

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEMAR MATTHEWS, vs. THE STATE OF NEVADA, 	Appellant, Respondent,	Supreme Court No. 62241 APPELLANT'S APPENDIX VOLUME II	Electronically Filed Aug 14 2013 01:50 p.m. Tracie K. Lindeman Clerk of Supreme Court
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APPELLANT'S INDEX VOLUME II

WILLIAM H. GAMAGE, ESQ.

Nevada Bar No. 9024
GAMAGE & GAMAGE
5580 South FT. Apache, Ste 110
Las Vegas, Nevada 89148
(702) 386-9529
(702) 382-9529 (Facsimile)
Counsel for Appellant MATTHEWS

STEVEN WOLFSON

Clark County District Attorney
200 Lewis Avenue
Las Vegas, Nevada 89155
(702) 671-2750
(702) 477-2957 (Facsimile)
Counsel for Respondent

CATHERINE CORTEZ MASTO, ESQ.

ATTORNEY GENERAL
100 N. Carson Street
Carson City, Nevada 89701-4717
(775) 684-1100
Counsel for State of Nevada

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. II was served on all counsel via the Court's electronic filing system to all counsel of record listed below:

STEVEN WOLFSON

Clark County District Attorney
200 Lewis Avenue
Las Vegas, Nevada 89155
(702) 671- 2501
(702) 455-2294
Respondent

**CATHERINE CORTEZ
MASTO, ESQ.**

ATTORNEY GENERAL
100 N. Carson Street
Carson City, Nevada 89701-4717
(775) 684-1100

JEMAR MATTHEWS

Inmate No. 1014654
Southern Desert State Prison
PO Box 208
Indian Springs, Nevada 89070

/s/ William H. Gamage, Esq.

William H. Gamage, Esq.

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1 you couldn't be a completely fair and impartial juror in
2 this case?

3 PROSPECTIVE JUROR NO. 637: No. I think I'm
4 pretty and open-minded and --

5 THE COURT: And you could be fair here
6 today?

7 PROSPECTIVE JUROR NO. 637: Yes.

8 THE COURT: Okay. State.

9 MR. BATEMAN: Any questions we've asked
10 previously that you would have wanted to -- if we'd
11 asked you the question you'd want to respond?

12 PROSPECTIVE JUROR NO. 637: Yes. I sold
13 guns for a couple of years, and I like to go target
14 shooting, so I know a little bit about them.

15 MR. BATEMAN: Okay. Like at a gun store is
16 where you were selling them?

17 PROSPECTIVE JUROR NO. 637: Yeah.

18 MR. BATEMAN: Okay. How long ago was that?

19 PROSPECTIVE JUROR NO. 637: Back in the
20 '70s.

21 MR. BATEMAN: Okay. So quite awhile ago?

22 PROSPECTIVE JUROR NO. 637: Yeah.

23 MR. BATEMAN: Okay. Okay. Anything else
24 that you would have wanted to volunteer?

25 PROSPECTIVE JUROR NO. 637: No.

1 MR. BATEMAN: Okay. Should the State feel
2 comfortable with you as a juror in this case?

3 PROSPECTIVE JUROR NO. 637: Um-h'm.

4 MR. BATEMAN: Okay. Pass for cause.

5 THE COURT: Defense.

6 MR. BUNIN: Thank you, Judge.

7 Ms. Ready, in your work, do you work with
8 young people at all?

9 PROSPECTIVE JUROR NO. 637: Yes, children.

10 MR. BUNIN: Children of what age?

11 PROSPECTIVE JUROR NO. 637: Elementary
12 school.

13 MR. BUNIN: Elementary school?

14 PROSPECTIVE JUROR NO. 637: Well, actually,
15 right now third, fourth and fifth grade.

16 MR. BUNIN: How about people you train,
17 people you work with? Are they sometimes younger or are
18 they usually older or both?

19 PROSPECTIVE JUROR NO. 637: Both.

20 MR. BUNIN: Both. You know, do you have any
21 feelings at all about young people or teenagers that
22 might, maybe, affect your view one way or the other?

23 PROSPECTIVE JUROR NO. 637: Nope.

24 MR. BUNIN: Do you think because a person's
25 a younger, you know, teenager that they'd might be more

1 likely to be guilty --

2 PROSPECTIVE JUROR NO. 637: No.

3 MR. BUNIN: -- just because they're younger?

4 PROSPECTIVE JUROR NO. 637: No. Not at all.

5 MR. BUNIN: You don't think so at all?

6 PROSPECTIVE JUROR NO. 637: No.

7 MR. BUNIN: Okay. Good. Is there -- you
8 said you like target shooting. Do you still do that?

9 PROSPECTIVE JUROR NO. 637: I haven't since
10 I've been up here, but it's been awhile.

11 MR. BUNIN: It's been a long time? Do you
12 own guns?

13 PROSPECTIVE JUROR NO. 637: Yes.

14 MR. BUNIN: What do you own?

15 PROSPECTIVE JUROR NO. 637: A shotgun, 9mm,
16 .380, .38, .22s.

17 MR. BUNIN: You named every gun I know plus
18 one I (indiscernible).

19 PROSPECTIVE JUROR NO. 637: I've had .357s.

20 MR. BUNIN: Wow.

21 PROSPECTIVE JUROR NO. 637: I haven't owned
22 a .44 yet.

23 MR. BUNIN: Yet. You feel comfortable,
24 obviously, having guns around your house?

25 PROSPECTIVE JUROR NO. 637: Uh-huh.

1 MR. BUNIN: You never had to use one for
2 anything other than --

3 PROSPECTIVE JUROR NO. 637: Oh, no.

4 MR. BUNIN: -- target shooting, have you?

5 PROSPECTIVE JUROR NO. 637: No, no.

6 MR. BUNIN: Okay.

7 PROSPECTIVE JUROR NO. 637: Heaven forbid.

8 MR. BUNIN: You know, you're going to hear
9 about some guns --

10 PROSPECTIVE JUROR NO. 637: Right.

11 MR. BUNIN: -- in this case. Is that going
12 to prejudice you --

13 PROSPECTIVE JUROR NO. 637: No.

14 MR. BUNIN: -- one way or the other in any
15 way? Hearing about young people supposedly with guns,
16 is that going to make you have feelings one way maybe
17 towards or against the prosecution or towards or against
18 Jamar?

19 PROSPECTIVE JUROR NO. 637: No.

20 MR. BUNIN: None at all?

21 PROSPECTIVE JUROR NO. 637: No.

22 MR. BUNIN: Do you know --

23 PROSPECTIVE JUROR NO. 637: Everybody has
24 guns at all ages, and they -- trust me. When I sold
25 them, they -- everybody carried them, and this was back

1 in the '70s, so --

2 MR. BUNIN: Where did you live then?

3 PROSPECTIVE JUROR NO. 637: California.

4 MR. BUNIN: Where in California?

5 PROSPECTIVE JUROR NO. 637: Long Beach.

6 MR. BUNIN: Long Beach? Stay out of Long
7 Beach.

8 PROSPECTIVE JUROR NO. 637: I sold to a lot
9 of the nurses who would get off at 3:00 o'clock in the
10 morning and --

11 MR. BUNIN: Oh, just for their own
12 protection --

13 PROSPECTIVE JUROR NO. 637: Protection.

14 MR. BUNIN: -- purposes? (Indiscernible).
15 Are you comfortable being a juror in this case?

16 PROSPECTIVE JUROR NO. 637: Yes.

17 MR. BUNIN: You know, this is probably a --
18 I don't know if it's a silly question or not, but if you
19 were sitting in the same position that Jamar's in, would
20 you want you for a juror in a case like this?

21 PROSPECTIVE JUROR NO. 637: Of course.

22 MR. BUNIN: You think you can give him a
23 fair trial?

24 PROSPECTIVE JUROR NO. 637: I'd listen to
25 all the evidence and then -- and then come to a

1 conclusion. Sure.

2 MR. BUNIN: And your personalities seems
3 somewhat strong. I just looked over at you by accident,
4 but there's some strong personalities --

5 PROSPECTIVE JUROR NO. 637: (Indiscernible).

6 UNIDENTIFIED JUROR: Sorry.

7 MR. BUNIN: No, not at all. Do you feel
8 comfortable forming your own opinions?

9 PROSPECTIVE JUROR NO. 637: Oh, yes.

10 MR. BUNIN: You know, do you feel
11 comfortable, maybe, if you have disagreements with other
12 people that you don't have to change your mind?

13 PROSPECTIVE JUROR NO. 637: Yeah.
14 Everyone's got their own --

15 UNIDENTIFIED SPEAKER: Excuse me.

16 PROSPECTIVE JUROR NO. 637: -- opinion. I
17 mean, wouldn't it be boring if everybody were lawyers?

18 MR. BUNIN: I finally almost got my lawyer
19 question out. Do you have any feelings about attorneys
20 that might affect your ability to be a juror?

21 PROSPECTIVE JUROR NO. 637: No.

22 MR. BUNIN: Have you had occasion to deal
23 with attorneys during the course of your life?

24 PROSPECTIVE JUROR NO. 637: No. Not really,
25 no.

1 MR. BUNIN: Really? That's good. All
2 right.

3 PROSPECTIVE JUROR NO. 637: Just with my
4 mother dying, but that kind of --

5 MR. BUNIN: Different type of thing?

6 PROSPECTIVE JUROR NO. 637: Yeah.

7 MR. BUNIN: All right. Thank you.

8 Pass for cause, Judge.

9 THE COURT: State.

10 MS. LEWIS: Judge, the State would like to
11 thank and excuse Juror Badge No. 492, Ms. Ocampo.

12 THE CLERK: I'm sorry. I didn't hear the
13 number.

14 MS. LEWIS: 492.

15 THE CLERK: Thank you.

16 THE COURT: Ms. Ocampo, thanks for coming.
17 Thanks for your open and honest answers. Please report
18 back to the jury deliberation room.

19 And call the next name on the roll.

20 THE CLERK: 638, Todd Parriott, please.

21 THE COURT: Is it Parriott?

22 PROSPECTIVE JUROR NO. 638: Yes.

23 THE COURT: Mr. Parriott, tell us a little
24 bit about yourself. How long have you been here in
25 Las Vegas?

1 PROSPECTIVE JUROR NO. 638: 20 years.

2 THE COURT: And what do you do for a living,
3 sir?

4 PROSPECTIVE JUROR NO. 638: I'm in charge of
5 a public company named Desert Capital Reed (phonetic).

6 THE COURT: And what kind of business is
7 that?

8 PROSPECTIVE JUROR NO. 638: We're a public
9 entity that loans money to builders and developers in
10 Las Vegas.

11 THE COURT: And your marital status, sir?

12 PROSPECTIVE JUROR NO. 638: Married.

13 THE COURT: Kids?

14 PROSPECTIVE JUROR NO. 638: Three.

15 THE COURT: Ages of your kids?

16 PROSPECTIVE JUROR NO. 638: 10, 8, 5.

17 THE COURT: Any prior jury experience?

18 PROSPECTIVE JUROR NO. 638: No.

19 THE COURT: A close family member or friend
20 ever been accused of a crime or yourself?

21 PROSPECTIVE JUROR NO. 638: No.

22 THE COURT: Close family member or yourself
23 ever been a victim of a crime?

24 PROSPECTIVE JUROR NO. 638: No.

25 THE COURT: Would you have a tendency to

1 give a police officer more credence simply because they
2 are a police officer?

3 PROSPECTIVE JUROR NO. 638: No.

4 THE COURT: Can you hold off on an opinion
5 if you're selected as a juror until after you've heard
6 all the evidence in the case and received instruction by
7 me?

8 PROSPECTIVE JUROR NO. 638: Yes.

9 THE COURT: Can you think of any reason why
10 you couldn't be a completely fair and impartial juror in
11 this case?

12 PROSPECTIVE JUROR NO. 638: No.

13 THE COURT: State.

14 MR. BATEMAN: Just reference your trip. You
15 said you had to leave town on what day was it, sir?

16 PROSPECTIVE JUROR NO. 6:38: Thursday.

17 MR. BATEMAN: At what time?

18 PROSPECTIVE JUROR NO. 638: 1:30.

19 MR. BATEMAN: You're leaving town
20 completely?

21 PROSPECTIVE JUROR NO. 638: Yes.

22 MR. BATEMAN: Okay. And I assume you
23 already have tickets?

24 PROSPECTIVE JUROR NO. 638: Yes.

25 MR. BATEMAN: Okay. Is it a business trip

1 or --

2 PROSPECTIVE JUROR NO. 638: No. I mean, I
3 could move it to -- I could probably move it to Friday.
4 I just don't know what tickets are available at this
5 time, and you can answer to my wife.

6 MR. BATEMAN: I don't want to answer to his
7 wife, Judge.

8 THE COURT: We're going to have to excuse
9 him. We're just not going to make Thursday.

10 Sir, sorry to have you hang around, but it's
11 important, the process is important. I appreciate your
12 cooperation and honest answers. Thank you for bringing
13 up the fact of the trip. (Indiscernible) special
14 circumstance. You're excused. Please report back to
15 Jury Services.

16 And we'll call the next name on the roll.

17 THE CLERK: No. 639, Arthur Nadler, please.

18 THE COURT: Ladies and gentlemen, as
19 Mr. Nadler's walking up to the bench or walking up to
20 jury deliberation room, it's my intention to get a jury
21 tonight. That means we might have to push long as
22 opposed to bringing you all back here tomorrow morning.

23 Is there anybody that has a serious
24 objection to that process? Anybody that can't
25 participate in that process this evening even though we

1 may go a little long?

2 Thank you. I appreciate your -- I see --

3 UNIDENTIFIED JUROR: My wife gets out of
4 work at 5:30. They said 5:00, and I thought there would
5 be no problem at all.

6 THE COURT: Gentlemen, based upon the
7 numbers we have here, can we -- we have three hands that
8 went up and that's all I saw. So --

9 UNIDENTIFIED JUROR: How long do you think?

10 THE COURT: 6:00 o'clock. If things move
11 along, 6:00 o'clock, 6:15.

12 UNIDENTIFIED JUROR: Will it go later than
13 that?

14 THE COURT: Well, I can't promise because I
15 don't know how long this is going to take. I'll tell
16 you what. Let's keep going until 6:00. Let's keep
17 going until 5:30 and see how we do. All right? All
18 right.

19 MS. LEWIS: And, Judge, for the record, the
20 State wouldn't have any objection to anybody stepping
21 out in the hallway and making any necessary phone calls
22 or taking any medication. I heard somebody mention
23 being diabetic.

24 THE COURT: Very --

25 UNIDENTIFIED JUROR: I just need to eat

1 dinner so --

2 THE COURT: Okay.

3 UNIDENTIFIED JUROR: She's having a bad
4 time.

5 THE COURT: Okay. Do we have anything we
6 can feed her?

7 UNIDENTIFIED JUROR: All I have is candy.

8 THE COURT: Is that -- you've got to have
9 complex carbohydrates, don't you?

10 UNIDENTIFIED JUROR: No, no carbs.

11 THE COURT: No carbs?

12 UNIDENTIFIED JUROR: Protein.

13 THE COURT: Protein.

14 UNIDENTIFIED JUROR: I have a Granola bar.

15 UNIDENTIFIED JUROR: Too much

16 (indiscernible).

17 THE COURT: Too much sugar. I'll tell you
18 what, ma'am --

19 UNIDENTIFIED JUROR: I can hang for a while,
20 but (indiscernible) --

21 THE COURT: All right. You raise your hand.
22 Make sure (indiscernible) knows. I don't want you --

23 UNIDENTIFIED JUROR: I mean, I'm late
24 (indiscernible).

25 THE COURT: Okay. I just can't let you go.

1 So if you get in distress, I need to know, all right?

2 Mr. Nadler, thank you for your patience,
3 sir. You have your microphone. Tell us about yourself.

4 PROSPECTIVE JUROR NO. 639: Yes. You hear
5 me? Is it turned on?

6 THE COURT: Yeah.

7 PROSPECTIVE JUROR NO. 639: I've lived here
8 since 1975. I'm a public-relations marketing person
9 with a government agency here. I worked at UNLV for a
10 while. I was -- I was a reporter for a local newspaper
11 for about 20 years.

12 THE COURT: And anything about that
13 employment that might affect your ability to be fair and
14 impartial?

15 PROSPECTIVE JUROR NO. 639: No.

16 THE COURT: All right. Marital status? I'm
17 sorry.

18 PROSPECTIVE JUROR NO. 639: I'm single.

19 THE COURT: All right. And any prior jury
20 experience?

21 PROSPECTIVE JUROR NO. 639: I was never on a
22 jury. No.

23 THE COURT: All right. Any close family
24 member or friends or yourself been accused of a crime?

25 PROSPECTIVE JUROR NO. 639: No.

1 THE COURT: Any close family member or
2 friends or yourself been a victim of a crime?

3 PROSPECTIVE JUROR NO. 639: No.

4 THE COURT: Would you give an officer of the
5 law any greater weight as a consequence simply that they
6 are employed as a police officer?

7 PROSPECTIVE JUROR NO. 639: No.

8 THE COURT: Do you or can you hold off on
9 forming an opinion as to the guilt or innocence of these
10 men until after all the evidence and instructions have
11 been received by you?

12 PROSPECTIVE JUROR NO. 639: Yes.

13 THE COURT: Do you know of any reason why
14 you couldn't be a completely fair and impartial juror?

15 PROSPECTIVE JUROR NO. 639: No.

16 THE COURT: State.

17 MR. BATEMAN: Just briefly. When you were a
18 reporter, did you report on any criminal cases or did
19 you report on other matters?

20 PROSPECTIVE JUROR NO. 639: I occasionally
21 covered some criminal cases. Yes.

22 MR. BATEMAN: Okay. How long ago was that?

23 PROSPECTIVE JUROR NO. 639: It was probably
24 in the '80s, '90s.

25 MR. BATEMAN: For what -- is it a newspaper?

1 PROSPECTIVE JUROR NO. 639: Yes, Las Vegas
2 Sun.

3 MR. BATEMAN: Okay. And do you have any
4 children, sir?

5 PROSPECTIVE JUROR NO. 639: No, I don't.

6 MR. BATEMAN: Okay. Pass for cause, Judge.

7 THE COURT: Defense.

8 MR. FIGLER: Thank you. Where did you come
9 from when you relocated to Las Vegas?

10 PROSPECTIVE JUROR NO. 639: From Buffalo,
11 New York.

12 MR. FIGLER: Okay. And so that's where you
13 lived most of your life and then you moved out --
14 relocated to Las Vegas? You been here since? Is that
15 about right?

16 PROSPECTIVE JUROR NO. 639: Actually, I
17 lived out here most of my life.

18 MR. FIGLER: Oh, okay. All right. And I'm
19 sorry. Again, how long have you been out here in
20 Las Vegas?

21 PROSPECTIVE JUROR NO. 639: Since 1975.

22 MR. FIGLER: Oh, okay. So you've seen a lot
23 of changes in the city, obviously.

24 PROSPECTIVE JUROR NO. 639: Yes, I did.

25 MR. FIGLER: And (indiscernible) probably

1 one of your responsibilities to note those changes as
2 they would occur, important events as they occur. Would
3 you agree with that?

4 PROSPECTIVE JUROR NO. 639: Yes.

5 MR. FIGLER: Okay. Do you think that you're
6 well-suited to be able to evaluate the credibility and
7 the perception of various witnesses as they would appear
8 before you?

9 PROSPECTIVE JUROR NO. 639: Yes.

10 MR. FIGLER: Okay. And do you believe that
11 because of the seriousness of the charge and the
12 consequence for Mr. Matthews that you would scrutinize
13 the prosecution witnesses to a degree that you felt
14 important? Would you do that?

15 PROSPECTIVE JUROR NO. 639: Yes.

16 MR. FIGLER: Okay. Now, the judge is going
17 to instruct you that there's different kinds of
18 evidence, and I don't want to touch on the instructions
19 at all, but you would agree with me that some evidence
20 is stronger than other kinds of evidence? Would you
21 agree with that statement?

22 PROSPECTIVE JUROR NO. 639: Yes.

23 MR. FIGLER: Okay. And you understand as an
24 individual juror here it's your individual determination
25 how much weight or credibility to give any piece of

1 evidence. Do you agree with that?

2 PROSPECTIVE JUROR NO. 639: Yes.

3 MR. FIGLER: Okay. So something could be
4 circumstantial, but it's up to you to determine if it's
5 weak circumstantial or strong circumstantial. You
6 understand that, correct?

7 PROSPECTIVE JUROR NO. 639: Yes.

8 MR. FIGLER: And you're comfortable doing
9 that?

10 PROSPECTIVE JUROR NO. 639: Yes.

11 MR. FIGLER: Thank you. We'll pass for
12 cause.

13 MR. SINGER: Do you have any contacts with
14 the criminal justice system like family members or
15 anything to that extent?

16 PROSPECTIVE JUROR NO. 639: No.

17 MR. SINGER: So when you were a reporter,
18 did you have contact with Metro or Henderson or any of
19 the police departments?

20 PROSPECTIVE JUROR NO. 639: At the time I
21 did. Yeah.

22 MR. SINGER: Yes?

23 PROSPECTIVE JUROR NO. 639: Yes.

24 MR. SINGER: And do you maintain any --

25 PROSPECTIVE JUROR NO. 639: Actually, where

1 I'm working at now there's a lot of ex-Metro policeman
2 and some highway patrolmen.

3 MR. SINGER: Retired?

4 PROSPECTIVE JUROR NO. 639: Yes.

5 MR. SINGER: Do you ever sit around at lunch
6 or whatever and talk with them about the old days or
7 their cases or anything like that?

8 PROSPECTIVE JUROR NO. 639: Not too much,
9 no.

10 MR. SINGER: Okay. And do you have any
11 feeling or preconceived notion or anything about the
12 status of Pierre as he sits there right now? Do you
13 have a problem accepting the concept that they're
14 innocent right now because you haven't heard any proof?

15 PROSPECTIVE JUROR NO. 639: No.

16 MR. SINGER: And would you feel comfortable
17 if Pierre sat there silent the entire trial? Would you
18 be able to render a guilty or a not guilty verdict?

19 PROSPECTIVE JUROR NO. 639: Yes.

20 MR. SINGER: Pass for cause, Judge.

21 THE COURT: Thank you. Is defense prepared
22 to exercise its second peremptory challenge?

23 MR. BUNIN: Yes.

24 MR. SINGER: Court's indulgence. Judge, at
25 this time the defense would thank and excuse Juror

1 No. 0074, Ms. Gatela, Gatela.

2 THE COURT: Ms. Gatela, thank you for
3 coming, appreciate your honest answer. On behalf of the
4 Eighth Judicial District Court, please report back to
5 Jury Services and they'll give you further instructions.
6 Thanks again.

7 And let's call the next name on the roll.

8 THE CLERK: No. 647, Wendy Kahoaka-Wright,
9 please.

10 THE COURT: Ms. Wright?

11 PROSPECTIVE JUROR NO. 647: Yes.

12 THE COURT: You've heard the questions that
13 I'm about to ask. How about how long have you been here
14 in Las Vegas?

15 PROSPECTIVE JUROR NO. 647: I lived in
16 Las Vegas on and off since 1990.

17 THE COURT: And where did you come from?

18 PROSPECTIVE JUROR NO. 647: Hawaii.

19 THE COURT: And what do you do for work?

20 PROSPECTIVE JUROR NO. 647: Executive
21 secretary.

22 THE COURT: For who?

23 PROSPECTIVE JUROR NO. 647: Marriott.

24 THE COURT: And are you married?

25 PROSPECTIVE JUROR NO. 647: Yes.

1 THE COURT: Children?

2 PROSPECTIVE JUROR NO. 647: My son's 21.

3 THE COURT: All right. Ever had any prior
4 jury experience?

5 PROSPECTIVE JUROR NO. 647: No.

6 THE COURT: Have you ever been -- you or
7 close family or friend been a victim of crime?

8 PROSPECTIVE JUROR NO. 647: Yes.

9 THE COURT: Tell us about that.

10 PROSPECTIVE JUROR NO. 647: About 30 years
11 ago my grandfather was murdered.

12 THE COURT: And where was that?

13 PROSPECTIVE JUROR NO. 647: In Hawaii.

14 THE COURT: Would that affect your ability
15 to be fair and impartial in any way in this case?

16 PROSPECTIVE JUROR NO. 647: No.

17 THE COURT: Has any close family member or
18 friend or yourself been accused of a crime?

19 PROSPECTIVE JUROR NO. 647: Yes.

20 THE COURT: Tell us about that.

21 PROSPECTIVE JUROR NO. 647: And I don't know
22 too much about it, but just that an uncle was convicted
23 for drugs.

24 THE COURT: Would that, the fact that your
25 uncle was convicted for drugs, have any bearing on your

1 decision if you were selected to be a juror here in this
2 case?

3 PROSPECTIVE JUROR NO. 647: No, not at all.

4 THE COURT: Would you give a police officer
5 greater or lesser weight in their testimony simply
6 because they're a police officer?

7 PROSPECTIVE JUROR NO. 647: Absolutely not.

8 THE COURT: All right. Would you hold in
9 forming your opinion as to guilt or innocence until
10 after you've heard all of the evidence in the case and
11 received the instructions by me?

12 PROSPECTIVE JUROR NO. 647: Absolutely.

13 THE COURT: Do you know of any reason you
14 couldn't be a completely fair and impartial juror?

15 PROSPECTIVE JUROR NO. 647: No.

16 THE COURT: State.

17 MR. BATEMAN: The murder of your grandfather
18 you said was 30 years ago?

19 PROSPECTIVE JUROR NO. 647: 30 years ago.

20 MR. BATEMAN: Did you know much information
21 about it at the time?

22 PROSPECTIVE JUROR NO. 647: Just briefly. I
23 was only ten years old at the time.

24 MR. BATEMAN: Okay. You weren't a witness
25 in the case?

1 PROSPECTIVE JUROR NO. 647: Not a witness in
2 the case, no.

3 MR. BATEMAN: Okay. Did you have any
4 personal knowledge about it or everything you knew about
5 it was what you heard from other people?

6 PROSPECTIVE JUROR NO. 647: When I was ten
7 years old, there were some threats that were made to the
8 family, so I was there for a couple of the incidents.

9 MR. BATEMAN: Where did this all take place?

10 PROSPECTIVE JUROR NO. 647: In Hawaii.

11 MR. BATEMAN: Okay. Were you close to your
12 grandfather back then?

13 PROSPECTIVE JUROR NO. 647: I wouldn't say
14 really close. No.

15 MR. BATEMAN: Okay. Anything about that
16 experience that would cause you to feel like maybe you
17 couldn't be fair and impartial in this case?

18 PROSPECTIVE JUROR NO. 647: Absolutely not.

19 MR. BATEMAN: Any reason why the State
20 should be concerned with having you with that kind of a
21 background as a juror in this case?

22 PROSPECTIVE JUROR NO. 647: Not at all.

23 MR. BATEMAN: Okay. Pass for cause, Judge.

24 THE COURT: Defense.

25 MR. BUNIN: Thank you, Judge.

1 Did they catch the person that killed your
2 grandfather?

3 PROSPECTIVE JUROR NO. 647: Persons, yes.

4 MR. BUNIN: Persons. Was there a trial?

5 PROSPECTIVE JUROR NO. 647: Yes.

6 MR. BUNIN: Do you have any feelings about
7 the process? Have you been able to look back on it and
8 what occurred back then?

9 PROSPECTIVE JUROR NO. 647: No, because I
10 was only ten years old. I don't know very much about
11 it, only that he was murdered and by whom.

12 MR. BUNIN: As you've gotten older you never
13 really learned more about it or never thought about, you
14 know, what happened?

15 PROSPECTIVE JUROR NO. 647: We didn't
16 discuss that.

17 MR. BUNIN: It's not a topic of discussion
18 in your family?

19 PROSPECTIVE JUROR NO. 647: Yeah.

20 MR. BUNIN: Okay. So has that left you with
21 any feelings towards maybe attorneys that may prejudice
22 you one way or the other?

23 PROSPECTIVE JUROR NO. 647: No, not at all.

24 MR. BUNIN: Maybe towards police officers
25 that could prejudice you one way or the other?

1 PROSPECTIVE JUROR NO. 647: Not at all.

2 MR. BUNIN: Do you feel like did the police
3 do a good job, do you have any idea, investigating that
4 back then? Do you know enough about it (indiscernible)?

5 PROSPECTIVE JUROR NO. 647: No, I don't.

6 MR. BUNIN: I'm going to stay way from that
7 because you don't really know much about it. That's
8 good. You said you had an uncle that had a case too,
9 but you didn't know much about that.

10 PROSPECTIVE JUROR NO. 647: I didn't know --
11 yeah, because I was already in Vegas when he was
12 convicted for drugs.

13 MR. BUNIN: (Indiscernible)?

14 PROSPECTIVE JUROR NO. 647: He was in
15 prison. He was just released on probation about two
16 years ago --

17 MR. BUNIN: -- (indiscernible).

18 PROSPECTIVE JUROR NO. 647: -- so I've been
19 in Vegas.

20 MR. BUNIN: Somebody you're close to?
21 Somebody you talk to?

22 PROSPECTIVE JUROR NO. 647: Not really, no.

23 MR. BUNIN: You don't know any details about
24 it at all?

25 PROSPECTIVE JUROR NO. 647: Just that he was

1 convicted and what type of drugs.

2 MR. BUNIN: Was that also in Hawaii?

3 PROSPECTIVE JUROR NO. 647: Hawaii, yes.

4 MR. BUNIN: Okay. Let me see. You said you
5 were an executive secretary for the Marriott; is that
6 correct?

7 PROSPECTIVE JUROR NO. 647: That's correct.

8 MR. BUNIN: How long have you done that?

9 PROSPECTIVE JUROR NO. 647: Six years.

10 MR. BUNIN: You know, we've been talking
11 about a lot of topics.

12 PROSPECTIVE JUROR NO. 647: Yes.

13 MR. BUNIN: Are there any of them that kind
14 of struck a note with you and that are interesting to
15 you you think you would like to talk about?

16 PROSPECTIVE JUROR NO. 647: No.

17 MR. BUNIN: Have you heard anybody mention
18 anything about some of the topics that we discussed that
19 you may disagree with?

20 PROSPECTIVE JUROR NO. 647: No.

21 MR. BUNIN: Not at all?

22 PROSPECTIVE JUROR NO. 647: Not at all.

23 MR. BUNIN: Okay. I'm going to pass for
24 cause, Judge.

25 THE COURT: Mr. Singer.

1 MR. SINGER: Thank you, Judge.

2 Is your son employed?

3 PROSPECTIVE JUROR NO. 647: Yes, he is.

4 MR. SINGER: What does he do?

5 PROSPECTIVE JUROR NO. 647: He's a bellman
6 at the Hotel of Mandalay Bay.

7 MR. SINGER: Bellman?

8 PROSPECTIVE JUROR NO. 647: Bellman.

9 MR. SINGER: Has he had any contact with the
10 criminal justice system here in Las Vegas?

11 PROSPECTIVE JUROR NO. 647: No, not at all.

12 MR. SINGER: He's never been questioned?

13 PROSPECTIVE JUROR NO. 647: No, not at all.

14 MR. SINGER: And what about your husband?
15 What's he do for a living?

16 PROSPECTIVE JUROR NO. 647: He works for
17 Republic as an operator, equipment operator.

18 MR. SINGER: Republic?

19 PROSPECTIVE JUROR NO. 647: Refuse service.

20 MR. SINGER: Okay. And how about him? Has
21 he ever been a victim or a witness to a crime?

22 PROSPECTIVE JUROR NO. 647: No. Never.

23 MR. SINGER: Do you have any relatives that
24 are in law enforcement?

25 PROSPECTIVE JUROR NO. 647: No.

1 MR. SINGER: Thank you, Judge. Pass for
2 cause.

3 THE COURT: I believe we're on State's
4 three.

5 MS. LEWIS: Judge, the State would like to
6 thank and excuse Juror Badge No. 631, Mr. Bradshaw.

7 THE COURT: Mr. Bradshaw, thank you for
8 coming. You're instructed to return back to Jury
9 Services for further information.

10 Call the next name on the roll.

11 THE CLERK: No. 650, Gary Aylesworth,
12 please.

13 THE COURT: Mr. Aylesworth.

14 (Off-record colloquy)

15 PROSPECTIVE JUROR NO. 650: Yes.

16 THE COURT: Good afternoon. How long have
17 you been here in Las Vegas, sir?

18 PROSPECTIVE JUROR NO. 650: Three years.

19 THE COURT: And where are you from?

20 PROSPECTIVE JUROR NO. 650: Atlanta,
21 Georgia.

22 THE COURT: And what do you do here?

23 PROSPECTIVE JUROR NO. 650: I'm retired.

24 THE COURT: Okay. Are you married?

25 PROSPECTIVE JUROR NO. 650: My wife passed

1 away.

2 THE COURT: All right. Do you have
3 children?

4 PROSPECTIVE JUROR NO. 650: Yes.

5 THE COURT: Are they all adults?

6 PROSPECTIVE JUROR NO. 650: Yes. And
7 grandchildren.

8 THE COURT: Any prior jury experience?

9 PROSPECTIVE JUROR NO. 650: No.

10 THE COURT: Have you ever been -- you or
11 close family member or a friend been a victim of crime?

12 PROSPECTIVE JUROR NO. 650: Never.

13 THE COURT: You close family member or
14 friend ever been accused of a crime?

15 PROSPECTIVE JUROR NO. 650: No.

16 THE COURT: Would you give the weight of an
17 officer's testimony any greater deference than you would
18 any other witness?

19 PROSPECTIVE JUROR NO. 650: No.

20 THE COURT: Can you wait in forming your
21 opinion as to guilt or innocence in this case if you're
22 selected as a juror until after all the evidence is
23 received and the instructions are read to you?

24 PROSPECTIVE JUROR NO. 650: Yes.

25 THE COURT: Do you know of any reason why

1 you couldn't be a completely fair and impartial juror?

2 PROSPECTIVE JUROR NO. 650: No.

3 THE COURT: State.

4 MR. BATEMAN: I'm sorry. I didn't catch
5 what you did before. You said you're retired?

6 PROSPECTIVE JUROR NO. 650: I am now, yes.

7 MR. BATEMAN: Okay. What were you doing
8 before?

9 PROSPECTIVE JUROR NO. 650: I was a sales
10 manager for a national company.

11 MR. BATEMAN: Okay. Any questions that the
12 State's asked or I guess anybody's asked that you would
13 have felt had that question been directed to you at this
14 time that you want to respond to?

15 PROSPECTIVE JUROR NO. 650: Not that I can
16 think of. No.

17 MR. BATEMAN: Okay. Any reason State should
18 be concerned with having you as a juror in this case?

19 PROSPECTIVE JUROR NO. 650: No.

20 MR. BATEMAN: Okay. I'll pass for cause,
21 Judge.

22 THE COURT: Defense.

23 MR. FIGLER: Thank you, Your Honor.

24 Mr. Aylesworth?

25 PROSPECTIVE JUROR NO. 650: Yes.

1 MR. FIGLER: Thank you. I'm going to say an
2 expression that we're probably all very familiar with,
3 and I just want to get your impression what you think
4 this means, okay, the expression "a juror of one's
5 peers, a jury of one's peers". What does that mean to
6 you?

7 PROSPECTIVE JUROR NO. 650: It would mean
8 someone who was somehow related either by age or by
9 position job wise or education, something of that order.

10 MR. FIGLER: Okay. And as you look over at
11 Jamar Matthews over there, he's looking out at this
12 panel of people. Would you agree or disagree that it's
13 likely to be a jury of his peers?

14 MR. BATEMAN: Judge, I'm going to object to
15 the question. The peers is clearly as we collect the
16 jury panel in this case based upon whatever the
17 requirements are in the statute. I think it's DMV
18 records. I think that it's -- I don't see the relevance
19 of this witness's own perception of what the term
20 "peers" means.

21 MR. FIGLER: Judge, I would say that it does
22 go to basically any biases or prejudices that any of the
23 jurors may have about the justice system, about how it
24 works, about the fairness --

25 THE COURT: I'm going to sustain the

1 objection to the extent and ask you to rephrase the
2 question. I believe you're in a fair area, just
3 rephrase the question.

4 MR. FIGLER: Okay. Thank you, Your Honor.

5 There's obviously some things
6 (indiscernible) about my client. He's a young person.

7 PROSPECTIVE JUROR NO. 650: Right.

8 MR. FIGLER: Okay. He's an
9 African-American person.

10 PROSPECTIVE JUROR NO. 650: Yes.

11 MR. FIGLER: Okay. You don't know much else
12 about him because that's just not how the system works,
13 so you're essentially being asked to sort of judge this
14 book over here by its cover for right now. Would you
15 agree with that?

16 PROSPECTIVE JUROR NO. 650: I would.

17 MR. FIGLER: Okay. Do you have any opinions
18 about trial by one's peers that would impact your
19 ability to think that this system is fair or how the
20 system that you're observing here today is still fair?
21 Just your general opinion about that subject.

22 PROSPECTIVE JUROR NO. 650: No. I mean, I
23 think it would be -- it's fair. It's been tested for
24 many years.

25 MR. FIGLER: Okay. Do you think that it is

1 important to have people of diverse backgrounds?

2 PROSPECTIVE JUROR NO. 650: Yes.

3 MR. FIGLER: Okay. Do you think that it's
4 important to make sure that a certain group isn't
5 excluded from the panel?

6 PROSPECTIVE JUROR NO. 650: Yes.

7 MR. FIGLER: Okay. Is there any experiences
8 that you've had with young people or teenagers that
9 would affect your ability to sit as a juror in this case
10 where there's a young person who is being accused of
11 this particular crime?

12 PROSPECTIVE JUROR NO. 650: No. I mean, my
13 own son, perhaps, his judgment wasn't always what it
14 could have been, but other than that, no.

15 MR. FIGLER: Okay. So you don't have any
16 specific biases or prejudices against young people?

17 PROSPECTIVE JUROR NO. 650: No.

18 MR. FIGLER: Okay. What about your opinion
19 about crime in Las Vegas? Do you think that the crime
20 is worse in some parts of town than other parts of town?

21 PROSPECTIVE JUROR NO. 650: From what I've
22 read, yes, but --

23 MR. FIGLER: Okay.

24 PROSPECTIVE JUROR NO. 650: -- I have no
25 personal experience.

1 MR. FIGLER: Okay. And what factors do you
2 think makes one part of town more criminal than another
3 part?

4 PROSPECTIVE JUROR NO. 650: The makeup of
5 the area. I mean, it could be any number of things.

6 MR. FIGLER: For example?

7 PROSPECTIVE JUROR NO. 650: You're asking me
8 if it's racial or ethnic, it could be. I don't know.

9 MR. FIGLER: Okay. Now, and again, none of
10 these questions are designed to embarrass. We just want
11 to get people's feelings laid out.

12 I can't remember what you said. I think you
13 said you were from Georgia --

14 PROSPECTIVE JUROR NO. 650: Yes.

15 MR. FIGLER: -- initially. Is there
16 anything in your background or experience growing up in
17 that state or moving to this state or something where
18 you've had the ability to form an opinion about young
19 African-American people one way or the other?

20 PROSPECTIVE JUROR NO. 650: No.

21 MR. FIGLER: Okay. And so just because
22 Jamar here is accused, you're willing to give him the
23 presumption of innocence.

24 PROSPECTIVE JUROR NO. 650: Yes.

25 MR. FIGLER: Okay. In fact, you believe

1 strongly in that presumption of innocence?

2 PROSPECTIVE JUROR NO. 650: Do I believe
3 strongly in that? The evidence has to show -- yes. I
4 mean, I can't say I would prefer to have somebody
5 considered guilty and then prove them innocent, you
6 know. I mean, that's the system.

7 MR. FIGLER: Okay.

8 PROSPECTIVE JUROR NO. 650: I don't think
9 he's guilty because he's here.

10 MR. FIGLER: Okay. So just the mere fact
11 that he wants to defend himself through his attorneys
12 about these very horrible accusations, you're not
13 holding that against him?

14 PROSPECTIVE JUROR NO. 650: No.

15 MR. FIGLER: And you've heard the expression
16 "where there's smoke, there's fire"? You don't believe
17 that just because he's here at trial means that he's
18 guilty of something, do you?

19 PROSPECTIVE JUROR NO. 650: No.

20 MR. FIGLER: Okay. And you're willing to
21 evaluate all the evidence and scrutinize all the
22 evidence as it appears in front of you in holding these
23 people over here, the prosecution accusing him, to that
24 burden of beyond a reasonable doubt on every single
25 element? Is that true?

1 PROSPECTIVE JUROR NO. 650: Yes.

2 MR. FIGLER: Okay. And if you feel that
3 that burden has not been met, that there's enough of a
4 question as you understand the instruction of reasonable
5 doubt to mean, that they as the prosecutors have not
6 proven their case beyond a reasonable doubt, will you
7 have any hesitation in writing not guilty on the verdict
8 form?

9 PROSPECTIVE JUROR NO. 650: I may have, yes.

10 MR. FIGLER: Oh, you may have. Tell me
11 about that, please.

12 PROSPECTIVE JUROR NO. 650: Because
13 similarly to what someone else stated earlier, I think a
14 person should -- they have the right to express their
15 thoughts and their attitudes towards what they're being
16 charged and if they prefer not to, that's their choice,
17 but I would like to hear their side of it.

18 MR. FIGLER: So if for whatever reason that
19 person doesn't testify on their own behalf, it would be
20 difficult for you to put that aside in evaluating
21 whether or not the prosecutors have met the burden of
22 proving the case?

23 PROSPECTIVE JUROR NO. 650: Honestly, it
24 would.

25 MR. FIGLER: Okay. And the fact that

1 there's a dead person in this case, a young woman, that
2 might impact you as well in that whole determination?

3 PROSPECTIVE JUROR NO. 650: Yes.

4 MR. FIGLER: We'll have a cause challenge,
5 Your Honor.

6 THE COURT: Do you want to traverse?

7 MS. LEWIS: Mr. Aylesworth --

8 PROSPECTIVE JUROR NO. 650: Yes.

9 MS. LEWIS: -- you understand the questions
10 posed to other jurors earlier about the criminal justice
11 system and how it works, right?

12 PROSPECTIVE JUROR NO. 650: Yes.

13 MS. LEWIS: And you understand the
14 defendants are innocent as they sit here. It's our job,
15 the State of Nevada, since we're accusing him of these
16 crimes, to prove everything we're accusing him of beyond
17 a reasonable doubt. You understand that?

18 PROSPECTIVE JUROR NO. 650: I do.

19 MS. LEWIS: Okay. And understanding -- and
20 we really appreciate your honest answers about your
21 personal beliefs. And like I mentioned earlier, I mean,
22 we're not asking you to set aside all your personal
23 beliefs and forget who you are when you come into this
24 room. Clearly, you're a human being. Obviously, that's
25 not possible to do that.

1 But all that we're asking you to do is to
2 judge the evidence fairly and wait to make a
3 determination at the conclusion of the case. Do you
4 think that you can do that?

5 PROSPECTIVE JUROR NO. 650: Yes. I think I
6 can.

7 MS. LEWIS: Okay. So if you feel that the
8 State of Nevada has not met its burden, if based on
9 whatever witnesses and testimony and evidence is
10 presented, if you feel that we did not meet our burden
11 of proof beyond a reasonable doubt, would you be able to
12 find the defendants not guilty?

13 PROSPECTIVE JUROR NO. 650: I would, but it
14 would be difficult for me. I'm being honest.

15 MS. LEWIS: And even though we're
16 responsible for our burden, and it's up to us to prove
17 every single allegation against the defendants, you
18 still would have a hard time finding them not guilty if
19 we didn't do that?

20 PROSPECTIVE JUROR NO. 650: If nothing was
21 said at all, nothing was presented at all from the other
22 side?

23 MS. LEWIS: So you're saying no matter what
24 you hear, you want the other side to present evidence?

25 PROSPECTIVE JUROR NO. 650: If I had --

1 MS. LEWIS: They don't -- they don't --

2 PROSPECTIVE JUROR NO. 650: If I had a
3 choice, yes --

4 MS. LEWIS: Well --

5 PROSPECTIVE JUROR NO. 650: -- but --

6 MS. LEWIS: Okay. If you had a choice, you
7 would like that --

8 PROSPECTIVE JUROR NO. 650: Yes.

9 MS. LEWIS: -- and I understand that, but
10 you understand they don't have to do that.

11 PROSPECTIVE JUROR NO. 650: I understand.

12 MS. LEWIS: And it's up to the State of
13 Nevada to prove the case, and we welcome that burden.

14 PROSPECTIVE JUROR NO. 650: Right.

15 MS. LEWIS: We have no problem with that,
16 whatsoever.

17 PROSPECTIVE JUROR NO. 650: Right.

18 MS. LEWIS: So even though I'm saying that
19 to you, I guess my question to you is would you be able
20 to evaluate this case and hold the State of Nevada to
21 its burden or you still want to hear something from the
22 defense?

23 PROSPECTIVE JUROR NO. 650: I would do my
24 best to evaluate it, yes.

25 MS. LEWIS: Okay. And I appreciate that.

1 Unfortunately, just to say that you would do your best
2 is not enough for what we're doing here --

3 PROSPECTIVE JUROR NO. 650: I understand.

4 MS. LEWIS: -- and so we need to know can
5 you do it or can you not? And if the answer's no,
6 that's fine as long as that's the truth.

7 And so I'm just saying if you understand the
8 way our criminal justice system works, are you able to
9 abide by the laws and wait and make a determination as
10 to whether or not the State has met its burden --

11 PROSPECTIVE JUROR NO. 650: Yes. I can do
12 that.

13 MS. LEWIS: -- at the conclusion?

14 PROSPECTIVE JUROR NO. 650: Yes.

15 MS. LEWIS: Okay. So are you going to
16 expect the defense to put on a case even though you
17 would like that? If they don't, are you going to hold
18 that against them --

19 PROSPECTIVE JUROR NO. 650: No.

20 MS. LEWIS: -- and find them guilty --

21 PROSPECTIVE JUROR NO. 650:

22 MS. LEWIS: -- just because they didn't put
23 on any evidence?

24 PROSPECTIVE JUROR NO. 650: No. It's a
25 preference. That's all.

1 MS. LEWIS: Okay. And so I guess that's --

2 PROSPECTIVE JUROR NO. 650: It's a personal
3 preference.

4 MS. LEWIS: I just want to --

5 PROSPECTIVE JUROR NO. 650: That's all.

6 MS. LEWIS: Okay. So even though that's
7 your personal preference, if they sit here and do
8 nothing --

9 PROSPECTIVE JUROR NO. 650: Right.

10 MS. LEWIS: -- over the course of this trial
11 and don't ask a single question and don't put on any
12 witnesses, would you hold that against them?

13 PROSPECTIVE JUROR NO. 650: I would not.

14 MS. LEWIS: Okay. Thank you.

15 THE COURT: I'm going to grant the motion of
16 challenge for cause at this time.

17 MR. FIGLER: Thank you, Your Honor.

18 THE COURT: Mr. Aylesworth, thank you for
19 coming. I'm going to excuse you at this point.

20 Call the next name on the roll.

21 THE CLERK: 651, Robert Reyes, please.

22 (Off-record colloquy)

23 UNIDENTIFIED SPEAKER: Your Honor,
24 (indiscernible).

25 THE COURT: Yes. Absolutely. Make yourself

1 comfortable. Mr. Reyes, how long have you been here in
2 Las Vegas, sir?

3 PROSPECTIVE JUROR NO. 651: September '99.

4 THE COURT: And what do you do for a living,
5 sir?

6 PROSPECTIVE JUROR NO. 651: Vice president
7 of sales for a manufacturer out here.

8 THE COURT: Are you married?

9 PROSPECTIVE JUROR NO. 651: I am.

10 THE COURT: And children?

11 PROSPECTIVE JUROR NO. 651: None.

12 THE COURT: Do you have any prior jury
13 experience?

14 PROSPECTIVE JUROR NO. 651: I do.

15 THE COURT: Without telling us your verdict,
16 were you able to reach your verdict?

17 PROSPECTIVE JUROR NO. 651: Yes.

18 THE COURT: Was it a civil or criminal case?

19 PROSPECTIVE JUROR NO. 651: Criminal.

20 THE COURT: And was it here or elsewhere?

21 PROSPECTIVE JUROR NO. 651: Illinois.

22 THE COURT: All right. Anything about that
23 experience that would affect your ability to be fair and
24 impartial here?

25 PROSPECTIVE JUROR NO. 651: No.

1 THE COURT: Have you either you or a close
2 family member or friend ever been accused of a crime?

3 PROSPECTIVE JUROR NO. 651: No.

4 THE COURT: Have you or a close family
5 member or friend ever been a victim of a crime?

6 PROSPECTIVE JUROR NO. 651: Yes.

7 THE COURT: Tell us about that.

8 PROSPECTIVE JUROR NO. 651: When I visited
9 Las Vegas -- I lived in Chicago at the time in 1996 -- I
10 was shot in the eye with a pellet gun.

11 THE COURT: Is there anything about that
12 experience that might affect your ability here to be
13 fair and impartial here?

14 PROSPECTIVE JUROR NO. 651: No.

15 THE COURT: You understand that what
16 happened to you there, as unfortunate as it is, has
17 nothing to do with --

18 PROSPECTIVE JUROR NO. 651: Yes, I do.

19 THE COURT: -- sitting as a juror here?

20 PROSPECTIVE JUROR NO. 651: I do understand
21 that.

22 THE COURT: Would you have a tendency to
23 give a police officer's testimony more credibility
24 simply because they're a police officer?

25 PROSPECTIVE JUROR NO. 651: No.

1 THE COURT: Can you wait in forming your
2 opinion as to the guilt and innocence of this case until
3 you've heard all the evidence and received the
4 instructions by me? Do know of any reason why you
5 couldn't be completely fair and impartial if you were
6 selected as a juror here?

7 PROSPECTIVE JUROR NO. 651: None.

8 THE COURT: State.

9 MR. BATEMAN: Pass for cause, Judge.

10 THE COURT: Defense.

11 MR. BUNIN: Thank you, Judge. How are you?

12 PROSPECTIVE JUROR NO. 651: Tired.

13 MR. BUNIN: Happy you made it into the box?
14 I know you're not.

15 You know, I'm going to hit the one topic
16 we've talked about several times because people
17 definitely have different opinions about it. You know,
18 you understand a person accused of a crime does not have
19 to testify at trial.

20 PROSPECTIVE JUROR NO. 651: I do understand
21 that.

22 MR. BUNIN: And it's a constitutional right
23 that he has. He has a choice whether or not he chooses
24 to testify or chooses not to.

25 PROSPECTIVE JUROR NO. 651: That's correct.

1 MR. BUNIN: And you understand that it is
2 the prosecutor's sole burden to prove beyond a
3 reasonable doubt every element of every charge against
4 the people that are accused of a crime? Do you
5 understand?

6 PROSPECTIVE JUROR NO. 651: I do understand
7 that.

8 MR. BUNIN: And are you comfortable with
9 those concepts?

10 PROSPECTIVE JUROR NO. 651: I am.

11 MR. BUNIN: If the State puts on their
12 entire case and the defense chooses not to put a case
13 on, if that's the choice they make at the time and you
14 don't believe State has proven every element beyond a
15 reasonable doubt, what would you do?

16 PROSPECTIVE JUROR NO. 651: I would weigh
17 the case based on the evidence that's presented and
18 respect the right of the defendants in this case not to
19 have to.

20 MR. BUNIN: And I talked to somebody about
21 this earlier. I think it was this gentleman here. Can
22 you think of some reasons why a person who is innocent
23 would choose not to testify at a trial?

24 PROSPECTIVE JUROR NO. 651: Well, first of
25 all, it's their right. But what reasons? Potentially,

1 they may not have the ability to in such an emotional
2 situation communicate effectively their position.

3 MR. BUNIN: (Indiscernible) make you nervous
4 about being cross-examined?

5 PROSPECTIVE JUROR NO. 651: Correct. They
6 may not be able to, for lack of a better word, find
7 common ground or develop rapport with the jury panel.

8 MR. BUNIN: Is it possible some people just,
9 you know, aren't particularly well spoken and that's why
10 they have attorneys who at least in theory are
11 well-spoken, hopefully well-spoken, but -- and that's
12 why we're here, to speak on the behalf of a person
13 accused of a crime?

14 PROSPECTIVE JUROR NO. 651: Absolutely.

15 MR. BUNIN: And maybe a person just due to
16 his lack of his comfort and his ability to express his
17 point of view may make the choice just for that reason
18 not to testify?

19 PROSPECTIVE JUROR NO. 651: Yes.

20 MR. BUNIN: Is that something that's
21 reasonable to you? That would be a reasonable choice to
22 make?

23 PROSPECTIVE JUROR NO. 651: Absolutely
24 reasonable.

25 MR. BUNIN: Okay. Or maybe just fear? You

1 know, you're in a room with a lot of people and --

2 PROSPECTIVE JUROR NO. 651: Sure.

3 MR. BUNIN: -- and it's a very serious
4 situation?

5 PROSPECTIVE JUROR NO. 651: Sure.

6 MR. BUNIN: And if you're back in the jury
7 room, if that choice is made by Jamar, can you not hold
8 that against him whatsoever for making the choice not to
9 testify if that's the choice he makes?

10 PROSPECTIVE JUROR NO. 651: Yes. I can --
11 we're going -- I would follow the instructions of the
12 judge and specifically not use that within my decision
13 process.

14 MR. BUNIN: And, you know, I talked about
15 this with a different perspective juror that's no longer
16 here, but there's a difference between being given an
17 instruction and being told you have to follow it and
18 then an ability to follow it.

19 Do you think as you sit back and think about
20 these concepts that you'll be able to follow the
21 instructions that the judge gives to you?

22 PROSPECTIVE JUROR NO. 651: Yes.

23 MR. BUNIN: And I appreciate the hesitation
24 on -- you're really thinking it through and making a
25 decision.

1 If the judge says to you you cannot take
2 into consideration the fact that a person didn't
3 testify, are you able to not take that into
4 consideration?

5 PROSPECTIVE JUROR NO. 651: I would want
6 that if I were the person who was accused of something.

7 MR. BUNIN: Okay. I'd pass for cause.

8 THE COURT: Mr. Singer.

9 MR. SINGER: Mr. Reyes, you got shot in the
10 eye with a pellet gun in Vegas, but you still decided to
11 move to Las Vegas?

12 PROSPECTIVE JUROR NO. 651: Yes.

13 MR. SINGER: Can I ask you what involvement
14 you had with the police department here on that case?

15 PROSPECTIVE JUROR NO. 651: You know, it was
16 such a quick incident that happened so fast, it was very
17 difficult for me to know what happened, not to mention
18 the people I was with.

19 My involvement with the police department
20 was a phone interview, and really, there was just no
21 leads for them to move forward (indiscernible).

22 MR. SINGER: And did you do anything like to
23 attempt to identify the perpetrator?

24 PROSPECTIVE JUROR NO. 651: Again, it
25 happened so quick there was nothing for me to see. I

1 had turned around and next thing I was on the ground.

2 MR. SINGER: Was this day or night?

3 PROSPECTIVE JUROR NO. 651: It was at -- it
4 was at night.

5 MR. SINGER: And other than the telephone
6 interview, you never had to travel back to Vegas for any
7 kind of trials?

8 PROSPECTIVE JUROR NO. 651: No. Again,
9 without any leads, there was really nothing to move
10 forward with.

11 MR. SINGER: And did you maintain contact
12 with any of the detectives other than that one phone
13 interview?

14 PROSPECTIVE JUROR NO. 651: (Indiscernible).

15 MR. SINGER: And you never found out the
16 status of the case or anything like that?

17 PROSPECTIVE JUROR NO. 651: Let me reclarify
18 that. I did inquire about it, and again, I understood
19 that it was just difficult.

20 Nobody came forward. Nobody saw anything,
21 so it was difficult for them to even move forward with
22 trying to find what -- what happened.

23 MR. SINGER: Generally, what part of
24 Las Vegas was the incident?

25 PROSPECTIVE JUROR NO. 651: It was on the

1 Strip right in front of the -- the volcano, in front of
2 the Mirage.

3 MR. SINGER: Thank you.

4 I'll pass for cause as well, Judge.

5 THE COURT: I believe we're -- is the
6 defense prepared to exercise its third peremptory
7 challenge?

8 MR. FIGLER: Yes, Your Honor. The defense
9 would thank and excuse Juror 614 sitting in seat 10,
10 Ms. Sarti.

11 THE COURT: Ms. Sarti, thank you for coming.
12 Thank you for your patience. Return to Jury Services.
13 Hopefully, somebody's down there to receive you and
14 process you further.

15 Let's call the next name on the roll.

16 THE CLERK: No. 658, Donald Felske, please.

17 THE COURT: Good evening, Mr. Felske.

18 There's -- yep. There we go. Tell me a little bit
19 about yourself, sir. How long have you been here in
20 Las Vegas?

21 PROSPECTIVE JUROR NO. 658: It will be 25
22 years in June.

23 THE COURT: And what do you do for a living,
24 sir?

25 PROSPECTIVE JUROR NO. 658: I work for

1 Lawrence Livermore National Laboratories out at the
2 Nevada test site.

3 THE COURT: And tell us about your marriage,
4 your marital status.

5 PROSPECTIVE JUROR NO. 658: I've been
6 married for ten years and --

7 THE COURT: Any children?

8 PROSPECTIVE JUROR NO. 658: -- I have no
9 children. My wife has an adult children from -- one
10 adult child from previous marriage.

11 THE COURT: You work at Lawrence Livermore?
12 Is that classified or can you tell us little bit about
13 what you do?

14 PROSPECTIVE JUROR NO. 658: I can tell you
15 I've been out there for 25 years. Early on in my career
16 I was involved in the underground nuclear weapons
17 testing program doing geophysical studies.

18 I've been moved into a middle management
19 position in the 1990s, and I held that until recently,
20 and which time then I have become something referred to
21 as the programatic interface for the Device Assembly
22 Facility, and it's my job to be the customer service
23 representative for agencies wishing to come to the test
24 site and utilize the Device Assembly Facility.

25 THE COURT: All right. Have you ever served

1 as a juror before, sir?

2 PROSPECTIVE JUROR NO. 658: I have not.

3 THE COURT: Have you or a close family
4 member or a friend ever been accused of a crime?

5 PROSPECTIVE JUROR NO. 658: I have not been
6 accused of a crime. My wife's daughter, adult daughter,
7 has had criminal prosecution due to substance abuse back
8 in Wisconsin.

9 THE COURT: Does or would that experience
10 affect your ability to be fair and impartial here?

11 PROSPECTIVE JUROR NO. 658: No, it would
12 not.

13 THE COURT: Have you or a close family
14 member or friend ever been a victim of crime?

15 PROSPECTIVE JUROR NO. 658: Just relatively
16 minor, petty stuff. I had a storage locker here in
17 Las Vegas broke into in the 1980s so --

18 THE COURT: Would that life experience
19 affect your ability to be fair here?

20 PROSPECTIVE JUROR NO. 658: No, it would
21 not.

22 THE COURT: Would you tend to give a police
23 officer more credibility if they were testifying simply
24 because they were a police officer?

25 PROSPECTIVE JUROR NO. 658: No, I would not.

1 THE COURT: Could you withhold your opinion
2 as to guilt or innocence in this case until after all
3 the evidence and jury instructions have been received by
4 you?

5 PROSPECTIVE JUROR NO. 658: Yes, I can.

6 THE COURT: Can you offer us any information
7 or assure us that you could be completely fair and
8 impartial as a juror if you were selected to be a juror
9 here?

10 PROSPECTIVE JUROR NO. 658: Any additional
11 information?

12 THE COURT: Well, just could you be fair and
13 impartial --

14 PROSPECTIVE JUROR NO. 658: Yes, sir.

15 THE COURT: -- is the bottom line.

16 PROSPECTIVE JUROR NO. 658: I can be fair
17 and impartial. I have had numerous opportunities in
18 which I have to interview employees for various
19 incidences when we have them at the test site.

20 And I've had the ability to sort of compile
21 all that information that you acquire before you readily
22 jump to any kind of conclusions, and it looks like to me
23 I've always been able to look at the pile of evidence as
24 you build it up and not just one little specific piece.

25 THE COURT: Very good. State.

1 MR. BATEMAN: Pass for cause, Judge.

2 THE COURT: Defense.

3 MR. FIGLER: Thank you, Your Honor. I'll
4 try to make this quick, Mr. Felske. On a scale of one
5 to ten, how boring is this whole process?

6 PROSPECTIVE JUROR NO. 658: Boring? No.
7 This process is not boring at all. I'd say if ten is
8 not boring, it's probably a ten.

9 MR. FIGLER: Okay. Excellent. You're the
10 first juror who's ever given me that exact number and
11 I'll tell you why because I usually follow that question
12 explaining how important this process is and how we
13 don't know you, and this is our only opportunity to
14 interact with you at all.

15 And somehow as the trial progresses you'll
16 understand that everyone's interaction is going to be
17 somewhat limited. That you don't get an opportunity to
18 go in the back and talk to Jamar and find out --

19 PROSPECTIVE JUROR NO. 658: Sure.

20 MR. FIGLER: -- things, et cetera. So --

21 PROSPECTIVE JUROR NO. 658: Yes, sir.

22 MR. FIGLER: -- it's very vital for us to
23 get as quickly as we can to the heart of things with
24 different people, and I appreciate that you respect
25 that.

1 PROSPECTIVE JUROR NO. 658: Yes, sir.

2 MR. FIGLER: Let me ask you one question.
3 As a scientist or somebody who is around science and
4 process, I understand the process by your answer is very
5 important to you. Would you agree with that?

6 PROSPECTIVE JUROR NO. 658: Yes, sir.

7 MR. FIGLER: Okay. Now, there's going to be
8 some witnesses that testify about their various
9 processes and how they accomplish what they hope will be
10 a reliable result. You understand that that's the type
11 of evidence --

12 PROSPECTIVE JUROR NO. 658: Yes, I do.

13 MR. FIGLER: -- you might hear?

14 PROSPECTIVE JUROR NO. 658: Yes.

15 MR. FIGLER: Okay. Do you believe that
16 you're aptly suited to scrutinize their processes to
17 determine the reliability or how much weight to give
18 their various evidence?

19 PROSPECTIVE JUROR NO. 658: Yes, I do.

20 MR. FIGLER: Okay. And are there certain
21 things that you in your own personal experiences might
22 demand of those witnesses understanding that everyone
23 comes to the table with something different and that
24 might be your background? Are you comfortable sharing
25 your views on that with other members of the jury?

1 PROSPECTIVE JUROR NO. 658: I -- I am
2 comfortable. I have no problems expressing myself or my
3 opinions.

4 And I have my own scientific processes that
5 I witness people go through everyday, and I also see
6 other people that counter our points and come back and
7 say, you know, you're wrong on this -- on this occasion
8 due to this fact or that fact.

9 MR. FIGLER: Okay. Now, do you watch the TV
10 shows, the crime shows or anything like that?

11 PROSPECTIVE JUROR NO. 658: My wife watches
12 CSI because previously she was employed by what used to
13 be called APL and then it was Quest Diagnostics, and
14 Quest has had at times some processing parts within
15 histology where they would bring parts and pieces over
16 and they process them there.

17 MR. FIGLER: Like serontology and things
18 like that?

19 PROSPECTIVE JUROR NO. 658: Yeah. Yeah.

20 MR. FIGLER: Okay.

21 PROSPECTIVE JUROR NO. 658: And so she's
22 interested in it, and so I end up watching it from time
23 to time (indiscernible).

24 MR. FIGLER: Okay. How about books? Do you
25 ever read crime novels or anything --

1 PROSPECTIVE JUROR NO. 658: I do not.

2 MR. FIGLER: -- that's -- okay.

3 PROSPECTIVE JUROR NO. 658: No, I do not.

4 MR. FIGLER: When you do watch the shows
5 with your wife, you see the things of ordinary police
6 work like lineups and things like that?

7 PROSPECTIVE JUROR NO. 658: Yeah.

8 MR. FIGLER: Okay. And you understand that
9 all the things represented in those TV shows while they
10 may be fictional shows are based on how reliable
11 evidence is evaluated by the police, correct?

12 PROSPECTIVE JUROR NO. 658: Yes.

13 MR. FIGLER: Okay. And, again, from your
14 perspective, you would be able to evaluate whether or
15 not the police went through the processes that they
16 should go through or didn't go through to get to a
17 reliable result. You're comfortable doing that?

18 PROSPECTIVE JUROR NO. 658: Yes, I am.

19 MR. FIGLER: Thank you. Thank you for your
20 answers.

21 I'll pass for cause.

22 THE COURT: Thank you.

23 MR. SINGER: Am I correct in the statement
24 you said earlier that your father and uncle were police
25 officers?

1 PROSPECTIVE JUROR NO. 658: Yes. My father
2 was a police officer in the town of Bates City,
3 Michigan, when I was growing up. I think he quit the
4 force sometime between when I was around age 13 or 12.
5 And so when I was growing up as a small child, my father
6 was a police officer on the city force.

7 MR. SINGER: Okay. And did he --

8 PROSPECTIVE JUROR NO. 658: And then he
9 moved on to become a recreation director.

10 MR. SINGER: And when he was a police
11 officer, did he bring his job home? Did you guys
12 discuss any of his investigations or any of his
13 activities as a police officer?

14 PROSPECTIVE JUROR NO. 658: My father was a
15 patrolman, and so mainly in small-town America I got to
16 see a few things from newspaper clippings. He was
17 directing traffic at fires and, you know, he came home
18 and I can remember his smokey uniforms.

19 He attempted to rescue a small child that
20 was drowning and, ultimately, did drown in our river,
21 and, you know, those kinds of things. That's big press
22 in a small town. And so, you know, from that
23 standpoint, my father was visible in the community. I
24 can kind of remember --

25 MR. SINGER: How about do you remember

1 earlier there was a gentleman sitting in the front row
2 over there who said that his friends or his relatives
3 were police and he grew up in kind of a metro type of an
4 environment where he felt very pro police? Is that
5 something that you can identify with or how do you react
6 to that?

7 PROSPECTIVE JUROR NO. 658: No, because I
8 think my father had a broad base of friends because he
9 was really involved in sports and that's why he went on
10 to become a recreation director, and so I saw more of my
11 father playing softball than I did of his work as a
12 police officer.

13 MR. SINGER: Thank you. Pass for cause.

14 THE COURT: I think we're on State's four.

15 MS. LEWIS: Judge, the State would like to
16 thank and excuse Juror Badge No. 658, Mr. Felske.

17 THE COURT: Mr. Felske, thanks for coming.
18 You're excused with the thanks of the Court. Return to
19 Jury Services for further information.

20 Let's call the next name.

21 THE CLERK: No. 660, Mario Espinoza, please.

22 (Off-record colloquy)

23 THE COURT: Mr. Espinoza, how long have you
24 been in Las Vegas?

25 PROSPECTIVE JUROR NO. 660: Two years.

1 THE COURT: And what do you do for a living,
2 sir?

3 PROSPECTIVE JUROR NO. 660: I'm a truck
4 driver.

5 THE COURT: And are you married?

6 PROSPECTIVE JUROR NO. 660: No, divorced.

7 THE COURT: Okay. Do you have any children?

8 PROSPECTIVE JUROR NO. 660: Two.

9 THE COURT: What are their ages?

10 PROSPECTIVE JUROR NO. 660: Four and seven.

11 THE COURT: And do you have any prior jury
12 experience?

13 PROSPECTIVE JUROR NO. 660: Yes. I served
14 in Tulsa, Oklahoma.

15 THE COURT: All right. Without telling us
16 what the verdict was in that case, were you able to
17 reach a verdict?

18 PROSPECTIVE JUROR NO. 660: Yes.

19 THE COURT: Is there anything about that
20 experience that might affect your ability to be fair and
21 impartial in this case?

22 PROSPECTIVE JUROR NO. 660: No.

23 THE COURT: Have you ever been accused or a
24 close family member accused of a crime?

25 PROSPECTIVE JUROR NO. 660: No.

1 THE COURT: A friend --

2 PROSPECTIVE JUROR NO. 660: No.

3 THE COURT: -- even? Anything about
4 accusation that might affect your ability to be fair
5 here?

6 PROSPECTIVE JUROR NO. 660: No.

7 THE COURT: Have you, close family member or
8 friend ever been a victim of a crime?

9 PROSPECTIVE JUROR NO. 660: No.

10 THE COURT: You have or would you give
11 weight to a police officer simply because they're a
12 police officer if they're called as a witness?

13 PROSPECTIVE JUROR NO. 660: No.

14 THE COURT: Can you hold off in forming your
15 opinion if selected as a juror in this case until you've
16 heard all of the evidence and receive the instructions
17 by me?

18 PROSPECTIVE JUROR NO. 660: Yes.

19 THE COURT: Do you know of any reason why
20 you couldn't be completely fair and impartial in this
21 case?

22 PROSPECTIVE JUROR NO. 660: No.

23 THE COURT: State.

24 MR. BATEMAN: Was the trial that you sat on
25 a criminal or civil trial?

1 PROSPECTIVE JUROR NO. 660: Civil.

2 MR. BATEMAN: Okay. For all of our
3 questions, any questions that you would have answered?
4 Okay. Should we feel comfortable with you as a juror in
5 this case?

6 PROSPECTIVE JUROR NO. 660: Yes.

7 MR. BATEMAN: Okay. Pass for cause.

8 THE COURT: Defense.

9 MR. BUNIN: Thank you, Judge. Is there
10 anything that we've talked about -- we've been here a
11 long time -- that was a topic that you think you would
12 like to add something to?

13 PROSPECTIVE JUROR NO. 660: No, nothing that
14 I can think of.

15 MR. BUNIN: Anybody express opinions that
16 maybe you disagreed with?

17 PROSPECTIVE JUROR NO. 660: No.

18 MR. BUNIN: Not at all? You talked about,
19 where are you from? You were from --

20 PROSPECTIVE JUROR NO. 660: Tulsa, Oklahoma.

21 MR. BUNIN: -- Tulsa, and you've only been
22 here a couple of years?

23 PROSPECTIVE JUROR NO. 660: Two years.

24 MR. BUNIN: Did you live your entire life in
25 Tulsa before that?

1 PROSPECTIVE JUROR NO. 660: Pretty much. I
2 was born in Hutchinson, Kansas, but I grew up in Tulsa,
3 Oklahoma.

4 MR. BUNIN: What made you come out to
5 Las Vegas?

6 PROSPECTIVE JUROR NO. 660: My ex-wife
7 wanted to move here, and she has my kids, and I want to
8 be with my kids so --

9 MR. BUNIN: So that's good. So your kids
10 live here too? Okay. So you see them? You're a truck
11 driver? Are you a local truck driver or do you do long
12 haul?

13 PROSPECTIVE JUROR NO. 660: Yeah. I do --
14 it's local. I work for an oil company here in town.
15 Every now and then I go to Havasu, but that's about as
16 far as it goes.

17 MR. BUNIN: Okay. So, generally, you're
18 just here in the city? You're not leaving town?

19 PROSPECTIVE JUROR NO. 660: Around town,
20 yeah.

21 MR. BUNIN: You know, they give us so little
22 to go on on these things. We know very little about
23 everybody, and that's why we're asking a lot of
24 questions, and I know we've been here for a long time.
25 (Indiscernible) not going to follow up. I'm going to

1 pass for cause. Thank you.

2 MR. SINGER: Pass for cause.

3 THE COURT: Mr. -- thank you. Is defense
4 prepared to exercise its fourth peremptory challenge?

5 (Off-record colloquy)

6 MR. SINGER: Judge, at this time, the
7 defense would like to thank and excuse Juror No. 0075.

8 (Off-record colloquy)

9 THE COURT: In seat No. 2?

10 MR. BUNIN: Thank you.

11 THE COURT: Mr. Cicatello? Is that right?

12 PROSPECTIVE JUROR NO. 75: That's correct,
13 sir.

14 THE COURT: Thank you for coming. Thank you
15 for your patience. You know the drill.

16 THE CLERK: No. 661, Jose Lomeli, please.

17 THE COURT: Mr. Lomeli, please come forward.
18 Mr. Lomeli, how long have you been here in Las Vegas,
19 sir?

20 PROSPECTIVE JUROR NO. 661: Since '89.

21 THE COURT: And what do you do for a living?

22 PROSPECTIVE JUROR NO. 661: I work at
23 Chemical Lime.

24 THE COURT: And what do you do for them?

25 PROSPECTIVE JUROR NO. 661: I just -- I'm a

1 load operator.

2 THE COURT: And are you married?

3 PROSPECTIVE JUROR NO. 661: I'm married, but
4 I'm separate past 14 years.

5 THE COURT: All right. Do you have
6 children?

7 PROSPECTIVE JUROR NO. 661: Yes.

8 THE COURT: Have you ever served as a jury
9 before?

10 PROSPECTIVE JUROR NO. 661: No. This is the
11 first time.

12 THE COURT: Do you have any close family
13 members or friends or yourself that have been a victim
14 of a crime?

15 PROSPECTIVE JUROR NO. 661: No.

16 THE COURT: Do you have close family member
17 or friends who have ever been accused of a crime or
18 yourself?

19 PROSPECTIVE JUROR NO. 661: No.

20 THE COURT: Would you have a tendency to
21 give a police officer more credibility simply because
22 they're a police officer?

23 PROSPECTIVE JUROR NO. 661: No.

24 THE COURT: Can you hold off in forming your
25 opinion in this case as to guilt or innocence until

1 after all the evidence is heard and all the instructions
2 are given to you by me?

3 PROSPECTIVE JUROR NO. 661: Yes.

4 THE COURT: Do you know of any reason why
5 you couldn't be a fair -- completely fair and impartial
6 juror?

7 State.

8 MR. BATEMAN: Judge, I pass for cause.

9 THE COURT: Defense.

10 MR. FIGLER: Thank you, Your Honor.

11 Mr. Lomeli, I'll try to make it quick. It's
12 getting very late in the evening.

13 There's been a lot of discussion about
14 police officers, and you understand that myself and
15 Mr. Bunin, we're not going to be calling police officers
16 bad people. We just need to make sure that they did
17 their job right or didn't make mistakes. You understand
18 that?

19 PROSPECTIVE JUROR NO. 661: Especially if
20 they made mistakes (indiscernible).

21 MR. FIGLER: Okay. So you understand that
22 that's how it works? You're not going to hold that
23 against us?

24 PROSPECTIVE JUROR NO. 661: No.

25 MR. FIGLER: Okay. And you understand that

1 sometimes people are in a situation. They might jump to
2 conclusions. They might not get it right. It's up for
3 you as an individual juror to analyze that, correct?

4 PROSPECTIVE JUROR NO. 661: That's correct.

5 MR. FIGLER: Okay. And they'll be different
6 things, different types of evidence that exists or maybe
7 doesn't exist that will help you. You understand that?

8 PROSPECTIVE JUROR NO. 661: Yes.

9 MR. FIGLER: And are you comfortable doing
10 that?

11 PROSPECTIVE JUROR NO. 661: Yes.

12 MR. FIGLER: Okay. Thank you. Pass for
13 cause. That was quick.

14 THE COURT: Thank you.

15 MR. SINGER: Pass for cause.

16 THE COURT: Thank you.

17 I believe we're on --

18 MS. LEWIS: Fifth, Your Honor.

19 THE COURT: State's five.

20 MS. LEWIS: Judge, the State would waive its
21 next peremptory challenge.

22 MR. FIGLER: May we approach, Your Honor?

23 THE COURT: Yes.

24 (Off-record bench conference)

25 THE COURT: All right. Ladies and

1 gentlemen, we're going to take a quick break while the
2 attorneys confer.

3 It is my duty to inform you not to converse
4 among yourselves or with anyone else on any subject
5 connected with this trial.

6 Further, you may not read, watch or listen
7 to any report of or commentary on the trial from any
8 medium of information including, without limitation,
9 newspapers, television or radio.

10 You may not form or express any opinion on
11 any subject connected with this case until it is finally
12 submitted to you.

13 Five minutes? Five minutes so we can move
14 the process. Thank you for your patience.

15 We're at recess.

16 (Court recessed at 6:00 p.m. until 6:06 p.m.)

17 (Prospective jurors not present)

18 THE COURT: Ready? On the record in
19 C228460, State of Nevada, plaintiff, versus
20 Pierre Joshlin and Jamar Matthews.

21 I'm holding now an original copy of
22 stipulation order prepared reflecting that parties have
23 agreed to waive penalty hearing for purposes of
24 sentencing should that be necessary. I note signatures
25 of Mr. Singer and Ms. Lewis, Mr. Joshlin, Mr. Figler,

1 Mr. Matthews on this stipulation order. Is that
2 correct, gentlemen and lady?

3 MR. BATEMAN: Yes, Judge.

4 MS. LEWIS: Yes.

5 MR. FIGLER: That's correct, Your Honor.

6 THE COURT: So it's my understanding that
7 pursuant to your waiving what would normally be the
8 right of the defendants pursuant to 175.552,
9 Mr. Matthews, Mr. Joshlin, do you understand the
10 ramifications of what this document means?

11 UNIDENTIFIED DEFENDANT: Yes, sir.

12 UNIDENTIFIED DEFENDANT: (Indiscernible).

13 THE COURT: All right. Are there any
14 additional questions that the State requests that I ask
15 these men in relation to this waiver?

16 MS. LEWIS: No, Judge.

17 THE COURT: Defense.

18 MR. FIGLER: And we'd just make for the
19 record that we, through negotiations aside, that we
20 would stipulate to the life without as the compromise,
21 and that's why we entered into --

22 MR. BATEMAN: No with.

23 MR. BUNIN: No. Life with the possibility.

24 MR. FIGLER: Life with. Sorry. I'm sorry.
25 I misspoke. Life with. Life with.

1 THE COURT: Life with.

2 MR. FIGLER: Thank you, Your Honor.

3 THE COURT: That is my understanding. The
4 record should so reflect. I'll file this document with
5 the clerk of the court.

6 We're ready to bring them in.

7 (Off-record colloquy)

8 (Prospective jurors present)

9 THE COURT: We're back on the record in
10 C228460, State of Nevada, plaintiff, versus Pierre
11 Joshlin and Jamar Matthews.

12 Ladies and gentlemen, how's everybody doing?
13 Everybody hanging on?

14 (Off-record colloquy)

15 THE COURT: Good. Good. Good. All right.

16 I believe we're on defense five.

17 MR. FIGLER: Thank you, Your Honor. The
18 defense would thank and excuse Ms. Wright, 647, sitting
19 in juror spot No. 1.

20 THE COURT: Thank you, Ms. Wright.
21 Appreciate your patience, your time, and your honesty.
22 Please report back to Jury Services for further
23 processing.

24 Call the next name.

25 THE CLERK: No. 662, Marissa Arroyo.

1 THE COURT: Ms. Arroyo, tell us how long
2 have you been here in Las Vegas?

3 PROSPECTIVE JUROR NO. 662: Since 2003.

4 THE COURT: And with a do you do for a
5 living, ma'am?

6 PROSPECTIVE JUROR NO. 662: Medical billing.

7 THE COURT: And how long have you been doing
8 that kind of work?

9 PROSPECTIVE JUROR NO. 662: For seven years.

10 THE COURT: Are you married?

11 PROSPECTIVE JUROR NO. 662: Yes.

12 THE COURT: Do you have children?

13 PROSPECTIVE JUROR NO. 662: Three.

14 THE COURT: How old are they?

15 PROSPECTIVE JUROR NO. 662: Nine, seven and
16 three months.

17 THE COURT: Any prior jury experience?

18 PROSPECTIVE JUROR NO. 662: Yes.

19 THE COURT: Without telling us the verdict,
20 were you able to reach a verdict?

21 PROSPECTIVE JUROR NO. 662: No.

22 THE COURT: Was it a civil or criminal
23 matter?

24 PROSPECTIVE JUROR NO. 662: Criminal.

25 THE COURT: Is there anything about that

1 experience that might affect your ability to be fair and
2 impartial in this case?

3 PROSPECTIVE JUROR NO. 662: No.

4 THE COURT: Do you have any close family
5 members, friends, associates that have been a victim of
6 crime?

7 PROSPECTIVE JUROR NO. 662: No.

8 THE COURT: Do you have any close family
9 member or friends that have been accused of a crime?

10 PROSPECTIVE JUROR NO. 662: No.

11 THE COURT: Would you have a tendency to
12 give a police officer more weight in their testimony
13 simply because they are a police officer?

14 PROSPECTIVE JUROR NO. 662: No.

15 THE COURT: Can you wait in forming your
16 opinions as to this case until all the evidence is in
17 and the instructions are received from me to you as a
18 juror?

19 PROSPECTIVE JUROR NO. 662: Yes.

20 THE COURT: Do you know of any reason why
21 you couldn't be a completely fair and impartial juror?

22 PROSPECTIVE JUROR NO. 662: No.

23 THE COURT: State.

24 MR. BATEMAN: On the criminal case -- I
25 don't want you to tell me the facts of the case --

1 PROSPECTIVE JUROR NO. 662: Um-h'm.

2 MR. BATEMAN: -- were you the foreperson?

3 PROSPECTIVE JUROR NO. 662: Was I the what?

4 MR. BATEMAN: Were you a foreperson?

5 PROSPECTIVE JUROR NO. 662: A foreperson?

6 MR. BATEMAN: The foreperson of the jury.

7 Did they have something like that?

8 PROSPECTIVE JUROR NO. 662: I don't

9 understand.

10 MR. BATEMAN: Okay. Where was this jury

11 that you sat on?

12 PROSPECTIVE JUROR NO. 662: It was in

13 Washington.

14 MR. BATEMAN: Okay. I mean, when they --

15 did you actually get to the point where you went back to

16 deliberate with your fellow jurors?

17 PROSPECTIVE JUROR NO. 662: No. No. Uh-uh.

18 It -- I don't know if I can say. There wasn't a

19 verdict.

20 THE COURT: Did you get in the box?

21 PROSPECTIVE JUROR NO. 662: Yes.

22 THE COURT: Were you in the jury box?

23 PROSPECTIVE JUROR NO. 662: Yes.

24 THE COURT: Did you -- I'm sorry,

25 Mr. Bateman.

1 But did you go back in the jury room and did
2 you deliberate? Don't tell us what happened. Just did
3 you go back and deliberate?

4 PROSPECTIVE JUROR NO. 662: No.

5 THE COURT: Did you ever raise your right
6 hand and take an oath to be a juror because I'm not
7 quite sure where in the process you were then.

8 PROSPECTIVE JUROR NO. 662: Right. No. We
9 -- it -- they did a mistrial.

10 THE COURT: Okay. So there was no -- you
11 never actually deliberated.

12 PROSPECTIVE JUROR NO. 662: No.

13 THE COURT: All right.

14 MR. BATEMAN: That was my question. Any
15 other questions that we've asked that you would have
16 wanted to raise your hand and answered?

17 PROSPECTIVE JUROR NO. 662: (Indiscernible).

18 MR. BATEMAN: Okay. Pass for cause.

19 THE COURT: Defense.

20 MR. BUNIN: No, Judge. We're just going to
21 pass for cause.

22 THE COURT: Mr. Singer.

23 MR. SINGER: Thank you, Judge.

24 Ms. Arroyo, what is your husband's
25 occupation?

1 PROSPECTIVE JUROR NO. 662: He works with me
2 also in medical.

3 MR. SINGER: Medical billing?

4 PROSPECTIVE JUROR NO. 662: Well, he is a
5 medical scheduler. We work for a family practice.

6 MR. SINGER: Pass for cause, Judge.

7 THE COURT: I think we're on --

8 THE CLERK: State's six.

9 THE COURT: -- State's six.

10 MS. LEWIS: Judge, the State would waive its
11 next peremptory challenge.

12 THE COURT: State would waive six.

13 Defense six.

14 MR. SINGER: Thank you, Judge.

15 (Off-record colloquy)

16 MR. SINGER: Judge, at this time the defense
17 would like to thank and excuse Juror No. 637, Ms. Ready.

18 THE COURT: 637, Ms. Ready. Thank you for
19 -- Ms. Ready, thank you for coming. Good luck to you
20 with Jury Services.

21 Let's call the next one on the roll.

22 THE CLERK: No. 667, Veronica Camara,
23 please.

24 THE COURT: Ms. Camara, good evening.

25 PROSPECTIVE JUROR NO. 667: Good evening.

1 THE COURT: I know you've been silent in the
2 back, but now it's time to speak up. Tell us a little
3 bit about yourself, ma'am.

4 PROSPECTIVE JUROR NO. 667: Okay. I lived
5 here eight years. I work at Opportunity Village. I'm
6 the payroll manager.

7 THE COURT: Okay.

8 PROSPECTIVE JUROR NO. 667: I'm married for
9 33 years. I have two sons, 30 and 29. They're both in
10 California.

11 THE COURT: All right. Any prior jury
12 experience?

13 PROSPECTIVE JUROR NO. 667: No.

14 THE COURT: And have you or any close member
15 of your family or close friend been the victim of a
16 crime?

17 PROSPECTIVE JUROR NO. 667: No, sir.

18 THE COURT: And has anyone been accused of a
19 crime that you know and care about?

20 PROSPECTIVE JUROR NO. 667: No, sir.

21 THE COURT: Would you tend to give a police
22 officer more credibility simply because they're police
23 officers if they're testifying on the stand?

24 PROSPECTIVE JUROR NO. 667: No, sir.

25 THE COURT: Can you wait in forming your

1 opinion as to the guilt or innocence in this case until
2 you've received all the evidence if you're selected as a
3 juror?

4 PROSPECTIVE JUROR NO. 667: Yes, sir.

5 THE COURT: And the instructions, of course,
6 too. Do you know of any reason why you couldn't be a
7 completely fair and impartial juror?

8 PROSPECTIVE JUROR NO. 667: No, sir.

9 THE COURT: Tell me what you do for
10 Opportunity Village.

11 PROSPECTIVE JUROR NO. 667: I'm the payroll
12 manager. We deal with the disabled and mental
13 retardation, so I handle their payroll.

14 THE COURT: And how long have you been doing
15 that?

16 PROSPECTIVE JUROR NO. 667: Eight years,
17 since I've been here.

18 THE COURT: Eight.
19 State.

20 MR. BATEMAN: Sorry, Judge. I don't know if
21 Your Honor asked.

22 Were you on -- had previous service as a
23 juror?

24 PROSPECTIVE JUROR NO. 667: No, sir.

25 MR. BATEMAN: Okay. Any questions that

1 we've asked that you would have wanted to answer if they
2 were asked of you?

3 PROSPECTIVE JUROR NO. 667: (Indiscernible)
4 weapons.

5 MR. BATEMAN: Okay.

6 PROSPECTIVE JUROR NO. 667: I have my CCW.

7 THE COURT: Okay. What kind of weapons do
8 you own?

9 PROSPECTIVE JUROR NO. 667: Pistols and
10 rifles.

11 MR. BATEMAN: Okay. How long have you been
12 familiar with weapons?

13 PROSPECTIVE JUROR NO. 667: Eight years. I
14 go to a shooting range.

15 MR. BATEMAN: Okay. How did you get in --

16 PROSPECTIVE JUROR NO. 667: (Indiscernible).

17 MR. BATEMAN: How did you get into that?

18 PROSPECTIVE JUROR NO. 667: (Indiscernible)
19 sport.

20 MR. BATEMAN: Okay. Pass for cause, Judge.

21 THE COURT: Defense.

22 MR. FIGLER: Thank you.

23 The question I want to ask you is about the
24 CCW which stands for the fact that you have a concealed
25 weapon.

1 PROSPECTIVE JUROR NO. 667: Correct.

2 MR. FIGLER: Why did you choose to get a
3 concealed weapon permit as opposed to just a regular
4 registration for the weapon?

5 PROSPECTIVE JUROR NO. 667: Safety.

6 MR. FIGLER: Okay. And what's your concern
7 with regard to safety?

8 PROSPECTIVE JUROR NO. 667: A lot of crime
9 in Las Vegas compared to California (indiscernible).

10 MR. FIGLER: What about the crime in
11 Las Vegas caused you to need to have a concealed weapon?

12 PROSPECTIVE JUROR NO. 667: People in the
13 parking lots, you hear a lot about crime where a lot of
14 people get robbed and kidnapped, so just for safety
15 reasons.

16 MR. FIGLER: And you're trained in the use
17 of the weapon --

18 PROSPECTIVE JUROR NO. 667: Yes.

19 MR. FIGLER: -- so if you were in a
20 situation --

21 PROSPECTIVE JUROR NO. 667: Yes.

22 MR. FIGLER: -- and if you drew the weapon,
23 you would use the weapon?

24 PROSPECTIVE JUROR NO. 667: Correct.

25 MR. FIGLER: Okay. That's one of the

1 tenants of the training; isn't that correct?

2 PROSPECTIVE JUROR NO. 667: Yes. Correct.

3 MR. FIGLER: Okay. Let's talk a little bit
4 about crime in Las Vegas. Are there, indeed, parts of
5 town where you've decided that you're just not going to
6 go because of the crime?

7 PROSPECTIVE JUROR NO. 667: Correct.

8 MR. FIGLER: Okay. And what parts of
9 Las Vegas wouldn't you go in because of the crime?

10 PROSPECTIVE JUROR NO. 667: The Washington
11 area and out by Nellis.

12 MR. FIGLER: Okay.

13 PROSPECTIVE JUROR NO. 667: I probably would
14 stay away from that area.

15 MR. FIGLER: And if you were told that the
16 area where this young woman was shot is not far from
17 Washington/Martin Luther King, area over there, does
18 that give you any preconceived notions about the people
19 who are over there, who live in that neighborhood?

20 PROSPECTIVE JUROR NO. 667: No. No.

21 MR. FIGLER: Okay. But you just wouldn't go
22 in that area --

23 PROSPECTIVE JUROR NO. 667: Yes.

24 MR. FIGLER: -- because you feel it's
25 unsafe.

1 PROSPECTIVE JUROR NO. 667: Exactly.

2 MR. FIGLER: And what about it makes you
3 feel that it's unsafe?

4 PROSPECTIVE JUROR NO. 667: Just -- just
5 what I hear on TV when a lot of tourists -- I guess this
6 one woman first came, a tourist, I guess got robbed
7 (indiscernible) stolen her car (indiscernible) area,
8 just basically what I heard on television --

9 MR. FIGLER: Okay.

10 PROSPECTIVE JUROR NO. 667: --
11 (indiscernible).

12 MR. FIGLER: Do you have any -- and again,
13 there's no wrong answers, and we're not here to
14 embarrass anyone. We just need to get to the core of
15 the --

16 PROSPECTIVE JUROR NO. 667: Yeah.

17 MR. FIGLER: -- (indiscernible). Is there
18 anything about young people who might live in that
19 neighborhood that just gives you a personal opinion
20 before you even know them? In other words, that you
21 might think about certain people who are young who live
22 in that neighborhood in a certain way?

23 PROSPECTIVE JUROR NO. 667: No.

24 MR. FIGLER: Is there anything like that?

25 PROSPECTIVE JUROR NO. 667: No.

1 MR. FIGLER: Okay. And I call this the
2 purse question, and I don't know if you carry a purse or
3 not, but is there anything about young say
4 African-American teens if they were walking by you and
5 you had your purse in your hand, your natural instinct
6 is it to clutch it closer to be hesitant if they're
7 coming near you or anything like that?

8 PROSPECTIVE JUROR NO. 667: No.

9 MR. FIGLER: Okay.

10 PROSPECTIVE JUROR NO. 667: I have a nephew
11 that's African-American.

12 MR. FIGLER: Okay.

13 PROSPECTIVE JUROR NO. 667: No.

14 MR. FIGLER: All right. And again, the
15 question just hasn't been asked and if anyone does, it
16 does. I mean, it just has to be out there. We want to
17 make sure.

18 We like to live in a world that's free, but
19 we all know that prejudice exists out there. We just
20 find out if somebody has or not. Okay. I appreciate
21 your honesty with the answers.

22 Is there anything in looking over at Jamar
23 right now that you have any preconceived notions or
24 thoughts about?

25 PROSPECTIVE JUROR NO. 667: No.

1 MR. FIGLER: Okay. The fact that he is
2 challenging the prosecution who is accusing him of this
3 particular offense and decided to stand trial, is there
4 anything about that that makes you feel that as he sits
5 here today he must be or might be guilty of something?

6 PROSPECTIVE JUROR NO. 667: No.

7 MR. FIGLER: Okay. So that's all out of
8 your mind?

9 PROSPECTIVE JUROR NO. 667: Yes.

10 MR. FIGLER: And you understand the
11 presumption of innocence?

12 PROSPECTIVE JUROR NO. 667: Yes.

13 MR. FIGLER: And you believe in that
14 presumption of innocence?

15 PROSPECTIVE JUROR NO. 667: Yes.

16 MR. FIGLER: And you have no problem holding
17 the prosecution to proving each and every element of the
18 particular offense?

19 PROSPECTIVE JUROR NO. 667: Correct.

20 MR. FIGLER: Okay. Now you understand
21 you're going to be instructed by the Court as to what
22 the various laws are. You understand that?

23 PROSPECTIVE JUROR NO. 667: Yes.

24 MR. FIGLER: And you'll be expected, as
25 everyone else will be, to read them yourself to see what

1 they mean to you. You understand that?

2 PROSPECTIVE JUROR NO. 667: Correct.

3 MR. FIGLER: Okay. And in those
4 instructions are various elements, some of them have
5 many elements, and you understand that it's the
6 prosecution's burden to prove each and every element,
7 and you're comfortable with that?

8 PROSPECTIVE JUROR NO. 667: Yes, sir.

9 MR. FIGLER: Okay. And if they fail to
10 prove beyond a reasonable doubt even one of those
11 elements in a particular offense charge, you have to
12 find not guilty no matter what else your gut may say or
13 your sympathies may say. You understand that?

14 PROSPECTIVE JUROR NO. 667: Correct.

15 MR. FIGLER: Okay. And would you have any
16 hesitation whatsoever in checking not guilty on the
17 verdict form if that was the circumstance?

18 PROSPECTIVE JUROR NO. 667: No, sir.

19 MR. FIGLER: Even though a person is dead in
20 this particular case?

21 PROSPECTIVE JUROR NO. 667: Correct.

22 MR. FIGLER: Okay. And what is it about you
23 that you think would make you a fair and impartial
24 person with regard to the receipt of the evidence in
25 this case?

1 PROSPECTIVE JUROR NO. 667: I'm a good
2 listener, so I'll probably take all the evidence and
3 listen to (indiscernible) and sort it out.

4 MR. FIGLER: Okay. Now, the only ones who
5 may bring anything to the table, per se --

6 PROSPECTIVE JUROR NO. 667: (Indiscernible).

7 MR. FIGLER: -- is the prosecution --

8 PROSPECTIVE JUROR NO. 667: Correct.

9 MR. FIGLER: -- because they're the ones
10 making accusations. You understand that's why it goes
11 that way?

12 PROSPECTIVE JUROR NO. 667: Yes.

13 MR. FIGLER: Okay. And we can challenge it,
14 and we can beg you to scrutinize it, and that's what we
15 rely upon. And you're comfortable with that?

16 PROSPECTIVE JUROR NO. 667: Yes.

17 MR. FIGLER: And if Jamar doesn't testify
18 based on advice of counsel, do you think that he has
19 something to hide because of that?

20 PROSPECTIVE JUROR NO. 667: No.

21 MR. FIGLER: Okay. Can you think of reasons
22 why a person might not want to testify even if they're
23 absolutely innocent of what they're being accused of?

24 PROSPECTIVE JUROR NO. 667: Probably either
25 they're afraid or not able to speak or understand.

1 MR. FIGLER: Okay. And you're not going to
2 hold that against them or speculate as to --

3 PROSPECTIVE JUROR NO. 667: No.

4 MR. FIGLER: -- why that is? You're just
5 going to take the law as the law, correct?

6 PROSPECTIVE JUROR NO. 667: Correct.

7 MR. FIGLER: Okay. Thank you.

8 We'll pass for cause.

9 THE COURT: Thank you. Mr. Singer.

10 MR. SINGER: Pass for cause.

11 THE COURT: Thank you. I believe we're on
12 State's seven.

13 MS. LEWIS: The State would waive, Judge.

14 THE COURT: State has waived its seventh
15 peremptory challenge.

16 Is defense prepared to exercise its seventh
17 peremptory challenge?

18 (Off-record colloquy)

19 MR. FIGLER: All right. Your Honor, we'll
20 at this time exercise -- the defense would thank and
21 excuse Juror No. 651 sitting in seat No. 3, Mr. Reyes.

22 THE COURT: Mr. Reyes, thank you for coming.
23 Please report back to Jury Services for further
24 instructions.

25 Let's call the next name.

1 THE CLERK: No. 671, Patricia Noon, please.

2 THE COURT: Good evening, Ms. Noon. Thank
3 you for your patience. Could you tell us how long
4 you've been here in Las Vegas.

5 PROSPECTIVE JUROR NO. 671: I've been here
6 for eleven years. I'm an elementary schoolteacher.

7 THE COURT: Okay.

8 PROSPECTIVE JUROR NO. 671: Single, no
9 children.

10 THE COURT: Prior jury experience?

11 PROSPECTIVE JUROR NO. 671: Nope.

12 THE COURT: Any close family member or
13 friend been a victim of crime?

14 PROSPECTIVE JUROR NO. 671: Nope.

15 THE COURT: Any close family member or
16 friend been accused of a crime?

17 PROSPECTIVE JUROR NO. 671: No.

18 THE COURT: Would you tend to give a police
19 officer more credibility simply because they're a police
20 officer if they're testifying?

21 PROSPECTIVE JUROR NO. 671: No.

22 THE COURT: And can you wait in forming your
23 opinion if selected as a juror until after all of the
24 evidence is received and you've been instructed on the
25 law?

1 PROSPECTIVE JUROR NO. 671: Yes.

2 THE COURT: You know of any reason why you
3 couldn't be a completely fair and impartial juror in
4 this case?

5 PROSPECTIVE JUROR NO. 671: No.

6 THE COURT: State.

7 MR. BATEMAN: Approach briefly, Judge.

8 (Off-record bench conference)

9 PROSPECTIVE JUROR NO. 671: My flight is at
10 Thursday night at 12:30 a.m. --

11 THE COURT: We're going to let --

12 PROSPECTIVE JUROR NO. 671: Thursday/Friday.

13 THE COURT: State.

14 MR. FIGLER: I would just to be --

15 THE COURT: Just to be safe.

16 MR. FIGLER: -- on the safe side.

17 THE COURT: Thank you.

18 PROSPECTIVE JUROR NO. 671: Thank you.

19 Fabulous.

20 THE COURT: Record should reflect Ms. Noon
21 has been excused. Please report back to Jury Services
22 for further instructions.

23 Let's call the next name.

24 THE CLERK: 672, Lydia Guerrero, please.

25 (Off-record colloquy)

1 THE COURT: Ms. Guerrero, thank you for your
2 patience. Tell us how long have you been here in
3 Las Vegas?

4 PROSPECTIVE JUROR NO. 672: I've been in
5 Vegas for close to five years.

6 THE COURT: And what do you do here in
7 Las Vegas?

8 PROSPECTIVE JUROR NO. 672: I work
9 (indiscernible) Wynn Las Vegas as a (indiscernible).

10 THE COURT: And how long have you been
11 working for Wynn Las Vegas?

12 PROSPECTIVE JUROR NO. 672: Since they
13 opened, two years.

14 THE COURT: Are you married?

15 PROSPECTIVE JUROR NO. 672: Yes.

16 THE COURT: Do you have any children?

17 PROSPECTIVE JUROR NO. 672: Yes. I have two
18 boys.

19 THE COURT: And how old are your boys?

20 PROSPECTIVE JUROR NO. 672: (Indiscernible).

21 THE COURT: Have you ever served as a juror
22 before?

23 PROSPECTIVE JUROR NO. 672: No.

24 THE COURT: Prior to coming here to
25 Las Vegas where did you come from?

1 PROSPECTIVE JUROR NO. 672: Washington
2 State.

3 THE COURT: And what did you do in
4 Washington State?

5 PROSPECTIVE JUROR NO. 672: I worked for a
6 company for (indiscernible) as an accounting clerk.

7 THE COURT: Have any close family members or
8 friends ever been accused of a crime or yourself?

9 PROSPECTIVE JUROR NO. 672: Yes.

10 THE COURT: Tell us about that, please,
11 ma'am.

12 PROSPECTIVE JUROR NO. 672: My ex-husband,
13 he was accused of shooting a policeman.

14 THE COURT: Your ex-husband --

15 PROSPECTIVE JUROR NO. 672: I'm sorry. FBI
16 agent.

17 THE COURT: Your ex-husband was accused of
18 shooting an FBI agent?

19 PROSPECTIVE JUROR NO. 672: Yes. And my son
20 was accused of stealing.

21 THE COURT: All right. Is anything about
22 that experience going to affect your ability to be fair
23 and impartial here in this case?

24 PROSPECTIVE JUROR NO. 672: No.

25 THE COURT: All right. How long ago was

1 that?

2 PROSPECTIVE JUROR NO. 672: Maybe like 20
3 years.

4 THE COURT: And where was that?

5 PROSPECTIVE JUROR NO. 672: In Puerto Rico.

6 THE COURT: All right. Have any close
7 family member or friends ever been a victim of crime?

8 PROSPECTIVE JUROR NO. 672: Myself.

9 THE COURT: Tell me about that.

10 PROSPECTIVE JUROR NO. 672: Somebody shoot
11 my house in a drive-by shooting in Washington State.

12 THE COURT: Okay. How long ago was that?

13 PROSPECTIVE JUROR NO. 672: It's been like
14 15 years.

15 THE COURT: Is there anything about that
16 life experience that might affect your ability to sit as
17 a juror in this case?

18 PROSPECTIVE JUROR NO. 672: No.

19 THE COURT: Can you wait in forming your
20 opinions in this case until after you've heard all of
21 the evidence and received the instructions by me?

22 PROSPECTIVE JUROR NO. 672: Yes.

23 THE COURT: And do you know of any reason
24 why you couldn't be completely fair and impartial in
25 this case as a juror?

1 PROSPECTIVE JUROR NO. 672: No.

2 THE COURT: State.

3 MR. BATEMAN: Just briefly.

4 You mentioned -- was it your ex-husband?

5 PROSPECTIVE JUROR NO. 672: Yes.

6 THE COURT: Okay.

7 PROSPECTIVE JUROR NO. 672: I was separated
8 by that time.

9 MR. BATEMAN: Okay. And that was in Puerto
10 Rico?

11 PROSPECTIVE JUROR NO. 672: Yes.

12 MR. BATEMAN: And then you said something
13 about your son?

14 PROSPECTIVE JUROR NO. 672: Yes.

15 MR. BATEMAN: What was that?

16 PROSPECTIVE JUROR NO. 672: (Indiscernible).

17 MR. BATEMAN: I'm sorry?

18 PROSPECTIVE JUROR NO. 672: My younger son.

19 MR. BATEMAN: Okay. And what happened with
20 him?

21 PROSPECTIVE JUROR NO. 672: He was a
22 teenager, and he was going out with the wrong crowds.
23 They got involved in stealing, so I went to court and I
24 asked the judge to send him away because I needed to
25 save his life by that time.

1 MR. BATEMAN: Where was this?

2 PROSPECTIVE JUROR NO. 672: Washington
3 State.

4 MR. BATEMAN: Okay. How long ago was that?

5 PROSPECTIVE JUROR NO. 672: 15 years.

6 MR. BATEMAN: You still have a good
7 relationship with your son?

8 PROSPECTIVE JUROR NO. 672: (Indiscernible)?

9 MR. BATEMAN: You still have a good
10 relationship with your son?

11 PROSPECTIVE JUROR NO. 672: Oh, yes.

12 MR. BATEMAN: Okay.

13 PROSPECTIVE JUROR NO. 672: Yes.

14 (Indiscernible) going to Washington next Saturday to
15 spend Mother's Day with him.

16 MR. BATEMAN: Okay. Now, you're leaving on
17 Saturday morning?

18 PROSPECTIVE JUROR NO. 672: Yes.

19 MR. BATEMAN: Okay. When you coming back?

20 PROSPECTIVE JUROR NO. 672: The 21st.

21 MR. BATEMAN: Okay. And then, lastly, you
22 said you had also been a victim of crime?

23 PROSPECTIVE JUROR NO. 672: Yes.

24 MR. BATEMAN: And what was that again?

25 PROSPECTIVE JUROR NO. 672: It was a

1 drive-by shooting.

2 MR. BATEMAN: A drive-by. And what area?

3 PROSPECTIVE JUROR NO. 672: Washington
4 State.

5 MR. BATEMAN: Okay. How long ago was that?

6 PROSPECTIVE JUROR NO. 672: It's been like
7 15 years.

8 MR. BATEMAN: Okay. Anything about that --
9 did they catch the people that did it?

10 PROSPECTIVE JUROR NO. 672: No, they didn't.

11 MR. BATEMAN: Okay. Did you make a police
12 report?

13 PROSPECTIVE JUROR NO. 672: Yes.

14 MR. BATEMAN: Okay. Anything about that
15 experience that you would hold any ill will against
16 police officers or anything like that?

17 PROSPECTIVE JUROR NO. 672: Oh, no.

18 MR. BATEMAN: Okay.

19 PROSPECTIVE JUROR NO. 672: (Indiscernible).

20 MR. BATEMAN: Pass for cause, Judge.

21 THE COURT: Defense.

22 MR. FIGLER: Thank you.

23 Ma'am, the situation with your son, he made
24 a mistake in judgment, but he's not being penalized for
25 it to this day. It's behind him, correct?

1 PROSPECTIVE JUROR NO. 672: Oh, yes.

2 MR. FIGLER: Okay. And so he basically was
3 able to turn everything around and live a good life?

4 PROSPECTIVE JUROR NO. 672: One day he call,
5 and he say thank you, you saved my life.

6 MR. FIGLER: Okay. And so you're probably
7 going to get a very good gift for Mother's Day?

8 PROSPECTIVE JUROR NO. 672: I hope so.

9 MR. FIGLER: I'll pass for cause, Judge.

10 THE COURT: Mr. Singer.

11 MR. SINGER: I'd pass for cause, Judge.

12 THE COURT: State's eight.

13 MS. LEWIS: Judge, the State would waive.

14 THE COURT: State's waived eight.

15 Defense. Has the defense had an opportunity
16 to confer?

17 MR. FIGLER: We're going to talk with each
18 other right now, Judge.

19 (Off-record colloquy)

20 MR. FIGLER: We're going to exercise the
21 final peremptory, Your Honor. The defense would thank
22 and excuse Juror 667, Ms. Camara, sitting in No. 11.

23 THE COURT: Ms. Camara, thanks for coming.
24 Thanks for your patience.

25 Call the next name on the roll.

1 THE WITNESS: No. 673, Robert Jaquez,
2 please.

3 THE COURT: Sir, thanks for your patience.
4 How do you pronounce your last name?

5 PROSPECTIVE JUROR NO. 673: Jaquez.

6 THE COURT: Jaquez? Mr. Jaquez, how long
7 have you been here in Las Vegas?

8 PROSPECTIVE JUROR NO. 673: (Indiscernible).

9 THE COURT: And what do you do, sir?

10 PROSPECTIVE JUROR NO. 673: I'm a supervisor
11 for New York New York (indiscernible).

12 THE COURT: And are you married?

13 PROSPECTIVE JUROR NO. 673: Single.

14 THE COURT: Do you have any children?

15 PROSPECTIVE JUROR NO. 673: Yes, I do.

16 THE COURT: How old are your children?

17 PROSPECTIVE JUROR NO. 673: (Indiscernible)
18 and the other's 25 and my son's 21 (indiscernible).

19 THE COURT: Do you have -- have you ever
20 served as a juror before, sir?

21 PROSPECTIVE JUROR NO. 673: (Indiscernible).

22 THE COURT: Do you know of anyone closely
23 associated with you, yourself, family member who's been
24 a victim of crime?

25 PROSPECTIVE JUROR NO. 673: (Indiscernible).

1 THE COURT: Do you know of anyone yourself
2 or a close family member or friend who's been accused of
3 a crime?

4 PROSPECTIVE JUROR NO. 673: My brother.

5 THE COURT: Tell me about that.

6 PROSPECTIVE JUROR NO. 673: He just got out
7 of jail (indiscernible) probably a month ago.

8 THE COURT: And for what?

9 PROSPECTIVE JUROR NO. 673: Drugs.

10 THE COURT: Is there anything about that
11 relationship or that situation that might affect your
12 ability to be fair and impartial?

13 PROSPECTIVE JUROR NO. 673: (Indiscernible).

14 THE COURT: Can you wait in forming your
15 opinion -- wait in forming your opinion until you've
16 heard all of the evidence in this case and received the
17 instructions by me?

18 PROSPECTIVE JUROR NO. 673: (Indiscernible).

19 THE COURT: Would you give a police officer
20 any greater weight, credibility just simply because
21 they're a police officer testifying?

22 PROSPECTIVE JUROR NO. 673: Yes, sir.

23 THE COURT: You would or no?

24 PROSPECTIVE JUROR NO. 673: No.

25 THE COURT: You would not. All right. Do

1 you know of any reason why you couldn't be a completely
2 fair and impartial juror in this case?

3 PROSPECTIVE JUROR NO. 673: (Indiscernible).

4 THE COURT: State.

5 MR. BATEMAN: Pass for cause.

6 THE COURT: Defense.

7 MR. FIGLER: Pass for cause.

8 MR. SINGER: Pass for cause.

9 THE COURT: State's final.

10 MR. BATEMAN: Yeah. The last one.

11 (Off-record colloquy)

12 MS. LEWIS: State would like to thank and
13 excuse Juror No. 636.

14 THE COURT: Juror 636, Ms. Jimerson. Yeah.
15 Call the next -- Ms. Jimerson, thank you for coming.

16 PROSPECTIVE JUROR NO. 636: Thanks for
17 having me.

18 THE COURT: Thanks for your patience.

19 PROSPECTIVE JUROR NO. 636: Thank you.

20 THE CLERK: No. 675, please, Mark Tabb.

21 THE COURT: Mr. Tabb, please seat 14.

22 Mr. Tabb, how long have you been here in Las Vegas?

23 PROSPECTIVE JUROR NO. 675: 26 years.

24 THE COURT: And what do you do, sir?

25 PROSPECTIVE JUROR NO. 675: I work at the

1 South Point Casino. I'm a casino (indiscernible)
2 manager.

3 THE COURT: And how long have you been doing
4 that kind of work?

5 PROSPECTIVE JUROR NO. 675: About 20 years.

6 THE COURT: Are you married?

7 PROSPECTIVE JUROR NO. 675: Single. Two
8 children.

9 THE COURT: How old are your children?

10 PROSPECTIVE JUROR NO. 675: 17 and 18.

11 THE COURT: Ever served as a juror before?

12 PROSPECTIVE JUROR NO. 675: No, sir.

13 THE COURT: Ever been a victim of crime,
14 you, a close member or a friend?

15 PROSPECTIVE JUROR NO. 675: I've had a car
16 stolen and my house broken into.

17 THE COURT: Anything about that life
18 experience that might affect your ability to be fair in
19 this case?

20 PROSPECTIVE JUROR NO. 675: No, sir.

21 THE COURT: Have you or a close family
22 member or friend ever been accused of a crime?

23 PROSPECTIVE JUROR NO. 675: No, sir.

24 THE COURT: Would you give the weight of the
25 testimony of an officer any greater or lesser weight as

1 a result of the fact they're a police officer than any
2 other witness?

3 PROSPECTIVE JUROR NO. 675: No, sir.

4 THE COURT: Can you wait in forming your
5 opinion in this case until all the evidence is received
6 by you and you've been instructed?

7 PROSPECTIVE JUROR NO. 675: Yes.

8 THE COURT: Do you know of any reason why
9 you couldn't be a completely fair and impartial juror?

10 PROSPECTIVE JUROR NO. 675: No, sir.

11 THE COURT: State.

12 MR. BATEMAN: Pass for cause.

13 THE COURT: Defense.

14 MR. FIGLER: Mr. Tabb, you indicated you had
15 someone in law enforcement in your life; is that
16 correct?

17 PROSPECTIVE JUROR NO. 675: Yes, sir, my
18 younger brother.

19 MR. FIGLER: Okay. And that's back in
20 Georgia?

21 PROSPECTIVE JUROR NO. 675: Yes.

22 MR. FIGLER: Where did you grow up?

23 PROSPECTIVE JUROR NO. 675: In Georgia for
24 the first 20 years.

25 MR. FIGLER: Okay. And then out to Vegas?

1 PROSPECTIVE JUROR NO. 675: Yes.

2 MR. FIGLER: What brought you out to Vegas?

3 PROSPECTIVE JUROR NO. 675: I moved out with
4 a friend. We come through one time on a trip and
5 decided to move out.

6 MR. FIGLER: Do you like it?

7 PROSPECTIVE JUROR NO. 675: (Indiscernible).

8 MR. FIGLER: All right. Anything about your
9 youth or growing up where you did, anything like that
10 that would be of interest to us? Understanding that we
11 really don't get to sit down --

12 PROSPECTIVE JUROR NO. 675: Right.

13 MR. FIGLER: -- and chat and get to know who
14 you are, so we depend on you being forthright of
15 anything in your life.

16 PROSPECTIVE JUROR NO. 675: Not that I can
17 think of.

18 MR. FIGLER: Okay. Everybody's had
19 something really important in their life. Have you ever
20 been touched by violence in your life in any way?

21 PROSPECTIVE JUROR NO. 675: Little fights as
22 kids, nothing extreme or anything like that.

23 MR. FIGLER: Okay. Nothing as an adult?

24 PROSPECTIVE JUROR NO. 675: No.

25 MR. FIGLER: And how about a witness? You

1 ever been a witness to a crime?

2 PROSPECTIVE JUROR NO. 675: No.

3 MR. FIGLER: So you kind of snuck through
4 this life sort of untarnished?

5 PROSPECTIVE JUROR NO. 675: Well, no
6 violence or anything.

7 MR. FIGLER: That's a good thing. You
8 understand that in this particular case there's going to
9 be evidence that violence was committed upon someone,
10 and I don't think it's any surprise. The big question
11 is who. You understand that?

12 PROSPECTIVE JUROR NO. 675: Right.

13 MR. FIGLER: Okay. Do you have any problem
14 with that type of scenario or the fact that there's a
15 dead person in this particular case that would cause you
16 any concern?

17 PROSPECTIVE JUROR NO. 675: If I had a
18 problem that someone's dead?

19 MR. FIGLER: Well, that that would cause you
20 any unusual concern in sitting as a juror.

21 PROSPECTIVE JUROR NO. 675: No.

22 MR. FIGLER: Okay. Is there anything, as
23 you look over as Jamar Matthews today, that would cause
24 you concern or cause us concern with you sitting as a
25 juror?

1 PROSPECTIVE JUROR NO. 675: No.

2 MR. FIGLER: There have been a lot of
3 questions about police officers and how they're going to
4 be challenged on make sure they did things right or make
5 sure that they did things accurately. You understand
6 that that's part of what we need to do here?

7 PROSPECTIVE JUROR NO. 675? Sure.

8 MR. FIGLER: Okay. Do you have any problem
9 with that whatsoever?

10 PROSPECTIVE JUROR NO. 675: No.

11 MR. FIGLER: All right. Your brother was a
12 police officer. The question was asked to you do you
13 think that police officers are more credible or not. Do
14 you think that you can accept that a police officer just
15 absolutely got something wrong?

16 PROSPECTIVE JUROR NO. 675: I think
17 everybody's capable of mistakes.

18 MR. FIGLER: Okay. Do you think that that's
19 a virtual impossibility or are you coming in this with
20 an absolute clean slate when those officers are going to
21 testify?

22 PROSPECTIVE JUROR NO. 675: Clean slate as
23 to they can make a mistake or --

24 MR. FIGLER: Correct.

25 PROSPECTIVE JUROR NO. 675: Sure.

1 MR. FIGLER: Okay. So they don't get a
2 presumption, and we don't have to prove that they made a
3 mistake. They're just a person and you're going to
4 evaluate how good job or not good a job they did.

5 PROSPECTIVE JUROR NO. 675: Right.

6 MR. FIGLER: And if they got the wrong
7 person through identification or something like that,
8 that's up to you to decide as an individual, correct?

9 PROSPECTIVE JUROR NO. 675: Um-um.

10 MR. FIGLER: Okay. And you're going to take
11 into account all their evidence; is that correct?

12 PROSPECTIVE JUROR NO. 675: Right.

13 MR. FIGLER: And there might be conflicting
14 evidence. You understand that?

15 PROSPECTIVE JUROR NO. 675: Um-h'm.

16 MR. FIGLER: Okay. And you think you'll be
17 able to sort through conflicting evidence in analyzing
18 whether or not the prosecution has met their burden
19 beyond a reasonable doubt proving what they say to the
20 letter of those instructions that they have to prove?
21 And that's okay with you?

22 PROSPECTIVE JUROR NO. 675: Yes.

23 MR. FIGLER: Okay. We'll pass for cause,
24 Judge.

25 THE COURT: Thank you.

1 MR. SINGER: Pass for cause, Judge.

2 THE COURT: Mr. Figler, Mr. Bunin.

3 (Off-record colloquy)

4 MR. FIGLER: Your Honor, the defense would
5 thank and excuse Mr. Tabb sitting as Juror 675 sitting
6 in seat No. 14.

7 THE COURT: Mr. Tabb, thanks for the --
8 thanks for your patience.

9 Call the next name.

10 Please report back to Jury Services.

11 THE CLERK: 676, Ryan Brewer, please.

12 THE COURT: Mr. Brewer, good evening. How
13 long have you been here in Las Vegas, sir?

14 PROSPECTIVE JUROR NO. 676: I was born and
15 raised here.

16 THE COURT: And what do you do for a living?

17 PROSPECTIVE JUROR NO. 676: Well, I'm an
18 engineer for Nellis Air Force Base, electrical. But
19 prior to that, I worked my whole life in the ghetto of
20 7-Eleven. My dad owns 7-Elevens. And I've been through
21 a lot of crime.

22 THE COURT: All right. Well, let's --

23 PROSPECTIVE JUROR NO. 676: (Indiscernible).

24 THE COURT: Sounds like you want to jump
25 right to that.

1 PROSPECTIVE JUROR NO. 676: Yeah. Yeah. My
2 dad's, you know, been robbed at gunpoint many times.
3 I've got in a lot of fist fights, knives pulled on me,
4 life threatened.

5 THE COURT: Is that life -- are those series
6 of life experiences going to affect your ability to be
7 fair and impartial in this case?

8 PROSPECTIVE JUROR NO. 676: I would say they
9 probably could.

10 THE COURT: Challenges for cause? State.

11 MR. BATEMAN: Submit it, Judge.

12 THE COURT: Defense. Mr. Brewer, we're
13 going to let you go. Based upon that life experience, I
14 think that --

15 PROSPECTIVE JUROR NO. 676: Yeah, I know.

16 THE COURT: -- it's best that we get you on
17 a civil case.

18 PROSPECTIVE JUROR NO. 676: I don't want to
19 -- thank you, Judge.

20 THE COURT: All right.

21 THE CLERK: No. 687, Gary Randell, please.

22 THE COURT: Mr. Randell, also thank you for
23 your patience, sir. Tell us how long have you been here
24 had Las Vegas?

25 PROSPECTIVE JUROR NO. 687: I've been in

1 Las Vegas eleven years now.

2 THE COURT: And what do you do to fill your
3 day?

4 PROSPECTIVE JUROR NO. 687: I'm retired.

5 THE COURT: Okay.

6 PROSPECTIVE JUROR NO. 687: Spent 50 years
7 in the contracting and procurement field. I'm married.
8 Have four children, seven grandchildren, and three great
9 grandchildren.

10 THE COURT: Impressive. Have you ever had
11 time to be a juror?

12 PROSPECTIVE JUROR NO. 687: I've been on two
13 juries.

14 THE COURT: Without telling us what the
15 verdicts are, sir, were you able to reach a verdict in
16 those cases?

17 PROSPECTIVE JUROR NO. 687: No, neither one.

18 THE COURT: On either within of these cases?
19 Were they civil or criminal?

20 PROSPECTIVE JUROR NO. 687: Civil cases.

21 THE COURT: Civil cases. And neither one of
22 you were able to reach a verdict?

23 PROSPECTIVE JUROR NO. 687: No.

24 THE COURT: All right. Have you or anyone
25 closely associated with you, family member or friend,

1 been the victim of a crime?

2 PROSPECTIVE JUROR NO. 687: I've been a
3 victim of identity theft.

4 THE COURT: Would that experience affect
5 your ability to sit as a juror in this case?

6 PROSPECTIVE JUROR NO. 687: I don't believe
7 so.

8 THE COURT: Thank you. Have you or a close
9 family member or friend ever been accused of a crime?

10 PROSPECTIVE JUROR NO. 687: I have -- one of
11 my sons has been jailed on a number of occasions for
12 alcohol abuse and drug problems.

13 THE COURT: Would the problems that your son
14 has had with the law affect your ability to be fair and
15 impartial in this case?

16 PROSPECTIVE JUROR NO. 687: I don't believe
17 so.

18 THE COURT: All right. Can you wait in
19 forming your opinions as to the guilt or innocence in
20 this case until you've heard all of the evidence and
21 received the instructions by me?

22 PROSPECTIVE JUROR NO. 687: (Indiscernible).

23 THE COURT: The question is can you follow
24 the law apply it to the facts fairly?

25 PROSPECTIVE JUROR NO. 687: Yes.

1 THE COURT: And will you do that at the end
2 of the case as opposed to making any prejudgments of the
3 evidence?

4 PROSPECTIVE JUROR NO. 687: Yes.

5 THE COURT: Would you tend to give the
6 weight of -- or the testimony of a police officer
7 greater or lesser weight simply because -- or greater
8 weight simply because they are a police officer?

9 PROSPECTIVE JUROR NO. 687: No.

10 THE COURT: Do you know of any reason that
11 you can't be a fair and impartial juror in this case,
12 completely fair and impartial?

13 PROSPECTIVE JUROR NO. 687: I have a little
14 bit of a problem with the concept of beyond a reasonable
15 doubt. I didn't have any problem with preponderance of
16 evidence in the civil trial, but I'm not sure that I can
17 really define what is reasonable.

18 And I think that probably out of 12 jurors,
19 we would all have a different concept what is
20 reasonable, and I think we would all have some doubt,
21 and I'm not sure how you really apply that.

22 THE COURT: All right. Obviously, you've
23 thought about this as a consequence of your prior jury
24 experience.

25 PROSPECTIVE JUROR NO. 687: (Indiscernible).

1 THE COURT: Is your mind set at this point
2 that you're unable to sit as a fair and impartial juror
3 based upon the fact that you know that the burden is --

4 PROSPECTIVE JUROR NO. 687: I'm not sure.

5 THE COURT: Well, how about we explore that.
6 State.

7 MR. BATEMAN: At the end of the trial the
8 judge is going to give you a set of instructions, and
9 there's a specific instruction that the Supreme Court's
10 said this is the instruction that you give jurors with
11 regard to the standard of reasonable doubt.

12 It's the only instruction you're going to
13 get on reasonable doubt, but it explains, according to
14 our Supreme Court, what that standard is. Regardless of
15 what anybody else says, that's the standard that you
16 apply.

17 Are you saying that you can't read that
18 standard that's been given to you and apply it in this
19 case at the end of the trial after you've heard all of
20 the facts not knowing as you sit here today what that
21 standard is?

22 PROSPECTIVE JUROR NO. 687: I'm not sure.
23 Like I say, I didn't have any problem with the
24 preponderance of evidence thing, but --

25 MR. BATEMAN: When you say preponderance of

1 evidence, that's the standard that's used in civil
2 cases, right?

3 PROSPECTIVE JUROR NO. 687: That's right.

4 MR. BATEMAN: That's like 51 percent, right?

5 PROSPECTIVE JUROR NO. 687: Yeah.

6 MR. BATEMAN: Okay. We don't quantify what
7 reasonable doubt is. Again, you get an instruction from
8 the judge, and you read that instruction and all of the
9 jurors are expected to look at that instruction and make
10 a determination as to whether the State's presented
11 sufficient evidence to meet that standard as that
12 instruction states. Are you saying that you don't
13 believe you can follow the law in this case that the
14 judge is going to give?

15 PROSPECTIVE JUROR NO. 687: I believe I can
16 follow the law. I'm just not -- I'm just not sure that
17 everyone sitting on a panel would apply it equally.

18 MR. BATEMAN: You're not required to apply
19 it to anyone other than yourself.

20 PROSPECTIVE JUROR NO. 687: I know.

21 MR. BATEMAN: Think you could follow it
22 yourself and make a determination after --

23 PROSPECTIVE JUROR NO. 687: (Indiscernible).

24 MR. BATEMAN: -- you look at that --

25 PROSPECTIVE JUROR NO. 687: (Indiscernible).

1 MR. BATEMAN: Okay. And not worry about
2 what anybody else thinks in their minds about that
3 standard? You can I guess just comply with that
4 standard by yourself and worry about the decision that
5 you make; is that correct?

6 PROSPECTIVE JUROR NO. 687: As long as I was
7 given the criteria and definition of what is reasonable
8 (indiscernible).

9 MR. BATEMAN: Pass for cause.

10 THE COURT: Pass for cause.

11 Defense.

12 MR. FIGLER: Thank you. Mr. Randell, no
13 one's asking you to do anything else than be an
14 individual and read that instruction and give your
15 interpretation of what those words means to you. I
16 think that's what the prosecutor says, and we agree with
17 that. And you're telling me you're comfortable doing
18 that?

19 PROSPECTIVE JUROR NO. 687: Yes.

20 MR. FIGLER: Okay. And even if that
21 interpretation you had differs from someone else, that's
22 okay. That's part of the system. You understand that?

23 PROSPECTIVE JUROR NO. 687: Yes.

24 MR. FIGLER: Okay. And, ultimately, it's
25 just up to you how you feel the prosecution has done

1 with regard to that burden of reasonable doubt. You
2 understand that?

3 PROSPECTIVE JUROR NO. 687: Yes.

4 MR. FIGLER: Okay. Now, of course, when
5 there's such a great consequence as in a charge you can
6 imagine with murder and, really, in any criminal case,
7 but in a murder case especially it has to be a very high
8 standard -- and I'm not getting into quantifying it.

9 What I want to tell you is understandably
10 it's going to be different or higher than the civil one.
11 You understand that that's important to have the highest
12 standard in these types of situations, correct?

13 PROSPECTIVE JUROR NO. 687: Yes.

14 MR. FIGLER: Okay. That's the highest legal
15 standard that's available, but still you'll be given an
16 instruction from the Court, and you're comfortable with
17 that?

18 PROSPECTIVE JUROR NO. 687: Yes.

19 MR. FIGLER: Okay. Now, as far as any of
20 the other questions that have come up, is there any
21 other aspect of your life or your life experiences that
22 would be important for us to discuss?

23 And I appreciate your candor on the
24 reasonable doubt. It should be a difficult thing. It
25 isn't kids' work. This is important work. And is there

1 anything else about your life experiences that would
2 make you good or bad as a juror?

3 PROSPECTIVE JUROR NO. 687: I can only say
4 that on both civil cases that I was on that the reason
5 that the decision could not be reached and it was a hung
6 jury was on racial basis, and that does bother me.

7 MR. FIGLER: Let me put it this way. With
8 regard to the evidence that you're going to scrutinize
9 here in the case, you understand that just because --
10 let's just focus -- I'm going to try to get to that
11 concern.

12 If our system was of such that all the
13 police had to do was say, yeah, I believe that's the
14 person, that's not a trial by jury. That's not
15 reasonable doubt. You understand that that's a
16 different standard?

17 PROSPECTIVE JUROR NO. 687: Yes.

18 MR. FIGLER: Okay. So whatever other
19 factors come in in evaluating the credibility of the
20 witnesses it's all fair because you're an individual
21 juror and you bring your life experiences, and we would
22 expect that you'd have vigorous discussions, if
23 necessary, with fellow jurors, and it sounds like you've
24 done that before, vigorous discussions?

25 PROSPECTIVE JUROR NO. 687: (Indiscernible).

1 MR. FIGLER: Okay. If anyone says something
2 that you feel is in violation of the rules that the
3 Court will give you, then again, you're free to inform
4 the bailiff and tell him that you feel that they're not
5 following the rules as given by the judge and then, you
6 know, if appropriate action needs to be taken, that will
7 be.

8 So, in other words, if someone's making you
9 feel uncomfortable or if you're having discussions about
10 this or that and you feel that someone's not doing what
11 the judge say says is allowable, that concern can be
12 raised to the Court. You understand all that?

13 PROSPECTIVE JUROR NO. 687: (Indiscernible).

14 MR. FIGLER: Okay. Understanding all that,
15 do you still think that you can't be a good juror in a
16 criminal case of this nature or tell me what you feel.

17 PROSPECTIVE JUROR NO. 687: I really have
18 mixed emotions. I really do. I think it's important
19 that juries do a good job.

20 And I -- in serving on the two separate
21 juries that I've been on, I have witnessed exactly the
22 opposite, and I don't really have that much faith that
23 the system really works all that well.

24 MR. FIGLER: Okay. Now, in this case, there
25 may be evidence of cross-racial identification issues,

1 so that is going to be an issue back there, potentially.
2 That's up to you as a juror to decide how much or how
3 little of an issue cross-racial identification or
4 profiling or any of that type of stuff might be. The
5 nature that that might be in this case, is that what's
6 causing you concern or just the system in general?

7 PROSPECTIVE JUROR NO. 687: Just the overall
8 experiences I guess.

9 MR. FIGLER: I would submit it, Your Honor.

10 THE COURT: Are you submitting or are you --

11 MR. FIGLER: Well, Court's indulgence.

12 We'll pass for cause this time, Your Honor.

13 THE COURT: Mr. Singer.

14 MR. SINGER: Pass for cause.

15 THE COURT: We have our jury.

16 MR. FIGLER: Oh, Mr. Singer has his --

17 THE COURT: Oh, Mr. Singer, final. Sorry.

18 MR. SINGER: We'll waive (indiscernible).

19 THE COURT: Waived. Final.

20 Ladies and gentlemen in the audience, thank
21 you for coming. We appreciate your patience. I know
22 it's been a long day, but the decision's been made.
23 You're free to go to Jury Services at this time. Again,
24 thank you with thanks -- thank you and good luck.

25 Ladies and gentlemen, we just have a few

1 more matters to attend to, and then I'll let you go for
2 the evening.

3 (Off-record colloquy)

4 (Prospective jurors not present)

5 THE COURT: All right. Record should
6 reflect all peremptory challenges having been exercised.
7 At this time we need to administer the oath of service
8 of the jury.

9 THE CLERK: If you'd please stand. Raise
10 your right hand.

11 (Impaneled jurors sworn)

12 THE JURY: I do.

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

14 THE COURT: Ladies and gentlemen, I will
15 reserve instructions for you tomorrow. It's been a long
16 night. I do have to do an overnight admonishment. It's
17 basically the same admonishment I give you during the
18 day.

19 You are admonished not to converse among
20 yourselves or with anyone else on any subject connected
21 with this trial or read, watch or listen to any report
22 of or commentary on the trial by any person connected
23 with this case or by any medium of information
24 including, without limitation, newspapers, television,
25 Internet, radio.

1 You are further admonished not to form or
2 expression any opinion on any subject connected with
3 this trial until it is finally submitted to you.

4 You're directed to return to the custody of
5 the bailiff tomorrow morning at 8:00 -- or, excuse me --
6 at 10:00 a.m. I have a calendar in the morning I have
7 to hear. My hope is to push through that calendar
8 quickly so we can begin your part of the process at
9 10:00 a.m.

10 Officer, where do you wish to meet them?

11 THE BAILIFF: I'll show them.

12 THE COURT: All right. With that
13 admonishment being given, you're excused for the
14 evening, and we're at ease. Thank you.

15 Gentlemen, hold on.

16 (Jury not present)

17 THE COURT: Richard, is that door closed? I
18 can't tell.

19 MR. FIGLER: It's closing. It's closed.

20 THE COURT: Record should reflect we're
21 outside of the presence of the jury. I know's been a
22 long day, gentlemen and lady. Is there anything else to
23 come before me at this point outside the presence of the
24 jury?

25 MR. SINGER: Judge, one thing.

1 THE COURT: Yes.

2 MR. SINGER: In past cases (indiscernible)
3 in this case, do you add to your nighttime or daily
4 admonishments that there might be circumstances where we
5 cross paths in elevators (indiscernible) --

6 THE COURT: I do that normally in my
7 instructions, and I will do that tomorrow. I've
8 instructed Officer Reichert to take the jury and put
9 them in the jury deliberation room right away, so
10 they're not standing in the hallway with witnesses.
11 That will be part of the overall instruction.

12 MR. SINGER: Thank you, Judge.

13 MR. FIGLER: Your Honor, will we have a
14 moment just in case there's anything to put on the
15 record prior to the jury coming in tomorrow in the
16 morning?

17 THE COURT: Or we put it on now.

18 MR. FIGLER: Well, I don't have anything
19 right now. If something comes up or if State has
20 something, we'll just have that one little second before
21 -- I don't -- and this is my own personal --

22 THE COURT: I understand.

23 MR. FIGLER: -- having done it, walking into
24 the jury sometimes something had come up overnight
25 and --

1 THE COURT: State, anything further?

2 MR. BATEMAN: No, not tonight, Your Honor.

3 THE COURT: Defense, anything further?

4 MR. FIGLER: Not tonight, Your Honor.

5 THE COURT: We're at ease.

6 MR. FIGLER: Thank you, Your Honor. See you

7 at 10:00.

8 THE COURT: (Indiscernible) recess.

9 (Court recessed at 6:55 p.m. until Tuesday,

10 May 8, 2007, at 10:00 a.m.)

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CLARK COUNTY, NEVADA
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THE STATE OF NEVADA,

Plaintiff

vs.

PIERRE JOSHLIN
JEMAR D. MATTHEWS,

Defendants
.....

CLERK OF THE COURT

CASE NO. C-228460

DEPT. NO. XVIII

Transcript of
Proceedings

BEFORE THE HONORABLE DAVID BARKER, DISTRICT COURT JUDGE

JURY TRIAL - DAY 2

TUESDAY, MAY 8, 2007

APPEARANCES:

FOR THE PLAINTIFF:

LINDA Y. LEWIS
SAMUEL G. BATEMAN
Deputy District Attorneys

FOR DEFENDANT JOSHLIN:

PHILLIP SINGER, ESQ.

FOR DEFENDANT MATTHEWS:

DANIEL M. BUNIN, ESQ.
DAYVID J. FIGLER, ESQ.

COURT RECORDER:

TRANSCRIPTION BY:

RICHARD KANGAS
District Court

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1 LAS VEGAS, NEVADA, TUESDAY, MAY 8, 2007, 10:06 A.M.

2 (Jury not present)

3 THE COURT: Again, we're on the record in
4 C228460, State of Nevada, plaintiff, versus
5 Pierre Joshlin and Jamar Matthews, present out of the
6 presence of the jury, all counsel, Mr. Matthews, and
7 Mr. Joshlin.

8 Is there any matter to come before the Court
9 outside the presence of the jury before we call the
10 jury?

11 MR. SINGER: Yes, Judge.

12 MR. FIGLER: Yeah.

13 MR. SINGER: You want to go first?

14 MR. FIGLER: No. Go ahead.

15 MR. SINGER: Unfortunately, I was strangely
16 prophetic last night when I asked you to give that
17 charge. Of course, this morning I'm in the elevator and
18 Mr. (Indiscernible) who's another attorney asks me why I
19 have all these folders and what's going on with my
20 trial, how am I doing.

21 And I see Mr. Ashley in the back of the
22 (indiscernible), and I freeze because I've been in the
23 situation before. That's why I asked you to do that
24 yesterday.

25 And Mr. Ashley starts talking to me and

1 telling me have a nice, how are you, and I'm trying -- I
2 told him I can't really talk to you, but he says
3 something like forget the rules, we're just -- can we be
4 friends, and I said not really.

5 And he said hi, can you just say hi to me
6 this morning? I said yeah, and then he went on with
7 other pleasantries, have a nice day and such.

8 And I'm like panicked because I've been in
9 this exact situation before. So if we can just give a
10 curative or --

11 THE COURT: Well, yeah. It's the second
12 paragraph of the opening --

13 MR. SINGER: I didn't mean to be --

14 THE COURT: -- of my --

15 MR. SINGER: -- rude to him this morning,
16 but I kind of was because I didn't want to --

17 THE COURT: State.

18 MR. BATEMAN: Doesn't sound like there's
19 anything nefarious going on or any information that was
20 transferred.

21 MR. SINGER: Could you just tell him why I
22 was rude this morning, though?

23 THE COURT: Absolutely.

24 MR. SINGER: Okay.

25 MR. FIGLER: All right. Judge,

1 unfortunately, I have the similar situation.

2 THE COURT: All right.

3 MR. BATEMAN: (Indiscernible).

4 MR. FIGLER: I know. I went into the
5 elevator this morning, and there was a juror in the back
6 of the elevator I didn't see, and we're all just waiting
7 there for the elevator to go up, and a large group of
8 people just wouldn't come into the elevator, and it was
9 keeping the elevator door open.

10 And Banks goes what's that, and I go I think
11 it might be my victim's family. Maybe they don't want
12 to get into the elevator with the defense attorney.

13 And then the doors closed, and I turned
14 around, and in the back I saw one of the jurors, and I
15 ceased any conversation whatsoever with anybody at that
16 point.

17 THE COURT: State.

18 MS. LEWIS: No problem.

19 THE COURT: All right.

20 MR. FIGLER: Just for the record. Just want
21 to make it clear.

22 THE COURT: You've got to. It's --

23 MR. FIGLER: Just the logistics of the
24 courthouse almost make it impossible not for those
25 things to happen.

1 THE COURT: All right.

2 MR. FIGLER: We do have one question outside
3 the presence, Judge. There is the potential issue of
4 the gun residue test, it's admissibility, whether it's
5 going to come in or come out.

6 We haven't -- it hasn't been offered, so
7 obviously, Your Honor, hasn't ruled upon it. Our
8 concern is that it gets mentioned during the opening.

9 THE COURT: Well -- I believe the State's --

10 MS. LEWIS: Well, Judge, we intend on it --

11 THE COURT: If the State feels that they
12 have a basis for admitting that evidence, then they can
13 comment on it. I have reviewed your bench memo. I am
14 aware of gun residue testing. I've seen it admitted
15 many times.

16 MR. FIGLER: I think that's true, Judge,
17 but --

18 THE COURT: And, frankly, I don't have a
19 problem with letting the gun residue in.

20 MR. FIGLER: Well, I've got about seven
21 problems. Can I just go over it really quick?

22 THE COURT: Sure.

23 MR. FIGLER: All right. Number one,
24 foundationally, we weren't provided with any knowledge
25 that a gun residue test was even taken. So we don't

1 know when it was taken, where it was taken, under what
2 conditions it was taken, if it was taken, really. None
3 of that's been provided.

4 So I think that's a fundamental first step,
5 if there's no evidence that's been provided to the
6 defense other than a report that's given to us on
7 May 3rd before trial that there was even gun residue.

8 In fact, I had specifically asked the
9 State's witness at the preliminary hearing, their
10 firearms expert, Mr. Krylo.

11 I said was there a gun residue test in this
12 case. Did you do a gun residue test in this case? And
13 he stated he has no knowledge of a gun residue test in
14 this case, okay, so foundationally, I don't see how they
15 can even bring it in.

16 Secondarily, I don't know what witnesses
17 they intend to bring in. If they're just going to bring
18 in the test and say, yeah, somebody gave me this, this
19 was sent to me and now I'm going to introduce it. So
20 foundationally, before we even get to the scientific
21 admissibility of it, I think there needs to be a
22 foundational showing.

23 MS. LEWIS: And, Judge, I don't think that I
24 have to make that showing, to be quite honest. The fact
25 that Mr. Figler asked one witness at a preliminary

1 hearing about a gunshot-residue test being done I don't
2 think is a relevant basis for excluding any mention of
3 it.

4 Jim Krylo is a firearms examiner. He
5 doesn't do gunshot-residue testing out at crime scenes
6 nor does he do gunshot-residue testing in the laboratory
7 after a gunshot-residue kit is taken, so there'd be no
8 reason for Jim Krylo to be aware of any gunshot-residue
9 testing.

10 Secondly, I noticed a gunshot-residue expert
11 on this case back in January. So the fact that I
12 provided that notice at that time should have been
13 indicative enough to the defense that the State intended
14 to present this type of evidence.

15 If Mr. Figler wanted any further details,
16 then he should have pursued it back in January after the
17 notice was filed as opposed to waiting 'til now when
18 here we are at 10:00 o'clock. We've already picked a
19 jury, and we're ready to do opening statements. Now is
20 not the appropriate time for him to raise those
21 objections.

22 We do have witnesses who will come and
23 testify that a gunshot-residue kit was taken of these
24 two defendants and that that kit was impounded in the
25 laboratory and then, thereafter, it was sent off to the

1 laboratory in Bexar County, Texas, which is the
2 laboratory that routinely performs those tests. Our
3 forensic laboratory does not perform gunshot-residue
4 testing.

5 So since the State did provide adequate
6 notice that it intended to call witnesses regarding
7 gunshot-residue testing, I believe that the defense was
8 put on notice that the State intended to present this
9 type of evidence, and I don't think we need to do
10 anything further.

11 THE COURT: Okay. Mr. Figler.

12 MR. FIGLER: And I don't believe that that's
13 accurate, Judge. Number one, we got notice on
14 January 26th of an expert that was very broad, a person
15 named Michael Martinez as an expert in numerous areas;
16 firearms, gunshot residue, tool-mark examinations,
17 comparisons.

18 The substance of that person's testimony was
19 listed as they will testify regarding the firearms
20 analysis performed in this case. I've received no
21 discovery to date that a kit was taken.

22 I notice the State did not mention the name
23 of the witness who said that they took the kit. I don't
24 -- I've got a list of 15 witnesses from the State on
25 Friday?

1 MR. BUNIN: Friday.

2 MR. FIGLER: On Friday, and I asked if that
3 was everybody, and the State indicated that that was
4 everybody. I don't know who on that list took the gun
5 kit test or where it was taken. I have no information
6 about it whatsoever.

7 I cannot do a cross-examination of the
8 expert who tested a package sent to them in the mail
9 when I don't know where that came from or who took it
10 and that was not provided in any discovery to date.

11 THE COURT: Was that information provided?

12 MS. LEWIS: Judge, that information wasn't
13 provided because I don't have anything to provide with
14 regards to it. I don't have a report that says that I
15 took a gunshot kit and I did this and that with it, so I
16 don't have anything to provide.

17 I provided them a list of witnesses, and to
18 be quite frank, I was very generous with providing them
19 the list of witnesses I provided. I gave them the
20 specific name of every single person that would testify.
21 I gave them the name of every single officer that would
22 testify.

23 And then, broadly, I said and then we're
24 going to call some crime scene analysts. We don't know
25 yet which ones because we're trying to narrow them down.

1 There were very many CSAs in this case, and that's the
2 list of names that I gave them. One of those crime
3 scene analysts is the one that I'm told took the
4 gunshot-residue kit --

5 THE COURT: Which one?

6 MS. LEWIS: -- and that's the person who
7 will testify. That I don't know for sure. I believe
8 it's Randall McPhail.

9 THE COURT: And when does Mr. McPhail --
10 when do you anticipate Mr. McPhail testifying?

11 MS. LEWIS: I don't know, not until Thursday
12 I guess.

13 THE COURT: Would you be able to give
14 defense access to Mr. McPhail should they have any
15 questions of him prior to taking the stand?

16 MS. LEWIS: Sure. Yeah.

17 THE COURT: Do they have a copy of
18 Mr. McPhail's impound reports or --

19 MS. LEWIS: I don't know that he did an
20 impound report. I don't have a single --

21 THE COURT: Well, I'm going to order that
22 defense has access to Mr. McPhail to ask him any
23 questions prior to him taking the stand or for them to
24 fully appreciate what he's going to testify to.

25 MS. LEWIS: Sure. And just for the record,

1 I'm not 100 percent certain that he's the witness that I
2 need, so I'm still working on trying to find that
3 information.

4 And I don't know if there is an impound
5 report. I don't believe that there is because I checked
6 through the homicide file, and I have everything that is
7 in the homicide file so --

8 MR. FIGLER: And how would you --

9 MS. LEWIS: -- I don't believe there's any
10 report, but if there is, I will certainly --

11 THE COURT: You need to provide --

12 MS. LEWIS: -- forward anything.

13 THE COURT: -- information to defense so
14 they can be adequately prepared to cross-examine
15 witnesses on the issue of foundation.

16 MR. FIGLER: And, Your Honor, if somebody
17 impounded evidence without creating a report that is so
18 contrary to any case that I've ever seen from a CSA
19 saying that they -- I mean, there is no way that defense
20 can somehow now say that this was a proper seizure of
21 physical evidence without impounding it.

22 And I got to tell you, Judge. We didn't
23 know that there was gunshot residue, despite the fact
24 that some vague expert was noticed back in January until
25 last week.

1 And McPhail is a name that still doesn't
2 show up on any of our witness lists, so I'm not really
3 sure what's going on, but it's starting to sound a
4 little bit like an ambush.

5 MS. LEWIS: Well, Judge, we're not required
6 to -- I mean, whether or not something -- an impound
7 report was created is not really a basis to exclude the
8 witness from testifying about it. Certainly,
9 Mr. Figler --

10 THE COURT: It goes to the weight.

11 MS. LEWIS: -- can go on cross-examination
12 and --

13 THE COURT: It goes to the weight of the
14 admissibility of the evidence. That's certainly true.

15 MR. FIGLER: And if I might approach,
16 Your Honor, Mr. Bunin handed me a document that was
17 faxed over to the defense last night, 5/7, at 11:24 a.m.
18 It lists a supplemental notice, a Randall McPhail.

19 MR. BUNIN: A.M. would be morning.

20 MR. FIGLER: A.M. Did I not say -- what did
21 I say?

22 MR. BUNIN: You said last night.

23 MR. FIGLER: 11:24 a.m. --

24 MR. SINGER: Yesterday morning.

25 MR. FIGLER: -- while we were getting ready

1 to come over.

2 THE COURT: At this point I'm going to
3 reserve ruling on the foundation. I'm going to permit
4 you to refer to it in opening statement.

5 I believe, frankly, the admissibility of the
6 evidence -- it goes to the weight of the admissibility,
7 not the admissibility. So at this point if you're
8 anticipating referring to gunshot residue in your
9 opening statement, I'm not precluding that, and you can
10 take it up with the jury --

11 MR. FIGLER: And if it doesn't --

12 THE COURT: -- if it comes in.

13 MR. FIGLER: If it does not come in?

14 THE COURT: If doesn't come in then it's
15 fair comment.

16 MR. FIGLER: All right. So what we don't
17 have -- and I just want to make my record clear and then
18 we'll move on, Judge.

19 We got notice of the witness who's going to
20 testify about it the day trial started. We have no
21 report whatsoever about gunshot-residue testing being
22 taken or where it was taken or under what conditions it
23 was taken.

24 I have no evidence presented to the defense
25 on chain of custody of that. I don't have any --

1 THE COURT: Where is the exhibit? There has
2 to be an exhibit.

3 MS. LEWIS: Somewhere in that pile over
4 there.

5 THE COURT: I want the defense to have the
6 opportunity to review that exhibit and review that
7 information so they can adequately prepare for
8 cross-examination. You have noticed the witness and as
9 you're required to do. They need to have sufficient
10 information in order to prepare for their
11 cross-examination.

12 MS. LEWIS: And, Judge, I can tell the
13 defense that the gunshot-residue kit would not have been
14 taken any other time other than that evening or sometime
15 during the apprehension of these particular suspects.

16 It's not like somebody went over to the jail
17 and took it, you know, the next day or the day after or
18 something like that, so it definitely was out at the
19 scene where these defendants were recovered.

20 I'm still trying to work on who exactly was
21 the CSA. I believe it's Randall McPhail, so if I find
22 out different, and I find out any --

23 THE COURT: Is Randall McPhail referred to
24 in other reports?

25 MS. LEWIS: No. He's --

1 MR. FIGLER: None.

2 MS. LEWIS: -- not referred to in any report
3 which is why I didn't know who it was so --

4 MR. FIGLER: But I think under Kyle's
5 (phonetic) she has -- or the State has an absolute Brady
6 duty to know of what's in their file and what exists.
7 Being that as it may, and even if it's not a Brady
8 violation, it certainly is a discovery-rule violation to
9 come in at this late juncture to say that we have this
10 evidence.

11 And I'm not even finished with the reasons
12 why it shouldn't come in. Forget about the scientific
13 evidence, and this is a particularly different
14 gunshot-residue test than the courts have apparently
15 admitted before and this --

16 THE COURT: Well, you're familiar with the
17 test that was performed?

18 MR. FIGLER: I'm familiar only in that it's
19 normally done as a fiber test or an accelerant in arson
20 tests. I think it's something innovative to try to put
21 this type of testing that this particular lab does onto
22 gunshot residue.

23 And I think that the CV that was sent of the
24 person who by the way is not the person who's going to
25 be testifying suggests that this is a new technology or

1 a new use of existing technology to make these
2 particular determinations. I know that the Nevada Court
3 has not admitted this company before as expert because
4 it wasn't listed in this individual's CV.

5 He listed all the states where he has been
6 admitted before. Nevada was not one of them.

7 I believe that this is a new application of
8 an old technology, and as such it needs to go through a
9 Daubert (phonetic) type analysis, understanding the
10 state of law of Daubert, but at least a trustworthiness
11 and reliability examination before its admissibility.

12 So I think that the shock value of that
13 information coming on that there was gunshot residue on
14 his hands when it was one microscopic particle here, one
15 there, different elements allegedly contained therein,
16 no time frames. In other words, even their gun expert's
17 not going to be able to testify how long it was done or
18 how long it lasted.

19 And it also says in the report -- and the
20 report which was provided last week doesn't say anything
21 other than that the defendant may have been in an
22 environment where a gun was fired or gunshot residue
23 existed, and there's so many issues of transference and
24 so many issues of contamination to --

25 THE COURT: And it appears to me that's all

1 good argument for you to use in arguing the -- whether
2 the jury --

3 MR. FIGLER: Well, I appreciate that except
4 that I can't cross and say, well, isn't (indiscernible)
5 sure you took it at X amount of time when, in fact, the
6 report says et cetera, the absence of reports, the
7 probative value of all that versus the prejudicial
8 impact which is the ultimate analysis.

9 And if you look at the Nevada decisions
10 interpreting our statute in NRS 50, et al., basically
11 says that is when all else is said and done, if there is
12 a proper foundational basis, if Your Honor rules that
13 the scientific evidence is both trustworthy with regard
14 to its admissibility, that there still needs to be a
15 relevant versus probative value analysis.

16 THE COURT: And I appreciate and understand
17 that.

18 MR. FIGLER: Or versus prejudicial impact.

19 THE COURT: Right.

20 MR. FIGLER: And I'm saying that the defense
21 at this late juncture having gotten this information
22 vaguely on Wednesday and then again today and yesterday
23 while we're under trial is absolutely prejudicial to the
24 defense to be able to cross-examine this unknown
25 witness.

1 The State still can't suggest to you who did
2 this or where it was done. It's all vagaries and
3 speculation, and I think that it'd be completely unfair.

4 Let them tie it up before Your Honor outside
5 the presence of the jury before they're able to say
6 gunshot residue was found on Jamar Matthew's hands
7 because that's misleading.

8 And, quite frankly, once that bell has been
9 rung I think it would be very difficult to unring with
10 it the jury even if gunshot-residue test does not come
11 into this case.

12 THE COURT: State.

13 MS. LEWIS: Judge, once again, I mean we're
14 not required to provide a report. Whether or not a
15 report was prepared that shows under what circumstances
16 and the when and how the testing, the kit, was taken
17 doesn't go to admissibility here.

18 I mean, certainly Mr. Figler's free to
19 cross-examine Randall McPhail regarding those points,
20 but we're not required to provide a test.

21 He was put on notice that we're noticing
22 this specific witness, Mike Martinez, from Bexar County.
23 Mike Martinez has testified here in the Eighth Judicial
24 courts numerous times as have --

25 THE COURT: With regard to this type of

1 testing --

2 MS. LEWIS: Yes.

3 THE COURT: -- which was Mr. Figler's point.

4 MS. LEWIS: Yes, with regard to this exact
5 type of testing he's testified on numerous occasions.

6 I've had him before on a witness about two years ago.

7 Mr. Bateman had Crystina Vachon who is another lab
8 employee that works with Mike Martinez testify just
9 recently as last month.

10 So, I mean, these people have testified here
11 before. They are the lab that routinely performs this
12 testing for the Las Vegas Metropolitan Police
13 Department.

14 THE COURT: All right.

15 MS. LEWIS: I guess they have a contract
16 with this particular lab.

17 THE COURT: At this point --

18 MR. FIGLER: And I see that. I stand
19 corrected on that, Your Honor.

20 THE COURT: At this point I'm going to allow
21 the State to proceed. With that information, obviously,
22 it's subject to a foundation, laying a foundation.

23 I'm going to order State to provide to
24 counsel an opportunity to review the exhibits so they
25 can be adequately prepared for cross-examination. Is

1 that clear?

2 MR. FIGLER: Yes, Your Honor. And then just
3 the last thing was the notice that they gave us during
4 the first day of trial of a new witness.

5 This is a witness that despite the fact they
6 didn't show up in any of the reports, that there's no
7 real good-faith reason if they knew back when they say
8 that they noticed us on firearms expert.

9 They can't have it both ways. If they knew
10 about it on January 26th of '07 that they were going to
11 do gun residue and they say shame on us for not pursuing
12 it somehow more vehemently, then they can't say that,
13 oh, we didn't know that we needed to notice the witness
14 for the chain of custody until the first day of trial.

15 That's not within five days under the
16 statute, and there's no other reason how this witness
17 should be able to testify. It violates the rules with
18 regard to notice.

19 And if they can't bring in Mr. McPhail, that
20 evidence doesn't come in. And if that evidence doesn't
21 come in, they shouldn't be able to refer to. So we have
22 this notice violation as well.

23 THE COURT: I understand, and you've made
24 your record on that point. I believe that based upon
25 the state of the evidence there's sufficient -- at least

1 at this point sufficient information and notice for you
2 to proceed.

3 Any other points?

4 MR. SINGER: Judge, just that defendant,
5 Pierre Joshlin, wants to join in defendant Matthew's
6 application on this point of the gunshot residue.

7 THE COURT: Understood. Anything else?

8 (No audible response)

9 THE COURT: Then let's bring the jury in.

10 (Off-record colloquy)

11 MR. FIGLER: I just wonder if we can inquire
12 if there's any other witnesses that are going to be
13 coming in that we don't know about.

14 THE COURT: That's a fair question.

15 MR. FIGLER: Are there any other witnesses
16 that we don't know about or is that it? The Judge said
17 I can make inquiry to you directly.

18 MS. LEWIS: I gave you a list of all of them
19 (indiscernible).

20 MR. BUNIN: When was the list of all the
21 witnesses because this one we didn't get until
22 yesterday. So when was the list we got of all the
23 witnesses?

24 MS. LEWIS: I actually told you some CSAs
25 would be testifying. I still don't know exactly which

1 ones so --

2 MR. BUNIN: So there might still be other
3 witnesses we don't know about? I just need to know for
4 the record.

5 MS. LEWIS: Oh, no, we've noticed everybody
6 that will be testifying.

7 (Off-record colloquy)

8 MR. FIGLER: Can we hold off bringing them
9 in for one second. I'm tying the tie for the defendant.

10 THE COURT: (Indiscernible) is already out
11 there.

12 (Off-record colloquy)

13 MR. FIGLER: We're good. Thank you.

14 Thanks, Dave.

15 (Jury present)

16 THE BAILIFF: Jury's present, please.
17 Panel's present, Your Honor.

18 THE COURT: Thank you.

19 THE BAILIFF: Be seated, please.

20 THE COURT: We're on the record in C228460,
21 State of Nevada, plaintiff, versus Pierre Joshlin and
22 Jamar Matthews.

23 Record should reflect presence of all
24 counsel and parties and presence of the jury.

25 Do the parties stipulate to the presence of

1 the jury?

2 MS. LEWIS: State so stipulates.

3 MR. BUNIN: Yes, Your Honor.

4 MR. SINGER: Yes, Your Honor.

5 THE COURT: Good morning, ladies and
6 gentlemen.

7 THE JURORS: Good morning.

8 THE COURT: I know we had a long night last
9 night, and, hopefully, we won't be pushing quite so far
10 tonight, but it's my intention to work at this case as
11 best pace as we're able.

12 I have a few opening comments that I need to
13 make to you before we get into the evidence. I
14 apologize. It's important information that I need to
15 read and help you understand so you have a better idea
16 of how this process works and it can be more effective.

17 Ladies and gentlemen, you are now sworn
18 members of this jury. And before we commence with
19 opening statements, again, I need to make these
20 comments.

21 You are admonished that no juror may declare
22 to a fellow juror any fact relating to this case of his
23 or her own knowledge, and if any juror discovers during
24 the trial or after the jury has retired that he or she
25 or any other juror has personal knowledge of any fact in

1 controversy in this case, he or she shall disclose such
2 situation to myself in the absence of the other jurors.

3 This means that if you learn during the
4 course of this trial that you're acquainted with the
5 facts of this case or the witnesses that you have not
6 previously told me about, you must declare that fact to
7 me and you communicate that information to me through
8 the bailiff. Is that understood?

9 (No audible response)

10 THE COURT: Thank you. During the course of
11 the trial, attorneys of both sides, they'll be
12 witnesses, court personnel, the bailiff, are not --
13 other than the bailiff -- are not permitted to converse
14 with you.

15 This means, ladies and gentlemen, if you see
16 the litigants in the hallways, in the elevators as I
17 understand, downstairs in the cafeteria during the
18 course of this trial, they are not permitted to talk to
19 you in any way. They're not permitted to acknowledge
20 you. They're not permitted to nod and be -- to
21 acknowledge you in any way.

22 It's not because they're being rude. It's
23 because the Court rules say they are not permitted to do
24 so, so they are bound by that ethic. And the fact that
25 that communication might occur, they're required to

1 report to me that information and to do so or not to do
2 might contaminate this verdict.

3 Again, you are admonished not to visit the
4 scene of any of the acts or occurrences mentioned during
5 this trial unless specifically directed to do so by the
6 Court.

7 Please do not investigate this case or
8 anyone who has anything to do with this case on your
9 own. Do not undertake any legal or factual research on
10 your own.

11 You must base your decision in this case
12 upon the information you receive in this room and this
13 room alone or in the courtroom. Is that understood?

14 (No audible response)

15 THE COURT: Thank you. What I will say now
16 is not intended to serve as an introduction to the case
17 but -- or as a substitute for the detailed instructions
18 to the law, but to give you, again, an overview.

19 This is a criminal case commenced by the
20 State of Nevada, sometimes referred to the State,
21 against Mr. Joshlin and Mr. Matthews.

22 This case is based upon information, and the
23 clerk will now read that information to you and state
24 the plea of the defendants to that information.

25 THE CLERK: Thank you, Your Honor.

1 "In the matter of District Court, Clark
2 County, Nevada. David Roger, Clark County District
3 Attorney, filing the information, amended information
4 filed May 7th, year 2007.

5 State of Nevada, plaintiff, versus
6 Pierre Joshlin and Jamar Matthews, defendants.
7 David Roger, District Attorney, within and for the
8 County of Clark, State of Nevada, in the name and by the
9 authority of the State of Nevada informs the Court that
10 Pierre Joshlin and Jamar Matthews, the defendants of
11 both named, having committed the crimes of conspiracy to
12 commit murder, a felony; murder with use of a deadly
13 weapon, felony; attempt murder with use of a deadly
14 weapon, felony; possession of short-barreled rifle,
15 felony; conspiracy to commit robbery, felony; robbery
16 with use of a deadly weapon, felony; and assault with
17 deadly weapon, felony, on or about (indiscernible)
18 year 2006 within the County of Clark, State of Nevada,
19 contrary to the form, force and effect of statutes in
20 such cases made and provided and against the peace and
21 dignity of the State of Nevada.

22 Count I, conspiracy to commit murder.
23 Defendants did then and there meet with each other and
24 between themselves, and each of them with the other
25 willfully and lawfully and feloniously conspire and

1 agree to commit a crime, to wit: murder, and in
2 furtherance of said conspiracy, defendants did commit
3 the acts as set forth in Counts II through IV, said acts
4 being incorporated by this reference as though fully set
5 forth herein.

6 Count II, murder with use of a deadly.
7 Defendants did then and there willfully, feloniously and
8 without authority of law and with premeditation and
9 deliberation and with malice aforethought kill
10 Mercy Williams, a human being, by shooting at and into
11 the body of said Mercy Williams with a deadly weapon, to
12 wit: a firearm, in the following manner, to wit:
13 defendants being responsible under the following
14 principles of criminal liability, to wit: one, by
15 directly committing said crime; and/or two, by the
16 defendants conspiring with each other and unidentified
17 others to kill the said Mercy Williams, whereby each
18 defendant is vicariously liable for the acts committed
19 in furtherance of said conspiracy if that defendant
20 intended that act to occur; and/or three, the defendants
21 aiding or abetting in the commission of the crime by
22 accompanying each other to the crime scene where both of
23 them repeatedly fired guns at the said Mercy Williams
24 and helped provide a getaway vehicle by assisting in the
25 robbery of an automobile immediately after the shooting,

1 the defendants encouraging one another throughout by
2 actions or words; the defendants acted in concert
3 throughout.

4 Count III, attempt murder with use of a
5 deadly weapon. Defendants did then and there without
6 authority of law and malice aforethought willfully and
7 feloniously attempt to kill Myniece Cook, a human being,
8 by shooting at the said Myniece Cook with a deadly
9 weapon, to wit: a firearm, in the following manner, to
10 wit: defendants being responsible under the following
11 principles of criminal liability, to wit: one, by
12 directly committing said crime; and/or two, by the
13 defendant's conspiring with each other and unidentified
14 others to kill the said Myniece Cook, whereby each
15 defendant is vicariously liable for the acts committed
16 in furtherance of said conspiracy if that defendant
17 intended that act to occur; and/or three, the defendants
18 aiding or abetting in the commission of the crime by
19 accompanying each other to the crime scene where both of
20 them repeatedly fired guns at the said Myniece Cook and
21 helped provide a getaway vehicle by assisting in the
22 robbery of an automobile immediately after said
23 shooting; the defendants encouraging one another
24 throughout by actions or words; the defendants acting in
25 concert throughout.

1 Count IV, attempt murder with use of a
2 deadly weapon. Defendants did then and there, without
3 authority of law and malice aforethought, willfully and
4 feloniously attempt to kill Michel'le Tolefree, a human
5 being, by shooting at the said" -- I think it's
6 Michel'le Tolefree -- "with a deadly weapon, to wit: a
7 firearm, in the following manner, to wit: defendants
8 being responsible under the following principles of
9 criminal liability, to wit: one, by directly committing
10 said crime; and/or two, by the defendant's conspiring
11 with each other and unidentified others to kill the said
12 Michel'le Tolefree, whereby each defendant is
13 vicariously liable for the acts committed in furtherance
14 of said conspiracy if that defendant intended that act
15 to occur; and/or three, the defendants aiding or
16 abetting in the commission of the crime by accompany
17 each other to the crime scene where both of them
18 repeatedly fired guns at the said Michel'le Tolefree and
19 helped provide a getaway vehicle by assisting in the
20 robbery of an automobile immediately after said
21 shooting; the defendants encouraging one another
22 throughout by actions or words; the defendants acting in
23 concert throughout.

24 Count V, attempt murder with use of a deadly
25 weapon. Defendants did then and there without authority

1 of law and malice aforethought willfully and feloniously
2 attempt to kill Maurice Hickman, a human being, by
3 shooting at the said Maurice Hickman with a deadly
4 weapon, to wit: a firearm, in the following manner, to
5 wit: defendants being responsible under the following
6 principles of criminal liability, to wit: one, by
7 directly committing said crime; and/or two, by the
8 defendants conspiring with each other and unidentified
9 others to kill the said Maurice Hickman, whereby each
10 defendant is vicariously liable for the acts committed
11 in furtherance of said conspiracy if that defendant
12 intended that act to occur; and/or three, the defendants
13 aiding or abetting in the commission of the crime by
14 accompanying each other to the crime scene where both of
15 them repeatedly fired guns at the said Maurice Hickman
16 and helped provide a getaway vehicle by assisting in the
17 robbery of an automobile immediately after the said
18 shooting; the defendants encouraging one another
19 throughout by actions or words; the defendants acting in
20 concert throughout.

21 Count VI, possession of short-barreled
22 rifle. Defendant Jamar Demon Matthews did then and
23 there willfully, unlawfully and feloniously possess a
24 short-barreled rifle having a barrel less than 16 inches
25 in length, to wit: a Ruger Model 10/22 .22 caliber with

1 a barrel approximately ten-and-three-quarter-inch long
2 and overall length of 20 inches.

3 Count VII, conspiracy to commit robbery.
4 Defendants did then and there meet with each other and
5 between themselves, and each of them with the other
6 willfully, unlawfully and feloniously conspire and agree
7 to commit a crime, to wit: robbery, and in furtherance
8 of said conspiracy, defendants did commit the acts as
9 set forth in Counts II and III, said acts being
10 incorporated by this reference as though fully set forth
11 herein.

12 Count VIII, robbery with use of a deadly
13 weapon. Defendants did then and there willfully,
14 unlawfully and feloniously take personal property, to
15 wit: a 1991 Lincoln Town Car, from the person of Geishe
16 M. Orduno or in her presence by means of force or
17 violence or fear of injury to and without the consent
18 and against the will of the said Geishe M. Orduno, said
19 defendant using a deadly, to wit: a firearm, during the
20 commission of said crime in the following manner, to wit
21 weapon: Defendant Jamar Matthews, also known as Jamar
22 Demon Matthews, directly committing said crime,
23 defendant Pierre Joshlin aiding and abetting by pointing
24 said firearm at the said Geishe M. Orduno.

25 Count IX, robbery with use of a deadly

1 weapon. Defendants did then and there willfully,
2 unlawfully and feloniously take personal property, to
3 wit: a 1991 Lincoln Town Car, from the person of
4 Melvin Bolden or in his presence by means of force or
5 violence or fear of injury to and without the consent
6 and against the will of the said Melvin Bolden, said
7 defendant using a deadly weapon, to wit: a firearm,
8 during the commission of said crime in the following
9 manner, to wit: Defendant Pierre Joshlin directly
10 committing said crime, defendant Jamar Matthews aiding
11 and abetting by pointing said firearm at the said
12 Melvin Bolden.

13 Count X, assault with a deadly weapon.
14 Defendant Jamar Matthews, also known as Jamar Demon
15 Matthews, did then and there willfully, unlawfully and
16 feloniously and intentionally place another person, to
17 wit: Bradley Cupp, in reasonable apprehension of
18 immediate bodily harm with use of a deadly weapon, to
19 wit: a firearm, by pointing said firearm at the said
20 Bradley Cupp.

21 Count XI, assault with a deadly weapon.
22 Defendant Jamar Matthews, also known as Jamar Demon
23 Matthews, did then and there willfully, unlawfully,
24 feloniously and intentionally place another person, to
25 wit: Brian Walter, in reasonable apprehension of

1 immediate bodily harm with use of a deadly weapon, to
2 wit: a firearm, by pointing said firearm at the said
3 Brian Walter."

4 Signed by David Roger, District Attorney;
5 Linda Lewis, Deputy District Attorney, to which the
6 defendants have entered a plea of not guilty.

7 THE COURT: Ladies and gentlemen, you should
8 understand that this is simply a charge and not any
9 sense -- in any sense evidence of guilt.

10 The defendant has pled not guilty. It is
11 therefore the State's burden of proof to prove each
12 essential element of the charges that have just been
13 read to you. Do you understand?

14 (No audible response)

15 THE COURT: The purpose of this trial is to
16 determine whether the State will meet that burden. It
17 is your primary responsibility as jurors to find and
18 determine the facts under our system of criminal
19 procedure.

20 You are the sole judges of facts. You are
21 to determine the facts from the testimony you hear and
22 the other evidence that you receive, including exhibits
23 introduced in the Court. It is up to you to determine
24 what inferences which you feel are properly drawn from
25 that evidence and that testimony.

1 At times I may sustain objections to
2 questions that are asked by lawyers. I may ask that you
3 disregard testimony or exhibits. You must not consider
4 any evidence which an objection has been sustained to or
5 where I have instructed you to disregard that evidence.

6 Anything that you may have seen or heard
7 outside this courtroom is not evidence, and it must be
8 disregarded.

9 You must not be influenced in any degree by
10 personal feelings of sympathy for or prejudice against
11 the State or the defendant. Both sides are entitled to
12 the same fair and impartial consideration in considering
13 the weight and value of the testimony of any witnesses.

14 You may take into consideration the
15 appearance, attitude, behavior of the witnesses, the
16 interest of the witness in the outcome of the case if
17 any, the relationship of the witness to the defendant or
18 the State, the inclination of the witness to speak
19 truthfully or not, the probability or improbability of
20 the witness's statement and all the facts and
21 circumstances of the evidence. Do you understand?

22 (No audible response)

23 THE COURT: Again, you are the trier of
24 fact. Thus, you may give the testimony of the witness
25 such weight and value as you believe the testimony and

1 the witness are entitled to receive.

2 There are two kinds of evidence, direct and
3 circumstantial. Direct evidence is testimony by a
4 witness about what the witness personally saw, heard or
5 did.

6 Circumstantial evidence is testimony or
7 exhibits which are proof of a particular fact from
8 which, if proven, you may infer the existence of a
9 second fact.

10 You may consider both direct and
11 circumstantial evidence in deciding this case. The law
12 permits you to give equal weight to both, but it is up
13 to you to decide how much weight to give any of the
14 evidence.

15 Opening statements and closing arguments of
16 the attorneys are intended to help you understand the
17 evidence and apply the law, but they are not evidence.

18 Until this case is submitted to you, you
19 must not discuss it with anyone, even with your fellow
20 jurors. That's very important.

21 As we proceed through this trial when you're
22 in the room waiting to come and go, it's okay to talk
23 about the weather, talk about anything else, but don't
24 talk about the evidence because you wait until you
25 receive all of the evidence as we talked yesterday and

1 all of the instructions before you're permitted to
2 discuss it among yourselves. Is that clear?

3 THE JURORS: Yes.

4 THE COURT: Good. If you cannot hear a
5 witness, please raise your hand as an indication.

6 Also, if you need to use the restroom, if
7 you feel ill, please raise your hand and give me an
8 indication. This is not a test of endurance.

9 My intent is to give you an opportunity to
10 listen to the witnesses and the evidence fairly and in
11 comfort. If you want to bring in a bottle of water,
12 feel free to do so in moderation.

13 I want you comfortable. I want you
14 listening to the testimony so you can make a fair and
15 just decision in this case.

16 During this trial, I may take notes of
17 witness testimony. You are not to make any inference
18 from that action. I am required to prepare for legal
19 arguments by counsel during this trial and for that
20 reason I may take notes.

21 The jury will not have a transcript to
22 consult at the close of this case. However, the jury
23 will be furnished with note pads and pencils and you
24 will be also allowed to take notes. Have you received
25 that yet? If not, you'll be getting it shortly.

1 Pursuant to a new Supreme Court rule, you
2 will be given an opportunity to write questions, if any,
3 during the witnesses who testify. You are not
4 encouraged to ask large numbers of questions because it
5 is the primary responsibility of the lawyers to ask
6 questions.

7 Questions may be asked only in the following
8 manner. After both lawyers have finished questioning
9 the witness and only at this time if there are any
10 additional questions that you would like to ask the
11 witness you may then seek permission to ask the witness
12 a written question.

13 Should you desire to ask a question, you
14 write the question down with your juror number on a full
15 sheet of paper. It must be a clean piece of paper and
16 you must raise your hand.

17 All questions from jurors must be factual in
18 nature, designed to clarify information already
19 presented. In addition, jurors must not place undue
20 weight on responses to their question.

21 The bailiff will pick up your question and
22 give it to me. All questions must be directed to the
23 witness and not to the lawyers or to me.

24 After consulting with counsel, I will
25 determine if the question is legally proper. If I

1 determine that the question may properly be asked, I
2 will ask the question. No adverse inference should be
3 drawn if the Court does not allow a particular question
4 to be asked. Is that understood?

5 (No audible response)

6 THE COURT: All right. The trial will
7 proceed in the following manner. The Deputy District
8 Attorney will make an opening statement which is an
9 outline to help you understand what the State expects to
10 prove.

11 Next, the defendant's attorney may, but does
12 not have to, make an opening statement. Opening
13 statements serve as an introduction to the evidence
14 which the party is intending to prove. The State will
15 present its evidence and counsel for the defendant may
16 cross-examine witnesses.

17 Following the State's case, the defendant
18 may present evidence and the Deputy District Attorney
19 may cross-examine the witnesses. However, as I have
20 said, the defendant is not obligated to present any
21 evidence.

22 After all the evidence has been presented, I
23 will instruct you on the law. After the instructions on
24 the law have been read to you, each side has an
25 opportunity to present oral argument.

1 What is said in closing argument, again, is
2 not evidence. Arguments are designed to summarize and
3 interpret the evidence.

4 Since the State has the burden of proving
5 the defendant guilty beyond a reasonable doubt, State
6 has the right to open and close the arguments. After
7 the arguments have completed, you will retire to
8 deliberate.

9 Again, I'll remind you that until this case
10 is submitted to you, do not talk to each other or anyone
11 else about this case. Don't go home tonight and talk to
12 your loved ones, your family about this case.

13 You're not permitted to talk to each other.
14 You're not permitted to talk to anyone else. Keep your
15 thoughts personal and private.

16 Do not let anyone else talk to you about the
17 case. If anyone persists in attempting to talk to you,
18 contact the bailiff immediately and provide that
19 information to me.

20 Do not read any news stories or articles or
21 listen to any radio or television reports about the case
22 or anyone who has anything to do with the case. Do not
23 visit the scene or any of the events mentioned during
24 the trial or undertake any investigation on your own.
25 Are these rules clear?

1 THE JURORS: Yes.

2 THE COURT: Good.

3 State, are you prepared to proceed with your
4 opening statement?

5 MS. LEWIS: Yes, Your Honor. May it please
6 the Court, counsel, co-counsel, ladies and gentlemen of
7 the jury.

8 On September 30th of last year
9 Mercy Williams was murdered. She was murdered in an
10 ambush-style attack upon her and her two cousins as they
11 stood outside a friend's house here in Las Vegas in a
12 local neighborhood.

13 After the gunmen lodged almost 40 bullets at
14 Mercy and her cousins and their friend, they ran around
15 the corner. And when they ran around the corner, they
16 encountered an unsuspecting older couple as they were
17 returning home from a night out.

18 It was Saturday night. It was almost
19 10:00 o'clock and Geishe and Melvin Bolden were coming
20 home from a night out.

21 And as they were coming home, they were
22 pulling into their driveway when these gunmen came up to
23 them and demanded the car from them at gunpoint that
24 they were driving in. Melvin and Geishe quickly got out
25 of the car.

1 The gunmen got in and sped off out of the
2 area. You will hear that two of these gunmen sit here
3 in this courtroom, Joshlin, Pierre Joshlin, and
4 Jamar Matthews.

5 The testimony will show that Mercy Williams
6 who was 22 years old on September 30th was with her two
7 cousins, Myniece Cook, her older cousin who was 27, and
8 Michel'le Tolefree, her younger cousin who was 16. They
9 had been at their grandmother's house having Saturday
10 dinner with grandmother and with other family members.

11 And when they were getting ready to leave,
12 Michel'le wanted to stop and visit one of her friends
13 who lived in that particular neighborhood where
14 grandma's house was.

15 This friend was Maurice Hickman, and you're
16 going to hear that Maurice Hickman lived at 1271 Balzar
17 which is at the top of the map here.

18 1271 Balzar intersects with the intersection
19 of Lexington, Balzar running west to east at the top of
20 the map and Lexington running north to south.

21 Just to the right here is a circle at the
22 top of the map and that area is known as Circle Park.
23 You're going to hear that referenced.

24 Maurice Hickman was living here at
25 1271 Balzar and the girls stopped so that Michel'le

1 could say hi to Maurice. They were there for a few
2 moments, and they were standing out front in front of
3 Maurice's house talking.

4 You're going to see pictures, but here's a
5 picture of the side of Maurice's house. Balzar avenue
6 is at the top and the front door of the house faces onto
7 Balzar, and over here on the side where these orange
8 cones are, this is Lexington --

9 MR. FIGLER: And, Your Honor, I'd like to
10 lodge an objection at this time.

11 THE COURT: What's your objection?

12 MR. FIGLER: The objection is that it
13 appears as though instead of explaining what the
14 evidence will be, that there's actual testimony that is
15 going on by pointing out the different areas on the
16 photos, so I think that it crosses the line of opening
17 statement.

18 MR. SINGER: Judge, we'd join in the
19 objection.

20 THE COURT: Overruled.

21 MS. LEWIS: Thank you, Judge.

22 Lexington Avenue, as you can see where these
23 orange cones are -- Lexington Street -- I'm sorry --
24 runs on the side of the house, and Lexington goes north
25 to south, so this picture is actually looking towards

1 the north.

2 You'll hear testimony that the girls were
3 standing with Maurice right in this area here in between
4 the car that you see here and the house, and they were
5 just having a friendly conversation when, suddenly, the
6 gunmen came from around this corner and walked up and
7 just started shooting.

8 They'll describe the gunmen as young black
9 males. They were wearing black clothes, and they just
10 opened fire. Almost 40 shell casings were covered at
11 that scene.

12 Right after the shooting happened, you'll
13 hear testimony from Michel'le who will tell you that her
14 and Maurice ran in the same direction across the street,
15 and they took cover somewhere across the street.

16 Myniece and Mercy ran together, and Myniece
17 will tell you that Mercy didn't move fast enough, so she
18 grabbed Mercy's arm and they went arm and arm. They
19 took a few steps, and as they took those few steps,
20 suddenly Mercy felt very heavy in Myniece's arm, and she
21 fell to the ground.

22 Right away Myniece didn't know what
23 happened. She thought maybe Mercy just dropped to the
24 ground to take cover, and so Myniece turned the
25 corner --

1 MR. FIGLER: Your Honor, I object again. We
2 have three objections. Maybe we should approach on what
3 they are.

4 THE COURT: Approach.

5 MR. FIGLER: Thanks.

6 (Off-record bench conference)

7 THE COURT: Please continue.

8 MS. LEWIS: Thank you, Judge.

9 As you can see in this picture, here's that
10 same blue car, and the girls were standing towards the
11 end of the car.

12 And so as they ran -- as Myniece -- I'm
13 sorry. As Mercy and Myniece went in this direction and
14 took the few steps, Myniece turned the corner at the
15 house right here, and she took cover around the corner
16 of the house.

17 She saw Mercy on the ground and thought that
18 Mercy had just dropped to the ground to take cover.
19 However, she realized that Mercy actually was dead after
20 the fact.

21 Myniece watched from where she was, and she
22 watched the end of the house and saw those gunmen again
23 run around the corner of the house and now going south
24 on Lexington the same way they had come on foot.

25 And after she saw them go in this direction,

1 she then came over to Mercy, and she realized that Mercy
2 was dead. It was readily apparent to her because Mercy
3 had a gunshot right in the head, and she started
4 bleeding from the head.

5 So there was no question in Myniece's mind
6 as to what had happened to Mercy and why she was -- why
7 she had fallen on the ground so suddenly.

8 You'll see that -- you'll hear testimony
9 that Melvin -- Melvin Bolden's home is actually right at
10 the corner here, and the street that goes east/west just
11 one block south of Balzar is called Lawry Street, and
12 Melvin Bolden's home is, actually, right on that corner
13 at Lawry Street.

14 Melvin Bolden and Geishe Orduno will tell
15 you that they were driving, and it was Geishe's car. It
16 was a gray Lincoln Town Car, and they were just coming
17 home.

18 And they were coming up Lawry Street, and
19 they heard shots fired in this area. And Melvin was
20 driving at that moment, and Melvin thought he could make
21 it home and get in the house and be safe.

22 You'll hear testimony that as they were
23 pulling into the driveway and getting ready to park the
24 car, suddenly, they were surrounded by gunmen. And
25 they'll describe them as young black males who were

1 wearing black clothes carrying guns. They were wearing
2 red and black gloves.

3 And they'll also describe for you what they
4 thought the guns looked like. Specifically, one in
5 particular looked like a shotgun or a rifle, and you'll
6 hear that description from Melvin and Geishe.

7 And they'll you that they feared for their
8 lives because they had just heard those shots fired, and
9 now they see these gunmen surrounding them at their car,
10 so they right away got out and gave up the car. And as
11 soon as the gunmen got in the car, they sped off
12 instantly.

13 And Melvin and Geishe called 911 right away.
14 And back at the corner at 1271 Balzar you'll hear that
15 also 911 was called by the resident of 1271 Balzar,
16 Maurice Hickman's mother.

17 So the girls were here with Mercy. Melvin
18 and Geishe were here not realizing what even had
19 happened at 1271 Balzar. All they knew is that they
20 heard shots fired and, suddenly, they were carjacked at
21 gunpoint by four individuals who they didn't know.

22 Up until this point these four gunmen were
23 acting in a very planned, methodical fashion. They came
24 to 1271 Balzar, to the shooting scene, and they were
25 acting in concert throughout.

1 They ran at the same time in the same
2 direction. They got to Melvin and Geishe's car. Again,
3 they were acting in concert throughout when they robbed
4 Melvin and Geishe of that Lincoln Town Car.

5 However, what they weren't planning on at
6 that point is there were two officers who happened to be
7 in this area, Officers Bradley Cupp and Officer Brian
8 Walters (sic), and you're going to hear that Officers
9 Cupp and Walters (sic) were patrolling in this area
10 around Circle Park.

11 They heard shots fired. They drove to the
12 same direction of where they heard those shots fired,
13 and that, ultimately, led them here on Lexington Street.
14 And it actually, as luck would have it, led them right
15 to the corner opposite of Melvin Bolden's home.

16 And they were in an unmarked car. It was a
17 maroon Chrysler vehicle, and they were sitting in their
18 car, and they didn't notice a single sole in the whole
19 area.

20 They heard gunshots, and they didn't notice
21 a single sole until they got to that corner when they
22 saw Melvin Bolden and Geishe Orduno at that Lincoln.
23 And they thought it was strange because that was the
24 only activity in the whole area, and they could see a
25 commotion.

1 They were too far to be able to hear the
2 conversation or the words that were being said, but they
3 could definitely see something was going on at this Town
4 Car and it didn't look right to them.

5 And they watched the Town Car, then, speed
6 off leaving behind the female and the male who are
7 Melvin and Geishe, and they saw the gunmen get into the
8 car, and they watched the car speed off, and so they
9 pursued that vehicle.

10 In fact -- and here's the front view of
11 Melvin and Geishe's home on Lexington and Lawry there.

12 Officers Cupp and Walters (sic) actually
13 watched the car as it went towards Martin Luther King,
14 and you'll see that Martin Luther King runs north/south,
15 and it is just slightly to the west of where this all
16 happened. They watched the car go to the west and
17 actually run a stop sign at Martin Luther King.

18 And at that point they activated their
19 lights and sirens. Although it's an unmarked Chrysler,
20 it is equipped with lights and sirens like a police car.

21 So at that point a police vehicle pursuit
22 began, and they're now driving down Martin Luther King
23 at a high rate speed. And when they get to Lake Mead
24 which is right here just to the south, there's a red
25 light there, and the driver of the Lincoln blows through

1 the red light.

2 Officers Cupp and Walters (sic) are still
3 following at this point, and they follow it all the way
4 down to this street here which is Jimmy Avenue
5 (phonetic). At that point the Lincoln turns east onto
6 Jimmy Avenue.

7 And it starts to slow down as it rounds that
8 corner. And when it starts to slow down, it's now going
9 at speeds of about 15 to 20 miles an hour with Officers
10 Cupp and Walters (sic) right behind the car.

11 And at this point the driver of the car is
12 driving so slow he's now leaning out. He's got the
13 door, the driver's side door, open and he's now leaning
14 out.

15 And Officers Cupp and Walters (sic) will
16 tell you that their instincts told them that they
17 thought the people in this car were getting ready to
18 make a jump for it, they were getting ready to go on
19 foot, so they stayed with the car.

20 They watched the driver. And when he leaned
21 out, they could see that the driver was holding some
22 sort of rifle or shotgun in his hands, and, suddenly,
23 the driver got out of the car. And when he jumped out
24 of the car, he ended up colliding with the front of
25 Officers Cupp and Walter's Chrysler that they were

1 driving.

2 The driver rolled over the hood of that
3 particular car. He got up and started running. And
4 when he started running, the car kept going, and it
5 actually crashed, and there's a little mark right here,
6 a little blue mark, to show you where the car crashed.

7 Right to the left there on the map is a
8 church, so the car actually came to a stop and crashed
9 into a fire hydrant that's just in front of this church
10 here.

11 And when the driver got out, both Officers
12 Cupp and Walters (sic) could see him. They could see he
13 was wearing all black clothes. They could see he had
14 red gloves on. They could see that shotgun, and he took
15 off running. And Officer Walter immediately began to
16 chase him on foot.

17 And you'll see that this is how the car
18 looked when it crashed up on the sidewalk. In the front
19 of it is the fire hydrant that it crashed into when it
20 finally came to a stop.

21 And Officer Walter chased the driver whom
22 you will hear identified in court. Officer Walter and
23 Officer Cupp will both identify the driver as
24 Jamar Matthews who sits here in court represented by
25 Mr. Figler and Mr. Bunin.

1 Officer Walter will tell you that as he
2 chased Jamar Matthews, Jamar Matthews headed towards
3 east, and the street he headed towards is Eleanor
4 (phonetic), and he lost sight of him specifically at
5 this house, 1200 Eleanor.

6 Officer Walters (sic) will tell you that
7 Jamar Matthews ran to the front of that house and he ran
8 towards the back, and at that point Officer Walters
9 (sic) heard three gunshots. Because he heard those
10 three gunshots, he stopped chasing Jamar Matthews at
11 that point, and he didn't see where he went. That's
12 where he lost sight of him.

13 And Officer Walters (sic) doubled back to
14 where his partner was in the car back at the church
15 because he heard those gunshots.

16 You're going to hear that while
17 Officer Walters (sic) went immediately on foot and
18 chased the driver who exited first from that vehicle,
19 Officer Cupp at the scene with the car, he saw two other
20 people come out of the car, and those two were also
21 young black males wearing dark clothes.

22 One of them had black gloves on, and the
23 person with the black gloves was holding a Glock pistol.
24 Officer Cupp focused his attention completely on that
25 person because of the pistol that he had in his hands.

1 So Officer Cupp is going to tell you that he
2 immediately began a foot pursuit, and that person whom
3 he will identify in Court as will Officer Walters (sic),
4 they will both come to court and identify that
5 individual as Pierre Joshlin who sits here in Court
6 represented by Mr. Singer.

7 Officer Cupp will tell you that
8 Pierre Joshlin ran towards the south and went into this
9 area here, and then he turned into this parking lot
10 area. And when he turned into this parking lot area,
11 there's a wall here, and then he jumped over that wall.

12 Officer Cupp will tell you that instead of
13 continuing to run and jump over the wall himself, he
14 doubled back to get in his car because he was familiar
15 with this area, and he knew on the other side of this
16 wall are these apartments, and the address 1701 J Street
17 and 1801 J Street, two sets of apartments connected
18 together.

19 Officer Cupp was familiar with what was on
20 the other side of the wall. He knew the only thing over
21 there were apartments, so he thought he'd get in his car
22 and come back around that way.

23 You're going to hear by this time there were
24 many other officers in this particular area, and many of
25 the officers heard the gunshots and were responding at

1 this point. And not only were they responding because
2 they heard the gunshots, but by this point Officers Cupp
3 and Officer Walters (sic) are on their radio giving
4 commands as to where they are.

5 They're saying we're following this vehicle
6 from the 1284 Lawry address. It's a gray Town Car.
7 It's driving this direction. It's driving that
8 direction.

9 They also gave commands the vehicle has
10 stopped, and the suspects are running from the vehicle
11 and we're on foot pursuit, so every available officer in
12 this area knew where Officer Cupp and Walters (sic) had
13 ended their pursuit of the vehicle and where the foot
14 pursuit began.

15 You're going to hear testimony from
16 Officers Rios, Kenneth Rios and Todd Conn. Officer Rios
17 and Conn will tell you that they also were on patrol
18 this particular evening. They were in the area of the
19 Circle Park when they heard those gunshots that went
20 off.

21 They also drove to the area of where the
22 gunshots sounded like it came from, and that took them
23 to 1271 Balzar. They were driving a mini van and with
24 them was Sergeant Gary Dale.

25 And Officer Rios and Conn will tell you that

1 Sergeant Dale stayed at the homicide scene because the
2 two girls, Mercy Williams and Myniece Cook, were
3 injured, and he stayed there, and Officer Rios and
4 Officer Conn continued on to come and assist
5 Officers Cupp and Walters (sic).

6 Officers Rios and Conn will tell you that
7 they came down J Street. And knowing that the car crash
8 was at the church over here and that J Street goes all
9 the way through Lake Mead, they decided to come across J
10 Street across Lake Mead, and then they were in the area
11 right here.

12 They're going to tell you that over here is
13 a park known as Doolittle Park and a school, and they're
14 going to tell you that this area is pretty well lit.
15 And as they were driving and getting close to Doolittle
16 is when they saw a black male wearing all black clothes
17 cross the street right down in this area.

18 My hand's not shaking. It's the pointer.

19 This street right here is called Wyatt
20 Avenue (phonetic), and right at about Wyatt Avenue is
21 where Officers Rios and Conn noticed this person go
22 across the street towards the entrance of this apartment
23 complex. I'll call it the J Street apartment complex.

24 They're going to tell you that they watched
25 the person go in, and this apartment complex is gated.

1 The only way in and out is the one entrance off of
2 J Street and it's a gated complex.

3 And they watched the person go into the
4 complex squeezing through the gates. They had a gate
5 clicker that enabled them to open the gates. They had
6 to wait for the gates to open because they were in their
7 car, of course.

8 And they'll tell you that they saw the
9 person go to his right when he entered that complex.
10 And as soon as their car also entered that complex, they
11 also went to the right.

12 And when they went to the right, what they
13 could see is the side of the building of the complex and
14 some trash dumpsters, and then as you can see these
15 buildings here where the trash dumpsters are housed.

16 Officers Conn and Rios will tell you they
17 immediately got out of their car. They were on foot.
18 There were other officers who had arrived at this
19 location by this time as well.

20 And Officer Rios will tell you that he
21 immediately heard noise coming from the dumpster area,
22 and he alerted the other officers around, and he said
23 words to the effect of I've got noise in the dumpster or
24 movement in the dumpsters or words to that effect to
25 alert the other officers.

1 And so all the officers were now approaching
2 this dumpster. They had it surrounded, and low and
3 behold, in the dumpster was Pierre Joshlin hiding. And
4 along with Pierre Joshlin in the dumpster -- and this is
5 what he looked like that evening. Along with him --

6 MR. SINGER: Judge, I'm going to object to
7 the picture that was just shown quickly.

8 THE COURT: Approach.

9 (Off-record bench conference)

10 THE COURT: Continue.

11 MS. LEWIS: Along with Pierre Joshlin hiding
12 in the dumpster were a pair of black gloves that you can
13 see here. This is a photograph of the inside area of
14 the dumpster and here's one glove, here's another. And
15 this item right here was a Glock pistol.

16 And you'll see a close-up of that here in
17 court, and you'll hear testimony about the kind of gun
18 that that is, but it is a Glock pistol, and it will be
19 identified that way to you.

20 You're going to hear that the entire time
21 that took place between the shooting at 1271 Balzar, the
22 carjacking at 1284 Lawry, and then the pursuit by
23 Officers Conn -- I'm sorry -- by Officers Cupp and
24 Walters (sic) (indiscernible) that ended at that church,
25 and then the foot chase that ended with Pierre Joshlin

1 in that trash dumpster took five minutes.

2 While that was going on at the dumpster,
3 remember we had the one who was running towards
4 1200 Eleanor.

5 At this point there were many other officers
6 coming in the area. A perimeter had been set up so that
7 officers were blocking any entrance and exits into this
8 area keeping the area closed off to any type of traffic.

9 And you'll hear that with the assistance of
10 a canine officer and a dog, a canine named Lasco
11 (phonetic), a person was found hiding at the address of
12 1116 Jimmy.

13 And you'll hear testimony that 1116 Jimmy
14 Street is on the side of 1200 Eleanor just a little bit
15 to the northeast, a couple houses down but on the other
16 side of the exact area where Officer Walters (sic) lost
17 sight of Jamar Matthews. And that person that was
18 hiding was Jamar Matthews, and he was --

19 MR. FIGLER: I'm going to object for the
20 record, Your Honor --

21 MS. LEWIS: -- found by that --

22 MR. FIGLER: -- for openings.

23 THE COURT: You can make a record.

24 MS. LEWIS: He was found by the canine dog,
25 eventually, and you're going to see that this is what he

1 looked like. He was a little bit dirty and had some
2 grass on him because he was hiding in a yard behind that
3 house there.

4 Homicide detectives were called out and had
5 arrived and were doing their work. Crime scene analysts
6 were called out, and they had arrived and they were
7 doing their work.

8 And you're going to hear testimony that
9 crime scene analysts recovered almost 40 different shell
10 casings from the 1271 Balzar Avenue house where the
11 shooting took place.

12 And you're going to hear that of those shell
13 casings there were three different types. There was a
14 .22 caliber, .45 caliber, and 9mm.

15 You're also going to hear that crime scene
16 analysts also responded to the location of the vehicle
17 crash at that church near Lexington and Doolittle, and
18 from the vehicle there was a firearm found in the front
19 floor board of that vehicle. That was a Colt .45
20 caliber firearm.

21 They also recovered the firearm from the
22 dumpster, the Glock pistol, and also you're going to
23 hear that a .22 caliber short-barreled rifle was found
24 near that church area, and all of those firearms were
25 recovered and impounded.

1 And you're going to hear testimony from a
2 person by the name of Jim Krylo who is a firearms
3 expert. He's going to tell you that he took all of
4 those firearms that the crime scene analysts recovered
5 that evening and he test fired them in a laboratory.

6 And when he test fired them, he compared the
7 shell casings that came from his test firings to the
8 different shell casings that were recovered that night
9 from the 1271 Balzar address, and as a result, he was
10 able to match the different guns to those shell casings.

11 So we know that those guns are the ones
12 responsible for leaving the shell casings at that scene
13 that resulted in the death of Mercy Williams that
14 particular evening and that resulted in the other
15 injuries that were sustained to Myniece Cook that
16 evening.

17 As a result of all this evidence that you're
18 going to hear, the defendants were charged with
19 conspiracy to commit murder, for acting together and
20 conspiring to murder Mercy Williams, Myniece Cook and
21 Michel'le Tolefree and Maurice Hickman who were all
22 standing outside in front of the house that evening.

23 They're charged with use of a deadly weapon
24 for Mercy Williams' death, and they're charged with
25 three counts of attempting to murder Michel'le, Myniece,

1 and Maurice Hickman.

2 They're also charged -- actually, one of
3 them is charged with possession of short-barreled rifle.
4 You're going to hear that that rifle was of such a
5 length that makes it an illegal firearm.

6 Normally, rifles and shotguns would not be
7 illegal. However, because of the length of the barrel,
8 it makes it an illegal firearm.

9 You're going to hear also that they're both
10 charged with conspiring to rob Melvin and Geishe of that
11 gray Lincoln Town Car because they acted together
12 throughout that robbery, and, again, they're charged
13 with two counts of robbing that vehicle from Melvin and
14 Geishe.

15 And finally, they're charged with two counts
16 of assaulting Officer Cupp and Officers Walters (sic) by
17 pointing their firearms at Officers Cupp and Walters
18 (sic).

19 As a result of all of the actions that
20 happened on September on 30th of 2006, this is the
21 evidence that the State intends to show you during the
22 course of this trial over the next few days. And at the
23 conclusion of the case, we will be asking that you find
24 both defendants guilty as they have been charged.

25 THE COURT: Thank you.

1 Mr. Figler.

2 MR. FIGLER: Thank you, Your Honor,
3 Your Honor, prosecutors, my co-counsel, most
4 importantly, ladies and gentlemen of the jury.

5 Now, I don't have a slide show to have you
6 go along with, so, hopefully, my words will be
7 captivating enough for you to follow along as we go
8 through a very brief recitation of Jamar Matthews'
9 position with regard to how it turns out that he's being
10 charged in this particular case when at the end it will
11 be very apparent that the evidence does not support that
12 Jamar Matthews be in this courtroom here today.

13 Now, from the onset, there are some things
14 that need to be clear as you receive the evidence, and
15 that is that there are two young men accused over at
16 that table.

17 I think that's going to be the last time you
18 hear me refer to two young men, because only one young
19 man is my responsibility and Mr. Bunin's and that's
20 Jamar Matthews.

21 Now, oftentimes during the course you might
22 here the defendants, but it's very important for each of
23 you to understand that the defendants does not mean
24 together. It means two individuals who both happen to
25 be charged with these offenses.

1 There's to be no implication whatsoever as
2 you receive evidence that the defendants refers to
3 anything other than the fact that there's two persons
4 over there. They're very separate.

5 Now, at times evidence may come in against
6 the other person and the Court would -- it depends on
7 how it comes in, but the Court would indicate to you
8 that you're only supposed to consider that evidence
9 against one or the other, and so when you're receiving
10 the evidence, that should be clear.

11 Secondly, there's talk about the driver of
12 the Lincoln Town Car that was pursued, and I noted that
13 the prosecutor substituted the word "Jamar Matthews" for
14 driver, but that's not because there's any evidence that
15 they're one and the same that's been presented to you
16 simply because that's the implication that wants to be
17 made.

18 And so you need to distinguish that as well
19 that oftentimes when someone's talking about a driver,
20 in your minds it should just be driver, okay. Not to
21 imply that it would be Jamar Matthews at that time.

22 Or there is a certain case made about the
23 driver of that vehicle, but the evidence will be far
24 from conclusive to the point where you're going to be
25 able to say throughout that Jamar Matthews is, indeed,

1 that person.

2 Now, we can start from the very end that,
3 indeed, that was Jamar Matthews who you saw in the
4 photograph, and he was apprehended by police. But
5 there's some time frame issues, and there's some
6 circumstances, and this case really is about safeguards,
7 about police work, and about reliability.

8 As we start, there's no dispute that this
9 young woman was shot and that she died. Now, we're not
10 going to show you photos of that over and again. I
11 don't know how that would come into you, but I will tell
12 you this. That there's no dispute she was killed by a
13 bullet.

14 Additionally, as the evidence shows -- and I
15 only discuss it because it was discussed to you
16 already -- there are witnesses at that area at that
17 scene, and it's anticipated that you'll hear from those
18 witnesses.

19 And those witnesses cooperate with the
20 police and give them the best accounts that they can
21 based on their preceptors of what is around them. It's
22 very reasonable.

23 And when that happens, there's initially a
24 discussion that there might be four to five people who
25 come up -- walk up to this area on Balzar Road on

1 September 30th of '06, and at some point shots are
2 fired. Now, after that occurs -- so that's one set of
3 witnesses.

4 And I believe you'll be hearing from
5 Myniece Cook and Michel'le Tolefree or Tolefree who will
6 testify about what they observed and what they saw and
7 what they described, and that's very -- that's going to
8 be very important.

9 After that, a block away from there over on
10 this Lawry address someone's car is taken, and the
11 police happen to be in the area. They were responding
12 to the shots that they heard, that's true, and they come
13 up and they see individuals getting into a car.

14 Now, the police officer when he gives his
15 report initially said he thought maybe three or four
16 people were involved in the taking of that vehicle,
17 three or four people. Okay.

18 Now, the people whose car was taken, we
19 anticipate that they're going to testify as well. These
20 are the people a block away from where the shooting
21 occurred.

22 So you've got the Balzar address and the
23 witnesses there, and you've got completely separate
24 witnesses a block away, and the witnesses a block away
25 have their car taken.

1 And we anticipate that the people who are
2 going to testify there are Geishe Orduno and
3 Melvin Bolden and those were people that were referenced
4 by the prosecutor in her opening statement.

5 Geishe and Melvin are basically confronted
6 by individuals, and, as a result, that car is taken and
7 driven away.

8 Now, just like the first set of witnesses
9 who are unrelated to the second set of witnesses, the
10 second set of witnesses cooperated with the police to
11 the best that they can.

12 They gave the descriptions that they
13 reasonably can convey to identify who the individuals
14 are who just did this to them, and that information is
15 recorded as well. So you've got part one on Balzar,
16 part two on Lawry.

17 Now there is a police pursuit. Again, none
18 of this is disputed. The police pursuit occurs in the
19 way that the prosecution indicates. There's no reason
20 to in any way contradict that.

21 There's a high-speed chase. The officer
22 says at one point it gets up to 60, 65 miles an hour.
23 Those cars turn left at one point past Lake Mead Drive,
24 and officers report that the car is going so fast that
25 bounces up onto the curb, okay, and that they're

1 continually going fast down that street, and they're in
2 pursuit.

3 The car then turns right on Lexington. And
4 about as you can see in that map, but you'll see more
5 specifically and closer up when we actually present the
6 evidence to you, that car crashes into a fire hydrant
7 that's about a block from where they had turned, about a
8 block, block and a half, no more than that.

9 The officers then are driving up behind, and
10 at some point the officers testify that they caught a
11 glimpse of somebody leaning out of the car with a weapon
12 in their hand.

13 That at some point that person is out of the
14 car, apparently, either had the weapon or didn't have
15 the weapon, discarded the weapon at that point or maybe
16 a little bit later, but was intentionally hit by the
17 police vehicle.

18 And the police officers are going to say,
19 yes, we intentionally hit them or Officer Cupp who was
20 driving the car said, yes, I intentionally hit him
21 because I was fearful for my life because here's
22 somebody with a shotgun, and we didn't have any other
23 way to respond.

24 We had our guns holstered in our arms or our
25 waists, and we had definitely seat belts on, and we were

1 vulnerable, so we hit this individual. We hit him in
2 the legs of the front of our vehicle, and he went down,
3 and he hit the ground hard at that point after we hit
4 him in the legs.

5 That individual who they identified as the
6 driver of the vehicle then runs away in a northerly
7 direction. Officer Walter will come in and say that
8 there was a pursuit.

9 Officer Walter will also indicate that the
10 pursuit was very short-lived because he heard bullets
11 coming from another direction, so he stopped and he went
12 back down that Eleanor Street, and he went over to where
13 the car was and where the car crash happened, and he
14 simply waited because he didn't know what was going on.

15 He was fearful that his partner was involved
16 in something because the partners in the car, Walter and
17 Cupp, lookout for each other. That's what they do.

18 That's what partners are all about. They're
19 buddies or whatever you want to call them, but they're
20 looking out for each other, and so that's why Walter
21 comes back to ensure the safety of Cupp. Okay.

22 Shortly thereafter, there's some other
23 activity over on J Street. Now, some time passes, and,
24 eventually -- and we're going to say maybe an hour or
25 so, not instantaneous -- there's a call that somebody

1 has been taken into custody, and that person is over on
2 Jimmy Street, and that person is in handcuffs.

3 And that person has just been attacked by a
4 canine dog. The dog took a bite out of that person's
5 hand and that person's neck and that person is Jamar
6 Matthews. Okay.

7 Now, at that point because there is an
8 officer-involved shooting, there's a special procedure
9 that doesn't happen in every single case. In this
10 particular thing, there is something called a
11 use-of-force administrative investigation.

12 Now, it's not some outside agency that does
13 it. It's not people who aren't involved with the police
14 department. It's people within the police department,
15 the same police department that Officer Cupp and Officer
16 Walter work for.

17 And they go through the steps of doing
18 interviews and recorded statements of the police
19 officers because there was a shooting that was involved
20 because a gun was discharged by an officer, and,
21 apparently, that's what distracted Officer Walters (sic)
22 from his pursuit to go respond, okay.

23 So now we have other officers involved, in
24 fact, a whole lot of officers because whenever an
25 officer discharges his firearm it's got to be made sure

1 that they did things right or else there's consequences,
2 and that's why you have administrative inquiries about
3 these things, but you're going to hear about all that.

4 You're going to hear about the statements
5 that Officer Walter and Officer Cupp made to the other
6 officers who were recording it to see what had happened.

7 Now, something happens at that point which
8 is kind of interesting, and I think you'll note that
9 when you see that evidence come in.

10 There was descriptions made of the people
11 who are involved in the two earlier incidences, the
12 Balzar incident.

13 And the witnesses said it was
14 African-American males. They were young. One of them
15 was rather short and some other general descriptors as
16 best that they could do. They described them in the
17 ways that they could.

18 Over on Lawry the people got a much closer
19 look at them because they're right on them getting them
20 literally out of the vehicle.

21 And there's some information that is
22 imparted by those witnesses at the time because officers
23 are taking the reports. And that is that there were two
24 people primarily who came up and, you know, they're
25 basically saying look, I'm X height. Like I would say

1 I'm five-foot-six.

2 And they would say how tall they are, okay,
3 and they would say how tall they are, and they'd say the
4 person who came up on me was a black person wearing
5 black and was my height or shorter. Now, they would
6 have the ability to say my height or taller or my height
7 or whatever they say.

8 You know, this is how we gauge things when
9 we're asked to respond. We say this is how I recall.

10 We're not asking them to guess the exact
11 height, but we're saying was he shorter than you or
12 taller than you because we know how tall you are, taller
13 or shorter, okay. So this is the kind of information.

14 Now, they say all sorts of things. They say
15 the person with what appeared to be a shotgun entered
16 into the rear of that vehicle, the rear passenger side
17 of that vehicle, the person with the shotgun.

18 They'll also say that the person who went
19 into the driver's side was wearing long pants, you know,
20 just factors that are identifiers of who was involved.

21 Now, this is done without anybody being
22 around them, without anybody in custody or in handcuffs
23 or anything. This is contemporaneous to their viewing
24 of the evidence.

25 They don't do the same thing with

1 Officer Walters (sic). You'll hear from the evidence
2 that there are a number of tools available to guarantee
3 reliability of identification.

4 You will hear evidence that one of these
5 tools is something we all see on TV, and I think we even
6 discussed it during our voir dire. It's called the
7 lineup.

8 Now, there's different kinds of lineups.
9 There's physical lineups -- what we call (indiscernible)
10 lineups -- under law where you have individuals who
11 stand there with the little height thing and then they
12 say, okay, which one of those people is the person that
13 you identified, that sort of thing.

14 There's also something called a photographic
15 lineup. In the parlaments of police talk it's called
16 the sick pack, and that's usually because they have at
17 least six photographs where they put them all down and
18 the individuals, one of them, presumably, is the suspect
19 that they have in custody.

20 And then the witness would be able to go
21 through and identify which one they believe might be the
22 person that they saw or that would be relevant. I mean,
23 it all makes sense. I mean, you want to have
24 reliability on these type of things.

25 In Officer Walter's case, an hour later

1 after knowing that there's an administrative
2 investigation and that there's going to be a lot of
3 police officers asking them a lot of questions, and also
4 knowing that a lot of the people got away who they were
5 initially looking for -- I mean, initially there's four
6 to five, then there's maybe three to four in the car.
7 They've got one suspect somewhere else and now they've
8 got someone else that they've taken.

9 And they bring Officer Walter over there,
10 and he sees what you see. He sees what you saw there.
11 He sees an individual alone, black in a black shirt in
12 handcuffs, just been bitten by a dog.

13 He's got bite marks on his arm. He's got
14 bite marks on his neck. He's got bite marks on his
15 hands. He's got handcuffs on, and they bring
16 Officer Walter up and they say is that the guy, and
17 Officer Walter says yes.

18 After that, they then take a statement from
19 Officer Walter, and they ask him for a specific
20 description of the person he was pursuing, and, low and
21 behold, the person he was pursuing fits the
22 identification of what Jamar Matthews looked like
23 standing in front of that police car at that point, so
24 he gives the description after he just saw the person in
25 custody.

1 Now there's an important fact here that I
2 also want to note. The evidence will show that instead
3 of long pants, that Jamar Matthews was wearing blue-jean
4 shorts, different clothes.

5 Now, Officer Cupp was not brought over to
6 that particular scene, and he gave a statement about
7 what he saw because he said he saw the driver of the
8 vehicle as well, and he gives what I'm going to tell
9 you, ladies and gentlemen, is a very general
10 description; black male, dark clothing. Yeah.

11 I'm also going to tell you that I believe
12 the evidence will come out that Balzar and Lawry and
13 Doolittle and Lexington and Eleanor are filled with
14 young black men that wear dark clothing, lots of them.

15 And I will -- that the evidence will also
16 show that on any given night late at night this is
17 usually a bustling area with kids hanging out, hanging
18 out in the yards, socializing, drinking, maybe involved
19 in things that they shouldn't be involved in but just
20 hanging out in that area.

21 But when the police are out there looking
22 around for people, everybody becomes pretty sparse.
23 That the normally bustling streets with teens in their
24 black T-shirts, when the police are going through for
25 whatever reason, doing sweeps, that when there's shots

1 fired in the neighborhood and they see police around,
2 that there are ample reasons, ample reasonable reasons,
3 why a young person in that neighborhood would choose not
4 to want to interact with the police, to not be just
5 standing on the street, to do whatever that person could
6 do to get outside of the sight of the police at that
7 time.

8 And during the course of this trial, the
9 evidence will show that there are reasonable reasons why
10 a person would be in that area and not want to interact
11 with the police that have absolutely nothing to do with
12 criminal culpability of a shooting that occurred blocks
13 away.

14 Ultimately, it's going to come down to this.
15 Two witness are going to say that they recognize
16 Jamar Matthews. These are the Caucasian officers, Cupp
17 and Walter.

18 The other witnesses, Myniece Cook,
19 Michel'le Tolefree, Geishe Orduno, Melvin Bolden, there
20 was a prior court proceeding and none of them at that
21 prior court proceeding identified Jamar Matthews as
22 being involved in the incidents that they were
23 personally involved with.

24 The officers are going to come before you,
25 and they're going to be confident, and I want to alert

1 you as you're receiving the evidence that there will be
2 cross-examination questions, and that the evidence will
3 show that confidence is not the same as accuracy.

4 One such as myself could be confident,
5 100 percent confident, that I left my keys on the living
6 room table, 100 percent confident. And when as they did
7 last week they turned up in the refrigerator, confidence
8 and accuracy are not the same things.

9 There are different factors on why someone
10 may very well have a confident or honest belief, and
11 we'll be exploring those as the evidence unfolds. Time,
12 how long they had the opportunity to observe someone;
13 proximity, exactly how close; the wild-card factor of
14 stress; the fact that a weapon was involved and the
15 focus on the weapon; post-event information, what
16 happened in the intervening time between the event that
17 you observed and what you're being asked to recall.

18 Job security is always an issue, but mostly,
19 the suggestiveness of the identification of somebody
20 who's in custody and the issues that exist of
21 cross-racial identification. All these will become very
22 important in the very key aspect of this case which is
23 the identification.

24 Now, anything else as the evidence unfolds
25 is going to be speculation. It's going to be broad.

1 It's going to be vague. It's not going to be tied
2 incorrectly.

3 It's going to reveal sloppy or inaccurate
4 police work. It's going to show reports that may not
5 have been filed or filed correctly. It's going to come
6 down to this identification issue.

7 And the suggestion here is that when the
8 evidence has all been received that you cannot say that
9 Jamar Matthews and driver of that car were the same
10 person, and you cannot even say just for the sake of
11 argument that that driver of the vehicle is the same
12 person they're saying he is, but that doesn't matter to
13 our side.

14 And Jamar Matthew and the other person over
15 at the table are very different. The evidence needs to
16 be viewed separately by one and the other. That's going
17 to be the instruction to you and not to let that cross
18 over even though they happen to be sitting at the table,
19 and I think, implicitly, everyone promised to follow the
20 law and do that when you became a juror.

21 And at the close of evidence you will have
22 no choice at that point to follow what is being
23 requested of you on behalf of Mr. Matthews, and that is
24 to find him not guilty of all the charges. Thank you.

25 THE COURT: Thank you.

1 Mr. Singer.

2 MR. SINGER: Thank you, Judge. Good
3 morning, ladies and gentlemen. May it please the
4 Court, State of Nevada, this is what we call the opening
5 statements and every attorney has a different technique,
6 and mine's going to be more brief.

7 Nevertheless, I'm going to ask you to take
8 it just as seriously as the other attorneys
9 (indiscernible) try to spare you repetition. Sorry.

10 But I'm going to tell you right now whether
11 I have the PowerPoint production or not, it's just as
12 important for you to remember things that you see on
13 PowerPoint, things that you see old school, handwritten.

14 There's been no evidence presented to you.
15 Your verdict as of right this second has to be not
16 guilty, not just because there's been no evidence
17 presented to you, but because that's really what you're
18 going to see and what you're going to believe and what
19 you're going to conclude at the end of the case.

20 Now, sometimes we all -- well, the purpose
21 of an opening statement is to kind of give you a
22 direction or a path so you can follow the evidence more
23 clearly, so you can see where we're going, so you can
24 see where the State hopes they're going to go, so you
25 can see where the defense hopes they're going to go.

1 But sometimes when we go to the movies, we
2 see previews for other movies and we say, man, that
3 looks like a really good movie. It's exciting. It has
4 car chases. It's pretty sexy or racy. It has some
5 gunshots. It's going to be a good movie.

6 But then we spend all that money to go see
7 the movie and it's nothing like we thought it was going
8 to be. All those fancy things you saw on the preview,
9 that was all the good stuff and the rest of the movie
10 was garbage, and that's what you're going to see in this
11 case.

12 From what you've heard from the prosecution
13 are all what they intend to prove, what they hope to
14 prove, but the preview and the whole movie that you're
15 going to see in a couple days when we come back to you,
16 totally different. It's going to be that what's going
17 to be important, and that's what you're going to see in
18 this case.

19 The evidence is going to show one thing
20 which I agree with the State. That on September 30th,
21 2006, as you saw the picture of my client, Pierre, being
22 shackled, he was taken into custody that day.

23 And at the first opportunity that he had, he
24 said I'm not guilty. From that first opportunity 'til
25 today as he sits here he's maintained not only the same

1 words of not guilty, but the exact same story.

2 His story hasn't changed. I'm going to get
3 into a little bit, and it's going to develop more
4 throughout the entire case, and it's going to be a
5 plausible story.

6 He did what he had to do, what this American
7 system of justice tells him to do if you're accused of
8 something that you didn't do. Tell the Court, tell the
9 police, tell whoever will listen to you that you're not
10 guilty and go through the Court process and make the
11 State prove it.

12 And you all promised myself and Mr. Joshlin
13 and the Court that you're going to follow the rules of
14 evidence. You took the oath as jurors, and you promised
15 that you're going to keep the burden right here.

16 And it's not by chance that this table's
17 closer to the jury box than the defense table. It's by
18 purpose because in the law the side with the burden, the
19 side that has a responsibility to you is closer to you,
20 and they have that responsibility from today until the
21 end of the trial to prove this case.

22 And in this case, tragedy happened, and
23 we're here because of that piece of paper that the clerk
24 read that charges the defendant, just a document, like
25 someone calling out come to court and face the charges.

1 That's all it is.

2 After you're here already, throw it away
3 because it doesn't mean anything. All it does is bring
4 us here, bring who they suspect, who they allege did
5 this here into court. That's all it does.

6 And human nature, no matter how much
7 sympathy you want to leave outside, no matter how much
8 you try to do that, there's going to be some sympathy,
9 rightly so because someone's life was lost, and human
10 nature's going to want you -- your human nature's going
11 to wants to you put responsibility for that loss of life
12 on somebody or some people.

13 Don't make the mistake of doing it to the
14 first available face you see because there's going to be
15 a reason why, and you're going to see the reason why the
16 right people weren't arrested. You're going to hear
17 that.

18 And it's going to become abundantly clear
19 through the testimony of these relatively young and
20 inexperienced police officers why the right people
21 weren't arrested.

22 You heard the prosecution lay out their
23 case, and they made promises to you. They might not
24 have said that they were promises, but when they're
25 showing you those slides of what they intend to prove

1 and they're reiterating and reciting what they hope or
2 intend the police officers to say, it's not in evidence
3 now. It's not taken for granted that that's already a
4 done deal.

5 You have to hold the prosecution to that
6 burden. They promised you that they were going to prove
7 certain things to you.

8 And when we come back up here -- when I come
9 back up here for Mr. Joshlin, I'm going to show you how
10 they haven't come through on their promises.

11 And it's your responsibility to hold that
12 against them and to say if not, why not. If they
13 promised me something on opening when words are easy,
14 but the evidence from the witness stand and the physical
15 evidence doesn't show that, how come they didn't keep
16 their promise?

17 There's going to be no physical evidence
18 that ties Pierre to not only one crime scene but two
19 crime scenes.

20 And you're going to see some things that are
21 circumstantial evidence, certainly, circumstantial
22 evidence, and you're going to hear all about it as the
23 Judge tells you what the law is.

24 But, in a nutshell, when you see -- when you
25 have a cookie jar on the counter and there's cookies

1 missing, and the little kid has little chocolate chip
2 marks on his face, you didn't see him take them, but you
3 know that since he has some chocolate on his face he
4 probably did, or the old example of the footsteps in the
5 snow leading away from the house, that's circumstantial
6 evidence.

7 But you have to decide as jurors to what
8 extent are you going to attenuate that. To what extent
9 are you going do stretch that and say, well, this led --
10 A leads to B, B leads to C, C leads to D, and I'm going
11 to tie it all back to the beginning?

12 That's what you're going to see in this
13 case. It's going to be so far stretched that it's not
14 really good, positive, certain circumstantial or
15 trustworthy circumstantial evidence.

16 You're going to see that this case at the
17 end is going to be a case of quality versus quantity,
18 and you're going to say to yourself -- I submit to you
19 each and every one of you is going to say to yourselves
20 what did that witness add to me. What did that witness
21 add for me?

22 It's going to be a case where there's a
23 bunch of spaghetti thrown up on the wall, most of it's
24 going to fall off, and maybe, hopefully, a few pieces
25 will stick. That's what the prosecution's hope is.

1 There's going to be so many witnesses on
2 that stand that add nothing to this case. It's going to
3 be a quantity versus quality because the circumstantial
4 evidence stretches too far.

5 Not only is there no identification of
6 Pierre at the Balzar address, there's no identification
7 of Pierre at the Lawry. And as learned counsel pointed
8 out to you regarding Mr. Matthews, there's no
9 identification of him either.

10 Now can you say to yourselves what a
11 coincidence? Out of two scenes and two people no
12 identification either way on either scene on either
13 person?

14 That takes it too far, and especially at the
15 second scene, the Lawry scene, that people had a very
16 close proximity in a well-lit neighborhood an
17 opportunity to observe Pierre face to face.

18 They could have identified him, but he
19 wasn't the person there. He wasn't the person getting
20 out of the car.

21 You're going to hear a lot of leaps of faith
22 and conjecture that puts Pierre in that car, but he
23 really wasn't in the car, and he told the police that
24 the first time he had the opportunity to.

25 Yes, he was arrested in the dumpster. Yes,

1 he was. He's not charged with running away from the
2 police. He's not charged with possessing a Glock or
3 whatever kind of gun was in the dumpster. He's not
4 charged with that.

5 He ran for sure. He got shot at for sure,
6 but not because he had anything to do with any of those
7 locations, neither Balzar or Lawry.

8 The evidence is going to be clear to you
9 that there are other suspects that weren't either
10 pursued -- I can't even tell you why not.

11 And you know, when you're going to have to
12 place blame, it's going to be hard for you to do it in
13 this way, but this is where the blame needs to lie.

14 The blame is not going to lie on an innocent
15 person sitting there or two. The blame is going to lie
16 on Metro, the Las Vegas Metropolitan Police Department's
17 inexperience or whatever.

18 They just didn't do a good job in this case,
19 whether it's inexperience, purposeful, poor police work,
20 poor detective work. That's where the blame for the
21 death goes because we all know that there's lots of
22 people that were there that aren't here.

23 You're going to need to pay really careful
24 attention to the cross-examination because as the judge
25 is going to instruct you, the witness's testimony is not

1 just a question from the prosecution and the answer,
2 this softball that they throw to the police officers and
3 the answer, but there's going to be detailed
4 cross-examination which isn't going to be so easy for
5 the policemen to answer.

6 The proof is going to show that Pierre was
7 walking through the neighborhood as many young men
8 fitting the exact same description as him were that
9 night, and he heard shots and ran, and that's about it.

10 He heard shots and ran because he didn't
11 know where the shots were coming from, where the shots
12 were going to. And as he's running, a second set of
13 shots he hear, and those shots are aimed at him.

14 And there's going to be a point in time that
15 you hear through cross-examination if the officers are
16 truthful -- and I'm going to make them hold them to that
17 responsibility.

18 And you're going to hear that the officers
19 in that vehicle who were pursuing the stolen car thought
20 that the passengers were ejected. And to say that my
21 client was ejected from a vehicle, you'll see that that
22 didn't happen.

23 So my client is not the passenger nor the
24 driver nor any occupant in that vehicle. It's just
25 convenient to put him in there because he was running

1 through the neighborhood to avoid getting shot, to avoid
2 shots that he didn't understand, and then to avoid
3 getting shot himself.

4 Basically, this case boils down to a case of
5 my client being at the wrong place at the wrong time.
6 Maybe if he would have -- well, for sure if he would
7 have stayed home that night none of this would have
8 happened.

9 But the fact that he was in his
10 neighborhood -- it's not a strange neighborhood to him.
11 It's his neighborhood. It's his girlfriend's
12 neighborhood.

13 He was out that night, and he was at the
14 wrong place at the wrong time, and he's said that from
15 day one to today, same story. And when I come back
16 here, I'm going to pretty much tell you the same thing.

17 At the end of the case we're going to have a
18 chance to argue to you from the evidence, and you have
19 to use the reasonable-doubt standard.

20 But I also submit to you, in this particular
21 case, there's not going to be any doubt in your mind
22 that Pierre Joshlin was involved in any shooting,
23 conspired to do any shooting, did any robbery, jumped
24 out of any car, passenger, driver or otherwise, but
25 you're going to realize and you're going to know beyond

1 any doubt that he was running through a neighborhood and
2 got shot at.

3 And when I come back before you at the close
4 of all the evidence, I'm going to ask that you return
5 the only verdict that's consistent with what you've
6 heard, not with what the prosecution hopes to prove or
7 promises to prove, but what actually comes from a
8 witness stand. I'm going to ask that you return a
9 verdict of not guilty because that's what justice is
10 going to require.

11 Thank you.

12 THE COURT: Thank you, Mr. Singer.

13 Ladies and gentlemen, we're going to take
14 our noon recess.

15 MR. BATEMAN: May we approach very briefly
16 before we take a recess?

17 (Off-record bench conference)

18 THE COURT: All right. We're going to call
19 -- State, are you prepared to call your first witness?

20 MR. BATEMAN: Yes, Your Honor. State calls
21 Amy Nemcic.

22 Amy Nemcic?

23 THE CLERK: Please remain standing. Raise
24 your right hand and I'll swear you.

25 //

1 AMY NEMCIC, PLAINTIFF'S WITNESS, SWORN

2 THE WITNESS: I do.

3 THE CLERK: Thank you. Be seated.

4 THE WITNESS: Thank you.

5 THE CLERK: Then state your name and spell
6 the first and last name for me.

7 THE WITNESS: Amy Nemcic. It's A-m-y and
8 N-e-m-c-i-c.

9 THE CLERK: Thank you.

10 DIRECT EXAMINATION

11 BY MR. BATEMAN:

12 Q. Ma'am, what do you do for a living?

13 A. I am a crime scene analyst with the Las Vegas
14 Metro Police Department.

15 Q. And how long have you been employed in that
16 capacity?

17 A. Approximately, two-and-a-half years.

18 Q. Okay. Tell me what a crime scene analyst does as
19 you currently are employed with Metro.

20 A. The primary concern that we have is documentation
21 of a crime scene through the use of notes, reports,
22 photography, as well as the collection and analysis of
23 items of potential evidentiary value.

24 Q. What kind of training and education do you get to
25 or have you obtained in order to do your job?

1 A. I currently have a bachelors of science in
2 anthropology. I attended the Las Vegas Metro
3 Criminalistics Academy, and I've also gone through the
4 field training division, and I'm constantly monitored by
5 my supervisors.

6 Q. Particularly to this case, ma'am, did I ask you
7 recently to go to the evidence vault and to bring some
8 evidence to court here with you today?

9 A. You did.

10 Q. Okay. And is the evidence that's ultimately in
11 any criminal case that's lodged with Metro's evidence
12 vault is it based upon what's called on event number?

13 A. It is.

14 Q. Can you tell what an event number is.

15 A. An event number is generated using the year, the
16 month, and the day of an occurrence as well as a
17 four-digit sequential number that with the first event
18 of that day starts with one and just goes sequentially
19 throughout the course of that 24-hour period.

20 Q. Okay. Now, I'm going to direct your attention to
21 -- for a moment to September 30th of 2006. Were you
22 working in the evening hours of that particular day?

23 A. Yes, I was.

24 Q. Okay. And were you actually dispatched to a
25 homicide scene at 1271 Balzar here in Las Vegas, Clark

1 County, Nevada?

2 A. Yes, I was.

3 Q. Okay. And were you dispatched to do that scene
4 to perform the normal duties that you perform as a crime
5 scene analyst?

6 A. Yes, I was.

7 Q. When that call came out, was an event number
8 generated that you're aware of with reference to this
9 particular event?

10 A. Yes --

11 Q. Okay.

12 A. -- it was.

13 Q. And so the first six digits of that event number
14 would be the date; is that correct?

15 A. That is correct.

16 Q. Do you remember those first six digit numbers?

17 A. I -- actually, if I could refer to my notes or my
18 report, that would be really helpful.

19 Q. Ultimately, did you create a report with
20 reference to your --

21 A. Yes.

22 Q. -- what you did in this particular case?

23 A. Yes, I did.

24 Q. Would it help to refresh your recollection as to
25 the event number?

1 A. Yes, it would.

2 Q. Okay. If you have it with you, if you'd just
3 look at it and let me know when you're done reviewing
4 it.

5 A. Finished, thank you.

6 Q. Okay. Do you remember the event number or does
7 that refresh your recollection as to the event number
8 that references this case so that Metro knows what we're
9 talking about?

10 A. Yes. It's 0609303216.

11 Q. Okay. Now when you went to the evidence vault,
12 can you tell me when it is you did that?

13 A. I did that this morning at, approximately,
14 7:09 a.m.

15 Q. And did you ask for all evidence that is
16 currently or was currently in the evidence vault with
17 that particular event number?

18 A. Yes, I did.

19 Q. Okay. Now some of that evidence -- was any of
20 that evidence necessarily collected by and impounded by
21 you?

22 A. By me, no, it was not.

23 Q. Okay. So the evidence that was in the evidence
24 vault may have been collected by others, but it was
25 pertaining to this particular event?

1 A. That is correct.

2 Q. Now, again, directing you to the late evening
3 hours when you were dispatched to 1271 Balzar, were you
4 dispatched alone or did you come into contact with other
5 crime scene analysts with Metro?

6 A. There were two other crime scene analysts that
7 were working this particular scene with me.

8 Q. Okay. And who were they?

9 A. Louise Renhard who's a senior crime scene analyst
10 and Dave Ruffino who is our supervisor.

11 Q. And when you arrive at a homicide scene, do you
12 -- are, basically, the duties to document the scene
13 provided amongst the crime scene analysts that are
14 there?

15 A. Actually, we kind of break it into different
16 segments given that it -- having more people on the
17 scene we're able to kind of break things up a little
18 bit.

19 My responsibilities on this particular scene were
20 photography as well as the report that was generated.
21 Louise who worked with me created a diagram, and she
22 also collected and processed the items that we
23 determined to have evidentiary value.

24 Q. Your job duties in particular were, again,
25 photography; is that correct?

1 A. Photography and generation of a report, yes.

2 Q. Okay. Generally, what was the purpose or what
3 was it that you were photographing at the particular
4 scene?

5 A. I was photographing what was indicated to me as
6 items of potential evidentiary value; cartridges,
7 cartridge cases, a decedent, several vehicles and a
8 couple of homes.

9 Q. Okay. Now, when you arrive on a scene, is it
10 often the case that you don't have a lot of information
11 until someone provides it to you?

12 A. That is correct.

13 Q. Okay. And based upon the information that you're
14 provided by whatever officers do that, that's when you
15 begin your investigation?

16 A. That is correct.

17 Q. When particular items of evidentiary value are
18 located, how is it you go about photographing those
19 items?

20 A. Our standard procedure is to photograph the
21 general scene which is kind of an overview of everything
22 as we find it which include things that the officers
23 have done, crime scene tape.

24 Occasionally, they'll put cones to indicate
25 specific items that they've noted. I do that

1 photography just as we see it.

2 And then we will go through and mark specific
3 items of interest to us either with numbers or other
4 cones or other methods, go through and photograph again
5 with the alterations that we've made to the scene
6 indicating evidence that we found or that we're
7 interested in.

8 And then I'll go in and do specific photography
9 so that you can actually see, perhaps, smaller items
10 that didn't -- weren't readily apparent with those
11 overviews.

12 Q. Now, these particular items, were they ultimately
13 -- based upon what you reviewed at this particular
14 scene, were they ultimately recovered and then impounded
15 with the evidence vault with Metro?

16 A. Yes, they were.

17 Q. And who did that?

18 A. Louise Renhard.

19 Q. Okay. And did you observe her do that?

20 A. I did.

21 Q. And you observed all of these items of evidence
22 when you were photographing them --

23 A. Yes, I did.

24 Q. -- is that correct? Okay. Now, was there also
25 a diagram of the scene created in this particular case?

1 A. Yes, there was.

2 Q. Who did that?

3 A. Louise Renhard.

4 Q. Have you reviewed that diagram?

5 A. I have.

6 Q. Is it a fair and accurate depiction of the crime
7 scene that you arrived on that particular evening?

8 A. Yes, it is.

9 MR. BATEMAN: May I approach the witness,
10 Your Honor?

11 THE COURT: You may.

12 BY MR. BATEMAN:

13 Q. After showing counsel, I'm first going to show
14 you what's been marked as State's Proposed Exhibit 13
15 and see if you recognize that document.

16 A. This is the diagram that was generated by Louise
17 which is an accurate depiction of the scene that we
18 arrived on.

19 Q. Okay. And in that diagram does it also include
20 where various items of evidence were located?

21 A. Yes, it does.

22 Q. Okay. And this is a fair and accurate depiction
23 of what it looked like on September 30th, 2006?

24 A. Yes, it is.

25 MR. BATEMAN: Your Honor, I'd move admission

1 of State's Proposed 13 and ask to publish.

2 THE COURT: Any objection?

3 MR. FIGLER: I think normally it would be
4 the person who created it, but in the interest of time
5 and expediency, Judge, we'll have no objection.

6 THE COURT: Mr. Singer?

7 MR. SINGER: No, no objection.

8 THE COURT: It will be admitted.

9 (Plaintiff's Exhibit No. 13 admitted)

10 BY MR. BATEMAN:

11 Q. Now, can you see that diagram up on your screen
12 there?

13 A. I can. It's a --

14 Q. Okay.

15 A. -- little on the blurry side, but it's --

16 Q. Generally speaking, where was this particular
17 crime scene located here in Las Vegas, Clark County?

18 A. This was at 1271 Balzar Avenue.

19 Q. Okay. Can you point to the -- or, actually, draw
20 on the screen where Balzar Avenue was. And if you touch
21 the screen, it should make a mark.

22 A. Okay. Thank you. This is Balzar.

23 Q. And which direction does Balzar run?

24 A. It runs east to west.

25 Q. Okay. Now, there appears to be a road to the

1 left on your diagram?

2 A. Yes.

3 Q. What road is that?

4 A. May I refer to my --

5 Q. Would it refresh your recollection?

6 A. Yes, it would.

7 Q. Okay. Please take a look at your report and let
8 me know when you're done.

9 A. Thank you. Okay. I'm finished. Thank you.

10 Q. Okay. Do you remember now where that
11 particular --

12 A. Yeah. It's Lexington Street.

13 Q. Okay. So does that road run north/south?

14 A. It does.

15 Q. Okay. Can you draw on the screen where that road
16 is.

17 A. Yeah. It's right here.

18 Q. I'm going to direct your attention, essentially,
19 to the middle of the diagram here. What am I pointing
20 to?

21 A. That is the house that we processed as a crime
22 scene.

23 Q. Okay. And is that at 1271 Balzar?

24 A. Yes, it is.

25 Q. Okay. And there appear to be a lot of numbers

1 here to the left. Can you tell me what those are.

2 A. Those indicate items that were recovered as
3 evidence and their specific item number as we recovered
4 and booked them.

5 Q. And do you collect them in a certain numerical
6 order?

7 A. Yes.

8 Q. Okay.

9 MR. BATEMAN: May I approach the witness,
10 Your Honor?

11 THE COURT: You may.

12 BY MR. BATEMAN:

13 Q. I'm going to show you first a set of photographs
14 marked State's Proposed Exhibit 64 through 92 and have
15 you take a look at these photographs in total first and
16 tell me whether you've seen them before.

17 A. I have.

18 Q. Okay. And are these the photographs that you
19 took on the night of September 30th with reference to
20 1271 Balzar?

21 A. Yes, they were.

22 Q. Okay. Are they a fair and accurate depiction of
23 what that particular area looked like on the night of
24 September 30th?

25 A. Yes, they were.

1 Q. Okay. And actually, you reviewed these photos
2 previous to today?

3 A. That is correct.

4 Q. Okay.

5 MR. BATEMAN: Move admission of State's 64,
6 Your Honor, through 92 and ask to publish -- not all,
7 obviously, but --

8 THE COURT: Objections.

9 MR. FIGLER: That would be the objection,
10 Judge, is that I'm guessing a lot of that's cumulative
11 and would otherwise be irrelevant. But with the
12 stipulation that he's only going to show the ones he
13 needs, that will be fine.

14 MR. SINGER: No objection, Judge.

15 THE COURT: The documents will be admitted.
16 The photographs will be admitted.

17 (Plaintiff's Exhibit Nos. 64 through 92 admitted)

18 MR. BATEMAN: Thank you.

19 BY MR. BATEMAN:

20 Q. I'm going to show you State's 64. Can you tell
21 me --

22 THE COURT: It was 64 through 92?

23 MR. BATEMAN: Yeah. 64 through 92. Yes.

24 BY MR. BATEMAN:

25 Q. -- what road is this? Where are we looking?

1 A. That appears to be westbound on Balzar.

2 Q. Okay. And the crime scene on that particular
3 photograph is?

4 A. It's down here.

5 Q. Okay. I'm going to show you a closer-up photo,
6 State's Proposed Exhibit 66 -- excuse me -- already in
7 evidence. Can you tell me what we're seeing in 66?

8 A. This is the scene that's at 1271 Balzar.

9 Q. Okay. And that's where a large amount of the
10 evidence that you collect -- well, that you observed and
11 was collected was located; is that correct?

12 A. That is correct.

13 Q. I see at least a cone in the street --

14 A. Um-h'm.

15 Q. -- is that correct?

16 A. That is correct. There's --

17 Q. Was there any evidence that was ultimately
18 collected From Balzar Street in front of 1271 Balzar?

19 A. There was.

20 Q. And what was that? Do you remember?

21 A. If I may refresh my memory.

22 Q. Would that help?

23 A. That would.

24 Q. Okay.

25 A. Thank you. There were two items of evidence that

1 were collected from Balzar directly in front of that
2 location.

3 Q. And what were those items?

4 A. They were two cartridge cases.

5 Q. Do you know the size?

6 A. They were 9mm cartridge cases.

7 Q. And we'll get to that briefly. I'm going to
8 reference this particular red vehicle right here. Did
9 you notice anything or did you document anything in your
10 report reference that vehicle?

11 A. There were apparent bullet holes and strikes in
12 that vehicle.

13 Q. Showing you 69. Is this what you're referring
14 to?

15 A. Yes, it is.

16 Q. And this vehicle was actually not parked on the
17 residence of 1271; is that correct?

18 A. That is correct.

19 Q. Okay. Now, ultimately, you were also -- you also
20 located a body at this particular scene; is that
21 correct?

22 A. That is correct.

23 Q. I'm going to show you State's Proposed 70. Can
24 you tell me where ultimately the body was located?

25 A. It's right here.

1 Q. And you documented that in your report?

2 A. I did.

3 Q. Did you observe any injuries to that --

4 A. I did. I did observe an injury to the forehead
5 of that individual.

6 Q. What type of injury was that?

7 A. It appeared to be a bullet hole.

8 Q. Now, there appears to be a car in the front yard;
9 is that correct?

10 A. That is correct.

11 Q. Showing you State's Proposed Exhibit 74. Is that
12 the vehicle (indiscernible)?

13 A. Yes, it is.

14 Q. And did that have any bullet strikes that you
15 were able to determine?

16 A. It did.

17 Q. And where were those?

18 A. Those were on the passenger side which is the
19 side closer to the residence.

20 Q. Showing you State's Proposed -- excuse me -- in
21 evidence as 76. Is this a different direction of the
22 scene?

23 A. That is correct. That's looking eastbound.

24 Q. On Balzar?

25 A. On Balzar, yes.

1 Q. To the right there appears to be an intersection.
2 Is that the intersection of Lexington?

3 A. Yes, Lexington and Balzar.

4 Q. And showing you 77, do you see a Metro Express
5 van?

6 A. I do.

7 Q. Okay. Which direction are we looking in this
8 particular photograph?

9 A. We're actually looking eastbound.

10 Q. All right. Did you find anything of evidentiary
11 value with regard to that Metro -- or that van, that
12 white van or truck?

13 A. Yes, we did.

14 Q. What was that?

15 A. There was a -- we located a bullet as well as
16 bullet strikes and bullet holes in that vehicle.

17 Q. Showing you State's Proposed -- excuse me --
18 Exhibit 82. Can you tell me the angle of this
19 particular photograph. Is this also the intersection of
20 Balzar and Lexington?

21 A. It is. It's slightly south of the previous photo
22 that was shown showing that intersection.

23 Q. Is this house here, is this 1271 Balzar?

24 A. Yes, it is.

25 Q. Now, I see some cones out to the right. What do

1 those cones signify?

2 A. Those cones are indicating cartridge cases that
3 are located in that area.

4 Q. When you say cartridge cases, tell me what a
5 cartridge case is.

6 A. A cartridge case is the metal cup that surrounds
7 the powder or ammunition, and then the bullet which is
8 the projectile is actually set on top of that
9 ammunition, so that would be indication that something
10 has been expended.

11 Q. All right. So they've been fired.

12 A. Correct.

13 Q. Okay.

14 A. Yeah.

15 Q. Is this where a large amount of the evidence that
16 was collected and that you document was located?

17 A. It is.

18 Q. All right. I'm going to show you now State's
19 Exhibit 83. Is this a southbound view of Lexington?

20 A. Yes, it is.

21 Q. And to the left, is that 1271 Balzar?

22 A. Yes, it is.

23 Q. Also going to show you State's Exhibit 70 --
24 excuse me 86. Is this a northbound view of Lexington
25 and then on the right the evidence that you collected?

1 A. Yes, it is.

2 Q. And finally -- trying to keep these in order --
3 showing you State's Exhibit 90. It's a close-up of the
4 evidence?

5 A. Yes.

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

7 THE COURT: You may.

8 BY MR. BATEMAN:

9 Q. I'm going to show you State's Proposed Exhibit 14
10 through 63, also photographs. If you'll just thumb
11 through them pretty quickly and tell me whether you've
12 seen these --

13 A. Okay.

14 Q. -- photographs before.

15 A. I have.

16 Q. Okay. And what are these photographs of?

17 A. These are photographs of the scene as well as the
18 items that were collected as evidence at that scene.

19 Q. Did you actually take these photographs?

20 A. Yes, I did.

21 Q. Okay. And so it's a fair and accurate depiction
22 of the area of 1271 Balzar and the items of evidence
23 that you collected?

24 A. Yes, it is.

25 MR. BATEMAN: Your Honor, I'd move admission

1 of State's 14 through 63. I'm only going to briefly
2 show a couple of these if I were permitted to publish.

3 MR. FIGLER: Same as last time, Judge,
4 and --

5 THE COURT: Your objections or observations
6 are noted.

7 MR. FIGLER: Thank you.

8 THE COURT: Mr. Singer.

9 MR. SINGER: No objection, Judge.

10 THE COURT: The photographs 14 through 63 --
11 Exhibits 14 through 63 will be admitted.

12 (Plaintiff's Exhibit Nos. 14 through 63 admitted)

13 BY MR. BATEMAN:

14 Q. Can you tell me in total how many items of
15 evidence were actually recovered and impounded reference
16 to yours and your fellow CSAs' duties that evening at
17 1271 Balzar.

18 A. 51.

19 Q. And can these be broken down into kind of smaller
20 groupings?

21 A. Um-h'm. Yes.

22 (Off-record colloquy)

23 MR. BATEMAN: May I approach your clerk?

24 THE COURT: Yes.

25 (Off-record colloquy)

1 MR. BATEMAN: Can I have the Court's
2 indulgence just one moment.

3 (Off-record colloquy)

4 MR. BATEMAN: May I approach the witness,
5 Judge?

6 THE COURT: You may.

7 BY MR. BATEMAN:

8 Q. I'm going to show you State's Proposed Exhibit 1.
9 It appears to be an evidence bag. Do you recognize that
10 evidence bag?

11 A. I do.

12 Q. Okay. And when I say evidence bag, is that bag
13 supposedly containing evidence that would have come from
14 a particular crime scene?

15 A. It does.

16 Q. Is this one of the items of evidence of this bag
17 that you brought from the evidence lab this morning, and
18 does it have the same event number?

19 A. It does.

20 Q. Okay. Do you recognize this particular evidence
21 bag?

22 A. I do.

23 Q. How do you recognize it?

24 A. This is one of the evidence bags that
25 Louise Renhard created after recovery of the evidence

1 from this particular scene.

2 Q. Okay. And this would contain the evidence that
3 you had talked about earlier, the items 1 through I
4 believe at least 40. Well, actually, it would be items
5 1 through 15 that you documented via photograph and that
6 we just talked about; is that correct?

7 A. Yes. That is correct.

8 Q. Okay. Now, there appear to be two different
9 seals on this bag, a red one and a blue one.

10 A. Um-h'm.

11 Q. Can you tell me what those seals mean.

12 A. The red seal is the first seal that is placed on
13 the bag. Once the items are placed in it, the label is
14 placed on it, it's signed, and then the red seal is
15 placed on to indicate any kind of tampering that may
16 occur.

17 The blue seal has the same concept behind it, but
18 it's placed on specific firearms examiner. Depending on
19 the evidence in the bag, it could be anyone from DNA,
20 latents, firearms, but that's placed on from the
21 forensics end.

22 Q. Other than the blue seal on this bag, is the bag
23 essentially in the same condition it was when you and
24 your fellow CSA impounded it into evidence?

25 A. It's in similar condition, yes.

1 Q. Okay. Specifically with regard to this
2 particular bag --

3 MR. BATEMAN: And, Judge, I'd move its
4 admission of 1 right now. I believe we have a
5 stipulation to open it a little later and mark the
6 contents.

7 THE COURT: Defense.

8 MR. FIGLER: Your Honor, I have a report
9 here called an evidence impound report. It presumably
10 lists all the items that the witness is testifying to.
11 So pursuant to that stipulation and further objection
12 later if necessary, but for right now that stipulation
13 is correct.

14 THE COURT: Mr. Singer.

15 MR. SINGER: I join in that.

16 THE COURT: Based upon the stipulation and
17 statement on the record, the exhibit is admitted as 1A?

18 MR. BATEMAN: 1, Your Honor, and then when
19 we open it up we will -- it will ultimately I think be
20 either A or B (indiscernible) Mr. Krylo comes in to
21 testify.

22 THE COURT: All right. 1 is in.

23 (Plaintiff's Exhibit No. 1 admitted)

24 MR. BATEMAN: Okay.

25 BY MR. BATEMAN:

1 Q. I'm first going to ask you about the two items
2 that are contained in this particular bag based upon the
3 label. Can you tell me what items 1 and 2 were.

4 A. Items 1 and 2 both are damaged cartridge cases
5 bearing the head stamp (indiscernible) 9mm Ruger.

6 Q. Okay. So 9mm essentially --

7 A. Yes.

8 Q. -- is (indiscernible)? And will those be
9 documented on the photographs I showed you earlier about
10 their particular locations?

11 A. Yes, they will.

12 Q. And they have numbers on the little yellow tags;
13 is that right?

14 A. Yes.

15 Q. Okay. Items 3 through 15, can you tell me what
16 items -- actually, I'm sorry, 3 through 13. Can you
17 tell me what those items are?

18 A. 3 through 13 are all cartridge cases of a
19 .45 caliber.

20 Q. Okay. So when you say again cartridge case,
21 those are spent rounds?

22 A. That is correct.

23 Q. All right. Items 14 and 15 also in this bag --

24 A. Um-h'm.

25 Q. -- can you tell me what those items

1 (indiscernible)?

2 A. Those are actually cartridges which are live or
3 unspent rounds. They still contain the projectile and
4 the powder or accelerant that would be contained in it.

5 Q. Haven't been fired?

6 A. Correct.

7 Q. Okay. I'm going to show you State's Proposed
8 Exhibit 2. Was this also a bag that you brought here
9 this morning?

10 A. Yes, it was.

11 Q. Got it from the same place?

12 A. Yes.

13 Q. Okay. Basically, all the questions I ask you
14 about State's Exhibit 1, are they basically the same
15 situation?

16 A. Yep.

17 Q. Oak. This is items of evidence taken from
18 1271 Balzar and impounded by (indiscernible)?

19 A. Correct.

20 Q. Okay.

21 MR. BATEMAN: Your Honor, at this time I'd
22 move for State's Proposed Exhibit 2 to be admitted under
23 the same condition.

24 THE COURT: Objection to 2?

25 MR. FIGLER: Same stipulation, same caveats,

1 Your Honor.

2 THE COURT: Mr. Singer.

3 MR. SINGER: I join.

4 THE COURT: With that statement, then, 2 is
5 offered and admitted.

6 (Plaintiff's Exhibit No. 2 admitted)

7 BY MR. BATEMAN:

8 Q. In package number 2, tell me is it
9 (indiscernible) essentially items 16 through 29 on your
10 impound report?

11 A. Correct.

12 Q. And are all of those items essentially or in some
13 ways similar?

14 A. Yes, they are.

15 Q. Okay. What are items 16 through 29 in that
16 particular evidence bag?

17 A. They are all .22 caliber cartridge cases, so
18 fired rounds.

19 Q. .22 calibers?

20 A. Um-h'm.

21 Q. Okay. Finally, I'm going to show you State's
22 Proposed Exhibit 3. Again, is this a bag that contains
23 evidence impounded or collected at the scene of
24 1271 Balzar by your partner and documented by you by
25 photograph?

1 A. It is.

2 Q. Okay. Essentially the same condition as the
3 other bags?

4 A. Correct.

5 Q. Okay.

6 MR. BATEMAN: Move admission, Your Honor, of
7 State's Proposed Exhibit No. 3 under, again, the same
8 stipulation.

9 MR. FIGLER: Same way, Your Honor.

10 MR. SINGER: We join.

11 THE COURT: 3 is in.

12 (Plaintiff's Exhibit No. 3 admitted)

13 BY MR. BATEMAN:

14 Q. Now, package number 3, does it contain what are
15 labelled items 30 through 47?

16 A. It does.

17 Q. Okay. I'm going to reference items 30 through
18 40. Can you tell me what those items?

19 A. Those are .22 caliber cartridge cases.

20 Q. Again, spent .22 caliber --

21 A. Yes, correct.

22 Q. -- rounds? Okay. Item 41 in that particular
23 bag.

24 A. Item 41 is a cartridge case that's a .45 caliber.

25 Q. Okay. Again, a spent --

1 A. Spent, yes.

2 Q. -- (indiscernible).

3 A. Yeah.

4 Q. And, finally, items 42 through 47.

5 A. 42 through 47 are all bullets.

6 Q. Okay. And were those located at various points
7 on the scene?

8 A. They were.

9 Q. Were they -- those particular areas documented in
10 -- on the impound report?

11 A. They are.

12 Q. Okay. How many of those bullets were found on
13 the outside or the exterior of 1271 Balzar?

14 A. If I may.

15 Q. Would it refresh your recollection to look at the
16 report?

17 A. It would.

18 Q. Okay. Take a look at it and let me know when
19 you're done.

20 A. Two of those bullets were located outside of the
21 residence.

22 Q. Do you know where those bullets were located?

23 A. I do.

24 Q. Okay. Which item number?

25 A. 42 --

1 Q. Um-h'm.

2 A. -- was located in the engine compartment of the
3 white truck that was to the east of the residence, and
4 item No. 46 was actually located in the front yard of
5 1271 Balzar.

6 Q. Okay. The remaining bullets were found where?

7 A. Inside of the residence.

8 MR. BATEMAN: Court's indulgence for a
9 moment.

10 BY MR. BATEMAN:

11 Q. Is there anything else that you did with regard
12 to any other scene other than 1271?

13 A. No. I only worked with 1271 Balzar.

14 MR. BATEMAN: Pass the witness, Your Honor.

15 THE COURT: Cross.

16 MR. FIGLER: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. FIGLER:

19 Q. Nemcic; is that correct?

20 A. Nemcic.

21 Q. Nemcic. I'm sorry.

22 A. That's all right.

23 Q. So just to make clear, you did not do any
24 photographs of any human being over on a street called
25 Jimmy later that evening?

1 A. I did not.

2 Q. Okay. Were you present over there?

3 A. No, I was not.

4 Q. Okay. And at that time you were working on the
5 night shift; is that correct?

6 A. Yes.

7 Q. Okay. Is that your typical shift, night shift?

8 A. It is.

9 Q. Okay. Did you change shifts or are you still on
10 the night shift?

11 A. I'm still on midnights. Yes.

12 Q. Okay. So you're not technically on duty right
13 now, just here for your court appearance.

14 A. That is correct.

15 Q. Okay. You did bring your service revolver with
16 you, though?

17 A. I did.

18 Q. Okay.

19 A. I did.

20 Q. Now, let me ask you another question. You
21 referred a few times because I guess you've been to a
22 lot of crime scenes since September of '06 and today,
23 correct?

24 A. Yes, I have.

25 Q. Would you agree with me so many that independent

1 recollection of the events of September of '06 fade with
2 time?

3 A. They do fade.

4 Q. Okay. And there were a number of times when you
5 had to refresh your memory by looking at your report,
6 correct?

7 A. That is correct.

8 Q. Okay. And that's the importance of keeping
9 reports, correct?

10 A. That is correct.

11 Q. Now as a crime scene analyst, I noted that
12 there's great detail here. Each item is listed on a
13 sheet. It says what the item is. It says where the
14 item was found. You do that because of many reasons,
15 but one of them is to refresh your memory at a later
16 date, correct?

17 A. A portion of it, yes.

18 Q. Okay. And another portion of it is to make sure
19 that you're maintaining accurate records about what it
20 is you're impounding?

21 A. That is correct.

22 Q. Okay. And if there's any questions later about
23 chain of custody or something like that, you can refer
24 to what you impounded on that date, correct?

25 A. That is correct.

1 Q. And that's part of your training as a crime scene
2 analyst?

3 A. It is.

4 Q. Okay.

5 MR. FIGLER: I'll pass the witness.

6 Thank you.

7 THE COURT: Mr. Singer.

8 MR. SINGER: Pass the witness, Judge.

9 THE COURT: Any redirect?

10 MR. BATEMAN: No, Your Honor.

11 THE COURT: Is this witness excused.

12 MR. BATEMAN: Yes, Your Honor.

13 THE COURT: Thank you for coming.

14 THE WITNESS: Thank you.

15 THE COURT: You're excused.

16 THE WITNESS: Thank you.

17 THE COURT: We're going to take our
18 afternoon recess, but we need to make sure we have all
19 the exhibits prior to people taking a break.

20 While we do that, ladies and gentlemen, it
21 is your duty not to converse among yourselves or with
22 anyone else on any subject connected with this trial.

23 Further, you may not read, watch or listen
24 to any report of or commentary on this trial from any
25 medium of information including, without limitation,

1 newspapers, television, radio.

2 You may not form or express any opinion on
3 any subject connected with this case until it is finally
4 submitted to you.

5 Ladies and gentlemen, I'm going to ask you
6 to follow Dan to the jury deliberation room, and we'll
7 be in recess for one hour for lunch.

8 (Jury not present)

9 THE COURT: May the record reflect we're
10 outside the presence of the jury.

11 Counsels, I'm receiving information from my
12 bailiff that there's a lot of activity between parties
13 out in the hallway. It could be family, it could be
14 friends, but whatever it is or whoever it is, it needs
15 to stop, so please advise both sides that any potential
16 conflicts, they don't happen outside this courtroom.

17 MR. FIGLER: We don't have any witnesses
18 here, Judge, and we don't -- I don't know --

19 THE COURT: I don't know whether they're
20 witnesses. I don't know whether they're friends. All I
21 know is that there are people who are acting out.

22 And they have created a concern of my
23 bailiff, and that's the reason I've moved the jury into
24 the jury deliberation room. They're going to be served
25 lunch there.

1 I don't want to have to do that every day,
2 but if I have to, that's what I'll do. I'd just like to
3 note that for you and tell your people to stand down if
4 there's a problem.

5 Further, we had objections in opening
6 statement to photographs, specifically the photograph
7 that depicted the victim in this case who had been shot
8 in the position where she was recovered.

9 Would you like to make a record on that now
10 or do you want to make it later?

11 MR. FIGLER: I think, Judge, for opening
12 prior to the admission of that, and we understand that
13 they are allowed to talk about how the evidence that
14 they anticipate will be received, but I think it was
15 highly prejudicial.

16 There were obviously a number of family
17 members of the decedent in the audience, and I think
18 that's part and parcel of what you were just referring
19 to, that tensions are running high, and I think that it
20 was designed to create some degree of sympathy more so
21 than any probative use that they might use for the
22 opening, and that's why we noted our objection, Judge.

23 THE COURT: I understand. That photograph
24 is in at this point with the objections or the
25 statements as noted.