

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR PASCO COUNTY
CASE NUMBER CRC2014CF005586CFAXWS

STATE OF FLORIDA,

Plaintiff,

vs.

VOLUME XI

ADAM MATOS,

Defendant.

PROCEEDINGS: JURY TRIAL

BEFORE: THE HONORABLE MARY M. HANDSEL
Circuit Court Judge

DATE: November 13, 2017

PLACE: Courtroom 3-A
West Pasco Judicial Center
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New Port Richey, Florida 3465

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2 P R O C E E D I N G S

3 * * * * *

4 (OPEN COURT.)

5 (Defendant present.)

6 (Jury absent.)

7 THE COURT: All right. We're here on the
8 record on State of Florida versus Adam Matos.

9 The State is here. The Defense is here. The
10 defendant is present.

11 State, anything we need to go over before I
12 have the jury brought up?

13 MR. SARABIA: No, Judge.

14 THE COURT: Defense, anything?

15 MR. MICHAIILOS: I don't believe so, Judge.

16 THE COURT: All right. Go ahead and bring the
17 jury up.

18 Mr. Sarabia, on Friday you said it might be a
19 short day today. What are we talking about?

20 They're not here?

21 THE CLERK: They're not all here yet.

22 THE COURT: He'll figure it out when he gets
23 down there.

24 THE CLERK: Okay.

25 MR. SARABIA: It depends how quickly we go

1 through the witnesses. If they go as fast as the
2 last five to ten witnesses on Thursday, we may be
3 done like 2:30, 3:00.

4 THE COURT: Then we'll talk about jury
5 instructions, perhaps.

6 MR. LABRUZZO: By lunchtime I'll have
7 something to print out to give to the Court.

8 THE COURT: Okay.

9 And then tomorrow we're going to finish up
10 with our witnesses?

11 MR. SARABIA: We think we will rest tomorrow.

12 THE COURT: Okay. Late tomorrow or should
13 they have their witnesses available for tomorrow
14 afternoon?

15 MR. SARABIA: I think it will be mid-afternoon
16 tomorrow.

17 MR. LABRUZZO: Late.

18 THE COURT: I don't know what that means.

19 MR. LABRUZZO: Later. I think 3:30, 4:00.

20 THE COURT: Okay. So I don't know how many
21 witnesses the Defense has, but you should be ready.
22 Well, I guess we're going to have a JOA argument
23 going on, so we'll be ready for Defense's case on
24 Wednesday. And closing arguments -- be prepared to
25 do closing arguments on Wednesday also.

1 MR. SARABIA: Okay.

2 THE COURT: Depending how long the Defense's
3 case takes. I'm not saying we will do them because
4 I don't want to do them late in the day. Jury
5 instructions on this type of case take a long time.

6 MR. LABRUZZO: Yep.

7 THE COURT: But let's say they don't put on
8 very many people, we're talking about 11:00, we'll
9 probably go into closing arguments.

10 MR. LABRUZZO: Okay.

11 THE COURT: Okay.

12 The jury ready, Clerk?

13 THE BAILIFF: Yes, Judge.

14 THE COURT: Are they all here?

15 THE BAILIFF: Yes, Judge.

16 THE COURT: State ready to proceed?

17 MR. LABRUZZO: Just a moment, Your Honor.

18 MR. SARABIA: We're ready, Judge.

19 THE COURT: I'll let Mr. Lawhorne sit down
20 before I bring the jury in so it doesn't look like
21 he's late or anything.

22 Mr. Lawhorne, don't stand in front of my clerk
23 while she swears the witness. Okay?

24 MR. LAWHORNE: While she's what?

25 THE COURT: While she swears the witness.

1 MR. LAWHORNE: Oh, okay.

2 THE COURT: You don't realize you did that
3 last time?

4 MR. LAWHORNE: No.

5 THE COURT: Oh, yeah. It was great. She was
6 like -- she was like (indicating).

7 MR. LAWHORNE: I didn't even notice. I'm glad
8 you pointed it out.

9 THE COURT: All right. Bring the jury in.

10 THE BAILIFF: Yes, Judge.

11 Jury entering the courtroom, Your Honor.

12 (Jury present.)

13 THE BAILIFF: The jury's all present and
14 seated, Your Honor.

15 THE COURT: Thank you.

16 Good morning, ladies and gentlemen. How are
17 you?

18 THE JURY PANEL: (Responding.)

19 THE COURT: Did you all have a nice long
20 weekend?

21 THE JURY PANEL: (Responding.)

22 THE COURT: And you got to, you know, do some
23 laundry and eat like regular dinners and things
24 like that.

25 Was everybody able to follow my instructions,

1 no reading, texting, tweeting, anything? Yes?

2 THE JURY PANEL: (Responding.)

3 THE COURT: All right. I think you've met my
4 new bailiff for the week. He'll be with you all
5 all week and he has the same rules as my other
6 bailiff. He's not going to answer any of your
7 questions other than what time to be back and where
8 to park and where the restrooms are and things like
9 that.

10 So I believe the State's ready to proceed with
11 their next witness. State?

12 MR. LAWHORNE: The State would call James
13 Spratling.

14 THE COURT: Spratling?

15 MR. LAWHORNE: Spratling.

16 THE COURT: Okay. James Spratling.

17 Good morning, Mr. Spratling. I'm going to
18 have you come up to the podium and stop right there
19 when you get to the podium. Turn, raise your right
20 hand and be sworn by my clerk.

21 THEREUPON,

22 JAMES SPRATLING,
23 the witness herein, was duly sworn and testified as
24 follows:

25 THE WITNESS: I do.

1 THE COURT: All right. Please have a seat in
2 the witness stand and speak in a loud and clear
3 voice for me. Okay?

4 THE WITNESS: Okay.

5 THE COURT: All right. State, you may
6 proceed.

7 MR. LAWHORNE: Thank you, Judge. Counsel.

8 DIRECT EXAMINATION

9 BY MR. LAWHORN:

10 Q Good morning.

11 A Good morning.

12 Q Would you please introduce yourself to the
13 jury.

14 A My name is James Spratling. I'm an asset
15 protection manager for Wal-Mart in Hudson, Florida.

16 Q And will you spell your last name for the
17 court reporter.

18 A S-, as in Sam, -p-r-a-t-l-i-n-g.

19 Q Now, Mr. Spratling, you said you're an asset
20 protection manager for Wal-Mart.

21 A Yes, sir.

22 Q Could you kind of tell us what that means,
23 what are your duties?

24 A Asset protection manager entails all of the
25 security for the building as well as the safety of the

1 Wal-Mart.

2 Q And does that include trying to make sure
3 items don't get stolen?

4 A Yes, sir.

5 Q I figure that's a large part of your job.

6 A Correct.

7 Q And also could you tell us about the camera
8 system that you have at Wal-Mart?

9 A Yes, sir. We have close to 400 cameras. We
10 have PTZs which is are pan, tilt and zoom cameras, still
11 shots, stuff of that nature.

12 Q Over 400, you said?

13 A Over 400.

14 Q And are all of these actively recording at one
15 time?

16 A Yes, sir.

17 Q And is all of that data captured in some
18 manner?

19 A Yes, sir.

20 Q And can you go back and look up a time and
21 pull up the videos for that particular time?

22 A Yes, sir.

23 Q Now, do you recall meeting with Detective
24 Hatcher on September 8, 2014, around 1:00 PM?

25 A Yes, sir.

1 Q And what was Detective Hatcher's reason for
2 meeting with you?

3 A He had an item -- a picture of a shovel bar
4 code that he needed me to identify to see if we sold it
5 in our local Wal-Mart.

6 Q And was that something you were able to help
7 him up with?

8 A Yes, sir. It was.

9 Q And was that something you do sell at your
10 Wal-Mart?

11 A Yes, sir. It was.

12 Q How did you know that?

13 A We went out to the garden center and looked at
14 the picture versus the shovels that we had. And I was
15 able to match the bar code or UPC to the item that we
16 sold in our store.

17 Q Okay. So you could look at the label, you
18 found the same label and then the bar code on that label
19 matched?

20 A Yes, sir.

21 Q Okay. Now, did Detective Hatcher also give
22 you a credit card number?

23 A Yes, sir. He gave me the last four of a
24 credit card number and asked if I could pull it up in
25 our system to see if that credit card had been used at

1 our store in a certain date range.

2 Q And is that something as the asset protection
3 manager you're able to do?

4 A Yes, sir.

5 Q And how does that work? How are you able to
6 look something like that up in your computer system?

7 A Our system has an query where I can put in
8 multiple different search options. In this particular
9 instance, I put in credit card with the last four ending
10 numbers of what he requested.

11 Q And this is probably kind of an obvious
12 sounding question, let me ask you just to make sure
13 we're on the same page. How is that record created in
14 the first place?

15 A Every time a transaction is made at Wal-Mart,
16 it's electronically stored, that is the original copy.
17 When that receipt prints off, that's a secondary copy.
18 So we keep all the original copies for every transaction
19 that's done within the Wal-Mart.

20 Q And then those are the transactions that you
21 can go back and search by a variety of methods?

22 A Yes, sir. Yes.

23 Q Now, did you actually find the shovel
24 transaction that Detective Hatcher was looking for?

25 A Yes, sir. I did.

1 Q And was it on August 29, 2014?

2 A Yes, sir. It was.

3 MR. LAWHORNE: Your Honor, may I approach the
4 witness?

5 THE COURT: You may.

6 MR. LAWHORNE: And I've already shown Defense.
7 I'm showing the witness what's been marked for ID
8 as State's 602.

9 Q (By Mr. Lawhorne) Without showing the jury,
10 can you tell us this is?

11 A It's a copy of an electronic journal entry
12 into our system.

13 Q And can you tell us what journal entry means?

14 A A journal entry is the electronic data that
15 when a register transaction is done, it stores
16 electrically in our system so that we're able to pull it
17 up.

18 Q In appearance is it very similar to a receipt?

19 A Correct. It's very similar to a receipt.

20 Q Okay. Now, is that the journal transaction or
21 journal entry for the shovel using the credit card number
22 that had been given to you by Detective Hatcher?

23 A Yes, sir. It is. Register 67, which is our
24 Electronics Department.

25 Q And is that a true and accurate copy of the

1 record that was created and maintained by Wal-Mart and
2 provided to the Sheriff's Office?

3 A Yes, sir.

4 MR. LAWHORNE: Your Honor, at this time we'd
5 like to introduce this document into evidence as
6 State's 602.

7 THE COURT: Any objection?

8 MR. MICHAÏLOS: No, Your Honor.

9 THE COURT: It will come in as 602.

10 Q (By Mr. Lawhorne) Now, Mr. Spratling, on this
11 journal transaction there, could you kind of tell us
12 what we're looking at? I see there's three transactions
13 and then some stuff below it.

14 A His first attempt was to purchase a
15 PlayStation game console, then a PlayStation 4 game and
16 the shovel using this credit card ending [REDACTED] When he
17 did that, the credit card company declined the charge,
18 I'm assuming, because it was over the credit limit of
19 that card. They then took off the game and the console
20 and he was able to purchase the shovel by itself on the
21 credit card. And that charge was accepted through the
22 credit card company.

23 Q And was the total charge for the shovel
24 \$17.09?

25 A Yes, sir. It was.

1 Q Was this on 8/29, 2014, at 11:48 PM?

2 A Yes, sir. It was.

3 Q Thank you.

4 Now, when you met with Detective Hatcher, were you
5 also able to provide him with a surveillance video?

6 A Yes, sir. I was.

7 MR. LAWHORNE: Your Honor, at this time we
8 would like to publish part of State's 601.

9 THE COURT: Okay.

10 Q (By Mr. Lawhorne) Now, this has already been
11 entered into evidence, but this is State's 601.

12 Is that a copy of the surveillance video that you
13 provided?

14 A Yes, sir, it is. My initials are on there.

15 Q Great. Now, on these videos there are
16 multiple camera views; is that correct?

17 A Yes, sir.

18 MR. LAWHORNE: And -- it's just placed where
19 everybody can see it or do I need to move it?

20 THE JURY PANEL: (Responding.)

21 Q (By Mr. Lawhorne) Mr. Spratling, can you see
22 that screen as well?

23 A Yes, sir.

24 (Thereupon, State's Exhibit 601 is published.)

25 Q (By Mr. Lawhorne) Now, on this disk that you

1 provided, there's multiple views, roof top cams, Stanley
2 GROC, MS GROC. We'll go through some of these and get
3 you to kind of tell us what we're looking at in the
4 store.

5 There it goes. All right.

6 Now, Mr. Spratling, this one is labeled roof top
7 cam Row 11. Can you tell us what this is?

8 A Okay. That would be a shot of the Hudson
9 Wal-Mart Row 11 in the parking lot.

10 Q And this is just looking out from the
11 building?

12 A Yes, sir. It's shooting off of the building
13 towards U.S. 19.

14 Q And that appear to be a silver van that just
15 pulled in; is that accurate?

16 A Yes, sir. It looks like a silver minivan.

17 Q And the time stamp on that one -- I know it's
18 already closed. Did you get a chance to read it? Did
19 it say 11:34?

20 A I did not see, sir.

21 Q We'll back up a little bit. Is that 11:32:58
22 right now?

23 A Yes, sir.

24 Q Okay. And this is the time frame that the
25 Sheriff's Office was asking about and that's the reason

1 you pulled this particular range; is that correct?

2 A Yes, sir.

3 Q Now, this one says Stanley g-r-o-c-o-h exit
4 out. Could you tell us what that means?

5 A Okay. A Stanley shot is a Stanley door, the
6 automatic doors that come in and out. It's an overhead
7 shot off of a Stanley door.

8 Q And g-r-o-c?

9 A And out would be the outside of the building.
10 In would be the inside of the building.

11 Q Does g-r-o-c mean grocery side?

12 A Yes, sir.

13 Q Mr. Spratling, is the time stamp on this one
14 approximately 11:36 right now?

15 A Yes, sir. It is.

16 Q Now, this next one says entrance g-r-o-c. Can
17 you tell us what that means we're looking at?

18 A That's the entrance of the store coming in on
19 the grocery side of the building.

20 Q So is this pointing at the same door as we
21 just saw but at a different angle?

22 A Yes, sir. Those doors in the background those
23 Stanley -- opening and closing doors, that camera that
24 we were watching is on top of that door pointing
25 outward.

1 Q And is this one currently about 11:35 on the
2 time stamp?

3 A Yes, sir. It is.

4 Q Now, the parking lot in the video that we saw
5 a few minutes ago, is that the parking lot generally
6 outside of these doors?

7 A Yes, sir.

8 Q And the next one says Stanley g-a-r-p-e-t-j-m
9 out. Can you tell us what that means?

10 A It's going to be the Stanley door at the
11 garden center between pets and the garden center. And
12 it's going to be a shot shooting in from the inside of
13 the garden center from that Stanley door into the garden
14 center itself.

15 Q And is the time stamp on this one
16 approximately 11:37 right now?

17 A Yes, sir. It is.

18 Q And are your -- your time stamps on your video
19 surveillance, are they accurate?

20 A Yes, sir. All of them are synced together.

21 Q And you're able to put into your system, I'd
22 like to see the videos for this time; it will put all
23 the cameras, you can select what you want?

24 A Yes. I'm able to put a time stamp or a time
25 or any video that I want to pull and it's able to pull

1 that exact time.

2 Q This next one that we're going to look at says
3 AA shoes electronics. Can you tell us what that means?

4 A AA stands for action alley, which is the main
5 thoroughfares through Wal-Mart that customers walk in.

6 Q Now, is this in the front of the store?

7 A Yes, sir. That is from our g-n entrance
8 shooting towards the grocery entrance along the front
9 action alley of the store.

10 Q The next one says a-a-g-r jewelry 97. Could
11 you tell us what that means?

12 A Action alley grocery to jewelry. That's the
13 reverse angle of the shot we were just looking at, from
14 the grocery shooting towards jewelry down towards g-n.

15 Q The next one says Stanley g-r-o-c-j-m exit.
16 And could you tell us what that means?

17 A Okay. That's a grocery shot of our
18 entrance/exit and this is going to be them coming out of
19 the store into the parking lot area.

20 Q The next one says roof top cam g-r entrance.
21 Can you tell us what that means?

22 A Okay. That is an overview of the grocery
23 entrance and the front parking lot of the store.

24 Q And this one is roof top cam Row 11 out.
25 Could you tell us what that means?

1 A Okay. That's another shot of the first one
2 that we originally looked at. The roof top camera 11 in
3 our parking lot in front of the store.

4 Q And is the time stamp here approximately 11:50
5 at this point?

6 A Yes, sir. It is.

7 Q Now, Mr. Spratling, I'm going to show you some
8 photographs that I've already shown to Defense. These
9 are labeled for identification purposes as State's 20,
10 21, 605, 604, 603.

11 Could you please look at these without showing the
12 jury and tell me what these are.

13 A These are all snapshots of the video we just
14 watched.

15 Q Those are all essentially still photographs
16 taken from that video?

17 A Yes, sir.

18 Q And are they true and accurate representations
19 of what was captured in the video?

20 A Yes, sir.

21 MR. LAWHORNE: Your Honor, at this time I'd
22 like to introduce these into evidence.

23 THE COURT: All right. The numbers again?
24 Make sure I have them.

25 MR. LAWHORNE: We've got 20, 21, 605, 604, and

1 603.

2 THE COURT: All right. Any objection?

3 MR. MICHAIILOS: No objection, Your Honor.

4 THE COURT: All right. 603, 604, 605, 20 and
5 21 will come in.

6 MR. LAWHORNE: Your Honor, may we publish
7 these?

8 THE COURT: You may. Are you going to publish
9 them in the overhead or are you going to --

10 MR. LAWHORNE: I was just going to throw them
11 on the overhead.

12 THE COURT: That's fine.

13 MR. LAWHORNE: I just have to switch over to
14 the computer properly.

15 Q (By Mr. Lawhorne) Now, this photograph,
16 Mr. Spratling, at the bottom it says rooftop cam 11.

17 Is that the same parking lot camera you mentioned
18 earlier?

19 A Yes, sir. It is.

20 Q This is at 11:33 PM approximately?

21 A Yes.

22 Q Now, and this exhibit we're looking at now is
23 State's 603. This next image is State's 604. And would
24 you tell us again what the g-a-r-p-e-t means?

25 A This is the garden pet jam out going into the

1 garden center from date 8/29/14, at 11:37 PM.

2 Q Thank you. And State's 605, could you tell us
3 again what we're looking at here?

4 A That is the same shot we just looked at. This
5 time he's coming back towards inside the store.

6 Q And is the man in that image holding a shovel
7 at this point?

8 A Yes, sir. He is.

9 Q And State's 20.

10 A Same shot as previously just a little bit
11 closer to the camera itself.

12 Q And State's 21.

13 A This is our action alley shooting from the
14 grocery side of the store towards the g-m side of the
15 store showing the person with the shovel in his hands.

16 Q Thank you.

17 MR. LAWHORNE: Your Honor, we have no further
18 questions at this time.

19 THE COURT: All right. Cross?

20 MR. MICHAIILOS: No questions, Judge.

21 THE COURT: All right, sir. You may step
22 down. Thank you very much.

23 State, may he be released?

24 MR. LAWHORNE: Yes, Judge.

25 THE COURT: All right. Defense, any

1 objection?

2 MR. MICHAÏLOS: No, Your Honor.

3 THE COURT: All right, sir. You are released.
4 Thank you very much.

5 State, call your next witness.

6 MR. SARABIA: The State would call Kimberly
7 Ward.

8 THE COURT: Kimberly Ward.

9 Good morning, Ms. Ward. If you want to step
10 up to the podium for me.

11 THE WITNESS: Good morning.

12 THE COURT: Good morning. If you want to stop
13 right there. Raise your right hand and be sworn by
14 my clerk.

15 THEREUPON,

16 KIMBERLY WARD,
17 the witness herein, was duly sworn and testified as
18 follows:

19 THE WITNESS: I do.

20 THE COURT: All right. Please have a seat in
21 the witness stand. Speak in a loud and clear voice
22 for me. Okay?

23 THE WITNESS: Okay.

24 THE COURT: State, you may proceed.

25 MR. SARABIA: Thank you, Judge.

1 DIRECT EXAMINATION

2 BY MR. SARABIA:

3 Q Could you please turn and introduce yourself
4 to the jury.5 A Good morning. My name is Kimberly Ward.
6 That's W-a-r-d.7 Q And, Ms. Ward, we've heard a little bit about
8 you through some of the other witnesses.

9 Do you know Jimmy Sigler?

10 A I do.

11 Q Do you know Tonya Carlson?

12 A I do.

13 Q How do you know them?

14 A I lived two blocks away from the Fisherman
15 Shack, so I would consider myself a regular. We go in
16 most days after work for two beers from 6:00 to 7:15.
17 So I've known Jimmy and Tonya for many, many years.
18 Very good friends.19 Q Back before August 2014, did you know Nicholas
20 Leonard?

21 A I did. Yes.

22 Q See him in the Fisherman Shack on a fairly
23 regular basis?

24 A Absolutely, yes.

25 Q Did you know Megan Brown?

1 A Yes.

2 Q How did you come to meet Megan Brown?

3 A She had been employed at the Fisherman Shack
4 for approximately two months. She had just moved in the
5 first part -- moved to the area the first part of July,
6 I believe.

7 Q Okay. And as a regular, going there often,
8 you had a decent amount of contact with Megan Brown?

9 A Uh-huh. Yes.

10 Q And do you remember the last day that Megan
11 Brown worked?

12 A Yes. That would have been Wednesday, the 27th
13 of August.

14 Q Of 2014?

15 A That's correct.

16 Q And the next day, August 28th of 2014, did you
17 learn about some stuff that had happened with Megan that
18 morning?

19 A Yes.

20 Q Was it something that was being discussed
21 within the bar?

22 A Absolutely, yes.

23 Q Were people who were concerned about her?

24 A Yes.

25 Q Were you one of those people?

1 A Absolutely.

2 Q Did you notice -- well, did you know what
3 vehicle she drove?

4 A Yes. It was a blue Blazer, SUV-type.

5 Q Okay. I'm holding up State's 308. Does that
6 appear to be the vehicle?

7 A It does, yes.

8 Q On the 28th, were you aware through
9 conversation with people that Megan was not expected to
10 come into work that day?

11 A That's correct, yes.

12 Q Because of the morning incident?

13 A Yes. She was going to get some sleep and she
14 was -- I was told that she was afraid.

15 MR. MICHAIILOS: Objection.

16 Q (By Mr. Sarabia) Without going into what --

17 THE COURT: Sustained.

18 Q (By Mr. Sarabia) I don't want to talk about
19 what anybody said.

20 A Okay.

21 Q It's hearsay. We can't go into that.

22 But you were aware she wasn't planning to be in
23 that day?

24 A That's correct.

25 Q But you also saw that her vehicle was there?

1 A Yes. Left from the night before.

2 Q So the next day, Friday, August 29th, did you
3 notice was the vehicle still there?

4 A It was.

5 Q Were you keeping a close eye on it?

6 A Yes.

7 Q Out of concern?

8 A Yes.

9 Q So, if it had moved or disappeared and come
10 back, that's something you would have taken note of?

11 A Yes.

12 Q So turning your attention to the next day,
13 August 30th of 2014, that would have been Saturday?

14 A Saturday morning.

15 Q Could you describe for the jury kind of how
16 you went about your morning and what you observed?

17 A I would typically drive to either the ice
18 cream parlor or one of the businesses down on Old Dixie
19 Highway where I would walk for exercise where I would
20 have sidewalk. So I would have to drive by the
21 Fisherman Shack. I would then go, again, to the ice
22 cream parlor and then walk -- basically it's a two-mile
23 round trek down to Hudson Beach and back. And I did
24 that most every morning. It took me right at an hour if
25 I did the two-mile trek. So at 8:30, the car was there

1 and I said an expletive, "Megan's car is still here." I
2 made a mental note of it. I spoke out loud to myself.
3 Then I did my two-mile walk. I came back at 9:30, one
4 hour later and the car was gone. And at that point I
5 felt relief and I said when I got home to my husband,
6 "Thank goodness."

7 MR. MICHAÏLOS: Objection.

8 MR. VIZCARRA: Objection, Judge. Hearsay.

9 Q (By Mr. Sarabia) Without going into what was
10 said, you were relieved some that the car was gone?

11 A Yes.

12 Q You thought that Megan must have been okay
13 because she came to get her car?

14 A Yep.

15 Q Now, and you said 8:30 and 9:30. That's 8:30
16 AM and 9:30 AM?

17 A That's correct.

18 Q And when you passed by 9:30 AM and saw the
19 vehicle was gone, did you notice had anybody come to
20 open up yet?

21 A No. It was right before, so it was 9:30.
22 Tonya would have gotten there right about 9:45.

23 Q Okay. And you're familiar with when the
24 Fisherman Shack opens and the bartender comes in to get
25 all of that ready?

1 A Ten o'clock, yes. Uh-huh.

2 MR. SARABIA: Okay. Judge, may I have a
3 moment?

4 THE COURT: You may.

5 MR. SARABIA: I don't have anymore questions,
6 Judge.

7 MR. MICHAIILOS: No questions, Your Honor.

8 THE COURT: All right. Ms. Ward, you may step
9 down.

10 State, is she released from her subpoena?

11 MR. SARABIA: Subject to recall, yes, Judge.

12 THE COURT: Okay, ma'am. You're release at
13 this time, but you stay on standby with the State.
14 Okay? Thank you very much.

15 THE WITNESS: Okay. Thank you.

16 THE COURT: You can leave the courthouse.

17 State, call your next witness.

18 MR. LABRUZZO: Yes, Your Honor. The State
19 would call Kayla Wilkins.

20 THE COURT: Good morning, Ms. Wilkins. You
21 can come up to the podium for me. Stop right
22 there. Raise your right hand and be sworn by my
23 clerk.

24

25

1 THEREUPON,

2 KAYLA WILKINS,
3 the witness herein, was duly sworn and testified as
4 follows:

5 THE WITNESS: I swear.

6 THE COURT: All right, ma'am. If you can have
7 a seat in the witness stand. And speak in a loud
8 and clear voice. You sound like you're a low
9 talker, so we need to keep it up. Okay?

10 THE WITNESS: Okay.

11 THE COURT: Thank you.

12 State, you may proceed.

13 MR. LABRUZZO: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MR. LABRUZZO:

16 Q Good morning, ma'am. Could you please turn to
17 the ladies and gentlemen of the jury, introduce yourself
18 by stating your name.

19 A My name is Kayla Wilkins.

20 Q And, Ms. Wilkins, do you live in Pasco County?

21 A Yes.

22 Q Which part?

23 A Hudson, Florida.

24 Q All right. And what do you currently do for a
25 living?

1 A I am an occupational therapy assistant.

2 Q All right. Back in 2014, did you work
3 someplace else?

4 A Yes.

5 Q And where did you work?

6 A Winn Dixie.

7 Q And which Winn Dixie store did you work at?

8 A The one on Hudson Ave. and 19.

9 Q All right. And what did you do at Winn Dixie?

10 A I was a customer service associate.

11 Q And what does that mean?

12 A I worked behind the customer service desk and
13 I did money management, things in the office. Excuse
14 me. Et cetera.

15 Q All right. I'm going to ask you to sit --
16 just to pull up a little bit closer to that microphone
17 if you could.

18 There you go. Thank you, ma'am.

19 So customer service representative, is that the
20 same as a person if you're buying groceries and you go
21 checkout line is that the same person that checks out
22 all the food or is that someone different?

23 A A little bit different.

24 Q All right. Now, you have responsibilities in
25 the office?

1 A Yes.

2 Q And this customer service area, where is it
3 located in the store?

4 A At that specific store, when you first walk
5 in, it's to the left-hand side.

6 Q Okay. And you kind of mentioned some of the
7 duties that are back there, but do you guys keep tobacco
8 products behind the customer service desk?

9 A We do.

10 Q And if someone wanted to buy a money order or
11 cash a check, would they go to you?

12 A Yes.

13 Q This Winn Dixie store that you worked at back
14 in 2014, did it have a video surveillance system?

15 A It did.

16 Q And are you aware that it was working?

17 A Yes.

18 Q In fact, if you were to go in the office at
19 times you could see a display of what was go on in the
20 store?

21 A Yes.

22 Q All right. And, in fact, you've had an
23 opportunity to view video surveillance of a case you
24 were involved in; is that correct?

25 A Correct.

1 Q All right. And I'm going to --

2 MR. LABRUZZO: For the record, I've already
3 shown Defense Counsel State's Exhibit 22.

4 Q (By Mr. Labruzzo) Ma'am, I'm going to ask you
5 to look at this CD. And do you see your initials and
6 the date on there?

7 A I do.

8 Q Did you have an opportunity to watch the video
9 surveillance that's on that CD?

10 A I did.

11 Q And does that video surveillance accurately
12 depict the customer service area of the Winn Dixie store
13 where you worked?

14 A It does.

15 Q In fact, you've seen yourself on this video,
16 correct?

17 A Correct.

18 MR. LABRUZZO: All right. Judge, at this time
19 the State would seek to admit State's Exhibit 22 as
20 the next item of evidence.

21 THE COURT: Any objection?

22 MR. MICHAIILOS: No objection.

23 THE COURT: All right. 22 will come in.

24 Q (By Mr. Labruzzo) And, ma'am, before I begin,
25 do you remember the date that this video surveillance

1 captures?

2 A I do not.

3 Q Okay. As part of this investigation, did you
4 prepare a written statement to the Sheriff's Office in
5 regards to your activities in this case?

6 A I did.

7 Q Would it help refresh your memory if I were to
8 show you your written statement and the date that we're
9 referencing?

10 A Yes.

11 MR. LABRUZZO: Okay. For the record, I'm
12 showing Defense Counsel.

13 Q (By Mr. Labruzzo) All right, Ms. Wilkins.
14 I'm just going to show you this (indicating). Take a
15 look at it. Let me know if you recognize it.

16 A I do.

17 Q All right, ma'am. And do you see the date
18 that we're referencing on here?

19 A Yes.

20 Q And what date are we talking about?

21 A September 1, 2014.

22 Q September the 1st of 2014. All right, ma'am.
23 I'm going -- can you look over your right shoulder
24 and see the monitor there?

25 A Uh-huh.

1 Q All right. I'm going to -- give me one second
2 to get to -- just give me one second.

3 Okay. All right, ma'am. Before I get playing this
4 video, let's just give a description of what we're
5 looking here at the monitor screen.

6 Can you see the area? What area is this?

7 A This is the customer service desk.

8 Q All right. And I'm going to walk over and
9 point to some areas and I want you to tell me what it
10 is.

11 A Sure.

12 Q What's this right here (indicating)?

13 A That's where we keep the cigarettes.

14 Q Tobacco products?

15 A Tobacco products.

16 Q And this is the cash register right here?

17 A Correct.

18 Q If you were doing some check cashing, would it
19 be this area as well (indicating)?

20 A Yes.

21 Q We kind of see a small, little blue light
22 right here, what is that?

23 A The electronic pen pad.

24 Q And what is that for?

25 A For anyone that's making an electronic

1 payment, that is what they pay through.

2 Q All right. And you can't see in this area
3 (indicating), but is there -- what's out of the view of
4 the camera? What's that area over there (indicating)?

5 A The pharmacy.

6 Q All right. All right, ma'am. I'm going to
7 forward to the time in question here.

8 That's a little too far.

9 All right, ma'am. Do you see yourself in this
10 picture?

11 A I do.

12 Q Okay. I'm going to let it play and I'll pause
13 it in a second. Okay?

14 A Okay.

15 Q And while this is playing, ma'am, do you
16 remember doing a transaction for two particular items, a
17 jug of milk -- a gallon of milk and a case of Yingling
18 beer?

19 A Yes.

20 Q All right. Is that the transaction that's in
21 question?

22 A Yes.

23 Q All right. So when we see the case of beer
24 and the gallon of milk, let us know.

25 A Okay.

1 Q Let me see if I can move it just a little bit.
2 It's just easier to let it play for a minute.

3 A This is where the beer and the milk come into
4 play.

5 Q Yes, ma'am. So this is the individual that
6 purchased the beer (sic) and the Yingling beer?

7 A Yes.

8 Q Prior to him walking up to your area, did you
9 observe the beer and milk sitting out?

10 A I did. It was over in the pharmacy area.

11 Q Okay. It was just sitting there?

12 A Uh-huh.

13 Q Okay. Is that a yes?

14 A Yes.

15 Q All right, ma'am. And what are you doing now
16 ma'am?

17 A I am attempting to cash a check.

18 Q Okay. Did this individual present you with a
19 check?

20 A Yes.

21 Q Ultimately were you able to cash the check
22 that he presented to you?

23 A No.

24 Q All right. And who's that walking up?

25 A One of my managers, Chris.

1 Q All right. As you sit here today, do you have
2 any recollection of why the check was not able to be
3 cashed?

4 A No.

5 Q Where are you going now?

6 A To where the tobacco products are.

7 Q All right. Are you familiar with cigarettes?

8 A Yes. From when I worked there. Vaguely,
9 yeah.

10 Q If someone were to ask for a specific type,
11 would you know exactly where to find them or you
12 sometimes would require some help?

13 A I would require help.

14 Q And what is he doing over here?

15 A He is helping me find the ones that he wanted.

16 Q Okay. And what are you doing now?

17 A I am ringing up the items that he would like
18 to purchase.

19 Q Does that include the gallon of milk, the case
20 of Yingling beer, and the cigarettes?

21 A It does.

22 Q And how is he paying for it?

23 A With a credit card.

24 Q At that pin terminal?

25 A Correct. Yes.

1 Q Was he able to complete the transaction?

2 A Yes.

3 Q All right, ma'am.

4 MR. LABRUZZO: Where did I put the sleeve?

5 Here it is.

6 Q (By Mr. Labruzzo) Okay. Just one more thing
7 before we're done, ma'am.

8 A Sure.

9 Q I'd like to show you what's been marked as
10 State's Exhibits 23, 606, and 607.

11 MR. LABRUZZO: For the record, I've shown them
12 to Defense Counsel.

13 Q (By Mr. Labruzzo) Ma'am, I want you to take a
14 second and look at these three photographs.

15 A Okay.

16 Q All right, ma'am. Are those photographs of
17 the video that we just watched?

18 A Yes.

19 Q All right. And I want to ask you paying
20 particular attention to the upper right-hand corner.
21 Let's see. Where is the first one?

22 MR. LABRUZZO: And I'm referring to State's
23 Exhibit 23.

24 Q (By Mr. Labruzzo) What time is noted on this
25 video?

1 A 15:12.

2 Q 15:12. And that's like a military time?

3 A Uh-huh.

4 Q Okay. Do you know how that converts into
5 normal time?

6 A 3:12.

7 Q All right, ma'am. And would that have been,
8 3:12, during the day, PM, the shift that you worked?

9 A Yes.

10 Q On September the 1st of 2014?

11 A Yes.

12 MR. LABRUZZO: Your Honor, at this time the
13 State would seek to admit 23, 606 and 607.

14 THE COURT: Any objection?

15 MR. MICHAILOS: No objection.

16 THE COURT: All right. 23, 606 and 607 will
17 be admitted.

18 MR. LABRUZZO: All right. Thank you, ma'am.
19 I have no further questions of this witness.

20 THE COURT: Cross?

21 MR. MICHAILOS: No questions, Judge.

22 THE COURT: All right, ma'am. You may step
23 down.

24 Is she released from her subpoena?

25 MR. LABRUZZO: Yes, Your Honor.

1 THE COURT: Defense, any objection?

2 MR. MICHAIILOS: No, ma'am.

3 THE COURT: All right, ma'am. You're released
4 from your subpoena. Thank you so much.

5 THE WITNESS: Thank you.

6 THE COURT: State, call your next witness.

7 MR. SARABIA: The State would call Ethan Roy.

8 THE COURT: All right. Ethan Roy, please.

9 Good morning, Mr. Roy. If you want to step up
10 to the podium right here for me.

11 Stop right there. Raise your right hand and
12 be sworn by my clerk.

13 THEREUPON,

14 ETHAN ROY,

15 the witness here, was duly sworn and testified as
16 follows:

17 THE WITNESS: Yes.

18 THE COURT: All right, sir. You may step
19 around into the witness stand and speak in a loud
20 and clear voice for me. Okay?

21 THE WITNESS: Okay.

22 THE COURT: Thank you, sir.

23 State, you may proceed.

24 MR. SARABIA: Thank you, Judge. Defense.

25

1 DIRECT EXAMINATION

2 BY MR. SARABIA:

3 Q Could you please turn and introduce yourself
4 to the jury.5 A My name is Ethan Roy. I currently live in
6 Kentucky.

7 Q Mr. Roy, back in 2014, where did you live?

8 A In Holiday Lake Estates.

9 Q Here in Pasco County, Florida?

10 A Yes, sir.

11 Q What were you doing for work at that time?

12 A Working for a Republic Trash Service. I was a
13 driver.14 Q And could you give the jury an idea, basically
15 what are we talking about?16 A I get up early, go and pick up trash. Go to
17 each individual house and pick up trash and go through
18 my route everyday.19 Q Okay. And did you have a route that included
20 the Sea Pines area of Old Dixie Highway and Hatteras
21 Drive?

22 A Yes, sir. Yes, sir.

23 Q Now, I want to take you back to the Tuesday
24 after Labor Day of 2014, which would have been September
25 2, 2014.

1 Were you working your trash route on that
2 particular day?

3 A Yes, sir.

4 Q And I'm going to show you what's been marked
5 as State's Exhibit 33. Do you remember this house?

6 A Yes, sir.

7 Q On September 2, 2014, was there anything
8 little bit unusual when you picked up at that house?

9 A Yeah. Normally there's no trash there, maybe
10 a bag once in a great, you know, month or two or
11 something. But that morning had ten or so bags setting
12 out. Did not look at my route sheet that morning. That
13 time of the year is when snowbirds come back. Did a
14 courtesy pick up, helped my temp that I had on the back
15 pick up the trash and throw it in the back.

16 Q Do you remember what color the trash bags
17 were?

18 A White.

19 Q And were they heavy?

20 A Pretty -- pretty heavy. Sort of like they
21 cleaned cabinets out, food products, stuff like that.

22 Q Some weight to them?

23 A Yes.

24 Q And so you pick up those ten or so trash bags
25 from that curb, you put them in the back of the garbage

1 truck after that?

2 A Yes, sir.

3 Q So what happens to that trash?

4 A It gets crushed in the garbage truck and then
5 at the end of the day, we take it to the infirnory (sic)
6 and dump it and they burn it.

7 Q And they burn it, meaning they incinerate it?

8 A Yes, sir.

9 Q Meaning it's gone?

10 A It's gone.

11 Q Anyone wants to go back to try to get that
12 trash, they're not going to get anything?

13 A No.

14 Q Okay. And trash pick up days were Tuesday and
15 Fridays --

16 A Yes, sir.

17 Q -- for that area?

18 MR. SARABIA: Okay. I don't have any more
19 questions, Judge.

20 THE COURT: Cross?

21 MR. MICHAIILOS: Nothing, Your Honor.

22 THE COURT: All right, Mr. Roy. Thank you
23 very much, sir. You may step down.

24 State, is he released from his subpoena?

25 MR. SARABIA: Yes, Judge.

1 THE COURT: Sir, you are free to go. Thank
2 you very much.

3 THE WITNESS: Thank you.

4 THE COURT: State, call your next witness.

5 MR. LAWHORNE: Stephanie Holyak.

6 THE COURT: Can you spell the last name for
7 me?

8 MR. LAWHORNE: Yes. H-o-l-y-a-k.

9 THE COURT: Wouldn't have gotten that one.

10 MR. LAWHORNE: I wouldn't have either.

11 THE COURT: Good morning, ma'am. If you want
12 to step up to the podium for me. If you can raise
13 your right hand and be sworn by my clerk.

14 THEREUPON,

15 STEPHANIE HOLYAK,
16 the witness herein, was duly sworn and testified as
17 follows:

18 THE WITNESS: Yes.

19 THE COURT: All right. Ma'am, if you want to
20 step around to the witness stand right there and
21 speak in a loud and clear voice for me. Okay?

22 THE WITNESS: Okay.

23 THE COURT: That's not loud and clear. So it
24 has to be louder than that one.

25 THE WITNESS: Thank you.

1 THE COURT: No problem.

2 State, you may proceed.

3 MR. LAWHORNE: Thank you, Judge.

4 DIRECT EXAMINATION

5 BY MR. LAWHORN:

6 Q Good morning.

7 A Good morning.

8 Q Would you please introduce yourself to the
9 jury.

10 A Hi my name is Stephanie Holyak. It's
11 S-t-e-p-h-a-n-i-e. Last name Holyak, H-o-l-y-a-k.

12 Q And, Ms. Holyak, let's go back to 2014.
13 In September of 2014, where did you work?

14 A I worked at Wells Fargo.

15 Q And what did you do for Wells Fargo?

16 A I was a bank teller.

17 Q And what does a bank teller do?

18 A We cash checks; we make deposits; we make
19 payments on various loans.

20 Q And the bank tellers are the people who
21 interact with the public at the counter?

22 A Yes. That's correct.

23 Q Now, were you working on September 2, 2014?

24 A Yes, I was.

25 Q And on that particular day, do you recall

1 having any interaction with a man by the name of Adam
2 Matos?

3 A Yes, I do.

4 Q And was Adam Matos there cash a check?

5 A Yes.

6 Q And do you recall what the check was for?

7 A It was his payroll check from Get Hooked.

8 Q And the process for cashing a check, would you
9 mind walking us through kind of how that works. I know
10 that's simple, but just so we're all on the same page.

11 A Yes. So I take his identification and then we
12 get a thumbprint on the check and then I process the
13 check and cash it.

14 Q And you get a thumbprint and you get ID. The
15 thumbprint, is that for people who don't have an account
16 or people who do have an account or everybody?

17 A That is for noncustomers, the thumbprint.
18 Yes.

19 Q Okay. So if you have an account for Wells
20 Fargo and walk in, you don't have to thumbprint?

21 A That's correct.

22 Q Okay. But if you don't, you have to do a
23 thumbprint?

24 A Yes.

25 Q Now, the check that was cashed -- well,

1 actually, let me back up.

2 A Okay.

3 Q I'm going to show you some photographs that
4 have been marked for identification as State's 24.
5 Without showing these to the jury, could you kind of
6 just look through them and tell us what they are.

7 A This is video surveillance of me cashing
8 Adam's check.

9 Q And when you say "video surveillance", are
10 these actually still photos taken from the video
11 surveillance?

12 A Yes.

13 Q And Wells Fargo has cameras in their banks?

14 A Correct.

15 Q And filming in multiple different angles?

16 A Correct.

17 Q And are these true and accurate
18 representations of what you observed that day?

19 A Yes, they are.

20 MR. LAWHORNE: And, Your Honor, at this time
21 I'd like to introduce State's 24 into evidence as
22 State's 24.

23 THE COURT: Any objection?

24 MR. MICHAÏLOS: No, Your Honor.

25 THE COURT: All right. State's 24 will come

1 in as State's 24.

2 MR. LAWHORNE: We'd also like to publish,
3 Judge.

4 THE COURT: You may.

5 (Thereupon, State's Exhibit 24 is published.)

6 Q (By Mr. Lawhorne) Ms. Holyak, can you see the
7 display that's turning on right now from where you're
8 seated?

9 A No.

10 Q I know it's not on yet.

11 A Okay. Yes.

12 Q Okay. It takes a second to warm up.

13 Okay. Let me zoom in a little bit so you can
14 actually see what we're looking at here.

15 This first photograph here, can you tell us where
16 this is in the bank?

17 A This is the front door to Wells Fargo.

18 Q And is that Adam Matos?

19 A Yes.

20 Q Now, the next photo there is that the same
21 door we just saw?

22 A Yes.

23 Q And is this the same door just the person a
24 little bit farther inside?

25 A Yes.

1 Q Now, this one appears to be a different angle
2 entirely. What are we looking at here?

3 A That's the teller line.

4 Q And the teller line meaning on the left side
5 of the photo, that's where all the bank tellers are and
6 then the public approaches from the right side?

7 A Correct.

8 Q Is that again Adam Matos you cashed the check
9 for that day?

10 A Yes.

11 Q Now, this photo appears to be a different
12 angle again. Where is this one from?

13 A That's Adam at my window cashing the check.

14 Q And same camera angle here?

15 A Yes.

16 Q And is this him actually physically handing
17 you the check?

18 A Yes.

19 Q Again, same camera angle?

20 A Yes.

21 Q Now, here he's handing you something. Can you
22 tell what he's handing you there?

23 A That's his ID -- identification.

24 Q And this next photo also still his ID?

25 A Yes.

1 Q And here there appears to be one other card on
2 the screen?

3 A Social Security card.

4 Q And is that part of what you sometimes require
5 to cash checks for non-account holders?

6 A That's correct. Two forms of identification.

7 Q And then this photo, again, same camera angle.
8 What are we looking at here?

9 A He's thumbprinting the check.

10 Q And that looks like he's actually putting his
11 hand in the ink pad in the photo?

12 A Yes.

13 Q And is that him putting the actual print onto
14 the document?

15 A Yes.

16 Q And, again, the same camera angle?

17 A Yes.

18 Q And this is the same camera angle?

19 A Yes.

20 Q And is that again the same camera angle?

21 A Yes.

22 Q Now, is this you actually giving him the cash
23 back in exchange for it?

24 A Yes.

25 Q Now, the hands we can see here, are those your

1 hands?

2 A Yes, they are.

3 Q And, again, this is the same camera angle. He
4 appears to have the cash in his hand at that point?

5 A Yes.

6 Q And is this back to the -- I'm sorry. I
7 forgot the word you used for this area.

8 A This is the teller line.

9 Q Teller line.

10 A In the lobby, yes.

11 Q And is that Adam Matos leaving?

12 A Yes.

13 Q And is this the same doors we saw earlier?

14 A Yes, they are.

15 Q And that's just him leaving this time instead
16 of coming in?

17 A Correct.

18 Q And, again, the same thing?

19 A Yes.

20 Q Now, while Adam Matos was at the bank, did he
21 talk to you about possibly opening a checking account?

22 A Yes, he did.

23 Q And did you discuss with him him coming back
24 the next day?

25 A Yes, I did.

1 Q And when you set that appointment up, did you
2 take his address and his phone number?

3 A Yes. He did provide that.

4 Q And with that information provided to you, did
5 you enter it into your computer system?

6 A Yes, I did.

7 MR. LAWHORNE: And, Your Honor, may I approach
8 with what has been marked as State's 609?

9 THE COURT: Okay.

10 Q (By Mr. Lawhorne) And without showing the
11 jury, can you tell us what this is?

12 A This is a screen shot of the information that
13 I entered into our system of Adam Matos's address and
14 his cell phone number that he provided me.

15 Q And is that a true and accurate copy of what
16 you actually entered in?

17 A Yes.

18 MR. LAWHORNE: Your Honor, at this time we'd
19 like to introduce this into evidence as State's
20 609?

21 THE COURT: Any objection?

22 MR. MICHAÏLOS: No, Your Honor.

23 THE COURT: All right. It will be entered as
24 609. Or 608.

25 MR. LAWHORNE: I think I have 608 next.

1 THE COURT: Okay. Can you try? Did I miss
2 something?

3 MR. LAWHORNE: May I publish?

4 THE COURT: You may.

5 (Thereupon, State's Exhibit 609 is published.)

6 Q (By Mr. Lawhorne) And the address that was
7 given to you, is that 7719 Hatteras Drive?

8 A Yes.

9 Q And the cell phone, is that 484-951-2687?

10 A Yes.

11 MR. LAWHORNE: And, Your Honor, may I approach
12 the witness one more time with State's 608?

13 THE COURT: You may.

14 Q (By Mr. Lawhorne) Without --

15 THE COURT: This is marked as 608.

16 MR. LAWHORNE: Marked for ID, yes.

17 THE COURT: Okay.

18 Q (By Mr. Lawhorne) Would you please tell us
19 what that is without showing the jury.

20 A This is Adam's payroll check that I cashed.

21 Q And how do you know that's a payroll check?

22 A Because it's from his employer.

23 Q And is that a name that you recognize?

24 A Yes, it is.

25 Q And is that a name that you associate with Get

1 Hooked?

2 A Correct.

3 Q And was that just from cashing numerous
4 payroll checks from Get Hooked?

5 A Correct.

6 Q Okay. And is this a true an accurate copy of
7 the check that he cashed that day?

8 A Yes, it is.

9 MR. LAWHORNE: And, Your Honor, at this time
10 we'd like to move 608 into evidence as 608.

11 THE COURT: Any objection?

12 MR. MICHAIILOS: No, Your Honor.

13 THE COURT: All right. 608 will come in.

14 MR. LAWHORNE: And may we publish?

15 THE COURT: You may.

16 (Thereupon, State's Exhibit 608 is published.)

17 Q (By Mr. Lawhorne) Let me zoom that out. And
18 so this is the check that you cashed that day you said?

19 A Yes.

20 Q And the name on it, is Michelle -- I can't
21 read the last name, but do you know the last name?

22 A Bittaker.

23 Q And that is the name you associate with Get
24 Hooked?

25 A Correct.

1 Q And the man whose checked you cash that day,
2 do you see him in the courtroom today?

3 A Yes, I do.

4 Q Would you please point to him and identify him
5 by an article of clothing that he's wearing?

6 A He's right there (indicating). And he's
7 wearing a blue tie -- navy blue.

8 MR. LAWHORNE: Your Honor, may the record
9 reflect that she's identified the defendant?

10 THE COURT: It will so reflect.

11 MR. LAWHORNE: Give me one second.

12 Judge, we have no further questions right now.

13 THE COURT: Cross?

14 MS. GARRETT: Just briefly, Your Honor.

15 THE COURT: Okay.

16 CROSS-EXAMINATION

17 BY MS. GARRETT:

18 Q Good morning, Ms. Holyak.

19 A Good morning.

20 Q I just had a quick question for you.

21 You mentioned earlier on direct that you had a
22 discussion with Mr. Matos about opening a checking
23 account; is that right?

24 A Yes, I did.

25 Q That's something that you initiated, right?

1 A Yes.

2 Q You asked him if he wanted to open an account?

3 A Yes.

4 Q But he did not come back to open that account;
5 is that right?

6 A He did not. But he scheduled an appointment
7 to come back the next day because he was not available
8 to do it the day that he came into the bank.

9 MS. GARRETT: Okay. I don't have any further
10 questions, Your Honor.

11 MR. LAWHORNE: No redirect, Judge.

12 THE COURT: All right. Is she released from
13 her subpoena?

14 MR. LAWHORNE: She is.

15 THE COURT: All right, ma'am. You may step
16 down and you're released from your subpoena.

17 THE WITNESS: Okay.

18 THE COURT: All right. State, call your next
19 witness.

20 MR. SARABIA: The State would call Jesse
21 Fletcher.

22 THE COURT: Jesse Fletcher.

23 Good morning, Mr. Fletcher. If you want to
24 step up to the podium for me.

25 You can stop right there. Raise your right

1 hand and be sworn by my clerk.

2 THEREUPON,

3 JESSE FLETCHER,

4 the witness herein, was duly sworn and testified as
5 follows:

6 THE WITNESS: I swear.

7 THE COURT: All right, sir. Have a seat in
8 the witness stand. Speak in a loud and clear voice
9 for me. Okay? Thank you, sir.

10 State, you may proceed.

11 MR. SARABIA: Thank you, Judge. Defense
12 Counsel.

13 DIRECT EXAMINATION

14 BY MR. SARABIA:

15 Q Could you please turn and introduce yourself
16 to the jury.

17 A Hello. My name is Jesse Fletcher.

18 Q Now, Mr. Fletcher, I want to take you back to
19 August and September of 2014.

20 What were you doing for work at that time?

21 A I was working for Papa Johns at the corner of
22 Little and 52.

23 Q And what did you do for them?

24 A I was a delivery driver, part-time shift
25 leader, manager.

1 Q Okay. Did you have occasion on September 2nd
2 of 2014, to deliver pizza to this residence -- and I'm
3 displaying State's Exhibit 33?

4 A Yes.

5 Q Approximately what time, if you remember?

6 A Approximately 6:00 PM.

7 Q And can you describe when you got to the
8 residence do you have to go up the flight of stairs to
9 get to the front door?

10 A That is correct.

11 Q And did you do that?

12 A Yes.

13 Q And did you knock on the door or ring the
14 bell?

15 A Yes.

16 Q And anybody answer?

17 A Yes.

18 Q Could you describe basically the person who
19 answered? Woman? Man? Child? Adult?

20 A It was an adult male, appeared to be Hispanic
21 maybe. And I recall he was not wearing a shirt.

22 Q Okay. And did you give him pizza?

23 A Yes.

24 Q Now, when you were doing this, did you notice
25 any unusual odors?

1 A Yes.

2 Q Now, at that time when you were delivering
3 pizza for Papa Johns, was this an odor that you were
4 familiar with?

5 A No.

6 Q Was this the first time you ever smelled
7 something like this?

8 A Yes.

9 Q Good smell or bad smell?

10 A Bad. Very, very foul.

11 Q Now, what do you do for work now?

12 A I'm a deputy sheriff for Hernando County.

13 Q And since you became a deputy sheriff of
14 Hernando County, have you had occasion to respond to
15 places where there are deceased people?

16 A Yes.

17 Q And you've had occasion to respond to places
18 where there have been people deceased for a period of
19 time?

20 A Yes.

21 Q And have you had an opportunity to smell the
22 smell that you smelled at 7719 Hatteras Drive again?

23 A Yes, I have.

24 Q Do you now know what that smell smells like or
25 what it is?

1 A Yes.

2 Q And is it a distinct odor?

3 A It is.

4 Q And what is that smell?

5 A It's the smell of a body in a state of
6 decomposition for an extended period of time.

7 Q Okay. And other than the person who answered
8 the door and you gave the pizza to, did you see anybody
9 else moving around?

10 A No.

11 Q No other people?

12 A Nothing.

13 Q And I want to show you what's been marked as
14 State's 610 for identification.

15 MR. SARABIA: I believe we're on 610, Judge?

16 THE COURT: We are on 610. Yes, we are. I
17 forgot. We went from 609 back up to 608, so we're
18 good.

19 Q (By Mr. Sarabia) All right. Do you recognize
20 this?

21 A Yes, I do.

22 Q Is that your signature there on the first
23 page?

24 A Yes.

25 Q Did you have an opportunity to review this

1 back on September 5th of 2014?

2 A Yep.

3 Q And is this a series of photos?

4 A Yes, it is.

5 Q I imagine you're much more familiar with
6 this now since you've been a sheriff's deputy?

7 A That's correct.

8 Q And were you able to select from the group of
9 photos the person that you delivered pizza to?

10 A Yes.

11 Q And which photograph did you select?

12 A This one right here (indicating), photograph
13 number seven -- page seven, rather.

14 Q It's labeled page number seven?

15 A Yes.

16 Q Did you circle it and put your name on it and
17 your initials in the circle?

18 A Yes, I did.

19 Q And that individual --

20 MR. SARABIA: Judge, at this time the State
21 would ask to move 610 into evidence?

22 THE COURT: Any objection?

23 MR. VIZCARRA: No.

24 THE COURT: All right. 610 will come in.

25 Q (By Mr. Sarabia) And that individual that you

1 delivered the pizza to on September 2nd at about
2 6:00 PM, do you see that individual in the courtroom
3 here today?

4 A Yes.

5 Q Could you please point him out and identify
6 something he's wearing?

7 A A blue tie.

8 MR. SARABIA: And, Judge, may the record
9 reflect the witness has indicated the defendant?

10 Q (By Mr. Sarabia) You want to be a little bit
11 more specific than that?

12 A Suit and tie, jacket.

13 THE COURT: Where is he at the table?

14 THE WITNESS: I'm sorry. To the far left,
15 over there (indicating). My left. My left.

16 THE COURT: Okay. The record will reflect
17 he's shown the defendant.

18 MR. SARABIA: May the record reflect the
19 witness has indicated the defendant, Judge?

20 THE COURT: It will so reflect.

21 MR. SARABIA: Judge, may I have a moment?

22 THE COURT: You may.

23 MR. SARABIA: I don't have any more questions.

24 THE COURT: Cross?

25 MR. VIZCARRA: No questions.

1 THE COURT: All right, sir. You may step
2 down.

3 Is he released from his subpoena?

4 MR. SARABIA: Yes, Judge.

5 THE COURT: Defense, any objection?

6 MR. MICHAIILOS: No, Your Honor.

7 THE COURT: You're free to go, sir. Thank you
8 very much.

9 THE WITNESS: Thank you, ma'am.

10 THE COURT: State, call your next witness.

11 MR. LAWHORNE: Grace Dimalanta.

12 THE COURT: Ma'am, if you want to step up.
13 You can stop right there. Raise your right hand
14 and be sworn by my clerk.

15 THEREUPON,

16 GRACE DIMALANTA,
17 the witness here, was sworn and testified as follows:

18 THE WITNESS: Yes.

19 THE COURT: All right, ma'am. If you want to
20 go ahead and have a seat in the witness stand and
21 speak in a loud and clear voice for me. Okay?

22 THE WITNESS: Yes.

23 THE COURT: There's a microphone there. So if
24 you move up close, you won't even have to yell or
25 anything.

1 State, you're ready to proceed?

2 MR. LAWHORNE: Yes, Judge.

3 DIRECT EXAMINATION

4 BY MR. LAWHORNE:

5 Q Good morning.

6 A Good morning.

7 Q Would you please introduce yourself to the
8 jury.

9 A Hi. I'm Grace Dimalanta.

10 Q And will you spell your last name for the
11 court reporter?

12 A D-i-m-a-l-a-n-t-a.

13 Q And, Ms. Dimalanta, where do you work?

14 A I work for Jordan Nicholas Elliott as an
15 office manager.

16 Q What is Jordan Nicholas Elliott? What is that
17 company?

18 A Jordan Nicholas Elliott. It's -- we are a
19 franchisees of Papa Johns.

20 Q And how many Papa Johns restaurants do you all
21 have?

22 A I believe 24.

23 Q Do you have any other restaurants as well?

24 A We have Mojoes and Genghis Grill.

25 Q Genghis Grill?

1 A Yes.

2 Q And what is your job for J.N.E.?

3 A I'm the office manager.

4 Q And what are some of your duties?

5 A I'm what you call -- I'm sorry. I'm a little
6 nervous.

7 Q That's all right.

8 A I keep histories, records. I'm an event
9 coordinator. I'm human resource. I do practically
10 everything in the office.

11 Q How long have you worked there?

12 A Mr. Dorsch hired me when I was 17. I've been
13 with the company 40 years.

14 Q So 40 years as the office manager, I imagine
15 you have your hands in pretty much everything?

16 A Yes. I've learned from the bottom.

17 Q Now, are part of your duties responding to any
18 law enforcement request for any of your records?

19 A Yes.

20 Q And can you tell us how your records are
21 maintained and how the records are created for the Papa
22 Johns locations?

23 A In the restaurants when a customer orders, our
24 computers keep track of every purchase, credit cards,
25 orders. In stores, everything. Employee files. Our

1 computer does everything.

2 Q So it maintains it automatically when the
3 orders are created?

4 A Yes.

5 Q And then they're stored?

6 A Yes.

7 Q And are you able to go back and search the
8 records?

9 A Yes.

10 Q And when you search the records, can you
11 search by a variety of different means?

12 A Yes. Names, phone numbers, address. We can
13 locate anything.

14 Q And do you recall meeting with the Pasco
15 County Sheriff's Office on -- I lost my date --
16 September 8th, I believe it was, in 2014?

17 Do you recall meeting with the Sheriff's Office in
18 September of 2014?

19 A Yes.

20 Q And do you recall them asking you about some
21 transactions with Papa Johns?

22 A Yes.

23 Q And were you able to provide the receipts or
24 other copies of the receipts for those transactions?

25 A Yes, sir.

1 MR. LAWHORNE: Your Honor, at this time I'd
2 like to approach the witness with what has been
3 marked for identification as State's 611?

4 THE COURT: You may.

5 Q (By Mr. Lawhorne) I'm showing you now what
6 the Defense has already seen which is 611 for ID.

7 Could you tell us what that is.

8 A This is a receipt for a customer.

9 Q And is that the receipt that the Sheriff's
10 Office asked you about or one of the receipts?

11 A Yes.

12 Q And what is the date that they asked for the
13 receipt? The date of the transaction, I'm sorry.

14 A This one says September 1st.

15 Q And is that a true and accurate copy of the
16 receipt that you provided for the Sheriff's Office?

17 A Yes.

18 Q And is that a true and accurate copy of the
19 receipt that was maintained by Papa Johns and created at
20 the time the customer made the order?

21 A Yes.

22 MR. LAWHORNE: Your Honor, at this time the
23 State would like to introduce this as State's 611.

24 THE COURT: Any objection?

25 MR. VIZCARRA: No.

1 THE COURT: All right. State's 611 will come
2 in.

3 Q (By Mr. Lawhorne) Now, Ms. Dimalanta, would
4 you mind telling us the date and time for that
5 transaction?

6 A This one is September 1st, 4:32 PM.

7 Q And what was the customer's name?

8 A On here it says "Adam."

9 Q And what was the address for the delivery?

10 A 7719 Hatter (sic) Drive in Hudson.

11 Q Thank you.

12 MR. LAWHORNE: Your Honor, may I have just one
13 moment?

14 THE COURT: You may.

15 MR. LAWHORNE: Your Honor, may I have just one
16 more second?

17 Your Honor, may I approach the clerk?

18 THE COURT: You may.

19 MR. LAWHORNE: And may I approach the witness?

20 THE COURT: You may.

21 Q (By Mr. Lawhorne) Now, I'm showing you,
22 ma'am, what has been marked for identification purposes
23 as State's 612. Can you tell me what that is?

24 A 612?

25 Q I'm sorry. That's the number on the back for

1 us knowing what we're talking about.

2 Could you tell us what this document is?

3 A It's a receipt produced by our computers when
4 a customer orders.

5 Q And is this one the Sheriff's Office also
6 asked you to get for them?

7 A Yes.

8 Q And is that a true and accurate copy of the
9 records that are in your records?

10 A Records, yes.

11 Q Now, is this one actually the document you
12 provided as opposed to a photocopy?

13 A Yes.

14 MR. LAWHORNE: At this time we'd like to
15 introduce this into evidence as State's 612.

16 THE COURT: Any objection?

17 MR. VIZCARRA: No.

18 THE COURT: All right. It will come in as
19 612.

20 Q (By Mr. Lawhorne) And would you tell us the
21 date and time for that transaction?

22 A This is September 2, 2014, at 5:22 PM.

23 Q And would you tell us the customer's name?

24 A Adam.

25 Q And the customer's address?

1 A 7719 Hatteras Drive in Hudson.

2 Q Thank you.

3 MR. LAWHORNE: Your Honor, may I have one
4 second?

5 THE COURT: You may.

6 MR. LAWHORNE: We have no further questions,
7 Judge.

8 THE COURT: Cross?

9 MR. VIZCARRA: No questions, Judge.

10 THE COURT: All right, ma'am. Thank you very
11 much. You may step down.

12 Is she released from her subpoena?

13 MR. LAWHORNE: She is.

14 THE COURT: All right.

15 All right. Can I have the lawyers at the
16 bench briefly.

17 (BENCH CONFERENCE.)

18 THE COURT: All right. Do we have a couple
19 more small witnesses? Are we going to start with
20 longer witnesses?

21 MR. SARABIA: We have more small witnesses.
22 We can have a five-minute bathroom break.

23 THE COURT: Okay. That's what I'm going to
24 do. I'm going to put them in the jury room and
25 then have them come back out and then we'll finish

1 up and go to lunch. You know, like 12:30. So that
2 will be another hour.

3 MR. SARABIA: We might not have that many.

4 THE COURT: That's fine. As many as you got.
5 All right.

6 (OPEN COURT.)

7 THE COURT: Ladies and gentlemen, at this
8 point we're going to go ahead and take a short
9 bathroom break before lunch. I'm going to go ahead
10 and put you in the jury room for that.

11 I'll remind you, no talking about the case
12 yet. We're not quite there. And no discussing the
13 case. And let us know by knocking when you're
14 ready. Okay? We'll be in recess.

15 (RECESS.)

16 (OPEN COURT.)

17 (Defendant present.)

18 (Jury absent.)

19 THE COURT: All right. Are we ready to go?

20 MR. SARABIA: Yes, Judge.

21 THE COURT: All right. Bring the jury back
22 in.

23 THE BAILIFF: Jury's now entering the
24 courtroom, Your Honor.

25 THE COURT: Thank you.

1 (Jury present.)

2 THE BAILIFF: The jury's all present and
3 seated, Your Honor.

4 THE COURT: Thank you.

5 State, call your next witness.

6 MR. SARABIA: The State would call Sharon
7 Mann.

8 THE COURT: All right. Sharon Mann.

9 Good morning, Ms. Mann.

10 If you could step up to where the podium is.
11 Stop right there. Raise your right hand and be
12 sworn by my clerk.

13 THEREUPON,

14 SHARON MANN,
15 the witness herein, was sworn and testified as follows:

16 THE WITNESS: Yes.

17 THE COURT: All right. Please have a seat in
18 the witness stand and speak in a loud and clear
19 voice for me. Okay?

20 THE WITNESS: I'm not very loud.

21 THE COURT: Okay. You can just sit real close
22 to the microphone. That should take care of it for
23 you. Okay?

24 All right. State, you may proceed.

25 MR. SARABIA: Thank you, Judge. Defense.

1 DIRECT EXAMINATION

2 BY MR. SARABIA:

3 Q You have a microphone right there in front of
4 you, so make sure -- I know you're very soft spoken, so
5 try to get speak into that as much as you can.

6 And can you please introduce yourself.

7 A Sharon Mann, M-a-n-n.

8 Q Okay. And, Ms. Mann, where do you live? Not
9 the exact address, but what street?

10 A At the time, on Hatteras.

11 Q Hatteras Drive up in Hudson?

12 A In Hudson.

13 Q And that was back in August and September of
14 2014?

15 A Yes, sir.

16 Q That area?

17 A Yes, sir.

18 Q And how far down Hatteras did you live
19 approximately?

20 A About halfway.

21 Q Okay. And Hatteras dead ends into a
22 cul-de-sac?

23 A Yes, sir.

24 Q And is it surrounded by a canal?

25 A Yes, sir.

1 Q So really there's only one way, other than by
2 water, in or out of Hatteras Drive and that would be up
3 to Old Dixie Highway?

4 A That's correct.

5 Q Are you the house on the corner there on the
6 north side 7719 Hatteras Drive?

7 A Yes.

8 Q Now, I want to turn your attention back to
9 September 3rd, a Wednesday. That morning, what were you
10 doing?

11 A Walking my dog.

12 Q And when you walk your dog, you walk your dog
13 down Hatteras Drive and by 7719 Hatteras Drive?

14 A Yes, sir.

15 Q And as you were walking by 7719 Hatteras
16 Drive, did you notice anything that drew your attention?

17 A Her dogs outside the side garage door.

18 Q Okay. And you're saying there were no dogs
19 outside the side garage door?

20 A Yes.

21 Q Were you familiar with that house enough to
22 know that there were small dogs associated with it?

23 A A small pen, yes.

24 Q Okay. And what else did you notice?

25 A Side door was open, someone inside.

1 Q Okay. Let me stop you. I'm going to walk you
2 through it pretty slowly.

3 A Okay.

4 Q And would this be the east side of the
5 residence, the side facing Old Dixie Highway?

6 A Yes.

7 Q Okay. I'm going to display State's 54. Do
8 you see 7719 Hatteras Drive over there?

9 A Yes.

10 Q Now, you said you saw the door open. Do you
11 see that door right there (indicating)?

12 A This door (indicating).

13 Q And really it's the only door on that side of
14 the house?

15 A Uh-huh.

16 Q And, again, I'm going to show you State's 82.
17 Is that a straight-on picture of that door?

18 A Yes.

19 Q Okay. So you saw that that door was open and
20 there was someone inside?

21 A Yes.

22 Q Could you describe what else you saw?

23 A Well, garden hose jetstream and a broom and
24 swishing --

25 Q Now --

1 A -- out the door.

2 Q Now, the person that you saw, where exactly
3 was he? Was he outside? Was he inside? Was he in the
4 doorway?

5 A Inside in the shadows.

6 Q Inside in the shadows?

7 A (Nodding head.)

8 Q And could you get a good look at him because
9 he was inside in the shadows?

10 A Not really.

11 Q But it appeared to be a male?

12 A Uh-huh.

13 Q Approximately 20s to 30s?

14 A Uh-huh.

15 MS. GARRETT: Objection, leading.

16 THE COURT: Approach.

17 (BENCH CONFERENCE.)

18 THE COURT: The witness obviously has a hard
19 time verbalizing. She's having a very difficult
20 time, so I'm going being a little more lenient than
21 I want. I believe the reason the State is doing
22 that is because she's having a hard time speaking.
23 I know she said her voice was low, I didn't know
24 she actually literally just can't speak. But I'll
25 sustain the objection.

1 MR. SARABIA: I'll rephrase.

2 THE COURT: But I'll allow you to rephrase and
3 I'll allow a little bit of leading, but might have
4 been a little bit too much on important details.
5 When we get to important details, she'll just have
6 to give those to us.

7 (OPEN COURT.)

8 THE COURT: Ms. Mann, I just have two requests
9 for you. Okay? First is, if it's a yes, say yes.
10 If it's a no, say no. Uh-huh and un-uh sounds the
11 same, okay, to my court reporter.

12 THE WITNESS: Okay.

13 THE COURT: And, number two, just slow down.
14 There's no speed necessary. So you can get out
15 your whole sentence. Okay? I know you're probably
16 nervous and you do have a very soft voice. We'll
17 wait for you. Okay? So just take your time. But
18 I really need a yes or no, not uh-huh or un-uh.
19 Okay?

20 Thank you, ma'am.

21 Q (By Mr. Sarabia) And as best you can, based
22 on the little you saw, what kind of description would
23 you give the individual that you could see in the
24 shadowy area of the doorway?

25 A About your size. Dark.

1 Q Man? Woman?

2 A It was a man.

3 Q Okay. Approximate age? Could you tell? Was
4 it an older gentleman or was it a young teenager?

5 A It wasn't old. It wasn't young teenager. It
6 was, I don't know, 20s, 30s.

7 Q And it wasn't young; it wasn't old; it was
8 20s, 30s?

9 A That age, yes.

10 Q And you described the hose. What was the
11 person doing with the hose and the jetstream?

12 A Rinsing the floor.

13 Q Rinsing the floor. And was that inside the
14 doorway or outside the doorway?

15 A Inside the doorway.

16 Q Okay. And then you described the individual
17 using the broom. What was the person doing with the
18 broom?

19 A Yes. (Indicating.) Very hard sweeping like
20 he was trying to push the water out the door.

21 Q Very hard sweeping like he was trying to push
22 the water out the door?

23 A That's correct.

24 Q I'm repeating what you're saying making sure
25 we can all hear.

1 Now, as you walked by, did that individual do
2 anything different?

3 A Step back into the shadows.

4 Q Okay. To make it more difficult for you to
5 see the person?

6 A That was my impression.

7 Q That was your impression?

8 A Yes.

9 Q So it became more difficult for you to see the
10 person as you passed by?

11 A Yes.

12 Q The individual reacted to you?

13 A Yes.

14 Q All right. Now, I want to turn your attention
15 to later that same day, Wednesday. In the afternoon,
16 somewhere around 3:00 to 4:00, were you walking your
17 dog? Well, rather, were you taking your dog somewhere
18 at that time?

19 A Yes.

20 Q Were you going with anybody else?

21 A Yes.

22 Q And who were you going with?

23 A Jeri Lamana.

24 Q Jeri Lamana, is that another neighbor of
25 yours?

1 A Yes.

2 Q And she has a dog as well?

3 A She trains dogs.

4 Q She trains dogs? And where were you guys
5 going and how were you getting there?

6 A Well, side-by-side vehicle down Old Dixie
7 Drive.

8 Q Okay. On a side-by-side vehicle down Old
9 Dixie Highway?

10 A Yes.

11 Q Is that like a golf cart-type vehicle?

12 A Yes.

13 Q Not like a car or --

14 A Right.

15 Q -- truck or something?

16 A Yes.

17 Q You guys were all traveling -- you Ms. Lamana
18 and your dogs traveling on this golf cart vehicle?

19 A Yes.

20 Q I'm going to show you -- I seem to have lost
21 track of it.

22 I'm going to show you State's Exhibit 256. Does
23 that appear to be an aerial photograph of the area of
24 Hatteras Drive and Old Dixie Highway?

25 A Yes.

1 MR. SARABIA: Judge, at this time we'd like to
2 admit State's 256 into evidence.

3 THE COURT: Any objection?

4 MS. GARRETT: No objection.

5 THE COURT: All right. 256 will be in.

6 Q (By Mr. Sarabia) And you see 7719 Hatteras
7 Drive there with the gold star?

8 A Uh-huh.

9 Q And you said --

10 A Yes.

11 Q -- you drove down Old Dixie Highway. Which
12 direction did you go?

13 A This direction (indicating).

14 Q You go all the way to where the dead end berm
15 would have been at the time?

16 A Yes.

17 Q Is that approximately the area where that red
18 star is?

19 A Yes.

20 Q Okay. And when you got there, what did you
21 notice?

22 A Lots of vultures and a horrific smell.

23 Q Lots of vultures and a horrific smell?

24 A Yes.

25 Q Is it a smell that you had ever come across

1 before?

2 A I had not.

3 Q A pretty terrible smell?

4 A An awful smell.

5 Q Where exactly were you when you could smell
6 it?

7 A About 20 feet from the berm.

8 Q About 20 feet from the berm --

9 A Yes.

10 Q -- as you travel down Old Dixie Highway on
11 that limestone road at the time?

12 A Yes.

13 Q And because of the smell did you guys stay
14 there for any length of time?

15 A No. No.

16 Q Had your intention been to let the dogs run
17 around in that area?

18 A Yes, sir.

19 Q Did you end up doing that?

20 A No.

21 Q Did you just leave?

22 A Yes.

23 MR. SARABIA: All right. Judge, if I could
24 just have a moment?

25 THE COURT: You may.

1 MR. SARABIA: No more questions, Judge.

2 THE COURT: Defense, cross?

3 MS. GARRETT: No questions, Your Honor.

4 THE COURT: All right, ma'am. You may step
5 down.

6 Is she released from her subpoena?

7 MR. SARABIA: Yes, Judge.

8 THE COURT: All right. Defense, any
9 objection?

10 MR. MICHAÏLOS: No, Your Honor.

11 THE COURT: All right. You're free to go,
12 ma'am. Thank you very much.

13 THE WITNESS: Thanks.

14 THE COURT: State, call your next witness.

15 MR. LABRUZZO: Yes, Your Honor. The State
16 would call William Lusk.

17 THE COURT: Good morning, sir. If you'll step
18 right up to the podium.

19 Stop right there. Raise your right hand and
20 be sworn by my clerk.

21 THEREUPON,

22 WILLIAM LUSK,

23 the witness herein, was sworn and testified as follows:

24 THE WITNESS: I do.

25 THE COURT: All right. Please have a seat in

1 the witness stand. Speak in a loud and clear voice
2 for me.

3 State, you may proceed.

4 MR. LABRUZZO: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY MR. LABRUZZO:

7 Q Good morning, sir. Could you please turn to
8 the ladies and gentlemen of the jury and introduce
9 yourself by stating your name.

10 A Good morning. Okay. My name is William Lusk,
11 L-u-s-k.

12 Q Mr. Lusk, as you sit here today do you live in
13 Pasco County?

14 A I do. I still do, yes.

15 Q And what part of the county do you live in
16 today?

17 A I live in Wesley Chapel.

18 Q Back in 2014, what part of the county did you
19 live in?

20 A I lived in Sea Pines in Hudson.

21 Q And what was your specific address back in
22 2014?

23 A I was at 7239 Hatteras Drive.

24 Q All right.

25 A In Hudson.

1 Q Let's talk about this area of Sea Pines and
2 Hatteras Drive. It's a residential street?

3 A Yes.

4 Q Could you just describe, I guess, the area or
5 the geography around the street?

6 A Okay. Hatteras Drive is one long peninsula.
7 It's surrounded by water. And the only way to get off
8 the street is Old Dixie Highway. So -- and I'm at the
9 extreme west end, so I'm closest of -- on Hatteras
10 Drive, my house is closest to the Gulf of Mexico. I'm
11 on the very end.

12 Q Let's talk a second and just talk about your
13 house? Is it a single story? Multiple story house?

14 A It's a three-story home.

15 Q All right. And the master bedroom, what floor
16 is it on?

17 A The master bedroom is up on the third floor.

18 Q All right. And so to get from the master
19 bedroom down to any of the other living areas of the
20 house you have to go downstairs?

21 A There's one stairwell and an elevator.

22 Q All right. The stairwell, is that what you
23 used primarily?

24 A My health is good, so I always took the
25 stairs. The elevator was something I had put in in case

1 of a heavy load.

2 Q Right. Okay. And as you go up and down the
3 stairs, is there any window that allows you to see out
4 to the Gulf of Mexico?

5 A There is. I put in as many windows as I could
6 because of the view where I am is very nice.

7 Q All right.

8 A And so it looks out over my dock and the canal
9 and the house directly across the canal to the west.

10 Q All right. You have a boat dock that is water
11 accessible?

12 A I do. There's a boat lift and a boat dock,
13 floating dock.

14 Q Okay. Did you keep a boat or a water craft on
15 your dock during that time, 2014?

16 A I had a canoe that sat upside down on my dock
17 for probably seven or eight years --

18 Q All right.

19 A -- that I lived there.

20 Q From time-to-time did you use your canoe?

21 A Used it several times a week. I was property
22 manager for a house right across the canal, so I would,
23 rather than drive around because it's at least two miles
24 to drive by car, I could row across the canal 35 feet in
25 like seconds. So I'd go back and forth by canoe caring

1 for my neighbor's property.

2 Q All right. And so when you would do that, is
3 it safe to say that you would take the canoe from your
4 property to the other house across the canal?

5 A Yes.

6 Q And bring the canoe back?

7 A I would do my chores as property manager
8 periodically and then come back across with the canoe,
9 yeah, and turn it upside down again.

10 Q I guess what I'm saying is any time you used
11 the canoe to go across the canal, you'd always bring it
12 back?

13 A Yes, sir.

14 Q Okay. I'd like to focus your attention to the
15 week of Labor Day, 2014.

16 A Uh-huh.

17 Q Was there during this period of time a large
18 police or sheriff's presence on Hatteras at around the
19 intersection of Hatteras and Old Dixie Highway?

20 A Extremely large presence of police, yes.

21 Q Okay. And during this time period I want to
22 focus your attention towards the end of the week. So
23 the Thursday evening after Labor Day.

24 A Right.

25 Q Do you recall seeing or noticing whether or

1 not your canoe was on your dock as you went up the
2 stairs to your residence?

3 A I didn't notice anything Thursday evening. I
4 went out to a Nights of Columbus meeting probably about
5 6:30 that evening. I remember it being very dark. I
6 believe it was a rainy evening. And our street light --
7 I'm right on the cul-de-sac. And there's one street
8 light there. For 100, 200 yards, that's only light.

9 Q Okay.

10 A And I believe that light was out for many
11 years and we had tried to get it on in the community.
12 So it was dark there. So you don't notice anything
13 that's happening on the side of your house or the water
14 at night. You just don't know.

15 Q Since we're talking about this area, the Sea
16 Pines area, during this period of time, 2014, were there
17 homes that were vacant due to either foreclosure or
18 people not living in them?

19 A There is, yes.

20 Q Would you say more than one?

21 A Yes.

22 Q More than two?

23 A Yes.

24 Q Okay. Multiple homes in that area?

25 A Yes. Yeah. It's -- that happened with the

1 collapse of the real estate market in Hudson being a
2 waterfront community. Lots of abandoned homes. It's
3 still that way.

4 Q So Thursday night you go to the Nights of
5 Columbus meeting. You return home. And as you would
6 have gotten up that Friday morning, that Friday after
7 Labor Day, did you notice something as you came down
8 your stairs?

9 A First thing I noticed.

10 Q What did you notice?

11 A Because when I come down my stairs, I'm
12 looking at a very tall wide window and you looking right
13 on the water. And my dock is right below me and I noted
14 my canoe was on the other side of the canal about
15 35 feet away and I had wondered how it got over there.

16 Q Did you take your boat -- your canoe from your
17 property to the property across the way?

18 A I did not.

19 Q Okay. And during that period of time, again
20 you've got to explain to the jury you were the property
21 manager for this residence, correct?

22 A I was. Across the canal.

23 Q So was there anyone staying or living at the
24 property where you saw your canoe during that period of
25 time?

1 A He was not. I knew -- he was a resident of
2 New York and this was his second home. And I knew he
3 was up in New York at the time. So...

4 Q All right. So you wake up. You see your
5 canoe no longer on your property but on the property
6 across the water, correct?

7 A That's correct.

8 Q All right. Mr. Lusk, I'd like to show you
9 what's been introduced as State's Exhibit 256. Okay?
10 I'm going to hold it up right here (indicating). I'm
11 going to take a second to look at it and identify --

12 A Okay.

13 Q All right. Have you oriented yourself to
14 this?

15 A I have, yes.

16 Q Okay. Can you just point to us where Old
17 Dixie Highway is?

18 A This is Old Dixie right here (indicating).

19 Q Okay. And do you see Hatteras Drive on here?

20 A This is Hatteras Drive starts here
21 (indicating). This is the east end and it ends right
22 about here (indicating). All the other streets in Sea
23 Pines go out further in the west. And Hatteras ends a
24 little shorter, right here (indicating).

25 Q Okay. Do you see a green star here

1 (indicating)?

2 A Yes. That's right in front of -- that's the
3 canal. That star is on right in front of my home. My
4 home is the tall three-story right here (indicating).

5 Q Okay. And you can kind of see the water back
6 here and the canal out to the Gulf, correct?

7 A Yes, sir. Uh-huh. That's correct.

8 Q And just so we're clear, Hatteras has homes on
9 both sides of the street?

10 A It does.

11 Q And it's surrounded by water all the way
12 around?

13 A That's right. So once you're out at this end
14 (indicating), you're land locked. The only way out is
15 to come back through this way and Old Dixie
16 (indicating).

17 Q Okay. And just for another -- I'm going to
18 show you what's been introduced as State's Exhibits 205,
19 and 255. I'm sorry. 505 and 255.

20 A Okay.

21 Q Do you recognize the views there?

22 A This is the floating dock that was just
23 mentioned in my previous statement. When I come down
24 the stairs, this is the ground level view of what I see
25 coming down my stairs (indicating).

1 Q I'll put the photographs up on the screen so
2 you can describe it. Do you recognize them?

3 A Yes, sir. This is the house I was the
4 property manager for.

5 Q Okay. Let me put it up here so you can
6 describe it for the jury so they can all see them.

7 THE COURT: It's going up on that screen.

8 Q (By Mr. Labruzzo) I'll ask you to look over
9 your right shoulder. We'll reference State's 505. Just
10 give me a second to focus the photograph. Okay.

11 MR. LABRUZZO: Zoom in a little bit. Okay.

12 Q (By Mr. Labruzzo) Okay, sir.

13 A That is --

14 Q You were describing this area here
15 (indicating). This is your floating dock?

16 A Yes, sir. That's floating dock. That's my
17 backyard. That view is looking straight west. That
18 canal goes straight out to the Gulf of Mexico. It runs
19 east and west. The blue house --

20 Q What's that here (indicating)?

21 A That's my neighbor that lives in New York, who
22 was up in New York at the time and he has a floating
23 dock too with the boat lift there.

24 Q And so this is the house where you saw your
25 canoe after you came down the stairs on that Friday

1 morning?

2 A Yes, sir. My boat -- my canoe was tied up
3 that morning on that floating dock straight over and a
4 little bit to the left there.

5 Q Okay.

6 A And that's my dock where your finger was.

7 Q All right. I'll show you quickly what is
8 State's 255. Let me just zoom in a little bit here.

9 You were describing that Hatteras is the -- it's
10 landlocked. I'm going to zoom into --

11 A Yes, sir. Okay. That's an aerial view of my
12 home and my backyard.

13 Q And is this your home right here (indicating)?

14 A Yes, sir.

15 Q And this is your dock?

16 A It is.

17 Q And this is where you saw the canoe, correct?

18 A That is correct. Yes.

19 Q All right, sir. So if -- and, again, if you
20 know the names of the streets that are over here, you
21 can use them. But my question to you is, if you were to
22 come down these streets, it leads to these separate
23 fingers or canals, correct?

24 A Yes. Yes. The next street over is Maple
25 higher on the screen. The next one, I'm not sure. It

1 might be Yachtsman.

2 Q Okay.

3 A But that's the only street to get out. Where
4 my neighbor is across the canal, you've got to go over
5 two streets on Old Dixie and then come all the way out.

6 Q Okay. But if you can get to this area right
7 here (indicating), you can use this road or this little
8 bridge to get access to the main road of Old Dixie
9 Highway?

10 A Correct. But from where I live, if I want to
11 walk over there, it's probably about two-mile walk.

12 Q Okay.

13 A Or mile-and-a-half anyway.

14 Q All right.

15 A Where, by water, it's only 35 feet.

16 MR. LABRUZZO: Okay. One moment, Your Honor?

17 All right, sir. Thank you.

18 No further questions at this time.

19 THE COURT: State (sic), cross?

20 MS. GARRETT: No questions, Your Honor.

21 THE COURT: All right, sir. Thank you very
22 much. You may step down.

23 State, is he released from his subpoena?

24 MR. LABRUZZO: Yes, Your Honor.

25 THE COURT: Any objection, Defense?

1 MR. MICHAILOS: No, Your Honor.

2 THE COURT: All right, sir. You are released.

3 Thank you.

4 THE WITNESS: Okay. Thank you.

5 THE COURT: State, call your next witness.

6 MR. LAWHORNE: Laura Maniscalco.

7 THE COURT: Good morning, ma'am. If you want
8 to step up to the podium for me. You want to stop
9 right there. Raise your right hand and be sworn by
10 my clerk.

11 THEREUPON,

12 LAURA MANISCALCO,
13 the witness herein, having been first duly sworn, was
14 examined and testified as follows:

15 THE WITNESS: I do.

16 THE COURT: All right. Please have a seat in
17 the witness stand. Speak in a loud and clear voice
18 for me. Okay?

19 State, you may proceed.

20 MR. LAWHORNE: Thank you, Judge. Counsel.

21 DIRECT EXAMINATION

22 Q Good morning.

23 A Good morning.

24 Q Would you please introduce yourself to the
25 jury.

1 A My name is Laura Maniscalco. I'm the store
2 manager at Circle K.

3 Q And would you mind spelling your last name for
4 the court reporter.

5 A M-a-n-i-s-c-a-l-c-o.

6 Q And which Circle K is it?

7 A State Road 52 and Moon Lake.

8 Q How long have you worked for Circle K?

9 A Seven-and-a-half years.

10 Q And you said you're the store manager?

11 A Yes, sir.

12 Q What are your duties as store manager?

13 A I basically do the everyday operation of the
14 store. I mean, do the hiring; I make sure the store is
15 staffed; I take care of just about everything in the
16 store. I do the scheduling. Everything.

17 Q And what can you tell us about the security
18 cameras of the store at Circle K?

19 A I basically have a view of the whole entire
20 store, from the gas pumps to the back rooms.

21 Q So you have multiple cameras?

22 A Yes, sir.

23 Q At different angles?

24 A Yes, sir.

25 Q And how is the data from those cameras stored?

1 A It's stored on a hard drive on a DVR.

2 Q And is that DVR inside your store?

3 A It is. It's inside my office.

4 Q And as the store manager, is the surveillance
5 system and the store video in your care, custody and
6 control?

7 A Yes, sir.

8 Q And do you recall meeting with the Pasco
9 Sheriff's Office in September of 2014?

10 A I do.

11 Q And do you recall them asking you about
12 surveillance videos?

13 A I do.

14 Q And were you able to pull up the videos they
15 were asking you for?

16 A Yes, sir.

17 MR. LAWHORNE: And may I approach the witness,
18 Judge?

19 THE COURT: You may.

20 Q (By Mr. Lawhorne) I'm showing you what's been
21 marked for ID as State's 612. Can you tell us what that
22 is?

23 A This is the video that I gave to the officer
24 that I reviewed in your office and I initialed and dated
25 it.

1 Q And I'm close to you. I can hear you, but I
2 don't think everyone else can.

3 A This is the disk I gave to the Sheriff's
4 Office that I watched in your office and I initiated and
5 dated.

6 Q Okay.

7 THE COURT: State, that would be 613.

8 MR. LAWHORNE: Thank you. I'll change that.

9 THE COURT: We already have 612. So it's
10 going to be -- the video is going to be 613.

11 MR. LAWHORNE: It is now marked as 613 for
12 identification purposes.

13 THE COURT: Thank you.

14 Q (By Mr. Lawhorne) And you said you wrote your
15 initials and the date on it when you reviewed this
16 video?

17 A Yes, sir.

18 Q And that's how you know what it is?

19 A Yes.

20 Q Now, this video, can you tell us what it
21 contains?

22 A You see the front door view. You can also see
23 the cashier view of the front door and behind the cash
24 register area.

25 Q And is this a surveillance video from

1 September 4, 2014?

2 A Yes.

3 Q And this disk, does it contain a true and
4 accurate copy of the surveillance video footage that was
5 created in your Circle K?

6 A Yes, sir.

7 MR. LAWHORNE: Your Honor, at this time we'd
8 like to introduce this into evidence as State's
9 613.

10 THE COURT: Any objection?

11 MR. MICHAIILOS: No objection.

12 THE COURT: All right. The video will come in
13 as 613.

14 MR. LAWHORNE: Your Honor, we'd like to
15 publish.

16 THE COURT: You may.

17 Q (By Mr. Lawhorne) Now, Ms. Maniscalco, the
18 video we're about to watch, are you actually in this
19 video?

20 THE WITNESS: No, sir.

21 Q (By Mr. Lawhorne) We're going to pull it up
22 on this screen here (indicating). Can you see that
23 screen from where you are?

24 A Yes, sir.

25 Q Now, the first one is Circle K number one.

1 And can you tell us once it starts playing what we're
2 looking at? It's going to take just a second while it
3 loads the disk.

4 (Thereupon, State's Exhibit 613 is published.)

5 A That's the centralized view when you first
6 walk into the store.

7 Q So are these the main entrances? This the
8 main entrance to the Circle K?

9 A Yes, sir.

10 Q Now, if you look through the front door,
11 there's a white car. The door just open and there's a
12 gentleman standing there. Is that the front parking lot
13 of the Circle K?

14 A Yes, sir.

15 Q Okay. And the video is just video. It does
16 not contain audio; is that correct?

17 A Correct.

18 Q Now, the man on the far left side of the
19 screen wearing the white -- appears to be a white
20 T-shirt, is that where a person stands to purchase
21 something from the store?

22 A Yes, sir.

23 Q Okay. The register area?

24 A (Nodding head.)

25 Q And the time stamp here 9/4, 2014,

1 approximately 11:04 PM. Are your time stamps accurate?

2 A Yes, sir.

3 Q Now, this second -- next video is labeled
4 Circle K 2. It's going to take just a second to pop up
5 just like the last one.

6 Can you tell us what your we're looking at here?

7 A This is the camera view we have behind the
8 transaction area so we can see the people who walk up to
9 the counter and the transactions they're making.

10 Q And is this the same time and same area we
11 just saw but from a different angle?

12 A Yes, sir.

13 MR. LAWHORNE: Judge, we have no further
14 questions.

15 THE COURT: Cross?

16 MS. GARRETT: No questions, Your Honor.

17 THE COURT: All right, ma'am. Thank you very
18 much. You may step down.

19 THE WITNESS: Thank you.

20 MR. LAWHORNE: She may be released.

21 THE COURT: All right. Ma'am, you're released
22 from your subpoena.

23 THE WITNESS: Thank you.

24 THE COURT: State, call your next witness.

25 MR. SARABIA: Judge, this would be a good

1 time.

2 THE COURT: To take lunch?

3 MR. SARABIA: Yes. The next witness will be a
4 little bit lengthier.

5 THE COURT: All right. Ladies and gentlemen,
6 I guess we're going to take lunch a little early
7 just so we don't have you have lunch really late.

8 So we'll go ahead and have you put away your
9 notes. Grab your electronic devices. I remind you
10 not to talk about it or tweet or text or blog. And
11 have a nice lunch. We'll see you back in the jury
12 pool room at 1:00. Okay?

13 We'll have to start putting names on it. They
14 all look alike these days.

15 (Jury absent.)

16 THE BAILIFF: The jury's out of the presence
17 of the Court, Your Honor.

18 THE COURT: Thank you.

19 Is there anything we need to address before we
20 have lunch?

21 MR. SARABIA: Judge, I would just note we have
22 three to four more witnesses for the day. Most of
23 them are very short. So I expect that we're going
24 to finish pretty early. And then we have six
25 witnesses for tomorrow, most of whom -- all of whom

1 either could not be here today due to the holidays
2 and whatnot, or we need to testify after some of
3 those people because they're testimony is dependent
4 on someone.

5 THE COURT: Okay. So my question to you, the
6 three or four witnesses, they'll be ready by 1:00?

7 MR. SARABIA: Yes, Judge.

8 THE COURT: All right. And then tomorrow
9 we'll be able to get in six witnesses in the entire
10 day, you think?

11 MR. SARABIA: Yes, Judge. I think we'll still
12 end up finishing early tomorrow as well. But the
13 witnesses tomorrow are a little bit lengthier.

14 THE COURT: Okay. No problem. And -- so
15 we'll be in recess until 1:00 and we'll move along.
16 And when we run out of witnesses, I'm sure the jury
17 will be happy to go home early. So we probably --
18 we'll finish whenever -- we'll be done whenever
19 you're done. Okay?

20 MR. SARABIA: Thank you, Judge.

21 THE COURT: Yes.

22 (RECESS.)

23 (OPEN COURT.)

24 (Defendant present.)

25 (Jury absent.)

1 THE COURT: The jury's on their way back up.
2 Do we need to discuss anything before we begin?

3 MR. LABRUZZO: Not before we begin, Judge. I
4 did place a copy of the draft instructions. I've
5 already found some errors I'm going to correct
6 before we have the discussion.

7 THE COURT: For the record, the defendant is
8 present, has been throughout -- with the Defense
9 attorneys. And the State is here and the jury's on
10 its way up. I appreciate the cover page, but it's
11 not necessary.

12 MR. LABRUZZO: Okay.

13 THE COURT: Jury ready? Bring them in.

14 THE BAILIFF: The jury's entering the
15 courtroom, Your Honor.

16 THE COURT: Thank you.

17 (Jury present.)

18 THE BAILIFF: The jury's all present and
19 seated, Your Honor.

20 THE COURT: Thank you. Everybody able to get
21 lunch and follow my instructions?

22 THE JURY PANEL: (Responding.)

23 THE COURT: Excellent.

24 State, call your next witness.

25 MR. SARABIA: The State will call Salvatore

1 Pizzo.

2 THE COURT: Good afternoon, sir. If you can
3 step up to the podium right here (indicating).

4 Stop right there (indicating). Raise your
5 right hand and be sworn by the clerk.

6 THEREUPON,

7 SALVATORE PIZZO,
8 the witness herein, having been first duly sworn, was
9 examined and testified as follows:

10 THE WITNESS: Yes.

11 THE COURT: All right. Sir, please have a
12 seat in the witness stand over here (indicating).
13 And speak in a loud and clear voice for me. Okay?

14 THE WITNESS: Yes.

15 THE COURT: Thank you, sir.
16 State, you may proceed.

17 MR. SARABIA: Thank you, Judge.

18 DIRECT EXAMINATION

19 BY MR. SARABIA:

20 Q Could you please introduce yourself to the
21 jury.

22 A Salvatore Pizzo.

23 Q How do you spell your last name?

24 A P-i-z-z-o.

25 Q Mr. Pizzo, I want you to take you back to

1 September of 2014. What were you doing for work at that
2 time?

3 A Driving for Joe's car service.

4 Q Okay. And what kind of work is that?

5 A It's like picking up people like a taxi cab.

6 Q Okay. So would I be wrong if I refer to you
7 as a taxi driver?

8 A No.

9 Q Were you working the night of September 4th of
10 2014?

11 A Yes.

12 Q And did you have occasion to pick somebody up
13 from the area of Yachtsman and Bertram?

14 A Yes.

15 Q And was that about between 10:30 at night and
16 11:00 at night?

17 A Yes.

18 Q Could you describe -- was it one person or
19 more than one person?

20 A More than one person.

21 Q And what was their basic description? Women?
22 Men? Adults? Children?

23 A One adult and one child between four and five.

24 Q Gender?

25 A Male.

1 Q Both of them?

2 A Both males.

3 Q And when you picked the person up, did that
4 person introduce himself?

5 A Yes.

6 Q What did he say his name was?

7 A Jake.

8 Q And, now, Bertram and Yachtsman, is that back
9 in a neighborhood somewhere?

10 A It's off of Old Dixie Highway.

11 Q And in order to get back out to the main
12 roads, do you have to go down Yachtsman to Old Dixie
13 Highway?

14 A Yes.

15 Q And when you do that and you turn onto Old
16 Dixie Highway, did you notice anything going on just a
17 little bit north of Yachtsman?

18 A Yes.

19 Q What did you see?

20 A A bunch of policemen looking for something or
21 doing something in the area -- general area.

22 Q Was it hard to miss?

23 A No.

24 Q Was it impossible to miss?

25 A No.

1 Q Not impossible to miss?

2 A No. You can't miss it at all.

3 Q Can't miss it at all?

4 A Right.

5 Q Did you say anything about that as you were
6 passing by with these people?

7 A I told them something on going on over here.
8 I don't know what it is. And he didn't seem, like,
9 worried about it.

10 Q Okay. Didn't say anything? Didn't respond at
11 all?

12 A No.

13 Q Didn't mention that it was his house that they
14 were at?

15 A No.

16 MR. MICHAÏLOS: Objection, leading.

17 THE COURT: Overruled.

18 Q (By Mr. Sarabia) And where did the person
19 want to go?

20 A He said Fort Meyers or Key West.

21 Q Where did he want you to take him?

22 A Oh, he wanted me to take him at the bus
23 station, Greyhound, Tampa.

24 Q Okay. What route do you take to get there?

25 A I took Yachtsman to Old Dixie Highway. Took

1 Old Dixie Highway to Hudson Avenue. Hudson Avenue to
2 Fivay. Fivay to Little Road. Little Road to 52. And
3 52 to Veterans Expressway.

4 Q Okay. And stop right there. We'll go back to
5 the route in a minute. But were there any stops that
6 you made along that route?

7 A Yes. Yes.

8 Q Where did you stop?

9 A Circle K at Moon Lake and 52.

10 Q Okay. And did your customer want to stop
11 someplace to get something?

12 A Yes. He wanted a drink for his son because
13 his son was looking at my drink and he was thirsty. He
14 said, "You need to stop at the store and get him a
15 drink."

16 Q And if I can draw your attention to that big
17 screen right there (indicating).

18 All right. Mr. Pizzo, I want to draw your
19 attention to this surveillance video I have it paused
20 right now.

21 A Uh-huh.

22 Q In particular, there's a white or silver
23 vehicle over here. Do you recognize that vehicle?

24 A Yes. That's the car I was driving for Joe's
25 Taxi.

1 Q And who's this guy right here (indicating)?

2 A Me waiting on him.

3 Q Okay. And these two individuals here, are
4 those the people that you picked up (indicating)?

5 A Yes, sir.

6 Q Now, after Circle K -- so you're telling us
7 you go down 52 to the Veterans Expressway. Where do you
8 go from there?

9 A From Veterans Expressway over towards 275.
10 Take 275 over to the Greyhound Bus Station.

11 Q Okay. And did you, in fact, drop this person
12 off at the Greyhound Bus Station?

13 A Yes, I did.

14 Q Did he pay you?

15 A Yes.

16 Q How did he pay you?

17 A Cash.

18 Q Approximately how much?

19 A About 120.

20 Q And about how long did the trip take you?

21 A Anywhere between -- there wasn't a lot of
22 traffic that night. Anywhere between hour to an
23 hour-and-a-half.

24 Q Okay. And you drop him off at the bus stop
25 and that's the last you ever see of the guy?

1 A Yes.

2 Q Shortly thereafter, did law enforcement come
3 into contact with you about this particular cab fare?

4 A They got in contact with the company. And
5 they said, "Did anybody pick up a gentleman with a
6 little, small boy?" And I got back on the radio and I
7 says, "I did." And he says, "Call me on the phone."
8 And he goes, "Well, there's an officer en route."

9 Q We don't need to go into all the details
10 because I can't go into what people said, but did you
11 ultimately meet with law enforcement about that?

12 A Yeah. Yes, I did.

13 Q Okay. And did they ask you questions about
14 it?

15 A Yes, they did.

16 Q And did you answer their questions?

17 A Yes, I did.

18 MR. SARABIA: All right, Judge. If I could
19 have just a moment?

20 THE COURT: You may.

21 MR. SARABIA: I don't have any more questions
22 Judge.

23 MR. MICHAİLOS: Just briefly, Judge.

24 THE COURT: Cross.

25

1 CROSS-EXAMINATION

2 BY MR. MICHAİLOS:

3 Q Good afternoon, sir.

4 A Good afternoon.

5 Q The little boy, did he seem in good health?

6 A Huh?

7 Q He seemed in good health, the little boy?

8 A Oh, yes. He did.

9 Q Did this look like a normal customer to you at
10 the time?

11 A A normal customer?

12 Q A normal customer. Did he seem like a normal
13 customer at the time?14 A Yes. He did seem, like, normal, you know,
15 like anybody I picked up from normal cab fare.

16 Q Okay. Was he polite?

17 A Yes, he was.

18 Q And did he give you a tip?

19 A Yes.

20 Q And your cab fare was \$82, right?

21 A Eighty dollars.

22 Q And he gave you 120?

23 A Yes.

24 Q So it's about a 50 percent tip?

25 A Yes.

1 MR. MICHAIILOS: Thank you, sir.

2 THE COURT: Any redirect?

3 MR. SARABIA: I don't have any questions,
4 Judge.

5 THE COURT: Are you releasing him from his
6 subpoena?

7 MR. SARABIA: Yes, Judge.

8 THE COURT: Defense any objection to release?

9 MR. MICHAIILOS: No, Your Honor.

10 THE COURT: Sir, you may step down. You're
11 free to go. Thank you very much.

12 THE WITNESS: Thank you. Have a good day.

13 THE COURT: State, call your next witness.

14 MR. SARABIA: The State would call Detective
15 Mike Rosa -- or, excuse me, Sergeant Mike Rosa.

16 THE COURT: Good afternoon, Sergeant. You
17 want to step to the podium.

18 THE WITNESS: Yes, ma'am.

19 THE COURT: Raise your right hand be sworn by
20 my clerk.

21 THEREUPON,

22 MICHAEL ROSA,
23 the witness herein, having been first duly sworn, was
24 examined and testified as follows:

25 THE WITNESS: Yes, ma'am.

1 THE COURT: All right. You may have a seat in
2 the witness stand and speak in a loud and clear
3 voice for me.

4 THE WITNESS: Thank you.

5 THE COURT: State, you may proceed.

6 MR. SARABIA: Thank you, Judge.

7 BY MR. SARABIA:

8 Q Could you please turn and introduce yourself
9 to the jury.

10 A Hello, jury. My name is Michael Alexander
11 Rosa. I'm currently a sergeant with the Pasco County
12 Sheriff's Office.

13 Q And what are your duties with the Sheriff's
14 Office currently?

15 A I'm currently a sergeant with the Major Crimes
16 Unit of the Pasco Sheriff's Office.

17 Q So are you acquainted what the Major Crimes
18 Unit does?

19 A Yes. We work all kinds of cases from
20 homicides, to child abuses, to rapes, to robberies.

21 Q Now, back in September of 2014, what was your
22 position?

23 A I was a detective with the Major Crimes Unit.

24 Q And were you involved in the investigation
25 regarding the four homicides that occurred in the area

1 of 7719 Hatteras Drive and Old Dixie Highway?

2 A I was, sir.

3 Q How would you describe your involvement?

4 A I assisted in interviewing and showing photo
5 packs and also assisted in following up with defendant's
6 call log.

7 Q Okay. In particular, September 4, 2014, fair
8 to say that you guys, initially when you get out there,
9 didn't know exactly what was going on?

10 A That's fair to say, sir.

11 Q And gradually as the investigation progresses
12 and you find things and find bodies that you're starting
13 to get a clearer picture?

14 A Yes, sir.

15 Q Was your involvement at that early stage,
16 September 4th going into September 5th of 2014, did you
17 track down some Papa Johns delivery drivers?

18 A I did.

19 Q And was one of those Jesse Fletcher?

20 A Yes, sir.

21 Q And did you speak with Jesse Fletcher?

22 A I did.

23 Q And did you ask him questions?

24 A I did.

25 Q And did he cooperate with you?

1 A Yes.

2 Q I want to show you --

3 MR. SARABIA: Judge, may I approach the
4 witness?

5 THE COURT: You may.

6 Q (By Mr. Sarabia) I want to show you what's
7 been entered into evidence as State's Exhibit 610. Go
8 ahead and look at that.

9 Have you seen that before?

10 A I have.

11 Q And can you tell the jury what is that?

12 A This is a photo pack.

13 Q And can you describe for the jury what a photo
14 pack is and why it is used?

15 A A photo pack is used to identify subjects
16 involved in an investigation. It could be identify
17 witnesses, victims, but usually it's used to identify
18 suspects.

19 Q Okay. And when you present somebody with a
20 photo pack, how do you go about doing it?

21 A I usually -- I set up an appointment. I meet
22 the person at the location. The photo pack is
23 presented. I first read the instructions to them. Then
24 I have the person I'm presenting the photo pack to read
25 the instructions as well, and they initial that they

1 understand. I shuffle the photos and I do not know the
2 order of the photos at that time. And then I show the
3 photo pack to the person I'm showing it to them. I do
4 not -- I usually explain to them that the person may or
5 may not be in the photo pack as well.

6 Q Okay. And in addition to -- how many
7 photographs are there within the photo pack?

8 A There are six.

9 Q In addition to the six photographs, are there
10 also a couple of blank pages to get shuffled in as well?

11 A There is.

12 Q And that's the procedure?

13 A Yes, sir.

14 Q So that way if people are thumbing through and
15 see a blank page they know why?

16 A Yes.

17 Q Now, with Mr. Fletcher, did you go through
18 that procedure that you just outlined for the jury and
19 read the instructions that are contained on the photo
20 pack with him?

21 A I did.

22 Q And did he look through the photo pack?

23 A He did.

24 Q Do you remember the date and time that you
25 actually presented it to him?

1 A It's noted on here. I would have to look,
2 but -- I would have to look at the photo pack.

3 Q Would that refresh your recollection?

4 A It would.

5 Q Then please go ahead and look at that.

6 A The photo pack was presented on September 5,
7 2014, at two minutes past midnight.

8 Q Okay. So we're just going into September 5th
9 when you presented this photo pack?

10 A Yes, sir.

11 Q All right. And was he able to identify the
12 person that he had delivered pizza to on September 2nd
13 within that photo pack?

14 A He did.

15 Q And can you thumb through there and tell us
16 who he selected?

17 A He selected photo number seven, the defendant,
18 Mr. Matos.

19 Q Now, the person that is pictured in photo
20 number seven, do you see that person in the courtroom
21 here today?

22 A I do.

23 Q Could you please point him out and identify
24 something he's wearing.

25 A He is directly to the left. I think it's a

1 blue polka dot tie and a white shirt.

2 MR. SARABIA: Judge, may the record reflect
3 the witness has indicated the defendant?

4 THE COURT: It will so reflect.

5 Q (By Mr. Sarabia) Now, subsequent to getting
6 in touch with Mr. Fletcher and presenting him with the
7 photo pack, did you also come into contact with an Erin
8 Jacobs?

9 A I did, sir.

10 Q And did you meet up with her?

11 A I did.

12 Q And did you ask her questions?

13 A I did.

14 Q Did she cooperate with you?

15 A Absolutely, sir.

16 Q I'm showing you State's 600. Have you seen
17 that before?

18 A I have.

19 Q And did you go through the same procedure with
20 Ms. Jacobs that you've already indicated you went
21 through with Mr. Fletcher?

22 A I did.

23 Q Now, did Ms. Jacobs -- was Ms. Jacobs able to
24 identify the person within the photo pack?

25 A She was not.

1 Q How did -- what did she say when she went
2 through the photo pack.

3 MR. MICHAIILOS: Objection, hearsay.

4 THE COURT: Approach.

5 (BENCH CONFERENCE.)

6 THE COURT: What's your response?

7 MR. SARABIA: It's a statement of
8 identification, Judge. She said it was either
9 number two or number seven. And number seven is
10 the defendant.

11 THE COURT: I'll overrule it. Just for the
12 photo pack identification, he can testify to what
13 the person said while looking at the photo pack.
14 All right.

15 (OPEN COURT.)

16 THE COURT: The objection is overruled. You
17 may reask the question.

18 Q (By Mr. Sarabia) Okay. What did Ms. Jacobs
19 say in reference to an identification with regard to
20 that photo pack?

21 A She was not positive. She told me that it was
22 between two different photos.

23 Q And which two photographs were those?

24 A I have to look in my report, if you don't
25 mind, sir. I believe it's photo number two and number

1 seven.

2 Q All right. If you need to refresh your
3 recollection, please go ahead and do so.

4 A Thank you.

5 Yes, sir. Number -- photo number two and photo
6 number seven.

7 Q And if you could, thumb through that photo
8 pack real quick for me and look at page number seven.

9 A Yes, sir.

10 Q And do you recognize that photograph?

11 A I do.

12 Q Who is that of?

13 A Mr. Matos, the defendant.

14 Q Okay. Now, in addition to tracking down the
15 Papa Johns people, did you also attempt to track down
16 ten or so bags of garbage that had been removed from
17 7719 Hatteras Drive by the trash collector?

18 A I did.

19 Q Did you go speak with the garbagemen, for lack
20 of a better term?

21 A Yes, sir.

22 Q And did you speak with the company to try and
23 locate these bags?

24 A I did.

25 Q And did you find those bags?

1 A I did not.

2 Q And why not?

3 A The bags were collected by the garbage
4 company. I'm not sure the name at this time. And I was
5 told by the company that the bags were taken from that
6 location and destroyed -- immediately destroyed.

7 Q Now, had you been able to find those, if they
8 hadn't been destroyed, would you have gone through them?

9 A Absolutely, sir.

10 Q Were you also involved -- well, let it me ask
11 it this way: Do you know what a neighborhood check is?

12 A I do.

13 Q What is a neighborhood check?

14 A A neighborhood check is done to possibly find
15 witnesses to a crime in an area. We usually interview
16 people in the area of the homes around the possible
17 crime scene, the streets around there. We interview
18 anybody that we can locate, people walking their dogs,
19 people at their houses, neighbor businesses. We're
20 looking for witnesses, looking for surveillance video.
21 We're looking for anything that may help with the
22 investigation.

23 Q And was a neighborhood check done with regard
24 to this investigation?

25 A Yes, sir.

1 Q Did you participate in that?

2 A I did.

3 Q Were you the only one who was participating in
4 that?

5 A No, sir. Several detectives assisted.

6 Q What areas did you specifically do a
7 neighborhood check in?

8 A On Hatteras Street and one house on Almond.

9 Q Okay. And Almond would be the street across
10 the canal from Hatteras?

11 A Just west of Hatteras.

12 Q So, for example, if I was to take a canoe from
13 the dead end of Hatteras and go straight to the next
14 street over, I'd be at Almond?

15 A That is correct, sir.

16 Q Okay. And while doing your neighborhood
17 check, did you also make contact with Mr. Lusk?

18 A I did.

19 Q And did Mr. Lusk cooperate with you?

20 A He did.

21 Q And provide you with information?

22 A He did.

23 Q In addition to doing a neighborhood check, did
24 you end up going through phone records for a phone
25 number of 484-951-2687?

1 A Yes, sir.

2 Q And particularly did you have dates that you
3 were interested in with regards to those phone records?

4 A Yes, sir.

5 Q Were those dates between August 28, 2014, and
6 September 4th of 2014?

7 A Yes, sir.

8 Q And what you did you do with regard to those
9 phone records?

10 A I was looking through to see who the defendant
11 contacted and who contacted him.

12 Q Okay. And as you see those, did you do
13 anything with your investigation with regard to those
14 numbers that appeared on the phone record?

15 A Yep. I spoke to several people and I
16 discovered that the defendant was selling property on
17 Craigslist.

18 Q Now, were you the only detective involved in
19 calling the numbers on the phone list?

20 A No, sir.

21 Q So there was somebody else helping you with
22 that?

23 A Yes.

24 Q How many different -- well, let me start it
25 this way: Did you make contact with a Patrick Duarte?

1 A I did.

2 Q And did you speak with him on the phone first?

3 A I did.

4 Q After speaking with him on the phone, did you
5 decide you wanted to go out and meet with him?

6 A I did.

7 Q Drive out to the Orlando area where he was to
8 do that?

9 A Yes, sir.

10 Q And did you sit down and speak with him about
11 what he might know about the case out there?

12 A I did.

13 Q Were you the only detective involved in doing
14 that?

15 A No, sir.

16 Q And did one of you -- did Mr. Duarte let you
17 take his phone and download information off of it?

18 A Yes, sir.

19 Q And what was the purpose of that?

20 A There was several text messages corresponding
21 with Mr. Matos that we wanted to forensically download.

22 Q Okay. So they could be preserved?

23 A Yes, sir.

24 Q And was that done?

25 A Yes, sir.

1 Q Now, when you were speaking with Mr. Duarte,
2 did you present him with a photo pack?

3 A I did not.

4 Q Why did you not present him with a photo pack?

5 A During this investigation, Mr. Duarte advised
6 me that he had seen this incident on the news and online
7 as well.

8 Q All right. And were you aware of the news
9 coverage?

10 A I was.

11 Q And were you aware that the defendant was
12 prominently featured in all the news coverage in terms
13 of a photograph of him?

14 A I was aware of that.

15 Q And did Mr. Duarte identify the person being
16 pictured by the news as the person that he had dealt
17 with?

18 A Yes, sir.

19 Q Did you also make contact with Paige Steele
20 based off of the phone record?

21 A I did.

22 Q And did you go out to see Ms. Steele?

23 A I did.

24 Q And I'm going to show you what's been entered
25 into evidence as State's 597. Have you seen this

1 before?

2 A I have.

3 Q And what is that?

4 A It a photo pack.

5 Q And did you present that to Ms. Steele?

6 A I did.

7 Q Did you present it using the same method that
8 you've already described to the jury reading her the
9 instructions, telling her that the person may or may not
10 be in the photo pack, shuffling the papers and all of
11 that stuff?

12 A Yes, sir.

13 Q And once you did that, was she able to make an
14 identification?

15 A She was.

16 Q And who did she pick out in the photo pack?

17 A She picked out photo number four.

18 Q And who is photo number four of?

19 A The defendant, Mr. Matos.

20 Q Okay. And, I'm sorry. What was the date and
21 time that you made contact with Ms. Steele?

22 A Again, I'd have to look, if that's okay, sir.

23 Q Sure. If that would refresh your
24 recollection.

25 A It would. September 8, 2014 at 17:49 hours,

1 so 5:49 P.M.

2 Q All right. I want to show you State's Exhibit
3 594. Did you make contact with a James Smith as part of
4 your investigation?

5 A I did.

6 Q And was Mr. Smith's situation a little
7 different in that he actually contacted the Sheriff's
8 Office first?

9 A Yes, sir.

10 Q And did you go out and did you speak with him?

11 A I did.

12 Q And did he cooperate with you?

13 A He did.

14 Q Did he answer your questions?

15 A Yes, sir.

16 Q And that item, I think it was 597. I forgot.
17 594. Can you tell us what that is?

18 A It's a photo pack, sir.

19 Q And did you present it to Mr. Smith using the
20 same manner and method that you've already described?

21 A I did.

22 Q And was Mr. Smith able to make a selection out
23 of that photo pack?

24 A He did.

25 Q And who did he select in the photo pack?

1 A He selected photo number two, the defendant,
2 Mr. Matos.

3 Q Okay. And based on speaking with Mr. Smith,
4 did you learn that you might want to speak with a
5 Brandon Derry?

6 A I did.

7 Q And did you have occasion to speak with
8 Brandon Derry?

9 A I did.

10 Q And I'm showing you State's 595. Did
11 Mr. Derry cooperate with you?

12 A He did.

13 Q Did he answer your questions?

14 A He did.

15 Q And State's 595, have you seen that before?

16 A I have.

17 Q What is it?

18 A It's a photo pack.

19 Q And did you present that photo pack to
20 Mr. Derry?

21 A I did.

22 Q Now, when you're presenting these photo packs,
23 do you do it to people individually or in a group?

24 A Individually.

25 Q Okay. And did you do that with all the people

1 that you presented photo packs to in this case?

2 A I did.

3 Q So Mr. Derry, was he able to make an
4 identification of the person that they had dealt with on
5 August 29th in regards to a TV?

6 A He did.

7 Q And who did he select in the photo pack?

8 A He selected photo number three, Mr. Matos, the
9 defendant.

10 Q Okay. One of the numbers that you called from
11 the phone records that we've been referencing, did you
12 get Pizza Hut?

13 A I did.

14 Q Based on that, did you do some investigation
15 into the Pizza Hut to determine if they had any relevant
16 information or if there were any witnesses?

17 A Yes, sir, I did.

18 Q And based on your investigation, did you
19 locate a Michael Hall?

20 A I did.

21 Q And did you go out and did you speak with
22 Michael Hall?

23 A I did.

24 Q And did he answer your questions?

25 A He did.

1 Q Did he cooperate with you?

2 A Yes, sir.

3 Q And I'm going to show you State's 598. Have
4 you seen this before?

5 A Yes, sir, I have.

6 Q And what is that?

7 A It's also a photo pack.

8 Q Is that the photo pack that you presented to
9 Mr. Hall?

10 A It is.

11 Q And did you go about presenting it to him
12 using the same method and manner that you already
13 described where you read him the instructions, told him
14 the person may or may not be in the photo pack, shuffled
15 the papers, those sorts of things?

16 A Yes, sir.

17 Q And was he able to select the person that he
18 delivered pizza to the afternoon of August 29th of 2014?

19 A He did.

20 Q And who did he select?

21 A He selected photo number five, the defendant,
22 Mr. Matos.

23 Q Okay. Now, in addition to those people that
24 we've just discussed, when you were going through
25 calling numbers on the phone list, did you also talk to

1 a Gary Morris, an Alexia McCallister, a Toshi Rumph, a
2 Carol Shoe-Mulherin, a Michael Pelletier, and a Jose
3 Castro?

4 A I did.

5 Q And did they all appear to be Craigs List
6 buyers?

7 A Yes.

8 Q Did you go out and speak with all of them?

9 A I did not.

10 Q And why not?

11 A Several of them did not make contact with the
12 defendant. It was just all by phone. I made contact
13 with several people that did because either they had
14 text messages or they actually were face-to-face.

15 Q Okay. And so those people were people that
16 you didn't -- it was your impression that they would
17 have never gone to the house or had contact with the
18 people in the house; is that the same?

19 A Correct.

20 Q Did some of them have text messages though
21 that you still went and recovered?

22 A Yes. Me or another detective did.

23 Q Okay. Now, as you're gathering all of this
24 information, do you relay this information to the other
25 detectives that are involved in the case, particularly

1 Detective Cougill and Detective Kennedy?

2 A I did.

3 Q So as you're gathering information, Detective
4 Kennedy and Detective Cougill are also getting that
5 information?

6 A Correct.

7 MR. SARABIA: Judge, may I have a moment?

8 THE COURT: You may.

9 MR. SARABIA: I don't have any more questions,
10 Judge.

11 THE COURT: Cross?

12 MR. MICHAÏLOS: Yes, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. MICHAÏLOS:

15 Q Good afternoon, Detective Rosa.

16 A Good afternoon, sir.

17 Q When you did subpoena records requests for
18 Adam Matos's phone number, you did so for other phone
19 numbers as well, correct?

20 A I actually am not the person who subpoenaed
21 them, another detective did. I just went over the
22 records when we retained information about back.

23 Q Are you familiar with the other numbers that
24 were researched?

25 A As in on the defendant's record or other

1 numbers?

2 Q Do you know what cell phone was linked to
3 Nicholas Leonard's cell phone?

4 A I do not.

5 Q Do you have that in your report?

6 A I don't believe so, sir.

7 Q How about Megan Brown's cell phone; do you
8 know?

9 A I had their numbers, but I was only going over
10 the defendant's records.

11 Q Okay. But you know that those records were
12 received by your office, correct?

13 A Yes. But not reviewed by me, sir.

14 Q Thank you, sir.

15 MR. MICHAÏLOS: I have no further questions.

16 THE WITNESS: You're welcome.

17 THE COURT: Any redirect?

18 MR. SARABIA: No, Judge.

19 THE COURT: All right, Sergeant. Thank you
20 very much. You may step down.

21 Is he released from his subpoena?

22 MR. SARABIA: Yes, Judge.

23 THE COURT: All right. Defense, any
24 objection?

25 MR. MICHAÏLOS: No, Your Honor.

1 THE COURT: You're free to go. Thank you,
2 Sergeant.

3 THE WITNESS: Thank you, ma'am. Thank you.

4 THE COURT: State, call your next witness.

5 MR. LAWHORN: Jeri Lamana.

6 THE COURT: Good afternoon, ma'am. Could you
7 step to the podium for me along with the cutest dog
8 I've ever seen.

9 THE WITNESS: Thank you.

10 THE COURT: All right. If you can raise your
11 right hand and be sworn by my clerk.

12 THEREUPON,

13 JERI LAMANA,
14 the witness herein, having been first duly sworn, was
15 examined and testified as follows:

16 THE WITNESS: Yes, ma'am.

17 THE COURT: All right. Please have a seat in
18 the witness stand and speak in a loud and clear
19 voice.

20 State, you may proceed.

21 MR. LAWHORN: Thank you, Judge.

22 DIRECT EXAMINATION

23 BY MR. LAWHORN:

24 Q Good afternoon.

25 A Good afternoon.

1 Q Would you please introduce yourself to the
2 jury.

3 A My name is Jeri Lamana.

4 Q And will you spell your first and last name
5 for the court reporter.

6 A It is J-e-r-i, L-a-m-a-n-a.

7 Q And, Ms. Lamana, what do you do for a living?

8 A I train dogs and take care of dogs for a
9 living.

10 Q And the dog you have here today, is that one
11 you're currently training?

12 A Yes. Well, she's trained, yes.

13 Q What is her name?

14 A That's Natalie Louise Lamana.

15 Q And, Ms. Lamana, where do you live?

16 A I live on 7424 Gulf Way.

17 Q And is that the same place you lived in August
18 and September of 2014?

19 A Yes, sir.

20 MR. LAWHORN: Your Honor, may I approach the
21 witness with what's been entered into evidence as
22 State's 256?

23 THE COURT: You may.

24 Q (By Mr. Lawhorn) Give us a general idea where
25 your house is on this map (indicating). This is Old

1 Dixie Highway right through here (indicating).

2 A Okay. So ...

3 Q Right at the end?

4 A Yeah.

5 Q Right at the end of this street not quite
6 pictured (indicating)?

7 A Yeah. Uh-huh. Right down here.

8 Q So your house is right down this road in this
9 general vicinity (indicating)?

10 A Yes.

11 Q Now, on September 3, 2014, did you go anywhere
12 down Old Dixie Highway?

13 A Yes.

14 Q Could you tell us about that?

15 A Well, every morning me and my best friend run
16 our dogs. And she lives right here right across the
17 water from me (indicating).

18 Q What's your best friend's name?

19 A Sherry Mann.

20 Q Okay.

21 A Or Sharon Mann. And so I had picked her up on
22 my off road vehicle. I have a Rhino. It's like a
23 side-by-side. So we rode together, picked up all the
24 dogs, and then we took them down towards the end of Old
25 Dixie Highway. And it used to be a dirt road then, so

1 we normally would let the dogs just run. But --
2 actually, we did let them run that day, but we had
3 smelled something along the way and they started going
4 crazy and so we loaded them all up and we went down and
5 we turned around.

6 Q And when you say you smelled something, about
7 how far down Old Dixie Highway were you when you could
8 smell this?

9 A Well, it was pretty early in the morning and I
10 would say that it was about half-way between my street
11 and where the crime scene was. So ...

12 Q Where the --

13 A About three quarters of a mile I would say.

14 Q Where the road ended; is that what you mean by
15 the "crime scene"?

16 A Yeah. Where the road ended. Where the bodies
17 were.

18 Q Now, you said where the bodies were found?

19 A Where the bodies were found, yeah.

20 Q Would you kind of point on the map, is it up
21 near that red star (indicating)?

22 A So -- yes.

23 Q That's where the road ended?

24 A Yes. They had -- at that time they were doing
25 construction down there so they had a barrier built

1 there so you couldn't get over it. I mean, some people
2 did but you weren't supposed to go past it. And then so
3 there was big, like, you know, piles of dirt there.

4 Q Okay. Now, about how far down the road
5 between your street and where the berm was did you start
6 to smell the odor?

7 A I'm going to say about half-way. I would say
8 about in this area (indicating). And because we had
9 already dropped the dogs right around hear, I think
10 (indicating). And it's all just coming back to me
11 because it's been a couple years. But we had dropped
12 them and then we picked them back up because they
13 started going crazy. And we smelled it and they smelled
14 it and so we had picked them up. But we went down,
15 turned around, and it smelled so bad that we got out of
16 there. But then --

17 Q Was it a smell that you were familiar with?

18 A I've never smelled that before.

19 Q Okay. And was it a good smell?

20 A It was not a good smell. It was -- be a smell
21 I'll never forget.

22 Q And at that point you ended up turning around
23 and going back home?

24 A We turned around and, yeah, we went to the
25 other side of the neighborhood because we knew something

1 was definitely not, like, what we wanted our dogs to get
2 into down there.

3 So, yeah, it didn't really cross either of our
4 minds that it could be, you know, what it was. We
5 thanked God that we didn't find it.

6 Q Now, you train dogs?

7 A Yes.

8 Q And have you ever bought or sold dogs, either
9 one?

10 A I have purchased dogs before.

11 Q And do you have any experience with very small
12 dogs like Yorkies?

13 A Yes. Plenty.

14 Q And what is your experience with those
15 animals?

16 A Well, I have plenty of clients that have them.
17 I have lots of friends that have them. And then I grew
18 up with them as a child.

19 Q And have you ever priced those animals?

20 A Yes.

21 Q And what do they normally sell for?

22 A You're going to go anywhere between five and
23 two grand. And the higher end is because of the
24 bloodlines. The more show dogs, you know, people are
25 paying for their ancestors.

1 Q When you say "five", you mean 500?

2 A Five hundred. Yeah. Five hundred would be,
3 like, the lowest end of a pet.

4 Q Okay.

5 A Yeah.

6 MR. LAWHORN: May I have just one moment,
7 Judge?

8 THE COURT: You may.

9 MR. LAWHORN: Judge, we have no further
10 questions.

11 THE COURT: Cross?

12 MS. GARRETT: No questions, Your Honor.

13 THE COURT: All right. Is she released from
14 her subpoena?

15 MR. LAWHORN: She is.

16 THE COURT: Defense, any objection?

17 MR. MICHAÏLOS: No, Your Honor.

18 THE COURT: Ma'am, you're free to go.

19 THE WITNESS: Thank you.

20 Let's do it.

21 THE COURT: And you have an excellently
22 behaved dog.

23 THE WITNESS: Oh, thank you.

24 Have a good day.

25 THE COURT: State, call your next witness.

1 MR. SARABIA: Can we approach, Judge?

2 THE COURT: Yes.

3 (BENCH CONFERENCE.)

4 MR. SARABIA: Those are all the witnesses we
5 have for today.

6 THE COURT: Okay.

7 MR. SARABIA: One of them we're not sure what
8 happened to, so we may have them tomorrow instead
9 or we have a replacement for him.

10 THE COURT: Sure you don't want to step out
11 and make sure they're not here and make a phone
12 call?

13 MR. SARABIA: We're sure.

14 THE COURT: Okay. All right. I'll just tell
15 the jury that we've run out of witnesses for today,
16 but we'll back tomorrow.

17 MR. SARABIA: We expect six to seven tomorrow,
18 some a little bit lengthy and some a couple short.

19 THE COURT: Okay.

20 (OPEN COURT.)

21 THE COURT: I have good news and I have bad
22 news. So I'll start with the bad news first, that
23 is, you have to come back tomorrow, as bad as that
24 is. But the good news is we're done for today. We
25 have used all the witnesses that are available

1 today. We had one that was not able to arrive
2 within a time period that I felt like we could
3 wait. But the State indicates that all the rest of
4 witnesses will be going for a good long time
5 tomorrow. And we're right on schedule. So this
6 early dismissal today is not affecting our timing
7 of the trial.

8 So I'm going to go ahead and let you put your
9 stuff away. It's a beautiful day outside. I took
10 time to take a walk at lunch. And you get it all
11 to yourself.

12 So tomorrow jury pool room, like normal.
13 Because they've already picked all their juries for
14 today. So you guys get the jury pool room again
15 tomorrow. 9:30. And we'll bring you up right away
16 and we'll have a big strong day tomorrow. All
17 right?

18 No talking, tweeting, texting. We're not done
19 yet and you all have a nice afternoon. All right.
20 This gives me time to work on some things with the
21 lawyers anyway, so it's good for us.

22 (Jury absent.)

23 THE BAILIFF: The jury's out of the presence
24 of the Court, Your Honor.

25 THE COURT: Thank you.

1 All right. We have some jury instructions to
2 go over.

3 Defense, did you get a copy of these?

4 MR. VIZCARRA: We did, Judge.

5 THE COURT: All right. So we can use this
6 time to go over the jury instructions. Now, this
7 is only instructions for first phase, and it will
8 stay that way until we have to go over second phase
9 if necessary. So we're only going over the first
10 phase instructions. Most of these are standard.

11 I know I asked the Defense earlier and,
12 Mr. LaBruzzo I don't know if you were in here, they
13 do want the self defense instruction. Is it in
14 here?

15 MR. LABRUZZO: No, Judge. There are too many
16 choices and decisions that have to be made as to
17 what. So if they provide it to me in a Word
18 document, I'd be happy to put it in. I don't feel
19 comfortable making the choices of what with the
20 crimes being against him and those types of --
21 so ...

22 THE COURT: I would assume you want
23 justifiable use of deadly force, first of all,
24 which is 3.6(f).

25 MR. MICHAIILOS: Yes.

1 THE COURT: So what I'm going to ask is
2 tomorrow morning if you could prepare -- if the
3 Defense could prepare their self defense
4 instruction, Justifiable Use of Deadly Force. You
5 can prepare one that is what you would wish to have
6 in there.

7 Oh, you already have one?

8 MR. LIVERMORE: No. I have a different
9 proposed instruction.

10 THE COURT: What, a proposed instruction?

11 MR. LIVERMORE: Yes, ma'am.

12 THE COURT: On another issue?

13 MR. LIVERMORE: Yes.

14 THE COURT: So the self defense instruction
15 for use of deadly force is kind of long. And
16 there's some subparts about dwelling and residence
17 and those kinds of things. So at this point, the
18 Defense, if you wish to have that, just prepare one
19 that you think would meet your needs and bring it
20 in tomorrow and we can discuss it. Okay? So we
21 can go over and put it in with these instructions
22 that we'll go over today.

23 So let's see. We'll go through the ones that
24 they have in front of me right now. Most of these
25 are standard.

1 (Staff conversation.)

2 THE COURT: First and foremost, I don't
3 know -- when we have a homicide, I usually start
4 with Introduction of Homicide before I go
5 Introduction to Final Instructions, but it doesn't
6 matter to me. One half, dozen of the other, as far
7 as I'm concerned.

8 So does anybody have a problem with -- and by
9 the way, there's no need for page numbers either.
10 But ...

11 MR. LABRUZZO: I can take them out.

12 THE COURT: It was helping you get them
13 organized?

14 MR. LABRUZZO: If they reference a page.

15 THE COURT: So it's Introduction to Final
16 Instructions. Members of the jury, I thank you for
17 your attention during the trial. Please pay
18 attention to the instructions I'm about to give
19 you. And then Adam Matos, the defendant in this
20 case, has been accused of the crimes of murder in
21 the first degree, Count I, murder in the first
22 degree, Count II, Count III and Count IV.

23 So any objection to that?

24 MR. MICHAÏLOS: No.

25 THE COURT: Okay. And then we get into

1 Introduction to Homicide, which is 7.1. I don't
2 need the numbers on them. I'm just referencing
3 them for that. And looks to be standard.

4 In this case, Adam Matos is accused of four
5 counts of murder in the first degree.

6 And then we have: Murder in the first degree
7 includes lesser crimes of murder in the second
8 degree and manslaughter both which are unlawful.

9 MR. LIVERMORE: Judge, I have an issue with
10 that. I guess it's the fourth paragraph there.
11 It's a little confusing.

12 MR. LABRUZZO: I agree.

13 MR. LIVERMORE: It seems like all or nothing
14 type thing. I think it needs to be --

15 THE COURT: Laid out each one individually?

16 MR. LIVERMORE: Yes.

17 THE COURT: Okay.

18 MR. LABRUZZO: Yeah. I agree, Judge. This is
19 one of those paragraphs that I kind of just
20 mismatched quickly to just get it in there.

21 THE COURT: Well, I mean, normally it's not a
22 problem. But in this particular case, there may be
23 different defenses as to each individual victim and
24 different arguments about whether the State has met
25 its burden as to whether it's first degree, second

1 degree, manslaughter or self defense.

2 So I assume what the Defense is asking for is
3 that this paragraph be four times in a row.

4 MR. LIVERMORE: Or expanded in some way to
5 make it clear.

6 THE COURT: Well, I don't know how --

7 MR. LIVERMORE: I don't know exactly how to do
8 it at the moment.

9 THE COURT: Right now it reads -- I mean, the
10 standard instruction says: If you find victim was
11 killed by defendant -- and we're supposed to fill
12 in the blanks -- you will then consider the
13 circumstances surrounding the killing in deciding
14 if the killing was first-degree murder or it was
15 second-degree murder or it was manslaughter, or
16 whether the killing was excusable or resulted from
17 justifiable use of deadly force.

18 Now, I could say: If you find -- and the way
19 they have it is: Nicholas Leonard, Megan Brown,
20 Gregory Brown and Margaret Brown was killed by Adam
21 Matos, you will then consider the circumstances
22 surrounding each individual killing?

23 MR. LABRUZZO: Or I can put just -- I can do
24 each paragraph four times. I think -- that was my
25 initial thought. Because then it we're sticking

1 with the -- I would defer to the Defense. Clearly
2 it needs to be corrected.

3 THE COURT: So, I mean, this is a thought.
4 I'm not saying you have to agree to this. But to
5 not make it four paragraphs, which means the
6 Defense may not want that either. I could say or
7 it could read: If you find, and then the four
8 names, was killed by Adam Matos, you will then
9 consider the circumstances surrounding each
10 individual killing in deciding if each individual
11 killing was murder in the first degree or was
12 murder in the second degree, manslaughter or
13 whether the killing was excusable or resulted from
14 justifiable use of deadly force in each case. Or I
15 can have it four times.

16 Defense, what do you think?

17 MR. LIVERMORE: I think instead of the four
18 paragraphs, each --

19 THE COURT: You want all four paragraphs?

20 MR. LIVERMORE: No. No. The other option.

21 MR. MICHAÏLOS: Your suggestion.

22 THE COURT: Okay. So I'll reread it so the
23 State will get it down.

24 MR. LABRUZZO: I've got it.

25 THE COURT: Okay. So it will be surrounding

1 each individual killing. In deciding if each
2 individual killing was -- and then at the end, in
3 each case. So we're telling them three times, this
4 is individual, individual, individual.

5 So, Defense, with those additions you think
6 you would be okay with that?

7 MR. LIVERMORE: Yes.

8 THE COURT: Okay. So we'll put that in.

9 In justifiable homicide, the next paragraph
10 says: The killing of a human being is justifiable
11 homicide and lawful if necessarily done while
12 resisting an attempt to murder or commit a felony
13 upon the defendant or to commit a felony in any
14 dwelling house in which the defendant was at the
15 time of the killing.

16 You're fine with that? That doesn't need to
17 be separated. That's just kind of an overall.
18 That's excusable -- or I mean, justifiable. And
19 then there's excusable.

20 And, again, neither one of these paragraphs
21 has anyone of the victims or the defendant's name
22 in it. So it's just more of a definitional
23 paragraph.

24 So under excusable, again: The killing of a
25 human being is excusable and, therefore, lawful

1 under any one of the following three circumstances.
2 Whether it was done, you know, accident,
3 misfortune, sudden provocation, when the killing is
4 committed by accident or misfortune from sudden
5 combat. So that's the standard.

6 Any objection to the excusable standard?

7 MR. MICHAÏLOS: No, Your Honor.

8 THE COURT: And then the definition of
9 "dangerous weapon" is: Any weapon that takes into
10 account the manner in which it is used and is
11 likely to produce death or great bodily harm.

12 And then the last paragraph is: I now
13 instruct you on circumstances that must be proved
14 before Adam Matos may be found guilty of murder in
15 the first degree or any lesser-included crime.

16 Now, the question is do we want to say in each
17 case just so we keep a theme going or do we want to
18 just have it --

19 MR. LABRUZZO: I'd defer to the Defense.

20 THE COURT: That's going to be a standard
21 answer, by the way.

22 MR. LIVERMORE: I get the impression.

23 THE COURT: I mean, we don't have to. It's
24 just a general definition saying, I instruct you on
25 the circumstances that must be proved before Adam

1 Matos may be found guilty of any of the murder --
2 any of the counts of murder in the first degree or
3 any lesser-included crimes? I'm just saying, we
4 might want to put --

5 MR. LIVERMORE: I think any is a good idea.

6 THE COURT: Okay. So it would be: I now
7 instruct you on the circumstances that must be
8 proved before Adam Matos may be found guilty of any
9 murder in the first degree or any lesser-included
10 crime.

11 And then Count I -- now, these, I assume, you
12 have three count -- four Count I's and then four
13 lessers, right?

14 MR. LABRUZZO: Yes, Judge.

15 THE COURT: So Count I would be: To prove the
16 crime of murder in the first degree, the State must
17 prove the following three elements beyond a
18 reasonable doubt: Nicholas Leonard is dead; the
19 death was caused by Adam Matos; and there was a
20 premedicated killing of Nicholas Leonard. And then
21 all the standard wording from that. This is a
22 standard instruction with the victim and the
23 defendant in there.

24 Any objection to that?

25 MR. LIVERMORE: No, ma'am.

1 THE COURT: And then, of course, Count II, we
2 have Megan Brown as the victim. Same instruction.

3 Now, on the two that were killed with a
4 firearm, the State has alleged in Count II: If you
5 have a reasonable doubt whether the defendant --
6 the defendant acted with a premeditated design to
7 kill because he acted in the heat of passion based
8 on adequate provocation, you should not find him
9 guilty of murder in the first degree. And then
10 they have the aggravation of a felony by carrying a
11 firearm.

12 MR. LABRUZZO: It's a reclassification.

13 THE COURT: To what? Really, really life?
14 Really, really death?

15 MR. LABRUZZO: Judge, in case there's a
16 directed verdict later. We've alleged the
17 reclassification, so I have to put it in there.

18 THE COURT: Can I see the file, please.

19 Okay. So they want the reclassification
20 because they did put the 10-20-Life wording in the
21 Indictment. So they have the wording for
22 aggravation of a felony by carrying a firearm,
23 discharge, and discharge causing death.

24 MR. LABRUZZO: I have a suggestion as it
25 relates to the possession of a firearm, if the

1 defense would agree. There are a total of one,
2 two, three. The first three paragraphs, I would
3 be -- I would believe it to be sufficient if it
4 were to say -- basically, if you find that Adam
5 Matos committed murder in the first degree and you
6 also find beyond a reasonable doubt that during the
7 commission of the crime he possessed and discharged
8 a firearm, and in doing so, caused the death of
9 Megan Brown. And then you've got the interrogatory
10 question on the verdict form indicated, possession,
11 discharge and death, and that it would be
12 sufficient and you would not have to read the other
13 two paragraphs.

14 THE COURT: Defense?

15 MR. LIVERMORE: Backing up a little bit. I
16 have a problem with the use of word "aggravation"
17 especially in this type of case because it's not a
18 legal aggravator and it's liable to be misconstrued
19 as such.

20 MR. LABRUZZO: It is actually an aggravator of
21 the crime, but I understand his objection.

22 THE COURT: If we did it the way that he's
23 requesting, the wording says, "possession of a
24 firearm, discharge causing great bodily, death."
25 So if you put it all in one, we could -- we can

1 actually title it like the second paragraph instead
2 of the first and then aggravation isn't in there.

3 MR. LABRUZZO: We can just call it -- okay.

4 THE COURT: See?

5 MR. LIVERMORE: Okay.

6 THE COURT: So you take out "aggravation of a
7 firearm by carrying -- aggravation of a felony by
8 carrying a firearm", that wording comes out. Then
9 you put the paragraph together like you requested
10 with the definition of "firearm", and then we just
11 title it, possession of a firearm and discharge,
12 great bodily, death. I think it's supposed to be
13 great bodily harm and death. But that's okay.

14 MR. LABRUZZO: I took out just death. I can
15 combine it is what I'm trying to say. I think you
16 can legally do that and make it easier for the
17 Court to read.

18 THE COURT: I don't disagree with you. And
19 then you title it, possession of a firearm and
20 discharge causing great bodily harm or death. Or
21 great death. I don't know how you have great
22 death.

23 MR. LABRUZZO: Maybe the Court maybe just
24 allow me to try to clarify my -- my position was
25 that under possession of a firearm there are three

1 paragraphs. And, like I said, I could combine that
2 into one paragraph. The Court is suggesting
3 combining aggravation of a felony where it's
4 carried, displayed, used, threatened to be used or
5 attempted to use as well into that so it's just one
6 paragraph that kind of outlines the whole thing.

7 THE COURT: Right.

8 MR. LABRUZZO: I don't have a problem with
9 that as long as the interrogatories allow for:
10 Carried, used, display, threaten to use and then
11 possession leading to discharge, leading to death.
12 So that would be my -- as long as there's the --

13 THE COURT: That's two different questions.
14 The interrogatory is the interrogatory. It is what
15 it is. It's just is whether the jury understands
16 that the State is asking them that in the two cases
17 in which a firearm was used, that they're to make a
18 further finding that a firearm was used, it was
19 possessed, and the discharge, and the discharge
20 caused the death.

21 So the way you wanted to read this is: If you
22 find that Adam Matos committed murder in the first
23 degree and you also find beyond a reasonable doubt
24 during the commission of the crime, he personally
25 carried, displayed, used, threaten to use,

1 attempted to use a firearm, you should find him
2 guilty of murder in the first degree with a
3 firearm. Then it defines "firearm."

4 If you find that Adam Matos committed murder
5 in the first degree but you were also not convinced
6 beyond a reasonable doubt that he personally
7 carried, displayed, used, threatened to use or
8 attempted to use a firearm, then you should find
9 him guilty only of murder in the first degree.

10 If you find that he committed murder in the
11 first degree, you also find beyond a reasonable
12 doubt during the commission of the crime he
13 discharged the firearm.

14 So it flows just fine if we just make it
15 one -- you know, one group and then we head it, you
16 know, possession of a firearm, discharge causing
17 great death, and then we take the three paragraphs
18 and combine them into one.

19 I know. I don't like that.

20 MR. LIVERMORE: Great death.

21 THE COURT: I just think, causing death. Take
22 out "great."

23 MR. LABRUZZO: Where's "great?"

24 THE COURT: Look at your paragraph, possession
25 of a firearm, discharge causing --

1 MR. LABRUZZO: Oh, my bad. That's --

2 THE COURT: And then that explains the entire
3 group. And then the paragraph would be: If you
4 find Adam Matos committed murder in the first
5 degree and you also find beyond a reasonable doubt
6 that during the commission of the crime he -- where
7 do you want to put --

8 MR. LABRUZZO: I would just say he possessed
9 and discharged a firearm.

10 THE COURT: You want and -- or you want it
11 possessed and discharged?

12 MR. LABRUZZO: That's --

13 THE COURT: Or do you want it and/or?

14 MR. LABRUZZO: Possessed and discharged.

15 THE COURT: Okay. Defense, any objection?

16 MR. LIVERMORE: No.

17 MR. VIZCARRA: No.

18 THE COURT: So -- and we're already defining
19 "firearm" in the paragraph, so we can take the new
20 definition out there. And then the question is we
21 still need the bottom which says, "actual
22 possession."

23 MR. LABRUZZO: Yep.

24 THE COURT: So we combine those three
25 paragraphs into one. We get rid of the second

1 definition of a firearm. We still have "actual
2 possession" definition and the whole thing's title
3 will be, possession of a firearm and discharge
4 causing death. And the aggravation of a felony
5 wording is gone.

6 MR. LABRUZZO: Yep.

7 THE COURT: Is that good?

8 MR. LIVERMORE: (Nodding head.)

9 MR. LABRUZZO: Just for the record, I will
10 do -- this instruction here appears on Count II and
11 Count III.

12 THE COURT: Right.

13 MR. LABRUZZO: And then the lessers to Count
14 II and to Count III, I will take note and I will do
15 that on all of them and bring it back to the Court
16 tomorrow so we don't have to go through that later
17 on.

18 THE COURT: That's fine.

19 So this is going to be as charged, this
20 aggravation. It's also going to be -- it's also
21 going to be an aggravation as to a lesser of
22 felony -- second degree. It's not a lesser to
23 manslaughter.

24 MR. LABRUZZO: Although the reclassification
25 is.

1 THE COURT: Right. But not the whole thing.

2 MR. LABRUZZO: Correct.

3 THE COURT: Just the possessed a firearm?

4 MR. LABRUZZO: No. Carried, used, threaten to
5 use.

6 THE COURT: The first part?

7 MR. LABRUZZO: Yes, Judge.

8 THE COURT: Yes. Okay. So it just gets the
9 first part for manslaughter.

10 So then on third-degree murder, we have the
11 exact same situation because with Gregory Brown,
12 you also alleged firearm. So we do the
13 aggravation --

14 MR. LABRUZZO: Yes.

15 THE COURT: -- paragraph the same way.

16 MR. LABRUZZO: Yes.

17 THE COURT: And we'd have the lessers of
18 second-degree murder with this enhancement. And
19 then manslaughter just with the part about
20 possessing at -- using, attempting to use, blah,
21 blah, blah.

22 MR. LABRUZZO: Yes.

23 THE COURT: Okay. On Count IV, that's
24 Margaret Brown, that's the same as Count I on,
25 like, Nicholas Leonard.

1 MR. LABRUZZO: Yes. There is a correction on
2 Page 14, I already see it.

3 THE COURT: What's the correction?

4 MR. LABRUZZO: I left in him and her.

5 THE COURT: So it will be her.

6 MR. LABRUZZO: Him.

7 THE COURT: No. This is Margaret Brown.

8 MR. LABRUZZO: Right but it's, him, Adam
9 Matos.

10 THE COURT: Oh, him. Okay. Sorry. Not find
11 him guilty of first degree, yes.

12 All right. So everybody agrees to those four.

13 And then, again, we're talking about the
14 lessers and he broke them down by counts.

15 Count I will be -- they all four have murder
16 in the second degree and manslaughter as lessers.

17 Is the Defense asking for any other lessers
18 other than that?

19 MR. LIVERMORE: No.

20 THE COURT: All right. So that will be it.
21 Those will be the lessers and we just went over
22 that.

23 Second-degree murder. To prove the crime of
24 murder in the second degree, the State must prove
25 the following three elements: Nicholas Leonard's

1 dead; the death was caused by the defendant; there
2 was an unlawful killing of Nicholas Leonard by an
3 act imminently dangerous to another and
4 demonstrating a deprived mind without regard to
5 human life.

6 The definition of "act."

7 Definition of "imminently dangerous to
8 another."

9 In order to convict of second-degree murder,
10 it's not necessary for the State to prove the
11 defendant intended to cause the death.

12 Then the part where he did not have a deprived
13 (sic) mind with regard to with regard to human life
14 because he acted in the heat of passion. I assume
15 you guys want that.

16 MR. LIVERMORE: Yes.

17 THE COURT: All right. So that's a yes.

18 Based on adequate provocation, in order to
19 find the defendant did not have a deprived (sic)
20 mind without regard for human life because he acted
21 in the heat of passion based on provocation. There
22 must be a sudden event. Reasonable person would
23 have -- a reasonable person would have lost normal
24 self control. There's not a reasonable amount of
25 time to cool off. A reasonable person would not

1 have cooled off. And then Adam Matos was, in fact,
2 so provoked and did not cool off before he
3 committed the act.

4 If you have a reasonable doubt as whether he
5 had a deprived (sic) mind without regard to human
6 life because he acted in the heat of passion on an
7 adequate provocation, you should find him not
8 guilty -- you should not find him guilty of murder
9 in the second degree. I've never liked that
10 wording, but that's the way it is. I have to make
11 sure I read it verbatim.

12 Lesser as to count includes manslaughter
13 Count I. So these are the lessers.

14 MR. LABRUZZO: What I did is, Judge, I put the
15 lessers as to Count I together and not separated by
16 a page. I can do that. I just -- as I was doing
17 it, I just thought it's already so long. But --
18 and I have not edited the manslaughter instruction.

19 THE COURT: Oh, I see. You just kept going.

20 MR. LABRUZZO: Yes. So when you go to
21 Count -- for the lessers for Count II, they're
22 together; lessers for Count III, together; lessers
23 Count IV, together.

24 THE COURT: So as to Count I, I read the
25 lesser for second-degree murder. Now, these are

1 the lessers for Count I of manslaughter: And to
2 prove the crime of manslaughter -- now, in the
3 middle, two elements beyond a reasonable doubt:

4 One. Nicholas Leonard is dead.

5 And, Number 2, it says: Give A, B or C
6 depending upon the alleged -- the allegations and
7 proof.

8 So "A" is: Intentionally commit an act or
9 acts that caused the death of Nicholas Leonard.

10 "B" is: Intentionally procured an act that
11 will cause -- I don't think he procured an act, did
12 he? So "B" is out.

13 And that it was caused by culpable negligence.

14 You guys are asking for "A", right?

15 MR. MICHAIILOS: Yes.

16 THE COURT: Okay. So it's going to be just
17 Adam Matos intentionally committed an act or acts
18 that caused the death of Nicholas Leonard.

19 The defendant cannot be guilty of manslaughter
20 by committing a merely negligent act or if the
21 killing was either justifiable or excusable
22 homicide as I have previously instructed you.

23 So ...

24 MR. LABRUZZO: It does instruct me to add in
25 justifiable homicide and excusable homicide from

1 the introduction, so I'll just copy and paste that
2 over.

3 THE COURT: What?

4 MR. LABRUZZO: The explanation is on Page 17,
5 that paragraph says: The explanation of
6 justifiable homicide and excusable homicide are in
7 the instruction.

8 THE COURT: But I just told them that, "As I
9 have previously instructed you."

10 MR. LABRUZZO: Okay. My bad.

11 THE COURT: So I don't know why -- I guess
12 they're just trying to help the Court because we're
13 too dumb to realize that we read it earlier. I
14 don't --

15 MR. LABRUZZO: That's fine.

16 THE COURT: I've never reread them. I read
17 them in the beginning and I tell them, "As I have
18 previously instructed you."

19 Now, I guess -- I guess I could say, "As I
20 have previously instructed you in the introduction"
21 so that they know where to look for it or do you
22 want just the way it's written?

23 Defense?

24 MR. LABRUZZO: I have page numbers. I can
25 reference the page.

1 MR. MICHAILOS: So the question is whether or
2 not we'll repeat the instruction under
3 manslaughter, the definition of "justifiable
4 homicide?"

5 THE COURT: Right.

6 MR. MICHAILOS: I'd like to include it again.

7 THE COURT: But you don't understand. The
8 reason they put this paragraph in is because
9 normally in manslaughter -- well, I guess you would
10 read the introduction to homicide, but I've never
11 reread it. Why would I read it again? It's a
12 page-and-a-half long. Why would I -- if I'm going
13 to read it, I'll just read it every time and not do
14 an introduction. I could put, though, "As I have
15 previously instructed you on Page 3."

16 MR. MICHAILOS: And justifiable homicide.

17 THE COURT: Right. Well, it says, "Either
18 justifiable or excusable homicide, as I have
19 previously instructed you on Page 3, Introduction
20 to Homicide."

21 MR. VIZCARRA: Let's keep -- can we keep the
22 underlined language? That will just --

23 MR. LIVERMORE: No. We don't want to do that.

24 THE COURT: I can just say, "On Page 3." So
25 in their instructions it's on Page 3 or whatever

1 page -- I would assume it's going to stay on 3. So
2 just say, "See Page 3" or "I previously instructed
3 you on Page 3", period.

4 MR. VIZCARRA: Okay.

5 THE COURT: So just put it in somewhere, "As I
6 have previously instructed you on Page 3", period.
7 So they'll know exactly where to look for it if
8 they can't remember what it was.

9 MR. VIZCARRA: Okay. Can you put
10 "Introduction to Homicide"?

11 MR. LABRUZZO: Sure.

12 MR. VIZCARRA: Or is that too much? So just
13 so they really know. Okay.

14 THE COURT: Sure. There's nothing else on
15 Page 3 but Introduction to Homicide, but, okay.
16 That's all Page 3 is. It's titled, "Justifiable
17 Homicide and Excusable Homicide" in big bold
18 letters. But if we want to -- that's what you
19 want, that's what we'll give them.

20 Can you do that, Chris?

21 MR. LABRUZZO: I can.

22 THE COURT: Thank you.

23 Let me know when you've done that so we'll
24 move on.

25 MR. LABRUZZO: I'm just making notes.

1 THE COURT: Okay. Each of us has a duty to
2 act reasonable towards another; if there's a
3 violation without any conscious intent to harm,
4 that violation is negligent.

5 So we're putting "A" in because that's what
6 we're going to read.

7 So in order to convict of manslaughter by act,
8 it is not necessary for the State to prove that the
9 defendant had an intent to cause death, only intent
10 to commit an act that was not merely negligent,
11 justifiable or excusable and which caused death.

12 We'll take out "procure." We take out
13 "culpable negligence."

14 Okay. Take out the whole rest of that page.
15 So we only have that very short paragraph at the
16 top on Page 18.

17 Does everybody see where we are?

18 MR. LIVERMORE: Yes.

19 THE COURT: Yes?

20 MR. VIZCARRA: Yeah.

21 THE COURT: Okay. Then we're on to Megan.
22 We'll do it exactly the same way.

23 And then we're going to fix the felon by
24 carrying a firearm part.

25 MR. LABRUZZO: Yep.

1 THE COURT: But we're -- excuse me -- we're
2 calling it possession of a firearm and discharge
3 causing death. We're taking out "great."

4 MR. LABRUZZO: Yep.

5 THE COURT: And then we'll make the same
6 changes to the manslaughter. It will be exactly --
7 Counts II, III, and IV will be exactly the same
8 when we get to the changes that the State's going
9 to make. We're going to be under 2(a). And we're
10 going to put in there that language about, "See
11 Page 3, Introduction to Homicide."

12 So we can go on past counts -- all the
13 lessers. We've said how we want all of them to be
14 the same.

15 Plea of Not Guilty; Reasonable Doubt; and
16 Burden of Proof. It's the standard instruction.

17 The defendant has entered a plea of not
18 guilty. This means you must presume or believe the
19 defendant is innocent. The presumption stays with
20 the defendant as to each material allegation in the
21 Indictment through each stage of the trial unless
22 it is overcome by the evidence to the exclusion of
23 and beyond a reasonable doubt.

24 To overcome the defendant's presumption of
25 innocence, the State has the burden of proving the

1 crime with which the defendant is charged was
2 committed and the defendant is the person who
3 committed the crime. The defendant is not required
4 to present evidence.

5 The definition of "reasonable doubt."

6 It is to the introduction -- it is to the
7 evidence introduced at trial.

8 Then the next paragraph: A reasonable doubt
9 as to the guilt. If you have a reasonable doubt,
10 you should find the defendant not guilty. If you
11 have no reasonable doubt, you should find the
12 defendant guilty.

13 Any objection?

14 MR. LIVERMORE: That's standard.

15 THE COURT: And I'll probably say when we get
16 to this part, that these instructions apply to all
17 four counts equally. You're to use these
18 instructions individually to all four counts. We
19 say it later, but I think I'd rather say it a
20 little bit -- as many times as I can so there's no
21 question about it.

22 Does the Defense have any objection to that?

23 MR. LIVERMORE: No.

24 THE COURT: All right. And I promise I'll
25 just say, "These instructions will be -- just use

1 those individually as to each count going forward,
2 but they all apply to the same." So ...

3 Then we get Weighing the Evidence.

4 In weighing the evidence -- I'm just going
5 to -- my request is that we just go ahead and put
6 them all in.

7 MR. LIVERMORE: Sure.

8 THE COURT: That way no one, you know,
9 renumbering them and then I have to make a decision
10 whether, you know, you impeached him enough or
11 whether -- just have them all in there. They can
12 make a decision based on that. So we're just going
13 to read all ten.

14 MR. LABRUZZO: Okay.

15 THE COURT: Okay?

16 MR. LIVERMORE: That's fine.

17 THE COURT: And then the next page, on 34, the
18 State has to meet its burden.

19 The fact that the witness is employed by law
20 enforcement, we want that one.

21 Expert witness is in.

22 Now, the question is do you want him to leave
23 in, "The defendant in this case became a witness"
24 for now?

25 MR. LIVERMORE: Leave them both for the

1 moment.

2 THE COURT: Right. That's fine.

3 It's entirely proper for the lawyer to talk
4 and you may rely on your own conclusion.

5 So for right now we'll leave both the
6 defendant testifying and the defendant not
7 testifying in. And then we'll have to make that
8 decision.

9 Now, there is a paragraph that says the
10 defendant's statements. At this point I have no
11 post-Miranda statements. I have no statements to
12 law enforcement. I know I have the Tampa Times
13 interview, but that's going to be shown.

14 MR. LABRUZZO: We intend on putting in
15 statements, Judge.

16 THE COURT: Okay. So we're going to have this
17 in.

18 MR. VIZCARRA: Please, Judge.

19 THE COURT: Okay. That's fine. That's why --
20 I didn't know if we were or weren't. So we're
21 good.

22 MR. MICHAILOS: We are.

23 THE COURT: Okay. So that's in, the
24 defendant's statements.

25 Eye witness identification. I'll leave it up

1 to the Defense. You want it? All the way?

2 MR. LIVERMORE: Yeah. Yes.

3 THE COURT: Okay. I know we did photo packs,
4 but sometimes the Defense doesn't want this
5 instruction even though there's a photo pack. This
6 is a defendant's instruction, so I leave it up to
7 them. So this is -- we'll have the Eye Witness
8 Identification instruction, then the Rules for
9 Deliberation.

10 MR. LABRUZZO: I took out the one because of
11 the question --

12 THE COURT: Right. I would have had you take
13 it out anyway.

14 MR. LABRUZZO: -- from experience with you.

15 THE COURT: Yeah. So normally there's eight,
16 but we don't have any questions at this point, so
17 there's no reason to have seven. It says, only,
18 you know, if applicable.

19 Now the instructions says, and the State did
20 it, but I want it on the record, normally in a jury
21 trial I read Number 5 on the Rules for Deliberation
22 says: "You're duty is to determine if the
23 defendant has been proven guilty or not in
24 accordance with the law. It is the judge's job to
25 determine a proper sentence." However, in this

1 case, it's specifically says that when the jury is
2 to be involved in a penalty phase -- I think it
3 should say, "if", but that's a whole other story
4 for another day. But, if, they might be involved
5 in a penalty phase, omit the second sentence.

6 So he took it out, the second sentence usually
7 says, it's a judge's job to determine a proper
8 sentence. So the instructions take it out when
9 there is a possibility of a second phase.

10 Does the Defense like it with it out or do
11 you -- I think I have to take it out at this point
12 because they've put that down as a possibility.
13 So ...

14 MR. LIVERMORE: I believe so yes.

15 THE COURT: So 5 will read: Your duty is to
16 determine if the defendant has been proven guilty
17 or not in accordance with the law, period. Nothing
18 about what my job is. All right? So we all agree
19 to that.

20 MR. LIVERMORE: Yes.

21 THE COURT: Then we have the Cautionary
22 Instruction. And then you have the verdict.

23 MR. LIVERMORE: Judge, I have my objection to
24 the second paragraph.

25 THE COURT: Of the verdict?

1 MR. LIVERMORE: Of verdict, yes.

2 THE COURT: Okay. So let's go through.

3 There's three paragraphs normally on the verdict
4 instruction. And this is 3.12. And it says:

5 You may find the defendant guilty as charged
6 in the Indictment or guilty of lesser-included
7 crimes as the evidence may justify or not guilty.

8 You have no problem with that paragraph?

9 MR. LIVERMORE: Correct.

10 THE COURT: Second paragraph says:

11 If you return a verdict of guilty, it should
12 be for the highest offense which has been proved
13 beyond a reasonable doubt. If you find that no
14 offense has been proved beyond a reasonable doubt,
15 then, of course, your verdict must be not guilty.

16 So what part don't you like?

17 MR. LIVERMORE: The first sentence should
18 be -- for the highest offense, it eliminates the
19 jury's pardon power. And I've objected to it every
20 since they added it.

21 THE COURT: Okay. That will be overruled and
22 your objection is noted.

23 The third paragraph says:

24 The verdict must be unanimous; that is, all of
25 you must agree to the same verdict. Only one

1 verdict may be returned as to each crime charged.
2 And then it says -- each crime charged -- the
3 verdict must be in writing. And for your
4 convenience, the necessary verdict forms have been
5 prepared for you.

6 There is a part where if they could be found
7 guilty of different lessers, but we don't have that
8 problem in this case. So we did have a mock
9 verdict form, but it's not going to work because
10 the State wants the aggravating lessers. And so
11 that makes for longer verdict forms.

12 Count I and IV is fine. It will just say: As
13 charged, first-degree murder, second-degree murder,
14 manslaughter, not guilty. And you guys want "not
15 guilty" first. The Defense is requesting that; the
16 Court is not going to do that. So Counts I and IV,
17 we have verdict forms.

18 Counts II and III, since we're giving them the
19 interrogatories, we'll have to make the verdict
20 form a little longer.

21 (Staff conversation.)

22 THE COURT: Just so you all know, I do this on
23 a regular basis: When I have multiple victims on
24 counts, I put the victims name highlighted in the
25 top. So it says, "Count I, Murder in the First

1 Degree" then in parentheses, it says, "As Margaret
2 Brown." But -- actually this is Count IV. So it
3 says, "Count IV", and it says, "Margaret Brown."
4 So that way, even though it says it in here, I want
5 it easy for the jury to know when they're sitting
6 down back there with four, which one goes to which
7 victim. And that way if they decide to make
8 different decisions as to each victim, they'll
9 know. It's not a problem for them. They clearly
10 know that this one when they work on it is Margaret
11 Brown. So I basically keep them -- it says
12 "Margaret Brown" in little -- you know, a little
13 bit over here, but I always put it highlighted at
14 the top just so you know. And I tell them that.

15 So as to Megan Brown and Gregory Brown, we
16 broke it down a little bit, but we'll finish up the
17 instructions and then we'll go over the verdict
18 form because I'm not sure I like it, but that's
19 fine.

20 So then it's Single Defendant Multiple Counts
21 or Information.

22 MR. LABRUZZO: I'll just say multiple counts.

23 THE COURT: Right. Just put multiple counts.

24 And it says: A separate crime is charged as
25 to each count of the Indictment. And although they

1 have been tried together, each crime and the
2 evidence applicable to it must be considered
3 separately and a separate verdict form returned as
4 to each. A finding of guilty or not guilty as to
5 one crime must not affect your verdict as to the
6 other crimes charged.

7 And then Submitting the Case to the Jury is
8 standard.

9 The Defense has provided a requested jury
10 instruction. I guess you gave me three copies of
11 the same one.

12 MR. LIVERMORE: And I gave you mine too.
13 So ...

14 THE COURT: Okay. You want it back?

15 MR. LIVERMORE: Yes.

16 THE COURT: Can you hand that to him.

17 And then this goes to the State (indicating).

18 MR. LABRUZZO: I have a copy.

19 MR. LIVERMORE: I gave it to him.

20 THE COURT: All right. And for the record,
21 the requested jury instruction number one says:

22 The fact that Adam Matos may have taken steps
23 to conceal the bodies of Nicholas Leonard, Megan
24 Brown, Gregory Brown, and Margaret Brown should not
25 be considered by you of evidence that he killed

1 Nicholas Leonard, Megan Brown, Gregory Brown or
2 Margaret Brown. And then you cite a case.

3 All right. State, what do you say?

4 MR. LABRUZZO: Well, Judge, in between the
5 going through of the instructions, I've been
6 reading the Balsort case. And it appears as though
7 there's some pretty strong factual differences
8 between the Adam Matos case and the Balsort case.
9 And those differences I think is really where the
10 Court should not allow this special instruction.
11 The Balsort case is a case out of the Second DCA
12 where the cause of deaths was asphyxiation based on
13 the theory of the case that the defendant manually
14 strangled his victims and then they went to -- went
15 to burn the victims in the woods.

16 The analysis that I was able to read really
17 references the Berrube case out of the Sixth
18 Circuit State of Florida, a case I'm pretty
19 familiar with that involves around whether or not
20 asphyxiation or strangulation is sufficient
21 evidence of premeditation by itself. And there was
22 a lineage of cases discussed in Berrube because it
23 was tried a number of times and I had an
24 opportunity to see some of that history. And where
25 the court in Berrube said there was enough to

1 determine that asphyxiation or strangulation was
2 enough to give premeditation is that there was
3 additional evidence of injury.

4 And so in this case, as to the Adam Matos
5 cases, we have multiple forms of injury as to the
6 victims. You have -- as to Count I, you've got
7 blunt force trauma, 21 blows to the head. That is
8 sufficient evidence to determine premeditation.

9 As to Count II, you've got a single gunshot
10 wound to the left eye of Megan Brown. There is
11 sufficient evidence to determine premeditation with
12 the single gunshot wound to the face.

13 As to Count III, Gregory Brown, multiple
14 gunshot wounds to the body with one of those into
15 the hip area. It is sufficient to determine
16 premeditation.

17 As to Margaret Brown, multiple blunt force
18 trauma with a contributory factor of asphyxiation
19 is sufficient, now really in light of the way she
20 was bound and gagged and tied and hog-tied for a
21 jury to determine based on those injuries that
22 there was premeditation.

23 This case, this Balsort case says that
24 covering up the body should not -- cannot by itself
25 create a premeditation before because it happens

1 after. And, again, it goes through the cases which
2 outline where the death -- the cause of death
3 itself is one that calls into question
4 premeditation. Although I would disagree with the
5 reviewing courts that strangulation is not
6 premeditation, and I can't imagine anymore
7 intimate -- hands on the neck of an individual,
8 hold squeezing until they die being a situation
9 where someone would not want to cause the death of
10 a person, but the courts have disagreed with me in
11 the past and I respect their decision. But that
12 being said, the evidence of coverup in this case is
13 different and the cause and manner of death is
14 different. It does -- the evidence is sufficient
15 to allow a jury to come to the decision of
16 premeditation. And it really is the root of that
17 case. Premeditation is discussed in Count I as
18 charged. It's also discussed in the
19 lesser-included being the difference between murder
20 one and murder two.

21 I'd ask the Court not to give this instruction
22 because this case is just too far afield from the
23 Matos case.

24 THE COURT: Defense?

25 MR. LIVERMORE: It's kind of the reason why

1 I'm doing it, Judge, is to tell them not to use
2 concealing the body as a basis for finding
3 premeditation. Whether the facts of the case are
4 sufficient, I mean that is up to the jury. But
5 this is basically a cautionary instruction saying
6 that what happened to the bodies afterwards is not
7 evidence of premeditation.

8 THE COURT: That's not what your --

9 MR. LIVERMORE: That's what the case says.

10 THE COURT: That's not what your instruction
11 says. It says: The fact that Adam Matos may have
12 taken steps to conceal the bodies of the victims
13 should not be considered by you as evidence that he
14 killed them. Not that he killed them with
15 premeditated design.

16 I would assume that the State is going to
17 argue consciousness of guilt to show that he was
18 the murderer. Now, the level of murder -- and I'm
19 not even getting to whether I agree with if I put
20 the word "premeditated" in there. But this case is
21 all about whether the -- whether the jury can
22 use -- or whether the argument can be made that
23 obviously was premeditated because he hid the body
24 when he was done. If it was by accident, he would
25 have called the cops or he would have called an

1 ambulance or he would have, you know, done
2 something to assist her. But it doesn't say that
3 they can't say that he hid the bodies because he's
4 the murderer. I mean, obviously they can argue
5 that.

6 So the question is I'm not going to read the
7 instruction that says if he hid the body that means
8 he didn't kill them. Because they can use whatever
9 they want to decide whether he is the person that
10 committed the death. Because it says, first
11 they've got to convince you that somebody was
12 killed and then they've got to convince you that
13 the defendant did it. Then after that, they've got
14 to decide whether it's first degree or second
15 degree or manslaughter or excusable or justifiable.

16 So the question is -- obviously if someone
17 takes bodies and disposes of them in the woods,
18 leaves them in the house and then puts them in the
19 woods, which I assume is the defense -- the theory
20 of the State based on the testimony of how much the
21 it stunk by every witness in the world between
22 September 1st and September 4th. They all
23 testified it was stinky; it was really stinky;
24 there was a lot of stinky. They're alleging that
25 the bodies were remaining in the home and at some

1 point they were transported to be dumped. So my
2 guess is that is going to show consciousness of
3 guilt, not that they were dumped so much, but that
4 he had to get them out of the house because he
5 couldn't bury them in the backyard.

6 MR. MICHAILOS: Judge, so you do agree,
7 perhaps, if we amend to it does not show
8 premeditation, that might be an acceptable jury
9 instruction.

10 THE COURT: I didn't say that. I said I'm not
11 going to read this one.

12 MR. MICHAILOS: Right. Okay.

13 THE COURT: So the question is: Are you
14 asking me -- so this one as it's written says
15 evidence that he killed them. I'm going to deny
16 that. So I'm going to write denied on here and
17 sign it. And now the question is if whether you
18 want to --

19 MR. MICHAILOS: Submit another one.

20 THE COURT: -- submit another one that's more
21 in line to what you're trying to get me to agree
22 to.

23 MR. MICHAILOS: Yes.

24 THE COURT: But I haven't finished reading
25 this case.

1 MR. MICHAIILOS: Yes, Your Honor.

2 THE COURT: So I'm going to sign this right
3 now and deny it as written because I think that
4 they can use the body placement as consciousness of
5 guilt or at least consciousness of trying to hide
6 the actions.

7 Let me just read it -- let me just finish
8 reading this case real quick.

9 Well, there's a big part in the middle of this
10 case that's kind of bad for the Defense.

11 MR. LIVERMORE: Most everything is, Judge.

12 THE COURT: It says: In addition, the State
13 did not present any other circumstantial evidence
14 that suggests that Balsort had a fully formed
15 conscious purpose to kill the victim. Balsort had
16 not made any earlier statements that he was going
17 to kill the victim and there was no witnesses to
18 the event holding that premeditation was not proved
19 and noting that there was no suggestion that the
20 defendant exhibited, mentioned or even possessed an
21 intent to kill the victim at any time prior to the
22 actual homicide.

23 I know it's been a while, but I'm thinking
24 back to that 911 tape that was earlier on
25 August 28th, where she said, "He told me he was

1 going to kill me." So obviously there's a
2 significant difference that the State has provided
3 to the jury an indication prior to the bodies being
4 found or the death occurring because the victim is
5 being seen by law enforcement twice before she then
6 is no longer seen. And statements were made to law
7 enforcement and had been presented to the jury that
8 she says, "He said he was going to kill me. And I
9 was scared and I think he's going to kill me."

10 MR. MICHAÏLOS: So they don't need the
11 implication that the burial is a consciousness of
12 guilt because they already have that. Why give
13 them more?

14 THE COURT: Really? Have you been in this
15 trial?

16 Where is it about the bodies in this case?
17 Because I'm reading it and I haven't yet found the
18 body part.

19 MR. LABRUZZO: You mean what he did with the
20 body?

21 THE COURT: Yeah. Where they said that they
22 shouldn't have allowed the bodies.

23 MR. LABRUZZO: I didn't read that.

24 THE COURT: I don't see anything about hiding
25 the body here.

1 MR. LABRUZZO: I read --

2 THE COURT: Mr. Livermore?

3 MR. LIVERMORE: Quoting from *Norton* -- and I
4 don't have the case; I just have an excerpt.

5 "The State presented evidence of Balsort
6 made ..."

7 (Thereupon, the court reporter interrupted.)

8 MR. LIVERMORE: I'm sorry.

9 "The State presented evidence that Balsort had
10 made efforts to conceal and burn the victim's body,
11 but this evidence does not support an inference
12 that he had the specific intent to kill the
13 victim."

14 I think it's around Page 838.

15 "The fact that he may have taken steps to
16 conceal evidence of a crime does not establish that
17 he committed murder with a preconceived plan or
18 design."

19 THE COURT: Okay.

20 MR. LIVERMORE: "Efforts to conceal evidence
21 of a premeditated murder are likely to be as
22 consistent with evidence to avoid prosecution for
23 any unlawful killing."

24 And that's the quote.

25 THE COURT: Okay. Let me see. I think I

1 found it in the middle here. Hold on one second.

2 I've read the whole case twice and the case
3 doesn't say that -- anything about reading an
4 instruction to the jury. It doesn't say anything
5 about the part that it was put in the woods. The
6 only part of the fact that the body was set on fire
7 was about the two broken -- a tibia and a -- a
8 tibia and -- she had two broken legs or a leg
9 broken in two places. I couldn't tell. And they
10 said that they could not rule out the fact that
11 that could have been done when they dumped the body
12 in the woods before it was set on fire.

13 So they were saying that those injuries -- no
14 witness testified that they occurred prior to her
15 being set on fire. And so they were just saying
16 those injuries themselves do not show premeditated
17 design to get first-degree murder because there was
18 nobody to testify that they couldn't have happened
19 when she was dumped in the woods and set on fire.
20 They don't go to the actual way she was killed;
21 whereas, the testimony in this case has been pretty
22 consistent.

23 The doctor can testify to exactly what was
24 done when the murders occurred. There's really
25 nothing that -- nobody's testified that any of

1 those injuries would have happened post mortem.
2 They all happened while they were -- you know, it's
3 a single gunshot wound. It's at least another
4 gunshot wound or two to Gregory Brown and then the
5 rest is significant blows to the head of both
6 Nicholas Leonard and Margaret Brown. So all of
7 that shows that it was done during the act of the
8 murder itself. And so I don't think the State's
9 going to argue that the body being dumped shows an
10 indication of premeditation.

11 State, are you arguing that?

12 MR. LABRUZZO: No, Judge.

13 THE COURT: All right. So I don't think that
14 I need to read an instruction because I don't
15 really think that the State, one, is going to argue
16 that, nor, I don't believe, that the jury is going
17 to you know find that from the instructions. The
18 instructions are pretty clear that the
19 premeditation should be determined in the act
20 itself. So at this point I've denied the
21 instruction that has been requested.

22 Is there any other instructions at this point
23 that the Defense wish the Court to read other than
24 the self defense instruction that you're going to
25 work on and have for me tomorrow?

1 Yes? Other than that, is there any other
2 instructions?

3 MR. LIVERMORE: No.

4 MR. MICHAIILOS: Just to pick your brain, how
5 about asphyxiation is not proof of premeditation?

6 THE COURT: That ain't happening. That's not
7 what they say anyway. There's a lot of cases that
8 say asphyxiation is proof of premeditation
9 depending on how it's done. Multiple -- putting a
10 bag over someone's head and taping it down, that
11 would be premeditation in my mind. It's going to
12 take a while for somebody to suffocate as opposed
13 to -- the whole idea is if you can -- I think it's
14 less than 70 seconds that you can make somebody
15 unconscious. So I'm kind of with the State. I
16 don't know how strangulation isn't premeditated
17 design, but I guess you have to go further than
18 that.

19 But in this particular case, it wasn't
20 strangulation, it was with a bag over her head. So
21 depending on how you argue that.

22 MR. MICHAIILOS: Thank you, Judge.

23 THE COURT: All right. Anything else?

24 Oh, I know what we need to go over, closings.
25 How much time do you think you need, State?

1 MR. LABRUZZO: Judge, I would feel much better
2 if this conversation was with Mr. Sarabia. I think
3 he would benefit from the Court's instruction more
4 than I would.

5 THE COURT: Defense, how much time do you
6 think you're going to need?

7 MR. MICHAIILOS: I guess that would be
8 dependent on Mr. Sarabia's forecast as well.

9 MR. LABRUZZO: I've discussed it with him.

10 THE COURT: Two hours?

11 MR. LABRUZZO: No. No, Judge. We discussed
12 it this weekend.

13 THE COURT: So if I said no more than two
14 hours, you're good with that? I'm not saying you
15 have to use that. I don't usually -- as
16 Mr. Michailos knows, I don't usually have a rule of
17 time because I find that lawyers tend to use up
18 every minute of time I give them. If I give them
19 no time, they end up ending when they end. But in
20 this particular case, I thought I'd go out there on
21 a limb and say, "Okay. Try not to use more than
22 two hours because if you go under that, the jury's
23 not listening anyway." That's my suggestion. But
24 I wasn't going to, you know --

25 MR. LABRUZZO: We discussed it yesterday,

1 Judge, that we would keep it under two hours.

2 THE COURT: And, again, please know you do not
3 have to use all two hours. It will be great if you
4 didn't. And it would be up to me to remind you of
5 the time, not my clerk. I don't use my clerk to
6 keep time because I don't think that's what their
7 job is. So I will keep -- it will be a rough
8 estimate. I usually write down what time each side
9 starts and what time each side stops. If we have
10 some sort of an objection, I just kind of -- I'm a
11 little more soccer referee kind of person. I don't
12 know exactly how much time, I just, eh, five extra
13 minutes. I just kind of round it up and that's it.
14 But I'm not going to say, "Sit down." Okay?

15 So just know that I won't make either side sit
16 down. I'll let you finish whatever part you're on
17 and then I'll have you sit down. But I'm hoping
18 that neither side will use two hours. So just let
19 Mr. Sarabia know that I did make a time and I made
20 it bigger than I thought you both needed.

21 MR. LABRUZZO: All right. I will. There is a
22 lot to discuss, but I will keep it -- I will remind
23 him.

24 THE COURT: It's time to get succinct. Put it
25 in some sort of order.

1 So, Defense, anything else that we need to
2 discuss? All right.

3 MR. MICHAİLOS: No.

4 THE COURT: All right. Mr. Matos, you've been
5 here throughout. Everything good with you on those
6 instructions?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: They're not really that
9 complicated. We make them for everyday people. If
10 you have any questions about them, please ask your
11 lawyers about them. We won't be reading them until
12 after the closing arguments, so, you know, you got
13 plenty of time to talk over those with your
14 lawyers.

15 And I think because the State has indicated
16 they might rest tomorrow, it's probably time that
17 the defense and the defendant have a big long talk
18 about whether he wishes to testify. Okay? I'll
19 have this conversation with you multiple times
20 prior to me making you make a decision or putting
21 it on the record. I'm one of those people that try
22 and wait until the very last minute so that if you
23 change your mind, I'm good with that. Because it's
24 not my decision to make; it's yours. So just know
25 that until I have you stand up and swear and tell

1 me what your decision is, you can change your mind
2 multiple times between you and your lawyers. Okay?

3 THE DEFENDANT: Okay.

4 THE COURT: So I'm not asking for your
5 decision now. And even if I did, I'd ask you again
6 later. But I think it's time in this journey that
7 you're on that you have a very long and hard
8 discussion with your lawyers on what decision you
9 want to make. Because ultimately they can give you
10 all the advice they want, but it's your decision.
11 Okay?

12 THE DEFENDANT: Okay.

13 THE COURT: And you can go against their
14 advice if you wish, but you need to talk about that
15 with them. Okay?

16 THE DEFENDANT: Okay.

17 THE COURT: Anything bother you about the way
18 they're proceeding? You're happy with their
19 representation so far and they're strategy in this
20 matter?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Okay. Great. We'll see you
23 tomorrow morning at 9:30.

24 (RECESS.)

25 (Continued in Volume XII.)

1 CERTIFICATE OF REPORTER

2
3 STATE OF FLORIDA)4
5 COUNTY OF PASCO)
6

7 I, Victoria L. Campbell, Registered
8 Professional Reporter, certify that I was authorized
9 to and did stenographically report the foregoing
10 proceedings and that the transcript is a true
11 record.

12 DATED this 22nd day of June, 2018.
13

14 /S Victoria Campbell
15 Victoria Campbell
16 Registered Professional Reporter
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