

IN THE CIRCUIT COURT IN THE EIGHTEENTH JUDICIAL CIRCUIT IN
AND FOR BREVARD COUNTY, FLORIDA

CASE NUMBER: 05-2015-CF-039550-AXXX-XX

STATE OF FLORIDA,

Plaintiff,

vs.

JOHN FRANKLIN DEROSSETT,

Defendant.

-----/

TRANSCRIPT OF IMMUNITY HEARING

DATE: August 27-31, 2018

PLACE: Historic Titusville Courthouse
506 South Palm Avenue
Titusville, Florida 32796.

BEFORE: The Honorable Robin Lemonidis,
Circuit Court Judge.

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1 TITUSVILLE, FLORIDA 8/27-31/2018

2 NOTE - Every effort has been made to correctly
3 identify speakers, but due to the nature of recordings
4 this is sometimes impossible.

5 NOTE - Efforts have been made not to transcribe any
6 obvious attorney/client privileged conversations, and
7 transcriptionist is not responsible for any inadvertent
8 transcription of such conversations.

9

10 WHEREUPON:

11 THE COURT: All righty, Mr. Panella, good morning.

12 MR. PANELLA: Good morning Your Honor. Nice to see
13 you.

14 THE COURT: Nice to see you.

15 MR. PANELLA: And I'd like to introduce you to John
16 West who is our co-counsel on this case.

17 THE COURT: I know Mr. West. Good morning Mr.
18 West. Nice to see you.

19 MR. PANELLA: Our client is downstairs. He can be
20 brought up anytime.

21 THE COURT: Okay. I think -- have we addressed
22 everybody? I think we did. That was the last thing was
23 Ms -- yes. So, we are ready to address Mr -- then --

24 THE CLERK: May we have a few minutes to finish
25 arranging the evidence to the State's liking?

1 THE COURT: Sure.

2 THE CLERK: Where ever it needs to go to.

3 THE COURT: We can -- well, can we use these
4 couple -- I mean, does that actively engage these
5 gentlemen? Because I would -- I wanted to just ask them
6 about a couple of scheduling matters if I could.

7 THE CLERK: No, that's fine.

8 THE COURT: Then we're not -- I mean, that way we
9 can understand what we're doing, and how long, and when
10 we're -- let's do some scheduling. We're planning
11 now -- we've set aside three and a half days.

12 I don't -- I think there's very little on the -- at
13 the end of the half day that we scheduled. So, just in
14 case. But can anybody give me an idea of how many
15 witnesses you'll have?

16 MR. PANELLA: Judge, I know that we have put 25
17 folks under subpoena.

18 THE COURT: Right.

19 MR. PANELLA: We intend to call some 10 to 15.

20 THE COURT: Okay.

21 MR. PANELLA: I've actually asked the State trying
22 to coordinate, but I'm not sure what they're intending
23 to do. So, I don't know the answer to that.

24 THE COURT: Okay. Well, just -- Mr. Respess, what
25 are your thoughts sir?

1 MR. RESPESS: Well, this is one of those situations
2 where the Defense goes first and puts on what they want
3 to put on, and then we'll respond. I believe that we'll
4 be able to handle many of the witnesses through cross
5 and not have any need to call them.

6 THE COURT: Okay.

7 MR. RESPESS: You know, if the Defense is calling
8 some of the witnesses that I anticipate hearing. So,
9 however this flows. And of course we're in the middle,
10 I don't think the Supreme Court is going to answer the
11 question until probably December about who's correct --

12 THE COURT: Right.

13 MR. RESPESS: (Cont'd) in the district courts of
14 appeal. So, we're asking you to look at this from both
15 directions to be safe, but I believe that the correct is
16 that it's not retroactive, but we need to -- we need to
17 look at it both ways.

18 THE COURT: Right, right.

19 MR. RESPESS: So, with that we'll go any direction
20 you tell us to.

21 MR. PANELLA: If I may respond Judge?

22 THE COURT: Certainly.

23 MR. PANELLA: And so obviously this is an important
24 deal on whether this is going to be applied to the
25 current law retroactively.

1 At a prior docket sounding on this case I asked the
2 Court what you intended to do, and you indicated to the
3 attorneys, including Mr. Scheiner, that at that point
4 the Martin decision had just come out.

5 And you said you were going to go ahead and apply
6 the new standard retroactively with clear and convincing
7 evidence on the State. I believe that's when Mr.
8 Scheiner said, yes, Judge, we have to put on our whole
9 case.

10 So, I agree that we have the initial burden by a
11 prima facie case to go ahead and present evidence, but
12 then that needs to be overcome by clear and convincing
13 evidence by the State.

14 And I think the greater weight of the cases right
15 now says that that's the correct way to do it, not to
16 mention the Rajai case and the other ones that are
17 coming out of Palm Beach that are more recent than
18 anything else.

19 THE COURT: We'll have to repeat some of this when
20 your client is present, but I read those cases very
21 carefully this weekend, and the Love case, which came
22 out of the Third after the Martin case came out --

23 MR. PANELLA: Em-hmm.

24 THE COURT: And I think you were here at a point
25 right after Martin and before Love --

1 MR. PANELLA: That may be.

2 THE COURT: (Cont'd) and that's why -- because I
3 tracked it back in my mind and I thought about it coming
4 and I thought, well, if it was anything it was, well, at
5 this point this is what the deal --

6 MR. PANELLA: Okay.

7 THE COURT: (Cont'd) this is what is there
8 appellate wise. And then what I feel is a better
9 reasoned decision came out of the Third, which went back
10 to Smiley, which is the Florida Supreme Court decision
11 from I believe it was 2015.

12 Is it 2015, or is it 2010? But I mean, it's pretty
13 recent. Or it may go -- Smiley may go back to another
14 Florida Supreme Court decision discussing the difference
15 between procedural and substantive law.

16 And I agree with the line of reasoning there that
17 this is a substantive change and -- but I will -- with
18 that being said I will look at it both ways with both
19 burdens in mind.

20 Because as we all know there could be something
21 coming out any time, and it might be sooner than
22 December. We don't know.

23 MR. RESPESS: Well, it will be by December because
24 three justices are leaving the court --

25 THE COURT: Well, that could -- right.

1 MR. RESPESS: (Cont'd) in January.

2 THE COURT: So, that could --

3 MR. RESPESS: And they're going to want to make
4 this decision, because you've got Fifth Amendment
5 separation of powers issues --

6 THE COURT: Right.

7 MR. RESPESS: And it's not just on this issue,
8 there's another case that they have up there as well
9 that they're dealing with that. So, I anticipate
10 they're going to rule before January.

11 THE COURT: Okay. Well, that would make sense.
12 But my -- so, my -- and my thought was that Mr. Panella,
13 I see that you have been very thorough, and I had seen
14 that there were 24 -- well, I had counted 23 or 24
15 people subpoenaed.

16 You put the letters, the cover letters for
17 subpoenas. So, I was assuming that you would have a
18 number of witnesses.

19 MR. PANELLA: Assuming that what?

20 THE COURT: I assumed that you had planned on
21 the -- having a number of witnesses if necessary.

22 MR. PANELLA: Sure, sure, that's true. You know,
23 and part of it -- I agree with Mr. Respass. I think
24 that we can address -- we can probably even -- I don't
25 know that we're going to have to have the exact same

1 thing repeated.

2 THE COURT: No, and that's what -- I don't want
3 that to happen, and that is why I want to specifically
4 know. I mean, I try to take fairly decent notes and --

5 MR. PANELLA: Sure.

6 THE COURT: And I want to specifically have in
7 mind, okay, if this is flipped around is the result the
8 same or not.

9 MR. PANELLA: Well, I will say Judge I'm not
10 entirely sure how to apply what you're saying to us
11 right now.

12 Because if you're looking at it with both burdens
13 in mind -- our position was we don't have the burden to
14 prove this case by a preponderance of evidence.

15 THE COURT: I understand, but what I've said is
16 that after reading both lines of cases -- the Martin
17 case was based on civil, all civ -- all the citations
18 that backed up the Martin case that came from that nice
19 long opinion of Judge Shure that you gave me.

20 MR. PANELLA: Right.

21 THE COURT: She and I were in the new judges class
22 together as a matter of fact, and she's a very nice
23 lady. Wow, she gave quite the clinic on this area of
24 the law.

25 But when I looked at all the citations that backed

1 up Martin, and looked at Martin, and looked at the
2 citations in that, the majority of them are civil.

3 I did not see many of them criminal. And the --
4 whereas the Love case was all referencing criminal
5 cases.

6 MR. PANELLA: Em-hmm.

7 THE COURT: And certainly procedural versus
8 substantive is different in criminal -- in the criminal
9 and civil context.

10 MR. PANELLA: Your Honor, I'm not sure if the
11 Court's aware there was actually just recently yet
12 another opinion that came out also affirming the
13 retroactivities.

14 Mr. West, do you have that cite off hand? Do you
15 remember which case that was? I think it also came out
16 of Palm Beach.

17 MR. WEST: I can find it. I have it on my phone
18 actually. I think -- I think what's happening at the
19 appellate court level is both of the districts where
20 they're having decisions on this issue there are
21 additional appellate opinions basically saying we've
22 already decided this. So, now there are a number of
23 cases in both camps, but --

24 THE COURT: Okay.

25

1 MR. WEST: (Cont'd) I'm not aware of any other DCA
2 that has independently ruled on it, other than in what
3 is --

4 THE COURT: Second and Third.

5 MR. WEST: (Cont'd) the Second and the Third.

6 THE COURT: Second and Third. Second is Martin,
7 Third is Love.

8 MR. PANELLA: Right.

9 MR. WEST: Em-hmm.

10 THE COURT: So.

11 MR. PANELLA: And yeah, there was another Second
12 DCA issue --

13 THE COURT: Well, that's the way we're going to do
14 it. The way I -- I'm going to follow the Love line of
15 cases that goes back to Smiley, and -- but I will, since
16 I'm the fact finder here, look at it in terms of --
17 because I did read -- I read just a trial court order a
18 while ago when this question came up before that dis --
19 where the judge actually said now if we -- it was right
20 after the change.

21 Now if we -- if I flip it around the result is -- I
22 don't know whether he said the same or not the same in
23 this case, but it was sort of -- the gent -- it was a
24 gentleman, I don't remember his name, but he said, you
25 know, that he found both ways. And I saw that it wasn't

1 that complicated to do that.

2 MR. PANELLA: So, he -- if you -- just so I
3 understand what you mean. If you find both ways what
4 does that -- for today I understand the Court to be
5 ruling that the burden is on the Defense, correct?

6 THE COURT: Yes.

7 MR. PANELLA: By a preponderance of the evidence?

8 THE COURT: Yes, because that was the law that was
9 in effect at the time that this occurred. This is an
10 August 20, 2015 event, and the statute didn't change
11 until July 9 2000 -- excuse me, June 9, 2017. So, that
12 is quite a ways afterwards and not the --

13 MR. PANELLA: And are you saying -- and I
14 understand Your Honor. And are you saying that in the
15 event that the law changes at a higher level, like at
16 the Florida Supreme Court, you would have already looked
17 at this case and our hearing using the other burden and
18 would have decided --

19 THE COURT: Right, so you don't --

20 MR. PANELLA: (Cont'd) if it would have been
21 different?

22 THE COURT: Right, so you don't have to do it
23 again. I mean, it's -- the evidence is going to come
24 out, and the evidence is what it is.

25 And obviously Mr. Respass, who made that

1 suggestion, that we kind of bear in mind that there
2 could be a change. And I'm sure that he'll present
3 anybody that he feels he wishes to present accordingly,
4 so.

5 MR. PANELLA: I understand Your Honor.

6 THE COURT: I mean, Mr. Respass am I --

7 MR. RESPESS: No, I think --

8 THE COURT: (Cont'd) reading this situation
9 properly?

10 MR. RESPESS: As I understand the Martin remedy, it
11 was go back and have a hearing with the new standard.
12 And I want to avoid that by having you consider both
13 standards and ruling.

14 And in the unlikely event that you feel one way
15 with one standard and another way with one stand -- the
16 other standard, I want you to express that opinion --

17 THE COURT: Express that, yes.

18 MR. RESPESS: (Cont'd) so that we have a good
19 record.

20 THE COURT: Yes. Because actually I -- another
21 trial court order that I also read that was -- that did
22 exactly that, said but if we did it this way, the other
23 way the outcome would be different.

24

25

1 MR. PANELLA: I understand Your Honor. The only
2 scenario would be of course if we're successful then it
3 doesn't matter, and if we're not then we may have been
4 successful if the burden were on the other way.

5 That's --

6 MR. RESPASS: Right.

7 MR. PANELLA: (Cont'd) sort of the whole thing that
8 you're saying.

9 THE COURT: I --

10 MR. PANELLA: Correct? I think.

11 THE COURT: I'm not sure. What I'm saying is that
12 I'm going to hear the evidence and let you all know that
13 we're hoping to do this once, not duplicate efforts, and
14 I will apply the standards set out in Love in the Third
15 today.

16 And with -- in terms of you calling the witnesses,
17 but knowing that we've had this discussion I'm sure that
18 Mr. Respess will ask or Mr. Scheiner will ask any
19 questions that they feel would go toward the other
20 standard as well.

21 MR. PANELLA: I understand Your Honor.

22 THE COURT: So I can bear both in mind. I've
23 gotten to that point where I can compartmentalize.

24

25

1 MR. PANELLA: Okay. It's just news to me, that's
2 all. This is coming as a little bit of a shift
3 depending on the way that we had prepared for this case.
4 So, that's --

5 THE COURT: What, you mean in terms of looking at
6 it both ways?

7 MR. PANELLA: Well, I mean, we were coming for the
8 position of the law is that the burden is on the State
9 by clear and convincing evidence.

10 Of course we were going to put up an initial
11 showing, but now that we know that this Court is ruling
12 that we have the burden that changes some things on our
13 end I think.

14 THE COURT: Okay.

15 MR. PANELLA: So, I would like an opportunity --

16 THE COURT: Well, okay. You'd like an opp -- go
17 ahead.

18 MR. PANELLA: I'd like an opportunity to confer
19 certainly now that we know the Court's ruling.

20 THE COURT: Sure.

21 MR. PANELLA: I appreciate us having this
22 conference.

23 THE COURT: Sure. Well, and now Mr. Derossett is
24 present, and he walked in about four minutes ago it
25 seems. And so I think we should sort of recap.

1 MR. PANELLA: Okay.

2 THE COURT: Because of -- and say that we are on
3 the record in 2015-CF-39550, State of Florida versus
4 John F. Derossett.

5 Mr. Derossett is present with counsel, Michael
6 Panella and Don West. And Mr -- and William Scheiner
7 and William Respass are here on behalf of the State.

8 We had a discussion before Mr. Derossett arrived
9 and we started talking about scheduling and we moved
10 into procedure and how the case was going to be done.
11 And Mr. Panella, does Mr. Derossett understand the
12 procedural issue at all?

13 MR. PANELLA: And we have discussed this with him
14 Judge. And we're going to request just --

15 THE COURT: Right, some time to discuss further.

16 MR. PANELLA: (Cont'd) a break to be able to speak
17 with him and sort of -- yeah.

18 THE COURT: Okay. Well, would you like to just do
19 that rather than me repeat?

20 MR. PANELLA: We're happy to do that. We'll take
21 care of that part Judge.

22 THE COURT: Okay.

23 MR. PANELLA: And we'll go ahead and have that
24 conversation with him. I'd also ask if there's any way
25 Mr. Derossett can be unhandcuffed while he's here?

1 THE COURT: I -- it's not policy. Everybody else
2 sits there throughout motions, writes in the same
3 fashion. That is not my purview.

4 I am the one that's supposed to leave immediately,
5 and so these -- so, the folks that are required to stay
6 I allow -- I defer to them.

7 MR. PANELLA: Okay Your Honor.

8 THE COURT: So.

9 MR. PANELLA: Well, thank you. Yes, if we could
10 have a short break.

11 THE COURT: All right, so, you want -- sure.

12 MR. PANELLA: Should I let your -- should I let the
13 clerk know or somebody?

14 THE COURT: Yeah, sure. Just let Deputy Turner
15 know.

16 MR. PANELLA: Okay.

17 THE COURT: And see you in a bit.

18 MR. PANELLA: Thank you Judge.

19 (Whereupon, court stands in recess for
20 approximately 45 minutes.)

21 MR. PANELLA: Good morning.

22 THE COURT: Good morning Mr. Panella. All right,
23 we're back on the record in State of Florida versus John
24 Derossett. And Mr. Derossett is present with counsel
25 Michael Panella and Don West. 2015-CF-39550-A. Mr.

1 Scheiner and Mr. Respass are here on behalf of the
2 State.

3 And Mr. Panella, we took a recess for you to
4 discuss with Mr. Derossett what we had discussed with
5 regard to the procedural posture in which we were going
6 to proceed. Have you had a chance to discuss that with
7 Mr. Derossett?

8 MR. PANELLA: Yes, ma'am, we have and we're willing
9 to go forward this morning.

10 THE COURT: Okay. And so do you mind if I inquire
11 of Mr. Derossett just briefly? I mean, I don't want to
12 know what you talked about, but if he's --

13 MR. PANELLA: Yes, ma'am, that's fine.

14 THE COURT: Mr. Derossett, good morning sir.

15 THE DEFENDANT: Good morning.

16 THE COURT: Do you understand the procedural
17 situation that we have here?

18 THE DEFENDANT: Yes, I do.

19 THE COURT: Okay. And are you comfortable moving
20 forward as Mr. Panella has --

21 THE DEFENDANT: Yes, I am.

22 THE COURT: Excuse me?

23 THE DEFENDANT: Yes, I am Your Honor.

24

25

1 THE COURT: All righty. Then -- and Mr. Panella
2 just -- and because we had discussed this before Mr.
3 Derossett came up do you -- shall we go over the issues
4 and the reasons that we're going -- proceeding as we are
5 again, or would you like to waive your client's presence
6 for that conversation that we had?

7 MR. PANELLA: I'll waive my client's presence Your
8 Honor and proceed on --

9 THE COURT: All right. Because you were able to
10 discuss it all with him anyway.

11 MR. PANELLA: Yes, Judge.

12 THE COURT: Okay, perfect. All righty, then --
13 first of all let me tell you -- okay, tap your
14 microphone please. I put it in the mode so that it's
15 dead on counsel table.

16 MR. PANELLA: Okay.

17 THE COURT: Okay. That's number one. Before we
18 start any session please just tap the mic so that we
19 can -- because I have a little setting up here that does
20 that. So, you all can talk to each other and it's not
21 on the tape. Mr. Respass?

22 MR. RESPESS: I just wanted to make -- the rule of
23 sequestration has not been invoked.

24 THE COURT: Okay.

25

1 MR. RESPESS: But I wanted to make the parties
2 aware that we intend for Deputy Casey to -- who wants to
3 attend.

4 THE COURT: Okay.

5 MR. RESPESS: And so I believe he's entitled to do
6 that. And so I just wanted to let everybody know that
7 was his position.

8 THE COURT: Okay.

9 MR. PANELLA: And Your Honor, I just spoke with Mr.
10 Scheiner. So, we are now officially invoking the rule
11 of sequestration for this hearing.

12 THE COURT: Okay, all right.

13 MR. PANELLA: And I would ask that that extend to
14 all of the witnesses in the witness room as well. That
15 no one should be talking about this case, even back
16 there.

17 THE COURT: Oh. Well, why don't we -- shall we
18 bring them in and explain?

19 MR. PANELLA: Yes, I think we should.

20 THE COURT: Okay.

21 MR. SCHEINER: I did tell them to assume the rule
22 was invoked.

23 THE COURT: All right. And Mr. Panella, do you --
24 I don't want to assume --

25 (Multiple speakers.)

1 THE COURT: I don't assume they're having a coffee
2 collective about this right now.

3 MR. PANELLA: I will say Judge obviously after
4 three years of working on this we are super sensitive to
5 what's going on, and to Mr. Smith's situation.

6 THE COURT: Rightfully so. Okay.

7 MR. PANELLA: We would request that the rule apply
8 to him as well. He's a critical -- an essential State
9 witness. He is one of only five eye witnesses to the
10 event.

11 There are going to be two other deputies that were
12 with him in the same exact special investigations unit
13 operation that are going to have a recollection of what
14 happened in this case.

15 And if there's ever been a reason for there not to
16 be -- you know, why would the rule be invoked? It's so
17 other peoples testimony doesn't influence somebody else.

18 And there's going to be different recollections, we
19 anticipate, of the same event. And so that directly
20 applies to Agent Smith Judge.

21 THE COURT: Let me ask you this: Mr. Panella,
22 is -- does not -- doesn't the Florida Constitution give
23 the victim of a crime the right to be present?

24 MR. PANELLA: Yes, Your Honor.

25 THE COURT: Even if --

1 MR. PANELLA: And that's the issue here.

2 THE COURT: Right.

3 MR. PANELLA: We -- in the -- my Defendant's
4 constitutional rights gets --

5 THE COURT: Right, we have two constitutional --
6 (Multiple speakers.)

7 MR. PANELLA: -- impartial hearing and an impartial
8 trial.

9 THE COURT: Right.

10 MR. PANELLA: And we're talking about, you know,
11 a -- the other two agents are technically victims as
12 well. It makes -- it really hinges on what is fair --

13 THE COURT: Well --

14 MR. PANELLA: (Cont'd) as far as impartial
15 proceeding before Your Honor Judge. But again, with
16 total deference of course to what he's gone through.
17 That's not what we're saying.

18 THE COURT: Oh, no. Yes. We understand that Mr.
19 Panella. You are in no way -- no way at all not --

20 MR. RESPESS: Can I --

21 THE COURT: Yes, sir.

22 MR. RESPESS: (Cont'd) direct to the Court --

23 THE COURT: Sure.

24 MR. RESPESS: (Cont'd) the statutory provision I
25 think --

1 THE COURT: Yes, sir.

2 MR. RESPESS: (Cont'd) answers the question and why
3 I brought it up? I believe it's 960.001 (1) (e), and
4 there's a -- it's the second paragraph which talks about
5 how this is to be handled by the Court.

6 THE COURT: Okay, wait a minute Mr. Respass. How
7 is it that my book stops at 985?

8 MR. RESPESS: I got another book.

9 THE COURT: Okay, wait. I can probably pull it up
10 on the internet here. Okay. Oh, you have the -- okay,
11 thank you. Mine I thought was the current one, but this
12 is a --

13 MR. RESPESS: It's been -- the statute's been in
14 effect really since the constitutional amendment was
15 passed I believe.

16 THE COURT: This is the same book.

17 MR. RESPESS: Well, it's --

18 THE COURT: All right, page 1335.

19 MR. RESPESS: (Cont'd) 960.001.

20 THE COURT: 1335. Okay, let's just go there. Yes,
21 it's page 1335. Thank you. Okay.

22 MR. RESPESS: And it's the middle paragraph on the
23 second -- in the second column.

24 THE COURT: Okay.

25 MR. RESPESS: Under (e).

1 THE COURT: 1335 --

2 MR. RESPESS: It starts with a victim, a victim's
3 parent or guardian.

4 THE COURT: Are you on the left hand page or the
5 right hand page?

6 MR. RESPESS: I'm on 1334, and I'm on the --

7 THE COURT: Okay.

8 MR. RESPESS: (Cont'd) the second column.

9 THE COURT: Okay, (e). I see, advanced
10 notification to victim or relative of victim.

11 MR. RESPESS: All right. And then the paragraph
12 below that begins a victim --

13 THE COURT: Yes, sir.

14 MR. RESPESS: (Cont'd) a victim's parent.

15 THE COURT: Okay.

16 MR. RESPESS: And if you read through there I
17 believe you're going to find that there should be a
18 motion that the Court considers and makes certain
19 findings, and absent that the victims should not be
20 excluded because they're a witness.

21 So, that's how the legislature I guess enacted and
22 gave the Court the test to determine that. I don't
23 believe there's been a motion, certainly no written
24 motion concerning this.

25 Now, frankly Deputy Steed and Jason Roberts, Deputy

1 Roberts, they're victims in this case as well. They
2 haven't expressed that desire.

3 THE COURT: Right. Well, they weren't -- they were
4 not actually injured physically as much, or --

5 MR. RESPESS: Right.

6 THE COURT: (Cont'd) as to my knowledge at all.

7 MR. RESPESS: They weren't hit by --

8 THE COURT: They weren't hit by a bullet.

9 MR. RESPESS: Right.

10 THE COURT: Okay. Here's one possible way, because
11 I've encountered this before in a slightly different
12 setting: Is there any possibility that Agent Smith
13 could testify first?

14 MR. RESPESS: Well, that's --

15 THE COURT: Would that sort of --

16 MR. RESPESS: That's up to them.

17 THE COURT: Mr. Panella?

18 MR. RESPESS: We were going to handle it that way,
19 but we're not --

20 THE COURT: Right. Mr. Panella, wouldn't that sort
21 of solve the problem?

22 MR. PANELLA: It would solve the problem Judge.

23 THE COURT: Is that reasonable for you to do?

24 MR. PANELLA: It's not reasonable for us now
25 that --

1 THE COURT: Okay.

2 MR. PANELLA: Again, this morning we've learned
3 that the burden's now on us. It's sort of changed
4 everything. So, we're not able to do that.

5 THE COURT: Okay.

6 MR. PANELLA: I do understand where the Court's
7 coming from. I'm not sure that this --

8 THE COURT: I mean, that would sort of be the best
9 of both worlds.

10 MR. PANELLA: Yeah, I know. And of course after
11 Agent Smith does testify we have no objection to him
12 being in the courtroom. And you know, that's not a
13 problem for us obviously.

14 THE COURT: Well, let me ask: Since this is not a
15 proceeding before a jury and since I will be taking
16 thorough notes, and I will certainly be able there --

17 On a computer I will be able to rearrange if you
18 say Agent Casey is -- excuse me, Agent Smith is supposed
19 to be witness number three, let's just say for the sake
20 of argument, I can always take his testimony after it's
21 been given first and just insert it in par -- you know,
22 witness number three.

23 And so that when the notes are reviewed it's all in
24 that context if that might assist. Because --

25 MR. PANELLA: I understand, I understand Judge.

1 THE COURT: (Cont'd) it's, you know, just simply
2 taking a witness out of order.

3 MR. PANELLA: Sure.

4 THE COURT: You know, same as we can take an
5 expert out of order because of their schedule, you can
6 take a doctor out of order, you can take all kinds of --

7 MR. PANELLA: I understand.

8 THE COURT: Any witness, a lay witness, out of
9 order because they're schedule doesn't permit them to,
10 you know, come as the flow would go.

11 MR. PANELLA: Part of the problem with it is now
12 that we are shouldering this preponderance of the
13 evidence --

14 THE COURT: Right.

15 MR. PANELLA: I know it's a low burden, but
16 nonetheless, I -- I'm sorry, we cannot --

17 THE COURT: It's just not possible, okay. If it's
18 just not possible.

19 MR. PANELLA: And in looking at the rule, obviously
20 we weren't made aware either. It's not like anyone was,
21 you know -- it's not like the State didn't know they
22 were going to call him as a witness in this case.

23 Certainly that's necessary, and they did not put us
24 on notice that this was their intention. As a matter of
25 fact, I actually have tried to communicate with the

1 State about these exact matters, and my email has gone
2 unresponded to.

3 So, frankly, I feel like the two issues that have
4 now been raised this morning are a little bit of an
5 ambush on us, because I've asked them to communicate
6 with us and it's not been received.

7 THE COURT: Well, let me ask you: Mr. Respess, can
8 you clarify please in subsection (e) --

9 MR. RESPESS: Em-hmm.

10 THE COURT: Where does it say that the witness will
11 be excused from the rule of sequestration?

12 MR. RESPESS: It -- I'll just read it. A victim, a
13 victim's parent or guardian --

14 THE COURT: Right.

15 MR. RESPESS: (Cont'd) if the victim is a minor, a
16 lawful representative of the victim, or the victim's
17 parent or guardian if the victim is a minor, or the
18 victim's next of kin may not be excluded from any
19 portion of any hearing, trial, or proceeding pertaining
20 to the offense based solely on the fact that said person
21 is subpoenaed to testify, unless upon a motion the Court
22 determines such person's --

23 THE COURT: Okay.

24 MR. RESPESS: (Cont'd) presence to be prejudicial.
25

1 THE COURT: That paragraph. All right, thank you.
2 That's the --

3 MR. PANELLA: Well, Judge, we're specif --

4 THE COURT: (Cont'd) second full paragraph under
5 sub (e), subsection (e) (3). Okay, so.

6 MR. PANELLA: And we would affirmatively, if the
7 State is asking us to do so, we would affirmatively say
8 that the presence of this particular witness would be
9 prejudicial to the Defendant because of the reasons I
10 enumerated.

11 It's not like this is just somebody who was
12 periphery to the scene. This is an essential and
13 critical witness.

14 THE COURT: No, I understand, I understand Agent
15 Smith's position in the whole affair, but -- yes, Mr.
16 Respess?

17 MR. RESPRESS: A victim is nearly always -- if
18 that's the rule then the exclusion would happen in every
19 case.

20 THE COURT: Right. Well, right, unless the victim
21 is deceased.

22 MR. RESPRESS: Right.

23 THE COURT: So, I do --

24 MR. RESPRESS: So --

25 THE COURT: (Cont'd) understand that.

1 MR. RESPESS: So, here's the thing: Agent Smith
2 gave a statement to law enforcement. Agent Smith has
3 given a deposition. If Agent Smith is inconsistent with
4 what he said he's going to be subject to cross
5 examination.

6 I do not anticipate that that is Agent Smith's
7 motivation. Quite frankly, as he's indicated in his
8 deposition, he has some memory issues that he would like
9 resolved for his own personal being that's not going to
10 effect his testimony in this case, and Mr. Scheiner and
11 I because there's that risk.

12 It can be argued to you, it can be argued to a jury
13 that he's changed his testimony to fit the facts. We've
14 talked with him about how important it is that he not do
15 that. That he go with the memory that he had, not
16 someone else's.

17 So, that has been accomplished in this case and as
18 a matter of record. So, I would suggest that there
19 needed -- there would need to be something more than
20 that to exclude him.

21 THE COURT: All right. And Mr. Panella, anything,
22 anything else you would like to state?

23 MR. PANELLA: Your Honor, it -- I don't want to
24 take up more of the Court's time.

25 THE COURT: Okay.

1 MR. PANELLA: You're aware of my objection.

2 THE COURT: All right. Thank you Mr. Panella. And
3 I'll respectfully overrule the objection in that it
4 does -- it's quite clear here in 960.001 subsection (e)
5 (3) that the -- that Agent Smith qualifies under the
6 statute to be present.

7 And yes, I had also thought of the fact that he has
8 given several statements under oath with regard to what
9 did or did not occur here.

10 And so I -- based on the thorough nature of your
11 pleadings I would in no way expect that you will know
12 exactly if something is inconsistent or not, so.

13 Respectfully the motion to exclude Agent Smith --
14 well, the motion to exclude him from the rule of
15 sequestration is granted. The motion to enforce the
16 rule of sequestration upon him is denied.

17 MR. PANELLA: I understand Your Honor.

18 THE COURT: Respectfully, so. All right, so
19 then --

20 MR. PANELLA: Are we bringing -- did you want to
21 bring in the witnesses so you can --

22 THE COURT: Yes. Shall we bring them all in and
23 just tell them? All right. Oh, is everyone in?

24 THE BAILIFF: Yeah, they're in.
25

1 THE COURT: Okay. Where are they? Oh, everybody's
2 sitting. Okay, thank you. Good morning folks. You
3 are -- are these the only witnesses that are here this
4 morning or at this time?

5 MR. SCHEINER: Yes.

6 THE COURT: Okay. The rule of sequestration has
7 been invoked, which means you must not discuss the case
8 amongst yourselves at all during this time.

9 Please do not discuss anything that has to do with
10 this case, whether it occurred in 2015 or any time going
11 forward, including today. So, thank you very much. And
12 you're welcome to be at ease where ever Deputy Gleason
13 leads you.

14 All right, then Mr. Panella, how would you like to
15 proceed sir? Do you wish to present a brief opening or
16 how would you like to proceed?

17 And just so that you know, I did read your motion
18 thoroughly, and I appreciate it very much. I appreciate
19 the opinion that you attached and the excerpts and all
20 the other things.

21 It was very, very thoroughly and well done. So,
22 would you like -- do you wish to make an opening of any
23 sort or would you like to call witnesses?

24 MR. PANELLA: Sure Your Honor, I'll make a brief
25 opening if I might.

1 THE COURT: Okay, sure.

2 MR. PANELLA: And thank you Judge for acknowledging
3 that you've already reviewed the motion and the
4 attendant attachments.

5 THE COURT: We don't get too many 184 page motions.
6 I thought if you spent the time writing it it was only
7 appropriate to spend the time reading it.

8 MR. PANELLA: Appreciate it Your Honor.

9 THE COURT: So.

10 MR. PANELLA: May it please the Court?

11 THE COURT: Yes, sir.

12 OPENING STATEMENT

13 BY MR. PANELLA:

14 Judge, this is -- as you know you've already looked
15 at the motion and the facts that we've alleged, but the
16 bottom line comes down to this: Mr. Derossett, on the
17 night of August 20, 2015, had no idea that the people at
18 his house were police officers.

19 This is clear from all of the evidence that the
20 State has provided in this case, and there's frankly no
21 evidence that's going to suggest to you that Mr.
22 Derossett at least was aware that the people at his home
23 were law enforcement officers.

24 The fact of the matter is this whole thing started
25 with his niece, who Mr. Derossett had reluctantly

1 allowed to live with her. We -- to live with him.

2 We believe that the evidence is going to show you
3 here very shortly that this was a person that had a
4 rough upbringing and really no where to go, and Mr.
5 Derossett had let her stay there frankly because she had
6 no other roof on her head.

7 The Brevard County Sheriff's Office decided that
8 this woman, her name is Mary Ellis, sometimes
9 incorrectly known as Mary Derossett, but her real name
10 is Mary Ellis, should become the target of a sting for
11 the special investigations unit.

12 As it turns out a high ranking official in the
13 Brevard County Sheriff's Office lived just across the
14 street from Mr. Derossett's house and had called in
15 basically reports to the special investigations unit
16 asking them to keep an eye on that house for whatever
17 reason.

18 Prior to the incident in August 20th of 2015 this
19 special investigations unit had their eye on Mary.
20 Fast-forward to this night and why we're here today.

21 On August 20th this special investigations unit,
22 and you'll hear from several of these folks in that unit
23 Judge, and they will explain that they were conducting
24 an undercover prostitution solicitation sting at the
25 Quality Inn over here in Titusville.

1 It was an organized organization, it was -- there
2 was two or three rooms that had been rented in order to
3 make sure that this was all done in a controlled
4 environment.

5 But Mary Ellis' name came up on the back page ad
6 again, and one of the agents, Agent Roberts, had been
7 familiar with her. And between he and Agent Steed they
8 decided this is the person we're going to go after
9 today.

10 They never had a warrant, there's never been a
11 warrant in this case, and they made contact in an
12 undercover capacity posing as a john, not to be confused
13 with our defendant, but as a person looking for sexual
14 services or sexual favors, and created a series of text
15 messages and reached out to Mary.

16 She never reached out to them, they reached out to
17 her, trying specifically to sting her. I anticipate
18 they'll be testimony that comes out that the agents were
19 actually trying to get a progressive enhancement charges
20 on Mary so maybe she could get kicked out of that
21 neighborhood.

22 Who knows, but the bottom line is they targeted
23 her, she was on their radar, she's who they wanted. And
24 they made a decision when Ms. Ellis wasn't going to go
25 to the hotel through texts that they were just going to

1 acquiesce and go right there.

2 They never implored her to come to the safe spot
3 that was already set up by BCSO where they were
4 conducting stings all day long. Instead they just
5 decided to assemble a team of men and go to her home.

6 You'll hear that this is not only unusual, it's
7 never been done. BCSO's special investigations unit
8 hasn't gone to a person's home for a prostitution or
9 solicitation second degree misdemeanor sting as far as
10 any of the witnesses can recall.

11 And there's reason, the reason is because it's
12 dangerous, it's confusing. Something like this may
13 happen, unfortunately, and frankly, the circumstances of
14 this event are so sad, they're sad all around.

15 Two men were shot, Agent Smith nearly lost his
16 life, and Mr. Derossett was also shot twice and really
17 had no idea why.

18 So, what ends up happening Judge is they go to --
19 they continue to create this sting with Mary, get in the
20 car, and it's agreed that they'll go over to the house
21 at 9, 9:30 at night.

22 The person who was actually doing the text messages
23 was a man named Agent Steed, who you'll hear from in
24 this case. Agent Steed, it was his fourth day on the
25 job Judge.

1 He had never done a prostitution detail before. He
2 hadn't even been in this special investigations -- this
3 was his fourth day in the special investigations unit.
4 So, he was being taken under the wing of Agent Roberts,
5 sort of showing him the ropes.

6 Agent Steed was chosen because he was the new guy
7 that maybe Ms. Ellis wouldn't know who he was. And
8 there was a concerted effort by law enforcement for
9 three hours to convince Ms. Ellis they were not law
10 enforcement.

11 That's the point. It was an undercover detail to
12 convince her that a real john was coming to her house
13 who wanted real sex. Agent Steed was dressed, and
14 you'll see the pictures, we have them ready to go for
15 you, in plain clothes.

16 He had a black T-shirt with a screen print. He had
17 jeans on and sneakers. He looked like every guy on the
18 street his age. Well groomed, put together. He had a
19 badge under his shirt that was also black.

20 So, it's a black badge on a black shirt, but it
21 doesn't even matter because when he approached the door
22 it was 9:30 at night. He will tell you that he
23 approached the door without his badge even showing, and
24 that he went there to convince her he was a john.

25 And now as far as Mary Ellis understood everything

1 leading up to that point was to confirm a solicitation
2 event at her home. Agent Steed -- Agent Smith and Agent
3 Roberts I anticipate will testify that they were out of
4 sight, that they were hiding in the shadows of this
5 front yard.

6 That they were out of sight on purpose because
7 they're trying to do a controlled take down and a
8 controlled sting and convince Mary they're not the
9 police. That's the point of the sting.

10 So, the yard happened to be extraordinarily dark.
11 It's very strange, but you'll see. It's almost eery how
12 dark this yard is. It's a neighborhood in Port St.
13 John, it's a corner lot.

14 There are two street lights, neither one of them
15 are on this property, and the way it's set up it's just
16 a very, very dark yard, and it was 9:30 at night.

17 Agent Steed -- they text, Agent Steed opens the
18 front door, still not revealing his badge, and Ms. Ellis
19 opens the door.

20 She invites him in, she turns away, having no
21 reason to believe he's anybody but a creep off the
22 internet, and Agent Steed will tell you that he, at that
23 moment, as she turned away, went to pull his badge out
24 from under -- previously hidden badge out from under his
25 shirt and reached through the threshold into the house,

1 grabbed her wrist, and forcefully yanked her out of the
2 house.

3 At this moment Mary Ellis began screaming like her
4 life depended on it, with everything in her. Agent
5 Steed will tell you that he was forcefully pulling her
6 out and never let her go.

7 That he was attempting to drag her into the front
8 yard. All the while the entire time while Ms. Ellis is
9 screaming for help, screaming John, John.

10 Now, Agent Steed will also tell you that John was
11 never to be seen. No one knew John was there, they
12 weren't there to arrest John, no one had a suspicion
13 that, you know, we should be arresting John or targeting
14 John.

15 Nothing that -- this had nothing to do with the
16 Defendant who's sitting right here, and he was in his
17 back bedroom. Agent Steed will tell you he didn't even
18 see him when the door was open.

19 This was a situation between Mary and Agent Steed,
20 and this man was in his back bedroom eating meatloaf
21 when he hears his niece screaming at the top of her
22 lungs because as far as she knows she is being drug by
23 force, by a guy in plain clothes who for three hours she
24 thought and still thought was a creep off the internet
25 seeking sex from her.

1 And next thing you know Agent Roberts comes to
2 assist, and now there's two of them pulling her into the
3 yard. Now, Agent Roberts and Agent Smith were wearing
4 tack vests. They're black.

5 I'm sure Your Honor's seen them. They have yellow
6 screen print that says sheriff on the front and on the
7 back, and yellow screen print on their black long sleeve
8 shirts that say sheriff.

9 But for -- and again, of course Agent Steed had
10 none of that, no identifying markings. But for what I
11 just told you, there is zero identifying markings that
12 these people are police.

13 All of the cars that were driven for example are
14 undercover cars. They're not even equipped with lights.
15 I believe Agent Roberts and Agent Smith took a pick-up
16 truck and Agent Steed took a Mazda 6, parked it across
17 the street.

18 So, what the agents are going to tell you is that
19 Agent Roberts then said, Mary, Mary, calm down, and
20 attempted to identify himself to her, but all of the
21 evidence shows that this did not register under this
22 chaotic, confusing miscommunication.

23 And she now finds herself in the dark front yard at
24 9:30 at night wrestling with two men trying to get in,
25 and just screaming, and everybody is trying to just --

1 the agents are trying to arrest her, they're trying to
2 take her down, and tragically she has no idea that these
3 people are agents.

4 So, what does John Derossett do hearing his niece
5 screaming for her life as she was forcefully -- by the
6 State's own witnesses will tell you, forcefully taken
7 out of the house.

8 By the way, without a warrant, and without proper
9 identification. He comes out of his back bedroom, grabs
10 his handgun, goes to the front porch, sees her
11 struggling with two or three men, which makes perfect
12 sense, and shoots his gun in the air and says what's
13 going on here.

14 The agents see the gun. The agents yell gun, gun,
15 gun, because they can see Mr. Derossett coming out from
16 the house. One of the agents is going to testify that
17 he actually threw Mary in John's direction.

18 They took perimeters on the scene and immediately,
19 tragically they are law enforcement officers, they all
20 have guns, and they all began to unload on Mr.
21 Derossett, who has never left his front porch through
22 this entire incident.

23 All of them are in the dark. Mr. Derossett sees
24 muzzle flashes, he shoots back. And a tragic gunfire
25 battle begins in this front yard at a quiet neighborhood

1 in Port St. John.

2 That's when Agent Smith was hit, that's when Mr.
3 Derossett was struck twice as well. And Mr. Derossett
4 eventually makes it back into the home where they call
5 the police to report the fact that strange men had just
6 abducted her. You'll have an opportunity to hear the
7 full 911 call.

8 Judge, everything in this case suggests he didn't
9 know. We wish we weren't here, but he wasn't present at
10 the door, he had nothing to do with setting up the
11 meeting.

12 The operation was conducted, as this Court's aware,
13 without a warrant and illegally actually, because you
14 can't arrest somebody for a misdemeanor without a
15 warrant in their house by breaching that threshold, at
16 night, in the dark.

17 His niece was terrified, was screaming for help,
18 and reasonably so. And he literally saw men forcefully
19 dragging her into the yard as she was screaming in the
20 darkness.

21 And Judge, the men never identified themselves as
22 law enforcement officer to John Derossett. It was
23 chaotic, it was confusing, it was a miscommunication.
24 Thanks Judge.

25

1 THE COURT: Thank you Mr. Panella. All right, Mr.
2 Respass.

3 OPENING STATEMENT

4 BY MR. RESPASS:

5 John Derossett allowed his niece to move into his
6 residence eight to nine months before this happened
7 according to the statement he gave the police.

8 He knew that she was committing acts of
9 prostitution in his residence throughout, knew she was
10 consuming drugs. On the night of the incident he
11 consumed some of her drugs. I believe he indicated he
12 consumed a lot, and that had occurred before this
13 incident occurred.

14 John Derossett helped Mary in her endeavors, not
15 just by allowing her to use the house. He was observed
16 by the special investigations unit, two members of the
17 team -- and let me get their -- one was Jason Roberts,
18 the other was Adam Stirewald.

19 THE COURT: Steurwald.

20 MR. RESPASS: Steurwald. And they were aware of
21 Mary. This was more than a month prior to this incident
22 on August 20th. And they actually followed Mary and Mr.
23 Derossett as he drove to Cocoa Beach.

24 Mr. Derossett admits they went there to pick up
25 money that was owed for -- by a john. So, he's

1 assisting her in her criminal activity, and therefore is
2 responsible for that criminal activity himself. On
3 the -- a month before, in July, there was -- well, let
4 me get back to that incident.

5 The law enforcement actually involved themselves in
6 a stop where they introduced themselves to the
7 Defendant, let him know their suspicions about Mary and
8 that his continued involvement could cause him to be
9 caught up in her criminal activity.

10 They specifically discussed that they were talking
11 about prostitution, which he admitted that he knew
12 about, and one of the people involved, a Jason Roberts,
13 who's involved in this very incident.

14 So, significantly more than a month prior to this
15 the Defendant is on actual notice that the special
16 investigations unit is aware of Mary and her illegal
17 activities and is watching her.

18 July 20th an operation is done with Mary and it's
19 similar to what was described in the current case.
20 There is texting, communication with her, there's an
21 agreement for a meet, and that meet is in relative close
22 proximity to this -- to Mr. Derossett's residence.

23 I believe it was at a pharmacy around the corner.
24 And Mary is -- comes -- leaves the residence, comes to
25 that location, and is arrested. And one of the people

1 that was there at the time of the arrest was Agent
2 Smith. The other one is Agent Roberts.

3 So, they're both involved in dealing with her. Mr.
4 Derossett knows that she has been now not only stopped,
5 now she's been arrested, and he's aware that law
6 enforcement has shown interest in her.

7 Now, I don't know if he knew that his across the
8 street neighbor was a sheriff's deputy or not, but he's
9 allowing this to go on in his residence across the
10 street from a sheriff's deputy.

11 The next incident is the incident on August 20th,
12 and they are looking, the sheriff's looking on the back
13 page advertisements that are happening and Mary is there
14 again. On back page -- and this is after she's been
15 arrested and has a pending charge for prostitution.

16 And they attempt to get her to come to the john,
17 and she refuses having been caught up in this other one
18 where she gets arrested and insists that this happen at
19 the residence, and law enforcement makes the decision to
20 do that.

21 The Defendant indicates he knows she's doing that,
22 he knows she has a john coming for a dance that evening,
23 and that he specifically sets himself in the bedroom as
24 an enforcer, a security type.

25 Leaves the door cracked a couple of inches so that

1 he can -- he can make sure that he's safe while she's
2 committing this criminal act that he's allowing to occur
3 in his residence, and the events unfold from there.

4 The description -- you know, I was at the
5 deposition, I don't recall Agent Steed saying that he
6 went inside the threshold. He said that he encountered
7 Mary at the threshold.

8 That shortly after he was there he informed her
9 that he was a police officer and put -- went hands on
10 her and she began to struggle and resist. Agent Roberts
11 came attempting to indicate who he was, and this was the
12 third time at least that Agent Roberts had met her.

13 Frankly, Ms. Derossett, when she's talking to law
14 enforcement said that -- inferring Roberts should know
15 her demeanor and should have known not to pull her out
16 of her house for a solicitation charge.

17 And if she testifies we'll find out what she meant
18 by that. But she is reacting about not wanting to go to
19 jail, and law enforcement is using the force necessary
20 to accomplish the arrest.

21 John Derossett, hearing Mary holler for help, in
22 his role comes out of the bedroom, is seen by Agent
23 Smith with a gun. And he immediately begins yelling to
24 his other two officers that there's a gun, and
25 repeatedly saying that loudly.

1 Now, John Derossett's hearing what he is describing
2 as a raucous when he's in his bedroom, and yet doesn't
3 hear the officer hollering gun, who's sitting there --
4 and Agent Casey is not, was not a small man.

5 He's not hard to see, and he's wearing a vest with
6 sheriff on it, sleeves with sheriff on it, and the
7 lighting is not nearly as dark as what Defense counsel
8 is saying.

9 There's either a light on on the porch or so much
10 light coming from inside the residence that things are
11 clearly visible. There are people across the street
12 that are able to recognize each other.

13 There are crime scene technicians that are able to
14 see each other and what's going on. They get lighting
15 out there to assist them in finding the shell casings
16 that are in the grass and the other pieces of evidence,
17 but this is not a situation where a human eye can't see.

18 So, when you're -- we're asking you to look at this
19 case because -- from that perspective. Because we
20 believe the evidence is going to show that the Defendant
21 has put blinders on in this case as a defense, and that
22 was a defense that was decided from before the 911 call
23 was even made.

24 And the standard is whether the person using or
25 threatening to use the force knew or reasonably knew

1 that the person was a law enforcement officer. And we
2 believe we're going to meet that burden if we get that
3 far.

4 Frankly, because we believe Mr. Derossett was
5 engaged in criminal activity at the time we don't
6 believe he's going to be entitled to immunity under this
7 case.

8 So, we're going to ask the Court to look at how the
9 parties were acting, what they were doing, and decide
10 whether or not the Defendant was justified or not.
11 Thank you very much.

12 THE COURT: All right. Thank you very much Mr.
13 Respass. Then Mr. Panella, how would you like to
14 proceed sir?

15 MR. PANELLA: Yes, Judge, we'd call our first
16 witness. It'd be Donna Derossett please.

17 THE COURT: All righty, Ms. Derossett.

18 THE CLERK: Raise your right hand. Do you solemnly
19 swear or affirm that the testimony you shall give will
20 be the truth, the whole truth, and nothing but the truth
21 so help you God?

22 THE WITNESS: I do.

23 THE CLERK: Thank you. Have a seat.

24 THE COURT: Good morning ma'am. Anytime you're
25 ready.

1 MR. PANELLA: Sure, thanks. May I proceed?

2 THE COURT: Certainly.

3 MR. PANELLA: Good morning.

4 WHEREUPON:

5 DONNA DEROSSETT,
6 a Witness herein, having been duly sworn, testified upon her
7 oath as follows:

8 DIRECT EXAMINATION

9 BY MR. PANELLA:

10 Q. Good morning.

11 A. Good morning.

12 Q. If you could state your name and spell your last
13 name for the record please?

14 A. Donna Grace Derossett, D-E-R-O-S-S-E-T-T.

15 Q. Okay. And Ms. Derossett, we brought you here just
16 to give a little context for who everybody is in this case.
17 If you could begin by explaining who you are and how you're
18 related to John Derossett, the Defendant.

19 A. That's my older brother.

20 Q. Okay. And where did you guys grow up?

21 A. Prestonburg, Kentucky.

22 Q. Okay. Now -- so, he's your older brother. Do you
23 have the same parents?

24 A. Yes.

25

1 Q. All right. And now who is Mary Ellis?

2 A. She is my niece.

3 Q. And how is she related? How is she the niece to
4 Mr. Derossett?

5 A. Our oldest brother Don Derossett.

6 Q. So, she is your brother's daughter?

7 A. Yes.

8 Q. Okay. Now, if you could tell me before we get into
9 how Mary came to live with John did you have occasion to know
10 Mary Ellis as she was growing up?

11 A. Yes, very good.

12 Q. Okay. And she's obviously your niece.

13 A. Yes.

14 Q. And so you're family, but did Ms. Ellis sort of
15 have a difficult upbringing to some degree?

16 A. Yes.

17 Q. All right. Did she struggle with, for example,
18 maybe some drug addiction and things like that?

19 A. Yes.

20 Q. And did she at around, you know, the middle of --
21 well, let's say 2014, 2015 -- well, let me ask you this: Do
22 you live in Brevard County?

23 A. Yes, I do.

24 Q. Did Mary Ellis ever live with you?

25 A. Not in Brevard County.

1 Q. Okay. But in the past she had?

2 A. Yes, in Kentucky.

3 Q. And when did Mary Ellis get to Brevard County?

4 A. About -- I think maybe about a year after I came.

5 Q. Okay. And were you at least in contact with Ms.
6 Ellis from time to time while she was here?

7 A. Quite a bit, yes.

8 Q. And what about with your brother, John?

9 A. Yes.

10 Q. Okay. Now, did Mary also have troublesome times
11 with a place to live?

12 A. Yes.

13 Q. Why was that?

14 A. Because she struggled with addiction so bad. It
15 was very hard for Mary to stay with anybody and stay clean
16 very long.

17 Q. Okay. Now, Ms. Derossett, if you don't mind me
18 asking, where do you work?

19 A. (No response.)

20 Q. Okay, that's all right. If you don't want to
21 answer that that's okay. So, at some point did you ask your
22 brother to take in Ms. Ellis?

23 A. Yes, I begged him.

24 Q. Why -- why? What was going on to set that up?

25 A. Mary had come back from Kentucky. She'd been

1 living in Kentucky I think and had -- we found her rehab in
2 Orlando, and she left it.

3 And I'm not sure of the details, but she had no place to
4 stay, and I couldn't keep her because we had a little rocky
5 relationship. And my mom was very sick and my sister was
6 dying of cancer.

7 So, John was living alone and I asked him to, and he had
8 told me at first no. It took about a week to talk him into
9 it.

10 Q. So, was it John -- so then I guess your testimony
11 is that it wasn't John's idea to bring Mary in in the first
12 place?

13 A. Not at all.

14 Q. Okay. And by the way, is John retired?

15 A. Yes.

16 Q. From where?

17 A. GM.

18 Q. Okay. And was that up in Michigan?

19 A. Yes.

20 Q. And did he have a part-time job here in Brevard in
21 his retirement?

22 A. Yes, a security guard at the port.

23 Q. Okay. So, when it came down to you asking Mr.
24 Derossett to allow Mary to live there is it -- what was his
25 initial reaction?

1 A. No.

2 Q. And why do you think that is?

3 A. He said he just couldn't deal with those problems.

4 Q. Okay. How did it come to be the case that John
5 eventually allowed her to live there?

6 A. I kept asking, kept begging. He even talked to
7 minister and they told him no, not to let her come there.

8 Q. Okay.

9 A. Because of the issues she'd had. And he was
10 adamant for a week and I just kind of just kept begging
11 because she had no place to go. And I knew it wouldn't turn
12 out well with me gone so much, and he was home more and could
13 kind of keep a better eye on her.

14 Q. Em-hmm.

15 A. And I was hoping that he was a better father figure
16 for her since she was out here. Because he was very stern
17 to --

18 Q. And your brother, her father, wasn't in Florida,
19 right?

20 A. No, he was in Kentucky.

21 Q. Okay. So, is that what created the issue, she
22 needed a family member?

23 A. Yes.

24

25

1 Q. And John was the obvious choice as far as you were
2 concerned?

3 A. Yes, because he lived alone.

4 Q. Okay.

5 MR. PANELLA: I don't have anything further Judge.

6 THE COURT: Okay. Mr. Scheiner?

7 MR. SCHEINER: Yes, William Scheiner, assistant
8 state attorney.

9 CROSS EXAMINATION

10 BY MR. SCHEINER:

11 Q. You're aware that Mary was engaged in prostitution?

12 A. Not until the arrest.

13 Q. Which one, the 20th of July?

14 A. Where they had the shoot-out at his house. I
15 wasn't --

16 Q. So, you didn't know that she got arrested in July
17 20th?

18 A. No.

19 Q. Okay. So, do you know who bonded her out of jail
20 on that offense?

21 A. No.

22 Q. Okay. Were you aware that approximately a month or
23 20 days prior to that July 20th offense that you brother,
24 John Derossett, had transported Mary to Cocoa Beach to meet
25 another John out there? Did you know about that?

1 A. Absolutely not.

2 MR. PANELLA: Objection, facts not in evidence and
3 I don't think there's a basis for the question frankly.

4 THE COURT: I --

5 MR. PANELLA: I don't believe the State has a good
6 faith basis to ask that question that way.

7 THE WITNESS: Not really.

8 THE COURT: Overruled.

9 BY MR. SCHEINER:

10 Q. So, you didn't know about that?

11 A. Absolutely not.

12 Q. Did you know that -- so, how long was Mary with Mr.
13 Derossett?

14 A. A year, two years.

15 Q. So, she was living with him for a year or two
16 years?

17 A. Yes, something like -- yes.

18 Q. Do you remember what date she moved in?

19 A. Let's see, my sister passed away in 2013, so she
20 was probably a few months -- maybe in April, May, something
21 like that, 2013. Maybe.

22 Q. And it was always at the Covina address that they
23 lived?

24 A. Yes.

25

1 Q. And anyone else ever live in that house with them?

2 A. No.

3 Q. Besides the two of them?

4 A. No.

5 Q. How often did your brother work, Mr. Derossett?

6 How often did he work outside the home?

7 A. I think he worked probably four days a week.

8 Q. Days or nights?

9 A. I think it was a mixture.

10 Q. Sorry?

11 A. I think it was a mixture. I'm not for sure.

12 Q. And where would he work at?

13 A. At the Port. He was a security guard there.

14 Q. For Port Canaveral or a shipping industry?

15 A. I think the ships.

16 Q. The cruise ships or something else?

17 A. The cruise ships.

18 Q. Had Mary ever lived with John Derossett prior to
19 this occasion that she lived with him?

20 A. No.

21 MR. SCHEINER: No other questions.

22 THE COURT: All righty.

23 MR. PANELLA: Briefly Judge?

24 THE COURT: Sure.

25

1 MR. PANELLA: And there's something I just wanted
2 to clean up. I would like to ask the question again
3 about where she works, but only to the bench.

4 I think there might be a concern because of the
5 publicity. I think it's a fair question, don't want to
6 have you any inferences frankly.

7 MR. RESPESS: What's the relevance?

8 THE COURT: I -- well, that was actually my
9 question too.

10 MR. PANELLA: Okay, no problem.

11 RE-DIRECT EXAMINATION

12 BY MR. PANELLA:

13 Q. And Ms. Derossett, do you know of any times John
14 actually went out of his way to try to get Mary help?

15 A. Yes, I do.

16 Q. Okay. Do you know of any times that he actually
17 attempted to have her Baker Acted?

18 A. Yes.

19 Q. And was that while she was living with him?

20 A. Yes.

21 Q. And what were the attempts to get her help --

22 A. He had come --

23 Q. (Cont'd) based on?

24 A. He had come to the courthouse to file a Baker Act
25 with the courts and they denied him.

1 Q. And why --

2 A. To get her help.

3 Q. Why did he do that, if you know?

4 A. Because she was drinking and on drugs really bad
5 and he was afraid for her life or something was going to
6 happen to her.

7 Q. Okay. So, he actually -- as far from your personal
8 knowledge you know of times he actually tried to get her
9 help?

10 A. Yes.

11 Q. Okay.

12 MR. PANELLA: That's all.

13 THE COURT: Okay, thank you. Can I clarify one
14 thing?

15 MR. PANELLA: Yes.

16 THE COURT: Did -- Mrs. Derossett, did you testify
17 about how long your niece had been living with Mr.
18 Derossett?

19 THE WITNESS: Yeah.

20 THE COURT: Did -- when? Did you say beginning in
21 April?

22 THE WITNESS: I think it was somewhere in April.

23 THE COURT: Around April.

24 THE WITNESS: 2013.

25 THE COURT: 2013?

1 THE WITNESS: I think.

2 THE COURT: Okay. So, it had been a couple of
3 years?

4 THE WITNESS: Maybe, yes.

5 THE COURT: And a couple of months?

6 THE WITNESS: Yeah.

7 THE COURT: At the time, by August 20, 2015. Okay,
8 thank you. I just wasn't clear on that. Thank you very
9 much. Yes, you may step down. May she be excused?

10 MR. PANELLA: She can Judge.

11 THE COURT: Thank you.

12 MR. PANELLA: Yeah, is -- and same thing, is she
13 allowed to sit in the gallery now that she's not going
14 to be involved?

15 THE COURT: Right, if she's excused, excused. I
16 mean, Mr. Respass, you don't have any -- okay, thank
17 you. And who will be your next witness Mr --

18 MR. PANELLA: Your Honor, it's going to be Erin
19 Strait, who's a CSI tech. I'm going to be -- if the
20 Court permits I'd like to use the --

21 THE COURT: Of course.

22 MR. PANELLA: (Cont'd) the screen. Where would you
23 like it Judge? Can I pull near me or?

24 THE COURT: The -- which -- the --

25 MR. PANELLA: This one.

1 THE COURT: That hooks up with an overhead
2 projector.

3 MR. PANELLA: I've got a computer. I've already
4 tested it.

5 THE COURT: Oh, you found it that way. Okay.

6 MR. PANELLA: Where do you want it Judge?

7 THE COURT: Generally we put it there so that
8 everybody can see.

9 MR. PANELLA: Okay. So then I'll just --

10 THE COURT: And that's why it -- well, it has two
11 sides.

12 MR. PANELLA: Oh. The problem with it --

13 THE COURT: That's why it has two sides, so that --

14 MR. PANELLA: Here's the issue, it's going to be
15 however long this thing is.

16 THE COURT: Yeah.

17 MR. PANELLA: Because it needs to connect to my
18 computer.

19 THE COURT: Well then bring it over here. Mr.
20 Respass, you need to see. Mr. Derossett and Mr. West
21 have to see.

22 MR. RESPESS: Well, I would like to see if we could
23 do it --

24 THE COURT: Right, we could put it over here
25 because it's got a screen on the back and I can see.

1 MR. PANELLA: Yeah. We'll figure it out.

2 THE COURT: Where ever it works so that we can all
3 see.

4 MR. PANELLA: Can you help me? Judge, he's an
5 attorney with my office. If you would permit?

6 THE COURT: Certainly.

7 MR. PANELLA: I don't want it to be between she
8 and I, but I don't want to block you guys from seeing
9 her.

10 THE COURT: Yeah, if you --

11 MR. PANELLA: This -- could this work?

12 THE COURT: Sure.

13 MR. PANELLA: So that way you and the witness can
14 see.

15 THE COURT: Well, the witness -- right, the witness
16 and I can see from the back and --

17 MR. PANELLA: Oh, good.

18 THE COURT: The only folks that can't see really
19 are -- all right, Mr. Respass, you can --

20 MR. PANELLA: Well, I can angle it more for Mr.
21 Respass. I think.

22 THE COURT: Okay.

23 MR. PANELLA: Can you see it Judge?

24 THE COURT: Pretty much. Well, I'll know in a
25 minute.

1 MR. PANELLA: We had it turned on. I'm not sure if
2 it still is.

3 THE COURT: I just want to see how -- if the glare
4 effects it too.

5 MR. PANELLA: Excellent.

6 THE CLERK: Raise your right hand. Do you solemnly
7 swear or affirm that the testimony you shall give will
8 be the truth, the whole truth, and nothing but the truth
9 so help you God?

10 THE WITNESS: I do.

11 THE CLERK: Thank you. Have a seat.

12 MR. PANELLA: Okay.

13 WHEREUPON:

14 ERIN STRAIT,
15 a Witness herein, having been duly sworn, testified upon her
16 oath as follows:

17 DIRECT EXAMINATION

18 BY MR. PANELLA:

19 Q. Good morning Ms. Strait.

20 A. Good morning.

21 Q. If you could say your name and spell your name
22 for -- the last name for the record please?

23 A. Erin Strait, S-T-R-A-I-T.
24
25

1 Q. Okay. And Ms. Strait, if you could begin by
2 telling us a little about your background and training and
3 experience, where you currently work.

4 A. I currently work for the Brevard County Sheriff's
5 Office as a crime scene investigator. I've been doing that
6 for approximately five and a half years. I have a Bachelor's
7 of Science in forensic investigation.

8 I've been to the National Forensic Academy. When I was
9 hired on at the Sheriff's Office we went through a 16 week
10 training program, and I'm certified through the International
11 Association for Identification as a crime scene analyst.

12 Q. Okay. And in August of 2015 what was your
13 position?

14 A. Crime scene investigator.

15 Q. And did you have occasion to be involved in an
16 officer involved shooting on that -- on August 20, 2015?

17 A. I did.

18 Q. Okay. And what was your role in that?

19 A. I took a video of the scene when we first arrived,
20 and then I assisted in some searching.

21 Q. Okay. So, before we get to that actual case I want
22 to talk to you about what the standard procedures are for a
23 crime scene tech when you get to a crime scene.

24 A. Okay.

25

1 Q. So, what is the first thing you're going to do --
2 well, how many people are on the team?

3 A. At the time we had I believe nine people.

4 Q. Okay.

5 A. Nine crime scene investigators, and then we have
6 one sworn sergeant.

7 Q. Okay. And so when you get to a scene -- let's talk
8 about like what you would do when you got to this scene.
9 What is the first thing that crime scene investigators are
10 supposed to be doing?

11 A. We usually will go to one of the responding
12 deputies or go to our sergeant, kind of get a little bit of
13 information about what we've actually responded to.

14 And then our sergeant will delegate who's going to be
15 the lead crime scene investigator. And then she -- actually,
16 CSI Pill in this case, she'll kind of delegate what tasks she
17 wants us to do.

18 Q. Okay. Now, when you get to a crime scene it's your
19 protocol not to move anything, right?

20 A. Correct.

21 Q. And is that -- what's the purpose of that?

22 A. Because we need to document the evidence as it is.

23 Q. Okay, for that matter does that even extend to
24 light switches and things like that?

25 A. Yes.

1 Q. Okay. So, is it fair to say that you wouldn't ever
2 go into a scene and turn a light on or off prior to it being
3 documented, right?

4 A. I would not.

5 Q. Okay. And so in -- I think the -- what I want to
6 get to is for your folks it's important to maintain the
7 integrity of the crime scene, right?

8 A. Yes.

9 Q. And so is one of the first things that's done when
10 you get there to go ahead and document the scene with a
11 video?

12 A. Yes.

13 Q. And in this case was that indeed one of the first
14 things that was done?

15 A. Yes.

16 Q. So, would you say that you were one of the first
17 people to begin documenting, at least for evidentiary
18 purposes, what was going on?

19 A. I was.

20 Q. And it was important for you to maintain the
21 integrity and make sure if we ever had a proceeding like this
22 it looked exactly like it looked to you?

23 A. Yes.

24

25

1 Q. Now, as far as you know nothing about this scene on
2 August 20, 2015 changed prior to you documenting it, right?

3 A. Right.

4 Q. So, let's -- I guess what I wanted to know, because
5 if it's dark out, like if it's at night, would you not turn
6 on a light for example if you were going into a house so you
7 could see better?

8 A. Sometimes we would.

9 Q. And would that only be after everything was
10 photographed and videoed?

11 A. Usually, yes.

12 Q. Okay. And if not wouldn't there be a note or
13 something, I turned this light on, or some marking somewhere
14 that that changed?

15 A. I would.

16 Q. Now, in your experience first responders to the
17 scene take great pains not to touch or change anything about
18 the crime scene either, correct?

19 A. To my knowledge, yes.

20 Q. Okay.

21 MR. PANELLA: Just give me one moment.

22 THE COURT: Certainly.

23 BY MR. PANELLA:

24 Q. Okay, so, when you're there doing your video of the
25 crime scene what kind of camera were you using?

1 A. It was a Sony Handycam.

2 Q. And was that a camera that was actually issued to
3 you by BCSO?

4 A. Yes.

5 Q. And we took a deposition in this case, right?

6 A. Yes.

7 Q. Okay. So, what I'm asking is does that camera
8 issue an accurate rendering of what you're looking at?

9 A. Yes.

10 Q. Okay. And your job is to completely and accurately
11 capture this whole scene that night?

12 A. Yes.

13 Q. Before we get to the video let's talk about the
14 lighting conditions as you personally perceived them that
15 night. It was very dark that night, correct?

16 A. Yes.

17 Q. And you -- you don't remember much light coming
18 from, you know, anywhere on that scene, right?

19 A. Not much.

20 Q. And as a matter of fact, your folks had to use
21 flashlights and all kinds of things in order to actually
22 locate shell casings in the front yard, right?

23 A. Yes.

24

25

1 Q. And you even had -- I think you used your
2 flashlight too, right, because you couldn't see much?

3 A. Yeah, for the camera. Sometimes when it's dark it
4 needs a flash to have something to focus on because we really
5 couldn't see.

6 Q. Okay. Now, is this -- what we're looking at right
7 now -- you've had a chance to review your video prior to your
8 in court testimony today, right?

9 A. I have.

10 Q. Okay. And so this video that I have here --

11 MR. SCHEINER: Judge, I'm ob -- I don't believe
12 this is marked in any way, shape, or form.

13 MR. PANELLA: Let me -- I have it ready to be
14 marked. So, I'd like to go ahead and do that then.

15 THE COURT: All right. Do you have a --

16 MR. PANELLA: I have a thumb drive that's currently
17 in my computer for this exact purpose that this is
18 running off of, but I can go ahead and give it to the
19 clerk.

20 THE COURT: Okay. Do you -- would you like to --

21 MR. SCHEINER: I just want to make sure that
22 what's --

23 THE COURT: Right, what we're about to see --

24 MR. SCHEINER: (Cont'd) being played is what's
25 going to become part of a record so that --

1 THE COURT: Right.

2 MR. PANELLA: I was about to lay the proper
3 predicate Judge --

4 THE COURT: Okay.

5 MR. PANELLA: (Cont'd) and introduce it, but this
6 is going to be Defense Exhibit A.

7 THE COURT: All right.

8 MR. PANELLA: And it will be the video tape taken
9 on August 20, 2015 by Erin Strait. Would you like the
10 thumb drive or can we move it?

11 THE COURT: Oh, if you want to just describe what
12 it is and --

13 MR. PANELLA: Okay.

14 THE COURT: And you've established that she's
15 already looked at it and --

16 MR. PANELLA: Okay.

17 BY MR. PANELLA:

18 Q. And so this video is 11 minutes and 10 seconds
19 long. Does this look like the video that you've reviewed?

20 A. Yes.

21 Q. I'm going to go ahead and play just a little bit of
22 it so you can make sure, and I'll play it all the way at the
23 end, make sure this is exactly the video as you recall that
24 you presented, okay?

25 A. Okay.

1 Q. And if you want -- you can stop me at any time too
2 if you fell comfortable.

3 A. Oh, yes, that's the video.

4 Q. That's the video?

5 A. Yes.

6 Q. Okay.

7 MR. PANELLA: All right, so, at this time I would
8 like to move Defense Exhibit A into evidence as Defense
9 Exhibit 1, which will be the scene video.

10 THE COURT: All right, Mr. Respass or Mr. Scheiner,
11 any objection?

12 MR. SCHEINER: No.

13 MR. PANELLA: Okay. May I give it to the clerk
14 after we're done watching it?

15 THE COURT: Certainly, certainly.

16 MR. PANELLA: All right. Okay, so, let me go ahead
17 and give you some exhibits so you can maybe -- it might
18 make it easier for us as you're telling us where you
19 are.

20 THE COURT: I think without objection Defense
21 Exhibit A will become Defense Exhibit 1.

22 BY MR. PANELLA:

23 Q. Do you know where you were when you started filming
24 in this case?

25 A. I'm south, south of the house. I'm on Alcazar.

1 The residence is on the corner of Alcazar and Covina. So, if
2 you would keep -- the direction I'm going to walk in this
3 video is towards Covina.

4 Q. Okay, so, you're walking towards Covina and also
5 toward the house itself, right?

6 A. Yes.

7 Q. Okay. And I want to give the Judge a clear view of
8 what's going on with these streets. So, I have here what I
9 would identify as Defense Exhibit B.

10 THE CLERK: Are we going to mark any of this stuff
11 Your Honor?

12 THE COURT: She -- the one -- the video is a thumb
13 drive.

14 THE CLERK: Right.

15 THE COURT: But yes, we are. So, A just hold the
16 sticker --

17 THE CLERK: Yes, ma'am.

18 THE COURT: (Cont'd) for when he takes it out. And
19 then B I think you can mark.

20 MR. PANELLA: Thank you.

21 THE COURT: Is that marked?

22 MR. PANELLA: This is going to be without objection
23 Defense Exhibit 2.

24 THE COURT: All right. Without objection. Then
25 Defense Exhibit 2. Is it marked?

1 MR. PANELLA: It's an aerial photo.

2 THE CLERK: No, it's not marked.

3 MR. SCHEINER: It's not marked.

4 THE COURT: Okay.

5 MR. PANELLA: It's not marked Judge.

6 THE COURT: Why don't you let Madam Clerk mark it
7 please. And do you anticipate a number of exhibits?

8 MR. PANELLA: Not for this witness.

9 THE COURT: Okay, but I mean --

10 MR. PANELLA: Yeah, we'll mark them.

11 THE COURT: Okay. I don't know, is anybody
12 allowed -- is Mr. West allowed to have stickers and
13 write the numbers on them?

14 THE CLERK: What?

15 THE COURT: So that they can be just --

16 THE CLERK: I'm going to say no.

17 MR. PANELLA: Your stickers?

18 THE CLERK: We're -- we need to mark the evidence.

19 THE COURT: All right.

20 THE CLERK: If you would like to provide it to
21 us --

22 THE COURT: Not a problem.

23 THE CLERK: (Cont'd) we could mark it in advance
24 while you're doing this one.

25

1 THE COURT: That's what I'm saying. Because I know
2 you all have to write the case number and then the
3 letters and all that. Yeah, thank you. That was always
4 co-counsel's job is to fill out the stickers. All
5 right.

6 MR. PANELLA: May I approach the witness Judge?

7 THE COURT: Yes, sir.

8 BY MR. PANELLA:

9 Q. Okay, I'm showing you what is now Defense Exhibit
10 2. Do you recognize this photo?

11 A. Yes.

12 Q. Okay. And what does this photo depict?

13 A. It's the residence 1051 Covina.

14 Q. All right. So, I'm also going to show you, just
15 for demonstrative purposes so the Judge can kind of see this
16 a little bit bigger, is this -- what do you recognize this to
17 be?

18 A. That's also 1051 Covina.

19 Q. Is this a fair and accurate rendering of the actual
20 house that you worked at that night?

21 A. Yes.

22 Q. Okay. And it's just -- it's for your purpose
23 Judge. This is the front of the house during the day. Is
24 this the next day when this photo was taken?

25 A. Yes.

1 Q. All right. So, when you started your invest --
2 when you started on this video where are you in relation to
3 this picture?

4 A. Down here.

5 THE COURT: Here wait, I think --

6 MR. SCHEINER: Can we get these exhibits marked
7 Judge, because --

8 THE COURT: Right.

9 MR. SCHEINER: (Cont'd) the witness is identifying
10 things on each of these exhibits --

11 THE COURT: Right.

12 MR. SCHEINER: (Cont'd) and the record's not going
13 to be clear what she's identifying.

14 THE COURT: And we really do -- yes, thank you Mr.
15 Scheiner. We definitely do. Why don't we mark that as
16 the next --

17 MR. RESPESS: C.

18 THE COURT: (Cont'd) numbered exhibit. Yes.

19 THE CLERK: Well, it's --

20 MR. PANELLA: She was already doing the other ones
21 Judge.

22 THE CLERK: Well, I haven't started yet.

23 THE COURT: Okay.

24

25

1 MR. PANELLA: Okay. Well then let's do this: For
2 this witness this is all I'm going to need. This one
3 would be 3.

4 THE CLERK: Is it in as 3 or is it still C?

5 MR. PANELLA: It's not in yet.

6 THE COURT: No, it's not in --

7 THE CLERK: It's C.

8 THE COURT: It's C, it's C.

9 MR. PANELLA: Is there -- do you have an objection?

10 MR. SCHEINER: I don't have an objection. I just
11 need stuff -- I just need it marked and then --

12 MR. PANELLA: Okay. And then -- I'll tell you
13 what --

14 THE COURT: So, you don't -- Mr. Scheiner, have you
15 looked at each of these?

16 MR. SCHEINER: I have not.

17 THE COURT: Okay, would you like to show him?

18 MR. PANELLA: Yeah.

19 THE COURT: Yeah, thank you.

20 MR. PANELLA: Okay.

21 THE COURT: Okay, so we're -- you have no objection
22 to these --

23 MR. SCHEINER: No objection.

24 THE COURT: (Cont'd) blow ups that he has? Okay,
25 great. Thank you.

1 MR. PANELLA: Thank you Judge.

2 THE CLERK: This is C-3.

3 MR. PANELLA: C-3. Well --

4 THE CLERK: No.

5 MR. PANELLA: No, it should be --

6 THE CLERK: Where's the one being marked as --

7 MR. PANELLA: It should be D-4?

8 THE CLERK: No. Okay, I have 1 and 2 in evidence.

9 MR. PANELLA: Okay.

10 THE CLERK: 1 is the thumb drive, B is the photo.

11 I've got C3 as the blow up of the house.

12 MR. PANELLA: C3.

13 THE CLERK: There's no sticker.

14 MR. PANELLA: I know. I'm trying to give it to
15 you.

16 THE CLERK: Okay.

17 MR. PANELLA: Thank you. D4. E5. Okay, thank you
18 Judge.

19 THE COURT: Certainly.

20 BY MR. PANELLA:

21 Q. So then you would be coming from you're saying from
22 down from the street down here, right?

23 A. Right.

24

25

1 Q. All right. So, you're heading toward the house
2 itself, which should be up here on your right?

3 A. Yes.

4 Q. Okay.

5 THE COURT: And Mr. Panella, so, you -- did Ms.
6 Strait say she was travelling north to south, south to
7 north? I think you had asked her that.

8 THE WITNESS: I'm south to north.

9 MR. PANELLA: Which direction are you travelling?

10 THE COURT: Okay, south to north.

11 MR. PANELLA: Okay. And so I want to play a little
12 of this video for you.

13 BY MR. PANELLA:

14 Q. So, when you're looking at this video this is an
15 accurate -- you already told us, this is an accurate way that
16 the scene looked to you, correct?

17 A. Yes.

18 Q. Okay. So, right now what we're looking at is
19 you're actually walking down Alcazar toward the house?

20 A. Yes.

21 Q. Okay. I'm going to skip ahead a little bit just to
22 save us some time. And I'll pause it here. Ms. Strait, what
23 are we looking at right now? What -- where are we? If you
24 could help orient us. And we're at minute 1:48.

25 A. I would actually have to go back to watch because I

1 walk -- because I pan across the whole area.

2 Q. Oh, no problem at all. I just wanted -- just let
3 me know if you're comfortable moving forward once we have an
4 orientation.

5 A. Is this where it was? Okay. I'm on the corner
6 of -- just about to the corner of Alcatraz and Covina. The
7 residence is to the right in this picture.

8 Q. Did you mean Alcazar and Covina?

9 A. Al -- yeah, Alcazar, sorry.

10 Q. Okay, all right. So -- but this police car to your
11 right, is -- what -- whose yard is that as far as you know?
12 What yard is that?

13 A. That's the residence.

14 Q. The subject residence?

15 A. Yes.

16 Q. Okay. And so can we briefly see just sort of right
17 here the side of 1051 Covina?

18 A. Yes.

19 Q. Okay. And obviously that police car's got its
20 brights on and all of that, right?

21 A. Yes.

22 Q. Now, for context we're looking at some things that
23 are on the floor here. Do you have any idea -- in front of
24 the sheriff's vehicle, do you have any idea what those are?

25 A. No.

1 Q. Okay. I'm going to skip ahead, and I'm going to
2 turn this down for all of our sakes. Okay, right now are you
3 just getting a closer look at the side yard of 1051 Covina?

4 A. And there's an item of evidence in the front yard
5 that I was kind of zooming in on.

6 Q. Is that what you're pointing out with your
7 flashlight?

8 A. Yes.

9 Q. I see a photo marker Ms. Strait right there, okay.

10 A. Yes.

11 Q. And we talked a little about this before, but I
12 just want to make sure. You said that the video was
13 obviously one of the first things that was done when you guys
14 got to the scene, right?

15 A. Yes.

16 Q. Is it fair to say that the reason the photo markers
17 are there is likely because they wanted you to be able to see
18 where the items of evidence were?

19 A. Yes.

20 Q. Okay. So, those may have been done by first
21 responders?

22 A. Yes, sometimes when first responders find items of
23 evidence, especially something that's in the grass where it's
24 not -- it's going to be hard to find, they'll mark it with
25 photo markers that they have in their vehicle.

1 Q. Okay. And would you agree with me that looking at
2 this video right here, but for the police cars actual bright
3 lights on, it's extraordinarily dark in that yard?

4 A. It's dark in the yard.

5 Q. Okay.

6 MR. SCHEINER: Can I get the time marking on that
7 please?

8 MR. PANELLA: This is 3:59.

9 MR. SCHEINER: Thank you.

10 MR. PANELLA: Yes, sir. And actually I want to
11 back up to 3:56 Mr. Scheiner, because I wanted to point
12 something else out. Actually, nevermind.

13 BY MR. PANELLA:

14 Q. Okay, so, let's go ahead and try to get you across
15 the street. If you're not oriented to where we are just let
16 me know and I'll back up.

17 A. Okay.

18 Q. Okay, I want to pause right here. Do you know
19 where we are Ms. Strait?

20 A. Yes.

21 Q. Okay. And what -- in this section of the video,
22 it's at 6:05, where is the 1051 Covina?

23 A. To the right.
24
25

1 Q. So, it's just to the right of where you're
2 standing?

3 A. Yes.

4 Q. So, are you standing like in the edge of the front
5 yard?

6 A. Yes.

7 Q. Okay. Now, I'd like to -- there's been some
8 discussion of street lights. Is that street light that we
9 see here at minute 6:05, is that the closest street light to
10 the house?

11 A. Yes.

12 Q. Okay. And I -- since you were there help us get a
13 sense. That's not directly across the street from the house
14 either, right?

15 A. No, it's down the street just a little bit.

16 Q. Okay, so, it's across the street from the house and
17 down maybe a house length or something?

18 A. Yes.

19 Q. But that -- that street light is on, right?

20 A. Yes.

21 Q. When you got there?

22 A. Yes.

23 Q. And yet it was still very dark in the yard,
24 correct?

25 A. Yes.

1 Q. I'm going to zoom us ahead just to save some time.
2 All right, where are we right now?

3 A. We're on Alcazar, the northwest corner of that
4 intersection.

5 Q. And I'm looking at minute 7:47 on the video. So,
6 is it -- let's see if we've got something easy to -- all
7 right, so, I'm looking at Defense Exhibit 3, and this is the
8 front of the house in the daytime. So, is this the same
9 house that we're looking at?

10 A. Yes.

11 Q. And where -- so, I guess you're sort of back here,
12 right, from your angle right now? If we could zoom out of
13 this picture where would you be?

14 A. If we could zoom out I would be --

15 Q. Yeah, I know, it's kind of tough.

16 A. (Cont'd) over here.

17 Q. Well, I'll tell you what, we have this that was
18 entered as Exhibit 2 and we can show the Judge. I don't know
19 if you can see this Judge, but where would you have been if
20 this is an aerial of the house?

21 A. Around here.

22 THE COURT: Oh, I see. Okay, thank you.

23 MR. PANELLA: You see it?

24 THE COURT: Yes.

25 MR. PANELLA: Okay.

1 BY MR. PANELLA:

2 Q. And I notice some -- okay. So, I notice some -- it
3 looks like there's some running lights on on one of the cars.
4 Is that what your observation was too?

5 A. Yes.

6 Q. Do you have any idea why?

7 A. No.

8 Q. Okay. But but for those running lights do you see
9 any other light coming out of that house?

10 A. By the front door.

11 Q. You do? Okay. We'll get an opportunity to look at
12 that. Okay, we're looking at photo marker two now. We're at
13 minute like 8:20. What do you observe here?

14 A. A cell phone.

15 Q. Is that a cell phone?

16 A. A cell phone.

17 Q. Okay. Is that -- so, that's in the street?

18 A. Yes.

19 Q. Would that still be in that intersection, like
20 right in the middle of it?

21 A. I'd have to come out a little bit.

22 Q. Okay.

23 A. It looks like it's more on Covina than the
24 intersection from where I'm -- when I bring the camera up.

25

1 Q. Okay. All right, so now we're finally getting over
2 to the front of the house, right?

3 A. Right.

4 Q. And is that the light you were talking about, some
5 light coming out from the front of the house?

6 A. Yes.

7 Q. Okay. And is the door open?

8 A. Yes.

9 Q. And so the light that you're seeing is because of
10 some lighting inside the house?

11 A. Yes.

12 Q. And still you would agree obviously that it's --
13 the yard is super dark, right?

14 A. It's relatively dark.

15 Q. It's relatively dark or it's dark?

16 A. It's dark.

17 Q. Okay. So, you would also -- based on your video
18 that the light emanating from whatever were looking at right
19 now does not extend at least into the yard, right, it just
20 illuminates the inside of the house?

21 A. Yes.

22 Q. Okay. And I'm going to show you what's now been
23 admitted into evidence as Defendant's Exhibit 5. So, this is
24 a screen shot, relatively close to where this was. I'm not
25 exactly sure which second.

1 But for our purposes that's where that's coming from Ms.
2 Strait. So, I guess my question is -- we're looking at the
3 front of the house right now and the porch light's not on,
4 right?

5 A. I don't know how high up any lighting was in that
6 area because I didn't take a video close up, but from here I
7 mainly just see light coming out of the house.

8 Q. So, is that a you cannot tell if the porch light's
9 on?

10 A. I can't tell.

11 MR. PANELLA: Just one moment Your Honor if I may?

12 THE COURT: Certainly.

13 MR. PANELLA: I have nothing further Judge.

14 THE COURT: All right, thank you. Mr. Scheiner.

15 MR. PANELLA: If you want to use this.

16 MR. SCHEINER: If I could please.

17 CROSS EXAMINATION

18 BY MR. SCHEINER:

19 Q. Ms. Strait, how are you?

20 A. Good. How are you?

21 Q. I'm good. Thank you. I want to talk to you
22 first -- let's -- we'll use -- we're looking at the video
23 here, and I forget the time on it. It was 8:49 on the
24 counter on the tape on Defense Exhibit 1.

25 With this particular photograph that we're looking at

1 here, just so that we're all on the same page, this is
2 Defense Exhibit Number 5, taken from the video. Do you agree
3 with me that even the blow up quality is different than what
4 we're seeing on --

5 A. The blow up --

6 Q. (Cont'd) on that picture?

7 A. The blow up quality is a little darker. You can't
8 see as clearly.

9 Q. And then actually in this blow up quality we don't
10 see the light illuminating from the street light, right?

11 A. Yes.

12 Q. Okay. And when you were standing there looking at
13 that house you were using just a handycam, right?

14 A. Yes.

15 Q. This is a camcorder that I can go buy at Wal-Mart
16 or Best Buy?

17 A. Yes.

18 Q. Okay, it's not film quality? This isn't like
19 movies, right?

20 A. Right.

21 Q. And do you have any idea how those cameras work?

22 A. No.

23 Q. Okay. Do you know that they have like a retina or
24 some sort of display on the inside that absorbs light in
25 order to record what it can record? Did you know that?

1 A. I did not.

2 Q. And depending on how good the camera is will depend
3 on how much light it can absorb at night. Do you know that?

4 A. I did not know that.

5 Q. Is your camera rated for night shots? Do you know
6 that?

7 A. I do not know. I know that I don't have a light or
8 a night vision on my camera.

9 Q. Right. You have to turn the flashlight on for it
10 to see things, is that right?

11 A. Correct.

12 Q. Okay. Now, when you stood back on August 20th of
13 2015, when you stood on that corner of Alcazar and Covina,
14 were you able to see the entire house at 1051 Covina with
15 your naked eye?

16 A. Yes, I could see the house.

17 Q. So, in other words, in these dark spots on this
18 video you could tell that this was bushes here, right?

19 A. Yes.

20 Q. With your naked eye. You could tell that there was
21 a garage wall here and another window on the home there with
22 your naked eye, is that right?

23 A. I don't remember if I can see -- if I could see
24 that.

25

1 Q. But you knew there was a house there, you could see
2 a house there?

3 A. Yes.

4 Q. You can't see portions of the house in this video,
5 can you?

6 A. Not in this still shot.

7 Q. So, the quality of lighting being captured by
8 Defendant's Exhibit 1 is not accurate to the quality of
9 lighting you were able to see with your naked eye then?

10 A. Correct.

11 Q. In the early morning. Do you remember what time
12 you responded to the scene?

13 A. I got to the scene at -- I would actually have to
14 look at my report.

15 Q. You can look at -- with the Court's blessing if she
16 could refer to her report to see what time she --

17 THE COURT: Certainly, certainly.

18 THE WITNESS: I got to Covina Street at 2:52 in the
19 morning on August 21st.

20 BY MR. SCHEINER:

21 Q. Do you know -- I'm sorry, what time was that?

22 A. 2:52.

23 Q. And this happened around what time? Do you know?

24 A. I don't know.

25

1 Q. I'm going to back the tape up to the side yard.
2 And thank you Mr. Panella for leaving this up for me.

3 MR. PANELLA: Sure.

4 BY MR. SCHEINER:

5 Q. I'm going to start it at 3:44. Ms. Strait, do you
6 see that -- there's a sharp dark line that goes across the
7 screen. Do you know what that's from?

8 A. The lighting seems like it's from the vehicle,
9 so -- the patrol vehicle that's running. So, I think that's
10 when the light from the patrol vehicle --

11 Q. That's the vehicles that we saw on the video from
12 the other side with their lights on?

13 A. Yeah.

14 Q. Illuminating the area and casting a dark shadow
15 across that yard there.

16 A. Yeah, it's not --

17 Q. Do you agree with that?

18 A. It's not illuminating that area, yes.

19 Q. Now, do you -- a little bit more about cameras. Do
20 you know that cameras will absorb light from where they can?

21 MR. PANELLA: Objection, speculation.

22 MR. SCHEINER: Do you know that?

23 THE COURT: Overruled.

24 THE WITNESS: Yes.

25

1 BY MR. SCHEINER:

2 Q. And so if there are areas -- do you have a camera,
3 your own camera at home, or do you use digital photography --

4 A. I do.

5 Q. (Cont'd) as a crime scene technician? Have you
6 ever taken pictures at night without a flash?

7 A. Yes.

8 Q. And how do they come out?

9 A. Black.

10 Q. And -- but you could see the item you were looking
11 at, right?

12 A. With --

13 Q. That you were intending to take a picture?

14 A. With the flash, yes, with the flash.

15 Q. But with your naked eye I mean.

16 A. Oh, yes. Sorry.

17 Q. Okay. But when you take the photograph it doesn't
18 capture any light.

19 A. Right.

20 Q. Okay. And have you ever taken a photograph towards
21 the sun?

22 A. Yes.

23 Q. Okay. And what happens when you do that?

24 A. It blows the picture up.

25

1 Q. Right. The white gets really white?

2 A. Yes.

3 Q. Okay. When you were walking through this area with
4 this photograph you cannot -- or this video, you can't see
5 anything here.

6 A. Correct.

7 Q. Can you looking at this photograph or this picture
8 tell if there's ground there, water there, a hole there,
9 grass there, looking at the video?

10 A. No.

11 Q. Okay. With your naked eye were you able to walk
12 safely through there knowing that that was grass, a front
13 yard of 1051 Covina?

14 A. Yes.

15 Q. So, this video doesn't accurately capture the
16 lighting conditions on August 20th and 21st of 2015, does it?

17 A. No.

18 Q. As we watch this video going forward you shine the
19 light on particular items around a photo marker.

20 A. Yes.

21 Q. Were you able to see that photo marker with your
22 naked eye without shining a light?

23 A. I don't recall.

24 Q. Okay. You -- no other questions Judge.

25

1 THE COURT: All righty, thank you. Mr. Panella,
2 does that prompt anything?

3 MR. PANELLA: Thank you Your Honor.

4 THE COURT: All right.

5 MR. PANELLA: Oh, I'm sorry. What was your
6 question?

7 THE COURT: Oh. You said it does prompt something?

8 MR. PANELLA: Oh, yes. Just briefly Judge.

9 THE COURT: Okay. Certainly.

10 MR. PANELLA: Sure. Thanks.

11 RE-DIRECT EXAMINATION

12 BY MR. PANELLA:

13 Q. Okay Ms. Strait, so, just to follow up on what he
14 was just saying. Going back to -- I think it was at 3:11.
15 Let's see. Sorry, 3:51.

16 There was some talk just now about how there's a --
17 obviously you already testified that there's a bright light
18 coming from it's the headlight of the police car, right?

19 A. Yes.

20 Q. Okay. And you said it cast a shadow. Is there --
21 do you know of any, you know, like anything in the yard that
22 would have cast that shadow that the light would have been
23 reflecting on, or is it just a flat yard?

24 A. It's a flat yard.

25

1 Q. Okay, it's a flat yard. So, there's just light in
2 the one section where the light beams hit, right?

3 A. Yes.

4 Q. Okay. And there was some discussion of that screen
5 shot -- certainly that wasn't the scene, that wasn't the
6 exact marker where that was taken. So, let's go back and
7 look at that and then let's go ahead and look at the exhibit.
8 Okay, right here in this video you actually can see the
9 outline of the entire house, right?

10 A. Yes.

11 Q. Okay, so, this is where I think that you were just
12 being asked questions, you know, does the video accurately
13 reflect and you actually -- you could see it with your naked
14 eye but not here. In the video you can see the outline of
15 the house obviously, right?

16 A. Yes.

17 Q. It's not like you can't, right?

18 A. Right.

19 Q. It's just that as you testified a couple times it
20 was dark?

21 A. Yes.

22 Q. So, whether it was on the video or whether it was
23 on your naked eye your testimony today was it was dark out
24 there, right?

25 A. It was dark.

1 Q. And frankly where I -- I wanted to take it as close
2 as I could while it was still zoomed in. So, I'm looking at
3 9 -- I want to go to 9:11.

4 Okay, I'm not sure if this is the exact millisecond, but
5 nonetheless, does this image on the video, which was
6 different than that image that we were looking at earlier
7 more accurately reflect -- we've got an illuminated screen
8 here, but more accurately reflect the image that we're
9 looking at here at least?

10 A. I don't quite understand the question. It's --

11 Q. Well just you were being questioned on a part of
12 the video that this image wasn't taken from and then saying
13 how is it -- obviously it's different. Obviously it is.
14 What I'm asking is we could see the outline of the car,
15 right?

16 A. Right.

17 Q. And we could see the garage? I'm just making a
18 point that this is different from where you were just being
19 questioned on the screen shot, that's all. Would you agree?

20 A. Yes, the location that I was questioned on is
21 different.

22 Q. Okay.

23 MR. PANELLA: I don't have anything further Judge.

24 THE COURT: Okay, thank you. Then may Ms.

25 Strait --

1 MR. PANELLA: As far as we're concerned she may.

2 MR. SCHEINER: Yes.

3 THE COURT: Okay, thank you. Then who will be your
4 next witness.

5 THE CLERK: Can I have the evidence please?

6 MR. PANELLA: Thank you ma'am.

7 THE CLERK: Can I have my evidence back please?

8 MR. SCHEINER: Yes, I got you.

9 THE CLERK: That includes the thumb drive.

10 MR. PANELLA: Yes, ma'am. Thank you for your help.
11 Are the other exhibits marked Madam Clerk?

12 THE CLERK: Mostly, but noted.

13 THE COURT: Mr. Panella, are you looking for
14 something or who will be your next witness?

15 MR. PANELLA: It's going to be Ms. Chretien, Emily
16 Chretien. I think the -- I'm going to ask her about
17 these exhibits and I think they're almost done.

18 THE COURT: All right. Do they -- Madam Clerk, do
19 you need a moment to mark the -- do whatever you're
20 doing with the exhibits here?

21 THE CLERK: I have stickers on them, I just haven't
22 got --

23 THE COURT: Right, that's what I'm saying. You're
24 doing --

25 (Multiple speakers.)

1 THE COURT: All right, I'm going to take one
2 second.

3 (Whereupon, court stands in recess for
4 approximately five minutes.)

5 THE COURT: All right, come on up and be sworn.

6 THE CLERK: Raise your right hand. Do you solemnly
7 swear or affirm that the testimony you shall give will
8 be the truth, the whole truth, and nothing but the truth
9 so help you God?

10 THE WITNESS: I do.

11 THE CLERK: Thank you. Have a seat.

12 MR. PANELLA: Okay.

13 WHEREUPON:

14 EMILY CHRETIEN,
15 a Witness herein, having been duly sworn, testified upon her
16 oath as follows:

17 DIRECT EXAMINATION

18 BY MR. PANELLA:

19 Q. Good morning Ms. Chretien.

20 A. Good morning.

21 Q. If you could please state your name, spell your
22 last name for the record?

23 A. Emily Chretien, C-H-R-E-T-I-E-N.
24
25

1 Q. Okay. And Ms. Chretien, if you could go ahead and
2 start off telling us what your background and experience is
3 and what your current employment is as well.

4 A. I am currently an analyst with the Brevard County
5 Sheriff's Office. I was previously in crime scene for six
6 and a half years with Brevard County Sheriff's Office.

7 Q. When did you start in crime scene?

8 A. In 2012.

9 Q. And so -- okay, did you have any prior law
10 enforcement experience before that?

11 A. No.

12 Q. So, did you go right from college or did you --
13 what did you do before you came to BCSO?

14 A. After college I interned at a local police
15 department in Maryland before I was hired on with the
16 Sheriff's Office here.

17 Q. Okay. And so then thinking about August 20, 2015
18 you would have been with crime scene for what, a year, year
19 and a half?

20 A. 2015 would have been about three years.

21 Q. Oh, three years.

22 A. Yes.

23 Q. I'm sorry. You started in 2012 you said?

24 A. 2012, yes.

25

1 Q. Okay. And so did you have -- just skipping to
2 that, right, did you have occasion to become aware of a
3 shooting that happened in Port St. John that day?

4 A. Yes.

5 Q. Okay. And what were you doing when you heard about
6 that?

7 A. I was at home.

8 Q. Okay. And how did you get the call?

9 A. My sergeant called me.

10 Q. Okay. So, what did you do first?

11 A. Per his request I responded to Holmes Regional
12 Medical Center in Melbourne.

13 Q. Okay. And what -- when you went to Holmes Regional
14 Medical Center what was the purpose as you understood it for
15 that?

16 A. I photographed the suspect --

17 Q. Okay.

18 A. (Cont'd) at the hospital.

19 Q. All right. I'm going to go ahead and just -- thank
20 you Madam Clerk very much.

21 THE CLERK: It's not in order.

22 MR. PANELLA: That's okay. Thank you.

23 BY MR. PANELLA:

24 Q. When you got to the hospital did you observe any
25 law enforcement officers there as well?

1 A. Yes.

2 Q. Okay. And do you remember who was there?

3 A. I met with at the time Deputy Grimes, Agent Mary
4 Adams was there, and Special Agent Ryan Bliss with FDLE was
5 also there.

6 Q. Okay. And were they speaking with the Defendant,
7 someone we now know as John Derossett when you were there?

8 A. Not that I recall.

9 Q. Were they in his hospital room?

10 A. When I arrived they were in the general area.

11 Q. Okay. Now, did you eventually go to John
12 Derossett's hospital room?

13 A. Yes.

14 Q. Okay. And when you got there what was his
15 condition?

16 A. He was lying on a bed in there.

17 Q. Okay. Was he handcuffed to the hospital bed?

18 A. Yes.

19 Q. Okay. And when he was there did you speak to him
20 at all?

21 A. Not really.

22 Q. Your purpose was really just to photograph him,
23 right?

24 A. Yes.

25

1 Q. Okay. And is that what you did?

2 A. Yes.

3 Q. All right. So, I'm going to be -- did he -- by the
4 way, I mean, was it clear to you that he had been shot?

5 A. Yes.

6 Q. Okay. And was he bleed -- obviously he was
7 bleeding and all of that?

8 A. Yes.

9 Q. Was -- and I anticipate you would say he was in
10 pain, correct?

11 A. I would --

12 Q. It seem -- did it seem that way?

13 A. Yes.

14 Q. Okay. So, I'm going to go ahead -- and if I could
15 approach the witness Judge?

16 THE COURT: Certainly.

17 BY MR. PANELLA:

18 Q. I'll present you what's been previously marked as
19 Defendant Exhibit R, S, T. And do you recognize these
20 photos?

21 A. Yes.

22 Q. Okay. And do these photos accurately reflect the
23 condition of Mr. Derossett, or your photos that you took that
24 night?

25 A. Yes.

1 Q. Okay. And what is the first photo? It's going to
2 be -- well, I'll tell you what, at this time I'd like to move
3 them in Defendant's -- I think it's going to be 6, 7, 8.

4 THE COURT: Just for the record, did we formally
5 admit C as 3, D as 4, E as 5?

6 THE CLERK: That's what we were told.

7 THE COURT: Okay, okay.

8 MR. PANELLA: I thought we did Judge.

9 THE COURT: Okay. I just hadn't remembered as
10 doing that, but did now. So, and then R is 6, S is 7,
11 and -- Mr. Respess, have you looked at these?

12 MR. RESPESS: I have.

13 THE COURT: Do you have any objection?

14 MR. RESPESS: No.

15 THE COURT: All right. Then without objection then
16 R becomes 6, S becomes 7, and T becomes 8.

17 MR. PANELLA: Thank you.

18 THE COURT: Thanks.

19 BY MR. PANELLA:

20 Q. Okay, I'm showing you what is Defendant's Exhibit
21 6. What is this photo? What do you see in this photo?

22 A. It is Mr. Derossett laying on the bed in the
23 hospital room.

24

25

1 Q. Okay. And since it's been admitted into evidence
2 I'm going to go ahead and pull it up so that way we can all
3 see what we're talking about. Is this the photo we're
4 referring to?

5 A. Yes.

6 Q. Okay. And so in this photo what do you -- what
7 injuries do you witness?

8 A. An injury to the left elbow, and he also had
9 patching on his left chest.

10 Q. Okay. And when you say patching what do you mean
11 by that?

12 A. Medical patches.

13 Q. Oh, okay. Do you observe any abrasions on his
14 shoulder or anything like that?

15 A. A little, yes.

16 Q. Okay. Now, let's look at what is, let's see,
17 Defendant's Exhibit -- we'll look at 7 and we'll also look at
18 8. What do you see in 7?

19 A. 7 is his left elbow.

20 Q. Okay. Is what we're looking at right now what
21 we're talking about?

22 A. Yes.

23 Q. In your training and experience is that a gunshot
24 wound?

25 A. Yes.

1 Q. Okay. Does his elbow look deformed in this photo
2 as well?

3 A. Yes.

4 Q. All right. Now, what were the medical staff doing
5 while you were there?

6 A. They were assisting me with positioning him so I
7 could take photographs of his wounds.

8 Q. Okay. Did he object to you repositioning him?

9 A. No.

10 Q. So, he complied with whatever you guys wanted him
11 to do?

12 A. Yes.

13 Q. And as long as you were there he complied with
14 everything the law enforcement officers wanted him to do too,
15 right?

16 A. Yes.

17 Q. Okay. Let's look at Defendant's Exhibit 8. What
18 do you see there?

19 A. This is a picture of his back, the left portion of
20 his back.

21 Q. Is this the same photo?

22 A. Yes.

23 Q. Okay. So, what are we looking at here? Help us
24 understand, because you were there.

25 A. This is -- there's a piece of tape over another

1 wound that was on his back.

2 Q. Okay. And as you look further down did you -- I
3 know you noted in your report. Did he have another gunshot
4 wound also?

5 A. On his left back shoulder area, yes.

6 Q. Okay. Well, is this -- well, what we're looking
7 right here, is this what you're referring to in this area?

8 A. No, where the tape is.

9 Q. Oh, right here?

10 A. Yes.

11 Q. Okay. So then what you observed was two gunshot
12 wounds, correct?

13 A. Yes.

14 Q. And what is going on down here? Do you know?

15 A. No.

16 Q. Okay. But it's a wound of some sort?

17 A. I'm not sure.

18 Q. All right. Did you do anything else when you were
19 at the hospital?

20 A. I collected clothing at the hospital as well.

21 Q. Whose clothing did you collect?

22 A. Mr. Derossett's.

23 Q. And did you observe blood stains on the clothing
24 that you observe -- that you collected?

25 A. I did not see it that night. Agent Adams had

1 collected it prior to my arrival. I just signed for it that
2 night. So, I looked at it later.

3 Q. Okay. When you looked at it later did you observe
4 blood stains on the clothing?

5 A. Yes.

6 Q. Where were those blood stains?

7 A. I don't recall.

8 Q. Okay. What did you do after you left the hospital?

9 A. I responded to the Port St. John substation.

10 Q. Okay, what was happening at that time?

11 A. That's where I was told to meet up with the other
12 crime scene investigators.

13 Q. And were you guys waiting on a search warrant?

14 A. Yes.

15 Q. Did you eventually go over to the house at 1051
16 Covina?

17 A. Yes.

18 Q. All right. What was the first thing you did when
19 you got to that house?

20 A. I don't remember what the first thing was, but I
21 was directed to take photographs.

22 Q. All right, so, let's see, when you got there --
23 well, first of all, when you got there it was pretty dark,
24 right?

25 A. Yes.

1 Q. And the area of the yard, the front yard and the
2 side yard was dark. Would you say that?

3 A. Yes.

4 Q. Okay. And let's see, when you got there did you --
5 you didn't happen to notice if the porch light was on or off
6 either, did you?

7 A. No.

8 Q. Okay. And -- but all you remember was it was a
9 very dark yard?

10 A. From what I remember, yes.

11 Q. Okay. Now, was your responsibility to take
12 pictures of the outside, of the inside? What was your role
13 in the whole thing?

14 A. Primarily the inside of the residence. I did take
15 a few photographs from the outside as well.

16 Q. Okay.

17 A. When I first arrived.

18 Q. By the way, did you notice any other abrasions or
19 injuries besides the obvious gunshot wounds when you were
20 observing Mr. Derossett?

21 A. Yes.

22 Q. What were those?

23 A. There were abrasions on his left knee and left
24 toes.

25

1 Q. Okay. Now, you documented in your report a lot of
2 bullet defects. Before we talk about -- before we look at
3 some of that what is a bullet defect, or a suspected bullet
4 defect for BCSO crime scene purposes?

5 A. It is a -- a defect is a mark left behind by a
6 suspected bullet.

7 Q. Okay. And so how do you know if it's -- you know,
8 I know this might sound silly, but how do you as a crime
9 scene analyst know if, hey, that looks like it's probably
10 caused by a bullet?

11 A. Based on training and experience.

12 Q. Okay. So, the way maybe the markings, or the paint
13 was chipped off, or the size of the hole, things like that?

14 A. Yes.

15 Q. Do you have your report with you?

16 A. Yes.

17 Q. Okay, great. Can you tell us please where you
18 observed, where you personally observed bullet defects?

19 A. On the inside of the house?

20 Q. Well, why don't we start with on the outside. Did
21 you personally observe any on the outside of the house?

22 A. I did, but I don't remember. I was primarily
23 focused on the inside of the residence.

24

25

1 Q. Okay. So, let's -- so, you know that there was
2 some out there, but that wasn't your job, right?

3 A. Correct.

4 Q. So, let's talk about the inside.

5 A. Okay.

6 Q. What did you observe in there?

7 A. On the inside there was a bullet defect observed on
8 the south wall of the living room.

9 Q. So, I want to go ahead and pull up -- let's see, do
10 you have any objection to these photos? Just give me one
11 moment Ms. Chretien.

12 A. Em-hmm.

13 Q. Okay, Ms. Chretien, I'm going to show you what's
14 been previously marked as Defendant's Exhibit AA. Do you
15 recognize this photo?

16 A. Yes.

17 Q. And what do you know it to be?

18 A. This is the living room.

19 Q. Okay.

20 A. Inside the house.

21 Q. Inside the house.

22 MR. PANELLA: And without objection I'd like to
23 move this into evidence. This is Defendant's AA.

24 THE COURT: All right. Mr --

25 MR. RESPESS: I don't, I don't object.

1 THE COURT: All righty, then without objection.

2 Thank you. That will -- AA will become 8.

3 THE CLERK: 9.

4 THE COURT: Defense Exhibit 8.

5 THE CLERK: 9.

6 THE COURT: 9?

7 THE CLERK: T is 8.

8 THE COURT: Oh, yes, ma'am. Yes, ma'am, thank you.

9 9, all right.

10 BY MR. PANELLA:

11 Q. Okay, Ms. Chretien, what does this picture show
12 you? What do you see?

13 A. This is --

14 THE COURT: Wait, let me ask you one thing. Are we
15 still on Exhibit 9?

16 MR. PANELLA: We are Judge.

17 THE COURT: All right. So, you've just handed the
18 witness Defendant's Exhibit 9?

19 MR. PANELLA: Yes, ma'am.

20 THE COURT: Which is on the screen. Okay, thank
21 you.

22 BY MR. PANELLA:

23 Q. You can proceed. What are we looking at?

24 A. This is a photo from the living room looking
25 towards the front door. You have the couch, the chair, the

1 ottoman, and the coffee table, and there is a firearm on the
2 coffee table.

3 Q. Okay. So -- and again, as far as you know were you
4 the first people to enter this residence after it was cleared
5 and -- that night?

6 A. I believe so.

7 Q. Okay. You have no reason to think you weren't,
8 right?

9 A. No.

10 Q. So, there's no reason to believe that this house
11 that we're looking at right now and inside this living room
12 would have been moved or changed, or any condition would have
13 been changed after the shooting, right?

14 A. No.

15 Q. Okay. All right, so, did you notice any suspected
16 blood stains as you come to this house?

17 A. Yes.

18 Q. Okay. So, help us understand where that might be.
19 What did you observe?

20 A. In this photo there are some blood stains on the
21 carpet right in front of the ottoman.

22 Q. Okay.

23 A. And there is some blood stains on the ottoman
24 itself.

25

1 Q. All right. Now, do you happen to know if you
2 observed blood stains on the inside hallway coming in from
3 the front door?

4 A. Yes.

5 Q. And where were those?

6 A. Those were on the floor as you walked into the --
7 through the front door.

8 Q. Em-hmm.

9 A. And there were a couple blood stains on the wood
10 table along the wall where the mirrors are, and on the end
11 table where the lamp is.

12 Q. There's a couple other things I want to point out
13 about this video. Does the front door open in or out?

14 A. The front door opens in.

15 Q. Okay. Because you're actually standing inside the
16 house and the front door opens inside, right?

17 A. Yes.

18 Q. And what about the screen door? Does the screen
19 door open in or out?

20 A. Out.

21 Q. So, outside this screen door what is -- what is
22 exactly outside this screen door?

23 A. The porch?

24 Q. It's a porch, right?

25 A. Yes.

1 Q. And is it a pretty small porch?

2 A. Yes.

3 Q. Okay. So, it's just like a little landing, right?

4 A. Yes.

5 Q. And it's not screened in or anything?

6 A. No.

7 Q. So -- and it's got an overhang, right?

8 A. Yes.

9 Q. Like a little roof?

10 A. Yes.

11 Q. And that's it? Two pillars?

12 A. Yes.

13 Q. Okay. Now, you mentioned -- I just wanted to give
14 us an orientation. You were talking about bullet defects.
15 Where was the bullet defect you were just telling us?

16 A. The south wall is not shown in this photograph.

17 Q. Okay.

18 A. It is -- it's on the other side of that hallway.
19 You can see a little entrance in the corner of the
20 photograph.

21 Q. Okay. Do you -- if you ever -- if I have these,
22 and I know it's kind of a weird situation because we don't
23 have a laser pointer, if you ever want to come over and show
24 us you -- I think the Judge would let you if we ask.

25 THE COURT: Sure.

1 BY MR. PANELLA:

2 Q. Would you like to show us?

3 A. If you'd like me to.

4 Q. I would actually.

5 A. Okay. This is the south wall right here.

6 Q. Okay. So, if that's the south wall where was the
7 bullet defect that you observed?

8 A. On the south wall.

9 Q. Okay. And was that -- did you lab -- do you
10 remember what you labeled that in your report?

11 A. MM.

12 Q. All right. Did MM, that bullet defect, did that
13 have another bullet defect as well that was in its
14 trajectory?

15 A. Yes.

16 Q. And where did that go?

17 A. Into the hallway closet behind that wall.

18 Q. Okay. So, when we're talking about -- oh, and by
19 the way, did you finally -- all right, so, we've got the
20 south wall?

21 A. Yes.

22 Q. And then there's a hallway closet. And that bullet
23 defect was another hole, right?

24 A. Yes.

25

1 Q. And then did you finally find the projectile
2 somewhere in this house?

3 A. Yes.

4 Q. Where was it found?

5 A. It was in the bedding in the closet.

6 Q. Okay, so, from your training and experience what
7 does that tell you about the trajectory that that bullet was
8 travelling?

9 A. From outside of the residence into the residence.

10 Q. Okay, thank you ma'am. I'm going to show you,
11 since we're on this topic of the bullet defects, I've got a
12 couple other pictures I want to show you.

13 These have been previously marked as Defendant's Z, AB,
14 and AC. Okay, first of all let's talk about Z. Do you
15 recognize Exhibit C -- Z I mean?

16 A. Yes.

17 Q. And what is that?

18 A. This is in the hallway closet.

19 Q. Okay. Is that a bullet defect?

20 A. Yes.

21 Q. Okay. We'll put it on the screen in a second and
22 talk about it, but do you also recognize AB?

23 A. Yes.

24 Q. Okay. What is that?

25 A. This is a photograph of blood stains on the

1 ottoman.

2 Q. Okay. And what about AC?

3 A. This is the front foyer area right by the front
4 door, inside, and there's blood stains on the floor.

5 Q. Okay. Are these photos accurately representative
6 of the photos that you took?

7 A. Yes.

8 Q. Okay. Has anything been changed?

9 A. No.

10 MR. PANELLA: At this time I'd like to move these
11 into evidence Judge.

12 THE COURT: All right. Mr. Respass?

13 MR. RESPESS: No objection.

14 THE COURT: Any objection? Without objection then
15 Defense Exhibit Z becomes 10, AB becomes 11, and AC
16 becomes 12.

17 BY MR. PANELLA:

18 Q. Okay, so, in looking at then Defendant's Exhibit
19 12, what are we seeing here? Is this the bullet defect that
20 went through several walls in the house?

21 A. Yes.

22 Q. In the direct -- and the -- you actually did find
23 the projectiles in the back bedroom? Is that what you said?

24 A. This is the --
25

1 Q. Or I'm sorry, in the bedding.

2 A. The bedding in the hallway closet, yes.

3 Q. Okay. So, this is just one example of a bullet
4 defect you saw in the house?

5 A. Yes.

6 Q. Were there any other bullet defects that you
7 observed inside the house?

8 A. Defects, no.

9 Q. Did you observe any other actual rounds inside the
10 house that had been fired, projectiles?

11 A. Yes.

12 Q. Okay, where was that?

13 A. That was in the front window between the glass and
14 the screen.

15 Q. So, you actually found a projectile in the front
16 window of the house between the glass and the screen?

17 A. Yes.

18 Q. So -- okay. And it just was sitting there on the
19 window sill?

20 A. Yes.

21 Q. And you don't remember if the glass was broken,
22 right?

23 A. No.

24

25

1 Q. If it were broken is it likely that you probably
2 would have documented that?

3 A. Yes.

4 Q. Okay. So, it's more likely than not certainly that
5 the glass wasn't broken?

6 A. Correct.

7 Q. So, once again, what does that tell you, what the
8 trajectory of that bullet was coming from?

9 A. I can't quite remember the layout, but it would be
10 from the outside towards the residence.

11 Q. Well, let's look at this right here. Is this --
12 I'm trying to help us understand what you're talking about.
13 Is this the front of the residence?

14 A. Yes.

15 Q. All right. Now, what we're looking at is I
16 suppose -- what's to the left, is that the garage?

17 A. Yes.

18 Q. And then obviously there's some shrubbery here and
19 a walk way, right?

20 A. Yes.

21 Q. And then we have a window right behind the
22 shrubbery, correct?

23 A. Yes.

24

25

1 Q. And then obviously we've got that covered porch
2 that we talked about and the door, whatever. Is -- where was
3 the projectile?

4 A. In that front window behind the bushes.

5 Q. So, the projectile was actually right here, right
6 in this front window that we're -- the one to the left of the
7 door if we're looking straight on?

8 A. Yes.

9 Q. Okay. Okay, now I'm going to refer you to
10 Defendant's Exhibit 10. All right, again, this is I think a
11 closer view of some of the things you were telling us about.
12 Where are you standing when this picture's taken?

13 A. Right at the front door.

14 Q. Okay. And so you observe your -- so, is the front
15 door -- are you in the threshold of the front door?

16 A. Yes.

17 Q. So, if you were to turn around you'd be looking
18 outside?

19 A. Yes.

20 Q. Now, as you walk in you observe -- I'm seeing what
21 looks to be blood splatter. Is that what you said in your
22 report as well?

23 A. Blood stains, yes.
24
25

1 Q. Blood stains. And where are those stains? And we
2 can't see as much because it's just one picture, but tell us
3 what you observed from this entry way?

4 A. There are blood stains on the tile and a little bit
5 on the front carpet, and then there's blood stains on the
6 wood table to the right, and there's also a couple blood
7 stains on the wood end table on the left.

8 Q. Okay. Now, this -- and if we're walking in help us
9 orient. Is there a bedroom here on the right?

10 A. Yes.

11 Q. And where's the master bedroom?

12 A. To the left.

13 Q. And all the way in the back of the house, right?

14 A. Yes.

15 Q. Okay. So, those two bedrooms are separated?

16 A. Yes.

17 Q. Were there blood stains on these towels here that
18 we see?

19 A. Yes, there was a blue towel and a dark colored
20 vest.

21 Q. Okay. And there was blood on those too?

22 A. Yes.

23 Q. I'm going to show you Defendant's Exhibit 11 now,
24 and if you could just tell us what this is.

25 A. Those are blood stains on the ottoman and onto the

1 carpet below the ottoman.

2 Q. Okay. Now, you've talked a little -- well, can you
3 tell us what a transfer stain is?

4 A. It is an object or an item that has blood on it
5 coming in contact with another item, or object.

6 Q. Okay. Do you observe any transfer stains on this
7 ottoman?

8 A. Yes.

9 Q. And what else do you observe?

10 A. Drip stains coming down the front of the ottoman.

11 Q. Is that like right here?

12 A. Yes.

13 Q. And then obviously you see some blood stains on the
14 carpet, right?

15 A. Yes.

16 Q. All right. Did you observe -- before we talk about
17 what that means to you as a CSI person, do you observe
18 anything else unusual about this particular photo?

19 A. No.

20 Q. Okay. So, what does this tell you as a person who
21 studies blood? What are we looking at? If we've got a
22 transfer stain drip and then something on the floor.

23 A. That either a person or an item that has blood on
24 it came in contact with the ottoman and it flowed down the
25 front of the ottoman onto the carpet.

1 Q. Okay. Now, going back to this photo of the -- I
2 believe it was in the living room and you noticed that there
3 was a firearm, right?

4 A. Yes.

5 Q. All right. Now, that firearm and the condition
6 that it's in -- this is the condition it was in when you got
7 there, right?

8 A. Yes.

9 Q. And it's actually -- it's not -- do you know how
10 firearms work?

11 A. Basics.

12 Q. Okay, so, the slide is not open for example. It's
13 not caught open, as in it's not jammed at least in the
14 condition we can see it right here, right?

15 A. Correct.

16 Q. The slide's closed.

17 A. Yes.

18 Q. Nothing seems out of the ordinary, unusual about
19 that firearm right there.

20 A. Correct.

21 Q. All right. Now, did you -- well, in your report
22 did you notice if there were any rounds left in that firearm?

23 A. Yes.

24

25

1 Q. Okay. And how many rounds were left in the
2 firearm?

3 A. There were five in the magazine and when the slide
4 was pulled back there was one that was jammed in the chamber.

5 Q. Okay, but -- and we talked a little about this, I
6 just want to be clear. It's not like the slide is jammed
7 open right here, right?

8 A. Correct.

9 Q. It's just that when your CSI folks try to render it
10 safe you notice that there was a round inside the gun trying
11 to move its way into the chamber, right?

12 A. It was pointed up, yes.

13 Q. Right, exactly. Okay. So, how many all together,
14 six?

15 A. Yes.

16 Q. Do you happen to know how many rounds that gun
17 holds?

18 A. It was a 15 round magazine.

19 Q. Okay. Now, did you find any shell casings, or
20 anything at all actually besides the blood and the trans --
21 and the bullet defect inside the house that had to do with
22 the shooting?

23 (No response.)

24

25

1 Q. Let me be clear. Did you find any spent shell
2 casings inside the house?

3 A. No.

4 Q. Okay. So, I guess what I'm saying is that would
5 suggest to you that where ever the shooting took place it was
6 not inside the house, right?

7 A. Yes.

8 Q. Okay, I'm going to show you this photo. This is
9 outside the house. You took some photos out there you said,
10 right?

11 A. Yes.

12 Q. All right. And this has been marked, and it's your
13 EAC 40/30. What does this photo show you?

14 THE COURT: I'm sorry, has this been marked in --

15 MR. PANELLA: It's marked. It's not admitted yet.

16 THE COURT: Okay. What exhibit is this please?

17 MR. PANELLA: This is Exhibit Number X -- letter X
18 Judge.

19 THE COURT: All right.

20 BY MR. PANELLA:

21 Q. Let me show you this, and we'll get a few more in
22 here, save some time. I'm also showing you Exhibit F,
23 Exhibit U, and I'll show you one more. Let's go ahead and do
24 this first. What is Exhibit X show you?

25 A. Two vehicles in the driveway.

1 Q. Do you recognize this photo?

2 A. Yes.

3 Q. Is it accurate?

4 A. Yes.

5 Q. Did you take it?

6 A. Yes.

7 Q. Okay. And then I want to show you Exhibit F.

8 Where was this photo -- what does this show you? Where's
9 this photo taken from?

10 A. The front, but I don't believe this one's mine.

11 Q. Right, and I'm going to ask you.

12 A. Oh, okay.

13 Q. Was that -- is that a true and accurate
14 representation of the con -- of the house that night, but
15 just taken with a flash?

16 A. I'm sorry.

17 Q. Does -- can you identify what's in this photo?

18 A. Oh, yes.

19 Q. Does it accurately represent the house as you know
20 it to be in that condition that night? With the exception of
21 the fact that the photos --

22 A. Of the house, yes.

23 Q. Yeah, okay. Except that the photo was taken with a
24 flash, right?

25 A. Yes.

1 Q. Okay. So, with that said -- okay, that's fine,
2 that's fine. I'm going to show you this photo as well. It's
3 Exhibit U.

4 THE COURT: Is that X?

5 MR. PANELLA: I'll tell you right now.

6 THE COURT: Or F?

7 MR. PANELLA: It was F.

8 THE COURT: The one that you were just talking
9 about.

10 MR. PANELLA: We were just talking about -- no,
11 Judge, I'm sorry. I just happened to have that.

12 THE COURT: Oh.

13 MR. PANELLA: It's Exhibit F.

14 THE COURT: Okay. Well, if we can just let's
15 please call out the exhibit numbers that we're looking
16 at, because we're making a record.

17 And if I can't follow and I'm sitting here I don't
18 know that anybody else who's reading about it is going
19 to follow.

20 MR. PANELLA: Sorry Your Honor, I'm -- there's --
21 this hasn't been admitted yet.

22 THE COURT: Okay.

23 MR. PANELLA: And so I was trying to get her to
24 identify it and lay the predicate, and then just admit a
25 bunch.

1 THE COURT: How about I'm now showing you what's
2 been marked as Defense Exhibit X. Do you recognize
3 this, etcetera, so then I know we're on X.

4 MR. PANELLA: Thank you Judge.

5 THE COURT: Thank you. I think you did that part
6 of the time, but then sometimes I think you're just
7 thinking faster than you're talking.

8 MR. PANELLA: Okay Your Honor. Thank you.

9 BY MR. PANELLA:

10 Q. I'm now showing you what's been previously marked
11 as Defense Exhibit U. Do you recognize this photo?

12 A. Yes.

13 Q. Okay. Is this your photo?

14 A. Yes.

15 Q. Has anything been changed about it?

16 A. No.

17 Q. Okay. I'm also showing you what's been previously
18 marked as Defendant's Exhibit W. Do you recognize that
19 photo?

20 A. Yes.

21 Q. Has anything been changed about it? Is it
22 accurate?

23 A. It's accurate.
24
25

1 Q. Okay. And finally, Defendant's Exhibit V, what's
2 been previously marked as Defendant's Exhibit V. Is that
3 also your photo?

4 A. Yes.

5 Q. True and accurate?

6 A. Yes.

7 Q. Okay. Thank you.

8 A. Em-hmm.

9 MR. RESPESS: Mr. Panella, can I just see those for
10 a --

11 MR. PANELLA: Yeah, absolutely. These are the ones
12 we were just talking about.

13 THE COURT: And then Mr. Respass are you -- and Mr.
14 Panella are you tendering these at this time, and Mr.
15 Respass do you have any objection?

16 MR. PANELLA: I am Your Honor.

17 THE COURT: No objection?

18 MR. RESPESS: No.

19 THE COURT: All right. So then without objection I
20 think we've talked about Exhibit X, true?

21 MR. PANELLA: X.

22 THE COURT: Which had not yet been numbered. So,
23 Exhibit -- wait a minute, wasn't there one prior to X?
24 No. Exhibit X and then is 13, Exhibit F is 14, Exhibit
25 U is 15, W is 16, and V is 17. That's the way you

1 had --

2 MR. PANELLA: Yes, ma'am, that's how I had them
3 right here for you.

4 THE COURT: (Cont'd) called them out. Thank you.

5 MR. PANELLA: Thank you ma'am.

6 BY MR. PANELLA:

7 Q. Okay, now, going back to what I'm showing you now
8 as Defendant's Exhibit 13, okay. When you took this photo
9 were you using a flash on your camera?

10 A. On this one? Yes.

11 Q. Yes, ma'am. And is that why, like, for example
12 obviously the lights are illuminated and all of that?

13 A. Yes.

14 Q. Okay. So, what -- when we're looking at this photo
15 was the flash an external flash?

16 A. Yes.

17 Q. And was that department issued by BCSO?

18 A. Yes.

19 Q. For that matter was the camera issued by BCSO?

20 A. Yes.

21 Q. And are you pretty good at taking photos?

22 A. Yes?

23 Q. Would you say so yourself?

24 A. Yes.

25

1 Q. You've got training and experience taking photos,
2 right, and documenting scenes?

3 A. Yes.

4 Q. And so you're aware of different settings you could
5 use for a camera to let in more or less light in dark
6 situations, right?

7 A. Yes.

8 Q. Okay. But nonetheless you chose to use a flash
9 here, right?

10 A. Yes.

11 Q. Because is it not the case that it would have been
12 very difficult to get an accurate picture of this without the
13 flash?

14 A. Yes.

15 Q. Because it would have been too dark, right?

16 A. Yes.

17 Q. All right. So now looking at then -- do you have
18 any idea whose cars those are by the way?

19 A. No.

20 Q. Okay. Looking at then -- did you have an
21 opportunity to document any other vehicles at the scene?

22 A. There was one in the roadway across from the house.

23 Q. Okay. I'm going to be showing you now what is
24 Defendant's Exhibit 17. Is that the vehicle you're talking
25 about ma'am?

1 A. Yes.

2 Q. Okay. What -- when you're looking at this vehicle
3 is this -- is there anything that tells you that this was
4 marked in any way as a police vehicle?

5 A. I don't remember.

6 Q. Well, I mean -- so nothing that sticks out in your
7 mind, right?

8 A. Oh, no.

9 Q. Okay. And do you see any markings, any sheriff's
10 markings or anything like that on this car as you were taking
11 pictures of it?

12 A. No.

13 Q. What is it, a Mazda or something?

14 A. I don't know.

15 Q. Okay. And it's black, right?

16 A. Yes.

17 Q. Now, where is this car -- it looks like it's parked
18 directly across the driveway from 1051 Covina. Is that
19 accurate?

20 A. Yes.

21 Q. Okay. So, would you have been able to see this
22 black vehicle from the doorway?

23 A. I don't know.

24 Q. You're just not sure?

25 A. I don't remember.

1 Q. Okay. Do you know whose vehicle that is?

2 A. No.

3 Q. Did you learn later?

4 A. If I did I don't remember.

5 Q. Okay. Let's look at an -- oh, and by the way, this
6 picture looks pretty bright to me. Is that because you're
7 using a flash, and you know, everything you can with your
8 camera to get it the brightest you can?

9 A. Yes.

10 Q. Okay. So, you're actually going out of your way --
11 I just want to be clear because this is unusual compared to
12 some of the other stuff.

13 You're going out of your way to make sure that that
14 looks as bright as possible by using external factors like a
15 flash and like an aperture mode, right?

16 A. Yes.

17 Q. Okay. Now, I want to show you something that's
18 been marked -- that is now Defendant's Exhibit 16. Okay,
19 we've already talked -- you already recognize this photo.
20 What is this photo showing us?

21 A. The vehicle in the roadway.

22 Q. So, is this the same vehicle that we were just
23 talking about?

24 A. Yes.

25

1 Q. Is this the exact same camera that you're using,
2 just this time you're using it without an external flash or
3 what? Or you are still?

4 A. I was using external flash for this one. The other
5 one I used a different technique with flash.

6 Q. Oh, okay. So, this is just taken straight without
7 special camera effects?

8 A. Correct. Well --

9 Q. But still with the flash?

10 A. (Cont'd) I don't use camera effects, but yes.

11 Q. Tell us about the technique.

12 A. It's called painting of light.

13 Q. Yeah.

14 A. So, you have your camera up on a tripod and you
15 opening up the aperture, you increase the (unintelligible) to
16 let in more light.

17 Q. Is that -- and so painting with light, is that
18 something you used in this case?

19 A. Yes.

20 Q. And is that something you use only when it's very
21 dark outside?

22 A. It's used when there are darker settings so you can
23 see --

24 Q. Okay.

25 A. (Cont'd) the area.

1 Q. So, I'm going to show you -- since you brought it
2 up I'm going to show you Defendant's Exhibit 15. What are we
3 looking at?

4 A. That was my first photograph with painting with
5 light, trying to get my settings correct.

6 Q. Okay, so -- all right. So, this is the first one,
7 it was sort of a test run, and it came out just straight up
8 black, right?

9 A. Pretty dark, yes.

10 Q. Pretty much. Where -- I don't actually know, is
11 this the house on the left?

12 A. I can't see.

13 Q. Sorry.

14 A. That's okay. I think that's a vehicle.

15 Q. Maybe that's the running -- is that 1051 Covina and
16 that's the vehicle we were just talking about?

17 A. Yes.

18 Q. So, you started out here. Because it was so dark
19 you had to adjust, use painting with light, and then finally
20 we get to that bright one of the same picture.

21 A. Yes.

22 MR. PANELLA: Just one moment Judge. I'm starting
23 to wrap it up here.

24 THE COURT: Oh, okay.

25

1 BY MR. PANELLA:

2 Q. The external flash that you were using, can you
3 tell us about that? Does that go on top of the camera?

4 A. Yes.

5 Q. And is it -- I mean, it's -- you use the external
6 flash because it's much brighter than the other type of flash
7 that's native to the camera itself, right?

8 A. Yes.

9 Q. And you felt like you needed to use that in this
10 case when you were outside because obviously we're seeing how
11 the pictures are coming out without it, right?

12 A. Yes.

13 Q. Did you have to use a flashlight when you were
14 outside to look for things?

15 A. I used that with the painting with light technique.

16 Q. So, wait a second, on top of the external flash you
17 actually had a flashlight too?

18 A. The painting with light doesn't use the external
19 flash. It's with the camera settings, and then you can use a
20 flashlight or you could use your externals, but I used a
21 flashlight instead.

22 Q. Oh, okay. So, you actually have an external light
23 source, in this case a flashlight, and special settings on
24 the camera?

25 A. For the painting with light, yes.

1 Q. For the painting with light. And then obviously we
2 see some without the painting of light it's much, much
3 darker.

4 A. Yes.

5 MR. PANELLA: Just one moment. Nothing further at
6 this time Judge.

7 THE COURT: All righty. Would this be a good time
8 to take lunch, to have a lunch break?

9 MR. RESPESS: Yes, I'm going to be -- I'm going to
10 be gathering some other things.

11 THE COURT: Okay.

12 MR. RESPESS: Because I'm going to be putting into
13 evidence through this witness.

14 THE COURT: Okay.

15 MR. RESPESS: It's going to take a little while.

16 THE COURT: So, we could -- we'll take a lunch
17 break at this time in this matter until 1:30, because I
18 think we have something at 1:15. We have just a really
19 brief matter. All right, so, we'll be in recess until
20 1:30.

21 MR. PANELLA: Okay, Your Honor. Thank you.

22 THE COURT: Thank you.

23 THE CLERK: Can I have my exhibits back please?

24 MR. PANELLA: Yep, working on it now.
25

1 (Whereupon, court stands in recess for the luncheon
2 hour.)

3 THE COURT: All right, we're back on the record,
4 State of Florida versus John Derossett, 2015-CF-39550-A.
5 Mr. Derossett is entering the courtroom. Crime Scene
6 Tech Emily Chretien is waiting, and we'll give Mr.
7 Derossett a minute to get settled.

8 All right, Mr. Derossett is present with counsel,
9 Mr. Panella, Mr. West. And Mr. Respess and Mr. Scheiner
10 are here on behalf of the State. And Mr. Respess, I
11 think you were going to begin with --

12 MR. RESPRESS: Cross.

13 THE COURT: Oh, cross examination of --

14 MR. RESPRESS: Ms. Chretien.

15 THE COURT: Ms. Chretien, yes.

16 MR. PANELLA: And Your Honor, just for witness
17 management purposes, I was just wondering if you could
18 give us a frame for how late you expect to go today?

19 THE COURT: Oh, about 5.

20 MR. PANELLA: Okay.

21 THE COURT: Is that -- I mean, I know you all are
22 travelling. I mean, every -- 5:00.

23 MR. PANELLA: Thank you Your Honor.

24

25

1 THE COURT: Okay, thank you. We're going to try to
2 make it a 9 to 5 exact, exact. All righty, come on up.
3 And Mr. Respess, you're aware that approximately 2pm we
4 have to take a break, I have to break?

5 MR. RESPESS: No, but you just -- hey, this is your
6 courtroom, you tell me when to stop.

7 THE COURT: No -- well, can you and Mr. Panella
8 approach for just one moment?

9 MR. RESPESS: Yeah.

10 THE COURT: Real quick. Sorry.

11 (Whereupon, a short discussion was held at the
12 bench.)

13 THE COURT: Oh, and by the way tap your mic if you
14 will Mr. West. I just -- I turned it off. It should be
15 dead now. Okay, thank you. Dead?

16 MR. PANELLA: I think so.

17 THE COURT: Okay.

18 MR. PANELLA: Yeah.

19 THE COURT: Okay, there we go.

20 MR. RESPESS: May I proceed?

21 THE COURT: Certainly.

22 MR. RESPESS: Okay.
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CROSS EXAMINATION

BY MR. RESPESS:

Q. Ms. Chretien, I wanted to start with there was some images that you took at the hospital of a person that was represented to you as being John Derossett?

A. Yes.

Q. All right. You hadn't met Mr. Derossett before that -- was it morning? When did you get there?

A. I arrived at the hospital just after 11pm.

Q. Okay.

A. On the 20th.

Q. All right, so, you got to go there before you did any real work at the scene, other than look, right?

A. The hospital was the first place I went to --

Q. Okay.

A. (Cont'd) before I even went to the scene.

Q. All right. This person that you -- that was identified to you as John Derossett, do you see him in court with us today?

A. Yes.

Q. Can you point to him and describe the clothing he's wearing today in court?

A. He's wearing the red outfit over there.

1 Q. Okay. So, let the record reflect the witness has
2 identified the Defendant, John Derossett. Now, your job at
3 that time was crime scene investigator?

4 A. Yes.

5 Q. And you have a different job now?

6 A. Correct.

7 Q. And that's fingerprint examiner?

8 A. Analyst.

9 Q. Analyst, okay. All right, now, I wanted to talk
10 about outside when you first got there, and I'm going to show
11 what's been marked as State's Exhibit 3.

12 MR. PANELLA: Your Honor, if I may? I'm sorry.

13 THE COURT: Certainly.

14 MR. PANELLA: If -- simply, we're just having a
15 hard time hearing the witness. Just -- thank you.

16 THE COURT: Oh, sure.

17 MR. PANELLA: Thank you.

18 THE COURT: Yes, thank you.

19 BY MR. RESPESS:

20 Q. All right, amplify your voice just a touch.

21 A. Okay.

22 Q. All right. And I wanted to show Defense Exhibit 3
23 because it's big, it's a big image. But do you remember --
24 you were at the hospital around 11:00 you said?

25 A. PM, yes.

1 Q. 11pm. And when did you get to the -- or did you
2 get to the scene? I'm assuming you did based on your earlier
3 testimony, but I'm going to ask.

4 A. I did.

5 Q. All right. Do you remember about when you got to
6 the Covina address we're looking at?

7 A. It was about 2:50 in the morning.

8 Q. All right. So, sun was down, it was dark, right?

9 A. Yes.

10 Q. Right. When you got there were you able to look
11 around the crime scene before the warrant came and you were
12 allowed to go into the house?

13 A. When I arrived the warrant was already signed.

14 Q. Oh, it was already signed?

15 A. Yes.

16 Q. Now, you took some outside pictures because we got
17 to see examples of working in paint with light and -- does
18 that mean that the aperture's actually staying open for a
19 longer period of time than is normally for a camera?

20 A. Yes.

21 Q. Okay. So, that's -- that's what I call time lapse
22 type thing where it's longer than normal.

23 A. Yes, aperture's open for longer to allow more light
24 that's out there into the camera.

25

1 Q. All right. So, you could take pictures where you
2 couldn't see much of anything other than maybe a shadow,
3 right?

4 A. Yes.

5 Q. And you could take pictures that made it look like
6 clear, like you could see some of the items pretty clear,
7 right? We saw both of those when you testified earlier.

8 A. Yes.

9 Q. I want to talk about what you could see, not what
10 the camera could see. So, when you got to this scene and you
11 looked around before you went in the house what could you
12 see?

13 A. By the gar -- or the driveway on the road there was
14 a giant pole light. So, that was illuminating that area.
15 And I could see the grass and --

16 Q. Okay.

17 A. (Cont'd) and the house.

18 Q. How about could you see these photo markers in the
19 yard?

20 A. When I got there the photo markers weren't there.

21 Q. Okay. So, that happened after you got there?

22 A. Yes.

23 Q. Or at least that's your recollection?

24 A. Yes.

25

1 Q. All right. How about other people, did you see
2 other people?

3 A. Yes.

4 Q. All right. Were you able to look at them and
5 recognize them as co-workers?

6 A. Yes.

7 Q. All right. So, this wasn't a situation where
8 you're out there and you couldn't see and recognize those
9 that were working with you?

10 A. Right.

11 Q. Were they standing right next to --

12 MR. PANELLA: Objec -- okay.

13 BY MR. RESPESS:

14 Q. Were they standing right next to you when this
15 happened? Would they be some distance away? Would it vary?

16 A. It would vary.

17 Q. Okay. So, when you're outside where do you recall
18 seeing people while you were doing what you were doing?

19 A. There were people on that side of the residence,
20 which I can't recall direction right now.

21 Q. Alcazar is that way I believe. Alcazar is towards
22 me.

23 A. Okay.

24 Q. And this is Covina in front.

25 A. Then yes, towards Alcazar.

1 Q. Okay.

2 A. They were over there at that intersection, and
3 there were a couple people around me as well over by the
4 driveway.

5 Q. Okay. And you were able to see them to the point
6 where you could recognize them?

7 A. Most people.

8 Q. All right. Were you able to recognize law
9 enforcement officers that you saw in the area?

10 A. Yes.

11 THE COURT: Oh, Mr. Respess, before you put that
12 down I have one question that I wanted to clarify. When
13 you and -- when you -- Deputy Chretien, you indicated a
14 light pole.

15 Is that that brown stick that's sticking up? Is
16 that a -- something -- no, no, no, the one behind the
17 house.

18 MR. RESPRESS: She's asking this one.

19 THE COURT: That. Does that have a light on it?

20 THE WITNESS: No, it's over in this area. It's not
21 in the photograph.

22 THE COURT: Oh, okay. So, that does not have a
23 light on it, that stick that --

24 THE WITNESS: No.

25 THE COURT: Is that a telephone pole or?

1 THE WITNESS: I think it's a telephone pole.

2 THE COURT: Okay, okay. I didn't know if you were
3 saying that the officers had brought that light device
4 with them or --

5 THE WITNESS: Oh, no, it's --

6 THE COURT: (Cont'd) that that was a light post.

7 THE WITNESS: Yes.

8 THE COURT: Okay. Okay, thank you.

9 MR. RESPESS: All right, and I'm going to show you
10 three images and ask if you recognize them. Those are
11 BP, BQ, BR. And I wanted you to look at those and see
12 if you recognize the scenes in them.

13 THE COURT: Is it V as in Victor.

14 MR. RESPESS: B, as in Boy.

15 THE COURT: B as in Boy, okay.

16 MR. RESPESS: BP, BQ, BR.

17 BY MR. RESPESS:

18 Q. Do you recognize all those images?

19 A. Yes.

20 Q. The scenes?

21 A. Yes.

22 Q. All right. Now, do you know if you took those
23 images?

24 A. I don't believe so.

25

1 Q. Okay. But that's something that you recognize that
2 you saw while you were at this particular scene?

3 A. Yes.

4 Q. All right. And do they accurately show -- I think
5 we've seen similar images before, have we not?

6 A. Yes.

7 MR. RESPESS: Your Honor, I'm going to offer
8 State's Exhibits BQ -- BP, BQ, BR.

9 THE COURT: All right.

10 MR. PANELLA: No objection.

11 THE COURT: All right. All right, without
12 objection then BP becomes -- where are we, 18?

13 THE CLERK: No, it would be State 1.

14 THE COURT: Oh, I'm sorry. Thank you.

15 MR. RESPESS: Yeah, we're going to start again.

16 THE COURT: State's 1. Yes, we're starting over.
17 Thank you. So, State's 1 is BP, State's 2 is BQ, and
18 State's 3 is BR.

19 MR. RESPESS: Right. And so the record's clear Mr.
20 Panella and my side have talked, and we don't object to
21 evidence coming in in each other's part of the case so
22 we can move forward with this hearing.

23 THE COURT: Okay.

24 MR. PANELLA: That's correct Your Honor.
25

1 THE COURT: All right, thank you. I appreciate
2 that very much.

3 BY MR. RESPESS:

4 Q. Okay, I'm going to start with State's 3. There's a
5 pen right here you can use to point on the image so the Judge
6 can see, and I'm going to put it on here.

7 And I'm going to -- how do I adjust this one? Usually
8 I -- all right, Will, you come up here and do that because
9 I'm used to having a knob right here. I want it to -- I just
10 want it to fill the screen. There we go. There we go.

11 All right, now, what I wanted to know is if you were --
12 if you recognize what we're looking at in this image right
13 now. And I want to pull it over this way a little bit. And
14 what are we looking at? What direction are we looking at?

15 A. This is the front of the residence, so.

16 Q. All right. So, you're on Covina, across the street
17 it looks like, looking towards the front of the residence?

18 A. Yes.

19 Q. All right. And do you know what lighting was used
20 to obtain this shot?

21 A. No, I did not take the picture.

22 Q. Okay, but that appears accurate. Now, I asked you
23 earlier --

24 MR. PANELLA: Objection.

25 MR. RESPESS: All right.

1 MR. PANELLA: Is there a question?

2 MR. RESPESS: All right.

3 THE COURT: All right, I think there was a --

4 MR. RESPESS: Withdrawn. Let me do it that way.

5 THE COURT: Okay.

6 MR. RESPESS: I'll withdraw that comment and I'll
7 move on.

8 BY MR. RESPESS:

9 Q. Were you ever in the area, this entry way, during
10 the course of working on this particular case?

11 A. I did walk through there, yes.

12 Q. All right. Did you actually observe when you're
13 walking in that area, did you observe out into the yard?

14 A. I'm sure I did.

15 Q. All right. Were you able to see, you know, people
16 in the yard or people outside, outside the residence at that
17 time?

18 A. When I was out there, yes.

19 Q. Okay. And -- okay. Could you see from that
20 vantage point, could you see across the street, to the
21 neighbor across the street?

22 A. Yes.

23 Q. Okay. And I'm talking about the residence, okay.
24 I'm going to do the same questions with Exhibit 1. All
25 right, do you recognize that photograph?

1 A. Yes.

2 Q. All right. And again, when you were at the entry
3 area of that particular residence were you able to see into
4 this area of the yard?

5 A. I don't remember.

6 Q. Okay. I want to ask you about State's Exhibit 3,
7 the same question. When you were in the entry area of that
8 residence were you able to see the side yard and what was
9 going on in the side yard of the residence?

10 A. I don't recall.

11 Q. Okay. I want to show you what's been marked as BM.
12 Ask you to look at this diagram and see if you recognize
13 what's depicted in the diagram?

14 A. Yes.

15 Q. All right. And in looking at the things that are
16 depicted in the diagram, looking at the legend, do you
17 recognize that diagram as being accurate based on your
18 investigation at this -- of this case?

19 A. Yes.

20 MR. RESPESS: Your Honor, I'm going to offer
21 State's Exhibit BM.

22 MR. PANELLA: No objection.

23 THE COURT: All right. Exhibit BM now becomes
24 State's 4 without objection.

25

1 BY MR. RESPESS:

2 Q. And I'm going to put Exhibit 4 up on the view
3 screen. And I know we've seen some images, and I'm going to
4 ask you to relate some of the images we've seen to what's on
5 the view screen right now, but could you explain what this is
6 a diagram of?

7 A. This is the living room and the front door and the
8 hallway leading to where the hallway closet was.

9 Q. Okay.

10 A. Where the projectile was found.

11 Q. All right. And I think we saw an image when the
12 Defense was talking with you. I've got several images, but
13 there's one I was interested in, and that's Defendant's
14 Exhibit 4 I believe. I believe that's a 4. You can -- I
15 don't have my glasses, I'm getting older. Is that a 4?

16 A. I think that's 9.

17 Q. You think that's a 9? Okay, I'll go with 9. All
18 right, can you orient us using Defense Exhibit 9 to State's
19 Exhibit 4?

20 A. Okay. This is the front door that relates to this
21 front door here, and this wall is this wall right here.

22 Q. Okay.

23 A. And this is the front window of the wall of the
24 residence, which is this one.

25

1 Q. Okay. And there's areas here that are labeled with
2 various marker, markers on here. And what did the -- what
3 did the ones I just pointed, GG, HH, I, JJ, LL, KK, what do
4 those all relate to?

5 A. Blood stains.

6 Q. All right. And then there's a EC1 here. Is that
7 visible in this image as well? And I'm talking about Defense
8 Exhibit 4.

9 A. Yes.

10 Q. Defense Exhibit 9.

11 A. Yes.

12 Q. Okay. Can you show -- orient the photo to the
13 diagram so the Court sees live and with the image?

14 A. This is the coffee table in the living room, and
15 this is EC1, the firearm, and this is the coffee table with
16 the firearm.

17 Q. Okay. Now, I want to -- right now I want to talk
18 about a guitar. And I'm going to show you actually starting
19 with Defense Exhibit Number 3. That one I can see.

20 Do you see -- when you look through the front door of
21 this exhibit do you see a guitar along the wall?

22 A. Yes.

23 Q. Okay. Can you show the Judge where that is?

24 A. Okay.

25

1 Q. Okay. So, looking actually in this image that's
2 outside the house you can look through the open door and see
3 that guitar, can you not?

4 A. Yes.

5 Q. Now, I'm going to show you a couple of images I'd
6 like to potentially introduce, and that's I believe it's DN
7 and DQ. I would ask you to look at those images and see if
8 you recognize those images as something you saw that morning
9 when you got to 1051 Covina.

10 A. Yes.

11 Q. All right. And is that same guitar in that image
12 in the same location as in those pictures and when you first
13 went into that residence?

14 A. Yes.

15 MR. RESPESS: Your Honor, I'm going to offer DQ and
16 DN.

17 MR. PANELLA: No objection.

18 THE COURT: All righty then. Without objection DN
19 will become State's 5 and DQ -- DQ, correct? Will
20 become State's 6. And may I take -- may I ask if you
21 can pause Mr. Respass?

22 MR. RESPESS: Yes.

23 THE COURT: Take a five minute recess.

24 (Whereupon, court stands in recess for
25 approximately five minutes.)

1 THE COURT: Okay, so, we can carry on? It's
2 already finished?

3 MR. PANELLA: May we approach?

4 THE COURT: No, I think I know. I'll just wait til
5 somebody tells me.

6 MR. PANELLA: Okay.

7 THE COURT: Til somebody who actually knows tells
8 me. Okay. Okay.

9 MR. RESPRESS: Are we still in recess?

10 THE COURT: Yes -- no, we're no longer in recess.
11 Back on the record in 2015-CF-39550-A. Mr. Respress, you
12 may continue.

13 MR. RESPRESS: All right.

14 THE COURT: Mr. Derossett is present with counsel.

15 BY MR. RESPRESS:

16 Q. I'm going to show you some more images that I
17 believe relate to each other and that guitar. Starting with
18 State's Exhibit DR, EB, EI, EJ, and EK. I'd ask you to look
19 at those exhibits. Do you recognize those exhibits?

20 A. Yes.

21 Q. All right. And do they all associate with
22 something you found in relative close proximity to that
23 guitar that we've been looking at?

24 A. Yes.

25

1 MR. RESPRESS: Your Honor, I'm going to offer each
2 of these exhibits consecutively.

3 THE COURT: All right. So then DR will be State's
4 7. D -- excuse me, EB as in boy, isn't it? State's 8.
5 EI is State's 9, and EK is State's 10.

6 THE CLERK: I have EJ also.

7 MR. RESPRESS: Oh, I'm sorry, did you want to see
8 them?

9 THE COURT: Did we have another one?

10 MR. PANELLA: If they're the ones you already
11 showed me I have no objection.

12 MR. RESPRESS: Here, let me show you.

13 THE COURT: Yeah, Mr. Panella I heard -- was
14 hearing no objection. I'm sorry.

15 MR. PANELLA: Yeah, I don't have an objection, I
16 just want to make sure that they're the ones he showed
17 me.

18 THE COURT: Okay. Okay, so, Mr. Respress, why don't
19 you back up and make sure that we got this properly.
20 We have --

21 MR. RESPRESS: Yeah, I showed him before we started,
22 but I showed him a block --

23 THE COURT: Okay.

24 THE CLERK: Okay.

25 THE COURT: DR is 7.

1 THE CLERK: DR is 7, EB is 8.

2 THE COURT: Yes.

3 THE CLERK: EI is 9. EK is 10. And I also have an
4 EJ here. Did you move that as well?

5 THE COURT: He would have if --

6 MR. RESPESS: Yes.

7 THE COURT: Yes. EJ, okay. I missed that one.

8 All right, EJ then is 11. Thank you.

9 BY MR. RESPESS:

10 Q. All right, and while she's marking those I want to
11 move on to the images we just talked about before the short
12 recess, and I believe this is Exhibit 5. And again, I wanted
13 you to show the Court where and relate where that guitar is
14 to the front door of the residence.

15 A. Okay, I'm standing at the front door taking this
16 photograph, and where the guitar is is the south wall of the
17 living room. So, here's the front door, and then this is the
18 south wall.

19 Q. Okay. And then I believe State's Exhibit 6 is a
20 slightly closer image, and I want to know if what you later
21 marked as MM is coming into view in that image?

22 A. Yes.

23 Q. And can you show us what I asked you about?

24 A. Right here is MM.

25

1 Q. Okay. And did you -- based on your training and
2 experience did you recognize MM as something that you look
3 for as a crime scene investigator?

4 A. Yes.

5 Q. And what did you recognize, what did it appear to
6 be based on your training and experience?

7 A. A bullet defect.

8 Q. Okay. And in this case did it appear that the
9 defect was a penetrating defect, that there was actually a
10 hole in the wall?

11 A. Yes.

12 Q. And State's Exhibit 7, is that another image, just
13 closer up?

14 A. Yes.

15 Q. And that's the same defect you described earlier?

16 A. Yes.

17 Q. I'm going to show you what's been marked as State's
18 Exhibit 8 and ask you to tell us what we're seeing in State's
19 Exhibit 8, and orient us to the -- what you labeled MM
20 earlier.

21 A. This is inside the hallway closet, and this wall
22 right here -- the other side of this wall is the south wall
23 of the living room.

24 So, we have a bullet defect that entered the south wall
25 of the living room, came through the closet, ricocheted off

1 of the back wall of the closet and hit the other end of the
2 closet before landing in the bedding.

3 Q. All right. And we're going to show you where you
4 ultimately found -- can you orient us using State's Exhibit
5 9 -- using State's Exhibit 8 and 9 to explain where you're
6 viewing this in relation to a total view of the hall closet,
7 a more total view of the hall closet?

8 A. Okay. This is the closet and this area is where
9 this photograph is.

10 Q. Okay. So, there's nothing on that -- okay, when
11 you take these images there's nothing on that particular
12 shelf?

13 A. No, I had move -- we moved the bedding to find --
14 to see where the --

15 Q. That's what I'm saying.

16 A. Okay.

17 Q. When you -- I'm not saying that's how it was when
18 you first got there, but when you're taking these series of
19 images you've removed and that shelf where you saw these --
20 the properties of where a bullet passed by you took -- so you
21 could take some pictures that's why the shelf was empty,
22 right?

23 A. Yes.

24

25

1 Q. Okay. Now, can you use this image to show where,
2 the region that you found what you believe to be a
3 projectile? And if you'd like I can show you State's
4 Exhibits 10 and 11.

5 A. Yes, please. It was in this area when we pulled
6 the bedding out.

7 Q. Okay. So, I want to show you what's been marked as
8 Exhibits 10 and 11. And if you could use those images to
9 show the Court where that is on Exhibit 9. Okay, so, we'll
10 start with -- I guess it's 10 and then 11, okay. That's 10.

11 A. All right, this is a close-up, and this is a little
12 further back, and it's about in this area.

13 Q. Okay. And so the metal and wood that you see in
14 that -- in those other images is the entry area of that
15 closest? Is that what you're describing?

16 A. Yes.

17 Q. Okay. Now, I'm going to show you what's been
18 marked as State's Exhibit AU, and ask if you recognize the
19 item and if you could associate with the series of images
20 we've just been talking about?

21 A. Yes, this is the projectile in this photograph.

22 Q. Do we have some scissors? And did you collect that
23 particular exhibit?

24 A. Yes.
25

1 Q. All right. And what did you put in there? What
2 did you put in that exhibit?

3 A. The projectile.

4 Q. All right. The projectile that's pictured in
5 State's Exhibits 10 and 11?

6 A. Yes.

7 Q. All right. And in looking at the packaging does it
8 appear to be the item that you packaged?

9 A. Yes.

10 Q. All right. And does it appear that anybody's gone
11 into that packaging since you -- since you sealed it?

12 A. Yes.

13 Q. All right. Could you open, with the Court's
14 permission, would you open the package and satisfy yourself
15 or determine whether or not the item you placed in there
16 appears to be in there today.

17 MR. RESPESS: Does she have your permission Judge?

18 THE COURT: Oh, absolutely.

19 MR. RESPESS: Okay.

20 THE COURT: I was expecting her to --

21 BY MR. RESPESS:

22 Q. All right, now, just looking at the box, is there
23 things on the box that you say, yeah, this is the item that
24 I -- packaged that I collected from that hall closet?

25 A. Yes.

1 Q. All right. And what is it on there that tells you
2 that?

3 A. Has the case number, my name that I collected it,
4 the item number --

5 Q. Okay.

6 A. (Cont'd) where I found it.

7 Q. And did you seal that box as well and put it in
8 that manila envelope?

9 A. Yes.

10 Q. And does it appear someone's gone into that box
11 since you've sealed it?

12 A. Yes.

13 Q. With the Court's permission I'd like you to go into
14 that box and see if what you placed in there appears to be in
15 there today.

16 THE COURT: Please do.

17 THE WITNESS: Yes.

18 MR. RESPESS: Okay. Your Honor, I'm going to offer
19 State's Exhibit AU.

20 THE COURT: All right. Mr. Panella, any objection
21 sir?

22 MR. PANELLA: No objection.

23 THE COURT: All right. Without objection AU will
24 become State's 12. Thanks -- thank you Mr. Respass.

25 MR. RESPESS: Okay.

1 BY MR. RESPESS:

2 Q. And from your experience as a crime scene
3 investigator what did State's Exhibit 12 I think we're on
4 now, what did that appear to be to you when you collected it?

5 A. A bullet.

6 Q. Okay. And what do you mean by bullet? People have
7 different def --

8 A. Well, a fired cartridge.

9 Q. Okay. A fired round?

10 A. Yes.

11 Q. All right. There's the cartridge case, there's the
12 projectile, and there's the explosive material in the
13 cartridge case. Which of these cases did you believe you
14 collected?

15 A. It was the projectile portion.

16 Q. Okay. Now, I want to go back, since we talked
17 about a projectile that you located, I want to go back to the
18 diagram, which is -- I'm getting my glasses out now. I
19 believe that's a 4. Do you think that's a 4 or do you think
20 that's a 9?

21 A. 4.

22 Q. All right, okay. I want to talk about the firearm
23 that you recovered from the scene that's EC1 I believe on the
24 image.

25 A. Yes.

1 Q. All right. And how -- well, let me just show it to
2 you and we'll go from there. State's Exhibit AV.

3 THE COURT: Did you say AV?

4 MR. RESPESS: AV as in Victor.

5 THE COURT: AV as in Victor. Thanks.

6 MR. RESPESS: All right.

7 BY MR. RESPESS:

8 Q. And I want you to just look at the box itself and
9 see if you're able to recognize and associate that item just
10 looking at the packaging with what you've labeled EC1 on
11 Exhibit 4?

12 A. Yes.

13 Q. Okay. How are you able to do that?

14 A. Has my seal, my signature on the seal, and the
15 information on the packaging.

16 Q. Okay. And the -- I believe the box itself, because
17 the firearm's been made sure it's safe, is in a unopened or
18 unsealed condition I think if you look. You can open it this
19 way. So, I ask you to look inside the box, and if it appears
20 that the item in there is the same item that you collected.

21 A. Yes.

22 Q. How are you able to recognize it as EC1?

23 A. There's the same serial number that's on the
24 firearm is on the inscription here, and in the photographs.

25

1 Q. Okay. So, you made note of the serial number when
2 you collected and packaged that particular item?

3 A. Yes.

4 Q. All right. And did you also collect something else
5 that you associated with that firearm that was together at
6 the time that you found it?

7 A. The magazine.

8 Q. Yes.

9 A. Yes.

10 Q. Is there a magazine in there?

11 A. Yes.

12 Q. Okay. And is that the 15 round magazine you were
13 talking with Defense counsel about earlier?

14 A. Yes.

15 Q. Okay. So, those two items relate to that. I want
16 to show you, because there was some discussion about how the
17 firearm was located on the coffee table, what condition it
18 was in.

19 Was there -- were you present and actually taking images
20 that demonstrated how a -- one of the rounds was in the
21 firearm at the time it was recovered?

22 A. Yes.

23 Q. I'm going to show you a series of images. State's
24 Exhibit EP, State's Exhibit ED, State's Exhibit EN, State's
25 Exhibit EM, State's Exhibit EL. I'm going to let you look at

1 those real quick before I show her so you know what I'm
2 talking about.

3 Now I'd like you to look at each of these exhibits I
4 just described and see if those images are accurate images
5 that you were present for and observed how they were located
6 in a particular -- in that particular firearm when you
7 recovered it.

8 A. Yes.

9 MR. RESPESS: Your Honor, I'm going to offer
10 State's Exhibit EP, ED, EN, EM, EL. And I'm sorry
11 they're out of order. I can -- let me do it this way:
12 Let me put them in order.

13 THE COURT: No, don't. That's okay. I've got them
14 written down the way you just listed them.

15 MR. RESPESS: Okay.

16 THE COURT: My question is this: Did you ever
17 offer AV, the firearm from the coffee table?

18 THE CLERK: No.

19 THE COURT: No.

20 MR. RESPESS: Not yet.

21 THE COURT: Okay, so --

22 MR. RESPESS: I'll get there.

23 THE COURT: Okay. Well, I just wanted to make sure
24 because that misses that number. All right, so then
25 the -- Mr. Panella, any objection to those --

1 MR. PANELLA: No objection.

2 THE COURT: (Cont'd) those photographs? Thank you.
3 Then we've got EP will be 13, State's 13. ED, State's
4 14. EM, State's 15. EN is 16, and EL is State's 17.

5 THE CLERK: It's not ED Your Honor, it's EO.

6 MR. RESPESS: All right.

7 THE COURT: Oh, it is. Okay.

8 MR. RESPESS: And that was with my glasses on.

9 THE COURT: D'S AND O's look alike, don't worry.

10 MR. RESPESS: I apologize.

11 THE COURT: Okay, thank you.

12 MR. RESPESS: ED is EO.

13 THE COURT: All right, so that becomes -- 17, 16,
14 15 -- so, EO is Exhibit 14. Mr. Respass, that person
15 that we were waiting for is here. If you have some
16 other things that you would like Madam Clerk to mark.

17 MR. RESPESS: That's fine. We can just --

18 THE COURT: We'll be at ease for just a sec.

19 MR. RESPESS: All right.

20 THE COURT: Because that person's on their way
21 upstairs. Mr. Panella, yeah.

22 THE BAILIFF: Judge, I don't know if you just want
23 to announce brief recess.

24 THE COURT: Yeah, we are having a brief recess.
25 Someone is here for Mr. Derossett.

1 (Whereupon, court stands in recess for
2 approximately 20 minutes.)

3 MR. RESPESS: Judge, I believe we're ready.

4 THE COURT: All right, we're back on the record
5 then. 2015-CF-39550-A. Mr. Derossett is present with
6 counsel, Mr. Panella and Mr. West. Mr. Scheiner and Mr.
7 Respass is ready to move along. Thank you sir.

8 MR. RESPESS: Okay. And Your Honor, I've been
9 moving back and forth with the witnesses. Is it all
10 right if I go over there for this?

11 THE COURT: Certainly, certainly.

12 MR. RESPESS: Okay.

13 THE COURT: However you're comfortable.

14 BY MR. RESPESS:

15 Q. Ms. Chretien, I wanted to show you Exhibit 17. I'm
16 going to put that up on the view screen. Do you recognize
17 that particular image?

18 A. Yes.

19 Q. All right. And what does this image represent
20 that's Exhibit 17?

21 A. There's a cartridge in the chamber there --

22 Q. I get --

23 A. (Cont'd) jammed kind of.
24
25

1 Q. You know, I get so used to doing direct. Let me be
2 leading. Is this the condition of the firearm as you found
3 it when it sat on the table? Is that how it looked at that
4 time, other than it looks like it's been moved to a white box
5 now?

6 A. I'd have to refer back to my other photo on the
7 coffee table.

8 Q. Okay. Do you have that?

9 A. No.

10 Q. Okay. So, you see there's no hand on the slide
11 here, right?

12 A. Correct.

13 Q. All right. And so that's what I'm -- if we need to
14 do something to refresh your memory I want to do it. So,
15 tell me what I need to do to refresh your memory as to what
16 that firearm looked like when you got it off of the coffee
17 table.

18 Let me see if I have it over here. I'm showing Defense
19 counsel what's been marked as State's Exhibits DT and DU.
20 Ms. Chretien, I'm going to give you what's been marked as
21 State's Exhibit DT and DU, and I don't think they have that
22 side showing. Does that assist you?

23 A. Yes.

24 Q. Okay. Does that appear how the firearm was?

25 A. It appears from this side.

1 Q. Okay. All right, because the ejection port's on
2 the other side, right?

3 A. Yes.

4 Q. Which is what you'd like to see?

5 A. Yes.

6 Q. All right. But that was laying down?

7 A. Correct.

8 Q. All right. Were you present when the firearm was
9 handled and collected?

10 A. Yes.

11 Q. Did you see how it was manipulated by the other --
12 are those your hands on this picture? Let me do it that way.

13 A. No.

14 Q. All right. Whose hands are those?

15 A. CSI Snyder.

16 Q. All right. So, you were present. You're actually
17 snapping the photographs that we're seeing. And I'll go
18 ahead and offer, since we're talking about these, DT and DU.

19 THE COURT: All right.

20 MR. PANELLA: No objection.

21 THE COURT: Mr. Panella? No objection. All right,
22 without objection DT becomes 18, State's 18. DU becomes
23 State's 19.

24 MR. RESPESS: Okay.

25

1 BY MR. RESPESS:

2 Q. And what you're looking at is you're trying to see
3 if this particular color object is there on the other side of
4 the gun, right?

5 A. Yes.

6 Q. Did you note that the slide was back a little bit
7 from the end of the firearm?

8 A. Yes.

9 Q. All right. Was that how you found the gun?

10 A. I believe so.

11 Q. All right. You understand what I'm talking about?

12 A. Yes.

13 Q. All right. And so I want to kind of walk you
14 through that. You took a series of images as Mr. Snyder,
15 Conrad Snyder cleared the weapon?

16 A. Yes.

17 Q. All right. Did you happen to see how that
18 projectile was in the area in front of the chamber, this
19 particular weapon, tied into the ejection port? Did you see
20 how that bullet, that live round, was located?

21 A. Yes.

22 Q. I'm going to show you what's been marked as State's
23 Exhibit 16. And can you tell us what we're seeing in that
24 image?

25 A. It's another angle of that live round.

1 Q. Okay. And does it show the bullet's not gone into
2 the chamber to be fired, that it's twisted?

3 A. Yes.

4 Q. Okay. And is that what we're seeing also in
5 State's Exhibit 15?

6 A. Yes.

7 Q. Okay. And then State's Exhibit 14, what's that an
8 image of?

9 A. This is of the cartridge once it was removed from
10 the firearm.

11 Q. Okay. So, we have these -- this is happening at
12 Mr. Derossett's home, is it not, these images that we're
13 looking at? Is that all happening there?

14 A. Yes.

15 Q. In fact, it looks like it's associated with that
16 same coffee table.

17 A. Yes.

18 Q. So, I want to show you what's been marked as
19 State's Exhibit AT for identification, and ask you if you
20 recognize and associate that particular exhibit with the
21 firearm and round we've been talking about that was found in
22 the ejection port area of that particular Glock?

23 A. Yes.

24 Q. Okay. And how are you able to recognize that?

25 A. From the writing on the packaging and my signature

1 on the seal.

2 Q. All right. Does it appear -- what did you place in
3 that package?

4 A. The cartridge.

5 Q. The one we're looking at on the view screen?

6 A. Yes.

7 Q. All right. And does it appear someone's gone into
8 that packaging since you sealed it?

9 A. Yes.

10 Q. With the Court's permission I'd ask you enter that
11 packaging and see if the item you placed in there appears to
12 be in there today.

13 THE COURT: Sure, please.

14 BY MR. RESPESS:

15 Q. And again, it looks like you found another box.
16 Before you start going into that can you look at the box, see
17 if you recognize it, and again, associate it with the live
18 round that we see on the view screen right now?

19 A. Yes.

20 Q. Okay. And how are you able to do that?

21 A. With my signature on the seal and the description
22 on the packaging.

23 Q. Does it appear that someone went into that package
24 since the time you sealed it?

25 A. Yes.

1 Q. I'd ask you to enter into that package and
2 determine whether or not the item appears to be there today?

3 A. Yes.

4 Q. Okay. So, that's the live round you're looking up
5 at the view screen?

6 A. Yes.

7 Q. And that was the round that was found, what I call
8 stovepipe, but crooked in the ejection port of that firearm?

9 A. Yes.

10 Q. Okay. Let me get this out of the way. We'll do
11 four things. I'm going to show you what's been marked as
12 State's Exhibit AS and image 13. I believe this is already
13 in evidence. I want to talk about it a little bit. Do you
14 recognize what's depicted in that image?

15 A. Yes.

16 Q. And is that CSI Snyder's digit? I think it may be
17 a thumb, not sure.

18 A. Probably.

19 Q. Okay. And does State's Exhibit AS associate or
20 relate to what's seen in State's Exhibit 13?

21 A. Yes.

22 Q. Okay. And can you -- and how does it relate? What
23 do you -- what did you place into State's Exhibit AS?

24 A. The four cartridges from the magazine.
25

1 Q. Okay. And those are visible in State's 13?

2 A. Yes.

3 Q. All right. Again, does it appear --

4 A. Oh, excuse me, five. I can't count.

5 Q. All right. Does it appear the items that you
6 recovered that that's the same packaging that you originally
7 placed them in?

8 A. Yes.

9 Q. Does it appear someone's gone into the packaging
10 since you placed them there?

11 A. Yes.

12 Q. With the Court's permission I'd like you to open
13 the packaging to satisfy yourself that what you placed in
14 there is in there today. Did you find another box?

15 A. Yes.

16 Q. Do you recognize the box?

17 A. Yes.

18 Q. Does it appear someone's gone into the box since
19 you packaged it?

20 A. Yes.

21 Q. I'll ask you to open the box and satisfy yourself
22 what you placed in there is in there today.

23 A. Yes.

24 Q. Okay.

25

1 MR. RESPESS: And so what I want to do now is mark
2 or move into evidence State's Exhibit AV, AT, and AS.

3 MR. PANELLA: Can I just see them so I can see the
4 original numbers? Thanks.

5 BY MR. RESPESS:

6 Q. And while he's doing that, the image we're looking
7 at, Exhibit 13, is that how CSI Snyder made the weapon with
8 the slide cocked back all the way like that?

9 A. Yes.

10 Q. All right. So, we saw a picture of what it looked
11 at -- looked like at the beginning before anything was taken
12 out of the firearm and that's how it appeared at the end when
13 CSI Snyder was done?

14 A. Yes.

15 Q. Okay.

16 MR. RESPESS: Your Honor, I'm going to offer these
17 exhibits.

18 MR. PANELLA: I have no objection.

19 THE COURT: All righty. Then without objection
20 they will go in -- State's AV becomes 21, A -- excuse
21 me?

22 THE CLERK: Apple Victor.

23 THE COURT: Apple Victor, AV becomes 21. Oh, and
24 then I also have AV as 22. That couldn't be correct.

25 THE CLERK: No.

1 THE COURT: T, U --

2 THE CLERK: It's AV, AS, and AT.

3 THE COURT: All right, okay. AV, AS, and AT. That
4 was what I -- all right, so, AS will become 22, and then
5 AT will become 23.

6 THE CLERK: I thought the last number we had used
7 was -- we're to use 20. 19 was the last number.

8 THE COURT: I thought we had already done them. 20
9 was the actual cartridge collected from the --

10 THE CLERK: 20, the box is AV. That's the way --
11 order he put them in. The box, and then AS and --

12 MR. RESPESS: I had her identify AV first, and then
13 I had her identify AT, and then I had her identify AS.
14 But any order, any -- whatever you decide. That was the
15 order that I --

16 THE COURT: Yeah, that's what I had written down,
17 what they asked last.

18 THE CLERK: Yeah, this is --

19 (Multiple speakers.

20 THE COURT: Okay, so, it should be 21 is which one?

21 THE CLERK: AV is 20, and then --

22 THE COURT: AV is 20.

23 THE CLERK: (Cont'd) if you want to go in his order
24 then AT will be 21 and AS will be 22.

25

1 THE COURT: Okay. All right, okay. Any time
2 you're ready Mr. Respess. I think we sorted it out.

3 MR. RESPESS: All right. If those items are --

4 THE COURT: They're in evidence.

5 MR. RESPESS: In evidence.

6 THE COURT: All of those items that are depicted in
7 this photograph on the view screen, those -- that's the
8 essence of what you've just --

9 MR. RESPESS: Right.

10 THE COURT: (Cont'd) offered, correct?

11 MR. RESPESS: And that's all the questions I have
12 of this witness.

13 THE COURT: Okay.

14 MR. RESPESS: At this time.

15 THE COURT: All right, thank you. Then may Ms.
16 Chretien be excused?

17 MR. RESPESS: Well, I don't know if he --

18 THE COURT: No, he's -- you just did cross.

19 MR. RESPESS: Right. So, he may want --

20 THE COURT: It may prompt some rebuttal, but if not
21 I --

22 MR. RESPESS: You're trying to be optimistic aren't
23 you?

24

25

1 THE COURT: No, I had to turn it around as well.
2 It's not usually -- Mr. Panella, does that prompt
3 anything?

4 MR. PANELLA: We're admitting all those pictures,
5 is that what you're saying? What was the issue? I'm
6 sorry Judge.

7 THE COURT: No, do -- remember this is kind of
8 backwards because you put this witness on. Mr.
9 Respass --

10 MR. PANELLA: I have no objection.

11 THE COURT: (Cont'd) has now crossed her. And my
12 question to you is would you like -- does that prompt
13 anything in rebuttal or?

14 MR. PANELLA: Oh, yes, Your Honor, absolutely.
15 Yeah, I'd like to re --

16 THE COURT: Do you have any other -- some further
17 questions?

18 MR. PANELLA: Right, right, it's a re-direct.

19 THE COURT: Yes.

20 MR. PANELLA: Right, exactly right Judge.

21 THE COURT: Exactly.

22 MR. PANELLA: Right, I know it's a little --
23 everything's different.

24 THE COURT: We're doing this -- yes, yes. We're
25 all working hard and following along.

1 MR. PANELLA: If I could -- what might be easier is
2 if I could see the exhibits that were just entered.

3 THE COURT: Okay.

4 MR. PANELLA: So that way I can just reference. I
5 don't -- actually, just the pictures. That's all I'm
6 interested in. Thank you.

7 MR. RESPESS: I put those up on the counter.

8 THE COURT: Okay.

9 MR. RESPESS: Right here.

10 MR. PANELLA: Okay, thanks.

11 MR. RESPESS: That's the last series. And that's
12 all the pictures I entered.

13 MR. PANELLA: Yeah, this and then that.

14 MR. RESPESS: Yep.

15 MR. PANELLA: And those I guess we already
16 introduced.

17 MR. RESPESS: No, these haven't been introduced.

18 MR. PANELLA: Oh, they're not?

19 MR. RESPESS: This is our pile.

20 MR. PANELLA: Okay.

21 MR. RESPESS: All right? I think there's a couple
22 over here that I introduced when I -- she needed to be
23 refreshed. Those two came in as well.

24 MR. PANELLA: Thank you Your Honor. May I proceed?

25 THE COURT: Certainly.

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RE-DIRECT EXAMINATION

BY MR. PANELLA:

Q. Okay, Ms. Chretien, let's just start where we just were and then maybe move backwards. That might make sense. So, we were just talking about that firearm that was found on the coffee table, right?

A. Yes.

Q. Okay. Okay, let's see, in looking at this picture for the Court, again, the firearm we're talking about is the one -- where is it?

MR. RESPRESS: Could we have the exhibit number please?

MR. PANELLA: I'm sorry, this is State's Exhibit 9.

THE COURT: You're not able to see it Mr. Respress?

MR. PANELLA: Actually, this is -- I'm sorry, I --

THE COURT: Can you see this?

MR. RESPRESS: Can't see the back.

MR. PANELLA: For the record I misspoke. This is actually Defendant's Exhibit 9 that was used.

THE COURT: Okay.

BY MR. PANELLA:

Q. And so help us understand again just if you could just point to where the firearm is.

A. Right here.

1 Q. All right. And also, this is where all the blood
2 drip stains, it was near there that we already talked about
3 on direct, right?

4 A. Yes.

5 Q. Okay. So then in thinking about that, when you
6 first approached the firearm, you or Agent Snyder or anybody
7 else, this was the condition it was actually in, right?

8 A. Yes.

9 Q. So, the slide wasn't racked back at all, right?

10 A. No.

11 Q. It's completely closed.

12 A. Em-hmm.

13 Q. Correct?

14 A. Yes.

15 Q. Okay. So, I just want to make sure. So, in any
16 event when you came to the firearm on the coffee table, you
17 and your team, there's no way you could have -- you would not
18 have known in what condition any of the rounds were, for
19 example, in the magazine, right? Because you can't see them.

20 A. Correct.

21 Q. Or inside the chamber of the firearm, right?

22 A. Correct.

23 Q. But you do know that it's completely closed and
24 there was no round keeping the slide of the magazine held
25 open, right?

1 A. No, I didn't flip it over.

2 Q. Well, what we have is -- you're saying -- are you
3 suggesting that if you flipped -- well, let's talk about
4 this: We have this picture here.

5 MR. RESPESS: Can you give us the --

6 MR. PANELLA: This is State's -- I'm showing the
7 witness State's Exhibit 13 for the record.

8 BY MR. PANELLA:

9 Q. It's obvious in this picture -- this might be very
10 obvious, but obviously the slide is racked back, right?

11 A. Correct.

12 Q. Okay. So, there's clearly a distinction -- and
13 whether this, for example, this particular gun were on this
14 side or on the other side the distance between the slide and
15 the rest of the gun would be the same, would you agree?

16 A. Yes.

17 Q. Okay. So, in this picture, which is again
18 referencing State's Exhibit 19, whether this gun were flipped
19 this way or flipped the other way the positioning of the
20 slide certainly wouldn't change, it just is what it is,
21 right?

22 A. Yes.

23 Q. Okay. So, all I'm getting at is you could not have
24 known if this gun were -- if there was a problem with the
25 projectile inside the weapon when you approach it, right?

1 A. Correct.

2 Q. Okay. Now, the only time that you ever realized --
3 and I'm -- collective view, right, the CSI team, you and
4 Agent Snyder, because he's the one that's actually
5 manipulating this, right?

6 A. Yes.

7 Q. The only time that you notice that anything was in
8 the chamber was when he actually physically manipulated the
9 weapon, correct?

10 A. When he's pulling it back here, yes, you can see
11 that.

12 Q. Right. And that's standard procedure to check the
13 weapon, render it safe, right?

14 A. Correct.

15 Q. Okay. So, you -- what I'm getting at Ms. Chretien
16 is you can't tell us that it was in this condition before he
17 manipulated it, because when you approached the weapon of
18 course it was completely closed, right?

19 A. Yes.

20 Q. Okay. And again, I'm referencing State's Exhibit
21 19 when I asked you that question. Okay.

22 A. Yes.

23 Q. So, we don't know. It could have -- that could
24 have happened when he manipulated it or it could have been
25 like that. We don't know, correct?

1 A. Correct.

2 Q. Okay. All right, now, I want to reference you back
3 over to Defendant's Exhibit 9 since I happen to have it up
4 here. This -- for the -- just for the Court's edification
5 you are in the living room and you can actually see outside
6 the front door here, correct?

7 A. Yes.

8 Q. And would you agree with me that it looks dark
9 outside the front door?

10 A. Yes.

11 Q. Okay. That's what I want to get at. That door's
12 open and the screen is closed, is that right?

13 A. Can I move this?

14 Q. Sure.

15 A. The screen is open.

16 Q. The screen -- okay. Let's look at -- okay. So,
17 the screen is open and the door's open, but your testimony
18 here today obviously is that it still from outside
19 looking -- from inside looking out it's dark out there.

20 A. Yes.

21 Q. Okay. I'm showing the witness what is State's
22 Exhibit 10. Ms. Chretien, you testified on cross this
23 projectile -- this was one that we talked about, right, the
24 MM that went through a couple walls and then landed
25 somewhere?

1 A. Yes.

2 Q. And your testimony on direct was that that
3 projectile, from your training and experience, came from a
4 weapon that was on the outside shooting in toward the house,
5 correct?

6 A. Yes.

7 Q. And as you sit here today do you know whose weapon
8 that came from?

9 A. No.

10 Q. Okay. But you do know it came from outside into
11 the inside.

12 A. It came from, yes, the front of the house towards
13 where it ended.

14 Q. Yes.

15 A. Yes.

16 Q. Okay. Now, were any pictures taken from the inside
17 of the residence, like, at the front door looking out into
18 the front yard?

19 A. Not that I recall.

20 Q. Okay. And that's what I thought. Do you know why
21 that is?

22 A. Because I was -- my -- I was focused on the inside
23 of the residence. So, I didn't do anything outside.

24

25

1 Q. Okay, all right. So -- but again, the picture from
2 the inside threshold looking out onto the porch for example,
3 we just don't have it from your investigation, right?

4 A. Not from me, no.

5 Q. Okay. The State asked you about three pictures,
6 and I'll reference them in turn. State's Exhibit 3 is what
7 we'll look at first. And you talked about this picture.

8 You had already -- I just want to make a point. I think
9 you testified on cross that there was an external light
10 source that's illuminating this picture, is that true?

11 A. Yes.

12 Q. Okay. So, I mean, you guys are using -- you know,
13 this picture for example is not a fair and accurate
14 representation of what that yard would have looked like if
15 you didn't have your own CSI light sources, right?

16 A. If a flash wasn't used, correct.

17 Q. Right, it wouldn't look like that.

18 A. Correct.

19 Q. Okay. I just want to be sure. It's not like
20 there's some external -- like the street light is doing that
21 or something like that. No, right?

22 A. Not in that location, no.

23 Q. No. And you also testified -- you were asked about
24 this. This is going to be -- I'm showing the witness State's
25 Exhibit 1, and you were asked if you could see what was going

1 on out there and you -- and your answer is you don't know,
2 right?

3 Is that what you were saying about this one? You
4 couldn't tell? You don't remember if you could see?

5 A. From standing at the front porch?

6 Q. Right.

7 A. I don't remember.

8 Q. Okay. Now, Ms. Chretien, in your, you know, life
9 experience, you -- when you are already outside -- oh, by the
10 way, there was already a police car on the scene, right? As
11 a matter of fact, it's in this picture.

12 I'm looking at Defendant's Exhibit 3. This just happens
13 to be a big blow up, but there's still a police car parked
14 right here on the side of the house, right?

15 A. Yes.

16 Q. Okay. And that police car was there the entire
17 night you were there, right?

18 A. I don't remember.

19 Q. Do you remember when we were looking at some of
20 those exhibits, and there were the headlights from a police
21 car and the spot light, and the State was asking about the
22 shadow and how dark it was?

23 A. I remember headlights.
24
25

1 Q. Okay, headlights. My point is when you were there,
2 by the time your CSI team was there there was for sure a
3 police car at least with headlights illuminating the side of
4 the yard, right?

5 A. When I arrived, yes.

6 Q. Okay. That's all I'm wondering. And so when we're
7 asking about what you could see and if you could see people
8 moving around. There were external light sources, even from
9 law enforcement vehicles by the time you got there, right?

10 A. Yes.

11 Q. Okay. And even with that when you are outside in a
12 dark area for, you know, any extended period of time would
13 you not agree that it's easier to see things your eyes
14 acclimate the longer you're out in the dark, kind of like a
15 camera.

16 A. Yes.

17 Q. So, it's easier to see something once you're out
18 there for a little bit than it is what it would be to when
19 you first walk out into the dark, right?

20 A. It can be.

21 Q. Kind of like when you walk into a pitch black room.
22 At first you might not be able to see anything, and then all
23 of the sudden you can start making out shapes, right?

24 A. Yes.

25 Q. Okay. Just one moment ma'am.

1 MR. PANELLA: I don't have anything further Your
2 Honor.

3 THE COURT: Okay, thank you. Then may this witness
4 be excused?

5 MR. RESPESS: I just have one question --

6 THE COURT: You do?

7 MR. RESPESS: (Cont'd) if the Court would allow.

8 THE COURT: Okay, certainly. I try not to go back
9 and forth, ping pong on the witnesses.

10 MR. RESPESS: Right. I just want to clarify one
11 question concerning this image, which is image 11 with
12 this witness, and it may be we call another witness to
13 get it straightened out.

14 RE-CROSS EXAMINATION

15 BY MR. RESPESS:

16 Q. Ms. Chretien, my question to you is do you know if
17 that firearm had been manipulated to expose this projectile
18 when you took that picture, or if that's how it was as it
19 came off the table?

20 A. You'd have to ask --

21 MR. PANELLA: Object.

22 THE WITNESS: (Cont'd) CSI Snyder.

23 THE COURT: I'm sorry, wait a second. You object
24 to?

25 MR. PANELLA: Objection, speculation.

1 MR. RESPESS: No, she was there. She may not know
2 and that's a fair response.

3 THE COURT: Okay.

4 MR. RESPESS: That's what I want to find out.

5 THE COURT: Okay.

6 MR. RESPESS: He --

7 THE COURT: So, the question is did she see it pop
8 out?

9 MR. RESPESS: No, my question is, is that how the
10 firearm was when it was turned over --

11 THE COURT: Oh, turned over. Gotcha. Thank you.
12 I understand.

13 MR. RESPESS: (Cont'd) or you don't know? That's
14 what I need to know is -- because someone else's hand is
15 on that firearm, you're taking a picture. Do you know
16 if that's how the firearm was when you turned it over or
17 not?

18 THE WITNESS: No.

19 MR. RESPESS: Okay. And that's CSI Snyder that has
20 the firearm, his hands are in the picture, right?

21 THE WITNESS: Yes.

22 MR. RESPESS: All right. I don't have any other
23 questions.

24 THE COURT: Okay, thank you. All right, then may
25 Ms. Chretien be excused?

1 MR. RESPESS: Subject to recall.

2 THE COURT: Subject to recall. All right, thank
3 you. Who will be your next witness Mr. Panella?

4 MR. PANELLA: Agent Stephen Fernez.

5 THE COURT: All right, thank you.

6 MR. PANELLA: I don't anticipate needing this for a
7 while.

8 THE COURT: Okay. Well then by all means --

9 MR. PANELLA: Maybe we should move it out of our
10 way.

11 THE COURT: (Cont'd) let's let it go, rest to the
12 side.

13 MR. PANELLA: Do you -- will you need it for --
14 okay.

15 MR. RESPESS: I don't think so. He wasn't at the
16 scene.

17 MR. PANELLA: Right.

18 THE COURT: Okay. Yeah, wouldn't imagine. He
19 didn't collect any evidence.

20 MR. PANELLA: Well, that's not entirely true.

21 MR. RESPESS: Well --

22 MR. PANELLA: I don't know if you're testifying now
23 or what Mr. Respess.

24 MR. RESPESS: He wasn't at the scene when it
25 happened. Let's put it that way.

1 THE COURT: Okay.

2 MR. PANELLA: Objection, counsel testifying.

3 THE COURT: I was going to say, don't take my word
4 for it, take the fifth or sixth question -- answer from
5 him.

6 THE CLERK: Raise your right hand. Do you solemnly
7 swear or affirm that the testimony you shall give will
8 be the truth, the whole truth, and nothing but the truth
9 so help you God?

10 THE WITNESS: Yes, ma'am.

11 THE CLERK: Thank you. You may be seated.

12 THE WITNESS: Good afternoon Judge.

13 THE COURT: Good afternoon. Any time Mr. Panella,
14 when you're ready.

15 WHEREUPON:

16 STEPHEN FERNEZ,
17 a Witness herein, having been duly sworn, testified upon his
18 oath as follows:

19 DIRECT EXAMINATION

20 BY MR. PANELLA:

21 Q. Good afternoon Agent Fernez.

22 A. How are you sir?

23 Q. I'm well sir. And if you could state your name and
24 spell your last name for the record?

25 A. It's Stephen with a PH, and last name is Fernez,

1 F-E-R-N-E-Z.

2 Q. Okay. And forgive me, what is your current rank?

3 A. Lieutenant.

4 Q. Lieutenant, okay. Okay, Lieutenant Fernez, if you
5 could start off telling us what your background and
6 experience is, what your current employment is, and then
7 we'll start drilling down some other stuff.

8 A. Gotcha. I've been with the Sheriff's Office for 15
9 years. I've been a field training officer, I've been a
10 corporal, I've been a general crimes agent, I've been a
11 sergeant, I've been a special investigations sergeant, and
12 now I'm a road patrol lieutenant.

13 Q. Okay, so, you've been around a long time?

14 A. Yeah.

15 Q. What year did you say?

16 A. 2003.

17 Q. All right. Now, at the time in 2015 what was your
18 position?

19 A. I was sergeant over the special investigations
20 unit.

21 Q. Okay. And how long had you been doing that?

22 A. Just shy of three years.

23 Q. Now, as sergeant in the special investigations unit
24 did you have particular responsibilities?

25 A. Yes, sir.

1 Q. Okay. What were those?

2 A. Your basic supervisory responsibilities,
3 maintaining scheduling, overseeing the operations of everyday
4 things, you know. Just your basic supervisory details.

5 Q. So, as the supervisor and as the sergeant you would
6 be aware of many of the operations that were going on
7 underneath you, right?

8 A. Yes, sir.

9 Q. So, it's like -- for example, how many people did
10 you have on your team in the special investigations unit in
11 2015?

12 A. Well, 2015 we varied up and down a little bit. So,
13 at one point we had six and at one point we had 12, so.

14 Q. Okay, all right. So, you know, any one of these
15 folks could have had many operations going on at any given
16 time, right?

17 A. Absolutely.

18 Q. So, in the -- and how long were you the sergeant?

19 A. Like I said, just shy of three years.

20 Q. Three, okay. So, in your let's call it three
21 years --

22 A. Okay.

23 Q. Okay. In your three years as sergeant how many
24 operations, if you could estimate, do you think you oversaw?

25 A. Oh, man. I mean, everyday you're doing something,

1 so. I mean, whether you want to call -- I mean, what kind of
2 operation are you talking about specifically? All operations
3 in special investigations? Because that could be --

4 Q. Well, maybe it makes sense to start there. What
5 kind of -- what kind of operations, right, so what kind of
6 crimes would you be investigating with the special
7 investigations unit be assigned to?

8 A. We deal with drug cases, prostitution cases, we do
9 cyber crime cases, such as like internet cafes. Basically
10 anything that might need plain clothes operations we would
11 deal with.

12 Q. Okay. So, I mean, yeah. So, thinking about all of
13 those things could you give me an estimate on how many
14 operations you think you might have overseen over the years?

15 A. Well, you got to figure we would be doing drug buys
16 every single day.

17 Q. Right.

18 A. So --

19 Q. Thousands?

20 A. Yeah.

21 Q. Yeah. Okay. And then how many solicitation
22 operations do you think? Or arrests or whatever?

23 A. Oh, we would -- you're talking -- as I told you
24 before, there's several different types of prostitution
25 details. Some are street level, some are call in, some are

1 call out.

2 Weekly we would do prostitution details. Some of the
3 ones where we would be using hotels, those may be every
4 maybe -- could be anything from once a quarter to a couple
5 times a quarter.

6 Q. Okay. And I'm glad you referenced that we've
7 talked in the past. Certainly you've given a deposition in
8 your case, right?

9 A. Yes, sir.

10 Q. And just so you're aware, I'm mainly going to be
11 going off of what we talked about that day.

12 A. Yeah, absolutely.

13 Q. All right. So, if you could tell us how does an
14 oper -- how does a prostitution or solicitation operation
15 work at a hotel?

16 A. You have different types. There's ones where you'd
17 be trying to pick up the male, which obviously are called
18 johhs, which you know, slang term --

19 Q. So, the male -- so, you're picking up -- so, you
20 have a female agent that is posing as --

21 A. You would have a female agent posing as the
22 prostitute, and males would be calling to try and set up a
23 date with her.

24

25

1 Q. Okay. And so let's talk about that sort of way.
2 How would that go down? What would you guys do?

3 A. In those situations we could have it set up with
4 phones, we could have it set up with computers. Sometimes
5 the female, who's actually the undercover, is not even
6 talking with the johns, the suspects. That would be us.

7 Many times it would be Agent Steurwald, it could be me,
8 it could be Agent Roberts, and we're either texting back and
9 forth or utilizing the computer back and forth.

10 Q. So, you're pretending -- in that kind of operation
11 you're pretending to be a female who's trying to get other
12 people to come to her, correct?

13 A. Absolutely.

14 Q. Okay, so -- all right. And how long have you done
15 that sort of thing?

16 A. Just during the three years I was there.

17 Q. Okay, all right. So, what about other types of
18 operations? Would you ever have -- would you ever pose as a
19 john looking for services?

20 A. Yes. We would -- we'd do signs where we'd be doing
21 street level ones where you're driving around and you see
22 what you call street level prostitution where people are
23 walking around and you're soliciting them that way.

24 And then you have the ones where you're calling into
25 hotels where you could sit there and --

1 Q. Right.

2 A. (Cont'd) you know, a female would show up.

3 Q. So -- and those are basically the two main ways
4 special investigations unit would do it, right?

5 A. Those are your basics, but there's obviously
6 variations that can occur, you know.

7 Q. Sure, but for the most part, at least I thought
8 from your prior testimony, you know, you're conducting these
9 operations in a controlled environment --

10 A. Yes.

11 Q. (Cont'd) as much you can, right?

12 A. Yeah, absolutely.

13 Q. And that would be BCSO policy to keep people safe,
14 right?

15 A. It's not necessarily policy, it's a standard of
16 practice of like how we do things that has evolved with time.

17 Q. Okay.

18 A. You know.

19 Q. Sure.

20 A. Obviously things were different in 1984 than they
21 are today.

22 Q. Yeah. All right, so, as far as today, or even like
23 in 2015 you would engage in these hotel operations,
24 prostitution stings, right?

25 A. Yes, sir.

1 Q. So, let's talk about -- well, for one thing, when
2 you have someone designated as a john do you -- it's fair to
3 say then that it would be standard protocol for that john to
4 stay in role and not become part of the take down team,
5 right?

6 A. Yeah, for the most part, yeah.

7 Q. And that's for safety reasons, right?

8 A. Yes.

9 Q. And to avoid confusion?

10 A. Yeah.

11 Q. Okay. So, the bottom line is if you're the john be
12 the john. If you're the take down team, be the take down
13 team. Don't mix the roles, right?

14 A. For the most part. There have been occasions where
15 obviously if something transpires where you need additional
16 hands sometimes the person's got to join in.

17 Q. Okay. Sometimes the john will join in.

18 A. Yeah, if --

19 Q. I see what you're saying.

20 A. Yeah.

21 Q. I'm sorry, I didn't mean to cut you off. That's a
22 yes?

23 A. Yeah, yeah.

24

25

1 Q. All right. But as a standard of practice you
2 wouldn't have the john be the john and then all of a sudden
3 flip hats on its own and become the take down agent, right?

4 A. Correct.

5 Q. Okay. That would be not something you would advise
6 and not something you'd do?

7 A. Correct.

8 Q. Okay. So, was -- back in 2015 the way that BCSO
9 normally did this was this conducted -- I think you said at
10 the street level normally and at the hotels. It was both,
11 right?

12 A. Yes.

13 Q. Okay. And that sometimes an agent may leave, but
14 that was very unusual?

15 A. It's not a regular occurrence, but it does happen.

16 Q. Right. I mean, you would agree that that would be
17 an unusual thing to have happen, right?

18 A. Yeah, it wouldn't be our standard way of doing it,
19 no.

20 Q. Okay. Now, generally you try to avoid in calls
21 because you're not in control of the environment, correct?

22 A. Yes, I'm not particularly a fan of in calls.

23 Q. Okay. And when you're doing -- when you're doing
24 these operations your main concern obviously is officer
25 safety, right?

1 A. Yes, sir.

2 Q. And so for example, if you're doing it at the
3 hotel how many rooms might you have set up?

4 A. You can have three rooms set up.

5 Q. Is one room just set up for staging?

6 A. One room would be the room that we would be using
7 for the operation, one would be where personnel would be, and
8 another one would be for booking.

9 Q. Okay. So, in the -- in just skipping back, and I
10 might skip back and forth a little bit, but on August 20,
11 2015 was there a operation on going at the Quality Inn in
12 Titusville?

13 A. Yes, sir.

14 Q. And was that a solicitation operation?

15 A. Yes, sir.

16 Q. And in that operation did you have several rooms?

17 A. Yes.

18 Q. Okay. And for that reason, right?

19 A. Yes.

20 Q. And so what was the whole point of special
21 investigations unit on August 20, 2015?

22 A. A prostitution detail at the hotel.

23 Q. Okay. And frankly, people were posing as johns,
24 right?

25 A. Yes. Yeah.

1 Q. And you were trying to get prostitutes or people
2 posing as such to come to the Quality Inn?

3 A. Yes.

4 Q. And then what would happen if someone did? Let's
5 say you're successful and someone, you know, came in for the
6 call at the Quality Inn. What would your steps be? How
7 would you go about --

8 A. If the john showed up they'd be arrested and then
9 moved over to the booking room.

10 Q. Okay. And how would the initial contact be made?

11 A. Once the john would step into the room deputies
12 would address him and detain him.

13 Q. Okay. What I mean is how would the initial contact
14 between the special investigations unit undercover person and
15 the prostitute be made.

16 A. Gotcha, gotcha. You're talking the initial
17 solicitation, whether it be --

18 Q. Yes, sir.

19 A. (Cont'd) internet or --

20 Q. Yes, sir.

21 A. Okay. Like I said, sometimes they would text. A
22 lot of times they text and you respond back via text. And
23 the person, once they get to the hotel they're given the room
24 number and then they come up to the room.

25

1 Q. And so something is agreed upon on the text or?

2 A. Yeah, or it -- it could be agreed upon on the text,
3 it could be agreed upon in the room.

4 Q. Okay. So, it might not be that the criminal
5 activity, the crime itself, was completed on the text. You
6 might wait for some further proof in the room, right?

7 A. Yeah.

8 Q. And what could that look like?

9 A. If it's a female showing up, a female could be
10 looking for money. If it's a male showing up they could be
11 presenting money, they could -- they could even -- just the
12 mere knock on the door entrance into the room shows that
13 their intent was to commit the crime, so.

14 Q. Right.

15 A. That'd be the same.

16 Q. And so the way that we're describing the operation
17 here right now, is that the way that the operation was going
18 on August 20, 2015?

19 A. As far as I know, but as we spoke in the past, I
20 was not at the operation.

21 Q. Okay. So, let's back up then. That's true. So,
22 you were the sergeant at the time?

23 A. Yes.

24 Q. But you were finishing a report or something?

25 A. I was working on an inquiry and Lieutenant Lanza

1 was running the operation.

2 Q. Okay. But you were aware that the operation was
3 going on?

4 A. Yes.

5 Q. And you were aware of who -- which agents you had
6 that were there?

7 A. Yeah.

8 Q. And for that matter let's go ahead and talk about
9 that. Who was there that night in that operation --

10 A. You would have --

11 Q. (Cont'd) as far as you recall?

12 A. You would have had Agent Minthorne, Agent Hawkins,
13 Agent Smith, Agent Roberts, Agent Stuerwald. Those I can
14 think of off the top of my -- Agent Simon, Agent Hart were
15 also there.

16 Q. And how about -- and this is what is going to bring
17 me to my next question, but how about Agent Steed?

18 A. Oh, yes, Agent Steed.

19 Q. And how about Agent Hawkins?

20 A. Yeah, Agent Hawkins was.

21 Q. Okay. And is the reason that that's difficult for
22 you to remember because they were brand new?

23 A. Oh, no, I actually mentioned Hawkins. I forgot
24 about Steed.

25

1 Q. Oh, you did? I apologize. Okay.

2 A. They were new to the unit, yeah.

3 Q. Okay.

4 A. We had just gone through a transition.

5 Q. So, let's talk about that. How long had Agent
6 Steed been in the special investigations unit as of August
7 20, 2015?

8 A. I believe that was his first week.

9 Q. Okay. And would it be fair to say it was four
10 days?

11 A. It could be.

12 Q. I can show you your -- I can --

13 A. Okay. Yeah, it could be, yeah. It was within the
14 first week that he was there. So, within a five day period.

15 Q. Okay. But certainly it was his first prostitution
16 detail, correct?

17 A. Yes, sir.

18 Q. All right. So, he had never had an experience like
19 this before?

20 A. No.

21 Q. And in the prior couple three days before this
22 maybe he had served some warrants or something, but as far as
23 you know no prostitution activity, no detail?

24 A. No, he had never been part of an operation, no.

25

1 Q. In a -- ever?

2 A. In a prostitution operation.

3 Q. Okay.

4 A. Drugs, yes, not prostitution.

5 Q. And so -- all right. Now, in this case that we all
6 now know about and why we're here, was contact at some point
7 made with someone we now know as Mary Ellis?

8 A. Yes, sir.

9 Q. And would that person -- how was that done as far
10 as what you know?

11 MR. SCHEINER: Judge, I'm objecting. Lack of
12 personal knowledge. He wasn't present for any of this.

13 THE COURT: Sustained. Sustained. He said clearly
14 he wasn't there, that he was aware of the personnel
15 situation, but as far as the details.

16 MR. PANELLA: He respectfully I understand. He
17 also said he was aware of the operation, he was the
18 sergeant, and I believe he was filled in on details as
19 it was on going, but I would like --

20 THE COURT: I think did he say he was working on
21 something else and tending to someone else?

22 MR. PANELLA: He said that he was aware that the
23 operation was on going Judge.

24 THE COURT: Okay.

25 MR. PANELLA: That's why I was asking him.

1 THE COURT: Okay. I thought he said a
2 lieutenant --

3 MR. PANELLA: I don't know where he got his
4 information.

5 THE COURT: (Cont'd) someone else was running it
6 actually.

7 MR. PANELLA: Okay, well, I under --

8 THE COURT: Correct me if I'm wrong.

9 MR. PANELLA: I'd like to move on and see what he
10 does remember --

11 THE COURT: Okay.

12 MR. PANELLA: (Cont'd) and what he does know.

13 THE COURT: Thank you.

14 BY MR. PANELLA:

15 Q. Were you aware of somebody named Mary Ellis prior
16 to this day?

17 A. Yes.

18 Q. Okay. And were you aware that she was brought to
19 the special investigations unit attention via law enforcement
20 officer?

21 A. Yes, sir.

22 Q. Okay. And were you aware that that law enforcement
23 officer lived in Mary Ellis' neighborhood?

24 A. Yes.

25

1 Q. And so you were aware that the special
2 investigations unit had a target on Mary Ellis because of
3 complaints that were coming from that person, right?

4 A. She -- yes. I mean, she was obviously a person
5 that had been brought to our attention as somebody who was
6 possibly committing some form of crime based upon short term
7 high volume traffic.

8 Q. Okay. And that was a tip that came to you from a
9 law enforcement officer?

10 A. Yes.

11 Q. Okay. So, the special investigations unit actually
12 had their eye on Mary Ellis, right?

13 A. Yes, sir.

14 Q. And you -- as you sit here you're not aware of any
15 other tips, other than this person that were coming and
16 complaining about her, correct?

17 A. Not to my knowledge.

18 Q. Okay. So, it's just this one person that put you
19 onto it?

20 A. Like I said, that's to my knowledge.

21 Q. That's what you know?

22 A. That's what I know.

23 Q. Right. Okay. So then when we're talking about
24 this particular night and what you do remember, when did
25 you -- oh. As far as you know John Derossett, the Defendant

1 in this case, was never on the special investigations unit
2 radar for criminal activity, correct?

3 A. No, just that when they did interact with him the
4 one time his name was brought up.

5 Q. Okay. But certainly the special investigations
6 unit wasn't suspicious that he was engaging in prostitution
7 or anything like that?

8 A. Well, there was discussion after he had been
9 stopped with her that he was possibly deriving profits from
10 her prostitution.

11 Q. But you guys never made any arrests at that time or
12 anything like that, right?

13 A. No, he was given a warning I believe.

14 Q. Okay. Well -- okay. Was there -- all right. So
15 then on August 20, 2015 -- well, let's skip -- we'll come
16 back to that then all right.

17 A. Okay.

18 Q. Certainly Mr. Derossett was never mentioned in any
19 of special investigation unit prior arrest reports, right?

20 A. Nothing in an arrest report, no.

21 Q. Okay. Nothing in any other written reports,
22 correct?

23 A. Nothing in a written report.

24 Q. And there were no prior arrests?

25 A. Not -- I have no idea what his prior arrest history

1 is, but.

2 Q. With the special investigations unit?

3 A. No, sir.

4 Q. With BCSO?

5 A. Not with my unit.

6 Q. Okay. And that's just what I want to get at Agent
7 Fernez. So, when -- really when we're talking about Mary
8 Ellis being a target and these tips coming into you it was
9 really focused on her, correct?

10 A. It was focused on the residence, which is her, and
11 whoever stays there.

12 Q. But as far as you -- what you just told us that she
13 had become the target of SIU.

14 A. She had -- the residence was the one that was
15 called in as the complaint. Obviously when you see a lot of
16 short term high volume traffic you don't necessarily know who
17 it's for, you just know that you're getting a lot of short
18 term high volume traffic.

19 So, it wasn't until after they had done traffic stops on
20 her that they were able to determine who it was.

21 Q. Okay. And let's talk about that, because I -- we
22 might as well. A month before this incident, and if you
23 don't know you don't know, but you told me, so. A month
24 before this incident was Mary Ellis arrested for
25 solicitation?

1 A. Yes, sir.

2 Q. And that didn't occur at the house, did it?

3 A. No, sir.

4 Q. And John Derossett wasn't there, was he?

5 A. Not that -- to my knowledge, no, sir.

6 Q. As a matter of fact there was no suspicion that he
7 was there.

8 A. Nope.

9 Q. There was no suspicion he was going to be there.

10 A. No.

11 Q. And when she was arrested she was actually driving
12 the car herself, right?

13 A. I believe so.

14 Q. And she was going to meet with -- again, she was
15 being stung by the special investigations unit. She was
16 going to meet with somebody that she considered -- thought
17 was going to be a john?

18 A. Yes, sir.

19 Q. Okay. And again, John Derossett wasn't there?

20 A. No, sir.

21 Q. Did your agents go back and try to arrest John
22 Derossett later that day?

23 A. No, sir.

24

25

1 Q. Okay. So really this was just isolated to Mary,
2 that one incident that we know about?

3 A. Yes, the arrest incident, yes.

4 Q. The arrest incident. And there was no mention of
5 John Derossett in the arrest report, right?

6 A. No.

7 Q. Okay. So, moving past that. The deputies didn't
8 actually go to her residence either, right?

9 A. No, they went to a off site location.

10 Q. So, the facts of that case and what happened on
11 this more serious night are entirely different in the sense
12 that it wasn't another in call, it was they met at a CVS.

13 A. Yes.

14 Q. Okay. You guys have special tactical vests, right?

15 A. Yes, sir.

16 Q. And what -- and the tactical vests, they say
17 sheriff in large lettering --

18 A. Yes, sir.

19 Q. (Cont'd) on the front and on the back, right?

20 A. Yes, sir.

21 Q. And then the special investigations unit, as a
22 standard of practice, also have long sleeve black sleeve
23 shirts, right?

24 A. Yes, sir.

25

1 Q. And those shirts say sheriff down the sides?

2 A. Yes, sir.

3 Q. Now, these tactical vests, the lettering on the
4 actual vest itself is not reflective, correct?

5 A. No, sir, it's just yellow -- it's green.

6 Q. It's -- okay. And that's just what I want to
7 clarify. So, it's not like, you know, a helmet or something
8 like that, it's just a yellow screen print that his not
9 reflective of light.

10 A. Yes.

11 Q. Okay. Now, let's talk about when you finally heard
12 about what happened on August 20, 2015. Where were you?

13 A. I had completed the inquiry, I arrived at the
14 hotel, at the Quality Inn. Lieutenant Lanza was there, he
15 told me go grab a bite to eat before -- because I would have
16 been taking over for him after that point. I went and
17 grabbed a bite to eat.

18 I actually called -- or either I called him or he called
19 me, Agent Smith, and asked if they needed anything at the
20 hotel room, drinks and whatever.

21 And then I went to go pick up what they needed and then
22 that's when I got the phone call that Casey had been shot.

23 Q. Okay. So, when you got the call that Casey had
24 been shot did you -- what did you do? Did you go to the
25 residence?

1 A. Yes, sir.

2 Q. And by the time you got there were there many other
3 law -- was law enforcement's presence pretty heavy?

4 A. Oh, yeah.

5 Q. And where were you -- you know what might make
6 sense, where were you able to park? If this is the res -- do
7 you recognize this?

8 A. Yes, sir.

9 Q. Okay. And I'm showing the witness Defendant's
10 Exhibit 3. This is the front of the house, and it's
11 obviously -- it didn't look like this, right? It was
12 nighttime at the time.

13 A. Yeah.

14 Q. Right, okay. But if we're looking at the front of
15 the residence where were you? If you could give us some
16 orientation. It's going to be hard on this, huh?

17 A. Yeah. I'm the other way.

18 Q. You're the other way.

19 A. So, like, you know where Covina meets in?

20 Q. Yeah. You're saying where -- this is Covina,
21 right?

22 A. Yeah.

23 Q. And then there's an intersection here of Alcazar?

24 A. Yeah.

25

1 Q. And this house is on the corner?

2 A. Yeah, I'm on Alcazar further to the north.

3 Q. Down this way?

4 A. Yeah, because by that time all the police cars were
5 there and I had to park almost to Fay Boulevard.

6 Q. Okay. And did you notice either John or Mary when
7 you got -- John Derossett or Mary Ellis when you got there?

8 A. As I was walking up I believe Mary Ellen was
9 being -- Mary Ellis was being walked out, and they put her at
10 the -- standing at the front of a patrol car. And then I saw
11 the Defendant coming out too.

12 I'm not sure if he was walking or getting on the gurney
13 yet, or how he was, but I saw them bring him over to the
14 ambulance.

15 Q. Okay. And did you notice anything distinctive
16 about Mary Ellis?

17 A. She had a little bit of blood on her shoulder.

18 Q. And -- right, okay. So, did you -- when -- did you
19 notice anything else particularly unique about the incident?
20 About what -- you know, what did you observe, any other
21 observations that stick out to you?

22 A. Off the top of my head, just I remember seeing
23 blood on her shoulder and that she was standing in front of
24 the patrol car. About her that was pretty much I can --

25

1 Q. Okay. And your real focus at that point was to
2 tend to your own agents, right?

3 A. Yeah, at that point I -- the only information I had
4 been given is that Casey had been shot. I didn't know
5 anything else.

6 So, I was trying to get past everybody, and then I'm
7 obviously in plain clothes at the time, so there were
8 deputies out there who didn't know who I was.

9 Q. Yeah.

10 A. So, I had to kind of grab my stuff and ID myself
11 before I could get through.

12 Q. Was Agent Smith by then already gone and taken
13 to --

14 A. Yeah, he had already been --

15 Q. (Cont'd) the hospital?

16 A. He had already been transported.

17 Q. All right. So -- okay. Now, I want to talk about
18 you told us you were a sergeant for over three years, and you
19 said it's -- you know, you talked about how we normally go
20 about these solicitation stings, either at a hotel or street
21 level, and you mentioned sometimes things change.

22 But I'm -- I'll ask you, can you think of another time
23 where the special investigations unit made a house --

24 MR. SCHEINER: Objection, relevance.

25 THE COURT: Relevance?

1 MR. PANELLA: I can make this relevant Judge. This
2 is relevant to our theory of the whole case. This is
3 important as to -- well, can we approach?

4 THE COURT: Sure.

5 (Whereupon, a side bar discussion was held outside
6 the hearing of the gallery.)

7 MR. SCHEINER: The objection's relevance because
8 the only thing --

9 THE COURT: Right.

10 MR. SCHEINER: (Cont'd) that matters is the facts
11 and circumstances surrounding the Defendant at the time
12 he acts a particular. What they've done in prior
13 investigations at prior times --

14 THE COURT: Right.

15 MR. SCHEINER: (Cont'd) and whether or not he would
16 have liked to have done this differently is not relevant
17 to the Defendant's state of mind when he chose to take
18 the actions he took.

19 MR. PANELLA: The question is if this has ever
20 happened in the past or if this was anomalous. And the
21 reason that that's relevant to this particular case
22 is because we anticipate the testimony's going to be,
23 yes, this was a unique situation, this is not in their
24 protocol.

25 And part of our theory of the defense or, you know,

1 of our case is that BCSO acted outside protocol in this
2 matter Judge. And so the only way to establish that
3 certainly would be to show that, yes, this was a unique
4 situation that wasn't handled correctly by BCSO.

5 THE COURT: Mr. Panella -- anything you want to add
6 to that Mr. Scheiner?

7 MR. SCHEINER: No, Judge. It doesn't change the
8 facts and circumstances of the -- the totality of the
9 circumstances facing the Defendant at the time that he
10 was --

11 THE COURT: Okay. That's the -- the way I'm
12 viewing it is we're focused right now on what Mr.
13 Derossett's state of mind or -- and behavior was.

14 And whatever thing that they were doing, sensible,
15 not sensible, you know, doing it -- you know, doing it
16 in weeks. It doesn't matter.

17 It really boils down to the interaction between
18 just a very few people at a very specific amount of
19 time, and the fact that they've run the identical
20 operation a hundred times or the fact this was the very
21 first time that they did it in this particular way, and
22 whether or not it was ill conceived or well conceived
23 is not the issue.

24 MR. PANELLA: Okay, well --

25 THE COURT: The issue is the behavior of --

1 MR. PANELLA: What I would say is let's keep this
2 in mind because the State in opening said that they were
3 going to go into prior incidents that have nothing to do
4 with this case either. So, I intend to go ahead and --

5 THE COURT: No, I -- okay. I'm sorry, go ahead.

6 MR. PANELLA: The prior incidents with --
7 interactions with John that are pretty attenuated that I
8 don't think are relevant to this night either.

9 So, I agree with the Court that the state of mind
10 of the Defendant at the time of this particular event is
11 what is important here.

12 THE COURT: Okay.

13 MR. PANELLA: So, with that said, if this is the
14 Court's ruling -- go ahead Don, I'll let you --

15 MR. RESPESS: I mean, you can proffer it, but --
16 you know, for the record, but you know, unless there's
17 relevant -- I've explained why I believe that these
18 other events are relevant to Mr. Derossett's decision
19 making.

20 It doesn't matter, Mr. Derossett doesn't know if
21 they do this everyday or this is the first time. It is
22 irrelevant to the decision making.

23 THE COURT: Well, that's what I've said. Exactly
24 what they did, whether it was ill conceived or well
25 conceived, regardless of whether they'd done it a

1 hundred times this way or whether this was the first
2 time they did it this way.

3 That is not something that Mr. Derossett -- I don't
4 think you're saying, well, he knew they always did it
5 this other way so he wasn't worried. I mean, it -- no.
6 The objection to relevance is sustained. Do you have
7 any further questions of --

8 MR. WEST: I believe if I can be heard or not. I'm
9 just responding to Mr. Respass' comment that why don't
10 we proffer it.

11 THE COURT: Em-hmm.

12 MR. WEST: And I would suggest that since this is a
13 bench trial anyway and there's no jury to worry about
14 why don't we just put it in the record and let the
15 jur -- and let the Court sort it out.

16 MR. RESPESS: Well, I mean --

17 THE COURT: You can do that, but I -- in my humble
18 opinion it's kind of going into things that, you know,
19 you're using your time and energy to go into that I
20 don't really see as crucial to what you're trying to
21 demonstrate otherwise, or whether -- what they're trying
22 to demonstrate otherwise. I --

23 MR. WEST: Judge, I think what's evident is that
24 whatever happened went horribly wrong.

25 THE COURT: Would be?

1 MR. WEST: I think went horribly wrong.

2 THE COURT: Obviously.

3 MR. WEST: We can all --

4 THE COURT: Agree to that. We've all been involved
5 in the area of criminal law long enough to know what
6 time it is.

7 MR. WEST: Yeah. So, this operation, which we know
8 or about to know is the very -- the only time this
9 witness knows that it to have been done this way --

10 THE COURT: Okay.

11 MR. WEST: (Cont'd) went terribly wrong --

12 THE COURT: Okay, but --

13 MR. WEST: (Cont'd) that we think is how the
14 operation was conducted, how it would normally have been
15 conducted, and what trigger points if you will, for lack
16 of a better term, resulted in responses from the people
17 that were in the house.

18 As the Court's aware from the opening statement
19 that there was a significant question who these people
20 were. That they showed up at the house at night in
21 plain clothes --

22 THE COURT: I understand.

23 MR. WEST: And --

24 THE COURT: I understand. I mean --

25

1 MR. RESPESS: We're not objecting to what
2 happened --

3 THE COURT: Right.

4 MR. RESPESS: (Cont'd) in the event.

5 THE COURT: Right.

6 MR. RESPESS: And never would. The only reason I
7 suggested the proffer is you -- I heard your rule, and
8 if they wanted to make a record by proffering the
9 state -- because it sounds to me like they pretty much
10 covered what they anticipated the testimony --

11 THE COURT: Sounds like it.

12 MR. RESPESS: But if they wanted to do that I'm not
13 going to object to that.

14 THE COURT: Do any of you object or disagree with
15 the fact that this is not really standard operating
16 procedure?

17 MR. RESPESS: I think his testimony at the
18 deposition was that if it's not normal -- I think he's
19 already sort of testified --

20 THE COURT: They've already said that.

21 MR. PANELLA: This guy's -- well, the --

22 THE COURT: I think he's already said that.

23 MR. PANELLA: So, do you disagree? Because he's
24 going to say he's never heard one before.

25

1 THE COURT: I mean, I think we've -- you've plugged
2 that hole.

3 MR. PANELLA: Okay.

4 THE COURT: Or --

5 MR. PANELLA: No problem Your Honor.

6 THE COURT: Or hit that target.

7 MR. PANELLA: No reason to take more of your time
8 Judge.

9 THE COURT: Whatever you want to do.

10 MR. PANELLA: Thank you for hearing us.

11 THE COURT: Thank you.

12 (Whereupon, the following was had in open court.)

13 MR. PANELLA: Just one moment Judge.

14 THE COURT: Okay, thank you.

15 MR. PANELLA: And I'm almost done.

16 BY MR. PANELLA:

17 Q. In no other interaction with Mary Ellis did the
18 special investigations unit have contact at 1051 Covina,
19 right?

20 A. Correct.

21 Q. Okay. And just one other thing you mentioned to me
22 earlier. There was a concern -- special investigations unit
23 has changed actually their attire over the years, right?

24 A. Yes, sir.
25

1 Q. To become a little bit more obvious and more safe,
2 right?

3 A. Yes, sir.

4 Q. But as part of the special investigations unit
5 you'd be wearing plain clothes, even if you were the officer
6 that's -- well, first of all, a lot of the agents in SIU wear
7 plain clothes, right?

8 A. Yes, sir.

9 Q. Because it's an undercover operation all together?

10 A. Yeah.

11 Q. All right, so that's the point. But when you want
12 to identify yourself you do it the way I just said, right?
13 You've got your tact vest and you've got your long sleeve
14 black shirt, right?

15 A. For the most part. There are certain occasions
16 where we wear neck badges where you could basically walk up
17 to somebody and say, hey, then identify yourself as so and
18 so.

19 We do that on what you would call soft target search
20 warrants where you want to make contact with somebody, but
21 you plan on using them later on in another investigation.
22 So, you really are trying to do it as covertly as possible.

23 Q. I understand. So, that's not somebody that
24 you're -- you're trying to be still in an undercover capacity
25 when you do it that way, to some degree?

1 A. To some degree.

2 Q. You want to let them know, but as subtly as you
3 possibly can.

4 A. Yes.

5 Q. So, if somebody's wearing plain clothes and he's
6 got the badge under his shirt and he shows his badge, that
7 would be the least -- that would be the most subtle way to
8 identify yourself as a law enforcement officer, right?

9 A. Yes.

10 Q. Okay. In special investigations unit in terms --

11 A. Yes.

12 Q. And by the way, in -- wasn't there a time before
13 these tact vests, that are now labeled in yellow, where
14 special investigations unit only had the badge and a hoody?

15 A. Absolutely.

16 Q. And there was a concern and that changed, right?
17 Because maybe someone wouldn't identify that person as a law
18 enforcement officer.

19 A. Yeah, that's why we switched. It used to be they'd
20 just wear a neck badge and like a T-shirt and shorts, and
21 then they'd actually put their black masks on, and we changed
22 the pattern of doing that.

23 We moved people to tact vests because when you do
24 have -- I mean, I was the smallest person in the unit. Agent
25 Smith's what, 6'5, 275 -- or sorry, 375.

1 So, I mean, you put a tact vest on him and a big yellow
2 lettering across his chest and he looks like a billboard, you
3 know.

4 Q. Right.

5 A. So, that was the safest way we could do it.

6 Q. Yeah, absolutely. I'm with you. All I'm getting
7 at is that did change because there was a concern about
8 safety with just the badge?

9 A. Yeah, absolutely.

10 MR. PANELLA: I don't have anything further right
11 now Judge.

12 THE COURT: All right. Thank you.

13 CROSS EXAMINATION

14 BY MR. SCHEINER:

15 Q. Agent Fernez, the -- or Lieutenant Fernez?

16 A. Yeah. Whatever you want to call me.

17 Q. All right. Agent Fernez, the -- when you arrived
18 on the scene at 1051 Covina --

19 A. Yes, sir.

20 Q. You were coming from Highway 50 in Titusville?

21 A. Yes, sir.

22 Q. And you -- at that point the information you had
23 was that Agent Smith had been shot?

24 A. Yes, sir.

25

1 Q. And then you drove from that point to Port St.
2 John, which is in the -- people call it the front. So, the
3 US1 side of Port St. John?

4 A. Yeah, it's closer to US1 off of Fay, yes.

5 Q. And when you arrived there at that point that's
6 when you see Mary Ellis coming out of the house?

7 A. No, when I -- she was already out of the house,
8 like on the street. Because I obviously couldn't see
9 anything --

10 Q. Okay.

11 A. (Cont'd) as I was walking up. Because the
12 ambulance was in front of me, well in front of me. So, as I
13 walked up and came around I saw somebody walking her to --
14 towards the front of a patrol car.

15 Q. Okay.

16 A. I couldn't tell you what deputy it was. I just saw
17 somebody walking with a female, so.

18 Q. Okay. And then later then you see the Defendant,
19 Mr. Derossett, coming out of the house?

20 A. Yes, yes, sir.

21 Q. Do you see Mr. Derossett in the courtroom?

22 A. Yes, sir.

23 Q. Could you identify him by something he's wearing
24 please?

25 A. Red jump suit.

1 Q. Okay. And record reflect the witness identified
2 the Defendant. Okay, the investigation that happened on July
3 20th at CVS, were you aware that the car that Mary was
4 driving was rented by the Defendant in order to go there?

5 A. No, sir.

6 Q. Okay.

7 A. I wasn't at that --

8 Q. You were not involved with that?

9 A. I was not involved in that investigation.

10 Q. And then the interaction that happened in which
11 contact was made with the Defendant, do you know who that was
12 that had contact with him?

13 A. I believe it was Agent Stuerwald.

14 Q. Okay. And you said he was left with a warning. Do
15 you know what that warning was?

16 A. I guess they explained to him what was going on and
17 kind of did like a --

18 MR. PANELLA: Objection Judge, it's hearsay.

19 MR. SCHEINER: I agree Judge.

20 THE COURT: Thank you. Sustained.

21 MR. SCHEINER: No other questions.

22 THE COURT: All righty then. Does that -- we're
23 backwards here. Does that prompt anything further Mr.
24 Panella?

25 MR. PANELLA: No.

1 THE COURT: All right, thank you. May Lieutenant
2 Fernez be excused?

3 MR. PANELLA: Yes, Judge.

4 THE COURT: All right, thank you. Thank you sir.

5 THE WITNESS: Thank you ma'am.

6 THE COURT: Nice to see you. Mr. Panella, who
7 would be your next witness?

8 MR. PANELLA: Your Honor, if we could take a five
9 minute break before we call our next witness?

10 THE COURT: Okay, sure. It's 20 of, do you want to
11 come back in at quarter of? Almost 20 of.

12 MR. PANELLA: Yes, ma'am.

13 THE COURT: Okay, sure. Be in recess. Thanks.

14 (Whereupon, court stands in recess for
15 approximately five minutes.)

16 THE COURT: All right, we're back on the record in
17 the State of Florida versus John Derossett,
18 2015-CF-39550. Mr. Derossett is present with counsel,
19 Mr. Panella. Mr. Panella, do you wish to wait a moment
20 for Mr. West? Is that him coming in?

21 MR. PANELLA: That's him coming in Judge.

22 THE COURT: That's him coming. Mr. West is coming
23 in. And Mr. Scheiner and Mr. Respass are here on behalf
24 of the State. All righty, Mr. Panella, you were about
25 to proceed.

1 MR. PANELLA: We're ready Judge.

2 THE COURT: Are you ready? All right.

3 MR. WEST: Should we have the witness take the
4 witness stand?

5 THE COURT: Is this your next witness?

6 MR. WEST: It is.

7 MR. PANELLA: Yes, Your Honor, it is.

8 THE COURT: Certainly. Would you -- I mean, if you
9 all have other -- are you still discussing something?

10 MR. PANELLA: We were just seeing if there's a
11 stipulation to what we're going to do Judge. We had
12 showed it to them a second ago.

13 THE COURT: Do you need a second to sort it out?

14 MR. PANELLA: I think it's up to the State.

15 THE COURT: Mr. Respass, Mr. Scheiner, do you want
16 a sec?

17 MR. RESPASS: We're not going to stipulate.

18 MR. PANELLA: Okay.

19 THE COURT: Okay. Okay, then yes, whoever please
20 ma'am, come on up.

21 THE CLERK: Raise your right hand. Do you solemnly
22 swear or affirm that the testimony you shall give will
23 be the truth, the whole truth, and nothing but the truth
24 so help you God?

25 THE WITNESS: Yes, ma'am.

1 THE CLERK: You may be seated.

2 THE BAILIFF: Right this way.

3 THE COURT: All righty, Mr. West or Mr. Panella,
4 anytime you're ready.

5 MR. WEST: Thank you Your Honor. We'll call Mary
6 Ellis.

7 THE COURT: All right.

8 MR. WEST: She has already taken the stand.

9 THE COURT: Good afternoon Ms. Ellis.

10 WHEREUPON:

11 MARY ELLIS,

12 a Witness herein, having been duly sworn, testified upon her
13 oath as follows:

14 DIRECT EXAMINATION

15 BY MR. WEST:

16 Q. Good afternoon. If you have any trouble hearing us
17 be sure to let us know that. So, let's start. If you would
18 please identify yourself and spell your last name?

19 A. Mary Ellen Ellis, E-L-L-I-S.

20 Q. Ms. Ellis, have you also from time to time been
21 incorrectly known or called Mary Derossett?

22 A. This is my maiden name.

23 Q. Do you know a person named John Derossett?

24 A. That's my uncle.

25

1 Q. You are related to him as -- he's your uncle you
2 said?

3 A. Yes.

4 Q. Okay. Do you see him here?

5 A. Yes.

6 Q. Do you recognize him as the man in the red
7 jumpsuit?

8 A. Yes.

9 Q. Okay. About how long have -- from -- we'll go back
10 to around 2015. We're going to focus on the events around
11 August 20, 2015, but also some events that occurred within
12 the several weeks before that. So, where were you living in
13 August of 2015?

14 A. With my uncle on Covina Street in Port St. John.

15 Q. Do you remember the street address in Port St.
16 John?

17 A. 1051 Covina.

18 Q. If I could ask you just to slow down a little bit
19 and be clear, speak into the microphone so we can all hear
20 you. Take your time.

21 THE COURT: Yes, thank you Mr. West.

22 THE WITNESS: Okay.

23 THE COURT: We were probably going to get a message
24 from digital saying --

25 MR. WEST: Right.

1 THE COURT: (Cont'd) like turn it up please from
2 your end.

3 BY MR WEST:

4 Q. Now, Ms. Ellis, this has been already introduced
5 into evidence as Defendant's Exhibit 3. I'm going to show
6 you this and see if you recognize what's in this picture as
7 the house where you were living in August of 2015?

8 A. Yes, it is.

9 Q. And the street number is here on the front of it.

10 A. Okay.

11 Q. While I've got it up here, there is a Chevrolet
12 vehicle in the driveway. Have you seen that before?

13 A. It's my uncle -- was my uncle's.

14 Q. Is that a vehicle that your uncle drove around that
15 time of August 2015?

16 A. Em-hmm.

17 Q. If you would just --

18 A. Yes, yes. I'm sorry.

19 Q. (Cont'd) speak outloud. Thank you. And there's
20 only a bit of a car that you can see here, but do you
21 recognize what that vehicle is?

22 A. Yes, it's my uncle's, so.

23 Q. What is it?

24 A. A BMW.

25

1 Q. And was that also a car that he owned or was
2 buying?

3 A. He owned it I believe.

4 Q. And was that a vehicle that was available from time
5 to time for you to drive?

6 A. Yes.

7 Q. You know, I'm sorry Ms. Ellis, I'm just still
8 having trouble hearing you.

9 A. I'm sorry. Okay.

10 THE COURT: Is her microphone on Mr. West?

11 THE WITNESS: I talk softer.

12 THE COURT: Thank you. I was having a little --

13 MR. WEST: I mean, it doesn't seem to --

14 THE COURT: Ma'am, you're very soft spoken and we
15 do have an audio record, so please if you can, speak up
16 as much as you can.

17 BY MR. WEST:

18 Q. For at least the several months before August 20,
19 2015 had you been staying at John Derossett's residence
20 that's pictured here?

21 A. Yes.

22 Q. And can you estimate roughly how long you had lived
23 there, whether it was on and off or continuous?

24 A. On and off for, I don't know, maybe a year and a
25 half, two years. It's 2014 --

1 Q. Somewhere --

2 A. Since 2014 some time.

3 Q. So, some time a year and a half, two years you were
4 staying in the house?

5 A. On and off, yes.

6 Q. And when you say on and off, were there times when
7 you didn't live there and you lived somewhere else?

8 A. Yes.

9 Q. From the time period in the summer of 2015 were you
10 living there fairly regularly, say from April or May or June
11 through the night of the incident on August 20th?

12 A. Yes.

13 Q. Can you describe the inside of the house in terms
14 of this for example: Did you have your own room that you
15 could solely occupy?

16 A. Yes.

17 Q. And where was that within the house?

18 A. It's where the blue K sign in the window, on the
19 right, right-hand side.

20 Q. So, your room was to the right of the front door?

21 A. Yes.

22 Q. And did your uncle, John Derossett, have a separate
23 room at some other place within the house?

24 A. Yes.

25

1 Q. And where was that roughly?

2 A. It's on the left hand side to the back -- or left
3 hand side behind the garage. There's a garage and there's a
4 master bathroom, and then there's his room behind that.

5 And if you go through -- if you go through there, you go
6 through the living room, past the kitchen, past the dining
7 room, and then in the back. He was kind of just basically --
8 our rooms were kind of diagonal --

9 Q. So, he --

10 A. (Cont'd) on opposite sides.

11 Q. Would it be fair to say he was -- his room was sort
12 of on the other side of the house?

13 A. Yes.

14 Q. And I take it you had a key and could kind of come
15 and go as you pleased?

16 A. Em-hmm.

17 Q. Is that right?

18 A. Yes, yes. I'm sorry.

19 Q. During that time period we're talking about, spring
20 summer of 2015 did your uncle work?

21 A. Yes.

22 Q. Did you know him to get up and go to work most
23 days?

24 A. Yes, I always knew his schedule.
25

1 Q. What was he doing?

2 A. He worked security guard at Port Canaveral around
3 the cruise ships.

4 Q. And did you know roughly when he would be gone from
5 the house?

6 A. That's why I -- yeah. I mean, I pretty much knew
7 his schedule whenever. I would ask him.

8 Q. And you could say something as simple as are you
9 working today?

10 A. Em-hmm. Yes.

11 Q. Please just --

12 A. I'm sorry. Gosh. I apologize.

13 Q. And the reason we ask you to do that is because at
14 some point if this is ever transcribed there has to be a
15 spoken word.

16 A. Yes, I understand.

17 Q. So, you would know day to day what his schedule was
18 I take it?

19 A. Yes, yes.

20 Q. And if you didn't know if he was going to work or
21 not then you could ask him and he would tell you?

22 A. Yes.

23 Q. Did he have any other regular practices where you
24 could predict that he wasn't going to be at home?

25 A. Yes, he went to church on -- twice on Sundays and

1 once on Wednesdays pretty much.

2 Q. And on Wednesdays, day or evening? Do you know?

3 A. Evening.

4 Q. And then on Sundays?

5 A. Yes, morning and evening.

6 Q. So, were you able, through living there and
7 observing his routine, able to predict, you know, pretty
8 closely when he would be there and when he wouldn't?

9 A. Yes. I mean, I would ask him ahead of time as well
10 so he would -- I would know he was going, which he did.

11 Q. Did -- did you have a regular job? We're going to
12 again focus on this time frame from spring to summer 2015.

13 A. Em-hmm.

14 Q. Did you have a regular job?

15 A. No.

16 Q. How did you earn income when you did?

17 A. Whatever I could, you know. Whatever I could.

18 Q. Em-hmm. There has been testimony in the case so
19 far that you had an ad on Backpage. Are you familiar with
20 that?

21 A. Yes.

22 Q. And would you, as a response to the ad, be
23 contacted by people that wanted to meet up with you in
24 person?

25 A. Yes.

1 Q. And would that happen sometimes by phone or by text
2 message?

3 A. Yes.

4 Q. And would you talk with them on the phone or
5 respond to their text message and some times make
6 arrangements to meet with them?

7 A. Yes.

8 Q. Were the encounters that you had with some of these
9 men that would contact you result in some sexual contact?

10 A. Yes.

11 Q. If I could fast forward for you to August 20, 2015,
12 the night of the shooting.

13 A. Em-hmm.

14 Q. Do you remember being contacted by text from
15 someone you didn't know who wanted to meet up with you?

16 A. Yes, vaguely.

17 Q. Do you remember at some point being asked if you
18 would meet with him at the Quality Inn Hotel in Titusville?

19 A. Yeah, I'm not sure. I don't remember really the
20 text. If that's exactly what the text said, then obviously I
21 did.

22 Q. Oh, sure.

23 A. If I responded. Nobody else had my phone.
24
25

1 Q. So, the messages in other words, the messages about
2 who said what, and when, and what the arrangements were would
3 be sent to your personal cell phone?

4 A. Yes.

5 Q. And this person that you had been talking with, was
6 there basically a plan over the course of this conversation
7 for him to meet with you the night of August 20, 2015?

8 A. I believe so. Apparently from -- yeah, obviously
9 some how.

10 Q. Oh, sure, sure. Okay. Well, we'll get into that
11 in more detail.

12 A. I just -- you know, I can't recall exactly what.

13 Q. I'm really trying to just kind of set the stage for
14 some of the events that you were witnessed to or directly
15 involved in.

16 A. Em-hmm.

17 Q. Over the course of your lifetime have you suffered
18 from some addiction problems?

19 A. Yes.

20 Q. And have you been better at sometimes than others
21 at being in control of it?

22 A. Yes.

23 Q. You doing okay now?

24 A. Yes.

25

1 Q. Would some of the sexual activity that we touched
2 on in -- be related to your substance abuse issues?

3 A. Yes, directly.

4 Q. Directly?

5 A. Pretty much, yeah.

6 Q. Directly in the sense that you didn't really have
7 any other way to make money?

8 A. Yeah. I mean, directly, that's why I did it.

9 Q. And from your testimony and other testimony about
10 living in the house --

11 A. Em-hmm.

12 Q. There's a question that's been raised about how
13 much knowledge your uncle, John Derossett, had of your own
14 activities, and I would talk with you a little about that.

15 You mentioned already that you had your own room and
16 that you came and went as you chose. You already mentioned
17 that you knew when he would be home and when he wouldn't.

18 A. Em-hmm.

19 Q. So, is it fair to say that on some occasions you
20 might leave the house to meet with people, but on other
21 occasions men would come to the house?

22 MR. RESPESS: Objection, leading. And I'm going to
23 be -- I haven't raised it so far, but I'm raising it
24 now.

25

1 THE COURT: Sustained. I think that was -- I think
2 there was sort of a summary there.

3 MR. WEST: It's pretty compound. I'll --

4 THE COURT: Yes.

5 MR. WEST: Sure.

6 MR. RESPESS: Well, it also calls for a particular
7 answer and it suggests an answer, and that's why -- you
8 know, I understand he's normally a Defense attorney, but
9 this -- he's supposed to do direct right now.

10 THE COURT: Right, t his is direct. Please do
11 phrase the questions accordingly. You've changed hats
12 here today.

13 BY MR. WEST:

14 Q. Okay, so, let's just break that down into smaller
15 pieces. Would -- on some occasions when you were meeting a
16 client would you leave the residence and meet them somewhere
17 else?

18 A. Most occasions, yes.

19 Q. Most occasions?

20 A. Em-hmm.

21 Q. And would sometimes -- where would that be?

22 A. Hotels, in a car, their house.

23 Q. And would that also typically be arranged over the
24 phone call or the text message?

25 A. Yes.

1 Q. And if you were leaving the house and you -- and
2 your uncle was there, if he were to ask you where you were
3 going, what would you typically tell him?

4 A. You know, usually in the beginning I would tell him
5 I was going to clean a house, going to baby-sit, wanted to
6 help someone.

7 Q. Was it -- was it your habit to lie to him about
8 what you were actually doing?

9 A. Of course, yes.

10 Q. Sometimes you would tell him that you were going to
11 clean houses?

12 A. Em-hmm.

13 Q. Sometimes you would tell him you had a baby-sitting
14 job?

15 A. Em-hmm. Sometimes I would just say I was going to
16 some friends, you know.

17 Q. Why weren't you just telling him?

18 A. Because he would have been mad, he would have
19 probably kicked me out.

20 Q. You thought that if he knew what you were actually
21 doing that he may kick you out of the house?

22 A. Yes.

23 Q. If he kicked you out of the house did you have
24 anywhere else to go?

25 A. No.

1 Q. On some occasions if -- on some occasions did you
2 allow men to come to the house?

3 A. Rarely. I mean, not -- yeah, I did. Yes, I did.

4 Q. Okay. And when you would allow men to come to the
5 house was your uncle typically aware that that was going to
6 happen?

7 A. No.

8 Q. And how did you keep that from him?

9 A. He would -- I would just when he was not there.

10 Q. So, just explain that for a second. How would you
11 arrange for someone to come to the house to be sure he wasn't
12 there?

13 A. Okay, if -- you know, obviously I'm going to have
14 some notice when someone's coming over and I -- you know, if
15 I knew when he was working.

16 I always knew pretty much -- I'd schedule someone on
17 days he went to church, or you know, and then -- or I'd find
18 out his schedule ahead of time and schedule it around him.

19 Q. If someone looks at -- looked at your text messages
20 would it be pretty clear that you were trying to keep
21 whatever you were doing away from him?

22 A. Well, yeah. I mean, I told people that I lived
23 with my uncle and he didn't know.

24 Q. Speak more directly.

25 A. I'm sorry. I told people that I lived with my

1 uncle and that he didn't know. So, you know, they'd have to
2 be on time, you know, they'd have to be out by a certain
3 time.

4 Q. Was it important to you that they not come to the
5 house when he was there whenever possible?

6 A. Yes. Yes.

7 Q. There have been a couple of incidents already in
8 the testimony I'd like to touch base with you on. One of
9 them wasn't identified by date, but it was identified as you
10 being in the vehicle with your uncle, the truck, I think some
11 weeks before the incident on August 20th where you were
12 stopped by the police and confronted.

13 A. Em-hmm.

14 Q. Do you remember that?

15 A. Yes.

16 Q. Were you and Mr. Derossett in the truck together
17 when that happened?

18 A. Yes.

19 Q. And what town were you in when you were stopped?

20 A. Cocoa Beach.

21 Q. Had Mr. Derossett given you a ride from the house
22 to this location?

23 A. Yes.

24

25

1 Q. And had you told him anything specific about where
2 he was taking you or why he was taking you, or did you -- did
3 he know what was going on?

4 A. I told him that I wanted to go down to a strip club
5 down there and see if I could get a job.

6 Q. Did you tell him that you wanted a ride to the
7 strip club?

8 A. Yes.

9 Q. Well, but you obviously didn't go directly there.

10 A. Em-hmm.

11 Q. What did you tell him when you asked him to stop
12 somewhere else?

13 A. I think I just told him I needed to run into one of
14 my friends and use the restroom.

15 Q. And --

16 A. And it was down by the strip club.

17 Q. And for this particular incident did you go
18 somewhere for a few minutes and then come back to the truck
19 as he kind of travelled around to pick you up?

20 A. Em-hmm.

21 Q. I'm sorry?

22 A. Yes. I'm sorry.

23 Q. Good. Okay. So, when you got back in the truck
24 were you stopped?

25 A. Yes.

1 Q. And when you were stopped do you know whether there
2 was some traffic infraction or what the stated reason was why
3 your uncle was pulled over?

4 A. You know, I don't -- I don't think they ever told
5 us why we were -- that I can recall why we got pulled over --

6 Q. Em-hmm.

7 A. (Cont'd) in the first place, but they had said that
8 I had just gone in that house for nine minutes exactly and
9 came back out and that was suspicious.

10 Q. You were basically told that you had been timed --

11 A. Yeah.

12 Q. (Cont'd) and you'd gone into this place for nine
13 minutes?

14 A. Nine minutes, yes.

15 Q. Was there any further contact with law enforcement?
16 Did you answer their questions? Did you allow them to search
17 you and your property?

18 A. Yes, they searched the --

19 Q. Did Mr -- sorry.

20 A. They got us both out and searched the truck and
21 searched us, yes.

22 Q. And in your personal property in the vehicle did
23 you have something that you were going to wear at this strip
24 club?

25 A. Yes, I had, you know, a dress, a sheer dress, a

1 g-string, and a -- that was in my purse and my -- the nine
2 inch heels were in the floor board.

3 Q. Was Mr. Derossett taken out of the vehicle and also
4 searched?

5 A. Yes.

6 Q. And did he make the officers aware that he had a
7 firearm in the vehicle?

8 A. Yes.

9 Q. Did he make them aware he had a Florida state
10 issued concealed carry permit?

11 A. Yes.

12 Q. And did law enforcement see that he was in the
13 lawful possession of a firearm?

14 A. Yes.

15 Q. Were you -- was there any other significant
16 conversation you remember that you were present for? Ever
17 given a reason for the stop?

18 A. I remember, you know, they were saying -- Agent
19 Roberts was saying that he had seen me on Backpage, which I
20 never put my picture on there. So, I thought that was odd.

21 And you know, they were kind of, you know, just -- he
22 was more than the other officer out there, Officer Smith.
23 You know, telling John that, you know, that you know, I was
24 prostitute and you know, I was -- whatever, whatever they
25 were saying.

1 You know, they kind of separated us. So, I was just
2 getting -- picking up bits and pieces.

3 Q. When John Derossett would ask you about that would
4 you admit it or deny it?

5 A. No, I wouldn't -- I would never admit that.

6 Q. You came up with an excuse of some sort?

7 A. Em-hmm. I mean, yeah.

8 Q. So, at the end of this particular encounter are you
9 saying no traffic tickets were written? There was nothing
10 stated as to why you were pulled over, you were just
11 basically searched and let go?

12 A. Yeah, I believe so.

13 Q. I think I heard you say, but I'm still having
14 trouble, that it was Agent Roberts?

15 A. Em-hmm.

16 Q. Agent Roberts, Agent Jason Roberts --

17 A. Yes.

18 Q. (Cont'd) from SIU Brevard County Sheriff's Office
19 was involved in that stop?

20 A. Em-hmm, yes.

21 Q. Is that right?

22 A. Yes, it was.

23 Q. So, you had some contact with him that night, is
24 that right?

25 A. Em-hmm.

1 THE COURT: Ma'am, you have to say yes or no.

2 THE WITNESS: I'm sorry. Gosh, I apologize.

3 Sorry.

4 THE COURT: Was that a yes or a no, your last
5 answer ma'am?

6 THE WITNESS: I'm sorry, could you repeat it?

7 BY MR. WEST:

8 Q. Well, I'm just trying to piece this together.

9 A. Yes.

10 Q. Was it Agent Roberts, Agent Jason Roberts that was
11 part of that traffic stop some weeks or months before the
12 incident on August 20th that we've been talking about?

13 A. Yes.

14 Q. Okay. How long would you estimate that you were
15 stopped there and searched and -- before you were let go?

16 A. 15 or 20 minutes.

17 Q. Was there any contraband found, any drugs, anything
18 that resulted in a citation of any sort, or obviously no
19 arrest?

20 A. No.

21 Q. Let's move forward a little bit to an incident at
22 CVS.

23 A. Em-hmm.

24

25

1 Q. Do you remember an incident at CVS roughly on July
2 20th of 2015 --

3 A. Yes.

4 Q. (Cont'd) where in fact you were arrested?

5 A. Yes.

6 Q. Did you respond to CVS pharmacy in Port St. John
7 area with the expectation of meeting someone that you had
8 corresponded with through Backpage or through text messaging?

9 A. Yes.

10 Q. And were you going to CVS in order to meet this
11 person to have some sort of sexual contact with them?

12 A. Yes.

13 Q. Would that have been through the Backpage website
14 that we've talked about?

15 A. Yes.

16 Q. And when you got to the CVS -- first of all, what
17 were you driving?

18 A. A green BMW.

19 Q. The one you can see the roof of over next to the
20 truck?

21 A. Yes.

22 Q. Were you by yourself?

23 A. Yes.

24

25

1 Q. Was Mr. Derossett close by, was he with you, was he
2 doing anything at all in connection with the incident at CVS?

3 A. He wasn't there. I mean, no, he wasn't. He was at
4 the house. He didn't know anything, no.

5 Q. At some point during this operation was it revealed
6 to you that you were being arrested?

7 A. Yes.

8 Q. Did you fight?

9 A. No.

10 Q. Or run?

11 A. No.

12 Q. Or scream?

13 A. No.

14 Q. Or call for help?

15 A. No.

16 Q. What -- what happened?

17 A. I pulled into the --

18 Q. No, I mean when they said you're under arrest what
19 happened?

20 A. Oh, they grabbed my win -- I was actually pulling
21 out to leave. I thought it was a little strange. And they
22 jumped out of the cars and ran up to my window and pulled --
23 with their guns pulled on me.

24 Q. And you didn't try --

25 A. And they were yelling at me.

1 Q. You didn't try to drive off or fight?

2 A. No.

3 Q. You -- did you resist arrest in any way?

4 A. No.

5 Q. Were you then booked and released on bail?

6 A. Yes.

7 Q. Who posted your bail?

8 A. My uncle did it on my behalf and I paid him back.

9 Q. All right. So, now we're talking approximately in
10 the time frame of July 20th, late July in 2015. Did your --
11 did you continue to have a back page ad during at least some
12 of the next month leading up to August 20th?

13 A. Yes.

14 Q. Were you aware at any time before the CVS incident,
15 or before the incident in Cocoa Beach, or even up to August
16 20th when the incident took place that you had been under
17 surveillance?

18 A. No, no. I didn't know, no. I -- but that just
19 makes me think I -- you know, it just makes me think about
20 when Officer Roberts said to me that he'd seen me on
21 Backpage. And I remember standing there thinking about it, I
22 never put my picture on there though.

23 Q. This was back at the -- at the first contact with
24 Agent Roberts back in Cocoa Beach?

25 A. Yeah. I thought maybe he just had me confused with

1 someone else or something.

2 Q. Oh, okay. At that point in time the Backpage ad
3 didn't have a picture of your face to identify?

4 A. Yeah, I never put my face up there, no.

5 Q. But Agent Roberts said he saw you on Backpage?

6 A. Em-hmm.

7 Q. But you don't know if that's really true in fact,
8 just that --

9 A. Well, he couldn't have.

10 Q. (Cont'd) that's what he said?

11 A. Yeah, I never put my -- and I never -- if I sent
12 somebody a picture I never sent pictures of my face either I
13 don't believe, unless I knew them, you know.

14 Q. So, if you were contacted by somebody --

15 A. I don't think.

16 Q. (Cont'd) who got information from Backpage and you
17 responded with them with pictures it would not be of your
18 face typically?

19 A. Yeah, I believe so.

20 Q. Well, let's take a look at then the events
21 surrounding August 20, 2015, because that's sort of what
22 brings us here today. And did you have some contact with
23 somebody by text messaging that wanted to get together with
24 you that evening?

25 A. Yes.

1 Q. And did you know who it was?

2 A. No, I had never spoken with him before that I knew
3 of.

4 Q. It wasn't anyone that was a friend of yours or
5 anyone that may have been a customer of any sort in the past?

6 A. Not that I was aware of, no.

7 Q. Okay. During this text messaging was there some
8 discussion of where you would meet and what the range of cost
9 might be?

10 A. It must have been obviously to -- at my place,
11 where I lived on Covina.

12 Q. Did you -- do you remember if you were asked to go
13 somewhere else, Quality Inn in particular, or whether all
14 along in your mind anyway it was you were going to invite him
15 to come to your house?

16 A. If that's what the text said then obviously --

17 Q. I don't have those available right now to show you,
18 so.

19 A. Oh. I don't --

20 Q. In any event, there's no question that the person
21 that you thought you were texting with was invited to come
22 over to your house?

23 A. Yes.

24 Q. And you wound up giving him the address?

25 A. Yes, yes.

1 Q. Was there a particular time of day that had been
2 discussed about what time he would get there?

3 A. It was that evening. I guess 9:15 was about when
4 everything took place.

5 Q. And had you been home that evening?

6 A. Yeah, for most of the evening, yes.

7 Q. Okay. And was your uncle, John Derossett, also
8 present there that evening?

9 A. He had gone to church I believe that night and --
10 or I may be -- yeah. I --

11 Q. Ms. Ellis, just speak up. We have to --

12 A. Yeah, I'm sorry. I was thinking out loud. I think
13 he had gone -- he had gone to church that night or -- I'm not
14 sure if he -- he was there.

15 Q. By the time -- by the time this person was going to
16 come over though he was back regardless of where he might
17 have been earlier?

18 A. Yes.

19 Q. So, you knew he was there in the house?

20 A. Em-hmm.

21 Q. Is it your practice to -- at the house there to
22 have the porch light on or off?

23 A. Usually off.

24 Q. And why would you leave it off?

25 A. We're trying to save money on electricity and I

1 didn't like -- we didn't like the bugs. They were, you know,
2 attracted to the light. So, if you opened the door bugs
3 would come in, and John was complaining I kept letting
4 lizards in.

5 Q. So, to the best of your memory was the porch light
6 at the house there on Covina off that night?

7 A. Off.

8 Q. So, explain to me what the arrangement would be
9 that -- I'll summarize this and see if I get it. Just
10 correct me if I'm wrong. Basically you would have a text
11 conversation with this individual, there would be a time for
12 the person roughly to show up, and they would show up at the
13 door?

14 A. Yes.

15 Q. Well, let's talk about this night in particular
16 then.

17 A. Em-hmm.

18 Q. Where was your uncle, John Derossett, that evening,
19 prior to this person showing up?

20 A. He was in his room.

21 Q. Do you remember him cooking and preparing some
22 dinner and taking it into his room?

23 A. Yes.

24

25

1 Q. Did you get some text messages close in time to the
2 arrival of this individual so you knew roughly when they were
3 going to get there?

4 A. Yes.

5 Q. And do you know whether the -- whether Mr.
6 Derossett was in his room prior to the arrival of this
7 individual?

8 A. Yes, he was, he was in his room.

9 Q. Did you tell him somebody was coming over?

10 A. I'm -- I don't recall, but I doubt it.

11 Q. Well, did you ask him to go into his room and just
12 leave you alone because you were expecting somebody?

13 A. No, but we -- you know, generally when we were home
14 I watched TV in my room and he watched TV in his room.

15 Q. From what you said before Ms. Ellis you had tried
16 to avoid having people come over while you knew he was there,
17 and yet you knew he was there that night.

18 A. Em-hmm, em-hmm. Yes.

19 Q. Was there anything special going on that in your
20 mind warranted that? Were you short on money? Was there
21 anything going on?

22 A. You know, to me I just thought that the --
23 something like that if I allowed someone -- if ever -- I
24 really don't think really ever happened.

25 It would -- you know, they were being pushy, or you

1 know, I needed extra money or -- you know, but it had been
2 something.

3 Because that wasn't common it wasn't what I would do.
4 It would costing me -- it would cause too many problems if I
5 had had people over there, and he knew.

6 Q. So, is your testimony that obviously it did happen
7 on August 20th, but that was not your routine?

8 A. Yes.

9 Q. Let me -- let me fast forward a little bit, but
10 within that same evening.

11 A. Em-hmm.

12 Q. To the point after shots had been fired and after
13 your uncle, John Derossett, was back in the house.

14 A. Em-hmm, yes.

15 Q. Did you call 911?

16 A. Yes.

17 Q. Did you call 911 to report the shooting and what
18 you believed was happening to you?

19 A. Yes.

20 Q. Have you listened to the 911 call that was provided
21 to the lawyers in this case?

22 A. Yes, yes.

23 Q. Did you recognize your voice as being the person
24 who placed the call and was talking to the emergency services
25 operator?

1 A. Yes.

2 MR. WEST: Your Honor, with that foundation I'd
3 like to offer the 911 call into evidence.

4 THE COURT: All right.

5 MR. WEST: It is Defense Exhibit --

6 MR. PANELLA: It's AM.

7 THE COURT: Mr. Respess, any objection?

8 MR. WEST: AM.

9 MR. RESPESS: I don't believe it fits as an excited
10 utterance. I don't think it fits as a contemporaneous
11 statement. There are three different calls as I
12 understand it. The one that may fit is the first one.

13 THE COURT: Oh, I thought -- I didn't know there
14 were three.

15 MR. RESPESS: See, I don't think it's just one 911
16 call. I think there's three.

17 THE COURT: Mr. West --

18 MR. RESPESS: Two of them are together, one of them
19 is separate, and I don't -- I believe that -- I can
20 deal -- you know, if you want I'd like to do some cross
21 on this about the timing of this frankly.

22 THE COURT: Okay.

23 MR. WEST: Your Honor, it's well established that a
24 911 call is admissible as an excited utterance. We've
25 clearly laid the foundation for that. This is the call

1 that was given to counsel in discovery.

2 THE COURT: I agree with you Mr. West in terms of a
3 911 call. I was just not aware that -- are you aware
4 that there's more than one?

5 MR. WEST: What I'm of aware of is Ms. Ellis
6 placed --

7 THE COURT: Or is there more than one to your
8 knowledge?

9 MR. WEST: No. Well, I have to explain it Judge.
10 Ms. Ellis dialed 911 to report the incident and request
11 help. There was a disconnect and she called back

12 THE COURT: Okay.

13 MR. WEST: And then I think the third one is when
14 she was actually transferred to medical services, but
15 it's all the same event that took place.

16 THE COURT: Okay. Well, I'll allow it and give it
17 the weight that it's due. I mean, if it sounds to me
18 like it's just -- I'll give it the weight that it's due.

19 If it sounds to me like it's not a present sense
20 impression or an excited utterance or any of those types
21 of --

22 MR. WEST: I think that's a very good way to handle
23 that.

24

25

1 THE COURT: (Cont'd) things then -- I mean, if it
2 sounds like someone's ordering a pizza then obviously it
3 will get no weight.

4 MR. RESPESS: Right.

5 MR. WEST: Of course. This is Defense AM that we
6 would tender as Defendant's next, and ask to publish it
7 to the Court.

8 THE COURT: All right. So then Mr. Respass, I'm
9 overruling your objection to the extent that I will
10 listen to it and --

11 MR. RESPESS: Well, all they've asked is if she --

12 THE CLERK: Can I have that exhibit if it's going
13 to be marked?

14 THE COURT: Okay. Is it already -- it's not
15 marked?

16 MR. PANELLA: It's marked as -- well.

17 THE COURT: It's now -- it's on the same thumb
18 drive?

19 MR. RESPESS: Here's the thing is, and maybe I
20 missed it, but my recollection is all she said is she
21 made a 911 call after the event.

22 She didn't say when in relation to that event, she
23 hasn't indicated her state, she hasn't done anything in
24 my opinion --

25 THE COURT: Okay.

1 MR. RESPESS: To -- in other words --

2 THE COURT: That objection is sustained. That
3 objection is -- yes.

4 MR. RESPESS: Now, you can draw whatever
5 conclusions you want from what's being said on the
6 event, but I disagree with counsel that -- and I've
7 never had a judge rule that 911 tapes automatically come
8 in, so --

9 THE COURT: No, no, certainly not. But no, I agree
10 that the point in time -- Mr. West, can you please just
11 clarify wherein the sequence of activity this call may
12 have taken place.

13 MR. WEST: Oh, sure.

14 THE COURT: I kind of have an idea, but let's --
15 may we be more specific please.

16 BY MR. WEST:

17 Q. Ms. Ellis.

18 A. Yes.

19 Q. The evening of August 20, 2015, in the neighborhood
20 of 9:30 at night, did a person come to the door, a person
21 that you expected, although didn't know, in response to your
22 text communications?

23 A. Yes.

24

25

1 MR. WEST: You know, Judge, instead of -- I was
2 going to sort of change the sequence. We can just go
3 more chronologically if that makes it easier for
4 everyone to --

5 THE COURT: Sure. It probably does.

6 MR. WEST: (Cont'd) to follow.

7 THE COURT: Okay.

8 MR. WEST: Sure.

9 BY MR. WEST:

10 Q. Okay, so, did you answer the door?

11 A. Yes.

12 Q. And where was your uncle at that point?

13 A. He was in his room. I went in there. He keeps his
14 TV up real loud, he can't hear very well. I went and shut
15 his door.

16 Q. So, is it common for him sometimes just to get his
17 dinner and take it in his room and to eat by himself?

18 A. Yeah, yeah, em-hmm.

19 Q. So, when you went to the door did you know he was
20 in there?

21 A. Yeah, I went and shut his door.

22 Q. Did you ask him to keep an eye out for you or tell
23 him there was somebody coming over that he -- you didn't know
24 or anything like that?

25 A. No. I don't know, I don't remember, I don't

1 recall. I don't think so.

2 Q. Okay. Do you know that he went in his room and the
3 door was shut or almost shut?

4 A. I went and shut the door, shut his door.

5 Q. And then -- and then when the person came to the
6 door did you answer the door?

7 A. Yes.

8 Q. Okay. Describe for the Court as you opened the
9 door what did you see first of all?

10 A. Just a man, a man standing there in front, in front
11 of my door.

12 Q. That in and of itself wasn't any surprise I take
13 it?

14 A. No.

15 Q. Because you were expecting someone?

16 A. (No verbal response.)

17 Q. What happened next? Did you invite him in the
18 house?

19 A. I just went to open the screen -- I pulled the door
20 back and went to open the screen door.

21 Q. So, let's stop there for a second. The wooden
22 door -- all right, Ms. Derossett, I'm going to offer you to
23 take a look at Defendant's 9.

24 MR. WEST: May I stay here for a moment Judge?

25 THE COURT: Sure.

1 BY MR. WEST:

2 Q. I'll hold it here so the Court can see. Is this a
3 picture of the inside of the house?

4 A. Yes.

5 Q. And the door that you are talking about opening, is
6 that the wooden door here?

7 A. Yes.

8 Q. And was there another door?

9 A. The screen door part.

10 Q. And which way did the screen door open?

11 A. To the left. I mean --

12 Q. Out or in?

13 A. Out.

14 Q. So, the wooden door opened in, the screen door
15 opened out and to the left?

16 A. Em-hmm.

17 Q. So --

18 A. Yes.

19 Q. (Cont'd) when you went to the door did you
20 basically position yourself in the area --

21 MR. RESPESS: Objection, leading.

22 MR. WEST: (Cont'd) of the threshold?

23 THE WITNESS: Yes.

24 THE COURT: Sustained.

25

1 MR. RESPESS: I -- you know, this is really
2 important that the witness answer these, not the
3 Defense.

4 THE COURT: Yeah, sustained.

5 MR. WEST: Well, did you position yourself in the
6 threshold or in some other place?

7 THE COURT: It's sustained.

8 MR. RESPESS: Objection leading.

9 THE COURT: Mr. West --

10 MR. WEST: No.

11 THE COURT: (Cont'd) there's a simple inquiry type
12 word that will suffice for all of that other -- where
13 were you standing.

14 MR. WEST: Sure, okay. I'm sorry. Thank you
15 Judge.

16 BY MR. WEST:

17 Q. Ms. Ellis, where were you standing at the point
18 that you opened the door?

19 A. I would have been to the right like -- you know,
20 open the door, in front of it, to the right to open the door,
21 you would open a door.

22 Q. Okay, thanks.

23 A. Pretty much.

24 Q. So, let's talk about what happened at that point.

25 A. I reached down to push the screen door open. He

1 grabbed my arm and started pulling me out the door.

2 Q. Did you know who this person was at that point?

3 A. No, I didn't.

4 Q. Did the person -- when you say grabbed your arm
5 describe how that happened.

6 A. I --

7 Q. Do you remember what arm and how it unfolded?

8 A. I went to open the door like this and I think I had
9 put this one like on the door jam from what I under -- what I
10 can recall, and he grabbed it, grabbed this one I think.

11 Q. Okay.

12 A. The right arm, I think.

13 Q. At the point that he grabbed your arm --

14 A. Em-hmm.

15 Q. Did you think or suspect that he might have been a
16 police officer?

17 A. No, no.

18 Q. After he grabbed your arm what did you do and what
19 did he do?

20 A. I was -- he kept pulling on me and trying to pull
21 me out the door and I was screaming. I hold on --

22 Q. Were you resisting?

23 A. Yes, I was trying to get away from him?

24 Q. How were you resisting? What were you doing?

25 A. I was pulling away from him. I'm like screaming,

1 screaming help, John, to my uncle.

2 Q. Do you remember which way you were facing as you
3 were pulling away from him when he had your arm?

4 A. I remember -- at that point I remember he was
5 pulling like this and I remember that I actually had the --
6 in fact, I was turned really strange and I was actually had
7 this was all -- this arm was pulled back there to hold onto
8 the door jam to keep myself inside.

9 Q. So, what -- to be clear what you were demonstrating
10 you reached back with your left hand?

11 A. Em-hmm.

12 Q. Is that --

13 A. Yes.

14 Q. (Cont'd) the hand you were holding onto the door
15 frame with?

16 A. Yes.

17 Q. And what direction was your face pointing?

18 A. Back that way. By to -- behind me. I'm sorry.

19 Q. Were you able to get loose?

20 A. No.

21 Q. Did you see any badge or any other indication that
22 he may have been a police officer?

23 A. No.

24 Q. What did you think was happening right then?

25 A. I thought he was a -- you know, someone kidnapping

1 me for the sex slave.

2 Q. What was your reaction when he grabbed you and
3 started pulling you out of the house, other than to resist?
4 You said you screamed, what did you scream?

5 A. Yes, kicking and screaming.

6 Q. What were you saying?

7 A. I was saying help, John.

8 Q. And how were you screaming? Were you screaming --
9 can you describe that for the Court?

10 A. I -- to me it just seemed really -- because
11 everything seemed really in slow motion and like no one could
12 hear me. I felt that I was screaming as loud as I could.

13 Q. Were you screaming -- okay. And did you scream
14 more than once?

15 A. Yes.

16 Q. And what was -- as you were screaming and trying to
17 pull back what was happening to you physically?

18 A. I was being pulled out the threshold of the door
19 and then I -- you know, somehow I saw two or -- there was two
20 figures that came from each side and they were -- they
21 grabbed hold of me as well and kept pulling me, pulling me
22 out to the door -- out the door, or you know, out the yard,
23 out to the yard.

24

25

1 Q. Could you describe what's immediately outside of
2 the door? I'm going to put this back up for you. It's
3 Defendant's -- it's 3 again.

4 A. Em-hmm.

5 Q. We showed you a picture before from the inside and
6 you said this was a picture of the outside.

7 A. Yes.

8 Q. So, when you talk about the porch area, is that
9 this area in front you're talking about?

10 A. The porch? I would probably be referring to the
11 covered area, and -- yeah, the covered area of the porch.

12 Q. And is that a concrete slab?

13 A. Yes.

14 Q. So, as you're describing being pulled out of the
15 door is this the door that we're talking about?

16 A. Yes.

17 Q. At some point you said that you sensed or you
18 realized there were other people, as well as the individual
19 that first grabbed you?

20 A. Em-hmm, yes.

21 Q. Did you get a look at the guy at the door? Did you
22 have a sense of how big he was, what he looked like, or what
23 he was wearing?

24 A. When I initially opened the door, yes.
25

1 Q. And what was your sense of -- can you describe him,
2 even generally?

3 A. He was -- like a big guy, a muscular guy, hispanic
4 maybe. It was a big guy.

5 Q. Em-hmm. And did you tell the police that that
6 night?

7 A. Yes. I believe so.

8 Q. That night did you cooperate with the police and
9 provide two separate statements on two occasions?

10 A. Yes.

11 Q. So, as this person you've described as pulling you
12 out of the door are you continuing to scream?

13 A. I was trying to, yes, yes.

14 Q. And were you trying to get your uncle's attention?

15 A. Yes.

16 Q. And you were saying that you sensed other people
17 joining or coming?

18 A. Yes.

19 Q. So, did you believe there were three at one point?

20 A. Yes.

21 Q. So, can you describe what they looked like? Did
22 you get a sense of what they were wearing?

23 A. They just -- big, they seemed big to me.
24
25

1 Q. Did you see anything on their clothing that would
2 help you identify them as police officers?

3 A. No, I didn't.

4 Q. Did you know they were police officers?

5 A. No, I didn't.

6 Q. As you continued to scream and struggle where were
7 you pulled?

8 A. Probably I think about out to -- past the
9 walkway --

10 Q. I'll put this --

11 A. (Cont'd) a little past the walkway.

12 Q. I'll hold this up again.

13 A. Em-hmm. Okay.

14 Q. Can you point for the Court where you think you
15 were?

16 A. I think like right around there.

17 Q. There's a sidewalk that extends from the porch and
18 then cuts over to the garage. Are you saying you were at, at
19 or beyond the end of that sidewalk?

20 A. Yes, beyond the sidewalk I believe. I know I was
21 on grass I'm pretty sure.

22 Q. Did one or more of the individuals you're talking
23 about still have hold of you?

24 A. At what point?
25

1 Q. At -- by the time you got all the way out here --

2 A. Yes, they all --

3 Q. (Cont'd) did they still have hold of you?

4 A. They did, they did, yes.

5 Q. And were you continuing to scream?

6 A. I believe so. I was trying.

7 Q. And do you remember anything specifically being
8 said to you?

9 A. No, the only thing I can remember right now, it
10 sounds strange, but someone two or three times telling me to
11 shut up.

12 Q. Did you hear anybody say Sheriff's Office, police
13 department, anything that might have made you think they were
14 the police?

15 A. No, I didn't.

16 Q. Did at any point in time from when this started
17 until here you are at the end of the sidewalk in the yard,
18 did anything change your mind from the first when you were
19 dragged out of the doorway that you weren't being kidnapped
20 or that you weren't being, you know, grabbed?

21 A. No, I believe the --

22 Q. Can you describe your position physically as you're
23 out there at the end of the sidewalk sort of being physically
24 restrained? Were you standing up, were you on the ground?
25 That's what I mean.

1 A. I believe I was like on my butt with my knees up to
2 my chest. Like this is what I think, or --

3 Q. Were you -- were you resisting? Were you trying to
4 get away?

5 A. Yes.

6 Q. So, do you remember what happened next, or the next
7 big thing that happened that may have changed what was going
8 on?

9 A. I just remember it was dark, everything was really
10 dark and they -- all the sudden they cleared out and I could
11 see, you know, see ahead of me -- see ahead of me and --

12 Q. All right. Let me just focus on that point. So,
13 are you saying that there was a point as this thing was
14 unfolding where your sense was they let go of you?

15 A. Yes.

16 Q. And when you could look around and see what did you
17 see?

18 A. Oh, I saw my uncle was pry -- I think he was still
19 underneath the, you know, the canopy part of the porch. He
20 was raising his gun up to the sky.

21 Q. Where was your uncle standing on that porch area
22 when you saw him raise the gun?

23 A. Probably at the end, like I said, at the end where
24 the canopy was. Under the canopy still with the gun out,
25 out, you know.

1 Q. When you say you saw him raise the gun --

2 A. Em-hmm.

3 Q. Can you describe the position that he held the gun
4 in his hand? Meaning up, down, middle.

5 A. I mean, just I could see it going up like that. I
6 saw it from maybe this point to this point.

7 Q. Are you saying that when you first saw him raising
8 the gun he was about level, but you saw him continuing to
9 raise it?

10 A. Yes.

11 Q. And when he raised it high, elevated the gun, did
12 you see or hear it fire?

13 A. I can't say that I -- when I picture it in my head
14 I don't see it or hear it. I just see the gun being raised.
15 Because I'm -- I don't remember if it -- there would be light
16 coming from it or -- I don't know. I'm not sure one way
17 or --

18 Q. Do you have a pretty clear memory of him coming out
19 on the porch and raising the gun up, higher than --

20 A. I didn't see him coming out on the porch, I just --

21 Q. Okay.

22 A. He was already there when I --

23 Q. Do you have a pretty clear memory of when you saw
24 him that he raised the gun?

25 A. Yes, I can see him raising it for sure.

1 Q. Em-hmm. At that point did you hear other gunfire?

2 MR. RESPESS: Objection, leading.

3 THE WITNESS: At that point --

4 THE COURT: Sustained.

5 MR. WEST: You know, I --

6 THE COURT: Did she hear anything else?

7 MR. WEST: Thank you.

8 THE COURT: I hear thunder.

9 THE WITNESS: At that point --

10 MR. WEST: Let --

11 THE COURT: Well, let him rephrase please ma'am.

12 THE WITNESS: I'm sorry.

13 THE COURT: The objection was sustained.

14 BY MR. WEST:

15 Q. After you saw the gun raised, although I take it
16 you weren't quite sure -- well, let me just have you explain
17 it. You saw the gun raised, these guys let go of you, and
18 then what happened?

19 A. Okay, so, I -- you know, I see him raising the gun.
20 They -- you know, they were gone, scattered, and I jumped up
21 and was running to him.

22 And I remember, you know, as I got close to him I could
23 feel the gun fire, the -- that's -- I think that's when I
24 really knew there was something going on because I could feel
25 the bullets flying past me.

1 Q. Did you -- did you hear gunshots at that point?

2 A. Yes.

3 Q. And what were you doing at that point? Which
4 direction were you heading?

5 A. I was running towards my uncle. I think I had just
6 got to him, em-hmm. Really all the -- I think -- I guess --
7 I imagine that it all happened within just a few seconds,
8 that all the gun fire was going.

9 Q. And once they let you go and you saw your uncle
10 raise the gun did you get another look at the people that had
11 been holding onto you?

12 A. Did I get a look at them?

13 Q. Right.

14 A. No, I mean, I couldn't, I couldn't see them.

15 Q. Where was your attention focused?

16 A. By -- okay, well, I -- when I got to him, okay, and
17 I pushed him like that to the door and turned him around.
18 And that's -- I think that's about maybe when the gunfire
19 stopped and pushed him in the door and I -- when I turned
20 around to push the door closed I believe I looked out at -- I
21 looked out to see if anyone else had got shot. I didn't
22 know my uncle was shot at that time, but if anyone had got
23 shot. I think I surveyed --

24 Q. When you looked out the door --

25 A. Em-hmm.

1 Q. (Cont'd) did you see anyone?

2 A. I -- you know, I thought I had seen someone maybe
3 in the middle of the yard. I know that I saw -- there was a
4 car at the end of the driveway.

5 Q. Did anything happen that changed your original
6 concern that you were being snatched out of the house or
7 kidnapped?

8 A. Just that they were gone so quickly, you know. I
9 thought -- you know, they were probably --

10 Q. When did you realize that your uncle had been
11 injured?

12 A. When I turned him around and looked up and I saw
13 the first gunshot wound in his shoulder.

14 Q. Did you decide to call 911?

15 A. Yes.

16 Q. And did you in fact call 911?

17 A. Yes.

18 Q. Was it close in time to getting safe in the house
19 and realizing your uncle had been shot?

20 A. Yes, it was immediately.

21 Q. And were you able to get through?

22 A. I -- I don't -- I'm not sure if it was the first --
23 it was difficult to really -- the first time I called
24 immediately back. I know I called immediately back. I'm
25 just -- yes.

1 Q. So, did you get through and actually talk to an
2 emergency services operator?

3 A. Yes.

4 Q. And were you at some point transferred to medical
5 services?

6 A. I believe eventually on the second time. I think
7 we got disconnected the first time and I called back, and I
8 believe that's when I --

9 Q. Why did you call 911? What did you want them to
10 do?

11 A. To come help my uncle. He was --

12 Q. Did you --

13 A. And I -- it was a -- I thought someone was trying
14 to kidnap me, and my uncle had been shot. I was helping.

15 Q. Did you explain in your 911 call to the operator
16 what had just happened?

17 A. Yes, I tried to explain, you know, what I knew.

18 Q. During the incident itself that you've been
19 describing did you get shot?

20 A. Yes.

21 Q. I'm going to approach the witness. This is
22 Defendant's AH. Do you recognize Defendant's AH as being --
23 showing where on your body you were injured?

24 A. Yes. That's not --

25

1 Q. Did you -- did you get the injury depicted in this
2 photograph that night?

3 A. As I -- yeah, I guess that's that night.

4 Q. Where were you injured? Where did you get shot?

5 A. Right here. Right here.

6 Q. Are you pointing to your left forearm?

7 A. Em-hmm.

8 Q. And is this --

9 A. Yes.

10 Q. Is this a picture of your left forearm at the
11 hospital?

12 A. Yes.

13 Q. Do you have a scar to this day from being treated
14 medically?

15 A. Yes.

16 Q. And would you point that out to the Court?

17 A. Yes.

18 Q. Just -- you'll have to turn to the Judge.

19 A. I'm sorry. It's right there.

20 Q. Is that the scar you got.

21 THE COURT: Okay, thank you.

22 MR. WEST: Is that the scar you got from this
23 injury?

24 THE WITNESS: Yes.

25

1 MR. WEST: I would tender Defendant's AH as
2 Defendant's next exhibit.

3 MR. RESPESS: No objection.

4 THE COURT: All right, without objection then that
5 will become -- wait, that's the question.

6 THE CLERK: 18.

7 THE COURT: Do you know?

8 THE CLERK: 18.

9 THE COURT: 18, all right. Thank you. Defendant's
10 18.

11 THE WITNESS: I'm --

12 MR. WEST: Go ahead.

13 THE WITNESS: That --

14 MR. RESPESS: Objection, there's no question on the
15 floor.

16 THE COURT: Well, yes. Sustained. Do you have a
17 question Mr. West?

18 MR. WEST: Well, I thought perhaps the witness was
19 explaining an answer. If not --

20 THE COURT: Well, I don't think you've asked her
21 anything yet. So, why don't you -- if you ask her
22 something I'm sure she's happy to explain.

23 MR. WEST: Okay.

24 THE COURT: The last question was --
25

1 BY MR. WEST:

2 Q. Ms. Ellis, were you aware that anyone that has --
3 was involved in this shooting, other than yourself and your
4 uncle, was injured?

5 A. Eventually.

6 Q. Right. I mean that night. As you --

7 A. No.

8 Q. (Cont'd) went into the house or even as you were on
9 the phone with 911?

10 A. No.

11 MR. WEST: Your Honor, at this time I would like to
12 publish the 911 call.

13 THE COURT: Any objection?

14 MR. RESPESS: Can we do that tomorrow morning?

15 MR. WEST: Judge, we would really like to finish
16 this witness today. She has travelled to be here and --

17 MR. RESPESS: Well, not --

18 THE COURT: I don't see how that's going to happen
19 Mr. West.

20 MR. RESPESS: I'm going to be for a while. I'm not
21 going to get constrained because --

22 THE COURT: Right. No, I'm --

23 MR. RESPESS: (Cont'd) she's at 5:00.

24

25

1 THE COURT: Right. No, I can't -- I mean, we can't
2 let Mr. Respass to three minutes of cross examination.
3 So, I mean, are you -- is that the last of your direct
4 examination or would you like to pick up with that
5 tomorrow?

6 MR. WEST: We're winding down. I think maybe if we
7 publish it and then I'll finish quickly in the morning,
8 if that's the Court's plan, and then tender her for
9 cross.

10 THE COURT: Why don't you just play the call in the
11 morning. We'll pick up with that. Because we've heard
12 her -- we've heard the run up to it now. We can start
13 right there.

14 MR. WEST: Oh, certainly, at the Court's pleasure.

15 THE COURT: All righty, thank you very much.

16 MR. WEST: Thank you Judge.

17 MR. PANELLA: Is it admitted yet? Have we
18 established that? Is it admitted?

19 THE CLERK: No.

20 MR. WEST: Can we offer it?

21 MR. PANELLA: Let's at least admit it so we can
22 play it in the morning.

23 THE COURT: Okay.

24 MR. RESPESS: Yeah, I thought she said she was
25 going to play it. So, I think that's admitted.

1 THE COURT: All righty then.

2 THE CLERK: Judge, they're asking to put this in
3 evidence.

4 MR. SCHEINER: You haven't formally received it.

5 THE COURT: Oh, okay. I thought we were picking up
6 with that. All right, you're tendering -- you're
7 offering the -- it would be --

8 THE CLERK: AM.

9 THE COURT: AM?

10 THE CLERK: Yes, ma'am.

11 THE COURT: Is this the one that's actually already
12 in evidence, or is it re-marked for the new piece of
13 evidence that's on it?

14 MR. WEST: It's not in evidence. It's been marked.

15 MR. RESPESS: For identification.

16 MR. WEST: For identification.

17 THE COURT: Oh.

18 MR. WEST: And offered now into evidence, and then
19 we'll publish it in the morning I guess.

20 THE COURT: All right.

21 MR. RESPESS: Right.

22 THE COURT: And so -- and Mr. Respess, do you have
23 any objection to it at this --

24

25

1 MR. RESPESS: Not -- no additional objections. I
2 think they've laid the predicate about the timing of it
3 in relation to the call.

4 THE COURT: Okay, all right. Then we -- I will
5 allow it and we'll publish it in the morning. So, that
6 will be come Defense Exhibit 19. Just -- may I ask, is
7 that on a jump drive?

8 MR. WEST: Yes.

9 MR. PANELLA: Yes, Your Honor. It's on a --
10 it's --

11 THE COURT: A USB thing?

12 MR. PANELLA: It's on a USB just by itself.

13 THE COURT: Oh, that is by itself, okay. Because I
14 thought you were using something else that was on a USB.

15 MR. PANELLA: And I did that as well for the video.

16 THE COURT: Okay.

17 MR. PANELLA: Trying to make it easy for the clerk.

18 THE COURT: Okay.

19 MR. PANELLA: Separate USB drives.

20 THE COURT: Okay, thank you. I -- okay, that makes
21 sense. Thank you. All right then what time would -- is
22 it -- does it work best for you all 9:00?

23 MR. PANELLA: 9:00's fine for the Defense.

24 THE COURT: Do we have anything --

25 MR. RESPESS: Do you have 8:30?

1 THE COURT: Well, that's what I'm trying to see,
2 whether we have anything. Because I'd like to start at
3 8:30 if we can. Do we have any other matters? I think
4 we pretty much tried to stay -- keep this very --

5 MR. SCHEINER: There's stuff tomorrow morning.

6 THE CLERK: I think you set a couple things from
7 docket sounding tomorrow morning.

8 THE COURT: Is there? Let me see.

9 MR. SCHEINER: There's a plea, two competency -- or
10 a plea, a competency hearing, and a status hearing.

11 MR. RESPESS: Okay.

12 THE COURT: I think that makes it 9:00.

13 MR. RESPESS: So, 9:00.

14 THE COURT: If you're willing to be 8:30 -- I don't
15 know, you all are driving too. I don't want to, you
16 know, put you in a --

17 MR. RESPESS: Well, we can't do it tomorrow because
18 you've got --

19 THE COURT: Right, obviously we've got things, but
20 I mean for the next day.

21 MR. PANELLA: Whatever the Court would like us to
22 do we will do.

23 THE COURT: Well, I don't want to undual -- you
24 have enough to worry about without worrying about
25 artificially imposed deadlines, so.

1 MR. PANELLA: So, should we do 9 tomorrow and then
2 maybe revisit 8:30 for the following day?

3 THE COURT: Yeah, sure, sure.

4 MR. PANELLA: Since you have something in the
5 morning.

6 THE COURT: Right. That works just fine.

7 MR. PANELLA: Do you think there's something
8 everyday?

9 THE COURT: Because would you -- yes, we have
10 some --

11 MR. SCHEINER: We scheduled something everyday
12 because we were --

13 THE COURT: We did.

14 MR. SCHEINER: They were noticed for, based on your
15 assistant, for 9:00.

16 THE COURT: I'm looking at -- yes, we are. I'm
17 looking at two pleas -- well, one person, two cases.
18 Yes.

19 So, we've got just one little thing sort of every
20 morning to kind of let you have time to, from 8:30 to
21 9:00, to get yourself set up and then we can roll right
22 into it, okay.

23 Because that's what I'm hoping, that you can come
24 in and get yourselves together, get out what you need,
25 mark what -- if you need things, and then that way we

1 can just go at 9 without --

2 MR. PANELLA: Sure.

3 THE COURT: If that works for you.

4 MR. PANELLA: Sure Judge.

5 THE COURT: Thank you, perfect.

6 THE CLERK: Just want to make sure before everybody
7 moves from their spots that there is no evidence on the
8 witness stand, on the podium, on the desk, or counsel
9 table.

10 MR. PANELLA: Let's get you what you need.

11 THE BAILIFF: Is the witness excused Your Honor?

12 THE COURT: Is -- well, she's -- she's excused
13 until tomorrow, correct?

14 MR. PANELLA: Until tomorrow morning.

15 THE COURT: All right, thank you.

16 THE BAILIFF: Okay.

17 THE COURT: All righty folks.

18 MR. PANELLA: Your Honor, if we could go back on
19 the record.

20 THE CLERK: We're still on.

21 THE COURT: Sure. No, we're still on the record.

22 MR. PANELLA: Okay. Your Honor --

23 THE COURT: Mr. Derossett is still present.
24
25

1 MR. PANELLA: (Cont'd) it appears Ms. Ellis, our
2 witness was just taken into custody. We have a
3 representative from the Public Defender's Office. We'd
4 like to have him formally appointed on this case.

5 There was a violation of probation matter from a
6 couple years back that I believe should be dismissed,
7 but in any event that's I think what they're doing.

8 So, we happen to have someone from the Public
9 Defender's Office, but we need to get her formally
10 appointed so he can do his job.

11 THE COURT: Okay. I think we have to -- right,
12 they have to do some -- I think we can't quite do it in
13 this order.

14 THE CLERK: Well, the thing is is there's a bond on
15 it, so she can post bond from the jail.

16 THE COURT: Okay.

17 MR. PANELLA: And she --

18 THE CLERK: If she doesn't post bond she'd be
19 scheduled for an additional appearance, and if she's
20 done here and gets back there by 1:15 she'll be
21 appointed at initial appearance. That's the procedure.

22 MR. PANELLA: Just so everyone is aware she was
23 initially appointed to the Public Defender's Office on
24 her underlying case anyway.

25 THE CLERK: Yes.

1 MR. PANELLA: So, that wasn't an issue.

2 THE COURT: Okay.

3 MR. PANELLA: So, the Public Defender's Office
4 already represented her. I --

5 THE CLERK: It's a violation of probation warrant,
6 so.

7 MR. PANELLA: Yeah, my guess is that this is a VOP
8 warrant.

9 THE COURT: Is this --

10 MR. PANELLA: On the same case.

11 THE COURT: (Cont'd) 2015-MM-39028?

12 THE CLERK: That is the one.

13 THE COURT: All righty. Well -- wait. I'm about
14 to tell you what the bond appears to be. 500 --

15 THE CLERK: Thousand dollars.

16 THE COURT: Okay, a thousand dollars?

17 THE CLERK: Thousand dollars.

18 THE COURT: Okay. That's what it is. And I don't
19 know that -- I don't know that we can appoint counsel
20 Mr. Panella before -- before she's even seen -- you
21 know, before she's even gotten booked or --

22 THE BAILIFF: She's not even booked yet.

23 THE COURT: Yeah. I mean --

24 MR. PANELLA: We spoke with Mr. Reynolds about it,
25 which is precisely why we have Drew?

1 MR. LONG: Yeah.

2 MR. PANELLA: What's your last name?

3 MR. LONG: Long, L-O-N-G.

4 MR. PANELLA: -- Long here in case this were to
5 happen. We wanted to make sure that we had all of our
6 ducks in a row.

7 He was under the impression certainly that you
8 could appoint the Public Defender, at least
9 provisionally, since he's here and since we know that
10 she's indigent, and she was already given the Public
11 Defender on the underlying case.

12 THE CLERK: That was three years ago.

13 THE COURT: Okay. That was three years ago. I
14 think she'd have to do a new affidavit.

15 THE CLERK: Yeah.

16 THE COURT: Because I -- I mean, we don't know. I
17 mean, we've heard about the description of her
18 activities three years ago, but --

19 MR. PANELLA: Yeah. Well, then how would this --

20 THE COURT: I'm kind of hoping that's changed for
21 the better.

22 MR. PANELLA: Sure. But we do need her back here.
23 And so how would you like to go about it tomorrow? If
24 she bonds out and she's here she's going to need the
25 Public Defender.

1 THE COURT: Well, if she bonds out you -- well, but
2 the Office of the Public Defender is welcome to -- she's
3 welcome to come in, we can address that.

4 Let her fill out an affidavit. As soon as she
5 bonds out let her fill out an affidavit. Can we do
6 that?

7 THE CLERK: Clerk's will do whatever you direct us
8 to do, but I mean --

9 THE COURT: That's kind of not -- that's kind of
10 out of order.

11 THE CLERK: Procedurally, if she bonds out they'll
12 give her a court date --

13 THE COURT: Right.

14 THE CLERK: (Cont'd) she'll appear for arraignment
15 in front of the assigned judge --

16 THE COURT: Right. And then she goes to
17 arraignment --

18 (Multiple speakers.)

19 MR. PANELLA: There are extenuating circumstances
20 on this one --

21 (Multiple speakers.)

22 THE COURT: You're trying to obtain counsel for
23 her, I understand.

24

25

1 MR. PANELLA: And not only that, but actually the
2 VOP warrant should be dismissed on its face because of
3 mobility anyway.

4 So, it's -- so, there's -- that's the reason that
5 we really want to get an attorney on this because
6 there's a good faith basis to believe that she shouldn't
7 be served on this warrant right now.

8 THE COURT: Okay.

9 MR. PANELLA: Because the tie -- because the court
10 lacks jurisdiction frankly to enforce it.

11 THE COURT: Well, right now I lack jurisdiction
12 over her misdemeanor case.

13 MR. PANELLA: Right.

14 THE COURT: So, I'll see you all in the morning

15 MR. PANELLA: All right Judge.

16 (Whereupon, court stands in recess for the evening;
17 resuming the following morning at approximately
18 8:45 a.m.)

19 TITUSVILLE, FLORIDA, 8/28/2018

20 THE COURT: Good morning Mr. Panella.

21 MR. PANELLA: Good morning.

22 THE COURT: I think Mr. Derossett's on his way up.

23 MR. PANELLA: Yes, I saw the transport bus.

24 THE COURT: Okay, good. Thanks. And is Mr. West
25 in the wings as well?

1 MR. PANELLA: He's right here.

2 THE COURT: Okay.

3 MR. PANELLA: And Your Honor, if I could just
4 address one matter? I have a --

5 THE COURT: Okay, is this on Mr. Derossett?

6 MR. PANELLA: No, it's not.

7 THE COURT: Oh, okay.

8 (Whereupon, the Court heard other matters on the
9 docket before returning to State v. Derossett.)

10 THE COURT: All right, here comes Mr. Derossett.
11 Good morning Mr. West.

12 MR. LONG: Good morning Your Honor.

13 THE COURT: Good morning.

14 MR. LONG: If I may, I'm Andrew Long with the
15 Public Defender's Office.

16 THE COURT: Yes, sir.

17 MR. LONG: What I have in my hand is an affidavit
18 of indigent status --

19 THE COURT: Okay.

20 MR. LONG: (Cont'd) for Ms. Ellis.

21 THE COURT: Okay.

22 MR. LONG: We were hoping that you would appoint
23 her today to our office. As Mr. Panella discussed
24 yesterday, she is being charged with violation of
25 probation in case number 05-15-MM-039028 in front of

1 Judge Silverman.

2 THE COURT: 039028?

3 MR. LONG: Yes, Your Honor.

4 THE COURT: No worries, I'm just writing. We were
5 hoping on behalf of Judge Silverman you could appoint
6 her. It's out belief that Ms. Ellis may need some legal
7 counsel today based on her testimony.

8 THE COURT: Okay.

9 MR. LONG: And she would need someone to consult
10 with in case that occurred.

11 THE COURT: Sure. Okay, how -- then yes. Do you
12 have the affidavit? Have you --

13 MR. LONG: Yes, may I approach?

14 THE COURT: (Cont'd) shown it to Madam Clerk?
15 They're the ones that have the tables.

16 THE CLERK: So, we're going to address the
17 misdemeanor case and the case --

18 THE COURT: Well, if that's what -- I guess that's
19 what he's asking that we do.

20 MR. RESPESS: All right, and you know, I don't
21 normally get involved with these things, but again, I
22 believe this is the Public Defender stepping into a
23 matter that they are not --

24 THE COURT: Has not yet been in due course
25 appointed is what you're saying?

1 MR. RESPESS: This is -- we're -- she's testifying
2 in this hearing. He's not appointed to her to represent
3 her as a witness. The matter he's dealing with is a
4 violation of probation.

5 And so, again, we just took a case, a writ of
6 (unintelligible) case up to the Fifth District Court of
7 Appeals to have the Fifth District explain to the Public
8 Defender's Office that they can't make appearances in
9 other matters outside what they are representing her
10 for.

11 In that particular situation they were repeatedly
12 representing people on civil traffic matters involving a
13 DWLS charge and asking the Court to go handle those.

14 The Fifth District Court of Appeal again -- you
15 know, because that was what we believed the law was
16 before. And I can go get the case and I can get --
17 because I didn't know all this was going to be happening
18 frankly.

19 THE COURT: Neither did I.

20 MR. RESPESS: But it's improper for the Public
21 Defender's Office to work outside the scope of the
22 appointment. So, their effort here to do this is
23 improper.

24 The case should go -- be handled in the normal
25 course with Judge Silverman. And so I object to the

1 extent that they're exceeding their authority granted to
2 them by the legislature, which is what those cases talk
3 about.

4 THE COURT: Okay.

5 MR. RESPESS: So, if Ms. Ellis needs appointment in
6 this case then that's something within the purview of
7 this Court, but to my knowledge she's a witness that has
8 been called by the Defense.

9 THE COURT: Okay, thank you Mr. Respass. All
10 right, so, Mr. Long, what did you -- do you have any
11 thoughts?

12 MR. LONG: Yes, Your Honor. It's not the Public
13 Defender's intention to become involved in the present
14 case in front of the Court.

15 It's simply our belief that Ms. Ellis or Ms.
16 Derossett may have to testify to some things that deal
17 with her violation of probation, which we would
18 represent her on.

19 And if so she would need counsel present to discuss
20 about whether or not she should or should not testify to
21 certain things.

22 MR. RESPESS: Well, I don't even -- I haven't even
23 seen the warrant. I have no intention -- I don't think
24 any of the testimony has touched on any of that. I was
25 one of the ones that was surprised that she exited that

1 door.

2 Apparently the Defense attorneys were not, but I
3 didn't know that was going to happen, and have no
4 intention of going into what she's now been accused of
5 not doing or doing since she's been placed on probation.

6 THE COURT: Mr. Long, you know, Mr. Respass makes a
7 very sound point, which is that is none of this Court's
8 business right now.

9 And that case I as well was not aware of any legal
10 status, other than citizen of Ms. Ellis or Ms. Derossett
11 when she was testifying up until about 30 seconds before
12 that status was changed in my mind.

13 MR. LONG: Em-hmm.

14 THE COURT: So -- and made aware to everyone else.
15 So, I -- she's here obviously involved in this hearing.
16 And what she -- whatever that violation of probation
17 matter may be, she will be arraigned and counsel will be
18 appointed in due course.

19 It would be perhaps a different matter if private
20 counsel were walking in and saying I want to represent
21 this person, but not with the Office of the Public
22 Defender. This is outside the scope of your
23 representation.

24

25

1 MR. LONG: Understandable Your Honor. In the
2 alternative could I appear as a friend of the court in
3 case Ms. Ellis or Derossett does have questions?

4 THE COURT: Well, their -- her testimony here is in
5 no way designed to elicit testimony regarding her
6 probation status or not. I had no idea she was on
7 probation.

8 And it's -- it seems inappropriate to do so at this
9 point when no one is here with the purpose of
10 incriminating her in any way for any reason. She's here
11 as a fact witness.

12 So, that -- respectfully sir the motion is denied
13 and she will be arraigned by Judge Silverman when she is
14 to be arraigned. And she can be questioned about the
15 events of the evening, and if she thinks she's being
16 asked to testify against her best interest then I'm sure
17 she knows what to do.

18 MR. LONG: Thank you Your Honor.

19 THE COURT: Thank you sir. And so Mr. Panella,
20 here we are, we're back on the record in
21 2015-CF-39550-A, State of Florida versus John Derossett.

22 Mr. Derossett is present with counsel, Mr. Panella
23 and Mr. West. Mr. Respass and Mr. Scheiner are here on
24 behalf of the State. And Mr. Panella, when we stopped
25 yesterday -- or excuse me, Mr. West, when we stopped

1 yesterday you had Ms. Ellis on the witness stand --

2 MR. WEST: Yes, Your Honor.

3 THE COURT: (Cont'd) and you were about to play a
4 911 call. So, would you like to resume your position
5 sir?

6 MR. WEST: Certainly. Thank you.

7 THE COURT: All right, thank you.

8 MR. WEST: We'd have the witness take the stand
9 please.

10 THE COURT: Certainly. Come on back Ms --

11 THE BAILIFF: Does she need to be sworn Judge or?

12 THE COURT: Right, she was previously sworn. Thank
13 you.

14 MR. WEST: Madam Clerk, if may have that exhibit
15 that we -- the film drive with the 911 call.

16 THE COURT: Okay, good morning Ms. Ellis.

17 THE WITNESS: Good morning.

18 THE COURT: All right. And ma'am, you were
19 previously sworn.

20 THE WITNESS: Yes.

21 THE COURT: All right. So, you're still sworn
22 from -- since yesterday.

23 THE WITNESS: Thank you.

24 THE COURT: And Mr. West, any time you are ready
25 sir.

1 MR. WEST: Thank you.

2 THE COURT: And that was just put into evidence as
3 Defense Exhibit 19, correct? That was the last thing
4 that you did was place that into evidence as Defense
5 Exhibit 19?

6 MR. WEST: You know, I'm sorry, I can't speak to
7 the exhibit number that the clerk has assigned.

8 THE COURT: Madam Clerk?

9 THE CLERK: Yes.

10 THE COURT: I'm sorry Mr. West. Maybe that's a
11 rhetorical question to you.

12 THE CLERK: That's accurate information Your Honor.

13 MR. PANELLA: It's Defense Exhibit 19 Judge.

14 THE COURT: Perfect. Thank you.

15 MR. WEST: Thanks.

16 THE COURT: There we go. The one with the eyes and
17 have it within his hand.

18 MR. WEST: That reminds me, I should get my glasses
19 too before we get started.

20 THE COURT: We should just hang a pair from the
21 podium.

22 MR. SCHEINER: See if you and Mr. Respass can agree
23 on the power.

24 MR. WEST: Have you seen the ones that the magnet
25 connects right in the center?

1 THE COURT: Oh, yes. I've seen them all, sadly.
2 Tiny, tiny ones that look the size of a fat pen.
3 They -- those kind.

4 MR. WEST: Exactly, yes. Mr. Panella, would you
5 just remain there until we're ready to publish the
6 exhibit?

7 MR. PANELLA: Absolutely.

8 MR. WEST: Thank you.

9 RESUMING DIRECT EXAMINATION

10 BY MR. WEST:

11 Q. Ms. Ellis, good morning.

12 A. Good morning.

13 Q. Yesterday at the end of the day before we recessed
14 we talked about a 911 call.

15 A. Yes.

16 Q. That you testified you made shortly after the
17 shooting incident.

18 A. Yes.

19 Q. And that that 911 call has been offered and
20 admitted into evidence as Exhibit 19.

21 A. Okay.

22 MR. WEST: We would like to publish that to the
23 Court at this time. Before you -- before we do, just
24 for the Court's benefit, I think we talked a little
25 about this yesterday.

1 Because of the call and recall there's a couple of
2 sections to it. So, there may actually need to be three
3 files played, is that right?

4 MR. PANELLA: Yes, sir.

5 MR. WEST: Okay, thank you.

6 THE COURT: Okay. Yes, sir, I remember.

7 MR. PANELLA: The beginning of the first call is
8 the end of a call just before Ms. Ellis' call.

9 THE COURT: Okay.

10 (Whereupon, State's Exhibit 19, the 911 call, is
11 now published to the Court.)

12 MR. WEST: Mr. Panella, could you do something to
13 improve the quality, even if it means reducing the
14 volume?

15 MR. PANELLA: Absolutely.

16 MR. WEST: Could -- and try that again.

17 MR. PANELLA: Sure.

18 (Whereupon, State's Exhibit 19, the 911 call, is
19 now published to the Court.)

20 MR. WEST: Thank you. May I proceed?

21 THE COURT: Certainly.

22 BY MR. WEST:

23 Q. Ms. Ellis, was that the 9 -- recording of the 911
24 call that you made immediately following the shooting at your
25 home --

1 A. Yes.

2 Q. (Cont'd) at 1050 --

3 A. 1051 Covina.

4 Q. -- 51 Covina --

5 A. Yes.

6 Q. (Cont'd) on August 20, 2015?

7 A. Yes, yes.

8 Q. Prior to making the call did you and your uncle,
9 John Derossett, talk about what you would say when you called
10 in?

11 A. No, no.

12 Q. Did you tell the dispatcher what had happened?

13 A. Yes, I told them.

14 Q. At the time you made the call did you know that the
15 people that had grabbed you and pulled you out into the yard
16 were police officers?

17 A. No.

18 Q. Do you know when in time you figured it out or how
19 you figured it out?

20 A. Yeah, I don't -- I don't know, it was, you know,
21 what points she says on the line. Something I can hear her
22 talking to other people about saying shooter, shooter on the
23 line.

24 And I just -- it didn't make sense that -- none of it
25 made sense. You couldn't believe that those would be -- I

1 couldn't believe that those would be police officers.

2 Everything's going through your head with it, you know.

3 Q. Well, one of the statements that you made on this
4 recording that we all heard was that you didn't understand
5 why there was so many police officers out there, but there
6 wasn't an ambulance.

7 A. And they weren't helping, yes. I didn't
8 understand.

9 Q. What were you trying to say there?

10 A. Why weren't they helping us, you know. Someone
11 with -- basically I thought somebody had just tried to pull
12 me -- you know, kidnap me, and why were they not helping, you
13 know. He had been shot. It was --

14 Q. Did you follow the instructions of the emergency
15 services operator and leave the house?

16 A. Yes.

17 Q. And did you still have your phone with you?

18 A. Yes.

19 Q. And when you left -- did you leave the house first?

20 A. Yes.

21 Q. And did you walk out that door that we saw in the
22 pictures yesterday and head across the yard?

23 A. Yes.

24

25

1 Q. And were you taken to the ground and taken into
2 custody?

3 A. Yes.

4 Q. And were you taken then for medical treatment?

5 A. They put me in the back of a police car for a few
6 minutes and then I think the police officer noticed that I
7 had been shot right there, and that's when she put me in the
8 ambulance.

9 Q. And then you went -- you went to the hospital and
10 got your treatment. And when were you released?

11 A. I wasn't.

12 Q. From the hospital?

13 A. Oh. Probably about 11:30, 12 at night. I mean,
14 they took me to the sheriff's and talked to me at the
15 sheriff's place, whatever, the Sheriff's Office.

16 Q. So, after you left the hospital for treatment are
17 you saying that you were transported to the Sheriff's Office?

18 A. Yes.

19 Q. And were you interviewed there?

20 A. Yes.

21 Q. And then where did you spend the night?

22 A. Basically there. I think I went over to the jail
23 the next -- that morning, about 7 or 8 in the morning I
24 think.

25

1 Q. Were you still in custody?

2 A. Yes.

3 Q. And did you meet with other officers, or some of
4 the officers you met with before and others and interviewed
5 again?

6 A. Yes.

7 Q. Had you been free during any of that time and had
8 any opportunity to talk with Mr. Derossett?

9 A. No, I wasn't allowed to go to the rest room by
10 myself, no. I didn't --

11 Q. I asked you generally was there a point in time or
12 when did it finally sink into you that the gun -- the
13 gunshots that were exchanged, that the people that had
14 grabbed you were law enforcement? Was there ever a moment
15 you can think of now where, hey, now I'm figuring this out?

16 A. I mean, I knew something, you know, really bad had
17 happened when I -- when, you know, both John and I were put
18 to the ground like that.

19 And I think probably not until the ride over there,
20 maybe speaking with the officer that drove me over, that
21 explained what had happened.

22 Q. Em-hmm. Were you actually arrested that night?

23 A. Yeah, yeah.

24

25

1 Q. Were you -- were you placed on probation in
2 connection with some of the events that occurred that night?

3 MR. RESPESS: What's the --

4 THE WITNESS: Yes.

5 MR. RESPESS: (Cont'd) relevance of this?

6 THE COURT: Sustained.

7 MR. RESPESS: Is he trying to suggest bias for the
8 witness? That's typically what's done when the State
9 calls --

10 THE COURT: Well, is it -- I mean, Mr. West is --

11 MR. RESPESS: Yeah, is it impeachment?

12 THE COURT: Right. That's my --

13 MR. RESPESS: I mean, what's the point?

14 THE COURT: (Cont'd) question. Is this for
15 impeachment? I mean --

16 MR. WEST: Well, the Court was aware yesterday Ms.
17 Ellis was taken into custody, and the Court's aware that
18 she has now been released on bond to appear here today.

19 THE COURT: Okay.

20 MR. WEST: And what --

21 THE COURT: I mean, is this -- that's all I'm
22 asking. Is this anticipatory impeachment with regard to
23 her legal status at the moment?

24

25

1 MR. RESPESS: And frankly I can't impeach her on
2 that. The only way that impeachment like that comes up
3 is if I call her as a State witness and then I have --

4 THE COURT: Right.

5 MR. RESPESS: (Cont'd) I have -- there's an
6 argument under Davis versus Alaska that I have some
7 control over her that causes her to tell -- say what I
8 want. They're not in that position. I don't think it's
9 appropriate to even raise this.

10 THE COURT: Mr. West.

11 MR. WEST: I can explain why I think it is.

12 THE COURT: Go ahead. Please.

13 MR. WEST: And that is because there's some suggest
14 that because -- that because Ms. Ellis was arrested at
15 the end of the day yesterday on a violation of probation
16 warrant that somehow she had been engaged in criminal
17 activity after this night. And I wanted to clarify to
18 the Court --

19 THE COURT: Oh, no. Someone said --

20 MR. WEST: (Cont'd) that the probation came out of
21 the prostitution charge for which she was arrested that
22 night.

23 THE COURT: I know that. I know what.

24 MR. RESPESS: And Judge, what --

25 THE COURT: I mean, it doesn't matter actually.

1 MR. RESPESS: Let's -- let's take a step back. All
2 that is happening outside the record has nothing --

3 THE COURT: Right, outside the scope of this --

4 MR. RESPESS: (Cont'd) has not been offered in any
5 way, shape, or form into the record. So, I guess
6 there's a suggestion that you're going to -- that
7 they're concerned you're going to use something outside
8 the record to make a factual decision in this case.

9 THE COURT: Right.

10 MR. RESPESS: Which would be inappropriate.

11 THE COURT: Which would be -- nothing could be
12 further from the truth Mr. West. I would -- her status
13 with regard to that case or current -- whatever other
14 issues she has is not germane to this inquiry at all in
15 my mind. And so if you had that concern please --

16 MR. WEST: Em-hmm.

17 THE COURT: Please understand you need not.

18 MR. WEST: I would never anticipate that, but I did
19 want the record to be --

20 THE COURT: Well, I understand.

21 MR. WEST: (Cont'd) clear that the same events for
22 which she were arrested were the events that occurred
23 that night.

24 THE COURT: Right. No, I understand that.

25 MR. WEST: Okay.

1 THE COURT: So, if you feel that -- if you've
2 satisfied the record that, you know, that was to the
3 extent you thought it was necessary then you can --
4 because I have no interest in what anything that has to
5 do with --

6 MR. WEST: Very good. Thank you.

7 THE COURT: (Cont'd) what arose legally with Ms.
8 Ellis.

9 MR. WEST: Very good. Thank you Judge. I'll move
10 on.

11 BY MR. WEST:

12 Q. In the 911 call that we just heard, unfortunately
13 it was a bit distorted and garbled in places, did you say
14 that your uncle shot in the sky?

15 A. Yes.

16 Q. And what did you mean by that?

17 A. He shot his gun into the sky.

18 Q. Do you mean some --

19 A. I mean, I didn't --

20 Q. I don't want to answer for you, so I'm going to ask
21 just if you would explain a little bit more what you mean by
22 him shooting in the sky?

23 A. I mean, when I saw him all I saw was him shooting
24 into the sky. I didn't see him shooting at anyone or -- his
25 gun was pointed up at the sky.

1 Q. What's what I'm trying to get you to clarify. When
2 you say up in the sky could you explain or demonstrate the
3 position of the gun?

4 A. Up. It wasn't, you know -- up and away from -- you
5 know. Say we were down here, you know. Wasn't pointing at
6 anyone.

7 Q. Okay.

8 A. It was up.

9 Q. That the gun was elevated away from the people?

10 A. Yes, yes.

11 Q. Let -- let me change direction here just a little
12 bit and ask you a few more questions about your relationship
13 with your uncle.

14 A. Em-hmm.

15 Q. And with the arrangement in the house. You
16 candidly acknowledged yesterday that you would arrange for
17 meetings with men over the internet and there would be an
18 exchange of money for sexual activity.

19 Did your uncle ever directly participate in that by
20 talking to any of these men, meeting any of these men,
21 arranging any of the appointments?

22 A. No, never.

23 Q. Is it still true today what you said yesterday that
24 you had tried to keep him away from your contact with these
25 men?

1 A. Yes.

2 Q. Did he receive any money from you that was a
3 percentage or a certain amount of the money that you may have
4 received for these encounters?

5 A. No.

6 Q. In any way did he initiate contact with men or make
7 any appointments for you?

8 A. No.

9 Q. When you lived in the house there together for this
10 period of time would you share some expenses involving food
11 and maybe utilities and maybe rent?

12 A. Yes. You know, when I first -- when I first moved
13 there, and this was before any of that had started, he had
14 made out a contract, however much I was to pay, you know.
15 And when -- I think I had to pay so much in the utility bill
16 and buy some groceries.

17 Not -- it wasn't a big amount, it was -- I think, you
18 know, he just wanted me to show some responsibility basically
19 was what it was.

20 Q. Do you have any idea, ballpark figure, what the
21 expected payment --

22 A. I don't think --

23 Q. (Cont'd) rent payment was?

24 A. (Cont'd) it was probably more than 175 dollars all
25 together a month, if that.

1 Q. In that neighborhood?

2 A. Yeah.

3 Q. Couple hundred bucks?

4 A. Yeah, at the most, at the very most.

5 Q. And did that amount change based upon how much
6 money you had?

7 A. No.

8 Q. Was it in any way related to any of the other
9 activities you were doing, legal or illegal?

10 A. No.

11 Q. Did you also contribute some to the food --

12 A. Yes.

13 Q. (Cont'd) and to the utilities?

14 A. Em-hmm. Yes, I did.

15 Q. You say that he -- you think that this rent
16 agreement was at least in part designed to help you become
17 more responsible?

18 A. Yes.

19 Q. What do you mean by that, in terms of enforcing a
20 regular commitment?

21 A. Yes, you know, being responsible, you know. I
22 think he probably thought it'd make me feel better about
23 myself, you know. Just as anyone, you know, anyone.

24 Q. Kind of a self esteem thing?

25 A. Yeah. I mean, it -- you know, when you're doing

1 stuff right, you know, you feel better. I mean, you -- you
2 know, that's --

3 Q. Em-hmm, em-hmm.

4 A. Do more I suppose.

5 Q. Did he ever try to get you help in other ways, like
6 any treatment for your addiction problems?

7 A. Yes, he -- he's taken -- I went to Circles of Care
8 once. I -- you know, prior to this, prior before the drug
9 abuse I was an alcoholic, which I, you know, pretty much quit
10 drinking, so.

11 And so, you know, he knew about that stuff. He used to
12 try to get me to go to church with him all the time, you
13 know.

14 Q. Do you think that he genuinely cared about you?

15 A. Yes.

16 MR. RESPESS: Objection.

17 THE WITNESS: Yeah.

18 THE COURT: Basis?

19 MR. RESPESS: What's the relevance of that?

20 THE COURT: Sustained.

21 MR. WEST: Well, because the State has suggested
22 that the relationship was based upon a commercial
23 transaction, not a family member where there's genuine
24 concern.

25

1 THE COURT: Okay, I -- Mr. West, I was not under
2 that impression, but -- I mean, that there was the lack
3 of familial concern, but if you feel you need to make a
4 record you go ahead.

5 MR. WEST: Well, I'm happy that the Court's now --
6 that the record's been made on that. Okay.

7 THE COURT: Didn't seem -- wasn't any question in
8 my mind.

9 MR. WEST: All right. Well, good.

10 THE COURT: That he was taking her in after a
11 conversation with other family members and her
12 situation. So, obviously somebody cares about her.

13 MR. WEST: Thank you.

14 THE COURT: Several people care about her.

15 MR. WEST: Yes, thank you. May I have one minute?

16 THE COURT: Certainly.

17 MR. WEST: Thank you. No further questions.

18 THE COURT: All right, thank you. Mr. Respass, are
19 you cross examining Ms. Ellis?

20 MR. RESPESS: Okay.

21 CROSS EXAMINATION

22 BY MR. RESPESS:

23 Q. Now, Ms. Ellis?

24 A. Yes, please.

25

1 Q. How long had you been living with him the last
2 time? Because you said off and on, and so I wanted to know
3 had you been living with him continuously for the last eight
4 or nine months?

5 A. I'm not -- you know, I'm not sure how long it had
6 been.

7 Q. Which would have put it --

8 A. Probably six months I would think.

9 Q. All right.

10 A. At that minimal.

11 Q. Well, let me give you some months and see if that
12 helps.

13 A. Okay.

14 Q. How about December, January before this happened in
15 August?

16 A. December? That would have been 2000 -- I don't
17 think -- I think -- I don't think so December -- in jan -- in
18 2000 -- December of 2014 to January of 2015? I don't think I
19 lived there.

20 Q. Okay. Where were you living?

21 A. I think I had a boyfriend. No, no, no. Was that
22 2013, '14. I'm not -- you know, I'm not -- I'm not sure.

23 Q. So, you don't recall?

24 A. No, I'm not exactly sure.

25

1 Q. Okay. Now --

2 A. 2014?

3 Q. (Cont'd) when you -- you came and began living with
4 him, did you begin using Backpage and other forms of
5 advertisement to do your business?

6 A. I think I had done that -- I think I started when I
7 wasn't living with him, when I had left or -- you know,
8 having him make me leave. It wouldn't have been for --

9 Q. All right. But you were advertising on Backpage --

10 A. Yes.

11 Q. (Cont'd) before he -- before you were living with
12 him?

13 A. I think, like in between maybe when I was living
14 with him. In between where --

15 Q. What do you mean by that?

16 A. Like I had -- think maybe I had left and then
17 started doing it when I was not living with him.

18 Q. Okay.

19 A. Okay.

20 Q. And I believe you indicated yesterday that you were
21 doing this because of a drug addiction problem that you had,
22 at least that was one of the reasons you were doing this?

23 A. Yes.

24

25

1 Q. All right. And it was -- this was essentially your
2 sole source of income, was it not?

3 A. Pretty much. I mean, I had an ex that used to take
4 care of me, so.

5 Q. Right. But that was in 2013?

6 A. No, not that -- no, no.

7 Q. Oh, was it another ex?

8 A. Yeah, yeah.

9 Q. When was that?

10 A. We were friends. I mean, he took -- he helped me
11 out for about ten years, so.

12 Q. Okay. And when did that stop?

13 A. Probably about two years ago.

14 Q. Okay. So, he was -- he was just sending you money?

15 A. He would send me money, yes, when I needed it,
16 em-hmm.

17 Q. Okay. And where was he located?

18 A. Fort Lauderdale.

19 Q. Now, is he one of your clients?

20 A. No.

21 Q. So, this response -- how much money was he giving
22 you?

23 A. Well, it just depended on how much I would ask for,
24 how much I would need.

25

1 Q. Well, you needed a hundred --

2 A. You know, I didn't prostitute the whole time, my
3 whole life, so.

4 Q. Okay. I'm not suggesting that you did.

5 A. Okay.

6 Q. What I'm asking is you had this understanding or
7 contractual relationship with your uncle where you needed 175
8 to 200 bucks a month. Was he sending you 175 to 200 bucks a
9 month or not?

10 A. Oh, yeah, he'd send me at least that.

11 Q. Okay.

12 A. If I needed it.

13 Q. So, was that how you were paying him was --

14 A. When I wasn't yeah, em-hmm, sure.

15 Q. All right. So, you were using that money to pay
16 him. What were you using to supply yourself with drugs?

17 A. I'm sorry, didn't I explain that earlier? That's
18 why I was doing the prostitution.

19 Q. Okay.

20 A. Okay.

21 Q. So, your friend down in Fort Lauderdale --

22 A. Em-hmm.

23 Q. (Cont'd) was paying for your housing and your food,
24 is that what you're telling us?

25 A. If I needed it that's -- yeah, that's what I

1 would --

2 Q. Well, did he send it every month?

3 A. He sended it pretty much weekly if I needed it.
4 Daily, whatever.

5 Q. Okay. So, that was your demonstration of
6 responsibility, having someone send you money to pay your
7 bills?

8 A. I didn't say any of it was responsible.

9 Q. Okay. Okay, now, the ads that you placed, they
10 were -- you could make them in certain regions of the
11 country, could you not?

12 A. I suppose.

13 Q. All right. And your ad was for the Brevard area,
14 right?

15 A. Yes. I believe so.

16 Q. And you did that because that's where you were?

17 A. Em-hmm. Yes.

18 Q. How much controlled substances, illegally
19 controlled substances were you consuming in July and August
20 of 2015?

21 A. July --

22 MR. WEST: I don't think it's relevant.

23 THE COURT: Mr. Respess?
24
25

1 MR. RESPESS: Judge, I think it is showing what her
2 habit is at that particular time. She's trying to --
3 and they're suggesting and she's suggesting that she's
4 not using any of this money for living expenses.

5 That this is -- that all this money is going to her
6 habit. So, I think, you know, that we need to have a
7 sense of how much money is that. And so that's why I'm
8 trying to figure that out. That's where I'm going with
9 this.

10 MR. WEST: Your Honor, I think that's a slight
11 mischaracterization of the witnesses testimony. I think
12 Ms. Ellis clearly said that she was receiving money sort
13 of as needed by -- from an ex, but I don't think she
14 said that's the only money that she would ever use to
15 live on, or even for that matter, try to say that that
16 was -- she segregated that money.

17 THE COURT: All right. Well, Mr. West, I'm going
18 to overrule the objection because I think that her --
19 not only is that relevant based on the questions and
20 answers, that just occurred, but it's relevant to her
21 state of mind and ability to accurately recall the
22 events of the evening, etcetera.

23 If she was, you know, doing fine and occasionally,
24 you know, doing something a little racy or if she was in
25 a constant state of intoxication. I think it's

1 relevant.

2 MR. WEST: I would agree at the --

3 THE COURT: Her mind frame as to --

4 MR. WEST: (Cont'd) time of the event --

5 THE COURT: Well, but the time --

6 MR. WEST: (Cont'd) but Mr. Respass was clear that
7 this was two or three months earlier.

8 THE COURT: All right.

9 MR. RESPASS: Right.

10 THE COURT: Mr. West I respectfully overrule your
11 objection because --

12 MR. WEST: Thank you.

13 THE COURT: (Cont'd) I do find that this is
14 relevant. So, please proceed Mr. Respass.

15 MR. RESPASS: All right.

16 BY MR. RESPASS:

17 Q. So, I don't want -- I don't want to -- let's clear
18 up, because I want to understand what your sources of income
19 were while you were living with your uncle. What were your
20 sources of income?

21 A. I just told you.

22 Q. Okay, and -- well, I just wanted to make sure
23 because Mr. West suggest that I misunderstood. So, I wanted
24 to clarify what your sources of income were beyond the
25 prostitution and this fellow in Fort Lauderdale.

1 A. Em-hmm. Okay.

2 Q. Was there any other sources of income for you?

3 A. No, unless my parents helped me out every once in a
4 while, you know.

5 Q. Okay.

6 A. The prostitution were for drugs. I can't ask for
7 that much money, you know.

8 Q. Okay. And so that's what I was asking you is --
9 and I don't know if you want to do it by a day, a week, or a
10 month, but how much were you spending on -- and I understand
11 it's Dilaudid, so let me back up.

12 A. Em-hmm.

13 Q. Is your drug of choice at the time was Dilaudid?

14 A. Em-hmm.

15 Q. Yes?

16 A. Yes, yes.

17 Q. And that's an opioid based drug?

18 A. Em-hmm.

19 Q. Yes?

20 A. Yes. I'm sorry, I'm sorry.

21 Q. So, if you couldn't get that would you take other
22 opioid based drugs that were available?

23 A. No.

24 Q. All right, so, Dilaudid was it?

25 A. Yes.

1 Q. All right. And you obtained that illegally without
2 a prescription, right?

3 A. Yes.

4 Q. All right. Now, how much -- and I'm interested in
5 this two month period, and there's a reason I'm asking about
6 it.

7 A. Em-hmm.

8 Q. So, July, early July to August 20th how much were
9 you spending? Let's try a week. Do you know how much you
10 were spending a week on Dilaudid?

11 A. No. I mean, you know, just depends on how much I
12 made really.

13 Q. Okay. So, whatever you made you spent on it?

14 A. Pretty much, yeah.

15 Q. Okay. Well, how much were you making?

16 A. Well, I couldn't tell -- you know. I couldn't make
17 none in one day, or you know, I could make a few -- you know,
18 hundreds in one day.

19 Q. What do you mean when you say nine? What do you --

20 A. None, zero.

21 Q. None?

22 A. Zero in one day, or I could make --

23 Q. All right. That means no clients.

24 A. Yeah. Or you know --

25

1 Q. And then another day -- what's the other end of it?

2 A. You know, I could make hundreds and hundreds, you
3 know. It's just -- I -- there's really probably not -- I
4 couldn't give you an average or anything, you know.

5 Some days I would just be sick, some days, you know, I
6 would do more than I should.

7 Q. Okay. All right, so, you would go through
8 withdrawals on some days?

9 A. Em-hmm, em-hmm. Yes, yes.

10 Q. All right. Now, I want to pick out some specific
11 times, and that's why I was asking you. Were you -- at the
12 time you were in July and August were you regularly using the
13 drugs weekly?

14 A. Yes.

15 Q. Daily?

16 A. Yes.

17 Q. Okay.

18 A. I think. Yes.

19 Q. How much were you taking? And I know there's days
20 you didn't, but when you had it did you ration it or did you
21 just take as much as you got?

22 A. Yes. You know, if it's there.

23 Q. All right. Did you share some of it with your
24 uncle?

25 A. Not that I recall.

1 Q. Okay.

2 A. You know, it's not --

3 Q. Well, are you --

4 A. Most drug addicts don't really like to share
5 their --

6 Q. Right, but would you share it with your uncle?

7 A. Not that I can think of.

8 Q. Okay.

9 A. Like I'm saying, it's not something you like to --
10 especially when you're paying 30 dollars a pill.

11 Q. All right. How about the day this shooting
12 happened? Did you give him some that day?

13 A. Not that I recall.

14 MR. WEST: Your Honor, I would object as to
15 relevance. It's Mr. Derossett that's on trial
16 obviously, he's the Defendant.

17 And Mr. Respess certainly knows that Mr.
18 Derossett's blood was drawn and analyzed and showed no
19 presence of any controlled substances the night of the
20 shooting.

21 MR. RESPRESS: Okay.

22 THE COURT: Okay.

23 MR. RESPRESS: But I -- and we'll deal with the
24 evidence. There's a reason I'm asking the question, and
25 we'll deal with that. And that may be some of the

1 evidence and they'll be other evidence.

2 I'm doing this for a reason. I believe that
3 Defense counsel knows what the reason is and -- so,
4 that's why I'm asking it. So --

5 THE COURT: Okay, I'll overrule the objection Mr.
6 West. I do find it -- it would be relevant if she had
7 given him Dilaudid, and if he had not been positive for
8 it.

9 MR. RESPESS: All right.

10 BY MR. RESPESS:

11 Q. So, your answer as you sit here today is I don't
12 know?

13 A. My answer is actually I -- yeah, I don't recall.
14 And I don't know why he would, he had his own prescriptions,
15 so.

16 Q. Okay, all right. Now, I want to go back to do you
17 recall when it was -- well, let me ask an even further
18 question. When did you become aware that Mike Lewis was your
19 neighbor?

20 A. I think I -- I think I had thought maybe he was
21 a -- I thought he worked for the fire department or
22 something.

23 Q. Okay.

24 A. He drove different vehicles or something. So, I
25 didn't really was exactly sure what he did or what he --

1 Q. Okay. Well, let me ask you a few questions about
2 that. Because of the work that you did --

3 A. Em-hmm.

4 Q. (Cont'd) and the drugs that you purchased --

5 A. Em-hmm.

6 Q. (Cont'd) you were very attentive to your
7 surroundings, right?

8 A. I -- obviously not.

9 Q. Well, you tried to be, didn't you?

10 A. No. I mean --

11 Q. You would be able to pick out an unmarked police
12 car?

13 A. No, I wasn't running guns or anything, so

14 Q. Right, but you would want -- you were concerned
15 about having contact with the law because you knew that what
16 you were doing was criminal?

17 A. Of course I knew it was wrong. I mean --

18 Q. But you knew it was criminal, that you could be
19 arrested for it?

20 A. Yes.

21 Q. All right. And so you were alert to those types of
22 situations to try and avoid getting caught, right?

23 A. Yeah, I suppose. I mean, apparently it wasn't that
24 big of an issue if I was doing it -- I knew all this that I
25 lived next to a police officer.

1 Q. Did you live next to a -- did you know you lived
2 next to a police officer?

3 A. No, I just told you that -- if I -- you know, I'm
4 sure I could have found out for sure.

5 Q. All right.

6 A. You know, it's --

7 Q. You had --

8 A. Okay.

9 Q. But when did you become aware I guess -- let me ask
10 this: When did you become aware that your across the street
11 neighbor was a law enforcement officer for the Sheriff's
12 Office?

13 A. I don't know. Maybe probably a week before, before
14 I think the incident actually --

15 Q. How did that happen?

16 A. A friend of mine told me.

17 Q. Okay. Now, you had deputies that were clients, did
18 you not?

19 A. Yes, I did.

20 Q. All right. Well, did you receive information from
21 them about the fact that Chief Lewis lived across the street
22 from you?

23 A. From one of them, yes.

24 Q. Okay. And that happened a week before?

25 A. Probably a week before.

1 Q. And before that time you were oblivious, you had no
2 idea?

3 A. I thought maybe he worked for the fire department
4 is what I said -- told you earlier.

5 Q. All right. Did you see any vehicles that he drove?

6 A. I think I -- I thought it was a fire vehicle or
7 something. Do you know what he drives? Maybe if you have a
8 picture of it I could tell you. I mean, I never -- I don't
9 believe I ever saw any police --

10 Q. Okay. So, the answer is you weren't sure until
11 about a week before?

12 A. Yes.

13 Q. All right. Now, let's go six weeks or a couple of
14 months before.

15 A. Em-hmm.

16 Q. Do you remember your uncle driving you over to
17 Cocoa Beach in the truck that was parked out in the front
18 yard when this happened?

19 A. I'm -- yes.

20 Q. Okay. And he was driving you over there so you
21 could meet a client and obtain money, right?

22 A. That wasn't why he thought -- or that wasn't what I
23 told him.

24

25

1 Q. Okay. Well, I wanted to ask you about that. Did
2 your uncle know that you were working as a prostitute?

3 A. No.

4 Q. Okay. And how -- so, you never discussed clients
5 coming over?

6 A. No.

7 Q. Okay. Did you discuss the client coming over that
8 lead to this incident? The fact that a client was coming
9 over for a dance. Did you discuss that with him?

10 A. I don't know.

11 Q. Okay, what do you -- why -- what do you mean you
12 don't know?

13 A. I mean, did -- was there something that said that I
14 did? If you have something to tell me then --

15 Q. Well, the evidence --

16 A. (Cont'd) refresh my memory than certainly, please.

17 Q. I'm not going to -- it's really not appropriate
18 to -- I'm going on your memory and what you've said.

19 A. Okay, yeah, I don't know.

20 Q. Okay.

21 A. That's three years ago.

22 Q. So, your -- you drive over to this place, and after
23 you leave the residence and your uncle has circled around and
24 picked you up law enforcement stops you?

25 A. Oh, I'm sorry, I thought you were talking about the

1 night that --

2 Q. I did. I know.

3 A. I thought -- okay. But now we're going back to
4 when the --

5 Q. Right, I want to go through --

6 A. In Cocoa Beach.

7 Q. You know, because you're -- you seem confident that
8 your uncle had no idea what you did in the eight or nine
9 months before this happened, right?

10 A. I have never -- yeah. I mean, I didn't -- I never
11 told him, I never told him what I was doing.

12 Q. Okay.

13 A. Okay. And that's --

14 Q. And how regularly were people coming over to the
15 residence?

16 A. Not regular. I mean, not with him there, not with
17 him there.

18 Q. All right. Well, regularly enough that the
19 neighbors would notice?

20 A. I don't know, I'm not the neighbors. I didn't ask
21 them. I don't know what they noticed.

22 Q. Okay.

23 MR. WEST: Your Honor, I object. I think that
24 there's been a mischaracterization of her testimony.

25 Whether people came over to the house in general or when

1 they came over to the house when Mr. Derossett was
2 present. That's two separate issues.

3 THE COURT: Yes, sir. I understand that is.

4 MR. RESPESS: Right. And we'll clean that up when
5 we put the rest of the evidence in. I'm getting her
6 view on this. I'm not going to talk about what other
7 witnesses are going to say or whatever evidence there
8 is.

9 MR. WEST: Well, because of the suggestion of
10 something the neighbors might notice, that doesn't
11 distinguish --

12 THE COURT: Oh.

13 MR. WEST: (Cont'd) between whether Mr. Derossett
14 was home or not. That's the basis for the objection.

15 MR. RESPESS: Well --

16 THE COURT: I didn't -- I didn't infer that Mr.
17 Respass was asking her if he knew whether or not the
18 neighbors noticed.

19 I think -- I got the impression he was asking her
20 if she felt that whatever she was doing may have drawn
21 the attention of neighbors.

22 MR. WEST: Regardless of whether --

23 THE COURT: Kind of regarding her activity in the
24 house.

25 MR. RESPESS: Right.

1 MR. WEST: Thank you Judge.

2 THE COURT: Okay, thank you.

3 MR. RESPESS: So, let me ask another question.
4 What's the most number of people that came over to your
5 house while you were living at Covina for your services
6 in a day?

7 MR. WEST: You know, I'm going to object to that
8 unless it's related to Mr. Derossett. It's whether or
9 not he was present and would have otherwise known.
10 Otherwise it suggests things about him that aren't in
11 the record and clearly are not relevant to his
12 knowledge.

13 MR. RESPESS: Can I approach and tell you why I
14 think it's relevant?

15 THE COURT: Certainly.

16 MR. RESPESS: All right.

17 (Whereupon, a side bar discussion was held outside
18 the hearing of the gallery.)

19 MR. RESPESS: Mr. Derossett told law enforcement
20 that he knew that she'd been doing this for eight or
21 nine months and was bringing people over to her house --
22 his house to do it.

23 So, I think all of this, finding out how
24 frequently it was happening is relevant. It ties into
25 Lewis' testimony that I think is going to be coming.

1 So, I think this is all relevant to show what is
2 going on, what -- and what Mr. Derossett knew is
3 confirming that he's telling the police that this stuff
4 is going on and he knows about it, everything.

5 Everything -- everything I've asked her I believe
6 is something that he's admitted to.

7 THE COURT: Mr. West?

8 MR. WEST: I don't have that statement, so I don't
9 know what Mr. Respass is referring to --

10 THE COURT: Which statement?

11 MR. WEST: (Cont'd) that Mr. Derossett admitted to
12 knowing that Ms. Ellis was engaging in prostitution at
13 the house. I'm --

14 THE COURT: Well, Mr. West, Mr. West

15 MR. PANELLA: I agree --

16 MR. RESPESS: You agree with what?

17 MR. PANELLA: That's not what the statement says.

18 THE COURT: There was a lot of references to a
19 statement made by Mr. Derossett in the pleading, the
20 initial motion for this. There's quite a few citations
21 to his statement. I don't believe his complete
22 statement was attached --

23 MR. PANELLA: Right, no. No, his complete
24 statement wasn't attached. They're relevant excerpts.

25

1 THE COURT: Right, I know, it's primarily excerpts.
2 So, I'm saying in my understanding there was
3 statement --

4 MR. WEST: Perhaps Mr. Respess can identify the
5 station -- the statement. When and who was present and
6 whether it's --

7 THE COURT: I think Mr. Respess is about to do
8 that.

9 MR. RESPRESS: Where's the report that references
10 the statement that I'm quoting from?

11 THE COURT: Yeah.

12 MR. RESPRESS: I assume counsel has.

13 THE COURT: Well, it was -- it's in the --

14 MR. WEST: Well, let's take a minute and sort it
15 out.

16 THE COURT: Do you want to take a recess and look
17 at it?

18 MR. WEST: Yes.

19 MR. RESPRESS: Yeah. I don't want to talk about
20 this in front of her. That's why I came up here.

21 MR. WEST: No, that's right. Sure.

22 THE COURT: Well, do you want me to turn this noise
23 off?

24 MR. RESPRESS: Either that or have her leave while
25 we --

1 THE COURT: Right, we'll have the witness step out
2 while we discuss it.

3 MR. PANELLA: Sure.

4 THE COURT: Can we do that? Okay, thank you.

5 (Whereupon, the following was had in open court.)

6 THE COURT: All right, Ms. Ellis, we're going to --
7 may we -- we ask you to excuse us please because we have
8 to discuss something outside of your presence.

9 THE WITNESS: Okay.

10 THE COURT: So, can you just go on back to the
11 witness room please. I don't know if -- yes, thank you
12 Deputy Kretchen. You can show her the way. Thank you.
13 Okay, Ms. Ellis has left the room. Yes? She's outside.

14 MR. RESPESS: I have handed them Wayne Simock's
15 report.

16 THE COURT: Okay.

17 MR. RESPESS: Which quotes some language that maybe
18 attributes to Mr. Derossett, which I am talking about.

19 THE COURT: All right, okay. Was there not a
20 transcript of the statement of some sort?

21 MR. RESPESS: No.

22 THE COURT: Okay. Well, if there wasn't what is
23 cited here?

24 MR. RESPESS: It's in the report, it's in his
25 report. He's quoting from the --

1 THE COURT: Oh, he's quoting from the report, okay.

2 MR. RESPESS: From the statement.

3 THE COURT: Okay. See, I'm looking at citation to
4 Derossett [REDACTED] transcript at 14.

5 MR. SCHEINER: If there is a transcript the State
6 is not in possession of that.

7 MR. RESPESS: Right, we haven't been provided that.
8 The Defense may have gotten a transcript. They can --
9 we give them the tapes, they can make transcripts.

10 THE COURT: Oh, was there a taped interview of him?

11 MR. RESPESS: Yes, yes, yes.

12 THE COURT: Oh, okay.

13 MR. PANELLA: It's a recorded interview. There's
14 no transcript.

15 THE COURT: Oh, but --

16 MR. PANELLA: But what they're showing us is
17 somebody else's interpretation of what was said in his
18 interview. That's -- we're going to review.

19 THE COURT: Okay, okay. I'm just looking to where
20 you cite to a transcript here, which lead --

21 MR. PANELLA: Oh, we -- for transcript purposes we
22 just generated --

23 THE COURT: You made your own person --

24 MR. PANELLA: -- we transcribed what he said.

25 THE COURT: Right. Understood.

1 MR. PANELLA: Verbatim from his recorded statement
2 that was provided to us.

3 THE COURT: Now I understand. Okay, thank you.
4 Now I understand. All right, I'll tell you what,
5 we're -- I'll take a three minute recess. If anybody
6 needs to take a moment.

7 (Whereupon court stands in recess for approximately
8 five minutes.)

9 THE COURT: Mr. Respess, Mr. West, have you all
10 sorted out what the transcript issue or --

11 MR. RESPRESS: What we sorted out is that the
12 Defense counsel doesn't like what's in the report and
13 believes that the statement is different.

14 And so they don't think I should be allowed to
15 question her, ask her questions that may tie into this
16 statement. And I believe that I can, and if I don't tie
17 it up, I don't tie it up. I'm not --

18 THE COURT: Well, wait.

19 MR. RESPRESS: I'm not telling her what the
20 statement is, I'm asking her questions.

21 THE COURT: Well, hold on, hold on Mr. Respess. Do
22 you -- you asked her whether that was her sole source of
23 income and what was the most number of people that have
24 ever come to the house in one day.

25 MR. RESPRESS: Right.

1 THE COURT: Mr. West objected stating that that
2 implied that she was aware of -- or that he --

3 MR. RESPESS: Mr. Derossett.

4 THE COURT: (Cont'd) some how was aware.

5 MR. RESPESS: Right.

6 THE COURT: And then we -- you approached the
7 bench --

8 MR. RESPESS: Right.

9 THE COURT: (Cont'd) and we had a small discussion.
10 And then you all compared notes on a statement.

11 MR. RESPESS: Right.

12 THE COURT: And based on that statement Mr. West,
13 what is your objection now sir? I think that's where we
14 were with this.

15 MR. WEST: Well, I'm sorry, but I don't know what
16 the pending question is at this point.

17 THE COURT: The pending question was what was the
18 most number of people that ever came to your home in one
19 day to -- for -- as a result of this Backpage type
20 activity.

21 MR. WEST: Em-hmm.

22 THE COURT: That was the last question.

23 MR. WEST: And I objected because I think --
24
25

1 THE COURT: You said -- admitted there was no
2 evidence that Mr. Derossett was aware of this and
3 whether he was there, etcetera.

4 And Mr. Respess said that, no, it was to
5 indicate -- to give the general impression, overview,
6 explanation of what was going on at that house and
7 whatever inference is drawn from that can be drawn or
8 not. I think that was where he was headed with that.

9 MR. WEST: But I --

10 THE COURT: And he said he will tie it up and that
11 he was asking questions with a good faith basis.

12 MR. RESPRESS: Yeah.

13 THE COURT: That's what he stated.

14 MR. RESPRESS: That's what I'm saying.

15 THE COURT: That's really the bot -- I think the
16 bottom line, right?

17 MR. RESPRESS: Right. I --

18 THE COURT: Because you were asking questions to
19 which you knew the answer with a good faith basis. That
20 was --

21 MR. RESPRESS: And then they can argue what Mr.
22 Derossett meant in his statement, we can argue what Mr.
23 Derossett meant in his statement, and you'll decide.
24 But --

25

1 THE COURT: Yeah. I mean, I'm okay with that, but
2 where -- so, what is your objection sir?

3 MR. WEST: I thought that Mr. Respass was going to
4 show the witness the report, or question her about the
5 report, or characterize --

6 THE COURT: Okay, but --

7 MR. WEST: (Cont'd) Mr. Derossett's statement to
8 law enforcement without referring to the actual
9 statement, rather the investigator's summary or
10 impression of what was said.

11 THE COURT: Okay.

12 MR. RESPESS: I'm not -- I'm trying to avoid
13 talking to her about the statement, which is why I
14 approached the bench to tell you why I asked the
15 question.

16 THE COURT: Right. And that's why I'm summarizing
17 that discussion with the fact that you indicated you had
18 a good faith basis for asking the question.

19 MR. RESPESS: Right.

20 THE COURT: And so --

21 MR. WEST: There were representations made at the
22 bench that Mr. Derossett said certain things --

23 THE COURT: Okay.

24 MR. WEST: (Cont'd) that I objected to, because I
25 hadn't seen those statements before.

1 THE COURT: Okay, but you've seen --

2 MR. WEST: And we took a moment to --

3 THE COURT: Apparently you've seen them now.

4 MR. WEST: Well --

5 THE COURT: That's why we took a moment.

6 MR. WEST: The statement that Mr. Respass has that
7 I think mischaracterizes what Mr. Derossett actually
8 said I see, but we're refer -- I thought he was
9 referring to a different statement, because the one we
10 received --

11 THE COURT: Okay.

12 MR. WEST: (Cont'd) in discovery doesn't say what
13 he said it does.

14 THE COURT: Okay. Have you ever seen the
15 statements that he's just shown you now? Have you ever
16 seen the report? Apparently there's statements
17 contained within the report of another witness. Is that
18 true?

19 MR. WEST: If we're talking about the recorded
20 statement that Mr. Derossett gave, yes, yes, we have
21 that.

22 THE COURT: Okay. Are these statements that Mr.
23 Respass is saying are the good faith basis for his
24 questions and for his knowledge, statements that are
25 known to you to have been previously made?

1 MR. WEST: They are not.

2 THE COURT: So, you did not have the report of
3 whichever witness was that included --

4 MR. WEST: Yes.

5 THE COURT: (Cont'd) these statements?

6 MR. WEST: Yes, we had the report and we had the
7 statement. But the report mischaracterizes the
8 statement and leads to conclusions that aren't --

9 THE COURT: Okay, okay.

10 MR. WEST: (Cont'd) that aren't reasonable.

11 THE COURT: So, you disagree with the way the
12 statements are characterized in the report?

13 MR. WEST: Yes.

14 THE COURT: Is that what you just said?

15 MR. WEST: Yes.

16 THE COURT: Okay. So, you are completely able to
17 rebut, re -- to clarify, recharacterize, whatever you
18 would like to call it, any of those statements, because
19 we only just begun.

20 So, I will respectfully overrule your objection,
21 and Mr. Respass, let's bring the witness back please.
22 Thank you Deputy Gleason. And let's resume.

23 MR. WEST: Thank you Judge.

24

25

1 THE COURT: Because -- thank you. Yes, Ms --
2 record should reflect that Ms. Ellis has returned to the
3 courtroom, is back on the witness stand. Ma'am, you're
4 still under oath. And Mr. Respess, you may proceed.
5 Thank you.

6 MR. RESPESS: Okay.

7 BY MR. RESPESS:

8 Q. Ms. Ellis, I think when we broke I was asking you a
9 question which in the months, days, weeks prior to this
10 shooting happening what was the largest number of clients
11 that came to your residence in one day?

12 A. Maybe two.

13 Q. Two?

14 A. Maybe.

15 Q. Okay. Now, I want to go back to the what I call
16 the first stop, which was Agent Steurwald and Agent Jason
17 Roberts. They stopped the car. That's when your uncle had
18 driven you to Cocoa Beach.

19 A. Okay.

20 Q. You remember that time your vehicle was stopped?

21 A. Okay.

22 Q. I think you talked about it yesterday?

23 A. Yes, I -- yeah.

24

25

1 Q. All right. So, let's start with what type of
2 vehicle were they driving when that happened?

3 A. I don't remember now.

4 Q. Okay. Well, let me just ask it this way:

5 A. Em-hmm.

6 Q. Was it a marked police unit or an unmarked police
7 unit? You know the difference between those, right?

8 A. Sometimes, yes. Sometimes, yes.

9 Q. Okay. Well, you know what a marked police unit is.
10 I'm talking about --

11 A. Yeah.

12 Q. (Cont'd) the one that has --

13 A. Oh, yeah, yeah, yeah. I understand what you're
14 saying, yes.

15 Q. (Cont'd) agency insignia, lights over the head --

16 A. Yeah. I don't know all the unmarked ones though,
17 no.

18 Q. Right.

19 A. If that's what you're asking.

20 Q. Well, they -- the difference is I'm asking you is
21 it one that looks -- when you look at it you go, that's a law
22 enforcement vehicle, they clearly marked it that way --

23 A. Okay.

24

25

1 Q. (Cont'd) so everybody on the planet would know, or
2 was it one that it may have had a light or something inside,
3 but otherwise it looked like a regular automobile.

4 A. Okay.

5 Q. Do you remember what kind of vehicle it was they
6 were in when they stopped you?

7 A. I'm going to -- since I don't recall it being a
8 marked one I'm going to say probably an unmarked one.

9 Q. Okay. And were they able to do something in some
10 way that caused you -- were you driving or was your uncle
11 driving?

12 A. John was driving.

13 Q. Okay. Was there something they did that caused you
14 to let them know they wanted you to stop, or had you stopped
15 somewhere and they just came up to you? How did that happen?

16 A. I believe they turned lights and siren on.

17 Q. Okay, all right. And did they come up to the car,
18 your truck?

19 A. Yes.

20 Q. All right. What were they wearing?

21 A. I don't know.

22 Q. Well, were they wearing uniforms, were they wearing
23 vests, were they wearing badges? What were they --

24 A. I think they were wearing a -- I think one of them
25 had one -- maybe a -- the badge around his neck and I think

1 maybe they had the holsters. I'm not sure.

2 Q. Okay. Do you remember if they had what we call
3 tact vests on?

4 A. No, I don't remember.

5 Q. Okay.

6 A. I don't know what that is anyway, but I wouldn't
7 know to call it.

8 Q. All right. How about the bullet proof vest that
9 has sheriff stenciled on it?

10 A. I don't know. I don't remember if they were in
11 those or not.

12 Q. Okay. Now, did you remember was that the first
13 time that you met Jason Roberts?

14 A. Yes, I believe so.

15 Q. Okay. And in that stop they were discussing their
16 belief that you were engaging in prostitution, were they not?

17 A. Yes.

18 Q. Okay. And they were right, weren't they?

19 A. Yeah.

20 Q. Okay. So, the -- you've seen the sheriff's, they
21 pulled your vehicle over, they talked about you in the terms
22 of being a prostitute and that they're undercover vice
23 agents. Did they indicate that to you?

24 A. No.

25

1 Q. Okay. Well, at that point you knew the Sheriff's
2 Office was on to you, did you not?

3 A. No, not really. No.

4 Q. Well, why not?

5 A. Because I didn't know why they pulled us over.

6 Q. Well, they --

7 A. I mean -- and he said there and said that I -- he'd
8 seen my picture on Backpage, and no, my picture was not on
9 Backpage.

10 Q. Okay. Well, let me --

11 A. And why, why is it -- I mean --

12 Q. Okay, so, you knew that you were engaged in
13 prostitution at that time and that they told you that they
14 knew you were doing that, right?

15 A. They told me that that's what they thought, yes.

16 Q. Yeah. And so you knew that they were on to you.

17 A. Okay, but -- yeah.

18 Q. Right?

19 A. No, I -- yeah, I guess. I don't know.

20 Q. You didn't think so?

21 A. No, I didn't think that they were following me
22 around for, you know, something I had just started doing, and
23 for -- I'm not a big, some big career criminal.

24 I don't -- no, it's not -- it's the little -- it's -- I
25 was -- it's hard for me to believe that someone would waste

1 time and money on --

2 Q. Okay.

3 A. (Cont'd) me doing that for such little, period.

4 Q. So, what you considered was that that wasn't a
5 warning to you that they were aware of your activities? Sort
6 of like giving you an opportunity to cease. You didn't see
7 it as --

8 A. No, no, no. No, I did not. You know, I was blind
9 to that.

10 Q. Okay, all right.

11 A. I absolutely did not.

12 Q. And you said that in your work that you didn't put
13 out images of yourself?

14 A. Not of my face on -- no.

15 Q. Okay. Let me show Defense counsel what's been
16 marked as State's Exhibit ER for identification.

17 THE COURT: DR?

18 MR. RESPESS: ER.

19 THE COURT: ER.

20 BY MR. RESPESS:

21 Q. And I'm going to show you what's been marked --

22 A. Em-hmm.

23 Q. (Cont'd) as State's Exhibit ER and ask if these
24 images are images that you had provided?

25 A. On Backpage?

1 Q. Or through text or to your customers?

2 A. Probably if I had known them, if I had met them
3 before, yes, I would send them those pictures, but
4 probably -- I don't think that I would have sent them to
5 someone --

6 Q. Okay.

7 A. (Cont'd) that I had never met, no.

8 Q. All right, so --

9 A. Not with my face in them.

10 Q. So, if someone was -- someone was investigating you
11 those pictures were -- you had sent those out in your
12 business.

13 A. To prob -- someone maybe I had met before. I
14 wouldn't -- my policy was not to send my face, or you know,
15 my body pictures to someone that I hadn't met in person.

16 Q. Okay. All right, so --

17 A. Pretty much was it.

18 Q. (Cont'd) if the police had possession of those
19 then --

20 A. You could have got this off my phone. I don't know
21 where he got those.

22 Q. Okay. But this -- these are --

23 A. Are my pictures, yes.

24 Q. Okay.

25 A. Those are pictures of me.

1 Q. All right.

2 A. Yeah. And those are pictures on my phone, so.

3 Q. All right. Well, we'll deal with where they came
4 from later on, okay.

5 THE COURT: Mr. Respass, you did not offer them at
6 this time?

7 MR. RESPESS: No, I'm going to tie it in with
8 another witness.

9 THE COURT: Okay, okay.

10 BY MR. RESPESS:

11 Q. All right, so, that was the first time you stopped.
12 Do you remember when that was? How long before July 20th
13 when you got arrested? How long before that was that stop?

14 A. I may -- I don't know. Didn't you say it was
15 earlier, it was like six weeks.

16 Q. That was the first time, right?

17 A. When my uncle and I got pulled over and I got my
18 solicitation.

19 Q. Right.

20 A. What you said was six weeks later.

21 Q. Right.

22 A. Okay.

23 Q. So, when you got pulled over for -- and they're
24 talking to you about prostitution they're talking about that
25 in front of your uncle as well, right?

1 A. Yes.

2 Q. Okay.

3 A. I'm assuming.

4 Q. All right, so, then July 20th you were using your
5 uncle's vehicle?

6 A. The BMW, yes.

7 Q. All right. And he let you use that, and he knew
8 you didn't have a license, right?

9 A. Knew what?

10 MR. WEST: Objection.

11 MR. RESPESS: Huh?

12 MR. WEST: Relevance.

13 THE COURT: Overruled.

14 MR. RESPESS: Again, I'm going tie it --

15 THE COURT: If she knows.

16 MR. WEST: And there's -- yes, there's a
17 foundation.

18 THE COURT: Right, if she knows.

19 MR. RESPESS: All right. So, do you understand my
20 question? Did your uncle know you didn't have a
21 license?

22 MR. WEST: Objection, it assumes, first of all, a
23 fact not in evidence.

24 MR. RESPESS: I think she said she didn't have her
25 license yesterday.

1 THE WITNESS: I already said that.

2 THE COURT: She did. There was testimony about
3 that whole --

4 MR. WEST: I did not hear it yesterday. I didn't
5 hear it. If it was said I didn't hear it.

6 THE COURT: And it was in this motion as well.
7 Thought it had been established yesterday that she had
8 been arrested at -- as she was pulling out and charged
9 with these two things.

10 MR. WEST: Oh, yeah, yes, absolutely Judge. Mr.
11 Respess is asking about whether she had a driver's
12 license or not.

13 THE COURT: Well, I thought she stated that she was
14 arrested for those two things.

15 MR. RESPRESS: No driving license --
16 (Multiple speakers.)

17 THE COURT: Yeah.

18 MR. WEST: If so I missed it.

19 THE COURT: Solicitation and no driver's license.

20 MR. RESPRESS: Right.

21 THE COURT: Or driving while license --
22 (Multiple speakers.)

23 MR. RESPRESS: I'll lock it down.

24 THE COURT: A mis -- second degree misdemeanor, two
25 second degree misdemeanors is arrested for.

1 THE WITNESS: I don't think that -- I don't think I
2 got charged with that though. Can I say that?

3 THE COURT: Excuse me?

4 MR. RESPESS: All right, well, I'll ask. I mean,
5 we can --

6 THE WITNESS: I'm not sure.

7 MR. RESPESS: We can get into what you were charged
8 for, okay.

9 BY MR. RESPESS:

10 Q. But before you had been arrested you had been
11 communicating with a client, had you not?

12 A. What -- okay.

13 Q. Right?

14 A. When you talking about?

15 Q. Talking about July 20.

16 A. Okay.

17 Q. Before you got arrested.

18 A. Okay, okay.

19 Q. You were communicating with a client?

20 A. Em-hmm.

21 Q. Yes?

22 A. A potential client, yes.

23 Q. Right. And you made arrangements to perform an
24 act?

25 A. Okay.

1 Q. True?

2 A. I don't know what the arrangements for, but if
3 it's -- you know, if --

4 Q. Well, you plead to that.

5 A. Okay, okay.

6 Q. Right? So, we're not here about --

7 MR. WEST: Objection.

8 THE WITNESS: I don't think I plead to that.

9 MR. WEST: Mr. Respass said earlier none of that
10 stuff --

11 THE COURT: Wait a minute ma'am. Hold on when --

12 MR. WEST: Mr. Respass said earlier none of that
13 stuff was relevant when the Court sustained my objection
14 to going into why Ms. Ellis was on probation.

15 MR. RESPASS: Well, I'm not going into -- she's --
16 she's --

17 MR. WEST: I thought the Court ruled that it wasn't
18 relevant.

19 THE COURT: Okay, right, and I'm -- okay, so, Mr.
20 Respass, I'm wondering where we're going here.

21 MR. RESPASS: I'm doing -- she's hedging, like, you
22 know, there's some issue, that there's going to be some
23 consequence for her for talking. I'm saying she's
24 plead. We can't do anything to her about that charge.
25 It's over with.

1 THE COURT: Right, I understand. You're trying to
2 get to a point and it seems like it's become more
3 difficult, so you're --

4 MR. RESPESS: Right. I'm just trying to get her to
5 just tell us what happened.

6 THE COURT: (Cont'd) doing it in very small slices
7 is what it's sounding like. Because there was like a
8 general question that wasn't quite answered or -- and so
9 he's now breaking it down to get to the answers is what
10 it sounds like to me, but.

11 MR. WEST: Whether Ms. Ellis has been convicted of
12 a traffic offense --

13 THE COURT: I don't think that was the question. I
14 think the original question was regarding the car that
15 she was driving at the time that she was arrested and
16 she's -- didn't give a very clear answer in that regard.
17 And --

18 MR. RESPESS: I'll withdraw the question.

19 THE COURT: (Cont'd I think that was the last
20 question.

21 MR. RESPESS: I'll start it in a different
22 direction.

23 THE COURT: Okay.
24
25

1 MR. RESPESS: And we'll get there eventually
2 anyways. So, let me do it this way: Let me just back
3 off. I'll withdraw.

4 THE COURT: Okay.

5 MR. RESPESS: We'll start again.

6 THE COURT: All right.

7 BY MR. RESPESS:

8 Q. I think I was asking you about the arrangements you
9 made that caused you to get into the automobile and drive to
10 the area that you were arrested.

11 A. Okay.

12 Q. Do you remember that incident?

13 A. Yes, I remember.

14 Q. Okay. And what I was asking you about was before
15 you got into your uncle's car and drove it had you had
16 communications with the client about providing a service and
17 a place to meet and -- to get together to accomplish that?

18 A. Obviously.

19 Q. And there was money involved, right?

20 A. Yes.

21 Q. Okay.

22 A. Okay.

23 Q. Now -- so, that was a situation where you left the
24 residence to do that, right?

25 A. Yes.

1 Q. All right.

2 A. Okay.

3 Q. How often were you doing that in the two months
4 prior to this?

5 A. That I would leave and meet them?

6 Q. Yes.

7 A. More often than not.

8 Q. Okay, all right. So, you did it this time and you
9 got to where? Where did you go?

10 A. To CVS. Is that what you're asking?

11 Q. And how far is that -- was that from your
12 residence?

13 A. A half a mile.

14 Q. Very close, right?

15 A. Em-hmm.

16 Q. Okay. And you were stopped that time, right?

17 A. Yeah.

18 Q. And what were the people wearing that stopped you?

19 A. I think the lady was wearing the -- that Brevard
20 khaki's and green stuff that they wear.

21 Q. She was there initially, or was she the one that
22 transported you?

23 A. No, she was there initially. She was right there.
24 She was -- came up to the window.

25

1 Q. Okay.

2 A. And -- yeah, she was there. I think they were in a
3 marked car. Somebody was in a marked car.

4 Q. Okay. Was that initially or --

5 A. I believe so, I believe.

6 Q. All right. Do you remember a statement you gave to
7 law enforcement? You gave two.

8 A. About what?

9 Q. About this incident.

10 A. Are you asking something specific about what I
11 said? I mean, I don't --

12 Q. Yes.

13 A. Okay, I don't know what you --

14 Q. When you spoke to them then did you tell them that
15 there was no marked units until after -- later on when you
16 were transported?

17 A. I don't remember, I don't remember that. That's
18 been three -- over three and a half years ago.

19 Q. Okay. You haven't listened to your statements
20 before you testified?

21 A. About that?

22 Q. About the statements that you gave law enforcement.

23 A. I don't remember what I said, but I -- whatever I
24 said then I -- you know. You want to tell me what it was
25 and --

1 Q. Well, I just suggested what it --

2 A. Okay.

3 Q. I'm asking you if you did tell them that?

4 A. I don't re -- okay, what did I tell them? Can you
5 tell me that? And if that's what I said then that's what it
6 is.

7 Q. Okay.

8 A. I just -- it's been three years, so.

9 Q. Okay, so, you're saying that what you told them
10 then would be more accurate on that issue than what you're
11 telling us today?

12 A. Yes, yes, I would say.

13 Q. Okay. Well, did you see any of the -- you
14 mentioned a female deputy. Did you see any male deputies?

15 A. Yes.

16 Q. Okay. What were they wearing?

17 A. I don't know. Jeans and T-shirts I would -- I
18 think.

19 Q. Okay. Were they wearing tactical vests?

20 A. I don't know. I don't know.

21 Q. Okay. How did you know that they were the
22 Sheriff's Office?

23 A. But they've got guns drawn and jumping out of cars
24 and pulling -- you know, telling me to stop.

25

1 Q. Okay. And that was --

2 A. I was doing something illegal.

3 Q. All right. And that was a lot of effort for a
4 solicitation too, wasn't it?

5 A. Absolutely.

6 Q. Okay. In your mind?

7 A. Yeah.

8 Q. Right?

9 A. Yeah.

10 Q. Okay. Now, did you -- was there a larger deputy
11 there named Casey Smith? Did you happen to see him?

12 A. You know, is this Casey right here? Is that --

13 Q. I'm not here to iden --

14 A. Okay, well, if -- I wouldn't recognize him. There
15 was a bigger man with a beard that was quiet and --

16 Q. Right.

17 A. (Cont'd) was there, that I didn't really have that
18 much contact with, yes.

19 Q. All right.

20 A. Em-hmm.

21 Q. And so that guy was there. And he was a large guy,
22 wasn't he?

23 A. Yes, he was.

24

25

1 Q. All right. And do you know if he was wearing a
2 tactical vest, what I call a bullet proof vest?

3 A. I don't think so. I don't think he came -- I think
4 he was at the sub station. I didn't -- I think -- I don't
5 remember him.

6 Q. You don't think he was at CVS?

7 A. No, not that I recall.

8 Q. Okay. So, you think you ran into him at the sub
9 station?

10 A. Em-hmm. That's what I thought.

11 Q. Okay. And then how about Jason Roberts? He's one
12 of the two that you'd met at the last stop. Was he there?

13 A. Yes.

14 Q. Okay. What was he wearing?

15 A. I don't know, jeans and a T-shirt.

16 Q. Okay. Did he have on a tactical vest?

17 A. I don't know.

18 Q. Did he have anything that --

19 A. I don't even know -- if maybe you show me what this
20 tactical vest looks like then I could see and --

21 Q. Is this one here? Yeah.

22 MR. RESPESS: Showing the Defense counsel what's
23 been marked as State's Exhibit BE. All right, I'm going
24 to take this around here. And with the Court's
25 permission can I enter into BE for purposes --

1 THE COURT: Certainly.

2 MR. RESPESS: (Cont'd) of showing the witness
3 what's contained in it?

4 THE COURT: Certainly.

5 BY MR. RESPESS:

6 Q. So, you see this?

7 A. Yeah.

8 Q. You see that?

9 A. Yeah.

10 Q. That's what I'm talking about when I'm talking
11 about a tactical vest.

12 A. All right. Is this -- which is the front -- that's
13 the front and --

14 MR. WEST: Your Honor, we can't hear the witness.

15 THE WITNESS: Oh, I'm sorry. No, I don't -- that
16 doesn't look familiar to me, it doesn't.

17 THE COURT: All right.

18 MR. RESPESS: Okay. So -- let me get a -- let me
19 put this back.

20 BY MR. RESPESS:

21 Q. So, now I've shown you something -- you know what
22 I'm talking about when I saw tactical vest.

23 A. Yes.

24 Q. Right?

25 A. Em-hmm. I understand, yes.

1 Q. All right. Did you -- do you recall if you saw
2 something like that with the deputies that stopped your
3 vehicle when your uncle was driving the truck?

4 A. I don't recall that. It's not -- they don't look
5 familiar to me.

6 Q. Okay.

7 A. Just really don't.

8 Q. How about when you were arrested on July 20th?

9 A. No. Like I said, they don't look familiar to me.
10 I mean, look -- they just don't look familiar all around, at
11 all.

12 Q. Okay.

13 A. It doesn't.

14 Q. First time you've ever seen anything like that,
15 right?

16 A. Doesn't look -- it's not something that I --
17 doesn't look familiar to me. I don't --

18 Q. Okay.

19 A. So, I'm telling you each time you ask me that it
20 just simply doesn't --

21 Q. Well, I haven't asked you anything in --

22 A. But you were going to ask you that again.

23 Q. Okay.

24 A. And I said if it doesn't look familiar to me, it
25 doesn't look familiar. It's pretty much it.

1 Q. All right.

2 A. Okay.

3 Q. All right, so, this day on July 20th --

4 A. Em-hmm.

5 Q. You were taken into custody, and it was Jason
6 Roberts that was dealing with you, was it not?

7 A. (No verbal response.)

8 Q. He's the one that handled the arrest?

9 A. Yeah, I guess -- yeah.

10 Q. Okay.

11 A. I mean --

12 Q. Did you recognize him as being the same fellow that
13 had been at the earlier stop?

14 A. I probably maybe not have recognized him, probably
15 just listened to him talk and the things he says, yes, but I
16 probably put two and two together.

17 Q. All right. So then you knew the Sheriff's Office
18 was onto you, did you not?

19 A. Oh, yeah, yeah. Well, they told me then, em-hmm,
20 yes.

21 Q. Well, they told you before.

22 A. Okay.

23 Q. Right?

24 A. Well, you were there, so you know. I mean --

25

1 Q. Did they not tell you before?

2 A. No.

3 Q. They didn't --

4 A. They didn't say, hey, we're watching you, but
5 we're -- you know. No, they did not. I told you that
6 before.

7 Q. Okay. So, this next time you know they're watching
8 you.

9 A. Yes.

10 Q. Right?

11 A. Em-hmm.

12 Q. Did you change your behaviors and decide to handle
13 your business at the house because you realized it was risk
14 of being arrested the way that it had happened to you this
15 time?

16 A. I'm not sure if I changed anything. I don't know.

17 Q. Well --

18 A. I think -- you know, I think at that point it
19 was -- you know, I was -- it's nothing something that I
20 wanted to do in the first place. So, you know, you're always
21 trying to get out of it.

22 Q. Okay.

23 A. You know, so.

24 Q. But you didn't, did you?

25 A. I'm not sure. I mean, I --

1 Q. Well, it happened again, at least --

2 A. Well, I didn't stop. No, I didn't stop, but
3 changing my behaviors, I don't -- you know.

4 Q. All right.

5 A. Probably some ways I did, some ways I didn't.

6 Q. Well, you were -- since you knew the police were
7 onto you you would -- you changed your behavior so you
8 wouldn't get caught, didn't you, so you would try not to get
9 caught?

10 A. Well, I mean, I don't never want to get caught,
11 but --

12 Q. Right.

13 A. (Cont'd) obviously, you know.

14 Q. Right. So --

15 A. Yes. This is just stupid questions.

16 Q. Did you decide to not travel --

17 A. No.

18 Q. (Cont'd) to hotels or CVS's, or other places to
19 avoid --

20 A. No.

21 Q. (Cont'd) the risk of being caught?

22 A. No, I still went took -- I still did that. I
23 mean --

24

25

1 Q. Okay. Did you still use your uncle's vehicle to do
2 that?

3 A. I'm -- I don't know.

4 Q. Well, what other vehicle was there?

5 A. Not on that night. I mean, I don't know.

6 Q. Well, what other vehicle was there?

7 A. Well, somebody could pick me up. Is that funny?

8 Q. Okay, so -- all right, so that's not travelling to
9 meet someone, that's someone coming over and picking you up.

10 A. Or I could use the bicycle.

11 Q. Okay, is that what you were doing or you just being
12 smart?

13 A. Well, I can -- if you can be smart then I'm going
14 to be smart too. I mean --

15 Q. Okay. So, do you not understand what I'm asking?

16 A. I understand what -- I understand what you're
17 saying.

18 Q. All right. So, is there some concern you have
19 about telling us that you were using your uncle's vehicle to
20 do your business?

21 A. How was I -- I wasn't going to do any business up
22 there at CVS.

23 Q. Okay.

24 A. Was I?
25

1 Q. All right. So -- okay. So, you weren't involved
2 in prostitution that time? Is that what you're saying?

3 A. Did you think I was going up to CVS and do business
4 at CVS with, you know -- what were you saying?

5 Q. I'm saying that's where you're going to go meet
6 your john and then you were going to go somewhere and conduct
7 your bus -- do your business.

8 A. Okay.

9 Q. Right?

10 A. CVS. Okay, yes. That's -- yep.

11 Q. Is that not true?

12 A. Actually, if you want to know what was really going
13 to happen, I was leaving the CVS. I decided I wasn't going
14 to do any business and I was leaving CVS, so.

15 Q. Right, because you were alert and you thought they
16 might be onto, right?

17 A. Okay. Yeah.

18 Q. Right? You thought that this might be a bad deal
19 and you might --

20 A. Yeah.

21 Q. (Cont'd) get arrested. That's why you changed your
22 mind.

23 A. Exactly.

24

25

1 Q. Okay. So, this happens in July. Your uncle bonds
2 you out of jail for the prostitution charge, does he not?

3 A. Em-hmm.

4 Q. All right. So, he knows that at least the police
5 are accusing you of prostitution at this point, does he not?

6 A. Yes.

7 Q. Okay. Now, at this point you're aware of how
8 undercover deputies appear, are you not?

9 A. Yeah. If they're undercover, they're undercover.
10 I mean --

11 Q. And at this point you're aware of how Jason Roberts
12 appears undercover, are you not?

13 A. Are you going -- I did not recognize Jason Roberts
14 that night. I did not see him, so.

15 Q. I didn't ask that question.

16 A. If that's what you're getting into. I know it's
17 what you're getting into.

18 Q. I -- I'm asking you did you know what Jason
19 Roberts -- how he looked undercover or not? This is your
20 second time seeing him?

21 A. I guess. I don't know how he looked undercover
22 when he went out undercover all the time, no. He could have
23 looked completely different. Maybe -- I don't know. I
24 know -- you know, I put two and two together and saw him,
25 yes.

1 Q. Okay. And you talked with him, you knew what he
2 sounded like?

3 A. I knew -- I didn't know his voice, the sound of his
4 voice. I knew how he talked, like that he kind of was
5 mouthy. That's what I meant when I knew how he talked.

6 Q. Well, what do you -- what do you mean that he's
7 mouthy?

8 A. Mouthy. You don't know what mouthy means? Like,
9 just --

10 Q. I want to know what you mean to that.

11 A. Just talks, condescending and -- you know, that
12 kind of -- tries to get a rise out of you, you know.

13 Q. Okay. And how did he do that?

14 A. Just saying smart remarks, you know.

15 Q. Like what?

16 A. I don't know. I can't think of anything in
17 particular right now. Oh, he was -- I remember actually
18 that -- I tried not to talk to him to be honest with you.

19 Q. Right.

20 A. But I remember just him saying something -- stupid
21 remarks about going bare back or something like that. Just
22 stupid remarks that are childish and unprofessional.

23 Q. Okay.

24 A. Okay.

25

1 Q. Now, were you angry about being arrested?

2 A. No, I wasn't angry. No.

3 Q. Were you angry at Jason Roberts?

4 A. No, I wasn't angry, you know, but it's --

5 Q. I'm just --

6 A. I mean, it's just -- you know, just -- you know,
7 nobody wants to be condescended to, and you know, put down,
8 or anything. But you know, something you got to -- everybody
9 has an opinion and you just kind of brush off.

10 Q. Okay.

11 A. Em-hmm.

12 Q. So, did you feel like you were cooperative?

13 A. Yes.

14 Q. And so your uncle knew about that arrest because he
15 bailed you out, right? Did he come pick you up?

16 A. Em-hmm. Yes. I'm sorry.

17 Q. Now, on August 20th you were still advertising on
18 Backpage, like we talked about, right?

19 A. Em-hmm.

20 Q. Yes?

21 A. Yes.

22 Q. And you received some text messages from what
23 turned out to be law enforcement, did you not?

24 A. Yes.

25

1 Q. Okay. And did law enforcement -- did that john or
2 client ask you to meet them at a hotel?

3 A. I'm not sure. I haven't seen the text messages.

4 MR. RESPESS: Let me get these marked as a
5 composite. Actually, kind of goes this way. Let me
6 show Defense counsel and see if --

7 BY MR. RESPESS:

8 Q. Okay, I'm going to show you what's been marked as
9 State's Exhibit ES, and see if you recognize this and
10 associate that within a conversation that you had with what
11 turned out to be an undercover deputy.

12 A. Okay, and then this was August?

13 Q. August 20th.

14 A. Okay, is this -- what is this?

15 Q. That's the second page of it.

16 A. Why is this talking about 7:30 and this says 9:30.
17 I don't understand.

18 Q. That really -- I'm not offering it to admit through
19 you. Do you recognize that as the conversation --

20 A. Okay.

21 Q. (Cont'd) that you had or not?

22 A. Okay. That's it, that's it.

23 Q. Well, I'm not -- no, that's not how it works.

24 A. Okay.

25

1 Q. I don't get to tell you, I'm asking you. If you
2 don't recognize it as the conversation then that would be
3 your answer. If you recognize it you're --

4 A. I mean, I don't remember it, but okay. I mean, I
5 will -- I can't imagine that -- that it's wrong.

6 Q. Okay.

7 A. I don't --

8 Q. Now, is part of the memory -- do you recall having
9 memory problems when you were being interviewed by the police
10 the following day?

11 A. No.

12 Q. Oh, you didn't think you did?

13 A. No, I don't. The following day after all this
14 happened?

15 Q. Yes.

16 A. No.

17 Q. When you were talking with Wayne Simock, and the
18 fellow from FDLE, Ryan Bliss?

19 A. No. What did I have memory problems about?

20 Q. Well, at one point you said your memory was fuzzy
21 to them.

22 A. I don't remember saying that to him.

23 Q. Okay. So, in looking at this --

24 A. See, are you talking about I say -- he say --
25 you're saying that I said that about this conversation?

1 Q. No.

2 A. Okay.

3 Q. About the event.

4 A. Okay. Well, I don't know.

5 Q. The -- in the conversation are you asked to come to
6 a hotel?

7 A. I don't think so. Not that I see.

8 Q. You don't see where they ask you to -- taking a
9 shower, he's going to go to a hotel?

10 A. I thought he said --

11 Q. Come see me --

12 A. I thought he said he was leaving the hotel.

13 Q. Come see me babe, come here, and then you give him
14 the address.

15 A. I thought he said he was taking a shower and then
16 he was -- going to the shower, going to take a shower at the
17 hotel. Come to --

18 Q. And then you told him to come see you there, you
19 didn't want to --

20 A. Okay, he's leaving Titusville. No, I don't see
21 where you're talking about. "Have to swing by the bank to
22 get some money." I don't -- no, I don't.

23 MR. WEST: Your Honor, is this an attempt to
24 refresh the witness' recollection?

25 THE WITNESS: I don't understand.

1 THE COURT: It appears to be. That's what I'm
2 interpreting it as.

3 MR. WEST: Okay.

4 THE COURT: Because the question was asked whether
5 she remembered it and she's said I don't remember it,
6 but I can't imagine it's wrong.

7 MR. WEST: Right.

8 THE COURT: And then they discussed her memory.
9 And so now I think she's being shown State's Exhibit ES.

10 THE WITNESS: Okay.

11 BY MR. RESPESS:

12 Q. Just got off work. Going to hotel to shower. What
13 time can you come?

14 A. Okay. Okay, now what's your question?

15 Q. So, the request was for you to come to the hotel,
16 right?

17 A. And I said no.

18 MR. WEST: Your Honor, there has not been a proper
19 predicate for that question. If the witness --

20 THE COURT: Okay, sustained if -- the predicate for
21 the text message? I mean --

22 MR. RESPESS: Well, she said -- I think you just
23 said it wasn't there. So, I'm sorry.

24 THE WITNESS: I just said --
25

1 THE COURT: No, what I'm saying is did she -- are
2 you -- Mr. West, am I misinterpreting? You're saying
3 there was no authentication of the text message?

4 MR. WEST: Yes. That hasn't been --

5 THE COURT: Recognizing that as hers.

6 MR. WEST: That hasn't been established yet. If --
7 unless -- I mean, the contents are evident. Anybody can
8 read them and see what it says.

9 THE COURT: I understand. That's what I'm saying.
10 Are you saying that she's not --

11 MR. RESPESS: Well --

12 THE COURT: (Cont'd) recognized them as hers?

13 MR. WEST: I don't know, because I don't think
14 we're there yet.

15 MR. RESPESS: Right. Well, here's the problem, and
16 I appreciate Mr. West's position --

17 THE COURT: Okay.

18 MR. RESPESS: (Cont'd) because I don't disagree,
19 but she just went through that and denied that there
20 was --

21 THE WITNESS: No, no, no.

22 MR. RESPESS: (Cont'd) a statement I just pointed
23 out to her.

24 THE WITNESS: No. And that's why I asked you --

25 THE COURT: Right. I --

1 THE WITNESS: (Cont'd) does this go with the same
2 conversation. That's why I asked you is this the same
3 thing.

4 MR. RESPESS: It's all the same, it's all the same.

5 THE WITNESS: No. And I said because this is at
6 7:30 and these are at 9:30, and you have this behind
7 this.

8 MR. RESPESS: Okay.

9 THE WITNESS: That's why I was ask -- that's what
10 I --

11 MR. RESPESS: All right.

12 THE WITNESS: Okay. I didn't think they were the
13 same conversation.

14 BY MR. RESPESS:

15 Q. Well, somebody contacted you before --

16 A. Okay.

17 Q. Before they came over to your place, right?

18 A. Okay. Okay, so, this is the first page right here?

19 Q. Right.

20 A. This is what we're doing. And where is the --
21 okay. I don't understand what's going on here.

22 Q. Well, my question is what Mr. West was asking. Are
23 you able to say that's your conversation with the undercover
24 agent or not?

25 A. Okay. I don't -- this looks like -- it doesn't

1 make any sense. It's just saying he was going to come to my
2 place. It doesn't -- I don't understand what --

3 Q. That's because you told him to.

4 A. Okay. But you're saying --

5 Q. Come here, you come here babe --

6 A. Okay, texted me at 7:30

7 Q. (Cont'd) or something like that.

8 A. But it looks like -- it looks like the whole
9 conversation was he was coming to where I was at is what it
10 looks like to me.

11 Q. All right. So, when --

12 A. What is -- what's the plan here?

13 Q. When the con -- when it looks like to you, just got
14 off work, going to the hotel to shower. What time can you
15 come? Just depending on how long you want to stay.

16 A. Okay, that's me saying -- okay.

17 Q. You're not at the hotel.

18 A. Okay. These are mine. Okay, I don't understand
19 who -- this isn't how -- it doesn't make any sense any way
20 you look at it because it's all saying it's coming from my
21 phone, so.

22 I don't know whose -- I don't know whose phone number
23 you are. I mean, they're all saying they're from my phone.

24 MR. WEST: Your Honor, I can't hear the witness --

25 THE COURT: I can't either. Mr. West, she's --

1 THE WITNESS: They're all -- that's all phone --
2 they're all text from my phone, so how do you
3 distinguish who's --

4 MR. RESPESS: Do you not see a conversation there?
5 I mean, I'm not -- I don't want to debate with you. If
6 you don't recognize it tell us you don't recognize it.

7 THE WITNESS: Okay, they're all -- no, it's not
8 distinguishing who is from who. I don't know who is
9 talking. It's all saying from my phone number, to and
10 from my phone number.

11 MR. RESPESS: All right.

12 THE WITNESS: To and from my phone number. That's
13 what it's saying.

14 BY MR. RESPESS:

15 Q. Do you see -- do you see where it says sent? Do
16 you see where it says read?

17 A. Okay. Okay, from -- sent from my phone number,
18 sent from my phone number, read from my -- it doesn't --

19 Q. So, there you go.

20 A. Okay, it doesn't make any sense. Okay, sent.
21 From. Okay. I mean, do you know what I'm talking about?

22 Q. I really don't -- I'm not really that concerned
23 about what you're talking about, other than --

24 A. Okay, then I'm not either.

25

1 Q. (Cont'd) if you recognize that or you don't.

2 A. I -- I mean --

3 Q. And it's okay if you don't.

4 A. Okay, I don't know. I mean, if it's coming from my
5 phone I just don't know who's who, okay. What is your point
6 about it? What's your question?

7 Q. My question was did the undercover agent ask you to
8 come to the hotel?

9 A. Yeah, I don't know. I can't tell if that's --
10 who's talking there? So, I don't know.

11 Q. All right. And you don't recall that?

12 A. I don't know. Yeah, I don't --

13 Q. Right, you didn't want to go to --

14 A. Probably not.

15 Q. (Cont'd) the hotel?

16 A. Probably not.

17 Q. And why wouldn't you want to do that?

18 A. Because I didn't really want to see anyone. To be
19 honest with you I didn't want to do anything I don't think
20 that night, so.

21 Q. But you did want to see him because you made
22 arrangements to see him.

23 A. Okay.

24 Q. Right?

25 A. That didn't mean I actually wanted to see him, but

1 yes. If I made arrangements then I was agreeing to it.

2 Q. Okay. So, you --

3 A. Okay.

4 Q. (Cont'd) communicated with him via text, did you
5 not? Did you communicate with this person via text?

6 A. Yes.

7 Q. All right. Did you tell him where you were
8 located?

9 A. Yes.

10 Q. All right.

11 A. Okay.

12 Q. And that was the residence that you were shown
13 pictures of yesterday?

14 A. Yes.

15 Q. And was that your phone number that was in those
16 texts?

17 A. Yes.

18 Q. Okay, all right. Now, I want to talk about are you
19 getting a text just before the person gets there telling you
20 they're there?

21 A. Yes.

22 Q. And --

23 A. Oh, God.

24

25

1 Q. (Cont'd) are you actually waiting for a knock at
2 the door or you opening the door expecting them? What
3 happens?

4 A. Okay, when I opened the door --

5 Q. All right, do you know what caused you to open the
6 door? Was it a text?

7 A. He text me telling me that he was here, meaning he
8 was at the door.

9 Q. All right. You okay?

10 A. Excuse me one second. Yeah. My shoe's stuck back
11 here. Okay.

12 Q. All right, and I'm going to get some pictures out
13 now. There we go. Okay. Now, do you recall if someone
14 knocked or rang the doorbell, or you just opened it because
15 they said they were there?

16 A. He said I'm here and I heard a little knock. I'm
17 sorry, let me scoot over.

18 Q. Okay, you think the person knocked?

19 A. He stated I'm here and knocked, gave a little knock
20 maybe.

21 Q. Okay. That's what you recall?

22 A. Yes.

23 Q. Okay. And so was the front door closed at that
24 time?

25 A. Yes.

1 Q. All right. So, you open that door. Do you
2 remember what hand you used to do that?

3 A. The front -- the door inside?

4 Q. The door that pulls inside.

5 A. Uh-uh. I don't know which one it was all the way.
6 I'm right-handed. I don't know.

7 Q. Okay, I'm going to put a -- I'm going to put a
8 picture up that has that door and the screen door.

9 A. Yeah, I know what it looks like.

10 Q. Okay. Okay, showing what's been marked as Defense
11 Exhibit 9. And I think we talked about -- you talked about
12 this image yesterday, didn't you? Do you recognize it?

13 A. Em-hmm. Yes.

14 Q. Were you shown that yesterday?

15 A. I don't think so.

16 Q. Okay. So, tell us what you recognize.

17 A. That's my living -- our living room.

18 Q. All right. And is the front door we've talking
19 about, is that visible in this image?

20 A. Yes.

21 Q. All right. And where is your bedroom in relation
22 to that door?

23 A. My bedroom's right here, back over here.
24
25

1 Q. Okay. So, would -- if he came into your -- into
2 the residence he'd walk down and to the right, that hallway,
3 that gives access to your bedroom?

4 A. Em-hmm. Well, it's right there on the other side
5 of that -- other side of this wall.

6 Q. Okay.

7 A. It's right here.

8 Q. All right. Now, you open that door. Is there
9 somebody standing there?

10 A. Yes.

11 Q. Okay. And where is the person standing?

12 A. Right in front of this, right in front of the door.

13 Q. Okay. Now, you've opened that -- the door, and how
14 do you -- what do you do after you open the door?

15 A. I open the screen, went down to open the screen
16 door.

17 Q. Okay. And that door opens out, right?

18 A. Yes.

19 Q. Do you remember what hand you used to open that
20 door with?

21 A. I think this, this one.

22 Q. You're indicating your left?

23 A. Yes. I'm sorry, my left hand.

24 Q. Okay. And so did you push that door open?

25 A. This one?

1 Q. The screen door. Did you push it open --

2 A. Push it open?

3 Q. (Cont'd) out so that you could let someone in?

4 A. I started to push it open. I don't --

5 Q. All right.

6 A. I couldn't -- I didn't get it open.

7 Q. All right, well, was the person -- did you open it
8 enough where the person is standing in front of you?

9 A. I don't know -- I don't know how it happened. It
10 opened enough for him to grab hold of me and pull me out is
11 exactly what happened.

12 Q. Okay.

13 A. Okay.

14 Q. So, you opened it, you opened your arm as to push
15 the door open. How far, half a way open?

16 A. When he grabbed me I don't know how far I was --
17 probably not -- it wasn't -- wasn't that open very far
18 because it was pretty quick.

19 Q. But was the person -- let me get the front. I
20 think we got a picture of the front. Thank you. This is
21 Exhibit 3. You see the screen door is kind of propped open
22 there, right?

23 A. Em-hmm.

24

25

1 Q. I think we were putting it up here. All right, so,
2 where was -- where was this undercover agent standing that he
3 would be able to even get to you if you haven't opened the
4 screen?

5 A. Well, if my hands right there I'm sure he could
6 just reach around and grab it right there.

7 Q. So, you're guessing?

8 A. I just barely had opened the door.

9 Q. You're guessing?

10 A. No, I'm not guessing, I'm telling you he was there
11 and he grabbed my arm. I don't know if he's a magician or
12 what. I'm telling you this is what happened.

13 Q. Okay. Well, I understand you're telling me and
14 I'm --

15 A. Okay.

16 Q. (Cont'd) trying to have you show us how it
17 happened, okay. So, just -- all right. So, this door --
18 where was he standing? Was he standing in the bushes?

19 A. No, he was standing in front of the door.

20 Q. In front of --

21 A. In front, yes, front -- of the front door, in
22 front. Right.

23 Q. All right. So, you had to open up the screen
24 enough --

25 A. I had to open up, yes.

1 Q. So, he would have access and be -- you'd be
2 available to him so he could contact or communicate with you,
3 right?

4 A. Yeah.

5 Q. Okay. And it was at that point that he put his
6 hand on you and told you you were under arrest, right?

7 A. No.

8 Q. And so did he take out his badge?

9 A. No, no.

10 Q. All right. Did he tell you to stop resisting?

11 A. No.

12 Q. Did he receive assistance from two other deputies?

13 A. Eventually, yes.

14 Q. Okay. Well, this didn't take a long time, did it?

15 A. No, no.

16 Q. All right. Now, you were upset at this point, were
17 you not?

18 A. Yeah.

19 Q. You didn't want to go where he was taking you,
20 right?

21 A. No. I don't -- no, I didn't -- a strange man is
22 pulling you out of your house you want to go with him?

23 Q. Okay. And so Jason Roberts comes up, right?

24 A. I don't know. Was that -- did he?
25

1 Q. Came up right there and is calling your name?

2 A. I don't -- I don't -- I mean, I don't know where he
3 came from or if he was saying my name.

4 Q. Okay. Did he tell you to stop resisting?

5 A. Not -- no.

6 Q. All right.

7 A. I've told you all before that all I ever heard two
8 or three times somebody saying shut up.

9 Q. Yeah, they just -- the officers they just told you
10 to shut up?

11 A. I know it sounds odd, doesn't it, but it is what it
12 is.

13 Q. Okay. And so the only thing that any of these
14 officers said to you was shut up?

15 A. That's it.

16 Q. And this is dynamic, they're actually -- where are
17 you in the yard? Because you said you got out in the yard,
18 so show us where you got to.

19 A. Okay.

20 Q. Show the Judge.

21 A. Okay. To where they -- where the -- where I felt
22 the two men grab me? Or I mean --

23 Q. Well, there was three, wasn't there?

24 A. Wait. Not initially no, and you know that. So,
25 don't act like --

1 Q. Well, I wasn't there, I wasn't there.

2 A. Okay. Yeah, well -- well, you told me that Jason
3 came out here, so how did you know.

4 Q. All right. Well, do you -- who's the first one?
5 You've now interacted with the john, who turns out to be a
6 sheriff's deputy, and where does the first person you see
7 come from? Instead of me --

8 A. The first person that was -- the first person was
9 at the door.

10 Q. Person -- other than the person that you were
11 getting ready to let in you house.

12 A. Okay. What -- the first -- okay, I -- okay, I
13 was -- there was the first person at the front door, and then
14 he's pulling me out. Probably -- and somewhere around there,
15 around the end of the porch maybe.

16 I'm not sure. I know around there is when I had felt
17 the other two grab a hold of me and then eventually I was --
18 and pulled me to where I was about at the end of this -- at
19 the middle -- in the yard.

20 Q. Okay, are you --

21 A. And that's about where I stopped.

22 Q. Are you still on the --

23 A. No, I was in the grass when I was down.

24 Q. So, you're in the grass?

25 A. Em-hmm.

1 Q. And you recall you're being near the sidewalk, but
2 not on it?

3 A. I don't think so. I felt the grass underneath my
4 butt is what I recall.

5 Q. Okay. Now -- so, did you -- you saw this person
6 coming from over here.

7 A. I couldn't. I was trying to get away from him. I
8 didn't -- just -- I didn't -- felt it, the presence. You
9 can't -- you know, I wasn't trying to look at everyone. I
10 wasn't examining what they were wearing. I wasn't -- there
11 was -- you know, I was --

12 Q. How big was that person?

13 A. Well, they were obviously men, you know, bigger
14 men.

15 Q. How big was this man?

16 A. I don't know. Which one?

17 MR. WEST: Objection Your Honor. She said there
18 were several men there. I think we need to know which
19 one the State's referring to.

20 THE COURT: Okay.

21 MR. RESPESS: Right now I'm focusing --

22 THE COURT: Which one are we talking about Mr.
23 Respass? Sustained. Which one are we talking about?

24

25

1 BY MR. RESPESS:

2 Q. Yeah, I'm focusing on the first one you perceive,
3 be that Casey Smith or Jason --

4 A. Okay, okay.

5 Q. All right.

6 A. The first man that came to the door?

7 Q. No, we know who that --

8 A. Okay, these two. Okay, I just told you that they
9 came to me. It seemed like they were there at the same
10 side -- same time.

11 Q. Okay.

12 A. Okay.

13 Q. So, these people -- you're struggling with this guy
14 and these people are coming and the lights are on in the --

15 A. No.

16 Q. (Cont'd) in the residence, are they not?

17 A. No, the lights weren't on in the residence.

18 Q. They're not?

19 A. No. The TV was -- do you -- okay, you see the TV
20 is way over here. This TV is on and I think the stove light
21 in the kitchen, all the way in the kitchen.

22 Q. Okay, so, no other lights are on in the house at
23 that time?

24 A. Not that I'm -- not -- no. Is that -- why is that
25 funny?

1 Q. Okay. But --

2 A. I think I had the stereo on. You might have been
3 able to see the light from that. It's a big TV, you know,
4 it's one of those big giant ones.

5 Q. All right. So, did you turn the lights on later?

6 A. When I went in after all this happened? Of course,
7 yes. In the -- yeah, in the house.

8 Q. Okay. So, you were able to clearly see this guy in
9 the doorway and describe him, right?

10 A. I could see, I could see him, yes.

11 Q. Okay. Didn't have problems seeing him?

12 A. I could see him, yes.

13 Q. All right. And because the light was low you
14 didn't have any problem transitioning to the outside then,
15 right?

16 A. No. No, I could see him.

17 Q. All right. So, you were able to see outside,
18 right?

19 A. Yes.

20 Q. And you saw these people coming?

21 A. Yes, but I wasn't stopping to examine them.

22 Q. Okay.

23 A. Okay. I also told you that I was fighting and
24 trying to get away from them.

25

1 Q. All right. So, you're telling us that you see
2 these people coming and you aren't able to see the --

3 A. Who they were, no.

4 Q. (Cont'd) the sheriff's blazing on their tact vest
5 that I told you?

6 A. That's exactly what I'm telling you.

7 Q. All right. And you would have been concerned for
8 your safety and wanting to know who these people are that are
9 coming towards you, wouldn't you?

10 A. I --

11 Q. I mean, that's -- wouldn't that be a natural
12 reaction to see who's coming?

13 A. Is that a question?

14 Q. Yes.

15 A. I mean, wouldn't it be a natural reaction? When
16 someone's -- I don't understand the question you were asking
17 me when someone's pulling me out of the house.

18 Q. Right, and you got two other people coming towards
19 you.

20 A. Would I think they were --

21 Q. Are you not going to be looking at them to see what
22 they're up to?

23 A. I'm going to be trying to get away from them
24 obviously. It was not -- no, I'm not going to hang out
25 and -- I'm going to try to get away from them.

1 Q. And you got -- you want to know where they are and
2 what they're doing, right?

3 A. I'm going to be trying to get away from them, back
4 into my house, you know. That's -- that's what I'm -- yeah.

5 Q. And your reaction was to scream for your uncle,
6 right?

7 A. Yes.

8 Q. All right. And that's because he was there as a
9 protector for you, right?

10 A. Well, he is my uncle and he would protect me, but
11 not -- not in what you're trying to get at, no. No, he
12 wasn't there. He didn't know what I was doing, like I've
13 told you before, and he wasn't some, you know --

14 Q. All right.

15 A. (Cont'd) whatever you're leading to, no. That's
16 not -- I'm not -- he wasn't there for that.

17 Q. All right. So, he didn't know that there was a
18 client coming and to go back in his room because he knew a
19 client was coming?

20 A. No, no.

21 Q. Okay. Now, you're at the -- I think you indicated
22 you're over here, right, in this area? I don't want to
23 miss -- that's what I thought you --

24 A. I'm about to the end of the walkway there is what
25 I'm thinking.

1 Q. Okay. And that's where you're engaged with three
2 men.

3 A. Em-hmm.

4 Q. Right?

5 A. Yes.

6 Q. And they were all bigger than you, right?

7 A. Yes.

8 Q. And so because these men were kidnapping you they
9 were beating the crap out of you, right?

10 A. They were trying to pull me away from my house.

11 Q. You didn't hear. I didn't say pull, I said they
12 were beating the crap out of you and --

13 A. Did I say they were beating the crap out of me? I
14 said they would pull me away from the house.

15 Q. Well, you thought they were kidnapping you, right?

16 A. Yes.

17 Q. Okay. So, they would be subduing you. Kidnappers
18 would subdue and quickly transport you away. These --

19 MR. WEST: Objection.

20 MR. RESPESS: Right?

21 MR. WEST: Objection.

22 THE WITNESS: Why would they beat the crap out of
23 me?

24 THE COURT: Hold on. Objection. Yes, sir.

25

1 MR. WEST: The State's characterization of what
2 kidnappers would do. There's no way that he would
3 know --

4 THE COURT: Okay.

5 MR. WEST: (Cont'd) what kidnappers would do.

6 MR. RESPESS: Right.

7 THE COURT: Okay, sustained. Mr. Respass, you can
8 rephrase if you want.

9 BY MR. RESPESS:

10 Q. So, these men -- this one guy was big enough to
11 grab a hold of you and carry you away if he wanted to, wasn't
12 he?

13 A. If the --

14 Q. The first guy.

15 A. The one guy could have just said, hey, busted and
16 arrested me though as well, so.

17 Q. Did you understand my question?

18 A. No, you -- you say it -- made a statement was well,
19 so.

20 Q. No, I asked you. The first guy, he could have just
21 overwhelmed you, grabbed you, and carried you away? He was
22 big enough to do that, wasn't he?

23 A. Yeah.

24

25

1 Q. Okay. And then the second guy, all by himself, was
2 big enough to do that too, wasn't he?

3 A. Sure.

4 Q. And the third guy was big enough to do that too,
5 right?

6 A. Sure.

7 Q. And none of them did that.

8 A. No. It could have been all kinds of different ways
9 to go about it.

10 Q. Now, did you see your uncle coming out of that
11 residence?

12 A. No.

13 Q. All right. Now, did you hear one of these guys, or
14 more than one of these guys yell gun, gun, gun?

15 A. No.

16 Q. Okay. Alls they said was shut up, right?

17 A. That's what I heard.

18 Q. Do you recall being pushed into your uncle by --

19 A. Me being pushed into --

20 Q. (Cont'd) by Jason Roberts?

21 A. Me being pushed into my uncle?

22 Q. Yes.

23 A. No.

24 Q. All right.

25 A. I don't see how that'd be possible.

1 Q. Do you recall -- do you recall going into the
2 residence and your uncle being outside by himself?

3 A. No.

4 Q. Did you see where the deputies went after they left
5 you?

6 A. So, after they scattered? I don't -- I don't --

7 Q. Well, me what you mean by scattered.

8 A. I mean, it's just like I had said earlier, you
9 know. I was down and then they -- I couldn't see anything,
10 it was all dark, and then they just all scattered.

11 Q. You couldn't see anything because it was dark?

12 A. Because they were dark. They were all over me. It
13 was dark, yes, and it was because it was dark. So, yeah.

14 Q. All right. So then they scatter. Where did they
15 scatter?

16 A. I don't know, I'm assuming -- it looks like --

17 Q. I don't want you to assume.

18 A. You got it pointed out right there.

19 Q. I don't want you to assume. Did you see where they
20 scattered to?

21 A. Nope.

22 Q. Did they run away from you?

23 A. Yeah, yeah. Well, they didn't run -- couldn't run
24 any more towards me.

25

1 Q. All right. And that was -- that was before --

2 A. This is stupid questions.

3 Q. (Cont'd) your uncle had done anything, right?

4 A. This -- I don't -- I don't know. I mean, I just
5 saw him raising the gun. So, I don't know what all -- you
6 know, what all had happened.

7 Q. So, you're --

8 A. If I didn't see it I don't know that it hap -- what
9 happened, so.

10 Q. All right. So, that's what we're trying to figure
11 out is what you saw, what you didn't see. Did the people
12 leave you before your uncle got out of the house?

13 A. He was out of the house.

14 Q. Okay. So, how do you know that?

15 A. Because I could just tell from where he was
16 standing.

17 Q. Okay. Where was he standing?

18 A. And I knew -- and I knew what the -- that the gun
19 was out up from -- see where the porch comes over, you know,
20 where the arch is?

21 Q. Do you recall my question?

22 A. How did I know where was he standing? Where was he
23 standing?

24 Q. No, ma'am.

25 A. You just said where was he standing.

1 Q. No, ma'am.

2 A. Okay, what was your question?

3 Q. My question was do you know whether or not your
4 uncle was out of the house when these --

5 A. And then you said how --

6 Q. (Cont'd) three guys left you and scattered.

7 A. And I said yes and you said -- and you last --

8 Q. How did you know that?

9 A. And then I was telling you because I could -- when
10 he was raising the gun -- I was telling you it was when he
11 was raising the gun it was not beneath the awning. That's
12 what I was telling you.

13 Q. Okay.

14 A. Okay.

15 Q. So, how did he -- had these guys -- I'm trying to
16 understand the dynamic here. Are you telling me that you --
17 as soon as these guys scattered the first thing you see is
18 your uncle?

19 A. I see him -- yeah, I see him -- yes, that's what I
20 saw, I saw him raising the gun up.

21 Q. Okay.

22 A. Right there at the end.

23 Q. All right. So, you -- the guys let go of you and
24 leave you.

25 A. Em-hmm.

1 Q. And you look up and you see your uncle, and he's
2 doing what?

3 A. Raising the gun up.

4 Q. All right. Did you hear him say anything like
5 what's going on?

6 A. No.

7 Q. Okay. Did you see him behind the screen look out
8 and say what's going on?

9 A. No.

10 Q. Okay. Was the screen door closed at this time?

11 A. I don't know. I believe. It seems like it --
12 yeah, I think so. Yeah, I think it shut by itself, so it had
13 to have been.

14 Q. Okay. And that was to keep the bugs out, right?

15 A. Yeah, and the lizards.

16 Q. And the lizards.

17 A. Em-hmm.

18 Q. So, are you -- you're telling us you're on the
19 ground?

20 A. Em-hmm.

21 Q. And you get up?

22 A. Em-hmm.

23 Q. And you run towards your uncle or the front door?

24 A. He was standing in the way of the front door,
25 so -- to me.

1 Q. Okay. And you're telling us that you grabbed him
2 as the gunshots were going off?

3 A. The gunshots were -- I could feel them flying past
4 me, yes.

5 Q. Okay. And you took him inside?

6 A. Yeah, I pushed him and turned him around. That's
7 what I thought.

8 Q. Okay. Did he ever end up here, outside the door on
9 the ground?

10 A. Not that I saw.

11 Q. Okay. Well, that wouldn't be possible in your
12 description, right?

13 A. Yeah, I never saw -- I mean, I never saw him there.

14 Q. Okay. Could it be that you were inside the house
15 and he was there?

16 A. No.

17 Q. Well, that's why I'm asking that question. So,
18 it's not possible that you were inside the house and your
19 uncle was right here bleeding?

20 A. No, because I pushed -- I turned him around and
21 slipped up, and I know exactly where I was, and I saw he was
22 shot.

23 Q. Okay. Did you see where any of these deputies were
24 shooting from?

25 A. No.

1 Q. All right. I believe you mentioned that you looked
2 out and you saw one when you were talking to the police. Do
3 you recall that?

4 A. I know -- I've heard -- I heard myself say that. I
5 don't remember it now. I don't recall it now.

6 Q. Okay.

7 A. I'm sorry.

8 Q. So, do you remember -- do you remember telling the
9 deputies that you could look outside and you --

10 A. Yeah.

11 Q. (Cont'd) looked out and you actually saw --

12 A. I do remember -- I know I said that, but I just
13 don't --

14 Q. Do you remember where you said you saw this person?

15 A. I think I said I saw them at the end of the yard.

16 Q. In this area, on the street?

17 A. I don't think I said it was at the end of the
18 street. It couldn't have been because I remember there was a
19 car parked right there. I do remember --

20 Q. A car was parked across the street, wasn't it?

21 A. Oh, I thought it was parked in the front, but -- I
22 don't think that --

23 Q. Defense Exhibit 4, you recognize that?

24 A. What? What do you want me to recognize? That was
25 my house.

1 Q. There's no -- that's your house.

2 A. This is immediately after? There wasn't a car
3 parked on this side?

4 Q. No car.

5 A. Really? What's -- what does that car look like
6 across the street?

7 Q. Let me show you another picture. Let me show you
8 another picture.

9 A. Okay. Yeah, from -- do you have a picture from my
10 angle?

11 Q. Defense Exhibit 17. Do you recognize that?

12 A. That's not -- no, that's not -- no, there was a
13 car -- I'm pretty sure I thought there was a car right there.

14 Q. Okay. So, you don't recognize Defense Exhibit 17?

15 A. No, there was a car right -- sitting right there.

16 Q. Okay. You believe there was a car there?

17 A. I believe there was, yeah.

18 Q. Okay. So, you felt like that car was between the
19 deputy -- or behind the deputy, is that what you're saying?

20 A. That's what I -- yeah.

21 Q. Okay.

22 A. That's what I -- but --

23 Q. Fair enough. You looked -- and so when you looked
24 out you saw the deputy and you believe there was a car behind
25 him?

1 A. That's -- yeah, that's what --

2 Q. That you could see?

3 A. That's -- that's what I had said earlier. I mean,
4 I can't remember it now, but I do remember that I thought
5 there was a car there.

6 Q. Right. And you saw -- you were able to see that
7 person had a gun, right?

8 A. Well, that's what I said earlier. I don't -- I
9 can't tell you right now because I don't remember that. I
10 know I said that, but I don't remember that right now, I
11 don't. I've tried.

12 Q. Had you changed the lighting at all in the time
13 period that you'd done that, made these observations, or
14 alleged observations that you said earlier?

15 A. I don't think -- I don't think so. I mean --

16 Q. Okay.

17 A. I wouldn't have changed the lighting between in the
18 time from when I answered the door til -- to when the guns
19 fire and all that. I don't --

20 MR. RESPESS: I don't have any other questions.

21 THE COURT: All right. Mr. West, does that prompt
22 anything sir? I think -- she's his witness, so.

23 MR. RESPESS: Right, his witness.

24 THE COURT: Okay.

25

1 MR. WEST: Your Honor, could we take a five minute
2 restroom break? And then I'll certainly finish well
3 before 12.

4 THE COURT: Sure.

5 MR. WEST: It's going to be very short.

6 THE COURT: Sure. No problem.

7 MR. WEST: Thank you.

8 THE COURT: We'll be in recess for five minutes.

9 (Whereupon, court stands in recess for
10 approximately five minutes.)

11 THE COURT: All right, back on the record in State
12 of Florida versus John Derossett, 2015-CF-39550. Mr.
13 Derossett is present. Mr. West and Mr. Panella are not.
14 Mr. Scheiner and Mr. Respass are present, but --

15 MR. RESPASS: Judge, there's one area of inquiry
16 that I neglected to cover that I'd like to be able to
17 cover before they re-direct.

18 THE COURT: Oh, okay. Certainly.

19 MR. RESPASS: So, it's completed.

20 THE COURT: To be completed, sure. But is Mr. West
21 coming?

22 MR. PANELLA: He's on his way Judge. I think he
23 was in the back.

24

25

1 THE COURT: He said this was his witness. Okay,
2 Mr. West, Mr. Respass said there was a couple things he
3 forgot to ask. So, since you hadn't started yet
4 we'll --

5 MR. WEST: Gotcha. I'm sorry. Thanks.

6 THE COURT: No worries. All right, thanks.

7 MR. RESPESS: No, I apologize for forgetting to
8 cover this portion of it.

9 BY MR. RESPESS:

10 Q. Ms. Ellis, we heard the 911 tape after this had
11 happened, and there was a period of time when you were
12 talking about everybody pointing their guns in your
13 direction. Do you remember that part?

14 A. Yes.

15 Q. Okay. What were you seeing? What were you seeing
16 that lead you to say that?

17 A. That there were policemen at their cars pointing
18 their guns in my direction.

19 Q. Okay.

20 A. At the house.

21 Q. And where were they? Let me put this up. Do you
22 recognize -- let me put this record. State's Exhibit 2.

23 MR. SCHEINER: Defense Exhibit.

24 MR. RESPESS: I'm sorry, Defense Exhibit 2.

25

1 BY MR. RESPESS:

2 Q. So, can you show us, is the area where you saw law
3 enforcement visible in this image?

4 A. No, not really there. Like around back here.

5 Q. Okay.

6 A. Where everyone was. Where they started.

7 Q. All right. And where were you looking from to be
8 able to see that?

9 A. Through the -- through my -- the front window.

10 Q. Okay. And so when you looked outside -- this was
11 after the incident had happened, right, and you were able
12 to --

13 A. Em-hmm.

14 Q. (Cont'd) see those people?

15 A. Yeah. There's a big street light over on top of
16 them back there.

17 Q. Okay.

18 A. All the way --

19 Q. Over where?

20 A. Back here.

21 Q. Okay. Did you see any other people?

22 A. No. I think they were just pretty much just up and
23 down the street.

24 Q. Up and down the street?

25 A. Up and down the street some point, yeah.

1 Q. All right, so, you saw more police up and down the
2 street?

3 A. Yes.

4 Q. Okay. And they were pointing guns in your
5 direction too?

6 A. I don't know. I basically focused on these people
7 right here for some reason.

8 Q. Okay. Now, on the phone --

9 A. Em-hmm.

10 Q. (Cont'd) when you didn't know that these people
11 were police officers why didn't you go outside and ask them
12 to help you?

13 A. I'm sorry?

14 Q. When you see the police out there and you recognize
15 they're out there why didn't you go outside and ask them to
16 help you?

17 A. Okay, did you hear me on the phone talking to her?
18 I was waiting for an ambulance to come help my hus -- my
19 uncle, who was in the house, who had been shot.

20 You know, why -- I'm asking her why are they out there.
21 I told her, you know, I'm scared to go out there because I
22 don't know where these people are and -- you know.

23 Q. Well, you knew they were police by then, right?

24 A. Who?

25

1 Q. The people that were out -- I'm talking about the
2 people that were now outside your house and --

3 A. Okay.

4 Q. And point -- and they're --

5 A. And I'm asking her why -- why are they pointing
6 guns, and she's talking about a shooter. And somebody had
7 just tried to pull me out of my house. The whole situation
8 was scary. Everyone was scary at that point.

9 Q. Okay. Were you afraid of the police at that point?

10 A. I'm -- I was -- I don't know why they were pointing
11 at my house. Can -- I mean --

12 Q. So, you go ask them.

13 A. I was scared of pretty much everyone right then,
14 yes.

15 Q. Were you afraid of being arrested at that point?

16 A. Not afraid of being arrested.

17 Q. Is that why you didn't want to come out?

18 A. I didn't know what the police thought had gone on.
19 That's exactly what it was.

20 Q. Okay, so you can go out and tell them.

21 A. So, they could have -- they could have thought me
22 and John had got into it. I had a -- I had the -- why would
23 I -- I had the people on the phone, they should have been
24 talking to them.

25

1 Q. All right. So, you could go out there and say,
2 hey, my uncle needs some help, can you come in and help --

3 A. And didn't I do that? Wasn't I on the phone with
4 her for 30 minutes asking where the ambulance was?

5 Q. Well, she's --

6 A. Wasn't I doing that?

7 Q. She's back at a communication's building. These
8 people --

9 A. And she's obviously communicating with them because
10 I can hear her talking. Oh boy.

11 Q. These people are right out there and you can say,
12 come on in, I need help.

13 A. Well, you know, maybe they should have said, hey
14 Mary, come on out, we're not trying to hurt you.

15 Q. Well, they did. They asked you to --

16 A. Oh, they did? Were you there?

17 Q. They ask you to go out -- well, I listened to the
18 tape.

19 A. Oh, to their tape? Because I'm pretty sure I
20 didn't hear them say that to me.

21 Q. They didn't ask you to go outside?

22 A. I know I walked out -- I had the par -- I had the
23 police and paramedics on the phone. I called them, so.

24 Q. Right. Did they ask you to go out?

25 A. Eventually. And did I go out?

1 Q. Okay. Did you --

2 A. Go out, yes, I did. I can answer that for you.

3 Q. Did you tell them you didn't want to, that you only
4 wanted the ambulance?

5 A. I told her I was scared. Em-hmm, I did tell her
6 that. I told her a couple times I was scared.

7 Q. Did you tell them you just wanted the ambulance,
8 not the police?

9 A. No, I did not tell her that. What --

10 Q. Okay. So, when you went outside this second time
11 were you able to see people around your house the way you
12 described looking out the windows? Were you able to see law
13 enforcement then?

14 A. Okay. I just --

15 Q. Were you able to see them?

16 A. Are you asking me just what you just asked me, was
17 I able to see law enforcement?

18 Q. No.

19 A. Okay.

20 Q. Now, you're saying that you were looking out the
21 window here --

22 A. When I saw them out there pointing guns at my
23 house.

24

25

1 Q. (Cont'd) I suppose, and were able to see people
2 over here because there was a light on, right?

3 A. There was a -- there's a --

4 Q. So, now I'm asking you walked outside, are you able
5 to see law enforcement outside when you get outside?

6 A. Yeah.

7 Q. Are you able to recognize them as law enforcement?

8 A. Yeah.

9 Q. And so you were able to see them, correct?

10 A. Yeah.

11 Q. Okay. But had the lighting conditions changed any?

12 A. What? I mean, nothing had changed.

13 Q. Had the lighting --

14 A. What are you -- I mean, when you can see a big
15 white police -- all white police cars were going up and down
16 your road, yeah, you can see it, you can see them.

17 Q. Okay, so, there was enough lighting you could
18 appreciate white?

19 A. I could see the police cars. What are you --

20 Q. Okay. Were you able to see your neighbor, Chief
21 Lewis?

22 A. Now -- yeah, now that I know he was Chief Lewis,
23 and I know where you're going, so you just want me to finish
24 it? He was wearing a vest. I didn't say it was a tactical
25 vest.

1 Q. Okay. You saw him in --

2 A. With a vest.

3 Q. (Cont'd) a bullet, a bullet proof vest, right?

4 A. A vest, it looked like a vest.

5 Q. It was a bullet proof vest, right?

6 A. Was it? Okay.

7 Q. Was it?

8 A. I don't know.

9 Q. Okay. Where was he?

10 A. Over there somewhere.

11 Q. Show us. Show us.

12 A. Over around here somewhere.

13 Q. Okay.

14 A. When I got out there, because he's the one that put
15 me to the ground, so.

16 Q. Oh, he put you to the ground?

17 A. So, I got to see him close up. And no, I don't
18 know what he looks like either if you want to -- I have no
19 idea what he looks like if you're going to ask me that.

20 Q. Okay, so, you didn't know your neighbor to see him?
21 You didn't recognize him on sight?

22 A. I didn't know who -- I wasn't -- I have -- no.

23 Q. You hadn't seen him before in the months you'd
24 lived --

25 A. I wouldn't know what he looks like, his face or

1 anything, no. I have no idea what he looks like.

2 Q. Okay, that's what I'm asking you. You hadn't seen
3 him outside in the neighborhood? You hadn't seen him before?

4 A. Not close enough I could see what he looks like,
5 no.

6 Q. Okay.

7 A. I have no -- I still have no --

8 Q. So, how did you -- how did you know who it was
9 then?

10 A. He was -- okay. Well, you -- because putting two
11 and two together. Someone had told me that my neighbor was a
12 cop. There was a man out in his -- in the yard with a gun,
13 and just shorts in his yard. So, yeah, you would -- he
14 might --

15 Q. Okay.

16 A. You might figure that out.

17 Q. That's what I wanted to know.

18 A. Okay.

19 Q. So, he was across the street at his residence with
20 a gun and you were able to see that?

21 A. When I got up -- when I got out there, yes.

22 Q. Where were you?

23 A. All the way over there. They brought me all the
24 way over there. And I wasn't fighting people off of me, you
25 know.

1 Q. You were fighting?

2 A. I wasn't fighting anyone off of me and being
3 dragged anywhere either at the time, so.

4 MR. RESPESS: All right, now I'm done.

5 THE COURT: Okay. Mr. West, would you like to --
6 do you have questions that you think would last a few
7 minutes or do you want to pick up after lunch?

8 MR. WEST: Just one moment Your Honor.

9 THE COURT: Take a moment, sure.

10 MR. WEST: Thank you Your Honor. I don't have any
11 re-direct.

12 THE COURT: Okay, all right, thank you. Well, that
13 ends it then. Thank you Ms. Ellis.

14 THE WITNESS: Thank you.

15 THE COURT: And then we'll -- this would be a good
16 time to break for lunch, and then we'll be back at -- I
17 think we have nothing at 1:15.

18 THE CLERK: That's accurate.

19 THE COURT: So, okay, excellent. So, would you
20 like to come back at 1:15? Does that work for
21 everybody? Okay, thank you. Then we'll be in recess
22 til 1:15.

23 (Whereupon, court stands in recess for the luncheon
24 hour.)

25

1 THE COURT: Can I ask you all first before -- while
2 we're waiting on -- for Mr. Derossett? Do you all have
3 a number of witnesses lined up for this afternoon?

4 MR. PANELLA: Yes, Judge, I've been thinking about
5 that. Let me grab it.

6 THE COURT: Okay. Because what I was wondering is
7 can we go to 5:30 maybe? See if we could make a little
8 bit better dent?

9 I was kind of relaxed yesterday saying, oh,
10 let's -- we don't have to worry about pressing it, and
11 now today I'm thinking, okay --

12 MR. RESPESS: I'm worried.

13 MR. PANELLA: Yeah.

14 THE COURT: (Cont'd) we're on witness four or
15 something and it's, you know, half way.

16 MR. RESPESS: I'm starting to worry.

17 THE COURT: Yes, I am too.

18 MR. PANELLA: I was thinking the same thing Judge.
19 So, I'm --

20 THE COURT: I am too.

21 MR. PANELLA: Sure, we have no problem going to
22 5:30. Is that a problem for you Mr. West?

23 MR. WEST: No. I am curious, since we're talking
24 about it, whether there's any way we might carry over
25 til Friday?

1 THE COURT: Well, that's -- if that's an issue we
2 have to be talking about it now. Thank you for raising
3 it. Because Janie will have a number of calls to make
4 and that -- because we set a lot of things for Friday.

5 MR. RESPESS: Right. I don't know what I got.
6 That's --

7 THE CLERK: Friday morning is --
8 (Multiple speakers.)

9 MR. SCHEINER: Polls close at 7?

10 THE COURT: Excuse me?

11 MR. SCHEINER: The polls close at 7?

12 THE COURT: Yeah.

13 MR. SCHEINER: I just got to be in line by 7,
14 because I didn't go this morning.

15 THE COURT: Well, you should be -- you're going
16 close by. I know I always point the wrong way, okay.

17 MR. SCHEINER: Well, I got to go --

18 THE COURT: I think that -- I think that's south
19 and I -- I'm sticking to my story.

20 MR. SCHEINER: No, that's going to be east.

21 THE COURT: I understand, but that's --

22 MR. SCHEINER: If you go that way to go south
23 you're in trouble.

24

25

1 THE CLERK: Also, on Thursday morning you don't
2 have anything in the morning. So, we can start early on
3 Thursday.

4 THE COURT: Okay.

5 THE CLERK: We have something tomorrow morning, but
6 Thursday morning we do not.

7 THE COURT: Okay, we could start -- well, what I'm
8 starting to wonder if we could just wipe out some of
9 these in between things. So, maybe I -- let's -- so,
10 Thursday morning we have nothing?

11 THE CLERK: Right. Nothing, other than this
12 starting at 9. So, we can start this as early as you
13 want.

14 THE COURT: Well, we could start this at 8:30 on
15 Thursday morning. Mr. Respess, that's assuming that you
16 don't have anything. Mr. Scheiner, you --

17 MR. SCHEINER: I can be here either way just so you
18 know. We can start at 8:30.

19 THE COURT: You're good, okay. Mr. Respess, your
20 schedule is different from all of ours, so.

21 MR. RESPRESS: Well, let me see, because I know that
22 Friday is when I was starting to do other stuff.

23 THE COURT: Yeah, same here.
24
25

1 MR. RESPESS: And I was apologizing to Mr. Panella
2 earlier because it's just been -- August has been crazy
3 for me.

4 THE COURT: Because I was hoping --

5 MR. RESPESS: In fact, I didn't communicate with
6 him as much as I would have liked.

7 THE COURT: Yeah, I mean, I was completely
8 intending that we would finish this.

9 MR. PANELLA: Right.

10 THE COURT: So, the --

11 MR. PANELLA: Do we have -- Judge, I heard -- in
12 the beginning you said that we had three and a half days
13 reserved?

14 THE COURT: Yeah.

15 MR. PANELLA: I thought we had the full day on
16 Thursday reserved.

17 MR. SCHEINER: We do.

18 MR. RESPESS: Right. I thought we --

19 THE COURT: Well, we may, and I may have thought --

20 THE CLERK: We do.

21 MR. PANELLA: Okay.

22 MR. RESPESS: I was planning --

23 THE COURT: Oh, we do? Okay. Because I had 3.5
24 written on the calender, but.

25 THE CLERK: Yeah, we have all day.

1 THE COURT: Okay. Janie probably knew better than
2 to allow me to -- you know, she had a half day.

3 MR. RESPESS: I have a doctor's appointment on
4 Friday I guess I could change.

5 THE COURT: I think I may well --

6 THE CLERK: Oh, you have a plea and a couple status
7 hearings at 1:30.

8 THE COURT: Thursday?

9 THE CLERK: Thursday, but.

10 THE COURT: Well, we might be able to move those.

11 MR. RESPESS: But -- so, I was planning on going
12 through --

13 THE COURT: Thursday.

14 MR. RESPESS: (Cont'd) Thursday on this.

15 THE COURT: Okay. So, why don't I ask Janie if we
16 could just clear off everything, except this, through
17 Thursday.

18 THE CLERK: Now, the plea is Randy Hill and Mr.
19 Funk. So, I'm not sure if that one is --

20 THE COURT: Are you familiar with that Mr.
21 Scheiner?

22 MR. SCHEINER: I'm not Judge.

23 THE COURT: Okay.

24 MR. SCHEINER: I think it's Mr. Sendra's case.
25

1 MR. RESPESS: I have a jail population meeting that
2 you probably would be interested in me attending, but I
3 don't think I'm going to be able to. That's Thursday.

4 THE COURT: Thursday. Like day, morning, or
5 afternoon?

6 MR. RESPESS: That's morning, 9:00, and I don't see
7 anyone -- so, you guys may want me to be there, but I
8 think I'm going to be here.

9 THE COURT: Yeah, okay. Okay, so, let's -- I mean,
10 we got til Thursday afternoon. So, I'm asking Janie to
11 take everything off that was on, other than this, on all
12 the other days.

13 MR. RESPESS: On Thursday?

14 THE COURT: All the other days.

15 MR. RESPESS: Okay. Friday as well?

16 THE CLERK: All the other days?

17 THE COURT: Except for Friday. I said through
18 Thursday.

19 MR. RESPESS: Okay.

20 THE CLERK: Oh, okay.

21 THE COURT: Okay, okay.

22 MR. RESPESS: Okay.

23 THE COURT: We're good?

24 MR. RESPESS: Let's get cooking.

25 THE COURT: Yeah, let's get going.

1 MR. PANELLA: So, what time would you like us here
2 tomorrow?

3 THE COURT: So, let's do 8:30 tomorrow. We'll just
4 be doing 8:30 and we'll push it as long as we can. So,
5 we want the witnesses passing here in the hall -- in our
6 little walk way.

7 MR. PANELLA: Sure.

8 THE COURT: Okay.

9 MR. PANELLA: Yeah.

10 THE CLERK: You have a plea in the morning, that's
11 it.

12 THE COURT: Okay. We'll just ask Janie to move
13 that.

14 THE CLERK: Oh, on Wednesday?

15 THE COURT: Yes.

16 THE CLERK: Okay.

17 THE COURT: We'll just ask her to move it. That's
18 not a big deal.

19 THE CLERK: Okay.

20 THE COURT: Okay. Okay, is Mr -- okay, we have the
21 issue with the nurse and the tablet again. And so I
22 said let's just bring him up here.

23 When the nurse arrives -- they're talking about
24 she's 15 minutes out or something. When she gets here
25 just let us know, we'll take a little break, into the

1 jury room goes Mr. Derossett.

2 MR. PANELLA: Sure.

3 THE COURT: And that'll only take a sec, okay.
4 Minimal disruption that way. Okay.

5 (Whereupon, a short recess was had.)

6 THE COURT: We should go back on the record. This
7 is State of Florida versus John Derossett,
8 2015-CF-39550.

9 Mr. Derossett is present with counsel, Mr. West and
10 Mr. Panella. Mr. Scheiner and Mr. Respess are here on
11 behalf of the State.

12 And I do have one clarifying question before we
13 move on from our last witness, and it's not of her. The
14 question is just there was evidence entered, the 911
15 calls.

16 MR. PANELLA: Yes.

17 THE COURT: Was there testimony as to what time
18 those calls came in?

19 MR. PANELLA: No.

20 THE COURT: Or is there later testimony about the
21 time that those came in?

22 MR. RESPRESS: We're going to be dealing with that.

23 THE COURT: Okay, okay. And it -- I mean, it's not
24 stamped on the --

25 MR. SCHEINER: No, it's not on there. It's not.

1 THE COURT: I didn't -- I could only barely make
2 out what appeared to be file names on the top of the
3 screen.

4 MR. SCHEINER: It's not stamped.

5 THE COURT: Okay.

6 MR. PANELLA: It was -- yeah, that's just the way
7 it came in discovery.

8 THE COURT: Okay.

9 MR. PANELLA: We're ready.

10 THE COURT: All righty. Then Mr. Panella, who will
11 be your next witness sir?

12 MR. PANELLA: Defense would call Agent Peter Stead.

13 THE COURT: All righty. Agent Stead.

14 THE CLERK: Raise your right hand. Do you solemnly
15 swear or affirm that the testimony you shall give will
16 be the truth, the whole truth, and nothing but the truth
17 so help you God?

18 THE WITNESS: I swear.

19 THE CLERK: Thank you. You may be seated.

20 MR. PANELLA: Oh, I can't see you. Let me
21 reposition.

22 THE COURT: Oh, do you want to put --

23 MR. PANELLA: I can't -- I just can't see him.

24 THE COURT: Are you going to use the projector? I
25 was going to say --

1 MR. PANELLA: We will eventually. Yeah, if you
2 could lower it for now.

3 THE COURT: Yeah, there we go.

4 MR. PANELLA: That'd be great.

5 THE COURT: Thank you.

6 WHEREUPON:

7 PETER STEAD,
8 a Witness herein, having been duly sworn, testified upon his
9 oath as follows:

10 DIRECT EXAMINATION

11 BY MR. PANELLA:

12 Q. Good afternoon Agent Stead.

13 A. Good afternoon sir.

14 Q. If you could state your name and spell your last
15 name for the record please?

16 A. First name is Peter, last name is Stead, S-T-E-A-D.

17 Q. Okay. And it's still Agent Stead, right?

18 A. Yes, sir.

19 Q. Okay. So, Agent Stead, if you could just start out
20 telling us about your background, training, experience, your
21 employment.

22 A. I've been employed with the Brevard County
23 Sheriff's Office since October 2011. I spent four years at
24 road patrol. I spent about eight months as a field training
25 officer.

1 After that, August 2015, I got assigned to the special
2 investigations unit as an agent. I spent there about eight
3 months. After that I was assigned to general crimes unit in
4 East Precinct. And I'm not currently, for the past year and
5 a half, I've been assigned to the fugitive unit.

6 Q. Okay. And so at the fugitive unit was it -- what
7 are your responsibilities?

8 A. I get assigned targets that have felony warrants,
9 active failure to appears and we go look for them.

10 Q. Okay. And so what kind of training do you need to
11 go through in order to go through the police academy and
12 ultimately become deputized with BCSO?

13 A. Prior to attending the academy you submit your
14 paperwork that you got accepted. They do a background check,
15 see if you're eligible to begin the academy.

16 Once that process is concluded you start the academy.
17 While I started the academy I applied for Brevard County
18 Sheriff's Office.

19 Once I graduated the academy -- two years after I
20 graduated I got -- I'm sorry, two months after that I got
21 picked up by the Sheriff's Office where I'm currently
22 employed.

23 Q. Okay. And so what kind of firearms training do you
24 go through just as a -- in general in order to qualify for
25 BCSO?

1 A. While attending the academy you had a block of
2 firearms training that you succeeded. If you don't complete
3 that obviously you don't pass, you don't finish the academy.
4 Once you get hired by the Sheriff's Office you attend their
5 training, and also we have to qualify every year.

6 Q. Okay. What is involved in qualifying?

7 A. There's a course, a 40 round course.

8 Q. Is that through FDLE?

9 A. Correct, FDLE.

10 Q. And so there's some sort of accuracy or something
11 like that that you have to meet a certain standard in order
12 to qualify?

13 A. Correct.

14 Q. Is it like 90 percent or?

15 A. 90 percent, yes, sir.

16 Q. Okay. So, in talking about your special
17 investigations unit experience; are there any additional
18 courses or firearms training you need to go through in order
19 to be considered for SIU?

20 A. There's not any extra firearms training that you
21 need to be considered for that. There's also classes that
22 you can attend that are provided by the FDLE, and also the
23 entities around the State of Florida that you can attend
24 while assigned to that unit.

25

1 Q. Sure. And you actually attended some additional
2 classes, right?

3 A. Yes, I attended dangerous drugs and narcotics
4 class. While I got assigned to the special investigations
5 unit I also attended several courses for narcotics, vice
6 crimes, undercover work, and stuff like that.

7 Q. Okay. But it's not a requirement to be in SIU to
8 take those additional courses, you just did that on your own?

9 A. Correct, while I was assigned at the unit.

10 Q. While -- oh, while you were already in SIU?

11 A. Yes, sir.

12 Q. Okay. So then just to clear that up; when a person
13 becomes employed, when a BCSO deputy becomes employed at the
14 SIU there isn't some specific training in order to get into
15 SIU, it's more like on the job training, right?

16 A. Correct.

17 Q. And in your case that was sort of what was going on
18 too is kind of like on the job training, mentors, things like
19 that?

20 A. Yes, sir.

21 Q. Okay. And you indicated that you got to the SIU in
22 August of 2015?

23 A. Correct, August '15, 2015.

24

25

1 Q. So, that would have been right around when this
2 incident happened, correct?

3 A. That is correct.

4 Q. And by the time that August 20th -- okay, so, on
5 August 20, 2015 I thought you had told me earlier that would
6 have been your fourth active day on SIU, is that right?

7 A. That is correct, that was my fourth day.

8 Q. Okay. And so in that -- in the beginning of the
9 SIU, your time there, what -- did you become -- well, let me
10 do this: We'll take an overview and then move in.

11 Were you -- did you have occasion to become involved in
12 any solicitation operations or stings?

13 A. I did.

14 Q. Okay. Generally speaking it -- the solicitation
15 with BCSO, often times that will be conducted at a hotel,
16 right?

17 A. Yes, sir.

18 Q. And so if you could tell me how that operation
19 works, kind of from start to finish. Like, what is -- how
20 does the solicitation operation in the SIU work when you're
21 doing a hotel solicitation sting?

22 A. Are we talking about this specific night or --

23 Q. No, not necessarily.

24 A. (Cont'd) in general?

25

1 Q. In general in your experience there.

2 A. We'll -- obviously as a unit we'll get together and
3 come up with a plan, see where are we going to conduct our
4 investigation. Could be the Holiday Inn, La Quinta, like it
5 was in this case, or any other hotel that is near the area
6 that we are going to target.

7 Q. Sure.

8 A. Once we do that we reserve a couple of rooms,
9 normally about three. We prefer to be both rooms adjacent to
10 each other in order that we can control the whole situation.
11 And also we have a third room which is located for booking
12 officers.

13 Q. So, is the way that I'm understanding it there's
14 basically like a staging room, right?

15 A. Correct.

16 Q. And then there's a booking room for arrests that
17 are made that night?

18 A. Yes.

19 Q. And then there's an actual room that's set up for
20 the sting itself?

21 A. Yes, sir.

22 Q. And so generally -- so, once you come up with your
23 plan and you've got those rooms how do you go about
24 activating solicitation calls or connections?

25 A. There's different agents that are assigned

1 different tasks. It's a unit, so there's not like there's
2 one guy doing all the work.

3 Several agents will begin communicating with Backpage
4 obviously at the time, and other social media looking for
5 females, or johns in that case to respond to the ads
6 pretending to be a john or a female looking for work.

7 Q. So, is it the case with BCSO SIU then that you
8 would have sometimes the operation would be that the
9 undercover would be pretending to be a john, right?

10 A. Correct, yes, sir.

11 Q. And other times it would be that the undercover's
12 pretending to be the prostitute?

13 A. Correct.

14 Q. Seeking a john to come to the hotel?

15 A. Yes, sir.

16 Q. And so thinking about how that's -- that arrest
17 would go down at the hotel in one of these operations, if you
18 were pretending to be a john what would that undercover be
19 doing in the hotel room?

20 A. If we're not able to obtain probable cause for the
21 arrest of the individual coming to the room prior to them
22 getting there you have to play a john until you able to agree
23 to a price or an exchange for any kind of goods in order to
24 have probable cause to make an arrest.

25

1 Q. So, that could be, you know, maybe you're asking --
2 well, if you're the john I suppose you're not asking the
3 prostitute to bring certain things to you, right? That would
4 be in the reverse, right?

5 A. Correct.

6 Q. So, really what you're trying to do is make contact
7 with that female at the room, right?

8 A. Yes, sir.

9 Q. And then once contact is made what happens next?

10 A. Once you have probable cause for an arrest --

11 Q. Sure.

12 A. We'll come up with a key word, Cracker Barrel. So,
13 an undercover agent or a john will use that in a sentence or
14 say Cracker Barrel. That is the key to everybody else in the
15 other room, hey, we can go ahead and take the individual into
16 custody.

17 Q. Okay. And I remember you telling me that in your
18 prior statement. So, you -- the john might very well say,
19 you know, I want to get something from Cracker Barrel and
20 then all of the sudden agents from the other room will come
21 in and take that person down?

22 A. That is correct.

23 Q. And so generally speaking the agent that is the
24 undercover remains the undercover, and then there's a second
25 take down team that comes in to handle that part, right?

1 A. Yes.

2 Q. And often times even the agent that's the
3 undercover might get out of the way, I mean, even go into the
4 bathroom, right?

5 A. Possibly. Depends on circumstances.

6 Q. Sure. Okay, so then in thinking about this night,
7 which would have been August 20, 2015, do you -- obviously
8 you remember that day, correct?

9 A. Yes, sir.

10 Q. And what were you doing that day?

11 A. I was playing a john --

12 Q. Okay.

13 A. (Cont'd) for that particular incident.

14 Q. And were you looking for prostitutes off Backpage?

15 A. At the time, yes, sir.

16 Q. And who was involved? Was Agent Roberts there
17 assisting you on your team as well?

18 A. It was Agent Roberts, Agent Steurwald, Agent Casey
19 Smith. I believe that in the room was also Agent Hawkins.

20 Q. And Agent Hawkins, he had the -- been on the SIU
21 just as long as you had, right?

22 A. We both started the same day.

23 Q. Okay. So, that was sort of like the new class of
24 SIU agents was you and Agent Hawkins?

25 A. Yes, sir.

1 Q. Sure. So then you were designated as the john, and
2 so what would you do in order to make contact with would be
3 prostitutes?

4 A. Once I obtain a phone number I use the department
5 issued cell phone and either text them looking for them to
6 come to the hotel room.

7 Q. And so was part of your responsibility to sort
8 of -- well, not sort of, but part of your responsibility was
9 to send texts specifically seeking sexual services, right?

10 A. Correct.

11 Q. And you would say, you know, whatever it was in
12 order to get that person to believe that you were in fact a
13 john looking for sex, right?

14 A. Yes.

15 Q. And that might even include acronyms or even some
16 vulgar stuff, right?

17 A. That is correct.

18 Q. And in this case was this a -- did you have
19 occasion to come across somebody we now know as Mary Ellis?

20 A. That is correct.

21 Q. And that was the same thing there, right, you
22 initiated texts?

23 A. Yes.

24 Q. And you saw her ad on Backpage?

25 A. I don't recall if it was Backpage. I'm pretty sure

1 it was Backpage. I don't know exactly which one of those
2 websites it was.

3 Q. Sure. But it was some website that you saw her ad
4 on?

5 A. Correct, it was an ad with different pictures.

6 Q. Now, prior to August 20, 2015 you told us you'd
7 only been there four days. Did you even know who Mary Ellis
8 was?

9 A. I did not.

10 Q. Now, were you informed that day though when you
11 came across her page who she was by someone else?

12 A. Yes, sir.

13 Q. And was that Agent Roberts?

14 A. That is correct.

15 Q. So, Agent Roberts had been familiar with her in the
16 past, right?

17 A. Yes.

18 Q. So, he kind of -- I think the word you may have
19 used -- is it fair to say that she was considered maybe one
20 of your frequent flyers?

21 A. That is correct.

22 Q. Okay. So, when you and Agent Roberts -- is it the
23 case that Agent Roberts was sort of helping you with what to
24 say with Ms. Ellis?

25 A. I don't recall if he was telling me, hey, say this.

1 It was pretty much just trying to have a normal conversation
2 with somebody.

3 Q. Okay. But this was your first time ever doing a
4 prostitution detail, right?

5 A. That's correct.

6 Q. And certainly your first undercover prostitution
7 operation?

8 A. Yes, sir.

9 Q. And prior to doing this particular operation when
10 you were in your other three days I think you had said you
11 had served some warrants, things like that?

12 A. Correct.

13 Q. So, was -- this would have been your first actual
14 like operation with the SIU?

15 A. That is correct.

16 Q. Okay. Now, the weapon that you used -- so, as an
17 undercover what do you generally wear?

18 A. Just plain clothes.

19 Q. Because you're trying to convince whoever it is
20 that you're not a law enforcement officer, right?

21 A. Correct.

22 Q. Okay, I happen to have some photos that were taken.
23 I want to go ahead and show them to you. These are
24 previously marked as Defendant's Exhibit AE and Defendant's
25 Exhibit AE.

1 THE COURT: Wait a minute. AE and?

2 MR. PANELLA: AD and AE.

3 THE COURT: Oh, AD and AE.

4 MR. PANELLA: I'm sorry if I misspoke.

5 THE COURT: No worries.

6 MR. PANELLA: I'm showing Defendant -- showing
7 Defendant's Exhibit AD to the witness. It's a little
8 tough, yeah, thanks.

9 THE COURT: All right, Mr. Panella, can we let
10 Agent Stead take a look at that and just take a really
11 quick break.

12 MR. PANELLA: Oh, yeah, absolutely.

13 MR. RESPESS: We don't object to those being
14 admitted, shown to the Judge. Can you --

15 THE COURT: Oh, then -- okay.

16 MR. PANELLA: I thought she said she wanted to take
17 a --

18 MR. SCHEINER: She does.

19 THE COURT: Well, I didn't know that you had an
20 objection.

21 MR. SCHEINER: No, no, we do not have an objection.
22 That's why I thought you were doing --

23 THE COURT: Oh, so I don't have to not look at
24 these?

25

1 MR. SCHEINER: So, we don't object and then we have
2 to take a break.

3 MR. RESPESS: You can look.

4 MR. SCHEINER: You can look.

5 THE COURT: Okay. But there's a --

6 MR. PANELLA: But I'll take it away anyway Judge.

7 THE COURT: We're going to take a moment to just
8 pause here because someone's here. Mr. Derossett, I
9 think someone's here for you. It'll be just a moment.

10 (Whereupon, court stands in recess for
11 approximately three minutes.)

12 THE COURT: Okay, Mr. Derossett is back.
13 Everything is -- the only person I don't see is Mr.
14 West.

15 MR. PANELLA: It's okay, we can start without him.

16 THE COURT: Okay.

17 MR. PANELLA: I just spoke with him.

18 THE COURT: Okay.

19 MR. PANELLA: He'll be along shortly if that's okay
20 with the Judge.

21 THE COURT: All right. So, Mr. Rossi, you okay?
22 Mr. Derossett, you okay?

23 THE DEFENDANT: Yes.
24
25

1 THE COURT: Okay, good. Then we're back on the
2 record. Mr. Panella, take up where you'd like please
3 sir.

4 MR. PANELLA: Thank you Judge.

5 THE COURT: Thank you.

6 MR. PANELLA: May I approach the witness?

7 THE COURT: Of course. Here comes Mr. West.

8 BY MR. PANELLA:

9 Q. And Agent Stead, when we first -- when we left off
10 we were talking about how as an undercover it's important to
11 be in plain clothes, correct?

12 A. Yes, sir.

13 Q. Okay. And so I'm showing you a picture. Is that a
14 picture of you?

15 A. That is correct.

16 Q. And you do recognize this to be a picture of what
17 you were wearing the night of August 20, 2015?

18 A. Yes.

19 Q. Is this a true and accurate representation?

20 A. Yes.

21 Q. Okay. And I'm showing you another picture of you.
22 Is that all things the same except you have a badge on your
23 chain, is that correct?

24 A. Yes.

25 Q. Okay.

1 MR. PANELLA: At this time I'd like to formally
2 admit what's been previously marked as Defendant's
3 Exhibit AD into evidence as Exhibit 20 and Defendant's
4 Exhibit AE as Exhibit 21.

5 MR. SCHEINER: No objection.

6 THE COURT: All righty, without objection.

7 MR. PANELLA: And it's already been --

8 THE COURT: Are they 20 and 21 Madam Clerk?

9 THE CLERK: That's accurate.

10 THE COURT: Okay, perfect.

11 MR. PANELLA: Thank you Judge.

12 THE COURT: Thank you.

13 MR. PANELLA: At this time I'd like to publish.

14 THE COURT: All righty.

15 BY MR. PANELLA:

16 Q. Okay, sir, so what we're looking at here is you're
17 wearing your normal undercover clothes, right?

18 A. Yes, sir.

19 Q. Okay. So that often would be just jeans, sneakers,
20 and maybe a black T-shirt?

21 A. Correct.

22 Q. In this case it's got like an Underarmour screen
23 print or something like that?

24 A. Yes, sir.

25

1 Q. And that particular night you -- you actually
2 didn't have a law enforcement badge on a chain with you when
3 you originally -- when you guys were originally planning to
4 go to the house, correct?

5 A. I did not have a chain on it.

6 Q. Okay. And did you end up borrowing that from Agent
7 Roberts?

8 A. Yes.

9 Q. Okay. So now I'm showing you Defendant's Exhibit
10 21. And would this be what we're talking about with the
11 chain and the badge?

12 A. Correct.

13 Q. Okay. And is it fair to say that the outer -- the
14 outside of the badge is on like a circle, right, like a
15 leather?

16 A. Yes, sir.

17 Q. And that's a black leather circle?

18 A. Correct.

19 Q. Okay. All right, and so also in your undercover
20 capacity and -- also in your undercover capacity -- thank you
21 sir.

22 THE COURT: Can I see those pictures Mr. Panella if
23 you're not --

24 MR. PANELLA: Yes, ma'am.

25 THE COURT: If you're finished with them.

1 MR. PANELLA: I am.

2 THE COURT: Please. Thank you very much. Thanks.

3 No, you can go on. I'm just --

4 MR. PANELLA: Okay.

5 BY MR. PANELLA:

6 Q. In your undercover capacity you also have a
7 department issued handgun, correct?

8 A. Yes.

9 Q. And what -- in your case you wanted to make sure it
10 was more of a concealable handgun, right?

11 A. That is correct.

12 Q. And actually at BCSO they offer you several
13 different types of firearms, right?

14 A. Two.

15 Q. Oh, I thought they -- what are the two?

16 A. When you're on road patrol you're assigned a Glock
17 22, which is a 40 caliber. We also have an option if you
18 want a Glock 23, which is a smaller firearm, also 40 caliber.

19 In this case I was using a Glock 27, also a 40 caliber,
20 which is a sub compact.

21 Q. A sub compact 40 caliber gun, right?

22 A. Correct.

23 Q. Now, I -- the reason I was wondering about three, I
24 thought they issue a long gun, do they not?

25 A. A rifle, is that what you mean?

1 Q. Yes.

2 A. Yes.

3 Q. Okay.

4 A. An AR 15.

5 Q. All right. So, in speaking of the Glock 27,
6 because that's what you had this particular evening, right?

7 A. Correct.

8 Q. And the way that you carry that gun -- that
9 magazine holds ten rounds, right?

10 A. Yes, sir.

11 Q. And you can also put one in the chamber?

12 A. Yes, sir.

13 Q. So, it's ten plus one for a total of eleven
14 possible shots, correct?

15 A. Correct.

16 Q. And is that how you were carrying it this
17 particular time?

18 A. Yes.

19 Q. As a matter of fact, is that how you always carry
20 it?

21 A. Yes, sir.

22 Q. Because that renders the firearm easily operable,
23 you don't have to rack the slide, you're ready to go, right?

24 A. Correct.

25

1 Q. So, when it comes to -- when it comes to how you're
2 trained to shoot as a law enforcement officer you're
3 certainly trained to eliminate the threat, correct?

4 A. Yes, sir.

5 Q. And that could certainly mean wounding somebody?

6 A. Correct.

7 Q. And it could certainly mean killing somebody?

8 A. That is correct.

9 Q. And the reason for that is for safety reasons for
10 law enforcement, right?

11 A. Correct.

12 Q. I mean, if you just wound somebody they could shoot
13 back, correct?

14 A. That is correct.

15 Q. So, you're never intentionally trying to shoot to
16 wound someone, that would be way against your protocol and
17 training, right?

18 A. Yes, sir.

19 Q. Okay. Now, on this particular night, going back to
20 August 20th of '15, was one of -- one of these prostitution
21 details was happening, kind of like what you told us about,
22 at a Quality Inn, correct?

23 A. Yes, sir.

24

25

1 Q. So, when did you get to the operation? When did it
2 start?

3 A. Somewhere in the early evening hours, probably
4 5:30, close to 6:00.

5 Q. Okay. And was it one of these situations where you
6 had three rooms?

7 A. We had two. One adjacent to the other one and one
8 for booking, correct. So, three rooms.

9 Q. Three all together, just like you told us?

10 A. Yes, sir.

11 Q. Okay. And your role that night was to be a john as
12 you told us?

13 A. Yes, sir.

14 Q. And you were making contact with -- you already
15 told us you made contact with Mary, who you now know to be
16 Mary Ellis. How did -- what was the substance of that
17 contact? Was it only via text?

18 A. It was all via text.

19 Q. You never spoke to her on the phone?

20 A. I did not.

21 Q. In -- during your text conversations did she ever
22 mention anything about her uncle?

23 A. No.

24

25

1 Q. Did you have any reason to believe that you were
2 texting with anybody but Mary Ellis?

3 A. Yeah, no other reason.

4 Q. Okay. I mean no other person.

5 A. No other person. Sorry.

6 Q. And so there was at least in your mind and what you
7 understood this was simply between you as the undercover john
8 and Ms. Ellis?

9 A. Yes, sir.

10 Q. Now, did she mention anything -- ultimately did you
11 guys decide on a price for a sex act?

12 A. Correct.

13 Q. And did you -- and you initially asked I think --
14 well, is it fair to say that you sent a text saying what time
15 can you come here?

16 A. That is correct. I don't recall exactly what was
17 said on text.

18 Q. No problem sir. I'll tell you what, I thought you
19 might say that because I know it's been three years. Would
20 looking at the text help refresh your recollection?

21 A. Yes, sir.

22 Q. Okay. I'm sorry, this isn't a complete version, so
23 it wouldn't be relevant to what we're talking about. So,
24 I'll just ask you from your recollection. You did initially
25 ask her to come to the -- you said what -- you know, the idea

1 was can -- you know, what time can you get here, right?

2 A. Correct.

3 Q. And then she said something to you like you come
4 here babe, right?

5 A. Yes, sir.

6 Q. So, simple -- it was a simple exchange of like
7 those two texts when it was decided where the -- where the
8 solicitation was going to take place, right?

9 A. Correct.

10 Q. So, it's not as if you implored her to, you know,
11 come to the hotel, it was really just kind of simple, right?

12 A. It was a conversation that lasted maybe a couple
13 hours.

14 Q. Sure.

15 A. The main goal was to get the individual to come to
16 the hotel.

17 Q. But in thinking about -- right. I mean, think you
18 guys texted for over three hours, sound about right, or right
19 around there?

20 A. Right around that time sir.

21 Q. Because you didn't get to the house until like
22 9:30, right?

23 A. Yes, sir.

24

25

1 Q. And you said you started the -- you got to the
2 Quality Inn at like 5:30, right?

3 A. That is correct.

4 Q. So, in just thinking about the time when it was
5 decided this was going to take place at her residence, does
6 it resonate with you that the text was simply her saying
7 something like you come here babe?

8 A. Yes, sir.

9 Q. Okay. And then there was no further discussion,
10 correct?

11 A. No, sir.

12 Q. The only discussion after that was, you know, what
13 time, all that stuff?

14 A. Arrangements, what time and --

15 Q. Right, exactly. Not the location?

16 A. Yes, sir.

17 Q. Okay. Now, when you were -- what was -- when you
18 spoke with Agent Roberts about her did he tell you -- he --
19 without telling me exactly what he said, did you get the
20 impression that there had been a tip about this person from
21 another law enforcement officer?

22 A. Yes, sir.

23 Q. And you already told us that Roberts indicated to
24 you he had met with Ms. Ellis before?

25 A. That is correct.

1 Q. And there was suggestion that this would have been
2 good training for you, right?

3 A. Yes, sir.

4 Q. And that would be partly because we kind of know
5 how Ms. Ellis acts, right?

6 A. Yes, sir.

7 Q. And that she doesn't resist?

8 A. I don't know exactly what she does or she doesn't,
9 but I know they had previous encounters with her.

10 Q. Well, there are -- at least they're aware of her
11 actions, which is why they put her on you, right?

12 A. Correct.

13 Q. It's not like they were trying to put you into a
14 trap --

15 A. Yes, sir.

16 Q. (Cont'd) is what I'm saying. And so you indicated
17 to me earlier that your whole goal was to try to get her to
18 solicit so that way the probable cause was made?

19 A. Correct.

20 Q. You mentioned something about wanting to have three
21 rooms to make sure that the environment -- it's a controlled
22 environment, right?

23 A. Yes, sir.

24

25

1 Q. And so it's generally BCSO policy to conduct these
2 sorts of operations inside of an oper -- of a situation they
3 can control?

4 A. Correct.

5 Q. To make sure that things don't get out of hand or
6 no one gets hurt, right?

7 A. That is correct.

8 Q. And that's why often these solicitation things go
9 on in hotels, you have the rooms, right?

10 A. Correct.

11 Q. Sometimes solicitations though with SIU can happen
12 on the street level too, right?

13 A. Yes, sir.

14 Q. But generally when that happens it's you're an
15 undercover and you see someone standing on the street corner
16 obviously as a prostitute, right?

17 A. Yes, sir.

18 Q. And you may very well go up to that person and act
19 like you want something and arrest is taken?

20 A. Correct.

21 Q. Okay. But you would agree that it would be
22 extremely rare for a solicitation event to go down the way at
23 someone's house the way this one did, right?

24 A. Correct.

25

1 Q. Now, you're also aware of how progressive crimes
2 work, right?

3 A. Yes, sir.

4 Q. And solicitation's one of those that can -- is
5 enhanceable?

6 A. Yes, sir.

7 Q. So, if Ms. Ellis for example were arrested on this,
8 I don't know, the third time, third conviction, it could be a
9 felony, right?

10 A. Correct.

11 Q. So, ultimately you decided to go meet with her at
12 where ever she said at her house, right?

13 A. Yes, sir.

14 Q. And how is it decided who was going to be assembled
15 on the team to go with you?

16 A. We just -- it was the three of us. We pretty much
17 just said, okay, I'm going to go and get her to come out of
18 the house and Agent Roberts and Agent Smith were going to
19 take her into custody.

20 Q. Okay. And Agent Roberts and Agent Smith -- Agent
21 Roberts had been on the SIU for longer than any of the three
22 of you, right?

23 A. Yes, sir.

24

25

1 Q. And so -- but Agent Smith had been there for a
2 while as well?

3 A. Yes, sir.

4 Q. So, it just sort of happened that -- because you
5 were doing this whole thing with Agent Roberts in the first
6 place, right? Agent Smith wasn't really part of that, the
7 texting and all that earlier in the day.

8 A. What do you mean earlier in the day?

9 Q. Well, I guess what I'm wondering is when you were
10 initially making the contact with Ms. Ellis and all that
11 stuff you were talking about how you had conversations with
12 Agent Roberts about her previous history, right?

13 A. We were all in the same room.

14 Q. Oh, okay. So -- all right. And so then ultimately
15 somehow it was decided it was going to be the three of you
16 that were going to go conduct the operation?

17 A. Yes, sir.

18 Q. And why was it determined that you were going to be
19 the john that night?

20 A. It just -- I was the new guy, I needed to have
21 experience.

22 Q. Okay. So, because you were the new guy? It --
23 that seems to make sense, right? That your -- you know, you
24 had the new face, correct?

25 A. Yes, sir.

1 Q. That she wouldn't have recognized who you were?

2 A. Yes, sir.

3 Q. And so that's -- was your impression that that's
4 the main reason why let's put Agent Stead on this one?

5 A. I didn't think of it, I just --

6 Q. Okay.

7 A. (Cont'd) did my job.

8 Q. I understand. So, I suppose the whole idea was to
9 trick Ms. Ellis into thinking you were actually a john that
10 truly wanted sex, right?

11 A. Yes, sir.

12 Q. And that black badge that we were just looking at,
13 is that the same one that you had under your shirt this
14 particular evening?

15 A. The gold badge?

16 Q. I'm sorry, the gold -- yes, yes. The gold and
17 black badge, the one -- the gold badge on the black
18 background.

19 A. Yes, sir.

20 Q. Is that the same one?

21 A. Yes, sir.

22 Q. And you had that concealed under your shirt,
23 correct?

24 A. Yes, sir.

25

1 Q. So, on this night you were the one who ultimately
2 walked up to the door to make the initial contact, right?

3 A. I did.

4 Q. And it would have been concealed under your shirt
5 at that time?

6 A. It was.

7 Q. And it actually would have been concealed even at
8 the moment that the door was open, correct?

9 A. It was, yes.

10 Q. Okay. Now, in your mind when is the crime of
11 solicitation actually completed?

12 A. We --

13 Q. For the -- in the context of an SIU, you know, text
14 messages or meetings, things like that.

15 A. When we agree to a sex act or an exchange of money
16 or anything else.

17 Q. So, is it when the sex act is agreed to or when
18 there's an agreed sex act and an exchange of money?

19 A. A sex act in exchange for money or --

20 Q. Oh, in exchange for money?

21 A. Yes, sir. Or money or any other goods.

22 Q. I understand. I don't mean to misrepresent what
23 you're saying. So, it's when a sex act is agreed to for some
24 goods --

25 A. Correct.

1 Q. (Cont'd) of some sort?

2 A. Correct.

3 Q. So, there's not -- in your mind there doesn't
4 necessarily need to be an exchange of actual money or any
5 physical, you know, visible money, right?

6 A. Correct.

7 Q. It's just when the deed is agreed to?

8 A. Yes, sir.

9 Q. Okay. Now, in this particular case there was a
10 probable cause arrest, right?

11 A. Yes, sir.

12 Q. And there was no warrant?

13 A. No, sir.

14 Q. No one was seeking one or anything like that?

15 A. No, sir.

16 Q. And there was no indication at all in your
17 conversations with Mary Ellis this particular night anything
18 about John Derossett, right?

19 A. No, sir.

20 Q. And there wasn't even an expectation of him being
21 involved in this whatsoever, right?

22 A. No, sir.

23 Q. I mean, the goal was really to go there and arrest
24 her for the solicitation quietly and everything would have
25 been just fine, right?

1 A. Yes, sir.

2 Q. So, the first time you ever learned about John
3 Derossett was once all of this other stuff started happening,
4 correct?

5 A. Yes, sir.

6 Q. Okay, so, I want to talk about what the plan was
7 going to be. You guys met at a CVS before going over there?

8 A. Yes.

9 Q. And you met at a CVS around what, 9:00?

10 A. Approximately I think.

11 Q. Okay. But you had already -- you already told us
12 by the time you got to the house it was 9:30, right?

13 A. I believe so, yes, sir.

14 Q. Okay. And all the while you're sort of texting
15 with Ms. Ellis saying, hey, I'm on the way?

16 A. I'm on the way, or I believe the last text was I'm
17 here.

18 Q. Right, right, all the way up to you finally saying
19 I'm here.

20 A. Yes, sir.

21 Q. And so your hope was really that she would come
22 outside and that you would -- that your group would take her
23 into custody, right?

24 A. Correct.

25

1 Q. And in your planning the idea was that you would be
2 the john and the other two actually had police markings, they
3 would be the ones that would take her down, correct?

4 A. Correct.

5 Q. So, I'm going to show you what has been previously
6 marked as Defendant's Exhibits -- well, Defendant's Exhibit
7 AG, and Defendant's Exhibit AF. Do you recognize these
8 pictures?

9 A. Yes, sir.

10 Q. Okay. What do you recognize them to be?

11 A. Agent Roberts.

12 Q. And was Agent Roberts wearing his BCSO issued
13 tactical vest?

14 A. Correct.

15 Q. And was this -- and he's also wearing jeans and a
16 hat, right?

17 A. Jeans and a hat, correct.

18 Q. And this is -- was this the outfit he was wearing
19 that particular night?

20 A. Yes, sir.

21 Q. Any changes to these as far as you know?

22 A. No, sir.

23 MR. PANELLA: At this time I'd like to admit these
24 both. It would be Defendant's AG and Defendant's AF
25 into evidence

1 MR. SCHEINER: No objection.

2 THE COURT: Okay. All right, thank you. So, would
3 AG be 22 Madam Clerk, and AF is 23?

4 THE CLERK: Correct?

5 THE COURT: Yes? All right, thank you. And Mr.
6 Panella, are those photographs of Agent Roberts?

7 MR. PANELLA: These are photographs of Agent
8 Roberts.

9 THE COURT: Okay, thanks.

10 MR. PANELLA: May I publish?

11 THE COURT: Certainly.

12 BY MR. PANELLA:

13 Q. Okay, so, what we're looking at -- and I'll fix
14 this again. So, this is the outfit that the take down team
15 was going to be wearing, correct?

16 A. Yes, sir.

17 Q. And Agent Casey Smith was also wearing this same
18 tact vest, just sized for him, correct?

19 A. Yes, sir.

20 Q. Okay. I don't -- he was also -- other than that he
21 wasn't wearing blue jeans, he was wearing shorts, right?

22 A. Correct.

23 Q. Okay. But as far as the vest is concerned this is
24 what it looked like?

25 A. Yes.

1 Q. And it's a black vest, right?

2 A. Correct.

3 Q. With yellow sheriff lettering?

4 A. Yes.

5 Q. Okay. And the same goes for the back. This was
6 the other one, same thing. It's a black tactical vest with
7 yellow sheriff lettering?

8 A. Correct.

9 Q. Okay, thank you sir. All right, so, when we talked
10 about your job being too -- I'm sorry, let me move that.
11 Your job was actually to go there, pretend to be the john,
12 and get her to come out of the house, right?

13 A. Correct.

14 Q. And it wasn't to force her out, right?

15 A. Yes, sir.

16 Q. It was not to force her out, correct?

17 A. What do you mean force her out?

18 Q. Well, I mean, to get her to come out of the house
19 and then the other agents were going to take her down?

20 A. Yes, sir.

21 Q. Kind of like how the operation goes in the hotel.
22 You've got the john, and then you've got two other ag -- you
23 know, a take down team, right?

24 A. Yes, sir.

25

1 Q. Okay. So, when you were -- and when you were
2 discussing the plan at the CVS there wasn't any discussion of
3 any other potential occupants of the house, right?

4 A. There was not.

5 Q. Now, when you were going to meet Ms. Ellis what
6 were you driving?

7 A. I was driving a department issued Mazda 6, four
8 door, black in color.

9 Q. Okay. Now, that is -- you said it's department
10 issued, but it's also an undercover car, right?

11 A. Yes, sir.

12 Q. Is it even equipped with lights or anything?

13 A. That has lights and sirens.

14 Q. Okay, but they're not visible.

15 A. They're not.

16 Q. Okay. And it's a Mazda -- you said it's a Mazda 6?

17 A. Yes, sir.

18 Q. Okay. And maybe until -- maybe Agent Stead I just
19 want to be able to see you, but I might just leave this up so
20 I don't keep being distracted. I'm showing the witness
21 Defendant's Exhibit 17 that's already been admitted into
22 evidence. Okay, sir, is that the vehicle?

23 A. Yes, sir.

24

25

1 Q. All right. And I just want to help orient the
2 Judge as to where we are. I'll also show you this one. Is
3 this -- this is going to be Defendant's Exhibit 16.

4 And I know that's a dark picture, but if you could look
5 closely and let us know that's the same -- if that's the same
6 vehicle too?

7 A. Yes, sir.

8 Q. Okay, all right. Now, we had discussed previously
9 that the -- well, this picture is obviously taken -- help us
10 understand where your vehicle is in relation to the house.

11 A. The house is right here. Right here I'm across
12 from the driveway, across the street.

13 Q. Yes, okay. So, that vehicle may -- if they were
14 looking for it may have been visible from the front door?

15 A. Possibly.

16 Q. Okay. And again, you can tell from this particular
17 picture that there's a flash and stuff like that going on,
18 right? All the reflections.

19 (No response.)

20 Q. I don't know if you've seen this picture before,
21 that's why I'm asking.

22 A. I have not.

23 Q. Okay. If you don't know, you don't know. But in
24 any event this is the vehicle we're talking about?

25 A. Yes, sir.

1 Q. Now, what did Agent Smith and Agent Roberts ride
2 in?

3 A. I believe it was a Chevy Silverado.

4 Q. And was that one marked?

5 A. Unmarked vehicle.

6 Q. So, they were both unmarked?

7 A. Yes, sir.

8 Q. All right. And it was decided that -- where did
9 they end up parking?

10 A. I believe that parked on Alcazar, somewhere on
11 Alcazar.

12 Q. I'm going to show you this, which is Defendant's
13 Exhibit Number 2. This is an aerial photo agency. Would
14 you -- do you recognize the house that's depicted in this
15 photo?

16 A. Yes, sir.

17 Q. Okay. And can you show us where Alcazar is?

18 A. It's right here on the west side of --

19 Q. Okay, so that one's Alcazar, and then what's the
20 other street in front?

21 A. Covina.

22 Q. Okay. So, the pick-up truck you said was parked on
23 Alcazar?

24 A. Yes, sir.

25

1 Q. And in this picture is that -- where would it have
2 been?

3 A. I believe it was somewhere on this side right here.

4 Q. All right. So, the pick-up truck would have
5 been -- and for that matter Agent Smith and Agent Roberts
6 would have been purposely out of view of the front door of
7 the house, correct?

8 A. Correct.

9 Q. And your Mazda 6, again, was parked where?

10 A. On Covina across from the driveway from the house.

11 Q. All right. And when you got there you actually
12 noticed two cars in the driveway, right?

13 A. Yes, sir.

14 Q. And so what did you do next? Was there
15 something -- there was -- one of the cars didn't have running
16 lights on it or something like that?

17 A. It was like an older model BMW, the lights were on.
18 It was kind odd that the dome light was on.

19 Q. Sure. And Agent Roberts told you to go check it
20 out, right?

21 A. I don't recall if he told me to check it out, but I
22 noticed it when I pulled up to Covina. It was kind of odd.
23 I didn't know if somebody was waiting inside a vehicle or
24 not.

25

1 Q. Okay. But no one was waiting inside the vehicle,
2 right?

3 A. No, sir.

4 Q. And to this day we have no idea why those lights
5 were on, right?

6 A. No, sir.

7 Q. Now, at this point you did text Ms. Ellis again
8 letting her know you were here?

9 A. Yes, sir.

10 Q. And she indicated come inside?

11 A. She says come in, yes, sir.

12 Q. Okay. So then you started walking up the driveway,
13 right?

14 A. To the side of the pick-up I believe.

15 Q. I'm going to show you Defendant's Exhibit 4. This
16 one was taken that night, so it's a little closer to what
17 we're talking about.

18 Okay, so, if you can -- and I'm sorry sir, if you could
19 help us understand where -- how you made your approach.

20 A. When I parked on Covina I noticed the light, the
21 dome light was on. First thing I did -- I didn't know if I
22 was getting set up or anything like that to that effect.

23 I went out on the east side of the BMW, which would be
24 away from the Chevy pick-up, walked down, make sure there was
25 nobody inside the vehicle that would ambush me if I walked on

1 the other side.

2 Q. Right.

3 A. Once I did that I went around and walked back on
4 the road, back to the side of the Chevy towards the front of
5 the house.

6 Q. Okay. And at this point where -- Agent Roberts and
7 Agent Stead were still out of view, right?

8 A. As I began --

9 Q. I'm sorry, Agent Roberts and Agent Smith.

10 A. As I began walking to the front of the house they
11 were in the corner to the house on the west side of Alcazar.

12 Q. Oh, over the corner -- yes.

13 A. The corner of the house right there.

14 Q. Is this ac -- where I'm pointing, is that accurate?

15 A. No, sir.

16 Q. Okay.

17 A. Get closer to the corner of the house. Right
18 there.

19 Q. Okay. So, they would have been out of view of the
20 front door?

21 A. Yes, sir.

22 Q. Now, this house has a porch, right?

23 A. Yes, sir.

24

25

1 Q. And we've, you know, seen a lot of it. It's not
2 like a screened in porch though, right?

3 A. No, sir.

4 Q. And would you say that it's got like a small slab,
5 like a landing?

6 A. I believe so, yes, sir.

7 Q. And it's flat with the yard, correct?

8 A. I think it's the -- if you can look at the picture
9 it's --

10 Q. Sure.

11 A. (Cont'd) a pad and then there's a sidewalk, a
12 walkway that goes to the driveway.

13 Q. Exactly. I'm just saying there isn't a step or
14 something that you have to go down in order to get to --

15 A. No, it's all flat with the --

16 Q. Right, okay. So, from the -- underneath this
17 covered porch area out to the sidewalk that goes and the
18 yard, it's all one level?

19 A. Yes, sir.

20 Q. Okay. And again, we're saying that you're
21 approaching from I suppose this direction?

22 A. Yes, sir.

23 Q. And Agent Smith and Agent Stead are sort of over
24 here?

25 A. Agent Roberts and Agent Smith, yes, sir.

1 Q. I'm sorry, I keep doing that. Agent Roberts and
2 Agent Smith are over here. Okay sir. Now, at this point
3 your only goal was really to take her into custody, right?

4 A. Yes, sir.

5 Q. I mean, you weren't there to, you know, have a
6 conversation, right?

7 A. No, sir.

8 Q. The crime had already been committed through the
9 text messages.

10 A. Yes, sir.

11 Q. So, you weren't trying to elicit anything else from
12 her?

13 A. No, sir.

14 Q. And you certainly weren't going to go into the
15 house.

16 A. No, sir.

17 Q. And it would have actually been dangerous to go in
18 the house potentially, right?

19 A. Yes, sir.

20 Q. And actually, you didn't have a warrant so you
21 shouldn't have gone in the house, right?

22 A. Correct.

23 Q. Because it was a misdemeanor.

24 A. Yes, sir.

25

1 Q. And so you walk up to the door and there's a front
2 door and a screen door that are right next to each other,
3 right?

4 A. Correct.

5 Q. It's -- we are talking -- there's not like a full
6 screen, it's one of these if this was the door right here
7 there'd be a screen door right in front of it?

8 A. Yes, sir.

9 Q. And the screen door opens out?

10 A. Yes, sir.

11 Q. And the front door opens in?

12 A. Yes, sir.

13 Q. And your testimony -- I'm sorry, and you had
14 previously talked about you opened this screen door, right?

15 A. Yes, sir.

16 Q. And did you hold it open with your foot?

17 MR. SCHEINER: Objection, leading Judge.

18 MR. PANELLA: It's --

19 MR. SCHEINER: I know we're trying to get through
20 it

21 THE COURT: Sustained. I know.

22 MR. PANELLA: Your Honor, it's a -- I have a --

23 THE COURT: How did -- what did you do next?

24 What did you do next is always a good question.
25

1 MR. PANELLA: I would like to. This is going to be
2 important and it's a State witness, and I cite you to
3 90.612. It's not only a State witness, it's a witness
4 identified with the State. This is exactly why that
5 rule is there.

6 THE COURT: But he's not been proven to be a
7 hostile witness at this point. So, please phrase your
8 questions according to direct examination rules. Thank
9 you. What happened next? He's not been hostile in any
10 way.

11 MR. PANELLA: No, no, no. It -- I understand Your
12 Honor.

13 BY MR. PANELLA:

14 Q. So, you -- all right, so then it's the case -- is
15 it the case she opened the door?

16 A. I knocked at the door first --

17 Q. Oh, I'm sorry. So, you opened the screen door you
18 told us?

19 A. I opened the screen --

20 THE COURT: Mr. Panella, this is direct
21 examination. Could you please phrase your questions
22 accordingly?

23 MR. PANELLA: Yes, Your Honor. May we approach
24 please?

25

1 THE COURT: They're not just yes or no questions.
2 So, she opened the door? Yes or no. I mean, that's
3 the --

4 (Whereupon, a side bar discussion was held outside
5 the hearing of the gallery.)

6 MR. PANELLA: This is critical Judge, and I want to
7 cite you to the rule because he doesn't need to be
8 declared a hostile witness under this circumstance.

9 THE COURT: He's not hostile.

10 MR. PANELLA: And he doesn't need to be. The fact
11 of the matter is he's a State witness. Even the --

12 THE COURT: What rule are you --

13 MR. PANELLA: The rule says -- 90.612 says even on
14 direct examination, doesn't -- he doesn't need to be
15 declared hostile, if the witness is a witness identified
16 with the adverse party, or if he is -- you know, even if
17 he's just identified with an adverse party I'm allowed
18 to ask leading questions and --

19 THE COURT: This is kind of like going into --
20 nevermind.

21 MR. PANELLA: But not only that, not only is he a
22 State witness, he's listed as a State victim Judge, so.

23 THE COURT: I understand, I understand, but does
24 that mean the rules of criminal procedure don't apply to
25 him?

1 MR. PANELLA: No, no, no. I believe that this is
2 the correct inter --

3 THE COURT: Or is he a special --

4 MR. PANELLA: This is the correct interpretation of
5 the rule --

6 THE COURT: (Cont'd) rules of criminal procedure.
7 Okay.

8 MR. PANELLA: (Cont'd) because of his special
9 designation.

10 THE COURT: I mean, if he has special rules then by
11 all means I'm happy to look at them and --

12 MR. PANELLA: Our position --

13 THE COURT: (Cont'd) and learn them.

14 MR. PANELLA: Sure. Our position only is that he
15 does, and the rule will show you he doesn't need to be
16 declared hostile, and I don't mean that he is in any
17 way.

18 THE COURT: Okay. No, I mean, I don't think he's
19 been. He hasn't been. I mean, I -- we've all seen
20 them. Okay, let's see -- all right, here we go.

21 MR. PANELLA: And I'm --

22 THE COURT: 9.612, okay. Emergency --

23 MR. PANELLA: And I'm looking at subsection three
24 Judge.

25 THE COURT: No. Excuse me, did you say --

1 MR. PANELLA: 90.612

2 THE COURT: 90.

3 MR. PANELLA: I'm sorry Judge.

4 THE COURT: Okay, yes, the evidence code -- yeah.
5 Okay, (1) (b) springs out at me.

6 MR. PANELLA: Right. So there's that too, but I'm
7 referring to (3), which I think is the most accurate.
8 And I've never seen a case where this fits more.

9 So, it's a hostile witness, an adverse party, or a
10 witness identified with an adverse party. Certainly I'm
11 not going to declare this witness hostile.

12 He doesn't need to be, but he does fit
13 subsection -- the two other prongs, especially the
14 third. And of course he's listed by the State Judge.

15 THE COURT: All right, well, it says if he's
16 identified with the adverse party. When a party calls a
17 hostile witness, an adverse party -- he's listed as a
18 victim, and so I suppose he would be adverse to --

19 MR. PANELLA: Or a witness identified with an
20 adverse party.

21 THE COURT: Or a witness identified with an
22 adverse, which that he is.

23 MR. PANELLA: And he's been a State witness since
24 the first day.

25

1 MR. SCHEINER: Well, he's on their witness list as
2 well Judge.

3 THE COURT: Right.

4 MR. SCHEINER: And he -- I agree he's a law
5 enforcement officer, I agree he's uniquely identified
6 with the State. He is not exclusively in our control.

7 He's been subpoenaed to be here by Defense as their
8 witness. These are critical aspects of his testimony.
9 He's been leading throughout and I'm objecting now
10 because this is going to be critical aspects of his
11 testimony and they should be the words of the witness,
12 not the words of the attorney.

13 MR. PANELLA: And the State has every ability --

14 THE COURT: And you know, Mr. Panella --
15 (Multiple speakers.)

16 THE COURT: Okay, I'm reading --

17 MR. SCHEINER: And that's my objection, and it says
18 may.

19 THE COURT: Okay.

20 MR. SCHEINER: And I think that --

21 MR. PANELLA: And obviously the mode and -- we're
22 in a strange situation right now with this particular
23 hearing Judge.

24 No one can say that he's not an adverse party or
25 identified with an adverse party. Of course he is.

1 He's the definition of that.

2 THE COURT: Okay, Mr. Panella, I understand. I
3 understand your position, I understand Mr. Scheiner's
4 objection, but reading this -- and this is the critical,
5 this -- these are the critical massive questions.

6 So -- and it is only appropriate for the words to
7 come from the witnesses mouth. Because what you say is
8 not evidence.

9 If I go back and I want to make a credibility
10 finding what am I going to say? Well, the witness said,
11 yes, yes, yes, no, yes, yes, no, no, yes, no. I mean,

12 MR. PANELLA: Well --

13 THE COURT: What's the evidence? What's the
14 evidence. The question is not the evidence. The --
15 whatever comes out of the witnesses mouth.

16 I'm very careful to write what's come out of -- my
17 notes are derived from what comes out of the witnesses
18 mouth, not what comes out of counsel's mouth. No
19 offense.

20 I understand that you spend time on your questions.
21 However, since this is critical testimony let's let him
22 tell it, and then you can go back and if you feel like
23 you need to tease out something you're welcome to do
24 that, as is Mr. Scheiner, but please from the beginning
25 to the end let him say what happened next, what happened

1 next, what happened next.

2 Are we trying to get to the truth or are we trying
3 to spin whatever he has to say? That's my question to
4 you.

5 MR. PANELLA: I understand. I'm not --

6 THE COURT: And I can give it the weight it
7 deserves if you choose the latter of it.

8 MR. PANELLA: Your Honor, I would just also --

9 THE COURT: Okay.

10 MR. PANELLA: I would also say --

11 THE COURT: I will -- okay.

12 MR. PANELLA: Sure. I would just ask, I think what
13 happened next is inappropriate. There's certain --

14 THE COURT: It's totally appropriate.

15 MR. PANELLA: Well, there's certain specific
16 questions I need to ask him. Obviously, I don't know
17 what happened. It's just not like that --

18 THE COURT: I understand. If you don't hear, if
19 you don't clarify you can say repeat that please, but
20 what I'm saying is please do not use leading questions
21 during this most critical part because that's not
22 helping me as a fact finder.

23 And if you want to assist me in finding facts,
24 which I think you do --

25 MR. PANELLA: Of course.

1 THE COURT: I think that's the purpose of the
2 hearing.

3 MR. PANELLA: Sure.

4 THE COURT: Let's let the facts be found please,
5 because your questions are not evidence. I think I've
6 made my ruling abundantly clear. Thank you.

7 MR. WEST: May we confer for just a moment?

8 THE COURT: You may, but please let's move it
9 along.

10 MR. PANELLA: I'm trying to.

11 THE COURT: I mean, we're ticking up to 6:00 now,
12 okay.

13 MR. WEST: That's fine.

14 THE COURT: Come on guys, we got to get it going.

15 MR. WEST: If we could just have a minute.

16 THE COURT: We got to get it going.

17 MR. PANELLA: I'm trying Judge.

18 THE COURT: Okay.

19 MR. WEST: Your Honor, just a point of order here.

20 THE COURT: Em-hmm.

21 MR. WEST: Are the bench conferences --

22 THE COURT: Would you like --

23 MR. WEST: It's a question. Are the bench
24 conferences stenographically recorded or recorded in
25 some way?

1 THE COURT: I believe so, yes. Yes, it's my
2 understanding that they are.

3 MR. WEST: So, do we --

4 THE COURT: Yes.

5 MR. WEST: Do we know that for sure?

6 THE COURT: Yes, we do, we do know that for certain
7 because -- yes, we do know that for certain.

8 MR. PANELLA: My other concern I'm happy for
9 everyone to hear is I'm happy -- I understand the
10 Judge's ruling. Obviously I have a deposition, so I may
11 need to refer back to that.

12 THE COURT: That's fine, that's fine, that's fine.

13 MR. PANELLA: That's all, that's the only reason.

14 THE COURT: Right. Let it come out and then you
15 can tease it.

16 (Whereupon, the following was had in open court.)

17 MR. PANELLA: Thank you Judge. Sorry about that
18 Agent Stead.

19 BY MR. PANELLA:

20 Q. Do you remember giving a deposition in this case?

21 A. Yes, sir.

22 Q. And it was a sworn deposition?

23 A. Yes, sir.

24

25

1 Q. And also, do you remember giving another sworn
2 statement after the incident, about four days later?

3 A. Yes, sir.

4 Q. Okay. So, I think where we were was you had
5 testified that you opened, the screen door, right?

6 A. Yes, sir.

7 Q. And what did you do next?

8 A. I knocked on the front door.

9 Q. And was the door opened?

10 A. It was not.

11 Q. Okay. What happened next?

12 A. The door opened and Mary Ellis was at the door and
13 said come in.

14 Q. Okay. So, was Mary Ellis on the inside of the door
15 frame?

16 A. The threshold of the door, yes, sir.

17 Q. Threshold of the door, right. So if like -- if
18 this black thing is the door threshold was she on the inside
19 of it?

20 A. Yes, sir.

21 Q. And were you on the outside of it?

22 A. Yes, sir.

23 Q. And then at that point did she ask you to come in?

24 A. She said, yes, come in.
25

1 Q. And she -- did she begin to turn away from you?

2 A. She did.

3 Q. And did you then reach in and grab her wrist?

4 A. No, at that time I said, hey, wait a minute. I
5 reached inside my chest to pull my badge out, hold it like
6 that. I said, no, you're under arrest, Sheriff's Office, and
7 I grabbed her wrist.

8 Q. Okay. And as you were just testifying -- so,
9 you -- when she turned away you reached in and grabbed
10 your -- the badge we talked about out from -- previously from
11 under your shirt, right?

12 A. Yes, sir.

13 Q. And at that point she -- you grabbed her wrist as
14 well?

15 A. Yes, sir.

16 Q. And then you pulled her out of the house?

17 A. Yes, sir.

18 Q. Is it the case that she then began screaming?

19 A. Yes, sir.

20 Q. And she was screaming someone's name, correct?

21 A. From my recollection she said John, John two or
22 three times.

23 Q. Okay. And did you let go of her?

24 A. I did not.

25

1 Q. And did you continue to pull her out of the house?

2 A. At that time we were in the cement pad. We tried
3 to secure her. By that time Agent Roberts and Agent Smith
4 came around to assist me in handcuffing her.

5 Q. Okay. So, in looking at this -- because it's
6 obviously -- I should have asked in the first place. Is this
7 the house that we're talking about?

8 A. Yes, sir.

9 Q. And this is obviously -- when this happened was at
10 night time, right?

11 A. Yes, sir.

12 Q. And obviously this is pictures from the daytime.

13 A. Yes, sir.

14 Q. But the initial struggle, was it right here in the
15 landing?

16 A. Yes, sir.

17 Q. And then you said that eventually Agent Roberts
18 came over to assist you?

19 A. Yes, sir.

20 Q. All right. And then at that point was she still --
21 is it fair to say she was still screaming?

22 A. She was resisting, yes, sir.

23 Q. Okay. And was she still screaming the John, John,
24 or the whatever you remember?

25 A. Yes, sir.

1 Q. Throughout this struggle?

2 A. I only heard two, three times she called for John,
3 John.

4 Q. Okay. Now, when you and Agent -- is it the case
5 then that you and Agent Roberts both had hands on Ms. Ellis?

6 A. Yes.

7 THE COURT: All right, Mr. Panella, the evidence I
8 just got from that was yes.

9 BY MR. PANELLA:

10 Q. Agent Stead, did -- with -- what were you and Agent
11 Roberts doing with Ms. Ellis at that time?

12 A. When I pulled her back to the landing pad Agent
13 Roberts came around saying Mary, stop, stop, Sheriff's
14 Office, come on Mary. And he came around and he took his
15 handcuffs out and we began to secure her.

16 Q. Okay. But did -- was it the case -- okay. Well,
17 then Agent Stead, can you tell us about the situation with
18 the handcuffs, whether they ever ended up getting on Mary?

19 A. I don't recall.

20 Q. So, as you sit here today your testimony is that
21 you don't recall if she was ever handcuffed?

22 A. I don't sir.

23 Q. So, at this point you had already testified that
24 you and Agent Roberts have hands on her?

25 A. Yes, sir.

1 Q. And what was your goal at this point? Were you
2 trying to get her under control?

3 A. To secure her and leave.

4 Q. And was she -- was she still flailing away from
5 you?

6 A. She was resisting, yes, sir.

7 Q. Okay. And you said she called out -- how many
8 times did you say you heard her scream?

9 A. Based on my -- two or three times she called John,
10 John, John.

11 Q. Okay. But the whole time she was struggling with
12 you guys?

13 A. Yes, sir.

14 Q. And would -- is it fair to say that you were
15 pulling her forcefully?

16 A. Yes, sir.

17 Q. And never let go at that point?

18 A. No, sir.

19 Q. Eventually how far into the yard did you make it?

20 A. It wasn't in the yard, it was -- everything
21 happened towards the -- under the I guess entrance of the
22 house, that little square area.

23 Q. Sure, but what about into the sidewalk area here,
24 beyond the pillars?

25 A. I don't recall if we made it to that. It was all

1 in that area in front of the house, the entrance.

2 Q. Now, how long did you say you were texting with her
3 before you got there?

4 A. Approximately three hours.

5 Q. And the goal of that text conversation was what?

6 A. To get her to come to the Quality Inn.

7 Q. And to get her to think what about you?

8 A. That I was a john.

9 Q. And there's -- is there anything you could tell me
10 today that would suggest that when she initially opened the
11 door she didn't -- she recognized you as anything but a john?

12 A. No, sir.

13 Q. When the door was open did you -- what did you
14 observe in the house?

15 A. It was like an open area to like a living room
16 area.

17 Q. And did you observe any other people?

18 A. I did not see anything else.

19 Q. Certainly didn't see anything about John Derossett,
20 right?

21 A. No, sir.

22 Q. How fast would you say this whole thing happened?

23 A. Pretty fast.

24

25

1 Q. So, from start to finish -- you know, I know it's
2 tough because there was a tough experience, but from start to
3 finish you'd say -- your definition would be pretty fast?

4 A. It happened fast and I --

5 Q. Sure.

6 A. (Cont'd) can't tell you exactly --

7 Q. So, from the time, for example, that you grabbed
8 her wrist that she started screaming, to the time the shots
9 were all done was also pretty fast.

10 A. Yes, sir.

11 Q. Is it your testimony that Agent Casey Smith was
12 also going hands on with Ms. Ellis?

13 A. No, I believe he wasn't going hands on.

14 Q. Okay. So, it was just you and Agent Roberts at
15 that point, right?

16 A. Yes, sir.

17 Q. And how would you characterize the way that you
18 were pulling Ms. Ellis out of the house?

19 A. I guess with my strength, pulled her out of the
20 house.

21 Q. With force?

22 A. Yes, sir.

23 Q. And you said that you heard her screaming, you
24 said, two or three times?

25 A. Yes, sir.

1 Q. Are you -- is your testimony here today that she
2 wasn't screaming throughout the entire struggle?

3 A. I recall she was screaming, I recall her yell for
4 John, John, John, and everything else happened after that.

5 Q. And we talked about you giving a deposition in this
6 case on November 9, 2017, right?

7 A. Yes, sir.

8 Q. And obviously the State was present?

9 A. Yes, sir.

10 Q. And I was present?

11 A. Yes, sir.

12 Q. And a question was posed to you, and the question
13 was: Is it fair to say that she was pretty much screaming --

14 MR. SCHEINER: Page and line please.

15 MR. PANELLA: I'm sorry.

16 MR. SCHEINER: Page and line.

17 MR. PANELLA: I'm sorry, page 79, line 15.

18 MR. SCHEINER: Thank you.

19 MR. PANELLA: Yes, sir.

20 BY MR. PANELLA:

21 Q. And the question was: Is it fair to say that she
22 was pretty much screaming throughout the entire struggle?

23 And your answer was right.

24 A. Yes, sir.

25

1 Q. Is that still your testimony today?

2 A. Can I recollect my memory please?

3 Q. Yes, sir.

4 A. Yes, sir.

5 Q. Okay. So, I'll ask you again. Was she -- how
6 long -- can you tell us about the duration of her screaming?

7 A. I can't tell you exactly how long she --

8 Q. Was it for the entire time you were struggling with
9 her?

10 A. Yes, sir.

11 Q. And was -- that struggle, who was that with?

12 A. With Mary.

13 Q. And who was Mary struggling with?

14 A. With myself and Agent Roberts.

15 Q. Okay. Did you ultimately get her out of the house?
16 You say --

17 A. Yes, sir.

18 Q. And it was just by the pillars under the landing?

19 A. Yes, sir.

20 Q. And was she trying to get away the whole time?

21 A. She was pulling back.

22 Q. You said in your testimony a moment ago that you
23 were under the overhang of the porch the entire time.

24 A. In that area, yes, sir.

25

1 Q. In that area. Isn't it the case -- well, I'll ask
2 you whether you were under that porch the entire time or
3 whether you actually, while you were involved, came outside
4 of the porch closer to the yard?

5 A. Once we -- the threat was present to us Agent Casey
6 began yelling gun, gun, gun --

7 Q. Oh, before that, way before you see Mr. Derossett
8 coming out. I'm saying when you still have Mary and you're
9 still struggling with her.

10 A. Okay.

11 Q. I want to know if your testimony today is that you
12 never left the porch area or if you did get outside the porch
13 a little bit into the yard?

14 A. I don't recall if we left the yard. It was towards
15 that area to the porch and towards the front of the walkway,
16 sidewalk walking -- leading towards the house.

17 Q. I'll refer you to page 85, line 1, and I will read
18 you the line of questioning that's relevant to what we're
19 talking about right now. Again, from your deposition from
20 November 9th sir.

21 A. Yes, sir.

22 Q. The question was: But was this thing that you were
23 just saying that we weren't all on the -- and you say Agent
24 Smith, when you're referring to that everybody was right
25 inside the square.

1 I'm telling you that, no, we weren't right there
2 crunched up in that little square. Question: Yes, that
3 makes sense to me. Answer: So, it was right here.

4 So, was there and I was right there. Agent Roberts was
5 right here under the covered area and Agent Smith was right
6 behind me in this area.

7 Question: In the front yard? Answer: Towards the
8 front yard. Question: But not under the overhang? Answer:
9 Right.

10 A. Towards the front of the overhang area you got the
11 landing strip walking towards the front --

12 Q. That's all I'm asking. It was outside of the
13 porch, you were just outside the porch, right?

14 A. Yes, sir, the walking -- the cement walkway.

15 Q. Okay.

16 A. Towards the --

17 Q. It wasn't like the three of you were under the --
18 the four of you were under the porch somehow trying to do
19 this? That things pretty small.

20 A. No, sir.

21 Q. Okay. So, you were out -- by then you were outside
22 of the porch, right?

23 A. Yes, sir.

24

25

1 Q. Okay. And would it have been -- in a normal
2 situation would it have been easy for you to take control of
3 her?

4 A. What do you mean?

5 Q. Well, I mean, how -- how big are you?

6 A. I'm 220 pounds.

7 Q. Okay. And she's a smaller woman, right?

8 A. Yes, sir.

9 Q. And so -- and you're a trained law enforcement
10 officer?

11 A. Yes, sir.

12 Q. So, would it -- in a normal take down situation you
13 could certainly subdue somebody like that, right?

14 A. Correct.

15 Q. With the size differential and all.

16 A. Yes, sir.

17 Q. And so -- especially with two of you, you and Agent
18 Rob -- Agent Roberts, is he a big guy too?

19 A. Yes, sir.

20 Q. Okay. But was this situation different for some
21 reason?

22 A. Say that again sir?

23 Q. I'm sorry sir. Was this situation different for
24 some reason?

25 A. She was resisting.

1 Q. So, it was difficult to take her down?

2 A. Yes, sir.

3 Q. And so even with the two of you that was still
4 tough. That's how far -- how hard she was trying to pull
5 away, right?

6 A. She pulled away and we didn't have time to finish
7 our job.

8 Q. But I mean when you were struggling out there in
9 the yard?

10 A. And then everything happened right after that.

11 Q. Right.

12 A. So, we stopped.

13 Q. Right. And by the way, is it -- you don't recall
14 whether you got a handcuff on her?

15 A. I don't recall.

16 Q. Okay. Did you end up having your hand -- well, you
17 didn't even have any handcuffs.

18 A. I didn't have any handcuffs sir.

19 Q. All right. So, I guess my question is would you
20 say that this was easy to subdue her?

21 A. It wasn't at the beginning.

22 Q. Okay. It was not, right?

23 A. It was not.

24

25

1 Q. Now, did she ever say anything to you that would
2 give you the impression that she maybe recognized Agent Smith
3 or Agent Roberts?

4 A. She didn't say anything to that effect.

5 Q. She never said -- did -- my question is did she
6 ever say anything to you that gave you that impression that
7 she might have recognized them?

8 A. No, sir.

9 Q. And so while we're talking about this, you
10 explained a little about where you were. I think we've
11 established you were outside of the overhang here in the --

12 MR. SCHEINER: Objection, mischaracterization of
13 the evidence Judge.

14 MR. PANELLA: I'll read the --

15 THE COURT: Why don't you ask him where he was.
16 Don't read anything, just ask him where he was --

17 MR. SCHEINER: No, we could read it again, because
18 he read it incorrectly.

19 THE COURT: Okay.

20 MR. PANELLA: What?

21 THE COURT: Please --

22 MR. RESPESS: It's Mr. Smith was outside.

23 MR. SCHEINER: It says -- the question -- the
24 answer was I was right here. She was there, and I was
25 right here. Agent Roberts was right under the covered

1 area.

2 Agent Smith was right behind me in this area.

3 Question referring to Agent Smith: In the front yard?

4 Towards the front yard. But not under the overhang?

5 Answer: Right.

6 Agent Smith wasn't under the underhang. He's never
7 testified to that, he never did before, and his
8 question in the depo was we were not all crammed on that
9 4 by 4 square under the patio. So, it's a
10 mischaracterization of the evidence in his testimony.

11 THE COURT: Okay, Mr. Panella, that's why I
12 would --

13 MR. SCHEINER: And improper impeachment.

14 THE COURT: (Cont'd) have preferred that if you
15 want to impeach the witness please let him read what
16 you're about to show him so that he understands.

17 Because maybe the way it's presented in the, you
18 know, written form isn't --

19 MR. PANELLA: No problem Your Honor. Thank you.
20 And the --

21 THE COURT: Might help you to understand, which I
22 think is what you're trying to do.

23 MR. PANELLA: Right, and we're doing this in a
24 strange fashion.

25 THE COURT: I understand.

1 BY MR. PANELLA:

2 Q. Nonetheless Agent Stead, I don't, by the way, mean
3 to mischaracterize what you're saying. So, where are you?
4 At the very furthest point.

5 A. (No verbal response.)

6 MR. PANELLA: May I approach the picture Your
7 Honor?

8 THE COURT: Certainly.

9 BY MR. PANELLA:

10 Q. At the very furthest point from the door that you
11 got where were you?

12 A. I was right there under the overhang.

13 Q. Okay. And the other -- where were the other
14 agents?

15 A. By the time she was out here struggling Agent
16 Roberts and Agent Smith came around telling to Mary to stop.
17 Agent Roberts was right here under the overhang. Agent Smith
18 was right here in front of this area.

19 Q. Okay. All right, thank you sir. So then at this
20 point when the struggle started, I think according to what
21 you're saying, they were still out of sight, right?

22 A. No, once I identified myself as law enforcement,
23 pulled my badge out to her face --

24 Q. Right.

25 A. (Cont'd) Agent Roberts and Agent Smith walked my

1 way and began addressing Mary.

2 Q. But I -- you said she started struggling from the
3 beginning when you grabbed her.

4 A. Yes, sir.

5 Q. Okay. Okay, so, what is the next thing you
6 remember about Agent Smith during this struggle?

7 A. Once I heard gun, gun, gun Agent Roberts and I let
8 go of her. I don't recall where she went. Myself and Agent
9 Smith retreated back towards Alcazar and Covina area, to that
10 side. And as I turned around I saw a muzzle flash of a gun.

11 Q. Okay. And in which direction -- so -- well, let's
12 unpack some of that if you don't mind.

13 A. Yes, sir.

14 Q. Do you know who yelled gun, gun, gun?

15 A. I believe was Agent Smith.

16 Q. Okay. And did you actually see the gun?

17 A. I did not.

18 Q. And your testimony earlier was that this whole
19 thing happened very quickly, correct?

20 A. Yes, sir.

21 Q. And would you still say that?

22 A. Yes, sir.

23 Q. And so once you heard the yell gun, gun, gun you
24 let go of Mary, is that what you just testified?

25 A. Yes, sir.

1 Q. And then took a position in the west side of the
2 yard?

3 A. Towards Alcazar, yes, sir.

4 Q. And do you know where Agent Smith went?

5 A. May I approach the picture Your Honor?

6 THE COURT: Certainly.

7 MR. PANELLA: Go ahead and get a closer view.

8 THE WITNESS: Well, we were here in the corner in
9 front of the house Agent Smith observed the firearm and
10 yelled gun, gun. Agent Roberts retreated this way
11 towards this area, this sidewalk.

12 Myself, I went around this area and Agent Smith
13 went around that area right here. He was to the corner
14 of me and as I turned around there was a muzzle flash
15 that came out. At that point I pulled my firearm and
16 began firing at the door.

17 MR. PANELLA: Yes, sir, thank you.

18 BY MR. PANELLA:

19 Q. And when you saw the muzzle flash how quickly after
20 you saw it did you fire at the muzzle -- return fire?

21 A. As soon as I saw the muzzle flash.

22 Q. So, as soon as you saw the first muzzle flash you
23 shot?

24 A. Yes, sir.
25

1 Q. And you shot at the person shooting that gun?

2 A. I shot towards that area.

3 Q. Yes, sir, that's my question.

4 A. Yes, sir.

5 Q. Is that fair to say?

6 A. Yes, sir.

7 Q. And in which direction was that initial muzzle
8 flash pointed?

9 A. Out the door towards the north.

10 Q. Is -- so, was it pointed in -- was it pointed up or
11 down?

12 A. It was -- when I saw the muzzle flash to me it was
13 about six, seven feet in the air.

14 Q. Okay, so, it was pointed up?

15 A. Yeah, all I saw was the muzzle flash, yes, sir.

16 Q. Okay, but that's important from your prior -- I
17 don't want to go through that whole rigmarole. I want to
18 know from you recollection was that muzzle flash pointed up?

19 A. Yes, sir.

20 Q. So, it wasn't at you, correct?

21 A. Not at that time sir.

22 Q. Is it fair to say that that muzzle flash was in the
23 air?

24 A. Yes, sir.

25

1 Q. Now, how many rounds did you shoot in that
2 direction?

3 A. All my rounds.

4 Q. How many is that?

5 A. 11.

6 Q. Did you have another magazine?

7 A. I did not.

8 Q. Did you eventually try to get another magazine?

9 A. I did.

10 Q. Did you shoot any rounds out of that second
11 magazine?

12 A. I did not.

13 Q. Okay. Did you eventually get that magazine from
14 one of the other agents?

15 A. I didn't have time, I couldn't --

16 Q. Oh, you never retrieved it?

17 A. No, sir.

18 Q. Okay sir. Now, from the time you heard gun, gun,
19 gun did you ever hear anyone else say anything before that
20 first muzzle flash?

21 A. No, sir.

22 Q. You didn't hear Sheriff's Office?

23 A. That was the original contact with Mary.
24
25

1 Q. Right. So, with Mary you heard Agent Roberts say
2 that, right?

3 A. Yes, sir.

4 Q. But by the time you heard John Derossett come
5 outside you never heard that, right?

6 A. We didn't have time to say anything, there was just
7 gunfire.

8 Q. I understand. And by then you said Agent
9 Roberts -- which direction did he go?

10 A. Excuse me Your Honor.

11 Q. If I can make this easier on you sir I will.

12 A. It don't matter.

13 Q. Okay.

14 THE COURT: No, I can see it this way --

15 MR. PANELLA: Okay, great.

16 THE COURT: (Cont'd) if he stands up. I appreciate
17 it.

18 THE WITNESS: We retreated first to this area right
19 here.

20 BY MR. PANELLA:

21 Q. You and Agent Smith did?

22 A. Yes, sir.

23 Q. And Agent Roberts was?

24 A. Towards that area over here.
25

1 Q. Okay. Yes, sir, thank you. So, you never heard
2 Agent Smith say that or anything, right? Nothing about
3 Sheriff's Office?

4 A. Not when the gunfire was going on.

5 Q. Okay. What was your goal at this point? And
6 I'm -- what was your goal when you were shooting?

7 A. To eliminate the threat.

8 Q. Kind of like what we talked about earlier?

9 A. Yes, sir.

10 Q. And so the idea would have been to kill him if you
11 could, right?

12 A. Yes, sir.

13 Q. And so do you know if you shot John Derossett?

14 A. No, sir.

15 Q. You don't know or you didn't --

16 A. I believe it wasn't me.

17 Q. Okay. Eventually did you understand that Agent
18 Smith was hit?

19 A. Yes, sir.

20 Q. And I'm sorry to make you do this again. We'll --

21 A. It's all right.

22 Q. I'll keep you up there for a little bit. Hopefully
23 you won't have to do it. Where was Agent Smith when you
24 realized he was hit?

25 A. Around that area right here.

1 Q. Okay. Around this area?

2 A. Right here.

3 Q. Okay. And what did you do to assist him?

4 A. Well, the gunfire was going on I emptied out my
5 gun --

6 Q. Sure.

7 A. (Cont'd) I had no more ammunition. At that time
8 he -- I heard him say, shit, I'm hit. By the time I was
9 walking towards him he was walking towards me, he collapsed
10 and I grabbed him and I started dragging him to the patrol
11 car right here in this picture.

12 And at that time there was a pause in the gunfire, and
13 as I was dragging him there was more gunfire. And by that
14 time Agent Roberts came around towards Alcazar and assisted
15 me grabbing Agent Smith towards this side over here.

16 Q. But at this point was there any more gunfire?

17 A. No, all the gunfire had stopped.

18 Q. Okay. And did you recognize if John Derossett was
19 still at the front door of the house by that --

20 A. I don't recall who was at the front door of the
21 house.

22 Q. Okay, thank you sir. Sir, how many days after this
23 incident -- how many statements have you given in this case?

24 A. One sir.

25

1 Q. Okay. Well, actually, did you give more than one
2 because of the deposition?

3 A. Yes, two sir.

4 Q. Okay. And then today?

5 A. Yes, sir.

6 Q. So, there was the one statement that law
7 enforcement actually interviewed you, right?

8 A. Yes, sir.

9 Q. Was that -- how many days after the incident was
10 that?

11 A. I think it was about four days.

12 Q. Okay. And sir, we're almost done here from my
13 part. Since this incident have you received any training or
14 talks with the special investigations unit about it?

15 MR. SCHEINER: Objection, relevance.

16 MR. PANELLA: And I'm happy --

17 THE COURT: Sustained.

18 MR. PANELLA: No, I'm ready to talk about this.
19 Judge, we can approach please?

20 THE COURT: Approach please.

21 (Whereupon, a side bar discussion was held outside
22 the hearing of the gallery.)

23 MR. PANELLA: Okay, here's why this is different
24 from what you were saying yesterday: I know what his
25 testimony's going to be. The issue before -- is going

1 to relate to this incident.

2 It's going to relate what could have or should have
3 been done differently. The reason that's relevant to my
4 client's state of mind Judge is because the set of
5 circumstances that was set up by law enforcement
6 officers directly impacted what my client saw. And so
7 if he received --

8 THE COURT: Well, I understand the --

9 MR. PANELLA: So, it's about this night. It's not
10 about something in the past. It's about this night,
11 it's about this case.

12 THE COURT: Okay, okay. I under -- I understand.
13 Mr. Scheiner, what's your objection sir?

14 MR. SCHEINER: My objection is how is the
15 department changing their policy, if they did or didn't,
16 after these events occurred, and has -- unless John
17 Derossett was in that room helping formulate that.

18 Because he said this was what I'm -- he needs to
19 take the stand and say this is what affected me and this
20 is what didn't affect me.

21 The fact that the Sheriff's Department did
22 something subsequent to this to fix some problem,
23 perceived problem, perceptual problem is in no way
24 relevant to a defendant's state of mind, which is at
25 issue in this particular case.

1 THE COURT: You know, Mr. Panella, there's -- I
2 remember a phrase: The best describes it then it's --
3 subsequent remedial measures --

4 MR. PANELLA: That's not --

5 THE COURT: That's really what you're talking
6 about.

7 MR. PANELLA: That's not -- that's a
8 mischaracter -- he just told you what he thinks. That's
9 not what they're -- that's not what this says.

10 THE COURT: That's what I --

11 MR. PANELLA: This isn't the department changing
12 something, no, it's subsequent --

13 THE COURT: You just told me it is.

14 MR. PANELLA: No, it's they told him what their
15 policy was and what he should have done differently at
16 the time. It's not a subsequent remedial measure. This
17 isn't bringing something into evidence because they
18 changed their -- the handicap spot.

19 THE COURT: Okay, but if -- okay, okay.

20 MR. PANELLA: That's a mischaracterization of where
21 I was going. I'm assuming he misunderstood --

22 THE COURT: Okay, then maybe I misunderstood what
23 you were trying to say and --

24 MR. SCHEINER: Well, maybe I misunderstand the
25 question --

1 (Multiple speakers.)

2 THE COURT: Right, because I was understanding it
3 to be subsequent remedial measures made, policy changes
4 that are made by the Sheriff's Department as a result
5 of --

6 MR. PANELLA: Yeah, it's not -- no, I wasn't going
7 to do remedial measures.

8 THE COURT: Okay. So, what you're saying is are
9 specific criticisms, if you want to call them that, of
10 his performance on this particular night?

11 MR. PANELLA: That night before this thing, which I
12 think is relevant of course to why things happened the
13 way they did, which goes to what my client perceived.
14 That is -- I don't know how to -- what's more relevant
15 than that.

16 THE COURT: Okay, Mr. Scheiner, do you agree -- do
17 you understand what he's talking about?

18 MR. SCHEINER: Well, I still don't think that's
19 relevant because that's arm chair quarterbacking from
20 someone else. That's still not getting into the
21 Defendant's state of mind and what he actually perceive
22 or didn't perceive.

23 THE COURT: Because that's --

24 MR. SCHEINER: That's arm chair -- that's criticism
25 of someone's actions, second guessing what the --

1 THE COURT: That's been my issue here Mr. Panella.
2 I understand what your -- I understand your concurrent
3 concern, okay, I do.

4 However, my focus and my understanding of the
5 appropriate focus is these circumstances it gave rise to
6 your client's decision to use lethal force or
7 potentially deadly force, whatever you -- whatever the
8 proper legal term, potentially deadly force.

9 And what were the immediate circumstances attended
10 to that, not did someone come in, you know, weeks later,
11 and you know, do a watergate committee, imposition and
12 decide that, you know -- you understand. These things
13 can be picked apart later.

14 MR. PANELLA: Right.

15 THE COURT: We can all go home and pick apart what
16 we did here today.

17 MR. PANELLA: I know.

18 THE COURT: And that doesn't change what happened,
19 okay. And our focus is on what happened, not what
20 people picked apart later. So, let's confine it to what
21 happened.

22 MR. PANELLA: I guess what I'm trying to say what
23 happened and why it happened.

24 THE COURT: Okay, but he just told us what
25 happened.

1 MR. PANELLA: Why it happened.

2 THE COURT: It was not good, none of it was good.

3 MR. PANELLA: Of course.

4 THE COURT: I get that.

5 MR. PANELLA: Of course Your Honor.

6 THE COURT: Okay. None of this is lost on me Mr.
7 Panella, okay. Really, I cannot emphasize that enough,
8 okay. So, let's just focus on the narrow purpose for
9 which we are here. And then we'll get it done and --

10 MR. PANELLA: Yeah, the -- there's -- I'd like to
11 proffer the answer.

12 THE COURT: Well, you certainly can do that.

13 MR. PANELLA: Okay.

14 THE COURT: I mean, you can certainly do that.

15 MR. PANELLA: But I don't want to take up more of
16 the Court's time, and this took longer than it would
17 have --

18 THE COURT: Oh, that's not --

19 MR. PANELLA: (Cont'd) you know, under the
20 circumstances.

21 THE COURT: You know, that's -- I mean, my thought
22 is let's focus on -- you've got enough to do to get all
23 the evidence in to firmly place the issue on the platter
24 before the court, okay.

25 MR. PANELLA: Right.

1 THE COURT: So, let's just focus on that. I
2 understand your ancillary concern, or your concurrent
3 concern, okay. It's not even ancillary, I get it, but
4 right now this motion is focused on something narrower
5 than that.

6 MR. PANELLA: Okay Judge.

7 THE COURT: Okay.

8 MR. PANELLA: Let me -- if you don't -- if -- with
9 the Court's permission I'll quickly proffer it.

10 THE COURT: Okay.

11 MR. PANELLA: And I may have to read the deposition
12 if he says something different.

13 THE COURT: Okay.

14 MR. PANELLA: And then I'm done.

15 THE COURT: Okay.

16 (Whereupon, the following was had in open court.)

17 THE COURT: Let him read the deposition
18 first.

19 MR. PANELLA: Well, I don't know what the answer's
20 going to be.

21 THE COURT: Well, this is -- right. But this isn't
22 trial by affidavit. We're going to -- he's going to
23 read it first and the words have to come out of his
24 mouth.

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PROFFER EXAMINATION

BY MR. PANELLA:

Q. I'm not going to belabor this point Agent Stead. After the incident did you have occasion to speak with other supervisors and other people about this and what may have been done differently?

A. Yes, sir.

Q. And what were those things?

A. Having other people involved --

MR. SCHEINER: Judge, I understand this is a proffer, I understand it's a proffer, but I want to object to hearsay at this point to, so.

THE COURT: Okay, all right. Then this --

MR. SCHEINER: But it is a proffer.

THE COURT: This is a proffer. Everything -- all of the following questions are a proffer. There's no jury to remove. This is a proffer. I've already told you that I think this is beyond the scope of our hearing today.

MR. PANELLA: Yes, Judge.

THE COURT: All right.

MR. PANELLA: You can answer sir.

THE WITNESS: I believe it was my supervisor at the time -- things that we could have done to obviously prevent this.

1 MR. PANELLA: Yes, sir.

2 BY MR. PANELLA:

3 Q. And what were those, just briefly?

4 A. Maybe arresting him wasn't worth it, or maybe
5 having more people involved in that incident.

6 Q. Were you spoken to about the danger of changing
7 roles?

8 A. I believe somebody talked to me about that, yes,
9 sir.

10 Q. And what does that mean?

11 A. If you play you see -- stay, you see.

12 Q. Okay sir.

13 MR. PANELLA: Just one moment please. That's the
14 end of my proffer Judge. I just wanted --

15 THE COURT: Okay, thank you.

16 MR. PANELLA: I don't have any further questions
17 Judge.

18 THE COURT: Okay, thank you. All right, Mr.
19 Scheiner?

20 CROSS EXAMINATION

21 BY MR. SCHEINER:

22 Q. Good afternoon Agent Stead.

23 A. Good afternoon sir.

24

25

1 Q. I want to take you back to the 20th, because that's
2 the time when you were involved, August 20, 2015, okay?

3 A. Yes, sir.

4 Q. And we'll start there. I'm going to show you
5 what's previously been marked as State's Evidence ES, a two
6 page document. The second page is actually page one I
7 believe.

8 And I want to ask if you recognize the -- I guess the
9 sents and to's and the from's in that text message composite
10 exhibit?

11 A. Yes, sir.

12 Q. And how is it that you recognize that?

13 A. It is the thread for me communicating with Mary.

14 Q. On the 20th of August 2017 -- or '15?

15 A. Yes, sir.

16 Q. Okay. And does that fairly and accurately capture
17 the conversation that you had over approximately a three hour
18 period with Ms. Ellis?

19 A. That is correct.

20 MR. SCHEINER: Your Honor, at this time I'd like to
21 move ES into evidence.

22 MR. PANELLA: I have an objection.

23 THE COURT: All righty. Then what is your
24 objection sir?

25

1 MR. PANELLA: I don't think that that is a -- the
2 full text conversation Judge. That's the -- it's my
3 only reason. I think it's an excerpt.

4 MR. SCHEINER: No, I think that is.

5 THE COURT: Okay.

6 MR. PANELLA: Otherwise I wouldn't have an
7 objection. That just might need to be cured.

8 THE COURT: Do you --

9 MR. SCHEINER: I'm just not sure what you think is
10 missing is all?

11 MR. PANELLA: Well, like --

12 THE COURT: You mean it isn't the entire chain, is
13 that what you're saying?

14 MR. PANELLA: I'm just not sure that it is. I'd
15 just like an another opportunity to review it and --

16 THE COURT: Sure.

17 MR. PANELLA: I don't have an objection.

18 THE COURT: Okay. Without objection then it'll
19 become -- ES will become State's Exhibit --

20 THE CLERK: 23.

21 THE COURT: 53?

22 THE CLERK: 23.

23 MR. SCHEINER: And just for the record, it's -- the
24 composite, the way it generates from the -- when it
25 downloads that way, page one is actually page two as it

1 relates to the text message order.

2 THE COURT: Okay.

3 MR. SCHEINER: And it starts on the bottom of page
4 two and goes up.

5 THE COURT: Okay.

6 BY MR. SCHEINER:

7 Q. All right, Agent Stead, I'm going to -- we're going
8 to go through this a little bit. Now, this would have been
9 information you sent text from your department issued phone,
10 right?

11 A. Yes, sir.

12 Q. And so where it says to on this particular exhibit
13 that's you sending a text to that number?

14 A. Yes, sir.

15 Q. Which is a number that you identify or later
16 identify as being Mary Derossett's?

17 A. Correct.

18 Q. Or Mary Ellis. And that number -- do you recall
19 where you got that number from?

20 A. From one of the ads on Backpage.

21 Q. Okay. And I want to talk to you about that. I'm
22 going to show you --

23 MR. PANELLA: Is that already in?

24 MR. SCHEINER: It's not in yet, no.

25

1 BY MR. SCHEINER:

2 Q. I'm going to show you what's Composite Exhibit ER,
3 and ask -- it's two pages. If you could look at the second
4 page and ask if you recognize any of the photographs as
5 something you had seen previously, or on August 20, 2015?

6 A. Yes, sir.

7 Q. And where do you recognize those as being?

8 A. They were sent text to me. They were texted to me.

9 Q. From responding to the ad on Backpage?

10 A. Correct.

11 Q. And the ad on Backpage, were there any photographs
12 or information on that?

13 A. The same photograph is also on that page.

14 MR. SCHEINER: Your Honor, at this time I'll move
15 ER into evidence.

16 MR. PANELLA: May I briefly voir dire the witness
17 on this?

18 THE COURT: Sure.

19 VOIR DIRE EXAMINATION

20 BY MR. PANELLA:

21 Q. Agent Stead, I just want to be clear, this is not
22 her Backpage ad, correct?

23 A. It is one of the ads.

24

25

1 Q. Is the testimony that this is one of the ads or
2 these are pictures that were texted to you?

3 A. To me that looks like that was the pictures that
4 was in the Backpage ad.

5 Q. Yeah. And you can look at it again. I understand,
6 but is this the Backpage ad?

7 A. No, this is the pictures.

8 Q. So, how did the pictures get on this photo copied
9 piece of paper that we now have?

10 A. These pictures were sent to me on my phone.

11 Q. Okay. And then what happened to them next?

12 A. What do you mean?

13 Q. I just don't know how -- they were on your phone.
14 How'd they get on this piece of paper?

15 A. The agency has my phone.

16 Q. So, did the agency put that piece of paper
17 together?

18 A. No, they're -- the picture itself is a composite of
19 all those pictures.

20 Q. Okay.

21 A. There's one picture of all those pictures.

22 Q. Okay. So, was this one picture of all these
23 pictures --

24 A. Yes, sir.
25

1 Q. (Cont'd) sent to you on your phone?

2 A. Yes, sir.

3 Q. Okay. So, there was a text to you of these six
4 pictures just like that?

5 A. I believe those are the -- the picture that was
6 sent to me.

7 Q. Okay. So, it's not like there's six individual
8 pictures that were sent to you, someone put them on a table
9 and took a picture of that?

10 A. Yes, sir.

11 Q. So, that's just what was sent to you?

12 A. Yes, sir.

13 MR. PANELLA: I don't have an objection.

14 THE COURT: Okay. May I see it?

15 RESUMING CROSS EXAMINATION

16 BY MR. SCHEINER:

17 Q. And these pictures that were sent to you, were they
18 also the pictures that you saw on the ad that you were
19 responding to?

20 A. Yes, sir.

21 Q. Okay. Now, when you're looking at -- on this, so,
22 the line -- look at line 43 on this particular exhibit.
23 We're going to scroll over. And it says hey, followed by are
24 you available tonight. Do you see that?

25 A. Yes, sir.

1 Q. Is that your text?

2 A. Yes, sir.

3 Q. To the person you later learned is Mary Ellis?

4 A. Yes, sir, that's correct.

5 Q. And then it -- those are sents, so that's you. If
6 it says sent that's you, right?

7 A. Yes, sir.

8 Q. And if it says read that's something that was sent
9 to you?

10 A. Yes, sir.

11 Q. Or a received text?

12 A. Yes.

13 Q. So, the next line is yes, right?

14 A. Yes, sir.

15 Q. And then what -- you send out what?

16 A. I send the next text: I am in Titusville, what
17 time is good? Can you do -- can you do -- what are the
18 donations.

19 Q. Okay. What is HH? Do you know what HH --

20 A. I don't recall.

21 Q. Is that -- that's some sort of language that Jason
22 Roberts re --

23 A. I believe hourly rate or something to that effect
24 sir.

25

1 Q. Okay.

2 A. I believe it's for an hour, whole hour. HH, whole
3 hour.

4 Q. Okay. And then the next line is -- it says 150 HH.
5 This is read by you. 150 H, 125 HH, 100 QV.

6 A. 150 for an hour, 125 for half an hour, and 100 --

7 Q. Do you remember what that stands for?

8 A. I don't -- I don't recall the QV.

9 Q. The text exchange goes on after that. Can you tell
10 us what was sent to you after that?

11 A. I texted to her saying just got off work, going to
12 the --

13 Q. What's before that? Just the --

14 A. The price.

15 Q. The price, and then above that read, it says just
16 depending on how long you want to stay?

17 A. Yes.

18 Q. Okay. And then what do you send?

19 A. I tell her that I just got off work, going to the
20 hotel to shower, what time can you come?

21 Q. Okay. And her response is what?

22 A. You come to -- you come here babe.

23 Q. And then what?

24 A. I would be like 9. I'm not far from Titusville.

25

1 Q. Okay. And then you send what?

2 A. Since I'm driving to your place can I finish twice?

3 Q. Okay. And what does she say?

4 A. She says okay -- no, I'm sorry, 150.

5 Q. Okay.

6 A. Sorry, it's confusing.

7 Q. 150, that's the price?

8 A. Yes. Just one message, 150.

9 Q. Okay. And then you send what?

10 A. The next text says, okay, how do I get to your
11 place? So, you have condoms or do I need to bring some?

12 Q. Okay. All right, so, when you were texting over
13 this period of three hours you're not texting with Ms. Ellis
14 for three hours straight?

15 A. No, sir.

16 Q. Okay. So, these texts are happening around what
17 time?

18 A. The first text around 6:30ish when we first began
19 communicating with the individual.

20 Q. And then the last text that you send with her is
21 around what time?

22 A. Right before 9, 9:30, 9:30ish.

23 Q. Right when you're arriving at her house?

24 A. Yes, sir.

25

1 Q. When you arrive at 1051 Covina -- and this is in
2 Brevard County, right?

3 A. Yes, sir.

4 Q. Please tell the Court again where it is that you
5 park your unmarked vehicle?

6 A. I park across from the driveway to Covina, 1051
7 Covina Street.

8 Q. And do you recall if there was any street lights in
9 the area of where you parked at?

10 A. I believe there's a light at the corner of Alcazar
11 and Covina.

12 Q. And what about behind you or to the -- Alcazar, so
13 that's to the west? Is that west?

14 A. Covina runs east and west. Alcazar runs north and
15 south.

16 Q. Okay. So, what would be on the pic -- we're
17 looking at the picture. Is there a light on the left hand
18 side?

19 A. This side right here is Alcazar, and I believe
20 there's a light on that corner.

21 Q. Okay. What about the other side of the picture
22 there? Do you know if there's any lights down that way?

23 A. I don't recall.
24
25

1 Q. When you arrive and you get out of your vehicle can
2 you tell the Court what it is you're able to see about the
3 house at 1051 Covina?

4 A. I can see the front of the house, I can see the two
5 vehicles parked there.

6 Q. Okay.

7 A. In front of the driveway.

8 Q. Are you able to see Agent Smith and Agent Roberts
9 from where you're at in the street in front of 1051 Covina?

10 A. Yes, sir.

11 Q. Okay. And where are they at? If you can show on
12 the map.

13 A. They are in the one four corner of the house.

14 Q. Okay.

15 A. Right here in this corner of the house.

16 Q. And from where you're standing are you able to see
17 their vehicle?

18 A. I don't recall if I saw the vehicle. I believe it
19 was parked on Alcazar, over to the side.

20 Q. You talked about the approach, you checked the BMW,
21 there was no one in it, and then as you approached the door
22 do you cut through the grass or do you walk on the -- how do
23 you go to the door?

24 A. I walked along side -- in this picture there was a
25 Chevy truck parked right here.

1 Q. Right.

2 A. I walked along side of the truck, and then I walked
3 on the walkway going -- leading to the front of the house.

4 Q. And you were dressed in like the photographs we
5 saw, right?

6 A. Yes, sir.

7 Q. Plain clothes. The badge is underneath?

8 A. Yes, sir.

9 Q. Tell the Court again where you got your badge from
10 that you had on that night?

11 A. I originally had just my badge, but I normally clip
12 it on my belt, but because I wanted it to hang in front of me
13 I asked Agent Roberts, because he had his with a chain. So,
14 I took his to use it that night.

15 Q. Okay. Why would you want it to hang in front of
16 you in that fashion?

17 A. So it's clearly visible since I'm wearing a
18 T-shirt. If I had it on my belt it would be covering it.

19 Q. All right, you approached the house when you get to
20 the door please go through with the Court the steps that you
21 went through in order to make contact with Ms. Ellis.

22 A. Once I walked, again, I made eye contact with Agent
23 Smith, Agent Roberts to make sure that they're there. I
24 walked to the door --

25

1 Q. All right, I'm going to stop you right there. When
2 you get to the house do you text her and tell her you're
3 there?

4 A. In the vehicle, yes, once I'm parking.

5 Q. And do you recall what she says back to you?

6 A. Come in.

7 Q. Come -- come to the door?

8 A. Yes.

9 Q. Do you remember that? And then you respond with K.
10 Do you remember that?

11 A. Yes.

12 Q. All right. So, she's inviting you over?

13 A. Yes, sir.

14 Q. Because she thinks you're going to pay her 150
15 dollars for sex, right?

16 A. Correct.

17 Q. Okay. So, you approach the door. Go. What do you
18 do next?

19 A. I open the screen door and I knocked on the door
20 and --

21 Q. How long do you wait after you knock on the door
22 before someone answers?

23 A. It was quick. As soon as I knocked on the door the
24 door opened. It was Mary. She was wearing like a dark robe
25 and she said come in. And she started turning over to --

1 Q. And when she opened the door could you see inside
2 the residence?

3 A. I could just see the -- the light was on inside
4 the -- that opened -- like an open -- like a living room type
5 area.

6 Q. Okay. Any other noises coming from inside the
7 residence?

8 A. No, I didn't hear anything else.

9 Q. Anybody else inside the residence that you could
10 immediately see at that point, other than Mary standing at
11 the doorway?

12 A. No, I just saw Mary.

13 Q. Does she say anything else to you at that point
14 other than come in and turn away?

15 A. No, sir.

16 Q. Okay. When she does that what do you do?

17 A. As she's turning around -- I don't want to go
18 inside the house. I reached inside, pull my badge, and I
19 said, hey, no, wait a minute.

20 I first caught her attention to turn around. I said,
21 no, wait a minute, and she turned, I grabbed her hand, and
22 said Sheriff's Office, you're under arrest.

23 Q. So, you tell her?

24 A. Yes, sir.

25

1 Q. Badge in one hand, grabbing her with the other?

2 A. Yes, sir.

3 Q. Sheriff's Department, you're under arrest?

4 A. Yes, sir.

5 Q. When you hold your badge up to her are you -- is it
6 in her face, is it down, do you just take it out and let it
7 hang?

8 A. No, I just took it out and present it to her.

9 Q. And that's the badge that's shown in the photograph
10 that Defense counsel showed you just a few moments ago?

11 A. Yes, sir.

12 Q. All right. What does Mary or Ms. Ellis do when you
13 do that?

14 A. She began resisting and pulling away back inside
15 the house.

16 Q. Okay. And what do you do?

17 A. I pulled her out, and by that time Agent Roberts
18 and Agent Smith come out behind me. And Agent Roberts began
19 telling her, Mary, come on, stop, Sheriff's Office.

20 Q. All right, I want you to show me on the -- if you
21 can, if you know, show us where you recall Agent Smith and
22 Agent Roberts coming from when Mary's pulling away from you,
23 after you make initial contact with her?

24 A. They were right here in this corner.

25

1 Q. Okay.

2 A. As I began making contact with her and trying to
3 secure my hands they walked this area right here.

4 Q. Does Ms. Ellis scream John, John, John immediately
5 upon you grabbing her wrists?

6 A. It was quick, it was briefly, yes, sir.

7 Q. And how quickly does Agent Roberts get to you to
8 help you in trying to take her into custody?

9 A. Pretty quick. They're right there. They begin
10 telling her.

11 Q. And how quickly is it that Agent Roberts is yelling
12 Mary, Sheriff's Depart -- well, what is he yelling?

13 A. She's telling her Mary, since he knows her, he says
14 Mary, come on, stop, Sheriff's Office. And at that time it
15 was John, John, John.

16 Q. Okay. Is -- so, she's yelling, right? Is Agent
17 Roberts yelling when he's saying Mary, stop it?

18 A. Yes, he's telling to stop.

19 Q. Is he yelling when he's identifying Mary, this is
20 the Sheriff's Department? Is he yelling?

21 A. Yes, sir.

22 Q. Is he yelling at the same volume that Mary is
23 yelling?

24 A. Yes, sir.

25

1 Q. Okay. And this is all happening under the covered
2 area of 1051 Covina?

3 A. Yes, sir.

4 Q. So, you're there, Agent -- is Agent Roberts closer
5 to her now than you are?

6 A. He is to my left right here, right next to her.

7 Q. Okay. And what is Agent Roberts wearing?

8 A. He's wearing his tactical vest with a sher --

9 Q. The ones we saw in the photograph?

10 A. With a Sheriff's Office in yellow writing on top of
11 his chest.

12 Q. Is the door to the house still open?

13 A. The door maintained -- stayed open the whole time.

14 Q. Do you remember if the porch light is on?

15 A. The porch light was on sir.

16 Q. Are you able to clearly see Mary -- let me ask you
17 this: When you were back at the hotel and you were talking
18 about engaging in this sting did you ever observe any
19 photographs of Mary prior to going?

20 A. I did.

21 Q. Other than the texts that she sent you?

22 A. No.

23 Q. Okay. But you recognized her face when you saw her
24 from the images that were sent to you?

25 A. Yes, sir.

1 Q. So, you knew that was the person you were engaging
2 with? There was no question?

3 A. Yes, sir.

4 Q. All right, what happens after that? So, Jason --
5 Agent Roberts is there with you and he's told her to stop and
6 to -- and by name, right?

7 A. Just told Mary, just stop.

8 Q. And identified himself as a Sheriff's Department,
9 at least to her?

10 A. Yes, sir.

11 Q. In a loud tone?

12 A. Yes, sir.

13 Q. What happens -- do you know where Agent Smith is
14 at?

15 A. Agent Smith I believe was somewhere around this
16 area right here.

17 Q. So --

18 A. Behind me.

19 Q. Is he under the -- he's -- is he under the
20 overhang?

21 A. No, towards the front with -- we couldn't fit all
22 in the overhang, so towards the area here paved.

23 Q. Okay.

24 A. I'm sorry, cement walkway.
25

1 Q. Okay. Anybody have guns drawn at this point?

2 A. No, sir.

3 Q. Who all is hands on with Ms. Ellis at this point?

4 A. Agent Roberts and myself.

5 Q. What happens next?

6 A. I heard gun, gun, gun.

7 Q. And where did you hear that from?

8 A. From behind me, which was Agent Smith.

9 Q. Okay. Did you recognize his voice?

10 A. Yes, sir.

11 Q. And when Agent Smith is yelling gun, gun, gun is he
12 yelling it just to you so you can hear it, or is he yelling
13 it outloud for the world to hear?

14 A. For the world to hear.

15 Q. Okay, so he's -- it's loud?

16 A. Yes, sir.

17 Q. Is it?

18 A. It's loud, yes, sir.

19 Q. And when that happens what do you do?

20 A. We let go of Mary.

21 Q. Okay. And where does Mary go?

22 A. I believe she went back inside. I don't recall
23 exactly where she went. I don't -- it was -- we basically
24 pushed her back away from us and we began retreating.

25

1 Q. Okay. And when you pushed her back away from you
2 was Mr. Derossett out of his house yet?

3 A. No, sir.

4 Q. Okay. Did you see him coming?

5 A. No, sir.

6 Q. Where did you go when you pushed her away from you?
7 Or which way did you push her away from you?

8 A. It was -- we were -- I was facing that. She was in
9 between me --

10 Q. What -- you said you were facing that. I don't
11 know what that means.

12 A. I'm sorry, facing her.

13 Q. Okay. And what --

14 A. And she was facing me.

15 Q. And what's on the other side of her?

16 A. The door to the living room area?

17 Q. Okay. And what is -- so you let her go, you push
18 her away?

19 A. Yes, we let her go.

20 Q. So, you push her towards her house?

21 A. Yes, sir.

22 Q. And where do you go when you do that?

23 A. At that point I retreat and I went back to this
24 area right here.

25

1 Q. Do you turn your back and run?

2 A. I retreated, looking to where I was coming, and as
3 I stop the muzzle flash came.

4 Q. Okay.

5 A. And immediately I began firing.

6 Q. All right. The vest you -- were you wearing a
7 vest?

8 A. I was not.

9 Q. Okay. And all you had was the badge?

10 A. Yes, sir.

11 Q. Casey -- or I'm sorry, Agent Smith, he was wearing
12 a tactical vest?

13 A. He was.

14 Q. Okay. And Agent Roberts was wearing a tactical
15 vest?

16 A. Yes, sir.

17 Q. Now, each one of those vests, they say what on the
18 front and what on the back?

19 A. Sheriff.

20 Q. Okay. And the lettering, what color is that?

21 A. Bright yellow.

22 Q. Okay. It's not -- is it reflective?

23 A. It is reflective, yes, sir.

24

25

1 Q. Is it like -- the mater -- well, we can look at one
2 in just a few minutes.

3 A. It's a reflective material if you were to put a
4 flashlight to it or any kind of light.

5 Q. It might catch it?

6 A. You see it clearly.

7 Q. All right, can you tell the Court looking at -- and
8 just for the record we've been using Defense Exhibit 2.
9 We've been talking about that one a lot.

10 Defense Exhibit 2, if you can use that pen point on
11 there where exactly you fled to and Agent Smith fled to when
12 you let go of Ms. Derossett or Ms. Ellis and pushed her
13 towards her house?

14 A. We retreated this way, Agent Roberts went this way.
15 Agent Smith and myself came to this area right here. I
16 was --

17 Q. Is that -- well, let me ask you this: Is that
18 where you end up?

19 A. I end up here.

20 Q. When the shooting has stopped?

21 A. No. When the shooting finally stops we're back
22 here.

23 Q. Okay. And when you return fire where -- or start
24 firing where are you at?

25 A. I was right about here sir.

1 Q. And do you know where Agent Smith was?

2 A. Somewhere around to my left.

3 Q. Do you see that little -- that plant that's there
4 in the field? Can you see that?

5 A. This right here?

6 Q. Yeah. Do you remember being by that or seeing
7 that?

8 A. I don't recall that being there.

9 Q. How far away from you is Agent Smith?

10 A. I would have to say approximately eight feet, six
11 to eight feet.

12 Q. You described that there was a pause in gunfire.

13 A. Yes, sir.

14 Q. Can you tell, was that before or after Agent Smith
15 went down?

16 A. The pause was -- he went down, a pause, and then as
17 I -- he walked towards me, I walked towards him, he
18 collapsed, and I began to drag him out of the way, because
19 there was a pine that my goal was to get him, myself and him,
20 behind that tree and take cover. As I was dragging him there
21 was more gunfire.

22 Q. Okay. And do you know where the gunfire was
23 directed at that point?

24 A. I don't recall where it was directed.
25

1 Q. Agent Smith had a tact vest on?

2 A. Yes, sir.

3 Q. And is that a bullet proof vest?

4 A. Yes, sir.

5 Q. And did he keep that on during the duration of this
6 volley of fire, gunfire?

7 A. He kept it on towards the end.

8 Q. Okay. And what happens to his vest?

9 A. Once we drag him away from the house, Agent Roberts
10 and I, we began assessing each other and him. He was
11 bleeding from the side and I was worried.

12 So, I cut his pants and I checked him. There was no
13 blood there. And I took his vest and I put it on myself.

14 Q. Okay.

15 A. While he was in --

16 Q. I'm going to show you something and ask if you
17 recognize it. This is State's Evidence BE. BE in case I was
18 muffled by that stuff. And I'm gong to ask if you recognize
19 what this is. Do you recognize that?

20 A. Yep.

21 Q. And what do you recognize that to be?

22 A. Agent Smith's vest.

23 Q. Okay. And this is the vest that you put on, took
24 it off of Agent Smith, put on yourself on August 20, 2015?

25 A. Yep.

1 Q. Okay.

2 MR. SCHEINER: Your Honor, at this time I'd like to
3 move in BE into evidence as the next numbered exhibit.

4 MR. PANELLA: No objection.

5 THE COURT: All right. Without objection that'd be
6 24, State's 24.

7 THE CLERK: It will be 24 -- no, the last was 24,
8 so this --

9 THE COURT: Oh, State's 25. Thank you.

10 BY MR. SCHEINER:

11 Q. All right, Agent Stead, when we're looking at this
12 vest it's velcroed in the front like that. Is that how the
13 vest would be?

14 A. No. This -- excuse me. These two belt straps go
15 underneath. Then once you put it on -- inside like that.

16 Q. Okay. And so that's -- that's the display that
17 Agent Smith would have been wearing on his chest on August
18 20th?

19 A. Yes, sir, yep.

20 Q. And then on the back, if he would have turned his
21 back it would have -- this was always on him, because it's
22 velcro, but that's on there --

23 A. Yes, sir.

24

25

1 Q. (Cont'd) and it stays on there? Now, that -- do
2 you know where that vest go after you're done using it on the
3 20th?

4 A. Once he was safely in the ambulance -- I was
5 wearing it. We went to -- Agent Stuerwald came to us, took
6 us in the back of the pick-up to the sub station.

7 And I don't recall if I took it as I was driving to the
8 sub station or when I got to the sub station I took it out
9 and left it there.

10 Q. In the back of Agent Steurwald's truck?

11 A. Yes, sir.

12 Q. Okay. And that's where, to your knowledge, it
13 remained?

14 A. Yes, sir.

15 Q. Did you do anything else with it while you had it,
16 other than wear it?

17 A. No.

18 Q. You didn't add anything to it, you didn't remove
19 anything from it?

20 A. I did not.

21 Q. You didn't shoot it?

22 A. No, sir.

23 Q. Anything like that? Okay. All right. I'm showing
24 the witness what's been marked as State's R for
25 identification purposes. You had a -- what type of firearm

1 did you have?

2 A. A Glock 27 sir.

3 Q. And that's a -- it's a 40 caliber. That's a
4 compact of the Glock 22?

5 A. Sub compact, correct.

6 Q. And what does that mean?

7 A. Concealable.

8 Q. So, small?

9 A. Yes, sir.

10 Q. Okay, I'm going to ask if you could open that,
11 State's R, looking inside and ask if you recognize what is
12 contained in there?

13 A. It's a Glock 27.

14 Q. Okay. Do you know what your serial number was on
15 your Glock?

16 A. I don't recall sir.

17 Q. Do you recognize this as being yours?

18 A. Yes, sir.

19 Q. Okay. And how is it that you recognize it as being
20 yours?

21 A. Last time I saw it it was left in the yard when I
22 was trying to assist Agent Smith.

23 Q. And where in the yard? Can you identify in the
24 photograph? Do you know?

25 A. When I heard shit, I'm hit I went to Agent Smith

1 who collapsed. And I don't recall if it fell, but when I
2 went down I placed it down on the ground, that's as I recall,
3 and I grabbed Casey and we went back.

4 Q. And that's where it would have remained within the
5 yard then?

6 A. Yes, sir.

7 Q. Okay. Showing you State's CB. Do you recognize
8 that?

9 A. Yes, sir.

10 Q. And what do you recognize that to be?

11 A. My gun.

12 Q. That's the gun that you left in the yard in front
13 of -- or in the yard at 1051 Covina?

14 A. Correct.

15 Q. On August 20th?

16 A. Yes, sir.

17 Q. 2015. Now, the slide is back on that, why is that?

18 A. Because I'm out of ammunition.

19 Q. Okay.

20 THE COURT: Mr. Scheiner, you're not offering
21 either of those at this time?

22 MR. SCHEINER: No, not at this time.

23 THE COURT: Okay.

24

25

1 BY MR. SCHEINER:

2 Q. Agent Stead, do you know where Agent Roberts went
3 after he was in the -- you had described that he was in the
4 front by that walkway heading towards the driveway. Do you
5 know where he would have went?

6 A. He first went to that area, towards this area
7 right here.

8 Q. Okay. And do you know where he went after that?

9 A. After the first exchange of fire he walked this way
10 around Alcazar. Because when I was dragging Casey I could
11 see him walking this way towards us.

12 Q. And could you tell it was him?

13 A. Yes.

14 Q. The person shooting at yourself, Casey, and Agent
15 Roberts, did you see where they went?

16 A. I did not see where they went.

17 Q. The direction of your shots across this photograph,
18 Defense Exhibit 2, would be which way?

19 A. My rounds would be this -- from the west to east in
20 all this area right here.

21 Q. So, if we're looking at the photograph they're
22 fromm Alcazar towards the house?

23 A. Yes, sir.

24 Q. And they are parallel with the front of the house?

25 A. Correct.

1 Q. The person that was shooting at -- that came out of
2 the house and was shooting at you and Casey, or Agent Smith,
3 do you see that person in the courtroom today?

4 A. Yes, sir.

5 Q. Could you please identify him?

6 A. He's sitting on the Defense wearing a gym -- a red
7 suit.

8 MR. SCHEINER: Let the record reflect the witness
9 identified the Defendant.

10 THE COURT: It shall.

11 MR. SCHEINER: Okay. Judge, if I could have just a
12 moment just to make sure that the --

13 THE COURT: Certainly.

14 BY MR. SCHEINER:

15 Q. I'm showing you Defendant's 17. That's the Mazda 6
16 that you were driving?

17 A. Yes, sir.

18 Q. Is that where you parked it when you got there?

19 A. Yes, sir.

20 Q. Did you ever move it?

21 A. No, sir.

22 Q. Were there any other cars, other than the two in
23 the driveway, parked in the vicinity of 1051 Covina when you
24 arrived?

25 A. No, sir.

1 Q. So, this photograph, there's a Sheriff's Department
2 vehicle on the other side, in the back of that photograph.

3 Do you see that?

4 A. Yes, sir.

5 Q. Other than that, in the immediate vicinity of the
6 house at 1051 Covina, does that fairly and accurately depict
7 the house itself and the driveway and where you parked the
8 car before any shooting started?

9 A. Yes, sir.

10 Q. And while the shooting was going on?

11 A. Yes, sir.

12 Q. And then after the shooting stopped this is what it
13 looked like?

14 A. Yes, sir.

15 Q. With the squad car? Is that squad car -- why was
16 that there, do you know?

17 A. I don't recall why that was over there.

18 Q. Did a patrol car pull up to where you had Casey?

19 A. Yes, sir.

20 Q. And that was where at on the -- Defendant's 2?

21 A. We were -- by that time we were like over here.
22 Sergeant Beuer, I believe was in Crown Victoria, he had
23 pulled up and he parked between us and the house.

24 Q. The Crown Victoria, that's a marked car?

25 A. It's a marked car, yes, sir.

1 Q. Okay.

2 MR. SCHEINER: No further questions. Thank you.

3 THE COURT: All right, thank you Mr. Scheiner. Mr.
4 Panella, does that prompt anything sir?

5 MR. PANELLA: Yeah, I'll be brief.

6 THE COURT: All right.

7 MR. WEST: Your Honor, would we be able to take a
8 break when this witness is finished?

9 THE COURT: Sure, that's fine.

10 MR. PANELLA: Yeah, I wanted to finish this
11 witness before I asked you.

12 THE COURT: Because I was going to -- I was waiting
13 for you all to ask. Because it's like, don't wake up
14 the sleeping baby, right? Okay.

15 MR. PANELLA: We really almost done sir. You don't
16 mind if --

17 THE WITNESS: No, sir.

18 THE COURT: Figured you all are more assertive than
19 a jury would be. If you need a break you'll ask.

20 RE-DIRECT EXAMINATION

21 BY MR. PANELLA:

22 Q. Agent Stead, I'm just curious, when you were out in
23 the yard that you were just telling us about did you have a
24 flashlight?

25 A. No, sir.

1 Q. Or anything like that? Okay. Now, when -- there
2 was some discussion of when you got there and you were
3 walking up to the house you noticed where Agent Casey Smith
4 was? Oh, we can do it, sure. Yeah. I just wanted to be
5 able to see you and this thing is distracting to me. There
6 we go.

7 THE COURT: You can move the thing.

8 MR. PANELLA: It's all right.

9 THE COURT: To the extent it can be --

10 MR. PANELLA: It's no problem.

11 THE COURT: So, it's not covering his face.

12 MR. PANELLA: Thank you Judge. I'm just fine.

13 Thank you sir.

14 BY MR. PANELLA:

15 Q. So, initially when you went up to the house to make
16 the initial contact with Ms. Ellis you indicated that you
17 could see Agent Smith and Agent Roberts and where they were,
18 right, over in the yard?

19 A. Right here.

20 Q. But in fairness, right, you knew they were coming
21 with you, right?

22 A. No, I could clearly see them. They were standing
23 there in the corner of the house.

24

25

1 Q. But my question is it's not like you didn't know
2 they were there, like, you were all in the --

3 A. Yes.

4 Q. (Cont'd) in the unit together of course?

5 A. Yes, sir.

6 Q. To do this operation, right?

7 A. Yes, sir.

8 Q. Okay. And so when you indicated that -- you
9 indicated that you wear the badge in the front of course so
10 that way it's visible to whomever you might be coming across?

11 A. Yes, sir.

12 Q. But I just wanted to be clear that your testimony
13 on the record today, and also in the past is that it was
14 under your shirt when the door was opened by Mary Ellis,
15 right?

16 A. Once I call her to turn around as she was saying
17 come in and she turned inside I said no, wait a second, I
18 pulled my badge out.

19 Q. Exactly. That's exactly what I wanted to just
20 clarify. When she first opened the door it's you and her,
21 she's inside the house, you're just outside the house, right?

22 A. Yes, sir.

23 Q. And your badge is still under your shirt?

24 A. Yes, sir.

25

1 Q. And you're there to be the john, right?

2 A. Correct.

3 Q. And there's nothing about that scenario that would
4 make her think different right then?

5 A. Yes, sir.

6 Q. And it's only when she turns around to invite you
7 in the house that then you pull the badge out, correct,
8 say -- and say you're under arrest?

9 A. Yes, sir.

10 Q. And grab her arm?

11 A. Yes, sir.

12 Q. And pull her out?

13 A. Correct.

14 Q. And that night, were you wearing a wire or
15 anything?

16 A. No, sir.

17 Q. Did you have a bugged phone on or anything like
18 that?

19 A. I had my phone, but I don't think it was turned on
20 as a bug or anything like that.

21 Q. Did you have a body cam?

22 A. No, sir.

23 Q. Are you sure if -- with the Court's permission if I
24 could approach State's Exhibit 25? Is it your testimony
25 today that the lettering on these tact vests is reflective?

1 A. They're bright yellow, yes, sir.

2 Q. They're -- well, what I mean is there's a
3 difference between a bright color and reflective material
4 like what you would see on like the back of a helmet or tail
5 lights, or something reflective, or even -- you know, so
6 my -- or street stuff.

7 My question to you is, is your testimony today that this
8 is reflective or that it's just bright yellow?

9 A. Bright yellow sir.

10 Q. Okay, sir.

11 MR. PANELLA: I don't have anything further Judge.

12 THE COURT: All right. Then may Detective Stead be
13 excused?

14 MR. RESPESS: Subject to recall.

15 THE COURT: Sorry?

16 MR. SCHEINER: We want him subject to recall.

17 THE COURT: Oh, subject to recall, okay. And now
18 we're going to take a -- take a moment, take a break.
19 Okay, sure. Ten minutes?

20 MR. PANELLA: Sure Judge. And I have witnesses
21 ready to go when we come back.

22 THE COURT: Okay, perfect. Thank you. All righty,
23 ten minutes, recess.

24 (Whereupon, court stands in recess for
25 approximately ten minutes.)

1 THE COURT: Mr. Panella, who will be your next
2 witness sir?

3 MR. PANELLA: It will be Sergeant Brenda Deans.
4 And I'm sorry Judge, we do need to adjust the TV for a
5 moment.

6 THE COURT: Okay.

7 MR. PANELLA: So, we're almost ready.

8 THE COURT: All right. Oh, and we're back on the
9 record, 2015-CF-39550, State of Florida versus John
10 Derossett.

11 Mr. Derossett is present with counsel, Mr. Panella
12 and Mr. West. Mr. Respass and Mr. Scheiner are here on
13 behalf of the State.

14 THE CLERK: Raise your right hand. Do you solemnly
15 swear or affirm that the testimony you shall give will
16 be the truth, the whole truth, and nothing but the truth
17 so help you God?

18 THE WITNESS: Yes, I do.

19 THE CLERK: Thank you. You may be seated.

20 THE BAILIFF: Right this way.

21 MR. PANELLA: Judge, if you would permit me I'd
22 like to move this closer to the podium like we had
23 yesterday.

24 THE COURT: Sure, sure. Whatever you -- just as
25 long as everybody can see.

1 MR. PANELLA: Exactly. Sergeant Deans, can you see
2 that --

3 THE WITNESS: Yes, sir.

4 MR. PANELLA: (Cont'd) from where you are? Okay,
5 thank you ma'am. And Judge, can you?

6 THE COURT: I can see it.

7 MR. PANELLA: State, can you?

8 THE COURT: Can you all see? Okay.

9 MR. PANELLA: Thank you.

10 THE COURT: Thank you.

11 WHEREUPON:

12 BRENDA DEANS,
13 a Witness herein, having been duly sworn, testified upon her
14 oath as follows:

15 DIRECT EXAMINATION

16 BY MR. PANELLA:

17 Q. Good afternoon.

18 A. Good afternoon.

19 Q. If you could please state your name and spell your
20 name for the record?

21 A. Brenda Dean, D-E-A-N-S.

22 Q. Okay. And Ms. Deans, you're actually a sergeant
23 with BCSO, is that right?

24 A. Yes, sir.
25

1 Q. Okay. Do you mind if I refer to you as Sergeant
2 Deans?

3 A. That's fine.

4 Q. Thank you ma'am. And I just want to ask -- this
5 probably won't take very long at all, but how long have you
6 been with BCSO?

7 A. Almost 18 years.

8 Q. And did you have any prior law enforcement
9 experience beforehand?

10 A. Yes, I did.

11 Q. Okay. And where did you work?

12 A. Five years at Cocoa Police Department and ten years
13 in the Air Force.

14 Q. Okay ma'am. And so I want to just go ahead and
15 bring you right to what we're talking about. Do you
16 remember -- were you on duty the night of August 20, 2015?

17 A. Yes, sir.

18 Q. And did you have -- what were you doing around the
19 hours of 9, 10:00?

20 A. I was patrolling the area. I was the supervisor on
21 shift that evening.

22 Q. Okay. And did you eventually hear that there had
23 been an officer involved shooting?

24 A. Yes, sir.

25

1 Q. What were you doing when you heard that call?

2 A. I believe I was in the area of Port St. John around
3 Fay and 1, just patrolling the area.

4 Q. Okay. And did you have occasion to go ahead and
5 respond to that call?

6 A. Yes, sir.

7 Q. And was your dash cam video operable at the time?

8 A. Yes, sir.

9 Q. And have you had an opportunity to review your dash
10 cam video from that evening?

11 A. I did, yes.

12 Q. And on the dash cam video if you could briefly tell
13 us what it sort of shows from your perspective?

14 A. I believe it tapes like 30 seconds prior and it got
15 me in the area right around US1, heading southbound on Fay --
16 or southbound on US1 passing Fay Boulevard when I came up
17 to -- when the call was out, right prior to that, and then I
18 turned right on Aron I believe it is, and then took Aron all
19 the way down to Alcazar, and then took a right no Alcazar.

20 Q. That sounds exactly perfect to me. So, you ended
21 up in that neighborhood then where Covina Street and Alcazar
22 intersect?

23 A. Yes, sir.

24

25

1 Q. And I want to show you just a little bit. You said
2 you've reviewed your dash cam video? It's over two hours
3 long, right ma'am?

4 A. I have no idea.

5 Q. Let me go ahead and show you a little bit of it
6 before publishing it I guess to the Court. And then if you
7 can verify that this in fact your dash cam video before I
8 introduce it into evidence.

9 This is previously marked as Defendant's Exhibit AN.
10 It's a USB drive of Brenda Deans dash cam video. And I'm
11 just showing this first part to you to authenticate whether
12 this is indeed your dash cam video. Sorry Judge, it just
13 hasn't been introduced yet.

14 THE COURT: I don't think they can see it Mr.
15 Panella. Let's turn that way.

16 BY MR. PANELLA:

17 Q. You can stop me whenever. If you're still not sure
18 no problem.

19 A. No, I'm sure. It's mine.

20 Q. Oh, this is, okay.

21 A. Yes, sir.

22 Q. So, this is your dash cam video?

23 A. Yes, sir.

24

25

1 Q. And is it an accurate representation of your video
2 from what you've seen so far?

3 A. Yes, sir.

4 Q. Okay.

5 MR. PANELLA: At this time I'd like to introduce
6 Defendant's Exhibit AN into evidence.

7 MR. SCHEINER: No objection.

8 THE COURT: All right. Without objection then
9 Defendant's Exhibit AN -- does that become Defendant's
10 what Madam Clerk?

11 THE CLERK: 24.

12 THE COURT: 24. All rightly, thank you.

13 BY MR. PANELLA:

14 Q. Okay, now, Ms. Deans, do you remember about what
15 time you responded to the scene?

16 A. I believe it was around 9:30 p.m.

17 Q. Okay. And were you one of the first people to
18 respond?

19 A. Yes, sir.

20 Q. And who else arrived shortly thereafter?

21 A. Corporal Beuer, now Sergeant Beuer, and Lieutenant
22 Haggarty.

23 Q. Okay. So, in looking at your video here, and we'll
24 just watch a little bit of it, you're saying you got there
25 probably around 9:30. As your driving though, before you

1 get -- and you got there pretty fast, right, like within a
2 couple minutes?

3 A. Yes, sir.

4 Q. I want to talk about the lighting conditions and
5 sort of that night. In looking at your video this is one of
6 the only videos we have. Would you agree that it was a
7 pretty dark night at this time?

8 A. Yes, sir.

9 Q. Okay. And do you remember anything specific about
10 the weather conditions?

11 A. No, sir.

12 Q. Okay. Do you recall for example if there happened
13 to be lightening out or anything like that?

14 A. I don't recall.

15 Q. All right. And so eventually you end up getting --
16 responding to the scene. So, I'm going to go ahead and fast
17 forward a little bit to save the Court's time. Now, can you
18 tell us where, if you know, where you are right now as you're
19 heading into the neighborhood?

20 A. That should be Aron.

21 Q. Okay. And I'm looking at minute 1:27. And where
22 are you turning now?

23 A. Alcazar.

24

25

1 Q. Okay, I see somebody right there. This seems -- as
2 far as you understand was this relatively close in time to
3 when the shooting had occurred?

4 A. Yes.

5 Q. Okay. And who is this on the left side of our
6 screen?

7 A. Chief Lewis.

8 Q. How do you know that?

9 A. I know him personally.

10 Q. Okay. So, were you able to recognize him?

11 A. Yes, sir.

12 Q. Okay. And obviously you're deployed right now with
13 your lights and sirens, correct?

14 A. Yes, sir.

15 Q. Are those your bright lights?

16 A. I don't know.

17 Q. Okay. And I don't want to belabor on this too
18 long, but what are we witnessing here?

19 A. That's I believe the two agents rendering aid to
20 Agent Smith.

21 Q. Okay. And so I want to under -- help us understand
22 exactly where you were. I'm trying to find the best picture.
23 It must be -- it might be this Agent Deans -- I mean, I'm
24 sorry, Sergeant Deans. I know this is only the front. This
25 would be Covina, right?

1 A. Yes, sir.

2 Q. And so where's Alcazar?

3 A. To the right on that picture.

4 Q. Like this?

5 A. Yes, sir.

6 Q. And so when you pull up -- what we're watching on
7 the video -- are you pulling up from this direction into the
8 yard?

9 A. From the back side of the house.

10 Q. From the back side of the house?

11 A. Yes.

12 Q. And then do you pull up to the side --

13 A. Yes.

14 Q. (Cont'd) of the yard here?

15 A. Yes, sir.

16 Q. And is that where your vehicle then remains as we
17 have this video?

18 A. Yes, sir.

19 Q. So, who put you -- who told you where to put your
20 vehicle?

21 A. The chief.

22 Q. Was he --

23 A. Chief Lewis.

24 Q. (Cont'd) sort of directing where you should go?

25 A. Yes, sir.

1 Q. And what was your role at -- when you arrived on
2 the scene?

3 A. Initially I went up to assist the two agents and --
4 with Agent Smith, and we tried to get him out of there and
5 could not initially.

6 Q. I'm sorry ma'am, just one moment. Okay, what were
7 you saying?

8 A. We tried to get Agent Smith out of there and we
9 could not. So, that was the time that Corporal Beuer pulled
10 up and then positioned his car in between the house and Agent
11 Smith, who's on the ground.

12 Q. Okay.

13 A. For cover.

14 Q. All right, so, when you arrived to the scene how
15 would you describe the lighting conditions?

16 A. It was dark.

17 Q. Okay. And were you able to tell what the agents
18 were actually wearing when you initially showed up, or was it
19 too dark?

20 A. I think I remember seeing the tact vests on the
21 agents.

22 Q. Do you remember giving a statement -- you were
23 interviewed in this case, right?

24 A. Yes, sir.

25

1 Q. At some point. Okay. And when were you
2 interviewed?

3 A. By who?

4 Q. Well, who were you interviewed by?

5 A. FDLE agent and Agent Nick Walker.

6 Q. Okay. And when was that interview given?

7 A. After I got back from the hospital. So, it would
8 have been that morning or the next day in the morning.

9 Q. Okay. And so I'm going to play a little of that
10 video right now just to maybe refresh your recollection. And
11 let me know if this is the audio.

12 MR. SCHEINER: I'm going to object. I don't know
13 if there's been a question and answer yet.

14 MR. PANELLA: Well, okay, here's what I'll do --

15 THE COURT: I think the question was, before you
16 started the run up to impeachment, was what were they
17 wearing, and she said I think I can see some of them
18 wearing the tact vests.

19 MR. PANELLA: That's --

20 THE COURT: Or you said could you see what they
21 were wearing and she said tact -- some of them wearing
22 tact vests.

23 MR. PANELLA: That's right Judge.

24 THE COURT: Okay, so?

25

1 MR. PANELLA: So, at this time I'd like to play her
2 prior statement on that --

3 THE COURT: Okay, why don't you -- do you have it
4 in writing?

5 MR. PANELLA: No, Judge. It wasn't provided to me
6 in writing.

7 MR. SCHEINER: It's not proper impeachment Judge.

8 THE COURT: Okay. How do we know what she says? I
9 mean, I don't have any idea what she said, whether it's
10 consistent with what she just said, whether it's
11 inconsistent with --

12 MR. PANELLA: If it's -- if I ask the question
13 inconsistently than I'll rephrase. I -- my
14 understanding is that -- the question -- the statement
15 was it was so dark on the scene, especially where the
16 agents were at, that you could not see what they were
17 wearing.

18 And I have that on a recorded interview with law
19 enforcement. It's a prior statement, which would be in
20 consistent with what was just said.

21 THE COURT: Okay, but I think the more appropriate
22 way to do it was -- would be to show her the statement,
23 not show everybody, but show her and say will this give
24 you an opportunity to refresh your recollection as to
25 what you could see when you got there.

1 And then you can ask her the question again. If
2 she says now I remember you're right it was this, okay,
3 or --

4 MR. PANELLA: The statement was provided in
5 discovery only in audio format Judge. I simply wanted
6 to --

7 THE COURT: Do you -- you have it on your computer,
8 don't you?

9 MR. PANELLA: It's an aud --

10 THE COURT: If it's on here it's on there.

11 MR. PANELLA: It's an audio file. That's right.

12 THE COURT: Okay.

13 MR. SCHEINER: Regardless --

14 THE COURT: Let them listen to it. I have
15 headphones.

16 MR. SCHEINER: If it's -- counsel believes that
17 she's answered differently than she's answered in the
18 past he has to show her that and give her an
19 opportunity --

20 THE COURT: Right.

21 MR. SCHEINER: (Cont'd) to either adopt, object, or
22 say I don't remember.

23 THE COURT: That's what I'm saying. Well, showing
24 is apparently off the table, so now we're listening.

25 MR. SCHEINER: Well --

1 THE COURT: It's not in writing he just finished
2 saying.

3 MR. SCHEINER: Did you at some other time in the
4 taped statement --

5 THE COURT: Right.

6 MR. SCHEINER: (Cont'd) say to the officers that it
7 was too dark for me to see them could be the same way to
8 confront her with a former statement --

9 THE COURT: Right.

10 MR. SCHEINER: (Cont'd) and that has not happened.

11 THE COURT: What I'm saying is give her an
12 opportunity to see --

13 MR. PANELLA: I simply wanted to give her an
14 opportunity to listen what she had said three years ago.

15 THE COURT: Right, but give it to her -- do you
16 need headphones?

17 MR. PANELLA: I think -- maybe I can play it very
18 quietly.

19 THE COURT: Okay. Thank you. Please give her an
20 opportunity to refresh her memory.

21 MR. PANELLA: That's all -- I'm not even trying to
22 impeach her.

23 THE COURT: Okay.

24 MR. PANELLA: I just want her to refresh her
25 recollection Judge.

1 THE COURT: Okay, that's -- okay.

2 BY MR. PANELLA:

3 Q. Okay, ma'am, did you have an opportunity to review
4 your prior statement?

5 A. Yes, sir.

6 Q. Okay. And so does -- I would just ask again then
7 does that refresh your recollection?

8 A. Yes, sir.

9 Q. Okay. So, when you pulled up to the scene were you
10 able to see what the agents were wearing or was it too dark?

11 A. It was too dark.

12 Q. Okay. Now, we know -- after -- well, when you
13 pulled up on the scene did you still notice -- I'll ask you
14 this: Did you notice any other lights illuminating that --
15 you already mentioned that the scene was dark, right?

16 A. Yes, sir.

17 Q. And so was there any lights illuminating the target
18 house?

19 A. I don't remember.

20 Q. Okay. If I asked you if the only lighting source
21 illuminating the target house from your perspective was the
22 light of your police car would that seem accurate to you?

23 A. Yes.

24

25

1 Q. Okay. And I can show you if we need to take a
2 break and listen to your whole statement we can, but I was
3 going to -- were there any -- did you notice any lights at
4 all emanating from the house at -- from the house itself when
5 you arrived on the scene?

6 A. I don't think so.

7 Q. Okay. Now, were you actually gone from the scene
8 by the time either Mr. Derossett, or who we now know is Mary
9 Ellis, were removed from the house?

10 A. Yes.

11 Q. Or they left the house? Okay. So, you didn't
12 witness any of that, right?

13 A. No, sir.

14 Q. Okay. I'm going to show you just a little bit more
15 of the video, and ask you to identify some of the things that
16 we're seeing, and then we'll be done. Okay, so now your
17 car -- once you position it where it is it doesn't move,
18 right?

19 A. Correct.

20 Q. Okay. And does it stay there overnight?

21 A. I don't know.

22 Q. All right. But in any event, what we're looking
23 at -- oh, who do -- that person in the tact vest, is that
24 also Chief Lewis?

25 A. Yes, sir.

1 Q. Or it's not even a tact vest, I'm sorry. I
2 misspoke. Is that person that we see to the right on the
3 screen who is that?

4 A. Chief Lewis.

5 Q. Okay. And what is he wearing?

6 A. He's wearing a bullet proof vest.

7 Q. Okay. And that -- the target house again is to our
8 right, correct?

9 A. Of my vehicle, yes.

10 Q. And from the orientation of this video.

11 A. In front of us.

12 Q. Okay.

13 A. To the right.

14 Q. Yep. Okay, now, I have this paused. It's
15 difficult because of the quality, but I want to know who
16 we're looking at right in front of us right now.

17 A. Those people right there would be BCFR.

18 Q. Who -- do you know who this person is from watching
19 your video? And I'll play it before without clicking it so
20 that way it might be a better image for you. That person
21 with the hat.

22 A. That's Agent Roberts.

23 Q. Okay. So, I just want to ask you a little about
24 that. So, is the -- and in this case Agent Roberts is --
25 what would you describe that he's wearing that you can tell,

1 from top to bottom?

2 A. He's wearing a Sheriff's Office -- well, it's a
3 baseball hat backwards.

4 Q. Okay.

5 A. Sheriff's Office tact vest, and looks like a pair
6 of dark trousers.

7 Q. In this video can you see the words Sheriff's
8 Office written any where on his sleeves?

9 A. No.

10 Q. And I want to talk about the lighting on the other
11 side. What -- it's obviously very, very bright. Are those
12 other emergency vehicles?

13 A. Yes, sir.

14 Q. And so would those be down Covina -- I mean down
15 Alcazar?

16 A. Yes, sir.

17 Q. All right. So, those vehicles would be facing you,
18 you're facing them?

19 A. Yes.

20 Q. And those vehicles would be closer to the
21 intersection of Alcazar and Covina I suppose?

22 A. Yes.

23 Q. And about how many vehicles would you estimate --
24 this is 14 minutes into your vehicle. About how many
25 emergency vehicles would you estimate are present at this

1 time?

2 A. I don't know.

3 Q. Was it quite a few?

4 A. I don't know, I was in the ambulance.

5 Q. Oh, okay. So, you were actually -- you were gone
6 even by now?

7 A. Yes.

8 Q. I understand. But nonetheless, but you would agree
9 with me that the light illumination situation right here,
10 aside from this I guess light on that house, is coming from
11 the emergency vehicles that we're looking at?

12 A. Yes.

13 Q. Okay. And does some of that light obviously, you
14 know, go onto the yard of Covina?

15 A. I guess, yes.

16 Q. But nonetheless, even with all these lights it's
17 still very dark in the front yard, right?

18 A. Yes.

19 Q. Okay. Okay, has your car -- has your vehicle moved
20 from the scene at this point, or is it still in the same
21 position?

22 A. I don't know, I was gone. I left my car on scene.

23 Q. Did you ever retrieve your vehicle?

24 A. Eventually, yes, sir, I did.

25

1 Q. From the scene?

2 A. I don't know that answer. I don't remember.

3 Q. Okay. Well, just in looking at this you -- do you
4 have any reason to believe that this dash cam video, you
5 know, that the vehicle moved in the first two hours of this
6 dash cam video recording?

7 A. No.

8 Q. Okay, all right. So, I just wanted to show the
9 difference frankly in the light with emergency vehicles and
10 without it Sergeant. So, at this point do you have any
11 reason to believe that your car has moved? That's all I'm
12 asking.

13 A. I can't tell.

14 Q. Okay. Would you agree that it's much darker then
15 at least at what we're looking at?

16 A. Yes, sir.

17 Q. Okay. Okay, and finally, from what we understand,
18 can you tell if we're still on the same street or anything
19 like that?

20 A. I can't really answer that. I don't know, I wasn't
21 there.

22 Q. No problem ma'am. But at least we can all agree
23 it's very dark out there on the right, correct?

24 A. Yes, sir.

25 Q. Okay.

1 MR. PANELLA: I don't have anything further Judge.

2 THE COURT: Okay, thank you. Mr. Scheiner?

3 MR. SCHEINER: Yes.

4 CROSS EXAMINATION

5 BY MR. SCHEINER:

6 Q. Sergeant Deans, from where you were parked on --
7 this is Defendant's Exhibit 2. Can you tell the Court on
8 this exhibit where it is that you were parked?

9 A. Right over here sir.

10 Q. Okay. So, you were behind the house on Alcazar?

11 A. Yes, sir.

12 Q. Okay. So, you didn't have a view of the front
13 yard --

14 A. No, I didn't.

15 Q. (Cont'd) from where you were at?

16 A. No, I did not.

17 Q. So, you don't know the lighting conditions at the
18 front of that house on August 20, 2015?

19 A. That's correct.

20 Q. Okay. And when you arrived on scene and you pulled
21 up could you tell that that was Sheriff's deputies tending to
22 another one of your fellow officers on the ground?

23 A. Yes, sir.

24

25

1 Q. So, regardless of what they were wearing you were
2 able to identify that as who?

3 A. Agent Stead and J Rob.

4 Q. You recognized them and you were able to see them
5 sufficiently to do that?

6 A. Yes, sir.

7 Q. Okay. And then -- and the guy running around in
8 his underwear?

9 A. Was Chief Lewis.

10 Q. Chief Lewis?

11 A. Yes, sir.

12 Q. Okay. And you were able to identify him and
13 recognize him as you approached?

14 A. Yes, sir.

15 Q. Now, on August 20, 2015 was Covina and Alcazar
16 somehow darker than any other place at that particular time
17 that you're aware of that didn't have lighting, artificial
18 lighting?

19 A. No, sir.

20 Q. It was a pretty normal August night for you and --
21 because that's your zone, right?

22 A. Yes, sir.

23 Q. How long have you been patrolling that zone for?

24 A. God, a total of probably eight years at least.

25

1 Q. Because I noticed in your video the other two
2 deputies made a U-turn on US1. They took the long way,
3 didn't they?

4 A. Yes, sir.

5 Q. That's your zone, you knew where to go?

6 A. Yes, sir.

7 Q. Okay. Were you able to, when you were outside of
8 your patrol car, look around you and see people?

9 A. Yes, sir.

10 Q. Were you able to see people that weren't being
11 illuminated by artificial lighting?

12 A. Yes, sir.

13 Q. Okay. And were you able to tell who they were?

14 A. Yes, sir.

15 Q. Okay.

16 MR. SCHEINER: No further questions.

17 MR. PANELLA: Just briefly Judge if I may.

18 THE COURT: Certainly.

19 RE-DIRECT EXAMINATION

20 BY MR. PANELLA:

21 Q. But just to be clear, when we're talking about you
22 being able to identify folks, and we can just look at it,
23 certainly there were already emergency vehicles on the scene
24 illuminating with light, right?

25 A. Yes, sir.

1 Q. Okay. So, it wasn't -- it certainly wouldn't be
2 the case that you would say the same -- it was the same
3 darkness as far as what you could view the individuals with
4 these police cars and your own vehicle lights and everything
5 versus none of those emergency vehicles on the scene, right?

6 A. I'm sorry, what's the question?

7 Q. I'm sorry. Just -- I'll make it clearer. When you
8 were identifying -- when you first arrived at the scene you
9 told us that you couldn't even identify the markings on these
10 peoples outfits, right?

11 A. Correct.

12 Q. And that was before some of these other emergency
13 personnel showed up on the scene, right?

14 A. Yes.

15 Q. Okay. And then once they did show up on the scene
16 and had bright lights like this you were able to make out who
17 people were a little better?

18 A. Yes.

19 MR. PANELLA: Nothing further Judge.

20 THE COURT: All right, thank you. May Sergeant
21 Deans be excused?

22 MR. PANELLA: She may.

23 THE COURT: All right. Thank you very much
24 Sergeant Deans. Mr. Panella, who will be your next
25 witness sir?

1 MR. PANELLA: Judge, I'd like to call -- can we do
2 the thing with the CD? If not I'll just -- I can call
3 another witness, have it loaded onto a thumb drive, and
4 do it that way if that's easier.

5 MR. SCHEINER: Do that.

6 MR. PANELLA: I'd like to call Sergeant Beuer, and
7 I'd like just one moment before we do.

8 THE COURT: All righty.

9 MR. PANELLA: I'm going to set it up for the
10 witness after that.

11 THE COURT: All right.

12 THE CLERK: Raise your right hand. Do you solemnly
13 swear or affirm that the testimony you shall give will
14 be the truth, the whole truth, and nothing but the truth
15 so help you God?

16 THE WITNESS: I do.

17 THE CLERK: Thank you. You may be seated.

18 WHEREUPON:

19 TODD BEUER,
20 a Witness herein, having been duly sworn, testified upon his
21 oath as follows:

22 DIRECT EXAMINATION

23 BY MR. PANELLA:

24 Q. Good afternoon sir.

25 A. How you doing?

1 Q. I'm well, thank you. If you could state your name
2 and spell your last name for the record please?

3 A. Todd Beuer. Last name spelling is B-E-U-E-R.

4 Q. And is it corporal or sergeant? I always get it
5 wrong.

6 A. Sergeant now.

7 Q. Okay, sergeant. And I'm sorry to keep you waiting
8 for the last couple days. Thanks for your patience.

9 A. It's perfectly fine.

10 Q. Sergeant Beuer, if you could just tell us where
11 you're employed and how long you been there?

12 A. I'm employed with the Brevard County Sheriff's
13 Office. I've been here since 1995. I've been a deputy
14 sheriff, certified deputy sheriff since 1998.

15 Q. Okay sir. And so I just want to bring you right to
16 what we're talking about today. Did you happen to be on duty
17 on August 20, 2015?

18 A. Yes.

19 Q. And what were you doing that night? Where were
20 you?

21 A. I was eating.

22 Q. Yeah?

23 A. Just gone done eating, yes.

24 Q. And who were you with?

25 A. Lieutenant Haggarty and Sergeant Jason Hart.

1 Q. Okay. And I'm going to ask you about an event that
2 happened that night, and just to make things easier for all
3 of us, if you don't remember the answer to my question I'm
4 happy to help refresh your recollection with your prior
5 testimony.

6 A. Okay, thank you.

7 Q. Okay. So, just let me know. And did you
8 ultimately get a call about a shooting?

9 A. Yes.

10 Q. And what did you do?

11 A. We departed the parking lot right there on US1. We
12 were approximately -- in a straight line we would have been
13 about a mile, but driving time about a mile and a half.

14 Q. Okay.

15 A. I arrived on scene. We came in on the west side of
16 the residence, and then parked. And then when I came up I
17 saw Chief Lewis at the time.

18 Q. Okay.

19 A. Mike Lewis. And at this time I observed Jason Hart
20 and I think it was Pete and Casey coming on the west side of
21 the residence.

22 Q. Okay. Was Sergeant Deans there just before you?

23 A. I'm not --

24 Q. Or who got there first?

25 A. I think it was myself, Lieutenant Haggarty, and

1 Jason Hart.

2 Q. And I know it's been a while. Sir, is it maybe
3 Jason Roberts? Is that -- or was it Hart that you --

4 A. Jason Hart, Sergeant Hart was there.

5 Q. You saw Sergeant Hart, okay.

6 A. And I was -- that's who I was eating with at
7 Kelly's Barbecue. There was three of us eating.

8 Q. Okay. And when you got to the scene you observed
9 Chief Lewis at the time?

10 A. Chief Lewis.

11 Q. And did you observe anybody else?

12 A. Yes. That's when I looked over to the residence
13 where the incident was occurring and I saw Jason Roberts, and
14 Pete Stead, and Casey Smith.

15 Q. Now I understand. I just didn't understand what
16 you meant.

17 A. Yeah.

18 Q. Okay, so -- and you're not sure -- but you were
19 certainly one of the first responders, is that right?

20 A. Yes.

21 Q. And now how was Agent Lewis or Chief Lewis dressed?

22 A. I believe he was in shorts and -- I think just a
23 pair of shorts if I recall.

24

25

1 Q. Okay. Because that was early on is what you're
2 saying?

3 A. Yes.

4 Q. Now, were the three agents that you spoke of, were
5 they already in the yard?

6 A. Yes, they were on -- now on the I guess on the
7 west -- more on the west side of the residence.

8 Q. Okay. And I guess my questions to you are simply
9 about the lighting at the time. So, from your position in
10 the yard was there any light emanating from the house?

11 A. Where I was positioned -- I was positioned on the
12 rear. Because once I arrived on scene and I observed what
13 they were doing coming across the yard that's when I backed
14 my car in in a position to -- for cover.

15 Q. Yes.

16 A. Because at this time we have no clue what's going
17 on. And I assisted to get Casey back and Jason and them back
18 behind my car. So, I was more on the back side of the
19 residence. And the -- which would be the west side and the
20 south side --

21 Q. Okay.

22 A. (Cont'd) of the house.

23 Q. And so -- well, could you see any light coming from
24 the house, whether from the side, the back, the front,
25 whatever you could see?

1 A. There were street lights --

2 Q. Any light emanating from the house?

3 A. I don't recall, because like I said, I was -- where
4 I was positioned I couldn't see the front of the house.

5 Q. Okay. Now, let's talk about -- you could at least
6 see the side yard though, right?

7 A. Yes.

8 Q. And part of the front yard, but not all of the
9 front yard, right?

10 A. Yes.

11 Q. And so from your position at least part -- and you
12 could see I guess the backyard too?

13 A. Yes.

14 Q. All right. So, from your position in all of the
15 parts of the yard that you could see how would you describe
16 the lighting conditions?

17 A. In -- where I was it was dark on the back side. It
18 was dark.

19 Q. Would you -- and in just your words would you say
20 it was pitch dark?

21 A. I could see.

22 Q. Okay.

23 A. I could still see what was going on.

24

25

1 Q. I'm just going to show you just so -- if you'd like
2 an opportunity to review this. I know it's been a while.

3 A. Yeah.

4 Q. Do you remember giving a deposition in this case?

5 A. Yes.

6 Q. And do you remember giving a statement even before
7 that to --

8 A. Agent Martin or?

9 Q. Right.

10 A. Yeah, one of the -- yes.

11 Q. Okay. Have you given any other statements besides
12 those?

13 A. No.

14 Q. Okay. And I know you said you might want to look
15 at this, so.

16 A. Yep.

17 Q. Let me show you where -- and I'll tell you where
18 Mr. Scheiner. Just let me get -- page 19, line 20. Oh --
19 yeah, that's right. Read as much as you want. This is your
20 answer.

21 A. Yes.

22 Q. Okay. If --

23 A. Yeah, from where I was --

24 Q. Right.

25 A. (Cont'd) on the back side it was dark.

1 Q. Right.

2 A. It was -- yes.

3 Q. So, I'm just asking, from where you were --

4 A. Yes.

5 Q. And all the parts of the yard you could see. And
6 recognizing -- obviously you couldn't see directly in front
7 of the house?

8 A. No.

9 Q. Because you were -- but you could see the whole
10 side yard and part of the front, right from what you're
11 saying?

12 A. More out towards the road.

13 Q. Right.

14 A. I would say maybe 25 to 30 foot away from the front
15 out to the road.

16 Q. Well, we happen to have this, and I'm showing the
17 witness Defendant's Exhibit 3. And so I know -- you were on
18 Alcazar right, down here?

19 A. Yes.

20 Q. Okay. So, what I'm getting at is from your vantage
21 point could you see the side yard?

22 A. Yes.

23 Q. And could you see the side yard up to the -- up to
24 at least Covina?

25 A. Yes.

1 Q. Into the front?

2 A. Yes.

3 Q. But you obviously --

4 A. But --

5 Q. Yeah.

6 A. If you drew a straight line basically from where
7 that big pine tree is.

8 Q. Sure.

9 A. Almost at an angle is -- was my main focus there in
10 the back yard.

11 Q. Ab -- and then of course all of the back yard.

12 A. Yes.

13 Q. And so going all the way up to Covina with that
14 straight line was your --

15 A. Yep.

16 Q. And my question then becomes would you describe
17 that as pitch dark from what you could see?

18 A. It was dark, yes.

19 Q. Okay, that's all. All right, now, you
20 eventually -- well, so, you were one of the first ones there.
21 What happened next, as far as the law enforcement response to
22 the scene?

23 A. Yeah, at this time it was myself and Lieutenant
24 Haggarty. We pretty much tried to take charge of the scene.
25 I -- at this time we had Casey, so the first thing we wanted

1 to do is get him out.

2 And then I had Jason Roberts with me, and Pete was
3 sitting here with me. So, my next priority was to get them
4 away and secure the house.

5 Q. Okay. And then at this point were there many
6 other -- were other agencies even responding to this
7 besides --

8 A. They started responding, yes, and then we started
9 trying to get them in place.

10 Q. Okay. So, of -- you know, within the course of,
11 what would you say, 15 minutes, there was -- was there quite
12 a law enforcement presence?

13 A. It kept increasing as the time went on, yes.

14 Q. Okay. And did you have occasion to actually
15 witness -- oh, and by the way, was there a lot of lights and
16 spots and all kinds of things focused on the house once law
17 enforcement started showing up?

18 A. Yes. Once we got there we started setting up the
19 perimeter and letting them, you know, know that it's the
20 police out here, yes.

21 Q. Okay. Letting the residence know that it's the
22 police?

23 A. So, we knew and we could see a lot better, yes.

24

25

1 Q. Sure. And so did you have occasion to witness a
2 female exit the residence?

3 A. I seen a female coming across the front yard, yes.

4 Q. Right, okay. And did you notice anything -- was
5 she on the phone or anything like that?

6 A. I -- from my vantage point I think she had the
7 phone or something in her hand. I'm not completely sure.

8 Q. But --

9 A. But from where I was at I was still watching the
10 back of the house. My duty was to watch the back of the
11 house at that point and continue setting up the logistics of
12 people coming in.

13 Q. Okay. And now did you have occasion -- and then
14 was she taken into custody?

15 A. Yes.

16 Q. Did you have occasion to see a male exit the
17 residence?

18 A. Yeah -- or once again, about half way through the
19 front of the yard is when I observed a male walking -- coming
20 out of the residence.

21 Q. Right. You couldn't see him come out the door,
22 but --

23 A. No.

24

25

1 Q. (Cont'd) about half way through the front of the
2 yard you can --

3 A. Yep.

4 Q. (Cont'd) finally -- they came into your view?

5 A. Yep.

6 Q. And where was the male taken into custody?

7 A. I -- I have no clue.

8 Q. All right.

9 A. Like I said, my priority was the back of the
10 residence and the side of the residence.

11 Q. But you just -- you happened -- you did happen to
12 notice those two people come out of the residence --

13 A. Yes.

14 Q. (Cont'd) at some point? And by then, like we said,
15 there was a bunch of law enforcement response and spotlights?

16 A. Yes.

17 Q. Things like that on the residence.

18 A. Yeah, there was a bunch of law enforcement, yes.

19 Q. Yeah. And would you say it was still difficult to
20 see them, even with all those lights?

21 A. No, not at that point.

22 Q. Okay. And again, I'm just going to show you -- and
23 you can look at this, and I'm referring to page 25 of his
24 deposition, and specifically line 21. All right, that's
25 where the answer probably shows up. And you can read as much

1 as you'd like.

2 A. Yeah, and like I said, my focus was the back of the
3 yard.

4 Q. Right.

5 A. So, I knew something was going on, and once he was
6 being addressed by other law enforcement that's their duty.

7 Q. Right.

8 A. My duty now is to get back on focus and whatever
9 goes on over there was going on.

10 Q. My question is simply even with the street -- the
11 spotlights and the police lights and all that that were in
12 place at the time was it still difficult for you to see them?

13 A. From where I was, yes, because I was more focused
14 on the back.

15 Q. Okay.

16 A. Yes.

17 MR. PANELLA: I don't have anything further for
18 this witness.

19 THE COURT: All right, thank you. Mr. Respass or
20 Scheiner?

21 CROSS EXAMINATION

22 BY MR. SCHEINER:

23 Q. So -- I almost called you Agent Beuer because
24 that's the last time I've had you testify was when you were
25 an agent. Sergeant Beuer, when you arrived on scene could

1 you see people?

2 A. Yes.

3 Q. Could you see people without illuminating them with
4 your light?

5 A. Yes.

6 Q. Could you make out their features, see who they
7 were, and identify them?

8 A. Immediately, yes.

9 Q. Okay. Now, when you say it was dark out you just
10 mean there's no artificial lighting illuminating that area.

11 A. Exactly, yes.

12 Q. And you were still able to see into the backyard?

13 A. Yes.

14 Q. And determine if there was any individuals coming
15 or going from that house?

16 A. Yes.

17 Q. Okay. Did you ever see anyone come or go from that
18 house?

19 A. No.

20 Q. Chief Lewis --

21 A. Yes.

22 Q. (Cont'd) was running around a lot that night.

23 A. Yes, he was.

24 Q. Did they keep a spotlight on him?

25 A. No.

1 Q. Were you able to see him as he was running around?

2 A. Yes. Oh, yeah, definitely, and that's what I
3 was -- I was thankful that myself and the older guys came up
4 the west side of the residence, because we immediately
5 recognized Mike Lewis.

6 Q. Okay.

7 A. And some of the younger guys don't know him.

8 Q. They might have seen a --

9 A. They might have seen somebody else running around,
10 and with the radio traffic it was kind of confusing at the
11 beginning. So, I immediately looked and I said, yep, there's
12 Mike Lewis there, or Chief Lewis.

13 Q. And you didn't have to illuminate him with your
14 headlights or anything?

15 A. No.

16 Q. He was in the side yard --

17 A. Yes.

18 Q. (Cont'd) when you saw him? And you were able to
19 see him and recognize him?

20 A. Yes.

21 Q. Okay. Without having any lights on him?

22 A. Yes.

23 Q. Okay. So, you could see, it just wasn't daylight?

24 A. Exactly, yes.

25

1 Q. It wasn't like this picture?

2 A. Not even close.

3 Q. Yeah. And you don't know what the lighting
4 conditions were at the front of the house when the shooting
5 started?

6 A. No.

7 Q. And you don't know what the lighting conditions
8 were at the front of the house when you got there?

9 A. No.

10 MR. SCHEINER: No other questions.

11 THE COURT: All right.

12 RE-DIRECT EXAMINATION

13 BY MR. PANELLA:

14 Q. Okay, just real quick. Again, from your vantage
15 point though, the part of the yard you could see, was it
16 pitch dark?

17 A. It was dark, but I could still see, yes.

18 Q. Right, but also you had your police car there with
19 your -- and Sergeant Deans police car and they had lights on
20 them, right, like the headlights?

21 A. My car was still facing southbound --

22 Q. Sure.

23 A. (Cont'd) on whatever the street is to the west,
24 Alcazar I believe.

25

1 Q. Well, we can -- I'm not sure what you mean.

2 A. To the west side of the residence where that other
3 patrol car is on the picture.

4 Q. Yeah. That's what you think, yeah. You're asking
5 if that's Alcazar?

6 A. I think it's Alcazar.

7 Q. Sure.

8 A. Yes.

9 Q. And that's Covina.

10 A. Yes. And my lights were pointing directly to the
11 south, and I could still see that it was Agent Roberts, and I
12 could still see Mike Lewis to the right.

13 Q. Sure. And also there was -- and very shortly
14 thereafter you talked about other responding cars and their
15 lights and all of that stuff and it's a different situation
16 at that point, right?

17 A. Yes.

18 Q. Okay.

19 MR. PANELLA: I don't have anything further Judge.

20 THE COURT: All righty. May Sergeant Beuer be
21 excused?

22 MR. SCHEINER: Yes, from the State's perspective.

23 MR. PANELLA: Yes, he can.

24 THE COURT: All right.

25 THE WITNESS: Thank you.

1 THE COURT: Thank you. Good to see you. I think
2 you were an agent last time I saw you testify too.

3 THE WITNESS: It's been a little bit.

4 THE COURT: All right. Who will be your next
5 witness Mr. Panella?

6 THE WITNESS: Thank you.

7 MR. PANELLA: Thank you sir. Andrew Johnson.

8 THE COURT: All righty.

9 MR. PANELLA: Trying to go quickly Judge.

10 THE COURT: All right. I appreciate that. How
11 much of a dent have we made in your list?

12 MR. PANELLA: In the what?

13 THE COURT: How much of a dent have we made in your
14 list?

15 MR. PANELLA: I'm sorry.

16 THE COURT: I'm saying how much of a dent?

17 MR. PANELLA: I'm trying --

18 (Multiple speakers.)

19 THE CLERK: Raise your right hand. Do you solemnly
20 swear or affirm that the testimony you shall give will
21 be the truth, the whole truth, and nothing but the truth
22 so help you God?

23 THE WITNESS: Yes.

24 THE CLERK: Thank you. You may be seated.

25

1 THE COURT: Yeah, I'm not trying to rush you, I'm
2 just trying to figure out how we can, you know --

3 MR. PANELLA: Yeah, absolutely.

4 THE COURT: (Cont'd) make it happen. Thank you.
5 Anytime you're ready sir.

6 MR. PANELLA: Sure Judge, thank you. I just had
7 a -- I thought I just gave the exhibit to have marked.

8 THE CLERK: Do you want that marked?

9 MR. PANELLA: Yeah, can you --

10 THE CLERK: Just mark it for ID.

11 MR. PANELLA: If you can mark it for ID, and then
12 I'm going to -- thank you.

13 THE CLERK: Can you tell me what that is?

14 MR. PANELLA: This is the dash cam video from
15 Deputy Andrew Johnson.

16 THE CLERK: Okay.

17 WHEREUPON:

18 ANDREW JOHNSON,
19 a Witness herein, having been duly sworn, testified upon his
20 oath as follows:

21 DIRECT EXAMINATION

22 BY MR. PANELLA:

23 Q. Okay, good afternoon sir.

24 A. How are you doing?
25

1 Q. I'm well, thank you. If you could state your name
2 and spell your last name for the record?

3 A. Corporal Andrew Johnson with the Sheriff's Office.
4 My last name is J-O-H-N-S-O-N.

5 Q. Thank you Corporal. I'm sorry to call you deputy.

6 A. That's fine.

7 Q. And if you could tell us where you're currently
8 employed and how long you've been there.

9 A. Brevard County Sheriff's Office, since November of
10 2007.

11 Q. And did you have any prior law enforcement
12 experience before that?

13 A. No.

14 Q. Okay. And where -- what was your position in 2015?

15 A. I was a field training officer.

16 Q. And so what -- I guess help me understand what
17 steps did you take to get where you are right now? Like what
18 were your positions with BCSO?

19 A. I was a dispatcher first.

20 Q. Okay.

21 A. And then I went to the police academy, became a
22 deputy, and then I became a field training officer.

23 Q. All right.

24 A. So.

25

1 Q. And were you -- did you happen to be on duty on the
2 night of August 20, 2015?

3 A. I believe so.

4 Q. Well, let me ask you this: Were you on duty the
5 night of the deputy involved shooting in 2015?

6 A. Yes, I was.

7 Q. With Agent Smith?

8 A. Yes.

9 Q. Okay. And sir, did you happen to have an in car
10 dash cam video --

11 A. I did.

12 Q. (Cont'd) recording some of your response? Okay, if
13 you could help us explain -- just explain to the Court what
14 you were doing right before you got the call?

15 A. We were at the Space Coast Sports Complex off
16 Canaveral Groves Boulevard. We had just finished up a call
17 and I was speaking with my sergeant.

18 Q. Okay.

19 A. When we were notified over the radio --

20 Q. So --

21 A. (Cont'd) that there was an incident.

22 Q. I'm sorry, I didn't mean to cut you off. What was
23 the rest of it?

24 A. We were notified over the radio that there was a
25 shooting involved with a deputy in the north precinct.

1 Q. All right. Were you -- so, was your vehicle
2 stopped at the -- did you come from a stopped position and
3 then book it over to the --

4 A. Yes.

5 Q. (Cont'd) to the residence?

6 A. Yes.

7 Q. All right. By the time you got there what did you
8 observe? Were there other -- like, for -- were there other
9 law enforcement? Was there other law enforcement presence
10 there?

11 A. Yes.

12 Q. And you know, were they deployed with lights and
13 things like that?

14 A. Yeah, I think it was the very early stages --

15 Q. Em-hmm.

16 A. (Cont'd) of setting up for whatever was going on.

17 Q. Sure. Did you -- I'm just wondering if you noticed
18 other police cars that were there before you?

19 A. Yes.

20 Q. All right. And if you could help us, we do have an
21 aerial, but we may not -- well, we probably do. Here it is.
22 I'm showing the witness Defendant's Exhibit 2. And we don't
23 have the overhead set up, but this is an aerial view. Do you
24 recognize this residence?

25 A. Yes.

1 Q. Okay. What do you recognize it as?

2 A. The residence that was involved that night.

3 Q. All right. And where -- which direction would you
4 have been coming in from?

5 A. I came from the north.

6 Q. Okay. So, you came from --

7 A. North to south.

8 Q. So, did you come -- you came from the north on
9 Alcazar?

10 A. I don't believe --

11 Q. Oh, on this road?

12 A. Whatever the road's -- I don't remember the road's
13 name.

14 Q. Sure. No problem. Was it this road though?

15 A. Yes.

16 Q. Okay. So, this road keeps going this way?

17 A. Correct.

18 Q. And did you come close to this intersection of this
19 road and this road?

20 A. Yes.

21 Q. All right. And is that where your vehicle rested?

22 A. Just north of the intersection.

23 Q. Oh, so like just at this -- just north of the
24 intersection on Alcazar?

25 A. Yes, facing south.

1 Q. Facing south, so I suppose the house would have
2 been to your left just a bit?

3 A. Front and left, yeah.

4 Q. Front and left, okay. Does the Court need
5 further --

6 THE COURT: No.

7 MR. PANELLA: Okay.

8 BY MR. PANELLA:

9 Q. Okay sir. And have you had an opportunity --
10 you've given some prior statements in this case, right? Did
11 you take a deposition?

12 A. I don't remember if I did.

13 Q. You don't?

14 A. It was so --

15 Q. You don't remem -- did you ever meet me before?

16 A. I'm not sure if I did.

17 Q. Okay. Well, no problem sir. Do you remember --
18 you do remember responding to the scene though, right?

19 A. Yes, sir.

20 Q. Do you remember that you had an in car video?

21 A. Yes, sir.

22 Q. And have you ever seen it?

23 A. I believe so, yes.

24

25

1 Q. All right. I am going to show you part of your
2 video so you can authenticate it. And if we need to take a
3 break to address some of this we will, but if something about
4 this looks unfamiliar to you let me know, but if it does jog
5 your memory then let me know that too.

6 A. Okay.

7 MR. SCHEINER: Could we just announce ID what we're
8 showing.

9 MR. PANELLA: It's going to be Defendant's Exhibit
10 AO.

11 THE COURT: Thank you.

12 MR. PANELLA: Thank you Mr. Scheiner.

13 THE WITNESS: That's not my video.

14 MR. PANELLA: Okay, then let me pause it. I'm glad
15 we're having this conversation. Hang on one second sir.
16 Judge, why don't we take a moment and get that right,
17 okay?

18 THE COURT: Okay.

19 MR. PANELLA: Can we take a brief recess?

20 THE COURT: Sure. All right, we'll be in recess.
21 Why don't you just let me know --

22 MR. PANELLA: Sure.

23 THE COURT: (Cont'd) when you've got it cued.

24 Thanks.

25

1 (Whereupon, court stands in recess for
2 approximately ten minutes.)

3 THE COURT: You ready to go?

4 MR. PANELLA: Yes, ma'am. Thank you Your Honor.

5 THE COURT: All right.

6 MR. PANELLA: And we're also resolving a witness
7 issue right now in case you wanted to keep going after
8 this. We're trying to see --

9 THE COURT: Okay.

10 MR. PANELLA: Make sure that we've maximized your
11 time.

12 THE COURT: Okay, perfect.

13 MR. PANELLA: So, that was part of it as well.

14 THE COURT: Thank you.

15 MR. PANELLA: You're welcome. Are we back on the
16 record?

17 THE COURT: So, you've got -- right. You were
18 showing Deputy -- Corporal Johnson Defense Exhibit AO,
19 correct?

20 MR. PANELLA: Yes, Judge. And it turns out Defense
21 Exhibit AO was incorrect. We have a new exhibit.
22 That's just going to be for identification. And we have
23 new one, Defense Exhibit AP.

24 THE COURT: Okay.

25

1 MR. PANELLA: For identification. And are we back
2 on the record?

3 THE COURT: Oh, yes.

4 MR. PANELLA: Okay.

5 THE COURT: Let's say -- let me do that. We're
6 back on the record in 2015-CF-39550, State of Florida
7 versus John Derossett. Mr. Derossett is present with
8 counsel Mr. Panella, and Mr. West must have stepped
9 out.

10 MR. PANELLA: There -- we're handling another
11 mix --

12 THE COURT: That's probably Mr. West walking in.
13 See. Every time I say he stepped out he walks back in.
14 And Mr. Scheiner is here, Mr. Respass is walking back in
15 as well. All right, Mr. Panella, please carry on as
16 you --

17 MR. PANELLA: Thank you ma'am. Thank you Corporal.
18 Sorry about the delay.

19 BY MR. PANELLA:

20 Q. I am showing you what's been previously marked as
21 Defendant's Exhibit AP. Have you had an opportunity in the
22 brief recess we took to review this?

23 A. Yes.

24

25

1 Q. And verify that this is indeed your in car video
2 from the evening of August 20, 2015?

3 A. Yes.

4 MR. PANELLA: At this time I'd like to move
5 Defendant's Exhibit AP into evidence.

6 MR. SCHEINER: No objection.

7 THE COURT: All right. Would that be number 26
8 Madam Clerk, without objection?

9 THE CLERK: 25.

10 THE COURT: 25 for them, okay, for the Defense.
11 Okay, thank you. Exhibit 25. And you said that's
12 Corporal Johnson's in car video, correct?

13 MR. PANELLA: Yes, ma'am.

14 THE COURT: All right.

15 MR. PANELLA: Thank you ma'am.

16 BY MR. PANELLA:

17 Q. Okay, Corporal, is this your video?

18 A. Yes.

19 Q. All right. We're not going to watch the whole
20 thing, it's quite lengthy, but let's go ahead and make sure
21 everyone can see it. State?

22 MR. SCHEINER: Yeah, you can turn it more in.

23 MR. RESPESS: Turn it towards the Judge

24 MR. PANELLA: Turn it more you're saying?
25

1 MR. SCHEINER: Yeah, so the Judge can see more. I
2 can see it. I've seen it.

3 BY MR. PANELLA:

4 Q. All right, I just want to pause it right here.
5 Obviously -- well, let me ask you, what were the lighting
6 conditions at the time that this video was taken, as far as
7 the sky and, you know?

8 A. It was night time and I think there was like heat
9 lighting off in the distance.

10 Q. I was going to ask you about that. Yeah, you can
11 see some heat lightening there. Was it raining or anything
12 or?

13 A. Not that I can recall.

14 Q. But you do remember some heat -- maybe heat
15 lightening?

16 A. I think so.

17 Q. Okay. But it was also pretty dark out there,
18 right?

19 A. Yes.

20 Q. All right. So, you start responding to the scene.
21 How long do you think it takes you to get there?

22 A. Just a few minutes.

23 Q. Okay. And the reason that I -- I'm going to show
24 you -- where are you coming from?

25 A. Canaveral Groves Boulevard.

1 Q. Said Canaveral Groves Boulevard, okay. Okay, now
2 I'm going to just go ahead and pause it. Now, where --
3 again, you said you were coming down Alcazar from the north
4 side?

5 A. Correct.

6 Q. Heading toward the house, right?

7 A. Correct.

8 Q. So, where -- is this the house in question?

9 A. Yes.

10 Q. All right. So, already there's at least one police
11 patrol unit that you can see on the scene, right?

12 A. Right.

13 Q. Okay. And they've got their lights on and you --
14 do you have your -- well, did they have their lights on from
15 what you can tell?

16 A. I don't believe so.

17 Q. Do these -- well, do you have your lights on at
18 least?

19 A. When we were responding, yes.

20 Q. Okay. And so it's illuminating these folks here
21 right here, right?

22 A. Yes.

23 Q. Do you know who these people are as you sit here
24 today?

25 A. I couldn't tell you right now.

1 Q. Okay, and that's fine. If you don't, you don't. I
2 know it's a long time ago.

3 A. If you played the video longer I'd probably be able
4 to tell you. I only recognize one other person.

5 Q. Sorry, what was that?

6 A. I only recognize one other person just off the
7 video.

8 Q. Okay. So, all I'm wondering about is this -- do
9 you -- how long was this -- how long was this dash -- how
10 long is your car there in that position that night?

11 A. A long time.

12 Q. Okay. Like hours?

13 A. Yes.

14 Q. And would you -- by the time -- from where -- we're
15 in like minute 549 of your video here, right?

16 A. Okay.

17 Q. And you -- it took you a couple minutes. So, did
18 more law enforcement officers come out to the scene?

19 A. Yes.

20 Q. And would you say that there's quite a -- like a
21 lot of law enforcement officers came out to the scene?

22 A. There was a heavy presence of --

23 Q. It was a heavy presence, okay. And even some
24 other -- besides BCSO there was some other agencies, right?
25 Or do you know?

1 A. I don't recall that.

2 Q. Okay. You just know there was a heavy presence?

3 A. Yes.

4 Q. And did you have occasion to witness the -- a male
5 and a female exit the residence?

6 A. Yes.

7 Q. Who exited -- which one exited first, the male or
8 the female?

9 A. The female.

10 Q. And did that -- is that captured on your video?

11 A. I'm not sure.

12 Q. All right, no problem.

13 A. I'm sure you could see her walking to where that
14 black SUV is in front of that marked patrol car. I believe
15 she passed in front of that black SUV.

16 Q. Okay.

17 A. And came to our position over there where she was
18 secured.

19 Q. And what I want to know is when she came out of the
20 residence at that point was there already quite a heavy
21 presence of police --

22 A. Yes.

23 Q. (Cont'd) in the area?

24 A. Yes.

25

1 Q. Did many of them have lights trained on the house?

2 A. I believe by that time we did. I can't say for
3 sure.

4 Q. Okay. Well, at least we know your vehicle is out
5 there, right?

6 A. Correct.

7 Q. With lights on?

8 A. Yes.

9 Q. And we know that -- you said there was a heavy
10 presence that responded to the scene?

11 A. Correct.

12 Q. So --

13 A. There was vehicles moved and -- to be in a more
14 tactical position.

15 Q. Okay. So, would -- if you were look -- for
16 example, if you were in that house looking out in the
17 position we're in right now do you think someone in that
18 house could see the lights of your vehicle?

19 A. Absolutely.

20 Q. Okay. And maybe some of the others that showed up
21 at the time as well?

22 A. Yeah.

23 Q. All right. Just one moment Your Honor. Okay. And
24 I wanted to back this up just a little bit as you're
25 responding in. I'm going to pause it here and I'm going to

1 ask you is -- from what you can tell from where you are
2 responding is the porch light on at that house?

3 A. From what I can tell, no.

4 Q. Okay.

5 MR. PANELLA: I don't have any further questions.

6 MR. SCHEINER: Just briefly Your Honor.

7 THE COURT: Sure.

8 CROSS EXAMINATION

9 BY MR. SCHEINER:

10 Q. This is -- well, assuming this timer is right at
11 21:36, that's 9:36?

12 A. Correct.

13 Q. So, the call -- you're dispatched at 9:31 or 9:30?

14 A. Somewhere right in there.

15 Q. So, this is five minutes later that you're
16 responding to the scene?

17 A. Yes.

18 Q. Okay. Now, as you pulled up, before you turned
19 your car in this fashion towards that house on Covina, were
20 you able to see into the yard?

21 A. Yes.

22 Q. And you could tell if there was anybody there?

23 A. Yes.

24

25

1 Q. Okay. You didn't see anybody there, but if there
2 was you would have been able to see them?

3 A. Yes.

4 Q. It wasn't that dark that you couldn't see?

5 A. No.

6 Q. Okay. And then how long were you on scene -- well,
7 the police presence, a lot of police showed up with lights
8 on.

9 A. Correct.

10 Q. And responded with lights and sirens?

11 A. Yes.

12 Q. You responded lights and sirens, you could hear it.

13 A. Yes.

14 Q. How long would you think or you recall being on
15 scene before the female comes out of the house?

16 A. It was a little bit.

17 Q. Okay. Let me see if we can -- let's see if we can
18 find it. So, this portion of the tape, we're at about 16
19 minutes in. This is -- cars have been moved?

20 A. Correct.

21 Q. The other marked patrol car that was in front of
22 you has been moved?

23 A. Correct.

24 Q. The SUV has been moved back?

25 A. I don't know if the SUV was moved. I don't recall

1 if it was or not. I know my --

2 Q. Or did you move up?

3 A. I moved up.

4 Q. Okay.

5 A. I didn't move my car, somebody else did, but it was
6 moved up.

7 Q. So, there's your car moving, right?

8 A. Correct.

9 Q. So, we're at 13 minutes out and she still hasn't
10 come out yet.

11 A. Okay.

12 Q. Do you remember who took her into custody?

13 A. Myself and Chief Lewis.

14 Q. Who's this?

15 A. That is Chief Lewis.

16 Q. Okay. And we're about 19 minutes and 44 seconds
17 into your tape?

18 A. Yeah.

19 Q. So, this is after you have been responding to 911
20 dispatching you?

21 A. This was after we were notified over our primary
22 channel on the list --

23 Q. Shots fired?

24 A. (Cont'd) from another deputy. I believe it was K-9
25 Deputy Scott Stewart that advised us.

1 Q. Can you hear that?

2 A. Yes.

3 Q. Is that her being taken into custody?

4 A. That is us giving her commands.

5 Q. And then she's right here?

6 A. That's her on the ground, yes.

7 Q. So, that's about 20 minutes after you responded?

8 A. Correct.

9 Q. Okay. And so when you responded on scene and there
10 was heavy police presence there's cars with their lights on?

11 A. Correct.

12 Q. The blue lights. How many cars do you think
13 responded at that point?

14 A. When I --

15 Q. Right.

16 A. (Cont'd) got on scene?

17 Q. Yeah.

18 A. There was only a handful.

19 Q. So, there was the two in front of you, the
20 unmarked, the marked unit that were immediately in front of
21 you. Did you know that there were other units that were on
22 the back side of --

23 A. On the south end of the whole thing?

24 Q. Correct.

25 A. Yes.

1 Q. Do you know how many units were over there?

2 A. No.

3 Q. And then what about I guess that would be --

4 A. On the east?

5 Q. East side of the --

6 A. To the east of the residence on Covina? I'm not
7 sure if anybody was over there yet. I'm not sure.

8 Q. And at this point that she's being taken into
9 custody EMS has already come and removed Casey from the
10 scene. Did you know that?

11 A. I do believe so.

12 Q. All right.

13 A. At this point where she was taken into custody I do
14 believe there was units on the east side on Covina.

15 Q. So, on the drive -- so, on the other side of the
16 house, Defendant's Exhibit 4 or, on this side?

17 A. Correct.

18 Q. No one ever came out of the house and asked any law
19 enforcement officer that you're aware of for help?

20 A. No.

21 Q. And you had been there for approximately 18 minutes
22 before she's taken into custody?

23 A. Correct. And she came out with a phone in her
24 hand. It was a landline wireless phone.

25 Q. Okay.

1 MR. SCHEINER: No other questions Your Honor.

2 Thank you.

3 THE COURT: All right. Mr. Panella, does that
4 prompt anything?

5 RE-DIRECT EXAMINATION

6 BY MR. PANELLA:

7 Q. Are -- I'm -- Corporal, are you saying that she
8 walked out with a landline wireless phone?

9 A. It was like -- it was a landline phone that's
10 plugged into a receiver, but cordless.

11 Q. Like the kind that you put on like a dock at your
12 house for like a landline?

13 A. Correct.

14 Q. It's not plugged -- and the dock's plugged in or
15 something?

16 A. I believe so.

17 Q. Okay. Do you know for sure?

18 A. I'm pretty positive.

19 Q. Did she have a cell phone?

20 A. I don't know if she had a cell phone. It was some
21 sort of phone. I'm almost positive that it was a larger
22 landline phone.

23 Q. Okay. Was that a -- do you know if that was
24 recovered?

25 A. I don't know.

1 Q. I mean, did you let her keep it? No, right? You
2 would have --

3 A. Obviously not, no.

4 Q. Okay. So -- and you don't know if she was actually
5 on a cell phone -- you don't know if she had a cell phone
6 with her?

7 A. It was a large object. I don't know what was on
8 her person --

9 Q. Right.

10 A. (Cont'd) other than some sort of large phone
11 object.

12 Q. And she was on it, talking?

13 A. Not when we were giving her commands.

14 Q. Okay. But when she came out of the house she was
15 on it talking? Is that --

16 A. I assume she was talking to somebody.

17 Q. Okay.

18 MR. PANELLA: All right, I don't have anything
19 further Judge.

20 THE COURT: Okay, thank you. May this -- may
21 Corporal Johnson be excused?

22 MR. PANELLA: He may Your Honor.

23 MR. SCHEINER: From the State's perspective, yes.

24 THE COURT: All right. Thank you sir.

25 THE WITNESS: Thank you ma'am.

1 THE COURT: Who will be your next witness Mr.
2 Panella?

3 MR. PANELLA: Let's -- can we -- let's get that
4 working again, we'll do Schneider. That'll be perfect.
5 It'll be Conrad Schneider Judge.

6 THE COURT: Okay.

7 THE CLERK: Can I have my exhibit please?

8 MR. PANELLA: Yeah, I'm working on it. I'm not
9 sure -- oh, it's right there.

10 THE CLERK: Thank you.

11 MR. PANELLA: Thank you. I'll help you Will. Hang
12 on.

13 THE CLERK: Raise your right hand. Do you solemnly
14 swear or affirm that the testimony you shall give will
15 be the truth, the whole truth, and nothing but the truth
16 so help you God?

17 THE WITNESS: I do.

18 THE CLERK: Thank you. You may be seated.

19 MR. WEST: Judge, I don't think I'll need this.
20 It'll be a short witness.

21 THE COURT: Oh, all right. If you want to just
22 move it.

23 MR. PANELLA: Oh, you didn't want to put it on the
24 overhead?

25 MR. WEST: I thought it would be on that one.

1 MR. PANELLA: It is.

2 MR. RESPESS: It is, but that's the --

3 MR. PANELLA: We did this for you.

4 MR. WEST: Gotcha, okay. That's fine Judge. That
5 makes more sense.

6 THE COURT: Okay.

7 MR. WEST: Thank you. Are we ready?

8 TH COURT: Sure, anytime you are.

9 MR. WEST: Thanks.

10 WHEREUPON:

11 CONRAD SCHNEIDER,
12 a Witness herein, having been duly sworn, testified upon his
13 oath as follows:

14 DIRECT EXAMINATION

15 BY MR. WEST:

16 Q. Good afternoon.

17 A. Good afternoon.

18 Q. If you would just identify yourself and spell your
19 last name for the record.

20 A. My name is Conrad Joseph Schneider. Last name's
21 spelled S-C-H-N-E-I-D-E-R.

22 Q. And Mr. Schneider, what is your business or
23 occupation? How are you employed?

24 A. I am a crime scene investigator with the Brevard
25 County Sheriff's Office.

1 Q. How long have you held that position?

2 A. Approximately eight years.

3 Q. And did you hold the same position within the
4 Sheriff's Department on August 20th of 2015?

5 A. Yes, sir.

6 Q. And in furtherance of your duties were you sent to
7 a residence at 1051 Covina in Port St. John?

8 A. Yes, sir.

9 Q. Was that identified to you as a possible crime
10 scene where you would be processing evidence?

11 A. Yes.

12 Q. And while you were there at the scene did you have
13 occasion to go into the house and identify or in some way
14 where you became aware of a firearm that was located on a
15 coffee table?

16 A. Yes, sir.

17 Q. And did you physically handle that firearm at one
18 point?

19 A. Yes, I did.

20 Q. And you know the gun we're talking about?

21 A. Yes.

22 Q. Okay. That's what I want to focus on. There may
23 be other questions, but that's what I'd like to focus on at
24 this point.

25 A. Okay.

1 Q. So, if you would first just tell me are you a
2 police officer?

3 A. No, sir.

4 Q. You're a civilian witness?

5 A. That's right.

6 Q. And what kind of background or training do you have
7 with firearms?

8 A. I've handled firearms during my investigative
9 duties as a CSI. I cleared firearms at a multitude of
10 different cases, including drug warrants, suicides, death
11 investigations in general, shootings, and other
12 investigations as well.

13 Q. Sometimes during your work as a crime scene
14 investigator you are asked specifically to clear a suspected
15 loaded firearm?

16 A. Yes.

17 Q. And was that your role in this case?

18 A. I did do that in this case, yes.

19 Q. Are you -- do you have any specific training in
20 firearms that in your mind would make you an expert?

21 A. I wouldn't call me an expert, no.

22 Q. I'm going to show you some exhibits that are
23 already in evidence and see if you can identify what they
24 are. They're all from the scene and they're all of these --
25 this gun that I'm talking about. Do you have your report

1 with you?

2 A. Yes.

3 Q. If you need it feel free to refer to it.

4 A. Okay.

5 Q. So, the first one I'm going to hand you is State's
6 18. I'm going to stick it here so we -- everybody can see
7 it. Can you see that okay?

8 A. Yes.

9 Q. Do you identify the firearm in this picture as the
10 one that you recovered from a coffee table and that you
11 cleared?

12 A. Yes.

13 Q. That's the one we talked about?

14 A. Yes.

15 Q. Let me show you a close up picture of that. That's
16 the same gun?

17 A. Yes.

18 Q. Feel free to move the picture around to get as good
19 a look as you want.

20 A. Okay.

21 Q. And was this the condition it was in when it was
22 pointed out to you?

23 A. Can't be a hundred percent, but I believe so, yes.

24 Q. What were you specifically asked to do with it?

25 A. I was asked to clear the firearm, to remove the

1 magazine, any cartridges or cartridge casing that might be in
2 the gun.

3 Q. Do you know why the other crime scene tech who was
4 taking the pictures didn't do that?

5 A. She was performing other duties at the time.

6 Q. Was your specific responsibility then for -- with
7 regard to this gun simply to clear it?

8 A. Yes.

9 Q. And then give it back so she could continue her
10 work?

11 A. Yes, to clear the firearm, and then she would then
12 photograph, document any magazines, any ammunition within the
13 gun.

14 Q. Okay. Looking at this picture with the
15 understanding and experience you have with firearms, do you
16 see that the magazine is still in the gun?

17 A. Yes.

18 Q. And do you see the ejection port?

19 A. Yes.

20 Q. And do you see the position of the slide?

21 A. Correct, yes.

22 Q. Does anything about the way this gun looks would
23 indicate that it's not capable of being fired?

24 A. At first glance, no.
25

1 Q. All right. When you say at first glance was there
2 something else about it once you looked at it a little more
3 carefully that made you think maybe so?

4 A. Yes, once I was clearing the firearm, yes.

5 Q. What did you do to clear the firearm?

6 A. I removed the magazine first, then I pulled back
7 the slide. As --

8 Q. So, how did you remove the magazine?

9 A. There is a little button on the side of the grip
10 which actually releases the magazine.

11 Q. And then what happens to it when you push the
12 button?

13 A. The magazine falls out, or you know, comes out so
14 you can pull it out.

15 Q. Okay. And then what was your next part of the
16 clearing process?

17 A. I pulled back the slide.

18 Q. Do you remember how you were holding the gun when
19 you pulled the slide back?

20 A. I would have been holding it like this in my hand.
21 Gun right here and then pulling back the slide like this.

22 Q. As opposed to sideways or down?

23 A. Correct, yes.

24

25

1 Q. Were you attempting to hold it in a certain way
2 perhaps to control where any cartridge that was in the
3 chamber may go?

4 A. It would have been over a box. I would have had a
5 gun box next to it. I would have been holding the gun over
6 the gun box. So, if anything fell out it would have gone
7 into the gun box.

8 Q. So, when you were clearing it you were holding the
9 gun in such a fashion that when -- if there was a bullet in
10 there that if -- when the bullet came out it would fly or
11 drop into the box?

12 A. Yes.

13 Q. And during that process you noticed what?

14 A. There was a cartridge stuck in basically what is --
15 what I think would be the extraction portion of the actual
16 firearm.

17 Q. Em-hmm. You don't see that in this picture?

18 A. No, that's an internal portion of the gun.

19 Q. Did you -- okay. Oh, I'm sorry. Just explain a
20 little bit more if you would what drew your attention to
21 something that seemed to be out of the ordinary that you
22 determined was something caught up in the mechanism.

23 A. When I pulled back the slide I looked down into the
24 extraction port and I noticed a cartridge was in there with
25 the bullet portion face up and the cartridge -- sorry, the

1 head stamp face down, down towards the butt or the grip of
2 the gun.

3 Q. And did you have the cartridge photographed in that
4 position?

5 A. I do remember calling over CSI Chretien to document
6 how it was when I pulled back the slide, yes.

7 Q. Let me show you State's 15 and -- well, let me
8 start with 17. Okay, is that what you're talking about?

9 A. Yes, that is.

10 Q. And you agree that the position of the slide is
11 very different than when you found it?

12 A. Correct.

13 Q. So, doesn't that mean then that whatever you did to
14 attempt to clear the gun resulted in the cartridge that was
15 in the chamber being jammed?

16 A. It's a possibility. Like I said, I'm not an
17 expert, but if the cartridge's had been loaded in the actual
18 barrel of the gun like it should of been when I pull back the
19 slide it should have been ejected, but it did not do so.

20 Q. Do you think that weather or not it was ejected may
21 have had something to do with your technique in trying to
22 eject it?

23 A. Like I said, I'm not an expert. I can't confirm or
24 deny that, so.

25

1 Q. Do you have -- have you ever been taught a specific
2 technique how to clear a chambered round?

3 A. Not specifically, just a general technique.

4 Q. Which basically means just pulling the slide back?

5 A. Correct.

6 Q. Short or long, however you do it, there's a way to
7 pull the slide back that should eject the cartridge.

8 A. Right. It's not a complicated technique.

9 Q. All right. In this case though it looks like the
10 cartridge fell out of or came out of the sil -- the barrel
11 and lodged itself in the firing mechanism as you attempted to
12 eject it. Is that fair?

13 A. It's a possibility.

14 Q. Yeah. Do you agree that it's clearly -- when you
15 found the gun it's dramatically different in terms of the
16 position of the slide?

17 A. Yes.

18 Q. You couldn't fire the gun in that condition?

19 A. With the slide back?

20 Q. In the top picture.

21 A. No, it cannot be fired.

22 Q. You could in the bottom?

23 A. Possibly.

24 Q. The -- have you heard the expression stove pipe?

25 A. Yes.

1 Q. What does that mean to you?

2 A. That's basically when a cartridge casing fails to
3 eject from the firearm. It's stuck in the ejection port.

4 Q. Stove pipe typically means a fired shell casing as
5 opposed to a live round, correct?

6 A. I believe so, yes.

7 Q. In this instance you first thought it might be a
8 fired casing that was stuck?

9 A. I believe I recall in my deposition, yes, I
10 refer -- recalled incorrectly that it was a casing, yes.

11 Q. Thinking, thinking perhaps naturally that what you
12 found inside the gun was as a result of stovepiping.

13 A. Yes.

14 Q. In other words, the bullet was fired and in the
15 ejection process the empty casing got stuck?

16 A. Yes.

17 Q. But you later determined that wasn't true?

18 A. Right, I remembered what actually, you know, had
19 occurred, yes.

20 Q. And what occurred was when you recovered what was
21 there in that was a live unfired cartridge, correct?

22 A. Yes.

23 Q. And this is 19. Is that what you took out?

24 A. I believe so, yes.
25

1 Q. And there were no other loose cartridges, correct?

2 A. I don't recall if there were any in the magazine or
3 not, but not within the firearm itself.

4 Q. Okay, so, whatever it was it was jamming the
5 sliding mechanism was that?

6 A. Yes.

7 Q. Do you think it's fair to say that that cartridge
8 was not jammed in the firearm as you later portrayed it in
9 these pictures when you first saw the gun? That somehow it
10 got jammed when you were clearing it?

11 A. Well, when I pulled back the slide that's pretty
12 much how I saw it, how you see it in the photograph and I
13 only pulled it back enough to where I saw the actual casing
14 in there. So, that's basically how I saw it when I first
15 witnessed it.

16 Q. Well, if you hadn't interrupted its path though it
17 would have -- the slide would have simply moved back forward.
18 It would be in a sense in battery and it would be ready to
19 go.

20 A. The --

21 Q. But somehow you pulled the slide back far enough
22 that the cartridge came out of the chamber --

23 MR. RESPESS: Objection --

24 MR. WEST: (Cont'd) or out of the barrel.

25 MR. RESPESS: He asked a question --

1 MR. WEST: That's right.

2 MR. RESPESS: (Cont'd) the witness is prepared to
3 answer, and then he interjects.

4 THE COURT: Okay, sustained. Then let's let him
5 answer and then --

6 MR. WEST: Sure.

7 THE COURT: (Cont'd) you can follow up.

8 MR. WEST: Go ahead.

9 THE WITNESS: When I pulled back the slide the way
10 that the cartridge was, how I witnessed it, is how, you
11 know -- the way it's positioned in the firearm would
12 have made it impossible to actually fire the firearm.

13 MR. WEST: Okay.

14 THE WITNESS: Because the firing pin wouldn't have
15 been able to make a connection to the actual headstamp.

16 BY MR. WEST:

17 Q. But what you can say is based upon the condition of
18 the firearm when you saw it there on the table it wasn't in
19 the position that it was shown in the photograph?

20 A. Correct. There's no way to witness how it was with
21 the slide forward.

22 Q. Okay, thank you.

23 MR. WEST: That's all the questions I have. Sorry
24 to --

25 THE COURT: All right. Mr. Respass?

1 MR. RESPESS: Right.

2 CROSS EXAMINATION

3 BY MR. RESPESS:

4 Q. I'm going to ask you to tell us what you found when
5 you attempted to extract a round using the slide on this
6 firearm.

7 A. Okay.

8 Q. So, you know -- so, explain to us what you saw that
9 you later attempted to document in the -- in these images,
10 realizing you didn't get it exactly like it was when you
11 started.

12 A. Okay.

13 Q. All right. So, tell us what you found as you're
14 attempting to clear this firearm.

15 A. Okay. While I attempted to clear the firearm I
16 ejected the magazine first, and then I pulled the slide back,
17 and what I found was basically what's in this photograph
18 right here with the cartridge, with the bullet portion faced
19 up and the headstamp face down towards the actual grip.

20 And I don't feel that it moved when I pulled the slide
21 back. It could have possibly moved, but I don't believe it
22 did.

23 Q. Okay. If it moves a little bit then that can
24 effect the ability for it to go back into the same position,
25 does it not?

1 A. Yes.

2 Q. Okay. But what I'm asking you is as you pull -- as
3 you pulled -- did you pull the slide back hard, or did you
4 pull the slide back to look?

5 A. No, I pulled the slide back to look.

6 Q. Okay. And so when you looked that's what you saw?

7 A. Correct.

8 Q. Is the -- is a live round, not in the chamber, at
9 an odd angle in the extractor area?

10 A. Yes, that is correct.

11 MR. RESPESS: Nothing further.

12 THE COURT: All righty. Then may -- Mr. West, does
13 that prompt anything sir?

14 RE-DIRECT EXAMINATION

15 BY MR. WEST:

16 Q. Mr. Schneider, thanks. Sorry.

17 A. Yes.

18 Q. Just on that point of when you pulled the slide
19 back to look inside the ejector port I guess at the end of
20 the barrel where the cartridge might be --

21 A. Correct, this portion right here.

22 Q. (Cont'd) you pulled it back far enough to take a
23 look, but you may very well have at that time simply caused a
24 bullet in the chamber to drop into that position.

25 A. It's a possibility. It's not likely, but it is

1 possible, yes.

2 Q. And you don't -- since you're not an expert you
3 simply don't know?

4 A. Correct.

5 Q. Okay.

6 THE COURT: All right.

7 MR. WEST: I'm sorry. That's all Judge.

8 THE COURT: And may Mr. Schneider be excused?

9 MR. WEST: Yes, Your Honor.

10 THE COURT: All right, thank you. Thank you Mr.

11 Schneider. Mr. Panella, who will be your next witness?

12 MR. PANELLA: Judge, in -- so, here's where I'm at:
13 I'm looking at who's back there.

14 THE COURT: Okay.

15 MR. PANELLA: One of the witness we're not going to
16 call. The next witness --

17 THE COURT: I hope he's not back there if you're
18 not going to call him.

19 MR. PANELLA: There's someone --

20 THE COURT: I would just start telling him to go
21 home right now.

22 MR. PANELLA: I've been trying. He's -- I think
23 that the State's going to call him, and that's
24 Steurwald. I don't an --

25 THE COURT: Okay.

1 MR. PANELLA: I may, I don't anticipate it. We can
2 start Agent Smith and get some preliminary stuff, but I
3 anticipate he's going to be, you know, some time.

4 THE COURT: Well, if Agent Stuerwald is here and
5 Mr. Respass or Mr. Scheiner would like for him to
6 testify do you want him to do that before he leaves or?

7 MR. RESPASS: That's up -- you know.

8 THE COURT: I mean, it's not my -- it's not my
9 business whether he testifies or not. I'm just thinking
10 in terms of --

11 MR. RESPASS: No, he's going --

12 THE COURT: Agent Smith has been here, but Agent
13 Stuerwald might otherwise be doing something else.

14 MR. RESPASS: I don't -- I don't disagree Judge.
15 This is one of the things we deal with when --

16 THE COURT: Okay.

17 MR. RESPASS: (Cont'd) they have their case.

18 THE COURT: Okay.

19 MR. RESPASS: I mean, I don't want to interrupt
20 their -- if they want -- don't mind then fine.

21 THE COURT: Okay, if he wants to flow that's fine.

22 MR. RESPASS: If he doesn't mind I'll do it now.

23 THE COURT: However you'd like Mr. Panella. What
24 I -- my question is this: Will Agent Steurwald kind of
25 fit into the just around 6 type thing, as opposed to

1 you've said that Agent Smith is not going to.

2 MR. PANELLA: Agent Smith prob -- obviously --

3 THE COURT: I would not expect him to be finished
4 around --

5 MR. PANELLA: Right. And I don't know what the
6 State intends -- I don't know the answer to that because
7 he's not someone I was intending to call.

8 MR. RESPESS: Okay.

9 THE COURT: Okay. And wasting time then talking
10 about it.

11 MR. RESPESS: Right.

12 THE COURT: You all do what you want.

13 MR. RESPESS: Right. If he's not going to call
14 him, we are going to call him. I anticipate Agent
15 Stuerwald will be talking about the early phase of the
16 investigation involving 1051 Covina, and identifying Ms.
17 Ellis, and having contact with Ms. Ellis, and --

18 THE COURT: But we've already heard he
19 participated, has participated.

20 MR. RESPESS: (Cont'd) and then his involvement or
21 what he knew about what was going on with the op the
22 evening of the 20th.

23 THE COURT: Okay.

24 MR. RESPESS: And so --

25

1 MR. PANELLA: Right. It's just a question of how
2 long you anticipate his testimony.

3 MR. RESPESS: I think he'll probably take a little
4 longer than 30 minutes is what I'm saying.

5 THE COURT: Okay.

6 MR. PANELLA: I think he's probably right.

7 THE COURT: Well, 45?

8 MR. RESPESS: I don't -- I don't know. I mean,
9 usually -- I would think 45 should do it.

10 THE COURT: Okay.

11 MR. RESPESS: But again, if they're okay I will do
12 that.

13 THE COURT: I -- it's up to you. Mr. Panella, it's
14 your case.

15 MR. PANELLA: Sure Judge. It's -- I'd prefer not
16 to, but I don't mind. I appreciate the time of the
17 Court and --

18 THE COURT: I just don't want to interrupt Agent
19 Smith if --

20 MR. RESPESS: Well, if he says I'd prefer not to
21 then we're not going to --

22 THE COURT: You prefer not to call Agent Steurwald
23 now?

24

25

1 MR. PANELLA: I'd prefer not -- I'd prefer to
2 finish where we're at, but I will because of the time
3 constraints that we're under.

4 I certainly defer to the State to have them put a
5 witness on in the middle of our presentation. But it's
6 going to -- you know.

7 THE COURT: I'm just trying to kind of put the
8 puzzle together, okay. And order to me is not as
9 impor -- I can move the order around in my notes very
10 easily.

11 MR. PANELLA: Right, of course. I just think
12 neither --

13 THE COURT: And then read the whole thing from top
14 to bottom in the order that you wish it to be presented.

15 MR. PANELLA: Sure. I -- neither one of these men
16 are going to be in the -- before 6, but in any event,
17 that's where I stand. I'm okay with it.

18 It's -- if it is important to conserve the Court's
19 time I'm okay with calling Steurwald. Otherwise, we --
20 neither -- otherwise we'd have to just stop now and come
21 back at 8:30.

22 THE COURT: Okay. Well, then let's call Stuerwald.

23 MR. PANELLA: Okay.

24 THE COURT: And we might stop at 6:20.

25

1 MR. PANELLA: Because I don't think there's anybody
2 else back there that --

3 THE COURT: Okay. Well, let's not have him be a
4 waste of make up for him. All right, thank you. Agent
5 Steurwald. See, he's dressed, he was prepared.

6 MR. PANELLA: Judge, can we --

7 THE COURT: Go ahead.

8 MR. PANELLA: Hold on, hold on one second Judge.
9 If we might just pause for one moment?

10 THE COURT: Sure, sure. Sure.

11 MR. PANELLA: Because we're just talking about it.

12 THE COURT: Yeah. I mean, if it --

13 MR. PANELLA: And especially because now we're kind
14 of going out of order and which one of us is going to do
15 it.

16 THE COURT: Okay, if it creates an issue with your
17 presentation we do not have to do that. I'm just trying
18 to --

19 MR. RESPESS: Right. This is their part of the
20 case, so.

21 THE COURT: Right. I know. I'm not trying to
22 create the issues for you, I'm just trying to optimize
23 the use of your witnesses and the time.

24

25

1 MR. PANELLA: Absolutely Judge, and I appreciate
2 that and understand that. And we've been trying to be
3 sensitive to that too.

4 THE COURT: And you are, I know you are.

5 MR. PANELLA: I think it makes sense, if the Court
6 is okay, to end for the day, given the witnesses that
7 are here, that are left.

8 THE COURT: Okay.

9 MR. PANELLA: And move forward as we had initially
10 planned. That would be our preference at this time.

11 THE COURT: Okay, okay. Then we -- then end for
12 the day and then call Agent Smith in --

13 MR. PANELLA: And I'll probably call Agent Smith in
14 the morning.

15 THE COURT: Okay. And we can do that. And we have
16 a -- we do have a plea, it's one person, two cases in
17 the morning. It's easier just to take the plea than it
18 is to move it and do all the paperwork associated --

19 MR. PANELLA: Sure.

20 THE COURT: With moving it. So, we'll just --

21 MR. RESPESS: 8:45.

22 THE COURT: Right, it's essentially 8:45. Because
23 I'm -- if at the crack of 8:30 if they are not here with
24 their plea in hand they will not enter it.

25

1 MR. PANELLA: But Judge, you want us here at 8:30,
2 right?

3 THE COURT: Please, yes, please. You be standing
4 by to crowd them out.

5 MR. PANELLA: Okay.

6 THE COURT: Okay.

7 MR. PANELLA: Thank you Your Honor.

8 THE COURT: So that I can say, look, we have
9 something very important going on. Out, out. Okay,
10 thank you Mr. Panella. See you all tomorrow.

11 MR. PANELLA: Thank you Your Honor.

12 (Whereupon, court stands in recess for the evening;
13 resuming the following morning at approximately
14 8:45 a.m.)

15 TITUSVILLE, FLORIDA, 8/29/2018

16 THE COURT: Good morning everybody.

17 MR. PANELLA: Good morning.

18 MR. SCHEINER: Good morning.

19 THE COURT: This is -- we're on the record
20 2015-CF-39550, State of Florida versus John Derossett.
21 Mr. Derossett is present with counsel, Mr. Panella and
22 Mr. West. Mr. Respass and Mr. Scheiner are here on
23 behalf of the State.

24 And my question is you all -- Mr. Panella, you put
25 two USB drives from dash cams that had run for an

1 unknown, or at least unstated, period of time.

2 That sort of just generally appeared to me to be
3 general just picking up what they could of what was
4 going on from their perspective, right?

5 MR. PANELLA: Yes, ma'am.

6 THE COURT: Do you -- are you just putting those in
7 the record in the part that you intended the Court to
8 consider has been shown? Because if not please pick the
9 parts and show them.

10 The witnesses authenticated them, but please show
11 them. Because I'm not going to -- I've been burned by
12 this once, and I cannot and will not get burned by it
13 again, because it's not fair.

14 I cannot go through your video and decide what's
15 pertinent. You know, you've gotten I'm sure the discs
16 of pertinent calls?

17 MR. PANELLA: Yes, ma'am.

18 THE COURT: Okay. So, that is not -- I don't --
19 that is not the proper function of the Court. So, if
20 there is something on any of those USB's that you would
21 like for this Court to consider in evidence please
22 present it.

23 MR. PANELLA: Thank you for brining this up Judge.
24 If I could respond to that, just because I'd like to
25 know how the Court would like to do it.

1 THE COURT: Sure.

2 MR. PANELLA: I think I have an understanding now.
3 One of the videos is like over two hours long. So,
4 certainly I didn't -- part of it was I'm trying to speed
5 up the process and not take the Court's time by sitting
6 there playing --

7 THE COURT: No, we have time. Mr. Panella, please,
8 relax. I understand. When I want to do this in an
9 orderly fashion, but we have set aside time for you.
10 So, please stop -- you need not apologize for taking up
11 anyone's time.

12 MR. PANELLA: Okay.

13 THE COURT: We're here for you.

14 MR. PANELLA: There may be parts in the video --

15 THE COURT: That's our function.

16 MR. PANELLA: The -- most of what I wanted to bring
17 to the Court's attention I've shown the Court through
18 the testimony already.

19 THE COURT: Okay.

20 MR. PANELLA: But there may be parts in the video
21 that I may want to have played in closing, since they're
22 in evidence already.

23 THE COURT: Okay. I mean, that's not --

24

25

1 MR. PANELLA: But beyond that -- I can think of one
2 part specifically, and I think I've actually put in
3 three videos now. One was of the scene video and then
4 there's two dash cams.

5 THE COURT: I was thinking more specifically --
6 okay, thank you. Yes. All three videos that you've put
7 in that have not been played in full.

8 MR. PANELLA: There was one portion in the scene
9 video that I didn't play for the witness that I thought
10 about that I might want to highlight in closing.

11 THE COURT: Okay.

12 MR. PANELLA: If you'd like me to bring that
13 witness back just to show the Court that part I'm happy
14 to do so.

15 THE COURT: Well, my thought was that the witness
16 has already authenticated the video, and when you
17 publish it is up to you.

18 And -- but if you want to publish it in closing you
19 may do so, but please understand that might make it a
20 little harder to note it and what -- closing isn't
21 evidence, it's the -- well, I don't know. It's sort
22 of --

23 MR. PANELLA: Sure. But the video is already in
24 evidence.

25 THE COURT: It gives it a different --

1 MR. PANELLA: Yeah. Well, I appreciate the Court
2 bringing this to my attention. And most of the parts
3 that I wanted to show the Court I already have through
4 the witnesses.

5 If you would like for your convenience, as you're
6 considering the evidence, for me to note the timestamps
7 of the parts that I did show the witnesses, if that
8 would be easier for you I'm be happy to do that also.

9 THE COURT: Well, no, you showed the beginning
10 snips of each, and I think I may have even written those
11 timestamps down.

12 MR. PANELLA: And then there were certain -- yeah.

13 THE COURT: But what I'm saying is you just --
14 it dawned on me as we broke yesterday that you had put
15 in these two videos that I sort of assumed had been
16 parked.

17 Dash cams turned on, those were the two that were
18 most on my mind at the moment. And -- because we had
19 sort of ended near those.

20 And the -- they'd been run and the people that had
21 driven the cars there seemed to have left the cars, and
22 other people seemed to have taken them back to the
23 Sheriff's garage or whatever.

24 That's the impression I got. But it was -- but
25 they were more there to document the scene.

1 MR. PANELLA: Right.

2 THE COURT: And they -- so, the video was left
3 running. And I didn't know, quite honestly, whether it
4 had run for seven hours, whether it had run for two
5 hours, whether there was anything on there that --
6 beyond general scene activity that was kind of, you
7 know, from an outsiders perspective without someone
8 pointing out what was important, disorganized.

9 MR. PANELLA: Right.

10 THE COURT: And so, you know, it's like watching
11 football without knowing the rules.

12 MR. PANELLA: Right. May I --

13 THE COURT: Watching basketball without knowing the
14 rules.

15 MR. PANELLA: Football's tougher. May I just
16 respond to the Court? There was a part in the vehicle
17 that wasn't the beginning.

18 I believe Sergeant Deans was on the stand and I
19 actually fast forwarded to when some of the emergency
20 vehicles had left and you could tell that the lighting
21 conditions in the yard were --

22 THE COURT: Oh, I remember that.

23 MR. PANELLA: (Cont'd) remarkably different.

24 THE COURT: I do -- I definitely remember that.

25

1 MR. PANELLA: But I don't know that I noted for the
2 Court what the timestamp was of that particular part
3 that I also published.

4 THE COURT: Right. Anything you published I'm
5 aware of. What I'm saying is anything that was on those
6 drives that you didn't specifically address while you
7 were in the process of that witness.

8 I would appreciate if you would in some way, even
9 though the witness is no longer here, because they
10 authenticated it, so that I can include that in the
11 consideration of the evidence appropriately.

12 MR. PANELLA: Thank you ma'am. There is one part
13 that I can think of specifically that I would like to
14 point out to the Court on the first video, that's the
15 scene video, that I think is particularly relevant that
16 I didn't bring out when she was on the stand.

17 THE COURT: Okay.

18 MR. PANELLA: Other than that I think the parts
19 that I published to you, including the, you know, the
20 part in the middle when the emergency vehicles left and
21 all of that --

22 THE COURT: Right, I would --

23 MR. PANELLA: (Cont'd) is what I wanted the Court
24 to be aware of. Just the lighting conditions and also
25 the light when the people came out of the house for that

1 second video.

2 THE COURT: Okay, okay.

3 MR. PANELLA: So, I think you've seen all that.
4 There's one part in the first video I don't think you
5 have.

6 THE COURT: Okay. So, if you want to show that --

7 MR. PANELLA: So, I could show it to the Court --

8 THE COURT: That would be great.

9 MR. PANELLA: If you'd like I can do that now, if
10 you'd like me to.

11 THE COURT: Sure. However you'd like to proceed.
12 I mean, I don't -- I'm -- that probably wasn't the way
13 you planned to proceed this morning, but if it fits with
14 it please do, otherwise.

15 MR. PANELLA: Now that I understand where the
16 Court's coming from I'm happy to do it. If I could just
17 have a moment maybe to set that up?

18 THE COURT: Of course.

19 MR. PANELLA: I'll do that.

20 THE COURT: Of course. Thank you.

21 MR. PANELLA: And then I think our client wanted to
22 tell us something. I'm not sure if we needed to speak
23 with him.

24 THE COURT: Okay, okay. That's right, because you
25 were going to talk with him.

1 MR. PANELLA: Right.

2 THE COURT: So, I'll give you a moment.

3 MR. PANELLA: And then I believe -- and just for --
4 because Agent Smith is here I know I said he'd probably
5 be first --

6 THE COURT: Right, you were going to --

7 MR. PANELLA: But he may be -- he may be second
8 today.

9 THE COURT: Okay.

10 MR. PANELLA: Instead of first. Just to just
11 everybody know.

12 THE COURT: Okay.

13 MR. PANELLA: Okay.

14 THE COURT: Mr. Respass, Mr. Scheiner, anything we
15 can -- no, okay.

16 (Whereupon court stands in recess for approximately
17 30 minutes.)

18 THE COURT: All right, we are back on the record in
19 State of Florida versus John Derossett, 2015-CF-39550.
20 Mr. Rossett (sic) is present with counsel, Mr. Panella
21 and Mr. West. Mr. Respass and Mr. Scheiner are here on
22 behalf of the State.

23 And we have had a slight difficulty with the record
24 this morning, but so we are starting from the beginning.
25 And Mr. Panella, we had a conversation about your

1 directing the Court's attention to the portion of the
2 videos and you're about to do that.

3 And you've discussed the matter with Mr. Rossett,
4 we did that. Mr. Rossett, you agree we discussed all
5 that?

6 THE DEFENDANT: Yes.

7 THE COURT: All right. Mr. Rossett says yes.
8 Thank you. And so now --

9 MR. PANELLA: Thank you Your Honor.

10 THE COURT: Welcome you to proceed. Thank you for
11 your patience.

12 MR. PANELLA: May I proceed?

13 THE COURT: Yes, sir.

14 MR. PANELLA: Okay, and thank you Judge. And yes,
15 I'll confirm that I did speak with Mr. Derossett about
16 what the Court had directed us, that you would like us
17 to point out certain portions of the video that you
18 wanted us to call your attention.

19 I'm -- this video is already in evidence and it's
20 in evidence as Defendant's Exhibit 1. This would be the
21 scene video taken by BCSO crime scene tech Erin Strait.
22 She has already testified as to several aspects of this.

23 The portion that I'm drawing your attention to
24 right now is specifically the mailbox that will be
25 zoomed in on. What I would call the Court's attention

1 to is that there are numbers on the mailbox that are not
2 visible until she puts a light on them, and she'll zoom
3 in on that.

4 The outside of the numbers are black and the inside
5 of the numbers are a reflective gold. It also zooms in
6 on the portion of the house where the altercation took
7 place and the lighting conditions there.

8 THE COURT: All right. Thank you.

9 MR. PANELLA: May I proceed?

10 THE COURT: Yes, sir.

11 MR. PANELLA: And this is -- I'm looking at minute
12 9:12.

13 THE COURT: Oh, 9:12?

14 MR. PANELLA: Or 9:11, 9:12, right there.

15 THE COURT: Okay, thank you.

16 (Whereupon, Defense Exhibit 1 is now published to
17 the Court.)

18 MR. PANELLA: And I just paused the video at 10:01.

19 THE COURT: All righty. Thank you very much.

20 MR. PANELLA: You're welcome Your Honor. Are there
21 any other portions you'd like to see right now?

22 THE COURT: Well, if the -- well, that would -- may
23 I turn that question around please?

24

25

1 MR. PANELLA: I believe that you -- my
2 understanding from the testimony is that you've seen the
3 street light that was across the street, and down.

4 THE COURT: Yes, I remember the street light.

5 MR. PANELLA: And the lighting conditions of the
6 front of the house and around the side.

7 THE COURT: Yes, yes.

8 MR. PANELLA: If there's anything else --

9 THE COURT: Saw that, saw a lot of that.

10 MR. PANELLA: That's all I was concerned about.

11 THE COURT: Okay.

12 MR. PANELLA: And this mailbox issue.

13 THE COURT: No -- wait. Okay, no, I think -- and
14 you have other exhibits that showed that, but I just
15 was worried about the depth of -- potential depth of
16 these videos that were just allowed to run.

17 MR. PANELLA: Thank you Your Honor.

18 THE COURT: So, I appreciate you narrowing it down.
19 Thank you.

20 MR. PANELLA: Yes, ma'am. Do I have the Court's
21 permission to move this?

22 THE COURT: Sure. Absolutely.

23 MR. PANELLA: Mr. West, do you want the projector
24 for the next witness?

25 MR. WEST: Yes.

1 MR. PANELLA: For the videos? Okay, where would
2 you like it, the screen?

3 MR. WEST: Right here.

4 MR. PANELLA: You want it there? Sure.

5 MR. WEST: I think that's probably a good spot.

6 THE COURT: Okay, so, Mr. Panella, how would you
7 like to proceed sir?

8 MR. PANELLA: Oh, we'll proceed with calling our
9 next witness.

10 THE COURT: Okay.

11 MR. PANELLA: It will be Kaitlin Pill.

12 THE COURT: All righty.

13 MR. WEST: Judge, while Ms. Pill gets here, just
14 sort of a point of order, we have decided, that is the
15 State and the Defense has decided that rather than --
16 rather than introduce duplicate exhibits when we both
17 want to talk about the same thing that we will -- that I
18 will work from the exhibits that the State has already
19 marked.

20 THE COURT: Oh, perfect. Thank you.

21 MR. WEST: So we don't want to get duplicate scene
22 diagrams and such.

23 THE COURT: Thank you. That's very gracious of you
24 all to do that, yeah.

25

1 MR. WEST: And I may offer them into evidence, or
2 the State may whenever they choose.

3 THE COURT: Right, right.

4 MR. WEST: But I'll try to keep that straight.

5 THE COURT: Okay. Thank you very much. I
6 appreciate you all doing that.

7 MR. WEST: So, I'll be identifying certain things
8 as a State's exhibit for identification.

9 THE COURT: Right, even though you're --

10 MR. WEST: Right.

11 THE COURT: (Cont'd) discussing it and --

12 THE CLERK: Raise your right hand. Do you solemnly
13 swear or affirm that the testimony you shall give will
14 be the truth, the whole truth, and nothing but the truth
15 so help you God?

16 THE WITNESS: I do.

17 THE CLERK: Thank you. You may be seated.

18 THE COURT: Good morning ma'am.

19 THE WITNESS: Good morning.
20
21
22
23
24
25

1 WHEREUPON:

2 KAITLIN PILL,

3 a Witness herein, having been duly sworn, testified upon her
4 oath as follows:

5 DIRECT EXAMINATION

6 BY MR. WEST:

7 Q. Good morning.

8 A. Good morning.

9 Q. My name is Don West. I represent, along with Mr.
10 Panella, Mr. Derossett in this case. I don't think we've met
11 before.

12 A. No.

13 Q. Okay. Would you start just by telling us your
14 legal name and spell your last name for the record.

15 A. Of course. So, it's Kaitlin Pill. Last name is
16 P-I-L-L.

17 Q. And does your first name have any unusual spelling?

18 A. No. It's K-A-I-T-L-I-N.

19 Q. Thank you. And what is your current position?

20 A. Currently I'm a latent print examiner with the
21 Brevard County Sheriff's Office. However, in 2015 I was a
22 crime scene investigator.

23 Q. For our purposes here this morning what would be
24 the best way for me to identify you?

25 A. However you'd like.

1 Q. Analyst --

2 A. Ms. Pill, Mrs. Pill, or analyst. Whatever you'd
3 like.

4 Q. Did you say Ms. Pill, is that good?

5 A. Yep, that's fine.

6 Q. Okay. Whatever I say will work it sounds like.

7 A. Yep, that's fine.

8 Q. In anticipation of your testimony here today did
9 you bring some materials with you?

10 A. I did.

11 Q. Does that include the report that you prepared in
12 this case?

13 A. It does.

14 Q. All right. Just so we're working on the same page,
15 let me show you what I have just so you can tell me if I have
16 your report.

17 A. Okay.

18 Q. In case you need to refer to yours later.

19 A. That's it. It looks like it's missing a couple
20 pages at the end.

21 Q. At the end?

22 A. Yeah.

23 Q. Okay, you can tell me what that is later if we get
24 to that point.

25 A. Okay.

1 Q. For the Court would you just briefly outline your
2 background and training, as it is now, but also specifically
3 with regard to your work related to this case in 2015?

4 A. Of course. I have a Bachelor of Science Degree
5 from West Virginia University in forensic and investigative
6 science.

7 After being employed with the Sheriff's Office I
8 received in house training, on the job training, and I also
9 attended several training classes all pertaining to the
10 documentation of evidence, collecting evidence, processing
11 items of evidence for fingerprints and for DNA.

12 I also am a graduate of the 29th session of the National
13 Forensic Academy. That's it for crime scene. Since then
14 I've also attended several fingerprint classes.

15 Q. Speaking of fingerprints, were there fingerprints
16 lifted or in some way preserved in connection with this
17 scene?

18 A. I processed several items of fingerprints, but none
19 were developed.

20 Q. So, there were none identified or of value
21 apparently?

22 A. None -- at the time I would have processed for
23 them, and developed them, documented them, and turned them
24 over to the ID unit. So, there weren't even any that I could
25 find, let alone any of value.

1 Q. Okay. Take a moment if you would and explain to
2 the Court how your crime scene investigation team is
3 organized and how assignments are made when you are directed
4 to a suspected crime scene?

5 A. For a larger investigation, such as this, there's
6 typically a crime scene investigator that is labeled as the
7 lead investigator.

8 Their job is to assign various tasks so that other crime
9 scene investigators -- and to basically for the most part
10 collect all the evidence, do most of the documentation, and
11 then at the end be the one who kind of coordinates everything
12 for submission to other units, such as FDLE.

13 Q. Em-hmm. And how is the lead assigned?

14 A. Usually it's done by the sergeant, and in this case
15 it was. Sergeant Terry Laufenberg assigned me as lead.

16 Q. So, there's no person that's designated lead within
17 the team, it's a case by case?

18 A. Yes.

19 Q. And as you said, you were the lead in this case?

20 A. I was because of the situation. There was also
21 crime scene investigator Emily Chretien. She was kind of the
22 lead on the interior of the residence, but I was the lead on
23 the outside and wrapped up the whole investigation as far as
24 submitting items to FDLE.

25

1 Q. As you mentioned earlier the role of a lead at some
2 point in time is to sort of collect and package what everyone
3 else has done as well.

4 A. Everything that's packaged and collected --

5 Q. Package, I don't mean individual pieces of
6 evidence, I mean collect and assemble a report.

7 A. Okay, yes. Yeah, so, such as this I kind of put
8 this all together, taking everybody's reports, everybody's
9 property receipts. Is that what you're referring to?

10 Q. Yes.

11 A. Yes.

12 Q. Exactly.

13 A. That's what I did.

14 Q. So, eventually everything funnels down to you?

15 A. It does.

16 Q. Or up to you I guess as the case would be. Okay,
17 and that's the role you played in this case?

18 A. I did.

19 Q. Okay. Well, I suppose maybe the best thing to do
20 is just let you describe how it was that this crime scene
21 investigation unfolded, where you were, what your location of
22 response was, and then the first few things that were done.

23 A. I received the call at about 10:30 p.m. on August
24 20th, and I was requested to respond to the Brevard County
25 sub station, and I did so.

1 When I arrived there I received a briefing on the
2 investigation, what had happened so far. And at that point I
3 documented a truck that was at the substation and an item of
4 evidence that was in the back of that truck.

5 Q. Do you remember what that item of evidence was?

6 A. I do. It was a tactical vest that had sheriff
7 across the front. It had been Deputy Smith's vest that he
8 was wearing.

9 Q. Ms. Pill, this has been introduced into evidence as
10 State's 25, which appears to be what we're generally
11 describing. Is this what we're talking about basically?

12 A. It is.

13 Q. And you said that it was in the back of a pick-up
14 truck? Do you know whose truck it was?

15 A. Yes, it was assigned to Agent Stuerwald.

16 Q. Em-hmm. And do you know how the vest came to be
17 placed in his vehicle?

18 A. I don't.

19 Q. Did you interview Agent Stuerwald in regards to
20 that?

21 A. I did not.

22 Q. However, you did collect it and then submit it for
23 processing, or at least preserve it for that purpose?

24 A. I did.

25

1 Q. Okay. After finishing that task did you go
2 somewhere else?

3 A. I did. But I should also mention there was a
4 projectile that was located in the front of that vest, and it
5 was also removed and collected.

6 Q. Let's talk about that for just a moment. What is
7 the team's procedure and system for marking individual pieces
8 of evidence that are recovered?

9 A. I'm not sure exactly what you mean.

10 Q. Okay.

11 A. Like photo markers or?

12 Q. Well, let's use this example of the vest. The vest
13 was pointed out to you, you collected the vest, and when
14 you -- so, it would get a number in your system?

15 A. That's correct.

16 Q. And then when you examined it more carefully you
17 saw a projectile lodged in the vest?

18 A. Yes.

19 Q. So, would you have removed the projectile and
20 recorded it separately with a unique identifier --

21 A. I did.

22 Q. (Cont'd) identifier of some sort?

23 A. I did.

24

25

1 Q. Okay. Just tell me and the Court how that
2 typically works, and what the system of identification is.

3 A. Well, in this case that particular item was called
4 NF 1 and then the projectile was referred to NF 2. NF just
5 stands for Nissan Frontier, because it was collected from a
6 Nissan Frontier.

7 Q. Are you able to create your own or generate your
8 own system of initials to help you remember where something
9 was?

10 A. That, and also I knew I'd be collecting items at
11 the scene. So, I didn't want to have to remember where I
12 left off at the sub station, and then pick up again at the
13 scene. So, that's why it was given a separate identifier.

14 Q. Okay. So, essentially at -- from the pick-up truck
15 you got two separate pieces of evidence?

16 A. I did.

17 Q. Okay. And then what did you do?

18 A. At approximately 1:20 a.m. I responded to the
19 scene.

20 Q. Can you describe the scene upon your arrival? Just
21 generally. Other people were there I take it?

22 A. Yes, they were.

23 Q. Had any of your team arrived before you?

24 A. No.

25

1 Q. And were you further briefed at the scene or had
2 you been briefed at the sub station sufficiently to know what
3 to do at the scene?

4 A. For the most part I had been briefed at the scene.
5 There were a few things that came up after I arrived at the
6 scene.

7 Q. Em-hmm.

8 A. Like additional pieces of information that I
9 received, but other than that I received most of the briefing
10 at the sub station.

11 Q. So, what's the purpose of the briefing from your
12 perspective?

13 A. It just kind of gives us a basic idea of what
14 happened so that we know some of the places to begin looking
15 for items of evidence, what things might be important at the
16 scene, things like that.

17 Q. Would you have known for example that firearms were
18 involved?

19 A. Yes.

20 Q. More than one probably?

21 A. Yes.

22 Q. So, when you get to the scene do you sort of do
23 your own assessment of what order in which to do things or
24 how to assign your team to specific tasks?

25 A. Yes.

1 Q. And what did you do here?

2 A. In this case we took a little bit of time to walk
3 around on Covina and Alcazar. There were two different
4 vehicles --

5 Q. I'm going to just put a picture of the general area
6 up there.

7 A. Okay.

8 Q. In the day light. I take it it was dark when you
9 were there?

10 A. Yes, it was dark out when I arrived.

11 Q. Does that help?

12 A. Sure. So, when I arrived we stuck to Covina and
13 Alcazar and we began by documenting the two vehicles that had
14 been driven there by Agent Stead and Agents Casey and
15 Roberts -- or I'm sorry, Agent Smith and Roberts.

16 Q. Right.

17 A. So, that was the first thing we did, and stayed
18 basically on the perimeter.

19 Q. In front of the house is Covina?

20 A. Yes. Covina's here and Alcazar is --

21 Q. To your right?

22 A. Yes.

23 Q. Okay. Were there evidence markers of some sort or
24 photo markers of some sort already there on your arrival?

25 A. There were a few in the yard that were there upon

1 my arrival.

2 Q. And what do you know about that?

3 A. I know that they were there. I don't know where
4 they came from or who placed them there. So, we documented
5 them in place, then removed them.

6 Q. Do you know what their significance was, why they
7 were placed where they were?

8 A. To the best of my recollection someone had placed
9 them there so that items in the yard that were easily
10 observed weren't walked on or walked across or anything like
11 that.

12 Q. Em-hmm.

13 A. But other than that I don't know.

14 Q. So, what you saw was consistent with police
15 procedure and protecting a crime scene from contamination or
16 some sort of destruction?

17 A. Yes.

18 Q. Do you remember any of the items that were
19 previously marked?

20 A. Not specifically.

21 Q. Would you have -- when -- removing the photo marker
22 would you have replaced it with your own identifier of some
23 sort?

24 A. Yes.

25

1 Q. Okay. So, you have that in your records somewhere?

2 A. Yes.

3 Q. Do you remember the basic briefing, or you can
4 certainly refer to your report if it's easier just to advise
5 what it was you were told about what had happened in order
6 for you to begin your work?

7 A. I'm --

8 MR. RESPESS: And I don't object as long as this
9 isn't being offered for the truth, just information she
10 received to do her job I guess.

11 THE COURT: Right. I mean, I thought you were
12 asking her to read it herself quietly and then you were
13 going to ask her questions about --

14 MR. WEST: I just want to know what she was told
15 that oriented her so she could do her work.

16 THE COURT: Oh, I thought you were going to ask
17 questions about that.

18 MR. WEST: I can, but it's written right here in
19 her report, which she's able to read to herself or
20 outloud to the Court. It doesn't matter to me.

21 THE COURT: All right. Is that -- was there an
22 objection to --

23 MR. RESPESS: No.

24 THE COURT: Okay, thank you.

25 THE WITNESS: I'm sorry, what was your question?

1 MR. WEST: If you have your --

2 THE COURT: You may go ahead and read it outloud I
3 think is what the --

4 MR. WEST: If you have your report available --

5 THE COURT: (Cont'd) if that was the original
6 request and Mr. Respass has no objection.

7 MR. WEST: (Cont'd) would you just read the
8 paragraph that says information provided, first
9 paragraph. Just read that outloud.

10 THE WITNESS: Shortly before 21:30 hours on August
11 20, 2015 BCSO Agents Stead, Roberts, and Smith arrived
12 at the residence located at 1051 Covina Street to arrest
13 a female for prostitution.

14 Agent Stead was dressed in plain clothes and acting
15 in an undercover capacity. Agents Roberts and Smith
16 were nearby to assist and were dressed displaying
17 Sheriff's Office shirts and tactical vests.

18 Agent Stead approached the front door and the
19 female suspect, Ms. Ellis, answered. Agent Stead
20 attempted to place her under arrest with the assistance
21 of Agents Roberts and Smith.

22 When the female started screaming her uncle, Mr.
23 Derossett, came toward the front door armed with a gun.
24 Mr. Derossett fired one round into the air as he stepped
25 outside the residence, and agents returned fire.

1 Agent Smith was hit by a projectile and wounded.
2 Mr. Derossett and Ms. Ellis were also wounded. Agent
3 Stead and Roberts pulled Agent Smith to the side yard
4 and rendered aid until Brevard County Fire Rescue
5 arrived on scene to take him to the hospital.

6 Patrol deputies surrounded the home and Ms. Ellis
7 and Mr. Derossett both surrendered and received medical
8 care for their wounds.

9 MR. WEST: So -- thank you, thank you.

10 BY MR. WEST:

11 Q. So, by the time you got to the Covina address you
12 knew that much about what had taken place?

13 A. That -- yeah, that's the briefing I received.

14 Q. Okay. So, you knew then that there were three
15 agents there who likely returned fire. So, there'd be at
16 least three firearms involved from law enforcement
17 standpoint.

18 A. Well, I knew that there would be at least two
19 weapons on scene. Agent Roberts still had his weapon on
20 him --

21 Q. Did you know --

22 A. (Cont'd) at the sub station.

23 Q. Did you know that before?

24 A. I did.

25

1 Q. Oh, you did. I'm sorry, I didn't realize that.

2 A. Yes.

3 Q. So, when you got to the sub station to get the vest
4 you knew by then that Agent Roberts was involved in the
5 shooting incident, but that his gun wasn't at the scene?

6 A. I did.

7 Q. Did you collect it from him?

8 A. I didn't. CSI Miranda was assigned that task.

9 Q. Was Agent Mir -- Analyst Miranda with you?

10 A. Yes and no. He was with me, but when he went into
11 the sub station to document Agent Roberts I wasn't with him
12 for that part.

13 Q. Okay. But just -- when you got to the sub station
14 Miranda was with you, you collected the vest, and Miranda
15 collected Agent Roberts gun and any related evidence?

16 A. He did.

17 Q. Okay. So, you knew about that gun, but you knew it
18 wouldn't be at the scene?

19 A. I did.

20 Q. Oh, that's what you're saying, but you knew two
21 other agents guns were likely to be there?

22 A. Yes.

23 Q. And you're also told that Mr. Derossett fired his
24 weapon?

25 A. Yes.

1 Q. So, you anticipated that it might be there?

2 A. Yes.

3 Q. Okay. Did you suspect any other firearms would be
4 there that were used in the incident?

5 A. Not based off any information I received.

6 Q. Okay, knowing that firearms were involved how would
7 that focus your attention on processing the scene?

8 A. Well, the first thing that comes to mind is because
9 we knew that some of the events happened in the yard we
10 wanted to be very careful with the front yard not to walk on
11 any items of evidence, to include cartridge casings or the
12 firearms themselves.

13 Q. You got there at what time again? Sorry.

14 A. 1:20 a.m.

15 Q. About four hours later, roughly?

16 A. Four hours later from what?

17 Q. From the incident. I'm sorry.

18 A. Oh, I'm sorry. Yes.

19 Q. Okay. So, obviously a lot of people had been there
20 before you had?

21 A. I would assume so, yes.

22 Q. When you got there there were other people there?

23 A. There were.

24

25

1 Q. And what efforts did you see had been made to
2 preserve the scene?

3 A. Well, the photo markers had been placed, as we
4 discussed earlier, and also there was crime scene tape up.
5 And on my arrival the -- all the deputies that were on scene
6 were on the perimeters and near the crime scene tape. They
7 weren't milling about the middle of the crime scene.

8 Q. And had you been told there was a -- that that's
9 what happened when the scene was secure, that the crime scene
10 tape was put up?

11 A. I don't believe I was told specifically.

12 Q. Em-hmm.

13 A. But I could see that the tape had been put up.

14 Q. So, when you got there it seemed like things were
15 secure and the areas probably -- properly cordoned off?

16 A. Yes.

17 Q. Okay. You knew that you would be looking for,
18 among other things, shell casings?

19 A. Yes.

20 Q. And it would be important I guess then to figure
21 out whether anybody had trampled in the area or perhaps
22 kicked them around, or anything that might have disturbed the
23 original location of any of the items?

24 A. Yes.

25

1 Q. So, after you had determined that the scene was
2 secure and you were ready to start your work what was your
3 process?

4 A. Well, we began by documenting the scene as it was
5 when we arrived, to include those two vehicles. And then
6 after we documented the vehicles we began documenting the
7 yard, the front yard, and the side yard.

8 Q. What do you mean by documenting?

9 A. I'm sorry, document via photography, and CSI Strait
10 also documented via a video recording.

11 Q. And how do you mark individual pieces of evidence?

12 A. They're marked with photo markers, but that's done
13 after our initial documentation.

14 Q. So, the video and the photography takes place
15 first?

16 A. Yes, and then we go back and re-photograph once the
17 photo markers are in place.

18 Q. And then how are individual items collected and
19 identified for further processing?

20 A. They're collected and placed in an evidence bag,
21 and the location is notated on the evidence packaging. So,
22 in this case it might be photo marker 21 would be the
23 location.

24 Q. Em-hmm.

25 A. So, that's how they're all individually collected.

1 Q. And I know you said already that the vest had an NF
2 number for Nissan Frontier. Do you use some coding system at
3 the scene itself to identify where it was collected within
4 the scene or who collected it?

5 A. In this case the items that were collected by me
6 were KP and then the number. So, KP1, KP2, and those are
7 just my initials so that I know I collected those items.

8 Q. Was a similar system used for the other team
9 members?

10 A. I believe so, or something similar.

11 Q. So, if we saw something on the long list of items
12 that were recovered that began with KP we would know you're
13 the one that personally collected it?

14 A. Yes.

15 Q. How about if it began with EC?

16 A. Emily Chretien.

17 Q. And what was Mr. Miranda's name?

18 A. His first name's Phil, Phillip.

19 Q. So, is he PM in your records?

20 A. He's either -- yes. He's either PM or PJ, and the
21 reason he doesn't use PM is because PM is the abbreviation we
22 use for photo marker. So, he uses PJ.

23 Q. So, in this case if we saw items of evidence that
24 had PJ as part of its identifier most likely it was collected
25 by Mr. Miranda?

1 A. That's true.

2 Q. In addition to photographing and then ultimately
3 physically collecting the evidence were there crime scene
4 diagrams made?

5 A. There were.

6 Q. And what are the purpose of the crime scene
7 diagrams?

8 A. The crime scene diagrams are another way to
9 document the items of evidence and where they were. We take
10 the photographs, but then we also have the diagrams to
11 corroborate and to just be another form of documentation as
12 to where each item was located within the scene.

13 Q. Can you typically match up a crime scene diagram
14 with a photograph of where that particular item was
15 photographed, as well as in this diagram identified as being
16 located?

17 A. Yes, you could look at one and then to the other
18 and they would be the same.

19 Q. And that would be for any piece of evidence that's
20 included on the diagram?

21 A. Yes.

22 Q. Whenever I look at these crime scene diagrams they
23 typically say in fairly bold print not to scale. What does
24 that mean?

25 A. It just means that there was a human that was a

1 part of taking those measurements. So, if something's off by
2 a millimeter, or even an inch that's what not to scale means.

3 It is -- they're all in their relative positions, but
4 we -- you know, a human does the best they can when taking
5 the measurements.

6 Q. So, would these items actually have been measured
7 in some fashion, or are you just eyeballing it?

8 A. No, they were measured.

9 Q. So, if not exactly they're pretty close?

10 A. Yes.

11 Q. But you could, as you said, connect that up with a
12 photograph anyway?

13 A. Yes.

14 Q. What is total station?

15 A. It's the machine that we used in the past. They
16 now have a different machine, but the -- it basically is the
17 laser measuring tool that documents where all those items of
18 evidence are. In the past we would have used a ruler or a
19 yard stick.

20 Q. Em-hmm.

21 A. But the total station actually uses laser to
22 document the measurements, and it sends it to a computer
23 program system basically and then the computer program system
24 plots the points of where the measurements were taken.

25

1 Q. So, it's kind of a more precise measuring system
2 than using a ruler or tape measure of some sort?

3 A. Yes.

4 Q. That's really what it does is it keeps everything
5 related by measurement?

6 A. Yes.

7 Q. Okay.

8 MR. WEST: And if I could approach the witness Your
9 Honor?

10 THE COURT: Certainly.

11 MR. WEST: I have some diagrams to show. You know
12 what, before I do that let me put another picture up
13 there. There we go. Just to have a frame of reference.

14 Ms. Pill, I have a series of diagrams here that
15 were provided. They had been marked with State's
16 exhibit numbers because we're all going to be using the
17 same ones, and I'm going to put this aerial, which is
18 Defendant's 2 up here just as another point of
19 reference.

20 Okay. So, the first one that I'm handing you is
21 State's Exhibit BF for identification.

22 THE COURT: Mr. West, could I ask you, do you mind
23 putting the projector down one way or the other? It's
24 right in the middle of your smaller --

25

1 MR. WEST: I should probably just put it on the
2 projector. I don't think --

3 THE COURT: No, no, no, you can -- well, the
4 screen -- I don't care, but all I'm saying is that the
5 head of this projector is dead center on where you put
6 the picture. There we go. Okay.

7 MR. WEST: Oh, I'm -- I didn't see it. Sorry. You
8 know, I think --

9 THE COURT: There we have it. That's -- thank you.
10 Mr. Panella, that solves the problem.

11 MR. WEST: (Cont'd for this part of it we'll
12 just --

13 THE COURT: Thank you. It was just -- the
14 projector. Thank you.

15 MR. WEST: I am technology impaired because now for
16 me to show you these I have to move this.

17 THE COURT: Well, go ahead. It's a nice easel, you
18 know, it works as an easel. I think we even have -- we
19 have one over in the corner, don't we? An easel? Mr.
20 West, if you'd prefer a regular easel I think we have --
21 yeah.

22 MR. WEST: Oh, that'd be -- sure, that'd be good.

23 THE COURT: Yeah, have a regular easel.

24 MR. WEST: I'll just continue as we get that.

25

1 THE COURT: Okay. We have tape too if you need
2 that for the easel.

3 BY MR. WEST:

4 Q. This is BF State's Exhibit I wanted to show you.
5 And really all I'm asking you to do at this point is tell me
6 what it is and what it represents. And feel free to move
7 that as needed.

8 A. This is an overall view. So, here's 1051 Covina
9 where the vic -- the scene basically. This is Covina Street
10 right here. This is Agent Stead's car that was parked across
11 the street.

12 1050 Covina where there were items of evidence collected
13 later on. This is a patrol car parked on Alcazar. This is
14 the side yard, the side yard where items of evidence were
15 collected.

16 This was a patrol car. And then further down Alcazar is
17 a truck that Agent Roberts and Agent Smith arrived in.

18 Q. As far as you know that's where they parked it?

19 A. Yes.

20 Q. Okay.

21 MR. RESPESS: I don't object to any of those coming
22 into evidence. So, why don't we just get them marked so
23 that there's --

24 MR. WEST: Just go ahead and introduce them
25 individually?

1 MR. RESPESS: Yeah, since we're publishing them
2 let's just go ahead and introduce them.

3 THE COURT: It's -- that is -- that one that's on
4 the screen right now is what, State's?

5 MR. WEST: BF.

6 THE COURT: B as in Boy?

7 MR. WEST: Correct.

8 THE COURT: Okay, BF. So, State's BF --

9 MR. RESPESS: And I don't -- I don't object to
10 those coming in as a State exhibit since they're red --

11 THE COURT: Just call it's a State exhibit
12 because --

13 MR. RESPESS: Right.

14 THE COURT: (Cont'd) it's got the red sticker on
15 it.

16 MR. RESPESS: Right.

17 THE COURT: Okay, that works. So, that's -- Madam
18 Clerk?

19 THE CLERK: BF is number 26.

20 THE COURT: Thank you.

21 MR. RESPESS: And I don't object to any of the
22 other diagrams that were prepared by the Sheriff's
23 Office coming into evidence that are marked with State's
24 exhibit numbers.

25 THE COURT: Okay. So, you want to just --

1 MR. RESPESS: So, if he could get those marked and
2 then we can publish them as --

3 THE COURT: Sure. Do you want to do that Mr. West?

4 MR. WEST: You know, I think that makes good sense.
5 I'll just offer the clerk all of these into evidence and
6 they can be marked accordingly --

7 THE COURT: Yes, thank you.

8 MR. WEST: (Cont'd) and received and we'll go from
9 there. Thank you.

10 THE COURT: Thank you. Thank you Mr. Respass.

11 MR. WEST: Do you have any others there?

12 THE WITNESS: It's the same one.

13 MR. WEST: That's yours.

14 THE CLERK: Do you want me to go ahead and announce
15 those Judge?

16 THE COURT: Yes. Wait one second while you're
17 doing that -- before you do that rather. Okay, thank
18 you. What are they?

19 THE CLERK: BF as in Frank is number 26. BG is
20 number 27. BH is number 28. BI is number 29.

21 THE COURT: All right.

22 THE CLERK: BJ is number 30. BK is number 31. BL
23 is number 32. BN as in Nancy is number 33. BO is
24 number 34.

25

1 THE COURT: Thank you Madam Clerk. All righty.

2 Thank you. Anytime you're ready Mr. West

3 BY MR. WEST:

4 Q. The first -- the one we were talking about, the
5 diagram of the scene basically is now State's 21. And you
6 already identified basically what was there.

7 Let me show you what's now State's 27. It's essentially
8 the same diagram with some additional information. Would you
9 tell me what this diagram represents?

10 A. Sure. This diagram is a little bit of a closer up
11 of 1051 and 1050. It includes photo markers of -- for items
12 of evidence that were marked and collected.

13 Q. So, what do the -- first of all, what do the
14 letters represent?

15 A. Those are photo markers that were in the street.
16 In this case these photo markers were five areas of reddish
17 brown stain, which is what we refer to when we're not sure if
18 something might be blood or not. It's a reddish brown stain.

19 Q. And why are they letters rather than numbers?

20 A. Just to differentiate between the two.

21 Q. The other items that were identified in this
22 diagram are by number, and is that a phys -- a piece of
23 physical evidence that was then collected and preserved?

24 A. Yes.

25

1 Q. So, you can connect any number on this diagram with
2 the actual evidence that was recovered, and then track where
3 it went from you?

4 A. Yes.

5 Q. Can you remember by looking at this generally what
6 the items were?

7 A. Yes, I can.

8 Q. Well, let's do that just kind of in groupings. So,
9 I'll point to this grouping here. This is 19, 20, 21, and
10 22. What's -- what did you recover there?

11 A. Those were cartridge casings.

12 Q. Meaning fired shell casings?

13 A. Yes.

14 Q. Did you have the opportunity to collect and submit
15 for analysis four Glock firearms?

16 A. Yes, I did.

17 Q. Did you do any of the analysis that would help
18 identify which gun fired which cartridge?

19 A. I did not. The Florida Department of Law
20 Enforcement did all of that part.

21 Q. Did you receive their report?

22 A. I did.

23 Q. So, you're familiar with it?

24 A. I am.

25

1 Q. But you're not -- you didn't do the work?

2 A. No, I didn't.

3 Q. And the State objects to testimony about it. All
4 right, let's take a look at this grouping over here, 25, 26,
5 27, 24 in order, and then 42.

6 A. 25, 26, 27, and 42 are cartridge casings, and 24 is
7 a flashlight.

8 Q. Did you take a picture of the flashlight?

9 A. I did.

10 Q. Can you describe it?

11 A. It was a black flashlight about this long.

12 Q. Would you call it a tact -- a tactical light?

13 A. I think you could refer to it that way, yes.

14 Q. Do you remember if it was on or off?

15 A. It was on.

16 Q. I'm sorry?

17 A. It was on.

18 Q. When you found it it was lit?

19 A. Yes.

20 Q. Had anybody previously marked it, or is that
21 something your teamed discovered?

22 A. That's something the crime scene unit marked.

23 Q. You know, I'll get to that after a while. I don't
24 want to take the time now to dig out the photograph, but it
25 was photographed?

1 A. Yes.

2 Q. Okay. One of the shell casings that you've
3 identified as being in this group, number 42 is way out of
4 sequence. It looks like you typically number them in order
5 when you find them. Why would there be a 42 in this group?

6 A. In this case the cartridge casings are difficult to
7 find in -- especially in the Florida grass. So, like you
8 said, we numbered them as we located them, and 42 happened to
9 be located a little bit later.

10 Q. Do you know why or how that came to be?

11 A. Just like I said, they're hard to find in the
12 grass, so the longer we kept searching the more cartridge
13 casings we found.

14 Q. What I was wondering is if you went back the next
15 day or it was found later than the others?

16 A. Later in time, but not -- it was all collected --
17 located and collected on that same day.

18 Q. How do you keep the numbers straight if somebody's
19 over here collecting something and you're over here
20 collecting something so you don't -- how are they marked? Is
21 it with the initials?

22 A. What happens is --

23 Q. So why there's not two 22's or two 15's.

24 A. There's one set of photo markers that are used, and
25 even if there are multiple crime scene investigators that are

1 searching and locating evidence every single item is brought
2 to my attention.

3 A photo marker is placed at that item. The item's
4 photographed in place by me. So, they're all assisting and
5 searching, but it all, like you were saying earlier, kind of
6 funnels to me.

7 Q. Since you mentioned A, B, C, D appeared to be a
8 reddish brown stain, was that submitted for identification
9 through DNA or some other analysis?

10 A. That one was not.

11 Q. Let's jump over to this side of the diagram, and
12 there are -- looks like generally two groupings of numbers.
13 Can you just speak to that?

14 A. Yes. You mean like right here, like 16, 17?

15 Q. Yes, exactly.

16 A. Okay. 13 is a firearm. 39 is a full cartridge, so
17 an unfired cartridge. 14 -- I may have to refer to my report
18 if that's all right for --

19 Q. Oh, sure, em-hmm. And you don't have to be too
20 specific, just generally what was there.

21 A. Okay, 14 was an orange hat. 15, 16, 18 are
22 cartridge casings. 17 is a firearm. And then over here,
23 these are all cartridge casings, with the exception of 11,
24 which was a white i-phone.

25

1 Q. You're looking at sort of another group of evidence
2 items. Is that west?

3 A. Yes.

4 Q. Towards Alcazar anyway?

5 A. Yes, it's west.

6 Q. And most of these numbers are cartridge casings?

7 A. Yes.

8 Q. Do you know whose firearm is number 13? Which
9 agent had what was later identified as number 13?

10 A. I do. 13 is Agent Stead's firearm.

11 Q. So, at this point we know that Agent Roberts had
12 his, and Agent Stead's was here in this area. How about
13 Agent Smith? Where was his gun recovered?

14 A. Agent Smith's is 17. Right there.

15 Q. Let's look then at the groupings sort of under the
16 porch area. Just speak to those generally if you would.

17 A. These numbers right here, the 28, 29, 30, 31, 32,
18 in that general area, those are cartridge casings. I believe
19 48 and 49 are projectiles. And then 35, 36, 38, these are
20 projectiles over here.

21 Q. Projectiles meaning the bullet?

22 A. Yes.

23 Q. Associated with firing the gun was recovered and
24 marked in this way?

25 A. Yes.

1 Q. This diagram does not show any damage to the house,
2 is that right?

3 A. That's correct.

4 Q. And this diagram doesn't show blood stains, or does
5 it?

6 A. It does. There were -- these ones in the road that
7 I spoke about --

8 Q. Oh, of course, I'm sorry.

9 A. And there were also these on the sidewalk and the
10 front porch.

11 Q. And are those marked by numbers too?

12 A. Those are letters, and I believe they're also all
13 red in color, although it's difficult to see.

14 Q. Thank you. Did you also examine the house for
15 damage that may have been caused by a projectile?

16 A. I did.

17 Q. I'm going to hand you State's Exhibit 30 -- or
18 actually, I'm going to put it up here and see if this is
19 familiar to you and if you could help us understand what's
20 lo -- what's identified within it.

21 A. These are all, with the exception of L, which is
22 right here, all the rest are suspected bullet defects.

23 Q. Suspected bullet defects in the sense that there is
24 damage to the house that you believe was caused by a bullet
25 hitting it?

1 A. Yes.

2 Q. And were those individually photographed?

3 A. They were.

4 Q. Is this the front of the house at Covina as you are
5 faced -- if you're standing on Covina looking at the house is
6 that the front door and around it?

7 A. Yes.

8 Q. And this is 31. It appears to be a close-up of
9 some sort.

10 A. This is the west facing garage wall. So, if you're
11 facing the front of the house the garage wall that kind of
12 jettied out, this is that wall.

13 Q. So, the front of the house where the defects and
14 the other diagram were in this area?

15 A. Yes.

16 Q. What you're seeing here is in this wall?

17 A. Yes.

18 Q. And what does this tell us?

19 A. These are some suspected bullet defects near the
20 porch area, and these are done in 3D. In particular a few of
21 these were kind of on the inside of the porch.

22 So, a bird's eye or a flat diagram like the one's you
23 showed previously wouldn't show these defects. That's why a
24 3D diagram was done for those.

25

1 Q. That's State's 29. So, they may not have been
2 represented in the other pictures, is that what you're
3 saying?

4 A. Yes, just because they're on the inside of that
5 porch and it -- they -- it wouldn't show in a flat diagram.

6 Q. And they were all individually photographed and
7 preserved in that way as well?

8 A. They were.

9 Q. We also have State's 32. What does this tell you?

10 A. This is the west wall of the residence. So, if you
11 were standing on Alcazar it would be the wall you would be
12 looking straight at.

13 Q. Can you orient me on that one?

14 A. If you were standing on Alcazar and looking
15 straight at the side of the house, this is that side wall,
16 and F was right there on that corner.

17 Q. I'm sorry.

18 A. So, F right here is right here on this corner.

19 Q. Thank you. Are you able to determine by looking at
20 the defect where the bullet was fired from?

21 A. With only one defect? You need more than one
22 defect or hole to give accurate trajectory, but just based on
23 where this was on the wall I believe it came from the west
24 side.

25

1 Q. From the Alcazar side?

2 A. Yes.

3 Q. All right. Okay, and that's where Agent Stead's
4 gun was found?

5 A. And Agent Smith.

6 Q. Yes. Thank you. I think this may be the last one
7 from the outside. This is State's 34.

8 A. This is 1050 Covina Street, so this is the
9 residence across the street. And this FF is a bullet defect.
10 This is the garage door, so it's just to the east of the
11 garage door underneath the light. I'm sorry, it's a
12 suspected bullet defect.

13 Q. Right. And this is essentially across the street
14 from Mr. Derossett's house?

15 A. Yes.

16 Q. Now, for some diagrams that were taken apparently
17 of the inside. Number 33, can you tell us what this is
18 about?

19 A. Briefly, I wasn't responsible for the inside of the
20 residence, but I do know that there was a defect and a
21 projectile recovered from a closet.

22 Q. Em-hmm. Does this represent that as far as you can
23 tell?

24 A. As far as I can tell, yes.

25

1 Q. Are you aware of there being other defects in the
2 house caused by bullets, other than this one that's
3 represented here?

4 MR. RESPESS: Well, I'm going to object that it's
5 not within her personal knowledge. So -- because I
6 believe CSI Chretien dealt with the inside of the
7 residence.

8 THE COURT: She did.

9 MR. WEST: That's fine.

10 THE COURT: Okay.

11 BY MR. WEST:

12 Q. If you don't know or if no one even at this point
13 has told you there were other suspected bullet holes inside
14 the house.

15 A. There may have been, but without referring to CSI
16 Chretien's report I couldn't say for sure.

17 Q. Fair enough. And this was State's 33. Were some
18 of the blood samples submitted to the lab for analysis?

19 A. They were.

20 Q. And did you get results on those?

21 A. I did.

22 Q. And did you do the analysis?

23 A. I did not. I submitted them to the Florida
24 Department of Law Enforcement and they took care of that.

25

1 Q. And did they give you results?

2 A. They did.

3 Q. And is -- do you have those results as part of your
4 overall case investigation?

5 A. I do.

6 Q. And can you speak to them and identify where the
7 blood stains were that had been identified and to whom?

8 (No response.)

9 MR. RESPESS: I won't object on that so we can move
10 this along.

11 THE COURT: All right, thank you. You may answer
12 ma'am.

13 THE WITNESS: Oh. I'm aware of the results from
14 FDLE. I can tell you what the results are, but not how
15 they arrived at those result or --

16 MR. WEST: Oh, sure.

17 THE WITNESS: (Cont'd) anything like that.

18 MR. WEST: Sure.

19 BY MR. WEST:

20 Q. How many different individuals were identified as
21 contributing to a blood stain?

22 A. That I don't know without looking at the report.

23 Q. Was there blood at the scene that later became
24 identified to John Derossett?

25 A. Yes.

1 Q. And where was that generally within the house?

2 A. There was a blood stain labeled L right next to or
3 on the west side of the front door, and that was identified
4 as belonging to Mr. Derossett.

5 Q. Is that a fairly large stain?

6 A. I'm not sure what you mean by large. I have a
7 photograph of it.

8 Q. With you?

9 A. No, it -- I took a photograph of it.

10 Q. Okay. I'll show you something that we had prepared
11 to see if it looks familiar. It's kind of big though. I'll
12 have to mark it. This is marked as Defendant's AQ. I'm
13 going to show the witness.

14 We're talking really about a blood stain that was
15 outside the door. Is -- this may not be to the same
16 proportion that your photo was, but is this what you believe
17 to be a blood stain that was near the front door of the
18 Covina house?

19 A. Yes, that's L, photo marker L.

20 Q. This is L.

21 A. Em-hmm.

22 Q. And was this actually your picture?

23 A. Yes.

24

25

1 Q. I'll also show you Defendant's M, and see if this
2 is the same picture, but at a greater distance?

3 A. Greater distance and slightly different angle, but
4 yes.

5 Q. Sure. And that's one you took?

6 A. Em-hmm.

7 MR. WEST: Your Honor, at this time I would move
8 Defendant's M and Defendant's AQ into evidence.

9 THE COURT: All righty.

10 MR. RESPESS: No objection.

11 THE COURT: So, M is the small -- without
12 objection then M becomes?

13 THE CLERK: 26.

14 THE COURT: 26, Defendant's 26. And M -- what was
15 the -- sir, the other one? Mr. West, the large one?

16 THE CLERK: AQ.

17 THE COURT: AQ. And then AQ becomes 27. Thank
18 you.

19 BY MR. WEST:

20 Q. Before I forget to ask you, did anybody on your
21 team go to the hospital where John Derossett was being
22 treated?

23 A. Yes.

24 Q. Did anybody there collect his blood for analysis?

25 A. I responded several days later to collect the

1 admission blood that had been taken by the hospital on his
2 arrival.

3 Q. And what did you do with it?

4 A. That was admitted to FDLE?

5 Q. And did you get the results on it?

6 A. Yes.

7 Q. And what were those results?

8 MR. RESPESS: Objection.

9 THE COURT: All right, sustained.

10 BY MR. WEST:

11 Q. Just to speak briefly to that. You went to the
12 hospital and retrieved from the hospital staff one or more
13 vials of blood that were identified as John Derossett's
14 blood?

15 A. I did.

16 Q. And what did you do with that blood?

17 A. The -- it was collected as evidence, submitted to
18 our evidence unit, and then I completed the submission form
19 to submit it to FDLE.

20 Q. And when did you pick up the blood?

21 A. I'd have to refer to my report to refresh my
22 memory.

23 Q. Sure. That'd be fine.

24 A. I responded on August 25th.

25

1 Q. All right. And do you have a note when the blood
2 was drawn?

3 A. I don't. It was labeled as admission blood, but
4 other than that I don't have --

5 Q. What did that mean to you, admission blood?

6 A. To me that means the blood was drawn on his
7 arrival.

8 Q. And that's what you took it to mean when you did
9 further processing with it?

10 A. I'm not sure that I needed that information for
11 further processing --

12 Q. Em-hmm.

13 A. (Cont'd) but that's what I was told it was.

14 Q. Well, I'm just trying to get a sense of the blood
15 being drawn close in time to when he was being admitted or
16 four days later when you got there.

17 MR. RESPESS: All that calls for hearsay. She
18 doesn't have personal knowledge to any of that.

19 THE COURT: Right. I -- the objection to hearsay
20 is sustained, unless she was in that chain of custody
21 and --

22 MR. WEST: Well, that's what I think -- I think the
23 witness has identified herself as being in the chain of
24 custody. We're just trying to figure out where in that
25 chain she was.

1 THE COURT: Seemed like she was in the part --
2 police department, Sheriff's Department to FDLE
3 position. Wouldn't she be?

4 MR. WEST: Well, I'm trying to ascertain what this
5 witness knows about that so we can see if any additional
6 witnesses are needed, and frankly whether we've been --
7 those witnesses have been disclosed because it's --

8 THE COURT: Okay.

9 MR. WEST: (Cont'd) really relevant evidence to
10 this.

11 THE COURT: Okay.

12 MR. WEST: Not to belabor --

13 THE COURT: I'm sorry, I thought she testified that
14 that's what she did, that she submitted it to FDLE.

15 MR. WEST: Yeah, I just may have -- I missed the
16 first part. I just need to clarify that.

17 THE COURT: Okay.

18 BY MR. WEST:

19 Q. So, Ms. Pill, on August 25, 2015 you went to the
20 hospital to collect blood that was identified to you as
21 admissions blood?

22 A. Yes.

23 Q. Did you photograph it?

24 A. I did not photograph it.

25

1 Q. Did you -- had you ever handled blood before in
2 your work?

3 A. Yes.

4 Q. Do you know what you're supposed to do to preserve
5 it?

6 A. Yes.

7 Q. What are you supposed to do?

8 A. Well, in this case it was blood that -- let me
9 rephrase. I collected it and submitted it to the evidence
10 unit, and they would have been the ones to determine if
11 anything needed to be done special with it.

12 Q. Em-hmm.

13 A. I don't know if they refrigerated it or -- that I
14 don't know.

15 Q. So, your records would indicate the act of
16 collecting it from the hospital?

17 A. Yes.

18 Q. But it doesn't show a picture of the label on the
19 blood vial?

20 A. No, I don't have a picture of that.

21 Q. How many vials did you get?

22 A. It was three vials.

23 Q. And did you take them immediately to the evidence
24 unit?

25 A. That I don't remember.

1 Q. Would it have been soon?

2 A. Yes.

3 Q. You didn't attempt to preserve the blood at your
4 office or at some other location?

5 A. I don't recall --

6 Q. Em-hmm.

7 A. (Cont'd) exactly where the blood was.

8 Q. Your memory of handling the blood was you picked it
9 up at the hospital and you took it over to evidence?

10 A. It was submitted to the evidence unit, yes.

11 Q. And --

12 A. I don't recall if I drove it there or if they
13 picked it up.

14 Q. Okay, fine. But at the point you hand it over to
15 them it was their responsibility to preserve it, and then
16 ultimately at the investigators discretion submit it to the
17 lab?

18 A. Yes.

19 Q. And you believe all that happened?

20 A. Yes.

21 Q. Because in your work you got the results from the
22 lab whether the blood contained any controlled substances?

23 A. Yes.

24 Q. Do you have that report with you?

25 A. I do.

1 Q. And would you -- would you get it out please?

2 Thanks.

3 MR. RESPESS: I've already objected once to this as
4 hearsay. I don't understand why we're still
5 (unintelligible) when you sustained it.

6 THE COURT: Okay, well --

7 MR. RESPESS: She's indicated she's gotten the
8 results. I objected to her offering the results since
9 she didn't do the examination.

10 THE COURT: Okay. Well, Mr. West what do you want
11 her -- that objection is sustained. She's not the lab
12 analyst.

13 MR. WEST: I'm -- I haven't asked her to disclose
14 what the paper says. Right now I just want to see the
15 paper that the witness has testified are the lab
16 results.

17 THE COURT: Okay.

18 BY MR. WEST:

19 Q. Ms. Pill, don't put that page on the projec --

20 A. Oh, sorry.

21 Q. No, that's fine, just the one that you're going to
22 find here in a second, don't put that on the projector til we
23 talk about it.

24 A. Forgot it was on.

25

1 Q. Thanks.

2 A. I have it.

3 Q. Okay. Let me take a look at it with you.

4 MR. WEST: Your Honor, I would like to retrieve
5 this item from the witness and show it to the State.

6 THE COURT: Okay.

7 MR. WEST: Your Honor, I would like the clerk to
8 mark this item.

9 THE COURT: Okay.

10 MR. WEST: Ms. Pill, I'm going to hand this back to
11 you. It's now been marked as Defendant's Exhibit AR,
12 and ask you to confirm that AR is a document from the
13 Florida Department of Law Enforcement, which reports --
14 it's a lab result reporting to describe the results of
15 an analysis of blood that you retrieved from the
16 hospital that's attributed to Mr. Derossett.

17 THE DEFENDANT: That looks like what this is.

18 MR. WEST: You still object?

19 MR. RESPESS: Yes.

20 MR. WEST: I think the State's objection, at least
21 at this point, is well taken. So, I'm not going to
22 offer it, but I'd like to return it to the clerk so we
23 can discuss it later.

24 THE COURT: Okay.

25 MR. WEST: Thanks.

1 THE COURT: All right, thank you Mr. West.

2 BY MR. WEST:

3 Q. Ms. Pill, let me ask you just some general
4 questions about the evidence that was collected at the crime
5 scene. And if you're able to answer off the top of your head
6 please do.

7 If you think it would -- you could find the answer but
8 it would take you a while to do it then just say that and
9 we'll decide if it's worth it. So, how many shell casings
10 were recovered at the scene?

11 A. I'd have to count to be sure.

12 Q. Without being precise can you estimate, or is
13 that -- probably don't work that way in your job, but can
14 you -- can you -- how about this: Do you know how many shots
15 were fired based upon the analysis of the firearms that were
16 recovered? Assuming that everybody had a full magazine.

17 A. I can't determine that based off the test results
18 from FDLE. Is that what you're asking?

19 Q. No, no, nothing to do with FDLE. I'm on a
20 completely different subject here. What I'm wondering is you
21 said you collected four guns, and I know from your own report
22 that all of those guns were examined.

23 And the number of cartridges that remained in any of
24 them were counted. That you know how many bullets they hold,
25 plus one in the chamber. So, you would know what the maximum

1 capacity would be for any of those guns. Is that true or is
2 that not? It's an assumption I shouldn't make.

3 A. Well, it's a couple different questions. The
4 capacity of the magazines you could tell by looking at the
5 back of them.

6 I don't specifically have that information in my report,
7 other than the photographs that I documented that each
8 magazine. I could count the number of cartridge casings that
9 were collected --

10 Q. Em-hmm.

11 A. And then I'll also do, like you said, have the
12 count of cartridges that were from each magazine, but.

13 Q. Let me ask it a different way, because I'm not
14 asking you to go through all those steps, but wondering that
15 since you said that sometimes -- in this case that a shell
16 casing might be found later on because they're kind of tricky
17 to find in grass in particular.

18 Did you have a discussion to figure out the best you
19 could, based upon the believed number of shots that had been
20 fired all together, whether you had recovered all the shell
21 casings?

22 A. We did try and determine, but when we were on scene
23 it was a guess whether or not each agent's gun had been
24 topped off with an extra chamber -- cartridge in the chamber.

25

1 Q. Em-hmm.

2 A. So, we were working the best we could off of the
3 assumptions we were making based on that.

4 Q. And how close do you think you got?

5 A. I don't recall. I know -- I remember having a
6 conversation about it, but I don't recall. I mean, we
7 searched several different ways to collect all the cartridge
8 casings that we could find. We did the best we could to --

9 Q. Of course.

10 A. (Cont'd) obviously collect each and every one of
11 them.

12 Q. Did anybody ever go back to the scene to look
13 specifically for more shell casings after discussing it and
14 not being sure if you'd gotten them all?

15 A. Not that I know of.

16 Q. I won't ask you at this time to go through all of
17 your records and do a specific count. Can you tell me
18 generally how many bullet defects you found in the house?

19 A. I didn't process the inside of the house. CSI
20 Chretien would possibly have that information.

21 Q. Would all of -- would that number be the sum of all
22 of those marks that were identified on the diagram?

23 A. I'm not sure what you're asking.
24
25

1 Q. You know the diagrams that we showed that
2 identified suspected defect from -- projectile defects?

3 A. Yes.

4 Q. Would the number of defects simply be adding all
5 those up?

6 A. You could say that.

7 Q. You don't happen to know what that number would be?

8 A. I don't.

9 Q. I'm going to hand you a stack of photographs and
10 just ask you to look briefly at them and tell me if these
11 photos represent bullet defects that your team identified.

12 The first one is State's -- I'm sorry, these hadn't been
13 admitted. They've been marked, but not admitted. The State
14 doesn't have any objection to these?

15 MR. RESPESS: If they're State's exhibits we don't
16 object.

17 THE COURT: Madam Clerk, do you want to just call
18 them out?

19 THE CLERK: It's going to have to be just a second
20 Judge.

21 THE COURT: Okay.

22 THE CLERK: I have to get them marked. State's
23 Exhibit CI becomes number 35. CN, as in Nancy, becomes
24 number 36. CO becomes number 37.

25 CS, as in Sam, becomes number 38. CT becomes 39.

1 CV, as in Victor, becomes number 40. CW becomes number
2 41. CX becomes number 42. CY becomes number 43. And
3 CZ becomes number 44.

4 THE COURT: Thank you Madam Clerk.

5 THE CLERK: Okay, Mr. West.

6 MR. WEST: Thank you.

7 THE CLERK: Thank you.

8 BY MR. WEST:

9 Q. Before we get back to the bullet defect question
10 Ms. Pill I'm going to -- I found what's now marked as State's
11 35, and see if this is the flashlight that you mentioned was
12 recovered at marker 24?

13 A. It is.

14 Q. I can't tell in this picture if it's on. Can you?

15 A. No.

16 Q. Your memory is that it was on?

17 A. Yes.

18 Q. All right. Was that ever noted do you know?

19 A. Yes, it's in my report.

20 Q. It is? That when you found number 24 it was on?

21 A. Yes.

22 Q. So, what do you suspect, the battery just wore out
23 in the time it took to photograph it?

24 A. Either that or because of the angle of the photo
25 and the daylight you just can't see that it's on.

1 Q. Oh, so this picture was probably taken in the
2 daylight several hours later?

3 A. It was.

4 Q. Okay. I'll identify by exhibit number what these
5 are, but I'm just going to hand them to you as a stack. This
6 is 36, 37, 38, 39, 40, 41, 42, 43, and 44 State's Exhibits.

7 And there's probably lots of things in these pictures
8 you could talk to, but all I really want to know at this
9 point is whether there's at least one or more what you would
10 call projectile damage, if there's one or more indications of
11 projectile damage in each of these pictures.

12 A. One or more each?

13 Q. One or more -- let me figure out a way that makes
14 sense to both of us. I'm really looking to know if there's
15 any damage in these photos that relate to projectiles, that
16 you've identified as damaged caused by projectiles.

17 A. I believe that to be damage caused by projectiles.

18 Q. Right, I'm not arguing with you a bit, I'm just
19 trying to illustrate what they look at, and to some degree
20 where they were because you can match all these up with that
21 diagram if you want to.

22 A. Yes.

23 Q. Did you see all these before?

24 A. I did.

25 Q. Okay, fine.

1 MR. WEST: Your Honor, I don't think to take the
2 time to publish all these if the Court is going to be
3 reviewing the evidence anyway. These all represent --

4 THE COURT: Okay, I --

5 MR. WEST: (Cont'd) just pictures of where --
6 projectile damage, or I'll hand them to the Court now.

7 THE COURT: Okay. Well, if -- sure.

8 MR. WEST: Thank you.

9 THE COURT: That'd be great. Thank you. I
10 appreciate it.

11 MR. RESPESS: Judge, I'll probably go through that
12 in my examination --

13 THE COURT: Okay.

14 MR. RESPESS: (Cont'd) so that we can tie it all
15 together. I'll probably do that.

16 THE COURT: Okay, thank you.

17 MR. WEST: Your Honor, I'll defer to that then and
18 not take any more time.

19 THE COURT: Okay.

20 MR. WEST: Since we're going to be going back over
21 it. So, I'll conclude my questioning of Ms. Pill at
22 this point.

23 THE COURT: All right.

24 MR. WEST: Thank you.

25

1 THE COURT: I'll leave this alone til Mr. Respess
2 picks up with them. Thank you.

3 MR. RESPESS: Can we take five minutes and then get
4 going?

5 THE COURT: Sure. Take a five minute break?

6 MR. RESPESS: Em-hmm.

7 THE COURT: Sure. All right, we'll take five.

8 THE BAILIFF: Court will be in recess.

9 THE COURT: Oh, Mr. Scheiner, can you and Mr.
10 Panella approach for a minute please?

11 (Whereupon, a side bar discussion was held outside
12 the hearing of the gallery.)

13 THE COURT: Here, you want to put these back in
14 with yours. I messed them -- I took them out of order a
15 little bit. I just wanted to let you know that
16 apparently there's --

17 MR. PANELLA: I'm sorry Judge, I can't hear you.

18 THE COURT: Apparently there has been an on going
19 issue between Mr. Derossett and his family members and
20 the deputies, because he keep -- they -- I have been
21 advised that since the beginning that he is turning
22 around and looking at them. And the deputies kept
23 asking him to face forward and not do that, not engage
24 in any of that.

25 And so I believe it was after he had been asked

1 multiple times that I had said, well, if he persists the
2 only remedy is to put his back to the bar there and then
3 he's going to be sitting sort of between the two of you.

4 And I -- so, my understanding from -- is that
5 Deputy Turner explained that to him. That he puts
6 himself there, he's put himself there by his actions.
7 So, I don't want to make a big deal of it, but that's
8 where he's going to be now starting after this break.

9 Because he was -- because Deputy Turner just
10 advised he was still engaging with these folks, and he's
11 really not supposed to be doing that, he's supposed to
12 be facing forward.

13 MR. PANELLA: We addressed it with him. I didn't
14 see him doing it today.

15 THE COURT: Well, apparently while Mr. West was
16 doing -- was working with CSI Pill -- well, she's here
17 in that capacity, so I'm going to call her that.

18 MR. PANELLA: Sure.

19 THE COURT: But it was apparently while he was
20 examining her and discussing the photographs and what
21 not. There was something going on.

22 So, if you -- if you want to put -- you know, you
23 want me to ask these two gentlemen in the different
24 colored green, who appear to have come with Mr.
25 Derossett, might know more about it.

1 I don't know if it was Deputy Turner that saw it, I
2 don't know if you want to discuss it any further, but
3 we're just going to let him sit with his back to --

4 MR. PANELLA: So, he's -- so, we're his chaperones
5 is what you're saying?

6 THE COURT: I know --

7 MR. WEST: I didn't hear what --

8 MR. PANELLA: She wants to put him in between the
9 two of us.

10 THE COURT: Yeah, he's -- well, he's just -- he'll
11 sit at counsel table with his back to the bar. And so
12 if that effectively --

13 MR. PANELLA: Okay. And if that's --

14 THE COURT: If that effectively puts him next to
15 you, you know, in between you, then it does.

16 MR. PANELLA: Yeah.

17 THE COURT: If you want to, you know sit
18 differently. I mean, one of you is most of the time
19 standing, so. It's not the --

20 MR. WEST: I understand the Court's concern --

21 THE COURT: You know, this is not the end of days,
22 but.

23 MR. WEST: (Cont'd) because it reflects that of
24 courtroom security, but I don't think there's been any
25 suggestion that he has done anything to create a

1 security risk.

2 THE COURT: I think they're suggesting that they --
3 that's the way they view it. And if you would like to
4 have a -- take a moment and take a break, and then we
5 can come back and discuss it on the record I'm happy to
6 do that. I mean, not that we're not on the record.
7 This is all on the record.

8 MR. WEST: I'm concerned only --

9 THE COURT: I just don't want it to look like I'm
10 calling him out --

11 MR. WEST: Right.

12 THE COURT: Because it's not -- you know, to me it
13 is not a big deal. To the deputies who are in charge of
14 security, driving the man to Seminole County every
15 night, who has been accused of a shooting with the
16 police, they are all prickly about this.

17 So, they don't want him communicating by winks,
18 hand signals, nods, grins, frowns, whatever kind of
19 grimace you can think of.

20 MR. WEST: Well --

21 THE COURT: Anything. They don't know whether he's
22 communicating. It'll be over at 5:30, be at the 44 and
23 I95 exit. They don't -- they think the worst possible
24 thing. You have to understand.

25 MR. WEST: Well --

1 THE COURT: So, all I'm going to do is put him with
2 his back to the bar, okay. Because that will just end
3 it and there will be no further issue. Just back him up
4 to the bar.

5 MR. WEST: These women are his sisters, correct?

6 THE COURT: I don't know what's going on Mr. West.
7 That's what I'm saying. There are no exceptions.

8 MR. WEST: They're older women that --

9 THE COURT: Let me put it this way: There are no
10 exceptions.

11 MR. WEST: Okay.

12 THE COURT: Okay. There are no exceptions. When
13 people have been warned to not communicate with people
14 in the audience and they continue to do so we
15 re-position them in order to put a stop to it as
16 unobtrusively as possible. That's what's happening.

17 MR. WEST: I understand.

18 THE COURT: Just wanted to let you know where your
19 new seating chart was. Thank you.

20 MR. WEST: Thanks Judge.

21 THE COURT: We're taking a break now.

22 (Whereupon, court stands in recess for
23 approximately 12 minutes.)

24 THE BAILIFF: Remain seated, come to order. Court
25 is back in session.

1 THE COURT: All righty folks. Oh, wait -- oh, Mr.
2 West, had you finished or?

3 MR. PANELLA: He has Your Honor, but can we
4 approach just briefly Judge?

5 THE COURT: Sure, sure.

6 (Whereupon, a side bar discussion was held outside
7 the hearing of the gallery.)

8 THE COURT: Do you want the noise on?

9 MR. PANELLA: Sure.

10 THE COURT: We didn't do that --

11 MR. PANELLA: I just wanted to let you know, we
12 spoke with -- we're with you. The -- Mr. West and I
13 want to be able to at least communicate. And so --

14 THE COURT: Right.

15 MR. PANELLA: (Cont'd) the other officer said
16 they're okay with him right there where he is.

17 THE COURT: Yeah, that's fine.

18 MR. PANELLA: He doesn't have to be between us, he
19 just needs to be facing you.

20 THE COURT: Right. No, no, no, no, no. I don't
21 mean between -- it -- fine, it's all fine.

22 MR. PANELLA: Okay. Just wanted to let you know.

23 THE COURT: Okay, yeah. No problem.

24 (Whereupon, the following was had in open court.)
25

1 THE COURT: And you can tap your mic and see that
2 you're -- it's off at your table.

3 MR. PANELLA: That's fine. I believe that's
4 correct.

5 THE COURT: Yeah, okay. Thanks.

6 MR. RESPESS: All right, may I proceed?

7 THE COURT: Certainly.

8 MR. RESPESS: Okay.

9 CROSS EXAMINATION

10 BY MR. RESPESS:

11 Q. Ms. Pill, I wanted to do some of this in more
12 photographic form. I think the diagrams can be helpful, but
13 I wanted to deal with some images and see if you can't help
14 orient us to what you found there at the crime scene.

15 So, with that in mind I wanted to start where I believe
16 the -- Mr. West was talking about and showed you a 3D
17 diagram. And so I'm going to have a series of images I
18 wanted you to look at that I want to put on the view screen.

19 The first one is 41. And do you recognize that
20 particular image?

21 A. I do.

22 Q. And where's that located?

23 A. This is the front porch right here and the door is
24 right here.

25

1 Q. Okay. And so that pillow that we're looking at
2 that has the number, the house number on it, is that the
3 pillar that's closest to the inside bed where it's wrapped
4 around with a concrete walkway?

5 A. Yes. It's on the east side, so the --

6 Q. It's next to the flower bed, and then the other
7 pillar's next to the yard, right?

8 A. Yes.

9 Q. Okay. And so that's how I wanted to -- now,
10 there's two impact sites I believe you were documenting on
11 the 3D diagram we saw earlier that are visible here. Is that
12 true?

13 A. Yes.

14 Q. Okay. Can you show us where those two were?

15 A. Sure. This one is labeled S, and then Q is up
16 here.

17 Q. Okay. Now, I've got a closer up, I believe it's
18 Exhibit 43 in evidence. Do you recognize that?

19 A. I do.

20 Q. And was there actually something that you were able
21 to recover at the Q site?

22 A. Yes.

23 Q. And what was that?

24 A. There was a projectile embedded right there.
25

1 Q. And I'm going to show Defense counsel State's T.
2 And I'm going to show you what's been marked as State's T.
3 You assured me there was scissors up here yesterday.

4 THE COURT: Yesterday there were. All right, be
5 right back.

6 THE CLERK: Got them, I got them.

7 MR. RESPESS: All right. We lost the Court. All
8 right, hold on a second. We're good.

9 BY MR. RESPESS:

10 Q. So, looking at that packaging are you able to
11 associate that package as something you recovered from the --
12 what this -- what you labeled Q?

13 A. Yes.

14 Q. All right. And how are you able to do that?

15 A. It holds all the identifying information, and the
16 location collected is photo marker Q, which is this.

17 Q. All right, can you look in -- with the Court's
18 permission can you look inside the package, satisfy yourself
19 what you placed there is there today.

20 And I'm making an assumption, so let me go ahead and
21 ask. Does it appear somebody's gone into that package since
22 you've sealed it?

23 A. Yes.

24

25

1 Q. Okay. Could you open the package and see if you
2 recognize the item that's in there today? Okay, so, it
3 appears to be the same?

4 A. Yes.

5 MR. RESPESS: Your Honor, I'm going to offer it.

6 THE COURT: All righty. Then that will be -- oh,
7 any objection Mr. West?

8 MR. WEST: No, Your Honor.

9 THE COURT: All right, then that -- whatever the --

10 MR. RESPESS: This is Exhibit T.

11 THE COURT: Oh, T, all right. State's T will
12 become State's 44.

13 THE CLERK: 45.

14 MR. RESPESS: All right.

15 THE COURT: 5? I mean, 5 -- yes, 45. Thank you.

16 BY MR. RESPESS:

17 Q. So, going back to Q on the image. Is that inside
18 the overhang that's the -- where the front entry way is?

19 A. Yes.

20 Q. And is it up above head level? I mean, it's up
21 above people?

22 A. Yes.

23 Q. And it's on that -- I guess we call it's tie in --
24 the portion that's tying the pillar to the house?

25 A. Yes.

1 Q. Is that what we're looking at?

2 A. Yes.

3 Q. Okay. And then you had S, and that was another
4 impact site that you found?

5 A. Yes.

6 Q. Did you recover anything from that site?

7 A. No.

8 Q. All right.

9 A. Not that could be correlated to it at least. It --
10 this S was just a chunk of stucco missing basically.

11 Q. Okay. And I'm going to show you what's been
12 received in evidence as Exhibit 37. I believe that's in a
13 related area, which is why I'm talking about it now.

14 Let me -- there we go. All right, can you tell us what
15 we're seeing in Exhibit 37?

16 A. This is the same front porch. This time you can
17 see the door right here, and this is the west side pillar.

18 Q. Okay.

19 A. So, the pillar that we were just looking at is
20 right behind it basically.

21 Q. This is the one that's closer to the yard?

22 A. Yes.

23 Q. All right. And I assume that's the screen door
24 where we see other impact sites documented?

25 A. Yes. There's one right here on the door edge.

1 There's a few -- and I believe there's one down here that you
2 can't see in the screen, and then H up here was one on the
3 pillar.

4 Q. All right. Now, you weren't there so you don't
5 know if the door was opened or closed when those shots
6 occurred, do you?

7 A. I don't.

8 Q. All right. So, those are the -- but those -- H, S,
9 and Q were the three impact sites associated with that 3D
10 diagram we saw earlier?

11 A. Yes.

12 Q. Okay. Let me do it this way: I'm going to start
13 with Exhibit 36, which I believe is another image back away
14 from the entry area of this residence.

15 And is there an area that you were describing as the
16 garage wall that's associated with this same planter area
17 where the inside pillar is next to?

18 A. Yes. The garage wall is this wall right here, and
19 it extends further out, but this is it right there.

20 Q. Okay. And then I believe you -- there was a
21 diagram we talked about with -- that you talked about in your
22 direct that dealt with some impact sites, and I wanted to
23 show Exhibit 44. And does that image document the impact
24 sites you were talking about and showing us on the diagram?

25 A. Yes.

1 Q. All right. Any projectiles recovered from any of
2 those sites?

3 A. Not that could be correlated. There were a few
4 found down here in the bushes, but because of the way these
5 are they couldn't be correlated back to any of these in
6 particular.

7 Q. Okay. Now, I wanted to -- I believe you documented
8 some impact sites at -- in the entry area of the home, and I
9 wanted to -- let me ask what number this is before I go.

10 THE CLERK: 38.

11 MR. RESPESS: I'm sorry.

12 THE CLERK: No, that's fine.

13 BY MR. RESPESS:

14 Q. All right, 38. So, I'm going to show you what's
15 been marked as Exhibit 38 on the view screen. Are some of
16 these impact sites that you documented in the diagram visible
17 in this image?

18 A. Yes.

19 Q. Okay. And can you show us where those are?

20 A. There's K, J, G, I, you can see M on the door, and
21 L was the blood stain.

22 Q. Okay. And that was the blood stain we looked at,
23 you looked at earlier?

24 A. Yes.

25

1 Q. All right. Now, I had a picture, but I don't --
2 there was one other impact damage that was on the side of the
3 house that faces Alcazar, close to where the residence
4 faces -- did I lose that one? I just wanted to deal with
5 that one and I was going to move on. There it is. Here we
6 go.

7 THE COURT: Can I ask a question Mr. Respess?

8 MR. RESPESS: Huh?

9 THE COURT: May I ask a question?

10 MR. RESPESS: Sure.

11 THE COURT: It shows the screen door propped open.

12 MR. RESPESS: Em-hmm.

13 THE COURT: Is that the way it was?

14 MR. RESPESS: She doesn't -- she's already answered
15 that. She doesn't know. You're going to have to take
16 the other testimony for that.

17 THE COURT: Oh, she doesn't know, okay. So then my
18 next question was M. Is M a straight in shot or is M
19 look like --

20 MR. RESPESS: You already -- you saw that from
21 another witness.

22 THE COURT: Right. Did M look like it came through
23 the crack.

24 MR. RESPESS: Right. You're going to have to rely
25 on earlier testimony --

1 THE COURT: Okay, okay.

2 MR. RESPESS: (Cont'd) about that from Ms. Chretien
3 and when we were looking --

4 THE COURT: Okay. She -- those were hers.

5 MR. RESPESS: I think we started -- yeah, we
6 started with this picture.

7 THE COURT: Right.

8 MR. RESPESS: And worked our way --

9 THE COURT: In.

10 MR. RESPESS: (Cont'd) back. Right. Okay.

11 THE COURT: Right.

12 MR. RESPESS: And then the testimony of the other
13 witnesses will answer that question I believe.

14 BY MR. RESPESS:

15 Q. All right, I'm going to show you what's been marked
16 as State's Exhibit CA. And does that exhibit show the area
17 where this impact occurred? I know it's a distant shot, but
18 is it visible?

19 A. Yes.

20 Q. Okay. I'm going to offer CA.

21 THE COURT: All right, then CA will become
22 State's -- well, any objection sir?

23 MR. WEST: No objection Your Honor.

24 THE COURT: All right, thank you. Then CA becomes
25 State's 36.

1 THE CLERK: 46.

2 THE COURT: 46 I meant. Thank you.

3 MR. WEST: Your Honor, if it'll help, I don't
4 object to any of these.

5 THE COURT: Okay, thank you.

6 MR. WEST: And if I do object --

7 THE COURT: You'll let us know.

8 MR. WEST: (Cont'd) I'll speak up. Yes. Thank
9 you.

10 THE COURT: Thank you very much Mr. West.

11 BY MR. RESPESS:

12 Q. All right, so, I'm going to put CA on the view
13 screen, and I'm going to zoom it in a little bit. Is the
14 area of impact damage to the residence on this side visible
15 in that exhibit?

16 A. It is. It's right here.

17 Q. Okay. And so that's what you were describing on
18 that diagram that we saw earlier? But that's what you were
19 talking about?

20 A. Yes.

21 Q. Okay. And then there's some other photo markers
22 around that we'll talk about later, because right now I want
23 to talk about impact damage. Let me get these out of the
24 way.

25 Now, did you also -- I think you talked about viewing

1 some impact damage across the street at 1050 Covina, did you
2 not?

3 A. I did.

4 Q. So, I wanted to show you a series of images that I
5 believe were associated with that, and I'll show them to
6 Defense counsel real quick. It'd be DA, DD, DE, DF. Oh,
7 okay. I'll get there.

8 All right, so, I'm going to show you these images, and
9 right now I'm just asking if you recognize and associate them
10 with this area, this residence across the street, 1050
11 Covina, as opposed to 1051 Covina?

12 A. I do.

13 Q. All right.

14 MR. RESPESS: Your Honor, I'd offer these exhibits
15 next sequentially.

16 THE COURT: All right. So then Madam Clerk, watch
17 me. DA, State's DA becomes State's 47, correct?

18 THE CLERK: I'm going to put them in order.

19 THE COURT: Okay. I think you did A, D, E, F.

20 THE CLERK: DA becomes 47.

21 THE COURT: All right.

22 THE CLERK: DB, as in Boy, becomes 48.

23 THE COURT: All right.

24 THE CLERK: DD, as in Dog becomes 49. DE becomes
25 50. DF, as in Frank, becomes number 51.

1 THE COURT: Thank you. Anytime you're ready Mr.
2 Respass.

3 BY MR. RESPESS:

4 Q. And I'm going to start with Defendant's 2 because I
5 want to orient the residence across -- why am I so bad at
6 this?

7 A. Zoom out.

8 Q. There we go. That's what I'm looking for, the edge
9 of the picture. All right, I want to start with Exhibit -- I
10 believe it's 47, but I don't want to say. 47. And I want
11 you to orient us -- let me back this up.

12 Okay, so, can you orient us where this residence is on
13 the aerial photograph where that would be, where that
14 residence would be located? Do you understand what I'm
15 saying?

16 A. Yeah. So, this is Covina, and the residence from
17 that photo is right here.

18 Q. Okay.

19 A. Right across the street.

20 Q. And I want to use Exhibit 47 to show us where you
21 located some impact damage.

22 A. It was right here next to the garage underneath
23 that garage light.

24

25

1 Q. Okay. And so I think I want to use Exhibit 49
2 next. Does that show what you were referring to?

3 A. Yes.

4 Q. All right. And so that's the area on that garage
5 light. Do you recall where that was in relation to the front
6 of the residence across the street that we were just at? Let
7 me get the aerial photo back. Where is this garage along
8 there if you recall? If you don't, if you can't remember
9 that's fine.

10 A. I know the -- I know the house is across the
11 street, but I don't remember exactly where it was situated on
12 the lot if that's what you're asking. Like, this way.

13 Q. Okay. So, it's somewhere over here across the
14 street, the garage, and it's -- obviously it's before the
15 side of the road, right?

16 A. Yes.

17 Q. Okay, all right. And so FF, is that the side
18 that's closest to Covina? Would that be the side of the
19 residence across the street that's closest to -- I'm sorry,
20 Alcazar?

21 A. Yes.

22 Q. Okay, all right. And then there is Exhibit 51.
23 And what's that?

24 A. This is the projectile that was located in the
25 yard next to the garage at 1050 Covina.

1 Q. Okay. And so if I took this picture -- there's
2 a -- you got the side yard there. Where is that projectile
3 located in relation to this picture?

4 A. The garage is right here and then there's side yard
5 right here. It was located in this side yard, so.

6 Q. Okay, all right.

7 THE COURT: So, towards Alcazar?

8 THE WITNESS: Yes, towards Alcazar.

9 BY MR. RESPESS:

10 Q. Showing you what's been marked as State's Exhibit S
11 for identification, ask if you recognize that exhibit?

12 A. I do.

13 Q. And can you associate it with that photo I just had
14 up, which I believe was Exhibit 51?

15 A. Yes.

16 Q. All right. Is that what you placed in that
17 particular package?

18 A. Yes.

19 Q. Does it appear someone's gone into it since you
20 sealed it?

21 A. It does, yes.

22 Q. With the Court's permission I'd like you to enter
23 into that package and satisfy yourself that what you placed
24 in there is in there today.

25 A. (No verbal response.)

1 Q. Okay.

2 MR. RESPESS: Then I'd offer that exhibit into
3 evidence. And that would be related to Exhibit 51. So,
4 it's State's Exhibit S.

5 THE COURT: Right. So that would -- right, and
6 that would become -- Mr. West, any objection sir?

7 MR. WEST: No, Your Honor.

8 THE COURT: No, okay. That will, without
9 objection, become State's 52, State's Exhibit 52. Yes?

10 THE CLERK: Yes.

11 THE COURT: All right, thank you.

12 MR. RESPESS: Thank you, thank you very much.

13 BY MR. RESPESS:

14 Q. All right, now we -- I think you earlier talked
15 about this exhibit, which I can't find the exhibit number.
16 Exhibit 23. That you recovered this from the Nissan Frontier
17 that you associated with who?

18 A. Agent Stuerwald.

19 Q. Right. And so you recovered this and you located
20 damage to it and recovered an item from it, did you not?

21 A. I did.

22 Q. Can you -- I know it's heavy. Can you take the
23 item out, show the Court where you observed damage to the
24 tact vest and where you recovered a projectile?

25 A. Down here is where the bullet defect was located.

1 And inside there was a second defect. And then the
2 projectile was in this inner lining, embedded in the bullet
3 proof vest.

4 Q. Thank you. Can you put that back together? Great.
5 Now I want to show you what's been marked as State's Exhibit
6 AM for identification, and ask if you recognize and can
7 associate that with the vest I just had you look and show the
8 Court?

9 A. Yes.

10 Q. How are you able to do that?

11 A. The markings on the package, and it's labeled as
12 coming from NF 1, which was the vest.

13 Q. All right. And does it look like that package has
14 been entered into since you sealed it?

15 A. Yes.

16 Q. Could you open that package up and satisfy yourself
17 that what you placed in there is in there today?

18 THE COURT: I'm sorry, I missed the num -- the
19 letters on that one.

20 MR. RESPESS: That one was -- hold on. It's AM.

21 THE COURT: Thank you.

22 MR. RESPESS: Okay, are you able to recognize that
23 exhibit as what you put in there that you removed from
24 the tact vest that I just showed you?

25 THE WITNESS: Yep. Yes.

1 MR. RESPESS: Your Honor, I'm going to offer
2 State's Exhibit AM.

3 THE COURT: All right. So, Mr. West, without
4 objection then AM will become State's 53.

5 BY MR. RESPESS:

6 Q. Now, I wanted to use the diagram for the items that
7 we're going to be talking about next. All right, let me zoom
8 it in. Okay, let me see where I want to start.

9 Okay, I think the best way we're going to be able to do
10 this is just start, okay. So, I'm going to show you what's
11 been marked as AW, AX, AY, AZ, AN, AO, AQ, and AR.

12 I'll ask you to look at these each sequentially,
13 determine whether or not there's something you removed from
14 this crime scene that is associated with this diagram, and
15 then we'll talk about it once you had a chance to view that.

16 Are those all items you collected in the -- outside the
17 residence at 1051 Covina and in relatively close proximity to
18 the entrance of the residence?

19 A. Yes.

20 Q. Okay. Now, does it appear that some or all of
21 those packages have been entered into since you sealed them?

22 A. Yes.

23 Q. All right. And do those packages each associate
24 themselves with a number that you have on this diagram that I
25 put up on the view screen? I believe that's -- what is that

1 Exhibit 30 -- I'm going to get it wrong. 27.

2 A. Yes, there's one that's a letter, but yes.

3 Q. Okay. There's one that's a letter? Which one is
4 that? Let me pull that one.

5 A. Photo marker B.

6 Q. Okay. Okay, but this was -- this is not a stain,
7 this is an item?

8 A. Yes.

9 Q. So, we'll leave it in there, okay. All right, so,
10 let's start from the top and work our way down. You can
11 pick -- pick which ever one you want to start with and give
12 us the exhibit number on -- that's on the red sticker on the
13 back.

14 A. State's Exhibit AR.

15 Q. Okay. And it appears someone's gone into that one
16 since you looked at it?

17 A. Yes.

18 Q. What did you place in the package?

19 A. This is a fragment from photo marker 38.

20 Q. Okay. And photo marker 38, I'll get you a pen so
21 you can point to where the item is on your diagram where it
22 is that it was recovered so the Court knows.

23 A. 38 is right there.

24

25

1 Q. Okay. So, is that in association with the
2 projectile marks that are on this wall that we looked at
3 along the garage?

4 A. Maybe.

5 Q. Right. In other words, it -- but it's close to
6 that area?

7 A. Yes.

8 Q. All right. Could you open the pack and satisfy
9 yourself that what you recovered is in there today. Okay,
10 and is it?

11 A. Yes.

12 Q. Okay. And set that aside and we'll do it all at
13 once. All right, how about the next exhibit? Can you tell
14 us how we marked that one?

15 A. This is State's AQ.

16 Q. For identification. Does it appear someone's gone
17 into that package since you opened it?

18 A. Yes.

19 Q. Would you open it up, satisfy yourself that what
20 you placed in there is in there today. And what is it that
21 you placed in that package?

22 A. This is a projectile from photo marker 48.

23 Q. Can you show the Court where that would be located.

24 A. (No verbal response.)
25

1 Q. Okay. And does that appear to be the same object
2 you placed in there?

3 A. Yes.

4 Q. Okay, you can set that one aside and we'll move on
5 to the next one. The next exhibit?

6 A. State's A0.

7 Q. Okay. And again, does it appear that package has
8 been entered into?

9 A. Yes.

10 Q. And what photo marker is associated with that
11 package?

12 A. Photo marker 36.

13 Q. Can you show the Court where that's located.

14 A. (No verbal response.)

15 Q. Okay. So, it's along that -- in that area of that
16 wall, the garage wall?

17 A. Yes.

18 Q. Could you open that package, satisfy yourself what
19 you placed in there is in there today? And what is it you
20 expect to find in there?

21 A. It should be a fragment.

22 Q. Projectile fragment?

23 A. Yes.

24

25

1 Q. Okay. Okay, set that one aside as well. And
2 what's the next exhibit?

3 A. Exhibit A2 -- Z, AZ.

4 Q. AZ, okay. And looking at it does it appear
5 someone's entered into that package?

6 A. Yes.

7 Q. What photo marker do you associate with that
8 exhibit?

9 A. This is photo marker 29.

10 Q. Can you show the Court where that was recovered.

11 A. (No verbal response.)

12 Q. Okay. So, near the walkway?

13 A. Yes.

14 Q. All right. And what did you place in there?

15 A. A cartridge casing.

16 Q. Okay. Could you open up that exhibit and satisfy
17 yourself that what you placed in there is in there today.

18 Okay, now, I want to put the cartridge casings in a separate
19 pile from the projectiles.

20 I know I'm making you make piles, but -- all right. So,
21 what's the next exhibit you're looking at?

22 A. This one is AY.

23 Q. Okay. And does that -- is that another exhibit you
24 recovered from this area?

25 A. Yes.

1 Q. What photo marker do you associate with that
2 exhibit?

3 A. This one is photo marker 28.

4 Q. Can you show the Court where that was located?

5 A. (No verbal response.)

6 Q. All right. And that's in that same -- near that
7 same walkway area, close proximity to Exhibit 29?

8 A. Yes.

9 Q. All right. And what did you place in that exhibit?

10 A. This is another cartridge casing.

11 Q. Okay. Can you -- it appears someone's gone into
12 the package?

13 A. Yes.

14 Q. Can you open the package and satisfy yourself what
15 you placed in there is in there today? Okay. And since
16 that's a casing you can put it over there. Thank you. The
17 next exhibit that you come across?

18 A. This one is AX.

19 Q. All right. And what photo marker number is that,
20 is AX?

21 A. This one is photo marker 46.

22 Q. Okay. And where is 46 located?

23 A. Right there.

24

25

1 Q. So, that's in the same general area as the other
2 two, a little bit further outside?

3 A. Yes.

4 Q. All right. In the yard. And what type of item was
5 it that you recovered that you document as 46?

6 A. It's a cartridge casing.

7 Q. All right. Could you open that exhibit and satisfy
8 yourself that what you placed in there is in there today?
9 Okay. And I believe there's one more package?

10 A. Two more.

11 Q. Two more, okay. And what exhibit number is
12 associated with that package?

13 A. AW.

14 Q. All right. And what photo marker does AW
15 represent?

16 A. This is photo marker 34.

17 Q. Can you show the Court where you recovered 34?

18 A. (No verbal response.)

19 Q. All right. So, that's near the walkway in the
20 flower bed?

21 A. Yes.

22 Q. Next to the house, okay. And what --

23 THE COURT: Wait, I'm sorry. Was it 34?

24 THE WITNESS: Yes. Right there.

25 THE COURT: Okay, thank you.

1 BY MR. RESPESS:

2 Q. And what did you recover and document as 34?

3 A. This one's a cartridge casing.

4 Q. Okay. Could you -- does it appear somebody's gone
5 into the package since you sealed it?

6 A. Yes.

7 Q. Could you open the package and satisfy yourself
8 what you placed in there is in there today?

9 A. Yes.

10 Q. Okay. Set that with the other cartridge casings
11 please. And the last exhibit that we haven't talked about,
12 what exhibit ID number is associated with that?

13 A. AN.

14 Q. All right. And what photo marker is associated
15 with AN?

16 A. This is photo marker V.

17 Q. And where is V located on this diagram?

18 A. It's not pictured, but right next to the porch
19 there was a window right here along this wall.

20 Q. Okay.

21 A. And there were defects in the window sill and
22 through the screen, and a projectile was located on the
23 window sill.

24

25

1 Q. Okay. So, that was in the front window that was
2 associated with the living room of the res -- the family room
3 of the residence, the main room when you walk in the door?

4 A. Yes.

5 Q. Okay. And does it appear the exhibit has been
6 entered into since you sealed it?

7 A. Yes.

8 Q. Could you enter -- could you open the exhibit and
9 satisfy yourself what you placed in there is in there today?
10 Okay.

11 I'm going to also show you what's been marked as State's
12 Exhibit J and K, and ask you to look at those exhibits and
13 see if you recognize them and associate them with this crime
14 scene diagram that we have up on the view screen.

15 A. Yes.

16 Q. All right. And pick one of them and we'll -- well,
17 let's try J, pick J since that's the first one in order. All
18 right. What photo marker do you associate with J?

19 A. This is photo marker 35.

20 Q. Can you show the Court where 35 is located?

21 A. (No verbal response.)

22 Q. And what is it you placed in that particular
23 package?

24 A. This is a projectile.
25

1 Q. And does it appear someone's gone into the package
2 since you sealed it?

3 A. Yes.

4 Q. Can you open the package, satisfy yourself what's
5 in there -- what was placed in there is in there today?

6 A. Yes.

7 Q. Okay. Then put that with the projectile group.
8 All right. And Exhibit K, what photo marker do you associate
9 with Exhibit K?

10 A. This is photo marker 49.

11 Q. Can you show the Court where 49 is located?

12 A. (No verbal response.)

13 Q. All right. So, that's out in the yard?

14 A. Yes.

15 Q. All right. And what did you place -- what did you
16 recover and place in as that particular exhibit, K?

17 A. This is a projectile.

18 Q. Okay. And does it appear someone's gone into the
19 package since you sealed it?

20 A. Yes.

21 Q. All right. Could you open the package, satisfy
22 yourself that what you placed in there is in there today?

23 A. Yes.

24 Q. Okay.

25

1 MR. RESPESS: All right, so, what I want to do is I
2 want to -- at this time I want to offer all the
3 projectiles. So, let me go through those for the clerk
4 and the Court.

5 And let me put them in order so it works better.
6 Okay, so I would not offer State's Exhibits J, K, AN,
7 AO, AQ, and AR.

8 THE COURT: All righty. Then Madam Clerk.

9 MR. RESPESS: Those are projectiles, or parts of
10 projectiles.

11 THE CLERK: J becomes number 54.

12 THE COURT: All right.

13 THE CLERK: K, 55. AN, as in Nancy becomes number
14 56. AO becomes number 57. AQ becomes number 58. AR
15 becomes 59.

16 THE COURT: All righty. Thank you. All right,
17 now, you have another batch?

18 MR. RESPESS: Well, there's going to be several
19 more batches.

20 THE COURT: Okay.

21 MR. RESPESS: Okay, I want to show you what's been
22 marked as AP, BD, BC, and BA.

23 THE COURT: AP, BD --

24 MR. RESPESS: Let me do it this way: AP, BA, BB,
25 BC, BD.

1 THE COURT: Thank you.

2 MR. RESPESS: And let's start with -- what was it

3 A --

4 THE COURT: AP.

5 MR. RESPESS: AP. Let's start with AP.

6 BY MR. RESPESS:

7 Q. And what photo marker do you associate with that
8 exhibit?

9 A. This is photo marker 45.

10 Q. Can you show the Court where that was -- that item
11 was located?

12 A. (No verbal response.)

13 Q. Okay, so, that's right next to the pillar?

14 A. Yes.

15 Q. And what type of item did you recover and place in
16 that package?

17 A. This is a fragment.

18 Q. Okay. And does it appear someone's gone into the
19 package since you sealed it?

20 A. Yes.

21 Q. Could you open the package and satisfy yourself
22 that what -- the fragment you placed in there is in there
23 today? All right.

24 MR. RESPESS: I'm going to offer State's AP.

25 THE COURT: All right.

1 MR. RESPESS: Because I want that with the other
2 group.

3 THE COURT: All right.

4 THE CLERK: 60.

5 THE COURT: Then AP will be -- so --

6 THE CLERK: AP is 60.

7 THE COURT: 60?

8 THE CLERK: 60.

9 THE COURT: Oh, yes. Thank you.

10 MR. RESPESS: Okay.

11 BY MR. RESPESS:

12 Q. BA, I want you to start with BA. What photo marker
13 do you associate with BA?

14 A. This is photo marker 30.

15 Q. And where is that located on your diagram?

16 A. Right there in the corner of the porch.

17 Q. All right. So, that's the entry area of the home?
18 What type of item did you recover and place in that package?

19 A. It's a cartridge casing.

20 Q. Okay. Could you open up the packaging, satisfy
21 yourself that what you -- does it appear someone's gone in
22 it? Let me ask that first.

23 A. Yes.

24

25

1 Q. Could you open up the package, satisfy yourself
2 what you placed in there is in there today?

3 A. Yes.

4 Q. Okay. Could you set that with the cartridge
5 casing -- well, you can set that anywhere because that's all
6 that's up there now. All right, and let's talk about BB.
7 And tell us the photo marker associated with that.

8 A. This is photo marker 31.

9 Q. Okay. Now, can you show us where that is?

10 A. Right there. It's actually on the porch. Right
11 there.

12 Q. Okay.

13 A. The number's just outside.

14 Q. All right. You've got an arrow going to where you
15 think it came from. All right, and what did you recover
16 there?

17 A. It's a cartridge casing.

18 Q. Did you -- and does it appear the package has been
19 gone into since you looked at it?

20 A. Yes.

21 Q. Since you sealed it? Could you open it, satisfy
22 yourself what you placed in there is in there today? And so
23 the cartridge casing's there?

24 A. Yes.

25

1 Q. All right. Set that aside. And could you pick up
2 State's Exhibit BC. And what photo marker is associated with
3 BC?

4 A. This is photo marker 32.

5 Q. And could you tell us what you recovered at 32?

6 A. 32 is right there on the porch, and it's a
7 cartridge casing.

8 Q. All right. And does it appear the package has been
9 entered into since you sealed it?

10 A. Yes.

11 Q. Could you open the package, satisfy yourself that
12 what you placed in there is in there today?

13 A. (No verbal response.)

14 Q. Okay. Now, are those all the cartridge casings?
15 We've gone through cartridge casings. Have we talked about
16 the cartridge casings that you found that were in close
17 proximity to the entrance of 1051 Covina?

18 A. Yes.

19 Q. Okay.

20 A. There's one left.

21 Q. Oh, there's one more?

22 A. Yes.

23 Q. BD?

24 A. Yes.

25

1 Q. Okay, let's talk --

2 A. This one's photo marker 33.

3 Q. And what did you -- is that another cartridge
4 casing?

5 A. Yes.

6 Q. And so 33 is in the entry area of -- the entrance
7 area of the residence as well?

8 A. Yes, right there.

9 Q. Okay. And does it appear that package has been
10 gone into?

11 A. Yes.

12 Q. And could you look in there and satisfy yourself
13 that what you placed in there is in there today?

14 A. (No verbal response.)

15 Q. Okay. And now have we covered the cartridge
16 casings that you found in relatively close proximity to the
17 entrance of the 1051 Covina?

18 A. Yes.

19 Q. And we count -- how many different cartridge
20 casings did you locate and recover?

21 A. There's eight.

22 MR. RESPESS: Your Honor, I'm going to offer these
23 exhibits, and let me get them in the order that they're
24 marked so we can make it a little easier on the clerk
25 and the Court.

1 THE COURT: All righty. Thank you Mr. Respess.

2 MR. RESPESS: All right, so, I'd ask to have
3 admitted into evidence State's AW, AX, AY, AZ, BA, BB,
4 BC, BD.

5 THE COURT: Okay.

6 THE CLERK: AW becomes number 61. AX becomes
7 number 62. AY becomes 63. AZ becomes 64. BA becomes
8 65.

9 THE COURT: BA is 65?

10 THE CLERK: Correct.

11 THE COURT: Okay.

12 THE CLERK: BB is 66. BC is 67. BD is 68.

13 THE COURT: All righty. Thank you. All right, do
14 you have another wave Mr. Respess?

15 MR. RESPESS: I do.

16 THE COURT: All righty.

17 BY MR. RESPESS:

18 Q. I want to deal with two exhibits, Exhibits P and Q.
19 Let's talk about P first. I'll start with what photo marker
20 you associate P with?

21 A. This is photo marker 44.

22 Q. Okay. And where would that be located on the
23 diagram?

24 A. Right here.
25

1 Q. All right. So, just next to the walkway in the
2 planter area?

3 A. Yes.

4 Q. Okay. And what did you recover and place in that
5 package?

6 A. It's a grey flip phone.

7 Q. Okay. Does it appear anyone's gone into that since
8 you sealed it?

9 A. No.

10 Q. All right. So, that was a flip phone that was --
11 and it was found in the planter area along what walkway that
12 we're seeing?

13 A. Yes.

14 Q. Okay

15 MR. RESPESS: I'd offer State's Exhibit P.

16 THE COURT: All righty. Madam Clerk, would that be
17 69?

18 THE CLERK: Correct.

19 THE COURT: State's Exhibit P. All right.

20 MR. RESPESS: P, and then let's talk about Q.

21 THE COURT: So, let's -- yeah, Exhibit 69.

22 MR. RESPESS: Did we get that one done?

23 THE CLERK: P is number 69.

24 THE COURT: Yeah, P is 69.

25 MR. RESPESS: All right.

1 BY MR. RESPESS:

2 Q. And let's talk about Q. And what photo marker is
3 associated with Q?

4 A. This is photo marker 24.

5 Q. And what did you place in 24?

6 A. This is a black flashlight.

7 Q. And that's a flashlight that there was pictures of
8 earlier in your testimony?

9 A. Yes.

10 Q. All right. And where was the flashlight, photo
11 marker 24, located?

12 A. Photo marker 24 is right here on the other side of
13 the walkway.

14 Q. All right. So, the phone is found in the planter,
15 and the flashlight's found just across the walkway from the
16 phone? Is that --

17 A. Yes.

18 Q. Okay.

19 MR. RESPESS: I'd offer State's Exhibit Q in
20 evidence.

21 THE COURT: All right. Madam Clerk, does that
22 become 70?

23 THE CLERK: Correct.

24 THE COURT: All right, thank you.

25 THE CLERK: Q was not opened, correct?

1 MR. RESPESS: No, we didn't open that.

2 THE CLERK: Okay.

3 MR. RESPESS: That's the fl --

4 THE CLERK: We were looking for a spot so we could
5 tape it back closed, so.

6 MR. RESPESS: Nobody entered into that package, so.

7 THE CLERK: Perfect. Thank you.

8 MR. RESPESS: We can presume what you put in there
9 is in there.

10 BY MR. RESPESS:

11 Q. All right, the next series of exhibits I want you
12 to look at are F, G, H, and I. And so let's start with F.
13 And what photo marker do you associate with F?

14 A. This is photo marker 19.

15 Q. Can you show the Court where 19 is located?

16 A. (No verbal response.)

17 Q. Okay. So, that's out in the front yard, closer to
18 Covina, right?

19 A. Yes.

20 Q. And what did you place in that package?

21 A. A cartridge casing.

22 Q. And does it appear someone's gone into the package
23 since you sealed it?

24 A. Yes.

25

1 Q. Would you open the package, satisfy yourself what
2 you placed in there is in there today?

3 A. (No verbal response.)

4 Q. Okay. Could you set that aside and I'll move on to
5 I. Can you tell us what photo marker is associated with
6 Exhibit I?

7 A. Photo marker 22.

8 Q. And where's that located?

9 A. (No verbal response.)

10 Q. Same general area as 19?

11 A. Yes.

12 Q. Okay. And does it appear someone's gone into that
13 packaging?

14 A. Yes.

15 Q. And what item did you place in there?

16 A. A cartridge casing.

17 Q. Could you open the package and satisfy yourself
18 what you placed in there is in there today?

19 A. (No verbal response.)

20 Q. All right. Could you set that one aside. And I
21 believe -- how about H? And what photo marker's associated
22 with H?

23 A. Photo marker 21.

24

25

1 Q. And what did you place in or recover and designate
2 as photo marker 21?

3 A. It's a cartridge casing.

4 Q. And so that's in the same general area as the other
5 two we've talked about?

6 A. Yes.

7 Q. Does it appear someone's gone into the package?

8 A. Yes.

9 Q. Could you open the package, satisfy yourself that
10 what you placed in there is in there today?

11 A. (No verbal response.)

12 Q. Okay. And set that one aside. And then I believe
13 that leaves us with G. And what photo marker is associated
14 with G?

15 A. Photo marker 20.

16 Q. Okay. So, that would be the fourth of those four
17 others, kind of off to themselves towards the street. What
18 item did you recover and place in that package?

19 A. A cartridge casing.

20 Q. All right. Does it appear the package has been
21 entered into since you sealed it?

22 A. Yes.

23 Q. Could you open it up, satisfy yourself what you
24 placed in there is in there today?

25 A. (No verbal response.)

1 Q. Okay.

2 MR. RESPESS: I'm going to offer F, G, H, and I
3 into evidence.

4 THE COURT: All righty. Hearing no objection.
5 Madam Clerk, how shall we --

6 THE CLERK: F will become number 71. G will become
7 number 72. H becomes number 73. And I becomes number
8 74.

9 THE COURT: All right, thank you. Mr. Respass, do
10 you have another wave?

11 MR. RESPESS: I do.

12 THE COURT: All right. Would you like --

13 MR. RESPESS: Several more to go Judge.

14 THE COURT: Okay.

15 MR. RESPESS: I'm sorry.

16 THE COURT: No worries.

17 MR. RESPESS: L is --

18 THE COURT: Well, here's my question though: Would
19 you like to do that or take a lunch break at --

20 MR. RESPESS: Let's do these four.

21 THE COURT: Okay.

22 MR. RESPESS: And that deals with a particular area
23 of the yard.

24 THE COURT: Perfect.

25 MR. RESPESS: And then we'll move on to the rest.

1 THE COURT: That was actually my question, is this
2 a logical point. Thank you.

3 MR. RESPESS: All right.

4 THE COURT: Whenever it is.

5 BY MR. RESPESS:

6 Q. I'm going to show the witness exhibits for ID L, M,
7 N, and O. And Ms. Pill, let's start with L. And I believe
8 you know what I'm going to be asking you by now. So, tell me
9 about that particular exhibit.

10 A. This is a cartridge casing from photo marker 25.

11 Q. All right. And where's that? Just so the Court --

12 A. (No verbal response.)

13 Q. All right, so, that's over closer to the truck?

14 A. Yes.

15 Q. And somebody go into that package?

16 A. Yes.

17 Q. Could you open the package, satisfy yourself what
18 you placed in there is in there today?

19 A. (No verbal response.)

20 Q. And how about doing the same with M.

21 A. M is photo marker 22 -- I'm sorry, 42, and it's a
22 cartridge casing.

23 Q. All right. So, is that in that grouping over near
24 that truck as well?

25 A. Yes, right there.

1 Q. Okay. And was that package entered into as well?

2 A. Yes.

3 Q. Could you open the package, satisfy yourself what
4 you placed in there is in there today?

5 A. (No verbal response.)

6 Q. Okay. And then I believe the next exhibit is M.
7 Can you tell us about Exhibit M?

8 A. It's photo marker 27, and it's a cartridge casing.

9 Q. And so that's in that same grouping closer to the
10 truck?

11 A. Yes.

12 Q. All right. And could you open that package and
13 satisfy yourself what you placed in there is in there today?
14 Because it's -- hasn't gone into.

15 A. (No verbal response.)

16 Q. Okay. And I believe the last exhibit is N, and can
17 you tell us about Exhibit N?

18 A. This is Exhibit O.

19 Q. Oh, I'm sorry. O.

20 A. Photo marker 26, and it's a cartridge casing.

21 Q. All right. Same as the other three we talked about
22 in someone went into the package after you sealed it?

23 A. Yes.

24

25

1 Q. Can you open the package and satisfy yourself
2 what's in there is what you placed in there before you sealed
3 it?

4 A. (No verbal response.)

5 Q. Okay.

6 MR. RESPESS: So, at this time Your Honor I'd ask
7 for Exhibits L, M, N, and O to be received in evidence
8 as next consecutive.

9 THE COURT: All righty. Without objection they
10 shall be. And Madam Clerk, you're in a better position
11 to --

12 BY MR. RESPESS:

13 Q. All right. And those two groupings interestingly
14 enough were eight shell casings as well, right?

15 A. Yes.

16 Q. Out in that part of the yard?

17 A. Yes.

18 Q. Okay.

19 THE COURT: Madam Clerk's going to announce them.

20 MR. RESPESS: Okay.

21 THE CLERK: L becomes 75. M, as in Mary, becomes
22 76. N, as in Nancy, becomes 77. And O becomes number
23 78.

24

25

1 THE COURT: All right, thank you. All right, then
2 Mr. Respess, where did you go? Oh, there you are. Is
3 this a good time to pause or do you want to do --
4 discuss any of these further?

5 MR. RESPRESS: Well, I think it's a good time --

6 THE COURT: Or do you -- would you like to --
7 anything further from the witness?

8 MR. RESPRESS: I'm not going to -- I'm not finished,
9 so.

10 THE COURT: Right.

11 MR. RESPRESS: I think it's a good time to pause.

12 THE COURT: Okay.

13 MR. RESPRESS: I've got other groupings that I need
14 to do in other parts of the yard, and I think this is a
15 good time to break.

16 THE COURT: Okay, all right. So, this will be --
17 thank you again. This will be a good time. We'll take
18 a -- we'll pause for lunch. Madam Clerk, do we -- I'm
19 not looking at the schedule. Do we --

20 THE CLERK: There's nothing this afternoon.

21 THE COURT: There's nothing. Okay, great. Do you
22 want to start back at 1 -- 1:20. How's that? Because
23 that would be 1:15 if we had stopped five minutes ago.

24 MR. RESPRESS: All right.
25

1 THE COURT: Or if you'd like to go to 1:30 if
2 you -- if there's anything you need to do, but do it --

3 MR. RESPESS: Why don't we -- I'll be back here,
4 try to be back by 1:15. If the clerks can be here at
5 1:20 it'll give me some time to --

6 THE COURT: Okay. Then we can just go and we'll
7 get Mr. Derossett in place.

8 MR. RESPESS: I can get organized.

9 THE COURT: That's perfect. Give you some time and
10 we'll get Mr. Rossett in place, and then if you can -- I
11 mean do, you want to be here before Mr. Derossett is up
12 or after, but we'll bring him up by 1:20.

13 MR. PANELLA: By 1:20.

14 THE COURT: Right.

15 MR. PANELLA: Thank you Your Honor.

16 THE COURT: All right, thank you.

17 (Whereupon, court stands in recess for the luncheon
18 hour.)

19 THE COURT: Let's go. We're back on the record
20 then in State of Florida versus John Derossett,
21 2015-CF-39550.

22 Mr. Derossett is present with counsel, Mr. Panella
23 and Mr. West. Mr. Respass and Mr. Scheiner are here on
24 behalf of the State. And Ms. Pill is in the witness
25 stand.

1 MR. RESPESS: And Exhibit 27 is on the view screen
2 again I believe.

3 THE COURT: All righty. Oh, Exhibit 27, all right.

4 MR. RESPESS: All right. And may I proceed?

5 THE COURT: Absolutely.

6 BY MR. RESPESS:

7 Q. I want to show you what's been marked as State's
8 Exhibit AK, which I believe -- let me make sure I've got this
9 right. Yes, AK, which is photo marker 17. Do you recognize
10 that particular exhibit?

11 A. I do.

12 Q. And how is it you're able to recognize it?

13 A. It has my markings on it, as well as the location
14 where it was collected.

15 Q. Okay. Can you show the Court where you would have
16 collected that particular exhibit?

17 A. Photo marker 17 is right here.

18 Q. Okay. And so that's out in the yard to the west of
19 the residence closer to Alcazar?

20 A. Yes.

21 Q. What was -- what did you place in that particular
22 exhibit?

23 A. This item is a Glock 22 handgun.
24
25

1 Q. All right. And did you associate that firearm with
2 any particular law enforcement officer?

3 A. Yes, it was associated to Agent Smith.

4 Q. Okay. So, Casey Smith?

5 A. Yes.

6 Q. And could you look inside the box to satisfy
7 yourself whether or not the item you placed in there is in
8 there today?

9 A. (No verbal response.)

10 Q. And so you're able to say that was the same
11 firearm?

12 A. Yes.

13 Q. And what was the condition of it when you located
14 it? What was -- how did it appear?

15 A. It was on the ground. There was a little bit of
16 sandy dirt from the grass on it, and it -- the magazine was
17 in it.

18 Q. Okay. And did you clear the weapon?

19 A. Sergeant Laufenberg cleared it in my presence.

20 Q. Okay. I'm going to show you what's been marked as
21 State's Exhibit CC. Is that the image that you took of the
22 weapon prior to having it handled and cleared?

23 A. Yes.

24 MR. RESPESS: I'm going to offer CC.

25 THE COURT: All right.

1 THE CLERK: CC becomes 79.

2 THE COURT: All right, Mr. West, we're counting on
3 you to make objections if you find -- if there is one.
4 Other -- if you say nothing we'll assume you have no
5 objection.

6 MR. WEST: What would the --

7 THE COURT: You had said that earlier.

8 MR. WEST: (Cont'd) Court's preference be? I'm
9 happy to --

10 THE COURT: That's fine. I mean, if you say --
11 unless you have an objection we'll consider it without.

12 MR. WEST: Yes. If I don't object specifically
13 the Court can fairly assume that I don't.

14 THE COURT: Okay, thank you. I'm just reconfirming
15 that since we're back from lunch.

16 MR. WEST: Of course.

17 THE COURT: Okay, thanks.

18 BY MR. RESPESS:

19 Q. So, Exhibit 79 shows what?

20 A. This is the photo marker placard that we placed
21 next to the item, and this is the handgun.

22 Q. Okay. And then I'm going to show you what's been
23 marked as State's Exhibit AG and AJ, and ask if you associate
24 these exhibits with that firearm that is Exhibit AK?

25 A. Would you like me to do AG first?

1 Q. Yes.

2 A. AG is a cartridge casing from photo marker 16.
3 It's from photo marker 16. It's a cartridge casing. Sorry.

4 Q. Okay. So, it's in proximity to the weapon, it's
5 not from the weapon?

6 A. Yes.

7 Q. Okay. Can you show us where you would have
8 recovered that particular exhibit?

9 A. 16 is right here.

10 Q. Okay. And that's a -- that was a live round?

11 A. No, this is a cartridge casing.

12 Q. Oh, I'm sorry. Well then let's hold off on talking
13 about that one. How about the one next to it?

14 A. This is -- there are 11 cartridges in here, and
15 these came from the magazine that was contained in the
16 handgun.

17 Q. Okay.

18 A. It was actually in the handgun.

19 Q. So, you do associate -- and what exhibit letter do
20 we have with that one?

21 A. This is AJ.

22 Q. All right. And so AJ is associated with the
23 handgun that we've just been talking about that was at photo
24 marker 17?

25 A. Yes.

1 Q. All right. And has anybody been into that
2 packaging?

3 A. Yes.

4 Q. Can you open it and satisfy yourself what you
5 placed in there is in there today?

6 A. (No verbal response.)

7 Q. All right. So, we have eleven 40 caliber rounds?

8 A. 11, yes.

9 Q. Okay.

10 MR. RESPESS: Your Honor, I'm going to offer AJ and
11 AK.

12 THE COURT: All righty. Then Madam Clerk, what do
13 we have? AJ, is that 79?

14 THE CLERK: AJ is 80.

15 THE COURT: 80.

16 THE CLERK: CC was 79. AK will be 81.

17 THE COURT: Thank you.

18 BY MR. RESPESS:

19 Q. All right, I'm going to show you State's Exhibit AG
20 again, and I'm going to show you that in conjunction with
21 State's Exhibit AF, AH, and AI.

22 So, let's start with AI since that's the last one I
23 talked about. And can you tell us if that exhibit is
24 associated with the diagram and what photo marker it relates
25 to?

1 A. This is from photo marker 39, which is right here.

2 Q. Okay. And so that's relatively close, but west of
3 the firearm, which was 17?

4 A. Yes.

5 Q. Okay. And what did you place in that package?

6 A. This is a cartridge.

7 Q. Okay. So, do you mean a live round?

8 A. Yes.

9 Q. One that can --

10 A. An unfired cartridge.

11 Q. Okay. And does it appear anybody's gone into that
12 package since you sealed it?

13 A. No.

14 Q. Okay. So, we'll set that one aside because you
15 know what's in there, right?

16 A. (No verbal response.)

17 Q. And when you say live round that means that the
18 projectile and the casing are together with the propellant
19 inside the casing?

20 A. Yes.

21 Q. Okay. How about State's Exhibit AH. Is that --
22 okay. Can you tell us what photo marker that exhibit is
23 associated with?

24 A. This is photo marker 15, which is right here.
25

1 Q. Okay. And what did you place in that exhibit?

2 A. This is a cartridge casing.

3 Q. All right. And has that exhibit been entered into
4 some -- by someone since you sealed it?

5 A. Yes.

6 Q. Can you enter into the packaging, satisfy yourself
7 what you placed in there is in there today?

8 A. (No verbal response.)

9 Q. Okay. Set that aside for the moment and let's go
10 to AG. And looking at AG, what photo marker do you associate
11 that exhibit with?

12 A. This is photo marker 16, which is right there.

13 Q. I'm going to zoom in so we can see that better.
14 Because I know if I can't see it that -- all right. So,
15 that -- you've got like a -- kind of a square there.

16 A. Yes.

17 Q. What did you put that square there for?

18 A. There was a little -- it was like a plant bed with
19 I believe a bush maybe, but it was a -- there was wooden
20 like -- it was wooden and it was a roped off bed, like flower
21 bed area. That's the best I can describe it.

22 Q. Like a landscape log type thing?

23 A. Yes.

24

25

1 Q. Okay, all right. So, you're finding these items,
2 the gun and these items that we're seeing, in relatively
3 close proximity to that landscape log bed?

4 A. Yes.

5 Q. All right. And what was it that -- what is it that
6 you found that was photo marker 16?

7 A. This is a cartridge casing.

8 Q. All right. Does it appear that the package has
9 been entered since you sealed the casing in there?

10 A. Yes.

11 Q. Can you open it and satisfy yourself that what you
12 placed in there is in there today?

13 A. (No verbal response.)

14 Q. All right. Set that one aside. And there should
15 be one more package, and I'm going to let you tell me which
16 number it is.

17 A. AF.

18 Q. All right. And where did you locate AF, the item
19 you put an AF on the crime scene?

20 A. AF is right here at photo marker 18.

21 Q. Okay. And what was -- what is it that you placed
22 in Exhibit AF?

23 A. It's a cartridge casing.

24

25

1 Q. And again, has somebody gone into the package since
2 you sealed it?

3 A. Yes.

4 Q. All right. Could you open the package and satisfy
5 yourself what you placed in there is in there today?

6 A. (No verbal response.)

7 Q. Okay.

8 MR. RESPESS: Now, Your Honor, at this time I'd
9 offer AF, AG, AH, and AI in evidence.

10 THE COURT: All righty. Then they will be
11 received. And Madam Clerk, do you want to order them?

12 82 I think we begin.

13 THE CLERK: AF is 82.

14 THE COURT: All right.

15 THE CLERK: AG is 83. AH is 84. AI is 85.

16 THE COURT: Thank you.

17 MR. RESPESS: You ready?

18 THE CLERK: Yes.

19 MR. RESPESS: Okay.

20 BY MR. RESPESS:

21 Q. I'm going to -- Ms. Pill, I'm going to show you
22 what's been marked as State's Exhibit R for identification.
23 I'm going to ask if you recognize that particular exhibit as
24 something you collected?

25 A. I do.

1 Q. And what do you recognize that exhibit to be?

2 A. This is a Glock 27 handgun.

3 Q. Okay. And did -- is that something that you
4 recovered from this same crime scene we've been talking
5 about?

6 A. Yes.

7 Q. And what photo marker did you associate with that
8 handgun and where's it located on the diagram?

9 A. This was collected from photo marker 13, which is
10 right here.

11 Q. Okay. So, that would be a little to the south of
12 the other firearm, the Glock 22 --

13 A. Yes.

14 Q. (Cont'd) that you just described? Okay. And when
15 you first observed that firearm how did it appear?

16 A. The firearm was laying in the grass and the slide
17 of the firearm was locked back and the magazine was empty.

18 Q. And let me find photo marker 13 in this. You
19 already marked that? Oh, I think -- here it is right here.
20 All right, I'm showing you what's been marked as State's
21 Exhibit CB. And does that document the way you found the
22 particular firearm that's marked as R?

23 A. Yes.

24 MR. RESPESS: Going to offer State's Exhibit CB.

25 MR. WEST: May I see it?

1 MR. RESPESS: Sure.

2 MR. WEST: Thank you.

3 THE COURT: All righty.

4 THE CLERK: CB becomes 86.

5 THE COURT: 86. Thank you.

6 BY MR. RESPESS:

7 Q. And I'll put this up on the view screen as State's
8 Exhibit 86. And if you could explain to the Court what it is
9 you observed that lead you to make the conclusion you did
10 about the condition of the firearm when you recovered it.

11 A. Here's the placard with photo marker 13, just
12 showing what this is. And you can see here that the slide is
13 locked back. Sorry, I'm moving it. The slide is locked back
14 and you can see right here that this is open.

15 And it wasn't until we looked at the firearm and
16 Sergeant Laufenberg cleared it to make it safe that we
17 discovered that there was nothing in the magazine.

18 Q. Okay. All right, so, let me get that out of the
19 way. And could you look inside State's Exhibit, is that K?

20 R. I'm sorry, R. And tell us if that is the same firearm
21 that you recovered from this crime scene at photo marker 13?

22 A. It is.

23 Q. All right. And who did you associate with that
24 firearm?

25 A. This firearm was associated to Agent Stead.

1 Q. Your Honor, I'm going to offer State's Exhibit R.
2 Now, that also has the magazine that was found in the firearm
3 that was empty, correct?

4 A. Yes.

5 THE COURT: All right. And then --

6 MR. WEST: No objection.

7 THE COURT: Without objection then. Thank you. 87
8 is it Madam Clerk?

9 THE CLERK: Yes.

10 THE COURT: All righty.

11 BY MR. RESPESS:

12 Q. Okay, I'm going to start with U, State's Exhibit U,
13 V, W, X, Y, and Z. And I want to start with State's Exhibit
14 U in that pile and ask if you recognize and associate State's
15 Exhibit U with a photo marker related to this crime scene?

16 A. I do.

17 Q. And can you tell us where it is that you recovered
18 that item from the crime scene?

19 A. This one is from photo marker 7, which is right
20 here on the edge of the tree. I think that was a tree, or a
21 bush. Right there.

22 Q. Okay. And again, that is a little bit further to
23 the south and west of the residence?

24 A. Yes.

25

1 Q. All right. And what item was it that you
2 recovered?

3 A. It's a cartridge casing.

4 Q. And does it appear that the package has been
5 entered since you placed the cartridge casing in there?

6 A. It does.

7 Q. Can you open the package and satisfy yourself what
8 you placed in there is in there today?

9 A. (No verbal response.)

10 Q. Okay. Set that one aside, and let's go to -- is it
11 V, State's Exhibit V for identification. Can you tell us
12 again if that's an item that you recovered from this crime
13 scene and where you located it?

14 A. It is and it's from photo marker 8, which was right
15 by 7. Right here.

16 Q. All right, I'm going to blow that up again. I keep
17 going back and forth depending on what image I have on the
18 screen. Okay. And approximately the same location as the
19 last exhibit we talked about, right?

20 A. Yes.

21 Q. And has that package been entered into?

22 A. Yes.

23 Q. Could you open your -- open it up and satisfy
24 yourself what you placed in there is in there today? And did
25 you tell us what it was and I just wasn't paying attention?

1 A. It's a cartridge casing.

2 Q. Okay. All right, set that one aside. Let's go to
3 V, State's Exhibit V as in --

4 A. That was V.

5 Q. Oh, that was. And W. Can you tell us where if you
6 recovered Exhibit W from this crime scene?

7 A. I did. It's from photo marker 9.

8 Q. Okay. Can you show us where 9 is?

9 A. Right here.

10 Q. Okay. And what type of exhibit was 9?

11 A. It's a cartridge casing.

12 Q. And did you place it in the package, seal it?

13 A. I did.

14 Q. And after you did that does it appear someone's
15 gone into the package?

16 A. It does.

17 Q. Can you open the package and satisfy yourself that
18 what you placed in there is in there today?

19 A. (No verbal response.)

20 Q. And let's go to the next exhibit, X. And where did
21 you recover Exhibit X?

22 A. X is from photo marker 10, which is right here.

23 Q. And what was Exhibit X, what did you recover?

24 A. It's a cartridge casing.

25

1 Q. All right. And again, has someone gone into the
2 package since you sealed it?

3 A. They have.

4 Q. Can you open the package and satisfy yourself what
5 you placed in there is in there today?

6 A. It is.

7 Q. Okay. Now I'm going to ask you about Exhibit Y.
8 I'm going to be asking you the same questions. So, can you
9 tell us about Exhibit Y?

10 A. Yes. Exhibit Y is from photo marker 12, which is
11 right up here, and it's a cartridge casing.

12 Q. Okay. And someone's entered into the packaging
13 since you sealed it. So, could you open it and satisfy us
14 that what's in there is what you collected?

15 A. (No verbal response.)

16 Q. And let's look at Exhibit Z. And same questions.
17 What is the story with Exhibit Z?

18 A. This is a cartridge casing, and it was located at
19 photo marker 23, which is right here next to 12.

20 Q. Okay. And someone's entered the package since you
21 sealed it?

22 A. Yes.

23 Q. Could you open it up, satisfy yourself the item you
24 placed there is there today?

25 A. (No verbal response.)

1 Q. All right. And we're getting a little bit of a
2 stack here. I wanted to give you five other exhibits.
3 State's Exhibit AA, AB, AC, AD, and AE.

4 And let's talk about those as well. And why don't we
5 just look at all of them and see if they're all the same
6 item, type of item. Do they all -- are they all cartridge
7 casings, like the other things have been?

8 A. They are.

9 Q. Okay. And let's go through each of them
10 individually and talk about where they were recovered, and
11 then we'll let you open them and make sure the items are
12 still there after you've done that. So, let's start with AA
13 and work through -- I believe it was to AE.

14 A. AA is a casing from photo marker 37, which is right
15 here.

16 Q. All right. Now, you're looking at the packaging to
17 do that, and so if the Court gets involved in this later on
18 where on the packaging are you -- would you look to know,
19 okay, and what would you look for to say, okay, this goes
20 with photo marker 37 or whatever number?

21 A. There's a spot on the evidence bag where it says
22 location collected, and that's where we place the photo
23 marker designation.

24
25

1 Q. All right. Can you put it on the projector, just
2 one example so that --

3 A. Right here.

4 Q. So, location collected, PM 37, and that would tell
5 you what photo marker to associate the exhibit, the item
6 that's in the bag with?

7 A. Yes.

8 Q. Okay. All right, thank you. Let's do that with
9 the rest of them, although you don't need to show anymore. I
10 just wanted that done at least once. So, I believe we're on
11 AB.

12 A. AB is a casing from photo marker 40, which is right
13 here.

14 Q. And AC?

15 A. Is a casing at photo marker 47. Right here.

16 Q. Okay. AD?

17 A. Is a casing from photo marker 41, which is right
18 there.

19 Q. Okay.

20 A. And AE is a casing at photo marker 50, which is
21 right there.

22 Q. Okay. And all those packages were entered into by
23 someone after you sealed them, were they not?

24 A. Yes.

25

1 Q. Could you look in each of them, satisfy yourself
2 the item that you placed in there is in there today?

3 A. (No verbal response.)

4 Q. Okay, so, all those appear to be the items that you
5 placed in the bags before you sealed them?

6 A. Yes.

7 Q. Okay. And how many cartridge casings are we
8 talking about that we've just been discussing?

9 A. 11.

10 Q. All right. Do you happen to know how many
11 cartridges could be held this particular -- it was found --
12 it's Exhibit 80, which was found at photo marker 13?

13 A. I don't know off the top of my head, but, there
14 should be markings on the back of the magazine that would
15 indicate what the capacity is.

16 Q. Okay. Showing you what's been received in evidence
17 as Exhibit 87, and we were talking about it at the beginning
18 of this particular grouping of cartridge casings. Is the
19 magazine you're referring to there?

20 A. Yes.

21 Q. Okay. Would that help you find that information?

22 A. It says eight on the back of here, but I believe
23 there's two that go underneath here, but I'm not sure.

24 Q. Okay. You're not sure?

25 A. Em-hmm.

1 Q. All right. Then we'll wait on that. Okay.

2 MR. RESPESS: Your Honor, at this time I'd offer
3 State's Exhibits U through Z, and let me get those over
4 first and then I'll get the other ones.

5 THE COURT: All right. And Madam Clerk, I'm going
6 to defer to you.

7 MR. RESPESS: And AA through AE.

8 THE CLERK: U becomes 88. V becomes 89. W becomes
9 90. X becomes 91. Y becomes 92. Z becomes 93.

10 THE COURT: What was W?

11 THE CLERK: I'm sorry?

12 THE COURT: I'm sorry, did you -- W is 91?

13 THE CLERK: W is 90. X is 91. Y is 92. Z is 93.

14 THE COURT: Thank you.

15 THE CLERK: AA is 94. AB is 95. AC is 96. AD,
16 like Dog, is 97. AE is 98.

17 THE COURT: Thank you. 97 and 98. All right, Mr.
18 Respass, do you have any more.

19 MR. RESPESS: I don't -- I'm done with this witness
20 for right now as far as asking any more questions.

21 THE COURT: All right, thank you. Then Mr. West,
22 is there anything that you would like to ask? Do you
23 have any re-direct questions sir?

24 MR. WEST: I do, just a couple of brief questions
25 for clarification.

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RE-DIRECT EXAMINATION

BY MR. WEST:

Q. Ms. Pill, earlier we talked briefly about the blood vials that you retrieved from the hospital.

A. Yes.

Q. What is your identifier on that?

A. Let me check to make sure. I believe it's KP53. Yes, it's item KP53.

Q. And you said it was three blood vials. Were they all submitted under KP53?

A. Yes.

Q. Were there any other blood samples that you knew or were told came from John Derossett that were submitted into evidence?

A. None that I know of.

Q. Was the KP53 that you collected the sample that was submitted to FDLE?

A. Yes, the item was submitted to FDLE.

MR. WEST: That's all.

THE COURT: Okay, thank you. Then may Ms. Pill be excused?

MR. RESPESS: Subject to recall.

THE COURT: Subject to recall.

MR. RESPESS: But unlikely to be --

THE COURT: All right.

1 MR. RESPESS: Unlikely to be called back.

2 THE COURT: Thank you. And then Mr. Panella, Mr.
3 West, who will be your next witness?

4 MR. RESPESS: Can we talk with counsel briefly?

5 THE COURT: Sure you can.

6 MR. RESPESS: We'd like to call CSI Miranda.

7 THE COURT: Okay.

8 MR. PANELLA: They're calling him in our case Judge
9 and we're okay with it.

10 THE COURT: Okay.

11 MR. RESPESS: Just the -- he's heading out of town
12 and we --

13 THE COURT: Okay.

14 MR. RESPESS: (Cont'd) need a piece of evidence.

15 THE COURT: Thank you. That's very gracious.
16 Thank you. This is somebody Mr. Respass that you're
17 calling?

18 MR. SCHEINER: Yes.

19 THE COURT: Just -- or Mr. Scheiner, you're calling
20 just out of order?

21 MR. SCHEINER: Yes.

22 THE COURT: Okay.

23 THE CLERK: Raise your right hand. Do you solemnly
24 swear or affirm that the testimony you shall give will
25 be the truth, the whole truth, and nothing but the truth

1 so help you God?

2 THE WITNESS: Yes, ma'am.

3 THE CLERK: Thank you. Your Honor, just to
4 clarify, this is a State witness?

5 THE COURT: Yes.

6 THE CLERK: Thank you.

7 THE COURT: Yes, that's what I was also clarifying.

8 MR. SCHEINER: May I inquire?

9 THE COURT: Any time you're ready, sure.

10 WHEREUPON:

11 PHILLIP MIRANDA,

12 a Witness herein, having been duly sworn, testified upon his
13 oath as follows:

14 DIRECT EXAMINATION

15 BY MR. SCHEINER:

16 Q. Good afternoon sir.

17 A. How you doing?

18 Q. Please introduce yourself to the Court, spell your
19 last name for me.

20 A. My name is Phillip Miranda. Last name,
21 M-I-R-A-N-D-A.

22 Q. And how are you employed sir?

23 A. I work for the Brevard County Sheriff's Office
24 crime scene unit.

25

1 Q. And what do you do for them?

2 A. I'm a crime scene investigator.

3 Q. Okay. Can you please tell the Court your training
4 and experience that allows you to be a crime scene
5 investigator?

6 A. When I was first hired as a crime scene
7 investigator I attended the -- I had a 16 week training
8 course. I also attended a ten week forensics course at the
9 National Forensics Academy in Tennessee.

10 I've attended numerous 40 hour training courses in
11 forensics, which include photography, blood stain pair
12 analysis, buried body recovery, things of that sort.

13 Q. Any prior law enforcement experience?

14 A. No, ma'am. This is my first law enforcement job.

15 Q. And degrees, do you hold any degrees?

16 A. Yes, I have a Bachelor's Degree in criminal justice
17 and I am currently working on a Masters Degree in criminal
18 justice and public administration.

19 Q. And on August 15 -- or August 20, 2015 were you
20 working for the Sheriff's Department?

21 A. Yes, I was.

22 Q. And what capacity were you working for the
23 Sheriff's Department then?

24 A. I was assisting as a crime scene investigator.
25

1 Q. And did you have an occasion to respond to a
2 location in Port St. John, Brevard County?

3 A. Yes, sir.

4 Q. Okay. And where exactly did you respond?

5 A. It was -- first I responded to the Port St. John
6 sub station.

7 Q. Okay. A BCSO police department basically in --

8 A. Yes.

9 Q. And what was your purpose in responding there?

10 A. When I arrived at the Port St. John sub station I
11 was requested to photograph and collect evidence from two --
12 well, photograph two agents and collect evidence from one
13 agent.

14 Q. Okay. And did you do that?

15 A. Yes, sir.

16 Q. Okay. I'm going to approach the witness.

17 MR. SCHEINER: I'm showing counsel a couple of
18 exhibits that are marked as E, D, A, B, and C. May I
19 approach the witness?

20 THE COURT: Certainly.

21 BY MR. SCHEINER:

22 Q. I'm first going to show you what's marked as E for
23 identification purposes and ask if you recognize that
24 exhibit.

25 A. Yes, sir.

1 Q. And what do you recognize that to be?

2 A. That would be the firearm that I collected from
3 Agent Roberts.

4 Q. On August 20, 2015?

5 A. Yes.

6 Q. And this was done at the Port St. John sub station?

7 A. Yes.

8 Q. Now, when you recovered the firearm from Agent
9 Roberts could you tell the Court the condition you found it
10 in when you took it from him?

11 A. The firearm was -- it had a magazine inside of the
12 magazine well. The magazine was fully loaded with 15
13 cartridges, and there was one cartridge in the ejection port.

14 Q. So, 15 plus 1?

15 A. Yes, sir.

16 Q. There was 16 rounds in it. And did you unload the
17 firearm, make it safe?

18 A. Yes, sir, I did.

19 Q. And you packaged it in the way it's contained now
20 at this point?

21 A. Yes, sir.

22 Q. And State's ID E, what is it? What's contained in
23 that box at this point?

24 A. Right here?
25

1 Q. Yeah.

2 A. It's a Glock generation -- it's a Glock 22,
3 generation four, serial number VVM712. And there is also a
4 magazine and a small envelope with I believe it's test fired
5 cartridges.

6 Q. And that's from the lab. This exhibit was sent to
7 a lab for testing?

8 A. Yes, sir.

9 MR. SCHEINER: Your Honor, at this time we'd move E
10 into evidence.

11 THE COURT: All righty. Madam Clerk, what number?
12 Where are we?

13 THE CLERK: 99.

14 THE COURT: Excuse me?

15 THE CLERK: E becomes 99.

16 THE COURT: 99, thank you.

17 BY MR. SCHEINER:

18 Q. State's ID A, ask if you recognize what A is?

19 A. Yes, sir.

20 Q. And what do you recognize A to be?

21 A. It's package containing 15 cartridges from the
22 magazine that was in the firearm.

23 Q. The firearm we just looked at?

24 A. Yes, sir.

25

1 Q. And do you recognize the markings on that
2 packaging?

3 A. Yes, sir, that is my handwriting.

4 Q. Does that package seem to be -- appear to be
5 opened?

6 A. Yes, sir.

7 Q. Okay. If you could open up the side package with
8 the Court's permission and satisfy yourself that what is in
9 there is what you placed in there on August 20th?

10 A. Give me one second.

11 Q. Yes?

12 A. There are cartridges, but there are seven
13 cartridges in this one.

14 Q. There's seven in there?

15 A. Yes.

16 Q. Let me show you State's D for identification
17 purposes. Do you recognize that one?

18 A. Yes, sir.

19 Q. And what do you recognize that one to be?

20 A. This package says seven cartridges from magazine
21 PJ2.

22 Q. Can you go ahead and open that one for me? And
23 what do you recognize that one to be?

24 A. This package has seven cartridges also in it.
25

1 Q. Okay. And did you package this one?

2 A. Yes, sir.

3 Q. Okay. And you recognize your initials and markings
4 on that?

5 A. Yes, sir.

6 Q. And does it appear -- that package that we're
7 looking at, D, does it appear to be in substantially the same
8 condition as it was when you packaged it on the 20th?

9 A. Yes, sir.

10 Q. Containing seven 40 caliber rounds?

11 A. Yes, sir.

12 MR. SCHEINER: Your Honor, at this time I'll move D
13 in evidence as the next numbered exhibit.

14 THE COURT: All righty. Madam Clerk, is that 100?

15 THE CLERK: It is 100.

16 BY MR. SCHEINER:

17 Q. Go ahead and put that one back in there for me.

18 A. Yes, sir.

19 Q. Is there a note on there that tells you what
20 happened to the others?

21 A. Yes, there is.

22 Q. Okay. And what's the note that's on there?

23 A. Says -- first, I did not write this note. It
24 probably came from the Florida Department of Law Enforcement.

25

1 Q. Okay.

2 A. It says eight cartridges used to test fire
3 firearms.

4 Q. Okay. But the --

5 A. And it's --

6 Q. (Cont'd) seven that are in there are consistent
7 with the 15 that you had put in there?

8 A. Yes.

9 Q. So, seven of the ones that are remaining are
10 consistent with seven of the 15 that you already put in
11 there?

12 A. Yes, sir.

13 Q. Okay. Go ahead and close it up. State's ID B. Do
14 you recognize that?

15 A. Yes, sir.

16 Q. And what do you recognize that to be?

17 A. It's the packaging containing one cartridge from
18 the chamber that I unloaded from the firearm collected from
19 Agent Roberts.

20 Q. Does that package appear to be opened since you
21 sealed it?

22 A. Yes, yes.

23 Q. Okay. If you could open it and take a look, make
24 sure that you're satisfied with the item you put in there on
25 the 20th of August 2015 is the item that's still in there.

1 A. Yes, sir, it is.

2 MR. SCHEINER: Your Honor, at this time I'll move B
3 into evidence as the next numbered exhibit.

4 THE COURT: All right. Then B will become 101.

5 MR. SCHEINER: Okay. And State's C I'm asking --

6 THE COURT: State's Exhibit 101.

7 THE CLERK: Yes.

8 MR. SCHEINER: Look at State's C -- I'm sorry?

9 THE COURT: Yeah, State's Exhibit 101.

10 BY MR. SCHEINER:

11 Q. Take a look at State's C. Do you recognize the
12 packaging?

13 A. Yes, sir, I do.

14 Q. And is this something that you collected?

15 A. Yes, sir, it is.

16 Q. And where did you collect State's C from?

17 A. This was a magazine that was handed to me by Agent
18 Roberts.

19 Q. Of the Sheriff's Department?

20 A. Yes, sir.

21 Q. And when -- you placed it in that bag?

22 A. Yes, sir.

23 Q. Okay. And was that -- has that bag been opened
24 since -- have any additional openings or tears in it?

25 A. Since my previous seal, yes.

1 Q. Okay. If you could open it up, take a look, and
2 satisfy yourself that what you placed in there on the 20th of
3 August 2015 is what is actually in there.

4 A. Yes, sir.

5 Q. And what is that?

6 A. It is a Glock magazine that can hold 15 rounds.

7 Q. And is that magazine compatible with the Glock 22
8 we just looked at?

9 A. Yes, sir.

10 Q. All right.

11 MR. SCHEINER: At this time I'll move C into
12 evidence as the next numbered exhibit.

13 THE COURT: All righty. Then C becomes 102. Did
14 you move A into evidence?

15 THE CLERK: Not yet.

16 MR. SCHEINER: No.

17 THE COURT: Not yet.

18 MR. SCHEINER: No further questions. Thank you.

19 THE COURT: All righty. Mr. West, do you or Mr.
20 Panella have any questions of --

21 MR. WEST: I have a couple. Give me just a minute.

22 THE COURT: All right. Certainly.

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CROSS EXAMINATION

BY MR. WEST:

Q. Good afternoon Mr. Miranda.

A. How you doing sir?

Q. I just want to be sure I followed your testimony. When you got to the sub station Agent Roberts gave you his Glock firearm that's been introduced here into evidence?

A. I received it from him after I photographed Agent Roberts.

Q. Sure, okay. We already have those photos, so I'm just going to talk about the gun.

A. Okay.

Q. So, he gave you the gun and it had a magazine in it that was fully loaded with 15 rounds?

A. Yes, sir.

Q. And one in the chamber for a total of 16?

A. Yes, sir.

Q. And that is represented here?

A. Yes, sir.

Q. And eight of the rounds in that magazine apparently were test fired by FDLE?

A. I believe they were, yes.

Q. That's what you -- the note indicated?

A. Yes, sir.

1 Q. So, that's the contents of that magazine. But then
2 you were also given a second magazine?

3 A. Yes, sir.

4 Q. That was not in a firearm when it was handed to
5 you. It was just handed to you as a magazine?

6 A. Correct.

7 Q. And that was also from Agent Roberts?

8 A. Yes, sir.

9 Q. And do you know where he retrieved it from?

10 A. From what I understood he unloaded it from the
11 firearm after it was fired and he put it in his duty belt,
12 and reloaded and placed a new magazine in his --

13 Q. But what -- the information you had was that he had
14 discharged bullets from that magazine at the scene and then
15 when he changed magazines he put the first one in his belt?

16 A. He put on his person, yes.

17 Q. So, he took it back to the station with him?

18 A. Yes, put it on his person.

19 Q. All right. And how many -- how many cartridges
20 were in that magazine?

21 A. There were seven cartridges.

22 Q. Was that also a 15 round magazine?

23 A. Yes, it was.

24 Q. Okay, thanks.

25 MR. SCHEINER: No follow up then.

1 THE COURT: All right, thank you. Then may this
2 witness be excused?

3 MR. SCHEINER: He is excused.

4 THE COURT: All right, thank you sir. Then are we
5 back to Mr. Panella and Mr. West calling the witnesses?

6 MR. PANELLA: Yes, ma'am.

7 THE COURT: All righty. So, how would you like to
8 proceed sir?

9 MR. PANELLA: Judge, at this time we'd call Agent
10 Casey Smith.

11 THE COURT: Okay, Agent Smith. Where are you sir?

12 THE CLERK: Raise your right hand. Do you solemnly
13 swear or affirm that the testimony you shall give will
14 be the truth, the whole truth, and nothing but the truth
15 so help you God?

16 THE WITNESS: I do.

17 THE CLERK: Thank you. You may be seated.

18 THE COURT: Anytime you're ready Mr --

19 MR. PANELLA: May I proceed?

20 THE COURT: Certainly.

21

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1 WHEREUPON:

2 JOHN CASEY SMITH,
3 a Witness herein, having been duly sworn, testified upon his
4 oath as follows:

5 DIRECT EXAMINATION

6 BY MR. PANELLA:

7 Q. Good afternoon Agent Smith.

8 A. Good afternoon.

9 Q. And if you could state your name and spell your
10 last name for the record?

11 A. John Casey Smith, S-M-I-T-H.

12 Q. Okay. And Mr. Smith, I'm going to be asking you
13 some questions in this case that happened back on August 20,
14 2015. Obviously you're familiar. If there's something that
15 you're unsure of based on your deposition -- do you remember
16 giving a deposition in this case?

17 A. Yes, sir.

18 Q. If there's something you want to review if it
19 refreshes your recollection I'm happy to give you that
20 opportunity. I have it here for you, okay.

21 A. Okay.

22 Q. All right. So, first I want to just start out
23 talking about your background, training, experience.

24 A. I've been employed with the Sheriff's Office since
25 August of 2009. I worked road patrol for approximately four

1 years, and then I went into special investigations, which I
2 was there for probably two years prior to the incident.

3 Q. Okay. So, you got to special investigations in
4 like 2013?

5 A. That sounds about right.

6 Q. Okay. And so when you were working SIU what kind
7 of cases would the unit handle?

8 A. Typically narcotics, prostitution, gambling,
9 prescription frauds and what not.

10 Q. Okay. Is there any special training Agent Smith
11 for being a member of the SIU?

12 A. It's kind of on the job training.

13 Q. Sure.

14 A. You go through an oral board. You have to be
15 selected -- you have to pass the oral board and then you're
16 selected.

17 Q. What's involved in the oral board?

18 A. It's just a series of questions just to make sure
19 you know -- or you have knowledge of what you're going into.
20 Search warrants and arrests warrants and all that kind of
21 stuff.

22 Q. Okay sir. So, I want to talk about your experience
23 with firearms. Did you -- what does your firearm training
24 consist of?

25 A. Training through the academy, and then personal

1 knowledge, and then every year we qualify with firearms at
2 the Sheriff's Office. And in addition to that we have block
3 training typically once a year.

4 Q. Is block training where they may set up a scenario
5 and students aren't familiar with what it's going to be, but
6 you have to react to certain situations?

7 A. Yes, sir.

8 Q. Okay. And so BCSO has you engage in that sort of
9 thing yearly?

10 A. Yes, sir.

11 Q. All right. Now, when it comes to law enforcement
12 training and your training with a firearm are you trained to
13 shoot until the threat is eliminated?

14 A. Yes, sir.

15 Q. Okay. Help us understand what that means from a
16 law enforcement perspective.

17 A. To stop the threat.

18 Q. Okay. And so could that certainly mean injuring
19 somebody?

20 A. Yes.

21 Q. And killing somebody, right?

22 A. Yes, sir.

23 Q. Okay. Now, you mentioned prostitution operations
24 in your responsibility at the special investigations unit.
25 Did you ever have occasion to be -- to pose as like an

1 undercover?

2 A. Yes, sir.

3 Q. And would that mean that you're pretending to be a
4 john or something like that?

5 A. Yes, sir.

6 Q. So, would the majority of these -- I guess with SUI
7 would the majority of these solicitation operations take
8 place at a hotel?

9 A. Yes.

10 Q. Okay. And we've heard a little about it in this
11 case, but if you could from your perspective explain to us
12 how an operation with BCSO SIU in a hotel for solicitation
13 would go.

14 A. Typically there's three rooms involved. Two rooms
15 are adjacent with one another, and then a third room,
16 which -- I mean, it doesn't have to be in the same area, it's
17 where we hold all the arrestees.

18 You have the -- I guess you would call it the operation,
19 operation room where the take down team is and all the
20 communication takes place. And then the second room would be
21 solely for the UC where contact is made with the john or
22 whatever.

23 Q. And the UC is the undercover?

24 A. Yes.

25

1 Q. So, the person in that room is posing as the
2 undercover where they would then, what, meet like a
3 prostitute that would come in?

4 A. Yes.

5 Q. And then there would be a separate take down team
6 that would come into that room and facilitate the arrest?

7 A. Yes.

8 Q. All right. So, when -- you know, what I would ask
9 is would you say it's preferable to do these sorts of
10 operations in a controlled environment?

11 A. Absolutely.

12 Q. Okay. And that's obviously for safety reasons,
13 right?

14 A. Yes, sir.

15 Q. So -- and this is -- I want to say I know this is
16 difficult for us to be here today, and obviously you were
17 severely injured in this case, right?

18 A. (No verbal response.)

19 Q. Okay. But I would ask you -- would you agree with
20 me that it's not necessarily preferable to have an operation
21 like this go down at someone's house the way this one did?

22 A. No, sir.

23 Q. Now, did you have a prior incident -- before all
24 this happened did you have a prior occasion to come in
25 contact with someone we now know as Mary Ellis?

1 A. Yes, sir.

2 Q. Where was that sir?

3 A. In the parking lot of CVS.

4 Q. And how far -- like how long before August 20th was
5 that incident?

6 A. Approximately a month I believe.

7 Q. Okay. So, around July 20th, something like that?

8 A. Yes, sir.

9 Q. Now, do you remember who the undercover was in that
10 case?

11 A. I believe it was Steve Deshaun.

12 Q. Okay. But you know for sure it wasn't you?

13 A. Correct.

14 Q. Okay. And so you said they met at the CVS. Did
15 anyone ever meet at her house?

16 A. Not on that occasion.

17 Q. Okay. And so how did it go down at the CVS?

18 A. I believe Agent Roberts and I were together in one
19 vehicle and Agent Deshaun was in a separate vehicle and he
20 was the one communicating with her if I remember correctly.

21 And she was coming to the CVS and when she came in we
22 blocked her in and approached the vehicle once she was on the
23 site or on premises.

24

25

1 Q. Okay. Now, in thinking about just that encounter
2 was there any interaction with John Derossett?

3 A. No, sir.

4 Q. Was there any communication with John Derossett?

5 A. No, sir.

6 Q. Okay, so, was he involved in any way in setting up
7 that solicitation or that criminal activity?

8 A. No.

9 Q. Did you even -- frankly in your -- just your
10 personal knowledge did you even know who he was until this
11 night?

12 A. No, sir.

13 Q. Of August 20th?

14 A. No.

15 Q. Okay. When you ended up arresting Mary Ellis was
16 she fairly compliant with you?

17 A. Yes.

18 Q. Did she fight with you or anything like that?

19 A. No.

20 Q. Did she try to pull away?

21 A. No.

22 Q. And so ultimately she was taken into custody
23 without incident?

24 A. Yes.

25

1 Q. Now, I know that other agents -- well, my
2 understanding is did you ever have another interaction, you
3 personally, with Mary Ellis besides the night of August 20th
4 obviously, and that time at CVS?

5 A. I was with her for -- I can't remember how long it
6 was, but I'd say probably an hour at the sub station when we
7 interviewed her after she was arrested at Port St. John sub
8 station.

9 Q. The first -- for the CVS incident?

10 A. Yes.

11 Q. Oh, okay. So -- but that was all in this same
12 night?

13 A. Yeah. We took her from CVS to Port St. John sub
14 station. And other than that, that was the only time I --

15 Q. Okay. I didn't know if that was a separate day or
16 occasion.

17 A. No.

18 Q. And by the way, that arrest that happened at the
19 CVS, was it still -- was there still light out?

20 A. Yes.

21 Q. Okay. Now, thinking forward to the night that
22 we're all here for, do you know how it happened that your
23 team ended up making contact with Mary Ellis that day?

24 A. I do not.

25

1 Q. Okay. What were you doing that day?

2 A. I was in the hotel room as part of the take down
3 team for the operation we had going on.

4 Q. So what -- is -- was that one of the -- similar to
5 the other ones you told us about with the solicitation
6 events --

7 A. Yes.

8 Q. (Cont'd) at the hotel? So, what was going on that
9 particular day for you? Like what was your day looking like?

10 A. I was basically suited up in our -- like, the black
11 shirt with the sheriff's screen print on it with my tact
12 vest, just waiting for -- I can't remember if it was John's
13 or James, whoever we were getting.

14 Q. Yeah.

15 A. Just waiting for whoever to arrive and go in and
16 take them down.

17 Q. So, when -- what time did you get to the hotel to
18 help with this sting?

19 A. It would have been early evening I presume.

20 Q. Okay. But you weren't -- you certainly weren't the
21 one that made contact with Mary Ellis, right?

22 A. No.

23 Q. And did you -- and so when you were there did you
24 facilitate any other arrests for --

25 A. I'm sorry.

1 Q. I'm sorry. When you were there did you facilitate
2 any other arrests or takedowns that night while you were at
3 that hotel?

4 A. I can't recall. I don't know.

5 Q. Okay. Now, did you even have any communication
6 with Mary Ellis whatsoever that night?

7 A. No, sir.

8 Q. All right. Did you know that Agent Stead -- what
9 Agent Stead and the woman, Mary Ellis, agreed to?

10 A. No, sir.

11 Q. So, did -- you really didn't know much about what
12 was going on at all, right?

13 A. No, sir.

14 Q. How did you get involved in this?

15 A. Agent Roberts informed me we were going to pick up
16 Mary at her house and asked me to come along and we took off.

17 Q. Okay. About what time was that?

18 A. It was --

19 Q. Do you want some water sir?

20 A. Yes, please.

21 Q. We can get you some.

22 A. I would say probably around 9:00 or so I'm
23 guessing.

24 Q. That was when you guys left to head over there?

25 A. Yeah, I believe so.

1 Q. And what about -- do you remember meeting at like a
2 CVS or anything beforehand?

3 A. I do not.

4 Q. Okay. So, when -- what was your -- what was going
5 to be your role in that operation?

6 A. To assist with the apprehension of Mary.

7 Q. Is that why you were wearing your tact vest and the
8 shirt?

9 A. Yes, sir.

10 Q. Since we're on the subject, what else were you
11 wearing that day?

12 A. Khaki shorts and a hat probably.

13 Q. Was it like a Clemson hat or something?

14 A. Probably.

15 Q. Okay.

16 A. Can I have it back actually?

17 Q. I -- ask them. All right, so -- and then were you
18 wearing sneakers?

19 A. Probably so, yes, sir.

20 Q. Is that pretty standard for what you would wear
21 in --

22 A. For me, yes, sir.

23 Q. Okay. Because when you're in SIU you're pretty
24 much allowed to dress in plain clothes, right?

25 A. Yes, sir.

1 Q. Let's get you that water. Oh, I thought that's
2 what that was.

3 A. No, that's all right.

4 Q. All right, so, aside from -- and then when you're
5 going to be part of the take down team that's when you put on
6 the tact vest and make sure you've got that long sleeved
7 shirt, right?

8 A. Yes, sir.

9 Q. But otherwise it's plain clothes?

10 A. Yes, sir.

11 Q. The tact vest is black though, right?

12 A. Yes, sir.

13 Q. And then it says sheriff in yellow writing?

14 A. Yes, sir.

15 Q. Would you agree that the lettering is not
16 reflective?

17 A. Correct.

18 Q. Okay. It's screen print and it's yellow, but it's
19 not like a reflector.

20 A. Right.

21 Q. There you go sir.

22 A. Thank you so much.

23 Q. Okay sir. So then Agent Roberts says it's time to
24 go and you I guess go. So, who -- did you drive?

25 A. Yes, sir.

1 Q. And where were you guys headed?

2 A. To Covina, to the house on Covina, her house.

3 Q. Okay. And I know you said you didn't have much
4 interaction, but what was your -- did anyone fill you in on
5 any level of detail about what was going on?

6 A. Yeah. I mean, I could remember seeing that Steve
7 was going to be the UC.

8 Q. Okay.

9 A. And he was going to go up and make contact with
10 her, and then we were going to take her down. I can't
11 remember the specifics.

12 Obviously he wasn't going to go into the house, but I
13 just know that, you know, Jason and I had talked about
14 approaching from the west side and making contact with her in
15 the front of the house.

16 Q. Okay. And so -- now, you and Agent Roberts had
17 been on the SIU. You'd been there for a couple years, right?

18 A. Yes, sir.

19 Q. And Agent Roberts had been there even longer than
20 you, right?

21 A. Yes, sir.

22 Q. How long had Agent Stead been on the team?

23 A. Just a few days. I think that was his first week.

24

25

1 Q. Okay. Do you know if it was his first solicitation
2 event?

3 A. Yes, it was.

4 Q. It was, okay. Now, what did you drive to get
5 there?

6 A. My truck that I was issued, my UC truck.

7 Q. And is that -- what color is the truck?

8 A. Black.

9 Q. So, that's a department issued truck?

10 A. Yes.

11 Q. But are there any police markings on it?

12 A. No.

13 Q. And the purpose of that is to remain undercover so
14 people wouldn't notice.

15 A. Yes.

16 Q. Right?

17 A. Correct.

18 Q. And so let's go ahead and get some exhibits up so
19 you can help us understand where you were.

20 A. Okay.

21 Q. Now, we've been using this Agent Smith, and I know
22 it's not ideal because -- where did you guys park your
23 undercover truck?

24 A. On the south end of Alcazar, which would have been
25 down here somewhere probably. I mean, it was out of sight of

1 this house.

2 Q. Out of sight. So, there's another road, Alcazar,
3 that goes this way?

4 A. Yeah, it was down the street somewhere.

5 Q. So, no one from this house, from 1051 would have
6 been able to see that truck, right?

7 A. Correct.

8 Q. I want to get our aerial photo if we can.

9 MR. PANELLA: Mr. West, do you know off hand
10 exactly where that is?

11 MR. WEST: I'm sorry, I'm not allowed to touch the
12 exhibits.

13 THE COURT: Mr. Panella.

14 MR. WEST: Has to be up there. I can't -- I don't
15 have --

16 THE CLERK: Has it already been entered in
17 evidence?

18 MR. PANELLA: Yes.

19 MR. RESPESS: It's Defense 2.

20 MR. PANELLA: That's what I thought. You don't see
21 it, right?

22 MR. SCHEINER: No, I don't see it.

23 THE COURT: Mr. West had it for the last witness.

24 MR. WEST: I wonder if it's over here.

25 MR. RESPESS: It's around.

1 MR. PANELLA: That's all right.

2 MR. RESPESS: It's around. We'll find it.

3 MR. PANELLA: No worries.

4 BY MR. PANELLA:

5 Q. So, let's get -- let's use this then Agent Smith
6 for now and we'll see if we can locate that later. So, you
7 parked down Alcazar, out of the view of anyone from the
8 house. What was -- what did you do next? What was the plan
9 with you and Agent Roberts?

10 A. Approach from the west side and come to the corner
11 of the house.

12 Q. Okay. And obviously this picture was taken during
13 the day, correct?

14 A. Correct.

15 Q. And you got there -- what time do you think you
16 actually got there? You said you left around 9.

17 A. It would -- had to be just close to 9:30 based on
18 when the call came out on the radio.

19 Q. Okay. So, the lighting was obviously different,
20 right, when you were there versus these, and we understand
21 that. But if you could help us understand based on this
22 aerial, and you can point for the Judge. This might be
23 actually better. So, there you go. Is that the road you're
24 talking about?

25 A. Yes, this is Alcazar.

1 Q. All right. So, where would your truck have been?

2 A. It would have been down this area -- oh, sorry.

3 Q. Oh, that's all right.

4 A. It would have been down here somewhere.

5 Q. Thank you. I'm showing the witness the Defense
6 Exhibit 2. All right.

7 A. I would say over here.

8 Q. And then what did you and Agent Roberts do?

9 A. We approached from here and came up to the corner
10 of the house.

11 Q. Okay. And let's pause there for a second. You and
12 Agent Roberts are both wearing your black tact vests --

13 A. Yes.

14 Q. (Cont'd) at this time?

15 A. Yes.

16 Q. Okay. And you are then positioned on the west
17 corner, I guess the northwest corner --

18 A. Northwest.

19 Q. (Cont'd) of the residence?

20 A. Yes.

21 Q. At this time did you witness Agent Stead?

22 A. Yes.

23 Q. Okay. Do you know where he was parked?

24 A. In front of the house -- in front of the driveway,
25 or across the street in front of the house.

1 Q. All right. Did you witness his approach up to the
2 door?

3 A. Yes.

4 Q. What was he driving?

5 A. A Mazda.

6 Q. Yeah.

7 A. A black car.

8 Q. Okay. But like yours, did it have any print or
9 anything like that?

10 A. No.

11 Q. So, they were both undercover vehicles?

12 A. Em-hmm.

13 Q. Before we get into the specifics of exactly what
14 happened right there were you carrying a department issued
15 weapon?

16 A. Yes, sir.

17 Q. And what weapon was that?

18 A. Glock 22.

19 Q. So, is that a full size handgun?

20 A. Yes, sir.

21 Q. And is that a 40 caliber?

22 A. Yes, sir.

23 Q. How do you normally typically carry your weapon as
24 far as how you load it and whether it's ready to fire?

25 A. There's 15 in the magazine and one in the chamber.

1 Q. Okay. So that means that you fully load it, put
2 one in the chamber, and then take the magazine out --

3 A. Top it off.

4 Q. (Cont'd) put another one, and then you've got a
5 total of 16?

6 A. Correct.

7 Q. Did you have any other magazines with you at the
8 time?

9 A. Two other.

10 Q. All right. Now, do you remember at any time
11 whether you reloaded your weapon this night?

12 A. No, I don't personally remember it.

13 Q. Okay. Yeah, just from your own independent
14 recollection.

15 A. Right.

16 Q. Okay.

17 A. No, I do not.

18 Q. So, how was -- we know where the truck is, we know
19 where you are. Would anyone from the house have been able to
20 see you and Agent Roberts?

21 A. No.

22 Q. Okay. And were you able to -- were you able to
23 actually see Agent Stead go up to the front door?

24 A. Yes.

25

1 Q. And I know this might sound silly, but it's --
2 we're asking everyone. By the -- when you got to the
3 residence would you say that it was dark out?

4 A. Yes, it was dark outside.

5 Q. Okay. And I know from speaking to you previously,
6 can you speak to the lighting condition of the yard itself?

7 A. There are no lights in the yard.

8 Q. There are no lights in the yard?

9 A. No, just across the street.

10 Q. Okay. As you sit here today can you tell us
11 whether the porch light was on or off?

12 A. I believe the porch light was on.

13 Q. Okay.

14 A. Because I can remember seeing Agent Stead's --
15 Stead standing in front of the front door.

16 Q. Okay. What I'd like to do is just give you -- and
17 maybe you can -- I'd like to go ahead and give you an
18 opportunity.

19 A. Okay.

20 Q. Do you -- you remember giving a sworn deposition
21 here, right?

22 A. To you? Yes.

23 Q. Yeah, to me, and the State was there. I'll just
24 refer the State to page 91, and it should be line 12. And
25 sir, if I might approach. Judge, do you mind if I approach?

1 THE COURT: Not at all.

2 THE WITNESS: Okay. At this -- based on my depo I
3 said I don't remember.

4 BY MR. PANELLA:

5 Q. Well, and I guess the question -- and that's why
6 I -- like I said, I want to give you the opportunity to, you
7 know refresh -- because you also gave a sworn statement prior
8 to the depo too, right?

9 A. Yes, sir.

10 Q. Okay. So, based on your two prior statements, you
11 know, now thinking about that, can you tell us with certainty
12 whether the porch light was on or off?

13 A. I just know there was light protruding from the
14 house.

15 Q. Okay. So, you could make out Agent Stead, but you
16 don't know if it was a porch light or what?

17 A. Right.

18 Q. Okay. So, I suppose the three of you were under
19 the impression -- you already told us Agent Stead's going to
20 be the john, right?

21 A. Yes.

22 Q. And so the whole idea was to get Mary Ellis to
23 believe that he was there for some sexual act, right?

24 A. Correct.

25

1 Q. And what did you hear next? Did he -- what did
2 Agent Stead do?

3 A. I know he addressed her -- or she opened the door.

4 Q. Do you know if -- do you know how he initially made
5 contact with her?

6 A. As far as?

7 Q. Well, do you know -- do you, from your own
8 independent recollection know whether he knocked on the door
9 or what --

10 A. Yes, he knocked on the door.

11 Q. Okay. And then what happened?

12 A. She opened the door.

13 Q. And where was she at this time? Was she inside the
14 house?

15 A. Yes, she was just inside the house, or at the
16 threshold, whatever you want to call it.

17 Q. At the threshold of the door?

18 A. Yes.

19 Q. So, you hear the knock and then she opens the door
20 as far as you remember?

21 A. Yes.

22 Q. And she's right inside the threshold of the
23 doorway?

24 A. Correct.

25

1 Q. Where's Agent Stead?

2 A. Just outside the door.

3 Q. Now, at this point he's still in plain clothes,
4 right?

5 A. Yes.

6 Q. Oh, I'm sorry, I should have asked. What's he
7 wearing?

8 A. Plain clothes.

9 Q. Okay.

10 A. I think blue jeans and T-shirt.

11 Q. And he does not have his badge exposed, right?

12 A. No.

13 Q. All right. And so she opens the door?

14 A. Correct.

15 Q. Do you hear the substance of their exchange?

16 A. I don't know what she said. I don't know exactly
17 what he said other than him pulling out his badge and saying
18 Sheriff's Office and grabbing her. And that's when all hell
19 broke loose honestly.

20 Q. Yeah. And we'll talk about that, hell breaking
21 loose, but you remember that he went to the door, she's
22 inside the door, he's outside the door, and I think your
23 testimony just now was you remember him pulling out his badge
24 saying Sheriff's Office and grabbing her out of --

25 A. Yes.

1 Q. Grabbing her, right?

2 A. Yes.

3 Q. And he grabbed her out of the door, right?

4 A. Yes.

5 Q. And he started pulling her forcefully toward the
6 yard?

7 A. Correct.

8 Q. And did she start screaming?

9 A. Yes.

10 Q. And I think your word is that she started -- is it
11 fair to say -- how was she screaming? How would you describe
12 it?

13 A. Very loudly.

14 Q. For -- very loudly, okay.

15 A. Whatever.

16 Q. Was she screaming profusely?

17 A. Yeah.

18 Q. Okay. And at this point what is Agent Stead doing?

19 A. Agent Stead is pulling her.

20 Q. All right. And so -- and he's -- is he pulling her
21 in the direction -- he's pulling her away from the house,
22 right?

23 A. Yes.

24 Q. And what is Mary Ellis doing?

25 A. Screaming.

1 Q. Is she trying to get away from him?

2 A. I assume so.

3 Q. Okay.

4 A. Yeah. I mean, I never made direct contact with
5 her, so.

6 Q. Right. As a matter of fact you never went hands on
7 with this person.

8 A. No.

9 Q. Right?

10 A. No.

11 Q. And frankly, you were the guy who had nothing to do
12 with setting this up in the first place, right?

13 A. No, but I mean, I'm part of the team so we all --

14 Q. I know.

15 A. (Cont'd) come together.

16 Q. I just want to clarify that. And you didn't --
17 you -- well, the next part of the story is what? What did
18 Agent Roberts do?

19 A. He went over to assist.

20 Q. Okay. And so the two of them now are grabbing her
21 and forcefully pulling her toward the yard, right?

22 A. Correct.

23 Q. And you again never even touched her?

24 A. No.

25

1 Q. Is she screaming the entire time

2 A. From what I can recall.

3 Q. Now, do you know if she was facing toward Agent
4 Stead or away from him when he grabbed her?

5 A. I don't know.

6 Q. Do you know from your recollection did Agent Stead
7 and Agent Roberts let go of her when she was screaming?

8 A. I don't know at what point they let go of her. I
9 couldn't tell you that.

10 Q. But she was -- okay. Well, let me ask you this:
11 Was she screaming and struggling and pulling way until you
12 ultimately see John Derossett?

13 A. Somewhere around at that point. I don't know --
14 like I said, I don't know exactly when they let go of her.

15 Q. Okay.

16 A. I know that Mr. Derossett was outside in -- like I
17 said, I -- whenever he came out I lost -- I had tunnel
18 vision, I couldn't see anything else.

19 Q. And we'll -- yeah, and we'll break that down and
20 we'll talk about that part. But you mentioned a lot of
21 things about just before that happened. Well, first of all,
22 is it fair to say that this whole thing happened very
23 quickly?

24 A. Yes.

25

1 Q. Okay. And I mean from the beginning of the
2 grabbing of the arm and the screaming, to the end of the gun
3 shots, I mean, would you say it was a pretty fast situation?

4 A. I couldn't put a time stamp on it, but yeah, it
5 seemed to go pretty quick.

6 Q. Okay sir. Now, in this time before you witnessed
7 John Derossett, who we now know, did Mary Ellis do or say
8 anything that made you think she saw you?

9 A. No. The only thing I recall her saying is John,
10 John, John, something along those lines. She was calling for
11 John.

12 Q. So, you heard her -- in the screams you heard her
13 calling the name John?

14 A. Yes.

15 Q. Was she calling for help?

16 A. Well --

17 Q. Did it seem that way to you?

18 A. I assume so. Yeah, I mean --

19 Q. And in the struggle with Mary Ellis and Agent Stead
20 and Agent Roberts you told us she was trying to pull away.
21 Which direction was she facing?

22 A. I don't know.

23 Q. But I guess what I want to know is do you think
24 that she recognized you?

25 A. Couldn't tell you that either.

1 Q. Okay.

2 A. I mean, as Agent Stead and Agent Roberts were
3 trying to take control of her I wasn't even focused on them,
4 I was focused on the house. That's -- as we went over that's
5 what I focused on.

6 Q. Yeah. I would ask do you think she saw you? And
7 the only reason I ask you that is because of a prior
8 statement you made. And so I'd ask you now if you -- in your
9 opinion if you think that she even noticed you were there?

10 A. I couldn't answer that.

11 Q. Okay. But at least she didn't do or say anything
12 that made you affirmatively think she did notice you?

13 A. No, I don't know if she noticed me or not.

14 Q. So, Agent Stead and Agent Roberts are both much
15 bigger than Mary Ellis, right?

16 A. Yes.

17 Q. So, help me understand why it was necessary under
18 these circumstances, while she's screaming, this whole
19 chaotic situation, why it took -- why two of them? You know,
20 what was going on there?

21 A. To take control of her so you don't hurt her. I
22 mean, we're not trying to hurt the individual, we're trying
23 to detain them.

24 Q. Right.

25 A. I mean, you know, obviously either one of those

1 guys could have battered her, but that's not the point or the
2 intention.

3 Q. Right.

4 A. It's to control her so nobody gets hurt.

5 Q. Sure. And she was flailing and pulling away and --

6 A. Correct.

7 Q. Yeah. Now, from what you could see did she
8 actually hit anybody or anything like that?

9 A. I don't know.

10 Q. How -- and before John Derossett came out of the
11 house what was your recollection of where Agent Roberts,
12 Agent Stead, and Mary Ellis were?

13 A. Just outside the front door step, or just outside
14 the overhang.

15 Q. Okay. So, let's look at this. Actually, this
16 one's not even as good probably. Whatever you want Agent
17 Stead -- Agent Smith.

18 A. I would say --

19 Q. There?

20 A. (Cont'd) probably in this area just outside the
21 front door.

22 Q. Okay. So, they were outside the overhang still in
23 the -- somewhere in between the corner of the sidewalk and
24 the front of the house in the -- is that what you're saying?

25 A. I would say within the front.

1 Q. Okay.

2 A. I mean, just the front piece of sidewalk right
3 here.

4 Q. Could you tell if they were in the grass or in the
5 sidewalk?

6 A. No, they were just in that general area. I
7 can't -- I can't tell you exactly.

8 Q. Okay. So, they were in the front of the house,
9 relatively close, but not -- you can't tell whether they were
10 in the grass or in the sidewalk itself?

11 A. Correct.

12 Q. So, where did you -- while this is all going on
13 where did you end up going?

14 A. Well, based on my recollection --

15 Q. Yeah.

16 A. (Cont'd) I ended up -- this is backwards -- what I
17 believe to be actually somewhere over here, or about right
18 here. I think.

19 Q. So, that -- this is important. If you could point
20 to that again for -- all right. So, right now you're saying
21 Agent Smith and Agent Roberts are struggling with Mary,
22 right?

23 A. Yes.

24 Q. In the front. You've got your eyes on the house?

25 A. Yes, I was --

1 Q. And you're -- I'm sorry?

2 A. I was just saying I was watching the door.

3 Q. Okay. And your recollection is -- if you could
4 show us again where you were.

5 A. (No verbal response.)

6 Q. Is that you end up out there in the yard?

7 A. Yes.

8 Q. And would you classify that as no man's land?

9 A. Absolutely.

10 Q. So, you're in the yard, they're still struggling,
11 and --

12 A. But based on our previous conversation you informed
13 me that I back peddled, and that's how I ended up out there.
14 But I --

15 Q. I didn't -- see, that -- and that's what I don't
16 want to do. I don't want to tell you --

17 A. Well, that was in my previous statement, which I
18 don't remember, but.

19 Q. Yeah. Because here's the thing, let me -- let's do
20 that right now Agent Smith. This picture was taken the next
21 day, and all we're concerned about is your recollection right
22 now, and that's why I didn't show you this, but we're here
23 now and this is already in evidence.

24 In looking at this picture where would you say you were
25 when you noticed John Derossett come out of the house?

1 A. I mean, I had to be over here somewhere.

2 Q. Kind of like what you're saying?

3 A. Yeah, but I -- I don't know how far back, but I
4 definitely had a vantage point through the door looking
5 through the back room because that's when I saw him --

6 Q. Exactly, sure.

7 A. (Cont'd) running through the house.

8 Q. Sure. All right, so, the entire time that they're
9 struggling with Mary I think you testified you recall her
10 screaming, right? Same thing with the dep --

11 A. Yes.

12 Q. Yeah. And at some point did you see John Derossett
13 coming toward your direction from inside the house?

14 A. Yes.

15 Q. So, from your vantage point is it fair to say that
16 you could actually see inside the house?

17 A. Yes.

18 Q. That's what you were just telling me, right?

19 A. Yes.

20 Q. And so as you see him do you witness -- what do you
21 see?

22 A. Gun.

23 Q. Okay. And where --

24 A. He's carrying a gun.

25

1 Q. What's that?

2 A. He's carrying a gun.

3 Q. Okay. That's what I was going to ask you. And you
4 see him carrying a gun. Where is he when you first notice
5 that?

6 A. He is on the backside of the living room.

7 Q. And you could see straight in, right?

8 A. Yes.

9 Q. Into the house. Now, they're still struggling,
10 right?

11 A. Yes.

12 Q. And as far as you understand they don't even
13 recognize that that's happening, right, that John Derossett's
14 on his way?

15 A. Say that one more time.

16 Q. From your perspective you don't even rec -- you
17 don't know if they even realize John Derossett's coming,
18 right?

19 A. No, they don't know.

20 Q. Okay. And so you see this and I'd like to know the
21 exact words of what you said.

22 A. I --

23 Q. And I can -- again, we can do that thing if you
24 want to --

25 A. It was something like gun, gun, gun, he's got a

1 fucking gun, he's got a fucking gun.

2 Q. And so you're yelling that, you're screaming that?

3 A. Yeah.

4 Q. And you're trying to protect your agents to let
5 them know, hey, be on alert, this guy's coming, right?

6 A. Yes.

7 Q. And so it's fair to say your statement was he's got
8 a fucking gun?

9 A. Yes.

10 Q. And at that point do you remain where you are in
11 the yard?

12 A. I don't know.

13 Q. Okay.

14 A. I mean, it's like I told you, I ended up in no
15 man's land. That's what happened.

16 Q. Okay.

17 A. Because I had no cover.

18 Q. And in any event when you see him coming with a gun
19 you then move to take your gun out, right?

20 A. Yes.

21 Q. Okay. And that's what you're trained to do?

22 A. Yes, sir.

23 Q. So, you would be ready to shoot within a
24 millisecond of him shooting, right?

25 A. Yes.

1 Q. And in fact, you were.

2 A. I was.

3 Q. And is it fair to say that after you witnessed his
4 initial shot you then immediately shot at him?

5 A. I would assume so. I don't know.

6 Q. Okay.

7 A. But I would assume so.

8 Q. So that -- so, from your best recollection, and I
9 know what ends up happening next, you know, may effect some
10 of this, but from your best recollection you shot and
11 addressed John Derossett as soon as you saw his first shot,
12 correct?

13 A. Yes.

14 Q. We'll talk a little more about that, but where did
15 Agent Stead and Agent Roberts go when you yelled what you
16 yelled?

17 A. I have no idea.

18 Q. Okay. You told us what you know you yelled, right,
19 but you can't say whether you yelled Sheriff's Office, right?

20 A. I can't say one way or the other.

21 Q. Okay.

22 A. I mean --

23 Q. Right. But you know with certainty what you yelled
24 and you yelled --

25 A. Yes.

1 Q. (Cont'd) what you told us, but beyond that you
2 don't know?

3 A. No.

4 Q. And for that matter you never heard anybody else
5 identify themselves as Sheriff's Office either, right?

6 A. I heard Agent Stead identify himself as a Sheriff's
7 Office when he made the initial contact with Mary.

8 Q. My apologies. Of course. When he made the initial
9 contact with Mary, Agent Stead, you heard him identify
10 himself?

11 A. Correct.

12 Q. But when John or when he was approaching to John
13 that's my question.

14 A. Right, no.

15 Q. You never heard anybody identify themselves to
16 John, right?

17 A. No.

18 Q. Did you observe John Derossett come out to that
19 front porch area?

20 A. He came out of the door. So, yes, out -- yes, he
21 was out in the front porch area.

22 Q. Okay. And you testified that you're not sure what
23 happened to Mary at this point, right? And --

24 A. No. Sorry.

25

1 Q. And then you -- all you know is he came out the
2 front door and what did he do?

3 A. He fired a round.

4 Q. He fired a round?

5 A. Yes.

6 Q. Okay. And also, you're -- can you tell us from
7 that first round exactly where that shot was fired?

8 A. I couldn't tell you.

9 Q. Okay. So, you don't know if it was up or down?

10 A. No, because my initial assessment was that I
11 thought the guys were on the sidewalk right here. I didn't
12 see them run or anything. I thought they were on the ground
13 with Mary fighting.

14 And he came out and I don't know if he fired the gun up
15 or down or whatever. He fired a shot and that's all I
16 remember.

17 Q. And then you addressed that fire, right?

18 A. Yes.

19 Q. And as you sit here do you believe that you were
20 the first one actually to return fire and shoot at him?

21 A. I can't tell you that. I don't know.

22 Q. Oh, okay. But you know that as soon as you saw
23 that you did shoot in his direction?

24 A. I would -- yes.

25

1 Q. Part of your concern -- well, I'll just let you
2 explain it. Was part of your concern, or maybe your whole
3 concern protecting the other agents?

4 A. Yes.

5 Q. And that was because from your perspective they
6 were much closer to him, right?

7 A. Yes.

8 Q. But for some reason, at least from your
9 recollection, do you recall him shooting at them?

10 A. Like I said -- no, he drew -- he fired the first
11 shot and he took aim at me.

12 Q. Fired at you?

13 A. Yes.

14 Q. And then the two of you exchanged gunfire from your
15 recollection, right?

16 A. Yes.

17 Q. And ultimately you were hit?

18 A. Yes.

19 Q. Do you know about where you were when you were hit?
20 Was it in that same general area, or do you think you had
21 moved?

22 A. No, I don't know. I -- it was out here in the yard
23 somewhere. I don't know where.

24

25

1 Q. Okay. So, is it fair to say that from where ever
2 you were when you first started firing you probably weren't
3 far from that location when you went down?

4 A. Correct.

5 Q. Okay. So, it's not like you were running around or
6 something in the yard?

7 A. No.

8 Q. Okay. Do you remember whether John Derossett said
9 anything when he came out of the door?

10 A. No.

11 Q. You don't remember, or you don't know one way or
12 the other, or he didn't?

13 A. I don't know one way or the other.

14 Q. Okay. I think we addressed it, but when -- after
15 you saw that first shot is it fair to say you immediately
16 engaged him?

17 A. Yes.

18 Q. Okay. Were you already shot Agent Smith at --
19 were -- do you know, and I know things start getting a little
20 fuzzy, but do you know if you were already shot before Mary
21 Ellis left your line of sight?

22 A. Like I said, I don't know where Mary was the entire
23 time. Basically whenever John fired the shot --

24 Q. Em-hmm.

25 A. (Cont'd) I couldn't tell you what happened to

1 anybody else that was there, other than he and I.

2 Q. But Mary -- from your recollection was Mary still
3 out there at least when John initially fired the shot?

4 A. Couldn't tell you.

5 Q. I'm looking at your deposition. It's page 93 Mr.
6 Scheiner. And again, I'm not -- I just want to -- would you
7 like the opportunity to review it?

8 A. Yeah, please, please.

9 Q. Maybe shed some light on this, just this one point.
10 We're pretty much done. I'm looking at page 93, and I draw
11 your attention to this line here. And I was going to ask you
12 about line 14.

13 So, whatever you'd like to review beyond that, and let
14 me know if your memory's refreshed.

15 A. Okay. It was my assumption that she was still
16 outside during the gunfire.

17 Q. Okay. That was an assumption?

18 A. Yeah, I -- like I said, I really don't know.

19 Q. Okay.

20 A. I mean --

21 Q. Okay, so you're not sure whether she was in, or
22 out, or what?

23 A. No, I -- I mean, like I said previously, I thought
24 J-Rob -- or I'm sorry, Agent Roberts, Agent Stead, and Mary
25 were all out on the sidewalk when everything began. So, I --

1 Q. Well, and maybe we should just put it out there.
2 You've been here for the last few days watching these
3 proceedings, right?

4 A. Yes.

5 Q. And part of the issue I think for you -- I don't
6 know. Are you concerned at all that maybe listening to what
7 other people are saying may impact what you recall?

8 A. No, I'm trying to give you the testimony --

9 Q. Most objective.

10 A. (Cont'd) as what I remember, but yes, definitely,
11 things have definitely come to light since I've been sitting
12 here.

13 Q. Yes, sir. As long as we recognize that. I think
14 that's important for --

15 A. Right.

16 Q. (Cont'd) everyone to recognize.

17 A. No, I'm not trying to change my testimony at all.

18 Q. I know sir, I know. I just have one other question
19 on that point though that you didn't seem fuzzy on, and the
20 question was do you know then before you got hit isn't it the
21 case that you knew that you had at least shot your weapon
22 before she was gone? Before you didn't know -- before you no
23 longer knew where she was.

24 A. I -- like I said, I -- I fired after Derossett
25 fired, and it was my -- once again, my assumption that the

1 other three individuals were still in the front yard.

2 And you know, that's what I believed up until -- you
3 know, obviously I've heard other testimony and things are
4 different now, but I thought those three were on the sidewalk
5 in front of John when the first shot went off.

6 Q. Sir, would you agree that this was -- I think it's
7 silly to even ask you this, but this is obviously a traumatic
8 experience for you, right?

9 A. A hundred percent.

10 Q. And in any shooting incident -- have you ever been
11 involved in another shooting incident?

12 A. No, sir.

13 Q. And so certainly different recollections of the
14 same event may happen. Do you think that that's fair to say?

15 A. Yes.

16 Q. So, I can appreciate where you're coming from. In
17 any event, hold on one second.

18 A. Okay.

19 Q. Let me just check something.

20 MR. PANELLA: I don't have any further questions.

21 THE COURT: All right. Thank you Mr. Panella. Mr.
22 Scheiner?

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CROSS EXAMINATION

BY MR. SCHEINER:

Q. Agent Smith, I want to make sure that we're very clear. When you say come to light what do you mean? Tell the Court what you mean by that.

A. As far as -- in relation to?

Q. You're having the opportunity to sit in the courtroom and you've heard some testimony, you've seen some exhibits. What do you mean by come to light?

A. Well, because I haven't heard everybody's story and the way things unfolded, and because I've had a lot of memory loss, you know, I had a certain perception of how things happened in -- or what I thought they -- or what I thought had happened, but it hasn't turned out to be the case so much.

Q. Now, I want to be very clear to you and I've been clear to you in the past. I want to make sure you testify from your memory as the best as you can recall.

A. Yes, sir.

Q. And if you don't recall I want you to tell me you don't recall.

A. Yes, sir.

Q. Okay. Now, everything you have testified to so far is that those are things that you recall?

A. Yes, sir.

1 Q. And it's not based on something you heard Agent
2 Stead testify or seeing crime scene photos or anything like
3 that?

4 A. Correct.

5 Q. Now, if any of that stuff refreshes your memory as
6 to an event a particular way you remember it I want you to
7 tell us and the Court that.

8 A. Okay.

9 Q. Because that's different than you forming your
10 testimony in a particular way.

11 A. Okay.

12 Q. And we don't want you to do that. All right, fair
13 enough?

14 A. Yes, sir.

15 Q. I want to start with you from the beginning, and
16 when I say the beginning I'm referring to at around 9:30 on
17 August 20, 2015, when you arrive at 1051 Covina.

18 A. Okay.

19 Q. Okay. I think you told us already, but let's start
20 from the very beginning. Can you tell the Court, if you
21 recall, the way you came into this neighborhood in Port St.
22 John, Brevard County, Florida.

23 A. I don't know the other side streets, I just know
24 that I came from south on Alcazar heading north.

25

1 Q. Okay. And do you recall the direction your truck
2 was facing when you parked on Alcazar?

3 A. North.

4 Q. Okay.

5 A. I think. I'm pretty sure.

6 Q. And if you could just indicate on the photograph.

7 A. Somewhere down here.

8 Q. Okay. So, facing towards the house? Facing
9 towards -- is north down on this picture or is it up?

10 A. North is this way I believe.

11 Q. Okay. Just want to make sure. And when -- and the
12 approach, if you could, starting at the top corner of that
13 photograph where you parked your truck, if you could trace
14 for the Court the path that you and Agent Roberts took in
15 order to arrive at 1051 Covina?

16 A. We came up the street and then entered the side
17 yard and went over to the side of the house, and came up
18 along the west side to where we got to the northwest corner.

19 And the from that point, that vantage point we could see
20 Agent Stead in the -- in front of the house, and just waited
21 for him to approach the house.

22 Q. When you first saw Agent Stead where exactly is he?

23 A. He's out by his vehicle.

24 Q. He's out of his vehicle? Is he out of the vehicle?

25 A. The first time I saw him, yes.

1 Q. Are you or Agent Roberts having any communications
2 with Agent Stead as the joint approach on the house is
3 happening? If you recall.

4 A. I don't recall.

5 Q. I'm going to show you State's 26.

6 A. I guess I parked that way.

7 Q. And ask if you recognize that? That photograph
8 gives us a north -- you see the north legend on there with
9 the diagram?

10 A. Oh, okay, yes.

11 Q. Okay.

12 A. I guess I was facing south.

13 Q. And -- well, you at least recognize that there's a
14 truck --

15 A. Yes.

16 Q. (Cont'd) or some sort of vehicle down here?

17 A. Yes, down here.

18 Q. And is that area consistent with where you believe
19 you parked?

20 A. Yes, sir.

21 Q. On Alcazar?

22 A. Yes, sir.

23 Q. All right. Let's get back to the approach on the
24 house. Tell the Court -- tell the Court what you observed
25 from your perspective on the northwest corner of the house at

1 1051 Covina.

2 A. I just -- the point that I remember is Agent Stead
3 coming up the driveway and sidewalk and going up to the front
4 of the house and knocking on the front door.

5 Q. Now, you know Agent Stead, right?

6 A. Yes.

7 Q. Okay. You've worked with him for at least directly
8 for a few days?

9 A. Yes.

10 Q. Had you known him with the Sheriff's Department
11 prior to that?

12 A. Yes.

13 Q. And how long had you known Agent Stead prior to
14 that?

15 A. I'd say a few months.

16 Q. And from your vantage point standing in the side
17 yard at 1051 Covina could you rec -- immediately recognize
18 Agent Stead?

19 A. Yes.

20 Q. Okay. The approach to the house, he gets to the
21 door, and tell the Court what you observed next.

22 A. He knocks on the door and Mary opens the door.

23 Q. Is there any period of time or delay in the opening
24 of the door?

25 A. It was relatively quick.

1 Q. Okay. The condition now on the patio in your
2 observation of Agent Stead on the patio when the door opens.

3 A. Say that one more time.

4 Q. What's the overall condition on the front porch of
5 1051 Covina when that door opens and you see Agent Stead
6 standing in the doorway?

7 A. Mary was standing on -- just on the inside of the
8 house and he was just on the outside.

9 Q. From your vantage point could you see Mary?

10 A. I could not see all of Mary, no. I had more eyes
11 on Agent Stead versus Mary.

12 Q. The screen door that was on the patio do you recall
13 it's condition?

14 A. Do I recall what? I'm sorry.

15 Q. How it was.

16 A. It was open.

17 Q. Okay. And where is Agent Stead in relation to the
18 screen door?

19 A. He's standing on the inside of it I guess if you
20 will.

21 Q. Is he using his body to hold it open?

22 A. Something along those lines.

23 Q. Can you see anything other than a potential person
24 inside the doorway of 1051? Can you -- anything else coming
25 out of the interior of the home?

1 A. Just light.

2 Q. Any noises or anything like that?

3 A. Not that I'm aware of.

4 Q. Okay. How long do you stay on the northwest corner
5 of the home?

6 A. Not very long.

7 Q. Okay. Tell the Court what happens.

8 A. Agent Stead, once he opens the door, at that point
9 he pulled out his neck badge and said Sheriff's Office,
10 you're under arrest, and grabbed her.

11 Q. Okay. Did you see that?

12 A. Yes.

13 Q. Okay. Describe for the Court what you saw when you
14 say he pulled out his neck badge. What exactly do you mean
15 by that?

16 A. He just pulled the necklace out of his shirt.

17 Q. Okay.

18 A. I don't know if he held it or what he did with it, I
19 just know he pulled it out and badged her and said Sheriff's
20 Office and grabbed her.

21 Q. Did you hear him say anything else prior to that?

22 A. No.

23 Q. Do you know the positioning of Mary when Agent
24 Stead badged her?

25 A. I do not.

1 Q. Okay. When that occurs what do you do?

2 A. Well, at that point he started pulling on her and
3 J-Rob ran -- or Agent Roberts ran over to assist and --

4 Q. Where did he -- show for the Court the path that he
5 took to go help?

6 A. Basically from this point to the front porch right
7 here, to the -- I'd say just where the archway is.

8 Q. And what do you do?

9 A. I'm not really sure. I just --

10 Q. Fair enough.

11 A. I know -- like I said previously, I ended up over
12 here in no man's land, but I -- I'm not exactly sure what I
13 did, other than watch the door.

14 Q. Okay. Now, when this -- do you hear Agent Roberts
15 say anything as he approaches Ms. Ellis and Agent Stead?

16 A. I don't recall.

17 Q. How long or how far out from underneath the
18 overhang of that house do you think they fell, if at all?

19 A. My recollection was maybe just two or three feet.

20 Q. Okay. Does Mary ever come fully out from
21 underneath the overhang from your recollection?

22 A. I don't know.

23 Q. Do the three of them stay on their feet the entire
24 time?

25 A. That I don't know either.

1 Q. How soon after the group of them come a little bit
2 out off the patio onto the sidewalk area there do you see Mr.
3 Derossett in the back of his home?

4 A. Relatively quickly. It was just a couple seconds.

5 Q. I'm going to show you some items that are in
6 evidence, and this is State's Evidence number 4. And this is
7 a diagram of the interior of the home, or at least the living
8 room area. And we've had testimony that this is the front
9 door.

10 A. Okay.

11 Q. Can you identify on here I guess where you were
12 looking in through the front door and the area approximately
13 that you think you may have seen Mr. Derossett?

14 A. It would have been this way.

15 Q. Well, here, let me -- I'll do this: Let me show
16 you State's DK for identification purposes and ask if you
17 recognize the scene depicted in State's DK?

18 A. I don't -- I mean -- let me see that one.

19 Q. This is State's DP.

20 A. Yeah, that makes more sense to me.

21 Q. Do you recognize State's DP?

22 A. Yes.

23 Q. What do you recognize State's DP to be?

24 A. Well, that I was looking from out there --
25

1 Q. Okay.

2 A. (Cont'd) almost -- is that just the outside of the
3 column or?

4 Q. It appears to be.

5 A. And that's kind of where I saw him through --

6 Q. Okay. And did you --

7 A. So, basically just a diagonal line here.

8 Q. So, through the living room area then?

9 A. Yes.

10 Q. Across the furniture, past the living room area?

11 A. Yes.

12 Q. Okay. Now, looking at -- you said you recognize
13 the scene depicted in DP as being --

14 A. Yes.

15 MR. SCHEINER: Your Honor, at this time I'll move DP
16 into evidence.

17 THE COURT: All right, let's --

18 MR. SCHEINER: Looking at DP does it help you
19 recognize --

20 THE COURT: D --

21 MR. SCHEINER: DP.

22 THE COURT: I know, DP is which?

23 MR. SCHEINER: It's a photograph.

24 THE COURT: But which one's the -- oh, that's --
25 that one's already in evidence.

1 MR. SCHEINER: It's a different photo.

2 THE COURT: Oh, slightly different.

3 MR. PANELLA: Defense one is in evidence.

4 THE COURT: Okay. There's one very similar to that
5 already.

6 MR. PANELLA: I have no objection.

7 MR. SCHEINER: There may be, I don't --

8 MR. PANELLA: Yes.

9 THE COURT: Okay.

10 MR. PANELLA: Yes, there is Judge.

11 THE COURT: Okay. It's DP. Thank you.

12 THE CLERK: Be 103 Judge.

13 THE COURT: 103.

14 BY MR. SCHEINER:

15 Q. Looking at DK now do you recognize the scene
16 depicted in DK?

17 A. Yes, sir.

18 Q. And what do you recognize the scene in DK to be?

19 A. Just to be the inside of the house where I
20 recognized him coming through with the firearm.

21 Q. And can you tell by looking at this picture the
22 approximate location the photograph was taken at?

23 A. From the front door area.

24 MR. SCHEINER: Your Honor, at this time I'll move
25 DK into evidence as the next numbered exhibit.

1 THE COURT: All right. So, then DK will -- oh, Mr.
2 Panella, are you taking --

3 MR. SCHEINER: I'm sorry, I didn't show that to
4 you.

5 MR. PANELLA: That's okay -- no. I have no
6 objection.

7 THE COURT: All right, thank you. Then DK becomes
8 104 is it Madam Clerk? DK becomes 104.

9 BY MR. SCHEINER:

10 Q. I'm going to show you 104. Now, when you were
11 identifying this you had indicated that you thought this
12 photograph was taken from the front door area of 1051 Covina,
13 right?

14 A. I think so, yes, sir.

15 Q. Okay. And can you identify in here where you
16 see -- first see Mr. Derossett running through the house at?

17 A. It would have been back in the area of dining room
18 table, or kitchen table, whatever that is.

19 Q. And describe for the Court the lighting conditions
20 within the home when you saw that occurring.

21 A. It was very well lit. I could obviously identify
22 that he had a firearm and he was coming through the house.

23 Q. All right. And do you see the manor in which he's
24 coming through the house with the firearm?

25 A. Very quickly.

1 Q. Okay. And his direction of travel is what?

2 A. I want to say it was just along this path right to
3 the door.

4 Q. Okay. And I'm going to show you State's 103 now.
5 And do you recognize 103?

6 A. Yes, sir.

7 Q. Okay. And if you can show the Court, if you can
8 tell in this photograph, the approximate vantage point that
9 you had looking into the home.

10 A. It would have been just in between the door frame
11 and the pillar, standing in the yard.

12 Q. So, basically diagonal line from where this shot is
13 taken, which -- is that right?

14 A. Yes, I had an even vantage point from the back of
15 the house, which is this area, to where I was standing on the
16 outside of the pillar looking in.

17 Q. When you approached the house from -- on Alcazar
18 coming north could you see the condition of the house from
19 the back? In other words, were there any windows in the back
20 of the house?

21 A. Well, based on the diagram over here I don't know
22 that I -- I don't know which way I came in honestly. I
23 thought I was -- I'm not sure.

24

25

1 Q. Okay. All right, so, let's go back up to the
2 front. You see him coming through the house. What do you do
3 to alert your fellow agents?

4 A. I start yelling very loudly gun, gun, gun, he's got
5 a fucking gun.

6 Q. Okay. How loud?

7 A. As loud as I could possibly yell. Loud enough that
8 they could hear me --

9 Q. Okay.

10 A. (Cont'd) over Mary yelling.

11 Q. So, you were yelling louder than Mary was yelling?

12 A. Yes.

13 Q. How many times do you think that you yell that
14 sequence, gun, gun, gun, he's got a fucking gun, he's got a
15 fucking gun?

16 A. Just like you said it, just like that.

17 Q. Okay, all right. What -- do you recall where you
18 go when that happens?

19 A. Well --

20 Q. Now, I want what you recall.

21 A. Like I said, I don't know exactly where I was, I
22 just know that under my estimation I was about right here.

23 Q. All right.

24 A. Oops, sorry. Just somewhere right here.

25

1 Q. And the last time that you recognize or appreciate
2 the location of Agent Roberts, Agent Stead, and Ms. Ellis,
3 where are they at?

4 A. They're all -- what was my guess was right here on
5 the sidewalk.

6 Q. That's the last time you remember seeing them?

7 A. Yes.

8 Q. What were the lighting conditions from your vantage
9 point the last time you observed the three of them? In other
10 words, could you see them?

11 A. Yes.

12 Q. Was it dark?

13 A. It was dark, but I could definitely see all of
14 them.

15 Q. Could you recognize Mary?

16 A. Yes.

17 Q. As the target, right?

18 A. Yes.

19 Q. Did you recognize Agent Stead?

20 A. Yes.

21 Q. Did you recognize Agent Roberts?

22 A. Yes.

23 Q. How was Agent Roberts dressed?

24 A. Blue jeans, black sheriff's office shirt, with a
25 tact vest and a hat, baseball cap.

1 Q. And the tact vest, what did the tact vest have on
2 it?

3 A. Sheriff's decal.

4 Q. When you see Mr. Derossett coming across the house
5 and towards the front door do you ever look away from him?

6 A. No.

7 Q. Tell the Court what happens?

8 A. He comes out and immediately starts shooting.

9 Q. Any recollection in your mind of anybody saying
10 anything or Mr. Derossett saying anything?

11 A. No.

12 Q. What about anybody else saying anything?

13 A. I mean, I thought I yelled Sheriff's Office, drop
14 the gun, but I can't remember. I --

15 Q. You feel like that's something you would have done?

16 A. I do. I mean, that's what we're trained to do. I
17 just --

18 Q. Do you --

19 A. (Cont'd) I just can't remember.

20 Q. You don't remember if you did or not?

21 A. No.

22 Q. And he comes out, he shoots, and you respond?

23 A. Yes.

24 Q. Do you remember much after that?

25 A. I just remember exchanging gunfire with him and --

1 Q. Do you know how many times you shot?

2 A. That I shot?

3 Q. Yeah.

4 A. No.

5 Q. Do you know how many times he shot?

6 A. No. I know he shot me three times.

7 Q. Okay.

8 A. I know that many.

9 Q. Tell the Court where you were hit.

10 A. I was hit in the vest, I was hit --

11 Q. Now, you're pointing, you're pointing.

12 A. I'm sorry. In the left abdomen, just rib cage
13 area. I was hit in my love handle, which was more of a
14 graze, and then I was hit just underneath the vest, and it
15 went into my abdomen.

16 Q. Mr. Smith or Agent Smith, 2015, August 20th, how
17 big were you? No disrespect intended.

18 A. Probably 350.

19 Q. Okay. And how tall?

20 A. 6'4, 6'5, something like that.

21 Q. You lose a little weight?

22 A. No. I need to.

23 Q. All right. I'm going to show you what's in
24 evidence as State's 25. Do you recognize this sir?

25 A. Yes, sir.

1 Q. Can I ask you to stand up and I just want you to
2 hold this in front of you as a demonstrative aid if you can.
3 You all right? Do you need a break?

4 MR. RESPESS: Request a recess.

5 THE COURT: Sure. Why doesn't everybody take five.

6 (Whereupon, court stands in recess for
7 approximately five minutes.)

8 THE COURT: All right, you good to go?

9 THE WITNESS: Yes, ma'am.

10 THE COURT: Okay. It goes a lot faster when
11 there's nobody over there. You ready to go Mr. Panella?

12 MR. PANELLA: I'm ready.

13 THE COURT: All right. We've lost Mr. West though.

14 MR. PANELLA: We can proceed.

15 THE COURT: He usually comes in right about the
16 time I say that, so. All right.

17 MR. SCHEINER: May I proceed?

18 THE COURT: Certainly

19 BY MR. SCHEINER:

20 Q. All right, Agent Smith, I'm going to ask you to
21 hold up State's Exhibit 25, okay. If you would. And if you
22 could just turn towards the Court so the Court can see you
23 please. Okay, thanks.

24 All right, Agent Smith, I want to talk to you a little
25 bit about -- or a lot about the shots fired, you return fire,

1 and then you engage in what between you and Mr. Derossett?

2 A. A gun fight.

3 Q. Okay. And describe for the Court what you observe
4 Mr. Derossett do during that gunfight.

5 A. He turned to me and fired. I --

6 Q. Is he pointing at you?

7 A. Absolutely.

8 Q. Are you looking down the barrel of his firearm on
9 the other end?

10 A. Yes.

11 Q. Okay. And are you pointing at him?

12 A. Yes, sir.

13 Q. Okay. Are you able to observe this individual
14 that's shooting at you?

15 A. Yes, I am.

16 Q. Can you see him clearly?

17 A. Yes.

18 Q. Do you see that person in the courtroom today?

19 A. Yes, sir.

20 Q. Could you please identify him by something he's
21 wearing?

22 A. He's in the red jumpsuit.

23 MR. SCHEINER: Let the record reflect the witness
24 has identified the Defendant.

25 THE COURT: It shall.

1 BY MR. SCHEINER:

2 Q. Anything between you and him?

3 A. I just remember look -- I mean, as we're exchanging
4 rounds I'm thinking I hope -- and please excuse my language,
5 but in my mind I'm thinking I hope this motherfucker doesn't
6 shoot me in the head.

7 Q. Okay. Because you're not wearing body armor on
8 your head?

9 A. (No verbal response.)

10 Q. All right. Anything -- anyone or anything
11 physically obstructing your view of this person shooting
12 towards you?

13 A. Not that I could see.

14 Q. Okay. And do you know where Ms. Ellis was?

15 A. At that time, no, sir.

16 Q. Do you know where Agent Roberts was?

17 A. No, sir.

18 Q. Agent Stead?

19 A. No, sir.

20 Q. The direction -- if you could show the Court the
21 directions of the shots that you recall firing across this
22 photograph that's on the projector?

23 A. From this, just this area right here.

24

25

1 Q. Okay. And the direction of shots that were
2 returned towards -- back towards you? The same?

3 A. Same area.

4 Q. Do you recall where Mr. Derossett was standing when
5 he was shooting at you?

6 A. Just outside the front archway, or right around
7 that area.

8 Q. What's the next thing you remember when you were at
9 the house at 1051?

10 A. I remember being hit the first time in my vest, and
11 then immediately after that I was hit again just under my
12 vest, and I remember going down to the ground and trying to
13 go for my radio, but I was in and out of consciousness.

14 And I remember Stead coming over, and what I remember he
15 was trying to get my radio out to call for assistance.

16 Q. Okay. Do you remember if your vest stayed on you
17 during the duration of this?

18 A. No, sir, I just -- I remember Agent Stead and Agent
19 Roberts dragging me through the yard, and I wasn't very fond
20 of that. Yeah, that's really the last thing I remember.

21 Q. Agent Smith, thank you.

22 MR. SCHEINER: I don't have any further questions
23 Your Honor.

24

25

1 THE COURT: All right, thank you sir. Thank you
2 Mr. Scheiner. Mr. Panella, do you have any other
3 questions?

4 MR. PANELLA: I don't have any further questions.

5 THE COURT: All right, thank you. Then may Agent
6 Smith step down?

7 MR. SCHEINER: Yes.

8 THE COURT: Thank you sir. All right, Mr. Panella,
9 who will be your next witness?

10 MR. PANELLA: Your Honor, I would ask if we can --
11 I know we just took a short recess. I'd like to take a
12 recess though, because we're -- our next witness should
13 be Agent Roberts. He's present, right?

14 MR. SCHEINER: He should be, yes.

15 MR. PANELLA: Okay. And I'd like a break before we
16 do his examination Judge.

17 THE COURT: Okay. Want to take five?

18 MR. PANELLA: Sure.

19 THE COURT: Okay.

20 MR. PANELLA: Could I have seven?

21 THE COURT: Seven. You want to do seven, all
22 right.

23 (Whereupon, court stands in recess for
24 approximately ten minutes.)

25

1 THE COURT: We're back on the record in
2 2015-CF-39550, State of Florida versus John Derossett.
3 Mr. Derossett is present with counsel, Mr. Panella and
4 Mr. West. And Mr. Scheiner and Mr. Respass are here on
5 behalf of the State. Mr. Panella, who will be your next
6 witness sir?

7 MR. PANELLA: I'm sorry Your Honor. It's going to
8 be Agent Roberts, Jason Roberts.

9 THE COURT: All righty. Agent Roberts. Thank you.

10 THE CLERK: Raise your right hand. Do you solemnly
11 swear or affirm that the testimony you shall give will
12 be the truth, the whole truth, and nothing but the truth
13 so help you God?

14 THE WITNESS: Yes, ma'am.

15 THE CLERK: Please have a seat over here.

16 THE WITNESS: Let me squeeze in here.

17 WHEREUPON:

18 JASON ROBERTS,
19 a Witness herein, having been duly sworn, testified upon his
20 oath as follows:

21 DIRECT EXAMINATION

22 BY MR. PANELLA:

23 Q. Good afternoon Agent Roberts.

24 A. How are you?
25

1 Q. I'm well, thanks. If you'd state your name and
2 spell your last name for the record please?

3 A. Jason Roberts, R-O-B-E-R-T-S.

4 Q. And Agent -- are you still an agent? Is that the
5 proper way to address --

6 A. Deputy.

7 Q. Deputy?

8 A. Yes, sir.

9 Q. Okay, all right. Deputy Roberts, if we could start
10 out just talking about your background, training, experience,
11 and specifically law enforcement experience.

12 A. Sure. I was hired in December of 2009.
13 Approximately 2012 I was promoted to a field training
14 officer. I did that for approximately 11 months, and then
15 transferred to the special investigations unit.

16 Q. When did -- okay, so, what year did you transfer to
17 SIU?

18 A. I believe it was March of 2013.

19 Q. Oh, all right. So, in August of 2015 you had been
20 there for about two and a half years?

21 A. Yes, sir, I believe so.

22 Q. Okay. And what is your firearms training? What's
23 required for BCSO?

24 A. The requirements are the state qualifications,
25 FDLE.

1 Q. Is that the 40 round test and that sort of thing?

2 A. Yes, sir.

3 Q. Okay. And you have to -- in order to qualify
4 there's an accuracy rating and all of that?

5 A. Yes, sir.

6 Q. Okay. Any other special firearms training?

7 A. No, sir.

8 Q. But you do have to qualify every year?

9 A. Yes, sir.

10 Q. And any additional training that you had to undergo
11 to become part of the special investigations unit?

12 A. There's no other specific training to become a
13 member of the unit. There's specific training while you're
14 assigned to the unit.

15 Q. So, we've been hearing something about like a lot
16 of on the job training --

17 A. Sure.

18 Q. (Cont'd) as well, and sort of mentoring, things
19 like that.

20 A. Yes.

21 Q. And what are the other things that you're saying
22 you learned while you're in the unit?

23 A. You're required 40 hours of training per year to
24 maintain the agent status.

25

1 Q. Is that over at the college, or where do you do
2 that training?

3 A. We have a Hyda sponsorship that we can go to, FDLE,
4 or to college.

5 Q. Okay. And so when talking about your firearms
6 experience you talked about your FDLE qualifications and
7 certain things like that, but as just a deputy in BCSO are
8 you trained in certain techniques in how to shoot?

9 A. Certain distances, yes.

10 Q. What about if I were to suggest to you something
11 like double tap, you know, is that pretty standard? What's a
12 double tap?

13 A. Two rounds fired quickly --

14 Q. Okay.

15 A. (Cont'd) at the target.

16 Q. And is that your standard practice when you're
17 shooting?

18 A. Close distances, yes.

19 Q. Okay. And what's the purpose of that sir?

20 A. Just to eliminate the threat I would say.

21 Q. Sure.

22 A. Without aiming.

23 Q. Right. So, if it's a -- if there's targets that
24 are moving, things like that, you want to double tap so you
25 get two rounds out there because you have a better chance of

1 actually hitting your target?

2 A. It's double tap is basically done from the hip
3 shooting. It's too close for me to extend the arms out
4 and --

5 Q. Okay. And it's -- and again, it's like it sounds,
6 right, like pop, pop, rather than just pop, pop, pop?

7 A. Yes, sir.

8 Q. And so when you talk about eliminating the threat
9 what does that mean from a law enforcement perspective?

10 A. To de-escalate until it -- you don't feel
11 threatened
12 anymore.

13 Q. Okay. So, when there's a threat, when you perceive
14 a threat the term eliminating the threat could certainly
15 mean, you know, killing someone, right?

16 A. Yes, sir.

17 Q. Okay. Now, your -- where are you at now? What's
18 your current position?

19 A. Deputy sheriff.

20 Q. And weren't you in the S -- I thought you were in
21 the SIU for longer than two years. When did you leave?

22 A. I left two weeks ago.

23 Q. Oh, okay. How come?

24 A. I'm looking to promote as supervision.
25

1 Q. I see, okay. Now, when you were in -- working for
2 the special investigations unit what kind of details would
3 you be involved in?

4 A. We did undercover prostitution details, cold
5 approaches, street level drug purchases, prostitution, stuff
6 like that.

7 Q. Vice crimes?

8 A. Yes, sir, prostitution.

9 Q. So, when you talk about cold approaches, is that
10 sort of like when you're driving around in an unmarked and
11 you're pretending to -- you pick up someone you perceive to
12 be a prostitute?

13 A. Yes, sir.

14 Q. On the street? Okay. I just want to make sure I
15 understand what you mean by that.

16 A. Yes, sir.

17 Q. And so in that sort of scenario is it the case that
18 you'd sort of seen someone and invite them into your car and
19 then maybe there'd be another special investigation's person
20 or a team that would then arrest that person?

21 A. Yes, sir.

22 Q. Okay. So, in speaking of the solicitation
23 events -- and by the way, you remember -- let's talk about
24 how many statements you've given in this case before we go
25 ahead and take another one.

1 A. Sure.

2 Q. How many statements have you given?

3 A. Two prior to today.

4 Q. Okay. And when was the first one?

5 A. I believe it was August 24th?

6 Q. So, would that have been four days after the
7 incident?

8 A. Yes, sir.

9 Q. And do you know why your statement was taken four
10 days after, not right away?

11 A. That's a critical incident, officer involved
12 shooting.

13 Q. Yes, sir, but what -- but what does that mean?
14 What's the reason?

15 A. It was actually -- it's our choice if we're
16 involved in an incident like that. We could give a statement
17 then or you can wait to -- a couple days.

18 Q. Okay. And that seems pretty standard for law
19 enforcement. So, is it -- do you perceive that to be, you
20 know, after four days have gone by it's -- you know, you have
21 a better, clearer head on what happened?

22 A. Yes.

23 Q. Okay. So, in speaking of the -- oh, and what was
24 the second statement?

25 A. Deposition.

1 Q. That was the deposition with me and with the State?

2 A. Yes, sir, February of this year.

3 Q. Okay, sir. Yes, I remember. Yeah, that's exactly
4 right. Okay. And beyond that have you given any other
5 statements about the case?

6 A. No, sir.

7 Q. Okay. So, in speaking of the solicitation
8 operations, would they normally take place at a hotel? If it
9 weren't the cold that you're talking about.

10 A. Well, if you're not referring to the cold approach
11 then yes, sir, the hotel would be the --

12 Q. Okay. So, the two main ways of going about it for
13 SIU are the cold approaches, right, on the street?

14 A. Yes.

15 Q. And then the hotel operations?

16 A. Those are two scenarios we have done, yes.

17 Q. Okay. So, help us understand what goes on in the
18 hotel scenario.

19 A. It's basically we utilize the websites, either
20 Backpage -- now there's recently a new one called skip the
21 games that we've recently been using.

22 Q. Is that because Backpage got shut down?

23 A. Yes, sir.

24 Q. Okay. Go on.

25 A. And we typically call either males or female

1 escorts that are advertising on Backpage and invite them to
2 the hotel.

3 Q. And so what is your job? What is the job of the
4 special investigations unit? How do you get them to the
5 hotel?

6 A. Just call the number that they provide in the ad.

7 Q. And let's say it's a female escort. How do you --
8 what -- take me from start to finish. How do we get, you
9 know, the initial contact, and what's SIU doing, and what
10 roles are they playing, all the way to arrest?

11 A. I mean, it's -- typically we initiate the
12 conversation because the ads posted and they're looking for
13 the act. Not every time it works.

14 Some of the girls will call and will just say, hey, you
15 can -- you know, the fake names that they have on the ad, and
16 most times you get a response immediately.

17 Q. Okay. So -- well, let's break that one down,
18 because yeah, I guess that's the first part. So, that's how
19 you initiate contact?

20 A. Sure.

21 Q. And that would be if you are pretending to be a
22 john looking for sex from that girl, right?

23 A. Correct.

24

25

1 Q. Do you ever pretend to be a female looking to lure
2 a john to you?

3 A. Yes.

4 Q. Okay. Is that done kind of the same way, just in
5 reverse?

6 A. Yes, sir.

7 Q. And so then you'll actually have an undercover
8 agent pretending to be a female trying to get some guy to
9 come to the hotel, right?

10 A. Yes.

11 Q. And generally speaking when -- well, so then if
12 you're the john though, let's just stick with that one, how
13 do you get the person to come to you and how do you know it's
14 the right person?

15 A. Well, during the conversation once the act has been
16 agreed upon between the two on the phone we give out a
17 location to the hotel we're at and try to get a vehicle
18 description. We do research on the phone number to see if we
19 can ID the person.

20 Q. Oh, okay. And then I guess the person comes up to
21 the room, right? Is the goal or no?

22 A. Yes. We don't give the room number out until they
23 pull into the parking lot.

24 Q. I see. So -- and is that for safety reasons?

25 A. Yes.

1 Q. Yeah. So then if the person comes up to the room
2 and you -- I guess you -- do you have an undercover there in
3 the room pretending to be the john?

4 A. Yes.

5 Q. And then do you have a separate team?

6 A. Yes.

7 Q. And so then how is it the case that that arrest
8 generally goes down? Is there an interaction between the
9 undercover and the girl?

10 A. There is, yes.

11 Q. And then is there like a code word or something
12 like that?

13 A. We know prior to them arriving in the room whether
14 their probable cause already exists for the arrest. If
15 probable cause does exist then as soon as they enter the room
16 the arrest team moves in and takes them into custody.

17 Q. Okay. But generally speaking there's a separation
18 between the arrest team and the undercover, right?

19 A. Yes, sir.

20 Q. So, the undercover stays in the role of the
21 undercover and the arrest team stays in the role of the
22 arrest team?

23 A. Yes, sir.

24

25

1 Q. Okay. And I think you had told me earlier,
2 sometimes even the undercover gets out of the way and like go
3 in the bathroom or something, then all of the sudden the take
4 down team's there. Is that true?

5 A. Yeah, that's true depending on where they're at
6 when the arrest team comes in.

7 Q. Okay, sure. So then let's talk about how you first
8 came -- do you know someone that we now know as Mary Ellis?

9 A. Yes, sir.

10 Q. How did you first hear about her?

11 A. It was through a complaint that was sent to my
12 sergeant at the time.

13 Q. Okay. And that complaint, was that -- that was
14 sent -- is that Sergeant Fernez?

15 A. Yes, sir, Steve Fernez.

16 Q. Okay. And did that come from another member of
17 BCSO at the time?

18 A. Yes, sir.

19 Q. All right. And so Sergeant Fernez told you about
20 Mary Ellis and then what did you do? Did you start keeping
21 an eye on her?

22 A. Yeah, we just opened a case on her, against her.

23 Q. Sure. And was that mainly you or was it you and
24 somebody else?

25 A. Be myself and Agent Steurwald.

1 Q. Okay. And so -- and part of your case against
2 her -- now, I think, you know, this keeping an eye on Mary
3 Ellis situation, what did you guys do to go ahead and start
4 building your case on her?

5 A. Just conduct surveillance at her house.

6 Q. How many times do you think you did that?

7 A. Prior to the first day actually making contact with
8 her would be four, five times.

9 Q. Okay. So -- and we'll talk about -- we'll talk
10 about all that stuff --

11 A. Sure.

12 Q. The first day and the second time, no problem.

13 A. Sure.

14 Q. We'll get to all of it. So, you think you
15 conducted surveillance on her home four or five times prior
16 to the first time you made contact with her?

17 A. Yes, sir.

18 Q. And in those four or five times did you ever
19 witness any criminal activity?

20 A. At the house, no.

21 Q. Okay. And you -- did you ever witness anything
22 that had anything to do with John Derossett?

23 A. No, sir.

24

25

1 Q. Okay. And so this four or five times you're
2 keeping surveillance you don't notice anything, and then is
3 there a fifth time or a sixth time, whatever it was, where
4 you did have an interaction?

5 A. Yes, sir.

6 Q. Now -- oh, by the way, in those four or five times
7 you said there were no -- you didn't notice any criminal
8 activity. So, that would go for prostitution or drugs,
9 right? You just didn't notice anything in your surveillance?

10 A. Correct.

11 Q. This next time is it fair to say you also, at least
12 initially, didn't notice anything that was out of the
13 ordinary either, right?

14 A. Correct.

15 Q. What you saw was John Derossett, who we now know as
16 John Derossett, drive a car that Mary Ellis also got into,
17 right?

18 A. A truck, correct.

19 Q. A truck. I'm sorry. That -- the truck that we
20 know about.

21 A. Correct.

22 Q. Was that truck there on August 20, 2015, that same
23 truck?

24 A. Yes, sir, yes.

25

1 Q. Okay. And luckily we have these demonstratives.
2 Is this the truck? I'm showing the witness what is -- this
3 is Defendant's Exhibit 3. Is this the same truck that we're
4 talking about?

5 A. Yes, sir.

6 Q. So, it's -- what is -- how would you describe that
7 truck?

8 A. Silverado, 1500.

9 Q. Yeah, that's what I think too. So, this fifth or
10 sixth time you actually saw them both get in this blue
11 Silverado. And then -- by the way, do you know how
12 they're -- if they're related?

13 A. That's his niece.

14 Q. Okay. Did you know that at the time?

15 A. I don't believe so, no.

16 Q. All right. So then what did you do once you saw
17 them get into the blue Silverado?

18 A. We just followed them to Cocoa Beach.

19 Q. Okay. Now, was there any probable cause for any
20 arrests or anything like that at this point?

21 A. No, sir.

22 Q. Okay. And did you have any real reason to follow
23 them, except for you were just kind of keeping an eye on
24 Mary?

25 A. Yes, that's it.

1 Q. And your concern at the time certainly had nothing
2 to do with Mr. Derossett, right, John?

3 A. No, sir.

4 Q. Okay. And when -- just one moment. Okay, so, when
5 they got to Cocoa Beach did you notice whether -- what
6 happened? Let's take it in parts. I'll let you tell the
7 story.

8 A. Sure. As we followed them southbound on A1A they
9 made an eastbound turn on Cleveland Avenue next to the male
10 establishment. Drove to Ridge --

11 Q. Male establishment being a strip club?

12 A. Strip club, yes, sir.

13 Q. So, that's a legitimate business though, right?
14 It's not like an illegal --

15 A. Yeah, Lido's Cabaret.

16 Q. Okay.

17 A. They continued to Ridgewood, and from Ridgewood
18 they headed south -- I'm sorry, correction, northbound to a
19 stop sign.

20 Q. And this whole time you and -- is Agent Steurwald
21 with you?

22 A. Yes, sir.

23 Q. You guys are following them?

24 A. Yes.

25

1 Q. And is that in an unmarked car?

2 A. Yes, sir.

3 Q. Okay. And by the way, were you dressed in plain
4 clothes, or do you remember?

5 A. I was in plain clothes wearing a tact vest and my
6 long sleeve shirt.

7 Q. Okay. So, we've heard a lot about that. So, this
8 is the black long sleeved shirt, right, with sheriff written
9 down the sleeves?

10 A. Yes, in yellow bold print.

11 Q. Exactly. And a black tact vest with sheriff
12 written across the front and the back, right?

13 A. Yes, sir.

14 Q. Also in yellow bold print?

15 A. Yes, sir.

16 Q. Okay. What is Agent Steurwald dressed in?

17 A. Same attire.

18 Q. But nonetheless, the vehicle itself from the naked
19 eye you couldn't tell if that had -- if it was a police car,
20 right?

21 A. No.

22 Q. It was unmarked is my point.

23 A. Yes.

24

25

1 Q. Okay. So, eventually does Mary get out of the --
2 Mary Ellis get out of the car?

3 A. Yes, sir.

4 Q. And you didn't quite see where she went, right?

5 A. As he approached the stop sign the vehicle came to
6 a stop and she exited the vehicle onto the sidewalk.

7 Q. Yeah, that's what I'm saying. But you couldn't --
8 could you tell exactly where she went?

9 A. No, she ended up -- as he pulled away, made a
10 westbound turn, she crossed the street towards some
11 townhomes.

12 Q. Okay. And by the way, outside of this -- and then
13 you continued to follow Mr. Derossett around, right?

14 A. Yes, sir.

15 Q. Okay. So, as you -- you know, aside from this one
16 time that you know he drove a car his niece was in, did you
17 ever see John Derossett drive Mary Ellis anywhere in your
18 life?

19 A. No, sir.

20 Q. Have you ever seen John Derossett interact with
21 Mary Ellis ever in your life?

22 A. No, sir.

23 Q. All right, so, do you continue to follow the car
24 around?

25 A. Yes.

1 Q. And what does it do? Does it come -- how long does
2 it take? How long you following him?

3 A. Probably five or six minutes.

4 Q. Okay. And then he comes back to the same location?

5 A. Yes. It appeared he continued to circle the block
6 and we assumed he was going to eventually go back to where --
7 pick her up where he dropped her off.

8 Q. And then he did do that?

9 A. Yes.

10 Q. And so when she -- so, five or six minutes later
11 does she come back to the car?

12 A. I'd say within ten minutes she was back at the car.

13 Q. Ten minutes, okay. And then after she gets back in
14 the car -- and by the way, had John Derossett ever gotten out
15 of the car as far as you know?

16 A. In the six minutes we were following him, no, sir.

17 Q. Okay. And how did -- where did we get the extra
18 four minutes? Did you lose him for a little bit?

19 A. No, as he continued to circle around the block,
20 like I said, we figured eventually he -- because he was
21 circling the block he was just going to go back and pick her
22 up.

23 Q. Probably come back, okay.

24 A. Yes.

25

1 Q. And so did you witness any illegal activity?

2 A. No, sir.

3 Q. By the way, this entire night with the interaction
4 of both of them, did you witness any illegal activity?

5 A. Just the traffic violation.

6 Q. Well, we'll talk about that, but any criminal
7 activity?

8 A. No, sir.

9 Q. All right. So, you actually make a stop of the
10 vehicle, right?

11 A. Yes.

12 Q. What was the traffic violation for?

13 A. I believe it was a stop sign violation. Agent
14 Stuerwald was driving.

15 Q. So, you wouldn't know or?

16 A. No, I believe it was a stop sign.

17 Q. Was a citation issued?

18 A. I don't believe so, no.

19 Q. Okay. But really you guys wanted to talk to them,
20 right?

21 A. Well, that too, yes.

22 Q. Okay. So, in any event did you ask them both to
23 get out of the car?

24 A. Yes.

25

1 Q. And did they comply?

2 A. Yes.

3 Q. Were they cooperative?

4 A. Yes.

5 Q. Did you ask Mr. Derossett if -- for consent to
6 search the vehicle?

7 A. Yes, we did.

8 Q. And did he willingly give it to you?

9 A. Yes.

10 Q. And did you search the vehicle?

11 A. Yes, sir.

12 Q. Did you also have a conversation with Mr.
13 Derossett?

14 A. I did.

15 Q. You personally?

16 A. Yes.

17 Q. And did you tell him that you had reason to believe
18 that his niece was engaging in prostitution activities?

19 A. Yes.

20 Q. And he then -- did he deny any knowledge of that?

21 A. Yes.

22 Q. So, as we sit here he didn't admit knowledge to you
23 of any of the things that you were saying?

24 A. He didn't admit to it, no.

25

1 Q. Okay. Did you end up searching her purse?

2 A. I don't believe she had a purse.

3 Q. Oh, okay. However, did you find what you believed
4 to be her cell phone?

5 A. Yes.

6 Q. Is the reason you think it's her cell phone because
7 it looked a little girlie?

8 A. That's -- yes.

9 Q. Okay. Like with the background and case. Is that
10 what it was?

11 A. Yes.

12 Q. All right. Did you also find some cash in the car?

13 A. Yes, sir.

14 Q. And was that near her cell phone?

15 A. It was underneath her cell phone.

16 Q. Underneath her cell phone, okay. And was that sort
17 of the end of it?

18 A. Basically, yes.

19 Q. And then they left and everyone went on their way,
20 right?

21 A. Yes.

22 Q. There were no arrests?

23 A. No, sir.

24

25

1 Q. And still no suspicion in SIU. I mean, you didn't
2 open a case on John Derossett at that time, right?

3 A. No, sir.

4 Q. Okay. So, let's fast forward then. There was
5 another interaction, right, with Mary Ellis?

6 A. Yes, sir.

7 Q. And how long after this first interaction was the
8 second interaction?

9 A. I'd say within two weeks maybe.

10 Q. Okay. And I know it's been like three years, so
11 I -- forgiveness is extended there on these exact times.

12 A. Okay.

13 Q. But you think it was a little after that first time
14 there was another time that you had interaction with this
15 woman, right?

16 A. Yes.

17 Q. And by the way, just to give the Court an
18 orientation, how long before the incident we're here tonight,
19 which would have been August 20, 2015, was this middle time?

20 A. The beginning of August I'd say.

21 Q. Okay. So, some weeks before the incident on
22 August --

23 A. Between July 20th and August 20th.

24 Q. Well, why do you say July 20th?

25 A. I believe that was the traffic stop date.

1 Q. Is it entirely possible that July 20th was the date
2 of her first arrest?

3 A. That may be.

4 Q. Okay. So, whatever, some time that summer though?

5 A. Right.

6 Q. And so what happened on that July -- well, what
7 happened on this time? Was this -- let's call this the CVS
8 event. Is that fair?

9 A. Perfect.

10 Q. All right. What hap -- tell me about the CVS
11 event.

12 A. We made contact with Mary via her ad on Backpage.

13 Q. All right, let's just stop there. So, here we go
14 again. We're have -- it's the SIU, you're pretending to be,
15 what, a john?

16 A. Yes, sir.

17 Q. Looking for sex?

18 A. Correct.

19 Q. At this time you came across what you believed to
20 be Mary Ellis' Backpage ad?

21 A. Yes.

22 Q. And you asked her -- and you then contacted her,
23 right?

24 A. Yes.

25

1 Q. All right. And ultimately was a sex act agreed to
2 for a certain price?

3 A. Yes.

4 Q. Was that over text?

5 A. I don't recall if it was text or --

6 Q. Who was the undercover in that case?

7 A. I believe it was Agent Simon, James Simon.

8 Q. Okay. So, was it determined that there was going
9 to be a meeting place to go?

10 A. Yes.

11 Q. And was that going to be the CVS?

12 A. Yes.

13 Q. Okay. So, no one met at her house, right?

14 A. No. I believe she directed us to the house, but we
15 changed it to the CVS.

16 Q. Okay. And the CVS is nearby, isn't it?

17 A. Yes.

18 Q. So, in any event, you guys end up meeting her at
19 the CVS parking lot, right?

20 A. Yes.

21 Q. And is Agent -- who's with you?

22 A. Agent Steurwald and Agent Smith.

23 Q. Okay. And then you think it was Agent Simon that
24 was the undercover?

25 A. I believe so, yes.

1 Q. Did -- okay. So then when Mary Ellis gets to -- or
2 who you -- I guess you now know what she looks like, right,
3 by the time the CVS event rolls around?

4 A. Yeah, she had her pictures posted with her ad.

5 Q. On the Backpage ad?

6 A. Yes, sir.

7 Q. All right. So, what happens next?

8 A. We had surveillance, pre-surveillance on the house
9 on Covina. Agent Colby Woodward was in an unmarked vehicle.
10 He observed Mary exit the residence, get into her -- I
11 believe it was a green BMW --

12 Q. Okay.

13 A. (Cont'd) and drive to this CVS.

14 Q. All right. Now, a solicitation -- the crime that
15 you're actually trying to bust her for, that's a second
16 degree misdemeanor, right?

17 A. Correct.

18 Q. So, that's like the lowest possible on the level of
19 crimes, right, as far as severity?

20 A. Close, yes.

21 Q. What's less?

22 A. Third degree.

23 Q. Okay, that's all right. No problem. So, but in
24 any event, you do know that solicitation is enhanceable,
25 right?

1 A. Yes.

2 Q. So, if you get a couple of those, maybe three, you
3 can -- it can all of the sudden get pretty serious, right?

4 A. Yes, sir.

5 Q. All right. But it starts out as a pretty low level
6 offense?

7 A. Correct.

8 Q. Okay. And by this time she had never been arrested
9 for solicitation before in her life, right, as far as you
10 knew?

11 A. Correct.

12 Q. So, this would have been her first misdemeanor
13 arrest for solicitation?

14 A. Yes.

15 Q. And so when she drove the vehicle was John
16 Derossett in the vehicle?

17 A. No.

18 Q. Did John Derossett have anything to do with setting
19 up the text exchange between your undercover and Mary?

20 A. Not that I'm aware of.

21 Q. Okay. And I mean -- and was there any mention of
22 John Derossett in this whole thing?

23 A. No, sir.

24 Q. Or her uncle or anything like that?

25 A. No.

1 Q. And so really as far as you guys understood she
2 just did this on her own, right?

3 A. Correct.

4 Q. So, some undercover contacted her from her ad and
5 she responded, and then she showed up and drove herself,
6 right?

7 A. Yes.

8 Q. No mention of him?

9 A. No.

10 Q. Did you ultimately arrest her?

11 A. Yes.

12 Q. So, when you arrested her was she -- did she
13 resist?

14 A. Not that I recall, no.

15 Q. Did she fight you?

16 A. No.

17 Q. Did she scream or anything?

18 A. I don't believe so, no.

19 Q. Okay. So, it's relatively an arrest without
20 incident, relatively peaceful?

21 A. Yes.

22 Q. And she just went with you and that was that?

23 A. Yes.

24

25

1 Q. By the way, during this arrest was it daylight
2 hours, or was it night time hours, was it in between?

3 A. Mid evening I'd say.

4 Q. Was it still light out though?

5 A. Yes.

6 Q. Okay. Like dusk I think is what you told me?

7 A. Yes.

8 Q. All right. And in your surveying of Mary Ellis and
9 you know, this whole thing, as far as you know the only time
10 anyone ever met her at her house was the night in question,
11 right?

12 A. Yes.

13 Q. August 20th. Now, I want to go ahead and -- oh, by
14 the way, you -- in your training and experience you
15 understand acronyms, right, like sexual acronyms?

16 A. Yes, sir.

17 Q. Like FS?

18 A. Yes, sir.

19 Q. What does that mean?

20 A. Full sex.

21 Q. QV?

22 A. Quick visit.

23 Q. HH? You giving answers?

24 MR. RESPESS: Not me, no.

25 THE WITNESS: I'm not sure

1 MR. PANELLA: I heard someone. Yeah, I feel like
2 I'm in school. No problem.

3 BY MR. PANELLA:

4 Q. But the bottom line is you know what these sorts of
5 things mean, right? It's sort of street lingo for how much
6 time or what you want or whatever, right?

7 A. Yes.

8 Q. And then you can agree upon some money, you know,
9 along the way?

10 A. Yes.

11 Q. All right.

12 MR. RESPESS: So, what was HH?

13 THE COURT: Whole hour.

14 MR. RESPESS: Huh?

15 THE COURT: Whole hour. Wasn't it?

16 MR. PANELLA: I think -- I don't want to -- counsel
17 shouldn't testify. I know the answer, but.

18 MR. RESPESS: Really?

19 MR. PANELLA: Yeah.

20 THE COURT: Really?

21 MR. PANELLA: I've read -- two and a half years on
22 this case Judge.

23 THE COURT: That's what he says now.

24 MR. PANELLA: Now I know there's a new website that
25 still exists. All right, so -- moving on Agent Roberts.

1 BY MR. PANELLA:

2 Q. The bottom line is you were aware who this person
3 was, right, Mary Ellis?

4 A. Yes.

5 Q. So, let's talk about why we're here, August 20,
6 2015. What was going on that day?

7 A. We were assisting the Titusville Police Department
8 with a hotel operation.

9 Q. Okay, so, it was BCSO SIU and Titusville PD?

10 A. Yes.

11 Q. And this was going to be an undercover solicitation
12 at -- right?

13 A. Yes.

14 Q. At where?

15 A. I believe it was a Holiday Inn off of State Road
16 50, Titusville.

17 Q. Okay, one of those motels?

18 A. Yes.

19 Q. All right. And for -- you know, in normal life at
20 the SIU if you're not going to be part of the take down team
21 do you just generally wear plain clothes?

22 A. Well, everybody's in plain clothes.

23 Q. Well, I -- sure, I agree, except don't you also say
24 sometimes you wear those long sleeve shirts with sheriff
25 written on it?

1 A. During the operation everybody's dressed in their
2 tactical vest and their long sleeve shirt, yes.

3 Q. Okay. Except the undercover?

4 A. Except for the undercover.

5 Q. All right, understood. Aside from the long sleeve
6 shirt and the tactical vest are you otherwise wearing plain
7 clothes?

8 A. Yes.

9 Q. Okay. And I -- I mean, even like a baseball cap or
10 something like that, right?

11 A. Yes.

12 Q. And your preference is a backwards black Steelers
13 hat, right?

14 A. Yes, sir.

15 Q. All right. And on top of that you're not wearing
16 like police pants or anything, you wear jeans, right?

17 A. Yes, sir.

18 Q. And you can wear sneakers or boots or whatever you
19 want?

20 A. Yes.

21 Q. Now, what is your -- you're also issued a
22 department issued firearm, right?

23 A. Yes.

24

25

1 Q. And what is your preferable -- what's the firearm
2 you like to use?

3 A. The Glock 22.

4 Q. And why is that?

5 A. It's just what I carry.

6 Q. Are you also issued a Glock 27?

7 A. I am not, no.

8 Q. Okay. When you are dressed and you're concealed,
9 let's say that you are -- you know, you're not wearing the
10 tact vest and all that stuff --

11 A. Sure.

12 Q. And you're just undercover and you're on the
13 street. Tell me how you carry your weapon.

14 A. On my hip. I carry it inside or outside my pants.

15 Q. Okay. And you can actually fit the 22 inside your
16 pants?

17 A. Yes.

18 Q. Do you sometimes wear something -- if you're
19 wearing it on the outside of your pants how do you cover it?

20 A. With a flannel jacket.

21 Q. Okay. So, that's sort of how you go about your
22 day?

23 A. Yes.

24

25

1 Q. You might -- you know, and so people just don't see
2 it, right?

3 A. Yes.

4 Q. And do you also have a neck badge that has a
5 sheriff emblem, like a star?

6 A. Yes, sir.

7 Q. And where's that worn, if you wear it?

8 A. Under my shirt.

9 Q. Okay. So, the Glock 22, do you carry that topped
10 off?

11 A. Yes.

12 Q. 15 plus one, right?

13 A. Yes, sir.

14 Q. And do you have other magazines that you carry with
15 you, or does that just sort of depend on what's going on?

16 A. If I'm wearing my vest I have two extra magazines.

17 Q. All right. So, that would be a total of 46 rounds?

18 A. Correct.

19 Q. And so for example, and we're fast forwarding a
20 little bit, but just to knock some of this out, that night
21 did you have -- is that exactly what the case was?

22 A. Yes, sir.

23 Q. Two magazines plus your fully loaded weapon?

24 A. Yes.

25

1 Q. Okay. So, a total of 46?

2 A. Yes.

3 Q. So, in thinking back on the solicitation event of
4 August 20th, back at the hotel, where -- what time did you
5 get to the place?

6 A. 6 or 6:30 I believe.

7 Q. Okay. And you knew you were going to be doing
8 prostitution detail that night?

9 A. Yes.

10 Q. Were you posing as an undercover?

11 A. No, sir.

12 Q. Who was?

13 A. It depends on who responds to what ads. If it's
14 either a male undercover or female.

15 Q. Okay. How about in this case? Did you have Agent
16 Stead be an undercover?

17 A. Yes.

18 Q. Okay. Why was he chosen to be the undercover here
19 for what we're talking about?

20 A. Because he -- Mary wasn't familiar with him and he
21 was new to the unit.

22 Q. So, when you say he was new to the unit and she
23 wasn't familiar, meaning he was the right guy because she
24 wouldn't recognize he was a cop?

25 A. Correct.

1 Q. Because he had -- she had never seen his face,
2 right?

3 A. Yes.

4 Q. And when you say he was new to the unit was that
5 like his fourth day on the job?

6 A. Yes.

7 Q. Had he ever done a prostitution detail before?

8 A. Not that I'm aware of.

9 Q. Okay. So, this would have been his first go?

10 A. Yes.

11 Q. And were you sort of taking him under your wings,
12 showing him what to do?

13 A. Agent Steurwald and I, yes.

14 Q. Okay. And that -- you know, at some point did you
15 come across Mary's Backpage ad?

16 A. Yes.

17 Q. And was that one that you pointed out to Agent
18 Stead?

19 A. Yes.

20 Q. So then what was the -- what did you guys decide to
21 do at that point? Did you decide to make contact?

22 A. Yes.

23 Q. Who was the one that was actually texting her?

24 A. I believe it was Agent Stuerwald.
25

1 Q. Okay. Did you suggest certain things to Agent
2 Stead to say on the text, like hey, this might make you sound
3 more legit?

4 A. I don't think so.

5 Q. Okay. But you mentioned that he was chosen for the
6 job because he was new. Is it the case that he was also
7 chosen for the job with Mary specifically because she would
8 have been good training for him?

9 A. It would have been good training at the hotel
10 either way, any one of them.

11 Q. Yeah, but I'm saying wasn't Mary -- Mary was sort
12 of known to you, right?

13 A. Yes.

14 Q. And because you had just arrested her without
15 incident like three -- whatever you said, earlier that month
16 or that -- whatever, that summer, right?

17 A. Yes.

18 Q. And so wasn't it also the case that because she was
19 sort of a known entity and you knew her not to be violent
20 that you thought she would be a good person for Stead to kind
21 of cut his teeth on?

22 A. Typically we target the same girls poster ads on
23 Facebook. We've arrested multiple females off the same
24 website at different locations.

25

1 Q. Sure. I'm just saying that wasn't part of the
2 calculus that you were aware of how she acted and that she
3 wasn't violent or anything like that, and that that was part
4 of the calculus? That's my question. For why she'd be good
5 training.

6 A. I guess you could say that, yes.

7 Q. Okay. All right, so, who scheduled the appointment
8 to go ahead and visit and meet Mary -- okay, so, bottom line,
9 was a sex act agreed to?

10 A. Yes.

11 Q. And you guys were kind of talking dirty to her?

12 A. I don't recall the text messages.

13 Q. Okay. You don't know what they said?

14 A. I don't recall what exactly what was said during
15 the conversation.

16 Q. But do you recall that there was at some point an
17 interaction -- an agreement for money in exchange for sex?

18 A. Yes.

19 Q. And where was the meeting place going to be?

20 A. 1051 Covina.

21 Q. Okay. And you guys didn't like implore her to come
22 to the hotel, right, it just she suggested 1051 and that was
23 kind of that?

24 A. I believe so. Like I said, I don't remember the
25 entire conversation. It was --

1 Q. Okay. But as you sit here you don't recall saying,
2 like, no, we really need her to come to the hotel, it was
3 kind of like she said let's go to the house, fine, let's just
4 go to the house?

5 A. I believe Agent Steurwald was the one communicating
6 with her.

7 Q. Really?

8 A. I'm pretty confident, yes.

9 Q. All right. But as -- but nonetheless, you don't
10 recall then any push back on going back to 1051? There's
11 nothing you can sit here and tell us?

12 A. I don't recall that, no.

13 Q. Okay. So, who was the one who -- who formed the
14 team? How did you guys decide who was going to be going?

15 A. Agent Stuerwald and I did.

16 Q. Why Agent Stuerwald? He didn't go.

17 A. He was -- he basically took the main role as the
18 communications on the laptop computer that night for the
19 operation.

20 Q. Do they call him skinny?

21 A. Yes, sir.

22 Q. Okay. So, was he often doing like the texting and
23 stuff like that on the computer?

24 A. Yes.

25

1 Q. That's part of like his deal?

2 A. Yes.

3 Q. And he also pretends to be a female a lot of times,
4 right?

5 A. Correct.

6 Q. Okay. So -- all right, fine. So, nonetheless,
7 you -- how do you end up getting chosen? I mean, you were
8 obviously involved in the texting in the Mary stuff, right?

9 A. Correct.

10 Q. And you told us that you already told -- you told
11 Agent Stead who she was, right?

12 A. Yeah, through the ad that she posted, yes.

13 Q. I mean, did you make him aware, hey -- like we were
14 just talking about, the good training and all that stuff. I
15 mean, you had a conversation with Stead about her, did you
16 not?

17 A. I'm sure there was. I don't recall exactly what
18 was -- I mean, I know there was the ad, and she's arrested
19 before, and -- yes, we did have a conversation.

20 Q. Okay. So, I'm just wondering how it was decided
21 that it was going to be you, and Agent Stead, and Agent Smith
22 that were going to finally go out to the house and take her
23 down.

24 A. Well, Agent Smith was aware of her because he was
25 there during the traffic stop.

1 Q. Okay.

2 A. And I was more of one of the senior agents in the
3 unit and we -- Agent Stead was the undercover.

4 Q. Do you know why Agent Steurwald didn't go?

5 A. He was on the computer arranging the rest of the --

6 Q. So, he was still working?

7 A. Yes, with the other females and --

8 Q. Okay. Now, did Sergeant Fernez, was he aware that
9 you guys were going to be going over to the house?

10 A. He was at the store at the time.

11 Q. Okay. So, he may not have known?

12 A. He may not have.

13 Q. All right. Now, where did you go -- well, what
14 time do you think -- when it was finally time to go over
15 there the plan was that Agent Stead was going to be the
16 undercover, right?

17 A. Yes.

18 Q. And how did you -- did you -- who did you ride
19 with? Did you drive?

20 A. I rode with Agent Smith.

21 Q. Okay. In what vehicle?

22 A. His unmarked Silverado.

23 Q. Okay. And was that a department issued truck?

24 A. Yes.

25

1 Q. And what color was it?

2 A. Dark blue.

3 Q. Okay.

4 A. Almost a black.

5 Q. What's that?

6 A. Almost a black.

7 Q. It was a dark color?

8 A. Dark.

9 Q. And it was unmarked so you couldn't tell that it
10 was a police car from the outside, right?

11 A. No.

12 Q. Now, who drove?

13 A. Agent Smith.

14 Q. And you rode shotgun?

15 A. Yes, sir.

16 Q. And then what did Agent Stead take?

17 A. His department issued unmarked vehicle.

18 Q. Okay. Do you know what color that car was?

19 A. I believe it was a black Mazda.

20 Q. Okay.

21 A. I don't recall exactly.

22 Q. All right. Now, when you left -- what time did you
23 leave the hotel to go ahead and initiate all of this?

24 A. Say around 9:00.

25

1 Q. And did you go anywhere before you went to the
2 house?

3 A. Went to the CVS.

4 Q. Okay. What happened there? Is this the same CVS?

5 A. Yes.

6 Q. All right.

7 A. US1 and Fay Boulevard.

8 Q. What happened there?

9 A. We basically regrouped there just to make sure
10 everybody was together and that we would go in at the same
11 time.

12 Q. Did -- was there -- did you guys formulate a plan
13 or something of who was going to do what?

14 A. Yeah, Agent Stead -- well, Agent Stead was already
15 assigned as the undercover and where he was going to park,
16 and then where we were going to park and approach.

17 Q. Okay. And so it was determined that Agent Stead
18 was going to be the undercover?

19 A. Yes.

20 Q. And you and Agent Smith were going to be the take
21 down team, right?

22 A. Correct.

23 Q. And so did you discuss with Agent Stead, as the
24 undercover, what his role was to do?

25 A. Yes.

1 Q. Was it to get Mary to come out of the house?

2 A. Yes.

3 Q. All right. And when you were at the CVS -- I mean,
4 how long was that conversation, just a brief planning
5 session?

6 A. Yeah, two minutes.

7 Q. Was there any plan about what would happen if
8 something went wrong?

9 A. No, sir.

10 Q. Okay. So, what time would you say you got to the
11 actual house?

12 A. 9:15 maybe, approximately.

13 Q. All right. But it was dark out, right?

14 A. Yes.

15 Q. And it was certainly night time, the sun was long
16 gone?

17 A. Yes.

18 Q. So, I'm going to go ahead and give you -- may I
19 approach Judge?

20 THE COURT: Certainly.

21 MR. PANELLA: Deputy Roberts, I'm showing you
22 Defendant's Exhibit B. We've been using this to try to
23 help orient everybody.

24 MR. RESPESS: Is that 2?
25

1 MR. PANELLA: 2 I meant to say. Thank you Mr.
2 Respass. Defendant's Exhibit 2.

3 BY MR. PANELLA:

4 Q. Do you -- sir, do you recognize this?

5 A. Yes.

6 Q. Okay. What do you -- what is this?

7 A. 1051 Covina.

8 Q. Okay. So, is this the residence that we're talking
9 about?

10 A. Yes, sir.

11 Q. And aside from the fact that this is, you know,
12 daylight and this obviously -- you just told us this happened
13 at night. Is it the same in the streets and everything?

14 A. Yes.

15 Q. Okay. So, where did you and Agent Smith park?

16 A. To the west on Alcazar.

17 Q. Okay. And let me give you -- oh, you have a pen.
18 Why don't you show the Judge. It's kind of weird with this
19 overhead, but yeah.

20 A. Yeah. I would say near this shadow area. I can
21 mark it.

22 Q. Sure.

23 A. Right here.

24 MR. PANELLA: We'll move to substitute. No, you
25 don't want to?

1 MR. RESPESS: No.

2 THE WITNESS: No?

3 MR. RESPESS: Let's just --

4 THE WITNESS: This don't work anyway. I can point.

5 MR. PANELLA: I think we should -- I think we
6 should for the record.

7 MR. RESPESS: Why don't you show him the diagram
8 and then he can adjust -- use one of the diagrams that
9 doesn't have it on there.

10 MR. PANELLA: I'd like for him to have something to
11 mark if he'd like to mark, so. Do we have an extra one
12 that hasn't been submitted into evidence yet?

13 MR. SCHEINER: No, but we can photo copy that one.
14 It'd be --

15 MR. PANELLA: Let's do that. Is there any way we
16 can get a photo copy?

17 THE COURT: Sure. There's one right there.

18 THE CLERK: It's not going to be in color.

19 THE COURT: Right, it'll be black and white.

20 MR. PANELLA: Can we get two just in case this
21 comes up again. Thank you.

22 THE CLERK: Okay.

23 MR. PANELLA: Thanks.

24

25

1 BY MR. PANELLA:

2 Q. So, we have a photo copy here. It's a little
3 darker, but I think we get the picture. We've been looking
4 at this all week.

5 A. Pen doesn't work either.

6 Q. I'll give you a better one.

7 MR. SCHEINER: Here's a Sharpie, blue Sharpie, red
8 Sharpie.

9 MR. PANELLA: I'll take both. Oh, let's do --
10 yeah. So, with a blue Sharpie why don't you just show
11 us where you guys parked.

12 MR. SCHEINER: Here's a red marker.

13 MR. PANELLA: Look at that. Thank you Mr.
14 Scheiner.

15 BY MR. PANELLA:

16 Q. Okay. And so that -- what road is that?

17 A. Alcazar.

18 Q. Okay. And where did Agent Stead park, do you know?

19 A. Here I believe.

20 Q. Okay. But where -- from where you're parked you
21 were certainly out of view of anybody in the house, right?

22 A. Yes.

23 Q. Like, would they have been able to see your truck
24 over there?

25 A. No, sir.

1 Q. Were you purposely parking out of view so you would
2 not be noticed?

3 A. Yes.

4 Q. Okay. And is that because you guys were going to
5 be the take down team?

6 A. Yes.

7 Q. Okay. So, show us how you approached -- and I
8 don't want you to mark this yet because I'm going to ask sort
9 of where you were later, but just show us if you could with
10 your pen how you approached the residence.

11 A. We approached from the rear of the vehicle, across
12 the yard, to the northwest corner of the house.

13 Q. Okay. And would you say that it's, you know,
14 pretty dark in the yard?

15 A. On this back corner section, yes, I would say it
16 was dark.

17 Q. Okay. Now, when you get there -- so are you
18 hanging out kind of here waiting for Agent Stead?

19 A. Yes.

20 Q. Okay. Now, how does Agent Stead approach?

21 A. He comes from his vehicle, the driver's side, up
22 the driveway to the sidewalk, straight to the front door.

23 Q. All right. Did you -- were you still giving sort
24 of directions to Agent Stead about certain things while he
25 was approaching?

1 A. No, sir.

2 Q. Well, for example, do you recall talking about a
3 car that may have been in the driveway?

4 A. I believe the interior -- it appeared the interior
5 lights were on in one of the vehicles.

6 Q. Okay. And did you ask -- did you direct him to go
7 ahead and check that out and make sure that there wasn't
8 someone there or something fishy going on?

9 A. Yes, that was prior to his arrival, yes.

10 Q. Well, I'm saying when you guys had arrived I
11 think -- is it the case that you noticed that car with the
12 running lights on?

13 A. Yes, as we came south on Alcazar.

14 Q. Okay. And as Agent Stead was approaching did you
15 tell him, or maybe right before he got there, did you tell
16 him to check out the car?

17 A. Yes.

18 Q. Okay. Was that -- how did you communicate that to
19 him?

20 A. Maybe a phone call or --

21 Q. A phone call or something. Like, he didn't have
22 like a pack set on or anything, right?

23 A. No, sir.

24

25

1 Q. Okay. And by the way, what was he wearing that
2 night?

3 A. Just plain clothes.

4 Q. So, like a T-shirt, jeans?

5 A. Yeah, jeans or shorts, yes.

6 Q. Something like that.

7 A. I believe jeans.

8 Q. Okay. Now, from where you were in that corner you
9 initially wouldn't have been able to see -- would you -- were
10 you able to initially see Agent Stead at the front door?

11 A. Yes.

12 Q. Okay, you could?

13 A. I could see him walk up the driveway.

14 Q. Okay. I'm saying could you see him though once he
15 got all the way up to the door?

16 A. Yes, sir.

17 Q. Okay. So, you had a clear view of him?

18 A. Yes.

19 Q. All right. And what did you hear him do next?

20 A. I watched him as he knocked on the door.

21 Q. Okay. So, do you recall if there's a screen or
22 anything like that?

23 A. I believe there's an exterior door.
24
25

1 Q. Do you know if he opened that, if Ms. Ellis opened
2 that, if it's even there?

3 A. I believe he opened it.

4 Q. Okay.

5 A. And then knocked on the door.

6 Q. Do you know if he was holding it open or?

7 A. I believe so.

8 Q. Do you know how?

9 A. With his hand. I'm not sure.

10 Q. Yeah, it's fine.

11 A. I'm really -- I mean --

12 Q. It's just whatever you remember.

13 A. Right.

14 Q. That's all. Okay.

15 A. Yeah.

16 Q. All right, you said you heard a knock on the door?

17 A. Yes.

18 Q. And then did -- what did you hear -- do you know if
19 the front door opened?

20 A. Yes.

21 Q. Do you know who opened the door?

22 A. I couldn't see as they were opening the door, but
23 as they stepped out, yes.

24 Q. And who do you believe that to have been?

25 A. Mary.

1 Q. Okay. So, what -- did you ever witness in this
2 initial thing anything about John Derossett?

3 A. No, sir.

4 Q. Okay. So, did you hear a short conversation
5 between them?

6 A. Yes.

7 Q. And ultimately -- how long would you say this
8 lasted, pretty brief?

9 A. Very brief.

10 Q. Like seconds maybe?

11 A. Yes.

12 Q. And then did you hear him identify -- did you hear
13 him -- what did you hear him say? I'll let you answer that.

14 A. He was greeted by Mary initially.

15 Q. Okay. And what did he say?

16 A. How you doing.

17 Q. Okay.

18 A. Hey, how are you.

19 Q. So, are -- is that what he said or you're not sure
20 what his words were?

21 A. I believe it's something of that nature. I don't
22 recall exactly, no.

23 Q. Okay. Then what happened immediately --

24 A. As he made contact Agent Smith and I approached
25 from the corner of the residence where we were at, directly

1 east to the front door.

2 Q. Okay. So, did he then -- what did he do next? Did
3 he grab her?

4 A. He grabbed her, yes.

5 Q. And did he pull her out of the house?

6 A. Yes. I saw him as he pulled out the neck badge and
7 I then -- I heard him say he was Sheriff's Office and pulled
8 her out --

9 Q. Okay.

10 A. (Cont'd) of the door as I was approaching.

11 Q. So, you heard him say Sheriff's Office as he was
12 pulling his neck badge out? Is that the way you were just
13 describing it?

14 A. Yes.

15 Q. And he also grabbed her?

16 A. Yes.

17 Q. And pulled her out of the door?

18 A. Yes.

19 Q. So, is it fair to say this whole thing was like one
20 transaction?

21 A. Yes.

22 Q. So, it's like Sheriff's Office, pulls out his
23 badge, grabs her, pulls her out of the door?

24 A. Yes.

25

1 Q. And then what does he do next?

2 A. By that time I was able to make it to the door step
3 as well.

4 Q. And is she -- what is Mary Ellis doing?

5 A. Trying to pull herself back into the house.

6 Q. Is she screaming?

7 A. Yes.

8 Q. Is she screaming loudly?

9 A. It was loud, yes.

10 Q. Was she going ballistic?

11 A. You could say so, yes.

12 Q. Okay. Only reason I bring that word in Agent
13 Roberts is because it's your word.

14 A. Correct.

15 Q. And if there's ever a time that you want to review
16 your prior statement I have it here for you.

17 A. Sure.

18 Q. So, we don't -- I don't have to sit here and -- you
19 can look at it if you ever want to. All right, so, tell me
20 your description of the way she was screaming.

21 A. She was screaming loud. She was saying help me,
22 help me.

23 Q. All right. And she -- okay, so now she's screaming
24 loudly, she's saying help me, help me, she's going ballistic,
25 she's pulling away? That's your testimony, right?

1 A. Correct.

2 Q. And was she screaming for a name?

3 A. At the time, yes, she was. I couldn't make it out
4 though.

5 Q. Okay. So, you couldn't tell us what name it was,
6 but it seemed like a name as well?

7 A. Yes.

8 Q. And screaming help me, help me?

9 A. Yes, it was help me, help me at first, and then it
10 was screaming for a name.

11 Q. Okay. And so then you said you came to assist.
12 What did you do?

13 A. I assisted him with pulling her out into the open
14 further.

15 Q. Okay. So, show us -- let's get the better one.
16 Show us where you -- when you say pull her out to the open
17 where did you pull her?

18 A. It's a close up. It's going to be just past the
19 pillars on the sidewalk.

20 Q. Okay. So, you're trying to get her away from the
21 door, right?

22 A. Just in the open, yes.

23 Q. All right. So, I'm going to have you -- the one
24 that we're marking up, I'm going to have you mark -- well,
25 how far into the -- away from the door do you think you got

1 her in your furthest point?

2 A. From the actual front door?

3 Q. Yeah, because at this point it's you and Agent
4 Stead, you know, pulling her, right?

5 A. Correct.

6 Q. All right. So, at the furthest point -- I know
7 eventually we're going to talk about another person, right,
8 but at the furthest away from the door you got her. How far
9 back do you think you were?

10 A. I'd say eight feet.

11 Q. So, show us on that one if that one -- if it's
12 clear enough. Otherwise we'll make a lighter one.

13 A. It's hard to give an accurate location. It's dark
14 and it's -- I mean, it's zoomed way out. I mean --

15 Q. It's the -- I think it's supposed to be the same
16 one as this. No.

17 A. It's more clear. The other one's black and white.
18 I can do the best I can.

19 Q. Okay. All right. So, you're struggling with her
20 and Agent Stead where you just, you know, marked that, right?

21 A. Yes.

22 THE COURT: May I ask a question? When you say
23 eight feet Agent Roberts are you talking about from the
24 door? Or Deputy. I'm sorry.

25

1 THE WITNESS: Yes, sir, from the actual threshold
2 of the door.

3 THE COURT: Okay, thank you.

4 THE WITNESS: Yes, ma'am.

5 THE COURT: Not from the edge of the slab?

6 THE WITNESS: Well, that's why I was -- I clarified
7 I thought with the --

8 THE COURT: When I say the edge of the slab I mean
9 the outer edge of the slab. Because I --

10 THE WITNESS: I would say within four feet past the
11 outside of the pillars.

12 THE COURT: Okay.

13 THE WITNESS: The two pillars.

14 BY MR. PANELLA:

15 Q. That's the outside of the -- okay. And would you
16 say that the -- actually, would you say that the -- that's a
17 good question. Would you say that -- how big do you think
18 that that slab is, the actual porch? Is it relatively small?

19 A. I believe they're commonly 4x6.

20 Q. Okay. Is it -- we're not talking about a big porch
21 here, right?

22 A. Correct.

23 Q. Okay. And so when Agent Stead was at the door and
24 originally approached her you have no reason to believe that
25 Mary would have thought he was anything but a john, right?

1 A. Until he pulled his neck badge out and --

2 Q. Right.

3 A. (Cont'd) announced himself.

4 Q. Until that moment.

5 A. Correct.

6 Q. But when she first opened the door and saw him he
7 was trying to convince her he was a john, right?

8 A. Well, yeah, that's the point of the undercover,
9 yes.

10 Q. Exactly. And so then you actually heard him switch
11 roles then, right?

12 A. Yes.

13 Q. And he went from being a john --

14 A. Yes.

15 Q. (Cont'd) to being a cop?

16 A. Yes.

17 Q. Now, by the time you approached were they already
18 in a struggle?

19 A. Yes.

20 Q. Okay. And was it pretty forceful?

21 A. Yes.

22 Q. And when he grabbed her arm was she on one side of
23 the door like on the inside of the door, inside of the house
24 in the threshold and he was just outside the porch when he
25 went and grabbed her arm?

1 A. As she opened the door she took a step outside, so
2 there was like a doormat.

3 Q. Yeah?

4 A. On the -- yes.

5 Q. Okay. So, I'm going to refer the State to page 84,
6 and I would refer to line 13. And sir, would you like an
7 opportunity to review your prior statement?

8 A. Sure, yes.

9 Q. Before I read it to you. Okay.

10 A. All right.

11 Q. All right. Have you had an opportunity to review
12 your prior statement?

13 A. Yes.

14 Q. Okay. So, what I want to know is when -- well, you
15 never mentioned anything about a mat before, right, in your
16 prior statement?

17 A. Correct.

18 Q. Okay. So, what I want to know is now that you've
19 had an opportunity to review that the question is where was
20 Mary when Stead reached and grabbed her arm and pulled her
21 out?

22 A. She was just outside of the actual threshold of the
23 door. When I approached she was actually using the door, the
24 frame of the door as leverage to try to pull herself in.

25

1 Q. Okay.

2 A. So, the --

3 Q. So, the question was when he grabbed her left arm,
4 though he isn't -- okay, when he grabbed her left arm though
5 he -- isn't it the case that she -- let's call it a door
6 threshold, right. He's on one side and she's on the other
7 and that's when he grabbed her arm. Answer: Yeah. So, is
8 that --

9 A. And later --

10 Q. (Cont'd) your testimony or is what you're saying
11 today?

12 A. Well, and later it says he was half way in and half
13 way out as if she's using the casing on the door to pull
14 herself back in the house.

15 Q. Okay, halfway in, halfway out. So, she didn't --
16 okay. So then she was -- you're saying that she's sort of
17 straddling it?

18 A. Correct, and --

19 Q. Halfway in and halfway out of the door.

20 A. And using the door frame to pull herself back in.

21 Q. I understand now. I'm glad you clarified.

22 A. As he had one of her arms.

23 Q. So, when she's -- so, when he's pulling her she's
24 literally straddling the door threshold, grabbing the wall,
25 and trying to pull herself back in?

1 A. Yes.

2 Q. When you approached?

3 A. Yes.

4 Q. Okay, I understand. Okay, so, is it fair to say
5 that the struggle was initially happening on the landing, on
6 that porch area until you got there?

7 A. Yes.

8 Q. And then you helped pull her out of there?

9 A. Yes, sir.

10 Q. Okay. And so the idea I suppose was to try to get
11 her into the yard and try to put her under arrest, right?

12 A. Right.

13 Q. Try to put cuffs on her?

14 A. Yes.

15 Q. Now, did cuffs ever make it on her?

16 A. No, sir.

17 Q. Okay. So, you said there's a part of the yard in
18 your deposition that's completely black, is that accurate?

19 A. Yes.

20 Q. And it's almost like a triangle I think you said,
21 like there's like kind of a cut from the house?

22 A. Yes.

23 Q. And could you show us on that -- don't draw on that
24 one, we'll let you do the other one, but show us on the
25 diagram in your perception where you feel like the completely

1 black part of the yard is.

2 A. I would say from the corner of the house where we
3 were initially approached to out to this way.

4 Q. Okay. So, that part of the yard you know is
5 completely black?

6 A. Well, from here this way.

7 Q. Okay. And so -- now, what I want to know is where
8 when you're struggling with Mary Ellis with Agent Stead
9 where's Agent Smith?

10 A. Standing behind us.

11 Q. Okay. So, if you could show us on there where --
12 so, we know where you said you were, somewhere, you know,
13 just off the landing. Where do you think he was?

14 A. Just to the west of us.

15 Q. Could you point? Which ever you'd like. That
16 one's worst.

17 A. I would say --

18 Q. He was out there?

19 A. Just here.

20 Q. Okay.

21 A. Right off the concrete.

22 Q. All right. Can you take that Sharpie and put an S
23 there?

24 A. Yeah, if it's legible.

25

1 Q. All right. I don't know. That's fine. And can
2 you -- all right. Yeah, that's good. So, do you remember
3 saying anything to Mary?

4 A. Yes.

5 Q. Okay. Your words were to me --

6 MR. RESPESS: Objection to leading.

7 THE COURT: Okay. What did he say?

8 MR. PANELLA: I didn't even ask a question yet.

9 MR. RESPESS: Well, he starts off your words
10 were --

11 THE COURT: Right.

12 MR. RESPESS: (Cont'd) which means he's going to
13 tell him what he thinks his words were rather than ask
14 him.

15 MR. PANELLA: I'll rephrase.

16 THE COURT: Right. You said did you say anything
17 to Mary, and then he didn't get a chance to answer.

18 MR. PANELLA: He said yes.

19 MR. RESPESS: He said yes.

20 THE COURT: He said yes?

21 MR. PANELLA: Yes, he said yes, and then I didn't
22 get to finish my next question.

23 THE COURT: Then the next question might be what
24 was that?

25

1 MR. PANELLA: That's okay Judge. I'll rephrase.
2 That's all right.

3 THE COURT: Okay.

4 MR. PANELLA: And then if I need to go in, to
5 drill in I will.

6 THE COURT: No worries.

7 BY MR. PANELLA:

8 Q. What did you say? Do you remember exactly what you
9 said?

10 A. Not exactly, no.

11 Q. Okay.

12 A. I told her to stop.

13 Q. You told her to stop?

14 A. Calm down.

15 Q. Calm down?

16 A. Yes.

17 Q. Okay. Were you yelling at her?

18 A. Yes.

19 Q. Okay. Now still at this point did you see John
20 Derossett anywhere? At this point.

21 A. No.

22 Q. And so from the entire time that Stead first
23 touched Mary, or grabbed her, pulled her, whatever, to the
24 time that you -- well, did you eventually somehow release
25 Mary Ellis?

1 A. Yes.

2 Q. Okay. And was that after you heard something else?

3 A. Yes.

4 Q. What was the other thing you heard?

5 A. Gun, gun, gun.

6 Q. Okay. And at that moment what did you do with Mary
7 Ellis?

8 A. I turned and looked inside the doorway --

9 Q. Yes.

10 A. (Cont'd) and saw Mr. Derossett coming around the
11 couch.

12 Q. Okay.

13 A. And I took Mary by the arms. Instead of
14 handcuffing her I threw her into the doorway.

15 Q. Okay. So, you actually sort of -- you threw her?

16 A. Yeah, I shoved her, yes.

17 Q. And was that sort of like a distraction or
18 something?

19 A. Yes.

20 Q. And you -- so, my question then is from the time
21 that Agent Stead first grabbed Mary to the time you threw her
22 did she ever stop screaming?

23 A. I don't believe so, no.

24 Q. Okay. So, it was a continuous thing?

25 A. Yes.

1 Q. And so you throw her. You hear gun, gun, gun. Who
2 said gun, gun, gun?

3 A. I believe it was Agent Smith.

4 Q. Okay. Are you sure? Or you're saying you believe
5 it was Agent Smith?

6 A. Yes.

7 Q. All right, that's fine. So, the question then
8 becomes do you see eventually John Derossett come outside?

9 A. Yes.

10 Q. And where is he?

11 A. Coming out the front door walking north on the
12 sidewalk.

13 Q. Okay. And what do you do?

14 A. I go try to retreat backwards and I ended up
15 tripping.

16 Q. Okay. So, let's zoom this in for you. If you look
17 at that TV it's probably easier.

18 A. Yes.

19 Q. Can you show the Court where you tripped?

20 A. In here. Here.

21 Q. Okay, so -- you know, so, what is that, like shrubs
22 or something like that?

23 A. Yes.

24

25

1 Q. All right. So, you end up tripping there, and do
2 you fall into that area?

3 A. Yes.

4 Q. Okay. But you still see him. Where's he?

5 A. He walked past me, down this sidewalk, and into the
6 front yard.

7 Q. Okay.

8 A. And stopped.

9 Q. And is it your understanding that he never saw you,
10 he didn't notice you?

11 A. I -- that's what I thought at the time, yes.

12 Q. And you thought that because you were so close to
13 him and he never even addressed you, right?

14 A. Correct.

15 Q. All right. Now, would you agree that this whole
16 thing happened very, very quickly?

17 A. Yes.

18 Q. And it was pretty obviously, you know, a traumatic
19 experience I'm sure for you, right?

20 A. Yes.

21 Q. So, do you know where Mary was when John came out
22 of the house and fired the initial shot?

23 A. No, sir.
24
25

1 Q. So, you can't tell us if she was out there, if she
2 was in there, if she was in the side yard, you just don't
3 know?

4 A. I know as I threw her into the house I assumed she
5 was back in the house.

6 Q. But you don't know where she was?

7 A. I didn't see her again, no.

8 Q. Okay. And I don't want to get ahead of it, but did
9 John Derossett -- did you witness him shoot his weapon?

10 A. Yes.

11 Q. Okay. And which direction did he shoot his initial
12 shot sir?

13 A. In the air.

14 Q. And at this time did you hear -- were you going for
15 your gun?

16 A. Yes.

17 Q. Trying to get it out obviously.

18 A. Yes.

19 Q. And were you trying to get it out in the first
20 place and that was why you tripped? Like, were you --

21 A. I don't believe so, no. I was trying to back
22 peddle.

23 Q. Right. And was part of that back peddling also
24 moving for your weapon?

25 A. Possible, yes.

1 Q. I mean, it's your -- okay.

2 A. Yes.

3 Q. So, in any event you get back up though, right?

4 A. Correct.

5 Q. And by now you have your weapon?

6 A. Correct.

7 Q. And what do you do?

8 A. I scream gun, gun, gun. I hear from the -- I look
9 over and I can see Agent Smith back peddling --

10 Q. Yes.

11 A. (Cont'd) through the yard as the initial shots
12 fired.

13 Q. Em-hmm.

14 A. At that time I was able to make it from the shrubs
15 to vehicle here next to the driveway. I'm --

16 Q. And you were -- I'm sorry, go ahead. Yeah.

17 A. Okay. And as I made it to my feet he lowered the
18 gun, and Mr. Derossett, I saw him fire three, four shots
19 towards Agent Smith.

20 Q. Okay. Now, when you came over to that direction
21 you're -- you are immediately going for your gun though once
22 you were at your feet, right?

23 A. Yes.

24

25

1 Q. I mean, you're a law enforcement officer and the
2 man's out there with a weapon, right?

3 A. Correct.

4 Q. Okay. And so as soon as you could though you fired
5 at Mr. Derossett, right?

6 A. Yes.

7 Q. Okay. And do you believe that you shot him?

8 A. Yes.

9 Q. How many times do you think you shot him?

10 A. Once.

11 Q. Now, up until the time you shot him was it still
12 your belief that he didn't even notice you?

13 A. Correct.

14 Q. Okay. And is it the case that your gun was out
15 about the same time he fired his first shot?

16 A. Yes.

17 Q. Okay. So, it wasn't like it was a long thing.
18 It's you saw the shot in the air, you run over, get your
19 weapon, he fires the first shot, your gun's already out?

20 A. Yes.

21 Q. Okay. And then you shoot?

22 A. As he lowers his gun and fires rounds toward Casey,
23 yes.

24

25

1 Q. Sure. But the whole thing is like super fast,
2 right?

3 A. It's fast, yes.

4 Q. Okay. Now, do you know if Agent Stead was shooting
5 too?

6 A. I believe so, yes.

7 Q. What makes you say that?

8 A. I could hear and see all the gunshots coming from
9 the west side of the house.

10 Q. Okay. So, you could actually hear and see Agent
11 Stead shooting in Mr. Derossett's -- in John Derossett's
12 direction, right?

13 A. Yes.

14 Q. And you could see -- could you see Casey shooting
15 in John Derossett's direction?

16 A. Yes.

17 Q. And you were shooting in John Derossett's
18 direction?

19 A. Yes.

20 Q. Now, you screamed gun, gun, gun you said, right?

21 A. Yes.

22 Q. And by now, by the time you screamed that gunfire
23 was already happening, right? Or was it not?

24 A. Just prior to it, as I was coming to my feet from
25 the bushes.

1 Q. Okay. And so that was sort of to confirm what you
2 believed Casey -- Agent Smith had said, right? Like, it is a
3 gun, you're right.

4 A. Yeah, it was basically when I heard gun I repeated
5 gun, gun, gun.

6 Q. Yeah.

7 A. And then made it to my feet.

8 Q. And he still didn't notice you even with you
9 screaming that near him, right, as far as you knew, as far as
10 you understood?

11 A. Correct.

12 Q. Knew he wasn't shooting at you, right?

13 A. Correct.

14 Q. And did he ever shoot in your direction until you
15 started shooting at him?

16 A. It was after.

17 Q. Okay. So, it was after you were shooting at him
18 that he started shooting in your direction?

19 A. Yes.

20 Q. What happened to him after he was hit?

21 A. He fell to the ground.

22 Q. Where was that?

23 A. I'd say -- I don't want to mark it. I'll just
24 point to it. This area right here.

25

1 Q. So, your testimony is that he fell to the ground
2 right there?

3 A. Yeah, it's in this area. I'm trying to --

4 Q. Okay. So, if I ask you -- I'm going to refer the
5 State to page 120. If I ask you where he went down I want to
6 know what your answer is. Can you describe the location for
7 me please?

8 A. It was to the west of the concrete slab.

9 Q. Okay. When you were previously asked the question
10 is -- and it's page 120, line 8: So, okay, you shoot him,
11 then what happens? You said he went down? Answer: He went
12 down. He goes down to the slab by the pillars. So --

13 MR. RESPESS: Goes to the slab.

14 MR. PANELLA: He goes -- he goes -- I'm sorry,
15 that's right. He went down. He goes to the slab by the
16 pillars.

17 THE WITNESS: Yes.

18 BY MR. PANELLA:

19 Q. So, can you explain? Is that -- that seems
20 different than what you're saying today. So, what do you
21 mean?

22 A. No, not at all. I -- when I -- he went down, he
23 was out here. Like I said, it's not to scale. He was in the
24 grass and then went to the pillars. And I watched as he went
25 to the pillars after he was shot.

1 Q. Okay. So, he went down -- where was he down on the
2 ground?

3 A. That's --

4 Q. If you don't -- and if you don't know, you don't
5 know.

6 A. No, it was in the grass area. I'm very familiar
7 with it, I was watching him.

8 Q. Okay.

9 A. He was shooting several rounds in my direction.
10 It's going to be in here. I'm trying to judge distance, but
11 like I say, this -- I can't really judge distance off the
12 sidewalk, but it was in this area.

13 Q. Is it your testimony that he was never down under
14 the covered porch area on the slab?

15 A. When he went to the porch, yes.

16 Q. He went down again?

17 A. He stayed down, yes.

18 Q. All right. Now, when Casey went down did you
19 notice that Casey went down as well obviously?

20 A. Yes.

21 Q. Did you know he was shot?

22 A. I heard him say I'm hit.

23 Q. Okay. Did you notice where he went down?

24 A. It was to the -- straight out from where Mr.
25 Derossett was initially.

1 Q. Okay. And is it fair to say that would be in some
2 of the dark spots that you were telling us about earlier?

3 A. No, it was on -- in the inside the -- it wasn't
4 inside the dark shadowy. When I made it -- go ahead. I'm
5 sorry.

6 Q. No, go ahead. It's okay. I'll show you -- I'll
7 ask you again. It's okay. Go ahead.

8 A. Okay. No, from when I initially went to -- when I
9 fired at Mr. Derossett --

10 Q. Em-hmm.

11 A. I was able to see Casey. As I went to the truck
12 and Derossett went down I no longer focused on Casey. I was
13 focusing on Mr. Derossett.

14 Q. Okay. So, is it your testimony today that it could
15 have been that Casey Smith went down in one of the dark areas
16 or you no he didn't?

17 A. It could have been.

18 Q. It could have been?

19 A. Yes.

20 Q. Okay, that's what I'm asking.

21 A. Yes.

22 Q. Okay. So, it very well could have been that where
23 he went down and where he was was in the dark shadowy area
24 that you told us about earlier?

25 A. It could have been. Like I said, he back peddled

1 and I'm -- my focus is on Mr. Derossett.

2 Q. Okay. And your focus was still, you know -- at
3 some point did the shooting come to a halt?

4 A. At that time, yes.

5 Q. Okay. And was it still your focus to eliminate
6 John Derossett?

7 A. At that point my focus was make it over to Casey.

8 Q. Was there anything else that you did before you
9 made it over to Casey?

10 A. I reloaded my firearm.

11 Q. Okay. Anything else?

12 A. I don't believe so, no.

13 Q. Did you look back over to the front door while you
14 were trying to assist Casey?

15 A. Yes.

16 Q. Did you notice whether John Derossett was there or
17 not?

18 A. He was there, yes.

19 Q. Was there a time that you looked over at the front
20 door and he was no longer there?

21 A. After he reengaged in a gunfight, yes.

22 Q. Well, that's what I'm -- that why -- yeah, I'm
23 trying to know what happened next. So, didn't you continue
24 to run across the yard and shoot in John Derossett's
25 direction?

1 A. No, when he went down initially, no. I did not
2 fire any more rounds at that time.

3 Q. Okay, so, then what is your testimony? What
4 happened?

5 A. I went down the driveway to the road and as I
6 got --

7 MR. RESPESS: Can we back that up so --

8 THE WITNESS: Yes, sir

9 MR. RESPESS: So we can -- just back it.

10 MR. PANELLA: I can do it.

11 THE WITNESS: Oh.

12 MR. RESPESS: Because the Court can't see what
13 you're doing. There you go.

14 THE WITNESS: I came down the side of the driveway,
15 and at this point I was reloading my firearm. And as I
16 came across the edge of the grass in the street,
17 directly in front of the front door I was continuing to
18 look at Casey and Mr. Derossett.

19 MR. PANELLA: Okay.

20 THE WITNESS: And he then grabbed his firearm and
21 reengaged with me.

22 MR. PANELLA: Okay.

23 BY MR. PANELLA:

24 Q. So, at that point were you exchanging gunfire with
25 him in the front of the house?

1 A. Yes.

2 Q. And so you were shooting in his direction?

3 A. And he was shooting in mine, yes.

4 Q. Okay. That's where -- I'm sorry Agent Rob --
5 Deputy Roberts. That's where I was -- I thought we were.
6 That's why I was asking what else did you do.

7 A. Okay.

8 Q. And so I'll help --

9 A. Oh, okay.

10 Q. (Cont'd) direct where we're at. So, bottom line,
11 you end up -- he goes down because you shoot him, you run
12 around and then there's another exchange of gunfire while
13 you're closer to the road?

14 A. Yes.

15 Q. And you're still shooting in John Derossett's
16 direction?

17 A. Yes.

18 Q. And I guess according to your testimony at this
19 point Agent Smith's already down, right?

20 A. Yes.

21 Q. He may have been down in a dark spot, you're not
22 sure at this point.

23 A. Correct.

24 Q. You're in the middle of a gunfight, right?

25 A. Correct.

1 Q. And you continue to engage him, right?

2 A. Yes.

3 Q. And your goal at that point is still to eliminate
4 John Derossett obviously.

5 A. Correct.

6 Q. Once you make it finally over to Casey Smith do you
7 at some point look back over at the door and notice whether
8 John's there or not?

9 A. Correct.

10 Q. Is he there?

11 A. No.

12 Q. And do you -- to this day do you have any idea how
13 he got inside? Would it be speculation for you to say if he
14 had help, or if he did it himself, or what?

15 A. I -- as I was exchanging fire with him from the
16 doorstep and I was in the road I retreated north across the
17 street into the neighbor's yard, and I could hear the bullets
18 whizzing by me.

19 And I basically -- and I gave it all I had. I covered
20 my face and just fired at the door. Because now I really
21 don't have any vehicles, I'm actually in the middle of the
22 road.

23 Q. No, I hear you, but what --

24 A. There's no trees, no cover, no nothing --

25

1 Q. I thought you ended up -- after that I thought you
2 ended up going over to assist Agent Smith?

3 A. I did.

4 Q. Okay. And by then was John Derossett still at
5 his -- in the -- was he gone?

6 A. As I was back peddling and firing and covering my
7 face and aiming at the light with Mr. Derossett --

8 Q. Em-hmm.

9 A. (Cont'd) watching his muzzle flash, I aimed at the
10 flash, covered my face, and retreated backwards and just shot
11 towards the door.

12 Q. How many rounds do you think you shot?

13 A. I have no idea. There was 16 in my gun. My gun
14 was fully loaded.

15 Q. And you reloaded, right?

16 A. On the way down there, prior to the second
17 exchange, yes.

18 Q. Do you have a flash -- I'm sorry. Did you have a
19 flashlight with you when you fell in the bushes?

20 A. There was probably one in my vest, yes.

21 Q. Was there one -- did you have one on at some point,
22 or no?

23 A. No.

24 Q. Okay.

25 A. No.

1 Q. When you're doing an undercover operation -- and
2 then you ended up tending to Agent Smith and drug him to the
3 side of the yard further, right?

4 A. Yes. After I made it up into the neighbor's house
5 across the street --

6 Q. Em-hmm.

7 A. (Cont'd) to the north I was firing, and as I was
8 backing up I looked and he was gone.

9 Q. Okay. When you're doing an undercover operation do
10 you ever put a wire on?

11 A. We do, yes.

12 Q. And did Stead had one in this case?

13 A. No, sir.

14 Q. Do you know why?

15 A. No, sir.

16 Q. Did he have his bug phone on or anything like that?

17 A. No, sir.

18 Q. So, looking back on this night is there anything
19 that you would have done differently?

20 MR. RESPESS: Objection.

21 THE COURT: Sustained, relevance.

22 MR. PANELLA: I -- can I explain the relevance?

23 THE COURT: Sure.

24

25

1 MR. PANELLA: My position on that is that the
2 relevance is that we're talking about this night.
3 Certainly not talking about subsequent remedial
4 measures.

5 Talking about my client's state of mind, what he
6 knew, the circumstances leading up to the events that he
7 witnessed, and if there's something that could have been
8 done differently that would have changed his perception
9 certainly I'd like to know the answer.

10 THE COURT: Well --

11 MR. RESPESS: Well, it's not relevant to -- what
12 we're here to find out is what happened and determine
13 whether or not the State can demonstrate that this
14 was -- this shooting was justified or not.

15 That's what I thought we were here for. So, any
16 Monday morning quarterbacking questions really has
17 nothing to do with the facts of this case.

18 They are what they are, and we're going to present
19 them and you're going to have to make a decision about
20 them when we get through this is what I anticipate. But
21 what purpose does it serve to ask someone would you do
22 something different?

23 I would prefer that none of this happen and the
24 woman get in the car and go to the -- go to jail. And
25 Mr. Smith doesn't get shot, and this fellow doesn't get

1 shot, and these people don't get shot at, but that
2 didn't happen.

3 THE COURT: Mr. Panella, is there anything you wish
4 to say in response?

5 MR. PANELLA: I -- it's relevant because I think it
6 goes to his state of mind. We can talk more about other
7 questions later.

8 THE COURT: All right, well, Mr. Panella,
9 respectfully the objection is sustained. We are all
10 going to go home tonight and probably think would have,
11 could have, should have done this, that, or the other.
12 And that doesn't change what is on the record when we
13 walk out of here today.

14 MR. PANELLA: I understand Your Honor.

15 THE COURT: Which is really a good analogy for what
16 our focus is.

17 MR. PANELLA: I understand the Court's ruling. I
18 don't have any further questions.

19 THE COURT: Thank you. Mr. Respess.

20 MR. RESPESS: Okay.

21 CROSS EXAMINATION

22 BY MR. RESPESS:

23 Q. I want to do this a little differently. So, what
24 I'd like to do is take this from as you're walking you're
25 hearing Agent Stead communicate with Ms. Ellis.

1 A. Yes.

2 Q. And so I want you to start with what Agent -- what
3 you observed Mary Ellis do, what you saw Agent Stead do in
4 what I would call the take down. So, can you explain that
5 dynamic? I want to start there.

6 A. Sure. As Agent Stead made contact with Mary I was
7 able to see him between the pillar and the house, which is
8 approximately a four foot, I would estimate, gap from the
9 corner of the house.

10 As he made contact I began to walk towards the their
11 location. Agent Smith followed behind me. As we made it up
12 she began to struggle before she identified us.

13 That is when she grabbed the threshold of the door, was
14 screaming help me, help me, help me, and we actually
15 assisted -- I assisted Agent Stead with bringing her out
16 into --

17 Q. Okay.

18 A. Beyond the pillars.

19 Q. All right. Now, you mentioned in there -- you
20 didn't mention what you heard Agent Stead say and I wanted
21 you to go through what you're saying as you're helping Agent
22 Stead with Ms. Ellis, who you've -- this is the third time
23 you've met her, correct?

24 A. Correct.

25

1 Q. All right. So, tell us what that dynamic is and
2 tie in the lighting conditions. If there's any problem
3 with -- that you would see with anybody seeing and
4 recognizing anybody with you, Mary Ellis, and Agent Stead,
5 okay.

6 A. Absolutely. The reason I approached her, made
7 contact with her is because of my previous interactions with
8 her, and I believed she would identify me with face to face
9 again. There was the traffic stop, the arrest at CVS and --
10 which I believe she did recognize me.

11 Q. Okay. And what are you -- what did you see that
12 lead you to that conclusion. Because your belief is an
13 opinion, but what are you --

14 A. Correct.

15 Q. (Cont'd) observing that lead you to that
16 conclusion?

17 A. As I approached the door she was initially
18 screaming inside the house as she's trying to pull herself
19 in. As we made it out in the open we actually are looking at
20 each other.

21 She's screaming, I'm screaming above her calm down, calm
22 down. We're basically looking at each other now and she's
23 still yelling for now what I know was John I believe.

24

25

1 Q. Okay. So, are you seeing recognition? In other
2 words, she's looking at you eye to eye?

3 A. I was between her and the entrance of the door,
4 yes.

5 Q. Okay. And so she's having to physically look at
6 you, and you were involved in the arrest of her four weeks
7 ago?

8 A. Yes.

9 Q. Before that, okay. And you're wearing a tactical
10 vest with sheriff on it?

11 A. Yes.

12 Q. Is that the same vest that you wore when you dealt
13 with her the last time?

14 A. Yes.

15 Q. Is that the same vest that you wore when you dealt
16 with her in Cocoa Beach?

17 A. Yes, sir.

18 Q. Now, is your back to the door while this is
19 happening?

20 A. Yes.

21 Q. What's the lighting situation around that area
22 where we're dealing with relatively close proximity to the
23 entrance to that residence?

24 A. The porch light and the front interior door was
25 actually open all the way against the wall. So, the

1 lighting -- I could see inside the house and a couch and into
2 what -- I believe there's like another wall that goes just
3 past the couch.

4 Q. How well were you able to see Ms. Ellis?

5 A. Very well. I was able to identify her from the
6 corner of the house.

7 Q. Okay. Was there any lighting issue in that area in
8 your mind at all?

9 A. No, sir.

10 Q. Is that where you were when John Derossett first
11 appeared?

12 A. Yes.

13 Q. So, the lighting conditions were the same?

14 A. Yes, sir.

15 Q. Did you see John Derossett before he left the
16 residence, before he exited his residence?

17 A. Yes, sir.

18 Q. Okay. And were you able to clearly see him?

19 A. Yes.

20 Q. Were you facing him or was your back to him at that
21 time?

22 A. I had one arm grabbing Mary's right arm, Agent
23 Stead had her left arm, and I actually was going for my
24 handcuffs when I heard and turned and looked in the doorway.

25

1 Q. Okay.

2 A. And basically grabbed her.

3 Q. So, you're telling us your back was to him?

4 A. Correct.

5 Q. All right. I think we have some pictures of how
6 you appeared that night. So, I'd like to get -- find those.
7 I'm showing you what's been received in evidence as
8 Defendant's 22 and 23. And I think I'm more interested in 22
9 based on your testimony. Do you recognize that image?

10 A. Yes, sir.

11 Q. Who is that?

12 A. That would be myself.

13 Q. Okay. Is that how you appeared?

14 A. Yes, sir.

15 Q. On your back, as someone's seeing you from the back
16 is that how you would appear?

17 A. Yes, sir.

18 Q. Was the lighting around you that you've been
19 describing on that sidewalk just outside the en -- the porch
20 area of that residence, was that sufficient to illuminate
21 your clothing? In other words, where someone would be able
22 to see it.

23 A. Yes. That is more identifiable than the back of
24 the uniform I'm actually wearing right now.

25

1 Q. Okay. And State's Exhibit 23, is that how you
2 appeared from the front side?

3 A. Yes, sir.

4 Q. All right, so, you turned around and observed Mr.
5 Derossett. Was he coming towards you?

6 A. Initially when I saw him he was walking -- can I
7 use the diagram on the house I guess? Or do we have an
8 interior layout I could --

9 Q. Here, let me see if this helps you. State's
10 Exhibit number 49 -- or is that number 9? Or number -- I can
11 never tell her four's from her nine's. Tell me what that is.

12 THE CLERK: That's a four.

13 MR. RESPESS: Okay, thank you.

14 BY MR. RESPESS:

15 Q. All right, State's Exhibit 4. And let me turn
16 this, turn it that way. This is the doorway.

17 A. Okay.

18 Q. All right. Does that help you?

19 A. Yes. This would be the front door?

20 Q. Yes.

21 A. Okay.

22 Q. So, where do you pick up Mr. Derossett?

23 A. Would be the corner of the sofa.
24
25

1 Q. All right. And so is he profiled to you or facing
2 you at that time?

3 A. It was -- when I initially saw him it was a profile
4 and then a quick turn walking towards the door.

5 Q. All right. So, you're looking at him. Are you
6 able to see where he's looking?

7 A. Out the front door, yes.

8 Q. Where you are?

9 A. Yes.

10 Q. Okay. And is this after you've heard Agent Smith
11 yell gun, gun, gun?

12 A. Yes.

13 Q. So, how do you react to seeing him coming towards
14 you like that?

15 A. He was a threat.

16 Q. And what did you see that -- you heard Agent Smith
17 tell you -- tell -- say gun, gun, gun. What did you see Mr.
18 Derossett that lead you to believe he was a threat?

19 A. Coming out the door as I turned I could see him
20 walking out along the back of the sofa --

21 Q. Em-hmm.

22 A. (Cont'd) and out the front door. And as I turned
23 and looked I could see him with a gun down by his side.

24

25

1 Q. That's what I'm asking. So, you saw -- you
2 confirmed what Agent Smith had told you?

3 A. Yes, sir.

4 Q. That the man had a gun and was coming out -- or
5 heading towards the door?

6 A. Yes, sir.

7 Q. Okay. What was your reaction to that, to Mr.
8 Derossett coming to the door with a gun?

9 A. I was no longer concerned about Mary and tossed her
10 into the door way.

11 Q. All right. So, I want you to describe the dynamic
12 of that, because it sounds to me like your back is towards
13 the door that Mr. Derossett's heading towards and Mary is
14 on -- you're between her and that door.

15 So, how do we get where Mary's heading towards the door
16 and she's closer to the door than you are. How did that
17 happen?

18 A. No, I'm actually closer to the door than her.

19 Q. Right.

20 A. Then Mary, yes.

21 Q. But you made it so she was closer to the door than
22 you. That's the dynamic you're describing is you're
23 basically tossing her towards that door, are you not?

24 A. Yes. Every second counted when somebody's coming
25 with a gun, yes, sir.

1 Q. All right.

2 A. I figured it would be a distraction.

3 Q. So, describe how you did that. Because you're
4 basically having to reverse your position with hers is what
5 it sounds like. That's what I want you to tell us. What
6 you --

7 A. Yes, as I had her and looked back I confirmed the
8 gun and I grabbed her. As I said, I was going for my
9 handcuffs to put her in handcuffs and as I realized I wasn't
10 going to do that I grabbed her, turned, and shoved her. And
11 I believe that's when I tripped and went into the bushes.

12 Q. Okay, all right. So, those acts, the things you're
13 describing would have happened in front of Mr. Derossett?

14 A. Yes, sir.

15 Q. All right. When you turned to a profile with him
16 was there any markings on your person indicating you were a
17 sheriff's deputy?

18 A. The sheriff's in yellow bold print down my arms,
19 outside.

20 Q. Okay. Was it you that had personally talked to Mr.
21 Derossett in a similar outfit approximately six weeks before
22 this happened?

23 A. It wasn't similar, it was the exact outfit.
24
25

1 Q. Okay. And you had told Mr. Derossett what back
2 then? What had you told Mr. Derossett about his niece and
3 why you were following?

4 A. That basically his niece, Mary, was advertising on
5 a website called Backpage, and that he can actually
6 potentially be charged if he's giving her rides and she's
7 giving him money for that, if he's participating in the -- as
8 being just the driver, taking her to these locations.

9 Q. He's helping her?

10 A. Correct.

11 Q. Okay. What was his reaction to that?

12 A. He acted like he didn't know anything about it.

13 Q. Did he ask to see the ad?

14 A. I don't believe so, no.

15 Q. Did -- was he suggesting surprise?

16 A. More of he wasn't really concerned or didn't
17 question it.

18 Q. And what --

19 MR. PANELLA: I'm going to object to that for
20 speculation --

21 MR. RESPESS: Well, that --

22 MR. PANELLA: (Cont'd) and ask to strike it.

23 MR. RESPESS: Let me ask it -- another question
24 to -- because I want him to explain that conclusion,
25 what he's observing and how Mr. Derossett is reacting

1 that leads him to the conclusion.

2 Because, you know, people can give opinion about
3 how people are acting. I don't think that's
4 inappropriate. And it's not speculation as long as
5 there's proper -- as long as he's doing it properly.

6 THE COURT: I'm going to overrule the objection
7 because it sounds to me like Mr -- like Agent Roberts is
8 giving sort of a lay person's opinion on one human to
9 another on a motion. And he can shade it the way he
10 thinks it is and I'll give it its due consideration.

11 MR. RESPESS: All right.

12 THE COURT: You know. So, sometimes people at the
13 receiving end are thinking something other than those on
14 the -- you know, the other end.

15 BY MR. RESPESS:

16 Q. What was he -- how was he acting that lead you to
17 that conclusion as you're -- you made this traffic stop and
18 you're explaining that you've been investigating his niece
19 concerning prostitution and found that she's advertising on
20 Backpage for prostitution ads?

21 A. I believe he was aware of it and just didn't want
22 to admit --

23 MR. PANELLA: Objection, speculation.

24 THE COURT: Okay, sustained.

25

1 MR. PANELLA: I'm going to move to strike that one
2 too.

3 THE COURT: Okay.

4 MR. RESPASS: All right. Well, I don't want you to
5 give me your belief. I'm really asking you how did he
6 act --

7 THE COURT: Granted, that's granted. Stricken is
8 granted.

9 MR. RESPASS: (Cont'd) and I'm saying, you know,
10 there's a whole bunch of ways people react.

11 BY MR. RESPASS:

12 Q. Did he act surprised?

13 A. Not at all, no.

14 Q. Okay. Did he act upset?

15 A. No.

16 Q. Did he express any anger that his niece had
17 potentially gotten him into this traffic stop?

18 A. No.

19 Q. All right. So, when Mr. Derossett is heading
20 towards the door when you perform this maneuver with Mary was
21 there anything obstructing his ability to see that happen?

22 A. No, sir.

23 Q. How far away from he -- from you would you estimate
24 he was at that time?

25 A. 12 feet, 15 feet.

1 Q. Now, how was he moving when you observed him?
2 Because you're -- you've got a description of movement where
3 he's basically rounding a corner and heading towards the door
4 is I think what you've described.

5 A. Correct.

6 Q. How quickly was he moving towards you?

7 A. He was walk -- I mean, he wasn't jogging or
8 running, he was walking.

9 Q. Okay.

10 A. And coming straight towards us.

11 Q. Where were you when he came out the door?

12 A. In the bushes.

13 Q. Okay. Now, you mentioned that you -- that you said
14 something. What is it that you recall that you said as Mr.
15 Derossett is leaving his residence?

16 A. I was referring to what I heard and was repeating
17 gun, gun, gun.

18 Q. Okay. And is that as you're falling or is that --

19 A. As he passed by me. Because it was directly right
20 next to me as I was laying on my side.

21 Q. And are you yelling this?

22 A. Yes.

23 Q. Did you yell anything else?

24 A. I heard the gun, gun, gun, Sheriff's Office coming
25 from the west side of the house, and I was concerned to get

1 to my feet and try to make it over to the truck to get some
2 sort of cover.

3 Q. All right.

4 A. So, I was --

5 Q. So, where are you hearing -- are you hearing
6 this -- are you recognizing the voice or are you just hearing
7 that?

8 A. Yes, from Agent Smith.

9 Q. Okay. Now, did you have a phone with you that
10 evening? I'm sorry. I'm showing you what's been marked as
11 State's Exhibit 69 and 70, and do we have the scissors still?

12 These have been accepted in evidence. And Agent
13 Roberts -- or I guess Deputy Roberts, I'd like you to start
14 with 69 and open it, open the package up and see if you
15 recognize it as something that belongs to you or not.

16 A. Take it out?

17 Q. Yes. It's in evidence.

18 A. This is my phone.

19 Q. Okay. Now, were you aware that that phone had
20 fallen off your person at this scene?

21 A. No, sir.

22 Q. Okay. Do you even know where you lost it? Do you
23 have -- do you know where --

24 A. I believe it was in the bushes when I fell.
25

1 Q. All right. But you don't have -- did you -- were
2 you even aware you were losing it when it happened or?

3 A. No, sir.

4 Q. Okay, all right. And I'm going to ask you to look
5 at Exhibit 70. Same thing.

6 A. That's my flashlight.

7 Q. Okay. And is that something that turned up missing
8 after this event?

9 A. Yes, sir.

10 Q. Okay. And were you aware as it was happening that
11 you'd lost that?

12 A. No, sir.

13 Q. Now, do you recall using that flashlight to see? I
14 mean, we've been talking about lighting.

15 A. Correct.

16 Q. Had you used that -- taken that -- well, where did
17 you have it stored?

18 A. In my vest.

19 Q. All right. And had you'd taken that flashlight out
20 intentionally to use it to see anything?

21 A. No, sir.

22 Q. All right. So, had you turned it on?

23 A. No, sir.

24

25

1 Q. Okay. All right, so, I think where we left I kind
2 of backtracked a little bit and I apologize, but I want to
3 get you back to the bushes and getting up, okay. And I want
4 to use a picture. State's Exhibit 3 I think, 3. Do you
5 recognize that image?

6 A. Yes, sir.

7 Q. Okay. Now, I want you to go take yourself as
8 you're accomplishing getting out of the scrubs and where does
9 your position yourself in showing us where you ended up
10 before you went ready and began firing.

11 A. I started here in the bushes as he -- as Mr.
12 Derossett passed me and walked out. I made it to my feet and
13 down by the truck.

14 Q. Okay. And is that when you addressed Mr. Derossett
15 with your firearm and began firing was from there?

16 A. Yes, from this location.

17 Q. Okay. And I know you aren't counting your rounds.
18 What are you seeing -- are you able to see behind Mr.
19 Derossett?

20 A. Yes.

21 Q. Okay. What are you seeing behind him?

22 A. The house.

23 Q. Okay. So, your line of fire would be towards the
24 house?

25 A. Yeah, some --

1 Q. I mean, behind him would be --

2 A. Yes, I believe towards the house here.

3 Q. All right. Are you aware, you know, because we
4 talked about this, are you aware of either of the other two
5 agents at this particular point in time, their location?

6 A. Yes.

7 Q. Okay. How are you -- how are you -- are you able
8 to visually know that, or is this a sense you have based on
9 something you'd seen earlier, or how are you doing that?

10 A. I know when Agent Stead's location. When he
11 retreated backwards and back peddled and Agent Stead was --
12 and the muzzle blasts were coming from the corner of the
13 house.

14 Q. Okay. And how did you ap -- where were you
15 appreciating that? Where were you recognizing that? Were
16 you still in the bushes or had you gotten out?

17 A. I was at the -- on my way to when the gunfire
18 started.

19 Q. Okay. How about Agent Smith, did you have any
20 awareness of where he was during this, or had you locked in
21 on Mr. Derossett?

22 A. Prior to the initial gunshot, yes, I knew where he
23 was at.

24

25

1 Q. Okay. And you're sighting Mr. Derossett I presume
2 with your weapon --

3 A. Yes, sir.

4 Q. (Cont'd) when you're getting ready to fire on him?
5 Are you seeing anything other than him in your line of sight
6 and the house that you're describing?

7 A. No, sir.

8 Q. How -- or what are we talking, 20 feet maybe to
9 where Mr. Derossett was from you?

10 A. I would -- approximately, yes, I'd say.

11 Q. Okay. Now, you shot more than one round at him?

12 A. Yes, sir.

13 Q. Okay. When did you stop shooting at him?

14 A. As he was going to the ground.

15 Q. Okay. Now, you indicated that you believed you hit
16 him.

17 A. Yes.

18 Q. And what lead you to that conclusion, that belief?
19 What'd you see?

20 A. The way he fell.

21 Q. Okay. And you in -- and you've shown us where he
22 fell and it was in proximity to the pillar in the grass, is
23 that what you described?

24 A. Correct.

25

1 Q. And are you still eyes on him?

2 A. Yes.

3 Q. And when is it you decide to move towards the
4 roadway? When is it you start deciding, okay, I'm going to
5 move my position, I'm going to head towards the roadway? How
6 long are you --

7 A. It was seconds. As soon as he went down.

8 Q. Okay. I know things are happening and I'm trying
9 to break it down.

10 A. Sure.

11 Q. You mentioned that at some point you had a belief
12 based on something you heard verbally --

13 A. Em-hmm.

14 Q. (Cont'd) that Agent Casey Smith had been shot?

15 A. Yes.

16 Q. When in the sequence of events did that happen? Is
17 there multiple things coming at the same time or when are you
18 getting that information?

19 A. As -- immediately after Derossett lowered the
20 firearm after firing the initial shot into the air.

21 Q. Okay. So, you saw -- is that why you're still in
22 the bushes or is it as you're moving?

23 A. It's as I'm moving to location. As soon as the
24 first shot is fired in the air I'm able to unholster my
25 firearm and he lowers the weapon and is shooting in the

1 direction I knew Casey -- I'm sorry, Agent Smith and Agent
2 Stead were to be.

3 Q. Okay. At that point were you able to see the gun
4 pointed in the direction of either of those agents?

5 A. Yes, sir.

6 Q. Who did you see Mr. Derossett pointing the firearm
7 at?

8 A. Agent Smith.

9 Q. Were you able to see Agent Smith?

10 A. Yes, sir.

11 Q. Were you able to see what Agent Smith was wearing?

12 A. Yes, sir.

13 Q. What was he wearing?

14 A. The same attire. I believe he had the brown cargo
15 shorts with a long sleeve black shirt with the sheriff
16 insignia and the yellow bold print down each arm, and the
17 tactical vest.

18 Q. Did the lighting conditions interfere with your
19 ability to see and recognize Agent Smith and what he had on?

20 A. No, sir.

21 Q. Is -- I want to move on to after you've shot Mr.
22 Derossett, and you're moving towards the street. Where are
23 your eyes? What are you looking at?

24 A. Back and forth between the area of Agent Casey
25 Smith and Derossett at the front door.

1 Q. Can you see Agent Smith?

2 A. I could see that -- after I hear I'm hit, I'm hit
3 that Agent Stead, the gunfire stopped and that Agent Stead
4 was actually appeared he was carrying him.

5 Q. Okay. So -- and is this while you're -- the
6 gunfire stopped and you've moving towards the street?

7 A. Yes, sir.

8 Q. Now, do you recall -- or did you actually observe
9 Mr. Derossett transition from the grass to the porch area
10 next to the door?

11 A. No.

12 Q. You did not see him?

13 A. I noticed he was down and by the time I made it and
14 was walking towards the street glancing I was reloading my
15 magazine real quick.

16 Q. Okay.

17 A. And holster my half used -- or used am -- magazine,
18 and then I noticed he was at the porch as I came across the
19 street.

20 Q. Okay. Now, have the lighting conditions at the
21 residence changed at all?

22 A. No, sir.

23 Q. All right. Are you able to see Mr. Derossett?

24 A. Yes.

25

1 Q. And the lights are still on at the house the way
2 you described them earlier?

3 A. Yes, with the door open.

4 Q. Okay. And how do you become aware that there's
5 going to be another gun fight situation? How do you -- how
6 are you first made aware that the gun fight is not over?

7 A. I observe as Derossett picks up the firearm and
8 stands up and begins shooting in my direction.

9 Q. Okay. So, you actually observed him with the
10 firearm, pointing it, shooting it in whose direction?

11 A. My direction.

12 Q. Okay. Now, is this the first time that you
13 received any gunfire in this engagement?

14 A. No, it's the second time.

15 Q. Okay. When was the first time?

16 A. At the vehicle.

17 Q. Okay. And describe what Mr. Derossett did to you
18 then?

19 A. Well --

20 Q. How did -- how do you believe he engaged you and
21 not the other two agents? And that's what I'm -- I
22 misunderstand. I thought his direction of fire was towards
23 the other two agents and you were off to his right, kind of
24 behind him.

25 A. I was behind him. As he turned, initially shot

1 Casey, I fired at him. And I don't believe I struck him at
2 that point.

3 Q. Em-hmm.

4 A. And then after I struck him he turned towards me
5 and kind of sideways fired at me.

6 Q. Okay. And then it was after that he went down?

7 A. Yes.

8 Q. What did you do in response to him firing at you
9 this second time, this time when you're moving towards the
10 street?

11 A. I still had my firearm drawn. As soon as the first
12 muzzle flashed I aimed towards the muzzle flash and began
13 firing at that, turned my face, covered my face because of my
14 position in the open street, and just began retreating
15 backwards and firing into and just holding --

16 Q. Okay.

17 A. Aiming towards the doorway where he was standing.

18 Q. Did you believe that you'd hit Mr. Derossett again
19 at that time?

20 A. I believed, yes.

21 Q. What lead you to that conclu -- that belief? What
22 did you observe that lead you to that conclusion?

23 A. He stopped shooting at me.
24
25

1 Q. Okay. Where was Mr. Derossett the last time you
2 saw him before you went over and started rendering aid to
3 Agent Casey?

4 A. On the porch slab directly in front of the front
5 door.

6 Q. You did not see him go in the residence or you did?

7 A. I did not.

8 Q. All right.

9 MR. RESPESS: I don't have any other questions at
10 this time.

11 THE COURT: All right. Thank you Mr. Respass. Mr.
12 Panella, does that prompt anything sir?

13 RE-DIRECT EXAMINATION

14 BY MR. PANELLA:

15 Q. Deputy Roberts, would you agree with me certainly
16 that the yard that we are looking at the night you were there
17 was a lot darker than this particular picture? Or do you
18 think it looked like that?

19 A. I mean, it's hard to say. I would say I -- I don't
20 know if I can answer that. It's just a weird lighting to me.

21 Q. Exactly. Doesn't it look like it's taken with like
22 a really bright camera flash to you, or no? Is that how it
23 looked? I'm just curious in your opinion.

24 A. I don't know, I can't answer that.

25

1 Q. So, you don't know if the yard was darker than that
2 or if that's kind of how it looked?

3 A. I would say areas of the yard was darker, yes.

4 Q. Okay. Look, I'm -- you gave a statement in -- this
5 is -- what picture -- what is -- this is -- let's just see.
6 State's Exhibit 3, okay. So, you gave two sworn statements
7 in this case, right, prior to today?

8 A. Correct.

9 Q. And you actually gave another sworn statement
10 accidentally. Weren't -- didn't you testify at his bond
11 hearing too because you happened to be in the courtroom? Way
12 back when.

13 A. Oh, yes, sir, I did.

14 Q. So, there's three. In none of your sworn
15 statements, not the one at the bond hearing, not on August
16 24th, not back in November when we spoke did you ever once
17 mention that you turned around to push Mary into the house.

18 And you didn't testify to that on direct, but you just
19 now on cross said you turned around to push her back in.

20 A. I turned around to shove her in the door, yes,
21 that's what happened.

22 Q. So, your testimony is that your back was facing the
23 door when you had Mary? That's what you're telling me on
24 cross?

25 A. Absolutely, yes.

1 Q. But yet you testified that the whole point was that
2 Stead grabbed her out of the house and she was constantly
3 trying to make it into the house?

4 A. I made --

5 Q. You testified to that on direct examination, that
6 she's pushing with all she has into the house, right?

7 MR. RESPESS: I'd ask that the witness be allowed
8 to answer the question before --

9 MR. PANELLA: Go ahead.

10 THE COURT: Right, sustained. Let him --

11 THE WITNESS: Yeah, when -- as she was in the
12 doorway she was using the casing to pull herself back
13 in.

14 As Agent Stead was on her left side -- when I'm
15 handcuffing somebody and I'm in control of their right
16 hand -- I am left handed. I'm going to gain control of
17 them by their right hand and remove my handcuffs from
18 the way she was facing.

19 BY MR. PANELLA:

20 Q. So, all I'm curious about is why you never
21 mentioned that until today in any of your sworn statements.
22 Do you have an answer for that?

23 A. I turned and shoved her in the doorway. I don't
24 think I was ever asked the position I was standing. I turned
25 and shoved her into the doorway.

1 Q. But your testimony is still of course that she was
2 trying to get away from you to go into the house, right?

3 That was --

4 A. After she was out she was screaming, help, help,
5 and then the name.

6 Q. And struggling and trying to get back into the
7 house, correct?

8 A. She was trying to avoid being handcuffed at that
9 point.

10 Q. You just pointed to an area of the yard. Is that
11 how far out in the yard she was where you just pointed?
12 Where was it, where she was?

13 A. I can't go off of this. I can't --

14 Q. Okay. Yeah, I just thought you were pointing to a
15 different direction. All right, I'm just curious why that
16 was never brought up. That's all sir.

17 A. Okay.

18 Q. Now, you also gave two other sworn statements and
19 never -- well, the third one with the bond hearing, but let's
20 let that go. And you never said that you heard Agent Smith
21 yell Sheriff's Office either.

22 A. I don't --

23 Q. And you didn't testify to that on direct
24 examination either.

25 A. I don't think I was ever asked if --

1 Q. You certainly were.

2 A. I know I was asked if I said Sheriff's Office and I
3 said I believe so.

4 Q. Right. And then you also --

5 A. But I couldn't recall.

6 Q. You actually didn't say that, right, and that's why
7 we didn't bring it up today, and I don't think that's why the
8 State brought it up today. You didn't initially say that.

9 A. I don't --

10 Q. And you --

11 A. I don't --

12 Q. Right, you don't know if you did.

13 A. Correct.

14 Q. Right. All right. I'm just -- is it fair to say
15 that in any of your sworn statements this is the first time
16 you brought that up. Is that at least a fair point? That
17 you heard --

18 A. I would have to review the last testimony that was
19 given.

20 Q. Another point that I'm concerned about. When you
21 say that you -- first of all, is your testimony still that
22 when you saw John Derossett coming out of the house with a
23 gun that you heard Agent Smith yell gun, gun, gun, and then
24 you backed up and tripped over the shrubs?

25 A. Yes.

1 Q. Okay. And then is your testimony still that you
2 believe that by the time John Derossett came out of the house
3 and shot that gun that he didn't notice you?

4 A. Yes.

5 Q. Okay. And that you in fact tried to make it to
6 your feet and made it back over finally over to the truck, or
7 near there, right?

8 A. Correct.

9 Q. And it was only after you started shooting at him,
10 and frankly shot him, that he noticed you and started
11 shooting in your direction, right?

12 A. Correct.

13 Q. But this whole area by the front door, any of that,
14 your testimony today is that he didn't even notice you there.

15 A. Correct.

16 Q. The other thing that I wanted to just -- I was
17 curious about was you said that you went for your gun and had
18 it out almost -- at the -- around the same time he shot his
19 first shot in the air, correct?

20 A. Correct.

21 Q. And you had it aimed at John Derossett, right?

22 A. Yes.

23 Q. And was it your intention to wait until he shot
24 another shot in Casey Smith's direction for you to make your
25 first shot?

1 A. There was no hesitation between the first shot in
2 the air and lowered it down towards Casey and began firing in
3 their direction, yes. I immediately --

4 Q. But your training --

5 A. (Cont'd) raised my firearm and shot.

6 Q. And shoot?

7 A. Yes.

8 Q. Okay. So, I just wanted to make sure that you
9 weren't -- it wasn't like this long period where you're
10 waiting for him to shoot two shots before you shoot, right?

11 A. No, sir.

12 Q. It was you see that gun coming out, he's shooting,
13 and you go to shoot him, right?

14 A. Yes.

15 Q. So, it was like immediate?

16 A. Absolutely.

17 Q. Okay. As far as John Derossett's personality;
18 there was some questioning about at the car and -- I mean,
19 you'd never met him before, right?

20 A. No, sir.

21 Q. So, you don't know how he reacts to certain things,
22 right? You don't know what his personality's like.

23 A. No, sir.

24

25

1 Q. You don't know if he is easily excitable, or angry,
2 or anything like that?

3 A. No, sir.

4 Q. So, if someone told him something shocking or
5 something that was rather benign you don't know how he would
6 act to either of those scenarios, because you just don't
7 know, right?

8 A. That's correct.

9 Q. Thank you sir.

10 A. Yes, sir.

11 MR. PANELLA: I don't have anything further Judge.

12 THE COURT: All righty.

13 MR. RESPESS: Nothing further on my end.

14 THE COURT: All right. Then may Agent Roberts be
15 excused?

16 MR. PANELLA: Yes.

17 MR. RESPESS: Subject to recall.

18 THE COURT: Or Deputy Roberts be excused. Subject
19 to recall, all right. Would this be a good time to
20 break for the evening?

21 MR. PANELLA: I -- you know, it's -- probably. I
22 was trying to accommodate the Court's schedule and I
23 have another witness in the back who's a short witness,
24 but whatever the Court says.

25

1 THE COURT: Whatever you all -- you would like to
2 do.

3 MR. PANELLA: I know. I'm just aware of the
4 situation.

5 MR. RESPESS: If they're here go ahead.

6 THE COURT: If they're here, sure.

7 MR. PANELLA: I think there's another person here.

8 THE COURT: Let's -- like I said --

9 MR. PANELLA: He won't be long. Are you guys going
10 to be long with him?

11 MR. RESPESS: I don't think -- he wasn't there, so.

12 THE COURT: Do you know who it is? Well --

13 MR. PANELLA: It's Agent Hawkins. I believe he's
14 here. If I could just have a moment to review my notes.

15 THE COURT: Okay.

16 MR. PANELLA: And we'll be ready to go. I -- it
17 won't be long.

18 THE COURT: Okay, okay. I mean, if he's here
19 let's --

20 MR. PANELLA: I brought him here on purpose when
21 I --

22 THE COURT: If he's here let's hear him. Well, now
23 we're back to if he's here.

24 MR. PANELLA: Oh, maybe he left when he saw that we
25 were going really late.

1 THE COURT: I don't know. Usually folks -- yeah,
2 see, we can sound the building here.

3 MR. PANELLA: Is he here?

4 THE BAILIFF: There's nobody out there, there's
5 nobody downstairs. Let me check the --

6 MR. PANELLA: Okay.

7 THE COURT: Oh.

8 MR. PANELLA: Then maybe he left.

9 THE COURT: She did sound the building. Okay.

10 MR. PANELLA: Okay. Well, then we'll start with
11 him in the morning if he's not here.

12 THE COURT: I would hate for him to spend the night
13 with Benjamin.

14 MR. PANELLA: He is present.

15 THE COURT: Okay. You'd like to have him testify?

16 THE CLERK: Raise your right hand. Do you solemnly
17 swear or affirm that the testimony you shall give will
18 be the truth, the whole truth, and nothing but the truth
19 so help you God?

20 THE WITNESS: Yes, ma'am.

21 THE CLERK: Please have a seat.

22

23

24

25

1 WHEREUPON:

2 SEAN HAWKINS,
3 a Witness herein, having been duly sworn, testified upon his
4 oath as follows:

5 DIRECT EXAMINATION

6 BY MR. PANELLA:

7 Q. Good evening sir.

8 A. Good evening.

9 Q. And thank you for being here. If you could state
10 your name, spell your last name for the record please?

11 A. Sean Hawkins, HAWKINS.

12 Q. And is it -- are you still an agent or how should I
13 address you sir?

14 A. Agent Hawkins.

15 Q. Agent Hawkins, okay.

16 A. Yes, sir.

17 Q. Agent Hawkins, we're -- it's late, so we're going
18 to just get right to this, okay.

19 A. Yes, sir.

20 Q. What is your current position?

21 A. Investigative agent for the Brevard County
22 Sheriff's Office.

23 Q. Okay. And how long have you been with the BCSO?

24 A. Since 2006.

25

1 Q. And did you have occasion to ever join the special
2 investigations unit?

3 A. Yes, sir.

4 Q. When was that sir?

5 A. August of 2015 I believe.

6 Q. Was that around the same time as the officer
7 involved shooting out in Port St. John?

8 A. I believe so, yes, sir.

9 Q. Did you have occasion to respond to that scene?

10 A. Yes, sir.

11 Q. Okay. Now, do you remember if when -- how many
12 days you had been in the special investigations unit when
13 that happened?

14 A. It was my fourth day.

15 Q. So, this was a pretty serious thing to happen on
16 your fourth day?

17 A. Yeah.

18 Q. Now, was there any other agents that were brought
19 in with your class to the special investigations unit?

20 A. You mean that started the same time as me?

21 Q. Yeah, sure.

22 A. Okay. Agent Peter Stead.

23 Q. Okay. And let me ask you, what were you guys doing
24 that day? What was your involvement in any solicitation
25 stuff, if any?

1 A. We were doing a prostitution op at -- operation in
2 Titusville.

3 Q. Okay. And where was that?

4 A. A hotel off of State Road 50 and 95.

5 Q. Okay. And so were you sort of still learning how
6 these prostitution details go given the fact that it was your
7 fourth day?

8 A. Yes.

9 Q. Was it pretty new to you?

10 A. Yes.

11 Q. Did you feel like you were pretty wet behind the
12 wheels on it?

13 A. Yes, sir.

14 Q. Would you think that that's because you had only
15 been in the special investigations unit for four days?

16 A. Yes, sir.

17 Q. Is it fair to say that Agent Stead was probably in
18 the same boat?

19 A. Yes, sir.

20 Q. And now what -- all I want to know is how did you
21 end up hearing about the shooting?

22 A. I believe Lieutenant Lanza told us. He got a text
23 or something along those lines.

24 Q. Okay.

25 A. Or a call. I'm not completely sure how he found

1 out.

2 Q. And what was your role when you got there?

3 A. Got where? To --

4 Q. I'm sorry. What did you do? I'm sorry -- I'm
5 sorry Agent Hawkins.

6 A. I'm --

7 Q. Once you heard about it what did you do?

8 A. Myself and I believe Agent Menthorne, we went -- we
9 all got in a car and we went to Port St. John where the
10 incident occurred.

11 Q. And so what was your role when you got to the
12 scene?

13 A. I was directed to get Agent Roberts and Agent Stead
14 and bring them to the Port St. John sub station.

15 Q. So, do you remember about what time you got to the
16 scene?

17 A. I do not.

18 Q. Okay.

19 A. I know it was dark outside.

20 Q. Did you know Agent Roberts and Agent Stead before
21 this night?

22 A. I did sir.

23 Q. And you knew -- were you made aware of -- that you
24 were looking for those two men when you got to the scene?

25 A. Oh, yes, sir.

1 Q. I mean, your role, right, was to go and get them
2 and get them back to the Port St. John sub station?

3 A. Yes, sir.

4 Q. So, where were you in the neighborhood when you
5 showed up initially? It's --

6 A. I couldn't really tell you.

7 Q. Yeah. I think we have an aerial. Oh, you
8 couldn't -- if I gave you a map would you be able to tell us
9 or?

10 A. (No verbal response.)

11 Q. Oh, you still couldn't?

12 A. No, sir.

13 Q. How far away from the house you think you were?

14 A. I couldn't even tell you where the house was to be
15 honest with you.

16 Q. Was -- let me ask you this: Was it really dark out
17 there?

18 A. It was night time sir.

19 Q. And my question really is you were looking for
20 Agent Roberts and Agent Stead who you knew, right?

21 A. Yes, sir.

22 Q. And was it difficult even for you to initially tell
23 who they were because of how dark it was?

24 A. No, I just -- I asked the -- some of the officers
25 on scene where they were at --

1 Q. Em-hmm.

2 A. (Cont'd) and they directed me to them, and that was
3 it.

4 Q. And I know it's been a while. Do you remember
5 giving a dep -- a sworn statement in this case?

6 A. I do.

7 Q. And do you remember giving a deposition in this
8 case with me?

9 A. I do.

10 Q. And let's see, I'll tell you in a second. What I'm
11 wondering is initially when you were looking for them did the
12 darkness create a problem in you being able to identify Agent
13 Stead and Agent Roberts until you got close to them?

14 A. I know that where I was at I couldn't see them.

15 Q. Okay. And I also was wondering, did -- is it fair
16 to say that you used the cover of darkness to assist you
17 while you were on the scene because it still was considered
18 an active shooting event?

19 A. Yes.

20 Q. And when you say the cover of darkness what do you
21 mean by that?

22 A. Well, I wasn't running under the street lights, I
23 was running and going behind the officers that were out and
24 the trees in the neighbors yards and stuff.

25

1 Q. And outside the street -- exactly. And so in that
2 particular neighborhood --

3 A. Right.

4 Q. (Cont'd) in that particular night, outside the
5 direct area of the street lights is it fair to say it's very
6 dark? Dark enough for you to use it as a cover of darkness
7 and not be seen?

8 A. It was dark enough to where I felt comfortable
9 running along it to --

10 Q. Comfortable not getting shot?

11 A. Yes, sir.

12 MR. PANELLA: I don't have any further questions.

13 THE COURT: All right.

14 MR. SCHEINER: No questions.

15 THE COURT: Any questions? No.

16 MR. PANELLA: Thank you sir.

17 THE COURT: All righty. Thank you very much. And
18 at this time would you like to recess until tomorrow?

19 MR. PANELLA: Yes, Judge, I think that would be
20 appropriate.

21 THE COURT: Okay.

22 MR. PANELLA: Except we do have one matter we
23 wanted to address with the Court.

24 THE COURT: Okay.

25 MR. WEST: If I could do that.

1 MR. RESPESS: What time do you want to start
2 tomorrow?

3 THE COURT: I think we can go at 8:30. Oh, wait,
4 do we have the one plea?

5 MR. SCHEINER: There's stuff in the morning.

6 THE COURT: We might have the one plea. I think --

7 THE CLERK: No, tomorrow's Thursday, right?

8 THE COURT: Yes, ma'am.

9 THE CLERK: We don't have anything tomorrow.

10 THE COURT: Nothing, okay. 8:30? Do you want to
11 do 8:30?

12 MR. SCHEINER: I thought there was something
13 tomorrow. Isn't there --

14 THE COURT: I thought there was too.

15 THE CLERK: No, Thursday was the one day we didn't
16 have anything.

17 MR. SCHEINER: I thought Arian Hampton is set
18 tomorrow.

19 THE CLERK: Pardon me?

20 MR. SCHEINER: Arian Hampton is set tomorrow.

21 THE CLERK: Hampton is set tomorrow afternoon.

22 MR. SCHEINER: Oh, it's in the afternoon.

23 THE COURT: Oh, okay.

24 THE BAILIFF: Yes, there's nothing in the morning.
25

1 THE COURT: I think I do remember there was
2 something in the afternoon. Is it 1:15?

3 THE CLERK: There was a plea and a sentencing
4 hearing.

5 THE COURT: No, I see something for tomorrow -- oh,
6 that's it. This for tomorrow morning. Tomorrow
7 afternoon at 1:15 I see a plea.

8 MR. RESPESS: Okay. So, 8:30 you want us here
9 ready to go?

10 THE COURT: Sure 8:30, we'll be ready to go at
11 8:30. Is that okay?

12 MR. WEST: We may have an issue for the Court
13 potentially.

14 THE COURT: Oh, okay.

15 MR. WEST: If we could just have a second. Judge,
16 what we're talking about is --

17 THE COURT: It's probably on the witness list.

18 MR. WEST: Mr. Derossett's --

19 THE COURT: Probably a person who has letters after
20 their name.

21 MR. RESPESS: This is somebody who was at the
22 hospital.

23 MR. PANELLA: No, no, no, it's not on the witness
24 list.

25 MR. RESPESS: Right.

1 THE COURT: Oh.

2 MR. WEST: The issue is this: Mr. Derossett's
3 blood was submitted to FDLE for analysis as to
4 controlled substances, and also as for DNA.

5 MR. RESPESS: Em-hmm.

6 THE COURT: Okay.

7 MR. WEST: And the lab analyst prepared a report
8 with his findings of whether there were controlled
9 substances in the blood. And that was marked today
10 with --

11 THE COURT: I remember.

12 MR. WEST: (Cont'd) the -- with Ms. Pill. So,
13 that's here. And we want to call the analyst to explain
14 what his findings were. So, we're trying to sort that
15 out so we don't waste a whole bunch of time tomorrow.

16 MR. RESPESS: Right.

17 THE COURT: Right. And so don't -- so, who are you
18 calling?

19 MR. WEST: Well, we want to call the analyst and --

20 MR. PANELLA: We have the analyst from FDLE who did
21 the --

22 MR. WEST: Do we need the analyst if we have the
23 other stuff?
24
25

1 MR. RESPESS: Yeah. Here's the thing: We don't
2 know -- you're going to need the analyst because we're
3 not stipulating to the report.

4 The reason we're not stipulating to the report is
5 we need to ask the analyst about the admissions that
6 your client made and why those -- that information
7 wouldn't be in this test. Because he described two
8 substances that he took, one in the morning and one at
9 6:00.

10 MR. WEST: The analyst would have no knowledge of
11 that. He just tested the blood he was given.

12 MR. SCHEINER: Right. We want to ask him why it
13 wouldn't show --

14 MR. RESPESS: Right, so we don't --

15 MR. WEST: So, why don't you find out who drew the
16 blood.

17 MR. RESPESS: We don't know who drew the blood.
18 That was given to the analyst from the hospital.

19 MR. WEST: But somebody initiated the sequence of
20 events on that.

21 MR. SCHEINER: No, no. They just do that at the
22 hospital as a matter of course when people get admitted.

23 MR. WEST: All right. So, we know it was drawn
24 when he was admitted.

25 MR. SCHEINER: Potentially

1 MR. RESPESS: Potentially.

2 MR. WEST: Judge, would -- can we have the blood
3 brought here tomorrow, at least we --

4 MR. RESPESS: I will -- I will --

5 MR. WEST: (Cont'd) can see if there's anything on
6 that.

7 MR. SCHEINER: They're all closed. I mean, I can't
8 contact anybody at 6:00 at night. I can contact them
9 tomorrow morning.

10 MR. WEST: The blood is at BCSO.

11 MR. RESPESS: It's close by.

12 MR. PANELLA: It's right there.

13 MR. SCHEINER: Right.

14 MR. RESPESS: It's close by. We can contact --

15 THE COURT: It's probably at a storage place. They
16 probably don't have it in the fridge in the back.

17 MR. PANELLA: I thought it was over at 700.

18 MR. RESPESS: Well, it just got here last week.

19 MR. PANELLA: Yeah, yeah, yeah.

20 MR. SCHEINER: I can't call anyone now to tell them
21 to bring it tomorrow at 8:30 in the morning.

22 THE COURT: Right.

23 MR. SCHEINER: That's not -- we can't do that now.

24 THE COURT: I mean, they might be here -- I mean,
25 they're only five, ten minutes from here.

1 MR. SCHEINER: But 8:00 tomorrow morning I can call
2 somebody.

3 THE COURT: Right, 8:00 tomorrow if somebody
4 answers.

5 MR. WEST: I'm just saying if we can make progress
6 toward this if we can get the blood here so at least we
7 can look at --

8 MR. RESPESS: Right.

9 MR. WEST: (Cont'd) the markings on the blood and
10 see --

11 THE COURT: Sure. You can see it's probably eve --

12 MR. RESPESS: I mean, the DNA test indicates that
13 it's Mr. Derossett. When the blood was drawn, what had
14 happened, all those things are need to be known.
15 Because --

16 MR. WEST: Well, we may need some time.

17 MR. RESPESS: Right.

18 MR. WEST: This is an important part of the case.
19 So, let's try to peel it off as best we can.

20 THE COURT: Can I just let you know that if you're
21 talking about time away from this courtroom before this
22 hearing is completed to sort out something that's just
23 coming up, you are going to have a rather difficult
24 woman to deal with, and her name is Janie. The one who
25 has just rescheduled everything off Friday.

1 MR. PANELLA: Hopefully we can get it resolved. If
2 we can get the blood here --

3 THE COURT: Be careful what you wish for.

4 MR. PANELLA: If we can get the blood here in the
5 morning we should be good to go. We'll figure it out.

6 THE COURT: No, that's just a bad idea. There will
7 not be any continuance of any kind. Because we have
8 just rearranged the entire schedule so that we can plow
9 straight through this and get to -- and conclude it, as
10 opposed to taking a break, and you know, leaving it
11 hanging.

12 You've got everybody here, everybody's put out --
13 carved out the time, so that's what we'll do. But if
14 you want to sort out -- if you think that this blood is
15 that critical in some way that's your call, but we're
16 moving through it the way it was planned to be moved
17 through and --

18 MR. WEST: Are we --

19 THE COURT: Evidence always has predicates.

20 MR. WEST: Are we -- are we on the record now?

21 THE COURT: We are sir.

22 MR. WEST: Okay. So, we don't have to repeat --

23 THE COURT: The red light is on. See that little
24 red light? Do you see the glow?

25 MR. WEST: Oh, I do now, yes.

1 THE COURT: That's what I'm saying. Everybody else
2 knows the glow, so. They're always telling me, the
3 lights still on.

4 MR. WEST: All right.

5 THE COURT: So, no, we're on the record. So,
6 that's what I'm saying, we've got the time, you're
7 welcome to do this if you think that that is a really
8 critical issue. I can't imagine that you're --

9 MR. WEST: Pardon me?

10 THE COURT: I'm saying if you think that the blood
11 and whatever is in it or not in it is a very critical
12 issue I am surprised that you would be learning about
13 it, or wondering about, or it be in any way not clear on
14 it at this juncture.

15 MR. WEST: Yes, me too, me too. Thank you.

16 THE COURT: Thank you.

17 MR. PANELLA: I'm sorry Your Honor. Goodnight.

18 THE COURT: Goodnight.

19 (Whereupon, court stands in recess for the evening;
20 resuming the following morning at approximately
21 9:00 a.m.)

22 TITUSVILLE, FLORIDA, 8/30/2018

23 THE COURT: Okay, are we ready to go? Here comes
24 Mr. Scheiner. We're back on the record in State of
25 Florida versus John Derossett, 2015-CF-39550.

1 Mr. Derossett is present, good morning sir, with
2 counsel, Mr. Panella and Mr. West. Good morning. And
3 Mr. Respass and Mr. Scheiner are here on behalf of the
4 State. Good morning to you. And are we ready to
5 proceed?

6 Let's see, where did -- I looked before where we
7 left off. With Agent Sean Hawkins and everybody was
8 finished with him. And who -- you said -- I think it
9 was someone that was longer was next? I don't recall
10 if --

11 MR. PANELLA: Right. Your Honor, that's true. The
12 FDLE --

13 THE COURT: I don't recall who it was.

14 MR. PANELLA: I think the firearms expert Mr.
15 Scheiner is here.

16 THE COURT: Oh, that's right, you were taking --

17 MR. SCHEINER: Yes, the firearms expert is here.

18 THE COURT: Right, that's right.

19 MR. SCHEINER: She's just reviewing -- it's -- she
20 looked at 51 exhibits, and so she's reviewing her case
21 packet now. Which I don't know, there is another
22 witness here. I don't know if we want to do the --

23 MR. PANELLA: I was thinking it might make sense,
24 at least from our perspective to go ahead and allow the
25 firearms expert to testify first. We're still --

1 THE COURT: Actually from our perspective, as in
2 all of us sitting here, it makes sense to get a witness
3 on the stand and start questioning that person.

4 MR. PANELLA: No, I understand Your Honor.

5 THE COURT: That's from our perspective. And yes,
6 perhaps I have a mouse in my pocket, but I want you all
7 to be able to have a full and fair hearing before the
8 entire week is finished. Because you know, Friday night
9 at 8:00 is a bad time to be in the --

10 MR. SCHEINER: I guess my point is is that Ms.
11 Murphy's not quite -- I'm not quite ready to put Ms.
12 Murphy on the stand yet.

13 THE COURT: Okay. Could we take the next person
14 then?

15 MR. SCHEINER: That's who I have here from the
16 State's perspective.

17 THE COURT: You have, okay. So, Mr. Panella, who
18 is --

19 MR. PANELLA: We did bring a witness Judge for
20 exactly that reason this morning, but we're discussing
21 it right now.

22 THE COURT: Okay, okay. Okay, Mr. Panella, it's
23 been about five minutes. Let's -- who will be your next
24 witness sir?

25 MR. PANELLA: Yes, Judge.

1 THE COURT: Okay, Mr. Panella, I'm not -- I'm
2 really not kidding. Let's go, let's go. You can have
3 these conversations during the evening, you can have
4 these conversations starting at 7am, that's your call,
5 but when we're on the court time that means it's go
6 time.

7 MR. WEST: Yes, ma'am.

8 THE COURT: So, let's go, please. This is 45
9 minutes after our start date. We've cancelled
10 everything so that we could start at 8:30. It is now
11 9:14. So, let's go.

12 MR. WEST: Yes, Judge. The -- we're still
13 regrouping on the question of the blood evidence. The
14 State has advised us they've requested that the blood be
15 brought to the courthouse. It's not here yet.

16 THE COURT: Okay.

17 MR. WEST: So, we're -- you know, we're sort of in
18 between at this point.

19 THE COURT: Okay.

20 MR. RESPESS: Well --

21 MR. WEST: So, if the --

22 THE COURT: Well --

23 MR. RESPESS: Can we just call -- there's an
24 officer sitting out there I believe they have here.
25 We'll call him. We were going to call him anyways.

1 Just so we're using the time.

2 THE COURT: Yeah. I mean, if we've got a witness
3 sitting in a corner and we've got no one sitting in the
4 courtroom except for all of us looking at each other.
5 That's not really the best use of our time.

6 MR. RESPESS: I mean, Officer Dobrowsky or Deputy
7 Dobrowsky is sitting --

8 THE COURT: Okay, Deputy Dobrowsky.

9 MR. RESPESS: (Cont'd) there, and he's reviewed
10 his -- and frankly that testimony would have to come
11 through us anyways because it would be --

12 THE COURT: Okay.

13 MR. RESPESS: (Cont'd self serving hearsay through
14 them.

15 THE COURT: Okay.

16 MR. PANELLA: Then Judge, that makes good sense.
17 If you want to go ahead and call him let's call him.

18 MR. RESPESS: Right. Now, understand this is out
19 of order. There's another witness tied to his testimony
20 that we intended to put close together, but we'll do it
21 this way just to fa -- to start doing something.

22 THE COURT: Okay, so, I'm just writing out of order
23 on him.

24

25

1 MR. PANELLA: Yes, Judge, and we brought him here
2 because we didn't want to waste the Court's time.
3 That's why he's here, because I called him at last night
4 at 8:00.

5 THE COURT: Okay.

6 MR. PANELLA: But if given where we're at if the
7 State wants to call him now that's okay with us.

8 THE COURT: That's fine.

9 MR. RESPESS: He's on our list.

10 THE COURT: Okay. I wrote down out of order
11 because at the end I'm going to go through with you what
12 the order is that you wanted. And I'm going to
13 rearrange the notes so that my notes so that they
14 reflect the order that you wanted.

15 MR. RESPESS: Right.

16 THE COURT: So, I have the whole account of
17 everything in the order that you all had intended.

18 MR. RESPESS: Right. And in conjunction with him
19 there would be people from the ambulance just after
20 this --

21 THE COURT: Okay.

22 MR. RESPESS: That we would be calling, but they're
23 going to be separate.

24

25

1 THE CLERK: Raise your right hand. Do you solemnly
2 swear or affirm that the testimony you shall give will
3 be the truth, the whole truth, and nothing but the truth
4 so help you God?

5 THE WITNESS: Yes.

6 THE CLERK: Thank you. You may be seated.

7 THE COURT: All right, thank you Mr. Respess. Any
8 time you're ready. Good morning sir.

9 THE WITNESS: Good morning.

10 WHEREUPON:

11 JEFFREY DOBROWSKY,
12 a Witness herein, having been duly sworn, testified upon his
13 oath as follows:

14 DIRECT EXAMINATION

15 BY MR. RESPESS:

16 Q. Can you tell us your name, spell your last name?
17 Don't say deputy because your mom didn't name you that.

18 A. Okay. Jeffrey Dobrowsky. Last name is
19 D-O-B-R-O-W-S-K-Y.

20 Q. Okay. And where are you employed?

21 A. Brevard County Sheriff's Office.

22 Q. All right. Were you employed with the Sheriff's
23 Office in the late evening, early morning hours of August 20,
24 2015 going into August 21, 2015?

25 A. Yes.

1 Q. What were you job duties back then?

2 A. I was on road patrol and I was actually in field
3 training at the time.

4 Q. So, you were just starting. Looks like you're
5 field training now.

6 A. I am now, recently.

7 Q. Okay. All right, so, relatively new deputy at that
8 time then?

9 A. Yes.

10 Q. Okay. And how did you -- what was the situation at
11 1051 Covina when you got there so we can understand when in
12 the sequence of events you're there?

13 A. When we arrived I know there was a fire truck
14 coming up the road. We pulled up, got out of the car.
15 Obviously the fire truck couldn't proceed up the road so we
16 had to move the vehicle. I backed the vehicle up. What
17 specifics are you looking for? Pretty much just painting a
18 picture or?

19 Q. Yeah, just -- so, was there a lot of law
20 enforcement already there before you got there, or were you
21 one of the first there, or what did you see? I know you've
22 got the fire truck --

23 A. There was a few. I was there fairly early.

24

25

1 Q. Okay. And the time you arrived there was a fire
2 truck. Was there an ambulance?

3 A. I don't recall.

4 Q. Okay. Now, how long were you -- I know you had to
5 move your vehicles around so other vehicles could get there,
6 but did you get that situation settled where you were out of
7 your automobile?

8 A. Yes.

9 Q. All right. And then what did you do?

10 A. Proceeded up the street. I know we spoke to
11 Brevard County Fire Rescue for a moment and from there my FTO
12 was already up the street, and I pretty much made contact
13 with one of the sergeant's that were there. And --

14 Q. Okay. Let me -- there's an aerial that we've been
15 using. Or is this mine? So, this is his pile? All right.
16 And I'm going to show you what's been marked as State's
17 Exhibit 2.

18 A. Okay.

19 Q. Do you recognize that?

20 A. Yes.

21 Q. Or not? You are, you're able to recognize it?

22 A. That house, yes.

23 Q. Okay, all right. Does -- can you show us where it
24 is you were in relation to that residence when you got with
25 your FTO?

1 A. We were actually, if not on this picture, we were
2 down on this piece of road. I believe this is --

3 Q. This Alcazar.

4 A. Alcazar, yeah. We were around here somewhere.

5 Q. Okay.

6 A. Down here.

7 Q. Okay. And so you were north of the intersection I
8 believe --

9 A. North.

10 Q. (Cont'd) is how north, south, east, and west works
11 there.

12 A. We were north.

13 Q. Would that be fair?

14 A. Yeah.

15 Q. Okay. And did there come a point in time where you
16 had contact with a person that came out of the house?

17 A. Later on in -- when he was in the ambulance.

18 Q. Okay. So, let's talk about that. How long were
19 you there before people came out of the house? Or were
20 you -- did you witness that?

21 A. Yes, yeah.

22 Q. Okay. So, you arrived. Do you remember how long
23 you were there before you witnessed people that were inside
24 this Covina residence come out?

25 A. I can't put a time on it.

1 Q. Okay.

2 A. There was too much going on.

3 Q. Fair enough. Do you see either of the people that
4 came out, that you observed come out of the house, in court
5 with us here today?

6 A. To tell you the truth it was dark, I can't.

7 Q. That's fair. Did you have contact with an
8 individual that had been shot that was not a law enforcement
9 officer?

10 A. Yes.

11 Q. And can you describe that person?

12 A. It was an elderly white male.

13 Q. All right. And where was this elderly white male
14 located when you had contact with him?

15 A. When I had contact with him he was first in the
16 ambulance. When I saw him first he came out of the house.

17 Q. Okay. So, is this the person, the same person that
18 you saw come out of the house and you described as an elderly
19 white male, is that the same person you saw at the ambulance?

20 A. Yes.

21 Q. Okay. And you aren't sure that you recognize that
22 person in court here today, is that what you're telling us?

23 A. I can't be certain.
24
25

1 Q. That's fair. Now, did -- were you -- was he in a
2 situation where you could appreciate his injuries, what
3 injuries he had? Were you able to visually observe those?

4 A. He was bleeding.

5 Q. Okay. Where was he bleeding?

6 A. To tell you the truth, he was laying down in the
7 stretcher. I know there was blood on the stretcher. That's
8 the extent that I know.

9 Q. Okay. And did he communicate with you?

10 A. He did at one point.

11 Q. All right. And had you asked him anything or said
12 anything to him?

13 A. No.

14 Q. All right. And did you have any particular purpose
15 for being there in proximity to him? Did you receive
16 instructions to stand by him or how --

17 A. Yeah, yes. Pretty much I was told to stay with him
18 and I was going to accompany him in the back of the ambulance
19 to the hospital.

20 Q. Okay. Now, did -- was this while -- the contact
21 that I'm talking about when he communicated with you, was
22 this while you were still at the scene?

23 A. Yes.

24 Q. Okay. And what happened? What did --

25 A. When he was in back of the ambulance?

1 Q. Yeah.

2 A. Pretty much he was sitting -- I was standing pretty
3 much in front of him, ambulance doors were open, and he was
4 sort of propped up, you know, on the stretcher, and that's
5 when he spoke to me.

6 Q. And what did he say?

7 A. He said I shot them in self defense. Who would
8 shoot a cop.

9 Q. Okay. So, he told you that -- he asked you the
10 question of who would shoot a cop, right?

11 A. Em-hmm.

12 Q. Okay. Now --

13 THE COURT: Sir, you have to say yes or no.

14 THE WITNESS: Yes.

15 MR. RESPESS: All right.

16 BY MR. RESPESS:

17 Q. And had -- was he handcuffed? Had he been told in
18 your presence, had he been told he was under arrest or
19 anything like that at that point?

20 A. He was handcuffed.

21 Q. Okay, all right. And was he -- how was he
22 handcuffed, handcuffed to the gurney?

23 A. I'm not sure.

24 Q. Okay.

25 MR. RESPESS: I don't have any other questions.

1 THE COURT: All right. Mr. Panella, any questions?

2 MR. WEST: Yes.

3 CROSS EXAMINATION

4 BY MR. WEST:

5 Q. Good morning.

6 A. Good morning.

7 Q. Please pronounce your last name for me.

8 A. Dobrowsky.

9 Q. Dobrowsky, Deputy Dobrowsky. The statement that
10 you just quoted Mr. Derossett saying, the man in the
11 ambulance --

12 A. Yes.

13 Q. Did he repeat it several times?

14 A. Only once to me.

15 Q. You only heard it one time?

16 A. Only heard it one time, yes.

17 Q. Was it directed to you?

18 A. I was the only person pretty much within his field
19 of view.

20 Q. Em-hmm.

21 A. It'd be like me to you right now.

22 Q. Yeah. Were you wearing a uniform?

23 A. Yes.

24 Q. And were the ambulance personnel around generally?

25 A. I'm not really too sure where they were. I'm sure

1 there was at least one or two in the ambulance.

2 Q. All right. Good, thanks. That's all I have --
3 sorry.

4 MR. WEST: Thanks Judge. That's all, thanks.

5 THE COURT: All righty. Thank you.

6 THE WITNESS: Thank you.

7 THE COURT: May Deputy Dobrowsky be excused?

8 MR. RESPESS: Yes.

9 THE COURT: All right. Thank you sir

10 THE WITNESS: Thank you.

11 THE COURT: Who will -- now, is the firearms --

12 MR. RESPESS: I believe -- I believe she's --

13 THE COURT: I think Mr. Scheiner's out there with
14 her?

15 MR. RESPESS: I believe she's ready. If they could
16 let him know.

17 THE BAILIFF: I will.

18 THE COURT: Sure.

19 THE CLERK: Raise your right hand. Do you solemnly
20 swear or affirm that the testimony you shall give will
21 be the truth, the whole truth, and nothing but the truth
22 so help you God?

23 THE WITNESS: I do.

24 THE CLERK: Thank you. You may have a seat.

25 MR. SCHEINER: May I inquire?

1 THE COURT: Yes, of course. Thank you.

2 WHEREUPON:

3 CHRISTINE MURPHY,

4 a Witness herein, having been duly sworn, testified upon her
5 oath as follows:

6 DIRECT EXAMINATION

7 BY MR. SCHEINER:

8 Q. Good morning.

9 A. Good morning.

10 Q. Please introduce yourself to the Court, spell your
11 last name.

12 A. Christine Murphy, M-U-R-P-H-Y.

13 Q. And Ms. Murphy, how are you employed?

14 A. I'm employed by the Florida Department of Law
15 Enforcement. I'm assigned to the firearms section of the
16 crime laboratory.

17 Q. And within the firearms section of the laboratory
18 what is -- what do you do?

19 A. My duties are to examine firearms that are
20 submitted into the laboratory for function and safety, to
21 test fire those firearms, collect the test fired cartridge
22 cases and bullets in order to compare them to any submitted
23 evidence, ammunition such as fired cartridge cases and
24 bullets.

25

1 Q. And you actually do the comparison as well?

2 A. Yes, I do.

3 Q. Okay. So, you don't just collect the exhibits for
4 comparison, you collect them so you can compare them to
5 things?

6 A. That's correct.

7 Q. And could you please tell the Court the training
8 that allows you to do the job that you do?

9 A. I have a Bachelor of Science Degree from the
10 University of Central Florida in physics, with a minor in
11 mathematics.

12 I have two additional years of forensic course work, and
13 when I was hired with FDLE I underwent a three month training
14 program as a forensic technologist in the firearms section.

15 And then when I was promoted to analyst I underwent a 19
16 month structured training program in the area of firearms and
17 tool mark identification.

18 Q. And how long have you been working in the area of
19 firearms and tool marks identification?

20 A. A little over 17 years.

21 Q. And do you hold any certifications?

22 A. I'm certified by the Florida Department of Law
23 Enforcement.

24

25

1 Q. Okay. And how long have you held that
2 certification?

3 A. Let's see, approximately 13 years.

4 Q. And do you undergo any proficiency or testing to
5 ensure that you've maintained that certification?

6 A. Yes. We have to undergo a proficiency test once a
7 year.

8 Q. And have you completed those?

9 A. Yes, I have.

10 Q. Successfully?

11 A. Yes.

12 Q. Okay. And the proficiency test, is it a blind
13 test? In other words, do you know that that's what's
14 happening?

15 A. No, it's provided by an outside company called
16 Collaborative Testing Services, and once a year they just
17 send each examiner a kit of firearms evidence --

18 Q. Okay.

19 A. (Cont'd) and scenario. And then we're to work it
20 as if it were an actual case.

21 Q. Okay. And you do that each -- annually?

22 A. Yes.

23 Q. Any continuing education or training that you have
24 to achieve?

25 A. We are required to pursue yearly training. There's

1 the Association of Firearm and Tool Mark Examiners annual
2 training meeting. However, not every examiner can go due to
3 due to funding.

4 Q. Right.

5 A. So, those that cannot attend the meeting will read
6 the quarterly journal from the Association of Firearms and
7 Tool Mark Examiners to read up on anything that's new in the
8 field or anything unusual that someone has come across during
9 case work and things like that.

10 Q. Have you had an occasion to testify in court as it
11 relates to firearms and tool mark identifications?

12 A. I have.

13 Q. And approximately how many occasions have you done
14 that?

15 A. I'd say over 80 times.

16 Q. Okay. And have you done it here in Brevard County?

17 A. I have.

18 Q. Have you done it in this courtroom?

19 A. I have.

20 MR. SCHEINER: I would tender the witness Judge.

21 THE COURT: All right. Any -- Mr. West, do you
22 wish to --

23 MR. WEST: Brief voir dire.

24 THE COURT: (Cont'd) voir dire the witness at all?
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VOIR DIRE EXAMINATION

BY MR. WEST:

Q. Good morning Ms. Murphy.

A. Good morning.

Q. Does your training extend to the operation of firearms as well as tool mark identification?

A. Yes, it does.

Q. So, you're generally familiar with firearms and how they operate, and safety mechanisms, and the -- essentially the handling of a firearm?

A. Yes, I am.

Q. And are you familiar with a firearm known as a Glock 22 in particular?

A. Yes.

Q. You've had other cases and had specific training on that -- on that handgun?

A. Not specific training on that gun, but we've had many Glock type guns that have come in and they've evolved over the years with different models of Glocks.

Q. Em-hmm.

A. But I'm very familiar with Glocks. We get several of those in case work every year.

Q. Thank you.

MR. WEST: No other questions.

THE COURT: Thank you.

1 MR. SCHEINER: Your Honor, I'd like to proceed in
2 questioning --

3 THE COURT: Yes, you may proceed.

4 MR. SCHEINER: (Cont'd) the witness in firearms and
5 tool marks identification.

6 THE COURT: Yes.

7 RESUMING DIRECT EXAMINATION

8 BY MR. SCHEINER:

9 Q. I'm going to -- have had an occasion to be involved
10 in a case that was investigated by the Department of --
11 Florida Department of Law Enforcement and the Brevard County
12 Sheriff's Department for a shooting that occurred in Brevard
13 County?

14 A. Yes, I have.

15 Q. Okay. And specifically a shooting that involved a
16 Casey Smith, or Agent Casey Smith, Agent Jason Roberts, Agent
17 Peter Stead, and a person by the name of John Derossett?

18 A. Yes, I have.

19 Q. Okay. Did you receive some items of evidence into
20 your laboratory for examination?

21 A. Yes, I did.

22 MR. SCHEINER: Your Honor I'm going to approach the
23 witness with some exhibits.

24 THE COURT: All righty.

25

1 BY MR. SCHEINER:

2 Q. I'm going to first show you an exhibit that is
3 marked as State's Evidence 81, and I'm going to ask that you
4 take a look at the outside of that box, tell me if you
5 recognize that box?

6 A. I do.

7 Q. And tell the Court what it is that you recognize
8 about that box?

9 A. It has the FDLE case number, the exhibit number,
10 and my initials written on the box.

11 Q. And could you go ahead and open the box, take a
12 look inside, and I'll ask if you recognize what's contained
13 in State's 83?

14 A. It contains a pistol --

15 THE COURT: Is it 81 or 3?

16 MR. SCHEINER: 81.

17 THE COURT: Okay.

18 MR. SCHEINER: Yes, 81. Thank you.

19 THE WITNESS: It contains a pistol, magazine, and
20 an envelope with the test fires.

21 BY MR. SCHEINER:

22 Q. And in looking at those items that are in there do
23 you recognize the items as in there as something that you
24 received in your laboratory and did some testing on?

25 A. I do.

1 Q. And how is it that you recognize them?

2 A. Has the FDLE case number, the exhibit number, and
3 my initials written on the items.

4 Q. And that particular exhibit has an agency exhibit
5 on it as well on the front, does it not? Not on the exhibit
6 itself, but on the box?

7 A. Yes, it does.

8 Q. And could you tell the Court what exhibit number
9 that is.

10 A. Appears to be OR dash -- can't really read the
11 writing.

12 Q. No, I'm concerned with the exhibit number.

13 A. Oh, the exhibit number. KP17.

14 Q. And if you could take that exhibit out of the box
15 and tell the Court the type of firearm that that is.

16 A. This is a semi automatic pistol, 40 Smith and
17 Wesson caliber.

18 Q. And the manufacturer of that?

19 A. It's Glock.

20 Q. And does it have a model?

21 A. It's a model 22.

22 Q. Okay. And do you know in your training and
23 experience or in your examination of that firearm the number
24 of rounds that that firearm is capable of holding?

25 A. This particular one the magazine specifies 15

1 cartridges. So, you could load 15 in the magazine and one in
2 the chamber. So, you have a total of 16.

3 Q. And did you have an occasion when receiving this
4 exhibit in your laboratory to test it for function?

5 A. I did.

6 Q. And please tell the Court what you did in order to
7 do that.

8 A. If I can refer to my notes?

9 Q. If that'll refresh your memory.

10 A. I test fired five cartridges in this particular
11 firearm and collected the test firing bullets and cartridge
12 cases, and the firearm was functional.

13 Q. Okay. And tell the Court how it is that you would
14 test fire this firearm in order to collect the cartridge --
15 or the cartridges and then the projectiles.

16 A. The firearm is just fired into a water tank and the
17 water tank allows me to collect the fired bullets in an
18 undamaged condition.

19 The water will just slow the bullets down enough where
20 they finally stop before they hit the end of the tank, and
21 then I can just fish them out of the tank.

22 And the cartridge cases are just ejected out of the port
23 of the firearm. And they are just on the floor, so I just
24 collect them off the floor.

25

1 Q. Okay. In a semi automatic firearm -- if you could
2 tell the Court how a semi automatic firearm works, like this
3 Glock 22.

4 A. Okay. First of all, the cartridges would be loaded
5 into the magazine, and then the magazine would be inserted
6 into the magazine well, which would be the pistol grip of the
7 semi automatic pistol. And then the slide would be pulled to
8 the rear, and it's under spring tension.

9 So, when you release the slide it's going to travel back
10 forward, and as it does so it's going to strip the top
11 cartridge of the magazine off of the magazine and chamber it
12 into the chamber.

13 While the slide is to the rear it's also cocking the
14 firing mechanism. So, once the slide closes it'll chamber
15 the top round of the magazine. It's already cocked and ready
16 to go. So, all you need to do is just pull the trigger.

17 Q. Okay. And would a user of that particular firearm
18 have to pull the slide back each time in order to fire it, or
19 would once it's been cocked and loaded once into the chamber
20 can the user just pull the trigger til it's empty?

21 A. Yes. For the first cartridge you'll manually have
22 to pull the slide to the rear to chamber the first cartridge,
23 but after that semi automatic means that every time you pull
24 the trigger and fire a shot that the cartridge, fired
25 cartridge case will -- the pressure inside will actually

1 force the slide to move to the rear, eject the fired
2 cartridge case.

3 And then under spring tension the slide's going to want
4 to move back forward. It's going to strip the next cartridge
5 off the magazine and chamber it. So, in order to fire this
6 gun you just keep pulling the trigger until you run out of
7 ammunition.

8 Q. So, once it's loaded and in a -- one in the chamber
9 the firearm is then -- the action of the firearm itself will
10 reload each round into the chamber?

11 A. Yes, the firearm will take care of the whole
12 sequence itself.

13 Q. Until it's empty?

14 A. Til you're out of ammo.

15 Q. If the firearm is not topped off, or the 15 plus 1,
16 so there's only the 15 in the chamber, the user has to slide
17 the slide back before the firearm could be fired?

18 A. Correct.

19 Q. When you receive an ex -- this particular exhibit
20 in your laboratory the package that it came in, was it in a
21 sealed condition?

22 A. Yes, it was.

23 Q. And you would have opened it, or one of your
24 evidence technicians that work with you would have opened it
25 for you to perform this testing?

1 A. That's correct.

2 Q. Okay. I'm going to show you a few more exhibits.
3 82, 83, 84, and 85, which were previously marked as -- well,
4 that's the State's Evidence numbers. I'm going to ask if you
5 recognize -- and we'll start with 82.

6 A. Yes, I do.

7 Q. And how do you recognize State's 82?

8 A. It has the FDLE case number, exhibit number, and my
9 initials on the package.

10 Q. And did you receive this particular exhibit in your
11 laboratory?

12 A. I did.

13 Q. And did you do any examination on this exhibit?

14 Well, let me ask you this: The package that it came in, was
15 it in a sealed condition?

16 A. Yes.

17 Q. And did you open up that package and do an
18 examination on it?

19 A. I had one of our FTA's that actually opened it and
20 documented what was inside for me.

21 Q. And then they present it to you?

22 A. Yes.

23 Q. And FT, they're -- what is an FT?

24 A. It's a forensic technologist.

25

1 Q. Is that someone that works underneath you in order
2 for you to do your job?

3 A. Yes, they assist us at times with our case work.

4 Q. And when you have 50 something exhibits that would
5 be one of those times?

6 A. Yes, I had someone help me and help document all of
7 the items.

8 Q. Tell the Court what you did with this particular
9 exhibit in order to examine it.

10 A. Okay, this was a fired cartridge case, and so
11 basically I just document the caliber and the make and the
12 composition of the cartridge case and the type of markings
13 that I see on it. And then I just do a microscopic
14 comparison with one of the test fires from one of the
15 firearms.

16 Q. And tell the Court what a microscopic comparison
17 entails so she understands.

18 A. Okay. We have a comparison microscope. So, it's
19 basically two microscopes joined by an optical bridge. And
20 this allows me to examine two items of evidence at the same
21 time under the same field of view, so I can compare them side
22 by side.

23 And what I'm looking at with the cartridge cases is on
24 the head of the cartridge. There's a primer, and that's what
25 the firing pin actually will strike in order to discharge the

1 bullet.

2 And when the cartridge is discharged there's pressures
3 that generate instantaneously inside the cartridge and inside
4 the chamber of the firearm.

5 So, this pressure will cause the cartridge case to slam
6 to the rear supporting surface of the firearm, which is
7 called the breach face.

8 And any microscopic markings on the surface of the
9 breach face are going to be impressed into the primer, and
10 also on the head of that cartridge case.

11 And those markings are what I'm going to utilize for my
12 microscopic comparison with the test fire. There's also the
13 firing pin impression that could also have unique microscopic
14 markings that could be utilized for identification purposes.

15 Q. Now, these impressions that are left by the
16 firearm, are these -- or the marks on the tool itself, which
17 would be the firearm, are these the result of manufacturing
18 process and use of the firearm?

19 A. It could be both.

20 Q. And are they unique to firearms, specific firearms?

21 A. They are.

22 Q. And you had -- you said you test fired from State's
23 Exhibit 81. So, you had those shell casings for comparison
24 to the cartridge casing that's in State's 82?

25 A. Yes, I did.

1 Q. And did you conduct that comparison?

2 A. I did.

3 Q. I'm going to ask that you remove 82 from its
4 packaging if you could. There should be tape on the side
5 maybe.

6 A. Oh, I see. Okay.

7 THE COURT: Is she still looking at 82?

8 MR. SCHEINER: Yes, 82.

9 THE COURT: She's opening 82, okay.

10 BY MR. SCHEINER:

11 Q. Now, you referred to the head, and the stamp, and
12 the primer. If you could identify for the Court -- maybe
13 this will work. Maybe, we'll see. When you're referring to
14 the head of the casing what are you referring to?

15 A. The head is this top surface that you're looking at
16 where you have the headstamp, which indicates the
17 manufacturer and the caliber.

18 It says Win for Winchester, and 40 Smith and Wesson is
19 the caliber. And then the brass colored circle in the middle
20 is the primer. And in the middle of the primer you see a
21 little indentation and that's the firing pin impression.

22 Q. Okay. And then you were talking about breach face
23 marks and things like that. Are you able to see that on this
24 or no?

25 A. You can see some of them, but most of them are

1 microscopic. So, you need a microscope to really see what
2 I'm looking at for my identification.

3 Q. And there's a package inside State's 81 that has
4 some smaller things in there.

5 A. Yes, those are the test fires.

6 Q. So, those would have been the standards that you
7 had used?

8 A. Yes, this is what I used to compare with the
9 cartridge, the evidence cartridge case, number 82.

10 Q. Because those that are in that little package that
11 were in the box of 81, those are known projectiles and
12 casings from that firearm?

13 A. Yes, these were actually fired from this specific
14 firearm.

15 Q. Now, on this particular exhibit, 82, do you put any
16 markings on that exhibit to know that that's the exhibit you
17 looked at?

18 A. Yes, when the package is opened it's immediately
19 marked. I don't know if you can see, but inside the mouth I
20 write an abbreviated --

21 Q. The lighting's not very good in here.

22 A. Yeah. An abbreviated case number, exhibit number,
23 and my initials inside the mouth. So, it can't be erased.
24 And then on the outside it was just written for convenience
25 purposes, the exhibit number.

1 Q. Which was KP18?

2 A. Yes.

3 Q. And that was assigned by the investigating agency?

4 A. Yes. As I received them that was the exhibit
5 number that was assigned to it.

6 Q. And you do that with each of the exhibits that you
7 look at?

8 A. I do that as they're opened so that they don't get
9 mixed up.

10 Q. Firearm, shell casing, projectile, you do that with
11 all of them?

12 A. Yes, em-hmm.

13 Q. You can go ahead and put that one back. Having
14 reviewed State's Exhibit 82 do you have an opinion as to what
15 firearm would have fired that particular shell casing, or
16 ejected that shell casing?

17 A. Yes, I was able to identify the KP17 pistol as
18 having fired the -- KP17 would be Exhibit Number 81, having
19 fired the Exhibit Number 82 cartridge case.

20 Q. Okay. I'm going to show you three more exhibits,
21 83, 84 -- I don't know what -- 83 and 84. Do you recognize
22 83 and 84?

23 A. I do.

24 Q. And how do you recognize them?

25 A. By the FDLE case number, the exhibit number, and my

1 entails on the packaging.

2 Q. And did you receive each of these exhibits for
3 forensic analysis?

4 A. I did.

5 Q. And did you conduct the same analysis you just
6 spoke of with 81 and 82 to these two exhibits?

7 A. I did.

8 Q. And were you able to reach a conclusion as to a
9 firearm that potentially fired that projectile?

10 A. Yes.

11 Q. And what was that conclusion?

12 A. My conclusion was that the Exhibit 81 pistol fired
13 the exhibit 83 and 84 cartridge cases.

14 Q. I'm going to show you what's been previously marked
15 for identification purposes as State's Exhibit A, and as if
16 you recognize State's Exhibit A?

17 A. I do.

18 Q. And how do you recognize State's Exhibit A?

19 A. With the FDLE case number, the exhibit number, and
20 my initials written on the package.

21 Q. And did you receive this particular exhibit in your
22 laboratory?

23 A. I did.

24

25

1 Q. Could you please remove its contents and take a
2 look at the box on the inside ma'am. Do you recognize the
3 box?

4 A. I do.

5 Q. And what is it that you recognize about the box?

6 A. It's also got the case number, exhibit number, and
7 my initials written on the box.

8 Q. And can you look inside the box and I'm going to
9 ask if you recognize what's inside there.

10 A. There's unfired cartridges in the -- inside the
11 box.

12 Q. Now, when you received State's Exhibit A for
13 identification purposes -- there's only seven in that box,
14 correct?

15 A. Yes, seven

16 Q. Okay. When you received that exhibit was there
17 more than seven in there?

18 A. Yes, there was.

19 Q. Okay. And what happened to the other -- how many
20 were in the box when you received it?

21 A. There was a total of 15 cartridges.

22 Q. Okay. And the other eight?

23 A. I used eight of the cartridges to test fire each
24 one of the submitted firearms.

25

1 Q. And tell the Court why you used those -- that
2 ammunition in the test firing?

3 A. I used similar ammunition because the evidence
4 cartridge cases, some of the cartridge cases and bullets
5 exhibited characteristics that were unique and similar to the
6 submitted cartridges.

7 So, in order to get the best markings on the bullets and
8 cartridges cases if I can use the same type of ammo it's
9 going to increase the chances of getting the same type of
10 markings. So, that's why I utilized the submitted cartridges
11 to test fire.

12 Q. So then you would have -- so, you used eight and
13 then you resealed the package and left it -- the contents?

14 A. Yes, I returned the fired bullets and cartridge
15 cases with each one of the firearms that I fired them from.

16 Q. And did you make a note on this -- the interior box
17 of this exhibit that you had done that?

18 A. Yes, I did.

19 Q. You can go ahead and put it back.

20 MR. SCHEINER: Judge, at this time I'd move A into
21 evidence as the next numbered exhibit.

22 THE COURT: All righty. This would be -- where are
23 we Madam Clerk?

24 THE CLERK: 105.

25 THE COURT: 105?

1 THE CLERK: Yes, ma'am.

2 THE COURT: All righty, thank you. 105. A will
3 become 105.

4 MR. SCHEINER: And just --

5 THE COURT: Without objection I'm assuming. We're
6 still going under the yesterday if you have an objection
7 you'll make it?

8 MR. PANELLA: Yes, ma'am.

9 THE COURT: Okay.

10 MR. WEST: Yes, Your Honor. Thank you.

11 THE COURT: Okay, thank you.

12 BY MR. SCHEINER:

13 Q. Ms. Murphy, the firearm that we had just looked at
14 before was previously KP17. Do you see 17 on the exhibit
15 that is on the screen now, which is photo 20 -- number --
16 State Exhibit 27?

17 A. Yes, I do.

18 Q. And if you could identify where 17 is at?

19 A. It's right there.

20 Q. And then I had shown you what was marked as State's
21 82, 83, and 84. And each of them was previously -- or was
22 indicated as PM18, PM16, and PM15. Do you see those on there
23 as well?

24 A. There's 16, 15 -- did you say 18?
25

1 Q. Yes, ma'am.

2 A. Okay.

3 Q. I'm going to show you what's in evidence as State's
4 Number 87 and ask if you recognize that exhibit?

5 A. I do.

6 Q. And what is it that you recognize about that
7 exhibit?

8 A. The FDLE case number, exhibit number, and my
9 initials on the package.

10 Q. Did you receive that exhibit in your laboratory?

11 A. I did.

12 Q. And does that exhibit have an agency case number --
13 or not case number, agency exhibit number?

14 A. KP13.

15 Q. And can you see KP13 on the screen there?

16 A. There's 13.

17 Q. And did you receive this exhibit into your
18 laboratory for examination?

19 A. Yes.

20 Q. When you received the exhibit was it in a sealed
21 condition?

22 A. Yes.

23 Q. Did you open it or one of your technicians open it?

24 A. Yes.

25

1 Q. And when you opened it did you put any markings on
2 it so that you would know that's the exhibit you analyzed?

3 A. Yes.

4 Q. Can you check and see if that's the case?

5 A. Yes, there's a pistol, magazine that both have the
6 FDLE case number, exhibit number, and my initials, along with
7 an envelope that has the test fired cartridge cases and
8 bullets from this particular firearm.

9 Q. Did you test fire this firearm?

10 A. Yes.

11 Q. And did you test fire it in the manner that you
12 described for the previous exhibit?

13 A. I did.

14 Q. And was this a functioning firearm?

15 A. It was.

16 Q. And what's a firearm?

17 A. A firearm is weapon designed to expel a projectile
18 with the use of an explosive force.

19 Q. And that's what this does?

20 A. Yes.

21 Q. Okay. And it was a functioning firearm?

22 A. It was.

23 Q. Please tell the Court what type of firearm that is.

24 A. This is also a semi automatic pistol. It's a
25 Glock, 40 Smith and Wesson caliber, model 27.

1 Q. Okay. And this particular Glock, is it larger --
2 the physical size of it, is it larger or smaller than the
3 Glock 22 we just looked at?

4 A. It's a smaller frame.

5 Q. Okay. What about the ammunition it uses?

6 A. Uses the same caliber ammunition, 40 Smith and
7 Wesson.

8 Q. The 40 caliber?

9 A. Em-hmm.

10 Q. How many rounds does this particular exhibit hold?

11 A. This magazine designates nine. So, you could load
12 nine in the magazine and one in the chamber for a total of
13 ten.

14 Q. And does this firearm function in the same way as
15 the previous firearm we looked at as a semi automatic?

16 A. Yes.

17 Q. So, one has to -- it has to be loaded in the
18 magazine, it has -- the slide has to be drawn back, and then
19 the action at that point will allow the firearm to be -- to
20 function in a semi automatic fashion?

21 A. Correct.

22 Q. Okay.

23 THE COURT: May I interrupt for one second? Which
24 exhibit is the Glock 27 again? I'm sorry, I didn't
25 catch the number.

1 THE WITNESS: 87.

2 MR. SCHEINER: 87.

3 THE COURT: 87. Thank you.

4 BY MR. SCHEINER:

5 Q. Having test fired this firearm did you collect the
6 projectiles and the shell casings that you fired?

7 A. I did.

8 Q. And did you use those for microscopic comparison to
9 other exhibits that were provided to you?

10 A. I did.

11 Q. I'll show you a number of exhibits. We're going to
12 start with number 89, and I'm going to ask if you recognize
13 number 89?

14 A. I do by the FDLE case number, exhibit number, and
15 my initials.

16 Q. And what is 89?

17 A. It's a fired cartridge case.

18 Q. And did you receive this exhibit into your
19 laboratory?

20 A. I did.

21 Q. When it came to your laboratory was it in a sealed
22 condition?

23 A. Yes.

24

25

1 Q. And was it opened by your laboratory and
2 documented?

3 A. Yes.

4 Q. Did you perform any comparison on this particular
5 exhibit to State's Evidence Number 87, the Glock 27?

6 A. I did.

7 Q. And that particular exhibit, if you could pull it
8 out of the box, take a look at it, and tell me if you can --
9 if you put those same markings that you put on the previous
10 exhibit?

11 A. Yes, it's got the FDLE case number, abbreviated
12 case number, exhibit number, and my initials on the inside of
13 the mouth, and then the exhibit number is written on the
14 outside of the case as well.

15 Q. And what exhibit number is that?

16 A. KP8.

17 Q. Can you see 8 on the screen?

18 A. Right there.

19 Q. And did you make an identification of any fashion
20 as it relates to State's Evidence number 89 as it relates to
21 87?

22 A. Yes. Number 89, the fired cartridge case, was
23 identified as having been fired in the Exhibit 87 pistol.

24

25

1 Q. I'm going to show you -- go ahead and put that
2 back. I'm going to show you 88, 90, 91, 92, and 93, and ask
3 if you recognize each of those exhibits?

4 A. I do. Each item has the FDLE case number, the
5 exhibit number, and my initials on each package.

6 Q. And did you receive each of those exhibits into
7 your laboratory for examination?

8 A. I did.

9 Q. And when they arrived at your laboratory were they
10 in a sealed condition?

11 A. They were.

12 Q. And did -- were they opened and documented by your
13 laboratory or yourself?

14 A. They were.

15 Q. Okay. And did you perform any microscopic
16 comparison on each of those exhibits?

17 A. I did.

18 Q. And were you able to compare those exhibits to
19 what's been previously marked with the Glock 27?

20 A. Yes, I did.

21 Q. State's --

22 A. 87.

23 Q. 87. I'll write that down so I don't forget. And
24 did you do the comparison -- or how did you do the
25 comparison?

1 A. I did a microscopic side by side comparison of each
2 evidence cartridge case with a test fire from the firearm.

3 Q. And each of those exhibits are cartridge casings?

4 A. Let me just double check and make sure. Yes, they
5 are. They're fired cartridge cases.

6 Q. And do you have an opinion as to which firearm
7 fired those shell casings that you have in front of you?

8 A. Each one of these cartridge cases were identified
9 as having been fired by the Exhibit 87 pistol.

10 Q. The Glock 27?

11 A. Yes.

12 Q. And do you see the -- on each of those exhibits
13 their original agency exhibit number?

14 A. Yes.

15 Q. And could you I guess tell me which evidence number
16 it is and then --

17 A. Number 88 is Exhibit KP7.

18 Q. Do you see KP7 on the screen?

19 A. (No verbal response.)

20 Q. It's under the tree? Is this it here?

21 A. Oh, yeah, it's right there.

22 Q. And then the next exhibit?

23 A. Exhibit number 90 is KP9. It is right there.

24 Exhibit 91 is KP10. It's right there. Exhibit 92 is KP12,

25 which would be right there. And Exhibit 93 is KP23, which is

1 right there.

2 Q. And all those came from KP13?

3 A. KP87.

4 Q. Or 87, but was previously KP13?

5 A. KP13, yes.

6 Q. Which is here?

7 A. Yes.

8 Q. I want to show you 90 -- State's 94, 95, 96, 97,
9 and 98, and ask if you recognize each of those exhibits?

10 A. I do by the FDLE case number the exhibit number,
11 and my initials written on each package.

12 Q. And did you receive each of those exhibits into
13 your laboratory?

14 A. I did.

15 Q. And did they arrive at your laboratory in a sealed
16 condition?

17 A. They did.

18 Q. Were they opened and documented for your
19 examination?

20 A. Yes, by myself or one of the FT's.

21 Q. Working with you?

22 A. Yes.

23 Q. And did you have an occasion -- what are each of
24 those exhibits?

25 A. Each one of these is also a fired cartridge case.

1 Q. Okay. And did you have an occasion to do a
2 microscopic comparison of those cartridge casings to State's
3 Exhibit -- or State's Evidence number 87?

4 A. I did.

5 Q. Okay. And how did you do that?

6 A. The same type of examination by a microscopic
7 comparison.

8 Q. And you were observing the breach face marks on the
9 primer and on the casing itself?

10 A. Yes.

11 Q. And do you have an opinion as to where each of
12 those exhibits came from, or which firearm fired them?

13 A. Yes.

14 Q. And if you could tell the Court what that is.

15 A. Each one of these cartridge cases was fired from
16 the KP13 pistol, which is Exhibit 87.

17 Q. And if you could identify each of those exhibits by
18 their original agency number.

19 A. Exhibit 94 is KP37. Exhibit 95 is KP40.

20 Q. Is that --

21 A. Oh, I'm sorry.

22 Q. No, you're okay. Go ahead.

23 A. KP -- or I'm sorry, Exhibit 96 is KP47. Exhibit 97
24 is KP41. And Exhibit 98 is KP50.

25

1 Q. And each one of these exhibits will have the same
2 FDLE case number or partial FDLE case number inscribed on the
3 inside with the mouth of them?

4 A. Yes.

5 Q. And then the original agency case number on the
6 exterior of it -- or the original agency exhibit number?

7 A. Yes.

8 Q. And those shell casings we just looked at came with
9 that firearm we were just looking at, State's 87?

10 A. They were fired from that firearm.

11 Q. I'm showing you what's marked as State's 99, and
12 ask if your recognize that exhibit?

13 A. I do by the FDLE case number, the exhibit number,
14 and my initials written on the box.

15 Q. Did you receive that exhibit into your laboratory?

16 A. I did.

17 Q. And did it arrive in your laboratory in a sealed
18 condition?

19 A. It did.

20 Q. Was it opened and examined?

21 A. By me or one of the FT's.

22 Q. And did you make note on the exhibit -- the inside
23 of the exhibit to know that that's the one that you received?

24 A. Yes, it has the FDLE case number, exhibit number,
25 my initials on both the items. There's a pistol, a magazine,

1 and an envelope with the test fires from the firearm.

2 Q. And did you test fire that firearm?

3 A. Yes, I did.

4 Q. And did you collect your test fired rounds and
5 shell casings?

6 A. Yes.

7 Q. And did you use those for microscopic comparison to
8 other exhibits that were provided to your laboratory?

9 A. I did.

10 Q. What is in State's 99?

11 A. Glock model 22 pistol, 40 Smith and Wesson caliber,
12 a magazine, and the test fires from this particular firearm.

13 Q. Okay. And that's the same type of semi automatic
14 firearm as the one we looked at, the first one?

15 A. The first one, yes.

16 Q. So, a Glock 22. How many rounds does that
17 particular firearm hold?

18 A. This magazine indicates 15. So, 15 in the
19 magazine, plus one in the chamber would be 16 total.

20 Q. Okay. And does it function in the same way as the
21 other firearms we talked about?

22 A. It does.

23 Q. And is that a functioning firearm?

24 A. Yes.

25

1 Q. I'm going to show you several exhibits again. And
2 we're going to start with 75. So, take a look at 75 first.
3 I'd like you to open -- or do you recognize it?

4 A. Yes, I do.

5 Q. And how do you recognize it?

6 A. The FDLE case number, exhibit number, and my
7 initials on the packaging.

8 Q. And when you received this exhibit did it arrive in
9 your department in a sealed condition?

10 A. Yes, it did.

11 Q. And it was opened and examined by yourself?

12 A. Yes.

13 Q. Well, examined by yourself, opened by either your
14 or a technician?

15 A. Yes.

16 Q. And could you take a look at the inside contents
17 and ask if you recognize that?

18 A. Yes, it's a fired cartridge case. It has the FDLE
19 case number, exhibit number, and my initials written on the
20 inside of the mouth.

21 Q. And you examined this particular exhibit?

22 A. Yes, I did.

23 Q. And did you compare it to State's Evidence 99, the
24 Glock 22 that we're looking at right next to you?

25 A. I did.

1 Q. And do you have an opinion based on that
2 microscopic comparison as to which firearm fired State's
3 15 -- I'm sorry, State's 75?

4 A. Yes, I was able to determine that this exhibit,
5 this fired cartridge case was fired from this Exhibit 99
6 firearm.

7 Q. And what original agency exhibit number was that
8 given?

9 A. For the cartridge case?

10 Q. Yeah.

11 A. KP25.

12 Q. That's here?

13 A. Yes.

14 Q. All right. You can go ahead and put that one back.

15 THE COURT: I'm sorry, the exhibit number was 75 on
16 that one?

17 MR. SCHEINER: 75.

18 THE COURT: 75. Thanks.

19 BY MR. SCHEINER:

20 Q. I'm showing you 76, 77, and 78, and ask if you
21 recognize each of these exhibits?

22 A. I do by the FDLE case number, the exhibit number,
23 my initials written on the package.

24

25

1 Q. And did you receive each of these exhibits into
2 your laboratory for testing?

3 A. I did.

4 Q. And when you received them were they received in a
5 sealed condition?

6 A. They were.

7 Q. And were they opened for microscopic comparison to
8 State's 99? Among other exhibits, but --

9 A. Okay. They were.

10 Q. Okay. And having done that -- you did that
11 comparison yourself?

12 A. I did.

13 Q. And do you have an opinion as to which firearm
14 fired each of those exhibits that we're looking at?

15 A. Each one of these cartridge cases was fired from
16 the Exhibit 99 pistol.

17 Q. And could you tell me the ex -- the evidence number
18 for this hearing, and then the original agency exhibit
19 number?

20 A. Exhibit 76 is KP42. Exhibit 77 KP27. And Exhibit
21 78 KP26.

22 Q. And again, each one of those came from the Glock 22
23 that's in State's 99?

24 A. That's correct.

25

1 Q. State's 71, 72, 73, and 74. Did you receive each
2 of these exhibits into your laboratory?

3 A. I did. They have the FDLE case number, exhibit
4 number, and my initials written on the packaging.

5 Q. And did they arrive at your laboratory in a sealed
6 condition?

7 A. They did.

8 Q. And did you -- were they opened and processed for
9 microscopic comparison?

10 A. They were.

11 Q. And were each of those exhibits marked in some way
12 on the inside by FDLE so that you know those are the exhibits
13 that you reviewed?

14 A. Yes.

15 Q. And did you compare them to State's Evidence 99?

16 A. I did.

17 Q. And do you have an opinion as to which firearm
18 fired those shell casings?

19 A. Yes, these four fired cartridge cases were fired
20 from the Exhibit 99 pistol.

21 Q. Okay. Which is previously agency report number
22 PJ1, right?

23 A. PJ1, yes.

24

25

1 Q. And if you could identify them by their hearing
2 exhibit number and then their original agency evidence
3 number.

4 A. Exhibit 71 is KP19. Exhibit 72 KP20. Exhibit 73
5 KP21. And Exhibit 74 KP22.

6 Q. All right, we're going to come back to 99 in a bit.

7 A. Okay.

8 Q. I'm going to show you what's in evidence as State's
9 Evidence number 20, and ask if you recognize State's 20?

10 A. I do by the FDLE case number, the exhibit number,
11 and my initials written on the box.

12 Q. And did you receive that exhibit into your
13 laboratory?

14 A. I did.

15 Q. And was it -- did it arrive in a sealed condition?

16 A. It did.

17 Q. And was it opened and processed for functionality?

18 A. Yes.

19 Q. And did you test fire that firearm?

20 A. Yes.

21 Q. Or that exhibit. Can you open it and take a look
22 and make sure what's in there is what you were working with?

23 A. Yes, there's a pistol and a magazine, both having
24 the FDLE case number, the exhibit number, and my initials on
25 each item, as well as an envelope with the test fires from

1 this firearm.

2 Q. And when you test fired that firearm did you
3 collect the projectiles and the shell casings for microscopic
4 comparison to exhibits that were submitted to your
5 laboratory?

6 A. Yes.

7 Q. And did you do that comparison?

8 A. I did.

9 Q. I'm sorry, could you remove that exhibit from it
10 and identify what it is for the Court?

11 A. This is a Glock, model 22, semi automatic pistol,
12 40 Smith and Wesson caliber.

13 Q. Okay. And fires the same type of ammunition that
14 we've been talking about in all the other firearms?

15 A. Yes, they're all 40 Smith and Wesson caliber.

16 Q. And they're all Glocks?

17 A. They're all Glocks.

18 Q. Three of them are Glock 22's, the other's a Glock
19 27?

20 A. Correct.

21 Q. Okay. How many rounds of ammunition does this
22 exhibit hold?

23 A. This magazine designates 15, so 15 in the magazine
24 plus one in the chamber is a total of 16.

25

1 Q. And does this firearm function the same way as the
2 other firearms we've discussed functions?

3 A. Yes.

4 Q. I'm going to show you what's marked into evidence
5 as State's Evidence 60, and I'm going to ask if you recognize
6 that exhibit?

7 A. I do by the FDLE case number, exhibit number and my
8 initials.

9 Q. Did you receive that exhibit in your laboratory?

10 A. I did.

11 Q. And did you conduct any micro -- or was it in a
12 sealed condition when you received it?

13 A. Yes, it was.

14 Q. Was it opened and processed for microscopic
15 comparison to what's previously marked as -- or what's marked
16 as --

17 A. 20.

18 Q. (Cont'd) State's 20?

19 A. It was.

20 Q. Okay. And did you do that comparison?

21 A. I did.

22 Q. And if you could open that exhibit, take a look
23 inside, and satisfy yourself that what's in there is what you
24 did the comparison on.

25 A. It's a fired bullet, which has the abbreviated FDLE

1 case number, exhibit number, and my initials on the base.

2 Q. Oh, did I give you -- I gave you a projectile?

3 A. Yes.

4 Q. All right. Well, we'll move on from that one for
5 just a minute, okay.

6 THE COURT: That's 20, correct? Mr. Scheiner, was
7 that Exhibit 20 that she had?

8 MR. SCHEINER: No, 20 is the firearm. This was
9 Exhibit 60.

10 THE COURT: Okay, is the 20 -- is -- what was the
11 original -- was the firearm the EC firearm?

12 MR. SCHEINER: Yes, EC1.

13 THE COURT: EC1, okay.

14 BY MR. SCHEINER:

15 Q. And I'll get back to that one with you, okay?

16 A. Okay.

17 Q. Let's try this one, State's 61. Do you recognize
18 61?

19 A. I do, with the FDLE case number, exhibit number,
20 and my initials on the package.

21 Q. And did you receive this exhibit in your laboratory
22 for microscopic comparison?

23 A. Yes.

24 Q. And did it arrive in a sealed condition?

25 A. Yes.

1 Q. And did you -- was it opened by your laboratory,
2 documented, and then used for that comparison?

3 A. Yes.

4 Q. If you could open it, take a look inside.

5 A. So, this is a fired cartridge case. It has the
6 abbreviated FDLE case number, exhibit number, my initials
7 written in the mouth.

8 Q. Okay. And what original agency evidence number did
9 that exhibit have?

10 A. KP34.

11 Q. And do you have -- did you compare that to the
12 known case -- or cartridges from State's Evidence 20?

13 A. Yes, I compared it to the test fires.

14 Q. And do you have an opinion as to which firearm
15 fired that evidence, State's 61?

16 A. Yes.

17 Q. And what is that opinion?

18 A. I was able to determine that Exhibit 61 was fired
19 from the Exhibit 20 pistol.

20 Q. Okay. Showing you 62, 63, 64, 65, 66, 67, and 68.
21 Do you recognize each of those exhibits?

22 A. I do by the FDLE case number, exhibit number, and
23 my initials on each package.

24

25

1 Q. And were each of those exhibits received by your
2 laboratory for microscopic comparison?

3 A. They were.

4 Q. And did they arrive in the sealed condition?

5 A. They did.

6 Q. And were they -- did you open them or someone open
7 them?

8 A. Yes.

9 Q. And were they documented in the condition they
10 arrived?

11 A. Yes.

12 Q. And did you conduct a microscopic comparison to
13 each of those exhibits?

14 A. Yes, I did.

15 Q. And what are -- each of those exhibits, what are
16 they?

17 A. These are all fired cartridge cases.

18 Q. And did you conduct a microscopic comparison with
19 your known standards to each one of those exhibits?

20 A. I compared each one of these cartridge cases to a
21 test fire from the Exhibit 20 pistol.

22 Q. Okay. And do you have an opinion as to which
23 firearm fired each one of those exhibits?

24 A. Yes.

25

1 Q. And could you tell the Court what that opinion is?

2 A. I was able to determine that each cartridge case
3 represented was fired from the Exhibit 20 pistol.

4 Q. Okay. And could you please identify them by their
5 exhibit number and then their original agency evidence
6 number?

7 A. Exhibit Number 62 is KP46. Exhibit 63 KP28.
8 Exhibit 64 KP29. Exhibit 65 KP30. Exhibit 66 KP31. Exhibit
9 67 KP32. And Exhibit 68 KP33.

10 Q. Thank you. Ms. Murphy, each one of the firearms
11 that you received were all Glock 40 caliber Smith and
12 Wesson's, correct?

13 A. Yes.

14 Q. Could you please tell the Court how a Glock 40
15 caliber Smith and Wesson would expel the projectile? Is
16 there a direction, is there similarities between
17 manufacturers?

18 A. You mean direction that it would be --

19 Q. Is there a spin to how the firearm comes out? Is
20 there a --

21 A. Oh, yes.

22 Q. Okay. If you could go over that. Probably poor
23 words on my part.

24 A. Let me just double check the rifling on these.
25 Okay, each one of these firearms has rifling in the barrel,

1 which is lands and grooves that are cut into the barrel.

2 And they're cut into the barrel with a twist either to
3 the right or to the left. And what this does is it allows
4 the bullet when it exits the firearm to have a spin on it,
5 and it makes it more accurate in its trajectory.

6 So, the manufacturer will determine the number of lands
7 and grooves and the direction of twists, which will be a
8 class characteristic of each firearm.

9 Each one of these Glock firearms represented today all
10 have six lands and grooves with a right twist.

11 Q. Okay. And that would be the class characteristics
12 for the gl -- these particular firearms?

13 A. One of the class characteristics, yes.

14 Q. And then what about the cartridge casings. Please
15 explain to the Court the manner in which those are expelled
16 from the firearm.

17 A. Those would be ejected from the ejection port on
18 the side.

19 Q. And if you could show the Court using State's 20
20 there?

21 A. Yes. There's a port on the slide of each firearm.
22 And so when the firearm is -- when the cartridge is
23 discharged the pressures inside the firearm will force the
24 slide to move to the rear, and inside the chamber area
25 there's a little ejector, which will hit the head of the

1 cartridge case and it will cause a cartridge case to come out
2 of the ejection port.

3 Q. Okay. And are each of the firearms that we looked
4 at have a right side ejector port?

5 A. Yes, they're all very similar to this one.

6 Q. Okay.

7 MR. SCHEINER: If I could just have just a few
8 moments Judge just to try to organize some stuff.

9 THE COURT: Em-hmm.

10 BY MR. SCHEINER:

11 Q. Okay, I'm going to show you what's marked in
12 evidence as State's 60. We were just looking at that one.
13 State's 60. So, let's start with State's 60.

14 A. Okay.

15 Q. Tell me what it is that you recognize about State's
16 60?

17 A. It has the FDLE case number, exhibit number, and my
18 initials written on the packaging.

19 Q. Okay. And can you tell me the original agency
20 exhibit number that's on that one?

21 A. KP45.

22 Q. Okay. And did you receive this exhibit into your
23 laboratory for examination?

24 A. I did.

25

1 Q. And could you open it up, take a look at it again
2 and tell us how you recognize that? Because that's just a
3 chunk of metal, right?

4 A. It's a smashed bullet.

5 Q. Okay.

6 A. And it has the abbreviated FDLE case number,
7 exhibit number, and my initials inscribed on the base of it.

8 Q. And how do you recognize that as being a smashed
9 bullet?

10 A. It has nose definition of a hollow point, and then
11 you have a base plate, which is consistent with a Winchester
12 brand of ammunition. It has the cooper jacketing and then
13 the lead core inside.

14 Q. And did you conduct a microscopic experiment --
15 examination of this particular exhibit?

16 A. I did.

17 Q. And were you able to come to any conclusions as it
18 relates to this exhibit?

19 A. This particular bullet I was not able to identify
20 or eliminate as having been fired from any one of the four
21 firearms.

22 Q. Okay. And what does that mean when you say you're
23 not able to identify or eliminate?

24 A. It means when I compare the individual
25 characteristics there's no correspondence of individual

1 characteristics when I compare it to the test fired bullets
2 from each of the firearms, but there's no characteristics
3 that would lead me to want to eliminate it. So, there's no
4 correlation --

5 Q. Not enough information either way?

6 A. Yes.

7 Q. And do you do this in a microscopic fashion that we
8 did the same -- that you do the same for the cartridge
9 casings?

10 A. Yes.

11 Q. Okay. And again, which exhibit? That was -- you
12 said it was 45?

13 A. KP45.

14 Q. And you identified that for us already. Next to
15 the edge of the pillar there?

16 A. Right there.

17 Q. All right. Let's get the next one. State's 59.

18 A. Yes. It has the FDLE case number, exhibit number,
19 and my initials on it.

20 Q. And does it have an original agency number on
21 there?

22 A. KP38.

23 Q. Okay. And if you could take a look at the inside.

24 A. Okay. This is another portion of a smashed bullet.
25 It has the FDLE case number, exhibit number, my initials

1 written on the item itself.

2 Q. And did you conduct a microscopic comparison on
3 this exhibit?

4 A. I did.

5 Q. And what can you tell us about this exhibit as it
6 relates to the four firearms that you tested?

7 A. It also was -- could not be identified or
8 eliminated as having been fired from any one of those
9 firearms.

10 Q. Let's get another one. State's 58.

11 A. It has the FDLE case number, exhibit number, and my
12 initials on the package.

13 Q. And do you recognize the ex -- the contents?

14 A. I do.

15 Q. And what is in there?

16 A. It is another smashed bullet. It has the
17 abbreviated FDLE case number, exhibit number, and my initials
18 written on the base.

19 Q. And did you do a microscopic comparison of this
20 exhibit to the known standards from each of the firearms that
21 were submitted to your lab?

22 A. I did.

23 Q. And do you have an opinion as to that exhibit?

24 A. Yes, this exhibit can either be identified or
25 eliminated as having been fired from any one of the four

1 firearms.

2 Q. And this exhibit number is what?

3 A. KP48.

4 Q. And do you see that on there?

5 A. Right there.

6 Q. Thank you. And each one of these exhibits that
7 we're looking at did they arrive in your laboratory in a
8 sealed condition?

9 A. Yes.

10 Q. And State's 53. Take a look at that.

11 A. Has the FDLE case number, exhibit number, and my
12 initials on the packaging.

13 Q. And does that one have an original agency evidence
14 number on it?

15 A. NF2.

16 Q. Okay. And does it also indicate where that exhibit
17 was removed or located on the -- well, on the packaging
18 itself?

19 A. From the vest.

20 Q. Did you do a microscopic comparison of that
21 exhibit?

22 A. I did.

23 Q. And did you compare that exhibit to the known
24 standards that were from each of the four firearms that you
25 received in this case?

1 A. I did.

2 Q. And do you have an opinion as to where that exhibit
3 came from?

4 A. It could neither be identified nor eliminated as
5 having been fired from any of the four firearms.

6 Q. Thank you. I'm going to show you a couple more
7 exhibits here. 57 -- or 56, start with 56.

8 A. It has the FDLE case number, exhibit number, and my
9 initials on the package.

10 Q. And when you received that exhibit did it receive
11 in a sealed condition?

12 A. Yes.

13 Q. And did you open it and make any markings on the
14 exhibit to know that that's the one you were looking at?

15 A. Yes.

16 Q. Did you conduct a microscopic comparison on that
17 exhibit?

18 A. I did.

19 Q. And did you compare it to the other -- what is that
20 exhibit exactly?

21 A. It's a bullet fragment.

22 Q. And were you able to come to any opinions as to the
23 firearms in this case as expelling that?

24 A. Yes, this particular bullet did not display
25 characteristics suitable for microscopic comparison purposes.

1 So, it was actually not compared to any of the firearms.

2 Q. And that original exhibit number is what?

3 A. KP52.

4 Q. Oh, does it also have another letter on the front?

5 Is it also PV -- PMV?

6 A. PMV.

7 Q. Does it just -- does it have a description of where
8 it was located, that one?

9 A. PMV is all it says.

10 Q. Okay. And then the next exhibit, 53. Take a look
11 at that one.

12 A. We looked at this one.

13 Q. Did we already look at that one?

14 A. Yes, it's an F2.

15 Q. Oh. Let's try 57.

16 A. Yes. It has the FDLE case number, exhibit number,
17 and my initials on the packaging.

18 Q. Okay. Take a look inside and satisfy your -- when
19 you received that exhibit in your laboratory did it arrive in
20 a sealed condition?

21 A. It did.

22 Q. And did you open it for microscopic comparison?

23 A. Yes, I did.

24

25

1 Q. Can you take a look at the exhibit and tell me if
2 you recognize the actual physical exhibit?

3 A. Yes.

4 Q. And what is it?

5 A. It's also a bullet fragment. It has the
6 abbreviated FDLE case number, exhibit number, my initials
7 written on it.

8 Q. And did you conduct a microscopic comparison of
9 that exhibit?

10 A. I microscopically looked at it, but again, it also
11 did not display suitable characteristics for microscopic
12 comparison purposes.

13 Q. Okay, thank you. I've got two more sets.

14 A. Did you want them --

15 Q. Oh, yeah. What's the photo -- or the agency
16 exhibit number on there?

17 A. KP36.

18 Q. And that's a bullet fragment, correct?

19 A. Yes.

20 Q. All right, I'm going to show you State's 45. Take
21 a look at 45 and tell me if you recognize 45.

22 A. Yes, by the FDLE case number, exhibit number, and
23 my initials on the packaging.

24

25

1 Q. And did you receive that exhibit in a sealed
2 condition at your laboratory?

3 A. I did.

4 Q. And was it for microscopic comparison purposes to
5 the firearms that were submitted to you?

6 A. Yes.

7 Q. And did you conduct that?

8 A. Yes.

9 Q. Or do that?

10 A. Yes, I did.

11 Q. If you could please remove that exhibit, take a
12 look inside.

13 A. And this is a fired bullet. It has the FDLE case
14 number, exhibit number, my initials written on the base.

15 Q. And where -- did you conduct the same or similar
16 microscopic comparison of this exhibit to the known standards
17 from each of the four firearms that you have?

18 A. I did.

19 Q. And are you able to come to a conclusion as to that
20 exhibit?

21 A. I was not able to identify or eliminate this bullet
22 as having been fired from any of the four firearms.

23 Q. Okay. And I want you to keep that exhibit with you
24 though. But can you tell me what photo or what original
25 agency case number is on there?

1 A. KP51.

2 Q. Is there any other designation on that exhibit?

3 A. PMQ.

4 THE COURT: Is that the across the street exhibit?

5 MR. SCHEINER: This would be State's Evidence 42 of
6 the address that's 1051 Covina.

7 THE COURT: Oh, okay. Thank you.

8 MR. SCHEINER: And then State's Evidence 43.

9 THE COURT: Oh, okay. Thank you. P and Q. Oh,
10 okay. Thank you.

11 BY MR. SCHEINER:

12 Q. I want you to keep that exhibit with you if you
13 would. I'm going to show you State's 52, and ask if you
14 recognize State's 52.

15 A. I do by the FDLE case number, exhibit number, and
16 my initials on the package.

17 Q. And did you receive this exhibit in a sealed
18 condition in your laboratory?

19 A. I did.

20 Q. And did you open it and process it the same or
21 similar ways that we've talked about the other exhibits?

22 A. Yes, I did.

23 Q. If you could go ahead and take a look inside,
24 satisfy yourself that that exhibit's still in there.

25 A. This is a portion of a fired bullet.

1 Q. Okay. And were you able to conduct a microscopic
2 comparison of that projectile?

3 A. I was.

4 Q. And do you have an opinion as to the four firearms,
5 if any of the four firearms shot -- fired that firearm -- or
6 that projectile?

7 A. Again, I was unable to identify or eliminate this
8 particular exhibit as being fired from any of the four
9 firearms.

10 Q. Now, I ask that you, having looked at this
11 particular exhibit, which is State's Evidence 52, did you
12 compare State's 52 to State's 42?

13 A. 45.

14 Q. 45.

15 A. I did.

16 Q. And what can you tell the Court the relationship
17 between those two exhibits?

18 A. I was able to identify Exhibit 52 and 45 as having
19 been fired from the same unknown firearm.

20 Q. Okay. And the second exhibit that we're looking
21 at, State's 52, does it have an original photo marker number
22 on it, or evidence number?

23 A. PM43.

24 Q. Okay. And do you see that on the display up there?

25 A. Yeah, way up here.

1 Q. This is for the Court's benefit 1050 Covina. That
2 was -- this is State's Evidence 47, 49, 51.

3 THE COURT: Thank you. And it was the two she said
4 that were in two of those photos that came from the same
5 firearm, but unable to determine which?

6 MR. SCHEINER: Same unknown firearm --

7 THE COURT: Same unknown firearm, right. Same
8 firearm, unable to determine which firearm.

9 MR. SCHEINER: And it was --

10 THE COURT: But they're the same. Okay.

11 MR. SCHEINER: And Ms. Murphy, it was from
12 previously agency exhibit number Q and 43 were
13 identified as Q and 43.

14 THE COURT: Oh, so it wasn't P and Q? P was the
15 electrical outlet in the portico, Q is in the crossbar
16 in the portico, and the --

17 MR. SCHEINER: No.

18 THE COURT: No?

19 THE WITNESS: PM, or photo marker 43 --

20 MR. RESPESS: Photo marker.

21 THE COURT: Oh, PM. Okay.

22 MR. SCHEINER: Is photo marker 43, is --

23 THE COURT: Is Q.

24 MR. SCHEINER: (Cont'd) that 1050 Covina?

25 THE COURT: Was marked at Q -- as Q.

1 MR. SCHEINER: No.

2 THE COURT: On the crossbar?

3 MR. SCHEINER: That's just -- that's just photo
4 marker 43 at Covina.

5 THE COURT: Oh, I saw -- photo marker 43, okay.
6 That's the one in the grass with the little -- right,
7 the object next to it, which was at 1050?

8 MR. SCHEINER: Yes, across the street.

9 THE COURT: Okay.

10 MR. SCHEINER: And then the other exhibit was?

11 THE WITNESS: PMQ. Exhibit 45.

12 THE COURT: Photo marker Q, which is the cross bar
13 of the portico.

14 MR. SCHEINER: Right, on 1051.

15 THE COURT: That's -- I mean, that's what I'm
16 calling it in my mind.

17 MR. SCHEINER: Yes.

18 THE COURT: Okay.

19 BY MR. SCHEINER:

20 Q. And we looked at -- Ms. Murphy, we looked at one
21 earlier that was PMV. Do you remember that, we looked at
22 PMV?

23 A. Yes.

24

25

1 Q. And just for the State's benefit, State's Evidence
2 30 shows V.

3 A. V.

4 THE COURT: V. That's -- isn't that designated as
5 V right there?

6 MR. SCHEINER: Yes.

7 THE COURT: As in Victor? Okay. That's a bullet
8 defect on the stucco of the -- outside of the house?

9 MR. SCHEINER: The window --

10 THE COURT: Or right at the window and the house.

11 MR. SCHEINER: Right.

12 THE COURT: Sort of at the window frame.

13 MR. SCHEINER: Right. This was the -- if the Court
14 remembers there was testimony about a projectile found
15 in between the screen and the glass.

16 THE COURT: Right, right, right, right.

17 MR. SCHEINER: Thank you.

18 THE COURT: And wait a minute, that -- but she
19 testified that that one --

20 MR. RESPESS: That one was --

21 MR. SCHEINER: Not identified to anything Judge.

22 THE COURT: Not identified. Okay, thank you.

23 MR. SCHEINER: I just want to let the -- I've been
24 giving the Court perspective on where each one was
25 found. I want to continue to do that.

1 THE COURT: Go ahead. Thank you. I appreciate
2 that.

3 BY MR. SCHEINER:

4 Q. Did I give you some more exhibits over there?

5 A. Those are the two bullets.

6 Q. All right, I'm going to show you three additional
7 exhibits. We're going to start with State's 12. And I'm
8 going to ask if you recognize State's -- actually, let's
9 start with this one. State's 55. Do you recognize State's
10 55?

11 A. Yes, by the FDLE case number, exhibit number, and
12 my initials.

13 Q. And did you receive this exhibit in your
14 laboratory?

15 A. I did.

16 Q. And did you conduct -- did it arrive in a sealed
17 condition?

18 A. Yes, it did.

19 Q. Was it opened and processed for microscopic
20 comparison?

21 A. Yes, it was.

22 Q. And did you conduct that comparison?

23 A. Yes.
24
25

1 Q. Could you go ahead and open it up, take a look
2 inside, satisfy yourself that what you looked at in there is
3 the exhibit that your received.

4 A. Yes, this is a fired bullet portion.

5 Q. And was that exhibit sufficient for microscopic
6 comparison?

7 A. Yes.

8 Q. And did you conduct a comparison to the known
9 projectiles from each of the four firearms that were
10 submitted to you in this case?

11 A. I did.

12 Q. And which photo marker was this -- or which
13 original agency case number exhibit number was this?

14 A. KP49.

15 Q. Do you see that on there?

16 A. Yeah, it's right there.

17 Q. And are you -- do you have an opinion as to which
18 of the four firearms would have fired that projectile?

19 A. Yes, I was able to identify this exhibit to the PJ1
20 pistol. I'm not sure which court exhibit that would be.

21 Q. Is that State's Evidence number 99? Is that right?

22 A. Yes, Exhibit Number 99.

23 Q. And this is the Glock 22 that belongs to Jason
24 Roberts.

25 THE COURT: Em-hmm. And that was 49?

1 MR. SCHEINER: 49, yes, ma'am.

2 THE COURT: Okay.

3 BY MR. SCHEINER:

4 Q. Next one that you have there?

5 A. Exhibit Number 12. It has the FDLE case number,
6 exhibit number, my initials on the packaging.

7 Q. Okay. And does it -- the exterior of that package
8 indicate where that particular item was located?

9 A. It says hall closet. Photo marker MM.

10 Q. State's 33 so the Court can recall. And did you
11 receive that exhibit into your laboratory?

12 A. I did.

13 Q. And did you conduct a microscopic comparison of
14 that exhibit?

15 A. Yes, I did.

16 Q. Can you please open it, take a look inside, and
17 satisfy yourself that what's in there is what you did the
18 work on?

19 A. It's a fired bullet. It has the FDLE case number,
20 exhibit number, and my initials on the base.

21 Q. And for the Court State's 11 and State's 10. And
22 did you conduct -- do you see the same agency numbers on that
23 exhibit as you did -- as it relates to this case?

24 A. Yes.

25

1 Q. And did you conduct a microscopic comparison to the
2 four firearms that were submitted to your laboratory in this
3 case?

4 A. I did.

5 Q. And do you have an opinion as to which firearm
6 expelled that projectile?

7 A. Yes, I was able to determine that Exhibit 12 was
8 also fired from the PJ1 pistol, which was Exhibit 99.

9 Q. 99, Agent Roberts firearm. And the last exhibit
10 that you have there?

11 A. This is Exhibit 54. It has the FDLE case number,
12 exhibit number, my initials on the packaging.

13 Q. Okay. And does it have an original agency exhibit
14 number on there?

15 A. KP35.

16 Q. I think that's on the garage wall.

17 A. Right there.

18 Q. Did you receive this exhibit into your laboratory?

19 A. I did.

20 Q. Did it arrive in a sealed condition?

21 A. Yes.

22 Q. And did you conduct a microscopic comparison of
23 this exhibit to the four firearms known projectiles?

24 A. I did.

25

1 Q. Okay, and if you could go ahead and open it up,
2 take a look inside, satisfy yourself that that's the
3 projectile you did the work on.

4 A. Yes, it has the FDLE case number, the exhibit
5 number, and my initials written on the base.

6 Q. And were you able to come to a conclusion as to
7 which of the four firearms fired that projectile?

8 A. Yes, this exhibit was also fired from the PJ1
9 pistol, which is Exhibit 99.

10 Q. Okay. Also Agent Roberts firearm.

11 MR. SCHEINER: No further questions. Thank you
12 Your Honor.

13 THE COURT: Okay, thank you. Mr. West, questions
14 sir?

15 CROSS EXAMINATION

16 BY MR. WEST:

17 Q. Good morning.

18 A. Good morning.

19 Q. Just a few questions. Some general ones first.
20 Did the fact that all of the firearms involved were the same
21 manufacture create any challenges for you that wouldn't have
22 been there if there had been different makes of firearms
23 involved?

24 A. The only challenge with the Glock firearms is that
25 the rifling in each of the barrels is what is called

1 polygonal, as most other firearms have conventional
2 rifling --

3 Q. Em-hmm.

4 A. (Cont'd) which means the lands and grooves have
5 definite borders, like you're -- you have -- when a firearm
6 is first -- a barrel first manufactured it's just a hollow
7 tube, and then the manufacturer will come in and create
8 grooves in that tube of the barrel.

9 And so you're going to have raised areas and lowered
10 areas. So, your grooves are going to be lower and your lands
11 are going to be higher. And you usually have like a -- it's
12 like almost like a step.

13 And so you have defined borders between each land and
14 each groove. Whereas with the Glock firearms that have the
15 polygonal rifling it's just -- it doesn't have those -- that
16 step between the lands and the grooves to have definite
17 borders.

18 It's more smooth. So, it's difficult to determine where
19 the borders would be located. So, it's a smoother type of
20 rifling, so it doesn't mark as well on the bullets.

21 Q. Perhaps less detail on the bullets because they're
22 Glocks?

23 A. Because of the polygonal rifling.

24 Q. Em-hmm.

25 A. Yeah.

1 Q. Anything about the details for the shell casings
2 that would make it more challenging because they were all
3 Glocks? The firing -- you know, the firing mechanism,
4 extractor marks, anything like that?

5 A. No. Actually, Glock cartridge cases are much
6 easier to identify, simply because they have a rectangular
7 shaped firing pin aperture, and that's the hole that the
8 firing pin comes through on the breech face to actually
9 strike the cartridge.

10 And when the cartridge is discharged the primer material
11 is very soft, so a lot of times it will flow into that firing
12 pin aperture, that open space.

13 And then when the cartridge case is ejected out of the
14 firearm the edge of that firing pin aperture will actually
15 scrap the primer and leave striated marks on the primer of
16 the cartridge case, and those are very unique to a specific
17 firearm, and those are very easily identifiable.

18 Q. So, in this case indeed you were able to identify
19 every shell casing that was offered to you?

20 A. I believe so.

21 Q. Some of the projectiles you couldn't, for one
22 reason or another, I assume some of that reason may be they
23 were just too damaged?

24 A. That's correct.
25

1 Q. Did you test fire each of the weapons yourself?

2 A. Let me double check.

3 Q. If it's hard to find don't trouble yourself.

4 A. I did test fire each cart -- each firearm.

5 Q. I heard I think you say that when there is
6 ammunition that was represented as having come with the
7 magazine accompanying the gun, that you had used some of that
8 to test fire?

9 A. I would use the submitted cartridges to test fire
10 if the evidence ammunition, the fired cartridge cases, and
11 fired bullets that were submitted are similar make
12 ammunition. Because I want to try to keep as much the same
13 as possible during the firing of the firearm.

14 Q. And then what do you do when there are no
15 cartridges accompanying a firearm?

16 A. If I didn't receive cartridges in the case then we
17 have laboratory ammunition, and I would select similar
18 laboratory ammunition to test fire.

19 Q. I take it that's what you would have done with at
20 least one of these firearms?

21 A. Well, I did fire laboratory ammunition, as well as
22 the ammunition that was submitted in this case.

23 Q. Okay. In your line of work identifying the
24 cartridge casings themselves as having been fired from a
25 particular firearm, was that relatively straight forward in

1 your mind and there aren't any of your results that you
2 thought were tough, tough calls?

3 A. No, those are pretty straight forward.

4 Q. This is your bread and butter stuff?

5 A. Yes.

6 Q. So, we can have a high confidence level that the
7 casings that you matched with the specific firearms were
8 indeed fired from those?

9 A. Yes, very high.

10 Q. There are other cases I take it where you have to
11 work a little harder to form your opinion?

12 A. That's true.

13 Q. Was there any of that in this case?

14 A. Not with the cartridge cases.

15 Q. The projectiles were a little trickier?

16 A. They were more difficult.

17 Q. Em-hmm. So, I take it you can say, yes, it is in
18 your opinion having been fired from the same gun, or no, it
19 wasn't, or I just can't tell?

20 A. Yes.

21 Q. Do you call that inconclusive, or not identified,
22 or how does that work?

23 A. If I can't identify or eliminate then it would be
24 labeled as an inconclusive.

25

1 Q. Em-hmm. Do you have Exhibit 20 in front of you?
2 That's one of the Glock handguns.

3 A. Yes.

4 Q. Would you open the box and take a look at it. And
5 let me ask you this: In general, are there some Glock
6 handguns that have a loaded round indicator, indicating that
7 there is a round in the chamber?

8 A. There could be.

9 Q. Do you know if any of the guns that you examined
10 had that feature?

11 A. I don't believe so.

12 Q. How about the generation four Glock, do they have
13 that? Do you know?

14 A. Off the top of my head I don't know.

15 Q. Would you be able to examine that gun and -- well,
16 first of all, if it's not something you're familiar with or
17 feel comfortable offering an opinion say so and we won't go
18 there, but if are familiar with that feature I'd like you to
19 look at that gun and see if that feature exists.

20 A. The Gen four?

21 Q. On the gun you're holding, number -- Exhibit 20.

22 A. Oh, this one does not, no.

23 Q. And what would it be and what would it look like?

24 A. It's usually an indicator either at the top or the
25 rear of the firearm that would indicate that there's a

1 chamber, a cartridge in the chamber.

2 Q. And how would it appear to you?

3 A. A lot of times it's a little almost like a little
4 button that'll pop up slightly, and it usually is marked with
5 red or something so that you could readily see.

6 Q. If you would take a look at the right side of the
7 handgun, sort of next to the ejection port. And if I could
8 approach the witness? Do you see anything there that when
9 closed if the handgun were --

10 A. That's your --

11 Q. (Cont'd) if the rack was -- the slide was forward?

12 A. That's your extractor.

13 Q. Yes.

14 A. And that's under spring tension.

15 Q. Em-hmm.

16 A. So, a lot of times once the cartridge is in the
17 chamber the edge of this inside the firearm will be in the
18 extractor groove of the cartridge. So, it doesn't
19 necessarily mean that it's going to be pushed out and flush
20 with the slide.

21 THE COURT: May I ask counsel to approach for a
22 moment please?

23 (Whereupon, a side bar discussion was held outside
24 the hearing of the gallery.)

25

1 THE COURT: Is there any question about an
2 accidental discharge here?

3 MR. WEST: Oh, no. We're not talking about that at
4 all.

5 THE COURT: Can you please move on to what is
6 actually -- you know, focus on either the conduct that
7 either provoked or the issue with regard to whether or
8 not the person was in a place they had a right to be and
9 whether they had a right to defend themselves or another
10 from great bodily harm by using the lethal force.

11 And I think that's kind of the focus of stand your
12 ground, is it not? I mean, if we're not discussing --
13 if, if accidental discharge is not an issue here do we
14 have to have a five to ten minute discussion on whether
15 there's a light that indicates a round was in the
16 chamber or not? I mean, is anybody disputing that
17 rounds came in and out of the chamber?

18 MR. WEST: Oh, no, not at all Judge, but --

19 THE COURT: Okay. Then can we move on please.

20 MR. WEST: (Cont'd) that's not the issue that I'm
21 addressing with this witness. The State raised this
22 issue through an earlier witness, and I'm attempting
23 through this expert to clarify it. I can ask two or
24 three questions and then move on.

25

1 THE COURT: Well, I mean, do you understand Mr.
2 West? I mean no disrespect. What I'm trying to do is
3 focus on what --

4 I mean, I understand that, you know, you all have
5 your own theories that you are getting at, but what I'm
6 asking is to please focus on the fact that this is a
7 really narrow issue.

8 And it doesn't really have to do anything with
9 whether or not there's a light that indicates there's a
10 round in the chamber when we've just heard a painstaking
11 dissection of approximately 40 or 60 rounds, you know,
12 shells on the ground, casings.

13 MR. WEST: Agreed, agreed.

14 THE COURT: Okay. So --

15 MR. WEST: The issue that relates to --

16 THE COURT: (Cont'd) what difference does it make
17 if there's an indicator that shows a round is in the
18 chamber?

19 MR. PANELLA: We'll explain it, yeah.

20 MR. WEST: The issue this relates to is the
21 suggestion that the gun jammed, and therefore Mr.
22 Derossett was unable to fire more rounds.

23 We talked about that with a couple of other
24 witnesses. This witness should be able to say this gun
25 has a loaded round indicator which would be --

1 THE COURT: Okay, okay. I've -- I understand. I
2 mean, I can think of a much shorter way to get there and
3 I know what the answer is, so.

4 MR. RESPESS: So far she said she doesn't.

5 THE COURT: I mean, I -- okay. I understand.
6 Let's --

7 MR. WEST: I appreciate the Court's --

8 THE COURT: I'm going to take like a two minute
9 break, just a restroom break. All right, we'll be in
10 recess for about five minutes max.

11 THE BAILIFF: Court will be in brief recess.

12 (Whereupon, court stand in recess for approximately
13 five minutes.)

14 THE COURT: Okay, we're back on the record, State
15 of Florida versus John Derossett, 2015-CF-39550. Mr.
16 Derossett is present with counsel, Mr. Panella and Mr.
17 West. Mr. Respass and Mr. Scheiner are here on behalf
18 of the State.

19 MR. SCHEINER: I'm sorry Judge.

20 THE COURT: Scheduling issue?

21 MR. PANELLA: Well, yeah. They're trying to fill
22 the Court's time. That's what we're talking about.

23 THE COURT: Okay. Well, I don't think there's any
24 problem doing that.

25

1 MR. PANELLA: It makes sense to. Just one moment
2 and we'll get --

3 THE COURT: Okay. Okay, you got it squared away?

4 MR. PANELLA: Yes.

5 THE COURT: All right, thank you. Mr. West, as we
6 were. Thank you sir.

7 BY MR. WEST:

8 Q. Ms. Murphy, I'm sorry to belabor this because I'm
9 the one who's creating the confusion.

10 A. That's okay.

11 Q. The first question -- let me just be more specific
12 about it. I had received some information that in certain
13 model Glockes, Glock 22's, that the -- could you just show the
14 gun again.

15 That in this area right here that when there was a round
16 loaded in the chamber that this button would slightly extend.
17 And if you knew what you were looking for you could see this
18 button out, and that would indicate to someone who knew what
19 they were looking for there was a round in the chamber. Are
20 you familiar at all with that feature?

21 A. This is an extractor --

22 Q. Em-hmm.

23 A. (Cont'd) so it's not a chamber loaded indicator at
24 all. That's not what it's designed to do.

25

1 Q. Em-hmm.

2 A. It is under slight spring tension. So, right now
3 the spring tension is pushing it slightly towards the inside.

4 Q. Em-hmm.

5 A. But when a cartridge is chambered the end of this
6 extractor is going to slip over the head and into the
7 extractor groove of the cartridge case.

8 Q. The rim around the back?

9 A. Well, there's going to be a groove underneath that
10 rim. So, it's actually possible that this is not going to be
11 actually coming out of the slide to indicate that there's
12 something in the chamber.

13 Q. So, while it may not have been designed
14 specifically, that button that we're looking at as part of
15 the extractor may actually be pushed out a little bit if
16 there's a loaded round?

17 A. It might, but it might not. I wouldn't trust it as
18 a loaded indicator.

19 Q. Okay. So, you wouldn't feel comfortable looking at
20 a gun like this one for example, like that one that you just
21 looked at, and being able to indi -- would you be able to
22 offer an opinion whether there's a round in the chamber
23 there?

24 A. No, I --

25

1 Q. No?

2 A. I can't see anything.

3 Q. What can you tell?

4 A. I can't even tell whether it's pushed in or out. I
5 mean, just from the angle.

6 Q. How about the gun itself? Can you tell that this
7 slide is fully forward as if it's in (unintelligible)?

8 A. It appears to be.

9 Q. Nothing that appears to you from that picture that
10 the gun is jammed in some way?

11 A. Yeah, I couldn't tell from looking at a photograph
12 whether it's jammed.

13 Q. How about if you looked at this one?

14 A. The only thing I can see from this photo is it just
15 appears that the slide is slightly to the rear, and it looks
16 like there's something in this little area, but I don't know
17 what that is.

18 Q. What I showed you first was State's 19 and what you
19 just commented on was State's 17. The testimony was that a
20 live cartridge was recovered from there.

21 A. Okay.

22 Q. And that it occurred during the clearing process.
23 This gun being cleared resulted in this.

24 A. Okay.

25

1 Q. Is that consistent with a round in the chamber
2 getting lodged in this area during the clearing process?

3 A. Not necessarily.

4 Q. How else could it be then?

5 A. I don't know. I don't know the circumstances of
6 how this picture was taken.

7 Q. Very good.

8 A. So, I really can't comment on that.

9 Q. Fair enough.

10 MR. WEST: I think that we're finished Judge.

11 Thank you.

12 THE COURT: Okay, thank you. Mr --

13 MR. SCHEINER: No follow up. Thank you.

14 THE COURT: And nothing further. All righty, then
15 may this witness be excused?

16 MR. SCHEINER: She may be excused, yes.

17 THE COURT: Thank you very much. And then Mr.
18 Panella, who will be your next witness sir?

19 MR. PANELLA: We have the blood Judge.

20 THE COURT: Okay.

21 MR. PANELLA: And the issue is we don't want to be
22 in the chain of custody too. It's still sealed. The
23 issue with it is it may give us the complete chain once
24 we open it to know who drew the blood, and that's the
25 issue right now.

1 We'd like to go ahead and enter the results.
2 There's a chain of custody issue that the State is sort
3 of objecting to. So, that's where we're at with this.
4 We have the analyst who did it.

5 THE COURT: So, what you're saying is you don't
6 have the person that drew the blood?

7 MR. PANELLA: Well, that -- basically we certainly
8 know that CSI Pill received it from the hospital.

9 THE COURT: Right, I heard her say that.

10 MR. PANELLA: We know that she gave it to FDLE, we
11 know who took it --

12 THE COURT: Well, what I'm asking is do you know
13 who drew it?

14 MR. PANELLA: No. And --

15 THE COURT: That was the question.

16 MR. PANELLA: No, and either does the State.

17 THE COURT: Okay. So --

18 MR. PANELLA: And it may be written on that vial,
19 and it's sealed from FDLE.

20 THE COURT: I don't know why -- okay.

21 MR. PANELLA: That -- so, the State is sort of
22 objecting to the state of cus -- the custody issue.

23 THE COURT: Well, I mean, it's not proper chain of
24 custody until --

25 MR. PANELLA: Right.

1 THE COURT: (Cont'd) unless -- without the person
2 who drew the blood.

3 MR. PANELLA: So, we're -- in the moment we're
4 trying to get a CSI person here. Otherwise --

5 THE COURT: My concern is if this is some person
6 from Holmes Regional Medical Center -- is that --

7 MR. RESPESS: Some -- whatever hospital she got it
8 from. I think it was Holmes.

9 THE COURT: I thought it was -- he went to Holmes.

10 MR. SCHEINER: It was Holmes.

11 THE COURT: And so then somebody has to say is
12 there a Nurse Jones there? I mean, is that --

13 MR. PANELLA: Right.

14 THE COURT: Is that kind of where we are?

15 MR. PANELLA: That's it. And we would have -- we
16 have a couple other witnesses that are --

17 THE COURT: And then where does Nurse Jones work if
18 she doesn't work at Holmes anymore? Because it's three
19 years later and she's moved to Missouri because she's a
20 travelling nurse and --

21 MR. PANELLA: If the -- and the reason it came up
22 during this --

23 THE COURT: Honestly.

24

25

1 MR. PANELLA: The reason it came up during this
2 hearing is because even though we know what the results
3 of the blood test were --

4 THE COURT: Right.

5 MR. PANELLA: (Cont'd) we know have received
6 information from the State that they intend to make
7 inferences that we intend to disprove now --

8 THE COURT: Okay.

9 MR. PANELLA: (Cont'd) because we have that. So,
10 that's where it's at Judge. We do have the results and
11 all of that, and we need to know --

12 THE COURT: Okay.

13 MR. PANELLA: (Cont'd) the chain of custody, if
14 they're going to raise that issue before the Court.
15 That's all.

16 THE COURT: Okay. Then while that is -- while you
17 all are investigating that in whatever way you are going
18 to, at this moment who would you like to testify?

19 MR. PANELLA: So, we would have --

20 THE COURT: Unless that's your round about way you
21 don't have anybody.

22 MR. PANELLA: No, no. The fact of the matter is we
23 would have other witnesses depending on this blood
24 issue. Other than that Judge we're about done.

25

1 THE COURT: Well, you would have other witnesses
2 because there would be a phlebotomist and then you would
3 want someone to report the results.

4 MR. PANELLA: We have --

5 THE COURT: Oh, the document's in evidence
6 through --

7 MR. PANELLA: Right, we have -- sure. We have the
8 analyst who would introduce the results, and we simply
9 need to know who drew the blood because the rest of the
10 chain stuff is -- that's where we're at Judge.

11 THE COURT: Okay. My concern is -- I understand
12 you're being optimistic that you -- that the analyst
13 will be readily available -- rather, the phlebotomist,
14 whoever that person is, will be readily available. What
15 if that's not the case? How would you like to proceed?

16 MR. PANELLA: Well, we'll deal with that issue if
17 they're not Judge, but --

18 THE COURT: Well, what we're -- what I'm expressing
19 here is that you're working for the best, but you're
20 moving forward as if, you know, that -- you would like
21 that to bear fruit, but you still have other things you
22 can do to move forward while you're awaiting that single
23 result. In other words, we can do more than one thing
24 at one time.

25 MR. PANELLA: Of course Your Honor.

1 THE COURT: At the same time.

2 MR. PANELLA: Judge, we're comfortable saying it's
3 time to turn it over to the State, but for this issue at
4 this time.

5 THE COURT: Okay.

6 MR. PANELLA: In the beginning of this hearing you
7 said that you were going to go ahead and consider both,
8 you know --

9 THE COURT: Sure.

10 MR. PANELLA: (Cont'd) both standards. We
11 certainly --

12 THE COURT: No, I will. I'm doing split screens.

13 MR. PANELLA: Yep.

14 THE COURT: That's what we got here, split screen.
15 No problem.

16 MR. PANELLA: And we certainly feel at this point,
17 even without the blood, we've met and exceeded both
18 burdens.

19 THE COURT: Okay, okay.

20 MR. PANELLA: So, but for the blood issue, simply
21 to rebut what we anticipate the State's going to infer
22 to you.

23 THE COURT: Okay. That's -- okay.

24 MR. PANELLA: It's time to turn it over to the
25 State.

1 THE COURT: That's fair enough. All right.

2 MR. PANELLA: Which is why we had that FDLE person
3 here this morning. We had a brief conversation last
4 night about it, so.

5 THE COURT: Okay.

6 MR. PANELLA: I don't think anyone's here at this
7 moment. If you think we should take a brief -- an early
8 lunch and come back early. I think we will have people
9 this afternoon.

10 THE COURT: Okay. We have a planned courthouse
11 lunch from 12 to 1.

12 MR. PANELLA: Okay.

13 THE COURT: Judge Harris is retire -- or moving on.

14 MR. PANELLA: Can we -- may we -- is there a way
15 that we can correctly and legally open that package with
16 a witness, without a -- if we don't have a CSI person
17 here? So, at least our team can get working on tracking
18 down the --

19 THE COURT: I mean, if you two -- if you both -- if
20 both of you agree that you're sitting here on video
21 opening this bag so that you can look at the vial I
22 don't see how that puts anybody in the chain of custody.
23 Because you're not tampering with, you're looking at it.

24 MR. RESPESS: No, I agree, it's giving it to
25 somebody after it's opened.

1 THE COURT: Right. Is it opened? Yes. But does
2 it change what's in it? And it doesn't. If the vial
3 itself isn't opened -- I mean --

4 MR. RESPESS: Okay.

5 THE COURT: (Cont'd) the bag is just protecting the
6 sealed vial and making it easier to carry around. So, I
7 don't see how the bag itself, in and of itself is
8 sacrosanct.

9 MR. PANELLA: I don't have a problem.

10 THE COURT: And if you all agree that it's not --

11 MR. PANELLA: Yeah, I have no issue with it.

12 THE COURT: (Cont'd) then who's going to object.

13 MR. RESPESS: Okay, all right. So, we'll -- what
14 we can do is --

15 THE COURT: I mean, Mr -- does Mr. Derossett have a
16 problem with Mr -- could you ask -- talk to Mr.
17 Derossett about whether or not he's got a problem with
18 the bag being cut open so you can see the vial?

19 MR. PANELLA: Well, let's just address that right
20 now.

21 MR. RESPESS: I can put an evidence marker on it
22 and we can go from there.

23 THE COURT: I mean, it's just -- you know, it's
24 the -- it's a bag to protect the actual container that
25 has to be intact. So, the way I see it the bag in and

1 of itself is not sacrosanct.

2 MR. PANELLA: Correct. I agree.

3 THE COURT: All right, so --

4 MR. PANELLA: He has no issue with it. I'm happy
5 to do --

6 THE COURT: All right, you've discussed it with Mr.
7 Derossett and waived that as any further -- as any
8 complaint further down the line, is that correct?

9 MR. PANELLA: Yes, ma'am.

10 THE COURT: All right, thank you.

11 THE COURT: Then let's open the bag and -- to
12 have -- get out your phones and photograph the name
13 please, the label. Isn't this stuff kept at the lab in
14 Orlando for months?

15 Aren't you all from Orlando? You never went over
16 to the lab and just snapped a picture of the vial? I'm
17 serious. Whoever had it, somebody had it. They would
18 have snapped a picture at the lab.

19 MR. RESPESS: It just came here last week.

20 THE COURT: All right, and I -- in case I didn't
21 say it we're on the record, 2015-CF-39550. Mr.
22 Derossett is present.

23 This is State of Florida versus John Derossett.
24 Mr. Derossett is present and has been at all times since
25 we started discussing how we would proceed.

1 MR. PANELLA: It's got some sort of identifying
2 number, the date, the time.

3 MR. WEST: Well, this has got everything we need on
4 it.

5 MR. PANELLA: Oh, yeah, it does. It's got the
6 timestamp and the date.

7 THE COURT: It's got all of the information. All
8 you need is a picture of that label and you ought to be
9 able to track whoever did what with this.

10 MR. PANELLA: Well, actually we can -- we actually
11 have part of it done because they took the same -- from
12 the same blood sample as how they matched up his DNA.

13 THE COURT: Sure, yeah. It's the same --

14 MR. PANELLA: So, actually, I think we just
15 completed it. Because one of the issues was the time it
16 was taken, and now it's self evident.

17 THE COURT: Yeah. It's -- of course it'll be -- if
18 they had -- if you had the DNA result you know who drew
19 the blood because it would say.

20 MR. PANELLA: Yeah, I think we just -- I think this
21 just answered our question.

22 MR. RESPESS: Well, what --

23 THE COURT: Okay, good.

24 MR. PANELLA: Well, I'm hoping so. It's up to
25 the -- if this -- unless the State has an objection.

1 MR. RESPESS: I'm going to let you put them in
2 evidence. We're going to stipulate that for purposes of
3 this hearing that this was KP53. It was used to test,
4 and because of the DNA reports it appears it was your
5 client.

6 And I'm relying on the fact that I know that the
7 blood stain on that wall was his blood because that's
8 where he was laying bleeding, okay. That's not a
9 typical way to do it, but I'm trying to get there so
10 that --

11 MR. WEST: I don't -- there's not much dispute who
12 was bleeding there on the porch.

13 MR. RESPESS: Not arguing that. That's why I'm not
14 arguing that.

15 MR. WEST: I know.

16 MR. RESPESS: It's just not typically how we do it.
17 Frankly I thought they'd have a buccal card on him and
18 they used this, which I was surprised to find out.
19 Okay. So, let's get that -- this back in.

20 MR. PANELLA: Will you stipulate to Ryan Warner's
21 reports and just enter it, or do you need us to call
22 him?

23 MR. RESPESS: Yeah, I need -- the reason I didn't
24 stipulate to Mr. Warner is based on what I told you
25 yesterday is I need to ask the expert is this possible.

1 MR. PANELLA: All right.

2 MR. RESPESS: You see what I'm saying? Because we
3 have a result and we have admissions that on the face
4 may be inconsistent.

5 So, we need to see if there's a way to make them
6 consistent or call into question the test, or call into
7 question the statements.

8 MR. SCHEINER: Did we mark that as an exhibit by
9 the way?

10 MR. RESPESS: Not yet. All right, so, I'm going to
11 put this --

12 MR. WEST: Is there anything else other than that
13 label on that exhibit? Let me just -- sorry.

14 MR. RESPESS: There you go.

15 MR. WEST: Just to see if there's any more -- how
16 do you want to do it for today? Just offer that as a
17 marked exhibit?

18 MR. RESPESS: Well, what we can do is mark it and
19 then perhaps if you're going to bring the expert in the
20 expert can talk about it, and then that way it may come
21 in.

22 MR. WEST: That's right.

23 MR. RESPESS: I mean, I'm not a great believer
24 in -- great ipsolopiter (sic) for markings on a bag, but
25 I want to get through this. So, let's do it that way.

1 THE CLERK: Whose exhibit is it?

2 MR. PANELLA: It's going to be --

3 MR. RESPESS: It's going to be theirs.

4 MR. PANELLA: (Cont'd) a defense exhibit.

5 MR. RESPESS: Yeah.

6 THE CLERK: And we're just marking it for ID right
7 now?

8 MR. PANELLA: Yes, yes.

9 MR. WEST: I think where this issue stands is that
10 we've marked the blood that we found now and that the
11 State doesn't object to us calling the lab analyst who
12 did the toxicology screening --

13 THE COURT: Skipping the phlebotomist or the person
14 who drew the blood.

15 MR. WEST: (Cont'd) on the blood. Doesn't
16 stipulate to the findings.

17 THE COURT: Right.

18 MR. WEST: But agrees that we can offer that
19 testimony, and including the findings if --

20 THE COURT: Right. What -- the bottom line is
21 they're agreeing skipping the person who drew the blood
22 and jumping to the analyst. Stipulating to the fact
23 that that's Mr. Derossett's blood for the purpose of
24 this hearing. That's --

25 MR. RESPESS: Right, and --

1 MR. WEST: Well, we've already got that I think in
2 the record.

3 THE COURT: Well, I -- isn't that what -- isn't
4 that what you all are doing?

5 MR. RESPESS: They really haven't, that is, here's
6 what I'm doing and why so the record is clear: I'm
7 trying to accomplish just making sure that we get the
8 correct evidence to the Court.

9 In looking at the reports that relate to genetic
10 testing done in this case KP54 I think it is --

11 THE CLERK: 53.

12 MR. RESPESS: Or 53. KP53 was compared to a blood
13 stain that was left at Mr. Derossett's house near his
14 doorway, that I think from this here we can all assume
15 was Mr. Derossett. And it came back that those two
16 things were the same.

17 So, I'm satisfied from that testing that the blood
18 is Mr. Derossett's, okay. The thing that I'm not as
19 sure about is there's some labeling on there that may
20 indicate a time and date that the blood was drawn, and
21 I'm a little uncomfortable with, but for purposes of
22 this hearing to get this issue resolved I'm willing to
23 concede for purposes of this hearing, not for the trial.

24 THE COURT: Right.

25

1 MR. RESPASS: And then I'm not stipulating to the
2 report because I think there needs to be more questions
3 asked of the toxicologist then just what the report
4 says.

5 THE COURT: So, what -- so what -- my understanding
6 Mr. Respess is you're stipulating to the fact that the
7 blood in that evidence bag can be -- that's KP, Kaitlin
8 Pill, 54 can be --

9 MR. RESPASS: 53.

10 THE COURT: 53. Can be testified -- the results of
11 the analysis can be testified to by the person because
12 you're satisfied that they -- that was --

13 MR. RESPASS: Right. Even though --

14 THE COURT: That by DNA that's his blood because it
15 doesn't have his name on the tube.

16 MR. RESPASS: Right. Even though we have -- yeah,
17 I'm just -- I'm going -- I'm trying to cut to the --

18 THE COURT: Right, I understand. There may be
19 discrepancy in the time it was drawn and what not, but
20 for the purpose of cutting to the end you're there.
21 Okay.

22 MR. RESPASS: Right.

23 THE COURT: I understand you completely. Thank
24 you. So -- and now I suppose you all would like to take
25 time to get somebody here from Orlando?

1 MR. PANELLA: He's aware. We've been in touch with
2 him of course, but he's not here now.

3 THE COURT: Oh, okay.

4 MR. PANELLA: So, yes.

5 THE COURT: So, yes. So --

6 MR. PANELLA: We're going to get him here.

7 THE COURT: So -- all right. So, if --

8 MR. SCHEINER: And we'll be piling witnesses up
9 ourselves Judge.

10 MR. PANELLA: Yeah.

11 THE COURT: Okay.

12 MR. SCHEINER: Well, they're already scheduled to
13 be here at 1, so.

14 THE COURT: Okay.

15 MR. RESPESS: And Judge, I'd also point out, I
16 believe there's an argument at this point that the
17 testimony at this point is legally insufficient.

18 Certainly I believe it's legally insufficient for
19 the old way, because I don't think that they've met the
20 burden.

21 THE COURT: You mean -- okay.

22 (Multiple speakers.)

23 MR. RESPESS: -- there is a burden.

24 THE COURT: Right.

25 MR. RESPESS: In the new statute --

1 THE COURT: Under the -- right.

2 MR. RESPESS: -- prima facie, which I don't know if
3 frankly Ms. Mary Ellis' testimony was sufficient to do
4 that, but I don't think there's any other testimony or
5 evidence at this point that would support justification.

6 THE COURT: But what you wanted to do in an
7 abundance of caution --

8 MR. RESPESS: Right.

9 THE COURT: Because if we leave today and the
10 Supreme Court opinion comes out tomorrow --

11 MR. RESPESS: Right.

12 THE COURT: (Cont'd) then we've missed -- you are
13 going to say you missed an opportunity, we've all missed
14 an opportunity --

15 MR. RESPESS: Right.

16 THE COURT: Because then it would be required to --

17 MR. RESPESS: Right. So, I believe under that
18 standard I don't think they've met their burden and that
19 we would not even need to go forward.

20 Under the other standard, which is a prima facie
21 case there may be an argument under Mary --

22 THE COURT: There's a -- okay. If we're -- if
23 I -- I see what -- I understand where we are. So,
24 certainly based on all the testimony that you've put on
25 you've put on a prima facie case if that were a finding

1 that needed to be made.

2 You have definitely, through the testimony, put on
3 a prima facie case that would, if the second DCA opinion
4 would be the one that the Florida Supreme Court chooses
5 to be correct, then you put on a prima facie case and --
6 if the burden is shifting to the State to prove by --

7 MR. RESPESS: Correct.

8 THE COURT: (Cont'd) clear and convincing evidence
9 that it was not a proper -- it didn't fall properly
10 under this statute.

11 So, however -- because we're going to do it both
12 ways so to speak, split screen, we -- I'm not going to
13 make any kind of a ruling on where we -- I would be
14 reserving ruling to go over everything and do it in
15 writing anyway.

16 MR. PANELLA: Okay. And --

17 THE COURT: So, I would -- I don't know why I would
18 change.

19 MR. PANELLA: I appreciate what the Court's saying,
20 because I was going to ask if you wanted to hear the
21 Defense response. Because certainly we have --

22 THE COURT: No. I mean --

23 MR. PANELLA: (Cont'd) argument that we've well
24 exceeded both burdens.

25

1 THE COURT: Well, I assume that all of that will
2 come at the end.

3 MR. PANELLA: Okay, thank you Judge.

4 THE COURT: Okay.

5 MR. PANELLA: That's fine.

6 THE COURT: Thanks. So, then let's go to -- why
7 don't we have -- be -- why don't we be in recess until
8 1:15.

9 MR. WEST: May I tell the lab analyst then to go
10 ahead and travel from Orlando here and --

11 THE COURT: That's what I thought, yeah. That's --
12 my thought was that would give that person time to get
13 here.

14 MR. PANELLA: Yes, ma'am. He'll be on his way.

15 THE COURT: Okay. Perfect. Thank you

16 THE BAILIFF: Court will be in recess until 12:15.

17 (Whereupon, court stands in recess for the luncheon
18 hour.)

19 THE COURT: State of Florida versus John Derossett,
20 2015-CF-39550. Mr. Derossett is present with counsel,
21 Mr. Panella and Mr. West. Mr. Scheiner and Mr. Respress
22 are here on behalf of the State. And Mr. West, you're
23 standing and in the middle. Where -- how should we
24 proceed?

25

1 MR. WEST: The next witness is right outside the
2 door. I'll go grab him.

3 THE COURT: All right. You'll bring her, him, that
4 person in. Thank you.

5 MR. WEST: Thank you.

6 THE CLERK: Raise your right hand. Do you solemnly
7 swear or affirm that the testimony you shall give will
8 be the truth, the whole truth, and nothing but the truth
9 so help you God?

10 THE WITNESS: I do.

11 THE CLERK: You may be seated.

12 MR. WEST: May I inquire?

13 THE COURT: Absolutely.

14 MR. WEST: Thank you.

15 WHEREUPON:

16 RYAN WARNER,
17 a Witness herein, having been duly sworn, testified upon his
18 oath as follows:

19 DIRECT EXAMINATION

20 BY MR. WEST:

21 Q. Please state your legal name and spell your last
22 name please.

23 A. My name is Ryan Warner. Last name is W-A-R-N-E-R.
24
25

1 Q. And Mr. Warner, what is your business or
2 occupation?

3 A. I am a crime laboratory analyst assigned to the
4 toxicology section with the Florida Department of Law
5 Enforcement.

6 Q. How long have you held that position?

7 A. Since July of 2006.

8 Q. And in that capacity have you had occasion to
9 analyze unknown substances to attempt to determine the
10 presence of controlled substances?

11 A. Yes, I have.

12 Q. Would you describe briefly for the Court your
13 background and training in your subject matter expertise?

14 A. Sure. I have a Bachelors of Science in chemistry
15 with a concentration in forensic science. And I received
16 that from the Application State University in Boone, North
17 Carolina in December of 2005.

18 When I was hired by FDLE in July of 2006 I went through
19 a full time training program in the area of blood alcohol
20 toxicology. And that lasted approximately eight months.

21 After I finished with that I went through a full time
22 training program in the area of drug toxicology. That lasted
23 approximately one year. After that I was able to do --
24 perform case work for FDLE.

25

1 Q. Have you in previous cases been offered and
2 accepted as an expert witness?

3 A. Yes, I have.

4 Q. Can you estimate how many times in a Florida state
5 court?

6 A. Sure. Approximately 75 times.

7 Q. And in those prior appearances have you been
8 allowed to offer an opinion as to whether there are
9 controlled substances contained within a blood sample?

10 A. Yes.

11 Q. Is it usually that you examine blood for the
12 presence of controlled substances?

13 A. Typically blood or urine.

14 Q. Let's talk more specifically -- oh, before we get
15 to that, your specific work in this case, does your
16 background and training -- are you considered a forensic
17 chemist, a toxicologist, or both?

18 A. Forensic toxicologist.

19 Q. Forensic toxicologist.

20 A. Yes.

21 Q. Does that include training and an expertise in
22 understanding the pharmacology of specific drugs that you may
23 be looking for?

24 A. Yes. The one year training program that I went
25 through for drug toxicology covered not only the methods of

1 testing or how to identify the drugs in blood or urine, also
2 the pharmacology or what the effects are on the body and how
3 they move through the body, how they're eliminated, and
4 metabolized by the body.

5 Q. So, you are familiar at least generally with those
6 processes?

7 A. Yes.

8 Q. And do you hold any degrees in forensic toxicology?

9 A. No, I don't.

10 Q. Your degree is in chemistry?

11 A. Correct.

12 Q. With additional training specifically in forensic
13 toxicology?

14 A. In forensics in general.

15 Q. Forensics.

16 A. Yes.

17 Q. The nature of the -- the work you do though is
18 within the realm of toxicology?

19 A. Correct.

20 Q. All right. Well, let's talk more specifically
21 about the matter that brings you here today. In your work do
22 you often receive blood samples that have been packaged by a
23 crime scene technician or otherwise made its way through the
24 pipeline to you with the request that you examine the blood
25 for the presence of controlled substances?

1 A. Yes, almost on a daily basis.

2 Q. And what is your typical process for analyzing
3 blood for that purpose?

4 A. So, for blood specimens the first thing that's
5 going to happen to them is they're going to be -- the
6 evidence is going to be opened up so that it can be analyzed.

7 The first analysis is typically blood alcohol analysis,
8 and once that analysis is finished, it usually takes one to
9 two weeks to complete that test, it's going to go on for drug
10 testing. And in drug testing it's a two --

11 Q. By you?

12 A. Correct.

13 Q. Okay.

14 A. In drug testing it's a two step process. The first
15 step is called a screening test or a preliminary test, which
16 looks for ten different classes of controlled substances.

17 If any of those screen tests positive then it moves on
18 for the second type of test called a confirmation test, which
19 tells me specifically what drug is in that specimen.

20 Q. So, the screening is what form of test.

21 A. The screening is called an ELISA, or enzyme linked
22 immunosorbent assay, and it's really a chemical color test
23 that tells you whether a group or a class of drugs is present
24 or not. It doesn't tell you specifically what drug is in the
25 specimen.

1 Q. Give me an example of a class of drugs that might
2 give you the reaction that you're looking for.

3 A. So, one example of a class of drugs is opioids.
4 One drug that's a member of the opioids class would be
5 Oxycodone, or Hydrocodone. So, if there were -- either of
6 those drugs were present then the opioids assay would test
7 positive.

8 Q. Once you have a positive test on the opioid assay
9 is that when you submit it for more specific, or you conduct
10 more specific testing?

11 A. Correct.

12 Q. And what is that typically in the opioid family?

13 A. Typically the second confirmation test would be
14 liquid chromatography with tandem mass spectrometry. And
15 again, that tells you specifically what drug is in the
16 specimen.

17 Q. At the end of the process once you have finished
18 your analysis and derived whatever results that you have do
19 you prepare a report?

20 A. Yes.

21 Q. Is the report in writing?

22 A. Yes.

23 Q. And is the report typically submitted to the
24 requesting agency?

25 A. Yes.

1 Q. Do you also keep a copy for yourself?

2 A. Yes, I do.

3 Q. And would you have a copy of the report in this
4 case with you?

5 A. I did bring it today, yes.

6 Q. Okay. Anything else that you brought with you that
7 would specifically relate to this case, just in general?

8 A. I did bring the case file that has all of the data
9 that's associated with any testing in this case.

10 Q. Em-hmm. Let's make the record clear on what it is
11 you tested. So, let me hand you -- this is going -- is
12 represented to be blood samples of Mr. Derossett. If you
13 want gloves they're available.

14 I'm going to ask you to look carefully at this exhibit,
15 which is identified as Defendant's AS, and ask you to look
16 inside -- first of all, the outside for any markings unique
17 to you or what you understand from your agency. Then inside
18 for the same thing.

19 A. Sure.

20 MR. WEST: May I approach the witness?

21 THE COURT: Of course.

22 MR. WEST: Thank you Judge.

23 BY MR. WEST:

24 Q. I'll just do that at this point. I would point out
25 though that on the left side of the bag it was recently

1 opened and just fastened together with some scotch tape.

2 A. Sure. Thank you.

3 Q. You are welcomed to use that to access the bag.

4 A. Thank you.

5 Q. Let's talk about the outer contents first. So,
6 take a look at any writings on the bag and see what you can
7 decipher for us that's relevant to the work you did.

8 A. Sure. I can see the FDLE case number, which is on
9 a sticker that was placed onto this packaging when it was
10 received by FDLE.

11 Q. Would you read that please?

12 A. Sure. It has the case number, FDLE case number
13 20150510142.

14 Q. And is that a number that you would later
15 transcribe onto any written report?

16 A. Yes, it is.

17 Q. Is that your main control number?

18 A. Yes.

19 Q. Okay.

20 A. I also see my initials and the date that I opened
21 this packaging.

22 THE COURT: May I interrupt for just one moment?
23 I'm sorry, Mr. West, did you identify what -- is there
24 an exhibit sticker on this?

25 MR. WEST: Yes.

1 THE COURT: I'm sorry, I didn't hear the --

2 MR. RESPESS: AS I think.

3 THE COURT: AS? Is it marked as Defense AS?

4 MR. WEST: It's Defendant's AS.

5 THE COURT: Oh, okay. I'm sorry. I did not hear
6 him say that.

7 BY MR. WEST:

8 Q. Mr. Warner, referring again to Defendant's AS. You
9 were telling the Court what markings you made and what they
10 represent?

11 A. Correct. I see my initials on this package, as
12 well as the date that I wrote when I opened the case -- the
13 evidence in this case.

14 Q. All right. Is that the typical procedure?

15 A. Yes.

16 Q. Tell us how you processed the evidence once you
17 take possession of it?

18 A. Once the evidence is in the toxicology section,
19 once I've taken possession of it, typically I'll open the
20 evidence. I'll open a batch of cases, maybe 10 to 12 cases,
21 this being one of those cases in the batch.

22 That batch will get run on the alcohol test, like I
23 mentioned earlier, usually on that same day or maybe the
24 following day. And then once all of the testing is complete
25 the package is -- everything's placed back into the package

1 and it's returned to the agency.

2 Q. Do you typically indicate -- well, let me rephrase
3 that. Is it typically indicated on the packaging what the
4 investigating agency -- how the investigating agency has
5 identified what's inside?

6 A. Yes.

7 Q. And in this case is there a unique identifier for
8 its contents?

9 A. Yes.

10 Q. What is that please?

11 A. You see the number, or letter and number
12 combination KP53, which is -- I think that is the exhibit
13 number that has been given to it by the agency that submitted
14 the evidence.

15 Q. Is there any other identifying information or
16 information of value that you take into account before you
17 would open that up and look what's inside?

18 A. Yes. Typically when I'm opening evidence I will
19 make note of each layer of packaging and whether those layers
20 contain the agency case number and or the subject's name in
21 the case.

22 Q. Let me have you go to the end of the process for a
23 moment. You said you had repackaged a sample that you had
24 tested and then return it to the agency?

25 A. Correct.

1 Q. Is there some indication on that exhibit that you
2 did that?

3 A. Yes. Again, I have my initials on top of the seal,
4 and the date that I sealed the package to return it to the
5 agency.

6 Q. So, let's talk about the dates. When did you
7 receive this item for analysis?

8 A. Well, I actually opened it on September 9th of
9 2015.

10 Q. And go ahead if you would then and tell us what you
11 did with its contents, at least up to the point that you can
12 without removing them.

13 A. So, like I mentioned earlier, any time I open a
14 piece of evidence I'll make a note of each layer of
15 packaging, what the layer is, whether it's a bag, or a
16 plastic kit, or paper bag, or whatever it is.

17 I'll make my notes on there, I'll write the FDLE case
18 number and my initials, and just go through each layer of
19 packaging until I get to the blood tubes that are inside.

20 Q. And did you do that in this instance?

21 A. Yes.

22 Q. If you would go ahead and using that unsealed cut
23 take a look at what's inside and identify that please.

24 (Witness complies.)

25

1 Q. Do the contents of the exhibit appear to reflect
2 what's noted on the outside?

3 A. Yes.

4 Q. And was -- what are those?

5 A. This contains three blood tubes.

6 Q. And was that the blood that you wound up testing?

7 A. Yes, it is.

8 Q. If you would then please explain to the Court what
9 you did with the contents of the exhibit.

10 A. So, like I said before, I wrote the FDLE case
11 number on each blood tube. There's three blood tubes. As
12 well as my initials. And then I only needed one blood tube
13 for testing, so that was this purple top tube.

14 The other tubes I didn't need for the testing, so I
15 didn't open those or use them at all. Once the alcohol test
16 was finished and the drug test was finished I packaged
17 everything back up, put it back in this paper bag, sealed it
18 up, and returned it to the evidence section to be returned to
19 the agency.

20 Q. So, when you opened the exhibit and looked at its
21 contents and discovered it was three vials of blood was that
22 what you expected to find in there?

23 A. Yes.

24

25

1 Q. And was it packaged in the fashion that you would
2 have expected it?

3 A. Yes.

4 Q. Nothing unusual or out of place?

5 A. No.

6 Q. And were the tests that you ran on this the
7 standard tests that you've talked about here today?

8 A. Yes.

9 Q. Question, since you mentioned specifically alcohol
10 testing. Do you have a separate written report on alcohol
11 from the one you prepared on controlled substances, or is
12 that all together?

13 A. They're two separate reports.

14 Q. Do you have the one relating to alcohol with you?

15 A. Yes, I do.

16 Q. Let's move to the blood work that you did though.
17 Do you remember in this case the results of the preliminary
18 assay?

19 A. Yes, I do.

20 Q. Based on those results I think you said that would
21 then dictate any additional testing?

22 A. Correct.

23 Q. Okay. What were your findings on the initial
24 assay?

25 A. All of the ten classes of drugs that were screened

1 for screened negative.

2 Q. Once you get a negative finding on your initial
3 screening or your initial assay testing is there any need to
4 do additional testing?

5 A. No.

6 Q. Where did your work stop in this case?

7 A. After the preliminary screening was finished and
8 all of the classes of drugs tested negative then the report
9 can be generated that this -- there was no drugs identified
10 in this specimen.

11 Q. So, you again referred to classes of drugs. Would
12 you -- can you describe what those classes are?

13 A. Yes.

14 Q. Please.

15 A. There's ten classes. They're actually listed on my
16 report. Rather than trying to memorize them all can I just
17 read them off?

18 Q. Yes.

19 A. So, his ten classes are amphetamines, barbiturates,
20 benzodiazepines, cannabinoids, carisoprodol, cocaines,
21 methadone, opiates, and Oxycodone.

22 Q. Would that also include a drug that may be more
23 popularly known as Hydrocodone?

24 A. Yes, Hydrocodone is a member of the opiates class.

25

1 Q. Would that also include a drug that may be better
2 known to others as Dilaudid?

3 A. Dilaudid is hydromorphone, which is a member of the
4 opiates class, yes.

5 Q. Did you make any markings yourself on the vials?

6 A. Yes, I did.

7 Q. Would you identify those please?

8 A. Yes. Like I mentioned earlier, I did write the
9 FDLE case number, as well as my initials on each of the
10 vials.

11 MR. WEST: Your Honor, I would approach the witness
12 and hand Defendant's Exhibit AR

13 THE COURT: All right.

14 BY MR. WEST:

15 Q. Mr. Warner, do you see Exhibit AR and know what it
16 contains?

17 A. Yes.

18 Q. What is that?

19 A. This is the report that was generated after the
20 drug analysis in this case.

21 Q. Is that your report?

22 A. Yes, it is.

23 Q. And does that report contain the findings that
24 you've testified to here today?

25 A. Yes.

1 MR. WEST: Your Honor, at this time I would tender
2 Defendant's AS and it's contents. I'll have the witness
3 repackage it. As well as Defendant's AR into evidence.

4 THE COURT: All right. Mr. Respass, in light of
5 your other objections, but --

6 MR. RESPASS: Right. The -- are we talking about
7 just AS?

8 THE COURT: AS right now. We're talking about the
9 blood.

10 MR. RESPASS: Yes, for purposes of this hearing --
11 I think I've indicated before the break my position on
12 this. So, I'm not objecting to that being received
13 without proper chain of custody in this hearing, but not
14 in any other proceeding.

15 THE COURT: Okay. And so -- and I understand what
16 you -- you articulated your objection very well. So,
17 with that in mind then that will be admitted. Madam
18 Clerk, what is the Defense next numbered exhibit?

19 THE CLERK: 28.

20 THE COURT: 28. All right, thank you. So,
21 Defendant's 28.

22 MR. WEST: Thank you Your Honor.

23 THE COURT: Thank you.

24 MR. WEST: I would tender the witness.

25 THE COURT: All righty. Thank you. Mr --

1 THE CLERK: That's just the --

2 (Multiple speakers.)

3 THE COURT: Well, the report was in as the report.

4 MR. RESPESS: Yeah, the report -- I'm not -- the
5 report's hearsay. I'm not agreeing to the report coming
6 into evidence. That's why the witness was here to
7 testify. I'm agreeing to the blood --

8 THE COURT: Right. The report was marked, it was
9 not placed into evidence.

10 MR. RESPESS: Right.

11 MR. WEST: I ten -- I offered it in evidence.

12 MR. RESPESS: Well, I -- then I object to that
13 being received because that's hearsay. I don't object
14 to the -- that's why I asked are you talking about AS
15 the package.

16 THE COURT: Right, we were talking about the bag,
17 that bag.

18 MR. RESPESS: Right. That I think I've --

19 THE COURT: Was with the -- whatever was -- with
20 the blood in it, blood vials in it.

21 MR. RESPESS: (Cont'd) indicated my position on the
22 blood vials and --

23 THE COURT: Right.

24 MR. RESPESS: (Cont'd) why I'm agreeing to let them
25 come in for this hearing.

1 THE COURT: Okay. And you know what, on that note
2 I want to clarify something I said earlier. And Mr.
3 West and Mr. Panella, I want to clarify something I said
4 before.

5 I was -- when we were talking about, you know, has
6 anybody established a prima facie case and all that and
7 I said, well, of course you have.

8 I -- that's an off the cuff remark and I don't want
9 you to rely on that in terms of what you're proving. We
10 didn't hear argument on that, we didn't -- that was --
11 that is -- that was not -- I misspoke.

12 Please do not attribute any meaning to that. What
13 I'm saying here is while we are proceeding as if. So,
14 that's not a finding that that happened. That's still
15 to be sorted out, okay. So, don't infer anything from
16 that comment.

17 MR. PANELLA: I understand.

18 THE COURT: Okay, thank you. Because you said you
19 didn't argue it, you didn't get to argue, he didn't get
20 to argue it but for the few words that raised the point.

21 MR. PANELLA: But for the purpose of moving on I
22 understand that.

23 THE COURT: Right, for the purpose of moving on we
24 just said, you know, we're acting as if. So, anyway,
25 thank you. Because you brought up that Mr. Respass I

1 wanted to clarify that. Thank you.

2 MR. RESPESS: All right.

3 THE CLERK: So, AS is number 28.

4 THE COURT: Yes, thank you.

5 MR. RESPESS: Right.

6 THE COURT: And then AR is not being offered. Is
7 that correct?

8 MR. WEST: I have a couple more questions for the
9 witness.

10 THE COURT: Okay.

11 MR. WEST: I missed my --

12 THE COURT: Oh, and Mr. Warner is still present.

13 MR. WEST: I offered too early. Sorry.

14 THE COURT: All righty.

15 MR. WEST: Let me hand you back your report. That
16 will be AR.

17 BY MR. WEST:

18 Q. Just double check for me if you would. Is there
19 any information in that report that relates to your testing
20 or the results that you haven't testified about here today?

21 A. No.

22 Q. Let's take a minute though and talk about alcohol,
23 because I think you said you did test those for alcohol.

24 A. Yes.

25

1 Q. Explain what the test was.

2 A. For alcohol I use a test called gas chromatography
3 with flame ionization testers. And again, just analyzes for
4 that one specific compound, alcohol, ethanol alcohol.

5 Q. And did you get a result?

6 A. Yes.

7 Q. What was the result?

8 A. No ethanol alcohol was found. So, negative
9 results.

10 Q. And did you also embody that result in a report?

11 A. Yes, I did.

12 Q. Is there any information in the report about your
13 testing for alcohol that you haven't told us about here
14 today?

15 A. No.

16 Q. All right.

17 MR. WEST: Now I'll tender the witness Your Honor.
18 Thanks.

19 THE COURT: All right, thank you.

20 MR. RESPESS: Okay. Where's the exhibit? Right
21 there. Thanks. Okay.

22 CROSS EXAMINATION

23 BY MR. RESPESS:

24 Q. And your name again sir?

25 A. Mr. Warner.

1 Q. Warner. All right, Mr. Warner, you rely -- you can
2 only test what's presented to you, correct?

3 A. Correct.

4 Q. So, you can't testify as to where the blood came
5 from, and you can't testify as to what the condition of the
6 person was at the time the blood was drawn?

7 A. Correct, I don't know any -- either of those
8 things.

9 Q. Okay. Now, I want to ask you some hypotheticals,
10 and I may want you to look at the tubes because there's some
11 information on the tubes that may be accurate, maybe not.
12 And that's as to the date and time of the blood draw.

13 We're making some assumptions. Could you look at the
14 tubes and see if there's any information on there that
15 suggests that information?

16 A. I mean, there is a date and a timestamp on the
17 label on the tubes. I don't know exactly what that means.
18 Whether that's when it was collected or time of a certain
19 test. I can't say.

20 Q. Okay. And I think it was 8/20/2015 at what, like
21 10:30 or so? What time was it?

22 A. 22:57.

23 Q. Okay, so, by math that's almost 11:00 then, right?

24 A. Correct, three minutes before 11.
25

1 Q. All right. So, that's at least what's typed on the
2 tube -- on the label that's on the tube, right?

3 A. Yes.

4 Q. Okay. And I wanted to ask you some questions,
5 hypothetical questions. If the individual consumed half a
6 dilaudid pill at 6pm before that blood was drawn, just before
7 11:00, what would you expect the test results of the blood to
8 be?

9 A. If somebody did consume half of a pill, I don't
10 know exactly what size a pill, let's just call it a half a
11 dose --

12 Q. Em-hmm.

13 A. (Cont'd) it's possible that, you know, five hours
14 later you would not find that drug in the blood. It might
15 have already dissipated to the point where it's no longer
16 able to be found on a test.

17 Q. Okay. Can you explain what you mean by that?

18 A. Sure. So, when you consume any drug basically what
19 happens is it's -- you know, it goes down into the stomach if
20 you're taking it orally.

21 It breaks down in the stomach, it goes into -- through
22 your stomach and small intestine into your blood system, and
23 then circulates around the body.

24 As it's circulating around the body it is going to reach
25 the brain where it causes its effect. You know, if somebody

1 takes enough drug they might be impaired for the purposes of
2 driving.

3 But it also goes through your liver where it's going to
4 be metabolized or broken down, and eliminated through the
5 urine. So, basically in the certain period of time that drug
6 is going to be built up in the blood system or in the blood
7 stream to a particular level, get to a max point, and then
8 drop back down back to zero as it's being eliminated.

9 Q. Okay. If the pill was taken was at 6pm how long is
10 it going to take for it to -- and I'm interested in what the
11 status of that pill would be on someone at 9:30.

12 A. Well, typically if you're taking a full dose the
13 effects would last about four to six hours. Meaning there
14 should be enough drug in your blood system for you to have
15 the effect.

16 Typically taking an opioid like Hydromorphone the effect
17 would be to relieve pain. So, for four to six hours you
18 should have enough of that drug in your blood system to
19 relieve pain.

20 But if you're taking only a half a dose that might only
21 last two to three hours, and then that pain relief is gone
22 and it's eliminated to the point where it might not have an
23 effect or it might not even be able to be tested.

24

25

1 Q. Okay. So, the event in this case happens
2 approximately 9:30, and if that information is correct
3 approximately 11:00 the blood draw is gone.

4 And under that hypothetical I just described your
5 findings would be consistent with that, you would not be
6 surprised by that outcome in your testing?

7 A. Correct.

8 Q. Okay. Now, I want to ask you probably illogical,
9 but I want to work backward. If that same individual had
10 consumed Hydrocodone in the morning of that same day would
11 you expect the same findings you reported if the blood was
12 drawn at 11:00 in the evening?

13 A. It's possible. Again, without knowing exactly how
14 much Hydrocodone was taken. If somebody's only taken one
15 dose then that's -- they've only -- you know, that's their
16 first dose of the day and they haven't taken anymore, then
17 yes, I would not expect to find Hydrocodone at the end of the
18 day.

19 However, if they took more than a dose or a large
20 amount, or they've taken Hydrocodone all day it is possible
21 and I would expect that you would find the Hydrocodone at the
22 time that the blood was collected.

23 Q. Okay. Are you able to tell us if either of those
24 substances were having any effect on -- in other words, any
25 impairing effects on the individual at 9:30?

1 A. Again, I actually don't have any evidence --

2 Q. Em-hmm.

3 A. (Cont'd) personally that there even was any drugs
4 in the blood.

5 Q. Understood.

6 A. If somebody had taken drugs at the times that you
7 mentioned it is possible that they would still be under the
8 influence of those drugs at 9:30 p.m.

9 Q. And still result in a negative finding on your
10 test?

11 A. Yes, that's correct.

12 Q. At 11:00?

13 A. Yes.

14 Q. Okay.

15 MR. RESPESS: I don't have any other questions.

16 THE COURT: All right, thank you. Mr. West, does
17 that prompt anything sir?

18 RE-DIRECT EXAMINATION

19 BY MR. WEST:

20 Q. Let's talk about that for just a minute just so
21 that I better understand what you really mean by that when
22 you say under the effects and what that actually means in
23 terms of function.

24 So, are you saying that as a toxicologist it's possible
25 that if somebody took half a dilaudid somewhere in the

1 neighborhood of 6:00 one evening, by 9:30 they're still could
2 be some detectable amount in his blood?

3 A. It is possible, yes.

4 Q. But it's also possible there was -- there wouldn't
5 be?

6 A. Correct.

7 Q. And that may be just the elimination rate as well
8 as the individual's metabolism?

9 A. Correct. People's metabolism and the elimination
10 rate for specific people can actually vary quite a bit. So,
11 you can't say based on one person's elimination rate that
12 another person would or wouldn't be experiencing the effects,
13 or even have that drug in their blood system based on that
14 other person.

15 Q. A better indicator of any impact on behavior would
16 be looking at the behavior?

17 A. Correct, or doing some sort of testing on that
18 individual.

19 Q. Em-hmm. In your field as a toxicologist are you
20 qualified to talk as a pharmo toxicologist, someone who has
21 specific training, advanced training in the mental and
22 physical effects of a drug?

23 A. Yes, I can talk about the effects of the drugs that
24 have been talked about today.

25

1 Q. What is -- you already said that dilaudid is for
2 pain?

3 A. Correct.

4 Q. Is it prescribed by doctors for pain?

5 A. It usually is prescribed for pain by a doctor, yes.

6 Q. Em-hmm. You would not, I take it, be able to
7 speculate or to offer any specific opinion in this case as to
8 any effect of dilaudid since you didn't find any?

9 A. I haven't been asked to do that, no.

10 Q. You can't.

11 A. I can testify to the general effects of what
12 dilaudid are, but in this specific case I can't say whether
13 there were even any effects or what the effects were.

14 Q. If you had found a dilaudid in the blood would you
15 have gotten a level?

16 A. Yes, I would have measured how much was in the
17 blood specimen, yes.

18 Q. And had you gotten a level you would be able to
19 more accurately predict its effect on the body?

20 A. Correct, yes.

21 Q. And could you indeed extrapolate back?

22 A. That's not something that's possible given the
23 amount of information that is available scientifically.

24 Q. Em-hmm.

25 A. So, no.

1 Q. Is there a level of Dilaudid by which toxicologists
2 consider it to be under the influence?

3 A. Generally what most people talk about is a level
4 that's called the therapeutic level or therapeutic range,
5 which is the amount of drug that you would expect to find in
6 somebody who's taking their drug as prescribed by the doctor,
7 and it's generally a range that's given for each specific
8 drug.

9 Q. Do you know the therapeutic level?

10 THE COURT: Mr. West, can you and Mr. Respass
11 approach for a minute please?

12 MR. WEST: I can't hear Judge.

13 THE COURT: Could you approach for a moment please?

14 (Whereupon, a side bar discussion was held outside
15 the hearing of the gallery.)

16 THE COURT: If he just said there's absolutely no
17 dilaudid --

18 MR. WEST: That's right.

19 THE COURT: No hydromorphone --

20 MR. WEST: That's right.

21 THE COURT: Can you please move on?

22 MR. WEST: Sure.

23 THE COURT: The therapeutic range and the
24 intoxicated range is not relevant. And I appreciate the
25 clinic, but I'd prefer that we advance. Thank you.

1 (Whereupon, the following was had in open court.)

2 MR. WEST: Your Honor, that will conclude my
3 questions. Thank you.

4 THE COURT: All right, thank you.

5 MR. RESPESS: I don't have any other questions.

6 THE COURT: All right. Then Mr -- may Mr. Warner
7 be excused?

8 MR. PANELLA: Yes

9 THE COURT: All right, thank you. Thank you Mr.
10 Warner. Then Mr. Panella, you I think indicated before
11 we took a break this afternoon that you had concluded
12 this -- that this gentleman concluded your witnesses.

13 MR. PANELLA: Yes, Your Honor that's correct.

14 THE COURT: Okay.

15 MR. PANELLA: At this point.

16 THE COURT: Perfect. And that's when we had segued
17 into we were going to just for the purpose of being
18 split screen here to the point we can that the -- then
19 Mr. Respass if you and Mr. Scheiner had anyone that you
20 wished to put on you were going to.

21 MR. RESPESS: Right.

22 THE COURT: Okay. So, now we're at that breaking
23 point.

24 MR. RESPESS: Right.

25 THE COURT: So, who would you like to call?

1 MR. RESPESS: Adam Steuerwald.

2 THE COURT: Okay.

3 THE CLERK: Raise your right hand. Do you solemnly
4 swear or affirm that the testimony you shall give will
5 be the truth, the whole truth, and nothing but the truth
6 so help you God?

7 THE WITNESS: I swear.

8 THE CLERK: Thank you. You may have a seat.

9 THE COURT: Good afternoon.

10 WHEREUPON:

11 ADAM STEUERWALD,
12 a Witness herein, having been duly sworn, testified upon his
13 oath as follows:

14 DIRECT EXAMINATION

15 BY MR. RESPESS:

16 Q. Deputy.

17 A. Good morning -- afternoon.

18 Q. Afternoon. I think the only thing we found out
19 before you got in here is I don't know how to correctly
20 pronounce your last name. So, could you tell us your name
21 and spell your last name?

22 A. Adam Steuerwald, S-T-E-U-E-R-W-A-L-D.

23 Q. And I want to go back to 2015. Where were you
24 working and what were you doing in 2015?

25 A. I was working at Brevard County Sheriff's Office in

1 our special investigations unit as a narcotics and vice
2 agent.

3 Q. And by August 20th of 2015 how long had you been
4 working in the vice unit?

5 A. Seven years at that point.

6 Q. And as a result of being in that unit were you
7 assigned to investigate activities at 1051 Covina in Port St.
8 John?

9 A. I was not necessarily assigned that, no, sir.

10 Q. Okay. Did you -- what -- did your agency, your
11 unit receive a complaint about suspected activities at
12 that -- at or around that residence?

13 A. Yes, sir, we had.

14 Q. Okay. And do you recall when that had happened?

15 A. I would say a couple months prior to, so June or
16 July of that year.

17 Q. 2015?

18 A. Yes, sir.

19 Q. Okay. And is it unusual for your unit to respond
20 from -- about complaints concerning activities in the
21 community that are reported in?

22 A. It's not unusual at all, no, sir.

23 Q. Is that usually how many of your investigations
24 begin?

25 A. That's how a good majority of them begin, yes, sir.

1 Q. Okay. Now, was anybody also working with you on
2 this particular complaint investigation?

3 A. Like I said, we as a unit had received the
4 complaint. I don't know that it was specifically assigned to
5 a specific agent, myself or whomever else.

6 Q. All right.

7 A. So, I can't say that it was assigned to any
8 particular agent, no, sir.

9 Q. Okay. Did you -- did you or anyone else to your
10 knowledge do some background on people believed to reside at
11 that residence concerning prostitution?

12 A. That we had, yes, sir.

13 Q. Okay. And when did -- did that start in June or
14 July, or when did that start?

15 A. I would imagine about the same time the complaint
16 came in, yes.

17 Q. Okay. And what is it that you did as far as
18 investigating that aspect? What did you do?

19 A. Typically we'll do a drive by, get tags, try to
20 identify whose vehicles were there. We may have an analyst
21 pull up a history of that residence to see if those tags
22 matched the persons listed there, see if we can identify who
23 the persons are, the residents are that's residing there or
24 occupying that residence.

25

1 Q. Okay. Were you able to do that in this particular
2 situation?

3 A. I believe we were, yes.

4 Q. Okay. And did one of the people that you
5 identified or associated with the residence, was that Mary
6 Ellis or Mary Derossett?

7 A. Yes, sir.

8 Q. And as a part of working vice you -- that
9 necessarily involves prostitution investigations, does it
10 not?

11 A. That is correct.

12 Q. All right. And by 2015 you were familiar with
13 how to investigate or determine if someone's involved in the
14 prostitution activities in our county?

15 A. Yes, sir.

16 Q. All right. And was one of those ways seeing if
17 they were advertising their services over the internet?

18 A. That is correct.

19 Q. Was that done in this case?

20 A. It was.

21 Q. And what were the results of an investigation as to
22 whether or not one of the occupants, specifically Mary Ellis
23 or Mary Derossett, was advertising her services over the
24 internet?

25 A. We located an ad with her photos on Backpage, which

1 I believe has since been taken down, but at the point in time
2 Backpage was a big advertisement for escorts in particular.

3 And we had located an ad that obviously we believed she
4 had posted, but it had her photos and her contact information
5 in there.

6 Q. Okay. So, you had that, at least discovered that
7 information as a part of the investigation. Was there
8 surveillance? You mentioned surveillance or driving by. Was
9 there actual surveillance conducted on the residence as well?

10 A. We had done surveillance on one particular day,
11 yes, sir.

12 Q. Okay. And who was with you when you were
13 performing surveillance on that residence?

14 A. I know Agent Roberts was, and I believe there was a
15 third agent there, but I'm not sure who that was and if there
16 was a third agent.

17 Q. Okay. And on that particular occasion do you
18 remember what type of vehicle you had, what type of clothing
19 you and the other agent or agents were wearing, that type of
20 thing?

21 A. It would have been normal street clothes.

22 Q. Okay.

23 A. As far as vehicle, I'm not sure.

24 Q. Okay. Marked or unmarked?

25 A. Unmarked.

1 Q. Okay. And did you have tact vests or other
2 identifying items available at that time or not?

3 A. Yes, sir, we do.

4 Q. All right. Now, was that something you were
5 wearing or you just had available?

6 A. During the surveillance portion of it we would have
7 not been wearing that, no, sir.

8 Q. Okay.

9 A. It would have been available to us though.

10 Q. Now, while you were surveilling this particular
11 residence did you observe anyone leave the residence that you
12 decided to follow?

13 A. We did, yes, sir.

14 Q. Okay. And do you remember what date it was that
15 that happened, when in relation to August 20th?

16 A. No, sir, I do not.

17 Q. All right. Was that before July 20th when Mary
18 Ellis was arrested for prostitution?

19 A. Yes, sir.

20 Q. Do you have a sense of how long before July 20th
21 that was? Was it weeks, a month, or are you not comfortable
22 making --

23 A. I would say a couple of months, but I'm -- that'd
24 be about the closet I could get you to it.

25

1 Q. Okay. So, it was within a couple of months?

2 A. Yes, sir.

3 Q. All right. Because you said the investigation
4 began in June?

5 A. June or July, yes.

6 Q. All right. And the first arrest was July 20th?

7 A. I believe so.

8 Q. You were involved in that, were you not?

9 A. Not in the first arrest, no, sir.

10 Q. Okay. Well, hold -- I'm going to keep going and
11 we'll -- I'll see if we got something to refresh your memory
12 on that.

13 A. Okay.

14 Q. Okay, you were aware of that arrest?

15 A. I'm only aware of it, yes.

16 Q. Okay, fair enough. So, I want to go back to this
17 earlier event where you're surveilling. Did you actually
18 follow people that you recognized that left the residence?

19 A. Yes.

20 Q. Tell us about that.

21 A. We had established what we referred to as eyes on
22 the residence and saw Mr. Derossett and Mary Derossett come
23 from the residence, get into his truck, and they left the
24 area. So, we maintained surveillance on them as they
25 travelled.

1 Q. Okay. And where did you follow them to?

2 A. We followed them to Cape Canaveral.

3 Q. And what happened when you were in Cape Canaveral?

4 A. We followed them to a residence off of Ridgewood.

5 I'm not sure on the numerics from Ridgewood, where Mary
6 exited the truck.

7 Q. Okay.

8 A. We continued surveillance on Mr. Derossett as he
9 travelled through Canaveral for the next 20, 25 minutes.

10 Q. Can you -- let's talk about -- because there's
11 travelling and there's travelling. What was Mr. Derossett
12 doing that you were following him for a period of time?

13 A. Just driving around Cape Canaveral.

14 Q. Okay. And when you say driving around was there a
15 pattern to it or what was happening?

16 A. I think he was just biding time, killing time
17 for --

18 MR. WEST: Objection.

19 THE WITNESS: (Cont'd) lack of a better term.

20 MR. WEST: Objection.

21 THE COURT: Yes, what's the objection sir?

22 MR. WEST: Calls for speculation as to what Mr.
23 Derossett was doing.

24 THE COURT: Oka, I'll sustain --

25 MR. RESPESS: Right.

1 THE COURT: (Cont'd) he can say what he --

2 MR. RESPESS: That's fine. Let me ask another
3 question.

4 MR. WEST: Is it stricken?

5 THE COURT: Sustained. If you wish, yes, sir,
6 stricken.

7 MR. WEST: Yes, thank you.

8 MR. RESPESS: All right.

9 BY MR. RESPESS:

10 Q. I don't want you to tell us what you concluded, I
11 want you to describe where he was going and if you appeared
12 to be passing the same places on more than one occasion?

13 A. I know that he was driving around Canaveral. As I
14 sit here I can't tell you exactly what he travelled or where
15 he travelled at that point in time.

16 Q. Okay. And how long did you follow him doing that?

17 A. 20 to 25 minutes until he returned to the residence
18 where he had dropped Mary off at.

19 Q. Okay. So, there was no stops?

20 A. No.

21 Q. Was there a point in time -- and I'm asking, was
22 there a point in time where the surveillance was broken off
23 and the two of you or the three of you went back and just
24 waited where Mary had been dropped off for him to return
25 because you anticipated that's what -- where he was going to

1 be?

2 A. No, sir, we stayed with him.

3 Q. And then -- so, did you observe Mary come back to
4 the vehicle?

5 A. That is correct, yes.

6 Q. All right. And Mr -- and so I'm clear, Mr.
7 Derossett never stopped, gotten out of his vehicle, or done
8 anything in the time that separated -- after he separated
9 from Ms. Ellis?

10 A. No.

11 Q. All right. After -- well, let me as this: You'd
12 been in the unit for seven years at that time?

13 A. Correct.

14 Q. All right. And you'd received information about --
15 from Backpage about the ad that you'd seen?

16 A. Yes.

17 Q. And the observations that you made about the way
18 Mr. Derossett had dropped her off and driven around Cape
19 Canaveral in between, did you have suspicions at that time
20 about what had occurred?

21 MR. WEST: Objection Your Honor, calls for rank
22 speculation about Mr. Derossett.

23 MR. RESPESS: This is based on training and
24 experience. The question I'm framing is training and
25 experience of someone that's been in the vice unit for

1 seven years.

2 THE COURT: Is that -- was that your understanding
3 of the question Mr. West?

4 MR. WEST: Well, it depends on who he's asking
5 about. Whether he's asking --

6 THE COURT: I think he's asking what Agent
7 Steuerwald was thinking.

8 MR. WEST: Right, but it depends on whether he's
9 asking Deputy Steuerwald about Mary Derossett or about
10 John Derossett. Those are two different people.

11 THE COURT: I think he's asking about -- well, I
12 thought he was asking about the situation.

13 MR. RESPESS: Yeah.

14 THE COURT: I thought he was saying based on your
15 having spent seven years in the vice unit up to that
16 point what did those circumstances that just unfolded in
17 front of you look like.

18 MR. RESPESS: What did that suggest to --

19 THE COURT: Was that -- did I misinterpret the
20 question?

21 MR. RESPESS: Right. But that's -- what does that
22 suggest to you based on your training and experience as
23 a vice officer involved in prostitution investigations.

24 THE COURT: Right.

25 MR. RESPESS: For seven years.

1 THE COURT: Do -- right. Is that the way you
2 understood the question? His interpretation.

3 MR. WEST: Well, my -- still, it depends on if it's
4 relating to Ms. Ellis or Mr. Derossett.

5 THE COURT: Okay.

6 MR. WEST: I'm sure he had lots --

7 THE COURT: Okay.

8 MR. WEST: He wasn't investigating Mr. Derossett --

9 THE COURT: Right, I understand.

10 MR. WEST: He didn't know who he was at that point.

11 THE COURT: I understand. So, the objection is
12 overruled. Thank you. And go ahead.

13 MR. RESPESS: All right.

14 BY MR. RESPESS:

15 Q. So, do you understand my question?

16 A. I do.

17 Q. All right.

18 A. Based on my observations and the timing of what had
19 occurred it would appear to us that he had taken her to what
20 we would consider to be an in call --

21 MR. WEST: You know, I object. This is just
22 completely speculative as to what he was doing. Now, if
23 he wants to use Backpage and some knowledge about Ms.
24 Ellis to form -- to make an informed opinion that's one
25 thing.

1 But to try to put that on Mr. Derossett, who was
2 not on their radar at all, not on Backpage, didn't even
3 know who he was until that day.

4 MR. RESPESS: Well, that's not what he's testified
5 to. He said that he's investigated the cars, who's
6 living there, who's going --

7 THE COURT: He knew. I mean, he had -- the -- he
8 testified he'd looked these things up.

9 MR. WEST: He didn't say what he --

10 THE COURT: I mean, I'm not saying that he
11 didn't -- he didn't testify he never seen Mr. Derossett
12 or wouldn't know him if he bumped into him.

13 MR. WEST: Yes. And there were no complaints about
14 Mr. Derossett, no complaints that his truck was used in
15 criminal activity. There's no basis for any of this as
16 to him.

17 MR. RESPESS: I'm trying to get -- there's going to
18 be a traffic stop. I'm just trying to get there.

19 THE COURT: Well, yeah. And the way I'm
20 understanding is that he's giving the opinion that it
21 looked as if the female had been dropped off at, as he
22 put it, an in call.

23 I mean, that's the way I'm hearing it, not as if --
24 not imputing some sort of malevolent behavior to anyone.
25 It's just that was the transaction that he -- is that

1 what the question was?

2 MR. RESPESS: Right.

3 THE COURT: Is that the transaction that he
4 believed he had just watched happened.

5 MR. RESPESS: Right. It's just like if I asked a
6 drug cop in a drug case, they see certain things
7 happen --

8 THE COURT: Right.

9 MR. RESPESS: What does that sug -- did you
10 actually see the drugs? No. What does that suggest to
11 you.

12 THE COURT: Right.

13 MR. RESPESS: That's what I'm asking.

14 THE COURT: Right. So, I -- I mean, Mr. West, I
15 understand your point. You're saying that he can't
16 impute state of mind to Mr. Derossett, but I'm taking it
17 as what did that whole little chain of events just say
18 to you in terms of what just happened, not necessarily
19 what's anybody thinking about it.

20 MR. WEST: Well, in fact, the witness can't testify
21 that there was an act of prostitution that happened that
22 day.

23 THE COURT: Right, that's what I'm saying, he
24 can't. I know that.

25 MR. WEST: Okay.

1 THE COURT: He doesn't know what happened. This
2 person might have, you know, had a birthday present in
3 their pocket for the person whose home they entered.

4 And they said I need 15 minutes with my girlfriend
5 so I can, you know, hear this story of whatever. I
6 understand.

7 MR. WEST: That's exactly my point as to why it
8 would be unfair to Mr. Derossett to involve him in
9 something --

10 THE COURT: But it --

11 MR. WEST: (Cont'd) that this witness doesn't have
12 the facts to support.

13 THE COURT: Okay, but Mr -- I understand, and that
14 objection is overruled.

15 MR. WEST: Thank you Judge.

16 THE COURT: I do understand your objection sir.

17 Thank you.

18 BY MR. RESPESS:

19 Q. Okay, so, that means you can answer the question,
20 but don't use terms like in call, because I don't know what
21 that means.

22 I'm not sure if the Judge does or not. Can you tell us
23 in -- without using some sort of hidden language that means
24 something else. So --

25 A. Okay.

1 Q. So, tell us what it is that this situation, based
2 on your training and experience, you believe have -- what had
3 occurred.

4 A. Based on my training, education, experience we
5 believed that Mr. Derossett had driven Mary to a perspective
6 client or to a client to render services where he drove
7 around until there was a set time that I can't attest to
8 until he returned and picked her up from said location where
9 he dropped her off.

10 Q. All right. So, when you observed that activity
11 what did you do?

12 A. We continued surveillance until we conducted a
13 traffic stop on Mr. Derossett, Mary, and the vehicle that
14 they were occupying.

15 Q. Okay. And during that traffic stop did you
16 communicate with Mr. Derossett or Mary about what had
17 happened and what you observed in your investigation up to
18 that point?

19 A. We did speak to Mr. Derossett about it, that's
20 correct.

21 Q. Okay. And what did you tell Mr. Derossett?

22 A. We explained to him obviously what --

23 MR. WEST: Objection. If the witness is going to
24 be talking about what he said that's fine, but not a
25 collective we, unless we know who's doing the talking.

1 THE COURT: Okay.

2 MR. RESPESS: Well, okay.

3 THE COURT: Thank you. Sustained.

4 BY MR. RESPESS:

5 Q. You need to be clear on who's saying what, but what
6 I want to know is what you said to Mr. Derossett or what any
7 other person that was with you said to Mr. Derossett about
8 the investigation, and what you'd observed, and the concerns
9 or suspicions you had.

10 A. Okay, I had spoken to him and explained to him that
11 if we could prove or if we had taken the time to prove that
12 there was a prostitution transaction that had occurred Mary
13 could be arrested for a misdemeanor charge.

14 On that same note, because he drove her he could be
15 charged with a felony because driving benefits the proceeds
16 of prostitution.

17 He stated to me that he knows what she was doing, but
18 she's down on her luck and he's trying to help her out as a
19 family member.

20 Q. Okay. He didn't tell you he didn't know that what
21 she was doing?

22 A. No, he stated he knew what she was doing.

23 Q. And so did you have any contact with Mary Ellis or
24 Mary Derossett at that time?

25 A. I don't believe I spoke to her on that particular

1 traffic stop, no, sir.

2 Q. Okay, all right. Did you search her car and find
3 suggestive clothing, high heels, anything like that?

4 A. I did not, no, sir.

5 Q. Do you recall involving yourself of a search of the
6 automobile?

7 A. I don't remember searching the automobile, no, sir.

8 Q. All right. And did you issue any traffic citation
9 for running a stop sign or anything like that?

10 MR. WEST: Objection, leading.

11 THE COURT: Okay. Sustained.

12 MR. RESPESS: All right.

13 BY MR. RESPESS:

14 Q. Did you issue any citations?

15 A. No, sir.

16 Q. Okay. All right, did you have any involvement in
17 the subsequent arrest of Ms. Derossett -- and let me show
18 Defense counsel what I'm going to show him to refresh.

19 Do you recall when it was that -- I think I asked you
20 earlier, but let me ask again. Do you recall when it was
21 that the -- that Mary Ellis was subsequently arrested for
22 prostitution based on a SUI Sheriff's Office operation?

23 A. All I know is she was arrested. I have no idea of
24 dates, times, or anything of that --

25

1 Q. I'll show you a document. See if that -- did you
2 actually -- were you aware of the operation before it
3 happened or did you learn about it after?

4 A. Learned about it after.

5 Q. All right. And was that through arrest reports or
6 923's?

7 A. Just talk in the office.

8 Q. All right. I'm going to see if that refreshes your
9 memory as to when those conversations would have been had.
10 Does that -- does that appear what was -- that report appear
11 to be what you were talking about in the office about?

12 A. Yes. I mean, my knowledge of it was that I think
13 they arrested her at a CVS parking lot.

14 Q. All right.

15 A. I don't know who the UC was. I now know who the
16 arresting agent was just based on the 923, but --

17 Q. And what I was interested in does that refresh your
18 memory as to the date -- the time period, the date that this
19 would -- that you would have become aware of that. Was it
20 shortly after the arrest?

21 A. I'm sure that it would have been the next day or
22 the following Monday.

23 Q. Okay. So, it would have been in later July, is
24 that what you're telling me?

25 A. Yes, sir.

1 Q. Okay. Now, did you subsequently become involved in
2 an operation in Titusville on August 20th, I guess about
3 almost a month after this?

4 A. I did, yes, sir.

5 Q. And what was it that you were doing that particular
6 evening?

7 A. It was a Backpage operation at the Quality Inn in
8 Titusville.

9 Q. And what do you mean by a Backpage operation?

10 A. When we do a Backpage operation typically we would
11 post an ad as a female, and we would also attempt to solicit
12 females that had posted on Backpage as well.

13 Q. Okay. And did Mary Ellis become involved in the
14 operation?

15 A. She did, yes, sir.

16 Q. And how did she become involved in that operation
17 on August 20th?

18 A. Obviously we post an ad on the Backpage, and at the
19 time if you posted at 7:00 at 7:05 you may not be at the top
20 of that list anymore.

21 So, we continuously scroll and attempt to contact
22 prostitutes that had -- or excuse me, escorts that had posted
23 an ad in the escort section while we're also dealing with
24 johhs contacting us via our ad.

25

1 Q. Em-hmm.

2 A. So, I'm sure that as we were scrolling through,
3 again, we know who she is, we see her pictures, we recognize
4 her. So, I'm positive that we reached out to her in an
5 attempt to get a solicitation charge from her as well.

6 Q. Okay. Now, do you recall what your role in this
7 particular op, what you were doing?

8 A. Typically I would play the female that we had
9 posted an ad of.

10 Q. Okay. Did you become aware of, or were you
11 involved in the decision for the op to leave that area and go
12 to 1051 Covina in Port St. John?

13 A. Sure.

14 Q. Okay. Tell us, were you involved in any of the
15 texting between Mary and the purported john?

16 A. I don't know if I was involved in the texting.

17 Q. Let me show you what's been received in evidence
18 as --

19 A. Okay.

20 Q. (Cont'd) Exhibit 23. I believe it starts -- kind
21 of goes in reverse order, and carries on over into the next
22 page. See if you recognize it as something you would have
23 been involved in or someone else.

24 A. It -- this very well could have been me. The
25 problem is is we all have what was called a calyo account.

1 Q. Em-hmm.

2 A. So, if they were using -- if another agent was
3 using their phone -- I don't recall doing this, but it very
4 well could have been me.

5 Q. Okay. But that -- is that a typical series of
6 texts back and forth between your agency, someone from your
7 agency, posing as a john and talking with a potential
8 prostitute and seeing if they were going to get an actual
9 solicitation for sexual services?

10 A. Yes, absolutely.

11 Q. Were you aware, whether or not you did it, were you
12 aware that that texting communication was going on between
13 people in your unit and Ms. Ellis?

14 A. Yes.

15 Q. Okay. Were you involved in the decision about who
16 was going to go over and arrest Ms. Ellis?

17 A. Yes, as a senior agent at the time I would say I
18 had a part in that, yes.

19 Q. Okay. And what was -- what part did you have?

20 A. I know that, yes, there were a lot of people at the
21 Quality Inn, but we had people doing booking paperwork, some
22 had gone to dinner, and those that were left were there.

23 Q. Okay.

24 A. So, based on our -- my previous dealing with Mr.
25 Derossett and Mary, and the history that we knew about them,

1 it wasn't a big deal for us to send three agents down there
2 to address this issue.

3 Q. Okay. And what do you mean by that, the past
4 dealings that you had?

5 A. Well, I had had -- we conducted a traffic stop, I'd
6 been a part of that traffic stop. Mr. Derossett was cordial,
7 wasn't argumentative.

8 Based on our knowledge he didn't have a history of
9 violent crimes or firearms charges or anything of that
10 nature.

11 So, we sent the three down there that went, and that was
12 kind of a decision made between myself and Lieutenant Lanza
13 at the time.

14 Q. Okay. I want to go back to this traffic stop that
15 you conducted, and that it was some time before this August
16 20th event.

17 A. Right.

18 Q. Do you recall what you were wearing at the time of
19 the traffic stop?

20 A. If we did a traffic stop we would have put our tact
21 vests on and then it very well could have been a long sleeve
22 shirt or just a short sleeve shirt, but we would have put our
23 tact vests on to conduct that traffic stop.

24

25

1 Q. And the tact vest would -- what would they have on
2 them? And let me see if I've got some pictures just to show.
3 Well, let me do this, I've got a vest so let me do this:
4 This is Exhibit 25. Did the vest you were wearing appear
5 something like this?

6 A. Yes.

7 Q. Okay. How about the arrest (sic) that Jason
8 Roberts was wearing? Was -- did his appear like this as
9 well?

10 A. The night of this incident?

11 Q. I'm talking about --

12 A. Oh.

13 Q. At the -- was he -- you indicated he was with you.

14 A. Yes.

15 Q. You weren't sure about the third person.

16 A. Yes, his would have been the same appearance, yes,
17 sir.

18 Q. Now, I want to show you a copy of Exhibit 24, and
19 ask you if you recognize the images contained in that
20 particular exhibit?

21 A. Yes.

22 Q. Okay. And you mentioned that you observed, when
23 you were doing this investigation, images of Ms. Ellis on
24 Backpage?

25 A. Correct.

1 Q. All right. And there's some images there in front
2 of you. Can you associate the images you saw on Backpage
3 with the photographs you're looking at now?

4 A. These would be the photos that she had posted on
5 her Backpage ad.

6 MR. RESPESS: I don't have anything else.

7 THE COURT: All righty. Mr. West or Mr. Panella?

8 MR. WEST: Yes, thanks.

9 MR. RESPESS: Let me pick up some of these
10 exhibits.

11 CROSS EXAMINATION

12 BY MR. WEST:

13 Q. Good afternoon.

14 A. Good afternoon.

15 Q. Should I inquire or wait for Mr. Respass to --

16 THE COURT: Oh, it --

17 MR. RESPESS: I'll be out of the way real quick.

18 THE COURT: Okay.

19 MR. WEST: All right, thanks.

20 THE COURT: He's putting everything back. Thank
21 you.

22 BY MR. WEST:

23 Q. Since you were talking about the Backpage ad just a
24 second ago, are you sure as you sit here today that the
25 images in this exhibit are actually from Backpage, or could

1 they be images captured in texts that she sent to Stead?

2 A. Could be both.

3 Q. Do you have a copy of the Backpage ad itself?

4 A. I do not, no, sir.

5 Q. Are you able to know in fact that this is her
6 Backpage ad or are you just -- what I'm trying to figure out
7 is it's pretty uncommon, isn't it, for people advertising on
8 Backpage to actually put their faces on the images?

9 A. No, sir.

10 Q. So, your testimony is, in any event, that you
11 believe this to be the Backpage ad?

12 A. I do.

13 Q. Okay. The reason that your participation in the
14 planning for the operation on August 20, 2015 played out the
15 way it did was because in your experience with Mary Ellis you
16 didn't see any evidence of threat, or security issues, or
17 safety to you or Agent Roberts?

18 A. Correct.

19 Q. None were reported to you from the CVS incident?

20 A. That's correct.

21 Q. So, even though you may not have been there and may
22 not know a lot about it nobody said she, you know, she fought
23 us, or she resisted, or anything like that?

24 A. Right, no, sir.

25

1 Q. Yeah. So, when you say your contact with Mr.
2 Derossett was cordial and you didn't think him to be a safety
3 concern, the same went for Mary?

4 A. Correct.

5 Q. Mary Ellis. On the night of August 20th you did
6 respond to the Covina address at some point, correct?

7 A. I did, yes, sir.

8 Q. And I know you had a relatively limited role there
9 as I understand it --

10 A. Right.

11 Q. But by the time you got there, certainly while you
12 were there, the place as swarming with medical personnel, law
13 enforcement, it was viewed as an active shooter situation?

14 A. Correct.

15 Q. Maybe 75 or as many as a hundred people there at
16 one point?

17 A. That's what I stated, yes, sir.

18 Q. Em-hmm. No reason to change that now I guess.

19 A. Absolutely not.

20 Q. Let's go back for a minute to the stop there in
21 Cape Canaveral.

22 A. Okay.

23 Q. You said what lead up to that was some surveillance
24 work that the team was doing?

25 A. Yes.

1 Q. And you only participated one day, the day of the
2 actual stop, correct?

3 A. Correct.

4 Q. So, do you know that there was actually five, or at
5 least another witness said, there were five days of
6 surveillance?

7 A. I have no idea of that.

8 Q. No reason to argue with that?

9 A. Nope.

10 Q. And that there was no observed criminal activity
11 during any of the surveillance?

12 A. Okay.

13 Q. At the house.

14 A. I wasn't there that I know of.

15 Q. Well, you -- but you're part of the team.

16 A. Correct.

17 Q. You're kind of the senior guy.

18 A. Right.

19 Q. If there had been criminal activity reported it
20 would have gotten back to you, wouldn't it?

21 A. Maybe, maybe not.

22 Q. Why not?

23 A. Because --

24 Q. Let's back up a little bit further.

25 A. Okay.

1 MR. RESPESS: Well, I'd like him to be able to
2 answer the question because he was getting ready to
3 answer and --

4 THE COURT: Right, that --

5 MR. WEST: I'll get right back to that point.

6 THE COURT: I'll sustain the objection. Let him
7 answer the question and then move on.

8 MR. WEST: Sure, sure.

9 THE WITNESS: Why not is because they may have been
10 reporting to the sergeant, they may have been reporting
11 to the lieutenant.

12 Like I said, I wasn't necessarily the case agent on
13 1051 Covina. So, they may very well have not have
14 mentioned that to me in any way, shape, or form.

15 BY MR. WEST:

16 Q. You don't think it would have been mentioned to you
17 that they had seen evidence of criminal activity leading up
18 to the day you conducted surveillance?

19 A. Not necessarily, no.

20 Q. Well, I know you said that it's not unusual for
21 there to be a complaint tat triggers an investigation.

22 A. Right.

23 Q. And that's what happened in this case, but in this
24 case it was actually a complaint passed on through Chief
25 Lewis.

1 A. Okay. I don't know that.

2 Q. You don't know how the SIU became aware of Mary
3 Ellis' suspected activities?

4 A. No, sir.

5 Q. In any event, there was a day when you and Agent
6 Roberts were conducting surveillance on the Covina address?

7 A. Yes.

8 Q. And that's the day that you saw Mr. Derossett and
9 Ms. Ellis exit the house and you followed them to Cape
10 Canaveral?

11 A. That is correct.

12 Q. You didn't know Mr. Derossett before that?

13 A. No, sir.

14 Q. Did you do a criminal history on him?

15 A. I don't --

16 Q. Run a records check?

17 A. (Cont'd) even know if we had done that yet.

18 Q. Em-hmm. So, as far as you know you had never seen
19 him before at that point?

20 A. Right.

21 Q. And that's because he wasn't the subject of any of
22 the complaints specifically?

23 A. Not the subject, no, sir.

24

25

1 Q. Okay. So, it's you and Agent Roberts at the time
2 that were following Mr. Derossett? He was driving, correct?

3 A. Yes.

4 Q. And during the course of following them you
5 travelled to the Cape Canaveral area, and you saw Mr.
6 Derossett what appeared to be to drop her off in front of a
7 residence?

8 A. Yes.

9 Q. What would the address of that residence be?

10 A. All I know is it was on Ridgewood. I'm not sure on
11 the numerics.

12 Q. Did you see her go in?

13 A. No, sir.

14 Q. Did you get the -- you didn't get the number?

15 A. No.

16 Q. And your decision at that point was just to go
17 ahead and stay behind him?

18 A. Correct.

19 Q. And you did it for however many minutes the -- it
20 lasted?

21 A. Yes.

22 Q. When he stopped -- do you know if he stopped in the
23 same spot or somewhere else to pick her up?

24 A. I think it was right along the same area.
25

1 Q. Em-hmm. So, at that point you decided to initiate
2 a traffic stop?

3 A. Correct.

4 Q. And from what you said obviously what it looked
5 like it could be was that Mary Ellis was dropped off to have
6 some contact with somebody, perhaps prostitution, and then
7 that she would get back in the car and they would drive off?

8 A. Yes.

9 Q. Because that's what you were doing those days,
10 right, you were doing vice?

11 A. Right.

12 Q. Everybody looked like a suspect at that point?

13 A. Well, not just vice, but yes.

14 Q. But in any event, you did not observe any criminal
15 activity?

16 A. No, sir.

17 Q. It's not against the law to drop somebody off, let
18 them go some place, and then pick them up a few minutes
19 later?

20 A. Right.

21 Q. But you did decide to conduct a traffic stop, and
22 can you tell me the probable cause for the stop?

23 A. I have no idea.
24
25

1 Q. Would that be something -- you have no idea why you
2 guys did the traffic stop?

3 A. Correct. As I sit here today I can't tell you why
4 we conducted the stop.

5 Q. Were you driving?

6 A. I believe so.

7 Q. Did you ever make a report of your interactions
8 with Mr. Derossett and Ms. Ellis from that night?

9 A. No, sir.

10 Q. From the time that it happened in 2015 until as we
11 sit here today you've never made a report?

12 A. No, sir.

13 Q. Did you have any dash cam, any audio devices,
14 anything that recorded any part of what you saw or what
15 you've testified that you heard?

16 A. No, sir.

17 Q. Did you observe a traffic violation that gave you
18 the right to stop them?

19 A. I'm sure that we did.

20 Q. Well, what was it?

21 A. Again, I don't know.

22 Q. You don't think it was maybe a pretextual stop just
23 because you wanted to confront them about what you suspected?

24 A. No, sir, we would have developed probable cause on
25 the travels of whatever, but I can't tell you what that was

1 today.

2 Q. But no citation was issued and no report was
3 written?

4 A. No, sir.

5 Q. I think I heard you say you can't remember whether
6 the vehicle was -- whether you found -- whether there was a
7 search. Is that accurate, or do you remember Mr. Derossett
8 being cooperative in allowing you to search?

9 A. I know that he was cooperative, but I don't
10 remember searching his vehicle, no, sir.

11 Q. Do you remember Agent Roberts searching the
12 vehicle?

13 A. No, sir.

14 Q. The conversation that you testified today about the
15 telling him about your suspicions of Mary Ellis, and you said
16 that he said I know what she's doing?

17 A. Correct.

18 Q. Is that his quote?

19 A. Sure.

20 Q. So, he said I know what she's doing, but she's down
21 on her luck and I'm helping her out?

22 A. That's correct.

23 Q. He didn't say specifically what that was that she
24 was doing?

25 A. No, but we had just spoke of if we track this back

1 and she gets charged with prostitution it's misdemeanor, and
2 because he drove her it's a felony, and then this
3 conversation occurs. So, to me it would show that he knows
4 exactly what we're talking about.

5 Q. So, that was sort of your conclusion based upon
6 your point of view?

7 A. Yes.

8 Q. But he never said I know that she's working as a
9 prostitute?

10 A. Correct.

11 THE COURT: Hold on a minute. He's got his own
12 white noise back there.

13 MR. WEST: Indeed -- I'm sorry.

14 THE COURT: Go ahead sir. I'm sorry.

15 MR. WEST: Okay.

16 BY MR. WEST:

17 Q. Indeed the ads on Backpage, as explicit as they
18 are, don't specifically advertise prostitution, correct?

19 A. I don't know that I agree with that statement.

20 Q. Well, what I'm thinking, and I'll share that with
21 you, is it's typically escort services, massages. It may be
22 code for prostitution, but it doesn't specifically say if you
23 come to my house I'll have sex with you for 150 dollars?

24 A. Right, but there is a -- I'm trying to think of the
25 appropriate word. Is there are abbreviations and lingo that

1 can be in a post where you're average citizen has no clue,
2 but based on my training, education, experience absolutely
3 spells out the story of exactly what I can expect if I were
4 to contact her.

5 Q. So, in other words it doesn't say I'll come to your
6 house and have sex for 150 bucks, it uses some kind of code
7 that if somebody that's looking for prostitution would know
8 what it means?

9 A. Correct.

10 Q. But -- and Mr. Respass doesn't know what incall
11 means. Is that something that would be in an ad, incall
12 service?

13 A. Absolutely.

14 Q. And you might associate that with prostitution?

15 A. Absolutely.

16 Q. Or dancing?

17 A. Can.

18 Q. Or massages?

19 A. Hopefully they're licensed.

20 Q. Of course. Legal and illegal activities could all
21 be considered incall?

22 A. Right.

23 Q. But the people that look on Backpage, and are
24 looking for something specific, would be able to read between
25 the lines?

1 A. Absolutely.

2 Q. And indeed in your position with the SIU you would
3 use those codes when you were communicating with a subject of
4 some sort?

5 A. Sometimes yes and sometimes no.

6 Q. Em-hmm, but you know what I'm talking about. So,
7 there would be the QV, the HH?

8 A. Correct.

9 Q. All that stuff is referring to sex without being
10 absolutely literal and blatant about it?

11 A. Right.

12 Q. And that's the way Backpage is?

13 A. Yes.

14 Q. And Mr. Derossett did never tell you I know about
15 Backpage, I know what that means, so when he said I know what
16 she's doing that he in fact knew she was committing
17 prostitution?

18 A. Yes.

19 MR. WEST: May I have one moment please?

20 THE COURT: Sure.

21 MR. WEST: Thank you. Thank you Judge, that's all.
22 Thank you.

23 THE COURT: All right, thank you. Does that prompt
24 anything Mr --

25 MR. RESPESS: Nothing further on that.

1 THE COURT: All right, thank you. May Deputy
2 Steuerwald be excused?

3 MR. RESPESS: Yes.

4 THE COURT: All right. Thank you Deputy
5 Steuerwald.

6 THE WITNESS: Subject to recall or I'm free?

7 THE COURT: You are free to go, yes, sir. Nice to
8 see you.

9 MR. RESPESS: You're free.

10 THE WITNESS: Okay, thank you sir.

11 MR. RESPESS: Judge, could we take a short recess?
12 I need to make a call.

13 THE COURT: Sure, okay. We'll be in recess for --
14 and maybe everyone wants to take a comfort break.

15 (Whereupon, court stands in recess for
16 approximately five minutes.)

17 THE COURT: All righty folks. Do you -- how do
18 we -- how would you like to proceed?

19 MR. SCHEINER: We'll --

20 THE COURT: Wait. Mr. West isn't here and let me
21 put us back on the record. State of Florida versus John
22 Derossett, 2015-CF-39550.

23 Mr. Derossett is present with counsel, Mr. Panella.
24 Mr. Respess and Mr. Scheiner are here on behalf of the
25 State. Mr. West, here he comes. He's here with Mr.

1 Panella and Mr. Derossett as well.

2 So, Mr. Respass and Mr. Scheiner, how would you all
3 like to proceed?

4 MR. SCHEINER: We'll call Detective Wayne Simock.

5 THE COURT: All righty. Detective Simock.

6 MR. RESPASS: Our intent is to authenticate a piece
7 of evidence and play it later. The agent has to be in
8 Jacksonville on a case for --

9 THE COURT: Oh, he's a little bit out of order?

10 MR. RESPASS: Yeah, we're just going to
11 authenticate the tape.

12 THE COURT: Okay.

13 MR. RESPASS: So that we can play it later.

14 THE COURT: Okay.

15 THE CLERK: Raise your right hand. Do you solemnly
16 swear or affirm that the testimony you shall give will
17 be the truth, the whole truth, and nothing but the truth
18 so help you God?

19 THE WITNESS: I do.

20 THE CLERK: Thank you. You may be seated.

21 MR. SCHEINER: May I inquire?

22 THE COURT: Certainly.

23

24

25

1 WHEREUPON:

2 WAYNE SIMOCK,

3 a Witness herein, having been duly sworn, testified upon his
4 oath as follows:

5 DIRECT EXAMINATION

6 BY MR. SCHEINER:

7 Q. Good afternoon Detective Simock.

8 A. How are you?

9 Q. Could you please introduce yourself to the Court,
10 spell your last name.

11 A. Sure. My name is Wayne Simock. My last name is
12 spelled S-I-M-O-C-K.

13 Q. And how are you employed?

14 A. I'm an agent with the major crimes homicide unit
15 with the Brevard County Sheriff's Office.

16 Q. And how long have you been with the Sheriff's
17 Department?

18 A. 12 years.

19 Q. Prior law enforcement experience?

20 A. I do.

21 Q. And where is that?

22 A. 20 years with the Allentown Police Department and
23 Lehigh County district attorney's office in Pennsylvania.

24

25

1 Q. And how long have you been with the major crime or
2 homicide unit with the Sheriff's Department?

3 A. Eight years.

4 Q. And back in August of 2015 were you doing what
5 you're doing now?

6 A. I was.

7 Q. Okay. And did you have an occasion to come in
8 contact with someone by the name of John Derossett?

9 A. I did.

10 Q. And the circumstances of -- that you got involved
11 in that case? How did you come to be the one to have contact
12 with Mr. Derossett?

13 A. Agent Martin, who's the lead agent in this case
14 asked for myself and Ryan Bliss to speak with Mr. Derossett
15 at the hospital, Holmes Regional.

16 Q. And who's Ryan Bliss?

17 A. Ryan Bliss is with the Florida Department of Law
18 Enforcement. He's an agent with them.

19 Q. Okay. And do you recall when you went to go speak
20 with Mr. Derossett?

21 A. It was the day after the incident, I believe August
22 21st.

23 Q. Okay. And where did you do that at?

24 A. Holmes Regional Medical Center in the ICU.
25

1 Q. And when you went to go meet with him -- or do you
2 see that person in the courtroom?

3 A. I do.

4 Q. Could you please identify him by something he's
5 wearing?

6 A. Red.

7 MR. SCHEINER: Record reflect the witness has
8 identified the Defendant.

9 THE COURT: It will.

10 BY MR. SCHEINER:

11 Q. And when you met with Mr. Derossett did you record
12 that interaction with him?

13 A. I did.

14 MR. SCHEINER: Could I approach the witness?

15 THE COURT: Yes, sir.

16 BY MR. SCHEINER:

17 Q. Showing you what's previously marked for -- has
18 been marked for identification as State's ET, and ask if you
19 recognize this CD?

20 A. Let me get my glasses on.

21 Q. I can hold it farther away if you need me to.

22 A. Yes.

23 Q. And how is it that you recognize the compact disc
24 just by looking at it?

25 A. It's my initials, my ID that's put on there.

1 Q. Did you have an occasion to review this particular
2 CD?

3 A. I did.

4 Q. And does this CD accurately capture the
5 conversation between you and the Defendant on August 21,
6 2015?

7 A. Yes, it does.

8 MR. SCHEINER: Your Honor, at this time I'm going
9 to move State's ET into evidence.

10 THE COURT: ET. Madam Clerk, where are we with --

11 THE CLERK: 106.

12 THE COURT: Thank you. ET is now Exhibit 106.

13 Thank you.

14 BY MR. SCHEINER:

15 Q. And this particular piece of evidence that we just
16 looked at, that covers the entire conversation that you had
17 or interaction that you had with Mr. Derossett when you
18 entered his room and then you exited his room, is that
19 correct?

20 A. Yes, I prefaced the tape just before I went in and
21 it was turned off when we left.

22 Q. And when you met with Mr. Derossett in his status
23 as being in custody at the hospital -- or he wasn't in
24 custody at that point, but based on the nature of your
25 conversation did you discuss with him his Constitutional

1 warnings?

2 A. I did.

3 Q. And did he agree to speak with you after going over
4 those?

5 A. He did.

6 Q. Okay. And that's -- is that captured on the audio?

7 A. It is.

8 Q. So, we'll hear that?

9 A. Yes.

10 Q. Okay.

11 MR. SCHEINER: I don't have any further questions
12 of the witness at this time Judge.

13 THE COURT: All righty. Thank you. Mr. Panella?

14 CROSS EXAMINATION

15 BY MR. PANELLA:

16 Q. Good afternoon sir.

17 A. How are you sir?

18 Q. I'm well, thanks. So, where did you say -- what's
19 your current position right now?

20 A. I'm an agent with the major crimes homicide unit,
21 Brevard County Sheriff's Office.

22 Q. Okay, major crime. And you said you've been there
23 for 12 years?

24 A. Yes.

25

1 Q. So, I just want to ask you, in cases -- officer
2 involved shootings, serious cases like that, generally
3 speaking, do you give the law enforcement officers, three,
4 four, couple days, five days before taking a statement?

5 A. It would be consistent to say that we would not
6 interview an officer involved in the shooting for, I believe
7 it's 72 hours.

8 Q. Okay. 72 hours at the minimum?

9 A. 72 hours is a general rule.

10 Q. Okay. But it could be later than that?

11 A. It could be.

12 Q. All right. And is part of the reason -- well,
13 what's the reason for that?

14 A. It's policy.

15 Q. Policy, okay. Do you know if that gives the agents
16 enough time to sort of recoup from the event, calm down, and
17 remember things clearly? Is that part of the policy?

18 A. The agents or the officer involved with the
19 shoot --

20 Q. The officer involved. I'm sorry.

21 A. I don't know if it's to calm down, it's just they
22 send him home that night. He's been in a traumatic
23 situation.

24

25

1 Q. And 72 hours, that's when you start with the
2 interview process?

3 A. Correct.

4 Q. Okay. And so what I'd like to know is were you
5 present for Mr -- were you aware that Mr. Derossett gave a
6 prior statement to this one?

7 A. I was.

8 Q. Okay. Were you present for that statement as well?

9 A. I was not.

10 Q. And how were you made aware that he gave a prior
11 statement to this statement?

12 A. I believe Agent Martin advised me of that.

13 Q. Okay. Was Agent Martin present with you when you
14 took the statement?

15 A. No.

16 Q. Did you -- I just want to confirm also that Mr.
17 Derossett was in custody when you took this statement, right?

18 A. He was not.

19 Q. He was not under arrest?

20 A. He was not handcuffed, there was no deputy there.

21 Q. So, when you took this statement from him -- this
22 was August 21st?

23 A. It was the day after the incident, the morning
24 after.

25

1 Q. Okay. And it's your testimony that he was not
2 detained? He was free to go?

3 A. If he was in custody there would have been a deputy
4 there from the jail and he would be in custody at that point.
5 There was no one there at that time, no.

6 Q. Were you -- did you have occasion to observe his
7 injuries while you were interviewing him there at HRMC?

8 A. He had injuries. I can't tell you specifically
9 what they were, but I don't think he was walking out of the
10 hospital at that point.

11 Q. Okay. All right, just one moment. Thank you sir.

12 MR. PANELLA: I have nothing further.

13 THE COURT: All righty. Mr. Scheiner, does that
14 prompt anything?

15 MR. SCHEINER: No, nothing.

16 THE COURT: All right, thank you. Then thank you
17 Agent Simock.

18 THE WITNESS: Okay.

19 THE COURT: Nice to see you sir.

20 MR. SCHEINER: Agent Simock can go to Jacksonville.

21 THE WITNESS: Thank you.

22 THE COURT: All righty then. Mr. Respass or Mr.
23 Scheiner, who's next?

24 MR. SCHEINER: State's going to call Pete Patellis.

25 THE COURT: All righty. Mr -- is it Patellis?

1 THE BAILIFF: Say the name again.

2 MR. SCHEINER: Pete Patellis.

3 THE CLERK: Raise your right hand. Do you solemnly
4 swear or affirm that the testimony you shall give will
5 be the truth, the whole truth, and nothing but the truth
6 so help you God?

7 THE WITNESS: I do.

8 THE CLERK: Thank you. You may be seated.

9 MR. SCHEINER: May I inquire?

10 THE COURT: Certainly.

11 WHEREUPON:

12 PETE PATELLIS,
13 a Witness herein, having been duly sworn, testified upon his
14 oath as follows:

15 DIRECT EXAMINATION

16 BY MR. SCHEINER:

17 Q. Good afternoon sir.

18 A. Good afternoon.

19 Q. Please introduce yourself to the Court, spell your
20 last name for me.

21 A. Firemedic Pete Patellis, P-A-T-E-L-L-I-S, Brevard
22 County Fire Rescue.

23 Q. And how long have you worked for Brevard County
24 Fire Rescue?

25 A. 16 and a half years.

1 Q. And were you working for Brevard County Fire Rescue
2 back in August of 2015?

3 A. Yes, I was.

4 Q. And specifically August 20th of 2015?

5 A. Yes, sir.

6 Q. And did you have an occasion to respond to a
7 shooting that had occurred in the area of 1051 Covina in Port
8 St. John?

9 A. I did.

10 Q. And when you responded to that location what
11 capacity were you responding to that location in?

12 A. I was on Rescue 29 responding for a report of a
13 deputy involved shooting, and I was assigned to standby to
14 transport the possible shooter.

15 Q. Okay. And did you have an occasion to transition
16 in and come into the scene in order to transport that person?

17 A. Yes, I came in through a back route off of Fay
18 Boulevard, and they staged us off scene -- off site, and then
19 they brought my patient to me.

20 Q. Okay. So, the patient was transported to you?

21 A. Yes.

22 Q. So, you didn't drive in closer to Covina, they came
23 to you?

24 A. Correct.

25

1 Q. Okay. And when the patient arrived to you do you
2 recall who that patient was?

3 A. At the time of the incident I did not know who the
4 patient was.

5 Q. Okay. Do you see that person in the courtroom?

6 A. I do.

7 Q. Okay. Could you identify him by something that
8 he's wearing?

9 A. The gentleman in the red.

10 Q. Okay.

11 MR. SCHEINER: If the record would reflect the
12 witness has identified the Defendant.

13 THE COURT: Yes.

14 BY MR. SCHEINER:

15 Q. When you observed this person did you observe any
16 immediate injuries to him?

17 A. He had a bandaged wound to his left elbow and a
18 gunshot wound to the back.

19 Q. Okay. And your primary focus in this particular
20 interaction with this patient is what?

21 A. Patient care for his wound to his back.

22 Q. And did you begin assessing and treating the --
23 this person?

24 A. I did. He was brought to me by another crew member
25 off of Engine 29. He received him from the Sheriff's Office,

1 and then we took him to the back of our rescue immediately.

2 Q. Okay. Did you -- did he get loaded into the back
3 of your rescue?

4 A. He did.

5 Q. Okay. And when doing that did you have any
6 interaction or speaking interaction with him?

7 A. Yes, I did.

8 Q. Okay. Can you tell the Court what he told you as
9 it related to the incident that had occurred?

10 A. He related that they were trying to take his niece
11 and that's why he shot, and then the motherfuckers shot him.

12 Q. Okay. And that was just something he had said to
13 you?

14 A. Yes, in the back of our rescue.

15 Q. Did you attempt to communicate with him further
16 about treating him?

17 A. Yeah, we -- I'd asked him numerous questions
18 pertaining to his medical history and his background. He
19 refused to answer the questions, stating just ask them.

20 Q. Referring to who?

21 A. Two deputies that were in the back of the rescue
22 with us.

23 Q. Okay.

24 MR. SCHEINER: I don't have any further questions
25 of this witness. Thank you.

1 THE COURT: All righty, Mr. West?

2 MR. WEST: Yes, thank you.

3 THE COURT: Questions?

4 CROSS EXAMINATION

5 BY MR. WEST:

6 Q. Good afternoon.

7 A. Good afternoon.

8 Q. If I heard what you said correctly in terms of how
9 you came to be in -- with Mr. Derossett, it was that he was
10 essentially given to you from another rescue?

11 A. It was from our engine company that arrived on
12 scene prior to us.

13 Q. Em-hmm. And you were there for the purpose of
14 treating -- immediate treatment and then transporting?

15 A. Correct.

16 Q. And that meant that he was going to be put on a
17 stretcher and put into your unit?

18 A. Yeah, he sat onto our stretcher outside of the back
19 of the rescue, and then we loaded him into the back of the
20 rescue.

21 Q. And he was in custody at that point?

22 A. Correct.

23 Q. No doubt in your mind he was in custody?

24 A. Correct, he was in handcuffs with two deputies
25 attending to him.

1 Q. And you overheard at least one of the deputies say
2 he's going to stay in cuffs, no way we're taking the cuffs
3 off?

4 A. Correct.

5 Q. The conversation that you had with him about --
6 that you just said, was that when you were in the ambulance,
7 or were you --

8 A. We were inside the ambulance in the back of the
9 rescue.

10 Q. And he was back -- and he was in the ambulance too?

11 A. Yes.

12 Q. And he was -- you were assessing his wounds and
13 trying to figure out what kind of treatment to give him?

14 A. Correct.

15 Q. And he was trying to explain to you in a sense what
16 happened? Because he had an gun, obvious gunshot wound.

17 A. It was just I think he was just rambling about it.
18 He wasn't directing it directly towards me.

19 Q. What your role was though as you were trying to
20 assess his injuries and figure out what to do --

21 A. Yes.

22 Q. And he was obviously the victim of a gunshot wound?

23 A. Correct.

24

25

1 Q. And that he was -- the statement of what he said
2 was in the context of telling you what happened.

3 A. There was no direct questioning to him regarding
4 that incident.

5 Q. Em-hmm. So, you would describe this as sort of a
6 spontaneous statement or just sort of an excited statement
7 without being questioned?

8 A. Correct.

9 Q. And had you heard him make any other statements to
10 anyone within your vicinity prior to him being pulled into
11 the ambulance or right --

12 A. He -- Mr. Derossett had made a comment to my
13 partner. I do not recall if he -- what it was about, but --

14 Q. Did you hear him say in the direction of or in the
15 presence of a police officer that -- did you hear him say
16 something to the effect to someone else other than you, I
17 shot in self defense. Who would shoot a cop?

18 A. No, I did not.

19 Q. There were two deputies though assigned to him,
20 correct?

21 A. Correct.

22 Q. And they even went with you to the hospital?

23 A. Yes, sir.

24

25

1 Q. You would describe Mr. Derossett as pretty
2 agitated, even a little bit belligerent at the time?

3 A. Correct.

4 Q. You would consider that he was still, I guess the
5 word might be, reeling from the event of the shooting?

6 A. Possibly, yes.

7 Q. Emotionally, if not physically?

8 A. Yes.

9 Q. And that it was obvious to you that he had
10 undergone physical trauma and he appeared to you also to be
11 going -- undergoing emotional trauma.

12 A. He was very angry. He was having some emotional
13 outbursts during the transport.

14 Q. He made this statement that they were take -- if I
15 misquote you please correct me, but they were taking his
16 niece and that's the only reason he shot. He was trying to
17 stop them.

18 A. I believe his statement was they were trying to
19 take my niece, that's why I shot.

20 Q. Em-hmm.

21 A. And then the motherfuckers shot me.

22 Q. At that point you didn't hear him do or say
23 anything that made you think when he said the motherfucker
24 shot him that he was talking about police officers?

25 A. Not that I know of. I was sitting directly behind

1 him --

2 Q. Well, he didn't say --

3 A. (Cont'd) at the time. So, I wouldn't know if he
4 gestured at all or.

5 Q. All right, but my question to you is he didn't do
6 or say anything that made you think that's who he was talking
7 about? That he shot at people he knew to be police officers?

8 A. He did not make any statements to that effect.

9 Q. But there's no doubt he was shot, correct?

10 A. Correct.

11 Q. So, somebody shot him?

12 A. Correct.

13 Q. He just didn't do anything to make it sound like he
14 knew the people that shot him were police officers.

15 A. That I recall, I don't recall him making any
16 statements that indicated one way or the other.

17 Q. Em-hmm.

18 A. Whether he knew it was a police officer or not.

19 Q. So, in other words, you just didn't know
20 specifically who he was referring to that shot him?

21 A. He made it pretty clear because he kept telling me
22 to just ask the police officers every time I asked him a
23 question regarding the incident or any of his medical
24 concerns. He just continued to say, well, then ask them.

25

1 Q. So --

2 A. There's the one that shot me.

3 Q. So, by then -- in other words, by then you're
4 saying that he knew. When he said -- here's what I'm trying
5 to figure out: The sequence of events. You didn't hear him
6 say anything before to any police officers about I shot in
7 self defense, who would shoot a cop. You never heard that,
8 correct?

9 A. Correct.

10 Q. And then when he was in your presence he said they
11 were trying to take my niece, I tried to stop them. That was
12 his first statement. And then shortly after he said and the
13 motherfucker shot me?

14 A. Correct.

15 Q. When you -- and that would have been in the
16 presence of the police officers in the ambulance?

17 A. Correct.

18 Q. And that's when you said he was -- he seemed to be
19 angry.

20 A. Correct.

21 Q. So, apparently at that point he must have realized
22 that he had been shot by a police officer. Was that your
23 assessment or did you still really not know what was going
24 on?

25 A. I really can't -- I really don't know what he was

1 thinking at the time, or what he knew or didn't know.

2 Q. And I don't want you to speculate unless there's
3 something you can tell me that would --

4 A. No, there was nothing specific that would tell me
5 that.

6 Q. Okay. So, do I understand correctly there was sort
7 of this initial exchange when he said that -- that one of the
8 fire fighter said, you know, don't talk, just shut up?

9 A. Yes, correct.

10 Q. That the officers were not engaging him, and that
11 from that point forward he just basically was silent until
12 you got him to the hospital?

13 A. No, that's not completely accurate. He was
14 notified by my partner at the time that it would be a
15 conversation that he needed to have with an attorney and with
16 the investigators when he brought up the shooting.

17 He then, multiple times during questioning, during our
18 transport, would either -- every time we would ask a question
19 it was either ask them or fuck you was his response.

20 Q. What were you asking him that prompted that
21 response?

22 A. Any time I asked anything about his medical
23 history, pain scale, basic questions that I would ask any
24 patient, medications, anything along those lines that was his
25 response.

1 Q. If I hear you correctly that when you're trying to
2 do your job, treat him for his medical condition --

3 A. Correct.

4 Q. (Cont'd) you're asking him what would be
5 information that you would want to know, but instead of
6 giving you that information specifically he would sort of
7 curse and say ask them, meaning the police officers?

8 A. Correct.

9 Q. And did that happen through the course of the ride
10 to -- was it Holmes?

11 A. Yes, Holmes Regional.

12 Q. Em-hmm. And are you saying that that's what
13 happened throughout the course of that or?

14 A. Yes, and that was documented in both my report and
15 in my last deposition.

16 Q. When you say the first -- the report, you know.

17 A. Yes, sir.

18 Q. Was that the audio interview?

19 A. Negative. That was my patient care report that was
20 generated by myself.

21 Q. Em-hmm.

22 A. On the day of the incident.

23 Q. And then do you remember having an audio interview
24 a few days later?

25 A. I believe it was later -- it was either later that

1 night or the next shift. I can't recall exactly what day it
2 was.

3 Q. Em-hmm.

4 A. With FDLE I believe.

5 Q. And have you listened to that or reviewed that at
6 all?

7 A. The audio recording, no, sir.

8 Q. Yeah. Do you think that during that audio
9 interview you may have said that the discussion that you
10 mentioned about him saying that they were trying to take his
11 niece and that's why he shot, that after that exchange that
12 he was then quiet during the rest of the ride?

13 A. No, sir, I have no -- I do not -- I do not
14 independently recall.

15 Q. Yeah. That's not your memory today?

16 A. No, sir.

17 MR. WEST: May I have just a second?

18 THE COURT: Certainly.

19 MR. WEST: I want to see if I can find that spot to
20 see if it refreshes your recollection.

21 THE WITNESS: Okay.

22 MR. WEST: Your Honor, since this is a bench
23 proceeding can we get close? And I don't know, without
24 headphones, if we can find the specific point, but I can
25 get pretty close. It may be --

1 THE COURT: Okay.

2 MR. WEST: (Cont'd) a few seconds on front or back.

3 THE COURT: Okay.

4 MR. WEST: Do you mind just listening to this?

5 Start at --

6 THE COURT: Are you seeking to refresh his memory?

7 MR. WEST: Yes, to see if he remembers saying that
8 during the recorded interview. This is going to be
9 about a minute, minute and a half.

10 THE COURT: Okay.

11 MR. WEST: Could we just approach the witness?

12 THE COURT: Sure.

13 MR. WEST: Could we plug it in?

14 THE COURT: Whatever device you have it on take it
15 over there and play it for them.

16 MR. PANELLA: May I approach?

17 THE COURT: Sure.

18 MR. WEST: Can you play it loud enough so we can
19 hear it?

20 THE COURT: Well, I thought it was refreshing his
21 memory.

22 MR. WEST: I can't hear it Mike.

23 THE COURT: No, I mean he's supposed to be hearing
24 it to refresh his memory. He's not playing it for -- in
25 open court.

1 MR. PANELLA: Between the two of you, if you want
2 to work it out.

3 MR. WEST: Just start it?

4 MR. PANELLA: Yeah. There you go.

5 MR. WEST: That's the part, unless you wanted to
6 hear some more.

7 THE WITNESS: No, I'm fine.

8 MR. WEST: Thank you Judge.

9 THE COURT: Oh, certainly.

10 BY MR. WEST:

11 Q. All right, so, just a couple of follow up
12 questions. Playing that part of your recording do you now
13 remember giving that statement?

14 A. I do.

15 Q. And do you remember sort of describing the events,
16 that there were these initial things that happened early on
17 in the ride where Mr. Derossett made the statement that you
18 quoted, and then he was told to be quiet and he basically was
19 silent for the rest of the ride to Holmes.

20 A. When I described silent in that portion of that
21 interview it was more geared towards Mr. Derossett's outburst
22 and discussing his case, not directly when I was asking him
23 directly pertinent medical information questions.

24

25

1 Q. Oh, okay. So, you're saying that he didn't make
2 additional comments regarding what had happened at the scene?

3 A. Correct.

4 Q. But you were still engaging with him about the
5 medical stuff?

6 A. Correct.

7 Q. Okay, I understand now. The way that you heard it
8 just now, is that an accurate statement of what happened
9 subject to your --

10 A. Yes.

11 Q. (Cont'd) comments here?

12 A. Yes, sir.

13 Q. Okay. Anything that he said though in the
14 ambulance, I call it an ambulance, would have been -- could
15 have been heard by others in the ambulance?

16 A. Correct, except for the driver.

17 Q. Right. And you don't know whether they did
18 necessarily but they could have, just the configuration of
19 how small it is and where everybody was?

20 A. Correct.

21 Q. Let's talk for just a moment about his medical
22 condition. You described him I think maybe even in the
23 interview about really being agitated at the beginning?

24 A. Correct.

25

1 Q. You said before he was still sort of reeling from
2 the traumatic events?

3 A. Yes, sir.

4 Q. So, what was his medical condition?

5 A. Well, he was --

6 Q. That you assessed.

7 A. He was a trauma alert for his gunshot wound to his
8 back --

9 Q. Em-hmm.

10 A. To his torso. And he --

11 Q. How would you describe the one in the back?

12 A. It was a medium caliber entry wound, just below the
13 shoulder blade on the left side of his back.

14 Q. Would it have caused some bleeding, external?

15 A. Minimal.

16 Q. How about internal?

17 A. Possibly.

18 Q. And do you -- did you suspect there may be some
19 damage to his lung?

20 A. Yes, sir.

21 Q. Was it important in your treatment to kind of keep
22 him under control so he didn't make things worse?

23 A. Yes, sir.

24

25

1 Q. How about other injuries? Did you notice an injury
2 to his elbow?

3 A. Yeah, he had a -- what was described to me as a
4 gunshot wound to his elbow as well. I did not witness that
5 wound because it was wrapped and secured prior to him being
6 turned over to myself.

7 Q. Was there some blood loss there too?

8 A. I would assume so.

9 Q. Em-hmm. That wasn't your big concern at that
10 point?

11 A. No, sir.

12 Q. That wasn't going to effect his vitals necessarily?

13 A. No, sir.

14 Q. And then when you got to the hospital did you
15 transfer him over to the ER staff?

16 A. I transferred him over to the trauma team at Holmes
17 Regional Medical Center.

18 Q. And then I take it from your comments earlier that
19 then he engaged with the doctors?

20 A. Yes, he does.

21 Q. Can I assume that there's no recording of any of
22 the things that you've talked about? There's no dash cam or
23 any way of preserving what is said on the inside?

24 A. No, sir.

25

1 Q. Can we be pretty clear now that we've talked about
2 a couple of things what it was exactly that you remember him
3 saying? I know it's a bit repetitive, but can you tell us
4 again what he said, and then whether there was a pause and
5 then what he said again?

6 A. Mr. Derossett said to us in the back of the
7 truck --

8 Q. Em-hmm.

9 A. (Cont'd) that they were trying to take his niece.
10 That's why -- the only reason he shot, and the mother -- then
11 the motherfuckers shot him.

12 Q. Thank you.

13 A. You're welcome.

14 THE COURT: All -- does that prompt anything Mr.
15 Scheiner?

16 MR. SCHEINER: Yeah, one question.

17 RE-DIRECT EXAMINATION

18 BY MR. SCHEINER:

19 Q. Did you treat him with any medications?

20 A. No, I did not.

21 Q. Okay.

22 MR. SCHEINER: No other questions.

23 THE COURT: All righty. May this witness be
24 excused? May --

25 MR. SCHEINER: Yes.

1 THE COURT: All right. Thank you sir.

2 THE WITNESS: Thank you.

3 THE COURT: And Mr. Scheiner, Mr. Respass, who will
4 be your next witness?

5 MR. SCHEINER: Retired chief -- retired deputy
6 chief Mike Lewis.

7 THE CLERK: Raise your right hand. Do you solemnly
8 swear or affirm that the testimony you shall give will
9 be the truth, the whole truth, and nothing but the truth
10 so help you God?

11 THE WITNESS: Yes, I do.

12 THE CLERK: Thank you. You may be seated.

13 WHEREUPON:

14 MICHAEL LEWIS,
15 a Witness herein, having been duly sworn, testified upon his
16 oath as follows:

17 DIRECT EXAMINATION

18 BY MR. SCHEINER:

19 Q. Good afternoon sir.

20 A. Good afternoon.

21 Q. I feel like you make it to chief you should keep
22 chief. Could you please introduce yourself to the Court.

23 A. My name is Michael Lewis.

24 Q. And spell your last name for me.

25 A. L-E-W-I-S.

1 Q. And sir, back in August of 2015 how were you
2 employed?

3 A. I was a deputy with the Brevard County Sheriff's
4 Office.

5 Q. Okay. And how long had you been with them at that
6 point?

7 A. Just over 35 years.

8 Q. Okay. And did you live in the area of 1051 --

9 A. Excuse me.

10 Q. Yes.

11 A. No, probably about 33. I'm thinking when I
12 retired.

13 Q. You retired at 35?

14 A. Yes.

15 Q. So, at that point you were two years shy of your
16 retirement?

17 A. Yeah, so about 33 years.

18 Q. And at that time back in August 20th of 2015 did
19 you live in the area of 1051 Covina?

20 A. I did sir.

21 Q. And whereabouts?

22 A. I live directly west on Alcazar.

23 Q. Okay. And how long had you been living there?

24 A. Probably about 16 years at the time.
25

1 Q. Okay. And did you know your neighbors, your
2 immediate neighbors?

3 A. I knew some of them.

4 Q. And what about the people that lived in 1051
5 Covina?

6 A. No, sir.

7 Q. Okay. Were you aware of them?

8 A. Yes, sir.

9 Q. Okay. And was there some activity or some
10 involvement at that residence that caused some concern for
11 you?

12 A. Yes, sir.

13 Q. Okay. And did you report that concern to members
14 of the Brevard County Sheriff's Department?

15 A. I did.

16 Q. Okay. And tell the Court what exactly you
17 reported?

18 A. I reported to our special investigations unit that
19 my wife had observed a lot of vehicular traffic coming and
20 going from the house for short periods of time.

21 What she explained to me sounded typically like it was
22 drug traffick going on. So, I contacted our special
23 investigations unit and asked them to please check into this
24 for me.

25

1 Q. Okay. And in your experience as a law enforcement
2 officer -- well, around what time was this, if you recall?
3 So, if the shooting happened --

4 A. I don't understand your question. What time of the
5 day, what --

6 Q. No, no, no, time of the year. So, if this happened
7 on August 20, 2015 when in relation to that date would you
8 say that this --

9 A. This had to be at least several months prior to the
10 incident that we're here for.

11 Q. Was it in the spring time, summer time.

12 A. (No verbal response.)

13 Q. Not sure, okay.

14 A. I --

15 Q. Okay, fair enough.

16 A. I would guess probably the spring time, but I'm
17 guessing sir.

18 Q. Okay, very good. And complaints that have to do
19 with I guess -- citizens complaints about neighbors, is that
20 pretty common for the Sheriff's Department in your
21 experience? So --

22 A. Me making citizen complaints about neighbors?

23 Q. No, no, not you making citizen -- in your
24 experience as a deputy sheriff --

25 A. Yes, sir.

1 Q. (Cont'd) or law enforcement officer, is it pretty
2 common for the Sheriff's Department to receive citizen
3 complaints about neighbors?

4 A. Yes, sir, it is.

5 Q. And in particular as it relates to the special
6 investigations unit, are you familiar with that unit?

7 A. Yes.

8 Q. Did you spend any time in that unit?

9 A. No.

10 Q. Okay. You say that emphatically. So, regardless,
11 you're familiar with the idea that citizens will complain
12 about potential neighbors and that will cause an
13 investigation by the Sheriff's Department?

14 A. Absolutely.

15 Q. And that's pretty common?

16 A. Yes, sir.

17 Q. Turning your attention to the events that occurred
18 on August 20th of 2015. Do you recall what you were doing on
19 that day?

20 A. Yes, I do.

21 Q. Okay. And what were you doing on that day?

22 A. Can you narrow that down to --

23 Q. So, in the evening hours.

24 A. I had gone out to dinner with my wife. It was a
25 calamity of events that lead us to go out to dinner. It was

1 an evening where I had planned on staying home, watching a
2 baseball game on TV outside and just relaxing.

3 And my neighbor had his cable shut off or was turning on
4 or -- they cut my cable by mistake. So, when I called the
5 cable company to report it they said they would get someone
6 out there to fix it.

7 So, my wife and I said, well, let's go out to dinner,
8 we'll come back, and we'll watch the baseball game. We got
9 back, there was a -- they hadn't fixed it, and they told me
10 they quit working at 7 at night and they will not be fixing
11 it til the morning.

12 Q. Okay.

13 A. So, I remember very vividly I was at home with no
14 technology, couldn't watch the Red sox game, couldn't turn on
15 the internet. I was stuck at home.

16 Q. All right. And did there come a time when you said
17 whatever you said and decided to go to bed?

18 A. I believe my -- I said to heck with this.

19 Q. Right.

20 A. And went to bed quite early that night. It was
21 like around 8:00 or so.

22 Q. And did something occur that drew your attention?

23 A. I was awoken very quickly by the -- what I
24 perceived to be the sound of gunfire.

25

1 Q. Okay. And do you know around what time that was?

2 A. No, sir.

3 Q. You didn't check you watch?

4 A. I did not.

5 Q. Right. So, what did you do when you were awoken to
6 what you perceived to be gunfire?

7 A. Well, my wife woke up the same time. We both sat
8 straight up in bed, and she goes was that -- I said that was
9 gunfire.

10 She goes that's not fireworks or something of that
11 nature. I go, no, that's gunfire. I perceived in my mind
12 from the way the gunshots sounded to me it sounded like
13 different reports.

14 Q. Okay.

15 A. Like there was more than one gun being fired, and I
16 just sensed that there was trouble based on that sound. My
17 house was being remodeled at the time.

18 I went to the other side of the house, grabbed my actual
19 duty weapon, went out the front door to see what was going
20 on.

21 Q. Okay. And when you did that as you're going out
22 your front door are you continuing to hear the shots?

23 A. No.

24 Q. Was there a --

25 A. By the time my feet hit the floor in my bedroom the

1 shots were done, there was no more gunfire.

2 Q. Was there a pattern or a volley of shots and then
3 a --

4 A. It was a -- there were just shot after shot after
5 shot, a very quick time frame.

6 Q. Okay.

7 A. Multiple shots. And again, what sounded to me like
8 two distinct reports.

9 Q. Okay. And you report to the other side of the
10 house, you get your duty weapon, and then you come to the
11 front door. When you open your front door what do you see?

12 A. I see Agent Roberts crouched down. I yell over
13 there because I could see his -- someone's vest that says
14 Sheriff on it.

15 Q. All right. Where are you seeing this at?

16 A. I am at my front door. I am just now opening up my
17 front door, because I don't know if I'm going to have to
18 retreat for cover or what's going on at this point.

19 Q. Okay.

20 A. I yell over there what's going on, and I see it's
21 Jason Roberts. And he yells something to the effect -- I
22 said do you need my help, and I believe he said something to
23 the effect, yes, Casey's been shot.

24

25

1 Q. Okay. I'm going to -- I have an aerial, which is
2 Defendant's Exhibit 2. And I just want to see if -- I don't
3 believe your residence -- I know your residence is not
4 captured on here.

5 What I'd like to see if you can orient us as to where
6 approximately on the -- what would be I guess the right side
7 of this photograph, Defendant's 2, your residence would be
8 located at. Can you see that?

9 A. Yes, it would be directly to the right. You can
10 see on the bottom of the screen there's what appears to be
11 two driveways there. Mine would be the second driveway.

12 Q. Here, why don't you point on here with that. If I
13 can hold it further away you won't need your glasses.

14 A. It would be right here.

15 Q. All right, very good. And your front door's
16 obviously a ways back from there, is that right?

17 A. Yes.

18 Q. Okay. And if you could point on this particular
19 exhibit approximately where you saw Agent Roberts?

20 A. They were probably in this area right around here.

21 Q. Okay. And you said that when you opened your door
22 you saw it was Agent Roberts. You recognized him?

23 A. Yes.

24

25

1 Q. Okay. And then you said you saw something else
2 about their clothing. What did you see?

3 A. Someone had a tactical vest that said sheriff on
4 it.

5 Q. Okay. And you could see that from where you were
6 at?

7 A. Yes, sir.

8 Q. Describe the lighting conditions of the yard of
9 1051 Covina?

10 A. That night it was fairly dark. I believe there's a
11 street light just to the north of there, maybe -- which was
12 coming down that street on the right, maybe two houses down.
13 So, you have some ambient light and whatever the neighbors
14 lights. There's no street light on Alcazar right there.

15 Q. Okay.

16 A. It's further down north on Alcazar.

17 Q. So, the closest street light in this area is
18 somewhere down this side of the --

19 A. No, sir, I don't know about this side.

20 Q. Okay.

21 A. On this street here it's about two houses north I
22 think.

23 Q. All right, very good. And when that occurs what do
24 you do next? When you see that it's Agent Roberts, you have
25 this communication with him, you learn that Casey's been shot

1 what do you do next?

2 A. I believe I told my wife to call 911 and I
3 immediately exited the house and went over to give assistance
4 and aid.

5 Q. Okay. You have your duty weapon at this point?

6 A. Yes, sir.

7 Q. And it's drawn, you're holding it in your hand?

8 A. Yes, I'm holding it. I don't even have a holster
9 at this point.

10 Q. And how are you otherwise dressed?

11 A. I'm in a pair of shorts and flip-flops.

12 Q. Okay. At some point do you end up wearing
13 something else other than shorts and flip-flops?

14 A. I put on a vest, a concealable body armor.

15 Q. Okay. At what point in this exchange does that
16 occur?

17 A. Once we had other units on the scene and I felt
18 like the perimeter was fairly secure that I could walk up. I
19 think my son actually had come out to drop off the vest to
20 me, like at the front door or something.

21 Q. How long -- so, do you approach Agent Roberts and
22 Agent Casey there on the ground?

23 A. Yes, sir.

24

25

1 Q. Okay. And how long do you stay in that particular
2 area that you had first identified to us?

3 A. Seconds, if that. Immediately I realized that we
4 needed to get behind some cover. And as you look there there
5 really isn't much. There's a pine tree that's depicted in
6 the top right area.

7 Q. Okay. If you could point to it on the picture
8 there.

9 A. This tree right here.

10 Q. Okay.

11 A. And by that point I don't know if Agent Pete -- I'm
12 going to screw up his last name -- Stead.

13 Q. Stead.

14 A. -- was there or just arrived there from the other
15 side of the house, but he and Agent Roberts moved Deputy
16 Casey -- Deputy Smith behind the tree while I provided cover
17 on the house for them.

18 Q. Now, from your vantage point from your front door,
19 and then as you approach Casey on the ground, are you able to
20 see the front door of that house?

21 A. No. From my house definitely not. You'd have to
22 be down in this section of my property right here to be able
23 to see the front door.

24 Q. Okay.

25 A. From where we moved over here initially and then

1 when we took cover I could just see the -- from an angle. I
2 could not see the front door itself.

3 Q. What about the lighting conditions from the front
4 of the house? Could you see that from your vantage point?

5 A. I don't recall.

6 Q. How long do you stay on the side of the yard there
7 after Casey gets moved? Do you wait for the other --

8 A. We waited there for the ambulance. I believe one
9 of the sergeants, Sergeant Beuer, brought his patrol car up
10 into a -- in a very advantageous position for us that we
11 could move, we could move Deputy Casey behind that to provide
12 a little bit more cover, and then gave us a little bit of
13 cover and concealment when we put him into the ambulance.
14 When I say we put him in, the ambulance crew put him in.

15 Q. Right.

16 A. We were there to provide protection.

17 Q. Now, you were -- were you involved in the taking
18 into custody of Mary Ellis?

19 A. Yes.

20 Q. Okay. And approximately how long after, if you
21 know, the volley of shots that you heard and then Ms. Ellis
22 being taken into custody?

23 A. I don't have any idea. I would have to look at
24 the -- or listen to the audio tapes to get an idea on that.

25

1 Q. Okay.

2 A. I don't know.

3 Q. But you would have been the only sheriff's deputy
4 out there in shorts and just a black vest that would have
5 been doing that, if that was caught on video?

6 A. Yes.

7 Q. Okay. And that would reflect an actual -- a timer
8 time as far as when that would have occurred potentially,
9 right?

10 A. Sure.

11 Q. Okay. What about Mr. Derossett, were you involved
12 in taking Mr. Derossett into custody?

13 A. Yes, I was.

14 Q. And how long after taking Ms. Ellis into custody
15 did that occur?

16 A. I don't have a time frame on that.

17 Q. Did -- he was told to exit the home, is that right?

18 A. Yes.

19 Q. And then he was taken into custody, or handcuffed,
20 and then provided over to emergency medical personnel?

21 A. Yes, sir.

22 Q. Okay. Thank you Mr -- or Mike Lewis, Mr. Lewis.

23 MR. SCHEINER: No further questions.

24 THE COURT: All righty. Mr. Panella or Mr. West?

25 MR. PANELLA: I'm coming Judge. It's me.

1 THE COURT: Okay.

2 CROSS EXAMINATION

3 BY MR. PANELLA:

4 Q. Good afternoon Chief Lewis.

5 A. Good afternoon.

6 Q. Good to see you again. And just a few follow up
7 questions. So, there was some talk about how the reports had
8 come in regarding the traffic over at the house in the first
9 place and all that.

10 I'm just curious, in your time living -- you've been
11 there way longer than those people lived at 1051, right?

12 A. Yes, sir.

13 Q. And you never personally witnessed any criminal
14 activity, right?

15 A. No, sir.

16 Q. Okay. So, even when they were doing surveillance
17 and all that, as far as you knew, you don't know of any,
18 right? Besides this particular --

19 A. I don't know of any surveillance or --

20 Q. No, of any criminal activity at the house that you
21 were aware of prior to --

22 A. Not that I witnessed.

23 Q. Okay.

24 A. No, sir.

25

1 Q. Now -- also, did you know -- did you have occasion
2 to ever see Mr. Derossett like out in the yard or anything
3 like that?

4 A. I seen him out in the yard, yes, sir.

5 Q. Did you know whether he had an RV?

6 A. No, sir.

7 Q. Did you ever notice whether he was absent a lot,
8 like just not home?

9 A. No, sir.

10 Q. You guys didn't really know each other at all,
11 right?

12 A. No.

13 Q. So, in thinking about the event -- oh, and you
14 didn't know Mary Ellis either, right?

15 A. No, sir.

16 Q. But you did become aware at some point that SIU
17 made a case on her, right?

18 A. That is correct.

19 Q. But as far as you knew -- because you were getting
20 periodic updates from them, right?

21 A. No, I had an update.

22 Q. Oh, you got an update?

23 A. Yes, sir.

24

25

1 Q. Okay. There was -- in that update or any other
2 conversation with them was there any mention of John
3 Derossett?

4 A. I don't recall.

5 Q. Okay. So, as you sit here now nothing sticks out,
6 right? It was just really about -- what sticks out in your
7 mind is Mary?

8 A. No, what sticks out in my mind is they said they
9 made a case.

10 Q. Oh, okay.

11 A. And I real -- I honestly just left it at that. It
12 was not my investigation, those deputies were not under my
13 command at that time, and quite frankly I wanted to stay out
14 of their way and not feel like I was micro managing them.

15 Q. Sure. Okay, so, thinking about August 20, 2015.
16 You had turned in earlier, missed the Red sox game, right?

17 A. Yes, sir.

18 Q. And are you -- I didn't catch it if I did. What --
19 do you remember what time you went to sleep or laid down?

20 A. I'm guessing the time frame was around 8pm.

21 Q. Okay. And would you call the type of sleep you
22 were in at that time like a twilight sleep?

23 A. That's I think how I referred to it.

24

25

1 Q. That's why I'm saying it. And I'm just going --
2 you remember doing --

3 A. So, yes, sir.

4 Q. What's that?

5 A. Yes, sir, I would.

6 Q. Okay. And you remember giving obviously a prior
7 deposition, right?

8 A. Yes, sir.

9 Q. Okay. So, that's where I'm getting all of this.
10 So, twilight sleep to you meant that it was sort of like you
11 were kind of sleeping, but kind of still aware of your
12 surroundings a little bit?

13 A. Yes.

14 Q. And what was the thing that alerted you out of your
15 sleep?

16 A. The sound of gunfire.

17 Q. Okay. And you with your training and experience
18 you know what that sounds like? It would --

19 A. I hear things that sound like gunfire. Often times
20 they are. I've been around the range for years and years.

21 Q. Right.

22 A. So, I know gunfire, but sometimes gunfire can be
23 confused with other noises like fireworks and things like --

24 Q. Or like a backfire or something?

25 A. I've never confused it with a backfire.

1 Q. Well, what I'm saying is in your deposition you
2 said I knew it wasn't a backfire. It was the unmistakable
3 sound of gunfire, right?

4 A. I knew when I woke up that evening that was
5 gunfire. I can't explain why I knew it. I go with my ears
6 of experience being around weapons and firearms in the type
7 of jobs I've held with the Sheriff's Office, but I knew
8 immediately it was gunfire.

9 Q. For sure. I think that makes perfect sense. So,
10 from the time that you heard that gunfire and was awoken til
11 the time you got to the front door, how long do you think it
12 was?

13 A. I think I estimated about ten seconds.

14 Q. Okay. So, this whole thing was rapid?

15 A. Yes.

16 Q. Okay. And when you say you heard two different
17 reports, did you hear shots on top of each other?

18 A. It was distinct enough that I could hear that there
19 were two different types of weapons. It wasn't one loud
20 noise, it was a volley of gunfire, but it was quick.

21 Q. Okay. And your service -- you grabbed your service
22 weapon, right?

23 A. Yes, sir.

24

25

1 Q. And you went to the front door to peak out, right,
2 to see what was going on?

3 A. Yes, sir.

4 Q. So, the shooting was over though -- well, was the
5 shooting over by the time you exited your residence?

6 A. The shooting was over by the time I touched the
7 floor.

8 Q. By the time you even touched the floor of your --

9 A. Yes, sir.

10 Q. (Cont'd) from the bed? Okay. And so then you
11 didn't initially have your vest, right, you just sort of went
12 out there the way that you were describing?

13 A. Right.

14 Q. Em-hmm. And then is that -- was the first thing
15 you did to go to tend to Agent Smith and the other two agents
16 that were in the side yard?

17 A. Yes, sir.

18 Q. And you mentioned Corporal Beuer. Do you remember
19 if Sergeant Deans was there?

20 A. Yes, I do remember that Sergeant Deans was there.

21 Q. Do you recall where she pulled her car up?

22 A. I have absolutely no idea where she pulled her
23 vehicle.

24

25

1 Q. Okay. Do you know if she was one of the first
2 people there?

3 A. No, I do not.

4 Q. What about Corporal Beuer? Was he -- he was -- was
5 he one of the first people there as far as you know?

6 A. No, I don't know that. I know he's the first one
7 to bring a vehicle on that particular portion of the road.

8 Q. I understand. So, is it fair to say that after --
9 you know, so you were -- but you were the first one to
10 respond to the scene I suppose, right?

11 A. Other than the agents that were already there.

12 Q. Other than the agents that were there.

13 A. Yes, sir.

14 Q. So, by the time you -- I mean, you're there, is law
15 enforcement presence starting to pour in at this time?

16 A. Yes.

17 Q. And would you -- is it fair to say that quite -- it
18 was quite a showing of law enforcement, but many different
19 police vehicles --

20 A. As it was unfolding I can't -- I can't even
21 estimate how many were there for the first couple minutes.
22 By the time it was over --

23 Q. Yeah.

24 A. (Cont'd) and the scene had been secured and the
25 suspects were in custody, our wounded were being taken care

1 of, the place was flooded with law enforcement.

2 Q. Yes, sir. And so how about -- yeah, let's talk
3 about by the time they come out and they're in custody, or
4 they're being taken into custody. By then was there quite a
5 presence of law enforcement?

6 A. Yes, sir.

7 Q. Okay. And many of these law enforcement officers,
8 you know, had guns trained on the house, right?

9 A. I would assume they would. I don't know that for a
10 fact.

11 Q. But you were also taking sort of command and lead
12 of where people should go and things like that, right?

13 A. I was initially taking lead on that when I believe
14 it was Lieutenant Haggarty showed up. I let him start
15 dealing with what he does, which was setting up the
16 perimeters and things of that nature.

17 Q. Sure.

18 A. But I was continually giving commands from a
19 tactical perspective on what we needed to be doing.

20 Q. And you said on -- since you were one of the first
21 ones there without the police vehicles I'm going to ask you
22 what you -- just to -- you said on direct that it was pretty
23 dark in that area, right?

24 A. Yeah.

25

1 Q. Okay. And obviously it got lighter as police
2 vehicles show up, lights and sirens, things like that with
3 artificial light, right?

4 A. Sure.

5 Q. And so eventually you were actually commanding
6 the -- who we now know as John Derossett, and also Mary Ellis
7 out of the house, right?

8 A. Yes, sir.

9 Q. And they did come out of the house eventually,
10 right?

11 A. (No verbal response.)

12 Q. Now, Ms. Ellis, did she come out first?

13 A. Yes.

14 Q. And then John Derossett came out?

15 A. Yes, sir.

16 Q. Now, did you request that he come out with his back
17 facing you?

18 A. Yes, sir.

19 Q. And he did, right?

20 A. He did.

21 Q. And there was an issue because he was holding his
22 arm, is that right?

23 (No response.)

24 Q. And let me clarify.

25 A. Yes, please.

1 Q. Sure. In your deposition -- well, in prior
2 statements, you know, you said you didn't want to call him
3 non-compliant because he was listening, but he wasn't
4 following instructions exactly. Is that right?

5 A. Yeah, but we kind of jumped ahead. There was an
6 issue where we told him to walk out. I don't know what
7 prompted -- I don't know if it was a negotiator on the phone
8 or what prompted him to exit the house itself, but once he
9 did I started giving verbal commands.

10 Q. Okay.

11 A. My verbal command was to walk backwards. Told him
12 to stop at one point and get on the ground. He refused, he
13 just wouldn't get on the ground.

14 So, that was the first time where I would classify it as
15 being non-compliant or not listening or whatever. He just
16 was not complying to the instructions given.

17 Q. Sure.

18 A. And then after that was the issue with the arm.
19 Once we got him to the ground he had his right arm pinned
20 underneath him --

21 Q. Yeah.

22 A. (Cont'd) and we asked him several times to remove
23 his arm and he would not, and I had to forcefully remove his
24 arm and put it back into a handcuffing position.

25

1 Q. Understood. So, let's unpack some of that. So --
2 and again, your term was you don't want to -- you're not
3 going to go so far to say he was non-compliant because he was
4 compliant with some things, but just not all of the
5 instructions, correct?

6 A. Correct.

7 Q. And so did you -- were you aware -- and I think you
8 said at the time you don't know if it was shock of the moment
9 or what, right?

10 A. I'm sorry?

11 Q. Shock of the moment was your term.

12 A. I don't -- again, I think I said I don't know why
13 he was behaving the way he did. Whether it was -- you know,
14 I don't know if I used the term shock of the moment, whether
15 it was shock of the moment, whether it was being
16 non-compliant I have no idea why he was reacting the way he
17 was.

18 Q. Okay. But it certainly could have been the shock
19 of the moment I think is what you're saying. It could have
20 been -- right?

21 A. Yeah, it could have been.

22 Q. Yeah. Okay. Now, did you -- were you aware at the
23 time that he had actually been shot in that -- in the arm?

24 A. No, sir.

25

1 Q. Okay. So -- and I understand what you were saying
2 that he was holding his arm, it was difficult to get it out,
3 but you ultimately did handcuff him, right?

4 A. Yes, sir.

5 Q. Were you aware that he was also -- he was shot in
6 his elbow?

7 A. No, sir.

8 Q. Okay. All right. Did you witness blood on him?

9 A. I believe once we got back to the ambulance area
10 that we had a chance to look and myself and several other
11 people were bloodied from this.

12 Q. Yeah.

13 A. And that was the first time we noticed blood.

14 Q. Okay. Now, when you were giving him commands you
15 were obviously yelling these commands at him, right?

16 A. Yes.

17 Q. Okay. And I mean, it's a tense situation, right?

18 A. Yes.

19 Q. Okay. And you've got lots of law enforcement
20 presence there and were commanding this guy out, and a deputy
21 has been shot, right?

22 A. Yes.

23 Q. Okay. So, when you -- and when you took -- you
24 actually ended up taking him to the ground, right?

25 A. That is correct.

1 Q. Sweeping his legs, put him on the ground?

2 A. Yes, sir.

3 Q. And when you did that he actually said something to
4 you, right?

5 A. Yes.

6 Q. What did he say?

7 A. Well, I don't know if it was while I was sleeping
8 his legs or while he was down on the ground --

9 Q. While you were taking him into custody.

10 A. Yes.

11 Q. And if you want to see the statement that you said
12 I can refresh --

13 A. Yeah.

14 Q. (Cont'd) your recollection, but if you rem --

15 A. No, I know what he said.

16 Q. Okay.

17 A. I'm just trying to put it in perspective. I don't
18 think it's at the moment where I'm sleeping his legs and
19 taking him down to the ground that he's making the statement.

20 Q. Fair enough.

21 A. But he kept repeating why you doing this to me, why
22 you doing this to me.

23 Q. Okay.

24 A. I think he also said I was -- he's a security
25 guard, why you doing this to me.

1 Q. Em-hmm. So, why you doing this to me, why are you
2 doing this to me, and did he also say they're trying to
3 kidnap my niece?

4 A. Yeah, he did. I don't know if that was at that
5 point, or when we're back at the ambulance, or when, but
6 yeah, those words did come out of his mouth.

7 Q. Okay sir. Just one moment please. That's okay
8 sir.

9 MR. PANELLA: I don't have anything further.

10 THE COURT: All righty. Mr. Scheiner, does that
11 prompt anything sir?

12 MR. SCHEINER: Three questions.

13 THE WITNESS: Yes, sir.

14 RE-DIRECT EXAMINATION

15 BY MR. SCHEINER:

16 Q. That night, did you ever discharge your firearm?

17 A. No, sir.

18 Q. And the time that Mr. Derossett or Ms. Ellis, that
19 you were aware that they were living at 1051, had you ever
20 worn your department uniform at hour house?

21 A. Yes, sir, daily.

22 Q. Outside in your driveway?

23 A. Yes, sir.

24 Q. Okay. And what about a marked unit at your house?

25 A. I would say there were probably occasions where

1 there was one there where I might have had a pool car.

2 Q. Okay.

3 A. When my issued vehicle was in for service. So,
4 absolutely from the time frame they were there there would
5 have been a patrol car several times.

6 Q. Okay.

7 MR. SCHEINER: No further questions. Thank you
8 sir.

9 THE COURT: All right, any Chief Lewis step down?

10 MR. SCHEINER: Yes.

11 THE WITNESS: Thank you.

12 THE COURT: Thank you sir. All right, Mr. Respess?

13 MR. RESPESS: I think we're done with --

14 THE COURT: Okay.

15 MR. RESPESS: (Cont'd) witness testimony.

16 THE COURT: Okay.

17 MR. RESPESS: We were going to play the tape we've
18 authenticated.

19 THE COURT: Okay.

20 MR. RESPESS: We're going to -- I'm going to
21 suggest we do that in the morning, and then finish up
22 with argument.

23 THE COURT: Okay.

24

25

1 MR. RESPESS: Because we'll be done unless they're
2 going to be offering some more evidence. That'll be how
3 we conclude.

4 THE COURT: Okay. Do you -- Mr. Panella, do you
5 all contemplate additional evidence after Mr. Respass
6 and Mr. Scheiner are finished?

7 MR. RESPESS: The tape's an hour and ten minutes.

8 THE COURT: Tape's an hour and ten minutes. Yeah,
9 you had said it's an hour and ten.

10 MR. WEST: Yes, could we just have a minute with
11 the State?

12 THE COURT: Certainly.

13 MR. PANELLA: So then Judge, potentially not, but
14 we're working on a couple issues. And if we do have --
15 if we do have another witness we will let you know in
16 the morning obviously, but at --

17 THE COURT: Okay, well, at this point you know
18 what their evidence is going to be.

19 MR. PANELLA: Right.

20 THE COURT: And that they're going to -- you're
21 going to rest at that point, right, Mr. Respass, is that
22 what you said?

23 MR. PANELLA: Right, because --

24 THE COURT: Mr. Scheiner?

25 MR. SCHEINER: Yes.

1 THE COURT: All right.

2 MR. PANELLA: So, they're resting after they play
3 the statement tomorrow.

4 THE COURT: Okay, right. They have to play the
5 statement. So, if you have anyone that you wish to call
6 after that, knowing that that's the end --

7 MR. PANELLA: We'll have them here.

8 THE COURT: Please have them here, yes.

9 MR. PANELLA: Exactly Judge.

10 (Multiple speakers.)

11 MR. PANELLA: -- as we stand here right now for
12 sure.

13 THE COURT: Well --

14 MR. PANELLA: But we'll -- if we are going to have
15 someone we'll have them there.

16 THE COURT: My goodness, you've got 15 hours to
17 sort that out.

18 MR. PANELLA: We're finishing early, huh? Look at
19 that.

20 THE COURT: Well, apparently we did. So, that's
21 what I'm saying. You know, you have all this extra
22 time.

23 MR. PANELLA: What time tomorrow would you like us?

24 THE COURT: Why don't we start at 8:30.

25 MR. PANELLA: Okay.

1 THE COURT: I don't we --

2 THE CLERK: I don't think -- you have other things
3 scheduled.

4 THE COURT: Oh, we do. Okay.

5 THE CLERK: If you want to plan -- have everybody
6 here at 8:30 knowing that we won't --

7 MR. RESPESS: I don't think we're going to -- from
8 what they told me we're not going to start til 9:30. I
9 think you've got about an hour of work tomorrow.

10 THE COURT: Do we? That's what I'm about to look
11 at.

12 MR. SCHEINER: There's like five -- four or five
13 bond hearings and a status hearing --

14 THE COURT: Oh, we do have all those. Okay.

15 THE CLERK: We have six cases.

16 THE COURT: Okay. We've got that. Then 9:30, why
17 don't we say 9:30. We can take care of that -- those
18 other matters in an hour it seems.

19 MR. PANELLA: 9:30?

20 THE COURT: Yes. All righty folks, we'll see you
21 at -- I'll see you all at 9:30.

22 (Whereupon, court stands in recess for the evening;
23 resuming the following morning at approximately
24 9:30 a.m.)

25

1 TITUSVILLE, FLORIDA, 8/31/2018

2 THE COURT: Okay, we're back on the record in State
3 of Florida versus John Derossett. Mr. Derossett is
4 present with counsel, Mr. West and Mr. Panella. Mr.
5 Scheiner and Mr. Respass are here on behalf of the
6 State. It's 2015-CF-39550. Good morning Mr. Derossett.

7 THE DEFENDANT: Good morning.

8 THE COURT: Then did I miss any preliminary matters
9 before we start, or we were going to start with a
10 statement, correct?

11 MR. RESPESS: Yes. I believe there's a preliminary
12 matter though.

13 THE COURT: All righty.

14 MR. RESPESS: It doesn't directly relate -- well, I
15 guess it can eventually relate to what we're doing here.

16 THE COURT: All righty.

17 MR. WEST: I'll speak to that on the part of the
18 Defense.

19 THE COURT: Okay, Mr. West, sure.

20 MR. WEST: Yes, Judge. Where we are is that the
21 State has introduced and will publish this morning a
22 recorded interview of Mr. Derossett that was taken by
23 Agent Simock and others that he testified about
24 yesterday. I think it was mid morning on the day after
25 the shooting --

1 THE COURT: Yes.

2 MR. WEST: (Cont'd) which would be August 21st --

3 THE COURT: Yes.

4 MR. WEST: (Cont'd) 2015.

5 THE COURT: Yes, sir.

6 MR. WEST: I believe he said that he was aware that
7 Mr. Derossett was interviewed the night before. I'm
8 confident he --

9 THE COURT: He did.

10 MR. WEST: I'm confident he said that.

11 THE COURT: I heard him say that.

12 MR. WEST: Yes. So, the State has indicated it
13 does not intend to offer the previous night's statement.

14 THE COURT: Okay.

15 MR. WEST: Which does exist, it is recorded. It
16 wouldn't require any witness, other than to just
17 authenticate that it was taken, but that's not in
18 dispute.

19 THE COURT: Okay, a statement of Mr. Derossett?

20 MR. WEST: Yes. He was interviewed --

21 THE COURT: Okay.

22 MR. WEST: (Cont'd) by law enforcement the night of
23 the shooting while he was at the hospital.

24 THE COURT: Okay.

25 MR. WEST: So --

1 THE COURT: Well, Mr. Respass can play it, the
2 State can play that.

3 MR. RESPESS: We are electing --

4 MR. WEST: Of course. We want them to play it. We
5 think the law requires them to play it, which is what
6 I'm asking.

7 THE COURT: Okay, but I mean, they're not required
8 to play it. Why would they be -- okay, please explain.
9 I'm sorry. Explain to me why you think the law requires
10 them to play it.

11 MR. WEST: Sure.

12 THE COURT: I mean, I always thought that, you
13 know, everybody could pick their own evidence. I mean,
14 we can't choose our -- no, stop. That was a bad --
15 that was poorly phrased.

16 That there is a -- there are 15 witnesses let's say
17 that are potential witnesses in a case, and if the State
18 chooses to call five of the 15 and they feel that that
19 proves their case that's their prerogative.

20 And if all the witnesses are made known to the
21 Defense then Defense can call any of those or none of
22 those, right?

23 MR. WEST: Yes, of course.

24

25

1 THE COURT: And if you have 15 witnesses on your
2 list you can choose to call none of them, some of them,
3 all of them, or the State can call some. Would that --

4 MR. WEST: Of course, yes.

5 THE COURT: Okay.

6 MR. WEST: Yes. The issue though, not that we're
7 asking the Court to order the State to play the first
8 recording, we're more than happy to do that, we intend
9 to do that.

10 But in discussing it with the State Mr. Respass
11 indicated the State objects to the Defense playing the
12 first interview, which was recorded in the evening of
13 the shooting at the hospital.

14 THE COURT: Okay.

15 MR. WEST: And we want to play it.

16 THE COURT: Well, under what exception to the
17 hearsay rule does it fall?

18 MR. WEST: It's not strictly an exception to the
19 hearsay rule, it is --

20 THE COURT: Well, then what exception to what rule
21 would it fall? Because my understanding is that would
22 be a hearsay statement. That statement would be deemed
23 hearsay if offered by you, by the Defense, statement of
24 Defendant in your case. True?

25

1 MR. WEST: Well, I think it probably would be
2 appropriately characterized as that, yes. And we're not
3 trying to jump into the weeds as to whether any of it
4 would be considered a spontaneous statement or excited
5 utterance. That's not the issue.

6 And it otherwise would be hearsay, except however
7 under 90.108 in the Florida Evidence Code the rule of
8 completeness requires that if a party, the State in this
9 case, plays part of a statement that we are entitled to
10 have the remainder of the statement played.

11 THE COURT: Yes, sir.

12 MR. WEST: Either the statement that they offer or
13 additional statements out of fairness. Because the
14 interview the next day was a continuation of the one the
15 night before. They came back to clarify some things.

16 So, in order for the Court to understand the full
17 context of the statement it's necessary for the Court
18 also to hear the first statement that was taken on
19 August 20th.

20 That is what rule 90.108 contemplates and
21 provides, and hearsay is not an objection or an
22 exclusion to that rule.

23 So, in other words because it might otherwise be
24 characterized as hearsay, because it's Mr. Derossett's
25 statement hearsay is not proper objection. So, we will

1 be moving -- we are moving now either the State plays it
2 or we play it under rule 90.108.

3 THE COURT: All right. Mr. Respass, what are your
4 thoughts? Wait a minute.

5 MR. RESPASS: My thoughts are is that these are two
6 separate statements, and we don't have to play an
7 earlier statement because a -- or an earlier statement
8 doesn't come in because a later statement comes in.

9 The entire conversation that was had between the
10 Sheriff's Office and the FDLE agent when they met with
11 this man we intend to play. We're not redacting
12 anything.

13 It's an hour and ten minutes long and we're going
14 to play the whole statement. But I do not believe that
15 opens the door to earlier statements in time or
16 statements that occurred later in time.

17 I don't think that one causes the other. There is
18 one continuous -- there's one person that was at both
19 interviews, that's Brian Bliss, but the first interview
20 was conducted by Mary Adams with Brian Bliss there, and
21 the second interview was conducted by Wayne Simock.

22 They're separated by time and date. And our -- in
23 my view independent of each other. I believe, as I just
24 (unintelligible-printer noise in courtroom) indicated
25 this issue was resolved by the Court, but -- well, let

1 me look at it.

2 I believe it's Kaczmar. It's a new opinion. Let
3 me see if we have something besides the Westlaw cite.
4 2012 Westlaw 466589. Let me read it first because I
5 heard about --

6 THE COURT: 4665829?

7 MR. RESPESS: (Cont'd) this a few weeks ago, and
8 let me make sure this says what I got out of that
9 presentation.

10 THE COURT: Okay. Is it K-A-S-M-A-R?

11 MR. RESPESS: It's K-A-C-Z-M --

12 THE COURT: Oh, I remember that. Okay, yeah. I
13 remember that because I remember the name, the weird
14 name, but I don't remember off the top of my head what
15 it stood for, but I remember reading it. K-A-C --

16 MR. RESPESS: So, maybe we all probably need to
17 take a moment to read this.

18 THE COURT: Well, my problem is that all of the
19 icons on my computer have -- except for the things I
20 have already put up have disappeared.

21 MR. SCHEINER: I think I adequately shook my ink
22 cartridge Judge. I'll try to print some more copies.

23 MR. RESPESS: Yeah, we're having a little bit of an
24 issue with that as well. It's a -- it looks like it's a
25 Supreme Court opinion, and it's 22 pages.

1 THE COURT: Okay.

2 MR. RESPESS: So, I'm going to -- I'll hand you the
3 copy. I'll hand one to counsel. And I haven't sat down
4 and read it, but I believe this touches on that subject.

5 THE COURT: Okay, thank you very much. I just
6 found it in -- I've been in Erhardt.

7 MR. SCHEINER: The cite for the case is 104
8 Southern Third 990.

9 THE COURT: Okay, thank you.

10 MR. RESPESS: And it's a 2000 -- it should have a
11 cite.

12 MR. SCHEINER: Yeah, it's 2012.

13 MR. RESPESS: It's a 2012 case.

14 THE COURT: Okay, it's 104 did you say?

15 MR. SCHEINER: Yes, 104 Southern Third 990.

16 THE COURT: 990. 104 Third 990?

17 MR. SCHEINER: Right.

18 THE COURT: Okay. K-A?

19 MR. SCHEINER: K-A-C-Z-M-A-R v. State. Supreme
20 Court, October 4, 2012.

21 THE COURT: 104 990. Okay.

22 MR. WEST: We don't have a copy of it just so the
23 Court's aware.

24 MR. SCHEINER: Yeah, I'm trying to --

25 THE COURT: Here, I can make a copy.

1 MR. RESPESS: Here, I'm going to give you this one.

2 THE COURT: Oh, you have that?

3 MR. RESPESS: This one talks about the rule of
4 completeness --

5 MR. WEST: Thank you.

6 MR. RESPESS: (Cont'd) and talks about opening the
7 door, and that's in an individual statement.

8 MR. WEST: Right.

9 MR. RESPESS: So, I don't know that it's directly
10 on point, but it talks about the issue. And that was
11 when the State edited a copy of the statement and the
12 Defense wanted the rule of completeness.

13 And then if the rule of completeness in that
14 situation comes in then the State was entitled to put in
15 prior convictions for impeachment on the resulting
16 evidence. I don't know if the case directly
17 addresses --

18 THE COURT: Two statements? Whether the rule of
19 completeness straddles two statements is what you're
20 saying?

21 MR. RESPESS: Yeah. And I --

22 THE COURT: That's kind of my question.

23 MR. RESPESS: Right. And I -- my position has been
24 that it does not.

25

1 THE COURT: Mr. West, do you have anything that
2 says it does? Because my understanding is it does not.
3 It's been very clear to me through -- and please correct
4 me if -- enlighten me, I'm always open to being
5 enlightened.

6 MR. WEST: So, if I would --

7 THE COURT: But my understanding is it's a single
8 recorded statement, and that it -- essentially neither
9 party is permitted to cherry pick the portions of a
10 statement.

11 Or play something that would -- or play or allow
12 the jury to read, the fact finder in this case, to read
13 a statement that would be misleading and is otherwise
14 out of context unless the entire -- the statement as its
15 entirety is considered.

16 So, if these are two separate statements given to
17 two separate in -- questioners, two separate
18 interviewers, i.e., Ms --

19 MR. RESPESS: Adams.

20 THE COURT: Or is she sergeant or some --

21 MR. RESPESS: I think an agent, she was an agent.

22 THE COURT: She's a law enforcement person, okay.
23 Agent Adams and Agent Simock. Then those are two
24 different statements.

25 MR. WEST: Well --

1 THE COURT: How are they not two different
2 statements?

3 MR. WEST: Well, first of all --

4 THE COURT: If one is by --

5 MR. WEST: (Cont'd) there was a common agent --

6 THE COURT: Okay, but the fact --

7 MR. WEST: (Cont'd) between the statements, and --

8 THE COURT: But in this situation we both -- we all
9 understand why that is.

10 MR. WEST: No, I'm sorry, I don't follow.

11 THE COURT: Well, it's an officer involved
12 shooting. Florida Department of Law Enforcement
13 investigates all of those, and therefore Florida
14 Department of Law Enforcement was necessarily present.

15 This is my understanding -- at all times when they
16 were doing the initial investigation of an officer
17 involved shooting, and whether that involve -- entailed
18 speaking with Agent Roberts or Agent Stead, or Mr.
19 Derossett, Brian Bliss was present from FDLE.

20 He seemed to have been present across the board,
21 but then individual other people were leading -- Ryan
22 Bliss lead the questioning in -- and I apologize if I'm
23 not using his proper title.

24 I don't know if he's agent or -- but he was -- I
25 know he's a -- he's with FDLE. He was leading the

1 questioning in some of these matters, mostly directed
2 toward the officers.

3 And then in -- these were in file transcripts in
4 the court file. And then in other situations it's been
5 clear that the questioning has been lead by either Agent
6 Martin, Joe Martin, Agent Wayne Simock testified that he
7 lead the questioning in another setting, and he said
8 that he questioned Mr. Derossett

9 I mean, there'd been a number of other people that
10 have lead questioning, but Ryan Bliss seems to have been
11 present most of the time due to his position as an FDLE
12 person investigating the officer involved shooting.

13 MR. WEST: Yes, I think that's right that he was --

14 THE COURT: So, I mean, his present at both
15 doesn't -- to me isn't the change maker.

16 MR. WEST: I'm not sure I understand the Court's
17 distinction. I'm just pointing out though that there
18 was at least one common officer present.

19 THE COURT: Okay.

20 MR. WEST: And we believe that to be --

21 THE COURT: But how does that --

22 MR. WEST: (Cont'd) Agent Bliss.

23 THE COURT: How does that make it a continuation?
24
25

1 MR. WEST: Well, because they went back to continue
2 the interview that had been started the day before to
3 clarify things and to derive additional information.
4 So --

5 THE COURT: Well --

6 MR. WEST: (Cont'd) it is clearly a continuation
7 because it occurred later in time. While it may have
8 occurred actually separately it was a continuation of
9 Mr. Derossett's interview or interrogation in connection
10 with the singular event.

11 It wasn't as if they went back the second day to
12 talk about something else. This was all the same thing
13 and it was the events surrounding the shooting that had
14 occurred on the evening of August 20, 2015, the date of
15 the first statement.

16 And indeed as the Court would learn, Mr. Derossett
17 was at the hospital, gave the statement essentially from
18 his hospital bed --

19 THE COURT: Okay.

20 MR. WEST: (Cont'd) like he did the next day.

21 THE COURT: Okay.

22 MR. WEST: The -- on the legal aspect of it Judge,
23 I think the Court is construing the rule too narrowly.
24 Again, we're referring to Florida Statute 90.108 (1),
25 that says when a writing, or recorded statement, or part

1 thereof is introduced by a party an adverse party may
2 require him or her at that time to introduce any other
3 part, or any other writing, or recorded statement that
4 in fairness ought to be considered contemporaneously.

5 An adverse party is not bound by evidence
6 introduced under this section. So, indeed the rule does
7 provide for the introduction of separate statements.

8 It also requires that the party offering the first
9 one also offer the other one. So, in this instance the
10 State could be compelled to play both.

11 Although we're not asking them to do it because we
12 can play it as easily as they can, but the Court is to
13 make the determination whether in fairness -- in this
14 instance it's contemplated that it would be before a
15 jury, whether the jury should hear, in this case, both
16 statements as opposed to just the one that the adverse
17 party chose.

18 So, the Court's going to have to make a ruling on
19 the statement that we want, the first recorded part of
20 this interview as to whether in fairness the trier of
21 fact should consider it.

22 THE COURT: So, what you're saying is there's an
23 interview on 8/20 and an interview -- or depending on
24 the time, you know, the hour, it was same night all
25 continuous night. That was the first interview.

1 MR. WEST: The night of August 20th, post shooting.

2 THE COURT: Right. So, what I'm saying is it was
3 prior to midnight it's on August 20, if it's after
4 midnight obviously it's now August 21.

5 MR. WEST: I can't remember, but I think it's late
6 in the evening --

7 THE COURT: Okay.

8 MR. WEST: (Cont'd) on the 20th.

9 THE COURT: So, let's say it's August 20. For the
10 sake of argument we're going to -- we'll say it's August
11 20th.

12 MR. WEST: Em-hmm.

13 THE COURT: And then the -- Mr. Respess, do you
14 have any idea what time the next day the --

15 MR. RESPESS: I think it's on the recording. We
16 can play it, because you know --

17 THE COURT: I mean, at what --

18 MR. WEST: Well, I think the witness said 10:40 or
19 something like that the next morning.

20 THE COURT: Okay.

21 MR. RESPESS: Right. And --

22 THE COURT: So, it's the next morning.

23 MR. RESPESS: And the rule is for the purpose avoid
24 the potential for creating misleading impressions by
25 taking statements out of context.

1 And how is that happening when the entire statement
2 that the witness is being asked is covered in the
3 statement. I -- you know, that -- it would be one thing
4 if there's an allegation that he said some --

5 I mean, I don't see where there's any indication of
6 misleading when you're telling the entire -- you're
7 giving the entire statement. These cases that talk
8 about that are --

9 THE COURT: You're saying it's just an entire
10 account of --

11 MR. RESPESS: Right, of the entire --
12 (Multiple speakers.)

13 THE COURT: -- as questioned through --

14 MR. RESPESS: Right.

15 THE COURT: Via questioning by Agent Simock is what
16 you're saying.

17 MR. RESPESS: Right. And the difference is is that
18 the people that are conducting the interrogation now
19 have information about the crime itself so that they can
20 talk to the Defendant about it and deal with the issues,
21 because they now have knowledge.

22 So, the -- so this has nothing to do with the
23 earlier statement, which is really just hearing what he
24 has to say without any issues.

25 THE COURT: Right.

1 MR. RESPESS: I mean, they actually have pictures
2 they're showing him --

3 THE COURT: Just a blank slate, just a blank slate
4 first, tell what happened. Is that what you're saying?
5 The first interview is kind of a what happened?

6 MR. RESPESS: That's what I believe it is because
7 Ms. Adams doesn't know, it's just happened.

8 THE COURT: I mean, I don't know. I've obviously
9 not heard it. That's why I'm asking. Is it a what
10 happened, you know, we're recording you? I don't know
11 whether rights were read, I don't know any of this, but
12 my question is if -- allow me a moment to read this
13 particular case.

14 MR RESPESS: And there's another case we're going
15 to want you to read as well. It's Larzelere, which is
16 another murder case.

17 THE COURT: Okay. How do you spell it please?

18 MR. RESPESS: L-A-R-Z-E-L-E-R-E v. State.

19 THE COURT: Wait, L-A-R-Z-E-L-E-R-E?

20 MR. RESPESS: Yes, and the cite is 676 Southern
21 Second 394.

22 THE COURT: Okay. And I'm looking at Johnson --
23 there's always a Johnson v. State that addresses all
24 issues. At 20 -- well, this is 653 Southern Second
25 1074, Third District. It's a '95 case, but it's

1 apparently pretty on point. Okay, so give me -- let's
2 take a moment.

3 MR. WEST: Are we talking about Larzelere at this
4 point?

5 THE COURT: Well, Mr. Respass cited that and I've
6 got this on my screen at the moment, and I'm going to
7 try to get the other one without the assistance of any
8 of my icons that tell me what the programs are.

9 MR. WEST: I'm just -- I'm just -- I'd like to know
10 which case the Court is viewing so we can look at it
11 too.

12 THE COURT: I'm looking at Johnson at this moment,
13 because that's what's on my screen. And so --

14 MR. WEST: And the citation for Johnson?

15 THE COURT: That is -- where did it go? 653
16 Southern Second 1074. So -- okay, give me a moment
17 please. Mr. Respass, is -- where's Larzelere? I'm not
18 finding where --

19 MR. SCHEINER: It's headnote eight in Larzelere.

20 THE COURT: Is it?

21 MR. SCHEINER: Or in --

22 THE COURT: Okay. I was -- thanks. Do I have the
23 wrong one?

24 MR. SCHEINER: 676 Southern Second 394, Supreme
25 Court of Florida.

1 THE COURT: Oh, no, I've got 979 190 --

2 MR. RESPESS: Well, no, she had a post
3 conviction --

4 THE COURT: That's what I'm looking at, the post
5 conviction somehow.

6 MR. RESPESS: Okay. No, this is the --

7 THE COURT: Okay. Because I'm looking at this
8 thinking, hmmm.

9 MR. RESPESS: No, no, it's the case that dealt with
10 the trial was 676 Southern Second 394.

11 THE COURT: Okay, thank you.

12 MR. RESPESS: Headnote eight.

13 THE COURT: Right.

14 MR. RESPESS: And nine.

15 THE COURT: Okay. What did -- it was 676 was the
16 cite?

17 MR. SCHEINER: 676 Southern Second --

18 THE COURT: Okay.

19 MR. SCHEINER: (Cont'd) 394.

20 THE COURT: Thanks. Okay, there it comes. All
21 right, thanks. All right, that's that one. Thank you.
22 Okay.

23 MR. RESPESS: Starts at headnote eight and goes
24 through the next series of --

25

1 THE COURT: Okay, now it's starting to make sense.
2 Okay, let's go to that. Oops, not that. Okay. Okay, I
3 think the Larzelare case, Larzelare is -- says it pretty
4 clearly.

5 And this is found at 676 -- I believe it was
6 Southern Second 394. It is a Supreme, Florida Supreme
7 Court opinion. The '98 case was pretty -- or excuse me,
8 the '95 case that was a Third DCA, Johnson, that I found
9 was a -- had a similar result.

10 And that is essentially that it's discretionary,
11 it's a matter of fairness, and it's to -- really the
12 policy behind it appears to be cherry picking. It's
13 obviously not fair to do that.

14 However, what is made clear by the Larzelare, by
15 the Florida Supreme Court here is that it sets forth the
16 statute when a writing or recorded statement or part
17 thereof is introduced an adverse party may require him
18 at that time to introduce any other part or any other
19 writing or recorded statement that in fairness ought to
20 be considered contemporaneously.

21 And this is known as the rule of completeness
22 and -- now, under this provision once the party, in this
23 case being the State, opens the door to introducing part
24 of the statement -- and this is coming from Ehrhardt.

25 The Florida Supreme Court is citing Ehrhardt. By

1 introducing part of a statement the other -- the
2 opposing party is entitled to contemporaneously bring
3 out the remainder of the statement in interest of
4 fairness.

5 This right however is not absolute. For
6 instance -- and then there's two other's cited.
7 Correll, C-O-R-R-E-L-L v. State, 523 Southern Second
8 562, and that's a Florida Supreme Court decision. Cert
9 denied, 1988.

10 And it's saying ordinarily a Defendant's statement
11 should be introduced into evidence in its entirety
12 absent totally extraneous matters.

13 And in this particular case the facts are that
14 there was a portion at the end of the statement
15 apparently that the State was not going to play and the
16 Court decided was pretty irrelevant anyway and excluded
17 it at the time and said no, Defense, if you want to play
18 it later you're welcome to, but at this point I don't
19 find it to be relevant.

20 And therefore I'm -- I -- I don't find that there's
21 a rule of completeness issue here. In -- but the bottom
22 line is it is only a qualified right to seek the
23 admission of an entire statement, and that was that.

24 So, actually a piece of that was not played over
25 Defense objection, and although Defense was invited to

1 play it in their case they chose not to.

2 And then the -- then the -- what the other --
3 reading these two cases together what it clearly says is
4 that by playing the statement the State opens the door
5 to any cross examination regarding what may have been
6 said in the other statement.

7 Now, the Johnson case was reversed because the
8 State played the original statements made right at the
9 time of arrest, which were inculpatory, and then when
10 taken to the station, seemingly within the hours is what
11 it sounded like by reading this, the person made a
12 statement that was exculpatory.

13 And so the Court allowed cross examination on that
14 other statement, or it should have been allowed, cross
15 examination should be -- the opinion says cross
16 examination, with regard to the other statement, should
17 be permitted, but it's cross examination with regard to
18 that statement. If not that statement should be
19 permitted, should be allowed.

20 And so I'm finding that these are two statements,
21 given to two separate interviewers, on two separate
22 days, at two separate times.

23 Although they are concerning the same event the
24 rule of completeness does not apply in that once one
25 statement comes in the other must come in.

1 And so you are welcome to cross examine on
2 everything and anything that was raised in the other
3 statement that you believe is going to enlighten the
4 Court on any of this.

5 But that statement in and of itself I do not find
6 fits within the rule of completeness because they are
7 separate and separated by more than eight hours. Far --
8 it's not like a continuous transaction.

9 There's a night of people all going their separate
10 ways that takes place. It's not we've got you at the
11 scene, now get in the car, now we're taking your
12 fingerprints and your picture, now sit down, we're going
13 to talk to you about this, let us read you your rights.

14 So, it's not sort of a continuous set of
15 circumstances, and even in that circumstance they
16 weren't both required to be played. It was simply
17 counsel was permitted to cross examine on those -- on
18 what had been said earlier -- later.

19 Because the State played what had been said first,
20 that statement. Do you see what I mean? It's kind
21 of -- it's slightly turned around.

22 And if I re -- my recollection is that there was
23 some criticism or -- I shouldn't -- maybe not
24 criticism, but question as to why Agent Roberts was --
25 and Stead were permitted to wait four days and Mr.

1 Derossett was questioned the next day, the very next
2 day.

3 And so it seems that the Defense favored the fact
4 that at least some time had been allowed to pass. So --
5 and seemed to look upon with favor the fact that time
6 had been -- had been allowed to pass with regard to the
7 other witnesses.

8 So, that's my finding. You're welcome to cross
9 examine on it, but I don't find that the rule of
10 completeness requires it to be admitted
11 contemporaneously in its entirety.

12 MR. WEST: On a couple of the issues the Court
13 raised, just for clarification, as to Larzelare, I don't
14 know if the other statement was recorded or not.

15 So, I don't know if cross examining meant you can
16 just ask questions about a -- non recorded statement or
17 whether it was preserved in some way. I don't think
18 that's the determining factor though.

19 THE COURT: No, they were taped, they were all
20 taped in Larzelere.

21 MR. WEST: Okay, so the --

22 THE COURT: They were all taped. Next, appellant
23 contends that the trial judge erred in admitting
24 selected portions of taped statements and then refusing
25 appellant's request to introduce the complete

1 statements.

2 MR. WEST: Em-hmm.

3 THE COURT: At trial the State introduced its
4 select -- introduced selected portions of taped
5 statements the appellant and Jason made to police. So,
6 they are taped.

7 MR. WEST: Okay. Well, that helps with that, but I
8 don't think that addresses our evidentiary issue here
9 for a couple reasons I need to explain.

10 First of all, Agent Simock is no longer here. He
11 was offered to introduce the recorded statement that's
12 been marked and introduced. He's gone --

13 THE COURT: Right.

14 MR. WEST: He went to Pennsylvania at this point.

15 THE COURT: Well, just like the person that wasn't
16 here when -- after I asked that Mr. Panella publish
17 whatever portion of the video that he wished for the
18 Court to consider.

19 I mean, I said it's already been authenticated,
20 it's here, in evidence, just please play the pertinent
21 portion of it.

22 And Mr. Respess went -- or whoever had examined,
23 whether it was Mr. Respess or Mr. Scheiner, whoever
24 examined Agent Simock made it clear that he was
25 authenticating this now because he had some commitment

1 to be elsewhere and that that was going to be played at
2 a later time, and that's their prerogative of when to
3 play it.

4 MR. WEST: Yes, but if the Court is requiring us to
5 cross examine Agent Simock as to the contents of the
6 statement that was given the night before --

7 THE COURT: Oh, I see what you mean, he's not
8 present.

9 MR. WEST: (Cont'd) as a predicate for
10 admissibility we can't do that. We'll have to --

11 THE COURT: Well --

12 MR. WEST: (Cont'd) have Agent Simock come back at
13 some point to finish that. I do think though that the
14 Court should make some factual findings so we have them
15 in the record about when the statements were made,
16 unless the Court wants to accept --

17 THE COURT: Well, nobody's given me the facts to do
18 that sir.

19 MR. WEST: Yes.

20 THE COURT: That would be not my job, sorry. Until
21 I have that information I can't give you those dates,
22 can I?

23 MR. WEST: No, ma'am.
24
25

1 THE COURT: I don't have access to that information
2 sir. That all comes to you all during discovery. So,
3 if you're not telling me specifically when these -- how
4 close in time or farther in time -- far in time they
5 were given I just know they're given on two different
6 days to two different people.

7 MR. WEST: Well, it wasn't different people, it was
8 some different people, but --

9 THE COURT: Questioned by two different people,
10 correct, at different times?

11 MR. WEST: I can't remember if Agent Bliss asked
12 any questions in both interviews or not.

13 THE COURT: Okay.

14 MR. WEST: I think so, I just don't remember that
15 specifically.

16 THE COURT: Okay, but even if he did the primary
17 interviewer was Agent Simock the second time, correct?
18 And the --

19 MR. WEST: Oh, wait, I think so.

20 THE COURT: And the thing is he was here on the
21 stand, and if you all knew that there were these two
22 statements -- I mean, he was here and that was an
23 opportunity to cross examine him and raise that issue.

24 Because if you knew that you wanted these
25 statements in -- I mean, that issue could have been

1 raised at that time and we could have then discussed,
2 well, no, Agent Simock has to be cross examined even
3 though the State's not playing the statement at this
4 moment.

5 MR. WEST: Well, Your Honor, we could not have
6 anticipated the Court's ruling on that issue at --

7 THE COURT: Well, you --

8 MR. WEST: (Cont'd) that point, that we would have
9 to --

10 THE COURT: I mean, you knew the Court was going to
11 rule one way or the other.

12 MR. WEST: No.

13 THE COURT: And the subject could have been raised.

14 MR. WEST: No.

15 THE COURT: You knew that this was an issue --

16 MR. WEST: No.

17 THE COURT: Because statements of the Defendant are
18 always hearsay, unless put on by the State, or they --
19 or some other exception applies, correct?

20 MR. WEST: Mostly, yes, mostly. There are other
21 statements that aren't hearsay.

22 THE COURT: Right, like I said, unless some other
23 exception applies.

24 MR. WEST: Your Honor, I'd like to --

25 THE COURT: Spontaneous, etcetera.

1 MR. WEST: Yes, the res gestae kind of statements,
2 yes.

3 THE COURT: Right. So, my point is that at the
4 time that Agent Simock was present you all were aware
5 that there were two statements, one of which had been
6 given to Agent Simock. And you were aware that there
7 had been another statement given to someone else the
8 night before. So --

9 MR. WEST: Yes, Agent Simock was questioned about
10 that.

11 THE COURT: Okay. I remember he was. So, when you
12 knew that there were two statements and you knew that
13 you could not put those statements in, and you knew that
14 you may have wanted to put a statement in than that was
15 the time to raise the issue Mr. West.

16 MR. WEST: Well, we --

17 THE COURT: So, I do find that raising it at this
18 point when Agent Simock is no longer available
19 unfortunately is -- it does not entitle you to a
20 continuance, because it is something that was certainly
21 known to you or discover -- easily discoverable at the
22 time that it occurred.

23 MR. WEST: Your Honor, we don't think that there
24 would be any need to cross examine Agent Simock on that
25 unless the Court were to say that and rule that.

1 We could never have anticipated that because we
2 didn't know at that point whether the State was going to
3 offer the first statement or not.

4 THE COURT: Well, but -- okay, what I'm saying
5 is --

6 MR. WEST: And now that --

7 THE COURT: (Cont'd) you could have anticipated it
8 because you knew there were two and you knew that they
9 may only offer one, and therefore the time to raise it,
10 knowing that Agent Simock was coming and having to leave
11 that would have been the time to raise it. So, I --

12 MR. WEST: Well, we couldn't have known that --

13 THE COURT: Okay, respectfully sir I just -- it
14 does --

15 MR. WEST: (Cont'd) because the State -- pardon me?

16 THE COURT: Respectfully I can -- I -- I
17 respectfully disagree, and I found that the rule of
18 completeness does not cover these two statements. So,
19 let's proceed.

20 MR. WEST: What I believe we have to do though is
21 since 90.108 clearly covers this type of situation, and
22 the statute requires the Court to consider in fairness
23 whether the other statement should be admitted to the
24 trier of fact, and because we're at a bench trial,
25 whether the Court should hear it and entertain it.

1 I think the Court has to hear both statements. We
2 have to have the first one in the record that we want
3 the Court to consider, so the Court can consider it in
4 the context of the statement that the Court has admitted
5 at the State's request so the Court can follow the
6 requirements of 90.108.

7 THE COURT: Okay, Mr. West --

8 MR. WEST: And make its finding of whether --

9 THE COURT: Mr. West --

10 MR. WEST: (Cont'd) fairness dictates admissibility
11 of the first statement given on the evening August 20th.
12 So, I -- if the State has that on an easily accessible
13 exhibit I'd like to have that marked so at least the
14 record is clear as to what we're talking about.

15 THE COURT: Do you not have the exhibit?

16 MR. WEST: Otherwise, we'll have to get a thumb
17 drive and we'll put it on and give it to the clerk, but
18 we're all talking about the same thing. It's recorded
19 there's no --

20 THE COURT: Right, I understand.

21 MR. WEST: (Cont'd) issue as to what's on it.

22 THE COURT: I understand, but the rule of
23 completeness does not straddle two statements, unless
24 for some reason there's an, oh my God, I'm being called
25 to another emergency, suspend the statement.

1 I'm sure everyone in their life has suspended a
2 deposition until further convening and you make it clear
3 when you're suspending something versus when you're
4 ending something.

5 And -- I mean, words are the tools of our trade.
6 We -- and we all use them carefully. So, we must look
7 at -- and if there's no discussion at the end of that
8 first statement, we're suspending this until we get
9 something else, whatever, that was one statement.

10 And then the next time it's another statement, and
11 they stand alone unless there is some exception.

12 MR. WEST: They don't stand alone if the Court
13 determines in fairness the trier of fact should consider
14 both statements.

15 I know that sounds a bit circular, but there does
16 not in any way have to be a clear break -- or actually,
17 the opposite. There wouldn't ever have to be, well,
18 we're going to continue your statement tomorrow morning,
19 so let's just --

20 THE COURT: Well, that happens.

21 MR. WEST: (Cont'd) sleep on it.

22 THE COURT: That happens.

23 MR. WEST: Not here.

24

25

1 THE COURT: Don't tell me you've never heard that
2 happen. I mean, I know you've -- you've been practicing
3 law for long enough to probably seen that happen quite a
4 few times.

5 MR. WEST: Well, certainly I've seen that happen.
6 I don't know that the law would require that to happen
7 before the Court should, under 90.108, consider the
8 statement that in fairness should be considered.

9 The Johnson case is pretty close Judge. It's
10 really pretty close. The order of the statements is
11 reversed, but --

12 THE COURT: Right, the order is reversed.

13 MR. WEST: (Cont'd) it's really --

14 THE COURT: Well, that's what I'm saying, they were
15 allowed to cross examine. That's what I'm saying, you
16 could have cross examined him on -- you knew that he was
17 introducing that second statement.

18 It was quite clear. It was -- Mr. Respass or Mr.
19 Scheiner, whoever put it into evidence --

20 MR. WEST: He wasn't at the first one. I couldn't
21 cross examine him on something that he --

22 THE COURT: Well, there you have it.

23 MR. WEST: (Cont'd) wasn't there.

24 THE COURT: Then you would have to call a different
25 witness.

1 MR. WEST: We can do that this morning.

2 THE COURT: You'd have to call Mr. Bliss or you'd
3 have to call somebody else, but what I'm -- my point
4 is --

5 MR. WEST: We can do that this morning. We can
6 call a witness --

7 THE COURT: Okay, Mr. West, my point is that this
8 matter is untimely in this posture right now. Because
9 if -- because when Agent Simock came in here you knew
10 there was going to be an issue with the two statements.
11 You knew there was going to be an issue.

12 I understand you work for the best and you prepare
13 against the worst, and if you had to call a different
14 person to cross examine them about a statement because
15 you believed the rule of completeness would allow that
16 that's your prerogative sir.

17 But we are now at the very 11th hour with regard to
18 this hearing, which has been an entire week. And I've
19 let you all go on as -- in every way that you wished, to
20 flush out all the facts that you wish, and many of which
21 may have been a little more facts then -- a few more
22 facts then necessary to determine the narrow issue that
23 we have before us.

24 But it's all been allowed in the interest of
25 letting you have a full and fair hearing, and it has

1 lasted five days. We are now on day five. We were
2 supposed to begin at 9:30. It is not 10:40, and the
3 State has an hour and ten minute statement to play.

4 And if you would like to cross examine someone
5 based on a previous statement I'm not sure how that's
6 going to happen. So --

7 MR. WEST: I'd like some guidance from the Court.
8 What do we need to do --

9 THE COURT: I can't tell you what you need to do
10 Mr. West.

11 MR. WEST: Well, I'm asking if the Court could tell
12 us what we need to do in order for the Court to
13 entertain the first statement on August 20, 2015 that
14 we've been talking about? Do I have to cross --

15 THE COURT: Find a legal way to get it admitted.
16 Find a legal way to get any of the admissable evidence,
17 and please show me the case law that supports your
18 offer.

19 MR. WEST: We're relying on 90.108 and --

20 THE COURT: Okay, I've read 90.108 and I don't find
21 that it appears -- applies to two statements given on
22 two separate days to two different interrogators,
23 regardless of the fact that a single agent was there at
24 both times, under those circumstances previously
25 described.

1 MR. WEST: If the State has a copy of that
2 statement on CD or DVD that we could mark it would make
3 it a lot easier. Otherwise, we need to go get a thumb
4 drive, or at some point supplement the record with the
5 statement that we're talking about.

6 THE COURT: Okay.

7 MR. WEST: I'm looking for some guidance how we get
8 that done.

9 THE COURT: There's a CVS on the corner here within
10 walking distance. I -- there's a Wal-Mart down on 50.
11 There's a Staples down that way too.

12 MR. WEST: If the State has a copy right there at
13 the desk --

14 THE COURT: I'm not from here. I don't know. I'm
15 sorry. Mr. West, I'm not trying to be facetious. What
16 I'm saying is it is your prerogative sir on how you
17 accomplish it. It is not my position, my place to
18 direct you on how to accomplish that.

19 MR. WEST: Okay, what I would like the Court to do
20 is ask the State if they have a copy of it. We -- give
21 it to us so we can mark it and get this done.

22 MR. RESPESS: There's been a pattern of us fixing
23 the problems.

24 THE COURT: Right. No, Mr. West --

25 MR. WEST: Okay.

1 THE COURT: If you want to -- you've had discovery.
2 This case is three years old. Mr. Panella has been on
3 this case for two years, at least, and we've -- you've
4 had this -- this hearing was set on May 11th for August
5 27th.

6 So, there was a lot of notice. The motion was
7 filed approximately July -- I think it was finally filed
8 20th, but for some -- I believe it was July 20th. So --
9 and it's a very long and very well thought out and very
10 well annotated, etcetera, motion.

11 And it is -- like I said, like 184 pages long or
12 something like. So -- and I have read the entire thing.
13 Obviously, you all have thought about this case a lot
14 and prepared a lot to get to what you need to do.

15 And so at this juncture sir if you had any question
16 in your mind or any scintilla of the idea that something
17 wasn't going to be admitted into evidence and you wanted
18 it to proffer it or enter it as a proffered exhibit or
19 something along that line bring it with you.

20 MR. WEST: Well, I can --

21 THE COURT: Bring it with you.

22 MR. WEST: We can resolve that problem because the
23 State has one of the law enforcement officers on standby
24 who was there for the August 20, 2015 interview.

25 If the State won't stipulate that what was given to

1 us in discovery was that recorded interview then we have
2 to call her simply to say that that was the recorded
3 interview that we want to then mark --

4 THE COURT: Mr -- can I ask you Mr. West, would you
5 stipulate to Mr. Derossett's statement coming in had
6 Agent Simock not testified?

7 MR. WEST: Sure, we offered to.

8 THE COURT: Okay. Let's just say that you can
9 stipulate to what you choose -- to which you choose,
10 that which you choose, and the State can do the same.
11 And they don't have to agree to bring the witnesses, or
12 give you the evidence, or do all those things.

13 You understand this Mr. West. This is -- I mean, I
14 know that everybody's very civil and gentlemanly, but
15 you are -- you do have opposing views of the evidence
16 and what the -- how this should all end.

17 And so you cannot in good faith keep expecting the
18 State to provide you with things, to stipulate to things
19 that -- like predicates that you were really -- it was
20 your obligation to lay, etcetera.

21 MR. WEST: I don't think we've done that in all
22 respect Judge --

23 THE COURT: So, I'm not going to tell them to do
24 anything.

25

1 MR. WEST: I don't think we've done that in all
2 respect and --

3 THE COURT: Okay. I'm not going to tell them to do
4 anything. That is not my place to do that. That is --
5 this is your case to do sir.

6 I'm not going to tell you how to run your case, nor
7 am I going to tell them how to run theirs. That is not
8 my place. You -- you came -- you all came here with
9 four months notice knowing what was going to -- what the
10 facts of the case were because it had been investigated
11 for two years prior -- three years prior to that.

12 MR. WEST: I'm sorry Judge, I know that this has
13 now gotten to the point that it's --

14 THE COURT: Now it's gotten to the point where I'm
15 ready to ask you very graciously to please respectfully
16 sit down.

17 MR. WEST: Thank you.

18 THE COURT: Thank you sir. Mr. Respess, do you
19 have -- we are still on the record, nothing has
20 changed, all the parties are present. Would you like to
21 introduce the evidence that you wish to introduce?

22 MR. RESPESS: Yes. Mr. Scheiner will do that.

23 MR. SCHEINER: Court ready?

24 THE COURT: Yes, sir. Anytime.

25

1 MR. SCHEINER: All right. State's publishing
2 State's Exhibit 106.

3 (Whereupon, State's Exhibit 106, the recorded
4 interview of the Defendant, is now published to the
5 Court, and is as follows:)

6 AGT. SIMOCK: This is Agent Wayne Simock with the
7 Brevard County Sheriff's Office. Today's date is August
8 21, 2015. The time is 14:31 hours. Currently at
9 Holmes Regional Medical Center in Melbourne, Florida.

10 Present with me is Agent Ryan Bliss of the Florida
11 Department of Law Enforcement. This will be an
12 interview with John Derossett. He's a white male with a
13 date of birth of 4/21/1950, in reference to BCSO case
14 report number 15-394570, a shooting involving a deputy
15 that occurred on 8/20/2015.

16 Hey, Ryan, before I forget, I want to give you
17 this. That's the one from last night, the -- that's the
18 video of it. And we're live. Videotape. Okay.

19 (Whereupon, so far Agent Bliss indiscernible.)

20 AGT. SIMOCK: Yeah, we always want to talk to the
21 nurses.

22 (More than one speaker, indiscernible.)

23 UNKNOWN FEMALE: I'm right here. He's not going to
24 run away or anything.

25 UNKNOWN MALE: I didn't think so.

1 UNKNOWN FEMALE: No, no, not (indiscernible). I'm
2 pulling his curtain, he absolutely has no idea.

3 UNKNOWN MALE: Yeah, okay.

4 (Whereupon, the recording is stopped.)

5 THE COURT: Mr. Scheiner, I'm sorry, in the
6 confusion of my computer little glitch -- did they state
7 a time on there?

8 MR. SCHEINER: They did.

9 THE COURT: I heard them doing the set up and I --

10 MR. SCHEINER: Yeah, but I don't remember. I don't
11 remember --

12 THE COURT: I don't know if you can just --

13 MR. SCHEINER: I can back it up.

14 THE COURT: (Cont'd) back it up to the point where
15 it says that. I apologize, people were trying to help
16 me get my --

17 (Whereupon, the recording resumes playing.)

18 AGT. SIMOCK: This is Agent Wayne Simock with the
19 Brevard County Sheriff's Office. Today's date is August
20 21, 2015. The time is 14:31 hours. Currently at
21 Holmes Regional Medical Center in Melbourne, Florida.

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10 UNKNOWN FEMALE: I'm right here. He's not going to
11 run away or anything.

12 UNKNOWN MALE: I didn't think so.

13 UNKNOWN FEMALE: No, no, not (indiscernible). I'm
14 pulling his curtain, he absolutely has no idea.

15 UNKNOWN MALE: Yeah, okay.

16 AGT. SIMOCK: All right, I gotcha. Okay, and this
17 one, A-438?

18 UNKNOWN MALE: Yes, sir. A-438.

19 AGT. SIMOCK: Okay. Hi, John.

20 MR. DeROSSETT: Hello, how are you gentlemen?

21 AGT. SIMOCK: I'd ask how you're doing, but I
22 know -- I know you've been better, right?

23 MR. DeROSSETT: (Indiscernible.)
24
25

1 AGT. SIMOCK: I gotcha. I'm Wayne Simock, and I
2 know you've talked to a lot of people from the Sheriff's
3 Office in the last few days, am I right?

4 MR. DeROSSETT: Well, yeah. I've talked to this
5 gentleman and a lady and --

6 AGT. SIMOCK: Well, my condolences for talking to
7 him but, you know. No, he's a good guy. So, you know
8 Ryan from FDLE?

9 MR. DeROSSETT: Ryan?

10 AGT. SIMOCK: Ryan Bliss, Agent Ryan Bliss.

11 MR. DeROSSETT: Okay, I was -- I was kind of
12 delirious last night.

13 AGT. SIMOCK: Yeah. And that's kind of why we
14 wanted to come back today. Can we turn the TV down or
15 off, is that possible?

16 MR. DeROSSETT: Yeah.

17 AGT. BLISS: Here it is, right here.

18 MR. DeROSSETT: Oh, okay. I've been all over the
19 news, all over the place.

20 AGT. SIMOCK: You have been?

21 MR. DeROSSETT: Yes, my daughter up in Michigan.

22 AGT. SIMOCK: Okay. I'm going to hit that down
23 just a little bit more if I can.

24 MR. DeROSSETT: Okay.

25 AGT. SIMOCK: There we go.

1 AGT. BLISS: Can't hear that well.

2 AGT. SIMOCK: Yeah, I'm getting old.

3 AGT. BLISS: Me too.

4 AGT. SIMOCK: Okay. Listen, because you said last
5 night, you know, I know things were happening very fast,
6 okay. And I'm with the Sheriff's Office, okay.

7 That's where I'm from and I work with a unit that
8 kind of investigates things like this, along with
9 Florida Department of Law Enforcement. They're kind of
10 independent agency that takes a look at this when we're
11 involved in that. So --

12 MR. DeROSSETT: All right.

13 AGT. SIMOCK: So, we kind of both like to pick your
14 brain a little bit and find out what you can remember
15 from last night, and we have talked to Mary. We talked
16 to her today and she's doing okay, by the way, she's
17 fine.

18 MR. DeROSSETT: Where's she at?

19 AGT. SIMOCK: She's fine. She's at the jail.

20 MR. DeROSSETT: Oh, okay.

21 AGT. SIMOCK: I mean, she's -- for some other
22 issues.

23 MR. DeROSSETT: She got -- she got wounded, didn't
24 she?

25

1 AGT. SIMOCK: She -- she had an injury, but we're
2 not sure if that was a gunshot or something else, but
3 she was fine, it was like a scrape.

4 MR. DeROSSETT: Yeah.

5 AGT. SIMOCK: I mean, they wrapped her arm up, they
6 cleaned it out real good and --

7 MR. DeROSSETT: Yeah.

8 AGT. SIMOCK: And we put her up to the jail, but on
9 unrelated charges, kind of what was going on
10 originally. You know what I'm saying?

11 MR. DeROSSETT: Kind of like prostitution?

12 AGT. SIMOCK: Prostitution, exactly. Exactly.

13 MR. DeROSSETT: Right.

14 AGT. SIMOCK: Let me put that -- that thing's just
15 buzzing in my ear yet.

16 MR. DeROSSETT: Okay.

17 AGT. SIMOCK: I'm sorry.

18 MR. DeROSSETT: Yeah, go ahead. Turn it down a
19 little more.

20 AGT. SIMOCK: There we go. I like Greta, but she
21 just -- man, she's got that voice that just keeps going.

22 MR. DeROSSETT: It's screechy.

23 AGT. SIMOCK: It's screechy, exactly. Now, listen,
24 because we're here, you know, you kind of got brought
25 here, all right?

1 MR. DeROSSETT: Em-hmm.

2 AGT. SIMOCK: I got to read you Miranda. I have to
3 do that.

4 MR. DeROSSETT: Well, they already read that last
5 night.

6 AGT. SIMOCK: They read it to you last night and
7 you understood it?

8 MR. DeROSSETT: I understood it.

9 AGT. SIMOCK: Okay. I'm here again, though, so I
10 have to read it again. Humor me with it, if you
11 wouldn't mind please.

12 Let me know, just acknowledge. I'm not going to
13 make you write anything or sign anything. I'll
14 verbalize it and you tell me if you understand it, okay.
15 Can you do that for me?

16 MR. DeROSSETT: (No audible response.)

17 AGT. SIMOCK: Excellent.

18 MR. DeROSSETT: How is this gentleman doing that I
19 shot?

20 AGT. SIMOCK: How is he doing? Well, he's still
21 got some rough go. He's got a rough go right now.

22 AGT. BLISS: Several things they're looking at,
23 trying to get him stabilized and everything.

24 AGT. SIMOCK: But I appreciate you asking.
25

1 MR. DeROSSETT: Well, I'm -- you know, I'm praying
2 for the guy. Yeah, I'm a -- I'm a -- I go to church,
3 I'm a Christian.

4 AGT. SIMOCK: Okay. Well, so are we.

5 MR. DeROSSETT: I'm getting teary-eyed just
6 thinking about it because --

7 AGT. SIMOCK: I understand, I understand. Can you
8 start out, before I read the Miranda, by just giving me
9 your first name?

10 MR. DeROSSETT: John F. DeRossett. I've been told
11 not to talk to anybody else.

12 AGT. SIMOCK: Okay.

13 MR. DeROSSETT: To get a lawyer and lawyer up
14 before I talk anymore.

15 AGT. SIMOCK: Okay. So, let me ask you a question.
16 Are you willing to talk to us today at all?

17 MR. DeROSSETT: Well, I'm --

18 AGT. SIMOCK: I'm not asking -- I'm asking right
19 now: Are you, specifically today, asking for an
20 attorney? I want to make sure if that's what you are
21 asking for, or if you're willing to talk to us.

22 MR. DeROSSETT: Well -- well, you got my
23 information last night and nothing's changed.

24 AGT. SIMOCK: Yes, sir.

25 MR. DeROSSETT: Okay.

1 AGT. SIMOCK: The issue is that you said you're
2 delirious a little bit. That's what kind of concerns
3 me.

4 MR. DeROSSETT: Well --

5 AGT. SIMOCK: Maybe things were fuzzy.

6 MR. DeROSSETT: No, not really fuzzy.

7 AGT. SIMOCK: Em-hmm.

8 MR. DeROSSETT: It just happens that I've never had
9 anything like that happen before to me.

10 AGT. SIMOCK: Completely understandable, and the
11 deputy can say the same thing.

12 MR. DeROSSETT: Yeah. It kind of shocked me
13 because, you know, I was -- you know, I had just got
14 through cooking dinner and I was sitting there eating
15 dinner and all of a sudden, wham-bam, you know. The
16 next thing I know, guns firing off and, I don't --

17 AGT. SIMOCK: I get that, and I would like to hear
18 more about that, because I think there's some things I'm
19 trying to clear up. And specifically after we talked to
20 Mary, things that we're trying to wrap our head around.

21 And we have some pictures now, too, that can help
22 us understand a little bit better the scene.

23 AGT. BLISS: The scene, because we didn't see the
24 scene prior to us talking last night. And after
25 speaking with you last night and speaking with Mary

1 today, it just seemed like -- and then viewing the
2 pictures, it gives us a better sense of what was going
3 on there.

4 MR. DeROSSETT: Right, that was at the porch,
5 right? Right at the porch, right?

6 AGT. BLISS: Right.

7 MR. DeROSSETT: Yeah.

8 AGT. BLISS: In that front yard area, exactly.
9 You're exactly right.

10 MR. DeROSSETT: Right, right.

11 AGT. BLISS: So that's what we'd like to discuss
12 with you.

13 MR. DeROSSETT: Em-hmm.

14 AGT. SIMOCK: We're not trying to -- we're not
15 trying to do an end run on you or anything like that.
16 We're trying to clear some things up. That's what we're
17 trying to do.

18 So, are you willing to talk to us about that? And
19 listen, if there's something you don't want to answer or
20 talk about --

21 MR. DeROSSETT: Em-hmm.

22 AGT. SIMOCK: (Cont'd) you tell us that, okay?

23 MR. DeROSSETT: Em-hmm.

24

25

1 AGT. SIMOCK: And you can tell us to move on, and
2 we'll ask something else. I'm not forcing you to answer
3 any of my questions, but I'll never get to that point of
4 clarification, if I don't hear really what you have to
5 say.

6 MR. DeROSSETT: Em-hmm.

7 AGT. SIMOCK: So, are you willing to talk to us?

8 MR. DeROSSETT: I don't -- yeah. I mean, I'm
9 willing to talk to you.

10 AGT. SIMOCK: I appreciate it, I appreciate that.

11 MR. DeROSSETT: But I don't want to spend the rest
12 of my life in prison.

13 AGT. SIMOCK: And nobody's -- you're putting --
14 you're putting the cart before the horse.

15 AGT. BLISS: Absolutely.

16 MR. DeROSSETT: I'm sorry about that.

17 AGT. SIMOCK: You are putting the cart before the
18 horse.

19 MR. DeROSSETT: Yeah.

20 AGT. BLISS: Was talking about that this morning.
21 I said no, there's nothing, you know, there's nothing
22 saying anything about you going to prison for anything.

23 MR. DeROSSETT: Em-hmm.

24

25

1 AGT. BLISS: So that's -- but like Agent Simock
2 said, we have questions we'd like to clear up to give us
3 a better picture of what happened that night.

4 Because of course, as you know, we weren't there.
5 So, we're trying to get from you, from Mary, from the
6 scene, which is telling us so much, things just aren't
7 measuring up correctly.

8 So, if you're willing to speak with us after we
9 advise you of your rights we'll be good to go and we'll
10 be in and out of here quicker than --

11 AGT. SIMOCK: If you can give us about -- if you
12 can give us about 20 minutes, that would be awesome.

13 AGT. BLISS: Greta will be -- still be on. She'll
14 be in good shape.

15 MR. DeROSSETT: All right (indiscernible).

16 AGT. SIMOCK: And you don't see anybody in here
17 right now standing around here or anything like that,
18 okay.

19 MR. DeROSSETT: Yeah.

20 AGT. SIMOCK: Okay?

21 MR. DeROSSETT: Yeah.

22 AGT. SIMOCK: Okay. Then I'll read you this first.
23 Your full name was John Franklin?

24 MR. DeROSSETT: Franklin DeRossett.

25 AGT. SIMOCK: DeRossett. And what's your birthday?

1 MR. DeROSSETT: 4/21/1950.

2 AGT. SIMOCK: Okay, all right. Now, Mr. DeRossett,
3 I'll tell you now, okay, you have the right to remain
4 silent. Okay?

5 MR. DeROSSETT: Em-hmm.

6 AGT. SIMOCK: Anything you say can be used against
7 you in court. You have the right to talk to a lawyer
8 for advice before you answer any questions, and to have
9 him or her present with you during questioning.

10 MR. DeROSSETT: Em-hmm.

11 AGT. SIMOCK: If you cannot afford a lawyer, one
12 will be appointed to represent you before any
13 questioning, if you wish.

14 And if you decide to answer questions now without a
15 lawyer present, you still have a right to stop answering
16 questions at any time. You also have the right to stop
17 answering questions at any time until you talk to a
18 lawyer.

19 And that's what I said to you earlier was if
20 there's a question you don't want to answer I'm not
21 going to force you or compel you to do that. Do you
22 understand all those rights that I've explained to you?

23 MR. DeROSSETT: Em-hmm.

24 AGT. SIMOCK: Is that a yes?

25 MR. DeROSSETT: Em-hmm.

1 AGT. SIMOCK: Okay. And with those rights in mind
2 do you have a problem talking to us about what happened
3 last night at your house?

4 MR. DeROSSETT: No. I mean, I'm telling you, I'll
5 be telling you the same thing I told them.

6 AGT. SIMOCK: Okay. Can you humor me? Just
7 because I have not heard it, and I may have a few things
8 just that Mary has said that I'm trying to clear up,
9 okay?

10 MR. DeROSSETT: Em-hmm, em-hmm.

11 AGT. SIMOCK: Can you do that for me?

12 MR. DeROSSETT: Em-hmm.

13 AGT. SIMOCK: Okay. I appreciate that. Thank you.

14 AGT. SIMOCK: Can you just take me from when this
15 started? I guess someone came to the door, is what --
16 from my understanding.

17 MR. DeROSSETT: Right. I mean, I just went in the
18 bedroom to sit down and eat dinner. I had cooked
19 meatloaf and I didn't even get to take a bite of it
20 before this happened.

21 I imagine it's still laying on the bed. I'd been
22 in there a few minutes and she was expecting somebody
23 at -- right about that time, 9 -- between 9 and 10,
24 9:30, 10:00. I'm not really sure. I'm not clear where
25 the time was at.

1 She started screaming for help. She started
2 screaming for help, and I think I heard -- somebody just
3 grabbed her, reached in and grabbed her and pulled her
4 out of the house.

5 And, you know, when I came -- I grabbed my gun and
6 I went to the front door. I didn't really step out, I
7 just kind of yelled out, "What's going on?" And they
8 just kind of cleared out.

9 I didn't have the gun pointing, I had it hanging
10 down at my side. So, once they scattered I opened the
11 door and I believe she came in the house, and I stepped
12 outside and I kind of looked around. I thought what's
13 going on here, you know.

14 And I seen -- seemed like I seen bodies in the
15 background there. It was dark and I couldn't -- and
16 they were in dark, and I took and shot the gun in the
17 air.

18 AGT. SIMOCK: You shot the gun in the air?

19 MR. DeROSSETT: Thinking that would scare them off,
20 whoever it was. I didn't know who it was. It could've
21 been -- you know, a lot of shooting goes on these days,
22 around the whole country, you know.

23 People getting attacked and everything else. You
24 know it as well as I do, and I was protecting myself, I
25 was protecting her basically, and my own self on top of

1 that. I didn't know what was going on.

2 AGT. SIMOCK: You didn't know what --

3 MR. DeROSSETT: Nobody didn't tell about this at
4 all.

5 AGENT: Okay.

6 MR. DeROSSETT: But I was protecting myself and
7 her.

8 AGT. SIMOCK: Okay.

9 MR. DeROSSETT: I was protecting my home is what I
10 was doing basically. Nobody identified who -- you know,
11 nobody said We're cops.

12 AGT. SIMOCK: Are you seeing the people in the
13 yard?

14 MR. DeROSSETT: Yeah.

15 AGT. SIMOCK: Okay. Where -- where are they?

16 MR. DeROSSETT: Well, like I told you last night,
17 they scattered. One went -- one went to the right. One
18 went to the -- straight back, which I really didn't see
19 him until he was further across the street and then came
20 back. And there was one off to the left.

21 So, the one that came back across the street after
22 the shooting was over and he went back across the
23 street. I don't know who shot -- I know who shot me,
24 the guy on the right.

25 AGT. SIMOCK: How do you know that, again?

1 MR. DeROSSETT: Well, I just know that because I
2 was up against the pillar right there. And I got a
3 couple shots off to my left, the person on the left.

4 AGT. SIMOCK: Let me ask you this: I didn't ask
5 you this morning. The pillar, which pillar? You have
6 two pillars there. If you're facing the house the one
7 on the right or the one on the left?

8 MR. DeROSSETT: Well, if you're facing the house it
9 was the one on the right.

10 AGT. SIMOCK: Okay. All right, let me ask you this
11 also --

12 AGT. BLISS: You got the pictures? Okay. I was
13 just going to ask you that.

14 AGT. SIMOCK: Are you right-handed or left-handed?

15 MR. DeROSSETT: I'm right-handed.

16 AGT. SIMOCK: You're right-handed, okay. I know
17 you can't mark anything because of your hands, but this
18 is a picture of the front of the house. You got that --
19 you see your address here says 1051 on the left pillar?

20 MR. DeROSSETT: Right.

21 AGT. SIMOCK: See it up there?

22 MR. DeROSSETT: Yeah. Em-hmm.

23 AGT. SIMOCK: So, you came out the door. Are you
24 behind this pillar on the -- if you're facing the house
25 the one on the right or the one on the left?

1 MR. DeROSSETT: I'm on -- the one on the right.

2 AGT. SIMOCK: You're at the one -- you're behind
3 the one on the right?

4 MR. DeROSSETT: Well, I'm off to the side of it.

5 AGT. SIMOCK: To the left side or the right side?

6 MR. DeROSSETT: To the left side, towards the door.

7 AGT. SIMOCK: Okay. So, you're between the door
8 and the pillar?

9 MR. DeROSSETT: Em-hmm.

10 AGT. SIMOCK: Behind the pillar?

11 MR. DeROSSETT: Em-hmm.

12 AGT. SIMOCK: Okay.

13 MR. DeROSSETT: Well, yeah, I'm -- well, I was kind
14 of -- I was looking -- before I knew that somebody was
15 over here --

16 AGT. SIMOCK: Over here, where?

17 MR. DeROSSETT: Off to my right.

18 AGT. SIMOCK: Okay.

19 MR. DeROSSETT: Over by the driveway.

20 AGT. SIMOCK: Okay.

21 MR. DeROSSETT: At the truck. I was mainly
22 concentrating on the guy over that way.

23 AGT. SIMOCK: You were concentrating --

24 MR. DeROSSETT: To my left.

25

1 AGT. SIMOCK: You were concentrating on the guy to
2 the left?

3 MR. DeROSSETT: Right.

4 AGT. SIMOCK: To your left, okay.

5 MR. DeROSSETT: Right.

6 AGT. SIMOCK: Okay. Where was he at?

7 MR. DeROSSETT: He was back up under this kind of
8 little hilly area. There's some plants and growth
9 there.

10 AGT. BLISS: I have a picture of -- I think I have
11 a picture of the side yard here.

12 MR. DeROSSETT: Yeah, yeah, yeah, yeah. He's kind
13 of back there, about 20 feet back.

14 AGT. SIMOCK: Okay, all right. Let me see that.
15 I'm going to -- that one you just spoke about, I'm going
16 to put a (1) in the top right corner of this. That's
17 the one you spoke about, about your position near the
18 pillar.

19 MR. DeROSSETT: Em-hmm.

20 AGT. SIMOCK: This next one is of the side yard
21 that you were describing. I'm going to label it number
22 (2) in the top right corner. Okay, here it is. Where
23 is that person positioned at?

24 MR. DeROSSETT: Well, he looked -- I can't even use
25 my left hand. It looked like he --

1 AGT. BLISS: I'll hold it. I'll hold it for you.
2 There you go.

3 MR. DeROSSETT: Looks like he's standing right
4 about there where that spot is.

5 AGT. SIMOCK: Okay, so I'm going to -- by this --

6 MR. DeROSSETT: Right there.

7 AGT. SIMOCK: I'm going to mark that with an "X".
8 Are you good with that?

9 MR. DeROSSETT: Em-hmm.

10 AGT. SIMOCK: Right here?

11 MR. DeROSSETT: Yeah, that looks about right.

12 AGT. SIMOCK: Okay, that's where you observed a
13 person standing?

14 MR. DeROSSETT: Em-hmm.

15 AGT. SIMOCK: Okay. And you're positioned behind
16 that pillar on the right. Then what happens?

17 MR. DeROSSETT: Well, they were firing at me, you
18 know, the shots were going off.

19 AGT. SIMOCK: And then that's after you shot that
20 round off in the air?

21 MR. DeROSSETT: Yeah, yeah, yeah, everybody -- they
22 fired at me first.

23 AGT. SIMOCK: They fired at you before you did that
24 shot in the air?

25

1 MR. DeROSSETT: No, no, I did the shot up in the
2 air.

3 AGT. SIMOCK: Okay.

4 MR. DeROSSETT: And that's when the shooting
5 started.

6 AGT. SIMOCK: Okay, okay.

7 MR. DeROSSETT: You want the truth, the whole truth
8 and nothing but the truth?

9 AGT. BLISS: Absolutely, that's what we're asking
10 you to do.

11 AGT. SIMOCK: That's what were saying here.

12 MR. DeROSSETT: You know, I'm not trying to
13 incriminate myself.

14 AGT. SIMOCK: No. We only want the truth to. We
15 don't want anything that's --

16 (More than one speaker, indiscernible.)

17 AGT. BLISS: We want you to say what you recall.

18 MR. DeROSSETT: Yeah, yeah. I know you tell a --
19 tell a story and a lot of times you miss things, and you
20 pick them up and it's almost like you changed your
21 story, but actually you're not changing the facts.

22 AGT. BLISS: We understand that. That's why we're
23 coming back to talk to you today.

24 MR. DeROSSETT: Yeah. And you think about little
25 details --

1 AGT. SIMOCK: Of course.

2 AGT. BLISS: Sure.

3 AGT. SIMOCK: Of course.

4 MR. DeROSSETT: -- that you missed.

5 AGT. BLISS: Okay. So, you see -- you come out --
6 Wayne, come in if you want to add anything in here. You
7 come out of the house and you see -- you see figures in
8 the yard?

9 MR. DeROSSETT: Em-hmm.

10 AGT. BLISS: You see people in the yard?

11 MR. DeROSSETT: Yeah, yeah, they done scattered
12 from when they released her and let her go.

13 AGT. BLISS: When they release her and let her go,
14 and again, too, where did she go?

15 MR. DeROSSETT: You know, I -- she went inside the
16 house I believe.

17 AGT. BLISS: Okay.

18 MR. DeROSSETT: But then I believe she came back
19 out.

20 AGT. BLISS: Okay. And you remained outside, and
21 did you -- did you -- where exactly -- did you shoot
22 that round straight up after coming out of that door?

23 MR. DeROSSETT: The one that when I came out, yeah.

24 AGT. BLISS: So the round went through the --
25 through the overhang?

1 MR. DeROSSETT: No, no, no, no, no. No, I was
2 standing under the overhang and reached out. It was
3 like --

4 AGT. BLISS: Okay. So, instead of straight up it
5 was kind of like that?

6 MR. DeROSSETT: It was straight up.

7 AGT. BLISS: Okay. So, you're on the outside of
8 the overhang?

9 AGT. SIMOCK: You shot into the sky, into the sky?

10 MR. DeROSSETT: My arm was --

11 (More than one speaker, indiscernible.)

12 MR. DeROSSETT: My arm was on the outside of that.

13 AGT. BLISS: Okay.

14 MR. DeROSSETT: Yeah.

15 AGT. BLISS: All right.

16 MR. DEROSSETT: Yeah. I'm under the -- I'm still
17 under the overhang.

18 AGT. BLISS: Okay. And then what happens?

19 MR. DeROSSETT: Well, once I -- I started hearing
20 shots.

21 AGT. SIMOCK: Okay.

22 MR. DeROSSETT: I couldn't tell what direction they
23 were coming from, but then I seen the lights -- I seen
24 lights. And like I told him last night, I noticed the
25 flash from the gun going off or a light on the gun, like

1 if they had lights on their guns. So then I started
2 firing back towards that direction.

3 AGT. BLISS: And where are you at now?

4 MR. DeROSSETT: Well, I'm still under -- I'm right
5 by the post.

6 AGT. BLISS: You're right by the post?

7 MR. DeROSSETT: The one on the right. I'm looking
8 straight at it. I'm right by the post.

9 AGT. BLISS: Okay.

10 MR. DeROSSETT: I didn't move much further from
11 there, or come out any further from there because I
12 didn't want to get shot.

13 And then I seen a guy step over from the right,
14 from the right over by the driveway, and then that's
15 when he saw me.

16 AGT. SIMOCK: Okay, okay.

17 MR. DeROSSETT: And that's when I went down. I
18 don't know if I shot anymore off then or not or -- I
19 might have shot one more shot off because the guy in the
20 center --

21 There was a guy in the center right in front of
22 the -- straight in front of the door, right past the
23 sidewalk, the sidewalk, the corner of the sidewalk there
24 goes. He was probably about five feet out in there,
25 five, six, seven, eight, nine feet.

1 AGT. SIMOCK: Passed that sidewalk?

2 MR. DeROSSETT: Right.

3 AGT. BLISS: On the same side, he's about five feet
4 beyond that?

5 MR. DeROSSETT: Yeah, yeah, yeah. He's not out in
6 the street, but he's back there a little bit.

7 AGT. SIMOCK: Okay.

8 MR. DeROSSETT: I shot at him, but he was -- I
9 don't -- I didn't hit him. I don't think I hit him.
10 And he ran across the street over to the house across
11 the street on the side of the house. So, that's when I
12 scrambled to get in the house, back in the house.

13 And I tried to stop the bleeding and I couldn't --
14 I couldn't hardly walk, and my hand was -- I can't even
15 move it up, upwards, that way, because -- I mean, the
16 elbow. I don't know where the elbow shot came from
17 but --

18 AGT. SIMOCK: You said you got back in the house.
19 Did you get back under your own power or did somebody
20 assist you?

21 MR. DeROSSETT: Yeah, I kind of -- I kind of
22 crawled and crawled.

23 AGT. SIMOCK: Okay. Where was Mary?

24 MR. DeROSSETT: She was in the house.

25 AGT. SIMOCK: She was in the house?

1 MR. DeROSSETT: Yeah.

2 AGENT SIMOCK: Now, you crawled into the house.

3 Okay.

4 MR. DeROSSETT: Em-hmm.

5 AGENT SIMOCK: And then what? Do you close the
6 door? Does Mary close the door? Does the door stay
7 open?

8 MR. DeROSSETT: I don't really know. We closed it,
9 though.

10 AGENT SIMOCK: Closed it, okay.

11 MR. DeROSSETT: It got closed.

12 AGENT SIMOCK: Okay. What do you do with the gun?

13 MR. DeROSSETT: I took it and laid it on the coffee
14 table.

15 AGENT SIMOCK: Okay. What was -- what was the gun
16 you used?

17 MR. DeROSSETT: It was a Glock.

18 AGENT SIMOCK: 40 or a nine?

19 MR. DeROSSETT: 40.

20 AGENT SIMOCK: 40, okay.

21 MR. DeROSSETT: Caliber.

22 AGENT SIMOCK: Do you know the model?

23 MR. DeROSSETT: It's a 22 model.

24 AGENT SIMOCK: 22, like a police gun?

25 MR. DeROSSETT: I believe it's a Smith & Wesson.

1 AGENT SIMOCK: Oh, you think it's a Smith & Wesson,
2 not a Glock?

3 MR. DeROSSETT: No, it's a Glock.

4 AGENT SIMOCK: Okay.

5 MR. DeROSSETT: I want to say -- I don't know if
6 it's Smith & Wesson made it or who made it.

7 AGENT SIMOCK: Okay. So, you put it on the coffee
8 table?

9 MR. DeROSSETT: Right.

10 AGENT SIMOCK: Was the magazine still have any
11 bullets in it or was it empty?

12 MR. DeROSSETT: Well, I don't know. I didn't
13 count.

14 AGENT SIMOCK: Okay. How many rounds do you think
15 you fired?

16 MR. DeROSSETT: You know, I fired -- I told him
17 maybe a half-dozen at least, four, five six.

18 AGENT SIMOCK: Em-hmm.

19 MR. DeROSSETT: At the most, I don't know.

20 AGENT SIMOCK: Okay.

21 MR. DeROSSETT: I don't know. I don't know if I
22 emptied it or not.

23 AGENT SIMOCK: Okay.

24 MR. DeROSSETT: You guys have been over there, was
25 it empty?

1 AGENT SIMOCK: You know what, the crime scene was
2 still doing that. I didn't -- I didn't get a chance to
3 go in the house to look at that.

4 MR. DeROSSETT: Yeah, yeah, you don't -- you don't
5 really count.

6 AGENT SIMOCK: What was the discussion now that
7 this is all done? Is Mary helping you at that point or
8 are you just --

9 MR. DeROSSETT: Yeah, she was trying to stop the
10 bleeding. I told her to call an ambulance and call the
11 police.

12 AGENT SIMOCK: Okay. And did she do that?

13 MR. DeROSSETT: Yeah, yeah. She was on the phone.

14 AGENT SIMOCK: Okay.

15 MR. DeROSSETT: You know, and I had a towel on
16 there trying to stop the bleeding. I was about to pass
17 out. I thought I was going to die.

18 AGENT SIMOCK: When did you realize that this was
19 law enforcement?

20 MR. DeROSSETT: I didn't -- not until after they
21 came.

22 AGENT SIMOCK: Came where?

23 MR. DeROSSETT: I had no idea.

24 AGENT SIMOCK: Okay.

25

1 MR. DeROSSETT: When they got there we opened the
2 door up and -- and I seen lights shining from the back
3 where I thought it might've been an ambulance or
4 something, because I was shot and I seen --

5 We opened the door and there was blue lights all
6 over the place, and I thought, well, where's the
7 ambulance at? That's when I realized something was
8 going on.

9 But of course I realized that whenever there's a
10 shooting of any kind, it's taken pretty seriously. You
11 will get a lot of -- a lot of police officers there.

12 So that's kind of when I realized something wasn't
13 right, something -- you know, I thought I was dealing
14 with criminals, criminals.

15 AGENT SIMOCK: Em-hmm. Well, let me ask you this:
16 Do you wear glasses at all?

17 MR. DeROSSETT: Reading glasses.

18 AGENT SIMOCK: Okay. Reading glasses?

19 MR. DeROSSETT: Yeah.

20 AGENT SIMOCK: Are you nearsighted?

21 MR. DeROSSETT: I see good at a distance.

22 AGENT SIMOCK: Okay. So good distance, but not
23 reading like -- like me?

24 MR. DeROSSETT: I got 15/20 vision.

25 AGENT SIMOCK: Okay.

1 MR. DeROSSETT: Something like that.

2 AGENT SIMOCK: Okay. So that's good for distance?

3 MR. DeROSSETT: Yeah.

4 AGENT SIMOCK: Okay.

5 MR. DeROSSETT: Yeah, yeah.

6 AGENT SIMOCK: All right. Were you drinking
7 alcohol last night?

8 MR. DeROSSETT: Not at all.

9 AGENT SIMOCK: Okay.

10 MR. DeROSSETT: No. I don't drink or taking
11 medications.

12 AGENT SIMOCK: I was going to ask, were using any
13 drugs or prescription medications?

14 MR. DeROSSETT: Prescription medications for my
15 foot.

16 AGENT SIMOCK: What's the prescription medication
17 that you're taking?

18 MR. DeROSSETT: Well, I actually had a Dilaudid,
19 like a half of a Dilaudid last night, probably about
20 6:00.

21 AGENT SIMOCK: 6:00?

22 MR. DeROSSETT: Something like that, but I did -- I
23 do Hydrocodones.

24 AGENT SIMOCK: You use Hydrocodone?

25 MR. DeROSSETT: Yeah.

1 AGENT SIMOCK: Did you use any of those yesterday?

2 MR. DeROSSETT: In the morning, I did.

3 AGENT SIMOCK: Okay. Nothing since the morning,
4 though?

5 MR. DeROSSETT: No.

6 AGENT SIMOCK: Okay. So, is it just the Dilaudid
7 that you used at 6:00 or did you take anything else?

8 MR. DeROSSETT: No, I didn't take anything else. I
9 won't -- I won't drink when I'm taking medications.

10 AGENT SIMOCK: Okay. So, you didn't drink?

11 MR. DeROSSETT: I don't drink hardly anyway.

12 AGENT SIMOCK: Okay. Were you scheduled to work
13 last night?

14 MR. DeROSSETT: I was scheduled to work this
15 morning.

16 AGENT SIMOCK: This morning, okay. What time?

17 MR. DeROSSETT: I was supposed to be there 6:30
18 this morning.

19 AGENT SIMOCK: Okay. And where do you work at?

20 MR. DeROSSETT: I work at the cruise line. I'm a
21 security officer.

22 AGENT SIMOCK: You're a security officer? And
23 what's the company you work for?

24 MR. DeROSSETT: McRoberts.

25 AGENT SIMOCK: McRoberts. Armed?

1 MR. DeROSSETT: Huh?

2 AGENT SIMOCK: Armed security?

3 MR. DeROSSETT: No, they don't really have them
4 armed over there. We've got -- we got Border Patrol
5 over there and then we got the Sheriff's Department over
6 there too, so.

7 AGENT SIMOCK: Right, right. Now, do you -- do you
8 have a concealed weapons permit?

9 MR. DeROSSETT: Yes, I do.

10 AGENT SIMOCK: How long you had that for?

11 MR. DeROSSETT: Well, I've had it since I been down
12 in Florida, but I had it when I was in Michigan.

13 AGENT SIMOCK: So, about how long was that, about
14 how long?

15 MR. DeROSSETT: About a total of 10 years, 10, 11,
16 12 years.

17 AGENT SIMOCK: Ten years. Have you ever been to
18 any firearms training classes?

19 MR. DeROSSETT: Yeah. Yeah, I did to get my
20 original concealed weapon.

21 AGENT SIMOCK: Okay. Were you in the military?

22 MR. DeROSSETT: No, but I've got a lot of family
23 that was.

24 AGENT SIMOCK: Okay.

25 MR. DeROSSETT: My dad, my uncles.

1 AGENT SIMOCK: Do you familiarize yourself with
2 your gun? In other words, I'd ask you to go shooting
3 like we all do.

4 MR. DeROSSETT: Well, I haven't lately but I have.

5 AGENT SIMOCK: Okay. Have you ever been in any
6 self-defense classes or anything like that?

7 MR. DeROSSETT: Like what kind of self-defense?

8 AGENT SIMOCK: For firearms. They have them out
9 there nowadays.

10 MR. DeROSSETT: Yeah, yeah. No, I haven't.

11 AGENT SIMOCK: Okay. What kind of firearms do you
12 have, other than the Glock 40 caliber 22 model?

13 MR. DeROSSETT: Oh, I've got the -- I've got a 38
14 detective special.

15 AGENT SIMOCK: Okay, is that a -- who makes that?

16 MR. DeROSSETT: Colt.

17 AGENT SIMOCK: Colt, okay.

18 MR. DeROSSETT: It's just a little gun, just
19 (indiscernible).

20 AGENT SIMOCK: I agree, I agree.

21 MR. DeROSSETT: Then I got my two-shot Derringer.

22 AGENT SIMOCK: And a Derringer?

23 MR. DeROSSETT: Yeah.

24 AGENT SIMOCK: Okay.

25

1 MR. DEROSSETT: That's what I shot myself in the
2 foot with last year.

3 AGENT SIMOCK: You shot yourself in the foot with
4 it last year, okay.

5 MR. DeROSSETT: I dropped it.

6 AGENT SIMOCK: Oh, you dropped it?

7 MR. DeROSSETT: Getting out of my truck when I had
8 it under my arm. And that's one of the things I had to
9 carry in, and when I stepped out of the truck it went --
10 dropped and went boom.

11 AGENT SIMOCK: Okay, all right.

12 MR. DeROSSETT: And then I got a shotgun.

13 AGENT SIMOCK: And a shotgun?

14 MR. DeROSSETT: Yeah.

15 AGENT SIMOCK: Okay.

16 MR. DeROSSETT: Yeah, I had two shotguns.

17 AGENT SIMOCK: Okay. Now, when -- when you were in
18 your room last night, were you -- that's where you were,
19 right? You were in your room and you had some food, I
20 think you said, right?

21 MR. DeROSSETT: Yeah, yeah. I'd just cooked my
22 dinner in there and sat down and was eating.

23 AGENT SIMOCK: Okay. What time did Mary come home?

24 MR. DeROSSETT: She had been there an hour or two,
25 I think.

1 AGENT SIMOCK: Okay. So this happens at about what
2 time? Does she --

3 MR. DeROSSETT: Well, I think between 9:30 and
4 10, I think.

5 AGENT SIMOCK: So, between 9:30 and 10 this
6 incident happens?

7 MR. DeROSSETT: Em-hmm.

8 AGENT SIMOCK: And about an hour or two earlier
9 Mary came home. Where did she come home from?

10 MR. DeROSSETT: I have no idea.

11 AGENT SIMOCK: Okay. Was she driving a car home --
12 go ahead.

13 MR. DeROSSETT: She was going to get a pack of
14 cigarettes one time I know.

15 AGENT SIMOCK: Okay. Was she driving a car?

16 MR. DeROSSETT: Yes, she was. She wasn't supposed
17 to be driving.

18 AGENT SIMOCK: Okay. Which car was she driving?

19 MR. DeROSSETT: The BMW.

20 AGENT SIMOCK: The BMW. Is that the one that has a
21 Michigan plates on it?

22 MR. DeROSSETT: Yeah.

23 AGENT SIMOCK: Okay. And she came home about an
24 hour or two prior to this incident?

25 MR. DeROSSETT: Em-hmm.

1 AGENT SIMOCK: Did you go out -- is that a yes?

2 MR. DeROSSETT: Yes, some -- yeah.

3 AGENT SIMOCK: Okay.

4 MR. DeROSSETT: But what was the question now?

5 AGENT SIMOCK: Okay. That she came home about an
6 hour or two before this happened?

7 MR. DeROSSETT: Yeah, it seems like it was. I
8 wasn't paying a lot of attention.

9 AGENT SIMOCK: So, that'd be around 7, between 7
10 and 8, right, if this happened 9:30, 10?

11 MR. DeROSSETT: Something like that.

12 AGENT SIMOCK: It was -- was it dark yet or
13 daylight?

14 MR. DeROSSETT: What, when she come home?

15 AGENT SIMOCK: Yeah.

16 MR. DeROSSETT: Yeah, it was still light out.

17 AGENT SIMOCK: Okay. Did you go out to the car and
18 do anything to the car after she came home? Were you in
19 it, did you run it, did you do anything to it?

20 MR. DeROSSETT: I think I did.

21 AGENT SIMOCK: You think you did?

22 MR. DeROSSETT: I think I did.

23 AGENT SIMOCK: Okay. Well, what is it that you
24 think you did?

25

1 MR. DeROSSETT: Well, I had -- she hadn't closed
2 the sunroof on it.

3 AGENT SIMOCK: Okay.

4 MR. DeROSSETT: All the way, and clouds were coming
5 up. But the day before I had changed the tire on it,
6 spare tire.

7 AGENT SIMOCK: Em-hmm.

8 MR. DeROSSETT: And that was -- that was an
9 experience and a half, because it fell off the -- well,
10 it didn't fall off the jack. I thought I had it all the
11 way jacked up and it -- you know, I turned it and the
12 wheel turned whenever I took the last bolt off --

13 AGENT SIMOCK: Right, the last lug?

14 MR. DeROSSETT: Yeah, yeah. And I got this laying
15 in the driveway, the damn car rolled out the driveway.

16 AGENT SIMOCK: Oh, man.

17 MR. DeROSSETT: I've got wheels on the jack and it
18 just went out -- rolled out there and sit.

19 AGENT SIMOCK: Okay.

20 MR. DeROSSETT: No damage done though.

21 AGENT SIMOCK: Now, yesterday, though --

22 MR. DeROSSETT: Maybe when I (indiscernible) on my
23 nose, it broke right on my face.

24 AGENT SIMOCK: That was from yesterday?

25 MR. DeROSSETT: Well, day before yesterday.

1 AGENT SIMOCK: Day before, okay. So, last night
2 after Mary comes home, you go back out to close the
3 sunroof or move the --

4 MR. DeROSSETT: Well, I think it was, I think it
5 was.

6 AGENT: Did you have to turn the car on to do that?

7 MR. DeROSSETT: Yeah, you got to do that, yeah.

8 AGENT: Did you turn the lights on?

9 MR. DeROSSETT: The headlights?

10 AGENT: Yes.

11 MR. DeROSSETT: I don't think so, uh-uh.

12 AGENT: Okay. You turned it off though I would
13 imagine, right?

14 MR. DeROSSETT: Oh, yeah. Yeah, yeah, yeah.

15 AGENT: And you took the keys back in the house?

16 MR. DeROSSETT: Yeah.

17 AGENT: Okay. Did Mary go out after that at all or
18 did she stay put?

19 MR. DeROSSETT: You know, I don't really remember.
20 I wasn't really watching her too much.

21 AGENT: Okay.

22 MR. DeROSSETT: Wasn't paying too much attention to
23 her yesterday.

24 AGENT: Okay. Safe to say.

25 MR. DeROSSETT: Yeah.

1 AGENT: When you were in that back room you said
2 you were eating food. Were you watching television at
3 all?

4 MR. DeROSSETT: Yeah.

5 AGENT: Listening to music?

6 MR. DeROSSETT: No, uh-uh.

7 AGENT: Just the television?

8 MR. DeROSSETT: Right.

9 AGENT: Okay. How's your hearing?

10 MR. DeROSSETT: Oh, it's pretty good. I've got a
11 little ringing over here, but --

12 AGENT: In the left year?

13 MR. DeROSSETT: Yeah.

14 AGENT: Okay, a little bit of ringing. And the
15 reason I'm asking, how was the volume?

16 MR. DeROSSETT: Oh, I keep it turned up about eight
17 or nine.

18 AGENT: Okay. I was going to say, because I heard
19 in here, but it was up pretty high, it was on 22 when I
20 came in here and you turned it down.

21 MR. DeROSSETT: Oh, this one?

22 AGENT: Yeah. Well, I was looking at the number
23 when it was on there. So, do you normally put it up a
24 little louder?

25

1 MR. DeROSSETT: Sometimes, but -- yeah, I mean, I
2 got a different TV and different volumes.

3 AGENT: Okay.

4 MR. DeROSSETT: Yeah, I got a TV in the living room
5 and you turn it up to 22, and it's surround sound.

6 AGENT: I would imagine that'd blow your ears out.

7 MR. DeROSSETT: Yeah, yeah, yeah. So, you got to
8 kind of watch it there.

9 AGENT: Do you remember what you were watching at
10 the time when this happened?

11 MR. DeROSSETT: Oh, I don't know. I might have
12 been watching -- between 9:30 -- 9 and 10:00?

13 AGENT: If you can remember.

14 MR. DeROSSETT: Well, I was something on Fox.

15 AGENT: Okay. Do you remember what you were
16 wearing?

17 MR. DeROSSETT: I just had shorts on, blue shorts.

18 AGENT: Did you have a shirt on?

19 MR. DeROSSETT: No.

20 AGENT: How about shoes?

21 MR. DeROSSETT: No.

22 AGENT: Okay. Where do you keep your gun?

23 MR. DeROSSETT: Well, actually I keep the --

24 AGENT: Take your time.
25

1 MR. DeROSSETT: Yeah, I'm getting this pain here
2 every now and then.

3 AGENT: You okay?

4 MR. DeROSSETT: Yeah, I guess I'll live. I hope I
5 live anyway. I might die, I might die in surgery here
6 in a couple hours.

7 AGENT: No, no, no, no.

8 MR. DeROSSETT: Now, what was that last thing?

9 AGENT: Where do you keep your gun?

10 MR. DeROSSETT: Normally I keep my Glock in the
11 truck. Now, I went to church on Wednesday night and I
12 carry a bag, a shoulder bag or whatever with my bible
13 and all that stuff, my information in there. I'll take
14 it into church with me sometimes. So, I take it in with
15 me.

16 When I came back in the house after church it was
17 in the house, so I just left it in here. And then I put
18 it in the middle part of the headboard where I kept the
19 38. The 38's right there, it's right above my head so I
20 can get close to it, or get it when I need it.

21 AGENT: Okay. So, it's in the headboard?

22 MR. DeROSSETT: Right.

23 AGENT: Okay. That's where it was -- that's where
24 it was last night?

25 MR. DeROSSETT: The 38 was.

1 AGENT: What about the Glock?

2 MR. DeROSSETT: The Glock was kind of over in the
3 middle where I've got a mirror.

4 AGENT: But that's still in the -- on the bed area,
5 the headboard area?

6 MR. DeROSSETT: Em-hmm.

7 AGENT: Now, did you hear the person come to the
8 door? Did you hear a knocking or a ringing on -- the
9 doorbell ring?

10 MR. DeROSSETT: Yeah, the doorbell rang. She was
11 expecting somebody.

12 AGENT: Okay. Did she say who she was expecting?

13 MR. DeROSSETT: I don't know who her friends --

14 AGENT: And she's already been very honest with us,
15 so.

16 MR. DeROSSETT: Yeah.

17 AGENT: And I appreciate what she said to me to be
18 very candid, because she swore and she said she'd tell
19 the truth just like you're swearing.

20 MR. DeROSSETT: Em-hmm.

21 AGENT: So, do you know who was coming over, and
22 for what purposes?

23 MR. DeROSSETT: Well, I -- you know, I really don't
24 know. You know, she calls these guys "clients" and she
25 dances. She dances for them.

1 AGENT: At the house?

2 MR. DeROSSETT: Yeah.

3 AGENT: Okay.

4 MR. DeROSSETT: Yeah.

5 AGENT: Okay. And you're -- how long has she been
6 doing this?

7 MR. DeROSSETT: Oh, off and on for, I don't know,
8 maybe six, eight, nine months or whatever.

9 AGENT: Okay. Is this a regular thing, maybe a
10 couple of times a week, couple times a day?

11 MR. DeROSSETT: Yeah, a couple -- a couple times a
12 week.

13 AGENT: Okay.

14 MR. DeROSSETT: Two, three times a week.

15 AGENT: And what do you do when she brings the
16 clients over?

17 MR. DeROSSETT: Well, I'm either not there or I
18 disappear, go in the bedroom.

19 AGENT: Okay. And is that why you were kind of
20 hiding in the back bedroom because you knew she was
21 going to do her thing?

22 MR. DeROSSETT: Yeah.

23 AGENT: And I don't want to put words in your
24 mouth. If that's true, then fine, if it's not then
25 don't say it is.

1 MR. DeROSSETT: Well, she don't want to scare the
2 guys off.

3 AGENT: By seeing you there?

4 MR. DeROSSETT: Exactly. Right, right.

5 AGENT: Okay. Does she get paid to dance?

6 MR. DeROSSETT: She gets something.

7 AGENT: Okay. (Laughs) Or she wouldn't be doing
8 it, right?

9 MR. DeROSSETT: Right, exactly.

10 AGENT: Okay.

11 MR. DeROSSETT: Yeah, nothing's free.

12 AGENT: I understand that.

13 MR. DeROSSETT: Okay.

14 AGENT: Did she tell you that she had a client
15 coming over? Is that why you went in the back bedroom
16 last night?

17 MR. DeROSSETT: Well, I was getting ready to eat,
18 so it was a good time, good chance to disappear.

19 AGENT: Was she on the phone?

20 MR. DeROSSETT: I don't really remember. She's
21 on and off the phone most of the day.

22 AGENT: Okay. Do you keep an eye out on her, at
23 least for safety purposes, when people, when clients
24 come over?

25 MR. DeROSSETT: Oh, yeah.

1 AGENT: Do you?

2 MR. DeROSSETT: Oh, yeah.

3 AGENT: I understand that.

4 AGENT: Does she want you to do that, or you just
5 take that upon yourself?

6 MR. DeROSSETT: I take it on myself to protect my
7 family member.

8 AGENT: Okay.

9 MR. DeROSSETT: Even though I don't approve of a
10 lot of shit she does.

11 AGENT: Yeah.

12 MR. DEROSSETT: At all.

13 AGENT: Em-hmm. Since you --

14 MR. DeROSSETT: She tells me she don't prostitute,
15 but I don't know if she does or not. I'm not in the
16 room.

17 AGENT: Okay. Now, has she ever had a problem
18 before when someone came to the house?

19 MR. DeROSSETT: She had a guy the other day, I
20 think it was earlier this week or towards the end of
21 last week that was -- he was a -- he was an ex-con.

22 And he was on the news, she showed me where he was
23 on the news in Orlando where he -- I guess he beat his
24 wife and raped her or something or other. I don't know,
25 attempted rape or something like that. But anyway, she

1 let the guy come in and just laid his gun down.

2 AGENT: He laid his gun down?

3 MR. DeROSSETT: Yeah.

4 AGENT: What did you do?

5 MR. DeROSSETT: Well, I mean, I was back in the
6 back bedroom. I didn't know anything until she told me
7 about it.

8 AGENT: Okay. Did she yell for help?

9 MR. DeROSSETT: No.

10 AGENT: She didn't tell you --

11 MR. DeROSSETT: No, no, no, he was nice. He was
12 nice about it.

13 AGENT: Okay. But that's the only thing she's ever
14 had that concerned her since coming to the house for the
15 last eight to nine months?

16 MR. DeROSSETT: Well, she's had a couple people
17 that didn't pay her, so.

18 AGENT: Okay. A couple that didn't pay her?

19 MR. DeROSSETT: Right.

20 AGENT: All right. Has she been arrested before?

21 MR. DeROSSETT: Well, you know that as well as I
22 do, so.

23 AGENT: That would be a yes then, right?

24 MR. DeROSSETT: Yeah, yeah.

25 AGENT: Okay. For similar offenses, right?

1 MR. DeROSSETT: Well, you know, prostitution, she
2 said she's never been arrested for that. Paraphernalia,
3 drugs, suspended license.

4 AGENT: Em-hmm.

5 MR. DEROSSETT: Things of that nature.

6 AGENT: Okay. And while we're at that, does she
7 use drugs still?

8 MR. DeROSSETT: You know, she's got herself cut
9 down quite a bit.

10 AGENT: Okay. So, that would be a yes?

11 MR. DeROSSETT: I've been working on her.

12 AGENT: Okay, but that would be a yes?

13 MR. DeROSSETT: Yes.

14 AGENT: She still uses drugs, she's just not using
15 as much?

16 MR. DeROSSETT: As much.

17 AGENT: What does she use?

18 MR. DeROSSETT: It's down two pills a day compared
19 to 10 or 12.

20 AGENT: Okay. What kind of pills is she using?

21 MR. DeROSSETT: Well, she uses the Dilaudids.

22 AGENT: Okay.

23 MR. DeROSSETT: That's what I've got in here right
24 now.

25

1 AGENT: I gotcha, I gotcha. Now, when these people
2 come over and they pay her, do you get any of that
3 money?

4 MR. DeROSSETT: Well, she pays me rent every month.

5 AGENT: I gotcha, okay. Kind of protection and
6 rent? It at least makes her feel better anyway.

7 MR. DeROSSETT: Well, I'm -- I'm not a pimp.

8 AGENT: No, no, no. I didn't -- I'm not calling
9 you that.

10 MR. DeROSSETT: Yeah, yeah, yeah --

11 (More than one speaker, indiscernible.)

12 AGENT: I'm not calling you that. Because you're
13 her uncle, I would hope you're not.

14 MR. DeROSSETT: No, no. Hell, no. I wouldn't do
15 that.

16 AGENT: Okay. But you're there to protect her
17 and --

18 MR. DeROSSETT: No, I get on to her about
19 prostitution.

20 AGENT: Okay.

21 MR. DeROSSETT: All that shit, don't be doing that
22 shit, or them drugs.

23 AGENT: Okay. So, when this doorbell rings she's
24 waiting for this gentleman. Do you monitor, do you see
25 who comes to the door?

1 MR. DeROSSETT: No.

2 AGENT: You didn't even check or peak out a little
3 to make sure is she going to be okay?

4 MR. DeROSSETT: Well, I have sometimes.

5 AGENT: Okay. Well, let's talk about last night,
6 because that would be normal, I would be doing that for
7 my niece.

8 MR. DeROSSETT: Well, yeah. No, I didn't, but
9 sometimes I have peaked out.

10 AGENT: Okay.

11 MR. DeROSSETT: And I told her I don't like anybody
12 after 10:00.

13 AGENT: Okay.

14 MR. DeROSSETT: And this was like going on 10:00.

15 AGENT: Right.

16 MR. DeROSSETT: So, you know, she's usually in
17 there 10 or 15 minutes, sometimes less than that.

18 AGENT: So, you didn't look out last night?

19 MR. DeROSSETT: No, no, no. I had the door opened
20 up just a little bit, but I didn't -- I was too busy
21 eating, I was about to starve to death.

22 AGENT: How far open did you have the door?

23 MR. DeROSSETT: Well, it --

24 AGENT: You're putting your hand at about -- I'm
25 guessing about maybe two inches?

1 MR. DeROSSETT: Yeah, yeah, just about like that.

2 AGENT: Okay. So, about two inches?

3 MR. DeROSSETT: Yeah, yeah.

4 AGENT: All right, that's fair to say.

5 MR. DeROSSETT: I can't see the front door, but I
6 can see back to the bedrooms, but I can't see the front
7 door.

8 AGENT: Okay.

9 MR. DEROSSETT: It's off to the right.

10 AGENT: Can you hear what's going on though with
11 your door open?

12 MR. DeROSSETT: All I heard was that she was
13 yelling.

14 AGENT: She was yelling. What did she yell?

15 MR. DeROSSETT: Well, "Help."

16 AGENT: She said, "Help."

17 MR. DeROSSETT: "Help."

18 AGENT: Did she ever call your name?

19 MR. DeROSSETT: Yeah, John, yeah.

20 AGENT: Okay. Is she the only person that you
21 heard?

22 MR. DeROSSETT: Yeah.

23 AGENT: You heard no other voices whatsoever?

24 MR. DeROSSETT: No, I just heard a -- kind of a
25 ruckus in here.

1 AGENT: Okay. So, a ruckus or a commotion, is that
2 fair to say?

3 MR. DeROSSETT: Yeah, yeah, yeah.

4 AGENT: Okay. So, you hear this ruckus or
5 commotion?

6 MR. DeROSSETT: Em-hmm.

7 AGENT: And what do you do?

8 MR. DeROSSETT: I grab my gun.

9 AGENT: Which? Did you grab the Glock?

10 MR. DeROSSETT: Yeah.

11 AGENT: Okay. You left the 38 alone?

12 MR. DeROSSETT: Yeah.

13 AGENT: Just the Glock, okay. So you bring the
14 Glock. What do you do now? You got the Glock, what do
15 you do?

16 MR. DeROSSETT: Well, I go to the front door and
17 I --

18 AGENT: Is the door open or closed?

19 MR. DeROSSETT: Well, it's open. I'm looking out
20 the screen door.

21 AGENT: Okay. So, the interior door or the big
22 door, like a wooden door, is open. Does that open in
23 or out?

24 MR. DeROSSETT: It opens inward.
25

1 AGENT: Okay. And then there's a screen door. And
2 with the screen door, does that open out or in?

3 MR. DeROSSETT: Out.

4 AGENT: Out. And is it closed right now?

5 MR. DeROSSETT: Yeah.

6 AGENT: Okay. So, you run to the front and what do
7 you see? Do you look through the screen at that point?

8 MR. DeROSSETT: Yeah.

9 AGENT: What do you see through the screen?

10 MR. DeROSSETT: Well, I seen these gentlemen out
11 there dressed in dark.

12 AGENT: How many?

13 MR. DeROSSETT: You know, I seen two, maybe three.

14 AGENT: Okay. And you said they were dressed in
15 "dark?"

16 MR. DeROSSETT: Dark, dark clothing.

17 AGENT: Dark clothing, all right.

18 MR. DeROSSETT: And then -- like a burglar, you
19 know.

20 AGENT: Okay. Did they have masks?

21 MR. DeROSSETT: You know how burglars --

22 AGENT: Do they have masks over their face?

23 MR. DeROSSETT: I couldn't really tell, it was --
24 it was dark.

25 AGENT: Okay.

1 MR. DeROSSETT: Can't really see.

2 AGENT: But you could tell they were men, right?

3 MR. DeROSSETT: Well, I couldn't tell they were men
4 either, but they were, you know, they were my size.

5 AGENT: Okay. So -- and how tall are you?

6 MR. DeROSSETT: 5'11.

7 AGENT: How much do you weigh, about?

8 MR. DeROSSETT: I don't know, I'm probably about
9 175, 180.

10 AGENT: Okay.

11 MR. DeROSSETT: Somewhere around there.

12 AGENT: All right. Do you open the screen door?

13 MR. DeROSSETT: Well, I seen they scattered.

14 AGENT: Before you -- before you open the screen
15 door, they scattered?

16 MR. DeROSSETT: Well, yeah, yeah. Because I had
17 like commented, I said, "What's going on out here?"

18 AGENT: All right.

19 MR. DEROSSETT: And they scattered.

20 AGENT: Any response from them?

21 MR. DeROSSETT: No, they just scattered.

22 AGENT: Okay. So, you say, "What's going on", they
23 all scatter, they say nothing. What is Mary saying?

24

25

1 MR. DeROSSETT: Well, she's running back in, and I
2 think she said something like they grabbed her. They
3 opened the door and reached in and pulled her out the
4 door.

5 AGENT: Okay. So, she actually runs inside the
6 house?

7 MR. DeROSSETT: Em-hmm.

8 AGENT: You have not made it out of the house yet
9 at all?

10 MR. DeROSSETT: Right, right.

11 AGENT: Okay. So, what do you do after she's
12 inside the house now?

13 MR. DeROSSETT: Well, I go out.

14 AGENT: Em-hmm. And what do you see?

15 MR. DeROSSETT: Well, not -- I don't really see
16 anything as of yet, and that's why I fired the gun, to
17 scare them off.

18 AGENT: Okay.

19 MR. DeROSSETT: And that's when I seen the light.

20 AGENT: Okay. Did you tell Mary to call 9-1-1?

21 MR. DeROSSETT: I can't remember. I don't think I
22 did right at that point in time.

23 AGENT: Okay. So, she's inside, you're inside,
24 they're all outside, they scattered already?

25 MR. DeROSSETT: Em-hmm.

1 AGENT: And then you open the door, step out, and
2 then you fire that gun off?

3 MR. DeROSSETT: Em-hmm.

4 AGENT: Okay. Is that true?

5 MR. DeROSSETT: Yeah.

6 AGENT: Okay. And what do the guys do now that you
7 fired that gun up in the air? What are they doing now?
8 And can you see masks on their face now? Because now
9 you're outside.

10 MR. DeROSSETT: Well, it's dark out there.

11 AGENT: It is. Is there a street light there?

12 MR. DeROSSETT: No, there isn't one right there,
13 but the lady's got a sensor activated light straight
14 across from the front.

15 AGENT: From the front of --

16 MR. DeROSSETT: But that blinds me more than
17 anything. It makes it just darker and I can't really --

18 AGENT: Did it go on?

19 MR. DeROSSETT: I don't -- it was on towards the
20 end. I can't remember in the beginning if it was on.

21 AGENT: Okay. So, while -- at the end of the
22 shooting that light was on and it illuminates the front
23 yard?

24 MR. DeROSSETT: Not -- not -- well, a little bit,
25 more so the driveway.

1 AGENT: Her driveway?

2 MR. DeROSSETT: Yeah.

3 AGENT: But it's --

4 MR. DEROSSETT: And I get a little bit of light
5 over in my yard.

6 AGENT: Get a little bit of light over there. If I
7 told you there is a street light right by your driveway
8 would you believe me?

9 MR. DeROSSETT: Well, yeah, there is.

10 AGENT: Okay. Would you believe me?

11 MR. DeROSSETT: Off to the right.

12 AGENT: So, you're aware of that?

13 MR. DeROSSETT: Yes.

14 AGENT: So, that -- was that street light on?

15 MR. DeROSSETT: I believe it was.

16 AGENT: Okay. Any light on at your house? Any
17 porch light or anything like that?

18 MR. DeROSSETT: I can't remember if the porch -- I
19 don't think it was on.

20 AGENT: Okay. Do you have a porch light?

21 MR. DeROSSETT: Yeah.

22 AGENT: You just don't remember if it was on or
23 not?

24 MR. DeROSSETT: Right.

25 AGENT: Okay.

1 MR. DeROSSETT: Because it looked dark out there,
2 but as I was saying, I remember they were dressed in
3 dark and I couldn't tell who they were.

4 AGENT: Okay. So -- but no masks that you can
5 remember, only dark clothing?

6 MR. DeROSSETT: Right.

7 AGENT: Okay. You see anything on that dark
8 clothing at all?

9 MR. DeROSSETT: No.

10 AGENT: No markings whatsoever?

11 MR. DeROSSETT: No.

12 AGENT: Okay.

13 MR. DeROSSETT: No, not at all.

14 AGENT: Okay. And they never said anything ever,
15 they never opened their mouth?

16 MR. DeROSSETT: No, not a word.

17 AGENT: And so they don't say anything. They're
18 leaving, or are they just standing, milling around on
19 the front yard?

20 MR. DeROSSETT: Well, they -- they scattered out
21 because -- by the front door where they had a hold of
22 her.

23 AGENT: Right.

24 MR. DEROSSETT: And a --

25

1 AGENT: So, the threat's over. She's inside the
2 house safe, you're inside the house safe. You have --
3 you could close the door, correct?

4 MR. DeROSSETT: Well, I'm making sure these guys
5 are -- are clearing out -- out, I didn't want no -- no
6 problems.

7 AGENT: But the purpose you thought they were there
8 was what? To do what?

9 MR. DeROSSETT: Well, it looked like they were
10 kidnapping her.

11 AGENT: Okay. She's obviously in the house though
12 now, no kidnapping is occurring.

13 MR. DeROSSETT: She's in and out of the house. I
14 told you.

15 AGENT: That's what I'm asking. So, did she go
16 back out of the house?

17 MR. DeROSSETT: Yeah.

18 AGENT: Okay.

19 MR. DeROSSETT: I think she did.

20 AGENT: How many times did she go in and out of the
21 house now?

22 MR. DeROSSETT: Well, maybe once.

23 AGENT: Okay. One time?
24
25

1 MR. DeROSSETT: Maybe once. She went in and then
2 came back out, I think, I think. Now, I can't say for
3 sure. I don't know. She could tell you more.

4 AGENT: Well, that's why I'm asking. I'm trying to
5 clarify some things.

6 MR. DeROSSETT: Yeah, yeah, yeah.

7 AGENT: So, were you outside --

8 MR. DeROSSETT: A couple of things I missed here
9 and there.

10 AGENT: I got that, I got that. So, you're outside
11 the house. Is that when she comes back out the second
12 time, and is that --

13 MR. DeROSSETT: Yeah, yeah, and I think she was out
14 there --

15 AGENT: Is that after you fired the gun in the air?

16 MR. DeROSSETT: Yeah, I think so.

17 AGENT: Okay. So, you fire the gun in the air and
18 what happens next?

19 MR. DeROSSETT: Well, that's -- that's when I
20 started seeing lights. Couldn't tell whether it was
21 lights from the gun or just a flash of a gun going off,
22 but I heard the guns go off.

23 AGENT: You heard the guns and you saw lights that
24 you're assuming they were flashes, is that fair?

25 MR. DeROSSETT: Yeah, right.

1 AGENT: Okay. Where were the flashes coming from?

2 MR. DeROSSETT: Well, one was coming off from the
3 left.

4 AGENT: From the left. And that would be -- the
5 left is over in the yard, that big yard where the hump
6 was in that, and the tree?

7 MR. DeROSSETT: Yeah, yeah, yeah.

8 AGENT: Okay. And so you saw a flash from there,
9 and then where else?

10 MR. DeROSSETT: I seen one in front of me.

11 AGENT: Okay.

12 MR. DeROSSETT: And then I heard shots.

13 AGENT: Okay.

14 MR. DeROSSETT: And I don't know how many shots I
15 heard.

16 AGENT: And where do you fire now?

17 MR. DeROSSETT: Well, I fired off to the left, I
18 think I fired off to the center, but --

19 AGENT: Em-hmm.

20 MR. DeROSSETT: (Cont'd) like I told her last
21 night, I didn't fire towards the driveway where the
22 other guy was.

23 AGENT: Why is that?

24 MR. DeROSSETT: Because I didn't want to shoot a
25 hole in my truck.

1 AGENT: Okay. But better to shoot a hole in your
2 truck than to be shot by somebody else. So, you were
3 concerned about your truck?

4 MR. DeROSSETT: Well, no, I wasn't looking to kill
5 anybody.

6 AGENT: I mean, I would hope not.

7 MR. DeROSSETT: No, hell no, I wasn't.

8 AGENT: But you did -- I just want to be clear, you
9 didn't shoot to the right because your vehicles were
10 there. Is that fair?

11 MR. DeROSSETT: Well, that was kind of fair to --
12 yeah, just kind of --

13 AGENT: Did you see a flash from there?

14 MR. DeROSSETT: Well, yeah, I did. The guy that
15 shot me came blasting from there.

16 AGENT: From the right?

17 MR. DeROSSETT: Yeah.

18 AGENT: From -- and that's when you're facing out
19 to the right? So, that would actually be to the east,
20 right, where the vehicles are?

21 MR. DeROSSETT: Right.

22 AGENT: Your vehicles in your driveway?

23 MR. DeROSSETT: Right, right.

24

25

1 AGENT: Okay. So you're shot -- you think you were
2 shot by the person that was over more by the driveway,
3 your driveway?

4 MR. DeROSSETT: That's what I'm thinking.

5 AGENT: Okay. And you didn't shoot that way
6 because you didn't want to hit the car?

7 MR. DeROSSETT: You know, I can't remember if I
8 shot over that way or not. If I did, I shot high.

9 AGENT: Okay.

10 MR. DeROSSETT: I might have shot high, up in the
11 air.

12 AGENT: You shot to the center? Do you know how
13 many times you shot to the center?

14 MR. DeROSSETT: Well, once or twice.

15 AGENT: How many times to the left?

16 MR. DeROSSETT: Once or twice, two or three times.

17 AGENT: How many -- and then how many in the air to
18 the right?

19 MR. DeROSSETT: Maybe once. Like I said, maybe a
20 half a dozen shots. I don't know how many I did shoot.

21 AGENT: Okay. Did they say anything while you were
22 shooting at them?

23 MR. DeROSSETT: No, not a word, not a word, not a
24 word. I had no idea, I didn't have a clue who they
25 were. You know, it could've been somebody from -- you

1 know, I couldn't tell if they were black, white, or what
2 was going on.

3 AGENT: How far away from you do you think the
4 person on the left was?

5 MR. DeROSSETT: Well, that's a good 20 feet, I'd
6 say.

7 AGENT: Okay. How about the center, the person in
8 the center?

9 MR. DeROSSETT: Well, he was a good 15 to 20 feet
10 too.

11 AGENT: 15 to 20?

12 MR. DeROSSETT: He wasn't in the road, he was -- he
13 was in the lawn, but --

14 AGENT: In the lawn, okay. And what about the guy
15 to the right?

16 MR. DeROSSETT: Well, he was -- he was almost up
17 against my truck over there.

18 AGENT: Okay. So more to almost -- almost in the
19 driveway?

20 MR. DeROSSETT: Yeah, yeah, yeah.

21 AGENT SIMOCK: Okay, all right. When you get back
22 in the house and the 9-1-1 call, who calls 9-1-1?

23 MR. DeROSSETT: Mary.

24 AGENT SIMOCK: Mary did? Do you go out of the
25 house first or does Mary go out of the house first?

1 MR. DeROSSETT: Well, she goes out of the house
2 first.

3 AGENT SIMOCK: Okay.

4 MR. DeROSSETT: They are telling her to put her
5 arms up, don't make any sudden moves or you're dead.

6 AGENT SIMOCK: Do they say that they're from the
7 Sheriff's Office now?

8 MR. DeROSSETT: Yeah. Well, you can tell there
9 were with police lights --

10 AGENT SIMOCK: Okay.

11 MR. DEROSSETT: Or what I assumed were all over
12 out there.

13 AGENT SIMOCK: Okay, okay. All right. Anything
14 else?

15 AGENT BLISS: Yeah, yeah. But so, they're -- when
16 they get Mary out of the house now you hear them saying
17 "Sheriff's Office" when Mary exits the house?

18 MR. DeROSSETT: Well, I kind of -- I kind of
19 figured they were when she opened the door, and I seen
20 the blue lights.

21 AGENT BLISS: Okay. And then that's when you hear
22 them say "Sheriff's Office."

23 MR. DeROSSETT: I believe they said that.

24

25

1 AGENT BLISS: Okay. Here's what we're trying to
2 determine also: Prior to that time when Mary exits that
3 house, when did she speak to you about law enforcement
4 in front of the house?

5 When did she say anything about law enforcement
6 officers being in front of the house prior to that
7 moment, you just described (static) and she came in and
8 out (static)?

9 MR. DeROSSETT: Oh, I thought you was talking about
10 at the end there when --

11 AGENT BLISS: No. Before then, before she comes
12 out of the house, when did she mention to you --

13 MR. DeROSSETT: She didn't say anything about law
14 enforcement.

15 AGENT BLISS: Not during her first egress back into
16 the house?

17 MR. DeROSSETT: No, no.

18 AGENT BLISS: How about her second egress?

19 MR. DeROSSETT: No, she --

20 AGENT BLISS: Because remember -- remember --

21 MR. DeROSSETT: No, she didn't tell me anything
22 about law enforcement.

23 AGENT BLISS: Okay. Because we spoke to her and
24 was trying to clear stuff up. So, you're saying she
25 never spoke of law enforcement?

1 MR. DeROSSETT: No, not at all, not at all to me.
2 Like I said, it could've been -- it could've been a
3 serial rapist out there. I have no idea.

4 AGENT BLISS: Okay.

5 MR. DeROSSETT: I had no idea of what was going on.

6 AGENT BLISS: Okay. Do you have something?

7 AGENT SIMOCK: Yeah. If you want to keep going
8 with your mindset, that's fine. I just have one -- a
9 couple questions.

10 AGENT BLISS: When you went down, when you were
11 shot and you crawled back in the house, when you're in
12 the house did you shoot back out of the house from
13 inside the house?

14 MR. DeROSSETT: (No audible response.)

15 AGENT BLISS: Were you -- at the entrance to the
16 doorway, trying to get back in the house, did you shoot
17 at that point?

18 MR. DeROSSETT: No.

19 AGENT BLISS: Do you -- what -- how many -- when
20 you're on the ground, when you were shot, how many times
21 do you think you shot from that position on the ground?

22 MR. DeROSSETT: Maybe once or twice.

23 AGENT BLISS: And then --

24 MR. DeROSSETT: Then I finally -- I just finally
25 stopped.

1 AGENT BLISS: And then the -- okay. So, maybe once
2 or twice on the ground?

3 MR. DeROSSETT: After I was hit, I kind of went
4 kind of faint.

5 AGENT BLISS: Okay.

6 MR. DeROSSETT: I was faint, real faint. It's like
7 I'm about getting ready to die, you know.

8 AGENT BLISS: Okay. So, you shoot maybe once or
9 twice from the ground back out? You shoot back out?

10 MR. DeROSSETT: (No audible response.)

11 AGENT BLISS: Do you have someone in sight that
12 you're shooting at?

13 MR. DeROSSETT: Well, like I said, I think I shot
14 at -- I was shooting at the guy in the middle, but he
15 took off and ran over across the street to a house.
16 That's when I ran in the house, or crawled in the house
17 basically.

18 AGENT BLISS: Did you crawl on all fours, did you
19 crawl on your knees? I know you're --

20 MR. DeROSSETT: Well, yeah, I couldn't hardly
21 use -- I couldn't even raise that arm up. So, I kind of
22 had to do three legs and an arm to get in the house.

23 AGENT BLISS: Okay. Couple of things here. The
24 Glock, how many rounds were in there? How do you load
25 your Glock?

1 MR. DeROSSETT: Just like anybody else, just like
2 you load a Glock.

3 AGENT BLISS: What's that?

4 MR. DeROSSETT: Just like you load a Glock, you
5 load it up.

6 AGENT BLISS: You fill it up?

7 MR. DeROSSETT: Right.

8 AGENT BLISS: Do you rack one in the chamber and
9 then put another round in the magazine?

10 MR. DeROSSETT: No, no, no, no, no, I leave it
11 empty.

12 AGENT BLISS: Okay, you don't top it off, you
13 leave -- then you -- okay. So, having said that, when
14 you -- so, when you got that Glock off the bed and
15 you're walking after you hear her yell for your help,
16 did you have to put a round in the chamber?

17 MR. DeROSSETT: I put a round in the chamber when I
18 was going out of the bedroom door.

19 AGENT BLISS: When you're going out the bedroom
20 door you rack one in the chamber?

21 MR. DeROSSETT: Yeah, because I didn't know what to
22 expect.

23 AGENT BLISS: And you load your magazine to kind
24 of -- is that a 15 round magazine?

25 MR. DeROSSETT: (No audible response.)

1 AGENT: Okay, you load the 15. Did -- what type of
2 ammunition do you use in the gun?

3 MR. DeROSSETT: They were actually target. They
4 were Target shots that I gotten from the dealer over in
5 Merritt Island, a gun dealership over there.

6 AGENT BLISS: D&H?

7 MR. DeROSSETT: Yeah, it might be D&H.

8 AGENT BLISS: Right down 520?

9 MR. DeROSSETT: Yeah. It's across the drawbridge.
10 I think there's a drawbridge there by Sykes Creek or
11 something. Right down there about two or three miles.

12 AGENT SIMOCK: You thinking ball round or more like
13 the squib loads, the flat ones?

14 MR. DeROSSETT: Well, they were target loads.

15 AGENT BLISS: Target loads?

16 MR. DeROSSETT: They were target loads, but a
17 friend -- a friend of mine gave me some. And I don't
18 know if they were in that -- in there like that or not
19 last night. They were -- they were kind of spread out,
20 the shell was.

21 There was a (indiscernible, static) was, like a --
22 I wouldn't say hollow point. It might've been a
23 hollow point, but it's kind of spread out, like you
24 had -- like that.

25 AGENT BLISS: Like a mushroom?

1 MR. DeROSSETT: Kind of like a mushroom, right.

2 AGENT BLISS: Okay.

3 MR. DEROSSETT: Right.

4 AGENT BLISS: Okay.

5 MR. DeROSSETT: I don't know if I had those in
6 there or not.

7 AGENT BLISS: Okay.

8 AGENT SIMOCK: You good Ryan for now?

9 AGENT BLISS: No, just one more.

10 AGENT SIMOCK: No, go for it. Now, the individual,
11 the person you saw on the right, were they near your
12 vehicle or did they approach the front door? Did they
13 approach you?

14 MR. DeROSSETT: Well, yeah, they come up closer.

15 AGENT BLISS: They? Was there more than one on the
16 right, or did they all approach?

17 MR. DeROSSETT: Well, no, they was kind of keeping
18 their distance down by the driveway. He came up close,
19 and in the guy in the middle, he got a little bit
20 closer, but he didn't get up to the sidewalk.

21 AGENT BLISS: Okay. And what about this guy on the
22 left?

23 MR. DeROSSETT: He didn't come closer I don't
24 think.

25

1 AGENT BLISS: Okay. Guy in the middle, guy on the
2 right, they're approaching you?

3 MR. DeROSSETT: Em-hmm.

4 AGENT BLISS: Are they shooting while they're
5 approaching you?

6 MR. DeROSSETT: Well, there was some gunshots going
7 off, yeah.

8 AGENT BLISS: Okay.

9 MR. DeROSSETT: And I was shooting back.

10 AGENT BLISS: Think about this John. I'm going to
11 ask you to really think about this. As they're
12 approaching do you hear -- are they saying, get down,
13 get on the ground, let me see your hands? Anything like
14 that?

15 MR. DeROSSETT: Nothing.

16 AGENT BLISS: Nothing?

17 MR. DeROSSETT: Nothing.

18 AGENT BLISS: Okay. As they continue to approach
19 how close when -- have you already been shot as they're
20 approaching?

21 MR. DeROSSETT: You know, I don't know what
22 happened to the guy on the left. I don't know if that's
23 the one I hit or not, whichever one I hit.

24 The last two I seen -- I didn't see the guy on the
25 left or the guy on -- the guy on the right I seen, and

1 the guy in the middle I seen across the street.

2 AGENT BLISS: Okay, okay.

3 MR. DeROSSETT: And nobody said a word about
4 anything.

5 AGENT BLISS: Okay. No one's saying a word, but
6 they're approaching you. Are they approaching you not
7 saying a word, The guy on the right and the guy in the
8 middle?

9 MR. DeROSSETT: They were just kind of moving in
10 and moving back out.

11 AGENT BLISS: Okay, okay. So, is this after you'd
12 been shot?

13 MR. DeROSSETT: It was kind of before I'd been
14 shot, but that's how the shooting was going on.

15 AGENT BLISS: Okay.

16 MR. DeROSSETT: But once it stopped -- once it
17 stopped, I -- the guy went back up across the street by
18 the house.

19 AGENT BLISS: Yeah.

20 MR. DEROSSETT: I quit shooting.

21 AGENT BLISS: Okay.

22 MR. DeROSSETT: I think that might have been the
23 one shot while I was laying, laying on the ground and
24 shot.

25 AGENT BLISS: Laying on the ground by the pillar?

1 MR. DeROSSETT: Yeah, yeah, maybe. Yeah, I
2 might've done one or two shots.

3 AGENT BLISS: All right.

4 MR. DeROSSETT: And then I scrambled in the house.

5 AGENT BLISS: Okay, okay. I'm good.

6 AGENT SIMOCK: John, do you remember a few -- I
7 don't know if it was a few months ago -- but there was a
8 traffic stop where you and Mary were in the car?

9 MR. DeROSSETT: Em-hmm.

10 AGENT SIMOCK: Do you remember that?

11 MR. DeROSSETT: Yeah.

12 AGENT SIMOCK: Okay.

13 MR. DEROSSETT: Yeah.

14 AGENT SIMOCK Do you remember who stopped you?

15 MR. DEROSSETT: I don't --

16 AGENT SIMOCK: What they were dressed like?

17 MR. DeROSSETT: A guy with a beard.

18 AGENT SIMOCK: Okay. What was he dressed in?

19 MR. DeROSSETT: He was dressed in dark, dark
20 clothing.

21 AGENT SIMOCK: Okay.

22 MR. DeROSSETT: He had a badge on I think.

23 AGENT SIMOCK: He had a badge on?

24 MR. DeROSSETT: I believe he did.

25

1 AGENT SIMOCK: Did he have a bulletproof vest on?
2 Do you know what a tact vest is?

3 MR. DeROSSETT: Yeah, yeah.

4 AGENT SIMOCK: What would a tact vest be to you?

5 MR. DeROSSETT: Well, it would be bulletproof, like
6 a bulletproof vest or whatever.

7 AGENT SIMOCK: Does it have identification on it
8 like "Sheriff" or "Deputy" or something like that?

9 MR. DeROSSETT: I believe so. I'm not really sure.

10 AGENT SIMOCK: Yeah. Is that what they were
11 wearing when they stopped you a couple of months ago
12 with Mary?

13 MR. DeROSSETT: Maybe, it maybe. Yeah, I'm not
14 sure.

15 AGENT SIMOCK: Okay. Was it daytime or nighttime
16 when they stopped --

17 MR. DeROSSETT: It was nighttime.

18 AGENT SIMOCK: It was nighttime?

19 MR. DeROSSETT: Yeah.

20 AGENT SIMOCK: And why did they stop you?

21 MR. DeROSSETT: Well, I dropped her off. She had a
22 friend that owed her some money, and I dropped her off
23 and I went down to the beach. She said she'd called me
24 when she was ready for me to pick her back up.

25 So, you know, she called me about 10, 15 minutes

1 later and I went by and picked her up. Then we got
2 pulled over. And I thought, what the hell?

3 AGENT SIMOCK: You say beach, what beach?

4 MR. DeROSSETT: Cocoa Beach Pier down there. And
5 a --

6 AGENT SIMOCK: Did you have a gun on you that
7 night?

8 MR. DeROSSETT: Yeah, I did.

9 AGENT SIMOCK: Okay. Did they find that gun?

10 MR. DeROSSETT: Well, I told them about it, I told
11 them I carried it.

12 AGENT SIMOCK: Okay.

13 MR. DeROSSETT: I'm licensed.

14 AGENT SIMOCK: How many guys were on that stop, how
15 many deputies?

16 MR. DeROSSETT: Well, there was two of them. Both
17 of them was bearded.

18 AGENT SIMOCK: Both of them bearded. Both of them
19 had the same bulletproof vest on?

20 MR. DeROSSETT: I think so, yeah.

21 AGENT SIMOCK: And both of the vests have
22 identification that you knew they were Deputy Sheriffs?

23 MR. DeROSSETT: Yeah, I presumed that, yeah.

24 AGENT SIMOCK: Okay. Did they have guns on their
25 side or?

1 MR. DeROSSETT: Yeah.

2 AGENT SIMOCK: You saw all of that? And this is at
3 night?

4 MR. DeROSSETT: Yeah.

5 AGENT SIMOCK: What kind of car did they stop you
6 that they were in?

7 MR. DeROSSETT: I believe it was in a black Dodge
8 Charger or something.

9 AGENT SIMOCK: Okay.

10 MR. DeROSSETT: I think.

11 AGENT: All right. So -- and she's been arrested a
12 few weeks ago for solicitation, correct?

13 MR. DeROSSETT: (No response.)

14 AGENT SIMOCK: If I told you that, I wouldn't lie
15 to you, right?

16 MR. DeROSSETT: Well, no, that was what this guy
17 said that stopped us that night.

18 AGENT SIMOCK: Okay. And she got arrested for
19 that?

20 MR. DeROSSETT: Yeah, yeah. He solicited her to
21 come down to see him, yes.

22 AGENT SIMOCK: Okay, okay. Did they identify
23 themselves that night as deputy sheriffs or?

24 MR. DeROSSETT: Well, I wasn't even around there.
25

1 AGENT SIMOCK: No, I'm talking about the night in
2 the car when you got stopped. Did they identify
3 themselves as deputy sheriff's?

4 MR. DeROSSETT: Oh, yeah, yeah. Well, the light
5 come on. They had a light.

6 AGENT SIMOCK: Well, did they tell you they were
7 from the Sheriff's Office or did they just stay silent?

8 MR. DeROSSETT: I don't know. I mean, I presumed
9 they were.

10 AGENT SIMOCK: Okay. So, they never identified
11 themselves and told you they were sheriffs, they could
12 have just --

13 MR. DeROSSETT: They were sheriff's deputies.

14 AGENT SIMOCK: But did they tell you that is my
15 question.

16 MR. DeROSSETT: Well, I mean, it's been a few weeks
17 back. A few weeks back, I don't really remember.

18 AGENT SIMOCK: Okay.

19 MR. DeROSSETT: Exactly what they said.

20 AGENT SIMOCK: Okay. So, in the business that
21 she's in, Mary, I'm talking about.

22 MR. DeROSSETT: Em-hmm.

23 AGENT SIMOCK: It could be completely plausible and
24 believable that they could do stings, right? You know
25 what I mean?

1 MR. DeROSSETT: Yeah, yeah, yeah. I've heard
2 that's what they did.

3 AGENT SIMOCK: Right. And so it would be
4 completely plausible to say that deputy sheriffs would
5 come to the house and go to arrest her?

6 MR. DeROSSETT: Em-hmm.

7 AGENT SIMOCK: That's believable, right?

8 MR. DeROSSETT: Well, she was already been arrested
9 for prostitution.

10 AGENT SIMOCK: Correct, but you knew there was a
11 client coming over that night, last night? There was a
12 client coming, right?

13 MR. DeROSSETT: There was somebody coming, and I'm
14 assuming that's what it was, but --

15 AGENT SIMOCK: And you left your door open a little
16 bit just so you could hear, not peek, or watch?

17 MR. DeROSSETT: Right, right.

18 AGENT SIMOCK: Okay. So, you knew what she was
19 doing. She was going to dance last night, right?

20 MR. DeROSSETT: I believe so.

21 AGENT SIMOCK: Okay. So, completely plausible to
22 say that deputy sheriffs might be coming over, right?
23 And we know that they were wearing vests last night,
24 because he was shot in the vest. So, it's not like we
25 could just say, let's put a vest on afterwards.

1 MR. DeROSSETT: Em-hmm.

2 AGENT SIMOCK: He's wearing that vest, so he shot
3 at the vest.

4 MR. DeROSSETT: Right, right.

5 AGENT SIMOCK: So, he clearly was wearing a vest
6 last night, as were they all.

7 MR. DeROSSETT: Right.

8 AGENT SIMOCK: And you say you never saw any of
9 that, yet the other night you saw them with "Deputy
10 Sheriff" on them when you got stopped, right?

11 MR. DeROSSETT: No, no, that was lit up. And like
12 I said, I couldn't really remember whether I did or not.

13 AGENT SIMOCK: Em-hmm.

14 MR. DeROSSETT: I couldn't really remember whether
15 it was lit up when I got stopped, because I could see
16 better. And in front of the house I couldn't see
17 nothing.

18 AGENT SIMOCK: So, wouldn't it have been prudent
19 for you last night, instead of coming out and firing in
20 the air, to make sure you could identify what your
21 target was?

22 MR. DeROSSETT: Well -- well --

23 AGENT SIMOCK: That they might've been deputy
24 sheriffs?

25 MR. DeROSSETT: Well --

1 AGENT SIMOCK: Because no one was shooting at you
2 yet, right?

3 MR. DeROSSETT: No one was shooting at me, but when
4 they took off running when I was just walking out
5 through the door, that made --

6 AGENT SIMOCK: Running away?

7 MR. DeROSSETT: That made me suspicious.

8 AGENT BLISS: The threat's gone there John, they're
9 running away. Let them go.

10 MR. DeROSSETT: Well, I was out to make sure they
11 was gone away.

12 AGENT SIMOCK: Better to -- better to call 9-1-1,
13 right?

14 MR. DeROSSETT: I shot up in the air to scare them
15 off.

16 AGENT SIMOCK: Right, but a police officer would
17 not think that. A police officer wouldn't think that.

18 MR. DeROSSETT: Yeah.

19 AGENT BLISS: You're thinking -- you're
20 shooting -- especially in today's times they're thinking
21 he's shooting at me.

22 MR. DeROSSETT: Em-hmm.

23 AGENT SIMOCK: Did you ever see those individuals
24 with a gun when you came out initially?

25 MR. DeROSSETT: No, I didn't.

1 AGENT SIMOCK: So, you never saw them with a gun,
2 but yet you fired a gun up in the air?

3 MR. DeROSSETT: To scare them off.

4 AGENT BLISS: To scare them off.

5 AGENT SIMOCK: And you never called 9-1-1?

6 MR. DeROSSETT: Well, I mean, the shit happened so
7 fast I couldn't get to 9-1-1.

8 AGENT SIMOCK: Well, did you ever tell Mary to call
9 9-1-1? She's in the house.

10 MR. DeROSSETT: You know, I can't remember if I did
11 or not. I don't think I did. Things went down so
12 quick, I didn't know what to expect. I didn't know if I
13 was going to be attacked or what was going on.

14 AGENT SIMOCK: But you could have closed the door
15 and locked it, right?

16 MR. DeROSSETT: I didn't know if -- well, yeah, I
17 probably should have. I probably should have. I
18 shouldn't have had a run-in, but I did know what these
19 guys were up to.

20 AGENT BLISS: That's why you call 9-1-1 and get the
21 Sheriff's Office out there.

22 MR. DeROSSETT: Yeah, yeah. Well, I agree. I
23 agree.

24 AGENT BLISS: The sheriff --
25

1 MR. DEROSSETT: But sometimes you might be dead by
2 the time you get the cops or --

3 AGENT SIMOCK: When you -- when you went out
4 again --

5 MR. DeROSSETT: Sometimes you got to take things on
6 your own.

7 AGENT SIMOCK: Take it in your own hands?

8 MR. DeROSSETT: In self-defense.

9 AGENT SIMOCK: You've got to protect what's going
10 on at your house, right?

11 MR. DeROSSETT: And you've got to protect your
12 life.

13 AGENT SIMOCK: And the -- in the business that your
14 niece is in?

15 MR. DeROSSETT: Not necessarily, no. No, no, not
16 her, no. I don't believe in that shit at all.

17 AGENT SIMOCK: Oh. But you allow it?

18 AGENT BLISS: But you allowed that to happen in
19 your house.

20 AGENT SIMOCK: That's clear.

21 MR. DeROSSETT: Well, yeah, She can tell me she
22 dances, not prostituting.

23 AGENT BLISS: Okay.

24 AGENT SIMOCK: You're a smart man though, you've
25 been around for a while.

1 MR. DeROSSETT: Right, and I tell her --

2 AGENT SIMOCK: You're not naive.

3 MR. DeROSSETT: I tell her that.

4 AGENT SIMOCK: You're not naive?

5 MR. DeROSSETT: No.

6 AGENT SIMOCK: You know she's prostituting inside
7 your house?

8 MR. DeROSSETT: Probably, probably is.

9 AGENT SIMOCK: Not probably.

10 MR. DeROSSETT: Probably is.

11 AGENT BLISS: Remember, we talked to her earlier,
12 John. She is.

13 AGENT SIMOCK: She's openly admitted it.

14 MR. DeROSSETT: Yeah.

15 AGENT SIMOCK: That you're fully aware of what
16 she's doing. Now, why would she lie?

17 MR. DeROSSETT: Why would she lie to me?

18 AGENT SIMOCK: Why would she lie to us? Does she
19 have any reason to lie to us and tell us that you're
20 fully aware that she's prostituting out of her house?

21 MR. DeROSSETT: She totally denies it to me.

22 AGENT SIMOCK: Well, why would she tell us that?
23 That's my question.

24

25

1 MR. DeROSSETT: Well, I don't know. I don't know,
2 you know. Just like the cop that stopped us that night,
3 he was going back-and-forth saying she was talking.

4 She was talking and trying to get me to talk about
5 things, and I was unaware of what was going on anyway at
6 the time.

7 AGENT SIMOCK: I won't play games with you. I'm
8 not going to play games with you. I don't work in the
9 dope unit, Ryan doesn't work in the dope unit. We're
10 not here to play games, we're just here for the truth.

11 MR. DeROSSETT: Em-hmm.

12 AGENT SIMOCK: Do you know your neighbor across the
13 street?

14 MR. DeROSSETT: The lady?

15 AGENT SIMOCK: No, the gentleman, on your left.

16 MR. DeROSSETT: Yeah, he's a Commander.

17 AGENT SIMOCK: Okay. Did you see him, did you see
18 him last night?

19 MR. DeROSSETT: No.

20 AGENT SIMOCK: Okay.

21 MR. DeROSSETT: No, I didn't.

22 AGENT SIMOCK: Okay, I just asked.

23 MR. DeROSSETT: Yeah, I haven't seen him in a
24 while. We got different schedules.

25 AGENT SIMOCK: Okay.

1 MR. DeROSSETT: I know he introduced him whenever
2 I -- right after I moved in there he came over.

3 AGENT SIMOCK: He introduced himself?

4 MR. DeROSSETT: Yeah.

5 AGENT SIMOCK: Okay, all right.

6 AGENT BLISS: Do you own that house?

7 MR. DeROSSETT: No, I'm renting the house.

8 AGENT BLISS: Okay, all right.

9 AGENT SIMOCK: How long have you been living at
10 that house?

11 MR. DeROSSETT: Two and-a-half years now.

12 AGENT SIMOCK: Two and-a-half years?

13 MR. DeROSSETT: Yeah.

14 AGENT SIMOCK: How long has she been at the house?

15 MR. DeROSSETT: Off and on for -- she's been there
16 for the last -- steady for the last eight months.

17 AGENT SIMOCK: Okay.

18 MR. DeROSSETT: I believe. October, November. But
19 she was in there before but, you know, she was acting
20 crazy and they handing drugs out to her.

21 AGENT SIMOCK: Did she ever --

22 MR. DeROSSETT: Then my guns got stolen.

23 AGENT SIMOCK: Had she ever stolen from you?
24
25

1 MR. DeROSSETT: No, she -- I got some Xanax to
2 sleep at night, because I can't tolerate sleeping pills,
3 and she had gotten into them.

4 AGENT SIMOCK: She got you hooked on Xanax?

5 MR. DeROSSETT: Oh, no, I'm not into --

6 AGENT SIMOCK: Oh, she just got your Xanax to help
7 you sleep?

8 MR. DeROSSETT: No, she stole them. Yeah.

9 AGENT SIMOCK: All right.

10 MR. DeROSSETT: I take a half a milligram at night.

11 AGENT SIMOCK: Okay.

12 MR. DEROSSETT: Sometimes.

13 AGENT SIMOCK: Low dose?

14 MR. DeROSSETT: Low doses, right.

15 AGENT SIMOCK: All right.

16 AGENT BLISS: Hey, John, the Dilaudid that you get,
17 is that from Mary or is that prescribed?

18 MR. DeROSSETT: (Indiscernible, static) yeah, that
19 was prescribed to me.

20 AGENT BLISS: (Indiscernible, static) from Mary
21 yesterday?

22 MR. DeROSSETT: (Indiscernible.) Only did a half of
23 one.

24 AGENT BLISS: Okay.

25

1 AGENT. SIMOCK: John, is everything you told us
2 here today true and correct to the best of your
3 knowledge and belief, so help you God?

4 MR. DeROSSETT: Em-hmm.

5 AGT. SIMOCK: Do you swear to that?

6 MR. DeROSSETT: I'll swear to that to the best of
7 my knowledge.

8 AGENT SIMOCK: Okay, thank you. Anything else
9 Ryan?

10 AGENT BLISS: John, from what you know also, we
11 were talking about the vest that he had on and that he
12 was shot in.

13 MR. DeROSSETT: Em-hmm.

14 AGENT BLISS: Where it says "Sheriff," the bullet
15 went right beneath that, right in that crack there,
16 right where it says "Sheriff." It's clear to be seen,
17 you know.

18 MR. DeROSSETT: It was dark. I seen nothing, all
19 right. I'm serious.

20 AGENT BLISS: All right.

21 AGENT SIMOCK: All right, it's okay.

22 AGENT BLISS: You didn't see the vest, you didn't
23 see the -- anybody in (Indiscernible, static)? You just
24 came out shooting?

25

1 MR. DeROSSETT: Not when I shot up in the air. I
2 shot up in the air.

3 AGENT SIMOCK: More than once?

4 MR. DeROSSETT: No, just once.

5 AGENT SIMOCK: Okay.

6 MR. DeROSSETT: And I figured anybody in their
7 right mind would leave, I mean, if they're up to no
8 good. So then I started to hear shots, and see lights
9 and flashes. That's when I started shooting.

10 AGENT SIMOCK: Okay.

11 AGENT BLISS: Okay.

12 MR. DeROSSETT: I was in a -- I'm in a damn gun
13 fight here.

14 AGENT SIMOCK: I gotcha. Okay.

15 MR. DeROSSETT: And I was wondering who in the hell
16 it was.

17 AGENT SIMOCK: John, we appreciate you talking to
18 us. Thank you very much. You've been a gentleman,
19 thank you.

20 MR. DeROSSETT: Em-hmm.

21 AGENT SIMOCK: And I hope you get better.

22 MR. DeROSSETT: Yeah. Well, I hope I get better.
23 I hope the guy that I hit, I hope he gets better. I'm
24 praying for him, he's in my prayers.

25 AGENT SIMOCK: I appreciate that.

1 MR. DeROSSETT: And I would never -- I would never
2 shoot a cop on purpose, purposely. I'm on your guys'
3 side. I'm a rent-a-cop myself.

4 AGENT SIMOCK: Em-hmm.

5 MR. DeROSSETT: You know, all this shit going
6 around the country right now where everybody hates cops,
7 you know that as well as I do.

8 AGENT SIMOCK: Em-hmm.

9 MR. DeROSSETT: You know, I'm not, I'm not against
10 you guys. You know, what are you going to do without
11 you?

12 AGENT SIMOCK: Em-hmm.

13 MR. DEROSSETT: I mean, we need help.

14 AGENT SIMOCK: I gotcha. Well, you rest up and I
15 hope you get better. I'll tell the nurse we're ready
16 then. Thank you, John.

17 MR. DeROSSETT: I hope your guy's better too.

18 AGENT SIMOCK: I do.

19 MR. DeROSSETT: And I hope -- I don't know the
20 guy's name, but just tell him that he's in my prayers.

21 AGENT SIMOCK: I will do that.

22 MR. DeROSSETT: And I apologize and that I'm sorry
23 I shot him.

24 AGENT SIMOCK: All right, I'll let him know.

25 MR. DeROSSETT: And let him know how I feel.

1 AGENT SIMOCK: I will let him know.

2 MR. DeROSSETT: All right.

3 AGENT SIMOCK: Thank you.

4 (Whereupon, this interview concluded.)

5 THE COURT: Thank you Mr. Scheiner. All right,
6 now, in the -- in light of the number of times they
7 said, well, to clear this up from last night, and now
8 we've got pictures, so you can show us on the pictures,
9 and well, we just wanted to clarify let's hear the other
10 statement please.

11 For the purpose of this hearing it seems
12 appropriate, and for the purpose of this hearing only.
13 This is not an admissibility ruling that extends --

14 MR. RESPESS: That's going to be --

15 THE COURT: (Cont'd) beyond the four corners of
16 this hearing period.

17 MR. RESPESS: Right. That's going to be about an
18 hour. Do you want to take lunch and do --

19 THE COURT: Oh. I didn't realize it was 12. I
20 suppose we should. Thank you for pointing that out Mr.
21 Respass. I'm surprised I was not aware of that. Thank
22 you.

23 MR. RESPESS: What time do you want us back?

24 THE COURT: All right, we don't have anything, so
25 1:15. Will that work? 1:15?

1 MR. PANELLA: Sure.

2 THE COURT: We don't have anything in the
3 afternoon. We took care of all of our things this
4 morning. All right, thank you very much.

5 (Whereupon, court stands in recess for the luncheon
6 hour.)

7 THE COURT: Okay, are we ready to hear the other
8 one, the --

9 MR. RESPESS: I think we can do that.

10 THE COURT: Okay, thank you.

11 MR. SCHEINER: And it's marked as EU Judge.

12 THE COURT: EU?

13 MR. SCHEINER: Yes, State's Exhibit EU.

14 THE COURT: Okay. Now, since -- since we're just
15 doing this in the -- pursuant to the fact that there
16 were references, and as I said it was -- it's for the
17 purpose of this hearing only, because we're kind of
18 doing it, as I'm calling it, split screen review here.
19 And so do you want it to be put into evidence or? I
20 guess we are.

21 MR. RESPESS: It's -- I would suggest it be a court
22 exhibit.

23 THE COURT: It should be a court -- right.

24

25

1 MR. RESPESS: Unless you determine that fairness
2 requires that it be considered in conjunction. So now
3 you're going to hear it in the context of just hearing
4 the last statement --

5 THE COURT: Right.

6 MR. RESPESS: (Cont'd) and decide fairness requires
7 you to allow that in under 90.108.

8 THE COURT: Okay, okay. Sounds reasonable. So,
9 this is AU?

10 MR. SCHEINER: EU.

11 THE COURT: EU, sorry. That should be easy to
12 remember. All right, thank you.

13 MR. SCHEINER: Court ready?

14 THE COURT: Sure. Thank you.

15 (Whereupon, Court Exhibit EU, the recorded
16 interview of the Defendant, is now published to the
17 Court, and is as follows:)

18 SPEAKER (M): Do a little paperwork and get a
19 little something to drink, then I will be working
20 towards that.

21 AGENT ADAMS: All right, sounds good.

22 SPEAKER (M): So I'll see you guys in a little bit.
23 We need some more (indiscernible) and something else,
24 I've just got to talk to him again real quick. John, we
25 got to talk to you again real quick.

1 MR. DeROSSETT: Okay.

2 AGENT BLISS: You were talking about what happened
3 there, but now we got to ask you again. Before I ask
4 you, we're going to read you Miranda. Okay?

5 MR. DeROSSETT: Okay (indiscernible).

6 AGENT BLISS: Yeah, because that's -- that was part
7 of my investigation. Okay?

8 MR. DeROSSETT: All right.

9 AGENT BLISS: So we're going to -- Mary's going to
10 read Miranda to you, okay?

11 AGENT ADAMS: Hi. What's your name, John?

12 MR. DeROSSETT: John.

13 AGENT ADAMS: What's your last name, sir?

14 MR. DeROSSETT: DeRossett.

15 AGENT ADAMS: DeRossett. And what's your birth
16 date?

17 MR. DeROSSETT: 4/21/1950.

18 AGENT ADAMS: Do you have a phone number?

19 MR. DeROSSETT: 616-216-9860.

20 AGENT ADAMS: 9860. Are you a resident of Brevard
21 County?

22 MR. DeROSSETT: I've lived down here about -- I
23 just moved down here about three years ago.

24 AGENT ADAMS: Three years.
25

1 MR. DeROSSETT: It's a Michigan number, I get a
2 discount, the college I went to up in Michigan through
3 AT&T, so.

4 AGENT ADAMS: Okay. And what's your home address.

5 MR. DeROSSETT: 1051 Covina Street.

6 AGENT ADAMS: Covina Street?

7 MR. DeROSSETT: Em-hmm.

8 AGENT ADAMS: And where's that at, Cocoa?

9 MR. DeROSSETT: Yeah, Cocoa.

10 AGENT ADAMS: Okay. John, do you know what Miranda
11 is?

12 MR. DeROSSETT: Yeah. I've never had it read to
13 me.

14 AGENT ADAMS: You've never had it read to you?

15 MR. DeROSSETT: No, I haven't. I know it's the
16 right to remain silent.

17 AGENT ADAMS: Okay. Yep, that's exactly what I'm
18 going to read to you. We'll go over it, okay?

19 MR. DeROSSETT: Em-hmm.

20 AGENT ADAMS: All right. You have the right to
21 remain silent. Do you understand what that means?

22 MR. DeROSSETT: That I don't have to say anything.

23 AGENT ADAMS: Yeah, exactly. Anything you say can
24 be used against you in court. Do you understand that?

25 MR. DeROSSETT: Em-hmm.

1 AGENT ADAMS: All right. If you have any
2 ques -- or you have the right to talk to a lawyer for
3 advice before we ask you any questions, and to have him
4 or her with you during questioning. Do you understand
5 that?

6 MR. DeROSSETT: Em-hmm.

7 AGENT ADAMS: All right. If you cannot afford a
8 lawyer one will be appointed for you before any
9 questioning if you wish. Do you understand that?

10 MR. DeROSSETT: Em-hmm.

11 AGENT ADAMS: All right. And if you decide to
12 answer questions now without a lawyer present, you will
13 still have the right to stop answering at any time.

14 You will also have the right to stop answering at
15 any time until you've talked to a lawyer. Do you
16 understand that?

17 MR. DeROSSETT: Yes, ma'am.

18 AGENT ADAMS: All right.

19 MR. DEROSSETT: I've already told them the story.

20 AGENT ADAMS: Yeah. Well, with these rights in
21 mind do you want to talk to us?

22 MR. DeROSSETT: Well, I've already told you once.

23 AGENT ADAMS: Okay.

24 MR. DeROSSETT: There's nothing else to tell
25 really.

1 AGENT ADAMS: All right. Yeah, if you're willing
2 to speak with me I'd like to talk with you about what
3 happened. If you don't want to that's cool too, but
4 I'm --

5 MR. DeROSSETT: Yeah, yeah. Well, it looks like we
6 will.

7 AGENT ADAMS: All right. Do you remember what time
8 all this happened?

9 MR. DeROSSETT: Oh, I don't know, close to 10:00,
10 9:30, 10:00, somewhere around in there.

11 AGENT ADAMS: All right. How long had you been
12 home tonight?

13 MR. DeROSSETT: I've been home all day today.

14 AGENT ADAMS: All day?

15 MR. DeROSSETT: Em-hmm.

16 AGENT ADAMS: And who was with you at home during
17 the day?

18 MR. DeROSSETT: My niece, Mary.

19 AGENT ADAMS: Your niece, Mary?

20 MR. DeROSSETT: Em-hmm.

21 AGENT ADAMS: And do know her last name? I know
22 you said her maiden name was the same as yours.

23 MR. DeROSSETT: Ellis.

24 AGENT ADAMS: Ellis. So, it's Mary Ellis now, but
25 it used to be Mary DeRossett?

1 MR. DeROSSETT: Right, Mary DeRossett.

2 AGENT ADAMS: DeRossett, okay. And was she home
3 with you all day?

4 MR. DeROSSETT: Well, she was in and out.

5 AGENT ADAMS: In an out. Does she drive?

6 MR. DeROSSETT: Well, yeah.

7 AGENT ADAMS: Okay. What kind of car does she
8 drive?

9 MR. DeROSSETT: Well, she drives my BMW.

10 AGENT ADAMS: Okay. You have a BMW registered to
11 you, but your niece uses it?

12 MR. DeROSSETT: Right, right.

13 AGENT ADAMS: All right. Does she live with you?

14 MR. DeROSSETT: Yeah. Yeah, she's been staying
15 there for about a year now.

16 AGENT ADAMS: And you said she was in and out. Do
17 you know the last time that she left for the evening
18 before all this happened?

19 MR. DeROSSETT: Oh, I don't know, I wasn't -- I
20 wasn't keeping track. I took a nap earlier before this
21 happened.

22 AGENT ADAMS: Okay.

23 MR. DeROSSETT: So, I don't know. And I was
24 talking on the phone to my daughter and I seen her go
25 out. So, that was around dark, 7:00, something like

1 that.

2 AGENT ADAMS: All right. So, you were on the phone
3 with your daughter?

4 MR. DeROSSETT: Em-hmm.

5 AGENT ADAMS: Okay. And where does your --

6 MR. DeROSSETT: And my daughter's mother some.

7 AGENT ADAMS: All right. Well, where does your
8 daughter live?

9 MR. DeROSSETT: Michigan.

10 AGENT ADAMS: In Michigan?

11 MR. DeROSSETT: Em-hmm.

12 AGENT ADAMS: And what's her name?

13 MR. DeROSSETT: Julie, Julie Marie.

14 AGENT ADAMS: Julie Marie?

15 MR. DeROSSETT: Em-hmm, my mama's name.

16 AGENT ADAMS: Okay. And what is Julie's phone
17 number?

18 MR. DeROSSETT: Oh God, it's something -- 734 --

19 AGENT ADAMS: 724?

20 MR. DeROSSETT: 734.

21 AGENT ADAMS: 734.

22 MR. DeROSSETT: 761 --

23 AGENT ADAMS: 761.

24 MR. DeROSSETT: 1861. No, that's not right.

25 734-754-1861. That's right.

1 AGENT ADAMS: All right. 1861?

2 MR. DeROSSETT: Em-hmm.

3 AGENT ADAMS: All right. And you're not sure about
4 what time you were talking to her, but you know it was
5 at dark time?

6 MR. DeROSSETT: Well, it was right around dark,
7 somewhere around there.

8 AGENT ADAMS: Okay. So, you're on your phone with
9 your daughter, and where's Mary?

10 MR. DeROSSETT: Well, I was in the bedroom and she
11 was, you know, she was in her bedroom and back and
12 forth, and going out on the sun room and smoke and I
13 think she was out once or twice.

14 AGENT ADAMS: Okay. Do you know what she was
15 doing?

16 MR. DeROSSETT: Not exactly.

17 AGENT ADAMS: Okay, and --

18 MR. DeROSSETT: I figured she went to buy
19 cigarettes one time.

20 AGENT ADAMS: All right. And you were in your
21 bedroom on the phone with your daughter?

22 MR. DeROSSETT: Em-hmm.

23 AGENT ADAMS: Can you remember what alerted you to
24 Mary going outside?

25 MR. DeROSSETT: Oh, when this happened?

1 AGENT ADAMS: Em-hmm.

2 MR. DeROSSETT: Well, the doorbell rang and I was
3 eating. I just took a -- took my plate in there and
4 it's laying in the bed right now.

5 AGENT ADAMS: Okay.

6 MR. DeROSSETT: I didn't even get to -- I only got
7 a bite or two and that was --

8 AGENT ADAMS: Were you still on the phone with your
9 daughter or had you hung up?

10 MR. DeROSSETT: Oh, no, no, I had hung up.

11 AGENT ADAMS: Okay.

12 MR. DeROSSETT: But I was talking to my other
13 daughter. I talked to both of them tonight.

14 AGENT ADAMS: All right. Were you on the phone
15 when you were eating when the doorbell rang?

16 MR. DeROSSETT: No, no.

17 AGENT ADAMS: Okay.

18 MR. DeROSSETT: I wasn't on the phone.

19 AGENT ADAMS: So, we're off the phone?

20 MR. DeROSSETT: Em-hmm.

21 AGENT ADAMS: Who make dinner?

22 MR. DeROSSETT: Oh, I did.

23 AGENT ADAMS: Okay. And so you made the dinner.
24 Was Mary eating too?

25

1 MR. DeROSSETT: No, she told me she wasn't eating
2 that.

3 AGENT ADAMS: Okay. So, you're in your bedroom
4 eating dinner and you hear the doorbell?

5 MR. DeROSSETT: Em-hmm.

6 AGENT ADAMS: And then what happens?

7 MR. DeROSSETT: Well, she went to the door bell. I
8 could hear -- I mean, she went to the door and answered
9 it, I guess. And the next thing I know she's yelling
10 help, help me.

11 AGENT ADAMS: All right. Could you see anything
12 from your bedroom as far as what was going on at the
13 door?

14 MR. DeROSSETT: No. Well, I just had it cracked
15 open about a foot.

16 AGENT ADAMS: Okay.

17 MR. DeROSSETT: So, I couldn't really see over the
18 doorway, you know. You know, I could see straight
19 through the hallway into the back bedroom where she's
20 at.

21 AGENT ADAMS: Okay.

22 MR. DeROSSETT: But I can't see the door.

23 AGENT ADAMS: All right.

24 MR. DEROSSETT: Or where --

25 AGENT ADAMS: So, she goes to answer the door?

1 MR. DeROSSETT: Em-hmm.

2 AGENT ADAMS: And do you see her actually get up
3 from her room and go answer the door, or how do you know
4 she did that?

5 MR. DeROSSETT: Well, I seen her, like I said,
6 walking over to the door. I didn't actually see her
7 open the door.

8 AGENT ADAMS: Okay.

9 MR. DeROSSETT: But I guess she did. But that's
10 when -- that's when it all happened.

11 AGENT ADAMS: Okay. And then what happened, as far
12 as when she answered the door? Do you hear her say
13 anything?

14 MR. DeROSSETT: She's screaming.

15 AGENT ADAMS: Or did you hear anybody else say
16 anything as far as --

17 MR. DeROSSETT: No, I didn't a hear word, other
18 than her screaming for help.

19 AGENT ADAMS: Okay. So, she answers the door. And
20 how long from the time that you believe she would've got
21 to the door to where you hear her screaming for help?

22 MR. DeROSSETT: Oh, I don't know, maybe a minute, a
23 minute and-a-half.

24 AGENT ADAMS: A minute?

25 MR. DeROSSETT: Yeah.

1 AGENT ADAMS: Okay.

2 MR. DeROSSETT: Okay. (Indiscernible) I can't move
3 my left arm or nothing.

4 AGENT ADAMS: You're in a pickle, huh?

5 MR. DeROSSETT: Oh God, I'm not going to (groaning)
6 so, I'm getting treated like a criminal by the cops, and
7 I didn't know who in the hell they were.

8 AGENT ADAMS: Well, that's what I would like to
9 hear about as far as, you know, what happened.

10 MR. DeROSSETT: Yeah. Well, I had no idea who they
11 were.

12 AGENT ADAMS: Okay. So --

13 MR. DeROSSETT: They could've been the man in the
14 moon, they could've been anybody. Who knows.

15 AGENT ADAMS: All right. So, you see Mary go out
16 to the door, She's there for about a minute, and then
17 you hear her screaming for help?

18 MR. DeROSSETT: Em-hmm.

19 AGENT ADAMS: All right. And what you do? Are you
20 still in your bedroom during this entire time?

21 MR. DeROSSETT: Well -- well, she started -- you
22 know, she sounded pretty scared.

23 AGENT: Em-hmm.

24

25

1 MR. DeROSSETT: So, I grabbed my gun and -- well,
2 like I said, and that's when I told him I went to the
3 doorway.

4 AGENT ADAMS: Em-hmm.

5 MR. DeROSSETT: And I had seen what looked like two
6 or three people out there had a hold of her.

7 AGENT ADAMS: Okay.

8 MR. DeROSSETT: And when they seen me they kind of
9 spread out. And I went out there, went out the doorway
10 and Mary ran in the doorway and (indiscernible) --

11 UNKNOWN MALE: And lots of talking too. No, that's
12 the trauma, that's everything going on that these guys,
13 so.

14 AGENT ADAMS: Where was your gun located?

15 MR. DeROSSETT: Well, I keep -- I keep it on the
16 headboard of my bed.

17 AGENT ADAMS: All right. You have like a bookcase
18 headboard?

19 MR. DeROSSETT: Yeah, but actually -- actually I
20 keep the -- I keep the Glock in the truck. But I
21 brought the Glock in because I -- I went to church last
22 night and I threw it in my bag or in my bag with my
23 bible and all that stuff and I take it into church.

24 Pastor knows I got it. (Indiscernible) But anyway,
25 it ended up in the house last night.

1 AGENT ADAMS: So, you brought it in last night when
2 you brought in your stuff?

3 MR. DeROSSETT: When I brought in my -- yeah,
4 right, right, right.

5 AGENT ADAMS: Okay. So, it was on the headboard of
6 your bed?

7 MR. DeROSSETT: Yeah.

8 AGENT ADAMS: You hear her crying for help?

9 MR. DeROSSETT: Yeah.

10 AGENT ADAMS: And so you get your gun. Did you
11 ever leave the bedroom before you heard her?

12 MR. DeROSSETT: No, no. No, I just -- I just kind
13 of stretched out there and I was getting ready to eat.

14 AGENT ADAMS: Okay.

15 MR. DeROSSETT: And Mary, you know, went on by to
16 answer it, before she started to screaming.

17 AGENT ADAMS: All right. So, you take your gun
18 and -- is there anybody else home or nearby?

19 MR. DeROSSETT: Nope. No, not at all.

20 AGENT ADAMS: All right. So, what's the first
21 thing you recall seeing?

22 MR. DeROSSETT: Well, just that they had a hold of
23 her. There was two or three people that had a hold of
24 her.

25

1 AGENT ADAMS: Okay. And by having a hold of her
2 did they have her by the arms or legs or?

3 MR. DeROSSETT: Well, she's standing up, and they
4 just got a hold of her like they're taking her forcibly.

5 AGENT ADAMS: Okay. Were her hands --

6 MR. DeROSSETT: -- with them.

7 AGENT ADAMS: (Cont'd) up in the air or were
8 they --

9 MR. DeROSSETT: Well, it was dark.

10 AGENT: Okay.

11 MR. DeROSSETT: It was dark. I couldn't see every
12 detail of it at the time.

13 AGENT ADAMS: All right. So, you're not sure where
14 her hands were, but she was standing?

15 MR. DeROSSETT: She was standing and they had a
16 hold of her.

17 AGENT ADAMS: Was she facing towards the house
18 where you could see, or was she facing out towards the
19 road?

20 MR. DeROSSETT: No, I only seen her back.

21 AGENT ADAMS: You only seen her back?

22 MR. DeROSSETT: Yeah.

23 AGENT ADAMS: And about how far away from the house
24 was she at this point?

25

1 MR. DeROSSETT: Oh, I don't know, 10, 15 feet
2 maybe.

3 AGENT ADAMS: Okay. So, when you approached the
4 door to see what's going on outside, she's 10 or 15 feet
5 away from the door being held by, you said two or three
6 people?

7 MR. DeROSSETT: Em-hmm.

8 AGENT ADAMS: All right. And so you have your gun.
9 Do you think the reason they scattered is because they
10 saw your gun?

11 MR. DeROSSETT: Well, maybe.

12 AGENT ADAMS: Okay. Did you say anything as far as
13 to make them scatter? I mean --

14 MR. DeROSSETT: Well, I just got there and said
15 what's going on out here.

16 AGENT ADAMS: Okay.

17 MR. DeROSSETT: You know, and I think my
18 adrenaline's starting --

19 AGENT ADAMS: Okay. So, you say What's going on
20 out here?

21 MR. DeROSSETT: Yeah, yeah.

22 AGENT ADAMS: And that scared them off?

23 MR. DeROSSETT: Yeah, pretty much.

24

25

1 AGENT ADAMS: All right. Now that you know that
2 they were cops do you think that -- still believe that
3 that's the same reaction that they would have when
4 somebody says, hey, what's going on?

5 MR. DeROSSETT: Well, I would think they would
6 answer me, identify themselves.

7 AGENT ADAMS: Right. And you're saying that you
8 don't remember any of that happening?

9 MR. DeROSSETT: Nothing, no, not at all.

10 AGENT ADAMS: Okay. So --

11 MR. DeROSSETT: No, hell no.

12 AGENT ADAMS: Now that you know do you think that
13 they saw your gun and that's what made them --

14 MR. DeROSSETT: Well, it was either that or when I
15 verbally said something.

16 AGENT ADAMS: Do you think cops do that when
17 somebody says, hey, what's going on? We just let go of
18 people and run off?

19 MR. DeROSSETT: I don't know.

20 AGENT ADAMS: Okay.

21 MR. DeROSSETT: I've never experienced anything
22 like this before.

23 AGENT ADAMS: All right. So, when you come out and
24 you say, hey, what's going on and then take off --

25

1 MR. DeROSSETT: Well, I was inside the house when I
2 said that.

3 AGENT ADAMS: Oh, okay. So, you could just see out
4 the door? How far --

5 MR. DeROSSETT: Yeah, and then --

6 AGENT ADAMS: (Cont'd) were you from the door do
7 you think?

8 MR. DeROSSETT: (Cont'd) like I said, I could see
9 they looked like shadows. They were dressed in dark.

10 AGENT ADAMS: They looked like shadows?

11 MR. DeROSSETT: Yeah, and when I seen her, she had
12 gray -- had a gray dress on. I seen that.

13 AGENT ADAMS: Okay. And where were you in
14 proximity to the door do you think?

15 MR. DeROSSETT: Oh, I don't know, a couple feet.

16 AGENT ADAMS: Does your door open out or does it
17 open in?

18 MR. DeROSSETT: The door opens in.

19 AGENT ADAMS: In, okay. So, you're a couple feet
20 from the door, you can see out. She's about you said
21 ten feet away?

22 MR. DeROSSETT: Yeah, roughly.

23 AGENT ADAMS: All right. And you can see that
24 she's being held?

25

1 MR. DeROSSETT: Em-hmm. Well, as I get closer
2 they're trying to drag her and she's resisting.

3 AGENT ADAMS: Okay. And she's screaming, right?

4 MR. DeROSSETT: Em-hmm.

5 AGENT ADAMS: So, you say, hey, what's going on?
6 The people who have her at that time you don't know who
7 they are?

8 MR. DeROSSETT: Em-hmm.

9 AGENT ADAMS: They scatter.

10 MR. DeROSSETT: Em-hmm.

11 AGENT ADAMS: And then what happens?

12 MR. DeROSSETT: Well, that's when I come out the
13 door and --

14 AGENT ADAMS: Did Mary come inside?

15 MR. DeROSSETT: Yeah, she came inside.

16 AGENT ADAMS: Okay.

17 MR. DeROSSETT: And then that's when I stepped out
18 and I shot the gun up in the air.

19 AGENT ADAMS: Okay. So, you step out onto the
20 porch?

21 MR. DeROSSETT: Em-hmm.

22 AGENT ADAMS: Is there a covering on the porch?

23 MR. DeROSSETT: Yeah, yeah, yeah, it's a porch. I
24 just kind of reached my arm out, so I didn't shoot it
25 into the porch.

1 AGENT ADAMS: So you didn't shoot up into the
2 ceiling?

3 MR. DeROSSETT: Right, right, right.

4 AGENT ADAMS: So, you step kind of out and shoot
5 around the ceiling up into the sky?

6 MR. DeROSSETT: Right, right.

7 AGENT ADAMS: And then what happens?

8 MR. DeROSSETT: Well, at that -- I saw a light
9 flash and I thought -- I didn't know if it was a gun
10 going off. I couldn't really tell.

11 AGENT ADAMS: Em-hmm.

12 MR. DeROSSETT: I couldn't really tell.

13 AGENT ADAMS: Where was the light?

14 MR. DeROSSETT: Well, it was off to my left.

15 AGENT ADAMS: Off to your left you see a light?

16 MR. DeROSSETT: Em-hmm, yeah, yeah. And then the
17 next thing I know, I hear them fire.

18 AGENT ADAMS: Okay. So, you see the light first
19 and then hear the shots?

20 MR. DeROSSETT: Yeah, yeah.

21 AGENT ADAMS: Okay. How many shots would you say
22 you heard?

23 MR. DeROSSETT: Oh, I don't know, a couple.

24 AGENT ADAMS: Okay. What did you do when you heard
25 the shots?

1 MR. DeROSSETT: Well, I started shooting back.

2 AGENT ADAMS: Okay. Do you remember which
3 direction you shot?

4 MR. DeROSSETT: Yeah, I think I -- I shot to the
5 left. I'm not sure if I shot to the right, but I shot
6 to the center.

7 AGENT ADAMS: Okay.

8 MR. DeROSSETT: Because there was one in the
9 center.

10 AGENT ADAMS: So, to the left and the center?

11 MR. DeROSSETT: And the one on the right is the one
12 that hit me.

13 AGENT ADAMS: Oh, okay. So, you're shooting to the
14 left and the center. Is that where the light was from?

15 MR. DeROSSETT: Well, the light was coming from the
16 left.

17 AGENT ADAMS: Okay. So, you shot towards the
18 light, or do you remember where you shot first?

19 MR. DeROSSETT: No, I didn't shoot to the right. I
20 shot to the -- I shot to the left and then I shot to the
21 center.

22 AGENT ADAMS: Okay, left and center?

23 MR. DeROSSETT: Yeah, I shot about three or four
24 rounds. I'm not really sure.

25

1 AGENT ADAMS: All right. I'm sorry, maybe I
2 misunderstood. Which side was the light on?

3 MR. DeROSSETT: The left.

4 AGENT ADAMS: On the left, okay.

5 MR. DeROSSETT: Em-hmm.

6 AGENT ADAMS: And then you shot to the left and
7 shot to the center, but you did not shoot to the right?

8 MR. DeROSSETT: No.

9 AGENT ADAMS: You believe the right is where the
10 shots came --

11 MR. DeROSSETT: No, my truck -- my truck was over
12 there. I didn't want to hit my truck.

13 AGENT ADAMS: All right, that makes sense. So, you
14 have a truck and a BMW?

15 MR. DeROSSETT: Yeah.

16 AGENT ADAMS: Okay. Both of them were parked in
17 your driveway at that time?

18 MR. DeROSSETT: Em-hmm.

19 AGENT ADAMS: All right. And you'll have to
20 forgive me, I have not been to your house.

21 MR. DeROSSETT: Em-hmm.

22 AGENT ADAMS: So, it's hard for me to put this
23 picture in my head. So, I may be redundant, and I don't
24 mean to irritate you.

25 MR. DeROSSETT: No, ma'am, you're not.

1 AGENT ADAMS: (Cont'd) I'm just trying to paint a
2 picture in my head.

3 MR. DeROSSETT: In the ambulance here I got the
4 story straight.

5 (Multiple speakers.)

6 AGENT ADAMS: Yeah, I just want to know what
7 happened. That's what I want to know.

8 MR. DeROSSETT: Yeah, yeah.

9 AGENT ADAMS: As far as -- so, you don't shoot off
10 into the right, but you hear shots from the right, and
11 you believe those are the ones that hit you?

12 MR. DeROSSETT: Yeah, yeah, I could tell.

13 AGENT ADAMS: Okay.

14 MR. DeROSSETT: I could tell because I was -- I was
15 kind of looking to my left, and I was leaning -- well, I
16 was standing this way, sideways.

17 AGENT ADAMS: Sideways?

18 MR. DeROSSETT: And that's -- that's when I felt
19 it.

20 AGENT ADAMS: Okay.

21 MR. DeROSSETT: And that's where it came from.

22 AGENT ADAMS: Now, were you still on the porch far
23 enough out --

24 MR. DeROSSETT: I didn't go off the porch.
25

1 AGENT ADAMS: Okay. But you were still far enough
2 out to have reached over and shot up around the ceiling?

3 MR. DeROSSETT: Well, yeah, that wasn't no big
4 deal.

5 AGENT ADAMS: So, how deep is your porch? Is it
6 just a couple of feet or it, you know, a deep porch, or?

7 MR. DeROSSETT: Oh, it's about -- it's about three
8 by six. It goes out about three, three maybe four feet.
9 And goes along --

10 AGENT ADAMS: Three or four feet. And then it's
11 six feet long?

12 MR. DeROSSETT: Yeah, about that, or whatever.

13 AGENT ADAMS: All right. So, you are still in the
14 same spot, and you said you're standing to the side.
15 Which side were you facing?

16 MR. DeROSSETT: I was facing the left.

17 AGENT ADAMS: Okay. So, you're standing to the
18 side facing the left, and you reach out, shoot, then you
19 see a light?

20 MR. DeROSSETT: Em-hmm.

21 AGENT ADAMS: Then you --

22 MR. DeROSSETT: Well, yeah, I seen the gunfire
23 coming from the left.

24 AGENT ADAMS: Okay, okay.

25 MR. DeROSSETT: And I shot to the left.

1 AGENT ADAMS: So then you addressed the gunfire
2 from the left?

3 MR. DeROSSETT: Em-hmm, fast.

4 AGENT ADAMS: And then you believe you hear gunfire
5 from the right, and that's what hit you?

6 MR. DeROSSETT: Em-hmm.

7 AGENT ADAMS: Okay. Well, that makes sense then.

8 MR. DEROSSETT: Yeah.

9 AGENT ADAMS: What do you do when you're hit?

10 MR. DeROSSETT: I fall down.

11 AGENT ADAMS: So, you fell to the ground?

12 MR. DeROSSETT: Em-hmm.

13 AGENT ADAMS: At what time did you stop shooting?

14 MR. DeROSSETT: I didn't shoot any more after that.

15 AGENT ADAMS: Okay. So, after you were hit you
16 didn't shoot anymore?

17 MR. DeROSSETT: I don't think I did. I'm pretty
18 sure I didn't.

19 AGENT ADAMS: Do you know where the gun is?

20 MR. DeROSSETT: Do I know where it's at?

21 AGENT ADAMS: Em-hmm.

22 MR. DeROSSETT: It's at the house.

23 AGENT ADAMS: Okay. Did you take it inside with
24 you?

25 MR. DeROSSETT: Yeah.

1 AGENT ADAMS: Okay. So, you fall to the porch, you
2 don't shoot anymore. When does the gunfire stop coming
3 in?

4 MR. DeROSSETT: Well, it stopped once I hit the
5 ground.

6 AGENT ADAMS: Okay.

7 MR. DeROSSETT: I don't think anybody else fired.
8 I know I -- I don't think I did either.

9 AGENT ADAMS: Okay. About how many rounds do you
10 think you fired from your gun?

11 MR. DeROSSETT: I don't know, maybe four or five.

12 AGENT ADAMS: Maybe four and five?

13 MR. DeROSSETT: Something like that.

14 AGENT ADAMS: Is that in addition to the one that
15 you popped off?

16 MR. DeROSSETT: Yeah.

17 AGENT ADAMS: Okay. And then how many rounds would
18 you say were fired towards you?

19 MR. DeROSSETT: Oh, I don't know, probably three to
20 four.

21 AGENT ADAMS: Three to four?

22 MR. DeROSSETT: Yeah, maybe five.

23 AGENT ADAMS: Okay. Do you know how many times
24 that you were struck?

25

1 MR. DeROSSETT: Just the once. I didn't know I was
2 hit in the elbow until I was in the house.

3 AGENT ADAMS: Okay. So, do you think it was twice
4 or once?

5 MR. DeROSSETT: No, I got hit twice.

6 AGENT ADAMS: Hit twice, okay.

7 MR. DeROSSETT: Yeah.

8 AGENT ADAMS: And do you know where you were hit?

9 MR. DeROSSETT: Well, I got hit in the shoulder, I
10 knew that.

11 AGENT ADAMS: Okay, in the shoulder?

12 MR. DeROSSETT: Yeah. But I didn't know -- at the
13 time I couldn't move my arm, and my hand was kind of
14 curled up like this.

15 AGENT ADAMS: So like the left shoulder and the
16 left arm?

17 MR. DeROSSETT: Em-hmm, yeah.

18 AGENT ADAMS: Okay. And nowhere else?

19 MR. DeROSSETT: Uh-uh.

20 AGENT ADAMS: Okay. Do you know if you hit
21 anybody?

22 MR. DeROSSETT: I have no idea.

23 AGENT ADAMS: Okay. Did -- at what point when you
24 said you stopped firing, they stopped firing, how long
25 do you think you were down on the porch before you were

1 able to get back inside?

2 MR. DeROSSETT: Well, I don't know, about two or
3 three minutes.

4 AGENT ADAMS: Two or three minutes. So, it was a
5 little while?

6 MR. DeROSSETT: Yeah.

7 AGENT ADAMS: Did you hear anything during this
8 time?

9 MR. DeROSSETT: Uh-uh.

10 AGENT ADAMS: All right. Did you hear anything
11 when you first came outside?

12 MR. DeROSSETT: No, I didn't hear anything at all.

13 AGENT ADAMS: All right.

14 MR. DEROSSETT: From anybody.

15 AGENT ADAMS: And did you hear Mary say anything?

16 MR. DeROSSETT: No, no. She just came running in
17 the house.

18 AGENT ADAMS: So, she just come running in the
19 house?

20 MR. DeROSSETT: Em-hmm. And then I'm not sure, I
21 think she might have slipped back out the door again,
22 but I'm not really sure.

23 AGENT ADAMS: Okay.

24 MR. DEROSSETT: But I think she got hit when -- she
25 got hit.

1 AGENT ADAMS: She got hit with a bullet?

2 MR. DeROSSETT: Yeah.

3 AGENT ADAMS: Okay.

4 MR. DeROSSETT: Somewhere, I'm not sure where.

5 AGENT ADAMS: All right.

6 MR. DeROSSETT: Maybe on the arm or kind of grazed
7 her I guess.

8 AGENT ADAMS: Okay. Do you think it's possible
9 that your gunfire could have struck her?

10 MR. DeROSSETT: No, no.

11 AGENT ADAMS: Okay. So, it had to have been
12 gunfire that was coming towards the house that struck
13 her?

14 MR. DeROSSETT: Right, right.

15 AGENT ADAMS: Are you presuming that she was
16 outside, that's how she had the gunshot, or did you see
17 her out there?

18 MR. DeROSSETT: Well, you know, I don't know, the
19 screen was kind of -- I don't know if it had some holes
20 in it, but I've got one of these old-time screens in
21 there.

22 AGENT ADAMS: Em-hmm.

23 MR. DeROSSETT: They got rubber seal or --

24 AGENT ADAMS: Okay. Like a twine?
25

1 MR. DeROSSETT: Yeah, yeah, yeah. It was like -- I
2 don't know, sort of like she hit it or I hit it and
3 (indiscernible).

4 AGENT ADAMS: All right. And what part of the
5 porch did you --

6 MR. DeROSSETT: I'm very uncomfortable.

7 AGENT ADAMS: Yeah, I'm sorry about that. At what
8 point -- you all right? I'm just going to help you out.

9 MR. DeROSSETT: You know, I don't know if I'm all
10 right or not (indiscernible).

11 AGENT ADAMS: I think you're doing all right.

12 MR. DEROSSETT: Can I get some more water please?
13 Oh, God.

14 AGENT ADAMS: Okay, so, you believe that you were
15 on the ground of the porch maybe two or three minutes
16 before you were able to make it inside?

17 MR. DeROSSETT: Yeah, something like that.

18 AGENT ADAMS: All right. Did Mary get in first or
19 did you?

20 MR. DeROSSETT: Well, she went in once they
21 released her.

22 AGENT ADAMS: Okay.

23 MR. DeROSSETT: Once I got outside they -- I'm not
24 sure, I wasn't paying much attention.

25

1 AGENT ADAMS: No, I can understand that. It was
2 probably a pretty stressful circumstance.

3 MR. DeROSSETT: I know she got inside.

4 AGENT ADAMS: Okay.

5 MR. DeROSSETT: Yeah, I probably should've went
6 inside, too.

7 AGENT ADAMS: Okay.

8 MR. DeROSSETT: But I started shooting.

9 AGENT ADAMS: Right. Do you recall exactly, like
10 where the gunfire came from, the first --

11 MR. DeROSSETT: Well, it came to the -- from the
12 left.

13 AGENT ADAMS: From the left?

14 MR. DeROSSETT: But I couldn't, you know, I
15 couldn't tell if the guy in the center was shooting or
16 not.

17 AGENT ADAMS: Okay.

18 MR. DeROSSETT: I think he had a light, you know,
19 it was either a light or you could see the flash of a
20 gun.

21 AGENT ADAMS: Okay. Do You have any idea how far
22 away?

23 MR. DeROSSETT: It wasn't too far away, maybe 20
24 feet.

25

1 AGENT ADAMS: Okay. Is there -- if I'm standing on
2 your porch and I'm looking out like you were.

3 MR. DeROSSETT: Em-hmm.

4 AGENT ADAMS: You said your cars were off to the
5 right?

6 MR. DeROSSETT: Right, in the driveway.

7 AGENT ADAMS: What's straight ahead?

8 MR. DeROSSETT: I guess the neighbor across the
9 street.

10 AGENT ADAMS: The neighbor across the street?

11 MR. DeROSSETT: Yeah.

12 AGENT ADAMS: And then what's off to the left?

13 MR. DeROSSETT: Well, I'm on a corner.

14 AGENT ADAMS: Okay.

15 MR. DeROSSETT: Actually, I got a sheriff commander
16 living across the street from me.

17 AGENT ADAMS: Okay.

18 MR. DeROSSETT: But yeah, and that's it.

19 AGENT ADAMS: All right. And when you get back
20 into the house, what happens at that point?

21 MR. DeROSSETT: Well, I closed the door and I told
22 her to call 9-1-1 and get an ambulance.

23 AGENT ADAMS: Em-hmm.

24 MR. DeROSSETT: And I was barely keeping
25 consciousness.

1 AGENT ADAMS: Sure.

2 MR. DeROSSETT: And passing out. And she called,
3 and it seemed like they were taking forever --

4 AGENT ADAMS: Em-hmm.

5 MR. DeROSSETT: (Cont'd) to answer, but the next
6 thing you know you've got -- got the -- oh, what do you
7 call that? Oh God, I can't --

8 AGENT ADAMS: Okay. No, take your time.

9 MR. DeROSSETT: That's when you got the SWAT team
10 out there.

11 AGENT ADAMS: Okay. How long a period of time, do
12 you think?

13 MR. DeROSSETT: About 10 minutes.

14 AGENT ADAMS: About 10 minutes?

15 MR. DeROSSETT: Yeah, pretty much.

16 AGENT ADAMS: Okay. Did Mary have anything with
17 her as far as was she wearing handcuffs?

18 MR. DeROSSETT: No.

19 AGENT ADAMS: When she got inside?

20 MR. DeROSSETT: Uh-uh.

21 AGENT ADAMS: So, she didn't have handcuffs on or
22 anything like that?

23 MR. DeROSSETT: Uh-uh.

24

25

1 AGENT ADAMS: Okay. Other than the gray dress, can
2 you remember anything else she was wearing? Did she
3 have shoes on or?

4 MR. DeROSSETT: I don't know, I think she had a
5 checkered white and black striped shirt or something
6 like that.

7 AGENT ADAMS: Okay. You said you're inside about
8 10 minutes before the SWAT team gets there?

9 MR. DeROSSETT: Yeah, I'm in there trying to stop
10 the bleeding. And, you know, I had my shorts on and I
11 had to get my pants and things to kind of --

12 AGENT ADAMS: Right.

13 MR. DeROSSETT: But anyway, I had got that on.

14 AGENT ADAMS: So, you got dressed afterwards?

15 MR. DeROSSETT: Yeah, I was trying to get dressed.

16 AGENT ADAMS: Okay. What were you wearing when
17 this happened?

18 MR. DeROSSETT: Well, I think I just had shorts on.

19 AGENT ADAMS: Just shorts?

20 MR. DeROSSETT: Shorts, yeah. Whatever, basketball
21 shorts.

22 AGENT ADAMS: Okay. Do you know where those are
23 now?

24 MR. DeROSSETT: I don't know if I have -- I think I
25 might have had them on under.

1 AGENT ADAMS: Okay. So, you just put pants on top
2 of your --

3 MR. DeROSSETT: Somebody just cut them off, my
4 favorite pair.

5 AGENT ADAMS: Oh. Well, paramedics, you know,
6 they're mostly concerned about making sure you're okay.

7 MR. DeROSSETT: Right, I understand.

8 AGENT ADAMS: So, you know, I know they don't do it
9 on purpose.

10 MR. DeROSSETT: Right, right. I understand.

11 AGENT ADAMS: Were you wearing a shirt?

12 MR. DeROSSETT: No, I didn't have a shirt on.

13 AGENT ADAMS: Okay. What about Mary, you said you
14 believe she was hit with a bullet. Do you know where
15 she was shot?

16 MR. DeROSSETT: Well, you know, I didn't know if
17 she had been hit until they put her -- me in the police
18 car with her.

19 AGENT ADAMS: Em-hmm.

20 MR. DeROSSETT: After they threw me on the ground
21 and choked me, choked me out.

22 AGENT ADAMS: Em-hmm.

23 MR. DeROSSETT: Everybody's hitting on me.

24 AGENT ADAMS: Was that the SWAT team?

25 MR. DeROSSETT: Huh?

1 AGENT ADAMS: Was that the SWAT team that you --

2 MR. DeROSSETT: Well, I don't know if it was a SWAT
3 team.

4 AGENT ADAMS: Okay. That was your impression
5 though?

6 MR. DeROSSETT: Right.

7 AGENT ADAMS: All right. So, you're in the house,
8 you ask Mary to call 9-1-1, you're in there about 10
9 minutes?

10 MR. DeROSSETT: Em-hmm.

11 AGENT ADAMS: What makes you aware that there are
12 people outside?

13 MR. DeROSSETT: Well, we opened the door and seen
14 lights flashing.

15 AGENT ADAMS: Okay.

16 MR. DeROSSETT: We was waiting for an ambulance to
17 get there.

18 AGENT ADAMS: Gotcha. So, you thought maybe it
19 was --

20 MR. DeROSSETT: But we got the police there
21 instead.

22 AGENT ADAMS: All right.

23 MR. DeROSSETT: And we weren't expecting that.

24 AGENT ADAMS: Okay.

25

1 MR. DeROSSETT: You know, we thought we had
2 kidnappers -- I thought we had kidnappers that was
3 kidnapping her.

4 AGENT ADAMS: Em-hmm, okay.

5 MR. DeROSSETT: And to have that happened, it's
6 like, what the hell's going on, you know?

7 AGENT ADAMS: Have you ever been involved in a
8 shooting before?

9 MR. DeROSSETT: No, just by my own self.

10 AGENT ADAMS: Okay.

11 MR. DeROSSETT: When I dropped my gun and shot
12 myself in the foot down there.

13 AGENT ADAMS: All right. So, you believe -- you
14 called for an ambulance, and you see lights outside and
15 you open the door?

16 MR. DeROSSETT: Em-hmm.

17 AGENT ADAMS: And it's blue lights?

18 MR. DeROSSETT: Em-hmm.

19 AGENT ADAMS: All right. And what happens from
20 there?

21 MR. DeROSSETT: Well, she was -- she was at the
22 door and they told me to come out with my hands up,
23 don't make no sudden moves or you'll lose your life.

24 AGENT ADAMS: Em-hmm.

25 MR. DeROSSETT: You know, that was all a shock.

1 AGENT ADAMS: Okay.

2 MR. DeROSSETT: What was going on there?

3 AGENT ADAMS: So, at that point, you're aware that
4 there are police outside?

5 MR. DeROSSETT: Yeah, yeah.

6 AGENT ADAMS: All right, prior to that --

7 MR. DeROSSETT: Well, we called 9-1-1 to get the
8 police there.

9 AGENT ADAMS: Okay.

10 MR. DeROSSETT: To find out who these guys were.

11 AGENT ADAMS: Okay. And I'm sorry, I thought you
12 called 9-1-1 to get the ambulance.

13 MR. DeROSSETT: Well, both.

14 AGENT ADAMS: Both.

15 MR. DeROSSETT: Both.

16 AGENT ADAMS: Okay. So, you weren't surprised when
17 the police were there?

18 MR. DeROSSETT: Well, no, I wasn't surprised, but
19 I was -- it shocked me to see what they did, you know.

20 AGENT ADAMS: Okay.

21 MR. DeROSSETT: You know, by ordering -- ordering
22 her out and threatening to shoot her.

23 AGENT ADAMS: Okay.

24 MR. DeROSSETT: If she made any sudden moves or
25 whatever, and then they do me the same way, so.

1 AGENT ADAMS: Okay. So, she goes out first?

2 MR. DeROSSETT: Yeah, yeah.

3 AGENT ADAMS: All right. Where did you put the gun
4 when you were in the house?

5 MR. DeROSSETT: Well, it was laying on the coffee
6 table.

7 AGENT ADAMS: On the coffee table?

8 MR. DeROSSETT: Em-hmm.

9 AGENT ADAMS: And so -- I wasn't there, but I'm,
10 guessing you didn't have the gun in your hand when you
11 went out?

12 MR. DeROSSETT: No, oh no.

13 AGENT ADAMS: Okay.

14 MR. DeROSSETT: No, no, no. No, I stuck my arms
15 up -- well, I couldn't bring my left arm up.

16 AGENT ADAMS: Em-hmm.

17 MR. DeROSSETT: And I tried to tell them that I
18 can't bring my left arm up, I'm hit.

19 AGENT ADAMS: Em-hmm.

20 MR. DeROSSETT: I'm shot, where's the ambulance at?
21 I need to get to the hospital.

22 AGENT ADAMS: Right.

23 MR. DeROSSETT: And it's like you're a dirty rotten
24 criminal for shooting.

25 AGENT ADAMS: Em-hmm, right.

1 MR. DeROSSETT: And I thought, what the hell did I
2 do, you know?

3 AGENT ADAMS: Okay. How long do you think you were
4 there before you came to the hospital?

5 MR. DeROSSETT: I don't know. Not much longer than
6 10 minutes.

7 AGENT ADAMS: All right. At one point did you
8 realize that the people that you were shooting with were
9 cops?

10 MR. DeROSSETT: Well, by the way we got treated out
11 there.

12 AGENT ADAMS: Okay.

13 MR. DeROSSETT: When we went outside. And she went
14 outside. I thought what the hell's going on here.

15 AGENT ADAMS: Okay.

16 MR. DEROSSETT: You know?

17 AGENT ADAMS: Okay. Did anybody tell you --

18 MR. DeROSSETT: I thought we had some kidnappers
19 here and --

20 AGENT ADAMS: Did you tell them about the
21 kidnappers?

22 MR. DeROSSETT: Well, they told me to shut up and
23 they didn't want to hear anything from me, And I was
24 trying to tell them. Evidently they knew what was going
25 on.

1 AGENT ADAMS: Okay.

2 MR. DeROSSETT: You know, I mean it's apparent
3 those were cops and they knew what was going on.

4 AGENT ADAMS: Right. Well, I just want to, you
5 know, I'm trying to look at this from your perspective.

6 MR. DeROSSETT: Em-hmm.

7 AGENT ADAMS: And I just wanted to know like when
8 it keyed into you. Was there a particular statement
9 that was made that made you realize that this wasn't,
10 you know, kidnapers, this was the cops?

11 MR. DeROSSETT: Run that by me again.

12 AGENT ADAMS: Is there a particular statement that
13 you heard from somebody that made you realize that these
14 weren't kidnapers?

15 MR. DeROSSETT: No, no, just by the way we were
16 being treated.

17 AGENT ADAMS: Just your overall treatment from the
18 cops?

19 MR. DeROSSETT: Right, right.

20 AGENT ADAMS: Okay. But nobody told you that?

21 MR. DeROSSETT: No, no.

22 AGENT ADAMS: Okay. And Mary never told you that
23 they were cops?

24 MR. DeROSSETT: No, no.

25 AGENT ADAMS: Okay.

1 MR. DeROSSETT: Evidentially she didn't know
2 either.

3 AGENT ADAMS: Oh, all right.

4 MR. DeROSSETT: She said they was dressed in dark,
5 dark clothing.

6 AGENT ADAMS: All right. Did you talk with Mary at
7 all, as far as -- you know, I know you said that when
8 you were caught by -- or taken into custody, they put
9 you in a car?

10 MR. DeROSSETT: Well, yeah, she was in the
11 backseat. And that's when I found out that she got
12 grazed by a bullet.

13 AGENT ADAMS: Okay. Do you remember where on her
14 body?

15 MR. DeROSSETT: I don't know, I think maybe her
16 arm. I'm not really sure.

17 AGENT ADAMS: Okay.

18 MR. DeROSSETT: She said she got hit, but she
19 didn't say where.

20 AGENT ADAMS: All right.

21 MR. DeROSSETT: She was pretty traumatized by all
22 of it.

23 AGENT ADAMS: Okay.

24 MR. DeROSSETT: And I was traumatized a bit.

25 AGENT ADAMS: Okay.

1 MR. DeROSSETT: I felt like I didn't really do
2 anything wrong.

3 AGENT ADAMS: Okay.

4 MR. DeROSSETT: I was defending myself.

5 AGENT ADAMS: All right. Are there any other guns
6 in the home?

7 MR. DeROSSETT: Well, I got a shotgun and I got a
8 38 and I've got a two shot derringer.

9 AGENT ADAMS: Okay. Is any particular reason you
10 chose to use the Glock?

11 MR. DeROSSETT: Well, yeah, I guess. I thought,
12 well, I needed it. It's more accurate than 38 and it
13 holds more.

14 AGENT ADAMS: Okay.

15 MR. DeROSSETT: If it comes to -- or whatever I've
16 got to do with it, I've got to do with it.

17 AGENT ADAMS: Right.

18 MR. DeROSSETT: So, I grabbed it instead of the 38.
19 The 38 is not really accurate.

20 AGENT ADAMS: Okay.

21 MR. DeROSSETT: It's a snub nose, detective special
22 or whatever.

23 AGENT ADAMS: Right. So, not the 38 because it's
24 not as accurate. And the shotgun?

25

1 MR. DeROSSETT: Well, the shotgun was in the
2 closet.

3 AGENT ADAMS: Okay.

4 MR. DeROSSETT: It's just kind of stored away.

5 AGENT ADAMS: All right.

6 MR. DeROSSETT: It's an old hunting gun.

7 AGENT ADAMS: Now, did you -- when you went and got
8 your -- let me see if I can remember correctly -- your
9 gun from your headboard?

10 MR. DeROSSETT: Em-hmm, one that was on the
11 headboard.

12 AGENT ADAMS: Do you hear Mary calling for help?
13 Is it loaded already, set to go, or do you have to go
14 get a clip or something?

15 MR. DeROSSETT: No, it's got a clip in it, just
16 don't have one in the chamber. I've got to cock it or
17 whatever, you know.

18 AGENT ADAMS: Okay. Do you remember when you
19 cocked the round into it?

20 MR. DeROSSETT: I cocked it before I come out of
21 bedroom.

22 AGENT ADAMS: Okay. So, you grab it, cock it, make
23 sure that, you know, you're not going to walk in there
24 with no gun -- or no round in the chamber?

25

1 MR. DeROSSETT: Right, right, if something's going
2 on.

3 AGENT ADAMS: Okay, sure. And then let me see if
4 I got this right, you come out, you hear her crying for
5 help, she's about 10 feet outside the doorway, she's got
6 people holding her --

7 MR. DeROSSETT: Yeah.

8 AGENT ADAMS: These people. Can you remember what
9 they look like? Were they men or women or?

10 MR. DeROSSETT: You know, they were dark, I
11 couldn't tell who they were.

12 AGENT ADAMS: All right. Could you tell if they
13 were white people or black people or?

14 MR. DeROSSETT: She said they were dark and I said,
15 what, are they black? You know, like black --

16 AGENT ADAMS: Skin, of course.

17 MR. DeROSSETT: Yeah.

18 AGENT ADAMS: Yeah.

19 MR. DeROSSETT: She said no, that they were dressed
20 in black.

21 AGENT ADAMS: Dressed in black.

22 MR. DeROSSETT: Dark.

23 AGENT ADAMS: Dark clothing, all right. Did she
24 give you any indication as far as how many of them?

25 MR. DeROSSETT: Well, I only seen two or three.

1 AGENT ADAMS: Two or three?

2 MR. DeROSSETT: Whenever I got out, you know, they
3 kind of scattered.

4 AGENT ADAMS: All right. Were they facing towards
5 you?

6 MR. DeROSSETT: They looked towards me and they
7 were shooting the --

8 AGENT ADAMS: Em-hmm.

9 MR. DeROSSETT: And they were trying to drag her
10 off.

11 AGENT ADAMS: Okay.

12 MR. DeROSSETT: Forcing her.

13 AGENT ADAMS: Right. So, she's resisting, she's
14 facing away from you?

15 MR. DeROSSETT: Yeah, yeah, I mean --

16 AGENT ADAMS: They look at you.

17 MR. DeROSSETT: I mean, I got there about 30, 45
18 seconds once -- when she yelled.

19 AGENT ADAMS: Okay.

20 MR. DeROSSETT: So, they didn't get too far.

21 AGENT ADAMS: Okay, so --

22 MR. DeROSSETT: Whenever they seen me and they
23 scattered.

24 AGENT ADAMS: All right. Can you recall what they
25 looked like, as far as --

1 MR. DeROSSETT: I couldn't tell, it was dark out
2 there.

3 AGENT ADAMS: Okay. If you had to, you know, based
4 on your impression of size, were they big people, little
5 people?

6 MR. DeROSSETT: About my size.

7 AGENT ADAMS: About your size, okay.

8 MR. DeROSSETT: Em-hmm.

9 AGENT ADAMS: If you had to say, would you say they
10 were men or women?

11 MR. DeROSSETT: (No audible response.)

12 AGENT ADAMS: Can't tell?

13 MR. DeROSSETT: Couldn't tell.

14 AGENT ADAMS: All right. And you can't tell as far
15 as skin color?

16 MR. DeROSSETT: Uh-uh.

17 AGENT ADAMS: All right. When -- at what point do
18 you -- you're coming to the door. At what point do you
19 go through the door and come out onto the porch, do you
20 recall?

21 MR. DeROSSETT: At what point?

22 AGENT ADAMS: Em-hmm. Did you just immediately
23 rush outside, or did you stop at the doorway for a
24 while?

25

1 MR. DeROSSETT: Well, I stopped at the doorway and
2 I kind of yelled.

3 AGENT ADAMS: Okay.

4 MR. DeROSSETT: And then they released her. And by
5 the time I got out the doorway my niece was going in.

6 AGENT ADAMS: Em-hmm.

7 MR. DeROSSETT: And I can't recall if she had got
8 all the way in when I fired the gun up, you know.
9 Everything just happened so fast.

10 AGENT ADAMS: Okay.

11 MR. DeROSSETT: I couldn't recall that. She might
12 have been inside, she might have been right at the --
13 right behind me. I don't know.

14 AGENT ADAMS: All right. Do you recall where you
15 were when they scattered?

16 MR. DeROSSETT: Well, I was in the house.

17 AGENT ADAMS: When you were in the house they
18 scattered?

19 MR. DeROSSETT: Well, they -- they let go of her.

20 AGENT ADAMS: Okay. And then she ran in and you
21 came out onto the porch?

22 MR. DeROSSETT: Well, yeah, we kind of -- you know,
23 I went out and I think she went in. I'm not really sure
24 if she went in right at that point.

25 AGENT ADAMS: Okay.

1 MR. DeROSSETT: And she may have been outside,
2 right outside the door when I fired the gun up in the
3 air.

4 AGENT ADAMS: Okay.

5 MR. DeROSSETT: I'm not really sure, I wasn't
6 looking.

7 AGENT ADAMS: Okay.

8 MR. DeROSSETT: I was trying to figure out what was
9 going on.

10 AGENT ADAMS: All right. So, when you're at the
11 door and you say, hey, what's going on they scatter?

12 MR. DeROSSETT: Em-hmm.

13 AGENT ADAMS: And let go of her?

14 MR. DeROSSETT: Right.

15 AGENT ADAMS: And you note -- and she comes into
16 the front door and you go out onto the porch?

17 MR. DeROSSETT: Em-hmm. I need some water. All
18 right, thank you.

19 AGENT ADAMS: All right. And you fire off the
20 warning shot?

21 MR. DeROSSETT: Right, right.

22 AGENT ADAMS: All right.

23 MR. DeROSSETT: Hoping to scare them off, but
24 evidently it didn't, so.

25

1 AGENT ADAMS: All right. And then they shoot back
2 after the warning shot?

3 MR. DeROSSETT: Em-hmm.

4 AGENT ADAMS: Did you shoot anything before they
5 started shooting again or?

6 MR. DeROSSETT: No, they shot first.

7 AGENT ADAMS: All right. So, you shoot off your
8 warning shot. You get shots coming from the left, if I
9 remember correctly, after you see a light?

10 MR. DeROSSETT: Em-hmm.

11 AGENT ADAMS: You're not --

12 MR. DeROSSETT: Well, I couldn't tell if it was a
13 light on a gun, you know.

14 AGENT ADAMS: A muzzle flash?

15 MR. DeROSSETT: You know, the light when a gun goes
16 off.

17 AGENT ADAMS: Okay.

18 MR. DeROSSETT: You've got a flare-up.

19 AGENT ADAMS: Right.

20 MR. DeROSSETT: So, you couldn't really tell. I
21 mean, I couldn't make it out.

22 AGENT ADAMS: All right. No, that's fair enough.
23 And then directly across from you, you believe somebody
24 from there shot at you as well?

25

1 MR. DeROSSETT: To the right, the one that --
2 that's the one that hit me.

3 AGENT ADAMS: Right. But directly across from you,
4 do you recall if anybody --

5 MR. DeROSSETT: Straight in -- straight in the
6 front of me?

7 AGENT ADAMS: Yeah.

8 MR. DeROSSETT: Well, yeah, there was somebody
9 straight in front. I can't remember if they shot or
10 not.

11 AGENT ADAMS: Okay.

12 MR. DeROSSETT: I don't know.

13 AGENT ADAMS: How far away do you think it was, as
14 far as where they were in proximity to your porch?

15 MR. DeROSSETT: Well, the one that hit me, he came
16 over a little bit closer.

17 AGENT ADAMS: Okay.

18 MR. DeROSSETT: You know, sideways, kind of -- kind
19 of through the driveway, comes in like this and into the
20 doorway.

21 AGENT ADAMS: Okay.

22 MR. DeROSSETT: So, he just moved over closer to my
23 corner, you know, closer in. I didn't know he was going
24 to hit me.

25

1 AGENT ADAMS: Okay. Did you know he was over there
2 before he hit you?

3 MR. DeROSSETT: Did I know what?

4 AGENT ADAMS: Did you know he was over there before
5 you were shot?

6 MR. DeROSSETT: Not really.

7 AGENT ADAMS: Okay. So, it was after that he shot?

8 MR. DeROSSETT: Well, I couldn't tell, I couldn't
9 tell where everybody was at. I knew the guy was to the
10 left, and then the guy in the center, he disappeared.

11 AGENT ADAMS: Okay.

12 MR. DeROSSETT: He disappeared out of no where.

13 AGENT ADAMS: All right.

14 MR. DeROSSETT: Like I say, it was pitch black dark
15 out there.

16 AGENT ADAMS: All right.

17 MR. DeROSSETT: But then across the street the
18 lady's got a sensor light that comes on. So, you got a
19 light behind him, and you can't really see and it's just
20 a bunch of (phone ringing).

21 AGENT ADAMS: Right. So, there -- the person
22 across the street from you is like backlit?

23 MR. DeROSSETT: Well, he wasn't across the street,
24 but that's where he ended up.

25 AGENT ADAMS: Okay. So --

1 MR. DeROSSETT: He ended up at the house across the
2 street once the shooting stopped. That's when, you
3 know, I quit shooting.

4 AGENT ADAMS: Okay.

5 MR. DeROSSETT: And went in the house. And I
6 seen him over at the corner of the house across the
7 street, around the end of it.

8 AGENT ADAMS: Okay. Was your door open?

9 MR. DeROSSETT: My door?

10 AGENT ADAMS: Yeah.

11 MR. DeROSSETT: Yeah.

12 AGENT ADAMS: All right. Did you leave it open
13 when you went inside?

14 MR. DeROSSETT: No, I closed it.

15 AGENT ADAMS: You closed it?

16 MR. DeROSSETT: Yeah.

17 AGENT ADAMS: Did you look out the window or --

18 MR. DeROSSETT: Uh-uh, I couldn't move.

19 AGENT ADAMS: Okay.

20 MR. DeROSSETT: My niece was. She kept looking out
21 the window waiting for the ambulance to come.

22 AGENT ADAMS: Okay. Did -- at any point you see
23 what was going on outside once you came inside?

24 MR. DeROSSETT: Now, what else? One more time.
25

1 AGENT ADAMS: When you came inside after being
2 shot, did you see anything going on outside?

3 MR. DeROSSETT: No.

4 AGENT ADAMS: Okay. So, you come inside and you
5 close the door?

6 MR. DeROSSETT: Well, I just came in and closed the
7 door and told her to call the -- to call the ambulance.
8 I'm shot up, I'm bleeding, I'm about to pass out. I
9 mean, that was it.

10 AGENT ADAMS: Did anybody else get --

11 MR. DeROSSETT: And I was hoping --

12 (More than one speaker, indiscernible.)

13 MR. DeROSSETT: I was hoping it was over with.

14 AGENT ADAMS: Right. Did you physically call
15 anybody or was it only Mary?

16 MR. DeROSSETT: Mary did. I wasn't able to.

17 AGENT ADAMS: Okay. Did she use your phone or did
18 she use someone else's?

19 MR. DeROSSETT: I think she used hers.

20 AGENT ADAMS: Her phone?

21 MR. DeROSSETT: Em-hmm.

22 AGENT ADAMS: Did she call anyone else, other than
23 the 9-1-1?

24 MR. DeROSSETT: Not that I know of, no.

25 AGENT ADAMS: Did you hear her conversation?

1 MR. DeROSSETT: Yeah, yeah, yeah. She was kind of
2 yelling, what's taking so long? My uncle got shot.

3 AGENT ADAMS: Em-hmm. Right.

4 MR. DeROSSETT: And he's bleeding real bad, I need
5 an ambulance.

6 AGENT ADAMS: Okay. And then you're waiting on the
7 ambulance to get there, obviously because you're shot
8 and you want medical treatment, and the next thing you
9 know what you believed was SWAT people were there?

10 MR. DeROSSETT: Well, I guess. I'm just assuming
11 that.

12 AGENT ADAMS: Okay. And what about it made you
13 think SWAT?

14 MR. DeROSSETT: Well, I don't know, you know. I
15 used to see it from the TV or whatever.

16 AGENT ADAMS: Em-hmm. Did you see what they were
17 wearing as far as gear?

18 MR. DeROSSETT: Well, are you talking about after
19 I -- when I went outside after --

20 AGENT ADAMS: Yeah, like after you -- my memory is
21 that you called for help, you come to the door, you open
22 it up expecting an ambulance, but you see blue lights?

23 MR. DeROSSETT: Well, I didn't, you know, I was
24 sitting there. My niece did.

25 AGENT ADAMS: Okay.

1 MR. DeROSSETT: That's when they yelled at her to
2 come out with hands up.

3 AGENT ADAMS: Em-hmm.

4 MR. DeROSSETT: Don't make any moves or you'll be
5 dead.

6 AGENT ADAMS: Right. So, you know it's law
7 enforcement. What about the tone of the situation made
8 you think it was SWAT law enforcement?

9 MR. DeROSSETT: Well, I don't know, they had dogs
10 there.

11 AGENT ADAMS: Okay.

12 MR. DeROSSETT: Well, I don't know, I mean, I just
13 kind of put that --

14 AGENT ADAMS: That was your impression?

15 MR. DeROSSETT: I just got that when I looked --

16 AGENT ADAMS: And, again, you know, this is through
17 your eyes and your ears and --

18 MR. DeROSSETT: Em-hmm.

19 AGENT ADAMS: And it doesn't necessarily have to be
20 what it was, it's just your impression.

21 MR. DeROSSETT: Right.

22 AGENT ADAMS: So, your impression was, was that it
23 was SWAT people?

24 MR. DeROSSETT: Em-hmm.

25

1 AGENT ADAMS: Did you recall any uniforms that they
2 were wearing? I know you said you saw blue lights, did
3 you see like the typical cop car with stripes on it and
4 stuff, or did you see like a big --

5 MR. DeROSSETT: Well, no, no --

6 AGENT ADAMS: -- military style vehicle or?

7 MR. DeROSSETT: Well, there was something like a
8 military style vehicle out there, I think.

9 AGENT ADAMS: Okay.

10 MR. DeROSSETT: I don't know, I was kind of
11 delirious --

12 AGENT ADAMS: All right.

13 MR. DeROSSETT: -- after I'd been shot.

14 AGENT ADAMS: And when they called you out -- first
15 they called Mary out?

16 MR. DeROSSETT: Em-hmm.

17 AGENT ADAMS: What -- how long from when Mary goes
18 out to they call you out?

19 MR. DeROSSETT: Well, I just had to get up. Yeah,
20 I just had to get up. They didn't really call me out, I
21 just got up and went to the door. They wanted to know
22 if anybody else was in there.

23 AGENT ADAMS: Right.

24

25

1 MR. DeROSSETT: So, I kind of went to the door and
2 they told me come out with my hands up, and all that
3 stuff. Don't make any sudden moves or you're dead.

4 AGENT ADAMS: Okay.

5 MR. DeROSSETT: And then I told them -- I told them
6 I couldn't raise my left arm up.

7 AGENT ADAMS: Em-hmm.

8 MR. DeROSSETT: But I raised my right arm and they,
9 told me to walk backwards --

10 AGENT ADAMS: Okay.

11 MR. DeROSSETT: -- across the street.

12 AGENT ADAMS: So, when you come out of your house,
13 you had to --

14 MR. DeROSSETT: And I mean, I was about to pass
15 out.

16 AGENT ADAMS: You had to turn around and walk
17 backwards?

18 MR. DeROSSETT: Yeah.

19 AGENT ADAMS: Did you do that once you got off the
20 porch or right from the door? At what point --

21 MR. DeROSSETT: Well, I got to the end of the
22 sidewalk, you know, the end of the sidewalk was here.

23 AGENT ADAMS: Em-hmm.

24 MR. DEROSSETT: Then went over to my driveway in
25 front of the garage.

1 AGENT ADAMS: Em-hmm.

2 MR. DeROSSETT: And I went straight on out and they
3 told me -- I got about halfway in the -- on the lawn
4 next to the pavement, and they told me to walk
5 backwards.

6 AGENT ADAMS: Okay.

7 MR. DeROSSETT: And I told them, shit, I couldn't
8 hardly walk forwards.

9 AGENT ADAMS: All right. So you walked backwards,
10 then they come up, and what happens at that point?

11 MR. DeROSSETT: Well, they had slammed me down on
12 the ground, like choked me out, and I said -- sat there
13 and I'm thinking about, and that's when I said I
14 think -- I feel like I'm about to die.

15 AGENT ADAMS: Em-hmm.

16 MR. DeROSSETT: And he said, well, you may do
17 that.

18 AGENT ADAMS: Okay.

19 MR. DeROSSETT: And he about choked me, I couldn't
20 breathe.

21 AGENT ADAMS: Em-hmm. Do you remember how many
22 people that was?

23 MR. DeROSSETT: Well, one, two, three. Maybe
24 three, four.

25

1 AGENT ADAMS: Okay. And do you remember what they
2 were wearing?

3 MR. DeROSSETT: I think I seen a star on one of
4 them.

5 AGENT ADAMS: Okay.

6 MR. DeROSSETT: I'm not really sure.

7 AGENT ADAMS: Do you remember what color uniforms?

8 MR. DeROSSETT: I can't really tell. I know they
9 wear green.

10 AGENT ADAMS: Green?

11 MR. DeROSSETT: Yeah.

12 AGENT ADAMS: Okay. So, they put you in handcuffs,
13 you're on the ground.

14 MR. DeROSSETT: Em-hmm.

15 AGENT ADAMS: And then at some point you go to the
16 back of a car with Mary?

17 MR. DeROSSETT: Right.

18 AGENT ADAMS: How long of a time frame was that?

19 MR. DeROSSETT: What timeframe, from the time I
20 come out of the house?

21 AGENT ADAMS: Yeah.

22 MR. DeROSSETT: Probably less than 10 minutes.

23 AGENT ADAMS: Less than 10 minutes?

24 MR. DeROSSETT: Yeah, em-hmm.

25

1 AGENT ADAMS: Do you, at any point during this time
2 period, tell them about the kidnapers?

3 MR. DeROSSETT: I was trying to tell them and they
4 were telling me to shut up.

5 AGENT ADAMS: Okay. So, you were trying to tell
6 them about the kidnapers, but that they were like,
7 shut up?

8 MR. DeROSSETT: Yeah.

9 AGENT ADAMS: Okay. What about Mary?

10 MR. DeROSSETT: She was trying to tell them the
11 same thing.

12 AGENT ADAMS: Okay. So, they didn't want you to
13 speak at all?

14 MR. DeROSSETT: Right, right.

15 AGENT ADAMS: Okay. And then they put you in the
16 back of the car with Mary, and you're there until?

17 MR. DeROSSETT: Well, maybe there five minutes give
18 or take, and they got me and put me in the ambulance,
19 drove me down here.

20 AGENT ADAMS: Okay. While you were in the
21 ambulance was there any police in there with you?

22 MR. DeROSSETT: Yeah, I think there was one or two
23 of them in there.

24 AGENT ADAMS: Okay. And did you have conversation
25 with them?

1 MR. DeROSSETT: No, I didn't. No, not really. I
2 tried to and they tell me to shut up and don't talk.

3 AGENT ADAMS: Okay. So, did you ever get the
4 opportunity to tell anyone about the kidnappers?

5 MR. DeROSSETT: Well, I told -- I told them while I
6 was in the ambulance, you know. It's like they don't
7 really want to listen.

8 AGENT ADAMS: Okay.

9 MR. DEROSSETT: Okay.

10 AGENT ADAMS: Do you think the medical people --
11 did they listen to you?

12 MR. DeROSSETT: Well, they were --

13 AGENT ADAMS: Because typically they're asking a
14 million questions.

15 MR. DeROSSETT: Yeah. Well, yeah, they were kind
16 of listening. They were more concerned with what --
17 where I was bleeding and what went on with that.

18 AGENT ADAMS: Right. Do you think that any of
19 those people in the ambulance would know what you said?

20 MR. DeROSSETT: I don't know, but they weren't
21 getting involved. They were worried more about me.

22 AGENT ADAMS: Okay. Do you remember how many
23 people were in the ambulance?

24 MR. DeROSSETT: Oh, I think there was three or
25 four.

1 AGENT ADAMS: Three or four, and is that --

2 MR. DeROSSETT: Two ambulance guys and two cops.

3 AGENT ADAMS: Okay. And then somebody was driving
4 the ambulance. Would that be another person?

5 MR. DeROSSETT: Yeah, I guess.

6 AGENT ADAMS: So, two in the back with you that
7 were medical personnel?

8 MR. DeROSSETT: Right, right.

9 AGENT ADAMS: And then two law enforcement
10 personnel?

11 MR. DeROSSETT: Right, I'm sure it was.

12 AGENT ADAMS: Okay. And then they bring you to the
13 hospital and are treating you?

14 MR. DeROSSETT: Em-hmm.

15 AGENT ADAMS: How long were the -- were the cops
16 with you the whole time?

17 MR. DeROSSETT: Well, yeah, til I was down, yeah.

18 AGENT ADAMS: Okay. And then once you got in here
19 do remember where the cops went?

20 MR. DeROSSETT: Oh, I don't know. I was down
21 this -- they were kind of in and around out there, I
22 think.

23 AGENT ADAMS: Okay. Do you remember, as far as
24 anything else that I haven't asked you that you think,
25 you know, is important for me to know?

1 MR. DeROSSETT: The only thing important to know is
2 we thought these were kidnappers.

3 AGENT ADAMS: Okay.

4 MR. DeROSSETT: We had no idea they were the cops.

5 AGENT ADAMS: All right.

6 MR. DeROSSETT: I mean, they were -- and kind of
7 figured that out when we got there what was going on,
8 and they were evidently trying to bust my niece or
9 whatever, ran her off. I mean, that's what I'm
10 thinking.

11 AGENT ADAMS: Em-hmm. Yeah, now that it's all
12 over, you know, it's my understanding that at some point
13 you realize that it's the police?

14 MR. DeROSSETT: Yeah, yeah, yeah. Once they got
15 there, and they did what they did when she came out the
16 door.

17 AGENT ADAMS: Okay.

18 MR. DeROSSETT: But all I thought was something --
19 something's going on here crazy, whatever was going on.

20 AGENT ADAMS: Right. And there was nobody else at
21 the house with you and Mary during this timeframe that
22 left?

23 MR. DeROSSETT: Uh-uh.

24 AGENT ADAMS: And no other people outside, other
25 than the people involved in the shooting?

1 MR. DeROSSETT: No, nobody else there but me and
2 her.

3 AGENT ADAMS: Okay. No one else was called, other
4 than 9-1-1?

5 MR. DeROSSETT: She called 9-1-1 trying to get an
6 ambulance and she called the police to get them here.

7 AGENT ADAMS: Okay.

8 MR. DeROSSETT: To see if we can find out who --
9 whatever we got it do to catch these guys that were
10 kidnapping her.

11 AGENT ADAMS: All right.

12 MR. DeROSSETT: Trying to kidnap her.

13 AGENT BLISS: Hey, John, let me ask you this real
14 quick:

15 MR. DeROSSETT: Em-hmm.

16 AGENT BLISS: How old's Mary again?

17 MR. DeROSSETT: 42.

18 AGENT BLISS: Did she have a bad relationship with
19 a boyfriend or anything, that she had recently broken up
20 with?

21 MR. DeROSSETT: Oh no, no. She did a couple years
22 ago.

23 AGENT BLISS: Is she extremely wealthy? I mean,
24 I'm just trying to determine why would someone -- why
25 would she be kidnapped? Why would you think someone

1 would kidnap Mary?

2 MR. DeROSSETT: Well, let me tell you a little
3 story here. She got busted for prostitution.

4 AGENT BLISS: Okay.

5 MR. DeROSSETT: I told you that.

6 AGENT BLISS: You said that, right.

7 MR. DeROSSETT: And this one cop, and I don't know
8 who he is, it's like he on a -- had a vendetta against
9 prostitution or something. I don't know, I'm trying to
10 piece it together I guess.

11 And I'm not sure, I could be wrong on a few things.
12 She was -- she actually had a date one time with a
13 police officer, a sheriff's deputy.

14 AGENT BLISS: Okay.

15 MR. DeROSSETT: Who, I don't know the name of, I
16 don't know the name. He'd come over, but I never met
17 him, I don't even know his name. So, I don't know what
18 went on here. Like I say, I'm just speculating.

19 AGENT BLISS: Okay. I'm just trying to -- if
20 they're going to kidnap -- I mean, why someone kidnap a
21 42-year-old woman.

22 MR. DeROSSETT: Well, I think there was maybe
23 prostitution in there. And that's a -- I took her to
24 court in May and she plead no contest I think, but it's
25 something that's worked out. (Indiscernible) I don't

1 know.

2 AGENT BLISS: All right. Sorry. Go ahead Mary.

3 AGENT ADAMS: Beyond her circumstance -- basically
4 she got in trouble for prostitution?

5 MR. DeROSSETT: Yeah.

6 AGENT ADAMS: Do you remember how long ago that
7 was?

8 MR. DeROSSETT: It's been a couple weeks ago.

9 AGENT ADAMS: A couple weeks ago?

10 MR. DeROSSETT: Yeah, about two.

11 AGENT ADAMS: And was she arrested?

12 MR. DeROSSETT: Yeah, yeah.

13 AGENT ADAMS: Okay. Did you get her out of jail?

14 MR. DeROSSETT: Yeah, I did. I paid her bail, you
15 know.

16 AGENT ADAMS: Okay, so she's out under bond?

17 MR. DeROSSETT: Right.

18 AGENT ADAMS: Okay, at your house?

19 MR. DeROSSETT: Em-hmm.

20 AGENT ADAMS: Does she have a lifestyle that
21 would --

22 MR. DeROSSETT: Well, she's been a stripper.

23 AGENT ADAMS: Okay.

24 MR. DeROSSETT: At Cheaters over there I guess. I
25 don't know.

1 AGENT ADAMS: All right. What about drugs, is
2 there any --

3 MR. DeROSSETT: Well, she's -- she's been on drugs
4 these last couple years.

5 AGENT ADAMS: Okay.

6 MR. DeROSSETT: I've helped -- I'm trying to help
7 her get off of them.

8 AGENT ADAMS: Em-hmm. So, she uses them?

9 MR. DeROSSETT: Pardon me?

10 AGENT ADAMS: She uses drugs?

11 MR. DeROSSETT: Yeah, pretty much.

12 AGENT ADAMS: All right. And you ever known her to
13 sell drugs?

14 MR. DeROSSETT: No, no, not at all.

15 AGENT ADAMS: So, nothing like that?

16 MR. DeROSSETT: No, no.

17 AGENT ADAMS: Okay. Has there ever been any like
18 drug activity at your home?

19 MR. DeROSSETT: No, no.

20 AGENT ADAMS: Or is that something she
21 traditionally does outside the home?

22 MR. DeROSSETT: Outside.

23 AGENT ADAMS: Okay. How do you know that she uses
24 drugs?

25

1 MR. DeROSSETT: Well, she does -- well, I think she
2 does her drugs in her bedroom.

3 AGENT ADAMS: Okay.

4 MR. DeROSSETT: You know, and she's paying me rent
5 to stay there.

6 AGENT ADAMS: Sure.

7 MR. DeROSSETT: And I give her privacy, you know,
8 just don't get too crazy with things.

9 AGENT ADAMS: Right.

10 MR. DeROSSETT: And I have to get on her case all
11 the time about things that she does.

12 AGENT ADAMS: Em-hmm, sure. Has she ever been
13 arrested from your home?

14 MR. DeROSSETT: No.

15 AGENT ADAMS: Okay. And she was arrested just a
16 couple weeks ago for prostitution?

17 MR. DEROSSETT: Yeah.

18 AGENT ADAMS: Do you remember --

19 MR. DeROSSETT: About three -- about three weeks
20 ago.

21 AGENT ADAMS: Do you remember when she was arrested
22 before that?

23 MR. DeROSSETT: Well, she was picked up for being
24 at -- being over on some area.

25 AGENT ADAMS: Em-hmm.

1 MR. DeROSSETT: And she had paraphernalia on her.
2 No drugs, but paraphernalia.

3 AGENT ADAMS: Were you with her at any of these
4 times when she was arrested?

5 MR. DeROSSETT: No, no, no. Well, I was with her
6 one time when I dropped her off. I dropped her off over
7 there in Cocoa Beach, and I don't know what she was
8 doing, but I dropped her off and I went over to the
9 beach.

10 And I hung around up there for a little bit, and
11 she texted me or called me, one or the other, and told
12 me to come and get her. So, I come and got her.

13 AGENT ADAMS: Where did you drop her off at?

14 MR. DeROSSETT: Oh, I don't know what the name of
15 the street was. Oh God, that's some bad pains.

16 AGENT ADAMS: Do you want me to get one of the
17 nurses?

18 MR. DeROSSETT: Yeah, please.

19 AGENT ADAMS: Okay. He says he's got some bad pain
20 and wanted somebody to come and take a look at him.

21 AGENT BLISS: Some back pain?

22 AGENT ADAMS: Bad pains.

23 AGENT BLISS: Oh, bad pain. Okay.

24 (Whereupon, subject getting medical attention.)
25

1 AGENT ADAMS: So you know that she's had trouble
2 with the law?

3 MR. DeROSSETT: Yeah, I've been with her.

4 AGENT ADAMS: Is anybody ever come by the house
5 looking for her or anything like that?

6 MR. DeROSSETT: Well, no, not really, but they'd
7 come over here before where she was around some guy
8 with an escort service.

9 AGENT ADAMS: Okay.

10 MR. DeROSSETT: And they were trying to get her to,
11 you know, I guess to tell the police what he was doing.

12 AGENT ADAMS: Okay.

13 MR. DeROSSETT: So, they came by there and talked
14 to her, and she basically said nobody else is talking
15 I'm not talking either.

16 AGENT ADAMS: Okay. So, this was a cop that came
17 by to talk to her about prostitution?

18 MR. DeROSSETT: Female. Well, it was prostitution
19 or escort or whatever it is.

20 AGENT ADAMS: Okay. And she said she didn't want
21 to talk about, I guess the johns or the pimps?

22 MR. DeROSSETT: Whatever, johns.

23 AGENT ADAMS: Okay.

24

25

1 MR. DeROSSETT: But I don't know, this one cop was,
2 you know, where I dropped her off, he was thinking I'm
3 pimping her, which is totally ridiculous. And I don't
4 know where all that comes from.

5 AGENT ADAMS: Oh, they thought you were the pimp?

6 MR. DeROSSETT: Yeah.

7 AGENT ADAMS: Okay.

8 MR. DeROSSETT: Yeah, and I never did --

9 AGENT ADAMS: Can you think of any reason why they
10 would believe that?

11 MR. DeROSSETT: I'm a Christian, I go to church.

12 AGENT ADAMS: Right.

13 MR. DeROSSETT: You know, and I'm a security
14 officer at Port Canaveral.

15 AGENT ADAMS: Okay.

16 AGENT BLISS: Where?

17 MR. DEROSSETT: Port Canaveral.

18 AGENT ADAMS: Do you work for a cruise lines?

19 MR. DeROSSETT: Yeah.

20 AGENT ADAMS: Okay.

21 MR. DeROSSETT: I'm a screener.

22 AGENT ADAMS: Oh, all right. Which cruise line do
23 you work for?

24 MR. DeROSSETT: Well, Royal Caribbean and Carnival.

25 AGENT ADAMS: Okay.

1 MR. DeROSSETT: But I work for the company.

2 AGENT ADAMS: Oh, so you're privately contracted to
3 work out there for all the cruise ships?

4 MR. DeROSSETT: Well, no, not all of them. I mean,
5 you've got Disney out, you've got American Bird.

6 AGENT ADAMS: Okay.

7 MR. DeROSSETT: The duty lines, and we've got Royal
8 Caribbean and Carnival.

9 AGENT ADAMS: Okay. And you said you've lived here
10 for about three years?

11 MR. DeROSSETT: Yeah, roughly.

12 AGENT ADAMS: And how long have you been working
13 out there?

14 MR. DeROSSETT: Since March.

15 AGENT ADAMS: Since March?

16 MR. DeROSSETT: Yeah, I'm supposed to be to work at
17 4 in the morning -- 6 in the morning actually.

18 AGENT ADAMS: Oh, geez.

19 MR. DeROSSETT: I'm not going to make it.

20 AGENT ADAMS: No, it doesn't look like it.

21 MR. DeROSSETT: How about Mary, what does she do?

22 AGENT ADAMS: She does whatever she does. She does
23 private -- private strip -- stripping.

24 AGENT ADAMS: Okay. So, she pays for --

25 MR. DEROSSETT: She describes it as stripping.

1 AGENT BLISS: So she's a stripper?

2 MR. DeROSSETT: Stripping, strip dancing, in other
3 words.

4 AGENT ADAMS: And where does she work?

5 MR. DeROSSETT: Where does she work? I think she
6 works out of her bedroom.

7 AGENT ADAMS: Oh, okay. So she has --

8 MR. DeROSSETT: And that's why --

9 (More than one speaker, indiscernible.)

10 AGENT ADAMS: -- customers over to the house?

11 MR. DeROSSETT: Well, yeah, it's something like
12 that.

13 AGENT ADAMS: Okay. When she pays you rent does
14 she pay that with cash?

15 MR. DeROSSETT: Basically.

16 AGENT ADAMS: Okay. So, that makes you believe
17 she's doing that or she pretty much told you this is
18 how I make my money, and she don't -- she don't care?

19 MR. DeROSSETT: Well, yeah, I kind of know.

20 AGENT ADAMS: Okay. Because she told you or just
21 because of what you've seen?

22 MR. DeROSSETT: Well, she told those guys it's not
23 prostitution, she said she's not prosecuting at all.

24 AGENT ADAMS: Okay.
25

1 MR. DeROSSETT: I mean, that's what she tells me,
2 so I presume that she don't.

3 AGENT ADAMS: Em-hmm. What kind of drugs is she
4 using?

5 MR. DeROSSETT: Well, she does the -- I don't know,
6 Dilaudid.

7 AGENT ADAMS: Oh, like prescription medications?

8 MR. DeROSSETT: Em-hmm.

9 AGENT ADAMS: Like the Dilaudids?

10 MR. DeROSSETT: Yeah, I don't want to go any
11 further with that.

12 AGENT ADAMS: Oh, okay.

13 MR. DeROSSETT: No, I leave that to her.

14 AGENT ADAMS: Well, and again, this is just
15 conversation.

16 MR. DeROSSETT: Right.

17 AGENT ADAMS: You know, if I don't see her with
18 drugs, it doesn't matter what you tell me, there's
19 nothing I can do.

20 MR. DeROSSETT: Well, I guess.

21 AGENT ADAMS: And I'm not interested in that
22 particularly.

23 MR. DeROSSETT: Right.

24 AGENT ADAMS: You know, I just am interested in her
25 lifestyle.

1 MR. DeROSSETT: Em-hmm.

2 AGENT ADAMS: Because I would like to, you know,
3 understand your impression that you had when you --
4 and knowing her better will help me understand why
5 you came to the conclusion that she was, you know, being
6 taken away by like a kidnapper versus being carried away
7 by cops.

8 MR. DeROSSETT: Well, I don't know, that's -- that
9 was my first reaction.

10 AGENT ADAMS: And again, that's why I'm trying to
11 understand your impression.

12 MR. DeROSSETT: That's my first reaction.

13 AGENT ADAMS: Okay.

14 MR. DeROSSETT: That somebody was kidnapping her.

15 AGENT ADAMS: All right.

16 MR. DeROSSETT: You know, I told her that you --
17 you're going to have somebody over to -- that's going to
18 cause you a problem.

19 AGENT ADAMS: Em-hmm. How long has she been
20 staying with you?

21 MR. DeROSSETT: Over a year now.

22 AGENT ADAMS: A year now?

23 MR. DeROSSETT: I mean, I've thrown her out about
24 three or four times.

25 AGENT ADAMS: Okay.

1 MR. DeROSSETT: For just being crazy.

2 AGENT ADAMS: Well, that's a lot to bring into
3 someone's home.

4 MR. DeROSSETT: Yeah, yeah, I know. And
5 everybody's kind of told me you need to throw her out of
6 here. And looking at me right now I think I probably
7 should have.

8 AGENT ADAMS: Yeah. When was the last time you
9 threw her out, do you remember?

10 MR. DeROSSETT: Well, she's been there now since
11 November or October.

12 AGENT ADAMS: November or October?

13 MR. DeROSSETT: Yeah.

14 (Whereupon, subject getting medical attention.)

15 MR. DeROSSETT: I think I'm kind of finished with
16 this now. It's a little uncomfortable. I don't want to
17 talk no more.

18 AGENT ADAMS: Okay.

19 MR. DeROSSETT: Can you understand me?

20 AGENT ADAMS: Yeah.

21 AGENT BLISS: Absolutely. And I want to thank you
22 for talking to us like you have. Thank you for helping
23 us out.

24 AGENT ADAMS: Em-hmm, and I appreciate your
25 corporation.

1 MR. DeROSSETT: Yeah, yeah, yeah. No problem, I'm
2 just, you know, like I said, that was my first
3 impression. If I'd known I was talking to -- or dealing
4 with cops, I would've not done anything.

5 AGENT BLISS: All right.

6 MR. DeROSSETT: At all.

7 AGENT BLISS: All right.

8 MR. DEROSSETT: I didn't hear anybody, did I.

9 AGENT BLISS: Yeah.

10 MR. DeROSSETT: Yeah? Is he all right? You don't
11 know?

12 AGENT BLISS: I don't know.

13 MR. DeROSSETT: Are they here or somewhere else?

14 AGENT BLISS: Well, I don't know.

15 MR. DeROSSETT: You don't know anything that's
16 going on with him?

17 AGENT BLISS: No, sir. I've been here with you. I
18 got called out and I been here with you. And you want
19 this opened back up?

20 MR. DeROSSETT: I just wondered what the guy -- I
21 might be up for a murder charge or for manslaughter, you
22 know, for protecting my house.

23 I didn't know what was going on, I was defending my
24 house and my -- and my niece. And I'm a peace -- a
25 peaceful man, you know. God loving, God fearing.

1 AGENT BLISS: Em-hmm.

2 MR. DeROSSETT: If I have to defend myself, I'm
3 going to do it.

4 AGENT BLISS: Let me ask you this: Were you
5 drinking anything tonight?

6 MR. DeROSSETT: No, no.

7 AGENT BLISS: Any illegal substances you used
8 earlier in the evening?

9 MR. DeROSSETT: Well, I take painkillers for my
10 foot. I've been taking that for a while.

11 AGENT BLISS: How many did you take tonight?

12 MR. DeROSSETT: Oh, I don't know, maybe -- well,
13 not much.

14 AGENT BLISS: What's your prescription for?

15 MR. DeROSSETT: Hydrocodone right now, but I did
16 oxycodone, so.

17 AGENT BLISS: What's the --

18 MR. DEROSSETT: I'm out of those.

19 AGENT BLISS: What are you supposed to take?
20 What's the amount you take a day?

21 MR. DeROSSETT: Oh, it says three to four a day
22 and I take three, three.

23 AGENT BLISS: How many did you take today?

24

25

1 MR. DeROSSETT: Well, I think it was three, and I
2 was getting ready to take another one before I went to
3 bed.

4 AGENT BLISS: Okay.

5 MR. DeROSSETT: Hydrocodone, 10 milligrams.

6 AGENT BLISS: 10 milligrams of hydrocodone?

7 MR. DeROSSETT: Yeah. I've been taking those so
8 long that they're very ineffective. They don't do much.
9 So, I'm going to the pain clinic down in Viera and
10 they're going to do a, you know, a pain plan and they
11 are all, you know, I've got these pain pills.

12 AGENT BLISS: So, you took three, three hydrocodone
13 tonight?

14 MR. DeROSSETT: Not all at once, no.

15 AGENT BLISS: Okay.

16 MR. DeROSSETT: No, I spread them out over the day.

17 AGENT BLISS: All right. Well, when was the last
18 time you took one today, before all of this happened?

19 MR. DeROSSETT: Oh, I don't know. It was somewhere
20 about 6.

21 AGENT BLISS: Okay.

22 MR. DeROSSETT: Something like that. I don't
23 remember exactly, but it's like I'm not taking anything.

24 AGENT BLISS: I'm sorry?
25

1 MR. DeROSSETT: But it's like I'm not taking
2 anything.

3 AGENT BLISS: Okay.

4 MR. DeROSSETT: It really has no effect on me. At
5 first I was getting -- maybe it was easing it some, but
6 I don't even get that from it now.

7 AGENT BLISS: Okay. How long have you been taking
8 them?

9 MR. DeROSSETT: Well, off and on. I've been doing
10 hydrocodone and oxycodone since I was sent to them last
11 year, but I had this surgery on my leg and it, you know,
12 it's kind of private.

13 It was like a penile -- a penile implant or
14 whatever, but I was (indiscernible) for a month, a month
15 and-a-half. And about two weeks after they operated I
16 dropped my gun, shot myself in the foot.

17 AGENT ADAMS: Em-hmm.

18 MR. DeROSSETT: So, I've been on it actually more
19 than a year.

20 AGENT BLISS: You been what?

21 MR. DeROSSETT: I've off of it -- I've been on it
22 more than a year.

23 AGENT BLISS: Okay.

24 AGENT ADAMS: When did you drop your gun? How long
25 ago was that?

1 MR. DeROSSETT: Well, it was Labor Day, September
2 1st.

3 AGENT ADAMS: Okay.

4 AGENT BLISS: Pistol?

5 MR. DeROSSETT: Well, it was a little two shot
6 derringer.

7 AGENT BLISS: Okay.

8 MR. DEROSSETT: It's a 380.

9 AGENT ADAMS: And you took the oxycodone up until
10 recently, and then you started taking the hydrocodone?

11 MR. DeROSSETT: Well, the doctor prescribed
12 oxycodone, but I had to get something else because I was
13 kind of getting immune to hydrocodone.

14 AGENT ADAMS: Okay.

15 MR. DeROSSETT: Well, I'm out of oxycodones right
16 now, and I've got a doctor's appointment next week to
17 get the script filled, you know.

18 AGENT BLISS: Em-hmm.

19 MR. DeROSSETT: But I had some hydrocodones left
20 over from back -- two months back, so that's what I'm
21 taken.

22 AGENT ADAMS: Em-hmm. Do they give you any sort of
23 euphoric effect or?

24 MR. DeROSSETT: What the --

25 AGENT ADAMS: Yeah, the hydrocodone.

1 MR. DeROSSETT: No.

2 AGENT ADAMS: No? Because you are -- because your
3 body is used to it is what I'm asking.

4 MR. DeROSSETT: Right, right.

5 AGENT ADAMS: Okay. So, you don't have what --

6 MR. DeROSSETT: The only thing that really bothers
7 me is it's got Tylenol in it.

8 AGENT ADAMS: Okay.

9 MR. DeROSSETT: And Tylenol don't agree with me.

10 AGENT ADAMS: Okay.

11 MR. DeROSSETT: So, that's why I was trying to get
12 the oxycodone.

13 AGENT ADAMS: Right. Because the hydrocodone
14 aren't strong enough and you can't feel the pain go
15 away?

16 MR. DeROSSETT: Well, it works -- it works a little
17 bit, but sometimes I have to take one and-a-half at a
18 time.

19 AGENT ADAMS: Okay.

20 MR. DeROSSETT: To be 15 milligrams for pain.

21 AGENT ADAMS: Em-hmm.

22 MR. DeROSSETT: Yeah, I've twisted my ankle a
23 couple times in the pain has been pretty bad.

24 AGENT ADAMS: Em-hmm.

25

1 MR. DeROSSETT: I hit the edge of the sidewalk and
2 my foot went sideways, so I just sprang the ankle.

3 AGENT ADAMS: Okay.

4 MR. DeROSSETT: So, I wound up taking them for
5 that.

6 AGENT ADAMS: Okay.

7 MR. DeROSSETT: So, I mean, you kind of get
8 addicted to them, but I've gotten off of them before.

9 AGENT ADAMS: Okay.

10 MR. DEROSSETT: It's no big deal.

11 AGENT ADAMS: All right.

12 MR. DEROSSETT: Just slept for a couple days and
13 I'm okay.

14 AGENT ADAMS: And you're anticipating -- you're
15 under doctor's care for that though, right?

16 MR. DeROSSETT: Yeah, yeah.

17 AGENT ADAMS: Okay. Well, then you need to take
18 your medicine.

19 MR. DeROSSETT: Yeah, yeah. I've got about two or
20 three doctors.

21 AGENT ADAMS: Okay. You got anything else?

22 AGENT BLISS: No, I'm good.

23 AGENT ADAMS: All right. Well, we're going to let
24 you rest a little bit.

25

1 AGENT BLISS: All right John, get some rest. It's
2 late. 2:00.

3 MR. DEROSSETT: What time is it?

4 AGENT BLISS: 2

5 MR. DeROSSETT: Really? It's way past my bedtime
6 here.

7 AGENT ADAMS: Mine too.

8 AGENT BLISS: Okay, take care.

9 MR. DeROSSETT: Right. And somebody let me know
10 about this police officer.

11 AGENT BLISS: Absolutely.

12 MR. DeROSSETT: Let me know.

13 AGENT BLISS: All right.

14 MR. DeROSSETT: I'm praying for him.

15 AGENT BLISS: Yeah, that's what he needs. That's
16 what we all need.

17 MR. DeROSSETT: Yeah, yeah. We all need it.

18 AGENT BLISS: Yeah.

19 MR. DeROSSETT: To put God back in our country.

20 AGENT BLISS: Yeah. All right, buddy.

21 MR. DeROSSETT: All right.

22 AGENT BLISS: Thank you.

23 AGENT ADAMS: Take care, good luck.

24 MR. DEROSSETT: All right.

25 (Whereupon, the interview is concluded.)

1 THE COURT: Okay. Thank you Mr. Scheiner. All
2 right, I fail to see how that statement -- I've
3 listened to that statement to -- for the purpose of this
4 hearing to consider whether there was any context, and
5 obviously we're in a non-jury situation, so.

6 To consider whether there was context given in that
7 statement that was not given in the other, and I find
8 that they -- the consideration of that, of statement
9 number one, which we'll call that, would not impact
10 consideration of the other in any way.

11 Basically, they are two separate statements, and
12 one is not necessary to understand or explain the other.
13 And they are almost identical except that -- except
14 for the inconsistencies with regard to number of shots
15 fired, number of pills taken, type of medications taken,
16 other little -- other details.

17 But in essence they are -- the accounts of the
18 events that occurred after the contact between law
19 enforcement and Mary Ellis are quite similar, if not the
20 same. So, for intents and purposes in terms of where
21 everyone was and wasn't.

22 MR. WEST: Will the Court entertain argument or has
23 the Court ruled now --

24 THE COURT: I've ruled now.

25 MR. WEST: (Cont'd) and moving on?

1 THE COURT: Thank you. I've ruled.

2 MR. WEST: Could we just for the record mark the
3 exhibits, so --

4 (Multiple speakers state "it is marked".)

5 THE COURT: It's already marked.

6 MR. WEST: I know, but we -- when the Court was
7 discussing we didn't identify them by -- we just called
8 it statement one, statement two.

9 THE COURT: Right, it was EU. It's statement -- I
10 mean, that's on -- that's Exhibit EU.

11 MR. WEST: Yes.

12 THE COURT: Remember?

13 MR. WEST: That's the one the Court is excluding.

14 THE COURT: Well, I'm finding that it's not
15 necessary. There's no context in that statement that's
16 given pursuant to the rule of completeness, which you
17 cited and said that it was necessary to place the other
18 statement in context.

19 But basically it's just, you know, the same
20 statement to -- made two times and just -- questions are
21 slightly different and the answers are slightly
22 different, but the essence of both is the same.

23 MR. WEST: I understand the Court's ruling. Thank
24 you Judge.

25

1 THE COURT: Thank you. All righty, then Ms -- are
2 we -- where are we? Mr. Respass --

3 MR. SCHEINER: State rests.

4 THE COURT: All right, you rest. And do you all
5 have any ad -- anything additional that you would like
6 to have considered?

7 MR. PANELLA: The Defense rests Judge.

8 THE COURT: All right. Then would you like to --
9 let's hear some argument, and let me get to my part of
10 the work after that.

11 And I am going to reserve ruling so that I can go
12 through all of this and obviously consider all the case
13 law that you all have. Mr. Scheiner gave me a couple of
14 cases this morning. So, I don't -- and I know that you
15 have cited some in yours.

16 MR. PANELLA: Yes, ma'am.

17 THE COURT: All right.

18 MR. PANELLA: Okay, so, as just a point of order,
19 given the way we were doing this particular proceeding,
20 I would assume that I --

21 THE COURT: You're the moment.

22 MR. PANELLA: (Cont'd) should go first.

23 THE COURT: Yes. You are the moment, yes, sir.

24 MR. PANELLA: And then I would also assume that I
25 get a rebuttal, a short rebuttal closing as well.

1 THE COURT: Yes, sir.

2 MR. PANELLA: Just like if we we're --

3 THE COURT: As the -- yes, that is the case.

4 MR. PANELLA: And so I would ask Judge if I could
5 have a few minutes to set up, so I'm not taking the
6 Court's time in the middle of it.

7 I'm going to be using the screen for you. So, if I
8 could get a few minutes to just set up my technology
9 situation so I can quickly go through the exhibits.

10 THE COURT: Mr. Panella?

11 MR. PANELLA: Yes.

12 THE COURT: Let me have you look at the clock.

13 MR. PANELLA: Sure.

14 THE COURT: And let me tell you that you've got
15 about 45 minutes. If you can't make your point in 45
16 minutes --

17 MR. PANELLA: That's not my issue. I just want to
18 make sure I can plug my computer in and get this
19 working.

20 THE COURT: All right, thank you. No a problem.

21 MR. PANELLA: Thanks Judge.

22 THE COURT: All right, we'll be in recess.

23 (Whereupon, court stands in recess for
24 approximately 20 minutes.)

25 THE COURT: All right, you ready to go sir?

1 MR. PANELLA: I am Your Honor. Thanks.

2 THE COURT: All righty, thank you.

3 MR. PANELLA: May it please the Court?

4 THE COURT: Certainly

5 CLOSING ARGUMENT

6 BY MR. PANELLA:

7 Who would shoot a cop? Who would shoot a cop
8 Judge. That's the line that we heard from Mr. Derossett
9 from one of the first people he saw after this incident
10 from Deputy Dobrowski. Who would shoot a cop?

11 You know, when I started this whole thing out this
12 week I told you that I anticipated the evidence was
13 going to show a situation that was chaotic, confusing,
14 and miscommunication.

15 And I want to wrap this whole thing up, and I know
16 you're not a jury so I won't belabor it too much, but I
17 want to wrap this whole thing up the exact reverse way.

18 It was miscommunication, that lead to confusion,
19 that lead to the chaos. And the miscommunication
20 started a lot earlier that day.

21 You know, when we first heard that someone could
22 shoot at three deputies, or in their general direction,
23 or any gun at all when there's three officers involved,
24 and two of them are wearing these tact vests that say
25 sheriff, and then say I thought they were kidnapping my

1 niece. That sounds so crazy.

2 But now that we've seen why, now that we've seen
3 the evidence in this case before you, and understand the
4 circumstances for how that could happen, this is it.

5 It is the perfect storm of a terrible grouping of
6 events that came together, that went to my client's
7 state of mind. You've been telling us this entire time
8 what matters in this case is whether under the
9 circumstances as Mr. Derossett perceived them that night
10 was the use of force reasonable.

11 Judge, I would cite to the -- all the statutes that
12 I put in my motion before I go further into the facts of
13 this particular case. Our position is that it's not
14 just 013, though that one applies to this.

15 Certainly Mr. Derossett was in his own house, so
16 he's actually presumed to be in fear anyway. Under 013
17 the statute says that you're presumed to be in
18 reasonable fear under certain circumstances, and if
19 someone is taken out of your house by force that counts.

20 But beyond that 012 and 031, and then ultimately
21 culminating in 032, which is what gave us the procedural
22 ability to be here, is where we are.

23 So, it's so rare, it's so unusual, and I can't
24 think of another case not anywhere in this country where
25 the facts are like this. Where all of the sudden we've

1 got self defense, we have the imminent commission of a
2 forcible felony, and we have defense of others all in
3 one.

4 Any one of those entitles him to immunity. Any one
5 of those entitles him to relief. But here we actually
6 have all three of those going on at the same time, and
7 he's at his house on top of it.

8 So, whether stand your ground exists or not he
9 would have been entitled to claim that he was in
10 presumed fear. But before we go too much into that
11 Judge let's start with the miscommunication.

12 Earlier that day is when it started. We heard
13 uncontroverted testimony -- and recognizing also that
14 we're looking at this both ways, we believe that we have
15 well exceeded both burdens. Well proceed a prima facie
16 case for sure.

17 And we believe that there's no way in this hearing
18 that the State overcame that to prove by clear and
19 convincing evidence that Mr. Derossett didn't know that
20 they were police.

21 I just think that that's way off the table at this
22 point. And so moving on from that and talking about the
23 preponderance of the evidence, we believe -- if we're
24 just talking about a mere preponderance of the evidence
25 standard, which is all we have to get to in this hearing

1 for immunity to be granted, I think we're way past that.

2 THE COURT: Wait, wait. Go back for a minute Mr.
3 Panella. You said you don't believe that the State has
4 proved that Mr. Derossett knew they were police?

5 MR. PANELLA: I don't believe that the State has
6 proved by clear and convincing --

7 THE COURT: I mean, was that what you -- was that
8 what you said?

9 MR. PANELLA: Yes, and -- yes, that is what I said.

10 THE COURT: Okay, okay.

11 MR. PANELLA: And what I mean by that is that I
12 don't believe that they've proved by clear and
13 convincing evidence that he's not entitled to immunity,
14 which is the new standard.

15 That once we meet the prima facie case the State is
16 then entitled to -- the burden shifts to the State to
17 prove their case by clear and convincing evidence that
18 the claimant isn't entitled to immunity.

19 THE COURT: Okay, okay. I'm following.

20 MR. PANELLA: Okay, all right.

21 THE COURT: I'm listening.

22 MR. PANELLA: And what's weird about where we're
23 sitting right now, and frankly I think we've all
24 acknowledged it, all the attorneys and you, because
25 we're looking at also the old standard, which was the

1 preponderance of the evidence and the burden's on us.

2 And what I'm saying --

3 THE COURT: Well, that's the standard that I --
4 right. I understand.

5 MR. PANELLA: And so what I'm saying is even with
6 that standard, which is a higher burden on the Defense,
7 we certainly believe that we have met and exceed it.
8 And this is why I'm telling you.

9 So, either way is what we're saying. We're -- we
10 believe that Mr. Derossett is entitled to immunity. Are
11 you with me on --

12 THE COURT: Yes.

13 MR. PANELLA: Okay. So, when I'm talking about the
14 miscommunication --

15 THE COURT: So, it doesn't matter that -- whether
16 these were police or not. If they could have been
17 citizens you're saying he would have been entitled to
18 immunity.

19 MR. PANELLA: I'm saying that if they -- certainly
20 that the fact of them being law enforcement plays, but
21 only if Mr. Derossett knew that. Because certainly if
22 he -- if you think about it like this Judge:

23 If these were three guys, if what Mr. Derossett
24 perceived was actually happening, that three men came
25 into the night at 9:30 and forcibly removed Mary Ellis

1 from her house, and she's screaming, and he sees the
2 exact same thing scenario that everyone has told us over
3 and over again as what happened here, then certainly
4 he'd be entitled to immunity because these would be
5 three guys off the street kidnapping someone, which is a
6 forcible felony.

7 Certainly when you use deadly force to prevent the
8 imminent commission of a forcible felony here we're way
9 past that. It wasn't even imminently going to happen,
10 it's on going.

11 So, just on that one theory alone, yes, but
12 unfortunately and tragically Judge, they turn out to be
13 law enforcement. But what matters in this case, and
14 what matters under the case law and in those statutes is
15 what Mr. Derossett knew at the time.

16 And so that's why it's critical about whether he
17 understood whether these people were law enforcement.
18 Because I don't think there's a person in the universe
19 who would say this was unreasonable if they weren't.

20 THE COURT: Well, let me ask you Mr. Panella --

21 MR. PANELLA: Sure.

22 THE COURT: If somebody rang the doorbell and then
23 in -- if you ring my doorbell and I -- somebody else is
24 in my house, they answer, and there's a raucous at the
25 door, because I'm inside my house and I hear a raucous

1 at the door is it okay for me to come out shooting once
2 I see that you're inside the house and the raucous is
3 receding?

4 MR. PANELLA: In your hypothet --

5 THE COURT: Can I come out shooting? I mean come
6 out of my door shooting?

7 MR. PANELLA: Is that -- is the person involved in
8 the raucous screaming for help like their life depends
9 on it --

10 THE COURT: Well --

11 MR. PANELLA: (Cont'd) and actually being drug into
12 the middle of the yard?

13 THE COURT: Well, according to Mr. Ross' statement
14 he was -- she was back inside the house when he went out
15 and started shooting, but.

16 MR. PANELLA: Well, Judge --

17 THE COURT: Did he say that in both of those
18 statements?

19 MR. PANELLA: Well, Judge, what we've heard, we've
20 heard uncontroverted -- we've heard so much testimony
21 from all of the agents and Agent Lewis that this whole
22 thing happened very fast.

23 We've heard testimony today -- we've heard
24 testimony today --

25

1 THE COURT: Well, I think it comes down to whether
2 he is entitled to go out shooting.

3 MR. PANELLA: I understand.

4 THE COURT: Like regardless if some-- what
5 somebody's calling. They could be, you know, screaming
6 whatever.

7 MR. PANELLA: Yes, he's en --

8 THE COURT: But --

9 MR. PANELLA: (Cont'd) he's entitled to use deadly
10 force under the circumstances of this case.

11 THE COURT: Tell me how he has no duty to assess
12 the situation before he begins shooting. That's really
13 the crux of it for me.

14 MR. PANELLA: Sure. Okay, well, I'm glad that you
15 brought that up. I think that he -- under this set of
16 circumstances he said that he heard her screaming.

17 He was already in the back room, he still heard her
18 screaming. The screaming never stopped the agents
19 testified to you, right? So, let's start there.

20 The screaming never stopped from the first time
21 Agent Stead reached in the door and grabbed her out to
22 the time that the gun was -- until they let her go.

23 And now here's the issue: Here's the issue for the
24 Court to seriously consider. We've got a guy who's in
25 his back bedroom eating food, okay. That -- I don't --

1 there's not going to be any -- he hears his niece
2 screaming.

3 He hears her screaming, the agents said going
4 ballistic, at the top of her lungs. This is scary. He
5 said in his statement that she was -- sounded scared.
6 And then he comes out to see what's going on.

7 He doesn't just run out shooting. He's not
8 shooting from inside the thing. He says that he comes
9 out and he see -- what does he say he sees? He says he
10 saw her out there with two or maybe three people. And
11 we know that's true now --

12 THE COURT: Well, that was when he was still
13 approaching the door.

14 MR. PANELLA: And he sees her being drug out into
15 the yard. And he -- and he said -- that's what he said
16 Judge. And so I ask you to go back and listen to the
17 statement that they put in.

18 And he sees her being drug in the yard, while still
19 screaming, while by their own testimony, forcefully
20 being removed from the house, right. And she -- and he
21 comes out and he shoots his gun, not at them.

22 Now, I contend that he had the legal right to shoot
23 at them. Let's not forget, he's at his own house. He's
24 witnessing what he perceives to be someone being
25 kidnapped, and they let her go.

1 Some of the agents testified that they threw her in
2 his direction as a distraction. Other agents said they
3 just let her go and -- but none of the agents know where
4 she was.

5 So, let's start there. They don't know that she
6 was out of the outside area --

7 THE COURT: Mr. Derossett seemed to be quite
8 certain where she was.

9 MR. PANELLA: Mr. Derossett all --

10 THE COURT: Because he said it both times.

11 MR. PANELLA: Mr. Derossett was also, by the way --

12 THE COURT: You insisted that I hear it at least
13 six times, hear him say that he was -- she was in the
14 house, in the house, in the house before he went out of
15 the house, out of the house, out of the house and fired
16 in the air, in the air, in the air. I mean, this was
17 repeatedly stated.

18 MR. PANELLA: We also heard Judge from four other
19 witnesses that were there. All four of those, that's
20 including Mary Ellis, who said how scared she was, who
21 said what happened to her, which was confirmed by the
22 other three.

23 All four of the other witnesses, including Mary --
24 well, some of the witnesses don't know if she was in the
25 house. They certainly never testified that she was.

1 THE COURT: Well, we're focusing on Mr.
2 Derossett's --

3 MR. PANELLA: I know, but Mary --

4 THE COURT: And he said she was in the house.

5 MR. PANELLA: And Mr --

6 THE COURT: And they had receded.

7 MR. PANELLA: Mr. Derossett, when he was being
8 interviewed Judge, and this is so important because we
9 also heard testimony on this too, was literally being
10 treated for gunshot wounds while they were interviewing
11 him.

12 THE COURT: But you insisted that we listen to this
13 first one where he was literally being treated for
14 gunshot wounds while he was being interviewed, rather
15 than sit on -- stand on the second one, which was the
16 next day when he was resting comfortably.

17 And I did -- and really there's no difference in
18 his tone, except for the fact that he's, you know,
19 having a couple little physical issues.

20 Not anything that he didn't -- that was overcoming
21 him, because when he -- when it got to be -- when he
22 felt that he was in pain he said I -- we need to stop
23 now.

24 So, he had com -- he was completely lucid, he knew
25 what he was doing, saying, and he didn't seem to have a

1 problem talking about it.

2 MR. PANELLA: I understand Judge.

3 THE COURT: I mean, he was cooperative and --

4 MR. PANELLA: Sure.

5 THE COURT: (Cont'd) polite and everything else,
6 and explained everything just as it happened. And then
7 the next day when he explains -- he explained it the
8 same way again.

9 MR. PANELLA: We heard -- I understand Judge, sure.
10 We heard testimony from the agents that were --
11 actually, we heard testimony specifically that when you
12 go through a shooting incident, and certainly Judge you
13 know this. When you go through a traumatic incident
14 like this --

15 THE COURT: I've never been shot.

16 MR. PANELLA: I hope you never have, and neither
17 have I --

18 THE COURT: Never been shot.

19 MR. PANELLA: But we've been doing this --

20 THE COURT: At.

21 MR. PANELLA: Right. But when you go through a
22 traumatic incident, as he also did, let's not forget, he
23 was also shot a couple times, even the next day when he
24 gave his statement -- this is -- people don't --
25 misremember certain details when they're recalling these

1 things.

2 Everyone of the agents did. It's what happens.
3 All three of the agents have conflicting stories. I'm
4 not even here to talk about that. You know, it's fine.
5 What we know for sure happened is that someone reached
6 in in plain clothes and grabbed Mary Ellis out of that
7 house.

8 No one's going to say that didn't happen. Everyone
9 knows, including Mr. Derossett and Ms. Ellis that she
10 was screaming like her life depended on it. Some of the
11 agents said she was screaming John, John. Other ones
12 said she was screaming help.

13 But the bottom line is everyone says, including Mr.
14 Derossett, she was screaming help. We all -- these are
15 things we know. We know it was dark. There's no
16 question Judge in this entire case --

17 THE COURT: You can just say that one time.
18 Because I heard it 50 during the -- during the case,
19 yes, I get it.

20 MR. PANELLA: Okay. So --

21 THE COURT: Mr. Panella, it was dark, it was really
22 dark, it was really, really, really dark.

23 MR. PANELLA: These are things we know.

24 THE COURT: End of thought.

25

1 MR. PANELLA: Exactly. And so under this set of
2 circumstances when Mr -- when he sees her being, his own
3 testimony, drug into by force into the front yard, which
4 is now corroborated by everybody else, yeah, absolutely.

5 And you know what else Judge? Whether the idea is,
6 you know, well, the kidnap -- first of all, I don't -- I
7 don't believe, and I would argue to you based on all of
8 the totality of the evidence, not just his statement,
9 that kidnapping wasn't over in his mind.

10 He thought these people were there to do them harm.
11 And by the way, home invasion robbery Judge is also a
12 forcible felony. So, that initial shot, that initial
13 shot out in his own house, it -- I would be with you if
14 he were out at the mall or something like that, but
15 that's not what we're talking about.

16 We're talking about 9:30 at night, in his house,
17 his loved one screaming. And he comes out and he shoots
18 his gun, not at anyone, in the air, hoping these people
19 who had just thought had invaded his home and physically
20 taken his niece out of the door and caused her to scream
21 like her life depended on it, and then still wouldn't
22 let her go.

23 They testified that she -- they were struggling
24 with her the whole time. If he didn't come out with a
25 gun who knows what would have happened, because that's

1 when they did let her go.

2 Now, here's the issue: Did they cross paths right
3 then? I don't know. Because there's -- what I would
4 submit to you is the totality of the circumstances
5 certainly shows by a preponderance of the evidence,
6 especially because we're talking about seconds, that
7 this was an on going event, at least as Mr. Derossett
8 perceived it.

9 And beyond that, even if it weren't, although it
10 was, even if it weren't they didn't leave. So, imagine
11 this: You are -- you get in a scenario where you now
12 have all these facts before you, because you sat here
13 like we all did.

14 And you're in your own house and you see all this
15 and you come out and you shoot hoping these people go
16 away. You're not trying to kill anybody, you're not
17 trying to shoot at anyone.

18 It's uncontroverted he shot in the air and then
19 they don't. What I thought was very interesting about
20 this is now all of the sudden your suspicions that these
21 people are here to do you no harm is now confirmed,
22 because they're shooting at you.

23 Now, I think it's uncontroverted in this case that
24 Mr. Derossett didn't just come out and shoot at people.
25 Listen, he's being charged with three counts of

1 attempted first degree premeditated murder of a law
2 enforcement officer.

3 Now, we know the facts, we know the word I'm not
4 allowed to use, the conditions of the yard and what was
5 going on. And I don't think after sitting here there's
6 anyone that's going to say, yeah, for sure, he knew that
7 they were cops when he came out, and that's what
8 matters.

9 Because if he didn't then this is the scariest
10 situation ever. It's what we all fear. It's what every
11 homeowner that has a gun has a gun for. Hopefully no
12 harm will come to us.

13 Hopefully people won't break in. Hopefully people
14 won't, you know, kidnap someone out of my house. But it
15 was this set of facts Judge, and that's why we're here.

16 So, beyond that the fact of the matter is they are
17 law enforcement. Of course they shoot back. They
18 perceive it as a threat. That's fine. It's so sad that
19 everyone got hurt. Thank God no one is dead.

20 But the question is what was in his mind. There
21 are two forcible felonies he was perceiving that was
22 happening. Not only the kidnapping he was witnessing,
23 but a home invasion robbery.

24 These people literally did go into the house and
25 grab someone out, and then they were on his yard, which

1 by the way is still part of the curtilage. And he's
2 entitled on the porch, it's part of the dwelling. He is
3 in his home the entire time.

4 So, I just -- I'm glad you brought it up because I
5 think that needs to be put to bed from our perspective,
6 because this is of upmost legal significance.

7 Now of course when people are shooting at him in
8 his own property and he shoots back we all understand
9 that is -- you know, was he in reasonable fear of
10 imminent great bodily harm or death when he's getting
11 shot at? Sure. Okay.

12 So, that's why I said this case is more interesting
13 than most because there are so many aspects of that
14 chapter that are at play.

15 You've got the imminent commission of a forcible
16 felony, you've got his reasonable perception that this
17 is happening, you've got the issue with the niece, and
18 you got the issue with the house itself, and you got the
19 issue that they're on his property.

20 Let's not forget, there wasn't a warrant. And
21 Judge, let's not forget the person who came to the door
22 was in plain clothes. I mean, we're talking about a
23 person wearing an Underarmor T-shirt and jeans.

24 And yes, I understand there's been testimony that
25 he identified himself to Mary, but there's been no

1 testimony at all that he had anyone identify themselves
2 to John.

3 I just wanted to remind the Court what we're
4 talking about. This is a picture -- and I tried to be
5 as fair as possible for you. I'm referring to Exhibit
6 Number -- this is Defense Exhibit 21 Judge.

7 THE COURT: All right.

8 MR. PANELLA: I'm sorry? It's Defense Exhibit 21

9 THE COURT: Yeah, I -- no, okay. 21.

10 MR. PANELLA: Yeah. And so this is -- I understand
11 this is what they wear, but we also understood from the
12 testimony that you are not supposed to change roles
13 because something like this can happen.

14 We heard three, or maybe even four people tell us
15 that protocol with BCSO is if you're the undercover,
16 stay the undercover. If you are the take down team,
17 stay the take down team.

18 And that's why we had a three man team here. But
19 what Agent Stead did is that he went from being the
20 undercover -- and now I'm referring to Defense Exhibit
21 20.

22 Judge, this is the distinction between the
23 undercover. So, he's not wearing the badge, to then
24 turn into -- when the plan didn't go quite right and she
25 didn't come outside, he reached in and grabbed her

1 Judge.

2 And that's what happened, that's why she got so
3 freaked out. And the only way he changes from
4 undercover Clark Kent into Superman is that little black
5 badge.

6 And what he testified Judge to us, he told us that
7 her back was turned to him when he did it. He said she
8 turned to go back into the house, she thought she was
9 inviting a john in, and then he said, no, no, wait a
10 minute Mary, and grabbed her arm and pulled her out.

11 And he also said he pulled out this badge. Now,
12 I'm looking at that badge on that shirt. I'm just
13 saying. This isn't my picture. This all came from BCSO
14 Judge.

15 And I'm thinking that's pretty hard, especially
16 when for three hours you've been texting trying to
17 convince this person you're not a cop. See, the thing
18 of it is is that this entire operation was to convince
19 her that they were not cops.

20 So, it's -- this isn't about Mary, but it certainly
21 explains why this series of events was set in motion and
22 why she started screaming because she thinks he's some
23 creep off the internet looking for sex, and he reaches
24 in and then grabs her and yanks her out.

25 She testified that she thought she might be getting

1 taken to the sex trade. You know, who knows. This is
2 some scary stuff, but you know, whether he identified
3 himself or not I'm not even contesting here because it
4 doesn't really matter, because what matters is John
5 Derossett's state of mind.

6 Now, no one identified themselves to him. Maybe
7 there wasn't time, I get it, but they didn't. And all
8 he perceives is a guy literally in plain clothes, and
9 there's two other ones.

10 They're both wearing plain clothes, but for the
11 black shirt that says sheriff and the tact vest. Now, I
12 want to talk about that for a second. Roberts told
13 us -- he's one of the two.

14 Roberts told us that he fell into the bushes and
15 that when John came out John -- he didn't even think
16 John Derossett saw him. So, he doesn't count. I mean,
17 whether it was dark -- it's a -- first of all, it's
18 super dark and I don't think they would have seen them
19 anyways because they're wearing black.

20 But nonetheless, as a further point, he wasn't even
21 in his line of sight. For some reason -- if you -- if
22 John Derossett was coming out there really because he
23 wanted to kill cops don't you think he would have?

24 You don't shoot in the air when you know that
25 there's three cops, unless you want to die. That's some

1 crazy -- it makes no sense. It doesn't fit with
2 anything in this case.

3 All of the facts in this case point to the fact he
4 had no idea and that's what we've been saying all along,
5 and now we've heard it from them, from everybody.

6 So, here's the thing: Roberts is in the bushes.
7 And the other thing that I think's really important
8 Judge is Agent Smith testified, I thought valiantly in
9 this case, and told us where he was, and I think tried
10 to be as honest as he could.

11 And I'm looking at Defendant's Exhibit 4. I just
12 wanted to point this out. He said -- remember, this is
13 the one with the flash photography. Obviously it was
14 darker, but he said he was way out.

15 Remember when he pointed on the thing where he was?
16 Now, he said he was way out in the side. If you --
17 obviously rely on your own memory, but when -- I think
18 we had like the aerial and he was pointing to us where
19 he was, but he was -- it wasn't like -- according to at
20 least his --

21 THE COURT: Wait. I'm sorry, you're talking about
22 where Agent Roberts went?

23 MR. PANELLA: I'm sorry, I'm talking about Agent
24 Smith. Agent Smith.

25 THE COURT: Oh, Smith, okay.

1 MR. PANELLA: Yeah, I was pointing out here.

2 THE COURT: Because I'm saying here's the --

3 MR. PANELLA: No, Roberts was over here.

4 THE COURT: This is the breadcrumb trail of Agent
5 Roberts right there. You're looking at it, the evidence
6 mark.

7 MR. PANELLA: No, this -- actually, that's blood
8 Judge.

9 THE COURT: Well, I know, but I'm calling it the
10 breadcrumb trail, meaning, that you could see exactly
11 where Roberts went because of his little -- his
12 debris --

13 MR. PANELLA: No, these are -- Judge, I'll show --

14 THE COURT: There were shells in one place, and
15 there's shells in another place.

16 MR. PANELLA: Let me --

17 THE COURT: Okay, it's not a direct line. There's
18 not --

19 MR. PANELLA: I'm glad you brought that up.

20 THE COURT: (Cont'd) breadcrumbs along the way, but
21 it was fairly clear where he went.

22 MR. PANELLA: Those are actually -- that's blood
23 from my client.

24 THE COURT: Okay.

25 MR. PANELLA: As he was getting arrested.

1 THE COURT: Okay.

2 MR. PANELLA: These are his breadcrumbs.

3 THE COURT: Right, that's what I'm referring to.

4 MR. PANELLA: Oh, yeah, these were --

5 THE COURT: But then there was another, the
6 aerial -- the drawn diagram that you all went over in
7 great detail --

8 MR. PANELLA: Yes.

9 THE COURT: (Cont'd) that showed that he was in --
10 he started out in this area, he went into that area,
11 then he went into the car area, then he went over across
12 the street.

13 MR. PANELLA: Yes.

14 THE COURT: Yeah.

15 MR. PANELLA: And Defendant's Exhibit 3 sort of
16 illustrates that well, because these we did not -- the
17 State identified --

18 THE COURT: Right, that's what I'm talking about.

19 MR. PANELLA: (Cont'd) where his casing and so --
20 but my point is Agent Smith was out here.

21 THE COURT: Right, okay.

22 MR. PANELLA: Okay. So, if we're all on the same
23 page there --

24 THE COURT: Right, right.

25

1 MR. PANELLA: And my point to you is the two guys
2 that were actually at any identifying markings at all,
3 that I don't even think would have been visible anyhow,
4 but nonetheless, let's just go with it.

5 One of them says John Derossett didn't see him, and
6 the other one was in the area of the yard that uncon --
7 no -- any -- even people that are saying, well, it might
8 have been a little bit light -- everyone's saying it's
9 super dark -- even that -- that is the darkest part
10 where Agent Smith unfortunately was.

11 He even testified he was like sort of out in no
12 man's land. So, okay. So, now what we have is --
13 remember it's his perception.

14 We have him coming out the door, knowing she's
15 screaming her head off, knowing that she's literally
16 being drug into the yard by these people that everyone
17 agrees happened.

18 And then the two people that are actually wearing
19 anything, if there even was light to see it, aren't even
20 in his line of sight. He says that he sees a muzzle
21 flash out there. Or I don't think he used the word
22 muzzle, but gun flash, whatever he said --

23 THE COURT: Light, light, he said light.
24
25

1 MR. PANELLA: Light. And he said I don't know if
2 it's the light from the gun from what. The point is, he
3 sees that, it's coming at him, he shoots in that
4 direction.

5 It's black. And Roberts is -- he doesn't even know
6 he's there. This wasn't I'm coming out the house
7 shooting for no reason. This was I'm literally coming
8 out the house, get off our property, you just kidnapped
9 my niece, it's happening at the moment.

10 We're talking about ten seconds. Everyone else
11 said it was seconds, seconds, seconds. If he remembers
12 one thing like that a little bit off when he's being
13 interviewed like this -- look, everyone else -- first of
14 all, she was out there, and we know this.

15 Whatever he said about that one point -- because
16 I'm going to refer you to Defendant's Exhibit -- Judge,
17 this is Defendant's Exhibit 18. So, this is Mary Ellis'
18 arm. She got shot.

19 So, that's why I'm saying that in a traumatic
20 experience like this sometimes where exact placement of
21 everybody you don't quite grasp it. I'm giving the same
22 leniency to the officers.

23 And that's why I'm not hammering them on everything
24 they said that was incorrect with each other. I know
25 what that is. It doesn't matter to me.

1 The big things that matter are: She's screaming,
2 she's crying for help, he perceives it, it's black out
3 there, they're pulling her by force, he doesn't shoot at
4 them, he shoots a warning shot into the air.

5 They take different positions in the yard and start
6 shooting at him and he starts addressing the muzzle
7 flashes that are happening. That's the whole story. I
8 just did it in like 15 seconds.

9 And the question is when your loved one is coming
10 out and screaming for your help and you actually see
11 what you perceive to be the scariest thing and your
12 biggest fear, when it's someone that you're trying to
13 put a roof over her head.

14 You -- yeah, she's got problems, we all get it, but
15 you know what, the fact of the matter is she didn't have
16 anywhere else to go. This guy was trying to help her.

17 You heard testimony that -- not only just from him,
18 but other people that know that he's tried to get her
19 Baker Acted, that he's kicked her out three or four
20 times.

21 Yeah, so, when we're talking about the little
22 things like where exactly was everyone, all we know is
23 this happened fast. Everyone says so. And here's
24 empirical evidence that she was outside, because how
25 else how the heck did she get shot?

1 So, yeah, it was on going, yeah, it was scary. So,
2 that's what I wanted to say about that particular piece
3 of it. Now, I'm not going to play you any portion of
4 the video because you get it.

5 The reason I highlighted the mailbox though, and
6 this is my opportunity to tell you -- unless you want to
7 see it and I'll show it. But the reason I highlighted
8 the mailbox because it's -- what are the chances of
9 this?

10 Everyone's talking about these vests. They're
11 black vests, no one's going to argue that. It says
12 sheriff in yellow. We know it's not reflective, so that
13 one I think is put to bed. You can look at it yourself,
14 it's just not.

15 So -- but what's interesting is the contrast. On
16 the mailbox you have the exact same color contrast, but
17 actually a little bit better. Those are those little
18 numbers you can get at Home Depot, you know, and they
19 are reflective actually.

20 If you shine a flashlight on it they're metal, you
21 know, and same color scheme. And I would ask you to go
22 look at it. It's like a minute 915 on the video.

23 THE COURT: Oh, I looked at it.

24 MR. PANELLA: Okay.

25

1 THE COURT: I have a very clear image right now in
2 my mind of what the --

3 MR. PANELLA: Yeah, so same color scheme. When you
4 walk -- when the person with the video camera walks up
5 to it it just went black, you know. And it's a black
6 background with like a gold number.

7 And then it's not until she puts the flashlight on
8 it it's like, oh, wait a second, there's a number there.
9 Other than that it just looks plain black.

10 I submit to you that we're talking about the exact
11 same phenomenon with these vests in the dark of night,
12 okay. So, Judge, as I briefly just conclude this,
13 because I think we've made where we want to be, you
14 know, for the most part, unless you'd like more
15 clarification on a couple other things.

16 I just want to hit a couple other points that I
17 think are important for you to consider. I know you've
18 heard it all and you will consider even more than I say.

19 But this idea of criminal activity, I -- you know,
20 we're not here to say that Mary wasn't doing the wrong
21 thing. What is important is that there hasn't been any
22 evidence before this court in this hearing that's
23 competent that says John Derossett, John Derossett was
24 engaged in criminal activity.

25 If you have somebody, right -- we know that some

1 months before he drove her to a -- somewhere. She got
2 out of a car and he picked her up. That is literally
3 the testimony today.

4 This is not is that -- is there probable cause for
5 arrest? No, of course not. None of them -- that's
6 why -- I mean, what are we talking about. But I think
7 that's really like the stretch of a lifetime.

8 Because we're talking about, yeah, you knew, she
9 was up to something and you dropped her off somewhere.
10 But you know what, if he was her pimp, if he was working
11 with her and stuff don't you think we would have heard
12 something about that?

13 Everyone's testifying that like had interaction
14 with her that John had nothing to do with it.
15 Everyone -- all the agents that ever texted with her
16 said we thought it was just Mary texting with us.

17 She was sort of doing her thing, you know. It's
18 just like so -- such a stretch, and I think it's
19 disgusting in a way. If it's -- the whole thing
20 becomes, well, John was somehow in on prostituting his
21 niece.

22 John was engaged in this master criminal enterprise
23 of prostitution over there in Port St. John. That is
24 like so silly to me, and I don't think there's any
25 evidence whatsoever.

1 By the way, those -- that prescription stuff we
2 heard about in the tapes, the one that got entered I
3 think Agent Simock misinterpreted what John Derossett
4 said.

5 He's prescribed that Hydrocodone -- or whatever it
6 was. And he's like oh -- and John's testimony, if you
7 recall, was, you know, she's gotten into my stuff
8 before. And he seemed kind of

9 THE COURT: He said she'd taken his Xanax.

10 MR. PANELLA: Xanax, Xanax.

11 THE COURT: Right?

12 MR. PANELLA: Yeah. And I thought Agent Simock
13 came around and said, oh, so she gives you Xanax. That
14 was a flip --

15 THE COURT: Right, they misunderstood, they
16 totally misunderstood that.

17 MR. PANELLA: Okay. I'm glad you --

18 THE COURT: I heard him say she's gotten into my
19 Xanax before.

20 MR. PANELLA: Yeah, exactly.

21 (Multiple speakers.)

22 MR. PANELLA: Exactly. And since we're on the
23 subject it's also important to recognize that they did a
24 tox screen on this guy and he came back negative for
25 anything, and you heard the whole testimony about the

1 ten panels.

2 I mean, this guy wasn't even on alcohol, literally
3 nothing. So, you know, there's no suggestion that he
4 was under the influence when this happened or anything
5 like that, because they did a tox screen.

6 And by the way, they did it at the hospital. That
7 was that big thing we had yesterday about when was the
8 blood taken. Well, it was taken like right after. And
9 guess what? There's nothing in his blood.

10 So, the -- you know, he wasn't under the influence
11 either. All right. So, those are two issues that I
12 think are important. Being aware that someone in your
13 family does something illegal doesn't make you a
14 criminal, doesn't mean that you are actively engaged in
15 criminal activity.

16 And in any event, that night is what matters,
17 whether he was engaged in criminal activity that night,
18 and we know he wasn't. He was literally sitting in his
19 house eating, and there's nothing to say he wasn't doing
20 that.

21 So, there's no -- there's no preponderance that
22 they've shown you that he was engaged in criminal
23 activity to knock this out that way either. That would
24 just be silly. The guy is sitting there eating, had
25 nothing to do with setting this up.

1 And by the way, every -- even Chief Lewis,
2 everybody said John Derossett wasn't on our radar, John
3 Derossett wasn't who we were looking for. We didn't
4 care about him, we didn't have any suspicion about him.

5 Sure, Steuerwald says we pulled him over one time.
6 Roberts and him have totally different stories,
7 whatever. There's nothing about criminal activity from
8 John.

9 You know, a guy who wants to kill somebody doesn't
10 say I'm praying for him, doesn't say tell him I'm sorry,
11 doesn't say, oh my God, what happened.

12 I think if there's one thing that's believable on
13 there -- I mean, even from the getgo on the one that
14 you heard first, the one that's in evidence, it's like
15 it sounded to me like he was stewing about this all
16 night, and the first thing he does is ask how the other
17 guy's doing. We all heard it.

18 Attempted premeditated murder of a -- this is not
19 this case. This is a guy who saw what he perceived to
20 be so scary for a person who is already vulnerable and
21 now it's happening. And she's screaming and what else
22 are you to do? And we know she was out there, the thing
23 was on going.

24 And what's funny about this case is that all of
25 these witnesses are state witnesses and they're all

1 testifying as to what I'm saying.

2 Let me just look this over real quick Judge and
3 I'll be done.

4 THE COURT: Take your time.

5 MR. PANELLA: Was it reasonable? You've been
6 talking about not Monday morning quarterbacking this
7 case. That's what you've been saying to us, you know,
8 let's not second -- let's not go back and say what
9 should have, would have, could have.

10 It's -- you've told us it's about what John
11 perceived. And you know what, should John have done
12 something different? I don't know, but should the
13 agents have done something different?

14 I think they've even said yeah, you know, we wished
15 this didn't happen like this. We've never gone to
16 someone's house at 9:30 at night without a warrant on a
17 second degree misdemeanor.

18 This has never been done. We went -- we did it
19 because we thought Mary -- we knew her and we knew that
20 she was the kind of person that doesn't resist, that
21 doesn't freak out, that just goes peacefully like she
22 did the month before.

23 So, if there's one thing besides anything that I've
24 said it's that the law enforcement officers themselves
25 were like what the heck is going on when she freaked

1 out.

2 So, if there's one thing that that tells you it's
3 that whether Agent Stead identified himself or not, it
4 didn't register with her. She didn't get it. Because
5 when she did, and no one can tell me different, she just
6 went, she just got arrested.

7 No one acts like this because they're going to get
8 arrested for a second degree misdemeanor and get out
9 tomorrow. That's so crazy and it's just not what
10 happened.

11 She acted like this because she thought she was
12 going to be put in the back of a van and never be seen
13 from or heard from again. And that is the -- in that
14 scenario, in that environment that is what John
15 Derossett heard, that sort of fear.

16 So, was what he did reasonable? Heck yeah it was.
17 And it was reasonable whether they had just let her go,
18 it was reasonable -- we're at his own house, and they're
19 in the dark and they're various stuff -- you know, just
20 one way -- you know, it --

21 You know, they're wearing plain clothes, and the
22 ones that aren't are wearing all black. This guy just
23 ripped your niece out of the house.

24 So, that's why I say no matter which standard we
25 apply -- we're in the split screen thing. This isn't a

1 practice for the trial. Judge, I submit to you this is
2 it.

3 If there was ever a case where immunity should have
4 been granted -- it's sad, it is -- I said from the
5 beginning, and I -- as I sit here -- as I stand here and
6 talk to you I mean it.

7 It's so tragic that Agent Smith was seriously
8 wounded. It's sad for me that he's sitting here chained
9 to this whatever, and that he was shot too. And I --
10 Mary, you know, who knows.

11 But the fact is what was in his mind, under these
12 circumstances. And was that reasonable? Of course it
13 was. By a preponderance of the evidence. Judge, I
14 submit to you we've proven by clear and convincing
15 evidence he didn't know.

16 We've proven this higher standard that his actions
17 were reasonable under these circumstances, this perfect
18 storm of crazy, unfortunate. The darkest yard I've
19 ever seen in my life. It's just craz -- it just is what
20 it is though.

21 And so all of that factors into what he was
22 perceiving and what was reasonable as to him. And there
23 wasn't, you know -- shoot in the air, you shoot in the
24 air when you're trying to kill somebody?

25 You shoot in the air when you're trying to run

1 intruders off. Every single thing about the facts of
2 this case -- I mean, I'm talking about every single
3 thing support what I'm saying.

4 Judge, if there's ever been a time that this
5 statute applied to it's this one. And the reason that
6 it matters about the identity issue, the reason it
7 matters whether he knew they were police officers or not
8 is for that second prong.

9 If he's -- frankly, if he is immune from
10 prosecution if these guys truly were home invasion
11 robbers because of what he perceived it to be, or
12 kidnappers or whatever, if he's immune from pros -- and
13 I don't think you'd be saying, oh, he's probably not, I
14 mean, he would be.

15 I mean, three guys come, rip somebody out of your
16 house. I mean, I think it's open and shut. What makes
17 this com -- this particular facts of this case
18 complicated is tragically they turn out to be our police
19 officers.

20 So, the question only is at that point, did he know
21 that. And that's why I'm saying I think that's the --
22 frankly I think that's the correct way for the Court to
23 be viewing this.

24 Did he have immunity if they weren't, or no, of
25 course I -- of course he does because of the

1 circumstances of this case and the screaming and
2 everything else and the way it went down.

3 She was grabbed out of her house, there wasn't a
4 warrant and all that. What else was -- what, is he
5 supposed to sit back and hope they -- you know, of
6 course it -- this just -- of course.

7 And then the only question becomes, yeah, but were
8 they cops and did he know it. And so I would gladly
9 tell you that --

10 THE COURT: Well, may I ask, do you have any case
11 law that says that there's a different standard applied
12 in some way if the folks --

13 MR. PANELLA: I think it's the same.

14 THE COURT: (Cont'd) if it's law enforcement that
15 is engaged with --

16 MR. PANELLA: I'm frankly giving them more credit

17 THE COURT: (Cont'd) the person who's exercising
18 the -- who says that they are standing their ground?

19 MR. PANELLA: No, there's not. Actually, cops
20 count. In the recent case in Rajah says that. They say
21 that -- you know, the case out of West Palm, it's point
22 blank says they're not granted special provisions.

23 THE COURT: Well, he was the -- he was the
24 defendant.

25

1 MR. PANELLA: I know, but the identity of the
2 officer --

3 THE COURT: That was -- that was a rather stark
4 case Mr. Panella. That was a rather -- those were
5 rather difficult circumstances.

6 MR. PANELLA: I understand, but the --

7 THE COURT: And that motion was denied by the way.

8 MR. PANELLA: I know that, but the facts of this
9 case are much stronger for the Defendant. That's why I
10 cited to it. I wasn't afraid that they denied that
11 motion.

12 Because I was -- I had reason to believe you would
13 grant this one. Because after you heard the facts of
14 this case you'd recognize, whoa, this is entirely
15 different.

16 That guy acted like an idiot, that guy didn't
17 identify himself. And you know what was interesting
18 about that? The judge in that case said the identity
19 issue and whether the other person realized that he was
20 an officer was critical.

21 THE COURT: Well, it was -- right. He was supposed
22 to be dressed in his tact vest and his shirt that said
23 whatever, car theft squad or -- he was an auto theft
24 special unit of some sort driving a white van up the
25 wrong side of the exit -- of the on ramp to a highway.

1 And he, without any indicia of being a law
2 enforcement officer approached this guy whose drum set
3 was in the car so he wouldn't leave it, and his car had
4 broken down and he said, you know, something -- can I
5 help you? And the man was on the phone with AT&T
6 Roadside Assistance -- yes, I read the case.

7 MR. PANELLA: Of course, yeah --

8 THE COURT: And I mean, suddenly they heard
9 gunshots. The guy says, no, man, I'm fine, and then you
10 hear gunshots.

11 MR. PANELLA: Yeah, and then the officer --

12 THE COURT: Okay, well --

13 MR. PANELLA: (Cont'd) said, well, I identified
14 myself, I identified myself.

15 THE COURT: Right.

16 MR. PANELLA: And the judge was like uh-uh,
17 because --

18 THE COURT: Not so much.

19 MR. PANELLA: And here's the thing, here's why I'm
20 saying -- first of all, I don't think there's a
21 different standard.

22 I'm just telling you I recognize in this statute
23 there's a part about law -- you know, what you perceive.
24 If it's a law enforcement officer and you recognize
25 that, guess what?

1 I'm willing to stand here and say if John Derossett
2 recognized these people were law enforcement, even under
3 the same set of circumstances, gladly deny my motion,
4 please.

5 THE COURT: Okay, but --

6 MR. PANELLA: Because I wouldn't have filed it.
7 That's why it's so critical because the point is if he
8 knew they were cops he didn't have a right to shoot.

9 They're cops. She's being arrested. Everything he
10 just thought about her being kidnapped changes just like
11 that. It's all -- it's like, oh. But instead, all of
12 the facts in our case are they didn't know.

13 I mean, they literally just didn't know. And now
14 all of the sudden we have a scenario where we have this
15 happen, and I'm referring to Defendant's Exhibit 19.

16 (Whereupon, Defendant's Exhibit 19 is published for
17 the Court.)

18 THE COURT: You don't have to play the whole thing
19 Mr. Panella. I know what it says.

20 MR. PANELLA: Exactly. And then the next one you
21 know of course she said -- they said what happened Mary,
22 and twice she repeats the same thing. I don't know, you
23 know, they pulled me out of the house, I started
24 screaming, blah, blah, blah.

25 And then they ask her who pulled you out of the

1 house? I don't know, whoever these people -- you know.
2 To suggest -- so, okay, so, that's what happens in this
3 case. That's why this isn't Rajah.

4 And so, yeah, does it matter whether or not my guy
5 knew they were cops? I think it does. I would take
6 that burden on. Am I just telling you he didn't, and I
7 think everything says he didn't obviously.

8 Then we go to the next part, it's like does -- do
9 police officers get a different standard? Yeah, there's
10 a special thing -- they don't get a different standard
11 of protection necessarily for them when someone's
12 claiming self defense based on their actions.

13 Because that doesn't make sense, but there is
14 something in there that's saying, hey, if my guy knew
15 they were cops he doesn't get immunity. And that's why
16 I was directing the Court to that.

17 I'm telling you, if you look in 013 and 032
18 there's -- the officer's, you know -- so -- and I'm just
19 making the point for the Court that I recognize those
20 things.

21 And the reason I brought this motion is because I
22 knew, I knew way beyond preponderance of the evidence, I
23 knew like beyond a reasonable doubt that the evidence
24 was going to show he didn't know.

25 And so, yeah, of course he's still entitled to

1 immunity Judge. And the fact that the victim turns out
2 to be a law enforcement officer isn't of consequence.
3 That's not of legal consequence for this -- for your
4 consideration in this case.

5 THE COURT: Okay.

6 MR. PANELLA: That's an enhancement issue for
7 later, for -- you know, for sentencing. Obviously I'm
8 not talking about us.

9 So, the fact of identification to John, and you'll
10 see in that statute that's what matters, or even if they
11 didn't identify themselves whether John knew they were
12 police is what's operative here.

13 And guess what, they all said they didn't, and
14 everything points to the fact that he didn't know, and
15 that's why we have this scenario. And that's why we
16 have people calling the police right after this because,
17 guess what, they had no idea they were the police.

18 We've heard from him now. The State was persistent
19 on putting his statement in. Look, you can hear how
20 this guy is. This man is contrite, is sad, wished this
21 never happened, would never have shot a cop he said.

22 And the line that I started this with is what I'll
23 end it with for now, and it's who would shoot a cop.
24 Judge, I respectfully ask that you grant this motion
25 because not only does it meet the old standard that

1 we're currently applying, it well exceeds the new one.

2 And under the facts of this particular case in this
3 courtroom in Brevard County the standard of whether or
4 not John reasonably believed that the use of force was
5 necessary has been met because -- just because of the
6 circumstances as he perceived them. Thanks.

7 THE COURT: Okay. Thank you Mr. Panella. All
8 righty, Mr. Scheiner?

9 MR. SCHEINER: I'll --

10 THE COURT: Looks like you're gathering papers.

11 CLOSING ARGUMENT

12 BY MR. SCHEINER:

13 I gave the Court the --

14 THE COURT: I've got them right here, yes, sir.

15 MR. SCHEINER: (Cont'd) cases I wanted the Court to
16 see. Included in that packet was Marin and Love, which
17 we'd already talked about. There --

18 THE COURT: I saw the other one, the new one.

19 MR. SCHEINER: The Fourth District had just ruled
20 on this same issue, and also said that it's not applied
21 retroactively, which obviously we're asking you to rule
22 both ways, but it's our belief that it's the Defendant's
23 burden by a preponderance of the evidence to establish
24 that he was acting in that particular way.

25 I would suggest to the Court though that even if

1 you were to apply the new burden of showing a prima
2 facie case that he was acting in self defense to shift
3 the burden to the State.

4 I don't believe we've gotten there, and I don't
5 believe we've gotten there because the Defendant has to
6 show that he reasonably believed that the force, or
7 threatened use of force that he engaged in on August 20,
8 2015 was necessary to prevent the imminent threat of
9 forcible felony or violence to himself or someone else.

10 And take everything else away that you heard,
11 because the Defendant didn't testify, he didn't tell you
12 what was in his state of mind. The State put his
13 statement in and you heard the --

14 MR. PANELLA: Objection. It's comment on the
15 Defendant not testifying Judge.

16 THE COURT: Well, but we're in a different setting
17 Mr. Panella.

18 MR. PANELLA: I'm just -- okay.

19 MR. SCHEINER: You heard the Defendant's
20 statement --

21 THE COURT: So, overrule, the objection is
22 overruled.

23 MR. SCHEINER: You heard his statement and it came
24 into this Court, and that statement says Mary was in the
25 house. I was standing at the screen door, I told them,

1 hey, what's going on.

2 They let her go, they scatter, she comes in, I go
3 out. She's safe, the threat to her is over. There is
4 no home invasion robbery by the way because they're
5 invited over, they're invited into the house.

6 There's no need for a warrant. Agent Stead could
7 have went in the house with her and arrested her in her
8 living room, because he was invited in. There is no
9 need for a warrant.

10 It's no different than going into a hotel room or
11 anywhere else where they've been invited as a john to
12 engage in prostitution. The threat was over, and the
13 Defendant says he knows that.

14 That they had scattered, they were gone, they ran
15 away. I just went out there to make sure they were
16 gone, and that they continued to flee or they didn't
17 come back, or whatever the case may be.

18 And interestingly, Mr. Panella wants you to think
19 that they -- he didn't see Jason Roberts. The Defendant
20 tells you I saw Jason Roberts, I saw the guy by the
21 truck.

22 I didn't shoot him, not because he wasn't a threat
23 to me, because I didn't want to shoot my truck. And
24 then he says I shot the guy in the middle and I shot the
25 guy on my left.

1 Left, middle, right, and I only shot the guy on the
2 right as he went across the street, which he then
3 confuses with the center guy. And we know he shoots the
4 guy across the street because how else does 43 get there
5 in State's Evidence number 27.

6 And you talk about the breadcrumb; this is -- this
7 is why it's important that we did this forensically and
8 ballistically. The breadcrumb of Agent Roberts, you can
9 look at State's Number 27 and all of the shell casings
10 that are in the grass going from the truck towards the
11 street, that's Jason Roberts path.

12 The immediate collection of -- that includes 18,
13 39, 15, 14, and 16, that's Agent Smith. And then next
14 to him is the grouping of eleven shell casings. That's
15 Agent Stead, and that's where the firearms were found,
16 13, 17. They're in there as 99, 20, 107 -- or 87 in
17 evidence.

18 So, you can look at all that and you can tell that
19 based on what they're telling you and they testified to
20 they're generally exactly where they were, or they would
21 tell you all these guns eject to the right.

22 And if you take their testimony where they said
23 they were out in no man's land or backed up to it all
24 lines up and it all adds up. Where was the Defendant?
25 He was on the porch.

1 Where are all his shell casings? On the porch, or
2 near the porch, or in the grass. Did the Defendant come
3 out off the porch? I'd ask you to look at the pictures.
4 There is blood on the sidewalk out from underneath the
5 covering, and all his shell casings are there.

6 And this idea that Mary -- first of all, I don't
7 know if Mary got shot, I don't know that. She had some
8 injury to her arm. Was that a gunshot wound? I don't
9 know.

10 And even if it was we know that bullets went into
11 the house because we found one. So -- and who did that
12 bullet belong to? It belonged to Agent Roberts. You
13 heard that testimony. There are bullets in the house.

14 So, maybe she did get shot, maybe she got shot when
15 she went in the house, because that's where she went.
16 Everyone else that's outside, the Defendant, Agent
17 Roberts, Agent Stead, Agent Smith all say I don't know
18 where Mary went.

19 I didn't see her, I didn't see her outside. I
20 don't know if she was outside, I don't know if she
21 stayed outside, I don't know where she went.

22 Where did Agent Roberts say she went? I threw her
23 at John Derossett when he was coming out the door when
24 Agent Smith is yelling gun, gun, gun.

25 You've been at this a long time Judge. When is the

1 last time you heard a home invasion robber, or anyone
2 for that matter, yell out the top of their lungs gun,
3 gun, gun, he's got a motherfucking gun, and they're
4 trying to kidnap her.

5 And if you believe Agent Roberts, who testified --
6 Agent Smith also shouted Sheriff's Department, drop the
7 gun. You heard that, that was the testimony.

8 And just because Defense counsel doesn't like it or
9 it doesn't jive with his theory of defense doesn't mean
10 that wasn't the testimony that you heard. That's the
11 testimony before the Court.

12 There is no imminent threat, and if there was it
13 was over. The statutes that apply are 776.012,
14 potentially 776.013, 776.032, which is the immunity from
15 criminal prosecution.

16 Contained in that statute is not just because
17 they're law enforcement officers they're immune. It
18 reads in pertinent part, the second part, unless -- so,
19 a person is entitled to immunity unless the person
20 against whom the force was used or threatened is a law
21 enforcement officer as defined in 943.

22 Who is acting in the performance of his or her
23 lawful duties, and the officer identified himself or
24 herself in accordance with any applicable laws, or the
25 person using or threatening to use the force knew or

1 reasonably should have known that the person was a law
2 enforcement officer.

3 Agent Smith is 6'4, well over 300, and you saw the
4 vest. He held it up. And this suggestion that that
5 sign on the mailbox somehow correlates to the bright
6 yellow lettering that's on that tact vest that you saw
7 is like saying Judge, I know you can read the numbers on
8 there, but can you read the numbers on here. Right?

9 It's the same print, it's the same black writing on
10 white lettering, white paper. It -- no. And you heard
11 testimony that these are cameras.

12 You heard testimony that the crime scene took a
13 picture of something and you couldn't see it in the
14 camera because the camera doesn't pick it up.

15 And we asked her, well, when you were pointing and
16 taking a picture you saw something obviously. You were
17 taking a picture of it. Well, yeah, just the settings
18 weren't right on the camera, didn't come out.

19 So, this isn't a black hole. 1051 Covina isn't a
20 black hole that absorbs all light and doesn't let
21 anything out. It's not what that is. It's the same
22 area of anywhere else.

23 There's no imminence, so you should stop there,
24 even under a prima facie case, even under the new
25 standard. There's no imminence, and so you should stop

1 there is my belief.

2 Certainly having meet the preponderance of evidence
3 that would be their burden if you apply the original
4 standard, which is what we believe is the correct
5 standard of the law.

6 And then fourth -- or third is under 776, all of
7 those statutes, including the one that involves the
8 home, you don't get the presumption and you don't get to
9 behave the way he behaved if you're engaged in criminal
10 activity.

11 And this idea that the Defendant has to want it to
12 happen, need it to happen, encourage it to happen, or is
13 just sitting there -- what do you know, what does this
14 Court know?

15 You know that approximately six, maybe eight weeks
16 prior there's a traffic stop that involves the Defendant
17 driving the victim -- or Mary Ellis somewhere in Cocoa
18 Beach.

19 And what is he doing? He drives around the block
20 for 20 minutes and comes back and picks her up. And
21 when they're stopped he says, well, I don't really know
22 what she's doing.

23 Yeah, I know she's engaged in that kind of conduct
24 and I don't condone it and it is what it is kind of.
25 That's the exchange. And we know that there's multiple

1 exchanges because the Defendant tells you in Agent
2 Simock's statement that there was multiple exchanges
3 between --

4 Because they talked to Mary, they'd talk to him,
5 talk to Mary, and they did talk to him about her conduct
6 and her being engaged in prostitution. So, you know
7 that happened.

8 And you know from the Defendant's statement that
9 he's well aware of her conduct because he gives you an
10 example of a guy with a gun who puts the gun down on the
11 bed.

12 And he was a nice guy, he was a good guy, but that
13 was just somebody that I knew about. And then she had
14 other issues with guys that didn't pay her. And she was
15 just dancing, giving private dances in her room.

16 And Agent Simock says, you're a smart man, you're
17 not that naive, you know. Yeah, yeah, she's probably
18 prostituting. Yeah, you know. He was the enforcer, he
19 was her muscle if the stuff was going to hit the fan,
20 and she knew that, he knew that.

21 And when the perception was that the stuff was
22 hitting the fan he responded. And I think the Court
23 hit the nail right on the head. He has to appreciate --
24 he doesn't get to come out and shoot blindly, and he
25 didn't.

1 He came out, he appreciated that someone, two,
2 maybe three people had hands on his niece, standing
3 outside his doorway. One of them with the back to him
4 with sheriff across the back.

5 And there's deputies in the gallery Judge. You can
6 look at their vests. I mean, it's bright gold
7 lettering.

8 THE COURT: Actually, the lettering on Agent
9 Smith's I think was white.

10 MR. SCHEINER: It's yellow Judge.

11 THE COURT: Is it yellow.

12 MR. SCHEINER: It's yellow.

13 MR. RESPESS: You can get it out.

14 MR. SCHEINER: I can get it out and show it to you.

15 THE COURT: On the back or the front?

16 MR. SCHEINER: It's bright yellow

17 THE COURT: Would you get it out? I'm remembering
18 it was dark blue or black and white.

19 MR. SCHEINER: The vest itself is black --

20 THE COURT: And the other ones were --

21 MR. SCHEINER: The yellowing -- the coloring is
22 exactly what's out here in the gallery.

23 THE COURT: The other ones were yellow -- looked
24 yellow to me, but the -- but his for some reason I
25 remembered it as white.

1 MR. SCHEINER: Then I'll show it to you.

2 THE COURT: If it's buried too much I'll go find it

3 MR. SCHEINER: No.

4 THE COURT: Oh, no, you have the exhibit right
5 here. Okay. I have a terrible memory for color. Okay,
6 let me see the back. Maybe it was the back.

7 MR. SCHEINER: There it is.

8 MR. RESPESS: Show her the back.

9 THE COURT: Let me see the -- let me see the -- oh,
10 it's quite yellow. Okay. Thank you.

11 MR. SCHEINER: And where does he get shot Judge?
12 He gets shot in the bottom of the vest -- center mass.
13 And what does Agent Smith tell you? We looked right at
14 each other, right at each other.

15 He saw me is the gist of his testimony, and I saw
16 him, and we shot at each other and he was successful in
17 hitting his target. Center mass. That's a good shot
18 Judge.

19 He was engaged in criminal conduct. He knew what
20 was happening. What's the saying? The defendant had a
21 conscious intent the criminal act be done. We can infer
22 that because he dropped her off once before.

23 And he knew it was happening that night because he
24 tells us that he knew she was having a guest over. This
25 is the principal, a client.

1 And the defendant did some act or said some words
2 which intended to or which did insight, cause,
3 encourage, assist, or advise the other person or persons
4 to actually commit or attempt to commit the crime. To
5 be a principal you don't have to be present.

6 THE COURT: So, let me ask you something Mr.
7 Scheiner. That -- you raise a good question there. I
8 just have one -- there's one -- the one thing that I'm
9 questioning when it says that the person engaged in
10 unlawful activity.

11 All right, so, what you're -- what you've just
12 presented as the principal instruction, which what
13 you're saying is that --

14 MR. SCHEINER: He's just as guilty as she is.

15 THE COURT: Well, I understand that that's what
16 you're saying, but what you're saying is being complicit
17 the same as being a principal?

18 MR. SCHEINER: No, no, he's keeping her safe, he's
19 providing her a location to have it done. He knows it's
20 happening and he's providing her this space to allow it.

21 He has in the past, and I think you can make
22 these inferences, has dropped her off to collect money.
23 He knows her business because you hear his voice.

24 He tells you that I know that she's been owed money
25 before, people haven't paid her, I know about particular

1 people she's engaged with, some former deputy from
2 Orange County or Orlando that came over and put his gun
3 out and how that guy was nice to her.

4 She clearly is communicating with him because he
5 knows this information and is relating it to Wayne
6 Simock, or Agent Simock, that -- what his conduct is.

7 And I'm asking you to make those inferences, which
8 I believe are reasonable based on the evidence before
9 this Court, that he is a principal to what is going on
10 in his home.

11 And if you believe her, which I'm not sure you can,
12 but if you believe her she goes back and tells him
13 something and shuts his door. So, as if to say --
14 because he says what do I do when people normally come
15 over, I go in my room and do my thing, and if she needs
16 me I'm there.

17 He tells Agent Simock that. And shortly after that
18 exchange happens the doorbell rings or there's a knock
19 at the door and she answers it. It just -- there's an
20 instruction that the Court should consider, willful
21 blindness.

22 In some cases the issue to be determined is whether
23 the Defendant had knowledge of a certain fact. Florida
24 law recognizes that concept known as willful blindness,
25 which is sometimes referred to deliberate avoidance of

1 positive knowledge.

2 Willful blindness occurs when a person has his or
3 her suspicion aroused about a particular fact, realized
4 its probability, but deliberately refrained from
5 obtaining confirmation because he or she wanted to
6 remain ignorant -- remain in ignorance.

7 A person who engages in willful blindness is deemed
8 to have knowledge of that fact. So, I think that's
9 something -- because the statute says knew or reasonably
10 should have known that they were law enforcement
11 officers. You have two men --

12 THE COURT: Is that a jury instruction?

13 MR. SCHEINER: That's a jury instruction. It's --

14 THE COURT: Which one is it?

15 MR. SCHEINER: 3.3 (h). You have two men outside a
16 yard in Port St. John wearing a tactical vest, just like
17 the one I'm holding. Each of them over six feet tall.
18 Each of them communicating or exchanging with Mary
19 Derossett.

20 A third -- well, I guess the other one in the vest
21 wasn't probably over six feet tall, but he was -- you
22 saw him, you saw Agent Roberts. He's here -- is he
23 here?

24 THE COURT: He was. He's right there.

25

1 MR. SCHEINER: And Agent Stead physically badges
2 her. Now, it's interesting the Defendant hears her but
3 doesn't hear the other officers that are talking to her
4 and Agent Roberts identifying himself and telling Mary
5 to calm down and Mary to stop.

6 So, I would just suggest to the Court that those
7 instructions, principal, and willful blindness apply.
8 I've given the Court a couple different cases, included
9 in those are the ones that I -- Martin.

10 The Height case, which is 2008 Westlaw cite -- 2018
11 Westlaw cite 3769191. That's a Fourth District case
12 that talks about that statute not being retroactive,
13 which I believe is the current state of the law.

14 I gave the Court 162 Southern Third 59, Fourth
15 District case that talks about -- it was an appeal by
16 the State and they were discussing with the Court or
17 asking the Court to make a ruling on whether or not the
18 defendant was engaged in criminal activity. Well, at
19 the time of this opinion the statute didn't include that
20 provision.

21 THE COURT: This is Wonder?

22 MR. SCHEINER: In 12. That's under --

23 THE COURT: Wonder? The Wonder case?

24 MR. SCHEINER: No, no this -- yeah, on Wonder.

25 THE COURT: 162 Southern Third 59?

1 MR. SCHEINER: Right. And that statute was
2 subsequently amended to include the engaged in criminal
3 activity statute, or language. That's why I gave you
4 the Chavers case.

5 THE COURT: Okay.

6 MR. SCHEINER: June 20, 2015?

7 MR. RESPESS: '14.

8 MR. SCHEINER: '14.

9 THE COURT: Yeah.

10 MR. SCHEINER: Was when the statute was amended to
11 include the criminal activity language.

12 THE COURT: Okay.

13 MR. SCHEINER: In State v. Chavers, which is 230
14 Southern Third 35, this opinion basically affirms that
15 belief. This was a shooting that occurred at I believe
16 a post office -- or maybe the other one was a post
17 office.

18 THE COURT: No.

19 MR. SCHEINER: The other one was the post office.
20 But either way, the Court ruled that there should have
21 been a discussion or a consideration into whether or not
22 the defendant was engaged in criminal activity.

23 Because to be entitled to a self defense claim or
24 stand your ground claim the defendant has to have not
25 been engaged in criminal activity, or has to have

1 retreated, attempted to retreat first.

2 And then I also gave the Court Joseph v. State, and
3 that's --

4 THE COURT: So, wait, let me make sure I
5 understand. The statute was amended since the Wonder
6 case came out?

7 MR. SCHEINER: Yeah. So, Wonder happened --

8 THE COURT: Which added -- to amend it to add
9 engaged in lawful activity.

10 MR. SCHEINER: Right. So, there were provisions of
11 776 that included the language that if the defendant was
12 engaged in criminal activity you don't get it. But
13 776 --

14 MR. RESPESS: That was in 012, that was the time
15 when 012 didn't have it.

16 MR. SCHEINER: Right.

17 MR. RESPESS: Force is not engaged in criminal --

18 MR. SCHEINER: Right.

19 THE COURT: That's what I'm saying. When --
20 during -- when the Wonder case came out that was not --

21 MR. SCHEINER: Right. At the time there was a loop
22 hole basically --

23 THE COURT: Since, the statute's been amended since
24 this case --

25 MR. SCHEINER: Right.

1 THE COURT: (Cont'd) and what you're saying is
2 Chavers --

3 (Multiple speakers.)

4 MR. SCHEINER: And so that's the status of the law
5 currently Judge. The other case I gave you was Joseph
6 v. State, 103 Southern Third 227. It's another stand
7 your ground case. Just turn your attention to headnote
8 seven.

9 In a prosecution for manslaughter with a deadly
10 weapon to show that he reasonably believed that the use
11 of force was necessary to prevent the imminent death or
12 great bodily harm to himself or another, or to prevent
13 the imminent commission of a forcible felony as
14 necessary to establish immunity for stand your ground,
15 provisions of self defense law.

16 A witness in that case testified at an evidentiary
17 hearing on defendant's motion to dismiss that the
18 defendant went into his home, retrieved a knife before
19 returning outside and stabbing the victim.

20 And there was also evidence that the defendant
21 actually chased the victim. That's not all that far
22 from what we have here Judge.

23 So, if you look at this situation from a -- of just
24 people at 1051 Covina that's not that dissimilar from
25 Joseph. You have an exchange that happens in the yard

1 between four people.

2 You have a perceived threat to one, which would be
3 Mary Ellis, if you're to believe the Defendant's
4 version. You have the defendant coming to the door
5 saying something, hey, what's going on, and Mary Ellis
6 being released and the three others scattering, running
7 away.

8 So, at its best that's the Defendant's version.
9 Mary goes inside and the Defendant comes outside and
10 discharges his firearm. Those are the facts.

11 So, under that set of facts, which is the facts
12 that I believe are before the Court, because the only
13 person that says she was outside when the shooting
14 started is Ms. Ellis.

15 And Judge, you can believe all, part, or none of
16 what a witness tells you. And I'm not sure Ms. Ellis is
17 worth -- testimony is worth anything unless it's
18 corroborated by physical evidence of some fashion.

19 And the only thing we're sure of is that she was
20 engaged in prostitution, and I've given you the text
21 messages and the Backpage profile for you to see that
22 that's what she was doing.

23 So then you're left with everyone else's version of
24 events, which is after we threw Mary to the door we
25 don't know where she went. And the Defendant's version

1 fills that gap.

2 She went inside, I came outside. The threat to
3 Mary is over. The three of them ran, they scattered,
4 which is what they told you they did. Gun, gun, gun,
5 he's got a fucking gun, everybody backed up and took
6 positions.

7 That's what they told you happened. Mary was
8 released. The threat to her is over. Cops or not, he
9 doesn't get to shoot them. There is not imminent
10 threat.

11 But then under 776.032 he should have known. He
12 reasonably should have known they were police officers
13 given the facts and circumstances before him, and the
14 information available.

15 And if you believe Agent Roberts -- Agent Smith,
16 who testified I can't tell you that I yelled sheriff's
17 department. I know I'm trained to yell sheriff's
18 department, I believe I would have yelled sheriff's
19 department, but I can't tell you I did.

20 That's Agent Smith's testimony. Agent Roberts
21 testified after him and said I heard him, I heard him
22 say it. So, he should have known, he reasonably should
23 have known.

24 I agree the Defendant should be judged in the light
25 and the circumstances he was surrounded in the

1 information available to him. Was he under the
2 influence of Dilaudid? Couldn't tell you.

3 We know he took one. We know the analyst testified
4 and said it could be out of his system by 11:00, which
5 is when that test is run, if you believe the exhibit,
6 which it's worth what it's worth because no one came to
7 say when they drew it.

8 But it's on the exhibit, I think it says 10:50
9 something, almost 11:00. He said he could very well be
10 under the influence at 9:30 still of that controlled
11 substance. What it would do to him, I don't know.

12 Would it impair him in some degree? Maybe. One
13 beer -- you can use your common sense Judge, one beer
14 impairs some people. One beer impairs people that drink
15 a lot too. It does something to him, otherwise why take
16 it.

17 And you know, you can assess that information how
18 you see fit, but I would just suggest to the Court that
19 the information available to the Defendant at the time
20 the shooting started was:

21 The threat was over, there was two people in the
22 front yard dressed in this, one with a badge hanging
23 around his neck. He knows his daughter's a -- or his
24 niece is a prostitute, and they're not there anymore,
25 they've scattered.

1 And he sees all three because he shoots at all
2 three. He tells you he shoots at all three, and he
3 center masses one of them. Judge, you should not grant
4 immunity in this case.

5 The State has met its burden if you're going to
6 apply a burden to the State, and the Defendant has
7 failed to meet his burden in any way. Thank you.

8 THE COURT: Thank you Mr. Scheiner. All right, Mr.
9 Panella, and does that prompt anything?

10 MR. PANELLA: Just briefly, briefly Your Honor.

11 THE COURT: Certainly.

12 MR. PANELLA: I'm sorry. Okay.

13 REBUTTAL ARGUMENT

14 BY MR. PANELLA:

15 You know, I'm listening and it's just -- what I
16 think the State's saying is that we have evidence before
17 the Court that the State ordered a blood draw and
18 there's no controlled substances in his system, but you
19 should think there is anyway.

20 That's seriously what I'm --

21 THE COURT: Mr. Panella, let me --

22 MR. PANELLA: Yeah.

23 THE COURT: (Cont'd) ease your mind. I -- that
24 whole thing --

25 MR. PANELLA: Right.

1 THE COURT: (Cont'd) is not factoring into this.
2 That's the last of -- that's the very, very least of
3 anyone's concerns.

4 MR. PANELLA: And I'm glad to hear that. I agree,
5 but here's the reason I bring that up because that
6 sounds the same thing with this idea of the principal
7 argument and all this other stuff.

8 It's like, okay, here's what we actually know: We
9 have no proof that Mr. Derossett was engaged in this
10 enterprise with her. As a matter of fact, he's talking
11 about the muscle and all this stuff.

12 Where was the muscle when Mary Ellis drove the
13 vehicle to the CVS when she got arrested in the first
14 place? I mean, he wasn't there, had nothing to do with,
15 and no one thought he did.

16 So, I just think that these stretches to try to say
17 and that's why, that to me doesn't make sense. Here's
18 what we do know: He's talking about what was available
19 to Mr. Derossett at the time under all these
20 circumstances and whatever. He shot a warning shot.

21 We can make all the inferences we want, Mr.
22 Scheiner and I, you know. What we actually have are
23 real facts though, and if he under the circumstances
24 reasonably should have known that these people were law
25 enforcement officers we wouldn't be having -- we

1 wouldn't -- we wouldn't have the facts that we have that
2 are actually facts, like the fact that he shot in the
3 air.

4 It just wouldn't have happened. Either he wouldn't
5 have shot, or if he really is this person that wants to
6 kill law enforcement, you know, he would have like not
7 shot in the air. It makes no sense.

8 So, when we actually look at the actual facts that
9 we have I think it's important to just recognize, wait a
10 second, everything actually backs up the fact of course
11 he didn't.

12 It's just what we know besides making the
13 inferences. About the timing of everything: Like I
14 said before, you know, we have actual evidence that
15 there was an injury.

16 I think it's a little -- you know, this idea that,
17 yeah, they were shooting in that house, it's pretty
18 scary stuff, you know. And I hear you, they found MM,
19 that whole thing that went through the closet and all
20 that stuff.

21 But there's no suggestion -- her blood's not in the
22 house Judge. So, you know, in that -- where that bullet
23 hits --

24 MR. SCHEINER: Objection, facts not in evidence.
25 We don't know whose blood's in the house Judge.

1 MR. PANELLA: I --

2 THE COURT: Yeah, that's sustained.

3 MR. PANELLA: All right, well --

4 THE COURT: We didn't discuss any blood in the
5 house or DNA analysis of anybody's blood.

6 MR. PANELLA: In any event --

7 THE COURT: Some blood in a chair where Mr.
8 Derossett had --

9 MR. SCHEINER: We don't even know that's blood
10 Judge.

11 THE COURT: Right. Well, there was something goopy
12 on a leather chair.

13 MR. PANELLA: I thought -- yeah, I thought we did
14 talk about that, but --

15 THE COURT: The rest of the house looked cleaner
16 than that.

17 MR. PANELLA: I think the Court gets my point, you
18 know what I mean? It's like, oh, come one. And that
19 bullet was in a back -- we do have facts in evidence
20 that that bullet was in a back bedroom. I mean, come
21 on, she's --

22 MR. SCHEINER: No, objection. No, it wasn't Judge.

23 THE COURT: No, actually -- no, Mr. Panella, it was
24 in the front laundry --

25 (Multiple speakers.)

1 MR. SCHEINER: -- that's exactly in front of where
2 the front door is.

3 MR. PANELLA: In the bedding, in the bedding Judge

4 THE COURT: Yeah, right.

5 MR. PANELLA: I'm sorry. That's what she just --

6 THE COURT: The little front closet.

7 MR. PANELLA: Right.

8 THE COURT: Right.

9 MR. PANELLA: So -- anyway, I'm just making -- you
10 hear what I'm saying. I mean, this idea that, you know,
11 he might have it a little bit off, all I would suggest
12 to you is listen to the totality of the evidence, and
13 we've got five people that all say, you know, different
14 versions of this event.

15 And we do know that she as at least injured during
16 this struggle, and that the struggle went on for --
17 while she screamed the entire time, and so what's
18 available to him of course is that he comes out and he
19 says he says he sees --

20 THE COURT: Right. Well, looking at that nobody
21 even knows if she bled.

22 MR. PANELLA: I'm sorry?

23 THE COURT: But looking at that nobody can say
24 whether or not she bled. I mean, dripped blood. When
25 I --

1 MR. PANELLA: Oh, sure. But the Court can make --

2 THE COURT: Looks like a scuff.

3 MR. PANELLA: Court can make up its own mind, and
4 you'll have it. So, you know, certainly they thought --
5 they were treating it as if she had been grazed by a
6 bullet at the time, but --

7 MR. SCHEINER: Objection, no evidence of that.

8 THE COURT: Okay. No, we didn't hear about that.
9 I will sustain that objection.

10 MR. PANELLA: She said she got stitches Judge that
11 night. So, that is in evidence.

12 MR. SCHEINER: No, no, I object to that. She
13 didn't get any stitches.

14 THE COURT: I don't remember hearing her say she
15 had stitches.

16 MR. SCHEINER: There was no testimony of that.

17 MR. PANELLA: She did say that.

18 MR. SCHEINER: No, I disagree.

19 THE COURT: I don't remember hearing the word
20 stitch.

21 MR. PANELLA: Well, I thought she did.

22 THE COURT: If I -- if she said it I would have
23 written it down, because --

24 MR. PANELLA: I'm not -- you know.
25

1 THE COURT: I don't know. It doesn't -- I don't
2 think --

3 MR. PANELLA: I know.

4 THE COURT: (Cont'd) that whether or not she got a
5 stitch is the most important issue to be decided here
6 today either.

7 MR. PANELLA: I think that -- I'm with you. So, in
8 any event, this -- as far as his involvement and stuff,
9 we actually do have facts in evidence that show that
10 there was a time she drove herself, she got arrested,
11 John had nothing to do with it.

12 So, I think it's a little -- not a little bit, I
13 think it's a massive stretch to be putting him into this
14 thing with her. What we -- you know, because we -- it's
15 not like he drove her somewhere and was his muscle and
16 all that stuff.

17 And as far as we know he had nothing to do with
18 this incident that night Judge. So, in any event, I
19 wanted to show you -- I just wanted to draw the Court's
20 attention to 776.013.

21 As the Court's very aware this is the home
22 protection statute. As -- Judge, I know you've been
23 doing this a long time, and so way before stand your
24 ground even.

25 You obviously don't have a duty to retreat in your

1 house. You never did, and you don't now. So, that's
2 kind of important to recognize. And the porch itself is
3 part of the dwelling as to Florida statute.

4 So, any argument to the contrary not only is
5 factually wrong, it just doesn't even apply. So, I
6 would --

7 MR. SCHEINER: Judge, there's a specific provision
8 in that statute that includes the presumptions set forth
9 in this subsection do not apply if you find that he's
10 engaged in criminal activity. There's a whole list of
11 things that -- when they don't apply, so.

12 MR. PANELLA: Yeah, well that's a separate issue,
13 and I don't know that we should have like a -- we can
14 have a legal discussion about.

15 The presumption, the presume to be in fear Judge is
16 what that's referring to. I think you'll see what I'm
17 saying. Not that you have a duty to retreat from your
18 own house. I think what Mr. Scheiner just said is
19 incorrect.

20 So, what I'm talking about is the presumed fear,
21 and I was going to draw your attention to subsection
22 two. Again, we're not just relying on 013, because the
23 facts of this case implicate several different statutes.
24 Like 012 and 031 even.

25 So -- but I did just want to read real quick. A

1 person -- this is subsection two. A person is presumed
2 to have held a reasonable fear of imminent parrel or
3 death or great bodily harm to himself or another when
4 using or threatening to use defensive force that is
5 intended or likely to cause death or great bodily harm
6 to another if:

7 And then (a), the person against whom the defensive
8 force was used or threatened was in the process of --
9 and remember this is all in his mind. You know the jury
10 instruction says it doesn't have to be actual.

11 We know these people weren't going to -- you know,
12 it's what's in his mind -- was in the process of
13 unlawfully and forcefully entering or had unlawfully and
14 forcibly entered a dwelling, residence, or occupied
15 vehicle.

16 Or if that person had removed or was attempting to
17 remove another against that person's will from the
18 dwelling. And the -- so, actually we have that, which
19 is fascinating in this case and just -- I understand why
20 this law is there.

21 That's pretty scary stuff when someone gets
22 forcefully removed from their house. So, anyway, you're
23 allowed to use deadly force if that had happened.
24 That's what that says, and it actually did by the
25 testimony in this case.

1 So, anyway, the next part is and the person who
2 uses or threatens to use defensive force knew or had
3 reason to believe that an unlawful and forceful entry or
4 unlawful and forcible act was occurring, or Judge, or
5 had occurred.

6 This whole argument about like, well, it was just
7 that one millisecond afterwards is not -- it's just
8 genuinely -- it's dishonest almost. The law says if the
9 guy thought that happened in his own house, and I don't
10 think anyone can suggest that he didn't, he's entitled
11 to this Judge.

12 So, like I said, if this was out on the street, if
13 we're talking about the no duty to retreat stuff and all
14 that, you know, stand your ground, whatever then I think
15 we'd have a different case, but we don't.

16 We have a house, we have his house, we have his
17 niece, we have her screaming, we have him seeing that.
18 We have her fighting and forcefully trying to get away,
19 and he says it and they said it too.

20 And we have everyone agreeing that Stead just sort
21 of grabbed it, reached in and grabbed her, and pulled
22 her out. And the guy was doing everything he could for
23 three hours, and even at the moment that she opened the
24 door, to convince her he wasn't a cop.

25 That's the scenario, and it's 9:30 at night, and it

1 happens to be super dark. And that thing about the
2 jacket Judge, I agree it's yellow lettering, but it
3 doesn't matter what color the letters are.

4 It could have -- the whole thing could have been
5 bright yellow as far as I'm concerned if there's no
6 light and you can't see it.

7 I would request that you at least view the video
8 where -- you know, however much you want, but I've
9 pointed out certain things just to make it easy for you.

10 Like, you're going to get -- you already have a
11 picture of how dark this is. I don't think we have to
12 sit here and argue about that. So, it doesn't really
13 matter.

14 I get it in the light of day and in this courtroom
15 we've got a tact vest with sheriff on it that says --
16 and I can see it and you can see it, but when you're out
17 in that yard and you can't it doesn't matter if it's
18 white, if it's yellow, if it's fluorescent pink, it's
19 black because you can't see it because they're in the
20 shadows.

21 So, Your Honor, I appreciate you giving us the time
22 to do this, and the fact of the matter is under the
23 facts of this case and under several different theories,
24 which all need to be overcome by the way in order to
25 deny immunity, the fact that he's at his house, the fact

1 013, like I just cited applies, the fact that 012
2 applies.

3 And even 031 applies because we suggest that he's
4 not of course engaged in criminal activity. There's not
5 been competent substantial evidence that he is, and he
6 was in his mind preventing the imminent commission of a
7 forcible felony that was actually on going.

8 And the fact of the matter is he's entitled to use
9 deadly force under this law back in 2015, and today in
10 2018 because that didn't change if under the
11 circumstances in his mind he reasonably believed that
12 someone was being taken from his house against her will.

13 That's what the law is, and although this is a
14 difficult case that's what the law is. So, with that
15 Your Honor, I respectfully ask that you grant this
16 motion and thank you again very much.

17 THE COURT: Thank you Mr. Panella. Thank you both
18 very much for a very well presented matter. All of you,
19 thank you very much.

20 MR. SCHEINER: Thank you Judge.

21 THE COURT: It was very well presented and you --
22 and I appreciate you all cooperating on as many things
23 as you were able to do and sharing the witnesses and
24 what not. So, thank you very much.

25 And I will reserve ruling and get you an order as

1 quickly as possible. And Mr. Panella, what is Mr.
2 Derossett's next court -- it was this. This was --

3 MR. PANELLA: October 5th for docket sounding I
4 think.

5 THE COURT: Oh, you're on October 5 docket
6 sounding?

7 MR. PANELLA: Isn't it?

8 THE COURT: Probably. That makes sense.

9 MR. PANELLA: Mr. Scheiner, isn't that what we set?
10 At the last docket sounding --

11 MR. SCHEINER: Maybe. Probably.

12 MR. PANELLA: I believe it is. That's what's on my
13 calender.

14 THE COURT: It may well be there. Okay, let me
15 just put it --

16 THE CLERK: It's set for October the 5th for docket
17 sounding.

18 THE COURT: October 5 docket sounding.

19 MR. PANELLA: Yes, ma'am.

20 THE COURT: Okay. Sounds right. All righty.
21 Well, you'll have the order long before that. So, thank
22 you very much. I appreciate your -- all of your
23 excellent presentation.

24 MR. PANELLA: Thank you Your Honor.

25 (Whereupon, this hearing concluded.)

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