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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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 VIII

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

APPELLANT'S APPENDIX

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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

TUESDAY, APRIL 24, 2018

TRANSCRIPT OF PROCEEDINGS RE:
JURY TRIAL - DAY 7

(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, TUESDAY, APRIL 24, 2018

[Proceedings commenced at 1:08 p.m.]

[Outside the presence of the jury.]

THE COURT: Please be seated. This is the continuation of the trial in *State of Nevada vs. Steven Turner and Clemon Hudson*, Case Number C-309578.

Counsel, state your appearances, please.

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

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

MR. PLUMMER: Clay Plummer on behalf of Mr. Hudson.

THE COURT: Is there any matters that need to be conducted outside the presence of the jurors?

MS. BEVERLY: Not from the State.

MS. MACHNICH: Not from the defense.

MS. BEVERLY: Oh, actually, yes. I'm sorry. Exhibits No. -- it's three surveillance videos, Exhibits No. 10, 09 -- sorry, 8, 9, and 10, we're going to move to admit by stipulation, for the surveillance video.

THE COURT: Is that correct, counsel?

MS. MACHNICH: That is correct on behalf of Mr. Turner.

MR. PLUMMER: No objection.

THE COURT: Thank you.

MR. GIORDANI: Also, I'm sorry, Your Honor, there was one

more. We also move Exhibit 402 by stipulation.

THE COURT: Is that also correct, counsel?

MS. MACHNICH: Yes, Your Honor.

THE COURT: Mr. Plummer?

MR. PLUMMER: Yes, Your Honor.

THE COURT: The said exhibits will be admitted pursuant to stipulation of the parties.

MR. GIORDANI: Thank you.

[State's Exhibit Nos. 8, 9, 10, and 402 admitted.]

THE COURT: Anything else, counsel?

MR. GIORDANI: No, Your Honor.

THE COURT: I'm going to call the jury in.

[Jury reconvened at 1:10 p.m.]

THE COURT: You may 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: State, call your next witness.

MR. GIORDANI: The State would call Marc Colon.

MARC COLON,

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

THE CLERK: Please be seated. Please state your full name and spell it for the record.

THE WITNESS: Mark Colon, M-A-R-C C-O-L-O-N.

MR. GIORDANI: May I, Your Honor?

THE COURT: You may.

MR. GIORDANI: Thank you.

DIRECT EXAMINATION

BY MR. GIORDANI:

Q Sir, how are you currently employed?

A I'm a detective with the Las Vegas Metropolitan Police Department.

Q And what unit are you currently assigned?

A I'm with the Force Investigation Team.

Q What is the Force Investigation Team, sir?

A We handle officer-involved shootings and any deadly uses of force that involves an officer.

Q Okay. When an officer discharges his firearm in the line of duty, whether or not he hits somebody, do you come out and respond to the scene?

A Yes. The discharging of the weapon is a deadly use of force, even if you don't hit the person.

Q Okay. I want to draw your specific attention back to September 4th of 2015. Did you respond to a particular address on Oveja Circle?

A Yes, sir.

MS. MACHNICH: Your Honor, may we approach just briefly?

THE COURT: You may.

[Bench conference transcribed as follows.]

MS. MACHNICH: The officer just testified that a use of a weapon is a deadly use of force. This case is about attempt murder and firing of a weapon. And, obviously, it's the State burden to prove that there's deadly use of force or not. I mean, that -- those are going to be some trigger words that we're finding in the jury instructions. Now he just used deadly use of force, and realize that that's Metro's verbiage on it.

THE COURT: Uh-huh.

MS. MACHNICH: But thinking it through, it would actually -- may implant in the jury's mind that, by law, a use of a weapon is a deadly use of force, which is not the case under the law and under the jury instructions in this case.

I guess at this point, I would ask for a limiting instruction with jury instructions specifically stating that even though the officers refer to something as deadly use of force, it is up to the province of the jury to determine if the counts have been proven beyond a reasonable doubt, because I believe that that's now been said. And I don't know how we would have him explain it further. I don't --

THE COURT: I'm sorry.

MS. MACHNICH: I don't know how we would have him explain it further. I don't know if the State could lead him through something. But I think that would be the best remedy at this point. I don't -- I don't think it rises to the level of a mistrial, but I do believe that it's a concern.

MR. GIORDANI: I don't believe anything inappropriate has happened up to this point. He's describing the types of calls he responds to as a FIT detective. I understand what Ms. Machnich is saying, but that's argument. That's for closing argument. This wasn't use of deadly force, because X, Y, Z. It has nothing to do with his qualifications and what types of calls he responds to.

THE COURT: All right. Are you going to ask him any additional questions --

MR. GIORDANI: No.

THE COURT: -- along this line?

MR. GIORDANI: No. I was moving into the incident.

THE COURT: All right. Okay.

MS. MACHNICH: He just said that he -- he responds to cases of --

THE COURT: All right.

MS. MACHNICH: -- deadly use of force, which is --

MR. GIORDANI: Right.

MS. MACHNICH: But he's -- I just -- I don't know if that was clear to the jury. And I know --

THE COURT: All right.

MS. MACHNICH: -- I don't think that you did anything improper.

THE COURT: Do you want to -- I mean, I can make a statement that infers deadly use of force. I mean, what is it that you want?

MS. MACHNICH: I would ask for a limiting instruction in the jury instruction saying that, while you may have heard police officers reference deadly use of force in regard to investigations, yeah, I'll draft something.

MR. GIORDANI: So we're dealing with jury instructions, so can I just move on and we can go --

MS. MACHNICH: Yeah, that's fine.

THE COURT: All right. But, do you -- I --

MR. GIORDANI: For the record, Your Honor, I'd rather not highlight it.

THE COURT: What is it that you want? Just tell me what you want so I can see it. It's going to take -- it's going to take two seconds and then we can move on.

Let me see what you wrote. You have heard officers reference -- referencing to deadly use-of-force investigation. It is within the province of the jury whether deadly use of force was used in this case.

MR. GIORDANI: We'll probably argue against it when we start to settle instruction, but for now --

THE COURT: I know. But what I'm saying is or I can say, You have heard officer reference responding to deadly use-of-force investigation. I will instruct you in the jury instruction as to the definition of deadly use of force.

MR. GIORDANI: No, I thought -- she's not even asking for it to be addressed now.

THE COURT: All right. Do you have any --

MR. GIORDANI: Right?

THE COURT: Do you have any objection to me saying what she wrote?

MR. GIORDANI: Right now? Yes.

THE COURT: What's the objection?

MS. MACHNICH: I would say that's a jury --

THE COURT: Huh?

MS. BEVERLY: What he said on his own is that he responds when officer uses deadly force. He didn't say anything about whether a suspect discharged deadly force. That's why I don't even know why it's a problem, because it's not like he said --

THE COURT: Okay. Was his testimony that it is the officer who's used deadly use of force?

MR. GIORDANI: Yes.

THE COURT: Did you miss --

MS. MACHNICH: I don't think that's what he said. I think he responds to deadly use -- no, I -- I know that that's how Metro's verbiage works. But he says he responds to deadly use of force and officer-involved shootings.

THE COURT: No.

MS. MACHNICH: Like, it was an and. And so while we know that that's what it is, it sounds like he responds to deadly use-of-force investigations.

MS. BEVERLY: What he said is, I respond to officer-involved

shootings and any officer-involved --

MR. GIORDANI: Use.

MS. BEVERLY: The use of deadly force any time, even if they hit someone or not. That's what he said.

THE COURT: And so --

MS. MACHNICH: Can Mr. Giordani just lead him through that just to be quite clear?

MR. GIORDANI: I'm done.

MS. MACHNICH: And then we can be done.

MR. GIORDANI: I'm done.

MS. MACHNICH: Right. But it's already been said.

MR. GIORDANI: Okay. Sure. I can do that.

MS. MACHNICH: If he can say that in the correct order --

THE COURT: Okay. So rephrase this --

MS. MACHNICH: And then that's perfect.

THE COURT: -- and make it a yes-or-no question. So you respond to an officer -- any investigation with an officer's use -- make it officer's use of deadly force.

MR. GIORDANI: Okay.

MS. MACHNICH: Perfect.

THE COURT: Yes-or-no answer.

MS. MACHNICH: Okay. Perfect. Thank you.

MR. GIORDANI: Thank you, Your Honor.

THE COURT: Thank you.

[End of bench conference.]

BY MR. GIORDANI:

Q And, Detective, to be clear, you respond to any call in which an officer may have used deadly force; is that accurate?

A That's correct.

Q Okay. I want to draw you back to September 4th of 2015; did you respond to Oveja Circle?

A Yes.

Q Around what time did you become aware that there was an officer-involved shooting?

A I believe probably about 4:00 a.m. I got the call.

Q Okay. Is it fair to say that a few minutes before that the 911 call actually went out?

A Yes. They don't call us until after the incident occurs.

Q Okay. Do you recall when the 911 call was made?

A I believe it was 3:48 --

Q Okay. So --

A -- around that time.

Q -- within minutes, you're getting called out to this; is that right?

A Yes.

Q And then when you respond, do you respond directly to the home or to somewhere else?

A No. We responded to a command -- actually an outer command post where all the detectives meet. There was an inner-command post where tactical units, like SWAT and K-9, they meet there, and the detectives met at an outer area command post.

Q Understood. Now describe for this jury what type of police response is associated with an officer-involved shooting such as this?

A Yeah. This call had a massive police response. All in all, there was probably approximately 200 police officers that responded that were documented, which means they notified the dispatcher that they were going. But that being said, if you're working patrol or even a detective, actually, and you're driving around and you hear on the radio an officer has been shot, an officer is down, you just drive there. So you don't want to waste the dispatcher's time to say, I'm on my way. You just go. So there was at least 200 officers, along with the air unit and K-9 and the specialized units.

Q Okay. So 200 officers that you counted having logged into that scene?

A Yes.

Q And then you indicated there may be a lot more that are just hearing it and responding without calling?

A That's correct.

Q You also talked about, briefly, the air unit and K-9 and SWAT. Based upon your understanding, how soon was that air unit on the scene?

A It was very -- it was -- I don't know the time, but it was very soon, because they were given the description of the suspect that was in the backyard.

Q Okay. You referenced suspect. How many suspects were there in this case?

A There were two.

Q Okay. One suspect was actually in custody or at least on the scene; is that right?

A That's correct.

Q And then was one outstanding or --

A Yes. One was -- when I first learned of the call, when I -- actually, when I got to the command post, one suspect was still in the yard and they were about to take him into custody or he was in custody, if I remember correctly, and one was outstanding.

Q Okay. During the course of your investigation -- and you're the lead detective on this case, right?

A Yes.

Q During the course of your investigation, did you ever come across any third suspect?

A No.

Q Okay. Was there reference at some point by -- and don't say what the witness said, but was there reference to a potential white male somewhere?

A Yes.

Q And did you look into that?

A Yes, I did.

Q And what did you find?

A The -- there's a house that's next to the -- the house where this occurred where the homeowner or the resident didn't want to be identified and didn't want to go on tape with us. She was afraid. But she

told us that around the time of the incident --

MS. MACHNICH: Your Honor, I'm going to object as to hearsay at this point.

MR. GIORDANI: I can rephrase it.

THE COURT: Well, I suppose that's sustained.

MR. GIORDANI: Okay.

BY MR. GIORDANI:

Q Let me ask you this way: Was there information you had received about potentially a vehicle with its trunk open?

A Yes.

Q Okay. Near the -- near the area of the shooting?

A Right in front of the house.

Q What is a downed officer rescue?

A A downed officer rescue is a technique where if the police aren't sure that the scene, wherever the crime is occurring, is safe, but there's an officer down, it's a way to get the downed officer out. So one of the techniques we use is we'll get a patrol car and we'll -- an actual car, not the SUV. We'll take all the stuff out of the trunk. We'll open a trunk and back it into the area and officers will lift the -- the downed officer into the trunk and he'll -- and he'll take off out of there to the hospital or to an awaiting ambulance.

Q Okay. Now based upon what that witness said and without saying, was it your understanding that there was a downed officer rescue attempt in this case?

A Yes. They were organizing a downed officer rescue.

Q Okay. And then that didn't happen, right?

A That's correct. Because the ambulance pulled up to the --

Q Okay.

A -- scene.

Q So any reference made to a white male adult and a trunk open, that was quickly eliminated as a suspect?

A Yes. We determined that when you have the trunk open of the police car, the rear quarter panel is a white car, and it did leave the area in a fast rate of speed.

Q Okay.

A It was getting out of the way for the ambulance.

Q Okay. So never more than two suspects in this case, correct?

A No, sir.

Q Okay. You indicated massive police response. We've heard reference to a perimeter. What is a perimeter?

A A perimeter is whenever there's a critical incident or looking for somebody, a perimeter is officers will assign themselves to outer areas of the -- of the neighborhood. So everyone will take a different intersection in the surrounding area and then also, once they get that established, in the middle of the actual streets as well.

Q Okay.

A Kind of forming a circle or a square around the target location.

Q Understood. Do you know the range or the streets that this perimeter was set up on this particular case?

A Yes. I believe this one went from Lorenzi to Palmhurst, and

from Charleston to Westcliff.

Q Okay. Now, while these 200-plus officers are on scene in addition to the air unit and the K-9 and the SWAT unit, is there any -- ever any reference to anyone being caught or suspected on the scene except for Steven Turner?

A No.

Q Okay. You indicated that you would be at a command post and then ultimately you go into the house?

A Yes. After the tactical units, being SWAT and K-9 and stuff like that, determine that it's safe for investigators and the CSIs, the crime scene analysts, to go to the house, we -- we go to the house.

Q Okay. I don't want to get into too much detail about the house. I want to kind of jump ahead a little bit. Ultimately, do you and other detectives canvass the area?

A Yes.

Q And does that mean just canvassing for witnesses asking people questions?

A Anything and everything. Meaning do they have a video on their house, surveillance video on their house? Did they hear anything? Did they see anything?

Q Okay. Did you end up getting a couple of surveillance videos?

A Yes, we did.

Q Do you recall how many different surveillance videos you were able to obtain during your canvass?

A I believe there's three.

Q All right. I'm showing you State's already admitted 402. Okay. Let me see if that focuses. There we go.

Can you see that on your screen, sir?

A Yes.

MR. GIORDANI: Your Honor, may I approach the witness freely?

THE COURT: You may.

MR. GIORDANI: Thank you.

BY MR. GIORDANI:

Q Detective, can you see the scene of the shooting on this map?

A Yes. The Oveja Circle street, yes.

Q Okay. Can you -- well, I'm not going to just circle it because it's been a pain. Is that the address at the bottom right area of the map?

A Yes.

Q And there are other locations notated on this map; is that right?

A That's correct.

Q Did you obtain video surveillance from three of those --

A Yes.

Q -- five locations?

A 16 -- the White Sands address, the 222 Rainbow, and the 209 Redstone.

Q Okay. I actually do need you to mark that so the jury can see it. So there's a mouse right there. Go down to the very bottom of the screen and click that green-brown looking thing. Okay. And then can

you mark those three locations that you have surveillance from?

A Yes.

Q All right. That's sufficient. All right. And you had mentioned the Oveja residence. Can you just put a dot on that --

A Yes.

Q -- just so we're clear?

MR. GIORDANI: And, Your Honor, by stipulation, we admitted 8, 9, and 10.

Q Detective, ultimately, before we move on to the videos, did you -- did you learn that Steven Turner had been taken into custody on the perimeter of this map?

A Yes, at the top, it says, In custody. That's Westcliff, so.

Q Okay. So did you attempt, after learning of his location where he was found, to backtrack and find kind of the -- the track he took?

A Yes.

Q And -- and then you find those three videos and there's two other addresses on this map, right?

A That's correct. I don't think they're marked.

Q Okay. Let me -- let me ask you this way. Three locations have video surveillance?

A Correct.

Q Did you also talk to witnesses? Don't tell me what they said.

A Right. Two other witnesses --

Q Okay.

A -- saw.

Q Okay. People who --

A Yes.

Q -- observed something? Okay. So I'm going to go ahead and start with State's 10.

Okay. So now is that the 6805 White Sands address?

A I believe it is.

[Video played.]

Q I'm just going to pause this for a moment. There's a date and time stamp up in the left corner of that screen; can you see that, sir?

A Yes.

Q Friday, September 4th around 4:01 --

A That's --

Q -- a.m.?

A That's correct. I see that.

Q Did you attempt to determine whether that was accurate or if it's off by a few minutes or hours?

A We did not forensically check the --

Q Okay.

A -- time stamps.

Q So that may not be accurate; is that right?

A Correct.

[Video played.]

Q Do you see the subject walking in the top right corner there?

A Yes.

Q All right. Did you believe that to be Steven Turner and that's

why you got this video?

A Yes.

Q Okay.

[Video played.]

Q Now you initially indicated that the 911 call came out at 3:48 a.m. Could -- would looking at the CAD refresh your memory as to the exact time of the 911 call?

A Yes.

Q Okay.

MR. GIORDANI: May I approach, Your Honor?

THE COURT: You may.

BY MR. GIORDANI:

Q What is a CAD, sir?

A I'm sorry?

Q What is a CAD?

A It's a Computer-Aided Dispatch. So it's everything that the dispatcher says. She'll put it -- she'll type it into the computer.

Q Okay. And does that also indicate when a 911 call is initiated?

A Yes. All the times and addresses.

Q Go ahead and look at that, Tell me if it refreshes your memory as to the time of the 911 call.

A Yes.

Q Okay. What was the time of the 911 call?

A 3:43.

Q Okay. Now, you have indicated this first video that we just

watched is the 6805 White Sands Avenue, correct?

A Yeah, this video on the screen I believe is the 6805.

Q Okay.

A Because that is Rainbow on the right-hand side of the screen.

Q Okay.

MR. GIORDANI: Can I switch back, ma'am? Okay.

Q Now, shots fired 911 call comes out at 3:43, and that time stamp indicated 4:01. This is, I mean, just across Rainbow, correct?

A Correct.

Q Okay. So potentially this time stamp could be off; is that right?

A That's correct.

Q Okay.

A That's correct.

Q And without going through it every time, is that -- are the time stamps potentially off on all videos that you obtain?

A Yes.

Q Okay.

A Especially on homeowners' videos.

Q Understood.

[Video played.]

Q Is this that same address, just a different camera angle?

A Yes.

[Video played.]

Q Okay. Sir, that busy-looking street out there, is that Rainbow?

A That's -- that's Rainbow.

Q Just for the record, the top right of the screen?

A Yes.

Q Okay. And then you said this is almost right across the street from Oveja?

A That's correct.

Q Okay. And you see the subject in that video?

A Yes. He's right now walking across the screen.

[Video played.]

Q Okay. Did you also obtain video from 222 South Rainbow?

A Yes.

Q And is that a kind of a business complex?

A Yes. It's a business complex.

Q All right.

MR. GIORDANI: And for the record, this is State's 8.

[Video played.]

Q You can see that, sir?

A Yes.

Q Now on this one, the time stamp is actually 1:35; is that right?

A That's correct.

Q So it actually looks like it's sooner than the last video.

A Right.

Q Okay.

[Video played.]

Q Drawing your attention to the left side of that screen, do you see the subject in that frame?

A Yes.

Q And is that like a gate or a wall or something there?

A Yes.

[Video played.]

Q And, sir, without putting up this other -- next one on this, is there another angle from this same location?

A Yes.

Q Okay. So if the jury sees this later, there's -- there's more video, but from the same location on that same disc?

A That's correct.

Q Okay. Did you obtain video from a third location at 209 Redstone?

A Yes, I -- yes, we did.

Q And on the map, is that that third location that's referenced on this?

A Yes.

MR. GIORDANI: And for the record, Your Honor, that's State's 9.

[Video played.]

Q Is this video also -- does this location also have two different angles?

A I believe -- I believe it does.

Q Okay.

[Video played.]

Q Can you see that, sir?

A Yes.

[Video played.]

Q In that last frame, do you see the gentleman jumping over or walking across the wall?

A Yes.

Q All right. Based upon those three cameras and the direction of travel that subject appeared to be traveling, did you come up with a map that indicated a potential route of travel between Oveja and where Mr. Turner was taken into custody?

A Yes.

Q And I want to go back to the scene now briefly. You referenced that there were crime scene analysts and several detectives and officers on the scene, right?

A Yes.

Q Did you observe two vehicles that were of interest in this case?

A Yes.

Q The -- there was a suspect vehicle and there was a vehicle in the driveway of the home, right?

A Yes. There was a Scion in the driveway, which I believe belonged to the resident.

Q Okay. Did crime scene analysts process that suspect vehicle?

A Yes.

Q And was that the Toyota Camry?

A Yes, it was.

Q Do you recall whether the key was in the ignition in that one?

A Yes, the key was in the ignition.

Q Okay. Who was the registered owner of that vehicle?

A Karen Hudson.

Q Okay. Were there a couple of cell phones taken from that vehicle?

A Yes, there was.

Q Do you recall the makes of those cell phones?

A Yes. There was an HTC and a Samsung.

Q Okay. Did you attempt to determine who the owner of the HTC was?

A Yes. The HTC came back to Karen Hudson.

Q Okay. What about the Samsung?

A The Samsung came back to a Sharon Robinson at 5904 Eugene.

Q And did you determine that that address was associated with someone?

A With Mr. Turner.

Q And that's Steven Turner?

A Yes.

Q I want to move on to a different subject area. What is the -- what is a weapons countdown?

A A weapons countdown is a thing we -- we conduct with officers who are involved in officer-involved shootings. Every officer is supposed to know how many -- how many bullets he keeps in the

magazine of his gun. So a countdown would be you count down the remaining bullets in the magazine to determine how many shots he fired.

Q Okay. And were countdowns conducted on both Officer Malik Grego-Smith's firearm and Officer Jeremy Robertson's firearm?

A Yes.

Q Let's start with Officer Grego-Smith's firearm. What type of gun was that?

A I believe it's a Glock or -- or I'm not sure.

Q Okay. That's all right. Would it refresh your memory to look at your report?

A Yeah. Yes, please.

Q You authored a 65-page report in this case, right?

A That's correct.

MR. GIORDANI: And, counsel, it's page 17 of 65.

Q Go ahead and look at that and tell me if that refreshes your memory.

A Yes. Okay.

Q With regard to Officer Malik Grego-Smith, what type of firearm did he have?

A He had a Glock 17.

Q And is that a semiautomatic service pistol?

A Yes, it is.

Q Not a revolver, a semi --

A Semi-automatic.

Q What type of ammunition did that contain?

A A Speer .9mm.

Q Okay. Speer, is that spelled S-P-E-E-R?

A That's correct. That's the brand.

Q Okay. And is that something you come across often as a Metro detective?

A That is the ammunition that LVMPD uses.

Q Okay.

A We have one ammunition that we're allowed to use.

Q Okay. And that ammunition, is it typically hollow point?

A Yes.

Q And without going into too much detail, hollow point, does that look, basically, hollow on the tip of the bullet?

A Yeah. The tip of the bullet is hollow.

Q Okay. What was the magazine capacity on Officer Grego-Smith's Glock?

A 17, it held 17 bullets.

Q Okay. What does one in the chamber mean?

A It means that you have -- when the -- the gun is ready to fire, you would cock it back, and a bullet from the magazine goes into the chamber. So now when you pull the trigger, the gun will fire. What most officers do or what pretty much all officers do is they have their 17-round magazine, they put it in the gun, they rack it, so now there's one in the chamber, and then they -- you put -- you fill your magazine back up one more, so you have 17 plus one.

Q Okay. So if we hear the phrase 17-plus-one referenced,

you're talking about a full magazine plus one in the chamber?

A Yes.

Q Ready to fire?

A Yes.

Q Okay. Did you do a countdown -- well, let me ask you this: Did you learn, during the course of your investigation, that Officer Grego-Smith did a speed reload on the scene or a tactical reload?

A Tactical reload, yes.

Q What is a tactical reload?

A A tactical reload is when you're in a shooting, it's a high-stress situation, and it's very hard to realize or remember how many shots you've fired during the gunfight. So if there's a lull in the action, you -- you tactically reload, which means even though your gun might not be empty, you take out the magazine and you put a full one in, so you're ready.

Q Okay. And was that magazine -- was there a magazine apparently dropped on scene that was recovered?

A Yes.

Q And do you recall how many rounds were in that magazine?

A There was five.

Q Okay. So the -- the magazine on the ground had five?

A Yes.

Q How many rounds were in the magazine in his firearm?

A When we did the countdown, there was 17.

Q Okay. Was there also one in the chamber?

A Yes.

Q Okay. Explain to this jury how you would do a countdown when there's that situation, a mag on the ground, a full magazine, and then one in the chamber in the firearm.

A Okay. So we know we did the -- he told us he did a tactical reload, which was backed up with the magazine on the ground in the house. So when -- we -- we still count down that magazine and we found out there's 17 and then one in the chamber. So at the scene we know that he discarded that magazine when he did the reload, so we count down that magazine. We found five. So since it's a 17-round magazine, we know there's 12 bullets missing.

Q Okay. And then were there 12 cartridge cases found on the scene?

A Yes.

Q Consistent with the rounds used by Officer Malik Grego-Smith?

A Yes.

Q Okay. Did you do or did one of your squad do a countdown on Officer Jeremy Robertson's firearm?

A Yes.

Q Do you recall what type of firearm he was carrying?

A I believe it was an H&K.

Q Okay. Is that Heckler and Koch?

A Yes.

Q .40 caliber?

A .40 caliber.

Q And what was the magazine capacity on that firearm?

A I don't recall. I'd have to --

Q Would it refresh your memory to see the report?

A Yes.

MR. GIORDANI: Again, page 17, counsel.

MR. PLUMMER: Your Honor, may we approach?

THE COURT: You may.

[Bench conference transcribed as follows.]

MR. PLUMMER: Your Honor, what I'm hearing is somebody else did a, I guess, a countdown on this next officer's magazine. And at this -- I believe this is going to be a hearsay response that he got from a different officer on how many bullets were left. So I'd make that objection now.

THE COURT: And is your objection based on hearsay?

MR. PLUMMER: It is.

THE COURT: State?

MR. GIORDANI: Well, this -- this detective didn't do the countdown himself, but he observed and looked at all the photographs taken during the countdown. He can say this magazine was full and this photograph, this magazine had 13 rounds in it and the capacity of 13. So it's not a hearsay.

THE COURT: Okay.

MR. GIORDANI: It's his observations.

THE COURT: Okay. I think you had him look at his report; is

that correct?

MR. GIORDANI: Oh, yeah.

THE COURT: Is he using that -- is he going to testify from the report or is he going to testify from his personal observations as to what he saw in the photograph?

MR. GIORDANI: Well, what I would ask him is his personal observations. I can make that clear and say --

THE COURT: Well, in other words, I'm not going -- I mean, if you're offering what's in the report for the truth of the matter asserted, it's hearsay.

MR. GIORDANI: Right. Yeah.

THE COURT: Okay. So, obviously, that would be sustained. If you're asking him did you review photographs, such and such, and that photograph shows there's X number of bullets in the chamber or whatever, that would be -- because, see, the photograph itself has been admitted. So that would be --

MR. GIORDANI: Yeah.

THE COURT: -- admissible testimony.

MR. GIORDANI: I'll -- I'll make it clear. I'll say, you didn't do the countdown yourself, but you observed --

THE COURT: But you reviewed the photographs that have been admitted into evidence and --

MR. GIORDANI: Okay.

THE COURT: -- however you want to phrase it, you know.

MR. PLUMMER: Thank you.

THE COURT: Okay. Your objection's sustained if that is going to be the answer.

[End of bench conference.]

BY MR. GIORDANI:

Q And, Detective, before I move on to Officer Robertson, I want to be clear; did you do this countdown yourself or did someone else do it?

A Someone else did the countdown.

Q Okay. On Robertson's gun?

A On Robertson's gun, yes.

Q As the lead detective in this case, have you reviewed all the records in this case including the photographs taken of Robertson's weapon and magazine?

A Yes.

Q Based upon that, what is the magazine capacity of Robertson's gun?

A 13.

Q Okay. Did -- so that's the capacity. How many rounds were in the magazine?

A 13.

Q Okay. Was there also one taken from the chamber of Robertson's weapon?

A Yes. He -- the gun held 13 plus 1, and we found 13 plus 1.

Q Understood. No cartridge cases consistent with a 40-caliber which this gun is?

A Correct. There was none.

Q Okay. So no evidence whatsoever that Officer Robertson discharged his weapon?

A That's correct.

Q The three suspect weapons that were located in the backyard, you didn't do countdowns on those either, correct?

A I did not.

Q Were those sent off to the forensic lab for analysis?

A Yes.

Q As the lead detective in this case, was it your responsibility to submit any swabs of DNA or fingerprints to the relative labs for testing?

A Yes.

Q Okay. And did you submit some DNA swabs in the weapons, etcetera, for prints and DNA?

A Yes, I did.

Q The guns, did you say the guns were submitted for testing to the lab as well?

A Yes.

Q Understood. Ultimately, were Mr. Turner and Mr. Hudson interviewed by detectives?

A Yes.

Q And after that, did you arrest them both for attempt murder with the use of a deadly weapon?

A Yes.

MR. GIORDANI: I'll pass the witness, Your Honor.

THE COURT: Thank you. Any cross --

MR. GIORDANI: Oh, I'm sorry. Court's indulgence.

Can I have the Court's indulgence and ask a couple more questions?

THE COURT: You may.

BY MR. GIORDANI:

Q Before we move on, I almost forgot, Detective; did you bring a couple of very large boxes with you here to court today?

A Yes, I did.

Q Where did you bring those from?

A From the evidence vault -- the Las Vegas Metropolitan Police Evidence Vault.

Q Okay. I want to start with --

MR. GIORDANI: Are these marked, Your Honor?

Q -- State's Proposed 410; do you recognize that, sir?

A Yes.

Q What does that appear to be to you?

A This is a -- the box that the rifle is in.

Q Okay. Did you obtain that at the State's request this morning from the evidence fault?

A Yes.

Q And for the record, there's some blue tape along the edges of the box and there's also red tape there; is that right?

A That's correct.

Q Are you familiar with that tape generally?

A Yes.

Q What is that?

A When it's sealed, we put -- or whoever -- whoever seals the box, whether it's a crime scene analyst or detectives or patrol officers or that effect, you put evidence tape on it and you initial the evidence tape. So if it's broken, you -- you can tell if it's -- someone's been in the box or not. So if you were to open it and -- and reseal it, you have to put another piece of evidence tape and initial that and the date as well.

Q Okay. There's also a large sticky label on the top of this box; is that right?

A Yes.

Q Las Vegas Metropolitan Police Department Evidence?

A Yes.

Q And then it has a 10-digit number, right?

A Yes. That's the event number, the incident number.

Q Okay. Is there one and one only incident number associated with this case?

A Yes.

Q Does that appear to be it?

A Yes.

Q Based upon your having taken this from the evidence vault, is it your understanding that the Yugo long rifle is contained in this box?

A Yes.

Q And it's still sealed, right?

A Yes. I did not break the seal.

Q Okay.

MR. GIORDANI: We'd move for the admission of 410.

THE COURT: Counsel --

MS. MACHNICH: No objection from Mr. Turner.

THE COURT: Counsel, are you moving for the admission of the box --

MR. GIORDANI: For now.

THE COURT: -- and the contents or just the box?

MR. GIORDANI: Well, box now. I was going to open it. Typically, it would be marked --

THE COURT: 410A and 410B.

MR. GIORDANI: Right.

THE COURT: Okay. So right --

MS. MACHNICH: Your Honor, we would stipulate to the admission of the box and its contents --

MR. GIORDANI: Thank you.

MS. MACHNICH: -- at this point now that it's here.

THE COURT: Okay. Counsel approach quickly, please.

[Bench conference transcribed as follows.]

THE COURT: If you -- I've had an issue on the chain of custody label or it had something that was inadmissible that should have been redacted? Before you -- before you stipulate, I want you to go over there and look at the chain of custody label and make sure there's nothing inappropriate, because that box will go back to the jury room.

UNIDENTIFIED SPEAKER: They're not -- they're not felons.

THE COURT: I know, but I just want to make sure there's nothing on that -- did you look at the label, counsel?

MR. PLUMMER: Yeah, it came -- he was on it.

THE COURT: You looked at it?

MR. GIORDANI: Yeah.

THE COURT: Okay.

[End of bench conference.]

[Pause in proceedings.]

THE COURT: Okay. Counsel, it's my understanding that you have no objection to Exhibit --

MR. GIORDANI: 410.

THE COURT: -- 410A and then the contents, which will be Exhibit 410B; is that correct?

MS. MACHNICH: That is correct, Your Honor.

THE COURT: Mr. Plummer?

MR. PLUMMER: No objection, Your Honor.

MR. GIORDANI: Thank you.

THE COURT: Thank you.

MR. GIORDANI: And, Your Honor, I would be walking through the foundational steps of 411 as well, so if there's no objection, I'll just skip that.

THE COURT: Okay. Have you had an opportunity to review 411, counsel?

MS. MACHNICH: Yes, Your Honor.

THE COURT: And do you have any objection -- do you

stipulate to foundation?

MS. MACHNICH: Yes, Your Honor.

THE COURT: And do you have any objection to the admission of 411, the box will be 411A and the contents will be 411B?

MS. MACHNICH: No objection, Your Honor.

THE COURT: Mr. Plummer, do you stipulate to foundation and chain of custody as to 411?

MR. PLUMMER: Yes, Your Honor.

THE COURT: And do you have any objection to the box being admitted as 411A and the contents 411B?

MR. PLUMMER: No, Your Honor.

THE COURT: Thank you.

MR. GIORDANI: Thank you, Your Honor. With your permission and the marshal's permission --

THE COURT: Right.

MR. GIORDANI: -- I would ask --

THE COURT: Well, I'm going to let it into -- 410A and B will be admitted and 411A and B will be admitted.

[State's Exhibit Nos. 410, 410A, 410B, 411, 411A, and 411B admitted.]

MR. GIORDANI: Thank you.

THE COURT: Thank you, counsel.

BY MR. GIORDANI:

Q All right. So with regard to 410, I'm going to ask you to break those seals and open them up.

A [Witness complies.]

Q Does that appear to be the Yugo long rifle, the SKS, and the magazine associated with it?

A Yes.

Q All right. For the record, that has an additional evidence bag underneath it, and we're going to get to that in a minute.

For the record, the firearm is attached with what appears to be three zip ties to the box; is that right?

A Yes.

Q Then there's an additional zip tie that goes through the chamber where it would be loaded.

A That's correct.

MR. GIORDANI: So I'm going to ask the marshal to briefly check this and make sure it's not loaded so I can move on.

[Marshal complies.]

MR. GIORDANI: Okay, thank you. All right. Detective, can I ask you to cut those zip ties?

[Marshal complies.]

MR. GIORDANI: Now remove it from the box, Marshal and Judge?

THE COURT: You may.

MR. GIORDANI: Thanks.

[Marshal complies.]

BY MR. GIORDANI:

Q All right. Now is this the SKS Yugo rifle that was impounded from the scene?

A Yes, it was.

Q And you submitted that to -- for analysis to the DNA lab and the fingerprint lab, correct?

A Yes.

Q Are you familiar with these type of firearms generally?

A Yes. The one that the Department uses is different, but in general, yes.

Q Okay. How is it that you rack one into the chamber or make this slide?

A You would put the magazine in this area here at the bottom and you would pull back on this right here.

Q Okay. And that would put one the chamber and then in flag for firearm?

A That's correct.

Q Okay. Can you go ahead and put that back in?

THE COURT: Counsel, what is the additional --

MR. GIORDANI: I'm going to --

THE COURT: -- packet inside?

MR. GIORDANI: I'm going to get to that right now, Your Honor.

THE COURT: And just for clarification of the record, the additional packet will be marked as 411C or unless that's a separate exhibit.

MR. GIORDANI: There is a magazine I'm not going to remove.

THE COURT: Uh-huh.

MR. GIORDANI: It's zip tied.

THE COURT: Okay.

MR. GIORDANI: This then would be I guess C.

THE COURT: Is that -- in other words, it's all part of 411?

MR. GIORDANI: Yeah, 410.

THE COURT: I'm sorry. I apologize. So 410A will be the box, 410B will be the weapon and the magazine, and 411 will be the contents of the bag.

MR. GIORDANI: Understood.

THE COURT: 411C, I apologize, 411C.

MR. GIORDANI: 410.

THE COURT: Gosh, I'm already ahead of him. All right. Let's put it clear on the record so I don't confuse the -- 410A will be the box; 410B will be the weapon and the magazine; and 4 -- that will be B; and 410C will be the contents of the bag.

MR. GIORDANI: Thank you, Your Honor.

THE COURT: Thank you.

BY MR. GIORDANI:

Q I'm going to ask you, sir, to open 410C. And before you do that, that's sealed with more tape?

A Yes.

THE COURT: And just so -- there's no objection by the defense; is that correct?

MS. MACHNICH: No objection, Your Honor.

MR. PLUMMER: No, Your Honor. No objection.

THE COURT: Thank you.

MR. PLUMMER: Thank you.

BY MR. GIORDANI:

Q All right. I'm going to -- hold that for a second, please. It's a paper bag and I'm going to empty the contents. And that contains a bag of what appear to be rounds?

A Yes.

Q Okay. And then a loose cartridge as well?

A That's correct.

Q I'll put that back into 410. Move on to 411.

I'd ask you to break the seals on that with the marshal's and the judge's permission.

THE COURT: You may.

[Pause in proceedings.]

BY MR. GIORDANI:

Q Does that appear to be the 12-gauge shotgun --

A Yes.

Q -- that was impounded by the scene?

A Yes.

MR. GIORDANI: I'm going to ask the marshal to check if that's not live.

[Marshal complies.]

Q And then I'm going to ask you to break those three zip ties.

A [Witness complies.]

Q Okay. That's fine. You can -- all right. So this is the shotgun that was found at the scene, correct?

A Yes.

Q Pretty damaged?

A Yes.

Q Does there appear to be a round hole in the slide?

A Yes, there is.

Q And -- and then this -- the barrel is almost dislodged, correct?

A That's correct.

MR. GIORDANI: I'm going to place that back in the box. And then for the record, Your Honor, there is a -- there is a little bag with what appears to be pieces of plastic attached to the shotgun. I'm going to leave that. And then there's a separate bag which I believe will be 411B.

THE COURT: I think it's 4 -- no, you got it. Okay. The box will 411A, the weapon with the little baggie attached to it will be 411B, and the separate bag will be 411C.

MR. GIORDANI: Understood.

THE COURT: Thank you.

MR. GIORDANI: Go ahead.

BY MR. GIORDANI:

Q For the record, that has a single zip tie, and we're going to cut that now.

A [Witness complies.]

Q This is a paper bag with some evidence tape on it, correct?

A Yes.

Q In addition, there is a little clear vial with a metal piece in it, right?

A Yes.

Q All right. I'm going to ask you to -- well, I can remove that. I'm going to place the little plastic vial back in the big box and ask you to open the bag.

A [Witness complies.]

Q Okay. Actually, can you hold that?

A Yeah.

Q I'm going to empty the contents of the 411C. I'm going to try to. All right. So there are three little plastic baggies within the paper bag, correct?

A Yes.

Q One contains what appears to be three shotgun shells?

A Yes.

Q Live?

A Yes.

Q Another one contains what appears to be an empty shotgun shell?

A That's correct.

Q And the third one contains what appears to be a disassembled shotgun shell?

A Yes.

Q Okay. All right. Thank you very much for your patience,

Detective.

MR. GIORDANI: I pass the witness, Your Honor.

THE COURT: And, counsel, what was the little vial, just out of clarification?

MR. GIORDANI: Oh, a little piece of metal. It's so small I don't know if we can mark it separately, so I was going to leave it.

THE COURT: All right. We'll just have that marked as 411C.

MR. GIORDANI: We already have C. So this would be --

THE COURT: I'm sorry, D.

MR. GIORDANI: -- D. Okay.

THE COURT: Okay. And that was on the outside of the bag; is that correct? It was taped to the outside of the bag?

MR. GIORDANI: Yes.

THE COURT: So let's just make that 411D.

MR. GIORDANI: Understood.

THE COURT: Thank you. Counsel, are you -- any further questions of this witness?

MR. GIORDANI: Oh, no. I'm sorry. I thought I passed the witness.

THE COURT: Yeah.

Defense, any cross-examination?

MS. MACHNICH: Yes, Your Honor. I just need to go through a few exhibits, if that's all right.

THE COURT: That's fine.

MS. MACHNICH: Thank you.

[Pause in proceedings.]

MS. MACHNICH: Okay. I apologize for the brief delay. May I proceed?

THE COURT: No apologies are necessary. You can proceed.

MS. MACHNICH: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. MACHNICH:

Q All right. So, Detective?

A Yes.

Q There were, as you stated during direct, two suspects in this case, correct?

A Yes.

Q And that was originally the case, because one of the officers involved radioed that they saw two suspects?

A The reason why there's two is -- there's numerous reasons why we established there's two suspects.

Q Okay. Well, first, you learned that the officers -- one -- at least one of the officers saw two people?

A Yes.

Q And then when -- obviously, one of the two was found in the backyard of the residence?

A Correct.

Q Okay. Now, moving on to where -- this is State's Exhibit 402 --

MS. MACHNICH: -- which I believe has already been admitted?

THE COURT: That's correct.

MS. MACHNICH: Okay.

BY MS. MACHNICH:

Q You testified on direct that this was the map that you plotted --

MS. BEVERLY: Tegan, that -- turn it on.

MS. MACHNICH: I touched too long, okay. There we go.

BY MS. MACHNICH:

Q Is this the map that you plotted that Mr. Turner traveled along, from your testimony, leaving the scene, correct?

A Yes.

Q Okay. And to your knowledge, he was leaving on foot?

A Yes.

Q Okay. And you know that because you saw several video surveillances photos of him --

A On foot.

Q -- traversing different yards and parking lots and fences on foot?

A Correct.

Q Okay. Now, you're aware that Mr. Turner was taken into custody, correct?

A Yes.

Q Okay. And that was the same day as this incident?

A Correct.

Q All right. And that was depicted on the exhibit that we're referring to up in the very top, just left of center, correct?

A Correct.

Q Okay. And it actually says in custody there?

A Correct.

Q Correct? Okay. And You're aware that when Mr. Turner was taken into custody, and I'm showing what has previously been marked and admitted as State's Exhibit 28, all right, this is what Mr. Turner was wearing?

A Yes.

Q All right. And that's the orange pants with the blood?

A Yes.

Q Okay. And the purple-bluish shirt?

A Correct.

Q Okay. And that's actually the same outfit that you could see him wearing in the different surveillance videos that you obtained from the home and business owners that we just discussed in your direct examination?

A Yes.

Q All right. And fair to say all of the video surveillance videos that you were shown during your direct examination were taken during nighttime hours when it was dark out?

A Yes.

Q But there was some ambient light from houses and street lights?

A Correct.

Q Okay.

MS. MACHNICH: Court's brief indulgence.

Q So you testified about a few videos that -- a few vehicles that were found on the scene, correct?

A Yes.

Q Okay. And you spoke about a white Scion that was parked in the driveway?

A Correct.

Q That was determined to be one of the homeowners' vehicles?

A Yes.

Q All right. And there was also another vehicle that came to your attention as part of this case?

A Yes.

Q All right. Now, referring you to State's Exhibit 50; this depicts the second vehicle that was part of this case?

A Yes.

Q Okay. And this was a Camry?

A I believe so.

Q All right. Showing you what has been marked and admitted as State's Exhibit 51; this is the same car that we were just discussing?

A Yes.

Q All right. And it's a -- it's a Camry?

A Yes.

Q Okay. And you were able to learn in the course of your

investigation that this vehicle was registered to Karen Hudson, yes?

A Yes.

Q And, in fact, showing you what has been marked and admitted as State's 385; here you have the registration that was located in that vehicle?

A Yes.

Q Now this vehicle was searched two times, correct?

A Yes.

Q Okay. And the first on scene?

A Right. Correct.

Q And then the second back at the whatever vehicle --

A The lot.

Q -- evidence area?

A Correct.

Q All right. And on scene, I'm showing you what's been marked and admitted as State's Exhibit 55; this depicts the glove box of the vehicle?

A Yes.

Q And within it, there's actually a gun magazine, correct?

A Yes.

Q And it has rounds in it?

A Yes.

Q Okay. And showing you what has been marked and admitted as State's 58; this is a picture of that same magazine that was located in the glove box of the car registered to Karen Hudson?

A Yes.

Q Okay. Additionally, I'm showing you what's been marked and admitted as State's Exhibit 388; you found some identifiers in the vehicle as well, correct?

A Yes.

Q And, for example, 388 is an identification for Clemon Hudson, yes?

A Yes.

Q And this was located in that Camry that we've been discussing?

A Correct.

Q Finally, I am showing what -- well, maybe not -- what just fell on the floor. Okay. I'm showing you what has also marked and admitted as State's Exhibit 384; you recognize this as a single what appears to be rifle round?

A Yes.

Q Okay. And this was also located inside the subject Camry that we have been discussing in this case?

A Yes.

Q Okay. In fact --

[Counsel confer briefly.]

MS. MACHNICH: Your Honor, may I approach the clerk to have some exhibits --

THE COURT: You may.

MS. MACHNICH: May I please mark these as next in line

Defense exhibits.

[Pause in proceedings.]

MS. MACHNICH: Thank you.

Okay. Your Honor, at this time, pursuant to stipulation, I would move into evidence Defense Exhibits C and D.

THE COURT: Mr. Plummer, is that correct, they're stipulated?

MR. PLUMMER: Yes, Your Honor.

THE COURT: State, is that correct?

MR. GIORDANI: Yes, Your Honor.

THE COURT: They will be admitted.

[Defense Exhibit Nos. C and D admitted.]

MS. MACHNICH: Thank you.

BY MS. MACHNICH:

Q And referencing the round that we just saw in State's Exhibit 384, Defense C also depicts that round in the subject Camry?

A Yes.

Q And you've described this area that it's located in, in the center area next to the gear shift?

A Yes.

Q That's accurate?

A Yes, looks right.

Q Okay. And additionally, referencing Defense D, this -- these were items that were removed from the car during the search warrant, correct?

A Yes.

Q And, in fact, it's noted that they're from the center console between the front two seats?

A Yes.

Q And you note the -- the round that we've been discussing is actually the pretty much bottom center of that?

A Yes.

Q All right.

MS. MACHNICH: Court's brief indulgence.

[Pause in proceedings.]

Q All right. And, sir, were you aware that two dogs were also located in the subject vehicle?

A Yes.

Q Okay. And that those dogs belonged to Mr. Turner?

A I don't recall the owner of the dogs.

Q Okay. There were two dogs in the subject vehicle?

A Yes.

Q All right. Thank you. And they were safely transported to Animal Foundation?

A Yes, probably.

Q You mean you agree.

A Yes.

Q Thank you, sir.

MS. MACHNICH: All right. I'm going to pass the witness. Thank you, Your Honor.

THE COURT: Thank you, counsel.

Mr. Plummer, any cross-examination?

MR. PLUMMER: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. PLUMMER:

Q Detective, you indicated you're familiar with an SKS?

A Somewhat familiar, yes.

Q It's a semi-automatic?

A Yes.

Q Which means you don't have to rack a round every time you fire?

A That's correct.

Q They can be fired extremely fast?

A Yes.

Q In essence, you can squeeze off three rounds in about two seconds or a second and a half?

A As fast as you can pull the trigger.

Q And when you pull a trigger on an SKS, there's a recoil?

A Yes.

Q And what I mean by recoil is it cocks, comes -- pushes back --

A Yes.

Q -- yes? And so if someone who's unfamiliar with one of those weapons pulls the trigger on it --

MR. GIORDANI: Objection, this is going to call for speculation.

THE COURT: Why don't you let him finish the question and

then you can --

MR. GIORDANI: Okay.

THE COURT: -- make an objection, counsel.

MR. PLUMMER: Thank you, Your Honor.

BY MR. PLUMMER:

Q Someone unfamiliar with this type of weapon can squeeze off three rounds without even realizing it?

MR. GIORDANI: Objection. Calls for speculation.

THE COURT: Sustained.

BY MR. PLUMMER:

Q You'll agree that rounds can be fired very quickly?

A Yeah, as fast as you can pull the trigger.

Q And a recoil of a weapon aids in pulling the trigger; the weapon's moving in your hands.

A Right. But you still have to squeeze your finger in the trigger.

Q Let's talk about the shotgun. The shotgun was hit with one of Officer Grego's bullets, wasn't it?

A Officer Grego-Smith, yes.

Q So Officer Grego-Smith, when he was firing out the door, one of his rounds actually impacted on the shotgun?

A Yes.

Q And impacted on the cartridge tube?

A Yes.

Q And what I mean by cartridge tube, it's where it holds the shotgun shells?

A Yes.

Q So the, I guess it was 411D, the little piece of metal, that's the, I guess, the spent round that impacted the shotgun?

A I believe so.

Q And one of the shotgun casings that was kind of, say, blown apart was as a result of Officer Grego's round hitting the cartridge tube with the shotgun?

A Yes.

Q And you can see the damage to the shotgun?

A Yes.

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

THE COURT: Thank you, counsel.

Any redirect by the State?

MR. GIORDANI: No, Your Honor. Thank you.

THE COURT: Can this witness be excused?

MR. GIORDANI: Yes, Your Honor.

THE COURT: Sir, thank you. You are excused.

THE WITNESS: Thank you.

THE COURT: You can call your next witness.

MR. GIORDANI: Can I have the Court's brief indulgence?

THE COURT: You may.

[Pause in proceedings.]

MR. PLUMMER: Your Honor, might I suggest this might be a good time for a recess? We've been going for almost an hour and a

half.

THE COURT: That's fine.

Ladies and gentlemen, at this time we're going to take a 15-minute recess. During this recess, you are admonished not to talk or converse among yourselves or with anyone else on any subject connected with this trial or to read, watch, or listen to any report of or commentary on the trial or any person connected with this trial by any medium of information, including, without limitation, newspapers, television, radio, or Internet, or form or express any opinion on any subject connected with the trial until the case is finally submitted to you.

We'll be in recess for 15 minutes.

MS. SISOLAK: Thank you, Your Honor.

[Court recessed at 2:22 p.m., until 2:45 p.m.]

[Outside the presence of the jury.]

THE COURT: This is a continuation of the trial in Case No. C-15-309578-1 and -2, *State of Nevada vs. Steven Turner and Clemon Hudson.* Let the record reflect the presence of counsel for the State, counsel for the defendants, and the presence of the Defendants.

Counsel, we'll bring the jury in at this time?

MR. GIORDANI: Pursuant to stipulation, I believe 403 through 409, and 412 through 420 will be admitted.

THE COURT: Defense, is that correct?

MS. MACHNICH: Yes, Your Honor.

MR. PLUMMER: Yes, Your Honor.

THE COURT: Pursuant to stipulation, said exhibits will be

admitted.

[State's Exhibit Nos. 403 through 409 and 412 through 420 admitted.]

MR. GIORDANI: Thank you. That will be it.

THE COURT: Bring the jury in, please.

[Jury reconvened at 2:46 p.m.]

THE COURT: You may be seated. Do 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.

State, call your next witness, please.

MR. GIORDANI: I call Anya Lester.

ANYA LESTER,

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

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

THE WITNESS: My name is Anya, A-N-Y-A, Lester, L-E-S-T-E-R.

MR. GIORDANI: May I, Your Honor?

THE COURT: You may.

DIRECT EXAMINATION

BY MR. GIORDANI:

Q How are you correctly employed?

A I am a forensic scientist with the Las Vegas Metropolitan Police Department Forensic Laboratory in the Firearms Analysis Unit.

Q How did you obtain a job as a forensic analyst in the Metro firearms unit?

A I have a Bachelor of Science degree in forensic science. And I was hired by Metro in the forensic lab in December of 2008. I started with Metro as a forensic laboratory aid and 10 months later I promoted into the forensic scientist position, and that was when I joined the Firearms Unit.

Q Can I refer to you as a firearms analyst?

A Yes.

Q So I don't get tongue-tied. What does a firearms analyst do, ma'am?

THE COURT: Counsel approach.

[Bench conference transcribed as follows.]

THE COURT: Are you offering this witness as an expert?

MR. GIORDANI: Yes.

THE COURT: As a firearms analyst?

MR. GIORDANI: Yes.

THE COURT: Thank you.

Is there any objection by the defense?

MS. MACHNICH: No, Your Honor.

MR. PLUMMER: No, Your Honor.

THE COURT: Okay. According to -- just so you -- *Mogol vs. State* [phonetic] and *Kramer vs. State*, I am not supposed to declare the

expert qualified. However, the district court looks at determination of the witness's qualifications allow him or her to testify as an expert in a particular area of expertise. So based on her qualifications, I will allow her to testify as an expert in the particular area of -- what is her area of expertise?

MR. GIORDANI: Firearms and tool marks. Firearms and tool marks.

THE COURT: Firearms and tool marks. Thank you.

MR. GIORDANI: Thank you.

[End of bench conference.]

BY MR. GIORDANI:

Q What does a firearms analyst do, ma'am?

A What a firearms analyst does is examine firearms, also ammunition, ammunition components, any other firearms-related evidence, including microscopic comparisons of bullets, cartridge cases, and ammunition components to determine if they were fired from a particular firearm.

Q Did you receive several different firearms in this particular case?

A Yes.

Q How many firearms did you receive?

A I received four firearms.

Q Okay. I want to start out with State's Exhibit 412; are those your photographs, ma'am?

A Yes.

Q Are those associated with the processing of a particular weapon?

A Those were the photographs that I took during my examination of this particular rifle, yes.

Q What type of rifle is this?

A This rifle is a model Yugo. The -- I'm sorry, the manufacturer is Yugo. The model number is the 59/66. It's a semi-automatic rifle.

Q When you say semi-automatic, what does that mean generally?

A It means during the cycle of firing the gun, the gun does something for you, semi-automatic, partially automatic. So with this particular rifle, what it does is after you pull the trigger and the bullet goes forward down the barrel, the cartridge case goes backwards and is automatically extracted and ejected from the gun. Then when the bullet goes forward, it loads the next cartridge into the chamber to ready for you to fire it.

Q Okay. Now we're going to get in a little more detail about this in a moment. Just generally, though, what is this that says, Mag Item 2.

A Yes. That's a magazine. It's where you load the cartridges to load them into the gun.

Q Okay. Now, I'll come back to that. I want to briefly go to 413; is this another firearm that you examined, ma'am?

A Yes.

Q What type of firearm is that?

A This is a Beretta, and this is -- well, it's a semi-automatic

pistol.

Q Okay. That's -- that's sufficient for now. State's 415, what are we looking at here?

A This is another semi-automatic pistol, a Glock.

Q Okay. So far we're dealing with all semi-automatic weapons, correct?

A Correct.

Q I'm showing you State's 413; what are we looking at here?

A This is a pump-action shotgun.

Q Okay. And is this considered semi-automatic?

A No. This is pump-action.

Q Okay. I want to briefly talk about other items of evidence before we revisit these firearms. In addition to the four firearms that you received, did you also receive several other items of evidence?

A Yes.

Q Do you know how many items of evidence you received?

A If I could refer to my report, I could give you an exact number.

Q Would that refresh your recollection?

A Yes.

Q Go ahead and do so.

A So in total, including the firearms, I received -- I'd have to count -- 47 total items of evidence.

Q Okay. With regard to the items separate and distinct from the firearms, what are we talking about that you received?

A I received magazines. I also received some unfired

cartridges. I received some fired cartridge cases, some shot pellets, some shot shell wads, one bullet, and several metal fragments.

Q Okay. Now as a firearm analyst, how do you go about examining State's 415? What do you start with and how do you go step by step?

A So first when I receive a firearm, I take notes that I've received the package. I take note as to who booked the package, as to where the package came from. I check and make sure that it's sealed correctly, and I take notes that I'm about to open it. Once I open it, I verify that what's in the package is indeed what is listed on the package for my inventory purposes. And then I photograph the item as I received it, which is what I did right here.

I photograph the serial number, take any written notes that I feel are appropriate about the gun, including the make, the model, the caliber, the serial number. I check and make sure that the gun is not loaded. I check and see if there are any safeties and if those are functional. I generally inspect the gun visually to make sure that it's safe enough for me to fire it. Once I have determined that it's safe enough for me to fire it, I then proceed with my test firing examination.

Q Okay. What is a test firing examination? What's the purpose and how do you do it?

A We have in our laboratory an indoor shooting range. Inside that range, we have a water tank. It's a big metal box. It has about 600 gallons of water in it. It's a stainless-steel tank. And you take the gun, load the magazine with some reference ammunition, insert the magazine

into the gun, and test-fire into that water tank.

Since the water's denser than air, the bullets go into that water, the water slows them right down, they fall down to the bottom of the tank, and then we can remove those bullets. And then we have test samples that come from that gun that we know came from that gun, because we fired them ourselves.

Also on that water tank, there's a net that catches the extracted and ejected cartridge cases that also came from that gun. Then we have those test samples that we can use for comparison to any evidence items that we received.

Q Okay. Now, to be clear, when you're test-firing rounds from, say, this weapon, you're not firing the evidence rounds that you receive, right?

A No, I'm not.

Q Those are your sample rounds that fit in the -- into the magazine?

A Yes. We have a supply of ammunition in our laboratory that we generally use for test-firing.

Q Okay. And you indicated that those rounds are then collected from the bottom of the tank or however it may be, the net. And at that point you have a test round; is that the term?

A Yeah. You have a test-fired bullet and a test-fired cartridge case.

Q Okay. With regard to the cartridge case, how is that important in determining whether particular items of evidence taken from a scene

may fit with that particular gun?

A So what you load into your gun is what we call a cartridge. It's a full unit of ammunition. It has a cartridge case, and there's some powder inside it and a bullet. After you shoot it and the bullet goes down the barrel and out of the muzzle of the gun, that cartridge case, like I spoke of before, is extracted and ejected from the gun. And then when the slide goes forward on a semi-automatic type of gun, loads the next one into the chamber and readies for you to fire it.

So on scene sometimes there are fired cartridges cases that are found, and those we compared to the test-fired ones that we create when we test-fired the firearm.

Q Okay. Before I move on, you indicated the cartridge case which houses a bullet, and in between a cartridge case and the bullet, there's gunpowder?

A Correct.

Q When a gun is fired, does that gunpowder or remnants of it sometimes get ejected from the end of the barrel?

A Yes. The powder may completely burn or partially burn. But normally during the firing process, some of that burned or partially burned powder comes out of the barrel, also possibly out of the ejection port area, this area here.

Q Okay. What is stippling, ma'am?

A Stippling is small marks that you could get on your skin if -- if you're shot, you have a gunshot wound. And powder stippling in particular is if that powder hits your skin. You get, like, little scratches or

bruises where that powder would impact your skin.

Q Is there a particular range or distance that stippling is associated with?

A There is many variables. The type of ammunition, type of gun, length of the barrel, all of those things would have an effect, so it's hard to give an exact number.

Q Have you ever seen a case of stippling in an object that's been struck by a bullet from more than 24 inches away?

A In my limited experience with stippling, I would say I have --

MS. MACHNICH: Your Honor, may I object at this point?

THE COURT: You may.

MS. MACHNICH: And may we approach.

[Bench conference transcribed as follows.]

MS. MACHNICH: Based on what the witness just testified to, she has limited experience in this. I don't believe this is within the purview, and I would move to strike all of the testimony about stippling. She's not here to talk about medical terminology and what may occur when a bullet impacts a human being. I don't believe that that's within her purview. I don't believe she's been qualified for that. In fact, she just said she has limited experience.

THE COURT: And so is it -- go ahead. I'm sorry.

MS. MACHNICH: Everything in regard to stippling, I believe that is medical terminology when it comes to resultant effects in a firearm, and I would move to strike it.

MR. GIORDANI: She's a firearms analyst. It's not a medical

term. It's a term associated with firearms and the effects thereof on whatever it may strike. I didn't ask her about any medical terminology. I wasn't referring to it striking a person in any way, so she's clearly qualified to say what stippling is and the range associated with it. And --

THE COURT: But I think what prompted the objection is she said in her limited experience with this area.

MR. GIORDANI: Right. Yeah.

MS. MACHNICH: And -- and therefore, I would ask that we be able to voir dire about that and if she is, in fact, not an expert with regard to that, because I don't believe that's within the purview of a firearm and tool mark expert as it is conveyed. I mean, this is nowhere in her report. This is nowhere in anything we've been provided.

THE COURT: Is that fair, counsel, it's not in her reports?

MR. GIORDANI: No. And it doesn't need to be in her report. She's a firearms analyst who has test-fired I presume thousands and thousands of weapons. Stippling is associated with it. She has degrees in this area. She's been trained in this area. It's certainly within her purview. I'm not asking her a medical -- to refer to any wounds or anything like that. I don't know why that --

MS. MACHNICH: Your Honor, she was not disclosed as an expert in the area of this. And, additionally, because it's not within her report, we were not on notice that she'd be testifying to this at all. Additionally, just the fact that she's fired firearms, I don't believe she's fired firearms these thousands of times at a person. We're talking about --

MR. GIORDANI: Of course not.

MS. MACHNICH: -- water tanks. There's no stippling at a water tank from what is testified to. This is markings on the skin. And, again, that's more in the purview of medical than it is in the purview of a firearms expert. Specifically, based upon the fact that she just said she had limited experience on that, I believe we should voir dire her outside the presence.

THE COURT: All right. My concern is she said limited experience. That's my concern. Right?

MS. MACHNICH: Uh-huh.

THE COURT: That's I'm sure what prompted the objection. I am not clear that what she is about to testify to is medical in nature. I believe that if she is qualified, she can testify as to the area that counsel is questioning. But because she did say limited experience, I'm going to allow some voir dire --

MR. GIORDANI: Okay.

THE COURT: -- to allow you to challenge her qualifications in that area.

MS. MACHNICH: We had -- we just had no notice that she was testifying to this.

THE COURT: So I'm going to excuse the jury for a few minutes --

MR. GIORDANI: Okay.

THE COURT: -- just to allow some brief questioning on voir dire. But she has -- counsel, you have stipulated -- I heard no -- heard

no objection, that she is the -- an expert in the two areas. I'm going to allow the State, after you do your voir diring, to go into her qualifications to put it on the record. Okay?

MS. MACHNICH: And that's fine. I just -- I truly don't believe that stippling, which is a resultant effect on a human being --

THE COURT: I understand.

MS. MACHNICH: -- is related --

THE COURT: I understand.

MS. MACHNICH: -- to this area.

THE COURT: I understand what prompted the objection, when she said limited experience. And so I will allow you some brief voir dire -- I'm not going to limit you -- some voir dire and her qualifications, but I'm also going to allow the State to ask her -- go into her qualifications in this area.

MR. GIORDANI: Understood.

MS. MACHNICH: Okay.

THE COURT: Thank you.

[End of bench conference.]

THE COURT: Ladies and gentlemen, we're going to have to take a short recess. During this recess, you are admonished not to talk or converse among yourselves or with anybody else on any subject connected with this trial, or read, watch, or listen to any report of or commentary on the trial, or any person connected with this trial by any medium of information, including, without limitation, newspapers, television, radio, or Internet, or form or express any opinion on any

subject connected with the trial until the case is finally submitted to you.

This should be a 5, 10-minute recess, ladies and gentlemen.

[Jury recessed at 3:03 p.m.]

THE COURT: Let the record reflect that the jury is not present.

And counsel, you requested to take this witness on voir dire regarding her qualifications; is that correct?

MS. MACHNICH: Yes, Your Honor.

THE COURT: Proceed, please.

MS. MACHNICH: Thank you.

VOIR DIRE EXAMINATION

BY MS. MACHNICH:

Q Ma'am, just a few questions. So I see on your CV that you're a tool marks expert, correct?

A Well, I think expert is for the Court to decide. I'm a forensic scientist in the field of firearms and tool marks.

Q So you have experience in the following disciplines, and one of them is tool marks?

A Yes, ma'am.

Q And one of them is -- is firearms?

A Yes.

Q Now, prior to the last bit of testimony, we were speaking about your involvement on this case with regard to the firearms that were impounded, correct?

A Yes.

Q Okay. And that includes analysis of the actual firearms themselves?

A Yes.

Q Okay. And of their magazines?

A Yes.

Q And of their ammunition?

A Correct.

Q Okay. And you also did some test firing, and you discussed that?

A Yes.

Q And that's both in this case, but you also do test firing in other cases?

A Yes.

Q And, primarily, that is into this cylinder with water that you discussed?

A A water tank. We can also shoot down range into a trap. But primarily to obtain the test fired bullets and cartridge cases, we do shoot into the water tank.

Q Okay. So right when we stopped the testimony earlier, we were discussing stippling, and you specifically stated that you had a limited experience with stippling.

A Yes.

Q What did you mean by that?

A We were trained, when I went through training, on stippling. And throughout my 10 years of firearms analyst, we have looked at

photographs of stippling and stippling patterns.

Q Okay. So you've seen photographs. Have you had to determine whether the photograph is stippling?

A Not whether it is stippling, but we've looked at the pattern of it --

Q Okay.

A -- when looking at distance, as far as gunshot residue, distance determination patterns.

Q Okay.

A I've done that.

Q So you've been given photographs of known -- what we're calling stippling, and you were asked to look at the pattern?

A Yes.

Q And you were trained upon something about the distance with that pattern?

A Yes. We're trained on distance determination from gunshot residue.

Q Okay. And when --

MS. MACHNICH: Court's brief indulgence.

Q So is stippling something that wipes off?

A No. What it is, is actually either, like, a bruise or a scratch. So when the powder or the debris impacts the skin, it leaves a mark on the skin.

Q Okay. So that's actually damage to the tissue of the skin?

A Correct.

Q Okay. And what wipes off is, like, the soot and the gunshot residue?

A Yes.

Q Okay. And is that referenced as separate and apart from the stippling itself, or is that part of the stippling?

A Well, the gunshot residue would consist of the powder itself, would consist of chemicals associated with the burned or partially burned powder particles, and also the sooting or the smoke from the vaporous lead. That's what I would consider to be the gunshot residue. The stippling itself would be the marks on the skin.

Q Okay. And in this case, you were specifically given the firearms in question that we've been discussing, correct?

A Yes.

Q You were given ammunition associated with those firearms?

A Yes.

Q And then some additional ammunition, the test ammunition?

A The test ammunition that I had referred to earlier was from our reference collection. So the ammunition that I received in reference to this event, I did receive some unfired cartridges, as well as some fired cartridge cases, a fired bullet, several metal fragments, a fired shot shell, some shot pellets, and some wads.

Q Okay. And you were also given shrapnel associated with -- or, not shrapnel -- Bullet fragments associated with the case?

A Yeah, those metal fragments that I referred to.

Q Okay.

MS. MACHNICH: Court's very brief indulgence.

Q And you're familiar with your CV, correct?

A I should be, yes.

Q Okay, good. Now, we have your initial education listed on your CV, yes?

A I presume so, yes.

Q Okay. And that most recently is a Oakland Fire Training Institute certification in 2005?

A That -- that was the most recent --

Q Yeah.

A -- education I did receive. You'll see my bachelor's degree on there, as well.

Q Of course. I was just moving back from -- and then we have a community college emergency medical services certification in 2000?

A Yes, ma'am.

Q Okay. And then an Edinburgh University 1997 degree in biology?

A That was a -- not a conferred degree. That was just some master's classes.

Q Okay. And then you have your bachelor's from Michigan State in '94?

A Yes.

Q All right. Now, with regard to the additional training and seminars, which one of these pertain to stippling?

A My initial training. When you look, that would be from -- or,

excuse me, when I promoted into the firearms unit in 2009, I began a firearms examiner training program. And I should -- it should say in there firearms examiner training program. And then I received my qualification on firearms comparisons, distance. And those were in 2011.

Q Okay. So I see Glock Armorer School in 2010, yes?

A Yes. Yes.

Q ATF IBIS data acquisition training --

A Yes.

Q -- in 2010. XR -- Innov-X XRF safety and operator training in 2010?

A Yes.

Q AFT annual seminar training in 2010?

A Yes.

Q Beretta 90 series and PX4 Armorer School in 2010?

A I did take that, yes.

Q Up in -- okay, so --

A It should say on there, ma'am --

Q Which one of these --

A It should --

Q -- pertain to stippling?

A It should say a firearms examiner training program. It was the -- the program that I entered when I promoted and joined the unit. And I trained in-house with a trainer for almost two years.

Q All right. If I were to show you --

A Could I --

Q -- a copy of your CV --

A Could I look at it? Yeah.

Q -- would you be able to find that?

A I hope so.

Q Okay.

A I believe it's on there, ma'am.

Q And I'm showing you what has been -- well --

A This is from 2013, so I think this is not up to date. I've -- I've testified 30 times, so this is not up to date.

THE COURT: You've testified 30 times as to stippling?

THE WITNESS: No, not -- not as to stippling, sir.

THE COURT: Okay. Thank you.

THE WITNESS: So it's not listed on here. I -- I know on my current one, it does say Firearms Examiner Training Program because I did finish that, complete that, in 2011. This -- this here only has, looks like, up through 2010. So as this being a not-updated CV, that is not listed as such.

BY MS. MACHNICH:

Q Okay. So fair to say, on the CV associated with this case that I've just shown you that has been disclosed and is on record in this case dated November 26, 2013, the program that we're talking about that we just discussed, the firearms training, was not disclosed as any training on this?

A It's not listed on there. I -- when I completed that, I received a

certificate that allowed me to begin my own independent case work. That was in 2011. I have been doing independent case work on firearms and tool marks analysis since that point in time.

Q Okay. And how much of this program that we're discussing, how long is that program?

A Pardon me. I received my first qualification after 18 months. And at 24 months was when I received my last one. So there's seven different areas where we qualify. We'd qualify in firearms, bullet comparisons, cartridge case comparisons, gunshot residue, distance determination, tool marks, serial number restoration.

Q So you -- the area that we're talking about, I guess, is the GSR distance comparison --

A Yes.

Q -- is what you're saying is -- is relevant here?

A Yes.

Q Okay. Now, you also say in your courtroom experience, your discipline listed is firearms identification.

A Yes.

Q And you've testified, you said, 30 times?

A I think this is my 30th testimony.

Q Okay. And that's related to firearms identification?

A Yes.

Q Okay. Not stippling?

A Stippling, as we discussed in the form of gunshot residue, would be, as we consider it, included in that gunshot residue

certification. I don't know, ma'am, that I've ever testified to that before. I was just speaking to the definition and what I am aware of through my limited experience.

Q Okay. And it would be limited experience, because the last testing you had on it was from 2009-ish?

A Well, that was the training that I had on it, ma'am.

Q Okay. And so that's the last training you had in stippling?

A Formal training, yes.

Q Okay. Fair to say that -- let me see here -- you have not published anything in that area?

A Hmm, I don't believe so.

Q Okay.

MS. MACHNICH: And Court's very brief indulgence.

Q And fair to say that in your report in this case, you were not asked to look into that at all?

A I was not.

Q In fact, I'm guessing that you first were asked to look into that by the district attorney?

A I was, yes?

Q Okay. When we were here today or --

A No.

Q -- before today?

A No, before today.

Q Okay. How long ago?

A I think -- I think it was just yesterday, ma'am.

Q Okay.

A So just in general. He just asked me about the definition and --

Q Okay. And, obviously, that was never part of your report in this case?

A It is not, no.

Q Okay.

MS. MACHNICH: I think that's everything I have at this point, Your Honor. And I would renew my objection to her testifying based on limited experience. And at this point -- and I realize, I guess, the State gets to discuss with her something, as well, so I can withhold my argument --

THE COURT: Actually, you're going to have -- okay. I'm going to allow the State to question her on her qualifications.

MS. MACHNICH: Thank you.

THE COURT: Thank you.

MR. GIORDANI: Thank you, Your Honor.

THE COURT: State, also, I need to know what her proffered opinion is going to be on this issue. What is it that you're going to request that she give an opinion on?

MR. GIORDANI: We're actually not asking for an opinion, and that's why I was trying to explain that at the bench. What we're asking is general terminology with regard to what stippling is. I believe there was two other questions. And it was, What range is generally associated with stippling? And, Have you ever seen a case in which stippling

occurred from further than 24 inches? And I believe the answer would be no, based on what she's seen.

MS. MACHNICH: I --

MR. GIORDANI: And --

MS. MACHNICH: I'm sorry.

MR. GIORDANI: It's okay.

MS. MACHNICH: I didn't mean to interrupt you.

MR. GIORDANI: No, it's okay.

MS. MACHNICH: I -- I would then ask a proffer on relevance, if that's all they're asking, and they're not asking for an expert opinion.

MR. GIORDANI: Well, so do I need to make a record here about --

THE COURT: Let's make a record.

MR. GIORDANI: Okay.

VOIR DIRE EXAMINATION

BY MR. GIORDANI:

Q Ma'am, you indicated that you had training back in -- I believe it was 2011, called distance determination patterns? Or am I -- am I off there?

A When I went through my original training --

Q Okay.

A -- with Metro, when I was hired as a forensic scientist in 2009, I underwent an internal training program. In that training program, one of the modules was a gunshot residue distance determination module, which I successfully completed in approximately 2011.

Q And not to sound too obvious, but stippling is a term associated with firearms, in which you are a forensic scientist, correct?

A I would say so, yes.

Q Okay. Because stippling comes from residue from a fired round?

A Powder stippling comes from gun powder, yes.

Q Okay. With regard to your answers to Ms. Machnich when she was questioning you, you indicated that you're familiar -- or you answered, is stippling something that wipes off, and various questions with regard to that?

A Yes.

Q Ms. Machnich asked you those questions?

A She did, yes.

Q And you seemed to have answers for those questions; is that right?

A Yes.

Q To the extent that your questions are limited to those and the questions that I've mentioned in the court, did you hear those questions?

A Yes.

Q Do you feel comfortable testifying with regard to those limited areas?

A Yes. And as I qualified, I said in my limited experience.

Q Understood. Now, if I go beyond that, will you be sure to tell the Court that you're not comfortable in whatever question that may be?

A Yes, I would be happy to tell you that you're outside of my

area of expertise.

Q I'm sure you would. Thank you very much.

MR. GIORDANI: I have no further questions, Your Honor.

THE COURT: Thank you, counsel.

Now you make your motion.

MS. MACHNICH: Thank you, Your Honor. I would move to prevent this witness or restrict this witness from testifying as to stippling, and the State from asking her about that -- at this point we move to strike -- and for potentially limiting instruction, although I would like a moment to think about that, because of the following: As she stated -- and we appreciate her honesty that it's within her limited experience. The problem there is, within your limited experience is necessarily not within your expert opinion, in our opinion. That's just not how expert testimony works.

And in this case, this witness was disclosed as an expert in firearm and tool mark analysis. Everything that's been provided to the defense with regard to the firearm and tool mark analysis, including this witness's CV from 2013, which is now, evidently, not the most up-to-date one, regards a firearm, like, firing a gun and analyzing whether a gun goes with a bullet. And that -- that's what's been provided in this case, the analysis of the actual firearms, are they functional, are they nonfunctional, all of those things that have been associated with this case, her examining various pieces of evidence that were impounded as a part of this case. So she has a lot of areas that she's clearly qualified as an expert to testify in.

However, with regard to something referenced stippling, we are talking about her opining as to soft tissue damage to the skin as a result of firearm. That was never disclosed in this case.

THE COURT: Okay. Go ahead. I'm sorry.

MS. MACHNICH: Oh, that's okay. So the standard is not whether she's comfortable testifying to something, although it's -- it's refreshing here that someone would be willing to speak up if they weren't versed in the topic. But again, she did speak up and she said limited experience.

Her most recent training with regard to this is between 2009 and 2011. It's not even listed on her CV. I don't know if it would have been specifically delineated on there anyway. But it certainly isn't even listed on the one we have. She's never published in the area. My understanding is that she's never -- certainly never taught in the area.

Because her area -- oh, and she's specifically testified in the area of firearms identification, and she's now said that it's 30 times, or this is the 30th time, while there's three listed on the CV.

But even so, we're talking about firearm identification, which is specifically what we received with regard to her report and everything provided within this case that she was noticed to testify to.

Because of that, and because of -- based on the State's questions that they're not having her opine, and they have not necessarily established relevance with regard to this testimony of stippling, I don't think this is proper on many levels. And we would move to exclude it and strike it from the record.

THE COURT: State, what's your position?

MR. GIORDANI: I think it's proper on every level. I'm not asking this witness to opine as to an expert opinion with regard to stippling. I'm not asking this witness to talk about injuries or soft tissue damage or anything that Ms. Machnich just referenced. I'm asking this firearms examiner to tell us what stippling is, when generally you can expect to see it. That is clearly within the realm of her training and experience.

The fact that it's not in her report is not surprising at all. We -- no one asked her to review stippling, which goes to my original point. It's not about rendering an opinion on any particular stippling in this case. I wouldn't ask her that. She probably wouldn't be comfortable answering that. So that's not what I'm doing here. I'm asking this forensic scientist in the area of firearms what stippling is, when generally you would expect to see it. And that's the extent of it.

Everything about this is proper. There's nothing that needed to be in a report that wasn't. And I will submit it to the Court on that.

THE COURT: All right, counsel. Thank you.

She has testified that she has a certification in gunshot residue. She has been accepted -- she does have sufficient qualifications to testify as an expert in a particular area of expertise. I believe that area is -- what were the areas of expertise?

MR. GIORDANI: The title is firearms and tool marks.

THE COURT: Firearms and tool marks. So to the extent -- counsel?

MS. SISOLAK: Tegan.

MS. MACHNICH: What? I'm sorry.

THE COURT: To the extent that this testimony falls with under -- within her overall expertise that she has -- that the Court has determined that she has the qualification to testify, I am going to allow to that extent.

However, I'm not going to allow her to give an opinion that is not contained in the expert report. So she's not going to allow -- she's not going to give an opinion as to the -- your concern about the medical issues related to stippling on the hand itself.

She is going to be allowed to testify within her expertise. I believe she testified that she has -- over the course of time, that she has made determinations as to the pattern of stippling for purposes of determining -- distance determination of gunshot residue. That's the type of -- that's the underlying testimony she can testify to here.

It's my understanding what the State's going to ask her is, what is stippling? Is it -- which I believe she's testified to. Generally, what the range of stippling is, or can there be stippling for more than 24 inches.

But, counsel, I'm not going to let you -- let her give an opinion on --

MR. GIORDANI: No.

THE COURT: -- for purposes of this case. This falls under her umbrella as regarding gunshot residue.

MR. GIORDANI: Understood.

MS. BEVERLY: Thank you.

THE COURT: Okay. That's my ruling, counsel.

MS. BEVERLY: Can we call the jury back in?

THE COURT: Anything further?

MR. GIORDANI: No, Your Honor.

MS. MACHNICH: I guess --

THE COURT: Go ahead.

MS. MACHNICH: We -- I know this is unorthodox, but I'd like to make a proffer outside the presence of the State with regard to why we believe this is happening and why we believe this is unfair. But I don't feel comfortable doing that, as it may -- I don't know if that's the case. I think that's why -- I think something -- I think I know what they're doing. I don't know if it's correct. If it's not correct, it's going to hurt my client by bringing it up. So I'd request to make a proffer to the Court outside the State -- presence of the State with regard to why I believe this is happening and why I believe this is improper, given the circumstances.

MS. BEVERLY: Judge, we're going to absolutely -- we're going to absolutely object to that. We're ask -- this is evidence coming in. We're in our case-in-chief. They have the ability to cross-examine her on that. They have the ability to cross-examine anybody else. But I don't see what else needs to be said other than what we've already done. Your Honor already established that she is allowed to testify about this very --

THE COURT: All right. The way I'm hearing this, counsel,

quite frankly, is these are foundational questions, just general foundational questions going to the issue of gunshot residue. That's how it seems to be being presented to me. Again, there was not a written Motion in Limine. I am concerned about the notice issue, that this was not contained in the expert report. However, the State has represented to me these are more general, foundational type of questions. They're not going to be asking her an opinion.

If you're going to make an allegation on some type of, I don't know, I mean, I'm assuming it's some type of improper motive by the prosecution, that's your concern.

MS. MACHNICH: I don't -- I don't -- I'm not trying to say anything disparaging about the State. They've been very forthcoming in this case. But yes, I think this is going to something more than just foundation, that's -- and I'm concerned. And I -- certainly, if it's not the case, I don't want to highlight it for them. But if it is the case, I think it's back-dooring in something that wasn't disclosed and becomes very relevant.

MS. BEVERLY: And, Judge, I am going to have to object at that point. I mean, I think that -- well, I don't think, I know that I've disclosed everything that's been admitted, everything that's -- everyone who is testifying. In fact, I even told them who I would be calling in this case, which is not something I even typically do, because we've been getting along so well.

So I don't know what type of -- it seems like back-dooring they think that we're doing, but everything's been disclosed.

THE COURT: I'm not sure what they're doing, counsel. I'm not sure if she's afraid of revealing some type of trial strategy or some type of improper motive. I -- and quite frankly, I don't know.

MS. BEVERLY: If it's talking about the State's -- I don't know why that would be outside the presence of the State. I mean, if they're talking about trial strategy, that's one thing. But they're talking about something that has to do with the State --

THE COURT: I don't know, counsel.

MS. BEVERLY: -- so the State should be present for that.

MS. MACHNICH: My -- my concern is, if I am not correct and I'm just being paranoid, then I've now highlighted something to them. So if -- if Your Honor does not keep out this testimony, I have then helped the State's case. And I don't think that that's proper, and I don't think that I should be forced to do that, because it necessarily harms my client. And it's a huge PCR issue.

I just -- we did not have notice that she'd be testifying to this area. We may have taken different steps, and I'd certainly like to make a proffer of what steps we might have taken if we had known she was testifying to this area, based on what I believe the State is going to do with this information. But again, I don't feel comfortable -- I'm sorry I'm being so vague. I have something very specific to say. I just -- if I highlight it in front of the State, they're very intelligent prosecutors, and I know that if Your Honor doesn't keep it out, they're going to use it.

MR. GIORDANI: Your Honor, I believe you made your ruling on this issue. And I would ask that if it's going to be visited any further, it

not be outside our presence. That's not appropriate, especially if it has to do with something alleged against us. We would --

THE COURT: That doesn't appear to be the situation, counsel. It appears to be something other than allegations of improper motive by the prosecution.

MR. GIORDANI: Right. And --

MS. MACHNICH: Right.

MR. GIORDANI: -- understood. But to the extent that you've made your ruling, I don't understand how anything in addition to the actual --

THE COURT: She wants to make a proffer outside the presence of the prosecution.

I'm going to take a short recess. Because here's your problem counsel: If it's a proffer outside the presence of the prosecution, I cannot make a ruling without them being informed of what the proffer is. I mean, they would have an -- I mean, are you making an offer of proof?

MS. MACHNICH: Yes.

THE COURT: Okay.

MS. MACHNICH: I would like to make an offer of proof outside the presence --

THE COURT: Okay. But the offer of proof would not be argument. It would be if -- an offer of proof is to establish in the record for an appellate review of your basis --

MS. MACHNICH: Yes.

THE COURT: -- of an objection.

MS. MACHNICH: Yes.

THE COURT: Okay. So that's what you want to do?

MS. MACHNICH: That is what I would like to do, Your Honor.

THE COURT: Okay. And you want it to be sealed so the State could not --

MS. MACHNICH: Yes, I would.

THE COURT: All right. We're going to be in a short recess.

MR. GIORDANI: All right.

MS. MACHNICH: Thank you, Your Honor.

[Court recessed at 3:31 p.m., until 3:38 p.m.]

[Outside the presence of the jury]

THE COURT: This is a continuation of case number -- I'm sorry, a continuation of the jury trial in case number C-15-309578-1 and -2, *State of Nevada vs. Defendants Steven Turner and Clemon Hudson.*

Counsel, state your appearance.

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

MR. GIORDANI: John Giordani and Leah Beverly for the State.

THE COURT: Let the record reflect that the jury is not present.

MR. GIORDANI: Mr. Plummer is here, too, with his client.

THE COURT: I'm sorry. Mr. Plummer?

MR. PLUMMER: Yes, Your Honor.

THE COURT: Thank you.

Let the record reflect the presence of counsel for the State, counsel for the defendants, and the defendants.

Counsel, I need some clarification. Under NRS 174.235 (1)(b), regarding with expert reports, it says:

> Results or reports of physical or mental examinations, scientific tests or scientific experiments made in connection with the particular case, or copies thereof, within the possession, custody, or control of the State, the existence of which is known, or by the exercise of due diligence, may become known to a prosecuting attorney.

It's my understanding that you have provided counsel with an expert report; is that correct?

MR. GIORDANI: Yes, Your Honor.

THE COURT: Do you have a copy of the expert report, counsel?

MS. MACHNICH: Yes, I do, Your Honor.

THE COURT: Can you --

MR. GIORDANI: For the record, it's one, two, three pages long.

THE COURT: Can you approach, please, with a copy of the report?

MS. MACHNICH: Yes, Your Honor.

[Pause in proceedings.]

THE COURT: I'm just going to hold this one moment.

In the areas that this witness has -- the Court has determined her qualifications allow her to testify, the particular areas of expertise are twofold; is that correct? It was tool markings, and what was the other area that she was offered as an expert?

MR. GIORDANI: The firearms and tool marks is her area of expertise.

THE COURT: Firearms and tool markings. And it's the State's position under her expertise as a -- as a -- as firearms, within there is gunshot residue, which would include the shotgun?

MR. GIORDANI: It would include all types of gunshot residue, including stippling, yes. That's her area of --

THE COURT: Well, my concern is the stippling, is -- is that as to both the rifle and the shotgun?

MR. GIORDANI: It applies to any firearm. And I believe what the witness said was the type of stippling -- stippling or the distance thereof, it actually depends on a lot of different factors, including the type of firearm, etcetera. So that's where she was being overly, I guess, cautious is the word. She's saying it all depends. And that's part of the reason I won't ask her an expert opinion, because she can't answer it. Depends on a whole lot of stuff.

THE COURT: And one of the objections was relevancy.

MR. GIORDANI: Right.

THE COURT: Okay. What is the relevancy of the stippling testimony?

MR. GIORDANI: Well, now, see this goes into exactly what

Ms. Machnich was trying to do. To the extent that she's objecting to the qualifications of the expert, relevance has nothing to do with it.

THE COURT: I agree.

MR. GIORDANI: If Your Honor made a ruling that she can testify to those things, I can proffer to you the relevance. But then if we do it in front of the defense, it's the same exact reason they don't want to do it in front of us, because we're talking about trial strategy. I mean, it's relevant --

THE COURT: This is what I'm not understanding.

MR. GIORDANI: Let me -- if I may. It's relevant to her expertise in all these different areas of firearms. All of this testimony is relevant. In fact, I skipped over a whole bunch of relevant stuff that would bolster her expertise. So, I mean, I can go back and ask her what is a bullet, what is a casing, what is a trigger guard, what is a this, that, that, to show she knows her guns. She knows the resulting impacts of guns. She knows, you know, the different components and the different effects, etcetera. That's -- it's all relevant to her --

THE COURT: But is it relevant to her opinion? That's my concern. The opinion --

MR. GIORDANI: She's --

THE COURT: -- are you going to ultimately ask her an opinion in this case?

MR. GIORDANI: No. No, no, no. Not with regard to stippling, no.

THE COURT: Okay. But in regards -- here's what I'm having

difficulty with this whole scenario. Okay. You put an expert on to give an opinion. That's the whole point of expert testimony. What is the opinion that this expert is going to give the purpose of you presenting her as an expert?

MR. GIORDANI: Well, first off, the sole purpose of presenting her is not for her opinions. It's to talk about all these different items of evidence to tie up what we've been going through this whole trial. The -- the expert portion of her testimony, the opinions, are going to be related to what casings from the scene go to what firearms. But a big chunk of her testimony is not about those opinions. It's to show, number one, that she's qualified. It's to show, number two, she knows what she's talking about. It's to show, number three, what those things we're finding on the scene are.

So it's not -- I'm not asking her these questions to result in an opinion at the end. Her opinion -- all of the questions I'm asking -- asking her are foundational for her expertise. So I'm not asking her an opinion with regard to anything to do with stippling.

THE COURT: Right.

MR. GIORDANI: And, I mean, to go a step further, so throw a hypothetical out there, so it's gonna be argued by Mr. Plummer that -- or potentially will be argued by Mr. Plummer that when his gun gets hit -- I mean when the shotgun gets hit by an officer's round, it's rendered inoperable. And that's either, potentially, an accidental discharge or self-defense or whatever it may be. Anything about that firearm is going to be relevant to argue that later. We have this witness to tie up

everything there is to possibly know about guns because that's the person who knows that.

THE COURT: Okay. But, again, just based on what the defense has stated, is there testimony in this record regarding stippling?

MR. GIORDANI: No.

MS. BEVERLY: Judge, but what we're saying is it's the same as asking the DNA person, What is DNA? It's the same thing as asking the fingerprint person, What are fingerprints? So what -- if you're asking us for, you know, what we're going to argue and what our --

THE COURT: I'm not asking that, counsel. What -- here -- I'm trying to figure out why defense counsel would need an ex parte offer of proof.

MS. BEVERLY: I don't know.

THE COURT: I'm trying to figure it out so I can make a ruling, okay.

MS. BEVERLY: It's -- it's --

THE COURT: And my question to you, counsel, is there evidence in this record, is there testimony in this record, regarding stippling?

MS. BEVERLY: Is there evidence in this case of stippling? Is that what you're asking? I guess -- I don't know why they want to make -- I think they want to make a proffer to try to, you know, cut -- see what the State's going to argue. Okay? But we are allowed to ask a firearms expert anything related to expertise in firearms, whether that's, What is a bullet? What is a casing? How does a bullet leave a casing?

How does the round expend from the chamber? All of that is within her purview, including the definition of stippling, including the --

THE COURT: But I don't want you -- okay. But you still haven't answered my question. My question is, is there testimony or evidence in this record of stippling? That's --

MR. GIORDANI: Well --

THE COURT: It's a simple question.

MR. GIORDANI: Yes.

MS. BEVERLY: Yes.

THE COURT: And who had the stippling? Who -- what --

MR. GIORDANI: Okay.

THE COURT: What person was it on?

MR. GIORDANI: Are -- are you ordering us to give our arguments up?

THE COURT: No. No, no, not your argument.

MR. GIORDANI: Okay.

THE COURT: I'm asking the state of the record right now. I can ask it of the defense attorney. That way --

MR. GIORDANI: Okay. That would be great.

THE COURT: All right. Is there evidence in the record of stippling? Is there testimony in the record of stippling? Has anybody testified that any person in this case had stippling?

MS. MACHNICH: I believe that there will be argument made by the State that that is the case.

THE COURT: Okay. The State --

MS. MACHNICH: So you asked --

THE COURT: -- can only make arguments -- inferences based on the evidence that's presented during the trial.

MS. MACHNICH: Yes.

MS. BEVERLY: Yes. There's photos, as an example.

THE COURT: There -- individuals have stippling on them? They have stippling?

MS. MACHNICH: That they could argue is stippling.

MS. BEVERLY: Yes.

THE COURT: Okay. That they can make a reasonable inference that his -- so there is no testimony in the record that -- that the evidence -- that there is evidence of stippling?

MS. BEVERLY: Judge, he has a gunshot wound to his left calf. That has been testified to repeatedly by --

THE COURT: No, I remember the testimony.

MS. BEVERLY: There have -- there are photos of those injuries. So I -- to answer your question, yes, right over there.

THE COURT: Okay. And if I understand correctly, there's the absence of stippling as to that wound; is that correct?

MR. GIORDANI: Well, that's going to be argued by them.

MS. MACHNICH: And the State's going to argue that there is stippling, I believe. Obviously, I'm not putting words in their mouth. But I would believe that the State would argue that my client had stippling on his leg. And based on this witness testifying that there was no stippling beyond 2 feet, which is an area she's not been disclosed in, they're

going to use that in their closing arguments to say he had to have been within 2 feet of a firearm when it was discharged for that pattern to have happened, and thus, the defense theory is incorrect.

MR. GIORDANI: So number one, that says it's relevant. And number two, she has been disclosed in this area. She is a firearms expert.

MS. MACHNICH: I actually have the -- the actual disclosure. And it says she is an expert in the field of firearm and tool mark comparisons, and is expected to testify thereto. And none of that suggests stippling.

THE COURT: Okay. My biggest concern, quite frankly, counsel, is the notice issue. I do have concern about the notice issue.

MS. BEVERLY: Judge, I really --

THE COURT: Okay. I understand the argument. Whether -- I'm going to allow her to give general statements about stippling, okay, because that does seem to fall under her -- the area that she's qualified. But I don't -- I am not yet convinced that she should be allowed to give an opinion -- I'm sorry, to give testimony regarding how far away stippling occurs. In other words, the three questions you asked, if you're going to -- the three questions you asked dealt with -- I have them written down. I apologize.

MR. GIORDANI: I can tell you, what is it? Or what is stippling?

THE COURT: Okay. That seems to be a proper question.

MR. GIORDANI: What is the range generally associated with

it? And her response was, It depends upon the caliber, the surface, the XYZ. I don't remember exactly what she said. And then the third question, and the question that is relevant to potential argument, is, Have you ever seen stippling occur from a distance of greater than 24 inches? And she --

THE COURT: Okay. And quite frankly, that's the question that's probably the most concerning.

MR. GIORDANI: Well, that --

MS. MACHNICH: Yeah, exactly.

MR. GIORDANI: That's --

MS. BEVERLY: Well, I guess the -- the situation is, Judge, she has testified that she fires guns. She's observed distances. She talked about how she has training. And we're talking about training in her general training as a firearms expert, which --

THE COURT: Okay.

MS. BEVERLY: -- she talked about. So that is all part of her qualification as an expert --

THE COURT: Okay.

MS. BEVERLY: -- the same way a DNA person can testify about different -- different types of DNA, and where DNA is found, and sometimes there's a mixture of DNA. That's all part of it. So --

THE COURT: Okay.

MS. BEVERLY: -- we're not asking her to give an opinion in this case about, Ma'am, in this case, how far was the -- anybody -- did you observe any stippling? We're not -- we're not asking her that. That

would be giving an opinion.

But to say in general, you know, in general distances, which she has experience in, I don't think is in any way affected by any notice issue. It's certainly part of her qualifications. Her training is listed in there as a firearms expert. And I think that's -- we're not asking for any further opinion.

THE COURT: Well, is she -- is she a firearm expert or is she a firearm comparison expert?

MS. BEVERLY: Both.

MR. GIORDANI: She's a firearms expert, not just a firearms comparison expert. That's the -- that's the big difference that we have in opinion. She --

MS. MACHNICH: Her notice --

THE COURT: Okay. Wait, counsel.

MS. MACHNICH: Sorry.

THE COURT: You've already stipulated that she's an expert. It was -- it's my recollection that you stipulated that she was a firearm expert in tool markings. That's my recollection. If I'm wrong, please let me know.

MS. MACHNICH: Based upon the area of her disclosed testimony that was included in the State's notice of witnesses, which specifically states firearm on tool mark comparisons.

THE COURT: Okay. My next issue that I have is her statement of limited experience, counsel. She volunteered that she has limited experience in this area. So before I would let you ask that

question, you're going to have to verify that she has -- at the very least, has some experience sufficient to make that type of statement, that --

MR. GIORDANI: Sure.

THE COURT: And what are you going to show me?

MR. GIORDANI: We -- we just did a voir dire of the witness --

THE COURT: Correct.

MR. GIORDANI: -- in which she said she is trained in distance determination. That is exactly what we're asking. Now, again, we're not asking her to render an opinion or look at those photos and say, is there stippling on Steven Turner's leg? We're not asking that. We would never ask that because it's not appropriate. She's not --

THE COURT: Okay. What she testified to, counsel, is that she has training in stippling, and her training involved pattern of stippling for distance determination of gunshot residue. That was her testimony.

MR. GIORDANI: Yes.

MS. MACHNICH: Yes.

THE COURT: Okay. She's been accepted -- based on her qualifications, she's been accepted to give an opinion regarding firearms and tool marks. So to the extent that her testimony is going to fall within that, okay, then she can establish pattern of stippling for purposes of distance determination of gunshot residue.

She seems to have -- I believe it was also her testimony that, as part of her certification, she had training in those areas. I had my notes and --

MR. GIORDANI: She did.

THE COURT: I apologize, counsel. So if the State can ask a question based on pattern of stippling and distance determination of gunshot residue, that seems to be within her qualifications. I'm not going to let her give a specific opinion or testimony regarding, for example, the gunshot wound as to the officer. Okay?

MS. MACHNICH: Okay.

MS. BEVERLY: Thank you.

MS. MACHNICH: I -- I guess, Your Honor, our concern was we did not have notice. And had we had notice that they were going to go into something other than firearm and tool mark comparisons, we may have hired our own expert. And we would request, potentially, a stay in order to get an expert or consult an expert. I don't know if that's even something that we can do at this point on such short notice. But -- but given that that is now what she's testifying to, and while she may not be opining --

THE COURT: How long would you need, counsel?

MS. MACHNICH: A week.

THE COURT: No, I'm not going to give you a week. How long would need? I mean, do you -- what office are you with?

MS. MACHNICH: Public defender.

THE COURT: Okay.

MR. GIORDANI: Can we make an objection for the record? This is now talking about middle of trial, long past the 21 days, and they're asking to stop our trial and send our jury home to bring in an expert. The issue here is whether she was on notice of the general idea

of stippling. So with regard to the second supplemental notice of witnesses and/or expert witnesses, we had two firearms examiners noticed. Both of those people -- one is Anya Lester. One is James Krylo. Both of those people are noticed with Or Designee next to their name. That is common -- I do it in every case. It looks like Ms. Beverly does too.

And both of those firearms analysts have disclosures next to them: Krylo is expected to testify regarding collection, comparison, analysis of firearms, ammunitions, ballistics, and tool mark evidence as it relates to this case.

The -- the general idea of stippling falls within the purview of firearms, ammunitions, ballistics, etcetera. Anya Lester is an expert in the field of firearm and tool mark comparisons, and is expected to testify thereto. Firearm and tool mark comparisons contain firearms, ammunitions, ballistics, and tool mark evidence.

There is no other notice we could possibly have given, other than saying, this is our trial strategy. Here you go. We cannot, and will never, do that. It's not required by law. I mean, as a comparison, the DNA expert, Kim Dannenberger --

THE COURT: Counsel, I don't need a -- here's -- here's the situation, counsel. If they can bring it in within her expertise, if they can establish it through her expertise that she is a firearm expert, and this falls within the comparison, she seems to have the qualifications to testify generally about stippling. I'm not going to let them ask the question, have you ever seen a case greater than 24 inches? That's too

fact-determinative in this case. She can give general statements as a firearm expert in -- in the expertise of comparison. So she has the qualifications, based on her testimony, to give general information around -- about stippling.

MS. MACHNICH: Okay. And with that restriction, we would --

THE COURT: Well, I'm not going to let them be specific to try to tailor to the facts of this case.

MR. GIORDANI: And we're not going to. But the problem is, is if you say -- if you allow us to say, what is stippling, and then don't get to say anything with regard to distance, then the testimony is pointless.

THE COURT: Okay. But you're -- but the problem is, you're -- you're asking her the distance. You said -- I believe it was -- one of the questions you're going to ask, 24 inches.

MR. GIORDANI: Have you ever seen any further than.

THE COURT: Okay. Ask her, what is the furthest you've seen --

MR. GIORDANI: Okay.

THE COURT: -- based on your experience?

MR. GIORDANI: Okay.

THE COURT: In other words --

MR. GIORDANI: What is the furthest you've --

THE COURT: Well, I'm not going to state the question for you. But you can ask general questions regarding stippling based on her experience in this area.

MS. BEVERLY: Thank you.

MS. MACHNICH: I'm going to blind asking her with no notice about whether -- how many times she's fired a weapon and registered stippling. I --

THE COURT: Okay. But that goes to cross-examination. She has said, already, limited experience. So that's going to go to the issue of cross-examination. How many times have you done this? She said limited experience. It's pretty much what you did in establishing her qualifications. So the issue goes to cross-examination, counsel.

MS. MACHNICH: Okay.

THE COURT: All right. I apologize. But again, whenever these things occur in the middle of trial, it is necessary for me to understand the context of which they are occurring.

MS. BEVERLY: We understand, Judge.

MR. GIORDANI: Understood.

THE COURT: I mean, obviously, you know, my preference has always been, as anybody that has practiced in front of me, written Motions in Limine, But I understand that this does occur during trial.

So my ruling is, counsel, that she can give a general description of what stippling is based on her qualifications.

MS. BEVERLY: Thank you, Your Honor.

MS. MACHNICH: And, Your Honor --

THE COURT: Thank you.

MS. MACHNICH: And, Your Honor, may I just briefly make our record? I respect your ruling, and I'm not trying to change it at this point. I just want my appellate record to be clear.

THE COURT: Absolutely.

MS. MACHNICH: That I am objecting pursuant to *Burnside v. State*, 352 P. 3d, 627 from 2015. And I would make the specific record that I've asked for a continuance pursuant to 174.295 or exclusion of the testimony at issue. And had I known about this area in advance and been on notice of it, I would have prepared a more thorough cross-examination on her qualifications. I would have, I guess, hoped that I had an up-to-date CV. And I would have potentially hired or consulted with a rebuttal expert. Thank you.

THE COURT: And what was the cite, counsel?

MS. MACHNICH: 352 P.3d, 627 from 2015. And it's *Burnside v. State*.

THE COURT: And do you have a copy of the case?

MS. MACHNICH: I -- I do. It does have some markings on it. I apologize. Actually, I may have a clean one right here. I do have a clean one right here.

THE COURT: Okay. Thank you.

State, do you have any argument regarding the case that counsel is citing?

MR. GIORDANI: No, not at all. We've already addressed the arguments that would arise from that case.

MS. MACHNICH: And I -- and, Your Honor, the discussion begins on Pincite 636, right on to the next page from 636.

THE COURT: What head note, counsel?

MS. MACHNICH: It's head note -- starts at 1, and

includes 1, 2 -- 1 and 2 and 3 and 4, 1 through 4.

[Pause in proceedings.]

THE COURT: In reviewing the *Burnside* matter, counsel, the distinction that the Court makes in reference to the case sub judice is that in *Burnside,* they sought to broaden the custodian of records regarding cell phones. And the Court noted that the State was required to provide notice pursuant to NRS 174.2342 that the record's custodian would testify as an expert witness. It failed to do so. Instead, including the records custodian on its notice of lay witnesses.

The State has represented to me that this witness was noticed as an expert witness. I find that distinction to be compelling in this matter. And therefore, my ruling stands.

MS. MACHNICH: Thank you, Your Honor.

MS. BEVERLY: Thank you.

MS. MACHNICH: And I would only note that the area that's listed in the area of comparison --

MS. BEVERLY: Judge --

MS. MACHNICH: -- was --

THE COURT: Thank you, counsel.

MS. BEVERLY: All right.

MS. MACHNICH: Thank you.

THE COURT: Bring the witness -- bring the jury back in, please.

And you understand my ruling, counsel?

MR. GIORDANI: Yes, Your Honor.

THE COURT: Thank you.

MR. GIORDANI: I wrote down the words you said. Can give general information regarding stippling?

THE COURT: No leading.

MR. GIORDANI: No leading?

THE COURT: Counsel. Counsel for the defense, if you could approach.

MS. MACHNICH: Of course.

THE COURT: Thank you.

MS. MACHNICH: Thank you.

[Jury reconvened at 4:08 p.m.]

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

MR. PLUMMER: Yes, Your Honor.

MS. MACHNICH: Yes, Your Honor.

MR. GIORDANI: Yes, Your Honor.

THE COURT: Is the witness still available?

MR. GIORDANI: Yes.

THE COURT: Ma'am, I would remind you you're still under oath.

THE WITNESS: Thank you.

THE COURT: Thank you.

MR. GIORDANI: May I?

THE COURT: You may.

MR. GIORDANI: Thank you.

DIRECT EXAMINATION (CONT.)

BY MR. GIORDANI:

Q Ma'am, what is stippling?

A Stippling from powder is small abrasions or scratches that you get on your skin that would be around a gunshot wound.

Q Okay. And that powder that you referenced, is that the stuff that you were describing earlier is behind a bullet and inside a case?

A Yes.

Q Cartridge case? In general, what range is associated with stippling?

A There are many variables that would go into that. It would depend on the type of gun, the length of the barrel, the type of ammunition, and the caliber. So I wouldn't be able to give an exact number.

Q Understood. What is the furthest distance you have seen associated with stippling?

A Again, I would not be able to give you an exact number.

Q Okay. Are we talking more than 3 feet? Less?

A I have -- I -- because there are so many variables, I would not be able to attest to an exact number. Normally, stippling would be seen at a -- more of a close-to-intermediate range.

Q Okay. What do the terms close to intermediate mean to you?

A Again, I would have a very difficult time giving you a number.

Q Okay. Could it be 25 feet away?

A I would say 25 feet would be too far.

Q Thank you. I want to get back to this firearm that we have, 415. 415. Did you conduct the different types of testing that you described previously on this firearm?

A Yes. Like I described previously, starting with the photography, taking the pictures, noting the serial number, and moving on to the test firing process, I did indeed do that with this firearm.

Q Okay. And was this firearm operable?

A Yes.

Q And did you conduct a countdown on this firearm?

A No, I -- I did not.

Q Understood. Did you receive a magazine associated with this firearm?

A If I may just refer to my report?

Q Would that refresh your memory?

A Yes. So, yes, I did receive a magazine associated with this firearm.

Q Okay. What was the -- well, do we see the magazine in that photo?

A Yes. It's right here on the right-hand side.

Q What was the capacity on that magazine?

A That submitted magazine has a capacity of 17 cartridges.

Q Okay. If there's -- if this magazine is full with 17 cartridges in it, can there be an additional cartridge in the firearm?

A In the chamber, yes.

Q Okay. So if I refer to that to -- as 17 plus one, does that sound

accurate?

A Yes.

Q And that would be the terminology used?

A Yes.

Q Okay. So when you received this firearm, did it have 17 in the magazine?

A No. When I received that, it was not loaded.

Q Okay. Understood. Did you receive cartridges associated with this firearm?

A One moment. I did receive cartridges in a separate package.

Q And how many of those?

A I received 18 total.

Q Okay. Were you able to take one of your own test rounds and -- and fire those from that gun?

A Yes.

Q And were you -- did you then compare the test rounds from this gun to some cartridge cases that you were provided?

A Yes, I did.

Q And how many cartridge cases were you provided?

A I was provided 15 total cartridge cases.

Q Okay. How many .9mm Speer cartridge cases were you provided?

A 12.

Q Okay. And did you compare your test-fired round from this gun to all of those or just some or what?

A To all of those, yes.

Q Okay. And do you have photographs that are associated with that comparison?

A Yes.

Q Did you provide those to us here in court?

A I did.

Q And I'm going to show you now State's already admitted 416; what are we looking at here?

A If you could move it down a tiny bit so I could see the top? So these are comparison photo examples. These are just examples of my comparisons. These are not all encompassing, as I did -- as I mentioned, 12 separate comparisons. These are samples of what I saw. On the left-hand side, the left-hand side of the dividing line is the test fire, and that is from Item -- my lab Item 22, Test Fire B, that's on the left. And my lab Item 36 is on the right. And these are examples of different areas on those cartridge cases.

Q Okay. On the top set of photographs it says primer next to it; what is a primer?

A Primer is on the head stamp area of a cartridge case. It's a chemical compound that when the trigger is pulled on the firearm, the hammer and the striker falls forward and hits that chemical compound, and that's what makes the spark that ignites the powder. So that when the powder burns, it creates gas and that's what propels the bullet down the barrel and out of the muzzle of the gun.

Q Is it common for markings to be left behind when the -- I forget

the term -- hits the primer?

A Yes. The -- the firing pin or the striker or the hammer, when it hits the primer, it typically will leave an indentation, like you will see right here. There can be other markings on this entire primer area, and that's from when that cartridge case goes backwards against the back of the slide, you'll get markings from that as well.

Q Okay. And were there markings in both your test-fired cartridge case in addition to the items of evidence you received from the scene?

A Yes.

Q And did you compare those?

A Yes, I did.

Q What were your results?

A I determined that the 12 cartridge cases were identified as having been fired by the submitted Glock pistol.

Q Okay. So we have a match from 12 cartridge cases to that submitted Glock pistol; is that right?

A Yes.

Q What are we looking at in these bottom three photographs?

[Equipment malfunction; pause in proceedings.]

THE COURT: Counsel, I'm going to take a short recess.

MR. GIORDANI: Okay.

THE COURT: Ladies and gentlemen, we are going to take a short recess [indiscernible] this trial, read, watch or listen to a report or commentary on the trial or any person connected with this trial, any

medium of information, including, without limitation, newspaper, television, radio or Internet, to form or express any opinion on a subject connected with the trial until the case has been finally submitted to you. We'll be in recess.

[Court recessed at 4:17 p.m., until 4:28 p.m.]

[Outside the presence of the jury.]

THE COURT: Let's go back on the record. This is the continuation of the jury trial in Case No. C-15-309578-1 and -2, *State of Nevada vs. Steven Turner and Clemon Hudson*. Let the record reflect the presence of counsel for the State, counsel for the defendants and the presence of the defendants.

Obviously, there was a glitch in the JAVS system, I -- I take it. Are we waiting for --

MR. GIORDANI: Well, no. What the State was going to bring up with you is now that it's been -- you know, we've had that significant delay and now this delay, I won't even be able to probably finish my direct by 5:00. So we need to check with this witness if she can come back tomorrow, unless you're -- unless you plan on staying a little past 5:00. This was going to be our last witness and we were going to rest.

THE COURT: Okay. Check with the witness, see what her preference is. I -- since we only started at 1:00, I would go past 5:00 to finish this witness.

MR. GIORDANI: Okay.

THE COURT: Or see if she can come back tomorrow,

whatever the witness's preference is.

MR. GIORDANI: Okay.

[Pause in proceedings]

MR. GIORDANI: Okay. It sounds like we can --

THE COURT: Okay. The only caveat, counsel, is if the -- some juror has some pressing matter that they have to leave at 5:00. I'm going to inquire of the jury to make -- because of all the delays this afternoon, if we can go beyond 5:00. Unless some juror has, like I said, some pressing matter, we'll try to conclude this witness this afternoon.

MR. GIORDANI: Okay.

MS. BEVERLY: And what are we doing the jury instructions?

THE COURT: We'll do them tomorrow.

MS. BEVERLY: Okay.

MR. GIORDANI: Okay.

THE COURT: Do you want to bring -- well, let's bring the jury in. No, you know what, before we bring the jury in, I do need a stipulation by counsel. I believe the admonishment was recorded, but I want a stipulation that I did admonish the jury prior to the recess.

MR. GIORDANI: You did. We heard you.

MS. MACHNICH: You did, Your Honor. Yes.

MR. PLUMMER: You did, Your Honor.

THE COURT: Thank you. All right. Let's bring the jury in.

[Jury reconvened at 4:34 p.m.]

THE COURT: You may be seated. Do 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, because of all the delays this afternoon I was going to go past 5:00, unless anybody has any pressing matters where they need to leave at 5:00? Seeing no hands, I'm going to -- again, because of all the delays, we're going to go past 5:00 this afternoon.

JUROR NO. 2: How -- how far past are we going to go?

THE COURT: You tell me. Do you have --

JUROR NO. 2: I have a school function I was supposed to be at by 6:00, and I live about 40 minutes from here.

THE COURT: And what time is your school function?

JUROR NO. 2: It starts at 6:00.

THE COURT: Well, we're hopeful to conclude this witness this afternoon. So if it gets close to 6:00, let me know, and I'll inquire of counsel how much longer the witness has.

JUROR NO. 2: All right.

THE COURT: Thank you.

Ma'am, you're still under oath.

THE WITNESS: Thank you.

THE COURT: Thank you.

DIRECT EXAMINATION (CONT.)

BY MR. GIORDANI:

Q Okay. I'm going to try to get through this as quickly as possible. Showing you State's 419; do you recognize that item?

A Yes.

Q And you indicated previously that's one of the firearms you received for testing?

A Yes, that's correct.

Q Did that have a magazine associated with it?

A Yes, it did.

Q And were there cartridges associated with it?

A If I may look at my notes for one moment?

Q Sure.

A Yes, there were.

Q And how many cartridges were associated with it?

A There were nine total.

Q What was the magazine capacity?

A The magazine capacity was eight cartridges.

Q So if there were nine, is it eight plus one, one in the chamber?

A That would be the total capacity of the firearm, yes.

Q Understood. Did you receive any casings from the scene that were in any way associated with this firearm?

A I did not.

Q No fired cases, is what I'm asking?

A I did not receive any fired cartridge cases that I identified to that firearm, no.

Q Understood. I'm showing you now State's 413; do you

recognize that as the Mossberg shotgun you received?

A Yes.

Q And were you able to test fire this?

A I was not.

Q Okay. Why not?

A This shotgun was noted to have an area of damage here on the bottom of the fore-end which proceeded through the magazine tube. And here, this is the top of the magazine tube after I removed the barrel. You can see the bulge right there. And that actually prevented me from being able to move that fore-end forward and backwards.

Q Okay. And what is the fore-end that you're referring to?

A The fore-end is this part that's right up here. This is the handle that you, as the operator of this firearm, would move backwards to extract a fired shot shell, move forward to load a new unfired shot shell in order to ready this pump action shotgun --

Q How --

A -- for firing.

Q Sorry.

A That's okay.

Q How is this shotgun loaded?

A So to load this gun, there is a tube here on the bottom. This part here is the barrel, this part here is the magazine tube. There is a loading port here on the bottom part of this receiver where you take the unfired shot shells and push them here into this magazine tube.

Q Okay. So there's a little port underneath exactly kind of where

that mouse is sitting, right?

A Yes.

Q And then you can load how many rounds, or shot shells, into that?

A I did not check the capacity of this one specifically, due to the damage.

Q Okay. So when you received this item, did you actually have to physically take it apart in order to examine it and look inside of it?

A Yes.

Q What areas did you take apart?

A I removed the barrel. So this part here I actually removed. I removed the trigger guard, which is this part here, and actually the entire trigger group, took that out of the receiver. There are two pieces, also, inside the receiver, one is a shell stop and one is a shell interrupter. They're just little pieces of metal that help the shot shell, when you're loading and unloading it from this magazine. It stops it from going backwards and help it to go forwards.

There's a bolt also inside there that I was unable to remove, and that is because I could not move this fore-end forward or backward. So --

Q Okay. Go ahead.

A -- after I removed the barrel and removed the trigger group, I was -- and those two little shell interrupters, I was unable to disassemble the shotgun any further.

Q Okay. Fair to say that when you received that shotgun, it was

inoperable?

A Yes.

Q And based upon your examination of the gun, was it inoperable due to whatever struck it here?

A Yes.

Q Did you examine the interior of this hole in the bottom right of the exhibit?

A Yes.

Q Did you find anything?

A Yes. When the shotgun was initially brought into our laboratory by the crime scene analyst, there was a small metal fragment that was -- actually, it was in between this magazine tube and the end of this fore-end. It was jammed in there.

Q Okay. And if you recall, did that small metal fragment -- fragment get placed by you into a little plastic vial and then taped to the shotgun when you rebooked -- reimpounded it?

A Yes, I believe so.

Q Does that sound about right?

A Sounds about right.

Q Okay. I'm not going to pull the box here. 419, did you receive shotgun rounds associated with that shotgun?

A Yes.

Q How many did you receive?

A I received, if I just can make sure?

Q Sure.

A I received four unfired shot shells, these four pictured here. And then I received one fired shot shell, this one down here.

Q Okay. Where was that fired shot shell taken from?

A It was removed from the chamber of the pump shotgun.

Q Okay. Now, what are we looking at in the center photograph here?

A That center photo, what I did is I took one of these unfired shot shells and I actually just cut it apart. I took a scalpel, made a slit right here, removed the wad and also the shot pellets and the powder in here.

Q Okay. Where is it in -- within this round that these pellets and this powder would be?

A So it's sort of like with a cartridge, like I described before. Here on this shot shell you have the primer that's in the bottom; you would have the powder inside here, and then the wad itself sits on top of that. This bottom part of the wad here, this is the over-powder part, sits over top of the powder. Then there's this little buffer piece, this little shock absorber piece here. Then this part is the shot cup part, and that's the part that contains the shot and all of that is inside the shot shell when it's fully assembled.

Q Do the cup and the --

A The over --

Q -- I apologize.

A -- powder part.

Q Yes. Does all of that get expended when a shotgun round is fired?

A Yes.

Q Showing you now State's 420; what are we looking at in the top three photographs here?

A So I also received two items of evidence, two pieces of wads here. And they were in two separate items. But here I put -- put them together. This piece here was consistent with the over-powder components of a combination wad. This piece here is consistent with a shot cup component. And I just photographed them here, right next to one of the wads from the shot shell that I disassembled.

Q Okay. So the one -- in the photograph with the two, one of them is a clean one, that's from the disassembled round that you did yourself?

A Correct.

Q And then the one on the right is reassembled by yourself from items at the scene, or items given to you?

A Right. It's just -- it's just the two components sitting next to each other and they're not attached together or anything.

Q Okay.

A I just posed them that way for the photograph.

Q Understood. Did you also receive several tiny shot pellets?

A Yes.

Q And are those depicted in this photograph that we're looking at here?

A Yes, they are.

Q And where are they?

A Oh, those are -- those are here, these items, 42, 43.

Q Okay. Did --

A And this little item here.

Q Did you compare these items to what was found when you disassembled that clean round?

A Yes.

Q And what was your -- the results of that comparison?

A So these are submitted shot pellets here from Item 42 and 43, were determined to be consistent in size, weight, and composition with Number 6 steel shot, which is the same size shot that was included in those unfired shot shells that I received.

Q Understood. What are the items down here?

A So these are pieces broken off of that fore-end, where it had that impact damage, so some plastic pieces.

Q Understood. I want to move on now to, again, State's 412. We briefly touched on this. Can you tell the jury, real quick, how this firearm is loaded?

A Yes. So this firearm has a removable magazine here. And it's loaded with cartridges in the top and then that magazine is inserted. There's -- there's a magazine port here, you can't really see it, on the bottom of this receiver where it's inserted. And then to get that top cartridge into the chamber, this bolt here, right here it's forward, if you move it backwards and then let it go forward, what it does is it takes that top cartridge out of the magazine, loads it into the chamber. So the magazine is kind of like a Pez dispenser, it has a spring that's pushing

those cartridges up. And the bolt on the bottom, there's a little lip and it just grabs that top cartridge and puts it forward into the chamber.

Q Okay. And you previously indicated this is a semi-automatic rifle?

A Yes.

Q Is this something where it only needs to be cocked or racked once in order to expend all the rounds in the magazine?

A So what it is, is you need to pull the trigger for each shot that you want to fire. But seeing as that it is semi-automatic, like what I described earlier, it does perform a part of that cycle and fire for you. Which is after you shoot, like I had described earlier, you have a firing pin that goes forward, hits the primer which ignites a spark, burns the powder, that's what propels the bullet forward, down the barrel and out of the muzzle.

Then for every action, you have an equal and opposite reaction: Bullet's going forward, cartridge case is going backwards against the back of that bolt, that is extracted and ejected from the firearm. Then when the bolt goes forward again, picks up the next cartridge from the magazine and loads it into the chamber. Then you have to pull the trigger again to fire another shot.

Q Understood. So to fire multiple rounds from this, you don't just hold the trigger down, you have to pull for each round; is that accurate?

A Correct. That would be a fully automatic firearm, where you held the trigger down and the gun continued to fire.

Q Understood. And with regard to this, similar to the shotgun,

does it take two hands to arm this rifle?

A I would say it's -- it's generally designed that you would hold it with two hands, Yes.

Q Okay. With regard to this firearm, were there cartridges in the magazine or did you receive cartridges separately?

A As I received it, it was not loaded. However I did receive cartridges separately.

Q Okay. And what's the caliber of this firearm?

A This is a 7.62x39 millimeter caliber firearm.

Q And what type were the cartridges that you received -- what caliber were the cartridges you received?

A They were the same, 7.62x39 millimeter.

Q Okay. Did you test fire this weapon in an attempt to compare your results to the cartridges?

A I did.

Q And what were your results? Oh, I'm sorry, let me -- let me ask you, more importantly, how many cartridge cases did you receive in that caliber?

A I did receive three cartridge cases in that caliber.

Q Okay. And did you test fire this weapon?

A Yes, I did.

Q Did you attempt to compare your test-fired cartridge cases to your evidence cartridge cases?

A Yes, I did.

Q And what were your results there?

A So the three cartridge cases that I received as evidence, they did share a similar general overall appearance, and they did have some limited corresponding microscopic information with the test-fired cartridge cases from this particular firearm.

However, due to a lack of microscopic detail, I was unable to make a conclusion as to whether they were identified or eliminated as having come from this specific rifle.

Q Are there different types of ammunition or cartridge cases that are more amenable to having markings left on them than others?

A Yes. Different ammunition is made of different metals and some metal is harder, some softer, so some mark better than others.

Q Was this made of a harder metal?

A Yes, these were all steel-cased cartridge cases, so.

Q Okay. So consistent caliber with this firearm, correct?

A Yes.

Q But you were unable to say conclusively they came from this firearm?

A Correct.

Q Okay. Did you receive -- or actually, with regard to this firearm specifically, does that have a -- a recoil associated with each trigger pull?

A Yes, it would have an amount of felt recoil when you pulled the trigger.

Q Okay. Same thing with the shotgun?

A I -- I, obviously, didn't test fire it --

Q Right.

A -- but -- but I would expect, in general, that a 12-gauge shotgun would also have some felt recoil, Yes.

Q Understood. Were there also several metal fragment -- fragments that you received to look at?

A Yes.

Q Showing you State's 417; are we looking at those -- some of those metal fragments?

A Yes.

Q And top right of this photograph, Item 46, were you able to examine that and come to any conclusion with regard to that?

A Yes. That particular item there is a bullet. And I can see the base of it here, so I could measure it and look at the caliber of it. And I could just see enough rifling impressions around the sides of that base to get a general idea of what type of caliber it was and what type of gun it could have come from.

Q Okay. And what type of caliber could it have come from?

A So that particular bullet was -- it had similar general rifling characteristics with the test-fired bullets from the submitted Glock pistol.

Q Okay. And I'm showing you, now -- so we've got Item 46 out of the way, showing you Exhibit 417, with Exhibit 418 overlapping it. Now are you seeing six different items?

A Yes.

Q Okay. Are those all items of metal fragments that you received for analysis?

A Yes.

Q And did you attempt to process all of those six items?

A I did.

Q And what were your results? And if you want to go one by one, that's fine, or generally.

A In general, all of those fragments, they did not have any items -- I'm sorry, any markings of value for microscopic comparison. So no rifling impressions.

Q Okay. So nothing that you can determinatively say which firearm which fragment comes from?

A That's correct.

Q Fair to say these are all pretty mangled pieces of metal?

A Yes.

Q And so you were unable to see your little lines and impressions that you typically would see or you referred to earlier?

A Right. And I did actually unfold these, these -- these ones that were folded up here, opened them up to examine them more closely under the microscope, but was not able to get any rifling impressions, any marks of value for me to perform any comparisons with those.

Q Okay. With regard to Item 52, are those little pieces of wood stuck in there?

A If I may just look in my notes?

Q Would that refresh your memory?

A Yes.

Q Okay.

A So what I noted for Item 52 was that there was possible dirt and possible building material, looks -- looked to me, like, maybe drywall or wall material.

Q Okay. Building material?

A That's -- that was what I wrote in my notes.

Q What about Item 54 up here?

A So Item 54 had a piece of white stuffing in the vial along with it, and you can see that in the picture there.

Q Okay. The very last little line of questioning here. Do you test the rifle and the shotgun for trigger weights?

A I did test the rifle, but as the shotgun being inoperable, I was unable to do that.

Q Understood. What's a trigger weight?

A So a trigger weight is a weight that we use to determine the amount of force that it takes to pull the trigger.

Q Okay. So you said with the shotgun you couldn't test the trigger weight, because it was in operable, correct?

A I could not test the amount of weight that it would take to pull the trigger, no.

Q 412, the long rifle, what was the weight associated with that?

A Yes, that did have a trigger pull of 4-3/4 to 5-1/4 pounds.

Q How exactly do you test that?

A Yes. We hold the rifle, with the muzzle pointing upward, and with the gun cocked, and then we have a hook that we hang on the trigger that hangs down, and we add a series of weight plates until the

trigger is actually pulled.

Q Okay. So this is a little over five, correct?

A It's --

Q Five pounds?

A -- 4-3/4 to 5-1/4.

Q Okay.

A We record a range as to where the weight holds and then the weight where the trigger actually is pulled.

Q Okay.

A So we do record as a range.

Q So, approximately, if you think about it, a five-pound dumbbell, and you would have to hang that amount of weight from that trigger in order for it to get pulled?

A Yes, that's correct.

Q Understood.

MR. GIORDANI: I'll pass the witness.

Thank you.

THE COURT: Defense, any cross-examination?

MS. MACHNICH: Yes. Briefly, Your Honor.

Did you -- are they all right here?

MR. GIORDANI: Yes, everything should be up there.

MS. MACHNICH: Oh, perfect. Ah, there's my CD. Thank you.

CROSS-EXAMINATION

BY MS. MACHNICH:

Q All right. A few questions. All right. So briefly revisiting our gunshot residue conversation from earlier that you had with the State earlier, The presence or absence of gunpowder on the clothing or skin indicates whether the gunshot was contact, close, intermediate, or distant, correct?

A That would be fair to say, Yes.

Q Okay. And to determine distance, a particular gun must be test fired with the same ammunition if accurate comparisons are to be made?

A Yes. When we are determining distance, we do use the particular gun in question, the particular ammunition in question, to make test patterns at known distances so we can compare those to an unknown pattern.

Q And that was not done in this case?

A No.

Q Okay. Turning our attention to all of the work that you did do, you were given 54 lab items?

A Yes.

Q Okay. Or worked with 54 lab items?

A There -- there's 54 item numbers, which there's some that I didn't examine, so I believe it equated to 47 individual evidence items.

Q Okay. And you're aware in this case that there were allegedly 12 shots fired by a Glock .9mm?

A I -- I'm not aware of that. I did actually identify 12 cartridge cases as having been fired by the Glock.

Q Perfect. And so in addition to that, you identified three cartridge casings having been identified to the 7.62x39 millimeter cartridge?

A No, I actually did not identify those. Those shared the same similar general overall appearance. But, again, to -- due to the lack of sufficiency in the microscopic marks, I was unable to identify or eliminate those as having been fired by that rifle.

Q Fair enough, and I appreciate your specificity. You had three cartridge casings that were of similar caliber and make that were located on scene to those rifle cartridges?

A Yes, that's correct.

Q Okay. And one shotgun shell?

A One fired shot shell. Yes.

Q Okay. Make sure I'm using the right terminology.

A Yes.

Q Okay. So as the State noted, referencing State's Exhibit 417 and 418, the five, all but the top right on 417, and then the one on 418, you recognize these as the metal fragments --

A Yes.

Q -- that -- that you examined, correct?

A Yes.

Q Okay. And you were not able to tell what originating bullets these came from, because they did not have any significant microscopic markings of value for microscopic comparisons?

A That's correct.

Q Okay. And similarly, Item 46, which is depicted on State's 417, that item is a bullet?

A Correct.

Q As previously discussed. And let me see, and you could determine that it was consistent with the rifling from the Glock pistol you examined?

A Yes.

Q But it was damaged badly?

A Yes. So I was unable to conclusively identify it to the Glock pistol, but it did have rifling impressions consistent with the Glock pistol.

Q But you don't know what it hit to cause this?

A I have no idea.

Q Okay. And were you ever asked to assess a second bullet retrieved from the scene on September 15th, 2015?

A I -- if I may look at my notes?

Q Of course.

A I'm not a hundred percent sure if this was the bullet that you were referring to, I think this is the one that -- there was one bullet that was booked later.

Q Okay.

A Is that the one that you're referring to? I did talk to Detective Patton and asked him if he did want me to examine that bullet, and he said no.

Q Okay. So you did not do any of the comparisons or examinations on that bullet?

A I did not.

Q Okay. And so other than the two bullets we've already discussed, did you receive any other bullets associated with this scene? Not -- not fragments, but actual bullets?

A So other than this bullet and the one that was booked later?

Q Correct.

A All right. Just one moment. No, I did not.

Q Okay. So you're not aware if the additional potential ten bullets corresponding to the shells, .9mm casings that you found, were ever -- ever acquired or --

A I -- yeah, they were never requested of me to examine those, so I have no idea if they were impounded or what -- where they would be. I -- I don't know.

Q But they were not requested of you?

A They were not.

Q Thank you.

A You're welcome.

Q I appreciate it.

MS. MACHNICH: No further questions.

THE COURT: Any cross-examination Mr. Plummer?

MR. PLUMMER: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. PLUMMER:

Q Hi. Good evening.

A Hi.

Q I guess I want to start with the fragment that you pulled out of the shotgun; do you remember that fragment?

A Yes. There is a picture of it, I believe it's Number 8.

Q Now, that fragment, you weren't able to determine what weapon that came from?

A No. Just like the other small fragments, it did not have any rifling impressions for me to be able to compare it to any of the test fires.

Q So it could have come from a ricochet off from a .9mm?

A Could have come from any variety of places.

Q Okay. Now, let's -- let's talk about when bullets impact, depending on the surface they impact on, they can shatter?

A Fragment?

Q Yeah.

A Certainly.

Q Shatter into fragments? They can get lodged and stay whole?

A Certainly.

Q You didn't have any that stayed whole; they all fragmented?

A I did have that one that was on the photo --

Q That was the closest?

A That was 46, which was mushroomed, but it was mostly intact.

Q Now -- but you agree with me that when bullets hit hard surfaces, they fragment into different pieces and go in all different directions?

A Well, depends on the construction of the bullet, depends on the distance it's fired from, depends on what the surface is.

Q With all of these little fragments that you've examined, it appears that they were fragmented into little pieces and going in different directions?

A It does appear that way, yes.

Q Now, let's -- let's talk about the trigger pull that you were discussing and was described as putting a five-pound weight barbell on to pull the trigger. Do you know what manufacturing specifications are?

A I do know what they are, yes.

Q And the SKS was within the manufacturing specifications?

A I didn't look up what the manufacturing specs were for that trigger pull, but in my experience, that trigger pull is approximately what I would expect from that type of a firearm.

Q So that's a normal trigger pull?

A Yes.

Q You're familiar with the different types of shotgun shells?

A Yes.

Q What's birdshot?

A In general --

Q Yes.

A -- birdshot is a small-sized pellet, usually 7, 7-1/2, size 8 shot that would be loaded into a shot shell that would be intended for use when hunting birds.

Q So the birdshot is designed with lots of little, tiny pellets?

A Yes.

Q In a Number 6 birdshot, that consists -- for steel birdshot

consists, normally, of 225 little pellets?

A Well, it would depend on the shot shell. Different manufacturers load different numbers.

Q On average, it contains about 225 --

A I wouldn't be --

Q -- for steel?

A -- able to give you an exact number due to differences in manufacturers.

Q Okay. Well, did you count the number of little pellets?

A I did not.

Q So you're not familiar -- all right, so you're not familiar with the number of little pellets in birdshot?

A I couldn't give you an exact number. No.

Q Are you familiar with what a BB is?

A Yes.

Q And just for -- for lead BBs in a similar shotgun shell, the number would be 25.

A Again, depending on the manufacturer, It may vary.

Q Vary in -- in what degree? I mean, can one manufacturer fit more of the same size pellets --

A Well, there is a --

Q -- into a shell?

A -- limitation, obviously, to the size of the shell.

Q Yes. How about -- I want to talk about the shells we have here.

A Uh-huh.

Q The shells we have here, under those designs, that manufacturer would be 225 for a Number 6 birdshot.

A Again, I did not count it, so I could not say.

Q You will agree with me that these pellets were considerably smaller than a BB?

A I would agree with that. Yes.

Q I'm going to draw your attention to Exhibit 413. This hole here is where you pulled out the -- the shard?

A Correct.

Q Now, if a full bullet were to hit that part of this shotgun and shattered into little pieces, you would have expected the whole casing to blow off?

A When you say casing?

Q Well, the -- right -- right here.

A This -- this fore-end?

Q This -- this right here.

A This piece? Yeah, this --

Q The plastic.

A Yeah, this plastic --

Q It would have shattered --

A -- fore-end?

Q -- the plastic into little, bitty pieces.

A Well, and it did break some small pieces off.

Q Correct. But if you had a full bullet impact that and shatter,

you would expect that to be broken up into multiple pieces?

A I couldn't possibly speculate as to that.

Q How many bullets have you seen hit plastic?

A Oh, jeez.

Q Many?

A Many. Situations similar to this. I've seen situations where guns have been shot, you know, where different -- different items at scenes have been shot.

Q But when bullets hit items and they fragment, they tend to scatter in different directions?

A The fragments?

Q The fragments.

A Yes.

Q And the --

MR. PLUMMER: You know what, Your Honor, I don't have any additional questions for this witness.

THE COURT: Any redirect by the --

MR. GIORDANI: Yes, Your Honor.

THE COURT: -- State?

MR. GIORDANI: I'll be brief.

REDIRECT EXAMINATION

BY MR. GIORDANI:

Q State's 413, that sure as hell isn't a BB gun, is it?

A That is not.

Q Okay. Ms. Machnich asked you a couple of questions about

stippling, and I want to ask you a yes-or-no question. In your experience, have you seen stippling from a distance greater than 3 feet?

MS. MACHNICH: Your Honor, I'm going to object pursuant to a prior ruling.

THE COURT: Counsel approach.

MR. GIORDANI: Okay. Yeah.

[Bench conference transcribed as follows.]

THE COURT: You're suggesting the answer.

MS. MACHNICH: Yes.

THE COURT: It's a leading question.

MR. GIORDANI: No, it's a yes-or-no question. I'm not suggesting an answer. And that's the only way I can ask it. When it was initially asked, the -- the witness said, when -- what she was saying was, I have -- and she was about to say, I have not, and the objection came up. So now this jury is left with the impression that she has seen stippling greater than 3 feet.

THE COURT: Okay. But my question is, how does her question open the door for you to ask that question? That's my --

MR. GIORDANI: She --

THE COURT: -- concern.

MR. GIORDANI: What she just asked was, stippling can occur -- I think I jotted it down. But stippling can occur, or depends upon varying calibers, degrees, distances, etcetera.

MS. MACHNICH: Yes.

MR. GIORDANI: Right.

MS. MACHNICH: Very specific [indiscernible].

MR. GIORDANI: But stippling doesn't occur, or at least in her experience, not greater than 3 feet. So --

THE COURT: Okay. But she -- her --

MR. GIORDANI: -- the only way --

THE COURT: Her initial answer was based on the variables.

MR. GIORDANI: Yes. But the problem with that is her initial answer that came in front of the jury was, Yes, I have. And then Tegan -- Ms. Machnich objected, and she was cut off there. So this jury is left with the impression that it's, Yes, I have, when she hasn't.

THE COURT: I don't remember this line of questioning. What was your --

MR. GIORDANI: Before -- no, this was before.

THE COURT: Okay. Before my ruling?

MR. GIORDANI: Yes.

THE COURT: And then I made a ruling that you could ask her general questions about stippling --

MR. GIORDANI: Right.

THE COURT: -- without leading her as to suggesting an answer.

MR. GIORDANI: Right.

THE COURT: Okay.

MR. GIORDANI: And that's why I said it specifically to yes or no --

THE COURT: All right. Restate your question to the extent

of -- what was your concern? Because she cut it off?

MS. MACHNICH: Right.

MR. GIORDANI: Well, number one, she cut it off. When this witness was -- very first witness objection came up, I asked the question, Have you ever seen stippling greater than 3 feet? She said, I have, when the answer was going to be, I have not. And Ms. Machnich objected at, I have. So now the jury has heard, I have, when that's not accurate. And Ms. Machnich just raised different calibers and distances, etcetera, affect stippling, which is accurate. But what I'm trying to do is clarify --

MS. MACHNICH: Your Honor, I believe he's trying to lead her into it. He suggested a distance that he's looking for.

THE COURT: Okay. You can ask her the question, a general question, with regard to stippling. And what -- I'm sorry. I apologize, what is the question that you have?

MR. GIORDANI: The question -- I phrased it specifically -- was, yes or no. I'm not suggesting an answer. That's yes or no, have you seen it -- ever seen it greater than 3 feet?

THE COURT: Okay. Make it more general.

MS. MACHNICH: Well, that would be asked and answered. He did ask that general question, How far have you said? And she said, I couldn't possibly say. And he said, Greater -- or, Have you ever seen it greater than 25 feet? And she said, No.

MR. GIORDANI: Yeah, that's the problem. Now the jury is misled.

THE COURT: Okay. Well --

MS. MACHNICH: There --

THE COURT: -- the objection was sustained, so I'm not sure the jury was misled if they only heard a partial answer. You need to ask it in terms of, What is the distance that you've seen stippling? Based on your experience, what are the distances that you've seen stippling? Something along -- an open-ended question like that.

MS. MACHNICH: Yeah.

MR. GIORDANI: Okay. The -- the only problem with that is that she cannot say the exact distances. All she can say is --

THE COURT: Well, you can ask: Based on your experience, what are the distances that you've seen stippling? What is the shortest distance you've seen stippling? What is the longest distance? In other words, for some reasons, 3 feet is -- seems to be of concern to both parties.

MS. MACHNICH: It's putting a number on it that, sure, when she said that she can't.

THE COURT: Okay. But what I'm saying, you can ask her, Based on your experience, what is the shortest distance that you've seen stippling?

MR. GIORDANI: Okay.

THE COURT: And what is the longest? I mean, in other words, her initial answer, you said it was on variables and things like that. Now you can ask her, Based on your experience, what is the distances you've seen stippling?

MR. GIORDANI: Can I ask her for a range of distances? So that at least --

THE COURT: Based on her experience. In other words --

MR. GIORDANI: Okay.

THE COURT: -- I'm asking her based on her experience, what is the distances that you've seen stippling.

MR. GIORDANI: Okay.

THE COURT: But, counsel, not the -- don't use the -- let her say 3 feet, 4 feet, 5 feet --

MR. GIORDANI: Okay.

THE COURT: -- things of that nature.

MR. GIORDANI: Okay.

THE COURT: So you can ask that type of question, what are the ranges, things like that, an open-ended -- but what are the ranges or what is the shortest -- come closer. What is the shortest distance? I just don't want you to give a specific number.

MR. GIORDANI: Right. And the only problem with that is this is an expert who has lab credentials and stuff --

THE COURT: I understand.

MR. GIORDANI: -- and she's going to say, I can't remember --

THE COURT: Right. But based on her experience, she can testify, okay, do you have experience -- what is the shortest distance that you have seen stippling based on your -- your specific experience. She can answer that.

MR. GIORDANI: Okay.

THE COURT: All right. Let's see what happens with that type of question.

MR. GIORDANI: Okay.

[End of bench conference.]

BY MR. GIORDANI:

Q Based upon your experience with stippling, what is the shortest and furthest distances you have seen yourself?

A I would say, approximately, from a near-contact shot out to approximately 36 inches.

Q Understood. Thank you.

MR. GIORDANI: Pass the witness.

THE COURT: Thank you.

Any recross -- recross-examination by the defense?

MS. MACHNICH: No, Your Honor.

THE COURT: Thank you.

MR. PLUMMER: No, Your Honor.

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

MR. GIORDANI: Yes, Your Honor.

THE COURT: Ma'am, thank you, and you are excused.

THE WITNESS: Thank you, Your Honor.

THE COURT: Thank you.

At this time, counsel, will you approach, please?

[Bench conference transcribed as follows.]

THE COURT: Is the State going to call any additional

witnesses?

MS. BEVERLY: We're going to talk about it tonight. We don't want to rest yet.

THE COURT: Okay. So you're not resting yet?

MS. BEVERLY: No.

THE COURT: Okay. That's fine.

MS. BEVERLY: Okay.

THE COURT: That's all I wanted to know.

MS. MACHNICH: Okay.

THE COURT: Sometime tomorrow -- I assume you're getting close to the end of the trial?

MS. BEVERLY: Yeah. Can we come a little earlier, like -- like, 12:00 or --

THE COURT: No, I can't.

MS. BEVERLY: Okay.

THE COURT: I don't have the courtroom. I'm in my civil calendar tomorrow. That usually lasts to almost noon.

MS. BEVERLY: Okay.

THE COURT: Or at least 11:30. So we're going to start -- my question is, when do you anticipate settling jury instructions, at what point?

MR. GIORDANI: Depends on -- we can do it tomorrow at 1:15.

THE COURT: No, no. I'm just going to have them come back here at 1:00 then.

MS. BEVERLY: Oh, okay.

THE COURT: Thank you.

MR. GIORDANI: But we -- we're available to come settle them whenever you're --

MS. MACHNICH: And for us, as well.

THE COURT: We're just going to come back at 1:00 tomorrow.

MS. MACHNICH: Okay.

THE COURT: Thank you.

[End of bench conference.]

THE COURT: Ladies and gentlemen, we're going to take our evening recess. During this recess, you are admonished not to talk or converse among yourselves or with anyone else on any subject connected with this trial, or read, watch, or listen to any report of or commentary on the trial or any person connected with this trial by any medium of information, including, without limitation, newspaper, television, radio, or Internet, or to form or express any opinion on any subject connected with the trial until the case is finally submitted to you.

We will be in recess until 1:00 tomorrow. Thank you.

[Jury recessed at 5:15 p.m.]

THE COURT: Let the record reflect that -- the absence of the jury.

Counsel, you're going to discuss tonight whether you're going to rest or not, or call additional witnesses; is that correct?

MR. GIORDANI: Yes, Your Honor.

THE COURT: State, do you want me to do the waiver of right against self-incrimination tonight, or do you want to do it tomorrow?

MS. MACHNICH: It would probably be a good use of time to do it now, if Your Honor is willing.

THE COURT: Okay. I would prefer to do it now.

MS. MACHNICH: Okay. We would too.

THE COURT: Okay. I'm going to address Mr. Turner first.

Mr. Turner, under the Constitution of the United States and under the Constitution of the State of Nevada, you cannot be compelled to testify in this case; do you understand that?

DEFENDANT TURNER: Yes, sir.

THE COURT: You need to speak up, sir.

DEFENDANT TURNER: Yes, sir.

THE COURT: Thank you. You may, at your own request, give up this right and take the witness stand and testify. If you do, you will be subject to cross-examination by the deputy district attorney And anything that you -- that you may say, be it on direct or cross-examination, will be the subject of fair comment when the deputy district attorney speaks to the jury in his or her final argument; do you understand that?

DEFENDANT TURNER: Yes, sir.

THE COURT: If you choose not to testify, the Court will not permit the deputy district attorney to make any comments to the jury because you have not testified; do you understand that?

DEFENDANT TURNER: Yes, sir.

THE COURT: If you elect to testify -- I'm sorry.

If you elect not to testify, the Court will instruct the jury, but only if your attorney specifically requests, as follows: The law does not compel a defendant in a criminal case to take the stand and testify, and no presumption may be raised, and no inference of any kind may be drawn, from the failure of a defendant -- from the failure of the defendant to testify; do you have any questions about these rights?

DEFENDANT TURNER: No. No, sir.

THE COURT: You are further advised that if you have a felony conviction and more than 10 years has not elapsed from the date that you have been convicted or discharged from prison, parole, or probation, whichever is later, and the defense has not sought to preclude that coming before the jury, and you elect to take the stand and testify, the deputy district attorney, in the presence of the jury, will be permitted to ask you the following -- the following:

1. Have you been convicted of a felony?

2. What was the felony?

and 3. When did it happen?

However, no details may be gone into; do you understand that, sir?

DEFENDANT TURNER: Yes, sir.

THE COURT: Thank you.

Mr. Hudson, under the Constitution of the United States and under the Constitution of the State of Nevada, you cannot be compelled to testify in this case; do you understand that?

DEFENDANT HUDSON: Yes, sir.

THE COURT: You may, at your own request, give up this right and take the witness stand and testify. If you do, you will be subject to cross-examination by the deputy district attorney and anything that you may say, be it on direct or cross-examination, will be the subject of fair comment when the deputy district attorney speaks to the jury in his or her final argument; do you understand that?

DEFENDANT HUDSON: Yes, sir.

THE COURT: If you choose not to testify, the Court will not permit the deputy district attorney to make any comments to the jury because you have not testified; do you understand that?

DEFENDANT HUDSON: Yes, sir.

THE COURT: If you elect not to testify, the Court will instruct the jury, but only if your attorney specifically requests, as follows: The law does not compel defendant in a criminal case to take the stand and testify, and no presumption may be raised, and no inference of any kind may be drawn, from the failure of a defendant to testify; do you have any questions about these rights?

DEFENDANT HUDSON: No, sir.

THE COURT: You are further advised that if you have a felony conviction, and more than 10 years has elapsed -- has not elapsed from the date you have been convicted or discharged from prison, parole, or probation, whichever is later, and the defense has not stopped to preclude that coming before the jury, and you elect to take the stand and testify, the deputy district attorney, in the presence of the

jury, will be permitted to ask you the following:

1. Have you been convicted of a felony?

2. What was the felony?

and 3. When did it happen?

However, no details may be gone into; do you understand that, sir?

DEFENDANT HUDSON: Yes, sir.

THE COURT: This Court will be in recess until tomorrow at 1:00.

MR. GIORDANI: 1:00.

MS. MACHNICH: Thank you, Your Honor.

MR. GIORDANI: Thank you.

THE COURT: Thank you.

[Court recessed at 5:20 p.m., until April 25, 2018, at 1:00 p.m.]

/ / /

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

Shawna Ortega

Shawna Ortega, CET*562