

EXHIBIT 262

EXHIBIT 262

Deposition of:

Marc DiGiacomo

Case:

Rickie Slaughter v. Renee Baker, et al.
3:16-CV-00721-RCJ-WGC

Date:

07/26/2019



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1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

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5
6 RICKIE SLAUGHTER,)

7 Petitioner,)

8 vs.)

9 RENEE BAKER, et al.,)

10 Respondents.)
11 _____)) Case No.
3:16-cv-00721
RCJ-WGC12
13 VIDEOTAPED DEPOSITION OF MARC DIGIACOMO14
15
16 Taken on Friday, July 26, 2019

17 By a Certified Court Reporter and Legal Videographer

18 At 9:22 a.m.

19 At 411 East Bonneville Avenue, Suite 250

20 Las Vegas, Nevada 89101

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22
23
24 Reported By: Gale Salerno, RMR, CCR No. 542

25 Job No. 35250

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1 (Exhibits 1-47 were marked for identification)

2 - - -

3 VIDEOTAPED DEPOSITION OF MARC DIGIACOMO

4 July 26, 2019

5 - - -

6 THE VIDEOGRAPHER: Good morning. Today is
7 Friday, July 26th, 2019. The time is approximately
8 9:22 a.m.

9 Your court reporter is Gale Salerno, and
10 I'm the videographer, Johnny Randall. We're here on
11 behalf of Oasis Reporting Services.

12 The witness today is Marc DiGiacomo, and
13 we're here in the case of Rickie Slaughter versus
14 Renee Baker, et al.

15 Will counsel please state your appearances,
16 and then the court reporter will administer the oath.

17 MR. BARON: Good morning. My name is
18 Jeremy Baron. I'm with the Federal Public Defender's
19 Office on behalf of Rickie Slaughter.

20 And with me today is my co-counsel
21 C.B. Kirschner, as well as Terri Lewis.

22 MR. BONGARD: My name is Michael Bongard.
23 I'm with the Attorney General's Office. I'm
24 representing Respondent, Renee Baker.

25 MS. COUMOU: And I'm Lucinda Coumou. And I

1 am with the District Attorney's Office, and I am here
2 on behalf of Mr. DiGiacomo.

3 - - -

4 MARC DIGIACOMO,
5 having been first duly sworn, was
6 examined and testified as follows:

7 - - -

8
9 EXAMINATION

10 BY MR. BARON:

11 Q. Good morning, Mr. DiGiacomo.

12 A. Good morning.

13 Q. Have you been deposed before?

14 A. In a civil case where I was in a car
15 accident, but not in a criminal case.

16 Q. About when was that?

17 A. Almost 20 years ago.

18 Q. You were the plaintiff in that lawsuit, or
19 the defendant?

20 A. The defendant.

21 Q. And that was one deposition?

22 A. Correct.

23 Q. Was that federal or state court?

24 A. I believe it was state court in New York.

25 Q. So you've been deposed before, you're

1 familiar with depositions?

2 A. Generally familiar.

3 Q. And you're obviously familiar with trial
4 testimony?

5 A. Yes.

6 Q. So let me just go over some of the rules
7 very quickly about how these depositions work.

8 They're somewhat similar to trials in that
9 your testimony today is sworn. It's being taken
10 under oath. Do you understand that?

11 A. Yes.

12 Q. So you understand that the answers you give
13 today are being given under penalty of perjury?

14 A. Yes.

15 Q. Like with trials, the court reporter is
16 making a record of these proceedings. So it's
17 important that we try not to talk over one another.

18 Like with trials, it's also important that
19 we answer -- you answer with an audible yes or no.
20 Does that make sense?

21 A. Yes.

22 Q. If I ask you a question and you didn't
23 understand it, please feel free to let me know and I
24 would be happy to try and rephrase and ask a better
25 question.

1 A. Okay.

2 Q. Now, unlike trials, objections are just for
3 the record. So Mr. Bongard may want to object based
4 on form, and I may want to rephrase my question if
5 I've asked a bad question. But if I ask you to
6 answer the question, you can feel free to go ahead
7 and answer the question. Does that make sense?

8 A. Yes.

9 Q. And then unlike trials, we can take a break
10 whenever we want. We don't need to wait for a judge
11 to offer. So if you need a break, anyone else in the
12 room needs a break, please just let me know, I would
13 be happy to call a break.

14 A. Okay.

15 Q. Is there any reason that you can't testify
16 today at this deposition?

17 A. Not that I'm aware of.

18 Q. No medical issues that might affect your
19 ability to answer my questions.

20 A. No.

21 Q. No scheduling constraints that might affect
22 your ability to stay here?

23 A. No.

24 Q. Have you taken any medication or substances
25 that would interfere with your ability to answer my

1 questions today?

2 A. No.

3 Q. Any other reason why you can't participate
4 today?

5 A. No.

6 Q. All right. I want to take a moment and
7 just discuss the exhibits and how they've been marked
8 today.

9 So there's a set of 47 exhibits that I've
10 marked for the purposes of this deposition. I've
11 marked them all for the purposes of today's
12 deposition. I'm not sure I'm going to get through
13 all of them. I may refer to just some of them, but
14 they've all been marked for the purposes at today's
15 deposition and stamped with exhibit numbers.

16 Now, there's some exhibits that are a part
17 of this deposition that have already been filed in
18 the federal litigation in this case. And so for
19 those exhibits, the first page of that exhibit is
20 going to be a slip sheet, and the slip sheet is going
21 to have the exhibit number from the federal
22 litigation. But it's also going to have a blue stamp
23 at the bottom right-hand corner with the exhibit
24 number for the purposes of today's deposition. And
25 that's the exhibit number I'm going to be referring

1 to.

2 So if we could just take a look at
3 Exhibit 1, for example.

4 This exhibit starts with a slip sheet. It
5 says Exhibit 31. That's because it was Exhibit 31 in
6 the federal litigation. But you'll see in the bottom
7 right-hand corner it has a stamp that says Exhibit 1.

8 So when I refer to Exhibit 1, I'm talking
9 about this exhibit even though there's a different
10 number associated with the exhibit for the purposes
11 of the federal litigation.

12 I hope that's not confusing. Do you have
13 any questions about that?

14 A. No.

15 MR. BARON: Do either of you have any
16 questions about exhibits?

17 MS. COUMOU: (Nodded.)

18 BY MR. BARON:

19 Q. And one last thing generally about the
20 exhibits. You'll see, again, looking at Exhibit 1,
21 there's a header on the document at the very top
22 that's generated by the federal filing system when
23 you file it. It associates page numbers
24 automatically.

25 When I refer to a specific page number for

1 a document like this that's previously been filed in
2 federal court, I'm going to be referring to the page
3 numbers in that header in the top right.

4 The document might have been a different
5 page numbering order, so that might get confusing.
6 But just generally, if I say please look at Page X,
7 check out the header at the top right and that's the
8 page that I'm going to be referring to.

9 I would like to ask a couple of questions
10 about your background. You're currently a chief
11 deputy district attorney?

12 A. Correct.

13 Q. You attended law school?

14 A. Yes, sir.

15 Q. Which law school?

16 A. Fordham Law School.

17 Q. When did you graduate?

18 A. 1999.

19 Q. Did you come directly --

20 MR. BONGARD: Excuse me. I'm getting that
21 more than you, Marc. If you could speak up a little
22 bit?

23 THE WITNESS: Sure.

24 MR. BONGARD: Thank you.

25

1 BY MR. BARON:

2 Q. You graduated in 1999?

3 A. Correct.

4 Q. Did you move to Las Vegas immediately after
5 graduation?

6 A. Yes.

7 Q. Did you take a position at the District
8 Attorney's Office immediately after graduation?

9 A. Yes.

10 Q. Have you been at the D.A.'s Office ever
11 since?

12 A. Yes.

13 Q. What position did you start out at at the
14 D.A.'s office?

15 A. A law clerk in the appellate division.

16 Q. After that were you promoted?

17 A. Yeah. I became a deputy district attorney
18 in April of 2000.

19 Q. How long were you in that role?

20 A. Well, four and a half years I was the
21 deputy district attorney assigned to various teams.

22 Q. And after four and a half years you were
23 promoted again?

24 A. I became a chief deputy district attorney.

25 Q. And that's been your position ever since

1 then?

2 A. Yes.

3 Q. So you became a chief deputy district
4 attorney roughly 2004, 2005?

5 A. I think it's October 2004.

6 Q. And that would have been your position in
7 May 2011, chief deputy district attorney?

8 A. Correct.

9 Q. Have the types of cases you've handled
10 changed over the years?

11 A. Somewhat.

12 Q. So when you started out, what types of
13 cases were you working on?

14 A. I was assigned to the domestic violence
15 unit from April of 2000 until June of 2001.

16 Q. And after that, you were assigned to a
17 different unit?

18 A. I was on a general litigation track for
19 approximately 18 months or so, which handled all
20 kinds of cases. And then after that, I became a
21 member of what we call our gun crimes unit.

22 Q. And so you became a member of that unit.
23 When would that have been?

24 A. Well, 18 months from June 1st, let's see,
25 2002. So January 2003. I think it's the day

1 Dave Roger took over as the district attorney.

2 Q. And so you were in that unit for how long?

3 A. Until the end of 2004. Somewhere around
4 the end of 2004 I was moved to the homicide unit.

5 Q. And you've been there since then, or has
6 that also changed?

7 A. I've been generally in the homicide unit
8 from the end of 2004 to the beginning of 2005 until
9 today, with the exception of a short period of time
10 where I was a team chief of a general litigation
11 track, and also on the gang unit shortly after
12 Steve Wilson took over.

13 Q. You're here today as a result of our
14 subpoena?

15 A. Correct.

16 Q. How did you prepare for the deposition?

17 A. I went into my file and collected the
18 records that I had associated with the request in
19 your subpoena.

20 Q. So you read those documents?

21 A. I did not read them. I just collected
22 them.

23 Q. Did you read any other documents to prepare
24 for the deposition?

25 A. No. I read the subpoena.

1 Q. Can I have those documents?

2 A. Sure. And just so you know, for the
3 record, I Bates stamped these 1 to 173, and noted
4 today's date in federal deposition.

5 Q. Thank you.

6 How did you go about looking for these
7 documents?

8 A. You had previously issued a subpoena to my
9 office. At that time, what I had of my file had been
10 provided to the appellate unit. I went in and
11 grabbed what I had from my file, with the exception
12 of one thing which I couldn't actually get onto a
13 disc, which is the 911 call. But we had previously
14 provided that, so I didn't think you needed the 911
15 call again.

16 Q. So I want to talk about the file that you
17 keep. Do you keep one single physical file for your
18 cases?

19 A. I do not have like a paper file, no.
20 That's all electronic.

21 Q. So Rickie Slaughter's file in the D.A.'s
22 office is one electronic file?

23 A. I don't know that Rickie Slaughter has a
24 file. The appellate division may have a file. But
25 as it relates to me, I have one folder electronically

1 related to Rickie Slaughter.

2 Q. And there are no paper files?

3 A. I have no paper file. I don't know if the
4 office after this many years even has a paper file or
5 if they keep it all electronically. The subpoena was
6 to me, so I looked at my file to determine what was
7 responsive.

8 Q. Would the office have destroyed any records
9 in connection with this case?

10 A. I don't know. I know we have search
11 retention periods. I know that there are certain
12 records that can be destroyed, but I have no idea.
13 I'm not the keeper of the file. I don't maintain a
14 file. That's just something that I've had since
15 2011.

16 Q. At the time of Rickie Slaughter's trial was
17 there a paper file?

18 A. There certainly would have been papers at
19 the time of Rickie's trial. Whether they were
20 printed electronically and, thus, there are copies of
21 the electronic file, or if there's something in there
22 that wasn't electronic, I have no way of telling you.

23 MR. BARON: And I just want to apologize
24 for any construction noise you might hear. They're
25 renovating the first floor, so that's why you're

1 going to hear those noises.

2 BY MR. BARON:

3 Q. So there may have been paper files at the
4 time of Rickie Slaughter's trial in May 2011 that
5 were not saved electronically?

6 A. That's possible. I have no way of knowing.

7 Q. Well, it's your file, right?

8 A. No, it's the office's file. I keep
9 something that allows me to go to trial. My
10 co-counsel has something that allows her to go to
11 trial.

12 There is a red file, or in this case it
13 would be blue I would think. There's what we call a
14 blue jacket, which is what is considered the file in
15 our office. That would have existed at some point.
16 Whether or not that blue jacket still exists, I don't
17 have it. I don't know where it went after the trial.

18 Q. The documents that you provided, is that
19 just the documents -- excuse me. The documents you
20 provided to me just now, are those your entire
21 electronic file, or just the documents that are
22 responsive to our subpoena?

23 A. Just the documents that are responsive.

24 Q. So I want to make sure I have this correct.
25 There is what you call a blue jacket file?

1 A. Correct.

2 Q. That's the file of everything that the
3 D.A.'s office has in the case?

4 A. Not usually, no.

5 Q. So what's in the blue file?

6 A. It would be a criminal complaint.

7 Sometimes there will be some pleadings. Sometimes
8 there will be some subpoenas.

9 You know, on your average case, there might
10 be -- the entire file might be in there. In a case
11 that's larger, there may be a pendaflex associated
12 with it.

13 At some point we moved to -- or I moved to
14 just using electronic, so I would scan and not keep
15 any paper associated with my file.

16 Q. Did you make that change before or after
17 Rickie Slaughter's trial in 2010?

18 A. I was fully electronic by the time of
19 Rickie Slaughter's trial. What my co-counsel of the
20 office, appellate division did, I have no idea.

21 Q. So who maintains the blue jacket file?

22 A. The Office of the District Attorney.

23 Q. Is there a secretary that is responsible
24 for that?

25 A. That's a gun crimes secretary. There is an

1 appellate division secretary. It depends on where it
2 is in the office currently.

3 There should be somewhere in the office a
4 blue file. I would have no way of knowing where it's
5 at.

6 Q. So there may be general physical files
7 maintained by the office as a whole?

8 A. Correct.

9 Q. There may be physical files maintained by
10 the individual prosecutors assigned to the case.

11 A. Correct.

12 Q. Would any D.A. investigators have their own
13 physical files?

14 A. They may have, although I don't believe my
15 investigator is still here. They may have a file
16 that involved, you know, information to locate some
17 of our witnesses and stuff like that. They didn't
18 normally have physical files like that. They have
19 police reports and those type of things. Mainly they
20 have information to locate witnesses.

21 Q. And there's also an electronic file?

22 A. Not -- well --

23 Q. Associated with the case?

24 A. I have an electronic file associated with
25 the case. I wouldn't know if the office -- at some

1 point our office went to scanning old files, and they
2 have a scanning system, and they have file folders
3 associated with that scanning. So the office itself
4 may have its own electronic file.

5 Q. And you're not aware of whether they
6 have -- the office has an electronic file associated
7 with Rickie Slaughter's case?

8 A. I am not. When they issued the subpoena
9 originally to my office, they asked me for what I had
10 responsive to that subpoena. I provided that to my
11 appellate division, and I have not looked anywhere
12 else to see what else is out there.

13 Q. So you looked at your electronic file?

14 A. Correct.

15 Q. But you didn't try and look for any
16 physical files that may still remain?

17 A. Well, I knew that I don't have a physical
18 file that still remains. So I didn't go searching.
19 Somebody else in my office was responding to your
20 subpoena. They asked me do I have anything on Rickie
21 Slaughter. I provided what I had related to the
22 subpoena on Rickie Slaughter.

23 Q. But as far as bringing these documents with
24 you today, you checked your electronic file?

25 A. Correct. That's all I checked.

1 Q. That's all you checked?

2 Did you speak with Mr. Bongard in
3 preparation for today's deposition?

4 A. No. Other than some pleasantries
5 downstairs, I have not discussed the case with him.

6 Q. What about Ms. Coumou --

7 MR. BARON: Did I pronounce that right?

8 MS. COUMOU: That's correct.

9 BY MR. BARON:

10 Q. Did you speak with Ms. Coumou?

11 A. I did.

12 Q. About how many times?

13 A. Basically, this morning, other than e-mails
14 setting up the deposition, the only substantive
15 conversation we had was this morning.

16 Q. And that was about 30 minutes?

17 A. 30 or 45, somewhere in there.

18 Q. Did you speak with any other attorneys to
19 prepare for today's deposition?

20 A. No.

21 Q. Any other staff members in the D.A.'s
22 office?

23 A. Substantively about their recollections?

24 No.

25 Q. Did you read our second discovery motion

1 which is attached to the subpoena?

2 A. I perused the second discovery motion. I
3 don't know that I fully read it.

4 Q. Did you read the order granting it?

5 A. I would have perused it.

6 Q. And you said you looked in your file for
7 responsive documents, but you didn't read those
8 documents.

9 Did you read any other documents to
10 prepare?

11 A. No. I mean, did I read certain portions of
12 those to make sure that they were responsive? Yes.
13 But for the most part, I looked at what we previously
14 provided you, which is the first half of that or so.
15 And then I saw that you didn't have every police
16 report, so I downloaded my reports section for you to
17 give you all the reports, because each one of them
18 has the date and time of call.

19 And I also, I think, duplicated, the
20 Kenny Marks photo lineup for you.

21 Q. The subpoena asked you to bring documents
22 today that were related to the photo lineups in this
23 case.

24 A. Correct.

25 Q. Are there responsive documents to that

1 request in this packet?

2 A. Yes.

3 Q. The subpoena asked you to bring documents
4 regarding a call placed by Jeffrey Arbuckle, or
5 someone else, regarding a trespassing allegation
6 against Rickie Slaughter at 715 North Nellis
7 Boulevard.

8 Are you familiar with that request?

9 A. I'm familiar with the request.

10 Q. Are any of the documents you provided today
11 responsive to that request?

12 A. Not that I'm aware.

13 Q. The subpoena asked you to bring documents
14 regarding the 911 calls relating to the home invasion
15 at issue in this case.

16 Are any of the documents in this packet
17 responsive to that request?

18 A. To the extent that they're referenced in
19 the reports, and as I said, I couldn't actually
20 physically make you the disk this morning. I can
21 send it to you later if you want, but I think we
22 previously provided that 911 call to you.

23 Q. Do you recall serving as the lead trial
24 prosecutor in Rickie Slaughter's prosecution?

25 A. Well, I certainly wasn't the lead when this

1 prosecution began, and by the time we went to trial,
2 I had a very senior lawyer with me, so I would have
3 said we were co-counsel.

4 Q. And just for the record, that's State
5 versus Slaughter in the Eighth Judicial District
6 Court, and the case number is C204957. Does that
7 sound right?

8 A. Yeah. I'll trust you on the case number.

9 Q. And you recall it involved a home invasion
10 robbery at 2612 Glory View Lane on June 26th, 2004?

11 A. Yeah. June 2004, Glory View Lane sounds
12 correct. It is certainly a home invasion robbery.
13 It was a little bit more than that but...

14 Q. Well, I'm just going to be referring to it
15 generally as the home invasion for the sake of
16 simplicity today. Is that all right?

17 A. Sure.

18 Q. What were your responsibilities as a
19 prosecutor on the case?

20 A. Prosecute the case.

21 Q. So what does that involve doing?

22 A. It's reviewing the discovery, determining
23 if there is any additional investigation that has to
24 happen, and ultimately talking to the witnesses,
25 handling the legal proceedings. It's fairly all

1 encompassing.

2 Q. Now, you mentioned you weren't the lead
3 prosecutor on the case originally.

4 A. Correct.

5 Q. Susan Krisko was?

6 A. Yes.

7 Q. When did you first get involved in the
8 case?

9 A. Shortly after Mr. Slaughter took a plea the
10 first time.

11 Q. So if he took a plea in, let's say
12 May 2005, you would have gotten involved a month or
13 two before that?

14 A. My recollection is he took a plea on the
15 first day of trial. It may have been calendar call,
16 but my recollection is that he came dressed in shorts
17 and took a plea in the middle of the courtroom in
18 shorts the first day of trial.

19 I would have been involved maybe a week or
20 two before that when Ms. Krisko came to me and asked
21 me to help her on the case.

22 Q. Why did she ask you to help her on the
23 case?

24 A. She was looking for a second chair, and she
25 asked me if I would help her on the case.

1 Q. And before then you had nothing to do with
2 the case?

3 A. Correct. I don't have any recollection. I
4 may have made an appearance on her behalf. We always
5 did that as team members. But as substantively, no,
6 I had no involvement in the case before she came to
7 me.

8 Q. So you mentioned Rickie Slaughter
9 originally took a plea deal.

10 A. Correct.

11 Q. He ultimately withdrew that plea?

12 A. Well, withdrew or I don't actually know
13 technically how it worked, but ultimately all of the
14 parties were wrong on the way his sentence structure
15 worked, and a court let him out of the plea. I'm not
16 sure if it was withdraw the plea or post conviction
17 or exactly how the relief happened, but ultimately he
18 was --

19 Q. His conviction was vacated and then --

20 A. Correct.

21 Q. -- went to trial?

22 And at that point you said you weren't lead
23 prosecutor, you would say co-prosecutor?

24 A. Correct.

25 Q. You were a co-prosecutor on the case --

1 A. Correct.

2 Q. -- at that point?

3 There are ongoing state post-conviction
4 proceedings regarding his conviction in this case,
5 right?

6 A. I believe so.

7 Q. And you appeared on behalf of the State at
8 a hearing on March 7th, 2019, regarding those
9 proceedings, right?

10 A. I certainly appeared recently on the case.
11 What the exact date is, I don't have any
12 recollection.

13 Q. I want to talk about your relationship with
14 police detectives. When you're building a criminal
15 prosecution, you base your prosecution on evidence
16 developed by the police officers and detectives,
17 right?

18 A. Usually.

19 Q. And especially evidence developed by the
20 lead detective?

21 A. Yes. I would say that's fair.

22 Q. You want those detectives to have done a
23 thorough job?

24 A. You would hope.

25 Q. You want them to have followed protocol?

1 A. Yes.

2 Q. You want them to have investigated all the
3 potentially relevant leads?

4 A. Yes.

5 Q. You want them to gather all of the
6 potentially relevant evidence?

7 A. Yes.

8 Q. That would include inculpatory and
9 exculpatory evidence?

10 A. Yes.

11 Q. You wouldn't bring a prosecution if you
12 doubted the quality of the police investigation,
13 correct?

14 A. I would say I wouldn't bring a prosecution
15 if I doubted the guilt of the defendant.

16 Q. If you had concerns about the quality of
17 the police investigation, but you nonetheless
18 subjectively believed the defendant was guilty, you
19 would prosecute the defendant?

20 A. If I believed I could prove the defendant
21 guilty beyond a reasonable doubt, whether or not the
22 cops made mistakes or not, I would still prosecute
23 him.

24 Q. Prosecutors in your D.A.'s office generally
25 don't participate in the police investigation, do

1 they?

2 A. Depends. Sometimes.

3 Q. When would they and when wouldn't they?

4 A. I don't think there's a hard and fast rule
5 on that. It's very case specific.

6 Q. Would it be fair to say usually the police
7 are responsible for the initial investigation?

8 A. Most cases come to our office by a
9 submittal or a request from an investigative agency.

10 Q. And that's after the investigative agency
11 has worked up the case?

12 A. At least to the point where they believe
13 they have probable cause.

14 Q. You've worked with Detective Jesus Prieto
15 before?

16 A. I have.

17 Q. By May of 2011, how many times had you
18 prosecuted a case where he was the lead detective on
19 a case?

20 A. I couldn't tell you a number, but certainly
21 more than five or six. I've had experiences with
22 Detective Prieto over the years.

23 Q. More than 10 before May 2011?

24 A. Possibly.

25 Q. More than 20 before May 2011?

1 A. That's even possible.

2 Q. How about in your entire career so far, how
3 many cases have you prosecuted where Detective Prieto
4 was lead detective on the case?

5 A. It would be the same answer. I'm not
6 distinguishing between May 2011 and today. Jessie
7 retired a couple of years now, maybe three years ago
8 now. He still has cases. I still have cases that
9 involve Jessie Prieto either as the lead detective or
10 an assistant detective.

11 Q. But back in May 2011, you worked with
12 Detective Prieto before?

13 A. I did.

14 Q. In about five, ten cases?

15 A. Sure. It may even be more than that. He
16 was one of the few detectives that North Las Vegas
17 had. So to the extent that North Las Vegas had a
18 case, that was a major case, he was likely involved
19 in some capacity, whether a lead detective or
20 otherwise.

21 Q. Do you consider Detective Prieto to be a
22 good detective?

23 A. I don't know that I can say that.

24 Q. Do you consider him to be thorough?

25 A. I don't know that I could say that either.

1 Q. Do you believe he generally follows
2 protocol?

3 A. I would say that question is vague. To the
4 extent that I'm aware of what those protocols are, I
5 don't have any reason to believe that he didn't
6 follow protocols specifically on any given occasion,
7 although I am aware of times where I would have liked
8 his protocols to be different. I don't know what
9 North Las Vegas protocols are.

10 Q. Do you believe he generally gathers all the
11 potentially relevant evidence?

12 A. I would say all? The answer would be no.

13 Q. Most?

14 A. Sure. I think he tries to the best of his
15 ability to gather as much evidence as he can.

16 Q. Does he tend to gather all or most of the
17 exculpatory evidence in the case?

18 A. I would think that any detective, including
19 Jessie Prieto, if he thinks that there's exculpatory
20 evidence that he would go there and look for it.

21 Q. Does he -- did he generally give you
22 accurate information about his cases?

23 A. There are times when -- and I don't want to
24 suggest that I would ever call Jessie Prieto a liar.
25 I wouldn't do that. But there are times when I

1 certainly questioned his ability to articulate
2 certain facts.

3 Q. Based on those answers, it sounds to me
4 like you have certain concerns about Jessie Prieto's
5 work?

6 A. Concerns? Certainly there are better
7 detectives than Jessie Prieto in the world, and I
8 hope -- I imagine that there are worse detectives.
9 Certainly everybody is human and everybody has their
10 frailties.

11 Q. You said you didn't know that you could
12 call Detective Prieto a good detective?

13 A. Correct.

14 Q. You said you didn't know you could say if
15 you could consider him thorough?

16 A. Correct.

17 Q. What's the basis for that opinion?

18 A. Cases I've had with Detective Prieto where
19 there are things that either he did not accurately
20 recall or could not accurately convey.

21 Q. Can you give me any specific examples?

22 A. I believe the photo lineups in this
23 particular case.

24 Q. Are there any examples from other cases?

25 A. Yeah. There was a case where Jessie was

1 under the belief that the defendant confessed. In
2 reviewing the video of that, I see why he thinks that
3 that was a confession, but to me, it was more of an
4 admission than a confession.

5 Q. Are there any other examples from other
6 cases that come to mind?

7 A. As it relates to accuracy?

8 Q. As it relates to your opinion of him --
9 about whether he is a good detective or a thorough
10 detective?

11 A. In this particular case, his collection of
12 the documentation associated with the burglary that
13 occurs at the convenience store later on. I would
14 have expected the detective to do a little bit more
15 to shore up the use of the card, and when the card
16 occurred, what the bank is, how do you get those
17 records, those type of things.

18 Q. What would you have expected to have done
19 with respect to -- you're referring to the 7-Eleven?

20 A. Correct.

21 Q. What would you have expected him to have
22 done differently?

23 A. And I don't remember exactly how this all
24 plays out, but I believe the victim of the credit
25 card that was used --

1 Q. Ryan John?

2 A. -- receives information -- it might have
3 been Ryan John. Receives information that his card
4 was used at this 7-Eleven.

5 Detective Prieto gets the video for the
6 7-Eleven, but I don't believe he ever got the records
7 or he didn't get all of the records. Maybe he got
8 some of the records that showed the chain to
9 establish exactly when and how that card was used at
10 that ATM.

11 Q. So are you aware of any records in this
12 case that show when and how that card was used at
13 that ATM?

14 A. My recollection is that there's some record
15 for a company that no longer existed at the time of
16 trial. But you can't quote me on that. This is
17 fifteen years ago now, or it's eight years ago the
18 trial was.

19 My recollection is that there was some
20 record, but we could not establish the authenticity
21 of the record.

22 Q. So there was no way to prove exactly when
23 and how Ryan John's ATM card was used at that
24 7-Eleven if, in fact, it was used at that 7-Eleven?

25 A. Well, no. I did prove that his card was

1 used at that 7-Eleven. It just would have been a
2 heck of a lot easier had Jessie gotten me the
3 records.

4 Q. Are there any cases where you declined to
5 prosecute a suspect based on concerns about the
6 quality of Detective Prieto's work?

7 A. No.

8 Q. You didn't call Detective Prieto in Rickie
9 Slaughter's case at trial, correct?

10 A. Correct.

11 Q. Was that because you had concerns that his
12 testimony would be unhelpful to your case?

13 MS. COUMOU: And at this point I'm going to
14 object and instruct the witness not to answer because
15 the question calls for information that falls under
16 the deliberative process privilege.

17 MR. BARON: And my response to that is I
18 don't think the privilege applies here, or if it
19 does, there is an exception to the privilege that
20 would apply that would compel the witness to answer.

21 Now, you're free to instruct him not to
22 answer and I'll respect that today. But if I think
23 it's necessary, I may ask for an order from the
24 federal judge compelling you to answer that, and he
25 may resolve that in my favor. If so, my position is

1 that we're going to need to conduct a further
2 deposition in order to get the answer to that
3 question.

4 Does that make sense?

5 MS. COUMOU: It does, and I have no problem
6 with that. And I stand with my objection, and it's
7 my position that the privilege does apply.

8 MR. BARON: That's fine.

9 BY MR. BARON:

10 Q. Do you usually call the lead detective to
11 testify in your cases?

12 A. It's very dependent. I wouldn't say I have
13 a hard and fast rule to call the lead detective in a
14 case. In fact, I would say more likely than not I'm
15 not calling the lead detective.

16 Q. So in greater than 50 percent of the cases
17 you prosecute, you do not call the lead detective?

18 A. I haven't gone back to my jury trials to
19 find out if those numbers work out.

20 Q. Just a rough estimate.

21 A. I would say it is quite often that I will
22 not call a lead detective that has the ability to
23 summarize the entire investigation in my case.

24 Q. Even if you aren't going to call the
25 detective to testify in your case-in-chief, it's

1 still helpful to have them available during trial,
2 correct?

3 A. Yeah.

4 Q. Something might come up at the trial that
5 might be helpful to consult with the detective?

6 A. Correct.

7 Q. A witness might forget something they
8 previously told the detective. You may need to call
9 the detective to testify to their prior statement?

10 A. Sure. I would always subpoena the
11 detective and have them available for trial. I just
12 don't know that I would put him on the stand.

13 Q. But generally, you would prefer to go to
14 trial knowing the lead detective is available if
15 necessary, correct?

16 A. Correct.

17 Q. Was Detective Prieto available to testify
18 during Rickie Slaughter's trial?

19 A. As far as I remember, he was.

20 Q. Did you subpoena him?

21 A. I'm sure I did.

22 Q. Was he in the courtroom at all during the
23 trial?

24 A. Not that I'm aware of. Witnesses aren't
25 normally allowed in state court.

1 Q. I'm sorry, I should have said was he in the
2 courthouse at the time of the trial?

3 A. On behalf of me? I don't recall ever
4 having Detective Prieto sitting outside the
5 courtroom. He may have been in the courthouse for
6 other things. It's quite possible.

7 Q. Let's talk about Brady versus Maryland,
8 Supreme Court case 373 U.S. 83 (1963).

9 Are you familiar with that case?

10 A. Yes.

11 Q. You're aware of your duties pursuant to
12 Brady?

13 A. Yes.

14 Q. Can you explain what your duty is to me?

15 A. I have a duty to disclose -- well, there's
16 two things: I have a duty to disclose exculpatory
17 information to the defense. Now, Brady is a remedy.
18 So there's certain parts of that that whether or not
19 I violated that duty comes up as whether or not, you
20 know, he's accessible by the defense through their
21 own reasonable investigation. But ultimately, the
22 duty that's associated with Brady is that I have a
23 duty to turn over exculpatory information. And it's
24 been expanded to things like Giglio information.
25 Things that tend to attack the credibility of

1 witnesses. I have a duty to turn that over, too.

2 Q. Have you received any training on those
3 obligations while you were at the D.A.'s office?

4 A. I'm sure I have, yes.

5 Q. What sort of training would that have been?

6 A. I know that routinely my office will do
7 CLEs. I've read Brady. We brief Brady all the time
8 in relation to our duties.

9 Q. Have you attended outside CLEs involving
10 Brady obligations?

11 A. I've attended outside trainings. And when
12 I say outside, meaning not put on by the office?

13 Q. Correct.

14 A. For example, every year there's a
15 prosecutor conference that's put on. At times
16 subjects related to Brady are discussed at those as
17 well.

18 Q. Does your office have any manuals or
19 protocols regarding Brady obligations?

20 A. I believe there is policies associated with
21 our obligation.

22 Q. Those are written down somewhere?

23 A. I believe so.

24 Q. Do you know what those policies are? Are
25 you able to summarize them?

1 A. My belief is that they track the language
2 of the case law. As I sit here today, I can't tell
3 you exactly what the language of the policy is
4 because it actually evolved at a time period where
5 there was a discussion of what is an open file
6 policy. So there was a number of iterations.

7 But ultimately it comes down to the
8 prosecutor is responsible for following both the
9 statutory and his constitutional obligations to
10 provide exculpatory information.

11 Q. As chief deputy district attorney, do you
12 train other less senior district attorneys on their
13 Brady obligations?

14 A. I can't recall if I've ever personally
15 given a CLE. In the course of what you'd call formal
16 training, obviously I have discussed with younger
17 deputies what I believe to be their obligation, and
18 if they have a question about whether or not they
19 have a certain piece of evidence, I've been in those
20 discussions before.

21 Q. How do you make sure you've fulfilled your
22 obligation to turn over material exculpatory evidence
23 to the defense?

24 A. When I review a file, I make sure that I
25 have it. I make sure I have -- if there's something

1 in there that jumps out at me, like I should have
2 this, I should have this, I attempt anyways to go out
3 there and look for it.

4 Normally, shortly before trial we will send
5 a request over to Metro to make sure that none of
6 the -- it could be North Las Vegas, whatever the
7 investigating agency -- make sure that whoever our
8 police witnesses are have never had a finding of
9 untruthfulness that's been sustained by their agency.

10 Essentially that covers it.

11 Q. When you send that request to the
12 investigating agency, do you specifically ask them to
13 provide any exculpatory evidence?

14 A. Well, I think you're getting the request
15 different. The request that we send to the agencies
16 are for individual law officers. We'll list out our
17 witness officers and ask the agency if within their
18 personnel files they have evidence of a sustained
19 untruthfulness violation. And they will respond back
20 to us, because they won't give us access to the
21 individual personnel files themselves.

22 When I get a case file, for example, I
23 usually meet with the detective, look at the case
24 file, discuss the case with him.

25 That probably didn't happen as much back in

1 2004, or '5 as it does today. But usually I'll go
2 through that.

3 I'm now senior enough to know that there
4 are places that records at various agencies are not
5 necessarily kept all in one location. I will usually
6 contact those various other locations to find out if
7 there's any records there that may be of interest to
8 me.

9 Q. So you make an effort to ensure that your
10 files have everything that the investigation -- the
11 investigating agency has in their files?

12 A. I do now.

13 Q. And you said you talked to the detectives
14 to make sure that your file is complete?

15 A. Correct.

16 Q. Is there anything else that you do to make
17 sure that you've satisfied your Brady obligations?

18 A. If there is a criminal history contained
19 within the file, I will review the criminal history
20 and make a determination if there's something in
21 there that is indicative to me of something that I
22 have to turn over on a witness. I will provide that
23 over on the witness.

24 Q. So one of your answers earlier -- in one of
25 your answers earlier you said you're now senior

1 enough to know there are places at various agencies,
2 they sometimes don't keep their records all in the
3 same place. Do you remember that answer?

4 A. Correct.

5 Q. When did you learn about this?

6 A. I couldn't give you a timeline. It's sort
7 of evolving. As you get more and more senior you
8 learn things about the way these large agencies are,
9 that there are times where there are records in
10 places that you didn't even know exist. And the
11 agencies are not always great about having a central
12 repository for records.

13 Q. In May 2011, were you aware of any problems
14 with the -- I'll just call them problems. Were you
15 aware of any problems like that with the North
16 Las Vegas Police Department?

17 A. I wasn't aware by 2011. I certainly was
18 aware whenever this photo lineup came up that there
19 was some sort of disconnect between the discovery we
20 received and the records that we had.

21 Q. But you were talking about different
22 investigative agencies sometimes having different
23 files in different locations?

24 A. Correct.

25 Q. After May 2011, did you learn about any

1 issues involving the file keeping policies at North
2 Las Vegas Police Department?

3 A. After 2011, no.

4 Q. Now, we talked about whether the office has
5 any policies about Brady obligations.

6 Do you have any what I would say are
7 personal policies that you generally follow in your
8 practice?

9 A. Yeah. If I believe I have a piece of
10 exculpatory evidence, I don't go to the next part
11 about can they get it themselves or anything else
12 like that. If I have it, I turn it over.

13 Q. Has any court ever found that you
14 personally committed a Brady violation?

15 A. Not that I can remember.

16 Q. Has any court ever found that you committed
17 prosecutorial misconduct?

18 A. I don't think so. I don't ever recall
19 having an opinion that said this was misconduct and
20 it was harmless, or this was misconduct and the case
21 is being reversed as it relates to me personally. I
22 haven't gone back and looked at every single
23 appellate opinion I've ever received to find out if
24 any court ever found that something I did was
25 misconduct.

1 But as I sit here today, I have no
2 independent recollection of any court ever finding
3 that I've engaged in misconduct.

4 Q. Has any court ever found that you committed
5 a Batson violation?

6 A. Well, either me or Mr. Raleigh did,
7 according to Justice Cherry.

8 Q. What case?

9 A. State of Nevada versus Jason McCarty.

10 Q. Have you been subject to any bar
11 complaints?

12 A. Have I had defendants ever make a complaint
13 to the state bar on me? I believe I have. Have I
14 ever had the state bar request me to answer? The
15 answer is no.

16 Q. Can you define exculpatory evidence for me?

17 A. Evidence which tends to establish the
18 defendant didn't commit the crime.

19 Q. If a witness identifies a subject in a
20 lineup, you would agree that's inculpatory with
21 respect to that suspect?

22 A. Correct.

23 Q. If a witness fails to identify a suspect in
24 a lineup, would you agree that's exculpatory with
25 respect to that suspect?

1 A. If the witness does not recognize and does
2 not point him out, yeah, that would be exculpatory.

3 Q. If a suspect's alibi is confirmed by the
4 police, that would be exculpatory evidence with
5 respect to that suspect?

6 A. Yeah. If the guy didn't do it, that would
7 be exculpatory.

8 Q. In addition to Brady, you have certain
9 ethical obligations as a prosecutor, correct?

10 A. I believe so.

11 Q. You have an ethical obligation not to
12 prosecute someone you don't believe you can prove
13 committed a crime beyond a reasonable doubt?

14 A. Yeah. I think it's maybe even broader than
15 that.

16 Q. How would you define that?

17 A. I would say -- well, no, you're probably
18 right.

19 Q. I'm not a prosecutor, so I don't know.

20 A. My personal one is that I don't prosecute
21 anybody that I do not believe I can prove to 12
22 people is guilty beyond a reasonable doubt.

23 Q. You also have a duty of candor to the
24 Court?

25 A. Correct.

1 Q. And to defense counsel?

2 A. Yes.

3 Q. As an officer of the court, whether you're
4 under oath or not, you have a duty to be truthful in
5 what you say while you're in court?

6 A. I believe so.

7 Q. You have an obligation to answer questions
8 and make representations to the court that are true
9 and accurate to the best of your knowledge?

10 A. I believe so.

11 Q. That also applies to statements you make to
12 defense counsel?

13 A. I believe so.

14 Q. I would like to talk about your general
15 practice when it comes to witnesses before a trial.

16 A. Okay.

17 Q. Will you generally meet with state
18 witnesses before trial to discuss a trial?

19 A. As much as possible, yes.

20 Q. Will you meet with them once, twice? About
21 how many times?

22 A. Really it depends on the witness. I like
23 to at least have talked to every witness once before
24 they get on the stand. Sometimes I talk to them more
25 than once.

1 Q. During those meetings will you generally
2 take notes?

3 A. No.

4 Q. Will you draft memos after the interviews
5 memorializing the conversations?

6 A. No.

7 Q. Are any police officers generally present
8 during these interviews?

9 A. Like investigating detectives? Sometimes
10 they can be. Sometimes they can't. My usual
11 pretrial, there's not anybody not associated with the
12 district attorney's office within the pretrial.

13 Q. What about D.A. investigators?

14 A. Depends on the witness. There may or may
15 not be a D.A. investigator in the room.

16 Q. Anyone else who is generally present during
17 these interviews?

18 A. My co-counsel.

19 Q. So it would be you, your co-counsel and
20 possibly a D.A. investigator?

21 A. For the most part, yes.

22 Q. Generally no one else?

23 A. Generally no one else.

24 Q. Do any of those other individuals, your
25 co-counsel or investigator, will they take notes

1 during these interviews?

2 A. I guess it depends on the individual
3 investigator or deputy.

4 Q. Different people do it differently?

5 A. Different people do different things.

6 Q. What about drafting memos afterwards?

7 A. I imagine there may be some D.A.'s out
8 there. I rarely, if ever, have seen a memo drafted
9 from a pretrial.

10 Q. Do you know if Michelle Fleck generally
11 writes notes or drafts memos corresponding to these
12 interviews?

13 A. I don't know.

14 Q. Do you recall -- were there any D.A.
15 investigators assigned to Rickie Slaughter's case?

16 A. There were probably a number of them over
17 the years. His case has spanned a pretty long time.

18 Q. Do you recall their names?

19 A. I don't. My best guess at the time of
20 trial would have been Ron Acuna.

21 Q. Would you have -- Rickie Slaughter's trial
22 got pushed out a few times. Did you have pretrial
23 interviews with the witnesses numerous times in light
24 of the fact that the trial date changed?

25 A. I don't know about numerous. I know that

1 we talked to them before Rickie's plea. That
2 happened in 2005. And to be honest with you, I don't
3 have much in the way of memory of pretrials after
4 that, but those pretrials stood out to me.

5 Q. If someone drafts notes or memos regarding
6 these interviews, would they be placed in the file?

7 A. I have no idea. I don't take notes. And
8 so I have no idea what an individual would do with
9 their notes, whether they keep them, whether they
10 don't keep them, what they do with them.

11 Q. Let's talk about photo lineups in general.
12 When I say lineup during this deposition, generally
13 I'm going to be referring to a photographic lineup
14 specifically.

15 The purpose of a photo lineup is to see if
16 a witness can identify a suspect?

17 A. Usually, yes.

18 Q. You want an identification based on a
19 lineup to be accurate?

20 A. Yes.

21 Q. You want an identification based -- excuse
22 me. Strike that.

23 You don't want a witness to purport to
24 identify someone who is innocent, do you?

25 A. Absolutely not.

1 Q. You want the police to design lineups that
2 produce accurate identifications?

3 A. You would hope so.

4 Q. It's possible for police to design their
5 lineups in a way that might not produce accurate
6 identification, right?

7 A. Sure.

8 Q. And I'm just going to refer to those types
9 of lineups as suggestive.

10 A. Okay.

11 Q. If a lineup is suggestive, you might have
12 reason to doubt whether the identification is
13 accurate?

14 A. Correct.

15 Q. So you don't want police to use suggestive
16 lineups?

17 A. Correct.

18 Q. Is it standard practice, as far as you're
19 aware, for police in Clark County to place only one
20 suspect in any given lineup?

21 A. With the exception of apparently this
22 particular case. It's the only time I'm aware that
23 there was more than one suspect placed into a single
24 six-pack.

25 Q. You usually don't participate in the

1 process of showing photo lineups to witnesses, do
2 you?

3 A. Depends on the situation. In this
4 particular case, I did do a photo lineup.

5 Q. Generally, will you show photo lineups to
6 witnesses in your cases?

7 A. If I am wondering if the witness can
8 identify somebody and the police has never done it, I
9 will normally show them a picture.

10 Now, whether or not I have a question of
11 whether or not they knew the person before, I may
12 decide, like I did in this case, to show a six-pack
13 instead of just an individual picture.

14 Q. Have you been trained in procedures for how
15 to show lineups to victims or witnesses?

16 A. No. But I've been involved in handling
17 cases involving photo lineups for quite a while. So
18 I don't know that I've been trained, but I certainly
19 have significant experience in the process of showing
20 a photo lineup.

21 Q. Can you walk me through what that process
22 is.

23 A. Well, it depends on what the witness is
24 for. For example, Kenny Marks, in this particular
25 case, he was a neighbor who had sold somebody a car.

1 Had I had a single photo of Mr. Slaughter, I probably
2 would have shown it to him, saying is this the guy
3 that showed you the car. But I didn't.

4 So in this particular case, I said is the
5 guy you sold the car to in this six photographs? The
6 answer was yes.

7 Now, that's not exactly the formal way the
8 police do it. Normally we'll go. They'll separate
9 out the witness. Nowadays you may even have somebody
10 who doesn't know the answer to the question to who
11 the suspect is. They will read him witness
12 instructions, and ask them if they recognize anybody
13 within the six-pack.

14 I didn't do that with Kenny Marks because I
15 didn't feel the situation was necessary.

16 Q. You didn't have access to any individual
17 photos of Rickie Slaughter?

18 A. My recollection at the time that I was
19 sitting there with Mr. Marks -- just happened to be
20 sitting there. So I picked it up and said, hey, do
21 you see the person that you sold the car to here?

22 Q. Let's say the police show a witness two
23 different lineups on two separate occasions. Let's
24 say the same suspect is in both of those lineups. If
25 the witness identifies the suspect in one of the

1 lineups but not the other, that would make their --
2 that would tend to make their identification less
3 reliable than if they identified the suspect in both
4 lineups; is that correct?

5 A. Depends on what the police officer said to
6 the individual who was shown the second photo lineup.

7 Q. Let's assume the police officer conducts a
8 proper showing of the lineup to the --

9 A. If the police officer puts six photos in
10 front of the witness and says do you see anybody you
11 recognize here, and that person says, yeah, I
12 recognize that guy, and then months later he comes
13 back and says, do you see anybody you recognize here,
14 and the person looks and doesn't identify him, I
15 would agree with you that that is exculpatory.

16 Q. So that would be information you would need
17 to turn over to the defense before trial?

18 A. Correct.

19 Q. All right. I'm going to show you a photo
20 lineup from this case that I'll refer to as the first
21 photo lineup and that's Exhibit 3.

22 This is a copy of a photo lineup in this
23 case that was shown to Ryan John; is that correct?

24 A. Is it Ryan John or John Ryan? Yeah, Ryan
25 John.

1 Q. Would you agree Detective Prieto showed
2 versions of this lineup? When I say versions of a
3 lineup, sometimes the police will put photographs in
4 different positions.

5 A. Correct.

6 Q. So those might be different versions of the
7 same lineup?

8 A. Correct.

9 Q. You would agree with me Detective Prieto
10 showed versions of this photo lineup to seven
11 witnesses in this case?

12 A. I don't have a recollection if it was
13 seven, but it's certainly to a number of people in
14 this case. If it's seven, I'll believe you.

15 Q. And four out of those seven purported to
16 identify Rickie Slaughter from a version of this
17 lineup?

18 A. If that's the answer. If it is four, I'll
19 agree with you. I know there's some number of the
20 seven that picked out Rickie Slaughter.

21 Q. And just for the record, Exhibits 7 through
22 10, you don't need to look at them now, but they're
23 just different versions of the same photo lineup.
24 These are the versions that we got from the evidence
25 vault in this case.

1 A. Okay.

2 Q. So turning back to Exhibit 3, the photo in
3 position 6 is of Ricky Slaughter, correct?

4 A. Correct.

5 Q. The photo in that lineup is not -- the
6 photo of Rickie Slaughter in that lineup is not a
7 booking photo, is it?

8 A. I don't know. It may be a juvenile booking
9 photo. I don't believe it's an adult booking photo.

10 Q. If I told you it was a photo that Metro
11 took when Rickie Slaughter registered as an ex-felon
12 down at the station in April of 2004, would you have
13 any reason to dispute that?

14 A. No.

15 Q. The photos in positions one through five in
16 this lineup are filler photos?

17 A. Correct.

18 Q. Those appear to be booking photos?

19 A. Well, maybe your definition of booking
20 photo is different than mine. Whenever Metro takes a
21 photograph, whether it was Ricky when you registered
22 it, or it was jail from someone being arrested, I
23 would think all those photos are the same.

24 I have no idea if these are booking photos
25 based upon the clothing that they're wearing.

1 They're not all wearing jail garb, so I have no idea.

2 Q. Does the background of Rickie Slaughter's
3 photo in this lineup look the same to you as the
4 background of the five filler photos?

5 A. In this copy, I'm not sure. There's a
6 significant difference. I guess his may be lighter
7 than a different one versus some that are darker than
8 other ones. They all have slightly different
9 backgrounds.

10 Q. Did you participate in showing this lineup
11 to any of the witnesses?

12 A. No.

13 Q. So you didn't participate in showing it to
14 Ivan Young?

15 A. No.

16 Q. Jennifer Dennis?

17 A. No.

18 Q. Jermaun Means?

19 A. No.

20 Q. Ryan John?

21 A. No.

22 Q. J [REDACTED] P [REDACTED]?

23 A. No.

24 Q. A [REDACTED] D [REDACTED]?

25 A. No.

1 Q. Or Destinee Waddy?

2 A. No.

3 Q. I'm going to show you another photo lineup
4 from this case that I'm going to refer to as the
5 second photo lineup and that's Exhibit 11.

6 A. Okay.

7 Q. Now this exhibit starts off with a couple
8 pages related to Rickie Slaughter's mugshot when he
9 was booked upon his arrest in connection with this
10 case. And then pages 3, 4, 5 and 6 are copies of
11 lineups.

12 This is a photo lineup that Detective
13 Prieto prepared in an attempt to identify the
14 suspect, Jacquan Richard, correct?

15 A. I believe so.

16 Q. Now again, just for the record, I've marked
17 some additional versions of this photo lineup.

18 Exhibit 13 is a copy that we got from the
19 evidence vault when they were marked as court
20 exhibits.

21 I've also marked a pretrial motion that the
22 defense filed back in 2009 that includes an
23 additional -- that includes an additional version of
24 the second photo lineup. That's Exhibit 14. But I'm
25 just going to stick with Exhibit 1 for now, if that's

1 all right?

2 A. It's not the best copy, but that's okay.

3 Q. Do you have any better copies?

4 A. I believe the very last page of that stack
5 I provided you has a better scan of it.

6 Q. Looking at the third page of Exhibit 11,
7 the photo in Exhibit 1 is of Jacquan Richard,
8 correct?

9 A. I have no idea.

10 Q. Let's look at Exhibit 16.

11 A. Okay.

12 Q. Exhibit 16 is a booking photo. It's in
13 color. At the top of the document, you see the name
14 Richard, Jacquan Lee, correct?

15 A. Correct.

16 Q. Can you compare the photo in Exhibit 16 to
17 the photo in position 1 on page 3 of Exhibit 11?

18 A. I'll give you it's the photo closest, but
19 it's not the best copy. But I mean, if you're
20 representing to me that that's the one that is
21 Jacquan Richard, I have no reason to dispute you. I
22 have never seen Mr. Richard before.

23 Q. Looking at page 3 of Exhibit 11, Rickie
24 Slaughter's photo is also in this lineup, correct?

25 A. Appears to be, yes.

1 Q. In position 4; is that right?

2 A. Correct.

3 Q. Looking at page 3 of Exhibit 11, do you see
4 any differences in the backgrounds of the photos of
5 the six individuals?

6 A. Yes. Some are lighter, some are darker.

7 Q. Did you participate in showing this lineup,
8 this second photo lineup or any other versions, to
9 any of the witnesses?

10 A. Well, I believe I showed it to Kenny Marks.

11 Q. Putting him aside.

12 A. Putting him aside? Certainly after I
13 learned the information from them about the existence
14 of this lineup, I certainly discussed it with him.

15 So was I the person that originally showed
16 it to him? No. But I certainly had conversations
17 with him about it.

18 Q. When you -- the first person to show this
19 lineup to the witnesses -- let's put Kenny Marks
20 aside. The first person to show the lineup to the
21 witnesses in this case would have been Detective
22 Prieto, right?

23 A. Correct.

24 Q. Were you present when he first showed those
25 lineups?

1 A. I wasn't.

2 Q. And that goes for all the seven names that
3 I listed before?

4 A. Correct.

5 Q. Now, page 3 of Exhibit 11 is in what I'll
6 call a landscape layout. The other versions of this
7 photo lineup I've seen are in a portrait layout. Do
8 you know what I mean by that?

9 A. You've seen a version of this in a portrait
10 layout?

11 Q. If you go to page 4.

12 A. Oh, there is one in a portrait layout.
13 Okay.

14 Q. And the rest of the versions in that -- the
15 rest of the versions of the photo lineup in that
16 exhibit are also in portrait.

17 A. Yeah.

18 Q. Do you happen to know why one version of
19 this lineup is in landscape and the other versions
20 are in portrait?

21 A. I don't.

22 Q. Now, I believe you said earlier the fact
23 that Detective Prieto had both Rickie Slaughter and
24 Jacquan Richard's photos in this single lineup would
25 be a mistake on his part, correct?

1 A. Yeah.

2 Q. Have you ever seen a color version of this
3 second photo lineup?

4 A. No. The best version I have is the one I
5 gave to you.

6 Q. So as far as you're aware, there are no
7 color versions that exist?

8 A. Not that I recall, or not that I've seen
9 recently.

10 Q. Do you have any reason to believe that
11 there might be a color version somewhere that you
12 haven't happened to see?

13 A. I believe there may have been a color
14 version that was originally shown the witnesses by
15 Detective Prieto.

16 Q. If Detective Prieto testified that he may
17 have taken a color version, copied it in black and
18 white and shown black and whites to the witnesses, do
19 you have any reason to dispute that?

20 A. Other than I have concerns about anything
21 Detective Prieto said about this particular photo
22 lineup, no.

23 Q. Did you ever have a conversation with him
24 where he said I showed him colors?

25 A. I don't recall ever having a conversation

1 with Prieto about whether or not these were in color
2 or not in color.

3 Q. You would agree that one of the witnesses
4 who saw this lineup identified Jacquan Richard from
5 the second photo lineup, correct?

6 A. That's my understanding.

7 Q. Let's look at Exhibit 12. This document is
8 a police report generated by Detective Prieto in
9 connection with this case.

10 A. Okay.

11 Q. Let's look at page 4 of that document.

12 A. Okay.

13 Q. The second full paragraph.

14 MR. BONGARD: I'm sorry, Jeremy, what
15 exhibit are you on?

16 MR. BARON: I'm sorry, Exhibit 12, and
17 we're on page 4. Page numbers are in the upper
18 right-hand.

19 BY MR. BARON:

20 Q. The second paragraph of this page says:
21 "Photo lineups of Richard were made and shown to all
22 of the victims. None of the victims were able to
23 identify Richard as a suspect."

24 Did I read that correctly?

25 A. You did.

1 Q. Would you agree that this report does not
2 say any of the witnesses identified Rickie Slaughter
3 from the second photo lineup?

4 A. The report does not say that.

5 Q. Look at Detective Prieto's deposition in
6 this case, which is Exhibit 17. And let's look at
7 page 89. And again, I'm looking at the page numbers
8 in the upper right-hand, not at the bottom.

9 I'm going to read from this page starting
10 at line 14.

11 "Question: Did any of the victims identify
12 anyone from these lineups?" By which I mean the
13 second photo lineup.

14 A. Sorry, you're on page 19?

15 Q. Page 89.

16 A. Oh, page 89? And what line?

17 Q. Exhibit 17, page 89, line 14.

18 A. Am I in the wrong one?

19 Q. Page 89 on the page numbers in the top at
20 the header.

21 A. Oh, sorry. I'm on page 89 of the depo.

22 Q. Line 14, question: "Did any of the victims
23 identify anyone from these lineups?" By which I mean
24 the second photo lineup.

25 Prieto answers: "If my report reflects

1 that they didn't, then they didn't."

2 Question. "So to the best of your
3 knowledge, none of the victims or witnesses
4 identified Rickie Slaughter from this second photo
5 lineup?" And I've referenced the exhibit number in
6 that deposition, which I'll represent to you is the
7 same as Exhibit 11.

8 Answer: "No. I showed you. Or you have
9 the ones that they identified them from."

10 Did I read that correctly?

11 A. You did read it correctly.

12 Q. You were present at the hearing in state
13 court in front of Judge Herndon?

14 A. Correct.

15 Q. Exhibit 18 is a transcript of that hearing.

16 A. Yes.

17 Q. And let's look at page 10.

18 A. This one is actually page 10.

19 Q. It's actually page 10, right.

20 A. Okay.

21 Q. Now, during that hearing, you made the
22 following statement, which starts at line 11: "I
23 would dispute with the defense that Jessie Prieto is
24 saying no one picked out Rickie Slaughter from the
25 second lineup means that none of the victims

1 recognize that Rickie Slaughter was in the photo
2 lineup."

3 Did I read that correctly?

4 A. You did.

5 Q. After that, you say, starting at line 16,
6 "The reason this came up and the defense even knew
7 about it was because the victims themselves told the
8 State, hey, there's a second photo lineup and Ricky
9 was in it, but Jacquan, we couldn't identify the
10 second suspect."

11 Did I read that correctly?

12 A. You did.

13 Q. When you said, "The victims themselves told
14 the State," which victims were you referring to?

15 A. I don't have an independent recollection.
16 The best of my memory is this first came up when Ivan
17 and his family came down. So it would have been Ivan
18 and Jennifer and one of the kids, I don't remember
19 which kid it is, came down.

20 And when I asked them about seeing a photo
21 lineup of Ricky, one of them, and I don't remember
22 which one, one of them said, well, actually there
23 were two photo lineups with Rickie Slaughter in them.

24 And we didn't have possession of the second
25 photo lineup. I didn't know what the heck they were

1 talking about.

2 So I learned from the witnesses themselves
3 that Ricky was in the second photo lineup.

4 Q. You referenced a kid. Would that have been

5 A [REDACTED] D [REDACTED]?

6 A. I assume that's Jennifer's kids. So my
7 guess is that A [REDACTED] came down for the pretrial, but
8 sometimes the kids didn't come with the parents. It
9 might have just been Jennifer and Ivan the first time
10 that this subject came up.

11 But I have a very distinct recollection of
12 being very confused by them telling me there were two
13 photo lineups with Rickie in them.

14 Q. When did this conversation take place?

15 A. Prior to the first plea. At that point in
16 time, we didn't have possession of that second photo
17 lineup. Jessie Prieto had never submitted that
18 second photo lineup to us.

19 And it was even Ivan or Jennifer, I can't
20 remember which one first said it, that, no, he came
21 back to us and we had a second photo lineup that had
22 Rickie's photo in it, but he was asking about the
23 second suspect, and the second suspect wasn't in
24 there.

25 Q. I would like to try to get as precise today

1 as I can about when this happened.

2 A. Sure.

3 Q. Would it have been about a month before the
4 guilty plea colloquy?

5 A. I don't think I was involved a month before
6 the guilty plea. Normally we pretrial the witnesses
7 the week before the trial starts, so the best I can
8 give you is that it's likely within that week of the
9 jury trial starting.

10 Q. Bear with me just one moment.

11 A. Sure.

12 Q. So let's walk through this conversation in
13 as much detail as you can remember.

14 A. Okay.

15 Q. You or someone on your behalf --

16 MR. BONGARD: Excuse me for a second.

17 Which conversation?

18 BY MR. BARON:

19 Q. The conversation you referenced where
20 either Ivan Young or Jennifer Dennis and possibly
21 A [REDACTED] D [REDACTED] came pretrial with you before the
22 original 2005 trial date.

23 A. The first one, I'm pretty sure.

24 Q. The subject of the second photo lineup
25 first came up.

1 A. Yes.

2 Q. You or someone on your behalf called that
3 family and asked them to come down to speak with you
4 before the trial?

5 A. Correct.

6 Q. They came down. Would it have been
7 morning? Afternoon?

8 A. I have no idea.

9 Q. How long did this meeting take place?

10 A. I can't give you a best estimate. Most
11 pretrials for situations like this, somewhere between
12 a half hour and an hour.

13 Q. What sort of topics did you discuss with
14 them?

15 A. We would discuss their testimony.

16 Q. So what about their testimony would you
17 have talked about ahead of time?

18 A. Normally we bring them in, talk to them
19 about the case. You know, no police report ever
20 gives you everything that can be said about what
21 happened during the incident. You have to talk to
22 them about what went through. You ask them
23 questions. You talk about their testimony.

24 It's hard to give you a real specific. You
25 know, pretrial is just you're meeting the witness and

1 finding out what the witness has to say to make a
2 determination.

3 Q. How did the topic of photo lineups first
4 come up during this conversation?

5 A. Normally if a witness has done a photo
6 lineup, you'll talk to them about the photo lineups.
7 And in this case, these witnesses, I don't recall all
8 of them, but I believe these witnesses had done two
9 photo lineups. The one I thought was Rickie
10 Slaughter, and the one I thought was Jacquan
11 Richard's.

12 We didn't have Jacquan Richard's photo
13 lineup. Jessie Prieto never sent it to us. We
14 didn't know anything about it other than they didn't
15 pick out Jacquan Richard. So when I asked did you do
16 a photo lineup with Rickie, one of them said, well,
17 we actually did two that had Rickie in it. And
18 that's when I began the conversation with them, what
19 are you talking about?

20 Q. So you're asking them about one of the
21 photo lineups or both?

22 A. I'm just -- we're just talking about you've
23 done photo lineups. I have no recollection of how it
24 was phrased or how the conversation came up. But
25 from that conversation, they told me they had seen

1 two photo lineups that involved Rickie Slaughter.

2 Q. And do you recall who specifically said
3 that first?

4 A. I don't.

5 Q. You can't recall if it was Ivan or Jennifer
6 or A [REDACTED]?

7 A. It's my best guess that it was the Dennis
8 family. So Ivan, Jennifer. And I don't remember the
9 little kid being there. I don't remember if Ivan and
10 Jennifer were in the room together. I don't remember
11 which one said it to me first.

12 But how I learned that there was a photo
13 lineup out there that I didn't have that had Rickie
14 Slaughter's face in it was from the witnesses.

15 Q. If the guilty plea colloquy in this case
16 took place on April 4, 2005, that was going to be the
17 first day of trial, correct?

18 A. Correct.

19 Q. So you said this pretrial would have been
20 about a week before that?

21 A. Well, that's a Monday. So it would have
22 been sometime -- my best estimate as I sit here years
23 later was we knew this before the first trial, and,
24 thus, it had to be within that week beforehand.
25 Where it was in that week, I have no idea.

1 Q. If we say late March, that's fair?

2 A. Sure.

3 Q. Was there anyone else present from the
4 D.A.'s office at this meeting?

5 A. I believe at the very least, Susan Krisko
6 was present.

7 Q. Any D.A. investigators?

8 A. I don't have an independent recollection
9 whether or not there was one or wasn't one.

10 Q. Any police officers?

11 A. Not that I recall.

12 Q. Other staff members?

13 A. Not that I recall.

14 Q. So it would have been you, Susan Krisko and
15 then either the two or three -- if the child was
16 there, the two or three witnesses?

17 A. Well, I can't remember if we pretrialed
18 them together or separately. So I can't answer that
19 either.

20 You know, my usual practice is to interview
21 witnesses separately. Sometimes with family members,
22 particularly husband and wife, which I'm not sure if
23 they're actually married, but she certainly acted
24 like that. Sometimes we don't do them individually.

25 I don't have an independent recollection of

1 whether or not it was one person in the room or two
2 witnesses in the room or how this all came up. I
3 just know that I learned about the existence of
4 Rickie Slaughter in photo lineup number two from
5 witnesses in the case.

6 Q. So you said you're not sure whether it was
7 one meeting or separate meetings. Do you recall two
8 separate meetings, two separate conversations about
9 the second photo lineup and a witness telling you
10 Rickie was in it?

11 A. I remember that there was more than one --
12 my recollection is there was more than one person,
13 who after I found out from the first person, when I
14 started asking about that, that identified for me
15 that they recognized that Rickie was in that second
16 photo lineup, but that the lineup was about
17 Jacquan Richard.

18 MR. BARON: Do you guys want to take a
19 break?

20 Let's go off the record.

21 THE VIDEOGRAPHER: The time is now
22 10:40 a.m. We are off the record.

23 (A recess was taken from 10:40 a.m.
24 to 10:58 a.m.)

25 THE VIDEOGRAPHER: The time is now

1 10:58 a.m. We are back on the record.

2 BY MR. BARON:

3 Q. Before the break we were talking about the
4 conversation with some of the witnesses where you
5 first learned Rickie Slaughter's photo was in the
6 second photo lineup. Do you remember that?

7 A. Yes.

8 Q. So again, I want to walk through the
9 steps you took that week after you realized that
10 information.

11 So again, I know we covered this before,
12 but I do want to get as precise as we can.

13 You had an initial pretrial meeting with a
14 witness or multiple witnesses where you first learned
15 this information?

16 A. Correct.

17 Q. And that may have been just with Ivan
18 Young, it may have been with Ivan Young and Jennifer
19 Dennis, or it may have been the two of them plus
20 A [REDACTED] D [REDACTED]; is that right?

21 A. Or it might have just been Jennifer Dennis
22 first. I don't know. I do realize that I don't
23 think Jennifer made an identification originally of
24 Mr. Slaughter, so that tends to make me think it was
25 Ivan that told me this. But I don't know. I don't

1 have an independent recollection of exactly how it
2 came up.

3 It's seared in my mind how I learned about
4 the existence of the second photo lineup because of
5 the unusual situation that's involved.

6 Q. So the most we can pin it down, again, is
7 to say it was a pretrial interview?

8 A. Correct. And I believe it was the family
9 of the -- of Ivan.

10 Q. One or more of the three individuals we
11 referenced would have been present?

12 A. Correct.

13 Q. What did you do with that information after
14 that meeting concluded?

15 A. First thing I did was call Detective Prieto
16 and find out if he maintained a copy of the Jacquan
17 Richard photo lineup and could I get a copy of it.

18 Q. Did you meet with him in person, or did you
19 talk to him over the phone?

20 A. I mean, I assume I talked to him first over
21 the phone. Whether or not I met with him personally
22 or he forwarded it to me, I don't have an independent
23 recollection.

24 Q. During that week, I would like to know, to
25 the extent you can remember, all the questions you

1 asked him about the second photo lineup and all of
2 his responses. Can you take me through the
3 conversations you had with him?

4 A. I don't have an independent recollection of
5 exactly the questions I asked. I can tell you what
6 my memory of the impressions that I had of what his
7 answers were, but I don't exactly remember like, hey,
8 this, that, this, that.

9 Q. Please go ahead.

10 A. I remember that at the time I first
11 contacted him, he did not know that Rickie Slaughter
12 was in that second photo lineup; that I believe I'm
13 the person who notified him of that fact. And then
14 he sent me the photo lineup.

15 I recall being very unhappy, expressing my
16 displeasure that this had occurred in this particular
17 case. But that's really all I can remember.

18 Q. You said when you contacted Detective
19 Prieto he did not know at the time Rickie Slaughter's
20 photo was in that lineup?

21 A. That's my impression. He learned that fact
22 from me.

23 Q. So none of the witnesses to whom he showed
24 the second photo lineup told him they could identify
25 Rickie Slaughter in that lineup?

1 A. I don't know that fact. I don't have a
2 specific recollection, but obviously I would have
3 asked that question of the witnesses. And my
4 understanding, from at least one or more of those
5 witnesses, is that they felt like they told Jessie
6 that.

7 So I have no way of knowing exactly what
8 happened during this photo lineup situation, what was
9 said, were they asked if Jacquan Richard or the
10 second suspect was in the photo.

11 I made an effort to learn exactly how this
12 came about. I was unable to make that determination
13 as to whether or not they told Jessie and he doesn't
14 remember or whether or not Jessie -- I have no idea.

15 Q. When you talked to him, he didn't respond
16 and say, oh, yeah, that's right. Ivan Young, for
17 example, told me that's Rickie Slaughter?

18 A. That's not the way I remember it. I
19 remember him not knowing that Rickie Slaughter was in
20 the photo lineup.

21 Q. And we looked at his testimony before the
22 break where he testifies none of the witnesses
23 identified Rickie Slaughter from the second photo
24 lineup.

25 Do you have any reason to dispute his

1 testimony?

2 A. What he says is if it's not in my report,
3 that it didn't happen. And that's not necessarily
4 unusual for a detective after 15 years.

5 I take what he said in his deposition is
6 that's how I read my report.

7 Q. If we read his testimony differently to say
8 that no one identified Rickie Slaughter from the
9 second photo lineup when I, Jessie Prieto, showed it
10 to them, you didn't respond and tell me and point him
11 out, do you have any reason to dispute that that's
12 what happened?

13 A. Yeah, I would not rely upon Jessie Prieto's
14 15-year-old memory of an undocumented photo lineup
15 procedure.

16 I couldn't figure out what happened in
17 2005. I'm certainly not going to accept that that's
18 what happened now in 2019. I have absolutely no idea
19 what happened during that photo lineup procedure. I
20 don't know.

21 Q. But you recall we looked at his report
22 regarding the second photo lineup. It doesn't
23 mention anybody identifying Rickie Slaughter,
24 correct?

25 A. Correct. What Jessie told me back then is,

1 when I questioned him like how the heck does
2 something this big of a screw-up occur, was he did
3 not document distracts.

4 So if somebody did not identify the suspect
5 he was looking for, he didn't document it at all.

6 And so none of the photo lineups are
7 signed. None of the photo lineups are written on.
8 He didn't even keep maybe even the original paper.
9 That's why we don't have a color copy of it.

10 My recollection is that what Detective
11 Prieto told me is that he only documented
12 identifications of the suspect he was looking for.
13 So do I think it's possible that some of these people
14 pointed to Rickie? I think that's possible, although
15 I think that's probably less likely than Detective
16 Prieto told them at the beginning that he was looking
17 for the second suspect, and do they see the second
18 suspect in the photo lineup, and their answer was no.

19 Detective Prieto showed up to show them
20 lineups of the second suspect, told them he was
21 looking for the second suspect. Do you see anybody
22 in this photo lineup that you recognize. They're
23 thinking it's the second suspect, and they say no. I
24 don't know, though. I mean, I wasn't there, and I
25 have no way of figuring it out.

1 But it clearly, to me, one or more of those
2 witnesses had to have recognized Rickie Slaughter
3 because I would have never known about the photo
4 lineup. Never could have possibly known about the
5 existence of the lineup, what it looked like, unless
6 one of them recognized Rickie being in that photo
7 lineup. That's the only way I could find out.

8 Q. If the witnesses had told Prieto, hey,
9 there's Rickie Slaughter right there, would you have
10 expected him to have put that in his report?

11 A. Would I ideally expect a detective to
12 document that? Yes. Are you asking me do I think
13 Detective Prieto would have documented it? I don't
14 know. That would be an example of a situation where
15 the police officer did not document this the way I
16 would have preferred it documented.

17 I would have preferred the entire thing to
18 have been recorded. We would have known exactly what
19 happened. But that's just not the situation that
20 occurred here.

21 Q. If they had told him I see Rickie Slaughter
22 there, would you have expected him to have asked them
23 to fill that out on the lineup form?

24 A. Ideally I would like that to happen, but
25 knowing what I know about both Detective Prieto and

1 this, if someone said, oh, that's Rickie, Detective
2 Prieto would have been oh, I screwed up, you know,
3 I'm looking for the other guy. Do you see the other
4 guy. And he may have documented that. I just don't
5 know. I have no idea.

6 Q. But when you talked to him on the phone for
7 the first time about this lineup, it was your
8 impression he did not realize the photo of Rickie
9 Slaughter was in there?

10 A. That was my impression.

11 Q. So you have this initial meeting. You
12 talked to Detective Prieto right after that. What do
13 you do next?

14 A. I get a copy of the photo lineup, and I
15 provide that photo lineup over to the defense.

16 Q. How did you provide it to the defense?

17 A. I don't have an independent recollection of
18 that. But certainly I read somewhere where there was
19 a motion in which this subject matter came up, the
20 fact that he wasn't identified in the second photo
21 lineup. So the only way they got that was from me.
22 So I had to have provided it in some manner at some
23 point.

24 Q. Is it possible you provided the second
25 photo lineup to them before you had this conversation

1 with the witnesses?

2 A. No. Because I only learned about the
3 second photo lineup from the witnesses.

4 Q. What did you tell the defense when you
5 turned over copies of the second photo lineup?

6 A. I have no independent recollection of what
7 exactly I said to them.

8 Q. Would you have sent them a cover letter
9 with that, with those documents, or would you have
10 just sent them the documents?

11 A. Not usually. Back then it probably would
12 have happened in the courtroom. I would have just
13 handed it over.

14 We probably had a conversation. It's a
15 fairly congenial situation over in state court. So
16 they probably had a full conversation about how it is
17 I wound up getting this document and turning it over.

18 Now, Rickie might have been in proper
19 person at that point. Certainly, I wouldn't have had
20 that conversation with Mr. Slaughter but I probably
21 had a conversation with Mr. Wommer, who I think was
22 the stand-by counsel.

23 Q. But you don't have any particular
24 recollection of what you told either Rickie Slaughter
25 or Paul Wommer about the second photo lineup, you

1 just know that you turned it over to them?

2 A. Correct. I don't have an independent
3 recollection of exactly what I said and when I turned
4 it over.

5 Q. After you turned it over to the defense,
6 what did you do next with respect to the second photo
7 lineup?

8 A. Well, I certainly would have talked to each
9 one of the witnesses with the exception of maybe --
10 and I'm not positive, Jermaun Means.

11 Q. That's right.

12 A. My recollection is he was somewhat
13 reluctant for a pretrial, so I don't recall if I ever
14 have pretrialed Jermaun Means or not. I do know that
15 I think he testified at one point, but I don't really
16 remember. But I remember there being at least one
17 witness that was somewhat reluctant to talk to us
18 outside of the courtroom, which is their right.

19 Q. Let's go through each witness.

20 Ivan Young may have been the first person
21 you had this conversation with?

22 A. Correct.

23 Q. Jennifer Dennis might have been there as
24 well. You may have had a separate conversation with
25 her?

1 A. Correct. I don't remember how it is it
2 came about, but I certainly had a conversation with
3 those two. I don't have an independent recollection
4 of the two kids. I actually remember, is it Jorge or
5 George?

6 Q. J [REDACTED]?

7 A. Is it J [REDACTED]?

8 Q. P [REDACTED]?

9 A. Yeah, I think it's actually J [REDACTED], but I
10 think it's J [REDACTED].

11 But I remember at some point having a
12 conversation with J [REDACTED]. I don't have an independent
13 memory of what A [REDACTED] D [REDACTED] looks like, or if I've
14 ever spoken to A [REDACTED] D [REDACTED].

15 Q. So you recall talking to Ivan Young?

16 A. Correct.

17 Q. Ivan Young told you Rickie Slaughter was in
18 the second photo lineup?

19 A. Either Ivan or Jennifer.

20 Q. I'm going to ask the same question with
21 respect to Jennifer anyway.

22 A. Right, but that's what I'm saying. I don't
23 have an independent memory of which one first alerted
24 me to the fact that Rickie Slaughter was in that
25 photo lineup, and I don't have an independent

1 recollection of which witnesses knew that fact or
2 didn't know that fact. I don't know that.

3 The only thing I do know is that I was
4 notified of the existence of Rickie Slaughter in that
5 second photo lineup, and that goes for all seven
6 people that were shown that first photo lineup.

7 I don't know what their response would be
8 to did you or did you not recognize Rickie Slaughter
9 in the second photo lineup. I don't know which one
10 would say yes or no.

11 I know there's at least one of them that
12 said he was in there because that's how I found out
13 about it.

14 Q. I'm going to ask each one, one by one
15 anyway.

16 A. That's fine.

17 Q. Did Ivan Young recognize Rickie Slaughter
18 from the second photo lineup?

19 A. I don't know.

20 Q. Did Jennifer Dennis recognize Rickie
21 Slaughter from the second photo lineup?

22 A. I don't know.

23 Q. Did Jermaun Means?

24 A. I don't know.

25 Q. Did Ryan John?

1 A. I don't know.

2 Q. Did J [REDACTED] P [REDACTED]?

3 A. I don't know.

4 Q. Did A [REDACTED] D [REDACTED]?

5 A. I don't know.

6 Q. Did Destinee Waddy?

7 A. I don't know.

8 Q. All you can say is that at least one of
9 those seven individuals did recognize Rickie
10 Slaughter from the second photo lineup?

11 A. Was that all seven? I think we were at
12 six. But okay. At least one of the people that were
13 shown the first photo lineup recognized Rickie
14 Slaughter in the second photo lineup.

15 Q. And you don't know if it was just one of
16 those seven or if it was two, three, four, five, six,
17 all seven?

18 A. I don't. I'm sure I did then, but as I sit
19 here today, I do not know.

20 Q. Did you meet with all seven -- I know you
21 mentioned Jermaun Means before, but did you meet with
22 all seven of those individuals during that week?

23 A. I don't have an independent recollection as
24 to whether or not we finished our pretrials or not.
25 So by the time he pled, sometimes we do them, you

1 know, the night before or the morning of their
2 testimonies. I couldn't tell you whether or not I
3 actually talked to all seven of them that week.

4 Q. When you had the follow-up conversations
5 with whichever witnesses you pretrialed, was anyone
6 else present?

7 A. On the first setting it would have been
8 Susan Krisko. On the second setting, I imagine
9 Michelle Fleck was there. I don't have a
10 recollection of whether or not she was or wasn't, but
11 it's our practice to do them together.

12 Q. There's nothing -- as far as you're aware,
13 there's nothing in the district attorney's office
14 file that memorializes this meeting, is there? Or
15 these meetings?

16 A. You mean memorializes in the sense of like
17 it was written down so-and-so told me such-and-such?
18 As far as I'm aware, there isn't. There's certainly
19 records in the court that memorialize the fact that I
20 had this conversation.

21 Q. But as far as notes or memos generated by
22 D.A.'s office staff, are you aware of any?

23 A. I am not. I know I didn't generate any.

24 Q. And you're not aware of any other
25 individuals generating memos or notes regarding these

1 meetings?

2 A. No.

3 Q. Are you aware of Detective Prieto
4 generating any notes or reports regarding the second
5 photo lineup after you had this conversation with
6 him?

7 A. Not that I'm aware of.

8 Q. Is there anything in the files that you
9 brought today that discusses this meeting or
10 indicates it took place?

11 A. I didn't look specifically for that, but I
12 can't imagine that there is.

13 Q. As far as you're aware, there aren't any
14 files outside of this stack that the D.A.'s office
15 has access to that memorializes or discusses this
16 meeting?

17 A. As far as I know, there's no record other
18 than the circumstances in which it happened, which
19 I'm sure part of the court record there were motions
20 associated with this and stuff like that where this
21 came up.

22 But as far as I know, there's no, you know,
23 handwritten note, memo that discusses the pretrial or
24 anything like that.

25 Q. Did you ask anyone to memorialize this

1 development?

2 A. No.

3 Q. Did you think it was important enough to
4 memorialize?

5 A. I don't know how to answer that. The
6 answer is no, it didn't seem to be of much moment to
7 me.

8 Q. So looking back at Exhibit 11, let's go
9 back to page 3. In the upper right-hand corner,
10 there are instructions.

11 A. Upper left-hand corner?

12 Q. Upper left-hand corner there are
13 instructions.

14 Number 1 says, "If previously you have seen
15 one or more of the persons in this photo spread,
16 write your initials in the initials space or spaces
17 beside the photo or photos of the person or persons
18 you have seen."

19 Did I read that correctly?

20 A. You did.

21 Q. If you look at the other versions of this
22 photo lineup, in this exhibit as well as Exhibits 13
23 and 14, they have substantially the same
24 instructions; is that correct?

25 A. Correct.

1 Q. There are no initials next to any of the
2 photos in the versions of the second photo lineup
3 that are in Exhibits 11, 13 or 14, are there?

4 A. Let me back up. Actually, there is some
5 instructions about if you haven't seen anyone, to
6 write none of the above.

7 And my understanding is that wasn't done on
8 any of these photo lineups either.

9 Q. The photo lineups in Exhibits 11, 13 and
10 14, they all have no notes in them whatsoever; is
11 that right?

12 A. Correct. There was no notation made on the
13 photo lineups in conformance with the instructions as
14 far as I'm aware.

15 Q. When you spoke to the witnesses about this
16 second photo lineup, you didn't show them the lineup
17 again and ask them to initial it, did you?

18 A. Oh, no. I did not ask them to generate any
19 sort of documentation, no.

20 Q. Did you ask anyone else to do that on your
21 behalf?

22 A. No.

23 Q. Did you ask them specifically if they told
24 Detective Prieto if they saw Rickie Slaughter in the
25 lineup?

1 A. I don't have an independent memory of
2 whether or not I asked that question of them or not.

3 Q. Did you ask anyone to follow up and ask him
4 that question?

5 A. Not that I'm aware of. Not that I recall.

6 Q. We talked about the possibility that in
7 this first pretrial meeting where you found out about
8 the second photo lineup, it may have been both Ivan
9 Young and Jennifer Dennis in the room at the same
10 time, maybe A [REDACTED] D [REDACTED].

11 Did you get the impression these witnesses
12 had spoken about this fact before they talked to you?

13 A. I don't think I can answer that question.
14 They're basically married, so I assume they spoke
15 about everything. But I have no idea, no independent
16 recollection whether or not the two of them had
17 discussed this fact before.

18 Q. Aside from yourself and the witnesses,
19 Ms. Krisko and Detective Prieto, is there anyone else
20 who was aware of these meetings that took place where
21 the witnesses told you about the second photo lineup?

22 A. Well, when you say "aware," is there
23 anybody that I've told this over the years?

24 Q. Yes.

25 A. Okay. Sure. A number of people.

1 Q. Who else?

2 A. Michelle Fleck obviously is aware of this
3 situation. I'm sure there's other deputies in my
4 office I have told this to as sort of a lesson to be
5 learned and what can go wrong in certain cases.

6 I'm pretty confident both Ozzie and Dustin
7 Marcello as well as Doug Herndon, the judge, are all
8 aware of this situation.

9 Q. Which deputies -- do you remember specific
10 deputies, aside from Michelle Fleck, you had this
11 conversation with?

12 A. I don't. I mean, I sat on the floor with
13 12 other deputies that have changed over the years.
14 I'm sure we've had this discussion about this
15 situation in the past.

16 Q. Now, you said this is the first time. This
17 pretrial meeting in roughly late March, 2005, that's
18 the first time you found out Rickie Slaughter's photo
19 was in the second photo lineup?

20 A. Correct.

21 Q. Let's look at Exhibit 19. This document is
22 a pretrial pleading that Rickie Slaughter filed in
23 proper person on March 18, 2005.

24 A. Correct.

25 Q. If we look at page 5, again, those page

1 numbers are at the top. If you look at page 5.

2 A. Okay.

3 Q. Line 8. Mr. Slaughter writes, "There are
4 seven victims in the instant case, all of whom failed
5 to identify this defendant on a prior occasion."

6 Did I read that correctly?

7 A. You did.

8 Q. He also cites two attachments. And if you
9 look at pages 12 to 14 of this document, those
10 attachments are copies of the second photo lineup,
11 correct?

12 A. Correct.

13 Q. Did he file this before or after you had
14 this meeting with the witnesses where they first told
15 you about the second photo lineup?

16 A. Well, I have to assume that he filed it
17 after they told me about the second photo lineup,
18 because I believe that's how the defense found out
19 about it. But it is possible, particularly back in
20 2004, that he could have gotten these records
21 independent of my office.

22 Q. So it's possible he filed this document
23 before you had these pretrial meetings with the
24 witnesses?

25 A. It is possible he filed this. I certainly

1 didn't see it before I had those meetings with the
2 witnesses.

3 Q. During Rickie Slaughter's trial in
4 May 2011, you and Ms. Fleck did not ask any of the
5 witnesses on the stand about the second photo lineup,
6 did you?

7 A. Correct. Or at least I believe so. I
8 mean, the record speaks for itself. That would be
9 consistent with my memory.

10 Q. Now, of the witnesses who identified
11 Rickie Slaughter in court, there are three witnesses
12 who identified him in court. If they identified him
13 off of more than one lineup in this case, that would
14 help bolster the credibility of their
15 identifications, correct?

16 A. Depends.

17 Q. Depends on what?

18 A. Well, I certainly wasn't going to open the
19 door to the second photo lineup in front of the jury.
20 That was more of a mess than it was worth. If the
21 defense wanted to, they were free to.

22 But I chose that -- I don't know that it
23 bolsters it. I believe that it may have opened the
24 door to information which would have been a complete
25 red herring in the case.

1 Q. If there were witnesses who identified
2 Rickie Slaughter in court, but they did not recognize
3 and ID him off the second photo lineup, that would
4 hurt the credibility of their in-court
5 identifications, correct?

6 A. Sure. If they didn't realize that Rickie
7 was in that second photo lineup when they were
8 showing it, then that was something the defense could
9 have crossed on.

10 Q. Let's talk about the witnesses who did not
11 make in-court identifications.

12 A. Okay.

13 Q. If they had identified him, recognized him
14 off the second photo lineup, that would be
15 inculpatory, correct?

16 A. Correct.

17 Q. The State called Ivan Young to testify at
18 trial.

19 A. Yes.

20 Q. Ivan Young provided an in-court
21 identification of Rickie Slaughter?

22 A. I'll believe you. I assume he did.

23 Q. The State also elicited that he previously
24 identified Rickie Slaughter from the first photo
25 lineup?

1 A. I'm sure it did.

2 Q. The State did not ask him about the second
3 photo lineup, correct?

4 A. Correct.

5 Q. The State called Ryan John to testify at
6 trial?

7 A. We must have, yeah.

8 Q. He provided an in-court identification of
9 Rickie Slaughter?

10 A. Yes.

11 Q. The State elicited he previously identified
12 Rickie Slaughter from the first photo lineup?

13 A. Yes.

14 Q. The State also elicited that he previously
15 identified Rickie Slaughter at a prior hearing, which
16 I assume was the prelim; is that right?

17 A. I'll trust you. I have no idea. I
18 certainly wasn't at the preliminary hearing.

19 Q. If you like I can show you the portions of
20 the transcript.

21 A. I'm willing to accept your representations
22 about the record.

23 Q. The State did not ask Ryan John about the
24 second photo lineup, correct?

25 A. I do not believe we did.

1 Q. The State called J [REDACTED] P [REDACTED] to testify at
2 trial, correct?

3 A. I believe we did, yes.

4 Q. He provided an in-court identification of
5 Rickie Slaughter?

6 A. I'll trust you. I assume so.

7 Q. The State elicited he previously identified
8 Rickie Slaughter from the first photo lineup,
9 correct?

10 A. Correct.

11 Q. The State also elicited he previously
12 identified Rickie Slaughter at a prior hearing,
13 which, again, I interpret to mean the prelim; is that
14 correct?

15 A. I would assume so.

16 Q. The State did not ask J [REDACTED] P [REDACTED] about the
17 second photo lineup, correct?

18 A. Correct.

19 Q. The State called Jermaun Means to testify
20 at trial?

21 A. Correct.

22 Q. He did not provide an in-court
23 identification of Rickie Slaughter?

24 A. I have no idea.

25 Q. If you want to look at Exhibit 21.

1 A. I mean, I'm willing to accept that that's
2 true. I assume you're not going to lie to me about
3 it.

4 Q. Let's take a look to be sure. If you look
5 at page 12. Again, that's the page in the upper
6 right. These are quad transcripts, so each of the
7 four transcript pages on this page have their own
8 page numbers.

9 So if we look at page 37, you ask -- and
10 this is at line 5: "Now, I know it's been seven
11 years since you did this photo lineup, do you think
12 you'd have the ability to recognize this person if
13 you saw him again?"

14 Mr. Means eventually answers: "If I seen
15 him right now, probably not, no." Is that right?

16 A. Correct. So you're right, I did not ask
17 him to make an in-court identification.

18 Q. But you elicited that he previously ID'd
19 Rickie Slaughter from the first photo lineup,
20 correct?

21 A. Correct.

22 Q. You did not ask Mr. Means about the second
23 photo lineup, correct?

24 A. I did not.

25 Q. You called Jennifer Dennis to testify at

1 trial?

2 A. I'm sure I did.

3 Q. She did not provide an in-court
4 identification of Rickie Slaughter?

5 A. Okay. I trust you.

6 Q. The defense elicited on cross-examination
7 that she was not able to identify anyone from the
8 first photo lineup.

9 A. Okay.

10 Q. You did not ask Jennifer Dennis about the
11 second photo lineup, correct?

12 A. Correct.

13 Q. Neither you nor the defense called A [REDACTED]
14 D [REDACTED] to testify at trial?

15 A. Correct.

16 Q. Neither you nor the defense called Destinee
17 Waddy to testify at trial?

18 A. Okay.

19 Q. Let's look at an e-mail chain between
20 myself and Glen O'Brien, which is Exhibit 27.

21 Do you know Glen O'Brien?

22 A. I do know Glen O'Brien, yes.

23 Q. Who is he?

24 A. He is a chief deputy district attorney in
25 our special assignments, I think, division.

1 Q. This is an e-mail chain between myself
2 and Mr. O'Brien regarding a subpoena our office
3 previously served on the D.A.'s office.

4 A. Okay.

5 Q. If you look at the bottom e-mail on the
6 bottom of page 2, going on to page 3, I explain I
7 have reason to believe the D.A.'s Office hasn't
8 produced all the documents it had in its possession
9 regarding the second photo lineup.

10 A. I'm sorry, repeat that again. I was
11 reading the e-mail.

12 Q. The topic of the e-mail is whether the
13 D.A.'s Office has produced all the documents it has
14 regarding the second photo lineup, correct?

15 A. Correct.

16 Q. After Glen received that e-mail from you,
17 he reached out to you, correct?

18 A. It appears. I actually have a memory, and
19 I can tell you our e-mail chain only goes back six
20 months because I went looking for the communication
21 about this to know what we discovered before and
22 nobody could answer the question as to what it is,
23 the communication happened.

24 So I'm assuming that this accurately
25 reflects the conversations between you and

1 Mr. O'Brien, and his communications with me, but I
2 don't have an independent recollection.

3 Q. So you don't recall whether Glen reached
4 out to you?

5 A. I recall somebody reached out to me. I
6 don't recall that it was Glen.

7 Q. And then Glen e-mails me back -- and this
8 is the first e-mail on page 2. Glen e-mails me back.
9 He writes, "This was the response from Mark" -- the
10 name is misspelled, but Marc DiGiacomo. Did I read
11 that correctly?

12 A. Correct.

13 Q. And you see there's a response in quotes
14 below that?

15 A. Correct.

16 Q. Did you write that response?

17 A. It seems consistent with something I would
18 have written. I have no reason to dispute Glen's
19 representation that that's what I wrote.

20 Q. What's written there is, "Apparently when
21 the detective created the Jacquan Richards photo
22 lineup, there's a picture of Rickie in a different
23 filler position. No one picked Richards out. The
24 detective didn't impound."

25 Did I read that correctly?

1 A. Correct.

2 Q. What did you mean by "apparently"?

3 A. Well, what it says, apparently that's what
4 happened. Because I don't know how it is that this
5 photo lineup was created or what happened with it.
6 And I don't necessarily trust Detective Prieto's
7 recollection of exactly what went down in front of
8 it.

9 So I was answering the question that was
10 being asked from me, which is this is what apparently
11 happened, that he accidentally put Rickie in there,
12 and that he didn't impound him.

13 And that's my understanding is that none of
14 the documents that were actually shown to the
15 witnesses were ever put into impound. That when I
16 asked him for that document, I don't know where he
17 got it from, but I think that's why it's black and
18 white is that it's a copy of it, not the original
19 color that would have been shown to those witnesses,
20 because as far as I know, nobody kept a record of
21 what happened during those lineups.

22 Q. Your response doesn't indicate that anyone
23 picked Rickie Slaughter out of the second photo
24 lineup, does it?

25 A. I don't know that I was being asked that.

1 Q. Regardless of whether or not you were asked
2 that, your response doesn't indicate that, correct?

3 A. Correct. Nowhere in there does it say that
4 Rickie was picked out by another witness.

5 Q. Is it standard practice for the police to
6 keep or impound the lineups even if a witness hasn't
7 made an identification?

8 A. Well, I guess it would depend on the
9 agency. According to Detective Prieto, that wasn't
10 his practice.

11 Q. Is it a practice of other police officers
12 as far as you're aware?

13 A. I don't know about impounding. That has a
14 very unique connotation in the criminal justice
15 realm. But certainly, I would think that detectives
16 would maintain in some capacity the photo lineups
17 that they've shown witnesses so we could recreate
18 what happened with those witnesses.

19 Q. Let's take a look at a transcript from a
20 December 1, 2009, pretrial hearing regarding this
21 issue, and that's Exhibit 28.

22 A. Okay.

23 Q. Before I get there, you said impounding has
24 a unique meaning. Can you explain what impounding
25 means?

1 A. Impound means that someone actually puts it
2 in an evidence envelope, seals the envelope, puts
3 tape on it, and puts it in the vault. That is --
4 when we use the term impound, that's sort of a term
5 of art that it's a physical piece of evidence that it
6 went to a vault, as opposed to maintaining a record,
7 let's say in a case file or in a records division.
8 That is not impounded.

9 Each agency does it differently. Some
10 agencies will impound disks and phone records and
11 things like that. Some agencies will just maintain a
12 copy in the case file. So it's different.

13 Q. So let's look at Exhibit 28, which as I
14 mentioned, is a transcript from a pretrial hearing on
15 December 1, 2009, in this case.

16 A. Okay.

17 Q. This date was an argument date on pretrial
18 motions, correct?

19 A. Sure.

20 Q. That includes the defense's motion to
21 dismiss the charges based on the police's failure to
22 preserve evidence regarding the second photo lineup,
23 correct?

24 A. I know that came up. I have to look at the
25 transcript to tell you it came up on this particular

1 occasion.

2 Q. Let's look at the paragraph that starts at
3 the end of page 8. The page is in the upper
4 right-hand.

5 A. Okay.

6 Q. Concluding at the end of page 9. This is
7 Mr. McDonald, who is speaking on behalf of the
8 defense. He's talking about the second photo lineup,
9 correct?

10 A. It appears that's what he's talking about.

11 Q. At line 2 of page 9, he says, "We don't
12 know what the results were aside from our client
13 apparently wasn't identified."

14 Did I read that correctly?

15 A. You did.

16 Q. Let's look at page 10, line 17. Starting
17 at line 17, you say the defense is, quote, "Taking a
18 giant leap, first of all, to say Rickie Slaughter
19 wasn't picked out of those photo lineups."

20 Did I read that correctly?

21 A. I went to the wrong line 17.

22 Q. Page 10, line 17. The defense's quote,
23 "taking a giant leap first of all."

24 A. I'm sorry.

25 MS. COUMOU: Page 10 at the top.

1 THE WITNESS: Yeah, I know. I went to
2 page 17.

3 BY MR. BARON:

4 Q. Page 10, line 17.

5 A. Okay.

6 Q. The defense says, quote, "Taking a giant
7 leap, first of all, to say Rickie Slaughter wasn't
8 picked out of those photo lineups."

9 Did I read that correctly?

10 A. Correct.

11 Q. In this statement, you're disputing the
12 defense's claim that none of the victims identified
13 Rickie Slaughter from the second photo lineup,
14 correct?

15 A. That's true.

16 Q. At this hearing, you didn't clarify that
17 none of the victims made an identification to
18 Detective Prieto, did you?

19 A. I'm sorry, I don't understand the question.

20 Q. In this hearing you didn't clarify that
21 when Detective Prieto showed the lineup, the second
22 photo lineup to the witnesses, they didn't tell
23 Detective Prieto they saw Rickie Slaughter there, did
24 you?

25 A. I don't know if they did or they didn't.

1 So no, I certainly didn't tell that.

2 What I said was he's free to cross-examine
3 the detective or the witnesses on what other
4 information he wants to know, but there's nothing
5 that has failed to be preserved.

6 Q. You didn't clarify that, well, we had a
7 pretrial hearing back in 2005, and some of the
8 witnesses at that pretrial hearing actually told me
9 they recall Rickie Slaughter being in that second
10 photo lineup. You didn't tell that -- you didn't say
11 that in court, did you?

12 A. I did not say that in court.

13 Q. You didn't say at this hearing, as you did
14 four months ago -- again, the hearing in March 2019,
15 that the victims themselves told the State Rickie was
16 in the second photo lineup, did you?

17 A. No. I did not tell the Court that.

18 MR. BARON: Do we need to switch disks?

19 Let's take a break and go off the record.

20 THE VIDEOGRAPHER: The time is now
21 11:39 a.m. This concludes digital media one. We are
22 off the record.

23 (A recess was taken from 11:39 a.m.
24 to 11:44 a.m.)

25 THE VIDEOGRAPHER: The time is now

1 11:44 a.m. This is the beginning of digital media
2 number two. We are back on the record.

3 BY MR. BARON:

4 Q. Before the break, we were talking about the
5 December 1, 2009, hearing regarding defense motion to
6 dismiss based on the second photo lineup.

7 A. Uh-huh.

8 Q. Let's look at Exhibit 29.

9 A. Okay.

10 Q. This is an opposition to that motion to
11 dismiss that was filed on November 9th, 2009,
12 correct?

13 A. Correct.

14 Q. You signed this opposition?

15 A. It was electronically signed I assume by my
16 secretary. But yeah, I mean, I was involved in the
17 drafting and filing of this response, if that's the
18 question.

19 Q. Did you personally draft it?

20 A. I would assume so.

21 Q. If you look at the footnotes on page 3,
22 footnote 1, you wrote, "Defendant asserts that none
23 of the witnesses identified Defendant in those photo
24 lineups. That conclusion is speculation on the part
25 of defendant. However, he is free to cross-examine

1 the witnesses on that fact."

2 Did I read that correctly?

3 A. Correct.

4 Q. By writing that conclusion is speculation,
5 you're again disputing the defense's claim that none
6 of the victims identified Rickie Slaughter from the
7 second photo lineup, correct?

8 A. Disputing might be a strong word, but I am
9 certainly not going to concede that the witnesses did
10 not recognize Rickie Slaughter in that second photo
11 lineup.

12 Q. In this opposition, you didn't clarify that
13 there was a pretrial hearing -- pretrial meeting back
14 in 2005 where the witnesses, one or more of the
15 witnesses, told you that they had identified Rickie
16 Slaughter in this lineup, correct?

17 A. Correct. I did not do that.

18 Q. Let's look at a trial transcript for
19 May 18th, 2011. It's Exhibit 23. Let's look at
20 page 18. Again, that's the page at the top right.
21 And these are quad transcripts.

22 So let's look specifically at pages 61 to
23 62 to start. You may want to look at actually page
24 60 on the page before that as well.

25 This is a portion of the trial transcript

1 where the defense -- the defense has asked for the
2 Court to give jury instructions about the second
3 photo lineup, correct?

4 A. I apologize. So you're at page 17 of
5 Exhibit 23, but you're on page 60 of the quad?

6 Q. Yes.

7 A. Okay. Because of the number thing, I was
8 making sure I was in the right spot.

9 Q. Sure.

10 A. Okay. I've read through 61. Do you want
11 me to keep going?

12 Q. This is the portion of the transcript that
13 the defense has asked for jury instructions about the
14 second photo lineup, correct?

15 A. That's correct. They've asked for -- well,
16 they call it jury instructions, but they're asking
17 the Court to comment on evidence, yes.

18 Q. At transcript page 63, line -- transcript
19 page 63, line 8, you say that: The defense could
20 have asked witnesses about the second photo lineup
21 but, quote, "they chose not to ask that question
22 because they were afraid of what the answer would
23 be."

24 Did I read that correctly?

25 A. That's correct.

1 Q. You also say, "The report indicates they
2 didn't pick out Jajuan (sic) Richards," which I
3 assume should be Jacquan Richards. "What it does say
4 is that they did pick out Rickie Slaughter."

5 Did I read that correctly?

6 A. You read it, but that's got to be a
7 misquote because the report does not say that.

8 Q. So you believe you -- what do you believe
9 you said?

10 A. I don't know what I said. Whether I
11 misspoke or if I was mistranscribed, and I know that
12 never happens but, you know, it does happen.

13 What I would have said is it doesn't make
14 any reference to Rickie Slaughter. At least that's
15 the thought I was trying to convey, is that they're
16 free to ask the witnesses those questions. It's not
17 answered by this report. They can ask the witnesses.

18 Q. When you say -- would it be fair to say
19 that in this portion of the transcript you're again
20 disputing the notion that none of the victims
21 identified Rickie Slaughter from the second photo
22 lineup?

23 A. I'm disputing the notion that none of them
24 recognized Rickie Slaughter in the second photo
25 lineup. That is -- my firm fast belief was that if

1 they had asked the questions -- and I believe whoever
2 wasn't doing their job, they know what the answer to
3 those questions were, they would have pretrialed
4 these witnesses themselves and found out what the
5 answers to those questions were.

6 My belief is the reason they didn't ask is
7 they didn't like what the answer was going to be,
8 which was at least as to some, if not all of them,
9 that the answer was going to be, yeah, we saw a
10 second photo lineup. He was looking for the second
11 suspect. We recognized Rickie Slaughter was in that
12 lineup, but that wasn't who he was asking about.

13 That's what I believed the answer from the
14 witnesses would be, and that's why I believe Mr. Fumo
15 and Mr. Marcello didn't ask the questions of the
16 witnesses.

17 They took the position that the witnesses,
18 and that's the evidence they thought they had, was
19 that the witnesses didn't make the ID. They didn't
20 ask those questions for a reason because they knew
21 the reason was bad for them.

22 Q. In that answer you just gave you said the
23 answer was going to be at least as to some, if not
24 all, that they recognized Rickie Slaughter in the
25 second photo lineup.

1 A. Where did I say that?

2 Q. In the answer you just gave in this
3 deposition. I want to clarify, your testimony today
4 is you know at least one witness told you they
5 recognized Rickie Slaughter?

6 A. As I sit here today, yes.

7 Q. And you can't tell me today that all of
8 them recognized Rickie Slaughter?

9 A. As I sit here today, I cannot.

10 Q. You also can't say that some of them did?

11 A. I do not have an independent recollection
12 of how many of them did or did not. I just don't
13 know that fact anymore.

14 Reading this transcript makes me believe
15 there's more than one of them. Just from reading the
16 transcript, this suggests to me that I know, back
17 then, how many there were. And I would imagine that
18 I would have known back then exactly what every
19 answer to every one of those witnesses would have
20 been.

21 Q. Does this portion refresh your recollection
22 today about a number?

23 A. I can't tell you how many there were.

24 Q. Is there anything in the file or anything
25 else we could show you that would refresh your

1 recollection about the exact number of witnesses who
2 told you they recognized Rickie Slaughter from the
3 second photo lineup?

4 A. No.

5 Q. In this portion of the trial, you don't
6 clarify that some of the witnesses actually told you
7 in a pretrial hearing in 2005 that they could -- at
8 least -- let me rephrase that. Sorry.

9 In this portion of the trial, you don't
10 clarify that at least one of the witnesses told you
11 at a pretrial hearing in 2005 that they recognized
12 Rickie Slaughter from the second photo lineup, did
13 you?

14 A. I did not.

15 Q. Aside from the transcript portions and the
16 pleadings that we've just been discussing, did you
17 ever have any conversations with Rickie Slaughter
18 personally or with his defense attorneys, on or off
19 the record, about the second photo lineup?

20 A. As I sit here today, I don't have an
21 independent recollection of it. I will say that at
22 the March hearing this year, Judge Herndon appeared
23 to have information about this subject matter. And
24 the only way that could have happened is if the
25 defense attorneys were part of that conversation.

1 So do I believe that I've had conversations
2 with them about it? I do. But I don't have any
3 independent recollection of what those conversations
4 were when they occurred.

5 Q. What specifically in the March hearing did
6 Judge Herndon say that makes you think he has some
7 recollection of this?

8 A. He started talking about when -- you were
9 there. We were having an argument, and Herndon
10 started talking about his recollection of the issue
11 related to the second photo lineup.

12 Now, there may be transcripts out there
13 that he had reviewed on the record, or he had some --
14 but it just made me think, like, it was pretty
15 impressive that Judge Herndon would have remembered
16 this case from 15 years ago and this little issue
17 related to it.

18 Q. Is it possible he remembered that based on
19 the pleadings that we filed?

20 A. It's possible. Although I don't recall
21 exactly what was in those pleadings, and I wouldn't
22 have written them.

23 But my recollection, and I don't have an
24 independent recollection, but my impression was that
25 both Ozzie and Dustin, the trial attorneys

1 themselves, were aware that it was an inculpatory
2 piece of information had they asked the witnesses,
3 and that's why they chose not to do it.

4 Q. Do you recall any conversations with Ozzie,
5 that's Ozzie Fumo, and Dustin, Dustin Marcello, do
6 you recall any conversations with them, on or off the
7 record, where you told them at least one of the
8 witnesses told you Rickie Slaughter -- at least one
9 of the witnesses told you that they identified Rickie
10 Slaughter off the second photo lineup?

11 A. I don't have an independent recollection.
12 My recollection is that I never specifically provided
13 that inculpatory information from the defense on
14 purpose.

15 Q. Now, you agreed before it would be
16 inculpatory information as to the witness, or witness
17 who identified Rickie Slaughter off the second photo
18 lineup, correct?

19 A. Correct.

20 Q. And it would be exculpatory information
21 with respect to any witnesses who did not identify
22 Rickie Slaughter from the second photo lineup,
23 correct?

24 A. Correct.

25 Q. I just asked you about conversations with

1 Mr. Fumo or Mr. Marcello. Do you recall any
2 conversations that you had with any other of the
3 defense attorneys in this case -- and I'll name Susan
4 Bush, Patrick McDonald, and Paul Wommer. Any
5 conversations with them on or off the record about
6 these pretrial meetings with the witnesses regarding
7 the second photo lineup?

8 A. The only one I can recall is the one with
9 Paul Wommer years ago. I don't even remember Susan
10 Bush and Patrick McDonald being involved in this case
11 independently, other than the transcripts I've just
12 seen.

13 I do recall -- and maybe I was in the case
14 longer than I thought I was, or maybe there was a
15 trial date that got moved and Rickie pled on the
16 second trial date, but I recall handing Paul Wommer
17 in a courtroom the second photo lineup and not the
18 ones that are portrait. I remember just being in
19 possession of the landscape photo lineup and handing
20 that to Paul Wommer, and having a discussion about
21 the fact that his client was in position number 4.

22 Q. Did that conversation include the
23 information that at least one of the witnesses
24 personally identified Rickie Slaughter and told you
25 that at a pretrial meeting?

1 A. I don't believe so, no. I don't believe I
2 disclosed that until subsequent to the trial.

3 Q. At the time, did you tell Mr. Wommer that
4 at least one and perhaps more of the witnesses saw
5 this lineup and did not identify Rickie Slaughter
6 from it?

7 A. That was a compound question. I provided
8 them to him and explained to him his client was in
9 the photo lineup shown to Jacquan Richards. Both
10 Mr. Wommer and Rickie Slaughter took that to mean
11 that nobody picked Rickie out of the photo lineup.

12 I don't think I ever specifically said to
13 them nobody picked him out. They interpreted the
14 police report in the same manner that everybody else
15 interpreted the police report, which is nobody picked
16 out Rickie Slaughter from those photo lineups.

17 I don't recall that I ever specifically
18 told them that, but it was clear that that was their
19 understanding.

20 Q. Did you ever specifically tell
21 Mr. Slaughter himself, or any of his defense
22 attorneys, that there's a second photo lineup, and at
23 least one, if not more, of the witnesses did not
24 identify Rickie Slaughter from that second photo
25 lineup?

1 A. In those words, no. But that was assumed
2 by the parties.

3 Q. Did you ever specifically tell
4 Mr. Slaughter himself, or any of his defense
5 attorneys, that there was a pretrial meeting you had
6 with the witnesses regarding their ability to
7 identify Rickie Slaughter from the second photo
8 lineup?

9 A. Not that I'm aware.

10 MR. BARON: This would be a good time to
11 take our lunch break, if that's all right.

12 Let's go off the record.

13 THE VIDEOGRAPHER: The time is now
14 11:59 a.m. We are off the record.

15 (A recess was taken from 11:59 a.m.
16 to 1:06 p.m.)

17 THE VIDEOGRAPHER: The time is now
18 1:06 p.m. We are back on the record.

19 BY MR. BARON:

20 Q. Before the break we were talking about
21 pretrial meetings that you had with the witnesses
22 back in 2005.

23 A. Okay.

24 Q. Did you have additional -- well, let me
25 back up.

1 Mr. Slaughter took a plea and then
2 ultimately the conviction was vacated and went to
3 trial.

4 A. Correct.

5 Q. During that period after this conviction
6 was vacated and before May 2011, did you have
7 additional pretrial meetings with the witnesses?

8 A. I'm sure I would have. I don't have an
9 independent recollection, but, you know, it's
10 standard practice to meet with the witnesses before
11 trial.

12 Q. Would that have been just in the weeks
13 leading up to the May 2011 trial, or would you have
14 had additional interviews with them in '09 or 2010?

15 A. You know, the way it still works, the State
16 works, is you get trial dates, they get vacated.
17 Sometimes we're pretrialing them beforehand.

18 So I mean, any of the dates I give you, I
19 would assume that I would have met with witnesses
20 within the week or two before any particular trial
21 date. There may have been more than one of them. So
22 I don't know how many times I would have talked to
23 them.

24 Q. During any of those pretrial meetings from
25 2009 on, did you discuss the second photo lineup with

1 the witnesses?

2 A. I'm sure I would have, but I don't have any
3 recollection of it.

4 Q. Would anyone else have been there?

5 A. I would assume -- I'm not sure that
6 Michelle Fleck was my co-counsel the whole time. So
7 whoever my co-counsel is I would assume was there. I
8 can't guarantee it.

9 Q. Would there have been a D.A. investigator
10 there?

11 A. There may or may not have been.

12 Q. Any police officers present?

13 A. Unlikely.

14 Q. Would you have interviewed all seven of the
15 witnesses I listed before? I can list them again
16 since we're after the break.

17 A. No. The other one I believe, and I believe
18 it's Jermaun Means. I recall there being a witness
19 who didn't want a pretrial.

20 I'm not sure if that's Mr. Means or not.

21 But my recollection would be is that Mr. Means was
22 less than willing to show up for pretrials, which are
23 purely voluntary on the part of the witnesses.

24 So I don't know that I have ever had a
25 conversation with Mr. Means that did not happen while

1 he was on the stand.

2 Q. But for the other six witnesses who were at
3 the home or in the vicinity at the time, you don't
4 remember specifically if you had any pretrial --

5 A. Anyone I call I would have talked to
6 beforehand.

7 Q. But you don't have a recollection of the
8 substance of those meetings?

9 A. No. I mean, other than we went over the
10 case and what their testimony would be. I mean, the
11 only thing that really stands out about me is how I
12 learned about the second photo lineup.

13 Q. But do you remember the substance of any
14 conversations you had with any of those witnesses
15 from '09 to 2011 about the second photo lineup?

16 A. No.

17 Q. Did you or anyone else take any notes
18 during those pretrial meetings?

19 A. No. Or I can say I didn't. I have no idea
20 if anybody else would have taken notes.

21 Q. Did you or anyone else write any memos
22 corresponding to those pretrial meetings?

23 A. I did not. I don't know about anybody
24 else.

25 Q. So you spoke before about Kenny Marks.

1 A. Correct.

2 Q. So let's look at Exhibit 30. This is a
3 copy of the second photo lineup. It has notations on
4 it. It's the same as the version of the second photo
5 lineup on page 3 of Exhibit 11, aside from the
6 writing; is that correct?

7 A. Yeah. Which would mean I was wrong on my
8 dates of when the pretrial happened, because Kenny
9 Marks signed this. There must have been a trial date
10 sometime prior to the one that Rickie pled on.

11 Q. So before you had said that this pretrial
12 meeting would have been in March of 2005?

13 A. Well, I said it was before the trial date.
14 I thought there was only one in which he pled, but it
15 might have been before that.

16 In fact, it had to be before that because
17 Krisko asked me to do the case with her while I was
18 still a gun crimes member deputy. I was not a gun
19 crimes member deputy in March of '05.

20 Q. So does looking at this refresh your
21 recollection any more about the meeting that you had
22 with Ivan Young and potentially other people where
23 you first learned about the second photo lineup?

24 A. Yes. And my guess would be is that Kenny
25 Marks would have been one of the witnesses we brought

1 in for the first set of pretrials, and he would have
2 happened after we obviously talked to Ivan and
3 Jennifer, and if we talked to A [REDACTED]. I don't even
4 remember that. He would have occurred sometime at
5 the end of those pretrials, because he was sort of a
6 late sort of addition as to who he was, what he might
7 have relevance to in this particular case.

8 And I think we learned about his
9 existence -- I don't remember exactly. I thought it
10 came from one of the witnesses.

11 Q. But your conversation with him would have
12 been roughly the same week as your conversation with
13 Ivan Young where you first learned about the second
14 lineup?

15 A. Roughly that time period. I would say the
16 same month.

17 Q. So we've already gone over the date, it
18 says 12/10/04.

19 A. Correct.

20 Q. And the initials. To me that looks like
21 KM. Is that correct?

22 A. It looks like -- I would call that a
23 signature, not initials. But he put it on the
24 initial line, so yeah.

25 Q. Corresponds to Kenny Marks, though?

1 A. If that's the neighbor that lives across
2 the street that sold the car to Rickie Slaughter,
3 then yes, if that's the guy. I think that's the guy.

4 Q. I apologize if I asked you this before, but
5 have you seen any other versions of this lineup with
6 any handwriting on it aside from this?

7 A. No. In fact, I was present when this
8 handwriting was put on it, I believe.

9 Q. But you've never seen a copy of the second
10 photo lineup aside from this copy that has
11 handwriting or notations on it?

12 A. Not to my memory, no.

13 Q. Kenny Marks was involved in this case
14 because Rickie Slaughter bought a car from him and
15 then returned it to him a couple of months later; is
16 that correct?

17 A. I remember it had something to do with a
18 car and a car title. I remember there being a car
19 title that may or may not have been signed by Rickie
20 Slaughter. That's how he had a tie to this
21 neighborhood.

22 But that's really all I remember. I don't
23 remember the exact specifics of what the transaction
24 was.

25 Q. You found out about Kenny Marks through

1 Ivan Young; is that right?

2 A. I guess that's how I would have found out
3 about him. Theoretically, it could have been
4 Ryan John. I believe, as I sit here today, and my
5 independent recollection of this would be we learned
6 that there was a neighbor that may have had contact
7 with Rickie Slaughter at a time period, and I believe
8 that had to come from the witnesses. I don't believe
9 there was a police report that informed us of that
10 information.

11 Q. And you recall that at some point Young,
12 Mr. Young, realized that he had actually seen Rickie
13 Slaughter in the neighborhood before the home
14 invasion took place?

15 A. I don't independently recall that, but it
16 does sound familiar.

17 Q. Let's look at Exhibit 22. And specifically
18 let's go to page 7, transfer page 18. And this is a
19 transcript from the trial of May 17th, 2011.

20 A. Okay.

21 Q. So this is Mr. Marks testifying. He says
22 line 8, quote, "Me and Ivan" -- presumably Ivan
23 Young -- "were actually outside of the house talking
24 and he" -- presumably Slaughter -- "pulls up and he
25 walks over to me," end quote. And they have a

1 conversation.

2 Did I read that correctly?

3 A. Sorry, you said -- give me the line again.

4 Oh, line 18 on page 18?

5 Q. Line 8 at page 18. I'm sorry, you're
6 right, 18, I apologize.

7 A. Okay. Yeah, that seems to be what
8 Mr. Marks is saying.

9 Q. So Ivan Young had seen Rickie Slaughter in
10 the neighborhood before the home invasion took place?

11 A. Well, that's according to Mr. Marks, yes.

12 Q. When you showed the lineup in Exhibit 30 to
13 Kenny Marks, you were trying to get Mr. Marks to
14 identify Rickie Slaughter, correct?

15 A. I was trying to see if he could identify
16 Mr. Slaughter.

17 Q. So you would have interviewed him on
18 December 10, 2004; is that correct?

19 A. Yeah.

20 Q. And that was a pretrial meeting to discuss
21 his anticipated testimony?

22 A. I don't know if I would call that
23 necessarily a pretrial, because I don't know that we
24 knew who Kenny Marks was and what Kenny Marks had to
25 say.

1 My recollection of this is that someone
2 brought up Kenny Marks may have seen Rickie Slaughter
3 in the neighborhood previously. And we called in
4 Kenny Marks to see did he have any relevant
5 information.

6 So I don't know if I would call that a
7 pretrial or if I would call that an interview or what
8 I would call it. But we didn't know who Kenny Marks
9 was or what he had to say, my recollection, before he
10 walked in the door.

11 Q. Who was present, aside from you and Kenny
12 Marks, for this meeting?

13 A. My best guess would be Susan Krisko was
14 present. There may or may not have been an
15 investigator in there, but I don't have any
16 recollection.

17 Q. Besides from just whether Mr. Marks had
18 seen Rickie Slaughter before in a car transaction, do
19 you remember anything else about the substance of
20 that conversation?

21 A. No. I remember that we sort of called him
22 blind to see -- we may have had a copy of the title
23 already somehow. It seems to me like there was a
24 title floating out there that had Rickie Slaughter's
25 name on it, and we were wondering how that was

1 possible or where that came from. I don't really
2 remember.

3 All I remember is that Kenny Marks came to
4 the office. We sat down and talked to Kenny Marks,
5 and he explained he knew who Rickie Slaughter was.

6 Q. The version of the lineup that you showed
7 Kenny Marks, that was in black and white?

8 A. Yeah. The scan I gave you was my scan of
9 that.

10 Q. Where is the original?

11 A. I'm not sure. Well, the original got
12 admitted at trial. It's at trial. If not, there's
13 just an electronic copy that remains. I don't know
14 that there is an original that still exists. I don't
15 know.

16 Q. I believe you testified before you showed
17 him that particular lineup because that's what you
18 had with you at the time; is that correct?

19 A. Yeah. I don't recall why it is I picked
20 that lineup to show him. My guess is that was a
21 blank lineup that I had available to me. The rest of
22 the lineups we had had writing on them. So that was
23 the blank one I had, and that's the one I showed him.

24 Q. You would have had copies of the first
25 photo lineup with you during that meeting?

1 A. Not my copies. I would have had the signed
2 copies that were signed by other witnesses. I don't
3 know that -- theoretically, I did have it, but I
4 don't have an independent memory of having a blank
5 copy of the first photo lineup. I think what was
6 submitted to us were the filled out versions.

7 Q. You could have let a D.A. investigator do
8 this meeting without you present, correct?

9 A. I could have, sure.

10 Q. But you personally showed the one up to
11 Kenny Marks?

12 A. My recollection is that I was the one who
13 showed him the photo lineup.

14 Q. Is that usual for you in your cases?

15 A. No. As I sit here today, I can't think of
16 another occasion where I've shown the photo lineup.
17 But in this particular case it was somebody who knew
18 Mr. Slaughter. I was just looking to see if this
19 was, in fact, the Mr. Slaughter he was talking about.

20 Q. Now, aside from that lineup showing, that
21 we just talked about, were you present for any other
22 lineup showings in connection with Rickie Slaughter's
23 case?

24 A. Not that I'm aware of.

25 Q. I would like to change topics and just talk

1 briefly about alibis.

2 A. Okay.

3 Q. If a witness claims an alibi, you want the
4 police to thoroughly investigate that alibi?

5 A. Ideally, yes.

6 Q. You want the police to interview witnesses
7 to verify or disprove the alibi?

8 A. Yes.

9 Q. Is it helpful from your perspective if the
10 police pressure a witness to make false statements
11 regarding an alibi, is it?

12 A. No. It's not helpful.

13 Q. If an alibi is valid, you wouldn't
14 prosecute the suspect, correct?

15 A. If it raised doubt in my mind as to whether
16 or not he was a perpetrator, I would not prosecute
17 the suspect.

18 Q. Do you recall when the home invasion at
19 issue in this case took place?

20 A. Do you mean time of day?

21 Q. Yes.

22 A. I believe the dispatch was 7:11 p.m.

23 Q. So let's look at Exhibit 33. This document
24 is a police report generated in connection with this
25 case. And let's look at page 2.

1 A. Uh-huh.

2 Q. Do you see about four rows down it lists
3 date slash time, and then states 6/26/04 slash 1911;
4 is that right?

5 A. Yes, it does.

6 Q. Fair to say there may be other police
7 reports generated in this case that similarly state a
8 date slash time of 6/26/04 slash 1911?

9 A. My guess would be every police report in
10 North Las Vegas would have that date and time for an
11 incident. That's the way their system worked, my
12 understanding.

13 Q. When the report says date slash time
14 6/26/04, 1911, what does that mean to you?

15 A. That's the date and time of the incident.

16 Q. What -- does it correspond with any
17 particular moment during the incident?

18 A. I don't have enough knowledge of the way
19 North Las Vegas does it. It was my impression,
20 because there's a police report that says we were
21 dispatched at 7:11 p.m., that that's the time the
22 officers were dispatched.

23 Q. But based on this particular notation in
24 this police report, that could be the time the
25 incident started?

1 A. I would not believe that that would ever be
2 the time that the incident started, the way North
3 Las Vegas works.

4 Q. It could be the time the incident ended?

5 A. I don't believe so. I believe that that
6 would be the time of dispatch.

7 Q. Could it be the time that the responding
8 officers got to the scene?

9 A. I would think that's unlikely.

10 Q. So you believe that would be the time of
11 dispatch?

12 A. I believe that's -- in these old reports,
13 that's the time of dispatch. I believe that those --
14 and I could be wrong, but my understanding of the way
15 these old reports were is that's automatically
16 generated by the North Las Vegas system. So when the
17 CAD system generates it, it populates this as the
18 event time and the date and time of incident.

19 Q. When you say dispatch, can you just clarify
20 what exactly you mean by that?

21 A. Yeah. When someone calls 911, someone
22 generates an event number associated. It
23 automatically generates a time, and that time goes in
24 the police report.

25 Q. Does this police report specifically state

1 1911 is the time that the, at least one of the
2 victims called 911?

3 A. That doesn't say it. There's another
4 report that says we were dispatched, the officers
5 were dispatched at 17 -- or 1911.

6 Q. Is it possible for the police to be
7 dispatched at a time later than when the 911 call
8 comes in?

9 A. Sure. Officers are dispatched days, weeks,
10 months later.

11 But my understanding of the way the North
12 Las Vegas system works was that when it generates an
13 event number, that number is automatically generated
14 from the CAD. I could be wrong, but I believe that's
15 the way it happens.

16 Q. I'm sorry, when you say CAD, can you
17 explain what CAD is?

18 A. Computer-aided dispatch. So when the 911
19 calls in and the caller answers, it automatically
20 generates an event number associated with that
21 particular call, and it automatically generates a
22 date and time that the call came in.

23 Q. Let's look at Exhibit 35.

24 A. Okay.

25 Q. This is a document that we received from

1 the North Las Vegas Police Department in 2018 in
2 connection with the subpoena we issued in this case.

3 Have you seen this document before?

4 A. I don't have an independent recollection of
5 seeing this document before.

6 Q. Is that -- as far as you're aware, was that
7 document in your file in connection with Rickie
8 Slaughter's case?

9 A. I don't know. I don't believe it's in the
10 electronic file I have now. But this is what I'm
11 talking about. This is a CAD that generates the
12 event, the officer assigned, the location, and the
13 date and time that's received.

14 Q. Do you recall turning this document over to
15 the defense?

16 A. Well, if I never had it, I wouldn't have
17 turned it over. These are public records from North
18 Las Vegas. They could have gotten those. But I
19 don't know. I have no idea if I turned it over or
20 not; if I had it or not. It certainly doesn't have
21 any additional information that I didn't already
22 know.

23 Q. You see on this document there are two
24 entries that say time received. One is toward the
25 top of that first chunk of information, one is toward

1 the bottom of that first chunk.

2 A. I see one. Where's the second one? I see
3 the one on the left-hand corner -- oh, they do not
4 say the same thing. Time received 1911, time
5 received 1911.

6 Q. Does that mean that the North Las Vegas 911
7 dispatcher received the phone call from Metro at
8 7:11 p.m.?

9 A. You say from Metro.

10 Q. Let me back up. The call was originally
11 placed to Metro and they transferred it to North
12 Las Vegas. Do you recall that? The 911 call Jermaun
13 Means made in this case.

14 A. There was multiple, I think, 911 calls
15 made.

16 Q. Let's focus on Jermaun Means' 911 call. Do
17 you recall that going to Metro and being transferred?

18 A. No.

19 Q. In any event, time received 1911 would mean
20 the time that North Las Vegas picked up the phone
21 would have been 7:11 p.m.; is that right?

22 A. I don't know. I don't know if it would
23 track the time that Metro picked up the phone or the
24 time that North Las Vegas picked up the phone. I
25 don't know that answer.

1 Q. But it's probably one of the two?

2 A. My guess is, yeah, that's generated at the
3 time the call is originally generated.

4 Q. Do you see where it says T slash L 5 min
5 ago. And this is in the text toward the bottom.

6 A. Yep.

7 Q. Do you know what that means?

8 A. I have no idea what the T slash L 5 minutes
9 ago, but I would assume that means the suspects left
10 five minutes ago. But I don't know what T slash L
11 stands for.

12 Q. Time lapsed, would that make sense?

13 A. Okay. I'll buy that. If the time lapsed
14 was five minutes ago.

15 Q. Do you recall Mr. Means' 911 call was
16 introduced as evidence in Rickie Slaughter's trial?

17 A. I have no independent recollection of that,
18 but I imagine it would have been.

19 Q. I'll represent to you it was. If you like,
20 I can show you the transcript.

21 A. No, no. I mean, I accept your
22 representations. I would think that would be
23 something that gets admitted at the trial.

24 Q. I'll also represent to you that at the one
25 minute 38 second mark of the 911 call, the audio

1 file, the dispatcher asked Mr. Means how long ago
2 this happened, and Mr. Means responds about five
3 minutes ago.

4 If you like I can play that for you.

5 A. No. I believe you.

6 Q. Now, I know we were saying we're not sure
7 if 7:11 is when -- and by the way. Let me back up.

8 On the phone -- on the audio, you can hear
9 the Metro dispatcher presumably talking to the North
10 Las Vegas dispatcher in transferring the call.

11 A. Okay.

12 Q. So I know we were not sure whether 7:11 is
13 when Metro picked up the phone or when North
14 Las Vegas picked up the phone. Let's just assume
15 right now it's when North Las Vegas picked up the
16 phone. And let's say that's exactly seven hours
17 eleven minutes and zero seconds.

18 A. Okay.

19 Q. And Mr. Means one minute and 38 seconds
20 into that call says that the incident took place
21 about five of minutes ago. So I'm just doing a
22 little math here. 7:11 plus one minute 38 seconds
23 would be 7:12:38, five minutes before that would be
24 7:07:38.

25 Does that seem to check out to you?

1 A. Your math seems to be accurate to me. I
2 think you're making a number of assumptions to get to
3 that number. But sure, your math seems accurate.

4 Q. And let's do a little bit of math again.
5 Let's assume North Las Vegas picked up the phone at
6 7:11:59 seconds. Five minutes -- if we do the same
7 math, add a minute and 38 seconds, subtract five
8 minutes precisely, that would put us at 7:08:37
9 seconds; is that right?

10 A. That's a lot of math for a lawyer, but it
11 sounds right.

12 Q. Now, based on Exhibit 35, the report that
13 we're looking at, says time received 1911.

14 Based on the content of the 911 call, the
15 time at which Mr. Means said they left about five
16 minutes ago, putting that all together, that suggests
17 that the incident took place about -- that the
18 suspects left about 7:08 p.m.

19 Do you agree with that?

20 A. That is an interpretation you can take, but
21 I would disagree with you that you could get that
22 precise in this situation.

23 Q. It depends on whether Mr. Means is accurate
24 when he says about five minutes ago, right?

25 A. Yeah. Witnesses that are involved in a

1 traumatic event, time periods to them are -- the only
2 thing you can be sure is there was some delay between
3 the incident and when he called. What that delay is,
4 I wouldn't rely on Mr. Means. Five minutes, five
5 seconds, in that type of situation I would not rely
6 upon his description of how long it was between the
7 time the witnesses -- or the suspects left and the
8 time that they actually were able to dial 911.

9 That's just not something that I think any human
10 being in that situation has the capacity to describe.

11 Q. Generally speaking, the witness is going to
12 try to get to the phone as soon as they can?

13 A. Not always. You have to remember that
14 these people were tied up. That they had bleach
15 poured on them. That there was a time period where
16 people left. Whether or not they waited around in
17 order to make sure there was nobody left there, I
18 mean, that's just too many variables there to say
19 that a witness, the first thing they're going to do
20 is run to 911.

21 I mean, my recollection is some guy ran all
22 the way down the street before he called 911. That
23 is something that is highly variable in criminal
24 cases, that there is no hard and fast rule as to what
25 people are going to do and how they're going to

1 react.

2 Q. Would you agree with me that if Means was
3 precisely accurate when he said five minutes ago, he
4 could deduce the suspects left at 7:08, correct?

5 A. If he was not only precisely accurate, but
6 also talking about the minute and 38 seconds he'd
7 spent on the phone. Maybe that he's saying that it
8 was five minutes before I dialed the number. So I
9 won't even give you that. I mean, that's such a
10 highly variable situation that I'm not willing to
11 concede that that is true.

12 Q. The dispatcher doesn't ask him how long ago
13 before you called 911 to the suspects. And I can
14 play the tape for you if you like.

15 A. I'm sure they don't. But I certainly know
16 that witnesses answer questions not necessarily in
17 precise answer to the question being asked to them.
18 That happens. You're a lawyer. That happens every
19 day.

20 Q. Maybe it's even happened in this
21 deposition.

22 A. It probably has.

23 I know that witnesses have a tendency to
24 repeat information that they believe they're being
25 asked, and it may not be exactly what they're being

1 asked. That happens all the time, and I guarantee
2 you it's happened today.

3 Q. But if Mr. Means is responding precisely to
4 the dispatcher's question and is precisely accurate
5 about five minutes, you would agree with the 7:08
6 math; is that right? 7:07 to 7:08?

7 A. 7:07 to 7:08? Yes, if at a minute-38
8 Mr. Means is thinking to himself all right, I've
9 spent a minute and a half on the phone with you, and
10 it was about three and a half minutes before I called
11 911, I'm going to go with about five minutes, then
12 your math is correct.

13 I don't buy that is a real world example.
14 I think that Mr. Means was saying there's some lag
15 and it's a number of minutes, which is not seconds,
16 it's minutes. So there is a significant time lag
17 between the time the suspects left and the time he
18 called 911.

19 Q. Are you aware of any other evidence in this
20 case that's more probative of precisely when the
21 suspects left the scene than the evidence that we've
22 just been referring to?

23 A. Oh, I don't know that there's any evidence
24 that is going to precisely establish when the
25 suspects left the scene. I mean, there's other

1 evidence of Rickie trying to manufacture his alibi
2 backwards.

3 But no, I don't think there's anything that
4 will precisely tell you when it is the suspects left
5 the scene.

6 Q. Now, at the end of the trial, do you recall
7 the defense wanted to argue in its closing that the
8 911 call came in at 7:11 p.m.?

9 A. That sounds familiar to me.

10 Q. Let's take a look at Exhibit 26, and this
11 is the transcript from May 20, 2011, of the trial.
12 Let's look at page 22. And the second transcript
13 page is going to be 77.

14 Now, I'm not going to read this entire
15 colloquy into the record, although I can if you would
16 like. But let me just give a summary and ask you if
17 you think I'm accurately describing this colloquy.

18 The defense wanted to argue in closing that
19 the 911 call came in at 7:11. You objected. The
20 Court sustained your objection.

21 You said that the defense could say it was
22 about 7:00 o'clock. And ultimately the defense told
23 the jury in closing the suspects left about 7:00
24 o'clock, and the witnesses called 911 approximately
25 after 7:00 o'clock.

1 Do you agree with that characterization?

2 A. Yes.

3 Q. Now, on page 79, line 8, you say -- you
4 said, quote, "There is a dispatch report that shows
5 the time the call was transferred from Metro to
6 North Las Vegas."

7 Did I read that correctly?

8 A. Page 78?

9 Q. Sorry, page 79, line 8.

10 A. Line 8, yeah. Clearly Mr. Marcello has
11 that CAD.

12 Q. Well, that's you saying there is a dispatch
13 report that shows the time the call was transferred
14 from Metro to North Las Vegas. Did I read that
15 correctly?

16 A. Yes. But if you keep reading on to page
17 80, it says I'm getting it off the call itself. So
18 it's my belief that he has the records you showed me
19 and he's showing it to me in the courtroom. Because
20 what's happening here is he wants to make an argument
21 about facts not in evidence before the jury. And
22 those -- they could have proved that up. They had an
23 ability to prove it up. They chose not to for
24 whatever reason to prove that up.

25 And so my objection was, hey, there's no

1 evidence in front of this jury that that call was
2 made at 7:11. This is -- my guess is prior to
3 closing, right? This is after closing.

4 Q. It's right before the defense closing.

5 A. Right. So it's after the original close in
6 the case, right? And now the defense wants to get
7 up and basically reopen evidence, and that's not
8 appropriate, so I object to it.

9 Q. But when you said there is a dispatch
10 report that shows the time the call was transferred
11 from Metro to North Las Vegas, what report were you
12 referring to?

13 A. My guess is the one you previously showed
14 me, and my guess is that Mr. Marcello had it. We
15 didn't.

16 Q. So it would have been a document --

17 A. Whatever the prior exhibit was.

18 Q. A document that was either Exhibit 33 or
19 substantially similar to Exhibit 33; is that right?
20 At least as far as where it says date, time, 6/26/04;
21 1911.

22 A. Not 33. 33 is the police report.

23 Q. So it's not the police report that you're
24 referring to there?

25 A. No. I'm talking about the one you just

1 showed me.

2 So back in this day, defense attorneys
3 would send a request off to North Las Vegas for
4 whatever documents they wanted associated with the
5 case. North Las Vegas wouldn't tell us about it.
6 They would send it to him.

7 So my guess is that Mr. Marcello had this
8 piece of paper in his hand, and is saying I want to
9 represent.

10 And I'm telling the Court, well, yeah, he's
11 got a CAD that says that's the time, but that's not
12 in evidence, and you don't get to argue things that
13 aren't in evidence.

14 Q. But you -- you specifically are saying
15 there's a dispatch report. And so my question to you
16 is when you said that, what were you referring to?
17 Were you referring to that Exhibit 35, or were you
18 referring to some other document?

19 A. My guess is that this is what I was
20 referring to. But I don't have an independent
21 recollection of this. But just reading the way that
22 that went back and forth, the way I'm saying there is
23 a dispatch report that says X, Y and Z, my guess is
24 that that's what Mr. Marcello is referring to the
25 Court to try to convince the Court to allow him to

1 argue 7:11.

2 And I'm saying, hey, that is not in
3 evidence. That doesn't qualify. You don't get to
4 talk about that in your closing argument because you
5 didn't put it into evidence.

6 Q. Do you remember seeing Mr. Marcello holding
7 the document in Exhibit 35 at the trial?

8 A. I don't have -- I can't testify that I have
9 an independent recollection of that. But reading
10 that transcript, that's what I take from that, is
11 that Mr. Marcello is talking about this particular
12 report.

13 Q. Meaning Exhibit 35?

14 A. Meaning Exhibit 35. And I'm saying, look,
15 that's what he has. He has a CAD report that says
16 that. But he didn't put that into evidence, and you
17 don't get to argue from a CAD report that's not in
18 evidence.

19 Q. Now, we were talking about the call coming
20 into Metro and being transferred to North Las Vegas.

21 A. Correct.

22 Q. And what you say is there is a dispatch
23 report -- and again, this is 79, line 8, Exhibit 26.

24 A. Yep.

25 Q. Transcript page 79, line 8. There is a

1 dispatch report that shows the time the call was
2 transferred from Metro to North Las Vegas. There is
3 not a report that shows what time the call went in to
4 Metro.

5 So my question is, you're not aware of any
6 reports that are in your files that memorialized when
7 Metro picked up the phone?

8 A. Correct. Other than my previous answer,
9 which is I don't know. I know I said that then, but
10 as I sit here today, I have no idea if the 911 is
11 North Town's number or Metro's number.

12 Q. It could be both, right? Metro could have
13 picked it up at 7:11, and it could have been
14 transferred and North Las Vegas got it at 7:11,
15 right?

16 A. Correct.

17 Q. Did you ask Metro for records that might
18 memorialize when they picked up this 911 call?

19 A. I did not.

20 Q. Would you generally ask for those sorts of
21 911 call time records in your cases?

22 A. If it was transferred like that? No. I
23 generally would not make that request of Metro. I
24 will assume that the call comes into Metro, it goes
25 to North Las Vegas. Everything is on that call. So

1 my guess is that it's, you know, within moments of
2 each other. I wouldn't see the need to make that
3 request.

4 Q. So you wouldn't have any documents in your
5 file that show when -- that prove when Metro picked
6 up the call?

7 A. No.

8 Q. If you would ask Metro for that
9 information, do you think they would have given it to
10 you?

11 A. I don't even know if they maintain it.

12 Q. Now, you said that you did not have
13 pretrial meetings with Jermaun Means; is that right?

14 A. Well, I'm not saying that. I don't have a
15 recollection. I remember -- what I remember is that
16 he was somewhat problematic as a witness, and I
17 believe it was Jermaun Means, if it's the individual
18 I'm thinking of.

19 So I don't have an independent memory if we
20 ever had a chance to pretrial him, or if -- maybe we
21 talked to him in the room right before he got on the
22 stand or something like that.

23 But my recollection is that he was the one,
24 adult witness anyways, that we had difficulty getting
25 him for pretrials.

1 Q. If you ever talked to him before he took
2 the stand, do you recall asking him questions about
3 precisely when he called 911?

4 A. I have no recollection.

5 Q. Did you ask him questions about when
6 precisely the suspects left the crime scene?

7 A. I have no recollection.

8 Q. Did anyone else in the D.A.'s office, as
9 far as you're aware, ask those questions?

10 A. Not that I'm aware of, but it's possible my
11 co-counsel would have talked to them, but I have no
12 idea.

13 Q. Now, you said that there are multiple 911
14 calls in this case.

15 A. It's my belief. My belief, as I sit here
16 today. And I haven't reviewed anything or anything
17 like that. But my recollection is that John Ryan or
18 Ryan John runs down the street and then calls. Or
19 maybe that's Jermaun Means that runs down the street
20 and calls.

21 Q. Well, my understanding of the testimony,
22 Jermaun Means goes outside to Destinee Waddy sitting
23 in the car and takes her cell phone. Ryan John is
24 the one that runs through, you know, a couple of
25 yards and goes to a neighbor to call 911.

1 A. And he calls, right? So that would be more
2 than one, right?

3 Q. Right. Do you have a copy of Ryan John's
4 911 call?

5 A. The only copy of 911 I have is the one I
6 gave to you.

7 Q. Do you have any records associated with
8 Ryan John's call to 911?

9 A. No. I mean, with the exception of -- let
10 me go back to 35. They normally link the offense, so
11 it may be in 35.

12 Q. Well, I'm telling you that in the middle
13 of the first block of information, it said persons
14 reporting, and then it says Jermaun, so I would infer
15 that's Jermaun Means.

16 Is there any information on Exhibit 35 that
17 you think is relevant to Ryan John's 911 call?

18 A. That's what I don't know. I mean, there's
19 a number of times in here. I don't know if they
20 linked the events or didn't link the events. I
21 provided you the 911 audio. Whether or not there's
22 multiple calls on there or a single call, I don't
23 know.

24 Q. In any of your pretrial meetings with any
25 of the witnesses, did you or anyone else at the

1 meeting ask the witnesses when precisely the suspects
2 left?

3 A. Like down to the minute?

4 Q. At all.

5 A. I can't imagine that I did, but I can't
6 tell you that I didn't.

7 Q. Did you ask the D.A. investigators to look
8 into that question?

9 A. No.

10 Q. I would like to switch topics. We've been
11 talking for a bit about when the suspects left the
12 scene. Let's talk about when Rickie Slaughter
13 arrived to pick up his girlfriend from work.

14 A. Okay.

15 Q. Do you recall he picked up his girlfriend
16 from work on the night of the home invasion?

17 A. Well, at least he said he did. I don't
18 remember if Jeff Arbuckle was there when Rickie
19 Slaughter actually arrived, or if Jeff Arbuckle left
20 before Rickie got there and just knew that the
21 witness was waiting for him. I don't have an
22 independent recollection of exactly what
23 Jeff Arbuckle said.

24 Q. Do you recall there was evidence in this
25 case that Rickie Slaughter picked up his girlfriend

1 up from work after the home invasion?

2 A. I recall that Rickie and his girlfriend
3 said that's what happened.

4 Q. And his girlfriend, at the time her name
5 was Tiffany Johnson. At trial it was Tiffany Hawley,
6 but I'll refer to Tiffany Johnson.

7 At the time she worked at the El Dorado
8 Cleaners in Las Vegas?

9 A. She worked at some dry cleaners in
10 Las Vegas, and Jeff Arbuckle was like the manager or
11 supervisor or something. He worked there as well.

12 Q. The crime scene was at 2612 Glory View
13 Lane?

14 A. Sure.

15 Q. North Las Vegas near the airport?

16 A. Correct.

17 Q. The El Dorado Cleaners was at 715 North
18 Nellis Boulevard, corner of Nellis and Bonanza. Does
19 that sound right?

20 A. I don't have an independent memory, but
21 I'll trust you that's accurate.

22 Q. Let's look at Exhibit 33, pages 2 and 3.
23 Page 2 lists location of occurrence 2612 Glory View.

24 A. Yes.

25 Q. Page 3 has information related to

1 Jeff Arbuckle and the address it has is 715 North
2 Nellis.

3 A. Okay.

4 Q. Did I read that correctly?

5 A. Yeah. I don't know if that's the business
6 address or if that's his personal address. I don't
7 know the answer to that question.

8 Q. Well, assuming it's the business address,
9 those locations, they're about eight to ten miles
10 away from each other. Does that sound about right?

11 A. I trust you on that. They're some distance
12 apart.

13 Q. It would take about 20 or 30 minutes to
14 drive from one location to another?

15 A. 30 minutes seems far to me. Maybe it would
16 take you 20, sure.

17 Q. Did you investigate, or anyone on the
18 D.A.'s Office's behalf, investigate how long the
19 drive would have taken before trial?

20 A. I'm sure I would have known that answer.

21 Q. You would have looked into it before trial?

22 A. I am sure I would have, yes.

23 Q. You don't remember what the answer is now?

24 A. I don't have any idea what the answer is
25 now.

1 Q. Do you have any documents in your file that
2 would tell you what you thought the number was?

3 A. No. I can tell you what I think I could
4 have done to look that up.

5 Q. What would you have done?

6 A. I probably would have Google mapped the two
7 addresses. Figured out what the average time was
8 according to Google, and then I would have subtracted
9 some time because I always drive faster than the
10 Google does. So I would have looked generally to see
11 what the distance was.

12 Q. Let's make a few assumptions. Let's assume
13 the suspects left the scene at about 7:08 p.m.

14 A. Okay.

15 Q. Let's also assume that Rickie Slaughter
16 picked his girlfriend up from work at 7:15 p.m.

17 A. Okay.

18 Q. Let's assume it would have taken at least
19 20 minutes to make that drive.

20 A. Correct.

21 Q. If all three of those assumptions are
22 correct, it wouldn't be physically possible for
23 Rickie Slaughter to have been at the crime scene?

24 A. Mathematically, if he left here it took
25 20 minutes and he was there, you're right, that's not

1 mathematically possible.

2 Q. Detective Prieto spoke to Tiffany Johnson
3 multiple times during his investigation?

4 A. I believe so.

5 Q. He talked to her about the same time they
6 arrested Rickie Slaughter?

7 A. Yeah. I think she might have been in the
8 house when they hit the house.

9 Q. She initially told him Rickie Slaughter
10 picked her up at 7:00 o'clock?

11 A. I'll agree with you if that's what she
12 said. I have no idea.

13 Q. If you want to look at Exhibit 17 at 119.

14 A. It's the top number?

15 Q. Yeah.

16 A. Okay.

17 Q. Do you see at line 16, I asked, "According
18 to your report" -- the exhibit number is a different
19 one from exhibit numbers in - on June 28th, she,
20 meaning Tiffany Johnson, consistently told you,
21 meaning helping Detective Prieto, "that Mr. Slaughter
22 picked her up on the day of the incident at 7:00
23 p.m."

24 I asked, "Is that right?" He answers,
25 "Yes."

1 Did I read that correctly?

2 A. Yes.

3 Q. Do you recall Detective Prieto interrogated
4 her on multiple occasions and asked her on multiple
5 occasions about when Rickie Slaughter picked her up?

6 A. I know that he talked to her more than
7 once, and I know that the subject matter of talking
8 to her was about the time that he picked her up, yes.

9 Q. Now, I'm going to characterize one of the
10 interrogations that took place after the arrest where
11 Tiffany originally implies he picked her up at
12 7:07 p.m. Prieto continues to question her. She
13 says it would have been before 7:30 p.m. He
14 continues to question her.

15 She ultimately agrees with him. It was
16 closer to 7:30 than 7:00 o'clock. And I can show you
17 the exhibit where --

18 A. No, I believe that's probably true.

19 Q. She ultimately testified at trial that
20 Rickie Slaughter picked her up, quote, "between 7:00
21 to 7:15, no later than 7:20."

22 Do you recall that?

23 A. I don't, but I trust your representation
24 that that's what she said.

25 Q. Let's just look at Exhibit 24 at page 9.

1 A. 39?

2 Q. Page 9. The transcript page is 21, line is
3 24. It says, "It "-- it meaning when he picked her
4 up, when Mr. Slaughter picked Tiffany Johnson up,
5 "had to have been between 7:00 and 7:15, no later
6 than 7:20." Is that right?

7 A. Page 9? I apologize.

8 Q. So it's page 9 up in the upper right-hand
9 corner, the quad transcript page is 21. The line
10 number is 23.

11 A. That's what she said on direct, correct.

12 Q. Did she say anything different on cross?

13 A. I don't have an independent recollection.
14 I remember that there were jail calls that seemed to
15 suggest both her and Rickie were trying to back the
16 time up.

17 So I don't remember if she ever finally
18 gave it to me on cross that she was being less than
19 accurate with everybody, or if she maintained that
20 time period. I don't recall.

21 Q. If you want to take the time to look,
22 you're welcome to do that.

23 A. I can't. You probably know the answer. I
24 trust you whether or not she ever did. Yeah, it's
25 the phone call that we got 7:30 from. That's page 12

1 of your Exhibit 36.

2 In reading this, she makes some reference
3 to 7:30 on the jail calls with Mr. Slaughter. And I
4 don't know that she ever acknowledged later on that
5 she was being less than accurate. But there was
6 certainly evidence that she had said 7:30 at some
7 point.

8 Q. So the jail call into evidence, your
9 interpretation of that jail call is that it impeaches
10 her testimony it was 7:00 to 7:15 and no later than
11 7:20, but she never contradicts that testimony in her
12 trial testimony, does she?

13 A. Under oath, no. But she made statements
14 that were inconsistent, which is substantive evidence
15 in the state court.

16 So I would take some umbrage with the idea
17 that she didn't have -- there wasn't substantive
18 evidence of 7:30.

19 Q. As far as her trial -- putting the jail
20 call aside, just look at her trial testimony.

21 A. She sticks to 7:15, maybe 7:20 at the
22 latest.

23 Q. Let's look at Exhibit 25.

24 A. Okay.

25 Q. At page 12 in Exhibit 25, is the trial

1 transcript from --

2 A. Page 12 you said?

3 Q. The trial transcript from May 19th, 2011.

4 And it's the 11:00 a.m. session.

5 So if we look at transcript page 37,
6 specifically lines 16. You're talking about
7 arguments you think the defense could make during
8 closing argument.

9 And one of those is, quote, "Jessie Prieto
10 was inappropriate with Tiffany Johnson." You say,
11 quote, "That is appropriate argument."

12 Do you see that?

13 A. Uh-huh.

14 Q. Do you agree that Jessie Prieto was
15 inappropriate with Tiffany Johnson?

16 A. I don't know that I agree with that, no. I
17 think a defense attorney could argue that Detective
18 Prieto was inappropriate with Tiffany Johnson.

19 And that's what I'm saying there. I don't
20 think that I can say sitting here right now that
21 Jessie Prieto was inappropriate with Tiffany Johnson.

22 Q. Do you recall that he threatened -- Prieto
23 threatened Tiffany she might be in trouble for
24 something that she didn't do during the
25 interrogation?

1 A. She might be in trouble for something?

2 Q. She didn't do.

3 A. I don't recall him saying that, but that
4 sounds like something Detective Prieto might have
5 said.

6 Q. Do you recall Detective Prieto accused her
7 of sitting in the car when the home invasion was
8 taking place?

9 A. Yeah. That sounds right.

10 Q. Do you recall Detective Prieto told Tiffany
11 she would be just as guilty as the culprit if she
12 didn't report what she knew about anything having to
13 do with the incident?

14 A. Sounds like something Detective Prieto
15 might have said. I don't have an independent
16 recollection of exactly what he said to Tiffany.

17 Q. Do you recall he told Tiffany everything
18 she worked for might go down the drain if she didn't
19 provide the information he wanted?

20 A. I don't know if that's an exact
21 characterization of what he said, but that doesn't
22 sound that unusual to me from Detective Prieto.

23 Q. Do you recall that Detective Prieto
24 continued to question her about the time, and
25 continued to try to get her to say Rickie Slaughter

1 picked her up around 7:30 as opposed to 7:00?

2 A. I certainly know that Detective Prieto was
3 attempting to get the truth from Ms. Johnson. If
4 Detective Prieto believed that that truth was 7:30
5 then, again, I don't have any reason to dispute that
6 that's what he was trying to get from her.

7 Q. Do you recall that Detective Prieto
8 actually arrested her for obstruction of a police
9 officer in this case?

10 A. I didn't independently, but I will tell you
11 that in reading this I saw somewhere in here where
12 that came up. So during the course of the
13 deposition, it appears in one of these records I read
14 that that happened.

15 Q. All of those questions I've just asked,
16 those are reasons why the defense might argue Jessie
17 Prieto was inappropriate with Tiffany Johnson; is
18 that right?

19 A. Yes. I mean, that would be an argument
20 that the defense attorneys make. There would be a
21 rebuttal obviously to that argument. But yeah, a
22 defense attorney could argue to 12 people that
23 Detective Prieto was trying to convince Tiffany to
24 say something that wasn't true.

25 I would say he was trying to get Tiffany

1 Johnson to say something that was true, and he was
2 using appropriate police tactics to do it
3 potentially.

4 Q. But there's a legitimate other point of
5 view?

6 A. Sure. That's something the defense can
7 argue.

8 Q. Did you conduct any pretrial meetings with
9 Tiffany Johnson?

10 A. I don't have a recollection of talking to
11 Tiffany Johnson, and my guess would be that I
12 wouldn't have talked with Tiffany Johnson considering
13 I didn't believe she was being truthful.

14 Q. Are you aware of anyone else in the D.A.'s
15 Office who spoke with Tiffany Johnson before trial?

16 A. I don't have any independent recollection
17 of that.

18 Q. Let's look at again Exhibit 25, page 12.
19 Transcript page 37, lines 14 and 16.

20 Again, you're talking about appropriate
21 arguments for the defense to make. One of them you
22 say, quote, "There has been no identification of the
23 second suspect in this particular case."

24 A. Correct.

25 Q. That's true, the police never identified a

1 second suspect in this case, did they?

2 A. Well, no one has ever identified who the
3 second suspect is. I think that Detective Prieto
4 believes it was Jacquan Richards. But no witness
5 picked out Jacquan Richards out of a photo lineup.

6 Q. The police never arrested anyone on
7 suspicion of being a second suspect?

8 A. As far as I know, nobody else has ever been
9 arrested in this incident.

10 Q. You also say the appropriate argument for
11 the defense is to say that Mr. Slaughter's
12 fingerprints weren't found at the scene and his DNA
13 were not found?

14 A. Yeah. Those are appropriate arguments.

15 Q. It's also true?

16 A. As far as I can remember, I imagine if his
17 fingerprints or his DNA were at the scene, it would
18 have been admitted at the jury trial.

19 Q. Now, we mentioned Jeffrey Arbuckle. He was
20 one of the managers where Tiffany Johnson worked; is
21 that right?

22 A. Manager, owner, supervisor. He had
23 something to do with Tiffany Johnson's employment and
24 I believe he was in a supervisory position over her.

25 Q. Do you recall Detective Prieto spoke to

1 Jeffrey Arbuckle during his investigation?

2 A. I don't recall that.

3 Q. Let's look at Exhibit 33, pages 3 to 4.

4 This is one of the police reports from the case. And
5 he writes at the bottom of page 4, over to page 5,
6 that he spoke to Arbuckle. "Arbuckle said when he
7 left work it was 7:15 p.m., and Johnson was still
8 waiting outside the business for her ride."

9 Did I read that correctly?

10 A. Correct.

11 Q. And let's turn back to Exhibit 17,
12 Detective Prieto's deposition at page 141.

13 A. Get the right number here. Uh-huh.

14 Q. And at line 4 I ask, "Arbuckle told you
15 when you left work it was 7:15 p.m. and Johnson was
16 still waiting outside the business for her ride?"
17 And he answers "Yes."

18 A. Correct.

19 Q. Does that refresh your recollection about
20 whether Detective Prieto spoke to Jeffrey Arbuckle
21 during the course of this investigation?

22 A. I don't know that it refreshes my
23 recollection, but I acknowledge to you that the
24 records seem to establish that that was true.

25 Q. So let's look at one of the trial

1 transcripts. It's Exhibit 22.

2 A. Okay.

3 Q. And this is the transcript from May 7th,
4 2011. Let's turn to page 15. This transcript is a
5 little weird because the quad transcripts we have
6 omit a few pages. So we have single pages replacing
7 it for the court reporter. But if you look at page
8 15 of the document, which is associated with page 46,
9 the defense is cross-examining Jeffrey Arbuckle
10 during this exchange.

11 A. Okay.

12 Q. The defense asks if Arbuckle recalls
13 telling Detective Prieto, quote, "You waited with
14 Tiffany until 7:15?" Did I read that right?

15 A. The question actually was, "So if he wrote
16 down in your report you waited until 7:15, he's
17 mistaken?"

18 Oh, I'm sorry, you're on the question
19 above. "Do you recall telling him you waited with
20 Tiffany until 7:15?" Okay, that's the question being
21 asked by the defense attorneys.

22 Q. And he answers, "No. I waited for about
23 30 minutes"?

24 A. That's what he said.

25 Q. And then the defense asked the question you

1 just quoted?

2 A. Yes.

3 Q. And you object?

4 A. Correct.

5 Q. And the Court sustains the objection?

6 A. Correct.

7 Q. Did you admit to the Court at this time
8 that there was, in fact, a report documenting that
9 Arbuckle told Prieto he left work at 7:15?

10 A. I wasn't disputing that there was such a
11 report.

12 Q. Did you tell the Court affirmatively during
13 the trial there was such a report?

14 A. No.

15 Q. Now, Arbuckle denied in this exchange
16 telling Prieto he waited with Tiffany until 7:15,
17 correct?

18 A. That's correct.

19 Q. But as we've just seen, it's true that
20 Mr. Arbuckle told Prieto he left work at 7:15 p.m.?

21 A. It's true that's what Jessie wrote in a
22 report.

23 Q. Any knowledge during his deposition
24 testimony?

25 A. I have no idea what it is Jeffrey Arbuckle

1 told Detective Prieto. If they wanted to establish
2 what exactly was said to Detective Prieto, they could
3 have called Detective Prieto.

4 But I wasn't there, so I don't know what
5 the truth is. Did Detective Prieto write down the
6 wrong number? Did Jeff Arbuckle change his
7 testimony? I don't know.

8 Q. But there is, in fact, a report documenting
9 7:15?

10 A. Correct. You showed it to me. There is a
11 report that Detective Prieto wrote down that Jeff
12 Arbuckle said that he left at 7:15 and Tiffany was
13 still waiting.

14 Q. And you didn't clarify that fact with the
15 Court during this exchange?

16 A. What do you mean did I clarify it? There
17 wasn't a dispute.

18 Q. Did you tell the Court when you objected at
19 the bench, or at any point, well, in fact, there is a
20 report that shows, that documents Jeff Arbuckle
21 telling Detective Prieto it was 7:15?

22 A. I guess the answer is no, but I have no
23 idea why anybody would ever have that discussion with
24 the Court.

25 Q. Do you recall Arbuckle testifies that

1 Rickie Slaughter pulled into the cleaners right when
2 Mr. Arbuckle was leaving?

3 A. I don't recall that. He may have said
4 that.

5 Q. Do you recall Tiffany testifying the same
6 thing?

7 A. I don't recall that, but she may have.

8 Q. Let's look at Exhibit 24. And again, this
9 is a trial transcript, the early session of May 19,
10 2011. Let's look at page 18, transcript pages 60.

11 And this is Tiffany Johnson testifying line
12 6, quote, "When he" -- meaning Jeffrey Arbuckle --
13 "was leaving the parking lot, Rickie was coming in
14 the parking lot."

15 Did I read that correctly?

16 A. Sorry. I was reading ahead of you for a
17 second. Give me those lines again.

18 Q. At line 6, quote: "When he" -- meaning
19 Jeffrey Arbuckle -- "was leaving the parking lot,
20 Rickie was coming in the parking lot."

21 A. Correct. That's what it says here.

22 Q. Let's look back at Exhibit 22 at page 13.
23 And this is transcript page 42, line 17.

24 Jeff Arbuckle testifies, "I was pulling
25 out of the parking lot and her," meaning Tiffany

1 Johnson's -- "ride did come."

2 Question: "So as you were leaving her ride
3 arrived in the parking lot?"

4 Answer: "Yes."

5 Did I read that correctly?

6 A. I'm sorry. I skipped the pages again.
7 What did you say? Page 22?

8 Q. Yeah, so it's page 13.

9 A. Oh, sorry, 13.

10 Q. The transcript page is 42.

11 A. Okay.

12 Q. And the line is 17.

13 A. Okay.

14 Q. Mr. Arbuckle testifies, "I was pulling out
15 of the parking lot and her ride did come."

16 A. Yeah.

17 Q. Question: "So as you were leaving, her
18 ride arrived in the parking lot?"

19 The answer is, "Yes."

20 A. Yes.

21 Q. Now, let's assume both Jeffrey Arbuckle and
22 Tiffany Johnson are correct about that, that Jeff
23 Arbuckle left right as Rickie Slaughter pulled in.
24 Let's assume that Arbuckle was correct when he told
25 Detective Prieto he left at 7:15.

1 If that's correct, then Tiffany and
2 Jeffrey's testimony matches precisely, correct? As
3 in Jeff left about 7:15, and right at that time is
4 when Rickie Slaughter arrives? Maybe not the best
5 question.

6 A. Very compound question. But what you're
7 saying is at one point in time did Jeff Arbuckle, if
8 Jessie Prieto is to be believed to be accurate, say
9 7:15, did Tiffany say 7:15, and do they corroborate
10 each other in that one was pulling in as the other
11 one was pulling out, is what you're asking?

12 Q. And that would indicate Rickie Slaughter
13 showed up at 7:15 p.m., correct?

14 A. Yeah. It assumes a heck of a lot of facts.
15 But yeah, I mean, if you were to assume all those
16 facts to be true, that would mean that Rickie showed
17 up at 7:15.

18 Q. Now, Rickie Slaughter had met Jeffrey
19 Arbuckle before; is that right?

20 A. According to what Mr. Arbuckle says, yes.

21 Q. Do you recall they had some sort of
22 disagreement in the months leading up to the home
23 invasion?

24 A. I don't recall that.

25 Q. Let's look at Exhibit 42. This is a

1 document that we received from Las Vegas Metro during
2 the federal discovery process.

3 A. Okay.

4 Q. Do you see in the middle of the first block
5 of text there's a name Jeff/MNGR?

6 A. Uh-huh.

7 Q. The location at the top left says El Dorado
8 Cleaners, and there's an address 715 North Nellis
9 Boulevard under that?

10 A. Yep.

11 Q. And the text associated with the first time
12 entry appears to say, "In front of business refusing
13 to leave Rickie Slaughter." Do you see that?

14 A. Uh-huh.

15 Q. Have you seen this document before?

16 A. No.

17 Q. It's not contained in your file at the
18 D.A.'s office?

19 A. Not that I'm aware of.

20 Q. Did you turn this document over to the
21 defense before trial?

22 A. I didn't have it. I didn't turn it over.
23 My guess is that I've never seen this document
24 before.

25 Q. Did you conduct any pretrial meetings with

1 Jeffrey Arbuckle?

2 A. I'm sure I did.

3 Q. Would that have been back in 2005?

4 A. I don't know if we got that far in 2005.

5 He was still rebuttal, so he would have been later in
6 the conversation.

7 I believe I talked to him before the actual
8 trial, which was 2011. Whether or not I talked to
9 him more than one time during that, I have no idea.

10 Q. During those meetings, were any other
11 individuals present?

12 A. Other than whoever my co-counsel at the
13 time was, I have no idea.

14 Q. Did you ask Mr. Arbuckle any questions
15 about when Rickie Slaughter arrived that evening?

16 A. I'm sure I would have.

17 Q. Do you recall what his answer was?

18 A. No. But I imagine it's consistent with his
19 trial testimony.

20 Q. Is it possible it was consistent with 7:15?

21 A. No. If a witness had told me something
22 different than what he said at a trial, then I would
23 have had to tell somebody that.

24 So no, it would have to be consistent with
25 what he said at trial.

1 Q. But you don't recall specifically what he
2 told you at your pretrial meeting?

3 A. No. But it would be my habit and custom if
4 he said 7:15 and got on the stand and said 7:30, that
5 would be something I would have had to disclose.

6 Q. Did you talk about whether Rickie Slaughter
7 had met Jeff Arbuckle before?

8 A. Well, the transcript suggests of
9 Mr. Arbuckle's testimony that he said he had met
10 Rickie Slaughter before. So my guess is that we had
11 a conversation about him meeting Rickie Slaughter
12 before.

13 Q. Do you recall any details about the
14 circumstances under which they met?

15 A. No. I think I went with the assumption
16 that he would pick up Tiffany from work, so he would
17 know who Rickie Slaughter is.

18 Q. Did Jeffrey Arbuckle tell you he had placed
19 a trespassing complaint against Rickie Slaughter?

20 A. No. First time I heard about that is the
21 subpoena you sent asking for records associated with
22 this. I never heard that before.

23 Q. I would like to switch topics again and
24 talk about a couple of statements you made during
25 Rickie Slaughter's trial unrelated to the subjects

1 that we've covered before.

2 Let's look at Exhibit 26 at page 40.

3 A. Okay.

4 Q. And the transcript page is 150.

5 A. Sorry, give me that page again.

6 Q. Page 40, transcript page is 150.

7 A. Okay.

8 Q. Line 20 you say, quote, "I suggest to you
9 if you are doing the job, 12 of you will go back in
10 that room, you will talk about it, and come back here
11 and tell him you know, too."

12 Did I read that correctly?

13 A. I do.

14 Q. Are you aware of the case Lamb versus
15 State?

16 A. Lamb, L-a-m-b?

17 Q. L-a-m-b.

18 A. What's the first name?

19 Q. I thought I was asking the questions.

20 A. Sorry, I apologize. But I think I know
21 where you're going.

22 Q. Robert Charles Lamb?

23 A. The case that talks about doing your job
24 and the duty and that whole thing, yeah. I will say
25 that I have a subsequent Nevada Supreme Court opinion

1 that says this argument, you have to take both
2 paragraphs together, but this is an appropriate
3 argument.

4 And that guy's name I think is Donald, I
5 can't remember Donald's last name. But there is -- I
6 think he's even published that says this is an
7 appropriate argument, and it's not a violation of
8 law.

9 Q. Have you seen the opinion in Lamb versus
10 State before?

11 A. I'm generally aware of it. I'm not sure
12 I've read it word for word, but I am aware of there
13 being some discussion about duty to convict
14 arguments.

15 Q. You were the lead prosecutor in that case?

16 A. In the Donald case. Not in the Lamb case,
17 was I?

18 Q. Well, let me ask a different question.

19 A. Charles Lamb? That name does sound
20 familiar.

21 Q. Well, let's look at Exhibit 44.

22 A. Do you have the actual?

23 Q. Do you see under attorneys and law firms --
24 this is the Nevada Supreme Court's opinion in Lamb
25 versus State.

1 A. Oh, yeah. This is the killing of the woman
2 outside the school. Okay, yeah, I was the prosecutor
3 in that case.

4 Q. Let's look at page 8 about six lines down
5 from the top of the first full paragraph on that
6 page. The Nevada Supreme Court writes while
7 exhorting the jury to, quote, "do its job" was
8 arguably improper, then it goes on to say the error
9 was harmless. Is that right?

10 A. Well, the Court -- the original quotation
11 "do its job" was arguably improper, and the district
12 court immediately directed the State to rephrase, and
13 it did.

14 Q. This opinion came out March 3rd, 2011; is
15 that right?

16 A. Correct. I don't know that it's the same
17 argument that I made here. In fact, the only
18 similarity is the word "job" in it.

19 Q. Bear with me for one moment. I'm quoting
20 from the trial transcript, Exhibit 26 again,
21 transcript page 150.

22 A. Uh-huh.

23 Q. You say, quote, "If you are doing the job."

24 A. Correct. That's different than do your
25 job.

1 Q. Than do its job?

2 A. Yeah.

3 Q. Were you aware of the Lamb versus State
4 opinion when it came out in March 2011?

5 A. I must have been. I argued it in front of
6 the Supreme; so yeah, I would have been aware of it.

7 Q. Now, the State prosecuted and the jury
8 convicted Rickie Slaughter of attempted murder with
9 respect to Ivan Young; is that right?

10 A. Yes.

11 Q. You argued at trial that Rickie Slaughter
12 directly shot Ivan Young in the face; is that right?

13 A. I believe -- I believe Rickie Slaughter
14 didn't pull that trigger, but I don't know that that
15 was the sole argument we made. You would have to
16 look back and look at it, because it was my belief
17 that the game of murder tied everybody involved in
18 this case to a specific intent to kill.

19 Q. Do you recall arguing that Rickie Slaughter
20 or the co-conspirator directly shot Ivan Young in the
21 face?

22 A. Oh, yeah. I believe that's true.

23 Q. Do you recall evidence that the suspect
24 actually shot into the ground and the fragments were
25 what hit Ivan Young in the face?

1 A. There's certainly an argument to be made
2 that the gunshot ricocheted in the ground and then
3 potentially caused the damage.

4 Whether or not the bullet went through
5 Ivan's head and hit the ground and came back up or
6 hit the ground, or if he shot at his head, missed,
7 hit the ground and came up in his face is a distinct
8 without meaning to me. You fire a gun near someone's
9 head, you intend to kill them.

10 Q. Susan Krisko, when she had the case, she
11 believed that the bullet hit the ground, fragmented,
12 and the fragments hit Ivan Young in the face; isn't
13 that right?

14 A. I don't know.

15 Q. Let's look at Exhibit 45. At page 10, this
16 is a transcript of the original sentencing back on
17 August 8th, 2005.

18 A. Okay. And you said page 10?

19 Q. Page 10, line 22. Susan Krisko speaking,
20 she says, "The Defendant then took that weapon and
21 shot into the floor. That was the ricochet that went
22 up into his," meaning Ivan Young's -- "face and he
23 lost his eye."

24 Did I read that correctly?

25 A. That's what she said.

1 Q. Do you think Susan Krisko is wrong about
2 that?

3 A. I don't know that -- I mean, she's making a
4 sentencing argument. I don't know that she is saying
5 that's the only possibility that existed here or not.

6 I mean, Susan Krisko is the guy who made
7 them plead to attempted murder with use of a deadly
8 weapon. So certainly she believed that whatever
9 action he took, he intended to kill at the time he
10 did it.

11 So her description of that, whether or not
12 that is her belief or that was part of her sentencing
13 argument, I don't know the answer to that question.

14 MR. BARON: Let's take a ten-minute break,
15 if that's all right?

16 THE VIDEOGRAPHER: The time is now
17 2:21 p.m. This is the end of digital media two. We
18 are off the record.

19 (A recess was taken from 2:21 p.m.
20 to 2:31 p.m.)

21 THE VIDEOGRAPHER: The time is now
22 2:31 p.m. We are back on the record.

23 BY MR. BARON:

24 Q. During one of your previous answers in
25 this deposition regarding the second photo lineup,

1 you said something to the effect of: I wasn't going
2 to open the door to the second photo lineup in front
3 of the jury. That was more of a mess than it was
4 worth. It may have opened the door to information
5 which would have been a complete red herring in the
6 case.

7 Can you explain what you meant by "red
8 herring"?

9 A. Yes. So the defense felt like they had
10 some exculpatory information. They felt like the
11 witnesses did not identify Rickie Slaughter.

12 I felt like I had a significant amount
13 of inculpatory information that would rehabilitate
14 any cross-examination they would do.

15 But ultimately, however that works out, it
16 makes Jessie Prieto look like a bad detective. And
17 this case wasn't about the investigation, to me. It
18 didn't really matter the mistakes that Jessie made,
19 but he made mistakes. And I felt like if we got into
20 the second photo lineup, that that would open the
21 door to attacking the investigation instead of what
22 the evidence was.

23 So I chose not to bring up the second photo
24 lineup. I'm assuming the defense chose not to bring
25 up the second photo lineup because they knew what the

1 response was going to be from the witnesses.

2 And so if that door was going to get
3 opened, they were opening it. I wasn't opening
4 it.

5 MR. BARON: It's all I have.

6

7 EXAMINATION

8 BY MR. BONGARD:

9 Q. I'm going to pick up on that with just a
10 couple of questions.

11 So when you found out about -- when you
12 found out about the second lineup, if you can clear
13 up the timeline with regards to your discussion with
14 Detective Prieto?

15 A. Sure. So now looking at -- and I don't
16 remember the exhibit in here, but the Kenny Marks
17 one.

18 Q. Right.

19 A. That says it was December of 2014, which is
20 just about the time period that I transitioned from
21 gun crimes to homicide.

22 Susan Krisko came to me while I was a gun
23 crimes deputy and asked me to look at this case. So
24 that means I had to be involved. So there had to be
25 a trial date somewhere around that time period

1 because we wouldn't have been talking to witnesses.

2 My recollection is when the witnesses told
3 me that they had seen two photo lineups with Rickie
4 Slaughter in it, I didn't know what the heck they
5 were talking about. I called Detective Prieto.

6 Detective Prieto gave me a second photo
7 lineup. And it's only once I received the second
8 photo lineup and looked at it that I realized that
9 Rickie Slaughter was in that second photo lineup, and
10 then we disclosed that to the defense.

11 I don't recall specifically my
12 conversations with Detective Prieto about that second
13 photo lineup. There would have been more than one
14 because I called him the first time just to ask for
15 it, in which he told me he didn't document anything
16 associated with a non-ID of the suspect. And he told
17 me he may have a copy of it somewhere and he sent me
18 the copy. He must have sent me all the ones that
19 Rickie submitted in March of 2005 because after I saw
20 that I called him up. And I don't remember the exact
21 conversation. I just remember that I was less than
22 happy with Detective Prieto for putting Rickie
23 Slaughter in the lineup.

24 Q. So by the time you had shown that copy to
25 Kenny Marks, you had already gotten -- that was one

1 of the copies or a copy that you had gotten from
2 Detective Prieto?

3 A. Correct. The one that I showed Kenny Marks
4 would have been the one that I received from
5 Detective Prieto.

6 Q. And it's your -- it's your recollection
7 that you gave that to Paul Wommer, who was stand-by
8 counsel?

9 A. Correct. I gave that to Paul Wommer, which
10 makes sense that Rickie then filed a motion in
11 March of 2005 related to that particular photo
12 lineup.

13 Q. And when you -- do you remember the gist of
14 what you told Paul Wommer when you turned that over?

15 A. Just as like, look, this is the Jacquan
16 Richards photo lineup, and your client is in position
17 number 4 of that particular lineup, and I would have
18 given it to him. I would not have gone through my
19 conversation with the witness because I felt like my
20 conversation with the witness was inculpatory and
21 rehabilitated any claim they were going to make of a
22 non-ID.

23 Q. So when you talk about Brady, you don't
24 know if it's Brady or not. You turn it over and let
25 them do what they want with it?

1 A. Correct.

2 Q. This is something that, for lack of a
3 better -- because I have had them as a prosecutor
4 where you get that pucker moment where you're kind of
5 like holy moly, turn it over, let them do what they
6 want with it.

7 A. Correct. And, you know, the claim at least
8 that's being made is that somehow I hid the non-ID by
9 these witnesses. I have never -- I have no idea what
10 happened between Jessie Prieto and his people.

11 The defense's position was the evidence we
12 have is that they did not ID. So they were in
13 possession of the exculpatory information. What I
14 was withholding was the inculpatory information,
15 which is they have an explanation that's going to
16 hurt you.

17 Q. And based upon your answer to subsequent
18 questions, you believe that during the course of
19 their preparation for trial, they actually found out
20 that there were -- there was opinion they had found
21 out potentially some of the inculpatory information
22 that you had?

23 A. Yeah. They must have because they're
24 talking about it, but they never asked the witness
25 about it.

1 And so I don't remember it because once a
2 case goes away, you know, the first time we need
3 police, there wouldn't be any reason to hold back
4 this information.

5 So what I don't know is whether or not I
6 had a specific conversation with Ozzie or Dustin or
7 Susan Bush. I don't think so, looking at these
8 transcripts, I told Susan Bush and Pat McDonald.

9 But certainly I have no idea exactly what
10 Ozzie and Dustin and I talked about, but certainly
11 they had to know something was up because they didn't
12 ask a single question of a witness about what they
13 believed to be a non-identification. They knew that
14 information and they chose not to. I can't get into
15 their heads to find out why.

16 Q. And based upon the fact that -- and correct
17 me if I'm wrong, but when Mr. Slaughter was pro se,
18 he filed a motion challenging you were hiding stuff
19 with the second lineup. Then McDonald and Bush filed
20 that same motion, and then Mr. Fumo and -- I forget
21 the last trial attorney.

22 MR. BARON: Marcello?

23 MR. BONGARD: Marcello.

24 BY MR. BONGARD:

25 Q. They all of them filed that type of motion?

1 A. Well, they filed a motion to dismiss for a
2 failure to preserve. I don't know that they were
3 accusing me of withholding exculpatory information.
4 Their position was that Jessie Prieto's report and
5 the instructions on the form, that none of the
6 witnesses recognized Rickie Slaughter.

7 So that was what they believed the evidence
8 would show. I knew it wouldn't show that. They all
9 filed motions related to that particular subject
10 matter.

11 Q. Okay.

12 A. They've never accused me of withholding
13 exculpatory information. They've never asked me
14 anything related to why do I keep saying that's pure
15 speculation.

16 Q. And I haven't read through -- I may have
17 missed something when I was getting ready for this,
18 but you talked about evidence that Rickie and his
19 then girlfriend were fudging time.

20 A. Correct.

21 Q. Could you talk about that, describe what
22 evidence there was of fudging time and what was
23 presented at trial?

24 A. Without getting very specific, because I
25 know it's been a long time, but there were jail calls

1 that occurred between Rickie Slaughter and Tiffany
2 Johnson. And in those jail calls, he is trying to
3 back up the time as close to 7:00 as possible for him
4 to pick her up.

5 And at least at some point she suggests
6 it's 7:30 in those phone calls. And it's highly
7 inculpatory when somebody claims they have an alibi,
8 when they're trying to manipulate their alibi witness
9 into the time they're supposed to give during their
10 testimony.

11 And so that was sort of the force of those
12 jail calls was, hey, there's nothing reliable about
13 Tiffany Johnson and this alibi. Those jail calls
14 have a tendency to not only dispute the alibi, but
15 inculcate to the defendant because that's
16 consciousness of guilt.

17 Q. Sure. And there was no evidence that
18 anybody was looking at watches, either Arbuckle,
19 Slaughter's girlfriend, any of that as far as, oh,
20 he's here, it's 7:20?

21 A. No. The only documentation of the time in
22 this entire case appears to be the 911 call was at
23 7:11.

24 Q. And then even assuming, because Mr. Baron
25 obviously went through some factual gymnastics with

1 you, but let's set up another set of factual
2 gymnastics.

3 MR. BARON: I'll object to the form of
4 that.

5 BY MR. BONGARD:

6 Q. Let's assume some facts. Let's assume that
7 about five minutes is -- maybe eight minutes, so that
8 they leave at 7:00. Even assuming the time frame
9 that Mr. -- that Mr. Baron gave you, at that point,
10 leaving at 7:20 minutes there, that's 20 minutes
11 after?

12 A. Correct.

13 Q. Okay.

14 A. I mean, it was always my position,
15 particularly in doing this for so long, that, you
16 know, witnesses and times are a little off.

17 The fact that it just happens to be that
18 the day that you are at least 15, as much as
19 30 minutes late for your girlfriend is the same day
20 that you allegedly just committed a home invasion
21 robbery in a car matching the description where there
22 are evidence of the guns inside the car. None of
23 that seemed to make any sense to me.

24 If you were to take what Jermaun Means says
25 about five minutes ago, now you're at 7:07 when they

1 leave. And even if it's 7:15, even if it's, you
2 know, a 20-minute drive, now you're talking 7:27,
3 it's still be before 7:30. So ultimately, in my
4 mind, those times worked perfectly. They didn't
5 alibi.

6 Q. Okay. And then when you talked about the
7 police report or the -- I'm trying to remember if it
8 was the argument with regard -- oh, it was Detective
9 Prieto's report where he wrote in his report that
10 Mr. Arbuckle said he left about 7:15. And again,
11 we're using that word "about," so we know it's not
12 exactly 7:15.

13 When you have interposed that objection,
14 isn't it true that you were not denying the fact
15 that there's a report. You were saying that the
16 facts in that report are not in evidence, so
17 that's why they're assuming facts not in evidence?

18 A. That's correct. And there was a secondary
19 which is asking one witness to comment on the
20 veracity of another witness, particularly one who
21 hasn't testified yet, wasn't appropriate.

22 So I was objecting to assuming the facts
23 not in evidence. I mean, once they put Jessie Prieto
24 up there, they certainly could have been asked the
25 question.

1 I didn't object to the question about did
2 you tell Jessie Prieto that. The answer was no. Now
3 the proper way would be call Jessie Prieto and say,
4 did he tell you this.

5 It was more the form and the manner of
6 which the questioning was formed.

7 Q. Sure. It's part of the job making sure
8 evidence comes in the proper way, doesn't come in the
9 improper way?

10 A. Correct.

11 Q. And if I understood your statement with
12 regards to the closing argument, you weren't
13 exhorting the jury to do their job. You were
14 suggesting that if they do their job, this is what's
15 going to happen?

16 A. Correct. And I think that's the
17 distinction. I don't know, there's not a full quote
18 in Lamb as to exactly what words I said. I can't
19 remember Donald's last name.

20 But the argument I'm making is two-fold.
21 It starts off with there's at least one person in
22 this room that knows who committed this crime. And
23 I suggest if you're doing their job, which is to
24 find the truth, you'll go back there, they'll look
25 through the evidence and they'll figure out the

1 answer.

2 I'm not telling them their duty is to
3 convict, which is the problem with the do your job
4 argument that the Courts have said.

5 MR. BONGARD: I have nothing else.

6 MR. BARON: Just a few follow-up
7 questions.

8

9 FURTHER EXAMINATION

10 BY MR. BARON:

11 Q. Mr. Bongard asked you about the second
12 photo lineup, and he referred a few times to the
13 witnesses telling you that they recognized Rickie
14 Slaughter in the second photo lineup.

15 I just want to clarify. I believe your
16 testimony before was you know at least one witness
17 said to you something about recognizing Rickie
18 Slaughter in the second photo lineup?

19 A. Correct. I don't have a recollection of
20 exactly how many of them would have answered that
21 question in the affirmative. I just know that at
22 least one of them did because I would have never
23 learned about the second photo lineup unless I was
24 told that.

25 Q. An identification of Rickie Slaughter on

1 the second photo lineup was inculpatory; is that
2 right?

3 A. If a witness identified him in the second
4 photo lineup, recognized him in the second photo
5 lineup, that's inculpatory, yes.

6 Q. And if a witness did not recognize Rickie
7 Slaughter on the second photo lineup, that would be
8 exculpatory?

9 A. That's the information the defense had,
10 their belief that there was no identification.

11 I don't know the answer to whether or not
12 there was or wasn't an identification by the
13 witnesses. I just don't know. They had the
14 information as to this is what the police report
15 says; they interpreted that as they didn't make an
16 identification.

17 I had information that suggested that they
18 did make an identification. I had nothing to
19 disclose to them one way or the other because I
20 honestly do not know what communications occurred
21 between Jessie Prieto. They are undocumented.
22 There's no writing about them. I don't know what the
23 answer to those questions would have been back in
24 2004 and '5.

25 Q. But you would have asked Jessie Prieto that

1 question whether any of the witnesses identified
2 Rickie Slaughter during -- when he showed the
3 witnesses the second photo lineup?

4 A. You would think I did, but I don't recall
5 what his answer was as it relates to that. I only
6 recall that the witnesses had made the -- the witness
7 or witnesses, to make you feel better, had notified
8 me that there was a second photo lineup where they
9 recognized Rickie Slaughter's picture.

10 Q. And you went back to follow up with the
11 witnesses about that, the other witnesses?

12 A. I imagine I must have talked to every
13 witness about it before the trial. I don't really
14 remember them.

15 What sticks out in my mind is learning
16 about the existence of the second photo lineup.

17 Q. Some of the witnesses may have said to
18 you, I didn't recognize anyone in the second photo
19 lineup?

20 A. I don't know that. I don't have any
21 specific recollection of what they did or didn't say.

22 Q. If they did tell you -- if some of the
23 witnesses did tell you, I didn't recognize anyone
24 from the second photo lineup, that would be
25 exculpatory information?

1 A. That would be information the defense was
2 in the possession of.

3 Q. Would you define it as exculpatory
4 information?

5 A. If a witness was shown a photo lineup and
6 didn't realize that Rickie's photo was in there, I
7 would say that that is exculpatory. But that is the
8 evidence that the defense had.

9 Q. Did you specifically tell them, I, Marc
10 DiGiacomo, spoke to this witness, here's what the
11 witness told me?

12 A. No. I mean, maybe I did, maybe I didn't.
13 I don't have a specific recollection what it is that
14 I said to the defense attorneys.

15 Q. Again, sitting here today, you don't recall
16 which witness or witnesses told you back in 2004,
17 2005 I recognize Rickie Slaughter from the second
18 photo lineup?

19 A. Correct. What I've always disputed is when
20 they've said none of the witnesses. I know that fact
21 not to be true.

22 Q. Did the defense attorneys, any of the
23 defense attorneys in this case specifically tell you
24 they had investigated this question about whether
25 anyone recognized Rickie Slaughter from the second

1 photo lineup?

2 A. I don't recall if they did or they didn't.
3 I have a fairly good relationship with both Dustin
4 and Ozzie. I imagine that after the trial when they
5 didn't call him, we had a conversation, but I don't
6 have an independent recollection.

7 I mean, this would have been something that
8 we would have discussed after the trial, like, hey,
9 how did this come about? You didn't ask this or
10 that. But I don't remember it now.

11 Q. But you don't have any -- you don't have
12 any firsthand knowledge that the defense attorneys
13 investigated this issue, spoke to the witnesses
14 about the second photo lineup, and knew one way
15 or the other which witnesses did or did not
16 recognize Rickie Slaughter from the second photo
17 lineup?

18 A. Firsthand knowledge in the sense that I
19 was aware of their investigation. I don't have any
20 specific. But I find it hard to believe that they
21 didn't investigate this, and then they didn't ask the
22 question. I find that very hard to believe.

23 So I think that's pretty good
24 circumstantial evidence that they knew the answer,
25 because why wouldn't you ask the question then?

1 Q. But you didn't have any conversations with
2 them before trial specifically about this?

3 A. Not before trial. Very well would be after
4 trial.

5 Q. We talked a little bit about the jail calls
6 in this case.

7 A. Yes.

8 Q. Do you recall Tiffany Johnson is on the
9 phone and she says she got off work at 7:30?

10 A. I don't remember exactly what she said. I
11 just remember that 7:30 came up.

12 Q. And Rickie Slaughter said something to the
13 effect of, no, it was 7:00, say it was 7:00,
14 something along those lines?

15 A. That sounds about accurate.

16 Q. The testimony at trial showed that
17 Tiffany Johnson got off work at 7:00 o'clock; is that
18 right?

19 A. That's certainly what her testimony, and
20 I believe it was probably what Arbuckle said, is
21 that basically when she got off work, he wasn't
22 there.

23 MR. BARON: That's all I have.

24 MR. BONGARD: A couple more.

25 MR. BARON: Sure.

1 news. Everybody knows that Rickie has been charged
2 in this crime. This is much later. He goes to them
3 and says, look, I'm trying to identify the second
4 suspect, do you see the second suspect in here, and
5 the witness tells him no.

6 Whether or not there's a conversation about
7 Rickie at that point in time, I just don't know.

8 Q. But then that would also mean that if
9 that's the person he's asking about, looking at -- or
10 if you recollect what he said in his deposition, that
11 he wouldn't have asked people about Rickie being in
12 there because he didn't know Rickie was in there,
13 correct?

14 A. Correct.

15 Q. When you -- you mentioned that between one
16 and seven of the people told you that Rickie was in
17 the second lineup?

18 A. Correct. And I think it came out all four
19 of the seven made the original ID, so we can limit it
20 down to four.

21 Q. Okay. Did you actually physically take
22 that second lineup to people and say was it you?

23 A. No.

24 Q. No. So you wouldn't have done that, so you
25 wouldn't have said, okay, this person says no, I have

1 to turn that over to Ozzie? Do you understand what
2 I'm saying?

3 A. Well, I mean, that wasn't the reason why I
4 didn't do it.

5 Q. Right.

6 A. I'm a gatherer of facts. I'm normally not
7 one who is attempting to create evidence.

8 So once I learned about the error that was
9 committed by Detective Prieto, and once I learned
10 that at least one of these witnesses was going to be
11 rehabilitated on cross-examination if this came out,
12 I would not have shown them their photo lineups and
13 said, hey, do you remember seeing this one, do you
14 recognize anybody in there? That wouldn't have been
15 something I would have...

16 Q. So I mean, other than saying there's this
17 second lineup, there wouldn't have been anything else
18 exculpatory because you wouldn't have taken that
19 second lineup and said, do you see Rickie Slaughter
20 in there?

21 A. Correct. And, you know, if somebody had
22 said that, like, if I showed them a lineup and they
23 said no, I don't see him in there, then that's
24 something I would have had to turn over. I wasn't in
25 the business of generating evidence. I was just

1 trying my case.

2 MR. BONGARD: That's all I have.

3 MR. BARON: And I'm sorry, I have just one
4 more that I meant to ask before.

5

6 FURTHER EXAMINATION

7 BY MR. BARON:

8 Q. Are you aware of any other exculpatory
9 evidence in Rickie Slaughter's case that was not
10 turned over to the defense?

11 A. I'm not aware of any exculpatory evidence
12 that wasn't turned over to the defense.

13 MR. BARON: That's all I have.

14 THE VIDEOGRAPHER: This concludes the
15 digital videotaped deposition of Marc DiGiacomo,
16 consisting of three media.

17 The time is now 2:57 p.m. We are off the
18 record.

19 - - -

20 (The videotaped deposition was
21 concluded at 2:57 p.m.)

22 - - -

23

24

25

1 CERTIFICATE OF REPORTER

2 I, the undersigned, a Certified Shorthand
3 Reporter of the State of Nevada, do hereby certify:

4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth;
6 that any witnesses in the foregoing proceedings,
7 prior to testifying, were duly sworn; that a record
8 of the proceedings was made by me using machine
9 shorthand which was thereafter transcribed under my
10 direction; that the foregoing transcript is a true
11 record of the testimony given to the best of my
12 ability.

13 Further, that before completion of the
14 proceedings, review of the transcript [] was
15 [X] was not requested pursuant to NRCP 30(e).

16 I further certify I am neither financially
17 interested in the action, nor a relative or employee
18 of any attorney or party to this action.

19 IN WITNESS WHEREOF, I have this date
20 subscribed my name.

21

22 Dated: August 5, 2019

23

24

GALE SALERNO, RMR, CCR #542

25

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