

IN THE FOURTH JUDICIAL DISTRICT COURT
OF UTAH COUNTY, STATE OF UTAH

_____) }
STATE OF UTAH,)
) VOLUME VI
Plaintiff,)
)
vs.) Case No. 141400517 FS
)
MEAGAN DAKOTA GRUNWALD,)
)
Defendant.)
_____)

Jury Trial
Electronically Recorded on
May 5, 2015

BEFORE: THE HONORABLE DAROLD MCDADE
Fourth District Court Judge

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P R O C E E D I N G S

(Electronically recorded on May 5, 2015)

THE COURT: Okay, we're going on the record. Today is Tuesday, May the 5th, 2015. This is Fourth District Court Division 10. We're in the matter of State of Utah vs. Meagan Grunwald, case 141400517. All the parties are present including Counsel and the defendant, Ms. Grunwald. Let's see, you wanted to argue a motion before we bring the jury in.

MR. TAYLOR: Yes, sir.

THE COURT: Mr. Taylor.

MR. TAYLOR: Thank you, Judge. Judge, the State is going to ask the Court to allow us to introduce evidence of an incident that occurred on November 16th, 2014 -- excuse me, 2013. On that date there in Draper at the Grunwald residence police were called, and the officer would testify that he met with a Meagan Grunwald and Jerry Grunwald, and he would talk about what Meagan Grunwald told him, that Angel Garcia was there on that date. Jerry Grunwald had gone into the bedroom because the door was closed, and an argument ensued.

There, as part of that argument, Angel ended up leaving the residence. Meagan Grunwald got extremely upset and started punching holes in the wall. Judge, we have some photo-graphs that we would look at introducing. May I approach, please.

THE COURT: Okay, and defense has seen these?

MR. TAYLOR: Yes.

1 THE COURT: Okay.

2 MR. TAYLOR: So there are three photographs of the
3 home, and then one photograph of her hand that was taken at
4 the time. In addition, Ms. Grunwald testified that she pushed
5 her dad at that time and did a little other damage to the -- to
6 the home.

7 So, Judge, the question is, is that under 404(b) -- I
8 believe this is probably a 404(b) issue, whether or not this
9 comes in as a prior act. The permitted uses in a criminal
10 case under 404(b) it says, "The evidence may be admissible for
11 another purpose such as proving motive, opportunity, intent,
12 preparation, plan, knowledge, identity, absence of mistake or
13 lack of accident."

14 So, Judge, we feel that one of the main issues that
15 we're looking at in this case has to do with motive associated
16 with the crimes that we're here for.

17 There is a case, Judge, State v. Pearson, 1997 --
18 excuse me, it is 943 P2d. 1347. It's a 1997 Supreme Court
19 case. I've given a copy of this case to Counsel this morning.
20 May I approach just real quick, Judge.

21 THE COURT: Okay.

22 MR. TAYLOR: Judge, in this case, back in 1997 a police
23 officer was killed and he was shot. So when the individual was
24 arrested the State intended to try -- to introduce evidence as
25 to why he was fleeing from the police.

1 The individual was actually from Indiana, and he had
2 left Indiana and he was going across country, he and a friend,
3 and they were steeling gas at certain locations across the
4 country. Here in Utah they end up steeling some gas. An
5 officer ended up pursuing them. The driver of the vehicle,
6 Mr. Pearson, had his hand out of the driver's side window,
7 and he fired shots at the officer and killed the officer.

8 So the State wanted to try and introduce evidence
9 as to his motive for fleeing from the officer. One of the
10 things that they introduce is that he had some trouble in
11 Indiana. They referred to this trouble in Indiana as that
12 he had a little drug issue and he became an informant for
13 the police. So they wanted to try and show that as part of
14 him fleeing not only from Indiana, he was fleeing from Utah
15 police officer with regards to that intent.

16 I don't think that that was the sole intent, Judge,
17 but that was something that they went ahead and sought to
18 introduce. So the individual was convicted, and so up on
19 appeal the Counsel for the defendant argued that they shouldn't
20 have introduced that prior evidence of his -- that incident
21 involving the drugs in Indiana.

22 So the Court looked at this case and they cited to
23 404(b), and they said, "Evidence is admissible to prove motive,
24 intent or absence of mistake," and they went through 404(b).
25 It says -- and I'm reading, Judge, I marked it on the copy, so

1 it's page 4 of 7 where it says evidence of prior crimes, just
2 about half that page.

3 Down in the first column it says, "Before admitting
4 to such evidence the trial Court finds that it is a necessity
5 that is highly probative regarding a material issue related
6 to the crime charge, and that these two factors outweigh its
7 prejudicial impact." Judge, we've heard prior testimony
8 already with regards to another incident, the same sort of
9 incident where Mr. Grunwald tried to separate Angel Garcia and
10 Meagan Grunwald, in that that ended in another violent sort of
11 confrontation.

12 Judge, we believe that that goes to motive. So the
13 motive -- one of the things that we're looking at in this case
14 that the State has alleged that the motive was for them to
15 stay together, and the motive on January 30th was also to stay
16 together.

17 So the incident on January 11th, which Mr. Grunwald
18 talked about yesterday, that, in addition to showing that Angel
19 Garcia had a gun, it can also go to motive. This is a similar
20 type of incident, Judge, that it could go to motive. We're not
21 using it for just some other non-character -- or a character
22 purpose.

23 Judge, when Mr. Grunwald was testifying yesterday,
24 I think that there was some responses elicited from him that
25 talked about that there were prior incidents at the house,

1 conflicts regarding -- that there were -- there were several
2 incidents at the house involving conflicts involving Meagan
3 and Angel Garcia, and not just that single incident yesterday.
4 So I think that there is already some information that the jury
5 has heard that it refers to other incidents.

6 Also, in Mr. Zabriskie's opening statements, he
7 actually -- he talked about an incident where Meagan was
8 punching holes in the wall. That's -- I don't know what
9 Mr. Zabriskie's reference was, but I believe that it could
10 have been referring to this. We had provided this beforehand,
11 we provided them these pictures quite a while ago. So they've
12 had copies of these.

13 So, Judge, we feel that under a permitted use, under
14 404(b), that this would be permitted. It's not so prejudicial,
15 Judge, because you -- you look at the seriousness of the crime
16 that we're facing, and this involves Ms. Grunwald punching
17 holes in the wall, and then also you compare that with the
18 testimony that was talked about yesterday where there was
19 actually a physical fight between Ms. Grunwald and Jerry
20 Grunwald, her dad, and a gun was involved in that situation.

21 So I don't think that the prejudicial effect of this
22 outweighs its probative value; and I think that probative
23 value does go to the motive, which is a proper use, Judge,
24 and we would ask that we permitted -- we be permitted to
25 bring the officer on to testify. He would be later on this

1 afternoon, and that he would testify about his interaction
2 with Ms. Grunwald. She did write out a statement also on that
3 day, Judge, and we would ask -- we would seek to introduce that
4 statement. Other than that, do you have any questions, Judge?

5 THE COURT: No. Thank you.

6 MR. TAYLOR: Thank you.

7 MR. ZABRISKIE: May I respond to that?

8 THE COURT: Sure.

9 MR. ZABRISKIE: I, at first, would address this issue
10 of what I referred to in my opening statement, I have no recol-
11 lection of (inaudible) to holes being punched in the wall in
12 my opening statement. I don't know if it came out in some
13 testimony thereafter, but I'm relatively sure that that was
14 not a reference in my opening statement.

15 Your Honor, historically Courts have guarded against
16 the use of prior bad acts for proving-- or for pointing out a
17 -- something in conformity with that prior bad act because,
18 one, it has such a prejudicial effect on juries and on the
19 listener. So we would ask the Court to keep that in mind.

20 We know that there are certain exceptions as it relates
21 to evidence coming in, but the first question that is always --
22 always extant -- always the first one to be considered by the
23 Court in determining whether in fact this is an exception to
24 the usual prohibition, is whether in fact it is -- its primary
25 purpose is to show the present subject as being in conformity,

1 at least the conduct, in conformity with a prior bad act. It
2 does not have to be a conviction, doesn't even have to be a
3 criminal charge.

4 Therein, the Courts have exercised the greatest caution
5 so that juries are not prejudiced by what happened before; and
6 therein assuming that once a certain act is committed, that
7 that in and of itself constitutes a form of evidence tainting
8 the jury as it relates to the present subject.

9 So the issue of whether, in fact, it's an exception,
10 we ask ourselves, "Is it offered for the purpose of showing
11 conformity?" If the Court determines that maybe that's not
12 entirely clear, then the Court goes to the exceptions, wherein
13 it's not shown for that purpose, but to show motive, intent,
14 planning things of that particular nature.

15 More often than not, the Courts have grown used to
16 that also becoming somewhat of an empty tent that is filled
17 with superfluous information only to show, well, we want to
18 show motive, we want to show this, and kind of creating a
19 nexus, one to the other, in the hopes of avoiding the prohib-
20 ition in 404(b).

21 The incident in November was a criminal mischief case.
22 There was a confrontation and it does show perhaps a lack of
23 judgment on the part of Meagan. It's about -- it's not even
24 remotely -- in this particular instance here, it only involved
25 Meagan and her father, while the source of the argument was the

1 relationship between Jose and the daughter.

2 They say it's to show motive. This was a spontaneous
3 act, one that was not planned. It's not part of a -- any type
4 of predetermined act on their part. It was a spontaneous act,
5 as was the one in January.

6 The difference in the one in January that sometimes we
7 overlook is that Meagan was not charged with a crime. She was
8 a victim in that particular act. It was her father that was
9 arrested for domestic violence and assault, and therein became
10 the subject of a protective order.

11 So while the players appear to be the same, it is
12 not one and the same, and it's an entirely different. In this
13 one here there was property damage done. It was filed in the
14 Juvenile Court, entirely different. It does show think some
15 poor judgment on her part.

16 I don't know that it shows a commitment to -- to Jose
17 that would stretch across the parameters of reality that an
18 act of criminal mischief which is not uncommon, especially
19 involving young people, to the horrendous act of homicide.
20 That's a quantum leap into space.

21 We think that this will have more prejudicial effect
22 on the jury as it relates to Meagan. It besmirches her -- at
23 least her self-control, and it's not relevant, and would be
24 very prejudicial, and we'd ask the Court to keep it out.

25 THE COURT: Okay, thank you. Mr. Taylor.

1 MR. TAYLOR: Judge, Mr. Grunwald was actually charged
2 with assault and criminal mischief. If the Court permits that,
3 we would instruct the officer not to discuss any of the charges
4 or any of the outcome -- I don't even know what the outcome was
5 with regards to that, but we would instruct him not to discuss
6 that. Only the incident with regards to what she told him at
7 the time, and then the pictures.

8 THE COURT: So this incident occurred in November of
9 2013?

10 MR. TAYLOR: Yes, sir, when Angel Garcia was living in
11 the home.

12 THE COURT: Okay.

13 MR. TAYLOR: Thank you.

14 THE COURT: Anything else, Mr. Zabriskie?

15 MR. ZABRISKIE: No, your Honor.

16 THE COURT: Give me a few minutes and I'll think about
17 this for a second.

18 COURT BAILIFF: All rise.

19 (Recess taken)

20 COURT BAILIFF: All rise. Court is now in session.

21 THE COURT: Thank you. Please be seated. Ready? All
22 right, we're back on the record. I apologize, Counsel, it's
23 taken me a little bit longer to look at this issue. The reason
24 for that, I think it's a very close call, and it's an important
25 call that I think I need to make, but I appreciate your argu-

1 ments on it and I'll tell you what I think.

2 Under Rule 404(b), evidence of other crimes, wrongs
3 or acts is not admissible to prove the character of a person
4 in order to show action and conformity therewith. It may,
5 however, be admissible for other purposes such as proof or
6 -- proof of motive, opportunity, intent, preparation, plan,
7 knowledge, identity, or absence of mistake or accident.

8 The Utah Supreme Court in State vs. Nelson Wagner
9 developed a three-part analysis to determine whether evidence
10 is admissible under Rule 404(b). First, the Court must deter-
11 mine if the bad acts evidence is being offered for proper non-
12 character purpose, such as one of those specifically listed in
13 Rule 404(b). Second, the Court must determine whether the bad
14 acts evidence meets the requirements of Rule 402, which permits
15 evidence of only relevant evidence.

16 It's my opinion that with regard to the first and
17 second elements, the State probably has met it's burden here.
18 It's the third one that's causing me some problems. The Court
19 must determine whether the bad acts evidence meets the require-
20 ments of Rule 403, which excludes evidence if its probative
21 value is substantially outweighed by the danger of unfair
22 prejudice, confusion of the issue or misleading the jury, or
23 by considerations of undue delay, waste of time, or needless
24 presentation of cumulative evidence.

25 So then when we look at element three, we go to the

1 Schickles factors, which talk about more factors which can be
2 considered by the Court, strength of the evidence of the other
3 bad acts, the similarities between the crimes, the interval
4 of time that has elapsed between the crimes, the need for
5 evidence, the efficacy of alternative proof, the degree to
6 which the evidence probably will arouse the jury to over-
7 mastering hostility.

8 The concern that I have with the Schickles requirements
9 is -- and the difficulty in applying 404(b) comes from State
10 vs. Verde, when we have to balance the prior bad acts evidence
11 and whether that's been generally off-- genuinely being offered
12 for a proper non-character purpose or whether it might actually
13 be aimed at sustaining an improper inference of action and
14 conformity with a person's bad character.

15 This issue isn't like this. If it's anything, it's
16 wading right in the middle. I think the State could have
17 probably argued more of the motive. I think they could have
18 argued more strongly on motive, opportunity and even absence
19 of mistake or accident. Probably would have characterized it
20 a little bit better, this incident. Not really seeing every-
21 thing that went on at this particular time, but -- as well as I
22 think defense could have probably argued a little bit strongly
23 one way or another as well, too, with regard to this issue.

24 I think in weighing the issue before the Court in this
25 incident in November 2013, that the -- that the scale weighs

1 ever so slightly in favor of the State on this issue; and so
2 I'm going to allow it to come in, finding that it does meet the
3 404(b) requirements, as well as the 403 requirements, and allow
4 that evidence to come in.

5 MR. TAYLOR: Thank you, Judge.

6 THE COURT: All right, are we ready for the jury?

7 MR. TAYLOR: Yes, your Honor.

8 COURT BAILIFF: All rise for the jury.

9 (Jury enters the courtroom)

10 THE COURT: Thank you. Please be seated. All right,
11 so we are on the record, and would note now that all members of
12 the jury are present. We did need to take care of some business
13 outside the presence of the jury this morning. So appreciate
14 your patience. We're still the State's case. Mr. Pead.

15 MR. PEAD: Your Honor, before we call the next witness,
16 the parties have entered into some stipulations regarding
17 exhibits without further testimony and without having to recall
18 any of the other previous witnesses.

19 THE COURT: Okay.

20 MR. PEAD: The first is Plaintiff's Exhibit 273. This
21 is Officer Braegger's body cam video that we watched yesterday;
22 and it ends immediately at the time that we stopped it after he
23 has finished talking with the defendants.

24 MR. ZABRISKIE: So stipulated, your Honor.

25 THE COURT: Thank you. So that's a new one; is that

1 what you're saying, Mr. Pead, or --

2 MR. PEAD: It's the same video that we showed yesterday
3 but it's been edited to only the portion that was shown yester-
4 day.

5 THE COURT: I see. Okay, so the one I admitted yester-
6 day --

7 MR. PEAD: Is it 273?

8 THE COURT: Yes.

9 MR. PEAD: Okay, it's still 273.

10 THE COURT: Okay.

11 MR. PEAD: Item -- or Exhibit 277, this is the second
12 bullet fragment that was from Deputy Sherwood's head. It was
13 not previously admitted, but there was talk of it in other
14 testimony. We are now stipulating to its admission.

15 MR. ZABRISKIE: So stipulated, your Honor.

16 THE COURT: Okay, thank you. What number?

17 MR. PEAD: No. 277.

18 THE COURT: I'll accept and receive State's Exhibit
19 277.

20 (Exhibit No. 277 received into evidence)

21 MR. PEAD: Your Honor, Plaintiff's Exhibit 278 is the
22 toxicology report for Jose Angel Garcia. It was also performed
23 by Mr. Nguyen who previously testified. It shows negative drug
24 -- it shows that no drugs were found in Mr. Garcia's blood, but
25 that methamphetamine and amphetamine were found in his urine,

1 and Counsel has graciously agreed to that coming in without
2 requiring Mr. Nguyen to come back. That is Plaintiff's 278.

3 MR. ZABRISKIE: So stipulated, your Honor.

4 THE COURT: I'll accept and receive State's Exhibit
5 278.

6 (Exhibit No. 278 received into evidence)

7 MR. PEAD: Your Honor, Exhibit 279 and 280, and we
8 talked a little bit about these yesterday, 279 is a summary of
9 the fingerprint evidence. It gives the trial exhibit numbers
10 for each piece of evidence, the State numbers, the description
11 of the item, the location where it was found, and then the
12 fingerprint results that Ms. Wilder-Estes testified about
13 yesterday. The purpose for this, for both parties, is to give
14 the jury an easy roadmap for what that forensic evidence means.

15 Similarly, 280 covers the same information for the
16 ballistics summary that Mr. Bechaver gave yesterday, outlining
17 the trial exhibit numbers, the descriptions, where those were
18 found, and what the ballistics comparisons showed, again, to
19 make that process as simple as possible for the jury. The
20 parties have stipulated to both these exhibits.

21 MR. ZABRISKIE: So stipulated, your Honor.

22 THE COURT: All right, thank you. I'll accept and
23 receive State's Exhibit 279 and 280.

24 (Exhibit Nos. 279 and 280 received into evidence)

25 MR. PEAD: Your Honor, the last stipulated exhibit is

1 281. This is a certified copy of conviction for Jose Angel
2 Garcia Jauregui for attempted murder and aggravated assault
3 which was alluded to yesterday.

4 MR. ZABRISKIE: So stipulated, your Honor.

5 THE COURT: Okay, thank you. I'll accept and receive
6 State's Exhibit 281 as well.

7 MR. PEAD: Thank you, your Honor.

8 THE COURT: Okay, thank you.

9 (Exhibit No. 281 received into evidence)

10 THE COURT: All right, Mr. Taylor.

11 MR. TAYLOR: Thank you. The State calls Gustavo
12 Jauregui.

13 THE COURT: Come forward, sir, let's get you sworn in.
14 Just raise your right hand.

15 THE WITNESS: Just right here?

16 THE COURT: Yeah.

17 COURT CLERK: Yeah, raise your right hand. You do
18 solemnly swear that the testimony you shall give in the case
19 now pending before the Court will be the truth, the whole truth
20 and nothing but the truth, so help you God?

21 THE WITNESS: I do.

22 THE COURT: Thank you, sir. Please have a seat here in
23 the witness box. Just need to pull that microphone down so it
24 will pick you up okay.

25 THE WITNESS: Yeah.

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THE COURT: Thank you.

GUSTAVO ANTONIO GARCIA JAUREGUI,

having been first duly sworn,

testified as follows:

DIRECT EXAMINATION

BY MR. TAYLOR:

Q. Good morning.

A. Good morning.

Q. Would you please state your full name and then spell your last name.

A. Gustavo Antonio Garcia Jauregui, G-a-r-c-i-a J-a-u-r-e-g-u-i.

Q. Thank you very much. What city do you live in?

A. I live in Provo.

Q. Okay, and how long have you lived here?

A. Seven -- eight years now.

Q. Okay, and what is your occupation?

A. Production worker, I guess you can call it.

Q. Where do you work at?

A. I work at Stauffer's and Sam's Club in Provo.

Q. Okay, and do you know Angel Garcia?

A. Yes.

Q. Okay, and how do you know him?

A. He is my brother.

MR. TAYLOR: May I approach the witness, please, Judge.

1 THE COURT: Yes.

2 Q. BY MR. TAYLOR: Okay, I'm going to show you what's been
3 marked State's Exhibit No. 120. Do you recognize that, Gustavo?

4 A. Yes.

5 Q. Who is that?

6 A. That is my brother.

7 Q. Okay, thank you. What kind of relationship did you
8 have with your brother?

9 A. I guess your average brother relationship.

10 Q. Did you guys -- did he ever live with you?

11 A. Yes.

12 Q. When did he live with you; do you remember?

13 A. When we first moved to Utah, when we were renting a
14 room in Provo he lived with me there until he had his first
15 incident where he went to prison.

16 Q. Okay.

17 A. Then when he first got out of prison in 20 -- yeah,
18 November 2012.

19 Q. Okay.

20 A. We were back there in Provo, and then I finally bought
21 my condo he moved with me for like the first two months, and
22 then he decided to go to Draper.

23 Q. Okay, and so you said he decided to go to Draper. Do
24 you know where he went to Draper; do you know where he went to
25 live with?

1 A. At first he had told me he had -- he was going with my
2 friends Chris and Rudy.

3 Q. Okay, and then do you know how long he stayed there?

4 A. Not really. I assumed he was there that whole time,
5 but I guess it turned out he was over at Meagan -- or the
6 Grunwalds.

7 Q. Okay, did he talk about being at Meagan Grunwald's
8 place?

9 A. No.

10 Q. Okay. All right, and so -- so we're talking about in
11 the latter part of 2013; does that sound right?

12 A. Yeah.

13 Q. Okay, and so after -- in that latter part of 2013 did
14 he live with you during that time?

15 A. Not really. He would stop by when they would go down
16 to St. George, but never really stayed there anymore.

17 Q. Okay, okay. Did you ever meet Meagan Grunwald?

18 A. Like twice.

19 Q. Okay.

20 A. When they stopped by just to say hello and when we
21 first moved to my condo in Provo she was there to help us move
22 with her truck.

23 Q. Is she here in the courtroom today?

24 A. Yes.

25 Q. Could you please -- is she over here in the white

1 sweater?

2 A. Yes.

3 Q. Okay, thank you. So did Meagan and Angel ever come
4 over to your place?

5 A. Yes.

6 Q. Okay, and could you describe your observations as to
7 how they appeared with regards to their relationship; how would
8 you describe that?

9 A. They were happy, spent a lot of time together. I mean,
10 they'd stay over, spend the night before they went down to
11 St. George. That's when -- the times I remember.

12 Q. Okay, so they -- they spent the night at your place
13 and then they would go down to St. George?

14 A. Yeah.

15 Q. Okay, did you ever -- do you remember approximately
16 when that would have been? I know that's probably going to
17 test your memory there.

18 A. Yeah, that's-- I honestly can't. It had to be towards
19 the beginning. So I got my condo in October.

20 Q. October 2013?

21 A. Yeah.

22 Q. Okay, so it would have been after that, then?

23 A. It would have been slightly after that.

24 Q. Okay, okay, fair enough. Did you ever see them arguing
25 at all?

1 A. No.

2 Q. Did you ever see Angel act physically -- did he hit
3 her at all?

4 A. No.

5 Q. Okay, do you remember when the last time was that you
6 spoke with your brother?

7 A. The last time I spoke with him was when his parole
8 officer called me. He was looking for him, and he had him on
9 the other line. He just wanted to -- he's like, "I got him
10 on the other line. I want to make sure he confirms with you,
11 he's telling me he's going to stop by your house. He's down
12 in St. George. He's going to stop at your place and in the
13 morning he's going to come see me, and I need you to make sure
14 you can confirm that." So we talked between the three of us,
15 and he said, "Yeah, I'll be there in the morning. We can head
16 over there."

17 Q. Was that a three-way call, then?

18 A. Yeah.

19 Q. So it was between his parole officer and Angel and
20 you; is that correct?

21 A. That's correct.

22 Q. Okay, and so Angel was supposed to come spend the
23 night and then check in --

24 A. Yeah.

25 Q. -- the following Monday or something with the parole

1 officer?

2 A. Yeah, I was expecting him to be there in the morning.

3 Q. Okay, did he come that night?

4 A. No.

5 Q. Okay, and so was that the last time that you ever
6 spoke with him?

7 A. Yes.

8 Q. Did you ever see him after that?

9 A. No.

10 Q. So if I told you that that was approximately July --
11 excuse me, January 27th of 2014 does that sound about right?

12 A. It sounds about right, yes.

13 Q. Okay, and did -- did you ever speak with Meagan around
14 that same time?

15 A. Yes, I believe -- I can't remember if I called her or
16 if she called me to check in, but it was that morning when we
17 were trying to confirm --

18 Q. When you say "that morning," are you talking January
19 the 27th?

20 A. Yeah.

21 Q. Okay, go ahead.

22 A. After I realized that my brother wasn't home, I can't
23 really remember if I called her or she called me, but I talked
24 to her and asked her, I was like, "Where's my brother?" It's
25 like, "He's not here." She's like, "Well, I dropped him off at

1 your door."

2 Q. But he --

3 A. It was like -- but he wasn't there obviously.

4 Q. -- wasn't there. Okay, and so but she said that she
5 had dropped him off at your house, but --

6 A. Yeah.

7 Q. -- he didn't arrive?

8 A. Correct.

9 Q. Okay, and so that was the last time that you ever
10 spoke with Meagan; is that correct?

11 A. That's correct.

12 MR. TAYLOR: Okay. All right, nothing further.

13 THE COURT: Thank you. Cross examination?

14 MR. ZABRISKIE: Thanks, Judge. May I proceed, your
15 Honor.

16 THE COURT: Sure.

17 CROSS EXAMINATION

18 BY MR. ZABRISKIE:

19 Q. Gustavo, do you go by Garcia or the name I can't
20 pronounce?

21 A. Garcia is fine.

22 Q. Pardon me?

23 A. Garcia is fine.

24 Q. All right, now you've lived here in Utah for how long?

25 A. About eight years now.

1 Q. During that period your brother's also been in Utah?

2 A. Yes, that's correct.

3 Q. In a different -- different location?

4 A. Yeah. Well, he was in prison for the most --

5 Q. Uh-huh. Do you know how long he was in prison?

6 A. It was -- well, overall it was six years.

7 Q. Did your -- during this period, the relevant time,
8 and I'm talking about between October of 2013 and that fateful
9 day in January of 2014, were you aware of whether in fact your
10 brother had some type of head injury?

11 A. Yes, it was -- he didn't tell me about it, but it was
12 Chris that had mentioned, you know, that he had a head injury
13 and that his job told him to take days off until he had it
14 checked out.

15 Q. Was it -- were you aware or were you told what the
16 cause of his head injury was?

17 A. No.

18 Q. Now, you -- just a few things I'd like to clear up,
19 and it will probably be a little bit out of order. You were
20 aware of a tattoo on --

21 A. Yes, on his --

22 Q. Well, it was on his neck.

23 A. It was on his neck.

24 Q. Yeah.

25 A. I want to say it was on his right side.

1 Q. Yeah, I think that's the right. Isn't it true that
2 that tattoo originally read "Gabby"?

3 A. Gabby, yes.

4 Q. And that if he were here today, it would read "Babby"?

5 A. Yeah.

6 Q. If somebody were to say or represent that it was
7 changed to Babby in deference to Meagan Grunwald, would that
8 be a true statement?

9 A. No.

10 Q. When in fact did he get -- as far as you know -- that
11 tattoo changed?

12 A. He was getting it in the prison.

13 Q. I see. Were you aware of what Gabby meant?

14 A. Yes. When he first moved to Utah he had a girlfriend.
15 Her name was Gabby.

16 Q. Is that the sign of a broken romance to change the
17 name?

18 A. Yeah, basically. Yeah.

19 Q. Was that before he went to prison?

20 A. Yeah, before he went to prison he met her. When he
21 went to prison she tried to meet him, you know, she'd go with
22 me and visit him every once in a while, but she eventually got
23 married, and you know, moved on with her life. So --

24 Q. Got tired of waiting?

25 A. Yeah.

1 Q. So would it be a correct conclusion that that tattoo
2 was revised before he met Meagan?

3 A. I believe so, yes.

4 Q. Okay, now, I noticed in your interview as it relates
5 to the circum -- incidentally I -- it's -- I know when I've
6 chatted, it's hard to talk about your brother; but you charac-
7 terized him as the consummate ladies' man --

8 A. Yes.

9 Q. --in your -- in your report. Is that a true statement?

10 A. Yes.

11 Q. Did you meet any of his girlfriends?

12 A. Yeah.

13 Q. Were there lots of girlfriends?

14 A. Yeah.

15 Q. I'm not criticizing; I'm only commenting, okay?

16 A. That's fine.

17 Q. When he would call you, isn't it true that on occasion
18 he would use Meagan's phone?

19 A. Yes.

20 Q. Okay, and in fact you could tell from caller -- or the
21 number ID it was Meagan's phone?

22 A. It's been a while, but yeah, I could tell.

23 Q. Okay, and that sometimes he'd use his own phone?

24 A. Yes.

25 Q. Okay, were there other phones that he used that you

1 can recall or that you're aware of?

2 A. No.

3 Q. Now, when you were interviewed about the relationship,
4 your relationship with your brother, and more particularly the
5 involvement with Meagan, you referred to her -- and correct me
6 if I'm wrong, okay -- "his friend Meagan." Gustavo said that
7 Angel and Meagan had told him they were just friends. Do you
8 recall saying that?

9 A. Yes.

10 Q. Is that the way they represented themselves?

11 A. To me it seemed like more, but --

12 Q. Uh-huh, more than just friends?

13 A. Yeah.

14 Q. But is that how they represented themselves to you? I
15 know you can't speak for others, but is that how he represented
16 himself?

17 A. Yeah.

18 Q. Now, you had indicated that -- you indicated in your
19 interview that you had only talked with her when she was with
20 your brother; is that correct?

21 A. That's correct.

22 Q. Never had occasion to talk to her -- I think there was
23 a telephone call where the two of you just talked directly?

24 A. Yes.

25 Q. But other than that she was always with your brother;

1 isn't that the case?

2 A. That's correct.

3 Q. I think you said Gustavo's -- you figured that the
4 relationship between Angel and Meagan wasn't going to last, so
5 you didn't really bother to get to know her?

6 A. That's correct.

7 Q. Is that because your brother's modus operandi was --

8 A. Yeah, he -- like I said, Meagan was basically the
9 third girlfriend I was aware of --

10 Q. Okay.

11 A. -- since he had gotten out of prison. So --

12 Q. Since he got out of prison. In fact, he had a girl-
13 friend at that time that was pregnant; did he not?

14 A. Yes.

15 Q. In fact, your comment was he would go through women
16 very quickly?

17 A. (No verbal response).

18 THE COURT: Make sure to answer audibly, sir.

19 THE WITNESS: Oh, yes.

20 THE COURT: Thank you.

21 THE WITNESS: I've just been nodding my head. Sorry.

22 Q. BY MR. ZABRISKIE: No, that's okay. When you were
23 questioned about your brother, and I think you gave a synopsis
24 or a brief summary of your life together, you had kind of a
25 bucolic living in the country life when you lived back in --

1 was it Kansas?

2 A. Yes.

3 Q. And talked about your brother and your life there with
4 your family?

5 A. Yeah.

6 Q. Isn't that correct?

7 A. That's correct.

8 Q. When asked whether your brother had a temper, you
9 responded that it didn't take much to agitate Angel. Gustavo
10 said that he's never there for -- it was -- said that he was
11 never there for the fights, but his parents were always being
12 told about his fights. Did he like to fight?

13 A. If -- the way -- yeah. The way he explained it is
14 that people were always looking for him or trying to get him
15 in trouble.

16 Q. So he was -- characterize it a rough and ready?

17 A. Yeah.

18 Q. Wouldn't take much to agitate him; is that correct?

19 A. That's correct.

20 Q. Now, sometime in January, and if I -- I'd say on
21 January 30th of 2014, that date has special significance; does
22 it not?

23 A. That's correct.

24 Q. You are aware that that date and the things that
25 happened on that date, with some little reference to other

1 date, is the significant date as it relates to this trial?

2 A. That's correct.

3 Q. Now, did you receive a call from your uncle on that
4 date? I think his name is -- tell me what his name is.

5 A. It's also Jose.

6 Q. Yeah, Jose.

7 A. Jose Angel.

8 Q. (Inaudible)?

9 A. Oh, the whole name? Jose Angel Garcia Gomez.

10 Q. Okay, yeah, he's almost like the same name, right?

11 A. Uh-huh.

12 Q. You got a call from Texas, and you indicated that both
13 indicated that -- you got a call from someone else on that day.
14 I can't remember who it was. Was it your mother? Certainly it
15 was your brother. Calls from Jose saying that he'd received a
16 call from your brother and he was yelling a lot of gibberish.
17 Both asked if Gustavo knew what was going on. They both said
18 Jose was yelling something about hurting someone, and that he
19 was going to do 30 years for it. Do you remember that?

20 A. Yes.

21 Q. Did he give you any other explanation other than that?

22 A. No, he was just (inaudible). He wasn't sure what he
23 was talking about. He was just scared. Said, "I think he did
24 something."

25 Q. When you say "scared," you're talking -- that was your

1 uncle that you're --

2 A. That was my uncle.

3 Q. -- yeah, because you didn't talk to your brother?

4 A. I didn't talk to him.

5 Q. When you characterized it as gibberish, is that a
6 true reflection of what your uncle had told you?

7 A. Yes.

8 Q. I notice you and your brother call each other
9 "Carnal"?

10 A. Yes.

11 Q. What's the significance of that? It's obviously
12 (inaudible).

13 A. It's the equivalent to "bro."

14 Q. Okay, so --

15 A. In Spanish.

16 Q. -- in terms of endearment, if I called you "Carnal,"
17 we'd be buddies?

18 A. We leave it only for family, but -- we're picky.

19 Q. You set -- if there's a hole, I'll step in it.

20 A. Yeah.

21 Q. Not quite friends. A little more than friends?

22 A. A little more than friends, yes.

23 Q. See, we call people "bro" that aren't family.

24 A. As friends, yeah.

25 Q. Yeah, all right. Now, he -- do you know why -- well,

1 you mentioned that he -- you knew three of the girls he dated
2 when he got out of prison, and Meagan you knew, of course.

3 A. Yeah.

4 Q. Were you aware that she was underage?

5 A. No, not at the time.

6 MR. ZABRISKIE: Okay, may I have just a second, your

7 Honor.

8 THE COURT: Yeah.

9 (Counsel conferring off the record)

10 MR. ZABRISKIE: Thanks, and good luck.

11 THE WITNESS: Thank you.

12 THE COURT: Okay, thank you. Redirect?

13 MR. TAYLOR: Just a couple of questions, Judge.

14 THE COURT: Okay.

15 REDIRECT EXAMINATION

16 BY MR. TAYLOR:

17 Q. Gustavo, were you aware that Angel referred to Meagan
18 as "Babby"?

19 A. No.

20 Q. He never mentioned that to you?

21 A. He never mentioned it.

22 Q. Okay, and at the time that Angel was with Meagan and
23 they came to your place, did -- around that same time period
24 did Angel ever come to your place with other girls?

25 A. During that same time period when he was with Meagan?

1 Q. Yeah.

2 A. No.

3 Q. Okay, so it was -- was it your understanding that it
4 was just-- that they were exclusive to each other at that time?

5 A. Yes.

6 Q. Okay, and you said that -- Mr. Zabriskie asked you a
7 question about that they would identify themselves as just
8 friends --

9 A. Right.

10 Q. -- but you said you thought differently. What made
11 you think differently with regards --

12 A. Well, just I guess the history with my brother. Just
13 like knowing that he couldn't really keep girl friends just to
14 that level.

15 Q. Okay.

16 A. There was always something more.

17 Q. So there was something more than just a friend?

18 A. Yeah.

19 Q. Okay, just based on your experience and stuff?

20 A. Correct.

21 MR. TAYLOR: Okay. All right, nothing further. Thank
22 you, Gustavo.

23 THE WITNESS: You're welcome.

24 MR. ZABRISKIE: No recross, your Honor.

25 THE COURT: Thank you. I believe that's all, sir. Can

1 he be excused?

2 MR. TAYLOR: Yes.

3 MR. ZABRISKIE: Yes, your Honor.

4 THE COURT: Thank you.

5 THE WITNESS: Thank you.

6 MR. TAYLOR: Next witness?

7 MR. PEAD: State calls Tori Grunwald.

8 THE COURT: Come forward, ma'am, let's have you sworn
9 in.

10 THE WITNESS: Where?

11 THE COURT: Right there's good. Let's get you to raise
12 your --

13 COURT CLERK: Raise your right hand. You do solemnly
14 swear that the testimony you shall give in the case now pending
15 before the Court will be the truth, the whole truth and nothing
16 but the truth, so help you God?

17 THE WITNESS: Yes, I do.

18 THE COURT: Thank you, sir. Please have a seat here in
19 the witness box. Just go ahead and get close to the microphone
20 so that we can pick you up okay.

21 THE WITNESS: Ah-oh.

22 THE COURT: Pull it down a little bit. Okay, thank
23 you.

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TORI DEE GRUNWALD,

having been first duly sworn,

testified as follows:

DIRECT EXAMINATION

BY MR. TAYLOR:

Q. Will you please state your name and spell it for the record.

A. Tori Dee Grunwald, T-o-r-i D-e-e G-r-u-n-w-a-l-d.

Q. Ms. Grunwald, do you recognize the person sitting here in the white blouse?

A. Yes.

Q. Who is that?

A. My beautiful daughter.

Q. I imagine this is difficult to be here.

A. Yes.

Q. You've been subpoenaed and commanded to be here?

A. Yes.

Q. And you've sworn to tell the truth?

A. Yes.

Q. Do you remember the day of January 30th of 2014?

A. Yes.

MR. PEAD: May I approach the witness, your Honor.

THE COURT: Yes.

Q. BY MR. PEAD: Ms. Grunwald, I'm going to show you what has been previously marked as Plaintiff's Exhibit 50. Will you

1 look at this. Before I get into that, are you aware of what
2 your phone number on January 30th of 2014 was?

3 A. Should have been the same one I have now, yes.

4 Q. What is that?

5 A. 801-809-6670.

6 Q. Okay, and are you aware of what your daughter's phone
7 number was on that same day?

8 A. No.

9 Q. Okay, Ms. Grunwald, this exhibit shows seven different
10 calls to 809-6670; one at 6:59 a.m., one at -- I'm going to
11 start over. So one to that number at 6:59, one at 1:03 p.m.,
12 and that's your number as well, right?

13 A. Yes.

14 Q. One at 1:22 p.m., one at 1:23 p.m., one at 1:47 p.m.,
15 one at 11:50 a.m., and one at 1:53 p.m., and one at 2 --

16 A. To who?

17 Q. Is this your phone number?

18 A. Yes.

19 Q. Okay, so this shows those calls to your phone number,
20 correct?

21 A. Uh-huh.

22 Q. Do you remember having phone conversations with your
23 daughter on that date?

24 A. I remember he calling like just a few times, but I
25 only talked to her once.

1 Q. Okay, and what was the substance of your conversation?

2 A. I do not remember, but I just -- I didn't realize it
3 until after, she was calling for help.

4 Q. But I imagine as her mother, you're protective of her?

5 A. Yes.

6 Q. And you would want to help her if you could?

7 A. Yes.

8 Q. As a result of those phone calls that we just talked
9 about, did you ever call the police?

10 A. On that day?

11 Q. Yeah.

12 A. Not that I know of, no.

13 Q. Do you know your daughter pretty well?

14 A. Yes.

15 Q. Do you think that if there was something wrong you
16 could sense it in her voice?

17 A. I had a weird feeling that day, but I didn't really
18 know.

19 Q. So there was nothing about that call that led you to
20 believe something was wrong?

21 A. No.

22 Q. Then later that day law enforcement came to your house
23 in Draper; is that correct?

24 A. Yes.

25 Q. Did they execute a search warrant at your house?

1 A. Yes.

2 Q. Do you remember what they searched?

3 A. The whole house.

4 Q. Okay, did they search Meagan's room?

5 A. Yes, they destroyed it.

6 Q. What -- where is Meagan's room located?

7 A. In the front part of the house.

8 Q. Okay, and how many bedrooms are there in the house?

9 A. Two.

10 Q. Do you know if they searched a safe in Meagan's room?

11 A. They broke it open, yes.

12 Q. Whose safe was that?

13 A. Meagan's.

14 Q. Initially you told law enforcement that Angel had not
15 been living there?

16 A. He's stayed there a few times, but he wasn't living
17 there, no.

18 Q. Don't you remember telling Detective Leany that-- that
19 he had been living there and that you had lied about that?

20 A. No.

21 Q. You don't remember that?

22 A. He stayed there some, but he wasn't living there, no.

23 Q. He hadn't been living there?

24 A. Uh-uh.

25 Q. It's your testimony?

1 A. He stayed there some, but he wasn't living there, no.

2 Q. Okay, was he there the night before?

3 A. I don't remember. Probably.

4 Q. Okay, and you don't remember telling Sergeant Leany
5 that he had been living there and that you had lied about that?

6 A. No.

7 Q. Do you remember telling Detective Leany that you had
8 lied because you did not want Angel to get in trouble?

9 A. No, because I don't know why he would get in trouble.

10 Q. When Angel was staying there, he was not supposed to
11 be having sexual intimacy with Meagan; is that correct?

12 A. Yes.

13 Q. Yet you know that they were, correct?

14 A. No.

15 Q. Didn't you find a condom?

16 A. What?

17 Q. Did you find a condom in the house?

18 A. No.

19 Q. You don't remember telling detectives about finding a
20 condom in the house?

21 A. No, I don't.

22 Q. You don't remember telling Felicia about finding a
23 condom in the house?

24 A. No.

25 Q. Did you believe that they were having sex?

1 A. No.

2 Q. Do you remember telling detectives that Angel protects
3 you and Meagan from Jerry?

4 A. Yeah.

5 Q. So he was protective of you and of Meagan?

6 A. Yes.

7 Q. He also paid rent, didn't he?

8 A. He never paid me, no. Jerry always asked him for
9 money, but he never paid me, no.

10 Q. Did he buy groceries and things like that?

11 A. Yeah, because he likes all that hot, spicy stuff.

12 Q. Did Meagan and Angel stay in the same room?

13 A. No, she slept in my room. He -- it started out him
14 in the front room and her in her bedroom; but then she moved
15 in our room, and he took over her bedroom.

16 Q. Ms. Grunwald, have you been following this case in the
17 media?

18 A. Yes.

19 Q. You know what the theory of the State's case is in
20 this, don't you?

21 A. What do you mean?

22 Q. You mean -- I mean, you know what we're trying to
23 prove in this case?

24 A. Yeah.

25 Q. And if possible, you would like to help and protect

1 your daughter?

2 A. Yes.

3 Q. Is that part of the reason why you're not being forth-
4 coming about them being sexually involved?

5 A. No, because as far as I know they weren't.

6 Q. On January 30th you guys were packing to move south; is
7 that correct?

8 A. Yes.

9 Q. Angel was packing as well?

10 A. Uh-huh.

11 Q. Were you aware of Angel having gone to prison?

12 A. No.

13 Q. You don't remember talking to Felicia about that?

14 A. No, I also thought Angel was 21; I didn't know his
15 real age.

16 Q. Do you remember his birthday?

17 A. No.

18 Q. You don't remember celebrating his birthday?

19 A. No.

20 Q. Who was living in the house, according to your memory,
21 on January 25th of 2014?

22 A. Just me and my daughter and Jerry.

23 Q. Wasn't Jerry already out of the house for the protec-
24 tive order?

25 A. I don't remember the dates like that. Probably.

1 Q. Okay, was Angel there?

2 A. I don't know. I don't remember dates.

3 Q. I'm going to show you something, and I'm going to ask
4 you if you recognize this. Do you recognize this?

5 A. No.

6 Q. Ms. Grunwald, are your -- are your sisters in Court?

7 A. Yes.

8 Q. Have they been watching this trial?

9 A. Yes.

10 Q. Have they talked to you about the trial?

11 A. Yeah.

12 Q. Kind of told you how it's gone and such?

13 A. Yes.

14 Q. What evidence has come in?

15 A. Yeah.

16 Q. And that part of our motive in this is a boyfriend,
17 girlfriend relationship with Meagan and Angel?

18 A. Uh-huh.

19 Q. And today' you're saying that you weren't aware of
20 that?

21 A. No, he was there to help her with her homework, with
22 her schoolwork, her nursing and all that.

23 Q. Do you remember going to Southern Utah with Meagan and
24 Angel?

25 A. Yeah.

1 Q. Do you remember talking to two detectives about that?

2 A. (Inaudible).

3 Q. Do you remember an incident where you went out a back-
4 yard in Southern Utah and saw Angel shooting a handgun?

5 A. I can't -- no.

6 Q. You don't remember telling detectives that you had
7 seen Angel shoot a handgun --

8 A. No.

9 Q. -- in the backyard?

10 A. (No verbal response).

11 Q. Just for clarification --

12 MR. PEAD: May I approach.

13 THE COURT: Sure.

14 Q. BY MR. PEAD: I'm going to show you what's been marked
15 as Plaintiff's 120. Do you recognize that person?

16 A. Yeah.

17 Q. Who is that?

18 A. Supposedly Angel.

19 Q. Is it Angel?

20 A. It's Jose, whatever his name is.

21 Q. Jose Angel Garcia?

22 A. Yeah. He's no angel.

23 Q. I won't disagree with that. Do you remember telling
24 Felicia that you were going to get Meagan an attorney and have
25 her say Angel made her do it?

1 A. I might have just told her I was getting an attorney,
2 but I ain't going to say that Angle made her do it. When this
3 first happened I didn't know nothing was going on.

4 Q. I understand, and it was at that point that you were
5 protecting Angel, wasn't it?

6 A. Huh?

7 Q. Before you knew what had happened, you actually came
8 to Angel's protection?

9 A. Meaning what?

10 Q. Meaning you told law enforcement that he wasn't living
11 at the house because you feared he'd get in trouble.

12 A. Why would he get in trouble? He stayed at the house
13 sometimes, but he wasn't actually living there. He lived down
14 the street.

15 Q. Ms. Grunwald, if we had multiple witnesses previously
16 testify to the fact that Angel was living at the home, what
17 would be your response to that?

18 A. That they're all -- they're saying he was over a lot,
19 yeah. He lived down the street with Chris.

20 Q. Were you at the house on January 30th of 2014?

21 A. Part of the day, yeah.

22 Q. What part were you there?

23 A. The later part of the day, I think.

24 Q. Were you there when Meagan and Angel were there?

25 A. I work, so I come and I leave.

1 Q. Well, the question wasn't if you work. The question
2 was were you there when Meagan and Angel were there?

3 A. I don't remember.

4 Q. Okay, do you remember telling law enforcement when
5 they interviewed you that you believed they had left around
6 11:30 that morning?

7 A. No.

8 Q. Do you remember if Meagan had any money with her?

9 A. She had money for gas, is all I know.

10 Q. Do you know how much money?

11 A. I don't remember.

12 Q. Is that money that you had given her?

13 A. Yes.

14 MR. PEAD: Okay, may I approach the witness again.

15 THE COURT: Yes.

16 Q. BY MR. PEAD: I'm going to show you what's been marked
17 as Plaintiff's Exhibit 160. Do you recognize that?

18 A. No.

19 Q. Does that look like Meagan's room?

20 A. Could be, yeah.

21 Q. Is that the safe that I asked you about earlier?

22 A. I don't know what her safe looked like. I never --

23 Q. Do you remember it after it was open?

24 A. No.

25 Q. Okay, but your testimony is that law enforcement broke

1 into her safe and executed --

2 A. Yeah.

3 Q. -- the search warrant?

4 A. Uh-huh.

5 Q. You've spoken to your daughter, obviously, since this
6 event?

7 A. Yes.

8 Q. Do you remember your daughter asking you to save
9 Angel's clothes?

10 A. No, I didn't save them.

11 THE COURT: I need you to get closer to that microphone,
12 ma'am.

13 THE WITNESS: No.

14 THE COURT: Thank you.

15 Q. BY MR. PEAD: Didn't you tell Felicia that Meagan asked
16 you to save Angel's clothes so that you could smell them?

17 A. No.

18 Q. Your testimony is that's not what you said?

19 A. No. I don't remember saying that, no.

20 Q. At some point -- and you've already testified that
21 Angel was protective of you and of Meagan --

22 A. Yes.

23 Q. -- did he offer to beat the shit out of Jerry?

24 A. Not that I remember; because if he did, I would have
25 said, "Yeah."

1 Q. The two of you were -- have either undergone or are
2 undergoing a divorce at this time? You and Jerry, that is.

3 A. Yes.

4 Q. Ms. Grunwald, I recognize this is difficult. Thank
5 you for honoring your subpoena.

6 THE COURT: Thank you. Cross examination?

7 MR. ZABRISKIE: Just a second, your Honor.

8 CROSS EXAMINATION

9 BY MR. ZABRISKIE:

10 Q. Ms. Grunwald, if I -- this is difficult for all of
11 us. Are you nervous now?

12 A. Yes.

13 Q. I'm going to ask you a few questions. If you're
14 uncomfortable about this you must tell me, but I'm going to
15 ask you questions about your health.

16 A. Okay.

17 Q. Did you-- you in fact suffered from a life threatening
18 car accident; did you not?

19 A. Yes.

20 Q. How old were you when you had that accident?

21 A. Thirteen.

22 Q. Was it -- was there -- did you suffer brain damage?

23 A. Yes.

24 Q. Were you in a coma?

25 A. Yes.

1 Q. How long were you in a coma?

2 A. About four months.

3 Q. Because of -- I don't -- I'm not going to ask you how
4 old you are, but it happened when you were fourteen years of
5 age?

6 A. Thirteen.

7 Q. Thirteen?

8 A. Yeah.

9 Q. Is it your understanding that you suffered irreparable
10 brain damage?

11 A. Yes.

12 Q. Does that affect your memory?

13 A. Yes.

14 Q. In fact, haven't you been told that you're in the
15 early stages of dementia and Alzheimer's?

16 A. Yes.

17 Q. Do you have short term memory loss?

18 A. Yes.

19 Q. And long term?

20 A. Uh-huh.

21 Q. Now, before I forget, because I didn't write this
22 down, the question was asked that you and Mr. Grunwald are
23 now -- are you getting a divorce or are you divorced?

24 A. We are divorced.

25 Q. Okay, and isn't it true that one of the main reasons

1 for the divorce -- when did you file the divorce proceedings?

2 A. He filed them first. It's been like when all this
3 happened.

4 Q. Uh-huh. Isn't it true that your motivation for the
5 divorce was because he beat Meagan?

6 A. Yes.

7 Q. Did he beat you?

8 A. He hit me once.

9 Q. Okay, but Meagan -- was Meagan the target of his
10 aggression?

11 A. Yeah.

12 Q. Uh-huh, now you had -- Meagan is an only child?

13 A. Yes.

14 Q. I almost said, "Does that mean you don't have any
15 more?" but --

16 A. No, I don't.

17 Q. Did she-- she played a role in your life as it relates
18 to your memory loss and -- and if this embarrasses you, just
19 stop me, but it's hard for you to get through the day, isn't
20 it, and remember things?

21 A. Yes.

22 Q. Did you rely on Meagan for -- to help you remember
23 things?

24 A. Yes, I did.

25 Q. I note in reviewing the telephone records that you

1 would call -- call her eight, nine, ten times a day; is that --

2 A. Because when I think something I have to say it or I
3 forget, you know. I have to find out or I forget.

4 Q. Uh-huh. At the risk of -- I don't want to cause
5 you any grief, but is your memory and your -- the things that
6 require your thinking precisely, is it deteriorating as you get
7 older?

8 A. Yes.

9 Q. Does medication help at all?

10 A. No.

11 Q. You were asked the question of whether in fact Jose or
12 Angel lived there. Were you talking about that immediate time?
13 You are aware that he lived there sometime in December, maybe
14 early January; are you not?

15 A. He lived there sometime, but not all the time, no.

16 Q. Did you -- the question was asked did you know whether
17 in fact the relationship between Meagan and Angel had reached
18 intimacy.

19 A. No.

20 Q. Can't remember that?

21 A. No.

22 Q. Do you remember the question he just asked you here
23 just three or four minutes ago?

24 A. I didn't think they had, no.

25 Q. Did you give Meagan -- when Jose was there, did you

1 give them permission to be in her room together?

2 A. Not during the night, no.

3 Q. So by that am I right in --

4 A. To watch shows or whatever.

5 Q. Uh-huh, and let me -- let me back up a little bit.

6 Do you recall -- let's talk about the 30th of January 2014.

7 That's the day that's the subject of these proceedings; you

8 do remember that?

9 A. Yes.

10 Q. Do you remember your conversations with Officer Leany
11 when he questioned you?

12 A. Not by that -- I don't know that name. So I don't
13 know.

14 Q. I note in your interview with law enforcement that
15 day and then some thereafter you told them, "I can't remember
16 much," because there were some inconsistencies in what you told
17 them; you do agree with that?

18 A. Probably, yeah.

19 Q. Okay, isn't it a fact you told them "I have trouble
20 remembering from one minute to the next"?

21 A. Yeah.

22 Q. Is that true?

23 A. Yes.

24 Q. Now, you were in the process of packing up and leaving
25 to move to St. George?

1 A. Oh, move down to Cedar, yeah.

2 Q. Okay, and were there packing boxes and things of that
3 nature?

4 A. Yes.

5 Q. That morning of the 30th, was Angel at the house?

6 A. I don't know if he was there in the morning. Probably.

7 Q. Probably?

8 A. Yeah, he had to be because they left together, yeah.

9 Q. Okay, and was he helping you move?

10 A. Yes.

11 Q. He was not going to move with you, was he?

12 A. No.

13 Q. Okay, you didn't plan on him going with you?

14 A. No.

15 Q. But had you started packing, things of that nature?

16 A. Yes.

17 Q. Now, during -- when Meagan was in high school, and the
18 days that we -- the years we've talked about for purposes of
19 this trial would be her junior and senior year -- did she work?

20 A. Yes.

21 Q. Did she help pay your bills?

22 A. She helped me out if I needed it, yes.

23 Q. Uh-huh, and would you -- how would you characterize
24 her? Was she the dutiful daughter? By that, did she help you?

25 A. She was -- she was a beautiful and a sweet, caring

1 daughter, yes.

2 Q. You relied heavily upon her?

3 A. Yes, I made her grow up too fast.

4 Q. Now, you indicated that-- well, let me back up. Strike
5 that. Was there any reason that you know of where she had to
6 see a dentist sometime that week?

7 A. Yes.

8 Q. What was that for?

9 A. She was supposed to get her wisdom teeth pulled.

10 Q. Was she suffering because of --

11 A. Yes.

12 Q. -- her wisdom teeth? When did you anticipate that she
13 would have that done?

14 A. When she was -- the first -- when she got hauled in at
15 the place before she went to jail, she was supposed to get that
16 done the day they transferred her, and it never got done.

17 Q. Are you aware of whether in fact she's had those teeth
18 attended to in the interim?

19 A. No, she hasn't.

20 Q. Now, you gave her money on the 30th; is that correct?

21 A. Yes.

22 Q. Wasn't that for the purpose of gassing up the cars?

23 A. Yeah, yes.

24 Q. Okay, did she at any time that day say, "Mom, I'm
25 leaving. I won't be seeing you for a while," anything like

1 that? Did she give any indication?

2 A. No, no.

3 Q. Okay, now when -- there were some calls made to you
4 later that day on the 30th; was there not? In fact, you made
5 most the calls; isn't that the case?

6 A. Yeah.

7 Q. Is that the case?

8 A. Yes.

9 Q. Okay, and I note that the calls were short, all the
10 calls?

11 A. Uh-huh.

12 Q. Did -- were you aware of what was going on in the car
13 that she was in?

14 A. No.

15 Q. And who she was with?

16 A. No.

17 Q. So she didn't communicate that to you?

18 A. No.

19 Q. Now, there's some talk about you saying that you would
20 -- going to get a lawyer for your daughter; is that correct?

21 A. To who?

22 Q. Did you say you were going to get a lawyer for your
23 daughter?

24 A. When all this started, yeah.

25 Q. Okay, and sometime thereafter we met; did we not?

1 A. Yes.

2 Q. Now, while all of this is going on and when the police
3 came to your house did you have any idea at all of what was
4 going on with your daughter and Angel Garcia?

5 A. No.

6 Q. When -- did you at some time that day, the 30th -- and
7 I'm talking when I say "that day," into the evening, did you
8 have a chance to talk with your daughter?

9 A. No.

10 Q. Did she call you from Juvenile Hall?

11 A. No.

12 Q. Did Neil Skousen, who was the first attorney to talk
13 to her, did he call you?

14 A. Not that I remember.

15 Q. Is it that you can't remember or is it that --

16 A. Yeah, I don't remember.

17 Q. I see. Now, had you been advised of what the potential
18 charges -- when were you advised -- excuse me, let me back up.
19 I'm trying to stay within your memory banks, but when were you
20 advised of what -- the trouble that your daughter was in?

21 MR. PEAD: I'm going to object as to relevance, your
22 Honor.

23 MR. ZABRISKIE: I'm just trying to narrow down the
24 time, your Honor. The question has been asked did she --

25 THE COURT: Overruled. I'll allow you a little more

1 leeway.

2 MR. ZABRISKIE: Thanks, Judge.

3 Q. BY MR. ZABRISKIE: When did you find out? When did
4 someone tell you, if you recall?

5 A. Well, I didn't know that she was even in an accident
6 until a couple hours later, because the police got -- they got
7 me. They was all down at the church by my house, and I drove
8 down to see what was going on. They made me pull over and get
9 in their car. He told me about an hour and a half ago she was
10 in an accident.

11 Q. That's what they told you?

12 A. Uh-huh.

13 MR. ZABRISKIE: May I have a second, your Honor.

14 THE COURT: Yes.

15 (Counsel conferring off the record)

16 Q. BY MR. ZABRISKIE: Did Angel ever try to borrow money
17 from you?

18 A. No.

19 Q. That you can recall?

20 A. No.

21 MR. ZABRISKIE: Thank you.

22 THE COURT: Thank you. Redirect? Hold on, ma'am.

23 Hold on. We still have some more questions for you.

24 THE WITNESS: Oh.

25 ///

1 REDIRECT EXAMINATION

2 BY MR. PEAD:

3 Q. You testified that Jerry had slapped Meagan?

4 A. Yes.

5 Q. Are you aware of whether or not Meagan had hit Jerry?

6 A. I don't think so.

7 Q. Do you know?

8 A. I don't remember being told that, no.

9 Q. You never saw that?

10 A. No.

11 Q. Did you ask Meagan if she was having sex with Angel?

12 A. Yeah.

13 Q. What did she say?

14 A. No.

15 Q. She denied that?

16 A. Yes, but I don't know when that was I asked her.

17 Q. Okay, I have noted that when Mr. Zabriskie would ask
18 you a question you would look at Meagan. Are you looking to
19 her for direction?

20 A. No, I'm looking at her because she's my beautiful
21 daughter.

22 Q. You said Meagan grew up fast?

23 A. Yes.

24 Q. She's pretty responsible for a young person?

25 A. Yes.

1 Q. I asked you earlier about a condom. Do you remember
2 telling Felicia not to tell Jerry about the condom?

3 A. No, I don't remember even telling Felicia about it.

4 Q. Do you remember after January 30th of 2014 getting a
5 ring?

6 A. Me?

7 Q. Yes.

8 A. From who? No.

9 Q. From Meagan's prior attorney?

10 A. No, I don't remember.

11 Q. Do you remember Angel giving Meagan a promise ring?

12 A. Yeah.

13 Q. Do you remember what it looks like?

14 A. No.

15 Q. But he gave her that promise ring?

16 A. Yes.

17 MR. PEAD: Thank you.

18 THE COURT: Anything else?

19 MR. ZABRISKIE: No, your Honor.

20 THE COURT: May she be excused?

21 MR. PEAD: Yes, and I -- the State has a subpoena for
22 her. I would now release her from that subpoena.

23 THE COURT: Mr. Zabriskie?

24 MR. ZABRISKIE: What were you saying?

25 MR. PEAD: I'm releasing the State's subpoena as it

1 relates to Ms. Grunwald.

2 MR. ZABRISKIE: Well, we don't have (inaudible), but
3 (inaudible).

4 THE COURT: Okay, that's all. Thank you.

5 MR. PEAD: For clarification, your Honor, that means
6 that if she remains in the courtroom she cannot be recalled as
7 a witness.

8 THE COURT: That's correct.

9 MR. ZABRISKIE: Again, we've released her and that does
10 create somewhat of a dilemma. I would ask her to remain in
11 the hallway until we've had a chance to (inaudible) before we
12 decide what we're going to do. We could even do that at the
13 next break.

14 THE COURT: Okay, you'll need to remain in the hallway
15 until we can figure whether or not you're going to be called
16 again. Okay, thank you.

17 MR. PEAD: Is now a good time for that break, your
18 Honor.

19 THE COURT: Sure. Okay, let's take a short recess.

20 COURT BAILIFF: All rise for the jury.

21 (Jury exits the courtroom)

22 THE COURT: Thank you. We'll be in recess.

23 (Recess taken)

24 THE COURT: Thank you. Please be seated. All right,
25 we're back on the record. Parties are present, including

1 Counsel. All members of the jury. State's next witness?

2 MR. PEAD: State calls James Mays.

3 THE COURT: Thank you. Let's have you raise your hand
4 the best you can, Mr. Mays, get you sworn in.

5 COURT CLERK: You do solemnly swear that the testimony
6 you shall give in the case now pending before the Court will be
7 the truth, the whole truth and nothing but the truth, so help
8 you God?

9 THE WITNESS: I do.

10 THE COURT: Thank you, sir. Please have a seat here in
11 the witness box. Just make sure we can get you close enough
12 that it will pick you up okay. Okay, thank you.

13 JAMES BUCKLEY MAYS,

14 having been first duly sworn,

15 testified as follows:

16 DIRECT EXAMINATION

17 BY MR. PEAD:

18 Q. Will you please state your name and spell it for the
19 record.

20 A. It's James Buckley Mays. It's J-a-m-e-s B-u-c-k-l-e-y
21 M-a-y-s.

22 Q. Mr. Mays, do you recognize the defendant sitting with
23 the white sweater on?

24 A. Yes, I do.

25 Q. Who is that?

1 A. It's Meagan Grunwald. It's my niece.

2 Q. She's your niece?

3 A. By marriage, yes.

4 Q. Do you know where she was living on January 30th of
5 2014?

6 A. In Draper with her mom.

7 Q. Okay, do you know who else was living there?

8 A. I was told that Angel was living there.

9 Q. Okay.

10 MR. ZABRISKIE: Your Honor, may I voir dire.

11 THE COURT: Okay.

12 MR. ZABRISKIE: It's actually I'm now pushing the cart
13 before the horse.

14 VOIR DIRE EXAMINATION

15 BY MR. ZABRISKIE:

16 Q. Did you have personal knowledge of whether in fact he
17 was living there?

18 A. No, I was just told.

19 Q. Okay, and so you were-- it was based on someone else's
20 comment, not yours?

21 A. Just somebody's comment.

22 MR. ZABRISKIE: Again, your Honor, I probably should
23 have immediately jumped to my feet, but I'm going to object to
24 it as hearsay and move to strike.

25 MR. PEAD: Well, it depends on who said it, your Honor.

1 THE COURT: Yeah, but not that far. At this point I'll
2 sustain the objection.

3 MR. PEAD: Can I follow up on that?

4 THE COURT: Sure.

5 DIRECT EXAMINATION (resumed)

6 BY MR. PEAD:

7 Q. Who did you talk to about Angel having lived there?

8 A. Her -- Meagan's mother.

9 Q. Did you talk to Meagan about it?

10 A. No.

11 Q. Okay, and what did Meagan's mother tell you?

12 A. She said that he was there. Didn't say -- actually
13 didn't really say that he was living there. She said that he
14 was there. Exact words, "He's there." I said, "Okay."

15 Q. He's there, okay. I'm going to show you Plaintiff's
16 Exhibit 120. Do you recognize this person?

17 A. Yeah.

18 Q. Who's that?

19 A. That's him.

20 Q. Okay, and were you at the Grunwald residence in Draper
21 on January 30th of 2014?

22 A. Yes, I was.

23 Q. What was your purpose in being there?

24 A. I was coming up to move Meagan and her mother down
25 south.

1 Q. Who was there when you were there?

2 A. It was her mother, Meagan and me. So it would be
3 Tori, Meagan and me, and then Angel was there.

4 Q. Angel was there as well. What day did you come to
5 help move?

6 A. I came the night of -- night of the 29th.

7 Q. Okay, so you stayed one night, and then the next day
8 was when?

9 A. Yeah, I was there real, real late. I got there real
10 late. Had car problems and --

11 Q. Okay, were Meagan and Angel at the house that morning
12 of the 30th?

13 A. Yes, they were there.

14 Q. Were you there when they left?

15 A. Yes, I was there.

16 Q. What if anything happened when they left?

17 A. I was in the garage. I was trying to get some stuff
18 done to the trailer because the front was broke on it. They
19 came out into the garage and they were getting ready to leave,
20 and I asked where they were going. They said they had to go
21 get some people to help load the stuff up. I said, "Well,
22 can't you use the phone?" They said well, they don't have a
23 vehicle. So they ended up leaving.

24 Q. So they left, saying they were going to get people to
25 help them move?

1 A. Yeah, just to come help, because I've got a broken
2 back. I couldn't lift anything.

3 Q. Oh, you had a broken point at that point?

4 A. Yes.

5 Q. So was your purpose to drive a vehicle, then?

6 A. Yes, I was just driving up and back, and that's it.

7 Q. Do you know what time it was that they left?

8 A. I don't remember exactly. It was before noon; I know
9 that. It was probably around 10, 10'ish.

10 Q. Okay, was Tori there when they left?

11 A. Yes, Tori was there.

12 Q. Was Tori there later that afternoon?

13 A. No, she had to leave, and she went somewhere. So I
14 was -- that's when I was welding the trailer.

15 Q. Do you remember Meagan or Angel ever calling anybody
16 in the house while you were there?

17 A. While I was there I don't -- I didn't get any phone
18 calls, I didn't see any; but when her mom had gotten back she
19 said that she had tried to call, but she couldn't get a hold of
20 her.

21 Q. Did Tori say if she'd ever talked to her?

22 A. She said she hadn't been able to get a hold of her.
23 She said she tried.

24 Q. Thank you, Mr. Mays. Well, obviously you've come in
25 here in chains and in the jumpsuit. That has nothing to do

1 with this case, correct?

2 A. Not a -- nothing.

3 Q. You're serving time on another unrelated incident?

4 A. Yeah.

5 Q. Okay, thank you.

6 THE COURT: Okay, thank you. Cross examination?

7 MR. ZABRISKIE: I'm sorry, your Honor, I --

8 THE COURT: Cross?

9 MR. ZABRISKIE: Thank you.

10 THE COURT: Okay, thank you.

11 CROSS EXAMINATION

12 BY MR. ZABRISKIE:

13 Q. Mr. Mays, I missed a few questions about you were
14 there, you were working in the trailer to get ready to trans-
15 port their furnishings back to St. George, or to Cedar City or
16 wherever.

17 A. Yes.

18 Q. Okay, and during that period you indicated there was a
19 time when Tori was not there?

20 A. Right.

21 Q. Again, this may be because I didn't hear everything.
22 She indicated that she had tried to get a hold of Meagan, but
23 could not?

24 A. She's -- or when she had gotten back, she had left
25 after Meagan and Angel left. Then she went somewhere. I don't

1 remember exactly where she went, but she came right back, and
2 when she did, she said that Meagan had tried to call, and she
3 couldn't get back a hold of her.

4 Q. Oh, so it was a missed call?

5 A. Yeah, it was a missed call.

6 Q. Okay, and then when -- so and then it's -- was it your
7 impression that then Tori tried to call her, and couldn't --
8 couldn't connect?

9 A. Right. Yes, sir.

10 MR. ZABRISKIE: All right, thank you. No further
11 questions.

12 THE COURT: Thank you. Redirect?

13 REDIRECT EXAMINATION

14 BY MR. PEAD:

15 Q. Did Tori say it was one call or multiple calls?

16 A. That I cannot remember. I just know that she said she
17 missed her call.

18 Q. So if evidence had been shown that there was a phone
19 call for over two minutes, that wouldn't be consistent with
20 what you've been told?

21 A. A phone call for over two minutes?

22 Q. Yeah. Would that be consistent with what you've been
23 told?

24 A. Depends on if it was on a voice mail.

25 Q. If it wasn't a voice mail?

1 A. No people to pick up the phone and accidentally hit it
2 and not answer it, but I don't know. I didn't remember talking
3 to her about that. The reason being is when Tori had gotten
4 back to the house, I looked across the road and I kept seeing
5 all these guys with binoculars looking, and I thought it was
6 because of Jerry.

7 Q. Uh-huh.

8 A. So when I had told her, I said, "Look --" she said
9 something about Meagan's call or something. Then -- or missing
10 a call. Then she said -- I said something to her about that,
11 and then she got in her car and took off. That's when the cops
12 called me and asked me to come over and talk to them.

13 Q. This is prior to them executing a search warrant at
14 the house?

15 A. Yes, sir.

16 Q. Okay, when Meagan left the house, was Angel forcing
17 her to leave?

18 A. It was a -- it was really weird. It was like Meagan
19 was kind of upset, and Angel was in a big hurry.

20 Q. They were anxious?

21 A. Well, I know what anxious is. Anxious, I would not
22 call Meagan. Very -- kind of upset. She was like, "Okay," and
23 I remember Angel saying, "Let's go now. We've got to go now."
24 She was like, "Okay." Then I asked her, I said, "How long you
25 going to be?" She says, "Not long."

1 Q. Okay, to -- and this, again, was to talk to friends
2 about moving?

3 A. Yeah, that's what I thought they were doing, yes.

4 Q. Did Meagan tell you she was afraid of her dad?

5 A. She's -- she's made comments in the last year or so.
6 I've known her for 18 years. I've known her since she was a
7 baby. So she has made little comments here and there that
8 she's getting scared of her dad.

9 Q. Didn't she tell you that Angel was protecting her?

10 A. She never told me Angel protected her. What she told
11 me is -- reason being is I've got a daughter the same age as
12 her, maybe six months --

13 Q. Well, I'm going to stop you real quick, okay, Mr. Mays.
14 I just want you to answer my questions as I've asked. Didn't
15 Meagan tell you that she was afraid of Jerry, and Angel was
16 protecting her?

17 A. She never told me Angel was protecting her. She told
18 me that Angel was helping her with school.

19 Q. Do you remember having an interview with Detective
20 Jeff Adams when they executed the search warrant at the house?

21 A. Yeah, I remember it.

22 Q. You don't remember telling him that? If I were to show
23 you his police report would that refresh your recollection?

24 A. Yeah, I'd like to see it.

25 Q. Okay.

1 A. Sorry, it's just been a while.

2 Q. No, you're -- you're fine.

3 A. Where is it?

4 MR. ZABRISKIE: Let me look at it first.

5 MR. PEAD: Oh, sorry.

6 Q. BY MR. PEAD: I don't want you to read this out loud.

7 I just want you to look at this and read this in your head,

8 okay, right here.

9 A. (Witness reading silently).

10 Q. Are you able to read that portion?

11 A. Yeah, I can read it. I'm just looking for protect --

12 says (inaudible). Doesn't say protecting. Where does it say

13 protecting?

14 Q. You're right, (inaudible). When did you find out that

15 Angel was Meagan's boyfriend?

16 A. A couple weeks prior to me coming up there. They had

17 came down from Draper down to try to find a place to stay, what

18 was Meagan, her mom and Angel was in the -- I think he was in

19 the front seat. I don't remember exactly.

20 Q. Okay.

21 A. It was just prior to that, though.

22 Q. Thank you.

23 MR. ZABRISKIE: Can I see that (inaudible). May I re-

24 cross, your Honor.

25 THE COURT: Okay.

1 REXCROSS EXAMINATION

2 BY MR. ZABRISKIE:

3 Q. The quote -- or excuse me, the line that you read in
4 effect says Meagan was afraid of Jerry and Angel was Meagan's
5 boyfriend, and that's all it says; isn't that the case?

6 A. Exactly.

7 MR. ZABRISKIE: Thank you.

8 THE COURT: Anything else for Mr. Mays?

9 MR. PEAD: No, your Honor.

10 THE COURT: Mr. Zabriskie?

11 MR. ZABRISKIE: No, your Honor.

12 THE COURT: May he be excused?

13 MR. PEAD: I would ask that he be excused.

14 MR. ZABRISKIE: Yes, your Honor.

15 THE COURT: Thank you, sir. That's all. Next witness?

16 MR. PEAD: State calls Felicia Grunwald Rodriguez.

17 THE COURT: Okay.

18 MR. PEAD: Apparently she's not here, your Honor.

19 State calls Renate Bolen.

20 THE COURT: Good morning, ma'am. Come forward, let's
21 have you sworn in. All right, let's have you raise your right
22 hand.

23 COURT CLERK: You do solemnly swear that the testimony
24 you shall give in the case now pending before the Court will be
25 the truth, the whole truth and nothing but the truth, so help

1 you God?

2 THE WITNESS: I do.

3 THE COURT: Thank you, ma'am. Will you be able to make
4 it up the stair and -- okay. Let's see if we can get the micro-
5 phone for her. We're going to have use this microphone as well
6 so it can pick you up a little bit better.

7 THE WITNESS: Well, I can come up to it.

8 THE COURT: Just in case, we'll have it there, too.
9 Thank you.

10 RENATE BOLEN,

11 having been first duly sworn,

12 testified as follows:

13 DIRECT EXAMINATION

14 BY MR. PEAD:

15 Q. Will you please state your name and spell it for the
16 record.

17 A. Renate Bolen, R-e-n-a-t-e B-o-l-e-n.

18 Q. Ms. Bolen, do you recognize the person sitting over
19 here on my right in the white sweatshirt?

20 A. Yes, I do.

21 Q. Sweater, excuse me. Who is that?

22 A. It's my granddaughter.

23 Q. What's her name?

24 A. Meagan Dakota Grunwald.

25 Q. I recognize this is probably a difficult process.

1 You've been subpoenaed here today, right?

2 A. Right.

3 Q. It's not your choice to be here?

4 A. Right.

5 Q. Okay, I'm going to show you what's been marked as
6 Plaintiff's Exhibit 120. Do you recognize this person?

7 A. Yes, I do.

8 Q. Who is that?

9 A. It was an acquaintance of Meagan.

10 Q. How were they acquainted?

11 A. I guess very closely.

12 Q. Do you know if that person ever lived in Meagan's
13 house?

14 A. Yes, I do.

15 Q. When did he come to live in that house?

16 A. I could not tell you for sure.

17 Q. Can you give an approximate?

18 A. Sometime in September, I think, of 20 --

19 MR. ZABRISKIE: Your Honor, asked and answered. Now
20 it's calling for speculation.

21 THE COURT: Overruled. Go ahead and respond.

22 Q. BY MR. PEAD: September of what year?

23 A. Of 2013.

24 Q. Okay.

25 MR. ZABRISKIE: Your Honor, may I voir dire.

1 MR. PEAD: Your Honor, I think what he's asking to do
2 is cross, and it could be accomplished then.

3 MR. ZABRISKIE: Well, I'm kind of curious as to what
4 the source of her information is.

5 THE COURT: Go ahead. I'll allow voir dire.

6 VOIR DIRE EXAMINATION

7 BY MR. ZABRISKIE:

8 Q. You indicated that -- first of all you said that there
9 was -- (inaudible). You indicate that it was in September that
10 that is when you thought that --

11 A. Yeah, I thought he came in -- that -- anyway, that's
12 when I found out.

13 Q. Okay, but you had -- had you been there; were you
14 witness to his moving in the house, or is this what someone
15 told you?

16 A. I knew that he was there because I went to visit my
17 son.

18 Q. That was in September?

19 A. In September.

20 Q. When you saw him?

21 A. I saw him then.

22 DIRECT EXAMINATION (resumed)

23 BY MR. PEAD:

24 Q. Did you visit your son pretty regularly?

25 A. No.

1 Q. Who is your son?

2 A. Jerry Grunwald.

3 Q. Are you aware that he's previously testified?

4 A. Yes.

5 Q. Okay, do you know how many bedrooms there were in your
6 son's home?

7 A. Two.

8 Q. When you went there, where was Angel living, in what
9 part of the house?

10 A. In Meagan's bedroom.

11 Q. Did you talk to Meagan about Angel?

12 A. I did.

13 Q. Did you talk to her about their ages?

14 A. I had a conversation with her and I told her, I said,
15 "Do you realize what you're doing? He's 27 and you're 17?"
16 She said, "I know, but I want to be with him, and besides, he
17 makes so much money."

18 Q. Do you know if she was working previously to meeting
19 Angel?

20 A. She was working lots of places, yeah.

21 Q. Do you know if she quit those jobs?

22 A. She -- I think she did.

23 Q. Did she tell you about that?

24 A. She mentioned that she left there because she didn't
25 get enough hours or something like that. That was her excuse

1 of why she wasn't there.

2 Q. Are you personally aware of whether or not -- strike
3 that, I apologize. Are you aware of an incident that took
4 place in January where your son Jerry was arrested?

5 A. Yes.

6 Q. Did Jerry tell you what Angel did on that occasion?

7 MR. ZABRISKIE: Voir dire. Lack of foundation, your
8 Honor.

9 MR. PEAD: I just laid the foundation.

10 THE COURT: She never -- she never had a chance to
11 respond.

12 MR. ZABRISKIE: If I -- I'm just inquiring as to what
13 the source of her info -- he said, "Where?"

14 THE COURT: All right, rephrase the question.

15 Q. BY MR. PEAD: Did Jerry tell you what happened?

16 A. Yeah.

17 Q. Okay.

18 A. He called me. He told me to come and bail him out of
19 jail.

20 MR. ZABRISKIE: I object as to hearsay, your Honor.

21 MR. PEAD: Your Honor, this is a prior consistent
22 statement under rule 801.

23 THE COURT: Overruled.

24 Q. BY MR. PEAD: What did Jerry tell you?

25 A. Jerry told me that he was in jail, and would I come

1 and get him.

2 Q. Did he say what --

3 A. He was crying and he said, "They pointed a gun at me,"
4 and he said, "I think I'm through."

5 Q. Okay, so this was the night he was arrested?

6 A. The night that he was arrested on January 11th.

7 Q. He told you -- who did he say pointed a gun at him?

8 A. He said that Angel pointed the gun at him.

9 Q. Did you ever talk to Meagan about Angel's prior prison
10 time?

11 A. I did.

12 Q. Tell us about that conversation.

13 A. I told her that there was nothing but trouble. I
14 wanted to know why he always carried a screwdriver in his back
15 pocket, and that I was scared of him.

16 Q. What was her response to that?

17 A. Just very chalant, "He'll be okay. It's going to be
18 okay, Grandma. I still love you."

19 Q. She said, "I still love him"?

20 A. "I still love you," she said.

21 Q. Oh, I see. Did you ever talk to Meagan about marriage
22 plans?

23 A. Yes.

24 Q. What did she say her marriage plans were?

25 A. I told her, I said, "Do you know that he's married.

1 He's got two kids and a third one on the way? Why do you want
2 to marry somebody like that?" and she just said, "I'm going to
3 be with him."

4 Q. She said she was going to marry him?

5 A. Yeah.

6 Q. When was that supposed to take place?

7 A. She never said to me, and I didn't hear it from any-
8 body else.

9 MR. PEAD: I know this isn't easy, but thank you for
10 honoring your subpoena, Ms. Bolen.

11 THE WITNESS: Uh-huh.

12 THE COURT: Thank you. Cross examination?

13 MR. ZABRISKIE: No cross, your Honor.

14 THE COURT: Anything else, then?

15 MR. PEAD: No, and I would ask that she be released
16 from the State subpoena.

17 MR. ZABRISKIE: No objection, your Honor.

18 THE COURT: Thank you. That's all, ma'am. Thank you.

19 MR. PEAD: Could I have just a second, Judge.

20 THE COURT: Okay.

21 MR. PEAD: Your Honor, the State calls James Horne.

22 THE COURT: Okay, come forward, sir, and let's have you
23 sworn in.

24 COURT CLERK: Raise your right hand. You do solemnly
25 swear that the testimony you shall give in the case now pending

1 before the Court will be the truth, the whole truth and nothing
2 but the truth, so help you God?

3 THE WITNESS: I do.

4 THE COURT: Thank you, sir. Have a seat in the witness
5 box. Let's get you close enough to the microphone that it will
6 pick you up okay. Thank you.

7 THE WITNESS: I have a loud voice.

8 JAMES BUCKLEY MAYS,

9 having been first duly sworn,

10 testified as follows:

11 DIRECT EXAMINATION

12 BY MS. HOWARD:

13 Q. Would you please state your name and spell your last
14 name for the record.

15 A. James, H-o-r-n-e.

16 Q. What is your occupation?

17 A. I am the HR Director for Dale T. Smith and Sons Meat
18 Packing.

19 Q. Meat Packing, and what city is that in?

20 A. Draper, Utah.

21 Q. Okay, and how long have you worked there?

22 A. Just over three years.

23 Q. While you were working in the HR position, did you
24 have opportunity to meet Meagan Grunwald?

25 A. Yes, ma'am.

1 Q. In what capacity?

2 A. I interviewed and hired her.

3 Q. Okay, and Mr. Horne, do you know what date she started
4 working for you?

5 A. I do. It was July 18th -- or excuse me, June 18th.

6 Q. June 18th of what year?

7 A. Of 2013.

8 Q. Mr. Horne, you're referring to something; is that
9 correct?

10 A. Yes, ma'am.

11 MR. ZABRISKIE: May I see what --

12 MS. HOWARD : Just approach -- or your Honor, may we
13 approach just to look at this.

14 THE COURT: Okay.

15 THE WITNESS: These are just my notes.

16 MS. HOWARD: Okay.

17 Q. BY MR. HOWARD: So you're looking at something, and can
18 you describe what those are that you're looking at?

19 A. They were just notes that I -- rather than bringing
20 the employee files with me I just created some notes.

21 Q. Those notes were taken from the employee records?

22 A. The employee records, yes, ma'am.

23 Q. Are those business records?

24 A. Yes, ma'am.

25 Q. So what you have, is that a summary of the business

1 records?

2 A. You could say that, yes.

3 Q. That's in your own hand?

4 A. Yes, ma'am.

5 Q. Okay.

6 MR. ZABRISKIE: We'll stipulate to the summary, your
7 Honor, as a business record.

8 THE COURT: Thank you.

9 MS. HOWARD: Thank you, your Honor.

10 Q. BY MS. HOWARD: So, again, she started in June working
11 for you. Is that correct?

12 A. Yes, June 18th.

13 Q. What was her -- what were her duties there?

14 A. Meagan was hired to do some cleaning, vacuuming. We
15 have an office part of our facility that has carpet, stairs
16 and upstairs office. She was hired to clean the carpets in an
17 upstairs bathroom, conference room tables, break room tables,
18 keep those clean.

19 Q. Okay, and that was a part-time job; is that correct?

20 A. Yes, ma'am.

21 Q. Did she stop working for you at some point?

22 A. She did.

23 Q. What was the dates of that?

24 A. 9/27/13.

25 Q. 9/27/13. September 27th?

1 A. Yes, ma'am.

2 Q. Do you recall, did she give you a reason for why she
3 stopped her employment there?

4 A. My recollection is that she was going back to school.

5 Q. Something to do with schooling?

6 A. Yes, ma'am.

7 Q. Okay, did you also have occasion to meet Jose Angel
8 Garcia?

9 A. Yes, ma'am.

10 Q. In what capacity?

11 A. I interviewed and hired him as well.

12 Q. Okay, and do you know when he started working there?

13 A. I do. 8/19/13.

14 Q. 8/19/13?

15 A. Yes.

16 Q. So that would be August 19th; is that correct?

17 A. Yes, ma'am.

18 Q. Okay, and when you interviewed him -- is that what you
19 just told the jury?

20 A. Yes, ma'am.

21 Q. In your interview did he give you a reference?

22 A. He had come and said that he was a friend of Meagan's,
23 and that he had heard through her about the possibility of
24 having a job with us.

25 Q. Okay, and after the interview then you hired him; is

1 that correct?

2 A. Yes.

3 Q. Okay, did he stop working for you at some point?

4 A. He did.

5 Q. When was that?

6 A. The actual last day he worked for us was December 27th.

7 He worked a half a day.

8 Q. Was that 2013?

9 A. Yes, ma'am, 2013.

10 Q. Okay, while Ms. Grunwald was working for you, did you
11 note whether or not her productivity changed?

12 A. I would say Meagan started out as a great employee.
13 Towards the last couple weeks, I think she -- her heart wasn't
14 in it. She didn't want to be there anymore. So I would say
15 yes, it had changed as far as, you know, time off requests or
16 things like that.

17 Q. Okay, so she stopped coming in; is that what you're
18 saying?

19 A. Well, she didn't stop coming in, but there were times
20 where she would call and ask for days off or come in late for
21 work or -- which wasn't a set schedule, per se, but she kind of
22 had her own hours of operation to come in, but it was later and
23 later into the evening.

24 Q. Okay, did you see her after she left your business?

25 A. On several occasions I did, yes. She had come in with

1 Angel to have lunch during his lunch break --

2 Q. Okay.

3 A. -- and sit in the employee break rooms.

4 Q. Okay, did you have occasion to observe Angel's work
5 productivity and whether or not that changed?

6 A. Yes, I did. Again, Angel started out very competent
7 with his job, had good skills; and as he became distracted and
8 kind of toward December he started missing work a lot. I went
9 and pulled his last pay stubs and -- not pay stubs, but time
10 in, time out punches, and there were frequent days that he
11 would miss during the month of December, which kind of, you
12 know, showed me that he was not taking his job very serious.

13 Q. Okay, and when you interviewed him, I neglected to
14 ask you, did he tell you where he was living?

15 A. At the time on his application it showed a Provo
16 address.

17 Q. Then did that later change?

18 A. It did.

19 Q. Where did he tell you he was living later?

20 A. Later he was living with the Grunwalds.

21 Q. Did they have drug screenings at your office; do you
22 have those?

23 A. We do. Our employees sign a consent to drug test as
24 part of our new hire paperwork. We do random drug testing once
25 a month. We randomly test six employees every month.

1 Q. Okay, and was Mr. Garcia aware of that policy?

2 A. Yes, he was.

3 Q. Would you call that -- characterize that as a zero
4 tolerance policy?

5 A. Absolutely. During the time that Angel was working
6 for me he had witnessed me -- us terminating two other indivi-
7 duals for a positive drug test.

8 Q. Okay, and do you know whether or not he had been
9 tested in December or January?

10 A. He had not.

11 Q. So was it coming due?

12 A. He would have been coming due, yes, ma'am.

13 Q. Okay, do you remember the last time you saw him at
14 work?

15 A. The last time I saw him was on January 7th he came in
16 after -- we hadn't seen him since the 27th, and the last time I
17 saw him was on January 7th. He came in and met with me in our
18 upstairs conference room.

19 Q. What was the purpose of that meeting?

20 A. To kind of bring me up to speed on why he had missed
21 and a head injury that he had had. I received a note back on
22 the 24th of December 2013. Early in the morning Meagan and him
23 had stopped by, and they had been at an Instacare, and he was
24 coming to explain. That note excused him from work until the
25 26th of December.

1 As I mentioned, he came to work on the 27th and worked
2 a half a day and then had gone home, and I hadn't seen him
3 since then. So trying to get a hold of him, that was when he
4 said he was available and came in to meet with me.

5 Q. It was to discuss whether or not he could work for
6 you again; is that --

7 A. Yeah, it was to discuss whether he was going to
8 continue to work for me or what was going on.

9 Q. Did you have occasion to discuss this -- then his
10 story about how he --

11 A. Yeah.

12 Q. -- had the head injury?

13 A. We had a pretty frank conversation, and I just said,
14 "You know, what's going on?" and he proceeded to tell me that
15 he had hit his head on the bathroom door due to his, as he
16 called it, martial arts training or martial arts skills and
17 his strength that as he was using the toilet and was startled
18 by the dog, that he somehow spun around and ran into the door,
19 and that had caused his head injury.

20 Q. So did he tell you whether the door was open or closed?

21 A. My understanding was the door was open as he tried to
22 describe how the bathroom -- I haven't seen it myself, but that
23 the door was open, and that as he spun around, he hit his head
24 on the open door.

25 Q. Okay, did he tell you whether or not he had been to

1 any medical providers about that?

2 A. Yeah, the note that I have -- or the work release note
3 from the 24th said he had gone to be seen for that.

4 Q. When you talked to him on January 7th, did he tell you
5 he'd been to any further doctors?

6 A. No, he was telling -- he had come to tell me that he
7 was going to see a doctor, a specialist, as he had indicated.

8 Q. Did you ask him who the doctor was?

9 A. I did. I had asked him, you know, which doctor. I've
10 got a brother that is in medical sales, and I know a lot of the
11 doctors in the area. Asked him, you know, who the doctor was.
12 He didn't remember. I asked him what kind of doctor he was
13 going to see, and he couldn't tell me.

14 I asked if it was a neurologist. He says, "Yes, that's
15 it. It's a neurologist." I says, "Well, what are they going
16 to do?" He says, "I don't know. We talked about an MRI and
17 what that would do. I had to explain to him what an MRI was.

18 Q. When you were talking to him, were you observing his
19 demeanor?

20 A. Yeah.

21 Q. What was it?

22 A. He was antsy. He didn't want to be there. He wanted
23 to get out and he didn't -- he didn't enjoy sitting -- having
24 me talk about his job with him and where he was at.

25 Q. What he was telling you, did it make sense?

1 A. No, it didn't make sense. Yeah, the story from the
2 beginning didn't make sense. The fact that he didn't know a
3 doctor -- who the doctor was or what was going to be done, what
4 medical treatment was next made absolutely not sense. I deal
5 with these employee issues day in and day out. So the protocol
6 that I would have expected to see from one of my employees who
7 had been injured -- that's not something that Angel displayed.

8 Q. Do you know whether or not he had a business medical
9 card while he was there that last month?

10 A. I had never seen one, no.

11 Q. Okay, regardless, did you receive any medical state-
12 ments from any healthcare providers regarding Angel Garcia?

13 A. No.

14 MS. HOWARD: If I may have just a moment, your Honor.

15 MR. ZABRISKIE: No cross, your Honor.

16 (Counsel conferring off the record)

17 MS. HOWARD: I apologize. I wasn't really clear that I
18 wasn't finished.

19 MR. ZABRISKIE: Sorry, it's my fault.

20 Q. BY MS. HOWARD: Do you know where you sent their W-2
21 statements, if you know?

22 A. I'm assuming Meagan's went to the house that I had on
23 file in Draper, and Angel's I believe went to Provo. Actually
24 somebody called and came and picked it up.

25 MS. HOWARD: Okay. All right, nothing further. Thank

1 you, your Honor.

2 THE COURT: Thank you.

3 MR. ZABRISKIE: No cross.

4 THE COURT: Thank you. I believe that's all, Mr. Horne.
5 May he be excused?

6 MS. HOWARD: Yes, your Honor. Thank you.

7 MR. ZABRISKIE: Yes.

8 THE WITNESS: Thanks.

9 THE COURT: Thanks.

10 MS. HOWARD: State calls Brett Smith.

11 THE COURT: Okay, come forward, sir, let's get you
12 sworn in. Just come right up here and get you -- raise your
13 right hand.

14 COURT CLERK: You do solemnly swear that the testimony
15 you shall give in the case now pending before the Court will be
16 the truth, the whole truth and nothing but the truth, so help
17 you God?

18 THE WITNESS: Yes.

19 THE COURT: Thank you, sir. Please have a seat here
20 in the witness box. Get close enough to the microphone that it
21 will pick you up okay. Thank you.

22 DARREL BRETT SMITH,

23 having been first duly sworn,

24 testified as follows:

25 DIRECT EXAMINATION

1 BY MS. HOWARD:

2 Q. Would you please state your name and spell your last
3 name for the record.

4 A. Darrel Brett Smith, S-m-i-t-h.

5 Q. What is your occupation?

6 A. I'm the Vice-President of Operations and Food Safety
7 at Dale T. Smith and Sons Meat Packing Company in Draper, Utah.

8 Q. Okay, and do you know the defendant, Meagan Grunwald?

9 A. Yes, I do.

10 Q. How is it you know her?

11 A. Well, I've known her pretty much her whole life. I've
12 known of her family, Jerry, her father, her mother, Tori for
13 most of my life. I grew up with Jerry.

14 Q. Did you also have some volunteer work with Jerry?

15 A. Yes, I was on the volunteer fire department with
16 Jerry.

17 Q. Were you present actually when he was injured?

18 A. Uh-huh.

19 Q. Okay, and that was a number of years ago; is that
20 right?

21 A. Yeah, I don't remember the date.

22 Q. So you've known him for a long, long time. You've
23 also known Meagan since she was little; is that --

24 A. That's correct.

25 Q. Okay, and then she worked for you; is that correct, at

1 your facility?

2 A. That's correct.

3 Q. Angel also worked for you at the facility?

4 A. Yes.

5 Q. Did you -- did you note while she was working for you
6 if her productivity changed at some point?

7 A. When she first was hired, which was around June 18th,
8 she was hired for housekeeping, and excuse me, she was basic-
9 ally brought to our attention by my cousin Jeff who's also in
10 the business and I believe her clergy that she needed a job.
11 So she was hired for sanitation. In the beginning she did a
12 pretty good job.

13 Towards the end, I'm not sure if it was change in
14 demeanor or attitude, but she started to become unreliable.
15 She injured her wrist, as I recall, off the job on another --
16 you know, somewhere else, and started to miss some work due
17 to that. Then ultimately gave us her resignation on around
18 September 27th, I believe is the date, to take another job.

19 Q. To take another job, okay. While she was employed
20 for you, did you have occasion to observe her demeanor?

21 A. Yes, I did.

22 Q. Did you notice whether or not it had changed?

23 A. I had always known Meagan to be kind of a shy, reserved
24 girl; and I felt that over the course of the few months that I
25 was involved with her at work, she seemed to come out of her

1 shell. She seemed to be more outgoing, maybe a little bit
2 more assertive. I don't know if rebellious would be a good
3 word, because she didn't ever rebel against us or the job or
4 anything, but she definitely changed from the shy girl that I
5 knew her to be.

6 Q. Okay, you said that you're familiar with Jerry
7 Grunwald; is that correct?

8 A. That's correct.

9 Q. Are you familiar with him in the community as well?

10 A. Yes.

11 Q. Do you have an opinion whether or not he has a repu-
12 tation in the community for truthfulness or untruthfulness?

13 A. I would say Jerry has always been truthful. He's
14 always had a bit of a temper, but I don't think that -- I think
15 he's a truthful man, yes. He's never lied to me.

16 MS. HOWARD: Okay. Okay, nothing further for this
17 witness. Thank you.

18 THE COURT: Thank you. Cross?

19 MR. ZABRISKIE: No cross, your Honor.

20 THE COURT: All right, I believe that's all. Can he be
21 excused?

22 MS. HOWARD: Yes, thank you, your Honor.

23 MR. ZABRISKIE: Yes.

24 THE COURT: Thank you, sir. That's all. Next witness?

25 MS. HOWARD: State calls Kristin-- she goes alternative

1 by Kristin Allred, Kristin Staker. I'll have her clarify that
2 on the stand.

3 THE COURT: Okay, come forward, ma'am, let's have you
4 sworn in.

5 COURT CLERK: Raise your right hand. You do solemnly
6 swear that the testimony you shall give in the case now pending
7 before the Court will be the truth, the whole truth and nothing
8 but the truth, so help you God?

9 THE WITNESS: Yes.

10 THE COURT: Thank you. Please have a seat here in the
11 witness box. Just go ahead and see if we can get that micro-
12 phone close enough to you. Thank you.

13 KRISTIN CAROL ALLRED,

14 having been first duly sworn,

15 testified as follows:

16 DIRECT EXAMINATION

17 BY MS. HOWARD:

18 Q. Would you please state your name.

19 A. It's Kristin Carol Allred.

20 Q. Allred?

21 A. Uh-huh.

22 Q. Would you spell your last name for the record.

23 A. A-l-l-r-e-d.

24 Q. Do you res -- where do you reside? Not your street
25 address, just your town?

1 A. Draper.

2 Q. Do you know the defendant, Meagan Grunwald?

3 A. Yes.

4 Q. How is it that you know her?

5 A. I've known her since she was three years old.

6 Q. Do you also know her father?

7 A. Yes.

8 Q. How is it you know him?

9 A. He originally hired me back when I was a child to

10 shoot rats and had always been in the neighborhood. So --

11 Q. To shoot rats on a farm?

12 A. Yes.

13 Q. Okay.

14 A. That sounded weird.

15 Q. Just so that the jury knows you're not just driving

16 around shooting rats. Do you -- did you also know Angel Garcia?

17 A. Yes.

18 Q. How did you know him?

19 A. He came -- we met him through his brother Gustavo.

20 Q. Through Gus?

21 A. Uh-huh.

22 Q. Okay, does he also go by Gus -- is his name Gustavo?

23 A. Gustavo is his full name.

24 Q. How long did you know Angel?

25 A. We knew Angel a little over a year.

1 Q. Okay, and at some point did he live with you?

2 A. Yes.

3 Q. When did -- when was that?

4 A. From mid-August until mid-September.

5 Q. Of what year?

6 A. Of --

7 Q. Does 2013 sound right?

8 A. Yes.

9 Q. Okay, so you said he lived there mid-August through

10 mid-September?

11 A. Yes.

12 Q. Then where did he move to?

13 A. The Grunwalds.

14 Q. Did he have belongings in your house when he lived

15 with you?

16 A. Yes.

17 Q. Clothing and things of that nature?

18 A. Yeah, clothing, bathroom things and stuff like that,

19 his coffee mug, whatnot.

20 Q. When he moved out did he take those with him?

21 A. Yes.

22 Q. To the -- to what place?

23 A. The Grunwalds.

24 Q. Okay, and what month was that, then?

25 A. That was in September.

1 Q. Okay, do you know how it is that -- well, let me ask
2 this a different way. Do you know when or if the defendant met
3 Angel?

4 A. She met him on March 17th of 2013.

5 Q. Where was that at?

6 A. She met him probably initially at the church, and then
7 they both came over to my house.

8 Q. So at your house March 17th, 2013?

9 A. Uh-huh.

10 Q. Okay, and then after that did you see them together?

11 A. Yes.

12 Q. Do you know when or if they started dating?

13 A. I'm not sure exactly when they started dating. I was
14 fully aware that they had started dating, though, the Wednesday
15 before Thanksgiving.

16 Q. Okay, at some point -- or how is it that you would
17 communicate with Meagan Grunwald?

18 A. Sometimes I would see her in person, sometimes it was
19 through a text, and sometimes it was through messaging on Face-
20 book, a few phone calls.

21 Q. Then also would she come to your home and visit?

22 A. Yes, the in person.

23 Q. Okay, do you recall a conversation with her through
24 Facebook in January?

25 A. Yes.

1 Q. What was it about?

2 A. I was telling her that -- initially it was to see if
3 there was any way we could get her to go to the circus with us
4 that night. Then from there it went to me telling her that I
5 was worried about her and that we had a -- I was wor -- I was
6 really worried about her, and considering Darcy had something
7 going on in her life, it was sad that I was more worried about
8 her, and her advice to me about what to do about my worries.

9 Q. Okay, so -- and what was her response about that
10 stressful situation?

11 A. She told me that I should get a gun and learn how to
12 use it again and get a concealed weapons permit.

13 Q. Okay, and did she tell you to get a gun -- strike
14 that. At some point -- do you recall when that conversation
15 was?

16 A. It was in January. It was actually the day before
17 Thursday, the Thursday that everything happened.

18 Q. January 29th?

19 A. I believe so.

20 Q. Okay, and did you also have conversations about her
21 relationship with Jose?

22 A. Some.

23 Q. Did you at some point see her wearing any kind of
24 rings?

25 A. She had a promise ring.

1 Q. Do you recall where she got it?

2 A. She told me that -- when I asked her, she told me that
3 Angel had gotten it for her.

4 Q. That Angel had gotten it for her?

5 A. Uh-huh.

6 Q. Do you recall when?

7 A. I'm not exactly sure what day.

8 MS. HOWARD: Okay, nothing further for this witness.

9 THE COURT: Thank you.

10 MR. ZABRISKIE: May I approach, your Honor.

11 THE COURT: Yes, cross examination.

12 CROSS EXAMINATION

13 BY MR. ZABRISKIE:

14 Q. Ms. Allred, you had indicated on direct testimony that
15 there was a period of time when Angel lived with you and your
16 husband; isn't that correct?

17 A. Yes.

18 Q. In fact, you had met him through your acquaintance
19 with his brother Gustavo?

20 A. Yes.

21 Q. Okay, when was it again that he lived with you?

22 A. From mid-August through mid-September.

23 Q. That was when he was in your home?

24 A. Yes.

25 Q. Now, you testified that based on your recollection,

1 that Meagan met Angel sometime in March?

2 A. March 17th. I remember it was St. Patrick's day.

3 Q. Okay, and was he staying at your house then?

4 A. No.

5 Q. Now, in prior test -- excuse me, in prior statements
6 made by you, you indicated that Angel was going to the local
7 ward with you folks; isn't that correct?

8 A. Yes.

9 Q. Attended a lot of meetings with you folks?

10 A. Yes.

11 Q. Showed an interest in the LDS church?

12 A. Yes.

13 Q. I think you've given in a prior interview that your
14 recollection was that Meagan met him when she came looking
15 for you to see if she could get help with her homework at the
16 church; do you recall that?

17 A. Yes.

18 Q. Was that in March?

19 A. That was March 17th.

20 Q. Okay, how is it that you recall the date?

21 A. Because it was St. Patrick's day, and I remember that
22 morning before church we were all going around trying to find
23 green, and I'd mentioned to Meagan when she came looking for
24 me in the Relief Society room that she wasn't wearing green.

25 Q. I see, and so did you know in March where in fact

1 Angel was living?

2 A. Where he was residing at the time? Yes.

3 Q. Where -- yes, where was that?

4 A. It was here in Provo.

5 Q. Okay, and that -- was that with his brother?

6 A. Yes.

7 Q. So would he come up to visit you folks in Draper?

8 A. Yes.

9 Q. Was that a frequent event?

10 A. Yes.

11 Q. While there, would you go to the local ward?

12 A. That was the first -- that March 17th was the first

13 Sunday that Angel had came with us to church.

14 Q. Okay, now you indicated in your statement that he

15 frequented the church with you folks after that?

16 A. He did go to a few activities. He usually attended

17 the Spanish branch, and we would go there with him.

18 Q. So you would go to the Spanish branch with --

19 A. With Angel. He felt more comfortable there.

20 Q. Okay, now you indicated that on that day in March,

21 St. Patrick's day, that Meagan came to the church. Was she

22 looking for you; is that your recollection?

23 A. She was looking for me.

24 Q. You do agree that she was looking for you to help her

25 with her homework?

1 A. Yes.

2 Q. How is it that she met Angel?

3 A. She came to our house after they briefly said "hi" at
4 the parking lot, she was introduced to who he was, and then
5 when she came over to -- when she came over to our house, they
6 sat down on the living room floor, and she actually started
7 asking him questions about it, instead of me.

8 Q. About her homework?

9 A. Yes.

10 Q. When-- when Angel moved in with you folks -- I presume
11 that was with you and your husband?

12 A. Yes.

13 Q. You had daughters in the home?

14 A. A daughter.

15 Q. Okay, a daughter, and that that was -- again, remind
16 me of the date.

17 A. I can't remember the exact date. I remember it wasn't
18 in August. It was right before school was about to start.

19 Q. When asked the question, "Did you ever see Angel with
20 a gun?" you indicated, "No." Is that your recollection?

21 A. No, I've never seen him with a gun.

22 Q. Okay, do he ever talk about guns with you?

23 A. No, Angel never talked to me about guns.

24 Q. Did he appear to you to be a man of -- peaceful man?

25 A. When he was around us, yes.

1 Q. Okay, now he stayed with you for approximately how
2 long?

3 A. He moved out mid-September.

4 Q. I'm sorry?

5 A. Mid-September.

6 Q. Okay, and during that period of time you did note that
7 he was keeping more time with Meagan?

8 A. Yes.

9 Q. Isn't it true that you -- you and/or your husband
10 together warned him, "She's too young"?

11 A. Yes.

12 Q. Was that of concern to you?

13 A. Yes.

14 Q. You got along well with Angel, didn't you?

15 A. Yes.

16 Q. Did you ever tell Meagan that he was your eye candy?

17 A. No.

18 MS. HOWARD: Objection, relevance, your Honor.

19 MR. ZABRISKIE: Just the nature of the relationship,
20 your Honor.

21 THE COURT: Sustained.

22 Q. BY MR. ZABRISKIE: So tell us what you told him, if you
23 recall. Not the whole conversation, but you were concerned
24 about his involvement with --

25 A. I advised both of them very strongly repeatedly to

1 stay away from each other, when they started spending more
2 time.

3 Q. Isn't it a fact that he told you that he would not --
4 would not date her?

5 A. Yes.

6 Q. You took him at his word?

7 A. That was one of the problems we didn't -- we actually
8 had. I didn't fully believe him. I wanted to take him for his
9 word.

10 Q. Were you aware of his reputation as somewhat of a
11 womanizer?

12 A. Yes.

13 Q. But you were worried about the difference in age,
14 weren't you?

15 A. I was worried about the whole situation.

16 Q. In fact, when they met, Meagan was only 16; you do
17 recall that? Well, you've known her --

18 A. I'm not sure exactly how old she was.

19 Q. If I told you that she was only 16 until August of
20 that year --

21 A. Yes.

22 Q. All right.

23 A. Yes, that she was 16.

24 Q. All right, so he met her when she was 16?

25 A. Yes.

1 Q. Were you aware of how old he was?

2 A. Yes.

3 Q. How old was that?

4 A. I wasn't aware of the exact age. I knew he was in
5 his 20's.

6 Q. All right, but you knew he was substantially older
7 than Meagan?

8 A. Yes.

9 Q. In fact, didn't you tell him that if he did not dis-
10 continue his pursuit of Meagan, that he had to leave your home?

11 A. I told him that I didn't want him to have a relation-
12 ship; I never told him he had to leave our home.

13 Q. Uh-huh, so if you -- if that's indicated in a prior
14 interview both of you and your husband Rudy, that you told him
15 to leave because he wouldn't leave her alone --

16 A. I told him that the relationship needed to cease or he
17 needed to leave.

18 Q. Consequently he left?

19 A. Consequently, yes, he went to --

20 Q. So I assume from that that he continued to pursue?

21 A. Yes.

22 Q. Now, did you ever -- did you ever notice the tattoo on
23 his neck?

24 A. Yes.

25 Q. Is that when he was living with you?

1 A. He had that when we first met him.

2 Q. Okay, and it just said "Babby," didn't it?

3 A. Originally it said "Gabby."

4 Q. Uh-huh.

5 A. He had that changed, in a prior relationship.

6 MR. ZABRISKIE: May I have a second, your Honor.

7 THE COURT: Sure.

8 (Counsel conferring off the record)

9 MR. ZABRISKIE: Thank you. No further questions.

10 THE COURT: Okay, thank you. Any redirect?

11 MS. HOWARD: Briefly, your Honor.

12 REDIRECT EXAMINATION

13 BY MS. HOWARD:

14 Q. Counsel asked you if you had talked to Jose Angel
15 Garcia about not having a relationship with Meagan; do you
16 recall that?

17 A. Yes.

18 Q. Did you also talk to Meagan about not having a
19 relationship with Jose?

20 A. Repeatedly.

21 Q. Pardon?

22 A. Repeatedly I did. Several times.

23 Q. Repeatedly?

24 A. Yes.

25 Q. Okay, and what was her response?

1 you. Can she be excused?

2 MS. HOWARD: Yes.

3 MR. ZABRISKIE: (Inaudible).

4 THE COURT: Thank you. State's next witness?

5 MS. HOWARD: State calls Rosa Smock.

6 THE COURT: Come forward, ma'am, let's have you sworn
7 in.

8 COURT CLERK: Right here's good.

9 MR. ZABRISKIE: May we approach, your Honor.

10 THE COURT: Do you need to get her sworn in or --

11 MR. ZABRISKIE: Before swearing.

12 (Discussion at the bench)

13 MR. ZABRISKIE: This is a witness where it's anticipated
14 she'll testify about some prior drug involvement, something
15 that we have been addressed in motions by the Court, but the
16 Court took it under advisement. We wanted to argue this out-
17 side the presence of a jury.

18 MS. HOWARD: We've already argued it, Judge. I under-
19 stood that it was a reserved ruling, that you were just going
20 to wait and see what the girls said if they came.

21 MR. ZABRISKIE: Well, we don't want her to say it in
22 front of the jury before you've ruled on it.

23 THE COURT: I'm not sure what is -- so there was a
24 motion pending previously and I ruled?

25 MS. HOWARD: It was the friends --

1 MR. PEAD: You deferred ruling.

2 THE COURT: Okay.

3 MR. ZABRISKIE: Yeah, but without hearing what the
4 testimony will be --

5 THE COURT: Is it one of those where I said if she
6 appears --

7 MS. HOWARD: Yes.

8 THE COURT: -- her testimony would be --

9 MS. HOWARD: Yeah.

10 THE COURT: -- accepted?

11 MR. ZABRISKIE: That's -- you said that about the uncle
12 only. On this one you just reserved ruling. So without them
13 presenting what the facts would be outside the presence of the
14 jury, we think it's prejudicial --

15 MS. HOWARD: Your Honor --

16 MR. ZABRISKIE: -- until the Court's ruling on it.

17 MS. HOWARD: -- my understanding was that you reserved
18 ruling, and you compared it to the uncle, and you said, "We'll
19 wait to see what they testify to when they come." We've reduced
20 it down to just two friends, and we've reduced it down to just
21 statements that the defendant told them. Particularly with
22 Rosa was --

23 THE COURT: What's her name?

24 MS. HOWARD: Rosa Smock. Reducing down her testimony
25 to just whether or not the defendant asked her to get meth-

1 amphetamine. She can testify to whether or not there was a
2 pregnancy. She can testify about that, and the ring. These
3 are all things that the defendant did say to her.

4 MR. PEAD: Certainly the methamphetamine is relevant
5 to Count IV. She's claiming she's not guilty of possession
6 of methamphetamine. It's just -- so it's certainly relevant
7 for that. The pregnancy is certainly relevant to (inaudible)
8 obviously.

9 MS. HOWARD: She also has evidence of the defendant
10 telling her --

11 THE COURT: Well, I'm going to -- I'll hear it outside
12 the presence of the jury, rather than go back and forth here.

13 MR. ZABRISKIE: Thank you, Judge.

14 THE COURT: Go ahead and have a recess for the jury.

15 COURT BAILIFF: All rise for the jury.

16 THE COURT: Not quite lunch recess yet, but we need you
17 to --

18 (Jury exits the courtroom)

19 MS. HOWARD: Your Honor, may we have the witness step
20 back out into the hallway.

21 THE COURT: Yes. Dan, if you would please (inaudible).

22 (Counsel conferring with clerk off the record)

23 THE COURT: Go ahead and be seated. All right, so at
24 the hearing on March 30th of this year we dealt with the issue
25 of the testimony of the friends. My ruling was at that time as

1 to the testimony of one, two, three, four, five witnesses, I
2 would hear that at the time of hearing because I felt like I
3 needed to hear the issues before they actually testified.
4 That's what's stated in the minutes. I don't know that an
5 order was ever submitted with regard to that ruling.

6 All right, Ms. Howard.

7 MS. HOWARD: Thank you, your Honor. Your Honor, I have
8 previously filed two memoranda on this. I have also previously
9 argued it at that hear. Just for the Court's information, we
10 have through careful review of the case and also careful review
11 of the evidence that's already come in, crossed off Kaylie Jo
12 Garret as a witness for today, Alexis Dunn, Kaitlyn Dunn and
13 Shelby Burgess. So we are left with two witnesses; Rosa Smock
14 and Anna Nicole Smock in an effort to streamline the case, your
15 Honor, as well as only to give relevant, pertinent information.

16 Rosa Smock and Anna Nicole Smock each have evidence
17 regarding important factors in this case. The evidence is based
18 upon statements the defendant made to them. So this would come
19 under Rule 801(d)-2, your Honor, which allows evidence of a
20 statement by an opposing party, classifies this evidence as
21 not hearsay. Therefore a hearsay objection is improper.

22 The instances that we have to present today is an
23 instance that is very particular with Rosa. She can give the
24 framework for it, of the defendant sitting in a class with her,
25 asking if she could get ice, which she will clarify as meth-

1 amphetamine, and the conversation they had about that. It was
2 very brief.

3 Rosa also has a conversation with the defendant about
4 her promise ring, and the defendant telling her that she was --
5 excuse me, I may have crossed witness statements. These are
6 twins. Excuse me, so Rosa has the evidence of the methampheta-
7 mine in the classroom, as I referred to. Also, the ring.

8 Also, your Honor, evidence has come in that through
9 Counsel's questioning and Counsel's opening statement that
10 Meagan did not know how old the defendant -- Jose Garcia was.
11 Rosa has information about that, and about what Meagan told him
12 about -- told her about why he had been in prison, to counter
13 the defendant's statements about that she was unaware.

14 Rosa has relevant information and also comes directly
15 from the words of the defendant -- I believe I've crossed my
16 twins again. Anna also has information about the defendant,
17 about her pregnancy, about what the defendant told her about
18 the relationship, and about the defendant telling her that they
19 were going to go to Mexico. We believe that that information
20 is relevant, and it is from the defendant's admissions. That's
21 under Rule 801(d)-2.

22 Your Honor, in the memoranda I also set forth the
23 evidence is also admissible under Rule 803-3, evidence of
24 motive, plan and preparation. Referring the Court to State
25 vs. Da'Bello, that this information is reliable. It is relevant

1 to show intent, plan, motive, design, and is relevant to prove
2 or explain acts or conduct of the defendant.

3 Again, with Rosa under that, defendant says she was
4 going to be with him the rest of her life. Defendant said she
5 was concerned she was pregnant. With Anna, again, the pregnancy
6 issue with Garcia's baby. That she had told Angel, and Angel
7 didn't -- she did not want Angel to be in more trouble, and
8 other plan evidence asking about methamphetamine.

9 MR. ZABRISKIE: The methamphetamine -- I'm sorry, your
10 Honor, may I inquire. Which of the twins on methamphetamine?

11 MS. HOWARD: Rosa, as well as a request for Anna for
12 cash. There are other -- your Honor, I did a lengthy analysis
13 of all of this evidence, but I do believe that the most perti-
14 nent is that it comes in under statement of a party opponent.
15 These are her actual words to these ladies, and they will be
16 prepared to testify.

17 They are relevant to pertinent issues. They are
18 relevant to the possession of the methamphetamine in the
19 defendant's bedroom. One of them also has information that
20 the defendant told her she was hiding methamphetamine for the
21 defendant -- or for -- I keep calling him the defendant -- for
22 Jose Angel Garcia in the bedroom. So they're various, but we
23 can be very direct with the direction that we take with them,
24 of what it is that they could testify to. Again, all of them
25 are defendant's own words. Thank you, your Honor.

1 THE COURT: Okay, thank you.

2 MR. ZABRISKIE: Thank you, Judge, and we appreciate
3 the Court going back to the record and seeing what the status
4 of this motion was. That was our recollection that the motion
5 had been -- the Court had deferred ruling. So I'm sure at this
6 point that the Court has read our pleadings and knows what our
7 position is; and we are prepared to submit on briefing that has
8 already been provided to the Court. I think we'll just submit
9 on that. Thank you, Judge.

10 THE COURT: Thank you.

11 MR. ZABRISKIE: Your Honor, I know the Court hasn't
12 ruled yet, but we would reserve the right to voir dire both
13 of these witnesses outside the presence of the jury as it goes
14 to dates, times, places, so we can have some context in the way
15 of foundation.

16 MS. HOWARD: Your Honor, I believe that would be appro-
17 priate as I lay foundation with them. That prior to them even
18 -- me asking the more salient questions, that they would have
19 the opportunity to see foundation just so that we can be quick
20 with these ladies and more onto the more -- other witnesses.

21 THE COURT: All right, well, under 801-2, I do believe
22 the evidence that's trying to be obtained through the testimony
23 of these two witnesses are admissible, and they are going to
24 intent or motive and they are offered for non-hearsay purposes.
25 So I'll allow it to come in, noting your objection as well and

1 your responses. How long do you think this is going to take?

2 MS. HOWARD: Your Honor, I believe -- I'm expecting
3 the testimony of Rosa to be brief. I would anticipate getting
4 questions done within five to six minutes on my side.

5 MR. ZABRISKIE: On your side.

6 MS. HOWARD: On my side. I don't believe, your Honor.
7 Excuse my informality. I don't believe -- I also believe that
8 Anna could be very brief as well. Potentially --

9 THE COURT: Brief to attorneys is not --

10 MS. HOWARD: -- seven minutes.

11 THE COURT: -- brief to other people.

12 MS. HOWARD: No, I understand. I was going to give you
13 a time --

14 THE COURT: I understand --

15 MS. HOWARD: -- of short it is.

16 THE COURT: -- but I -- I know what an attorney being
17 brief is. So I know we're going to get -- what I'm getting to
18 is we've got to go to lunch for the jury, and so --

19 MS. HOWARD: Sure, sure. I was just letting your Honor
20 know, overall, so you could decide what was most judicious --

21 THE COURT: Sure.

22 MS. HOWARD: -- is that five to seven minutes on both
23 girls, as far as prosecution.

24 THE COURT: Yeah, and we better break for lunch at this
25 point. Even though I've had a chance to review this and tell

1 you what I think, I'm going to review it a little bit further.
2 If I come up with something different after I research it a
3 little bit more, I'll have you in before the jury and make
4 that on the record; but for now it appears that I can allow
5 them in, but I'm going to look at it a little bit closer as
6 well.

7 So then let's break for lunch. Let's come back at
8 1 o'clock. We'll start as soon as we can thereafter. Anything
9 else, then, before we break?

10 MR. PEAD: No, your Honor.

11 MR. ZABRISKIE: No, your Honor.

12 THE COURT: All right, we'll be in recess.

13 COURT BAILIFF: All rise. Court in recess.

14 (Recess taken)

15 COURT BAILIFF: All rise for the jury.

16 (Jury enters the courtroom)

17 THE COURT: Thank you. Please be seated. Are you
18 ready, Kim?

19 COURT CLERK: Uh-huh.

20 THE COURT: All right, we're back on the records. The
21 parties are present, including the defendant Ms. Grunwald, all
22 members of the jury as well. Ms. Howard, still the State's
23 case. Our next witness.

24 MS. HOWARD: State calls Rosa Smock.

25 THE COURT: Thank you. Thank you, ma'am. Come forward.

1 Let's get you sworn in. Right hand.

2 THE WITNESS: I'm sorry.

3 COURT CLERK: Do you solemnly swear that the testimony
4 you shall give in the case now pending before the Court will be
5 the truth, the whole truth and nothing but the truth, so help
6 you God?

7 THE WITNESS: I do.

8 THE COURT: Thank you. Please have a seat here in the
9 witness box. Just make sure we get close enough that we can
10 pick you up on the microphone, okay?

11 THE WITNESS: Okay.

12 THE COURT: Thank you.

13 ROSA SMOCK,

14 having been first duly sworn,

15 testified as follows:

16 DIRECT EXAMINATION

17 BY MS. HOWARD:

18 Q. Would you please state your name and spell your last
19 name for the record.

20 A. Rosa Smock, S-m-o-c-k.

21 Q. Ms. Smock, where do you reside? Not your street
22 address, just your town?

23 A. American Fork.

24 Q. American Fork, and previous to that where did you
25 reside?

1 A. Lehi.

2 Q. At some point did you go to school up in Salt Lake
3 County?

4 A. I did.

5 Q. When was that?

6 A. That was through my whole sen -- or up 'til my junior
7 year --

8 Q. Okay.

9 A. -- I was in Riverton.

10 Q. Riverton High School?

11 A. Uh-huh.

12 Q. How -- do you know Meagan Grunwald?

13 A. Yes.

14 Q. How do you know her?

15 A. From school.

16 Q. Is she present in this courtroom?

17 A. Yes.

18 Q. Is she seated at the table behind me?

19 A. Yes.

20 Q. Okay, and how long have you known her?

21 A. I've known her since junior year.

22 Q. Okay, and how did you meet?

23 A. Through my sister.

24 Q. Okay, and did you hang out with her?

25 A. Yeah, I've hung out with her.

1 Q. From your junior year?

2 A. (No verbal response).

3 Q. You're speaking very quietly.

4 A. Sorry.

5 Q. So we'll just -- it's making a record.

6 A. Okay.

7 Q. So if you can just make sure you speak loud.

8 A. Okay.

9 Q. Rosa, did you know someone that went by the name

10 "Angel"?

11 A. Yes.

12 Q. How do you know him?

13 A. Through Meagan.

14 Q. When did you meet him?

15 A. Well, I met him before, but the -- I remember him more

16 through the second time I met him, when I went to a Tech 9

17 concert.

18 Q. Tech 9 concert. Do you remember when that was?

19 A. October.

20 Q. October of?

21 A. Of last year, sorry.

22 Q. Your senior year?

23 A. Senior year.

24 Q. Okay, and you'd met him once and then you went to a

25 Tech 9 concert, and that's the time you actually do remember

1 meeting him; is that what you're telling the jury?

2 A. Yes.

3 Q. Okay, and just to be clear that we're talking about
4 the same person --

5 MS. HOWARD: May I approach, your Honor.

6 THE COURT: Yes.

7 Q. BY MS. HOWARD: -- I have what's been already marked
8 and entered into evidence, but can you identify this person?

9 A. Yep, that's Angel.

10 Q. That's Angel. This is who you're talking about?

11 A. (No verbal response).

12 Q. Did you ever converse with Meagan about him?

13 A. We've had a few conversations about Angel.

14 Q. Okay, you and Meagan, is it fair to say, were very
15 close in school?

16 A. We were pretty close.

17 Q. Okay, and at some point did she tell you how old he
18 was?

19 A. Yes.

20 Q. How old was that?

21 A. 27.

22 Q. At some point did she tell you about his past?

23 A. Yes.

24 Q. What was that?

25 A. That he's been to prison before for --

1 Q. Do you know -- did she tell you why?

2 A. Because he almost killed a guy with --

3 Q. Do you remember how?

4 A. -- with a screwdriver.

5 Q. With a screwdriver?

6 A. (No verbal response).

7 Q. Did you at some point ever see Meagan wearing a ring?

8 A. Yes.

9 Q. Can you describe it?

10 A. A silver little band with -- I'm pretty sure it was a
11 cute little diamond that had -- I know it had some kind of gold
12 on it. I just can't remember everything that it looked like
13 from before.

14 Q. Do you remember -- do you know when she got it?

15 A. I can't remember. I think -- it was in -- before
16 school ended, is what I know for sure. Around January.

17 Q. Around January; and do you recall what finger she
18 would wear it on?

19 A. Her ring finger on her left hand.

20 MS. HOWARD: Okay, may I approach again, your Honor.

21 THE COURT: Yes.

22 MR. ZABRISKIE: I'm sorry, what was that last comment?

23 MS. HOWARD: (Inaudible) ring finger.

24 Q. BY MS. HOWARD: I show you what's already been entered
25 into evidence as Plaintiff's Exhibit 152. Do you recognize

1 this?

2 A. Uh-huh.

3 Q. Is that a "yes"?

4 A. Yes.

5 Q. What is it?

6 A. It's a -- looks like a promise ring, but it's a ring.

7 Q. Is it a ring? Is it the ring you were just talking

8 about?

9 A. (No verbal response).

10 THE COURT: Okay, you need to answer audibly every time
11 so that we can pick you up, okay?

12 THE WITNESS: Okay.

13 THE COURT: So is that a "yes"?

14 THE WITNESS: Yes.

15 THE COURT: Thank you.

16 Q. BY MS. HOWARD: Is that the ring that she showed you?

17 A. Yes.

18 Q. When she showed you the ring did she tell you what her
19 plans were with Angel?

20 A. She wanted to be with Angel and move to Mexico.

21 Q. Move to Mexico?

22 A. (No verbal response).

23 Q. Now I'll direct your attention to a class that the two
24 of you had. Do you recall having a class together with her
25 your senior year?

1 A. Yes.

2 Q. What class was it?

3 A. Biology.

4 Q. Do you recall a conversation while you were in that
5 class about drugs?

6 A. Yes.

7 Q. What was the conversation?

8 A. She asked me where I could get ice.

9 Q. What is ice?

10 A. Crystal meth.

11 Q. What did you tell her?

12 A. I told her I knew someone, but I don't talk to them,
13 and then he's dead. So --

14 Q. Now he is? At that point was he?

15 A. No.

16 Q. What's his name?

17 A. Trevor Yarrington.

18 Q. Okay, and were you in class when that conversation
19 happened?

20 A. Yes.

21 Q. So how was that happening while you were in class;
22 where were you?

23 A. We were just sitting in the back of the room watching
24 a movie.

25 Q. Okay, so was it a loud conversation, a quiet conver-

1 sation or --

2 A. A quiet conversation.

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

4 A. Like around December, I think. I'm not like 100 percent

5 sure.

6 Q. But in the wintertime?

7 A. Yeah.

8 Q. Seems right? Okay, now do you recall the last time

9 you saw Meagan Grunwald at Riverton High School?

10 A. That was in January when she was being checked out of

11 school by her dad --

12 Q. Okay.

13 A. -- was what I was told.

14 Q. Okay, so first of all, where were you when you saw

15 her?

16 A. We were outside Ms. Foringer's room.

17 Q. Okay, and what was she doing?

18 A. She just had all of her books and papers and was

19 telling me that she was signing out of school.

20 Q. Okay, and what did she say about that?

21 A. She said that her dad was signing her out of school.

22 Q. That her dad was? Are you sure that it was her dad?

23 A. Yeah.

24 Q. Okay, when you were talking to her, did the conversa-

25 tion turn to questions about a pregnancy?

1 A. Yes.

2 Q. What was that conversation?

3 A. We were just seeing if she was pregnant or like --

4 Q. Actually I'm going to be very specific on that, just
5 so that we're very careful and clear.

6 A. Okay.

7 Q. Did she tell you she was concerned she was pregnant
8 that day?

9 A. Yes.

10 Q. Okay, and who was she dating at that time?

11 A. Angel.

12 Q. Okay, and was that the last time you saw her?

13 A. Yes.

14 Q. Okay, do you have any information for the jury about
15 her and shooting a gun?

16 A. All I know is that she did go shooting. I don't know
17 where or when.

18 Q. Okay, and so we just need to back up. So is that a
19 conversation you had with her?

20 MR. ZABRISKIE: Your Honor, may I voir dire as to time,
21 place and source.

22 MS. HOWARD: I'm prepared to do that myself.

23 THE COURT: I'll allow objection on foundation.

24 MR. ZABRISKIE: All right.

25 THE COURT: Sustained. Go ahead.

1 MS. HOWARD: Thank you.

2 THE COURT: Lay some foundation.

3 MS. HOWARD: Thank you, your Honor.

4 Q. BY MS. HOWARD: So do you recall having a conversation
5 with -- well, you just talked about a conversation, but before
6 we talk about that again, let's talk about when and where. Do
7 you recall when that was?

8 A. A long time ago. Like between December, I think. I'm
9 not 100 percent sure.

10 Q. December of your senior year?

11 A. Yes.

12 Q. Okay, and do you recall where you were when she told
13 you that?

14 A. At school.

15 Q. At school, and was she talking to you face-to-face;
16 was it through a phone; was it through text; or something some-
17 one else said?

18 A. She was talking to my sister about it.

19 Q. Did you hear --

20 A. So I overheard the conversation with them.

21 MS. HOWARD: Okay, your Honor, I'm prepared to ask the
22 question again.

23 THE COURT: Go ahead.

24 Q. BY MS. HOWARD: So do you have information about her
25 and shooting a gun?

1 A. I know that she went shooting with Angel. That's --
2 so yeah.

3 MS. HOWARD: Okay, nothing further for this witness.
4 Thank you, your Honor.

5 THE COURT: Thank you. Cross examination?

6 MR. ZABRISKIE: If I may, your Honor.

7 CROSS EXAMINATION

8 BY MR. ZABRISKIE:

9 Q. You indicated that you had the occasion to meet Angel.
10 Do you recall the date?

11 A. I don't recall the date.

12 Q. You indicated you met him on two separate occasions?

13 A. Yes, the first time I can't really remember when I
14 met him. The second time we were going to a concert.

15 Q. Tell me when -- okay, this Tech 9, I presume that
16 that's an entertainment group?

17 A. Yeah, he's a musician.

18 Q. Okay, do you recall the date of the Tech 9 concert?

19 A. I don't have the exact date. I know on my phone I
20 have pictures from that date, though --

21 Q. Uh-huh.

22 A. -- but it was in October.

23 Q. Okay, and on that occasion you had -- you met Angel
24 again?

25 A. Yes.

1 Q. Did you ever have a conversation with Angel?

2 A. Not really, just when I picked them up and drove them
3 to the concert. I can't really remember if -- what we were
4 talking about or anything.

5 Q. Okay, where was the concert held?

6 A. At the Great Saltair.

7 Q. Now, you indicated in your testimony that Meagan had
8 mentioned to you that she was thinking of marrying Angel; did
9 I hear that correctly?

10 A. I didn't know if they were going to get married. I
11 know that she wanted to be with him.

12 Q. Okay, and did she not indicate that that would be when
13 she was eighteen or older?

14 A. I believe so, is when she was talking about it, about
15 being with him.

16 Q. Okay, now do you know how old she was when she was
17 talking to you?

18 A. Seventeen.

19 Q. Okay, and I note in your -- in your written report as
20 to what you recall, you indicated that she added the caveat,
21 "When I'm eighteen."

22 A. When I'm eighteen, okay.

23 Q. Okay, do you recall that?

24 A. Yes.

25 Q. Okay, now did she ever talk to you at all about any-

1 thing dealing with violence or any type of wild act with Angel?

2 A. Not that I can recall.

3 Q. In your recollection of when you met Angel, how would
4 you characterize his demeanor?

5 A. I didn't see him personally as a bad person, but there
6 was just something off about him to me.

7 Q. Pardon me?

8 A. There was just something off about him to me.

9 Q. Okay, but you never saw him act out?

10 A. No.

11 Q. Never heard him say anything out of sorts?

12 A. No.

13 Q. When they were together was their conduct appropriate?

14 A. Yes.

15 Q. Okay, so other than those two occasions you never saw
16 him again?

17 A. We hung out on New Years Eve at my house.

18 Q. Okay.

19 A. We were just hanging out.

20 Q. When you say "we hung out," who are you -- who are you
21 talking --

22 A. My sister, Meagan, me, Angel and my ex-boyfriend.

23 Q. Uh-huh, you indicated that -- and again, correct me if
24 I'm wrong -- that there was some talk about going shooting?

25 A. Yes.

1 Q. She said, "I'm going shooting"?

2 A. Yes.

3 Q. Did she say who was going to be shooting, or did she
4 just say, "I'm going shooting with -- with Angel"?

5 A. Just that she was going shooting with Angel.

6 Q. Okay, so you don't know whether she was going to shoot
7 or Angel was going to shoot?

8 A. Correct.

9 Q. You don't know if it was a b.b. gun or a pellet gun?

10 A. I don't.

11 Q. Did you ever see her with a gun?

12 A. No.

13 Q. Ever talk guns before that?

14 A. No.

15 Q. So you don't know for a fact that they weren't going
16 to wear these -- what do you call these things, these air guns
17 where you get involved in mock shooting and stuff that's like
18 in a gallery; you don't know if they were going there, do you?

19 A. No.

20 Q. Was there ever any explanation or did you inquire as
21 it relates to going with him shooting?

22 A. I really didn't ask.

23 Q. Okay, did you ever hear from anyone else or have any
24 information that she had ever shot a gun before?

25 A. No.

1 Q. In reality, you don't know the nature of the shooting
2 that she was talking about?

3 A. Correct, I don't.

4 Q. What was the date of that conversation?

5 A. I don't remember the date. It was within winter last
6 -- in my senior year, is what I can remember.

7 Q. I don't mean to upset you.

8 A. No.

9 Q. It's hard for me to remember dates, too. But you do
10 -- you do remember the conversation?

11 A. Yes.

12 Q. Okay, and it was sometime in the winter?

13 A. (No verbal response).

14 Q. Okay, now did you write any of this down? Do you keep
15 a diary or a journal, anything like that?

16 A. No, I don't.

17 Q. This is just based on your -- your recollection?

18 A. (No verbal response).

19 THE COURT: Okay, you need to answer audibly.

20 THE WITNESS: Sorry, I don't.

21 Q. BY MR. ZABRISKIE: When I speak loud that means I'm
22 just too close to her. Just relax, okay? You indicated that
23 you saw -- do you have a tissue?

24 MS. HOWARD: She needs a tissue up there.

25 MR. ZABRISKIE: Do you have a tissue up there.

1 Q. BY MR. ZABRISKIE: Let me back up a little bit. You
2 indicated that you saw a ring?

3 A. Yes.

4 Q. Am I right in assuming you saw it on Meagan?

5 A. Yes.

6 Q. Other than seeing the ring, do you know the circum-
7 stances of it?

8 A. Just that I knew that she wanted to be with him.

9 Q. Uh-huh. I'm talking about the ring. Do you know --
10 were you there when she received it; do you know what the --
11 whether there was any exchange of comment or anything as it
12 relates to the ring?

13 A. I was not there when she received the ring.

14 Q. Okay, but you did recognize that they were together?

15 A. Yes.

16 Q. Okay, now you said that while at school you saw her
17 checking out?

18 A. Like --

19 Q. Okay, would you help me there. What -- again, can you
20 remember the date?

21 A. I can't remember the date. I know it was in January,
22 the beg -- like after New Year's.

23 Q. I see, and her dad was there checking her out?

24 A. It was just her. She told me that her dad was checking
25 her out of school.

1 Q. Okay, did you graduate that year?

2 A. I did.

3 Q. When did you graduate?

4 A. In June.

5 Q. Are you aware that she also graduated?

6 A. Yes.

7 Q. Okay, and so when you say "checking out," she didn't
8 quit school. Could she have finished her school requirements
9 and -- or do you know?

10 A. I wasn't sure at that time like if she was graduated
11 or not. I just knew that she was being checked out of school.
12 They were like --

13 Q. That was sometime in January. Were you aware that she
14 was going to move to St. George?

15 A. I was not.

16 Q. When you say that you hung out, what does that mean to
17 you? I've heard different definitions of hanging out, but what
18 does it mean?

19 A. Just like hang out and talk and see how each other are
20 doing and what's going on, you know.

21 Q. So you shared each other's secrets, things like that?

22 A. I didn't know as much as my sister knows about her.

23 Q. Is -- what is the source of your information as it
24 relates to -- is there anything that you -- let me back up.

25 Strike that, your Honor. I'm sorry. Is there anything that

1 you testified to today that you only heard from your sister?

2 A. No.

3 Q. Okay, was she closer to your sister than you?

4 A. She was.

5 Q. So you -- you're twins, though, you and your sister?

6 A. Yes.

7 Q. She indicated to you that there was some concern as to
8 whether she was pregnant?

9 A. Yes.

10 Q. Are you aware of whether in fact that proved out, or
11 was proved to be true?

12 A. I wasn't aware of if she was or not.

13 Q. You had indicated that she had asked you on one
14 occasion if you knew a source for ice?

15 A. Correct.

16 Q. I was a little bit distracted. You said you knew
17 someone but --

18 A. I knew -- I did know someone. He just recently died
19 in November.

20 Q. Okay, so that's the person you were talking about when
21 you said you knew someone?

22 A. Yes.

23 Q. Other than that conversation did you ever hear her
24 talk about ice or anything else again?

25 A. I did not.

1 Q. You hung out a lot?

2 A. We hung out every now and then. We didn't hang out a
3 lot, though.

4 Q. Okay, but you never heard her mention it again?

5 A. No, I did not.

6 Q. Uh-huh, and you weren't aware of whether in fact ice,
7 whatever it is, was part of her life?

8 A. As far as I knew, she wasn't doing any type of drugs.

9 Q. Uh-huh, and you were close enough to know that?

10 A. (No verbal response).

11 THE COURT: Okay, you have to answer audibly.

12 THE WITNESS: Yes, sorry.

13 THE COURT: Thanks.

14 THE WITNESS: I'm sorry.

15 Q. BY MR. ZABRISKIE: They're watching us, so we have to
16 (inaudible).

17 A. Yeah.

18 MR. ZABRISKIE: All right, thanks, Judge.

19 THE COURT: Thank you.

20 MS. HOWARD: Nothing further, your Honor.

21 THE COURT: All right, may she be excused?

22 MS. HOWARD: Yes.

23 MR. ZABRISKIE: Yes, your Honor.

24 THE COURT: Thank you. That's all.

25 MS. HOWARD: She will be passing her sister in the

1 hallway, so just don't talk.

2 MR. ZABRISKIE: How will we know which one comes back?

3 MS. HOWARD: You just have to watch the clothes.

4 MR. ZABRISKIE: Okay.

5 MS. HOWARD: State vs. Anna Smock -- or sorry, State
6 calls Anna Smock.

7 THE COURT: Come forward, ma'am, let's have you sworn
8 in.

9 COURT CLERK: Raise your right hand. Do you solemnly
10 swear that the testimony you shall give in the case now pending
11 before the Court will be the truth, the whole truth and nothing
12 but the truth, so help you God?

13 THE WITNESS: yes.

14 THE COURT: Thank you. Please have a seat here in the
15 witness box.

16 MS. HOWARD: Your sister didn't know which one was her
17 right hand either, so that's fine. You must be twins.

18 THE COURT: Make sure we get you close enough that it
19 will pick you up all right. Thank you.

20 MS. HOWARD: Does your Honor want to remind her to make
21 audible answers or --

22 THE COURT: We'll see how it goes.

23 MS. HOWARD: Okay.

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ANNA SMOCK,

having been first duly sworn,

testified as follows:

DIRECT EXAMINATION

BY MS. HOWARD:

Q. Would you please state your name.

A. Anna Smock.

Q. Spell your last name for the record.

A. S-m-o-c-k.

Q. You are sister to Rosa; is that correct?

A. Yes.

Q. Okay, and do you also know Meagan Grunwald?

A. Yes, I do.

Q. How did you meet her?

A. Through high school.

Q. So how long have you known her?

A. My sophomore year, so about three, four years now.

Q. Okay, and how often would you see her?

A. Oh, we had a class every day together in high school.

Q. For which year?

A. All years.

Q. Oh, every year you had a class every day with her?

A. I did.

Q. Okay, and do you know someone by the name of Angel?

A. Yes.

1 Q. How do you know him?

2 A. Through Meagan.

3 Q. Do you know when they -- did you ever meet him, excuse
4 me?

5 A. Yes, I have.

6 Q. When did you meet him?

7 A. Um --

8 Q. Let's just go with when did you first meet him; do you
9 remember?

10 A. I think it was August.

11 Q. Okay.

12 A. Around Meagan's birthday.

13 Q. Okay, and would you ever see him and Meagan together?

14 A. Yes.

15 Q. Is that a "yes"?

16 A. Yes.

17 Q. Okay, and did you also join them at a Tech 9 concert?

18 A. I did.

19 Q. Do you recall when that was?

20 A. It was in June.

21 Q. In June?

22 A. Uh-huh.

23 Q. Did Meagan ever talk to you about her relationship
24 with Angel?

25 A. Yeah, sometimes she did.

1 Q. Okay, did she tell you how old he was?

2 A. No, I never asked.

3 Q. Okay, did she tell you about his past?

4 A. No.

5 Q. Okay, how often would you see them together?

6 A. Every time we hung out. It was probably a couple
7 weeks we'd hang out and we'd see them together.

8 Q. Okay, and the Meagan that you're talking about, is she
9 present in the courtroom?

10 A. Yes.

11 Q. Okay, is she seated at the table behind me?

12 A. Yes.

13 Q. Okay, and you were talking about a man named Angel; is
14 that correct?

15 A. Yes.

16 Q. And you saw him?

17 A. Yes.

18 MS. HOWARD: May I approach.

19 THE COURT: Yes. Okay, I need you to speak up a little
20 louder so that we can pick you up okay, all right?

21 THE WITNESS: Okay.

22 THE COURT: Thanks.

23 Q. BY MS. HOWARD: So the person you described as Angel,
24 if I can show you Plaintiff's Exhibit 120, is that the same
25 person that you're talking about?

1 A. Yes.

2 Q. Do you know his name?

3 A. Angel Garcia.

4 Q. Angel Garcia is what you knew?

5 A. (No verbal response).

6 Q. Now, do you recall whether or not you ever talked to

7 Meagan about a ring?

8 A. A promise ring.

9 Q. A promise ring; and do you recall when that was?

10 A. I don't remember.

11 Q. Okay, and did she show it to you?

12 A. Yes.

13 Q. What did she say about it?

14 A. That it was a promise ring that Angel gave him -- gave

15 her.

16 Q. Did you ever see her wear it?

17 A. I can't remember.

18 Q. Okay, have you seen a picture of that promise ring?

19 A. Yes, I have.

20 Q. Prior to coming to Court today?

21 A. Yes.

22 MS. HOWARD: May I approach, your Honor.

23 THE COURT: Okay.

24 Q. BY MS. HOWARD: Plaintiff's Exhibit 152, is this the

25 picture that you were shown?

1 A. Yes, it is.

2 Q. Can you describe that for the jury.

3 A. The gold ring with the diamond, it looks like.

4 Q. Is this the ring that you saw Meagan have?

5 A. Yes.

6 Q. You identified this as the promise ring?

7 A. Yes.

8 Q. Did she tell you what her plans were when she showed
9 you the ring?

10 A. No, she did not.

11 Q. Now, at sometime in the month of November, I'd like
12 to direct you to some conversations you maybe had with her
13 regarding pregnancies. Do you recall some conversations
14 starting about that time?

15 A. Yes.

16 Q. What was it; what were the conversations?

17 A. That she was thinking that she was pregnant.

18 Q. What month was that again?

19 A. I believe November.

20 Q. Okay, and so did you take her somewhere about that?

21 A. I don't remember actually. It was quite a while ago.

22 Q. Did you give her something about that?

23 A. I believe we probably gave her -- I gave her some gas
24 money and made sure that she was okay.

25 Q. Okay, did you give her anything else when you were

1 talking about pregnancies?

2 A. No.

3 Q. Okay, and when is the next time you talked to her
4 about a concern with pregnancy?

5 MR. ZABRISKIE: If --

6 MS. HOWARD: I can back up and lay foundation.

7 MR. ZABRISKIE: All right.

8 Q. BY MS. HOWARD: Do you recall having another -- when
9 you would converse with Meagan, how would it be done, just
10 generally?

11 A. Sometimes over text or just face-to-face.

12 Q. Okay, if it was face-to-face, where was it usually?

13 A. In classrooms when we went to school.

14 Q. Okay, and your senior year did you have an accounting
15 class with her?

16 A. That was junior year --

17 Q. Junior year.

18 A. -- we had accounting.

19 Q. Oh, okay, I'm mixing up my notes. In your senior year
20 you had a class with her and what class was it?

21 A. I believe it would be math with Marse.

22 Q. With Marse?

23 A. I think so, yeah.

24 Q. Okay, and while you were in math with Marse did you
25 have a conversation with Meagan about pregnancies?

1 A. Yes.

2 Q. What did she tell you?

3 A. That she was thinking that she was pregnant.

4 Q. Was this a second time or a first time?

5 A. The second time, I believe.

6 Q. What did you tell her?

7 A. I don't remember.

8 Q. Okay.

9 MR. ZABRISKIE: Your Honor, this is not an objection as
10 much as I didn't hear the foundation. Did she cite the time of
11 that class?

12 THE COURT: Talked about her school year.

13 MR. ZABRISKIE: Okay, but the date of the conversation?

14 MS. HOWARD: I don't believe she had that information,
15 your Honor.

16 MR. ZABRISKIE: I thought she mentioned March.

17 THE COURT: Nothing there.

18 MR. ZABRISKIE: I'd like to know the date.

19 THE WITNESS: I don't know the date.

20 Q. BY MS. HOWARD: Do you recall writing -- well, no,
21 strike that.

22 MR. ZABRISKIE: Your Honor, standing objection as to
23 foundation if she can't remember the date.

24 MS. HOWARD: Your Honor, the particular date is not
25 an item of foundation. She gave a general time frame for the

1 jurors.

2 MR. ZABRISKIE: Well, the date is very important, your
3 Honor, as it relates to age, time and recollection of anyone
4 else involved.

5 THE COURT: Sustain the objection.

6 Q. BY MS. HOWARD: Did you and Meagan text often?

7 A. Yeah. Yes, we did.

8 Q. In those texts were you called "Raw"?

9 A. Yes.

10 Q. Was that a nickname for you?

11 A. Yeah, it was.

12 Q. Do you recall having some texts with her December 6th,
13 2013 about her being pregnant?

14 A. Yes, I believe so.

15 Q. What phone number would you use?

16 A. I don't know which phone number I would have used.

17 Q. But in December you do remember having a conversation
18 with her about her being pregnant?

19 A. Yes, I believe so.

20 Q. Via text? Just (inaudible). You do remember a second
21 time having a conversation with her about pregnancies; is that
22 right?

23 A. Yes.

24 Q. Okay, when was the last contact you had with Meagan
25 before January -- or well, when was the last time you had a

1 conversation with her?

2 A. I believe it would have probably been the 29th of
3 January. I was at work and she tried to call me.

4 Q. Didn't connect?

5 A. (No verbal response).

6 MS. HOWARD: Thank you. Nothing further.

7 THE COURT: Thank you.

8 MR. ZABRISKIE: May I cross, your Honor.

9 THE COURT: Yes.

10 CROSS EXAMINATION

11 BY MR. ZABRISKIE:

12 Q. It's Anna?

13 A. Yes.

14 Q. I know your sister. Anna, you -- we've heard testimony
15 both before you took the stand and from you that you and Meagan
16 were good friends. In fact, your sister Rosa indicated that
17 you were actually closer to Meagan than she was.

18 A. Yes.

19 Q. You indicated that you went -- you met her in your
20 junior year?

21 A. In my sophomore year.

22 Q. Your sophomore year, so that --

23 A. Best.

24 Q. -- you maintained contact up through your senior year?

25 A. Yes.

1 Q. Almost -- I'm not real quick at math, but that's three
2 years, isn't it?

3 A. Yes, three years.

4 Q. I note in the written materials that are reflecting
5 what you shared with the State, you were concerned about
6 Meagan, in fact even offered your house as a shelter to her;
7 isn't that the case?

8 A. Yes.

9 Q. Did she on occasion stay at your home?

10 A. No. We'd hang out, and that's the only time she'd
11 stay.

12 Q. Okay, you indicated that she had talked with you about
13 an argument or arguments between her and Angel. Do you recall
14 that?

15 A. Very vaguely.

16 Q. Uh-huh, and you indicated that the fights, at least as
17 you understood them, were over Angel doing drugs and Meagan not
18 wanting him to do drugs; do you remember that?

19 A. Yes.

20 Q. Your source of information for that was Meagan?

21 A. Yes.

22 Q. So she didn't want him to do drugs?

23 A. Yes.

24 Q. You also indicated, when asked whether in fact Angel
25 got Meagan involved in drugs, your response was, "Meagan would

1 not do drugs." Do you recall that?

2 A. Yes, I do.

3 Q. That's the Meagan that you'd come to know over three
4 years?

5 A. Yes.

6 Q. Before she met Angel?

7 A. Before she met Angel.

8 Q. Now, how many times did you meet Angel?

9 A. I actually don't remember. I remember seeing him
10 quite a few times.

11 Q. Did you have the occasion to go out with him socially?

12 A. When we went out to Tech 9.

13 Q. Uh-huh, and Tech 9 was when?

14 A. It was in June.

15 Q. Uh-huh, and so if I'm correct, and based on your
16 acquaintance with Meagan, she would have been 16?

17 A. Yeah.

18 Q. Are you approximately the same age as Meagan?

19 A. Yes, I am.

20 Q. So are you sure that the concert was in June?

21 A. I am pretty sure, because that's the month my birthday
22 was in and Tech 9 was coming around June.

23 Q. Did you ever have the occasion to hear Meagan talk
24 about any act of violence or anything like that?

25 A. Not that I can recall.

1 Q. Okay, in all the time that you knew her did you ever
2 know her to act out in a violent way?

3 A. No.

4 Q. Would you characterize her as sort of a soft spoken,
5 shy girl?

6 A. Yes, I do.

7 Q. Are you soft spoken and shy?

8 A. Yeah.

9 Q. Okay, and did you ever hear her talk about any type
10 of planning or any type of adventure involving violence with
11 Angel?

12 A. No, I did not.

13 Q. Okay, you were pretty close, weren't you?

14 A. Yes.

15 Q. Talking, texting, girl stuff?

16 A. Yes.

17 Q. Okay, when was the last time -- you indicated that she
18 tried to call you on the 29th of January?

19 A. Yes.

20 Q. Did you receive that call?

21 A. No, I did not.

22 Q. Did you talk to her at any time after that?

23 A. I did not.

24 MR. ZABRISKIE: Just a second, your Honor.

25 THE COURT: Okay.

1 (Counsel conferring off the record)

2 Q. BY MR. ZABRISKIE: Anna?

3 A. Yes.

4 MR. ZABRISKIE: Okay, I'm sorry. I'm done, Anna.

5 Thank you.

6 THE WITNESS: Okay.

7 THE COURT: Thank you. Redirect?

8 MS. HOWARD: No, thank you, your Honor.

9 THE COURT: All right, that's all, Ms. Smock. May she
10 be excused?

11 MS. HOWARD: Yes.

12 THE COURT: Thank you.

13 MR. PEAD: State calls Felicia Grunwald Rodriguez.

14 THE COURT: Okay. Come forward. Let's get you sworn
15 in. Right there is good. Just raise your right hand.

16 COURT CLERK: Do you solemnly swear that the testimony
17 you shall give in the case now pending before the Court will be
18 the truth, the whole truth and nothing but the truth, so help
19 you God?

20 THE WITNESS: I do.

21 THE COURT: Thank you. Please have a seat here in the
22 witness box. Make sure you're close enough to the microphone
23 it will pick you up okay. Thank you.

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FELICIA GRUNWALD RODRIGUEZ,
having been first duly sworn,
testified as follows:

DIRECT EXAMINATION

BY MR. PEAD:

Q. Will you state your name and spell it for the record.

A. It's Felicia Grunwald Rodriguez. It's F-e-l-i-c-i-a
G-r-u-n-w-a-l-d Rodriguez is R-o-d-r-i-g-u-e-z.

Q. Can I call you Ms. Rodriguez?

A. Yes.

Q. Have you been subpoenaed to be here?

A. Yes.

Q. I take it you don't want to be here?

A. No.

Q. I recognize this is hard. You see the defendant over
here?

A. Yes.

Q. You know who that is, correct?

A. Yes.

Q. Who is it?

A. She's my cousin, Meagan.

Q. You two are pretty close?

A. Yes.

Q. Spend a lot of time together?

A. Yes.

1 Q. Do you know her mother?

2 A. Yes.

3 Q. She's your aunt?

4 A. Yep.

5 Q. What is her name?

6 A. Tori Grunwald.

7 Q. Okay, you've had a number of conversations with Tori,
8 haven't you?

9 A. Yes.

10 Q. Do you remember -- well, do you recognize the person
11 in this Exhibit 120?

12 A. Yes, I do.

13 Q. Who is that?

14 A. Angel Garcia.

15 Q. How do you know him?

16 A. He -- through Meagan.

17 Q. What was his relationship with Meagan?

18 A. They were friends and then I believe they were dating
19 or --

20 Q. Are you aware of whether or not Angel ever lived with
21 the Grunwalds in Draper?

22 A. Yeah, he lived there.

23 Q. Okay, while he was living there did your Aunt Tori
24 send you a text message about finding a condom?

25 A. Yes.

1 Q. Did she know what it was?

2 A. No.

3 Q. Did you tell her what it was?

4 A. Yes.

5 Q. As a result of that did you send a text message to
6 Meagan?

7 A. Yes.

8 Q. Did Meagan deny having had sex?

9 A. Yes.

10 Q. What did you say?

11 A. I told her that he's an older guy, and older guys
12 aren't looking for the same thing as like a younger 13 or 14
13 year old guy. So not to lie to me, and tell me the truth and
14 to always be safe, and I'm glad they were using condoms, but to
15 be safe because she doesn't need a baby. She needs to be, you
16 know -- I understand everybody's -- you know, younger people
17 have sex, and that's fine, but to be safe.

18 Q. Okay, did you ever do any research on Angel Garcia in
19 relation to a prior crime?

20 A. I tried, but I'm not very good at searching stuff, so
21 my husband -- my husband did.

22 Q. Okay, and did you find out information?

23 A. Yes.

24 Q. Did you relay that to Meagan?

25 A. Yes.

1 Q. What was her response to that?

2 A. She told me that it was -- because it's a very common
3 name -- that it was a common name and that it didn't sound like
4 the story that he had told her. So that it wasn't -- she didn't
5 believe that it was him.

6 Q. Okay, are you aware of whether or not Angel ever
7 bought Meagan a ring?

8 A. Yes.

9 Q. What kind of a ring was that?

10 A. I took it as like a -- kind of like a promise ring.

11 Q. Do you know if she wore that?

12 A. Yeah, a few times.

13 Q. Where did she wear it?

14 A. We went over to her house for -- I don't even --

15 Q. I apologize, that's a poor question. On her body
16 where did she wear the ring?

17 A. I want to say either on her wedding ring finger or I
18 think it was a little big, so maybe on her -- I don't know --
19 this finger.

20 Q. Okay.

21 A. I don't know what you call that finger.

22 Q. One of those?

23 A. Yeah.

24 Q. Okay, did Angel have a tattoo on his neck?

25 A. Yes.

1 Q. What did that say?

2 A. I want to say a lady's name, maybe Gabby or something
3 to that effect. Gabby, Gabey, something like that.

4 Q. Do you know if that tattoo was changed?

5 A. I don't -- I don't believe it was. I like tattoos,
6 and I'm pretty sure if they would have changed it Meagan would
7 have told me. I maybe would have gone with her or something.
8 So I don't believe it was changed, no.

9 Q. Do you remember telling law enforcement that it
10 actually said "Babby," like B-a-b-b-y?

11 A. I don't believe so, no. I think it was something
12 with a G. I don't believe I said anything that it was that.

13 Q. Did Tori tell you about getting phone calls from
14 Meagan on January 30th of 2014?

15 A. She told me that she got called, but to my knowledge
16 I think that she was at work and she -- trying to remember.
17 I believe she was at work and she couldn't answer her phone.
18 That's -- that's really --

19 Q. But she told you she had received some calls?

20 A. She received calls from Meagan, but she couldn't
21 answer. She worked with disabled kids, and so she couldn't
22 just talk on the phone all the time. So I don't believe she
23 answered.

24 Q. Did Tori tell you that Meagan had asked her to save
25 Angel's clothes so that she could smell them?

1 A. She said that she wanted to save something for Meagan
2 to have a memory of like that time. So kind of, but I don't
3 think it was taken as so she could smell them.

4 Q. But she told you that Meagan asked for her to save
5 some of Angel's things?

6 A. To save something, yeah.

7 MR. PEAD: Okay. Again, I recognize this is difficult.
8 Thank you for honoring your subpoena.

9 THE WITNESS: Uh-huh.

10 THE COURT: Okay, thank you. Cross examination?

11 CROSS EXAMINATION

12 BY MR. ZABRISKIE:

13 Q. I have just a few questions, Ms. Rodriguez. You've
14 evidently signed a statement wherein you were interviewed by --
15 by the prosecution in this case.

16 A. Yes.

17 Q. I note in there that you indicated that when asked
18 -- let me -- let me establish a little foundation. This is a
19 document that you signed and evidently completed on the 11th day
20 of April 2014. Do you remember that document?

21 A. Yes, I do.

22 Q. That's some time after the terrible incident we're
23 talking about on January 30th?

24 A. Yes.

25 Q. You opined that Meagan is not a violent person.

1 A. Not at all.

2 Q. That's your -- your impression of her?

3 A. Yep, I've known her my -- since she was born. She's
4 never -- never been violent, never. She wouldn't hurt animals,
5 she wouldn't -- never. She's never violent.

6 Q. Characterize her as sensitive?

7 A. Very sensitive.

8 Q. Have you ever heard her say anything out of sorts or
9 negative about police or law enforcement, anything like that?

10 A. Nope, never. She -- when she was little I remember
11 we'd -- when we'd go somewhere, she'd wave at cops when she was
12 little. So she wasn't -- she wasn't against law enforcement in
13 any way.

14 Q. Uh-huh, and as far as you know, at least up through --
15 did she ever have any problems in junior high with law
16 enforcement, anything like that?

17 A. No, never.

18 Q. She wasn't what we'd characterize as a delinquent,
19 anything like that?

20 A. Oh, no, not at all.

21 Q. You also indicated, "I don't believe Tori would try to
22 tell Meagan what to say." Is that your opinion?

23 A. Yeah, I don't believe Tori would ever try and tell her
24 what to say. I don't --

25 Q. Uh-huh, well, you're acquainted with Tori, and you are

1 -- you are acquainted with Tori, right?

2 A. Yes.

3 Q. She's your aunt?

4 A. Yes, very.

5 Q. You are aware of the difficulties she has because of a
6 brain injury?

7 A. Yes.

8 Q. Am I right in assuming that you also know your Aunt
9 Tori very well?

10 A. Very well.

11 Q. Been in their home many times?

12 A. Very many, many times.

13 Q. Would you characterize her as being forgetful?

14 A. Yes, very forgetful. She -- she forgets things some-
15 times I'll talk on the phone with her and she'll tell me the
16 same -- same thing over and over.

17 Q. Uh-huh, and isn't it true that she relies on Meagan to
18 kind of keep her --

19 A. Yeah, Meagan --

20 Q. -- keep her going during the day?

21 A. -- yep, Meagan's always -- ever since she was little
22 Meagan's always helped her remember everything from what she's
23 -- from laundry, she was doing, dishes, taking her medicine,
24 everything. Meagan's always been her rock for everything.

25 Q. Always been there for her mom?

1 A. Always, yep. I think that's why it's so hard for
2 Tori. Now without Meagan she doesn't have anybody to remind
3 her of things. Meagan's always been there like that for her.

4 Q. My wife does that for me.

5 A. Yeah, yep.

6 Q. Then in Jan -- did you meet Angel?

7 A. Yeah.

8 Q. You indicated in your testimony that there was this
9 question as to what a condom --

10 A. Yes.

11 Q. Do you recall the date of that -- and I'm sorry, I saw
12 it on your text, but I didn't catch the date of it. What was
13 the date of that?

14 A. When she sent me the text?

15 Q. Yeah.

16 A. I don't even -- I have no idea.

17 Q. Well, you would agree that in fact Meagan was under
18 age when the text was sent?

19 A. Yes.

20 Q. You were aware of the fact that Angel was substantially
21 older?

22 A. Yes, a lot older. He -- I believe he's my age. So a
23 lot older.

24 Q. Well, you're young; but you're older than she is?

25 A. Yes, very much.

1 Q. You are aware of the fact that a man that age with a
2 girl her age, that's a crime?

3 A. Yep.

4 Q. When I say "with him," I'm talking about intimate.

5 A. Yep.

6 Q. It's a crime.

7 A. Yes, it is.

8 Q. Younger of that pairing would be considered a victim?

9 A. Yes.

10 MR. ZABRISKIE: Thank you. No further questions.

11 THE COURT: Thank you. Redirect?

12 MR. PEAD: Just real briefly, your Honor.

13 REDIRECT EXAMINATION

14 BY MR. PEAD:

15 Q. How do you know that's a crime?

16 A. Just because he's so much older. He was 27'ish and
17 she was 16 or 17; it's just too big of a gap.

18 Q. So do you know what the law says about that, or are
19 you just speculating on that?

20 A. I don't know. I guess -- I guess it's just what you
21 hear, that every -- they can't be that big of a difference, and
22 she wasn't over 18 to give really a consent.

23 Q. Okay, Mr. Zabriskie asked you if you knew that he was
24 older.

25 A. Yes.

1 Q. How did you know that?

2 A. She -- when I first met him she had told me that he
3 was older, and I asked how old, and I -- I want to say he was
4 27, and I was 27 at the time, so she said, "He's your age," and
5 so -- and then that. So --

6 Q. I apologize, and when did you first meet him?

7 A. The first time I met him his -- my uncle came over to
8 fix our dryer, and Meagan came and Angel came and my uncle came
9 over to our house, and she brought him over.

10 Q. Do you know when that was, what month?

11 A. I really could not say.

12 Q. Was it -- was it fall; was it summer?

13 A. I would say fall.

14 Q. Okay, of 2013?

15 A. Yes.

16 MR. PEAD: Okay, thank you.

17 THE WITNESS: Uh-huh.

18 MR. ZABRISKIE: No recross, your Honor.

19 THE COURT: Thank you. So is that all, then, for
20 Ms. Rodriguez?

21 MR. PEAD: Yes, your Honor. We'd ask that Ms. Rodriguez
22 be released from her subpoena.

23 MR. ZABRISKIE: We agree.

24 THE COURT: That's all, ma'am. Thank you.

25 THE WITNESS: You're welcome.

1 MR. PEAD: State calls Theron Leany.

2 THE COURT: Come forward, sir, let's have you sworn in.

3 COURT CLERK: Do you solemnly swear that the testimony
4 you shall give in the case now pending before the Court will be
5 the truth, the whole truth and nothing but the truth, so help
6 you God?

7 THE WITNESS: Yes, I do.

8 THE COURT: Thank you, sir. Please have a seat here in
9 the witness box. Just make sure you get close enough to the
10 microphone that it will pick you up okay. Thank you.

11 THERON LEANY,

12 having been first duly sworn,

13 testified as follows:

14 DIRECT EXAMINATION

15 BY MR. PEAD:

16 Q. Would you please state your name and spell it for the
17 record.

18 A. Yes, my name is Theron Leany. First name is T-h-e-r-
19 o-n. Last name is Leany, L-e-a-n-y.

20 Q. How are you employed?

21 A. Currently employed with Brigham Young University as a
22 police officer.

23 Q. Okay, how were you employed on January 30th of 2014?

24 A. At that time I was employed by Orem City assigned to
25 the Utah County Major Crimes Task Force.

1 Q. Okay, and what was your title then?

2 A. I was a sergeant at that time.

3 Q. Did you help investigate this matter in that role?

4 A. I did.

5 Q. What was your primary investigatory role in this case?

6 A. At that time I was supervising the search warrant and

7 I conducted some interviews.

8 Q. Did you conduct an interview of Tori Grunwald?

9 A. I did.

10 Q. Okay, did you ask Ms. Grunwald about whether or not

11 Jose Angel Garcia had been living in the home?

12 A. Yes, we had a conversation about that matter.

13 Q. What did she say?

14 A. Well, at the time there had been some concern as to

15 her comments that were made previously to another detective

16 regarding him living there. She had denied that. I confronted

17 her about that in regards to some evidence that we found that

18 stated that he had been living there.

19 Q. When you confronted her about that, what did she say?

20 A. Tori admitted to lying to the other detectives, said

21 she was sorry, said that she had lied because she didn't want

22 Angel to get into any trouble.

23 Q. Did she say why she didn't want Angel to get into

24 trouble?

25 A. Yeah, she expressed that she really liked him, appre-

1 ciated the fact that he was living there and protecting her and
2 Meagan from her soon-to-be ex-husband, Jerry Grunwald.

3 Q. Okay, during your conversation with her did you ever
4 ask her about Angel having a gun?

5 A. I did.

6 Q. What was her response to that?

7 A. I asked her if she had ever seen him with or heard
8 him talk about a gun. She said she had never -- her original
9 statement was she had not ever seen one. She made the comment
10 that her soon-to-be ex, Jerry, had reported to the police that
11 Angel had threatened him with a gun. Then she proceeded to
12 tell me of an incident that had taken place approximately three
13 weeks prior, where they had traveled to Cedar City, and she saw
14 him and a friend of his shooting a handgun.

15 Q. Did she describe what the handgun looked like?

16 A. She said it was a black handgun, was the best she
17 could describe.

18 MR. PEAD: Thank you.

19 THE COURT: Cross examination?

20 MR. ZABRISKIE: Just a few.

21 CROSS EXAMINATION

22 BY MR. ZABRISKIE:

23 Q. Officer, how are you?

24 A. Really good, thank you.

25 Q. During your conversation with her -- and again, I was

1 looking for the transcript of that conversation, but I can't
2 find it, but I do recall what was said -- didn't she also offer
3 to you the caveat that she has a horrible time remembering
4 things? That she suffered from brain damage?

5 A. I don't really recall that ever coming up in conver-
6 sation.

7 Q. Uh-huh. Could it have come up with one of the other
8 police officers?

9 A. Well, you don't know.

10 Q. Yeah, I couldn't answer that.

11 A. Okay, did you not detect some difficulties in talking
12 to her?

13 A. No. I mean, I know she was uncertain. She was real
14 skeptical, didn't know what was going on. So she was pretty
15 leery as to what she wanted to say.

16 Q. You didn't tell her everything that had transpired
17 that day leading up to your conversation, did you?

18 A. No, a lot of the details I myself wasn't aware of at
19 that time. She knew that there was some involvement with her
20 daughter and the police, and that Angel had been involved as
21 well.

22 Q. But she didn't know the nature of it or the details?

23 A. She didn't know the nature of it.

24 Q. Were you the only police officer that interviewed her?

25 A. No, Detective Billings had talked to her prior to my

1 conversation with her.

2 Q. Okay, and did anyone else talk to her, that you're
3 aware of?

4 A. Not that I'm aware of.

5 MR. ZABRISKIE: All right, thank you. No further
6 questions.

7 THE COURT: Thank you.

8 MR. PEAD: I have no redirect and I'd ask that now
9 Officer Leany be released from his subpoena.

10 THE COURT: Any objection to that?

11 MR. ZABRISKIE: Just a second, your Honor.

12 MR. ZABRISKIE: Just a second.

13 (Counsel conferring off the record)

14 MR. ZABRISKIE: We'd like to keep him under subpoena,
15 your Honor, until -- if we -- I'm putting the cart before the
16 horse, but as we start our case we're going to review witnesses
17 that we anticipated, and we'd like to hold him to his subpoena,
18 at least until tomorrow.

19 THE COURT: Okay, you're still under subpoena. So
20 please refrain from talking to others that may testify. Maybe
21 you'll be called back again. Thank you.

22 MR. PEAD: State calls Sergeant Scott Finch. Actually
23 we're going to change that, your Honor.

24 MR. TAYLOR: Judge, State calls Officer Ben Sullivan.

25 THE COURT: Okay.

1 MR. ZABRISKIE: Officer who?

2 MR. TAYLOR: Ben Sullivan.

3 MR. ZABRISKIE: How did we get from Finch to Sullivan?

4 (Counsel conferring off the record)

5 THE COURT: Come forward, sir, let's have you sworn in.

6 COURT CLERK: Do you solemnly swear that the testimony

7 you shall give in this case now pending before the Court will

8 be the truth, the whole truth and nothing but the truth, so

9 help you God?

10 THE WITNESS: Yes, ma'am.

11 THE COURT: Thank you, sir. Please have a seat here

12 in the witness box. Just make sure we get you close so we can

13 pick you up on the microphone, okay?

14 THE WITNESS: What's that?

15 THE COURT: Make sure we're close enough to pick you up

16 on the microphone.

17 THE WITNESS: Yes, sir.

18 THE COURT: Thank you.

19 BEN SULLIVAN,

20 having been first duly sworn,

21 testified as follows:

22 DIRECT EXAMINATION

23 BY MR. TAYLOR:

24 Q. Would you please state your name for the record.

25 A. Ben Sullivan.

1 Q. Where are you employed, Mr. Sullivan?

2 A. Draper City.

3 Q. As -- in what capacity?

4 A. I'm a police officer.

5 Q. How long have you been a police officer?

6 A. Almost eight years, with Draper for two.

7 Q. Okay, were you a police officer on November 16th, 2013?

8 A. Yes, sir.

9 Q. Did you have contact with -- did you go to the Jerry
10 Grunwald residence on that day?

11 A. Yes, sir.

12 Q. Could you please describe for the jury what led up
13 to you going to the Grunwald residence.

14 A. I was dispatched to a domestic in progress.

15 Q. Okay, and so did you respond by yourself?

16 A. No, sir, it was myself and I believe two of the
17 sergeants.

18 Q. Okay, and so do you remember, was that day or night,
19 or what do you recall? Do you have your report there in front
20 of you?

21 A. Yes, sir. Do you mind if I --

22 Q. If you could use that to refresh your memory and then
23 go ahead and do that.

24 A. It was -- I've got 21:40, so it would be 9:40 is when
25 I arrived.

1 Q. Okay, in the evening, then?

2 A. Yes, sir.

3 Q. When you arrived, could you describe what you observed.

4 A. When I arrived, the parties had separated. We got --
5 the call was that a mother and daughter -- and I don't know.
6 There was -- there was a physical altercation, but when I
7 arrived the parties had separated. Ms. Grunwald was outside
8 talking on her phone; and her mother, I believe, Tori, came and
9 met me in the driveway.

10 Q. Okay, when you say "the parties," and then you said
11 "Ms. Grunwald," so did you make contact with a Meagan Grunwald?

12 A. Yes, sir.

13 Q. Is she here in the courtroom today?

14 A. Yes, sir.

15 Q. Is this her over here in the white sweater?

16 A. Yes, sir.

17 Q. Okay, and so who did you speak with first, or do you
18 recall?

19 A. Tori.

20 Q. Okay, and were you just trying to get an understanding
21 of what had happened?

22 A. Yeah, I was just trying to get an overview of what we
23 were -- what type of situation we were looking at and where we
24 could start diffusing or what we needed to do.

25 Q. Besides Meagan Grunwald and Tori, was anyone else

1 there at the residence?

2 A. Tori let me know that Jerry was still in the home.

3 Q. Okay.

4 A. So we separated and I stayed outside to interview
5 Meagan and her mother while the other parties went inside to
6 talk with Jerry.

7 Q. Okay, and so you and Meagan had a conversation with
8 regards to what happened?

9 A. First I spoke with Tori before I spoke with Meagan.

10 Q. Okay, and then aft -- so after you got done speaking
11 with Tori then you spoke with Meagan Grunwald?

12 A. Yes, sir.

13 Q. What did she tell you happened that night?

14 A. I'm going to look in my report as I go, if that's
15 okay, but I do --

16 Q. If you could just refresh your memory --

17 A. Okay.

18 Q. -- and if that helps you, then go ahead.

19 A. I just -- I think I'm comfortable.

20 Q. Okay.

21 A. Basically she told me that her and her boyfriend had
22 been watching a movie I believe in the living room; and that
23 her father Jerry kept coming and checking on them, and this
24 upset her because she wanted more privacy.

25 When I was talking to her I constantly had to calm

1 her down, you know, she was shaking, crying, very upset; but
2 essentially she was mad that Jerry wouldn't give her and her
3 boyfriend privacy.

4 She said when she confronted her father about that,
5 that made her even madder. At which time her boyfriend decided
6 he was going to leave. This infuriated her. She told me she
7 punched holes in the wall. Then I believe she did tell me --
8 Tori had already kind of run the scenario through for me.

9 Q. Okay.

10 A. Meagan just kind of confirmed this story.

11 Q. Okay.

12 A. Then Jerry followed Jose out to the car as he was
13 leaving. Meagan followed him. I believe she pushed him down
14 the stairs or -- in an attempt -- I don't know if it was a full
15 on push or an attempt to get by him.

16 Q. When you say "pushed him down the stairs," who are you
17 referring to?

18 A. Jerry. Jerry's in a wheelchair, so I don't know how
19 much of that played. He's able to walk, or was at the time.

20 Q. Okay.

21 A. So he fell down the stairs in the course of her
22 tantrum.

23 Q. Okay.

24 A. She also admitted to breaking the front door in the
25 same altercation. She was fairly difficult to interview, just

1 because of the amount of tracking, and you know, just basically
2 throwing a tantrum while we were speaking with her, but that is
3 the story she laid out.

4 Q. Okay, and at some point did you -- did you enter into
5 the home?

6 A. Yes, sir. Sergeant Coe, I believe, went in to speak
7 with Jerry. The way we do things a lot of times in domestic
8 situations is we'll have an officer to, like we did, inside.
9 I was the initial officer. He kind of came out and confirmed
10 Jerry's side of the story. So I went in to confirm the damage
11 inside the home.

12 Q. Okay, and so what damage did you observe?

13 A. I believe in the hallways there was holes either punch
14 -- she said she punched it, and her knuckles were all bloody,
15 so there was holes in the hallway. That's what I specifically
16 remember, and that's what's in my report. I do recall seeing a
17 lot of damage in the sheet rock in the hallway area.

18 Q. Were there photographs taken of that damage; are you
19 aware?

20 A. Yes, sir.

21 Q. Have you seen those photographs?

22 A. Yes, sir.

23 Q. You also talked about her hand. You said you saw her
24 hand at the time you described as being somewhat bloody?

25 A. Yes, bloody and bruised. I believe there's photo-

1 graphs of that as well.

2 Q. Okay, I'm going to --

3 MR. TAYLOR: May I approach the witness, please, Judge.

4 THE COURT: Yes.

5 MR. ZABRISKIE: While you're doing that, can I look at
6 his report?

7 MR. TAYLOR: Yes.

8 MR. ZABRISKIE: Thank you.

9 (Counsel conferring off the record)

10 Q. BY MR. TAYLOR: Okay, Officer Sullivan, I'm going to
11 hand you what's been marked 267, 268, 269, and ten 275. Ask if
12 you would take a look at those and if those are the photographs
13 where they -- if those accurately depict what you saw that
14 night?

15 A. Yes, sir. Yeah, these are -- these would be it.

16 MR. TAYLOR: The State would offer into evidence those
17 four exhibits.

18 MR. ZABRISKIE: No objection, your Honor.

19 THE COURT: Accept -- we'll accept and received State's
20 Exhibits 267, 268, 269 and 275.

21 (Exhibit Nos. 267 thru 269 received into evidence)

22 (Exhibit No. 275 received into evidence)

23 MR. TAYLOR: Thank you, Judge. We'd like -- ask
24 permission to publish those to the jury.

25 THE COURT: Any objection to that?

1 MR. ZABRISKIE: No objection, your Honor.

2 THE COURT: Thank you.

3 Q. BY MR. TAYLOR: Okay, so Officer Sullivan, there is a
4 pointer there in front of you.

5 THE COURT: Make sure that that one works.

6 THE WITNESS: Yeah, I got it.

7 Q. BY MR. TAYLOR: All right, so Officer Sullivan, this is
8 -- if I can just have those pictures right here so I can refer
9 to -- this is Exhibit No. 267 that's projected on the wall. Do
10 you recognize this?

11 A. Yes, sir.

12 Q. What is this that we're looking at?

13 A. This is -- as you come in through -- if I remember the
14 layout of the home, I think you come in through the garage into
15 the kitchen, and there would be the damage in the hallway right
16 there.

17 Q. Okay, so 268?

18 A. Yep, that's just the further damage where she punched
19 the wall down here.

20 Q. Okay, and 269?

21 A. Just a closeup of the same damage where she -- like
22 I says, that's where she admitted to punching the wall and
23 causing that damage.

24 Q. Okay, and 275?

25 A. That's Ms. Grunwald's hand.

1 Q. Okay, thank you. So at some point did you -- did you
2 end up getting a witness statement from her?

3 A. Yes, sir.

4 Q. Okay, this is State's Exhibit No. 274. I've handed
5 you Exhibit 274. Do you recognize that?

6 A. Yes, sir.

7 Q. What is that?

8 A. This is Ms. Grunwald's witness statement.

9 Q. Okay, and --

10 A. -- of that night.

11 Q. -- did she fill that out on that night; do you recall?

12 A. Yes, sir.

13 MR. TAYLOR: Okay, the State would offer into evidence
14 Exhibit No. 274.

15 MR. ZABRISKIE: No objection, your Honor.

16 THE COURT: Thank you. I'll accept and receive State's
17 Exhibit 274.

18 (Exhibit No. 274 received into evidence)

19 Q. BY MR. TAYLOR: So you said that you made contact with
20 Tori Grunwald, Meagan Grunwald. Did you ever make contact with
21 Jerry Grunwald?

22 A. Briefly, yes.

23 Q. Okay.

24 A. I just wanted to kind of collaborate the story since I
25 was going to be typing the report.

1 Q. Okay, and you mentioned a person by the name of Jose.
2 Did you ever make contact with him?

3 A. Yes, sir, I actually called him and had him come back
4 to the scene and fill out a statement as well.

5 Q. Did he do that?

6 A. Yes, sir.

7 Q. Okay, thank you.

8 (Counsel conferring off the record)

9 MR. ZABRISKIE: Nothing further.

10 THE COURT: Thank you. Cross examination?

11 MR. ZABRISKIE: If I may, your Honor.

12 THE COURT: Okay.

13 CROSS EXAMINATION

14 BY MR. ZABRISKIE:

15 Q. Officer, if I may, the picture involving the wall --
16 may I approach, your Honor.

17 THE COURT: Okay.

18 Q. BY MR. ZABRISKIE: Officer, if I may -- excuse me,
19 ladies and gentlemen -- this is what's been marked as 269,
20 right?

21 A. Okay.

22 Q. There appear to be -- there's a hole here and a hole
23 here, and then there is one down here where it would be more of
24 a function of a kick or a boot; would it not?

25 A. Yes, sir.

1 Q. Do you have any experience or any knowledge as it
2 relates to building materials like sheet rock?

3 A. No, sir.

4 Q. If I told you that that appears to be quarter inch,
5 which is the thinnest sheet rock there is, would you agree or
6 disagree?

7 A. I couldn't attest to what type of sheet rock it was.

8 Q. Uh-huh, but you would -- certainly you would agree
9 that at least visibly that's very thin?

10 A. It looks like common sheet rock to me.

11 Q. Uh-huh, if there is such a thing.

12 A. Yeah, I'm not -- I'm a police officer.

13 Q. When you got there -- very good. You indicated when
14 you got there, she was there. She did not leave the house.
15 She was there waiting when you folks arrived?

16 A. She was on the phone out front.

17 Q. Okay, and evidently Angel had left?

18 A. Yes, sir.

19 Q. So I'm right in assuming that she didn't leave with
20 them?

21 A. Right.

22 Q. There was no restraint as it relates to her; she could
23 have left before you got there?

24 A. Yes, sir. We would have -- we would have requested
25 she come back, but yes, she could have left.

1 Q. Yeah, but with that aside, she was there waiting?

2 A. Oh, yes.

3 Q. Okay, and am I right in that Jerry Grunwald ultimately
4 left also?

5 A. Yes. We gave Jerry -- the situation amounted -- with
6 juveniles we don't like to take them to DT. Generally we have
7 to have three charges or a felony to do so. The situation very
8 well could have amounted to a situation where we could have
9 taken her to DT.

10 I didn't feel like that is what I want -- we don't
11 like to see juveniles go there if we have another option; but I
12 do feel like the parties needed to be separated for the night.
13 I can't tell Jerry to leave his home. We presented the option
14 to Jerry to diffuse the situation.

15 I can't say for sure we would have taken her to DT had
16 he not left; but Jerry chose that option in lieu of to diffuse,
17 because she was really, really close. Honestly amounted to
18 disorderly conduct as well, which would have given us three
19 charges, and taken her -- Jerry chose to leave to diffuse the
20 situation, because her problem was that he made Jose leave.
21 That's what the tantrum was over. She told me that.

22 Q. Were you aware when you went to that home of the prior
23 violence perpetrated upon her by Jerry?

24 A. I knew that there was a history at the home, and I
25 believe the home had a -- what we call a flag, where we have

1 a minimum of two to three officers. I was a new officer to
2 Draper City, so I didn't know directly the history of the home.
3
4 So I knew that there was history but I didn't know specifically
5 of what.
6 MR. ZABRISKIE: Thank you. No further questions.
7 THE COURT: Thank you. Redirect?
8 MR. TAYLOR: Nothing further.
9 THE COURT: Thank you. May the officer be excused?
10 MR. TAYLOR: Yes, sir.
11 MR. ZABRISKIE: No objection, your Honor.
12 THE COURT: Thank you, sir. That's all.
13 MR. PEAD: Your Honor, the State recalls Sergeant Scott
14 Finch.
15 THE COURT: Is he the last witness today?
16 MR. PEAD: Second to the last.
17 THE COURT: Let's take a recess at this point, if we
18 could.
19 COURT BAILIFF: All rise for the jury.
20 (Jury exits the courthouse)
21 THE COURT: Thank you. We'll be in recess.
22 MR. PEAD: Thanks, Judge.
23 (Recess taken)
24 THE COURT: Thank you. Please be seated. Are we back
25 on, Kim?

1 COURT CLERK: Yes.

2 THE COURT: Okay. All right, we're back on the record.
3 Mr. Pead.

4 MR. PEAD: Your Honor, our next witness is going to be
5 Sergeant Mark Dell'Ergo performed the forensic analysis of the
6 defendant's cellular phone. He extracted some pictures from
7 that, he extracted some web searches, and he also extracted
8 what are known as "memes," which are like Internet mottos.

9 Sergeant Dell'Ergo would be able to testify that
10 because these were on his phone, the defendant viewed these
11 memes. That would be the foundation and the basis for the
12 admission of those memes with Sergeant Dell'Ergo's testimony

13 I would like to show the Court those memes before we
14 show them to the jury. My understanding is that the defense
15 has two grounds which they would like to object to those on,
16 and we would like the Court to rule on that before calling the
17 jury back in so you know what's coming in before them. If I
18 could approach.

19 THE COURT: Okay.

20 MR. PEAD: These are the Internet memes. Oh, and if I
21 -- if I wasn't clear, this is her phone, the defendant's.

22 THE COURT: Mr. Zabriskie?

23 MR. ZABRISKIE: Yeah. Thank you, Judge. May I handle
24 those exhibits while I'm addressing the Court. Thank you. I'm
25 not real savvy with this tech language calling these "memes."

1 I don't know exactly what that means. To me, I'm looking at an
2 image here, that according to Counsel was simply viewed on the
3 defendant's phone.

4 To me, this is paramount to an argument by the prose-
5 cution that would open the door so wide that law enforcement
6 could bring in newspapers that the defendant has supposedly
7 viewed, television programs that the defendant has supposedly
8 viewed, and other literature that she has supposedly viewed.
9 To me that is not a sufficient basis to lay foundation.

10 I can understand in cases where perhaps it can be
11 demonstrated forensically that an image on a cell phone has
12 been viewed by the person -- or excuse me, has been downloaded
13 by the person possessing the phone; but these are not down-
14 loads. According to what I heard of Counsel's argument, these
15 are sim -- the testimony would be that these were simply viewed
16 on the phone.

17 That is our foundation objection, that where does
18 it show any kind of intent? I mean, how does this go to any-
19 thing to state of mind by the defendant? Simply that they were
20 viewed on her phone.

21 The other objection is that -- I'm not going to read
22 all these out loud. The Court can look at them, but these are
23 highly prejudicial statements, and I don't know why else the
24 prosecution would want to introduce these other than to cause
25 prejudice.

1 There's no probative value whatsoever in this image
2 of two people embracing, a statement of commitment. No mention
3 of Jose Angel Garcia. These aren't pictures of any of the
4 participants, victims in this case -- excuse me, witnesses in
5 this case. I said "victim." That was a slip of the tongue.
6 It's been argued that Meagan is a victim also based on some
7 of the testimony we've heard here, but there's -- there's just
8 nothing that connects this image to Meagan, or the statement
9 therein. Nor is there anything that connects this image to
10 Jose Garcia.

11 The same goes for each of these other statements that
12 are -- or the images that contain statements. I make the same
13 argument, same objection on each of these. We ask the Court to
14 exercise its discretion to keep this very prejudicial content
15 from being seen by the jury. There's no probative value here
16 whatsoever. With that, we'll submit to the Court's judgment.

17 THE COURT: Okay, thank you.

18 MR. PEAD: May I briefly respond, your Honor.

19 THE COURT: Sure.

20 MR. PEAD: Your Honor, what a person looks at on the
21 Internet is -- tells a little bit about them. In this case
22 the State is attempting to show the defendant's attitude about
23 her man, about Jose Angel Garcia. The things that she views
24 on her phone go to that.

25 I think that any prejudicial effect can be -- can be

1 at least addressed in cross examination with recognizing the
2 limit of this evidence, which is simply that it was viewed on
3 her phone. We think it shows an attitude that she had about
4 her boyfriend, and was therefore in a protective mode for him
5 on the date of January 30th of 2014. That would be our purpose
6 in offering these.

7 MR. ZABRISKIE: Judge, just adding to our foundation
8 objection, as I look at those images, there's nothing imbedded
9 in those images that would give us any context as to the date
10 and time upon which those were viewed by the defendant. There's
11 no way -- I don't know how the State can even demonstrate that
12 these were even viewed during the time frame when the relation-
13 ship was ongoing.

14 THE COURT: I agree.

15 MR. ZABRISKIE: Thank you, Judge.

16 THE COURT: Won't allow it to come in.

17 MR. PEAD: Thank you, your Honor. May I retrieve them.

18 THE COURT: Sure.

19 MR. PEAD: I think we're ready now, your Honor.

20 THE COURT: Thank you.

21 COURT BAILIFF: All rise for the jury.

22 (Jury enters the courtroom)

23 THE COURT: All right, please be seated. Thank you.

24 Okay, we are back on the record. Parties are present including
25 all members of the jury. Mr. Pead.

1 MR. PEAD: Your Honor, the State Calls Sergeant Mark
2 Dell'Ergo.

3 THE COURT: Thank you. Come forward. Let's have you
4 sworn in.

5 COURT CLERK: Do you solemnly swear that the testimony
6 you shall give in this case now pending before the Court will
7 be the truth, the whole truth and nothing but the truth, so
8 help you God?

9 THE WITNESS: I do.

10 THE COURT: Thank you, sir. Please have a seat in the
11 witness box. All right, just pull that down so we can pick you
12 up okay. Thank you.

13 MARK DELL'ERGO,

14 having been first duly sworn,

15 testified as follows:

16 DIRECT EXAMINATION

17 BY MR. PEAD:

18 Q. Will you please state your name and spell it for the
19 record.

20 A. Mark Dell'Ergo, D-e-l-l apostrophe, capital E-r-g-o.

21 Q. How are you employed?

22 A. I'm a Sergeant in the Bureau of Investigations at the
23 Utah County Attorney's Office.

24 Q. Okay, and what are your roles in that position as a
25 Sergeant?

1 A. I do computer forensics and phone analysis and extrac-
2 tions.

3 Q. Okay, what kind of training and experience have you
4 had relating to forensic searches of phones?

5 A. I've had training with United States Secret Service in
6 their Hoover, Alabama facility on a basic certification course
7 that was two-and-a-half months. Then I had an advanced course
8 same facility for two-and-a-half weeks. I'm also certified as
9 a computer forensic expert through IASIS.

10 Q. Okay.

11 A. Which is an international organization.

12 Q. Are you also a certified peace officer in the State of
13 Utah?

14 A. I am.

15 Q. How much of your job encompasses computer forensic
16 searches and phone searches?

17 A. Nearly all of it.

18 Q. Okay, and do you know what case we're here on today?

19 A. Yes.

20 Q. Did you in fact perform a forensic search on the
21 defendant's phone?

22 A. I did.

23 Q. I'm going to show you what was --

24 MR. PEAD: If I can approach the witness, your Honor.

25 THE COURT: Sure.

1 Q. BY MR. PEAD: I'm going to show you what was previously
2 marked as State's Exhibit 229. Do you recognize that?

3 A. I do.

4 Q. What is it?

5 A. It's a Samsung Galaxy S3.

6 Q. Okay, and whose phone was that?

7 A. The defendant's.

8 Q. Is this the phone you performed the forensic search
9 on?

10 A. It is.

11 Q. In this forensic search did you locate pictures?

12 A. I did.

13 Q. And text messages?

14 A. Yes.

15 Q. And Internet searches?

16 A. Uh-huh.

17 Q. Were there a lot of those items?

18 A. Yes.

19 Q. Okay, I'm going to -- I'm going to show you a few of
20 those items, if I could.

21 A. Okay.

22 Q. I'm going to show you what's been marked as Exhibits
23 282 --

24 MR. ZABRISKIE: Sorry, may I approach, Judge.

25 THE COURT: Sure.

1 MR. ZABRISKIE: I just want to see what's being
2 presented. Thank you.

3 Q. BY MR. PEAD: 282, 283, 284, 285, 286, 287, 288, 289,
4 290, 291, 298, 299, 297 and 294. Do you recognize those items?

5 A. I do.

6 Q. What are they?

7 A. Those are text messages, pictures and some other data
8 that I was able to extract from her phone.

9 Q. Including a couple Internet searches?

10 A. Yes.

11 MR. PEAD: Your Honor, at this time I would move to
12 offer those exhibits.

13 MR. ZABRISKIE: No objection.

14 MR. PEAD: Also move to publish them.

15 MR. ZABRISKIE: No objection.

16 THE COURT: So I had 282 through 291, and then it
17 jumped to 294, 297, 298, 299, I believe.

18 MR. PEAD: So you said 282 to 291?

19 THE COURT: Yeah.

20 MR. PEAD: 294, 297, 298 and 299?

21 THE COURT: Yeah.

22 MR. PEAD: Okay, that's the same as I have.

23 THE COURT: All right, I'll accept and receive State's
24 Exhibits 282 through 291, 294, 297, 298, 299.

25 (Exhibit Nos. 282 thru 291 received into evidence)

1 (Exhibit No. 294 received into evidence)

2 (Exhibit Nos. 297 thru 299 received into evidence)

3 THE COURT: Any objection to publishing?

4 MR. ZABRISKIE: No objection to publishing.

5 THE COURT: Thank you.

6 Q. BY MR. PEAD: Again, Sergeant Dell'Ergo, all of these
7 items were taken from defendant's phone?

8 A. Correct.

9 Q. This is Exhibit 282?

10 A. Yes.

11 Q. Can we move to Exhibit 283?

12 A. Yes.

13 Q. Exhibit 284?

14 A. Yes.

15 Q. Exhibit 285?

16 A. Yes.

17 Q. Exhibit 286?

18 A. Yes.

19 Q. Exhibit 287?

20 A. Yes.

21 Q. Exhibit 288?

22 A. Yes.

23 Q. Exhibit 289?

24 A. Yes.

25 Q. Exhibit 290?

1 A. Yes.

2 Q. Do you see any writing in the form of a tattoo there,
3 Sergeant Dell'Ergo?

4 A. I do.

5 Q. What does that say?

6 A. It says, "Babby," B-a-b-b-y.

7 Q. Exhibit 291, what is this?

8 A. This is a screen shot of a Facebook post that was
9 taken on her phone, on the defendant's phone.

10 Q. Okay, and will you read that post.

11 A. "Feels good to know it lady is the best in the world.
12 Puts a smile on your face, even on the shittiest days, and even
13 when she wants to cut it balls off, she still takes care of
14 you. Thank you babby girl, and than you, God, for putting her
15 in my life. Meagan"

16 Q. Is that like a smiley face before that?

17 A. Yes.

18 Q. Okay, and whose name does that purport to be from?

19 A. It appears that it's from Meagan.

20 Q. No, I mean, the -- above there.

21 A. Oh, I'm sorry, that's the screen shot of Angel's Face-
22 book post.

23 Q. But you're saying this is on her phone?

24 A. Yes.

25 Q. Are you aware of how pictures can be taken in a screen

1 shot?

2 A. Yes.

3 Q. Okay, and how does that work?

4 A. Most phones have some -- some type of manipulation
5 where you can press one or two buttons and it will actually
6 take a whole shot of everything that you can see, including
7 that you can see the time, battery power, cell signal and such.

8 Q. Okay, Exhibit 294, what is this? I must be out of
9 order here. This is 298.

10 A. This is a -- this is a database table.

11 MR. ZABRISKIE: Sorry, what number is this?

12 MR. PEAD: 298.

13 MR. ZABRISKIE: Okay.

14 Q. BY MR. PEAD: What does this show?

15 A. This shows what places this person has gone to look
16 for specific items, searches.

17 Q. Like through a browser?

18 A. Correct.

19 Q. Okay, and what are some of the terms that were
20 searched in this browser?

21 A. "Does meth affect going under for surgery?" "Crystal
22 meth before surgery with general anesthesia?" Answers, "Does
23 dose meth affect the anesthesia in surgery?" Med Help, "Does
24 meth affect going under for surgery?" A duplicate entry of the
25 same thing. "Can using meth the night before shoulder surgery

1 cause any major complications?" and "Does meth affect you when
2 you're having your wisdom teeth taken out?"

3 Q. Based on your forensic search, what can you say about
4 these search terms?

5 A. That those were typed in by the user of the -- of the
6 phone.

7 Q. Okay, next exhibit. This is Exhibit 299. What is
8 this?

9 A. This is one of the -- this is one of the sites that
10 came up from the search.

11 Q. So this was something that was clicked on?

12 A. Yes.

13 Q. Okay, and what is this about?

14 A. "What are the risks of smoking meth before surgery?"

15 Q. Okay, next exhibit? Is this a text message?

16 A. It is.

17 Q. This is Exhibit 297. Is this a received message or a
18 sent message?

19 A. This is a sent message.

20 Q. It was sent by this phone?

21 A. Correct.

22 Q. Who was it sent to?

23 A. To the person under party column, which shows Angel
24 from the person's contacts.

25 Q. Okay, and is there a number there?

1 A. There is.

2 Q. What is that number?

3 A. It's 1-801-800-7291.

4 Q. What does the message say?

5 A. There's a smiley face, "I freaking love you more,

6 too." Smiley face. "Sadie wants to come to our wedding."

7 Then she has a saying in Spanish after it.

8 Q. Do you know what saying is?

9 A. Carazon is heart. So something about my heart.

10 Q. Okay, and does it have a time stamp of when that text

11 message was sent?

12 A. It does. It's December 18th, 2013 at 11:30 and 56

13 seconds in the morning.

14 Q. Okay, next exhibit. Now, I just want to focus on text

15 No. 834. Now, did you have pages and pages of texts?

16 A. Yes, there was nearly 2000 texts, I believe.

17 Q. I just want to focus on 834 and go through the same

18 analysis. From what phone was text 834 sent?

19 A. That was --

20 MR. ZABRISKIE: Sam, I'm sorry to interrupt. What

21 exhibit number?

22 MR. PEAD: This is Exhibit 294.

23 MR. ZABRISKIE: Thank you.

24 THE WITNESS: We're looking at 834?

25 MR. PEAD: Correct.

1 Q. BY MR. PEAD: Do you see that one?

2 A. Yeah, yeah. It is --

3 THE COURT: Do you have your pointer?

4 Q. BY MR. PEAD: Right here.

5 A. Okay.

6 Q. Is that a receipt or a sent message?

7 A. That's a send.

8 Q. Who was it sent to?

9 A. The contact from the person's phone is "bug."

10 Q. Is there a number there?

11 A. There is.

12 Q. What is that number?

13 A. 1-435-256-7038.

14 Q. Okay, and when was that text message sent?

15 A. It's January 2nd, 2014 at 9:06 and 23 seconds in the
16 morning.

17 Q. What is the content of that?

18 A. It says, "Hmm, is Will still awake? I want to look at
19 his AK-47 and his other guns."

20 MR. PEAD: Thank you. I believe those are all the
21 questions I have.

22 THE COURT: Thank you. Cross examination?

23 CROSS EXAMINATION

24 BY MR. ZABRISKIE:

25 Q. Mark, how are you doing?

1 A. Doing well, thank you.

2 Q. Good. Been waiting out in the hall for a while, huh?

3 A. Uh-huh.

4 Q. It seems like a longer day in here for us than it does
5 for you, I believe.

6 A. Yeah.

7 Q. So I just have a few questions about mostly dealing
8 with your expertise in electronic evidence. You've been doing
9 this for many, many years, right?

10 A. Since 2008.

11 Q. Since 2008. Since 2008, since you've become involved
12 in this field of expertise, you've been dealing with cell
13 phones this entire time?

14 A. We started doing cell phones in 2010.

15 Q. In 2010, okay.

16 A. Yes.

17 Q. So many years of experience, nonetheless. One thing
18 that's unique about cell phones is that you can-- when you look
19 into the records, like there's outgoing phone calls, incoming
20 phone calls, missed phone calls. These are all documented
21 within the electronic memory of the phone; is that right?

22 A. Correct.

23 Q. Unless perhaps there's a deletion. If there's a
24 deletion, is that something that you can determine?

25 A. It depends on -- it depends on how you obtain your

1 information.

2 Q. Okay.

3 A. That's possible, though.

4 Q. One thing, though, that I think you'll agree with
5 is that although examining a telephone, or a cell phone, you
6 can see that a phone call was made, there's nothing in your
7 forensic examination that would determine whose fingers it
8 was that pushed the keys, who initiated that phone call?

9 A. Nope.

10 Q. Likewise, when a phone call incoming is answered on a
11 cell phone, there's no way of you determining forensically who
12 answered that call?

13 A. That's correct.

14 Q. The same goes for incoming and outgoing text messages;
15 same there, right? Can't tell who's initiating the action on
16 the phone?

17 A. No.

18 Q. But you can with text messages. So long as they're not
19 deleted, you can see what the content was as we've demonstrated
20 here, right?

21 A. Correct.

22 Q. All right, and so I'm looking at one of the exhibit
23 numbers. Are they still up in front of you or do you -- let's
24 see, Exhibit No. 294.

25 MR. ZABRISKIE: Yeah, so may I approach the witness,

1 your Honor.

2 THE COURT: Yes.

3 Q. BY MR. ZABRISKIE: What I'm looking at is Exhibit 294.
4 This is -- would you classify this or would you describe this
5 as a text message conversation?

6 A. Yes.

7 Q. This is between two cell phones, right?

8 A. Yes.

9 Q. Okay, and one is the cell phone of Meagan Grunwald?

10 A. Correct.

11 Q. Okay, and those would be indicated by -- which would
12 indicate; the sent or the inbox?

13 A. The sent ones will be from her. The inbox will be
14 received.

15 Q. So the ones that are in white here, those are from
16 Meagan's phone. The ones that are kind of green or turquoise,
17 those are from someone else's phone to her phone?

18 A. Yes.

19 Q. Okay, so I'm just going to ask you a few questions
20 about this, then. Were you able to determine in your exami-
21 nation whose cell phone -- or at least the phone number that
22 was communicating with Meagan --

23 A. Yes.

24 Q. -- or with Meagan's cell?

25 A. I'm sorry?

1 Q. Were you able to determine a phone number that was
2 communicating with Meagan's cell phone?

3 A. Just any number?

4 Q. In this conversation that we're looking at here.

5 A. Yes.

6 Q. Do you want me to come back over here to see it?

7 A. Yeah, they should be shown. Right here.

8 Q. Who's the phone -- what's the phone number that she's
9 communicating with? Who is "bug;" what phone number is that?

10 A. That's the phone number right there.

11 Q. Okay, ending in 7038?

12 A. Yes.

13 Q. Okay, and were you able to determine who "bug" is?

14 A. No.

15 Q. Did anyone ask you to determine who that is?

16 A. No, we didn't.

17 Q. Okay, do you have a means by which you can determine
18 whose -- who the person is that that cell phone is registered
19 to?

20 A. There are ways of trying to locate who a particular
21 cell phone number is belonging to.

22 Q. Okay, did anyone ask you to make that inquiry and
23 determine whose cell phone it was that was communicating with
24 Meagan's phone?

25 A. On that particular instance?

1 Q. Yeah, the one that there's a nickname there of "bug."

2 Did anyone ask you to determine whose phone that is?

3 A. No.

4 Q. Okay, did you attempt to call that number and see
5 whose phone it is?

6 A. No.

7 Q. Also, many of the exhibits were photographs of Meagan
8 and Angel Garcia together. Were you able to determine the date
9 upon which any of those photographs were taken?

10 A. Yes.

11 Q. Okay.

12 A. Yeah, that's all in the FTK report that you received.

13 Q. You can -- any of those taken on January 30th, 2014?

14 A. No, there weren't any.

15 Q. Any of them taken on January 29th, 2014?

16 A. Any of the ones that --

17 Q. Any of the photographs --

18 A. -- are admitted?

19 Q. -- that were just presented to you on the stand?

20 A. No.

21 Q. Any of those taken January 29th?

22 A. No.

23 Q. What's the latest date upon which any of those photo-
24 graphs of Meagan and/or Angel Garcia were taken? What's the
25 last date?

1 A. Either the end of November or the first part of
2 December.

3 Q. The end of November or the first part of December.
4 What year?

5 A. Of '13.

6 Q. Of 2013. Okay, so that's -- you can surmise some
7 things, or one might surmise some things from looking at these
8 photographs; but one thing that these photographs do not tell
9 us is the con -- anything about the condition of the relation-
10 ship between these two in January of 2014; am I right?

11 A. Um --

12 Q. They were taken before then?

13 A. Sure.

14 MR. ZABRISKIE: May I have a moment, Judge.

15 THE COURT: Okay.

16 (Counsel conferring off the record)

17 Q. BY MR. ZABRISKIE: So just a couple more questions.
18 This is on the text message -- the text message exchange
19 between -- excuse me, between Meagan's phone and the person
20 who's indicated as "bug." There's some conversation there
21 about an AK-47, right?

22 A. Yes.

23 Q. You don't know who sent -- who the actual person was
24 that sent that message, do you?

25 A. No.

1 Q. You don't know who the person was who received it, do
2 you?

3 A. No.

4 MR. ZABRISKIE: All right, no further questions. Thank
5 you.

6 THE WITNESS: Uh-huh.

7 THE COURT: Thank you. Redirect?

8 MR. PEAD: Just briefly, your Honor.

9 REDIRECT EXAMINATION

10 BY MR. PEAD:

11 Q. Are you aware of when this phone was retrieved and
12 taken into evidence?

13 A. Yes.

14 Q. When was that?

15 A. That was the -- it would have been the first of
16 February.

17 Q. Was this during a processing of the Toyota Tundra?

18 A. Yes.

19 Q. Okay, and so the condition of the phone at the time
20 you did forensic analysis on it would have been the same as
21 that time?

22 A. Yes.

23 Q. At the time of these events on January 30th, all these
24 pictures that are demonstrative of the relationship were still
25 on the phone?

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A. Correct.

MR. PEAD: Thank you.

THE COURT: Anything else?

MR. ZABRISKIE: No further cross. Thank you, Judge.

THE COURT: All right, that's all, Officer. Thank you.

THE WITNESS: Thank you.

THE COURT: Be excused?

MR. PEAD: Yes.

MR. ZABRISKIE: No objection.

THE COURT: Thank you.

MR. PEAD: State calls Sergeant Scott Finch.

THE COURT: Mr. Finch, you're still under oath, so no need to swear you in again.

SCOTT FINCH,

having been previously sworn,

retakes the witness stand,

and testified as follows:

DIRECT EXAMINATION

BY MR. PEAD:

Q. Sergeant Finch, I think we discussed your credentials previously.

MR. PEAD: Is that agreed?

MR. ZABRISKIE: (No verbal response).

Q. BY MR. PEAD: I think we covered your role in this case and that it was kind of multifaceted. Sergeant Finch, are you

1 also trained on forensic analysis of cellular phones?

2 A. Yes, I am.

3 Q. Did you conduct any forensic analysis in this case?

4 A. Yes, I did.

5 Q. What was that on?

6 A. That was on a phone recovered from the Tundra by the
7 State Crime Lab, which is also believed to be Garcia's phone.

8 Q. Jose Angel Garcia's phone?

9 A. Correct.

10 MR. PEAD: If I could approach the witness, your Honor.

11 THE COURT: Okay.

12 Q. BY MR. PEAD: I'm going to show you what's been marked
13 as Plaintiff's Exhibit 233. Do you recognize that?

14 A. Yes, I do.

15 Q. What is that?

16 A. That is the phone that was recovered from the Toyota
17 Tundra in the console that the CSI personnel already testified
18 about. It was in the battery. It had the cracked screen on
19 it. The back of the phone had already been removed.

20 Q. Okay, what kind of a phone is this, Sergeant Finch?

21 A. This is a Nokia 710 Windows phone.

22 Q. Okay, and what kind of training have you received to
23 do forensic analysis?

24 A. I went in 2010 to a three-day training on a specific
25 extraction tool, which is called the "Celebrite UFED," which is

1 Universal Forensic Extraction Device. Over the next few years
2 I have attended additional classes week-long on device seizure,
3 which is basically the same thing as how to treat a phone and
4 then how to operate their extraction programs or devices.

5 Q. Okay, were you able to view pictures, videos, text
6 message, things like that?

7 A. On this phone?

8 Q. Yes.

9 A. Yes, I was.

10 Q. Okay, and did you in fact do that process on this
11 phone?

12 A. Yes, I did.

13 Q. Okay, was there a primary language in which the text
14 messages were sent from this phone?

15 A. Yes, it was Spanish.

16 Q. Okay, I'm going to show you what's been marked as
17 Plaintiff's Exhibit 305. I'm going to show you what's been
18 marked Plaintiff's Exhibit 305. Do you recognize this?

19 A. Yes, this is a DVD that was created, and t has a copy
20 of one of the videos I was able to recover or extract from the
21 cell phone that we're talking about, the Nokia.

22 Q. During that extraction process are you able to tell
23 when this video was recorded on that phone?

24 A. Yes, there was a date stamped on where -- that is
25 given to that video during -- when it's recorded. The phone

1 automatically will make a name for that, so you can locate
2 those items.

3 Q. Okay, and what was the date for this video?

4 A. If I remember right, it was 11 -- November 7th, 2013.

5 Q. Okay, and just briefly --

6 MR. PEAD: Well, I'd move to admit Exhibit 305.

7 MR. ZABRISKIE: Do you have a visual, a picture of what
8 we're talking about?

9 (Counsel conferring off the record)

10 THE COURT: Any objection?

11 MR. ZABRISKIE: No, your Honor.

12 THE COURT: Accept and receive State's Exhibit 305.

13 (Exhibit No. 305 received into evidence)

14 MR. PEAD: At this time, your Honor, we'd move to
15 publish Exhibit 305.

16 THE COURT: Any objection to that?

17 MR. ZABRISKIE: No objection.

18 THE COURT: Thank you.

19 (DVD played in courtroom)

20 MEAGAN GRUNWALD: Dear Hot Tamale, I've dated Nerds and
21 Goobers. I know sometimes I'm an Airhead, but I'm no Dumdum.
22 You're Extra special to me. You make my Pop Rocks burst. I
23 feel like I'm on a Milky Way or just won 100 Grand when I'm
24 with you. I love you to Reeses Pieces. I want to kiss you
25 long later. I love my Ring Pop that I got. Can't wait 'til

1 you have one, too. You satisfy my Snicker. He begins to feel
2 her Mounds that were pure Almond Joy. He let off a Snicker as
3 his Butter Finger went up into her Kit-Kat and caused a Milky
4 Way. She grabbed his Tootsie Roll and squeezed his Peanut
5 M&M's. Love Sweet Tart. P.S. I'll fuck you even if you
6 Score."

7 (DVD turned off)

8 Q. BY MR. PEAD: Sergeant Finch, do you recognize the
9 voice in that video?

10 A. Yes, I do.

11 Q. Whose voice is that?

12 A. That is Meagan Grunwald.

13 MR. PEAD: Okay, thank you.

14 THE COURT: Cross examination?

15 MR. ZABRISKIE: Yes.

16 THE COURT: Okay.

17 CROSS EXAMINATION

18 BY MR. ZABRISKIE:

19 Q. How's it going?

20 A. Good.

21 Q. Good. So just a few questions. In your forensic
22 examination of this piece of evidence were you able to deter-
23 mine when that video was put on the phone?

24 A. Well, when the phone -- somebody takes a video or
25 takes a picture, the phone will create a name for that, so it

1 can be stored, recovered and brought back.

2 Q. Okay.

3 A. On this particular one there -- it was the date. It's
4 11/7 of 2013.

5 Q. 11/7 of 2013. That's November 7, 2013?

6 A. That is correct.

7 Q. Okay, can you determine from your examination if in
8 fact that recording was initially made with that phone, rather
9 than some sort of transfer of data to the phone from another
10 device?

11 A. I do not have that information.

12 Q. Okay, so based on your lack of information there is
13 even a potential that that video could have been created on a
14 separate device, on an earlier date, earlier than November 7th
15 of 2013?

16 A. Possibly.

17 Q. All right, and again, we were getting -- the incident
18 that we're here for occurred on January 30th, 2014. You're
19 aware of that, right?

20 A. That is correct.

21 Q. Okay, so the prosecution -- and you work within their
22 office; am I right?

23 A. Well, we --

24 Q. Investigator in their office?

25 A. Yes.

1 Q. Okay, do you office -- do you have an office space in
2 their office?

3 A. Well, they're on the second floor. We're on the third
4 floor, but yes --

5 Q. All right, so you're -- you're very --

6 A. -- basically, yes.

7 Q. -- needless to say, you're -- you've sat through
8 this entire trial, sitting at the bench behind them. You're
9 intimately aware of the prosecution's assertions and their
10 arguments in this case; am I right?

11 A. Yes.

12 Q. So this video that we've watched, you're offering it
13 -- or the relevance, I suppose, that it's being offered for,
14 in your estimation, is to show that there's this close bond
15 between Meagan and Angel Garcia; is that right?

16 A. I would say that would be correct.

17 Q. All right, so what that video would illustrate is the
18 condition of their relationship, not on January 30th, 2014, but
19 on another date?

20 A. On the --

21 Q. A much earlier date, right?

22 A. Correct, in 2013.

23 Q. Is there anything about this video that we've watched
24 that tells us about what happened on January 30th, 2014?

25 A. No.

1 MR. PEAD: Objection, calls for a legal conclusion.

2 THE COURT: Overruled.

3 MR. ZABRISKIE: Thank you.

4 Q. BY MR. ZABRISKIE: Go ahead and answer the question.

5 A. No.

6 MR. PEAD: Thank you.

7 REDIRECT EXAMINATION

8 BY MR. PEAD:

9 Q. Sergeant Finch, this video was on the phone on January
10 30th of 2014; fair to say?

11 A. I would say yes.

12 Q. Is it likely that this was recorded on something other
13 than the phone?

14 A. No, I don't believe so.

15 Q. In that phone the defendant alludes to getting a ring,
16 correct?

17 A. She did.

18 Q. And to giving the person recording it a ring as well?

19 A. Yes.

20 MR. PEAD: Okay, thank you.

21 THE COURT: Thank you.

22 MR. ZABRISKIE: I have just a couple more questions.

23 REDIRECT EXAMINATION

24 BY MR. ZABRISKIE:

25 Q. What did you have to do to access this video on the

1 phone?

2 A. First I did an extraction from the phone, which goes
3 through a process of hooking the phone up to an extraction
4 device. In this particular case the Celebrite UFED Touch.
5 I then ran the phone, the process, ran it basically running a
6 program, and it extracts the data from the phone, okay?

7 Then at that time I created a report, and it takes the
8 extracted data and puts it in a more user friendly mode so you
9 can be able to access the text messages, call detail records,
10 and pictures and videos.

11 Q. All right, so is there anything in your forensic
12 examination of that phone that would tell the jury when the
13 last time was that that video was viewed on that phone, prior
14 to your examination?

15 A. It did not, because it would only do a logical extrac-
16 tion, which is basically what is on the phone, and also I ran a
17 file system on it, too, which goes a little bit deeper into the
18 phone's files to be able to extract the data. When I did that,
19 the file system data, it changed the modified date to the day I
20 did that data extraction.

21 Q. All right, so in answer to my question, I was looking
22 for a simple "yes" or "no," there was no way for you to tell
23 when it had viewed prior to you viewing it?

24 A. No.

25 Q. I'm going to ask you the same question about photo-

1 graphs that may have been on the phone at the time of the
2 forensic examination. Is there anything in your examination
3 processes that would tell us when photographs were last viewed
4 on that phone?

5 A. Not on that particular phone, no.

6 Q. Okay, were you involved in examining any other phones
7 in this case?

8 A. I was not.

9 Q. Just the phone of Angel Garcia?

10 A. That is correct.

11 MR. ZABRISKIE: All right, thank you.

12 THE WITNESS: Uh-huh.

13 THE COURT: Thank you.

14 MR. PEAD: Nothing further, your Honor.

15 THE COURT: All right, that's all, Detective. Thank
16 you.

17 MR. PEAD: Your Honor, those are all of the witnesses
18 for today.

19 THE COURT: Are you resting or going to hold out?

20 MR. PEAD: We would like to go through all of the
21 exhibits and make sure that we have everything in before we
22 officially rest, your Honor.

23 THE COURT: I see.

24 MR. ZABRISKIE: May I address the Court, your Honor.

25 As we indicated, this appears that Sam's review of the evidence

1 to make sure that everything's been properly identified and
2 then entered into the record as either by stipulation or lack
3 of an objection. We anticipate the State's case will -- there
4 will be-- are you going to rest today if everything's in order?

5 MR. PEAD: Potentially, yeah.

6 MR. ZABRISKIE: Then if that is the case then we'd
7 ask for recess and we'll start our case in the morning, as we
8 indicated earlier on this morning.

9 MR. TAYLOR: If I might add, Judge, we have a list
10 of quite a number of witnesses that we will -- we anticipate
11 excusing once the State has officially rested their case. It
12 would be considered duplicative testimony.

13 THE COURT: Okay.

14 MR. TAYLOR: That should streamline things tomorrow.

15 THE COURT: Are you asking me to keep the jury around
16 and --

17 MR. PEAD: No, I think we -- it would be wise to excuse
18 the jury for the remainder of today.

19 THE COURT: Okay, any objection?

20 MR. ZABRISKIE: No objection.

21 THE COURT: All right, so for today's purposes we get
22 to go home-- well, you get to go home early, or whatever you're
23 going to do; and I'll see you back tomorrow morning at 8:30.
24 Does anybody have any problem with that, any conflicts? Can
25 make it at 8:30? Pona will let you know again where he needs

1 to have you.

2 Again, I admonish you to comply with the instructions
3 that I give you with regard to this case and talking about it
4 with anybody, researching, doing any of those kinds of things,
5 as we're getting close to finishing this trial up. Be mindful
6 of that. Anything else before we release the jury?

7 MR. PEAD: No, your Honor.

8 COURT BAILIFF: All rise for the jury.

9 (Jury exits the courtroom)

10 THE COURT: Thank you. I will --

11 MR. ZABRISKIE: Judge, can I just address one issue.

12 We have one law enforcement official that is under subpoena --

13 THE COURT: Go ahead and be seated, please.

14 MR. ZABRISKIE: -- by our office that has not responded
15 to our subpoena. I've had my investigator try and contact him,
16 my witness coordinator. I just wanted to make the Court aware
17 of this. I won't name what department he's from or what his
18 name is, but there is a potential that we'll ask the Court to
19 intervene in our efforts to get him here in the morning if he's
20 not here by 10 o'clock. Just making the Court aware that there
21 is that issue.

22 THE COURT: Okay.

23 MR. ZABRISKIE: Counsel has graciously offered his
24 assistance, so we're going together make an effort to get him
25 here. Thank you, Judge.

1 THE COURT: All right, in the meantime I'm still working
2 on the final instructions. I should have those completed by
3 today, give them to you first thing in the morning, and you
4 can read -- those are proposed. So it will give you a chance
5 to review those, and then my practice is to prior to closing
6 I'll go over those with both Counsel in the courtroom; and any
7 changes or whatever arguments that we need to have done, we can
8 do. If not, we'll get those finished, then. I do have the
9 verdict form ready, but I think I'll give those to you when I'm
10 done with the instructions as well.

11 MR. PEAD: Okay.

12 MR. ZABRISKIE: Thank you, Judge.

13 THE COURT: Anything else I can do before we recess?

14 MR. PEAD: No, your Honor.

15 THE COURT: Thank you.

16 MR. ZABRISKIE: Thank you, Judge.

17 THE COURT: Be in recess.

18 COURT BAILIFF: All rise.

19 (Sixth day of trial concluded)

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