

FILED
AUG 09, 2016
Court of Appeals
Division III
State of Washington

NO. 31187-2

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

DIVISION III

STATE OF WASHINGTON
Plaintiff/Respondent,
Vs.
JOSE JESUS MANCILLA
Defendant/Appellant.

SUPPLEMENTAL BRIEF OF RESPONDENT
BY YAKIMA COUNTY

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STATUTES

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A. INTRODUCTION

This consolidated appeal was stayed pending a decision in State v. DeLeon , 185 Wn.2d 478, __ P.3d __, slip op. No. 91185-1 (May 5, 2016). Appellant's have either submitted supplemental briefs or have adopted other appellant's briefing.

Clearly DeLeon is applicable to the matters before this court and the challenge to the booking information was properly raised. However, it is the State's position that the totality of the evidence presented at this trial was sufficient and independent of the booking information and therefore satisfied the harmless error test set out in DeLeon.

The State has supplemented the record before this court in order to present to this court with some the exhibits which were introduced at the time of trial.

The State has also taken the extraordinary step and has gone through the entire record yet again and taken from that record the extensive evidence that was presented to the jury at trial. This task resulted in the document appended to this brief, Appendix A, which sets forth directly from the testimony of the witnesses 98 pages of testimony that refutes the claims by these defendants that based on DeLeon's reasoning involving the use of the booking information in this trail that it too should be remanded to the trial court for retrial.

B. ISSUES PRESENTED BY PETITION

- 1) Is the decision in DeLeon controlling and if so was there sufficient independent evidence presented at trial such that the introduction of the booking information was harmless error?

ANSWERS TO ISSUES PRESENTED BY PETITION

- 1) The court's ruling in Deleon is controlling. However unlike DeLeon, in this case the evidence is such that this court may find the introduction of the booking information harmless beyond a reasonable doubt.

C. STATEMENT OF THE CASE

The facts of this case have been set forth now numerous times. However, because of the ruling in DeLeon the State has appended the facts that support the State's argument in Appendix A.

The State has addressed the court's ruling regarding the use of gang information and the need for that information to be presented to the jury. The State has now supplemented the record before this court to include the exhibits that included photographs of the defendants which were submitted to the jury those photographs are now in the court record.

D. ARGUMENT

1. **Deleon while applicable to the information introduced from the booking process also makes it clear that this type of error will not be fatal to a conviction is the additional evidenced presented at trial comports with the harmless error standard. In this case the independent evidence presented was clearly overwhelming and as such the error arising from the introduction of the booking information was harmless.**

DeLeon, supra, “We apply a harmless error standard to constitutional errors such as this. See, e.g., State v. Monday, 171 Wn.2d 667, 680, 257 P.3d 551 (2011). "Under that standard, we will vacate a conviction unless it necessarily appears, beyond a reasonable doubt, that the misconduct did not affect the verdict." Id. More specifically, to find such a constitutional error harmless, we must find-beyond a reasonable doubt-that "*any reasonable jury* would have reached the same result, despite the error." State v. Aumick, 126 Wn.2d 422, 430, 894 P.2d 1325 (1995) (emphasis added). The State bears the burden of showing that the constitutional error was harmless. Monday, 171 Wn.2d at 680.”

Id at 487-8

The State will set forth herein only a short synopsis of the facts. Because this court must look to the record to determine if there were sufficient facts and evidence presented to meet the harmless error analysis, as stated above, the State combed the verbatim report of proceedings and sets forth below in the appendix a very long and extensive recitation of the facts which support the present argument that the error here was harmless.

As was addressed in the opening brief, the home that was hit by numerous gunshots at 4:00 AM was a known gang home. At trial testimony was given, without objection, that victim’s home had been shot

at and hit by gunfire on numerous previous occasions.

This was not a criminal act that was prosecuted against these four defendants based on scant evidence. Concurrent with the shots being fired at the residence there were two women who were driving in the area delivering newspapers. They were connected to the individuals who lived in a residence that was not far away, a residence where a known gang member lived and which had been shot at several times before.

Moments after the shots were fired these two women saw a car drive hurriedly through a spot sign and continuing off in a hurried fashion. These two women then did a very courageous act, they followed this car. They followed it out into the fields surrounding this part of Yakima County and only stopped the chase when the involved vehicle turned around and started to come back towards them. These two women were met shortly thereafter by a police officer who had also traveled in that direction. Shortly after this encounter the vehicle, that the two women had called 911 and identified as a Mitsubishi Gallant gray in color, was spotted and followed by another officer.

This officer followed the Gallant and initiated a “felony” stop with additional officers present. The four defendants were located in this car and several were wearing gang clothing or paraphernalia or had gang related tattoo’s. The stopping officer and one other officer traveled back

to the location of the initial contact. The stopping officer was not, after initially sighting the car, able to turn and pursue. Upon returning to this area the officers saw and recovered three firearms. On .40 caliber handgun, a .22 caliber rifle and a 7.2 caliber semi-automatic rifle. There was no ammunition magazine/clip in the semi-automatic weapon, however at the scene of the shooting there was one recovered along with spent casings.

These three weapons were test fired by a forensic scientist from the Washington State Patrol Crime Laboratory. The test fired ammunition from all three weapons matched the spent casings found at the scene of the initial crime.

There was DNA recovered from the weapons that did not directly tie these four defendants to those weapons. However, there was DNA recovered that matched, “was one in ten trillion.” RP 671. This DNA matched an associate, a gang member, of these four defendants.

The four defendants were by their own admission members of the LVL –Sureno’s street gang and wore blue clothing and had tattoo’s that identified them as belonging to that gang. The Sureno’s claim the number 13 and the color blue. In this trial Officer Ortiz did not testify to the just general actions and conduct of gangs, throughout his testimony he is asked to identify from states exhibits, pictures of the defendants, what the

various tattoos and items of clothing mean in the gang culture. Vol. VII 091012 pgs. 836-43 – Vol. VIII 091112 pgs. 853-60

Elias Rincon Mendoza was a victim and was in the house at the time of the shooting. He testified that he was a Norteno who's gang claimed the color red. He testified that he had nothing to say, his description of what had awakened was "fireworks", that he was not nervous while bullets were flying toward him and his home and his home had been shot at "plenty of times." He testified he was not nervous when his house is shot because he was "just used to it." His testimony was that he was in court to testify because "...you guys are making me come or else I get a warrant." Vol. III 0831,090412 pg 268-9 Mr. Mendoza further testified that both he and his brother are north side Nortenos and Norteno and Surenos were enemies. Vol. III pgs. 271-2.

While there was no testimony that the four defendants went to that house to specifically assault or shoot the self-professed gang member living there but they shot into a home at 4:00 am when anyone would know people were in that home, sleeping or awake.

Appellants argued in their first brief there was insufficient evidence that anyone intended to shoot someone inside the residence because there is no evidence that the shooters knew there was anyone in the house. And now with the recent ruling in DeLeon the question of the

sufficiency of the evidence presented once again becomes an issue.

As was previously addressed in the State's opening brief a person is guilty of first degree assault if, with intent to inflict great bodily harm, he assaults another with a firearm. RCW 9A.36.01 1(1)(a). A person acts with intent when he acts with the objective or purpose to accomplish a result constituting a crime. RCW 9A.08.010(1)(a). Specific intent cannot be presumed, but can be inferred as a logical probability from all the facts and circumstances. State v. Wilson, 125 Wn.2d 212, 217, 883 P.2d 320 (1994)

The Appellants did not and do not dispute that shots were fired into the house. Therefore, it was the States duty to prove to the jury beyond a reasonable doubt that the four persons arrested that night were the people who drove to a home at 4:00 AM and shot numerous rounds of ammunition from three different types of firearms into this occupied home.

State v. Thompson, 151 Wn.2d 793, 92 P.3d 228 (Wash. 2004);

Thompson's conviction was based, at least in part, on evidence found within the trailer--evidence we here conclude is inadmissible. This constitutional error may be considered harmless if we are convinced beyond a reasonable doubt that any reasonable trier of fact would have reached the same result despite the error. State v. Brown, 140 Wn.2d 456, 468-69, 998 P.2d 321 (2000). To make this determination, we utilize the "overwhelming untainted evidence" test. State v. Smith, 148 Wn.2d 122,

139, 59 P.3d 74 (2002). Under this test, we consider the untainted evidence *admitted at trial* to determine if it is so overwhelming that it necessarily leads to a finding of guilt. *Id.* (Emphasis in original.)

State v. Flores, 164 Wn.2d 1, 186 P.3d 1038, 1046-7 (2008) “In

evaluating whether the error is harmless, this court applies the

“overwhelming untainted evidence” test. State v. Davis, 154 Wn.2d 291, 305, 111 P.3d 844 (2005) (quoting State v. Smith, 148 Wn.2d 122, 139, 59 P.3d 74 (2002)), *aff’d* on other grounds by 547 U.S. 813, 126 S.Ct. 2266, 165 L.Ed.2d 224 (2006). Under that test, when the properly admitted evidence is so overwhelming as to necessarily lead to a finding of guilt, the error is harmless. *Id.*

E. CONCLUSION

The determination of the jury should not be disturbed. While DeLeon clearly is applicable to this case, it is as equally clear that the Washington State Supreme Court set forth an analysis that was to be used in this type of case to determine whether, taking into account the error, there was still sufficient untainted evidence such that any rational jury would still have found the defendants guilty absent the introduction of that tainted evidence.

The evidence presented here was overwhelming as set forth in the State’s extremely lengthy and extensive appendix of the facts presented and as can be seen from the photographs admitted the gang information

that was presented independently of the booking information was also extensive.

This appeal should be denied and dismissed.

Respectfully submitted this 8th day of August, 2016.

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DECLARATION OF SERVICE

I, David B. Trefry state that on August 8, 2016, I emailed a copy, by agreement of the parties, of the Respondent's Brief, to: Andrea Burkhart at Andrea@BurkhartandBurkhart.com, Gregory Link at wapofficemail@washapp.org, Ken Kato at khkato@comcast.net and David Gasch at gaschlaw@msn.com

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 8th day of August, 2016 at Spokane, Washington.

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Appendix A

Ms. Rincon- mother of Angel Lopez

Q Ms. Rincon, your son, Angel, is he a member of a gang?

A Yes.

Q Is it a red gang or a blue gang?

A Red.

RP 212

...

Q Has anybody ever shot at your house before the instance in this case?

A Yes.

Q About how many times?

A Four or five.

RP 213

Cross by Mr. Fiander:

Q On Friday, you had testified that before this happened in March your house had been shot at four or five times, didn't you?

A Yes.

Q Did you mean your old house someone had taken four or five shots at it or did this happen to you four or five separate times?

A They were on different occasions.

...

Q How many times - how many shots were fired at your house do you think before this happened, 30, 50 --A I don't know.

Q But you do remember that your house was shot at four or five different times before the night we're talking about?

A Yes.

Q On each of these different times, your house was shot at, was there more than one shot?

A In some occasions, yes.

Q In some cases, how many, more than five?

A Yes, that could be.

Q Was your old house shot at after this night we're talking about today?

A Yes.

Q So would you agree that your house was shot at many times both before or after the incident we're talking about today?

A Yes. (RP 250-1)

Redirect by the State:

Q Ms. Lopez, do you remember the next time your house was attacked after March 14th?

A Yes.

Q Okay, was anybody hit during that incident?

A Yes.

Q And who was hit during that incident?

A My girl, Diane.

Q Okay, is that why she can't be here to testify?

[Q The -- let me ask you, and I have to ask this, is your son -- I mean, is your daughter Diane, is she available to testify in this case?

A No.

Q And why not?

A She's dead.

RP 221

A Yes.

Q Okay, and the people in that instance, did you see what they were wearing?

A Yes.

Q What was their

-- what color of clothing were they wearing in this later incident?

A They were dressed in black clothing with a blue bandana.

Q Okay. Thank you.

RP 252

Elias Rincon Mendoza

Q Did anything wake you up that morning?

A Couple of fireworks, I think, I don't know.

Q Couple of fireworks. Did you hear anything that woke you up?

A (Inaudible).

Q Okay. And what did you hear?

A Some fireworks.

Q Some fireworks. And where were you sleeping at the time?

A The couch.

Q Okay. Was his gunfire, not fireworks?

A I'm not sure.

Q Has your home been shot at before?

A Plenty of times.

Q Okay. Do you -- when your house was fired at do you get upset by it?

A Well, what I can do?

Q Are you nervous when bullets are flying toward you?

A No.

Q Why not?

A Just used to it.

RP 268

...

Q Okay. Are you -- your brother, Angel, is he a gang member?

271

A Yeah.

Q Okay. Are you a gang member?

A Yeah.

Q Okay. And what gang do you belong to?

A North side.

Q Okay, and so isn't it true that even when you're a victim, you're not supposed to come and testify against the other side?

A Yeah, I guess so.

Q And north side is that a Norteno gang, a red gang?

A I don't know, what do you think?

THE COURT: Mr. Mendoza, would you please answer the question. You can't answer a question with a question. You need to answer his question. Would you ask

the question again, please, Mr. Hintze?

Q Is North side, is that a Norteno gang?

A Yeah.

Q Okay. I mean, it sounds like an obvious question but -- so, Mr. Mendoza, is -- how do the North sides or Nortenos, how do they get along with --MR. ALFORD: Objection, relevance.

THE COURT: I haven't heard the question yet, but finish your question, please.

Q How do they get along with LVL?

MR. BANDA: Objection, also Your Honor, as to speculation.

THE COURT: Overruled.

Q How do you guys get along with LVL?

A Pretty fine, I think.

Q Pretty fine?

A Yeah.

Q All right. Isn't it actually true that Nortenos and Surenos are enemies with each other?

A Yeah.

RP 272

CROSS EXAMINATION MR. ALFORD.

Q 21 years old, okay. And you say that you belong to a Norteno gang?

A Yeah.

Q And what was your response to how this LVL gang or gang members get along with your particular gang?

A I'm not understanding your question.

Q Do you get along or do you not get along?

A No.

Q Don't get along?

A No.

Q Okay. How many different gangs are you familiar with in your various, I guess, Neighborhood or area about?

A Just two.

Q What?

A Just two.

Q Just two, okay. All right. Thank you, sir.

RP 273

Dep. Ron Shepard

Q Okay. Were photographs taken?

A Yes, they were.

Q Okay, and who took them?

A I did.

Q Okay, and what were you taking pictures of?

A I started at the driveway entrance on the north side of the residence at the driveway and worked my way inward.

RP 279

...

Q Okay. Number — State's Identification 76, what's that of?

A That is taken from the north side facing Yakima Valley Highway. It's the driveway entrance into the gated area where the trailer, single wide trailer sits and it shows acceleration marks on the pavement as well as on gravel from somebody leaving that, from a vehicle.

RP 280

...

Q Deputy, did you make any initial observations of the scene and make determinations of what was important to take photos of?

A Yeah, I did do a walk around to see what generally what was there at the scene.

Q And what did you first observe or what were the important things that you observed?

A One of the first things I saw as I arrived was that there was graffiti in blue at the --near the entrance of the house. I believe it was on a phone box which was unusual because the activities that I seen at that residence in the past had been - should have been red because of the gang affiliation.

RP 281

...

Q What about — okay, is that an accurate photo?

A Yes, and I notice also that it has
--says the Rincon family, First Avenue.

Q No. 82, I'd ask you — I'm going to try to do these in a larger group. No. 82, what does that depict?

A 82, I've walked around the end of the trailer and I've arrived near the front of the trailer, the front entrance of the trailer on the Yakima Valley Highway side and I see that there are numerous small manila envelopes which were placed next to spent casings. There was a clip with live rounds and also a live round that was on the ground there.

RP 284

Q Okay. What are these little things down here?

A Those are small manila envelopes.

Q Okay. Are they next to anything?

A They're next to the spent casings, clip and live round that were on the ground outside the south side of the house.

RP 285

...

Q Okay, I direct your attention to State's Identification 84. What does that depict?

A That's a close-up version of the clip lying on the ground next to some chairs.

Q Okay. And did you — and is that an accurate photo of the way it was that morning?

A Yes, it is.

Q Okay, and No. 85, that picture. What is that a picture of?

A That's a picture of live round next to the clip in the same general location that wasn't visible in 84 because it's from a set different angle.

Q Okay. How close was the live round to magazine, do you recall?

A Just a short distance. Just a matter of a couple feet.

RP 287

...

Q Okay. Now, I direct your attention to State's Identification 90 and 91, those two photographs. 90, what does that show?

A 90 shows a spent casing, appears to be a .40 caliber marked number 7, and on No. 91, also a spent casing marked number 8.

Q And those are accurate photographs of what you took that day?

A Yes, they are.

RP 289

...

Q Okay. Deputy, No. 95, is that something we've seen at a different angle already?

A Yes, it is. That is a clip from a rifle with live rounds that appear to be 7.62 round marked number one five —15.

Q Okay, and is that the same magazine —

A Yes, it is.

Q - that you — in earlier photos?

A Just a closer version, yes.

Q Closer version. Are you able to see whether or not it still has rounds in the magazine?

A I can see three live rounds protruding from the end of the magazine that would be inserted into the rifle.

RP 290

...

Q Okay, and let me give you the laser pointer, the button right here — there's a button right on top there. Please don't get me in the eye with it and where is ~ in relation to this drawing where were those spent shell casings you were taken photos of?

A They were right out in this area right in here.

Q Okay. Where was that SKS magazine and round?

A Right in that area right in there.

RP 296

...

Q Deputy Shepard, did you take photographs ~ did you take photographs of any damage that was ~ that you saw there?

A Yes, I did.

Q Okay, and why was that?

A To show where the — some of the bullets entered the house and into the interior of the residence.

RP 298

Q Okay. How did you know where to look?

A Maria Rincon had located a couple of spots in the house along with two bullets and a split fragment.

Q Okay, and did you take photographs of those bullets?

A I did. I took a photograph of the bullets and then also she showed me where she had found them because she had picked them up and she showed me where she'd found them and where they had entered and I replaced them where she showed me and then I took photographs of that as well.

Q Okay. I'm going to show you what's marked as State's Identification 108. What's the importance of that photograph, what does it show?

A It just shows an impact point of one of the rounds and it's on the interior of the south side of the house.

A It just shows an impact point of one of the rounds and it's on the interior of the south side of the house.

Q And where exactly is that?

A I believe that is the wall next to the front door.

Q Okay.

A Or is it not - that's at the base of a cabinet.

Q Kitchen cabinet?

A Yes.

Q Okay. Does that an accurate photo of what you took that morning?

A Yes, it is.

Q No. 109, what does that show?

A It shows the bottom drawer of the oven that was in the kitchen and shows a hole where a round had come through the stove.

Q Okay. And is that an accurate photo of what you took that morning?

A Yes, it is.

RP 299

...

Q Handing 109 and 108 to the jury. No. 110, State's Identification, what does that show?

A That's the inside of the stove where one of the rounds had protruded -- had penetrated this stove into the food that was inside the stove, or the oven, I'm sorry.

RP 300

...

Q And finally State's Identification 115. Do you recognize that photo and what is it?

A Yes, that's - I believe that's the kitchen sink with one of these - one of the rounds lying next to a knife and plate that were in the sink.

Q And, again, was that where you found it or where you placed it at her direction?

A No, that's where I placed it where Mrs. Rincon had showed me that she had found it.

Q Okay. All right, and is that an accurate photo?

A Yes.

RP 304

...

Q Okay. I'd ask that - now this one has less tape on it. Could you open that up and look at what's inside?

A Yes. There is a spent .22 casing.

Q Okay, now you've seen a lot of .22 casings in your time as a police officer -

A Yes.

RP 314

...

Q Okay, I'd ask you to open it at this time.

A Also a .22 caliber rim fire spent casing.

Q Okay, and is that what you collected at the scene that morning?

A Yes.

RP 316

...

Q Okay. I'd ask that you ~ that's different than the way you packaged it up like in the previous exhibits?

A Yes.

Q I would ask that you open that up.

A This is a .40 caliber spent casing.

Q Okay.

A And it also has a marking, Crime Lab marking on it, looks like number 1, center fire.

RP 320

...

Q Okay, and I'd ask that you - is that the envelope used to collect one of the shell casings?

A Yes, it is,

Q I'd ask that you open that up and see what's inside.

A Say a .40 caliber - a spent .40 caliber center fire casing.

RP 321

Q And you're extracting something. What do you have?

A This another .40 caliber, a spent .40 caliber center fire casing and it does appear that there is a marking of either a number 9 or a number 6 from the Crime Lab. I can't tell.

RP 322

Q Okay, and is that the envelope you used to place the shell casing in?

A Yes.

Q Okay. I would ask that you open that envelope up.

A This has a spent. 40 caliber center fire casing.

RP 323

Q Okay. I'd ask that you, again, open that up and look at the contents.

A This is a spent. 40 caliber center fire casing.

RP 324

A My marking number 12, and there's some other writing on it.

Q Okay. I'd ask that you open it up and take a look at the contents.

A A spent .40 caliber center fire casing.

Q Okay, any change -- is that something that you collected that morning?

A Yes.

RP 326

...

Q Okay. I would ask that you do so without - obviously without damaging any numbers or signatures to the best of your ability. I'll let you touch it since you're wearing

the gloves, Deputy.

A It's a --Q Well, let me ask you what did you just extract from the box?

A This is a rusted banana style clip for a auto or semi-auto rifle.

Q Okay. I'm going to show you what's now State's Exhibit No. 95, one of the pictures that you took earlier. What is that a picture of I just showed you?

A It's a picture of the same clip.

Q Okay. Any changes to it?

A Well, the live rounds were extracted from the magazine - or from the clip itself for safety.

RP 328

...

Q Okay. Now, what is ~ let me ask you what's inside the box other than the banana clip?

A Well, my original photo marking with the number 15 on it with the small manila envelope. There's also a second larger manila envelope.

Q Okay. All right, and does that - what is the evidence tape on that? Is that Yakima County or is it Crime Lab evidence (inaudible) -A No, this is Crime Lab evidence and it says six cartridges plus it has their item

-- the

item number 16 and some of their other markings as well — as of the only other marks ~ other envelopes.

Q I'd ask that you open that up and look at what's inside.

A There are six 7.62, I believe. I can't see the marking on it. Rifle rounds, live.

Q Okay, and six of them. So A One, two, three, four, five, six, yes.

Q All right. Are those the — appear to be the rounds that were found with the magazine?

A Yes, there were - I believe in the photo it showed that there was three visible at the end of the magazine. The other three would have been buried inside the clip.

Q Okay. Do these appear to be the same type of rounds that you saw in the magazine?

A Yes.

RP 329

...

Q Okay, is that an envelope you use to collect evidence that same morning?

A Yes.

Q Okay, and does it have

-- what kind of tape does it have on it?

A It has the red evidence tape.

Q Okay. I'd ask that you take a look at its contents.

A It's a live 7.62 round.

Q Okay. Now, did you find that item?

A Yes.

RP 332

CROSS EXAMINATION Dep. Shepherd

Q Just for clarification, what is the difference between a spent shell casing and a live one?

A A spent shell casing is one that's actually been fired and the bullet has left the shell casing itself as a projectile.

Q Okay. So you had found some that had been fired, the casing that you had found some that had not been fired.

A Yes.

Q And you also recovered the projectile that had been fired out of a barrel of a gun.

A Yes.

Q Okay. And you collected 24 live or spent casings in total?

A I don't know the number but yeah, I collected numerous -- numerous casings.

Q From three different guns?

A Yes.

RP 346

...

Q Okay. Okay, and why did you collect these various items?

A Because there had been a drive-by shooting reported at that location and there were spent shell casings on the ground that indicated that that was likely ~ as well as live casings and a clip that indicated that was probably true.

RP 347

...

Q Detective Shepard, when you were investigating and searching this scene, were you just looking for shell casings?

A No.

Q What else were you looking for?

A Anything that I could find that would be related to a drive-by shooting.

Q Now when you went into the house, in doing so did you look both inside and outside the house?

A Yes.

Q Now, inside the house, Ms. Rincon apparently identified you some what she believed were new gunshot holes?

A Yes.

Q How did you distinguish those from any old gunshot holes?

A Ms. Rincon told me that she didn't have any holes in her stove or her refrigerator and there hadn't been any bullets spent — or bullets in her food prior to that day.

Q Had there been bullet holes in the house —

A Yes.

Q - prior to that day?

A Yes, there had.

Q Okay, about how many?

A I have no idea.

Q More than one?

A Yes.

Q Could you see some of them?

A Yes.

Q Okay. Did she identify those as being there prior to this day, March 14th?

RP 349

A The holes that I saw, sir, were on the outside of the residence that I couldn't identify in any - as to what was new and what was old. The interior would be quite simple for her to identify since there was a new bullet in her food that she had prepared and there was also a

new bullet in the oven that she was preparing the food in and the refrigerator that she stored it in, so she told me that those had not been there. The one that was in the sink, too, she told me hadn't laid there for any longer than when the shooting occurred.

Q Okay. Did she point out any that weren't new?

A No.

Q Did you see any bullet holes that weren't new?

A On the outside I did. I couldn't tell on the inside.

Q Is this the first time you've been at the -- investigated the scene of an offense at this address?

A No, it wasn't. I'd been there before but I don't know for what reason I had been there before.

Q Okay.

RP 350

Carla Stark. Paper delivery person.

Q All right. Ms. Starke, when you - back in March of 2011, what were you doing for a living?

A I deliver the paper.

RP 354

...

Q Okay, and as you were delivering the paper did you hear anything unusual?

A What I thought were gunshots.

Q Okay. All right, and where were you when you thought you heard these gunshots?

A On Outlook Road.

RP 355

...

Q Are you familiar with who lived in that general area?

A Yeah.

Q Okay, and who were you familiar with?

A I have a sister -- my sister's aunt lives in the house.

Q And who is your sister's aunt?

A Her name is Maria Rincon.

Q Okay. All right, and were you aware -- well, let me ask you, what did you know about, if anything, has happened at that house before at this point in time?

A That's a (inaudible) gang house.

Q Norteno side of the gangs?

RP 355

A Yes.

Q Okay. Had there, to your knowledge, had there been any violence at that house before?

A It was known they to do drive-bys there.

Q All right. So when you heard what sounded like gunshots did you take your prior knowledge into consideration?

A Yeah.

Q Okay, and were you concerned?

A For the people in the house, yeah.

Q Okay. Now, after hearing this did you observe any vehicles on the road?

A A vehicle got in front of me.

Q Okay, from which direction?

A Coming from the way what I heard the shots.

Q Would it have come from the. direction of the Rincon home?

A Yes.

Q Okay, and at what street did it turn onto Outlook Road?

A I think it's -- I don't even know — I think that's 1st Street.

Q Okay. And when this happened, was this vehicle did it have its lights on or lights off?

A I don't believe it had its lights on.

Q Okay. When you saw this vehicle how did you react, what did you do?

A I started to follow it.

Q Now, were you alone? I don't think I've covered this?

A No.

Q Who was with you?

A My sister.

RP 356

...

Q Okay. Now, you started following, did anybody call the police?

A My sister.

Q Okay, and you heard her call the police?

A Yes.

Q All right. Now, what is the description of this car that you saw?

A It was like a charcoal colored Mitsubishi Gallant.

Q Okay. Now, in calling the police, was this description as far as what you heard Veronica say, was this described?

A Yeah.

Q Charcoal Mitsubishi Gallant. Where did you follow this vehicle?

A It went down North Outlook Road and then it turned left and we followed it.

Q Okay. When it — so you're on Outlook Road and you turn onto North Outlook Road?

A Yes.

Q All right, and from that how far was it until it turned?

A I don't know, a couple miles.

Q Okay, so what kind - is this a populated area or just fields going back into this area?

RP 357

...

A It flipped around and I went straight and flipped around, I think. I don't really remember that part.

Q All right, and did you ever stop following the car?

A Yes.

Q Okay, and when you stopped following it, which direction was the car still moving toward?

A It would have been going like towards Yakima from Outlook.

Q Okay. Is that westbound or eastbound?

A I think west.

Q Okay. All right. Now, after that point in time did you make ~ did any police officer contact you?

A Yes.

Q Okay, when did that happen?

A Right after we stopped following it.

Q Okay, and was that a quick contact or A Yeah.

Q Okay, and what did the officer do, did the officer take off or stay with you?

A Yeah. He took off.

Q Okay. Now later that morning were you contacted by law enforcement?

A Yes.

Q All right, and when you were contacted by law enforcement what was the purpose

RP 358

that they wanted to talk to you about?

A They wanted us to ID the vehicle.

Q All right, and when you - all right. Did you go anywhere to ID a vehicle?

A Yes.

Q Okay, did you drive or did somebody drive you?

A I drove.

Q Okay. Did A Well, I drove them — I drove and I met the sheriff and then he took us to where the

vehicle was.

Q Us, did Veronica go with you?

A Yes.

Q And they drove you there?

A Yes.

Q And on the side of the road were there police cars there?

A Yes.

Q And was there a car that wasn't a police car?

A Yeah.

Q Okay. What kind of a car was that?

A A Mitsubishi Gallant.

Q What color was it?

A Charcoal.

Q And did you ~ was that the car?

A It looked like it.

RP 359

...

Q Are you aware of who these defendants are?

A I don't know them personally but I know of them.

Q And does that cause you concern?

A A little bit but not really.

Q Okay. Well, let me ask you this. Are you involved in any gang activity?

A No.

Q Do you associate with gang members?

A My brother is a gang member.

Q Okay, and so he has people over?

A Not really.

Q What is your feelings towards testifying against alleged gang members?

A They do what they do and I see it, I have to be honest. I don't lie for anybody

RP 362

CROSS BY DEFENDANTS

NADA

Redirect by the State;

Q Okay, so there's a drive-by shooting at a residence of one of your relatives, a known Norteno hangout, correct?

A Yes.

Q You follow a vehicle that you suspect is involved in that drive-by shooting, correct?

A Uhm-hm.

Q And after all was said and done, you weren't willing to come identify it except by threat of being charged yourself, isn't that correct?

A Yeah.

Q Okay, now is it because you don't want to get involved?

A I didn't want to get up and I didn't want to go identify the vehicle. I was already in bed.

Q Okay. And just like that — so this wasn't - sleep was more important?

A Yeah.

Q Okay. Than seeing if you could identify the people that shot up the house.

A Well, I already had given them a description.

RP 373

Veronica Lopez other paper route person.

Q Okay, and as you're heading on North Outlook Road did you notice anything or see or hear anything unusual?

A Only until we hit like the speed limit, the sign, and then after that - we had the radio up loudly and (unintelligible) say what the hell, did you hear that? And we turned it down

RP 379

and we heard like another gunshot and then after that we heard -- by the time we heard one more so I think we heard three.

Q And could you tell from what direction this was being done?

A Only like from my sense of hearing.

Q Okay. All right.

...

Q So, were you driving anywhere near 1st Avenue and Outlook?

A Yeah.

Q Okay, and as you approached the intersection of Outlook Road and 1st Avenue did you see anything?

A That's the one -- 1st is the one that runs that way, right? I mean, it runs north, right?

Q Let me - I'm going to try to help you out here in a minute.

A Okay.

Q But did you see any vehicles on the road?

A Only at the stop sign of North Outlook and whatever the end road is.

Q Okay, and what did you see?

A The car did not stop at the stop sign. It was a charcoal colored Mitsubishi and it didn't stop at the stop sign and it just turned left, isn't it.

Q Okay, and so it didn't stop at a stop sign. Did that vehicle have its headlights on?

A No, it turned them on after it had turned.

Q Okay.

A Because our headlights were touching the vehicle when it had turned and it didn't have its lights on.

RP 380

Q Okay, and as it - so this car turned in front of you?

A Yeah.

Q Okay, and you said it was a Mitsubishi and charcoal, do you know what model it was?

A Gallant.

Q Okay. Now, what did you do when you saw this?

A What did I do?

Q Yeah, what did you do?

A In my head immediately I just figured, well, you know, like the timeframe when you hear gunshots and then you see a car that doesn't stop at a stop sign and, you know, turns all crazy and then they turn on their lights afterwards, you just think in your head, well, you know, obviously it's somebody that did drive-by, right.

Q Okay.

A And so my sister told me, well, call the cops. You never know if anybody got hurt or who got hurt or whatever.

Q And so did this vehicle emerge from the direction of the gunshots?

A Yeah.

Q Okay. And as you ~ who was driving?

A My sister.

Q Okay, and you called 911?

A Yes.

Q And A Well, it wasn't 911, I think I called the Sunnyside number.

Q Okay. And you called the police?

A Yeah.

Q And did you speak to them?

RP 381

A Yes.

Q And did you tell them what was happening?

A Yes.

Q And you gave them a description of the vehicle you were following?

A Yes.

Q Okay, and - now this car did it have tinted windows?

A I believe so, yeah.

Q Okay. And did you tell the police that?

A I don't remember actually if I did or not. I think I did, I'm not sure.

Q Okay.

CLERK: Your Honor, the Clerk has marked State's Identification 170.

Q All right. And did you follow - and in following this vehicle where did you go?

A What do you mean, I mean, like

--Q Where did the vehicle go?

A I mean, after ~ I don't understand your question, where did it go? I mean, it went straight when we were following it

--Q Yeah.

A ~ we went straight for like, I don't know, how many miles and then it turned into a field like if it was going to come back at us and we went straight while they turned around and then they went east and while we were going north, well, we turned back around.

Q Okay. Now, after going up North Outlook Road where did the vehicle go, did it turn?

A Yeah, it turned - I don't know what that road is actually. It runs north of

--CLERK: Your Honor, the Clerk has marked State's Identification 170 - 171,
I'm sorry.

Q Let me - are you well familiar with the Outlook area through delivering papers?

RP 382

...

Q Okay. All right, and - okay, and this area - this intersection right here, are you familiar with that intersection?

A It's 1st and Outlook, right?

Q Yes.

A Well, yeah.

Q Okay, and is that where the car came from?

A Yeah, because it was at the stop sign right there.

Q And - all right, and I can't recall how far we got but what was your description of the vehicle?

A It was Mitsubishi Gallant, charcoal color with a fin, I believe.

Q Okay, and do you know it had a fin?

A Well, I believe there was a fin, yeah.

Q Okay, and did you tell the deputies that?

A Yeah. I'm pretty sure I did.

Q Now, when you - after it went past and turned onto Outlook Road, where did it go?

A Onto North Outlook Road, right, yeah.

Q Did it take a right or a left? Did it go toward the freeway or away from the freeway?

A Away from the freeway.

Q Okay. So when it went up here how far did you follow it?

RP 390

Q Okay. All right, and - okay, and this area - this intersection right here, are you familiar with that intersection?

A It's 1st and Outlook, right?

Q Yes.

A Well, yeah.

Q Okay, and is that where the car came from?

A Yeah, because it was at the stop sign right there.

Q And - all right, and I can't recall how far we got but what was your description of the vehicle?

A It was Mitsubishi Gallant, charcoal color with a fin, I believe.

Q Okay, and do you know it had a fin?

A Well, I believe there was a fin, yeah.

Q Okay, and did you tell the deputies that?

A Yeah. I'm pretty sure I did.

Q Now, when you - after it went past and turned onto Outlook Road, where did it go?

A Onto North Outlook Road, right, yeah.

Q Did it take a right or a left? Did it go toward the freeway or away from the freeway?

A Away from the freeway.

Q Okay. So when it went up here how far did you follow it?

RP 390

...

A I don't know, maybe -- I'm not good on distance, so I'm going to say like five, six miles, maybe.

Q Okay, and what kind of ~ what's the description of this countryside. Is it, you know, residential or is it farming areas?

A Farming areas.

Q And did it continue going straight down North Outlook Road or did it turn?

A No completely because if you recall in my earlier statement, I said that they turned around in a grape vineyard.

Q Was it made a turn before that or at any point?

A Not that I know of, no.

Q All right, and when you last saw it when you stopped ~ did at any point you stop following it?

A When I last saw it?

Q Yeah.

A The last time I seen it was -- they were going west bound on -- I We don't even know what that road was, and that was only because I was on the phone with the dispatcher and one officer already passed us and we pulled over with the lights. The second one came and he asked us where did the car go and we just said we didn't know ~ I didn't know.

Q Okay, and so did this car have tinted windows that you were following?

A Yeah, I believe I said it did.

Q Okay. That's what you told the dispatcher, right?

A Yeah.

Q And you told that it was a charcoal gray.

A Yeah, it's a charcoal colored Mitsubishi Gallant.

Q Did you mention anything about the tail fin?

RP 391

...

Q Okay, and in that did we discuss who you associated with?

A Yeah, I believe so.

Q Okay, and did you admit that you socialize with gang members at times?

A Yeah.

Q Okay.

A From both sides.

Q From both sides.

A Yeah.

RP 407

CROSS

Q Good afternoon, Ms. Lopez.

A So, I'll cut to the chase. We're going to go straight to this - you were given papers and you indicate you heard some gunshots, correct?

A Yes.

Q And you saw a car —

A Yeah.

Q -- pass in front of you, correct?

A Yeah.

Q And you -- how long did it take you to call 911?

A Enough time for me to put it together one by one - or I think how you say it. Put one and one together, gunshots, there's a car, it doesn't stop, it doesn't have its lights on and just on that, I don't know the mentality -- my own mentality that, you know, that's how long.

RP 409

Q Quick?

A Yeah.

Q Were you scared?

A Kind of, yeah, sort of because I mean, I don't know who's in the car and I don't know what they have and obviously I just heard, you know, gunshots.

Q So you — sorry.

A I don't know if they still have rounds of, you know, whatever, anything.

Q So (unintelligible) gunshots?

A Yeah.

Q There's a car in front of you, shocking moment, correct?

A Well, yeah, I mean I've only been in one other drive-by before.

Q So you were shocked, correct?

A Yeah.

Q And who's driving?

A I have no idea.

Q No, I mean A You mean my sister's car, my sister.

Q Okay, and you're on the phone?

A Uh-huh.

Q And you guys are going fast?

A Before or after we seen the car?

Q When you were following the car?

A Oh, yeah.

...

Q Now, isn't it true you also say it looks like a Mitsubishi on the 911?

A No, I said Honda, actually.

Q Yeah.

A But until -- only until we got closer to it did I discover it was a Mitsubishi Gallant.

...

Q Mr. Hintze asked you whether you associated with gang members, correct?

A Yes.

Q Where do you live?

A In Sunnyside.

Q Are there a bunch of gangs in Sunnyside?

A Yeah.

Q There's a lot of gang bangers. I mean, you could know —

A There's a lot of gang bangers, yes, but not so much gangs because there's like just a couple main ones, you know, that you know about but not ~ that I know -- that I know, they're, you know, there's a lot, you know, a lot of gang members.

Q So by associate, I mean, sometimes you talk to them, right?

A Uhm-hm.

Q That doesn't mean you go around and hang around with them. You talk, you say hi, be courteous, is that correct?

A Yeah, kick it with them, yeah, party with them, yeah.

RP 415

Q There's a bunch of kids out there doing that, correct, but you're not a gang banger?

A No.

Q And you wouldn't know what it is - this snitch.

A No, I mean, like I said, the way I think of snitching, I think of like little kids, you know, on a playground, you know, that tattletale on each other.

RP 416

...

Q Okay. And when you got home what did you do?

A When I got home. I think I went to the bathroom and my brother said, can you take

RP 418

me to Outlook or whatever because my aunt had called him and said that whatever was going on.

Q Okay.

A And that's when we found out that it was-- that that's where the shooting had took place or whatever.

Q Okay, and your sister who you were delivering papers with, she went to bed?

A Yeah. Well, we walked in and then my brother woke up like a little bit later and said you know, hey, can you take me to Outlook or whatever.

Q Can you say that again?

A That my brother ~ okay, when you get home - right, we got home and we went and did our own thing, you know, and then my brother says, hey, can you take me to Outlook. Okay, and within like a ten-minute time period that's when the officer calls me and says can I come identify the vehicle.

RP 419

Dep Perry Brown

Q Did you make any initial observations about the scene?

A It's a known house -- that particular trailer is a known gang house. We'd been there

many, many times.

Q What variety, Norteno or Sureno?

A I believe the trailer itself is - they're Norteno.

RP 432

Deputy Jesus Rojas

Q Now back in early 2011, what were your duties?

A I was on standard patrol in the Lower Valley.

Q Now, were you on duty in the early morning hours of March 1 4th of 20 11 ?

A Yes, I was.

Q And this morning hours, what day of the week was it?

A This was early Monday morning.

Q Okay. Now, were you on duty approximately 4:15, 4:16 a.m. in the morning?

A Yes, I was.

Q Did anything occur at that point in time?

A Yes, it did.

Q What?

A We got a call of a drive-by shooting in the Outlook area.

Q Okay, and was there any other information imparted to you?

A Yes, also with that there was also given a suspect ~ a possible suspect vehicle and I believe dispatch advised the witnesses were following the vehicle.

Q Okay. Was there a vehicle description given to you?

A Yes, it was.

Q And what was that?

A It was a Gallant, I believe. A gray passenger car, Gallant.

RP 461

A When the initial call came out, I was in the Toppenish area. So I started drifting towards the Outlook area and I was at that approximate time I was in the area of Yakima Valley Highway and 1-82, just outside the city limits of Zillah.

Q Okay. Were you driving on the Yakima Valley Highway?

A Yes, I was.

Q Okay, and did you ~ was there other vehicles on the roadway at this time of night or morning?

A None. I mean, at that time it was dead. There was no other cars except myself.

Q Okay, and did you see a vehicle then at that point?

A Yes, within that vicinity I was going westbound -Yakima Valley Highway kind of loops, kind of S shape - westbound at East Zillah Drive, a passenger car that matches the suspect vehicle was coming to a stop as I was coming to the intersection.

Q Let me ~ well, let me - let me ask you, when you came across this intersection — where did you see this vehicle?

A The vehicle is coming up to the stop sign on East Zillah Drive, so I was going on Yakima Valley Highway and I seen a vehicle because there's nobody else on the road besides myself and I see the headlights of another vehicle, and it's coming up to the stop sign at East Zillah Drive. Em noticing it and there's a large street light there and they come up to a stop sign as I come up to the intersection. I said, hey, that matches the suspect vehicle.

Q Okay. And how do you react?

A This was simultaneously. I was coming to a stop sign. I couldn't see the vehicle because it's dark and I go and I said that's the suspect's vehicle in my head. And I continued because I was already committed and then as I came up the vehicle jumped onto Yakima Highway and continued eastbound back towards the Zillah area. At that time I was able to —
RP 462

when I flipped around and tried to get behind the vehicle.

RP 463

...

A I advised dispatch that I'd possibly located the suspect vehicle and I gave dispatch the license plate of 486ZZN.

Q Okay, and do you make any observations about the vehicle or who was in the vehicle?

A It's at this time ~ okay, so I've fallen behind the vehicle and I see there's a driver and a passenger and then I continue following and I seen possible two heads kind of ducking down at the bottom of the — like ducking below in the back seats.

Q Okay. Were you sure about that?

A I was assuming, it looked like it at the time, I didn't know and I was Q Okay.

A ~ my feeling was there was other people hiding behind the seats - or in the back seats.

Q All right, and do you make a stop right away at this point?

A No, I didn't.

Q Why not?

A Because I - this was a suspect vehicle in a drive-by shooting and I was by myself, so I was waiting for additional units for backup because at least - had at least two people in the vehicle and I was alone.

Q Okay. Did you eventually get some backup?

A Yes.

Q And who - how many backup did you get before you made the stop?

A Just one initially which is a Granger officer, Paganelli, was there to assist me at the time.

Q Okay, and did you eventually turn on your lights?

a Yes, I did.

Q And did the vehicle stop?

RP 468

A Yes, it did.

Q Okay, and what did you do at that point when you made the stop?

A Well, to make this target stop, I pulled over, the vehicle pulled over, I pulled over, Paganelli was shortly just right behind me, that's when I turned my emergency lights. I came out of the vehicle and at that time I heard yelling coming out of the vehicle. Fuck you or —

Q Do you know who was saying that?

A No, I don't.

Q Okay. Now what was being said?

A Cursing words. They were cursing at me saying, why did you stop me. Come get me, or just being very aggressive. I mean, it was shaking in his boot, you know, so I - I like (unintelligible) back. He backs my vehicle at gun point and there's yelling constantly coming from within the vehicle. At that time, two occupants in the back seats pop up.

Q I was going to ask you that. They pop up. Did they pop up at the same time?

A Simultaneously, yes.

Q Okay. And how did you respond to that?

A It spooked me even more because I knew this is probably the suspect vehicle to the point where I told — at the time, Officer Paganelli was a newer officer. I said, make sure you have cover, make sure you have cover, because I felt this was going to go bad real fast, and that's what I told my dispatcher, I need additional units now.

Q Okay. Did additional units arrive?

A Eventually, so we had to get additional units from the Granger area and the Zillah area.

Q Okay, and once you got - what did you do before you got these additional units?

A So, we were standing there — what we call is a felony stop, a high risk stop. We have RP 469

— we're constantly telling the suspects in the vehicle to keep your hands up, keep your hands up, keep your hands up and at this time constant yells from the car taunting us, you know, why did you stop us. If you come get me, you'll see what happens, just constant yelling out of the car. So this happened for, as units were arriving, so this stand off happen ~ at this time we're saying, driver come out, driver come out and, no, they would not ~ no one would follow our commands and this stalemate happened about 10 minutes, 5 to 10 minutes, we're yelling back and forth at gun point. I'm advising dispatch they're not getting out of the car, I'm asking for additional resources, a canine, possibly if there was one on duty. So, it's a good 10 minutes this spiel is going back and forth.

Q And once you got additional units there, were you able to start extracting people from that car?

A Yes, approximately 5 to 10 minutes into this the driver finally started following commands. The driver was the first one out of the group within the vehicle to follow commands.

Q Okay, and how did he first following commands?

A Give the commands of driver -- which we call standard, open the door, put your hands up, step out of the car so he would — so the driver came out of the car and had his hands stand up and basically is hands stands up so he can walk him to us.

Q Now, let me ask you is the ~ who was the driver?

A It was the defendant sitting right across from me in the black shirt.

Q Okay. For the record the witness as identified the defendant Armando Lopez.

THE COURT: The record will so reflect.

Q Okay. How was he attired at that time?

A What caught my attention was he was dressed down or he had a blue handkerchief or bandana hanging from his neck, loosely hanging. I want to characterize it kind of like the RP 470

wild, wild west where you can hold it over the face. That really caught my attention. When he came out of the car, I said, whoa. I said, we got the guys, so that definitely caught my attention.

Q Okay, and did you take him ~ how did you take him into custody?

A Again, we had the defendant walk back to us as (inaudible) covered as far as we can and with the cover officer because we had saw additional people in the vehicle, took him in handcuffs and then backed him up and then put him in the first free vehicle, first patrol vehicle and get him secured in the car, and then we addressed the other suspects in the vehicle.

Q Okay. Now, when you were doing the stop were there any other vehicles driving by on the roadway other than police vehicles?

A At that exact moment, I don't recall because it was - my attention was focused on the vehicle, but I believe, no, but at the end of it

- at the end of this there was because it was

kind of morning time, people starting to go to work, so eventually people started driving around.

Q Okay, during the course of this ~

A During the course of —

Q -- the scene location.

A Yes, the scene location of the traffic stop.

Q All right. And so did you remove the other people from the vehicle?

A Yes, with the assistance of the other officers, so I was the one that withdrew the defendant — or the driver and I don't recall what order or what officer took the other ones there were several officers at this time.

Q Do you recall who was the front seat passenger?

A Yes.

RP 471

Q Who was the front seat passenger?

A It's the defendant with the tie next to defendant -- it's this gentlemen.

Q Okay, can you describe for the record what he's wearing?

A He's wearing a tie, from my recollection he was the passenger.

Q What color is his tie?

A Brown, black, or - (unintelligible) covered up.

Q Okay, and what color is his shirt?

A It's checkered and gray.

MR. HINTZE: For the record, the Deputy has identified the defendant, Mr. Mancilla.

THE COURT: The record will so reflect.

Q Okay, and then who were the two backseat passengers?

A It's the two defendants sitting to the far right and the last gentleman, defendant to the back, the rear.

Q Okay.

MR. HINTZE: Okay. For the record, the Deputy has identified the two remaining defendants, man charged as Jaime Lopez and the defendant, Nicolas James.

THE COURT: The record will so reflect.

Q All right. And they were removed?

A Yes, they were.

Q Okay. Now, at this - during the course of this did anybody ask you to do anything, any of these defendants ask you to do anything?

A Can you be more specific?

Q About the car.

A Yes, the driver, the defendant -- this is - he was more interested in getting his car to

RP 472

his girlfriend.

Q Did he ask you to give his car to his girlfriend?

A That was the theme, I want my girlfriend to pick up the car, I want my girlfriend to pick up the car.

Q Okay. That's it. That's all I want to ask you about. What happened to each of these four individuals?

A After they were taken out of the vehicle, they were placed in different patrol vehicles.

Q Okay. And were they patted down in the course of this?

A Yes, obviously before they get put into patrol vehicle, we pat them down for any search for any weapons because they're going to be in the back of a patrol car.

Q And handcuffed?

A Yes.

Q So you're processing this ~ did you - what was your next course of action at the scene?

A Okay. After the scene was secured, basically all the occupants of the vehicle were in the patrol vehicle and that was secured, and now we're investigating, okay, we want to see if we can get the vehicle verified that this was the vehicle involved, if there's any weapons in the vehicle, so that's kinda how we -- so at this time, I said, okay. I contacted ~ I had - I contacted the two witnesses that called the shooting in and were - I believe they were following the vehicle at one point.

Q Okay, which one did you actually call and talk to, if any.

A If I can refer to my report?

Q You may.

A I spoke to a Veronica Lopez on the phone and I let her know, hey, is there any way I can get a hold of you - you can come ~ if we can get you to verify this is the vehicle that RP 473

you seen ~ or that - or was at the incidence [sic] you were following. And she said she could - she could identify the vehicle.

Q Okay, and did she show any reluctance to come down at that point in time?

A No.

Q Did you threaten her at all, you better do it or we're going to arrest you?

A No.

Q Did she describe to you, to your recollection, any problems with them coming to view the vehicle?

A Not that I can recall, no.

Q Okay. Now, what -- how were you going to do this? Were you just going to have them drive up to the scene in their own vehicles or were you going to do it a different way?

A No, I didn't want - this is

-- I didn't want her - basically I try to shield the witness she's a witness ~ they were witnesses. I wanted - I asked Deputy Brown to go pick her up.

I didn't want her to drive her vehicle, just so we can keep her (unintelligible) away from the occupants of the vehicle. At that time I didn't know it was involved for sure. So I had Deputy Brown pick her up so I can have her not viewed with her own vehicle by the defendants.

Q So the defendants, were they going to remain at the scene until you had people see if they could take a look at the vehicle?

A I'm sorry (inaudible), sir.

Q Were you going to have the defendants remain at this location, you know, through that point where you'd be having these witnesses show up?

A Yes, they were going to be at the scene.

Q Okay, so about how long did ~ well, did they eventually arrive?

A Yes, Deputy Brown brought the witnesses to the scene. At that time I contacted - I RP 474

made contact with the witnesses. I said, hey, thanks for coming, you know, (unintelligible) can you — is that the vehicle because at the time our patrol lights are on, is that the vehicle that was involved that you seen and both witnesses said, yes, that is the vehicle.

Q Did they express any hesitation?

A No.

Q Did they seem particularly nervous at that time?

A Nothing I can — I mean, nothing that stands out.

Q Okay. Were you or anybody else in your presence pressuring them to come up with an identification?

A No.

Q Did they have any qualifications to their identification?

A Qualifications, what do you mean, sir?

Q Well, it looks like it but - or that might be it but I'm not sure, things like that?

A No, it was a yes, that's the vehicle. It was a hundred percent, no questions to ask.

Q Okay. Now, after ~ and of course were they

-- how long did they stay there at the scene, these two women?

A I don't know because I made contact with them to make sure they verified the vehicle, that was the vehicle, and I said, okay, thank you very much and I believe that was it. I walked away so I had to deal with the suspects on the scene, so I don't know when Deputy Brown took them back to their vehicle or their house, I don't know how long they were on the scene for.

Q Okay. Now, at a certain point - can you see inside the vehicle, the suspect vehicle, at the this time, this Mitsubishi Gallant?

A Yes, from the windows. I couldn't look in the vehicles.

Q Now, did you notice anything to do with weapons, guns, ammunition or anything like RP 475 that in the vehicle?

A No, I couldn't see -- within the vehicle I couldn't see anything that stood out.

Q Now, who else had been arriving at the scene, anybody there to help you out from the Sheriffs Department?

A Yes, when -- at that time it was middle shift change because it's now early Monday morning, 6:00, so that's our shift change is 6:00 in the morning, so the day shift - I'm at night shift. Day shift is now coming on duty and they are now coming to assist me.

Q Okay, and who was that? Who showed up?

A What we call C squad which is Sergeant Russell and the rest of his squad.

Q Okay. Now, when you have a vehicle this, one thing you could do is ~ do you get search warrants?

A Yes, we could.

Q Okay. And to search that vehicle at that time you'd be ~ would you need to get a search warrant?

A Yes, we would.

Q Okay. Now, not seeing any obvious signs of weapons in the car, did you take any what was your reaction to this?

A You know, it just didn't seem right because I said, that's my suspect vehicle. These Individuals -- it's 4:00 in the morning, I said, they have to be involved, I said, it doesn't seem right. So I said ~ I told Sergeant Russell, I said, Sergeant Russell, we need to go back to the location where I initially seen the vehicle. If they had enough time, if they had anything, to throw it out - throw anything out, weapons, any evidence, I said, we need to go back and I don't — I need ~ I want to verify there's nothing there at the intersection.

Q Okay. So did you -- your next course of action was that going back to the intersection?

RP 476

A Yes.

Q And let me just - let me just show you a few photographs. I'm going to show you 12, 13, 14 and 15, State's Identification. I'm not asking you about the location which the target of those photographs is located but do you recognize what the pictures are of?

A Yes, this is the vehicle, suspect vehicle had stopped and was involved in the traffic stop.

Q Okay, and - but you weren't there for those photographs?

A No, I was not.

Q Okay. Thank you. Do those seem accurate photos, the way the vehicle looked except for its location?

A Yes, it is.

Q Okay. So, you go back to the intersection?

A Yes.

Q Now at this time do you have anybody in your patrol vehicle?

A Yes, the defendant Lopez was in my patrol vehicle.

MR. HINTZE: For the record, the witness pointed back toward Armando Lopez.

A Yeah, Armando.

THE COURT: The record will so reflect.

Q And back to State's Identification 178, I believe -- did I walk off with the laser pointer. I think I did again.

A Yes, you did.

Q Can you point out where ~ now, did anybody go with you to the location?

A Yes, Sergeant Russell and I ~ Sergeant Russell delegated kind of duties at the traffic stop or at that location and then he and I both went back to the intersection.

RP 477

Q Okay, and where did you go?

A I'm sorry.

Q Where did you go? Can you show us?

A Yes. Well, I was in front. I let Sergeant Russell follow me so I could show him exactly where it was at. I drove up and I parked initially right there in that vehicle right - I parked right there just to - I wanted to walk back to this area.

Q Now, did you see where Sergeant Russell went?

A Yeah, he was behind me -- and Sergeant was behind. He pulled off in this area. He pulled off there as I pulled in this area and right there.

Q Okay, and did you get out of your vehicle to walk back?

A Yes, I did.

Q Did you see - did Sergeant Russell get out of his vehicle?

A By the time I pulled over and got out of my patrol car and he was already walking on the roadway.

Q Okay. And did you come across anything on the side of the roadway?

A Yes. Approximately in this area there's a scope or some part of a weapon laying right on the shoulder of the roadway in this area right here.

Q Okay. All right, so you saw it - what side of the roadway, the right side — or I mean the east side or the west side if that's (inaudible) --A Right side, along this orchard here, right there. That's what initially caught my attention, there's like a scope or something right on the shoulder on the pavement area.

Q Okay, and about how far away from the intersection were these things located? You can guess based on your memory.

A A hundred yards – I mean, from the intersection here about 100 yards or approximately this area right here from the intersection. It's kind of an awkward intersection

RP 478

Q Now, do you ~ did you notice anything else on the side of the roadway beyond a

scope?

A Yes, and now I walk — now, when I'm facing down the roadway I see there's several firearms laying on the roadway.

Q Okay, and which - what firearms did you see?

A I don't recall. They were covered, they're in the dirt shoulder off the hard pavement.

Q Okay, and were any pictures taken of these items?

A Yes, there was.

Q (Inaudible

-- both talking at once) ~

A Yes.

Q Did you see by who?

A I believe Sergeant Russell was photographing.

Q Okay, and was it you or somebody else that collected these items?

A Sergeant Russell was there and — Sergeant was there and two lead detectives were there as well at that time.

Q Okay. All right. So, were you present while the photographs were being taken?

A Yes, I seen some photographs being taken.

Q Now, from that point after the location and photographs and collection of evidence, were you there for the collecting of the evidence or was that ~ or you leave at that point?

A I was there for some of the collection. People were collecting things. There's a couple of the officers and detectives helping us out at that point.

Q Okay, and where did you go?

A I transported the defendant, Armando Lopez, to our Sheriffs Office.

Q Okay, and at that location were any photographs taken?

RP 479

A Yes, there was.

Q Okay, was any photographs taken of any person?

A Yes, of the defendants sitting across from me.

Q All four?

A Yes.

Q Okay, were you present for the taking of those photographs?

A Yes.

Q Now, I showed you some- actually did I?

A You took them.

Q Okay. Let me get there. These photographs, at least taken of these four at the station, did it show what they were wearing?

A Yes, there was.

Q Do these photographs show any tattoos that these people had?

A Yes, they did.

Q Okay, and were you ~ these photographs focusing in on what they were wearing and their tattoos?

A Because we - the defense - there's some gang ties that we were trying to identify and we knew that were present of the incident that happened.

Q All right. Is there any significance to the color ~ based on your training and experience is there any significance to the color blue?

A Yes.

Q And what is that?

A That's a gang, it's a Sureno gang.

Q Okay. Is - do you know of any significance of the number 13?

A That's another gang identifying number.

RP 480

Q Okay, identifying with what?

A Surenos.

Q Okay. Are you familiar with LVL?

A It's another group within the — it's heavily in the Sunnyside area.

Q Okay, and group, what do you mean by group?

A It's another gang, it's another gang.

Q And have you dealt with them in the past?

A Yes. Working the Lower Valley, yes.

Q Okay. And what kind of gang is that? Is that Norteno or Sureno?

A Norteno - no, Sureno.

Q All right. I'm going to hand you what's marked, as a series of photographs, marked

46 through 58. I'll give you a moment to peruse through those.

A Okay.

Q Let me ask you, are those ~ do you recognize that group of photos?

A Yes, it's going to be -- this is to depict the area where the firearms were located.

Q And you were there when these photos were taken?

A Yes.

Q Do they accurately depict these various locations and what the photographs are taken of?

A Yes.

Q Okay, and specifically number 46, what does that depict?

A This is going to be looking from down the road which would be south from the roadway look towards the intersection where I initially seen the suspect vehicle.

Q Okay, and does that accurately show the way this location looked that morning?

A Yes.

RP 481

Q And what does it - is there anything else in the photograph that you can see?

A There's evidence markers where firearms and the pieces of the scopes that were located at.

Q Okay. And ~ all right.

...

Q Okay, so is the intersection further up in the top top right of the picture?

A Yes, I believe there's a car coming right to posted stop sign, right there, that's where the intersection is that and these are the evidence markers where the various evidence was found.

Q Okay. So the items of evidence, is this before after the first house ~

A This is

Q -- and go south on Yakima Valley Highway?

A This is the first residence, so this would be the first residence as I'm heading south on Yakima Valley Highway.

RP 482

Q And so let me clarify that, now that you've taken a look at these photographs, I'm

going to show you State's Exhibit 178 again. So where is that - the evidence located if A In the -- in approximately this area right here.

Q Okay. Now I move your attention to State's Identification 47.

A 47.

Q And what does that show?

A It just depicts a closer picture of the evidence in relation to the first residence on the south side of the road — I mean, on the west side of the roadway.

Q Is that an accurate photo?

A Yes, it is.

Q And State's Identification 48, what does that depict?

A Again, this is another even closer shot - picture of the evidence found and the residence in relationship to the roadway and the evidence.

...

RP 483

Q I'm going to put up State's Exhibit 48. Okay. Does that show some of the locations of the evidence along the road?

A Yes, again, evidence markers locating the various items find down [sic].

Q I direct your attention to No. 49, what does - do you recognize that photo and what does it depict?

A Yes, this — Exhibit 49 is now looking to the south which is on the — I believe on the back of that patrol vehicle. Now, we're looking the other directions at the evidence found.

Q Okay. Is that an accurate photo?

A Yes, it is.

Q And you were there when it was taken?

A Yes, I was.

...

Q I'm going to ask you about a series of photos focusing on one particular item. No. 50, State's Identification. What does that depict?

A It's going to depict a closer picture of a rifle and this is going to be directly across from that marking right there.

RP 484

Q Okay, and is that an accurate photo of the rifle that was laying on the ground that morning?

A Yes, it is.

Q And I direct your attention to No. 51, what does that depict?

A This is going to be another photograph of the rifle located from a different angle.

Q Okay, is that an accurate photo of it laying on the ground that morning?

A Yes, it is.

Q And No. 52, what does that depict?

A It's another just a closer shot of that rifle located ~ located.

Q Okay, and is it an accurate photo?

A Yes.

Q And State's Identification 53, what is that?

A No, this is a close shot of a rifle what was depicted in the other pictures along with a - looks like a bayonet, I think of it.

Q A what?

A A bayonet, a knife at the end of the —

Q Bayonet?

A Yeah, bayonet.

Q Okay. And is that an accurate photo of the way that rifle looked A Yes.

Q - that morning?

A Yes.

RP 485

...

Q Putting up State's Identification 50. All right. And I'm going to put up next State's Identification 53, Deputy. Deputy, did you ever find a magazine for this rifle on the side of the road?

A I don't recall.

Q Okay. And another angle, 51 . Deputy, I'd ask you to look at the remainder of the photographs. State's Identification 54. Do you recognize that?

A That's going to be another part of a weapon, looks like it was broken off, freshly broken off part of a weapon.

Q Okay, and was that laying there on the ground when you were there?

A Yes.

Q Okay, is that an accurate photo of it?

A Yes.

RP 486

...

Q Next, I direct your attention to State's Identification 55. Do you recognize what that photo depicts?

A This is going to be another part of a weapon ~ or a broken piece of plastic in relationship to that location of a broken firearm.

Q Is that what you saw there that morning?

A Yes.

Q Is that an accurate photo?

A Yes.

...

Q I'm showing 54. Deputy, does that - is that the rifle you just spoke about?

A Yes.

RP 487

Q Is it missing anything?

A I believe it's missing the butt stock, I can see the trigger guard right at the far end.

Q And State's Identification 55. Now on the top of that photo, what is -- what is at the top in relationship to what's at the bottom?

A It appears that broken piece belongs to that and is (unintelligible) right there. (Unintelligible).

Q And on the bottom is that edge of the roadway or is it further away?

A Yeah, this would be the - if you break down this is kind of the shoulder area of the roadway and that's kind of the off in the gravel area.

Q Okay.

A You can change your tire right there if you have a flat.

Q All right. I direct your attention to State's Identification 56. What does that depict?

A Another picture of the marked unit of ~ and the picture has the rifle's already been

presented. The broken firearm and that other piece and it looks like a scope kind of a marking in it.

Q Okay, is that what you saw there that morning?

A Yes.

Q Is that an accurate photo of it?

A Yes.

Q I direct your attention to No. 57. Do you ~ what is that and do you recognize it?

A That's going to be a scope located on the roadway.

Q Okay, and is there anything by the scope?

A It's an evidence marker, too.

Q Okay, and do you recognize that photo?

A Yes, it was taken when I was there.

RP 488

Q Is that an accurate photo?

A Yes, it is.

...

Q And finally, 58, what does - do you recognize that photograph?

A It depicts a picture of ammunition located in the area of the firearms.

Q Okay, and did you see that that morning?

A I don't recall seeing the ammunition, I don't recall that.

Q Okay. Well, then I'll let that one go for now.

MR. HINTZE: Permission to publish 56 and 57 to the jury, Your Honor.

THE COURT: Permission granted.

MR. HINTZE: And that's 56 and State's Identification 57.

Q Deputy, earlier we talked about photos that were taken of the defendants at the Sheriff's Department.

A Yes.

Q And again, were you the ones taking the photos or was somebody else?

A I believe it was Sergeant Russell was photographing.

Q Were you present for these photographs?

A Yes, I was.

Q Sorry, I have to get to the right place in my list. I'm going to hand you a group of
RP 489

photos that are State's Identification 59 through 74. State's Identification 59, so you
recognize that photograph?

A This is going to be one of the defendants sitting ~ located - when we stopped them.

Q Okay, is that an accurate photo of the way that defendant looked?

A Yes, it is.

Q Is that what he was wearing?

A Yes, it was.

Q And which defendant is that?

A He has hair now. I believe it's that defendant right there (unintelligible) the far right
defendant.

Q The farthest on your right?

A Yes, my right.

Q Okay.

MR. HINTZE: For the record, the Deputy has identified Nicolas James.

THE COURT: The record will so reflect.

RP 490

...

MR. HINTZE: Permission to publish.

THE COURT: You may.

Q Let me ask you a couple questions about this. The color of his top?

A Blue shirt.

Q Okay, the color of his belt?

A Blue.

Q Any symbol on the belt buckle?

A In the buckle of his belt, he has number 1 3 .

Q Okay. The color of his shoelaces?

A They are black.

Q Okay.

MR. HINTZE: Permission to publish.

THE COURT: You may.

MR. HINTZE: I'm going to hand them straight to the jury.

THE COURT: Members of the jury as you're looking through the photograph, recall that you need to pay particular attention to the testimony also that may be elicited during this period of time , so don't let your attention be drawn away from the testimony.

Q Okay. Deputy, I direct your attention to State's Identification 60. Do you recognize that photo?

A Yes.

Q Were you there when it was taken?

RP 491

A Yes, I was.

Q Is this an accurate photo of the way this ~ what does it depict?

A It depicts the defendant (unintelligible) I believe (unintelligible) the last name.

Q Who?

A The defendant with the tie.

Q Which tie? Some of them have ties.

A Jesus Mancilla.

Q Okay.

MR. HINTZE: And for the record, the witness has pointed back to the defendant, Jose Jesus Mancilla.

THE COURT: The record will so reflect.

Q And is that an accurate photo of the way he looked in the station?

A Yes.

...

Q I direct your attention to State's Identification 61. Do you recognize that photo?

A Yes, I do.

Q Were you present when it was taken?

A Yes, I was.

RP 492

Q And what does that photo depict?

A The defendant, Jaime Lopez, or he was identified that day as Jaime Lopez.

Q Okay. So, can you point to him in the courtroom, is he here?

A The last defendant sitting in the back.

Q What is he wearing?

A He is wearing a blue and white shirt.

MR. HINTZE: For the record, the defendant Jaime Lopez has been identified by the witness.

THE COURT: The record will so reflect.

Q Now, is he — does he look the same today as he did then?

A Looks a little thinner.

Q Is that an accurate photo of the way he looked sitting in the Sheriff's office that morning?

A Yes.

...

Q State's Identification 62. Do you recognize that photo?

A Yes.

Q Do you recognize what it depicts?

A Yes.

Q Were you there when the photo was taken?

A Yes.

Q What is this a photograph of?

RP 493

A It's a tattoo of defendant — of the same defendant, the back of his neck with a tattoo of a Joker (as heard), JOR13.

Q Okay.

THE COURT: Mr. Hintze, would you clarify for the record which defendant the witness was pointing to?

A The witness pointed back to Jaime Lopez, the defendant Jaime Lopez.

THE COURT: Is that correct, Officer?

A Yes, Your Honor.

THE COURT: Okay.

Q Is that an accurate photo of his tattoo?

A Yes, it is.

MR. HINTZE: Move to admit State's Identification 62.

THE COURT: 62 will be admitted over the objection of the defendants.

Q And again, 63, is that — do you recognize that?

A It's going to be just a close shot

-- a close up shot of the defendant Jaime Lopez's
tattoo, Joker 13, JOR 13.

Q And is that an accurate photo of it?

A Yes.

MR. HINTZE: Move to admit State's Identification 63.

THE COURT: 63 will be admitted over the objection of the defendants.

Q No. 64.

A Yes.

Q And do you recognize that photo?

A Yes, I do.

Q And what does that photo depict?

RP 494

A This is another tattoo of defendant Jaime Lopez. On his forearm he has a tattoo of
360, which I'm assuming is a zip code.

Q And is that an accurate photo of that 360 tattoo of Mr. Jaime Lopez?

A Yes.

Q And you were there when it was taken?

A Yes.

...

Q Now, I'm showing State's Identification 62. Can -- Deputy, is that an L or a J?

A It is a J — J-O-R.

Q I'm showing State's Identification 64. Ah, technology. Okay, is that 360 tattoo?

A Yes, it is.

Q Let me ask you about State's Identification 65, what is that?

A It's going to

-- depicts a close up of defendant Jaime Lopez's 360 on his inside arm

(inaudible ~ talking over the answer) --Q Is that an accurate photo of the way it looked then?

A Yes.

MR. HINTZE: Move to admit 65.

THE COURT: 65 will be admitted over the presumed objection of the defendants, and do you so object?

COUNSEL: Yes, Your Honor.

THE COURT: Okay.

RP 495

Q I'll direct your attention to State's Identification 66. What does that — do you recognize that photo?

A Yes, I do.

Q And what is it a photo of?

A It's going to be a picture again of defendant Jaime Lopez tattoo of a 1 and a 3 on his shoulders.

Q Okay. Is that an accurate photo of the way his tattoo looked that morning?

A Yes.

Q And you were present when it was taken?

A Yes.

MR. HINTZE: Move to admit State's Identification 66.

THE COURT: 66 will be admitted over objection.

Q And finally ~

MR. HINTZE: Well, permission to publish State's Identification - or Exhibit 66.

THE COURT: Permission granted.

Q Okay. And at another point you had him obviously take off his outer shirt at that point?

A Yes, we did.

Q Why were you interested in taking these photos of these tattoos?

A Because they were all the same gang which is Surenos and 13, and we were getting all their identifying tattoos of them.

Q Okay. And State's Identification 67, what does that show?

A That's another tattoo of Jaime Lopez - defendant Jaime Lopez's forearm with the Old English lettering on it.

RP 496

Q Okay, and is that an accurate photo of that tattoo?

A Yes, it is.

...

Q State's Identification 68, do you recognize that photo?

A Yes, it's a picture of defendant Armando Lopez.

Q Were you present when that was taken?

A Yes, I was.

Q Is that an accurate photo of Armando Lopez as he looked that morning?

A Yes, it is.

Q Okay, and what does it show?

A It shows the defendant Armando Lopez - picture of his attire and him throwing up a gang sign.

Q And you were present when this was taken?

A Yes, I was.

...

Q Okay, and was that taken in the Sheriff's office?

A Yes, it was.

Q State's Identification 69, do you recognize that photo?

A Yes, it's a picture -- a photograph of defendant Armando Lopez.

Q And is he wearing the same thing at that point?

A Yes, we had him take off his outside layer shirt, now he's in a tank top - missing a

RP 497

shirt.

Q Okay, does that expose anything?

A It exposes several other tattoos along his shoulders and chest area.

Q Okay, and what - any significance to those - you taking photos of those tattoos?

A Yeah, he has a number 13 on his inner

-- between his thumb and finger here and some

other tattoos on his arms, a different Old English writings.

...

Q State's Identification 70. Do you recognize that photo?

A Yes, I do.

Q What does it depict?

A It's going to be defendant Armando Lopez's back of his neck and another tattoo of Old English writing.

Q And is that an accurate photo of the said tattoo?

A Yes, it is.

Q Okay. What does that writing say?

A This was harder – I can't - Old English, I don't know what it really says. I don't (inaudible).

RP 498

...

Q No. 71, what is that a photo of?

A This is another picture of Armando Lopez lifting up his shirt and then his stomach, mid-area has an Old English letter S-A-R and a number 13 on this stomach.

Q Is that middle letter an A?

A Yes.

Q And what number is there?

A Number 13 on his stomach.

Q And you were there when that was taken?

A Yes, I was.

Q And that's accurate?

A Yes.

MR. HINTZE: Move to admit State's Identification 71 .

THE COURT: 71 will be admitted over objection.

Q And 72, State's Identification, do you recognize that?

A Yes.

Q And what does that depict?

A It's another picture of defendant Armando Lopez's arm and a closer picture of his 13

right here in this hand, thumb, finger area and some other tattoos that goes along his arms.

RP 499

Q Okay. Is that an accurate photo of his tattoos?

A Yes.

Q And you were present?

A Yes.

...

Q I'll try to get out of everybody's way. This is State's Identification 72. Okay, and this is a picture that shows the 13 on the hand?

A Yes.

Q And on the arm the ~ what are those symbols?

A It's an X and it's either a one (unintelligible) I can't tell with (unintelligible).

Q And there are three of them.

A Three of them. It could be 13 sideways.

Q And State's Identification 71, okay. And that's the one of him pulling up his shirt exposing the S whatever R and the 13?

A Yes.

Q Okay. State's Identification 73, are these still photos of the defendant Armando Lopez's tattoos?

A Yes, it is.

Q Okay, and what does ~ were you there when it was taken?

A Yes, I was.

Q And is it an accurate photo of one of his tattoos?

A Yes, it was.

RP 500

Q And what does this focus in on, this picture?

A Basically some more English Old writing on his forearm, his other arm. A closer picture of the 13 and some other on this forearm — on his bicep area.

Q Let me ask you —

MR. HINTZE: May I approach?

THE COURT: You may.

Q Do you know what that Old English is there?

A No, I can't determine it. It's Old English (unintelligible), no.

...

Q I'll just hand that one along. State's Identification 74, is that a photo focusing in on anything?

A Yes, it's going to be another -- on the opposite hand of Old English writing which this is Rascal.

Q Okay, and what -- on whose body is this?

A On defendant ~ again, defendant Armando Lopez.

Q Okay, and where is this writing?

A On the opposite hand of the other 13, on the other side -- inside of his hand.

Q And you're - and for the record, you're pointing to your right hand?

RP 501

A My right hand.

Ends at RP 502

A I contacted Veronica Lopez via phone.

Q Okay. And you asked her, you say, or did you tell her come over?

A No, I said, hey, I stopped the vehicle, are you sure you identify the vehicle and she says, yes, I can.

Q And then she came over and just (clicked fingers) in a heartbeat said that's the vehicle?

A No, I asked Deputy Brown to pick her up and she came down and I said, Veronica,

RP 517

thanks for helping us out. Is this the vehicle you stopped -- or excuse me, is this the vehicle you were following? Are you sure? Yes, I'm sure and her sister, I believe it was, said, yeah, that's the vehicle.

RP 518

...

Q And you made — you seemed to give a lot of importance to this color blue.

A Yes.

Q Because you think that that tends to make people commit crimes, is that what you're

saying, sir?

A No.

Q Then why such an emphasis on the blue?

A This is ~ I know the residence. It's a gang house and I know the color blue it's indicative of the issues they have in the Outlook area.

Q What color is my tie and my pocket square?

A Blue, blue.

RP 520

...

A In my quote — in the incident from that day, I quoted somebody from the vehicle, says, why the fuck did you stop us. Another quote saying that you'll see what happens if you come get us out.

RP 528

Sgt. Mike Russell.

Q Okay, let me put that one aside. Did you take photographs of this location?

A I did.

Q Well, let me ask you did you first see something that caught your attention when you came south of this intersection?

A Yeah, as a matter of fact, we were heading north on Yakima Valley Highway and of course I'm keeping my eyes out for any evidence and lo and behold I see a rifle scope on the
RP 540

Q Okay, let me put that one aside. Did you take photographs of this location?

A I did.

Q Well, let me ask you did you first see something that caught your attention when you came south of this intersection?

A Yeah, as a matter of fact, we were heading north on Yakima Valley Highway and of course I'm keeping my eyes out for any evidence and lo and behold I see a rifle scope on the
RP 540

shoulder of the roadway and it kind of got my attention.

Q Okay. Did you stop?

A Yeah, I did.

Q Okay, and did you pull off on what side of the road, if you could call it north, south, east, west side of the road?

A I was headed north and I turned around facing south and parked facing southbound on the west side of the road on the southbound shoulder.

Q Okay. And when you got out did you see anything beyond that rifle scope?

A I did.

Q What were some of your observations, what did you see?

A Besides the rifle scope, I saw a 7.62 caliber SKS assault rifle, a black .22 Marlin long barreled rifle with pistol grip. It has been broken off and then I also saw a Ruger .40 caliber semi-automatic handgun.

Q Okay. Now did you see pistol grip?

A I did.

Q Okay, and these — did you take photographs?

A I did.

Q Okay, and — I'm going to hand you what's marked as State's Identification 75. This has been previously shown to (inaudible — can't hear him). Let me show you State's Identification 75. Is that one of the pictures that you took?

A Yes, it looks like.

Q And what is depicted in that photograph?

A This shows the general area and layout of the scene where I recovered the firearms and evidence.

Q Okay, and is there ~ does it show the side of the road?

RP 541

Q All right, and so is the intersection here in the background?

RP 542

A Yes, it is.

Q About how far south is this location where you discovered all this items along the side of the road?

A About 100 yards south.

Q Okay. Any of these items laying in the pavement of the roadway?

A In the roadway itself, no. On the shoulder there were a couple of items, yes.

Q Okay, does it show the gravel?

A No, it was a paved shoulder.

Q Okay. The ~ where was the .40 caliber Ruger handgun found?

A The .40 caliber Ruger handgun was the one that was further south near the driveway that you pointed out. It was the further south than any of the other items. I'm not sure how else to describe it beyond that.

RP 543

...

Q Sergeant, I don't have — one of -- a number of these points that I was dealing with you earlier checked off, was there a - in and around the guns and pieces of firearms that you found were there any other - anything you noticed about the ground along the side of the road?

A There was.

Q What?

A What I saw was indications, gouge marks if you want to call it in the roadway indicating the trajectory of the firearms when they were in motion before they came to rest.

Q Were these along the side of the road or the curb or whatnot or ~

A Yeah, there's no curb through there but it was right along the shoulder of the roadway.

Q Okay. All right.

RP 574

Q Now, I direct your attention to your second page and it's the fourth paragraph down.

A Uh-huh.

Q What did you do - did you make contact with a .22 caliber rifle?

A I did.

Q Okay, and when you took it into ~ when you grabbed it, did you do anything with it?

RP 576

A When I grabbed it did I do anything with it?

Q Yeah, did you do anything with the .22 rifle?

A When I took custody of it, I made it safe and removed several rounds from the rifle.

Q And how many rounds?

A Five.

RP 577

...

Q Okay, and what information does that sticker you placed on there have?

A What this indicates is that it's a Ruger semi-automatic firearm.

RP 578

...

Q You can open it up. What is in that box right now?

A It's one of the firearms that I recovered that morning on the shoulder of the roadway.

Q And which one of the firearms is it?

A The Ruger .40 caliber semi-automatic handgun.

Q Okay. Has »

does it look the same?

A It does. It's still very dirty. I recall it was very dirty on that occasion as well.

Q Okay. Is there anything else in the box other than the firearm? Is there something separate from it?

A There is, there's a magazine that would have contained rounds if you wanted to load it.

RP 579

...

Q Okay, what is the indication of the firearm that you placed inside that box?

A It's an SKS 7.62 caliber rifle.

Q And what is the case number, you said the same, but just for the record, what does it state?

A 11-03490.

Q Okay, and when did you place this into evidence?

A It would be on the date of the recovery, shortly - several hours after they were recovered.

RP 580

...

Q What about at the butt end. I would ask you to take a look at that. On the butt, there's

sticker there.

A There is a sticker there and I did not — I did not put that there.

Q Okay. All right. Now, is there a magazine in place in that rifle?

A There is not.

Q Was there a magazine in place when you found it on the side of the road?

A There was not.

RP 582

...

Q Okay. The -- all right. I'd ask that you -- did you collect this on March 14th, 2011?

A It's the .22 caliber Marlin rifle, I anticipate is in there, I did.

Q I'd ask you to open it up and take a look and see what the contents are. And for the record you're now cutting through blue evidence tape?

A Yes. It is open.

Q Okay, we need to get a mic with you when you're testifying. Let's see —

CLERK: If he just stands closer to the stand, then that's fine.

Q Deputy, what does this box contain?

A This contains the .22 caliber Marlin rifle and scope and the broken off pistol grip that I recovered from the road shoulder that morning.

Q Okay. Have there been any changes made to this?

A I see, again, here a white tag on the underside of this, apparently a rifle.

Q Okay.

A I did not put that on there. The broken pistol grip appears to have been written on by someone other than me. The rifle as well bears writing that was put on it by someone other than me. And the same with the rifle as well. It bears writing put on there by someone other than me and then a tag with writing that I did not put on it.

RP 583

...

A And Mr. Mancilla appears to be seated next in a tie and button down shirt, striped, maybe white and black perhaps.

Q Did you collect any evidence from Mr. Mancilla as he was going to be booked in?

A I did.

Q Okay, and what did you ~ what did you collect from him?

A I collected all clothing and such that would indicate an association with a gang.

Q And what did you collect from him?

A To be precise, I'd have to review my notes to recall everything (unintelligible) receive was clothing items and ~

Q Would you by referring to your report would that help refresh your recollection?

A It would.

Q Please do so.

A From Mr. Mancilla, I recovered a blue shirt as well as a blue bandana that had been taken from him at the time of the arrest.

RP 585

CROSS EXAMINATION OF SGT. RUSSELL

Q And you recovered some items from Mr. Mancilla, is that correct?

A That's correct.

Q Did you recover any other items from any other defendants?

A I did.

Q What did you collect from Jaime Lopez?

RP 587

A I would have to review my notes again for the particularized items. Again, they were all clothing items, the vast majority of them. From ~ did you say Jaime Lopez?

Q Yeah.

A With Jaime Lopez, it was photographs essentially indicating tattoos of a gang nature and that would be it.

Q Okay, what about from Armando Lopez?

A From Armando Lopez, I recovered a blue shirt, a blue F-13 belt, shoes with blue laces and a blue lighter that had been previously taken from him and then we were able to take a photograph of Mr. Lopez demonstrating his gang sign.

RP 588

Q Okay. I'd like to talk about some exhibits that were just admitted and go unqualified, I'm going to ask you to pick these things up. There's a Ruger .40 caliber, wasn't there?

A There was.

...

Q Okay, and that frame is made out of metal?

A Yes.

Q Is there any damage to the metal?

A It appears that, yes, there is some damage to the metal.

Q Okay. What kind of damage?

591

A Scuff marks, gouge marks.

Q Consistent with it hitting a hard object?

A It could be consistent with that, yes.

Q Okay. Perhaps the surface of a road.

A It could be consistent with that, yes.

RP 592

...

Q Okay. All right. Let's take a look at that -- the Marlin .22. I'm showing you what's been marked as State's Identification 152. Now, would you mind taking a look at that and tell me if there's any damage to the metal surfaces of that gun. You did testify earlier that a metal portion of it — a stock had been broken off, correct?

A Yes, that's correct.

Q Okay. Any damage to any metal portions of it?

A Well, the scope is still partially fastened so I can't pull it completely so the jury can see but this — on the ends of the scope, both ends as a matter of fact, it has significant damage that again would be consistent with it striking a hard object with the roadway or some other surface.

RP 593

...

A A lot of scarring on the barrel, some significant scarring and gouging here on the metal. I would have to say yes, there is damage to the metal portion of the —

Q And that scarring is consistent with it striking a road surface?

A It could be, yes.

RP 594

...

Q Okay. All right. Let's take a look at the SKS. Now, I'm handing you what again has been marked as State's Identification 150. That's the SKS?

A It is.

Q And that's made out of wood and metal?

A It is.

Q Do you mind taking a look at that and tell me if there's any damage to the metal portions of that.

A There's a significant amount of scarring here but that looks like old damage. This scarring may be new. There is damage in places, I couldn't tell you how old it would be, this scarring here. This is from a significant impact.

Q That's towards the front side of the rifle?

A Exactly, yes. There's some scarring here as well. I don't see anything else that jumps out at me.

Q Is some of that scarring consistent with it hitting a hard object, perhaps a road surface?

A It could be, yes.

Q Now, you testified earlier that the magazine is not with the rifle?

A That's correct.

RP 595

...

Q Okay. Let's put that thing away. Deputy, yourself and Deputy Rojas decided to go back to the area where he had stated that he initially saw the suspect vehicle?

A That's correct.

Q And as you're approaching – I think you testified that you immediately saw this silver scope?

A Yes, immediately.

Q And that scope was on the black top first portion of the roadway, correct?

A Was on the paved shoulder, yes.

Q Okay. All right. Thank you.

RP 596

OFFICER STEVEN WINMILL.

The testimony of this officer is not set forth here. It is the portion of the testimony which addressed booking information and statements. Clearly based on the ruling in DeLeon this information should not be included in a reply by the State addressing harmless error and the evidence which was presented that may still be used to support that analysis.

DETECTIVE DAVID JOHNSON

Q State's Identification 135. Do you recognize what I just handed you?

A This is a banana clip that we recovered at the scene on 10 West First in Outlook.

Q Okay.

A In the morning.

Q And after Deputy Shepard collected it in that outer bag, what did you do with it?

A It was brought up to the office, finished process as far as logging it into evidence and placed it into the building.

RP 622

...

Q Skipping over to the issue of buccal swabs, did you make contact with the defendants in this case?

A I did.

Q Okay, and when was that, do you recall?

A That morning at our office in Yakima.

Q Okay, and during the course of your contact with them, did you take any DNA samples from them?

A I did.

Q In what manner did you take them?

A I gloved up, took a buccal swab out of its sealed case Q What's a buccal swab?

A It's like a large Q-tip.

Q Okay, and why were you doing that?

A To take DNA samples from them.

Q Okay, and what was the ultimate intent or basis for doing that?

A To identify any DNA that was trace evidence on the items of evidence collected.

Q Okay, so in case there was any DNA, this may be a way to link?

A To connect them, yes.

RP 626

...

Q Did you view any of the information contained in the phone at the time?

A We did.

Q Okay. Did you look to see if there were any calls the early morning of March 14th, 2011?

A Yes, I found that he had two outgoing phone calls on Q Let me ask you about one. The one at - well, the one at 3 :1 8 a.m. That one - what number was attempted to be called at that point?

A The number attempted at 3 :1 8 was 837-6008.

Q Was there a contact name associated with that attempted phone call?

A There was.

Q And what was that?

A Drifter.

Q And whose number is 837-6008? Did you make any A Roberto Cruz, Jr.

Q Okay. Was this call connected according to the call log?

A It was not.

...

Q I'm going to hand you what's marked as State's Identification 183. Do you recognize what I handed you?

A I do.

Q How so and what is it?

A This is a buccal swab container containing the buccal swabs of a Roberto Cruz, Jr.

Q Okay, and did you personally make contact with him?

A I did.

Q Who was with you?

A Detective Rob Layman from the Sunnyside Police Department and two other officers.

Q Okay. Was one of those Officer Ortiz?

A Correct.

Q Okay, and you made contact with him. Did you obtain this buccal swab from him?

A I did.

Q In the same manner that you did with the defendants here?

A Correct.

RP 631

FORENSIC SCIENTIST GLENN DAVIS.

A I recognize this item of evidence as it has the Washington State Patrol Crime Laboratory blue evidence sealing tape here and this tape bears the Washington State Patrol 640

case number, my initials and the date that I sealed this particular item.

Q Okay, was this examined in this case?

A Yes, it was.

Q Okay, and what ~ what number is that? That's number A This was submitted to me as Item 11

Q Item 11. .40 caliber Smith and Wesson?

A May I open it?

Q You may.

A Yes, that's the caliber of this fired cartridge case.

Q Okay. And that's — and you have -- you did a Crime Lab report?

A I wrote a report for this case, yes.

Q I'm going to hand you what's marked as State's Identification 184.

A Thank you.

Q Is that a copy of your report on this case?

A Yes, it is.

Q Okay, and so you list the evidence you received, under what item numbers and what they were?

A Yes.

Q Okay. I'm going to hand you what's marked as State's Identification 128. Is this listed as item number 9 on the sticker?

A Yes, it is.

Q Okay. And item number 9 in your report, is that another .40 caliber?

A Yes, it is.

Q Okay, and is that the item that you examined?

A It is, and I recognize it by that blue evidence tape I spoke about earlier.

RP 641

Q Okay. I'm going to hand you what's marked as State's Identification 126.

A Thank you.

Q Is that marked on the evidence tape as number 7?

A Yes, it has a label but it says 007 on it.

Q And is that also a .40 caliber Smith and Wesson casing?

A Yes, it is.

Q Okay. And that's what you examined?

A Uhm-hm, yes. It, too, has that evidence tape I mentioned.

Q State's Identification 125.

A Thank you.

Q What item number is that?

A This is item 6.

Q And did you examine that item?

A I did, yes. It again has that blue evidence tape bearing the State Patrol case number, the date I sealed it and my initials.

Q Is this case a .22 long rifle caliber?

A This is a .22 long or a .22 long rifle caliber.

Q Okay. I'm going to hand you what's marked as State's Identification 123. Again, do you recognize that, did you examine that item?

A I do recognize this item. It was submitted to me as item 4 and it, too, has that evidence tape on it.

Q Okay. And in this group, this would be State's Identification 121. Do you recognize that?

A I do, yes. It was submitted to us as item 2, and it has the evidence tape with my initials and case number and date that I sealed it on.

RP 642

Q Okay. Those with the casings, I'm going to hand you what's marked as State's Exhibit 135. Do you recognize that item?

A Yes, I do. This was submitted to us as item 16 and it, too, has the blue evidence tape

with the State Patrol case number, initials and the date that I sealed it.

Q Okay, and what was ~ what was this item?

A May I open it?

Q You may.

A This was a magazine which is a box device that cartridges are loaded into and then it's loaded into a firearm and a handful of unfired cartridges.

Q Okay, and this is what part did this play in your examination?

A One of the firearms that I examined, I used this magazine to test fire that firearm.

Q Okay, so you loaded items - bullets into that and used it to test fire the gun?

A I loaded cartridges into this magazine, loaded the magazine into the firearm and then test fired the firearm.

Q Okay, and is this listed as item number 16 in your report?

A It is, yes.

Q Okay. What type of rifle did you insert this magazine into?

A It went into an SKS semi-automatic rifle.

RP 643

...

Q I'm going to hand you what's marked as State's Exhibit 150. I'd ask you to take a look at the outside tape on this box. Do you recognize this box?

A Yes, I do.

RP 643

Q How so?

A Well, this was submitted to us as item 31, and it also has the evidence tape that I've mentioned on the other items.

Q Okay. And what is item 31 ?

A May I open it?

Q You may look in.

A Item 31 is an SKS semi-automatic rifle. It's 7.62 by .39 caliber.

Q Okay, and did you - and is the one that you examined? Did you test fire this?

A Let me check the serial number, please. Yes. Yes, this is the rifle I examined.

Q Okay. Now, as far as test firing on this one did you have any spent casing to compare

to or did you just test it for whether or not it functioned

A I just tested to see if the firearm functioned.

Q Okay. And this - and the magazine we talked about earlier, did it fit in there properly?

A Yes, it did.

Q Okay, and it fired?

A It did, yes.

Q It fed the ammunition into the chamber and it fired?

A It did, yes.

Q Okay. I'll take this away from you. We could trade. I'm going to hand you what's marked as State's Exhibit 152. Do you recognize what I just handed you?

A Yes. This was submitted to us as item 33.

Q And item 33, what is item 33?

A Item 33 is a Marlin brand, Model - Glenfield, Model 60 semi-automatic rifle.

Q Can you --I'll help you but could we tilt this box so the members of the jury could see what we're looking at. Can people see this? Okay. All right. Now, is this an item that you test fired?

A Yes, it is.

Q Okay, and did you compare this ~ what caliber is this rifle?

A This is a .22 long rifle caliber rifle.

Q And let me ask you did you have any - do you compare it with the casings we spoke about earlier that were .22 caliber?

A I did, yes.

Q Okay, and what analysis did you perform?

A I performed a microscopic comparison of the fired cartridge cases that was submitted to us as evidence and fired cartridge cases that I produced at the Crime Laboratory. When a firearm fires the cartridge inside generates a great deal of pressure. That pressure forces the bullet down the bore of the firearm and out. It also pushes backwards on the cartridge case and because the cartridge case is made of brass, it picks up those marks in manufacturing I mentioned earlier. What I do is I have something called a comparison microscope. It's essentially two microscopes in one. One on the left side and one on the right side and when

you look in the field of view you see a circle with a dividing line down the middle. And what I do is I put the evidence on one side and my knowns on the other side and manipulate them and look at the marks and determine if they are of common origin.

Q Okay. So - and you were saying that I was trying to find the - another thing to show you, specifically what's marked as State's Identification 164. Do you recognize that and what is it, if you do?

A Yes, this is one of our Washington State Patrol test fire envelopes and I recognize it as it has the evidence seal on it and my handwriting.

Q Okay. It's one of your ~ what does it contain?

RP 645

A This contains the test fires that I made at the Crime Lab. We have a range at the Crime Lab that I can fire a gun and I can -- we have a water tank that I can shoot into that covers the bullets and I pick up the fired cartridge cases off of the floor. That's how I produce the knowns for these kinds of examinations.

Q These ones that are test fired group, did you compare them to what you have been referring to in the report as the .22 long rifles, items 2, 4 and 6?

A Yes.

Q Okay, and did you make any determinations regarding that comparison?

A That they were both fired in the same firearm and that they were fired in this Marlin rifle here.

Q Okay. Thank you.

MR. HINTZE: Your Honor, the State moves to admit State's Identification 164 into evidence.

Q I'm going to be handing you what's marked as State's Exhibit 151. Do you recognize this box I just handed you?

A I do. This was submitted to us as item 32, and it has, again, that blue evidence tape

RP 646

and my initials.

Q Okay, and did you examine this as part of this case that we're here today under YSO agency number 1 1-03490?

A Yes.

Q Okay. And what did you ~ you can open it up. Okay, and what does this box contain?

A This box contains a Ruger brand, Model P94 semi-automatic pistol in .40 Smith and Wesson caliber.

Q And what - is this listed in your report that you made on this case?

A I believe it is.

Q What item number is it?

A 032.

Q Okay, and did you do any kind of test fires with this?

A Yes. I test fired this in a similar fashion as the aforementioned Marlin pistol. I shot it at the full water tank, recovered the bullets and recovered the cartridge cases. I then compared by known cartridge cases that I just made with the cartridge cases that were submitted to us as evidence in this case.

Q I'm going to hand you what's marked as State's Identification 163. What is this little packet or envelope that I just handed you?

A This is, again, a Washington State Patrol Crime Laboratory test fire envelope and it bears my initials and the blue evidence sealing tape as well as my handwriting on it. This contains the test fires from this firearm.

Q And is this marked additionally with the YSO case number and your lab number?

A Yes, it is.

Q Okay. And did you compare these to the other casings?

RP 647

A I did, yes.

MR. HINTZE: Now, move to -- at this time move to admit State's Identification 163.

THE COURT: Any objection, Mr. Banda?

MR. BANDA: No objection.

THE COURT: Mr. Alford.

MR. ALFORD: No, Your Honor.

THE COURT: Mr. Fiander.

MR. FIANDER: No, Your Honor.

THE COURT: Mr. Heilman-Schott.

MR. HEILMAN-SCHOTT: None, Your Honor.

THE COURT: 163 will be admitted.

Q Which items did you compare these with, which casings?

A I compared them to the fired .40 Smith and Wesson caliber cartridge cases which were submitted to the Crime Lab as item 7, 9 and 11 .

Q And those were among the group that you previously looked at?

A Yes.

Q Okay, and did you in comparing them did you make any determinations or were you able to?

A I determined that the cartridge cases submitted to the Crime Lab as item 7, 9 and 11 were fired in the same firearm as the test fires which is this Ruger right here.

Q Okay. And did all these ~ let me ask, do you have any functioning problems with this Ruger or the .22 Marlin rifle?

A No, I did not. Both of them functioned as designed.

Q Did you have problems with the rifle having no grip to grip it?

RP 648

A No.

Q Okay.

MR. HINTZE: Move to admit State's Identification 184, the Crime Lab report.

THE COURT: Mr. Banda.

MR. BANDA: No objection, Your Honor.

THE COURT: Mr. Alford.

MR. ALFORD: No, Your Honor.

THE COURT: Mr. Fiander, any objections?

MR. FIANDER: No, Your Honor.

THE COURT: Any objection, Mr. Heilman-Schott?

MR. HEILMAN-SCHOTT: None, Your Honor.

THE COURT: 1 84, is that correct, 1 84 ~

MR. HINTZE: Yes, 184.

THE COURT: - will be admitted.

CROSS EXAMINATION OF GLEN DAVIS

Q Mr. Davis, you previously testified that the Ruger .40 caliber, the Marlin .22 long rifle and the SKS 762 by 39, they all functioned properly?

A Yes.

Q Did you have to do anything special to them to make them work?

A If memory serves me correctly, no.

RP 654

FORENSIC SCIENTIST HEATHER PYLES.

...

Q Now, is that ~ are you usually able to find usable DNA on such items?

A Generally from my experience from the firearms and the casings that I've tested, I don't usually - either I don't get a lot of DNA or what I do get is of low quality so it's not sufficient for comparisons.

Q Okay. Did you do any kind of comparisons in this case of YSO Case No. 11-03490, the case against Armando Lopez and others?

A Yes, I did.

Q Did you receive items to examine in this case?

A Yes.

Q Okay. I'm going to hand you what's marked as State's Exhibit 121, 123, 125, 126, 128 and 130. Did you do any examination of those items?

A Yes, I did.

Q And what did you do with them?

A These particular items are cartridge casings and I swabbed each of them individually to sample for DNA.

Q Okay. Did you separate them out into groups of the .22's and .40 calibers separately?

A Yes.

RP 658

...

Q Okay, and did you do an examination? I'm just going to open up the box on this rifle, did you do any kind of analysis on this?

A Yes.

Q Okay, and what was the nature of the procedure you performed? What did you do with it?

A On this particular item, it's a rifle and so I swabbed areas on the rifle that somebody would have potentially touched while handling the firearm.

Q Okay. And so you took swabs from that?

A Yes.

Q Okay. State's Exhibit 152. Do you recognize any of this box?

A Yes.

Q And how do you recognize it?

A Again, I have the item number and my initials and the lab case number and the date written on the box.

Q Okay, and when you were done with the analysis did you seal it back up?

A Yes.

Q With the blue evidence tape?

A Yes. One of the blue ones is mine.

Q Okay, and the same ~ this parts of rifle and a scope, did you do any analysis or try to extract DNA from the surfaces?

A Yes.

Q Okay, using the same process?

RP 659

Yes.

Q Okay. The State's Exhibit 135. Do you recognize this box?

A Yes.

Q How so?

A My markings are on the box as well as on the bag.

Q Okay, and did you attempt to extract DNA from any items in here?

A Yes.

Q And which items were those?

A From the clip as well as the cartridges.

Q Okay. Were you using the same process?

A Yes.

Q Okay, and did you seal this back up once you were done?

A Yes.

Q And finally, State's Identification 151 - well, not finally. We're still trucking along.

Do you recognize that box that I just handed you?

A Yes.

Q How so?

A It has my markings here.

Q Okay, and is this for Case 11-03490?

A Yes.

Q And did you try to extract DNA from its contents, the Ruger pistol?

A Yes, I did.

Q And from the surfaces ~ where would you normally try to extract DNA from this?

A From an item like this, I would swab the grip, the trigger, various safety levers or knobs or magazine release buttons, as well as the magazine that came along with it.

RP 660

Q Okay. Now when you do this you have to have reference DNA to compare to it?

A Yes. If I don't have a DNA profile from a known person then I have nothing to compare to the evidence and all I can say is DNA was found or not.

Q Okay. I'm going to — I'm handing you what's marked as State's Identification 140.

Do you recognize this little box that I just handed you?

A Yes.

Q And how do you recognize it?

A I have my markings on it here.

Q Okay. Was this part of this analysis of your in your case report on this case?

A Yes, it was.

Q Did it have corresponding case numbers and lab numbers?

A Yes.

Q Okay, and who does it indicate that this reference sample belongs to?

A From my notes, this reference sample was reportedly from Armando Lopez.

Q Okay, and did you use this reference sample in your comparisons?

A Yes.

Q Did you extract DNA from it?

A Yes.

Q Did you try to

- try to compare it with any of the DNA found from any of the other items of evidence?

A Yes.

Q Okay. State's Identification

-- or State's Exhibit 141 . I'm going to hand this to you.

Again, same questions. Do you recognize this item?

A Yes.

Q Okay, and what do you recognize it as?

RP 661

A I recognize it as a DNA reference reportedly collected from Jamie or Jaime Lopez.

Q Okay, and is it in (inaudible) your report, what item number is it referenced as?

A It's references as item number 22.

Q Okay, and this is from this same examination ~

A Yes.

Q ~ with the same evidence and did you extract DNA from this sample?

A Yes.

Q Did you try to compare it with any other samples?

A Yes.

Q Okay. State's Identification 142 ~ or State's Exhibit - same question. Do you recognize this? If so, how so?

A Yes, it has my markings here.

Q Okay, and does it have the corresponding case numbers for this case?

A Yes.

Q And corresponding lab numbers?

A Yes.

Q And did you extract DNA from that item?

A Yes.

Q And did you attempt to compare it to any other DNA recovered?

A Yes.

Q And who is the person reported that this is from in your notes and lab report?

A This is reportedly a DNA reference collected from Jesus Mancilla.

Q Okay, thank you. And finally, State's ~ finally for this round of questioning, State's Exhibit 143. Same question, do you recognize what I just handed you and if so, how?

A Yes, I have my markings on it here.

RP 662

Q Okay, and is this part of your analysis at the same time with the other items of DNA?

A Yes.

Q Okay, and what item number is this listed in your report?

A This is listed as item number 24.

Q And who is it reported DNA from?

A This was reportedly collected from Nicolas James.

Q Okay, and is this is in the same condition in which you sealed it all up?

A It appears to be.

Q Okay, and the same question for the others that I handed you before of the swabs?

A As long as they're still sealed, yes.

Q The -- at this stage when was your first -- when was your examination of DNA regarding this case? When did you do this analysis?

A That particular report is dated September 7th of 2011, so that's when the analysis was completed.

Q Okay, and leading up to that - well, did you make any ~ were you able to make any comparisons between the sample DNA and any DNA collected from the items of evidence that we've talked about?

A Yes.

Q Okay. What were your conclusions? What did you discover? Were you able to ~ let me ask you. The .22 cartridge casings that were given to you, were you able to find any DNA at all?

A On those particular items, I was able to recover what we refer to as trace DNA, which is low level DNA and due to the limited amount of it, no comparisons were possible.

Q Okay. Well, you also were given some of the selected .40 caliber cartridge casings. Were you able to make any determinations regarding -- with respect to the sample DNA that RP 663

you were given at that time?

A For the .40 caliber cartridge casings, I also obtained trace levels of DNA, but there was a higher level of the trace so I was able to make exclusions from that but it was not sufficient for me to include anyone.

Q Okay, and who was excluded from the

--A From the .40 caliber cartridge casings, I was able to exclude Armando Lopez, Jamie Lopez, Jesus Mancilla and Nicolas James.

Q Okay. What about the magazine, the SKS magazine. Were you able to actually get any DNA from that?

A Yes.

Q Okay, and were you able to make any type of analysis at all - and what - actually, I want to ask you. What was the quality of the DNA you were able to extract from the magazine?

A From the magazine I obtained a mixture of at least three individuals and based on the mixture that was obtained Q Okay, and were you able to make any determinations either including or excluding

any of the samples you were given?

A Yes.

Q And what were your determinations at that time?

A For the mixture on the magazine, I was able to include Armando Lopez and Nicolas James as possible contributors to that profile.

Q But how good - what kind of percentages are we talking about?

A Whenever we make any kind of an inclusionary [sic] statement, we follow that up with a statistic and in this particular case, based on the U.S. population, it's estimated that every one in two individuals could be a potential contributor to that three-person mixture

RP 664

profile from the magazine.

Q Okay, so the DNA you collected from this magazine was not a great quantity or great

quality?

A It was not highly suitable for comparisons if you're trying to discriminate between individuals.

Q Okay. Is that unusual?

A Not in my experience with firearms in general.

Q Okay. What about ~ were you able to say one thing or the other regarding Jaime Lopez and Jesus Mancilla?

A For those two particular individuals, their contribution to the mixed profile was inconclusive.

Q Okay. So you couldn't include or exclude them?

A That is correct.

Q Okay. What about -- were you able to get any kind of DNA off the SKS rifle?

A Yes.

Q Okay, and were you able to make any kind of comparisons with that?

A Unfortunately on that profile it was too complex and so I declared that it was inconclusive for comparisons.

Q Why would something be too complex?

A It's going to be sample dependent but in this particular case there was at least three people and if the DNA is degrading it's more difficult to tell reliably what's going on and so at that point in time, I will say that it's not suitable for comparisons.

Q Okay. Now, were you able to extract DNA from the Ruger P94 handgun?

A Yes.

Q Okay, and at this time did you make any determinations regarding the group of four RP 665

people -- oh, actually, was there one person's DNA or multiple persons' DNA on that gun?

A For that handgun, I found a mixture of at least two people.

Q Okay. Were you able on these four individuals were you able to either include or exclude them as possible contributors?

A I was not able to include or exclude.

Q Now, was there a better piece of - or pieces of DNA regarding to another individual on this handgun?

A On this particular item there was an individual's DNA that was at higher levels than the other person, so I refer to them as a major profile.

Q Okay, and in your report who do you ~ in this report of September 7th, who do you refer to that as?

A At that point in time I referred to that individual as Individual A because they are unknown.

Q We will get back to Individual A. And finally, were you able to extract DNA from the Marlin .22 caliber rifle?

A Yes.

Q And were there one profile or multiple profiles on this gun?

A For that item there was a mixture of at least two individuals.

Q Okay, and were you able to either include or exclude any of these four defendants for which you received those four samples?

A I was not able to include or exclude any of them.

Q Okay. Now, is this unusual when you have multiple DNA on a surface? Does that give the science a problem in determining whether or not someone's DNA is there or not?

A That would be correct. The more people present on an item the more difficult is to include or exclude.

RP 666

Q Okay. And when you're dealing with firearms in your experience is that common?

A Yes, it's common from the standpoint if more than one individual is handling a firearm.

Q Okay. Now, at a later point in time did you receive another buccal swab or DNA sample in order to compare to some of the extracted DNA?

A Yes.

Q Actually, before I get there, State's Identification 166, do you recognize that envelope I just handed you?

A I recognize the envelope.

Q Is this from this test, this round of tests?

A Yes.

Q Okay, and it's sealed with evidence tape?

A Yes.

Q Okay, and is that your initials on it?

A Yes.

Q And this is connected to this analysis we've been talking about?

A Yes.

Q Okay, and what's contained in that?

A Inside this envelope are the remaining DNA extracts from the testing.

Q Okay. Any changes been made to it since you sealed it all up?

A It's in the same condition.

Q Aside from this evidence ~

A (Inaudible - both talking at once) ~

Q -- (inaudible) exhibit number.

A -- (inaudible) sealed condition as I left it.

RP 667

...

Q State's Exhibit 183. Let me ask you ~ I just handed this to you. It has a lot of blue evidence tape on this box. Do you recognize this?

A Yes.

Q And how do you recognize it?

A I have my markings here on this box.

Q Okay, and did you do a later analysis after your first report on this case?

A Yes.

Q Okay. Was this item that I just handed to you provided to you at a later date?

A Yes.

Q Okay.

MR. HINTZE: And at this time, Your Honor, I'm moving to admit ~ move to admit State's Identification Q Actually, let me show this to you first. State's Identification 185. What is that a copy of I just handed you?

A This is a copy of the first report that I issued in this case.

RP 668

Q Okay. And that is from the September 7th report?

A Yes.

Q September 7th, 2011?

A Yes.

...

Q Did you compare the DNA in that item that I handed you to the DNA collected in this case?

A Yes.

Q Do you recall when that was given to you?

A When the item was given to me?

Q Yeah, when the item was - when you started doing analysis on that item.

A We received the item on March 22nd of 20 12.

Q Okay, and you extract DNA from that swab?

A Yes.

Q And were you able to make any conclusions regarding that in comparison to the DNA already extracted from some of the items of evidence?

RP 669

A Yes.

Q Okay, and what conclusions - were you able to link up that DNA to any of the DNA collected?

A Can you maybe rephrase your question?

Q Were you able to match the DNA from that sample to any of the DNA you collected before? Specifically I'm referring to your report of April 26, 2012?

A Yes.

Q Were you able to - the DNA collected regarding Individual A in your earlier report, who is Individual A?

A When I compared the DNA obtained from this reference and compared it to the DNA profile from Individual A, I determined that it was a match.

Q Okay. And according to your report whose DNA was sent to you?

A According to my notes, this sample was collected from a Mr. Roberto Cruz.

Q Okay. All right, and unlike the other either inconclusive or 1 in 2 of the population, Ms. Pyles, were you able to make any statistical determinations regarding what likelihood

that that DNA from Roberto Cruz is the same as the DNA you recovered from the Ruger handgun?

A I was able to generate a statistic but the statistic does not tell you the likelihood that it is somebody's DNA or not. What it does is gives strength of the match and the statistic that was generated was that's the estimated probability of selecting unrelated individual at random from the U.S. population with a profile that matches the profile of Individual A was one in ten trillion.

Q And this is recorded in your report of April 26th, 20 12?

A Yes.

Q And what I've just handed you a moment ago, State's Identification 1 86. Is that a RP 670

copy of your report?

A Yes, it is.

Q Okay.

MR. HINTZE: Move to admit State's Identification 186

...

THE COURT: 186 will be admitted

RP 671

DETECTIVE DAVE JOHNSON (CONTINUED FOR PREVIOUS VOLUME.)

A There was an asphalt pad, I would guess leading to the driveway of the home in question and these are acceleration marks - tires made from the vehicle leaving the scene.

Q Okay. State's Identification 1, what does that photo show?

A It shows a single tire mark.

Q Is that a close-up of the tire mark?

A It is.

Q Is that an accurate photo of the tire mark?

A It is.

RP 694

...

Q And number 2. What does that show?

A It shows the same tire mark on the asphalt at the edge of the gravel area but it also has

a tape measure in the photo.

RP 694

Q Now let me ask you a question for all 9 of these photos regarding the subject matter.

You took them?

A I did.

Q And you took them on March 14, 2011?

A Correct.

Q Does that accurately show the photos-what you took that morning?

A They do.

Q Okay. Now number 2 it shows the concrete and a measuring tape. Why do you have a measuring tape next to the tire mark?

A To try to accurately measure the width of the tire.

RP 695

...

Q So you made all these measurements. Inside width, outside width, tire width itself.

Were you going to compare this to anything?

A I was going to compare it to the Mitsubishi Galant that was recovered when the suspects were stopped.

Q Okay. And so you first saw the Mitsubishi Galant at the scene of the stop?

A Correct.

RP 699

...

Q Now in this group what is the focus of your photography?

A The focus is the tires of the vehicle.

Q Okay. And in what respect?

A The width and the type of tread that was on the tires.

Q Did you do measurements of the width of the tires?

A Correct.

Q Did you do measurements and compare the width of the tread of the tires?

A Correct.

Q Did you do measurements from wheel-to-wheel?

A Correct.

Q Did you compare them with anything?

A We compared them to the photos of the tire marks at the scene on Outlook.

Q Did you compare them to the measurements you took at the scene on Outlook?

A We did.

Q How did they compare?

A They were consistent with the same type of tread, same type of marks left at the scene.

Q Now consistency doesn't mean positive match.

A That is correct.

Q But the dimensions were they the same?

A Very close.

Q The State's Identification 31, that shows?

RP 715

A Shows one of the tires and my measuring tape in it.

Q State's Identification 32, what does that show?

A A little closer view of the same tire with my measuring tape.

Q And State's Identification 33, what does that show?

A It shows the left rear tire with my measuring tape.

Q State's Identification 34, what does that show?

A Another tire with my measuring tape.

Q 35?

A A closer look at the tire with my measuring tape.

Q And 36.

A The right rear tire of the vehicle with my measuring tape.

RP 716

JEREMY WELCH – WORKS FOR THE YAKIMA COUNTY JAIL AND TESTIFIED REGARDING THE NUMBERS CALLED FROM THE RECORDED JAIL PHONE SYSTEM. RP 761- 770

DETECTIVE JOHNSON TESTIMONY CONTINUED – JAIL PHONE CALLS.

...

Q Actually did you listen to the entire call?

A I did not.

Q Okay. Did you hear ~ did you recognize anybody's voice on that?

A Mr. Mancilla's.

Q Did you listen to other phone calls?

A I did.

Q Does that voice match the ones on the other phone calls on this disc?

A As much as I could tell, yes.

Q And the subject matter. Did he identify himself?

A He did.

Q Okay, and how did he identify himself?

A This is Solo.

Q And did he identify what gang he came from?

A LVL.

RP 773

...

Q State's Identification 191. Did you have a chance to listen to some of the phone calls from Nicolas James?

A I did.

Q And were you able to recognize his voice?

A I did.

Q Were you able to compare the relevant phone call to other phone calls?

A Correct.

Q Were you able to listen to the one on March 25th, 2011 at 16:39 time period?

A I did.

Q And in that call does he identify himself?

A He does.

Q And how does he identify himself?

A This is Rascal.

Q Excuse me?

A Or Little Rascal, I'm sorry.

Q Little Rascal. And then what does he - in the content of this does he mention or identify some of his co-defendants?

A He does. He identifies Solo and Rascal.

RP 774

(Recording played - refer to State's Exhibit No. 190).

AUTOMATED VOICE: Call number: 15094019. Inmate Id: 297690. Date: 201 1/4/17. Time: 20:57:04. Dial Number: 1-509-388-1304. From station: 2301. Press 1 For Eng- (phone dialing). Please enter your pin (dialing) After the tone please say your First and last name.

MR. MANCILLA: This is Mancilla.

AUTOMATED VOICE: Thank you. (phone dialing) (dial tone) (dialing)—

RP 775

FEMALE: Hello.

AUTOMATED VOICE: Hello. You have call from

MR. MANCILLA: (Inaudible).

AUTOMATED VOICE: An inmate at Yakima County Department of Corrections. To accept this call press 5. To refuse this call hang up now. To block this call and all future calls from this (tone). We are unable to complete this call as a collect call. Please stay on the line for a one time complimentary call provided by Inmate Calling Solutions. At the end of your call you will be automatically connected to our call center so that you may make payment arrangements allowing you to receive future calls from.

MR. MANCILLA: Jesus Mancilla.

AUTOMATED CALLS: An inmate at Yakima County Department of Corrections. This call may be recorded and is subject to monitoring at any time. You may begin speaking now.

FEMALE: Hello

MR. MANCILLA: Yeah, who is this?

FEMALE: This is (inaudible), who's this.

MR. MANCILLA: This is Solo from LVL. I was looking for Sarah.

FEMALE: Sarah?

MR. MANCILLA: Sarah Mancilla (inaudible).

FEMALE: You 've got the wrong number.

MR. MANCILLA: Shit who is this. Hey.

FEMALE: I'm sorry, you 've got the wrong number.

MR. MANCILLA: Well, can I talk to you for a minute for this minute shit?

FEMALE: No.

MR. MANCILLA: No.

RP 776

FEMALE: No.

MR. MANCILLA: Then I fucked up.

FEMALE: Sorry.

MR. MANCILLA: Alright.

FEMALE: Bye.

AUTOMATED VOICE: Call (inaudible).

(End of recording)

Q Was that the telephone call you listened to?

A That is correct.

Q Okay. For the record what is LVL?

A It is one of the Lower Valley gangs, Sureno gangs.

MR. HINTZE: And next permission to play the phone call on Nicolas James,
March 25th of 20 11, 16:39.48.

THE COURT: You may play that.

MR. HINTZE: For the record I am starting it at 3 minutes 14 seconds.

(Recording played)

MR. JAMES: (Inaudible).

FEMALE: Yeah.

MR. JAMES: let me talk to him.

FEMALE: Gus, here.

MALE: Hello.

MR. JAMES: What's up (unintelligible).

MALE: Who is this?

MR. JAMES: Little Rascal homey what are you doing.

MALE: Oh, what's up, (inaudible).

RP 777

MR. JAMES: What you doing, homey?

MALE: I was chillin, kicking back.

MR. JAMES: Yeah.

MALE: Yeah, how you doing?

MR. JAMES: Sitting here chillin ' trying to hang in there, you know.

MALE: (Unintelligible).

MR. JAMES: (Unintelligible) Rascal, fucking Solo, Soldier (inaudible) —

MALE: Oh, yeah. Hang in there.

MR. JAMES: (Unintelligible). I was only there for a day.

MALE: I can't hear you, bro.

MR. JAMES: I was only there for a day.

MALE: Why did they move you?

MR. JAMES: Because of my co-defendants Solo and Rascal.

MALE: Oh, yeah.

MR. JAMES: They separated us.

(Recording stops)

OFFICER JOSE ORTIZ

...

Q And so have you ever been declared as an expert in any cases in Superior Court?

A Yes, I have.

Q In particularly as a gang expert?

A Yes.

Q Have you ever been declared a gang expert while testifying in Federal Court?

RP 837

A Yes, I have.

Q Now down in Sunnyside are you familiar with a gang called LVL?

A Yes, I am.

Q What does LVL stand for?

A Little Valley Locos or Lokotes.

Q Okay. And has that gang been in existence since your beginning in Sunnyside in '94?

A Yes, it has.

Q Where did this gang originate?

A Sunnyside.

Q And has this gang been limited to Sunnyside or has it reached out into other places?

A It has actually branched out across the State to include parts of Oregon. I know that Idaho. I know Centralia, Washington, Moses Lake, Seattle, those areas.

Q Okay. In particular have you had a lot of contact over the years with their membership?

A As they come and go, yes.

Q And this LvL is this a Sureno or Norteno gang?

A It's a Sureno group.

Q Okay and what does that mean?

A Its allegiance is to the blue, to number 13 and to the Mexican Mafia.

Q Okay number 13. Is that number peculiarly associated as far as gangs to the Sureno gangs?

A As far as respect to the gangs the number 13 is indicative of the 13th letter of the American alphabet which falls into the M, henceforth the association with the Mexican Mafia. M is Lieme (phonetic) in Spanish for M. So Mexican Mafia 13, that is the association for the number.

Q And is there any significance in contrast to that to the number 14?

A Yes. Number 14 is also again going on the American alphabet, 14 falls on N so that would be the rival gang to the Surenos. That is Nuestra Familia. Both Mexican Mafia and the Nuestra Familia are both well noted prison gangs.

Q What is Norteno?

A Norteno is basically just a northerner. So it's actually the group that falls

-- Nuestra

Familia is the prison gang. Nortenos are the ones that follow. They are foot soldiers so to speak.

Q And so the Nortenos what color are they?

A They are red.

Q Now do Surenos and Nortenos get along?

A They hate each other.

Q Okay. Now as part of this is there acts of violence committed between the two of them?

A Continuously.

Q The LVL, is LVL any exception to this general description of Surenos?

A No.

Q So LVL are they enemies with all Nortenos?

A Yes.

Q Are they only enemies with Nortenos?

A No.

Q Who else are they enemies with?

A They are also rivals - it could be to other Surenos believe it or not. They also go against some other blues. One in particular especially in the Lower Valley would be the BGL's the Bell Garden Locos. So they have been bitter enemies for over a decade now.

RP 839

Q Are you familiar at least in the - with respect to the Lower Valley or particularly the Outlook area the letters NSV?

A Yes, I am.

Q What does that stand for?

A In the Lower Valley that stands for North Side Varrío. And Varrío is spelled with a V-A-R-R-I-O.

Q And is that a Norteno gang?

A Yes, it is.

Q So would LVL be on friendly terms or poor terms with them?

A They are enemies, they hate each other.

Q Now as to these particular members let me focus in on a couple that maybe you are familiar with. Are you familiar with a person named Roberto Cruz?

A Yes.

Q For how long have you been familiar with him?

A Pretty much since I've been in Sunnyside.

Q Since back in '94?

A Correct.

Q And is he a member of any gang?

A Yes, he is.

Q Which gang have you seen him with and he's a member of?

A LVL.

Q And are you familiar with what his street name or names are?

A I initially knew him as Florse. It's now changed to Drifter.

Q Drifter. What does the term OG mean?

A Original Gangster.

RP 840

Q Is Drifter at this stage in the game — how old is this Drifter?

A He's up there in age. I believe he's in his 30's now. So late 20's, early 30's.

Q What is an OG?

A It is an Original Gangster.

Q That means?

A Basically an elder.

Q Okay. Now let me ask you this. Why would -- what are the motivations that a rival gang has to attack or commit violence upon a rival gang?

A Just the mere fact that they are rivals is enough motivation for any form of retaliation.

It could be anywhere from a disrespect. For the most part any disrespect is grounds on some sort of retaliation. Disrespect comes in many forms whether they are flying their colors out in their neighborhood, they are passing by, they are doing call outs or shout outs. Gosh, even just a stare down. What they call mad dogging is good enough for some sort of retaliation.

Q Flying their colors, what does that mean?

A Flying their colors basically they are representing the group that they are in. So it could be either red or blue, whatever group you are in. You're brazenly wearing those colors. What I mean brazenly you know some individuals will get away with just an earring, that's enough. But these individuals by flying their colors would for the most part be like the color of maybe a blue shirt, sweater, sweat top. Something that is really pronounced in that color. So whether it is red or blue. A belt — a cloth belt is pretty much associated with this.

They drape it down to the side. Then you go down to shoelaces. So that's what, you know, when they go out representing.

Q Throw out bandanas?

A Bandanas. Nicely folded bandanas that is their flag and no one, not even their own, disrespects it. Nicely folded and either it is hanging outside their pockets, again flying their RP 841

colors, or nicely folded and in their pockets.

Q Let me ask you about State's Exhibit 59. Is this an example of flying your colors?

A Yes.

Q Okay. When you looked at this earlier did you see what that ~ what was the significance of that cloth belt there?

A The cloth belt, like I said, we have to take everything into consideration not to jump to conclusions. So you have to take everything into consideration. So you could do the 30 second scan which they all do, along with everyone that's in a group. As you are going up you're basically kind of taking note starting from the shoes on up, their stance, their walk. So at the waist looking at about a 13 belt buckle and then looks like the belt is basically on the side there.

Q Okay. What about gang signs. What are the type of signs that LVL throws?

A There's - and here's the thing is that it almost mimics the American sign language. But they do have different forms of communication. One is the hand signs. One is also whistling. So each group has their own way of - something to this effect or stuff like that or, you know, an S. They have their own symbols that within the group they're recognized and outside the group they're recognized.

Q When we talk about the number 13 is there any particular -- just holding up three fingers does that have any significance?

A It could go something like this. So 1 and 3. Yeah.

Q Okay. The State's Exhibit 68, Mr. Lopez. What is he doing there? Obviously he has something restricting him there but what is the significance, if any, of those hand signs?

A Basically LVL symbols. Throwing it up. Representing his group.

Q Let me cut to — what is the significance of State's Exhibit 70? We had—do you have trouble reading that script?

RP 842

A No, that is Sureno. The word Sureno.

Q What about - let me ask you about these. You've taken a look at this in other pictures earlier. That doesn't come across well. Did you see this earlier when you were looking at this close up?

A Yes, I did.

Q Okay. And what does that say right there?

A Well, it's just the letters LVL.

Q And the - and this right here?

A Sur. So that is South 13. I see the number.

Q Do you see the numerals on this arm?

A They are roman numerals.

Q And what does that — what roman numerals?

A So X and then a III. So 13.

Q And this down there.

A I believe that was also LVL.

Q Let me show you something closer. This is a very poor system we have going on here.

RP 843

By Mr. Hintze:

Q We left off, we were talking about some of those pictures we were showing and talking about gang attire. What does -- are you familiar with the name Scoob or Scooby?

A Yes, sir.

Q Is there and EVE gang member named that?

DET. ORTIZ'S TESTIMONY CONTINUES FROM PREVIOUS DAY.

RP 853

A Yes, sir.

Q And who have you seen this person associating with?

A It is Mr. ScoobyQ Name.

A I know him by his moniker.

Q What is his moniker?

A Rascal.

Q Rascal. And showing you what is marked as State's Identification 29. Do you know what those words mean on that?

A That's Scooby 13 and then cuts. So obviously this is a CD that belongs to this individual, his tracks.

MR. HINTZE: I move to admit State's Identification 29.

THE COURT: Any objection, Mr. Banda?

MR. BANDA: I've already voiced it, Your Honor.

THE COURT: Any objection, Mr. Alford?

MR. ALFORD: Yes, Your Honor.

THE COURT: Same objection, Mr. Fiander?

MR. FIANDER: Yes, Your Honor.

THE COURT: Same objection –

MR. HEILMAN-SCHOTT: Same, Your Honor.

THE COURT: The Court is going to sustain the objection.

Q The LVL gang, what activities does it conduct?. What's it involved in?

A Well, that just depends on the individual's perspective who is looking into it. I mean, you could say that it's maybe like a second family to them. For the most part what I've seen from my professional perspective is that a lot of criminal activity occurs within the groups.

RP 854

Q Is that one of its primary purposes?

A That is one of the primary purposes.

Q And those crimes range from what to what?

A It could be anything small from disorderly conduct, drinking, vehicle prowls, thefts, robberies, shooting, homicides, assaults.

Q Now let me ask you something. Is there an attitude regarding cooperating with police or snitching?

A Within the groups?

Q Within the gang. Within the LVL gang and its associates.

A Within the groups, the gangs, yes.

Q And does that include the LVL gang?

A Yes.

Q What is this attitude about snitches?

A Snitches get stitches or snitches and ditches. In essence anyone within the organization that talks to the police or who even they believe is talking to the police pretty much gets beat up.

Q Let me ask you this. Say I'm a gang member and I'm walking down the street. I haven't done anything to anybody for a while and a car of the opposing gang rolls up. I know who they are and they shoot me in the leg and roll off. With those set of values, am I going to cooperate with the police and say you know Dopey, Sneazy and Bashful did it?

A For the most part, no.

Q Now is the other gang going to be upset if I'm suddenly snitching on them?

A Would they be upset, yes, along with your gang members.

Q My own gang —

A Yes.

RP 855

Q ~ for going against - in the legal side against the other gang.

A It is just the street code.

Q So if I decided to snitch against the other gang what can I expect from my own gang with this set of values?

A Probably you could either be courted out or you'd get a severe beating.

Q Now what if I'm not a natural jumped in gang member. I just hang out with them. I kick it with them. I party with them. How does me cooperating with the police against them or the opposing gang, how is that going to fly?

A They also kind of are intimidated so they're probably going to be very super reluctant to talk to law enforcement only because of the mysticisms that, you know, the fear factor.

Q Fear factor. So people on both sides they can expect the other people not to snitch?

A For the most part, yes.

Q Now are there other benefits of being a member of a gang -- do they share anything?

A They do.

Q What are some of the things that they share?

A Well, I mean you could go anywhere from drugs, alcohol, any items that they acquire

they may share. So - and that could be anywhere from stolen property or vehicles, to include vehicles, weapons that sort of stuff.

Q Weapons. Within the gang context within a particular gang is one of the traits that they share guns?

A Yes.

Q Why is that?

A Well, one, it's sometimes they are not able to get a hold of, you know, themselves a weapon so usually they'll have someone holding it or a location where they could obtain some weapons.

RP 856

Q Let me ask you. If somebody has a name, you know, whatever their street name is, and another person is hanging out with them with the same street name except with before it Little — so what — does that have any significance?

A Yes.

Q What would that be?

A What I've seen and we're talking about 19 years worth and talking to other gang experts, for the most part when you have - and we're going to bring out some where you may have, for example, Scooby. You may have Little Scooby, Baby Scooby, Scooby, Mr. Scooby. So you could have four individuals with that moniker within a group, just one particular group. Usually in order to get and to have that particular moniker you have to go to the main individual. So it would be like Mr. Scooby would be the primary one and basically kind of ask. You also - for the most part you'd have to be almost like a mentorship. So in order for someone to get that particular moniker you'd have to kind of show that you are kind of entitled to it, so you would have to earn it, so to speak.

Q Okay. You have to (inaudible) me Detective as we split this up. Did we talk about Roberto Cruz yesterday in front of the jury?

A I'm not sure.

Q Let me just clarify this. You know Roberto Cruz?

A Yes, I do.

Q And you know him as who?

A As initially Horse and then his moniker changed to Drifter.

Q He's an LVL gang member?

A Correct.

MR. FIANDER: Objection, asked and answered.

THE COURT: It has been.

RP 857

MR. HINTZE: Okay.

Q The ~ again, in the context of drive-by shootings against an opposing gang what does this, if anything, what does it do to one's status within the gang, their gang?

A Whoever is pulling the trigger gets actually a higher status -- is viewed upon in high regards.

Q Okay. Does this have to be seen being done?

A For the most part, yes.

Q Why?

A It has to be witnessed. The problem that you have is like anyone else people talk. So do gang members and they embellish. So in order to kind of thwart this they have these little deals where it has to be witnessed.

Q Now if acts of ~ whether or not this is retaliation or just because it is against a rival gang, what — if someone is asked to participate and they refuse what would that do to their status within the gang?

A Well, that's going to be dependent upon what judgment that gets passed. And so that's a group, an individual group thing.

Q But participating does that increase one's status?

A Yes. They are actually asked to put in, what they call put in work. So that would be part of putting in work.

Q And that can mean anything from shootings down to lower level work?

A Yes.

Q What are the types - again, what are the - I don't know if I asked this in the first round. What are the motives between that a gang would have in attacking a rival gang house?

A I mean, just the fact that they are rivals is motive enough. You really don't need to

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have anything beyond that. You know, you could instigate something at any particular time but again if they're rivals that's just the way it is out in the streets.

Q Okay. And do you have any estimate of this LVL gang, how many members it has?

A I wouldn't be able to phantom, you know, and I don't think any gang expert, PhD or anything would be able to give you a specific number in all honesty with any gang, just an estimate.

Q Well, let me — let me — let me limit it down to the area of Sunnyside, are we talking more than a couple of dozen people?

A Yes.

Q More than three dozen?

A Yes.

Q If I were to claim, falsely claim gang membership, start flying their colors, start telling people that I am a member, how would that be taken by members of a criminal street gang, particularly the LVLs?

A That individual would be pretty much guaranteed that he would be assaulted, or her.

Q It would be dangerous?

A Yes, it would be.

Q Is there any type of hierarchy in the criminal street gang LVL?

A At this point the dynamics that are going on, is there a hierarchy? At this point, they're the older ones that are out there were individuals that have basically made themselves -- kind of moved up in the ranks. At this point it's a little bit in shambles but I know the individual at this point who is pretty much controlling it.

Q And who would that be?

A Mr. Lopez.

Q Rascal?

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A Yes, sir.

Q And so people within this gang some people have higher status within this gang and there are different levels of status?

A Yes, there would be.

Q Okay, thank you very much.