

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

JEMAR MATTHEWS,  vs.  THE STATE OF NEVADA,  	Appellant,    Respondent,	Supreme Court No. 62241  <b>APPELLANT'S APPENDIX VOLUME III</b>	Electronically Filed Aug 14 2013 01:51 p.m. Tracie K. Lindeman Clerk of Supreme Court
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**APPELLANT'S INDEX VOLUME III**

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 12th day of August, 2013, a true and copy of above and foregoing APPELANTS APPENDIX VOL. III was served on all counsel via the Court's electronic filing system to all counsel of record listed below:

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1 Is that correct, Mr. Singer?

2 MR. SINGER: Yes. I don't --

3 THE COURT: Mr. Figler.

4 MR. SINGER: I had other objections that  
5 need to be made.

6 THE COURT: All right. Let's go into those.

7 MR. SINGER: One is my client was portrayed  
8 on opening in shackles, with a waist shackle and arm  
9 shackles, which is not going to be anything I don't  
10 believe is going to come in. It shouldn't come in and  
11 I'll object to it coming in, so it's going to be hard  
12 to --

13 THE COURT: Are you making a motion for  
14 mistrial at this time?

15 MR. SINGER: No.

16 THE COURT: All right.

17 MR. SINGER: And the second thing is, Judge,  
18 Ms. Lewis referred to my client as being charged with  
19 two counts of assault with a deadly weapon on Officers  
20 Cupp and Walters (sic) which is a mischaracterization of  
21 the information before Your Honor.

22 Only Mr. Matthews is charged with those last  
23 two counts, and I don't know how you're going to correct  
24 that, but I just want -- I would ask you to correct it.

25 THE COURT: I believe you can address that

1 at the time of closing argument. The charging document  
2 will speak for itself.

3 If he's not charged, then, clearly, they  
4 can't consider that simply because Ms. Lewis may have  
5 made a misstatement -- may or may not have made a  
6 misstatement in opening.

7 Is there anything else to come before the  
8 Court before we take our afternoon or our lunch recess?

9 MS. LEWIS: Judge, on behalf of the State, I  
10 just want to say there was no purposeful design in this  
11 State's presentation of the evidence during the opening.

12 If this is a murder case, and the jury knows  
13 it's a murder case, I don't think it's unusual to see a  
14 picture of a body laying on the ground as it happened.  
15 Obviously, that exhibit is going to be admitted.

16 And with regards to the photographs of  
17 Mr. Singer's client, that's how he was that evening.  
18 It's vital to the State's case to present to this jury  
19 what he looked like.

20 He was wearing certain clothing, and he was  
21 described a certain way, and so that's the only  
22 photograph we have of him that evening.

23 I showed that exact photograph to Mr. Singer  
24 this morning before we began here at the desk. And I  
25 said this is the photograph I'm using of your client.

1           There are many photographs of his client of  
2 different angles, different views, different sides. I  
3 pointed to that photograph, and I said that's the one  
4 I'm using because it's the only picture that shows his  
5 full front side.

6           THE COURT: All right. The record's made.

7           We're in recess for one hour, until 1:30.  
8 If you gentlemen could be back a little bit early,  
9 though, I'd appreciate it because there's always  
10 something outside the presence.

11           MR. SINGER: Judge, the courtroom  
12 (indiscernible).

13           THE COURT: Excuse me?

14           MR. SINGER: The courtroom's going to be  
15 secured (indiscernible).

16           THE COURT: Actually, we're going to have a  
17 little bit of a swearing in, but you can, you can leave  
18 your -- you can leave your --

19           (Court recessed at 12:26 p.m. until 1:29 p.m.)

20           THE COURT: -- 228460, State of Nevada,  
21 plaintiff, versus Pierre Joshlin and Jamar Matthews.

22           Record should reflect presence of all  
23 counsel, Mr. Joshlin and Mr. Matthews with -- at counsel  
24 table.

25           Do we have anything to come outside or

1 before the Court outside the presence of the jury?

2 MR. FIGLER: Not --

3 THE COURT: Now, I don't know where we're at  
4 in terms of the gunshot residue, but I want defense to  
5 have access to all that evidence as we discussed  
6 earlier, so I'm going to make -- I'm directing the State  
7 to provide you with that information.

8 MR. FIGLER: All I have right now is a P  
9 number and a representation that there's something over  
10 there that's relevant. That's where we're at right this  
11 second.

12 THE COURT: All right. Well, that's my  
13 order, so anything else?

14 MR. BATEMAN: They've got the report as  
15 well.

16 THE COURT: Good.

17 MR. BATEMAN: I mean, we're correct?

18 MR. FIGLER: Oh, I'm sorry. We do have that  
19 report from Texas.

20 THE COURT: All right.

21 MR. FIGLER: All right.

22 THE COURT: As long as you have the report  
23 and the CV and the declaration --

24 MR. FIGLER: But I don't know that we  
25 have --

1 THE COURT: But still --

2 MR. FIGLER: -- the CV for the witness that  
3 they're going to put on the stand. I don't think we've  
4 got that.

5 (Off-record colloquy)

6 THE COURT: And I want you to have access to  
7 that bag in terms of the foundation. That was your  
8 concern, and I think that's legitimate, and I want you  
9 to have an opportunity to review it.

10 MR. FIGLER: Thank you, Your Honor.

11 THE COURT: All right. Anything else? We  
12 have the jury in the jury room. We can bring them in.

13 (Off-record colloquy)

14 MR. FIGLER: (Indiscernible).

15 THE COURT: Well, you know, I've got eight  
16 calendar calls tomorrow. That's why I'm pushing you  
17 guys. I've got a calendar I've got to work, and I'm  
18 going to work it.

19 MS. LEWIS: What's our schedule tomorrow?

20 THE COURT: Tomorrow. All right. That's a  
21 fair question. Too many because we start floating  
22 tomorrow.

23 MR. SINGER: (Indiscernible); is that right?

24 THE COURT: We're going to do my a.m.  
25 calendar's in 15B trial's in 15B. 15B is Department 22,



1 and it's a huge criminal calendar for me tomorrow, so I  
2 want to start at -- what do you guys think about 12:30?  
3 1:00 o'clock.

4 MS. LEWIS: That late?

5 THE COURT: It is a -- all right. How about  
6 11:00 o'clock?

7 MR. FIGLER: How far we going today?

8 MR. BATEMAN: Judge, you'll be done with  
9 that at 10:00.

10 MS. LEWIS: Only until 5:00.

11 THE COURT: All right. Let's --

12 MR. BATEMAN: I have the upmost confidence.

13 MS. LEWIS: Don't you take the bench at like  
14 8:15?

15 THE COURT: I take the bench at 8:15.

16 MS. LEWIS: Oh, you'll be done by 10:30.

17 THE COURT: All right. Let's shoot for  
18 10 --

19 MR. BATEMAN: 30.

20 THE COURT: -- 30.

21 MR. BUNIN: Tomorrow at 10:30?

22 THE COURT: Tomorrow at 10:30.

23 THE CLERK: For the trial?

24 THE COURT: For the trial. I'm killing  
25 Sharon because --

1 THE CLERK: Yeah. It's the calendar court,  
2 guys.

3 MR. SINGER: In 15?

4 THE COURT: Correct. And then we move down  
5 to --

6 MR. SINGER: (Indiscernible).

7 MR. BATEMAN: You'll be -- yeah. You'll be  
8 in 15B for the trial.

9 THE COURT: How are we going to do that  
10 because I'm homeless.

11 MR. FIGLER: It's the saddest story I've  
12 ever heard.

13 THE COURT: It is my life right now. We'll  
14 get an answer for you. I would love to start as quickly  
15 as I can in the morning, and so 10:30 would be great.

16 MR. FIGLER: Depending on your calendar.

17 THE COURT: But, currently, the way it's  
18 worked out is a.m. means 22, right?

19 THE CLERK: 22. (Indiscernible).

20 THE COURT: And then we're just going to  
21 have to move everything down. God, that's just --

22 MR. FIGLER: Sucks. How late are we going  
23 this evening, Judge?

24 MS. LEWIS: 5:00.

25 MR. BATEMAN: Until 5:00.

1 THE COURT: I understand there's a baseball  
2 game. 5:00 o'clock.

3 MR. SINGER: 5:00.

4 THE COURT: 5:00 o'clock.

5 MR. SINGER: (Indiscernible).

6 THE COURT: You don't want to push until  
7 7:00 again?

8 MS. LEWIS: Well, we've only timed witnesses  
9 until 5:00 because you said until 5:00.

10 THE COURT: Yeah. Okay.

11 THE CLERK: Okay. So the trial then, what  
12 did we decide, 10:00?

13 (Jury present)

14 THE BAILIFF: Jury's present, please?

15 THE CLERK: And then we'll just --

16 THE COURT: 10:00.

17 THE CLERK: -- try to wing it? Okay. I'll  
18 just tell her to put it on. Okay.

19 THE BAILIFF: Your Honor, please, panel  
20 present.

21 THE COURT: Thank you.

22 Back on the record in C228460, State of  
23 Nevada, plaintiff, versus Pierre Joshlin and  
24 Jamar Matthews.

25 Do all counsel stipulate to the presence of

1 the jury?

2 MS. LEWIS: The State so stipulates.

3 MR. FIGLER: Yes, Your Honor.

4 THE COURT: State --

5 MR. SINGER: Yes, Your Honor.

6 THE COURT: -- prepare to call your next  
7 witness.

8 MS. LEWIS: The State calls Myniece Cook.

9 THE CLERK: Oh, I'm sorry.

10 MYNIECE COOK, PLAINTIFF'S WITNESS SWORN

11 THE WITNESS: Yes.

12 THE CLERK: Thank you. You may be seated.

13 Ma'am, state your name loudly for us and spell both your  
14 first and last name.

15 THE COURT: Dan, we need paper.

16 THE BAILIFF: Where's your book?

17 UNIDENTIFIED JUROR: (Indiscernible).

18 THE BAILIFF: Everybody look under their  
19 chairs. We're missing a book.

20 (Off-record colloquy)

21 THE BAILIFF: Everybody have their right  
22 notes?

23 UNIDENTIFIED JUROR: Yes.

24 THE BAILIFF: Anybody (indiscernible) any  
25 notes? Everybody have the right number on the back of

1 their book?

2 UNIDENTIFIED JUROR: Um-h'm. Yes.

3 (Off-record colloquy)

4 THE BAILIFF: You didn't take -- anybody  
5 took them -- take them back there?

6 UNIDENTIFIED JUROR: (Indiscernible).

7 THE BAILIFF: Did you have any notes?

8 UNIDENTIFIED JUROR: Yes.

9 THE COURT: Well, for the time being --

10 THE BAILIFF: I (indiscernible).

11 THE CLERK: Please state your name for us  
12 loudly and spell it.

13 THE WITNESS: Myniece Cook, M-y-n-i-e-c-e,  
14 C-o-o-k.

15 THE CLERK: Thank you.

16 MS. LEWIS: May I precede?

17 THE COURT: You may.

18 MS. LEWIS: Thank you.

19 DIRECT EXAMINATION

20 BY MS. LEWIS:

21 Q. Ms. Cook, how old are you?

22 A. 27.

23 Q. And what do you do for a living?

24 A. I watch the heart monitors.

25 Q. Are you a nurse?

1 A. A telemetry tech.

2 Q. I'm sorry?

3 A. Telemetry tech.

4 Q. Okay. So you work in a hospital?

5 A. Um-h'm.

6 Q. Is that yes?

7 A. Yes.

8 Q. Okay. And what is your relation to

9 Mercy Williams?

10 A. That's my first cousin.

11 Q. I want to direct your attention to the evening of  
12 September 30th of last year, 2006. Do you remember what  
13 you were doing that date and specifically that evening?

14 A. Yes.

15 Q. Were you with your cousin on that evening?

16 A. Yes.

17 Q. And where were you at?

18 A. At a friend house.

19 Q. Okay. Before you were at that friend's house,  
20 where had you been?

21 A. Down to my grandmother's house.

22 Q. Okay. And what area does your grandmother live  
23 at? Just a rough estimate of what area.

24 A. Between Martin Luther King and Lake Mead.

25 Q. Okay. And what were you doing at your grandma's

1 house?

2 A. My grandma had cooked earlier that day. All my  
3 family was over there.

4 Q. Okay. Do you remember what day of the week it  
5 was?

6 A. Saturday.

7 Q. Okay. And did so did you have some plans that  
8 Saturday night that included Mercy?

9 A. We were getting ready to go out for her birthday.

10 Q. And when was her birthday?

11 A. October 3rd, that Tuesday.

12 Q. Okay. So you were celebrating a little bit early  
13 or your plans were to celebrate a little bit early?

14 A. Right.

15 Q. Okay. So what happened when you left your  
16 grandmother's house? Who was with you?

17 A. It was me, Mercy and Michel'le.

18 Q. And who's Michel'le?

19 A. My little cousin.

20 Q. Is that Michel'le Tolefree?

21 A. Yes.

22 Q. How old is she?

23 A. 16.

24 Q. Okay. And is she also cousins with Mercy?

25 A. Yes.

1 Q. So all three of you are cousins?

2 A. We're all first cousins.

3 Q. Okay. Do you have the same -- are your mothers  
4 related or your fathers or --

5 A. They're sisters.

6 Q. Okay. So your mother and Mercy's mother --

7 A. Mercy's mom and Michel'le mother.

8 Q. They're all sisters?

9 A. Um-h'm.

10 Q. Is that yes?

11 A. Yes.

12 Q. Okay. Were they all at grandma's house earlier  
13 in the day?

14 A. Yes.

15 Q. Okay. So when you guys left -- who was the  
16 friend? You said you stopped at a friend's house. Who  
17 was the friend that you were visiting?

18 A. It was Michel'le's little friend.

19 Q. Okay. Do you remember his name?

20 A. Maurice.

21 Q. Is that Maurice Hickman?

22 A. Yes.

23 Q. And do you know where he lives?

24 A. Down the street from my grandmother house on  
25 Balzar.



1 Q. Okay. And is his house the corner house on  
2 Balzar?

3 A. Yes.

4 Q. Okay. When you stopped there to visit, were you  
5 visiting inside his house with him or outside or how did  
6 that take place?

7 A. We had just stopped by for Mich to say hi, and we  
8 never went inside the house.

9 Q. Okay. And were you driving that night?

10 A. Yes.

11 Q. Were you in your car or did you get out?

12 A. We got out. At first we was in the car, and then  
13 we got out.

14 Q. Okay. And when you say we got out, is that you  
15 and Mercy and Michel'le?

16 A. Yes.

17 Q. Okay. And besides Maurice who you were talking  
18 to outside, who else was out there?

19 A. Just me, Mercy and Michel'le.

20 Q. Okay. And where were you outside talking with  
21 Maurice?

22 A. Just standing in the yard in front of a  
23 greenish-blue car.

24 Q. Okay. That's the yard of Maurice's house?

25 A. Yes.

1 Q. Okay. Do you remember if you saw any other  
2 people out there standing outside or hanging out or  
3 anything?

4 A. At first, no.

5 Q. Okay. Did there come a point in time when you  
6 saw some other people?

7 A. Yes.

8 Q. Tell us about what happened.

9 A. We was standing out there talking, and a guy was  
10 standing there with his hand behind his back, and Mercy  
11 looked up and was like who is that.

12 MR. FIGLER: Object to what was said as  
13 hearsay.

14 MS. LEWIS: Judge, I'm not offering it for  
15 the truth of the matter. I'm offering it to show what  
16 she did as a result.

17 THE COURT: Overruled.

18 BY MS. LEWIS:

19 Q. Go ahead. You said that Mercy looked up and then  
20 what did you do?

21 A. Everybody looked, and it was a guy standing there  
22 with his hands behind his back, and then like three  
23 other guys walked up and started shooting.

24 Q. Okay. When they started shooting, what did you  
25 do?

1       A. Well, first I was -- well, Michel'le and Maurice  
2 started running and Mercy, she just stood there in  
3 shock, so I didn't want to run off and leave her, so I  
4 stood there and told her we had to run.

5       Q. Okay. And did there come a point in time when  
6 you and Mercy ran?

7       A. Yes.

8       Q. How did you do that?

9       A. Once she came to, I -- we grabbed each other arm  
10 and turned around to try to run and --

11      Q. Were you able to run?

12      A. Not really. They ambushed us.

13      Q. Okay. What happened?

14      A. We turned around to try to run and Mercy got  
15 shot, and when she fell I fell, and I just laid there  
16 and played dead.

17      Q. Okay. Did you know that she got shot right away  
18 when she fell?

19      A. Yeah. Kind of.

20      Q. Okay.

21      A. Because I heard her like make a noise, and then  
22 she got really heavy on my arm, and then she --

23      Q. What noise did you hear her make?

24      A. Like a uhh (phonetic).

25      Q. Okay. And when she got heavy on your arm, is

1 that when she fell?

2 A. Yes.

3 Q. Okay. And then you fell as well?

4 A. Yes.

5 Q. Okay. Did you stay down or did you get up?

6 A. I stayed down --

7 Q. Okay.

8 A. -- because they were still shooting.

9 Q. Okay. And what happened after that?

10 A. After I didn't hear anymore gunshots, I got up  
11 and I ran to the side of the house, and I was looking  
12 around because it was like complete silence now, and I  
13 heard Maurice's mom opening the door, and I ran to the  
14 door.

15 Q. Okay. Did you see where Maurice and Michel'le  
16 ran toward when they -- you said they took off first.  
17 Did you see where they --

18 A. Right.

19 Q. -- went towards?

20 A. Towards the Circle Parkway.

21 Q. Okay. And when you said that you got up and you  
22 waited until you didn't hear anymore gunshots, did you  
23 ever see where the people who were shooting -- where  
24 they ran to when they left?

25 A. I heard footsteps towards Lexington Way because

1 they ran past me when I was laying on the ground.

2 Q. Okay. And human people did you see shooting?

3 A. It was about four.

4 Q. Were you able to get a look at anybody's face?

5 A. I just seen the silhouette.

6 Q. Can you give us an idea of what the four people  
7 that you saw looked like as far as race and maybe how  
8 old they might have appeared to you or anything like  
9 that?

10 A. When we looked up, I thought it was some little  
11 kids because they looked like they was about 16, 15, 16.

12 Q. And all of them looked to be the same like kids?

13 A. Yeah, pretty much.

14 Q. How about clothing? Do you remember anything  
15 about the clothing?

16 A. I remember all black from head to toe, all black.

17 Q. Okay. And what about the shots that were fired?  
18 Do you remember how many you heard?

19 A. Over 20.

20 Q. Were you injured in any way?

21 A. Yes.

22 Q. What injures did you receive?

23 A. I got shot in the wrist.

24 Q. And which wrist is that?

25 A. My left wrist.

1 Q. Okay. And did you see any injuries on Mercy?

2 A. Yes.

3 Q. Where?

4 A. In her head.

5 Q. Did you see Michel'le and Maurice after the  
6 shooting?

7 A. Not until the police had came and taped  
8 everything off. I didn't know where they had ran to.

9 Q. Okay. So you said that Maurice's mom came to the  
10 door, and that's when you got up and ran to the door,  
11 the front door, of the house as well; is that right?

12 A. Yeah.

13 Q. Okay. What did you do after that?

14 A. I went in the house and she was already on the  
15 phone with the police, and then I turned back around and  
16 walked back out to check on Mercy. And when I turned  
17 her over, she wasn't talking or anything.

18 Q. Is that when you noticed the --

19 A. That she had got shot in her head.

20 Q. And you pointed to your head. That's where you  
21 saw the injuries on Mercy?

22 A. Yes.

23 Q. Okay. Did you speak to anybody right away at  
24 that time out there?

25 A. The police, when the police came.

1 Q. Okay. And how did they come or how is it that  
2 you spoke to them?

3 A. They came like right after the shooting, and they  
4 asked me which way did they go, and I pointed the  
5 direction which way I heard the footsteps go.

6 Q. And which way did you point to?

7 A. Toward Lexington and Doolittle Way.

8 Q. Okay. And do you know if those same police  
9 officers -- was it more than one that you talked to or  
10 just one?

11 A. It was like -- I think it was three --

12 Q. Okay.

13 A. -- that got out the car -- out the van.

14 Q. And do you know if those three police officers  
15 who were in a van all left or did anybody stay with you?

16 A. It was one that stayed, and the other ones ran to  
17 chase whoever did it --

18 Q. Okay.

19 A. -- the ones who did it.

20 Q. And as far as the people that -- you said you  
21 only saw silhouettes of the people who were shooting.  
22 You didn't know who anybody was that night, did you?

23 A. No.

24 (Off-record colloquy)

25 MS. LEWIS: May I approach, Judge?

1 THE COURT: Yes.

2 BY MS. LEWIS:

3 Q. I'm going to show you a few pictures. Showing  
4 you State's Exhibits -- they have been previously marked  
5 and admitted -- State's Exhibit No. 70, 85 and 86.

6 See they're all marked like that. Take a look at  
7 those and -- to yourself -- tell me if you recognize  
8 them.

9 A. Yes.

10 Q. Okay. I'm going to take them back from you, and  
11 I'm going to put them up on the projector now so we can  
12 all look at what you're looking at.

13 Showing you first State's Exhibit 70, do you see  
14 in that picture where you were standing that night when  
15 you saw and heard the shots?

16 A. Yes.

17 Q. And can you show us in that picture where you  
18 would have been standing that night? You can make a  
19 mark on the screen. Use your finger and make a mark.

20 A. I was standing here up on the side of the car, on  
21 the inside of the car.

22 Q. Okay. Take your finger and just like -- like  
23 you're drawing on the screen (indiscernible).

24 A. Oh, okay. Right there.

25 Q. Okay. And are you on the outside of this car,



1 the car closer to the street or on the inside closer to  
2 the house?

3 A. On the inside closer to the house.

4 Q. Okay. And in relation to where you were  
5 standing, where were Mercy, Michel'le and Maurice  
6 standing?

7 A. Mercy was standing to the right side of me and  
8 Michel'le was standing to the left side of me, and  
9 Maurice was standing like right there with his back  
10 toward that way facing us.

11 Q. Okay. So Maurice had his back towards which way?

12 A. This way. His back was toward that way. He was  
13 facing that, so he was looking --

14 Q. And what street --

15 A. -- this way.

16 Q. -- is that way where you've --

17 A. His back was facing Lexington.

18 Q. Okay. And so were you guys all standing kind of  
19 in a little circle?

20 A. Yeah, pretty much.

21 Q. And showing you State's Exhibit 85, can -- do you  
22 see -- first of all, is this the same house on the side?

23 A. Yes.

24 Q. Okay. And which side of the street is this that  
25 we're looking at?

1 A. This is Lexington.

2 Q. Okay. And in relation to this exhibit or this  
3 picture, where would you be standing? Can you make  
4 another mark for us.

5 A. We were standing over there.

6 Q. Showing you --

7 (Off-record colloquy)

8 BY MS. LEWIS:

9 Q. I'm showing you State's Proposed Exhibit 96. Do  
10 you recognize that?

11 A. Yes.

12 Q. And does that fairly and accurately depict what  
13 you saw that evening of September 30th?

14 A. Yes.

15 MS. LEWIS: Judge, I move for the admission  
16 of State's Proposed 96.

17 THE COURT: Have you shown it to counsel?

18 MS. LEWIS: Yes.

19 THE COURT: Any opposition?

20 MR. BUNIN: No objection.

21 THE COURT: It will be admitted.

22 MS. LEWIS: Thank you.

23 (Plaintiff's Exhibit No. 96 admitted)

24 BY MS. LEWIS:

25 Q. And showing you State's Proposed --

1 THE COURT: Any objection?

2 MR. SINGER: No objection.

3 THE COURT: Thank you.

4 BY MS. LEWIS:

5 Q. Showing you State's Proposed Exhibit 97, do you  
6 recognize that photograph?

7 A. Yes.

8 Q. Do you know when that was taken?

9 A. Probably, I'd say about a couple weeks prior to  
10 this.

11 Q. A couple weeks prior to September 30th --

12 A. Right.

13 Q. -- 2006?

14 A. Yes.

15 Q. And does that fairly and accurately depict  
16 what --

17 A. 2007.

18 Q. -- this person looked like at that time?

19 A. Yes.

20 MS. LEWIS: Judge, I'd move for the  
21 admission of State's Proposed 97.

22 THE COURT: Any objection?

23 MR. BUNIN: I object to the relevance,  
24 otherwise submitted.

25 THE COURT: Any objection? Relevance is

1 overruled and admitted if Mr. Singer has any other  
2 objection.

3 MR. SINGER: No.

4 THE COURT: It's admitted.

5 (Plaintiff's Exhibit No. 97 admitted)

6 MS. LEWIS: Permission to publish.

7 THE COURT: Granted.

8 BY MS. LEWIS:

9 Q. And Exhibit 96, what is that a photograph of?

10 A. Of my arm.

11 Q. Okay. And where was that taken?

12 A. At the hospital.

13 Q. Okay. Do you have any scars or anything on your  
14 arm today to show where you received that injury?

15 A. Yes.

16 Q. Can you lift your arm up and show us. Okay. For  
17 the record, you have some scars on your left wrist on a  
18 couple different sides; is that right?

19 A. Yes.

20 Q. Do you have any problems with your wrist today?

21 A. Well, it's healing, but it's still kind of tender  
22 up in this area, but --

23 Q. And, finally, State's Exhibit 97, that's a  
24 photograph of who?

25 A. Mercy.

1 Q. And you said that was taken a few weeks before  
2 September 30th?

3 A. Yes.

4 MS. LEWIS: I'll pass the witness.

5 THE COURT: Cross.

6 (Off-record colloquy)

7 MR. BUNIN: You want your exhibit back?  
8 Thank you.

9 CROSS-EXAMINATION

10 BY MR. BUNIN:

11 Q. I have very few questions for you, Ms. Cook.

12 A. Okay.

13 Q. You know, it's not uncommon for young people like  
14 yourself in that neighborhood to be maybe hanging out in  
15 front of houses; is that right?

16 A. Right.

17 Q. Okay. Well, early on the first thing you saw was  
18 one person come around the corner of the house; is that  
19 right?

20 A. Yeah, one person standing there.

21 Q. One person standing there with his hands behind  
22 his back?

23 A. Um-h'm.

24 Q. Then you saw several others within the next few  
25 seconds; is that right?

1 A. (Indiscernible).

2 Q. You may have seen up to five people total; is  
3 that accurate?

4 A. It was four.

5 Q. Do you remember doing a recorded statement that  
6 night where you spoke to a police officer?

7 A. Right.

8 Q. And the police officer asked you some questions  
9 about what you saw that night?

10 A. Yes.

11 Q. And do you remember that evening telling the  
12 officer that there could have been as many as five  
13 people?

14 A. Yeah. I told him it could have been.

15 Q. Okay.

16 A. Yes.

17 Q. That's fine. Now, you actually didn't see anyone  
18 who did any shooting that night. You heard the shots,  
19 but you didn't actually see it. Is that --

20 A. I seen them before they started shooting.

21 Q. Did you see anyone -- you didn't see anybody  
22 while they were actually shooting?

23 A. Well, yeah.

24 Q. Okay. Do you remember also, you know,  
25 testifying, Ms. Cook --

1 A. Um-h'm.

2 Q. -- at a prior hearing, a preliminary hearing,  
3 also in this case?

4 A. Yes.

5 Q. Do you remember saying under oath at that hearing  
6 that you didn't actually see who did any shooting --

7 A. I didn't see a face --

8 Q. -- that night?

9 A. -- but I seen him. Yes.

10 Q. Okay. You don't know how many of the people you  
11 saw were actually shooting. You just know more than one  
12 was shooting.

13 A. Definitely.

14 Q. But you don't know how many total were shooting.

15 A. No.

16 Q. Okay. You can't identify any of the people that  
17 you saw that night.

18 A. No.

19 Q. As you sit here today you can't identify  
20 Jamar Matthews as anybody that was there that evening.

21 A. I can't identify him. No.

22 Q. Okay.

23 MR. BUNIN: I don't have any other  
24 questions. Thank you.

25 THE COURT: Mr. Singer.

1 MR. SINGER: Thank you, Judge.

2 CROSS-EXAMINATION

3 BY MR. SINGER:

4 Q. On direct you said the quote, "All black head to  
5 toe."

6 A. Yes.

7 Q. And if you could put a percentage on that, you  
8 sounded pretty sure to me, maybe that's just me. I  
9 don't know you, but would you agree that you're pretty  
10 sure all black head to toe is accurate?

11 MS. LEWIS: Judge, I'd object as to  
12 speculation.

13 THE COURT: If she knows. Overruled.

14 THE WITNESS: I seen all black.

15 BY MR. SINGER:

16 Q. Head to toe?

17 A. Pretty much.

18 MR. SINGER: Pass the witness, Judge.

19 THE COURT: Any redirect?

20 REDIRECT EXAMINATION

21 BY MS. LEWIS:

22 Q. Were there any other people out there besides  
23 yourself and your cousins and Maurice and the people who  
24 you saw come from around Lexington doing the shooting?

25 A. Across the street there were like kids out there



1 playing.

2 Q. Okay. And did you notice what those kids were  
3 doing when the shooting happened?

4 MR. SINGER: Objection. Outside the scope.  
5 Neither counsel brought that up on cross.

6 THE COURT: It is outside the scope.

7 MS. LEWIS: Well, Judge, I'm talking about  
8 people that are out there, and they're asking about  
9 people that are out there in clothing description, so I  
10 think I'm entitled to pursue that avenue.

11 THE COURT: I think it's outside the scope  
12 of cross-examination. Sustained.

13 MS. LEWIS: I'll pass the witness.

14 MR. BUNIN: No more questions, Your Honor.

15 MR. SINGER: No more questions, Judge.

16 THE COURT: Is there anything else from this  
17 witness?

18 MR. BATEMAN: No, thank you.

19 THE COURT: Ma'am, you're free to step down.

20 Thank you.

21 Call your next witness.

22 MR. BATEMAN: State calls Michel'le  
23 Tolefree.

24 THE CLERK: Remain standing, please.

25 (Indiscernible) raise your right hand (indiscernible).

1 MICHEL'LE TOLEFREE, PLAINTIFF'S WITNESS, SWORN

2 THE WITNESS: Yes.

3 THE CLERK: You may be seated, and please  
4 state your name really loudly and spell both first and  
5 last name for me.

6 THE WITNESS: Michel'le Tolefree.

7 THE CLERK: Okay. And spell it.

8 THE WITNESS: M-i-c-h-e-l apostrophe l-e  
9 T-o-l-e-f-r-e-e.

10 THE CLERK: Thank you.

11 DIRECT EXAMINATION

12 BY MR. BATEMAN:

13 Q. Michel'le; is that right?

14 A. Yes.

15 Q. Do you go by anything else?

16 A. Mich.

17 Q. Do you mind if I call you Mich?

18 A. Yeah.

19 Q. Okay. You know the lady that just exited the  
20 courtroom, do you know her?

21 A. Yes.

22 Q. Who's that?

23 A. My cousin.

24 Q. What her name?

25 A. Myniece Cook.

1 Q. She's your cousin?

2 A. Yes.

3 Q. Do you know Mercy?

4 A. Yes.

5 Q. Who is Mercy to you?

6 A. My cousin.

7 Q. I'm going to direct your attention to September  
8 30th of 2006. Did you have occasion to be in the area  
9 of Lexington and Balzar?

10 A. Yes.

11 Q. Why were you there?

12 A. To go visit a friend.

13 Q. Who's your friend?

14 A. Maurice.

15 Q. What's Maurice's last name?

16 A. Hickman.

17 Q. How did you know Maurice?

18 A. From school.

19 Q. Okay. And how old are you?

20 A. 16.

21 Q. Is he about your age?

22 A. He 18.

23 Q. Have you known him for sometime prior to  
24 September 30th, 2006?

25 A. Yes.

1 Q. Okay. In the evening roughly about 9:45, is that  
2 when you headed over to that house?

3 A. Yes.

4 Q. Okay. Is that 1271 Balzar?

5 A. Yes.

6 Q. How did you get there?

7 A. My cousin Myniece.

8 Q. Okay. She have a vehicle that you were driving  
9 in?

10 A. Yes.

11 Q. Okay. And where were you coming from?

12 A. We was coming from the store. Well, my grandma  
13 stay down the street, so we was at my grandma house  
14 first.

15 Q. When you say you were going to visit Maurice,  
16 were you planning on staying very long?

17 A. No.

18 Q. Okay. So about that evening about 9:45 did you  
19 get to 1271 Balzar with your cousins?

20 A. Yes.

21 Q. And at some point did you get out of the vehicle?

22 A. Yes.

23 Q. Was Maurice already outside or how did you come  
24 into contact with him that night, if you did?

25 A. We was on the phone and he came outside, and we

1 pulled up.

2 Q. Do you have a cell phone?

3 A. Yes.

4 Q. Okay. Did you call his telephone?

5 A. Yes.

6 Q. Did you just want to talk to him, just to chat?

7 A. Yes.

8 Q. And then did Maurice come out of the house?

9 A. Yes.

10 Q. And did you guys have a conversation?

11 A. Yes.

12 Q. Where were you when this took place?

13 A. In front of his house.

14 MR. BATEMAN: May approach, Judge?

15 THE COURT: Yes.

16 BY MR. BATEMAN:

17 Q. I'm going to show you what's in evidence as

18 State's Proposed 80 -- or, excuse me -- 82. It's

19 already in evidence. Do you recognize what's in that

20 photograph?

21 A. Yes.

22 Q. Okay. Is that 1271 Balzar?

23 A. Yes.

24 Q. Do you recognize whether your cousin's vehicle is

25 there?

1 A. Yes.

2 Q. Okay. What kind of vehicle is it?

3 A. A Tahoe.

4 Q. Okay.

5 MR. BATEMAN: May I publish, Your Honor?

6 THE COURT: It's admitted?

7 MR. BATEMAN: It is.

8 THE COURT: Yes.

9 BY MR. BATEMAN:

10 Q. Is that the intersection of Lexington and Balzar?

11 A. Yes.

12 Q. Where were you talking with your cousins and with  
13 Maurice?

14 A. In front of the blue car.

15 Q. Okay. If you actually touch the screen you can  
16 make a little mark on the screen, so show me about where  
17 you were.

18 A. The blue car right here.

19 Q. Okay. In front of that blue car?

20 A. Yes.

21 Q. Were you in between the blue car and the house?

22 A. Yes.

23 Q. How close were you do you think to the blue car?

24 A. How close were we?

25 Q. Um-h'm. Standing right next to it?

1 A. Like -- yes. Yes.

2 Q. Okay. How long -- well, did there come a point  
3 in time in which you saw some people come up from  
4 Lexington towards where you guys were standing?

5 A. Yes.

6 Q. How long had you been speaking with Maurice  
7 before you observed these people come up?

8 A. Like probably three minutes or two.

9 Q. Okay. What is the first thing you saw when these  
10 people came towards you?

11 A. I saw a boy in like a black hoody standing right  
12 here.

13 Q. Okay.

14 A. And then Mercy had turned around and she was like  
15 who is that, and then Maurice had turned around and was  
16 like run.

17 Q. I'm sorry. Maurice told you to run?

18 A. Yes.

19 Q. Okay. This individual that you just marked on  
20 the street there, do you know where it is he came from  
21 or did you just suddenly see him in that particular  
22 location?

23 A. He probably had to come this way.

24 Q. Okay. So he came from south to north?

25 A. Yes.

1 Q. All right. Did you see him actually walking?

2 A. When he finally got right here, that's when we  
3 saw him. Like we couldn't see from the side of the  
4 house.

5 Q. Okay. But he didn't come from the other  
6 direction?

7 A. No.

8 Q. Okay.

9 MR. SINGER: Judge, can I ask the witness to  
10 clarify when she said right here. I didn't know exactly  
11 what point she was talking about.

12 THE COURT: Why don't you clarify it.

13 MR. BATEMAN: I will.

14 BY MR. BATEMAN:

15 Q. I noticed you're marking Exhibit No. 82, and you  
16 said you noticed him in front of what appears to be a  
17 car parked on Lexington northbound; is that correct?

18 A. Yes, on the corner.

19 Q. Okay. So you kind of saw him on the front corner  
20 of that looks like a Cadillac or a gray Cadillac; is  
21 that right?

22 A. Yes.

23 Q. And when you first saw this individual, what did  
24 he look like?

25 A. You couldn't really tell. You could just see all



1 black, but he was like short.

2 Q. You could just see all black? Okay. Was he  
3 African-American, white, Hispanic?

4 A. African-American.

5 Q. Okay. And what color clothes was he wearing?

6 A. Black.

7 Q. Did it look like a -- you said a -- okay. Strike  
8 that. Did you get a good look at his face?

9 A. I just saw his hair.

10 Q. Okay. What color hair?

11 A. Like a little Afro.

12 Q. Okay. Could you see his hands?

13 A. No.

14 Q. Where were they?

15 A. Behind his back.

16 Q. Okay. At some point did you see his hands?

17 A. No.

18 Q. Okay. Was there ever a time in which anybody  
19 else came about that same area with him?

20 A. Yes.

21 Q. Okay. How long after you first saw him did some  
22 additional people come?

23 A. When we started running, and then I like kind of  
24 glanced back, and I saw like five or four dudes standing  
25 there shooting.

1 Q. In the same area?

2 A. Yes.

3 Q. Okay. When you say standing there shooting, how  
4 do you know they were shooting?

5 A. Because I turned around and looked.

6 Q. Okay. Could you hear anything?

7 A. Yes.

8 Q. What could you hear?

9 A. It was like gunshots.

10 Q. Okay. How many?

11 A. A lot.

12 Q. Did you see guns?

13 A. Yes.

14 Q. Did it appear that all the people had guns?

15 A. Yes.

16 Q. Okay. Do you think they were shooting at you?

17 A. Yes. Whoever that was standing outside they was  
18 trying to hit.

19 Q. When Maurice said run, where did you run to?

20 A. Across the street in some houses over there.

21 Q. Okay. Over there you got some trees kind of  
22 above that --

23 A. It's like some houses behind that.

24 Q. Did you go northbound across Balzar?

25 A. Yes.

1 Q. And what did you do when you got to the other  
2 side of the street?

3 A. We had hid.

4 Q. Where did you hide?

5 A. In like somebody backyard.

6 Q. When you got to the backyard, did you notice  
7 whether any of those individuals that were shooting at  
8 you had followed you?

9 A. Yes. Because when we was hiding we saw like  
10 somebody following us, but they didn't see us, so we  
11 continued to stay in our spot where we was already in  
12 until like -- I saw like heard some polices (phonetic).

13 Q. Okay.

14 A. And then that's when I finally got up.

15 Q. So at some point you couldn't see this individual  
16 that had followed you anymore?

17 A. No.

18 Q. And then how long do you think you were hiding  
19 before you heard the police?

20 A. Like three or two minutes.

21 Q. And then as soon as you heard the police you got  
22 up?

23 A. Yes.

24 Q. And where did you go?

25 A. I went by the Circle Park, and then I saw my mom.

1 MR. BATEMAN: Court's indulgence just one  
2 moment.

3 BY MR. BATEMAN:

4 Q. When you came -- did you come back to  
5 1271 Balzar?

6 A. No. I went the back way. It was like a back way  
7 and then you turn by the Circle Park.

8 Q. Oak. Did you ever come back to this house,  
9 though?

10 A. No.

11 Q. That night you didn't?

12 A. No.

13 Q. Okay. Where did you go?

14 A. To the Circle Park and then I saw the polices,  
15 and then they had asked me some questions because the  
16 house was blocked off.

17 MR. BATEMAN: Court's indulgence.

18 (Off-record colloquy)

19 BY MR. BATEMAN:

20 Q. I'm just going to briefly ask you just a couple  
21 more questions about what the individuals were wearing.  
22 You said it looked like it was mostly black?

23 A. Yes.

24 Q. When you say black, are you talking about shirts,  
25 shorts? What are you talking about?

1 A. Black shirt and shorts.

2 Q. Okay. So you think that they wore black shorts  
3 as well?

4 A. Yes.

5 Q. Do you remember if that's what you told the  
6 police on that night?

7 A. Yes.

8 MR. BATEMAN: May approach, Your Honor?

9 THE COURT: You may.

10 MR. BUNIN: Is he impeaching, Judge? She  
11 just said that's what she said to the police. If he's  
12 impeaching, that's fine, but --

13 MR. FIGLER: Does she not have memory?

14 THE COURT: Are you --

15 MR. BATEMAN: She's made a statement to the  
16 police that was on that night that might be more  
17 accurate at the time.

18 THE COURT: You're refreshing her  
19 recollection?

20 MR. BATEMAN: Correct.

21 MR. BUNIN: She just said what she said she  
22 told the police that night.

23 MR. BATEMAN: Right. It's a prior  
24 inconsistent statement.

25 THE COURT: You may approach and lay the

1 proper foundation.

2 BY MR. BATEMAN:

3 Q. Let me show you page 7 of the statement that you  
4 made to the police officers, okay?

5 A. Um-h'm.

6 Q. They asked you about the clothing that was worn  
7 on the individuals.

8 A. Yeah.

9 Q. Do you remember that?

10 A. Yeah.

11 Q. Okay. I'm going to have you look at your answer  
12 right here where it says A --

13 A. Yeah.

14 Q. -- and read that.

15 MR. SINGER: Can we see --

16 THE WITNESS: Yeah.

17 MR. SINGER: -- what page he's referring to?

18 MR. BATEMAN: Page 7. I believe I informed  
19 counsel.

20 BY MR. BATEMAN:

21 Q. Do you remember what you told police officers on  
22 the scene?

23 A. Yes.

24 Q. What did you tell them?

25 MR. FIGLER: I'm going to object,

1 Your Honor. There was no foundation that she didn't  
2 remember before what she told police she already  
3 testified, so asked and answered.

4 THE COURT: It's a prior --

5 MR. SINGER: She's also reading from a  
6 document not in evidence.

7 MR. FIGLER: Prior inconsistent. There's  
8 nothing consistent.

9 MR. BATEMAN: She said they wore black pants  
10 on the night in question. She told police officers the  
11 description of the clothing at the time.

12 And she's saying now that it's actually  
13 different what she's saying now, and I'm asking about  
14 the statement that she made to police officers prior.  
15 It should be a prior inconsistent statement, and I don't  
16 believe I need to have to admit the --

17 THE COURT: Overruled.

18 MR. BATEMAN: Okay. Thank you.

19 BY MR. BATEMAN:

20 Q. Do you remember what you told the police officer?

21 A. Yeah.

22 Q. What did you say?

23 A. Probably blue --

24 Q. Blue shorts?

25 A. -- shorts. Yes.

1 Q. Okay.

2 (Off-record colloquy)

3 MR. BATEMAN: Pass the witness, Judge.

4 THE COURT: Cross.

5 CROSS-EXAMINATION

6 BY MR. BUNIN:

7 Q. I have a couple of questions for you, okay? Do  
8 you remember testifying at a hearing several months  
9 back?

10 A. Yes.

11 Q. And you testified under oath at that hearing?

12 A. Excuse me.

13 Q. You were under oath; is that right?

14 A. Yes.

15 Q. So did you tell the truth -- do the best to tell  
16 the truth at that hearing?

17 A. Yes.

18 Q. Okay. Do you remember saying at that hearing  
19 that the one person you saw is all in black?

20 A. Yes.

21 Q. And, in fact, you were asked again a few moments  
22 later what was their clothing like and you said it was  
23 all black; is that correct?

24 A. Yes.

25 Q. Okay. Do you also remember saying the person you



1 saw was about five-foot-seven?

2 A. Yes.

3 Q. I'm sorry. Five-foot-six or five-foot-seven. Do  
4 you remember telling that to the police that evening?

5 A. Yes.

6 Q. You do? Okay. That's your best recollection,  
7 five-six or five-seven? You have to say yes or no for  
8 the record.

9 A. Yes.

10 Q. Okay. Just because the record won't pick it up.  
11 It won't know if you meant yes or no. Do you also  
12 remember telling the police that you only saw one person  
13 that evening?

14 A. No.

15 MR. BUNIN: May I quickly approach the  
16 witness, Judge?

17 THE COURT: Yes.

18 MR. BUNIN: And I'm on page -- I'm on the --  
19 I'm on page 3 in the middle, okay?

20 BY MR. BUNIN:

21 Q. Showing (indiscernible). Do you remember making  
22 this recorded statement to the police?

23 A. Yes.

24 Q. And the question was I just like this house right  
25 here and this house around the house over there, and

1 then your answer was I just saw one boy and then you go  
2 on to say you thought there had to be more because you  
3 heard shots, correct?

4 A. Yes. First we saw one boy just standing there,  
5 and then like when they continued to start shooting,  
6 that's when we saw like four or five.

7 Q. And you never said any of that in your statement  
8 to the police. You just said you only saw one.

9 A. Yeah, I said it. He just showed me that  
10 statement.

11 Q. So if it's in the police -- you believe it's in  
12 this report that you said you saw more than one person?  
13 Not heard more than one, but that you saw more than one?

14 A. Yes.

15 Q. Okay. And then as you sit there today, you don't  
16 recognize Jamar Matthews as anybody that was there that  
17 night?

18 A. No.

19 Q. No? You have to say -- I just couldn't hear you  
20 very well.

21 A. No.

22 Q. Thank you.

23 MR. BUNIN: I don't have any other  
24 questions.

25 MR. SINGER: Thank you, Judge.

1 (Indiscernible).

2 CROSS-EXAMINATION

3 BY MR. SINGER:

4 Q. Ms. Tolefree, you don't remember or can identify  
5 anybody that was there that night as far as any in that  
6 group four or five young (indiscernible).

7 A. Well, one of the boys was short so -- and had a  
8 short hair cut.

9 Q. Okay. And the one that first came up, the boy,  
10 was a black hoody you said on direct? Did you say those  
11 words "black hoody"?

12 A. Or a black T-shirt, yeah.

13 Q. So right now when I'm asking you the question  
14 you're saying it's or a black T-shirt, but when the  
15 prosecutor --

16 A. It was one of them.

17 Q. But it could have been a black hoody, right?

18 A. Yeah.

19 Q. And when the prosecutor just asked you about it,  
20 you said a black hoody, right?

21 A. Yeah.

22 MR. SINGER: Pass the witness.

23 THE COURT: Redirect.

24 MR. BATEMAN: Court's indulgence.

25 (Off-record colloquy)

## 1 REDIRECT EXAMINATION

2 BY MR. BATEMAN:

3 Q. Miss, you were asked some questions about whether  
4 you can recognize the individuals sitting here to my  
5 right, Jamar Matthews. Are you saying that it's  
6 definitely not this person or that you just couldn't get  
7 a good enough view at the time to say one way or the  
8 other?

9 A. It probably could be him.

10 MR. BUNIN: Judge, not only is that leading,  
11 I think he's trying to get her to qualify, I mean, how  
12 much she knows. She answered the question clearly. She  
13 doesn't recognize him as the person.

14 THE COURT: The question was leading. You  
15 can ask it in a nonleading fashion.

16 MR. BATEMAN: Okay.

17 BY MR. BATEMAN:

18 Q. When you observed the individuals that came up to  
19 Balzar that evening, did you get a good enough look at  
20 any of their faces that you think you would have been  
21 able to identify them again?

22 A. No.

23 Q. Okay. So can you say that the individuals in the  
24 courtroom were not the individuals that were there that  
25 evening?

1 A. Yes. I can say it was. It was.

2 MR. BUNIN: I would object. Well, I guess  
3 it was leading again, but it's also very vague. I don't  
4 know -- I mean, I don't understand the question. I  
5 don't know if you do, Your Honor.

6 THE COURT: You can take her on  
7 recross-examination based --

8 MR. BUNIN: Right.

9 THE COURT: Upon the statement. She  
10 answered the question.

11 I know you're not done yet.

12 MR. BATEMAN: Right.

13 BY MR. BATEMAN:

14 Q. All I'm asking is do you know one way or the  
15 other whether these two individuals were there that  
16 night, based upon what you could see?

17 A. Yes, I can.

18 Q. You can identify these individuals?

19 A. Well, it look like he was the one that was like  
20 the first one that's standing right there, the first  
21 person we saw.

22 Q. Okay. Who's he? Can you point to the person and  
23 describe what they're wearing?

24 A. I don't know if that's Jamar or Pierre, one of  
25 them.

1 Q. I'm sorry?

2 A. I don't know which he is.

3 Q. Okay. Describe the person's hairdo, hair that  
4 you're looking at.

5 A. It look like him.

6 Q. What kind of hairdo is the person --

7 A. It was --

8 Q. -- wearing that you're pointing to?

9 A. At the time it was like a little fade, like a  
10 little Afro.

11 Q. But you're just saying it looks similar, but you  
12 don't know --

13 A. Yeah. It look similar --

14 Q. -- whether it's this person?

15 A. -- to the person I saw.

16 Q. Okay. And again, you're not sure one way or the  
17 other; is that right?

18 A. Yeah.

19 MR. BATEMAN: And for the record,  
20 Your Honor, I think she was pointing at Mr. Joshlin.

21 THE COURT: I don't know who she was  
22 pointing at.

23 MR. BATEMAN: What's that?

24 THE COURT: I don't know who she was  
25 pointing at.

1 BY MR. BATEMAN:

2 Q. Okay. Can you describe a little bit more in  
3 detail. You pointed to an individual in the courtroom.  
4 Can you describe what he's wearing today?

5 A. A white shirt, a tie, black pants, black shoes,  
6 fro.

7 Q. Okay. There are one, two, three, four, five  
8 gentlemen sitting at the table to my right, to your  
9 left. If I start all the way down at the end, the  
10 farthest to your left, count over for me and tell my  
11 which one you're talking about.

12 A. The second one.

13 Q. Okay. From your left all the way at the end of  
14 the table?

15 A. The second one.

16 Q. Okay.

17 MR. BATEMAN: Record reflect the  
18 identification of Pierre Joshlin to the extent that  
19 she's made any identification at all.

20 THE COURT: The record should so reflect.

21 MR. BATEMAN: Okay. Pass the witness.

22 THE COURT: Cross.

23 MR. BUNIN: Thank you.

24 //

25 //

## 1 RECROSS-EXAMINATION

2 BY MR. BUNIN:

3 Q. The person you just identified, that was the  
4 person that you're saying was wearing shorts that night;  
5 is that correct?

6 A. Yes.

7 MR. BUNIN: I have no other questions.

8 THE COURT: Cross.

9 MR. SINGER: Court's indulgence. Pass the  
10 witness.

11 THE COURT: Any redirect as a consequence  
12 of --

13 MR. BATEMAN: No, Your Honor.

14 THE COURT: -- the cross-examination? Is  
15 this witness free to go?

16 MR. BATEMAN: Yes, Your Honor.

17 THE COURT: Thank you. Ma'am, thank you for  
18 your testimony. Please step down.

19 Call your next witness.

20 MR. BATEMAN: Court's indulgence.

21 (Off-record colloquy)

22 MR. BATEMAN: We'll call Geishe Orduno.

23 GEISHE ORDUNO, PLAINTIFF'S WITNESS SWORN

24 THE WITNESS: Yes.

25 THE CLERK: You may be seated, and state



1 your name real loudly and spell both first and last name  
2 for me.

3 THE WITNESS: Geishe Orduno. It's  
4 G-e-i-s-h-e O-r-d-u-n-o.

5 (Off-record colloquy)

6 MR. BATEMAN: May I proceed, Your Honor?

7 THE COURT: You may.

8 DIRECT EXAMINATION

9 BY MR. BATEMAN:

10 Q. Good afternoon, ma'am.

11 A. Good afternoon.

12 Q. Can I ask you where you currently live, ma'am?

13 A. 1284 Lawry.

14 Q. Is that here in Las Vegas, Clark County, Nevada?

15 A. Yes.

16 Q. Okay. What general area of town is that?

17 A. The west side.

18 Q. Okay. How long have you lived there?

19 A. Like six months.

20 Q. Okay. I'm going to direct your attention back to  
21 September.

22 A. Yeah. September. I just barely had moved there.

23 Q. Okay. September 30th, in particular.

24 A. Yes.

25 Q. You said you just barely moved to this location?

1 A. Yeah.

2 Q. Okay.

3 MR. BATEMAN: May approach, Your Honor?

4 THE COURT: Yes.

5 BY MR. BATEMAN:

6 Q. I'm going to show you two photographs marked  
7 State's Proposed Exhibit 94 and 95, see if you recognize  
8 what's in these two photographs.

9 A. Yes.

10 Q. Do you recognize what's in those photographs?

11 A. Yes.

12 Q. How do you recognize it?

13 A. Because that's where I live.

14 Q. Is that your house at Lawry?

15 A. Uh-huh.

16 Q. Okay. And you'd lived there for how long prior  
17 to September?

18 A. I just moved there like two weeks before.

19 Q. Okay. Is that how is looked back in September,  
20 then?

21 A. Yes.

22 Q. Okay.

23 MR. BATEMAN: Move admission of 94 and 95,  
24 Your Honor.

25 THE COURT: Objection?

1 MR. BUNIN: I'll submit it, Your Honor.

2 MR. SINGER: No objection.

3 THE COURT: It's admitted.

4 (Plaintiff's Exhibit Nos. 94 and 95 admitted)

5 MR. BATEMAN: Permission to publish,  
6 Your Honor?

7 THE COURT: Yes.

8 BY MR. BATEMAN:

9 Q. Showing you on the screen what's been now in  
10 evidence as 95. Do you know what your cross streets  
11 there right on the corner are?

12 A. Alexar (sic).

13 Q. I'm sorry?

14 A. Alexar.

15 Q. Is it Lexington?

16 A. Yeah, Lexington.

17 Q. Okay. Who lives with you at -- or back in  
18 September who lived with you at that particular  
19 location?

20 A. Me and my boyfriend and his brother.

21 Q. What's your boyfriend's name?

22 A. Melvin.

23 Q. What's his last name?

24 A. Bolden.

25 Q. Okay. Did you and Melvin have a vehicle that you

1 guys owned?

2 A. Yeah, a --

3 Q. What kind of vehicle was it?

4 A. A Lincoln Continental.

5 Q. All right. Was there any problem with the  
6 steering on the Lincoln --

7 A. The power steering wasn't working.

8 Q. Okay. Did you have a hard time sometimes parking  
9 that vehicle?

10 A. Yes.

11 Q. That evening had you and Melvin gone somewhere?

12 A. Yeah. We went out to dinner with two friends.

13 Q. Who were the friends?

14 A. Steve and Betty.

15 Q. Where is it that you went out for the evening?

16 A. Downtown to The Main Street Buffet.

17 Q. Okay. And did you return home that evening?

18 A. Yes, we did.

19 Q. Do you remember about what time it was?

20 A. Like 9:45, quarter to 10:00.

21 Q. Okay. Now, do you remember what route you took  
22 to get home?

23 A. We went down H to Lawry.

24 Q. Okay. And then --

25 A. And turned on Lawry. I was driving, and then

1 because the power steering didn't work so we switched  
2 places, and he actually was parking the car at the time.

3 Q. Okay. Who switched places?

4 A. Me and -- me and Melvin.

5 Q. Do you know where he switched?

6 A. I don't know the name of that street, but the  
7 street --

8 Q. Is it on Lexington?

9 A. No. It was on Lawry, but there's another street.  
10 I don't know the name of that street.

11 Q. Okay. Before you got to your house?

12 A. Yeah, before we got to the house.

13 Q. Okay. So were you driving to that point?

14 A. Yes.

15 Q. And then where did you go and where did Melvin  
16 go?

17 A. He went to the driver's seat and I went to the  
18 passenger seat.

19 Q. Okay. And then did you proceed back to your  
20 house at Lawry?

21 A. Yes.

22 Q. Okay. And at some point when you get around your  
23 house at Lawry did you hear something?

24 A. Yeah. We heard gunshots.

25 Q. Do you know how many gunshots you heard?

1 A. A lot.

2 Q. Okay. What did you want to do at that point when  
3 you heard the gunshots?

4 A. I said kept -- keep going, but --

5 Q. Who did you tell that to?

6 A. To Melvin.

7 Q. Okay. Did he keep going?

8 A. No.

9 Q. Okay. What did he do?

10 A. We was parking.

11 Q. Okay. And when you say parking, were you parking  
12 in front of your house there?

13 A. Yeah, in front.

14 Q. Okay. Did you park on the street?

15 A. The street.

16 Q. Okay. At some point did someone or a multitude  
17 of people come up to your car?

18 A. Yeah. They ran up to the car.

19 Q. You say they ran up to the car. How many people  
20 ran up to your car?

21 A. I say four.

22 Q. Okay. Do you know where they came from?

23 A. Around the corner.

24 Q. Okay. You can actually draw on this. Again, 95  
25 is up in front of you. If you touch that screen right

1 in front of you, you can draw on it.

2 A. Oh, okay.

3 Q. Go ahead and touch it and tell me where these  
4 individuals came from.

5 A. From around this corner right here.

6 Q. Okay.

7 MR. BATEMAN: And, Judge, I think she's  
8 noted the Lexington side on that particular photograph.

9 THE COURT: Counsel, do you object to that  
10 conclusion based upon the entry on the JAVS system?

11 MR. BUNIN: No. No, Your Honor.

12 THE COURT: Then that would be the finding.

13 BY MR. BATEMAN:

14 Q. You say you saw how many?

15 A. Four.

16 Q. Okay. Describe the individuals that you saw or  
17 what did they look like?

18 A. I didn't see their faces because it was dark, and  
19 by that time I was bending down in the car, and they  
20 just kept saying get out the car, get out the car. The  
21 one that was on my side which I was on the passenger  
22 side had dark clothes on and red gloves.

23 Q. Okay.

24 A. So I got out the car and I went into the yard and  
25 I hid behind the Cadillac that's parked right there in

1 the yard.

2 Q. Okay. Let me back you up. One of the  
3 individuals came to your passenger said?

4 A. Yes.

5 Q. All right. And describe was he white, black,  
6 Hispanic?

7 A. Oh, he was black.

8 Q. Okay. And you say you didn't get a good look at  
9 his face?

10 A. No.

11 Q. What color clothes was he wearing?

12 A. Dark-color clothes and they had red gloves on.  
13 He had red gloves on.

14 Q. Did you notice whether this individual had  
15 anything in his hands?

16 A. A gun.

17 Q. Can you describe the gun?

18 A. It was like this long, and he had it like kind of  
19 like pointed toward the sidewalk.

20 Q. Can you --

21 A. Like this.

22 MR. BATEMAN: I'd say 18 inches, Judge --

23 THE WITNESS: Yeah. Something like --

24 MR. BATEMAN: -- for the record.

25 THE COURT: Fair estimation, counsel?



1 MR. BUNIN: Yeah. Submitted.

2 MR. SINGER: Submitted.

3 BY MR. BATEMAN:

4 Q. And how was he pointing it?

5 A. Towards the ground.

6 Q. Okay. And what was this individual saying to  
7 you?

8 A. Get out the car.

9 Q. Did you get out of the car?

10 A. Yes, I did.

11 Q. Why did you get out of the car?

12 A. Because he had a gun.

13 Q. Were you afraid?

14 A. Yes.

15 Q. After you got out of the car, where did you go?

16 A. I hid we behind -- I went in the yard, and I hid  
17 behind the Cadillac that's parked right there.

18 Q. Okay. Why don't you touch that screen and tell  
19 me kind of where you hid.

20 A. Like in front of car right here.

21 Q. Okay. And that appears to be the vehicle parked  
22 in the driveway to the right?

23 A. Yes.

24 MR. BATEMAN: For the record, Your Honor,  
25 again, in State's Exhibit 95.

1 THE COURT: Correct.

2 BY MR. BATEMAN:

3 Q. When you say you hid, did you get down? How did  
4 you --

5 A. Yeah --

6 Q. -- hide?

7 A. -- I was down practically kind of like under it.

8 Q. Okay. Did you see what was going -- or could you  
9 even at that point see what was going on --

10 A. No.

11 Q. -- back in the car?

12 A. No, I didn't.

13 Q. When you got out of your car, were any of the  
14 other occupants of your vehicle -- had they left yet?

15 A. No.

16 Q. And when I say left --

17 A. I think I was --

18 Q. -- had they got out of the vehicle?

19 A. Yeah. I think I was the first one out.

20 Q. Okay. And once you got out, did you go directly  
21 to your hiding spot?

22 A. Yes.

23 Q. All right. So based upon that, do you have any  
24 idea where or what side of the car this individual with  
25 the red gloves got into?

1 A. I assume he got -- when I got out because I left  
2 the door open, he got right in.

3 Q. Did you see him get in --

4 A. No. I didn't see him get in.

5 Q. Okay. Is that because you were heading to  
6 your --

7 A. Yes.

8 Q. -- hiding spot?

9 A. Yes.

10 Q. The other three individuals that you saw, can you  
11 describe what they were wearing?

12 A. One, when they ran up, I thought I saw a white  
13 shirt.

14 Q. Okay.

15 A. And then the other two, it was just dark because  
16 by that time I was leaning and Melvin was leaning, we  
17 were both leaning towards each other in the middle, and  
18 one I thought had seen a white shirt.

19 Q. Okay. And you said the other two were kind of --  
20 had dark clothing?

21 A. Had dark clothes on.

22 Q. All right. Did you see any other weapons?

23 A. No, just the one I saw when I got out.

24 Q. Was there only one of them that was telling you  
25 get out of the car or were multiple people saying --

1 A. Multiple.

2 Q. -- things? When you say you and Melvin had kind  
3 of huddled together --

4 A. Yeah, because, you know, we're leaning in towards  
5 each other.

6 Q. Why?

7 A. I didn't -- just a reaction I had to do. I don't  
8 know. They like coming -- I didn't know if they were  
9 going to come up shooting, so you want to lean to block  
10 the shots or --

11 Q. At some point after you had gotten to your hiding  
12 place --

13 A. Uh-huh.

14 Q. -- did you hear anything with regard to your  
15 car?

16 A. I heard them when they drove off.

17 Q. Okay. How do you know they drove off?

18 A. Because of the tire, you know, when you sped off  
19 real fast it makes that noise.

20 Q. Sounded to you like they had sped off quickly?

21 A. Yeah.

22 Q. Okay. When you say they, who are you referring  
23 to?

24 A. The ones that ran up to the car.

25 Q. Okay. How do you know it was them?

1 A. I assume it was them because if I'm out the car,  
2 Melvin's out the car, and Betty and Steve was out the  
3 car --

4 Q. Okay. And the guys that came up to your car --

5 A. The car, yeah.

6 Q. -- were they in the area anymore?

7 A. No.

8 Q. And neither was your car?

9 A. Neither was my car.

10 Q. Okay. Did you do anything after that to try  
11 to --

12 A. I called --

13 Q. -- go look --

14 A. 911.

15 Q. Okay. And what'd you tell them?

16 A. That we just got carjacked by gunpoint and they  
17 took the car.

18 MR. BATEMAN: Court's indulgence.

19 Your Honor, may approach the witness?

20 THE COURT: Have you shown the photographs  
21 to counsel?

22 MR. BATEMAN: I have shown them two proposed  
23 exhibits to counsel, Your Honor.

24 THE COURT: You may approach.

25 /

1 BY MR. BATEMAN:

2 Q. I'm going to show you State's Proposed Exhibits  
3 148 and 149 and see if you recognize those -- what's  
4 depicted in those two photographs.

5 A. My car.

6 Q. Is that a picture of your car?

7 A. Yes.

8 Q. Both are pictures of your car?

9 A. Uh-huh.

10 Q. And that's how your car, at least in part, looked  
11 that evening after it skid out of your driveway?

12 A. Yes.

13 MR. BATEMAN: Move to admit 148 and 149 as  
14 proposed briefly, Judge.

15 THE COURT: Any objection?

16 MR. BUNIN: Submitted.

17 MR. SINGER: No objection, Judge.

18 THE COURT: It will be admitted.

19 (Plaintiff's Exhibit Nos. 148-149 admitted)

20 BY MR. BATEMAN:

21 Q. Showing you 149, did you ever see your car in  
22 that particular position?

23 A. You mean after it happened?

24 Q. Correct.

25 A. No. I didn't go over there.

1 Q. Did you ever get your car back?

2 A. Yes.

3 Q. How did you get it back?

4 A. Like that.

5 Q. When say like that --

6 A. With the dent and the wheels and the windshield's  
7 cracked like in the corner.

8 Q. There was some front-end damage?

9 A. Yeah. It was on a flat. It wasn't drivable.

10 MR. BATEMAN: Court's indulgence. Pass the  
11 witness.

12 THE COURT: Cross-examination.

13 MR. BUNIN: Thank you.

14 CROSS-EXAMINATION

15 BY MR. BUNIN:

16 Q. Hello.

17 A. Hello.

18 Q. I just want to be clear on a couple things you  
19 said, okay?

20 A. Uh-huh.

21 Q. You were sitting on the front passenger side of  
22 your car?

23 A. Yes.

24 Q. And you saw four people approach?

25 A. Yes.

1 Q. Okay. And you got out of your car, and for a  
2 moment you were next to one of those people; is that  
3 right?

4 A. Yeah.

5 Q. The person that had the long gun --

6 A. Uh-huh.

7 Q. -- that you described? And then you went over  
8 and you hid in front of a different car that was in your  
9 yard --

10 A. Right.

11 Q. -- is that correct? Okay. Now, and one of the  
12 people you saw was wearing a white T-shirt?

13 A. Yeah, the one that ran up.

14 Q. At least one of them had a white T-shirt on?

15 A. Uh-huh.

16 Q. Okay. And then the people you saw were wearing  
17 pants and not shorts?

18 A. Yeah, pants.

19 Q. Okay. The whole incident occurred very fast I  
20 would assume?

21 A. Yes.

22 Q. Okay. A couple of seconds?

23 A. Yeah. You could say that. Yeah.

24 Q. All right. You can't identify the people that  
25 took your car?



1 A. No, only by what they were wearing.

2 Q. Okay. Can appreciate that. You know, I noticed  
3 that the prosecutor didn't ask you about height. How  
4 tall are you?

5 A. I'd say like five-five.

6 Q. You're about five-foot-five? And when you got  
7 out of the car, you were right next to the person that  
8 had the long gun in their hand --

9 A. Correct.

10 Q. -- for a moment; isn't that right? Yes?

11 A. Yes.

12 Q. I'm sorry I'm talking over you. The person that  
13 had the long gun in his hand was no taller than you or  
14 maybe even a little shorter; isn't that correct?

15 A. Yeah. I'll say that. Yes.

16 Q. Maybe even a little bit shorter?

17 A. Well, they was kind of like bending down, so,  
18 maybe.

19 Q. But the person was no taller than you?

20 A. Yeah.

21 Q. Okay. And if Jamar Matthews here is  
22 five-foot-eleven, then that wouldn't be the person you  
23 were talking about with the long weapon?

24 A. Probably, no.

25 MR. BATEMAN: I'm going to object as to

1 assuming facts that are not in evidence.

2 THE COURT: What's the basis of the  
3 objection?

4 MR. BATEMAN: Facts not in evidence.  
5 They're just basically testifying as to height.

6 THE COURT: Overruled.

7 MR. FIGLER: (Indiscernible) stand next to  
8 him.

9 MR. BUNIN: Thank you. And, Judge, if you'd  
10 like, can I stand up next to each other and the jury can  
11 see the difference in height between my client and this  
12 witness?

13 THE COURT: (Indiscernible) to the height?

14 MR. BATEMAN: If they want to stand next --

15 THE COURT: If's your cross-examination.

16 MR. BATEMAN: -- to each other, that's fine.

17 MR. BUNIN: Can we have that happen, Judge?  
18 Can we -- would you -- is it all right with the Court if  
19 the witnesses stand next to each other briefly? If the  
20 witness stands next to my client.

21 THE COURT: Witnesses want to stand? Yes.  
22 That's fine.

23 MR. BUNIN: Can we bring him around real  
24 quick just --

25 THE COURT: How about we just have them

1 stand.

2 MR. BUNIN: All right. That's great.

3 BY MR. BUNIN:

4 Q. Do you mind standing up for a moment for us? I  
5 don't know if you can get down there at the same level  
6 as my client. You're up pretty high.

7 A. Here or --

8 Q. No. Come on down to where the floor is I guess  
9 just so we can see -- go ahead and stand up Jamar. Just  
10 stay right over here. Come on right around here, if  
11 that's okay.

12 I just hope the jury can see the difference in  
13 height. Stop right there. That's great. Okay.  
14 Thanks. Come on back over and have a seat.

15 MR. BUNIN: I have no other questions for  
16 this witness, Your Honor.

17 THE COURT: Cross.

18 MR. SINGER: Thank you, Judge.

19 (Off-record colloquy)

20 CROSS-EXAMINATION

21 BY MR. SINGER:

22 Q. What time of night was it when you were parking  
23 the car?

24 A. Like 9:45, 10:00.

25 Q. And what type of lighting is in front of your

1 house? Is there street lights in your house?

2 A. Across the street.

3 Q. Where the car was parked when Melvin was parking  
4 it?

5 A. No. There's no street light there --

6 Q. No light at all?

7 A. -- but across the street there's a street light.

8 Q. Okay. Is it a well-lit spot where the car's  
9 being parked? I'm sorry. Let me withdraw that. Does  
10 the street light give off some light so that you can  
11 see?

12 A. Yeah. Not very bright, but you can see.

13 Q. And you saw all the individuals. Other than the  
14 one with the white T-shirt were wearing all dark  
15 clothing; is that correct?

16 A. Correct.

17 Q. And all long pants?

18 A. Yeah. They had pants on.

19 Q. And dark pants?

20 A. It only was dark clothing.

21 Q. All dark head to toe?

22 A. Except for the red gloves.

23 Q. And except for the white T-shirt.

24 A. Yes.

25 Q. How about shoes? Dark shoes, too?

1 A. I didn't look at the shoes.

2 Q. Now, you said that after you were ordered out of  
3 the car, you kind of ran to your hiding spot, right?

4 A. Correct.

5 Q. So you don't even know who got in that car?

6 A. No. I don't know who got in. I --

7 Q. Because when the prosecutor asked you did the  
8 same people take your car, you said I assume so, right?

9 A. Yeah, because --

10 Q. So you --

11 A. -- they wasn't there when I stood up when the  
12 car sped off.

13 Q. So when you looked -- when you turned and ran,  
14 you didn't see how many people got in the car?

15 A. No, I didn't.

16 MR. SINGER: Pass the witness, Judge.

17 THE COURT: Redirect.

18 REDIRECT EXAMINATION

19 BY MR. BATEMAN:

20 Q. I think you were asked a couple questions about  
21 how long kind of this whole situation took place. Would  
22 you say it was a matter of minutes, seconds?

23 A. Matter of seconds. It happened really, really  
24 fast.

25 Q. And when you got out of your vehicle on the

1 passenger side, where exactly was this individual that  
2 was standing next to you with the gun pointed down?

3 A. Like the door opened, and right like right there  
4 on the sidewalk. Like, you know how you park and you  
5 opened the door and it's like right there, a little bit  
6 behind.

7 Q. Did you spend any time standing next to this  
8 individual and looking at him?

9 A. No, I did not.

10 Q. Okay. You didn't stand back to back and try to,  
11 you know, judge --

12 A. No, I did not.

13 Q. -- exactly how high he was?

14 A. No, I did not.

15 Q. After you got out of the vehicle, did you stop  
16 and talk to this individual?

17 A. No, I did not.

18 Q. Okay. Where'd you go? You went directly for  
19 your hiding spot?

20 A. Directly.

21 Q. And when you came out of your hiding spot, the  
22 car was gone?

23 A. The car was gone.

24 MR. BATEMAN: I'll pass the witness, Judge.

25 THE COURT: Recross?

1 MR. BUNIN: Very briefly.

2 RECROSS-EXAMINATION

3 BY MR. BUNIN:

4 Q. You know, a moment ago you just said that the  
5 person with the long weapon --

6 A. Um-h'm.

7 Q. -- you went right next to him for a moment,  
8 right?

9 A. No.

10 Q. You passed by him?

11 A. I passed by him.

12 Q. And that person, you just testified, was no more  
13 than your height. Now, earlier you remember testifying  
14 at a different hearing several months back?

15 A. Correct.

16 Q. And that was also under oath; is that right?

17 A. Correct.

18 Q. And you told the truth at that hearing I assume,  
19 didn't you?

20 A. Correct.

21 Q. And didn't you also state at that hearing that  
22 the person with the long weapon was your height or  
23 shorter?

24 A. Yeah, because -- yeah.

25 Q. Okay.

1 MR. BUNIN: I have no other questions.

2 Thank you.

3 THE COURT: Mr. Singer.

4 MR. SINGER: No, thank you, Judge.

5 THE COURT: Any redirect?

6 MR. BATEMAN: No, Your Honor.

7 THE COURT: Is this witness excused?

8 MR. BATEMAN: Yes, Your Honor.

9 THE COURT: Ma'am, thank you for your  
10 testimony.

11 THE WITNESS: Uh-huh. Thank you.

12 THE COURT: You may step down.

13 State call your next witness.

14 MS. LEWIS: The state calls Melvin Bolden.

15 (Off-record colloquy)

16 THE CLERK: If you'll remain standing,  
17 please. Raise your right hand to swear you in.

18 MELVIN BOLDEN, PLAINTIFF'S WITNESS, SWORN

19 THE WITNESS: I swear.

20 THE CLERK: Thank you. You may be seated,  
21 and please state your full name for us. Spell your  
22 first and last name. You may sit.

23 THE WITNESS: Melvin Bolden.

24 THE CLERK: And spell both first and last  
25 name, please.



1 THE WITNESS: M-e-l-v-i-n, last name  
2 B-o-l-d-e-n.

3 THE CLERK: Thank you.

4 DIRECT EXAMINATION

5 BY MS. LEWIS:

6 Q. Good afternoon, Mr. Bolden. I want to direct  
7 your attention to September 30th of last year 2006.  
8 Were you living at 1284 Lawry Street?

9 A. Yes, ma'am.

10 Q. And is that the corner of Lawry and Lexington?

11 A. Yes, ma'am.

12 Q. And that's here in Las Vegas, Nevada, Clark  
13 County?

14 A. Exactly.

15 Q. I want to direct your attention to that evening.  
16 Were you out with your girlfriend?

17 A. Yes.

18 Q. And who's your girlfriend?

19 A. Geishe Orduno.

20 Q. Okay. And were there also some friends who were  
21 out with you that evening?

22 A. Yes. Steve -- I can't remember his last name.  
23 Steve and Betty.

24 Q. Okay. And do you remember about what time it was  
25 that you were coming home this night?

1 A. Might be around about 9:00 or a little bit after  
2 9:00 or 10:00, something like that.

3 Q. Okay. And when you came home, did you hear  
4 anything unusual --

5 A. Yeah.

6 Q. -- when you were driving home?

7 A. Gunshots.

8 Q. Do you remember about how many you heard?

9 A. Numerous of them, about nine or ten or something  
10 like that.

11 Q. And can you tell which direction or what area the  
12 gunshots were coming from?

13 A. Seem like it was coming from Lexington going to  
14 Balzar.

15 Q. Okay. And were you on Lawry Street at the time  
16 that you heard the gunshots?

17 A. Yes, ma'am.

18 Q. Okay. Were you driving or was Geishe driving?

19 A. Well, Geishe was driving from the hotel. To be  
20 specific, she had -- we had went to the Main Street  
21 Station, and then on our way back home we went down  
22 Lawry, and then we traded places because of the power  
23 steering wouldn't work because she couldn't park the  
24 car.

25 Q. Okay. Is that Geishe's car that you were in?

1 A. Yes.

2 Q. And that's a Lincoln Town Car?

3 A. Yes.

4 Q. What color is that car?

5 A. Gray.

6 Q. All right. And so there's a problem with the  
7 power steering?

8 A. Yeah. It was a problem with the power steering.

9 Q. Okay. And so does Geishe have a hard time  
10 parking the car because of that?

11 A. Yeah. Yeah.

12 Q. Okay. So when you guys traded places, you were  
13 driving?

14 A. Yeah. I was driving during that time.

15 Q. And where did Geishe sit in the car?

16 A. She was in the front.

17 Q. Okay. And what about Steve and Betty? Where  
18 were they?

19 A. They was in the back seat.

20 Q. Okay. So what happened, then, when you got to  
21 your house?

22 A. We seen about three -- I think it was four guys.  
23 I don't know, three or four guys walking down the  
24 street.

25 Q. Which way did you see them walking?

1 A. Down Lexington.

2 Q. Okay. Coming from where on Lexington? Coming  
3 from which side?

4 A. Okay. Coming from north to south.

5 Q. Okay.

6 A. Uh-huh. Right before you get to Lawry. They had  
7 on black shirts and all that stuff.

8 Q. And you said you saw three or four of them?

9 A. Um-h'm.

10 Q. Is that yes?

11 A. Yes.

12 Q. Okay. And had you already parked the car at this  
13 point or --

14 A. Yeah. I had just parked it. The car was still  
15 running.

16 Q. Okay. Had you gotten out yet?

17 A. No. I didn't get a chance.

18 Q. Okay. What happened? Why didn't you get a  
19 chance?

20 A. Because when I opened the door, the dude came up  
21 there and put the gun to my head and said get out the  
22 car, get out the car.

23 Q. And what did you do?

24 A. I got out the car.

25 Q. Do you remember anything about how that person

1 looked to describe anything?

2 A. No. I had my hand in my face like this.

3 Q. Okay.

4 A. It was dark.

5 Q. Who about clothes or anything like that?

6 A. Just a black -- I remember black T-shirts, some  
7 jeans and the gloves they had on.

8 Q. Okay. You remember what color the gloves they  
9 had on?

10 A. The one was on my side had red and black gloves  
11 on.

12 Q. Okay. And what about the gun? Did you get a  
13 look at any of the guns or the gun that you said was put  
14 to your side?

15 A. I seen the one guy getting on the right-hand side  
16 in the back, and he had a sawed-off shotgun.

17 Q. Okay. So --

18 A. And I know the other guy that pulled a gun on me,  
19 I don't know what kind of gun that was. He had a nine  
20 or something pointed right to me.

21 Q. Okay.

22 A. And I put -- I thought he was going to shoot me.

23 Q. Okay. So you put your hands up like you're  
24 showing us in the crisscross in front of your face?

25 A. Yeah, like this.

1 Q. Okay.

2 A. Uh-huh.

3 Q. And what did you do?

4 A. I got out the car.

5 Q. And where did you go when you got out of the car?

6 A. Shoot, I came in the house.

7 Q. Were you scared?

8 A. Yeah. I actually -- I say where Geishe at, but  
9 she was in front of my other car, I mean, my -- my  
10 Cadillac. She was dialing 911.

11 Q. And is that Cadillac parked in front of your  
12 house as well?

13 A. Yeah. Yeah.

14 Q. Okay. So Geishe was there on the phone?

15 A. In front, yeah.

16 Q. When you ran into the house, did you actually go  
17 inside or did you stop where Geishe was?

18 A. No, no. My brother opened the door.

19 Q. Okay.

20 A. My bother -- I ran over there and he said Geishe  
21 right here.

22 Q. And did you --

23 A. Because I thought Geishe was still up in the car.

24 Q. Did you see if the three or four people that came  
25 up to the car with the guns got into the car and drove

1 off?

2 A. Yeah, yeah. I seen them all get in the car. It  
3 was like three or four of them.

4 Q. Did you see which way they drove off when they  
5 left?

6 A. Yeah. They drove down Lawry, and they turned  
7 down left on Martin Luther King.

8 Q. Okay. And can you describe how they were driving  
9 when they left?

10 A. They took off. Err (phonetic). They was gone.

11 Q. Okay. And you heard the car squeal away like you  
12 just made that sound?

13 A. Yeah. They -- yeah. They took off.

14 Q. The three or four people, could you tell us  
15 anything about if they were male, female, race?

16 A. They was males.

17 Q. They were all males?

18 A. Um-h'm.

19 Q. How about their race?

20 A. Black.

21 Q. All of them?

22 A. All of them.

23 Q. Could you tell me anything about their age?

24 A. They was pretty young. Well, compared to me,  
25 they was young.

1 Q. And the one on your side that you said was  
2 wearing a black T-shirt and blue jeans and had gloves --

3 A. Um-h'm.

4 Q. -- did you get a look at any of the other people  
5 to tell us how they were dressed?

6 A. Majority of them was dressed the same. Yeah.  
7 And then, like I said, shoot, I was just trying to get  
8 somewhere.

9 Q. Do you or Geishe carry guns in your cars?

10 A. No, ma'am.

11 Q. In that particular Lincoln Town Car that you were  
12 driving that night --

13 A. Uh-huh.

14 Q. -- did you happen to notice whether Steve or  
15 Betty brought a gun into the car with them?

16 A. No. No.

17 Q. They don't carry guns?

18 A. No.

19 Q. Okay.

20 A. Because if they did carry guns, they wouldn't  
21 ride with me.

22 Q. When these three or four males got into the car  
23 and drove off, did you give them permission to do that,  
24 to take the car like that?

25 A. What kind of question is that? If somebody put a



1 gun to your head, is you going let them go? You going  
2 give them permission if they put a gun to your head.  
3 You going to let them go with your car.

4 Q. Okay. So your answer is no?

5 A. No.

6 Q. Okay. Thank you.

7 MS. LEWIS: I'll pass the witness.

8 THE COURT: Cross-examination.

9 MR. BUNIN: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. BUNIN:

12 Q. I just want to run a couple of the things that  
13 you said, okay, Mr. Bolden.

14 A. Yes.

15 Q. Four people -- at least three or four people,  
16 possibly four people, came up and got into your car; is  
17 that right?

18 A. Exactly.

19 Q. Now they all had black T-shirts on, to the best  
20 of your memory --

21 A. Yeah.

22 Q. -- is that correct?

23 A. Yeah.

24 Q. And they were all short-sleeved T-shirts, to the  
25 best of your recollection --

1 A. Yes.

2 Q. -- is that correct?

3 A. Uh-huh.

4 Q. Do you also remember telling the police that  
5 maybe at least one of the people had a white T-shirt on?

6 A. No. I didn't tell them that.

7 Q. If there's a police report that says both you and  
8 your girlfriend said that one of them may have had a  
9 white T-shirt on, is that report accurate?

10 MS. LEWIS: Judge, I object to anything that  
11 the girlfriend might have said as his question relates.  
12 I don't have any objection to him asking him about --

13 THE COURT: So the objection is to form of  
14 the question.

15 MS. LEWIS: Yes.

16 THE WITNESS: Yeah. Well --

17 THE COURT: Rephrase.

18 THE WITNESS: -- she might have said that.  
19 I didn't say it, though.

20 BY MR. BUNIN:

21 Q. All right.

22 A. I don't know --

23 Q. If there's a --

24 A. -- what she seen.

25 Q. If there's a police report, sir, that says that

1 you may have said that, do you think that report's  
2 wrong? It's not accurate, the report?

3 A. Well, they have my police report. I never said  
4 neither one of them had a white shirt on. She said  
5 that. I don't know --

6 Q. Your girlfriend said that?

7 A. -- if she -- yeah. She told the police that.

8 Q. Okay. Now, you know, just that night you were  
9 wearing a black shirt, weren't you?

10 A. Yeah. Me and Betty.

11 Q. Matter of fact --

12 A. Me and Betty.

13 Q. -- you and Betty. Somebody else in your car  
14 named Betty --

15 A. Yeah --

16 Q. -- she was also wearing --

17 A. -- she had a black shirt --

18 Q. -- a black shirt that night?

19 A. -- on, too.

20 Q. And, actually, the police for a moment there  
21 actually mistook --

22 A. Yeah. They --

23 Q. -- you and Betty as suspects?

24 A. Yeah. They mistaken us for being with them.

25 Q. Yeah.

1 A. Yeah.

2 Q. You know -- oh, all the people you saw, they had  
3 long pants on; is that correct?

4 A. Yeah. I believe so. Yeah, I think so.

5 Q. Okay. Now, the person you said had the shotgun,  
6 he got into the back --

7 A. Yeah.

8 Q. -- right passenger seat?

9 A. The right passenger seat.

10 Q. Back right passenger seat. Okay.

11 A. Yeah. Yeah.

12 Q. And then the person that drove the vehicle, that  
13 was the one that was closest to you, right?

14 A. Yeah. That's the one that put the gun --

15 Q. He had a handgun?

16 A. -- to my head. He had a handgun.

17 Q. And when you got up out of the car, you're right  
18 next to him for a moment; is that correct?

19 A. No. I wasn't next to him. I jumped out the car.

20 Q. Okay. Now, I noticed again the prosecutor didn't  
21 ask you your height, but your five-foot-seven; is that  
22 correct?

23 A. Yes.

24 Q. And the person that drove the vehicle was your  
25 height or shorter; isn't that correct?

1 A. Oh, he was a little shorter than me.

2 Q. He was a little bit shorter than you?

3 A. Yeah.

4 Q. Okay. So if Jamar Matthews here is  
5 five-foot-eleven, he would be four inches taller than  
6 you, right?

7 MS. LEWIS: I'm going to object to the form  
8 of the question. There is no evidence as to the height  
9 of Jamar Matthews.

10 MR. BUNIN: That's an improper objection. I  
11 mean, I'm asking him a question that if my client's  
12 five-foot-eleven this wouldn't be the person that got  
13 into the car.

14 THE COURT: What is your question?

15 MR. BUNIN: If Jamar Matthews is  
16 five-foot-eleven, then he's not the one that drove the  
17 car that night.

18 THE COURT: You can ask the question whether  
19 he knows.

20 MR. BUNIN: Thank you.

21 BY MR. BUNIN:

22 Q. So if the person that drove the car was your  
23 height or a little bit shorter, that's your testimony.  
24 Is that correct?

25 A. Well, I had on boots so --

1 Q. Okay.

2 A. I had on boots --

3 Q. All right.

4 A. -- so I don't know if he was taller or shorter.

5 Like I said, I was just trying to get somewhere.

6 Q. Do you remember testifying under oath at a  
7 different hearing in this case?

8 A. Yes.

9 Q. That was a couple of months ago; is that right?

10 A. That's right.

11 Q. And at that hearing you said specifically you  
12 were five-foot-seven. Do you remember saying that?

13 A. Yes.

14 Q. And you said that the person that drove the car  
15 was your height or a little bit shorter. Do you  
16 remember saying that?

17 A. Yeah.

18 Q. Okay. I don't have any other questions. Thank  
19 you.

20 A. Uh-huh.

21 THE COURT: Cross.

22 MR. SINGER: Thank you.

23 CROSS-EXAMINATION

24 BY MR. SINGER:

25 Q. The four guys that were -- before they came up to

1 your car you saw them walking up to you guys --

2 A. Yeah, yeah.

3 Q. -- walking up to your location?

4 A. Just walking right down Lexington, walking right  
5 down Lexington like you're going south.

6 Q. Okay. And then at the point where the person  
7 came up to you right before you put your hands up, you  
8 saw some red and black gloves on his hands, right?

9 A. Yeah.

10 Q. And you said something about a 9mm. Did you see  
11 what you thought to be --

12 A. I said I don't -- I'm sure it was a handgun, but  
13 I said it looked like a nine to me. I don't know what  
14 kind of gun it was.

15 Q. But it looked like a 9mm to you?

16 A. Yes. Yeah, it looked like a nine or something.

17 Q. Do you remember you gave the police a recorded  
18 statement, right?

19 A. Yeah.

20 Q. And that recorded statement was the night of the  
21 incident?

22 A. Yes. Yes.

23 Q. And your memory was kind of -- would you agree  
24 with me that your memory was better that night than it  
25 is today?

1 A. That night, yes.

2 Q. Remember telling the police that the individuals  
3 had long black pants on?

4 A. I didn't say black. I said I think they had blue  
5 jeans on, blue jeans on with black shirts.

6 MR. SINGER: Judge, may I approach?

7 THE COURT: You may.

8 MR. SINGER: I'm referring to page 12 on the  
9 bottom.

10 BY MR. SINGER:

11 Q. Do you remember the policeman asking you the  
12 question -- well, I'll going to give you a few  
13 questions. The policeman said, "Did he have shorts on  
14 or jeans?" And you answered, "I don't remember."

15 MS. LEWIS: Judge, I'm going to object to  
16 reading from the statement.

17 THE COURT: If you're going to impeach him  
18 with a prior inconsistent statement, ask him about a  
19 specific statement.

20 BY MR. SINGER:

21 Q. Showing you part of your statement, page 12,  
22 right here. Do you remember the question referring to  
23 the bottom?

24 A. Okay. Is this mine?

25 Q. Is that your name right there?



1 A. Yeah.

2 Q. Okay. Well, you tell me if it's yours.

3 A. Well, it said don't remember. They had on --  
4 they got on some long pants.

5 Q. And then did the policeman said, "Long black  
6 pants," question mark, and you say, "Yeah"? Is that  
7 true?

8 A. No. I said I don't know if they was black jeans  
9 or black pants.

10 Q. So when you said --

11 A. Blue jeans or black pants.

12 Q. Do you see where the policeman asked you, "Long  
13 black pants," question mark?

14 A. Yeah.

15 Q. And what's your answer?

16 A. Yeah. They had on -- they on long pants. That's  
17 what I said. They had on long pants.

18 Q. Thank you.

19 A. I didn't say blue jeans or black pants.

20 Q. All four of these young men had short-sleeved  
21 shirts on, right?

22 A. Yeah.

23 MR. SINGER: Pass the witness.

24 THE COURT: Redirect.

25 MS. LEWIS: May I approach?

1 THE COURT: Yes.

2 REDIRECT EXAMINATION

3 BY MS. LEWIS:

4 Q. Melvin, I want to show you page 12 and 13. At  
5 the bottom of page 12 is what he just showed you where  
6 you said, "Yeah. They had on long pants," right?

7 A. Um-h'm.

8 Q. Okay. Read the rest of this -- read the next  
9 question and the next answer that goes on to page 13 to  
10 yourself.

11 A. Okay. What's that now?

12 Q. Read it to yourself.

13 A. Okay. Now on this right here? You want me to  
14 read --

15 Q. Right here at the top --

16 A. -- this one?

17 Q. -- of page 13. Okay. So after you talked to  
18 the police and after the question about whether they had  
19 long pants on, long black pants, and you said they had  
20 long pants, did you further describe to the police what  
21 kind of pants?

22 A. No.

23 Q. At the top --

24 A. I said they had long pants on, I know that.

25 Q. And the next question that you just read at the

1 top of page 13, did you give a description of what kind  
2 of pants?

3 A. No. I said it was blue jeans or something like  
4 that.

5 Q. Okay.

6 A. That's why I got a question mark on it.

7 Q. Okay.

8 A. Because I wasn't sure.

9 MR. BUNIN: Judge, I'm going to object,  
10 please.

11 THE COURT: There's a question. What's the  
12 basis for the objection?

13 MR. BUNIN: Because he's summarizing  
14 something incorrectly.

15 THE COURT: I'll let you take it up on  
16 recross-examination.

17 BY MS. LEWIS:

18 Q. And you told the police blue jeans or jeans,  
19 correct?

20 A. Yeah.

21 Q. Okay.

22 A. Something like that.

23 MS. LEWIS: Pass the witness.

24 THE COURT: Recross.

25 MR. BUNIN: Briefly.

## 1 RECROSS-EXAMINATION

2 BY MR. BUNIN:

3 Q. Whether they were black pants or blue jeans, they  
4 were long, not short; is that correct?

5 A. Yeah. I think it was long pants.

6 Q. And you specifically said I think they all had on  
7 black pants, right?8 A. I think they -- I think they was blue jeans or  
9 black pants.10 Q. In the statement that was just given to you you  
11 said I think they all had on black pants, jeans.

12 A. Or blue jeans.

13 Q. You just said jeans, not blue jeans, correct?

14 A. Yeah.

15 Q. So it could have been black long pants that might  
16 have been jeans?

17 A. Could have been.

18 Q. Okay.

19 A. Um-h'm.

20 Q. You know, you also -- I just asked you a second  
21 ago about the hearing that was several months old where  
22 you testified. At that hearing the same prosecutor was  
23 asking you questions; is that right?

24 MS. LEWIS: Judge, objection to --

25 THE WITNESS: Yes.

1 MS. LEWIS: -- to relevance.

2 THE COURT: What is the relevance?

3 MR. BUNIN: The relevance is that she asked  
4 the exact same question about his height, and I want to  
5 go through how he answered at that time. She was the  
6 one asking him the questions, so I guess that's  
7 important.

8 THE COURT: I'm sorry. I don't understand.

9 MR. BUNIN: I just want to ask him about a  
10 prior hearing, if that's okay, Your Honor.

11 THE COURT: Okay.

12 BY MR. BUNIN:

13 Q. At the prior hearing where you testified you were  
14 asked the question, "How tall are you, Melvin?" Answer,  
15 "I'm five-foot-seven." Do you remember that?

16 A. Yeah.

17 Q. Okay.

18 A. I'm five-foot-seven.

19 Q. And then the next question was, "And would you  
20 say that the person with the gun in your face was taller  
21 or shorter than you, and your answer was, "Probably  
22 about the same height as I am or a little shorter"; is  
23 that correct?

24 A. Yeah, a little shorter or taller.

25 Q. You mention anything else about wearing shoes or

1 boots or anything along those lines, what you were  
2 wearing that day?

3 A. No. I was wearing some slacks.

4 Q. My question is you didn't answer any questions  
5 about that at any other time?

6 A. No. I wasn't asked no questions about that.

7 Q. All right.

8 A. No.

9 Q. Thank you. I appreciate it.

10 A. Um-h'm.

11 THE COURT: Mr. Singer.

12 MR. SINGER: Pass the witness, Judge. Thank  
13 you.

14 THE COURT: Redirect?

15 MS. LEWIS: No redirect.

16 THE COURT: Is this witness free to go?

17 MS. LEWIS: Yes.

18 THE COURT: Thank you, Mr. Bolden.

19 THE WITNESS: You're welcome. Thank you.

20 THE COURT: You may step down, and you're  
21 excused.

22 THE WITNESS: Okay. Thank you.

23 THE COURT: Call your next witness.

24 MS. LEWIS: May we approach?

25 (Off-record bench conference)

1           THE COURT: Yes. All right. Ladies and  
2 gentlemen, we're going to take our afternoon recess. I  
3 need Bailiff Reichert back in the courtroom.

4           Dan, we're doing our afternoon recess.

5           It is your duty not to converse among  
6 yourselves or with anyone else on any subject connected  
7 with this trial.

8           Further, you may not read, watch or listen  
9 to any report of or commentary on this trial from any  
10 medium of information including, without limitation,  
11 newspaper, television or radio.

12           You may not form or express an opinion, any  
13 opinion, on any subject connected with this case until  
14 it's finally submitted to you.

15           We'll be in recess for 15 minutes. Follow  
16 Officer Reichert.

17                       (Jury not present)

18           THE COURT: All right. There are a couple  
19 things. The record should reflect we're outside the  
20 presence of the jury.

21           On our afternoon recess there had been a  
22 number of individuals coming and going from the back of  
23 the courtroom as well as officers. I have no idea what  
24 the reasons for that are.

25           I would also note that Juror No. 13,

1 Mr. Tate, whose notes had disappeared have now  
2 reappeared, so the record should reflect that. I will  
3 inquire of Mr. Tate if the notes are complete and make  
4 sure that --

5 MS. LEWIS: Do we know where they  
6 disappeared to and how they reappeared or --

7 THE BAILIFF: Detective Malone tracked them  
8 down. Apparently, they picked up some --

9 THE COURT: It was a -- during the lunch  
10 break there was a swearing in of AGs, civil DAs,  
11 criminal DAs, and I think maybe even a public defender,  
12 and they sat in that box over there.

13 MS. LEWIS: Oh, okay.

14 THE COURT: I don't know who was sitting  
15 there so --

16 MS. LEWIS: So somebody picked it up and  
17 walked away with it (indiscernible) --

18 THE COURT: Apparently.

19 MR. FIGLER: I was going to make a record  
20 that the room was crawling with DAs, but I decided  
21 (indiscernible).

22 UNIDENTIFIED SPEAKER: (Indiscernible) told  
23 them to grab them all.

24 THE COURT: I don't know. I just want to  
25 make sure the record's clear.



1 MR. FIGLER: What was really funny, Judge,  
2 is that you said there might be a fracas outside, so I  
3 walked out and there was all these people talking and  
4 like (indiscernible) we're like oh, no, what are we  
5 walking into, and it was all the --

6 MR. BUNIN: DAs talking.

7 MR. FIGLER: -- (indiscernible).

8 THE COURT: Oh, really?

9 MR. FIGLER: Yeah. I'm like you guys better  
10 calm down. The Judge is mad.

11 THE COURT: We're on break, 15 minutes.

12 MR. FIGLER: Thanks, Judge.

13 (Court recessed at 2:57 p.m. until 3:12 p.m.)

14 (Jury not present)

15 THE COURT: -- presence of all counsel.

16 State of Nevada versus Pierre Joshlin and  
17 Jamar Matthews. Record should reflect presence of all  
18 counsel and Mr. Joshlin and Mr. Matthews.

19 I see counsel over there busily looking over  
20 proof sheets. Are we ready to bring the jury back?

21 MS. LEWIS: State's ready. Are you ready?

22 THE COURT: Are we ready to bring the jury  
23 back?

24 MR. FIGLER: (Indiscernible). Okay. Yes,  
25 we are, Your Honor. We just had to go over some stuff.

1 THE COURT: Always fair.

2 (Off-record colloquy)

3 (Jury present)

4 THE BAILIFF: Jury's present, please.  
5 Panel's present, Your Honor.

6 THE COURT: Thank you. Back on the record  
7 in C228460, State of Nevada, plaintiff, versus  
8 Pierre Joshlin and Jamar Matthews.

9 Record should reflect presence of counsel,  
10 clients and all members of the jury.

11 Do the parties stipulate to the presence of  
12 the jury?

13 MS. LEWIS: State so stipulates.

14 MR. BUNIN: Yes, Your Honor.

15 MR. SINGER: Yes, Your Honor.

16 THE COURT: Thank you. State, call your  
17 next witness.

18 MR. BATEMAN: State calls Brian Walter.

19 THE CLERK: I'll swear you in, sir.

20 BRIAN WALTER, PLAINTIFF'S WITNESS SWORN

21 THE WITNESS: Yes, I do.

22 THE CLERK: Thank you. Please be seated.  
23 Please state your full name loudly and spell the first  
24 and last name.

25 THE WITNESS: Brian Walter, B-r-i-a-n

1 W-a-l-t-e-r.

2 THE CLERK: Thank you.

3 DIRECT EXAMINATION

4 BY MR. BATEMAN:

5 Q. Sir, you're an officer at the Las Vegas  
6 Metropolitan Police Department?

7 A. Yes, sir, I am.

8 Q. What's your current assignment?

9 A. Currently I'm assigned to Bolden Problem Solving  
10 Unit.

11 Q. Okay. Well, how long have you been a police  
12 officer?

13 A. At this point, three-and-a-half years.

14 Q. How long have you been at this particular  
15 assignment that you're now at Bolden PSU?

16 A. As of today, one year.

17 Q. Okay. First tell me what does the term "Bolden"  
18 mean?

19 A. Bolden is our area command. It's named after  
20 Larry C. Bolden, and it's just the area command for the  
21 area I work.

22 Q. You say the area you work. You work in a  
23 particular area in Las Vegas valley?

24 A. Yes, I do, sir.

25 Q. What is that area in terms of streets and

1 addresses?

2 A. It's mainly Martin Luther King Boulevard.

3 Everything east there to basically I-15.

4 Q. I'm sorry?

5 A. Martin Luther King Boulevard. Everything east to  
6 I-15 down to about Main Street, probably be a good  
7 estimation.

8 Q. Now, when you say you're also a problem solving  
9 unit, what does that mean?

10 A. Basically that entails -- we're like a  
11 plainclothes unit inside the area command where we  
12 investigate certain crimes that happened in our area  
13 command; robberies, property crimes, anything of that  
14 nature that we can solve on our level, so it takes a  
15 little bit of wear off the detective bureau.

16 Q. I'm going to direct your attention to September  
17 30th of 2006. Were you working that evening?

18 A. Yes, I was.

19 Q. And you were at the Bolden area; is that right?

20 A. Yes, sir.

21 Q. Do you have a partner that you were working with  
22 at that time?

23 A. Yes, Officer Cupp.

24 Q. And what's Officer Cupp's first name?

25 A. Brad.

1 Q. Were you in a patrol vehicle?

2 A. No. We were in a plain vehicle. It's a -- it  
3 was a red Chrysler Seabring, just a plain car. It had  
4 its emergency equipment inside kind of like an  
5 undercover car.

6 Q. Emergency equipment means what? You have lights  
7 and sirens?

8 A. Red and blue lights, sirens, we had strobe lights  
9 inside each front corner of the headlights and in the  
10 rear taillights.

11 Q. Okay. That evening, without elaboration, was  
12 there a significant amount of police presence generally  
13 in the area of the Bolden area?

14 A. Yes, sir, there was.

15 Q. Okay. And specifically at about 9:50 that  
16 evening were you in the area with your partner of  
17 Bartlett and Concord (phonetic) which is here in  
18 Las Vegas, Clark County?

19 A. Yes, I was.

20 Q. And were you in your vehicle, this Chrysler  
21 Seabring?

22 A. Yes. I was in the front passenger seat and  
23 Officer Cupp was the driver of that vehicle.

24 Q. Are you in plain clothes or are you wearing a  
25 uniform at the time like you are today?

1       A. We were in plain clothes. It's a -- just  
2 basically jeans and a T-shirt, and we had like a black  
3 tactical vest that said "police" in big letters across  
4 the front and the back.

5       Q. Now, in the area of Bartlett and Concord did you  
6 happen to hear something that caused you some concern?

7       A. As myself and Officer Cupp were driving down the  
8 road we heard three -- probably three to six, maybe  
9 eight gunshots coming from an area just south of where  
10 we were, Bartlett and Concord.

11      Q. Okay. And Bartlett and Concord, what's the next  
12 street south?

13      A. The next street south would be Balzar.

14      Q. Okay. And then the next street south of that?  
15 Is that --

16      A. Lawry would be the next street south of that.

17      Q. Okay. When you first heard these gunshots, do  
18 you remember how many you heard?

19      A. It -- three, six, seven is -- quite a few. It  
20 was very fast. They came one right after the other  
21 repeatedly.

22                               (Off-record colloquy)

23               MR. BATEMAN: May I approach the witness,  
24 Your Honor?

25               THE COURT: Yes. Have you shown it to

1 counsel?

2 BY MR. BATEMAN:

3 Q. So after showing counsels, I'm going to show you  
4 State's I believe Proposed Exhibit 154 and ask you to  
5 take a look at this. Does it appear to be an overhead  
6 map of the area that you were in on the evening of  
7 September 30th, 2006?

8 A. Yes, sir, it does.

9 Q. Okay. And that particular map, does it contain  
10 an area of a number of addresses that were relevant to  
11 your testimony here today?

12 A. Yes, sir, it does.

13 Q. Okay.

14 MR. BATEMAN: Move admission of 150 --  
15 State's Proposed 154 and ask to publish so that we can  
16 continue with examination.

17 THE COURT: Any objection?

18 MR. BUNIN: No, Your Honor.

19 MR. SINGER: None, Your Honor.

20 THE COURT: It will be admitted.

21 (Plaintiff's Exhibit No. 154 admitted)

22 MR. BATEMAN: May I approach?

23 THE COURT: You may.

24 BY MR. BATEMAN:

25 Q. I'll have you look at the screen. Can you see

1 that on your screen or is it --

2 A. Yes.

3 Q. -- in front of you?

4 A. It's --

5 Q. Okay.

6 A. -- a little blurry, but I can still see.

7 Q. All right. You can actually draw on the screen  
8 of your monitor there, so if you touch the monitor it  
9 will kind of show a line. Can you tell me where you  
10 first started out when you heard a gunshot?

11 A. Balzar would be this street right here. Oh,  
12 sorry. Oh, boy. Sorry.

13 Q. There we go.

14 A. Can I still touch it or --

15 Q. Yeah. Go ahead.

16 A. Balzar is -- it's not drawing any lines. Do you  
17 have like a stylus or anything I can use?

18 Q. It still doing it? Try one more time. Okay.

19 A. I got a pen I can use.

20 Q. Try your pen. I don't know why (indiscernible).  
21 Okay.

22 A. It would be the next -- that next street closest  
23 -- it would be --

24 Q. Above it?

25 A. -- towards the top of the page. Yes.



1 Q. Okay.

2 A. That's Balzar, and the street we were on is  
3 Bartlett which is not represented on this map.

4 Q. Where's Bartlett in relation to Balzar?

5 A. The next street north.

6 Q. So it would be up this way?

7 A. Yes. North would be up.

8 Q. What's that circle I see there kind of on the  
9 top?

10 A. That is a park. The city has a real name for it,  
11 but I'm not sure what it, but we call it Circle Park and  
12 the people around that area call it Circle Park.

13 Q. Okay. When you hear these gunshots, do you have  
14 a general vicinity that you believe that they come from  
15 and is that why you had -- and where you head as a  
16 result of that?

17 A. They sounded really close to us from where we  
18 were sitting. This is Concord here, by the way. It's  
19 kind of -- I'm sorry. I keep messing the thing up.  
20 This little farther to the right of the screen would be  
21 Concord.

22 Q. Okay.

23 A. Bartlett will be up here, and it sounded really  
24 close. It sounded like the next street south of us  
25 which would be Balzar. I'm sorry.

1 Q. Okay. So when you hear these shots, where do you  
2 and Officer Cupp drive?

3 A. We turn eastbound down Bartlett to Concord and  
4 basically go around Circle Park to Balzar and make a  
5 west-hand turn at Balzar towards Lexington.

6 Q. Okay. So where you've got this line right here,  
7 you're heading -- is this west over here?

8 A. Yes. West would be to the left, east would be to  
9 the right, and then south would be down, and north would  
10 be up.

11 Q. Okay. You head towards Balzar and Lexington; is  
12 that right?

13 A. Yes, sir.

14 Q. And when you get to Lexington, what do you do?

15 A. We don't see anything at the intersection of  
16 Balzar and Lexington, so we continue southbound on  
17 Lexington to the next street which is Lawry.

18 Q. Okay. At this point in time when you're passing  
19 the Balzar/Lexington intersection, is there anybody out?

20 A. We don't see anybody moving. There's nobody out  
21 running around. There's nobody screaming for help.

22 There wasn't anybody -- you know, we were in a  
23 plain car, mind you, where there was nobody in the  
24 street. There was really nothing going on. We didn't  
25 see anything.

1 Q. Is that what you were looking for as a result of  
2 hearing the gunshots?

3 A. Normally when a -- my experience, normally when a  
4 shooting occurs, there's usually a lot of commotion  
5 that's around after the shooting. There's people  
6 screaming.

7 Maybe there might be some suspects in the area,  
8 that type of thing. That's what we were looking for is  
9 people running from the scene or screaming for help or  
10 anything like that.

11 Q. Okay. And when you hear the gunshots, do you  
12 actually have a way of kind calling out to your fellow  
13 officers that you've heard gunshots or do you receive  
14 information relating to these gunshots in a certain way?

15 A. Our sergeant immediately notified dispatch. We  
16 were -- our unit kind of operates together so we're all  
17 pretty much in the same area all the time we do an  
18 operation, and our sergeant notified dispatch that he  
19 had some -- heard some shots being fired to our south.

20 Q. And do you either in your car or on your person  
21 as you are on duty do you have radio equipment that you  
22 can hear how different officers are talking to each  
23 other?

24 A. Yes. Inside our vehicle, of course, is the car  
25 radio and then on each officer is a like a

1 walkie-talkie, a PAC set (phonetic).

2 Q. Okay. And you can use this kind of walkie-talkie  
3 to either -- is it to call other officers or do you send  
4 a message to the dispatch center and then it's sent out  
5 to officers? How does that work?

6 A. It's sent through dispatch, but other officers,  
7 of course, on the same frequency can hear us, too.

8 Q. Okay. And do you remember the call out regarding  
9 shots first occurred?

10 A. Immediately after they happened. We were  
11 probably on Concord just turning up Balzar at the time  
12 the -- our supervisor called them out.

13 Q. Do you know the exact time?

14 A. No, sir, I do not.

15 Q. Is the details of a particular call-out such as  
16 this, are they normally recorded by the Las Vegas  
17 Metropolitan Police Department?

18 A. All of our radio traffic is recorded by --  
19 through dispatch, so -- and they print out a log so it's  
20 ready for court purposes.

21 Q. Okay. Would looking at this log refresh your  
22 recollection as to when the initial call-out came out?

23 A. Yes, it would, sir.

24 Q. Do you have a call sign that you and Officer Cupp  
25 use on the night in question?

1 A. I believe that night we were 8 Williams -- or  
2 8W73, 8 Williams 73.

3 MR. BATEMAN: May I approach, Your Honor?  
4 I'm already here.

5 THE COURT: You're there.

6 BY MR. BATEMAN:

7 Q. I'm going to show you this document here, have  
8 you take a look at it and see if it refreshes your  
9 recollection as to when the actual call-out shots fired  
10 occur.

11 A. Yes, sir. It's -- it says heard by 692 which  
12 would have been my supervisor, his call sign, was heard  
13 at 22 -- or 2152 hours.

14 MR. BUNIN: Judge, I'd object to him reading  
15 off it. If it refreshes his recollection, he can  
16 testify. That's fine.

17 THE COURT: Officer, you need to refresh  
18 your memory, set the document down and testify --

19 THE WITNESS: Okay.

20 THE COURT: -- and answer questions.

21 BY MR. BATEMAN:

22 Q. Have you finished reviewing that document?

23 A. Yes.

24 Q. Okay. Does it refresh your recollection as to  
25 when the call actually came in?

1 A. Yes.

2 Q. And what was that time?

3 A. 2152 hours which would be 9:52 p.m.

4 Q. Now, we'll go back to the map here on 154. You  
5 say you passed the 1271 Balzar. Did you make any turns  
6 at that point at the intersection of Lexington and  
7 Balzar?

8 A. When we hit the intersection of Lexington, we  
9 turned southbound and proceeded to a stop sign at Lawry.

10 Q. Okay. And at that particular intersection did  
11 anything unusual catch your eye?

12 A. As we were sitting at the stop sign we heard some  
13 commotion to our left which would be to the east part of  
14 the street. It sounded like three or four people  
15 arguing at a car and some more voices walking towards  
16 the house at that intersection.

17 Q. Okay. And what is it that you saw?

18 A. It was very dark. We couldn't make out any  
19 figures. We couldn't identify anybody if it came to  
20 that. All we heard was voices.

21 And we couldn't really make out what they were  
22 saying, but it sounded like an argument was going on.  
23 People moving towards the house were yelling at the  
24 people at the car.

25 Q. And can you describe the car.

1       A. It was a silver Lincoln four-door. It was a  
2 Continental I believe is what it was.

3       Q. And did you find anything about this particular  
4 situation unusual? I mean, what struck you about this  
5 particular scene you were observing?

6       A. Well, being that we heard the gunshots seconds  
7 before, we saw the commotion at the car, probably, an  
8 estimate, probably, six to eight seconds after the  
9 gunshots, we observed the commotion at the car. It kind  
10 of drew our attention because there was nobody else out  
11 on the street.

12           There weren't anybody -- you know, nobody was  
13 walking around. We didn't see any kids playing,  
14 anything of that nature, so it kind of drew our  
15 attention to this specific area because all the  
16 commotion that was going on.

17       Q. Okay. And as you were stopped at this  
18 intersection, what happened with reference to this  
19 particular car that you were (indiscernible)?

20       A. The vices that we heard outside the car, we heard  
21 doors open and doors close, I think three doors or four  
22 doors open and close, and then the vehicle left the  
23 house at a high rate of speed going westbound on --

24       Q. Lexington.

25       A. -- towards Martin Luther King Boulevard.

1 Q. Okay. At a high rate of speed. What do you mean  
2 by that?

3 A. Normally when a normal person takes off in a car,  
4 its general speed increases as the distance is traveled.  
5 This -- I mean, from the beginning it sounded like they  
6 hit the gas pedals as hard as they could and the car  
7 went off as fast as it would go when they got into it.

8 Q. Based upon what you saw at this particular  
9 intersection, what did you and Officer Cupp do?

10 A. Based upon the vehicle leaving the scene, like I  
11 said like totality of circumstances, heard the gunshots,  
12 the suspicious activity around the vehicle, the vehicle  
13 leaving at what we thought was a high rate of speed, we  
14 immediately turned and began to follow the vehicle.

15 Q. Which direction did the vehicle --

16 A. The vehicle --

17 Q. -- drive?

18 A. -- went westbound towards Martin Luther King  
19 Boulevard which would --

20 Q. Okay. Looking at 154 in front of you, is this  
21 Martin Luther King right over here?

22 A. Yes, sir, it is.

23 Q. Okay.

24 A. Thank you.

25 Q. So they went west on Lawry towards Martin Luther



1 King?

2 A. Yes, sir, they did.

3 Q. The intersection of Lawry and Martin Luther King,  
4 is that a stop sign? Is that a red and green light?  
5 What kind of --

6 A. It's a -- it's a stop sign for westbound traffic  
7 on Lawry.

8 Q. Okay. Did you observe the vehicle in front of  
9 you as it got to that particular intersection?

10 A. What had appeared to me what the driver did was  
11 slow down enough to look to his left to make sure there  
12 was no traffic going northbound on Martin Luther King.  
13 Kind of a rolling stop is what he did, and he rolled  
14 completely through the stop sign without stopping.

15 Q. And which direction did he go?

16 A. He went southbound on Martin Luther King  
17 Boulevard towards Lake Mead.

18 Q. You and Officer Cupp follow?

19 A. Yes, he did. At that time after he ran the stop  
20 sign, we initiated our emergency equipment, our red  
21 lights and siren, and began to chase the vehicle.

22 Q. Besides what would otherwise be the differences  
23 in your car and a patrol car, are the lights and sirens  
24 that you'd be using significantly similar?

25 A. Yes, yes. Still strobe lights and still blue and

1 red flashing lights in the visor.

2 Q. Is there a siren?

3 A. Yes, sir, there is.

4 Q. Once you turned on your sirens and your lights,  
5 what happened along Martin Luther King?

6 A. The vehicle continued southbound. It's  
7 approaching the intersection of Lake Mead and is still  
8 traveling at a high rate of speed based on what the  
9 traffic conditions was.

10 There was a solid red light at the intersection  
11 of Lake Mead and the car, it didn't even slow down, just  
12 went right through the intersection. If there had been  
13 somebody there, they would -- it would have been a bad,  
14 bad wreck.

15 Q. Do you know about how fast the car was going?

16 A. Just in my guess 50, 55 miles an hour. I -- that  
17 would be a guess.

18 Q. All right. And I assume that you continue to  
19 follow this particular vehicle?

20 A. Yes. We still had our emergency equipment  
21 activated pursuing the vehicle. We came to the red  
22 light. We have to wait on the intersection for traffic  
23 to clear and stuff to yield to us, so we immediately  
24 went through the intersection once traffic did.

25 Q. Okay. And at some point did this particular

1 vehicle take a turn off of Martin Luther King or did it  
2 stay on Martin Luther King?

3 A. No. It made a left-hand turn onto a street  
4 called Jimmy which would be going eastbound.

5 Q. Can you see Jimmy on the map in front of you?

6 A. Lexington, Eleanor. It's kind of -- okay. Yes,  
7 I do see it. It would be towards up a little bit from  
8 where that little dot is I just made.

9 Q. So you're right here? Is that where you left  
10 that dot?

11 A. Yes, that road right there.

12 Q. Okay.

13 A. That would be Jimmy.

14 Q. And the car makes a left onto Jimmy?

15 A. Yes.

16 Q. And do you and the officer follow?

17 A. Yes. We're still in pursuit of the vehicle at  
18 this time.

19 Q. What happens after the car makes a turn onto  
20 Jimmy?

21 A. Once it made a left-hand turn onto Jimmy, it's --  
22 the vehicle's starting to slow down, and as it  
23 approached the intersection again at Lexington -- the  
24 intersection continues through -- it makes a right-hand  
25 turn onto Lexington which it would still be going

1 southbound.

2 The car's slowing down now to a point to where it  
3 appears that the occupants of the vehicle are going to  
4 get out and do -- bail from the vehicle.

5 Q. Okay. When you say slowing down, at what rate of  
6 speed would the car slow down to?

7 A. Five to ten miles an hour, maybe coast, like a  
8 coasting speed is what I would say.

9 Q. And where was the turn onto Jimmy onto Lexington  
10 on this map, 154?

11 A. Lexington would be the next street to the right  
12 of my little dot.

13 Q. Martin Luther King?

14 A. Yeah, the next street east -- or north/south or  
15 -- east of Martin Luther King. I'm sorry. I'm --

16 Q. Is that this street right here?

17 A. Yes.

18 Q. When the car starts slowing down, where are you  
19 and Officer Cupp in your vehicle in comparison to that  
20 car?

21 A. When the vehicle made the right-hand turn onto  
22 Lexington, it's -- I'll use my hands for this. The  
23 vehicle would be going this direction. It's towards the  
24 right-hand side of the curb which we have the curb right  
25 here, and we positioned our vehicle offset to the left

1 of that vehicle.

2 Q. And you said that it looked to you or appeared to  
3 you that, perhaps, the occupants of the vehicle were  
4 going to attempt to leave the vehicle?

5 A. Yes. The vehicle slowed down in such a way that  
6 we saw the driver or I saw the driver's door open up and  
7 then the driver of that vehicle lean out in such a  
8 manner that we could see basically his whole torso of  
9 his body.

10 Q. The driver?

11 A. Yes, sir.

12 Q. Okay. Did you see anything in the driver's  
13 hands?

14 A. The way he was positioned, this would be the  
15 front of the vehicle. His driver's door would be on  
16 this side. He's got the door propped open with his left  
17 hand and his left foot I believe.

18 And as he's leaning out, he's looking back at us  
19 and he's got a it looked like a rifle, like a sawed-off  
20 rifle, in his right hand, and he's just looking back at  
21 us.

22 Q. Okay. And as you -- could you -- did you really  
23 observe what this individual looked like at that time or  
24 what he was wearing at that time or were you focused  
25 solely on the firearm?

1       A. The firearm was, of course, there. We saw, you  
2 know, the red -- his hands were in red gloves. We could  
3 tell -- I saw that he had a black shirt on and blue  
4 jeans, and I could see the corn rows in his hair.

5           But I couldn't, as far as face we were kind of  
6 far back. I could, you know, just, you know, glimpse at  
7 his face is all I could see.

8       Q. What do you mean by corn rows?

9       A. It's a hair style like I don't know how to  
10 describe it. Like braids I think is what it is. It  
11 would be my best definition.

12       Q. Did something happen after you observed the door  
13 open and the driver appear to pull out and show you the  
14 firearm?

15       A. As the driver's leaning out, the car is slowly  
16 kind of -- the car's coasting at this time the way I  
17 pictured it, and it's drifting towards the right-hand  
18 curb.

19           And at that point I don't know if it's -- the  
20 driver falls out. I don't know if it's because he  
21 intentionally bailed or it's because the car struck the  
22 curb that forced him out of the vehicle, but either way,  
23 he fell out of the car.

24       Q. When the vehicle struck the curb, did it come to  
25 a stop?

1 A. No. The vehicle continued rolling southbound,  
2 and it came to a stop when it hit a fire hydrant on the  
3 right front quarter panel of the vehicle.

4 Q. At that point where is the driver?

5 A. The driver once he had fallen out he was  
6 basically right in front of us when he fell out, and he  
7 rolled once, maybe twice, stood up and then he ran. He  
8 ran at our car or we ran into him, one of the two.

9 I don't know what officer -- Officer Cupp didn't  
10 swerve to hit him, but he was just right there (snap  
11 fingers once) when we were right there on top of him,  
12 glancing blow off the front of our car so it caused him  
13 kind of to roll down the side of our car as he went by.

14 Q. Okay. And about what speed was your car going at  
15 this time? Could you estimate? I know you weren't  
16 driving.

17 A. Five to ten miles on hour would probably be a  
18 safe best. We were coasting because we were expecting,  
19 too, to get out and have to chase after them once they  
20 bailed.

21 Q. Do you remember whether this individual, this  
22 driver, still had the firearm in his hand?

23 A. He had the firearm when he fell out of the  
24 vehicle. I don't know if he dropped it when he hit the  
25 ground initially or he dropped it after Officer Cupp hit

1 him with the car.

2 Q. Okay. And at some point after the driver came  
3 into contact with your vehicle, what did you do? Well,  
4 strike that. Did your vehicle come to a stop?

5 A. Our vehicle it slowed down enough to where I was  
6 able to get out once he had gone past my door.

7 Q. Okay. Could you tell whether there were any  
8 other occupants in this particular vehicle?

9 A. At this point, no, I couldn't tell. The windows  
10 were tinted. I couldn't see if there was any other  
11 persons inside the vehicle.

12 Q. Okay. What did you do once your car came to a  
13 stop with regard to the driver?

14 A. I immediately exited the car and started chasing  
15 after him.

16 Q. Okay. Which way did the driver run?

17 A. The driver went -- ran northbound up Lexington  
18 towards a street called Eleanor.

19 Q. Okay. And if could again direct you to 154, and  
20 if you can just kind of demonstrate on the overhead the  
21 path that this individual was taking.

22 A. About -- in this area is where the car came to a  
23 final rest. About right there is where the person got  
24 kicked out of the -- or left the vehicle I should say,  
25 and he went northbound -- oh, man. Northbound and then



1 made a right-hand turn onto Eleanor.

2 Q. And did you give chase?

3 A. Yes. I was in visual sight of him the whole  
4 time.

5 Q. Could you tell whether or not at this point that  
6 the driver still had the weapon?

7 A. No. He did not have the weapon at this point.  
8 As I got out of the car, it appeared to me that he  
9 looked back to see if there was somebody chasing him or  
10 if we had stayed inside the vehicle.

11 So I got out. At that point I'm probably  
12 distance wise from me to the -- where the overhead  
13 projector is sitting from him. So at this point he  
14 looks back at me, and he's looking at me to make sure  
15 that there's somebody following, so I get a good look at  
16 his face at that time and get a better clothing  
17 description of him.

18 Q. At this point you said you did get a look at his  
19 face?

20 A. Yes. Yes.

21 Q. Okay. Did you recognize this individual?

22 A. I recognized him, yes, but at that point I  
23 couldn't place his name, but he looked -- he appeared to  
24 be somebody that I had made contact with before. Yes.

25 Q. Okay. And just when you say you made contact, I

1 mean, you generally patrol this area and work with the  
2 neighborhood; is that correct?

3 A. Yes, sir. The entire time I've been stationed at  
4 Bolden area command I've worked that area of town.

5 Q. Okay. And you've come into contact with the  
6 residents of the neighborhood?

7 A. Yes, sir.

8 Q. It's not necessarily some sort of criminal stop  
9 or anything. You just come into contact with them.

10 A. Yes. Yes.

11 Q. Okay. You talk to them?

12 A. Yes.

13 Q. Okay. So this time you had recognized him as  
14 someone you'd seen before?

15 A. His appearance appeared to be that I recognized.  
16 Like I said, I couldn't remember what his name was at  
17 that time, but his face jogged my memory. It appeared I  
18 knew him.

19 Q. Now you continued to give chase; is that correct?

20 A. Yes, sir, northbound down Lexington and made a  
21 right-hand turn onto Eleanor.

22 (Off-record colloquy)

23 MR. BATEMAN: May I approach the witness,  
24 Your Honor?

25 THE COURT: You may.

1 BY MR. BATEMAN:

2 Q. Okay. First exhibit I'm going to show you is  
3 State's Proposed Exhibit 155, again, what appears to be  
4 an overhead map. Do you recognize what area of town is  
5 depicted or what particular address is depicted  
6 (indiscernible)?

7 A. Yes. The address depicted is 1200 Eleanor.

8 Q. Okay. This is the same Eleanor Street that  
9 you're chasing the driver down?

10 A. Yes.

11 Q. Okay.

12 MR. BATEMAN: Move admission of 155, and ask  
13 to publish.

14 THE COURT: Any objection?

15 MR. BUNIN: Submitted.

16 MR. SINGER: No, Judge.

17 THE COURT: Mr. Bunin?

18 MR. BUNIN: Submitted, Judge.

19 THE COURT: It's admitted.

20 (Plaintiff's Exhibit No. 155 admitted)

21 BY MR. BATEMAN:

22 Q. Okay. Now I'm going to put this on the overhead.  
23 This street over here, is that Lexington?

24 A. Yes, sir, it is.

25 Q. And this is Eleanor Street?

1 A. Yes.

2 Q. At some point is this where you're chasing the  
3 driver?

4 A. Yes. I can kind of draw, sir.

5 Q. Yes.

6 A. Okay. He's running this direction, and he makes  
7 a right-hand turn down Eleanor.

8 Q. Okay. Now, at some point does another patrol  
9 officer show up in this area?

10 A. Yes. Before we round the intersection of  
11 Eleanor, a patrol unit coming southbound on Lexington  
12 sees me chasing this person and gets in behind or makes  
13 a right-hand turn also down or a left-hand turn down  
14 Eleanor.

15 Q. All right. And are you continuing to give chase  
16 even though this vehicle pulled in front of you?

17 A. Yes. I'm still chasing him even though there's  
18 patrol between me --

19 Q. Do you know who the people were or the patrol  
20 officer?

21 A. The officer was Officer Patrucci and Officer  
22 Depierro.

23 Q. Okay. Where is it that you see at this point the  
24 suspect that you're chasing go?

25 A. He continues eastbound. He continues eastbound

1 down Eleanor and makes a left-hand turn. There wasn't  
2 any cars at this point parked in front of the residence  
3 and makes a right or left-hand turn into that direction.  
4 Again, there was no cars parked in front of the  
5 residence at this time.

6 Q. Okay. And do you continue to give chase into the  
7 yards of the houses on the north side of Eleanor?

8 A. Yes. The patrol car had kind of at that time  
9 pulled right behind the suspect as he was starting to  
10 veer over towards the house, and I had run around the  
11 rear of the patrol car.

12 I could see his upper torso where I was running,  
13 and the patrol car stopped when it hit the sidewalk, and  
14 then the suspect jumped the first chain-link fence to  
15 the front yard.

16 Q. Okay. Did he jump any other fences?

17 A. Yes. He continued to run northbound through the  
18 yard and jump the backyard into the neighbor's house or  
19 the neighbor yard.

20 Q. Is that the last fence that you saw this  
21 particular individual jump?

22 A. He jumped a fence or he jumped a front yard  
23 fence, I jumped a front yard fence. He jumped the  
24 backyard fence. I jumped the backyard fence and --

25 Q. Okay. And then did something happen that stopped

1 you from chasing this particular suspect?

2 A. Yes. I heard three gunshots to my south, back  
3 the direction where my partner was, where I thought he  
4 was with the vehicle.

5 Q. Did you have your radio on you?

6 A. Yes.

7 Q. Okay. And based upon -- was there a call-out as  
8 to the shots?

9 A. I heard the shots first, and then five seconds  
10 later, probably, I heard my partner say that he had shot  
11 at another suspect.

12 Q. Based upon that information that you'd received,  
13 what did you do?

14 A. I stopped chasing the suspect and went back to  
15 where my partner -- where I heard the gunshots.

16 MR. BATEMAN: May I approach, Your Honor?

17 THE COURT: Yes.

18 BY MR. BATEMAN:

19 Q. Showing you State's Proposed Exhibits 129, 130,  
20 and 131. I'd have you look at those three photographs,  
21 see if you recognize that particular road and residence  
22 that is depicted in those photographs.

23 A. Yes. This is Eleanor, and it's -- the picture's  
24 taken from Lexington looking eastbound down Eleanor.

25 Q. You're looking at Proposed Exhibit 129. 130 is

1 it similar?

2 A. Yes.

3 Q. Okay. And then 131, is that a closer-up of the  
4 house or the area in which the suspect (indiscernible)  
5 and into the residence?

6 A. Yes, sir, it is because the tire tracks on the  
7 sidewalk are from the patrol car.

8 Q. Okay.

9 MR. BATEMAN: Move the admission of 129,  
10 130.

11 BY MR. BATEMAN:

12 Q. And just briefly as to Exhibit 131, there's a  
13 cone on the sidewalk. You didn't see that cone while  
14 you were chasing --

15 A. That cone was not there during the foot chase,  
16 no.

17 Q. Other than that cone, everything else is a fair  
18 and accurate depiction of what it looked like that  
19 evening?

20 A. Yes.

21 Q. Okay.

22 MR. BATEMAN: Move admission of 129, 130,  
23 131, Your Honor.

24 THE COURT: Any objection?

25 MR. BUNIN: Submitted.

1 MR. SINGER: No objection, Judge.

2 THE COURT: It will be admitted.

3 (Plaintiff's Exhibit Nos. 129-131 admitted)

4 MR. BATEMAN: And, Judge, briefly, if I may  
5 publish 131.

6 THE COURT: Yes.

7 BY MR. BATEMAN:

8 Q. Are you saying that this is the fence that  
9 ultimately the suspect had jumped?

10 A. Yes. The skid marks here on the sidewalk are  
11 from the patrol car when they were chasing after the  
12 suspect. He jumped this fence here and ran I guess it  
13 would be to the left of the page into the backyard.

14 Q. What's the next street to the north after  
15 Eleanor? Do you know?

16 A. The next street to the north would be Jimmy, the  
17 street that we had initially turned down from --

18 Q. Now after you heard the shots, did you return to  
19 the location of the Lincoln Continental?

20 A. Yes. I went back to the last area I knew the  
21 Lincoln Continental to be which would be at a church an  
22 Lexington.

23 Q. And when you got back to that Lincoln  
24 Continental, was there anybody around?

25 A. No. There was -- when I first approached the



1 vehicle there was no patrol units, no officers around,  
2 and the doors of the Lincoln were open and the interior  
3 light was on and the engine was still running.

4 Q. Based upon coming back to the Lincoln Continental  
5 and there not being anyone around, what did you do  
6 decide to do with regard to that area?

7 A. I had to secure that area, and before I could  
8 secure the area, I had to check the vehicle to make sure  
9 there were no more people ducked down in the back seat  
10 of the vehicle.

11 Q. Okay. And did you ultimately find whether there  
12 was anyone in that vehicle?

13 A. There was no other persons inside the vehicle.

14 Q. Okay. So at that point did you just decide to  
15 secure that particular scene?

16 A. Yes. I stayed there and called some more patrol  
17 units to assist me with securing the scene.

18 MR. BATEMAN: May I approach, Your Honor,  
19 after showing Counsel exhibits?

20 THE COURT: Yes.

21 BY MR. BATEMAN:

22 Q. I'm going to show you a number of additional  
23 photographs, Exhibits 1 -- Proposed Exhibits 145, 146,  
24 147. See if you recognize what's depicted in those  
25 photographs for me and let know.

1 A. 145 is the church and the car, the Lincoln  
2 Continental, stopped in front of it, and 146 is just a  
3 close-up of the same shot, and 147 is the rear of the  
4 Lincoln Continental in front of the church.

5 Q. Is this ultimately on --

6 A. This is Lexington.

7 Q. Okay.

8 A. Yes.

9 MR. BATEMAN: Move admission of 145 through  
10 147, Your Honor.

11 THE COURT: Any objection?

12 MR. BUNIN: Submitted.

13 MR. SINGER: No objection.

14 THE COURT: They're admitted.

15 (Plaintiff's Exhibit Nos. 145-147 admitted)

16 BY MR. BATEMAN:

17 Q. And showing you what's been marked as State's  
18 Proposed 150, 51 (sic), 152, 153, and see if you  
19 recognize what's depicted in those photographs.

20 A. Yes. Photograph 150 is the silver Lincoln Town  
21 Car that we were in pursuit of that the suspects had --  
22 or that the driver had bailed from that I began a foot  
23 chase after.

24 151 is the interior view of the same Lincoln.  
25 The doors were -- that door was open as is.

1           And then 152 would be a black handgun in the  
2 passenger floor board of that same Lincoln, and then 153  
3 is a close-up of that handgun.

4           MR. BATEMAN: Your Honor, move admission of  
5 150 to 153.

6           THE COURT: Any objection.

7           MR. BUNIN: Submitted.

8           MR. SINGER: No objection, Judge.

9           THE COURT: They're admitted.

10          (Plaintiff's Exhibit Nos. 150-153 admitted)

11          THE CLERK: I'm sorry. It was 152 and 153?

12          MR. BATEMAN: 150 to 153.

13          THE CLERK: Okay. Thank you.

14 BY MR. BATEMAN:

15          Q. Briefly, you said you found a handgun actually in  
16 the Lincoln Continental; is that correct?

17          A. Yes, sir.

18          Q. Okay. Showing you --

19          MR. BATEMAN: May I publish, Your Honor,  
20 152?

21          THE COURT: Yes.

22 BY MR. BATEMAN:

23          Q. Showing you 152, is that a photograph of the  
24 handgun?

25          A. Exactly as I'd seen it that night.

1 Q. Okay. Now when you observe this evidence, do you  
2 actually do anything with the evidence or do you wait  
3 for someone else to come recover the evidence?

4 A. No, sir. We secure the scene and make sure that  
5 nobody goes in and touches any evidence inside the  
6 vehicle, but we do stay there and leave it as is.

7 Q. Okay. Do you know what kind of handgun this is?

8 A. It appears to be a 1911 style .45.

9 Q. .45 caliber?

10 A. Yes, sir.

11 Q. Anything about the magazine that's currently in  
12 the gun that you recognize?

13 A. The magazine is partially ejected and the slide  
14 is locked back. It looks like a misfeed.

15 MR. BATEMAN: May I publish 153 as well as,  
16 Your Honor?

17 THE COURT: Yes.

18 BY MR. BATEMAN:

19 Q. Is that a same picture of that particular  
20 firearm?

21 A. Yes, just a closer view.

22 Q. And then, finally, did you find any other items  
23 of evidentiary value at or near the Lincoln Town Car?

24 A. In the front area of the church, the grass area  
25 of the church by the sidewalk, we located -- or I

1 located a sawed-off Remington 10/22 .22 caliber rifle.

2 Q. Okay. I'm going to show you State's Proposed  
3 Exhibits 157 and 158, have you look at those two  
4 photographs. Tell me if you recognize what's depicted  
5 in those photographs.

6 A. 157 and 158 are both the weapons I saw in  
7 Mr. Matthews' hands.

8 Q. Okay. That's the weapon you believe you saw in  
9 Mr. Matthews' hands?

10 A. Yes, the driver.

11 Q. Okay. When you say Mr. Matthews, what makes you  
12 say Mr. Matthews?

13 A. That's who he was later identified as.

14 Q. Okay. We'll get there.

15 A. Okay.

16 MR. BATEMAN: Move admission of 157 and 158,  
17 Your Honor?

18 THE COURT: Objection?

19 MR. BUNIN: Submitted.

20 MR. SINGER: No.

21 THE COURT: It's admitted.

22 (Plaintiff's Exhibit Nos. 157-158 admitted)

23 MR. BATEMAN: Move to publish 157.

24 THE COURT: Yes.

25 BY MR. BATEMAN:

1 Q. Is this the picture of where you found the gun in  
2 the grass?

3 A. Yes, sir, it is.

4 MR. BATEMAN: Move to publish 158.

5 THE COURT: Yes.

6 BY MR. BATEMAN:

7 Q. Is that a close-up of that gun?

8 A. Yes, it is.

9 MR. BATEMAN: I'm also going to move to  
10 publish 145, Your Honor.

11 THE COURT: Yes.

12 BY MR. BATEMAN:

13 Q. And can you tell me just generally where in the  
14 grass that gun was in relation to the Town Car  
15 Continental?

16 A. The Lincoln is there. The firearm would be --  
17 I'm sorry -- right here in this area.

18 Q. Kind of to the rear of that vehicle?

19 A. To the rear and farther up the grass away from  
20 the sidewalk.

21 Q. After you had secured this particular scene, at  
22 some point later were you asked to come identify whether  
23 -- or come look at a particular suspect?

24 A. Yes. Before that, once I returned to the  
25 vehicle, I gave radio traffic of the subject's -- or the

1 subject's description and last known direction of travel  
2 and a perimeter by other patrol units was set up in that  
3 area.

4 And then an hour, hour and a half later, was when  
5 patrol had -- or I had heard over the radio that canine  
6 had found somebody and I needed to come look at him to  
7 see if it was the driver of the vehicle or not.

8 Q. I'm sorry. I didn't hear the last part of your  
9 answer.

10 A. A canine had located a person and wanted to know  
11 if I could come look at him to see if that was the  
12 subject that ran from me.

13 Q. Do you generally know where this individual was  
14 located?

15 A. He was found on Eleanor which is the same street  
16 that I last saw him run down and away from northbound.

17 Q. Had some time past before you actually went to  
18 take a look at this individual?

19 A. An hour, maybe an hour and a half because the  
20 scene is static at that point which just means it's  
21 secured. There's a lot of stuff going on, and we're  
22 just containing a perimeter to try to keep the people  
23 locked out.

24 Q. Okay. And where is it that you had an  
25 opportunity to observe this individual?

1 A. He was brought in the back of a patrol car to me  
2 on J Street. I think it was at J and Doolittle where he  
3 was in the back of the patrol car.

4 Q. You said a perimeter was set up. What exactly do  
5 you mean by that?

6 A. Basically, we'll call out where we last seen the  
7 subject which would have been running northbound from  
8 Eleanor through a backyard, and then other units in the  
9 area will respond by setting up. Basically, we try to  
10 make a square, a large square, of an area to keep a  
11 person contained in that area.

12 We'll activate our sirens every once in awhile to  
13 let -- we try to get the person to stop running, to lay  
14 down, so when canine gets there it's easier for them to  
15 find him.

16 Q. Okay. Is it fair to say most of these units were  
17 coming kind of from the north to the south?

18 A. Yes. We were the only units operating in that  
19 area at that time, so everybody else would have had to  
20 come from the north.

21 Q. And where is it again that you were or you an  
22 opportunity to observe this individual that they had  
23 taken into custody in the Eleanor area?

24 A. It was on J Street at Doolittle. I think it was  
25 the intersection.



1 Q. Okay. And tell me what were the circumstances  
2 that --

3 A. He was --

4 Q. -- you were observing this person?

5 A. He was in the back seat of the patrol car. He --  
6 the patrol officer had him get out of the car. I looked  
7 at him from head to toe. Same facial features, same  
8 corn rows in his hair, same long-sleeve or black sheet,  
9 same blue-jean shorts. The only thing that was not on  
10 him was the red gloves.

11 Q. Do you see that individual in the courtroom here  
12 today?

13 A. No. I actually can't see him. He's blocked by  
14 the monitor.

15 MR. FIGLER: I'll make a record, Judge, that  
16 somehow he knows that defendant is blocked by a monitor.

17 MR. BATEMAN: Well, he's walked in the  
18 courtroom all the way up to, you know, the witness  
19 table, and he had to walk right past the person who was  
20 just identified.

21 THE COURT: Ask the question again.

22 MR. BATEMAN: Okay.

23 BY MR. BATEMAN:

24 Q. Can I have you stand up?

25 A. Yes, sir.

1 Q. Okay. Standing up, can you observe -- okay. If  
2 I can have you step down.

3 A. White shirt, black tie looks like sitting in  
4 between two defense attorneys on the right-hand side of  
5 the table. My right.

6 Q. Your right-hand side (indiscernible)?

7 MR. BATEMAN: I'd move admission of -- or  
8 I'm sorry. May the record reflect identification of  
9 Mr. Matthews?

10 THE COURT: It shall.

11 MR. FIGLER: But we'd object to the overly  
12 suggestive nature of the defendant sitting next to his  
13 counsel, and we'd note that objection for the record,  
14 Judge.

15 THE COURT: Noted.

16 BY MR. MATTHEWS:

17 Q. As Mr. Matthews sits here today, does he look  
18 somewhat different than how he looked on the night in  
19 question?

20 A. Yes. He doesn't have the corn rows in his hair.

21 MR. BATEMAN: Your Honor, may I approach?

22 THE COURT: Yes.

23 MR. BATEMAN: I have shown counsel.

24 BY MR. BATEMAN:

25 Q. Showing you State's Proposed Exhibits 119 and

1 122, can you take a look at those photos and tell me if  
2 you recognize who's depicted in those photographs.

3 A. Yes. That is the defendant.

4 Q. Which defendant? The one you just identified?

5 A. Yes, sir.

6 Q. Okay. And how do you know?

7 A. Minus the grass and everything on his person, but  
8 that's same facial features, same hair, same clothing  
9 description that I -- he had run when he was running  
10 from me.

11 Q. Okay.

12 MR. BATEMAN: Move admission of 19 (sic) and  
13 122, Your Honor.

14 THE COURT: Objection?

15 MR. BUNIN: Submitted.

16 MR. SINGER: None.

17 THE COURT: It's admitted.

18 (Plaintiff's Exhibit Nos. 119 and 122 admitted)

19 (Off-record colloquy)

20 MR. BATEMAN: I'll pass the witness, Judge.

21 THE COURT: Cross.

22 MR. BUNIN: Thank you.

23 CROSS-EXAMINATION

24 BY MR. BUNIN:

25 Q. Good afternoon.

1 A. (Indiscernible) water real quick?

2 Q. Sure.

3 A. Thank you. Thank you, sir.

4 Q. You ready?

5 A. Yes, sir.

6 Q. You know, at this time this incident occurred you  
7 were on the force for about three years; is that  
8 correct?

9 A. Yes, about that time.

10 Q. And the unit you were working for you were with  
11 them for about four months at that time; is that right?

12 A. Four months at the time this incident occurred.  
13 Yes.

14 Q. And this was the first time you were ever  
15 involved in a chase with a person that was a suspect in  
16 a homicide case; would that be correct?

17 A. It wasn't my first car chase, but this instance,  
18 yes.

19 Q. All right. Now, your testimony is that you were  
20 near Lexington and Lawry and saw some commotion around a  
21 car; is that correct?

22 A. Yes.

23 Q. And it was very dark out.

24 A. Yes.

25 Q. Difficult to see?

1 A. Yes. We couldn't make out any persons.

2 Q. You were about 16 feet, is that accurate, from  
3 the car where the four people are (indiscernible) it?

4 A. Yes. I'd say that's a good --

5 Q. And you couldn't tell -- well, at least three or  
6 possibly four people got into the car; is that correct?

7 A. Yes. Just based on what the car doors, it  
8 sounded like there was four car doors or three car doors  
9 had closed.

10 Q. You know, my question is there were up to four  
11 people that got in the car. It's a yes-or-no question.  
12 I just want to make sure I understand you. Would that  
13 be yes, up to four people got into the car?

14 A. Yes.

15 Q. Okay. You also could not tell what was being  
16 said, correct?

17 A. No.

18 Q. All right. At the time the suspects got into the  
19 car, you couldn't make out what they looked like because  
20 it was so dark. That would be accurate?

21 A. That would be correct. Yes.

22 Q. So you would not have been able to describe them  
23 at that point.

24 A. No, I would not.

25 Q. And then the car had tinted windows.

1 A. Yes.

2 Q. So you would not be able to describe them during  
3 any part of the chase because you couldn't see inside  
4 the car.

5 A. That would be correct. Yes.

6 Q. All right. Now, the chase reached speeds of up  
7 to about 60 miles an hour; is that correct?

8 A. Yeah, 50, 55, that area. Yes.

9 Q. Do you remember saying at any point that the  
10 chase may have reached about 60 miles an hour? Does  
11 that sound something like something you might have said?

12 A. It may have.

13 Q. Do you remember this incident pretty well?

14 A. Yes.

15 Q. Do you remember talking to police officers who  
16 did a recorded statement of you right after these events  
17 occurred?

18 A. I remember talking to a homicide detective. Is  
19 that what you --

20 Q. That's a better way of putting it. You spoke to  
21 a homicide detective that recorded your statement; is  
22 that correct?

23 A. Yes.

24 Q. And you told him that the chase reached speeds of  
25 about 60 miles an hour. Does that sound accurate?

1 A. Yes.

2 Q. Okay. And then you testified that the first  
3 time, then, that you've had any visual shot of the  
4 person driving the vehicle was when it slowed down after  
5 you turned off Martin Luther King; is that correct?

6 A. Yes, sir.

7 Q. Now the turn was on is that Jimmy Street is where  
8 you guys turned left off Martin Luther King?

9 A. Yes, Jimmy Street. Left-hand turn there,  
10 right-hand turn onto Lexington.

11 Q. Well, my question is -- I'm just trying to take  
12 it one step at a time. You turned left on Jimmy Street.  
13 That would be a yes?

14 A. Yes.

15 Q. And the car was still going. You guys were going  
16 near your full speed at the time that the car turned  
17 left; is that correct?

18 A. I'm sorry. I don't -- full speed.

19 Q. The car you were chasing was upwards of 50 to 60  
20 miles an hour around the time it turned left?

21 A. It had slowed down before it turned, made a  
22 left-hand turn.

23 Q. It was still going so fast that the car lost some  
24 control and actually went up onto the sidewalk on Jimmy  
25 as it turned left?

1 A. Yes.

2 Q. Okay. And then the car made the very next right  
3 turn; is that correct?

4 A. Yes.

5 Q. And that was a very short distance away, that  
6 next right turn.

7 A. Very short.

8 Q. And your testimony then is that right after it  
9 made that right turn it suddenly slowed down to about  
10 five to ten miles an hour? Is that what you just said?

11 A. Estimate, yes.

12 Q. Okay. And then this is when you for the first  
13 time ever get a glimpse of the person driving the car?

14 A. Yes. That would be correct.

15 Q. And then the person driving the car opens the  
16 door; is that correct?

17 A. Yes.

18 Q. And then leans back for some short period of time  
19 until he falls out or jumps out, you don't know which;  
20 is that correct?

21 A. Correct.

22 Q. And all you saw of him during that time frame was  
23 a glimpse. That's exactly how you just testified; is  
24 that correct?

25 A. Um-h'm. Yes.



1 Q. You have to say yes or no. I'm sorry.

2 A. Yes.

3 Q. Just for the record so everyone knows if that was  
4 a yes or a no.

5 A. Yes.

6 Q. Okay. And, in fact, you testified now that you  
7 saw a weapon in the driver's hand; is that correct?

8 A. Yes.

9 Q. And you kept your eye on that weapon to some  
10 extent; isn't that accurate?

11 A. The person holding the weapon, yes.

12 Q. Did you also keep your eye on the weapon?

13 A. I --

14 Q. You looked at the weapon?

15 A. Yes. The weapon -- I saw the weapon, yes.

16 Q. In fact, part of your training is that you need  
17 to keep your eye on the weapon because the movement of  
18 the weapon is some indicator of how it's going to be  
19 used. Would that be accurate?

20 A. That would be accurate, yes, but --

21 Q. Okay. And to some extent you were concerned  
22 about the driver of the car having a weapon I would  
23 assume --

24 A. Yes, I would.

25 Q. -- certainly. Certainly, you were probably a

1 little bit scared maybe. Would that be fair to say?

2 Your adrenaline was going?

3 A. Adrenaline's going, yes.

4 Q. Sure. So you kept your best focus on the  
5 vehicle, the weapon, and the person for those couple of  
6 seconds before the car crashed into the fire hydrant; is  
7 that correct?

8 A. Mainly my focus was on the person.

9 Q. Okay. Now these events happened pretty fast.  
10 That would be fair to say?

11 A. Yes.

12 Q. Oak. Now, the person that leaned out of the car,  
13 the driver, he either jumped or fell out of the car.  
14 You don't know which.

15 A. I don't know which.

16 Q. It happened very suddenly.

17 A. Yes.

18 Q. And it happened before the car crashed into the  
19 fire hydrant.

20 A. Yes.

21 Q. In fact, once he was out of the vehicle, the car  
22 kept going with the other suspects in the car.

23 A. Yes.

24 Q. And the driver, when he either jumped or fell out  
25 of the vehicle, actually fell to the ground for a

1 moment, right?

2 A. Yes.

3 Q. And then he rolled.

4 A. Yes.

5 Q. And he got right back up; is that correct?

6 A. Yes.

7 Q. And then, you know, just so I understand, too,  
8 you were with Officer Cupp that night?

9 A. Cupp, yes.

10 Q. Cupp, is that correct?

11 A. Yes.

12 Q. And he was your partner?

13 A. Yes.

14 Q. And, you know, having a partner as a police  
15 officer involves I guess a lot of trust. Would that be  
16 a fair thing to say?

17 A. Yes.

18 Q. Loyalty, that's an important thing I guess in a  
19 partner? But you always want to know you have each  
20 other's backs?

21 A. Of course. Yes.

22 Q. Okay. You want to protect your partner and vice  
23 versa. You hope that's how they feel about you, at  
24 least if you're going to be their partner?

25 A. Correct. Yes.

1 Q. Now, when the driver of the vehicle falls out, he  
2 rolls, he gets up and then is almost immediately hit by  
3 the car that Cupp is driving; is that correct?

4 A. Correct.

5 Q. And he's hit in the legs, right?

6 A. Lower extremities. I don't know if it was the  
7 hip area or the legs, but, yes.

8 Q. Well, hip or down?

9 A. Yes.

10 Q. And it caused him so much -- there was so much  
11 impact that it caused his hands to slam into the car,  
12 and then he kind of rolled over the car onto the ground.

13 A. It was a glancing blow, yes.

14 Q. Well, his hands slammed down onto the car for a  
15 moment.

16 A. And then he rolled --

17 Q. And then he rolled over the car.

18 A. Basically, yeah. Not -- I don't want to say  
19 rolled over as in was off the ground and rolled over  
20 the, you know, the --

21 Q. Did he go over the corner to some extent?

22 A. Yes, yes.

23 Q. And then he fell --

24 A. He rolled down the side of the vehicle.

25 Q. -- on down to the ground?

1 A. Yes.

2 Q. To the side of the vehicle?

3 A. Yes, sir.

4 Q. Okay. Now, Officer Cupp swerved in order to  
5 purposefully hit the driver of that vehicle.

6 A. I don't know what Officer -- I --

7 Q. Was there a swerve or wasn't there?

8 A. I don't remember a swerve, no, sir.

9 Q. You believe the car went straight into him?

10 A. I think that's -- that's the way I remember it.  
11 Yes, sir.

12 Q. I mean, are you aware that Officer Cupp has  
13 testified that he specifically swerved in order to hit  
14 the driver of that vehicle?

15 A. Okay.

16 Q. Are you aware of that?

17 A. No.

18 Q. Okay. Your recollection is there was no swerve.  
19 He just went straight into him.

20 A. It appeared to where I was sitting was no swerve.

21 Q. Officer Cupp, though, intentionally hit him.

22 A. I -- he got hit by the car. I don't know if Cupp  
23 intentionally hit him or if it was after the fact. I'm  
24 not sure what Officer --

25 Q. You never discussed it with Officer Cupp?

1 A. No. I --

2 Q. Okay. Now, the driver of the vehicle was hit.  
3 The car could have been going as fast as 15 miles an  
4 hour. Does that sound accurate?

5 A. My estimation was ten to -- five to ten miles an  
6 hour is what my estimation was.

7 Q. And again, Officer Cupp, are you aware that he  
8 said it could have been as high as 15, 10 to 15 miles an  
9 hour?

10 A. I -- okay. I -- if that's what Officer Cupp  
11 said, that's what he believed it to be.

12 Q. Okay. Now, you just said -- did you say five to  
13 ten just now?

14 A. Five to ten, I think that's what I've said.

15 Q. You've been asked that question before, haven't  
16 you, how fast the car was going at the time of impact?

17 A. Five to ten, yes.

18 Q. That's not how you've always answered the  
19 question, though, is it?

20 A. I don't remember how I else I've answered it.

21 Q. Okay. You talked before about homicide  
22 detectives who gave you a recorded statement --

23 A. Yes.

24 Q. -- is that correct?

25 A. Yes.

1 Q. Do you remember them asking you the question?

2 A. I'm sure they asked the question, yes.

3 Q. And you stated five miles an hour, if that; is  
4 that correct?

5 A. Unless I look at the interview, I'm not sure.

6 MR. BUNIN: May I approach the witness?

7 THE COURT: Yes.

8 BY MR. BUNIN:

9 Q. I'm on page 11 in the middle.

10 A. Okay.

11 Q. Right here. Just read it to yourself, okay. So  
12 during the recorded statement by the detective that was  
13 taking this statement, you said five miles an hour, if  
14 that; is that correct?

15 A. Yes.

16 Q. Meaning it could have even been less than five  
17 miles an hour.

18 A. It could have been.

19 Q. And then you testified at a preliminary hearing.  
20 Do you remember that hearing?

21 A. Yes.

22 Q. And you were under oath at that hearing?

23 A. Correct. Yes.

24 Q. And you were asked the question, initially, by  
25 the prosecutor how fast was the car going. Do you

1 remember being asked?

2 A. Yes.

3 Q. And you answered five to ten miles an hour; is  
4 that correct?

5 A. Correct.

6 Q. Okay. And then a few minutes later you were also  
7 questioned actually by Mr. Figler at that time, not by  
8 me. Do you remember Mr. Figler asking you some  
9 questions --

10 A. Question.

11 Q. -- right here? And he informed you that  
12 Officer Cupp had said the car was going 10 to 15. Do  
13 you remember that?

14 A. Vaguely, yes.

15 Q. Okay.

16 A. I believe that's what he said.

17 Q. And then you agreed and said the car could have  
18 been going 10 to 15 miles an hour.

19 A. It could have been.

20 Q. Okay. Okay. Were you trying to protect  
21 Officer Cupp when you said it was going maybe less than  
22 five miles an hour to your original recorded statement?

23 A. No.

24 Q. Okay. Now let me get back. The driver was -- we  
25 talked about this. He was hit by the car and then he



1 was knocked down for a second; is that right? After the  
2 car hits him -- I'm sorry -- the driver gets knocked  
3 down and then gets right back up again.

4 A. Yes.

5 Q. And then he starts running pretty much  
6 immediately; is that right?

7 A. Yes.

8 Q. And then you get out of your vehicle to give  
9 chase immediately.

10 A. Yes, as soon as he --

11 Q. In fact --

12 A. -- passed my door.

13 Q. -- your vehicle is still moving when you get  
14 out, right?

15 A. I think it's still moving at a slow speed, yes,  
16 sir.

17 Q. And the other vehicle that's in front of you is  
18 actually still moving at the time you get out.

19 A. I believe so. I wasn't looking at that vehicle.  
20 I was concentrating on the driver of the vehicle.

21 Q. You didn't see any of the other suspects in the  
22 other vehicle get out of their vehicle?

23 A. No, sir.

24 Q. You were already off on the chase.

25 A. Yes, sir.

1 Q. Okay. Now, when the chase started, the driver of  
2 the vehicle in front of you did not have a weapon on  
3 him.

4 A. When the foot chase --

5 Q. Foot chase.

6 A. -- started?

7 Q. Yes.

8 A. No.

9 Q. Okay.

10 A. He was not armed when I started chasing him.

11 Q. And you didn't see what happened to the weapon at  
12 the time when the foot chase started.

13 A. No.

14 Q. You just know he didn't have it.

15 A. Yes.

16 Q. All right. Now when you got into the foot chase  
17 with this driver, he was running pretty hard, wasn't he?

18 A. Yes. He was very fast.

19 Q. Seemed like he was running about as fast as he  
20 could?

21 A. Yes.

22 Q. Now, you just had that map up there. It's not  
23 there anymore, but that's fine.

24 You went around the corner from behind where your  
25 vehicles were; is that correct? You said you would go

1 back up around the corner and you turned right on  
2 Eleanor.

3 A. Yes.

4 Q. That's a very short distance, isn't it?

5 A. Very short.

6 Q. So running as fast as he can we're talking five  
7 seconds to get to that corner, maybe?

8 A. Yes.

9 Q. And then you go down Eleanor maybe three or four  
10 houses, something like that?

11 A. Yes.

12 Q. And then the person you're chasing cuts left and  
13 jumps over a fence on Eleanor?

14 A. A front yard fence, yes.

15 Q. Now that couldn't have taken another five seconds  
16 go running full speed?

17 A. Possibly, yes.

18 Q. So we're talking about a ten-second chase?

19 A. So far, yes.

20 Q. And then he jumps the fence at Eleanor, and then  
21 do you follow behind at that point?

22 A. He jumps the front yard fence. I jump the front  
23 yard fence. He jumps the backyard fence. I jump the  
24 backyard fence.

25 Q. And that's when your part of the foot chase ends.

1 A. Yes.

2 Q. At that point you hear gunshots.

3 A. Yes.

4 Q. And you stop your chase and you turn and you go  
5 and help your partner.

6 A. Yes.

7 Q. All right. So that entire chase we're talking 15  
8 seconds?

9 A. That's --

10 Q. That's pretty accurate?

11 A. That sounds about right.

12 Q. Okay. Now, you testified today in a way I've  
13 never heard you say anything before, but let's go  
14 through it. You said that when you were chasing this  
15 person, the driver of the car, he looked back; is that  
16 right?

17 A. Yes.

18 Q. During this 10- to 15-second chase, 15- to  
19 20-second chase?

20 A. Yes.

21 Q. This was at night, by the way, right? About  
22 10:15 at night by now?

23 A. I'm not sure what the time was.

24 Q. Okay. Well, the entire car chase was five  
25 minutes tops? A little more?

1 A. Approximately five minutes.

2 Q. Okay. You just stated that the driver of the  
3 vehicle looked back for a second and you could see his  
4 face, right?

5 A. Yes.

6 Q. Now, in this recorded statement I just showed you  
7 you never said that to those officers; is that correct?

8 A. Never said that to the homicide --

9 Q. The homicide --

10 A. -- detective?

11 Q. -- detective that took your statement right  
12 after these events. You didn't tell him that the person  
13 you were chasing looked back and you saw and got a good  
14 look at his face.

15 A. Okay. I --

16 Q. Do you recall saying that?

17 A. -- if it's not -- if it's not in that statement,  
18 then no, I did not.

19 Q. It's not in the statement.

20 A. Okay. Then no, I did not.

21 Q. Would that have been an important thing to tell  
22 him?

23 A. Possibly.

24 Q. And, in fact, today you said you may have  
25 actually recognized this person as somebody you've seen

1 before. You just testified to that; is that correct?

2 A. Um-h'm.

3 Q. Now you've -- is that -- you have to say yes --

4 A. Yes.

5 Q. -- for the record.

6 A. Sorry. Yes.

7 Q. That's okay. I do that, too. You've never said  
8 that to any other officer who took a report; isn't that  
9 correct?

10 A. Well, no -- no. No, I haven't.

11 Q. The statement that you may have known the person  
12 you were chasing, you didn't mention it to the homicide  
13 detectives who took your recorded statement; is that  
14 correct?

15 A. The recorded statement by homicide was before the  
16 suspect was in custody, so --

17 Q. Okay. The recorded statement by the homicide  
18 detective, just to see if you recall, was at 1:13 in the  
19 morning, right?

20 A. Yes. If that's what time --

21 Q. And the suspect was in custody around 11:15 p.m.?

22 A. I'm not sure what time he was in custody.

23 MR. BUNIN: Can you find that?

24 THE WITNESS: Hours had -- a few hours had  
25 passed. I'm not sure what time it was.

1 (Off-record colloquy)

2 BY MR. BUNIN:

3 Q. From the time you stopped the chase with the  
4 person driving the car to the time that the other  
5 officers brought you to look at the person they caught  
6 only about an hour had past, right?

7 A. That's what I had thought, yes.

8 Q. So that means it was around 11:15 p.m.,  
9 approximately?

10 A. That's what I had thought, yes.

11 Q. So your statement you made just now where you  
12 said, well, I didn't give the recorded statement until  
13 that was before I saw the driver of the car, that's not  
14 true, right? You actually gave the recorded statement  
15 after you saw the driver of the car that you say you  
16 were chasing.

17 A. Well, it was -- I was with homicide when -- I was  
18 done with homicide when I had did the -- no, it was  
19 before.

20 Q. Which was before?

21 A. It was before. Homicide interview was after he  
22 was in custody.

23 Q. So you were brought to identify somebody around  
24 11:15, maybe a little bit later that evening.

25 A. Maybe a little later, yes.

1 Q. And then after that you gave a statement to a  
2 homicide detective?

3 A. Yes.

4 Q. And you just testified today that you recognized  
5 to some extent the person that you were chasing, right?

6 A. Yes.

7 Q. A you didn't mention that to the homicide  
8 detectives when they recorded you that night?

9 A. No. He was already in custody.

10 Q. Would that have been an important thing to  
11 mention to them, maybe, that you kind of recognized him?

12 A. He was already in custody at --

13 Q. In fact, I think the last question they asked you  
14 is -- what is it? Next to last question. Okay.

15 On page 15 they say, "Is there any other  
16 information that you have that you might think be  
17 important for us to know that in our investigation maybe  
18 we just haven't discussed," and your answer was, "No,"  
19 right?

20 A. If that's what it says on the statement.

21 Q. Is identification important in a case?

22 A. I believe throughout that statement I said that  
23 he had been brought to me and I positively identified  
24 him.

25 Q. Do you understand my question? My question --



1 I'll ask it again, I apologize.

2 MR. BATEMAN: Can he answer (indiscernible).

3 MR. BUNIN: He wasn't answering my question.

4 BY MR. BUNIN:

5 Q. My question was is --

6 MR. BUNIN: Was that an objection?

7 MR. BATEMAN: That's an objection.

8 MR. BUNIN: Good.

9 THE COURT: What's the basis for the  
10 objection?

11 MR. BATEMAN: He's not letting him answer  
12 the question.

13 MR. BUNIN: He wasn't answering my question.

14 THE COURT: Rephrase the question.

15 MR. BUNIN: Thank you.

16 BY MR. BUNIN:

17 Q. Identification is an important thing in a case,  
18 isn't it?

19 A. Absolutely.

20 Q. In fact, it might be the most important thing to  
21 be able to identify somebody in a case?

22 A. Oh, yes.

23 Q. And you just testified today that you may have  
24 recognized this person from the past, right?

25 A. Yes. Once I made the positive --

1 Q. And that would certainly relate to identification  
2 of a suspect in the case. A prior recognition would be  
3 a pretty important thing for yes, I recognize somebody,  
4 right?

5 A. Yes.

6 Q. And you didn't mention that to the homicide  
7 detectives during your recorded statement that evening,  
8 maybe like an hour after you saw the person was  
9 arrested. It's a yes-or-a-no question. You didn't  
10 mention it to them.

11 A. Yes. I identified the suspect during --

12 Q. You didn't mention to them that you recognized  
13 him from the past.

14 A. Oh, no. No, sir, I didn't. No.

15 Q. Thank you. And you've never testified that way  
16 at any prior hearing in this case that you recognized  
17 him from the past?

18 A. No, I don't believe. I have not.

19 Q. All right. You know, let me go back a little bit  
20 to the chase, then. During the course of your chase --  
21 foot chase, not the car chase -- you had the radio on  
22 that you were describing earlier for the prosecutor.

23 A. Yes.

24 Q. And you could speak and give a description as to  
25 what was going on during that chase, right --

1 A. Yes.

2 Q. -- during the actual foot chase. And, in fact,  
3 you did give a description during the chase of the  
4 person you were chasing, right?

5 A. Yes.

6 Q. And what you said was black clothing, right?

7 A. I believe so, yes.

8 Q. And you said five-eight or five-nine?

9 A. I think so, yes.

10 Q. You didn't mention anything about hair, right?

11 A. At that time, no, I don't believe I did.

12 Q. And then you didn't, of course, mention that  
13 you're chasing somebody that I know from the past. You  
14 didn't say that either during this chase.

15 A. No.

16 Q. Okay.

17 A. It was irrelevant.

18 Q. Excuse me? It was irrelevant?

19 A. Well, when you're giving out your description in  
20 the --

21 Q. Was that a -- I'm just wondering. I never heard  
22 what you said.

23 MR. BATEMAN: Can he finish?

24 BY MR. BUNIN:

25 Q. Did you say it was irrelevant?

1 THE COURT: What's the objection?

2 MR. BATEMAN: Same objection, again. I  
3 think he's badgering the witness. I'd like --

4 MR. BUNIN: I'm not badgering this witness.

5 MR. BATEMAN: -- the witness to be able to  
6 answer the question.

7 MR. BUNIN: I'm trying to understand. You  
8 just said it was irrelevant. I think that's what he  
9 said, and I was surprised, and I didn't hear him, so I'm  
10 asking if that's what he just said.

11 THE COURT: Rephrase the question  
12 (indiscernible).

13 MR. BUNIN: Thank you. I'm going to  
14 withdraw it.

15 BY MR. BUNIN:

16 Q. Now let's get to the point about 15 to 20 seconds  
17 in where you heard some shots elsewhere, okay. You  
18 heard three shorts and you were concerned for your  
19 partner, Officer Cupp, when you heard those shots.

20 A. Yes.

21 Q. So then you abandoned the chase.

22 A. Correct. Yes.

23 Q. And there were other officers you were hoping  
24 would be able to complete that for you, but you  
25 abandoned it at that point.

1 A. Yes.

2 Q. Okay. And then there came a time when every  
3 officer lost the driver of the vehicle that they were  
4 chasing; isn't that correct?

5 A. I don't understand the question.

6 Q. There was a time when visual contact was lost by  
7 every officer that was attempting to chase that person.

8 A. I -- I lost visual contact. I don't know if  
9 other officers had seen him or not, but I lost visual  
10 contact.

11 Q. We just said that it was over an hour later where  
12 they contacted you and said we have somebody in custody?

13 A. Yes, approximately.

14 Q. And to your knowledge, during that entire hour  
15 nobody had visual contact on the person you guys were  
16 chasing.

17 A. No. I don't believe so. No.

18 Q. Okay. You certainly weren't present when  
19 Jamar Matthews was taken into custody. You were not  
20 present.

21 A. No, I was not.

22 Q. All right. You know, before we get -- I want to  
23 ask you, do you have experience with lineups?

24 A. Putting them together --

25 Q. Yeah.

1 A. -- looking --

2 Q. Any experience as an officer with a lineup?

3 A. Yes.

4 Q. I mean, certainly you're familiar with what a  
5 lineup is.

6 A. Yes, sir, I am.

7 Q. Okay. You know, when you -- a lineup is you take  
8 a person that's a witness to a crime and you want to use  
9 the lineup to help them identify whether or not the  
10 person they saw that you have in custody is the actual  
11 person they saw commit the crime; is that correct?

12 A. That's one way to do it, yes, sir.

13 Q. We'll get into all of them I guess, then. I'm  
14 sure there's several. One of them is a live lineup  
15 where there's a person that says I'm a witness to a  
16 crime, you have somebody in custody. That will be a  
17 start, right?

18 A. One-on-one, yes, sir.

19 Q. And then you bring in other people possibly of  
20 similar height, similar weight, maybe similar skin tone,  
21 and then you have this person look at these people  
22 together; is that correct?

23 A. Like a live lineup?

24 Q. Yep. That's one way to do one.

25 A. Yes, yes.

1 Q. Another one is a photo lineup, something you guys  
2 call a six pack; is that right?

3 A. Yes, photo lineup.

4 Q. A six pack is where you might take a photo of a  
5 suspect and then you take five similar photos, right?

6 A. Of different persons, yes.

7 Q. Of different persons, but similar-looking people  
8 I suppose.

9 A. Correct.

10 Q. And then you take them to the person that says  
11 they witnessed the crime and you show them, and they  
12 determine whether or not they can pick out the person  
13 that they saw commit the crime.

14 A. Yes.

15 Q. And the purpose of a lineup is to make sure the  
16 right person is identified; would that be accurate?

17 A. Yes.

18 Q. Okay. The goal is to make sure there's accuracy  
19 in identification. I guess that's a fair way to say  
20 it --

21 A. Yes.

22 Q. -- is that right?

23 A. Yes.

24 Q. And the goal is to protect potentially innocent  
25 people from being misidentified. That's the entire

1 point of a lineup.

2 A. Yes, sir.

3 Q. Okay. You know, and if you take a witness to a  
4 crime and you bring them to a person one on one without  
5 anybody else around, well, they're more likely to pick  
6 that person, and that's why you have these lineups where  
7 you bring in all the photographs. Wouldn't that be  
8 accurate or other people?

9 A. Can I explain the --

10 Q. I want you to answer my question. If the  
11 prosecution thinks you need to explain, I'm sure they're  
12 going to ask you questions and you let you do it, okay?

13 A. Okay. Could you repeat the question one more  
14 time. I'm sorry?

15 Q. Sure. I probably didn't phrase it well, anyway.  
16 The reason you allow a witness to a crime to see a  
17 person with other people is because if you just bring  
18 them to one person or just show them one photograph,  
19 it's more suggestive. They're more likely to  
20 misidentify. Would that be accurate?

21 A. Some would, yes.

22 Q. Okay. And again, the goal again is to protect  
23 the person who may be accused of a crime, but you don't  
24 want to misidentify him.

25 A. Correct.



1 Q. Okay. And using these lineups may be the most  
2 accurate way possible to identify a person who's accused  
3 of a crime. It's a way of ensuring accuracy.

4 A. Yes. It's --

5 Q. Okay.

6 A. -- the best that we can do with the technology  
7 we have.

8 Q. The best you can do. I appreciate that. Now,  
9 when over an hour later you were contacted and they told  
10 you they had somebody in custody, they wanted to see if  
11 you could identify that person, right?

12 A. Correct. Yes.

13 Q. So then did they bring you to where that person  
14 was or ask you to come to where that person was?

15 A. No. The person --

16 Q. They brought him to you.

17 A. Well, I don't know if they necessarily brought  
18 them to me, but brought him to where I was located.

19 Q. You met up somewhere.

20 A. Yes.

21 Q. Okay. And then the only people -- the only  
22 person brought to you -- the only people in front of you  
23 were a uniformed police officer and Jamar Matthews.

24 A. Yes.

25 Q. And you picked Jamar.

1 A. Yes.

2 Q. Okay. And, in fact, you didn't use any of the  
3 safeguards we just discussed to try to ensure accuracy  
4 of identification.

5 A. No photo lineups were done. No.

6 Q. Okay. You testified a minute ago that you  
7 believe Jamar Matthews was found on Eleanor. That's  
8 what you just said during your direct testimony; is that  
9 correct?

10 A. I think that's where he was found. Yes.

11 Q. You weren't there, right?

12 A. No. When he was found, no, sir.

13 Q. You don't know where he was found personally.  
14 You weren't there.

15 A. No.

16 Q. He was found on Jimmy; isn't that correct? Not  
17 Eleanor. He was found on Jimmy.

18 A. If that's where he was found, that's where he was  
19 found.

20 Q. Okay. You know, you said during the chase that  
21 -- the foot chase -- I'm getting back to it again. I'm  
22 jumping all over the place. That the person you were  
23 chasing was five-eight or five-nine?

24 A. Yes. That's the (indiscernible) gave us.

25 Q. All right. During this 15- or 20-second chase?

1 A. Yes.

2 Q. You know who Melvin Bolden is? He's the person  
3 who had his vehicle stolen. You were 16 feet away when  
4 it happened. His name is Melvin Bolden.

5 A. I didn't know his name, no, sir.

6 Q. If he said the driver of his vehicle was  
7 five-seven or shorter, then possibly that would be an  
8 accurate statement, right?

9 A. I -- if -- I don't know --

10 MR. BATEMAN: Judge, asking a witness to  
11 comment on what the veracity of another witness is  
12 inappropriate.

13 BY MR. BUNIN:

14 Q. If Jamar Matthews is five-foot-eleven --

15 MR. BUNIN: I apologize, Your Honor.

16 BY MR. BUNIN:

17 Q. If Jamar Matthews is five-foot-eleven and  
18 Mr. Bolden says the person was five-seven or shorter,  
19 then Jamar Matthews wouldn't have been the driver of the  
20 vehicle you were chasing.

21 A. He was the person I saw in the driver's seat when  
22 he --

23 Q. But my question is if Jamar's five-eleven and  
24 somebody else says the person that was driving was less  
25 than five-seven, then they wouldn't be the same person,

1 right?

2 MR. BATEMAN: Judge, it's --

3 THE COURT: It's a confusing question.

4 MR. BATEMAN: It's a confusing question, and  
5 I think he's asking him to speculate.

6 THE COURT: It is. It's speculation.  
7 Sustained.

8 MR. BUNIN: Thank you.

9 BY MR. BUNIN:

10 Q. Now, the night of the incident we talked briefly  
11 about a recorded statement that you did with the  
12 homicide detectives, right?

13 A. Yes, sir.

14 Q. And other officers were taking your statement and  
15 recording it, right?

16 A. The homicide detective was --

17 Q. The homicide -- I keep calling him officer. Is  
18 that not -- I'm sorry about that.

19 A. Detective. Detective would be fine. Yes, sir.

20 Q. All right. Well, homicide detectives were taking  
21 your statement and recording it, right?

22 A. Yes.

23 Q. So that we can have some accuracy in what  
24 occurred that night and get your best memory of what  
25 occurred --

1 A. Yes.

2 Q. -- would that be accurate?

3 A. Yes.

4 Q. All right. And again, we just talked about this.  
5 The statement was taken, we're clear now, after the time  
6 they took you to look at Jamar Matthews and say is that  
7 him or isn't that him --

8 A. That is correct.

9 Q. -- after, correct?

10 A. That is correct.

11 Q. And it wasn't very long after that you took that  
12 statement.

13 A. I'm not sure time wise, but, no, it didn't seem  
14 very long at the time.

15 Q. It was 1:13 a.m. Does that sound right if I tell  
16 you the recorded statement was 1:13?

17 A. With homicide?

18 Q. Yes.

19 A. Yes.

20 Q. Okay. And before you gave that recorded  
21 statement, you got to actually take a good long look at  
22 Jamar Matthews and view him up close, right?

23 A. Yes.

24 Q. You got right up to him and got to take a look at  
25 him.

1 A. He was standing outside the patrol car, yes.

2 Q. That's great. Okay. Now, it was during that  
3 statement to the recorded statement that was the first  
4 time you ever described the driver of that vehicle with  
5 corn rows for hair; isn't that right?

6 A. The statement I did with homicide was the first  
7 time I --

8 Q. Yes.

9 A. Yes.

10 Q. Right after you saw Jamar, right?

11 A. Yes. That's when the interview was done. Yes.

12 Q. But also the first time you said jean shorts;  
13 isn't that right?

14 A. I said jeans. I think during the radio dispatch  
15 was jeans.

16 Q. You said dark clothes. Does that sound accurate,  
17 dark clothes?

18 A. Without looking at the printout I'm not sure if I  
19 said dark shirt or dark pants or (indiscernible). If  
20 you have the printout there, I can look it up for you.

21 Q. I'm sure. I appreciate that. During the chase  
22 you didn't say shorts. Do you recall when you were  
23 speaking -- when you were out chasing the person you  
24 were chasing at the time --

25 A. Right.

1 Q. -- you didn't say shorts.

2 A. I don't remember what I said without referring --  
3 I could have -- I don't know if I said shorts, I don't  
4 know if I said pants, I don't know if I said blue jeans.

5 Q. Let me --

6 MR. BUNIN: May I approach the witness?

7 THE COURT: Yes.

8 BY MR. BUNIN:

9 Q. I'm on --

10 A. I don't remember exactly what I said.

11 Q. -- it's around --

12 MR. FIGLER: Page 4.

13 BY MR. BUNIN:

14 Q. It's page 4 of the incident recall. I hope  
15 (indiscernible).

16 A. Very -- yeah. They're very confusing.

17 Q. Yeah. Right here.

18 A. Well, this was after he was taken into custody,  
19 so before this is when I would give his --

20 Q. This is 2215; is that correct? Is that the time  
21 on the left, 2215?

22 A. Three in vehicle, one in custody towards MLK from  
23 bail position, both BMAs, black clothing and one with  
24 red gloves.

25 Q. That's correct. The person in custody was

1 somebody else, and at 2215, that would be 10:15 p.m.; is  
2 that correct?

3 A. Yes, 10:15 p.m.

4 Q. So at 10:15, that's right around when the foot  
5 chase would have been going on, right?

6 A. Yes.

7 Q. And because you testified earlier it was about  
8 eight minutes until 10:00 that you heard the shots,  
9 right, 9:52?

10 A. That's what time the -- yeah.

11 Q. So --

12 A. That's what time this log was.

13 Q. -- this is you at 2215 calling in what you're  
14 seeing, right? Five-eight, five-nine; is that right?

15 A. Five-eight, five-nine, 150, red gloves. Yes,  
16 black clothing with red gloves.

17 Q. That's all you said.

18 A. Yes.

19 Q. You didn't mention anything about hair.

20 A. No, not at the time I didn't. No.

21 Q. Did mention anything about shorts.

22 MS. LEWIS: Can we see what you're  
23 looking --

24 MR. BATEMAN: Can we see what you're looking  
25 at.



1 MR. FIGLER: Page 4.

2 MR. BUNIN: Page 4 right in the middle,  
3 2215. I'm sorry. It said 2215 as the time right in the  
4 middle of the page.

5 BY MR. BUNIN:

6 Q. Nothing about shorts.

7 A. No.

8 Q. First time you mentioned shorts was during your  
9 recorded statement with the homicide detective.

10 A. Yes.

11 Q. Right after they took you to see Jamar Matthews  
12 who was in custody, right? Yes?

13 A. Yes, yes.

14 Q. Thank you. You know, that night, I mean, you  
15 were hoping the person that was in custody was the right  
16 person, weren't you?

17 A. The person that canine --

18 Q. They called -- yeah. Canine called and said we  
19 have somebody in custody. You were hoping that that was  
20 the person that was in the car, weren't you?

21 A. That was the person that was in the car.

22 Q. You were hoping before you testified that you say  
23 you know that confidently now, but at the time before  
24 you knew you were hoping that was the same person.

25 A. Okay. At the scene at the time --

1 Q. Yes.

2 A. -- when the person came out was in custody?

3 Yes. I was -- I hoped they caught him. Yes.

4 Q. That's right. And, in fact, everybody that was  
5 in the car for sure wasn't caught that night, right?

6 A. No, sir.

7 Q. And that's a problem. You were hoping everybody  
8 would get caught, weren't you?

9 A. Hoping, yes.

10 Q. Okay. You know, the area that you were in, I  
11 guess it's fair to describe that area where these events  
12 occurred as a high-crime area?

13 A. Yes, sir, it is.

14 Q. And I guess the area is also -- it's also fair to  
15 say it's mostly an African-American area?

16 A. Yes.

17 Q. You were looking for, based on your description,  
18 a black male in black clothing, right?

19 A. Based on the description given, yes.

20 Q. And that could describe many people in the  
21 neighborhood that particular area that night, wouldn't  
22 that be fair to say?

23 A. No, sir. There were no other persons out that I  
24 saw.

25 Q. Really? The driver of the car that was stolen,

1 Melvin Bolden, was actually wearing a black shirt that  
2 night, wasn't he?

3 A. I said before I couldn't make out any clothing or  
4 anything of anybody of what they were wearing.

5 Q. Actually, if more than one -- did you understand  
6 that not only was Melvin, more than one person in that  
7 car was wearing black and they were mistaken for  
8 suspects. Were you aware of that?

9 A. I don't understand the question.

10 Q. The people that had their car stolen, two of them  
11 were briefly mistaken for suspects because they were  
12 African-Americans wearing black. Were you aware of  
13 that?

14 A. No, sir, I wasn't.

15 (Off-record colloquy)

16 BY MR. BUNIN:

17 Q. Okay. And I guess just my last question would be  
18 once the call-ins came that there was a shooting in the  
19 neighborhood, a lot of police came into neighborhood?

20 A. At the residence where the homicide was, sir?

21 Q. Yeah, in that general area.

22 A. Yes. Some units went there and some units went  
23 with us.

24 Q. Okay. There would have been a lot of sirens  
25 going?

1 A. Yes, sir.

2 Q. A lot of lights? It would have been obvious  
3 there was a police presence in the area after the  
4 call-in?

5 A. Yes.

6 Q. Okay.

7 MR. BUNIN: I have no other questions.

8 THE COURT: Cross?

9 MR. SINGER: Thank you, Judge.

10 CROSS-EXAMINATION

11 BY MR. SINGER:

12 Q. Officer, in that neighborhood you just testified  
13 that that's largely populated by African-American  
14 families?

15 A. The entire area I work, yes, sir.

16 Q. Specifically the area we're talking about, that's  
17 all I want to direct your attention to. Was that true  
18 for that specific area?

19 A. Yes, yes.

20 Q. Lawry, Lexington, Balzar?

21 A. Yes.

22 Q. And is it unusual to see young men or young boys  
23 wearing black clothing?

24 A. No.

25 Q. So that's something you see on a regular basis?

1 A. Yes.

2 Q. And when you -- what's your tour? What's your  
3 usual tour?

4 A. I'm sorry?

5 Q. Tour. What's your usual shift?

6 A. My shift?

7 Q. Shift.

8 A. I work 2:30 p.m. to 12:30 at night is my  
9 normal --

10 Q. So that's swing?

11 A. Yes.

12 Q. 2:30 to --

13 A. 2:30 to 12:30, ten hours.

14 Q. So part of your shift is in the darker hours.

15 A. Yes, sir.

16 Q. Are you on duty right now?

17 A. No, sir.

18 Q. And you're still in the PSU?

19 A. Yes.

20 Q. And in problem solving, do you normally go out in  
21 plain clothes?

22 A. Yes.

23 Q. And today you're wearing a uniform?

24 A. Yes. I don't have a suit, sir. Our policy  
25 requires us to wear a uniform or a suit to testify. I

1 don't have a suit.

2 Q. But the uniform that you're wearing now is not  
3 what you wear when you're on duty.

4 A. It depends on the role that we're doing, but that  
5 night, no, sir, it was plain clothes.

6 Q. How many times were you interviewed by homicide  
7 detectives?

8 A. One time.

9 Q. And that was right -- that was that evening going  
10 into the next morning?

11 A. Yes.

12 Q. And it never -- have you been interviewed by  
13 anybody since then from Metro?

14 A. No.

15 Q. When you got to let's just say the scene, when  
16 you first heard the shots and you drove to what you  
17 thought were the location --

18 A. Yes.

19 Q. -- that intersection's -- is it completely pitch  
20 black or just very dark? How would you describe it?

21 A. The intersection of Balzar and Lexington?

22 Q. Yes, sir.

23 A. It's lit. It's good enough to where you can see  
24 into, you know, the yards and stuff. But other than  
25 that, no, it's not well --

1 Q. How about from when you first arrived and you  
2 looked up and saw where the Lincoln Town Car was?

3 A. That intersection at Lawry and Lexington is dark.

4 Q. How far were you when you were first looking at  
5 the Town Car?

6 A. About 15 feet I think is what I testified to  
7 earlier.

8 Q. And it was still too dark to notice anything.

9 A. It was very dark. I couldn't make out clothing  
10 or descriptions, height, weights, anything, no.

11 Q. When you were at that scene or at that location  
12 looking to that 15 feet towards the Town Car, do you  
13 remember either verbally saying or thinking that I  
14 wonder or maybe the shots were related to the commotion  
15 at the Town Car?

16 A. It had crossed my mind. Yes.

17 Q. But it wasn't a sure thing, was it?

18 A. No. Not --

19 Q. You weren't positive.

20 A. No.

21 Q. You were far from positive at that point.

22 A. It was a shot. It was -- it could possibly been  
23 related based on the time frame.

24 Q. But other than that thought, you had -- there was  
25 no information that --

1 A. No.

2 Q. -- connected the two in your mind --

3 A. No, nothing at all.

4 Q. You didn't see -- when you rolled up, the four  
5 people as you say were already around the Town Car.

6 A. Yes.

7 Q. Now when you -- directing your attention to  
8 subsequent to the chase, right before you got out of  
9 your vehicle, you got out of the passenger side,  
10 correct?

11 A. I was sitting in the front passenger seat. Yes,  
12 sir.

13 Q. And nobody was in the back seat?

14 A. Of my car?

15 Q. Yes.

16 A. No. It was just me and Officer Cupp.

17 Q. And when you -- did you ever -- as you first got  
18 out did you ever pass the passenger side of the Town  
19 Car? Pass by?

20 A. No. That vehicle was in front of us.

21 Q. What path did you take after you got out of your  
22 vehicle?

23 A. Northbound down Lexington following the suspect.

24 Q. Okay. Maybe I'm not -- when you -- on your way  
25 to that exact route you were just describing did you



1 pass by the passenger side of the Town Car?

2 A. No. That vehicle's in front of the vehicle I was  
3 getting out of. The Town Car was in front of my patrol  
4 -- my car.

5 Q. And so are you saying that you went to the  
6 backside of your car?

7 A. Yes.

8 Q. Okay. That's what I'm asking you, and at no  
9 point in time did you turn around to see how many doors  
10 opened or any -- you didn't have any information about  
11 occupants.

12 A. No. I didn't know how many other people were in  
13 the car.

14 Q. Did you and Officer Cupp discuss who would take  
15 what route? Which of you would take which route? Which  
16 person?

17 A. No.

18 Q. So you just made a single -- it was just a  
19 unilateral decision that you were going to take the  
20 driver. You didn't never discuss that or had any  
21 conversation with Officer Cupp about that.

22 A. Before this evening, yes, me and Officer Cupp  
23 worked together enough to where we know what each one of  
24 us is going to do when it comes to that.

25 Q. So you always took the driver?

1 A. Well, if I'm a passenger in a vehicle and the  
2 driver's the first one out, then yes, it's my  
3 responsibility, the driver's (indiscernible)  
4 responsibility.

5 Q. You said when you were on foot pursuit you could  
6 hear gunshots; is that correct?

7 A. I heard three gunshots fire while I was chasing  
8 the suspect. Yes, sir.

9 Q. Did you make a determination as to how far away  
10 it was?

11 A. It sounded close.

12 Q. And did you ever come to learn how far away it  
13 really was?

14 A. I believe Officer Cupp shot on Doolittle. Is  
15 that the question you're asking, sir?

16 Q. Yeah. I'm just asking how far away were the  
17 shots from where you were located when you heard them.

18 A. I think one block to my south, sir.

19 (Off-record colloquy)

20 MR. SINGER: Court's indulgence.

21 (Off-record colloquy)

22 MR. SINGER: Nothing further, Judge. Thank  
23 you.

24 THE COURT: Redirect?

25 MR. BATEMAN: Thank you.

## 1 REDIRECT EXAMINATION

2 BY MR. BATEMAN:

3 Q. Sir, the first time that you had the opportunity  
4 to sit down and give a voluntary statement or statement  
5 was when you finally -- everything calmed down and you  
6 talked to homicide; is that right?

7 A. It takes homicide awhile to get to the scene,  
8 yes, sir, so time had passed.

9 Q. Okay. And I think you were -- there weren't any  
10 other officers that were coming out to take your  
11 statement at that point --

12 MR. BUNIN: Leading.

13 BY MR. BATEMAN:

14 Q. Were there any other officers at that point  
15 coming out to take your statement?

16 MR. BUNIN: Thank you.

17 THE WITNESS: No. Homicide -- based on the  
18 circumstances of the whole incident, homicide would come  
19 out and do the interviews. No other detectives would.

20 BY MR. BATEMAN:

21 Q. Okay. Were you still involved at that point in  
22 any sort of investigation that was ongoing with regard  
23 to either the murder or the robbery?

24 A. Just securing the scene, basically, is all we  
25 were doing.

1 Q. Okay. And so did homicide at some point find out  
2 that you were involved in the chase?

3 A. Yes.

4 Q. Okay. And is it at that point that they came and  
5 talked to you?

6 A. Yes.

7 Q. Okay. You were asked a little bit whether you  
8 had ever described the individual that you were chasing  
9 prior to talking homicide detectives.

10 MR. BATEMAN: May I approach with the  
11 details log?

12 THE COURT: Yes.

13 BY MR. BATEMAN:

14 Q. I'm going to specifically point your or direct  
15 your -- invite your attention to the time 2151. It's  
16 the bottom line here and then into the next page, the  
17 top line.

18 Tell me if you just -- read that to yourself.  
19 Does that look like a description that you made given  
20 out over the call detail?

21 A. Yes. That's another unit giving the description  
22 that I had given the unit.

23 Q. Passed on?

24 MR. BUNIN: Objection. Is that a different  
25 unit giving the description?

1 THE WITNESS: Yes.

2 MR. BUNIN: Then he can't testify to that.  
3 It's not within his personal knowledge. I mean, whoever  
4 that is --

5 THE COURT: It's a follow-up to your --

6 MR. BUNIN: -- can come in and give their  
7 description.

8 THE COURT: -- question.

9 MR. BUNIN: It's hearsay --

10 THE WITNESS: It was over the radio.

11 MR. BUNIN: -- and my question was what did  
12 you describe to this officer, not what did somebody else  
13 describe, Your Honor.

14 MR. BATEMAN: He had to describe it to  
15 somebody. I'll ask him the next question.

16 BY MR. BATEMAN:

17 Q. Did you describe it to another unit?

18 A. Yes, sir, I did.

19 Q. Okay. Was that like an oral description?

20 A. Yes.

21 Q. And then were you there when that was called out  
22 over the detail?

23 A. Yes, over the radio.

24 Q. Okay.

25 A. Yes, sir.

1 Q. Based upon that detail that came out in the  
2 catalogue, is that consistent with what you told that  
3 particular officer or detail?

4 A. Yes, it was.

5 Q. Okay. And what is it exactly --

6 MR. BUNIN: You know, objection. He's  
7 vouching for another witness. I don't even know who  
8 they're talking about here.

9 THE COURT: What's the basis for the  
10 objection?

11 MR. BUNIN: It's hearsay. They're talking  
12 about what another witness said.

13 MR. BATEMAN: I'm asking whether a  
14 detailed --

15 THE COURT: I don't think it was. He was  
16 asking what this witness relayed to another officer.

17 MR. BATEMAN: Absolutely.

18 THE COURT: Overruled.

19 BY MR. BATEMAN:

20 Q. And is what came out of that detail -- on that  
21 detail log consistent with what you told that officer?

22 A. Yes. That's what it would broadcast over the  
23 radio.

24 Q. Can you read that into the record for me, please?

25 MR. BUNIN: Judge, I object. That officer

1 can come testify as to what it was.

2 BY MR. BATEMAN:

3 Q. What did you tell him?

4 THE COURT: I'm going to overrule the  
5 objection, and I want words from what this officer  
6 stated.

7 MR. BATEMAN: All right.

8 BY MR. BATEMAN:

9 Q. What did you tell him based upon what you read on  
10 that catalogue?

11 A. I'm going to read it from here or just -- do you  
12 want me --

13 Q. Does that refresh your recollection as to what  
14 you told that particular officer?

15 A. Yes.

16 Q. What did you tell him?

17 A. BMA, black shirt --

18 MR. BUNIN: Judge, we object. He's reading  
19 off the report, so it's hearsay. If it refreshes his  
20 recollection, he can testify about it.

21 MR. BATEMAN: It's not hearsay if all I'm  
22 asking him is what came across the detail was consistent  
23 with what he told that officer and what was it.

24 MR. BUNIN: Number one, that's a leading  
25 yes-or-no question, but that's not what he just said.

1 He said what did you tell him, and then he started  
2 reading off the detail. He either remembers or he  
3 doesn't.

4 THE COURT: It is hearsay -- or, excuse  
5 me -- it is leading. The officer can testify to the  
6 words that he communicated.

7 MR. BATEMAN: Thank you.

8 BY MR. BATEMAN:

9 Q. What did you communicate, sir?

10 A. A black shirt, blue jean shorts, red gloves.

11 Q. Thank you. And that was at what time?

12 A. 2159 hours --

13 MR. BUNIN: Same objection.

14 THE WITNESS: -- or --

15 THE COURT: Hearsay?

16 MR. BUNIN: Yes. He's reading off the  
17 report again. He leaned -- he asked what time. He  
18 leaned over and read off the report.

19 Either he remembers or he doesn't, and he  
20 can refresh his recollection. I mean, we know how this  
21 works.

22 BY MR. BATEMAN:

23 Q. Please take a look at that catalogue, sir, and  
24 see if it refreshes your recollection as to  
25 approximately the time that you had described the



1 individual that you were chasing down the road.

2 A. Yes, sir. At 9:59 p.m., sir.

3 Q. Thank you.

4 A. You're welcome.

5 Q. And that was approximately seven minutes after  
6 the call had initiated; is that correct?

7 A. Yes, sir.

8 Q. Okay. And that was way in advance of when you  
9 talked to the homicide detective?

10 A. Yes, sir.

11 MR. BUNIN: Leading. Every one of them,  
12 actually.

13 THE COURT: Sustained.

14 BY MR. BATEMAN:

15 Q. Now, there's been some talk about the height of  
16 the driver that you were chasing. Are you familiar with  
17 what's called SCOPE?

18 A. Yes.

19 Q. Okay. And is SCOPE something that people in the  
20 community get, for instance, when they go down and get a  
21 sheriff's card and work cards?

22 A. Sheriff cards, work cards or arrested, for that  
23 matter.

24 Q. Okay. And does that actually, generally, contain  
25 identifiers of that particular individual like height

1 and weight and ethnicity?

2 A. Yes, sir, it does.

3 Q. Okay.

4 MR. BATEMAN: May I approach, Your Honor?

5 THE COURT: Yes.

6 MR. BATEMAN: Okay. And I'm not going to  
7 have this marked for various reasons. We can highlight  
8 it out if you want to mark it separately.

9 THE COURT: I don't know where you're going.

10 MR. BUNIN: Judge, can I approach?

11 THE COURT: Yes.

12 MR. BUNIN: Thank you.

13 (Off-record bench conference)

14 BY MR. BATEMAN:

15 Q. Do you happen to know what the height of  
16 Mr. Matthews was time? Do you know?

17 A. No.

18 Q. Okay. If you looked at a document and it said it  
19 was five-nine, would that be correct?

20 A. If that's what it had in the document, yes, sir.

21 Q. Generally --

22 MR. BUNIN: I do object. I don't understand  
23 that question. If you look at a document, it would tell  
24 whose height? I don't even understand the question he  
25 just asked.

1 MR. BATEMAN: That is about the same type of  
2 question as if I told you he was five-eleven, would that  
3 sound about right.

4 MR. BUNIN: I don't know if that's a  
5 response to my objection.

6 MR. BATEMAN: I'll withdraw.

7 THE COURT: Okay. The questions withdrawn.

8 MR. BUNIN: I move to strike it, Your Honor.

9 THE COURT: The question is struck. The  
10 answer is struck.

11 BY MR. BATEMAN:

12 Q. Generally, during the course of your job duties  
13 over the last three years have you had occasion to  
14 conduct what's called one-on-ones in furtherance of your  
15 investigations?

16 A. Yes, sir.

17 Q. And what generally are those?

18 A. What's the purpose you do a one-on-one for?

19 Q. Correct.

20 A. Is if -- the main purpose for one-on-one is if  
21 you have a suspect in custody and the witness or the  
22 victim is still at the scene.

23 Q. Okay. And at that point you're -- would that be  
24 consistent with what you ultimately did in this case  
25 with reference to Mr. Matthews?

1 A. Yes. At this time I'd be almost considered a  
2 witness.

3 Q. Okay. How many of these one-on-ones have you  
4 done over the course of your three-plus years,  
5 generally, with just lay witnesses, not police officers  
6 like yourself?

7 A. Numerous, in the neighborhood of 25.

8 Q. Is it something that is done regularly?

9 A. Yes. They're almost every night, almost every  
10 call we go to. If we have somebody in custody, then  
11 it's done a one-on-one with the victim.

12 Q. Okay. And, I mean, there's procedures that are  
13 followed; is that correct?

14 A. Yes, sir.

15 Q. And so what you did in this case is common in  
16 your practice or your line of work.

17 A. Yes, it is.

18 Q. Now, you said -- there was some questions about  
19 whether you had said in your statement that you had  
20 previously recognized the defendant; is that correct?

21 A. Correct.

22 Q. Mr. Matthews?

23 A. Yes.

24 Q. Okay. And you said I think at the time that you  
25 weren't sure you knew his name; is that correct?

1 MR. BUNIN: These are all leading questions,  
2 Judge. I mean, I don't want to keep trying to  
3 interrupt --

4 THE COURT: Sustained.

5 MR. BUNIN: -- but we're just telling him  
6 what to say.

7 THE COURT: Rephrase.

8 MR. BUNIN: Thank you.

9 BY MR. BATEMAN:

10 Q. Were you able to tell the homicide detectives  
11 during the interview the name that you knew? Without  
12 telling me what the name was or didn't know.

13 A. No.

14 Q. Okay. Towards the end of your statement with  
15 homicide detectives, do you remember them asking you  
16 whether you -- how sure you were of the person that you  
17 saw or that they brought you to take a look at was the  
18 individual you were chasing?

19 MR. BUNIN: You're asking to quantify a  
20 statement. How sure were you?

21 MR. FIGLER: Vouching.

22 MR. BUNIN: He's vouching?

23 MR. BATEMAN: I'm asking him whether he was  
24 asked that question, Your Honor.

25 THE COURT: I'll overrule the objection. He

1 can answer the question.

2 THE WITNESS: Yes.

3 BY MR. BATEMAN:

4 Q. Okay. And what did you tell the homicide  
5 detectives?

6 A. 100 percent sure.

7 Q. Okay. Despite not telling the homicide  
8 detectives --

9 MR. BUNIN: I'd like to note that the  
10 prosecution objected to the same question that  
11 Mr. Singer said earlier, how sure are you, and they  
12 objected that he couldn't say what percent sure he was.  
13 It was speculative, and I think that might have been  
14 sustained earlier.

15 You don't recall? Judge, I don't think I  
16 remembered it wrong, but it's always possible, but I  
17 think that they made a -- I think that counsel made a  
18 similar objection about quantifying how much a person  
19 remembers something, what percent, earlier, not on this  
20 witness, but on a different witness.

21 THE COURT: Well --

22 MR. BUNIN: My objection was speculation and  
23 he's trying to quantify.

24 THE COURT: Understood.

25 MR. BUNIN: Thank you.

1 THE COURT: The record will note it.

2 BY MR. BATEMAN:

3 Q. I'm sorry. Through all that, I missed what your  
4 answer was.

5 A. Yeah, 100 percent.

6 Q. Okay.

7 A. Yes.

8 Q. So after all of this you feel pretty confident  
9 that the person you observed that evening in custody  
10 sometime later was the individual you had been chasing  
11 and came out of the Town Car of the driver's side?

12 A. Yes, 100 percent sure.

13 Q. All right. Did you have the right guy?

14 A. Yes.

15 Q. Okay.

16 MR. BUNIN: Do I have to object to the  
17 leading or the cheating or whatever it is that he's  
18 doing every time? You got the right guy? That's the  
19 question the DAs, Judge? I move it stricken from the  
20 record.

21 THE COURT: The question was leading.  
22 Cross-examination (sic).

23 MR. BUNIN: Thank you.

24 THE COURT: I think he's done.

25 MR. BUNIN: Seems like it. Thank you.

1 THE COURT: Cross (sic).

2 RECROSS-EXAMINATION

3 BY MR. BUNIN:

4 Q. I asked you --

5 MR. BUNIN: Thank you.

6 BY MR. BUNIN:

7 Q. I asked you earlier if you described over the  
8 radio shorts, right? And your answer was no, you  
9 didn't.

10 A. I may have. I don't --

11 Q. What was your answer? It was no.

12 A. If that's what my answer was, then yes, that's  
13 what I said.

14 Q. And, in fact, I asked you if you ever described  
15 the hair or the corn rows over the radio and your answer  
16 was no.

17 A. If --

18 Q. Right?

19 A. -- that's what I said.

20 Q. That's what you said, right?

21 A. Yes.

22 Q. Okay. In fact, all you described were the height  
23 which is five-eight or five-nine, that's it, and black  
24 clothing?

25 A. Based on the printout that you showed me, yes.



1 Q. And my question to you before was what did you  
2 describe, not what did somebody else possibly describe  
3 over this radio, but what did you describe. Do you  
4 recall that being the question?

5 A. Yes. But --

6 Q. That's a yes, right? You understood my question  
7 just now?

8 A. Yes.

9 Q. I asked you what you described.

10 A. Yes.

11 Q. You just testified that you've done at least 25  
12 one-one-ones where you go up to an individual and you  
13 identify them that way, one-on-one, without anybody else  
14 around, right? You've done at least 25?

15 A. 25 suspects in custody one-on-ones with the  
16 victims.

17 Q. Yeah, one-on-ones with you?

18 A. I think that's fair --

19 Q. And you also testified earlier that lineups are  
20 the most accurate way we know to make sure we don't  
21 misidentify somebody, right?

22 A. Sir, a lineup is a one-on-one. It's the --

23 Q. The type of lineup we spoke about where you put  
24 other people in there --

25 A. Photo lineups or --

1 Q. Or live lineups is the most accurate way we know  
2 to ensure the wrong person isn't picked, right?

3 A. Yes, yes.

4 Q. And one-on-one is more suggestive. It can taint  
5 a person's ability to pick accurate, and that's why you  
6 bring in other people. Isn't that why you have lineups?

7 A. You only -- can I --

8 Q. It's a yes or a no. If you don't understand the  
9 question, I'll rephrase it.

10 A. Could you rephrase it, please?

11 Q. You have lineups to ensure accuracy, right?

12 A. Yes.

13 Q. And one-on-one is very suggestive. It can taint  
14 a person's ability to pick accurately whether or not  
15 that's the person, and that's why you have lineups where  
16 there's five and six people there, photos or live.  
17 That's why they do those types of lineups. Wouldn't  
18 that be an accurate statement?

19 A. No, sir. I don't think one-on-ones will --

20 Q. All the suspects in this case are --

21 MR. BATEMAN: Objection. I, again, ask the  
22 -- allow him to answer the question.

23 MR. BUNIN: I'm asking him yes-or-no  
24 questions, and he's trying to avoid answering it. Maybe  
25 I shouldn't ask it because he already answered it the

1 same way earlier, but --

2 THE COURT: Just rephrase the question and  
3 continue your cross.

4 MR. BUNIN: Thank you.

5 BY MR. BUNIN:

6 Q. These 25 lineups you've done one-on-one were they  
7 mostly black suspects?

8 A. No. They've been all races.

9 Q. I didn't ask if they've been all races. I asked  
10 what most of them were. Are most of them black  
11 suspects? Because of the area you work in I assume that  
12 might be true.

13 A. It might be true, yes.

14 Q. So probably most of them have been black  
15 suspects, these one-on-ones?

16 A. And black victims, yes.

17 Q. Okay. I didn't ask you who the victims were. Do  
18 you understand my question? I'm asking you the suspects  
19 in a case -- do you understand that my question, the  
20 suspects?

21 A. Yes.

22 Q. Most of them have been black on these  
23 one-on-ones?

24 A. I don't know percentage wise. I don't -- do you  
25 consider most being over 50 percent, over 60 percent?

1 Q. Yes, over 50 percent of them have been black.

2 A. Yes.

3 Q. Thank you.

4 THE COURT: Mr. Singer.

5 MR. SINGER: No, thank you, Judge.

6 THE COURT: Redirect?

7 MR. BATEMAN: No, Your Honor.

8 THE COURT: Is this witness excused?

9 MR. BATEMAN: Yes, Your Honor.

10 THE COURT: Officer, thank you for your  
11 testimony. You're --

12 THE WITNESS: Thank you, Judge.

13 THE COURT: Ask you to step down.

14 MR. BATEMAN: May we approach as to  
15 scheduling?

16 THE COURT: Yes. Let's talk about  
17 scheduling.

18 (Off-record bench conference)

19 THE COURT: Ladies and gentlemen, we're  
20 going to go one more witness.

21 State, call your next witness.

22 MR. BATEMAN: State calls Cord Overson.

23 THE CLERK: Please remain standing. I'll  
24 swear you in.

25 //

1 CORD OVERSON, PLAINTIFF'S WITNESS, SWORN

2 THE WITNESS: Yes, I do.

3 THE CLERK: Thank you. You may be seated.

4 And please state your name loudly and spell it for us.

5 THE WITNESS: Officer Cord Overson, C --

6 THE CLERK: Spell --

7 THE WITNESS: C-o-r-d O-v-e-r-s-o-n.

8 THE CLERK: Thank you.

9 DIRECT EXAMINATION

10 BY MR. BATEMAN:

11 Q. Sir, what do you do for a living?

12 A. I'm a police officer with Las Vegas Metropolitan  
13 Police Department.

14 Q. What's your current assignment?

15 A. Currently assigned to the canine detail.

16 Q. How long have you been assigned to the canine  
17 detail?

18 A. I've been in canine almost two-and-a-half years.

19 Q. What kind of training do you get to be a canine  
20 unit?

21 A. When you initially go to canine and you get a  
22 dog, you go through an initial training that's roughly  
23 three-months' long where you train every night all night  
24 with your dog to be certified as a canine team.

25 Q. Okay. Now when you say canine, obviously you

1 have a dog, and do you do training with the dog to learn  
2 how to operate the dog --

3 A. Yes.

4 Q. -- under circumstances?

5 A. Yes. Every night we train with the dog.

6 Q. Okay. Now, I'm going to direct your attention to  
7 September 30th of 2006. Were you called out to an area  
8 of, essentially, Doolittle/Lexington with regard to a  
9 potential homicide scene?

10 A. Yes, I was.

11 Q. Okay. And do you know what the reason for having  
12 the canine unit come out on that particular evening?

13 A. Yes. I was told that a shooting had occurred and  
14 that someone had been killed and that several subjects  
15 had bailed out of a car, and we were looking for at  
16 least one of those subjects in the neighborhood.

17 Q. Okay. Were you given a general area to begin  
18 your search with the canine?

19 A. Yes.

20 Q. And where is it that you first started? Do you  
21 remember?

22 A. I was searching down the north side of Jimmy.

23 Q. Okay. Now prior to that, had you gone to an area  
24 where there was a Lincoln Continental?

25 A. Yes.

1 Q. Okay. Why did you go there? Do you remember?

2 A. We typically will start where the subject was  
3 last seen --

4 Q. Okay.

5 A. -- and then kind of, depending on how many canine  
6 officers are there, split up the neighborhood into  
7 different areas and a different officer take a different  
8 part of the neighborhood.

9 Q. Okay. When the dog's out looking for suspects  
10 under these types of circumstances, how is it that the  
11 dog would know where to go or what to do or anything  
12 like that?

13 A. Well, we guide the dog. We'll pick an area and  
14 begin searching that with the dog, and then we use the  
15 dog to alert us of a potential person hiding, so the dog  
16 is mainly used to find someone that's hiding.

17 Q. Now, you said you started in the area of Jimmy;  
18 is that correct?

19 A. Yes, sir.

20 Q. Okay. And do you know at about approximately  
21 what time it is that you began the search with your  
22 canine unit?

23 A. Roughly, 10:30.

24 Q. And did your search take you to a particular  
25 location off of either Eleanor or Jimmy?

1 A. Yes. During the course of our search, I ended up  
2 in the backyard of 1116 Jimmy.

3 Q. Now, are you familiar with the streets in this  
4 particular neighborhood?

5 A. Some of them, yes.

6 Q. Okay. And do you know what the street is  
7 immediately south of Jimmy?

8 A. No, not without looking at a map.

9 Q. Okay.

10 A. I believe that's where the car was left --

11 Q. Okay.

12 A. -- in that intersection.

13 Q. So you ended up at 1116 Jimmy in the backyard?

14 A. Yes, sir.

15 Q. Okay. Do you know approximately what time it was  
16 that you ended up in that particular location?

17 A. About ten minutes after 11:00.

18 Q. Okay. Now, is there something that caused your  
19 dog at that point to alert you that there may be someone  
20 there?

21 A. Yes, sir.

22 Q. And what happened exactly?

23 A. As we were searching down the backyard, we had a  
24 breeze coming out of the west, so I was searching down  
25 the east side of the yard to take advantage of the



1 breeze because the dog will obviously is looking for  
2 human scent.

3 As we went down the east side of the yard, we got  
4 to the northeast corner of the yard. My dog turned and  
5 darted into the brush there in the northeast corner of  
6 the yard and bit a subject that was hiding there.

7 Q. Okay. Did that kind of come as a surprise to you  
8 at the time?

9 A. Yes, sir.

10 Q. Okay. Why is that?

11 A. Because I couldn't see the subject. He was  
12 wearing dark clothing and he was hiding in the brush,  
13 and so I didn't know that he was there. I had no idea  
14 that there was a person there until my dog darted into  
15 the brush and bit someone.

16 Q. Okay.

17 MR. BATEMAN: May I approach your clerk? I  
18 have a couple exhibits --

19 THE COURT: Yes.

20 (Off-record colloquy)

21 MR. BATEMAN: -- to mark. I'm going to move  
22 to publish 154 which is the map and already in evidence,  
23 Your Honor.

24 THE COURT: Yes.

25 BY MR. BATEMAN:

1 Q. Can you see that on your screen, sir?

2 A. Yes.

3 Q. Just, generally, first, I'm going to ask you if  
4 you know approximately where Jimmy is on this particular  
5 map.

6 A. I believe it's -- I see Eleanor there. I believe  
7 it's the one street north of Eleanor.

8 Q. Okay. If you touch the screen right there you  
9 can make a little line about where that road is.

10 A. Right here is where I believe it would be.

11 Q. Okay. And is that approximately where you  
12 entered 1116?

13 A. Yes. I believe 1116 is right here.

14 Q. Okay. Is that on the north side or the south  
15 side of the street?

16 A. North side of the street.

17 Q. Now, when the dog bit the individual that was in  
18 the bush, what did you do in reaction to that?

19 A. Immediately pulled the dog back off of the  
20 subject and told him to show me his hands. I pointed my  
21 weapon at him, told him to show me his hands, used the  
22 flashlight to illuminate him so I could see his hands,  
23 and then called for assistance.

24 Q. Okay. Do you take that individual into some sort  
25 of the custody to --

1       A.  Myself, no.  I asked for other officers to come  
2 assist me, and there was another officer that came and  
3 actually physically placed handcuffs on him.

4       Q.  Okay.  Was it -- how long -- how much time had  
5 passed from the time you pulled this individual out of  
6 the brush to the time this other officer came and  
7 secured this individual?

8       A.  Roughly, a minute.

9       Q.  Okay.  Did this individual as you pulled him out,  
10 did he try to leave or anything like that?

11      A.  No.  He was very compliant after he'd been  
12 bitten.  In fact, said don't -- I give up.  Don't let  
13 the dog bite anymore.

14      Q.  Okay.

15               MR. BATEMAN:  May I approach with a few  
16 exhibits, Your Honor?

17               THE COURT:  Yes.

18 BY MR. BATEMAN:

19      Q.  I think I've got these sufficiently mixed up, so  
20 if you just give me one moment.  First, I'm going to  
21 show you State's Proposed Exhibits 126, 127, 128, see if  
22 you recognize what's depicted in those photographs.

23      A.  The first picture is the address 1116.  That was  
24 the front of the house where the suspect was  
25 apprehended.

1 Q. Okay. And then what's in 127 and -- do you  
2 recognize what's in 126 and 127?

3 A. Yes. The next pictures are pictures of the brush  
4 where the subject was hiding.

5 Q. Okay.

6 MR. BATEMAN: Move to admit, Your Honor, 126  
7 to 128. Ask to publish briefly.

8 MR. FIGLER: Submit.

9 MR. SINGER: No objection.

10 THE COURT: 126, 127, 128 are in.

11 (Plaintiff's Exhibit Nos. 126-128 admitted)

12 THE CLERK: Thank you.

13 MR. BATEMAN: And I'll just publish 126 with  
14 the Court's permission.

15 THE COURT: Yes.

16 BY MR. BATEMAN:

17 Q. Is this the backyard of 1116 Jimmy that you were  
18 able to locate the individual?

19 A. Yes, sir.

20 Q. Okay. Where, generally, in the backyard are we  
21 looking?

22 A. This is a picture if you're standing roughly near  
23 the gate to enter the backyard. This is looking  
24 directly north. This is the block wall here on the  
25 north side of the backyard, of the backyard there, and

1 this is the brush where he was hiding in.

2 Q. Now, you said that the -- first, I'm going to  
3 show you State's Proposed Exhibits 119 through 124 and  
4 then 159 and 160 and ask you just to look at these as a  
5 group and see if you recognize what's depicted in those  
6 photographs.

7 A. Yes, sir. These are pictures of the subject that  
8 was located in the brush and also pictures of where my  
9 police dog bit him.

10 Q. Okay. And those are all fair and accurate  
11 depictions of what the individual looked like on the  
12 evening in question?

13 A. Yes, sir. This is immediately after he was  
14 bitten by my dog. These pictures were taken maybe ten  
15 minutes after he was taken into custody.

16 Q. And during this period of time had the suspect  
17 ever left your observation or your control?

18 A. No, sir. He was -- in fact, he was placed in the  
19 back of a patrol car until someone arrived with a  
20 camera, and then they took him out of the patrol car and  
21 took photos of him.

22 Q. Okay.

23 MR. BATEMAN: I move admission of 129,  
24 Your Honor, through 124 and then 159 and 160.

25 THE CLERK: I'm sorry. Would you say the

1 first group again.

2 MR. BATEMAN: 119 through 124 and then 159  
3 and 160.

4 THE CLERK: Thank you.

5 THE COURT: Any objection?

6 MR. FIGLER: Well, with a caveat, Judge,  
7 that this was taken -- the photos were taken by another  
8 person and this witness and they were taken ten minutes  
9 after, and that I've heard no testimony that he was with  
10 the individual for that entire ten-minute period of  
11 time. So as far as they appear to be that individual  
12 from the night, I don't think that a proper foundation's  
13 been laid, Your Honor.

14 MR. BATEMAN: I think he just testified that  
15 it was a fair and accurate depiction of what he looked  
16 within the ten minutes that he (indiscernible).

17 THE COURT: Were they fair and accurate  
18 depictions?

19 THE WITNESS: Yes, sir.

20 THE COURT: All right. The photographs are  
21 admitted.

22 (Plaintiff's Exhibit Nos. 119 & 122 previously admitted)

23 (Plaintiff's Exhibit Nos. 123-124 and 150-160 admitted)

24 MR. BATEMAN: And move to publish,  
25 Your Honor. I'm not going to publish them all.

1 THE COURT: Which ones are you going to  
2 publish? Show counsel.

3 MR. BATEMAN: I think they've seen this.

4 (Off-record colloquy)

5 BY MR. BATEMAN:

6 Q. I'm going to show 123. Is that a picture of the  
7 individual from this side that you had secured from the  
8 bushes?

9 A. Yes, sir.

10 Q. Okay. And is that where the dog had bit this  
11 individual on the right shoulder?

12 A. Yes. You can see right there. He also bit him  
13 in his -- I believe it was his left hand.

14 Q. Showing you what's been marked as 120 already in  
15 evidence. Is that a picture of the dog bite on the  
16 (indiscernible)?

17 A. Yes, sir.

18 Q. Okay. Showing you 122. Is this a front picture  
19 of the individual?

20 A. Yes, sir.

21 Q. Showing you what's been admitted as 160. It's a  
22 full frontal with all the clothing.

23 A. Yes, sir.

24 Q. And then, finally, 159 (indiscernible). That  
25 would also be the same photo of shorts pulled up?

1 A. Yes, sir.

2 Q. Did you, ultimately, turn this individual over to  
3 the custody of other officers?

4 A. Yes.

5 Q. You said ultimately you apprehended him about ten  
6 minutes after 11:00; is that correct?

7 A. Yes, sir.

8 Q. Okay.

9 MR. BATEMAN: Pass the witness, Judge.

10 THE COURT: Cross.

11 MR. FIGLER: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. FIGLER:

14 Q. Officer Overson?

15 A. Yes, sir.

16 Q. I don't think I'll last too long. I know we're  
17 kind of near the end of the day. I just have a few  
18 questions for you.

19 The first question is about Lasco. Lasco is  
20 basically your partner.

21 A. Yes, he is.

22 Q. And in canine you refer to your animal partner as  
23 a partner, correct?

24 A. Sometimes.

25 Q. Okay.



1 A. Yes.

2 Q. But I'm not trying to be cute, but that's  
3 often --

4 A. Yes.

5 Q. -- (indiscernible). I've heard that.

6 A. Oftentimes we'll say our canine partner, yes.

7 Q. Okay. And so a perimeter's set in this area, and  
8 you're on Jimmy Street?

9 A. Yes.

10 Q. Okay. And so as you're going down Jimmy Street  
11 through the yards and Jimmy Street, your dog alerts that  
12 there's somebody hiding in the bush and just takes right  
13 off, correct?

14 A. Um-h'm.

15 Q. Is that correct?

16 A. Well, his alert was him lunging into the brush.

17 Q. Is that a typical alert or sometimes don't canine  
18 dogs, aren't they trained to just kind of bark and let  
19 you know about it?

20 A. Yes. The problem was in this case, as I said,  
21 the wind was coming out of the west, and as I was  
22 walking along the fence up the east side of the fence,  
23 my dog didn't get into human odor until he was right  
24 next to the subject hiding in the brush.

25 Q. Okay.

1 A. So he had enough leash that he could turn and at  
2 a moment's time lung into the bush to bite him.

3 Q. Okay. I can sympathize with that. I don't have  
4 a highly-trained dog, and if there's something in a bush  
5 my dog goes. That's a common dog instinct, right?

6 A. Yes, it is.

7 Q. Dogs have a heightened sense of smell, correct?

8 A. Yes, sir.

9 Q. Okay. So whether it be my dog alerting to a cat  
10 and going after a bush or this dog alerting to a human,  
11 your dog is trained for that, correct?

12 A. Yes. He's trained to find and alert an human  
13 odor.

14 Q. Okay. And we were joking outside a little bit,  
15 but Lasco didn't come in to testify today. You have to  
16 do that for him, right?

17 A. Yes, sir.

18 Q. Okay. And we want to make sure that Lasco  
19 doesn't get a second helping at --

20 A. He's not that quite highly trained.

21 Q. Okay. But the dog did get a pretty good bite in  
22 on Mr. Matthews here; is that correct?

23 A. It was a decent bite.

24 (Off-record colloquy)

25 BY MR. FIGLER:

1 Q. I'm showing you now what's been marked State's  
2 Exhibit 124. That's a bite on his shoulder?

3 A. Yes, sir.

4 Q. Okay. And it's definitely bleeding and  
5 definitely puncture marks; is that correct?

6 A. Yes. He had -- if I believe -- if I remember  
7 correctly, I believe he had two punctures on his  
8 shoulder and then one to his hand.

9 Q. And you testified that at that point he's like I  
10 give up, stop the dog, right?

11 A. Yes, sir.

12 Q. That's not an uncommon thing when the dog has  
13 bitten into someone, is it?

14 A. It's very common for suspects to be compliant  
15 when confronted with the dog.

16 Q. Okay. They really don't want to get bit again,  
17 right?

18 A. Yes, sir.

19 Q. Okay. He didn't say I give up, I shot that  
20 person?

21 A. No.

22 Q. Okay. He didn't say I give up, I'm the one  
23 running from the cops?

24 MR. BATEMAN: Judge, I'm going to object as  
25 to hearsay.

1 THE COURT: Hearsay?

2 MR. BATEMAN: Um-h'm.

3 THE COURT: Overruled.

4 BY MR. FIGLER:

5 Q. He didn't say that --

6 MR. BATEMAN: The defendant's statement.

7 BY MR. FIGLER:

8 Q. -- right?

9 THE COURT: Excuse me?

10 MR. BATEMAN: The defendant's statement.

11 (Indiscernible).

12 BY MR. FIGLER:

13 Q. He said to you okay, I give up, correct? Is that  
14 what's being testified to?

15 A. Yes. I --

16 MR. FIGLER: Is that okay to ask that?

17 THE COURT: Well, you asked it. There's no  
18 objection pending.

19 BY MR. FIGLER:

20 Q. Okay. So you can answer that, Officer.

21 A. Yes, sir. I've got it written down exactly what  
22 he said in my --

23 Q. I'll let you refresh your memory --

24 A. -- officer's report, if you don't mind.

25 Q. No. No problem.

1 A. Okay. I give up. Don't let the dog bite me  
2 anymore.

3 Q. Okay. So that's what he's talking about --

4 A. Yes.

5 Q. -- there? Okay. And you have no personal  
6 knowledge and on behalf of Lasco the two of you have no  
7 personal knowledge that that was the person being chased  
8 an hour earlier, correct?

9 A. No.

10 Q. Okay. Now, the prosecutor showed you another  
11 picture of a gentleman with the pockets turned out. Do  
12 you remember that picture?

13 A. Yes.

14 Q. Okay. Did you conduct the search on him?

15 A. No, I didn't.

16 Q. Okay. So another officer conducted the search?

17 A. Yes.

18 Q. All right. And so that was in between the time  
19 when you found him and this picture was taken he was  
20 searched, correct?

21 A. Yes.

22 Q. Okay. And one of the indicators that he had been  
23 searched is probably his pockets outside of his pants,  
24 correct?

25 A. Um-h'm.

1 Q. Is that --

2 A. Yes, sir. Yes.

3 Q. Thank you. And one of the things that officers  
4 do is they go down into the pockets to see if there's  
5 anything in those pants, and then they pull out the  
6 pockets, and that's not an unfamiliar technique to make  
7 sure that the person doesn't have any weapons or  
8 anything on him, correct?

9 A. No, sir.

10 Q. So what I'm saying it's accurate that they would  
11 go in, look for anything, pat down, and then pull out  
12 the --

13 A. Yes, sir.

14 Q. -- the pants pocket? Okay. Finally, because I  
15 said I was going to keep it short, the only injuries  
16 that you noted on him were the injuries to the shoulder  
17 and hand, correct?

18 A. Yes, sir.

19 Q. No other injuries noted?

20 A. No, not -- as far as dog bites.

21 Q. Okay. Do you note any other injuries?

22 A. No. I did not in my officer's report.

23 Q. Okay. But you were looking to see if the dog bit  
24 him anywhere else, right?

25 A. Yes.

1 Q. Okay. But you only noted two injuries on this  
2 individual that appeared to be fresh, correct?

3 A. Yes --

4 Q. Shoulder --

5 A. -- from the dog bite.

6 Q. Hands --

7 A. Only two injuries from the dog bite.

8 Q. Shoulder --

9 A. I didn't noticed anything else.

10 Q. -- and hand are the only injuries that you noted,  
11 correct?

12 A. Yes.

13 Q. Okay.

14 MR. FIGLER: Pass the witness.

15 THE COURT: Cross.

16 MR. SINGER: Pass the witness.

17 THE COURT: Redirect.

18 MR. BATEMAN: Just briefly.

19 REDIRECT EXAMINATION

20 BY MR. BATEMAN:

21 Q. I guess I'm confused. The dog is trained to find  
22 people hiding. Is that solely the basis or is there  
23 some -- do they have -- do you have them --

24 MR. FIGLER: Object to leading. He asked if  
25 it was solely. I think he's going to give leading --

1 THE COURT: Rephrase.

2 MR. BATEMAN: I'll rephrase.

3 BY MR. BATEMAN:

4 Q. In this particular case, is there ever a time in  
5 which you ever use a technique of trying to give the dog  
6 a scent of a particular suspect?

7 A. No. What -- the technique that we use with our  
8 dogs is called air scenting.

9 MR. FIGLER: Your Honor, I think it's  
10 nonresponsive to his -- asked as a yes or no. Did you  
11 give him the scent, and the officer replied no. I think  
12 that's responsive. Anything else would be a narrative  
13 or nonresponsive.

14 THE COURT: All right. I think it's a  
15 narrative. Overruled.

16 BY MR. BATEMAN:

17 Q. You can go ahead and answer.

18 A. The technique that we use with our dogs is air  
19 scenting. We don't track with the dogs as they do in  
20 other jurisdictions because of the heat, and, typically,  
21 we're on pavement which is not conducive all the time to  
22 tracking.

23 So we have to -- the dogs have to actually smell  
24 the odor coming from the suspect coming towards the  
25 dogs. The dogs do learn over time as my dog does know



1 that suspects that are hiding typically smell different  
2 from a regular person. Their body emits an odor called  
3 apocrine.

4 MR. FIGLER: And now, Your Honor, I think  
5 we're getting into some sort of medical testimony. I  
6 don't know if he's been qualified as an expert. It's  
7 certainly more than an answer to yes or no.

8 THE COURT: It does seem to be a bit further  
9 than the question called for.

10 MR. BATEMAN: Well, I'm trying to figure out  
11 how it is -- it was implied this dog just suddenly bit  
12 somebody out of nowhere based on cross-examination. I'm  
13 trying to figure out why the dog ended up where he did  
14 and why he did what he did.

15 MR. FIGLER: And I object to that  
16 characterization. The officer testified that the dog is  
17 alert to the presence by smelling a human in the bush  
18 and went off that direction, and I think that's the  
19 answer that he got, and he's trying to change it,  
20 perhaps.

21 THE COURT: All right. You can ask the  
22 question.

23 BY MR. BATEMAN:

24 Q. This scent that you were talking about that's  
25 different, what is it called?

1 A. Apocrine.

2 Q. Okay. And why is that emitted?

3 A. People emit that once they've had an adrenaline  
4 dump. When they're running from the police, have  
5 something traumatic happen to them --

6 MR. FIGLER: And I'm going to object,  
7 Your Honor, as to the nature as being nonresponsive.

8 THE COURT: Ask a nonleading question.

9 MR. BATEMAN: Well, I don't know that that  
10 was leading, but --

11 BY MR. BATEMAN:

12 Q. Why do people emit that particular hormone or  
13 scent?

14 A. From when they have an adrenaline dump when  
15 people are scared, when something traumatic has  
16 happened.

17 Q. And in this particular case, does your dog always  
18 bite a suspect or is it because of the situation with  
19 the wind? That's all I'm going to ask.

20 A. Yes. The dog -- dogs are trained to bite a  
21 suspect when they're on leash searching in a backyard.

22 If they're off leash and I send him to bite  
23 someone, we train our dogs to do detainment or  
24 bark-and-hold which means that they'll stop and bark  
25 near the suspect to alert us that they're there, but

1 that's only when they're off leash and we send them to  
2 apprehend someone.

3 MR. BATEMAN: Court's indulgence. I have  
4 nothing further, Judge.

5 THE COURT: Cross.

6 MR. FIGLER: Real brief.

7 RECROSS-EXAMINATION

8 BY MR. FIGLER:

9 Q. And you did note in your report that Mr. Matthews  
10 -- and this is my words -- made the foolish mistake of  
11 trying to hit Lasco, is that correct --

12 A. He --

13 Q. -- to get him off.

14 A. That's what he told me. I was curious as to how  
15 he got bit in the hand because I knew he got bit in the  
16 shoulder.

17 And then when we pulled him out of the bush, I  
18 asked Mr. Matthews, you know, how did you get hit in the  
19 hand or bit in the hand, and he told me that when the  
20 dog was biting him, he tried to hit the dog, and the dog  
21 bit him in the hand.

22 Q. So that was a bad move on Mr. Matthews' part?

23 A. Well --

24 Q. You shouldn't hit a canine dog --

25 A. Dogs are trained --

1 Q. -- (indiscernible).

2 A. -- to protect themselves and us so --

3 Q. Okay. Thank you.

4 A. -- he perceived that as an --

5 MR. FIGLER: No further questions.

6 THE WITNESS: -- aggressive action towards  
7 him.

8 MR. FIGLER: Okay. Thanks.

9 THE COURT: Anything else?

10 MR. BATEMAN: No, Your Honor.

11 THE COURT: Is this witness excused?

12 MR. BATEMAN: Yes.

13 THE COURT: Officer, you're excused.

14 THE WITNESS: Thank you.

15 THE COURT: Thank you for your testimony.

16 Ladies and gentlemen, we're going to take  
17 our -- well, first of all, let's talk about our  
18 scheduling for tomorrow.

19 Even though we are working -- you are  
20 working in Department 18, we are visitors in Department  
21 15. You may have noticed that outside.

22 As a consequence of the crowded nature of  
23 this courthouse, we will be floating tomorrow for  
24 purposes of this case. You will be coordinating with  
25 Officer Reichert in terms of where we will be.

1           But it's my intention to be on the 15th  
2 floor in 15D which is actually Department 22 in the  
3 morning. And then the afternoon, unfortunately, we're  
4 going to have to move.

5           Does everybody understand that? I'm going  
6 to have Officer Reichert take you in the back and  
7 explain it just to make sure we're all clear, we know  
8 where we need to be, everybody's on the same page.

9           I'd like to pick this up tomorrow morning at  
10 10:30. I have a calendar in the morning, but I'd like  
11 to try to get going at 10:30. In between then, I have  
12 to admonish you again.

13           During this recess you're admonished not to  
14 -- excuse me -- wrong admonishment. You're admonished  
15 not to converse among yourselves or with anyone else on  
16 or any subject connected with this trial or read or  
17 watch or listen to any report of or commentary on this  
18 trial by any person connected with this case or by any  
19 medium of information including, without limitation,  
20 newspaper, television, Internet or radio.

21           You're further admonished not to form or  
22 express any opinion on any subject connected with this  
23 trial until this case is finally submitted to you.

24           Officer Reichert, where would you like this  
25 jury to meet you?

1           THE BAILIFF: I'm going to brief them when  
2 we get in the back.

3           THE COURT: All right. Again, coordinate  
4 with Officer Reichert. Tomorrow morning, 10:30, we'll  
5 pick this case up. We are at recess at this time.  
6 Please follow Officer Reichert, ladies and gentlemen.

7                       (Jury not present)

8           THE COURT: Clear. All right, jury  
9 instructions. Record should reflect we're outside the  
10 presence of the jury.

11           Where are we on jury instructions?

12           MR. BATEMAN: I have a working set, and I  
13 can probably get it to -- or I can E-mail it to whoever  
14 you want me to E-mail it to. If defense counsel has a  
15 few, you know, stocks, like whatever, I'd be happy to  
16 put them in.

17           THE COURT: I'd like to you work together in  
18 formulating the instructions, and then we can expedite  
19 the settlement of those instructions as we come nearer  
20 to that point.

21           MR. FIGLER: We'll do the best we can,  
22 Judge. Sometimes it's a little timely because we take  
23 the position that the Eighth Judicial District Court  
24 does not have stock instructions.

25           So we're not trying to reinvent the wheel,

1 but there's a number of instructions that are presented  
2 as being, quote/unquote, stock that we feel are  
3 inappropriate.

4 And we also have a number of special verdict  
5 forms including theory of defense that we would be  
6 offering, and I will get those to Mr. Bateman and/or  
7 Ms. Lewis as quick as I can get them together, Judge.

8 THE COURT: Well, it sounds like we're going  
9 to need some time --

10 MR. FIGLER: I think so.

11 THE COURT: -- to block some time on those  
12 instructions. Okay. Well, work the best you can  
13 together on those instructions.

14 Is there anything else to come before the  
15 Court before we adjourn for the evening?

16 MR. FIGLER: I have one thing, Judge.

17 THE COURT: Yes.

18 MR. FIGLER: Well, two things. One's really  
19 quick. I've just been noting that Juror No. 12 -- and I  
20 don't have the jury list in front of me. I don't think  
21 we got that this morning.

22 But Juror No. 12 is in the front row in the  
23 third seat over. He appears to be nodding off quite a  
24 bit during the course of the proceedings.

25 THE COURT: I, frankly, have been trying to

1 watch them, and I did not see that.

2 MR. FIGLER: I've caught her a couple of  
3 times out for a good minute or two and then open up her  
4 eyes. I don't know if she's resting her eyes or what  
5 the story is, but I just thought I'd bring it up to the  
6 Court's attention. That's not --

7 THE COURT: Okay.

8 MR. FIGLER: -- the main issue.

9 THE COURT: Okay.

10 MR. FIGLER: The main issue that we have at  
11 this point, Your Honor, and we need to make a record is  
12 that -- and I appreciate that he attempted to limit the  
13 impact of it.

14 But Mr. Bateman in cross-examining -- or,  
15 sorry -- redirecting Officer Walters (sic) did make  
16 reference to Mr. Matthews having a SCOPE.

17 A SCOPE while it can be there for someone  
18 who's a victim of a crime or for a sheriff's card or  
19 something -- and I appreciate the effort he made -- it  
20 was absolutely improper for the prosecutor to inform the  
21 jury in such a fashion without approaching first,  
22 without consulting with counsel, but going directly to  
23 the witness stand with the SCOPE, and we objected  
24 contemporaneous to that occurring.

25 We approached the bench, but at this time,



1 Your Honor, we'd like to make a motion for mistrial with  
2 prejudice that the conduct can't be unwronged. That no  
3 cautionary instruction can be had to tell them ignore  
4 the fact that he had a criminal record waved in front of  
5 his face and then that the prosecution was unable to get  
6 into it and go back to their chair.

7 I think that it's outrageous conduct as much  
8 as they did attempt to limit it, and I appreciate that.  
9 It was something that shouldn't have been done and  
10 couldn't have been limited, and for that purpose I think  
11 that a mistrial with prejudice would be warranted at  
12 this time.

13 THE COURT: Mr. Bateman.

14 MR. BATEMAN: Your Honor sustained the  
15 objection mostly based upon I think the ability to lay  
16 the foundation at this time with the SCOPE printout, and  
17 that I think that would hopefully be the extent of it or  
18 to the extent that it was hearsay or without a hearsay  
19 exception.

20 I specifically asked the officer -- I led  
21 him the whole way so I didn't say anything about  
22 criminal history. There was never any reference. SCOPE  
23 itself doesn't refer to criminal history if asked about  
24 sheriff's card and work.

25 THE COURT: I do recall you asking about

1 sheriff's card. Do you want a cautionary instruction?

2 MR. FIGLER: Well, Judge, I just don't think  
3 a cautionary instruction is going to do anything except  
4 draw additional attention to the fact that he has a  
5 SCOPE.

6 Mr. Bateman did use the words "SCOPE", and I  
7 don't know because we never canvassed the jury ahead of  
8 time if they know what a SCOPE is. They may very well  
9 know what a SCOPE is.

10 It was obviously a document that was not  
11 necessarily waved in front of the jury, but presented to  
12 the jury as being an official document called a SCOPE.

13 And if any of them know what it is, again,  
14 I'm in an untenable position which is why I'm asking for  
15 a mistrial with prejudice because it can't be unwronged.  
16 I think a cautionary instruction would only further  
17 exasperate the intentional conduct of the State.

18 It's not like it slipped out of a book or  
19 something. Mr. Bateman went through his files, found  
20 the SCOPE, grabbed the SCOPE, went up to the witness and  
21 called it a SCOPE. I just don't know how more  
22 intentional you can get.

23 Granted, he did then -- and this is what  
24 happens. That when a SCOPE does become an issue in a  
25 particular case, usually it's ahead of time and usually

1 the sides are admonished. You know, let's talk about it  
2 as a sheriff's card, let's talk about it as something  
3 other than a criminal record.

4 THE COURT: I believe he did that.

5 MR. FIGLER: Yeah, after the fact. But he  
6 still called it a SCOPE, and we were surprised by that  
7 and, quite frankly, there was no good grounds for him to  
8 do it. Usually this stuff is worked out ahead of time.

9 MR. BUNIN: We also don't know what the jury  
10 could have seen if I could add just briefly. When he  
11 walked over with that sheet of paper that he called a  
12 SCOPE, we don't know if they could see how long it was  
13 or what was on it. He walked right over past them in  
14 front of them so (indiscernible) --

15 MR. FIGLER: I think it was --

16 MR. BUNIN: -- should be noted.

17 MR. FIGLER: -- a spontaneous decision on  
18 the part of the State, but I think it was one that went  
19 down the absolute wrong path, and it can't be unwronged  
20 now.

21 So I'm not asking for a precautionary  
22 instruction because I don't want to draw attention to  
23 the bell that's been rung, so my motion is for a  
24 mistrial with prejudice.

25 THE COURT: I understand your motion.