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

3 **EVARISTO JONATHAN GARCIA,**

4 Appellant,

5 vs.

6 **THE STATE OF NEVADA,**

7 Respondent.
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Supreme Court Case No.: 64221

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11 **APPELLANT'S APPENDIX**

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1 A. No, not that I've ever heard.

2 Q. Okay. Now, counsel was asking you if, back in 2006,
3 DNA was around.

4 A. Sure.

5 Q. And you said it's made leaps and bounds since then.

6 A. Absolutely.

7 Q. What types of leaps and bounds?

8 A. The biggest leaps and bounds is the sensitivity of
9 the testing equipment to the DNA itself.

10 In other words, they need far less DNA today
11 than they did back in 2006 to actually develop a profile.

12 Q. Are you familiar with what touch DNA is?

13 A. Yes.

14 Q. And what is touch DNA?

15 A. Touch DNA basically describes you're coming into
16 contact with an item, say in this case a gun, and just through
17 normal action, especially with sharp edges on a firearm for
18 instance, you're going to leave either, say, blood if you cut
19 yourself, or just normal sloughing of skin. You're very liable
20 to leave some portion of your DNA behind on that item.

21 Q. Now, with regard to just skin itself, is there a
22 certain level of sensitivity that's required in the testing?

23 A. Yes.

24 Q. Okay. Was that something that was -- you were
25 capable of in 2006?

1 A. That would be a much better question for a DNA
2 person but, yes -- I mean it's certainly changed.

3 Q. Okay. In 2006 did you, as a crime scene department,
4 swab for touch DNA?

5 A. I don't recall if we were doing it in 2006. I can't
6 recall.

7 Q. That's okay.

8 Now, counsel was asking you about whether or not
9 Officer Moreno had indicated whether or not he touched the gun.
10 You yourself didn't have a conversation with Officer Moreno?

11 A. Correct.

12 Q. Had there been some conversation where he indicated
13 he touched it, was there something additional you would have
14 notated?

15 A. Absolutely.

16 Q. And why is that?

17 MR. FIGLER: I'm just going to object on
18 speculation. It calls for facts not in evidence.

19 THE COURT: Sustained.

20 MS. DEMONTE: Okay.

21 THE COURT: It's definitely facts not in evidence.

22 BY MS. DEMONTE:

23 Q. Counsel had asked you if Bill Speas would be the
24 correct person to ask that question to; correct?

25 A. Yes.

1 Q. What about Officer Moreno himself?

2 A. If he would be -- I'm sorry, can you -- can you
3 rephrase that?

4 Q. Would he be equipped to answer whether or not he
5 touched the firearm?

6 A. Yeah, absolutely.

7 MS. DEMONTE: Nothing further, pass the witness.

8 THE COURT: Recross.

9 MR. FIGLER: One question.

10

11

RECROSS-EXAMINATION

12 BY MR. FIGLER:

13 Q. So Package 10 is the box of the gun; correct?

14 A. Correct. It contains the gun, magazine, and two
15 cartridges.

16 Q. So there could be a 10-A, B and C inside that
17 package. Is that what's in there?

18 A. That's possible. Someone could have relabeled.
19 Because if -- because I labeled it Item 10, if someone later on
20 was going into that package, they could decide to separate out
21 those components, the cartridge -- cartridges, the magazine,
22 and label them 10-A, 10-B, 10-C, 10-D, correct.

23 Q. But it's always going to be Item 10 for consistency,
24 you guys need to have that; correct?

25 A. It's nice -- yeah. I mean you can -- you can

1 renumber it as long as you're not covering over an item number
2 that I've already used under my P number.

3 Q. All right.

4 A. So we -- we have actually changed that. We used to
5 do the P number and -- the P number and a package number, if
6 that makes sense, and then start 1 through however many items
7 you have.

8 Q. Okay. But as we sit here today, Package 10 is gun;
9 correct?

10 A. Package 10 would be the gun. And as I marked it,
11 the firearm, the magazine, and two cartridges.

12 MR. FIGLER: Thank you.

13 No further questions.

14 THE COURT: All right. Ladies and gentlemen of the
15 Jury, it's your turn, if you have any questions, for this crime
16 scene analyst, we are allowed, as I told you in the opening
17 instructions, to ask questions of a witness.

18 The procedure we use is that you would write it down
19 on your notepad. You need to have your name and your badge
20 number, the current badge number, so however you're sitting,
21 1 through 14, on it.

22 If you don't have any, that's fine, too, but if you
23 do, you will hand those to the marshal and I will see the
24 attorneys at the bench.

25 Are there any questions? Is anybody writing them

1 down or can I excuse this witness?

2 Any questions?

3 (Affirmative response from the jury panel.)

4 THE COURT: Yes. Go ahead, take your time.

5 (Bench conference outside the presence of the jury.)

6 THE REPORTER: I can't hear.

7 THE COURT: The procedure I use is that I'll say for
8 the record: Do you know the number and what juror? And then I
9 basically show it to defense, read it, or you can all read it
10 together, but just say: I object. Or no, no objection. Or
11 objection, and state your objection.

12 MR. FIGLER: Okay.

13 THE COURT: That's all I need. I don't want to
14 discuss.

15 MR. FIGLER: No, no.

16 THE COURT: I read it first. So if you make an
17 objection, I can rule. Okay?

18 MR. FIGLER: And then it becomes a Court exhibit,
19 yeah.

20 THE COURT: Always, sure, yeah. No, of course.

21 MR. FIGLER: I just want to make sure.

22 THE COURT: A lot of time people -- people want to
23 discuss it, and I don't want to discuss it. I just want to
24 rule on it and then I want to ask it, if it's proper. And if
25 it's not proper, then I make a whole record outside the

1 presence of why it is or isn't --

2 MR. GOODMAN: Right.

3 THE COURT: But I don't like a lot of discussion on
4 a simple evidentiary objection.

5 And most of the time I find that nobody objects, so
6 it's a rather quick procedure of just reading it.

7 MR. FIGLER: I can't imagine I'd object to a
8 question from a CSA, but that's it.

9 MR. GOODMAN: First time it happened.

10 THE COURT: Actually on the CSI probably on the most
11 objectionable, yes, because they ask things from different
12 witnesses that this witness would not be competent to talk
13 about, but I guess we'll find out.

14 This one is from juror number (inaudible) -- I'm not
15 sure what the first two words say, something bullet.

16 MR. FIGLER: Term bullet.

17 THE COURT: Term bullet.

18 MR. FIGLER: Is at the complete --

19 THE REPORTER: I can't hear.

20 THE COURT: They read it. The term bullet then is
21 the first one.

22 MR. FIGLER: Right.

23 THE COURT: I just can't read those first two
24 letters.

25 MR. FIGLER: No objection.

1 THE COURT: No objection.

2 MS. PANDUKHT: No.

3 THE COURT: Okay. This is from -- can I -- can I
4 get them to write their name on it? They just put Number 5.
5 Thank you.

6 This is from Badge Number 6.

7 MR. FIGLER: No objection.

8 MS. PANDUKHT: No objection.

9 THE COURT: This one is from number 14,
10 Sandra Gomez. Is there an objection?

11 MS. PANDUKHT: Yes.

12 THE COURT: Is there an objection, defense?

13 MR. FIGLER: No objection from defense, but I
14 understand if State's objecting.

15 THE COURT: I'm going to sustain the objection.
16 Well, wait until you get this one, Jacque Wiese,
17 Number 5.

18 MR. FIGLER: Can I go first?

19 THE COURT: No.

20 MS. PANDUKHT: This -- let me.

21 THE COURT: Let me say, what did I say?

22 MS. PANDUKHT: Objection. I can't provide a
23 possible reason for the objection.

24 THE COURT: Objection or no objection? Is there an
25 objection?

1 MS. PANDUKHT: Okay. I would object.

2 THE COURT: Okay. Sustained.

3 Did you have an objection for the record?

4 MR. FIGLER: No.

5 THE COURT: No objection by the defense.

6 MS. PANDUKHT: Can I tell you?

7 THE COURT: Number -- you know what --

8 MR. FIGLER: Yeah.

9 THE COURT: This is -- could I get --

10 (Sotto voce at this time.)

11 THE COURT: Marshal Ellis, I'm sorry, she needs to
12 write her name on this one too. Sorry. She made two
13 questions. I would prefer to have her name on it too.

14 THE REPORTER: I can't hear you guys.

15 (Sotto voce at this time.)

16 MS. PANDUKHT: Judge, can we state the reasons for
17 our objection when we make our record afterwards?

18 THE COURT: Yeah, but I mean itself -- I mean, I'll
19 read the ones I don't put into evidence, does that make sense?
20 Because I'm reading it. If I -- if I ask them --

21 MR. FIGLER: If the State has concern she can make a
22 record.

23 MS. PANDUKHT: No.

24 THE COURT: I also said it.

25 MR. FIGLER: Just generally.

1 THE COURT: Yeah. This is from Number 5,
2 Jacque Wiese.

3 MR. FIGLER: That's better for ballistics.

4 THE COURT: Any objection? Objection, yes or no?

5 MS. PANDUKHT: Okay. Objection, because another
6 witness will tell us.

7 MR. FIGLER: Okay.

8 THE COURT: Sustained. Thank you.

9 Can you take me off bench conference? Thank you.

10 (End of bench conference.)

11 (Proceedings in the presence of the jury panel.)

12 THE COURT: All right. This is a question from
13 Badge Number 6, Angelica Numez -- sorry. Boy, I really need
14 to -- I have to read this.

15 Why is there tape over two of the items in Package
16 Number 1?

17 Do you need to see Package 1 to know what they're
18 talking about?

19 THE WITNESS: I believe I know what they're talking
20 about. The -- there's scotch tape over the vial, that's what
21 they're referring to?

22 It's been placed over the vial, my guess is, to try
23 to protect -- the pens that we have to write on the vials
24 themselves oftentimes run, so if you try to handle it soon
25 after you've written on the vial, it's not a great surface for

1 writing, so a lot of that will just smudge right off.

2 It's typically why I use a Sharpie and a thick
3 Sharpie, so that's my guess as to why they've done that.

4 If you use a felt tip marker, for example, a very
5 thin felt tip marker or a pen, it will smudge right off if you
6 touch it, so they probably placed the tape over it to preserve
7 whatever -- whatever they've written on it.

8 THE COURT: All right. This is from Juror Number 7,
9 Keith Trombetta: The term bullet, is that the complete unfired
10 shell or the tip or projectile?

11 THE WITNESS: That's a good question.

12 It's -- it's easy to confuse because everyone refers
13 to it on TV and common parlance, the bullet as the entire
14 cartridge.

15 But that's correct, the bullet is actually the top
16 portion of the complete cartridge, and that's what would be
17 forced out of the barrel.

18 If that answers that question.

19 THE COURT: Any follow up by the State from the
20 jurors' questions?

21 MS. DEMONTE: No, Your Honor.

22 THE COURT: Any from the defense?

23 MR. FIGLER: No, Your Honor.

24 THE COURT: Thank you very much for your testimony,
25 sir. You're excused.

1 THE WITNESS: Thank you, Your Honor.

2 (Whereupon, at this time the witness was excused.)

3 THE COURT: This is a good time for our first break
4 since we had opening and a longer witness.

5 What I'm going to do now -- let me think, yeah.

6 During this recess you're admonished not to talk
7 or converse among yourselves or with anyone else of
8 any subject connected with the trial;

9 Read, watch, or listen to any -- whatever
10 commentary on the trial, or any person connected
11 with this trial, by any medium of information,
12 including, without limitation, newspaper,
13 television, radio or internet;

14 Or form or express any opinion on any subject
15 connected with the trial until the case is finally
16 submitted to you.

17 We'll take a ten-minute break, so we'll see you
18 back at five till three.

19 And the attorneys will stay on the record.

20 MR. FIGLER: Your Honor, the jurors are indicating
21 whether or not to leave the book in the jury room or take it
22 with them.

23 THE COURT: No. Leave it right there on your seats.
24 Okay. Nobody looks at them. But you're not supposed to take
25 them with you, ever. It's your secret.

1 THE MARSHAL: All rise.

2

3 (The following proceedings were had in open
4 Court outside the presence of the jury panel:)

5

6 THE COURT: Be seated.

7 We're outside the presence.

8 I want to make a record of three questions that were
9 not asked.

10 Two of them were from Jacque Wiese, Juror Number 5.

11 The first one is: Who is the gun registered under?

12 This witness -- I sustained the objection. This
13 witness is not competent to testify as to who the gun is
14 registered under. There were objections made.

15 The next one, from Jacque Wiese, Number 5, is: How
16 many bullets can a gun hold at any one time?

17 There were objections by both parties to this.

18 This witness is not a firearm expert. I believe the
19 State has a firearm expert coming in, is that correct, in this
20 case?

21 MS. PANDUKHT: Correct, Your Honor.

22 THE COURT: And so it's more properly answered by
23 the firearm expert and not this particular witness.

24 So I sustained the objection.

25 The next question is from Sandra Gomez, Juror

1 No. 14: How do we know if anyone else touched gun since no one
2 can confirm?

3 Sustained the objection.

4 It's speculative. It calls for speculation.

5 MR. FIGLER: And both sides know there are experts
6 in that area so that is a better witness, too, Your Honor.

7 THE COURT: As well, yours is a fingerprint expert
8 is probably a better expert, and I believe the State has a
9 fingerprint expert coming in as well.

10 MS. PANDUKHT: Correct.

11 THE COURT: So that may be very well -- more
12 appropriate for another expert, but it calls for speculation
13 for this particular -- or competency of this particular
14 witness.

15 All right? All right. So I'm going to give you a
16 break unless you have something you wanted to bring to my
17 attention right now, either side?

18 MR. FIGLER: The State just filed a third amended
19 indictment. It only has corrections with spelling errors, we
20 have no objection to that.

21 THE COURT: With that, the amended is now filed and
22 it's granted.

23 Anything else then?

24 MR. FIGLER: No, Your Honor.

25 MS. PANDUKHT: No.

1 THE COURT: All right. Thank you.

2 THE MARSHAL: All rise.

3 (Recess in proceedings.)

4

5 (The following proceedings were had in open
6 Court in the presence of the jury panel:)

7

8 THE COURT: All right. Please be seated. Good
9 afternoon -- we're in the afternoon. In the presence of the
10 jurors, Case Number C262966, State of Nevada versus
11 Evaristo Garcia.

12 Let the record reflect the defendant's present with
13 his attorneys, Mr. Figler and Mr. Goodman. And for the State,
14 Ms. Pandukht and Ms. Demonte.

15 So it's still the State's case in chief, and if the
16 State would call their next witness.

17 MS. DEMONTE: The State calls Detective
18 Richard Moreno.

19

20 RICHARD MORENO

21 called as a witness on behalf of the State,

22 having been first duly sworn,

23 was examined and testified as follows:

24

25 THE WITNESS: Yes, I do.

1 THE CLERK: Please be seated.

2 THE WITNESS: Thank you.

3 THE CLERK: State and spell your full name for the
4 record, please.

5 THE WITNESS: Okay. It's Detective Richard Moreno,
6 R-I-C-H-A-R-D, M-O-R-E-N-O.

7

8 DIRECT EXAMINATION

9 BY MS. DEMONTE:

10 Q. Good afternoon.

11 A. Good afternoon.

12 Q. Do you work for the Las Vegas Metropolitan Police
13 Department?

14 A. Yes, I do.

15 Q. How long have you worked for the department in
16 total?

17 A. A little over 18 years.

18 Q. And how long have you been a detective?

19 A. Currently a little over three years.

20 Q. What unit are you assigned to currently?

21 A. I'm in the Gang Crime Bureau.

22 Q. So prior to that were you in patrol?

23 A. Yes, I was.

24 Q. So on February 6th, 2006, at approximately nine
25 o'clock p.m., you were in the patrol division?

1 A. Yes, I was.

2 Q. Do you remember what area command?

3 A. Yes, in the Northeast Area Command.

4 Q. So on that date and time, on February 6th, 2006, at
5 approximately 9:02 p.m., did you learn of an incident that had
6 taken place at the Morris Sunset East High School?

7 A. Yes, I did.

8 Q. And was that located at 3801 East Washington?

9 A. Yes, it is.

10 Q. Is that within Clark County, Nevada?

11 A. Yes, it is.

12 Q. So when you were -- when you received the phone
13 call, were you technically dispatched, or did you just arrive
14 on your own?

15 A. I believe I arrived on my own. I went to that
16 location, arrived on my own.

17 Q. Is there a method within the department in which
18 officers can communicate and learn of information?

19 A. Yes, I can.

20 Q. What is that system called?

21 A. That's through my mobile -- we call them MCTs,
22 mobile computer -- computer terminal.

23 Q. Does that have any relationship to when people call
24 in 911 calls?

25 A. Yes. That's in part of it, yes, I'm able to read

1 that information.

2 Q. So if somebody calls in to 911, and there's an
3 incident that officers are being dispatched to, would you be
4 able, and other officers, be able to hear about that
5 information?

6 A. Yes. You can hear it being broadcast over the air
7 by the dispatchers and also typed verbatim from the dispatchers
8 receiving that information. They update it as quickly as they
9 can on the MCT. We're able to read that.

10 Q. And are there logs that are generated that show
11 which officers are dispatched and involved with a particular
12 incident as well as the times and locations?

13 A. Yes, there is.

14 Q. Okay. And those are called what exactly?

15 A. I believe it's called CAD. I don't know exactly
16 what the acronym stands for.

17 Q. But that's the abbreviation, C-A-D?

18 A. Yes.

19 Q. Okay. So is there a specific event number also that
20 is associated with each and every case?

21 A. Yes, there is.

22 Q. And so on this particular date, do you remember the
23 time in which or how long after you were assigned to this case?

24 A. I was assigned, I believe, at 2110 hours.

25 Q. So what time would that be?

1 A. I'm sorry, 9:10 p.m.

2 Q. And about how long approximately did it take you to
3 arrive at the location of the school?

4 A. At approximately 2121 hours, which is 9:21 p.m.

5 Q. So that's 20 minutes after the initial 911 call came
6 out?

7 A. Yes, it was.

8 Q. Okay. So when you arrived at the scene at about
9 9:21 p.m., were there any other police officers and personnel
10 already at the scene?

11 A. Yes, there were several officers and other people at
12 the scene. So I obtained a more outer position.

13 Q. And was -- when you already arrived, was the scene
14 already secured, and was there taping put up and things like
15 that?

16 A. No. I assisted on putting some of that tape up on
17 the outer perimeter.

18 I could tell that there was ample manpower with
19 inside the inner perimeter or close to where the crime scene
20 had occurred, so I just assumed a more outer position or an
21 outer perimeter position on the particular crime scene.

22 Q. So was there anything else that you personally did
23 in terms of the crime scene in that area?

24 A. Yeah. Just -- I -- I protected the outer areas of
25 the crime scene, more positioned on Washington and Parkhurst

1 area. I remember directing traffic away from that particular
2 area.

3 Q. Let me show you what has already been admitted into
4 evidence as State's Exhibit Number 1. Do you recognize this
5 aerial photograph?

6 A. Yes, I do.

7 Q. Could you explain to the jury what area this
8 depicts?

9 A. This describes the area where this particular
10 incident occurred, at 3801 East Washington.

11 Q. So here we have Washington Avenue and then this
12 street over here?

13 A. Yes, Virgil.

14 Q. And what about this street over here?

15 A. And Parkhurst.

16 Q. Let me show you a close-up to make it a little
17 easier. This is State's Exhibit 2. And this is a close-up
18 area of where the school is, and could you point out where the
19 school is located, Morris Academy?

20 A. The school -- am I pointing at this or?

21 Q. Yeah, go ahead, you can mark it on your computer
22 screen.

23 A. This school is located -- I guess I can touch it,
24 right?

25 Q. Yeah, you can. If you touch the screen it will show

1 up.

2 A. Does it? Okay, I'm sorry.

3 Right in this particular area is where the
4 school is at (indicating).

5 And I was positioned in this area here
6 (indicating), at Parkhurst and Washington.

7 Q. Okay. Did there come a point when you began to go
8 somewhere else outside of the immediate area right there?

9 A. Yes. After I was relieved after that of my
10 position, I then assumed a position on Parkhurst and started
11 walking on Parkhurst.

12 Q. Why did you decide to walk south on Parkhurst?

13 A. Information was broadcast earlier that the suspect
14 had possibly ran westbound on Washington.

15 Sitting out there for two hours, through my
16 training and experience, it's often that suspects flee a
17 particular area, may discard clothing or weapons, or articles
18 related to the particular crime that I'm in.

19 So I just started walking the area on Parkhurst,
20 and I'm going to point on the screen here, from Washington, I
21 decided to walk directly southbound on Parkhurst from
22 Washington.

23 Out there on -- on the sidewalk was trash that
24 was obviously being discarded for pickup. And I just started
25 looking in the particular yards, and also on the curb, and in

1 that particular case I started looking into the trash.

2 Q. Okay. Now, first of all, you kind of drew an area.
3 Do you know the address that -- of this house?

4 A. I believe it was 865 Parkhurst.

5 Q. And could you point the house out?

6 A. I'm not positive if it was the first one or second
7 one, but I know it was right here (indicating) in this area
8 where the -- the trash was discarded.

9 Q. So do you remember it being kind of close to
10 Washington Avenue?

11 A. Oh, yes, absolutely. I could see Washington right
12 there.

13 Q. And when you say trash, what in particular kind of
14 trash are you talking about?

15 A. It was -- there was toilets, used toilets, older,
16 soiled toilets sitting on the curb, and there was newer boxes
17 of probably newer toilets sitting right there on the curb also
18 next to these older toilets.

19 Q. And did you see anything of any significance in that
20 area?

21 A. Yeah. I looked inside of one of the toilets, and I
22 immediately saw a semi-auto handgun, a blue steel or black
23 semi-auto handgun.

24 Q. Did you see a lid on the toilet?

25 A. No, I don't believe so.

1 Q. And when you're saying toilet, is it the part where
2 you sit on or the tank?

3 A. No, it was the tank, I'm sorry.

4 Q. Let me show you some photographs that have also been
5 admitted into evidence.

6 A. Okay.

7 Q. This is State's Exhibit Number 36. Do you recognize
8 this?

9 A. Yes, I do.

10 (Sotto voce at this time.)

11 MR. FIGLER: Thank you.

12 BY MS. DEMONTE:

13 Q. So please describe what you recognize, if anything,
14 in this photograph.

15 A. This is the same toilets that I observed on that
16 evening that were sitting on a curb in front of 865 Parkhurst.

17 Q. And I see that there is a mailbox in front of the
18 residence. What is the number on the mailbox?

19 A. I believe --

20 Q. And I can zoom it in if you'd like?

21 A. 865.

22 Q. Okay. And could you point to the -- the toilet that
23 you found the item in?

24 A. I don't recall whether it was the first one or
25 second one.

1 Q. Did both toilets have the -- the same lack of lid?

2 A. Yes.

3 Q. So is this -- when you came up on these toilet
4 tanks, is this exactly how they looked?

5 A. Yes, they are.

6 Q. So neither one had a lid?

7 A. Correct.

8 Q. Okay. And I see here that there is a sidewalk here.
9 Was this exactly where they were located on the sidewalk?

10 A. Yes, they were.

11 Q. Let me show you State's Exhibit Number 39. This is
12 another view. I'm going to zoom back out.

13 Okay. Is this another view of the evidence that
14 you saw?

15 A. Yes, it is, ma'am.

16 Q. Okay. And is there a label on here on the box that
17 we can see?

18 A. Yes. It says: American Standard Total Toilet Set.

19 Q. Now, also I don't know if it's even possible to see
20 it, but can you see a stop sign here with a street sign?

21 A. That is a stop sign of -- that is Washington.

22 Q. Okay. So you know that that's Washington Avenue?

23 A. Yes, I do.

24 Q. Okay. Showing you State's Exhibit Number 37. Do
25 you recognize what is depicted in this photograph?

1 A. Yes. That is the semi-auto handgun that I observed
2 that evening.

3 Q. Was there any water inside of the toilet tank?

4 A. No, there wasn't.

5 Q. And when you observed this firearm, is this in the
6 exact position that you first observed it?

7 A. Yes, it is.

8 Q. So with the gun, the top of the gun on the bottom of
9 the tank?

10 A. Correct.

11 Q. Did you touch this firearm at all?

12 A. No, not at all.

13 Q. And why not?

14 A. It's a crucial priority not to handle any evidence,
15 to preserve any evidence that we locate on crime scenes so the
16 proper crime scene specialist can come and recover evidence.

17 Q. State's Exhibit Number 38. Is this a close-up?

18 A. It appears to be, yes, ma'am.

19 Q. Okay. Now, what did you do when you found that
20 semi-auto firearm in the toilet?

21 A. I stayed there at the scene, because it being the
22 type of call it is, the radio traffic is often very, very busy.

23 I then called dispatch and advised them, via
24 telephone, that I had recovered a firearm at 865 Parkhurst.

25 Q. Did you call for a crime scene analyst or a Homicide

1 detective to come out to your location?

2 A. Yes. I notified a -- a detective from Homicide. It
3 was Detective Hardy.

4 Q. And to your knowledge, was he the detective that was
5 in charge of the crime scene?

6 A. He was one of the detectives that was out there,
7 yes.

8 Q. And did you remain with that firearm the entire time
9 until someone else arrived?

10 A. Absolutely, yes.

11 Q. What about the crime scene analyst -- Crime Scene
12 Analyst Proietto, did you -- were you there when he arrived?

13 A. Yes. I think simultaneously CSI Proietto and
14 Detective Hardy responded to my location and then assumed
15 possession of that evidence, of the firearm.

16 Q. And you were there when both of them arrived and
17 when he impounded the firearm?

18 A. Correct.

19 Q. Or collected the firearm?

20 A. Yes, ma'am.

21 Q. And did you -- you've already said you didn't touch
22 it. Did you remain there by the firearm to make sure nobody
23 else touched it other than Crime Scene Analyst Proietto?

24 A. Absolutely, yes.

25 (Sotto voce at this time.)

1 BY MS. DEMONTE:

2 Q. So no one else touched that firearm?

3 A. No one else; no, ma'am.

4 (Sotto voce at this time.)

5 MS. DEMONTE: Pass the witness.

6 THE COURT: Cross-examination.

7 MR. FIGLER: Thank you.

8

9 CROSS-EXAMINATION

10 BY MR. FIGLER:

11 Q. Detective, did you see who took it out of the tank?

12 A. I don't recall exactly. I -- I believe it was the
13 crime scene analyst that took it out.

14 Q. But you can't tell me which one?

15 A. I can't remember, can't recall at this time, sir.

16 Q. Okay. And as a detective, when you go investigate a
17 crime, it's pretty routine for you to do a report almost every
18 single time now; correct, now that you're a detective?

19 A. Correct.

20 Q. Okay. But back when you were patrol, it's hit and
21 miss, sometimes they ask you to fill out a report, sometimes
22 they don't; correct?

23 A. There's times, correct.

24 Q. Okay. And in this particular event, no one had you
25 fill out a report; correct?

1 A. Correct.

2 Q. And to your knowledge, you did not fill out any
3 report in this particular case?

4 A. I did not, no, sir.

5 Q. Okay. I'm going to show you some of those pictures.

6 Did you have any interaction with the residents
7 of 865 Parkhurst?

8 A. I don't believe I did.

9 Q. I'm going to show you a couple of the pictures that
10 the prosecution just showed you. I just have a couple more
11 questions.

12 A. Yes, sir.

13 Q. I'm going to show you what's been marked as State's
14 Exhibit 36. Those are the two commodes that you came upon as
15 part of your investigation; correct?

16 A. Correct.

17 Q. Now, when you first came upon them, they were not
18 illuminated in such a fashion, were they?

19 A. No, they weren't.

20 Q. Okay. In fact, generally speaking, it was pretty
21 dark outside at the time that you had done your investigation?

22 A. I'd say so, yes, sir.

23 Q. Okay. And presumably, like every other good cop,
24 you're out there with your flashlight looking around; is that
25 correct?

1 A. Yes, probably.

2 Q. Okay. You're -- most patrol officers are equipped
3 with some illuminating device or a flashlight or something?

4 A. Yes, sir.

5 Q. Okay. And to your recollection, you probably had
6 that that evening to go around and look around?

7 A. Correct, sir.

8 Q. You probably would not have been able to see inside
9 those tanks without -- without your flashlight, correct?

10 A. I think I could probably have saw inside of them,
11 yes.

12 Q. Okay.

13 A. Without -- without illumination.

14 Q. But you did have your illumination with you?

15 A. I did have it, yes, sir.

16 Q. Thanks.

17 Now, here's Exhibit -- State's Exhibit 39.
18 That's just a different view; correct?

19 A. Yes, sir.

20 Q. Okay. And again, beyond the area -- this appears to
21 be an illuminated photo, in other words, a picture that was
22 probably taken with a flash?

23 A. Probably, yes, sir.

24 Q. Okay. And you saw crime scene analysts out there
25 taking pictures with flashes; correct?

1 A. Yes, sir.

2 Q. Okay. But you would agree with me that the area
3 beyond that is fairly dark; correct?

4 A. Correct.

5 Q. And that reflects accurately what it was like that
6 night?

7 A. Correct.

8 Q. Okay. Now, you had also indicated that there was no
9 water at all in the tank of the --

10 A. For some reason I remember moist or I remember, um,
11 a mildew-type smell.

12 Q. Okay.

13 A. For whatever reason, I -- I remember that still.

14 Q. Okay. So there was some sort of moisture that
15 existed within the -- within the tank; correct?

16 A. By looking at this and then based on my smell that
17 evening, yes.

18 Q. And that even looks like -- that little white part,
19 which is not -- I'm sorry, in Exhibit 38, there appears to be
20 something white in the photo; in Exhibit 37, there doesn't
21 appear to be anything white. Could you say that that might be
22 a reflection of a flash? Does that look consistent with that?

23 A. I -- I don't know. I mean I'm just looking at these
24 pictures. I don't know what it could be.

25 Q. Sure, but there's definitely something in that tank;

1 correct?

2 A. Could be, yes.

3 Q. And you do recall then, you said, some kind of
4 moisture or something like that?

5 A. A mildew smell I remember.

6 Q. Right. And -- and that's how you viewed this --
7 this gun, it was kind of upside down like that?

8 A. Yes, sir.

9 Q. So that was the -- the positioning of the gun when
10 you came upon it?

11 A. Absolutely, yes, sir.

12 Q. Okay. Do you recall if you were wearing gloves that
13 night, just generally speaking?

14 A. I was not wearing gloves.

15 Q. Okay. Did you ever see close enough to that gun,
16 did you see the gun when they took it out? Did you have an
17 opportunity to observe it closer?

18 A. I really didn't.

19 Q. Okay.

20 A. Wasn't concerned.

21 Q. Okay. So if -- if you had seen something particular
22 on it, you probably would have reported that; correct?

23 A. Absolutely, yes.

24 Q. Okay. But you didn't inspect it closely?

25 A. Not at all.

1 Q. Okay. As --

2 MR. FIGLER: Yeah, go back over there.

3 BY MR. FIGLER:

4 Q. When -- when you do collect evidence now or come
5 upon evidence, you -- you look for biological material
6 sometimes because that helps you identify DNA; is that correct?

7 A. Correct.

8 Q. Okay. And so you're trained to look for things like
9 reddish brown substances that might exist on items; is that
10 correct?

11 A. Um, I can't say red or brown.

12 What are you referring to?

13 Q. Biological materials. If you're looking for a
14 biological material on an item of evidentiary value, something
15 that might be reddish or brownish could possibly turn out to be
16 biological material; correct?

17 A. I'm not going to speculate on that. I'm not going
18 to look for specific biological evidence.

19 I mean, if I do obtain a piece of evidence, it
20 could be microscopic, it could be whatever. I'm not trained in
21 that particular area.

22 Q. Okay.

23 A. I'll gather it, protect it, and then send it to the
24 crime scene analyst.

25 Q. Perfect. So if you see something, you say

1 something, right? You tell people -- if you see something that
2 looks like it might be of evidentiary value, you pass that
3 information along to the people who deal with that?

4 A. Sure, yes.

5 Q. Every time, that's what you do as a cop, right?

6 A. That's what I would do, yes.

7 Q. Okay. Thank you.

8 MR. FIGLER: Nothing further, Your Honor.

9 THE COURT: Any redirect?

10 MS. DEMONTE: No, Your Honor.

11 THE COURT: With no redirect, ladies and gentlemen
12 of the jury, do any of the jurors have any questions for this
13 witness?

14 (Negative response from the jury panel.)

15 THE COURT: Negative response.

16 Thank you very much for your testimony. You're
17 excused.

18 THE WITNESS: Thank you.

19 (Whereupon, at this time the witness was excused.)

20 THE COURT: State, call your next witness.

21 MS. DEMONTE: State calls Jena Marquez.

22 May I approach your clerk?

23 THE COURT: You may.

24 THE CLERK: Raise your right hand.

25

JENA MARQUEZ

called as a witness on behalf of the State,
having been first duly sworn,
was examined and testified as follows:

THE WITNESS: Yes.

THE CLERK: Please state your full name.

THE WITNESS: My name is Jena Marquez.

THE CLERK: Could you spell that for the record,
please.

THE WITNESS: Mm-hmm. It's J-E-N-A, M-A-R-Q-U-E-Z.

THE CLERK: Please have a seat.

THE WITNESS: Thank you.

THE COURT: Make sure you pull in and speak into the
mike. Thank you.

THE WITNESS: Mm-hmm.

MS. DEMONTE: May I proceed, Your Honor?

THE COURT: Yes.

MS. DEMONTE: Thank you.

DIRECT EXAMINATION

BY MS. DEMONTE:

Q. Ma'am, how old are you?

A. Twenty-four.

THE REPORTER: What -- okay. Excuse me.

1 THE COURT: Can you hear?

2 THE REPORTER: I think I can, Judge. I'm sorry.

3 THE COURT: You can't -- the acoustics are really
4 tough in this courtroom. So speak up.

5 THE WITNESS: Okay.

6 THE COURT: Because if my court reporter can't hear
7 you, the jury can't hear you. Okay? Speak up and speak into
8 that mike too. You can kind of pull that book in front of you
9 a little farther. Thank you.

10 THE WITNESS: You're welcome.

11 THE COURT: Go ahead.

12 BY MS. DEMONTE:

13 Q. So you're 24 now?

14 A. Correct.

15 Q. So back in 2006, would that have made you 17 years
16 old?

17 A. Yes.

18 Q. Okay. In February of 2006, were you attending high
19 school?

20 A. I was.

21 Q. And what high school did you attend?

22 A. Morris Academy.

23 Q. And where is that?

24 A. On Washington.

25 Q. And is that here in Clark County?

1 A. Yes.

2 Q. Now, have you heard Morris Academy referred to as
3 Morris Sunset as well?

4 A. Yes.

5 Q. And what's the reason for the word "Sunset," if you
6 know?

7 A. I don't know.

8 Q. Okay. What time of day did you go to school?

9 A. In the evening.

10 Q. All right. So approximately when would school start
11 for you?

12 A. Six.

13 Q. And when would school let out?

14 A. Eight.

15 Q. Okay. Now, on February 6th of 2006, were you at
16 school that day?

17 A. Yes.

18 Q. How long had you been going to Morris Academy?

19 A. I don't know the exact time, but for about a month,
20 maybe less.

21 Q. Okay. And do you remember some of the people in
22 school with you?

23 A. Yes. I attended the school with Crystal and
24 Melissa.

25 Q. And do you know Crystal's last name?

1 A. Yes, it's Perez.

2 Q. And do you know Melissa's last name?

3 A. Yes, it's Gamboa.

4 Q. Did you know a person by the name of Jesus?

5 A. Yes.

6 Q. And do you know Jesus's last name?

7 A. Yes.

8 Q. What is it?

9 A. Alonzo.

10 Q. How long had you known Jesus?

11 A. I've known Jesus since maybe 2000, the year.

12 Q. So you'd known him approximately six years?

13 A. Yes. We went to junior high together.

14 Q. And did you meet in junior high?

15 A. Yes.

16 Q. At some point did you become more familiar with
17 Jesus?

18 A. Yes.

19 Q. And why did you become more familiar with Jesus?

20 A. I connected with him through a mutual friend, and we
21 hung out together.

22 Q. And who was that mutual friend?

23 A. Miguel.

24 Q. Now, did you know Jesus to be in a relationship with
25 anyone?

1 A. At that time, no.

2 Q. How about in 2006?

3 A. He started dating Melissa.

4 Q. And how well did you know Jesus when he was dating
5 Melissa?

6 A. I know him well enough I think.

7 Q. Okay. Did you know if he was in any gangs?

8 MR. FIGLER: I'm going to object, Your Honor.
9 Foundation.

10 THE COURT: Sustained.

11 BY MS. DEMONTE:

12 Q. Okay. Did you know Jesus to have any tattoos?

13 A. Yes.

14 Q. What did he have tattooed?

15 MR. FIGLER: Objection, Your Honor. Relevance.

16 THE COURT: Overruled.

17 THE WITNESS: He had a -- he had a saying across his
18 chest.

19 BY MS. DEMONTE:

20 Q. Do you know what it was?

21 A. Mm-hmm. In Spanish it was Perdoname Madre --

22 THE REPORTER: I'm sorry?

23 THE WITNESS: -- which means: Forgive me, Mother of
24 Mine.

25 THE REPORTER: I don't know how to write that,

1 Judge.

2 THE COURT: I don't know. Well, can you spell it?

3 THE WITNESS: No.

4 THE COURT: Can you say it slow?

5 THE WITNESS: Yeah.

6 THE COURT: So she can phonetically transcribe it?

7 THE WITNESS: Mm-hmm.

8 THE COURT: Thank you.

9 THE WITNESS: It's Perdoname Madre Mia.

10 THE REPORTER: Thank you.

11 BY MS. DEMONTE:

12 Q. And you translated that a second ago.

13 A. Yeah.

14 Q. Can you repeat that translation?

15 A. Yes. Forgive me, Mother of Mine.

16 Q. Forgive me, Mother of Mine?

17 A. Mm-hmm.

18 Q. Did you see any other tattoos on him?

19 A. No.

20 Q. Okay. And he was dating Melissa?

21 A. Mm-hmm.

22 Q. Is that a yes?

23 A. Yes. I'm sorry.

24 Q. Did you know Jesus to use any other names?

25 A. Just his nickname.

1 Q. And what was that?

2 A. Diablo.

3 Q. And what does that mean?

4 A. Devil.

5 Q. Do you know why he had that nickname?

6 A. No.

7 Q. Do you know where that nickname came from?

8 MR. FIGLER: Objection, calls for speculation,
9 especially given the last answer.

10 MS. DEMONTE: I just asked if you know.

11 THE COURT: Well, that still calls -- if it -- it
12 can call for speculation depending on how she knows, or it
13 could call for hearsay depending on how she knows. So
14 foundationally it's an improper question.

15 Ask another question.

16 MS. DEMONTE: That's fine, Your Honor.

17 BY MS. DEMONTE:

18 Q. Now, did Jesus go to school with you?

19 A. No.

20 Q. How often would you see Jesus?

21 A. Throughout the week?

22 Q. Yes.

23 A. Sometimes the whole week, sometimes maybe three,
24 four times.

25 Q. And when you would see Jesus who would be with him?

1 A. We would all be together, me and Melissa and Jesus.

2 Q. Now, I want to direct your attention to the week
3 prior to February 6th. Do you know a person by the name of
4 Giovanni?

5 A. Yes.

6 Q. Okay. And how did you know Giovanni?

7 A. We went to school together.

8 Q. And do you know his last name?

9 A. Garcia.

10 Q. And did you call him Giovanni if you would speak to
11 him?

12 A. Yes.

13 Q. Did you ever use another name to speak to Giovanni?

14 A. No.

15 Q. Okay.

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

18 THE COURT: You may.

19 MS. DEMONTE: Thank you.

20 BY MS. DEMONTE:

21 Q. Showing you a picture -- sorry.

22 Showing you State's Proposed Exhibit 85, do you
23 recognize that person?

24 A. Yes.

25 Q. And is that a fair and accurate depiction of

1 Jesus Alonzo when you knew him in 2006?

2 A. Yes.

3 MS. DEMONTE: Move for admission of 85.

4 MR. FIGLER: No objection.

5 MS. DEMONTE: Thank you.

6 THE COURT: With no objection, 85 is now admitted.

7 (State's Exhibit 85

8 was admitted into evidence.)

9 BY MS. DEMONTE:

10 Q. Now showing you State's Exhibit 50, do you recognize
11 the person in that photograph?

12 A. Yes.

13 Q. And is that a fair and accurate depiction of
14 Giovanni when you knew him in 2006?

15 A. Yes.

16 MS. DEMONTE: Move for admission of 50.

17 THE COURT: There any --

18 MR. FIGLER: No objection.

19 MS. DEMONTE: Thank you.

20 THE COURT: I'm sorry, no objection?

21 MR. FIGLER: No objection, Your Honor.

22 THE COURT: Exhibit Number 50 is now admitted.

23 (State's Exhibit 50

24 was admitted into evidence.)

25 MS. DEMONTE: Thank you.

1 Move to publish, Your Honor?

2 THE COURT: You may.

3 MS. DEMONTE: Thank you.

4 BY MS. DEMONTE:

5 Q. Now, how did you know Giovanni?

6 A. I only knew him because we went to school together.
7 We have -- we had fifth and sixth period together.

8 Q. Okay. And out of -- with Melissa and Crystal, were
9 they in fifth or sixth period with you as well?

10 A. Crystal was in my fifth period and Melissa was in my
11 sixth.

12 Q. Okay. So in fifth period, you were in class with
13 Giovanni for sure, Crystal for sure?

14 A. Yes.

15 Q. And then in sixth period, Giovanni for sure, and
16 Melissa for sure?

17 A. Yes.

18 Q. Okay. Now, did you know Giovanni to have any
19 tattoos?

20 A. Yes.

21 Q. And what tattoos did you see on Giovanni?

22 MR. FIGLER: I'm going to object again as to
23 relevance.

24 THE COURT: Is it relevant to this case?

25 MS. DEMONTE: It is --

1 THE COURT: Because the last one wasn't relevant.

2 MS. DEMONTE: This one is, Your Honor.

3 THE COURT: Okay. With that, I'll overrule it.

4 MS. DEMONTE: Thank you, Your Honor.

5 THE WITNESS: He had -- the last name Garcia on the
6 back of his neck. He had a 1-3 on his chest and East Side on
7 his arms here (indicating) and here.

8 BY MS. DEMONTE:

9 Q. And do you recall when you first saw those tattoos
10 on Giovanny?

11 A. During fifth period, him and Crystal were comparing
12 tattoos, talking about tattoos. He showed us his tattoos and
13 at that time told us the meaning of --

14 MR. FIGLER: I'm going to object, Your Honor.
15 Hearsay.

16 THE COURT: Sustained.

17 The rest -- and it's also now getting nonresponsive.

18 MS. DEMONTE: Okay.

19 BY MS. DEMONTE:

20 Q. So he showed you your -- the tattoos, correct?

21 A. Yes.

22 Q. Now, prior to Giovanny showing you his tattoos, did
23 you see how he and Crystal would interact?

24 A. Yeah. They were fine. They talked. I mean it
25 wasn't a friendship, it was a hi and bye.

1 Q. So would you characterize it as friendly?

2 A. Yes.

3 Q. After Giovanny showed you and Crystal those tattoos,
4 how did they interact with each other?

5 A. We were -- they were fine.

6 Q. Okay. Now, before -- right before February 6th, the
7 week before, were you present during an interaction between
8 Crystal and Giovanny --

9 A. Yes.

10 Q. -- that was different?

11 A. Yes.

12 Q. Okay. And when did this happen?

13 A. During fifth period.

14 Q. Okay. Do you remember what day it was?

15 A. No, I don't.

16 Q. But you know it to be the week prior?

17 A. Yes.

18 Q. Okay. And what happened during fifth period?

19 MR. FIGLER: Calls for a narrative, Your Honor. And
20 specifically, I think it's going to suggest that there might be
21 some hearsay involved too.

22 THE COURT: I'm going to overrule it, but I'll
23 caution the witness not to testify as to what other people
24 said. You can't testify as to what somebody else said.

25 So if you can answer the question without doing

1 that, I'm overruling it.

2 Perhaps you should be more direct on the questions.

3 MS. DEMONTE: Thank you.

4 BY MS. DEMONTE:

5 Q. Did you observe something physically happening
6 between Giovanni and Crystal?

7 A. No.

8 Q. Okay. Did you see something involving a book?

9 A. Yes.

10 Q. Okay. What did you see involving a book?

11 A. A book was tossed over to another table that was
12 next to us.

13 Q. Do you know who did that?

14 A. Yes.

15 Q. Who did that?

16 A. Crystal.

17 Q. Okay. And what happened after Crystal did that?

18 A. They threw insults at each other.

19 Q. And who would that be?

20 A. I'm sorry, Crystal and Giovanni.

21 Q. And what was Crystal's demeanor when she was
22 throwing insults?

23 A. Angry.

24 Q. And what was Giovanni's demeanor when he was
25 throwing insults?

1 A. Angry.

2 Q. Do you remember specifically what those insults
3 were?

4 A. No.

5 Q. Now, after that, where they were throwing insults at
6 each other, did you go to sixth period that day?

7 A. Yes.

8 Q. Okay. After sixth period -- is sixth period the
9 last period?

10 A. Yes.

11 Q. Okay. How did you then leave school?

12 A. Jesus would pick us up after school.

13 Q. And did he do that on that day?

14 A. Yes.

15 Q. Okay. And who did you ride home from school with?

16 A. Crystal and Melissa.

17 Q. After you rode home with Jesus and Melissa, did you
18 inform Jesus what had happened in fifth period?

19 A. No.

20 Q. At some point though did you observe Jesus with
21 Giovanny?

22 A. Yes.

23 Q. And do you remember when that was?

24 A. That same evening, after school.

25 Q. After school?

1 A. Yes.

2 Q. And without telling me what anyone said, what did
3 you see?

4 A. Just Jesus approached Giovanny.

5 Q. And how did Jesus appear?

6 A. Angry.

7 Q. Okay. How did Giovanny appear?

8 A. Angry.

9 Q. And how many times did you observe Jesus approach
10 Giovanny?

11 A. Twice.

12 Q. And the second time, where did that take place?

13 A. In the parking lot.

14 Q. Okay. Where did the first time take place?

15 A. On school, on school grounds.

16 Q. Okay. Where about on school grounds?

17 A. In the front of the school.

18 Q. Okay. Like --

19 A. There was double doors in the front where the people
20 entered and exit.

21 Q. And then the second time was in the parking lot?

22 A. Yes.

23 Q. Okay. Now, on the second occasion, what was Jesus's
24 demeanor like?

25 A. They were both very angry.

1 Q. And -- Jesus and Giovanny?

2 A. Yes.

3 Q. Could you hear anything that was said the second
4 time?

5 A. No.

6 Q. Okay. Could you see Melissa the second time?

7 A. Yes.

8 Q. What did Melissa do?

9 A. She went and pulled Jesus away.

10 Q. Now, I want to take you to Monday, February 6th of
11 2006.

12 A. Okay.

13 Q. You went to school that day?

14 A. Yes.

15 Q. Okay. And did you see Giovanny that day?

16 A. Yes.

17 Q. Did you say anything to Giovanny?

18 A. Yes. I actually approached Giovanny to calm the
19 situation and apologize, but he didn't want to. He didn't want
20 to accept my apology.

21 Q. What was his demeanor like?

22 A. He was angry.

23 Q. And what did he say to you?

24 MR. FIGLER: I'm going to object, Your Honor.

25 THE COURT: Sustained.

1 (Sotto voce at this time.)

2 MS. DEMONTE: Your Honor, pursuant to 51.035, it's
3 non-hearsay, a statement by a co-conspirator of a party during
4 the course of the conspiracy.

5 MR. FIGLER: There has been --

6 THE COURT: There's been no evidence of a conspiracy
7 at this time. Sustained.

8 MR. FIGLER: Thank you, Your Honor.

9 MS. DEMONTE: Thank you.

10 BY MS. DEMONTE:

11 Q. Now, when did you approach Giovanni, what period was
12 that?

13 A. Fifth.

14 Q. Okay. Did you see Crystal in fifth period as well?

15 A. Yes.

16 Q. And could you see Crystal interact with Giovanni?

17 A. No.

18 Q. Now, after fifth period was over, were you with
19 Crystal?

20 A. Yes.

21 Q. Okay. Did something happen after fifth period?

22 A. Yes. They got into a confrontation.

23 Q. Who did?

24 A. Crystal and Giovanni.

25 Q. And where did this occur?

1 A. On our way to sixth period in the hallway.

2 Q. Okay. And what was Crystal's demeanor like during
3 the confrontation?

4 A. Angry.

5 Q. And Giovanni as well?

6 A. Yes.

7 Q. Now, could you hear what was said at all?

8 A. Yes.

9 Q. Okay. After that confrontation did you observe what
10 Giovanni did?

11 A. He got on his cell phone.

12 Q. And you watched him?

13 A. Yes.

14 Q. Okay. Did you know who he was calling at that
15 point?

16 A. No.

17 Q. Okay. But could you hear what he was saying?

18 A. Yes.

19 Q. And was he still angry?

20 A. Very.

21 Q. Okay. What did he say?

22 MR. FIGLER: I'd object, Your Honor. I don't
23 believe they've established excited utterance, if that's what
24 they're trying to do. Angry is not excited. There's another
25 exception to the --

1 MS. DEMONTE: State would again offer --

2 THE COURT: I think that you could get it a little
3 more on foundation if that's what you're -- you haven't
4 established a conspiracy. You can always go back and ask these
5 questions once you establish something more. Okay?

6 MS. DEMONTE: Okay.

7 THE COURT: But right now it sounds like hearsay.
8 You could foundationally go back and ask more questions, so --
9 and then re-ask it.

10 MS. DEMONTE: Okay.

11 BY MS. DEMONTE:

12 Q. Now, you heard what Giovanni said on the phone?

13 A. Yes.

14 Q. Without telling me what he said, how did that make
15 you feel?

16 A. At the time, angry, upset.

17 Q. Did you then go to sixth period after hearing that
18 conversation?

19 A. Yes, I did.

20 Q. Okay. What was your feeling in sixth period?

21 A. Nervous.

22 MR. FIGLER: Your Honor, I'm going to object to the
23 relevance of this witness's feelings on the named victim.
24 There's no tie-in.

25 THE COURT: Sustained.

1 MS. DEMONTE: Okay.

2 MR. FIGLER: And I'll move to strike the answer.

3 THE COURT: The answer will be stricken.

4 BY MS. DEMONTE:

5 Q. Did you then have a conversation with somebody
6 during sixth period?

7 A. Yes.

8 Q. Who were you having that conversation with?

9 A. With Melissa.

10 Q. Okay. And why were you talking to Melissa?

11 MR. FIGLER: I'm going to object, Your Honor, as far
12 as the relevance as why --

13 THE COURT: Sustained.

14 MR. FIGLER: Thank you.

15 BY MS. DEMONTE:

16 Q. What did you say to Melissa?

17 A. Something was going to happen and we needed to
18 leave.

19 Q. Did you then leave?

20 A. Yes.

21 Q. Okay. Now, did you leave on your own volition?

22 A. Yes.

23 Q. Okay. To your knowledge was -- did anyone overhear
24 you?

25 A. The teacher.

1 Q. Okay. So after you talked to Melissa you left?

2 A. Yes.

3 Q. Did Melissa leave with you?

4 A. No.

5 Q. Okay. Where did you go when you left?

6 A. To the 7-Eleven on the corner of Washington.

7 Q. And who was with you when you left school?

8 A. Crystal.

9 Q. Okay. What did you do when you got to the 7-Eleven?

10 A. I called my brother.

11 Q. Okay. And who is your brother?

12 A. Bryan Marquez.

13 THE REPORTER: Bryan Marquez?

14 THE WITNESS: Yes.

15 THE REPORTER: Thank you. Sorry.

16 BY MS. DEMONTE:

17 Q. And is Bryan Marquez younger or older than you?

18 A. We're twins.

19 Q. Did he go to school with you?

20 A. No.

21 Q. What school did he attend?

22 A. He didn't attend school.

23 Q. Okay. And after you called Bryan to pick -- what
24 was the purpose of calling Bryan?

25 A. To come pick us up, to -- to be there with me.

1 Q. Okay. And did you try to make -- did you make any
2 other phone calls?

3 A. No.

4 Q. Okay. And did your brother come and pick you up at
5 that point?

6 A. He did.

7 Q. Who did he have with him?

8 A. Victor.

9 Q. And who is Victor?

10 A. Victor is Melissa's brother.

11 Q. Okay. And how old was Victor?

12 A. I don't know but he had just had a birthday.

13 Q. Okay. Was he younger or older than Melissa?

14 A. Younger.

15 Q. And when Bryan and Victor came to pick you up, where
16 did you guys go next?

17 A. Back to the school.

18 Q. And why did you go back to the school?

19 A. To meet up with Jesus.

20 Jesus picked us up every night -- not every
21 night, but usually he would be the one to pick us up.

22 Q. Okay. And when you arrived at the school, did you
23 see whether or not Jesus arrived?

24 A. We arrived at the same time.

25 Q. Okay. And where did you guys park?

1 A. We parked across the street from the school on the
2 street named Virgil. Jesus parked in the parking lot.

3 Q. Showing you what's already been admitted as State's
4 Exhibit 2, do you see Virgil on that?

5 A. Yes.

6 Q. And you can take your finger and draw on the screen,
7 if you could draw an X where you parked?

8 A. Here (indicating).

9 Q. Okay. And you said Jesus was in the parking lot.
10 Can you just circle the parking lot?

11 A. Here (indicating).

12 Q. Okay. And what happened when you got to the parking
13 lot? Was school -- had school let out yet?

14 A. Yes.

15 Q. Okay. And what happened once school let out?

16 A. My brother confronted Giovanni.

17 Q. Bryan did?

18 A. Correct. And Giovanni, I am assuming, felt --

19 MR. FIGLER: I'm going to object, Your Honor.

20 BY MS. DEMONTE:

21 Q. Don't tell me how Giovanni felt.

22 THE REPORTER: Wait -- whoa, whoa.

23 THE COURT: Hold on. Everybody, stop. There's one
24 court reporter. I heard everybody talking.

25 You made an objection.

1 You gotta to wait.

2 MS. DEMONTE: Okay.

3 THE COURT: You made an objection.

4 MR. FIGLER: It was speculation because the witness
5 said "assume."

6 THE COURT: Okay. I got it with one word. Okay?
7 Speculation.

8 Do you have anything to say about that?

9 MS. DEMONTE: No, Your Honor. I was just actually
10 redirecting the witness.

11 THE COURT: Then I'm going to sustain that.
12 BY MS. DEMONTE:

13 Q. Don't tell me what you think Giovanni felt. What
14 did you --

15 THE COURT: Well, one other thing, if -- when you
16 hear the attorneys start talking, and until I say it's okay to
17 answer, okay, don't answer.

18 THE WITNESS: Okay.

19 THE COURT: Because it's just one more voice for my
20 court reporter to take down, and she can't take -- she can only
21 take down one voice at a time. Okay?

22 THE WITNESS: Okay.

23 THE COURT: Thanks.

24 (Sotto voce at this time.)

25 THE COURT: Okay. Go ahead.

1 BY MS. DEMONTE:

2 Q. What did you see happen?

3 A. Giovanni struck my brother --

4 Q. And when --

5 A. -- Bryan.

6 Q. -- you say struck, can you describe it for me?

7 A. Yes. He punched him.

8 Q. Where did he punch him?

9 A. In the face.

10 Q. And what did you see happen next?

11 A. Chaos.

12 Q. What do you mean by that?

13 A. Everybody started fighting.

14 Q. When you say everybody, where was this taking place?

15 A. In front of the school.

16 Q. Okay. Can you draw a circle on the map for me?

17 A. Here (indicating).

18 Q. And approximately how many people were out there?

19 A. I don't know.

20 Q. Okay. Was it more than two?

21 A. Yes, more than two.

22 Q. Was it more than ten?

23 A. Yes.

24 Q. More than twenty?

25 A. I'm not sure.

1 Q. Okay. Did you recognize them as all being students?

2 A. Yes.

3 Q. Okay. Everybody or just some people?

4 A. Not everybody.

5 Q. How many people do you know that started fighting,
6 that you saw?

7 A. Four.

8 Q. Okay. Did you yourself start fighting?

9 A. Yes.

10 Q. Okay. Did you see Crystal start fighting?

11 A. Yes.

12 Q. Was your brother still fighting?

13 A. Yes.

14 Q. Was Melissa fighting?

15 A. No.

16 Q. Could you see whether or not Victor was fighting?

17 A. No.

18 Q. Okay. And how long were you fighting?

19 A. I don't have a specific time.

20 (Sotto voce at this time.)

21 BY MS. DEMONTE:

22 Q. Was it more than a minute?

23 A. Yes.

24 Q. More than ten minutes?

25 A. No.

1 Q. Okay. Did something happen to make you stop
2 fighting?

3 A. Yes.

4 Q. What happened?

5 A. Someone yelled: Cops.

6 So we ran.

7 Q. Now, let me take you back to who you saw fighting.
8 Did you see Jesus fighting?

9 A. Yes.

10 Q. All right. Now, you said someone yelled: Cops.
11 And you ran, what direction did you run?

12 A. Towards Virgil.

13 Q. Okay. From that circle that you drew in front of
14 the school?

15 A. Yes.

16 Q. And who was running with you that you saw?

17 A. My brother; Jesus.

18 Q. And could you -- did you know who else was running
19 with you?

20 A. No.

21 Q. Were there other people running with you though?

22 A. Yes.

23 Q. Did you make it to your car?

24 A. Yes.

25 Q. And who got to your car with you?

1 A. My brother, Bryan; myself; and Jesus; and one other
2 person who I didn't know.

3 Q. Okay. And did the three of you, plus that one other
4 person, get in the car together?

5 A. Yes.

6 Q. Okay. And did you then start to drive away?

7 A. Correct, yes.

8 Q. Who was driving?

9 A. My -- Bryan.

10 Q. Okay. And what direction did Bryan start to drive
11 away to?

12 A. Down Virgil.

13 Q. Okay. And can you actually draw an arrow on the
14 map?

15 A. Yes (indicating).

16 Q. Okay. And you actually drew a line down
17 Valley Forge; is that correct?

18 A. On my screen it's Virgil.

19 Q. Oh, okay.

20 A. I'll turn it around if you'd like.

21 Q. All right. But you started driving that direction?

22 A. Yes.

23 Q. Did something happen -- did you hear or see anything
24 as you were driving?

25 A. I didn't see anything but I did hear gunshots.

1 Q. How many gunshots did you hear?

2 A. Five.

3 Q. Did you see any shooting take place?

4 A. No.

5 Q. At some point did you see Melissa again?

6 A. Yes, that night.

7 Q. And where did you see her?

8 A. Her house.

9 Q. Okay. How -- what time -- sorry. Approximately
10 what time was that?

11 A. Midnight.

12 Q. And what was her demeanor like?

13 MR. FIGLER: Objection, relevance.

14 THE COURT: Overruled.

15 Overruled, you can answer it.

16 THE WITNESS: Upset.

17 BY MS. DEMONTE:

18 Q. Did you find out from Melissa what had happened?

19 A. Yes.

20 Q. Okay. Now, before you saw Melissa again, did you
21 already have a conversation with Crystal?

22 A. Yes.

23 Q. Okay. And when did that take place?

24 A. Five minutes after we had left the scene.

25 Q. And did you call Crystal or did Crystal call you?

1 A. Crystal called me.

2 Q. Now, without telling me what Crystal said, what did
3 you do with that information?

4 A. We went to the hospital.

5 Q. Okay. And who did you see at the hospital?

6 A. Melissa's family.

7 Q. And what was their demeanor like?

8 A. Upset.

9 MS. DEMONTE: Pass the witness.

10 THE COURT: Cross-examination.

11 MR. FIGLER: Court's indulgence.

12 (Sotto voce at this time.)

13 MR. FIGLER: Your Honor, may I proceed?

14 THE COURT: Yes.

15 MR. FIGLER: Just very briefly.

16

17 CROSS-EXAMINATION

18 BY MR. FIGLER:

19 Q. Jena, you have tattoos on you?

20 A. Yes.

21 Q. How many tattoos do you have?

22 A. Four.

23 Q. And what are they?

24 A. I have a peacock feather on my arm; I have a saying
25 on my other arm, two; and I have a butterfly on my chest.

1 Q. And you have a saying?

2 A. Yes.

3 Q. And what's the saying?

4 A. It's: My beautiful life.

5 And: God loves, have faith.

6 Q. Okay. At this time were you in any kind of gang?

7 A. No.

8 Q. Are you in a gang now?

9 A. No.

10 MR. FIGLER: Pass the witness.

11 THE COURT: Redirect?

12 (Sotto voce at this time.)

13 MS. DEMONTE: None, Your Honor.

14 THE COURT: I'm sorry, none?

15 MS. DEMONTE: None, Your Honor.

16 THE COURT: All right. Do the ladies and gentlemen
17 of the jury have any questions for this witness?

18 (Negative response from the jury panel.)

19 THE COURT: With a negative response, ma'am, you're
20 excused. Thank you.

21 THE WITNESS: Thank you.

22 (Whereupon, at this time the witness was excused.)

23 THE COURT: State, call your next witness.

24 MS. PANDUKHT: The State calls Edshel Calvillo.

25 COURT SERVICES OFFICER: Make sure you speak into

1 the microphone.

2 THE CLERK: Remain standing, please.

3 THE COURT: Remain standing.

4 THE CLERK: And raise your right hand as best you
5 can.

6

7 EDSHEL CALVILLO

8 called as a witness on behalf of the State,

9 having been first duly sworn,

10 was examined and testified as follows:

11

12 THE WITNESS: Yes, ma'am.

13 THE CLERK: Please state your full name for the
14 record.

15 THE WITNESS: My name is Edshel Francisco Calvillo.

16 THE CLERK: Could you spell that, please?

17 THE WITNESS: It's E-D-S-H-E-L; F-R-A-N-C-I-S-C-O;
18 C-A-L-V-I-L-L-O.

19 THE CLERK: Please be seated.

20 COURT SERVICES OFFICER: Scoot your seat up there.
21 Make sure you speak into the microphone. Okay.

22

23 DIRECT EXAMINATION

24 BY MS. PANDUKHT:

25 Q. Good afternoon, Mr. Calvillo.

1 A. Good afternoon.

2 Q. Did you come to Court on your own volition today?

3 A. No, I did not.

4 Q. Did the State, in fact, arrest you on a material
5 witness warrant?

6 A. Yes, they did.

7 Q. Did the State attempt to contact you last week and
8 the week before to come to Court and talk about the case?

9 A. Yes, you did.

10 Q. Did you, in fact, speak with my investigator,
11 Jamie Honnicker (phonetic) on more than one occasion?

12 A. Yes, I did.

13 Q. And did you promise to come and talk to us at our
14 office?

15 A. Yes, I did.

16 Q. And did you promise to come to Court yesterday for
17 the first day of trial?

18 A. Yes, I did.

19 Q. And did you not come to Court?

20 A. I did not.

21 Q. Mr. Calvillo, why didn't you come to Court?

22 A. See, my wife, she's pregnant, right? And she's
23 almost due, she's due on August 24th. And to me, I really
24 thought this case was dismissed, it was closed away and, you
25 know, I really -- you know -- you know, in my situation I took

1 it as, Your Honor, my family comes first, as any other man
2 would, you know. So, you know, that day I took in my wife to
3 the hospital.

4 Q. Let me -- let me stop you right there.

5 Is it hard for you to be here today?

6 A. Yes, it is.

7 Q. Why is it hard for you to be here today?

8 A. Because this is bringing a lot of flashbacks towards
9 my life that I was done with, I've moved forward with it.

10 Q. Did any of that include Puros Locos?

11 A. Yes, it did.

12 Q. Mr. Calvillo, could you tell me about yourself and
13 Puros Locos --

14 MR. FIGLER: I object -- sorry.

15 MS. PANDUKHT: Go ahead.

16 MR. FIGLER: Finish your question.

17 Is that it?

18 THE COURT: No. I think it's done.

19 Do you have an objection? What's your objection?

20 MR. FIGLER: My objection is, first of all,
21 relevance. It's also 48.1 -- or 0145 (phonetic). And I just
22 want to make sure that the State has complied with all
23 discovery in the case they're going to try to admit statements
24 of anyone that would require that.

25 THE COURT: Overruled.

1 You can re-ask the question.

2 BY MS. PANDUKHT:

3 Q. Were you a member of Puros Locos?

4 A. I was, several years ago.

5 Q. So you are no longer a member today; correct?

6 A. I have not been, no.

7 Q. I wanted to ask you though about what date we're
8 here about, which is February 6th, 2006. And most of my
9 questions are going to be limited to that time frame. And I
10 understand that was seven years ago.

11 Do you still remember that time?

12 A. I do.

13 Q. Mr. Calvillo, were you a member of Puros Locos in
14 February of 2006?

15 MR. FIGLER: I'm going to object, Your Honor. This
16 witness has not been informed of his Fifth Amendment right. If
17 there's been a conspiracy charge, if that's the case he needs
18 to be informed of his Fifth Amendment.

19 THE COURT: I'll see counsel at the bench.

20 (Bench conference outside the presence of the jury.)

21 THE REPORTER: Wait, wait, I can't hear. Are you
22 talking?

23 THE COURT: Can you hear?

24 THE REPORTER: Oh, okay.

25 MR. FIGLER: Your Honor, we have a gang enhancement

1 charge, and he's also been listed as a witness in this case.

2 THE COURT: Okay. So what does he need the Fifth --
3 what -- why doesn't he have an attorney?

4 MR. FIGLER: He's implicating himself as part of the
5 conspiracy.

6 THE COURT: To commit murder?

7 MR. FIGLER: I don't know where their conspiracy
8 goes --

9 THE COURT: It does --

10 MR. FIGLER: It goes if they're saying that the
11 Puros Locos has intention of a criminal enterprise (phonetic)
12 to enter that park or that parking lot, to enter the fight,
13 which seems to be their theory of liability, both for challenge
14 the fight and for conspiracy, then this individual will be
15 implicating himself if he testifies. If that's -- which is
16 fine.

17 THE COURT: You can make your record, go ahead,
18 State.

19 MS. PANDUKHT: Your Honor, this particular defendant
20 did not participate in the fight. He's going to talk about the
21 Puros Locos members. His participation was in Puros Locos.
22 He's going to talk about admissions made by the defendant after
23 the crime and seeing him before the crime. He's going to talk
24 about the gun, but he didn't go to the fight. This witness did
25 not go.

1 THE COURT: You said the fight, we're talking about
2 the shooting?

3 MS. PANDUKHT: I'm sorry, Judge?

4 THE COURT: He wasn't at the shooting?

5 MS. PANDUKHT: He was in a car and he heard it, but
6 he didn't see it and he didn't participate in the fight.

7 THE COURT: Was he in the car with the defendant?

8 MS. PANDUKHT: No. He was in the --

9 MR. FIGLER: I believe it was Salvador.

10 THE COURT: Okay. And my understanding, just based
11 on your opening statement, is that Manuel Lopez and this
12 defendant conspired together?

13 MS. PANDUKHT: It was Manuel Lopez and
14 Giovanni Garcia.

15 THE COURT: Right.

16 MS. PANDUKHT: And the defendant.

17 THE COURT: Giovanni Garcia called these guys,
18 Manuel Lopez and the defendant, allegedly to come to the school
19 and fight?

20 MS. PANDUKHT: To back him up.

21 THE COURT: Okay. All righty. My ruling is that
22 it's going to be overruled.

23 MS. PANDUKHT: Thank you, Your Honor.

24 (End of bench conference.)

25 (Proceedings in the presence of the jury.)

1 THE COURT: Back in the presence.

2 That is overruled.

3 MS. PANDUKHT: Thank you.

4 BY MS. PANDUKHT:

5 Q. Mr. Calvillo, so I want to -- again, I'm going back
6 to around February 6th, 2006. Were you a member of
7 Puros Locos?

8 A. Yes, I was.

9 Q. I only want to ask you what's in your personal
10 knowledge. So please answer that way.

11 I'm not asking you for hearsay. I just want to
12 know, you know, what it was like back then.

13 So tell me, did you have a nickname?

14 A. Yeah, I had -- I had a nickname, just like any other
15 body, you know, that's a part of a -- a gang.

16 Q. Okay.

17 A. And, yeah, my nickname was Danger, you know, I
18 fought, I was a boxer, you know, and that's what -- that was my
19 reputation in the streets, just -- just fighting.

20 Q. You just said that everybody in the gang had a
21 nickname?

22 A. Yes.

23 Q. Who was in the gang and what were their nicknames?

24 A. Jonathan Harper was Silent; Sal was Boxer; I don't
25 know Puppet's name; Little One's Giovanny; and I knew E as

1 Evaristo -- E, Chuckie. That's it, those are the people I was
2 close to.

3 Q. Do you see Evaristo in the courtroom today?

4 A. Yes, I do.

5 Q. Could you point to him, describe where he's sitting
6 and what he's wearing today?

7 A. He's wearing a blue shirt, to the right hand
8 standing in front me -- well, not in front of me but to the
9 right-hand side.

10 MS. PANDUKHT: May the record reflect identification
11 of the defendant, Evaristo Garcia?

12 THE COURT: It will. The record will so reflect.
13 BY MS. PANDUKHT:

14 Q. And was there somebody else -- I don't -- and I
15 apologize if I didn't hear that, was there somebody you said
16 named Boxer?

17 A. Sal.

18 Q. Okay. And what was Sal's last name?

19 A. I believe it was Garcia.

20 Q. Do you know Giovanni's last name?

21 A. They're brothers, I think the same name, same last
22 name.

23 Q. And could you tell me, Mr. Calvillo, how long you
24 were in the gang Puros Locos?

25 A. We were there for a while, you know. I would say

1 about two years.

2 Q. Okay. And -- I'm sorry. Go ahead.

3 A. Okay. About two years.

4 Q. And how did you get into the gang?

5 A. Well, you know, it's -- it all started as kids, you
6 know? As kids and, you know, the way -- the way it is, in not
7 just this game but any other game, you know, you get jumped in.

8 Q. What is that?

9 A. You know, you -- you -- you physically take a
10 beating.

11 Q. By who?

12 A. By the members that are around.

13 Q. By the members of --

14 A. Around, they're all around, from the same group.

15 Q. From the same gang?

16 A. Yeah.

17 Q. Is there a set time period that you are beat up?

18 A. Just ten seconds.

19 Q. Is it an actual certain time that you know about?

20 A. No.

21 Q. Okay.

22 A. No.

23 Q. So could it be ten seconds for one person and 15
24 seconds for another?

25 A. Right.

1 Q. Okay. Now, what were some of the things that you
2 did -- first of all, can I ask you how many members were in
3 your gang?

4 A. See, this group, it wasn't really a well-known gang,
5 big gang, it was like five, six of us that I can say was in the
6 group, you know, from the -- the group that we were with.

7 Q. Okay. And were there bigger gangs than yourselves,
8 than Puros Locos at that time?

9 A. Oh, yes.

10 Q. Okay. So what were some of the things -- were there
11 any crimes that you and your fellow gang members committed --
12 was there anything you had to commit in order to be in the
13 gang?

14 Do you understand my question?

15 A. We -- we had -- we didn't have to commit, you know,
16 we weren't ordered to do nothing, you know? It was on our own.

17 And -- but as crimes, I'll say, you know, the
18 worst crime it will be, you know, on my part --

19 MR. FIGLER: Again, Your Honor, he's going to be
20 admitting to crimes, and he doesn't have an attorney and he
21 doesn't have a Fifth Amendment warning or anything.

22 MS. PANDUKHT: Can we approach again?

23 MR. FIGLER: Are they giving him immunity?

24 MS. PANDUKHT: Your Honor, the only reason is for
25 the gang enhancement being charged. I'm asking this solely

1 because of the element within the gang enhancement of prior
2 felonious activity. That's the only reason.

3 So those are the only reasons it's being offered.

4 THE COURT: Sustained.

5 MS. PANDUKHT: Okay.

6 THE COURT: You're asking him about crimes he did?

7 MS. PANDUKHT: It will be tied in with the gang
8 expert, so the gang expert is going to talk about those types
9 of -- it's part of the statute. It's part of the one of the
10 elements of the gang enhancement.

11 THE COURT: You -- I think you can ask it a
12 different way.

13 MS. PANDUKHT: Okay. I will.

14 THE COURT: Without him implicating himself.

15 MS. PANDUKHT: I will. And that certainly was not
16 my intention, Your Honor.

17 THE COURT: Okay.

18 BY MS. PANDUKHT:

19 Q. Mr. Calvillo, what types of activities that were
20 criminal did the gang perform?

21 THE COURT: Let me also just say, for the record,
22 that unless it's certain crimes, almost all of them, the
23 statute of limitations has probably run.

24 MS. PANDUKHT: Again --

25 MR. FIGLER: And again --

1 THE COURT: Except for other ones, certain ones --

2 MS. PANDUKHT: And I'm only asking it because of the
3 enhancement that we have to prove. That's the only reason.

4 MR. FIGLER: And, Your Honor, the statute requires
5 there to be concerted effort of felonious activity for the
6 benefit of the criminal gang.

7 So this is very problematic for the State.

8 THE COURT: I think that they can ask it in a way
9 that satisfies the statute without necessarily implicating
10 himself, by himself, in a crime, generally talking about the
11 gang and what they did. And that's what I want you to stay to
12 for the questions.

13 MS. PANDUKHT: Okay. I'll do my best, Your Honor.

14 BY MS. PANDUKHT:

15 Q. Do you understand the question? Do you want me to
16 rephrase it?

17 A. Okay. Yeah, rephrase it, please.

18 Q. Rephrase it? Okay.

19 Were there felony types of crimes that you
20 were -- that you had knowledge of being committed by
21 Puros Locos members?

22 A. I can't say felonies.

23 THE REPORTER: I can't say what?

24 THE WITNESS: Felonies. It wasn't felonies.

25 You know, most of the problems, it will be physical,

1 you know, fighting, you know, fistfight, you know. That --
2 that -- I gotta say that will be the only, you know, crime that
3 will be, you know?

4 BY MS. PANDUKHT:

5 Q. Anything involving drugs or stolen vehicles?

6 A. Well, you know, we -- we smoked, you know, yes.

7 Q. But anything to do with illegal controlled
8 substances, just to be clear, either possessing or selling?

9 A. No, not at all.

10 Q. Okay. Now, how about the stolen vehicles, were you
11 going to answer that question?

12 A. You know, with that group I've never, ever, ever,
13 you know, committed a crime like that, yes.

14 Q. Okay. And I was asking in terms of not just
15 specific, because I want to follow the Court's order, not just
16 specific to yourself, but knowledge of members of the gang?

17 A. Well, with Jonathan Harper, yeah.

18 Q. With regard to what specific activity?

19 A. Regarding grand theft/auto.

20 Q. Okay. Now, what about -- you talked about
21 nicknames. What about tattoos, did you know any of the members
22 of Puros Locos that you've already told us about to have
23 tattoos related to that gang?

24 A. Right, yeah.

25 Q. Who?

1 A. You know, it was, um, Boxer, you have Puppet, and
2 Little One.

3 Q. Okay. Let me start with you said Salvador?

4 A. Yeah.

5 Q. What type of tattoo did Salvador have?

6 A. Well, he had 702 up here (indicating), and then if I
7 don't make a mistake, I believe he had a PL on his arm, on the
8 arm.

9 THE REPORTER: Say that -- I'm sorry.

10 THE WITNESS: He had a PL on the arm.

11 BY MS. PANDUKHT:

12 Q. You said PL?

13 A. PL.

14 Q. What does PL stand for?

15 A. Puros Locos.

16 Q. And you said 702, does that have any significance?

17 A. Just the area code for Las Vegas.

18 Q. Why would you tattoo the area code on the body?

19 A. That's where the chapter began here in Vegas.

20 Q. Okay. Are you talking about the Puros Locos
21 chapter?

22 A. Right.

23 Q. Okay. What about Giovanni Garcia, what tattoos did
24 he have?

25 A. He had a tattoo across his chest.

1 Q. What did it say?

2 A. It said Puros Locos as well.

3 Q. Did he have any other tattoos?

4 A. I'm not sure. That's the only one I've seen in him.

5 (Sotto voce at this time.)

6 MS. PANDUKHT: Approach the witness, Your Honor?

7 THE COURT: You may.

8 BY MS. PANDUKHT:

9 Q. I'm showing you what's already been admitted as
10 State's Exhibit --

11 MS. PANDUKHT: I -- I don't know if it's been
12 admitted, State's Exhibit 51?

13 THE CLERK: No.

14 MS. PANDUKHT: Okay. I'll lay the foundation.

15 THE COURT: Okay.

16 BY MS. PANDUKHT:

17 Q. I'm going to show you State's Exhibit Number 51.
18 Who is that?

19 A. That's Giovanny.

20 Q. Giovanny Garcia?

21 A. Right.

22 Q. Also known as Little One?

23 A. Right.

24 MS. PANDUKHT: State moves to admit State's Proposed
25 Exhibit 51 into evidence.

1 THE COURT: Any objection?

2 MR. FIGLER: Just relevance, Your Honor.

3 THE COURT: Overruled.

4 It will be admitted as State's Exhibit 51.

5 (State's Exhibit 51

6 was admitted into evidence.)

7 BY MS. PANDUKHT:

8 Q. Number 54, do you recognize that? What do you
9 recognize that to be?

10 A. The name, the name of a gang.

11 Q. Do you recognize who that tattoo belongs to?

12 A. Yep.

13 Q. Who?

14 A. Code 51.

15 Q. Are you referring back to Number 51 of the exhibit?

16 A. Yep.

17 Q. Okay. So would that be Giovanny Garcia?

18 A. Yes, ma'am.

19 Q. Thank you.

20 MS. PANDUKHT: Then I would move to admit State's
21 Proposed Exhibit 54 into evidence?

22 THE COURT: Any objection?

23 MR. FIGLER: Same objection, Your Honor.

24 THE COURT: It will be overruled.

25 That will be admitted into evidence.

1 (State's Exhibit 54
2 was admitted into evidence.)

3 MS. PANDUKHT: Move to publish?

4 THE COURT: You may.

5 BY MS. PANDUKHT:

6 Q. And for the record, this is State's Exhibit
7 Number 51, I believe.

8 And for the members of the jury, who is this
9 again?

10 A. (No audible response.)

11 Q. Mr. Calvillo, who is this again?

12 A. Giovanny.

13 Q. Okay. And then I'm going to publish Number 54.

14 Do you recognize this?

15 A. Yeah.

16 Q. What is it?

17 A. Same guy.

18 Q. Okay. So is that a tattoo of Puros Locos on
19 Giovanny Garcia?

20 A. Yes, ma'am.

21 Q. Okay. You said anyone else had tattoos?

22 A. That was it.

23 Q. Did you know Puppet to have any tattoos?

24 A. Well, Puppet, he was in the -- he -- he did tattoos,
25 yeah, he had tats as well.

1 Q. Okay. What tattoos did Puppet have?

2 A. You know, Puppet was the only one that I didn't
3 really like because he had a lot, he had a couple, yeah.

4 Q. Do you remember any in particular?

5 A. I really don't.

6 Q. Did you say something about he did tattoos?

7 A. Yes.

8 Q. Did I hear you right?

9 A. Right.

10 Q. What does that mean?

11 A. He -- well, that's what he did to -- to, you know,
12 make little profits on the side for him.

13 Q. So he actually would -- I don't know what the proper
14 word is -- but create the tattoo?

15 A. Right.

16 Q. And you don't remember any gang-related tattoos on
17 Puppet?

18 A. No.

19 MS. PANDUKHT: May I approach the witness?

20 THE COURT: You may.

21 MR. FIGLER: Okay.

22 BY MS. PANDUKHT:

23 Q. Mr. Calvillo, I'm showing you a photograph -- two
24 photographs actually, this is 58. Do you recognize this
25 person?

1 A. (No audible response.)

2 Q. Who is it?

3 A. It's Puppet.

4 Q. Okay. I'm going to show you now State's Exhibit
5 Number -- or Proposed Exhibit Number 63. Do you recognize
6 this?

7 A. Yeah.

8 Q. What is it?

9 A. That's the El Camino car, his car.

10 Q. Whose car?

11 A. Puppet's car.

12 Q. Okay. And could you tell us what color you remember
13 that being, what color it is?

14 A. Gray.

15 Q. Okay.

16 MS. PANDUKHT: I'm going to move to admit State's
17 Proposed Exhibits 68 and 63 if they're not already admitted.

18 THE COURT: Is there any objection?

19 MR. FIGLER: No objection.

20 THE COURT: With no objection they'll both be
21 admitted.

22 (State's Exhibits 63 and 68
23 were admitted into evidence.)

24 MS. PANDUKHT: And I'm going to move to publish.

25 THE COURT: You may.

1 BY MS. PANDUKHT:

2 Q. So again, Number 58, who is this?

3 A. Puppet.

4 Q. And Number 63?

5 A. That's his car, the El Camino.

6 Q. And could you point to it?

7 A. (Indicating), his car.

8 Q. Well, just describe it.

9 A. It's just his gray El Camino car.

10 Q. And it was Puppet's car?

11 A. Right.

12 Q. Okay.

13 (Sotto voce at this time.)

14 BY MS. PANDUKHT:

15 Q. Okay. So now I'd like to draw your attention to the
16 night of February 6th, 2006. Do you remember that night?

17 A. Yes, ma'am.

18 Q. Did you give a statement to police? Do you remember
19 talking to Detective Mogg on July 26th, 2006?

20 A. Yeah, I remember.

21 Q. Okay. And that's the only statement you gave,
22 right?

23 A. Right.

24 Q. You don't remember giving any other statement in
25 this case besides -- it was an audio tape recorded statement;

1 correct?

2 A. Correct.

3 Q. But do you actually kind of independently remember
4 that night as well?

5 A. Absolutely.

6 Q. Could you tell me that night, February 6th, 2006,
7 where you were? And I'd like to start about eight o'clock at
8 night.

9 A. We were at Salvador Garcia's house.

10 Q. Do you remember where that was, what the address was
11 or kind of generally where it was located?

12 A. I don't remember the address. The apartments were
13 called the Ham -- Hamptons, I believe so.

14 Q. Was it here in Las Vegas?

15 A. Correct.

16 Q. So who was over at Salvador's house with you,
17 Mr. Calvillo?

18 A. It was Salvador, me, Jonathan, Padre (phonetic),
19 Periso (phonetic), we had a couple other girlfriends as well
20 there.

21 Q. Do you know whose girlfriends they were?

22 A. It was just friends, not girlfriends, but friends,
23 right.

24 Q. Did Puppet have a girlfriend?

25 A. Yes, he did.

1 Q. What was her name?

2 A. I never knew her name.

3 (Sotto voce at this time.)

4 BY MS. PANDUKHT:

5 Q. If I showed you a picture of her, do you think you
6 might recognize her?

7 A. Yeah.

8 Q. And if you don't, I want you to tell me you don't.
9 Okay?

10 MS. PANDUKHT: Can I approach the witness,
11 Your Honor?

12 THE COURT: You may.

13 MS. PANDUKHT: Thank you.

14 BY MS. PANDUKHT:

15 Q. I'm going to show you State's Proposed Exhibit 86.

16 A. Yes, ma'am.

17 Q. Do you recognize --

18 A. Yep.

19 Q. Who do you recognize this to be?

20 A. Puppet's girl.

21 Q. Okay. But you still don't remember her name?

22 A. I don't know, never got her name.

23 Q. Okay. Now --

24 MS. PANDUKHT: The State moves to admit State's
25 Proposed Exhibit 86 into evidence.

1 MR. FIGLER: Relevance, Your Honor.

2 THE COURT: Overruled, except for -- oh, I guess it
3 will be admitted as Puppet's girlfriend? That's the
4 identification limit?

5 MS. PANDUKHT: Well, yeah, and she's one of the
6 parties that's going to be discussed during the trial by other
7 witnesses.

8 THE COURT: Okay.

9 MS. PANDUKHT: Move to publish.

10 I move to admit and then move to publish.

11 THE COURT: Okay. She is going to testify, is that
12 what you're telling me?

13 MS. PANDUKHT: No, but she will be referenced, other
14 witnesses will discuss her.

15 THE COURT: Do they reference her by name or just
16 Puppet's girlfriend?

17 MS. PANDUKHT: It could be either.

18 THE COURT: Okay. All right. Go ahead. You can
19 publish it.

20 (State's Exhibit 86
21 was admitted into evidence.)

22 MS. PANDUKHT: Thank you.

23 BY MS. PANDUKHT:

24 Q. Number 86, is that how she appeared on February 6th,
25 2006?

1 A. I really don't remember.

2 Q. But you recognize her?

3 A. Yes.

4 Q. Okay. Was she there at Salvador's house that night,
5 on February 6th, 2006?

6 A. Yes.

7 Q. Now, when you're there what happens at Sal's house?

8 A. We just received a call. We received a call from
9 Giovanny. I guess there was this other group of guys, a gang,
10 you know, that were out to harm him, you know, waiting for him
11 after school.

12 You know, we received a call -- Salvador
13 received a call, you know, just telling us that, you know, his
14 brother's going to get jumped by, you know, 20, 30 guys waiting
15 for him after school.

16 Q. What gang was that?

17 MR. FIGLER: I'm going to object, Your Honor. Now
18 we're on a bunch of hearsay.

19 THE COURT: Sustained.

20 BY MS. PANDUKHT:

21 Q. You know what gang?

22 A. He has --

23 MR. FIGLER: I'm going to object, Your Honor.

24 That's not a question, number one.

25 And, number two, it ties into the one that was

1 sustained.

2 THE COURT: It ties into what was just sustained.

3 MS. PANDUKHT: Okay.

4 THE COURT: You could ask it a different way.

5 MS. PANDUKHT: I will.

6 THE COURT: Sustained.

7 BY MS. PANDUKHT:

8 Q. So are you aware that -- of this phone call from
9 Giovanni?

10 A. Well, yeah, because Salvador told us.

11 Q. Without saying what he said, when you were there, in
12 the -- was it a house or an apartment?

13 A. It was an apartment.

14 Q. When you were there in the apartment, and Giovanni
15 calls, were the same people there -- Sal, Evaristo -- all the
16 people you previously mentioned?

17 A. Right.

18 Q. Okay. So when that call comes out, what does
19 everyone do? What do you do?

20 A. We -- we -- you know, that's -- that was a friend of
21 us, you know, that --

22 MR. FIGLER: I think it's being nonresponsive,
23 Your Honor. She asked what he did, this is --

24 THE COURT: Sustained.

25 BY MS. PANDUKHT:

1 Q. Did you see anybody leave the apartment?

2 A. Yeah, we all left.

3 Q. Okay. Who left the apartment?

4 A. Everybody that was in there.

5 Q. Okay. Did all of you leave together in one car, or
6 did some of you leave in one car and some in another?

7 A. There was too many people to go in one car.

8 Q. So I just have to make sure I explain everything --
9 we get everything out for the jury, so that's why I'm asking
10 you all these questions.

11 So who got in what car?

12 A. It was Puppet, he was the one driving his girl. It
13 was Jonathan and Evaristo.

14 Q. In whose car?

15 A. Puppet's car.

16 Q. And then who was in another car?

17 A. It was me, one of my brothers, another guy that was
18 there, and Sal -- Salvador.

19 Q. And what was the name of your brother that was there
20 with you?

21 A. Arian, Arian Ealeillo.

22 Q. Could you spell that just for the record?

23 A. A-R-I-A- -- A-N.

24 Q. Okay. Now what car did you guys go in?

25 A. One A.

1 THE REPORTER: What -- wait. One A?

2 THE WITNESS: Right. Arian.

3 THE REPORTER: Spell it over. Spell it over.

4 THE WITNESS: A-R-I-A-N.

5 THE REPORTER: Last name?

6 THE WITNESS: Ealeillo, E-A-L-E-I-L-L-O.

7 BY MS. PANDUKHT:

8 Q. So what car did you and Arian and Salvador, and I
9 believe you said one other person?

10 A. We left in a -- in a different car.

11 Q. Whose car was it?

12 A. It was Rafael, this other guy that we knew.

13 Q. Okay. What kind of car was it, if you remember?

14 A. I can't remember the model.

15 Q. Who left the apartment first, Puppet in his car with
16 those people, or you guys?

17 A. They were in front of us and, yeah, they were the
18 ones -- we followed them.

19 Q. You followed them?

20 A. We followed them.

21 Q. As a result of Giovanny's phone call -- well, first
22 of all, did you know where Giovanny was?

23 A. All I knew it was a night school. I had no idea
24 what school we were going to.

25 Q. Okay. Did anything occur inside Sal's apartment

1 before Puppet and the defendant and Jonathan went into that
2 gray El Camino?

3 A. Did anything happen?

4 Q. That you saw. Did you see anything happen between
5 Puppet and the defendant?

6 A. Yeah, I -- yeah.

7 Q. Can you tell us?

8 A. That's -- man, yeah, there was -- it was somebody
9 brought a gun, you know.

10 Q. What kind of gun?

11 A. It was a black gun. I -- I don't remember -- I
12 don't know what kind of gun it was.

13 Q. Do you know whose gun it was?

14 A. Yeah, it belonged to Puppet.

15 Q. Okay. And what did Puppet do with it? Did you see
16 who had it first? That's a better question. Who did you see
17 with the gun?

18 A. Well, he -- he -- it was his gun, you know.

19 Q. I just didn't want to take it for granted.

20 So you see Puppet with the gun?

21 A. Yeah.

22 Q. Okay. What happens after you see Puppet with the
23 gun?

24 A. Well, they -- then Evaristo takes it, you know.

25 Q. Tell us exactly how you saw Evaristo take it.

1 A. He just put it in his waist.

2 Q. So did you physically see Evaristo take the gun from
3 Manuel and put it in his waistband?

4 A. I didn't see it-see it, but I mean, you know, it was
5 his gun and then he had it, you know.

6 Q. I don't want to put words in your mouth. I just
7 want to know what happened.

8 So then you saw the defendant with the gun?

9 A. Yeah.

10 Q. And was that before you left Sal's apartment?

11 A. Yeah.

12 Q. Did you hear the defendant say anything?

13 A. Seven years ago, you know.

14 Q. So you don't remember -- let me ask you this: Do
15 you remember if the defendant said anything back at Sal's
16 apartment?

17 A. It's been a while, so, no, I --

18 Q. So then everybody -- you see the defendant, Jonathan
19 and Puppet and the girl go in the El Camino. Tell me what you
20 do next.

21 A. So, you know, we're driving behind them and, you
22 know, we got caught up in the -- in the light, stop light, and
23 therefore, you know, they're already there at the -- at the
24 school. So there was kind of a traffic, you know, because it
25 was when school was coming out.

1 So there was traffic, there was a lot of people,
2 and, you know, we -- we were probably going to, you know,
3 arrive to the property of the school, and therefore, you know,
4 we -- we see a crowd, just a crowd of people, just running.

5 Out of nowhere we see a gunshot.

6 Q. Where do you see the crowd of people running, do you
7 remember a location?

8 A. They were running across the street.

9 Q. Do you remember the name of the street?

10 A. I don't remember the name. I know it was at a high
11 school.

12 Q. And you don't remember the name of the high school?

13 A. I think it was Washington school or the street.

14 Q. Okay. And you said that you heard gunshots. How
15 many gunshots?

16 A. You know, I -- I can't say how many I heard, but I
17 heard a couple. And it's not that I don't want to say, it's
18 not that. It's that I don't remember. It's been seven years.

19 Q. I understand.

20 Was it more than one?

21 A. Yeah.

22 Q. And how -- what was the time interval or time lapse
23 between the shots? Was there a pause or was it kind of quick?

24 A. You know, we -- we, um, in the car we were -- we
25 were driving in, we -- we were playing music, you know, and

1 that question is really hard to answer, you know, because I
2 really don't remember.

3 Q. Okay. And where were you in the car, if you
4 remember, when you heard the gunshots?

5 A. We were in the back -- I was in the back seat.

6 Q. Do you remember what location in terms of
7 Washington Street and the school? Like were you in front of
8 the school, on the side of the school?

9 A. We were already pulled up to the school.

10 Q. Pulling up to the school?

11 A. Yes. We didn't -- we didn't actually make it in the
12 property because therefore it was traffic coming in, so we
13 were -- we were stopped -- we stopped into where you make the
14 left-hand in to go to the school.

15 Q. Did you actually see the shooting?

16 A. I did not see the shooting. We heard the shooting.

17 Q. And did you personally participate in the fight that
18 may have occurred in front of the school?

19 A. No, I did not.

20 Q. So what do you do after you hear these gunshots?
21 What happens in the car you're in?

22 A. We didn't -- we didn't know who got hit, you know,
23 we just -- we took off.

24 Q. Okay.

25 A. We took off and afterwards we just -- we just left,

1 you know.

2 Q. Where did you go?

3 A. We left to Salvador's house.

4 Q. You went back to Salvador's house?

5 A. Yeah.

6 Q. Okay. And that's a yes?

7 A. Yeah.

8 Q. I just want to make sure for the record so nobody
9 yells at me.

10 So when you go back to Salvador's house, is it
11 right after the shooting?

12 A. Yeah.

13 Q. You know, when you heard the shooting?

14 A. Yeah.

15 Q. Now, does there come a point when anyone else
16 returns to Sal's place?

17 A. Everybody.

18 Q. Who is everybody? Just so I know -- so we know.

19 A. Everybody that was involved, you know, into that
20 fighting.

21 Q. So the same people, Puppet?

22 A. (No audible response.)

23 Q. Did Jonathan come back?

24 A. (No audible response.)

25 Q. How about your brother, Arian? Oh, I'm sorry, you

1 didn't -- you've got to say for the record.

2 MS. PANDUKHT: I'm watching him nod. My apologies.

3 BY MS. PANDUKHT:

4 Q. So let me go back, restart over.

5 Did Puppet come back to Sal's place?

6 A. Right.

7 Q. Okay. Did Jonathan come back?

8 A. Yeah.

9 Q. Did the defendant come back?

10 A. Everybody went back.

11 Q. Okay. I just want to make sure we're clear. It's
12 important, and I -- how about Giovanny, did he come?

13 A. Man, I don't remember seeing -- seeing Giovanny
14 there. I don't -- I don't think he got there until later on
15 that night.

16 Q. Okay. Anyone else that I forgot to ask you about
17 specifically?

18 A. No.

19 Q. So the defendant comes back to the place, to Sal's
20 place?

21 A. (No audible response.)

22 Q. Can you tell us --

23 THE COURT: He didn't answer that audibly.

24 MS. PANDUKHT: I'm sorry. Thank you, Judge.

25 BY MS. PANDUKHT:

1 Q. Can you say yes or no for the record?

2 A. Yes.

3 Q. Okay. So how was the defendant acting when he
4 returned to Sal's place?

5 A. Everybody was scared, you know, everybody was hyped
6 up and scared at the time, you know. We didn't know what --
7 what went down until, you know -- you know, he --

8 Q. What did he say?

9 A. Just, man, like, man, I think -- I think I shot him,
10 I think I got him.

11 Q. Did he say who he was shooting?

12 A. He didn't say where or who he shot or nothing like
13 that.

14 Q. Did he call him any name or anything? Do you
15 remember exactly what he said?

16 A. I can't remember, you know, because I wasn't there,
17 you know.

18 Q. Oh, I know, I'm only asking you about what the
19 defendant said.

20 What did the defendant say exactly that you
21 remember?

22 A. You know, that night we -- everybody was drunk.
23 Everybody was drunk and off -- you know, we were drugged out
24 off of marijuana, like drugged out.

25 Q. And again, what did you hear the defendant say

1 specifically about the shooting?

2 A. Just high, you know.

3 Q. Do you remember him telling you he shot a kid?

4 A. Jonathan Harper was the one that told me that.

5 Q. Did you speak to Jonathan Harper after the shooting?

6 A. Yes, I did.

7 Q. How quickly after the shooting did you speak to
8 Jonathan Harper?

9 A. Like the next day he told me what happened, like
10 everything, he was the one that was there.

11 Q. Witnessing it?

12 A. Witnessing, like -- like there with him, like at the
13 school, he was there.

14 Q. And he told you what he saw?

15 A. Yeah, and what he heard.

16 Q. So let me go back to the defendant, and I just want
17 to make sure I got everything right.

18 Do you remember the defendant telling you he
19 shot a kid? Do you remember that word?

20 MS. PANDUKHT: And I'm -- I'm referring to his
21 statement on page 5 for counsel.

22 THE WITNESS: Yeah.

23 BY MS. PANDUKHT:

24 Q. You do, you remember that?

25 A. (No audible response.)

1 Q. Do you remember what he was doing -- how he was
2 saying that when he told you that?

3 A. I don't.

4 Q. Do you remember saying that the defendant just
5 laughed?

6 A. Again, you know, we were all drunk and high, you
7 know?

8 Q. I'm just wanting to find out what you heard.

9 A. Yeah.

10 Q. Do you remember that?

11 A. No.

12 Q. What, you don't remember him saying that?

13 A. (No audible response.)

14 Q. Let me refer you to page 5, also referring counsel.

15 (Sotto voce at this time.)

16 MS. PANDUKHT: May I approach?

17 THE COURT: You may.

18 BY MS. PANDUKHT:

19 Q. Mr. Calvillo, I'm showing you that statement I told
20 you about, it's got your name right here (indicating). I'm
21 going to ask you to look at the page I've referred everyone to.
22 So I want you to read this and tell me, once you read it, if it
23 refreshes your recollection. Go ahead.

24 A. Man, I mean, you know, --

25 MR. FIGLER: Objection, Your Honor, nonresponsive.

1 Calls for a yes or no.

2 THE COURT: Sustained.

3 BY MS. PANDUKHT:

4 Q. Could you read it?

5 A. (No audible response.)

6 Q. I'm sorry?

7 A. Okay. Um, who else was involved in the shooting?

8 Q. No, no, just to yourself. Just to yourself.

9 A. (Witness complies.)

10 Q. Are you done reading? Okay.

11 Do you remember the defendant --

12 MR. FIGLER: I'm going to object, Your Honor --

13 THE COURT: Hold on.

14 BY MS. PANDUKHT:

15 Q. Did that refresh your recollection?

16 THE COURT: Hold on. First of all, let her finish
17 the sentence, and then I can make a ruling.

18 MR. FIGLER: I think she was going to read the
19 statement directly from the -- which would be improper form.

20 THE COURT: That's true.

21 MS. PANDUKHT: Which I quickly realized, I was going
22 to rephrase. So could I rephrase?

23 THE COURT: Okay. I'm sure you were. It's just
24 that you're getting -- go ahead.

25 BY MS. PANDUKHT:

1 Q. So did reading that refresh your recollection?

2 A. Yeah.

3 Q. Do you remember now if the defendant laughed when he
4 said it?

5 A. Well, yeah.

6 Q. Or that you said: He just laughed?

7 A. I mean we laughed almost after -- it was on the
8 news, you know?

9 Q. What else did the defendant tell you that night
10 after the shooting?

11 A. Regarding the shooting?

12 Q. Yes, please.

13 A. I mean, you know, it was just -- you know, we got to
14 Salvador's house, everybody was just, you know, still drinking,
15 you know, still drinking.

16 Q. And I just want to find out what else the defendant
17 told you because there's some other things that you said in
18 your statement that I want to ask about.

19 MR. FIGLER: Objection, that's leading and --

20 MS. PANDUKHT: I'm trying to direct the witness.

21 THE COURT: Overruled.

22 BY MS. PANDUKHT:

23 Q. What else did the defendant tell you about the
24 shooting?

25 A. You know, I don't remember. I gotta see the

1 statement.

2 Q. Okay. So do you recall -- do you recall the
3 defendant telling you the kid was trying to --

4 MR. FIGLER: I'm going to object, Your Honor.

5 MS. PANDUKHT: And this is pursuant to callie
6 (phonetic) -- he just said he doesn't remember. So now I need
7 to see if this can refresh his recollection.

8 So I can just have him read the --

9 THE COURT: I don't think you're asking it properly.

10 MS. PANDUKHT: Okay. Well, I'll ask to approach. I
11 just don't know. I want to be specific on the statements, so I
12 will instruct him to a page and then have him read that page.

13 He just said he didn't remember, so --

14 THE COURT: Then ask him if it refreshes his
15 recollection.

16 MS. PANDUKHT: Okay. So I'm just going to direct
17 him to a page.

18 THE COURT: And you can ask another question from
19 there, but you can't ask him, did you -- da-da-da --
20 particularly when you're reading it, and that's improper.

21 MS. PANDUKHT: I just have several statements, I
22 want to make sure I go through them one by one.

23 So I'm going now to direct counsel to page 6, which
24 is the next page.

25 BY MS. PANDUKHT:

1 Q. You already said that you wanted to see your
2 statement again, so would it refresh your recollection to see
3 the statement?

4 A. I remember clear.

5 Q. What?

6 A. I remember.

7 Q. You do remember?

8 A. Yeah.

9 Q. Okay. Okay. So -- so you do remember?

10 A. Yeah.

11 Q. Okay. You don't need to see this?

12 A. Not at all.

13 Q. All right. Is it hard for you to do this?

14 A. Yes, it is, absolutely it is.

15 Q. Okay. Okay. Can you tell me what else you said?

16 A. Yeah.

17 Q. Go ahead.

18 A. So we got back home and, you know, Evaristo, you
19 know, not just me but everybody in there, you know, I mean I
20 did what I did because I seen the kid trying to pull something
21 out, too, you know, and it was either him or me.

22 Q. Okay. What else did you hear him say?

23 A. (No audible response.)

24 Q. Anything about Giovanny?

25 A. Yeah, that I guess Giovanny was the one, you know,

1 that said, you know, he's got a gun.

2 Q. No, don't say -- don't say what Giovanni said.

3 Did he say anything -- did the defendant -- I
4 only want to talk about what the defendant said. Did the
5 defendant say anything about Giovanni?

6 A. Yeah.

7 Q. What?

8 A. What he said, you know, to -- that the other kid
9 that he seen, you know, that he had no weapon as well, you
10 know.

11 Q. Okay. Do you remember anything about a fight going
12 on -- anything being said by the defendant regarding a fight
13 going on with Giovanni?

14 A. You know, I don't even know if they even fought. I
15 wasn't even there, you know?

16 Q. Oh, I know.

17 A. I don't even know if they fought.

18 Q. I just want to know what you told the police, that's
19 all.

20 MS. PANDUKHT: May I approach the witness again,
21 Your Honor?

22 THE COURT: You may.

23 BY MS. PANDUKHT:

24 Q. I'm going to show you page 6 of your statement.
25 Please review the top portion of page 6 and -- to yourself --

1 and tell me if that refreshes your recollection.

2 A. (Witness complies.)

3 Q. Have you read page 6?

4 A. This page right here?

5 Q. Yeah, this is page 6.

6 A. I'm almost done. I'm almost --

7 Q. Okay. Do you remember talking to the defendant, and
8 the defendant talking about the fight with -- I believe in the
9 statement you referred to him as Yobanni?

10 A. Right.

11 Q. Did Giovanny have another name, Yobanni? Did some
12 people call him Yobanni and some people Giovanny?

13 A. Yeah.

14 Q. I mean, you heard that, right?

15 A. Yeah.

16 Q. Okay. But that's the same person?

17 A. Yeah.

18 Q. Okay. So do you remember the defendant telling you
19 the kid was trying to jump his cousin Yobanni?

20 A. Yep.

21 Q. Okay.

22 A. Him and several other guys.

23 Q. Okay. And then now do you remember anything about
24 the defendant saying why he shot the kid?

25 A. I don't remember that.

1 Q. Okay. Do you remember the defendant saying anything
2 about Yobanni being involved and why he shot the kid?

3 A. I -- yeah, I remember.

4 Q. What did he say?

5 A. Yeah, that Yobanni was, like, you know, like, get
6 him, you know, he -- he's got a gun, you know?

7 Q. Well, do you remember that the defendant said that
8 he shot the kid because Little One told him to?

9 A. Right. See here (indicating).

10 Q. You do remember that? Because that's on page 13,
11 and I can -- I can show it to you.

12 A. Oh, no, no, no, I remember.

13 Q. Okay.

14 A. I remember.

15 Q. You do remember that?

16 A. Uh-huh, yeah. I'm sorry.

17 Q. That's okay. I understand.

18 Just want to make sure -- okay. Did the
19 defendant tell you anything about a chase?

20 A. See, um, Jonathan was the one that had spoke to me
21 about that.

22 Q. Okay. So did the defendant say that he chased him?

23 MR. FIGLER: Objection, leading.

24 MS. PANDUKHT: Well --

25 THE COURT: Sustained.

1 MS. PANDUKHT: -- he said he doesn't remember, so --

2 THE COURT: Sustained. The way it was asked is
3 sustained.

4 BY MS. PANDUKHT:

5 Q. Do you remember anything about the defendant saying
6 anything about chasing anyone?

7 A. Yes, ma'am.

8 Q. What did the defendant say?

9 A. That he saw the kid, you know, pulling out a gun
10 and, you know, that I guess he chased him down.

11 Q. Did the defendant say anything about what happened
12 to the gun afterwards?

13 A. Yeah.

14 Q. What did he say?

15 A. He said he hid it, you know, like -- like that
16 bathroom, in a toilet.

17 Q. That's what the defendant said?

18 A. Yes, ma'am.

19 Q. Did he say anything else about that?

20 A. That was it.

21 Q. Okay. Did you ever describe the gun?

22 I know you said today -- how would you describe
23 that gun?

24 A. As a black gun.

25 Q. Do you know what kind of gun it looked like?

1 A. It was not a revolver.

2 Q. Okay. So it was a semiautomatic?

3 A. Yeah, it had to be because it had a clip.

4 Q. Okay. And then did you know what kind of caliber it
5 looked like?

6 A. I'm not sure if it was a .45. I'm not sure.

7 Q. Do you remember saying in your statement to the
8 police what you thought it might have looked like?

9 A. It was either a nine or a .45. It was either one of
10 those two guns.

11 Q. Okay.

12 MS. PANDUKHT: Court's indulgence.

13 (Sotto voce at this time.)

14 BY MS. PANDUKHT:

15 Q. Mr. Calvillo, so it's your testimony today that the
16 defendant said that the other person had a gun?

17 A. Yes, ma'am.

18 Q. And isn't it true that in your statement that you
19 gave to the police it doesn't say that anywhere in your
20 statement?

21 A. Not at all.

22 Q. Okay.

23 A. It didn't.

24 Q. And so you didn't tell the police that back in 2006?

25 A. I did not.

1 Q. Why are you saying that today?

2 A. You know, um, I tell you like this, ma'am, I'm 24
3 years old. I'm a young kid now, you know? When I was involved
4 with all of this activity, I was young. I didn't know about
5 what was right from wrong, you know?

6 Well, maybe I did, you know. And -- but I tell
7 you one thing, man, these guys were like family, you know? And
8 I wasn't going to hide nothing because I'm still here. The
9 truth's got to come out. You know?

10 Q. I know.

11 (Sotto voce at this time.)

12 MS. PANDUKHT: Mr. Calvillo, I thank you, and I have
13 no further questions.

14 THE COURT: Cross-examination.

15 MR. FIGLER: It's going to go past five. It's your
16 call.

17 THE COURT: How much past five?

18 MR. FIGLER: We have at least 35 minutes with this
19 witness, Your Honor.

20 THE COURT: Okay. I'm going to go ahead and take
21 that break then tonight..

22 All right. Ladies and gentlemen, during this
23 recess you're admonished not to talk or converse
24 among yourselves or with anyone else on any subject
25 connected with this trial;

1 Or read, watch or listen to any report of or
2 commentary on the trial, or any person connected
3 with this trial, by any medium of information,
4 including, without limitation, newspaper,
5 television, radio or internet;

6 Or form or express any opinion on any subject
7 connected with the trial until the case is finally
8 submitted to you.

9 We'll begin tomorrow at nine o'clock. Have a
10 good -- good evening tonight. Thank you.

11 Marshal, can I see you up at the bench -- hold
12 on, please wait.

13 THE MARSHAL: All rise.

14
15 (The following proceedings were had in open.
16 Court outside the presence of the jury panel:)

17
18 THE COURT: We're outside the presence of the
19 jurors.

20 I'm going to have the officers go ahead and escort
21 this young man out.

22 COURT SERVICES OFFICER: Watch your step, sir.

23 THE COURT: And have a seat, please. Thank you.

24 Let's allow him --

25 MS. PANDUKHT: May we come up?

1 THE COURT: Yes.

2 MR. GOODMAN: Is it okay if we interview the -- the
3 witness, Your Honor, just like the prosecutors got to do
4 earlier?

5 THE COURT: One thing at a time.

6 MR. GOODMAN: But that would be the defense
7 request -- wait, wait.

8 THE COURT: Hang on.

9 MR. GOODMAN: Hang on, Marshal.

10 THE COURT: You want to speak with him --

11 MR. FIGLER: Judge --

12 MR. GOODMAN: We can --

13 THE REPORTER: One person at a time.

14 THE COURT: Whoa, whoa, whoa, whoa. Hold on. Hold
15 on, hold on.

16 MR. GOODMAN: Okay.

17 THE COURT: Hold on.

18 Let me make a record -- before you take him off,
19 sir, hold on one second.

20 Has this witness -- I'm assuming this witness has
21 been properly questioned for years.

22 MS. PANDUKHT: Yes, Your Honor.

23 THE COURT: How is it that you've not ever
24 interviewed this witness?

25 MR. GOODMAN: We have not been able to locate him,

1 Your Honor, so he's here on a material witness warrant. We
2 would like to have the benefit now of interviewing him.

3 THE COURT: Okay.

4 MR. GOODMAN: Since the prosecutors have interviewed
5 this witness, here on a material witness warrant --

6 THE COURT: All right.

7 MR. GOODMAN: -- we would like to have the same
8 benefit --

9 THE COURT: You may.

10 MR. GOODMAN: -- of interviewing the witness.

11 THE COURT: I will make that available to you.

12 And what I'm going to ask is if the officers then
13 could take, in a moment when we're off the record, the
14 defendant back to Clark County Detention Center.

15 What I'm going to do is then have the other marshal
16 stay in here, the courtroom will be clear, and allow the
17 defense counsel to interview this witness.

18 MR. FIGLER: Thank you, Your Honor.

19 MR. GOODMAN: Thank you.

20 THE COURT: Sure. But before we take him back and
21 before we go off the record, I want to make a couple -- I want
22 to make a record of a couple things, if I could find my notes.

23 First, I want to make a record one more time, I
24 forgot to make a record of the offer that had been made to the
25 defendant prior to trial.

1 So what, Prosecutor, was the offer prior to trial?

2 MS. PANDUKHT: Not in the presence of the witness,
3 Your Honor.

4 THE COURT: Can we just let the -- can we just put
5 him -- just outside the door shot while we're doing the rest of
6 this? Thank you.

7 COURT SERVICES OFFICER: Sure.

8 MS. PANDUKHT: For the record --

9 THE COURT: So we've made a record. Go ahead.

10 MS. PANDUKHT: Can I just say something else for the
11 record, the only reason I went over there to talk to the
12 Corrections officer was to make sure the witness was kept
13 separate from the defendant.

14 THE COURT: Well, I let him know that -- same thing.
15 He'll be put into protective custody.

16 MS. PANDUKHT: Thank you. I just wanted that clear
17 for the record. I didn't talk to him about his testimony at
18 all.

19 THE COURT: No, no, no, you're fine.

20 MS. PANDUKHT: For the record, Your Honor, I came on
21 to this case rather late, but this is my understanding of the
22 offer --

23 THE COURT: Who gave an offer?

24 MS. PANDUKHT: Ms. Jimenez and I made the initial
25 offer. And then he was allowed to withdraw his plea.

1 THE COURT: Right. I'm talking about --

2 (Multiple speakers at this time.)

3 THE REPORTER: One person at a time, please.

4 THE COURT: Hold on. I'm talking about prior to
5 trial at calendar call.

6 MS. PANDUKHT: Right.

7 THE COURT: Clearly an offer had been made.

8 MS. PANDUKHT: Yes.

9 THE COURT: Prior to trial.

10 MS. PANDUKHT: I had made the offer of either second
11 degree murder with a deadly weapon, which would be under the
12 old law, would be offered ten to life -- ten years to life,
13 plus a consecutive ten years to life, for a total of 20 years.

14 And he has approximately five years or so credit
15 because I agreed to allow him to get credit time served since
16 his arrest date in Mexico in 2008.

17 THE COURT: Right. Okay.

18 MS. PANDUKHT: Now, I had come up with an
19 alternative offer, which I also conveyed to counsel, of simply
20 first degree murder, which would be one life sentence, but 20
21 years to life, but he would only have to parole off of one life
22 sentence as opposed to paroling off two.

23 THE COURT: Understood.

24 MS. PANDUKHT: And I gave that alternative offer new
25 to Mr. Goodman again with the same credit.

1 THE COURT: When was that given?

2 MS. PANDUKHT: Um, I gave that --

3 THE COURT: About.

4 MS. PANDUKHT: Was it a couple weeks --

5 MR. GOODMAN: I conveyed that to my client,

6 Your Honor, with Mr. Figler and Mr. Lawson present.

7 THE COURT: All right. And is that correct, sir,
8 they conveyed the offer to you; correct, both your attorneys
9 conveyed that offer?

10 THE DEFENDANT: Yes, they did.

11 THE COURT: And you refused that offer; correct?

12 THE DEFENDANT: Your Honor, I've been in Court how
13 long, three years? Four years?

14 THE COURT: I didn't ask you that, sir.

15 THE DEFENDANT: Yeah, it's been denied.

16 THE COURT: I'm sorry?

17 THE DEFENDANT: It's been denied.

18 MR. FIGLER: It's been denied is what he's saying,
19 the offer.

20 THE COURT: All right. So you refused that offer.
21 I'm just making a record, sir.

22 MR. GOODMAN: Wait, hang on, Your Honor, one second,
23 please.

24 (Sotto voce at this time.)

25 THE COURT: Wait, wait. Can he just answer that

1 question?

2 You refused the offer; correct?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: And you proceeded to trial?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Okay. Go ahead, Mr. Goodman.

7 (Sotto voce at this time.)

8 THE COURT: I have one more thing I want to make a
9 record. For whatever reason I want to make a record because
10 otherwise you can't tell --

11 MR. FIGLER: Was that sufficient canvass,
12 Your Honor? Because I --

13 THE COURT: Can I what?

14 MR. FIGLER: Was that a sufficient canvass for
15 Your Honor because I said earlier I would reduce it to writing
16 if the Court needed that.

17 THE COURT: Yeah, you guys need to reduce it to
18 writing, and I think you should, but I think now we've made the
19 record. There's been no -- nothing by the Supreme Court that
20 it has to be reduced. I think it's a better practice, but I
21 think now this is the second record I've made of it. It's in
22 the middle of trial. It's not like nobody's going to be able
23 to locate this. This is in trial transcript now. So I think
24 it's sufficient in the record.

25 MR. FIGLER: Thank you, Your Honor.

1 THE COURT: I do want to make a record that it
2 appears the jury is made up of the following:

3 Number 1, Lisa Griffis, is a Caucasian female; 2,
4 Namit Bhatnagar, is a -- an Asian male; Juror 3,
5 Michael Arcana, is a Caucasian male; Juror 4, Pamela Olson, is
6 a white female; Juror 5, Jacque Wiese, is a Caucasian female;
7 6, Angela Numez-Morarrez, is a Hispanic female; 7,
8 Keith Trombetta, is a Caucasian male; 8, Kristina Beber, is a
9 white female -- or Caucasian female; 9, Erika Villanueva, is a
10 Hispanic female; Joseph Catello, 10, is a Caucasian male;
11 David McCallum, 11, is a Caucasian male; Juror 12,
12 Elizabeth Uhrle, is either Hispanic or Asian female; 13,
13 Sarah Morasco, appears to be a Hispanic female; and, 14,
14 Sandra Gomez, is a Hispanic female.

15 Those are the Court's observations. Anybody wants
16 to add to the record or change my observations or add their
17 observations, you may. For whatever reason, I know several
18 times it's been brought up about keeping Hispanics on the jury,
19 and so I just want the transcript to reflect the Court's
20 observations of the diversity on the jury.

21 MS. PANDUKHT: Thank you.

22 THE COURT: All right. So having done that and,
23 like I said, if you want to pipe up tomorrow after looking and
24 seeing that's what I wrote down, but if anybody is in conflict
25 with that, you're free to make a record.

1 All right. Having said that, is there anything
2 further then this evening?

3 (Sotto voce at this time.)

4 MR. FIGLER: I don't think so.

5 I submitted the proposed jury instructions to your
6 Court's clerk and the State for the Court's review, as I
7 promised I would do, in the a.m. hours today. So that's done.

8 THE COURT: Thank you, I appreciate that.

9 MS. PANDUKHT: Your Honor, could I renew something
10 based on previous objection?

11 THE COURT: Hold on, let -- do you have anything
12 else?

13 MR. FIGLER: Not at this time, no.

14 THE COURT: All right. I did receive them. I'll
15 start looking at instructions tomorrow. I just had a doctor's
16 appointment this morning so I couldn't review them, but I'll
17 start reviewing them tomorrow.

18 Oh, wait, I've got one more record, hold on, here's
19 my other record.

20 My other record is in regard to this last witness
21 and Mr. Figler's prior motion that the Court appoint that
22 particular witness counsel.

23 Even if, as defense has suggested, that witness was
24 somehow involved or could be implicated in a crime, the Court
25 would note at least, and you can add to this record, that, at

1 most, based on his testimony on Direct, it appears that, at
2 most, in the worst case scenario, he could have been charged
3 with an accessory to murder, which is a C felony.

4 The statute of limitations is three years on that.
5 So the statute of limitations for the State to have filed, and
6 clearly they had a police statement, would have been by 2009 if
7 they were going to charge him with that crime.

8 Additionally, in the worst case scenario, he could
9 have, I suppose, in the worst case scenario been charged with a
10 conspiracy to commit murder just based on him saying that he
11 had seen the defendant with the gun prior to getting into the
12 car.

13 If that's the case, in the worst case scenario,
14 that's a B felony, and I believe it's still a three-year
15 statute of limitations, which would have been by the State,
16 again, what it's alluding to the entire time a statement that
17 defendant gave to the police.

18 The statute would have run on this as of
19 February 6th of 2009 for the State to have filed a complaint
20 against him.

21 Therefore, with the statute of limitations running
22 on those crimes, unless you throw out another crime, it's the
23 Court's contention that, even in the worst case scenario, which
24 the Court didn't necessarily -- you know, the facts obviously
25 are contested, but even in the worst case scenario, it appears

1 that the statute of limitations would have run to which there
2 would be in this date, which is July 9th, 2013, no need for the
3 prosecutors to convey immunity to that individual prior to
4 testifying, nor would there be any need for this individual to
5 require counsel to advise him of his Fifth Amendment rights
6 prior to testifying.

7 And, therefore, the Court wants to make a record
8 that the Court denied the defense's request at the bench.

9 I just want to make a full record of that. And
10 you're free to pipe in on the record, I think.

11 MR. FIGLER: On that, Your Honor, then thank you.

12 The State has pled this case that a first degree
13 murder conviction can be premised on the challenge-to-fight
14 statute, which would have no statute of limitation, which is a
15 Category A felony found at 200.450.

16 The witness did wind up testifying that he received
17 a call from Giovanny Garcia or --

18 THE COURT: I don't think he did, Puppet did.

19 MR. FIGLER: Right, but that he responded, that call
20 was made to the apartment where he was located, that he
21 responded, and that they all got in the cars and headed down to
22 it.

23 Now, he denies that he got out of the car, but
24 the -- the response to the challenge to fight, if that's the
25 State's theory, was engaged in by this individual. Now he has

1 some other facts surrounding that. They knew a gun was there,
2 that a gun was going to that direction. He knows that somebody
3 got shot. They all kind of grouped together by his testimony
4 and went back to his house again and were then engaged in it as
5 well.

6 So I believe that, if the State wanted to, he does
7 have the same exposure under that theory as -- as broad as it's
8 been pled in Count II to the murder charge.

9 So -- so that was additionally a concern.

10 I appreciate Your Honor's comments on the other
11 aspects of it. And he wasn't given any immunity for that, and
12 he wasn't advised of his Fifth Amendment rights or being able
13 to consult with an attorney on that.

14 So that's what we were looking on that because of
15 the way that the -- that it was pled.

16 Additionally, Your Honor, there is a concern of
17 whether or not he would technically be under law an accomplice,
18 and that would be an issue for us to address during jury
19 instructions with regard to the necessity for corroborating
20 evidence, et cetera. But I guess we can cross that bridge when
21 we get to it, but those are the concerns of the defense.

22 MS. PANDUKHT: May I respond, Your Honor?

23 THE COURT: Sure.

24 MS. PANDUKHT: Thank you. First of all, the charge
25 is conspiracy to commit murder, not just conspiracy to commit

1 any old crime.

2 And in this case the reason the State charged at
3 first Giovanni Garcia and then later Manuel Lopez is because
4 it's the State's contention, it's already starting to be coming
5 out and will continue to come out that Manuel Lopez, it was his
6 gun, and he gave it to the defendant prior to the shooting, and
7 that Giovanni Garcia not only brought them over to the fight
8 and started the whole fight, but he told the defendant to shoot
9 him and had some involvement right there immediately before the
10 shooting.

11 As you know, you can't just charge defendants for
12 mere presence -- or I mean the State cannot just charge every
13 single person that's at a crime scene with conspiracy to commit
14 murder. There is so much of a higher burden than that.

15 And the State believes that Edshel Calvillo's
16 conduct never rose anywhere close to that level. So I want to
17 make that --

18 THE COURT: Well, I'm having prosecutor -- I don't
19 know under what world he could ever truly be prosecuted as to
20 your contention.

21 I appreciate that. I guess esoterically we can all
22 argue whatever, but from what he testified to, it didn't appear
23 that he was -- it did appear that arguably, arguably, perhaps
24 the ones that got in the car with him and got out and told him
25 to shoot, those people perhaps, and even when he gets back

1 supposedly the alleged victim, or the victim, the actual
2 victim, had a -- supposedly had a gun and, you know, that
3 creates a whole nother issue.

4 MR. FIGLER: It does now.

5 THE COURT: Did the person, if it is this defendant
6 who shot, you know, and that's why I said, I'm not going to --
7 I've seen people switch defenses in the middle of a case, and
8 now, you know, I didn't hear any of this in opening, and ta-da,
9 somebody is saying he's got the gun, he's admitting to
10 shooting, quote, the kid.

11 You know, I don't know, but people have changed
12 defenses in the middle of a trial.

13 MR. FIGLER: Sure.

14 THE COURT: Okay? So I'm glad I made my prior
15 ruling because you never know what's going to happen at trial.
16 It's just the name of the game.

17 However, still based on what I heard, this Court,
18 the rendition of the Direct Examination did not rise to the
19 level of a first degree murder by this defendant.

20 At best, and that's in the best case scenario, the
21 best case scenario, on their best day, possibly, maybe,
22 possibly, unlikely though, conspiracy to commit murder is the
23 best they ever could have charged, ever --

24 MR. FIGLER: What about the challenge that I said
25 though? That's what I'm concerned about because I didn't talk

1 about the conspiracy to commit murder charge, I talked about
2 the challenge to fight and --

3 THE REPORTER: Slow down.

4 MR. FIGLER: I know, I do that sometimes. Sorry,
5 Renee.

6 THE COURT: That's okay.

7 MR. FIGLER: And if it doesn't apply to this witness
8 who testified, and it doesn't apply to Jonathan Harper, who
9 will be testifying, then it shouldn't --

10 THE COURT: What's the punishment on the challenge
11 to fight?

12 MR. FIGLER: First degree murder. It's an
13 automatic. It's a strict liability that if there's a response
14 to a challenge to fight as pled -- and I have a problem with
15 that --

16 THE COURT: Let me see --

17 MR. FIGLER: -- that it automatically becomes first
18 degree murder.

19 Now, we'd be happy if the State strikes that from
20 the Complaint -- from the indictment --

21 (Sotto voce at this time.)

22 THE COURT: It still appears based on that, that it
23 would be -- you know, as alleged, it would still be the
24 defendant.

25 MR. FIGLER: I mean where's the --

1 THE COURT: This is under the aiding and abetting
2 under the challenge to fight.

3 MR. FIGLER: Well, and that's problematic as well.

4 THE COURT: I mean it's just -- it's almost like
5 it's kind of -- some kind of weird aiding and abetting
6 bootstrap onto the statute itself.

7 MR. FIGLER: And I don't know if that's even
8 allowed, and especially if they're --

9 THE COURT: I'm just going to -- I'm going to make
10 the hard call and say no, how about that? I'm making a hard
11 call right now because I'm sure there is no law on it. I'm
12 just making it up as I go.

13 But what I heard doesn't come to the level. It
14 appears -- it didn't appear to me that, from what he testified
15 to, that the statute of limitation had run on that. Okay? So
16 I'll just throw it out there.

17 And I don't think that they could have charged him
18 with first degree murder based on what I heard. I know you
19 would -- if he was your client, he definitely wouldn't think
20 that, but just based on the facts, it's just so farfetched, so
21 farfetched based on the statute.

22 MR. FIGLER: Well --

23 THE COURT: The statute, as I read it, and as the
24 State presented their theory, fits this defendant's conduct.
25 Doesn't necessarily fit that witness's conduct.

1 MR. FIGLER: And I think they're throwing in extra
2 elements of aiding and abet and -- and conspiring, and they're
3 conflating it into the theory of challenge to fight, when
4 challenge to fight doesn't have any of that language, but
5 challenge to fight has an agency requirement in there, in the
6 statute.

7 So I think, you know, now that this is all kind of
8 come to light how the State's proceeding, we really all need to
9 talk about whether or not this challenge to fight with this
10 extra language of aiding and abetting and conspiracy is even
11 appropriate.

12 THE COURT: Let me see. Can I get the third
13 amended? I'll just look at it because I mean I'll have to deal
14 with it for instructions.

15 MR. GOODMAN: We have our jury -- yeah, we have our
16 proposed jury instructions.

17 THE COURT: Here's the thing, I'm going to have to
18 deal with it for sure, there's no doubt with instructions. I
19 mean I'm going to have to deal with it, however, that can be
20 another day.

21 What I'm talking about is having to give this
22 witness --

23 MR. FIGLER: We're moving down it now. Your Honor
24 ruled.

25 THE COURT: Yeah, yeah. I'm just saying --

1 MR. FIGLER: I was just saying that this now
2 triggers our concern --

3 THE COURT: Okay. Got you.

4 MR. FIGLER: -- that we're going to have to deal
5 with it. And if Your Honor forgets, I will raise it again.

6 THE COURT: No, no, no, I'll start looking at it
7 because I'm not -- I said that to the parties, I didn't try a
8 gang case. I mean I may have put on some prelims.

9 I didn't try a gang murder, and I didn't -- as a
10 Judge, this is my first gang murder, so I'm happy and I'm open
11 to hearing your arguments, and I'll sit and read all of these
12 statutes.

13 MS. PANDUKHT: Okay.

14 THE COURT: And I'll -- I'll do the best I can.

15 And if you have any extra gang law, feel free to
16 send it to me, any kind of, you know -- you know, not general,
17 you know, law on murder.

18 I mean if there's something specific to the
19 statute --

20 MR. FIGLER: Yeah.

21 THE COURT: -- feel free to send it to me ahead of
22 time, and I'll read whatever cases, and I'll be like a gang
23 expert by the time I've done this case. I promise.

24 Now, I'll have -- that's why I like to see my jury
25 instructions ahead of time so I reconcile. You know, I should

1 be okay. I had a product liability endoscopy case, quite
2 complicated, and I made it through.

3 So I know I can do this.

4 MS. PANDUKHT: Yeah.

5 THE COURT: And I will.

6 But I just think we're going all the way to jury
7 instructions though now.

8 MR. FIGLER: Okay.

9 MS. PANDUKHT: And, Your Honor, I just have two
10 things.

11 THE COURT: Okay.

12 MS. PANDUKHT: One is -- and I know that Mr. Figler
13 and Mr. Goodman would never do this, but out of an abundance of
14 caution because I had it happen in another case, I just want to
15 make sure that they're not advising -- when they speak to
16 Mr. Calvillo, they're not advising him about being arrested or
17 anything like that. That should come from a Court.

18 THE COURT: You arrested him.

19 MS. PANDUKHT: No, no, I mean other than material
20 witness --

21 THE COURT: No. He's in jail.

22 MS. PANDUKHT: No, but I mean everything we
23 discussed right here with regard to liability by him, I just
24 want to make sure -- I know they wouldn't do anything like
25 that, telling him, you know --

1 THE COURT: Well, since I've made my ruling that he
2 doesn't need counsel --

3 MS. PANDUKHT: That's all I'm saying.

4 THE COURT: -- I know that per the rules of
5 professional responsibility, since I've already made a ruling
6 saying he doesn't need counsel, that they're not going to go in
7 there and somehow intimate to a witness that he needs counsel.

8 MR. FIGLER: Well, if he invokes counsel at this
9 point, I move for a mistrial because I don't get a chance to
10 cross-examine under --

11 (Multiple speakers at this time.)

12 THE REPORTER: One person at a time, please.

13 THE COURT: And if that happens, which I'm sure you
14 don't want it to happen, your -- this client of yours is going
15 next year to trial. So think long and hard if anybody wants to
16 start messing up this trial.

17 MR. FIGLER: Exactly.

18 THE COURT: I will put it over another year. Trust
19 me. Okay?

20 So they have every, every desire to want to conclude
21 this case without a mistrial. Nobody will want a mistrial,
22 because Deshawn Reed's mistrial and it was exactly put over a
23 year. And right now I'm setting into next May. And that would
24 be a sad thing if I -- if this case mistried --

25 MR. FIGLER: No, I agree.

1 THE COURT: -- over something so ridiculous like
2 that.

3 MR. FIGLER: Let's just say illogical for them to
4 even suggest that we would do that.

5 THE COURT: Well, it's not to you.

6 MS. PANDUKHT: No, I know they would never do that.

7 THE COURT: But, you know, having been in that
8 office before, there are defense attorneys that are
9 completely -- well, I just won't even say it, but would do
10 something unethical to throw it.

11 Now, I know that's not either one of you, but I just
12 want to caution and just state that, you know, just putting it
13 out there for everyone, there shouldn't be a mistrial, and that
14 goes both ways.

15 You know, and, of course, if the State made a
16 mistrial, I've -- I've actually --

17 MR. FIGLER: Jeopardy.

18 THE COURT: Yeah. It was -- was that your case,
19 Ms. Nyikos?

20 MS. DEMONTE: No, no, no.

21 THE COURT: No, it was one of DiGiacomo's --
22 Sandy DiGiacomo's case. They threw a mistrial -- threw
23 something right out there on purpose because they were losing.

24 MS. PANDUKHT: We would never do that.

25 THE COURT: You wouldn't. She did. She did it and

1 it was intentional, and she threw something out on a bad act
2 without a motion in limine, and threw the whole case. Okay?

3 And I declared not only a mistrial, that jeopardy
4 attached, and I didn't allow a retrial. Okay?

5 MR. FIGLER: Right.

6 THE COURT: So I'm not afraid to do it on both
7 sides. I just, you know, with this type of case, and it being
8 fragile, I don't want a mistrial. We want to get through this,
9 this case is old, from 2006.

10 MR. FIGLER: Okay.

11 THE COURT: So it's in his best interest, too, you
12 know. Obviously, this guy's in jail, but, you know, there
13 better be nothing coming through to him, you know, as far as,
14 you know, we have a lot of people out there listening.

15 MR. FIGLER: It's all in our best interest to have
16 him crossed, trust me, Judge.

17 THE COURT: Agreed. Agreed.

18 MR. FIGLER: Right.

19 THE COURT: But I don't know, you know, there could
20 be a family member that not liked, you know, what this guy said
21 and --

22 MR. FIGLER: We're not directing anything of that
23 sort.

24 THE COURT: Right. And, you know, calls his wife
25 and then, you know, his wife could call him in jail, and the

1 next thing you know he don't want to testify.

2 MS. PANDUKHT: Right.

3 THE COURT: So I can see that happening too. So we
4 don't want that to happen.

5 MR. FIGLER: Obviously.

6 MS. PANDUKHT: And then I have one more, I just want
7 to clarify --

8 THE COURT: I don't know how you stop that from
9 happening by the way, because he can't control perhaps on the
10 outside, you know, what his family member or friend might do.

11 MR. FIGLER: It's in no one's interest on the
12 defense side for this person to not be crossed in front of this
13 jury.

14 THE COURT: Agreed. Agreed, because I would have to
15 declare a mistrial.

16 MS. PANDUKHT: I have one other -- two other things.

17 THE COURT: Go ahead.

18 I should have let him cross. Go ahead.

19 MS. PANDUKHT: I'm sorry.

20 THE COURT: I should have. No good deed goes
21 unpunished.

22 MR. FIGLER: I was just giving the Court a heads up.

23 MS. PANDUKHT: I know --

24 MR. FIGLER: I didn't ask for it tomorrow.

25 THE COURT: I know.

1 MS. PANDUKHT: Okay. One more thing, in light of
2 what you have just said, I also wanted to tell you that, in
3 light of your very clear ruling, Your Honor, yesterday about
4 the Salvador shooting, I reread that transcript, you were
5 absolutely -- you made a very clear ruling, I've admonished all
6 the witnesses --

7 THE COURT: I don't remember what I said.

8 MS. PANDUKHT: Whatever we argued about yesterday,
9 you were right, the Salvador Garcia --

10 (Multiple speakers at this time.)

11 THE REPORTER: One person at a time.

12 THE COURT: I'm sorry. Thanks.

13 MS. PANDUKHT: I wanted to tell you that I
14 admonished this witness --

15 THE COURT: Okay.

16 MS. PANDUKHT: -- not to say anything about
17 Salvador Garcia and the shooting, that you specifically
18 excluded it. And I just wanted to make that clear in case it
19 was in any way unclear yesterday.

20 THE COURT: Okay.

21 MS. PANDUKHT: Wanted to do that.

22 THE COURT: Thanks.

23 MS. PANDUKHT: And then there's one other thing I
24 want to ask Your Honor.

25 THE COURT: Okay.

1 MS. PANDUKHT: In light of your prior ruling with
2 regard to the evidence of a conspiracy, it is the State's
3 contention that now with Edshel's testimony -- remember you had
4 denied or sustained some hearsay objections?

5 THE COURT: Right.

6 MS. PANDUKHT: Now it is the State's contention that
7 through the testimony of Edshel, that now there is at least
8 slight evidence, which is all that's required under the
9 statute, for a co-conspirator's statement, is slight evidence
10 of a conspiracy, it is the State's contention that now that
11 testimony has provided it. And so we would ask that tomorrow
12 we would be eliciting -- it's Giovanni's statements.

13 THE COURT: Right.

14 MR. FIGLER: And what's the unlawful act that they
15 are conspiring to do, which is required?

16 MS. PANDUKHT: Giovanni was charged as well as
17 Manuel Lopez.

18 MR. FIGLER: Okay. They still have to name the
19 unlawful acts that they were conspiring --

20 THE COURT: And -- and Manuel actually pled
21 guilty --

22 MS. PANDUKHT: Yes.

23 THE COURT: -- for the record.

24 MS. PANDUKHT: Yes.

25 THE COURT: And why don't you make a record of what

1 he pled guilt to.

2 MS. PANDUKHT: Well --

3 MS. DEMONTE: Manuel pled guilty to conspiracy and
4 voluntary manslaughter.

5 THE COURT: Right. I think I took the pleas.

6 MS. DEMONTE: Yes.

7 THE COURT: So Manuel Lopez actually pled in front
8 of me and pled guilty to conspiracy to commit murder with him.

9 MS. PANDUKHT: And then what did --

10 THE COURT: Okay. So --

11 MR. FIGLER: But there's no evidence in the record
12 yet that establishes that. We can't look outside the record to
13 establish their conspiracy for the purposes of admitting stuff
14 under NRS 50 --

15 THE COURT: Well, I understand. I think they've met
16 the slight evidence -- I -- the burden is they have shown some
17 evidence now.

18 MS. PANDUKHT: Yes.

19 THE COURT: And them getting in the car with the gun
20 is enough, being present before, during and after the
21 commission of the crime is going to be enough to get in
22 co-conspirator's statements of Giovanni Garcia and Manuel Lopez
23 at this point. That's what I would say.

24 MS. PANDUKHT: I just want to --

25 THE COURT: The people that were in the car were

1 Puppet -- who's Puppet?

2 MR. FIGLER: Manuel Lopez.

3 THE COURT: Okay. Puppet and Giovanni Garcia, which
4 was the one that called.

5 And also, I mean it's not listed in here, but
6 probably Salvador was in that car too. I would probably say
7 Salvador as well.

8 MR. FIGLER: They're saying Salvador was in the car
9 with the witness --

10 THE COURT: I'm sorry, there's just a lot of
11 players.

12 MS. PANDUKHT: I know, I --

13 THE COURT: But then the one that was in the car,
14 Puppet, Manuel Lopez and then Giovanni Garcia, they certainly
15 met that burden.

16 To now you can certainly -- I want you, of course,
17 to contemporaneously make an objection for the record, but
18 cat's out of the bag now with his testimony. Those statements
19 would come in.

20 Initially, I had a crime scene analyst, and, you
21 know, she's cold on the record. So I sustained it. But it's
22 been met now and, you know, if other people start testifying,
23 go ahead and make your record, but I'll probably overrule that.

24 MR. FIGLER: And then just clear for the record that
25 within the four corners of the case that we have in front of

1 Your Honor so far, that they have not established an actual
2 conspiracy, an agreement to go and commit an unlawful act on
3 either side of the equation.

4 They're agreeing to go somewhere, that doesn't
5 make --

6 THE COURT: Well, when you bring a gun, at a minimum
7 it's an assault with a deadly weapon.

8 MR. FIGLER: Well, someone has a gun. There is no
9 agreement and there's no testimony that the gun is to be used
10 in any way.

11 Just because someone has a gun in their pocket, it's
12 not under the statute for use in any way, and there's no
13 testimony yet that that gun was intended to be used in any way
14 with regard to going over there and -- and doing whatever they
15 were going to do, which is still quite uncertain.

16 So we're saying that based on the record as it
17 exists today, that we have an objection to Your Honor's ruling.

18 THE COURT: Okay. I appreciate that.

19 MS. PANDUKHT: I can cite a case if you would like,
20 Your Honor, for the record.

21 THE COURT: You can cite it, and that's fine, but I
22 mean --

23 MS. PANDUKHT: I do have the case law --

24 THE COURT: Well, I don't have one off the top of my
25 head.

1 MS. PANDUKHT: No, I know, and I will -- I actually
2 have a citation. Goldsmith versus Sheriff, and 85 Nevada 295.
3 It says the amount of independent evidence necessary to prove
4 the existence of a conspiracy may be slight, and it is enough
5 that only prima facie evidence of the facts is produced.

6 And what they're talking about is the hearsay
7 co-conspirator's statement. And so I just wanted to cite that
8 for the record.

9 THE COURT: Thank you.

10 MR. FIGLER: That doesn't change my opinion.

11 THE COURT: I -- I know, I understand.

12 Both sides have antagonistic approaches, I
13 understand. The record is made. But I made a ruling on that.
14 They're probably going to come in at this point at least as to
15 those two.

16 MR. FIGLER: All right. A couple other things.

17 Number two, the State indicated, and I don't know
18 the extent, that their investigator had spoken to this witness
19 prior -- on prior occasions, it was something about promising
20 to come to Court --

21 THE COURT: It sounded like serving a subpoena and
22 promising to come to Court.

23 MR. FIGLER: But that's the extent of it. He wasn't
24 interviewed or gave additional statements of the defendant or
25 anything like that in reply.

1 MS. PANDUKHT: Well, we have --

2 THE COURT: Well, it's just for the record.

3 MS. PANDUKHT: Well --

4 THE COURT: Go ahead.

5 MS. PANDUKHT: Thank you, Your Honor.

6 Prior to today I wasn't able to get Mr. Calvillo to
7 come into my office, but we just got him into custody today.

8 And so we went over to the jail, me and my
9 investigator, and, frankly, the -- he was saying everything to
10 us, he said everything consistent with his statement.

11 But as I'm sure you heard, I didn't go into this
12 because I was assuming there was going to be objection, but he
13 got a statement evidently from -- Edshel heard statements from
14 Jonathan Harper. The night of the shooting or the night after
15 the shooting Jonathan told him some stuff. I know he kind of
16 alluded to that, I -- I anticipated an objection so I didn't
17 let him.

18 THE COURT: Okay. So he got -- who got a --

19 MS. PANDUKHT: Jonathan made some statements about
20 witnessing the murder. He testified to it today.

21 THE COURT: Right, right.

22 MS. PANDUKHT: To Edshel.

23 THE COURT: Right, but we're talking -- we're
24 talking about discovery --

25 MS. PANDUKHT: That's it --

1 MR. FIGLER: I'm just --

2 THE COURT: I just want to know about discovery for
3 post-conviction so that we know he only gave one statement to
4 the police.

5 MS. PANDUKHT: Yes.

6 THE COURT: He never gave any other statements, and
7 you just basically interviewed him today with your investigator
8 over at jail.

9 MS. PANDUKHT: Right.

10 THE COURT: Prior to testifying.

11 MS. PANDUKHT: Right.

12 THE COURT: Okay.

13 MR. FIGLER: And we'd also like under the discovery
14 that was already -- the discovery motion was already granted by
15 Your Honor, if there was any threat of any source that were
16 conveyed from the State to the -- to the witness --

17 THE COURT: You can cross him on that too.

18 MR. FIGLER: I could, but I also have a right under
19 Brady to get that information from the State.

20 So I need to know what the State told him about his
21 continued status, when he'd be released, what is he -- what
22 would happen if he didn't testify in a certain way -- anything
23 like that that the State is in possession of, they need to
24 present that to the defense as discovery. That is not work
25 product.

1 MS. PANDUKHT: I don't mind at all because I made
2 no -- I should have asked him before he left.

3 THE COURT: Go ahead.

4 MS. PANDUKHT: But I made no promises and no threats
5 other than he, you know, as you know, material witness warrant,
6 once he testifies he can be released, and he can also post
7 bail. So I didn't make him any promises other than I told him
8 the only reason I felt I had to do the material witness warrant
9 because I -- he didn't show up.

10 THE COURT: He's on my calendar for Thursday for the
11 bench warrant return on the material witness warrant. He has a
12 bail of \$10,000, and I signed that. So I signed that material
13 witness warrant yesterday after he didn't show up for Court
14 as -- as requested in the affidavit.

15 MS. PANDUKHT: And I told him I would call.

16 THE COURT: So there is a bail on him.

17 MR. FIGLER: So it's the State's representation --

18 THE COURT: Basically he's on calendar for Thursday,
19 for my releasing him on Thursday.

20 MR. FIGLER: Right.

21 THE COURT: Now, if somebody testified sooner,
22 there's no reason to keep him in custody. I, as the Court, if
23 I listen to it and I'd ask everybody if they're done, including
24 yourselves, if he hasn't posted bail, I might call over to jail
25 and say he should be released sooner, because at that point

1 that's no reason to keep him in until Thursday.

2 MR. FIGLER: I'm not concerned about that. What I'm
3 concerned about is if the State made any representations of any
4 sort indicating to him --

5 THE COURT: Sure.

6 MR. FIGLER: -- that if he did not testify, even if
7 called, if he did not testify consistent with his prior
8 statement, if he did not testify against Evaristo Garcia, that
9 there would be any consequence whatsoever to which that
10 information is conveyed. The State is indicating to me that
11 they made no representation of that sort.

12 MS. PANDUKHT: I would never do it --

13 MR. FIGLER: Well, again, for an abundance of
14 caution, I know some prosecutors --

15 MS. PANDUKHT: Absolutely.

16 MR. FIGLER: -- would do something like that.

17 THE COURT: Absolutely. And I think that's --

18 THE REPORTER: One person at a time.

19 THE COURT: I think that's a fair statement,
20 Mr. Figler. You're exactly right. What's good for one side is
21 good for the other.

22 I don't think Ms. Pandukht would do that.

23 But out of an abundance of caution, we've made a
24 good record. She said she hasn't done that.

25 MR. FIGLER: Nor her investigator.

1 MS. PANDUKHT: Yeah, he was with me.

2 THE COURT: Your investigator was there. You were
3 present. Your investigator didn't threaten, promise, do
4 anything?

5 MS. PANDUKHT: Other than we were hoping he could
6 finish testifying today, and that didn't work.

7 THE COURT: Right.

8 MS. PANDUKHT: So he's upset about that. But I had
9 no control over that. I said I would call him.

10 THE COURT: I -- like I said, I would have kept
11 going, but I -- I knew we weren't getting out of here, and we
12 needed to get the jury out because I tell them five o'clock,
13 and we're not supposed to do on overtime -- blah, blah, blah,
14 it's 5:30 now.

15 MR. FIGLER: Now, last thing.

16 THE COURT: Sure.

17 MR. FIGLER: And this is out of respect to the Court
18 because you know that, as defense attorneys, Mr. Goodman and I
19 are strong advocates, but because of what's been raised by the
20 State, I don't want there to be any concern by the Court that
21 the defense is trying to do something or violate a Court's
22 order. So I'm going to bring this up ahead of time, and
23 normally we wouldn't have to.

24 With that said, there is a -- there is evidence, and
25 I can make an offer of proof, that in an under-oath proceeding,

1 that this witness, Mr. Calvillo, perjured himself. That is
2 absolutely relevant evidence for this jury to consider with
3 regard to his reliability.

4 Your Honor would agree with that statement; correct?
5 That evidence of perjury?

6 MS. PANDUKHT: I don't know what he's referring to.

7 THE COURT: Well --

8 MR. FIGLER: Would you agree with that?

9 THE COURT: No. I -- here's the thing, what is
10 your -- what does that mean, evidence of perjury?

11 I mean your definition of evidence of perjury is
12 somebody who has a perjury conviction --

13 MR. FIGLER: No.

14 THE COURT: -- that's going to be relevant.

15 MR. FIGLER: Correct.

16 THE COURT: If somebody just thinks somebody's
17 lying, that may not be relevant, and you can certainly try to
18 impeach them with proper impeachment evidence.

19 MR. FIGLER: That's correct. And that's what we're
20 looking at.

21 He testified at Salvador Garcia's trial of
22 Jonathan Harper shooting --

23 THE COURT: Okay.

24 MR. FIGLER: -- that Jonathan Harper shot himself.
25 He testified under oath to that.

1 THE COURT: Okay.

2 MR. FIGLER: The evidence is overwhelming that he
3 was convicted beyond a reasonable doubt, Salvador Garcia, that
4 Jonathan Harper did not shoot himself.

5 The State has taken the position that
6 Jonathan Harper did not shoot himself. Jonathan Harper --

7 THE COURT: That Salvador Garcia is now in -- in
8 custody for attempt -- for attempted murder on Jonathan Harper.

9 MR. FIGLER: Right. So this witness has testified
10 under oath that Jonathan Harper shot himself. That is
11 provably --

12 THE COURT: In some other --

13 MR. FIGLER: -- perjury.

14 THE COURT: Right. But it's in some other instance,
15 which I have no information about, which occurred two weeks
16 later.

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

18 But the trial transcript is available, and I'm
19 saying this is my offer of proof, and it's an offer of good
20 faith, that I have the ability to ask this -- first of all, I
21 don't -- I don't know what the State's interpretation of your
22 ruling was. If it becomes relevant, we could get into the fact
23 that Jonathan Harper was shot in the head, and that this
24 witness was in the room when it happened, and that this witness
25 said he --

1 THE COURT: Why are you getting into the unrelated
2 act when --

3 MR. FIGLER: I just want to get into the perjury.

4 THE COURT: -- you didn't want get into the
5 unrelated act?

6 MR. FIGLER: I want to get into the perjury.

7 MS. PANDUKHT: Well, I have a copy of your
8 transcript.

9 MR. FIGLER: The perjury is what we're looking for.
10 The State called this witness. The State put on
11 somebody who we can't --

12 THE COURT: This person has been endorsed for years.

13 MS. PANDUKHT: Yes.

14 MR. FIGLER: And I appreciate that. And they had to
15 find him and arrest him. We don't have a police force, you
16 know that, Your Honor. We can't go out and arrest somebody if
17 we want --

18 THE COURT: You can get a private investigator just
19 like anybody.

20 MR. FIGLER: Who came up empty.

21 THE COURT: Okay. I don't know what to tell you.

22 MR. FIGLER: I mean I appreciate that.

23 THE COURT: I'm letting you sit there and talk to
24 him all night if you want to sit and -- and talk to him.

25 MR. FIGLER: I appreciate that. But I do want to

1 bring up the fact that he indicated in another proceeding under
2 oath that Jonathan Harper shot himself.

3 And then Jonathan Harper is going to come in and
4 say: I did not shoot myself.

5 MS. DEMONTE: Well, no, Jonathan Harper is not going
6 to say that because he's been admonished by us not to talk
7 about the fact of the shooting.

8 THE COURT: Why are we bringing up that shooting?
9 Because once you bring it up then I'm letting everything in.
10 You can't let parts of it in, and you can't have another part
11 in.

12 MR. FIGLER: They've opened the door for this now.

13 (Multiple speakers at this time.)

14 THE COURT: Let's just open it all up and -- you
15 didn't want the guy's name to come up because it's the same
16 name as this gentleman, it's his brother -- is it his brother?

17 MS. DEMONTE: Cousin.

18 THE COURT: I mean there's three Garcias for
19 goodness sake. And we all know that two of the Garcias are
20 brothers, so what's the chance the last one who they're
21 going -- you know.

22 MR. FIGLER: This all goes to bias impeachment of
23 this witness that the State chose to call.

24 THE COURT: Go ahead.

25 MR. FIGLER: Okay.

1 THE COURT: Go ahead. But they're going to be able
2 to get into the name of Salvador Garcia and that they're
3 brothers.

4 MR. FIGLER: If that's the Court's ruling that
5 that's not overly prejudicial, that's fine, we'll have to live
6 with that.

7 THE COURT: You'll live with it. If that's what you
8 want, and you want to start getting into that other shooting,
9 which you told me is completely unrelated to this case --

10 MR. FIGLER: It is unrelated with regard to the
11 motive that Jonathan Harper presented, but the fact that he has
12 a bias about it --

13 THE COURT: Well, it's not bias when it starts
14 coming in in all forms. I don't know what --

15 MS. PANDUKHT: Because --

16 MR. FIGLER: I get that, Your Honor.

17 THE CLERK: Judge, we have an issue.

18 THE COURT: What?

19 THE CLERK: We have an issue.

20 THE COURT: They will not approve OT to; too cheap.
21 They will have to go to CCDC tonight or else he can be here at
22 eight a.m. tomorrow.

23 THE CLERK: They have no choice.

24 THE COURT: Um, they're going to have to take him.
25 I don't know -- I can't stop this train.

1 So can I either have you -- they either can go over
2 there to the jail, and I'll make sure my order is that he be
3 taken down -- he's got -- they've got to see him, or this trial
4 can't start tomorrow.

5 MR. FIGLER: Right. I don't necessarily want to --

6 THE COURT: Or -- or can I bring him in here at
7 eight a.m.?

8 MR. FIGLER: Yeah.

9 THE COURT: Or seven. You want him here at seven,
10 I'll get him here at seven.

11 MR. GOODMAN: What time are we starting, Your Honor?

12 THE CLERK: Nine.

13 THE COURT: I told everybody nine.

14 MR. GOODMAN: So eight?

15 MR. FIGLER: Eight-thirty is fine, and we just
16 need -- put the guy in the holding cell.

17 THE COURT: Sure. That might be better. Why don't
18 we do that?

19 MR. GOODMAN: That's fine. Thank you.

20 THE COURT: Thank you. I'm sorry about that.

21 COURT SERVICES OFFICER: We'll just say have him
22 here by eight.

23 THE COURT: It will probably be better for them
24 because they have all night to chew on what he just said, and
25 now he can interview him. And I'll make him available more if

1 that's not enough time for you as well.

2 So I've made a record that, you know, why don't we
3 make it eight o'clock. Have an hour with him.

4 MR. FIGLER: Thank you, Your Honor.

5 THE COURT: If you need more time, I'll hold the
6 jury there. You can sit and interview him all day.

7 MR. FIGLER: Thank you, Your Honor.

8 THE COURT: And then we'll go back on the record
9 when you guys are ready. Okay?

10 MR. GOODMAN: Thank you, Your Honor.

11 MR. FIGLER: Thank you.

12 THE COURT: Okay.

13 MR. FIGLER: That's all we have.

14 THE CLERK: They had to leave.

15 THE COURT: All right. So we'll get the COs out of
16 here.

17 I will reread whatever my prior ruling is --

18 MS. PANDUKHT: Yes.

19 THE COURT: -- but the thing is, now that I sat
20 through testimony and an opening statement, I'm not really -- I
21 can't remember what -- what did you say my ruling was before on
22 the motion in limine?

23 MS. PANDUKHT: Yes, Your Honor. I took your advice,
24 and you were very, very detailed on all of your rulings. I
25 made copies for the defense, I've given them to the defense,

1 the transcript is what helped.

2 THE COURT: Okay.

3 MS. PANDUKHT: Because I was just reading the
4 minutes, and that's what I think where the confusion came.

5 So I read the transcript, and I'm going to refer
6 you, Judge, to -- hold on -- okay. The first thing was, on
7 page 14, was about the flight. You said that not only was
8 flight admissible, but the extradition was admissible.

9 THE COURT: Okay.

10 MS. PANDUKHT: But certainly if he was arrested for
11 some other crime, like a sex assault, in Mexico, I couldn't
12 bring that up, which, of course, he wasn't. He was only
13 arrested --

14 THE COURT: Well, he brought up that he waived
15 extradition. They've already brought that up.

16 MS. PANDUKHT: Yeah, you mentioned that.

17 I just want to clarify the record, Your Honor.

18 THE COURT: Okay. Okay.

19 MS. PANDUKHT: Then you -- on page 16, Your Honor,
20 you start talking about -- oh, I'm sorry, go back, 15 -- no,
21 you start on the bottom of page 14 of that transcript, and you
22 start talking about, um, they could talk about the fact that he
23 was shot in the head because it goes to his ability to testify.

24 THE COURT: Right.

25 MS. PANDUKHT: But that it was too prejudicial to

1 talk about the shooting being by Sal and that whole other
2 incident where you -- you know, the details about Sal shooting
3 him in that trial and all the facts.

4 So basically you limited it, and you were very
5 specific, and that's why I wanted to say that, if I said
6 anything different yesterday, I was taking it back.

7 THE COURT: Okay.

8 MS. PANDUKHT: So you said it was overly prejudicial
9 and that we couldn't talk about it. So we are admonishing our
10 witnesses not to talk about it.

11 MR. FIGLER: See, and --

12 MS. PANDUKHT: Pursuant to your ruling.

13 MR. FIGLER: We read that differently, Judge.

14 On page 15, the Court says: Look, if either side
15 has something, I would always consider that, but looking at it
16 right now -- well, right now we didn't have the same purpose.

17 (Sotto voce at this time.)

18 THE COURT: Are they cousins or are they brothers?

19 MS. DEMONTE: They are cousins. Sal is Giovanni's
20 brother.

21 THE COURT: Right.

22 MS. DEMONTE: Sal and Giovanni are brothers.

23 Evaristo is the cousin of Sal and Giovanni.

24 THE COURT: Okay. Well, what is it you want to
25 bring in even if they bring in that he shot him in the head?

1 Who cares?

2 MS. PANDUKHT: That's what I said, Judge --

3 THE COURT: No, let's just take what he wants to do,
4 who cares? It's a big who cares. So what?

5 So what they bring in their belief that he said
6 something else in another proceeding, who cares?

7 MS. PANDUKHT: Well, you just were saying it opened
8 the door --

9 THE COURT: No --

10 MR. FIGLER: I think the jury cares but that's it.

11 THE COURT: I mean why are we confusing the jury?

12 P.S., I didn't even know who Puppet was or Puppet's
13 girlfriend. It's a -- it's a train wreck. I mean you need to
14 make a flow chart for this case. All right? You want to add
15 another shooting with more players to it?

16 MS. PANDUKHT: No, I don't think -- we don't want
17 to --

18 THE COURT: No, I'm just saying, what -- what do you
19 want to open the door to?

20 MS. PANDUKHT: I didn't want --

21 THE COURT: Okay. So they asked him about what he
22 testified to this other shooting, everybody knows that Jonathan
23 got shot in the head. Let's just keep it clean, the record.
24 He can ask if he wants to ask, if he says that he's lying about
25 something, he'll say he's not lying.

1 MR. FIGLER: Right.

2 MS. PANDUKHT: All I want to do, Your Honor, is know
3 what we're doing because it's my job --

4 THE COURT: Right.

5 MS. PANDUKHT: -- to admonish the witnesses --

6 THE COURT: Sure.

7 MS. PANDUKHT: -- so they don't say something so we
8 don't have a mistrial. That is all I'm trying to do, Judge.
9 That's it.

10 THE COURT: Okay. Well, it sounds like we're on the
11 same page.

12 MS. PANDUKHT: I want to be on the same page --

13 MR. FIGLER: That's why I brought it up ahead of
14 time. And again that was out of respect for the Court.

15 THE COURT: No, I appreciate it, because it's a
16 mess. There's a lot. There's a lot of players.

17 MR. FIGLER: And I know Your Honor especially
18 doesn't want this to pop up in the middle of an examination.
19 So I'm glad we're doing it.

20 THE COURT: No, I appreciate it.

21 MS. PANDUKHT: And let me say this, Your Honor, if
22 for some reason before I ever, um, went through a door, I'm
23 going to come ask to approach.

24 THE COURT: Okay.

25 MS. PANDUKHT: Let me promise you that.

1 THE COURT: Just approach the bench because if I see
2 some doors open, I may very well allow it.

3 I just -- you know, this whole other shooting, it's
4 complicated enough this shooting.

5 MS. PANDUKHT: I understand.

6 THE COURT: I'm just wondering why even the State
7 would care or want to bring up an unrelated type of shooting.

8 Jonathan gets shot in the head, okay, they're
9 allegedly gang members for the State. Not a shock, another
10 death, I heard. I mean come on. Puros Locos, tattoos, I mean
11 I don't think anybody's shocked here that there's more
12 shootings going on.

13 MS. PANDUKHT: Right. I know.

14 THE COURT: But if we start opening the door with
15 more evidence that they're opposing, now my record is, if he
16 gets convicted, a mess on appeal. And I prefer to keep it
17 cleaner.

18 MS. PANDUKHT: Me too.

19 THE COURT: So if you want to ask him how he
20 testified in a different shooting, I'm going to allow you to do
21 that. You can intimate lying. That's fine.

22 MR. FIGLER: Thank you.

23 THE COURT: That's your job.

24 MR. FIGLER: Yep.

25 THE COURT: Okay. I appreciate the heads up.

1 MR. FIGLER: Of course.

2 THE COURT: All right. So have a good night, and
3 then you guys will be able to -- boy, I hope they get him here
4 at eight a.m. tomorrow.

5 Can you -- can you see -- can you leave a big note
6 on Gail's desk to make sure she calls the jail if he's not here
7 tomorrow at eight?

8 THE CLERK: She gets here right around eight
9 herself. So that won't help. I'm the only one here that
10 early.

11 THE COURT: No, no, if you just -- just leave her a
12 note that if he's not here by eight -- wait, how -- Dave, are
13 you here early?

14 MR. FIGLER: I'm here at 6:30.

15 THE COURT: If you could come up earlier and not,
16 like, be at the gate.

17 THE MARSHAL: Sure.

18 THE COURT: If you could come up, and that way you
19 can keep watch of the courtroom or whatever.

20 And make sure, if they don't have him here by, like,
21 7-like-55, maybe you should call over to the jail and say --
22 because it's just going to hold our jury up.

23 THE MARSHAL: Okay. I'll have him here.

24 THE COURT: Okay. Thanks.

25 All right. Have a good evening. We'll go off the

1 record.

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(Proceedings concluded.)

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7 ATTEST: Full, true and accurate transcript of proceedings.

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/S/Renee Silvaggio
RENEE SILVAGGIO, C.C.R. 122

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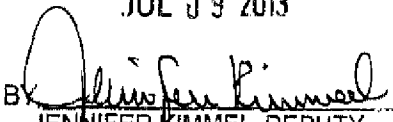
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JUL 09 2013

BY 
JENNIFER KIMMEL, DEPUTY

1 **AIND**

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8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,)

11 Plaintiff,)

12 -vs-)

Case No. 10-C-262966-1
Dept. No. XV

13
14 EVARISTO JONATHAN GARCIA,
15 #2685822,)

16 Defendant.)

**THIRD AMENDED
INDICTMENT**

17
18 STATE OF NEVADA }
19 COUNTY OF CLARK } ss.

20 The Defendant above named, EVARISTO JONATHAN GARCIA, accused by the
21 Clark County Grand Jury of the crimes of **CONSPIRACY TO COMMIT MURDER**
22 **(Category B Felony - NRS 200.010, 200.030, 199.480) and MURDER WITH USE OF A**
23 **DEADLY WEAPON WITH THE INTENT TO PROMOTE, FURTHER OR ASSIST**
24 **A CRIMINAL GANG (Category A Felony - NRS 200.010, 200.030, 200.450, 193.165,**
25 **193.168, 193.169), committed at and within the County of Clark, State of Nevada, on or**
26 **about the 6th day of February, 2006, as follows:**

27 //

28 //

1 COUNT 1 - CONSPIRACY TO COMMIT MURDER

2 did then and there wilfully, unlawfully, felonously, and knowingly meet with
3 GIOVANNY GARCIA, aka Yobani Borradas and/or MANUEL ANTHONY LOPEZ and
4 between themselves, and each of them with the other, did conspire and agree to commit a
5 crime, to-wit: murder, and in furtherance of said conspiracy, did commit the acts as set forth
6 in Count 2, said acts being incorporated by this reference as though fully set forth herein.

7 COUNT 2 - MURDER WITH USE OF A DEADLY WEAPON WITH THE INTENT TO
8 PROMOTE, FURTHER OR ASSIST A CRIMINAL GANG

9 did then and there wilfully, unlawfully, felonously, and knowingly, for the benefit of,
10 at the direction of, or in affiliation with a criminal gang, to-wit: PUROS LOCOS, which has
11 as one of its common activities engaging in felonious criminal activities other than the
12 conduct which constitutes the primary offense, and the Defendant with specific intent to
13 promote, further, or assist the activities of the above said gang, did without authority of law,
14 and with malice aforethought, kill VICTOR GAMBOA, a human being, by shooting at and
15 into the body of the said VICTOR GAMBOA, with use of a deadly weapon, to-wit: a
16 firearm, said killing having been (1) wilful, deliberate and premeditated; and/or (2) said death
17 ensuing following Defendant and/or GIOVANNY GARCIA, aka Yobani Borradas and/or
18 MANUEL ANTHONY LOPEZ giving and/or sending and/or accepting a challenge to fight
19 and/or said death ensuing during a fight that occurred upon previous concert and agreement;
20 said Defendant being responsible under one or more of the following principles of criminal
21 liability, to-wit: (1) by directly committing the act and/or (2) by conspiring with
22 GIOVANNY GARCIA, aka Yobani Borradas and/or MANUEL ANTHONY LOPEZ to
23 commit murder whereby each is vicariously liable for the acts of the other which are the
24 object of the conspiracy and/or (3) by Defendant aiding or abetting in the commission of the
25 crime by entering into a course of conduct whereby GIOVANNY GARCIA, aka Yobani
26 Borradas, while at Morris Sunset East High School contacted one or both Defendant and
27 MANUEL ANTHONY LOPEZ via cellular telephone to inform them of the fight to take
28 place after school, where Defendant and/or GIOVANNY GARCIA, aka Yobani Borradas

1 and/or MANUEL ANTHONY LOPEZ accompanied each other to the school in the vehicle
2 of MANUEL ANTHONY LOPEZ, Defendant and/or GIOVANNY GARCIA, aka Yobani
3 Borradas and/or MANUEL ANTHONY LOPEZ bringing with them a firearm, whereafter
4 Defendant and/or GIOVANNY GARCIA, aka Yobani Borradas and/or MANUEL
5 ANTHONY LOPEZ engaged in a fist fight with others, including VICTOR GAMBOA, at
6 the school, Defendant and/or GIOVANNY GARCIA, aka Yobani Borradas and/or
7 MANUEL ANTHONY LOPEZ thereafter chasing VICTOR GAMBOA, at which time
8 Defendant fired a firearm numerous times at VICTOR GAMBOA, striking him one time,
9 thereafter Defendant fleeing from the scene on foot with the firearm, Defendant and/or
10 GIOVANNY GARCIA, aka Yobani Borradas and/or MANUEL ANTHONY LOPEZ
11 disposing of the firearm in a nearby abandoned toilet, thereafter fleeing the scene together in
12 MANUEL ANTHONY LOPEZ's vehicle, Defendant and/or GIOVANNY GARCIA, aka
13 Yobani Borradas and/or MANUEL ANTHONY LOPEZ acting in concert throughout, each
14 supporting, counseling and encouraging the others in the commission of the crime by their
15 presence, words and actions.

16 DATED this 9th day of July, 2013.

17 STEVEN B. WOLFSON
18 DISTRICT ATTORNEY
19 Nevada Bar #001565

20 BY

21 TALEEN R. PANDUKHT
22 Chief Deputy District Attorney
23 Nevada Bar #005743

24
25
26
27 09BGJ047A/06F11378A/10F03640X/mmw/GANG
28 LVMPD EV#0602062820; 0602090797
(TK5)

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Before the Honorable ABBI SILVER

Wednesday, July 10, 2013, 9:00 a.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>
<u>STATE'S WITNESSES:</u>				
Edshel Calvillo (cont.)	---	4	57	71
Vanessa Grajeda	79	87	---	---
Dan Eichelberger	93	102	105	106
Joseph Harris	110	---	---	---
Betty Graves	121	131, 135	---	---
Bryan Marquez	138	157	---	---
Crystal Perez	162	182	184	---
Melissa Gamboa	186	210	230	235
Russell Carr	240	246	---	---
Dania Diaz	251	265	265	---

DEFENSE WITNESSES:

(None called.)	---	---	---	---
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EXHIBITS MARKED & ADMITTED IN EVIDENCE:MARKED ADMITTED

(None offered.)	---	---
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* * * * *

1 Las Vegas, Clark County, Nevada

2 Wednesday, July 10, 2013, 9:00 a.m.

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

4 * * * * *

5
6 (The following proceedings were had in open
7 Court in the presence of the jury panel:)

8
9 THE COURT: Good morning, ladies and gentlemen.

10 We're back on the record on State of Nevada versus
11 Evaristo Garcia, Case Number C262966.

12 Let the record reflect the defendant is present with
13 his attorneys, Mr. Goodman and Mr. Figler; for the State,
14 Ms. Pandukht and Ms. Demonte.

15 All right. We are still in the State's case in
16 chief. We're on cross-examination of the witness.

17 THE CLERK: Would you like him re-sworn, Your Honor?

18 THE COURT: Sure.

19
20 EDSHEL CALVILLO

21 called as a witness on behalf of the State,

22 having been first duly sworn,

23 was examined and testified as follows:

24
25 THE WITNESS: Yes, ma'am.

1 THE CLERK: Please be seated.

2 State your full name for the record.

3 THE WITNESS: My name is Edshel Cavillo.

4 Edshel Francisco Cavillo.

5 THE CLERK: Thank you.

6 THE COURT: Mr. Figler.

7 MR. FIGLER: Thank you, Your Honor.

8

9 CROSS-EXAMINATION

10 BY MR. FIGLER:

11 Q. Good morning, Mr. Calvillo.

12 A. Good morning.

13 Q. I understand you spent the night in jail?

14 A. Yes, sir.

15 Q. That must have been quite scary for you. Were you
16 able to deal with that?

17 A. Yes.

18 Q. Now, you took an oath yesterday. Do you remember
19 that?

20 A. Yes, sir.

21 Q. Do you understand you're still under that same exact
22 oath today?

23 A. No.

24 Q. Okay. Maybe the Judge should remind you, sir.

25 THE COURT: Yesterday you took an oath to swear to

1 tell the truth, the whole truth and nothing but the truth.

2 THE WITNESS: Yes, ma'am.

3 THE COURT: And today we just re-swore you to tell
4 the truth, the whole truth and nothing but the truth.

5 THE WITNESS: Yes.

6 THE COURT: You understand that, right?

7 THE WITNESS: Yes, I do.

8 THE COURT: All right.

9 BY MR. FIGLER:

10 Q. And that's to tell the truth and the whole truth.
11 You understand that?

12 A. Yes, sir.

13 Q. Good. And that oath would mean a lot to you that
14 you would never violate that; correct?

15 A. That's right, sir.

16 Q. Now, you did that yesterday, you told the whole
17 truth and nothing but the truth yesterday?

18 A. Yes, sir.

19 Q. So these ladies and gentlemen of the jury heard
20 everything, right?

21 A. Right.

22 Q. Didn't leave anything out?

23 A. Not at all.

24 Q. Are you all right to go forward with a couple more
25 questions with me right now?

1 A. Yeah, go ahead.

2 Q. Okay. Fantastic.

3 Now, you said you are no longer affiliated with
4 that gang or really any gang; is that correct?

5 A. Well, I stopped -- I stopped after what happened
6 with Jonathan, yes, I did. I stopped affiliating with the gang
7 I was affiliating with.

8 Q. Okay.

9 A. Yes, I did.

10 Q. And the one you were affiliated with was the
11 Puros Locos?

12 A. Correct.

13 Q. That means pure crazy?

14 A. Correct.

15 Q. And so you said that you were done with that around
16 February of 2006 then?

17 A. You know, I don't remember the year, sir, but it was
18 after, you know -- right after when Jonathan got, uh, you know,
19 shot.

20 Q. Okay. Now, you remember that Jonathan getting shot
21 was in close proximity -- close time to when this thing that
22 you testified about yesterday was?

23 A. Yes, sir.

24 Q. Okay. So it's your testimony that you're pretty
25 much out of the gang around February of 2006 then; is that

1 right?

2 A. That's right, sir.

3 Q. Okay. And if I told you that Jonathan was shot on
4 February 18th, 2006, is that about when you got out of the gang
5 then forever?

6 A. You know, I don't remember exactly the date that
7 Jonathan got shot, sir. I'm not going to lie to you, but, you
8 know, I can easily tell you, you know, it was a week after
9 regarding to when Jonathan got shot. In fact, I spoke to that
10 day, you know, of, you know, I was going to church and, you
11 know.

12 Q. Okay. All right. Yeah, yeah, you were going to
13 church.

14 A. Absolutely.

15 Q. Yeah. So by then you had -- you had found God, and
16 you were done with the gang lifestyle February of 2006?

17 A. Correct, sir.

18 Q. Okay. Now, yesterday you described to this jury
19 that your gang was like family to you; correct?

20 A. Yes, sir.

21 Q. Okay. In fact, your fellow gang members were like
22 family members?

23 A. The ones that I considered being more family was
24 Jonathan and -- and -- and Sal.

25 Q. Okay. And you would agree with me that, sometime in

1 the gang situation like that, you could be even closer than
2 your real family depending on your situation; correct?

3 A. Depending on how, you know, each person sees it.

4 Q. Okay. And you were -- you said you were tight with
5 Jonathan; correct?

6 A. Correct.

7 Q. And you were tight with Sal?

8 A. Salvador.

9 Q. Okay. These were your homies, right?

10 A. They were the closest ones.

11 Q. Okay. But you were also tight with Giovanni;
12 correct?

13 A. Well, I mean he was around, yes, he was part of the
14 group, but it was more, you know, more the friendship and, you
15 know, with -- with Jonathan and -- and Salvador Garcia.

16 Q. Okay. But you were also good friends with Giovanni;
17 correct?

18 A. Absolutely, we were friends --

19 Q. You would do things for him that --

20 THE REPORTER: One person at a time, please.

21 BY MR. FIGLER:

22 Q. You would do things for him that you wouldn't do for
23 strangers, right?

24 A. What kind of things, sir?

25 Q. Well, like, say, Giovanni called up and said he

1 needed backup over at the Morris school, you wouldn't even
2 think twice about that; correct?

3 A. Oh, well, yeah.

4 Q. Okay. And you wouldn't do that for a stranger if he
5 called you, right?

6 A. Not at all.

7 Q. Okay. You wouldn't do that for me if I called you
8 and said back me up in the park right now, would you?

9 A. Would you do that for me?

10 Q. Exactly.

11 So there's this gang that goes back and forth,
12 they take care of you and you take care of them; correct?

13 A. (No audible response.)

14 Q. Is that right?

15 A. Yes.

16 Q. Yes? Okay.

17 And it's kind of a code being in that kind of
18 situation, you would agree with me that there's a code of being
19 in a gang of that sort?

20 A. I'm not sure if it's a code.

21 Q. Okay. You have honor when you're in the gang?

22 A. Not honor. I can't say honor, sir.

23 Q. Okay. You have allegiance to your fellow gang
24 members, would you agree with that?

25 A. Allegiance?

1 Q. Yeah.

2 A. Could you describe the word, sir. I am honestly not
3 sure what --

4 Q. Sure. That you are loyal to them, that you would do
5 things for them like you would a tight family member?

6 A. Well, yeah.

7 Q. Now, you were in the gang lifestyle for a little bit
8 of time; correct?

9 A. I'll say, you know, not even -- not even two, three
10 years, sir.

11 Q. Okay. So two, three years.

12 And --

13 A. Not -- not even.

14 Q. Not even, okay.

15 And you know that when you're in the gang, one
16 of the main rules of the code is that you don't snitch on each
17 other in the gang; correct?

18 A. That's right.

19 Q. Okay. You don't tell on another gang member, right?

20 A. Correct.

21 Q. That's the code. Okay.

22 Because if someone finds out that you snitched
23 on a gang member, then, you know, it could be trouble for you,
24 you could get physically hurt, right?

25 A. Correct.

1 Q. Okay. Now, these guys, the Puros Locos, some of
2 them had guns, didn't they?

3 A. Okay.

4 Q. Okay. And you -- you testified yesterday that
5 you -- you saw Puppet with a gun in Sal's apartment at one
6 point; correct?

7 A. Correct.

8 Q. Okay. And you had seen at least one gun in Sal's
9 apartment that belonged to Sal a couple weeks later; correct?

10 A. Correct.

11 Q. Okay. And you knew that Giovanni sometimes had a
12 gun; correct?

13 A. Correct.

14 Q. In fact, Puppet had a lot of guns, didn't he?

15 A. No, I only seen one in Puppet.

16 Q. Okay. So, all right, we're back in 2006, and you
17 were in Puros Locos; correct?

18 A. Correct.

19 Q. All right. And in 2006, Mr. Calvillo -- Calvillo,
20 one -- I'm sorry.

21 In 2006, if one of your fellow gang members told
22 you to tell a specific lie to the police, you would then go
23 ahead and tell that lie to the police; wouldn't you?

24 A. You know, sir, that's why I'm up here --

25 Q. It's a yes or no.

1 A. I'm not lying. I'm up here saying the truth.

2 Q. Okay. Back in 2006, if one of your fellow gang
3 members told you to tell a lie to the police, you would then go
4 and flat out lie to the police; isn't that correct, sir?

5 A. If it was like that, sir, I would never be here.

6 Q. Okay. So you would never lie to the police;
7 correct?

8 A. That's right.

9 Q. Okay. All right. We're going to put a little
10 pin -- I put myself a note, "lie to the police," and I'm going
11 to just hold this over here so Mr. Goodman reminds me to get
12 back to that.

13 You testified yesterday that you were in Sal's
14 apartment on February 6th, 2006; is that correct?

15 A. Correct.

16 Q. Okay. And Sal is also known as Boxer or Chavez;
17 correct?

18 A. Correct.

19 Q. All right. And Sal is basically the head of your
20 so-called gang; correct?

21 A. Correct.

22 Q. And you also said that my client was there in that
23 apartment, right?

24 A. Correct.

25 Q. And that Puppet was there; correct?

1 A. Correct.

2 Q. And his girlfriend, Puppet's girlfriend?

3 A. Yeah.

4 Q. Okay. And we saw Puppet's girlfriend. You
5 identified her yesterday. I'm showing you Exhibit 86. This is
6 what she looked like on that day (indicating)?

7 A. I don't remember what she looked like at that day.

8 Q. Do you recognize her from the dark hair?

9 A. I recognize her.

10 Q. Do you recognize her dark hair?

11 A. Not her hair but her face, I do, and the mole she
12 has on her chest.

13 Q. Okay. But she -- she was a dark-haired girl, or you
14 don't even remember?

15 A. I don't remember that, sir.

16 Q. All right. And you said Jonathan Harper was there
17 as well?

18 A. Correct.

19 Q. All right. And it's your testimony that you were
20 all just sitting around when a phone call came in from
21 Giovanny; correct?

22 A. Correct.

23 Q. And Giovanny is known as Little One; is that
24 correct?

25 A. Yes, sir.