

1 specifically, "Do you know where the guns are?"

2 Q. Okay.

3 A. No.

4 Q. And were the other guns seized as well?

5 A. No, sir.

6 Q. In your training and experience, everything that you
7 took as far as the shell casings, the weapons, things of that
8 nature could have fingerprints on them?

9 A. Yes, sir.

10 Q. They could have DNA on them?

11 A. Yes, sir.

12 Q. Would it be unusual if an individual owned a -- on
13 his own gun to have DNA on that gun?

14 A. You know, that's funny. I think I asked the same
15 question to the -- the -- the crime lab -- or the DPS, and
16 they said it's possible that they'd have DNA on the casing

17 Q. Okay.

18 A. It's rare, but it's possible.

19 Q. But what I'm asking is if a person owned a weapon,
20 there would be -- there very well could be their own DNA on
21 that weapon?

22 A. I guess so. Yes.

23 Q. Where would the -- did you find any other bullets of
24 a similar caliber?

25 A. Yes, sir.

1 Q Where were those located?

2 A On the downstairs

3 Q Did you find any unspent rounds anywhere?

4 A Yes, sir.

5 Q. Where were those found?

6 A. On the case or on the box of bullets

7 Q. Okay. You found a box?

8 A Yes, sir

9 Q Okay. But did you find any strewn about the floor?

10 A No, sir.

11 Q. Did you find any in the pockets of Mr. Romero?

12 A. Not that I'm aware of, sir

13 (Brief pause.)

14 Q. And a single action bolt action -- or is it -- how

15 do you phrase that weapon, single bolt action, or . ?

16 A It's something like that. (Laughs.)

17 Q. Okay.

18 A. I don't know the exact amount

19 Q And that require -- it's one round per shot, right?

20 A. One round, yes.

21 Q. You don't have a magazine?

22 A No, sir.

23 Q And so when you shoot and then you eject, put a new

24 one in, close it up, fire it again?

25 A. Yes, sir.

1 Q. So there would be a requirement you touch each of
2 the -- each of the casings in order to do that, right?

3 A. Yes, sir.

4 Q. And also the person would have to be pretty good?

5 A. Yes, sir I -- I asked that question. They -- all
6 I've gotten from people that have guns is that they would have
7 to know the -- the gun

8 Q. The individuals that indicated they heard noises,
9 did you talk to them; or hearing (sic) popping sounds?

10 A I haven't talked to them, no.

11 Q. Based on your observation of the bodies, did you
12 come to an assessment of how many times there was a shot in
13 each of the bodies?

14 A. How many times there was -- they -- they were hit?

15 Q. Right.

16 A. I would have to say about five each

17 Q. Five individual shots in each person?

18 A. Yes, sir.

19 Q Did you ever observe them without their clothes on;
20 the bodies?

21 A. Without their -- without their clothes on?

22 Q. Right.

23 A No. I have not.

24 Q. So you didn't get into a thorough examination?

25 A. No. That would be on the autopsy.

1 Q But you knew from training and experience --

2 A. We --

3 Q. -- what a -- what a entrance wound and an exit
4 wounds are?

5 A Yes, sir.

6 Q And you wouldn't -- you wouldn't mistake those as
7 two entrance wounds, or would you?

8 A. No, sir.

9 Q. And your testimony is that when EMS arrived, they
10 checked Tim?

11 A. Tim, yes

12 Q. For a pulse?

13 A. Pulse.

14 Q. And you never checked either of the bodies for a
15 pulse?

16 A. No.

17 Q. And the individual in the home was never checked by
18 anybody?

19 A. The only thing I did was touch and check the
20 temperature.

21 Q And how do you do that?

22 A. I just grabbed a leg and just went like this on the
23 leg with my two fingers, and it was warm to the touch. I was
24 wanting more or less to establish how long the bodies had been
25 on the ground.

1 Q. Okay.

2 A That's all. But I didn't check for vital signs or
3 anything like that. No, sir

4 Q. Okay. And would it have been your call to call an
5 EMS to have them check that out?

6 A. Yes, sir.

7 Q. And you told them no?

8 A. Yes, sir

9 Q And they agreed with you?

10 A Well, I explained to them what I saw, and they were
11 like, "Okay "

12 Q. Okay. So they weren't ordered to stay out?

13 A. Excuse me?

14 Q. Did you not -- did you order them to stay out?

15 A. It wasn't an order It wasn't -- I just -- they
16 asked me, "How about the guy upstairs?" And I told them,
17 "He's got a shot on the head, and I saw the brain matter on
18 the -- splattered, and the liquid's clear. It's ."

19 (Brief pause.)

20 MR. BREWER: That's all I have, Judge.

21 THE COURT: Redirect?

22 REDIRECT EXAMINATION

23 BY MR. CARLYON:

24 Q. You try to protect your crime scene as best you can,
25 correct?

1 A. Yes.

2 Q. You try not to allow other people in that don't
3 absolutely have to be there?

4 A. Yes, sir.

5 Q. Would that come into play if you're deciding whether
6 EMS comes in the house to check on Vincent?

7 A. Yes, sir.

8 Q. How far -- when you got your dispatch to go to this
9 resident (sic), where were you at?

10 A. At the police station

11 Q. And how far is that from the residence?

12 A. Seven blocks.

13 Q. Less than a mile?

14 A. Less than a mile. Yes, sir.

15 Q. During your investigation, did you learn if people
16 could smoke inside the Romero house?

17 A. Yes

18 Q. What did you learn?

19 A. I had learned that they were not allowed to smoke
20 inside the house.

21 Q. Where the photo indicated the lighter and the
22 cigarette pack and the other little container, was that in the
23 area that looked like a smoking area?

24 A. Yes.

25 Q. You stated this is an unusual case. Why is it

1 unusual and you're more emotional about this case than others?
2 Is it just the dead bodies?

3 A. No, sir. It's -- it's two dead bodies. I know the
4 families, or at least one of the families; and the age of the
5 suspect -- the -- the --

6 Q So that's why it's unusual and more emotional?

7 A. Yes, sir.

8 Q. You've had other homicides and dead bodies, and it
9 doesn't quite affect you the same?

10 A No, sir.

11 Q When you interviewed the SRP coworkers and you're
12 looking at the trucks, you're looking at all the vehicles in
13 the area?

14 A (No audible response.)

15 Q You got to say yes or no for the --

16 A. Yes, sir.

17 Q. So if there was a spouse's vehicle or a significant
18 other, you would've taken it in for them to have the location
19 at that time?

20 A Yes, sir.

21 Q. Christian never said that a white vehicle did it.
22 It was in his statement that there was a white vehicle driving
23 away quickly as he was starting to come towards the house?

24 A Yes. That -- that's where I got white vehicle
25 driving away.

1 Q But he never said it was at the house or anything of
2 that nature?

3 A No.

4 Q At least at the time that you were looking for the
5 white vehicle?

6 A No.

7 Q Mr Brewer asked you a question that, at least to
8 me, was slightly confusing. He was talking to you to start --
9 about the start of the blood trail at the end of the driveway,
10 and he asked something about were there shell casings in these
11 -- in this area, and I think you said no. Is that right?

12 A Yes.

13 Q But where the blood trickle started and where you
14 found the shell casings, was there an unobstructed view in
15 that area that somebody could've shot from the porch where the
16 shell casings were found to where the blood trickle started?

17 A Yes, sir.

18 Q And at this time, we're waiting for -- on the labs?

19 A Yes. We're sending things to the lab and continuing
20 our investigation.

21 Q Not done?

22 A Not done.

23 Q Been a hectic couple days?

24 A Yes, sir.

25 Q Still working hard?

1 A Still

2 MR. CARLYON: That's all I have of this witness.

3 THE COURT: May I ask the witness a couple of
4 questions?

5 MR. CARLYON: Please.

6 THE COURT: Okay. Sergeant Rodriguez, this is
7 State's 4 in evidence. Immediately adjacent to Mr. Romans'
8 hat, there is spot on the security door?

9 THE WITNESS: Yes, sir

10 THE COURT Is that what you described as a bullet
11 transit point?

12 THE WITNESS: Yes, sir.

13 THE COURT: Okay. In that picture, did the -- did
14 it appear that the bullet went from left to right or right to
15 left?

16 THE WITNESS. It went from --

17 THE COURT: Okay. Just --

18 THE WITNESS: -- right to left

19 THE COURT: Okay. So from the inside of the house
20 to the outside?

21 THE WITNESS: No, from the outside to the inside --
22 from the outside of the house to the inside of the house.

23 THE COURT So somebody shot into the house from the
24 outside?

25 THE WITNESS: They way I look at it, sir, they were

1 shot in -- they were aiming towards the head and missed the
2 head and shot the screen. It's more --

3 THE COURT: Oh, okay. So did it appear that the
4 bullet went actually down into the screen?

5 THE WITNESS: Down into the screen. Yes, sir.

6 THE COURT: At a down angle?

7 THE WITNESS: Uh-huh

8 THE COURT: Okay. All right. Thank you

9 You indicated there was a box of -- that had unspent
10 .22 rounds in it --

11 THE WITNESS: Yes.

12 THE COURT: -- where was that box found?

13 THE WITNESS: On the bottom stairs on one of the
14 stands next to the sofa.

15 THE COURT: Okay. But it wasn't, you know, in a
16 drawer or anything like that?

17 THE WITNESS: No, sir.

18 THE COURT: It wasn't concealed?

19 THE WITNESS: No, sir.

20 THE COURT: How many rounds are missing?

21 THE WITNESS: I didn't check for how many rounds. I
22 grabbed the box and put it in the -- in a bag and sealed it
23 up.

24 THE COURT: Did it rattle?

25 THE WITNESS: Yes.

1 THE COURT: Okay. So there were some --

2 THE WITNESS: There -- there were some missing.

3 Yes.

4 THE COURT: Okay Does this give counsel any basis
5 for any further inquiry?

6 MR. BREWER: No

7 MR. CARLYON: Briefly.

8 THE COURT: By all means.

9 FURTHER REDIRECT EXAMINATION

10 BY MR CARLYON:

11 Q. On the hole in the screen door, were you able to
12 determine there was somewhat of a down angle by how the screen
13 flared on the inside?

14 A. Yes, sir.

15 Q. And --

16 A. That kind of -- the trajectory coming from -- looks
17 like the -- the top to the bottom and the way it's open on the
18 outside.

19 Q And there's no way to know if the screen door was
20 closed at that time in a latched position or partially open
21 and next to the head or anything --

22 A. When I arrived there, the door was open; like --
23 just like you said, against his head.

24 Q During your search of the area, did you ever find
25 the lead?

1 A. No, sir I searched, but I didn't find it.

2 MR. CARLYON: Okay That's all I have.

3 THE COURT: Any further redirect (sic), Mister -- or
4 re-cross, Mr. Brewer?

5 MR. BREWER: No, Judge

6 THE COURT: Okay. May the witness be excused --

7 MR. CARLYON Please.

8 THE COURT. -- as a witness?

9 MR. CARLYON: Please.

10 THE COURT: Subject to recall

11 Thank you very much, Sergeant.

12 MR. CARLYON: I'm going to -- I'm going to call one
13 more briefly; Webb Hogle

14 THE COURT: Okay.

15 MR. CARLYON: He should be in the hallway.

16 THE COURT: Sergeant Hogle?

17 (Brief pause.)

18 THE COURT: Sergeant, could you come forward and be
19 sworn, please?

20 THE WITNESS: Yes, sir.

21 SERGEANT WEBB HOGLE,

22 having been called as a witness for the State, having been
23 duly sworn, testified upon his oath as follows:

24 THE COURT: Please have a seat, sir.

25 (Brief pause.)

1 THE COURT: Okay. Please go ahead.

2 DIRECT EXAMINATION

3 BY MR CARLYON:

4 Q. Webb, just identify yourself for the record.

5 A Sergeant Webb Hogle with Apache County Sheriff's
6 Office.

7 Q. And were you involved in the investigation of a
8 double homicide here in Saint Johns on the 5th of November,
9 2008?

10 A My involvement was more -- the following day, I was
11 -- when I checked on, I learned that Deputy Robert Watkins was
12 at the funeral home there in Eagar with the bodies. He had
13 been there all night. So I stopped at the funeral to relieve
14 him.

15 Q. Did you have the opportunity to examine the bodies
16 at any time?

17 A. I did. While I was there, I -- I sat -- sat there
18 at the home, ensured custody was -- was done and taken care of
19 in a proper manner. When Officer Neckel or Detective Neckels
20 and Sergeant Rodriguez came to the -- to the mortuary, they
21 photographed the bodies and stuff, and I was in the room when
22 that took place. And also I was in the room when the medical
23 examiner, Dr. Bigham, was there and examined the bodies as
24 well to sign the death certificates

25 Q Were you able to determine that there were multiple

1 wounds to the bodies?

2 A. Yes, sir; there were.

3 Q. What did you observe?

4 A. What I observed is on Mister -- Mr. Romero, he had a
5 couple to the chest; two, possibly more. He had one that went
6 up right here through his jaw and up and out the top of his
7 head, and then also possibly one that come down through the
8 hard hat, which was still on his head.

9 Q. When you're saying a hard hat, you're meaning an
10 actual hat and not describing the skull? It's a hard hat?

11 A. It -- it's a hard hat He -- he was still wearing
12 his work clothes; Carhartt overalls. He had a red hard hat
13 on. He's a boilermaker out at SRP; is my understanding And
14 he had his -- his glasses goggles on.

15 Q. So a hard hat is like a construction hard hat?

16 A. Yes, it's -- it's a construction hard hat.

17 Q. The other body, did you have a chance to look at
18 that and see if you noticed the --

19 A. Yes, sir; I did.

20 Q. What'd you observe?

21 A. He had a wound in his arm, looked like he took a
22 round in his arm, two, possibly three in the chest. And then
23 he had a stocking cap on, and he was bleeding from the back of
24 the head. So I believe he was shot in the head as well, but
25 the stocking cap was not removed to see.

1 Q Are you familiar with gunshot wounds?

2 A Yes, sir; I am.

3 Q A 22 entry wound, does that usually leave a gapping
4 entry or something else?

5 A It's -- it's -- in the clothing especially, because
6 they were not un -- unclothed while I was there, it's a minute
7 pinhole They're hard to spot.

8 Q Did you ever learn about the .22 rifle that
9 apparently was used in this incident?

10 A I heard it was a -- a 22 Crickett rifle. It's a
11 youth model, single shot bolt action When you stifle the
12 bolt, before you can shoot, you have to reach up and pull the
13 firing pin back, and it clicks into place. My kids -- my boys
14 have the exact same model gun

15 Q And what kind of report does it have when it's
16 fired?

17 A You know, a 22 rifle, you know, it's a lot
18 different than a large caliber gun. It's more of a -- a pop.
19 As far as a decibel level, I couldn't give you But within
20 the confines of a house or a vehicle or -- it -- you know,
21 it's pretty muffled It would sound like a pop more than a
22 report of a gunfire.

23 Q What if you're outside like on a porch, be a little
24 bit more sound --

25 A Yeah. You could -- you could hear it more

1 substantially outside.

2 Q. But if somebody was inside firing it, you may not
3 really hear it or recognize what it is from the outside?

4 A Yes, sir. It would be harder to hear from the
5 outside.

6 Q. While you were at the funeral home, did you come in
7 contact with Tim's wife?

8 A Yes, I did. While I was there, Tim's family, they
9 came in, and they were very distraught and upset. And at one
10 point, I had to go out and try and settle them down because it
11 was almost getting to be too much. And I pulled -- pulled her
12 into a room along with his mother and spoke to them -- to
13 them, you know, and tried to calm them down; let them know
14 what the situation was, why -- they were demanding to see the
15 bodies; why they couldn't see the bodies right at that time.
16 And during the course of that, you know, I mean, she told me
17 and explained some things that were concerning to her.

18 Q. Did she talk to you about a phone conversation she
19 was having with Tim on the evening of the 5th after he got off
20 of work?

21 A. Yes, sir. That was the thing that concerned her the
22 most. She told me, she says, "You know, right after work, he
23 called me." And during the duration of the call, they -- they
24 talked about work and -- and a few other things. And he --
25 she said she could hear Christian in the background yelling,

1 "Tim I need you to come in here Something's wrong with
2 Dad Tim, come in the house. Something's wrong "

3 And she told me, she says, "You need to talk to that
4 little boy. He knows something. He was there when something
5 bad happened to my husband." You know --

6 Q She's telling you this?

7 A. She's telling me that. "Make sure that they talk to
8 him about this."

9 Q. Was she able to indicate to you or did you gather
10 from her any timeline of when this phone call was?

11 A. Said it was -- it was after work when he got there
12 at the house. She didn't give me an hour.

13 And, you know, I told her, I said, "Ma'am, this is
14 real important You need to fill out a statement."

15 And, you know, up to that point, my involvement in
16 the case was nothing more than custody on the -- on the
17 bodies. And I -- Officer Rodriguez or Sergeant Rodriguez was
18 there at the funeral home, and I says, "I need to go get him
19 so that you can relay the same stuff to him," which I believe
20 she already had And then he provided her with a witness
21 statement as well to fill out.

22 Q Did she indicate that she was able to recognize
23 Christian's voice?

24 A. Excuse me?

25 Q. Did she indicate she was able to recognize

1 Christian's voice?

2 A Yes. Matter of fact, her -- I believe when she
3 relayed the -- the story to me, she said that her husband
4 said, "Something's wrong. Christian said something's wrong.
5 I got to go."

6 MR. CARLYON: That's all the questions I have.

7 THE COURT Cross-examine?

8 CROSS-EXAMINATION

9 BY MR. BREWER:

10 Q When you -- you indicated you viewed the bodies at
11 the mortuary?

12 A. Yes, sir.

13 Q. And when you were viewing them, they were fully
14 clothed?

15 A. Yes, sir.

16 Q. And so you couldn't give a complete, accurate
17 description of what you saw?

18 A I can give you an accurate description of I saw --
19 what I saw, but as far as actually seeing the bare-chested
20 wounds on the body, no I cannot.

21 Q. And that would be the best as far as for you to make
22 a determination of how many times an individual was shot; is
23 to see the --

24 A Yes, sir. The -- the three -- the two or three that
25 I pointed out were through a couple layers of clothes, and

1 they are .22 rounds It is very small in diameter, and they
2 do look like pinholes, and you have to, you know, look for
3 them to spot them.

4 Q And so I guess what I'm getting at is what you saw,
5 you would say is minimal?

6 A. What -- yeah. The -- there was those few there,
7 possibly more. It's very easy to miss some, you know, in that
8 situation There's multi layers of clothes there, and the
9 holes are very, very small.

10 Q. And you indicated you had some understanding of the
11 volume one of these types of weapons produces when it's fired?

12 A. Yes, sir.

13 Q Show you a picture -- (brief pause) -- that's been
14 admitted as State's Exhibit 5, I believe. You've never --
15 have you ever been in the house?

16 A. No, sir.

17 Q Okay. Well, let me ask you. Look at that picture
18 for a little bit, and if there -- if I were to tell you that
19 there's an individual lying here, would you have a reason to
20 disbelieve that?

21 MR. CARLYON: That there's a what?

22 MR. BREWER: Individual lying there

23 MR. CARLYON: Oh, individual lying there. Okay.

24 BY MR. BREWER:

25 Q. I'm not trying to trip you up, but..

1 A. In this -- in this photograph, I cannot tell if
2 that's an individual or not --

3 Q Okay.

4 A. -- but in that photograph, I certainly could.

5 Q. Okay. And with regard to this individual, someone's
6 outside shooting off a .22?

7 A Uh-huh.

8 Q And you're talking to the end of the courtroom
9 there. You're going to hear that?

10 A. If somebody's outside shooting or shooting from the
11 inside out?

12 Q No, outside shooting.

13 A Yeah, if there's somebody outside, I would certainly
14 hear it. Yes.

15 Q. Okay. How about the door opened and they're
16 shooting inside? How far would you --

17 A Yeah. If they were shooting from the inside out,
18 it'd be much quieter --

19 Q. Okay.

20 A -- but you could probably still hear the report of
21 the rifle.

22 Q Okay. Door closed?

23 A It'd be much more muffled.

24 Q. Okay.

25 A. Depends on the wind, and you know how that is here;

1 whether you were sitting in a vehicle, talking on a cell
2 phone, et cetera; you know.

3 Q. Does it -- does it sound like a Black Cat
4 firecracker, or is it something --

5 A. It's different than that.

6 Q. M-80? I mean, what --

7 A. It's that -- you know, the report of the rifle, a
8 high-powered rifle, is really sharp and cracking because it
9 breaks the sound barrier. A .22 caliber rifle travels under
10 the speed of sound, so it's subsonic. So you don't get that
11 crack, you know, that pierces the air so much.

12 Q. Okay. You -- now, just so I understand this, who's
13 wife were you talking to at the -- at the mortuary?

14 A. The gentleman that you showed me the picture of
15 right there.

16 Q. Okay. That'd be Tim?

17 A. Tim's.

18 Q. And she resides where?

19 A. San Carlos, I believe.

20 Q. And -- okay. And so she traveled up to where you
21 were?

22 A. Yes, and she brought quite a few of her family
23 members. I think there was, you know, eight to ten of them

24 Q. Okay. And you spoke with her face to face?

25 A. I pulled her aside in a room with her and her mother

1 -- her mother-in-law. Excuse me

2 Q And you didn't record that?

3 A No, sir; I did not.

4 Q But you -- did you write a -- write a report based
5 on what she said?

6 A. No, sir; I have not yet.

7 Q. But have you been directed to?

8 A No, but I planned on it.

9 Q Okay. And you directed her to fill out a statement
10 with regard to what she was telling you?

11 A. I told her she needed to -- to fill out a statement
12 concerning the facts But, like I said, I was not
13 investigating anything This is something she just gave me
14 voluntarily, and she was asking me, "You know, is there any
15 suspects in this case?"

16 And it was not my place to explain the case to her,
17 nor did I feel that I could accurately And I said, "You need
18 to speak with Sergeant Lucas" -- what's his last name? Just
19 --

20 Q. Rodriguez.

21 A Rodriguez. Sorry. And -- and then I went and got
22 him, and then he came in, and he explained some things to her

23 Q Okay. Did you ever provide her with a witness
24 statement, or do you still --

25 A. No, but --

1 Q. Okay.

2 A. -- Sergeant Rodriguez did.

3 Q. And you never saw her witness statement?

4 A. I never read it, but -- actually I did see the --
5 the witness statement. He came back, and he said, "Look. She
6 filled out a statement " But I never went through it.

7 Q. Okay. And how long have you been with the Sheriff's
8 Office?

9 A. I'd say going on eight years I'd been with Eagar
10 P D before that for a few years, so I have about 10 years on

11 Q. And it appears to me that you are a bit emotional
12 talking about this?

13 A. Yes. It's very difficult for me I feel horrible
14 about the whole situation. I have kids at their age

15 Q. And you didn't even see -- you didn't see the
16 investigation, did you?

17 A. I just seen photos of the body -- the bodies and the
18 bodies.

19 Q. And is it customary that when you hear of an
20 investigation, that you become emotional like this?

21 A. Certain -- certain things I feel -- where I get
22 emotional is -- dealing with bodies and the situation, it's
23 not -- not so much. It's with grieving families.

24 Q. Okay. And this is something very unusual? You
25 haven't seen this before?

1 A. Right It's -- it's unprecedented pretty much in
2 this area

3 MR. BREWER: That's all I have, Judge

4 THE COURT: Redirect?

5 REDIRECT EXAMINATION

6 BY MR. CARLYON:

7 Q. If people were in the house across the road from the
8 Romero house and gunfire was there on the front porch, would
9 it be very muffled in that house -- other house?

10 A Would it be audible to that house?

11 Q. At least muffled.

12 A. Yeah. You -- you -- it would -- it would sound like
13 a -- a pop more than anything.

14 Q Okay. But it'd sound much different if you were on
15 the outside and the gun was fired on the outside and you were
16 in the same proximity?

17 A. I would -- I would think so. Yes, sir.

18 Q. And if you were on the -- the gun was fired on the
19 inside of the house, say in a stairwell or upstairs, and
20 somebody else was outside of the house either in a truck or
21 outside the truck, it'd be very muffled?

22 A. Yes --

23 MR. CARLYON: That's all I have.

24 THE WITNESS -- I would believe so.

25 MR. CARLYON: That's all I have

1 THE COURT: May the witness be excused?

2 MR. CARLYON: Yes.

3 THE COURT. Thank you

4 MR. CARLYON: The State would like to admit the DVD
5 of the interview. I know you have concerns time-wise about
6 that.

7 THE COURT: Well, and disclosure-wise, too.

8 MR. CARLYON: I gave him a copy. I know he hasn't
9 had a chance to watch it, but I received it late this morning
10 and, as soon as I did, made copies.

11 THE COURT: I understand that. And disclosure-wise,
12 usable disclosure. Am I wrong?

13 MR. CARLYON: In a detention hearing that's being
14 held within two days of it in a case of this nature, you
15 typically don't get all the reports done.

16 THE COURT: I understand that. And --

17 MR. CARLYON: You know --

18 THE COURT: -- you got to --

19 MR. CARLYON: -- we're --

20 THE COURT: -- if you're defending it, you should
21 have the right to review -- those were charged on, and this is
22 the -- essentially the equivalent of the report of the
23 interrogation or at least interview by Officer Neckel and
24 Commander Avila

25 MR. CARLYON: It --

1 or did you have an offer of proof as to the issue of probable
2 cause?

3 MR BREWER: No offer of proof, Judge. With regard
4 to the second prong, I would need just a bit of time to speak
5 with an individual before I can put evidence that would --

6 THE COURT: Okay

7 Mr. Carlyon, did you have additional witnesses that
8 you wanted to present as to the grounds in 23(d)?

9 MR CARLYON: Just the evidence that has been
10 provided to the Court based upon the -- that's presented in
11 the probable cause portion. Once again, I would ask for the
12 admission of the DVD because I think it is appropriate for
13 some of the demeanor. I understand what the Court's ruling's
14 going to be, but I want to request it again.

15 THE COURT Same ruling.

16 MR. CARLYON: Respectfully disagree. For appeal
17 purposes, I'll respect the Court's ruling

18 THE COURT: All right.

19 Mr. Brewer?

20 MR BREWER: Yes, Judge?

21 THE COURT: Rather than forcing you to conduct that
22 conversation in front of a whole bunch of witnesses and
23 overhearing people, why don't we take about a five-minute
24 break?

25 MR BREWER: Okay.

1 THE COURT: All right. Thank you

2 THE CLERK: All rise

3 (Whereupon a recess was held from 6:41:38 p m. to
4 6:59:48 p m.)

5 THE COURT: Thank you very much. Please have a
6 seat.

7 (Brief pause.)

8 THE COURT: Mr. Carlyon, what -- okay. First of
9 all, we're back on the record in JV2008065 --

10 MR. BREWER: You may want to hold on just a minute,
11 Judge

12 THE COURT: Let's wait for the minor to return
13 (Pause.)

14 THE COURT: Okay. Let the record show that the
15 minor, Christian Romero, is present, Mr. Brewer, and the State
16 is present by way of Mr. Carlyon The Court's made a finding
17 of probable cause, and the next issue is outlined in Rule
18 23(d).

19 Mr. Carlyon, did you have any witnesses that you
20 wanted to present in that regard?

21 MR CARLYON. Your Honor, as before we took the
22 break, I was relying on the testimony that was brought forth
23 in the probable cause, and you already denied my motion for
24 submission of the video.

25 THE COURT: Okay. Mr. Brewer, did you have any

1 evidence that you wish to produce at this time?

2 MR BREWER: Judge, what we're -- what we're
3 planning on doing is going ahead and agreeing for the time
4 being that there is a basis to hold him. However, we would
5 like to keep any avenue to address the Court again with regard
6 to that when maybe new information arises that Mr. Romero may
7 have a place to go. At the present time, there isn't one.
8 And so we are going to ask that that be deferred until Ms.
9 Cooper has an opportunity to contact -- or maybe something
10 will come up and she'll be able to address that issue.

11 I spoke with Mr. Carlyon, and I believe he would
12 agree with that; that we will be allowed to raise that at a
13 time in the future.

14 THE COURT: Okay I just took a quick review of
15 23(h). I believe your analysis is correct. There is a
16 requirement for a motion to allege material facts not
17 previously presented. It also, however, says that it can be
18 reviewed on the motion of the prosecution or on the Court's
19 own motion. The Court's inclined to accept your reservation
20 of the right to present evidence and to address the question
21 of release at a later time.

22 It's always been my view that it's one of those
23 things that can be addressed at any hearing, even if not
24 previously brought to the Court's attention by a motion. So
25 that's just the way I approach it.

1 MR. CARLYON: And I have no problem with that,
2 Judge. I would just like some advance notice so that I don't
3 show up expecting a pretrial hearing and all of a sudden it's
4 a release hearing.

5 THE COURT Well --

6 MR. CARLYON I'd just like a little bit of notice.

7 THE COURT: Okay. We're all dealing in a -- in a
8 new era because the State's got victim notification
9 obligations. So with that said, based on the matters
10 previously presented and subject to the defense opportunity to
11 raise the issue again and present other matters regarding the
12 propriety of detention, the Court will find pursuant to
13 23(d)(2) and (4) First of all, the Court is concerned that
14 the minor may, without detention, commit an offense injurious
15 to himself or his -- there is a reasonable likelihood That's
16 my concern.

17 The Court will find by probable cause that the
18 interests of the minor and the public require custodial
19 protection. That said, it's my understanding that the minor's
20 biological mother is here in town and has traveled a great
21 distance

22 MR. BREWER That's correct, Judge.

23 THE COURT: Okay. We've got our next hearing -- at
24 least a status conference set Monday. Okay.

25 Mr. Colwell, I'm going to put you on the spot for a

1 moment. What accommodations can you make in detention -- in
2 the detention facilities -- Ms. Himes, feel free to inform me
3 as well -- to allow face to face visits with the minor by his
4 biological mother as well as his other relatives? I'm most
5 concerned about the people that have come the farthest.

6 MS HIMES Yes. And all they would need to do is
7 contact us and let us know when they would like to come, and
8 we can make that happen.

9 THE COURT: Okay. Mr Carlyon, Mr. Brewer, can you
10 make a point of making Ms. Himes' contact information
11 available to the minor's mother?

12 MR. BREWER: I can, Judge, if the State has that.
13 I'm not sure I have the phone number, but I can --

14 MR CARLYON She's right there We'll have her
15 write it on a piece of paper.

16 THE COURT: Ms. Himes is right there. She's --

17 MR. BREWER: Oh. Okay.

18 THE COURT: -- she's in charge of the facility.

19 (Laughter.)

20 MR BREWER: Yeah, we can do that, Judge.

21 THE COURT: Okay. All right.

22 Mr. Colwell, as a policy question, any problems with
23 that? Who is -- first of all, who's the minor's PO going to
24 be?

25 MR COLWELL: It's going to be Andrew Maestas.

1 THE COURT: Okay. And he's unavailable this week,
2 and it's my understanding you've made a point of familiarizing
3 yourself with this case. Is that correct?

4 MR. COLWELL: Yes.

5 THE COURT Can you arrange for a psych eval to be
6 started?

7 MR. COLWELL: Yes.

8 THE COURT Okay Mr. Carlyon, did you not have --
9 did you have something else that you wanted to bring up?

10 MR. CARLYON: Yes, Your Honor. We'd request that
11 the Court initiate with CPS a dependency hearing, a matter on
12 the same juvenile

13 THE COURT. Okay. It's always fun to order Mr
14 Sheets to do things in his absence.

15 It's ordered that the Department of Economic
16 Security Child Protective Services or the Division of Youth
17 and Family or something like that commence an investigation
18 with an eye to initiating dependency proceedings I'm going
19 to ask that copies of the Minute Entry from this hearing go to
20 Mr. Sheets at the AG's office in Flagstaff, to CPS here in
21 Saint Johns

22 Do we need to notify anybody else?

23 MR. CARLYON Just to CPS, attention of Ms Orona.

24 THE COURT: Christie Orona?

25 MR. CARLYON: Yeah.

1 THE COURT: Okay.

2 MR. CARLYON: Who I believe is present now, or she
3 was.

4 THE COURT: Ah. There she is. Okay.

5 It's also ordered referring this matter to Ms. Ryan
6 for review and possible assignment of a CASA.

7 Okay. Anything else we need to do this evening?

8 MR. BREWER: Judge, I'd ask that a GAL be appointed
9 as well.

10 THE COURT: In addition to a CASA and in addition to
11 an attorney?

12 MR BREWER: Uh-huh

13 MR. CARLYON I'm sorry, Judge. I didn't..

14 THE COURT: Mr. Brewer is requesting a Guardian Ad
15 Litem.

16 MR. CARLYON: No objection to that. It seems
17 appropriate.

18 THE COURT Okay.

19 MR. CARLYON: Just --

20 THE COURT: Mr. Brewer, I'm not sure who's
21 available. But do you mind terribly if I refer the matter to
22 the Court Administrator for assignment?

23 MR. BREWER: No. That's fine, Judge.

24 THE COURT: Okay

25 MR. CARLYON: For clarification of the GAL; in both

1 the juvenile case and the dependency, or only the dependency?

2 THE COURT: Why would it be limited?

3 MR. CARLYON: I have never seen a G --

4 THE COURT: You've never seen a GAL in a delinquency
5 case?

6 MR. CARLYON: -- a GAL come in in a juvenile and
7 talk.

8 THE COURT: Okay.

9 MR. CARLYON: That doesn't mean it can't happen I
10 just --

11 THE COURT: All right. Let's leave it at referring
12 the matter to the Court Administrator for the assignment of a
13 Guardian Ad Litem with a specific request that the Court
14 Administrator locate someone for that purpose who would be
15 willing to attend upon delinquency proceedings as well as
16 dependency proceedings.

17 MR. CARLYON: Okay.

18 THE COURT: Does that cover it, Mr Brewer?

19 MR. BREWER: I believe so, Judge. I have a couple
20 other issues that I'd like to raise

21 THE COURT: Okay. Go.

22 MR. BREWER: Regarding the evaluation for
23 competency, I certainly understand the need for that.
24 However, I also have a desire to protect my client. My
25 interest would be that a competency evaluation be done for

1 purposes of defense, and then we make a determination of
2 whether or not we want to disclose that based on the
3 information that's provided in there because there could be a
4 fairly scary, I guess, you know, report, and I would rather
5 not have the Court order the State review that.

6 And I don't know if it's -- if it's normally this
7 way, but that's something we would not be able to redact. We
8 would be redacting his statements and things of that nature,
9 but nothing with regard to what the -- what the diagnosis is
10 or anything like that. And so I'm asking that the Court order
11 an evaluation be done strictly for defense or for the defense
12 to use as a defense. And if it becomes an issue that he is in
13 fact not competent, we'd certainly then provide that to the
14 Court and proceed under those --

15 THE COURT: Okay. Well, it wasn't intended
16 necessarily as a -- exclusively as a competency evaluation. I
17 think your concerns are valid. I would, however, point out
18 there's a countervailing concern from the point of view of the
19 Juvenile Probation Department to take the view of looking
20 after the minor's best interests as well; not merely his legal
21 best interests, but the entire picture.

22 Mr Colwell, how long is it likely to take to set
23 something like that up anyway?

24 MR. COLWELL Normally it's been taking about 30
25 days to get the completion of it done. That's coming from

1 ordering it to getting it back.

2 THE COURT: All right

3 MR. COLWELL: He's pretty good at working with it
4 and it might be shorter than that, but it -- on average, it's
5 30 days.

6 MR. BREWER: And who are they using, Judge?

7 MR. COLWELL: We have been using Dr Cady from
8 Flagstaff.

9 THE COURT: Okay.

10 MR. BREWER: Okay.

11 THE COURT: Is Dr. Cady prepared to disclose the
12 report either to the Court under seal for review by the
13 defense or directly to the defense and to delay disclosure
14 until the defense consents to dissemination?

15 MR CARLYON. Can we address this on Monday when Ms
16 Cooper is here? That way, we can address recommendations from
17 both Probation, State and Defense as to maybe who would be
18 appropriate to do this? There's the different type of
19 competency; one, it can assist in their defense -- their own
20 defense versus more of they acknowledge some mental health
21 issues, to see where Ms. Cooper, who has some more -- may make
22 a slightly different strategy decision than Mr. Brewer may be
23 thinking. Maybe she's the more appropriate one for us to have
24 that discussion with.

25 THE COURT: Can I get an answer to my question to

1 Mr Colwell first?

2 MR CARLYON: Probably.

3 THE COURT: Okay.

4 MR. CARLYON: Because you're the judge.

5 THE COURT: Okay Is Dr. Cady prepared to do that?

6 MR. COLWELL: He can -- he's -- in the past, he's
7 done both the -- he does both our competencies and both our
8 evaluations

9 THE COURT: Okay Is he prepared to either report
10 to the Court under seal for defense review or report only to
11 the defense until the defense consents to disclosure?

12 MR. COLWELL: He's done that in the past.

13 THE COURT: Okay So bright and early Monday --

14 MR. COLWELL Okay.

15 THE COURT -- start the wheels turning.

16 Okay. Mr. Brewer, if you, on behalf of the Wood Law
17 Office, elect to stay on, love to chat with you on Monday
18 Okay? And to that extent, the issue is ultimately going to be
19 punted to Ms. Cooper. But for the immediate present, I don't
20 want it disclosed until there's some rubric of how we're going
21 to proceed based on Mr. Brewer's current objection -- or
22 current concerns.

23 Is that a fair enough way of dealing with it?

24 MR. BREWER: It is, Judge.

25 THE COURT: Okay Does that satisfy your concerns

1 too?

2 MR. CARLYON: From what I understand, the Court is
3 saying, yes.

4 THE COURT Okay. Basically we're sort of punting
5 the issue till Monday, maybe to Ms. Cooper, maybe to Mr.
6 Brewer depending on what the Wood Law Office decides

7 MR. CARLYON: Are you allowing them to stay on if
8 they choose and automatically bump Cooper off or asking them
9 to be co-counsel? I'm not following you there.

10 THE COURT: Okay. If the Wood Law Office is willing
11 to volunteer to continue with this case, given the effort
12 that's been put into it so far, I'm not going to say to him,
13 "On, no You have to get out of it " On the other hand, the
14 assignment is to Ms. Cooper. Mr. Brewer is here as a courtesy
15 and -- to the Court and on a special appearance So --

16 MR. CARLYON: Ms. Cooper is going to love you

17 THE COURT: Well, it's not her choice at this point
18 On the other hand, if the Wood Law Office wants to stick with
19 it, I think they -- you know, that option should be available
20 to them --

21 MR. CARLYON: That's fine.

22 THE COURT: -- to allow a continuity of
23 representation

24 MR. CARLYON: Well, I have no problem with that. I
25 wasn't quite following what you were saying. It almost

1 sounded at one point you were going to let them co-counsel.
2 And I thought that would be an interesting mixture

3 THE COURT: I think there needs to be a single
4 attorney making legal decisions, but, at this point, I think
5 the Wood Law Office has the choice of whether or not to
6 continue, and I'm not going to attempt to influence that one
7 way or another.

8 MR. CARLYON Okay.

9 THE COURT: Okay

10 MR. CARLYON: Now I understand what you're saying.

11 THE COURT: Okay. Is there anything else we need to
12 address this evening?

13 MR. BREWER: There is, Judge. I would request a
14 copy of the transcript of this hearing either for ourselves or
15 for Ms Cooper, who will need to know this stuff.

16 THE COURT: Okay. No, I understand.

17 MR BREWER: In addition --

18 THE COURT: It's ordered that a transcript be
19 prepared -- yes?

20 MR. CARLYON No, I have no trouble with the
21 transcript. I'm going to go back to the other issue if you're
22 done

23 THE COURT: One more thing. Okay

24 MR. CARLYON: Is there a time when it gets declared
25 if you're going to keep her or not? Because I don't know

1 whether really to separate this --

2 THE COURT: Yeah, Monday

3 MR. CARLYON Monday at three o'clock when we have
4 the hearing? Because I don't know how much to work with Ms
5 Cooper or if I should be working with Mr Brewer when he comes
6 at 9:00 I guess they could --

7 THE COURT: I think --

8 MR. BREWER: I'll know -- I'll know on Monday,
9 Judge. I got to talk to --

10 THE COURT. I think Mr. Brewer will probably know
11 first thing on Monday morning, and everything will become
12 apparent in good time.

13 MR. CARLYON: Okay.

14 THE COURT: Okay? Like --

15 MR. BREWER: Judge, one last issue --

16 THE COURT: -- within 72 hours

17 MR. BREWER: I would -- you know, and it's probably
18 fairly clear, but there's been some -- a bit of confusion. I
19 would ask the Court to order anyone from a government agency
20 speaking with the juvenile without the presence of counsel --

21 THE COURT: Any government agency? Like.. ?

22 MR BREWER: Except for Detention. I mean about the
23 case, Judge. I don't want him making any other statements. I
24 don't want any other statements slipping out accidentally. I
25 just don't want anything to get in that realm at all.

1 THE COURT: Okay

2 MR. BREWER: And so --

3 THE COURT: Sounds to me like a Sixth and Fifth
4 Amendment advocatation. I think it needs to be respected.

5 Okay Mr. Colwell?

6 MR. BREWER: I believe those are all the --

7 THE COURT: Please --

8 MR. BREWER: -- concerns I have at this time

9 THE COURT: -- please pass that message to Mr.
10 Maestas Okay.

11 MS HIMES. Your Honor, I have a concern. Can we
12 talk about who we should have come visit him so that I don't
13 have --

14 THE COURT: Okay.

15 MS. HIMES: -- a ton of people showing up?

16 THE COURT: First of all, his mom that was here from
17 --

18 MR. CARLYON: Mississippi.

19 THE COURT: -- Mississippi?

20 MR. BREWER. Uh-huh.

21 THE COURT: Okay. Who else?

22 MR CARLYON. Step-mom

23 THE COURT Okay.

24 MS. HIMES: And his step-mom.

25 THE COURT: Okay

1 MS HIMES: And who else?
2 UNIDENTIFIED SPEAKER: His grandmother.
3 MS. HIMES: Grandmother Okay.
4 THE COURT: Okay.
5 UNIDENTIFIED SPEAKER Elizabeth Castillo
6 (indiscernible; away from microphone)
7 MS. HIMES Anybody else? The grandfather?
8 MR. BREWER: No.
9 MS. HIMES: No? Okay.
10 THE COURT: Okay.
11 UNIDENTIFIED SPEAKER: (Indiscernible; away from
12 microphone) from Panama
13 THE COURT All right. Does that answer you
14 question?
15 MS. HIMES: Yes. Thank you.
16 THE COURT: Okay Anything else?
17 MR BREWER No, Judge
18 THE COURT: Anything from the State?
19 MR. CARLYON That covered it.
20 THE COURT: Mike?
21 MR CARLYON: That covered it.
22 THE COURT: Okay. We're in recess.
23 MR. CARLYON: Thank you.
24 THE COURT: Thank you
25 MR. BREWER: Thank you.

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(Whereupon, the proceedings were concluded at
7:17:06 p.m.)

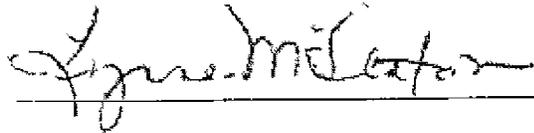
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C E R T I F I C A T E

I, LYNNE McSEATON, CERT, do hereby certify that the foregoing pages numbered 1 through 184 constitute a full, true, and accurate transcript from a copy of the electronic recording of the proceedings had in the foregoing matter, all done to the best of my skill and ability.

I further certify that I am in no way related to any of the parties and that I am not in any way interested in the outcome thereof.

SIGNED and dated this 18th day of November, 2008.



Lynne McSeaton

Certified Electronic Court Reporter
and Transcriber No. 00281