that he enjoyed

6 playing?

7 A Yes, sir.

8 Q Okay.

9 MR. PESCI: Pass the witness. Thank you.

10 THE COURT: Cross-examination?

11 MR. SANFT: No cross, Your Honor.

12 MR. RUGGEROLI: I have no questions, Your Honor.

13 THE COURT: Okay. Thank you very much for your

14 testimony here today. You may step down. You are excused

15 from your subpoena. Thank you for being here.

16 THE WITNESS: Thank you, ma'am.

17 THE COURT: And you may call your next witness.

18 MR. BROOKS: Your Honor, the State calls William

19 Speas.

20 THE MARSHAL: If you'll please remain standing,

21 raise your right hand, and face the Clerk.

22 WILLIAM SPEAS, STATE'S WITNESS, SWORN

23 THE CLERK: You may be seated. Please state and

24 spell your first and last name for the record.

25 THE WITNESS: My name is William Speas.

1 W-i-l-l-i-a-m, and then Speas, S-p-e-a-s.

2 MR. BROOKS: May I, Your Honor?

3 THE COURT: You may.

4 DIRECT EXAMINATION

5 BY MR. BROOKS:

6 Q Mr. Speas, how are you currently employed?

7 A Currently, I'm -- I'm retired.

8 Q And when did you retire?

9 A Two years ago.

10 Q And prior to that, how were you employed?

11 A I was Las Vegas Metro Police Department CSI.

12 Q And what -- what is that? What were your duties?

13 A Crime scene investigator. My jobs were to go out to
14 scenes, assist officers or detectives on the scene, document,
15 photographs, taking notes. Also, collect and protect evidence
16 to process for fingerprints.

17 Q And tell me -- tell me about the progression. So,
18 essentially, did you start as a CSA 1, or was that term not
19 even around when you started?

20 A Yes, it was.

21 Q Okay.

22 A I started out -- I went to a crime scene
23 investigation academy and graduated from that. I was a crime
24 scene analyst or CSA 1. Then, progressed to CSA 2, and then
25 to senior CSA, which is what I was when I retired.

1 Q And senior CSAs, would senior CSA typically do
2 different type of investigations than you would have done as a
3 CSA 1?

4 A We can do more complex crime scenes. Actually, as a
5 2, I did some pretty complex ones, too. It all depends on
6 manning.

7 Q Now, I want to turn your attention to August 9th,
8 2017. Do you remember an incident that brings us here to
9 court today?

10 A Yes, I do.

11 Q And were you part on an investigation that started
12 on that day and proceeded for a few days?

13 A Yes.

14 Q So tell me a little bit about when you were
15 initially dispatched, where you were sent.

16 A Okay. At -- we were sent to a resident on Dewey a
17 little after midnight.

18 Q And is that 5536 West Dewey Drive?

19 A That should be it.

20 Q And is that here in Las Vegas, Clark County, Nevada?

21 A Yes, it is.

22 Q Okay. So when you get there, tell me, as a crime
23 scene analyst, you show up; what do you do first?

24 A First, we meet with the detectives and we kind of go
25 hash out a little plan of what we want to do. I was the lead

1 CSI on this one, which meant I was the one that did reports
2 and photographs. So I started out, I would photograph the
3 entire scene as we saw it when we arrived. And then, later,
4 as we did search, we found pieces of evidence or evidence that
5 was right out there. They were marked, they would be
6 photographed again, showing where evidence was, and then we
7 photograph what the evidence was.

8 Q Okay. So when a CSI is eventually dispatched and
9 sent to a scene, is the victim typically still present?

10 A It -- it will vary. In this scene, the victim had
11 been transported.

12 Q So the victim had already been transported to UMC?

13 A Yes, prior to -- well, I'm not sure where, but prior
14 to our arrival, the victim had been transported.

15 Q Okay. And so, when you arrive, do you arrive with
16 another CSA? Not necessarily at the same time, but are you
17 kind of paired with someone?

18 A We arrive pretty much the same time. It was Ebony
19 Stephens.

20 Q Oh, sorry, that's a poor question. Yeah, did you
21 have like a partner this day?

22 A Yes, I did.

23 Q And who was that?

24 A That was Senior Crime Scene Analyst Ebony -- Ebony
25 Stephens.

1 Q And has she since retired?

2 A She -- yes, she has also retired.

3 Q Okay. So you kind of mentioned earlier -- forgive
4 me, I don't remember the word. Did you say you were primary,
5 and she was secondary, or what? How does that work?

6 A It -- it varies. We work as a team. Basically, I
7 was the one that, like I said, did photographs and report.
8 And in this place, she did evidence and diagram.

9 Q Oh, okay. So is that typically how it's broken up?

10 A It will break it up, yes.

11 Q And what does diagram mean?

12 A Diagram is just as it sounds. Diagram is just a --
13 she'll go out and she'll make a sketch of the area. She'll
14 measure out like landmarks, driveways, walls where a house is
15 located, and then just the whole -- basically, the scene.
16 Then she will go around where all the evidence is.
17 She'll find a point of reference, like the end of -- in this
18 case, I believe it was the end of a wall. And they'll say,
19 okay, this piece of evidence is so many feet west, so many
20 feet north of -- of this corner of the wall or whatever. And
21 she'll measure in all the pieces of evidence that we find
22 there so that we would supposedly be able to go back and place
23 them.

24 Q And so, you said diagram. Does that happen on every
25 case, or just on some?

1 A It happens on major cases, most -- we do those on
2 homicides and officer-involved shootings.

3 Q And when you said reference point, does she pick
4 like a chair, or does she pick something --

5 A No, she picks something that's permanent, stationed
6 in there. Nothing that can be moved.

7 MR. BROOKS: And Your Honor, I've shown all these
8 photos to defense. So at this point in time, may I approach
9 occasionally with different packets of the photos to work with
10 Mr. Speas?

11 THE COURT: Sure.

12 MR. SANFT: And Your Honor, just for the record, on
13 behalf of Mr. Robertson, we have no objection to their
14 admission at this particular time.

15 MR. RUGGEROLI: Same for Mr. Wheeler.

16 THE COURT: Okay. Do you just want to cite for the
17 record what you have?

18 MR. BROOKS: Yes. Exhibits 37 through 56.

19 THE COURT: Okay, they're admitted.

20 (State's Exhibits 37 through 56 are admitted)

21 MR. BROOKS: Exhibits 9 through 36. Some have -- a
22 couple have already been admitted with the last witness.

23 THE COURT: Okay, they're admitted.

24 (State's Exhibits 9 through 36 are admitted)*

25 MR. BROOKS: Exhibits 57 through 71.

1 THE COURT: They're admitted.
2 (State's Exhibits 57 through 71 are admitted)
3 THE COURT: They're admitted.
4 MR. BROOKS: Exhibits 72 to 80.
5 THE COURT: They are admitted.
6 (State's Exhibits 72 through 80 are admitted)
7 MR. BROOKS: And Exhibits 81 to 92.
8 THE COURT: And they are admitted.
9 (State's Exhibits 81 through 92 are admitted)
10 MR. BROOKS: And then, those -- that's with the West
11 Dewey address. The second one that I'll work with him later
12 on is 2 -- is the Bagpipe address, 215 to 229.
13 THE COURT: They're admitted.
14 (State's Exhibits 215 through 229 are admitted)
15 MR. BROOKS: And 230 to 234.
16 THE COURT: And they are admitted.
17 (State's Exhibits 230 through 234 are admitted)
18 MR. BROOKS: May I publish, Your Honor?
19 THE COURT: You may.
20 BY MR. BROOKS:
21 Q So, Mr. Speas, you were kind of talking about a --
22 that diagram. Do you recognize what's depicted here?
23 A Yes, this is a diagram that Ebony made.
24 Q Okay.
25 THE COURT: What exhibit is that?

1 MR. BROOKS: Oh, I'm so sorry. Exhibit 37.

2 BY MR. BROOKS:

3 Q And now, I kind of want to -- I want you to walk us
4 through, because you took the photos. So walk us through,
5 essentially, as I go through these photos, what you're doing
6 and why you're taking certain photos. Exhibit 10?

7 A Okay, this is a location photograph. I'll do some
8 that pan around the area. As you can see, the sky is kind of
9 a cobalt color. This was late at night; it was dark. What I
10 had done for this, I had taken a timed exposure, putting my
11 camera on a tripod, and then having my exposure for an
12 extended period of time, which you do for that color and
13 stuff. It wasn't quite that light; it was a lot darker.

14 Q Okay, I want to move to a different sort area and a
15 different zoom. On State's Exhibit 13, what are you doing
16 here?

17 A Okay. That moved in, this is like an RV driveway
18 that they have, and that is right there on the -- in front of
19 the house.

20 Q Do you recall that driveway being slanted?

21 A Yes, it's slanted from the west going up to the
22 east.

23 Q And you note that in your report. Why would you
24 note something like that?

25 A Just to -- well, as things could roll down. In this

1 case, we have apparent blood that's there; we had cartridge
2 cases. Anything that just could -- gravity would just take it
3 down that hill --

4 Q Okay, so when Ms. --

5 A -- incline.

6 Q When Ms. Stephens on the crime scene diagram is
7 noting where cartridge cases are found, that is where they
8 were static. But your -- when you're going to report and
9 noting the slant, is that why you're doing that, so that those
10 two could be used in conjunction?

11 A It could be. I just did it because that's what I
12 saw.

13 Q Okay. Exhibit 15?

14 A Okay. This -- if I can mark on here?

15 Q Yes, sir.

16 A All right.

17 Q With -- oh, with the mouse now.

18 A Okay. Right -- this area here, this is the
19 sidewalk, this is the cinder block wall, this is the opening
20 or the beginning of that little driveway.

21 Q Let me get you a different photo. Why were you
22 documenting here, 17?

23 A I was just documenting this apparent blood and these
24 -- also, we have some torn mail, and some apparent footwear,
25 and apparent blood that's also on the pavement.

1 Q And State's Exhibit 23, what is that?

2 A That's a vehicle that was parked at the end of the
3 driveway, at the east end.

4 Q Exhibit 24?

5 A That's just another view of it, showing that the
6 passenger door is slightly open -- or is open.

7 Q Now, tell us about the -- in the diagram, Ms.
8 Stephens notes cartridges. I want you to explain to us what
9 we're seeing in 38. What are those yellow markings there?

10 A Okay. That you can see, right back here is one --
11 these are little -- called tent markers. They're numbered
12 tent markers. This is just a view going back to kind of show
13 where they're at. I'll do a series of these photos as they
14 come in, so you'll be able to read -- read the tent markers,
15 read the numbers on them. What they do is they mark the
16 location of pieces of evidence, and they -- the numbers
17 corresponds to the numbers that are given to -- to each piece
18 of evidence. Like, Tent Marker number 1, Evidence Item number
19 1.

20 Q All right. Showing you a different angle, do you
21 see in State's Exhibit 41 those same tent markers?

22 A Yes, I see -- yes.

23 Q All right. I want to zoom-in on just some of the
24 tent markers, and then what essentially they were. So here's
25 State's Exhibit 45. What is that?

1 A That is a .22 caliber cartridge case.

2 Q And in State's Exhibit 44, is that what it looked
3 like prior to you putting the tent marker there?

4 A Yes, it is.

5 Q Now, after you've taken those photos without
6 disturbing it, what do you do here in State's Exhibit 46?

7 A What I did, after I had photographed it in place and
8 showed where it was, I placed it on top so you were able to --
9 I was able to photograph the headstamp. As you can see -- can
10 we enlarge that?

11 Q Let me see if I can.

12 A Yeah. It's -- there is a letter C on there. It's a
13 small cartridge case. .22s don't normally say .22 caliber,
14 but the "C" shows who the manufacturer is.

15 Q Now, I want to show you Exhibit 50. What is that?

16 A That's the headstamp of the .45 caliber cartridge
17 case.

18 Q And was that Item 2?

19 A Yes.

20 Q Showing you Exhibit 53, what is that?

21 A That's another .45 caliber cartridge case.
22 Different headstamp, but the same caliber.

23 Q And lastly, Exhibit 56?

24 A Again, a .45 caliber cartridge case. Also a
25 different headstamp, but same caliber.

1 Q Okay. See if you can then, with that mouse -- and
2 then we'll put back up Exhibit 37. And here, Ms. Stephens has
3 labeled 1, and then 2 through 4.

4 A Yes.

5 Q So could you use that mouse and tell us where each
6 thing would have been?

7 A Okay. Number 1, which was the .22 caliber case, is
8 right here. That is like right at the bottom of the -- looks
9 like the bottom of the incline, going up into the -- want to
10 make sure exactly where the incline comes in right here. But
11 it's right at the opening of the -- of the driveway here,
12 because here's the wall. It's right here near a retainer
13 wall.

14 Our Item number 2 is out here in the street;
15 cartridge case. Item number 3, another cartridge case, is
16 right here. And Item number 4 is right here, kind of on the
17 walkway.

18 Q Perfect. Now that we've looked at that, I'm going
19 to show you Exhibit 39. And I'll try to zoom-in a bit.

20 A Yeah, I can -- I can --

21 Q Can you --

22 A I can make these out.

23 Q Can you see what you just described to us?

24 A Okay. Like, here's Item number 1 again, the .22
25 cartridge case right -- here it is, right there at the start

1 of the incline. Number 22 out in the street -- number --
2 number 2, which is a .45 out in the street. Number 3 is right
3 at the entrance. And number 4 right here on the walkway or
4 the little sidewalk where it curves up.

5 Q And now, you weren't in charge of impounding; that
6 was Ms. Stephens?

7 A Yes.

8 Q Okay. So how long were you guys still at the -- at
9 the scene? Do you know? Were you guys in and out in 15
10 minutes?

11 A I -- no, no, no. This is an all night thing, pretty
12 much.

13 Q Okay. So were you there even when the sun rose?

14 A I believe so.

15 Q When the sun rose, did you take additional photos?

16 A Yes.

17 Q Showing you State's Exhibit 57. Oh, let me zoom
18 back out.

19 A Okay.

20 Q Is that -- is that you who took that?

21 A Yes.

22 Q All right. I want to show you, when the sun was up,
23 did you guys have a little more light, and were you able to
24 find something that you didn't see the night before?

25 A Yeah. This is not unusual on a crime scene, is

1 we're working in the dark and searching for things as small as
2 cartridge cases, or bullet, or bullet fragments in the dark,
3 and then when the sun comes up and we have a lot of light,
4 we'll find additional stuff. That's one of the reasons we
5 would stick around and we would search. And we were
6 constantly searching as we were going around photographing and
7 -- and looking at the scene.

8 Q So I want to show you State's Exhibit 63. Do you
9 see a cone there?

10 A Yes, it's a cone. It's right -- right here next to
11 this palm tree.

12 Q Now -- and is that the car in the left side of that
13 photo --

14 A Yes.

15 Q -- to help us orient us where we are?

16 A So that would be towards the east end of the
17 driveway, and then over into the planter area.

18 Q All right. Now, I want to zoom-in on that cone in
19 State's Exhibit 64. Why did you put that cone there?

20 A That would be to -- trying to see if that's it. The
21 cone was placed to mark, I believe, a bullet or bullet
22 fragment.

23 Q Okay. Now, it's not really clear because of that.
24 So now the cone's moved away. I'm going to zoom-in a bit in
25 State's Exhibit 62. Do you see now why you placed the cone

1 there?

2 A Yes, it was a bullet there.

3 Q Okay. I'm going to zoom-out, show you State's
4 Exhibit 65. What are we looking at?

5 A We're looking at a bullet. It's a spent -- it's
6 called a spent bullet. This bullet has impacted something.
7 That's not what it looks like coming out of the -- when it's
8 fired out of the cartridge. And I took this photo because --
9 I can tell because it's my personnel number right here with my
10 initials.

11 Q And who's holding it? Do you know?

12 A It's probably Ebony.

13 Q Okay, and you're taking it. Who would have
14 impounded that?

15 A Ebony.

16 Q Ebony would have impounded it?

17 A Yes.

18 Q So if that bullet needed to be tested, it was in her
19 sole care and custody until being impounded, even though
20 that's your P number right in front of it?

21 A Yeah, just my P number, just to show I photographed
22 it. Yes.

23 Q After you leave the scene -- or I guess, while
24 you're at the scene, do detectives gain some sort of
25 information about a possible other place of interest?

1 A I was -- yes. I was -- well, in fact, I went to one
2 the next night. I'm not sure exactly when they got that, but
3 I know that I was dispatched for a search warrant the
4 following evening.

5 Q Okay. So -- oh, no, sorry. That morning, roughly
6 6:00 -- 5:00, 6:00 A.M. when you leave the West Dewey
7 location, do you go to a convenience store?

8 A Oh, yes.

9 Q And was that based on something that detectives
10 learned while --

11 A Yes. There was -- there was some conversation about
12 there may have been some suspects that were seen at this
13 scene.

14 Q But you at least were told to go document just the
15 front?

16 A Yeah. It was right next to our lab, and I went and
17 photographed just the scene in case this came up.

18 Q Showing you State's Exhibit 71. Do you recognize
19 that?

20 A Yes.

21 Q Is that the convenience store you went to?

22 A Yes, it is.

23 Q Now, I want to ask you, back at the scene -- and
24 I'll represent that on Ms. Stephens's diagram, this says
25 "Cigarette butts" here in State's 73.

1 A Okay.

2 Q How do you -- how do you know? What is it there?

3 A Those -- we have them marked also with cones there.

4 Q Okay. And that's -- why would that be of interest

5 to you?

6 A Well, we will look on a scene like that, and we'll

7 look -- if we find cigarette butts, they are a good source of

8 DNA, especially through the filters on those, in case a person

9 of interest were to be smoking a cigarette and throw it down.

10 Q So that's why that would have been documented?

11 A Documented and collected.

12 Q And Ms. Stephens would have impounded that?

13 A Yes.

14 Q Okay. And then did you learn that there was a lot

15 of foot traffic around the victim?

16 A Yes. There was foot traffic around the victim

17 because, as he was there after he had been shot, first

18 responders showed up; paramedics, police -- or not --

19 paramedics, fire department.

20 Q And did you have the opportunity to take some

21 photographs of the people who were around the body?

22 A Yes. Because we found footwear prints there, we

23 took photographs of -- took photographs of the individuals and

24 the soles of their feet to -- so they could be compared to

25 footwear impressions that were -- or footwear prints that were

1 found on the pavement.

2 Q And is there a word for that that you would use?

3 A Just footwear comparison, or?

4 Q I guess, if it's the first responder and it's the
5 firefighter or the paramedic who picked the victim up and put
6 him on the gurney, if you're taking a photo of his shoe, why
7 are you doing that?

8 A We call them -- for elimination, just in case --
9 just to show that it -- it's not him.

10 Q Okay. So in State's Exhibit 81, we see some
11 firefighter there. And then, in State's Exhibit 83, what is
12 that?

13 A That's the sole of his shoe.

14 Q Okay. State's Exhibit 84, is that a paramedic?

15 A Yes.

16 Q And then, would you have also taken, in State's
17 Exhibit 86, the bottom of his shoe?

18 A Yes.

19 Q Additionally, in 87, so Exhibit 87, is that a
20 flip-flop sandal thing?

21 A Yes, a family member that had gone out to the scene,
22 too, and we took photos of the shoe that they were wearing.

23 Q And then, if you could just describe, I guess, for
24 the ladies and gentlemen of the jury, in 90, is that what you
25 were working on trying to eliminate?

1 A Yes.

2 Q All right. A few days later, does another location
3 become of interest in this investigation?

4 A I believe it was the following night.

5 Q It was the following night, August 9th, 2017,
6 around, what, 11:00 P.M.?

7 A Yes. It was not too long after I arrived to work.

8 Q Okay. And where were you dispatched?

9 A I was dispatched to a house on Bagpipe.

10 Q Is that 919 Bagpipe Court?

11 A Yes.

12 Q Here in Las -- North Las Vegas area?

13 A Yes.

14 Q All right. And I guess, forgive me, I didn't ask
15 this on the last one. When you initially arrived on the
16 scene, do you get some direction from detectives as far as
17 what's of interest; what you guys are looking to document?

18 A Yes. We'll -- we'll have a conference with the
19 detective or the police officers, whoseever the lead in there
20 when we arrive.

21 Q Do you remember who kind of the detectives were at
22 that initial Dewey scene that we talked about?

23 A I know there was -- I believe an Officer Jaeger, and
24 there was a different one. One of the other officers came to
25 us -- came with us on the night of the search warrant was the

1 lead. I don't remember exactly. It's two-and-a-half years
2 ago. I don't remember exactly which officers are there.

3 Q No problem. And at the 919 Bagpipe location, do you
4 recall which detective would have been at that location?

5 A I don't recall the name right now. It's in my
6 report.

7 Q If Detective Cook is in your report, is that --

8 A Yes.

9 Q Okay. So you get to that location. And tell us,
10 when a search warrant has been executed on an apartment or a
11 residence, do you go in while it's being executed? What --
12 what -- at what point do you go in and start taking photos?

13 A What I will do there is, normally, I'll go in, and I
14 will take photos of the scene. I'll take photos of what it
15 looks like. Officers will -- the location of evidence, I'll
16 take pictures of the search warrant, the returns, and anything
17 that's recovered there. Basically, I'm documenting the search
18 warrant and what's being done.

19 Q In State's Exhibit 215, although it says "19" up in
20 that corner, what was the residence?

21 A It would be in my report.

22 Q So if it's 919 in your report --

23 A Yeah.

24 Q -- is that just missing a number?

25 A That would be --

1 Q Okay. And then, showing you State's Exhibit 216,
2 are we just moving closer to the door here?

3 A Yes.

4 Q Okay. And then, 217, it appears you've gone
5 upstairs into the residence; is that correct?

6 A Yes.

7 Q All right. Tell us what we're looking at in 218.

8 A I'm not sure with this print and everything exactly
9 what we're --

10 Q Sure.

11 A -- you're referring to.

12 Q So let me show you three photos in succession, and
13 then you tell me what you were doing as the CSA. So that was
14 218, now 219, and then 220.

15 A Okay. This is -- I'm going -- this is just going
16 into the bedroom. And then, on the bed, we have a pink
17 backpack.

18 Q Okay. So that was kind of a progression of how you
19 would have walked once you got up the stairs --

20 A Oh, yes.

21 Q -- into a certain bedroom?

22 A Yes.

23 Q All right, and then you mentioned the pink backpack.
24 Let's go to State's Exhibit 222. Is that just a close-up?

25 A That's just a close-up of it.

1 Q Was there something of interest inside this
2 backpack?
3 A Yes.
4 Q What was it?
5 A It's a handgun.
6 Q And is this -- Exhibit 223?
7 A Well, that's a little dark, but yeah, there's a
8 handgun in there.
9 Q Yeah. I'm color-blind and that doesn't look
10 correct. Let me show you a different one in 224.
11 A Okay. That's the handgun that was recovered from
12 the bag.
13 Q So it was taken out of the bag, and that's --
14 A Yes.
15 Q -- that's why the previous photo had it in there?
16 A The reason it's all black in this area, it's in a
17 holster. It's in a black canvass holster.
18 Q And that's how you document it initially?
19 A Yes.
20 Q Would you then take it out in like State's Exhibit
21 226?
22 A Yeah, I did it in stages, and that's the handgun as
23 it's pulled out.
24 Q I want to show you 228. What are you doing here?
25 Why that photo?

1 A Okay. This -- I did a download just to show the
2 cartridges. These are the unfired cartridges that went into
3 it. This is the magazine. It came out of the bottom here in
4 the handle, the magazine well. As you can see, there's six
5 cartridges right here. Those came out of the magazine.
6 Sometimes, if there's one in the chamber, which is up here, I
7 will place that bullet in my photograph up here. This case, I
8 didn't, which means there was just six in the magazine; there
9 was none in the chamber.

10 Q And how many rounds did that magazine hold?

11 A 40 -- I'm not -- possibly seven or eight. Usually,
12 this is around seven. I'm not sure exactly. I didn't load it
13 all the way, and I didn't see any markings on this.

14 Q Now, would it have been in your report, or would
15 that be something that the firearms expert would have done?

16 A Firearms experts would have more information on
17 that.

18 Q Okay. And then, 229, what is that?

19 A Okay. That is showing the headstamps of the unfired
20 cartridges that came out of that magazine, and in this case,
21 they're all the same. They're all RP45 Auto; they're .45
22 caliber cartridges.

23 Q So that Interarms Star .45 caliber handgun, do you
24 impound it into evidence?

25 A Yes.

1 Q Would it stay in your sole care and custody until
2 being impounded into evidence?

3 A It would be either in my care and custody, or it
4 would either be under lock and key in a locker and in a locked
5 room until it was ready to be impounded. Once it was
6 processed and it was packaged up, it would be put into a room
7 that I couldn't even get into. That's where it would be
8 picked up by the evidence vault and taken away.

9 Q So did you do something forensically to this firearm
10 prior to impounding it?

11 A Yes. I swabbed the firearm for possible DNA
12 evidence, and then I also chemically processed the handgun and
13 the magazine for possible latent prints.

14 Q Okay, so explain that to us. You swabbed it for
15 DNA. How would that process --

16 A Okay. It's like a big Q-tip. It's slightly
17 dampened. On the handle where it has like a textured grip or
18 checkered grip on the handles, which can actually kind of peel
19 off our small epithelial cells from the palm, which is good
20 for DNA evidence.

21 Also, on the trigger, and on the hammer, and on the
22 slide, they all have little sharp edges or have -- so you can
23 grip them, but they also peel off little cells from the palm
24 of the hand. And that's why I was swabbing those areas, in
25 hope to collect possible epithelial cells or for DNA evidence.

1 Q And would that have been impounded under your P
2 number?

3 A Yes.

4 Q Additionally, did you swab the magazine?

5 A Yes. The magazine, I take it, and I swab it at the
6 base where it gets -- if you've ever seen in the movies where
7 the guy puts a gun in and he kind of punches it on the bottom,
8 that's the base. Also, at the top is where you push down the
9 cartridges to load -- load them into the magazine. There's
10 kind of like some sharp edges or -- that will also take off
11 epithelial cells.

12 Q When you said you processed these for prints, were
13 there any results?

14 A There was negative results.

15 Q Okay, and how would you have processed it?

16 A What I did is called a -- well, it's super glue,
17 cyanoacrylate fuming, but super glue fuming. They're put into
18 a tank which has got a humidity set into it, and then there is
19 a little pan of super glue that is heated in there. Once the
20 super glue fumes heat up, they adhere to fingerprints that --
21 they can adhere to fingerprints that are on there and make
22 them visible.

23 Then, I used a stain called Rhodamine 6G, which, if
24 they found fingerprints and everything, it would make them
25 more visible. And I did that to those two items and found

1 nothing on it. It's not unusual for handguns to be very bad
2 for fingerprints.

3 Q And did you impound any other items from this 919
4 Bagpipe house?

5 A I would have to look at my thing. I know I -- I did
6 the -- I had the swabs, I had the handguns, I had the
7 cartridge cases, I had the --

8 Q Holster?

9 A The holster, yes.

10 Q The bullets?

11 A Or -- yeah, cartridges.

12 Q Did you also do some Air Jordan shoes?

13 A Yes, yes. Excuse me. There was a pair of red Air
14 Jordan athletic -- high-top athletic shoes. And those were --
15 I got from under the -- under a desk, in I believe the same
16 room.

17 Q And so, kind of how you just said that those things
18 were impounded under your P number at that 919 Bagpipe house,
19 you know how we went through all the cartridges at the West
20 Dewey address; we went through --

21 A Yes.

22 Q -- the cigarette butts? Would those have been
23 impounded under Ebony Stephens's P number, which is 5158?

24 A Yes.

25 Q And that would include the four cartridges; the

1 bullet that you found in the morning?

2 A And the bullet fragment.

3 Q And the bullet fragment. Oh, okay. So the bullet
4 that we saw in the grass there --

5 A Yes.

6 Q -- was there also something else that you just
7 referred to?

8 A Yes, there was a bullet fragment. Bullets, when
9 they're fired, if they hit something hard, they hit -- hit the
10 -- if they come down, they ricochet, or if they hit the
11 cement, or actually, if they hit a body, hit bone or
12 something, they can fragment, and they a lot of times will not
13 stay intact.

14 Q Okay. So that will be impounded, but oftentimes not
15 tested because it's so small?

16 A Well, it can be test -- tested in which way? Are
17 you talking for identification? For --

18 Q Yes.

19 A It would all depend on the size of the fragment, on
20 what they have. A lot of times, they'll have copper that --
21 they'll have a lead core with copper wrapped around it for the
22 bullet, and the copper will have all the markings, but it will
23 peel off of it. That will be considered a fragment because it
24 doesn't have the whole bullet, but the striations will be on
25 the copper that I know that firearms identification can

1 sometimes get some info off of.

2 THE COURT: Okay. We're going to break right now
3 and take a recess.

4 During this recess, you're admonished not to talk or
5 converse amongst yourselves or with anyone else on any subject
6 connected with this trial, or read, watch, or listen to any
7 report of or commentary on the trial, or any person connected
8 with this trial, by any medium of information, including,
9 without limitation, newspapers, television, the internet, or
10 radio, or form or express any opinion on any subject connected
11 with this trial until the case is finally submitted to you.
12 We'll be in recess for 15 minutes.

13 THE MARSHAL: Thank you. All rise for the exiting
14 jury, please. Jurors.

15 (Court recessed at 4:01 P.M. until 4:14 P.M.)

16 (Outside the presence of the jurors)

17 THE MARSHAL: All rise for the entering jury,
18 please.

19 (Within the presence of the jurors)

20 THE MARSHAL: Thank you, everyone. Please be
21 seated.

22 THE COURT: Does the State stipulate to the presence
23 of our panel?

24 MR. PESCI: Yes, Your Honor.

25 THE COURT: Mr. Sanft?

1 MR. SANFT: Yes, Your Honor.

2 THE COURT: Mr. Ruggeroli?

3 MR. RUGGEROLI: Yes, Your Honor.

4 THE COURT: Thank you. You may proceed with your
5 direct.

6 BY MR. BROOKS:

7 Q Mr. Speas, just a couple last questions. Back to
8 that Dewey -- the primary scene, the Dewey Drive address, did
9 Ms. Stephens also impound a pair of eyeglasses with apparent
10 blood and a black fidget spinner?

11 A Yes.

12 Q And was one of the two cigarettes a Marlboro Red?

13 A Yes, it was.

14 MR. BROOKS: Thank you. Pass the witness, Your
15 Honor.

16 THE COURT: Cross-examination?

17 MR. SANFT: No cross, Your Honor.

18 MR. RUGGEROLI: Thank you, Judge. Need to get one
19 of the exhibits. If I could just --

20 THE COURT: Of course.

21 MR. RUGGEROLI: -- have Court's indulgence. 37.

22 (Pause in the proceedings)

23 CROSS-EXAMINATION

24 BY MR. RUGGEROLI:

25 Q Good afternoon. Is it Officer Speas?

1 A No, it's just Mr. Speas, if you want.

2 Q Mr. Speas. I'm going to show you State's 37. This
3 is that diagram. You're familiar with that, correct?

4 A Yes, I am.

5 Q Okay. Before we get into that, I want to back up
6 just a tad. When you're called out -- you said CSI, and I
7 think you were drawing a little bit of a distinction, just
8 maybe on time, between a CSA. Can you just clarify that
9 briefly?

10 A Okay. CSI -- and it's kind of become -- because of
11 the television program, everybody thinks of all of us as crime
12 scene investigators. We're actually called crime scene
13 analysts. The section is CSI; the actual individuals that
14 work in it are CSAs.

15 Q Okay, thank you. So when you come out, you have
16 certain tasks that you follow up on, and a lot of that is to
17 document, correct?

18 A Yes.

19 Q And then, do you do some independent investigation
20 of your own in looking for things, or do you just wait for
21 other officers, detectives, whoever to tell you where to do
22 your documentation?

23 A No, we search -- everybody searches.

24 Q Okay. Do you have like a special flashlight or any
25 other equipment that --

1 A I have a very bright flashlight, and then we would
2 do certain search patterns that -- you know, up, down, up,
3 down, and we're pretty thorough.

4 Q Okay. So looking at this State's 37, these numbers
5 correspond to the items that you found at -- at the scene and
6 documented, correct? So number 1, that's that .22 caliber
7 cartridge case?

8 A That's correct.

9 Q Okay. I don't think the State went through it, but
10 I did want to have you talk about it. This number 10, that
11 was a fidget spinner; is that right?

12 A Yes.

13 Q Okay. And then that would have been documented;
14 it's put on this diagram, correct?

15 A That's correct.

16 Q And then, you or -- is she your partner?

17 A She was a coworker.

18 Q Okay, and she's another CSA?

19 A Yes, she is.

20 Q And --

21 A Another senior CSA, yes.

22 Q Senior CSA, Ms. Stephens. One of the two of you
23 would have got the fidget spinner, and then impounded it, and
24 kept it under seal, and then --

25 A All of the -- all items of -- all items of evidence

1 were collected and secured, yes.

2 Q Okay. The car had the driver's side door open?

3 A Yes.

4 Q And it was like that when you arrived?

5 A Yes.

6 Q It's your understanding that it was like that at the
7 time? Nobody that responded that you're aware of would have
8 opened that door?

9 A No. When we arrived, that's the way it was.

10 Q Did you do anything to process the car for any
11 swabbing of DNA or processing for prints?

12 A Know we did a search. I do not recall.

13 Q Okay, so -- okay, break that down. You recall doing
14 a search?

15 A I recall we did a search in there.

16 Q And you did take some photos; we saw some of those?

17 A Yes.

18 Q But in terms of specifically swabbing the car for
19 DNA or for processing for prints, you're not sure?

20 A No, I don't believe we did.

21 Q And then, you did document the -- and I wanted to
22 have you clarify this, if you don't mind. The -- there was a
23 pool of blood located near number 13, correct, because that's
24 where that t-shirt was?

25 A Yes, it was right down at the bottom of the incline.

1 Q Could you use the mouse and just show the jury where
2 13 is, please?

3 A Right -- here's number 13.

4 Q Thank you. And so there was -- there was a pool of
5 blood that led down the slope of that embankment, correct?

6 A I believe it actually -- instead of going down the
7 embankment --

8 Q Right.

9 A -- it kind of came kind of south here.

10 Q And for the record, you're going from kind of top to
11 bottom?

12 A Yeah, top to bottom.

13 Q Thank you. You had noticed that there was a number
14 of footprints in the blood?

15 A We all noticed that, yes.

16 Q And so what you did was you tried to eliminate
17 certain prints of known contributors, including the firemen,
18 correct?

19 A First responders, yes.

20 Q AMR, correct? But you're not a footprint expert?

21 A No.

22 Q And so all you did was document it?

23 A We documented, and we looked, yes.

24 Q And you are aware that there are experts that would
25 testify potentially that would do an actual expert analysis of

1 footwear or impressions; you're not that guy though?

2 A I am not that guy.

3 Q Okay, thank you. How far was your perimeter, for
4 lack of a better word, in this exact location to look for
5 evidence?

6 A Hmm.

7 Q And before you answer that, I'll clarify. If you
8 could put the mouse on 11 and 12. Okay. Those were where the
9 cigarette butts were found?

10 A Yes.

11 Q And then, down back to 10 again, if you don't mind.
12 Correct?

13 A Yes.

14 Q Okay, but there are no other numbers on the street.
15 If you go to the east on the -- yes. That's Lindell, right?

16 A Yes.

17 Q Did you have information that there was a vehicle
18 located over there?

19 A I'm not sure when I heard, but I did know that there
20 was apparently a vehicle parked out in that area.

21 Q And I don't know if we saw any photos; I don't
22 recall any. Did you take any photos of that street at that
23 location?

24 A I took a photo of the street sign showing at the
25 corner, and that's for the location.

1 Q In terms of those numbers there, those are
2 documented pieces of evidence, correct?

3 A Yes.

4 Q And I don't see any numbers for anything located on
5 that east side over on Lindell Street?

6 A No.

7 Q Okay. Do you know how thoroughly that was searched?

8 A Been two years. I -- I know that we -- but this is
9 all conjecture. What's standard procedure, we would have
10 walked up and down, and we would have looked around the area.

11 MR. RUGGEROLI: I have nothing further. Thank you,
12 Your Honor.

13 THE COURT: Thank you. Any redirect?

14 MR. BROOKS: No, Your Honor.

15 THE COURT: Okay. Thank you very much for your
16 testimony here today. You may step down. You are excused.
17 Thank you for being here.

18 THE WITNESS: Okay.

19 THE COURT: You may call your next witness.

20 MR. PESCI: State calls Sergeant John Tromboni. May
21 I approach your Clerk?

22 THE COURT: Uh-huh.

23 THE MARSHAL: If you'll please remain standing,
24 raise your right hand, and face the Clerk.

25 JOHN TROMBONI, STATE'S WITNESS, SWORN

1 THE CLERK: You may be seated.

2 THE WITNESS: Thanks.

3 THE CLERK: Please state and spell your first and
4 last name for the record.

5 THE WITNESS: It's John Tromboni. J-o-h-n,
6 T-r-o-m-b-o-n-i.

7 MR. PESCI: May I proceed, Your Honor?

8 THE COURT: You may.

9 MR. PESCI: Thank you.

10 DIRECT EXAMINATION

11 BY MR. PESCI:

12 Q Sir, what do you do for a living?

13 A I'm a sergeant with the Las Vegas Metropolitan
14 Police Department.

15 Q How long have you been with Metro?

16 A Almost 14 years now.

17 Q Back in August, specifically August 8th and 9th of
18 2017, were you a sergeant at that time, or were you patrol?

19 A I was a patrol officer.

20 Q Okay. And what area did you patrol?

21 A Enterprise Area Command.

22 Q All right. What are the -- kind of the boundaries
23 of Enterprise?

24 A There's two sections. There's Ocean area, which is
25 Sunset south all the way to the M. And then, there's Sam

1 area, which is north of that all the way to Flamingo.

2 Q All right. The names Ocean and Sam, is that
3 something that, internally, you as police officers designate
4 for an area?

5 A Yes, they're sector beats.

6 Q All right, a sector beat?

7 A Yes.

8 Q What was your sector beat back in August of 2017?

9 A It was Ocean area.

10 Q I want to show you State's Exhibit 5, which has been
11 previously shown to defense counsel. Do you recognize that?

12 A Yes.

13 Q Is that a fair and accurate depiction of an aerial
14 of this area that you were describing?

15 A Yes.

16 Q Is Enterprise Area Command, a part of it, in this
17 photograph?

18 A Yes.

19 MR. PESCI: Move for the admission of State's
20 Exhibit 5.

21 THE COURT: Any --

22 MR. SANFT: No objection.

23 MR. RUGGEROLI: No objection.

24 THE COURT: It's admitted.

25 (State's Exhibit 5 is admitted)

1 MR. PESCI: And ask to approach?

2 THE COURT: You may.

3 BY MR. PESCI:

4 Q Looking at State's 5, tell us if you can in this
5 area where Ocean is.

6 A Ocean starts Sunset --

7 Q There's a mouse -- there's a mouse there. If you'd
8 grab the mouse.

9 A Oh, I can grab it? Okay, cool.

10 Q There you go.

11 A Pretty much Sunset all the way to the 15 and then
12 south is Ocean area.

13 Q Okay. And then, on August the 8th of 2017, were you
14 assigned to a call regarding a suspicious vehicle and/or
15 individuals in a certain area?

16 A Yes.

17 Q Okay, how does that work? How do you get assigned
18 to a call? What -- what happens?

19 A Oh, it all depends. If you're one of the units that
20 are clear, then dispatch automatically assigns you.

21 Q Okay. When you say clear, meaning you're not
22 currently working on a particular call, so you're open to take
23 a call?

24 A Correct.

25 Q All right. And on that particular night -- or the

1 early morning hours of the 9th, did you get sent to that
2 particular call about suspicious individuals and a vehicle?

3 A I believe I did eventually through -- through the
4 night when I was assigned to another call.

5 Q Okay. The other call that you were assigned to,
6 what was that?

7 A That was a 415A, which is a shooting.

8 Q Okay. So, the 415A came in after you got the
9 earlier call about a suspicious area -- or vehicle?

10 A Yeah, I'm not sure the timing. I'd have to look at
11 the CAD.

12 Q Okay. What is a CAD?

13 A The CAD is the details of the calls. It has times,
14 who's assigned, where you're assigned.

15 Q Okay, but you do recall going to a 415A?

16 A Correct.

17 Q And that is what?

18 A It's a shooting.

19 Q Okay. And do you remember where it was that you
20 responded to for that shooting?

21 A I do.

22 Q Okay, where was that?

23 A It was in the area of Dewey and Jones --

24 Q Okay.

25 A -- I believe, or Lindell, to be specific.

1 Q And when you responded to that area, what did you
2 do?

3 A I believe at that time, I took a perimeter spot,
4 just to block off traffic.

5 Q What does that mean, a perimeter spot?

6 A It's -- throughout a specific area, units take a
7 perimeter spot. It's pretty much a location of where you're
8 going to be if you have to direct traffic, stop traffic.

9 Q Showing you what's been admitted as State's 13.
10 When we look off on the right hand side of that exhibit, is
11 there some yellow tape?

12 A Yes, it looks like it.

13 Q Is that tape that will be set up to set up a
14 perimeter?

15 A That will --

16 THE COURT: Are you publishing 13?

17 MR. PESCI: Yes. Is it not in yet?

18 THE COURT: Okay, that has not been admitted --

19 MR. PESCI: Oh, I apologize.

20 THE COURT: -- so I just want to make sure.

21 MR. SANFT: No objection, Your Honor.

22 MR. RUGGEROLI: No objection.

23 THE COURT: Okay, it's admitted.

24 (State's Exhibit 13 is admitted)

25 MR. PESCI: Thank you. I apologize.

1 BY MR. PESCI:

2 Q State's 13. Do you see that yellow crime scene tape
3 off to the right hand side?

4 A Yes.

5 Q Okay. Now, is that an example of kind of the
6 perimeter that you were speaking of earlier -- a perimeter?

7 A That could be a perimeter location, yes. It just
8 designates -- sometimes the air unit tells us where to go
9 because they can see better from the aerial view.

10 Q Okay. And so you were assigned to a perimeter,
11 correct?

12 A Yes.

13 Q All right. And then, at some point, did you leave
14 that area or clear that call?

15 A Yes, I -- there was that other call that you were
16 talking about, that suspicious person or vehicle call.

17 Q Uh-huh.

18 A And I realized it was in our same area.

19 Q Okay.

20 A So I had them assign me to it so I can close it out.

21 Q All right. To close it out -- what happens to close
22 something out?

23 A Because it's something that we were already on
24 another call, so we know that vehicle or person that is on --
25 that was called in, they're not in that area, because we are.

1 So it was just for us to close that out.

2 Q All right, so that one was closed out at that point?

3 A Yes.

4 Q Okay. Now, did you leave this 5536 Dewey area that

5 we see depicted in State's Exhibit 5 and head back to your

6 area?

7 A Yes.

8 Q All right. So what's the dividing line between

9 Ocean -- and what was the other area?

10 A Sam area.

11 Q Sam area? And was the shooting in Sam or Ocean?

12 A It was in Sam.

13 Q All right. So you were in Sam; your normal area is

14 Ocean. Did you head south towards your area, Ocean?

15 A Yes.

16 Q Okay. Had you been at that location for some time,

17 that is, the 5536 Dewey area?

18 A Yes.

19 Q All right. Did you need to use the bathroom?

20 A I did.

21 Q Okay. Where did you stop to do that?

22 A Well, I was going to go to the nearest convenience

23 store, and from taking Jones south, the nearest one was right

24 there at Jones and Warm Springs.

25 Q All right. Would you mind, with the --

1 A Oh, sorry.

2 Q -- mouse, showing us Jones?

3 A Yeah. Coming down -- this is Russell here. Coming
4 down Jones, that would have been the first -- there's one
5 here, but instead of making a U-turn, I had to go, so that was
6 the first one I was going to go to.

7 Q Okay. And is that a Short Line Express convenience
8 store?

9 A Yes.

10 Q All right. Now, the town has expanded somewhat
11 since August of 2017; is that correct?

12 A It has, yes.

13 Q All right. So but at that time, was that the
14 closest bathroom for you?

15 A Correct.

16 Q All right. Are you familiar with an Officer Jose
17 Lopez?

18 A I am.

19 Q Was he also working that night?

20 A Yes.

21 Q And was he a part of the Ocean area?

22 A Yes.

23 Q Okay. Did the two of you actually both need to go
24 to the bathroom?

25 A I believe he did also, yeah.

1 Q Okay. All right. Now, we've heard some information
2 about body-worn cameras. Are you familiar with those?
3 A Yes.
4 Q All right. In anticipation of testifying, did you
5 review some body-worn camera?
6 A Yes.
7 Q Specifically, that of Officer Lopez?
8 A Correct.
9 Q And then, are you seen or depicted in Officer
10 Lopez's body-worn camera?
11 A I am.
12 Q Okay.
13 MR. PESCI: Your Honor, we have marked as State's
14 Exhibit 331 that video that's been shown to defense counsel.
15 I believe there's no objection.
16 MR. SANFT: That's correct, Your Honor.
17 MR. RUGGEROLI: He's testifying, right? You're
18 definitely bringing in the Clerk?
19 MR. PESCI: Yeah.
20 MR. RUGGEROLI: Yeah, no objection.
21 THE COURT: Okay. 331 is admitted.
22 (State's Exhibit 331 is admitted)
23 MR. PESCI: I would ask to publish 331.
24 THE COURT: You may.
25 (Video is played)

1 BY MR. PESCI:

2 Q Sergeant, is that you?

3 A Yes.

4 (Stopped playing of video)

5 MR. PESCI: Okay.

6 BY MR. PESCI:

7 Q At the very end, you're seen going inside of the
8 store; is that correct?

9 A Correct.

10 Q And is that a store inside of your area?

11 A Yes.

12 Q Okay. Do you often -- or, not often. Do you
13 sometimes speak with individuals inside of businesses inside
14 your area?

15 A Pretty much every night, yes.

16 Q Okay. So when you went in there, in addition to
17 using the bathroom, did you speak with the Clerk?

18 A Yes.

19 Q Did you ask him any questions?

20 A We usually just -- that night, yes. We -- I asked
21 if -- we must have struck up a conversation as far as his
22 evening, and then, that's pretty much it.

23 Q Okay. But from what he said -- without saying what
24 he said specifically, but from what he said, did it spark some
25 interest in you based on the shooting scene you had left?

1 A Yes.

2 Q Okay. Did he give you information that made you
3 want to see more from inside the store?

4 A Yes.

5 Q Okay. Did you ask him questions based on what he
6 had said to you?

7 A Yes.

8 Q What did you ask him?

9 A I had asked him about a description of people that
10 were in there, and a car that they were driving, if he knew
11 about it.

12 Q All right. Without saying what he said, did he give
13 you information in that regard?

14 A Yes.

15 Q And then, did you ask about video surveillance based
16 on what he told you?

17 A Yes.

18 Q Were you able to see that video surveillance?

19 A No.

20 Q All right. But did you ask him, that Clerk, to
21 obtain that video surveillance?

22 A If he could, yes.

23 Q All right. Did you remain there while that
24 surveillance was obtained?

25 A No.

1 Q Okay. Did he have to call for someone to get that
2 surveillance?
3 A Yes.
4 Q All right. The information that you received from
5 that store Clerk, did you pass that information along to other
6 officers?
7 A I did, yes.
8 Q All right. And the information that you had
9 received from him, did you think it could be connected from
10 the shooting scene you had already gone to?
11 A Yes.
12 Q And based on that, you passed that information
13 along?
14 A I did, yes.
15 Q Okay.
16 MR. PESCI: Pass the witness.
17 THE COURT: Cross-examination?
18 MR. SANFT: No cross, Your Honor.
19 THE COURT: Mr. Ruggeroli?
20 MR. RUGGEROLI: Judge, I have no questions. Thank
21 you.
22 THE COURT: Okay. Thank you very much --
23 THE WITNESS: Okay.
24 THE COURT: -- for your testimony here today. You
25 may step down, and you are excused. And you may call your

1 next witness.

2 MR. BROOKS: Your Honor, the State calls Nikolaus
3 Spahn.

4 THE MARSHAL: Please step up into the witness stand.
5 Remain standing, raise your right hand, and face the Clerk,
6 please.

7 NIKOLAUS SPAHN, STATE'S WITNESS, SWORN

8 THE CLERK: You may be seated. Please state and
9 spell your first and last name for the record.

10 THE WITNESS: Nikolaus Spahn. N-i-k-o-l-a-u-s.
11 Last name is Spahn, S-p-a-h-n.

12 DIRECT EXAMINATION

13 BY MR. BROOKS:

14 Q Mr. Spahn, I want to turn your attention back to
15 August 9th of 2017. Do you recall an incident that brings us
16 here to court today?

17 A Yes.

18 Q Back then, where were you working?

19 A Yes, I was.

20 Q Where?

21 A Short Line Express.

22 Q And where's that located?

23 A That's located on Jones and Warm Springs.

24 Q Tell me a little bit about -- I want to turn your
25 attention around roughly 11:30 P.M. that night.

1 A Um-hum.

2 Q Did something unusual happen?

3 A No, just a regular night. I work by myself, I work
4 graveyard, and I had four suspects come in my store that was
5 just out of the ordinary.

6 Q Well, sorry. You used the word "suspect." Just --

7 A I mean, like -- like, they just looked suspicious to
8 me because I was working by -- I'm working by myself. So as
9 soon as they came into my store, it raised a concern.

10 Q Was there just one thing in particular that raised
11 your concern?

12 A Yeah, they were just -- they were just -- a bad
13 vibe, more or less. They went in, looking around, not asking
14 any questions.

15 Q But was there something on one of the four
16 individuals that caused you concern?

17 A Yes, there was a holster on one of his sides.

18 Q And was it just a holster?

19 A As far as I know, it looked like a holster. I
20 couldn't really see a split -- clear image of a gun, but it
21 was a gun holster, and he used the restroom for about 15 to 20
22 minutes.

23 Q The person who had the --

24 A Correct.

25 Q And so did that cause you some concern, that the

1 person who had the gun --

2 A Yes.

3 Q -- was using a bathroom --

4 A Yes.

5 Q -- for an extended period of time?

6 A Yes.

7 Q You work graveyard?

8 A Correct.

9 Q And at this point in time, was that store -- did it

10 have a lot of regulars?

11 A I had my normal -- normal crowd of regulars that

12 came in on grave.

13 Q Okay.

14 A So when I seen a group of someone that wasn't out of

15 the regular, it raises concern, you know?

16 Q Were -- so these guys weren't regulars?

17 A No.

18 Q Okay. How often would you say during your time did

19 you work there?

20 A What do you mean?

21 Q How many years?

22 A I worked there for three years.

23 Q And during that time, how often would someone walk

24 in open carrying?

25 A Not very often. I mean, not -- here -- here and

1 there. I mean, not all the time.

2 Q Under ten? Under five?

3 A About ten, I'd say.

4 Q Ten? Each time, did it cause you a little concern?

5 A Yeah, of course.

6 Q Okay. So that's kind of what mainly sparks --

7 A Correct.

8 Q Okay. Do you do something while one of the regulars

9 is in the store?

10 A Yes, I drop all my money.

11 Q What does that mean?

12 A I drop all my money, meaning I take all my money out

13 of the register because I'm only supposed to have X amount of

14 money in my drawer per company. So when they came inside the

15 store, I had a regular in front of me. I dropped all my money

16 inside an envelope, and I put it in a safe drop, and I dropped

17 it.

18 Q Now, was that just out of precaution?

19 A Yes, out of precaution.

20 Q Get it out of your hands?

21 A Correct.

22 Q It turned out that no one ever used the gun, or

23 flashed the gun, or anything?

24 A No. I didn't feel threatened, there was no -- there

25 was no incident like that. It was just a gut instinct. I

1 just felt -- I just felt uncomfortable.

2 Q You never felt threatened; just gut instinct, and
3 you just --

4 A Just gut instinct.

5 Q Okay. At some point, do these four gentlemen leave
6 the store?

7 A Yes.

8 Q And then, do they stay around outside, or do they
9 just leave?

10 A When I seen them leave, and after I get done helping
11 the rest of my customers that were inside the store, I go
12 outside and I smoke a cigarette, and they're just sitting
13 there at the table, just hanging out at the table.

14 Q Did you get a chance to see what car they were in,
15 or what car they left in, or --

16 A They arrived in a white Mercury, I believe.

17 Q At that point in time, did you think it resembled
18 some other type of car?

19 A Yes, I thought a Crown Vic.

20 Q New or old?

21 A An older one.

22 Q Now, that was at around 11:30. I want to
23 fast-forward later into the night. At some point, do a couple
24 officers come in?

25 A Correct. About 12:15, 12:20.

1 Q Just to use the store?

2 A They just came in, stopped in, and said, hey, how's
3 your night going? And I was like, good, and I expressed what
4 happened. And then they're like, oh, okay. It raised a
5 little concern, and they started asking questions.

6 Q And do they ask specifically if you saw a vehicle?

7 A Yes.

8 Q What vehicle they were in?

9 A Yes.

10 Q At that point in time, does the officer's demeanor
11 kind of change?

12 A Yes. He told me to call my manager to get
13 surveillance tape, and I had to fill out a police officer
14 report.

15 Q Now, those two officers that you initially dealt
16 with, do they stay all night, or does some other detective
17 come later?

18 A Some other detective comes in the morning.

19 Q And is that who gets the video surveillance?

20 A Correct.

21 Q Have you had an opportunity to view these video
22 surveillance clips about this time frame that we're
23 discussing?

24 A No.

25 Q Did you have the opportunity to come in and meet

1 with me and Mr. Pesci?

2 A Yes.

3 Q And we showed you some video clips?

4 A Yes, yes.

5 Q And is -- was that video --

6 A Yes.

7 Q -- surveillance clips --

8 A Sorry.

9 Q -- of this time period?

10 A Yes.

11 Q Did you mean at that night, you didn't?

12 A At that night, no, I didn't.

13 Q Okay.

14 A Because I had no access to it.

15 Q Do these video clips fairly and accurately depict

16 the interaction that you were referring to during that time

17 period?

18 A Yes, it does.

19 Q Okay.

20 MR. BROOKS: Your Honor, having shown defense

21 State's Proposed Exhibit 328, we'd move for admission.

22 MR. SANFT: We have no objection.

23 MR. RUGGEROLI: No objection.

24 THE COURT: Okay, it's admitted.

25 (State's Exhibit 328 is admitted)

1 BY MR. BROOKS:

2 Q Now, Mr. Spahn, we're going to just play a couple
3 different clips; we won't go through all of it. Fair to say
4 I'm not going to hear any sound here?

5 A No.

6 (Video is played)

7 BY MR. BROOKS:

8 Q Is this a camera posted on the outside of your
9 store?

10 A Yes, it is.

11 Q Is that the gas station across the street from your
12 store?

13 A Yes.

14 Q You saw a white vehicle just pull into a parking
15 spot there?

16 A Correct.

17 Q Is that the white vehicle you later tell detectives
18 and officers about?

19 A Yes.

20 Q Now, initially, does one individual come in, and
21 then later on, all three come in?

22 A Yes.

23 Q And by later on, just a few seconds, minutes later,
24 right?

25 A A few seconds later, yeah.

1 Q Okay. I'm going to switch to another angle. Where
2 is this camera placed? Like, what are we looking at?

3 A This camera is faced right in front of the store.
4 As soon as you walk in, there's a monitor right in the --
5 right in the view.

6 Q So you saw one individual just walk in, and now two
7 more are behind him. Do you recognize something in this video
8 picture that caused you concern that night?

9 A Not in that -- that particular direction -- view of
10 that picture, but yes. In person, yes, he was the person
11 behind him.

12 Q Oh, okay. So you're saying that you didn't have
13 this view that night?

14 A That's from the camera view. I was sitting -- I was
15 sitting live, direct, so I seen that -- I seen a better view.

16 Q Let's get one that's a better depiction of your
17 view. Do you see yourself there?

18 A Yes.

19 Q See the person that's right in front of you at the
20 register, kind of like you should be helping him?

21 A Um-hum.

22 Q Do you recognize that person?

23 A Yeah, that's my regular. That's when I was making
24 the money drop; doing the safe drop.

25 Q Oh, okay. So you were supposed to be helping him,

1 but instead, you wanted to do the money drop?

2 A Yeah, I let him know. I gave him -- I warned him.
3 I was like, I got to make a drop, give me a second.

4 Q Okay.

5 A He said, okay, no problem, because I'm by myself.

6 Q And I'm sorry, I worded that poorly. I wasn't
7 trying to say you weren't doing your job when I said "supposed
8 to." I'm sorry. Behind your regular, what have we seen here?

9 A Three more customers.

10 Q Specifically, the three people behind him?

11 A Three people behind him.

12 Q Are these the four men that entered the store?

13 A Yes.

14 Q And is that man right there with that thing on his
15 hip, is that the open carry that you were discussing?

16 A Yes.

17 Q What are you doing?

18 A I'm making a safe drop.

19 (Stopped playing of video)

20 BY MR. BROOKS:

21 Q Now, Mr. Spahn, when you do that money drop, at no
22 point does someone pull a gun or say, hey, give me that?

23 A No.

24 Q No? Okay. And then, eventually, do those four
25 guys, including the one who has the gun on his hip, attempt to

1 buy stuff or do buy stuff?

2 A They bought a water.

3 Q Does one of them try to buy something, and you say
4 no?

5 A Yes. They tried to buy a tobacco product, and they
6 didn't have an ID, so I said no. I refused to sell.

7 Q Eventually though, does someone else come in, and
8 you sell --

9 A Someone comes else in and buys the exact same
10 particular Black and Mild, with a Swisher and a box of
11 condoms, and it was paid on a debit card. So I can't really
12 recall if that was for them outside, but -- if they sent
13 somebody in, you know, fishing for them, but I can't totally
14 recall that.

15 Q Okay.

16 MR. BROOKS: Nothing further. Pass the witness,
17 Your Honor.

18 THE COURT: Cross-examination?

19 MR. SANFT: Yes, Your Honor. All right.

20 CROSS-EXAMINATION

21 BY MR. SANFT:

22 Q Mr. Spahn, you -- you're a Clerk, you're at the
23 store. You can't sell tobacco products to somebody that you
24 believe is under a certain age, right?

25 A Correct. As long as they don't have ID, then I

1 can't sell it to them.

2 Q So if I were to walk in to buy a pack of cigarettes,
3 would you ID me as well?

4 A Yes, I would.

5 Q Okay. Is that just because you have to ID
6 everybody, or because I look young enough to be under the age
7 of 18?

8 A I have to ID everybody.

9 Q Okay. I just want to make sure, because, you know.

10 A No, just doing my job. It's protocol; state law,
11 too. I got to ID everybody.

12 Q All right. Now, with regards to the video that we
13 saw here today, you're telling me that, outside of your
14 conversation with the district attorney prior to today's
15 hearing, that's the only time you've ever seen these videos?

16 A Yes.

17 Q Now, they're stuttery. Is that -- do know any
18 reason why that is?

19 A That's because that was an old camera system.

20 Q I --

21 A That was an old system we had, and now I guess they
22 upgraded it since I've been gone. So I guess they upgraded
23 their camera system, and they're probably better now.

24 Q Okay.

25 A But I mean, they're kind of poor quality a little

1 bit.

2 Q Yeah. And with regard to the location of these
3 cameras, you had one camera that's obviously in front of the
4 store looking at the gas pumps and so forth, then you've got
5 another camera that's on the inside facing towards the
6 entrance of the store?

7 A Um-hum.

8 Q And then you've got one camera that's behind you and
9 the cash register?

10 A Yeah. I have 32 cameras in that store.

11 Q Okay. What other locations are those other cameras
12 in?

13 A Down every single aisle. There's one right -- right
14 before the bathroom. There's one right on the -- to -- if you
15 walk out the door exiting the store, you have one right there
16 to the left, underneath the little awning. Then you have one
17 to the right by the chair -- by the tables and the water jug.
18 Then you have one in the car wash. You have one in the back.
19 You have one facing the garbage cans. You have one in the
20 cooler. We have cameras everywhere.

21 Q That's not an exaggeration.

22 A No.

23 Q Well, let me ask you this. Were all those cameras
24 working on this particular night?

25 A Yes.

1 Q Okay. And as far as you know, once again, you're
2 not responsible for those cameras operating, fair?

3 A Fair.

4 Q That's somebody else who does that?

5 A Yeah, someone else.

6 Q Now --

7 A I mean, if our system goes out, if our camera goes
8 out, it goes out. I mean, sometimes there's a night where we
9 have no footage.

10 Q Okay. But in terms of those -- the location of the
11 recording device that records all that video footage --

12 A Um-hum.

13 Q -- do you have access to that?

14 A No, I do not.

15 Q That's in a separate office that's locked?

16 A No, that's in the office that's located in the
17 store, but I'm not a manager --

18 Q I see.

19 A -- just an employee, so I don't have access to that.

20 Q Got it. Okay. So on this particular night, you
21 told this jury that when you saw these four individuals come
22 into the store -- and I want to make sure I'm not putting
23 words in your mouth. They looked suspicious, they gave you a
24 bad vibe when they walked in, and they were looking around?

25 A Yes, because they looked lost. They were looking in

1 one direction of the store that had just ice, and they were
2 just looking just to see what was going on in the store.

3 Q Okay.

4 A And I was working by myself. I just seen, you know,
5 something on the hip, so I felt -- I was just doing safety. I
6 just feel -- you know?

7 Q Okay. So them walking in and looking around the
8 store, by looking at the ice, you -- made you feel
9 uncomfortable about it?

10 A Yeah. I was just taking protocol, I was just being
11 safe, so I just dropped all my money just in case, you know,
12 if something were to happen, they're not going to get a lot of
13 money, I mean, if -- I mean, take my life, whatever they want
14 to do, you know?

15 Q But I want to make sure you and I are clear though,
16 sir. So your testimony to this jury is these people walk in;
17 you see somebody with what you believe is an open carry?

18 A Correct.

19 Q But you just see what you believe is a holster; not
20 a firearm?

21 A Firearm holster.

22 Q You just see the holster; not the firearm?

23 A I seen the holster.

24 Q Okay. And you -- because of the fact that they're
25 wandering through the store, you felt uncomfortable enough

1 that you decided, I'm going to protect my money, I'm going to
2 make a drop right now --

3 A Correct.

4 Q -- because of that?

5 A Correct.

6 Q Was there any type of interaction between yourself
7 and any of these four individuals outside of just attempting
8 to purchase tobacco?

9 A No, everything was --

10 Q They didn't say anything to you?

11 A No. Hello, sir, how are you doing? That's it.
12 Just regular customers.

13 Q Okay. And with regards to that conversation between
14 -- or your interaction with whoever it was, do you recall who
15 that person was you had the actual conversation about the
16 tobacco?

17 A I -- I don't recall. That was three --
18 two-and-a-half years ago, three years ago.

19 Q Fair, fair enough. Well, let me ask you this
20 though. The -- so your -- you had told this jury as well, at
21 some point, they were sitting outside at the table?

22 A Yes. When they exited out the store, they were
23 sitting outside the table.

24 Q So there's a table that's provided for --

25 A Customers.

1 Q -- patrons to sit outside --
2 A Um-hum.
3 Q -- for a minute?
4 A Yeah.
5 Q And that's what they were doing outside?
6 A Correct.
7 Q Okay. Did you ever inform police of the fact that
8 they were sitting outside at these tables?
9 A No, I just informed -- they asked me the question, I
10 answered their question, and they just -- the information that
11 I gave them, it just fit -- fit the description. And they
12 said instantly, call my manager --
13 Q Okay.
14 A -- we need to pull surveillance film.
15 Q Did you at any point ever see any of the individuals
16 sitting at the table smoking a cigarette?
17 A I don't recall.
18 Q Okay, but would it be fair to say that that would be
19 a normal place for somebody who --
20 A Correct, yeah.
21 Q -- who's a patron --
22 A I sit there at the table and smoke cigarettes, and
23 I'm an employee, so.
24 Q Okay. And you said that the people that were there,
25 the four individuals that walked in there, they're somebody

1 that were not regulars, and that was another reason why it
2 caused you concern?

3 A Yes.

4 Q How does that work? I mean, you are --

5 A Because you work graveyard, and you have regular
6 customers that come in on a regular basis.

7 Q Okay, but --

8 A Like, on the weekends, you have your -- your little
9 crowds.

10 Q All right.

11 A But for the most part, you get your same regular
12 customers throughout, or you get the bar crowd, because
13 there's a bar right across from my store.

14 Q But you're technically right in the middle of Las
15 Vegas. It's not we're talking like Pahrump or Tonopah; you're
16 in the middle of Las Vegas. Are you telling me --

17 A I have a housing complex that's to the left side of
18 that store.

19 Q Okay.

20 A I have another Ampm that's to the caddy-corner, and
21 then I have this big Switch building that's a big data center
22 right across the street --

23 THE COURT: Okay.

24 THE WITNESS: -- and then I have a bar.

25 THE COURT: Sir, if you could wait until the

1 attorney is done --

2 THE WITNESS: Oh, okay, I'm sorry.

3 THE COURT: -- asking his question --

4 THE WITNESS: I'm sorry.

5 THE COURT: -- that would be helpful for us.

6 THE WITNESS: I apologize.

7 BY MR. SANFT:

8 Q I understand that you're nervous.

9 A Oh, no, it's just so long --

10 THE COURT: You're doing fine.

11 THE WITNESS: It's been so long.

12 THE COURT: You're doing fine.

13 THE WITNESS: I mean, I --

14 BY MR. SANFT:

15 Q And once again, I just want to make sure that you

16 and I are clear. You tell this jury that because they -- they

17 were not your regulars, you felt like you -- there was a

18 heightened level of suspicion already, fair?

19 A Fair.

20 Q Okay. Now, you've also told this jury now there is

21 an Ampm that's caddy-corner to where your location is, right?

22 A Correct.

23 Q Meaning it's diagonal from where you're at?

24 A Correct.

25 Q And then, there's a -- I think there's a bar that's

1 actually in the same vicinity as your --

2 A As my store.

3 Q -- gas station, right?

4 A Yes.

5 Q And then, you've also told this jury that there's a

6 housing development that's behind your location, right?

7 A Yes.

8 Q Those houses that are right there, and then there's

9 -- there's residences all over the place?

10 A Yes.

11 Q But because of the fact you -- once again, these

12 four people walk in, you don't recognize them, it's in the

13 middle of the night, and that caused you concern?

14 A Yes.

15 Q Okay. Do you recall how long they were in the

16 store?

17 A I can't recall.

18 Q Okay. Would that be something that would be

19 probably on the video cameras in terms of the length of time?

20 A Correct.

21 Q Okay.

22 MR. SANFT: Your Honor, I have no further questions.

23 Thank you.

24 THE COURT: Mr. Ruggeroli?

25 MR. RUGGEROLI: Judge, could I have Court's

1 indulgence?

2 THE COURT: Um-hum.

3 MR. RUGGEROLI: Judge, State had not moved to admit
4 a number of photos, and there's no objection. If we could
5 just have them admitted at this time.

6 THE COURT: Okay. Do you want to read them off?

7 MR. RUGGEROLI: Yes, please.

8 THE COURT: Thank you.

9 MR. RUGGEROLI: This is going to be State's 320,
10 321, 322, 323, 324, and 325.

11 THE COURT: And there's no objection?

12 MR. RUGGEROLI: No, Your Honor.

13 THE COURT: Mr. Sanft? Mr. Sanft, I just want to
14 make sure there was no objection.

15 MR. SANFT: Yes, Your Honor, there was no objection.

16 THE COURT: Okay.

17 MR. SANFT: Thank you.

18 THE COURT: They're admitted.

19 (State's Exhibits 320 through 325 are admitted)

20 MR. RUGGEROLI: Thank you, Judge.

21 THE COURT: Um-hum.

22 MR. RUGGEROLI: And in a minute, can I publish them?

23 THE COURT: You may.

24 MR. RUGGEROLI: Thank you.

25 CROSS-EXAMINATION

1 BY MR. RUGGEROLI:

2 Q Good afternoon, Mr. Spahn.

3 A Good morning. Good afternoon.

4 Q Are you positively working graveyard, or --

5 A Yes.

6 Q Yeah.

7 A Actually, I'm a handyman, so I worked -- I mean, I'm

8 just trying to wrap up these few last little jobs I got going

9 on, so.

10 Q Okay. I'm showing you State's admitted 324. And

11 you were asked about this photo. Do you see the individual in

12 the white hat and the lighter-colored pullover, and he's got

13 his hand on his -- on his waist?

14 A Yes.

15 Q You were asked about that. Are you aware of whether

16 or not that individual was taking a magazine out of that

17 firearm?

18 A I don't recall.

19 Q Okay. And now I'm showing you State's admitted 323.

20 That's just another angle. We watched a video of that,

21 correct?

22 A Correct.

23 Q Now, you indicated that you had worked there about

24 three years, correct?

25 A Correct.

1 Q One of the individuals was in the restroom, the one
2 with the holster that you say, for an extended period of time,
3 correct?

4 A Yes.

5 Q One of them asked to buy a Black and Mild. That's
6 like a cigarillo or something?

7 A Correct.

8 Q And you wouldn't sell it. Did they protest and get
9 out of line or anything when you said --

10 A No, no.

11 Q Okay, so that's a no?

12 A That's a no.

13 Q They left the store, and your store was empty?

14 A Correct.

15 Q And you had initially indicated that you had some
16 feelings of concern about those individuals specifically?

17 A Yes, because after everyone left the store, they
18 were just hanging out at the tables, and I was by myself. So
19 -- and it was just them four individuals, so it raised a --

20 Q Right. You didn't call 911?

21 A No.

22 Q You didn't call 311?

23 A No.

24 Q You didn't lock the door?

25 A No.

1 Q You actually exited the door and went outside?

2 A Yes.

3 Q Okay. And then, there was another individual that

4 came in and bought the same type of cigarillo that they had

5 wanted to buy that you didn't sell them?

6 A They wanted a Black and Mild, and the gentleman that

7 came in bought a Black and Mild Jazz with a cigarillo, and a

8 box of condoms as well.

9 Q And that was in very close proximity --

10 A Correct.

11 Q -- of time?

12 A Correct.

13 Q And so that individual was an African American,

14 correct?

15 A I don't recall.

16 Q And is he a regular?

17 A I don't recall.

18 Q You had written a Voluntary Statement --

19 A Um-hum, yes.

20 Q -- regarding this event?

21 A Yes.

22 Q To the best of your recollection, this happened

23 approximately 11:20 on August 8th, 2017?

24 A About 11:20 -- between 11:20 and 11:30.

25 Q Was your understanding at the time that the video

1 surveillance did not have a timestamp, an internal timestamp?

2 A I do not recall that.

3 Q Okay.

4 MR. RUGGEROLI: Thank you. I have nothing further.

5 THE COURT: Any redirect?

6 MR. BROOKS: Briefly, Your Honor.

7 THE COURT: You bet.

8 REDIRECT EXAMINATION

9 BY MR. BROOKS:

10 Q Mr. Spahn, do you remember the question that you had
11 a heightened concern based on the fact that you just didn't
12 recognize them?

13 A Yes.

14 Q Do you remember that question?

15 A Is it because you didn't recognize them, or is it
16 because you didn't recognize them and one of them was open
17 carrying in your store around midnight?

18 MR. SANFT: Objection, Your Honor, leading.

19 THE COURT: You are leading.

20 BY MR. BROOKS:

21 Q Which -- why were you -- why did you have a
22 heightened concern?

23 A Because I was working by myself and working
24 graveyard.

25 Q Okay. And at night, do people typically come in

1 that you don't know?

2 A Of course, every single customer. I mean, I don't
3 know everybody.

4 Q Do you always have a heightened concern?

5 A Always.

6 Q Okay. And in this situation, which one went into
7 the bathroom, and was it a normal time to be in the bathroom?

8 A I don't recall if they just went to -- they didn't
9 even ask for the bathroom key, they just went to the bathroom,
10 and the bathroom was unlocked.

11 Q Want to show you -- is that you coming out?

12 A Yes.

13 Q And this video motion sensor?

14 A No.

15 Q Which one was it that went in the bathroom?

16 A The one with the white hat and the maroon sweater.

17 Q Did he have the holster on his hip?

18 A I recall. I believe so.

19 MR. BROOKS: Nothing further, Your Honor.

20 THE COURT: Any recross?

21 MR. SANFT: Yeah. Actually, can I just watch that
22 video again? I don't know who walked into the bathroom. If
23 we could.

24 MR. PESCI: Sorry, it's going to --

25 MR. SANFT: Counsel, can we --

1 MR. PESCI: It's going to take a second for me to --

2 MR. SANFT: Okay.

3 MR. PESCI: -- get logged on. Sorry.

4 RECROSS-EXAMINATION

5 BY MR. SANFT:

6 Q Now, the State had asked you a question specifically
7 about motion sensors?

8 A Yes.

9 Q Meaning that if there is some type of motion, then
10 automatically turns on the video?

11 A Yes.

12 Q That's not what you had?

13 A No.

14 Q So your camera is running the entire time?

15 A Entire time.

16 Q Okay. So right here, this angle that we're showing
17 you is an angle from the hallway that's inside of the store,
18 facing towards the entrance of the store, actually, right?

19 A Yeah, because there's a women's bathroom right here
20 by -- on the back wall, and then there's a men's bathroom, and
21 then there's the cooler door --

22 Q Okay.

23 A -- that I just walked out of.

24 Q Okay. So just for the record, if we can -- well,
25 here. To the bottom lefthand corner of the screen, it looks

1 like there's a little sign right there. That's the female
2 bathroom?

3 A Yes.

4 Q And then, the other door that's on that same wall --

5 A Is the men's bathroom.

6 Q -- is the men's bathroom? Okay. Thank you. And
7 then, this door that's over here to the right, what is that,
8 the one that's open?

9 A That's the cooler door.

10 Q That's a cooler door? Okay.

11 A That's the cooler door.

12 Q And you've told this jury there's a camera in there,
13 too?

14 A Yes.

15 Q Okay.

16 A That -- that one is on motion sensor --

17 Q I see.

18 A -- in the cooler.

19 Q I see.

20 A Because no one can go in the cooler. I mean, unless
21 someone goes in the cooler, then it detects motion, then it
22 records.

23 Q Okay. So what we're going to see next is we're
24 going to see an individual wearing some type of athletic gear
25 that's going to walk here up in the front. That would have

1 been just a customer in the area, right?

2 A Correct.

3 Q Wearing the jersey? All right. And there's another

4 individual who's going to walk past him as well in that area,

5 fair?

6 A Fair.

7 Q Okay. Now, the next person that's going to walk

8 down, is that the individual you're saying was the individual

9 that had the open carry?

10 A Yes.

11 Q Okay. And that's the individual that's there that's

12 walking --

13 A Yes, because you can see it right here.

14 Q All right. Now, when that individual walks in, once

15 again, you're telling us that it's a holster, but no gun, as

16 far as you can tell?

17 A I can just tell, but I don't -- I don't really

18 recall, to be honest. I don't recall.

19 Q Okay.

20 A All I know is it was a holster.

21 Q All right.

22 A Whether the firearm was in there -- you see, the

23 sweater was kind of, you know, bulky, so -- but I don't recall

24 though.

25 Q All right. So this individual then walks into this

1 bathroom. Describe for us -- to the jury, is this a
2 single-person bathroom where you lock the door? Or is that
3 like you could walk in, and I could walk in after --

4 A No, actually, you're supposed to ask for the key.

5 Q I see. Did he ask for the key, this person?

6 A No.

7 Q And -- but the door was open?

8 A Correct.

9 Q Now, once again, is this a bathroom that has
10 multiple stalls in it, or is it just the one --

11 A Just one.

12 Q Okay.

13 A Just one toilet.

14 Q So what we're going to see here, though, I'm
15 assuming, is once this person walks into the bathroom, you've
16 testified to this jury at some point that you believe that he
17 was in there for a very long period of time?

18 A 15 minutes, yeah. And I didn't know he was using
19 the bathroom. He just went into the bathroom --

20 Q Okay.

21 A -- without asking for the key. You know, normally,
22 you ask for the key -- restroom key; where's the restroom at?

23 Q All right.

24 A He just walked right to it.

25 Q But once again, let's say, for instance, that's

1 accurate, and it was 15 or 20 minutes. Does that in and of
2 itself tell you anything at all but the fact that he was in
3 the bathroom for 15 or 20 minutes?

4 A Correct, yeah. He was using the restroom.

5 Q Okay. Anything at all, when he came out of the
6 bathroom and passed you on the way out the door, that --

7 A No.

8 Q -- indicated to you that he was there for any
9 malicious purpose outside of just visiting your store?

10 A No, sir.

11 MR. SANFT: No further questions, Your Honor.

12 MR. RUGGEROLI: Just --

13 THE COURT: Mr. Ruggeroli?

14 MR. RUGGEROLI: May I approach the Clerk?

15 THE COURT: You bet.

16 (Pause in the proceedings)

17 RECROSS-EXAMINATION

18 BY MR. RUGGEROLI:

19 Q Just briefly, Mr. Spahn. The individual that's in
20 front of the -- the four -- this is State's 322. Is this a
21 regular?

22 A At -- at the register?

23 Q Yeah.

24 A Yes.

25 Q And this is a knife that you see --

1 A No.

2 Q -- protruding from his shirt?

3 A No, that's his belt.

4 Q Okay. But you're familiar with him?

5 A Yes.

6 Q And there are some uncertainties that you have about

7 a number of details? This has been two-and-a-half years,

8 correct?

9 A Correct.

10 Q It's possible that the individual may have asked for

11 a key and you forgot?

12 A Well, he didn't have the key; he just opened the

13 door.

14 Q Okay. 15 minutes is an estimation?

15 A Correct.

16 Q And despite your feelings of uncertainty and

17 potential concern, after those individuals left, you went

18 outside as well?

19 A Correct.

20 MR. RUGGEROLI: I have nothing further.

21 THE COURT: Anything else?

22 MR. BROOKS: No.

23 THE COURT: Okay. Thank you very much for your

24 testimony here today. You may step down. You are excused

25 from your subpoena.

1 At this time, we are going to conclude for the
2 evening. During this recess, you're admonished not to talk or
3 converse amongst yourselves or with anyone else on any subject
4 connected with this trial, or read, watch, or listen to any
5 report of or commentary on the trial, or any person connected
6 with this trial, by any medium of information, including,
7 without limitation, newspapers, television, the internet, or
8 radio, or form or express any opinion on any subject connected
9 with this trial until the case is finally submitted to you.

10 You're further admonished you may not communicate
11 with anyone, including your fellow jurors about this case, on
12 your cell phone, through email, Blackberry, iPhone, text
13 messaging, or on Twitter, through any blog or website, through
14 any internet chat room, or by way of any other social
15 networking website, including, but not limited to Facebook,
16 Myspace, Linked In, and YouTube.

17 We are in recess until tomorrow morning at 8:30.
18 Thank you very much, and have a good night.

19 THE MARSHAL: Thank you. All rise for the exiting
20 jury. Jurors, please leave your notebooks on your chair.

21 (Court recessed at 5:06 P.M.)

22 (Court recessed at 5:06 P.M., until Friday,
23 February 14, 2020, at 8:46 A.M.)

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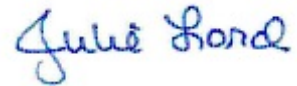
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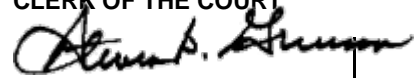
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ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual proceedings in the above-entitled case to the best of my ability.



JULIE LORD, COURT TRANSCRIBER
VERBATIM DIGITAL REPORTING, LLC



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,)	CASE NO. C-17-328587-2
)	CASE NO. C-17-328587-3
Plaintiff,)	
)	DEPT. NO. XII
v.)	
)	
RAEKWON SETREY ROBERTSON,)	
a/k/a RAEKWON ROBERTSON,)	
and DAVONTAE AMARRI WHEELER,)	
)	
Defendants.)	

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

FRIDAY, FEBRUARY 14, 2020

**RECORDER'S TRANSCRIPT OF PROCEEDINGS:
JURY TRIAL - DAY 4**

APPEARANCES:

FOR THE STATE:	GIANCARLO PESCI, ESQ. Chief Deputy District Attorney
	PARKER P. BROOKS, ESQ. Deputy District Attorney
FOR DEFENDANT ROBERTSON:	MICHAEL W. SANFT, ESQ.
FOR DEFENDANT WHEELER:	JAMES J. RUGGEROLI, ESQ.

RECORDED BY: SARA RICHARDSON, COURT RECORDER
TRANSCRIBED BY: VERBATIM DIGITAL REPORTING, LLC

1 LAS VEGAS, NEVADA, FRIDAY, FEBRUARY 14, 2020

2 (Case called at 8:46 A.M.)

3 (Outside the presence of the jurors)

4 THE COURT: Where's Mr. Wheeler?

5 THE CLERK: I think in the back. So, Mr. Ruggeroli,
6 there's your proposed exhibit you needed.

7 THE COURT: Okay. The record will reflect that the
8 hearing is take -- okay, are we getting Mr. Wheeler in here?

9 MR. RUGGEROLI: He's just finishing up.

10 THE COURT: Okay.

11 (Pause in the proceedings)

12 THE COURT: Okay. Both defendants are present, and
13 the hearing is taking place outside the presence of the jury
14 panel.

15 Officer Hawkes let me know that Juror number 10
16 approached him this morning and has some concerns about his
17 ability to remain fair and impartial. So I'm going to bring
18 Juror number 10 in and canvass Juror number 10. It is Caesar
19 Castro.

20 (Within the presence of Juror No. 10)

21 THE MARSHAL: Just straight ahead of you.

22 THE COURT: Okay. The record will reflect that Mr.
23 Castro, Juror number 10, is present in the courtroom -- you
24 can go right there at the podium -- and that this hearing is
25 taking place outside the presence of the other jurors.

1 Mr. Castro, it's my understanding that after some
2 evidence came in yesterday, that you now have some concerns
3 about --

4 JUROR NO. 10: Yes.

5 THE COURT: -- whether you can serve. Go ahead.

6 JUROR NO. 10: So during the jury selection, I
7 believe Mr. --

8 THE COURT: One of the DAs? Okay.

9 JUROR NO. 10: Yeah, asked if -- if we would get so
10 mad if we see footage of the victim. And at that time, I -- I
11 thought I would be fine, but after watching the footage
12 yesterday of the victim, that's exactly what happened to me,
13 and I don't think I can be fair and impartial anymore.

14 THE COURT: Okay. Who is it you think you're not
15 going to be able to be fair to?

16 JUROR NO. 10: Both.

17 THE COURT: Both sides?

18 JUROR NO. 10: Yes. Well --

19 THE COURT: Okay, based on the evidence --

20 JUROR NO. 10: The defendant --

21 THE COURT: -- that you saw?

22 JUROR NO. 10: The defendants' side.

23 THE COURT: Okay, based on the evidence that you
24 saw?

25 JUROR NO. 10: Just --

1 THE COURT: Okay, because you understand they're
2 entitled to the presumption of innocence unless and until the
3 State of Nevada can prove --

4 JUROR NO. 10: Yes, I --

5 THE COURT: -- these allegations by proof beyond a
6 reasonable doubt? Do you understand that?

7 JUROR NO. 10: I understand that.

8 THE COURT: Do you agree with that?

9 JUROR NO. 10: I agree with that.

10 THE COURT: Okay.

11 JUROR NO. 10: But after watching the footage, I
12 already formed an opinion.

13 THE COURT: What is that opinion?

14 JUROR NO. 10: Or judgment.

15 THE COURT: What is that judgment?

16 JUROR NO. 10: Guilty.

17 THE COURT: Okay. Just after seeing footage, you've
18 determined that these defendants are guilty?

19 JUROR NO. 10: Yes. I got so -- while watching the
20 footage, I was actually seething.

21 THE COURT: Well, it's okay to get mad.

22 JUROR NO. 10: I know.

23 THE COURT: It's just not okay to, you know, form an
24 opinion already.

25 JUROR NO. 10: But I did.

1 THE COURT: Okay, all right.

2 JUROR NO. 10: I'm sorry. This is the first time
3 I'm doing this, and --

4 THE COURT: Okay. Well, you know what, I appreciate
5 your -- I appreciate you approaching Officer Hawkes. I
6 appreciate you letting me know that. I don't know if either
7 side has any further follow up.

8 MR. PESCI: Not from the State.

9 MR. SANFT: No, Your Honor.

10 THE COURT: Okay.

11 MR. RUGGEROLI: Based on what he said, no.

12 THE COURT: Okay. All right, Mr. Castro, if you
13 just don't mind going outside. Before you do, I'm going to
14 instruct you not to discuss with your fellow jurors anything
15 that we have discussed in here. And if anyone insists on
16 speaking to you about what we discussed in here, I ask that
17 you make that fact known to Officer Hawkes. Have you
18 discussed any of your opinions with any of the other jurors?

19 JUROR NO. 10: No, I have not.

20 THE COURT: Okay. And I would just ask you
21 obviously not to discuss any of those opinions with any of the
22 other jurors, and you will agree to not do that?

23 JUROR NO. 10: I agree.

24 THE COURT: Okay. If you just don't mind waiting
25 outside, Mr. Castro. And again, I appreciate your --

1 JUROR NO. 10: I'm sorry.

2 THE COURT: -- honesty. No, I appreciate it.

3 (Outside the presence of Juror No. 10)

4 THE COURT: Okay, the record will reflect that Mr.
5 Castro has left the courtroom. Based on his representations
6 to the Court, I'm going to excuse Mr. Castro. I'm assuming
7 nobody has any objection?

8 MR. PESCI: Not from the State.

9 MR. RUGGEROLI: No, Your Honor.

10 MR. SANFT: No, Your Honor.

11 THE COURT: Okay. So, Officer Hawkes, you can go
12 out and let Mr. Castro know that he is excused, he can leave
13 the courthouse, and then Roberta Bell will become Juror number
14 10.

15 THE MARSHAL: Yes, Your Honor.

16 THE COURT: It's my understanding you may have some
17 other stuff outside the presence?

18 MR. PESCI: Yes, Judge. In speaking with defense
19 counsel this morning, specifically Mr. Ruggeroli was asking
20 about the Guilty Plea Agreement and the Agreement to Testify.
21 We marked that this morning.

22 We have done numerous efforts to doctor this thing
23 -- and I'm going to say this on the record -- to lie to the
24 jury about what's actually in this thing, and we have cut it
25 out pursuant to the case law. It's my understanding now that

1 defense counsel wants it in, which would have been nice to
2 know, because we spent a lot of time cutting that out, and
3 it's really not easy to do.

4 That being said, if he wants it in -- because the
5 case law says that, pursuant to Sessions, it has to come out;
6 but if during cross-examination there is the allegation of
7 lying, then it can come back in.

8 The problem with that, and since I didn't know this
9 was what was wanted, a completely clean, unredacted version of
10 the Agreement implicates Mr. Robertson in the other three
11 counts that we have severed because -- by implication,
12 arguably, right? Because those counts are not in front of
13 this jury. But when we originally did the deal, it
14 encompassed the case as it was originally charged.

15 THE COURT: Right.

16 MR. PESCI: And so, bringing it back completely
17 unredacted is a problem for Mr. Robertson. So I wanted to
18 bring that to Mr. Robertson's attention, to the Court's
19 attention, and figure out how we want to deal with this,
20 because you can't really just go with the whole unredacted
21 version.

22 THE COURT: Mr. Ruggeroli?

23 MR. RUGGEROLI: Thank you, Judge. Your Honor, the
24 -- the issue is -- and I believe the case law supports that,
25 essentially, if we open the door, if we get into notions of

1 having to testify to a certain version based on the
2 Agreement --

3 THE COURT: Right.

4 MR. RUGGEROLI: -- that we're getting into the
5 language that implicates the notion of what is truth --
6 truthfulness. And the Plea itself has that language, but my
7 understanding is the case law says that that's not originally
8 included. And I think that's to kind of protect defendants --

9 THE COURT: Uh-huh.

10 MR. RUGGEROLI: -- because it gives an overall
11 general idea of, well, this is true, and the State would then
12 have their kind of credibility of their witness bolstered
13 because there's a general notion of truthfulness, and that's
14 all that's being applied.

15 We do intend to attack that, and because of that, I
16 just -- I don't see any way that the State would not be
17 reinvested with the ability to have the actual language saying
18 -- because I think what they're going to argue once we do that
19 is, oh, no, wait a minute, here's what the Plea says, and this
20 is what you're only to do: you're only to testify to what is
21 true; it's not the State's version, it's just what is true.

22 So I -- I just don't see any other way to do it.
23 The problem is that there is that unredacted portion. I know
24 that it's, you know, the day after I found out that they were
25 going to provide a redacted version of that section that is

1 initially required to be taken out.

2 THE COURT: So you don't want it taken out?

3 MR. RUGGEROLI: Well, because I -- I don't want to
4 be limited in our ability to cross-examine Mr. Robinson about
5 --

6 THE COURT: You won't be.

7 MR. RUGGEROLI: Well --

8 THE COURT: I mean, I'm not going to limit your
9 ability to cross-examine a witness that has agreed to testify.

10 MR. RUGGEROLI: Well, so let's say we say, Mr.
11 Robinson, you took this deal because you have to testify
12 against the defendants; you have to say that Mr. Wheeler was
13 one of the people with you at the shooting, or you don't get
14 the benefit of this agreement. I suspect that the State's
15 going to want to say, oh, wait a minute, all you have to
16 testify is to the truthfulness. We don't require --

17 THE COURT: Right. I mean, he's under oath like
18 every other witness.

19 MR. RUGGEROLI: Okay. Well, as long as -- as long
20 as the State then doesn't need it, then we can just use the
21 redacted one.

22 MR. PESCI: No, no, no, no, no, no.

23 THE COURT: Yeah, I mean --

24 MR. PESCI: No.

25 THE COURT: -- I don't understand that.

1 MR. PESCI: You want to attack it --
2 THE COURT: Yeah.
3 MR. PESCI: -- that triggers our chance to go back.
4 We're not going to, in advance, take it away from us to be
5 able to do that because he wants it.
6 THE COURT: Right.
7 MR. PESCI: This is his choice. Like you're saying,
8 you're not impeding him at all.
9 THE COURT: No.
10 MR. PESCI: All I'm saying is, if you do that, we
11 have the added wrinkle and complication that the unredacted
12 version implicates Mr. Robertson on the three or four charges
13 that are not currently before this jury. So I assume --
14 MR. SANFT: I -- we -- and we -- I'm sorry.
15 MR. PESCI: Yeah, let's turn it to you.
16 MR. SANFT: On behalf of Mr. Robertson, with regards
17 to that issue, those factual issues, that would be an issue
18 that we would want to have redacted. Everything else I think
19 is unrelated and should be, you know, fair comment, according
20 to what Mr. Ruggeroli wants. But with regards to the other
21 parts that have been taken out and we're not trying him on
22 these -- on those issues, I think we've got a big issue there
23 with regards to prior bad acts and everything else that's
24 going to come in on this particular --
25 THE COURT: Right. I mean --

1 MR. SANFT: Okay.

2 THE COURT: And they relate to the counts that have
3 been severed, correct?

4 MR. PESCI: Correct, yes.

5 MR. SANFT: We've taken the pains to make sure that
6 that happens. I understand Mr. Ruggeroli's point though. I
7 mean, he wants to be able to have fair comment on anything to
8 do with this event on August 8th, 2017 --

9 THE COURT: Okay.

10 MR. SANFT: -- not about anything --

11 THE COURT: So you don't want that language taken
12 out that Sessions says we should take out?

13 MR. RUGGEROLI: Correct, because I know what the
14 second step will be, is either the State's going to object and
15 say the defense can't ask this line of questions because we
16 can't comment on it --

17 MR. PESCI: No, no, we're not going to say you
18 can't. Not at all. You absolutely can. We're just --

19 THE COURT: Right. I think --

20 MR. PESCI: -- given opportunities and options after
21 you do it.

22 MR. RUGGEROLI: Which would --

23 THE COURT: Exactly.

24 MR. RUGGEROLI: Which would --

25 THE COURT: I mean, the language has to be redacted,

1 okay?

2 MR. RUGGEROLI: Right.

3 THE COURT: I guess if you're waiving that right to
4 have the language redacted --

5 MR. RUGGEROLI: Yes.

6 THE COURT: However, if you during cross-examination
7 suggest to this jury that this witness has to testify to a
8 certain set of facts in order to get the deal, instead of the
9 truth --

10 MR. RUGGEROLI: Right.

11 THE COURT: -- which sounds like that's what you are
12 going to do --

13 MR. RUGGEROLI: We want that ability, yes.

14 THE COURT: Right. Then the State has the right to
15 bring that back in --

16 MR. RUGGEROLI: Exactly.

17 THE COURT: -- that, no, he has to testify as to the
18 truth.

19 MR. RUGGEROLI: And that's why it would need to not
20 be redacted. So I'm getting -- I'm getting ahead because I
21 know where this would ultimately lead. Were it not for the
22 inadmissible information about Mr. Robertson, then I think we
23 wouldn't have a problem.

24 THE COURT: Okay.

25 MR. RUGGEROLI: I -- I --

1 THE COURT: So you don't want the information
2 redacted that he has -- he's under the obligation to tell the
3 truth?

4 MR. RUGGEROLI: Correct.

5 THE COURT: Okay. Mr. Sanft, do you agree with
6 that?

7 MR. SANFT: We will have no objection to that
8 language being included.

9 THE COURT: Included?

10 MR. SANFT: Included. Yes, Your Honor.

11 THE COURT: Okay. Now, how do we get rid of --

12 MR. PESCI: Okay.

13 THE COURT: So we could bring it back in, but we
14 can't --

15 MR. PESCI: Can I interrupt just one second? I
16 apologize.

17 THE COURT: Sure.

18 MR. PESCI: Can you canvass the defendants on that?
19 Because that, sure as anything, is going to be argued by
20 different attorneys that this was a mistake.

21 THE COURT: I'm assuming -- have -- Mr. Ruggeroli,
22 have you spoken to Mr. Wheeler about that?

23 MR. RUGGEROLI: Yeah, I just spoke to him in the
24 back, Judge.

25 THE COURT: And Mr. Sanft, you've spoken to your

1 client about that?

2 MR. SANFT: I have not spoken to my client about it,
3 but I have spoken with Mr. Ruggeroli about this issue. I
4 agree with the strategy as to why it should happen that way.
5 So if I need to canvass my client, then I'll canvass my
6 client, but this was a strategic reason as to why we would
7 allow that language to come in with regards to our ability to
8 cross-examine the --

9 MR. PESCI: Perfect, that's exactly what I was
10 looking for. Thank you.

11 THE COURT: Okay. And Mr. Wheeler, you understand
12 that your attorney is making this decision?

13 DEFENDANT WHEELER: We about to --

14 MR. RUGGEROLI: Stand up, stand up.

15 DEFENDANT WHEELER: We about to --

16 THE COURT: He's asking that this language that
17 you're entitled to have redacted from the Agreement to
18 Testify, he's asking that it be put back in.

19 DEFENDANT WHEELER: Are we going to talk about -- if
20 we can talk a little bit more about the situation.

21 THE COURT: All right.

22 MR. RUGGEROLI: If you could just give me one
23 second, Judge.

24 THE COURT: I'll let you talk to him about it.

25 DEFENDANT WHEELER: All right, thank you.

1 (Pause in the proceedings)

2 THE COURT: So we'd still have to redact some of

3 this?

4 MR. PESCI: Yes, that's --

5 THE COURT: And you've got it highlighted.

6 MR. PESCI: That's the concern. That's why I

7 brought this up --

8 THE COURT: Um-hum.

9 MR. PESCI: -- when I found this out this morning.

10 It's that portion. Now, there are some different options. I

11 can tell you this: I cannot magically have -- make this happen

12 --

13 THE COURT: I understand.

14 MR. PESCI: -- because I've had someone working on

15 this for days. Because it's like really trickery, right? We

16 take a portion --

17 THE COURT: Right.

18 MR. PESCI: -- we cut it out, and we have push

19 pieces together using some sort of --

20 THE COURT: To make it look like we didn't do that.

21 MR. PESCI: Right, exactly. So now our only option

22 really is to Wite-Out and copy another page so no one can see,

23 but there's going to be big holes.

24 MR. RUGGEROLI: And just so that we're clear,

25 because I need to reference this for Mr. Wheeler, the Guilty

1 Plea Agreement itself, if you could direct me to the portion
2 that -- because I thought it was for the actual Agreement to
3 Testify portion.

4 THE COURT: It's in the Agreement to Testify.

5 MR. PESCI: It's in the Agreement to Testify.

6 MR. RUGGEROLI: Okay, and so --

7 THE COURT: I only have the first few pages.

8 MR. RUGGEROLI: So --

9 THE COURT: Or the first couple of pages.

10 MR. PESCI: So the original Agreement to Testify,
11 because --

12 MR. RUGGEROLI: Right.

13 MR. PESCI: -- at the time, they were facing all of
14 the charges, Mr. Robinson's other charges, it references that
15 because he's making an Agreement to Testify about all of the
16 information. So this highlights his charges that are severed
17 and not before this jury, which is why I brought it to Your
18 Honor, so you could see --

19 THE COURT: Right.

20 MR. PESCI: -- which portion.

21 THE COURT: So that part would have to be redacted.

22 MR. RUGGEROLI: Of course. Right.

23 (Pause in the proceedings)

24 (Off the record at 9:04 A.M. until 9:17 A.M.)

25 (Outside the presence of the jurors)

1 THE MARSHAL: Please come to order.

2 MR. SANFT: Your Honor, we're missing Mr. Ruggeroli.

3 THE COURT: Right.

4 MR. SANFT: Okay.

5 THE COURT: I'm assuming he's done though; we're
6 ready?

7 THE CLERK: Yeah.

8 MR. PESCI: We have some more things outside the
9 presence --

10 THE COURT: Okay.

11 MR. PESCI: -- based on this, and so --

12 THE MARSHAL: Have a seat.

13 THE COURT: Okay, go ahead.

14 MR. PESCI: Thank you, Your Honor. So I'm not sure
15 how the defense is intending on doing this. I want to state
16 the State's position on the record.

17 THE COURT: Okay.

18 MR. PESCI: I am going to comply with 175.282 and
19 Sessions v. State. I have marked a redacted version based on
20 the law that exists. If the defense chooses to do something,
21 they can, and then there are different things that are
22 triggered based on that.

23 The last thing I would ask, Your Honor, is if the
24 defendants personally are in agreement with their clients' --
25 their attorneys' strategic decision to do this.

1 THE COURT: Okay. And so you're just going to leave
2 it the way it is?

3 MR. PESCI: I'm not doing anything because I can't
4 until they cross.

5 THE COURT: Well, you're right. You can't, you
6 can't.

7 MR. PESCI: Right. Per the -- per the case law, I'm
8 -- as I read the case law, I'm handcuffed until they attack
9 it.

10 THE COURT: Okay, but it sounds like --

11 MR. PESCI: And I would be happy to be wrong some
12 day down the road if the Supreme Court tells me.

13 MR. RUGGEROLI: Judge, I --

14 THE COURT: And it sounds like you're going to
15 attack it?

16 MR. RUGGEROLI: I am, and I'm --

17 THE COURT: Okay.

18 MR. RUGGEROLI: -- dealing with this because of
19 Sessions and my prior experience in front of Judge Herndon,
20 which we have a lot of respect for Mr. Pesci, because Judge
21 Herndon referenced Mr. Pesci regarding this exact issue. So I
22 have looked at this. That's my reading. And I'm getting in
23 advance in the sense that -- would have preferred yesterday,
24 but today, we're not doing it during cross-examination.

25 I would like the ability to fully cross-examine --

1 one other aspect which is particularly important is that this
2 wound up being an Alford plea. So what we have is, during the
3 canvass, no actual admission; no actual affirmative statement
4 of, "Yes, I did this." So we're relying on the State's
5 recitation of facts to the Court. We're relying on other
6 things that did not actually come from Mr. Robinson.

7 THE COURT: Mr. Robinson's plea was Alford?

8 MR. RUGGEROLI: Yes.

9 MR. PESCI: Yes. That's the second portion,
10 whenever he's done, that I wanted to address.

11 THE COURT: Okay.

12 MR. RUGGEROLI: So the notion of truth is very
13 important. Now, I believe that I have fully explained this,
14 that in the initial instance, the defendant is protected; the
15 State is required to have that portion of the Agreement
16 removed. But in getting ahead, in order for the defense to
17 really kind of have more access to challenge motive, things
18 like that, we will necessarily be implicating the provision
19 that provides for the truthfulness. So I agree with Mr.
20 Pesci.

21 The only other issue is what to do with the language
22 that was unfortunately included, and then redacted, regarding
23 Mr. Robertson's other case. Everybody's in agreement that
24 that shouldn't come in. I mean, honestly, the State -- you
25 put this in Adobe, you take out a couple lines, and print. I

1 don't think this is difficult to redact those lines. I
2 don't --

3 MR. PESCI: Then we invite you to do it.

4 MR. RUGGEROLI: I could download it. I don't have
5 my printer, but --

6 MR. PESCI: A caveat -- I apologize, I'm jumping in.
7 That was flippant, I apologize.

8 The other thing we can do, Your Honor, is before we
9 get to the jury, have that done. It doesn't actually have to
10 be done today if you're not going to literally put it down on
11 the door to show it to him, because we can work on it between
12 now -- I'm not going to work on it, but someone can work on it
13 between now and when it actually goes back as an exhibit for
14 the jury.

15 THE COURT: Okay.

16 MR. SANFT: I guess --

17 THE COURT: So it sounds like the parties -- you
18 have the right to have this language out, okay? The defense
19 is saying, we don't want it out; we want that language in
20 because we're going to fully cross-examine this witness, and
21 we're going to be implicating that clause in the Agreement
22 anyways. Is that --

23 MR. RUGGEROLI: And Mr. Wheeler --

24 THE COURT: Is -- you're shaking your head yes, but
25 I just want you to say yes.

1 MR. RUGGEROLI: Yes, Your Honor, and he's prepared
2 to --

3 THE COURT: Okay.

4 MR. RUGGEROLI: -- put the waiver on the record.

5 THE COURT: And Mr. Sanft, yes?

6 MR. SANFT: Yes, Your Honor. And since the time
7 that we last spoke, I have spoken with Mr. Robertson about it.
8 He also agrees with that strategy.

9 THE COURT: Okay. And Mr. Wheeler, I gave you an
10 opportunity to speak to Mr. Ruggeroli about that strategy as
11 well; is that correct?

12 DEFENDANT WHEELER: Yes, ma'am.

13 THE COURT: And you're in agreement with that?

14 DEFENDANT WHEELER: Yes, ma'am.

15 THE COURT: Okay, thank you. And Mr. Robinson
16 (sic), you're in agreement with that as well, correct?

17 DEFENDANT ROBERTSON: Yes.

18 THE COURT: And you had a chance to speak to Mr.
19 Sanft about it, correct?

20 DEFENDANT ROBERTSON: Yeah, I've spoken to him.

21 THE COURT: Okay.

22 MR. PESCI: Thank you very much, Your Honor. And I
23 totally understand defense counsel's position. It makes all
24 the sense in the world to me. I think this is the unintended
25 consequences of that decision that we've been stuck with, so

1 we're just living with those consequences.

2 However, defense counsel made a comment about Alford
3 and penalties, and that's what I want to talk to you before we
4 brought this jury in.

5 THE COURT: Okay.

6 MR. PESCI: So in the canvass itself, because it's
7 an Alford plea, there's a rendition of facts put forth by the
8 State. So in some senses, I'm asking for an offer of proof of
9 what they want to get into, which is why we were not
10 introducing this in our case-in-chief, because I'm afraid of
11 the argument of witness vouching, being me, because I'm the
12 one making a rendition of facts.

13 Additionally, there is not time at an Alford plea to
14 put everything in. So I don't put everything in that is in
15 evidence because Your Honor and every other judge can't sit
16 there for the State to create a trial record for a plea
17 canvass. So I don't want to be accused of an argument's being
18 made that, look at this, this is the real facts that the State
19 believed, because that was just a bare bones or a somewhat
20 fleshed out rendition of facts as opposed to an entire trial's
21 worth of evidence. And so I'm cautious and concerned about
22 that, so I would ask for an offer of proof.

23 Additionally, Mr. Sanft brought up a good point,
24 right? We all signed a waiver. The waiver says, we don't
25 talk about penalties for murder. It is completely appropriate

1 for this witness to be canvassed about the penalties
2 associated with the specific charges that he entered a plea
3 to, and it's completely appropriate for the defense to say,
4 you had a murder charge and it's not here anymore.

5 It is absolutely inappropriate, pursuant to the
6 Agreement we all signed, to say, because you were facing life
7 without -- which he wasn't because he was a juvenile -- but
8 you were facing life, 20, or 50 to 20. Like, can't go into
9 specifics. I think it's appropriate to say, you were facing
10 more time, and maybe even like much more time for a murder
11 charge, but not the specifics.

12 THE COURT: Right. Since, I mean, everybody's
13 waived penalty, I would agree with that.

14 MR. RUGGEROLI: Well, okay. So the penalty --

15 THE COURT: I mean, I think you could say, you were
16 facing a lot more time --

17 MR. RUGGEROLI: Yeah.

18 THE COURT: -- because you were facing a murder
19 charge as well.

20 MR. RUGGEROLI: Yes. I --

21 THE COURT: But even what he was facing wouldn't be
22 the same as these gentlemen because --

23 MR. RUGGEROLI: Right.

24 THE COURT: -- he's a minor.

25 MR. RUGGEROLI: So this is a good time to bring up

1 Defense Proposed Exhibit A. I've had it marked. There is not
2 an agreement. That is the canvass of the entry of this plea.
3 Here's why that's important and I think that it should be
4 admissible. The context -- and you've got to remember what --

5 THE COURT: What is marked as Defense A?

6 THE CLERK: It's A1, just to clarify for the record.

7 MR. RUGGEROLI: Okay. It's right up top there.

8 THE COURT: Okay.

9 MR. RUGGEROLI: The State didn't have this, so I've
10 had it marked.

11 THE COURT: Uh-huh.

12 MR. RUGGEROLI: The likely cross-examination is
13 going to be that DeShawn made statements the next day from the
14 shooting to the officers when he was arrested. Time went on,
15 he entered an agreement, and now it's an Alford plea. The
16 only way he got the benefit of that plea was to agree to
17 testify, which is a huge portion of our argument that he has a
18 motive to say what he's saying.

19 THE COURT: Uh-huh.

20 MR. RUGGEROLI: Because I fully expect that he's
21 going to say, "I was with three other individuals, and we
22 drove to Dewey, and my -- Mr. Wheeler was one of those people,
23 and so-and-so shot so-and-so." That's what I expect the
24 evidence is going to show.

25 So in getting to -- this is not a normal situation

1 where it would be very clean, "You pled guilty on this date
2 and time, and at that time, you admitted that this was your
3 conspiracy; you admitted that you were a part of this
4 attempted robbery."

5 THE COURT: Well, he admitted the State could prove
6 it.

7 MR. RUGGEROLI: That's what he admitted, but he
8 never admitted that -- well, it's an Alford plea. So what we
9 have is, I agree with Mr. Pesci to the extent that I would not
10 need to go into specifically, "You were looking at a life
11 penalty," because there is overlap.

12 THE COURT: Right.

13 MR. RUGGEROLI: That would educate the jury about
14 what the defendants had waived, and it might not even apply to
15 a juvenile. But I do think -- and this is my argument for the
16 admission of 1A -- Defense Proposed 1A -- or is it A1?

17 THE CLERK: A1.

18 MR. RUGGEROLI: Yeah. The context of this plea is
19 very important, and what he said is absolutely relevant; what
20 he did not admit to. It's part of his -- now he's going to
21 stand up, and we're going to object --

22 THE COURT: Let me just say -- did he proffer to
23 you?

24 MR. PESCI: Yes.

25 THE COURT: Okay. That, to me, is more important

1 than what he said during an Alford plea.

2 MR. RUGGEROLI: Okay.

3 THE COURT: I mean, because in a proffer, they
4 proffer to the district attorney --

5 MR. RUGGEROLI: Yes.

6 THE COURT: -- basically everything they know and
7 everything that they will testify to.

8 MR. RUGGEROLI: We don't have any -- anything about
9 -- I know it happened, but I did request, and there's nothing
10 in writing.

11 MR. PESCI: Right. It wasn't recorded.

12 MR. RUGGEROLI: Right.

13 MR. PESCI: It wasn't written down, it wasn't
14 reduced --

15 THE COURT: Okay.

16 MR. RUGGEROLI: So that's why it's even more
17 important that -- he's going to be asked, and he can't be led
18 through this testimony, "Well, what happened?"

19 THE COURT: Right.

20 MR. RUGGEROLI: I went -- okay, and then on cross,
21 "Okay, but you were -- you pled Alford; you did not
22 specifically -- did not admit that you did that."

23 MR. PESCI: I agree with the ability of defense
24 counsel to do that. I'm just saying, admitting the transcript
25 is dangerous, and it has information that is superfluous to

1 the actual proceedings. It has language where I am saying
2 what the case evidence would be.

3 And so I think it's completely appropriate for them
4 to cross-examine him, and talking about Alford, and you didn't
5 admit this or you didn't admit that. But I think admitting
6 the transcript is a time bomb, because, one, it says what I
7 think the case is at a bare minimum's version. And you know,
8 someone could argue that that's witness vouching, because you
9 then accepted -- I'm sorry, you, Your Honor, accepted that
10 proffer, right?

11 And so I think it's appropriate to just go into it.
12 And you can even utilize this, right? Just not admit it as a
13 piece of evidence. That's why we didn't do this, because
14 there are all these issues inside of it. It's --

15 THE COURT: Anything else, Mr. Ruggeroli?

16 MR. RUGGEROLI: Yes. If it's relevant, it's
17 generally admissible -- and it is relevant -- unless there's
18 some portion specifically that would make it inadmissible.
19 These are general principals being applied to, but there's
20 nothing specific. There's no authority to support, well,
21 here's why it's inadmissible. This -- the document speaks for
22 itself, so I don't think it's inadmissible. The question of a
23 time bomb, that remains to be seen. And I would not --

24 THE COURT: Why is it relevant? Why is it relevant
25 what the State said in an Alford plea? Why is that relevant?

1 MR. RUGGEROLI: Well, the most -- the most -- it
2 makes --

3 THE COURT: Why is the transcript relevant if you're
4 going to be able to cross-examine him, like, "You didn't admit
5 that in front of the Court, you didn't" -- I mean, yeah, you
6 can cross-examine him about that, but I mean, this is a
7 formality and it's an Alford plea. I don't understand why a
8 transcript would be relevant.

9 MR. RUGGEROLI: The relevance is that it makes the
10 truthfulness of his statement about there is a conspiracy
11 today less likely because he did not admit to it at the time
12 of the canvass. That provides the actual question and answer.
13 So it is relevant; it's just the State is saying it's not
14 admissible, but -- but why? It doesn't sound good, we think
15 it might --

16 THE COURT: No, because I think it would be very
17 confusing to a jury.

18 MR. PESCI: What I'm saying is I'm not --

19 THE COURT: I mean, it would be very confusing.

20 MR. PESCI: I'm not saying it's a per se
21 inadmissible thing, which is why I asked for the offer of
22 proof, is I'm like, what is this going to be used for?
23 Because if there are going to be arguments -- right? Because
24 that's really what we do. We put a piece of evidence in --

25 THE COURT: Um-hum.

1 MR. PESCI: -- then we argue later on. If there's
2 going to be arguments that somehow this was the four corners
3 of the facts --

4 THE COURT: That's my concern.

5 MR. RUGGEROLI: And I would agree to an instruction
6 that clears -- it just simply explains that the State did not
7 put on the entire trial evidence at the entry of this plea.
8 I'm not going to argue, hey, that's all they -- because my --
9 the importance of what I want to argue is not what the State
10 said at the plea. That's what they're concerned about.

11 I have no intent to say, "Well, they should be
12 limited, ladies and gentlemen of the jury, to what they said
13 at the time." I'm not going to argue that at all. And I
14 would have no problem explaining to the jury in an
15 instruction, or you could admonish the jury, "The State was
16 not required to put their trial on at the time of the entry of
17 plea."

18 The importance for us is not what the State said,
19 other than they had to say it because he wouldn't admit it.
20 That's why it's important, and that's why it's relevant, is
21 because when it came to the time of entering this agreement,
22 he did not admit that he was part of a conspiracy, and that's
23 hugely important.

24 I actually very respectfully disagree with Your
25 Honor. I don't think it will confuse the jury; I think it

1 will help them understand it more, because it lays out line by
2 line, question, answer, this is an Alford plea, you understand
3 you're not admitting guilt, and because of that, there has to
4 be a factual basis. And that's why I think it's admissible,
5 and we would agree to either an admonishment and/or an
6 instruction that says of course the State was not required to
7 put on the whole trial evidence at that time.

8 THE COURT: Okay. So then, again, I'm going to ask
9 you, why is it relevant here?

10 MR. RUGGEROLI: Because --

11 THE COURT: Because this isn't the four corners of
12 his agreement. He proffered to the State of Nevada.

13 MR. RUGGEROLI: Because even in its most simplistic
14 form, he did not agree that he was a part of the conspiracy.
15 He did not admit that. He did not admit that there was an
16 attempt robbery that he was a part of; he did not admit that
17 he was a part of the murder. The fact that he didn't admit
18 it, that's why it's so important.

19 MR. PESCI: And I think it's --

20 THE COURT: Okay.

21 MR. PESCI: -- completely appropriate to be asking
22 him about how he never admitted it, right? If he wants to
23 introduce it, I just think there are a lot of land mines in
24 there, a lot of things that could go sideways, and there are
25 concerns.

1 And it seems as if he's saying he's not going to
2 argue one thing or another, but we're going to have to do an
3 instruction about what an Alford plea is, right? Because I
4 say here that the defendant could have been convicted of the
5 murder, because the concept of an Alford is, you're saying --
6 you're acknowledging the jury could convict you --

7 THE COURT: Right.

8 MR. PESCI: -- so I'm taking this lesser without
9 necessarily admitting to this. We've done this before, Your
10 Honor. We've had a co-defendant testify via an Alford plea,
11 right? And everyone got to cross-examine that witness, and
12 got to flesh out that she didn't say she actually admitted to
13 it, right? That's a completely appropriate line of
14 questioning. I'm just saying I'm a little concerned about
15 that.

16 At least he's told me right now that he's not going
17 to argue some sort of quantitative analysis of what the offer
18 of proof was being the entire amount of the case that the
19 State had. And so, with that, we'll deal with it. I'm just
20 saying that there could be issues that come up later, and
21 especially in closing arguments, depending on how it's argued.

22 THE COURT: Okay. I want to be able to read the
23 transcript in its entirety. When is this witness coming to
24 testify?

25 MR. PESCI: Well, he's supposed to be at 10:00, but

1 we've got other ones in front of him.

2 THE COURT: Pardon?

3 MR. PESCI: We have other ones that are in the hall

4 waiting in front of him.

5 THE COURT: Okay. Can we bring the panel in now?

6 Where is he? I mean, is --

7 MR. PESCI: He's in --

8 THE COURT: He's still in custody, right?

9 MR. PESCI: He's in custody, and so he's going to be

10 transported here. My investigator has spoken with your

11 Marshal to talk about that process of getting him here.

12 THE COURT: Okay. And he's in custody, correct?

13 MR. PESCI: Yes, he's in custody. He's in a

14 juvenile detention facility.

15 THE COURT: All right. Are you going to have him

16 appear in custody?

17 MR. PESCI: We have to.

18 THE COURT: Well, you have the right to have him

19 dressed in normal clothes.

20 MR. PESCI: No, we don't, because that's me making

21 him appear that he's out of custody. I wish you were right.

22 I'm sorry. I apologize. I believe that the case law says

23 that I don't get to dress out my witnesses that are in

24 custody; I have show them as they are.

25 THE MARSHAL: I spoke to his investigator this

1 morning. A juvenile P and P officer, his caseworker, his
2 attorney, and his investigator will be sitting in the jury
3 room, waiting for him to be brought to the stand.

4 THE COURT: Okay.

5 THE MARSHAL: So --

6 THE COURT: So his -- I think his attorney -- Mr.
7 Evans, he's going to be --

8 THE MARSHAL: Yes.

9 MR. PESCI: Yes.

10 THE COURT: He's been notified?

11 MR. PESCI: We've spoken to him; we've notified him
12 of the time. He told me he was going to be here, he asked the
13 specific room, so our expectation is he's going to be here.

14 THE COURT: Okay. All right, we can bring them in.

15 THE MARSHAL: All rise for the entering jurors,
16 please.

17 (Within the presence of the jurors at 9:35 a.m.)

18 THE MARSHAL: Go ahead and have a seat when you get
19 to your chairs. Everybody's standing for you guys, so. Thank
20 you, everyone. Please be seated.

21 THE COURT: Okay. Does the State stipulate to the
22 presence of the panel as now impaneled?

23 MR. PESCI: Yes, Your Honor.

24 THE COURT: Mr. Sanft?

25 MR. SANFT: Yes, Your Honor.

1 THE COURT: Mr. Ruggeroli?
2 MR. RUGGEROLI: Yes, Your Honor.
3 THE COURT: Okay. Ms. Bell, I have excused Juror
4 number 10, so you will now become Juror number 10. You can
5 sit where you are, or you can sit in that seat; it's wherever
6 you're comfortable. I'm okay with wherever you want to sit.
7 I just wanted to make sure you understand you're now Juror
8 number 10.
9 JUROR NO. 10: Okay.
10 THE COURT: Okay?
11 JUROR NO. 10: Will I still be able to not come in
12 on next Friday?
13 THE COURT: I got you covered for next Friday.
14 JUROR NO. 10: Okay, just wanted to make sure that
15 was covered.
16 THE COURT: Okay. Okay, State can call their next
17 witness.
18 MR. PESCI: State calls Detective Lora Cody. May I
19 approach?
20 THE COURT: Uh-huh.
21 THE MARSHAL: If you'll please remain standing,
22 raise your right hand, and face the Clerk.
23 DETECTIVE LORA CODY, STATE'S WITNESS, SWORN
24 THE CLERK: You may be seated. Please state and
25 spell your first and last name for the record.

1 THE WITNESS: It's Lora Cody. L-o-r-a, C-o-d-y.

2 THE COURT: You may --

3 MR. PESCI: Thank you.

4 THE COURT: You may proceed.

5 DIRECT EXAMINATION

6 BY MR. PESCI:

7 Q Ma'am, what do you do for a living?

8 A I'm a homicide detective with the Las Vegas
9 Metropolitan Police Department.

10 Q How long have you been with Homicide?

11 A About four years.

12 Q Before Homicide, where were you within Metro?

13 A I worked what's called Internet Crimes Against
14 Children, sexual assault, sexual abuse, as a detective.

15 Q And then prior to that?

16 A I was a patrol officer with Metro.

17 Q How long -- I cut you off, I'm sorry. How long have
18 you been with Metro in total?

19 A 18 years.

20 Q Okay. You said, I think it was four years you've
21 been with Homicide?

22 A That's correct.

23 Q Okay. So back in August of 2017, were you assigned
24 with a squad of other detectives to investigate a homicide
25 that had occurred on Dewey Avenue here in Las Vegas?

1 A Yes, I was.

2 Q When you get to a murder scene, as a homicide
3 detective, how does that work? Just so the ladies and
4 gentlemen can understand, are you there right away when the
5 first patrol officers get there, or how does that work?

6 A No. Usually, the patrol officers will get the
7 initial call. They'll respond to the scene and kind of make
8 an assessment as to what resources they need, then they'll
9 usually call in patrol detectives. Patrol detectives then,
10 upon realizing that whatever crime it is requires kind of like
11 a higher level response -- in this case, a homicide had
12 occurred -- they then call Homicide out. So we usually may
13 respond to the scene, it could be anywhere from 15 minutes, 20
14 minutes, to several hours later.

15 Q Can that be sometimes too based on the fact that, if
16 a victim is still alive originally at the scene, then
17 Homicide's not called out?

18 A That is correct.

19 Q So if a victim who's wounded is transported to the
20 hospital, is it until after the hospital notifies of someone
21 actually being deceased that the mechanism then triggers
22 Homicide being involved?

23 A Yes.

24 Q Okay. When you were in fact called on this specific
25 situation, where did you go first?

1 A We went to the Dewey scene.

2 Q All right. I want to show you what's been
3 previously marked as State's Exhibit 11. Do you recognize
4 that?

5 A Yes, I do.

6 Q Okay. Now, I mentioned earlier a squad. Is that a
7 team of detectives?

8 A Yes.

9 Q Who was the group or the team of detectives that you
10 responded with?

11 A I responded there with Detective Mitch Dosch,
12 Detective Ryan Jaeger, myself, eventually Detective Maureen
13 Bogatay, and Detective Fred Merrick.

14 Q And does she sometimes, Detective Bogatay, go by the
15 name Sonny?

16 A Yes, Sonny.

17 Q Okay. Now, when you get to a scene, is there a
18 determination as far as who's going to be doing what pieces of
19 the investigation?

20 A Yes, we respond as a squad. It could be as large as
21 from four to six people, just depending upon the amount of
22 resources that we need. Usually, there's a primary detective.
23 In this case, the primary detective is Detective Mitch Dosch.
24 His partner, Detective Ryan Jaeger, is considered the second.
25 And then we have what's called the third wheel, and that third

1 wheel was myself, and then it goes third, fourth, fifth, six
2 kind of a wheel.

3 The primary detective usually will take the scene.
4 The secondary detective will take kind of like the -- what we
5 call, like, maybe like the more important witnesses or
6 subjects to be interviewed. The third detective kind of picks
7 up the pieces, if you will.

8 Q All right. So if I'm understanding correctly, this
9 is kind of the partnership of Jaeger and Dosch, correct?

10 A Correct.

11 Q All right. And now, was Jaeger assigned to the
12 scene?

13 A I believe he was, yes.

14 Q Okay, so what does that mean?

15 A That means that he will respond out. He will
16 document the scene, along with the crime scene analysts.

17 Q Okay. And then were you, and Detective Dosch, and
18 the others you mentioned assigned to witnesses?

19 A Yes, we were.

20 Q How does that work?

21 A Again, it's kind of up to -- how the primary
22 detective wants to dole out the assignments, if you will.
23 Detective Dosch was assigned some witnesses. I was also
24 assigned a witness, and I was also assigned extra duties as
25 well.

1 Q Okay. So when you're out at this scene, are you
2 getting information from patrol or other officers that were
3 there before you?

4 A Yes. Depending upon who's there, depending upon
5 kind of the level of the response, we all get together, and
6 we'll receive a brief from either patrol or patrol detectives;
7 and in this case, it was patrol detectives.

8 Q So the ladies and gentlemen of the jury saw some
9 body-worn camera of the first responders. Are those the
10 sources of some of that information in that first briefing?

11 A Yes.

12 Q Okay. And while you're at this scene and Detective
13 Jaeger's working the scene, did information come in about a
14 convenience store of interest?

15 A Yes. Prior to the shooting, and I forget if it was
16 an hour or two hours prior to the shooting, there was an
17 incident that had occurred at the Short Line Express, and I
18 believe it was 7325 South Jones.

19 The convenience Clerk was obviously inside the
20 convenience store when four black male adults entered the
21 store and were acting kind of suspicious. One of those black
22 male adults had a gun on his hip in like an open carry
23 fashion, and so that convenience Clerk had called our dispatch
24 to say that he kind of felt maybe he might have -- might be
25 robbed, and he was just kind of, you know, just unsecured. So

1 police officers responded and talked with the convenience
2 store.

3 Q Okay. And then, based on that information that the
4 police officers obtained from talking to that Clerk in the
5 convenience store, did you respond to the convenience store?

6 A Yes, I did.

7 Q I want to show you State's Exhibit 71. Do you
8 recognize that?

9 A Yes, that's the Short Line Express market.

10 Q Okay. And then, based on the information that had
11 been sent from the convenience store, to the other patrol
12 officers, to you, what were you trying to find or locate
13 there?

14 A Some of the information that initial patrol officers
15 received when they respond to the convenience store, that the
16 four black male adults had entered the store, and they were --
17 had actually driven into the -- or driven into the parking lot
18 in the store in like a white Grand Marquis, or like a white
19 kind of a vehicle, and this had matched some information that
20 we had received at the briefing at the homicide scene.

21 Q Speaking of that briefing and the matching of the
22 information, did you have information that there was a white
23 Crown Vic-type car with a specific license plate?

24 A Yes, I did.

25 Q All right. So when you went to this location, were

1 you trying to see if you could see from the surveillance a car
2 that would fit that description?

3 A Yes.

4 Q Okay.

5 MR. PESCI: Your Honor, with your permission, can I
6 publish what's been previously admitted as 328?

7 THE COURT: You may.

8 BY MR. PESCI:

9 Q Detective, were you there when this video
10 surveillance was obtained?

11 A Yes, I was.

12 Q Okay. And was your responsibility, in essence, to
13 try to look at that and retrieve that video surveillance?

14 A Yes.

15 Q Okay. I want to show you a clip, and ask you if you
16 recognize this clip.

17 A Yes, I do.

18 Q Okay. And then, with this clip -- or did you see
19 this clip when you went to that location?

20 A Yes, I did.

21 Q And what did you do -- what was there that piqued
22 your interest?

23 A I noticed, as the vehicle pulled in, you can make
24 out on the bottom lefthand side, the front license plate, the
25 numbers 473.

1 Q Okay, and there's actually a mouse right there. And
2 if you move that mouse, it will correspond to the screen, or
3 at least it should. Let me do this. There we go. Thank you.
4 And did you view that to try to find out about that particular
5 license plate?

6 A Yes, I did.

7 Q Did that match the information that you had received
8 from the briefing?

9 A Yes.

10 Q Okay. And then, also, as far as there being four
11 individuals, was that information that you had?

12 A Yes.

13 Q Did you watch this video surveillance, among other
14 camera angles?

15 A Yes, I did.

16 Q And were you able to see four individuals?

17 A That's correct.

18 Q You mentioned you had some information about the
19 possibility of someone open carrying?

20 A Yes.

21 Q All right. And then, in reviewing that
22 surveillance, did you see things of interest to you?

23 A Yes, there's an individual that is open carrying of
24 a firearm.

25 Q Now, based on that license plate, what did you do,

1 getting that information?

2 A I provided that information, as well as the video
3 surveillance, back to Detective Dosch and Detective Jaeger.

4 Q Okay. And then, was there an effort to, in essence,
5 look up that particular license plate?

6 A Yes.

7 Q Okay. I want to show you what's been marked as
8 State's 332.

9 MR. PESCI: May I approach, Your Honor?

10 THE COURT: You may.

11 MR. PESCI: Which has been previously shown to
12 defense counsel, and I believe there's no objection.

13 MR. SANFT: No objection, Your Honor.

14 MR. RUGGEROLI: No, Your Honor.

15 MR. PESCI: Move for the admission of 332, Your
16 Honor.

17 THE COURT: It's admitted.

18 (State's Exhibit 332 is admitted)

19 BY MR. PESCI:

20 Q Do you recognize what that is?

21 A Yes.

22 Q What is that?

23 A This is the vehicle registration data for that
24 specific license plate.

25 Q Okay. What does that information tell you?

1 A It tells me that this plate was surrendered and
2 actually had belonged to a James Newman (phonetic) at 1327 H
3 Street, Apartment 431.

4 Q Okay, so showing you State's Proposed Exhibit 150.

5 MR. PESCI: Any objection to that one?

6 MR. SANFT: No objection.

7 MR. RUGGEROLI: No objection, Your Honor.

8 THE COURT: 150 is admitted.

9 (State's 150 is admitted)

10 BY MR. PESCI:

11 Q Do you recognize State's 150?

12 THE CLERK: You got to hit the button.

13 MR. PESCI: Oh, goodness. Thanks.

14 BY MR. PESCI:

15 Q Do you recognize State's 150? We got to zoom-out.

16 A Yes, I do.

17 Q Okay. Now, before we get to where you actually saw
18 that, you just talked to us about H Street, the letter H?

19 A Yes.

20 Q Okay. So who is the listed individual as the
21 registered owner of this particular vehicle?

22 A James Newman.

23 Q Okay. And then, James Newman had an address of the
24 H Street?

25 A Yes.

1 Q Okay. And what did you, as a squad or a group, do
2 with that information? Did you go to that location?
3 A Yes, we did.
4 Q Okay. And then, did you make contact with a Mr.
5 Newman?
6 A I did not, but I believe Detective Jaeger and Dosch
7 did.
8 Q Okay.
9 MR. PESCI: Court's indulgence.
10 BY MR. PESCI:
11 Q So did you get information in the course of your
12 investigation that Mr. Newman had sold that vehicle?
13 A Yes.
14 Q Okay. So that car had actually been sold to a
15 DeMario Lofton-Robinson; that's the information that you had
16 received?
17 A There was a -- yes. Eventually, it had been sold to
18 DeMario Lofton-Robinson.
19 Q Right. The information you received is there was
20 kind of a middle person in between that?
21 A Yes.
22 Q Okay. But eventually, that car was sold and
23 purchased by DeMario Lofton-Robinson?
24 A Yes.
25 Q Okay. And then, with that information, did you try

1 to go to an address associated with DeMario Lofton-Robinson?

2 A Yes, we did.

3 Q All right. Showing you State's Exhibit 215, do you
4 recognize that?

5 A Yes, I do.

6 Q Okay. What is that?

7 A That is a residence at 919 Bagpipe in North Las
8 Vegas.

9 Q And did you in your investigation have information
10 associating DeMario Lofton-Robinson with this particular
11 address?

12 A Yes, we did.

13 Q All right. Now, when you respond to a homicide
14 scene, when you start working it, do you remember roughly
15 about what time you got to the scene?

16 A I believe it was about midnight --

17 Q All right.

18 A -- on the 9th.

19 Q Okay, so the early morning hours of the 9th?

20 A Yes.

21 Q You're not exactly sure exactly what time?

22 A Correct.

23 Q Okay. And here's the point I was trying to get to.
24 Do you -- do you go home at that point?

25 A No, we work the scene until all leads are exhausted.

1 Q Okay. Do you stay at a scene or stay talking to
2 witnesses for many hours?

3 A Yes, we do.

4 Q You, as we've heard from your testimony today, went
5 to the Short Line Express?

6 A Yes.

7 Q You actually search for and get information about
8 this car, and then go to that H Street location?

9 A Yes, we did.

10 Q Interviews are done with different individuals to
11 find out about this sale?

12 A Yes.

13 Q Okay. And then, after that, there's still more work
14 to be done?

15 A Yes. Sometimes, there's more follow up to be done.

16 Q All right. Was there a decision at some point to
17 say, okay, we've been at this for a while, let's go home?

18 A Yes, in the evening hours of the 9th.

19 Q About -- do you know -- do you remember about how
20 many hours you'd been working at that point?

21 A Well, almost 24, 30 hours.

22 Q Okay. So was there a decision to go home and get
23 some sleep?

24 A Yes.

25 Q But instead, what did you do?

1 A Instead, on my way home, I drove by the Bagpipe
2 address.

3 Q All right. So when you went by that address, was
4 there anything of interest that you saw?

5 A Yes. I saw the Grand Marquis parked in the -- in
6 front of the Bagpipe address, with the license plate 473YZ
7 Baker.

8 Q And so, at that point, you didn't actually have that
9 car at that address, did you?

10 A No, we did not.

11 Q All right. You had information, but you hadn't
12 physically put eyes on it?

13 A No.

14 Q Was that something important in the process of your
15 investigation?

16 A Yes.

17 Q What did you do?

18 A I basically started to survey the -- surveil the
19 call -- or the car, and I made phone calls into my squad to
20 say that I have located the suspect vehicle.

21 Q So you called them all back out?

22 A Yes.

23 Q Okay. So did you do anything in reference to that
24 vehicle? Did anybody get in; did anybody move? What
25 happened?

1 A Yes. While I was conducting surveillance of the
2 vehicle, two black males adults entered the vehicle, and they
3 resembled the same black male adults that I had seen in the
4 video from the Short Line Express.

5 Q And I wanted to point that out. Like, you had
6 visually watched the video surveillance?

7 A Many times, yes.

8 Q Okay. And so, when you were outside of State's 215,
9 is that where the two individuals that fit the description
10 from the surveillance video that you watched exited from?

11 A Yes.

12 Q Okay. And now, when we look at State's 150, is that
13 at the house?

14 A No, it's not.

15 Q Okay. Walk us through what happened.

16 Q So, as I'm surveilling the vehicle, the two black
17 male adults get in the vehicle, and the vehicle becomes
18 mobile. I then made the decision to follow the vehicle. At
19 this time, I'm also calling out to my squadmates and to other
20 patrol officers that I was following the vehicle at some
21 distance, because we wanted to see where the vehicle was
22 heading to, in hopes of eventually stopping the vehicle.

23 Q Okay. And then, was it stopped?

24 A Yes, it was stopped at -- I believe it was 1366 West
25 Cheyenne. It's the Reef Dispensaries.

1 Q Okay. Is there a Dotty's nearby as well?

2 A There is.

3 Q Okay. So when the car is stopped there, the two

4 people that are in the vehicle, what happens with them?

5 A The two people exit the vehicle, and they were

6 stopped and taken into custody.

7 Q Okay. And then, what was done with the car?

8 A The car was then -- we had actually called out crime

9 scene analysts, and we sealed the car, and the car was

10 eventually towed to our crime lab.

11 Q All right. When you say you called out crime scene

12 analysts, does that mean they responded to this particular

13 location?

14 A Yes, they do.

15 Q Okay, which we see in the photograph right now?

16 A Yes.

17 Q Okay. Now, as you're working this car, it's away

18 from the Bagpipe address, correct?

19 A Correct.

20 Q What is done in relation to the Bagpipe address as

21 you and the crime scene analysts are here working this car?

22 A When the vehicle became mobile, some of our criminal

23 intel detectives were actually en route to the Bagpipe address

24 to continue surveillance. They continued surveillance, and at

25 that point, Detective Jaeger obtained a search warrant for

1 that residence.

2 Q Okay. And so, when you peeled off to follow the
3 car, others went back to the house to watch it?

4 A Yes.

5 Q Okay. And then, did someone come out of that house
6 later on that fit the description of someone from the video
7 surveillance?

8 A Yes, eventually.

9 Q And do you remember who that was?

10 A I do not.

11 Q Okay, but was that person also taken into custody?

12 A Yes.

13 Q All right. And then, did you go with the car to the
14 crime lab?

15 A No, I did not.

16 Q Okay.

17 MR. PESCI: Pass the witness.

18 THE COURT: Cross-examination?

19 MR. SANFT: No cross, Your Honor.

20 MR. RUGGEROLI: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. RUGGEROLI:

23 Q Morning, Detective.

24 A Good morning.

25 Q You met with the Clerk at the Speedy -- or the Short

1 Line Express?

2 A Yes.

3 Q And that's the early morning hours of August 9th,
4 2017?

5 A That's correct, yes.

6 Q You indicated -- and I think your statement was
7 robbery -- might be a robbery?

8 A Yes.

9 Q Now, you're just remembering this; you didn't put
10 that information in a report or anything like that, correct?

11 A No, I didn't.

12 Q You may be in error about what his actual statements
13 were? I want to be clear. When you spoke to him, that phrase
14 was not used?

15 A I did not speak to the Clerk about the robbery, no.

16 Q Okay, thank you. And there wasn't an actual
17 criminal incident; it was that you had information about the
18 four suspects that may have been at the Short Line Express?

19 A No, the Clerk was unsure. The Clerk felt that he
20 was going to be robbed, so he notified patrol officers.

21 Q But you didn't receive that information?

22 A No, I did not.

23 Q And so what you're saying -- and this is why I'm
24 asking you. That word, "robbed," that was never spoken to
25 you?

1 A To -- to me directly by --
2 Q From the Clerk.
3 A From the Clerk? No.
4 Q And also, the Clerk did not call 911? You went out
5 to the Short Line Express because Sergeant Tromboni had
6 actually gone there, correct?
7 A Yes.
8 Q Thank you.
9 MR. RUGGEROLI: Court's indulgence.
10 (Pause in the proceedings)
11 BY MR. RUGGEROLI:
12 Q Detective, I'm going to show you a portion of
13 State's 328, which you were shown a portion of on direct
14 examination.
15 MR. PESCI: Sorry, it's going to take a second to
16 load.
17 MR. RUGGEROLI: No problem.
18 BY MR. RUGGEROLI:
19 Q While they're loading that up, you had indicated
20 that you watched the surveillance video several times?
21 A Yes.
22 Q You've been trained in firearms?
23 A Yes.
24 Q And I just want to see if you're able to notice
25 something from the video.

1 MR. PESCI: Which one do you want?

2 MR. RUGGEROLI: The fourth one down. Thank you.

3 Just while they walk in.

4 BY MR. RUGGEROLI:

5 Q Do you see the individual that you said had the

6 firearm, and he's adjusting?

7 A Yes.

8 Q Okay. Are you able to tell from that video -- thank

9 you -- if that individual took the magazine out of the

10 firearm?

11 A No, I can't tell.

12 Q Okay. But that is what you were shown on direct

13 examination, that portion of them walking in?

14 A Yes.

15 Q Thank you.

16 MR. RUGGEROLI: That's all I had for that. Thank

17 you.

18 MR. PESCI: Okay.

19 BY MR. RUGGEROLI:

20 Q You had actually also interviewed Mr. Relato, the

21 decedent's cousin; is that correct?

22 A Yes.

23 Q Do you recall that he had given you some information

24 about an iPhone?

25 A I do not recall that, no.

1 Q What about the mail that Mr. Valenzuela had? Do you
2 recall him giving you any information about that?

3 A No, I do not.

4 Q Do you recall him giving you any information or did
5 you learn any information about Mr. Valenzuela's vehicle prior
6 to August 8th, August 9th of 2017 being broke into?

7 A No.

8 Q And did you personally write a report regarding this
9 incident?

10 A Did I personally write a report?

11 Q Yes.

12 A Not that I recall, no.

13 MR. RUGGEROLI: Thank you, Detective. I have
14 nothing further.

15 THE COURT: Any redirect?

16 MR. PESCI: No.

17 THE COURT: Thank you very much for your testimony
18 here today. You may step down --

19 THE WITNESS: Thank you.

20 THE COURT: -- and you are excused from your
21 subpoena. You may call your next witness.

22 MR. BROOKS: Your Honor, the State calls Shawn
23 Fletcher.

24 THE MARSHAL: And if you'll please remain standing,
25 raise your right hand, and face the Clerk.

1 SHAWN FLETCHER, STATE'S WITNESS, SWORN

2 THE CLERK: You may be seated. Please state and
3 spell your first and last name for the record.

4 THE WITNESS: Shawn Fletcher. It's S-h-a-w-n,
5 F-l-e-t-c-h-e-r.

6 DIRECT EXAMINATION

7 BY MR. BROOKS:

8 Q Ms. Fletcher, how are you employed?

9 A I work for Las Vegas Metropolitan Police Department
10 as a senior crime scene analyst.

11 Q And how long have you been so employed?

12 A 23-and-a-half years.

13 Q Do you recall an incident that brings us here to
14 court today?

15 A Yes.

16 Q So I want to turn your attention to that August 9th,
17 2017 incident. How did you first become involved in it?

18 A I got requested by detectives to go out to the scene
19 and seal a vehicle.

20 Q And when you say "scene," do you recall which scene
21 this was?

22 A We were on East Cheyenne at a Dotty -- in a Dotty's
23 parking lot.

24 Q And was this nighttime or morning?

25 A It was nighttime, about 8:30.

1 Q Now, was this the primary scene of the
2 investigation, or was this like a secondary scene?

3 A This was a secondary follow up scene.

4 Q Okay. So when you got there, what did you see?

5 A When I got there, there was a vehicle there, and it
6 was a white four-door Grand Marquis, I believe, and it was in
7 the parking lot in the westbound direction.

8 MR. BROOKS: And Your Honor, I've shown defense some
9 of these exhibits, so going to admit the car photos by
10 stipulation.

11 THE COURT: Okay. Do you want to just state for the
12 record?

13 MR. BROOKS: Yes. Exhibits 150 through 154.

14 THE COURT: Any objection?

15 MR. SANFT: No, Your Honor.

16 MR. RUGGEROLI: No, Your Honor.

17 THE COURT: They're admitted.

18 (State's Exhibits 150 through 154 are admitted)

19 MR. BROOKS: Exhibits 155 through 159.

20 MR. SANFT: No objection, Your Honor.

21 MR. RUGGEROLI: No objection.

22 THE COURT: They're admitted.

23 (State's Exhibits 155 through 159 are admitted)

24 MR. BROOKS: Exhibits 160 through 175.

25 MR. SANFT: No objection.

1 MR. RUGGEROLI: No objection.
2 THE COURT: They're admitted.
3 (State's Exhibits 160 through 175 are admitted)
4 MR. BROOKS: Exhibits 176 through 180.
5 MR. SANFT: No objection, Your Honor.
6 MR. RUGGEROLI: No objection.
7 THE COURT: They're admitted.
8 (State's Exhibits 176 through 180 are admitted)
9 MR. BROOKS: And then, 181 through 214.
10 MR. SANFT: No objection, Your Honor.
11 MR. RUGGEROLI: No objection.
12 THE COURT: They're admitted.
13 (State's Exhibits 181 through 214 are admitted)
14 MR. BROOKS: And Your Honor, may I publish?
15 THE COURT: You may.
16 BY MR. BROOKS:
17 Q So, Ms. Fletcher, is this the vehicle?
18 A Yes, it is.
19 Q Was there something unusual about the vehicle when
20 you arrived that caused you to have to do something?
21 A Yes, the driver's window was down.
22 Q And so what did you do?
23 A Sometimes when -- in this particular case, the
24 battery was dead, so we tried to jump the car so we could get
25 the window up, and that didn't work. So I placed plastic wrap

1 over it after I fingerprint processed it to seal up the window
2 so that we could tow the vehicle without losing anything.

3 Q I'm showing you -- that last one, for the record,
4 was Exhibit 151. Showing you Exhibit 152.

5 A This is -- is this a touch screen, or am I using the
6 mouse?

7 Q The mouse in front of you.

8 A The mouse? Okay.

9 Q Yes.

10 A This -- the black stuff that you see around this
11 window here is my fingerprint powder, and then this is a
12 picture of my actual fingerprint lifts. It's kind of hard to
13 see, but you can see like a number 3 here. These are my
14 fingerprint tape. This is before I put that Saran Wrap, so to
15 speak, over the window.

16 Q So you print it before you put the Saran Wrap?

17 A Yes.

18 Q And how would -- you mentioned the battery had died
19 on this. How would you have transported it after you were
20 done?

21 A We call the tow company that's on-call, and they
22 towed it to our lab.

23 Q And did that happen?

24 A It did.

25 Q Did it happen that night?

1 A It did.

2 Q I want to show you specifically Exhibit 154, and I
3 want to turn your attention to the 4 and 5 pieces of tape.
4 What are those?

5 A These are pieces of my fingerprint tape. You can
6 see the numbers that I gave each one; a 3, a 6, a 7. I'm not
7 sure what that one says, maybe 1. And that's my fingerprint
8 tape that's in place over a developed fingerprint.

9 Q So what are you doing? What does the tape do?

10 A The tape -- basically, when you leave your
11 fingerprint behind, you leave behind residue on something.
12 Our powder will adhere to that residue. And then, this is
13 basically -- it's forensic tape, but it's really just Scotch
14 tape. You put that over the print, and then you can pull it
15 off of there, and that black residue that's adhering to the
16 print is on the tape, and it's placed on a white fingerprint
17 card. So this is just a photo to show the location of those
18 latent prints that I recovered.

19 Q And what's the word "Q card" mean?

20 A I'm sorry?

21 Q What does "Q card" mean?

22 A I don't know.

23 Q Okay. So when you put this tape on something, what
24 do you do with it then?

25 A When it gets put on the latent print card, it gets

1 -- there's a label that's already printed on the card, and
2 it's got the case number, my name and P number, the location,
3 and the area that the fingerprint was pulled off. So these
4 would all say, "Exterior driver's door," and it's got the
5 vehicle information. And then that gets placed into a latent
6 print packet, so basically, it's an evidence envelope that
7 gets sealed, and then that gets sent over to our Latent
8 Fingerprint Detail.

9 Q So, Latent Prints 4 and 5, would they have been
10 impounded into evidence with -- by you and had your P number
11 put on it?

12 A Yes.

13 Q And then that could have been sent to the lab if
14 someone ever wanted to test it?

15 A Yes. I would secure them and send them over to the
16 Latent Print Detail, and then they hold them from then on.

17 Q Do you test it?

18 A I do not.

19 Q Okay. So after you're done at this Dotty's parking
20 lot, do you go with the car back to the CSI lab?

21 A Yes, I followed the car back there.

22 Q Now, I want to show you Exhibit 159. Do you
23 recognize what we're looking at?

24 A I do.

25 Q And I want to turn your attention to that window.

1 What -- what are we seeing there?

2 A The driver's window?

3 Q Yes.

4 A This is just the plastic seal that I put over the
5 window after I processed it, just so that it would secure it
6 up for towing.

7 Q So, now that it's back at the lab, what happens
8 next?

9 A Now that it's back at the lab, you can see the --
10 the seals that we placed on the vehicle, where I talked
11 earlier about sealing the vehicle. And now we're ready to
12 completely process the vehicle and do everything else that we
13 need to do with the vehicle through documenting it with
14 photography and latent print processing.

15 Q Do you do that that night?

16 A No, we did that on the 11th, so two days later.

17 Q Do you wait for a search warrant?

18 A Yes.

19 Q Until you're able to break those seals?

20 A Correct.

21 Q Were those seals intact at the time you broke them?

22 A They were.

23 Q So once you guys execute the search warrant and
24 start documenting what's inside the car, take me through what
25 happens. How does that process work?

1 A It starts out with a photograph like this. So I
2 would have photographed the vehicle, showing it in this state
3 with the seals in place and everything. And then we would
4 photograph -- break the seals, and photograph the entire
5 inside of it.

6 Generally, the order that we work in is we'll do
7 that -- we'll do all the photography first. We'll pull out
8 any evidence, or in this case, I believe we pulled everything
9 out of the car and laid it down on paper on the floor, and
10 photo the contents of the vehicle. And then we'll collect any
11 evidence, or anything that we're going to collect as evidence
12 gets pulled out, and then we usually do the fingerprint
13 processing last.

14 Q You said "we." Who's we?

15 A I worked with another crime scene analyst, Claire
16 Browning.

17 Q And you said you did the fingerprint processing
18 last. Would your fingerprints have been on it? How would you
19 keep your fingerprints from being on it?

20 A No, we are of course wearing gloves and protective
21 gear so that we don't leave any evidence behind.

22 Q So now I want to turn your attention to kind of like
23 inside the car at this point in time; specifically, the glove
24 box. Was there something in the glove box of evidentiary
25 interest to you?

1 A Yes. We had a box of ammunition -- firearms
2 ammunition in the glove box.

3 Q Showing you Exhibit 180. Do you recognize that?

4 A I do. This is the contents of the ammunition box.

5 Q And what kind of ammunition is that?

6 A It's .45 Auto. It's FC, which is Federal, .45 Auto.

7 Q And was there something else related to firearms in
8 the glove box?

9 A I believe there was a firearms box.

10 Q Okay, and is that -- showing you State's Exhibit
11 177, do you recognize that?

12 A Yes, that is the box.

13 Q Okay, and what kind of -- what kind of box is that?

14 A It's an Interarms .45 semiautomatic gun box.

15 Q Now, inside the vehicle, what was -- what was inside
16 the vehicle?

17 A Well, evidentiary-wise, we had a lot of receipts.
18 We recovered a lot of receipts. We did what we call trace
19 acetate lifts or trace evidence lifts on the seats.

20 Q What's that?

21 A A trace evidence lift, sorry, is -- it's a large
22 adhesive -- it's a big piece of Scotch tape that's like
23 eight-and-a-half by 11, and we just use them to -- we tap it.
24 It's kind of like a lint roller effect. We tap it over all of
25 the seats to recover any trace evidence; any hairs or fibers

1 that might be on the seats. So we had that.

2 We did -- also did DNA swabs on all of the door
3 handles, interior and exterior, and then also the steering
4 wheel, the rear-view mirror, and the gear shift, and those are
5 just for any transfer DNA that might be on those items. And
6 then Claire actually did the evidence impound. So it was
7 mostly receipts, the ammunition that you just showed, and
8 clothing; we had shoes that were in the trunk of the vehicle.

9 Q Now, the DNA swabs, where would you do that to and
10 why?

11 A The DNA swabs on a vehicle, we typically will do,
12 like I said, the steering wheel, the rear-view mirror where
13 you would grab the rear-view mirror to adjust the mirror,
14 we'll do the gearshift, and then we do all of the door
15 handles, so every interior door handle and every exterior door
16 handle.

17 Q I want to show you State's Exhibit 191. What is
18 this a photo of and why did you take it?

19 A This is a photo of the right rear of the vehicle,
20 and it's basically just showing the vehicle as -- with the
21 contents as we opened -- as it was when we opened the door.

22 Q And then you guys start taking things out and
23 documenting it?

24 A Correct.

25 Q So, do you see that sweatshirt there --

1 A Yes.

2 Q -- above the trash bag?

3 A Yes.

4 Q So tell me, if I see -- show you Exhibit 187, what
5 happens in between when you see it on the seat to this? What
6 is that?

7 A Normally, the way that we'll -- we'll do evidence is
8 we photo it in place, and then we will pull it out. This is
9 butcher paper that's lying down on the floor of our garage.
10 So we get fresh butcher paper out, we'll lay the item out, and
11 re-photo it for identification purposes.

12 Q Okay. I want to show you some photos in the trunk.
13 193.

14 A We have several -- obviously, several Nike boxes.
15 We've got a red Air Jordan shoe, and then there's a -- there's
16 a lot of other things in there.

17 Q And Exhibit 194, is that just kind of another type
18 view?

19 A Yes, that's a little bit over to the left of the
20 center.

21 Q All right. Did you have some information that those
22 shoes might be of interest?

23 A Yes.

24 Q And so, showing you Exhibit 181.

25 A That's going to be a close-up of one of the pairs of

1 shoes, and it's on the butcher paper now, as you can see in
2 the background.

3 Q And then, why this in 183? What are you doing here?

4 A This is just showing the size. So that's the -- a
5 sticker that's on the -- the insole, showing the size of the
6 shoe.

7 Q And was there more than one type of this shoe?

8 A We had a size 11, and we also had a pair that were
9 size 9.

10 Q So, in Exhibit 184, is that kind of the same shoe,
11 but with --

12 A Yes.

13 Q -- a different size?

14 A Correct.

15 Q And how do you know it's a different size?

16 A The 9 and the -- right in here.

17 Q I want to show you Exhibit 189. At the point in
18 time when you were taking this, did you know why you were
19 taking this, or why was this of interest?

20 A I don't know.

21 Q Okay. And then, showing you Exhibit 195, what are
22 we looking at?

23 A This little spot that is back here, we thought might
24 be a spot of blood, and it -- and it did turn out to be a spot
25 of blood once we did a presumptive test on it.

1 Q What's a presumptive test?

2 A We use a presumptive test called phenolphthalein,
3 and it basically will tell you -- we'll do a small little
4 sample -- take a small little sample with a dampened swab, and
5 then we'll test the swab, and the phenolphthalein will
6 indicate whether it's blood or not.

7 Q Okay. And so then, showing you Exhibit 196, is that
8 a zoomed-in version?

9 A It is.

10 Q Is that your P number?

11 A It is, yes, 5221.

12 Q Okay. So your P number in the photo, does that mean
13 that, when you swabbed that, it would have been impounded
14 under your number, or was it impounded under someone else's?

15 A It was impounded under Claire's -- Claire Browning's
16 P number. She did all the evidence.

17 Q And were there any other areas that you tried to do
18 presumptive blood tests on?

19 A We did. We had some stains on the shoes, both of
20 the pairs of the red shoes that we tested. Those did not come
21 back positive; they were negative. And then we had -- this is
22 on the back of the -- it's on the top of the right front seat.
23 On the interior right rear door, we had a couple of stains,
24 but they were very small, so we just collected those; we did
25 not test them.

1 Q Okay. Would they have been preserved though if
2 someone wanted to test them later?

3 A Yes. And I'm sorry, we also had a red shirt that we
4 tested that was negative as well.

5 Q And Exhibit 201. So now, at this step of the
6 process, what are you doing?

7 A This is kind of the same process I described
8 earlier. We've taken the things out of the trunk and laid
9 them on the butcher paper, and now I'm just kind of
10 photographing them more spread out so that you can see
11 everything.

12 Q All right, I'm going to walk you through kind of a
13 progression of that. 202?

14 A This is another picture kind of going down the line.

15 Q So you just end up going down the line, in like 203,
16 and documenting the various things you took out?

17 A Correct.

18 Q Exhibit 204?

19 A Again, same thing.

20 Q Exhibit 205?

21 A And more of the same.

22 Q And Exhibit 206?

23 A And that's probably the end of it.

24 Q So, after documenting all this, are you present when
25 Ms. Browning begins to process the car for fingerprints, or

1 what are you doing while she's doing that?

2 A Yes, I was present.

3 Q Okay. And does she use a similar type style that
4 you would have used?

5 A She did, yes.

6 Q Once you guys are done documenting everything inside
7 of this, what happens with the car, and then what happens with
8 the evidence that you guys gathered?

9 A The evidence that was gathered, Claire would have
10 processed some of the items. I think -- I can't remember
11 everything that she processed, but she would have processed
12 some of the items for fingerprints, the things that could have
13 been processed. She would have swabbed some of the drink
14 containers for DNA, just like we swabbed the door handles.

15 And then, when we -- when we impound or we recover
16 evidence, it's kind of similar to the fingerprints. We will
17 put it in an interior package that we seal up or staple up
18 with the event number. Claire will put her initials, and P
19 number, and the item number on it.

20 And then, the exterior bag is going to have a label
21 on it that's got a detailed description of exactly what's
22 inside of the bag. That's also going to have the case number,
23 the location. It's going to have Claire's initials and P
24 number; she's going to sign the label. So it's going to have
25 all of the identifiers of the case on that label.

1 And then she's going to seal -- we do what we call
2 seal the evidence, and that's a red piece of tape that's got
3 the Metro stuff on it, and she'll seal it around the -- where
4 she folded over the bag, and then she also initials and writes
5 the date on that, and that shows that the evidence hasn't been
6 tampered with.

7 If the package is opened by somebody after, like a
8 forensics or a latent print examiner, they don't break that
9 seal. They cut the package open, and then they will reseal
10 where they cut the package open so it maintains the integrity
11 of the evidence. And then it will go to the evidence vault at
12 that point.

13 MR. BROOKS: Thank you. Nothing further. Pass the
14 witness.

15 THE COURT: Mr. Sanft?

16 MR. SANFT: No cross, Your Honor.

17 THE COURT: Mr. Ruggeroli?

18 MR. RUGGEROLI: Just one brief question.

19 CROSS-EXAMINATION

20 BY MR. RUGGEROLI:

21 Q I wanted you to just clarify. You did find some
22 evidence of what looked to be potential bloodstains on shoes,
23 but that turned out to be negative; is that correct?

24 A It did.

25 MR. RUGGEROLI: Okay, nothing further. Thank you.

1 THE COURT: Anything else?

2 MR. BROOKS: No, Your Honor.

3 THE COURT: Okay. Thank you very much for your
4 testimony here today. You may step down, and you are excused
5 from your subpoena. You may call your next witness.

6 MR. BROOKS: Your Honor, the State calls Claire
7 Browning.

8 THE MARSHAL: If you'll please step up into the
9 witness stand. Remain standing, raise your right hand, and
10 face the Clerk.

11 CLAIRE BROWNING, STATE'S WITNESS, SWORN

12 THE CLERK: You may be seated. Please state and
13 spell your first and last name for the record.

14 THE WITNESS: My name is Claire Browning. First
15 name is C-l-a-i-r-e. Last name, B-r-o-w-n-i-n-g.

16 DIRECT EXAMINATION

17 BY MR. BROOKS:

18 Q Ms. Browning, how are you employed?

19 A I'm employed as a crime scene analyst with Las Vegas
20 Metropolitan Police Department.

21 Q How long have you been so employed?

22 A A little over four-and-a-half years.

23 Q Did you know the lady who just walked out of the
24 courtroom?

25 A Yes, I do.

1 Q Do you recall an incident that brings us here to
2 court today that you worked with that lady?

3 A Yes.

4 Q So I want to turn your attention to that August 2017
5 time period. How did you first become involved in this
6 investigation?

7 A I was requested to assist on a vehicle that was in
8 the CSI garage that was related to a homicide event.

9 Q So, by the time you get brought on, the vehicle's
10 already in -- at your CSI lab?

11 A That's correct.

12 Q All right. And so, what do you -- what's your first
13 step? How do you guys divide up the labor?

14 A So it was decided that Shawn Fletcher, the last
15 person that testified, she was going to do the photos and the
16 report for this particular incident, and then I was going to
17 collect any latent prints and evidence.

18 Q So what's the first step that you would do then?

19 A So Shawn originally took some photos of the vehicle
20 to show it in the original condition, to include the seals
21 that were affixed on the exterior of the vehicle. We then cut
22 the seals open, and she can photograph all of the interior of
23 the vehicle to show where all of the items of evidence and all
24 the contents, where they were for their original location.

25 Q And then, what is kind of the first step that you

1 would be involved in?

2 A So the first step that I would be involved in, I
3 believe that we latent print processed the exterior of the
4 vehicle, and we pulled all of the items out of the vehicle to
5 see what was pertinent to the case that we were working.

6 Q What's an acetate trace lift?

7 A So an acetate trace lift, it's actually -- think of
8 it as like a really big, sticky sheet of paper. It's clear
9 plastic. We can use it to pick up any trace evidence that
10 might be on the surface. So in this case, we used trace lifts
11 on the seats of the vehicle. We then adhere it to just a
12 piece of clear vinyl -- or, sorry, not clear vinyl -- white
13 vinyl, and submit it for evidence.

14 Q And when you guys swabbed the car for DNA, would
15 that have been impounded under your event number?

16 A It would have been --

17 Q Or, sorry, P number?

18 A Yes. It would have been impounded under my P
19 number.

20 Q And were there three specific things that appeared
21 to be, like, blood?

22 A There were some areas that did appear to be blood,
23 and one area actually tested positive for blood.

24 Q And when you say tested positive, what -- what test?

25 A We did a phenolphthalein presumptive test. It's

1 just a test that could point towards the stain that we found
2 being blood. It's not 100 percent clear-cut, but more than
3 likely, it would be blood.

4 Q And do you recall where that was?

5 A The area that we tested was on the right side of the
6 right front seat back.

7 Q Showing you Exhibit 195, do you recognize that?

8 A Yes, this is the stain that I was talking about.

9 Q And would that have -- what's your P number?

10 A My P number is 15291.

11 Q Would you have impounded that with your P number?

12 A Yes.

13 Q Was that in Package 3, Item 15?

14 A I believe so, yes.

15 Q Were there two other areas of interest that looked
16 similar to that?

17 A Yes. The areas were too small to actually
18 presumptively test, but we did collect them, and they did
19 appear to be blood. They were located on the interior side of
20 the right rear door. I believe it was on the armrest, and
21 then on the interior panel near the handle.

22 Q So showing you Exhibit 199, do you kind of see that
23 from here, or do you want me to give you a closer view?

24 A Yes, I can see it.

25 Q Okay. And so would those have been impounded under

1 your P number in that Package 3, Item 16 and 17?

2 A I believe so, yes.

3 Q Now, let's move to the print processing. Were you
4 the person who did the print processing?

5 A Yeah, I did the majority of the processing on the
6 vehicle. The only area that I personally did not process
7 myself was the, sorry, exterior side of the left front door.
8 I believe that CSA Fletcher had already done that when she had
9 towed the vehicle. But we processed -- or, sorry. I
10 processed the interior and exterior sides of all doors,
11 windows, the hood, the trunk, and several items that were
12 located inside the vehicle.

13 Q All right, I want to walk you through some of those.
14 Forgive me, you guys took a lot of photos here. So I'm going
15 to turn your attention to Latent Print 6 first, so Exhibit
16 164. Where is Latent Print 6, and how would that have been
17 impounded?

18 A So Latent Print 6 looks like it's on the exterior
19 right rear quarter panel, or what's kind of the, I guess, C
20 frame of the vehicle. When we impound a latent print lift, we
21 actually -- if you see the tape here, we peel that piece of
22 tape off of the surface and apply it to a piece of white
23 cardstock so that we can visualize the print.

24 We then label it with the event number, it would be
25 my name and P number, the date that we collected it, what

1 surface we collected it from, and then that designator, so
2 LP6, or Latent Print 6. We then -- for all of the prints that
3 we end up getting, we submit them in a latent print envelope,
4 which details the same information that the card has, and seal
5 it, impound it, and give it to the Latent Print Detail.

6 Q And just so we don't have to go through that step on
7 each one, all the prints that I'm about to talk about, do you
8 do the same thing individually with those prints?

9 A Yes, we do.

10 Q Are some of these fingerprints and some of these
11 palm prints?

12 A I believe so, yeah.

13 Q How do you decide, you know, what to pull?

14 A So there are certain specifications to what we take.
15 Typically, there's got to be a certain number of points in
16 ridge detail that we can identify. There can be a delta --
17 I'm not a latent print examiner, and I'm not an expert by any
18 means, but we look for certain details that are within the
19 print.

20 Q So, Latent Print 13 in Exhibit 165, let me see if I
21 can zoom-in to help you with the number. Do you see it?
22 Wait.

23 A Sorry, repeat the -- the number.

24 Q Latent Print 13, do you see it there?

25 A Oh, 13. Yes, it's on the exterior side of that

1 window.

2 Q And is that the back passenger?

3 A Yes, it is.

4 Q Showing you Exhibit 166, Latent Print 16. Do you

5 see it there?

6 A 16 appears to be at the top edge of the right front

7 window.

8 Q Now, is there also a Latent Print 19? Do you want

9 me to back out of there?

10 A It looks like it's actually on that -- that bottom

11 edge of the window.

12 Q So that's the one on the bottom edge here?

13 A Yes, that's correct.

14 Q Latent Print 20 on Exhibit 167. Do you see it

15 there?

16 A Yes. It looks like it's going to be on the frame of

17 the right front door.

18 Q And where is Latent Print 23 now in Exhibit 169?

19 A It looks like this is the front hood of the vehicle.

20 Q So we've kind of been going up in numbers, and

21 working our way how on the car? How did you do it?

22 A It's hard to say, but based off of the direction

23 that the prints appear to be going, we would have numbered it

24 from the right rear side of the vehicle, around towards the

25 front, towards the left side of the vehicle.

1 Q I'm going to show you kind of a group of different
2 photos -- or I'm going to ask on a group of different prints
3 now. Showing you Exhibit 170. Can you use that mouse in
4 front of you and help identify for us Latent Print 27?

5 A This appears to be Latent Print 27.

6 Q Let me see. Okay, and Latent Print 28?

7 A Is right next to it.

8 Q Latent Print 29?

9 A I believe it's this one.

10 Q And 30?

11 A Latent Print 30 is this one.

12 Q 31?

13 A If I can read it correctly, I believe it's this one
14 right here.

15 Q Okay, and let me show you Exhibit 171. Can you kind
16 of see some of the areas that we were just looking at when we
17 were talking about 31, 29, and 30?

18 A Yes.

19 Q Now, I want to ask you where 32, 33, and 34 are.

20 A These are these three prints right here.

21 Q Right. And showing you Exhibit 172. Do you see
22 where 34 and 35 are?

23 A I believe this is 35, and then -- I feel like my
24 eyesight is failing me. I can't see where 34 is. Oh, 34 is
25 this one right here.

1 Q 37? Do you want me to back -- back out?
2 A You're good. 37 is right here. I just --
3 Q All right.
4 A I think this is still the front hood.
5 Q And were we all -- we're still on the hood for all
6 those, right?
7 A Yes.
8 Q And was the car this dirty, or did you make it that
9 dirty?
10 A I made it that dirty. That is the latent print
11 powder that we were using.
12 Q And I promise, just a last couple. Latent Print 43?
13 A 43 appears to be on the top frame of -- this looks
14 to be the left rear door.
15 Q And do we see 44 in this photo?
16 A I believe this one is 44 on the door -- or, sorry,
17 not the door; on the window.
18 Q Now, were there things that you processed for prints
19 that didn't involve this type of processing that returned
20 negative results?
21 A We actually did powder processing on all the items
22 that we did process. Several of those items were located
23 inside the vehicle, so we processed water bottles, there was a
24 gun box, cigarillo wrappers, things of that nature.
25 MR. BROOKS: Thank you, Your Honor. Pass the

1 witness.

2 THE COURT: Cross-examination?

3 MR. SANFT: No cross, Your Honor.

4 MR. RUGGEROLI: I have no questions. Thank you.

5 THE COURT: Okay. Thank you very much for your
6 testimony here today. You may step down. You are excused
7 from your subpoena.

8 MR. PESCI: Can I approach?

9 THE COURT: Yeah.

10 MR. PESCI: Can we approach?

11 (Bench conference)

12 THE COURT: Is this where you want to call DeShawn?

13 MR. PESCI: Yeah. Yeah, so I don't know if you
14 wanted to take a break.

15 THE COURT: Okay, yeah, we'll take a break.

16 (End of bench conference)

17 THE COURT: Okay. At this time, ladies and
18 gentlemen, we're going to take a short recess.

19 During this recess, you're admonished not to talk or
20 converse amongst yourselves or with anyone else on any subject
21 connected with this trial, or read, watch, or listen to any
22 report of or commentary on the trial, or any person connected
23 with this trial, by any medium of information, including,
24 without limitation, newspapers, television, the internet, or
25 radio, or form or express any opinion on any subject connected

1 with this trial until the case is finally submitted to you.
2 We'll be in recess for at least the next 15 minutes.
3 Thank you.
4 THE MARSHAL: Thank you. All rise for the exiting
5 jury, please. Jurors.
6 (Outside the presence of the jurors at 10:29 a.m.)
7 THE COURT: Okay, the record will reflect that the
8 hearing is taking place outside the presence of the jury
9 panel.
10 MR. PESCI: If I can just make a quick record, Your
11 Honor.
12 THE COURT: Sure.
13 MR. PESCI: During the testimony of Detective Lora
14 Cody, there was evidence admitted regarding the registration
15 of the vehicle, and specifically, it's under the name of James
16 Newman. I was concerned and didn't want there to be the
17 appearance that somehow this was a stolen vehicle because it
18 comes back as the registered owner being James Newman.
19 So I briefly conferred with defense counsel. They
20 agreed with the concept of me utilizing some hearsay evidence
21 to establish that it actually had been sold to DeMario
22 Lofton-Robinson so there was no appearance of some sort of
23 other bad act because of the car being in someone else's name.
24 MR. SANFT: That is correct, Your Honor.
25 MR. RUGGEROLI: Correct.

1 THE COURT: Okay. And we're bringing in DeShawn
2 Robinson, correct? He's here?

3 MR. PESCI: Correct. Yes.

4 THE COURT: Okay.

5 MR. PESCI: That's what I'm told.

6 MR. SANFT: Yeah.

7 THE COURT: Do we have to settle these issues, or
8 did we agree that these exhibits, we would be able to resolve
9 that later? The actual exhibits. That's my concern, because
10 I don't know, Mr. Ruggeroli, if you're going to want to
11 actually use the exhibit.

12 MR. RUGGEROLI: We have multiple exhibits. The only
13 one that I -- I don't know if I would use any right now.

14 THE COURT: The Agreement to Testify.

15 MR. RUGGEROLI: Yeah, I'm not going to use that
16 right now because I know --

17 THE COURT: Okay.

18 MR. RUGGEROLI: -- that it needs to be worked on.

19 THE COURT: Okay.

20 MR. RUGGEROLI: I think you were going to let us
21 know after you had a chance to read the canvass of the entry
22 of plea. And so, at this time, I can't display it, obviously,
23 until you make a ruling on that.

24 THE COURT: And you want to actually admit this?

25 MR. RUGGEROLI: I do. So, it's Defense Proposed A1.

1 THE COURT: Okay. And you've read it in its
2 entirety? Okay, because I'm concerned about page 12, some of
3 the things that I say.

4 MR. SANFT: Yeah.

5 THE COURT: I just want to make sure that -- I mean,
6 page 12 when I say, "And you understand that you'll be
7 testifying in front of this Court, and this Court would also
8 be the one that would probably most likely sentence you, and
9 that I'll have an opportunity to hear how you testify?"

10 MR. RUGGEROLI: Yes.

11 THE COURT: I mean --

12 MR. RUGGEROLI: I know. I did read it, and there's
13 also some other portions on page 12. I --

14 THE COURT: Yeah.

15 MR. RUGGEROLI: I've made my argument.

16 THE COURT: "And you understand the importance of
17 agreeing to testify truthfully, and if the State believes you
18 didn't testify truthfully, it could be used against you and
19 they could argue for a more harsh penalty?" I mean, those are
20 all coming from me.

21 MR. RUGGEROLI: That's true, Judge. I just think
22 that it helps -- it's all true, and because of that, I think
23 that it did play a role in his decision-making, which then
24 should be subject to cross-examination so that we can do our
25 job and attack his credibility and motive.

1 The motive that we're going to be suggesting is that
2 he has received a tremendous benefit, despite the fact that
3 he's denied and did not admit to being involved in any
4 conspiracy; but that he is obligated, in order to receive the
5 benefits of that agreement, to testify. And so, I've asked
6 that that exhibit be admitted.

7 THE COURT: Okay. And on page 8, line 20, it says
8 that on -- that the State would prove that on August 19th -- I
9 think Mr. Pesci meant August 9th.

10 MR. PESCI: Yes.

11 THE COURT: So, again, I just want to make sure you
12 want this in, I mean, because they would be able to read the
13 things that I said to Mr. Robinson as well.

14 MR. RUGGEROLI: Yes, I don't have the desire to
15 redact it. I think it would pretty much be impossible, and it
16 would destroy the context of his answers.

17 MR. PESCI: And Judge, the State's only request is,
18 as you pointed out, I'm not sure if it's misspeaking or the
19 transcription, but obviously, it's 9th.

20 THE COURT: Right.

21 MR. PESCI: So I would ask just that the "1" be
22 redacted.

23 THE COURT: Oh, yeah, we could just do that, right?

24 MR. PESCI: We could do Wite-Out.

25 THE COURT: It's -- do I have the actual exhibit?

1 THE CLERK: Um-hum.

2 THE COURT: Oh, I have the actual one? Oh, I'm so
3 glad I didn't write on it. Oh. Okay, so you just want me to
4 White-Out the "1"?

5 MR. PESCI: Yes, please.

6 THE COURT: Okay.

7 MR. RUGGEROLI: And Judge, just another matter of
8 clarification, if I may.

9 THE COURT: It's line 20 on page 8. It says,
10 "19th." It's supposed to be the 9th.

11 MR. RUGGEROLI: As to Mr. Pesci's point about they
12 did not present all the evidence that they even had at their
13 disposal --

14 THE COURT: Uh-huh.

15 MR. RUGGEROLI: -- at the time, I expressed my -- I
16 do not intend in any way to say, oh, hey, this is all the
17 State had. But also, on page 8, Mr. Pesci did reference the
18 fact that they were incorporating the grand jury transcripts.

19 THE COURT: Grand jury. Um-hum.

20 MR. RUGGEROLI: I don't want the grand jury
21 transcripts to come in, but I think that that would -- and I'm
22 not going to do it, but even if I unintentionally said
23 something, the State could then point out, hey, look, we
24 incorporated this voluminous document, which is the grand jury
25 transcripts, by reference to this plea, and that contained,

1 you know, a lot more specificity and information.

2 But I don't want the grand jury transcripts
3 introduced at all. Just in order to address the State's
4 concern that I would somehow suggest that the only evidence
5 that they had was what Mr. Pesci relayed, they also had the
6 grand jury, even based on the information that was presented
7 in the canvass.

8 THE COURT: And he actually incorporated it --

9 MR. RUGGEROLI: Yes.

10 THE COURT: -- into the transcript.

11 MR. RUGGEROLI: Yes. And I did want to clarify that
12 I don't want to incorporate it into the proposed exhibit.

13 THE COURT: Of course you don't. Mr. Sanft, I just
14 want to make sure you don't have any objection.

15 MR. SANFT: No, Your Honor. Thank you.

16 THE COURT: Okay, and the State has stated all of
17 theirs?

18 MR. PESCI: Yes, Judge. I mean, it depends on what
19 he argues that I might do something from that. So I don't
20 know how he's eventually going to argue that, but my intent is
21 not to say, "I now move to admit the entire grand jury
22 transcript," because it has the other crimes that had been
23 excised out.

24 THE COURT: Okay. So I'm going to allow it, so I
25 can admit it right now. Al.

1 (Defense Exhibit A1 is admitted)

2 THE COURT: Is there anything else before -- because

3 Officer Hawkes is going to have to get that witness in here

4 and get him ready.

5 MR. PESCI: I don't think so.

6 MR. SANFT: Yes, Your Honor.

7 THE COURT: And I saw his attorney, so Mr. Evans is

8 here, right?

9 THE MARSHAL: He's back in the back with him.

10 THE COURT: Okay.

11 MR. PESCI: Yes.

12 THE MARSHAL: Yeah.

13 THE COURT: So we'll just take about ten minutes --

14 MR. RUGGEROLI: Thank you, Judge.

15 THE COURT: -- and then we can get the witness

16 ready.

17 MR. PESCI: Thank you, Your Honor.

18 (Court recessed at 10:36 A.M. until 10:51 A.M.)

19 (Outside the presence of the jurors)

20 THE MARSHAL: Please come to order. Court is now in

21 session.

22 THE COURT: Okay, can we bring the panel in? Bring

23 them in.

24 THE MARSHAL: All rise for the entering jury,

25 please. Oh.

1 (Pause in the proceedings)

2 MR. RUGGEROLI: Your Honor, as we're waiting, I

3 would like to invoke the exclusionary rule. I don't expect

4 anybody's a witness, but in case --

5 THE COURT: Okay, just a minute.

6 THE MARSHAL: All rise for entering jury.

7 THE COURT: Just will you hold Hawkes just for a

8 moment? Okay. You're invoking the exclusionary rule?

9 MR. RUGGEROLI: Yes.

10 THE COURT: Are there any witnesses in here?

11 MR. RUGGEROLI: I don't think so; I'm just being

12 cautious.

13 THE COURT: Okay.

14 MR. PESCI: No. The State's invoking the same

15 thing, and we have been since the beginning.

16 THE COURT: Okay.

17 MR. PESCI: So I don't know -- everybody that's over

18 here, they are not going to testify because they've been in

19 here the whole trial.

20 MR. RUGGEROLI: Correct.

21 THE COURT: And -- because I don't know everybody in

22 the courtroom, so I just -- I'll rely on the attorneys, okay?

23 Sorry about that.

24 THE MARSHAL: No problem.

25 THE COURT: And I also want the record to reflect

1 that Mr. Robinson's attorney, Mr. Evans, is present in the
2 courtroom.

3 MR. PESCI: Thank you, Your Honor. That's what I
4 was just going to say, and we also have some other individuals
5 from the juvenile detention facility. So I'm not sure maybe
6 if that was the concern, but they are associated with the --
7 they have to have someone here with him --

8 THE COURT: Yeah.

9 MR. PESCI: -- because he's in custody.

10 THE COURT: That's fine. Okay, anything else before
11 we bring them in?

12 MR. RUGGEROLI: No, Judge.

13 THE COURT: Okay, thank you. Mr. Evans, you're okay
14 with where you're sitting?

15 MR. EVANS: Yeah, I'm fine. I'm fine here, Judge.
16 If you'd prefer, I'll move somewhere else, but --

17 THE COURT: No, it's your pleasure.

18 MR. EVANS: -- I'm comfortable here and it's a
19 little crowded up there.

20 THE COURT: Okay.

21 MR. EVANS: All right.

22 THE COURT: You can bring them in.

23 THE MARSHAL: Okay, we're ready to roll. All rise
24 for the entering jury.

25 (Within the presence of the jurors at 10:55 a.m.)

1 THE COURT: Does the State stipulate to the presence
2 of the panel?

3 THE MARSHAL: Thank you, everyone. Please be
4 seated.

5 THE COURT: Mr. Pesci, do you stipulate to the
6 presence?

7 MR. PESCI: Yes, Your Honor. Thank you.

8 THE COURT: Mr. Sanft?

9 MR. SANFT: Yes, Your Honor.

10 THE COURT: Mr. Ruggeroli?

11 MR. RUGGEROLI: Yes, Your Honor.

12 THE COURT: Okay. The State of Nevada may call
13 their next witness.

14 MR. BROOKS: Your Honor, the State calls DeShawn
15 Robinson.

16 THE COURT: Mr. Robinson, if you don't mind
17 standing, facing the Clerk, raising your right hand so you can
18 be sworn in. She's over here, Mr. Robinson.

19 DESHAWN ROBINSON, STATE'S WITNESS, SWORN

20 THE CLERK: You may be seated. Please state and
21 spell your first and last name for the record.

22 THE WITNESS: DeShawn Robinson. D-e-s-h-a-w-n.
23 Robinson, R-o-b-i-n-s-o-n.

24 DIRECT EXAMINATION

25 BY MR. BROOKS:

1 Q Mr. Robinson, can I call you DeShawn?

2 A Yes, sir.

3 Q DeShawn, how old are you?

4 A 17.

5 Q And I see you have a handcuff on. Where did you
6 come from today?

7 A Summit View Center.

8 Q Where is that?

9 A I don't know where it's located.

10 Q Is it here in Las Vegas though?

11 A Yes, sir.

12 Q Okay. And I want to turn your attention back to
13 like that 2017 time frame. Can we talk about that time frame?

14 A Yes, sir.

15 Q How old were you then?

16 A 14.

17 Q And were you in high school or were you going into
18 high school?

19 A Going into high school.

20 Q Which high school?

21 A I was out when summertime was -- so I didn't get to
22 sign up for school or anything.

23 Q Oh, I guess I should have worded it better. Which
24 one were you zoned for? Where would you have gone?

25 A I would have gone to Desert Pines High School.

1 Q Desert Pines? And where were you living back then?
2 A I was living with my brother and his girlfriend.
3 Q And what's your brother's name?
4 A DeMario Lofton-Robinson.
5 Q And do you sometimes refer to him by something else?
6 A Yes, sir.
7 Q What do you call him?
8 A DJ.
9 Q DJ? What's DJ short for?
10 A DeMario Lofton -- it's short for DeMario, Jr.
11 because --
12 Q Oh, he's a Junior?
13 A Yes, sir.
14 Q Okay. And where was your -- did you guys have the
15 same mom or same dad? Which one?
16 A Same mom.
17 Q Same mom? And where did she live?
18 A She lived in Texas.
19 Q Did you ever get the chance to kind of go visit her?
20 A Yeah.
21 Q Back before this time frame that we're talking
22 about, had you recently visited her?
23 A Yeah.
24 Q What part of Texas; do you know?
25 A Arlington, Texas.

1 Q And in this 2017 time frame, who were you living
2 with then? Whose house?
3 A I was living with my brother's girlfriend.
4 Q Brother's girlfriend?
5 A Yes, sir.
6 Q Who -- where was your dad living?
7 A I don't know.
8 Q Okay. Do you know if he's in Nevada?
9 A Yeah.
10 Q He's in Nevada. And did you have any other family
11 here in Las Vegas?
12 A My grandma.
13 Q What was her name?
14 A Barbara Barnett (phonetic).
15 Q Where was she -- what was her address?
16 A 919 Bagpipe Court.
17 Q Is that North Las Vegas area?
18 A Yes, sir.
19 Q Did you sometimes stay there?
20 A Yeah.
21 Q Did DJ sometimes stay there?
22 A Yeah.
23 Q Who else lived there?
24 A My grandma, my other brother Adrian, and my sister
25 Nicky (phonetic).

1 Q Does Nicky have another name?

2 A Her first name, DeAndra (phonetic).

3 Q DeAndra? And is she -- is there something special

4 between her and DeMario?

5 A Twins.

6 Q Identical or fraternal?

7 A Identical.

8 Q And so who's the oldest in the family?

9 A My brother, Anthony.

10 Q Anthony? And then who?

11 A Then, Adrian.

12 Q And then who?

13 A My brother, DeMario.

14 Q And then you?

15 A Yes, I'm the youngest.

16 Q You're the youngest? Okay. And what was DeMario or

17 DJ -- I might switch back and forth, sorry. What was

18 DeMario's girlfriend's name?

19 A Katara (phonetic)

20 Q Katara?

21 A Um-hum.

22 Q And did you have a girlfriend at the time?

23 A Yes, sir.

24 Q What was her name?

25 A Aja (phonetic).

1 Q Aja. Primarily, did you guys keep your clothing and
2 sleep at your grandmother's house?

3 A No, she actually kicked us out, so we were living
4 out of his car.

5 Q So if you didn't come out -- come home at night, or
6 if you were, you know, mouthing off, would she tell you --

7 A Yeah.

8 Q Now, I want to kind of specifically turn your
9 attention to like August 9th, 2017. Do you recall an incident
10 that brings us here to court today?

11 A Yes, sir.

12 Q About a week before that, did your brother buy
13 something new?

14 A Yes, sir.

15 Q What did he -- what did he get?

16 A Clothes, shoes.

17 Q Oh, sorry. Did he get a vehicle, I meant?

18 A Yes, sir.

19 Q What kind?

20 A A Grand Marquis.

21 Q What color?

22 A White.

23 Q Would you recognize it if I showed you a photo?

24 A Yes, sir.

25 MR. BROOKS: Your Honor, permission to publish

1 exhibits that have been admitted?

2 THE COURT: You may.

3 BY MR. BROOKS:

4 Q Exhibit 150. Do you recognize that, DeShawn?

5 A Yes, sir.

6 Q And is that the car that your brother had just
7 bought a week before?

8 A Yes, sir.

9 Q And when I say week before, I mean that August 9th
10 time frame.

11 A Yes, sir.

12 Q Had you been inside it?

13 A Yeah.

14 Q Did your brother take you places?

15 A Yeah.

16 Q I want to show you kind of like a view in the back.
17 Exhibit 191. Do you recognize the back seat there?

18 A Yes, sir.

19 Q What is -- what kind of stuff's back there? Do you
20 know?

21 A A black bag, a sweater.

22 Q Had you seen that sweater before?

23 A Yeah.

24 Q Do you know what kind of brand it is?

25 A No, sir.

1 Q I want to show you Exhibit 215. DeShawn, do you
2 recognize what's in this photo?

3 A Yes, sir.

4 Q What is it?

5 A My grandmother's house.

6 Q So this is that 919 Bagpipe?

7 A Yes, sir.

8 Q All right, I'm going to take you through a couple
9 photos. Tell me what we're looking at with regard to this
10 house. 216. What do we see?

11 A The front door.

12 Q 217?

13 A The upstairs.

14 Q And then, tell me what's down this hallway in 218.

15 A It's a room -- it's two rooms and a bathroom.

16 Q Okay. DeShawn, with your right hand, you see that
17 mouse right there?

18 A Yes, sir.

19 Q If you could just -- I'll give you a zoomed-in
20 version of that photo, so 219. Tell me whose room's who.

21 A This is my brother Anthony's room right here.

22 Q Okay.

23 A And this is my sister's room.

24 Q Did you sometimes -- did you get along with Anthony?

25 A Yes, sir.

1 Q And did you get along with your sister?

2 A Yes, sir.

3 Q Who were you closest with though?

4 A My sister.

5 Q And between Anthony and DeMario, who were you

6 closest with?

7 A DeMario.

8 Q I want to show you a photo.

9 MR. BROOKS: Permission to approach, Your Honor?

10 THE COURT: You may.

11 BY MR. BROOKS:

12 Q DeShawn, I want you to look at State's Proposed

13 Exhibits 144, 145, 146, 147, and 148.

14 A Yes, sir.

15 Q Do you recognize who's pictured in these photos?

16 A Yes, sir.

17 Q Who is it?

18 A My brother.

19 Q And would these have been taken a couple years back

20 around August 2017?

21 A Yes, sir.

22 Q And when you say your brother, who -- what -- who

23 specifically?

24 A My brother, DeMario.

25 Q DeMario Lofton-Robinson?

1 A Yes, sir.

2 MR. BROOKS: Your Honor, State moves for admission

3 of these particular exhibits.

4 MR. SANFT: No objection, Your Honor.

5 MR. RUGGEROLI: No objection.

6 THE COURT: They're admitted.

7 (State's Exhibits 144 through 148 are admitted)

8 BY MR. BROOKS:

9 Q DeShawn, I want to show you Exhibit 144. Is that

10 DJ?

11 A Yes, sir.

12 Q And in 145, is that also DJ?

13 A Yes, sir.

14 Q How tall was he?

15 A At least 5'9.

16 Q Okay. And do you recall back then whether he was

17 taller than you, or?

18 A About the same height.

19 Q About the same height? And now who's taller?

20 A I do not know. I don't know.

21 Q I want to show you --

22 MR. BROOKS: Permission to approach, Your Honor?

23 THE COURT: You may.

24 BY MR. BROOKS:

25 Q DeShawn, I want to show you State's Proposed

1 Exhibits 130 through 134. Do you recognize who's pictured in
2 these photographs?

3 A Yes, sir.

4 Q Who is it?

5 A Me.

6 MR. BROOKS: Your Honor, State moves for admission
7 of those particular exhibits.

8 MR. SANFT: No objection.

9 MR. RUGGEROLI: No objection.

10 THE COURT: They're admitted.

11 (State's Exhibits 130 through 134 are admitted)

12 MR. BROOKS: DeShawn -- permission to publish, Your
13 Honor?

14 THE COURT: You may.

15 BY MR. BROOKS:

16 Q DeShawn, showing you Exhibit 130, do you recognize
17 yourself there?

18 A Yes, sir.

19 Q How old were you?

20 A 14.

21 Q And was this taken August 2017?

22 A Yes, sir.

23 Q Was it taken at a police station?

24 A Yes, sir.

25 Q Have you since grown?

1 A Yes, sir.

2 Q DeShawn, when this was taken, did officers also take
3 your cell phone from you?

4 A Yes, sir.

5 Q Now, I want to go back to kind of when we were
6 talking about the car. Do you remember when we were talking
7 about the vehicle?

8 A Yes, sir.

9 Q And I showed you a photo?

10 A Yes, sir.

11 Q I want to show you State's Exhibit 325. Do you see
12 the vehicle that you pointed out in this photograph?

13 A Yes, sir.

14 Q Could you take that mouse for us and point which
15 one? Do you remember which night this was?

16 A Yes, sir.

17 Q And do you remember where you were seated inside
18 that car?

19 A Yes, sir.

20 Q Where?

21 A Right behind the passenger side.

22 Q Behind the passenger side?

23 A Yes, sir.

24 Q So, I want to show you Exhibit 195. Do you see kind
25 of a marking on that seat?

1 A Yes, sir.

2 Q Do you remember that?

3 A No, sir.

4 Q No? Okay. Would you have been sitting behind that

5 seat though?

6 A Yes, sir.

7 Q Now, DeShawn, I want to show you a couple photos

8 from the trunk of that car, okay?

9 A Yes, sir.

10 Q Exhibit 194. Do you recognize that?

11 A Yes, sir.

12 Q And were some of those items in the back of the car

13 yours?

14 A Yes, sir.

15 Q So remember how, earlier, I asked that bad question?

16 I said, you know, did your brother buy some stuff a week

17 earlier, and you said, yes, some clothes?

18 A Yes.

19 Q Okay, and I meant the vehicle, but did he buy some

20 shoes?

21 A Yes, sir.

22 Q Did you get some shoes?

23 A Yes, sir.

24 Q Did you guys get the same shoes?

25 A Um-hum.

1 Q Do you recall what kind?
2 THE COURT: Is that a yes?
3 THE WITNESS: Yes, sir.
4 THE COURT: Thank you.
5 THE WITNESS: Yes, ma'am.
6 BY MR. BROOKS:
7 Q Do you recall what kind?
8 A I can't remember the name.
9 Q Were they Reeboks, Adidas, Nikes?
10 A No, they were Jordans.
11 Q Jordans? Okay. So, showing you Exhibit 181, do you
12 recognize those?
13 A Yes, sir.
14 Q And I'm going to show you Exhibit 182. Is that just
15 kind of like a side shot?
16 A Yes, sir.
17 Q So I'm going to show you two different ones, because
18 there are two different pairs in that trunk, and I want you to
19 explain something to me.
20 MR. BROOKS: So showing you two different photos,
21 Your Honor, at the same time, 186 and 183.
22 BY MR. BROOKS:
23 Q DeShawn, there's a size 9 and a size 11. Whose was
24 whose?
25 A The size 9 was my brother's, and the size 11 was

1 mine.

2 Q So you were the bigger one?

3 A Yes, sir.

4 Q Okay. And do you remember wearing those shoes on

5 the night that we're talking about?

6 A Yes, sir.

7 Q DeShawn, I want to ask about a convenience store.

8 Do you remember a convenience store?

9 A Yes, sir.

10 Q All right. Do you recall going into it?

11 A Yes, sir.

12 Q Do you remember what you were wearing?

13 A A black shirt, believe black Levis, and the shoes in

14 the picture.

15 Q Who were you with?

16 A My brother.

17 Q And do you remember what your brother was wearing?

18 A No, sir.

19 Q Okay. Would you be able to recognize him if I

20 showed you a photo?

21 A Yes, sir.

22 Q I want to show you Exhibit 320. Do you recognize

23 that?

24 A Yes, sir.

25 Q Do you see anyone in there that we just talked

1 about?

2 A Yes, sir.

3 Q Who?

4 A My brother.

5 Q Where?

6 A Right there.

7 Q And the shoes that we were just referring to, do you

8 see them in the photo?

9 A Yes, sir.

10 Q And those are those Air Jordan 5's?

11 A Yes, sir.

12 Q Did he have any other kind of Air Jordans?

13 A Yes, sir.

14 Q DeShawn, I want to go back to inside your house. Do

15 you remember some of the photos I was showing you?

16 A Yes, sir.

17 Q I want to go to Exhibit 220. Do you recognize that

18 room?

19 A Yes, sir.

20 Q I want to zoom-in on a particular area, Exhibit 221.

21 Do you see some items that you're familiar with?

22 A Yes, sir.

23 Q Specifically, I want to ask you about this bag. Do

24 you recognize it?

25 A Yes, sir.

1 Q And so, the bag -- what color is that bag that I'm
2 referring to?

3 A Pink.

4 Q And who used that bag?

5 A Me and my brother.

6 Q Would you both put stuff in there?

7 A Yes, sir.

8 Q Remember how I showed you that surveillance footage
9 just a second ago of your brother?

10 A Yes, sir.

11 Q I want to show you Exhibit 187. Do you -- do you
12 recognize that?

13 A Yes, sir.

14 Q Was he wearing that sweater in that surveillance
15 photo?

16 A Yes, sir.

17 Q And what brand is that?

18 A I don't know.

19 Q Okay. Now, DeShawn, I kind of want to talk about
20 the night in question, okay? Were you with some people other
21 than your brother?

22 A Yes, sir.

23 Q How many?

24 A Two.

25 Q Were you guys in the same car or driving separately?

1 How was that?

2 A We were in the same car.

3 Q Whose car?

4 A My brother's car.

5 Q So the car that we saw the photo of at the

6 surveillance -- or at the convenience store?

7 A Yes, sir.

8 Q Who was in that at that time when you guys pulled

9 into the convenience store? Was it all four people?

10 A Yes, sir.

11 Q After that convenience store, do you go somewhere?

12 A Yeah.

13 Q Where do you go?

14 A Just driving around.

15 Q Do you eventually stop at a house?

16 A Yeah.

17 Q Why do you stop at the house?

18 A Really don't have any clue.

19 Q Did anyone have any plan to do anything at the

20 house? Why did you stop?

21 A I don't remember the -- the conversation in the car,

22 but I remember that we stopped at a house and got out the car.

23 Q When you say "we," are all four people getting out?

24 A Yes, sir.

25 Q Would you recognize that house if I showed you a

1 photo of it?

2 A Yes, sir.

3 Q Showing you State's Exhibit 10. DeShawn, do you

4 recognize that house?

5 A Yes.

6 Q Do you recognize that wall?

7 A Yes.

8 Q Tell me about that wall. Where -- why do you

9 recognize that?

10 A Because that's the wall we were standing behind.

11 Q When you say "we," was it you?

12 A Yes, I was there.

13 Q Was your brother there?

14 A Yes, sir.

15 Q Were the two other individuals there?

16 A Yes, sir.

17 Q Are they the same or different individuals from the

18 two people in the surveillance footage that we just saw?

19 A The same.

20 Q So you guys went from the convenience store to this

21 house?

22 A Yes, sir.

23 Q Do you all get out of the car?

24 A Yes, sir.

25 Q Where did you guys park?

1 A We parked at the edge of this wall, right over here.

2 Q Let me see, DeShawn, if I can get you a map to kind

3 of show us. Showing you Exhibit 3. So if this is that house

4 that we were just looking at, where did you park?

5 A Right over here.

6 Q Behind --

7 A On the main street.

8 Q Say what?

9 A On the main street.

10 Q On the main street?

11 A Yes, sir.

12 Q And you guys all get out; where do you go?

13 A Walked to the corner.

14 Q To the corner?

15 A Yes, sir.

16 Q DeShawn, do you guys have something with you that

17 night?

18 A Yes.

19 Q What did you guys have?

20 A Guns.

21 Q And who had guns?

22 A My brother, and then the other two.

23 Q Your brother and the other two?

24 A Yes, sir.

25 Q How was your brother carrying his gun?

1 A On his hip in a holster.

2 Q In a holster?

3 A Yes, sir.

4 Q And how was -- let's talk about one of the other

5 ones. How was one of the other ones holding it, or --

6 A The same way.

7 Q -- carrying it? Same way?

8 A Yes, sir.

9 Q Like, out in the open, or?

10 A Yes, out in the open.

11 Q Out in the open. And then the other person?

12 A His pocket.

13 Q In his pocket?

14 A Yes, sir.

15 Q Do you know if it was in a jacket pocket or in a

16 pants pocket?

17 A Pants pocket.

18 Q Pants pocket? During the course of that night, had

19 you personally seen the guns that each had?

20 A Yes, sir.

21 Q Had you seen some of the bullets that some of them

22 had?

23 A Yes, sir.

24 Q So -- and had you previously seen your brother's

25 gun?

1 A Yes, sir.

2 Q Had you maybe even held it before?

3 A I don't remember.

4 Q DeShawn, do you think you'd recognize your brother's

5 gun if I showed it to you?

6 A Yes, sir.

7 Q Would you recognize the holster?

8 A Yes, sir.

9 Q Want to show you Exhibit 225. Do you recognize

10 that?

11 A Yes, sir.

12 Q Is that your brother's gun?

13 A Yes.

14 Q And is that his holster?

15 A Yes.

16 Q DeShawn, I want to go back and show you, again, 320,

17 and I'm going to zoom-in. Do you see something in your

18 brother's pocket area?

19 A Yes.

20 Q What was in his pocket?

21 A His gun.

22 Q So was sometimes during the night, it out, and then

23 sometimes in?

24 A I thought it was out the whole night.

25 Q It was out the whole night? And I want to show you

1 -- do you see the person behind him?
2 A Yes.
3 Q And do you see how he's kind of reaching to the
4 right --
5 A Yes.
6 Q -- of his hip? Was he one of the people who was
7 with you?
8 A Yes, sir.
9 Q In Exhibit 324, what was on his right hip?
10 A His gun.
11 Q And had you seen it?
12 A Yes, sir.
13 Q Showing you 321, it's kind of like a zoomed-in
14 version.
15 A Yes, sir.
16 Q Do you recognize the hat he was wearing?
17 A Yes, sir.
18 Q Was he wearing it all night?
19 A Yes.
20 Q Would you recognize a photo if I showed it to you?
21 MR. BROOKS: Permission to approach, Your Honor?
22 THE COURT: You may.
23 MR. SANFT: No objection, Your Honor.
24 MR. RUGGEROLI: No objection.
25 THE COURT: Do you want to offer it?

1 MR. BROOKS: Oh. Exhibit 309, Your Honor.
2 THE COURT: Okay, there being no objection, it's
3 admitted.
4 (State's Exhibit 309 is admitted)
5 MR. SANFT: Thank you, Your Honor.
6 BY MR. BROOKS:
7 Q DeShawn, Exhibit 309, do you recognize that?
8 A Yes.
9 Q What is it?
10 A The hat.
11 Q The hat that that man was wearing with the gun on
12 his hip?
13 A Yes.
14 Q That's not your brother?
15 A No.
16 Q Okay. DeShawn, we kind of talked about some shoes
17 earlier. Are you familiar with what Huaraches are?
18 A Yes.
19 Q A type of Nike shoe?
20 A Yes.
21 Q Would you be able to identify one if you saw it?
22 A Yes.
23 MR. BROOKS: Exhibit 312, Your Honor.
24 THE COURT: Any objection?
25 MR. RUGGEROLI: No, Your Honor.

1 THE COURT: Mr. Sanft?

2 MR. SANFT: No objection, Your Honor.

3 THE COURT: It's admitted, and you may publish.

4 (State's 312 is admitted)

5 BY MR. BROOKS:

6 Q So, DeShawn, before I publish 312, that guy we were

7 just referring to in Exhibit 322, use the mouse to show me the

8 one with the hat that we just talked about. Where is he?

9 A Right here.

10 Q Okay, and where are you?

11 A Right there.

12 Q And where is DJ?

13 A Right there.

14 Q Okay, and where's the other one that we haven't yet

15 discussed?

16 A Right here.

17 Q Okay. Remember how I just asked you about some

18 Huaraches?

19 A Yes.

20 Q All right, I want to show you Exhibit 312. Do you

21 recognize those?

22 A Yes, sir.

23 Q What are they?

24 A Huaraches.

25 Q And what color?

1 A Burgundy.

2 Q Was someone wearing those shoes this night?

3 A Yes, sir.

4 Q Which one? Okay, and that's the same one with the
5 hat that we just looked at?

6 A Yes, sir.

7 Q Okay. At this point in time, on this photo -- so
8 we've talked about your brother having a firearm, and I showed
9 you that?

10 A Yes, sir.

11 Q We've talked about the guy in the hat and the
12 Huaraches having a firearm?

13 A Yes, sir.

14 Q And the guy in the black hoodie, was he the one who
15 had it in the pocket?

16 A Yes, sir.

17 Q Oh, so that was the one you were -- okay. Does he
18 have it on him right now?

19 A I don't know, sir.

20 Q You don't know if he brought it in the store or
21 anything like that?

22 A No, sir.

23 Q Okay, but throughout the night, at some point, did
24 you see it?

25 A Yes, sir.

1 Q Okay. Now, DeShawn, I want to show you Exhibit 11.
2 Why did you guys get out of the car?
3 A Why did we get out the car?
4 Q Why did you get out of the car?
5 A I got out the car because I was following them.
6 Q Why did they get out of the car?
7 MR. RUGGEROLI: Objection to speculation.
8 THE COURT: Overruled. You can answer.
9 THE WITNESS: So, do I answer?
10 MR. BROOKS: Yes.
11 THE COURT: Yes.
12 THE WITNESS: To my knowledge, to rob a house.
13 BY MR. BROOKS:
14 Q And did -- remember when I asked you that question
15 earlier about officers taking your cell phone?
16 A Yes, sir.
17 Q Did you have some communication earlier that day
18 with one of those people?
19 A Yes, sir.
20 Q And was it about robbing a house, like you put it?
21 A Yes, sir.
22 Q Would you recognize that text thread if I showed it
23 to you?
24 A Yes, sir.
25 Q Would you recognize your phone if I showed it to

1 you?

2 A Yes, sir.

3 MR. BROOKS: Your Honor, may I approach?

4 THE COURT: You may.

5 BY MR. BROOKS:

6 Q DeShawn, I want to first show you State's Proposed
7 Exhibit 333. Do you recognize that?

8 A Yes.

9 Q Whose phone was that?

10 A Mine.

11 Q Did the police take that from you?

12 A Yes, sir.

13 MR. BROOKS: Your Honor, State moves for admission
14 of Exhibit 333.

15 MR. SANFT: No objection.

16 MR. RUGGEROLI: No objection as to that.

17 THE COURT: Okay, it's admitted.

18 (State's Exhibit 333 is admitted)

19 MR. BROOKS: Permission to publish that one, Your
20 Honor?

21 THE COURT: You may.

22 BY MR. BROOKS:

23 Q DeShawn, I'm showing you State's Proposed Exhibit
24 334. Do you recognize that?

25 A Yes, sir.

1 Q Is that just the back side --
2 A Yes.
3 Q -- of your phone?
4 A Yes.
5 MR. BROOKS: Your Honor, State moves for admission
6 of Exhibit 334.
7 MR. SANFT: No objection.
8 MR. RUGGEROLI: No objection.
9 THE COURT: It's admitted.
10 (State's Exhibit 334 is admitted)
11 BY MR. BROOKS:
12 Q As for State's Proposed Exhibit 335, do you
13 recognize the screen there?
14 A Yes, sir.
15 Q Whose screen was that?
16 A Mine.
17 Q And does it kind of fairly depict the things -- the
18 apps that were on your screen?
19 A Yes.
20 MR. BROOKS: Your Honor, State moves for admission
21 of Exhibit 335.
22 MR. SANFT: No objection.
23 MR. RUGGEROLI: No objection.
24 THE COURT: It's admitted.
25 (State's Exhibit 335 is admitted)

1 BY MR. BROOKS:

2 Q DeShawn, do you see that?

3 A Yes.

4 Q Now, you didn't turn this on, correct? You didn't

5 turn this on and take this photo, right?

6 A No, sir.

7 Q Officers did when they took your phone?

8 A Yes, sir.

9 Q So -- and have you subsequently been told that

10 they've downloaded information?

11 MR. RUGGEROLI: Judge, I'm going to object to

12 hearsay.

13 MR. BROOKS: I'll rephrase it.

14 THE COURT: Okay.

15 BY MR. BROOKS:

16 Q DeShawn, did you learn that officers got into the

17 phone?

18 A Yes, sir.

19 MR. RUGGEROLI: Judge, I'm going to object to

20 speculation and lack of personal knowledge.

21 THE COURT: Overruled. You can answer.

22 THE WITNESS: Yes, sir.

23 BY MR. BROOKS:

24 Q And you've been told certain things that were found?

25 A Yes.

1 Q And have you been shown certain things that were
2 found in the phone?

3 A Yes.

4 Q So I want to specifically go to this right here. Do
5 you see this app?

6 A Yes, sir.

7 Q What app is that?

8 A Messenger.

9 Q Is it Facebook Messenger?

10 A Yes.

11 Q Is that kind of a common thing that people use to
12 communicate?

13 A Yes.

14 Q Would you use it to communicate, similar to text?

15 A Yes.

16 Q Okay, so you and I could text on that, or text just
17 via our normal messaging?

18 A Yes.

19 Q And which would you use?

20 A What would I use?

21 Q Yeah.

22 A Can you please repeat --

23 Q Did you use both? Did you sometimes use Facebook
24 Messenger?

25 A I used both.

1 Q Did you sometimes text on Facebook Messenger someone
2 named Ray Logan?

3 A Yes.

4 Q And was Ray Logan one of those people in the videos
5 that we just showed, and the photos we just showed?

6 A Yes.

7 Q And was he the one in black that we were discussing?

8 A Yes.

9 Q The one that the -- the gun was in a pocket, not
10 out?

11 MR. SANFT: Your Honor --

12 THE WITNESS: Yes, sir.

13 MR. SANFT: -- I'm going to object to this line of
14 questioning as being leading at this point.

15 THE COURT: Yeah.

16 MR. BROOKS: Okay.

17 THE COURT: The objection's sustained.

18 BY MR. BROOKS:

19 Q Did you receive a message from Ray Logan that day?

20 A Yes.

21 Q I want to show you Exhibit 336. Do you recognize
22 that?

23 A Yes.

24 Q Is that a fair and accurate depiction of the
25 screenshot -- text conversation between you and Ray Logan --

1 A Yes.

2 Q -- on Tuesday, August 8th, 2017?

3 A Yes.

4 MR. BROOKS: Your Honor, at this point in time,

5 State moves for admission of Exhibit 336 and the contents

6 depicted on it.

7 THE COURT: Other than what's already been stated,

8 any further?

9 MR. RUGGEROLI: Judge, may we approach?

10 THE COURT: Sure.

11 (Bench conference)

12 MR. RUGGEROLI: I know you probably don't want a

13 speaking objection. I do think, based on my reading of the

14 case on point, I do need to specify, because I did it before

15 for the big overhead in opening.

16 THE COURT: Um-hum.

17 MR. RUGGEROLI: So I can make a record of this out

18 of the presence because I have preserved the issue, but I did

19 want to make sure that I make a record right now of the

20 specifics that I'm objecting to. It's not just a blanket

21 hearsay. So if you don't want the jury to hear it, I

22 understand, I'll do it at the break, but I do want to make a

23 record of the grounds again, even though I stated it

24 previously.

25 THE COURT: You think you need to do it again?

1 MR. RUGGEROLI: I do, because --
2 THE COURT: Okay, go ahead.
3 MR. RUGGEROLI: Okay.
4 THE COURT: Do it right here.
5 MR. RUGGEROLI: Thank you, and I'll be brief.
6 THE COURT: No, just do it right here.
7 MR. RUGGEROLI: Right. I'm objecting additionally
8 -- I didn't say this previously, but I don't think it's been
9 properly authenticated. I'm objecting for hearsay grounds.
10 I'm also objecting because it is a denial of the
11 confrontation --
12 THE COURT: I'm sorry, it's a --
13 MR. RUGGEROLI: Yes, authentication.
14 THE COURT: Okay.
15 MR. RUGGEROLI: Hearsay. It is a denial and
16 violation of the Confrontation Clause, and it is not a
17 statement made in the furtherance or in the course of a
18 conspiracy.
19 MR. PESCI: So, Judge, we've already addressed --
20 THE COURT: Uh-huh.
21 MR. PESCI: -- all those. I wanted to just
22 incorporate by reference our prior arguments, and then
23 specify, right now, I'm talking to the authenticity, because
24 that wasn't really as much fleshed out. There's no better
25 person to authenticate this very text. It's the actual owner

1 of the phone who's talking about an actual conversation that
2 he had. It's so different from all of the cases that talk
3 about concerns of this because it's the actual person.

4 MR. RUGGEROLI: Well, yeah, he received it, but he
5 can't verify who actually wrote that. It's from Ray Logan's
6 phone, but he can't say, I know for a fact Ray Logan wrote
7 that.

8 THE COURT: Well, I mean, you can --

9 MR. PESCI: He testified, in response, that he knows
10 Ray Logan and that --

11 MR. RUGGEROLI: But --

12 MR. PESCI: -- he got a text from Ray Logan.

13 THE COURT: Right.

14 MR. RUGGEROLI: Here's what I'm saying --

15 THE COURT: But if you want to make that argument --

16 MR. RUGGEROLI: He --

17 THE COURT: -- that it was just Ray Logan's phone --

18 MR. RUGGEROLI: Right.

19 THE COURT: -- I mean, that's fine.

20 MR. RUGGEROLI: No, no. I know.

21 THE COURT: I mean, obvious, that's where it came
22 from.

23 MR. RUGGEROLI: That's where it came from.

24 THE COURT: Yeah. But the objection's overruled,
25 and I'm going to allow it in.

1 (End of bench conference)

2 THE COURT: Okay. At this time, 336 is admitted.

3 (State's Exhibit 336 is admitted)

4 BY MR. BROOKS:

5 Q So do you see the picture that comes up next to the

6 messages?

7 A Yes.

8 Q And so, I have a question. We have two different

9 color -- colors on here. One's blue, and then what color is

10 this?

11 A Gray.

12 Q Which one is you, and which one is the other person?

13 A Other person's the gray, and I am the blue.

14 Q So next to the gray, when the gray sends a text,

15 there's a photo to the left of it?

16 A Yes.

17 Q What's that photo? What's that called?

18 A It's a Facebook photo.

19 Q Like a profile picture?

20 A Yes.

21 Q Okay. And did you know who that was?

22 A In the profile picture?

23 Q Yes.

24 A Yes.

25 Q And had you talked to that person before?

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on March 7, 2023. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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/s/ Steven S. Owens
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