IN THE SUPREME COURT OF THE STATE OF NEVADA

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CLEMON HUDSON, Appellant, vs. THE STATE OF NEVADA, Respondent.	S.C. CASE NO. 82231

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Elizabeth A. Brown
Clerk of Supreme Court

APPEAL FROM A JUDGMENT OF CONVICTION PURSUANT TO LOZADA V. STATE AND DENIAL OF PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) EIGHTH JUDICIAL DISTRICT COURT THE HONORABLE JUDGE CARLI KIERNY, PRESIDING

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APPELLANT'S APPENDIX TO THE OPENING BRIEF VOLUME IV

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ATTORNEY FOR APPELLANT
CHRISTOPHER R. ORAM, ESQ.
Attorney at Law
Nevada Bar No. 004349
Rachael E. Stewart
Nevada Bar No. 14122
520 S. Fourth Street, 2nd Floor
Las Vegas, Nevada 89101
Telephone: (702) 384-5563

ATTORNEY FOR RESPONDENT
STEVE WOLFSON
Nevada Bar No. 1565
200 E. Lewis Ave.
Las Vegas, Nevada 89155
(702)455-4711

AARON FORD
Nevada Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717

CHRISTOPHER R. ORAM, LTD.
520 SOUTH 4TH STREET | SECOND FLOOR
LAS VEGAS, NEVADA 89101
TEL. 702.384-5563 | FAX. 702.974-0623

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APPELLANT'S APPENDIX

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LAS VEGAS, NEVADA 89101
TEL. 702.384-5563 | FAX. 702.974-0623

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520 SOUTH 4TH STREET | SECOND FLOOR
LAS VEGAS, NEVADA 89101
TEL. 702.384-5563 | FAX. 702.974-0623

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CHRISTOPHER R. ORAM, LTD.
520 SOUTH 4TH STREET | SECOND FLOOR
LAS VEGAS, NEVADA 89101
TEL. 702.384-5563 | FAX. 702.974-0623

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 6th August, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON FORD
Nevada Attorney General

CLARK COUNTY DISTRICT ATTORNEY'S OFFICE

CHRISTOPHER R. ORAM, ESQ.

BY:

/s/ Nancy Medina
An Employee of Christopher R. Oram, Esq.

CHRISTOPHER R. ORAM, LTD.
520 SOUTH 4TH STREET | SECOND FLOOR
LAS VEGAS, NEVADA 89101
TEL. 702.384-5563 | FAX. 702.974-0623

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff(s), vs. STEVEN TURNER AND CLEMON HUDSON, Defendant(s).	Case No. C-15-309578-1 and Case No. C-15-309578-2 DEPT. XVIII

BEFORE THE HONORABLE MARK B. BAILUS,
DISTRICT COURT JUDGE

WEDNESDAY, APRIL 18, 2018

TRANSCRIPT OF PROCEEDINGS RE:
JURY TRIAL - DAY 3

(Appearances on page 2.)

RECORDED BY: ROBIN PAGE, COURT RECORDER

APPEARANCES:

For the Plaintiff(s):	LEAH C. BEVERLY, ESQ. (Deputy District Attorney) JOHN L. GIORDANI III, ESQ. (Deputy District Attorney)
For the Defendant Steven Turner:	TEGAN C. MACHNICH, ESQ. (Deputy Public Defender) ASHLEY L. SISOLAK, ESQ. (Deputy Public Defender)
For the Defendant Clemon Hudson:	CLAY PLUMMER, ESQ.

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LAS VEGAS, NEVADA, WEDNESDAY, APRIL 18, 2018

[Proceedings commenced at 1:14 p.m.]

[Outside the presence of the jury.]

THE COURT: Good morning -- or good afternoon, ladies and gentlemen. Please be seated. This is the continuation of the trial in Case Number C-15-309578-1 and -2, *Plaintiffs, State of Nevada vs. Defendants, Steven Turner and Clemon Hudson*.

Counsel, state your appearances, please.

MS. BEVERLY: Leah Beverly and John Giordani for the State.

MS. MACHNICH: Tegan Machnich and Ashley Sisolak for Mr. Turner.

MR. PLUMMER: Clay Plummer for Mr. Hudson.

THE COURT: Let the record reflect the presence of the defendants.

It's my understanding, counsel, that I will read the preliminary instructions to the jury, at which time we'll proceed with opening statements, and then we're going to take testimony after that.

MS. BEVERLY: Yes.

THE COURT: Is there any housekeeping matters we need to take care of?

MR. GIORDANI: Yes. Briefly, Your Honor. There were some statements made by both defendants. Your Honor made pretrial rulings on some of them, redacted others. The -- the statements that have been

deemed admissible by Your Honor, we have not determined whether or not we're going to play those in -- in our case in chief. For that reason we're not going to reference them in any way in our opening statement, and we'd ask that the defense not do so, because, obviously, they'd be hearsay if they came in through them. And we haven't decided whether we're going to play them or not.

THE COURT: Defense, what's your position?

MS. MACHNICH: We'll obviously respect that and understand how the rules of evidence work, so we will not be going into them either.

THE COURT: Mr. Plummer?

MR. PLUMMER: Your Honor, I'm not going to mention Mr. Hudson's statement in opening.

MS. MACHNICH: And we do have one more housekeeping matter.

THE COURT: Yes.

MS. MACHNICH: Your Honor, we -- the parties have kind of repeatedly discussed potentially doing a stipulation with regard to the friendship between the homeowner and Mr. Turner. At this time, we're not entering into a stipulation with specific language, but it's the understanding of Mr. Turner that all parties will not be going into that friendship, beyond the fact that there was a friendship, and that Mr. Turner had been over to the house to smoke weed.

THE COURT: And that's fine. Apparently there's some text messages that we're going to have a evidentiary hearing and I'm going to make a ruling on whether they're admissible or not. Depending on my

ruling, I want a clarification of that stipulation. Because it appears that that would be the underlying basis for the text, is some type of relationship or friendship between the two -- two individuals.

MS. MACHNICH: Yes, Your Honor. And -- and Ms. Beverly and I have discussed potentially redacting parts of the text messages, if they are allowed in. But that will be something for after --

THE COURT: That's what I was going to inquire when we get to that point. I was reviewing --

MS. BEVERLY: Right.

THE COURT: -- the text messages prior to court. And I wanted to address those at the time we have the testimony regarding the authentication of those messages.

MS. BEVERLY: And that's fine. And when we have the brief hearing outside the presence of the jury, I do need to go into their relationship a little bit for authentication purposes, but, obviously, not in front of the jury. And whatever Your Honor rules on the text messages, if they do come in, there will be things that need to come out of those.

MS. MACHNICH: Yeah. And that's our position as well.

THE COURT: And, quite frankly, counsel, I want you on one of the breaks to confer and see if you can come to an agreement, if they do come in, what is to be redacted.

MS. BEVERLY: Okay. I have it right here, so --

THE COURT: Sometimes since we now have the jury sworn, I want to take shorter breaks, if possible.

MS. MACHNICH: Of course.

MS. BEVERLY: Okay.

THE COURT: Thank you, counsel.

MS. MACHNICH: Thank you.

THE COURT: Can I bring the jury in?

MS. BEVERLY: Yes.

MR. GIORDANI: Yes Your Honor.

THE COURT: Thank you.

[Jury reconvened at 1:18 p.m.]

THE COURT: Please be seated. Will the parties stipulate to the presence of the jury?

MR. GIORDANI: Yes, Your Honor.

MS. MACHNICH: Yes, Your Honor.

MR. PLUMMER: Yes, Your Honor.

THE COURT: Thank you.

Ladies and gentlemen, you are now sworn members of this jury. Before we commence with opening statements, I need to make some introductory remarks.

You're admonished that no juror may declare to a fellow juror any fact relating to this case or his or her own knowledge. And if any juror discovers during the trial or after the jury has retired that he or she or any other juror has personal knowledge of any fact in controversy in this case, he or she shall disclose such situation to myself in the absence of the other jurors.

This means that if you learn during the course of this trial that you were acquainted with the facts of this case or the witnesses, and

you have not previously told me of this relationship, you must then declare that fact to me.

You communicate to the court through my marshal. During the course of this trial the attorneys for both sides, the parties, the witnesses, and court personnel, other than the marshal, are not permitted to converse with members of the jury. These individuals are not being antisocial. They are bound by ethics and the law not to talk to you. To do so might contaminate your verdict.

You are admonished additionally that you are not to visit the scene of any of the acts or occurrences made mention of during this trial unless specifically directed to do so by the court. Please don't investigate this case or anyone who has anything to do with this case on your own. Do not undertake any legal or factual research on your own.

What I now will say is intended to serve as in introduction to the trial of this case. It is not a substitute for the detailed instructions on the law which I will give to you at the close of the case and before you retire to consider your verdict.

This is a criminal case commenced by the State of Nevada, which I may sometimes refer to as the State, against Steven Turner and Clemon Hudson. Defendants -- the case is based on an indictment. The clerk will now read the indictment to the ladies and gentlemen of the jury and state the plea of the defendants to the indictment.

Counsel is it an indictment or an amended indictment?

MS. BEVERLY: Amended.

MR. GIORDANI: Amended.

THE COURT: Okay. I'm going to restate that. Apparently it's an amended indictment.

This case is based on amended indictment. The clerk will now read the amended indictment to the ladies and gentlemen of the jury and state the plea of the defendants to that amended indictment. Do you have the amended? Thank you.

[Information read.]

THE COURT: Thank you.

This case is based on the amended indictment which has been read to you by the clerk. You should distinctly understand that the amended indictment is simply a charge and that it is not, in any sense, evidence of the allegations it contains.

The defendants have pled not guilty to the amended indictment. The State, therefore, has the burden of proving each of the essential elements of the charges beyond a reasonable doubt. As the defendants sit there now, they are not guilty. The purpose of this trial is to determine whether the State will meet that burden.

It is your primary responsibility as jurors to find and determine the facts. Under our system of criminal procedure, you are the sole judge of the facts. You are to determine the facts from the testimony you hear and the other evidence including exhibits introduced in court. It is up to you to determine the inferences which you feel may properly be drawn from the evidence.

At times, I may sustain objections or direct that you disregard certain testimony or exhibits. You must not consider any evidence to

which an objection has been sustained or which I have instructed you to disregard.

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded. You must not be influenced in any degree by any personal feeling of sympathy for or prejudice against the State or the defendant. Both sides are entitled to the same fair and impartial consideration.

In considering the weight and value of the testimony of any witness, you may take into consideration the appearance, attitude, and behavior of the witness, the interest of the witness in the outcome of the case, if any, the relation of the witness to the defendant or the State, the inclination of the witness to speak truthfully or not, and the probability or improbability of the witness's statement and all of the facts and circumstances in evidence. Thus, you may give the testimony of any witness just such weight and value as you believe the testimony of the witness is entitled to receive.

There are two kinds of evidence: Direct evidence and circumstantial. Direct evidence is testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is testimony or exhibits which are proof of a particular fact from which, if proven, you may infer the existence of a second fact. You may consider both direct and circumstantial evidence in deciding this case. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence.

Opening statements and closing arguments of the attorneys

are not intended to help you -- repeat.

Opening statements and closing arguments of the attorneys are intended to help you in understanding the evidence and applying the law, but they are not evidence. In arriving at a verdict in this case as to whether the defendant is guilty or not guilty, the subject of the penalty or punishment is not to be discussed or considered by you and should in no way influence your verdict.

Until this case is submitted to you, you must not discuss it with anyone, even with your fellow jurors. After it is submitted to you, you must discuss it only in the jury room with your fellow jurors. It is important that you keep an open mind and not decide any issue in the case until the entire case has been submitted you under instructions from me.

If you cannot hear a witness, please raise your hand as an indication. Also, if you need to use the restroom or you -- or if you feel ill, please also raise your hand as an indication.

We will take intermittent breaks as the Court sees fit, usually about every 90 minutes or so. And for the most part, I have no objection to jurors bringing drinks into the courtroom.

I may, during the trial, take notes of the witnesses' testimony and -- and you will see me working on my computer. You are not to make any inference from that action. I am required to prepare for legal arguments of counsel during this trial. And for that reason, I may take notes.

The jury will not have a transcript to consult at the close of the

case. However, the jury will be furnished with notepads and pencils and will be allowed to take notes.

The trial will proceed in the following manner: The deputy district attorney will make an opening statement, which is an outline to help you understand what the State expects to prove. Next, the defendant may, but does not have to, make an opening statement. Opening statements are not evidence, but serve as an introduction to the evidence which the party making the statement intends to prove.

The State will then present its evidence and counsel for the defendants may cross-examine the witnesses. Following the State's case, the defendants may present evidence and the deputy district attorney may cross-examine the witnesses. However, as I have said, the defendants are not obligated to present any evidence.

You will be given the opportunity to ask written questions of any of the witnesses called to testify in this case. You are not encourage to ask large numbers of questions, because that is the primary responsibility of the parties.

Questions may be asked only if -- only in the following manner: After both sides have finished questioning the witnesses, and only at this time, if there are additional questions you would like to ask the witnesses, you may then seek permission to ask that witness a written question.

Should you desire to ask a question, write your question down with your juror number on a full sheet of clean paper and raise your hand. All questions from jurors must be factual in nature and designed

to clarify information already presented. In addition, jurors must not place undue weight on the responses to their questions.

The marshal will pick up your questions and give it to me. All questions must be directed to the witness and not to the lawyers or to the judge. After consulting with the parties, I will determine if your question is legally proper. If I determine that your question may properly be asked, I will ask it. No adverse inference should be drawn if the Court does not allow a particular question.

After all the evidence has been presented, I will instruct you on the law. After the instructions on the law have been read to you, each side has the opportunity to present oral argument. What is said in closing arguments is not evidence. The arguments are designed to summarize and interpret the evidence. Since the State has the burden of proving the defendants' guilt beyond a reasonable doubt, the State has the right to open and close the arguments.

After the arguments have been completed, you will retire to deliberate on your verdict. Again, let me -- let me remind you that until this case is submitted to you, one, do not talk to each other about it or about anyone who has anything to do with it until the end of the case when you go to the jury room to decide on your verdict; two, do not talk with anyone else about this case or about anyone who has anything to do with it until the trial has ended and you have been discharged as jurors.

Anyone else includes members of your family and your friends. You may tell them that you are a juror in a criminal case, but

don't tell them anything else about it until after I have discharged you.

Do not let anyone talk to you about the case or about anyone who has anything to do with it. If someone should try to talk to you, please report it to me immediately by contacting my marshal. Do not read any news stories or articles or listen to any radio or television reports about the case or about anyone who has anything to do with it. Do not visit the scene of any of the events mentioned during the trial or undertake any investigation or research on your own. Do not do any posting or communications on any social networking sites or do any independent research, including Internet searches.

Counsel, is there a request to exclude out -- exclude witnesses?

MS. MACHNICH: Yes, Your Honor.

THE COURT: If there is anyone present who expects to be called as a witness, please leave the courtroom. Please remain available in the hallway and do not discuss your testimony or the testimony of any other witness with anyone except the parties to this case and their attorneys.

State, you may proceed with opening statement.

OPENING STATEMENT BY THE STATE

MS. BEVERLY: Thank you, Your Honor.

Thank you.

Can everybody see this okay? So we're here this week and we'll be here next week for the *State of Nevada vs. Steven Turner and Clemon Hudson.*

And this is the time of the trial where we're here for the opening statements. And the purpose of an opening statement is to give you, as the jury, a roadmap as to the testimony and the evidence that you will hear over the next few days so you have a context to place it into as we continue on.

And I ask that you pay close attention to all the evidence that you'll hear in this case. There'll be lots of witnesses and lots of different evidence. So I ask that you keep an open mind and hold onto that evidence and take it back in the room with you to deliberate.

So in this trial we have Clemon Hudson, Defendant No. 2, and Steven Turner, Defendant No. 1. And they are charged both with the following crimes that you heard about: Conspiracy to commit burglary, attempt burglary while in possession of a firearm, two counts of attempt murder with use of a deadly weapon for both officers, and battery with use of a deadly weapon resulting in substantial bodily harm for an Officer Robertson that you'll hear from during this trial.

You're going to hear that this crime took place -- or these crimes took place on September the 4th of 2015 in the very, very early morning hours, approximately 3:30 in the morning. And it happened over on -- at 6729 Oveja Circle. And just to familiarize you with the area, Oveja Circle is in the area of Rainbow and Westcliff, and Rainbow and Alta. You'll see various maps in this case showing you the overall location of this particular crime. But it happened at this house, and this house actually backs up to the major street of Rainbow.

During this trial, you'll meet the homeowners of this home, Eric

Clarkson and Willoughby Grimaldi. They'll actually be testifying today and tomorrow. And they will tell you that they lived in this home. They've been living there for a while. And that is their vehicle, this white vehicle parked in front of the home. And that's how the vehicle was parked there on September the 4th of 2015.

You'll hear from Mr. Eric Clarkson that he actually knew the defendant, Steven Turner. He'd known him for a while. Mr. Turner had been over to his house before. They had smoked weed together before. So he had a friendly relationship with him prior to this incident happening.

So you'll hear that on September the 4th of 2015, Eric and Willoughby were in their home getting ready to go to sleep. They're kind of night owls. So they stay up pretty late, but they were getting in their bed to go to sleep, had just kind of fallen asleep when Eric heard something on the back patio.

You're going to see a lot of photos in this trial of the layout of this house, the backyard of the house, the inside of the house, and the front of the house. And this area that we're looking at in this photo here is the backyard of the house. So the backyard is kind of separated into a small patio area, then a -- an open area, and then in further -- later on pictures, you'll see there's a pool area as well at the house.

So Eric was woken up to this noise on the patio. And he looked out of his window, which is actually on the side of the little patio, looked into the patio and saw someone on the patio. And that's his window. You'll hear about how he looked out that window and what he

saw when he looked out that window.

When he heard this noise, he woke up his roommate, Willow, and said, Hey, Willow, there's somebody out there. We're not expecting anybody. You know, what's going on? So Willow gets up out of his bed and he looks outside the patio too and sees an African-American adult male with a cap on cocking a shotgun in the backyard.

Obviously, this was of great concern to Willow and Eric, and so they call 911 immediately. They're on the phone with 911 for quite a period of time waiting for officers to arrive. And during this approximately 10 to 15-minute time period, a lot of stuff is going on surrounding their house.

You'll hear this 911 call and you'll hear that as they're waiting for officers to arrive, they actually hear someone at the front door of their house, banging on the door, a different male than who was in the backyard, banging on the door, knocking on that door. And if you can see, it's kind of a, like, a screen door, a metal screen door in front of the actual wood door. So they look out the window and they see that.

While this is also going on, they see, Willow out of his bedroom window, which is a different bedroom than where Eric was staying, and he looks out of his window and sees another male crossing over the back part of the house.

So again, this is all going on as this 911 call is being heard. And you'll hear that whole call. They will also tell you that prior to officers getting there, the male who was banging on the front door runs away from the house, runs down the cul-de-sac and runs completely

away from the house. And a few minutes later, officers arrive.

And the officers who arrive are two officers, Officer Robertson and Officer Grego-Smith. They are both graveyard officers. They've been with Metro for a period of time. And they get assigned this prowler call, as you'll hear it's described as, on the dispatch radio from Oveja Circle.

So they arrive at the location. They kind of check out the scene when they first get up there. This is kind of an older neighborhood, so the numbers on the house are kind of hard to see. It's very dark outside around this time, 3:30 in the morning.

And so when they get to the house, they kind of check out the areas of the house, the side area, the front of the house. And they realize they can't get into the backyard of the house because of the way the house is situated and the way the gates on the house are. So they tell dispatch, Hey, can you tell the homeowners to let us in through the front of the house. So dispatch tells Eric and Willoughby the officers have arrived, can you please let them in the front of your home.

At that point, Eric's 911 call cut off and he lets the officers into the home. And you're going to see, again, photos of this layout of this house, where the front door is, where the back door to the patio is, where the living room is. But if you look at this photo, you can see that there is a living room area that's right in front of the front door of the house, and it heads straight back to the kitchen area of the house, and then a back door that leads right onto the small patio area of the backyard portion.

So officers go into the house. And Willow and Eric, they kind of stand by the front door kind of watching what's happening with the officers. And they tell the officers, Hey, there's still somebody in the backyard. And they tell Officer Robertson, Hey, this is how you unlock the back door, so he can know how to get in the backyard.

So Officer Robertson and Officer Grego-Smith make up a plan to clear the backyard. And they'll explain to who you what clearing a backyard means when they have a prowler-type call.

So they make this plan. Officer Grego-Smith is going to go through the door first to start clearing the backyard, followed by his backup officer, Robertson. Officer Robertson opens the back door to that patio, and immediately gunshots -- gunshots start coming from the patio into the home.

And you're going to hear from Eric and Willoughby, who are watching this happen, that two different calibers of gunfire comes through that house. One of those gunshots, in fact, strikes Officer Robertson in the hip/leg area. And Officer Grego-Smith immediately fires back onto the patio after being fired upon.

You'll hear what we call radio traffic in this case. Radio traffic is when officers are communicating over a radio -- the radio from between dispatch. They're getting information. They're telling dispatch information so everybody can be on the same page. And you'll hear radio traffic in this case, and you'll hear Officer Grego-Smith saying, Shots fired shots fired, officer down.

And you'll hear that one suspect is still in the backyard. And

there's another suspect who jumped over the wall of the house onto Rainbow. Again, the house faces -- the back of the house faces Rainbow.

And you'll hear, actually, on the radio traffic, Officer Robertson saying, Two suspects, two suspects, I've been shot with a high-powered rifle.

Officer Grego-Smith gets on the radio saying, We need people to come, we need more units to come, we've just been shot at, I can't see the suspect in the backyard, I know he's out there, but I can't see him.

And as it turns out, the suspect in the backyard is Mr. Hudson. And he is lying behind kind of a -- like, an awning area that separates the -- the back patio from the grassy part of the backyard.

And so as he's on the radio, other units begin to arrive, including the K-9 unit. And Officer Grego-Smith is saying, I can't see him, I can't see him, you know, stay still, don't move, don't move, but I can't see him. It's pitch black out there.

So the K-9 unit arrives. They give Mr. Hudson instructions and eventually he doesn't comply and they let the dog out to find him. They immediately find him and he's found right in that area. And this is who they find, Clemon Hudson back there.

And back there with him are multiple firearms, three different guns. There was a handgun an SKS and an AK-47 -- excuse me, an SKS and a shotgun. And these are weapons that you'll see. You'll actually see various pictures of these weapons throughout the trial.

You'll get a chance to take all these photos back with you in the jury deliberation room.

Now, lots and lots of -- of officers arrive on this scene. And the reason for that, that you'll hear throughout this trial and what the evidence will show, is that there's an outstanding suspect and they need to find this outstanding suspect. And so they set up what is known as a perimeter. You'll hear what a perimeter is, what that means in terms of law enforcement. But it basically means the containment area, because they need to search the area for this outstanding suspect. They know there's two of them. They know one's in the backyard; the other one has hopped over this wall, somewhere, hopefully in this neighborhood.

The perimeter they set up is very, very large. It goes all the way from Buffalo, Westcliff, Alta, all the way almost over here to this high school. So very, very large perimeter and there's multiple officers searching all other this neighborhood for this second suspect.

And a few hours later, they find the second suspect. And that is Steven Turner. And you'll hear from Officer Vance, who was the officer who was on patrol, one of the officer -- hundreds of officers looking in this area. And he'll tell you that he came in contact with Mr. Turner in that neighborhood about a mile -- actually, about half a mile from where Oveja Circle is, where these shots had come out. And he'll tell you that as soon as he saw Mr. Hudson -- and he saw him, he noticed that there was a gunshot wound to his left calf.

Detectives in this case get assigned to this particular investigation and they begin their investigation into the shooting at Oveja

Circle and the burglary at Oveja Circle. And it's assigned to Detective Joe Patton and Marc Colon. And they -- as they do their investigation, along with crime scene analysts, who you'll hear from multiple crime scene analysts in this case, they come to the conclusion that 16 shots had been fired in this incident. Okay.

There was four from Mr. Hudson and Mr. Turner, and 12 from Officer Grego-Smith. And you'll hear about the trajectories of those shots. And you'll hear about how they were able to calculate that from these various officers.

So in terms of the shots from Mr. Hudson and Mr. Turner, you'll hear there was one shot from an SKS rifle. It went through Officer Robertson's leg, through the security gate at the front door and out through the front yard, very high powered.

The next shot was a shotgun blast. You'll hear that that went, also, through the house to the front window of the house by where the front door is. And you'll hear descriptions of those various shots also from the homeowners who were right by that front door watching this all happen.

The third shot you'll hear from crime -- crime scene analysts hit the back of a chair on the patio, fragmented -- fragmented all over the place. Some ended up in the cushions of the fabric. And one of those pieces ended up in Mr. Turner's leg.

And the fourth shot from the SKS also, also went to -- towards the TV on the patio, fragmented and kind of broke up after that -- after it hit the TV and the console.

You'll hear about Officer Grego-Smith's rounds as well. All of his rounds went through this screen-type mechanism that, again, we talked about separates the patio from the grassy area of the backyard. And they were able to account for all of Officer Grego-Smith's rounds.

And you'll see -- you'll hear from crime scene analysts as well as other people in this case that they actually had to recreate this screen, because the screen had fallen down during this incident. And so when we go back and look at this back picture, that wasn't the way it was. They had to put it back up there so they could count the bullet holes that went through that screen.

And one of the bullets from Officer Grego-Smith that went through that screen ended up hitting the shotgun, rendering it unable to be fired anymore. So this is all happening very quickly.

And you'll hear from the detectives and the crime scene analysts and the trajectory analysis that they knew it was Mr. Turner who actually shot himself based on accounting for all of the -- the bullets in this case and all the shots in this case.

You'll hear from a DNA analyst in this case. You'll hear from a fingerprint analyst. And they will give you some additional information about what items were found and what items were tested in this case.

You'll also hear about some surveillance video in this case showing where Mr. Turner went after hopping that backyard of the fence. And they were able to actually track his movements to where he was eventually caught by Officer Vance.

At the end of this trial, the State's going to ask that you find

both Mr. Hudson and Mr. Turner guilty of all five charges in this case. Thank you.

THE COURT: Defense?

MS. MACHNICH: Court's indulgence just one moment, Your Honor.

THE COURT: You may proceed.

MS. SISOLAK: Thank you, Your Honor. We're looking for one photo.

[Pause in proceedings.]

OPENING STATEMENT BY DEFENDANT TURNER

MS. SISOLAK: Good afternoon, ladies and gentlemen. Mr. Turner was along for the ride, but he is not guilty of attempt murder. We expect that the evidence is going to show you the following: Mr. Hudson picked up my client in his mom's car and my client brings his dogs along. You're going to hear they were going to steal some marijuana.

One of the things that you're going to see, you take at look at the photo on the TV, my client is dressed like a big dummy. Wouldn't be my first choice considering it's so readily identifiable. Strangely enough, nobody identifies that.

We know that the pair arrived at the house. We know that they hopped the back wall. We know that Mr. Turner, somewhere near the rear of the house -- well, we expect the evidence to show you that he was somewhere near the rear of the yard. The evidence is going to show you that Mr. Turner had a -- excuse me, Mr. Hudson had a gun,

one in his hand and one in his sock.

The evidence is also going to show you that while this pair scoped out that -- scoped out that house where they were going to steal the marijuana from, more people showed up, specifically two men, no shirts, black basketball shorts.

We know that one of those men pounded on the door. We know that a homeowner saw that person take off. We know that that same homeowner saw another person cross that bedroom window that Ms. Beverly talked about, entered into the backyard and joined Mr. Hudson with a firearm.

By now, homeowners are on the phone with 911: We see somebody in the backyard. We see somebody in the backyard. He's got a shotgun. He's wearing a billed hat. He's got a shotgun. We see him. He's in the backyard.

You're going to hear that the police arrive, no lights, no sirens. They sneak up on the house, come through the front door. You're going to hear the 911 call of the homeowners talking to dispatch. Police arrive, they come in through the front door. And as quietly as possible, they sneak through that house, because they know somebody's in the backyard.

They approach that backdoor. The homeowner's telling them how to unlock that metal screen you guys saw. As officers are opening that door, shots ring out. Unfortunately, that is when an officer is shot in the leg.

You're also going to hear that as soon as shots are fired, my

client, Mr. Turner, he takes off running scared. This is not what he signed up for. He signed up to steal some weed. He didn't sign up for anybody to get hurt.

We know Steven takes off. We know that Steven never had a gun. There are no fingerprints on that gun that are his, no DNA on the guns that are his. We know he didn't have a gun. We know he was going to steal weed, and then as soon as things got crazy, he was out.

We know that Steven never changed clothes, because these orange pants have a hole from the shrapnel in the back of them and his blood all over them. We know that later he was stopped by police wearing this outfit. And you're going to hear that nobody identifies my client at all, which is surprising, given that he's wearing a purple shirt and orange pants. No one identifies him at all, much less as the shooter.

But people do identify the shooter, including one of those arriving officers, the two that snuck through the house. They identify a man, black basketball shorts, no shirt, as the shooter.

A few more things you're going to learn: You're going to learn that Mr. Hudson's fingerprints are on those guns. You're going to learn that those homeowners see that there were more than two people there, specifically, three. We talked about the -- the one at the front door, the no shirt and basketball shorts in the backyard, the guy with a shotgun and the billed hat. That's at least three. None of those are identified as my client.

You're going to see Mr. Turner was along for the ride. But as

soon as things got violent, he was literally and figuratively out of there, over the back wall, following that map you guys just saw. He was gone.

At the end of this, I'm going ask you to do something I usually wouldn't do. You guys know what my job is. I'm going to ask you to find Mr. Turner guilty on Counts 1 and 2. That's the conspiracy burglary and the attempt burglary. I'm going to ask you find him guilty on those two counts. That's what he was there for. He was there to steal stuff from that house.

But what he wasn't there for was anyone to get hurt or for any violence. That's why when things turned south, he was gone. I'm going to ask you to find him not guilty of the two counts of attempt murder. But I am going to ask you to consider that Mr. Turner didn't make the greatest choice in being there to take marijuana. But what happened turned violent very quickly. And when it did, my client was over that back wall and across the street. Thank you.

THE COURT: Counsel?

OPENING STATEMENT BY DEFENDANT HUDSON

MR. PLUMMER: Good afternoon. As the judge informed you in the initial instructions, opening statements are not evidence. Nothing that has been said so far is evidence in this trial. I'm asking you to wait until your hear the evidence and see the evidence before you come to any conclusions or think to believe anything that's been said by counsel. I don't believe the evidence is going to show what either of them state.

I do agree with Mr. Turner's counsel. At the end, I'm also going to concede to Counts 1 and 2. We're not here for those two.

We're here for the other three counts. That's why you're sitting here.

Mr. Hudson, you will hear, he did have a shotgun. You're -- you're going to hear it. His fingerprints were found on that shotgun. You're going to hear how a bullet struck that shotgun. You're going hear how the shotgun went off, why it went off. Mr. Hudson never shot anyone, never intended on shooting anyone, never intended anyone to be shot, let alone be shot at.

You're going to hear how the officers pulled up, how they came in tactically quiet, how they heard someone in the backyard and didn't shine a light down the side, didn't holler back saying, Hey, this is the police out front, how they snuck through the house, whipped open the door, how it's pitch black, they can't see out, nobody can see in, and how gunfire started.

And but what you're not going to hear about is any intent. And what you're not going hear about is Mr. Hudson shooting any officer.

Thank you and I'd ask you to keep an open mind through this trial until the evidence is actually in.

THE COURT: Thank you.

State, are you prepared to present your first witness?

MS. BEVERLY: I think we need take a break, Your Honor.

THE COURT: We'll be in a 15-minute recess. During this recess, it is your duty not to converse among yourselves or with anyone else on any subject connected with the trial, to read, watch, or listen to any report of or commentary on the trial by any person connected with the trial by any medium of information, including without limitation,

newspaper, television, and radio. And you are not to form or express an opinion on any subject connected with this case until it is finally submitted to you.

We'll be in a 15-minute recess.

[Jury recessed at 2:08 p.m.]

THE COURT: We'll be in recess.

MS. BEVERLY: Thank you, Your Honor.

[Court recessed from 2:08 p.m., until 2:17 p.m.]

[Outside the presence of the jury.]

THE COURT: This is continuation of the trial of *State of Nevada vs. Steven Turner and Clemon Hudson*, Case No. C-15-30957-1 and -2.

Counsel, this is on for Defendant Steven Turner's Motion in Limine. You wanted to conduct an evidentiary hearing; is that correct?

MS. MACHNICH: That's correct, Your Honor.

MS. BEVERLY: Yes.

THE COURT: Do you have the --

MS. BEVERLY: Yes.

THE COURT: -- authenticating witness available?

MS. BEVERLY: His name is Eric Clarkson. He's right outside.

[Evidentiary hearing commenced at 2:17 p.m.]

ERIC CLARKSON,

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

THE CLERK: Please be seated. Sir, could you please state and spell your name for the record.

THE WITNESS: Eric Clarkson, E-R-I-C. Last name is C-L-A-R-K-S-O-N.

DIRECT EXAMINATION

BY MS. BEVERLY:

Q Mr. Clarkson, do you know someone by the name of Steven Turner?

A Yes, I do.

Q Do you see Mr. Turner in court today?

A Yes, I do. Yes, I do.

Q Can you please point to him and tell me an article of clothing he's wearing today?

A He -- looks like a light blue shirt and glasses.

MS. BEVERLY: Let the record reflect identification of the defendant.

THE COURT: The record will so reflect the identification of the defendant, Steven Turner.

BY MS. BEVERLY:

Q Mr. Clarkson, I want to direct your attention back to 2014/2015 time period; did you know Mr. Turner during that time period?

A Yes, I did.

Q Okay. What was the nature of your relationship with Mr. Turner during that time period?

A Sexual.

Q Okay. Can you describe that for us? And I don't mean to embarrass you, but can you describe that for us?

A We initially met online and we started a -- a sexual relationship where we would see each other once every couple of weeks.

Q And when did that relationship start?

A Several years, perhaps a total of five years before this incident.

Q Okay. So was this an ongoing type situation?

A It was for several years, yes. Three years.

Q And had Mr. Turner been over to your house during this time period over on Oveja Circle?

A Yes, he had. Many --

Q Had -- oh, go ahead. I'm sorry.

A He had many times.

Q Okay. Now, was there a time period where there was -- you -- the two of you stopped communicating?

A Yes, there was.

Q And when approximately was that?

A About three years after we met. He said he had met a girl who was moving to California. I didn't really see him for at least six months at that point. He contacted me once about six months later and said he was in town and wanted to see me. I said yes. And that was the last time I saw him.

Q Okay. Now, you're from -- you know that you're here and you will be testifying in a few minutes regarding the incident on September

the 4th of 2015; is that correct?

A Yes, ma'am.

Q Okay. Prior to September the 4th, 2015, had you received some text messages?

A Yes, I had.

Q And let me ask you this also: You know Mr. Turner's African-American; is that correct?

A Yes, ma'am. I do.

Q Okay. Do you know anyone else of any race named Steve?

A Personally, a few friends.

Q Okay. Do you know any other black Steves?

A No, ma'am.

Q Okay.

MS. BEVERLY: Your Honor, if I can approach with what's been marked for the purpose of this hearing only as State's 1, 2, 3, and 4?

THE COURT: You may.

BY MS. BEVERLY:

Q After this incident on September 4th of 2015, you were interviewed by a detective; is that correct?

A Yes, ma'am.

Q Okay. At the time, did you know who was involved in the burglary of your home?

A No, ma'am, I did not.

Q Okay. Subsequent to your interview -- your initial interview

with the police, did you think about some text messages that had been sent to you?

A Yes.

Q Okay. At that point, did you reach back out to detectives to speak with them again?

A Yes. However, that wasn't the basis of my reaching back out to them.

Q Okay. Tell me why you reached back out to them.

A Initially, I had not seen -- I was not able to verify anybody's face.

Q Okay.

A I -- after we were allowed to leave the scene and actually leave, we went to my best female friend's house. She was on her phone watching what was going on at my house. And then the news came on. We were at the top of the news. And the two pictures that came up, I was aware immediately that I knew one of them.

Q Okay. And would that be Mr. Turner?

A Yes, ma'am.

Q Okay. And then what did you do next?

A I went outside and I -- I had to double verify for myself that it was actually him. So I went on the Fox News web page and I pulled the picture. I enlarged it and I snapped a shot. I enlarged it one more time, just to verify that, indeed, I knew him.

Q Okay.

A At which time, I then contacted the detectives to let them know

that, indeed, I knew somebody --

Q Okay.

A -- that was involved.

Q And did you tell the detectives about some text messages that you believe -- well, did you tell them about some -- some text messages that you had received?

A Yes.

Q Okay. Why did you tell the detectives about these text messages?

A Because it plainly states Steve, black Steve.

Q Okay. So I'm going to show you State's Proposed Exhibit No. 1 for purposes of evidentiary hearing only. What about -- well, actually, can you go ahead and read what the content of this text message is?

A Yes.

Q I'm so happy I remember your number. It's Steve. Just got to a iPad to text you. No phone. Please text me back. Been in city the last six months. I need you in my life, baby. I'm ready right now. The black Steve you're always mad at.

Okay. What about those text messages caused you to believe that they were from the defendant, Steven Turner?

A I -- I don't know any other black Steves.

Q Okay. Had you ever been in any kind of sexual relationship with a black Steve, other than Mr. Turner?

A No, ma'am.

Q Okay. Okay. Now I'm going to show you State's Exhibit No. 2 for purposes of evidentiary hearing; can you read the content of those messages?

A It's part of the bottom of this one. It says, again:

The black Steve you're always mad at it.

It then says, sent from Text Free. But after that:

Stay, I'm ready to get right. You been on my brain and that's only for one reason. You're who I need in my life, per energy. Let's do it.

And then it says at the bottom -- and, obviously, it's a secondary or third text part of the message. And it says:

Oh, okay, I get it.

Q Okay. So what about the content of what we just read indicates to you that it's the defendant, Mr. Turner, who sent those to you?

A Again, it's black -- the black Steve. And the fact that he's now thought about the fact -- we had been in a sexual relationship and I believe that that's what he felt he then wanted.

Q Okay.

MS. BEVERLY: I will pass the witness.

THE COURT: You may proceed.

MS. MACHNICH: Thank you, Your Honor.

Court's brief indulgence.

MS. BEVERLY: I'm sorry, just one second before Ms. Machnich. I have just one extra question.

THE COURT: That's fine.

BY MS. BEVERLY:

Q Can you actually -- can you actually read the contents of State's Proposed Exhibit No. 3 too?

A Yes. Just as in the last paper, it's the continuation of a text. And it says, as I read before:

Oh, okay, I get it. Sent from Text Free. Please respond. Sent from Text Free. Hey, they gave me a bus pass. Imma just come over. Been trying to vocal you for -- vocal you for you for six months. Here I come. Sent from Text Free. Nvm --

I believe that stands for never mind.

-- I get it. You don't give a fuck. I'll leave.

Q Okay. And then Exhibit No. 4, the last part of that message?

A Never mind, I get it. You don't give a fuck. I'll leave it at that.

Q Okay. And you indicated earlier that the last time you had seen, I'm sorry, Mr. Turner had been about six months prior to this, getting these text messages?

A At -- at least.

Q At least? Okay.

MS. BEVERLY: Nothing further.

THE COURT: Thank you.

Defense.

MS. MACHNICH: Thank you.

CROSS-EXAMINATION

BY MS. MACHNICH:

Q Mr. Clarkson. All right. So just to be clear, referencing State's Exhibits, I believe, 1 through 4 that we've been discussing, you received them the Saturday before the incident at your house, correct?

A I believe it was either late Friday night, Saturday morning or late Saturday, Sunday morning. I don't remember which.

Q Okay.

A It was over -- very late at night or early morning.

Q Okay. And then you did not respond until --

A Well into --

Q -- later?

A Well into the next day.

Q Okay. And this is approximately around August 29th-ish, 2015?

A I believe so. I don't have the dates, I'm sorry.

Q That's fine. So you've referred to these text messages as out of nowhere, unnamed text from someone from a Text Free app named Steve, correct?

A Yes.

Q Okay. At that time, you thought you knew who it was, but you also thought it was unusual and didn't think anything about it?

A I really -- I really didn't think much about it, other than the fact that I never got a secondary response. When I sent the question mark, nothing ever came back.

Q And not until seeing the news story after the incident did you connect the text messages with Steven Turner?

A That's actually not true. I mean, I only knew one Steve. I just never -- never really thought about further contacting him. He reached out to me. I responded. And he never responded back.

Q Okay. And about a year before the incident, you blocked Steven's number?

A I just removed him all from my phone.

Q Okay. And that was about a year before?

A Yes.

Q Okay. And you had had no contact with Steven for at least that year?

A I would say those six months to a year. At one point he had come back from California, I believe, for a weekend, contacted me, we saw each other one final time, and that was when I removed his information from my phone.

Q Okay. I just want to make sure we have that correct. Then let me see, it's clear to say that the number that's associated with State's 1 through 4 was from a Text Free app?

A Yes.

Q Okay. You had never before received a message from Steven from this 702-389-0558 number?

A No, I had not.

Q Okay. In fact, you didn't understand most of what the texter was saying?

A I understood it, basically, but there was certainly part that made no sense to me whatsoever.

Q Okay. And also, you would not describe yourself as being always mad at Steven Turner?

A No.

Q All right. Now, nowhere in these messages -- and I'm again referring to State's 1 through 4 -- does it mention your name, correct?

A No.

Q Okay. And do you remember what name Steven knew you by?

A Tawdri.

Q Tawdri. And nowhere else in the -- does it mention where the texter was for the last six months?

A No.

Q Or how long it had been since you last spoke?

A No.

Q And it doesn't mention anything further about what it meant as city, whether that was a city or city jail or anything like that?

A No, it did not.

Q Okay. The texts don't mention continue on with prior booty calls or sexual relationship?

A No, they do not.

Q And they don't mention specifics about what the texter wanted?

A No, they do not.

Q There are some very specific abbreviations and -- and the words aren't all, like, English language words; would you agree with me

on that?

A They are. They are not, excuse me.

Q They're not?

A They're not.

Q Okay. I -- I understand at this point it's been about four years since you've exchanged messages with Steven, known messages with Steven Turner, taking these aside. I'm not trying to trick you.

A More.

Q Over four years?

A Yes.

Q Is it fair to say that you haven't maintained any of those to compare the certain syntax and spelling and unique word usage between the two?

A When I removed his information from my phone, it says all information will be removed, and I just said yeah. So everything was gone, all texts, everything.

Q Okay. And so really, the only identifying factor in these is black Steve?

A Yes. And the fact that he spoke about the fact that he -- if I may, I know I -- I should only speak to what you've stated.

Q Oh, no, it's fine.

A But the fact that it says, I know that you're the one for me, baby. And those are the things that made me actually know that it was him. For those three years, we had been intimate for three years.

Q You had described that relationship as a booty call

relationship?

A A booty call, but intimate, sexual. In my mind, sex is intimacy.

Q Okay. You weren't -- you wouldn't -- it was not a dating relationship?

A Absolutely not.

Q Okay. And yes, obviously, sexually intimate relationship, but not a dating --

A Not dating --

Q -- intimate --

A -- in any way. No.

Q Okay.

MS. MACHNICH: Court's brief indulgence.

Q Okay. And have you received any communication from this number in the past or -- before these were sent or after these were sent?

A I've never -- that I know, ever received a Text Free message from anybody before, and not since.

Q Okay.

MS. MACHNICH: Pass the witness. Thank you.

THE COURT: Thank you, counsel.

State?

MS. BEVERLY: Court's indulgence.

THE COURT: Counsel, can I see the exhibits? Well, let's see if State needs to use them in their rebuttal.

MS. BEVERLY: I have no further questions for this witness.

THE COURT: Thank you. Argument?

MS. BEVERLY: Yeah. Do you want to give Mr. Plummer a chance to cross-examine if he wants to? I know he's not part of the motion, but --

THE COURT: He --

MS. BEVERLY: -- if he has any questions.

THE COURT: He's not part of the motion.

MS. BEVERLY: Okay. I -- I had no further --

THE COURT: He didn't join in, so he's not part of the motion.

MS. MACHNICH: Okay.

MS. BEVERLY: Oh, okay. I guess --

THE COURT: That's my --

MS. BEVERLY: -- he can leave before we argue.

THE COURT: -- understanding.

MS. MACHNICH: Yeah. That's fine. He -- he step down.

MS. BEVERLY: You can step out, Mr. Clarkson.

THE COURT: Argument, please.

MS. BEVERLY: I'm just going to wait for him to step out.

MS. MACHNICH: And are you looking for -- who would you like to hear from first? Because, obviously, I did the Motion in Limine, but they're offering the -- the messages.

THE COURT: According to *Rodriguez*, the Nevada Supreme Court concluded:

We thus conclude when -- when there has been an objection to admissibility of a text message, see NRS 47.04 1(A) -- I'm sorry, (1)(A), the proponent of the evidence must explain the purpose for

which the text message is being offered and provide sufficient direct or circumstantial corroborating evidence of authorship in order to authenticate the text message as a condition precedent to its admission, see NRS 52.015(1). See also NR 47.060, NRS 47.070.

Counsel, argument?

MS. BEVERLY: I'll go first, Judge.

First of all, I guess talking about the purpose for which it's being offered, I think it's being offered to show that not only did Mr. Turner know Mr. Clarkson and know where he lived, he was actually communicating with him a few days before he decides to go over to his house and burglarize him.

It also shows also for the purpose of there being some animosity, at least on the part of Mr. Turner when Mr. Clarkson is not responding, again, adding motive to going over there with guns and breaking into their house.

In terms of the authentication purpose, I think Mr. Clarkson made very, very clear that he only knows one black Steve. He's only been in one sexual relationship with anyone with a -- a black Steve.

I mean, I also want to note that in Mr. Turner's statement that was, Your Honor eventually suppressed, he admits to texting the victim and the victim texting him back. So I think that, in itself, goes to the fact that these text messages are from him.

THE COURT: I -- I thought the gentleman said he did not text him back?

MS. BEVERLY: He sent him back question marks. That's in

his statement. He didn't respond immediately, but he sent him question marks back. And Mr. Turner, in fact, confirms that he text the victim.

He also confirms in that other statement, admits to going over to the house prior to the day of the actual shooting. So I think that also lends to the authentication of these text messages.

MS. MACHNICH: And, Your Honor, we would inquire as to what statement of Mr. Turner she's referring to with regard to --

MS. BEVERLY: Sure.

MS. MACHNICH: And if she can just give me a location, I can -- I certainly have them right in front of me to respond to that.

MS. BEVERLY: It's going to be on Transcript No. 5.

MS. MACHNICH: Okay.

MS. BEVERLY: On page 11.

MS. MACHNICH: Court's brief indulgence.

Your Honor, responding to -- well, first, responding to why the State is offering the text messages. With regard to the fact that the two knew each other, that there was a friendship, that Mr. Turner knew where this house was and would not have somehow forgotten where it was and he had been there numerous times, that's something that we are willing to go so far as to stipulate to. We have no -- no problem admitting that. We're not opposing that. So for that reason, we don't believe that it's necessary to get into these highly prejudicial text messages.

As to any animosity with regard to Mr. Clarkson, referring back to Mr. Turner's statements as the State did, I actually don't believe that

the context -- it -- I don't read it as the context being the same:

> Then I called the homey and shit. Then I'm like, all right, let's go there. I had texted and he had texted back. I had texted Derek that he had texted me back. And I'm, like, let's just go over there.

I don't think that text, texted back reference in the statement refers to any such text messages with Mr. Clarkson. I think that those -- that statement section refers to text messages with other individuals. It does not say he texted the homeowner. Does not say the homeowner texted back.

So I think that's an aside for -- I -- I don't think that goes towards the authentication purposes and that he admitted in any way, shape, or form -- my client has never admitted in any way, shape, or form that he sent these text messages or that these were sent from him or alluded to in any way. I think -- I just disagree with the State in the reading of that statement.

With regard to the text message authentication in general, as Your Honor noted in *Rodriguez*, it is on the proponent of the text messages to establish their authentication. In the *Rodriguez* case, these were text messages that were sent from a known phone number to I believe it was a domestic relationship. So the person had the defendant's phone number. And they're still determined that most of the messages did not come in, because they couldn't authenticate that the phone was in the hands of the right person at the time.

So where *Rodriguez* talks about circumstantial evidence surrounding what the context of the text messages, and how that can be

used to authenticate them, the *Rodriguez* case is specifically talking about a situation, where not only did they have them authenticate the number that the messages came from, but they went to look for further information to authenticate that the phone was in the hands of the defendant at the time. And that they were only able to do for a fraction of the text messages in *Rodriguez*, if I recall the case correctly.

And so they only allowed those and thought that was appropriate for those text messages to be in. So not only did they authenticate a phone number they came from, but they then had to have put that phone in a specific person's hands.

In this case, we're talking about text messages sent from a Text Free number. While, obviously, now some -- some substantial time has passed, there's not a lot of context in these messages with regard to who they came from or who they were meant for. For all intents and purposes, these could have been meant for another person.

This text message does not refer to Eric Clarkson by the name which Steven Turner would have known him by. These text messages don't refer to Eric by his given name. They just start talking.

Additionally -- yeah -- yeah. And -- what? Oh, yeah. Yeah. And it's -- and they actually, as my co-counsel just pointed out, it says something about I'm so glad I remember your number. Well, maybe they didn't remember the number and may these messages were meant for a totally different person. We don't know.

There's some very specific syntax and spelling and abbreviations that are listed therein. There are no text messages to

compare, that we have known messages from Steven Turner. So we have no way of authenticating them that way.

It seems like, when it gets down to it, the only thing that these authenticate to is a black Steve, and he didn't know any other black Steves that he was intimate with. However, we don't know if this was meant for him. We don't -- we know that there are many, many Steves out there. Steve is a very common name. We know that there are many black Steves out there. I can tell you my client's father is a black Steve. So there are many people out there that could have been referenced in this text message.

It's sent from this Text Free number, and this number has never before been used with communications between Steven Turner and Eric Clarkson, so they can't even get past to *Rodriguez*, where we're talking about the number being authenticated. They're not even to that point, because, honestly, it cannot be authenticated in this manner.

He -- Mr. Clarkson had never received messages from this number before or after. And there's no context in the messages themselves that Mr. Clarkson did actually know who he was semi speaking with when he sent back a question mark. In fact, the response was a question mark, to suggest that maybe he didn't even know who this was or what this was about.

And then, obviously, as the -- several days passed and then this occurred, and then he sees Steven Turner's name and picture on the television, then he's like, oh, yeah, that could be it. But that's simply -- I -- I would request, not enough to authenticate text messages

that are so prejudicial, not probative of anything at issue in this case, given what the -- what Mr. Turner is willing to stipulate to.

And I don't believe pursuant to *Rodriguez* and Nevada law, the State has reached the level of authentication.

THE COURT: State?

MS. BEVERLY: Judge, I think that everything Ms. Machnich just said can certainly be asked on cross-examination of Mr. Clarkson. But I don't think it goes to authentication. He literally says, black Steve, talking about sexual relationship. That's a very specific thing.

And *Rodriguez* talks about how messages can be authenticated by the context, by the name, by specific things that one person would know about another person. The one --

THE COURT: Where's the sexual references, counsel?

MS. BEVERLY: Your Honor, when he talks about I need you in my life --

THE COURT: It says:

But after that stay, I'm ready to get you right then on my brain and that's only for one reason, you -- who I need you my -- in my life per energy.

And you interpret that as a sexual --

MS. BEVERLY: Well --

THE COURT: -- reference?

MS. BEVERLY: -- before that, Judge, when he's talking -- I believe it's on State's Exhibit No. 1 or 2 where he's talking about Baby, I miss you, I need you in my life, things of that nature, Mr. Clarkson

testified that he had no other relationship of sexual nature, which is the -- the State's position, that's the context, and Mr. Clarkson's position is that's the context, from a black Steve.

So I think additional questions about, oh, well, you never got a message from this number before and X, Y, and Z are cross-examination. But it doesn't go to the heart of the authentication issue, which is the context of these messages given to Mr. Clarkson days before this incident from the black sleeve -- black Steve is enough to authenticate it.

THE COURT: We'll be in recess for a few minutes.

[Court recessed from 2:44 p.m., until 2:48 p.m.]

[Outside the presence of the jury.]

THE COURT: You may be seated. We're back on the record. Let the record reflect the presence of the State -- I'm sorry, the presence of counsel for the State, counsel for the defendants, and the defendants.

I've reviewed the Proposed Exhibits 1, 2, 3, and 4, argument by counsel. I also reviewed the appropriate statutes as well as *State vs.* -- I'm sorry, *Rodriguez vs. State,* 273 P.3d 845. I also reviewed two out-of-state decisions, *State vs. Koch,* 157 Idaho 89, and *State of Arizona vs. Stanley*, 2016 WL 3950676.

At this point, I am not going to allow the text messages to be introduced into evidence. The State has failed to establish authorship of these text messages. Further, in reviewing the text messages, the only response to any of these text messages, that it appears to be on the Exhibit 4, which is a question mark at the bottom of Exhibit No. 4.

The text messages themselves are not so unique as to demonstrate that they were sent by the defendant, Steven Turner. The only reference is black Steve. There -- in response to that portion of the text -- I'm sorry, there is no response to that portion of the text by the person who received the text.

In any event, I'm not going to allow the text to be presented into evidence.

MS. BEVERLY: Thank you.

MS. MACHNICH: Thank you, Your Honor.

THE COURT: I'm sorry, my decision is further based on the fact that the defense is going to stipulate that there was a relationship between the defendant Steven Turner, and -- and the witness. And counsel, I want that on the record. I want that to be --

MS. BEVERLY: Well --

THE COURT: -- stipulated fact.

MS. BEVERLY: -- before we do a stipulation, I just want to be able to ask the witness questions. And that should satisfy, I think, before we do a stipulation.

MS. MACHNICH: We're happy to do it however the State wants.

MS. BEVERLY: I want to ask him questions.

THE COURT: Well, again, part of my decision is based on the fact that the defense is going to stipulate that there was a relationship between Mr. Turner and Mr. -- and the witness.

MS. BEVERLY: I -- I understand that. But I want to -- I'm still

going to ask the witness questions about very --

THE COURT: That's fine.

MS. BEVERLY: -- specific questions I -- I told Ms. Machnich about.

THE COURT: And there will be no objection by the defense; is that correct?

MS. MACHNICH: No objection to the questions that Ms. Beverly ran past in the back hallway before we started today. Those are fine.

And again, we are more than willing to type up whatever stipulation and stipulated language works for the parties with regard to this. If we don't -- if the State or if any party feels like they don't feel like a full picture of the extent of the interactions between the two, absent the sexual basis, is -- is not evident by the testimony, we're happy to do a stip.

THE COURT: That's fine. And that goes to the issue of probative value versus prejudicial effect. Because there's references in these texts that I was very concerned about on exhibit -- on Exhibit 3, there's a reference:

Hey they gave me a bus pass. I-M-M-A just come over. Been trying to vocal for you ups you for six months. Here I come.

I had an issue how that could be interpreted. So in any event, I'm not going to allow them in.

MS. BEVERLY: Okay.

MS. MACHNICH: Thank you.

MR. GIORDANI: Just so -- just so the record's clear, Your Honor, we both -- Ms. Machnich and Ms. Beverly have discussed this extensively. The idea here is that we're not going to introduce any evidence of a sexual relationship. But the relationship in and of itself referred to vaguely is probative, and I don't think there's going to be any objection to that, that he knew him, he had been to his house several times. He knew the address, which is part of, you know, how he ended up there in the first place. We're just -- we're going to instruct the victim right now, no reference whatsoever to any sexual relationship with Mr. Turner.

MS. MACHNICH: And -- and our understanding was there was no -- it's not a relationship. It's a friendship, is how we would class it.

MR. GIORDANI: Oh, yeah. Sure.

MS. MACHNICH: Yeah.

MS. BEVERLY: Yeah.

MS. MACHNICH: The interactions and the fact that they knew each other, he had been over to the house numerous times is not something we're contesting. It's just the --

THE COURT: And you're stipulating to that?

MS. MACHNICH: Yes.

THE COURT: That they had a friendship and they've been to the house -- that your client has been to the witness's house several times?

MS. MACHNICH: Well, I think it's actually a little more in

depth than that. And yes, we are stipulating to all of that. I had a proposed stipulation that -- that went into it. But again, if -- if the State doesn't want to go that way, I'm fine with that as well. This was what we had.

THE COURT: All right.

MR. GIORDANI: Yeah. I saw it. I just --

THE COURT: In any event, I'm going to make -- I'm going to take proposed Exhibits 1 through 4 and make them a court exhibit and they'll be part of the record.

MR. GIORDANI: Understood. If we could just have one minute? We're telling the witness that the texts aren't coming in.

MS. BEVERLY: I told him.

MR. GIORDANI: Okay.

MS. MACHNICH: All right.

[Evidentiary hearing concluded at 2:54 p.m.]

MS. SISOLAK: Your Honor, we do have -- we do have one other housekeeping matter, and -- if I may address.

Your Honor, prior to --

THE COURT: Just so you know, this was going to be a 15-minute recess.

MS. SISOLAK: I -- I understand, Your Honor. This will be very brief.

THE COURT: So if -- if counsel thinks we're going to have an extended recess, please approach the bench and let me know so I don't have the jury just sitting out there. I'll give them more time.

MS. SISOLAK: I understand, Your Honor.

Your Honor, just to note, Ms. Machnich, prior to opening statements, had invoked the exclusionary rule. Defense counsel, Ms. Machnich, and I, had filed on behalf of Mr. Turner a Notice of Witness, witness -- noticing any and all the State's witnesses, in addition to several additional witnesses.

It's come to my attention that one of the witnesses we potentially intend to call has remained in the courtroom. Her name is Karen Hudson. She is co-defendant's mother. She is relevant because she's the registered owner of the vehicle. Potentially, we intend to address some other things with her. So I'd ask that she be excluded.

THE COURT: She will be.

MS. SISOLAK: Thank you.

THE COURT: Is she present now?

MS. MACHNICH: I believe she's outside with the rest of the family members.

MR. PLUMMER: She's not, Your Honor.

THE COURT: Okay.

MR. PLUMMER: And I had told the State I'd stipulate to the registration. It's not any concern --

MS. BEVERLY: It's not the State that has a problem with it. It's --

THE COURT: All right.

MS. BEVERLY: -- Mr. Turner.

THE COURT: Counsel, you just -- you have an intention of

calling this witness in your case?

MS. SISOLAK: Your Honor, I'd be happy to make a proffer with Your Honor --

THE COURT: No, no, no.

MS. SISOLAK: -- at the bench.

THE COURT: I just -- I want a good faith statement from you that I'm excluding this person because it's a -- a potential witness in your case.

MS. SISOLAK: Depending on if -- dependent upon if Mr. Hudson chooses to testify or not, she could become pertinent to my case, yes.

THE COURT: Okay. Then I'll exclude her.

MS. SISOLAK: Thank you.

THE COURT: Bring the jury in, please.

[Jury reconvened at 2:56 p.m.]

THE COURT: You may be seated. Will the parties stipulate to the presence of the jury?

MS. MACHNICH: We would, Your Honor.

MR. PLUMMER: Yes, Your Honor.

THE COURT: State? State?

MS. BEVERLY: State calls Eric Clarkson.

THE COURT: No. State, do you stipulate to the presence of the jury?

MS. BEVERLY: Oh, yes. I'm sorry.

THE COURT: Thank you. Call your first witness, please.

MS. BEVERLY: The State calls Eric Clarkson.

ERIC CLARKSON,

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

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

THE WITNESS: Eric Clarkson, E-R-I-C C-L-A-R-K-S-O-N.

MS. BEVERLY: May I proceed, Your Honor?

THE COURT: You may.

DIRECT EXAMINATION

BY MS. BEVERLY:

Q Mr. Clarkson, do you know a person by the name of Steven Turner?

A Yes, I do.

Q Do you see Mr. Turner here in court today?

A Yes, I do.

Q Can you please point to that person and tell me an article of clothing that they're wearing today?

A He's right there. He's wearing glasses and a light blue shirt.

MS. BEVERLY: Let the record reflect identification of the defendant.

THE COURT: The record will so reflect.

BY MS. BEVERLY:

Q I want to direct your attention to prior to 2015, around 2013, 2014. At that time, did you have a friendship with

Mr. Turner?

A Yes.

Q Would Mr. Turner come over to your house?

A Yes.

Q How often would he come over to your house?

A Every other weekend or four times a month, every weekend.

Q And your house at the time, was that at 6729 Oveja Circle?

A Yes.

Q Okay. When Mr. Turner would come over to your house, would the two of you occasionally smoke some marijuana?

A Yes.

Q Prior to September 4th of 2015, had you and Mr. Turner stopped communicating?

A Yes.

Q Okay.

MS. BEVERLY: Your Honor, for purposes of the record, defense counsel and I have stipulated to the admission of State's Exhibit No. 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, and 24.

THE COURT: Can you say after 100 which ones? What were the other ones? 100, and what was after that?

MS. BEVERLY: It's going to be 101 through 105, and then Exhibit No. 24.

THE COURT: Is that correct, Defense; you're stipulating to the admission of those exhibits?

MS. SISOLAK: As to Mr. Turner, we would, Your Honor.

MR. PLUMMER: Yes, Your Honor.

THE COURT: At this time, Exhibits -- State's Exhibits 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, and 24 will be admitted.

[State's Exhibit Nos. 24, and 92 through 105 admitted.]

MS. BEVERLY: Thank you, Your Honor.

BY MS. BEVERLY:

Q Okay. Mr. Clarkson, since -- back in 2015, specifically September the 4th of 2015, were you living at the location of 6729 Oveja Circle?

A Yes, I was.

Q Is that here in Las Vegas, Clark County?

A Yes, it is.

Q I'm going to publish --

MS. BEVERLY: Permission to publish, Your Honor?

THE COURT: You may.

BY MS. BEVERLY:

Q I'm going to publish for the jury -- and I think you can actually see it on your screen right, what has been now admitted as State's Exhibit No. 92. I'll zoom in a little bit for you and the jury. Can you see this map on your screen?

A Yes, I can.

Q Okay. And can you see the little red dot marking 67 -- I'm sorry?

UNIDENTIFIED JUROR: Needs to be positioned over here more, please. Can't see. It's too far to the left.

MS. BEVERLY: Is that better?

UNIDENTIFIED JUROR: Much better. Thank you.

MS. BEVERLY: And please do let us know if you can't see or hear any of the witnesses.

BY MS. BEVERLY:

Q So Mr. Clarkson --

THE COURT: If I make an inquiry, can the jurors see the witness since we've moved the screen? I need you to be able to see the witness as he testifies.

UNIDENTIFIED JUROR: Not here. We can see half of him.

[Pause in proceedings.]

THE COURT: Can you now see the witness? Call all the jurors see the witness?

UNIDENTIFIED JUROR: Yes.

UNIDENTIFIED JUROR: Yes.

THE COURT: Thank you.

MS. BEVERLY: Thank you, Your Honor.

BY MS. BEVERLY:

Q Okay. Mr. Clarkson, we were talking about do you see where this red marking is, where my pen is?

A Yes.

Q Would that be marking your address at 6729?

A I believe so. It's a little blurry, but I believe so.

Q Okay. Can you tell us what the major cross-streets are of where your home is?

A Rainbow, between Westcliff and Alta, or between Celeste and Westcliff, depending on how you look at it. The major cross streets would be Alta and Westcliff.

Q And how long prior to 2000 -- actually September 4th of 2015 had you lived at this address?

A 10 -- nine years. Eight, nine years.

Q How many bedrooms does your home have?

A It was four. It's now three, with a den.

Q Okay. And back on September the 4th, who were you living with, if anyone, at the time?

A My best friend, Willoughby Potter de Grimaldi.

Q Okay. So I want to direct your attention to the late night -- or actually, the early morning hours of September the 4th of 2015. Around 3:30 in the morning, what were you doing?

A Playing on my phone and watching TV and getting ready for bed.

Q Okay. Are you kind of a late night --

A Yes, I am.

Q -- like, night owl? What time do you typically go to bed?

A Any time after 2:00 or 3:00 in the morning. I do work a graveyard shift.

Q Now, you have one of the bedrooms in the house; is that correct?

A I do.

Q What -- is there a window in your bedroom?

A Yes, there is.

Q Where does the window in your bedroom face? Which part of the house does it face?

A It faces north directly on to the outdoor patio.

Q And do you have a fan or anything in your actual window?

A Yes, I do.

Q Okay. I'm going to show you what has been --

MS. BEVERLY: Or permission to publish, Your Honor?

THE COURT: You may publish the ones that -- the exhibits that have been admitted, counsel.

MS. BEVERLY: Thank you so much.

BY MS. BEVERLY:

Q Publishing Exhibit No. 101; can you see that on your screen there?

A Yes.

Q Okay. What are we looking at here?

A You're looking at my bedroom window and the fan in my window with the -- the blinds are drawn up to allow for the airflow.

Q Okay. And there's this fan on the right side of the window; is that correct?

A That is correct.

Q And you indicated that this fan faces the back patio of your home?

A That's correct.

Q Okay. Is it a covered patio or kind of an open patio?

A It is a covered patio.

Q Okay. So you're getting ready to go to bed around 3:30 in the morning. And what, if anything, do you hear, do you see?

A I -- I told a friend that I was going to bed and sent a final text. I rolled over and turned off the light. And within just a few minutes, I heard a sound that I recognized as one of my steel outdoor patio chairs being moved across the bricks.

Q Okay. I am going to show you, up on the screen, what has been marked and admitted as State's Exhibit No. 96. Okay. We just had a photo up here of your bedroom window and the fan in your window; is that correct?

A Yes.

MS. BEVERLY: Your Honor, does the courtroom have the ability to draw on the screen?

THE CLERK: Yes, it should have.

MS. SISOLAK: It should.

MS. BEVERLY: Okay.

BY MS. BEVERLY:

Q Mr. Clarkson, what you can actually do, is if you take your finger, you can actually draw on your screen and it will show up for the members of the jury to see.

A Okay.

Q So if can on here, let me know if you need me to zoom in, can

you circle where your bedroom window is?

A Right there, and the fan you can see to the left.

Q Okay. So you look out of -- or you hear something on this back patio area; is that correct?

A Yes.

Q And you indicated that it was a sound of metal chairs moving?

A Those chairs that you can see there, those patio chairs, that's solid steel tubing that they're made from.

Q Okay. How long have you had those for?

A Many years. I -- I no longer have them. But at that point, I'd them for at least five years.

Q Okay. Now, what gave you the impression that it was chairs being moved?

A The sound of the -- the steel against the brick.

Q Okay. Had you -- prior to going to bed, had you left your chairs -- and I'll actually show you Exhibit No. 97. Is this the way that your chairs looked when you went to sleep that night?

A Yes.

Q So you hear the chairs moving. And, obviously, this is a brick patio; is that right?

A Correct.

Q And what do you do when you hear those chairs moving?

A If I may, I believe it was only one chair that was moved.

Q Okay.

A I -- at that point, I sat up in my bed and I looked through the

window, which faces directly north. And I saw a figure walk by my window. At -- at first I thought I was seeing things so I got up and I went to that fan and I put my sideways and looked outside. And there was, indeed, a young black man on the patio.

Q Okay. When you actually looked through the fan, can you kind of see through the holes in the particular fan on to the patio?

A Yes. Especially when a fan is going fast, it doesn't really block your view at all.

Q Let me show you State's Exhibit No. 105. This is the fan that we were talking about; is that correct?

A That is correct.

Q Okay. And when you looked through the fan, you can actually see on the patio, is -- where my pen is?

A Yes, ma'am.

Q Okay. So you indicated that you see a shadowy figure. And what do you do decide that you're going to do, if anything?

A I grabbed my phone and immediately went to my roommate's bedroom, told him that I had seen and heard somebody on the patio and that I was going to call 911. I asked him to get up.

Q Were you expecting anyone at your home that night?

A No.

Q Did anyone call you and say, Hey, I'm going over tonight?

A No.

Q Did you invite anybody over?

A No.

Q What do you do when you call 911? What's happening?

A I let them know that somebody was in my backyard. I verified it and I had seen someone.

Q Okay. What happens next?

A I was on the phone with 911. And my roommate got up out of bed. It took him a moment to put a little bit of clothes on. At that point, I showed him that you could plainly see somebody through the glass of the back door.

Q Okay. And I don't want you to tell me anything that Willow told you, but did you go and look out the back door of your home as well?

A No, I did not. You're -- you're not able to look through the glass. The glass has what's known as a -- a slicker on it. But you can plainly see through if there's light on -- on either side. You can see through if there's somebody on the other side.

Q Okay. And I'm going to publish Exhibit No. 97. At the time, around 3:30 in the morning when this is happening, are there any lights on -- on the patio?

A No.

Q Are there any lights on inside of your home?

A No.

Q Okay. Now, your house backs up to Rainbow; is that correct?

A Indeed.

Q Are there street lights on Rainbow?

A Now that I'm aware, there are 17 that cast light into my backyard.

Q Okay. At the time when you're looking into your back patio though, what are the lighting conditions like?

A Cast light from the three immediate street lights on Rainbow, and then all the extra light for all the other lights coming onto the -- under the patio. So you could -- dim, but -- but obvious.

Q But was it dark? Was it, like, daylight bright, or was it dark?

A No. It was dark.

Q Okay. And the inside of your house was dark as well; is that correct?

A Absolutely dark, no lighting.

THE COURT: I'm sorry?

MS. BEVERLY: I thought you had a question for me, Your Honor. I'm sorry.

THE COURT: No. He cleared his -- my law clerk cleared his throat.

MS. BEVERLY: Oh, I'm sorry.

BY MS. BEVERLY:

Q Okay. So no lights on on the patio. Maybe some street lights from Rainbow, but also dark inside the house; is that correct?

A Correct.

Q All right. What happens after you tell Willow that, Hey, there's somebody on the back patio?

A Willow came -- as I said, he came out of his bedroom. And when I told him, stop, look, you can see somebody up against the outside, right outside of the back door, initially he walked to the back

door. And then he went to the window, which is directly to the right of the -- when you're inside of the home, it's directly to the right of the back door. He stood on the wall side of the window, looked outside, and saw -- saw someone.

Q Okay. And I will show you, let's see, Exhibit No. 93. Where my pen is, where this clock is, is this the window that you're talking about?

A Yes, ma'am.

Q Okay. Are you still on the phone with 911 as all of this is happening?

A Yes, ma'am.

Q Okay. Are you asking that police come to your house and figure out what's going on?

A Yes, ma'am.

Q All right. As you're on the phone with 911, what's the next thing that you personally see or hear?

A After Willow had walked to the window, and although I can't speak to what he said, we both then heard somebody beating on the front door, security door.

Q What kind of security door do you have on your front door?

A At the time, it was a 45-year-old metal black screen door, locked.

Q So you hear someone knocking on the front door; is that correct?

A If I may, it was much more beating than knocking.

Q Okay. What do you do when you hear this?

A I was slightly frozen in time with the 911 operator. But Willow immediately went from the back window to the front window. And because we have solar screens, if the lights are on outside and it's dark inside, you can see nothing inside. So he went to the window and he looked out and could see someone outside the front door.

Q Okay. And again, this whole time, are you still talking to 911?

A Yes, ma'am.

Q Are you relaying whatever information that you see as well as things that Willow might be telling you?

A Yes, ma'am.

Q Okay. What happens after Willow goes to the front door and looks out?

A I actually asked the 911 operator if that -- if whoever was beating on the front door were the police. And she -- the operator said no, she could not verify that the officers had yet arrived. And, yes, I was on the phone. But at that point, Willow indicated something to me, that he saw something on the other side of the house. And he went directly to look at what it was.

Q Okay. At some point, do officers arrive to your home?

A Yes.

Q Okay.

MS. BEVERLY: At this time, Your Honor, based on the conversation I just had with defense counsel, they're stipulating to the 911 call, which is Part 1 of Exhibit No. 11.

THE COURT: Okay. Are you moving for admission of Exhibit 11?

MS. BEVERLY: I -- Part 1 of Exhibit No. 11. There's two things on there. The next one will come in through someone else.

THE COURT: Okay. Are they marked 11A and 11B?

MS. BEVERLY: They're actually on the CD, so I can have it marked that way if need be. Okay. So yes, I'm moving for the admission of 11A at this point.

THE COURT: Defense, any objection to the admission of 11A?

MS. SISOLAK: Not on behalf of Mr. Turner, Your Honor.

MR. PLUMMER: No, Your Honor.

THE COURT: And counsel, what is 11 -- Exhibit 11A? It's the 911 call?

MS. BEVERLY: Yes, of Mr. Clarkson. At this time, I'd ask permission to publish that call.

THE COURT: There being no objection to the admission of Exhibit 11A, it will be admitted and you may publish.

[State's Exhibit No. 11A admitted.]

MS. SISOLAK: Thank you, Your Honor.

[Audio played.]

BY MS. BEVERLY:

Q Mr. Clarkson, did you just hear that call?

A Yes.

Q And you seem to be kind of visibly upset. What's causing you

to be upset right now?

A It was a -- it was a very scary thing. And right after that phone call ended, shots start coming into my home.

Q We're going to talk about that. Okay. And as we talked about earlier though, you weren't expecting anyone to come over to your house; is that correct?

A No, ma'am.

Q All right. So I want to pick up where the 911 call left off. Okay. Do you need some water or anything?

A I'm good. Thank you.

Q Let's pick up where the 911 call left off. When the 911 call left off, it appeared that officers had just arrived at your home; is that correct?

A Yes, ma'am.

Q How many officers came to your home?

A Initially, two.

Q When they come, do you let them in the front door?

A Yes.

Q And what happens when those officers come in the front door?

A Initially, I let them both -- made them both aware of the fact that you could see through my back door and that you could plainly see that there was somebody on my back patio. I explained to Officer Robertson how to open the back door. My roommate explained to Officer Grego how to turn the light on right by the back door. And that

was while I was still on the phone with the 911 operator.

And immediately after I hung up the phone, because for some reason I had just kind of forgotten I was on the phone with the 911 operator, when I hung up and I looked back, Officer Robertson was kneeling at my back door and Officer Grego was to the left from my eye view. And Officer Robertson turned the key and opened the back door.

Q Let me stop you right there. I'm going to publish what's been admitted as -- I'm sorry, State's Exhibit No. 100. There we go. Thank you so much.

Actually, let's do exhibit number -- Exhibit No. 98 first. Okay. The perspective of this photo, is this from the front door of your home?

A Yes. Direct -- looking directly toward the back door. In this photo, the actual back door is open and you're looking in towards the backyard.

Q Okay. So on the right hand, when you come in the front door, we have your living room; is that correct?

A That is correct.

Q What do we have on the left side?

A We have a -- a -- I mean, there's a demi wall. And on the right of the demi wall is a small curio cabinet. And on the left of the demi wall, there are coats hanging and that is the hallway that leads to my roommate's bedroom.

Q Okay. So on -- where my finger is pointed in the very, very far left hand of the screen, that's kind of a hallway that leads to additional bedrooms?

A Willow's bedroom, my roommate's bedroom.

Q And a little further up, kind of at the bottom of the screen would be the area where the den would be?

A That is correct.

Q Okay. All right. So you let officers in and you indicated that officer -- now on the --

MS. BEVERLY: Excuse me, for the record, Number 100 is being published.

Q You let officers in and they go to the back door; is that correct?

A Initially, Officer Grego went to the back door, to the left of the back door on -- on the wall side. And Officer Robertson went to the window that you can see there in the far right and looked out the back and didn't say anything, because it was, again, dark and quiet. But he indicated the -- the number two, and a gun.

Q Okay. Now, what do you see after that?

A From that point, the next thing that I actually saw were the bullet -- the bullets coming in the house.

Q I believe you said something earlier about one of them was kneeling, one of the officers was kneeling or something?

A Officer Robertson was kneeling right there by the back door.

Q Can you put a little circle where you saw Officer Robertson kneeling?

A Right here.

Q And then where is Officer Grego-Smith?

A Here on the wall side. I couldn't get my finger quite there. But if you go over to the wall where you can see the light switch, that's where he was standing.

Q Okay. So but inside the house; is that correct?

A Correct. And if I may, this --

Q Sure.

A -- table was over here, so all the way over here. It had been slid out of the way by the paramedics.

Q During -- okay. I'm going put back up Exhibit No. 98. You indicated to us that you -- Officer Robertson opened the door; is that right?

A Yes, ma'am.

Q Back door?

A Yes, ma'am.

Q Tell me where you're standing. I'm going to try to make this a little less bright if I can.

A Willow -- Willow and I are both right here in this area.

Q Okay. So are you kind of, for lack of a better phrasing, peeking around to see what's happening with the officers?

A I was still on the phone with the 911 operator and I really wasn't looking at what was going on. I -- I knew the officers were in the house and had gone that direction. But when I -- I heard the 911 officer -- the 911 operator say, Sir, are you there, it kind of woke me back up. And I said, Oh, yes, they have arrived. I hung up. And when I peeked back around the corner is when I saw him open the door.

Q Okay. And I want you to describe for the jury, okay, what you saw when Officer Robertson opened this door, as depicted in State's Exhibit No. 150 -- I mean, 100. I'm sorry.

A I saw two bullets fly through my living room.

Q Where did those bullets from your perspective come from?

A Right outside that back door, right there where you can see the orange and the chair. Right there.

Q How did you know they were gunshots?

A I saw the bullets fly across my living room.

Q Describe for us what those, from your perspective, what those bullets looked like coming through your house.

A Molten metal, red and blue. The other one was a -- like a giant sparkler had gone off in my living room.

Q So from your perspective, was it two different types of bullets?

A Yes.

Q Do you --

A Yes.

Q These shots that came through your home, were they in quick succession or shot, break, shot?

A They were quick succession.

Q Back to back?

A Yes, ma'am.

Q Okay. What's the next thing that you hear or see?

A I -- I hear, Officer down. I heard somebody scream, Officer down, officer shot, I've been shot. And I hear gun play, guns going off.

Q So -- so after these first shots come through your house, you hear additional shots?

A Yes, ma'am.

Q From outside or from inside the house?

A At that time, I have no -- I had no idea.

Q Would it be fair to say that after these first shots came through your home, you kind of ducked back past the wall?

A Yes, ma'am.

Q And again, this is going to be Exhibit No. 98. When the bullets originally that we were talking about came through your home, how close were they to you, the bullets?

A Very.

Q Were you, in fact, standing very close to your front door and your living room window?

A Yes, ma'am. No more than six inches.

Q After you hear other shots being fired, what's the next thing that you do?

A Both Willow and I had retreated to his bedroom after those first shots rang into the house. That's why I really couldn't tell what -- where the shots were coming from from that point. The next thing I heard was a very loud booming black man's voice screaming to get the fuck down or he -- that person was going to shoot whoever he had -- whoever it was.

Q At some point, do additional officers start arriving at your home?

A Yes.

Q Does your house, in fact, get pretty crowded with other officers?

A Yes, ma'am.

Q And did that include a K-9 dog officer?

A Yes.

Q Do those officers try to keep you and Willow out of the way of what's going on?

A No.

Q Okay. You don't go, like, in the backyard or anything, though, do you?

A Oh, no.

Q Okay. At some point after this has gone on, do you end up meeting with some detectives and giving a statement about what happened?

A Yes.

MS. BEVERLY: Court's indulgence.

Q The backyard of your house has a pool area; is that right?

A Yes.

MS. BEVERLY: I'm going to show what's been admitted as Exhibit No. 21 -- 24, excuse me, Your Honor.

Q Do you remember whether this part of your pool area was damaged prior to this night?

A It was not.

MS. BEVERLY: Court's indulgence.

I have no further questions. I'll pass the witness.

THE COURT: Thank you.

Any cross-examination by the defense?

MS. SISOLAK: Thank you, Your Honor.

THE COURT: You may proceed.

CROSS-EXAMINATION

BY MS. SISOLAK:

Q Good afternoon, Mr. Clarkson.

THE COURT: Counsel, question the witness from the lectern, please.

MS. SISOLAK: Absolutely, Your Honor. I apologize.

BY MS. SISOLAK:

Q Mr. Clarkson, I'll be brief. I know this is tough. I'm sorry.

Other than what we heard on the 911 call, any other descriptions of what was seen were given to you by your roommate, correct?

A No. What was given to me were quiet, because it was almost 4:00 in the morning. And what was going on was in the dark and he indicated to me initially that he had seen some --

MR. PLUMMER: Objection. Hearsay.

BY MS. SISOLAK:

Q And I don't want you to tell me what he said.

A Okay.

Q Maybe I could rephrase my question.

A Thank you.

Q Mr. Clarkson, I understand this was going very quickly and things were -- were sort of chaotic. You told officers everything you saw, correct?

A Yes.

MS. SISOLAK: Nothing further. Thank you.

THE COURT: Mr. Plummer?

MR. PLUMMER: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. PLUMMER:

Q Good afternoon, Mr. Clarkson.

A Good afternoon.

Q The -- do you know Mr. Hudson?

A No.

Q Have you ever seen Mr. Hudson before?

A Only in the pictures.

Q Have you ever talked to him?

A No.

Q Do you know Mr. Turner?

A Yes.

Q You've known him for five, six years?

A Now almost eight, even though no contact for the last three and a half.

Q Since this incident?

A Correct.

Q But prior to this incident, you had known him for five years?

A About five years.
Q And he had been to your house numerous times.
A Yes.
Q And the two of you had smoked marijuana together numerous times?
A Yes.
Q And you provided the marijuana most of the time?
A 50/50.
Q And over those five or so years, there were time periods where he was over your house once a week?
A Yes.
Q Times it was every other week?
A Yes.
Q So he had been to that house many, many times?
A Yes.
Q Mr. Hudson, though, had never been there?
A Not that I'm aware of.
Q Do you recall the first time you gave a recorded statement?
A I believe so, yes.
Q And in that recorded statement, though, that wasn't the first time that you had talked to officers and told them what was going on? I mean, you had talked to a police officer, letting them know what was going on before actually sitting down with the detective that hit record?
A I -- I believe so. I really don't think that there was much talking going on to anybody. And if there was any, as you said -- indicated, it

would have been to another officer.

Q And the -- do you recall on September 4th, 2015, giving a statement, a recorded statement?

A Yes.

Q Prior to giving that statement, you had talked to police officers concerning this?

A Again, in -- perhaps in the -- in the street on Oveja while we were awaiting.

Q And do you remember which officer, as far as -- do you remember an officer discussing with you as far as who fired the first shot?

MS. BEVERLY: And can we approach, Judge?

THE COURT: Yes.

[Bench conference transcribed as follows:]

MS. BEVERLY: I don't know where this line of questioning is going, but I don't know if he's trying to get him to say Turner fired the first shot, but that would be completely -- I think that would be a proving issue. So I don't know what path he's going down, but --

MR. GIORDANI: It's a concern with the proof.

MS. BEVERLY: -- I think that's a prudent issue. That's not allowed at all. That's the whole purpose of the redaction of the statement.

THE COURT: Okay. But what is your question? What is the question you're asking?

MR. PLUMMER: Your -- Your Honor, we're --

THE COURT: I thought your question was, did the officer tell you who filed -- fired the first shot.

MR. PLUMMER: That's where I'm going.

MS. BEVERLY: Well, that would be --

MR. PLUMMER: I'm going to discussions --

MR. GIORDANI: Oh --

THE COURT: Okay. But then you need to make an objection, Ms. --

MS. BEVERLY: I'll make -- I -- I'll make an objection to that. I didn't hear -- I thought he said -- I thought he asked him, did you tell the officers who filed -- fired first. I was going to say, I was concerned about proving issues. But I'll make an objection to hearsay.

THE COURT: Okay. I -- let me make sure I heard the question correctly. Did you ask, Did the officer tell you who fired the first shot?

MR. PLUMMER: That's where I was --

THE COURT: Okay. But was that --

MR. PLUMMER: I hadn't gotten there yet.

THE COURT: That's what I --

MR. PLUMMER: But that is where I was going.

THE COURT: -- thought the basis of your question --

MR. PLUMMER: That is where I was going, but I hadn't got there --

MS. BEVERLY: And I think --

MR. PLUMMER: -- yet.

MS. BEVERLY: -- both parties are going to have a hearsay objection. Or the State is going to have a hearsay objection to that.

MS. SISOLAK: Well, we will absolutely have one as well.

THE COURT: Okay. I'm going to sustain the objection. Certainly, you can ask the officer. And if he makes a different statement, you know, you can bring a prior witness's statement through the rules of evidence. But I'm going to sustain the objection as to what the officer said, if you are asserting it for the truth of the matter asserted.

MR. PLUMMER: Understood.

THE COURT: Thank you.

MS. SISOLAK: Thank you, Your Honor.

MS. MACHNICH: I was just --

THE COURT: Wait.

MS. MACHNICH: I just -- have a procedural question. Do we get a chance to recross on his cross, since there's no -- we've been -- our client has been attacked by his cross? Or --

THE COURT: Okay.

MS. MACHNICH: -- how does that -- I don't know how that works. I just wanted to ask.

THE COURT: I'm going to let the State do rebuttal. I will give you an opportunity to ask some follow-up questions based -- now, would you rather them ask their final questions before you ask your questions?

MS. BEVERLY: I think the State has to have redirect before either of them can have --

THE COURT: Do recross.

MS. BEVERLY: -- a recross.

THE COURT: I agree.

MS. BEVERLY: Yeah.

MS. MACHNICH: But I thought we get -- we would get to recross on that.

THE COURT: I will let you make --

MS. MACHNICH: Very briefly.

MS. SISOLAK: It will be brief.

THE COURT: But I'm just saying, it's going to be limited to anything that he elicits.

MS. MACHNICH: Yes.

MS. SISOLAK: Yes.

MS. MACHNICH: Got it.

THE COURT: Not --

MS. MACHNICH: Nothing else.

MR. GIORDANI: Hold on, hold on.

THE COURT: I'm not going to keep going --

MS. MACHNICH: I don't --

MR. GIORDANI: I'm sorry. So if we don't redirect, you're saying that they can --

THE COURT: I'm going to let them bring out some --

MS. MACHNICH: If he --

THE COURT: -- question him on --

MS. MACHNICH: Only on something he brought out.

THE COURT: They're not -- they're not --

MR. GIORDANI: That's not --

THE COURT: -- together, as far as defenses.

MR. GIORDANI: Right. Of course.

THE COURT: Okay. So I'm going to let Mr. Turner's -- let me get it right. You represent Mr. Turner; is that correct?

MS. MACHNICH: Yes.

THE COURT: Would what you -- I -- I would let you have a limited recross. I would allow you to reopen.

MR. GIORDANI: Okay. We're -- we're objecting to that.

MS. BEVERLY: Definitely object to that.

MR. GIORDANI: That -- that is completely inappropriate, not -- that is not within the rules of evidence or procedure. That -- that could potentially cause --

MS. SISOLAK: I --

MR. GIORDANI: -- this trial to go on forever.

THE COURT: Well, I'm not going to --

MS. SISOLAK: I think --

THE COURT: -- let it go on forever.

MS. SISOLAK: I think that --

MR. PLUMMER: That is proper procedure.

MS. SISOLAK: -- the record we're making is that because Mr. Plummer is bringing up stuff that we didn't bring up, had I known he was going to bring it out, I would have asked on cross. I'm basically crossing on what --

THE COURT: All right. Here's how --

MS. SISOLAK: -- we're considering to be his direct.

THE COURT: -- it can go, counsel. We're -- we're going to do that. I'm doing to let the State do -- yeah. I have a -- I will let either defense counsel then ask some questions based strictly on what came out after they asked their questions.

MS. SISOLAK: Okay.

MS. MACHNICH: Okay.

MS. SISOLAK: That's fine.

THE COURT: Not -- we're not going to get back into everything. It's going to be very limited.

MR. GIORDANI: And I understand. We're -- we're objecting if --

THE COURT: Okay. That's --

MR. GIORDANI: We respect the Court's decision.

THE COURT: But again, you're right. This is not going to go on and on forever, counsel. And it better be very limited to something that's -- strictly came out.

MS. MACHNICH: It will.

MS. SISOLAK: Understood, Your Honor.

MR. GIORDANI: And just for the record, the -- the State's objection is re -- cross-examination is limited to the direct examination and recross-examination is limited to the redirect examination. That's the rules. That's why we're objecting. Because now you're giving cross on a cross. It's not appropriate.

THE COURT: Okay. But what I can do counsel, what I can

do or -- is I can allow her to reopen her cross before you do your redirect. Okay.

MS. MACHNICH: That's fair. That's fine.

MS. SISOLAK: I don't care when I get to ask --

THE COURT: Thank you. Okay. Do you have an objection to that, where you will get redirect after I let her reopen her cross based on something he brought out?

MR. GIORDANI: Respectfully, yes. I still object to that. The State's position is that cross-examination should be limited to what the State brought out in direct examination, not what some co-defendant does. I've done several co-defendant cases and never heard of that happening before, respectfully.

THE COURT: I understand.

MR. GIORDANI: You know, I -- and to -- that --

THE COURT: I agree in theory what the State is saying. We're not going to get into this. If there's something -- whether -- making offer of proof as to what you want to bring out. But he -- because I didn't hear anything that was --

MS. MACHNICH: One of the of things that Mr. Plummer elicited was that you hadn't seen Mr. Turner -- you never saw Mr. Turner again after this night. But I believe Mr. Clarkson's -- is true about this, is Mr. Clarkson didn't see Mr. Turner the night of this incident. And so we have one question about that, which is you didn't see Mr. Turner the night of this incident. Because he didn't see any -- I mean, I'm --

THE COURT: I'm going to ask you -- let you -- I do agree, one

question.

MS. MACHNICH: Okay.

MS. SISOLAK: Thank you, Your Honor.

MR. GIORDANI: Understood.

THE COURT: Okay.

MS. MACHNICH: After he's done.

THE COURT: After he finishes, and then they're going to have the last words, last few words.

MS. MACHNICH: Thank you, Your Honor.

MR. PLUMMER: Thank you, Your Honor.

[End of bench conference.]

BY MR. PLUMMER:

Q Mr. Clarkson, I guess let me rephrase my question. You've talked to a number of police officers involving this case?

A Yes.

Q And not -- in not one of those discussions or in any recorded statement did you ever mention that you could see a molten-colored bullet streaming past the hallway?

A Okay.

Q That -- that language has never been used before?

A Oh, no. It was used.

Q When?

A In -- in the last situation like this when we were in court. The same question was asked of me, and I believe I answered the same way.

Q When you spoke to the police officers you never mentioned any of that.

A Perhaps.

Q Now, at some point you saw Officer Grego turn on the outside light?

A He was there. I -- in my idea, with Officer Robertson on the ground with his gun drawn, he wouldn't have been able to reach up and flip the light on as well. So somebody had to have turned the light on. You're right, I did not see Officer Grego's hand turn that light switch on.

Q But Officer Grego was standing right there by the light switch?

A Yes, sir.

Q Did you see him with his gun drawn?

A I did. Both officers had their guns drawn.

Q Both of them had their guns drawn?

A Yes, sir.

MR. PLUMMER: Your Honor, I don't have any further questions.

THE COURT: Thank you.

Ms. Sisolak, I'll let you reopen cross-examination and ask one additional question.

MS. SISOLAK: Thank you, Your Honor.

RECROSS-EXAMINATION

BY MS. SISOLAK:

Q Mr. Clarkson, you did not see Mr. Turner that night at your house, that night of the incident, did you?

A I did not see anybody's face at all, no.

MS. SISOLAK: Thank you.

THE COURT: State?

MS. BEVERLY: I have nothing further.

THE COURT: Thank you. Can this witness be excused?

MS. BEVERLY: Yes.

THE COURT: Sir, thank you for --

THE WITNESS: Thank you guys.

THE COURT: -- coming today. You may be excused.

State, do you have a -- another witness?

MS. BEVERLY: I do. The State's next witness is Willoughby Grimaldi.

MS. SISOLAK: Your Honor, do you mind if we just stood back here?

THE COURT: You're fine.

MS. SISOLAK: Thank you, Your Honor.

WILLOUGHBY POTTER DE GRIMALDI,

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

THE CLERK: Would you please state and spell your name for the record?

THE WITNESS: Willoughby Potter de Grimaldi. W-I-L-L-O-U-G-H-B-Y P-O-T-T-E-R space D-E space G-R-I-M-A-L-D-I.

THE COURT: Sir, would you mind if I had you back up a little bit and so you could turn more towards the jurors so they can see your --

see you as you testify? Is that satisfactory?

[Pause in proceedings.]

MS. BEVERLY: Court's indulgence. Your Honor, by stipulation of the parties, going to ask that you admit State's Proposed Exhibits No. 106, 107, 108, 109, 62, 63, 64, 110, 111, 112, 113, 114 and 115.

THE COURT: Is -- is that correct, the defense has stipulated to the admissions of the exhibits that the State just read off?

MS. MACHNICH: On behalf of Mr. Turner, yes.

MR. PLUMMER: Yes, Your Honor.

THE COURT: Exhibits 106, 107, 108, 109, 62, 63, 64, 110, 111, 112, 113, 114, and 115 will be admitted.

[State's Exhibit Nos. 62 through 64, 106 through 115 admitted.]

MS. BEVERLY: Thank you, Your Honor.

THE COURT: And you may publish those exhibits without requesting to publish each one.

MS. BEVERLY: Thank you so much.

DIRECT EXAMINATION

BY MS. BEVERLY:

Q Sir, may I call you Willow?

A Yes.

Q Is that what you typically go by?

A Yes.

Q All right. I want to direct your attention to September the 4th of 2015. On that day, were you living at 6729 Oveja Circle?

A I was, yes.

Q Who were you living with at the time?

A My best friend and roommate, Eric Clarkson.

Q And how long had you been living at that address?

A On and off, a few years.

Q Now, in that particular home, Eric has a bedroom and you have a bedroom, I assume; is that correct?

A Correct.

Q And is your bedroom kind of off of a little hallway off the front door?

A Yes. It's the main hallway.

Q And which area of the backyard or the front yard or which part of the house does your bedroom face?

A Out my window?

Q Yes.

A It faces south, out to the pool area/backyard.

Q And is there a -- a fan or anything in your window?

A Yes. For -- a swamp cooler, yes.

Q I'm going to show you --

MS. BEVERLY: If I can approach the witness?

THE COURT: You may.

BY MS. BEVERLY:

Q State's Exhibit No., excuse me, 106. Can you see your window depicted, your bedroom window, depicted in this photo?

A Yes.

Q Okay. And is it where my finger is pointed, kind of in the middle of the page?

A Yes.

Q And it looks like next to the window, there's a little, like, half wall? Or what do you describe that as?

A We call it a demi wall.

Q Is that a step down as well?

A Yes. It's a flower bed.

MS. BEVERLY: And I'm going to publish this for the record, Grand Jury Exhibit No. 106 on the screen for the jury.

THE COURT: And, counsel, if it's easier for you, you may have to do it the old-fashioned way and actually just show them the picture.

MS. BEVERLY: Yeah. I might have to -- you know what, that might be better, Your Honor. Thank you. Haven't had to do that in a while.

BY MS. BEVERLY:

Q So you were describing -- maybe we can all see it. There's a window here. That's your bedroom window, right?

A The one to the right.

Q This one right here?

A Yes.

Q Okay. So to the right of the page by this demi wall?

A Yes.

Q Okay. During the early morning hours of -- actually, one

second. Show you one more, Exhibit No. 107. Is this a closer up of your bedroom window and then that demi wall we're talking about?

A Yes, it is.

Q And behind that demi wall, does this wall go to the front of your house?

A Yes.

Q On September the 4th of 2015 at about 3:30 in the morning, what were you doing?

A Trying to go to sleep.

Q Are you and Eric kind of late night owls?

A Yes.

Q What, if anything, happens as you're trying to go to sleep that evening -- or that morning, actually?

A Just before falling asleep, I was quickly, harshly woken up by my roommate in quite a panic.

Q And I don't want you to tell me what Eric told you, but did he give you some information that was concerning to you?

A Yes. In fact, so concerning I was not really believing it was actual facts. I just thought it was anything other than what it was.

Q When you get this information from Eric, what do you decide to do?

A I decided to try to prove him wrong and go check on it myself, to see if anything else was happening. I put pants on and proceeded to go towards the back of the inside of the house to actually check on what ruckus was happening in the backyard.

Q Okay. So in the backyard of your home, there's a patio area; is that correct?

A Yes.

Q And then there's a further pool area; is that correct?

A Yes.

Q And then there's kind of a, like, an open area of the backyard with furniture on it; is that fair?

A Correct.

Q I -- I'm going to show you Exhibit No. 99; where do you go in your home to figure out what's going on?

A I first traveled the along this wall here on the left and I approached the back door that was closed. And before reaching for the handle, I thought let's check out the window. So I crossed over and stood against this wall here, next to the clock. And I peered around the corner, out the back window.

Q And what, if anything, can you tell the jury did you see when you looked out that back window?

A Directly out the back window there is an archway that's across -- it's -- it's the actually walk path out of the awning area. And I saw the silhouette of -- of a black man that was with a billed cap on and cocking what looked to be a shotgun.

Q Fair to -- would it be fair to say, please correct me if I'm wrong, you couldn't detail any facial features or anything about this person; is that correct?

A That is correct. All light was from the backside of him.

Q At some point after you see this -- well, actually, let me ask you this: Before you go and check, has Eric called 911 already?

A Yes.

Q Do you relay the information that you just saw in the back to Eric to tell 911?

A I did. It was a very -- I'm sorry, it was a role reversal for us. Usually Eric is the leader and I'm more of the assistant or follower. But tonight was not that at all. It totally swapped.

Q Had you been expecting anyone to come over to your home that evening?

A Not at all.

Q Had you invited anyone over?

A No. And we communicate everything, so no.

Q You and Eric?

A Yes.

Q Okay. Sir, did you have any firearms at the house that evening?

A Not at all.

Q I'm going to show you Exhibit No. 95. Do you see the guns depicted in this photo?

A I do.

Q Are those your guns?

A No.

Q Are they Eric's guns?

A No.

Q I'm going to show you Exhibit No. 94. Do you see the handgun depicted in this photo?

A I do.

Q Is that either you or Eric's handgun?

A No. We own no firearm.

Q Okay. All right. Now, what did you do after you see this person on the back with what appeared to be a shotgun?

A Immediately freaked out. I backed up against the wall and cut across the living room to relay the information to Eric, to let him tell the 911 operator. And I then proceeded to stand in the living room, trying to not only look out the back, but also continue -- I don't know. Should I -- should I go on?

Q Let me ask you this: At some point, do you hear something at your front door?

A Yes.

Q Tell us about that.

A After crossing back from the back window, within a few moments, that's when I heard not just the doorbell ring, but then banging continuous on the front door. We have a screen door. And it was locked. But there was still continuous banging. I proceeded to go to the corner of our living room where you can actually look out the front window. Our front light was on, so I could see out front. But while standing there, I could still see the shadow out back, as well as out of the corner I could see directly through to my own bedroom, out that window where I could see a third person, totally different from both the

one out front and the one out back. And that person ran from one side -- from the pool side to the demi wall side.

Q Okay. Let's talk -- let's break that down a little bit. Okay? So you go to the front door when you hear banging on the front door; is that right?

A Well, I was at the front door, basically, in that hallway. And --

Q So let me show you Exhibit No. 109 so you can describe this for the jury. This is the front of your home; is that correct?

A Yes. The entry.

Q This would be the front door?

A Uh-huh.

Q Correct? And this is the screen door that you're referring to?

A Correct.

Q Okay. Is this a living room window?

A Yes.

Q And then over here on the right side of the page, would that be -- what window is that?

A That's our den.

Q Okay. And behind the front door, that would be the hallway that leads to your bedroom; is that correct?

A Along this path. It turns left.

Q When you look out the front door, what do you see?

A I could see through the four windows at the top of the door. I could see the shadow of a figure of a afro of some sort. And that's when I cut to the corner in the actual living room where I could hear through

the blinds. And I could see the entire description of a man out front that was shirtless, and probably 6'1" or so. And he was in black shorts and seemed very frantic, but continuously looking around as if there was something more coming.

Q And then you indicated you saw another person run past your bedroom window; is that correct?

A Yes.

Q And I want to go back to this photo. This is going to be Exhibit No. 106, for the record. Can you actually just draw with your finger for the jury to see where this person ran that you saw?

A He was from this section directly across. I saw him go across this way and immediately hop up and up, as if he was communicating to whoever was --

Q I -- I don't want you to speculate or anything. But just what you saw. Okay? So you drew -- you drew the little path for us; is that right?

A Yes. I saw him go from this direction to this direction.

Q In your backyard though, right?

A Yes.

Q So now we're talking about one person in the back, one person at the front door, and one person kind of on the side by your window; is that right?

A Yes.

Q All right.

MR. PLUMMER: Your Honor, can I ask that counsel, after

she has the witness point out on the piece of paper, put it up on the screen and reconfirm it, so that we can all see what it is that he's testifying to?

MS. BEVERLY: It's -- it's hard to reconfirm, because he can't see the screen. So that's why I'm showing the jury --

THE COURT: Here is what I'll allow you to do, counsel.

THE WITNESS: Should I do it here?

MS. BEVERLY: If -- if you can do it here, that would be better.

THE COURT: Okay. Wait.

MS. BEVERLY: So.

THE COURT: I'll allow you --

THE WITNESS: From this side --

MS. BEVERLY: Hold on one second, sir.

THE COURT: Either -- sir, is that going to -- can you do it on that screen? Otherwise, I'm going to allow counsel to stand at the end of the jury box so you can actually see the exhibit that he's pointing to.

MS. BEVERLY: Okay.

MR. PLUMMER: Either way, Your Honor.

THE COURT: You tell me. What would you prefer?

MR. PLUMMER: I'd prefer to see it on the screen so that we can all see what the witness is testifying to.

THE COURT: All right.

MS. BEVERLY: Okay. We'll do our best, Judge. Thank you.

THE COURT: Thank you. If you cannot, counsel, then you can stand at the end of the jury box and actually witness the actual

exhibit that he's pointing to.

MR. PLUMMER: Thank you, Your Honor.

THE COURT: Thank you, counsel.

BY MS. BEVERLY:

Q And let's just go over a -- a couple of descriptions. Okay? So we have the person at the back, and that's the person you indicated you saw with a potential shotgun; is that right?

A Yes.

Q Did that person have anything on their head?

A Yes. They were wearing a billed cap of some sort.

Q Okay. And shirtless, is that what you said, I think?

A I don't recall.

Q You're -- you're not sure? Okay. Then we have the person at the front door, correct?

A That person was shirtless.

Q Okay. And anything descriptive about that person?

A Besides in black basketball shorts and -- I could tell they had a couple of an inch of -- of afro.

Q Okay.

A Other than that, I didn't recognize them or recognize anything else.

Q Okay. And then we have the person running across your window, correct?

A Yes.

Q Any description about that person?

A I could tell the hairline, more so than anything. It was very fast. So I actually crossed from the living room down my hallway to look out the window. That's when I could see more of a -- of a description. But the first thing that popped in my mind was the hair. Because the hair was unlike anyone that I knew, and it was very wild, spiky almost.

Q Okay. At some point, do you come back to the front of your house, the front door?

A I did.

Q What do you see when you come back to the front door of your house?

A Well, I went around the corner into the den and looked out that window. And that's when the knocking and banging at the door stopped. I saw that the guy had bolted away from our front door and had crossed the cul-de-sac in front of our house.

Q So I'm going to show you over here Exhibit No. 64. Is this the window of the den window you're talking about?

A Yes, it is.

Q Okay. Put that on the screen now. So you looked out this den window and you see whoever was knocking at the front take off away from your house; is that right?

A Correct.

Q All right. And you indicated they went down to, I believe, you say Nutha Street?

A Nunca.

Q Nunca. Okay. This is going to be a little hard to see, so we're

going to put it -- actually, sorry.

MS. BEVERLY: For the record, parties stipulate to the admission of Exhibit No. 117.

THE COURT: Is that correct, counsel?

MS. MACHNICH: Yes, Your Honor, for Mr. Turner.

MR. PLUMMER: Yes, Your Honor.

THE COURT: Exhibit 117 -- State's Exhibit 117 will be admitted.

[State's Exhibit No. 117 admitted.]

MS. BEVERLY: Thank you, Judge.

BY MS. BEVERLY:

Q So I'm going to show you this first and then I'm going to put it on the --

THE COURT: Counsel, approach. If you want to -- see if this will assist the witness in pointing, if you want to put it up on the screen.

MS. BEVERLY: Oh, okay. My teacher had these. Let's try this. Okay? Let's publish Exhibit No. 117.

BY MS. BEVERLY:

Q I'm going to zoom in on this. Do you see Oveja Circle -- actually, do you see Nunca on here?

A Yes.

Q And do you see Oveja Circle?

A Yes.

Q Do you see where my pen is, Oveja Circle?

A Yes.

Q So you see the person at the front leave your residence and go down -- go down, excuse me, over to Nunca?

A I saw him cross across this path, run along, and then turn sharp left.

Q Okay. Thank you so much. Keep that with you, just in case. Okay? Now, any of these three people you did not recognize; is that correct?

A Correct.

Q In fact, you weren't able to identify anybody as the people at your house; is that correct?

A Yes. That's correct.

Q Now, at a later point -- we're just going to fast forward for a few minutes -- at a later point, are you shown some photographs of people who may or may not be involved in this investigation?

A I am --

Q Were --

A -- or was.

Q Okay. Were either of the people shown to you the person who ran away from the house who was at the front door?

A I was able to recognize the hair identically to one.

Q Okay. But were either of the people the person who ran away from your house?

A No.

Q Now, once this person runs away from your house, do officers end up arriving?

A Yes. Almost at the same exact time. It was -- it was freakishly perfect.

Q Okay. It seemed close in time?

A Yeah. I wasn't -- I just wasn't expecting it. And at that time, it took so long, yet so fast for everything to happen. But yeah.

Q When the officers arrive, what if anything, do you tell them?

A Upon entering the house, I proceeded to point and explain very quietly how to turn the back doorknob and switch the light on that is right next to the doorknob.

Q Okay.

A I -- I believe there was more -- I think I also even told him how to look out the back and which door to open. Because we have what looks like just two glass windows, but one is a door and one is a window.

Q And is this the kind of door that you actually have to open from the -- unlock from the inside?

A Yes. Both dead bolt and handle.

Q And does the door swing out or does it swing in?

A In. It opens in the center.

Q I'll show you Exhibit No. 100 up on the screen, if you can see that. Oh, can you actually see up there?

A I can.

Q Oh, great. Solves our problem. This door where my figure is pointed, that's the door we're talking about that leads to your patio, correct?

A Yes.

Q And swings inward?

A Yes. It opens from this side and swings around this way.

Q Okay. All right. So the officers come in. And what do they do that you observed?

A Immediately they had lights on beaming on the ground, because the entire house was dark. They immediately popped them off and proceeded to just react. They listened to what we said. They walked along the same path along the wall. One officer went to the right and actually looked out the window that I had looked out. And the other officer stayed on the far left by the actual door entrance.

Q Okay. Where are you and Eric standing as you're watching the officers?

This is going to be, for the record, Exhibit No. 98 on the screen.

A We're standing right here by this wall. This is the actual hallway. And Eric was actually leaning against this wall and I was standing next to him peering around this corner.

Q Okay. So you're kind of in front of Eric, right?

A Yes.

Q A little bit?

A Yeah. I was part way on the tile and part way on the carpet. Eric was completely back on the tile, but leaning forward. He has the advantage of being tall. I do not.

Q Okay. What do you see once the officers get to that back door?

A I see them nonverbally communicating to each other.

Q What's the next thing you see?

A Do you want me to say what I saw?

Q Sure. Go ahead.

A I saw the -- the officer that was standing at the window hold up two fingers and what looked like a gun out of his fingers. And the officer on the left nodded and was joined by the officer on the far right. And I watched one officer stay standing, and the other officer kneel down onto what looked like one -- one knee to prepare to open the door. I watched them reach for the door handle and unlock it. And before they even -- before the light even came on, the door had been opened.

Q Okay. What do you see when that door to your back patio opens?

A Immediately before the light came on at all, there was a gun -- gunfire. And it -- it happened so quickly that I watched the officer immediately fall down. And then the door went flying open and shots came into the house before either officer could even do anything.

Q Okay. Did you hear the shots or did you see the shots?

A Both. I pushed back, both Eric and myself, pulling back as bullets literally went right past our face.

Q Okay.

A And I could tell the difference between the bullets, because I could -- I knew the difference between what a shotgun looks like and what an actual straight-shooting bullet looks like.

Q Okay.

A I saw the actual -- what looked like fireworks in our living room as shrapnel went everywhere.

Q So the shots that you hear, are they coming from inside or outside the -- the patio door?

A Outside coming into the house, right through the house. In fact, one went right out the open screen door that was still ajar.

Q Okay. And let's talk about that shot; can you describe what that shot visibly looked like?

A That shot was like a shooting star. It just went from one side straight through the house. And it was extremely different than the shotgun shot, which exploded like fireworks, leaving shrapnel not only blowing out our front window, but shrapnel throughout the entire living room.

Q So in your experience from what you saw, would you different it as two different calibers of -- of gunfire?

A Absolutely. Two totally different guns.

Q And how quickly are these shots in relation to one another?

A Rapid fire. They're extremely quick, in fact, as if they were happening at the same exact time.

Q Okay. What's the next thing that you hear or see after that?

A I could hear the -- I could hear someone saying repeatedly to drop your weapon. I couldn't tell who. I didn't know who. I didn't know the voices. So I actually crawled along the floor to look around the corner to actually see if the officers were shot or not. And I could see one was still laying on the ground, but there was another officer that was

standing trying to get out the back door.

Q Do you hear any shots coming from the inside of the house?

A I could hear shots from the officers. I could tell the difference in their guns almost -- almost perfectly. And it sounded -- it sounded like they unloaded two entire rounds.

Q Okay.

A And as if whoever was out there was not stopping.

Q Okay.

A Wouldn't --

Q Well, let me -- let me stop you right there. Okay. Do you hear any other shots from the patio after these first shots you described?

A Coming from the outside, in?

Q Yes.

A No. I only heard that a few times in the very, very beginning.

Q Okay. So you hear shots in the very beginning. Then you can hear later on some officer shots for different -- different caliber; is that right?

A Correct. I could tell because of the echo. The echo of the actual bullets exploding in the house, versus what I could hear, not only hitting the back of the house but the actual outside area, like metal things.

Q And you described that you actually saw one of the officers fall to the ground; is that right?

A [No audible response.]

Q All right. Now, at some point, a little bit after this, do other

officers start arriving?

A Yes.

Q Do you and Eric kind of stay in the same area by the front door where you had been throughout this incident?

A Yeah. We were almost curled up on the floor in the actual corner of the hallway. And it took a few rounds of officers to come in before they actually noticed us, because we were just trying to stay hidden.

Q Fair to say your house filled up pretty quickly with officers?

A Yes.

Q How close -- you described the gunfire coming through your house, out your living room, out your front door; how close were those shots to you and Eric?

A They were close enough to where I could actually not only see one of our Buddha statues within two feet of me, a bullet going right through it, and feel shrapnel literally hit me in the chest. I was still shirtless myself and it was way too close.

Q Okay. At some point after the other officers get there and your house -- did your house kind of get cleared out eventually?

A No. We were cleared out of the house though.

Q Okay.

A The house was no longer ours.

Q And later on that morning do you end up talking to a detective and telling him what you saw?

A Yes. Before even leaving the Oveja Circle street.

Q Okay. And just to be clear, I think you might have talked about this, but on the patio before any of this started happening, was it dark on the patio?

A We have -- we're right along Rainbow Boulevard. So there's 15 or 20 giant lights out along the street that had just been switched to LED lights. So there was no yellow hue. It was all white coming from the street, but our actual patio light was off.

Q Okay.

A So there was nothing visible from under there. But all the backlights just lit up everything like a silhouette, even out my window.

Q Okay. But was it -- what about the inside of the house? Was that dark or light?

A Completely dark.

Q So it was light enough for you to see silhouettes, but not distinctive features of someone; is that fair to say?

A Correct.

Q Okay.

MS. BEVERLY: At this point, I'll pass the witness.

THE COURT: Defense --

MS. MACHNICH: Thank you.

THE COURT: -- any cross-examination?

MS. MACHNICH: Yes. Thank you. Sorry.

Court's very brief indulgence.

[Pause in proceedings.]

MS. MACHNICH: Your Honor, before I proceed, pursuant to

stipulation of the parties, at this time I would like to move into evidence State's Exhibit 28.

THE COURT: Exhibit -- it's Defense Exhibit 20?

MS. MACHNICH: It's -- it's State's Exhibit 28.

MS. BEVERLY: Obviously, no objection to that.

THE COURT: Mr. Plummer?

MR. PLUMMER: No objection, Your Honor.

THE COURT: State's Exhibit No. 28 will be admitted.

[State's Exhibit No. 28 admitted.]

THE COURT: State's -- it's State's Exhibit 28; is that correct?

[Pause in proceedings.]

MS. MACHNICH: Yes. Your Honor, I'm also going to approach the clerk at this time and ask to mark Defense Exhibits A and B, which we'll be requesting to move into evidence pursuant to stipulation of the parties. And I can actually go on with my cross now and come back to those in a minute if that's all right.

THE COURT: That's fine.

MS. MACHNICH: Thank you.

CROSS-EXAMINATION

BY MS. MACHNICH:

Q All right. Good afternoon.

A Hello.

Q All right. Just a few preliminary questions. Your testimony is that you saw three shots come into the house, correct?

A Directly. That's the only ones that I visually saw and then

backed away from.

Q So the first was the shot that hit the officer?

A Yes.

Q The second was the shot that went straight through?

A Yes.

Q And --

A Out the front door.

Q And out the front door. And the third was the shot that appeared to look like fireworks, like the shotgun?

A Yes. It looked more like the first shot, but it looked like it actually just exploded in our living room instead of in someone.

Q Okay. Thank you. All right. Now, I would like to discuss with you the descriptions of the different people you saw outside your house that day. Okay?

A [No audible response.]

Q All right. First, it's fair to say you saw three men outside your house before police arrived the night of the incident?

A Yes.

Q Okay. And these were three different people?

A Yes.

Q Okay. The first one you saw out of the dining room side window?

A Correct.

Q And it was a shadow or silhouette of an adult male?

A Correct.

Q And he was shirtless?

A I don't recall.

Q Okay. Would it refresh your recollection to review your testimony given to the grand jury in this case potentially with regard to what this gentleman might have been wearing?

A Yes.

Q Okay.

THE COURT: You may approach the witness.

MS. MACHNICH: Thank you.

BY MS. MACHNICH:

Q Okay. Sir, will you please review the bottom part of this page?

MS. MACHNICH: And for counsel's information, it's Page 41 of the grand jury transcript.

Q And when you're done reading it, please look up.

A [Witness complies.]

Q Does that refresh your recollection?

A Yes.

Q Thank you, sir. So I would like to re-ask the question. That man that we've been discussing that you saw out of the dining room side window, he was shirtless?

A Yes.

Q Okay. And he appeared to be cocking a shotgun?

A It appeared that way.

Q Okay. But it could also have been a long gun of some kind?

A Perhaps. It -- I -- I can tell the difference of how you actually

cock a shotgun versus add ammunition to the bottom of another type of gun, but yes.

Q Okay. You originally told police that it was either a shotgun or -- or a long gun of some kind?

A Correct.

Q Okay. Thank you and this man that you saw was wearing a billed cap of some type?

A Yes.

Q Okay. Now, immediately after you saw this first man, you started hearing the knocking, banging noise on the front door, correct?

A Yes.

Q And you crossed to the corner of the main front window and looked through the blinds?

A Yes.

Q And you saw a tall, black man?

A Yes.

Q Also shirtless?

A Correct.

Q With a round, two-inch afro?

A Yes.

Q This man was wearing black basketball shorts?

A Yes.

Q And, ultimately, before police arrived, you saw the man run down your driveway, down the street, and turn on Nunca?

A Correct.

Q Now, after you had first seen this man at the front door, you then saw a third person out of the corner of your eye?

A Correct.

Q At first you saw the man running past your bedroom window?

A That is right.

Q And you rushed over to see what was going on in the backyard?

A Yes.

Q And that is when you saw the third man jump up into the demi wall and wall?

A Correct.

Q All right. And this man was another African-American man, correct?

A Yes.

Q And you would describe him as having an afro that was wild and spiky?

A Of some sort. It looked like that.

Q And approximately one to two inches in length?

A Perhaps, yes.

Q Okay. All right. Now, ultimately, you were shown pictures of several individuals that police asked you if you could identify?

A Correct.

Q Okay. Now, I'm going to show you what has previously been marked as Defense Exhibit A and B and admitted into evidence at this time.

THE COURT: Mr. Plummer, as to Defense Exhibits A and B, do you have any objection?

MR. PLUMMER: No, Your Honor.

MS. BEVERLY: Can we approach quickly?

MS. MACHNICH: Sure.

[Bench conference transcribed as follows.]

MR. GIORDANI: We're not objecting to the admission of these. What the concern is, is that we don't know if the witness has ever seen these photos previously. And where I think Ms. Machnich is going, is she's going to try to do a single photo, which is suggestive obviously, and potentially try to eliminate her client. But the concern is that he may not have seen these previously.

It's in the context of seeing photos before. We've tried to figure out -- I think we've all tried to figure out what photos he ever saw. Certainly wasn't booking photos. These are from arrest after the incident, so --

THE COURT: Did -- the issue is do you have an objection to the admission of the photos?

MR. GIORDANI: No. But we wanted to get up here before the bell -- you can't un-ring the bell, you know. She's --

THE COURT: And your concern is that he's never seen these photos before?

MR. GIORDANI: Well, we don't know. That's the concern. He's seen some photos. We don't know if they're them.

THE COURT: Okay. And your concern is he's going to say

somehow these are booking photos?

MR. GIORDANI: Well, I don't think so.

THE COURT: Let me see the photos.

MS. MACHNICH: Your Honor, prior to -- prior to testimony today, I spoke with Willow in the anteroom with -- with the DAs present. I had intended to show him the photos at that time to ask if these were the photos. They had an objection to that, because they believed that would be tainting the witness. And so I did not show them to him. I had attempted to do so and -- and then I did not.

THE COURT: Okay. Just in looking at the photos, they're just head shots with a blank background, nothing indicating any type of -- that they're booking photos. So because you are not objecting to the photos, I'm going to allow the photos --

MR. GIORDANI: Okay.

THE COURT: -- to come in. But you're not precluded from making additional objections based on the questioning of the photos.

MR. GIORDANI: Understood.

THE COURT: Okay.

MS. MACHNICH: Thank you, Your Honor.

MS. SISOLAK: Thank you.

[End of bench conference.]

THE COURT: State, it's my understanding you have no objection to the admission of the photos?

MR. GIORDANI: Correct.

MS. BEVERLY: Correct.

THE COURT: At this time, Defense Exhibits A and B will be admitted.

[Defendant's Exhibit Nos. A and B admitted.]

MS. MACHNICH: Thank you, Your Honor.

BY MS. MACHNICH:

Q I'm going to show you what has previously been marked and admitted as Defense Exhibit A. Do you recognize the hairline in this photograph as one that you have seen previously?

A No.

Q Okay.

MS. MACHNICH: And we previously moved into evidence Number 28, State's Exhibit 28?

THE COURT: State's Exhibit 28 has been admitted.

MS. MACHNICH: Okay.

BY MS. MACHNICH:

Q So we've counted the three men that you saw that night. The first in a cap with a large gun, yes?

A Yes.

Q Shirtless?

A Yes.

Q The second, at the front door with an afro and basketball shorts, also shirtless?

A Yes.

Q Okay. And the running man with wild, spiky hair?

A Yes.

Q Okay. Sir, I'm showing you what has previously been marked and admitted as State's 28. You did not see this man?

A I did not recognize the man. And I don't know. I, again, saw silhouettes. I don't recognize the person.

Q Okay.

MS. MACHNICH: And I'm going to publish State's 28. Thank you.

Court brief indulgence.

Thank you, Your Honor. I'll pass the witness. Thank you.

THE COURT: Mr. Plummer?

MR. PLUMMER: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. PLUMMER:

Q Mr. Grimaldi, am I pronouncing that correctly?

A Yes.

Q This happened two and a half years ago?

A Almost, yes.

Q And when you gave a recorded statement to a detective two and a half years ago, do you think your memory was a little better back then?

A Probably, seeing how in the last three years I've had a lot of health problems go downward. And now, unfortunately, have medication daily that I have to take and I was not like that then.

Q Does that medication affect your memory?

A It affects almost every aspect of my life. I can't even work,

unfortunately.

Q It affects your memory?

A To some point, yes. Unfortunately, I cannot -- I can't let go of certain memories that are just engrained in my mind. Like gunfire, it never let -- I can't seem to let it go.

Q In the past two and a half years, you and Eric have talked about that night and everything that took place?

A Very little. Unfortunately, I'm -- I'm very heated very easily, and I don't like fighting with my -- my roommate/best friend. So most of the times, we don't talk about it. We just try to move on.

Q Who -- who did you talk with to prepare for your testimony today?

A I went over my own paperwork from both grand jury and from the detective.

Q So you were re-reading the transcripts of your prior testimony?

A I re-read the grand jury testimony. It was very difficult for me to get through my first initial interview with the detective. It was a lot of information. And it was, in my viewpoint, not 100 percent accurate.

Q Your grand jury testimony came along after your initial interview with the detective, which took place almost immediately after this incident?

A Correct.

Q And during your interview with the detective, you told the detective that the officer that went down, you thought that he actually fired a round and a round went off from his gun before he was hit and

went down?

MS. BEVERLY: Judge, I'm going to object as to improper impeachment at this time. He can ask the witness, do you recall what happened in this situation. If he says something different, he can show him but --

THE COURT: He can ask him if he previously testified to something. I'm going to overrule the objection.

MR. PLUMMER: Thank you, Your Honor.

THE COURT: Was that your question? Have you previously testified --

MR. PLUMMER: Yes, sir. My question was a previous statement which was different than the one --

THE COURT: All right. Ask your question --

MR. PLUMMER: -- he testified to in court today.

THE COURT: -- counsel. Ask your question.

MR. PLUMMER: Thank you, Your Honor.

BY MR. PLUMMER:

Q In your statements with the detective in your first interview, you indicated that the officer who was shot you thought fired a round before he was shot?

MS. BEVERLY: Can I get a page number, please?

THE COURT: You need to ask if that's correct.

BY MR. PLUMMER:

Q Is that correct?

MR. PLUMMER: Page 14.

THE WITNESS: I may have said that, especially in the heat of the moment.

BY MR. PLUMMER:

Q If I showed you a copy of what you said, would that refresh your memory?

A Well, that would be exactly what I said then.

Q Would --

A Would you like to show me a copy?

Q -- you like -- yes. Would you like me to show you a copy to refresh your memory?

MR. PLUMMER: May I approach, Your Honor?

THE COURT: You may.

MR. PLUMMER: It's page 14 of the statement. I'm showing the witness. Mark that, Your Honor, or no?

THE COURT: You don't need to mark. All you're doing is refreshing his recollection.

MR. PLUMMER: Correct.

THE COURT: Have him review it. Ask him if it refreshes his recollection. And then if it does, you can restate your question.

THE WITNESS: It actually specifically says, the first sentence, yeah, yeah, the first --

THE COURT: Sir, sir. I'm not going to --

THE WITNESS: Sorry.

THE COURT: I don't want you to read what it says. I want you to read it and then advise counsel if it refreshes your recollection.

THE WITNESS: The --

BY MR. PLUMMER:

Q Does it refresh your recollection of what you said?

A Yes. It refreshes my recollection of what I said.

THE COURT: Okay. Now, restate your question.

MR. PLUMMER: May I retrieve the document?

THE COURT: You may.

BY MR. PLUMMER:

Q So when you spoke to the detective on the first time, isn't it true that you stated:

Yeah, yeah, the first officer went down. I don't remember if he got to return fire. I want to say he did feel like he shot once, and then he was hit and was down. And then the second gentleman, the tall, black guy, was the one standing there with his gun pointed at the guy on the ground waiting.

Is that what you told the detective?

A Yes.

THE COURT: Counsel approach, please.

[Bench conference transcribed as follows.]

THE COURT: Okay. When you refresh recollection, you don't then read the statement into the record. You ask him a question: Did you tell the officer? But you don't read the statement into the record. You're refreshing his recollection, and then you're asking him a question based on his refreshed recollection.

MR. PLUMMER: Yes, Your Honor.

MS. BEVERLY: Thank you.

THE COURT: Okay. So you ask the question based on his refreshed recollection.

MS. BEVERLY: Thank you.

MR. PLUMMER: Thank you, Your Honor.

THE COURT: Thank you.

[End of bench conference.]

BY MR. PLUMMER:

Q Now, is it your belief that the officers fired three or four times that night; is that what you remember?

A It is my belief that numerous rounds were fired. And I do not know for a fact exactly who shot who or what was going on, except for the exchange of gunfire. I could tell the difference in the sounds. I could tell the difference between what was in the house and what was obviously not. Did I answer your question?

Q You did. You don't know how many shots were fired?

MS. BEVERLY: Objection. Asked and answered.

THE COURT: He can answer it one more time.

You can respond to his question.

THE WITNESS: Correct. I do not know the number of shots that were fired.

MR. PLUMMER: Your Honor, I don't have any further questions.

THE COURT: Thank you.

State, any redirect.

MS. BEVERLY: Court's indulgence.

REDIRECT EXAMINATION

BY MS. BEVERLY:

Q Willow, I just have a couple questions -- follow-up questions for you. Okay. Do you remember testifying at the grand jury?

A I do.

Q Okay. Do you remember describing at the grand jury what happened when the door burst opened?

A I do.

Q And what did you say?

A That one officer, still standing, flung the door the remained of the way open and returned fire.

Q Okay. But I'm talking about when the door -- when the first officer turned the door and began to open the door, what did you describe the gunfire as coming through the house?

A Immediate, like a quick boom, boom, boom.

Q Okay. And then that gunfire was coming from the patio; is that correct?

A Yes.

Q And then you saw the other officer standing, swing the other door -- the rest of the door open; is that correct?

A Yes.

Q And then the officer returned fire; is that correct?

A Correct.

Q Okay. So just to be clear, the first shots that you hear are

coming from the patio?

A Correct.

MS. BEVERLY: I pass the witness.

THE COURT: Any recross by the defense?

MS. MACHNICH: Nothing further from Mr. Turner.

MR. PLUMMER: No, Your Honor.

THE COURT: Ladies and gentlemen, after the first witness, I did not see any hands raised so I excused -- from the jurors, so I excused the witness. As part of my preliminary instructions, you are allowed to ask questions if you so desire before I excuse the witness. So I'll always look over to see if I see any hands raised. If not, I just excuse the witness. I don't know if you recall that. I know I go through the preliminary instructions, and they're quite lengthy. So again, I'll always look over before I excuse the witness. If I don't see any hands raised, I'm going to excuse the witness.

At this time, I do not see any hands raised so I am going to excuse the witness. Thank you.

Sir, thank you for --

THE WITNESS: Thank you.

THE COURT: You are excused.

I was going to take our evening recess at this time. We will resume tomorrow at 11:00. And again, we're probably not going to take our lunch break until about 12:30 and then resume after the lunch break around 2:00. So if you could return to this courtroom tomorrow at 11:00.

At this time, ladies and gentlemen, we're going to take our

evening break, our evening recess. During this recess, it is your duty not to converse among yourselves or with anyone else on any subject connected with the trial, or to read, watch, or listen to any report of or commentary on the trial by any person connected with the trial, or by any medium of information, including without limitation, newspaper, television, and radio. And you are not to form or express an opinion on any subject connected with this case until it is finally submitted to you.

Thank you.

[Court recessed at 4:55 p.m., until April 19, 2018, at 11:00 a.m.]

/ / /

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

Shawna Ortega

Shawna Ortega, CET*562