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

3 EVARISTO JONATHAN GARCIA,

4 Appellant,

5 vs.  
6

7 THE STATE OF NEVADA,

8 Respondent.  
9

Supreme Court Case No.: 64221

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12 **APPELLANT'S APPENDIX**

13 **VOLUME 4 of 11**

14 **(BATES 587-787)**  
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19 ROSS C. GOODMAN, ESQ.  
20 GOODMAN LAW GROUP  
21 A PROFESSIONAL CORPORATION  
22 520 SOUTH FOURTH STREET, 2<sup>ND</sup> FL.  
23 LAS VEGAS, NEVADA 89101  
24 TELEPHONE: 702-383-5088  
25 FACSIMILE: 702-385-5088  
26 EMAIL: [ross@goodmanlawgroup.com](mailto:ross@goodmanlawgroup.com)  
27 **ATTORNEY FOR APPELLANT,**  
28 ***EVARISTO JONATHAN GARCIA***

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1 have to worry about the penalty. You understand  
2 that?

3 A. Yes.

4 Q. Okay. So if she asked you if you can  
5 consider all three and you -- your response was I  
6 believe so, was there any hesitation that you have  
7 or concern that you have about any of those  
8 particular penalties in a case where you had  
9 theoretically had just found somebody guilty of  
10 first-degree murder?

11 A. No, I don't think so.

12 EXAMINATION

13 BY MR. FIGLER:

14 Q. Okay. There was someone else here who  
15 also said I hope so. Two people. One was Mr.  
16 McCallum, 139. Mr. McCallum. There you are. I  
17 just had a notation that you either said I believe  
18 so or I hope so with regard to consideration of  
19 those penalties.

20 Was there any concern or hesitation  
21 you had with any of those penalties?

22 A. With the --

23 Q. With the three options, if and only if a  
24 jury finds somebody guilty of first-degree murder,  
25 then they would be asked upon to also rule on the

1 second. And there were three options that the judge  
2 read to you.

3 Do you remember that part?

4 A. Yeah, I don't think I have any objection.

5 Q. Oh, to any of the three, there was no  
6 special concern to any of the three?

7 A. No, sir.

8 Q. Okay. Thank you, Mr. McCallum. I  
9 appreciate that.

10 EXAMINATION

11 BY MR. FIGLER:

12 Q. Mr. Shenk?

13 A. Yes.

14 Q. Okay. Same question for you. Because I  
15 have just a little baby notation here. We try to  
16 listen to everything that everybody says.

17 A. Yeah. Badge 148. No, I did not have  
18 any -- I did not have any reservations about any  
19 part that was the penalty phase.

20 Q. You believe you can consider all three  
21 and that there's --

22 A. Yes, I could.

23 Q. And -- okay. I think that was it.

24 MR. FIGLER: All right. Your Honor, we  
25 did have at least one additional cause challenge

1 that we wanted to bring to the court's attention.

2 THE COURT: All right. Can I see the  
3 attorneys at the bench?

4 (Whereupon, the following proceedings  
5 were had in open court outside the  
6 presence of the prospective jury panel.)

7 THE COURT: Go head, Mr. Figler.

8 MR. FIGLER: Ms. Belisle said that she  
9 was already forming an opinion and that she couldn't  
10 stop herself. That was Juror No. 89.

11 Ms. Schiavone had indicated that she  
12 was raped by five Hispanic people. And I didn't  
13 know how much I really wanted to get in front of  
14 that in front of the rest of the jury.

15 THE COURT: Let's do one at a time, okay,  
16 so that we've made a record. So thank you.

17 MR. FIGLER: Ms. Belisle, No. 89, she  
18 said that she's a very judgmental person, she knows  
19 herself better than anyone else, she's already  
20 formed an opinion, she just can't stop doing that.  
21 And I think that would be a sufficient cause  
22 objection.

23 MS. PANDUKHT: I think she's lying  
24 because it's obviously -- it's obvious like what Mr.  
25 Figler was worried about earlier like preliminarily

1 coming up with stuff earlier that they never told us  
2 before and I just found that she didn't seem  
3 credible when she was talking about it. She was  
4 very vague, you know, about her opinion. She didn't  
5 say whether it was pro us or pro the defense. I  
6 mean, I don't even know what she was talking about.

7 MR. FIGLER: I got the suggestion that  
8 she was suggesting that my client wasn't gonna get a  
9 fair trial and not --

10 MS. PANDUKHT: I thought she could be  
11 against us. I just kind of thought she was making  
12 it up.

13 THE COURT: Okay. Who's your next one?

14 MS. PANDUKHT: I wouldn't worry about --

15 MR. FIGLER: No, that was No. 89. No.  
16 144, Ms. Schiavone. We just didn't want to get into  
17 it in front of everybody. She's the one, she said  
18 she was raped by five Hispanic people. I turned it  
19 over to Mr. Goodman, let's talk about it at the  
20 bench, he shot me the look not to keep up on it.

21 THE COURT: She said she had -- she could  
22 be fair and impartial and her boyfriend just got out  
23 of jail, too. She mentioned she would be fair and  
24 impartial. So I'm gonna deny that. I didn't hear  
25 anything for cause on her.



1           MR. FIGLER: Okay. And then the last one  
2 is Ms. Wiese. I just didn't know what they should  
3 do with Ms. Wiese.

4           THE COURT: She is an ICU nurse. It's  
5 just almost incredible that she's trying to back out  
6 at the end of the day. An ICU nurse. Like if  
7 anyone, she's harder than all of us which is I like,  
8 you know --

9           MS. PANDUKHT: I was --

10          THE COURT: I brag about being the  
11 toughest. She's the toughest person in the  
12 courtroom.

13          MS. PANDUKHT: I couldn't even believe  
14 she said that.

15          MR. FIGLER: With those three  
16 indications, we would pass for cause.

17          THE COURT: I'm going to -- I'm gonna  
18 deny yours on the nurse, too, on Wiese. I'm  
19 inclined to grant yours on the first one you said,  
20 Ms. Belisle.

21          MR. FIGLER: Belisle.

22          THE COURT: So it's your call. How many  
23 preempts are you doing? Because I don't want to put  
24 you in a --

25                   I'm gonna deny on the last two, but

1 allow Ms. Belisle, even though she's coming up with  
2 the -- hold on.

3 MR. FIGLER: Okay. If they're giving us  
4 two, we'll use one.

5 MS. PANDUKHT: Can't they just --

6 THE COURT: Yeah, if you can on the  
7 record state --

8 MS. PANDUKHT: Judge, I'm --

9 THE COURT: Do you want to give them two  
10 extras?

11 MS. PANDUKHT: No, no. We're preempting  
12 two people that they want to challenge for cause.  
13 Why can't they just preempt this third person?

14 THE COURT: That's not how it works.

15 MR. FIGLER: You're being gracious and  
16 we're stuck because we have --

17 THE COURT: I can't say oh, yeah, force  
18 you into it.

19 MS. DEMONTE: If they --

20 THE COURT: Let me make a record. On Ms.  
21 Belisle, she clearly is acting like -- even though I  
22 think she's just trying to get out of it, okay,  
23 yeah, I get the gut feeling she's trying to get out  
24 of it, but the record that she's made has been one  
25 that she can't be fair and impartial because she's

1 already made up her mind. So the record's not great  
2 on her.

3 The other lady, the ICU nurse, she  
4 has said that she can be fair and impartial. And  
5 she did get a little bit choked up, but she got very  
6 emotional because she was taking care of that  
7 patient, too, okay.

8 MR. FIGLER: And then the gang rape, five  
9 Hispanics.

10 THE COURT: Yeah, she hasn't said  
11 anything. Just because she was raped doesn't mean  
12 that she can't be fair and impartial.

13 MR. FIGLER: Well, can we followup on  
14 that, Your Honor? I just don't feel comfortable.

15 THE COURT: No, you need to followup  
16 then.

17 MS. PANDUKHT: There.

18 MR. FIGLER: Oh, you're taking her off?

19 MS. PANDUKHT: Yeah.

20 THE COURT: So let's just make a record  
21 that even though I would deny for cause that the  
22 State has graciously said they're gonna preempt her  
23 anyway. So because they're gonna preempt her, I  
24 don't need to make any followups. The only one I'm  
25 gonna let go is Belisle.

1 MR. FIGLER: Thank you, Your Honor.

2 THE COURT: Okay. All right. Let me  
3 just do a quick record. Thanks.

4 (Whereupon, the bench conference ended.)

5 THE COURT: All right. I'm gonna thank  
6 and excuse Juror No. 089, Yvette Belisle.

7 Who's the next one in line?

8 THE CLERK: Next in line is Keith  
9 Trombetta. Trombetta. Keith. Badge 168.

10 THE COURT: Come on up, sir.

11 EXAMINATION

12 BY THE COURT:

13 Q. All right, sir. Read off and tell us a  
14 little bit about yourself.

15 A. My name's Keith Trombetta, badge 168.  
16 I've lived in Clark County for about 13 years. And  
17 I've gone equivalent 12 years of schooling.

18 I am currently employed. Basically  
19 I have two positions. One, I own and operate a  
20 travel agency since 1995. And then secondly, I've  
21 worked for a company called Express Scripts. And  
22 there I'm basically a resolution expert. We handle  
23 complaints and problem issues. There I've worked  
24 for about nine years.

25 I'm currently single. I don't have

1 any children.

2 I'm not aware of any of my family  
3 members, immediate family members, with any -- that  
4 are involved with law enforcement.

5 I've never served as a juror. And  
6 I'm not aware of any family, immediate family,  
7 that's been a victim of any crimes. And nor have  
8 they been charged, nor I, with any arrests.

9 And I can wait until all evidence  
10 is, you know, provided before I make a decision.

11 Q. If a defendant invoked his Fifth  
12 Amendment right not to testify, do you promise that  
13 you wouldn't discuss that as a juror if selected as  
14 a juror and that you wouldn't hold them against him?

15 A. I do promise, yes.

16 Q. And if you were selected as a juror and  
17 the jury came back with a verdict of first-degree  
18 murder, could you consider the three forms of  
19 punishment that I've mentioned previously?

20 A. Yes, I can.

21 Q. All right, thank you.

22 THE COURT: State.

23 MS. DEMONTE: Thank you.

24 EXAMINATION

25 BY MS. DEMONTE:

1           Q.     Sir, did you hear the three questions I  
2 had posed to the panel about CSI, CSI and gang  
3 stuff?

4           A.     Yes.

5           Q.     Do you have anything you want to add to  
6 those?

7           A.     No. I'm a fan of the show, but I realize  
8 it is just a show. I enjoy the stories.

9           MS. DEMONTE: Thank you. Pass for cause.

10          THE COURT: State passes for cause.  
11 Defense on this particular juror?

12          MR. FIGLER: Yes, Your Honor. Just on  
13 that one followup.

14                       EXAMINATION

15 BY MR. FIGLER:

16          Q.     But you also know on CSI that it is very  
17 important not to jump to conclusions, right?

18          A.     No, I understand. There's a lot of  
19 twists.

20          MR. FIGLER: We'll pass for cause.

21          THE COURT: All right. Now, State and  
22 defense has now passed for cause; is that correct?

23          MS. DEMONTE: Yes.

24          MR. FIGLER: Yes.

25          THE COURT: All right. Go ahead and have

1 a seat. This panel is passed for cause. Ladies and  
2 gentlemen, not the 32 that we just passed for cause,  
3 the reason I'm taking so long into the night is  
4 because I didn't want to have to bring all the rest  
5 of you back.

6 You're all thanked and excused as  
7 jurors in the Eighth Judicial District Court.  
8 Thanks again for coming in. You're excused.

9 The 32 that are sitting there, have  
10 a seat. The attorneys are gonna decide who the  
11 jury's gonna be from the 32 that have been  
12 qualified.

13 So we'll be at ease for a few  
14 moments and then I'll give you probably a  
15 five-minute break, okay. But I want the attorneys  
16 to take a look at who's sitting there right now as  
17 you're passing that back and forth, okay. Five more  
18 minutes, okay. We'll be at ease for a moment.

19 Ladies and gentlemen, during this  
20 process the attorneys are gonna be figuring out who  
21 will be the jury. If you are selected as jurors,  
22 what I'm gonna do is I'm gonna cut to the chase  
23 right now and use this time to give you a court's  
24 admonishment, an opening statement, so if you are  
25 selected, I don't have to go into this tomorrow as

1 you're just sitting there. So listen carefully as  
2 you're just sitting. So listen if you're selected.  
3 These are the court's admonishments.

4 Next to your seat, if you're  
5 selected as a juror, you will find paper and pens  
6 for your use as well as a badge, which we request  
7 that you wear during your jury service.

8 You must base your verdict solely on  
9 the evidence presented in the courtroom, i.e., the  
10 witnesses, their demeanor, documentary evidence or  
11 other items admitted into evidence during trial.

12 During the course of this trial, the  
13 attorneys for both sides and parties and the witness  
14 and court personnel, other than the marshal, are not  
15 permitted to converse with members of the jury. And  
16 I explained that to you before. If you see somebody  
17 outside, you can't say hi to them. If you do, don't  
18 be offended if they don't say hi back.

19 All right. This is a criminal case  
20 commenced by the State of Nevada, which I may  
21 sometimes refer to as the State, against Evaristo  
22 Garcia, the defendant.

23 This case is based on an Information  
24 which the clerk is gonna read once you're sworn in  
25 as jurors, to which the defendant has stated a plea



1 of not guilty.

2 Understand that an Information is  
3 simply a charge and it is not in any sense evidence  
4 of allegations it contains. The defendant has pled  
5 not guilty to that Information. And the State  
6 therefore has the burden of proving each of the  
7 essential elements of the information beyond a  
8 reasonable doubt.

9 As the defendant sits there now, he  
10 is not guilty. The purpose of this trial is to  
11 determine whether the State will meet that burden.

12 It is your primary responsibility as  
13 jurors to find and determine the facts under our  
14 system of criminal procedure. You are the sole  
15 judge of the facts. You are to determine the facts  
16 from the testimony you hear and the other evidence,  
17 including exhibits introduced in court. It is up to  
18 you to determine the inferences which you feel may  
19 be properly drawn from the evidence.

20 The parties may sometimes present  
21 objections to some of the testimony or other  
22 evidence. It is the duty of a lawyer to object to  
23 evidence which he or she believes may not properly  
24 be offered and you should not be prejudiced in any  
25 way against a lawyer who makes objections on behalf

1 of the party he represents.

2 At times I may sustain objections or  
3 direct you to disregard testimony or exhibits. You  
4 must not consider any evidence to which an objection  
5 has been sustained or which I've instructed you to  
6 disregard.

7 In considering the weight and value  
8 of the testimony of any witness, you may take into  
9 consideration the appearance, attitude and behavior  
10 of the witness, the interest of the witness in the  
11 outcome of the case, if any, the relation of the  
12 witness to the defendant or the State, the  
13 inclination of the witness to speak truthfully or  
14 not, and the probability or improbability of the  
15 witnesses' statements and all of the facts and  
16 circumstances in evidence. Thus, you may give the  
17 testimony of any witness just such weight and value  
18 as you believe the testimony of the witness is  
19 entitled to receive. It is for you to decide how  
20 much weight to give to any evidence.

21 After jury selection, we will have  
22 opening statements by the State, maybe opening  
23 statements by the defense, State's evidence,  
24 possibly defense evidence, jury instructions and  
25 closing arguments.

1           Until this case is submitted to you,  
2 you must not discuss it with anyone. Anyone. So  
3 you don't go home, you don't discuss it with your  
4 wife or husband. No one. Even your fellow jurors.

5           After it is submitted to you, you  
6 must discuss it only in the jury room with your  
7 fellow jurors.

8           It is important that you keep an  
9 open mind and not decide any issue in the case until  
10 the entire case has been submitted to you under  
11 instructions from me.

12           If you cannot hear a witness, please  
13 raise your hand as an indication. Also, if you need  
14 to use the restroom or you feel ill, please raise  
15 your hand as an indication.

16           Jurors are allowed to ask questions.  
17 The procedures require that you write your juror  
18 number and question on a sheet of paper and give it  
19 to the marshal while the witness is still in the  
20 courtroom. If it's a proper question under court  
21 rules, I'll ask it. If not, I'll keep it and  
22 explain it after trial the purpose of the rule that  
23 precluded my asking it.

24           Also during trial, I may take notes  
25 of witnesses' testimony. You are not to make any

1 inference from that action. I am required to  
2 prepare for, among others things, any legal  
3 arguments and settling of jury instructions and I  
4 therefore may take notes.

5           You obviously have the opportunity  
6 to take notes as well and you will be furnished with  
7 note pads and pens, so that you can do so. Note  
8 taking is very important because the jury will not  
9 have a transcript of the witnesses' testimony and/or  
10 the arguments of counsel to consult with at the  
11 close of the cases.

12           However, please do not be overly  
13 ambitious in your note taking and let that interfere  
14 with your ability to watch and listen to the people  
15 as they testify.

16           If you are selected as jurors, we're  
17 looking at starting tomorrow. I have criminal  
18 calendar and we won't start until about 12:30  
19 tomorrow. So have a lunch and then we'll go from  
20 12:30 to 5. On Wednesday we'll start at 9 a.m. and  
21 we'll go to 3:30. On Thursday, we'll start at 10:30  
22 and we'll go to 5. On Friday, we'll go from 9 to 5.

23           I have criminal calendars in the  
24 morning or civil calendars and sometimes that  
25 precludes me -- I know that kills everybody from

1 starting right at 9. We have to take other cases  
2 that are on our law and motion calendars.

3 If we go into next week, which we  
4 may go into next week, we should be giving this to  
5 the jury by next Wednesday. Again, it's like 9 to 5  
6 on Monday; Tuesday, 10:30 to 5; and Wednesday,  
7 probably 10:30 to 5, next Wednesday, the 17th, or 10  
8 to 5. I just have to see what's on my calendar.

9 I usually take only an hour -- we're  
10 not even supposed to be giving overtime. So usually  
11 I never go past 5, but I'm really -- I go past 5  
12 today because I know that if I go a little bit  
13 longer today, we don't have to bring in possibly  
14 half of you tomorrow. And so I'm gonna go a little  
15 bit over to try to get some of you guys out of here.  
16 But generally we don't go past 5. We generally will  
17 stop about 4:45 because as you probably know, the  
18 county and government has, you know, obviously  
19 problem with funding and so we don't pay overtime  
20 like we used to.

21 So we take an hour for lunch,  
22 they'll be quick lunches. The longer you -- if you  
23 are selected as a juror, one person isn't here,  
24 everybody has to wait. Everybody. So just be  
25 considerate of your fellow jurors of everybody in

1 here. We'll be all be sitting here waiting for that  
2 one person.

3                   So don't show up -- if I say 9  
4 o'clock, don't show up at 9:20 because everybody is  
5 sitting around waiting for you. Give yourself some  
6 time to get here. The RJC is really tough to get  
7 into. It takes a really long time with the  
8 security. So if you come right at 9, if you're  
9 asked to be here at 9, really start off early to get  
10 here. Sometimes it's wrapped around the building.

11                   Although Marshal Ellis, do we -- are  
12 the jurors allowed to come in the --

13                   THE MARSHAL: South gate.

14                   THE COURT: So they'll come in faster.  
15 So they won't have that problem. So then you guys  
16 are in better shape than most people.

17                   THE CLERK: Bring your badge.

18                   THE COURT: Yeah, you should bring your  
19 badge because you'll get right in versus having to  
20 stand in a wraparound line. Even the attorneys have  
21 to stand in the wraparound lines.

22                   We take a morning recess, like 10  
23 minutes, and 10 minutes in the afternoon. Again,  
24 about 3 o'clock if you're selected as a juror, we go  
25 3, 3:15. And in the morning, you know, if we start

1 early, somewhere around 10, 10:30, a little morning  
2 break.

3                   On the morning and afternoon breaks,  
4 I ask that you stay here because the elevators are,  
5 you know, it will take 20 minutes for you to go up  
6 and down the elevator in this building.

7                   Can you tell us about parking.  
8 Where do they park?

9                   THE MARSHAL: Right across the street.

10                  THE COURT: Where?

11                  THE MARSHAL: On Casino Center and --  
12 right on the corner of Lewis and Casino Center.

13                  THE COURT: There's some public parking  
14 right there. And I think they validate it. So you  
15 don't have to pay for that.

16                         And if you're selected as a juror,  
17 we have a Capriotti's downstairs for lunch, you have  
18 Starbucks across the street, a bunch of cafes. A  
19 pizza place across the street. They have good  
20 reviews here. I think that's it.

21                         If you're selected as a juror, at  
22 12:30 tomorrow we will start with opening statements  
23 by the parties.

24                   MS. PANDUKHT: So we're starting at 12:30  
25 tomorrow, judge?

1 THE COURT: Yeah.

2 MS. PANDUKHT: Okay.

3 THE COURT: What did I say before, 1?

4 MS. PANDUKHT: 1.

5 THE COURT: So 12:30 will be easier.

6 MR. FIGLER: That's fine. We've got one  
7 each so far.

8 THE COURT: Huh?

9 MR. FIGLER: We've got one each. I'm  
10 being funny. We're almost done.

11 THE COURT: Oh, you're almost done. I'm  
12 not rushing you or anything. I never rush anybody.

13 You're free to bring drinks in here  
14 as jurors. Also, you might want to bring a sweater.  
15 If you think it's cold now, wait until tomorrow  
16 because I already asked the head of administration  
17 they've got to do something about the heat that's  
18 going on in this courtroom.

19 MS. PANDUKHT: No.

20 THE COURT: So if you think it's cold  
21 now, I'm telling you it's gonna be a lot colder  
22 tomorrow. I know it sounds weird, but really I'm  
23 not kidding, bring a sweater.

24 UNIDENTIFIED PROSPECTIVE JUROR: Can I  
25 ask you a question or --



1           THE COURT: I guess. You're not really  
2 supposed to, but go ahead. It's generally the  
3 marshal.

4           UNIDENTIFIED PROSPECTIVE JUROR: I can  
5 ask him then?

6           THE COURT: Yeah.

7           UNIDENTIFIED PROSPECTIVE JUROR: This is  
8 regarding security and badges. I think the judge  
9 said that if we have a badge --

10          THE COURT: He'll end up taking you  
11 outside and explaining some more rules to you.

12          UNIDENTIFIED PROSPECTIVE JUROR: All  
13 right. Thank you.

14          THE COURT: You'll be dialed in if you're  
15 selected.

16          MR. FIGLER: We have the first eight on  
17 both sides, Your Honor.

18          THE COURT: You're just one more, right,  
19 each?

20          MS. DEMONTE: Yeah.

21          MR. FIGLER: And that one -- can we  
22 approach just to make sure we're doing it correctly?

23          THE COURT: Sure. Just nine total.

24          MR. FIGLER: Okay. So it can be any one  
25 on the list?

1 THE COURT: Yeah.

2 MR. FIGLER: Okay, great.

3 THE COURT: She's gonna read it off and  
4 the last two.

5 MR. FIGLER: Okay.

6 THE COURT: The last two jurors, you go  
7 one by one through 12 is the jury. Juror No. 13 and  
8 14, the two last in line are the two alternates. I  
9 tell everybody up front who the alternates are  
10 because if you don't, people get mad. They want to  
11 know who the alternates are. But I will say that in  
12 every jury trial just about we always use your  
13 alternates. It's unfortunate. You know, somebody's  
14 mom died, something happens. And it's just  
15 unfortunate. The reason why we have alternates is  
16 we use them.

17 So what I'm saying to you alternates  
18 is being listening. Don't think that you're off  
19 duty because you're an alternate because you may  
20 very well go in there.

21 The other thing is if -- we've  
22 talked a couple times already about if there was a  
23 penalty phase as well, we've had people go in as  
24 alternates into the penalty as well and may not have  
25 even deliberated in the first phase. So just if you

1 are selected as an alternate, it's very, very  
2 important that you listen just like you're going to  
3 deliberate.

4 Okay. So bear with us. If your  
5 name is not called, we're gonna start calling names.  
6 And that's like Juror No. 1 up there. So if your  
7 name isn't called, start moving out and just stand  
8 in the middle over here because sometimes we have to  
9 do it a couple times because everybody's marked off  
10 we have to say it a couple times.

11 Don't try to skedaddle out of here  
12 like oh, great, I didn't hear my name. Somebody  
13 always trying tries to sniggle out. So don't.  
14 We're gonna do it a couple times to make sure  
15 everybody's in place a couple times because it's  
16 hard for my clerk to do this from what they've just  
17 done.

18 The jury box has exactly 14. And  
19 like I said, the last two on this side, on the right  
20 facing me, will be the alternates. 13, 14.

21 Yeah. If your name's not called, go  
22 ahead and start moving out.

23 THE CLERK: Lisa Griffis.

24 THE COURT: Mr. Sprenz, move on out.

25 THE CLERK: Namit Bhatnagar.

1           THE COURT:   Griffis, you're in one.  
2           THE CLERK:   Namit Bhatnagar.  
3           THE COURT:   Go to two.  
4           THE CLERK:   Michael Arcana.  
5           THE COURT:   Wait, wait.   Hold on.   Go  
6 ahead.   You're next.  
7           THE CLERK:   Namit Bhatnagar, we need you  
8 up here.   You're in two.  
9           THE COURT:   You're in two.   See, you  
10 tried to get out.   That's what happens.   So I don't  
11 let anybody go.  
12           THE CLERK:   That was one of the better  
13 moves I've seen.  
14                       Pamela Olson.   The people between  
15 her and Arcana can leave.  
16           THE COURT:   Come on right here.  
17           THE CLERK:   Jacque Wiese.   Angelica  
18 Numez-Morarrez.   Keith Trombetta.  
19           THE COURT:   Yup, you go there.  
20           THE CLERK:   Kristina Beber.   That means  
21 you're --  
22           THE COURT:   Kristina Beber, come on up.  
23           THE CLERK:   Erika Villanueva.  
24           THE COURT:   Wait.  
25           THE CLERK:   We passed you guys.   Run

1 while you can.

2 THE COURT: No, don't leave though. Just  
3 stay there.

4 THE CLERK: Joseph Catello. David  
5 McCallum. Elizabeth Uhrle. Sarah Morasco. Sandra  
6 Gomez.

7 THE COURT: Now hold on everyone. Hold  
8 on.

9 THE CLERK: You guys -- what happened  
10 there?

11 THE COURT: Keep on. We're letting  
12 people go up. I don't --

13 THE CLERK: I need Elizabeth Uhrle.  
14 David McCallum. He's here already.

15 THE COURT: Where'd McCallum go?

16 THE CLERK: David McCallum, you're Juror  
17 No. 11.

18 THE COURT: You're up there. You're up  
19 there.

20 THE CLERK: Elizabeth Uhrle then. Then  
21 we have Sarah Morasco, Sandra Gomez.

22 THE COURT: Okay. So what we're gonna do  
23 now, just to make sure, is when your name is called,  
24 we're gonna go 1 through 14. When your name is  
25 called, raise your hand. We're gonna go slow, make

1 sure we got everybody.

2 THE CLERK: Lisa Griffis.

3 JUROR GRIFFIS: Here.

4 THE CLERK: Namit Bhatnagar?

5 JUROR BHATNAGAR: Here.

6 THE CLERK: Michael Arcana?

7 JUROR ARCANA: I'm here.

8 THE COURT: Attorneys, make sure you're

9 watching, too.

10 THE CLERK: Pamela Olson?

11 JUROR OLSON: Here.

12 THE CLERK: Jacque Wiese?

13 JUROR WIESE: Here.

14 THE CLERK: Angelica Numez-Morarrez?

15 JUROR NUMEZ-MORARREZ: Here.

16 THE CLERK: Keith Trombetta?

17 JUROR TROMBETTA: Here.

18 THE CLERK: We got Kristina Beber?

19 JUROR BEBER: Here.

20 THE CLERK: Erika Villanueva?

21 JUROR VILLANUEVA: Here.

22 THE CLERK: Joseph Catello?

23 JUROR CATELLO: Here.

24 THE CLERK: David McCallum?

25 JUROR MCCALLUM: Here.

1 THE CLERK: Elizabeth Uhrle?

2 JUROR UHRLE: Here.

3 THE CLERK: Sarah Morasco?

4 JUROR MORASCO: Here.

5 THE CLERK: Sandra Gomez?

6 JUROR GOMEZ: Here.

7 THE COURT: Please stand and be sworn.

8 (Whereupon, the jury panel was sworn in.)

9 THE CLERK: Please be seated. You're our  
10 jury.

11 THE COURT: Ladies and gentlemen, thank  
12 you so much for staying after hours. I just want to  
13 let you go. You don't have to come back tomorrow.

14 Again, on behalf of the Eighth  
15 Judicial District Court, thank you very much for  
16 coming in for your time. Thank you. You're  
17 excused.

18 (Whereupon, the prospective jury panel  
19 exited the courtroom.)

20 THE COURT: All right. Ladies and  
21 gentlemen, this is the Information. It's gonna be  
22 read to you, the charging document in the case, to  
23 which the defendant -- to which the clerk will then  
24 answer -- or will read the plea.

25 THE CLERK: In the District Court, Clark

1 County, Nevada, the State of Nevada, plaintiff,  
2 versus Evaristo Jonathan Garcia, defendant. Case  
3 C262966-1. Department 15. Second amended,  
4 indictment.

5                   The defendant above named, Evaristo  
6 Jonathan Garcia, accused by the Clark County Grand  
7 Jury to the crimes of conspiracy to commit murder,  
8 Category B felony, and murder with use of a deadly  
9 weapon with the intent to promote, further or assist  
10 a criminal gang, Category A felony, committed at and  
11 within the County of Clark, State of Nevada, on or  
12 about the 6th day of February 2006 as follows:

13                   Count I, conspiracy to commit  
14 murder. Did then and there willfully, unlawfully,  
15 feloniously and knowingly meet with Giovanni Garcia,  
16 aka, Yobani Borradas and/or Manual Anthony Lopez,  
17 and between themselves and each of them with the  
18 other, did conspire and agree to commit a crime, to  
19 wit: Murder. And in furtherance of said  
20 conspiracy, did commit the acts as set forth in  
21 Count II, said acts being incorporated as though  
22 fully set forth therein.

23                   Count II, murder with use of a  
24 deadly weapon with intent -- with the intent to  
25 promote, further or assist a criminal gang.



1                   Did then and there willfully,  
2 unlawfully, feloniously and knowingly, for the  
3 benefit of, at the direction of, or in affiliation  
4 with a criminal gang, to-wit: Puros Locos, which  
5 has as one of its common activities engaging in  
6 felonious criminal activities other than the conduct  
7 which constitutes the primary offense, and the  
8 defendant with specific intent to promote, further  
9 or assist the activities of the above-said gang, did  
10 without authority of law and with malice  
11 aforethought, kill Victor Gamboa, a human being, by  
12 shooting at and into the body of the said Victor  
13 Gamboa, with use of a deadly weapon, to-wit: A  
14 firearm, said killing having been (1), willful and  
15 premeditated; and/or (2), said death ensuing  
16 following defendant and/or Giovanny Garcia, aka  
17 Yobani Borradas, and/or Manuel Anthony Lopez giving  
18 and/or sending and/or accepting a challenge to fight  
19 and/or said death ensuing during a fight that  
20 occurred upon previous concert and agreement; said  
21 defendant being responsible under one or more of the  
22 following principles of criminal liability; to-wit:  
23 (1) by directly committing the act, and/or (2) by  
24 conspiring with Giovanny Garcia, aka Yobani  
25 Borradas, and/or Manuel Anthony Lopez to commit

1 murder whereby each is vicariously liable for the  
2 acts of the other which are the object of the  
3 conspiracy, and/or (3) by defendant aiding or  
4 abetting in the commission of the crime by entering  
5 into a course of conduct whereby Giovanni Garcia,  
6 aka Yobani Borradas, while at Morris Sunset East  
7 High School contacted one or both defendant Manuel  
8 Anthony Lopez via cellular telephone to inform them  
9 of the fight to take place after school where  
10 defendant and/or Giovanni Garcia, aka Yobani  
11 Borradas, and/or Manuel Anthony Lopez accompanied  
12 each other to the school in the vehicle of Manuel  
13 Anthony Lopez, defendant and/or Giovanni Garcia, aka  
14 Yobani Borradas, and/or Manuel Anthony Lopez  
15 bringing with them a firearm, where after defendant  
16 and/or Giovanni Garcia, aka Yobani Borradas, and/or  
17 Manuel Anthony Lopez engaged in a fist fight with  
18 others, including Victor Gamboa, at the school,  
19 defendant and/or Giovanni Garcia, aka Yobani  
20 Borradas, and/or Manuel Anthony Lopez thereby  
21 chasing Victor Gamboa, at which time defendant fired  
22 a firearm numerous times at Victor Gamboa, striking  
23 him one time, thereafter defendant fleeing from the  
24 scene on foot with a firearm, defendant and/or  
25 Giovanni Garcia, aka Yobani Borradas, and/or Manuel

1 Anthony Lopez disposing of the firearm in a nearby  
2 abandoned toilet, thereafter fleeing the scene  
3 together in Manuel Anthony Lopez's vehicle,  
4 defendant and/or Giovanny Garcia, aka Yobani  
5 Borradas, and/or Manuel Anthony Lopez acting in  
6 concert throughout, each supporting, counseling and  
7 encouraging the others in the commission of the  
8 crime by their presence, words and actions.

9 This is dated the 2nd day of July  
10 2013 and signed by deputy district attorney Taleen  
11 Pandukht, to which the defendant has entered a plea  
12 of not guilty.

13 THE COURT: All right. Ladies and  
14 gentlemen, during this recess, you're admonished not  
15 to talk or converse among yourselves or with anyone  
16 else on any subject connected with this trial.

17 Or read, watch or listen to any  
18 report of or commentary on the trial or any person  
19 connected with this trial by any medium of  
20 information, including, without limitation,  
21 newspapers, television, radio or internet.

22 Or form or express any opinion on  
23 any subject connected with the trial until the case  
24 is finally submitted to you.

25 We'll see everybody back tomorrow at

1 12:30 for opening statements. We'll start trial in  
2 State's evidence and we'll go, like I said, until 5.  
3 Have a good evening. Thank you.

4 We'll stay on the record, attorneys.  
5 (Whereupon, the jury exited the  
6 courtroom.)

7 THE COURT: We're outside the presence of  
8 the jurors, we're still on the record. I just  
9 wanted to state before we conclude this evening, if  
10 there was anything that we needed to go on the  
11 record about.

12 At breaks I'll generally take -- if  
13 there's something you want to bring up, you know, I  
14 always stay on the record to see if there's  
15 something that you need.

16 MR. FIGLER: Right. There's a couple of  
17 things, Your Honor, that I think both sides are  
18 concerned about as far as the openings go.

19 May we just throw it out to Your  
20 Honor?

21 THE COURT: Yeah, can we talk about it  
22 now, so that we can go right into opening.

23 MR. FIGLER: Sure.

24 THE COURT: Perfect.

25 MR. FIGLER: The first is something that

1 came up with prior counsel. It was talked around  
2 and about and there was a discussion about keeping  
3 things out or in, but here's where we are right now:  
4 This surrounds the shooting of Jonathan Harper.

5 As Your Honor recalls, weeks after  
6 the incident at issue in our case, Mr. Harper was in  
7 an apartment with numerous members of the Locos  
8 gang, which we're calling gang for argument sake  
9 right now, and he was shot in the head.

10 The initial reported it as a  
11 self-inflicted wound. He later changed his story.

12 There was a criminal prosecution of  
13 Sal Garcia, who is related to Giovanny Garcia, one  
14 of the named co-defendants, and also there is a  
15 cousin relationship to the defendant.

16 I'm just giving you all the facts.

17 THE COURT: Hold on. Can you hold on a  
18 second because, you know, I don't remember this  
19 case, it's been continued so many times. I don't  
20 remember all the specifics.

21 MR. FIGLER: That's fine.

22 THE COURT: I did a lot of motions  
23 before, but it's a lot of facts you just threw out  
24 there at me.

25 MR. FIGLER: Yeah, yeah. We'll fill you

1 in. So take your time.

2 THE COURT: Okay. Okay. So he accused  
3 Sal Garcia?

4 MR. FIGLER: Alternately, but he  
5 initially said it was self-inflicted.

6 MS. DEMONTE: Actually that's not true.  
7 That's a misstatement. I did that trial. That's --

8 MR. FIGLER: I'll defer to Miss --

9 MS. DEMONTE: Okay.

10 MR. FIGLER: -- Demonte.

11 MS. DEMONTE: The call came out as an  
12 attempted suicide, but that's because Sal Garcia's  
13 the one that made the call.

14 Jonathan Harper had half his brain  
15 blown out, couldn't say anything. So it was only  
16 when he was able to talk was Sal Garcia actually  
17 accused.

18 MR. FIGLER: Okay.

19 THE COURT: So you prosecuted --

20 MS. DEMONTE: I prosecuted --

21 THE COURT: -- Sal Garcia --

22 MS. DEMONTE: Yes.

23 THE COURT: -- for the attempt murder on  
24 Jonathan Harper?

25 MS. DEMONTE: Yes.

1 THE COURT: Okay.

2 MR. FIGLER: Okay. There was a trial.

3 Mr. Buchanan represented Mr.--

4 THE COURT: Son or father?

5 MR. GOODMAN: The father.

6 MS. DEMONTE: The father.

7 MR. FIGLER: It was Bucky, right? Were  
8 you there?

9 MS. DEMONTE: The father. It was Bucky.

10 THE COURT: Okay.

11 MR. FIGLER: Manuel Lopez testified at  
12 that trial. He said this was self-inflicted.  
13 Manuel Lopez, who's the named co-defendant --

14 THE COURT: He's the co-defendant in this  
15 trial?

16 MR. FIGLER: Right.

17 THE COURT: So he testified in that  
18 trial?

19 MR. FIGLER: Yes. And he said it was  
20 self-inflicted.

21 THE COURT: Okay. So he testified --

22 MS. DEMONTE: Basically every member of  
23 Puros Locos --

24 THE COURT: Okay.

25 MS. DEMONTE: -- testified as such.

1 THE COURT: Okay.

2 MR. FIGLER: Okay. So then there's also  
3 this whole prior --

4 THE COURT: He's a defense witness then,  
5 right?

6 MR. FIGLER: Potentially.

7 THE COURT: I mean, that guy was a  
8 defense witness --

9 MR. FIGLER: Oh, and --

10 THE COURT: -- who testified for the  
11 defense?

12 MR. FIGLER: He was.

13 THE COURT: That it was self-inflicted  
14 and that it wasn't --

15 MR. FIGLER: Right.

16 THE COURT: -- Sal Garcia who did it?

17 MR. FIGLER: Correct.

18 THE COURT: Okay.

19 MR. FIGLER: And the jury didn't buy it,  
20 they found him guilty.

21 THE COURT: Okay. Sal Garcia's guilty in  
22 a whole different --

23 MR. FIGLER: Sal Garcia's in custody now  
24 in a completely different case. My client was not  
25 present in the room when any of that happened.



1 There's no dispute about that.

2 THE COURT: Okay.

3 MR. FIGLER: Okay.

4 THE COURT: That's a totally separate  
5 incident after this.

6 MR. FIGLER: Right.

7 THE COURT: Okay.

8 MR. FIGLER: But prior to that shooting,  
9 Jonathan Harper doesn't give any information to the  
10 authorities about what happened at the park in our  
11 case.

12 THE COURT: Why do I have a vague  
13 recollection of a motion in limine on this already?

14 MS. PANDUKHT: There was.

15 MS. DEMONTE: There was.

16 MR. FIGLER: There was.

17 THE COURT: Okay.

18 MR. FIGLER: But it was from a different  
19 angle. And what happened was that the defense  
20 didn't want any of this to be brought in, but now  
21 we're looking at it --

22 MR. GOODMAN: This is three years ago  
23 so --

24 MR. FIGLER: Right.

25 MR. GOODMAN: -- the court understands.

1 You know, before my involvement and before Mr.  
2 Figler's involvement.

3 MR. FIGLER: And so here's our conundrum:  
4 We --

5 THE COURT: Except for any motions in  
6 limine have to be brought before trial and not --

7 MR. FIGLER: Right.

8 THE COURT: -- thrown on me.

9 MR. FIGLER: And right. So what we're,  
10 we're really saying is that part of that motion in  
11 limine that was already granted by the defense is  
12 being withdrawn. It was a defense motion in limine,  
13 okay.

14 But to the extent that we want to  
15 make sure that we're keeping a clear record, that's  
16 why we're bringing it up to Your Honor right now.

17 THE COURT: Do you have a copy of the  
18 order that I did? You know, unfortunately we're  
19 paperless. So unless you bring something up to me,  
20 I have to -- and by the way, my computer's broken  
21 right now, they're gonna get me a new computer  
22 tomorrow. Unless I use my iPad again.

23 MR. FIGLER: Right.

24 THE COURT: But I can't -- I don't even  
25 have access to Odyssey right now. And even if you

1 tell me something, it takes like forever to click on  
2 to something.

3 I just want to say, you know, help  
4 me out a little sometimes and just refresh my memory  
5 because it has been going a really long time, this  
6 case.

7 MS. DEMONTE: Your Honor, we have the  
8 minutes.

9 MR. FIGLER: Minutes.

10 MS. DEMONTE: If I can approach.

11 MR. FIGLER: I think we all have the  
12 minutes. I don't know exactly if you --

13 THE COURT: I just want -- you guys all  
14 know the case much better obviously and the motions  
15 were done so long ago, but so you're -- you're gonna  
16 just let the prosecution know that you have no  
17 problem with that?

18 MR. FIGLER: No, no. We all do. We all  
19 do. That's why we're bringing it up to Your Honor.

20 THE COURT: Okay.

21 MR. FIGLER: Because we've been talking  
22 about it amongst ourselves. So now I can see --

23 THE COURT: So you want to undo my order  
24 kind of thing, but everybody's okay with it?

25 MS. PANDUKHT: Well --

1           MR. FIGLER: If I can just layout what  
2 we're going with and then gets the State's position.

3           THE COURT: Okay.

4           MR. FIGLER: So --

5           THE COURT: What did I grant on the  
6 motion in limine? What did I keep -- what did I  
7 keep out or --

8           MR. FIGLER: You just said that everyone  
9 would have to be really cautious about how we talk  
10 about the shooting, the unrelated shooting, because  
11 that the defense could potentially open up the door  
12 for more than they want to come in. And that's how  
13 it was left. That is how it was left.

14          THE COURT: Okay.

15          MR. FIGLER: And then Your Honor stated,  
16 and it's in the minutes, that just -- and actually  
17 it's in the transcript. You had it transcribed --

18          THE COURT: Oh, I did?

19          MR. FIGLER: -- the hearing, so you were  
20 able to recall --

21          THE COURT: Can I get a copy of the  
22 transcript? I'll read it tonight.

23          MS. PANDUKHT: I don't have that.

24          MS. DEMONTE: I don't think we brought it  
25 today. I have it in my car.

1           MR. FIGLER: So you wanted the transcript  
2 at the end, so that if you ever had to look at it  
3 again, you would have it all. And you said to your  
4 clerk at that point, let's transcribe that.

5           THE COURT: Do you know what the date of  
6 the transcript is?

7           MR. FIGLER: I'm gonna -- I think it  
8 might be the one that was September -- like  
9 September --

10          THE COURT: So September.

11          MR. FIGLER: -- 28th.

12          THE COURT: September 21st, 2010.

13          MR. FIGLER: That would be right.

14          THE COURT: Okay. The transcript would  
15 be filed any time after that, though. So you're  
16 gonna have to click on a lot.

17          MR. FIGLER: So you did --

18          MS. DEMONTE: Oh, no, wait. Okay. That  
19 transcript is the original motion in limine. The  
20 opening the door record I think had to do with Mr.  
21 Goodman's motion.

22          MR. FIGLER: Right.

23          MS. DEMONTE: And that was not 2010.  
24 That was just --

25          MR. FIGLER: Right. But you do need that

1 one to start from.

2 THE COURT: Okay. I'll take that, too.

3 MR. FIGLER: So here's where we're at:  
4 And I'm gonna try to burn it out really quick, Your  
5 Honor.

6 THE COURT: Okay.

7 MR. FIGLER: That was all just kind of  
8 background. Prior to being shot in the head,  
9 Jonathan Harper gives no information to the  
10 authorities about what happened in the park.

11 THE COURT: Right.

12 MR. FIGLER: Post being shot in the head,  
13 he's got this severe brain injury.

14 THE COURT: Right.

15 MR. FIGLER: That's the big hearing you  
16 had with Mr. Goodman.

17 THE COURT: I remember that.

18 MR. FIGLER: And we -- and the idea is  
19 now he's giving information about our client, then  
20 there's a preliminary hearing where he's saying, you  
21 know what, I got this brain injury, I don't have a  
22 lot of memories of stuff.

23 And between the preliminary hearing  
24 and the grand jury, which he had to do twice, he's  
25 basically getting impeached, or whatever you want to

1 call it, prior inconsistent statement in with that  
2 interview that happened after the shooting happened.

3 THE COURT: Okay.

4 MR. FIGLER: And so what we want to get  
5 into in the opening is that look, this guy got shot  
6 in the head, all these guys are there, our guy is  
7 not there, and now he's saying to the police that  
8 this happened.

9 That there has to be some inference  
10 that before he's not telling the police, after he is  
11 telling the police.

12 Our client, there's no offer of  
13 proof that anyone from the State can make you that  
14 our client had anything to do with the shooting of  
15 Jonathan Harper. He was never charged, he was never  
16 implicated by anyone --

17 MR. GOODMAN: I don't think that's even  
18 in the speak (sic) because Harper says that had  
19 nothing to do with it.

20 MR. FIGLER: Right. And then Harper  
21 said, this was about something between me and Sal,  
22 et cetera, et cetera.

23 But Mr. Goodman wants to get in in  
24 the opening is that this guy gets shot in the head,  
25 he has some brain damage, he has a hard time putting

1 memories together, the evidence will show all this.  
2 The evidence will also show that for whatever reason  
3 before he's not cooperating with the police,  
4 afterwards he is, and ladies and gentlemen,  
5 hopefully during this trial you'll see that that  
6 reflects on manner of bias on his part or  
7 credibility.

8 THE COURT: Okay.

9 MR. FIGLER: It impeaches his  
10 credibility. That's it. I think that the State  
11 feels that that opens up the door to suggest that  
12 Sal Garcia who is ultimately convicted of this is  
13 our guy's -- is, is Evaristo's cousin.

14 And to us, that mere implication  
15 makes a prejudicial impact saying that somehow  
16 because they're cousins this was directed at  
17 Evaristo's behalf or at his, at his desire. And,  
18 and there's no evidence of that.

19 So we don't want that implication to  
20 come in. We don't want to ring any sort of bells or  
21 allow the specter of that to be out there because  
22 it's not relevant to anything.

23 MR. GOODMAN: I --

24 THE COURT: I'm gonna stand by whatever I  
25 ruled before.



1 MR. GOODMAN: I mean, just to sum it up,  
2 Your Honor --

3 THE COURT: You can't --

4 THE COURT REPORTER: Wait.

5 THE COURT: -- on opening statements --

6 MR. GOODMAN: No, just to sum it up, to  
7 be consistent with your order.

8 THE COURT: I mean, if you want to make a  
9 record, you can.

10 MR. GOODMAN: Right. To be consistent  
11 with your order, I want to be able to tell the jury  
12 that there was a shooting, an unrelated shooting. I  
13 have to explain to the jury how he got his brain --

14 THE COURT: Brain damage?

15 MR. GOODMAN: Right. So I'm not gonna  
16 say anything more than that.

17 THE COURT: Right.

18 MR. GOODMAN: I'm gonna say it's an  
19 unrelated shooting.

20 THE COURT: Right.

21 MR. GOODMAN: That's, that's it.

22 MR. FIGLER: We just don't want them then  
23 to go and say that has somehow opened up the door in  
24 their opening. Well, it's not gonna get opened  
25 because they go first.

1 THE COURT: How would that open up to the  
2 door of him just getting shot in the head?

3 MS. DEMONTE: Okay. This is not --

4 THE COURT: Okay.

5 MS. DEMONTE: This is not exactly how Ms.  
6 Pandukht and I have envisioned all this going down  
7 in our heads.

8 We don't believe it opens the door  
9 to the whole cousin relationship between Evaristo  
10 and Sal Garcia.

11 But it's the State's position that  
12 if defense is going there with this whole Jonathan  
13 Harper's state of mind, whether it be bias or  
14 whatever, it's certainly the State's position that  
15 when he says I don't remember, it has nothing to do  
16 with getting shot in the head.

17 It has everything to do with he got  
18 shot in the head by the leader of the gang that he's  
19 in and had to endure that trial where witnesses are  
20 writing 187 on the window and he's scared. It's a  
21 gang case.

22 Of course now he's gonna get up and  
23 say I don't remember when it involves this case  
24 because that's what's more likely to have occurred  
25 rather than getting shot on one side of the head

1 that doesn't affect memory being the reason why he  
2 can't remember things.

3 THE COURT: I mean, I don't know. You  
4 guys are taking me by surprise to be honest.

5 MS. DEMONTE: No, I know.

6 THE COURT: I mean, motion in liminies  
7 are done prior to trial, so I have a time to study  
8 it, not the night before.

9 So whatever my order was, you'll  
10 stick by my order. Because I know whatever I read  
11 before, I read the whole grand jury transcript. And  
12 I read tons of motions in this case. It's just been  
13 a long time and nobody brought anything up to change  
14 an order that I've done. So I'm just gonna say  
15 stick with my order.

16 MR. FIGLER: Okay.

17 MR. GOODMAN: That's fine, Your Honor.

18 MR. FIGLER: That's fine. And I believe  
19 that our -- the order that's there, and if we could  
20 have discussions and they can object if they feel  
21 that we're somehow violating it, would allow just  
22 the information as being shot in the head without  
23 anything more.

24 MS. PANDUKHT: No, that's not my  
25 understanding of the order. My understanding of the

1 order was all this Sal Garcia stuff is out.

2 MR. GOODMAN: Okay.

3 THE COURT: I have to read the  
4 transcript.

5 MS. PANDUKHT: Then let's --

6 THE COURT: All I can say is everybody  
7 better read the transcript tonight, including  
8 defense and the State.

9 You know, a lot of things happened  
10 over the weekend, you're really prepping and, you  
11 know, things come into your mind and you want to get  
12 into the stuff, but whatever my order was back then,  
13 and I don't care what defense counsel, that's the  
14 law of the case, okay. That's what we all live  
15 with.

16 And if you wanted to change that  
17 order or do something different, then you had to  
18 have done it prior to trial, okay. Not that I would  
19 have necessarily changed it, but you can't just -- I  
20 have no idea what you guys are talking about.

21 MR. GOODMAN: The problem is, Your Honor,  
22 is that the order said it -- that it would open the  
23 door. And we're saying it shouldn't open the door.

24 THE COURT: Well, don't redo my order  
25 then.

1 MR. GOODMAN: Right.

2 THE COURT: If that's what I said before,  
3 then that's --

4 MR. GOODMAN: Right.

5 THE COURT: -- what my ruling is.

6 MR. GOODMAN: Right. So we're saying, so  
7 we're saying -- staying consistent with the order,  
8 but you left out this thing how it could open the  
9 door.

10 THE COURT: Well, I don't know.

11 MR. GOODMAN: We're saying it doesn't  
12 open the door and they're claiming it is. And if it  
13 does open the door, that's what we're bringing to  
14 the court's attention. And there's gonna be -- then  
15 there's gonna be all sorts of error in the record, I  
16 mean, before we even get to the first witness.

17 MR. FIGLER: So, so --

18 THE COURT: I don't know. I have to read  
19 what I said before.

20 MR. FIGLER: We just wanted to give you a  
21 heads up. That's the thing is that we don't think  
22 we're violating the order by just saying that one  
23 thing.

24 THE COURT: And you think they are gonna  
25 be violating an order?

1 MS. DEMONTE: We do.

2 THE COURT: Okay. Well, I'll read the  
3 transcript.

4 MS. PANDUKHT: Well, let me, let me read  
5 everything tonight.

6 THE COURT: Because if I reread what I  
7 said, then I'll understand what it is you're talking  
8 about. And I probably need to look at the motions  
9 again, but just heed of warning, you know, what your  
10 interpretation of my order is, either side, you  
11 know, when I read it tonight, I'll figure it out and  
12 don't violate it. Either side shouldn't violate.

13 MR. GOODMAN: The State's material  
14 witness that the court will remember as part of my  
15 motion, the State's primary witness got shot in the  
16 head and is giving testimony based on that statement  
17 after being shot in the head. To say that the jury  
18 shouldn't consider that is is just error.

19 THE COURT: No, I don't understand how  
20 you keep out he's been shot in the head.

21 MR. GOODMAN: Right. That's what I'm  
22 saying.

23 THE COURT: How do you keep out  
24 somebody's been shot in the head at all as they're  
25 testifying?

1 MS. PANDUKHT: Cuz we just wanted to  
2 clarify what the parameters were gonna be. I think  
3 that's all Mr. Figler and Mr. Goodman and us were  
4 trying to do was clarify the parameters. But it  
5 can't come in that he was shot in the head but not  
6 say who shot him in the head.

7 MR. GOODMAN: Well --

8 MS. PANDUKHT: So I think they're --

9 THE COURT: I think that's what they're  
10 saying then.

11 MS. PANDUKHT: That Sal's gonna say it --  
12 that they're gonna agree that it was Salvatore  
13 Garcia that --

14 MR. GOODMAN: No, we're not. We're not  
15 agreeing to that. We're just saying that the guy --  
16 the State's primary witness got a gun shot in his  
17 head.

18 THE COURT: How do you keep out that the  
19 dude was shot in the head?

20 MS. PANDUKHT: And then that's what our  
21 argument --

22 THE COURT: Just at that, how do you not  
23 say shot in the head? Because anything physically  
24 has to do with him testifying today.

25 MS. PANDUKHT: And it was all this trial

1 that Salvatore Garcia was convicted of shooting him  
2 in the head. And he's gonna be mentioned throughout  
3 this trial because she's a member of the gang. So  
4 that's why we had brought this up to you.

5 THE COURT: Did I go into all that  
6 before --

7 MS. PANDUKHT: Yes.

8 THE COURT: -- in opening the door?

9 MS. PANDUKHT: Yes. You had mentioned  
10 that. So that's why --

11 THE COURT: Well, I'm gonna stand by -- I  
12 mean --

13 MR. FIGLER: You said --

14 THE COURT: You may not agree with me,  
15 defense. I don't know what I said. I don't have it  
16 in front of me. I'm gonna read the transcript  
17 tonight. If I said it opens the door, then I read  
18 it in full before and it opens the door and don't do  
19 it.

20 MR. FIGLER: But you did distinctly say  
21 but it doesn't open the door to his cousin stuff.  
22 You were very explicit about that.

23 MR. GOODMAN: And that's what we're  
24 talking about. That's the only thing we're talking  
25 about.



1 MS. DEMONTE: Okay. So maybe --

2 THE COURT: Maybe -- I don't know. Maybe  
3 the State's not getting it.

4 MS. DEMONTE: Yeah, I'm actually very  
5 confused of what their stance is because I -- Mr.  
6 Goodman and Mr. Figler and I --

7 THE COURT: Why don't you give an offer  
8 of proof of what your opening would say and you all  
9 listen to it. The State says you're --

10 MR. GOODMAN: Mr. Figler just gave a  
11 proof of what the opening is, which is that the  
12 primary witness --

13 THE COURT: Listen to this.

14 MR. GOODMAN: That the, that the State's  
15 primary witness who claims that my client was  
16 somehow part of this shooting gave his statement  
17 five weeks after suffering traumatic brain injury  
18 which he then denied in grand jury testimony a  
19 couple years later.

20 So I need to be able to tell the  
21 jury that the guy got shot in the head and that  
22 could have been the cause of why he gave his  
23 statement, information to the police that he then  
24 denied a couple years later in grand jury testimony.

25 It doesn't mean that we then have to

1 say his cousin shot him in the head because his  
2 cousin was convicted in shooting him in the head on  
3 a completely separate case that had nothing remotely  
4 to do with this case.

5 MS. DEMONTE: Okay. If that is what it's  
6 going to be, I don't believe that is the opening  
7 statement violates the order.

8 MR. GOODMAN: Okay.

9 MS. DEMONTE: I think what I believe is  
10 gonna violate the order is gonna be testimony by Dr.  
11 Roitman and things like that later down the road.

12 But for opening statement, I don't  
13 believe that's gonna be a problem.

14 MR. GOODMAN: Okay. You allowed Dr.  
15 Roitman to come in --

16 THE COURT: How do I not keep Dr. Roitman  
17 from giving the basis of his opinion?

18 MR. GOODMAN: Yeah.

19 THE COURT: An expert can give the basis  
20 of their opinion based on hearsay. And didn't I  
21 already do a ruling on that?

22 MR. GOODMAN: Yes, you did, Your Honor.

23 THE COURT: Because I allowed them to  
24 already do Roitman.

25 MS. PANDUKHT: Our, our position is that

1 if they get to say that Jonathan was shot in the  
2 head, then we get to say who shot him in the head.  
3 Now, their, their --

4 THE COURT: Why? Why?

5 MS. PANDUKHT: -- that it's --

6 THE COURT: The only issue --

7 MS. PANDUKHT: We just want to name him.  
8 They don't want the relationship. This is what they  
9 told us before the trial: They don't want the  
10 relationship of the cousin relationship, but it's  
11 obviously --

12 THE COURT: Was the defendant.

13 MS. PANDUKHT: Yeah, was the defendant.  
14 But obviously it was Salvatore Garcia. So the jury  
15 shouldn't be able to hear that the witness was shot  
16 in the head but not know who shot him because they  
17 were all in the same gang.

18 THE COURT: Well, why is it, why is it  
19 relevant who shot him?

20 MS. PANDUKHT: Because this is a gang  
21 case and it's, it's relevant because of all of their  
22 interactions and motivations and, and all of that.

23 THE COURT: Well, the fact he got shot in  
24 the head is relevant, end of story, okay, because  
25 somebody testifying he was shot in the head is

1 relevant, period.

2                   So tell me how it's irrelevant that  
3 it's his cousin versus just some other banger out  
4 there?

5                   MS. PANDUKHT: And that's why we're  
6 trying to honor the order --

7                   THE COURT: What's the relevance --

8                   MS. PANDUKHT: -- which you said it would  
9 open the door. And that's why we're trying to --

10                  MS. DEMONTE: We're -- what we were  
11 willing to do is say Salvatore Garcia, but not say  
12 it's the cousin.

13                  MS. PANDUKHT: Yeah.

14                  MR. GOODMAN: We don't want to say it's  
15 Salvatore Garcia because that's prejudicial to the  
16 defense.

17                  THE COURT: Well, I don't know how --

18                  MR. GOODMAN: We just want to say there  
19 was an unrelated shooting.

20                  THE COURT: Well, there's a lot of  
21 Lopezes and Garcias out there.

22                  MR. GOODMAN: Right.

23                  THE COURT: Okay.

24                  MR. GOODMAN: Exactly.

25                  THE COURT: So it doesn't necessarily

1 have to tie, you know, Sal Garcia to him.

2 MR. GOODMAN: But they're gonna hear Sal  
3 Garcia throughout the case.

4 THE COURT: They're gonna hear Sal Garcia  
5 the whole -- throughout the case anyway I'm  
6 assuming.

7 MS. DEMONTE: Yeah.

8 THE COURT: So they're gonna hear  
9 somebody named Sal Garcia anyway and not know it's  
10 the cousin, correct?

11 MS. DEMONTE: Correct.

12 MR. FIGLER: So long as the State doesn't  
13 bring that out, yeah.

14 THE COURT: So they're gonna hear Sal  
15 Garcia's name anywhere.

16 MR. GOODMAN: Right.

17 MS. DEMONTE: Right.

18 MR. GOODMAN: My opening statement is  
19 that there was an unrelated shooting, he got --  
20 Harper got a gunshot injury to the head. It's  
21 prejudicial to that --

22 THE COURT: Well, why don't you just say  
23 he got a gunshot in the head, period. Don't say  
24 unrelated shooting because they're saying --

25 MR. GOODMAN: That's --

1 THE COURT: How about you just say he got  
2 shot in the head?

3 MR. GOODMAN: No, they're not saying it's  
4 related, Your Honor.

5 THE COURT: They're not saying it's  
6 related?

7 MR. GOODMAN: No. The State's not saying  
8 it's related.

9 MS. PANDUKHT: We just want it out who  
10 shot him, that it was somebody in his own gang, that  
11 it was Sal Garcia. We don't want them to not know  
12 it was --

13 THE COURT: Why? What's the relevance of  
14 somebody in his own gang shooting him if it's  
15 unrelated?

16 MS. PANDUKHT: Well, because we -- well,  
17 see, it's because there's reasons why he would say  
18 that it was from mem -- I mean, we believe that it  
19 wasn't from memory because we have an expert, Dr.  
20 Derek Duke, who's gonna say that where he was shot  
21 in the head doesn't affect his memory. We have a  
22 rebuttal expert that --

23 THE COURT: Yeah, but that has nothing to  
24 do with who shot. Each doctor can say oh, this  
25 one's got a bad memory, that one doesn't have a

1 memory, it's gang related.

2                   You're gonna argue all your  
3 inferences. And you all can argue your inferences.

4                   MS. PANDUKHT: But it's what --

5                   THE COURT: But why do you --

6                   MS. PANDUKHT: -- he's scared to testify  
7 as well. So that's why.

8                   THE COURT: But you can say that without  
9 saying the name of who it is that shot you in the  
10 head.

11                   MR. FIGLER: In any event, neither side's  
12 gonna say the name of who shot him in the head in  
13 the opening, right?

14                   MS. DEMONTE: Right.

15                   MS. PANDUKHT: I wasn't gonna mention it  
16 at all because I thought it was gonna --

17                   THE COURT: Right.

18                   MS. PANDUKHT: -- open the door. So I --

19                   MR. FIGLER: All right. So we're good --

20                   THE COURT: So at least we're --

21                   MR. FIGLER: -- for openings.

22                   THE COURT: -- on the same page. The guy  
23 got shot in the head, you're gonna claim he's got  
24 memory loss, you're gonna say he's a gang banger and  
25 scared or whatever and he's just lying. And that's

1 the end of it.

2 MR. GOODMAN: Not to get into a whole  
3 separate issue, but --

4 THE COURT: Oh, for God's sake.

5 MR. GOODMAN: Just so the judge knows  
6 that, you know, the prosecutor was in error when she  
7 said that we're saying that he had a memory issue.  
8 We're saying Dr. Roitman is saying something  
9 completely different. So it has nothing to do with  
10 memory issue. It has to do -- that is consistent  
11 with the court's order.

12 If you remember, the court made a  
13 huge distinction about what Roitman could testify to  
14 and what he couldn't testify to.

15 THE COURT: I better look at that order,  
16 too. Let's get a copy of that, too.

17 MS. PANDUKHT: I don't remember it being  
18 that clear, but let me reread -- I'll reread it all  
19 again.

20 MR. GOODMAN: So I'm not sure what --

21 THE COURT: I can't remember just off the  
22 cuff. I'm assuming everybody's following my orders.  
23 And as I hear it -- and once I hear opening  
24 statement, I'm gonna know the case a lot better  
25 again because I haven't read it in awhile.



1                   And there were no motion in liminies  
2 lately so I figured I'd get up on this again when I  
3 heard opening statements and I'd learn who everybody  
4 was and then you can all fight and I'll know what's  
5 going on.

6                   MR. FIGLER: The --

7                   THE COURT: But whatever my orders  
8 were --

9                   MR. FIGLER: Yeah.

10                  MS. PANDUKHT: Right.

11                  THE COURT: Yeah.

12                  MR. FIGLER: So I think we're all good on  
13 that.

14                  THE COURT: I think we're good on that.

15                  MR. FIGLER: The second issue in opening  
16 is the nature of the, the extradition. The nature  
17 of the extradition, Your Honor, and him coming back  
18 from Mexico and the process of using the FBI to go  
19 get him and all this other stuff.

20                         Here's, here's the problem: There  
21 was a back door flight objection that had occurred  
22 early on in the case. It wasn't properly raised to  
23 the extent that there was a motion to sever between  
24 Lopez and Garcia. There was talk about on Lopez's  
25 side how he felt like part of the motion to sever

1 was look, they found Garcia down in Mexico, that's  
2 gonna prejudice my guy, etc., and then Scott Bindrup  
3 said oh, hey, maybe we shouldn't do this flight  
4 instruction then or -- and it talks about that in  
5 the extradition and it was just kind of left up in  
6 the air.

7                   And Your Honor said, well, obviously  
8 fleeing to another country is conscious of guilt.  
9 So unless something changes, I'm just gonna let that  
10 roll. That was kind of where the court was on that.

11                   We've been talking back and forth  
12 about the nature of how much of that extradition  
13 should be stated to the jury or not because frankly,  
14 there's, there's a bit of a lapse to get from being  
15 in Mexico as to being conscious of guilt.

16                   Now, the shooter ran out of the  
17 park. They've got that. But the leap then to say  
18 that because Mr. Garcia, and let's assume for a  
19 second that he wasn't the shooter but that he had  
20 some other reason why if all these gang bangers are  
21 saying he's the shooter and they're pinning it on  
22 him and, and guys are getting shot or whatever, he  
23 goes down to Mexico to avoid this gang, well, that's  
24 not consciousness of guilt, that's actually fear and  
25 innocence.

1                   And, and when you bring in that he  
2                   had to be extradited, that's pretty prejudicial.

3                   THE COURT: Well, this all could have  
4                   been taken in motion in limine.

5                   MR. FIGLER: I get that.

6                   THE COURT: So it looks like it's coming  
7                   in.

8                   MR. FIGLER: Well, here's my concern  
9                   about the extradition stuff is that he waives his  
10                  extradition when they get him down here and comes  
11                  back voluntarily. So I don't know what the  
12                  parameters -- we're gonna object.

13                  THE COURT: Well, you can object for the  
14                  record.

15                  MR. FIGLER: We will.

16                  THE COURT: But the record is that you  
17                  made no motion in limine for me to give parameters  
18                  on evidence.

19                                So right now I don't know what  
20                  they're bringing in. I'm assuming --

21                  MR. FIGLER: Right.

22                  THE COURT: -- they're bringing in HE GOT  
23                  extradited.

24                  MR. FIGLER: Right. And we're gonna,  
25                  we're gonna fight it at the, at the instruction

1 level that a flight instruction be given.

2 THE COURT: Right.

3 MR. FIGLER: Which we still have the  
4 right to do obviously.

5 THE COURT: Sure.

6 MR. FIGLER: But, you know, I think that  
7 the State even wanted a little bit of guidance from  
8 the Court what they felt that was maybe not  
9 appropriate as far as what's coming in on  
10 extradition and what they can refer to in the  
11 opening. Because it could become a problem --

12 THE COURT: Why am I, why am I doing that  
13 now? Why wouldn't I do that in a motion in limine?

14 MS. PANDUKHT: The motion in limine,  
15 basically it was a defense motion to keep it out and  
16 you denied the motion.

17 THE COURT: Right.

18 MS. PANDUKHT: And you said his flight to  
19 Mexico was relevant to show --

20 THE COURT: Okay.

21 MS. PANDUKHT: -- consciousness of guilt  
22 from --

23 THE COURT: Okay. So you all need to  
24 figure out how if he gets convicted of murder in the  
25 first degree, how you should present the evidence to

1 where it will not be overturned.

2 MS. DEMONTE: Right, right.

3 THE COURT: And how you do that, you both  
4 know how to do it.

5 MR. FIGLER: Okay.

6 MS. PANDUKHT: Okay. And then the  
7 last --

8 THE COURT: You guys can use those  
9 parameters, and they're gonna object anyway --

10 MS. PANDUKHT: Right.

11 THE COURT: -- because they don't want  
12 flight in. But I'm not gonna tell you how to do  
13 your job. You're gonna figure out what evidence --  
14 I don't know what went into the extradition here and  
15 I wasn't given any briefs on it.

16 MS. PANDUKHT: Right.

17 THE COURT: And the other side, you know,  
18 that's what motion in liminies once again are for.  
19 So --

20 MR. FIGLER: I get it. I mean, the thing  
21 is that the State knows, and we'll talk about it  
22 now, judge, but --

23 THE COURT: Okay.

24 MR. FIGLER: -- we just want to give you  
25 a heads up. You know, the State knows that we're

1 gonna give them, give them a relevance objection  
2 when they talk about the extradition because that  
3 does sound pretty bad. So we'll see if we can work  
4 something out.

5 THE COURT: Well, if I've already ruled  
6 it's in --

7 MR. FIGLER: Not on the extradition. You  
8 ruled on the flight instruction. We never -- no one  
9 ever talked to you about extradition per say coming  
10 in.

11 THE COURT: It's coming in. It's coming  
12 in. That's part of it. That was part of your  
13 motion. I knew he was extradited and that's coming  
14 in that he was extradited from Mexico. I know that  
15 was my ruling.

16 MR. FIGLER: Nobody talked about  
17 extradition per say. It just talked about the  
18 flight, that he was in Mexico. So that's fine. But  
19 I mean, that's --

20 THE COURT: It's part of the evidence in  
21 the case. He didn't come back voluntarily. He was  
22 extradited.

23 MR. FIGLER: He was stopped and waived  
24 any fighting of extradition.

25 THE COURT: You guys can argue the

1 inferences from it why he was in Mexico.

2 MR. FIGLER: Yeah.

3 THE COURT: You can say he was going to  
4 visit grandma and --

5 MR. FIGLER: Yeah.

6 THE COURT: -- you can say he fled.

7 MR. FIGLER: Right. But we'll be  
8 objecting. We object now and we'll object in the  
9 future.

10 THE COURT: Okay.

11 MR. FIGLER: With regard to the fact of  
12 extradition is an irrelevant fact.

13 THE COURT: Unless there's some kind of  
14 case law that I'm not aware of that says extradition  
15 is just too prejudicial like the word red herring  
16 and, you know, Christmas and Easter bunnies.

17 MR. FIGLER: Yeah.

18 THE COURT: Then I'm telling you that  
19 that's part of what I needed the case to be.

20 MR. FIGLER: But the fact that  
21 extradition doesn't make more probative than not any  
22 of the material in the case, that's, that's our  
23 position.

24 THE COURT: Okay.

25 MR. FIGLER: All right.

1 THE COURT: Well, you can certainly make  
2 a record.

3 MS. PANDUKHT: I just have one --

4 THE COURT: I just know that nobody once  
5 again, you still could have -- if it wasn't  
6 litigated, Mr. Goodman has been on the case for a  
7 very long time, could have -- you know, these are,  
8 these are things called motion in liminies.

9 Either side can bring them if  
10 they're unclear of the parameters of evidence;  
11 what's in, what's out. Not brought, not timely, I  
12 know whatever my rulings were stand. And my  
13 understanding from a long time ago, that I remember,  
14 he fled and he was extradited.

15 And how they bring it in so that  
16 it's not, if he got convicted of murder one,  
17 reversible error, I'll leave it to them and you'll  
18 have to deal with anything as far as mistrial  
19 motions or anything that's overboard on their part.  
20 I can't imagine that, but, you know, it could be  
21 that way. Who knows. You guys know the evidence  
22 better than me.

23 MR. FIGLER: Okay. I think that was --

24 MS. PANDUKHT: Well, I just have the one  
25 thing. Because this is a gang case, I know it's not



1 required, but in the abundance of caution, I have a  
2 limiting instruction that is part of our instruction  
3 packet. And just in the abundance of caution, I was  
4 gonna ask that you read it before any witness that  
5 testifies about gang stuff just in case. I know we  
6 don't have to do it, but I thought I would at least  
7 have it ready in case it was --

8 MR. FIGLER: It's the bad acts gang  
9 limiting instruction.

10 MS. PANDUKHT: Yeah.

11 MR. FIGLER: It's like you're not to take  
12 the fact that if you feel that they've established  
13 that beyond a reasonable doubt that he was in a gang  
14 or participating in a gang, whatever the language  
15 says, you can't use that fact alone to think that  
16 he's guilty of something that --

17 THE COURT: You want me to read that  
18 before anyone who testifies that's in a gang to read  
19 the limiting instruction each time?

20 MS. PANDUKHT: At least in the beginning  
21 of the trial. I know you already read some  
22 instructions, but I thought, you know, just as an  
23 abundance of caution to read that before, you know,  
24 certain witnesses --

25 THE COURT: Is there any law that says I

1 have to do it?

2 MR. FIGLER: No.

3 MS. PANDUKHT: No. It's just something I  
4 brought up just to --

5 THE COURT: Well, unless there's law that  
6 you show me, I'm not gonna instruct them unless I  
7 need to contemporaneously give something if there's  
8 now law.

9 MS. PANDUKHT: I don't think it's  
10 required because we've alleged the gang enhancement,  
11 Your Honor. But because we wanted --

12 THE COURT: What's the defendant's  
13 position? Do you want a limiting instruction?

14 MR. FIGLER: Well, we were neutral on the  
15 subject. There's pros and cons of doing it that  
16 way. We're not asking for it. How's that?

17 THE COURT: Okay. Then I'm not gonna do  
18 it.

19 MS. PANDUKHT: Can we at least include it  
20 in the packet that goes to the jury?

21 THE COURT: Did you give it to me?

22 MS. PANDUKHT: Yeah.

23 THE COURT: Oh, okay. Then I'll  
24 be reading that.

25 MS. PANDUKHT: Can we do that?

1 THE COURT: I just got back so I haven't  
2 even --

3 MR. FIGLER: Yeah. We'll talk about it.  
4 Right. But we just got theirs. And as soon we do  
5 it, then we're gonna get you --

6 THE COURT: Right. It may be that they  
7 don't oppose it.

8 MS. PANDUKHT: Yeah.

9 THE COURT: Yeah. I just haven't read  
10 it.

11 MR. FIGLER: We're talking the pre,  
12 pre-motions. Or the pre-instructions. You're not  
13 gonna do that --

14 THE COURT: Right.

15 MR. FIGLER: Before the receipt of  
16 evidence, you read the instructions, right? So I  
17 think that's what she was asking, to include it in  
18 that.

19 THE COURT: Yeah. No, she wanted me to  
20 read that like in the beginning of --

21 MS. PANDUKHT: Yeah.

22 THE COURT: -- trial.

23 MR. FIGLER: Right.

24 THE COURT: And unless there's some case  
25 that says I'm, I'm mandated to do so, which, you

1 know, I have not --

2 MR. FIGLER: There's no --

3 THE COURT: -- tried gang cases as an  
4 attorney or as a judge. So I'm relying on both  
5 sides' expertise, you know, despite obviously tons  
6 of murder cases, you know, it wasn't really -- my  
7 background was more special victims, okay.

8 So if there's something I need to  
9 know about gang related, you know, instructions,  
10 feel free to definitely cut in and tell me I need to  
11 do something.

12 MR. FIGLER: You'll get our special on  
13 it. It's slightly different from the State's and  
14 the State's giving --

15 THE COURT: I haven't gotten the  
16 defense's.

17 MR. FIGLER: No, you're getting that  
18 right now.

19 THE COURT: Okay.

20 MR. FIGLER: Because we need to see which  
21 gang ones are gonna go.

22 THE COURT: Okay.

23 MR. FIGLER: So we're gonna do a quick  
24 turnaround for Your Honor because I know you want  
25 that.

1 THE COURT: That's fine. No, no, no,  
2 that's fine. Okay. So I'll get it probably  
3 sometime tomorrow.

4 MR. FIGLER: Yes, that's right. And  
5 then --

6 THE COURT: I told them 12:30 because I'm  
7 hopeful that if we tell them 12:30 we'll be on by 1.

8 MS. PANDUKHT: Okay.

9 MR. FIGLER: I think that's it. Does  
10 Your Honor -- I mean your opening instructions tell  
11 them that they could ask questions? Is that  
12 required?

13 THE COURT: I already did that.

14 MR. FIGLER: Okay.

15 THE COURT: I gave all the opening  
16 instructions. It's from the bench books which  
17 basically says they can.

18 MR. FIGLER: Okay.

19 THE COURT: And then at some point I told  
20 them I will after every witness ask them if they  
21 have any questions.

22 MR. FIGLER: Okay, great. Just curious  
23 if you did that or not.

24 THE COURT: I did.

25 MR. FIGLER: Every judge does that

1 different. You know that?

2 THE COURT: I didn't know that.

3 MR. FIGLER: They do. Every judge reads  
4 the instruction out of the bench book, but not every  
5 judge after the witness says ladies and gentlemen do  
6 you have any questions.

7 THE COURT: I thought they were supposed  
8 to.

9 MR. FIGLER: I think they're supposed to,  
10 too, but not every judge does that.

11 THE COURT: Okay. I'm not gonna comment.

12 MR. FIGLER: I'm not gonna comment  
13 either. That's why I --

14 MS. DEMONTE: Didn't you just comment?

15 MR. FIGLER: I did, but I'm not  
16 commenting further. I'm not naming names.

17 THE COURT: No worries. It is the law.  
18 I always ask them. If I don't, my wonderful clerk  
19 over here always says judge, don't -- I'm pretty  
20 good at it now. The first few I wasn't used to it  
21 because we didn't do it back in the old days, but  
22 now --

23 MR. FIGLER: But you don't leave it out  
24 now.

25 THE COURT: Now I'm pretty much used to

1 it.

2 MR. FIGLER: Okay. That was it for --

3 MS. PANDUKHT: That was it. Thank you,  
4 judge.

5 MR. FIGLER: You guys, nobody -- neither  
6 side is using a power point so we don't have to  
7 worry about that.

8 THE COURT: Okay.

9 MR. FIGLER: It's just gonna be old  
10 school.

11 THE COURT: It couldn't be that old  
12 school. We'll go off the record.

13

14 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF THE  
15 PROCEEDINGS.

16 /s/ JoAnn Melendez

17 JO ANN MELENDEZ

18 CCR NO. 370

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DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,	)	
	)	
Plaintiff,	)	
	)	Case No. C262966
vs.	)	Dept. No. XV
	)	
EVARISTO JONATHAN GARCIA,	)	
	)	
Defendant.	)	

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Before the Honorable ABBIE SILVER  
Tuesday, July 9, 2013, 12:30 p.m.  
Reporter's Transcript of Proceedings

JURY TRIAL

APPEARANCES:

For the State:                   TALEEN PANDUKHT, ESQ.  
                                     NOREEN DEMONTE, ESQ.  
                                     Deputies District Attorney

For the Defendant:           ROSS GOODMAN, ESQ.  
                                     DAYVID FIGLER, ESQ.  
                                     Attorneys at Law

REPORTED BY:   RENEE SILVAGGIO, C.C.R. No. 122

## I N D E X

State of Nevada v. Evaristo Jonathan Garcia

Case No. C262966

	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
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STATE'S WITNESSES:

Daniel Proietto	32	69	84	90
Richard Moreno	102	113	---	---
Jena Marquez	120	149	---	---
Edshel Calvillo	151	---	---	---

DEFENSE WITNESSES:

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EXHIBITS MARKED & ADMITTED IN EVIDENCE:

	<u>MARKED</u>	<u>ADMITTED</u>
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State's Exhibit Nos. 1 and 2, Respectively	3	35
State's Exhibit No. 3	3	38
State's Exhibit Nos. 4 through 49, Respectively	3	39
State's Exhibit No. 99	3	62
State's Exhibit No. 85	3	128
State's Exhibit No. 50	3	128
State's Exhibit No. 51	3	166
State's Exhibit No. 54	3	166
State's Exhibit No. 63	3	169
State's Exhibit No. 68	3	169
State's Exhibit No. 86	3	173

MISCELLANEOUS

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\* \* \* \* \*



1 Las Vegas, Clark County, Nevada  
2 Tuesday, July 9, 2013, 12:30 p.m.

3 P R O C E E D I N G S

4 \* \* \* \* \*

5  
6 (State's Proposed Exhibits 1 through 51, respectively;  
7 and State's Proposed Exhibits 54, 63, 68, 85, 86, and 99,  
8 respectively, were marked for identification.)  
9

10 (The following proceedings were had in open  
11 Court in the presence of the jury panel:)  
12

13 THE COURT: All right. Good afternoon, ladies and  
14 gentlemen. We're on the record in the presence of the jurors  
15 on State of Nevada versus Evaristo Garcia, Case Number C262966.

16 Let the record reflect the defendant's presence with  
17 his attorneys, Mr. Goodman and Mr. Figler, along with the  
18 State's attorneys, Ms. Pandukht and Ms. Demonte.

19 We're going to begin opening statements, so we'll  
20 hear from the State of Nevada.

21 MS. PANDUKHT: Thank you.

22 THE COURT: Should I ask if either party wants to  
23 invoke the Exclusionary Rule?

24 MS. PANDUKHT: Yes, the State invokes the  
25 Exclusionary Rule.

1 MR. GOODMAN: Yes, Your Honor, so if we could just  
2 have a moment.

3 THE COURT: The State of Nevada has invoked the  
4 Exclusionary Rule.

5 Any possible witnesses in this case are to remain  
6 outside during the trial, and they're not to discuss their  
7 testimony between each other. Just making sure.

8 MR. GOODMAN: Thank you, Your Honor.

9 THE COURT: It's been invoked so it is in effect for  
10 both sides. All right, Ms. Pandukht.

11 MS. PANDUKHT: Thank you.

12

13 OPENING STATEMENT ON BEHALF OF THE STATE

14

15 MS. PANDUKHT: Evaristo Garcia shot 15-year-old  
16 Victor Gamboa in the back as he was running away at a local  
17 high school.

18 This case occurred approximately seven years ago, on  
19 February 6th, 2006, at a high school called Morris Sunset East  
20 High School. It's located at 3801 East Washington, at the  
21 corner of Virgil. And what you will see from diagrams is  
22 there's streets that are perpendicular to Washington, and a  
23 little bit over up to the north is Virgil, a little bit to the  
24 south is a street called Parkhurst Avenue.

25 And it occurred here in Clark County.

1           You are going to hear about an incident that started  
2 occurring at this school. This was a night school. It was a  
3 school that had the hours approximately 2:00 o'clock until  
4 8:50 p.m. at night. So it was kind of a night school, and it  
5 would get out at approximately 8:50, which is when sixth period  
6 ended. So there were six periods in the school.

7           You're going to hear about several students that  
8 were going to that school at that time. One was  
9 Giovanni Garcia, he is also known by the name Yobanni Barata  
10 (phonetic) and the nickname of Little One.

11           He was going to that school with three other  
12 students that you're going to hear from -- Crystal Perez,  
13 Melissa Gamboa and Jena Marquez.

14           Now, Crystal, Jena and Melissa all went to school  
15 there, but they had some siblings that you'll also hear from.  
16 Jena Marquez had a brother, a twin brother, his name is  
17 Bryan Marquez.

18           And Melissa Gamboa's younger brother at that time is  
19 Victor Gamboa, who was 15 years old at the time that he was  
20 killed.

21           You're going to hear about another individual, and  
22 that individual's name is Jesus Alonzo. He was a member of  
23 Brown Pride Locotes, abbreviation BPL, and that's a gang here  
24 in Las Vegas. His nickname, or monicker, was Diablo.

25           You're going to hear that he was the boyfriend at

1 the time of Melissa Gamboa. He is now since deceased, but  
2 you're going to hear about him through -- throughout the trial.  
3 So I wanted to let you know who all the players were that  
4 you're going to be hearing from and their relationships to each  
5 other because it can get a little confusing.

6 So you're going to hear about a rival gang of Brown  
7 Pride Locotes, which is Puros Locos. And Puros Locos, which is  
8 spelled P-U-R-O-S, and then Locos is L-O-C-O-S, and you're  
9 going to hear about that gang as well, which Little One was a  
10 member of.

11 And you're going to be able to see tattoos that  
12 Little One had with Puros Locos on his chest, the number 13,  
13 and another common tattoo, East Side.

14 Now, you are going to hear about an altercation that  
15 occurred between originally Crystal Perez and Little One -- so  
16 Giovanni Garcia.

17 This altercation occurs the week before the  
18 shooting, and it starts between those two, and it kind of  
19 continues during that week.

20 And you're going to hear that, on Monday, the day of  
21 the shooting, on February 6th, 2006, this verbal altercation  
22 escalated between them. And you're going to hear that  
23 Jesus Alonzo got involved, and there ultimately is a phone call  
24 that Giovanni Garcia places on a cell phone in the hallway at  
25 the school before sixth period, sometime around fifth period,

1 around eight o'clock in the evening.

2 You're going to hear that that phone call is  
3 witnessed by a few individuals, including Jena Marquez and  
4 Crystal Perez, who are threatened by Giovanni Garcia.

5 And then you're going to hear that there is talk of  
6 a fight that's going to take place after school.

7 Based upon this threat and what's going on at  
8 school, you will hear that Jena Marquez and Crystal Perez were  
9 concerned for their safety, and so Jena Marquez calls her  
10 brother, Bryan, to come to the school and pick her up.

11 And you're going to hear from Bryan that he wants to  
12 know who this Giovanni Garcia -- after school lets out, you  
13 know, who's threatening my sister?

14 So you're going to hear about after school lets out  
15 at 8:50, that there -- everybody comes out of the school.

16 And Bryan Marquez goes up to Giovanni Garcia, and  
17 then a fight has started. You're going to hear about this --  
18 this fistfight throughout the course of this trial, and a bunch  
19 of people start getting involved in this fight.

20 Jesus, Diablo -- Diablo is there, he gets involved  
21 in the fight. Girls get involved in the fight, Crystal and  
22 Jena, they're in there fighting.

23 And then you will hear that the principal comes out,  
24 and he hears about the fight from his campus security monitor,  
25 you're going to hear from her, her name is Betty Graves. She

1 is there, she notifies him. He comes out -- his name is  
2 Dan Eichelberger, he'd actually only been a principal there for  
3 six days, he comes out and he breaks up the fight.

4 So everybody then starts running across the street,  
5 and the street that's in front of the school is  
6 Washington Avenue.

7 So everyone runs across the street, and that is  
8 where you will hear from several witnesses about a shooting  
9 that takes place in the middle of Washington Avenue right  
10 around the median. You're going to see photographs and  
11 diagrams of a couple of medians that are raised dividers in the  
12 middle of Washington Avenue. There's one that is north and one  
13 that is south.

14 And you are going to hear from several witnesses  
15 about an individual wearing a gray hooded sweatshirt, a light  
16 gray hooded sweatshirt, with short black hair, that runs across  
17 Washington after an individual, who is identified as  
18 Victor Gamboa, and shoots multiple times from a black firearm  
19 at that individual, Victor Gamboa.

20 You are going to hear from several witnesses, who  
21 all will describe to you in their own words what they saw.

22 Those witnesses, not only include people that you  
23 have already heard about -- Crystal Perez, Jena Marquez,  
24 Bryan Marquez -- but you're going to hear from Melissa Gamboa,  
25 who was there. She was not actually participating in the

1 fight, but she was watching the fight, and she's running with  
2 her brother across the street.

3 And you're going to hear that there is -- across  
4 from Washington there's a sidewalk, and there's a block wall,  
5 and behind it are some houses.

6 And Melissa Gamboa is going to tell you that she was  
7 running with her brother when she sees him get shot, and she  
8 previously identified the defendant, Evaristo Garcia, as being  
9 the individual that she saw shooting directly at her brother.

10 You are going to hear from an individual that was on  
11 the corner there, right at Washington and Virgil, he was on his  
12 bike there to pick up his girlfriend. And his name is  
13 Joseph Harris. And he will tell you that he saw the victim get  
14 shot up against the wall, and he saw the shooter in this case.

15 You're also going to hear from another individual,  
16 Vanessa Grajeda, that was there watching the fight. And she  
17 doesn't know anybody involved in this case.

18 And everybody's going to tell you their description  
19 of the shooter, they're going to tell you where they were, what  
20 they saw, how many gunshots they heard, and you're going to  
21 hear all of those details throughout the trial.

22 As well as you're going to hear what Betty Graves  
23 saw. And Betty Graves saw the person in the gray hooded  
24 sweatshirt keeping his right hand in his pocket of his  
25 sweatshirt. And he was actually swinging with his left hand.

1           And you're going to also hear from Vanessa Grajeda  
2 that she saw a black object hanging out of the gray hooded  
3 sweatshirt pocket.

4           Then you're going to hear that a crime scene analyst  
5 comes out to the scene, and his name is Daniel Proietto. And  
6 he's a crime scene analyst that comes out, and they collect all  
7 of the physical evidence at the scene.

8           And he is there at the direction of two homicide  
9 detectives that are assigned to investigate this case --  
10 Detective Cliff Mogg and a retired homicide detective,  
11 Detective Ken Hardy. So they come out. They're assigned to  
12 investigate the case, and they direct, you know, the collection  
13 of evidence.

14           You are going to be able to see photographs taken at  
15 the crime scene, a diagram taken of the area and where the  
16 evidence was found, as well as aerial photographs showing you  
17 the location.

18           And you're going to hear from CSA Proietto that he  
19 found six Wolf 9-millimeter Makarov cartridge cases that had  
20 been fired or expended right there in and around and on that  
21 north median in the middle of Washington Avenue.

22           And he's also going to tell you that he found four  
23 bullets at that scene, which were also 9-millimeter bullets  
24 that were there.

25           He's going to explain to you the location of where



1 all the evidence is found.

2 And then he's also going to explain about evidence  
3 that's found further around the corner on Parkhurst.

4 So several witnesses describe the shooter running  
5 south on Parkhurst.

6 So you will hear from a police officer, who was on  
7 patrol at that time, his name is Richard Moreno. He's actually  
8 now a detective in the gang unit. And Richard Moreno started  
9 walking south on Parkhurst Avenue, and he finds in front of --  
10 like he doesn't get very far, it's like the second house there,  
11 at 865 Parkhurst. He -- walking down the street, he sees a  
12 couple of abandoned toilets that are just in front of a  
13 residence there.

14 The person who was living there at the time, he'll  
15 come in too and tell you that that address was 865 Parkhurst;  
16 that his name is Russell Carr, and he was there, and they were  
17 remodeling the bathrooms, and they are changing out tile, and  
18 they were replacing the toilets.

19 So those toilets are sitting out there. There's no  
20 lid in -- on the toilets, there's no water in the toilets, but  
21 as Richard Moreno is walking by looking for where possibly  
22 there might be evidence, he sees in the toilet tank a gun. It  
23 turns out to be a 9-millimeter automatic Makarov firearm,  
24 semiautomatic caliber firearm. He finds that inside, face down  
25 so that the top of the gun is on the bottom of the toilet tank.

1           You'll hear that CSA Dan Proietto impounds that gun.  
2 He takes fingerprints from outside of the toilet tank, but he  
3 doesn't process the actual firearm itself at that time.

4           He packages it up, and then he preserves it for  
5 later analysis by other experts from the Las Vegas Metropolitan  
6 Police Department.

7           So that's kind of the crime scene that they find out  
8 there, but they're still trying to identify who's the person  
9 responsible.

10           So you're going to hear from Detective Mogg that he  
11 continues to try and learn the identities of all the people  
12 involved. And that one of the ways he does that is by finding  
13 cell phone records starting with the phone that was being used  
14 by Giovanni Garcia.

15           You will hear from Detective Mogg that he finds out  
16 that there were numerous phone calls, approximately 20 or so,  
17 that are made by the phone that Giovanni Garcia was using,  
18 which was actually in the name of his brother, Salvador Garcia.

19           That there were 20 phone calls made from that phone  
20 number to an individual by the name of Manuel Lopez.

21           Manuel Lopez has a nickname called Puppet, and  
22 that's how he was known, by that nickname.

23           There are also calls, and the importance of these  
24 calls is they're between eight o'clock and nine o'clock on the  
25 day of the shooting, so between eight p.m. and nine p.m.,

1 approximately 20 phone calls between Giovanny Garcia and  
2 Manuel, and also approximately 12 phone calls between  
3 Giovanny Garcia and Melinda Lopez, who, and I know all the  
4 relationships are a little crazy here, but Melinda Lopez is  
5 Manuel Lopez's sister, Salvador Garcia's girlfriend at the  
6 time. Okay.

7 So he finds out all of these things, and then he  
8 eventually finds another witness to the murder. And his name  
9 is Jonathan Harper.

10 He interviews Jonathan Harper approximately  
11 April 1st, 2006. And Jonathan Harper was a member of the gang  
12 Puros Locos.

13 And he will explain to you about the members of that  
14 gang, about Salvador Garcia, whose nickname was Boxer, about  
15 all the other individuals that I've mentioned already --  
16 Giovanny Garcia, Manuel Lopez.

17 He's also going to talk about his friend  
18 Edshel Calvillo, whose nickname was Danger. And he's going to  
19 talk about the things they were doing, part of that gang, and  
20 he's going to talk about the fight that occurred on that day,  
21 on February 6th, 2006.

22 Jonathan Harper told police that he was at  
23 Salvador Garcia's house when Giovanny Garcia called about this  
24 fight that's taking place, and he wanted them to back him up.

25 So you will hear that Jonathan got into a gray

1 El Camino vehicle, which had a closed front, but kind of a bed  
2 in the back, it's kind of like a truck in the back. That  
3 vehicle's important because Melissa Gamboa told police that she  
4 saw a gray El Camino come to the scene before the shooting.  
5 And she said in that gray El Camino were three individuals that  
6 were male and an individual who was female.

7 And she described the two males that got out of that  
8 car. One of those males had a shiny bald head and was wearing  
9 blue, I believe. And the other individual had the gray hooded  
10 sweatshirt on. And she saw them join in the fight with  
11 Giovanni Garcia.

12 Now, back to Jonathan Harper. Jonathan Harper had  
13 told police that he went in that gray El Camino, driven by  
14 Puppet, that Puppet's girl was there, the defendant was there,  
15 and they all go to the school, and that the defendant and  
16 Jonathan Harper get out of the El Camino and start fighting.

17 Jonathan Harper told police that he was fighting the  
18 leader of the Brown Pride Locotes gang, Diablo, at the time,  
19 that's who he was personally fighting with. And he told police  
20 that he witnessed the shooting.

21 He told police the identity of E, who is also  
22 sometimes known as Chuckie, the defendant Evaristo Garcia. And  
23 he picked him out of a photo lineup, and that is how the police  
24 started finding out who did this murder.

25 And then you're going to hear as well that there was

1 an autopsy done. The autopsy in this case was done by  
2 Clark County Coroner Dr. Lary Sims.

3 Dr. Lary Sims decided that the cause and manner of  
4 the death was a single gunshot wound to the back.

5 You're going to hear again something I forgot to  
6 mention with regard to the crime scene analyst, Crime Scene  
7 Analyst Proietto had also found on that left wall, he found  
8 four bullet strikes to that block wall right where the victim  
9 fell.

10 You're also going to hear from other experts from  
11 the Las Vegas Metropolitan Police Department. There is a  
12 firearms examiner, and her name is Angel Moses, and she  
13 examined the firearm in this case that was impounded into  
14 evidence.

15 She test fired it to make sure that it was operating  
16 normally and firing properly.

17 And she also was able to examine all the cartridge  
18 cases, as well as the bullets.

19 Now, while two of the bullets were too mutilated in  
20 order to really form an identification, she will tell you that  
21 she conclusively identified two of the bullets found right  
22 there at the scene as having been fired by the exact  
23 9-millimeter Makarov gun that was found in the toilet right  
24 there on Parkhurst.

25 And then finally you're going to hear from two other

1 experts, you're going to hear from Detective Michael Souter  
2 (phonetic), he is a gang expert with the Las Vegas Metropolitan  
3 Police Department. And he's going to talk to you about  
4 criminal gangs in general, about these gangs in particular,  
5 Puros Locos, as well as Brown Pride Locotes, and he will give  
6 you, based upon his training and experience, he's going to  
7 explain various terminology, various reasons behind tattoos,  
8 the monickers, customs, relationships, motivations amongst  
9 these two gangs, and gangs in general.

10 And then you're going to hear from a fingerprint  
11 expert, who is also the lab manager of the Las Vegas  
12 Metropolitan Police Department. Her name is Alice Maceo, and  
13 she compared that 9-millimeter Makarov gun to the fingerprints  
14 of Giovanni Garcia and Manuel Lopez.

15 Their fingerprints were not identified anywhere on  
16 the gun, but she also compared the defendant's fingerprints to  
17 the actual gun itself, and she will tell you that she  
18 identified two of the defendant's fingerprints, that one of the  
19 fingerprints was his right ring finger that was on the top of  
20 the grip.

21 And then she's also going to tell you about the  
22 partial palm print that was found on the back strap of the grip  
23 of the firearm, the webbing area between your thumb and your  
24 index finger was right there, identified to the defendant, on  
25 the back of the grip of the gun (indicating).

1           After you have heard all of the evidence in this  
2 case, all of the State's witnesses, and seen all of the  
3 physical evidence that the State presents, Ms. Demonte and I  
4 are confident that you are going to return a verdict of guilty  
5 on all counts.

6           Thank you.

7           THE COURT: Thank you, Ms. Pandukht.

8           And the defense.

9           MR. GOODMAN: Thank you, Your Honor.

10          THE COURT: Mr. Goodman.

11

12                   OPENING STATEMENT ON BEHALF OF THE DEFENDANT

13

14          MR. GOODMAN: Good afternoon.

15                You know it's a murder case. You know that  
16 Victor Gamboa died. You know that he died from a gunshot  
17 wound.

18                But other than that it's a relatively simple case  
19 for you to decide.

20                It's a question of whether or not Evaristo Garcia,  
21 sitting over there (indicating), was the actual shooter.

22                So let me give you my road map as to what you're  
23 going to hear over the course of the week.

24                You're going to hear primarily from only two  
25 witnesses. The State told you about a whole bunch of

1 witnesses. There were about 20 to 30 kids in this fight. It  
2 was a fight that happened at a school between non-gang members.

3 Most of the people at that school, in that park,  
4 during that fight, were non-gang members.

5 You're going to hear from two witnesses:  
6 Melissa Gamboa, that the State just talked about, who is  
7 Victor Gamboa's sister, and you're going to hear from  
8 Jonathan Harper.

9 What's interesting is that you already heard in  
10 opening statement that the shooter was wearing a gray  
11 sweatshirt, a gray hoodie.

12 It's important for your consideration to listen  
13 carefully to what the evidence actually is during the course of  
14 the trial because it's not enough that there is a shooter, you  
15 have to prove -- the State has to prove beyond a reasonable  
16 doubt that Mr. Garcia was the shooter and whether or not  
17 Mr. Garcia was wearing a gray sweatshirt.

18 And this is what we do know, this is what you're  
19 going to hear from those two primary witnesses, Melissa Gamboa  
20 and Jonathan Harper. You're going to hear that they both  
21 described the shooter as wearing a black, not gray, sweatshirt.

22 Specifically, under oath, Jonathan Harper testified:  
23 The shooter was wearing, quote, all black sleeved, long sleeved  
24 pant, end quote.

25 You're going to hear that Melissa Gamboa, under



1 oath, testified the shooter -- the shooter was wearing, quote,  
2 black sweater, black hoodie.

3 Now, you heard a lot of names. You heard a lot of  
4 witnesses -- Manuel Lopez, Salvador Garcia, Giovanny Garcia, a  
5 lot of people. What you need to pay attention to during the  
6 course of this evidence is what evidence is related to  
7 Evaristo Garcia.

8 And let's talk about what you're going to hear from  
9 Jonathan Harper.

10 Jonathan Harper is a confirmed member of  
11 Puros Locos.

12 You're going to hear Jonathan Harper tell you that  
13 he was promised immunity. He was promised not to be prosecuted  
14 in order to give evidence and testimony in this case.

15 That's a big motivation for you to consider because  
16 Jonathan Harper is going to tell you that he was at  
17 Salvador Garcia's house, Manuel Lopez came to pick him up, and  
18 he went to the park.

19 He's going to tell you that Giovanny and Edshel, who  
20 you just heard otherwise known as Danger, was also at the  
21 house.

22 Guess who he said was not at the house?  
23 Evaristo Garcia.

24 He didn't say that until later, but his initial  
25 statement to the police was -- he didn't mention

1 Evaristo Garcia.

2           You're going to hear from Jonathan Harper that not  
3 only was he at the house, Salvador Garcia's house, that he was  
4 picked up by -- by Manuel Lopez, and he was -- and he went to  
5 this school.

6           And you're going to hear that he got out of the car,  
7 he jumped on somebody immediately, and he participated in the  
8 fight.

9           He's going to tell you that he knew before  
10 leaving -- before going to the park, going to the school, that  
11 Manuel Lopez had a gun.

12           He's going to tell you that Manuel Lopez owns that  
13 gun that was in the shooting.

14           Jonathan Harper's going to tell you that  
15 Manuel Lopez had that gun that you're going to see in his  
16 waistband at Salvador Garcia's house before they actually  
17 travel to the school:

18           Before you got into the car was there any talk  
19 about a gun?

20           Jonathan Harper: No.

21           Now, let's talk about the gun for a second even  
22 though we know from Jonathan Harper that it was Lopez's gun.  
23 Lopez had it in his waistband before they went to the park,  
24 Lopez drove to the park. Let's talk about the gun, because  
25 you're going to hear some evidence that, at some point,

1 Evaristo Garcia handled that gun (indicating).

2 And you're going to hear that there were three  
3 prints that were lifted from that gun, three prints. One was,  
4 as you heard, between the thumb and the ring finger, the web  
5 part.

6 So if you can imagine, and we'll show you during  
7 the course of trial, if you shoot the gun and you stick your --  
8 your hand as far up as you can, then that -- that partial web  
9 print was on there.

10 You're also going to hear that there's another  
11 print that was lifted on the upper left-hand side of the gun by  
12 his right index finger that was in the two o'clock position.

13 The State's own expert is going to tell you  
14 that's a very -- very unusual spot.

15 And when you look to see exactly where the print  
16 is, you're going to see that that was consistent with somebody  
17 holding the gun and touching the gun.

18 Nobody is going to tell you that that's  
19 consistent with somebody shooting the gun.

20 So when you're listening to the evidence during  
21 this week about that there's some prints on the gun, you're  
22 going to hear that this gun was at -- was with Lopez at the  
23 house, and it was passed around.

24 It's common for people to touch the gun.

25 What you're also going to hear is that there was

1 a third spot, a third fingerprint that was lifted, that would  
2 be consistent with somebody shooting the gun.

3 That print was not identified to  
4 Evaristo Garcia.

5 You're going to hear that this gun, after the  
6 fight, was dropped off in a toilet, and you're going to hear  
7 that there was a print lifted off of the toilet.

8 You're going to hear that that print was not  
9 identified as Evaristo Garcia.

10 And what you need to consider and why we talked  
11 in voir dire and why I asked you those questions about would  
12 you please wait to form your opinion is because you have to ask  
13 yourselves: Well, what would have been on the gun that can  
14 prove to you beyond a reasonable doubt that Evaristo Garcia  
15 (indicating) was the actual shooter?

16 And when you hold the gun, everybody knows you  
17 hold the gun on the grip. And it's very common to have, during  
18 crime scene, to have swabs of DNA pulled from the grip of the  
19 gun, because that's where you leave skin cells and other things  
20 that can be lifted.

21 That would have conclusively proved who shot the  
22 gun.

23 The DNA came back negative.

24 They even found the car that allegedly  
25 Evaristo Garcia rode in. There was no prints from the car.

1 There was no gun in the car, there was no clothes from the car.  
2 There was nothing from this crime scene before, during or after  
3 connecting Evaristo Garcia as the shooter.

4 If there was a fingerprint -- if a crime was  
5 committed in this room, and there was a fingerprint on that  
6 wall (indicating), that fingerprint would have more  
7 significance, right? Because you would know at least that  
8 person was in that room.

9 When you handle a gun no matter -- before -- an  
10 hour before, a day before, and you lift off a print, especially  
11 not consistent with somebody shooting the gun, that gun can  
12 move, it's transitional. That's no more evidence of somebody  
13 shooting the gun as it is somebody holding a gun the day  
14 before.

15 So you really have to look to see what evidence  
16 there is to connect Evaristo Garcia in any way, shape, manner  
17 or form as the shooter in this case.

18 But what the evidence is going to show you is  
19 that it was Manuel Lopez's gun, he carried the gun, he owned  
20 the gun. He had the gun in his waistband. And Manuel Lopez  
21 was the only person that went back to that toilet to try and  
22 retrieve that gun.

23 You're going to hear that from Jonathan Harper,  
24 not Evaristo Garcia.

25 Listen to see what evidence there is about

1 Evaristo Garcia in this entire case.

2 In voir dire and in opening, you heard a lot  
3 about gang, about Puros Locos gang, that there was some kids  
4 from the Puros Locos gang and there was some kids from  
5 Brown Pride.

6 We just mentioned a whole bunch of names.  
7 Listen to what the evidence is that Evaristo Garcia is a member  
8 of any gang.

9 He was 16 years old when this happened.

10 The names that were just mentioned by both the  
11 prosecutor and myself, Manuel Lopez, Jonathan Harper,  
12 Giovanny Garcia, Sal, are all confirmed Puros Locos members.  
13 That's what the evidence is going to show.

14 And you're going to hear from the State's  
15 expert, how to you -- how do you confirm whether or not you --  
16 somebody is a member of a gang?

17 There's traditional ways to do that.

18 Police officers go out in the field. They're  
19 called field cards, and there would be a field card on somebody  
20 that's a member of a gang.

21 There would be Incident Reports, so people know,  
22 so police officers know if more than two people are together,  
23 they commit a crime, it's from the same gang, and that's put in  
24 the system.

25 They have people who admit to being in a gang.

1                   You're going to hear from a gang expert that  
2 that was done in this case, that all those names I just  
3 mentioned, either through field cards, tattoos with the logo  
4 Puros Locos on -- on them, right, that would be a good sign if  
5 somebody's in a gang, Incident Report, all that information was  
6 found to confirm all these people were gang members.

7                   Who's the only person that I didn't mention?

8                   Evaristo Garcia.

9                   Not only are you not going to hear evidence that  
10 Garcia did not have -- police officers did not have a field  
11 card for Evaristo Garcia, they did not have an Incident Report  
12 for Evaristo Garcia. There's no logo tattooed on  
13 Evaristo Garcia, Puros Locos, like there is for other gang  
14 members.

15                   But you're going to hear that there was nothing  
16 on Evaristo Garcia. He wasn't even arrested before this case.

17                   So listen to the evidence. That's why we talked  
18 about yesterday, please wait to form your opinion and listen or  
19 write down when you hear if there's any evidence connecting  
20 Evaristo Garcia as being a member of Puros Locos.

21                   Now, this is also important for your  
22 consideration because you're going to hear, the State didn't  
23 mention it in their opening statement, but Evaristo Garcia  
24 ultimately, at some point, went to Mexico.

25                   And we just got done talking about how

1 Evaristo Garcia is the only non-confirmed gang member in this  
2 case.

3 And when the police notified Evaristo Garcia  
4 that he was actually being looked at in this case, they went  
5 down to Mexico, and Evaristo Garcia waived extradition. He  
6 didn't try to fight extradition.

7 You're going to hear that the reason  
8 Evaristo Garcia went down to Mexico was because he was afraid  
9 of the Puros Locos gang members. He wasn't one of them. He  
10 was the only non-gang member there.

11 There has been testimony for the last couple of  
12 years in this case that Evaristo -- Jonathan Harper, the  
13 witness who is going to tell you that he was promised that he  
14 wouldn't be prosecuted, this is what he's going to tell you:  
15 That when he was fighting, the principal came out of the  
16 school, all these kids ran in different directions.

17 Jonathan Harper did not follow Giovanny Garcia.

18 At one point, some point in his testimony he  
19 says that Evaristo Garcia was there, then under oath he says  
20 Evaristo Garcia was not there.

21 But what he's going to tell you is that when --  
22 at the point -- at some point in his testimony, on the day that  
23 he chooses to say either Evaristo Garcia was there or  
24 Evaristo Garcia wasn't there, on the time he chooses to say  
25 that Evaristo Garcia was there, he testified that



1 Giovanni Garcia pursued Victor Gamboa, and Evaristo Garcia was  
2 behind him.

3 Jonathan Harper is going to tell you that he  
4 went in a completely different direction. He went towards the  
5 baseball field.

6 At one point, and it's up to you, ladies and  
7 gentlemen of the jury, on who you believe. You're going to  
8 have to assess his credibility. At one point he tells you he  
9 heard that there was this conversation going back and forth  
10 between Giovanni Garcia and Evaristo Garcia, you know: Give me  
11 the gun, let me do the shooting -- words to that effect.

12 Then he tells you under oath later that he  
13 couldn't hear anything that happened.

14 He didn't see anything that happened.

15 He was behind the baseball fields.

16 You know who else said that they didn't hear  
17 anything happen by the shooter? Melissa Gamboa.

18 Melissa Gamboa, that's what's consistent.

19 Melissa says:

20 Did a shooter say anything?

21 No.

22 Did you hear anything?

23 No.

24 So pay attention to that when you're -- when  
25 Jonathan Harper's testifying. I'm not sure what he's going to

1 testify to, there's been so many different statements.

2           So we know -- the evidence is going to show you  
3 that Jonathan Harper was motivated for a whole host of reasons,  
4 whether it was so he wasn't prosecuted, his statement changes  
5 about three or four times. You'll hear all of that, and it's  
6 going to be up to you to judge his credibility.

7           But the other person who you're going to hear  
8 from, and really the only other person that claims to identify  
9 Evaristo Garcia, was the deceased's sister, Melissa Gamboa.

10           And you're going to have to ask yourselves, is  
11 something else motivating -- motivating Melissa Gamboa? She  
12 just saw her brother shot dead. She's going to want to hold  
13 somebody accountable. But you're going to have to look at the  
14 evidence.

15           And this is what Melissa Gamboa said, she said  
16 the day -- the night of the shooting that the shooter had light  
17 hair and was 18 or 19 years old.

18           You know, just looking at Evaristo Garcia, that  
19 he doesn't have black hair at the time when he was 16 years  
20 old.

21           She then says, at the Preliminary Hearing, the  
22 shooter was, quote, wearing a hoodie that night, end quote.

23           The hoodie, quote, covered his face, end quote.

24           She also acknowledged that her description of  
25 Evaristo Garcia did not match the shooter.

1           Nobody faults Melissa Gamboa, she wants to see  
2           somebody held accountable. So really, when you listen to her  
3           testimony, she then comes into Court three years later, at the  
4           Preliminary Hearing, with Evaristo Garcia in the courtroom,  
5           they ask her: Can you identify the shooter? He's right there  
6           (indicating).

7           So you're going to have to ask yourselves  
8           whether or not her previous testimony of the shooter was  
9           wearing light -- had light hair, was 18 to 19 years old, was  
10          wearing a hoodie that night that covered his face, whether or  
11          not she could really identify who the shooter was except for  
12          that he was the defendant at the time in the courtroom.

13          There's one last thing that I want to talk to  
14          you about is Jonathan Harper.

15          Jonathan Harper was shot in the head. He  
16          suffered a traumatic brain injury.

17          He was shot in the head in an unrelated incident  
18          about two weeks after the shooting in this case, before he gave  
19          any statements. It's not like he called up the police officer  
20          and said, You know what, I'm a witness to the case.

21          So -- and you're going to hear a lot of things  
22          when I come up to cross-examine Mr. Harper of all these  
23          statements that he's made.

24          The prosecutor asked him in prior testimony:

25          Does it cause you to have some memory problems

1 sometimes?

2 Answer: Yes.

3 Question: All right. Do you think you're  
4 recovered now?

5 Answer: Yes.

6 Question: You're back on?

7 Answer: Not -- not -- not normal.

8 Question. Okay. And you think you were screwed  
9 up when you made these other statements?

10 Answer: Yes.

11 So what your job here to do during a week or  
12 week and a half is to actually write down in your notebooks,  
13 piece together what evidence you think come from that stand  
14 that prove to you beyond a reasonable doubt that the shooter in  
15 this case is actually Evaristo Garcia.

16 Because even though there's 20 to 30 kids that  
17 participated in this fight, there's only going to be two  
18 witnesses that actually claim to have identified  
19 Evaristo Garcia, Melissa Gamboa, the deceased's sister, who  
20 says that the shooter had light hair, was wearing a hoodie,  
21 face was covered; and for Jonathan Harper, who was shot in the  
22 head, suffered brain injury, had every reason, was motivated,  
23 every reason to say whatever he thought to say at that time in  
24 order to avoid prosecution.

25 You're going to hear evidence that Jonathan said

1 that he's tired of the members of the DA's Office. That's the  
2 District Attorney's Office that these prosecutors are from,  
3 placed a great deal of stress on him in their efforts to obtain  
4 additional information despite his insistence that he does not  
5 remember any specifics surrounding who fired the gun.

6 He was tired. You're going to hear his  
7 testimony. He talked to an investigator, who said that he was  
8 tired of the DA's Office putting words in his mouth.

9 There's a confluence of events that you, ladies  
10 and gentlemen, have to determine regarding Jonathan Harper, why  
11 he's motivated to say what he said, whether or not the gunshot  
12 injury to his head had any impact, and whether or not who was  
13 telling him to say what and when.

14 At the end of the day, we're here, as we are in  
15 murder cases, somebody's dead, somebody should be held  
16 accountable.

17 But they have the wrong person sitting at that  
18 table (indicating).

19 Thank you.

20 THE COURT: Thank you, Mr. Goodman.

21 All right. We'll begin with the State's case in  
22 chief.

23 MS. DEMONTE: Thank you.

24 State calls Dan Proietto.

25 May I approach your clerk, Your Honor?

1 THE COURT: You may.

2 MS. DEMONTE: Thank you.

3

4 DANIEL PROIETTO

5 called as a witness on behalf of the State,

6 having been first duly sworn,

7 was examined and testified as follows:

8

9 THE WITNESS: I do.

10 THE CLERK: Please be seated.

11 THE WITNESS: Thank you.

12 THE CLERK: State and spell your full name for the  
13 record, please.

14 THE WITNESS: First name is Daniel, D-A-N-I-E-L;  
15 last name Proietto, spelled P-R-O-I-E-T-T-O.

16

17 DIRECT EXAMINATION

18 BY MS. DEMONTE:

19 Q. Sir, how are you employed?

20 A. By the Las Vegas Metropolitan Police Department.

21 Q. And how long have you been there?

22 A. For nine and a half -- about nine and a half years.

23 Q. And what is your current job title?

24 A. I am a senior crime scene analyst, and I'm currently  
25 assigned to the training coordinator position.

1 Q. And so you train other crime scene analysts?

2 A. Correct.

3 Q. How long have you been doing that?

4 A. For about half a year now.

5 Q. Okay. And prior to becoming the senior crime scene  
6 analyst responsible for the training, what did you do before  
7 that?

8 A. I'm a senior crime scene analyst.

9 Q. And is -- have you always been a crime scene analyst  
10 in your career with Metro?

11 A. Yes.

12 Q. And what are the duties of a crime scene analyst?

13 A. We respond to crime scenes. We document the crime  
14 scenes using photography. We conduct things like latent print  
15 processing, and basically we're there to document, collect and  
16 preserve the evidence.

17 Q. Okay. Now, are you familiar with the television  
18 show called CSI?

19 A. Yes.

20 Q. Do you go out and interview witnesses?

21 A. No.

22 Q. Do you go out and interrogate suspects?

23 A. No.

24 Q. Do you make arrests?

25 A. No.

1 Q. Okay. Now, sir, I want to direct your attention to  
2 February 6th of 2006. Were you employed at that time with  
3 Metro?

4 A. Yes.

5 Q. As a crime scene analyst?

6 A. Correct.

7 Q. Do you recall being called out to the Morris Sunset  
8 High School on Washington Avenue?

9 A. Yes.

10 Q. Okay. And do you -- approximately how -- what time  
11 of day was that? Sorry.

12 A. Approximately eleven o'clock at night.

13 Q. And what was that reference to?

14 A. It was in reference to a shooting, which turned into  
15 a homicide.

16 MS. DEMONTE: May I approach the witness,  
17 Your Honor?

18 THE COURT: You may.

19 BY MS. DEMONTE:

20 Q. Sir, showing you what's been marked as State's  
21 Proposed Exhibits 1 and 2, do you recognize this?

22 A. Yes, I do.

23 Q. Okay. And do those fairly and accurately depict the  
24 area that you responded to that evening?

25 A. Yes.



1 Q. And would those assist you in your testimony this  
2 morning?

3 A. Yes, they would.

4 MS. DEMONTE: Move for admission of 1 and 2.

5 THE COURT: Is there any objection?

6 MR. GOODMAN: None, Your Honor.

7 THE COURT: All right. State's Proposed  
8 Exhibits Number 1 and 2 are now State's Exhibits 1 and 2,  
9 admitted.

10 (State's Exhibits 1 and 2, respectively,  
11 were admitted into evidence.)

12 MS. DEMONTE: Thank you, Your Honor.

13 Move to publish?

14 THE COURT: You may.

15 BY MS. DEMONTE:

16 Q. And is your screen in front of you on, sir?

17 A. No, it's not.

18 Q. I'll come around.

19 And do you see Exhibit 1 up here on the screen?

20 A. Yes.

21 Q. Okay.

22 MR. FIGLER: I'm sorry, Counselor, I hate to  
23 interrupt, our monitor didn't come up when they were supposed  
24 to.

25 MS. PANDUKHT: Did you turn it on?

1 MR. FIGLER: No, I didn't. The Marshal told me not  
2 to, so --

3 MS. DEMONTE: Okay. I'm a bad girl. All right.

4 BY MS. DEMONTE:

5 Q. And what are we looking at here?

6 A. We're looking at the area that I responded to for  
7 the crime scene.

8 Q. Okay. Now, putting up on the screen State's  
9 Exhibit 2, is this just a more close up version of that?

10 A. Yes, it is.

11 Q. And what area were you primarily concerned with?

12 A. With the intersection at Washington Avenue and  
13 Virgil Street.

14 Q. And can you please circle that on the screen?

15 A. Yes. (Witness complies.)

16 Q. And why were you concerned with that area?

17 A. There were a number of cartridge cases and bullets  
18 located in that area.

19 Q. Now, prior to you actually examining the scene, are  
20 you briefed?

21 A. Yes.

22 Q. And who does that briefing?

23 A. Generally it's either the homicide detectives that  
24 are at the scene or the major crime detectives that are  
25 responding first.

1 Q. And in this particular case, do you recall who did  
2 the briefing with you?

3 A. I do not.

4 Q. Okay.

5 A. It's been a number of years.

6 Q. That's okay.

7 But do you remember which homicide detectives  
8 were on the scene?

9 A. Yes.

10 Q. And who were there?

11 A. I believe Cliff Mogg was there,  
12 Ken Hardy, Detective Chris Fontaine (phonetic), who was  
13 assigned to, I believe, major crime scenes at the time. Those  
14 are just some of them.

15 Q. Okay. And with respect to Detectives Mogg and  
16 Hardy, did they then direct you to a certain area?

17 A. Yes.

18 Q. Okay.

19 MS. DEMONTE: Move to approach again, Your Honor?

20 THE COURT: You may.

21 MS. DEMONTE: And, Your Honor, permission to just  
22 approach this witness?

23 THE COURT: You may.

24 MS. DEMONTE: Thank you.

25 BY MS. DEMONTE:

1 Q. Now, sir, showing you State's Exhibit 3, do you  
2 recognize that item?

3 A. Yes, I do.

4 Q. And what is that?

5 A. This is a finished diagram that I completed of the  
6 crime scene.

7 Q. And you did that yourself?

8 A. Yes, I did.

9 Q. And did you do that -- and what was the purpose of  
10 doing that?

11 A. To note the location of the evidence that was  
12 recovered at the crime scene.

13 MS. DEMONTE: Move for admission of 3.

14 MR. FIGLER: No objection.

15 THE COURT: Three is now admitted.

16 (State's Exhibit 3  
17 was admitted into evidence.)

18 BY MS. DEMONTE:

19 Q. And now, sir, showing you Exhibits 4 through 49,  
20 could you please briefly flip through those and let me know  
21 when you recognize -- if you recognize them?

22 A. Sure. (Witness complies.)

23 Q. And, sir, have you looked through 4 through 49?

24 A. Yes, I have.

25 Q. You do you recognize those?

1 A. Yes.

2 Q. And do those fairly and accurately depict the crime  
3 scene as you were documenting it the night of February 6th,  
4 2006?

5 A. Yes, they do.

6 MS. DEMONTE: Move for admission of 4 through 49.

7 MR. FIGLER: Submitted, Your Honor.

8 THE COURT: Submitted, or is there an objection or  
9 no objection?

10 MR. FIGLER: With regard to the authentication,  
11 that's fine, just contact -- we're fine, we have no objection.

12 THE COURT: No objection, they'll all be admitted.  
13 They're now State's 4 through 49.

14 Right, is that it? Yeah, 4 through 49.

15 (State's Exhibits 4 through 49, respectively,  
16 were admitted into evidence.)

17 MS. DEMONTE: And move to publish, Your Honor.

18 THE COURT: You may.

19 MS. DEMONTE: Thank you.

20 BY MS. DEMONTE:

21 Q. Now, sir, you had circled the area that's the  
22 intersection of Washington and Virgil. Putting on the screen  
23 now what's now State's Exhibit 3, and you had stated this is  
24 your diagram; correct?

25 A. Correct.

1                   Is there a way to -- I can --

2           Q.     Yeah, you put your finger on the bottom corner.

3           A.     Got it.

4           Q.     And now this diagram that you drew, does that depict  
5 the exact same intersection?

6           A.     Yes, it does.

7           Q.     Okay. And what was the purpose of making this  
8 diagram?

9           A.     To mark the locations -- location, like I said, of  
10 the evidence, and also it makes it a little bit easier to see  
11 versus an aerial depiction, just because a lot of the fluff is  
12 taken out.

13          Q.     And, sir, there's various markings on this diagram  
14 besides just the street itself. Can you describe what we're  
15 looking at here?

16          A.     Yes. We're looking at eastbound Washington -- or  
17 east and westbound lanes of Washington Avenue, approximately  
18 the 3800 block.

19                   If you look at the top of the screen, you can  
20 see North Virgil Street. That's depicted in the very center.

21                   And to the east or right of Virgil Street, on  
22 Washington, you can see an area where there's a left-hand turn  
23 lane that turns from westbound Washington south onto the  
24 academy. It's like an academy drive, which is --

25          Q.     And if you could just draw a circle in that area.

1 A. Sure.

2 And this the academy drive.

3 Q. Okay. And is that where the school is located?

4 A. The school drive is -- is what I've just circled.

5 Q. Okay.

6 A. And the school is just east of that where it says  
7 Morris Academy.

8 Q. Okay. And then you had stated there's a turn lane.  
9 Can you please circle that area?

10 A. Yes. Sorry, it's not letting me --

11 Q. Oh, it's not erasing?

12 A. -- unclick.

13 Q. It's not letting me do it either.

14 MR. FIGLER: I got that for you.

15 MS. DEMONTE: Thank you.

16 THE WITNESS: So the turn lane is right where I  
17 circled.

18 BY MS. DEMONTE:

19 Q. Okay. And do you recall if there's like a raised  
20 median in that area?

21 A. Yes.

22 Q. And had you drawn that in as well?

23 A. Yes, they're actually two sections of median, they  
24 look like little pie slices.

25 Q. Now, in that area you circled, I'm going to zoom in

1 a little closer here. You placed various numbers, what do  
2 those numbers mean?

3 A. They represent either bullets or cartridge cases  
4 that were observed and recovered from the scene.

5 Q. Okay. Now, when you're preparing this diagram, are  
6 there photographs and things like that that are also taken so  
7 that you can then make the diagram later?

8 A. Yes.

9 Q. Okay. And in this particular case, who was taking  
10 those photographs?

11 A. It was Senior Crime Scene Analyst Bill Speas.

12 Q. And is Bill Speas still employed with the Las Vegas  
13 Metropolitan Police Department?

14 A. Yes, he is.

15 Q. Okay. The photographs, which are 4 through 49, were  
16 these the photographs he took?

17 A. Yes.

18 Q. You were present when those photographs were taken?

19 A. Correct.

20 Q. And is it common that one person will photograph,  
21 and the other person will document and do the diagram?

22 A. Yes. Typically how we split up big scenes like this  
23 is one -- one crime scene analyst is assigned to the  
24 photographs and the report, and a second crime scene analyst is  
25 responsible for the evidence and diagram. It's typically how



1 it's divided.

2 Q. So now let's go through Mr. Speas's photographs.

3 Showing you what's been marked as State's  
4 Exhibit 4, what are we looking at here?

5 A. We are looking, that's going to be eastbound on  
6 Washington.

7 Q. And what can you tell me about the lighting  
8 conditions in this particular photograph?

9 A. It represents the level of darkness, if you will,  
10 the scene is fairly dark. When we're taking our photographs,  
11 we're trying to show as much of the evidence as possible so  
12 we're correcting for that and trying to lighten up our  
13 photographs just a little bit so you can actually see the  
14 evidence.

15 Q. And do you actually take a reference photograph  
16 showing how dark it is?

17 A. We try to.

18 Q. Okay.

19 A. This is before the days of digital, so it was a  
20 little bit more complicated to do. But, yes, this is an  
21 attempt at that, correct.

22 Q. Okay. And State's Exhibit 5, are we still looking  
23 at the same area here?

24 A. Yes, we are.

25 Q. Okay. Now, in this photograph, have you guys

1 actually made an attempt to lighten it up, this portion, at --  
2 at this particular time?

3 A. I would have to look at the original photo.

4 Q. Okay. It's kind of bad on the screen.

5 A. A little bit. It's still fairly dark.

6 Q. Okay. And -- but these are a series of photographs  
7 of that median; is that correct?

8 A. Correct.

9 Q. Okay. Now, State's Exhibit 11, what are we looking  
10 at here?

11 A. This is the turn lane that I had just circled prior,  
12 and this is looking now westbound on Washington inside that  
13 turn lane, and off to the left is that private academy drive.

14 Q. Okay. And so this is the opposite direction from  
15 the previous photograph?

16 A. Correct.

17 Q. Okay. And Exhibit 12?

18 A. This is actually standing on North Virgil and  
19 looking -- it would be southeast.

20 Q. Okay.

21 A. And looking at that -- the center median.

22 Q. Now, at the center median there are some cones in  
23 that photograph; is that correct?

24 A. Yes.

25 Q. What do those cones represent?

1       A.     Those are placed to mark evidence that was at the  
2 scene.

3       Q.     And you placed those cones there?

4       A.     I believe those were placed prior to our arrival.  
5 So probably by patrol officers basically to make sure that  
6 people aren't walking over them, driving over them, kicking the  
7 evidence or stepping on it.

8       Q.     Okay. And did you later yourself go to those cones  
9 to investigate what you found there?

10      A.     Yes.

11      Q.     And did you then document what you found at those  
12 cones in your diagram?

13      A.     Yes, I did.

14      Q.     Okay. Showing you State's Exhibit 19, can you see  
15 that or do you need me to bring it up to you?

16      A.     I can see it.

17      Q.     Okay. Now, in addition to the cones, there's actual  
18 number placards; correct?

19      A.     Yes.

20      Q.     And in this one we have one, two, three and four?

21      A.     Correct.

22      Q.     Okay. Now those number placards, who put those  
23 there?

24      A.     I did.

25      Q.     And those are yours?

1 A. Yes.

2 Q. And do those correlate on your diagram with the  
3 numbers that you placed there?

4 A. Yes, they do.

5 Q. Okay. So let's start with 1 and 2, can you please  
6 circle that?

7 A. (Witness complies.)

8 Q. And what are 1 and 2?

9 A. 1 is an apparent bullet, and 2 is a cartridge case.

10 Q. Okay. And did you yourself go up to those and  
11 collect those?

12 A. Yes.

13 Q. Okay. And where on the diagram were those located?

14 A. Items Number 1 and 2 are marked on the diagram --  
15 there you go, where I've circled.

16 MS. DEMONTE: And for the record, on State's  
17 Exhibit 3, the witness drew a circle at the numbers 1 and 2,  
18 which is close to the intersection of North Virgil and  
19 East Washington Street.

20 Now, going back to State's Exhibit 19, do you see 3  
21 and 4?

22 A. Yes, I do.

23 Q. And what are 3 and 4?

24 A. 3 and 4 are both cartridge cases.

25 Q. And you collected those as well?

1 A. Yes, I did.

2 Q. Now, on your diagram can you please show us where 3  
3 and 4 are?

4 A. Yes. I've circled them and they're just south of  
5 Items 1 and 2.

6 Q. Okay. And do those appear to be actually in the  
7 westbound lane?

8 A. In the westbound lane, correct.

9 Q. Okay. Now, sir, I'm putting on the screen State's  
10 Exhibit 22. Are there additional numbers there?

11 A. Yes, there are.

12 Q. And do those appear to be 5, 6, 7 and 8?

13 A. Yes.

14 Q. Can you please circle 5 and 6?

15 A. (Witness complies.)

16 Q. And what were 5 and 6?

17 A. 5 is a cartridge case, and 6 is an apparent bullet.

18 Q. Now, what is the difference between a cartridge case  
19 and a bullet?

20 A. A cartridge -- or what people normally refer to as a  
21 bullet is actually a cartridge.

22 Now, a cartridge contains a cartridge case,  
23 which has a primer, which is what actually sets the powder  
24 that's contained within the cartridge to form the explosion  
25 that propels the bullet down the barrel.

1                   So a cartridge simply contains a bullet, a  
2 cartridge case, which is the metal component that flies out of  
3 the gun after it's fired or, in the case of a revolver, stays  
4 in the cylinder.

5                   The primer is actually what gets the explosion  
6 going, and the powder is the actual explosive that propels the  
7 bullet.

8                   Does that make sense?

9           Q.     Okay. So the bullet itself is what comes out the  
10 front of the gun?

11          A.     Correct. Comes out -- out at the muzzle, the muzzle  
12 side.

13          Q.     And the cartridge case is, fair to say, left behind?

14          A.     Correct.

15          Q.     And depending on the type of gun, it either remains  
16 with the gun or is expelled from the gun?

17          A.     Correct.

18          Q.     Based from the fact that you found cartridge cases  
19 on the scene, were you able to draw conclusions based on your  
20 training and experience as to what type of gun it was?

21          A.     Yes. And based on the caliber it's consistent with  
22 a semiautomatic firearm versus a revolver.

23          Q.     And the cartridge cases you found and the bullets  
24 you found, were you able to tell what type of caliber bullet  
25 they were?

1 A. Yes.

2 Q. And what were those?

3 A. It's 9-millimeter Makarov.

4 Q. And how can you tell that?

5 A. It's actually marked on the cartridge case itself.

6 It's stamped. It's called a head stamp so it's actually

7 stamped on the cartridge case.

8 Q. And the cartridge cases you found are actually  
9 stamped that way?

10 A. Correct.

11 Q. Okay. And was every cartridge case you found  
12 stamped that way?

13 A. Yes.

14 Q. And what is 9-millimeter Makarov?

15 A. There's a family of 9-millimeter, it's one of the  
16 calibers in that family.

17 What most people are familiar with is like  
18 9-millimeter Luger or a 9 Parabellum, and that's simply a  
19 9-by-19, 19 representing the case length.

20 What a Makarov is, is a 9-by-18. So it's a  
21 slightly shorter cartridge case, and it's very typical of  
22 Eastern Block European ammunition.

23 Q. And would you -- sorry.

24 If a gun is actually a Makarov, can you put  
25 9-millimeter Luger or Parabellum in it?

1           A.     It's probably a better question for a firearms  
2 examiner. It wouldn't be safe to swap ammunition like that  
3 though.

4           Q.     Okay. So the Makarov is actually a smaller around?

5           A.     It's smaller than a 9 Luger or 9 Parabellum, but.

6           Q.     Okay. And on a scale where would a .380 be?

7           A.     A .380 is actually a 9-by-17 versus 9-by-18, which  
8 is the Makarov, or 9-by-19, which is Luger or Parabellum.

9           Q.     Okay. So the Makarov, size-wise, is between the  
10 .380 and the 9-millimeter Luger?

11          A.     Correct.

12          Q.     Okay. So which one of 6 -- I'm sorry, 5 and 6 was  
13 the cartridge?

14          A.     5 is the cartridge case.

15          Q.     Okay. Sorry.

16          A.     And -- that's okay. And 6 is the apparent bullet.

17          Q.     Okay. And did you depict those on your diagram as  
18 well?

19          A.     Yes, I did.

20          Q.     And for the record you have drawn a circle around  
21 what's depicted at 5 and 6, which on the diagram are actually  
22 on the median itself; correct?

23          A.     Correct.

24          Q.     Okay. And then 7 and 8, what were those?

25          A.     7 and 8 are also cartridge cases.



1 Q. And they were also the Makarov?

2 A. Yes.

3 Q. Okay. And were those on your diagram depicted on  
4 the median as well?

5 A. Yes.

6 Q. And now State's Exhibit 23, you have an Item 9.  
7 Where was that located?

8 A. Can we go back to the diagram?

9 Q. Absolutely.

10 A. Make it a little bit easier.

11 Q. Did you actually place 9 on your diagram?

12 A. Yes. I'll circle it on the diagram; is that okay?

13 Q. Absolutely.

14 A. And 9 is actually located in -- inside of what's a  
15 bicycle lane, along the -- it would be the south edge of East  
16 Washington Avenue, so it's actually south of the travel lanes  
17 and just north of the sidewalk.

18 Q. Now, it's clear across the street; correct?

19 A. Correct.

20 Q. Okay. And it's not near any of the other items that  
21 you found?

22 A. Correct.

23 Q. Did you also examine the area along the sidewalk on  
24 Washington?

25 A. Yes.

1 Q. Okay. And what is along that sidewalk, if you could  
2 describe that area for me?

3 A. Along the sidewalk of Washington?

4 Q. Yes.

5 A. Okay. Sorry.

6 I don't know what you are trying to refer to.  
7 Sorry.

8 Q. That's okay. I'm trying to find the picture.

9 (Sotto voce at this time.)

10 BY MS. DEMONTE:

11 Q. Was there a block wall?

12 A. Yes.

13 Q. Okay. Did you actually depict that in your diagram?

14 A. Yes, I did.

15 Q. Okay.

16 A. Are you talking about the north?

17 Q. Yes.

18 A. Okay.

19 Q. Now, showing you State's Exhibit 17, what are we  
20 looking at here?

21 A. We are looking at apparent bullet impacts to a wall  
22 along East Washington.

23 Q. And do I even have the orientation correct on this  
24 photograph?

25 A. Actually, if you turn that -- yes, that's correct.

1 Q. Okay. And where is this section of wall on your  
2 diagram?

3 A. There's a number 11. Can I circle that?

4 Q. Absolutely.

5 A. It's in the area marked 11 on the diagram.

6 Q. And what did you find in the area marked 11?

7 A. There is actually a bullet that is lodged inside of  
8 the wall.

9 Q. And is that what's depicted here in State's  
10 Exhibit 33?

11 A. Yes.

12 Q. Okay. And did you collect that bullet as well?

13 A. Yes, I did.

14 Q. Okay.

15 A. And if you could go back to the --

16 Q. The wall?

17 A. -- picture of the wall --

18 Q. Absolutely.

19 A. -- I can show which the bullet is in.

20 Actually, it would be that hole in the wall  
21 that's circled.

22 Q. Okay. So the second bullet hole from the top?

23 A. Correct.

24 Q. Okay. And how many bullet strikes are though this  
25 wall?

1 A. Four.

2 Q. Okay. How many bullets did you recover?

3 A. Total bullets?

4 Q. Yes.

5 A. Four.

6 Q. Okay. And how many cases did you recover?

7 A. Six.

8 Q. Is it common for you to collect all of the bullets  
9 when you find casings?

10 A. We always try to collect all of the bullets or  
11 account for them.

12 It's not uncommon for bullets or cartridge cases  
13 to go missing.

14 Q. And why is that?

15 A. A number of reasons. Especially in a street scene  
16 like this, we have cars, they're traveling back and forth  
17 before any first responders, ambulances, anyone can get there  
18 to shut down the scene.

19 There are people walking through the area,  
20 again, before first responders arrive.

21 Any number of reasons. The gun could have been  
22 fired in the air for instance, so we wouldn't expect to  
23 necessarily find a bullet.

24 Q. Okay. And is there any rhyme or reason to where the  
25 bullets are going to land?

1           A.     In this case they're impacting a brick wall. It's  
2 covered with stucco.

3                     What happens when they impact brick walls like  
4 this is it actually shatters the stucco that's right behind it,  
5 and it makes the direction of the bullet flight very chaotic.  
6 They can bounce around just about anywhere.

7           Q.     And so in the case of what Item 9, the bullet that  
8 was found across the street, is that consistent?

9           A.     Yes.

10          Q.     Now, in addition to the bullet strikes along the  
11 wall, was an attempt made to recover a firearm that  
12 corresponded with these?

13          A.     Yes.

14          Q.     To your knowledge was one recovered?

15          A.     Yes.

16          Q.     And where was that?

17          A.     Let me go back to the diagram.

18          Q.     And let me put State's Exhibit 2 back up.

19                     MR. FIGLER: Your Honor, I would just make a  
20 foundation objection. I'm sure that the State would be able to  
21 status check it, were you aware of it, but we don't have the  
22 status between, so it's just the foundation.

23                     THE COURT: All right.

24                     BY MS. DEMONTE:

25          Q.     I'm sorry. At some point were you able to locate

1 and recover a firearm?

2 A. Yes.

3 Q. And where did you recover that firearm?

4 A. From North Parkhurst Drive -- or sorry, North  
5 Parkhurst Street.

6 Q. Okay. And did you actually make a notation of that  
7 on your diagram?

8 A. Yes, I did.

9 Q. Okay. And can you please circle that?

10 A. Yes.

11 Q. Okay. Now, you yourself were not the first person  
12 to locate this firearm; correct?

13 A. Correct.

14 Q. Who notified you to go to that location?

15 A. I believe it was Senior Crime Scene Analyst  
16 Bill Speas.

17 Q. Okay. And when you went to that location, were  
18 there already Metro personnel on scene?

19 A. Yes.

20 Q. Okay. And do you recall who those people were?

21 A. To the best of my recollection, and again this is  
22 going back seven years, there was actually a patrol officer  
23 that had walked that street looking for any firearms evidence  
24 for us, and he actually located it.

25 Q. Okay. And was that patrol officer still there when

1 you went to secure --

2 A. To the best of my recollection, he was, yes.

3 Q. Okay. Now, facing on the screen, where did you  
4 recover that firearm from?

5 A. From inside the toilet tank.

6 Q. Okay. Putting on the screen State's Exhibit 36. Is  
7 this the area on Parkhurst that that firearm was located at?

8 A. Yes, it is.

9 Q. Okay. And again showing you State's Exhibit 39, is  
10 that that same area?

11 A. Yes, it is.

12 Q. And are we looking at the sidewalk?

13 A. Yes.

14 Q. And which street does that sidewalk go up against?

15 A. This is North Parkhurst, and we're looking at a stop  
16 sign that's located at the intersection of Parkhurst and  
17 Washington.

18 Q. Okay. And State's Exhibit 37?

19 A. Yes, that's a view inside of the toilet tank showing  
20 the firearm.

21 Q. Okay. And you -- can you please circle the firearm  
22 for me?

23 A. Yes.

24 Q. Now, what type of firearm was this?

25 A. It is a 9-millimeter Makarov made by Imez. That's a

1 semi-auto.

2 Q. Now, Makarov is not the name of the gun?

3 A. Correct.

4 Q. It's the caliber; correct?

5 A. Correct.

6 Q. Okay. And is this consistent with the shell casings  
7 that you found?

8 A. Yes.

9 Q. And did you actually recover this yourself?

10 A. Yes.

11 Q. And prior to impounding it into evidence, was it  
12 photographed?

13 A. Yes.

14 Q. And is this what we see here on State's Exhibit 47?

15 A. Yes, it is.

16 Q. Okay.

17 A. Sorry, it's not working.

18 Q. Yeah.

19 Now, showing you State's Exhibit 99, do you  
20 recognize this?

21 A. Yes, I do.

22 Q. How do you recognize it?

23 A. It is a package that I have sealed and placed my  
24 label on, bearing my signature and other information from the  
25 case.



1 Q. Okay. And you actually see your signature, your  
2 label, and the information from the case?

3 A. Yes.

4 Q. And one of the things that is placed on that label  
5 is something called an event number; is that correct?

6 A. Correct.

7 Q. What is an event number?

8 A. It's a number that's generated to be assigned to a  
9 specific case so we can locate, for example, items of -- items  
10 of evidence that are specifically for that case.

11 Q. And --

12 A. Reports and stuff.

13 Q. And how are the numbers generated, is there a rhyme  
14 or reason to it?

15 A. Yes. It's -- basically we start at one at midnight  
16 and we go up from there.

17 Q. Okay. And is there a series of numbers prior to the  
18 1 through --

19 A. Yes, that correspond with the year and the month and  
20 day.

21 Q. Okay. So this event number would start with 06 for  
22 the year?

23 A. Correct.

24 Q. Okay. And then 02?

25 A. 02 for February, and then 06 for the day.

1 Q. And what were the last four digits of this one?

2 A. This one is 2820.

3 Q. And is that unique to this shooting?

4 A. Yes.

5 Q. Okay. So the next call that comes in that could be  
6 a robbery halfway across town will have the number following  
7 it?

8 A. Yes, exactly.

9 Q. Okay. And you placed event number on that bag?

10 A. Yes.

11 Q. Okay. And what is inside that bag?

12 A. This contains the bullets and cartridge cases that  
13 I've spoken of at the scene.

14 Q. Okay. And did you yourself place those inside that  
15 bag?

16 A. Yes, I did.

17 Q. And are those the bullets and cartridge cases that  
18 you yourself recovered?

19 A. Yes.

20 Q. Were they in your sole care, custody and control  
21 from the time you picked them up from the street to the time  
22 you placed them in that bag?

23 A. Yes.

24 Q. And after you placed them in that bag, what did you  
25 do with it?

1       A.     It goes into impound so the bag gets sealed and my  
2     initials and personnel number, as well as the date, are noted  
3     on the crime scene tape, and basically this keeps anyone out of  
4     this bag.

5                 It's tamper resistant, so if you try to get into  
6     the bag along that seal it will tear and let us know that  
7     someone was in that -- in that portion of the bag.

8       Q.     And are your seals still intact?

9       A.     Yes.

10      Q.     Okay. And after you placed it in the bag and placed  
11     your seals on it, where do you place it?

12      A.     It goes into an impound room where there's an  
13     impound log that gets signed, and then it goes on to the  
14     evidence vault.

15      Q.     And was that bag in your sole care, custody and  
16     control from the time you loaded those items into it, placed  
17     your seals onto it, to the time you eventually logged it with  
18     the vault?

19      A.     Yes.

20      Q.     Now, in addition to your seals that are intact, do  
21     you notice any other seals or any evidence that the bag had  
22     been opened?

23      A.     Yes.

24      Q.     And how do you notice that?

25      A.     There are actually two new seals that are placed,

1 one along the side of the bag and one at the bottom of the bag.

2 And they have different P numbers, initials, and dates as well.

3 Q. So let's start with the one at the bottom of the  
4 bag, do you recognize that type of seal?

5 A. It's typically used by the forensic lab.

6 Q. Okay.

7 A. Which is denoted by the color.

8 Q. And on the side of the bag do you recognize that  
9 seal?

10 A. Yes.

11 Q. Okay. And is that one of the detectives assigned to  
12 this case?

13 A. Yes.

14 Q. With the exception of the two seals that indicate  
15 someone had opened it, is the bag in the same condition as when  
16 you placed it in the vault?

17 A. Yes.

18 MS. DEMONTE: Move for admission of 99.

19 MR. FIGLER: No objection.

20 THE COURT: With no objection, 99 is now admitted.

21 (State's Exhibit 99

22 was admitted into evidence.)

23 MS. DEMONTE: Does defense counsel wish it to be  
24 opened?

25 MR. FIGLER: It's the prosecutor's pleasure on that.

1 It doesn't need to be opened at this time, Your Honor, if the  
2 State does not want to do it.

3 MS. DEMONTE: The State will not open it at this  
4 time then.

5 BY MS. DEMONTE:

6 Q. Now showing you State's Exhibit 100. Do you  
7 recognize that?

8 A. Yes, I do.

9 Q. And how do you recognize it?

10 A. Again, it has the event number, as well as my  
11 P numbers -- P number, initials, my signature on the package,  
12 as well as the seals that I placed on the package.

13 Q. Now, same with this exhibit, do your seals appear to  
14 be intact?

15 A. In this case they are not intact.

16 Q. But are there other seals over your seals to  
17 indicate who was the person that opened them?

18 A. Yes.

19 Q. And do you recognize those as being from the  
20 forensic laboratory?

21 A. As well as a second set of seals that would be  
22 consistent with the detective.

23 Q. With the exception of those seals, is it in the same  
24 condition as when you yourself sealed that item?

25 A. Yes.

1 Q. And what is inside that item?

2 A. This contains the firearm.

3 Q. And did you yourself place the firearm in that?

4 A. Yes.

5 Q. And prior to placing the firearm into that box, was  
6 it in your sole care, custody and control?

7 A. Yes.

8 Q. And did you yourself then lodge it with the evidence  
9 vault?

10 A. Yes.

11 Q. And did it remain in your sole care, custody and  
12 control from the time you picked up the firearm to the time you  
13 lodged the entire box with the evidence vault?

14 A. Yes.

15 MS. DEMONTE: Move for admission of 100.

16 MR. FIGLER: I would conditionally not object to  
17 that. There's a question about the -- the second seals and may  
18 be something that comes up later. So for purposes of  
19 identification, that's fine, but --

20 MS. DEMONTE: Can we approach on the second seals?

21 THE COURT: I'm going to sustain the objection.

22 (Bench conference outside the presence of the jury.)

23 THE COURT: All right.

24 MS. PANDUKHT: Does counsel want to do the evidence  
25 view? You guys indicated you wanted it opened today.

1 MR. FIGLER: We didn't do the evidence.

2 THE COURT: When I -- when I sustained it, I'm  
3 thinking that thing was checked as well. It's -- for firearms  
4 eval.

5 MR. FIGLER: Right.

6 THE COURT: So you haven't met chain of custody. I  
7 don't know what you are talking about.

8 If there's another time that was stipulated to,  
9 that's different than what you are talking about.

10 MR. FIGLER: She'd can do it right now. There's a  
11 gun inside there, okay? I don't know that it needs to be  
12 admitted formally yet. We can deal with this issue later  
13 outside the presence if you want.

14 We ask just sort it all out. Maybe we can come up  
15 with a stipulation, but just for where we're at right now in  
16 the proceedings, we didn't feel comfortable just admitting it.  
17 We think it needs to be --

18 THE COURT: Right now, from what I heard, and I  
19 don't know what has been stipulated looking at evidence, okay,  
20 that's a different ball game, but just knowing that a firearm,  
21 I'm assuming the firearm has been tested as well?

22 MS. PANDUKHT: Yes.

23 THE COURT: You haven't met -- you haven't met --  
24 it's improper, I won't admit it anyway, so I'm just going to  
25 sustain it. Yeah, it's improper for you to move to admit right

1 now. You haven't met a chain of custody.

2 MS. DEMONTE: Okay. Okay. We'll just do that.

3 (End of bench conference.)

4 (Proceedings in the presence of the jury.)

5 BY MS. DEMONTE:

6 Q. I will collect 100 from you.

7 A. Sure.

8 Q. But you're the one that lodged this, and you expect  
9 the Makarov to be inside here?

10 A. Yes.

11 Q. Do you have any reason to believe that inside here  
12 is not going to be the Makarov?

13 A. No.

14 Q. Okay. Now, when the firearm was located at the  
15 toilet, was there any testing done on the toilet itself?

16 A. There was.

17 Q. Okay. And what was done on the toilet?

18 A. Latent print processing was conducted on the toilet  
19 to see if there were any latent prints located on the toilet  
20 itself.

21 Q. And what is latent print processing?

22 A. Like you've probably seen on TV if you watch CSI,  
23 typically out in the field we're using latent fingerprint  
24 powder, so we're using a powder brush and basically dusting the  
25 areas to see if there are any latent prints that are not



1 readily observable to the naked eye.

2 Q. And in this particular case, was that done to the  
3 toilet?

4 A. Yes.

5 Q. Okay. And is that what's depicted here in State's  
6 Exhibit 41?

7 A. Yes.

8 Q. Okay. And what are we looking at as far as this  
9 exhibit?

10 A. We're looking at the toilet that's already been  
11 processed for fingerprints. And once we find an area that's  
12 consistent with latent print detail, we lay down a piece of  
13 tape so that we can actually recover that section of detail.

14 So we're photographing the actual tape that's on  
15 the surface, and then that tape would be lifted -- the tape  
16 would be placed on a card so that later on, latent print  
17 examiners can look at it and try to make a comparison.

18 Q. Now, did you yourself lift that print?

19 A. I did not.

20 Q. Did you observe who did that?

21 A. Yes.

22 Q. And who did that?

23 A. Senior Crime Scene Analyst Bill Speas.

24 Q. Okay. And are you aware of where Mr. Speas is this  
25 week?

1 A. Yes.

2 Q. Where is he?

3 A. He's on vacation.

4 Q. Okay. Now, in 2006, when you recovered the firearm,  
5 did you yourself do any forensic lifting or processing of that  
6 firearm?

7 A. Back in 2006 it was our section's policy to not do  
8 any kind of latent print finger -- latent fingerprint  
9 development and/or DNA collection. It was basically our  
10 procedure to impound the firearm and have the other forensic  
11 disciplines do those, whether it be DNA or latent prints.

12 Q. So in this particular case, once you collected the  
13 firearm, you placed it in impound, and it was up to the  
14 forensic laboratory to do the processing?

15 A. Correct. We're basically handling it very carefully  
16 to preserve either the DNA or the -- for the possibility of  
17 fingerprints.

18 Q. And has that policy changed today?

19 A. Yes, it has.

20 Q. And what is the policy now today?

21 A. The crime scene analysts out in the field are  
22 actually recovering firearms from homicides, and we bring them  
23 back and we do our own DNA recovery as well as latent  
24 fingerprint development.

25 Q. But in 2006 that was not what was done?

1 A. Correct.

2 Q. Okay.

3 (Sotto voce at this time.)

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

5 THE COURT: Cross-examination.

6 MR. FIGLER: Thank you, Your Honor.

7

8 CROSS-EXAMINATION

9 BY MR. FIGLER:

10 Q. Sir, you're essentially doing a little covering for  
11 another crime scene analyst today because that person is  
12 unavailable. Is that basically what's going on?

13 A. Yes.

14 Q. Okay. So a lot of things that were done hands-on  
15 were not done by you but by Mr. Speas; is that correct?

16 A. Correct.

17 Q. Okay. So you were however at the -- at the incident  
18 scene, the one that you depicted in the -- in the photos and in  
19 the diagram as well; correct?

20 A. Yes.

21 Q. Okay. So do you recall what time this incident was  
22 called in to Metro?

23 A. I don't. Typically that's recorded by the crime  
24 scene analyst that's doing the notes and the report.

25 Q. Okay.

1           A.     So it would be Bill Speas that writes that down, but  
2 it would be sometime just prior to eleven o'clock.

3           Q.     Okay. Is there something also called an incident  
4 log or incident recall?

5           A.     Yes.

6           Q.     All right. If I were to show you one, do you think  
7 that that might refresh your recollection as to when the  
8 incident was made? Would that be a good source for you to  
9 remember?

10          A.     It might. I -- I would have to see it.

11          Q.     Okay.

12                         (Sotto voce at this time.)

13          MR. FIGLER: May I approach, Your Honor?

14          THE COURT: You may.

15          MR. FIGLER: Thank you.

16 BY MR. FIGLER:

17          Q.     I'm just showing you what's marked on top an  
18 incident recall, and you should be able to identify if that's  
19 related to this particular case rather quickly. Why don't you  
20 just review that document.

21          A.     Sure.

22          Q.     And just upon cursory review, is that a document  
23 related to this investigation?

24          A.     Yes.

25          Q.     Okay. Now, reading that, you can then tell me if

1 that refreshes your recollection as to when the incident  
2 occurred.

3 A. The first time that I have on here, and I don't --  
4 I've never read one of these before, so I'm not too familiar,  
5 the first time recorded is 2100 hours, which would be nine  
6 o'clock.

7 Q. Okay. And do you recall what time -- I'll take that  
8 back from you.

9 A. Sure.

10 Q. Do you recall what time you arrived at the -- at the  
11 scene?

12 A. It was just before eleven o'clock.

13 Q. Okay. So if the incident itself was around nine and  
14 you arrived around eleven, that's about a two hour difference  
15 of things happening; correct?

16 A. Correct.

17 Q. Okay. And that's not uncommon in the investigation.  
18 You're not a first responder by any stretch of the imagination,  
19 are you?

20 A. Absolutely, that's correct.

21 Q. Okay. And so the investigation was well underway  
22 prior to your arrival by -- just when you arrived at the scene,  
23 you were able to observe that; correct?

24 A. Yes.

25 Q. And this patrol officer, you don't recall that

1 patrol officer's name who found the gun?

2 A. I don't.

3 Q. Okay. So you really don't have any information for  
4 us on how they got to that area or who directed them or what  
5 briefing they had, or anything like that?

6 A. I do. And again, it's seven years ago, so it's my  
7 recollection, but I do have a recollection of how we were --  
8 how we got to that area.

9 Q. Okay.

10 A. Specific --

11 Q. But that was from the patrol officer, I'm saying.

12 In other words, you testified on Direct that it  
13 was the patrol officer who, in all likelihood, found the weapon  
14 itself; correct?

15 A. Yes.

16 Q. All right. The question I was asking you is you're  
17 not sure what instructions that patrol officer got or how that  
18 patrol officer found himself at that location, you don't know  
19 that happened?

20 A. I do. I have a recollection of that as well.

21 Q. Oh, and can you tell me how that happened?

22 A. My recollection of it, and again it's seven years  
23 ago, is that a witness had observed a suspect that was running  
24 down North Parkhurst and so that officer took it upon himself  
25 to walk that area, and he came across the firearm.

1 Q. Thank you.

2 A. Sure.

3 Q. Now, first things first, we -- we were talking a  
4 little bit on Direct there about how that scene was fairly dark  
5 when you arrived; correct?

6 A. Correct.

7 Q. Okay. And there's no real evidentiary value, if you  
8 want to take a picture of a bullet that's in the road, you want  
9 to make sure it's illuminated; correct?

10 A. Yes.

11 Q. Because if you were to show the jury a bunch of dark  
12 pictures, that would be fairly useless; correct?

13 A. Exactly.

14 Q. Okay. So none of the pictures that were shown to  
15 you by the prosecution were without artificial illumination; is  
16 that correct? Or your illumination?

17 A. I can't say that.

18 Q. Okay. You don't depict or you don't have a log that  
19 says which ones were and which ones were not with the use of a  
20 flash or some other artificial illumination; correct?

21 A. No.

22 Q. Okay. And certainly we saw some pictures with  
23 some --

24 MR. FIGLER: May I just grab any one of those?

25 Thanks.

1 BY MR. FIGLER:

2 Q. I'm going to show you what's been State's Exhibit 5.  
3 For an instance, we see some streetlights -- they weren't in  
4 their natural state star bust -- star bust streetlights like  
5 that; correct?

6 A. Correct.

7 Q. Okay. In fact, there were some rather dark areas  
8 throughout the -- the area that you were investigating;  
9 correct?

10 A. Yes.

11 Q. Okay. Now, there was a photo of a -- a bullet --  
12 I'm sorry.

13 (Sotto voce at this time.)

14 BY MR. FIGLER:

15 Q. Exhibit 33, State's Exhibit 33, there is a hand with  
16 a bullet in it. Do you remember testifying about that?

17 A. Yes, sir.

18 Q. Is that your hand or someone else's hand?

19 A. Chances are it's my hand.

20 Q. Okay.

21 A. But it's in a glove so it's tough to tell.

22 Q. Okay. So there's no log that says whose hand is in  
23 what at any time, you don't keep records of that degree of  
24 detail?

25 A. No, I'm responsible for the evidence. So like I



1 said, chances are it's my hand.

2 Q. Okay.

3 A. And I typically would do the bullet recovery, so I'm  
4 fairly certain it's my hand, but I couldn't say a hundred  
5 percent.

6 Q. All right. And you wear gloves on the scene to  
7 avoid, as best you can, contamination; isn't that correct?

8 A. Yes.

9 Q. And what is contamination for the -- so the jury  
10 knows what we're talking about there?

11 A. Cross-contamination would be, for example, handling  
12 one item of evidence and then, without changing gloves, going  
13 and handling a second item -- item of evidence, so we could  
14 cross-contaminate, say, the DNA.

15 Q. Okay.

16 A. So it would be transferred from one item of evidence  
17 through the glove onto a second item.

18 Q. And you would also agree that it's important to  
19 avoid contamination in that you want to avoid interfering with  
20 the ability to take latent prints from an item of potential  
21 evidentiary value; correct?

22 A. Yes.

23 Q. Okay. But that does sometimes happen?

24 A. It's the nature of the business. You have to handle  
25 the -- the items of evidence, so we do it just as carefully as

1 possible and change our gloves as frequently as we can.

2 Q. Okay. But you lose evidence sometimes, or things of  
3 evidentiary value just because, like you said, it's the nature  
4 of the beast?

5 A. Yes.

6 Q. Okay. So CSIs or CSAs always are instructed to be  
7 wearing these gloves; correct? That's protocol?

8 A. No, not necessarily always.

9 Q. Okay. It's a better practice for them to be wearing  
10 the special blue gloves though; correct?

11 A. Depending on the item of evidence, yes.

12 Q. Okay. And it's also a good protocol for them to be  
13 changing gloves on a regular basis between handling one item  
14 and another item; correct?

15 A. Yes.

16 Q. You would call that a general protocol for CSAs;  
17 correct?

18 A. Yes, absolutely.

19 Q. Now, sometimes you get other personnel from Metro  
20 who might not be as familiar or follow those protocols; isn't  
21 that correct?

22 A. We've hounded people for so long that most people  
23 are familiar, from patrol officers to detectives, et cetera.

24 Q. Okay.

25 A. So it's -- it's fairly common practice across the

1 department by now.

2 Q. The patrol officer who found the gun, do you have  
3 personal knowledge that he followed the protocol?

4 A. I don't, but generally speaking that's our first  
5 question.

6 Q. Okay. Is that documented anywhere? Do you do a  
7 recorded interview or a written interview or a written  
8 statement that says that patrol officer wearing the correct  
9 gloves, using them the correct way checked? Do you have that?

10 A. I know Bill Speas had the initial contact.

11 Q. So Mr. Speas would be the better one to ask that  
12 question?

13 A. Absolutely.

14 Q. So as you sit here today, you don't have personal  
15 knowledge of that?

16 A. Correct.

17 Q. Thank you.

18 And can you tell me how many people handled or  
19 touched or prodded that gun in any way from that evening before  
20 you came upon it?

21 A. No. There's no way to tell.

22 Q. Can you tell me how many Metro personnel touched,  
23 handled or prodded that item that evening?

24 A. No.

25 Q. Do you have the names of everybody who, from Metro,

1 who touched, prodded and poked that item?

2 A. Before it came into my custody?

3 Q. That's correct.

4 A. I would seriously doubt there would be one because  
5 they'd hear about it from us. And typically, like I said,  
6 that's the very first question that we'd ask the patrol officer  
7 is did -- did he touch it.

8 Q. And the answer Mr. Speas has?

9 A. Again I'm assuming, that would be my question --

10 Q. I don't want you to assume.

11 A. -- of that -- that officer.

12 Q. Okay.

13 A. My first -- very first question would be: Did you  
14 ham the firearm in any way?

15 Q. Okay. But you weren't responsible for asking that  
16 question in this particular case?

17 A. No.

18 Q. We saw pictures of those tanks. You were able to  
19 personally observe those toilet tanks; correct?

20 A. Yes.

21 Q. They were fairly heavy items; is that correct?

22 A. I didn't try to lift them.

23 Q. Okay. Did they look like they were of normal weight  
24 for a toilet bowl?

25 A. Sure.

1 Q. The whole commode?

2 A. Sure.

3 Q. Okay.

4 A. Minus the toilet tanks, the tank tops, I don't  
5 believe that they were there.

6 Q. But you weren't there first, so you didn't see --  
7 you weren't the first one to see what it looked like initially;  
8 right?

9 A. Correct.

10 Q. Do you know what time the toilet bowl was found or  
11 the gun was found?

12 A. Again, to the best of my recollection, after seven  
13 years, it was fairly early on in the investigation.

14 Q. So it might have been before you arrived?

15 A. It may have been, sure.

16 Q. Now, on the Direct Examination, the prosecutor asked  
17 you about DNA testing, you would do DNA testing; is that  
18 correct?

19 A. Yes.

20 Q. Okay. And you're saying that the Metropolitan  
21 Police Department has changed their policy as to who is  
22 responsible for the -- the testing since 2006; correct?

23 A. The actual collection, not the testing.

24 Q. Okay. Now, DNA was still a very important thing in  
25 2006, was it not?

1           A.     Yes, but we've gone leaps and bounds above 2006 to  
2 today.

3           Q.     Okay. The thing about preservation of DNA evidence  
4 is that, if there's enough, you can test it five years later,  
5 six years later, ten years later?

6           A.     Potentially, yes.

7           Q.     Okay. But in 2006, they were still happy to get DNA  
8 because that would help them prove their case; isn't that  
9 correct?

10          A.     Yes.

11          Q.     Okay. It would have great evidentiary value to find  
12 some DNA on something like a gun; is that correct?

13          A.     Yes.

14          Q.     That doesn't change from 2006 to 2013?

15          A.     That -- no, that doesn't change.

16          Q.     Okay. Your -- your unit did not do any DNA testing  
17 on this particular gun; correct?

18          A.     Our section does not do the testing, correct.

19          Q.     And your unit did not do the gathering or the  
20 swabbing of the item to do any DNA testing on the gun; correct?

21          A.     Correct.

22          Q.     And when I said swabbing, just so everybody know,  
23 swabbing is one of the techniques used by crime scene analysts  
24 now or anyone who's gathering evidence to remove DNA from an  
25 item; isn't that correct?

1 A. Yes.

2 Q. Okay. And it looks a little bit like a -- like a  
3 Q-Tip that people would be familiar with, but it's done in a  
4 certain way to maintain the -- the integrity of the substance  
5 being taken for later testing; correct?

6 A. Yes.

7 Q. Okay. But back in '06 your division or your unit  
8 wasn't responsible for doing that?

9 A. For homicide?

10 Q. For homicide cases.

11 A. Firearms, correct.

12 Q. Okay. Now, let's take this bag as an example.  
13 Showing you what's been admitted as State's 99, this is a  
14 typical item of --

15 MR. FIGLER: May I approach, Your Honor?

16 THE COURT: You may.

17 BY MR. FIGLER:

18 Q. This is a typical item, sir, of evidence impounding,  
19 in other words, you take the item and you stick it in these  
20 brown paper bags, that's pretty much every single case has  
21 probably a brown paper bag, would that be fair?

22 A. Yes.

23 Q. And there are a lot of markings on the outside of  
24 the brown paper bag; correct?

25 A. Yes.

1 Q. And that's to help in the investigation, help the  
2 prosecution, help the defense, help everybody identify what's  
3 in a bag at any time; correct?

4 A. Yes.

5 Q. Okay. And when items go on an impound log, I think  
6 you testified, they enter the information from each individual  
7 paper bag; correct?

8 A. Yes.

9 Q. Okay. So if I were to hand you the impound log on  
10 this particular case, it would identify a package and an item  
11 number, and then you would have great confidence of what exists  
12 in that package and item number if you were to have it in your  
13 hands; correct?

14 A. Yes.

15 Q. Okay. So for instance on this package, what is  
16 the -- the package number and the items contained within?

17 A. The package number is Number 1, and the items  
18 contained are bullets and, like I said previously, bullets and  
19 cartridge cases.

20 Q. Okay. And they're listed individually as Item 1,  
21 Item 2, Item 3, Item 4?

22 A. Correct.

23 Q. And sometimes items are listed by a letter; correct,  
24 1-A, 1-B, something like that?

25 A. Yes, correct.



1 Q. Okay. But it gives you great certainty as to what's  
2 in the bag so you don't have to open it every single time;  
3 correct?

4 A. Yes.

5 Q. Okay. So I'm shaking this bag. And reading what's  
6 on there, you're pretty confident that there's going to be  
7 bullets and cartridges inside here; correct?

8 A. Yes.

9 Q. You don't think that if I opened it right now there  
10 would be, you know, gumdrops in there or something like that?

11 A. Correct.

12 Q. Okay. That would come as a great shock to you?

13 A. Yes.

14 Q. Because you use all these controls to be able to  
15 identify everything; correct?

16 A. Yes.

17 Q. Okay. And, sir, after your involvement out at the  
18 scene documenting what you did and the things that you were --  
19 you observed or can testify as to what Mr. Speas did, did you  
20 have any further role in this investigation?

21 A. Other than the evidence and the diagram, no.

22 Q. Okay. Did you collect any other evidence or process  
23 any other evidence in this particular case?

24 A. No.

25 Q. Okay. There was a -- a vehicle that I think might

1 have been involved in this case. Did you have anything to do  
2 with the investigation or the processing of that vehicle?

3 A. I did not.

4 Q. So as far as your role in finding out more about  
5 this or tracking down information that would lead you to find  
6 who did it or any of that stuff, you -- you testified as to  
7 your entire role in this particular case today?

8 A. Yes.

9 Q. Okay.

10 MR. FIGLER: No further questions, Your Honor.

11 THE COURT: Redirect.

12 MS. DEMONTE: Thank you.

13 May I approach the clerk again?

14 THE COURT: You may.

15 MS. DEMONTE: May I approach the witness again?

16 THE COURT: I'm sorry?

17 MS. DEMONTE: May I approach the witness again?

18 THE COURT: You may.

19 (Sotto voce at this time.)

20

21 REDIRECT EXAMINATION

22 BY MS. DEMONTE:

23 Q. Sir, handing you Exhibit 99, which has already been  
24 admitted into custody, counsel was asking you what you would  
25 expect to find in there. Can you please take the scissors and

1 open it without breaking any seals?

2 A. Yes.

3 Q. Thank you.

4 A. (Witness complies.)

5 Q. And have you now opened the bag?

6 A. Yes.

7 Q. Can you please remove the contents.

8 A. (Witness complies.)

9 Q. And for the record you've removed approximately ten  
10 items?

11 A. Yes.

12 Q. Okay. Now, those items, do they actually have  
13 numbers across the top?

14 A. Yes.

15 Q. And did you yourself do those numbers?

16 A. Yes.

17 Q. What do those numbers represent?

18 A. They represent the item number that's contained in  
19 that vial.

20 Q. And is that what you documented here on the front?

21 A. Yes.

22 Q. Okay. And are those in the same or substantially  
23 the same condition as from when you placed the items inside  
24 them and numbered them to when you placed them in the bag and  
25 documented what they were?

1       A.     Yes. The only exception is there's a -- it looks  
2 like the event number and some other notation on it with tape  
3 placed over it. But other than that, yes, it's in -- they're  
4 all in the same condition.

5       Q.     And what do you recognize that tape placed over it  
6 to be?

7       A.     Well, there's the even number, like I stated,  
8 repeated on -- I had written it prior to as repeated.

9               And the second -- it looks like it's just the  
10 package number and a dash and the item number itself.

11              So just again repeated and then tape over them.

12       Q.     Okay. So with the exception of those additional  
13 tape markings, those are in substantially the same condition as  
14 when you placed them in?

15       A.     Yes.

16       Q.     Okay. And they are actually labeled 1 through 9,  
17 and 11; correct?

18       A.     Correct.

19       Q.     And what's the significance of those numbers?

20       A.     They represent the item numbers themselves for the  
21 items that are placed inside those vials.

22       Q.     And they -- do they correspond with your diagram as  
23 well?

24       A.     Yes.

25       Q.     Okay. So Item 1 on the vial is Item 1 on your

1 diagram that you found?

2 A. Correct.

3 Q. And why did we skip Item 10?

4 A. Item 10 is actually the firearm itself.

5 Q. And the firearm is listed on your diagram as 10?

6 A. Ten, correct.

7 (Sotto voce at this time.)

8 THE COURT: Well, actually they are admitted.

9 MS. DEMONTE: Oh, contents.

10 THE COURT: They're the contents so they are  
11 admitted.

12 MS. DEMONTE: Okay. So I move -- officially move  
13 for admission of --

14 THE COURT: You can't move to admit. They're in.

15 MS. DEMONTE: Okay. Thank you, Your Honor.

16 BY MS. DEMONTE:

17 Q. Now, counsel was asking you about DNA and  
18 preservation and cross-contamination.

19 And you're wearing the gloves to make sure that  
20 you're not placing your DNA on the item; correct?

21 A. Either our DNA or other potential DNAs, say, from  
22 other items of evidence. We're constantly changing our gloves,  
23 correct.

24 Q. In your training and experience, is it possible to  
25 place a fingerprint from one item to another?