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

3 EVARISTO JONATHAN GARCIA,

4 Appellant,

5 vs.
6

7 THE STATE OF NEVADA,

8 Respondent.
9

Supreme Court Case No.: 64221

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11 **APPELLANT'S APPENDIX**

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18 ROSS C. GOODMAN, ESQ.
19 GOODMAN LAW GROUP
20 A PROFESSIONAL CORPORATION
21 520 SOUTH FOURTH STREET, 2ND FL.
22 LAS VEGAS, NEVADA 89101
23 TELEPHONE: 702-383-5088
24 FACSIMILE: 702-385-5088
25 EMAIL: ross@goodmanlawgroup.com
26 **ATTORNEY FOR APPELLANT,**
27 ***EVARISTO JONATHAN GARCIA***
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1 Q. Had -- right, had blond hair, not black hair?

2 A. Yeah.

3 Q. So it wouldn't have been this person that is
4 photographed; correct?

5 A. Don't know.

6 MS. PANDUKHT: Objection, calls for speculation.

7 BY MR. GOODMAN:

8 Q. What's that?

9 A. I don't know.

10 THE COURT: I can't even answer. I'm just going to
11 let it stand since she didn't know.

12 MR. GOODMAN: Thank you, Your Honor.

13 THE COURT: When an objection is made, ma'am, wait
14 and don't answer it, and let me answer the objection. Okay?

15 THE WITNESS: Okay.

16 BY MR. GOODMAN:

17 Q. So you said the shooter that who you saw had a gray
18 sweater with a hoody; correct?

19 A. Yes.

20 Q. And you also described the shooter as wearing a
21 black sweater and a black hoody; correct?

22 A. Don't remember.

23 Q. Okay. Well, remember that Grand Jury testimony that
24 we just talked about?

25 A. Yes.

1 Q. Okay. And you just told the jury that you reviewed
2 your testimony before coming in today; correct?

3 A. Yes.

4 Q. Okay. So did you recall seeing where you gave
5 testimony that the shooter, according to you --

6 MS. PANDUKHT: Page?

7 MR. GOODMAN: 53.

8 BY MR. GOODMAN:

9 Q. -- was wearing a black sweater -- quote: Black
10 sweater, black hoody. End quote.

11 A. Don't remember.

12 Q. Okay. Well, let me show that to you, okay?

13 MR. GOODMAN: In fact, I think that since it was
14 under oath, Your Honor, I can just put it up on the screen?

15 THE COURT: It's not in evidence.

16 MR. GOODMAN: Okay.

17 THE COURT: So it's not published.

18 MR. GOODMAN: If I may approach?

19 THE COURT: You may.

20 MR. GOODMAN: Thank you.

21 BY MR. GOODMAN:

22 Q. You can look at that highlight and just look up when
23 you're done. Look at the question and then your answer.

24 A. (Witness complies.) Okay.

25 Q. Does that refresh your recollection?

1 A. Yes.

2 Q. So is it true -- is it true that you testified under
3 oath, in front of a jury much like this jury today, that the
4 shooter was wearing a black sweater and a black hoody?

5 A. Yes.

6 Q. Now, Melissa, you also described the shooter,
7 according to you, as having light hair; correct?

8 A. Yes.

9 Q. And you described the shooter as being -- as looking
10 like he was either 18 or 19; correct?

11 A. Don't remember.

12 Q. And so you remember making a statement to the police
13 right after the shooting; correct?

14 A. Yes.

15 MR. GOODMAN: And I'm going to approach with the
16 Court's permission?

17 THE COURT: You may.

18 MR. GOODMAN: That's on page 6, the Voluntary
19 Statement.

20 BY MR. GOODMAN:

21 Q. Showing you what's been recorded -- the transcript
22 of your recorded statement, if you could look towards the
23 bottom at the question and the answer and then look up when
24 you're done reviewing it?

25 A. (Witness complies.) Okay.

1 Q. Does that refresh your -- does that refresh your
2 recollection --

3 A. Yes.

4 Q. Where you told the police the night of the shooting
5 that the shooter was probably 18 or 19; correct?

6 A. Yes.

7 Q. Now, you also described the height of the shooter.
8 You said the shooter -- well, would you recall saying that the
9 shooter was, like, five-three?

10 A. Yes.

11 Q. Okay. So the shooter wasn't five-eight to six-one?

12 A. That was my description.

13 Q. So -- right. So your description on the night of
14 the shooting, that the shooter was around five-foot
15 three-inches tall; correct?

16 A. Yes.

17 Q. Okay. In fact, Melissa, the description that you
18 gave the police of the -- on the night of the shooting where
19 the shooter was 18 or 19, had light hair, was five-three, you
20 agreed at an earlier proceeding that that didn't match the
21 description of Evaristo Garcia; correct?

22 A. What do you mean that I --

23 Q. The description that you -- the description that you
24 gave the police that night of who the shooter was, that
25 description did not match Mr. Garcia?

1 MS. PANDUKHT: I'm going to object to that question
2 because of time frame.

3 THE COURT: I think it needs more foundation.

4 MS. PANDUKHT: When --

5 THE COURT: Sustained on foundation.

6 BY MR. GOODMAN:

7 Q. Does the description that you gave police the night
8 of the shooting match Evaristo Garcia?

9 MS. PANDUKHT: When?

10 THE COURT: Are you saying as he sits here today or
11 when -- as he sat there when he was -- whatever age he was at?

12 MR. GOODMAN: No, at the -- right, the description
13 of Evaristo Garcia --

14 THE COURT: I think she's saying foundation, when?

15 MR. GOODMAN: Okay.

16 THE COURT: The description of him today versus --

17 MS. PANDUKHT: Seven years ago.

18 THE COURT: -- some years ago.

19 MR. GOODMAN: At the Preliminary Hearing proceeding
20 where she -- where she was asked that question, Your Honor.

21 THE COURT: It --

22 MR. GOODMAN: At the Preliminary --

23 THE COURT: Understood, but --

24 MR. GOODMAN: Okay. Okay. So let me rephrase it
25 then.

1 THE COURT: Okay. On the date of the Prelim, give
2 the date.

3 BY MR. GOODMAN:

4 Q. At the date of the Preliminary Hearing, Melissa, you
5 saw -- you saw Evaristo Garcia in Court; correct?

6 A. Correct.

7 Q. And that was on December 18th, 2008; correct?

8 A. Correct.

9 Q. And you testified that the -- that the description
10 you gave of the shooter on the night that your brother was shot
11 did not match the description of Evaristo Garcia as you saw him
12 December 18th of 2008; correct?

13 A. I don't remember.

14 Q. Okay.

15 MR. GOODMAN: If I may approach, Your Honor?

16 THE COURT: You may.

17 MS. PANDUKHT: Page?

18 MR. GOODMAN: 94.

19 BY MR. GOODMAN:

20 Q. Right where the clean asterisk is, if you could read
21 the question and then the answer.

22 A. (Witness complies.)

23 Q. Does that refresh your recollection, Melissa?

24 A. Yes.

25 Q. Okay. So the question asked of you: Do you

1 acknowledge that he does not meet the description that you gave
2 to the police the same day -- the same day it occurred, yes or
3 no? Your answer was yes. Correct?

4 A. Correct.

5 Q. Now, do you recall also telling the police the night
6 of the shooting that you don't know if the shooter came out of
7 that El Camino?

8 A. Don't remember.

9 Q. Right. Oh, you don't remember if you told the
10 police that?

11 A. No.

12 Q. Okay. Did you review your statement before giving
13 testimony here today?

14 A. No.

15 Q. What statement did you review before giving
16 testimony today at trial, Melissa?

17 A. My -- my written one, the one I wrote.

18 Q. So the one-page statement?

19 A. Yes.

20 Q. Okay.

21 MR. GOODMAN: If I may approach, Your Honor?

22 THE COURT: You may.

23 MR. GOODMAN: Page 13.

24 BY MR. GOODMAN:

25 Q. If you can look at where I just put that asterisk

1 and then look up when you're done.

2 A. (Witness complies.)

3 Q. Does that refresh your recollection, Melissa?

4 A. Yes.

5 Q. And you said that you don't know whether or not the
6 shooter came out of the car; correct?

7 A. Correct.

8 Q. I just saw when he started shooting at my brother?

9 A. Correct.

10 Q. And your -- and your -- and your recollection of
11 what you saw, your personal knowledge of what you saw would
12 have been fresher and in your mind closer in time to when it
13 happened than later in time; correct?

14 A. Um, don't understand. I'm sorry.

15 Q. Well, I mean, you know, after you witnessed what you
16 saw and you gave a statement, the information was fresh in your
17 mind at that time; correct?

18 A. Yes.

19 Q. Now, you also said that you were running behind your
20 brother; correct?

21 A. Yes.

22 Q. Across Washington?

23 A. Yes.

24 Q. Okay. And you saw the shooter coming, like,
25 parallel, or diagonal; correct, to you? At what -- at what

1 point did you see the shooter when you were running behind your
2 brother?

3 A. Um, when he did the first shot.

4 Q. Okay. And so were you close to him at that point?

5 A. It wasn't very close. It wasn't like a me-to-you
6 distance here.

7 Q. It is like this distance or --

8 A. It wasn't.

9 Q. So it's further?

10 A. Yes.

11 Q. You didn't hear the shooter say anything; correct?

12 A. No.

13 Q. Okay. You didn't hear anybody at that time say any
14 words or exchange any words, did you?

15 A. No.

16 Q. So your brother didn't exchange any words?

17 A. No.

18 Q. The shooter didn't say anything?

19 A. No.

20 Q. And anybody next to the shooter didn't say anything;
21 correct?

22 A. Yes.

23 Q. Okay. And you're positive about that?

24 A. Yes.

25 Q. And you said the shooter was wearing a hoody that

1 night?

2 A. Yes.

3 Q. And that it covered his face?

4 A. No.

5 Q. Okay. You said to the -- you just said at the

6 beginning that you reviewed your Preliminary Hearing

7 transcript; correct?

8 A. Yes.

9 Q. That's the testimony when you came into Court before

10 a Judge, and you -- and you gave testimony for the first time;

11 correct?

12 A. (No audible response.)

13 Q. Do you remember that, at the Preliminary Hearing?

14 A. No.

15 Q. Okay.

16 MR. GOODMAN: Well, if I may approach, Your Honor?

17 THE COURT: You may.

18 MR. GOODMAN: Page 81.

19 BY MR. GOODMAN:

20 Q. If you can look at where I just marked it and see --

21 and see if that refreshes your -- your recollection?

22 A. (Witness complies.) Okay.

23 Q. Okay. Now, when you're giving this testimony that

24 you just reviewed, that was under oath; correct?

25 A. Under what?

1 Q. Under oath. You had to stand up and raise your
2 right hand --

3 A. Yes.

4 Q. -- and swear to tell the truth; correct?

5 And it's true that you -- that you testified
6 under oath that he was wearing a hoody that night and it
7 covered his face; correct?

8 A. To be honest, I don't -- I didn't see him covering
9 his face. I think that was probably a wrong communication
10 there, but when this happened that he -- who his -- his hoody
11 wasn't on.

12 Q. Oh, it wasn't on.

13 A. It wasn't.

14 Q. Okay. But you gave testimony from a Preliminary
15 Hearing, and you gave testimony before a Grand Jury --

16 A. I believe that was a wrong communication there.

17 Q. You have never, Melissa, in seven years ever
18 testified before anybody under oath that the shooter was not
19 wearing a hoody, did you?

20 A. That he wasn't --

21 Q. Right.

22 A. -- I always testified he wasn't wearing a hoody.

23 Q. Okay.

24 A. And, yes, I did see it on the paper, but that's not
25 what I saw.

1 Q. Okay. So you acknowledge seeing the transcript --
2 this is a transcript of what a witness testifies to? And
3 you -- and you acknowledge for purposes of this hearing, of
4 this trial, that you testified, under oath, that it covered
5 the -- the hoody covered the shooter's face; correct?

6 A. Yes.

7 Q. And for the first time in seven years you are now
8 saying that the shooter was not wearing a hoody?

9 A. Yes. He was wearing a hoody, but I'm saying -- you
10 asked if it was placed on, and I said it wasn't on. He had a
11 gray hoody.

12 Q. Right. So according --

13 A. It wasn't -- my -- you're asking me if he had it on;
14 correct?

15 Q. Yes.

16 A. Like if it covered -- if it covered his hairs?

17 Q. If it covered his face, like you testified to.

18 A. Right. That's what you're asking me, right?

19 Q. Yes.

20 A. Okay. No, he wasn't.

21 Q. So you're -- so you're changing your sworn
22 testimony --

23 A. My statement was that he was wearing a gray hoody
24 sweater.

25 Q. Okay. I have the -- for the court reporter I have

1 to finish my question, okay?

2 So today, seven years later, you're changing
3 your testimony that the shooter was not wearing a hoody that
4 covered his face, and that, in fact, the shooter was wearing a
5 hoody that didn't cover his face; is that your testimony today?

6 A. Yes.

7 Q. Okay. But you never told the police that, did you?

8 A. I'm sorry, I'm just so confused right now. It's
9 just, I --

10 Q. You reviewed your statement. Did you ever tell the
11 police that the shooter was not wearing a hoody?

12 A. Yes.

13 Q. Oh, you did? Where?

14 A. He wasn't -- it wasn't placed on.

15 Q. Okay. And you put that in some statement; correct?

16 A. Yes.

17 Q. Okay. Well, I'm sure the prosecutors will bring
18 that up if they can find it anywhere.

19 A. Okay.

20 Q. Okay. And obviously your memory would be better
21 closer in time than it would be seven years later; correct?

22 A. Yes.

23 Q. Okay. Now, but for the interaction, seeing the
24 shooter on, you know, Washington, shooting a gun, you had no
25 other -- you had no other interaction with the shooter, did

1 you?

2 A. No.

3 Q. Okay. You never saw the shooter a year later or two
4 years later, did you?

5 A. I remember I recognized him once.

6 Q. Where, at the Preliminary Hearing?

7 A. Yes.

8 Q. And that was about two and a half years later;
9 correct?

10 A. Yes.

11 Q. And that was a courtroom, and there was just lawyers
12 and --

13 A. Yes.

14 Q. -- there was somebody sitting at counsel table. And
15 you said when the prosecutor asked can you identify who the
16 shooter was, you pointed at the person sitting at the table;
17 correct?

18 A. Yes.

19 Q. But you couldn't -- but you can't identify
20 Evaristo Garcia today, can you?

21 A. No.

22 Q. Now, between the shooting and the time two and a
23 half years later when you were at this Preliminary Hearing, you
24 didn't see any pictures of Mr. Garcia, did you?

25 A. No.

1 Q. You weren't, like other witnesses in this case,
2 during that two and a half year period, the police didn't come
3 to you and say: Here's a photo lineup. We just want to make
4 sure to know whether or not you can identify the person. Can
5 you please identify this six pack of pictures?

6 A. No.

7 Q. And to you, when you identified the only person
8 sitting at the table two and a half years later, at that point
9 he wasn't -- he didn't have blond hair; correct?

10 A. No.

11 Q. Okay. And that's what you described -- and that's
12 what you described the shooter as having; correct?

13 A. No.

14 Q. No, you didn't describe the shooter --

15 A. I didn't describe him blond hair.

16 Q. You didn't describe the shooter as having blond
17 hair?

18 A. (No audible response.)

19 Q. Is light hair the same thing as blond hair?

20 A. No.

21 Q. So what is light hair?

22 A. Didn't have, like, much hair.

23 Q. Oh, so you're saying light, as in balding?

24 A. Like not a lot.

25 Q. Did you ever describe the shooter in your statement

1 to the police of having -- of having black hair?

2 A. I don't remember. I don't remember.

3 MR. GOODMAN: Okay. One second, Your Honor.

4 (Sotto voce at this time.)

5 MR. GOODMAN: We'll pass the witness, Your Honor.

6 THE COURT: Redirect.

7 MS. PANDUKHT: Thank you.

8

9 REDIRECT EXAMINATION

10 BY MS. PANDUKHT:

11 Q. Melissa, this case has been going on for seven years
12 now; hasn't it?

13 A. Yes.

14 Q. You've had to come to Court and give multiple
15 statements or testimony about your brother being shot for seven
16 years almost?

17 A. Yes.

18 Q. And when you had just seen this shooting, the very,
19 very first statement that you gave was a handwritten statement;
20 isn't that true?

21 A. Yes.

22 Q. And do you remember the exact description that you
23 gave of the shooter, in your handwritten statement, on the day
24 of the shooting?

25 A. Exact, I don't know.

1 Q. Would looking at your handwritten Voluntary
2 Statement refresh your recollection as to the exact description
3 you gave?

4 A. Yes.

5 MS. PANDUKHT: May I approach?

6 THE COURT: You may.

7 BY MS. PANDUKHT:

8 Q. I'm showing you your handwritten Voluntary Statement
9 that you gave on -- and down here it has all this information:
10 February 6th, 2006; 2300 is eleven o'clock at night. So that's
11 the same night as -- as your brother was shot and killed.

12 What description -- read this to yourself and
13 then let me know when you're done regarding the description you
14 gave, and I'm looking for the exact description.

15 A. (Witness complies.) Okay.

16 Q. Do you recall the description that you gave the
17 shooter the night that you witnessed this?

18 A. Yes.

19 Q. What description did you give about his appearance
20 and what he was wearing?

21 A. Um, black hair, gray sweater, and dark shorts.

22 Q. Did you say anything else about his black hair?

23 A. I don't remember. Sorry. I don't.

24 Q. What else did you say about his hair?

25 A. He had a fade.

1 THE REPORTER: I'm sorry?

2 THE WITNESS: He had a fade.

3 BY MS. PANDUKHT:

4 Q. That's spelled F-A-D-E.

5 Could you describe that for the jury what that
6 is, what you mean?

7 A. Just what -- short hair.

8 Q. It's short black hair?

9 A. Yes.

10 Q. And then you also, in this Voluntary Statement, you
11 described the gun.

12 A. Yes.

13 Q. That you saw. And then you also named -- as you sit
14 here today, did you ever know of a relationship between the
15 shooter and Giovanny?

16 A. Yes.

17 Q. And what was that relationship?

18 A. I know they -- they know each other.

19 Q. And is it true that in your --

20 MR. GOODMAN: I'm going to object, Your Honor, the
21 foundation.

22 MS. PANDUKHT: I --

23 THE COURT: It's already been answered, they know
24 each other. Keep going.

25 BY MS. PANDUKHT:

1 Q. And do you recall referring to the shooter as
2 Giovanni's friend in your Voluntary Statement?

3 A. Yes.

4 MR. GOODMAN: I'm going to object to foundation on
5 that. I mean that's improper impeachment.

6 THE COURT: It's actually beyond the scope of the
7 cross, so I'll just sustain it on that.

8 MR. GOODMAN: So move to strike, Your Honor.

9 MS. PANDUKHT: That's fine.

10 THE COURT: It's ordered to be stricken to the jury.
11 BY MS. PANDUKHT:

12 Q. So when Mr. Goodman asked you about when you had
13 described, at the Grand Jury, about a black sweater or black
14 hoody, that was actually the last time you testified before
15 today, right?

16 A. Yes.

17 Q. So you give a handwritten statement and a recorded
18 statement the day of the murder, on February 6th, 2006, right?

19 A. Yes.

20 Q. And then the Preliminary Hearing was two years
21 later, in 2008.

22 A. Yes.

23 Q. And then this testimony that we have referred to as
24 the Grand Jury testimony, that occurred in 2010, when you were
25 20, and specifically March 4th, 2010?

1 A. Yes.

2 Q. I just want to make sure we all know the dates and
3 the time frames.

4 A. Okay.

5 Q. So your Grand Jury testimony, where you may have
6 described the sweatshirt as being black was actually four years
7 after the shooting?

8 A. Yes.

9 Q. And isn't it also true that you described the
10 sweatshirt that the shooter was wearing as gray in all three of
11 your prior statements -- the handwritten statement, the
12 Voluntary Statement to police, and also the Preliminary Hearing
13 that you described it as a gray hooded sweatshirt?

14 A. Yes.

15 Q. And it was also -- I was going to ask you about the
16 light hair, but you've already clarified that when you say
17 light hair you didn't mean blond?

18 MR. GOODMAN: I'm going to object, Your Honor, it's
19 been asked and answered.

20 THE COURT: Overruled.

21 BY MS. PANDUKHT:

22 Q. Go ahead.

23 A. Yes.

24 Q. You just meant shorter hair?

25 A. Correct.

1 Q. So you did, in fact, provide a description of the
2 shooter to the police on the day of the murder?

3 A. Yes.

4 Q. So it's your testimony, I believe, when Mr. Goodman
5 was asking you questions that you really didn't review your
6 statement before coming to Court that much; is that what I'm
7 gathering?

8 A. Yes.

9 Q. Why didn't you read all of your statements?

10 A. It just hurts.

11 MS. PANDUKHT: I'm not going to ask anything else.

12 THE COURT: Recross.

13 MR. GOODMAN: Thank you, Your Honor.

14

15 RE CROSS-EXAMINATION

16 BY MR. GOODMAN:

17 Q. Melissa, I just have to ask you to -- so we can get
18 the full description of the statement that you gave the police,
19 that it was -- that it was a black shirt and brown pants. Do
20 you recall telling the police that?

21 MS. PANDUKHT: That's where?

22 MS. DEMONTE: Where?

23 MS. PANDUKHT: It doesn't say --

24 MR. GOODMAN: Hang on, Your Honor.

25 MS. PANDUKHT: I'm sorry?

1 MR. FIGLER: Court's indulgence.

2 (Sotto voce at this time.)

3 BY MR. GOODMAN:

4 Q. Melissa, I understand that your testimony throughout
5 the seven years is that it's very emotional, and you're trying
6 to hold whoever the shooter is accountable; correct?

7 A. Correct.

8 Q. And that you gave many statements throughout the
9 seven years that we just talked about; correct?

10 A. Correct.

11 Q. And you try your best to give what the accurate
12 information is regarding what you saw to describe the shooter;
13 correct?

14 A. Correct.

15 Q. And that what you know for sure is that the night of
16 the shooting, in your mind, the shooter was five-three;
17 correct? Correct?

18 A. I'm sorry, what was that?

19 Q. The shooter was five-three?

20 A. Yes.

21 Q. And 18 to 19 years old; correct?

22 A. Yes.

23 Q. And you didn't do a photo lineup; correct?

24 A. Correct. Not --

25 Q. You never -- you never saw a picture who the police

1 thought was the shooter until you came into Court more than two
2 and a half years later; correct?

3 A. Never saw a picture.

4 MR. GOODMAN: Okay. Thank you.

5 THE COURT: Do the ladies and gentlemen of the jury
6 have any questions of this witness before I excuse her?

7

8 (Negative response from the jury panel.)

9

10 THE COURT: Negative response.

11 Thank you very much for your testimony, Melissa.

12 THE WITNESS: Thank you.

13 THE COURT: You're excused.

14

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

16

17 THE COURT: State, call your next witness.

18 MS. DEMONTE: State calls Russell Carr.

19 THE COURT: While we're bringing them in, could I
20 see counsel. Bench conference.

21 (Bench conference outside the presence of the jury
22 reported as follows:)

23 THE COURT: I was just curious, we've got one or two
24 more today?

25 MS. DEMONTE: We've got two more.

1 THE COURT: We're going to 3:30, and then we'll
2 start tomorrow at 10:30 right after criminal calendar. Do you
3 think, considering we've gone through a lot of witnesses, we
4 might be done in case in chief tomorrow or not?

5 MS. PANDUKHT: I'm really concerned, Your Honor,
6 because I don't know now if we can finish between 10:30 and
7 5:00 tomorrow because tomorrow we still have Jonathan, he's
8 going to be -- I have several experts. We have firearms. I'm
9 so sorry.

10 THE COURT: No, I'm just curious because we're
11 rolling through it.

12 MS. PANDUKHT: We're a tad behind unfortunately.

13 THE COURT: So you think more it will be Friday your
14 case in chief?

15 MS. PANDUKHT: I think so now, Judge.

16 THE COURT: Because today we've got some experts,
17 and I'm just trying to figure when they should be coming in.

18 MS. PANDUKHT: Guess what though, I think, Judge,
19 there's a good chance that we can finish with the defense and
20 State's case Friday, and closing.

21 THE COURT: It sounds like they might end on Friday
22 morning, and then,

23 MR. GOODMAN: We can close on Monday. I don't see
24 closings before Monday.

25 THE COURT: Oh no, no, and I wouldn't make you do

1 it. There's a lot of evidence and there's no rush.

2 MS. PANDUKHT: Okay. Thank you.

3 THE COURT: I think I allotted two weeks so don't
4 worry about that.

5 I was just wondering about their experts.

6 MS. PANDUKHT: And I also know, Your Honor, that you
7 cut out of -- if anybody had a problem, like, on the 18th you
8 got rid of then, the jury. So no one has any conflicts.

9 THE COURT: No, we can go into next week. It's
10 fine. I was just curious, it seemed like we were going fast,
11 but I didn't know, yeah, Harper is going to take long. All
12 right. So 10:30, yeah, because Friday we're nine to five.

13 MS. PANDUKHT: Yeah, that's what I'm thinking.

14 THE COURT: Okay.

15 MS. PANDUKHT: Thank you, Judge.

16 (End of bench conference.)

17 (Proceedings in the presence of the jury.)

18 THE COURT: You can go ahead and bring that witness
19 in.

20 THE CLERK: Would you remain standing and raise your
21 right hand, please.

22

23 RUSSELL CARR

24 called as a witness on behalf of the State,

25 having been first duly sworn,

1 was examined and testified as follows:

2

3 THE WITNESS: Yes, I do.

4 THE CLERK: Please be seated.

5 THE WITNESS: Thank you.

6 THE CLERK: State your full name and spell it for
7 the record, please.

8 THE WITNESS: Russell Alan Carr. R-U-S-S-E-L-L,
9 A-L-A-N, C-A-R-R.

10

11 DIRECT EXAMINATION

12 BY MS. DEMONTE:

13 Q. Sir, I want to direct your attention to February of
14 2006. Who were you living with at the time?

15 A. My parents.

16 Q. And what was -- what's your mother's name?

17 A. Sharon Carr.

18 Q. Okay. And where was your parent's house located?

19 A. 865 Parkhurst Street.

20 Q. And is that here in Clark County, Nevada?

21 A. Yes, it is.

22 Q. Now, showing you on the screen State's Exhibit 2, do
23 you see your parents' house located on that?

24 A. Yes.

25 Q. Can you please circle it with your finger?

1 A. (Witness complies.)

2 Q. And for the record, you've drawn a circle on the
3 second house just to the south of Washington Street; is that
4 correct?

5 A. That's correct.

6 THE COURT: Sorry, I'm going to have to take a
7 five-minute break.

8 Sorry, sir.

9 During this recess you're admonished not to talk
10 or converse among yourselves or with anyone else on
11 any subject connected with this trial;

12 Or read, watch, or listen to any report of or
13 commentary on the trial, or any person connected
14 with this trial, by any medium of information,
15 including, without limitation, newspapers,
16 television, radio, or internet;

17 Or form or express any opinion on any subject
18 connected with the trial until the case is finally
19 submitted to you.

20 A quick five minutes and we're going to jump
21 right back on because we're going to end at 3:30 today. Okay?
22 Thank you.

23 THE MARSHAL: All rise.

24

25 (The following proceedings were had in open

1 Court outside the presence of the jury panel:)

2

3 THE COURT: All right. We're outside the presence
4 of the jurors. One of the jurors had to take a restroom break.
5 So I'm sorry to do that.

6 MR. FIGLER: Okay.

7 THE COURT: But I don't want to have anybody have an
8 accident here. So we'll be right back on.

9 They're not used to what we're used to, sitting here
10 for hours.

11 MS. DEMONTE: Is the Court okay if the witness stays
12 where he's at?

13 THE COURT: Or he can step down. Whatever he'd
14 like. I'm sorry about that. That happens, just quick.

15 (Recess in proceedings.)

16

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

19

20 THE MARSHAL: Remain seated, come to order.
21 The Court in session.

22 THE COURT: All right. We're back on the record in
23 State of Nevada versus Evaristo Garcia, C262966.

24 Let the record reflect that the defendant is
25 present, with his attorneys, Mr. Goodman and Mr. Figler; and

1 for the State, Ms. Pandukht and Ms. Demonte.

2 And we are in the presence of the jury.

3 We are on the direct examination of this witness.

4 And you're still sworn under oath, sir. Thank you.

5 THE WITNESS: Thank you.

6 BY MS. DEMONTE:

7 Q. Mr. Carr, I think we left off with you just
8 identified your parents' house as being the second house if
9 you're traveling south on Parkhurst from Washington; is that
10 correct?

11 A. Yes.

12 Q. All right. And I'm sorry, what was that address
13 again?

14 A. 865 Parkhurst Street.

15 Q. Now, in 2006, particularly February of 2006, the
16 early part of the February, was there work being done on your
17 parents' house?

18 A. Yes, there was.

19 Q. What was being done?

20 A. We were having the flooring in the bathroom redone.

21 Q. Okay. As a result of the flooring in the bathroom
22 being redone, was there some plumbing work that was also took
23 place?

24 A. Yes. We had toilets replaced and we also had the
25 vanities replaced as well.

1 Q. And who did you -- what company did you go through
2 to arrange all this work?

3 A. We went through Home Depot.

4 Q. Now, was it Home Depot themselves that arrived in a
5 truck, or did they contract it out?

6 A. No, they subcontracted.

7 Q. And off the top of your head, do you recall at all
8 the name of the subcontractor that did the plumbing?

9 A. I don't recall even the truck that pulled up to
10 the -- to the house.

11 Q. And that's perfectly fine.

12 Now, Mr. Carr, as a result of that, you said
13 toilets were replaced. Showing you State's Exhibit 36, do you
14 actually see your parents' house in that picture?

15 A. Yes.

16 Q. Can you kind of maybe give some indication as to
17 where it is?

18 A. (Indicating.)

19 Q. And is that the front portion of the house by the
20 garage?

21 A. That's by the garage, yes.

22 Q. Okay. Now, up to the front, are we looking at the
23 sidewalk?

24 A. Yes.

25 Q. And there's two toilets there. Were those toilets

1 that had just been removed from your home?

2 A. Yes.

3 Q. Now, did you yourself place those there?

4 A. No.

5 Q. Or your parents?

6 A. No.

7 Q. Were those done by the workers?

8 A. Yes.

9 Q. Okay. Now, showing you State's Exhibit 37 -- but
10 you know these were the toilets that were in your home;
11 correct?

12 A. Yes.

13 Q. Now to show you State's Exhibit 37, there's an
14 object in the tank of one of those toilets. Do you recognize
15 that at all?

16 A. No.

17 Q. Is that yours or your parents'?

18 A. No.

19 Q. Was that item, particularly this firearm that I'm
20 pointing to right there (indicating), ever in your home?

21 A. No.

22 Q. Can you think of any reason why a firearm would be
23 stored in a toilet tank in your house?

24 A. Not unless you never wanted to use it.

25 MS. DEMONTE: Okay. Nothing further. I'll pass the

1 witness.

2 THE COURT: Cross-examination.

3 MR. FIGLER: Thank you, Your Honor.

4

5 CROSS-EXAMINATION

6 BY MR. FIGLER:

7 Q. Good afternoon, Mr. Carr.

8 A. Hello.

9 Q. You were living in the house on February 6th, 2006,
10 with your folks?

11 A. Yes.

12 Q. And I understand your mom passed away. I'm very
13 sorry to hear that.

14 A. Both my parents passed away.

15 Q. Oh, I'm sorry, double side, my condolences.

16 A. Thank you.

17 Q. Mr. Carr, you indicated that an independent company
18 was sent out to your house by Home Depot, you remember that,
19 right?

20 A. Yes.

21 Q. And they were going to do some of the floor tile
22 work back there in February?

23 A. Yes.

24 Q. And as part of that, that's why the -- the toilet
25 bowls got moved outside; is that correct?

1 A. Correct.

2 Q. All right. I appreciate that.

3 Do you know if -- yes or no, if you know, if
4 your mom spoke to the police afterwards?

5 A. I believe so. In fact, I actually remember talking
6 to an officer about something. I don't know if it was
7 regarding this case or not.

8 Q. Okay.

9 A. I don't remember the officer's name.

10 Q. You remember your mom talking to police though?

11 A. Yes.

12 Q. Do you remember anything about your mom going down
13 and doing a photo lineup of maybe some of the workers?

14 A. No.

15 Q. Okay. So you weren't involved in that part?

16 A. No.

17 Q. But if she would have done that, that would have
18 been her thing, you might not know about that; correct?

19 A. Correct.

20 Q. Were you asked if you could identify any of the
21 workers who were working on your house in February?

22 A. No.

23 Q. Okay. Were you ever shown a -- a photo lineup, kind
24 of looks like that (indicating)?

25 A. No.

1 Q. Okay. So if it was done with your mom, you don't
2 have knowledge of that?

3 A. No.

4 Q. Okay. I appreciate that.

5 Thanks for coming in today, sir.

6 MR. FIGLER: No further questions.

7 THE COURT: Redirect.

8 MS. DEMONTE: None, Your Honor.

9 THE COURT: No redirect.

10 Any questions from the jurors of this witness?

11

12 (Negative response from the jury panel.)

13

14 THE COURT: All right. With a negative response.

15 Thank you so much, sir, for coming in.

16 THE WITNESS: You're welcome.

17 THE COURT: You're excused.

18

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

20

21 THE COURT: State, call your next witness.

22 MS. PANDUKHT: We're waiting, she's in the building,
23 and I think she will be here momentarily. I will check
24 outside.

25 THE COURT: Okay. How long is that next witness

1 about, the next one?

2 MS. DEMONTE: Oh, about five, ten minutes.

3 THE COURT: While we're sitting here, ladies and
4 gentlemen, we're going to reconvene tomorrow at 10:30. We have
5 a pretty big criminal calendar, but I should be done, and
6 hopefully I'll have you right on at 10:30. I'll really move
7 those attorneys quickly. No argument.

8 They know when I'm in trial to go quicker, and they
9 will.

10 So hopefully we will be getting on at 10:30.

11 MS. PANDUKHT: She's going to be here momentarily,
12 if that's okay. She's coming straight from work.

13 THE COURT: No problem.

14 May I see the attorneys at the bench? I'd like to
15 make a record on something?

16 MS. DEMONTE: Okay.

17 THE COURT: Could I have it on bench conference?

18 (Bench conference outside the presence of the jury
19 reported as follows:)

20 THE COURT: This is from Juror Number 7,
21 Keith Trombetta. The question is: Is it a fact that both
22 transcripts, in parentheses, Prelim and Grand Jury, end of
23 parentheses, show that hoody was covering face as defense
24 stated from this witness Melissa?

25 And then he writes: Is above question proper, not

1 of witness, but of Court?

2 It's just not proper. It was given to my Marshal
3 during the break, a bathroom break, and just, like, handed to
4 him. I'm going to -- I read it into the record, and it's now
5 going to be a Court exhibit, and --

6 MS. PANDUKHT: Can I look at it?

7 THE COURT: I'm going to give it to both of you, but
8 I'm sure that there's no objection to either side me just not
9 answering a question of a juror regarding evidence.

10 MS. DEMONTE: Absolutely.

11 MS. PANDUKHT: Thank you so much.

12 THE COURT: Lets bring her in.

13 Go ahead.

14 THE CLERK: Are you done?

15 THE COURT: Not quite.

16 Any objection?

17 MR. FIGLER: The defense agrees with the Court's
18 assessment that at tops all the Court could do was admonish
19 that the witness needs to pay attention to the evidence
20 received.

21 THE COURT: Well, I'm not going to admonish him.

22 MR. FIGLER: Okay.

23 (End of bench conference.)

24 (Proceedings in the presence of the jury.)

25 THE COURT: Come on up and be sworn.

1 THE CLERK: Raise your right hand.

2

3 DANIA DIAZ

4 called as a witness on behalf of the State,

5 having been first duly sworn,

6 was examined and testified as follows:

7

8 THE WITNESS: Yes.

9 THE CLERK: Please be seated.

10 State and spell your full name for the record,
11 please.

12 THE WITNESS: Dania.

13 THE CLERK: Pardon me?

14 THE WITNESS: D-A-N-I-A.

15 THE CLERK: And spell your last name for us.

16 THE WITNESS: D-I-A-Z.

17

18 DIRECT EXAMINATION

19 BY MS. PANDUKHT:

20 Q. Make sure you can move that book up to you or move
21 the seat up. That's the microphone.

22 A. Okay.

23 Q. Okay?

24 A. Thank you.

25 Q. And thank you for coming here. I understand you

1 came straight from work.

2 Where do you work?

3 A. At a studio.

4 Q. Okay. And what do you do?

5 A. I'm a janitor.

6 Q. And are you -- how old are you right now?

7 A. 24.

8 Q. Back on February 6th, 2006, were you about 17 years
9 old?

10 A. Yes.

11 Q. And you lived here in Las Vegas?

12 A. Mm-hmm.

13 Q. Okay. And if you could answer yes or no for the
14 record?

15 A. Oh, yes. Okay.

16 Q. Instead of uh-huh because we have to get everything
17 on the record.

18 A. Okay.

19 Q. So back on February 6th, 2006, did you go to school?

20 A. Yes, I did.

21 Q. What school did you go to?

22 A. Harris Morris, I don't remember the name really
23 good.

24 Q. Was it a school on Washington --

25 A. Yes, it was.

1 Q. -- called --

2 A. It was behind --

3 THE REPORTER: One -- I didn't hear the answer,
4 please.

5 BY MS. PANDUKHT:

6 Q. Okay. I'll -- I'm going to just finish my question,
7 and then, as soon as I'm done with my question, you can answer,
8 so that she can get everything down.

9 A. Okay.

10 Q. Okay. So was that the school on Washington and
11 Virgil called Morris Sunset East High School?

12 A. Yes, it was.

13 Q. And how long did you go to that school?

14 A. A year.

15 Q. And when you went to that school, were you going
16 there on February 6th, 2006?

17 A. Yes, I was.

18 Q. And did you have any friends that went to that
19 school with you? Did you know other people there?

20 A. Yes, I did.

21 Q. Okay. I'd like to draw your attention to
22 February 6th, 2006, to an incident that occurred that day,
23 which brings us to Court here today.

24 Do you remember that?

25 A. Yes, I do.

1 Q. Okay. Could you tell me in terms of what
2 involvement -- how did it start with you?

3 A. Well, when we were leaving --

4 Q. Okay.

5 A. So --

6 Q. So about what time?

7 A. It was about 8:50.

8 Q. Okay.

9 A. Around there, almost nine.

10 Q. Okay.

11 A. We were leaving the school with my friends going to
12 the right, to go home. I lived on Lamb and Bonanza.

13 Q. Okay.

14 A. And that's when we heard the shots. We saw the
15 person that shot him -- I -- we didn't see his face, but I saw
16 somebody shooting at Victor Gamboa.

17 Q. Did you know Victor Gamboa?

18 A. Yes, I did.

19 Q. Did Victor Gamboa go to Morris Sunset?

20 A. No, he didn't.

21 Q. Did he have any relatives that went there?

22 A. Yes, he did.

23 Q. Do you know her name?

24 A. Yeah, Melissa Gamboa.

25 Q. And you mentioned earlier that you had some friends

1 that you were traveling with or going to leave with?

2 A. Uh-huh.

3 Q. Who were there?

4 A. Carla Rosales and Jessica Rosales and Carla's
5 boyfriend. I just know his first name is Javier.

6 Q. Okay. And so when you were -- you had already said
7 that you heard shots. Tell me, when you come out of the
8 school, do you see a fight that occurs in front of the school?

9 A. Yes.

10 Q. Let's start there.

11 A. Yeah, we did, I saw the fight there.

12 Q. So when you see this fight occurring in front of the
13 school, was it right after the bell rang and school's out?

14 A. Yeah, it was right after the bell -- the bell rang.

15 Q. Did you yourself participate in that fight?

16 A. I was just there looking like Victor was too. We
17 were just staring at what was going on and that was it. I
18 didn't fight or anything.

19 Q. You weren't fighting?

20 A. No, I was not.

21 Q. But there were girls and boys that were fighting?

22 A. Mm-hmm.

23 Q. Make sure it's a yes or no.

24 A. Yes.

25 Q. Did you -- could you estimate approximately how many

1 people were fighting?

2 A. I could tell you it was a lot of people.

3 Q. Okay.

4 A. It was people that weren't even going to the school.

5 Q. Okay. Now, how did the fight stop?

6 A. This -- me and Victor, we called out that the
7 principal was coming, and everybody started running off.

8 Q. So the principal came?

9 A. The principal came.

10 Q. Do you remember his name?

11 A. No, I don't.

12 Q. So when the principal came, did he kind of break up
13 the fight?

14 A. I really don't know, we all -- everybody started
15 running.

16 Q. Okay.

17 A. I just know when we saw him, we said the principal,
18 and everybody started running off.

19 Q. Where did you run?

20 A. With my friend Carla, to her car -- to her
21 boyfriend's car.

22 Q. And where did you run to?

23 A. Right there at the same -- at the parking lot, we
24 were just -- we just ran inside the car.

25 Q. I'm going to show you an aerial map that's been

1 admitted as State's Exhibit Number 2, and just so you can
2 see -- could you click for me -- the school's right here and
3 Washington and Virgil (indicating). Could you show me -- first
4 of all, did you have the car -- it was parked somewhere you
5 said?

6 A. Yeah, it was parked inside the school.

7 Q. Where was that? If you mark on your screen it'll
8 show up.

9 A. Oh, it will show you? Okay. It was, like, around
10 here (indicating).

11 Q. Well, the school was right here.

12 A. Mm-hmm.

13 Q. Were you in the parking -- where was that car
14 parked?

15 A. Around here (indicating).

16 Q. Okay.

17 A. You got it?

18 Q. Could you make it a little bigger?

19 A. Oh.

20 Q. It's hard to see. Okay, there we go.

21 A. Yeah.

22 Q. So in the parking lot?

23 A. That's why I'm telling you we ran because the fight
24 occurred around here, I'm guessing (indicating). I'm pretty
25 sure it was right there, and we ran over there.

1 Q. Now, could you describe this car?

2 A. It was a red car.

3 Q. Do you know anything else about it besides it being
4 a red car?

5 A. No.

6 Q. Was it your car?

7 A. No, it was my friend's car -- my friend's
8 boyfriend's car.

9 Q. So when you were there running across the street
10 tell me what you saw.

11 A. Well, we didn't --

12 Q. You didn't go across the street at all?

13 A. We went across the street when we heard the gunshots
14 but with the car.

15 Q. Okay. So I want you to go slowly about exactly --
16 so tell me, you get to the car?

17 A. We get to the car, we were leaving, we were heading
18 out this way (indicating).

19 Q. Okay.

20 A. To go this way (indicating).

21 Q. Okay.

22 A. And that's when we hear the gunshots.

23 Q. How many gunshots did you hear?

24 A. Three.

25 Q. And how close, were they together or far apart?

1 A. They were -- they were one after another.

2 Q. One after another?

3 A. Mm-hmm.

4 Q. Okay. And when you heard the gunshots, were you
5 inside your car?

6 A. Yeah, we were inside the car.

7 Q. And tell me what you saw then.

8 A. We saw Victor hit the wall and fall.

9 Q. Okay. So which wall, could you point on the map?

10 A. Right here (indicating).

11 Q. Okay. And did you see Victor with any kind of
12 weapon?

13 A. No.

14 Q. Did you see the person who was doing any shooting?

15 A. I didn't see his face.

16 Q. Could you describe what you did see?

17 A. I saw that he had a hoody on, (indicating), like a
18 big jacket and the hoody top.

19 Q. Okay. What color?

20 MR. FIGLER: And just for the record, Your Honor,
21 the witness indicated a flip over the top of her head
22 (indicating).

23 THE COURT: The record will reflect that the witness
24 did make a movement as to put her hood over her head.

25 BY MS. PANDUKHT:

1 Q. What color was it?

2 A. It was dark. It was a -- it was a dark, black you
3 could say.

4 Q. I was asking about the hoody, what color was -- was
5 the hoody, and then what was he wearing on the bottom?

6 A. The bottom was gray, I remember it was black and
7 gray what he was wearing, I wasn't really focusing on the
8 person. We were more focused on, you know, Victor when we
9 fell, and that's when we went with the car.

10 Q. So you remember he was wearing black and gray?

11 A. Yes.

12 Q. Did you see the gun?

13 A. I didn't see the gun. I saw him sticking his hand
14 out, but I didn't see the gun. I can't tell you I saw the gun
15 or how big it was because I didn't see it.

16 Q. Did you see what color it was?

17 A. No.

18 Q. Did you see what hand the person was holding it in?

19 A. It was the right hand.

20 Q. Are you sure?

21 A. Yes, I'm sure.

22 Q. Now, when you saw the person shooting, was he -- did
23 you actually see him shooting, and what was he doing when he
24 was shooting?

25 A. He was running while he was shooting.

1 Q. And who was easy running towards?

2 A. Towards them -- towards, um, Melissa and her
3 brother.

4 Q. How close was Melissa to her brother?

5 A. She was really close to him.

6 Q. And then where was he aiming -- the shooter, where
7 was he aiming his gun at?

8 A. At Victor.

9 Q. Now, when you saw him shooting --
10 (Sotto voce at this time.)

11 BY MS. PANDUKHT:

12 Q. When you saw him shooting, could you circle where
13 you saw him on the map?

14 A. Right here (indicating). He was walking right
15 there -- running -- first he was walking right there -- oh, let
16 me think. He was walking right there. That's why we thought
17 it was just someone that was, you know, walking because we did
18 see him walking.

19 And that's when he started running towards right
20 here (indicating), towards where Melissa and her brother were.

21 Q. Towards that block wall that was there (indicating)?

22 A. Yes.

23 Q. Now, when Victor got shot, did you see how close he
24 was to that wall?

25 A. Well, I saw him hitting the wall.

1 Q. And did he fall?

2 A. He did.

3 Q. Okay. You had mentioned you saw the hoody. Could
4 you see any hair on the person?

5 A. I did.

6 Q. What kind of hair?

7 A. It wasn't -- it wasn't a lot. It was just, like,
8 the short hair you could say.

9 Q. Could you tell what color?

10 A. It was black, it was dark.

11 Q. Okay. Now, did you know a student by the name of
12 Giovanni Garcia?

13 A. I did.

14 Q. Did you go to school with him?

15 A. Mm-hmm.

16 Q. Is that a yes?

17 A. Yes.

18 MS. PANDUKHT: May I approach the witness?

19 THE COURT: You may.

20 BY MS. PANDUKHT:

21 Q. I'm showing you State's Exhibit number 50. Is this
22 Giovanni?

23 A. Yes, that's him.

24 Q. So you knew him?

25 A. Yeah, I did.

1 Q. Okay. And how long did you know him?

2 A. Not that long. Just while we were going to the
3 school.

4 Q. Put this up for the jury.

5 And then where did you see him in relation to
6 the fight?

7 A. He was going to fight with Crystal, and I do
8 remember I grabbed him and told him not to fight with her.

9 Q. And do you remember what he was wearing that day?

10 A. He was wearing all dark.

11 Q. All dark clothing?

12 A. Mm-hmm.

13 Q. Yes or no?

14 A. Yes.

15 Q. Okay. So when you saw Victor get shot, what did you
16 do? Did you and your friends do anything?

17 A. Yeah. We went towards where the shooting -- where
18 he landed on the floor, 'cause after that he landed on the
19 street, so we went there and we -- my friend put the car right
20 there so no more cars could pass by or run him over or hurt
21 him. And we all got out of the car, and his sister was
22 screaming, she was telling us, you know, to help her out.

23 Q. And what were you trying to do?

24 A. We were just trying -- I was trying to calm her --
25 calm her down, and then she kept on screaming and telling us to

1 take him to the hospital.

2 Q. So were you and your friends trying to get him in
3 the car to take him to the hospital?

4 A. When she asked us to, we did.

5 Q. And could you tell if Victor was still alive at that
6 point?

7 A. He was, because he was breathing. She said he
8 stopped breathing, and since I was more calm than her, I
9 checked his -- I put my finger on his nose and he was still
10 breathing.

11 Q. Did anybody come -- did you actually see anybody put
12 Victor inside the car?

13 A. Yes.

14 Q. Who?

15 A. It was my friend's boyfriend at that time, Javier --
16 I mean, yeah, Javier, and my friend Carla.

17 Q. Did anything happen where Victor was taken out of
18 the car?

19 A. Um, what do you mean? Can you ask that --

20 Q. Did anybody come and get him out of the car?

21 A. Yes, the principal did.

22 Q. Okay. And then he got him -- after he got him out,
23 did you see where he put him?

24 A. He put him on the floor right there on the street.
25 And a couple -- like a minute or two later the ambulance came.

1 MS. PANDUKHT: Okay. Court's indulgence.

2 (Sotto voce at this time.)

3 MS. PANDUKHT: Pass the witness.

4 THE COURT: Cross-examination.

5 MR. FIGLER: Thanks.

6

7 CROSS-EXAMINATION

8 MR. FIGLER:

9 Q. Dania, you just testified that the shooter had a
10 dark top on?

11 A. Mm-hmm.

12 Q. Is that correct?

13 A. Yes.

14 Q. You also testified Giovanni had a dark top on that
15 day; correct?

16 A. Correct.

17 MR. FIGLER: Okay. Thank you.

18 I have no further questions.

19 THE COURT: Redirect.

20

21 REDIRECT EXAMINATION

22 BY MS. PANDUKHT:

23 Q. Are you sure? You said it was black or gray.

24 MR. FIGLER: Objection, Your Honor, it misstates the
25 evidence.

1 MS. PANDUKHT: On direct I was talking about.

2 THE COURT: Sustained.

3 MS. PANDUKHT: His question on direct examination
4 was regarding colors.

5 THE COURT: Was on cross-examination.

6 MS. PANDUKHT: Right.

7 THE COURT: Was the top.

8 MS. PANDUKHT: No, I was just talking about the
9 colors. I'm trying to redirect on his color, the colors, I
10 didn't understand.

11 THE COURT: I understood it. I'm sustaining his
12 objection.

13 MS. PANDUKHT: Okay. Can I have another question?

14 THE COURT: Sure.

15 BY MS. PANDUKHT:

16 Q. So when you gave a statement in this case, did you
17 describe the color of that article of clothing in a statement?

18 A. I did.

19 Q. Do you remember how you described it in your
20 statement?

21 A. It was -- I can't remember that much of that. I --
22 I think it was gray.

23 The thing is that I remember he was wearing gray
24 and black. I just -- to -- where I go back, I don't remember
25 if it was the top or the bottom.

1 Q. That's just what I wanted to clarify.

2 MS. PANDUKHT: Thank you.

3 THE COURT: Recross.

4 MR. FIGLER: Nothing, Your Honor.

5 THE COURT: Do the ladies and gentlemen of the jury
6 have any questions of this witness?

7

8 (Negative response from the jury panel.)

9

10 THE COURT: All right. With a negative response,
11 ma'am, you're excused from testifying.

12 Thank you very much.

13 THE WITNESS: Thank you.

14

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

16

17 THE COURT: All right. Well, it's 3:30, perfect
18 timing, we're going to take our break for the evening. I'll
19 see everybody back at 10:30 tomorrow.

20 During this recess you are admonished not to
21 talk or converse among yourselves or with anyone
22 else on any subject connected with this trial;

23 Or read, watch, or listen to any report of or
24 commentary on the trial, or any person connected
25 with this trial, by any medium of information,

1 including, without limitation, newspapers,
2 television, the internet, and radio;

3 Or form or express any opinion on any subject
4 connected with the trial until the case is finally
5 submitted to you.

6 See you at 10:30 tomorrow. Have a good evening.

7 THE MARSHAL: All rise.

8 THE COURT: Do you want to stay on the record?

9 MR. FIGLER: No, Your Honor. Thank you.

10 THE COURT: No? Okay. Have a good evening.

11
12 (Proceedings concluded.)

13
14 * * * * *

15
16 ATTEST: Full, true and accurate transcript of proceedings.

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19 /S/Renee Silvaggio
20 RENEE SILVAGGIO, C.C.R. 122
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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Before the Honorable ABBIE SILVER
Thursday, July 11, 2013, 10:30 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>				
Jonathan Harper	5	26	54	60
Lary Sims	96	106	108	---
Maria Lopez	110	117	---	---
Ken Hardy	121	133	161,177	168,179
Voir Dire Examination	132	---	---	---
Dinnah Angel Moses	182	202	---	---

DEFENSE WITNESSES:

(None called.)	---	---	---	---
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<u>EXHIBITS MARKED AND ADMITTED INTO EVIDENCE</u>	<u>Marked</u>	<u>Admitted</u>
---	---------------	-----------------

State's Exhibits 76 through 84, respectively	3	99
State's Exhibits 64 through 75, respectively	3	112
State's Exhibit 102	3	116
State's Exhibit 111	3	133
State's Exhibit 100	3	193
State's Exhibits 90 through 95, respectively	3	194
Defense Exhibit A	146	149

* * * * *

1 Las Vegas, Clark County, Nevada

2 Tuesday, July 9, 2013, 12:30 a.m.

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

4 * * * * *

5
6 (State's Proposed Exhibits 64 through 84, respectively,
7 State's Proposed Exhibits 90 through 95, respectively,
8 State's Proposed Exhibits 100, 102 and 111, respectively,
9 were marked for identification.)

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

13
14 THE COURT: Good morning, ladies and gentlemen.

15 We're back on the record on State of Nevada versus
16 Evaristo Garcia, Case Number C262966.

17 Let the record reflect that the defendant is present
18 with his attorneys, Mr. Figler and Mr. Goodman; and also for
19 the State, Ms. Pandukht and Ms. Demonte.

20 We're in the presence of the jurors.

21 I sincerely apologize. I really don't like to have
22 a jury sit and have to wait, especially when you waited one
23 hour this morning.

24 My calendar was, as much as I tried to move it, it's
25 right after the 4th of July, and it was like a double calendar,

1 so, again, I apologize for that inconvenience.

2 I really do try to get you in and out without
3 sitting out there waiting.

4 It just -- it's one of those things and I apologize.

5 So having said that, we're still in the State's case
6 in chief, and we're going to start with the next witness.

7 MS. DEMONTE: Thank you.

8 State calls Jonathan Harper.

9 THE MARSHAL: He's in the restroom. He'll be right
10 back.

11 (Pause in proceedings.)

12 MS. DEMONTE: Okay.

13 THE MARSHAL: Could you -- I'm sorry, remain
14 standing and raise your right hand, please.

15

16 JONATHAN HARPER

17 called as a witness on behalf of the State,

18 having been first duly sworn,

19 was examined and testified as follows:

20

21 THE WITNESS: Yes.

22 THE CLERK: Please be seated.

23 State and spell your full name for the record,
24 please.

25 THE WITNESS: Jonathan -- spell it?

1 THE CLERK: Please.

2 THE WITNESS: J-O-N-A-T-H-A-N.

3 MS. DEMONTE: What's your last name?

4 THE WITNESS: Harper.

5 MS. DEMONTE: Can you spell that?

6 THE WITNESS: H-A-R-P-E-R.

7 MS DEMONTE: May I proceed, Your Honor?

8 THE COURT: Yes, you may.

9 MS. DEMONTE: Thank you.

10

11 DIRECT EXAMINATION

12 BY MS. DEMONTE:

13 Q. Jonathan, how old are you today?

14 A. 23.

15 Q. Back in 2006 that made you about 15?

16 A. Yes.

17 Q. When you were 15 years old, were you part of a gang?

18 A. Yes.

19 Q. What gang was that?

20 A. PL. Puros Locos.

21 Q. Okay. And when did you become a member of that

22 gang?

23 A. Several months before, before my injury.

24 Q. Okay. You had a head injury?

25 A. Yes.

1 Q. Was that in 2006 as well?

2 A. Yes.

3 Q. To be exact that's February 18th of 2006?

4 A. Yes.

5 Q. Okay. So you became a member of Puros Locos, you
6 said, several months prior to that?

7 A. Yep -- yes.

8 Q. Yes? Okay.

9 How did you become a member?

10 A. Through a friend -- you know --

11 Q. Which friend?

12 A. Can you be more -- precise on the question?

13 Q. Oh, okay. How did you first learn about the gang?

14 A. Again, through a friend.

15 Q. Which friend was that?

16 A. Edshel.

17 Q. Do you remember Edshel's last name?

18 A. Calvillo.

19 Q. And how long have you known Edshel?

20 A. I've known Edshel since sixth grade.

21 Q. Did you and Edshel become members of this gang
22 together?

23 A. No.

24 Q. Okay. Did you become members of the gang at the
25 same time?

1 A. No.

2 Q. Who was in the gang first?

3 A. Edshel.

4 Q. Okay. And is he the one that brought you into the
5 gang?

6 A. He introduced me.

7 Q. Okay. And at some point you yourself became a
8 member; correct?

9 A. Yep -- yes.

10 Q. And how did that happen?

11 A. Just influence.

12 Q. Influenced?

13 A. Yeah, just influenced in the crowd around me. You
14 know, I was just into bad things.

15 Q. Okay. Now, in order to become an actual member, did
16 you have to do something?

17 A. Um, just fight and tag.

18 Q. Fighting and tagging?

19 A. Yep -- yes.

20 Q. Do you know what "jumped in" is?

21 A. Yes.

22 Q. Did that happen with you?

23 A. Yes.

24 Q. Okay. What is jumped in?

25 A. When you got other people around you, seven people,

1 and they're beating your ass for over 30 seconds.

2 Q. And you did that?

3 A. Yes.

4 Q. Who jumped you in?

5 A. It was Edshel, Giovanny, Puppet, Chavi --

6 Q. Chavi?

7 A. Yep. And then Stranger.

8 Q. Okay. And you said a couple of nicknames. Let me
9 start with Chavi, who is Chavi?

10 A. Salvador.

11 Q. Do you know Salvador's last name?

12 A. Garcia.

13 Q. Who is Puppet?

14 A. Puppet is Emmanuel.

15 Q. Do you know Emmanuel's last name?

16 A. No.

17 Q. Okay. Who's Stranger?

18 A. I don't know his name.

19 Q. That's okay, but he was in the gang?

20 A. Yes.

21 Q. And you used Giovanny's name. Do you know what
22 Giovanny's nickname was?

23 A. Little One.

24 Q. What was Edshel's nickname?

25 A. Danger.

1 Q. And once you got jumped in, did you get a nickname?

2 A. Yes.

3 Q. What --

4 A. Silent.

5 Q. Now, you said you had to do tagging and fights. How
6 often would you get into fights?

7 A. Pretty much every day.

8 Q. And when you got into these fights, would these be
9 for the gang?

10 A. Before and after.

11 Q. Sorry, would the fight be for the gang?

12 A. Like fighting?

13 Q. Yes.

14 A. Yeah, before and after. I would fight before, you
15 know, and then after, fighting when I was in it.

16 Q. When you were in the gang you got in fights?

17 A. Yeah.

18 Q. I'll leave it at that.

19 Tagging, what is tagging?

20 A. Tagging is when you got spray paint and you're
21 tagging on the walls.

22 Q. And what would you spray paint on the walls?

23 A. PL.

24 Q. Okay. And how often did you do that?

25 A. Um, again, pretty much every day.

1 Q. Okay. Now, Jonathan, a couple of weeks -- actually,
2 let me just show you a couple pictures to see if you recognize
3 any of these people.

4 Putting on the screen State's Exhibit 50, who is
5 that?

6 A. Giovanny.

7 Q. And is that Little One?

8 A. Yes.

9 Q. Next putting on the screen 58, who is that?

10 A. Puppet.

11 Q. And that's Emmanuel?

12 A. Yes.

13 Q. Okay. Did Puppet have a girlfriend?

14 A. Yes.

15 Q. Do you remember her name?

16 A. Stacey.

17 Q. State's Exhibit 86, is that her?

18 A. Yes.

19 Q. All right. Now, a couple of weeks prior to you
20 getting hurt, do you remember being with Puppet that day?

21 A. Yes.

22 Q. Okay. And where were you?

23 A. At Sal's.

24 Q. Okay. And I'm talking in particular about
25 February 6th of 2006. You were at Sal's house?

1 A. Apartment.

2 Q. Sal's apartment.

3 And who was with you at Sal's apartment?

4 A. It was me, Puppet, Stranger -- I mean Danger --

5 Q. Danger is Edshe1?

6 A. Yes.

7 Q. Okay.

8 A. -- Sal and E.

9 Q. And who is E?

10 A. Jonathan?

11 Q. He goes by the name Jonathan?

12 A. Yeah, I think that's his real name.

13 Q. Do you see E in the courtroom today?

14 A. No.

15 Q. Okay.

16 (Sotto voce at this time.)

17 MR. GOODMAN: Yeah, Your Honor, can we approach with
18 a question of admissibility.

19 THE COURT: All right. Bench conference, please.

20 (Bench conference outside the presence of the jury
21 reported as follows:)

22 MR. GOODMAN: The -- the prosecutor is about to
23 admit a booking photo of Evaristo Garcia.

24 THE COURT: But you can't do it. You can't
25 necessarily admit that photo through this witness, so they can

1 show him this. Go ahead.

2 THE REPORTER: I can't hear.

3 MS. PANDUKHT: Sorry. Can I get to the microphone?

4 THE COURT: I don't think they're trying to admit --

5 MS. DEMONTE: I'm not trying to admit it. I'm going
6 to show it to him and not show it to the jury, and just give it
7 right back to the clerk. And then I'll admit through it to a
8 person who has knowledge as to when it was taken.

9 MR. GOODMAN: But the objection is foundation is
10 when the photograph was taken of them, what the date was.

11 MS. DEMONTE: Like I said, I'm not seeking to admit
12 it through this witness. I'm just going to ask this witness if
13 he recognizes the person in State's Exhibit whatever it's going
14 to be.

15 MR. GOODMAN: It's just I can't propose exhibit when
16 she wants the witness to --

17 THE COURT: So you have an objection to it. What's
18 your objection?

19 MR. GOODMAN: The objection is it should not be
20 published to the jury.

21 THE COURT: It's not going to be published to the
22 jury?

23 MS. DEMONTE: It's not.

24 THE COURT: Oh, okay. That's fine, of course.

25 (End of bench conference.)

1 (Proceedings in the presence of the jury.)

2 THE COURT: All right. Thanks. Go ahead.

3 BY MS. DEMONTE:

4 Q. Jonathan, you looked around the courtroom, and you
5 did not see E; correct?

6 A. No.

7 Q. Okay.

8 MS. DEMONTE: May I approach, Your Honor?

9 THE COURT: You may.

10 BY MS. DEMONTE:

11 Q. Jonathan, showing you State's Proposed Exhibit 111,
12 do you recognize the person in that picture?

13 A. Yes.

14 Q. Is that E?

15 A. Yes.

16 Q. Okay. And does that look like E back when you knew
17 him?

18 A. Yes.

19 Q. Thank you.

20 And, um, while you're at Sal's house with E,
21 Puppet, Sal, Stranger and Edshel, does -- does something
22 happen?

23 A. Someone got a phone call and said there's going to
24 be a fight after school, and they wanted us to come.

25 Q. And who told you that you had -- you were going to

1 go to the school?

2 A. Sal.

3 Q. Okay. And did you then go to the school?

4 A. Yes.

5 Q. Okay. Do you know who called?

6 A. Little One.

7 Q. Is that Giovanny?

8 A. Yes.

9 Q. Okay. Now, why were you going to the school?

10 A. I was going to -- I was going there to fight and

11 back up a friend -- he used to be a friend.

12 Q. To back up Little One?

13 A. Yes.

14 Q. Did you know who you were going to fight with?

15 A. No. I just know that there was going to be a fight.

16 Q. Okay. So how did you get to the school?

17 A. I rode with Puppet in his El Camino.

18 Q. Okay. Showing you --

19 A. A black El Camino.

20 Q. It's black? Or do you remember?

21 A. Or gray, dark gray.

22 Q. State's Exhibit 63, is that Puppet's El Camino?

23 A. Yes.

24 Q. Okay. And who rode with you in Puppet's El Camino?

25 A. It was me, E, Stacey and Puppet.

1 Q. Okay. And now, where in the car were you when you
2 were riding to school?

3 A. I was in the back.

4 Q. The -- the bed that we can see there (indicating)?

5 A. Yes.

6 Q. And was anybody in the bed with you?

7 A. No.

8 Q. Okay. And who was in the front seats?

9 A. It was E, Stacey and Puppet.

10 Q. Now, before you left Sal's house, did you see any
11 weapons?

12 A. Puppet's nine.

13 Q. Puppet's nine?

14 A. Yeah, Emmanuel's.

15 Q. Okay. Where did you see that?

16 A. On his hip.

17 Q. On whose hip?

18 A. On Emmanuel's hip.

19 Q. Did you see what Puppet did with it?

20 A. Gave it to E.

21 Q. And did that happen at Sal's house?

22 A. No. It was before we got in the car.

23 Q. Okay. But were you still at Sal's apartment
24 complex?

25 A. Yes.

1 Q. All right. Once you got in the car where did you
2 go?

3 A. We were driving to the school.

4 Q. Okay. Do you remember where that school was?

5 A. Washington and Pecos.

6 Q. Okay. Now, were there other people that were also
7 going to come to the school with you?

8 A. Yes, but we got there first.

9 Q. Okay. Who was going to come too?

10 A. Danger.

11 Q. And Danger is Edshel?

12 A. Yes.

13 Q. Okay.

14 A. Edshel, Edshel's brother, Sal, uh -- I don't -- so
15 there was Sal, Danger, Danger's brother.

16 Q. Danger's brother, what's Danger's brother's name?

17 A. Scrappy.

18 Q. Do you know his real name?

19 A. Brian.

20 Q. And he's -- Brian and Edshel are brothers?

21 A. Yeah.

22 Q. Okay. Did Edshel have another brother also in the
23 gang?

24 A. He was not a part of the gang, but he did have an
25 older brother.

1 Q. Okay. What was his name?

2 A. Arian (phonetic).

3 Q. All right.

4 THE REPORTER: Can you spell that?

5 THE WITNESS: Me?

6 THE REPORTER: Yeah.

7 THE WITNESS: No, I can't.

8 MS. DEMONTE: I can give you the spelling later.

9 BY MS. DEMONTE:

10 Q. All right. Now, you said you got to the school
11 first?

12 A. Yes.

13 Q. What happened when you got to the school?

14 A. It was just a big -- it was a big brawl.

15 Q. How -- now, where was this brawl taking place?

16 A. Right there in the middle of the parking lot.

17 Q. Now, how many people were in this big brawl?

18 A. It was Giovanni by himself at the time, and then it
19 was 15 people around him, you know. And then we got there, and
20 it was like -- and then it was me, E and Puppet.

21 Q. What was E wearing?

22 A. A gray hoody.

23 Q. Okay. Now, you said Giovanni was fighting by
24 himself at first. Who were you fighting with?

25 A. I ran to the circle and punched the same person that

1 he was fighting.

2 Q. Can you describe this person?

3 A. He was big and fat.

4 Q. Okay. And then what happened?

5 A. And then the same person -- Puppet jumped in the
6 circle -- we all jumped in the circle and pretty much fought
7 the same dude because he was bigger than everyone.

8 Q. Really big fat guy?

9 A. Huh?

10 Q. Really a big fat guy?

11 A. Yep.

12 Q. Okay.

13 A. And then I got sideswiped by another person that was
14 a part of that group, and I --

15 Q. How do you know he was part of that group?

16 A. Because he was fighting with them.

17 Q. Okay. And what happened next?

18 A. He punched me and then me and him started fighting.

19 Q. And did you know who this person was?

20 A. I didn't know him, like, personally, but I know that
21 his name was Diablo.

22 Q. Okay. And did you know if he was part of any gang?

23 A. He was part of Brown Pride.

24 Q. Now, would --

25 MR. FIGLER: Objection, Your Honor, foundation.

1 THE COURT: Well, it's not timely. It's already
2 been answered.

3 BY MS. DEMONTE:

4 Q. Now, when you were a member of Puros Locos, were
5 there other gangs that you would fight with?

6 A. Um, other Surenos.

7 Q. Other Surenos?

8 A. Yeah.

9 Q. Okay. Can you name some of them?

10 A. No.

11 Q. That's okay.

12 So what happened after you got in the fight with
13 Diablo?

14 A. We started fighting, and then the kid that started
15 the fight or all the -- all that ruckus with Giovanny, he ran
16 out of the circle.

17 Q. Can you describe that kid for me?

18 A. He was kind of -- not tall, taller, but he was tall
19 and lanky.

20 Q. Was he about your age?

21 A. Yes.

22 Q. Okay. How do you know he started it with Giovanny?

23 A. Because Giovanny was talking about somebody that he
24 was having a problem with because he's talking to a girl, and
25 they didn't like that.

1 Q. Okay.

2 A. And that's how all that started.

3 Q. All right. So you thought this was the person
4 Giovanni had trouble with?

5 A. Yeah, because they -- the whole fight started -- I
6 mean stopped, and they ran out of the circle, and then they
7 started chasing the kid.

8 Q. Who started chasing the kid?

9 A. Giovanni and E.

10 Q. Okay. What was Giovanni wearing?

11 A. A white shirt.

12 Q. Okay. And were you running with Giovanni and E?

13 A. I was running -- they were running this way
14 (indicating), and I was running this way (indicating).

15 Q. Okay. So --

16 A. And we were like 50 feet apart.

17 Q. Could you hear Giovanni and E talking at all?

18 A. Yeah. They were arguing with -- for the gun.

19 Q. What were they saying?

20 A. Give me the gun.

21 Q. Who said that?

22 A. Giovanni. And then E, he said: Nah, it's cool --
23 Nah, I got it.

24 Q. He said: Nah, I got it?

25 A. Yeah.

1 Q. What happened next?

2 A. Kid ran across the street, traffic's passing this
3 way, passing that way, and E's in the middle, and he shot him.

4 Q. How many times did he shoot?

5 A. The first one hit him, and then he ran up to him
6 and, uh, dumped a whole -- loaded the whole clip in the kid.

7 Q. Okay. Where was he when he was doing that?

8 A. The kid was on the floor.

9 Q. Okay. And he was still shooting?

10 A. Yeah.

11 Q. Okay.

12 A. And then he -- he heard the -- he heard the
13 principal, he's like: Shots fired, shots fired.

14 And everything went hectic.

15 Q. Did you see what happened -- where E went right
16 after that?

17 A. He ran in towards the neighborhood.

18 Q. Okay. And where did you go after that?

19 A. I ran the opposite way, out -- out to the gang and
20 started running through the field.

21 Q. At some point did you make it back to Sal's house?

22 A. Yes.

23 Q. When was that?

24 A. 15 to 20 minutes after.

25 Q. Okay. And did you see E later that day?

1 A. Yes.

2 Q. Did you talk to E?

3 A. For a split second.

4 Q. What did he say to you?

5 A. I got him. You know, I gotta go.

6 MR. GOODMAN: Objection, Your Honor. I don't think
7 there's foundation laid for this.

8 THE COURT: Overruled.

9 BY MS. DEMONTE:

10 Q. He said: I got him?

11 A. Yes.

12 Q. Okay. Did you talk to E about where the gun was?

13 A. No.

14 Q. Okay. Did you talk to somebody else about where the
15 gun was?

16 A. They were just talking about it, you know, and I
17 just heard it over them talking, and it was in the toilet.

18 Q. Okay. I'm sorry, you overheard people talking?

19 A. Yes.

20 Q. Who did you overhear talking?

21 A. Sal --

22 THE COURT: Actually, I'm going to -- I'm going to
23 allow those statements in subject to the State connecting up
24 the foundation if the State wants to with another witness.

25 MR. GOODMAN: I was just going to say, Your Honor --

1 THE COURT: That's fine. I'm going to -- I'll
2 sustain it if -- if they don't, and we can move to strike that
3 part of the testimony.

4 I'm going to -- I'd let it in.

5 MS. DEMONTE: I'm sorry, which statement is it?

6 MR. GOODMAN: And the foundation --

7 THE COURT: I understand what the foundation is,
8 okay? So what I'm telling you is, for the record, it will all
9 be stricken if it's not connected up through the State through
10 another witness.

11 MR. GOODMAN: Another felony --

12 THE COURT: If there was an identification on
13 Exhibit 111 --

14 MR. GOODMAN: No.

15 THE COURT: So through the admission of that, I'm --
16 I'm not going to bring in another witness because I think,
17 based on what I know from the bench, it's going to be connected
18 up.

19 MR. GOODMAN: But the other foundational objection
20 was when did they have this conversation with E?

21 THE COURT: Oh, I'm sorry. When you said
22 foundation, I was thinking --

23 MR. GOODMAN: No -- no, that as well, but the
24 witness --

25 THE COURT: Okay. Sorry. I was thinking more as

1 far as identification --

2 MR. GOODMAN: Like to lay the foundation for that.

3 MS. DEMONTE: I already asked him that, I'll ask him
4 again.

5 THE COURT: Okay, that's fine. And -- and like I
6 said, if it's not connected up, then that part of the testimony
7 that we're talking about right now will be stricken.

8 MS. DEMONTE: Understood, Your Honor.

9 THE COURT: Okay. So I've let it in. It is what it
10 is.

11 MS. DEMONTE: Thank you.

12 BY MS. DEMONTE:

13 Q. When E said to you I got him, was that later this
14 same day?

15 A. Later the same night?

16 Q. I'm sorry, was it -- this happened at night, didn't
17 it?

18 A. Yes.

19 Q. Okay. When did you see E again?

20 A. The -- the same night. You know, just for a split
21 second.

22 Q. Okay.

23 A. We were at -- we were at Sal's.

24 Q. At Sal's house? Okay.

25 And -- now, you said you overheard people

1 talking about what happened to the gun. Who did you overhear?

2 A. Puppet.

3 Q. Okay. Now, Jonathan, a couple weeks after this,
4 you -- you got shot in the head, didn't you?

5 A. Yes.

6 Q. Okay. And do you have any symptoms because of that?

7 A. No.

8 Q. Okay. Does it affect how you talk?

9 A. Yes.

10 Q. And how you move?

11 A. Yes.

12 Q. All right. And can you explain that for me?

13 A. How do you want me to explain it?

14 You know, I walk with a limp. I got a speech
15 impediment. You know, my whole left side is like a stroke
16 victim.

17 Q. Okay. But does -- how is your memory?

18 A. My memory is good.

19 Q. Okay.

20 A. You know.

21 Q. And as you sit here today, are you telling us things
22 because you remember them?

23 A. Yes.

24 MS. DEMONTE: Thank you.

25 I'll pass the witness.

1 THE COURT: Cross-examination.

2 MR. GOODMAN: Thank you, Your Honor.

3

4 CROSS-EXAMINATION

5 BY MR. GOODMAN:

6 Q. Jonathan, are you taking any medication?

7 A. Yes.

8 Q. What -- what type of medication are you on?

9 A. I'm on seizure pills.

10 Q. Why do you take seizure pills?

11 A. Because chemicals in my head is -- they're not
12 right. So if I don't take them, my -- the levels will get low,
13 and if I do take them, my levels get -- they'll stay right.

14 Q. You don't operate well under stress, do you?

15 A. Stress?

16 Q. Yeah.

17 A. I don't think anybody does.

18 Q. Well, if you get -- if there's a stressful situation
19 for you, then you can go into a seizure; correct?

20 A. Yes.

21 Q. All right. You gave many statements in this case
22 that we're talking about today; correct?

23 A. Um, what I know I only gave one statement.

24 Q. Okay. So you talked to police; correct?

25 A. Yes.

1 Q. Okay. You gave testimony at a Preliminary Hearing;
2 correct?

3 A. Yes.

4 Q. Okay. And you've met with the prosecutors quite a
5 bit, haven't you?

6 A. Them?

7 Q. Yes.

8 A. Yes.

9 Q. Okay. And, in fact, just right outside before you
10 came in today, you were out there meeting with the prosecutors,
11 weren't you?

12 A. Yes.

13 Q. And you were -- and you were going over your
14 testimony today; correct?

15 A. No.

16 Q. Well, what were you talking to the prosecutors about
17 right before Court?

18 A. There was nothing, like -- it was about here, but it
19 was nothing serious, like, you know, they were telling me
20 something.

21 Q. So they weren't going over what -- what questions
22 that they were going to ask you today?

23 A. No, they didn't.

24 Q. How many times have you gone over to the
25 prosecutor's office to rehearse or review your testimony for

1 today?

2 MS. DEMONTE: Objection, argumentative.

3 THE COURT: Overruled.

4 THE WITNESS: Only once.

5 THE COURT: Let me just strike -- hold on.

6 I'm going to actually sustain that based on the

7 order that you just used.

8 Re-ask it.

9 MR. GOODMAN: Okay.

10 THE COURT: Thanks.

11 BY MR. GOODMAN:

12 Q. How many times have you gone over to the

13 prosecutor's office?

14 A. Once.

15 Q. How many times have the DA's investigators gone over

16 to your house to talk to you about your testimony?

17 A. Once, but I was not there.

18 Q. Okay. So according to you, when did you speak to

19 the prosecutors last about your testimony?

20 A. It was last week.

21 Q. Okay. And how long did you meet with them?

22 A. An hour at the most.

23 Q. Okay. And did they go over your recorded statement

24 that you gave to the police?

25 A. Yes.

1 Q. Did they go -- and did they go over your testimony
2 that you gave under oath at a Preliminary Hearing?

3 A. No.

4 Q. So they only reviewed the Voluntary Statement with
5 you?

6 A. Yes, the original statement.

7 Q. Okay. To the police; correct?

8 A. Yes.

9 Q. And that was done approximately about five weeks
10 after you got shot in the head; correct?

11 A. Yes.

12 Q. Okay. Now, you -- there's a lot of different
13 statements here, so if you want me to slow down, you just tell
14 me because I'm not here to try to confuse you. Okay?

15 A. Okay.

16 Q. When you first gave a statement to the police, you
17 told the police that you were at Sal's house; correct?

18 A. Yes.

19 Q. Okay. And that Giovanni called to have you come
20 over to the school; correct?

21 A. Yes.

22 Q. And that Puppet, Emmanuel Lopez, came to pick you
23 up; correct?

24 A. He was already there.

25 Q. Didn't you just testify on direct that

1 Emmanuel Lopez came to pick you up?

2 A. He was already there.

3 Q. Oh, at the house?

4 A. Yes.

5 Q. Okay. But Lopez came with his girlfriend, Stacey;
6 correct?

7 A. Yes.

8 Q. Okay. And then you jumped into the car with
9 Puppet -- with Lopez and Stacey; correct?

10 A. Yes.

11 Q. Okay. And you remember telling the police that --
12 that Giovanni was there; correct?

13 A. At the school?

14 Q. At Sal's house.

15 A. At the school?

16 Q. At Sal's house.

17 A. Giovanni?

18 Q. Yeah.

19 A. No, Giovanni was at school.

20 Q. Okay. And do you remember telling the police that
21 Edshel, or Danger, was at the house?

22 A. Yes.

23 Q. Okay. But you didn't mention that Evaristo Garcia
24 was at the house; did you?

25 A. He was there.

1 Q. Okay.

2 MR. GOODMAN: If I may approach, Your Honor?

3 THE COURT: You may.

4 MR. GOODMAN: Thank you.

5 MS. DEMONTE: Page?

6 MR. GOODMAN: Page 5.

7 BY MR. GOODMAN:

8 Q. I want to have you look to -- and this is your
9 statement -- at this question and then your answer. Okay?

10 And then -- and then once you're done, you can
11 let me know.

12 A. (Witness complies.)

13 Q. Are you done reviewing your statement?

14 A. Yep.

15 Q. Okay. Have you seen your statement before?

16 A. Yes.

17 Q. Okay. So can you tell the ladies and gentlemen of
18 the jury who you told the police was at the house, at Sal's
19 house?

20 A. It says on the statement: Danger, Little One,
21 Puppet.

22 Q. Okay. So there was no mention of Evaristo Garcia in
23 your statement; was there?

24 A. No.

25 Q. Okay. So even though you just got done testifying

1 on direct examination to this jury that Evaristo Garcia was at
2 Sal's house, you told the police, in your recorded statement,
3 that the only people at Sal's house was Puppet, Little One and
4 Edshel; correct?

5 A. Yes.

6 Q. No mention of Evaristo Garcia in your statement;
7 correct?

8 A. Not in the paper.

9 Q. Okay. Now, you told the police that Manuel Lopez
10 had the gun in his waistband before he left Sal's house;
11 correct?

12 A. Yes.

13 Q. And that -- and that Lopez owned the gun; correct?

14 A. Yes.

15 Q. So you told the police that Manuel Lopez had that
16 9-millimeter -- I mean that .380 gun in his waistband; correct?

17 A. .380?

18 Q. Yeah.

19 A. Wasn't it a nine?

20 Q. I mean -- okay, strike that, I withdraw that.

21 So your -- so your statement to the police was
22 that Manuel Lopez had the gun in his waistband before you left
23 Sal's house; correct?

24 A. Yes.

25 Q. Okay. And that you got into the car; correct?

1 A. I got in the back of the car.

2 Q. You got into the back of the car, and that you
3 didn't see Manuel Lopez hand the gun to anybody, did you?

4 A. Yes, I did.

5 MR. GOODMAN: If I may approach, Your Honor?

6 THE COURT: You may.

7 BY MR. GOODMAN:

8 Q. Do you remember giving a Preliminary Hearing or
9 testimony at a Preliminary Hearing on December 18th of 2008?

10 A. No.

11 Q. But -- but -- but you gave testimony at a
12 Preliminary Hearing; correct?

13 A. Yes.

14 MR. GOODMAN: So, Your Honor, if I could approach
15 with the transcript?

16 THE COURT: You may.

17 MR. GOODMAN: Thank you.

18 MS. DEMONTE: Page, please?

19 MR. GOODMAN: Page 20.

20 BY MR. GOODMAN:

21 Q. You can read your transcript and then look up when
22 you're done.

23 A. (Witness complies.)

24 Q. You done?

25 A. Yeah. Do you want me to read it out loud?

1 Q. Nope.

2 Does that refresh your recollection of what you
3 testified at the Preliminary Hearing?

4 A. No.

5 Q. Okay. So the question is: Did you see him get it
6 from Puppet?

7 The answer is: No.

8 Okay. Was that what you just reviewed on the
9 transcript?

10 A. Yes.

11 Q. Okay. And that was testimony that you gave under
12 oath; correct, Mr. Harper?

13 A. In 2008?

14 Q. Right. So you were sworn in to tell the truth;
15 correct?

16 A. Yes.

17 Q. Under oath, and you told -- and you told the Judge
18 at the Preliminary Hearing that you didn't see Puppet give the
19 gun to Evaristo; correct?

20 A. Yes, unless I'm mistaken.

21 Q. Now, you mentioned on direct examination here about
22 a gray hoody, but -- but you also testified at that same
23 hearing that we just talked about that you saw Evaristo wearing
24 all black sleeved --

25 MS. DEMONTE: Objection --

1 BY MR. GOODMAN:

2 Q. -- sleeved pants; correct?

3 THE COURT: Hold on.

4 THE WITNESS: No.

5 THE COURT: Hold on, hold on, hold on.

6 THE WITNESS: Can you rephrase that?

7 MR. GOODMAN: Well, I think there's an objection.

8 THE COURT: Overruled. Overruled.

9 MR. GOODMAN: Thank you, Your Honor.

10 MS. DEMONTE: Page number, Counsel?

11 MR. GOODMAN: Well, I'm not there yet. He hasn't
12 answered.

13 THE COURT: It's cross-examination. You don't have
14 to give a page number on cross.

15 BY MR. GOODMAN:

16 Q. Okay. At this same Preliminary Hearing where you
17 took the same oath that you just took today; correct?

18 A. Yes.

19 Q. Okay. You were sworn to tell the truth; correct?

20 A. Yes.

21 Q. Okay. You described Evaristo on that night as
22 wearing all black sleeves; correct?

23 A. No.

24 Q. No?

25 A. No.

1 Q. Okay.

2 MR. GOODMAN: If I may approach again, Your Honor?

3 THE COURT: You may.

4 BY MR. GOODMAN:

5 Q. Take a look at the question and answer, then look up
6 when you're done.

7 A. (Witness complies.)

8 Q. Now, the question to you, Mr. Harper, was: Now, on
9 the day of shooting -- on the day of the shooting, can you tell
10 me what he was wearing, do you remember?

11 Answer: All black sleeved, long sleeves, pants.

12 Was that your answer?

13 A. On that statement.

14 Q. And that was under oath too; correct?

15 A. Yes.

16 Q. About this gun you were -- you never talked to
17 Evaristo about how he allegedly got this gun, did you?

18 A. He got it before he got in the fight.

19 (Sotto voce at this time.)

20 MR. GOODMAN: It's the same statement I just
21 impeached him with.

22 BY MR. GOODMAN:

23 Q. Now, Manuel Lopez told you that he was going back to
24 pick up the gun from the toilet; correct?

25 MS. DEMONTE: Objection, hearsay.

1 THE COURT: Overruled.

2 THE WITNESS: Do I answer that?

3 BY MR. GOODMAN:

4 Q. Yes.

5 A. Now, what was it?

6 THE COURT: I've already made a ruling for you on
7 that exact issue, by the way.

8 MS. DEMONTE: Oh, okay.

9 THE COURT: So it's --

10 THE WITNESS: Can you repeat that?

11 BY MR. GOODMAN:

12 Q. Yes. If you don't -- and again, if you don't
13 understand a question, just ask me, okay?

14 A. No, I do, but just can you repeat it because --

15 Q. You told -- you told -- Manuel Lopez told you that
16 he was going back to pick up his gun from the toilet; correct?

17 A. Yes.

18 Q. Now, you testified earlier that you got to the
19 school, that -- that you jumped on a guy named -- named Diablo;
20 correct?

21 A. No. Diablo sideswiped me while I was fighting the
22 big guy.

23 Q. So were you fighting Diablo or somebody else?

24 A. I was fighting the same person that Giovanny was
25 hitting, and then I got sideswiped by Diablo, he hit me on the

1 side.

2 Q. Okay. At some point did you fight Diablo?

3 A. Yeah, we were fighting.

4 Q. And there was a lot of fights going on at the same
5 time; correct?

6 A. Yeah, this was just one big one.

7 Q. You said that it was crazy and hectic; correct?

8 A. Yes. After the gun shooting.

9 Q. Now, you said that once the principal came out, and
10 everybody started to scatter --

11 A. Principal was already outside.

12 Q. Okay. So once the fight broke up, and everybody
13 started to scatter, Giovanni ran across the street -- ran
14 across Washington Street; correct?

15 A. No.

16 MR. GOODMAN: Okay. If I may approach, Your Honor?

17 THE COURT: You may.

18 BY MR. GOODMAN:

19 Q. Take a look at that statement.

20 A. (Witness complies.)

21 Q. Do you see that, Mr. Harper?

22 A. Hold on. Okay.

23 MR. GOODMAN: For the record, this is from his
24 Grand Jury testimony on March 4th of 2010.

25 BY MR. GOODMAN:

1 Q. Now, you testified that Giovanni was running across
2 the street; correct?

3 A. Yes.

4 Q. And that you were running towards the baseball
5 field; correct?

6 A. Yes.

7 Q. So you saw Giovanni run across Washington; correct?

8 A. Giovanni?

9 Q. Yeah.

10 A. No.

11 Q. You just --

12 A. Giovanni didn't run across Washington.

13 Q. You just got done testifying that Giovanni ran
14 across the street.

15 A. That was E.

16 Q. Oh, okay. So -- okay. So did you just read your
17 testimony?

18 A. Yeah.

19 Q. Do you want to look at it again?

20 A. E and Little One ran this way --

21 Q. Who's Little One?

22 A. Giovanni.

23 Q. Okay. Okay. So go ahead.

24 A. He ran this way, and when I saw them two run this
25 way (indicating), I ran this way (indicating).

1 Q. So --

2 A. And we were 50 -- to, like, 40 to 50 feet apart.

3 And they're yelling at each other.

4 Q. So you're running in the opposite direction of
5 Giovanni; correct?

6 A. Yes.

7 Q. And you were running towards the baseball fields;
8 correct?

9 A. Towards this way (indicating).

10 Q. Right. Towards --

11 A. Because they're running this way towards the kid.

12 Q. Are the baseball field is in the direction that
13 you're running?

14 A. Yes.

15 Q. Okay. So just so we're clear, you're not running in
16 the same direction as Giovanni; correct?

17 A. No.

18 Q. Now, you couldn't hear -- you couldn't hear what
19 anybody was saying, the people that were running across the
20 street, you couldn't hear what they were saying; isn't that
21 true?

22 A. That's false, because they were loud enough to the
23 point I did hear them. They were screaming at each other.

24 Q. Do you remember what they were arguing about?

25 A. They were arguing for the gun.

1 MR. GOODMAN: If I may approach, Your Honor?

2 THE COURT: You may.

3 MS. DEMONTE: What's that?

4 MR. GOODMAN: The Grand Jury testimony.

5 MS. DEMONTE: Okay.

6 BY MR. GOODMAN:

7 Q. You can take a look at your testimony here, and then
8 it follows to your answer here (indicating), here at the bottom
9 of the page, and then it comes up to the top of the page
10 (indicating).

11 It's a question, answer; question, answer. Do
12 you see that?

13 A. Yeah, but I'm reading it. Hold on. I'm sorry, I do
14 got an infarim (phonetic) in there.

15 Q. Do you see that?

16 A. (No audible response.)

17 Q. So you don't remember what you -- or you couldn't
18 hear what they were arguing about, could you?

19 A. Again, I said they were arguing for the gun.

20 Q. Okay. So in this Grand Jury testimony, the question
21 was: Could you hear what they were arguing about?

22 Answer: They were arguing about something.

23 Question: Do you remember what they were
24 arguing for?

25 Answer: No.

1 Wasn't that your testimony?

2 A. Yes.

3 Q. You just -- you just reviewed that; correct?

4 A. (No audible response.)

5 Q. You just reviewed that, I just showed that to you;
6 correct?

7 A. Yes.

8 Q. Okay. Also, you testified in front of a Grand Jury
9 under oath that you did not see who the shooter was, did you?

10 A. That's false.

11 MR. GOODMAN: If I may approach, Your Honor?

12 THE COURT: You may.

13 BY MR. GOODMAN:

14 Q. Here's page 119. You can look at answer, question,
15 answer, question.

16 A. (Witness complies.)

17 Q. So the question was: All right. So they were
18 chasing this kid and arguing -- arguing over the gun. What --
19 what happens next?

20 Answer: Like, I just started hearing gunshots.

21 Question: Do you remember seeing what happened?

22 Answer: No.

23 Is that your testimony that you just reviewed?

24 A. Yes.

25 Q. Under oath in front of a Grand Jury; correct?

1 A. Yes.

2 Q. Now, when you heard the police siren, you started to
3 run; correct?

4 A. No. I ran when I heard the gunshots.

5 Q. After the shooting where did you go?

6 A. I ran towards the field, and I got picked up with
7 Giovanny.

8 Q. So -- okay. So Giovanny and who else picked you up?

9 A. One of his friends. I don't know.

10 Q. You don't know who one of his friends was?

11 A. No.

12 MR. GOODMAN: If I may approach, Your Honor?

13 THE COURT: You may.

14 BY MR. GOODMAN:

15 Q. See your testimony on page 120, who picked you up,
16 you can read from there.

17 A. (Witness complies.)

18 You asked me did I know him. You didn't ask me
19 what did I get picked up in.

20 Q. Okay. Did you review this?

21 A. This?

22 Q. Yes.

23 A. Yes.

24 Q. Okay. So the question was: Who picked you up?

25 Answer: A girl and this guy in a truck.

1 Question: Did you know them?

2 Answer: No.

3 That was your testimony under oath, wasn't it --

4 A. Yes.

5 Q. -- Mr. Harper?

6 You didn't mention anything about -- about
7 Giovanni, did you?

8 A. No.

9 Q. Now, after the shooting, it's true that you didn't
10 talk to Garcia again, did you? You didn't talk to
11 Evaristo Garcia, did you?

12 A. After the shooting?

13 Q. Yeah.

14 A. I did.

15 Q. When you went back to the house -- when you went
16 back to Sal's house, it's Chavi?

17 A. Chavi.

18 Q. Chavi, who's Sal; correct?

19 A. Yes.

20 Q. And Little One; correct?

21 A. Little One is Giovanni.

22 Q. Stranger was there?

23 A. I don't know Stranger's name.

24 Q. But Edshe1 and his older brother was there; correct?

25 A. Yes.

1 Q. There was no mention of Evaristo Garcia at Sal's
2 house, was there?

3 A. What was that?

4 MR. GOODMAN: If I could approach with his
5 Grand Jury testimony, Your Honor?

6 THE COURT: You may.

7 BY MR. GOODMAN:

8 Q. Look at page 120.

9 A. (Witness complies.)

10 Q. Do you see that, sir?

11 A. Yeah.

12 Q. Question was: Okay. When you got back to Sal's,
13 who was there?

14 Answer: It was me, Chavi, Little One, Stranger,
15 Edshel and his brother.

16 Correct?

17 A. Correct.

18 Q. Okay. Do you remember where E was?

19 Answer: No.

20 Question: Did you see or did you talk to E
21 after this shooting happened?

22 Answer: No.

23 Is that -- is that your testimony, sir?

24 A. Yes, under oath.

25 Q. Right, under oath; correct?

1 A. (No audible response.)

2 Q. Now, before you gave the recorded statement to the
3 police and before you gave your Preliminary Hearing testimony,
4 before you gave testimony in front of a Grand Jury, you were --
5 you suffered a gunshot injury to the head; correct?

6 A. Yes.

7 Q. So this -- this incident happened on February 6th,
8 2006; correct?

9 A. The incident right there?

10 Q. This case that we're talking about happened on
11 February 6th, 2006; correct?

12 A. Yes.

13 Q. And you sustained a gunshot -- gunshot head injury
14 on February 18th of 2006; correct?

15 A. Yes.

16 Q. Between February 6th and February 18th of 2006, you
17 never went to the police to tell them the story, did you?

18 A. No. They came to me.

19 Q. You were admitted to Sunrise Hospital in critical
20 condition; correct?

21 A. Yes.

22 Q. You suffered a hemorrhage to the left side of your
23 head?

24 A. Hemorrhage?

25 Q. Yeah.

1 A. Can you -- what does that mean?

2 Q. You had bleeding inside of your head?

3 A. Yeah, I had 20 percent of my brain blown out.

4 Q. So you had swelling and tissue damage; correct?

5 A. Yes.

6 Q. Okay. After you left Sunrise Hospital, you then
7 went to Health South; correct?

8 A. Yes.

9 Q. And do you know how long you were at Health --
10 Health South for?

11 A. Thirty days.

12 Q. Okay. So right after that, you then gave this first
13 initial statement to the police; correct?

14 A. Yes, on a tape recorder.

15 Q. And -- and your mother was present; correct?

16 A. Yes.

17 Q. And two detectives were present; correct?

18 A. Yes.

19 Q. And about an hour and a half after you gave that
20 statement to police, you then gave a statement regarding the
21 incident of what happened with your shooting to the head;
22 correct?

23 A. Yes.

24 Q. Now, when you gave a statement in this case, you
25 couldn't say who Evaristo's name was, right? You couldn't say

1 the name of Evaristo at the time that you gave the statement;
2 correct?

3 A. Yes.

4 Q. In fact, you didn't even know when the shooting
5 occurred, did you, when you gave that statement to the police?

6 A. I know it was before I got shot.

7 Q. Okay. But when the police asked you, you didn't
8 know if it was a month before, two months before or when that
9 shooting in this case happened, did you?

10 A. No.

11 Q. In fact, you also gave testimony, under oath, at a
12 trial, in the case where the person who shot you in the head
13 was prosecuted; correct?

14 A. Yes.

15 Q. And you testified at that trial; correct?

16 A. Yes.

17 Q. All right. Well, before we get there, let me ask
18 you this. This whole statement about -- about -- about what
19 you -- about what you told to the police in this case, you've
20 reviewed that statement, and you don't really remember anything
21 you said in that statement, do you?

22 A. The statement of what's going on right now?

23 Q. In this case.

24 A. I remember the tape.

25 Q. Okay.

1 A. Did you hear the tape?

2 (Sotto voce at this time.)

3 MR. GOODMAN: If I could have just a moment,
4 Your Honor?

5 THE COURT: You may.

6 (Pause in proceeding.)

7 THE COURT: If you would like to stand up and
8 stretch for a moment, go ahead.

9 MR. GOODMAN: Okay. If I may approach, Your Honor?

10 THE COURT: You may.

11 MR. GOODMAN: There are several statements, I
12 apologize, I had to find out which one.

13 BY MR. GOODMAN:

14 Q. Okay. Sir, this is again from your testimony in
15 front of the Grand Jury. If you could look at this part and
16 this part (indicating)?

17 A. (Witness complies.)

18 Q. Do you see that, sir?

19 A. Yeah, right here. But you see, when --

20 Q. And then --

21 A. -- when --

22 Q. And then -- well, wait.

23 A. No. When was this? Because if you are trying to
24 bring up that, you know --

25 Q. This is your Grand Jury testimony, sir, I'm asking

1 you to review the transcript --

2 A. I read it.

3 Q. -- of your Grand Jury testimony.

4 A. I read it.

5 Q. And then follow-up to here (indicating), please.

6 A. Okay.

7 Q. I'm trying to get some truthful testimony here, sir,
8 so I just ask you to follow the transcript.

9 A. I'm following whatever you're asking.

10 Q. Okay. So, question: Okay, now, Jonathan, you got
11 this head injury, yeah?

12 Answer: Yes.

13 Question: Does it cause you to have some memory
14 problems sometimes?

15 Answer: Yes.

16 Question: Now, you met with me in my office
17 earlier, yes?

18 This is, of course, the prosecutor asking you this.

19 Answer: Yes.

20 Question: Okay. Do you remember giving a statement
21 to Detectives Mogg and Hardy?

22 Answer: Bits and pieces.

23 Correct?

24 A. Yes.

25 Q. So you've reviewed this statement that we're talking

1 about many times before, haven't you?

2 A. No.

3 Q. Well, you reviewed earlier before the Preliminary
4 Hearing, before you gave testimony at the Preliminary Hearing;
5 correct, your statement to the police?

6 A. And when was this? When was this?

7 Q. Okay. You gave a statement to the police; correct?

8 A. Yes.

9 Q. And then before you testified under oath at a
10 Preliminary Hearing, you reviewed that statement; correct?

11 A. A week ago?

12 Q. No, at the Preliminary Hearing, Mr. Harper. In
13 December of 2008, you reviewed your police statement; correct?

14 A. Yes.

15 Q. Okay. And then again you reviewed that police
16 statement before you gave testimony before the Grand Jury;
17 correct?

18 A. Yes.

19 Q. Okay. And you told the prosecutor that you had
20 memory problems, and you could only remember bits and pieces of
21 that statement; correct?

22 A. Yeah.

23 Q. And this statement that you can only remember bits
24 and pieces of, you didn't even give until about five weeks
25 after the gunshot injury to your head; correct?

1 A. Yes.

2 Q. Now, in the trial that you testified in your case,
3 you also had problems recalling what you had previously said;
4 correct?

5 A. (No audible response.)

6 Q. Do you remember being confused in your trial when
7 you gave testimony?

8 A. Yes. At the beginning.

9 Q. And the prosecutors asked you if you had recovered
10 now.

11 And you said: Not -- not -- not normal.

12 Do you recall that?

13 A. Yes.

14 Q. And then they asked you if you think you were
15 screwed up when you made these other statements.

16 And your answer was: Yes.

17 Do you recall that?

18 A. Yes.

19 Q. Now, you were asked whether or not you were promised
20 anything to give testimony in this case.

21 Do you remember that?

22 A. Yes.

23 Q. And you were promised -- and you -- and you said
24 that you were promised that you wouldn't be prosecuted; isn't
25 that correct?

1 A. Yes.

2 Q. And you have not been prosecuted, have you?

3 A. No.

4 MR. GOODMAN: One moment, Your Honor.

5 (Sotto voce at this time.)

6 BY MR. GOODMAN:

7 Q. Did you shoot yourself in the head?

8 A. No.

9 Q. Did E shoot you in the head?

10 A. No.

11 Q. Did Chuckie shoot you in the head?

12 A. That's the same person.

13 Q. You had reason to be afraid of the person who shot
14 you; correct?

15 A. Yes.

16 Q. What was Sal wearing the day of the shooting, of the
17 shooting in this case, Mr. Harper?

18 A. A black shirt, and that's all I can recall.

19 I know that he had a bald head.

20 Q. And what was Edshel wearing the night of the
21 shooting?

22 A. I can't recall.

23 Q. What was Edshel's brother wearing the night of the
24 shooting?

25 A. Again, I can't recall.

1 Q. What was Puppet wearing the night of the shooting?

2 A. I can't recall.

3 Q. So why can you recall what Sal was wearing?

4 A. Because I was -- we had an argument before he shot
5 me.

6 Q. So -- so, Mr. Harper, your testimony today is that
7 the shooter ran up and unloaded the gun into the kid; correct?

8 A. Yes.

9 Q. Okay.

10 A. He dumped the clip, if you want to be precise.

11 MR. GOODMAN: Thank you.

12 THE COURT: Redirect.

13 MS. DEMONTE: Thank you.

14

15 REDIRECT EXAMINATION

16 BY MS. DEMONTE:

17 Q. Now, Jonathan, I want to start with the questions he
18 just asked you about what Sal was wearing. And he said -- he
19 asked you what Sal was wearing the night of the shooting. What
20 shooting were you talking about when you answered?

21 A. I was talking about when he shot me.

22 Q. When Sal shot you?

23 A. Yes.

24 Q. Okay. On February 6th, 2006, did Sal make it to the
25 school?

1 A. He was on the way with Edshel and his older brother.

2 Q. Okay. Did you ever see Sal get to the school?

3 A. No.

4 Q. Okay. Now, counsel asked you about testifying at
5 the Preliminary Hearing, that you were promised you wouldn't be
6 prosecuted. Do you remember who you said at the Preliminary
7 Hearing made that promise to you?

8 A. Um, um, I know she's short, black hair, and, um --

9 Q. Do you remember telling -- okay. It was not me?

10 A. No.

11 Q. It was not Miss Jimenez?

12 A. No.

13 Q. Okay. Would it refresh your recollection as to who
14 you testified about that promise to if I showed you what you
15 said?

16 A. Yes.

17 Q. Okay.

18 (Pause in proceedings.)

19 BY MS. DEMONTE:

20 Q. It's right here (indicating). Do you remember?

21 A. Yes.

22 Q. Is your memory refreshed?

23 A. Yes.

24 Q. Okay. Who did you say made you that promise?

25 A. Mogg.

1 Q. Okay. And is Mogg a detective?

2 A. Yes.

3 Q. All right. Now, Jonathan, last week you said -- you
4 told counsel that you -- you went over your statement with me.
5 Did we look at it together, or did we just listen to it?

6 A. We listened to it.

7 Q. Okay. How -- do you speak better now than you did
8 then?

9 A. Yes.

10 Q. Okay. In what way?

11 A. In all ways. You know, you can understand me while
12 I'm talking, you know. Before I couldn't -- I could barely
13 talk.

14 (Sotto voce at this time.)

15 BY MS. DEMONTE:

16 Q. Now, Jonathan, I'm going to start with your
17 statement to Detective Mogg, and that was April 1st, the one we
18 listened to?

19 A. Yes.

20 Q. Okay. And counsel showed you page 5 and asked you:
21 Isn't it true you never said E was at Sal's house?

22 A. Yes.

23 Q. Okay. Do you remember for sure, as you sit here
24 today, whether or not you told the police that E was at Sal's
25 house?

1 A. No.

2 Q. Okay. Would it refresh your recollection if I
3 showed you page 3?

4 A. Yes.

5 Q. Thank you.

6 A. (Witness complies.) Yeah.

7 Q. Okay. Is your memory refreshed?

8 A. Yes.

9 Q. Okay. So did you tell the police that E was with
10 you that night?

11 A. Yes.

12 Q. All right. Now -- now, counsel again asked you
13 about whether or not you mentioned Puppet giving the gun to E
14 in your Voluntary Statement.

15 Do you remember whether or not you said that to
16 the police on April 1st?

17 A. I don't remember.

18 Q. Would it refresh your recollection if I showed you
19 page 18 of that statement to the police?

20 A. Yes.

21 Q. Okay.

22 A. (Witness complies.)

23 Q. Is your memory refreshed?

24 A. Yes.

25 Q. So did you tell the police that Puppet gave the gun

1 to E?

2 A. Yes.

3 Q. Now, counsel then asked you to fast-forward to a
4 Preliminary Hearing, which was, for the record, December 18th
5 of 2008, so two and a half years later.

6 A. Yes.

7 Q. Do you remember being there?

8 A. Yes.

9 Q. Okay. And it was in this building (indicating)?

10 A. (No audible response.)

11 Q. Is that a yes?

12 A. Yes.

13 Q. Okay. Now, counsel showed you page 24 and asked you
14 about you testifying that E was wearing all black. But do you
15 remember if you corrected yourself?

16 A. Yes.

17 Q. You actually --

18 MR. GOODMAN: Objection -- I'm going to object,
19 Your Honor, as to correction.

20 THE COURT: Sustained.

21 BY MS. DEMONTE:

22 Q. Do you remember if you changed your answer?

23 A. Yes.

24 Q. Okay. And what did you change your answer to?

25 A. I changed it to he was wearing a black -- he was

1 wearing a gray hoody.

2 Q. And why did you change your answer?

3 A. Because that's what he was actually wearing.

4 Q. Okay. Now, you also testified even two years after
5 that in front of the Grand Jury.

6 Do you remember that?

7 A. Yes.

8 Q. You told me a lot that you didn't remember things?

9 A. (No audible response.)

10 Q. Is that a yes?

11 A. Yes.

12 Q. Okay. Why did you tell me you didn't remember
13 things at Grand Jury?

14 A. Because I had to look over the papers and refresh
15 myself.

16 Q. Okay. Do you like coming to Court to testify in
17 this case?

18 A. No.

19 Q. Do you like that we have been bothering you over the
20 years to talk about this case?

21 A. You gotta do what you gotta do.

22 Q. But do you like it?

23 A. No.

24 Q. Okay.

25 A. I'm just -- I mean -- I'm doing what I'm supposed to

1 do.

2 Q. All right.

3 (Sotto voce at this time.)

4 MS. DEMONTE: Pass the witness.

5 THE COURT: Recross.

6 MR. GOODMAN: Thank you, Your Honor.

7

8

RECROSS-EXAMINATION

9 BY MR. GOODMAN:

10 Q. In your recorded statement, you said that -- or do
11 you recall saying that -- well, you didn't know when you went
12 to the park that you were going to shoot anybody or have
13 somebody in your gang shoot somebody; correct?

14 A. Yes.

15 MS. DEMONTE: Objection, outside the scope of
16 redirect.

17 MR. GOODMAN: It's the same page as she just
18 impeached him -- the witness with.

19 THE COURT: I can have him recalled at a later date,
20 or I can just allow it, so I'm just going to allow it. How's
21 that?

22 MS. DEMONTE: Okay.

23 BY MR. GOODMAN:

24 Q. Before you got there, you knew that Puppet had the
25 gun; correct?

1 A. Yes.

2 Q. Now, we talked about all these statements, this
3 statement, the police statement; correct, which was unsworn,
4 and then your testimony at the Preliminary Hearing and at the
5 Grand Jury, which was -- which was sworn, and it was under
6 oath; correct?

7 A. Yes.

8 Q. Okay. And you also met with the prosecutors;
9 correct?

10 A. Yes.

11 Q. As you said before.

12 And you also met with a defense lawyer and
13 defense investigator before by name of Scott Bindrupt; correct?

14 A. I can't recall that.

15 Q. Do you recall meeting with any lawyers or
16 investigators that represented Evaristo Garcia?

17 A. I think one -- I think one did come by the house,
18 but then I had a seizure, and then that's the last time I did
19 hear about this Court.

20 Q. And when you interviewed with the defense lawyer and
21 the investigator, you told them that you were sick of the
22 prosecutors putting words in your mouth.

23 Do you remember saying that?

24 A. Yes.

25 MR. GOODMAN: Thank you, Your Honor.

1 THE COURT: Do the ladies and gentlemen of the jury
2 have any questions for this witness?

3
4 (Negative response from the jury panel.)

5
6 THE COURT: That's a negative response.

7 Mr. Harper, thank you very much for your testimony.
8 You are excused. Thank you.

9 THE WITNESS: Thank you.

10
11 (Whereupon, at this time the witness was excused.)

12
13 THE COURT: May I see counsel up at the bench.
14 And, ladies and gentlemen, I'm going to start my
15 admonishment right now.

16 During this recess you are admonished not to
17 talk or converse among yourselves or with anyone
18 else on any subject connected with this trial;

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

24 Or form or express any opinion on any subject
25 connected with the trial until the case is finally

1 submitted to you.

2 (Bench conference outside the presence of the jury
3 reported as follows:)

4 THE COURT: Do you have the gang expert coming on
5 after lunch, is that what you are looking at?

6 MS. PANDUKHT: This afternoon, yes.

7 THE COURT: Are we taking another break before that?

8 MS. PANDUKHT: Yeah, we have several witnesses
9 before.

10 THE COURT: Oh. Tell me about when is that gang
11 expert coming.

12 MS. PANDUKHT: Well, we have a CSA, a detective --
13 you know, it will be later in the afternoon just because we
14 have several witnesses before, I bet we could do it after
15 your -- after your afternoon break.

16 THE COURT: So let me do over an hour now because I
17 was giving them an hour and a half to argue that.

18 MS. PANDUKHT: It's up to you. Whatever you want.

19 THE COURT: Let me give them an hour and a half and
20 that way they only come back once and break it --

21 MS. PANDUKHT: And do you want to do it now or after
22 you've read everything?

23 THE COURT: Oh, yeah, what I'm going to do is give
24 them an hour and a half, give you guys an hour, come back after
25 we've all read it after lunch, and you can argue for a half

1 hour before the next witness.

2 MS. PANDUKHT: Okay.

3 THE COURT: But here's the deal, if we're not done,
4 I want to get started and you can pick up wherever you are done
5 arguing on the next break. Okay? So if we're not fully
6 done -- I don't want to keep them waiting like we did this
7 morning. It's just not courteous.

8 MS. PANDUKHT: We'll try to do it --

9 THE COURT: If it's not done in a half hour, I'm
10 just telling you -- I'll let you argue and keep making your
11 record. I'll just spill into the afternoon.

12 MR. FIGLER: It's --

13 MS. PANDUKHT: We can do that -- we can do that,
14 Your Honor.

15 THE COURT: Well, it's gone longer before, so --
16 okay.

17 MS. PANDUKHT: Okay.

18 (End of bench conference.)

19 (Proceedings back in the presence of the jury.)

20 THE COURT: We're back on the record.

21 So, ladies and gentlemen, I am going to give you --
22 let's see.

23 I may give you an hour and a half lunch. Be happy.

24 So it gives you a little bit more time.

25 We're going to come back on the record at about

1 3:15. That gives you an hour and a half exactly for lunch.

2 I've given your admonishment, have a good lunch.

3 Just wait outside the hallway at an hour and a half,

4 3:15 -- did I say it wrong? Or, I'm sorry, 2:15.

5 Wow, that's a really great dinner break -- I mean a
6 lunch break. Okay? I've been on the record since nine, so I
7 gotta give my staff a break. I'm sorry. 2:15.

8

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

11

12 THE COURT: All right. We're outside the presence.
13 I'm going to see the attorneys at 1:45 -- not 1:45,
14 right?

15 MS. PANDUKHT: 1:45.

16 MS. DEMONTE: 1:45.

17 THE COURT: 1:45 we'll go back on the record outside
18 the presence. Okay? Have a good lunch.

19 MS. PANDUKHT: Thank you.

20 MS. DEMONTE: Thank you.

21 MR. FIGLER: Thank you, Your Honor.

22 (Recess in proceedings.)

23

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

1 THE COURT: We're back on the record on State of
2 Nevada versus Evaristo Garcia, Case Number C262966.

3 And let the record reflect the defendant is present.
4 We're outside the presence of the jurors.

5 MS. PANDUKHT: I'm going to get Noreen.

6 THE COURT: Sure.

7 We have defendant present, Mr. Goodman, Mr. Figler,
8 and --

9 THE CLERK: Everybody.

10 THE COURT: We're going to have the prosecutors in a
11 second.

12 They gave me a case for me to read.

13 Now I have both prosecutors present.

14 MS. DEMONTE: Sorry, Your Honor.

15 THE COURT: So, anyway, I just had read
16 Origel-Candido. Did you give any to the defense what you gave
17 to me by any chance?

18 MS. PANDUKHT: You know, I didn't because they cited
19 it in their proposed instructions, so I thought --

20 THE COURT: Oh, well --

21 MR. FIGLER: We know Origel --

22 THE COURT: Well, because Origel seems to be, like,
23 you know, against the State as far as allowing a gang expert
24 testimony if it's not sufficiently, you know, they really -- if
25 they go into conclusory facts that it's a criminal street gang,

1 Supreme Court reversed on that level.

2 MS. PANDUKHT: Yes, because when --

3 THE COURT: It wasn't really important, but, okay.

4 MS. PANDUKHT: Well, the reason why --

5 THE COURT: Can you see that new case that came
6 down --

7 MR. FIGLER: Unpublished, but a lot more detail.

8 THE COURT: Well, yeah, I know.

9 MR. FIGLER: A lot more that they don't have in this
10 case.

11 THE COURT: Well, that's what I'm saying. I mean I
12 look at that, and you both had an opportunity to read that
13 Furman's (phonetic) recently, and it's, like, of last month, so
14 I know it was not published but, you know, I've only had an
15 hour to really read this stuff.

16 So my understanding is defense is going to object to
17 the expert; is that right?

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

19 THE COURT: So I looked at your Power Point, too, so
20 go ahead and argue it.

21 MS. PANDUKHT: Do you want me to argue it?

22 THE COURT: They have an objection and --

23 MS. PANDUKHT: I don't mind going forward.

24 THE COURT: And assuming the objection is also to
25 the Power Point that they gave to me just for me to look at.

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

2 THE COURT: What part of the Power Point are you
3 not -- maybe you should make your argument and then -- more
4 fuller, and then I'll let them respond.

5 MS. PANDUKHT: Thank you.

6 MR. FIGLER: Sure, Your Honor.

7 As it goes -- and let me just give you a little bit
8 of context of our argument first.

9 Is that we don't feel that, in the light viewed most
10 favorable to the State, at this point, and with the exception
11 of the gang expert to come, I don't believe the State can make
12 an offer of proof that there's any more evidence that's going
13 to come before the Court that they could -- with the light most
14 favorable to the State, show that this fight was in furtherance
15 of any gang activity or promotion of the gang in any way.

16 That the gangs sometimes fight, that's as best as
17 they got out of Harper, nothing beyond that.

18 This is all about some girl and some boy who had a
19 dispute, and they just came to one of their buddy's aid.

20 There was no intention to shoot anybody. No
21 intention to kill anybody. This kid, Victor, isn't even in
22 anybody's gang.

23 And there's no evidence so far that Evaristo is part
24 of anybody 's gang. He's with some of the gang members by
25 their light most favorable.

1 So they don't get to -- they don't get to the point
2 where, by any stretch of the imagination, this could be in
3 furtherance of the gang.

4 That said, now we have to look at what they want to
5 do to prove that a gang under the law exists for the jury's
6 consideration.

7 THE COURT: Mm-hmm.

8 MR. FIGLER: And now we look at this Power Point,
9 and so now we finally have a road map of what the State intends
10 to do.

11 Now, prior to us getting this road map, here's what
12 we do know, that Evaristo Garcia had no field investigation
13 cards on him, not a one.

14 That Evaristo Garcia has never been arrested for any
15 criminal activity whatsoever in Juvenile Court at all.

16 What we know is that Evaristo Garcia has never
17 admitted to participation or -- or being part of this gang to
18 anyone at any time.

19 And we don't have any of the PL on him (indicating)
20 or the one three on him or the Puros Locos on him at any time,
21 even currently.

22 Subsequent to all of this, he winds up getting the
23 words "east" and "side" tattooed on his body, so we have that
24 now. The State can't establish that that was even anywhere
25 near his body before this happened. Okay.

1 So that's who Evaristo Garcia is in 2006.

2 Completely off everyone's radar and none of the
3 traditional indicia and none of the admissions or connections
4 to a gang of any sort.

5 Now we've got this Power Point where -- and we've
6 been asking for any other documentation that this is a gang, or
7 that he is in the gang.

8 They gave us a bunch of Field Investigation Cards,
9 and Your Honor is aware of those; right?

10 THE COURT: Mm-hmm.

11 MR. FIGLER: Okay. With pretty much a lot of these
12 folks, Edshel Calvillo and Manuel Lopez and Giovanny and all
13 these guys' field cards, okay, but as far as arrests go, the
14 best they could come up with for the whole gang is one guy in
15 '05, who has never been mentioned by anybody here, has a PCS,
16 with intent I think. No other gang member or any other
17 associate is there in that crime.

18 There's another one where Puppet winds up with a
19 PSV. And then there's a bunch of prison stuff for some of
20 these guys involved with Surenos, which now they want to come
21 in and say is affiliated with -- with Puros Locos.

22 Interestingly enough, in this Hernandez case, they
23 say that Surenos is affiliated with Brown Pride.

24 THE COURT: Yeah, I just read that in the --

25 MR. FIGLER: Yeah, yeah. So I mean it's all

1 conjecture, it's all speculation.

2 But the bottom line is here that that's what they
3 want to bring in, so they want to bring in priors, which -- or
4 other bad acts of other people by association, which I know
5 there's a limiting instruction, but if that limiting
6 instruction is grossly outweighed by the prejudice of it, the
7 Court can deny it to come in.

8 I know they want to try to establish that there was
9 a criminal gang in effect because those priors, but I don't
10 think that anyone in this room truly believes that that's a
11 legal sufficient standard to show that the purpose of this gang
12 is felonious activity.

13 I mean, Jiminy Cricket, if for 30 years they've been
14 trying get Hell's Angels to be a criminal gang for purposes of
15 enhancements, and no one has been able to do that yet in any
16 Clark County courtroom or in federal.

17 You know, I don't see how this would amount to it.

18 But more importantly, on the last part of the Power
19 Point, not only do they have east side as the tattoos, which
20 they cannot say when those were put on Evaristo Garcia, but now
21 they're saying, in the Power Point, Evaristo Garcia is
22 documented as affiliating with Puros Locos gang. Documented.

23 I got no documentation. That -- that is conclusory.

24 Evaristo Garcia is referred to as a member of
25 Puros Locos through a reliable source.

1 They have not revealed the reliable source. I don't
2 have any information on the reliable source.

3 MS. PANDUKHT: That information is contained in the
4 jail incidence that I have provided to the defense.

5 THE COURT: Is that after the fact though?

6 MS. PANDUKHT: After the fact, but that's where that
7 information came from.

8 MR. FIGLER: Two years later -- three years later.

9 THE COURT: Somebody can join a gang in jail.

10 MR. FIGLER: Yeah. And sometimes they have to,
11 quite frankly.

12 MS. PANDUKHT: I'll respond to everything, I just
13 want to clarify that I didn't hide that.

14 THE COURT: I mean it's pretty clear from the
15 testimony, by the way, that he wasn't in the gang when this
16 occurred.

17 MS. PANDUKHT: If I could --

18 THE COURT: Go ahead. Unless I've been sitting
19 through a different trial, I -- I did not hear that he was part
20 of a gang.

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

22 So all this stuff --

23 THE COURT: I mean, even somebody sitting here,
24 Edshel whatever, I can't say his name, looked at him and goes:
25 He wasn't in the gang.

1 MR. FIGLER: Right.

2 And so our whole contention is that this now becomes
3 so grossly prejudicial, because that he's being accused of
4 being around these people, et cetera, that they can't even
5 show, under the light most favorable to them, that a gang
6 exists, let alone that he's in the gang, let alone that all
7 this other stuff that's in this Power Point, I mean it is
8 opening up a remarkable can of prejudice here on our client
9 without any backup whatsoever.

10 And do we object to the entire Power Point.

11 We really think at this point that the State
12 shouldn't even be able to pursue, now that they've given their
13 full offer of proof to the Court, this gang enhancement in this
14 particular matter; or the alternative, that there be a directed
15 verdict on with regard at least to the enhancement by the time
16 we get to jury instructions, because what we're really doing is
17 laying on the --

18 THE COURT: I don't want to talk about jury
19 instructions.

20 MR. FIGLER: Okay. So I'll go off on that.

21 THE COURT: Because we've got five minutes.

22 MS. PANDUKHT: So --

23 MR. FIGLER: So we're talking about this.

24 THE COURT: Okay. We're talking about expert and
25 Power Point right now.

1 MR. FIGLER: Right. So we think that the expert is
2 inappropriate given the fact the Power Point is remarkably
3 prejudicial and doesn't have the proper foundation.

4 We'll submit it.

5 MS. PANDUKHT: Thank you, Your Honor.

6 Okay. First of all, there is no requirement that
7 the defendant or the victim actually be a member of a criminal
8 gang. I refer you --

9 THE COURT: That helps when they're --

10 MS. PANDUKHT: But I just want to -- Your Honor,
11 there is no --

12 THE COURT: It almost defies logic. I can't believe
13 you're saying that.

14 MS. PANDUKHT: But, Judge --

15 THE COURT: It defies logic.

16 MS. PANDUKHT: True, because in the statute -- in
17 the statute it directly states, Your Honor, in 139.168, that a
18 person who is convicted of a felony commit --

19 THE REPORTER: Slow down.

20 MS. PANDUKHT: Sorry.

21 She said I was rushing --

22 THE COURT: Go ahead. I'm going to let you --

23 MS. PANDUKHT: Please let me. Thank you, Judge.

24 -- who is convicted of a felony, committed knowingly
25 for the benefit of, at the direction of or in affiliation with

1 a criminal gang with the intent to promote, further or assist
2 the activities of the criminal gang.

3 There is no case and no statute, Judge, that says
4 that the defendant or the victim must be a member of the
5 criminal gang.

6 But he has to --

7 THE COURT: P.S., the victim is not in a gang,
8 conclusory. And he -- there's been not one -- not one person
9 has testified that this defendant is a member of that gang.

10 MS. PANDUKHT: They did -- if I could continue?

11 THE COURT: Go ahead.

12 MS. PANDUKHT: And I think you -- because that will
13 help me direct the Court's questions.

14 THE COURT: Okay.

15 MS. PANDUKHT: And so basically I understand that
16 there were witnesses that had said previously in the discovery
17 that they were -- that he was a member of the gang.

18 THE COURT: Okay. But, P.S., I'm a blank slate
19 listening to trial. I don't care what the discovery said.

20 Police reports say all kinds of things.

21 What I go by is the evidence at trial. So I don't
22 care what the discovery says.

23 MS. PANDUKHT: I just want to --

24 THE COURT: Or what the gang experts say.

25 I know what I heard at trial. Let's stick with the

1 evidence at trial.

2 MS. PANDUKHT: I will. I just want to make sure I
3 make a clear record on everything.

4 THE COURT: Well --

5 MS. PANDUKHT: I just want to make sure I make a
6 record of everything.

7 THE COURT: You know, listen, you've got a very
8 good -- you're an ethical prosecutor.

9 MS. PANDUKHT: Thank you.

10 THE COURT: You bring things because you think it's
11 there.

12 But we're all in the same room right now, and we all
13 heard the same evidence. And the only record that I know of is
14 the record that's made in this trial.

15 And I didn't hear a shred of evidence that this
16 defendant is a gang member, and it was clear that the victim
17 wasn't a gang member, although they're hanging out with some
18 gang members.

19 MS. PANDUKHT: May I continue?

20 THE COURT: Go ahead.

21 MS. PANDUKHT: So as I have stated, the testimony
22 came out through all of the witnesses that there were members
23 of Brown Pride that were there at the school.

24 So we heard testimony, Your Honor, of Crystal and
25 Jesus Alonzo and Brian Marquez, who has previously been a

1 member of Brown Pride Locotes. They were there, and there was
2 an altercation.

3 And I would direct your attention, you heard several
4 witnesses testify, but one of the strongest ones was Crystal
5 Perez. And she testified before how Jesus, who is allegedly
6 one of the leaders of Brown Pride, going up to Giovanny and
7 hitting him up.

8 Now, we didn't get an opportunity to have that
9 defined for the jury. That's something our gang expert could
10 do, but hitting up is challenging another gang member to fight.
11 And that's what our gang expert would say.

12 And then she also described the hand sign that
13 Giovanny Garcia did. And I'm talking about Giovanny Garcia and
14 all of his tattoos and all of his hand signs, and his showing
15 off him being Puros Locos. The reason, because he's the one
16 that gets on the phone and calls up the rest of Puros Locos
17 members at Sal's apartment and says: I need backup, I need you
18 to come up here.

19 We've got challenge to fight that is alleged in this
20 case, and these members of Puros Locos all go, including the
21 defendant, who is there, who the State contends does not have
22 to prove that he's a gang member yet.

23 I mean it's our contention he was trying to earn his
24 membership and become a member of the gang.

25 And my gang expert --

1 THE COURT: You can still do that without a gang
2 expert.

3 MS. PANDUKHT: No, Judge, and the reason --

4 THE COURT: You can still do it without a gang
5 expert.

6 MS. PANDUKHT: No. Can I just explain -- let me
7 explain that matter?

8 THE COURT: Go ahead.

9 MS. PANDUKHT: I know I can't do it without a gang
10 expert because of that Origel-Candido case. I know that the
11 Supreme Court will overturn that enhancement on appeal because
12 of that case, because you just can't have -- this is not
13 sufficient in the Supreme Court's mind. It isn't.

14 And there's evidence that we bring up from lay
15 witnesses that we bring up in this case that is -- is
16 bolster -- you know, it's important evidence.

17 I don't want to belittle the direct evidence you got
18 from witnesses, but I know under the cases that I provided
19 Your Honor, including -- let me cite, I want to make sure --

20 THE COURT: Well, the case -- I mean, you say --
21 here's what the Supreme Court says --

22 MS. PANDUKHT: Hold on, Judge.

23 THE COURT: The fact that individual members
24 committed a felony -- I'm more concerned, quite frankly, with
25 the definition of criminal gang, okay?

1 Because the best you're showing in -- in a slide
2 slow, and Mr. Figler didn't hit on this, but I am going to
3 because I'm having a problem with your slide show where the
4 best felonious thing that they're doing is somebody gets
5 stopped in a car with dope, okay, the intent to sell, in '05,
6 who has not been mentioned. And then you've got Manuel Lopez,
7 who had a PSV. Okay?

8 One of the things the Nevada Supreme Court said in
9 here is that the conclusion of felonious action is a common
10 denominator of the gang.

11 How in the world are you proving that a common
12 denominator of the gang exists here, especially with the Power
13 Point you've presented to me?

14 MS. PANDUKHT: May I address that, Your Honor?

15 THE COURT: Sure.

16 MS. PANDUKHT: Okay. First of all, there is no
17 requirement in the State of Nevada for a specific number --
18 that just, you know, Judge --

19 THE COURT: Oh, God, I don't want reversible error.
20 I know there's no requirement.

21 MS. PANDUKHT: Judge --

22 THE COURT: This is just common sense to me.

23 MS. PANDUKHT: Can I just -- and I don't want to
24 argue with Your Honor, I just want to make a full record of
25 everything that I need to say.

1 THE COURT: Okay.

2 MS. PANDUKHT: So --

3 THE COURT: Good, because you're probably going to
4 appeal me on it.

5 MS. PANDUKHT: No, no.

6 THE COURT: I'm telling you I can think so far
7 ahead --

8 MS. PANDUKHT: That's not my intention, Your Honor.

9 THE COURT: Okay. Go ahead.

10 MS. PANDUKHT: I'm not trying to entrap you,
11 Your Honor.

12 THE COURT: Don't worry, I don't care. Trap me.
13 I'm good.

14 MS. PANDUKHT: Judge -- I'm talking a mile a minute,
15 my apologies.

16 THE COURT: Go ahead.

17 MS. PANDUKHT: Okay. Your Honor, I just want to
18 make for the record that you do not have to provide a
19 specific -- wait, I'm just stating for the record, not a
20 specific number of felonies, but the biggest problem in this
21 particular case is that almost all of these individuals were
22 juveniles, so it is very difficult finding these records of
23 juveniles.

24 THE COURT: Are you kidding me? You're the DA. Are
25 you kidding me?

1 You don't have -- you've got a whole DA juvenile
2 division. You can get anything you want down there. You give
3 me an order, I sign it. Are you kidding me?

4 Yeah, you can. Yeah, you can.

5 MS. PANDUKHT: I just wanted to make --

6 THE COURT: Now that's disingenuous. Come on.

7 MS. PANDUKHT: And --

8 THE COURT: What, are you kidding me?

9 MS. PANDUKHT: We have tried and this is the
10 evidence that we were able to --

11 THE COURT: In seven years you're telling me -- you
12 never came to me with an order to get their juvie records, not
13 one.

14 MS. PANDUKHT: And we've come up with examples that
15 we provided in the Power Point, and I am not trying to be
16 disingenuous with the Court.

17 And let me go back, if I may, also there was a
18 petition for Writ of Habeas Corpus that, you know, brought up
19 the gang enhancement and that was denied, and the motion wasn't
20 filed before, you know -- there was no motion.

21 THE COURT: I don't care about writs right now. I'm
22 talking about excluding testimony of your expert.

23 MS. PANDUKHT: I'm sorry?

24 THE COURT: I don't care about what I did on a writ.
25 Go ahead.

1 MS. PANDUKHT: No, I just wanted to bring all the
2 timing of everything, too, because I feel as though now that we
3 have charged the gang enhancement, and we've had witnesses
4 testify about the gang enhancement, that I should be able to
5 finish that -- you know, because this motion wasn't brought
6 ahead of time to strike the gang enhancement, so because we had
7 a gang enhancement charged, we actually provided all this
8 testimony to the jury.

9 So I think that pursuant to Pineda also versus
10 State, Pineda versus State is 120 Nevada 204, that in that case
11 they spoke about the importance of a person talking about these
12 issues of gang expert, and it's because they have specialized
13 training, knowledge and experience.

14 And in Pineda they said: It is quite probable that
15 the average juror either knows little of gang subcultures,
16 obligations placed upon its members, and the interaction of
17 gang members, either with an individual gang or between
18 members --

19 THE COURT: And that's a defense case. That was
20 reversed because the defense, that District Court Judge didn't
21 allow the defense to bring in gang affiliation on a
22 self-defense claim.

23 MS. PANDUKHT: Agree.

24 THE COURT: Okay. So that's apples and oranges
25 right now. It's apples and oranges, and you're not addressing

1 what I asked you to address.

2 MS. PANDUKHT: Okay.

3 THE COURT: Which, P.S., is how you -- how are you
4 showing me that, based on this Power Point, and we'll mark it
5 as an exhibit, trust me.

6 MS. PANDUKHT: Okay.

7 THE COURT: That under both the definition that
8 you've provided me in the statute and according to
9 Origel-Candido versus State, that that Power Point is anywhere
10 close to what the Supreme Court expects an expert to testify
11 to.

12 Because if I'm going to call him an expert in gang,
13 one of the things you have to look at is -- and this is their
14 words, thanks for bringing it to me -- the fact that individual
15 members committed felony crimes, which benefited the gang --
16 and by the way the PCS with intent in a car doesn't show a
17 benefit of the gang, it's like a kind of an isolated act from
18 what I saw, and you've not given me anything different.

19 And then the other one with Manuel Lopez is a PSV.
20 There's no showing it benefited the gang.

21 In the case that just came down, it was unpublished,
22 that Mr. Figler just talked about, they were talking about
23 drive-by shootings. That's a felony, assault with a deadly
24 weapon, discharge of a firearm in the promotion of a gang.

25 To promote their gang.

1 The two things that you included in your Power Point
2 do not show that the felonies benefited the gang and did not
3 lead to the conclusion that felonious action is a common
4 denominator of the gang.

5 Looking at the light most favorable to everything
6 I've listened to, if everybody who's going to testify testified
7 in this case, after Jonathan Harper you're just putting on, you
8 know, experts and everything else, then I've heard all the
9 testimony. It's not even close.

10 I mean are they a gang? Yeah, they're a gang.

11 Do they wear tattoos? Yeah, they wear tattoos.

12 It's a club of ten and they think they're bad, and
13 they're high schoolers.

14 But it doesn't -- part of the definition of criminal
15 gang is that it's got to be for promotion of felonious conduct.

16 And I just haven't heard anything.

17 And when I look at your Power Point, you know, at
18 best you got -- there's a, like, three slides that I turned to
19 the side, which is somebody in jail, and you have -- you
20 have -- he had some problems in jail, but there's no conviction
21 on that. You know, they're just going to talk about some
22 problems in jail.

23 It's just an event, battery by a prisoner.

24 But you don't have on there that he's convicted of
25 that.

1 That's on the Boxer.

2 In any event, the only two convictions, two
3 convictions in all this time, and we're talking it's been seven
4 years, is a PCS with intent and --

5 MR. FIGLER: PSV.

6 THE COURT: And the PSV.

7 How in the world do you say that this gang is to
8 promote felonious conduct, you know, to promote the gang?

9 MS. PANDUKHT: The battery by prisoner, I believe he
10 was convicted of a gross misdemeanor. I thought it said that
11 in here.

12 THE COURT: Well, that's not a felony last time I
13 checked. Gross misdemeanor is not a felony.

14 Felonious acts the statute requires, not gross
15 misdemeanor acts, not misdemeanor acts, because you know what,
16 you would have met your burden.

17 MS. PANDUKHT: And I --

18 THE COURT: All day, all night. If it was about
19 grosses, misdemeanors, and just crimes, you would have met --
20 you would have met the burden.

21 It's specifically -- the statute says: Felony.

22 MS. PANDUKHT: It doesn't --

23 THE COURT: This is what Mel Harmon used to say, and
24 unfortunately the facts are against you on this.

25 MS. PANDUKHT: Your Honor, I just will -- I wanted

1 to make a record of what -- I can't change the facts,
2 Your Honor.

3 THE COURT: You can't.

4 MS. PANDUKHT: I can't change the testimony.

5 THE COURT: You can't make it any better because
6 it's not.

7 MS. PANDUKHT: But I do want to make sure that I
8 make a proper record of everything that the State intended to
9 do in this case.

10 And I want to make sure that there is no ruling that
11 the State did anything intentional or wrong.

12 THE COURT: Oh, I don't -- I don't find that.

13 MS. PANDUKHT: We proceeded with this gang
14 enhancement.

15 THE COURT: No.

16 MS. PANDUKHT: In my opinion the discovery stated
17 that he was in that gang. Okay?

18 That that discovery from Edshel and Jonathan and
19 every piece of evidence that we have is that this defendant was
20 in that gang with them. So I understand that testimony may
21 have come out a little different --

22 THE COURT: Way different.

23 MS. PANDUKHT: -- at trial, but the State proceeded
24 in good faith.

25 THE COURT: I believe that. I don't doubt that.

1 MS. PANDUKHT: And the State did everything that it
2 could to find out everything it could and presented stacks of
3 FI cards to the defense and incident reports and records and
4 anything that we could find.

5 The reality, Your Honor, is that --

6 THE COURT: Well, didn't this other -- the material
7 witness, he didn't testify before. So you didn't have an
8 opportunity to talk to him.

9 So you weren't aware that he was going to look over
10 and say: That guy is not in the gang.

11 MS. PANDUKHT: No.

12 THE COURT: I understand that.

13 But what about Jonathan Harper? He didn't say this
14 guy was in a gang today, and he's been up here many times.

15 Did he say ever, did he testify that he was in a
16 gang?

17 MS. PANDUKHT: Yes, he said he was in a gang.

18 MR. FIGLER: But that was impeached and it didn't
19 come out.

20 THE COURT: I see. Okay.

21 MS. PANDUKHT: And then, Judge --

22 THE COURT: Interesting. Okay. No.

23 MS. PANDUKHT: Let me say this.

24 THE COURT: That's fine.

25 MS. PANDUKHT: One more thing I want to say.

1 THE COURT: Go ahead.

2 MS. PANDUKHT: The other thing I want to say,
3 Your Honor, is that this gang was a very -- as you know, you
4 know this, this gang was a smaller gang, Brown Pride Locotes
5 and a lot of other gangs are bigger. And this gang got a lot
6 more violent after this incident. And, you know, it -- okay.

7 So, you know, that's -- that's the record the State
8 wanted to make, and I wanted to make sure that -- this I know,
9 if you don't allow the gang expert to testify, correct me if
10 I'm wrong, Ms. DeMonte, but I don't think there's any point in
11 having the gang enhancement without the gang expert testifying.

12 THE COURT: I'm going to grant their motion to
13 preclude the expert based on now that in your case in chief
14 what's been presented to me does not even come close, in the
15 light most favorable, not even close.

16 And I'm going to put in a copy of your Power Point.
17 And if --

18 MS. PANDUKHT: As a Court's Exhibit only,
19 Your Honor; right?

20 THE COURT: As a Court's Exhibit.

21 So that -- and honestly, that's how you make law.
22 And if he's convicted of Murder One and you're unhappy with it,
23 feel free, go ahead -- and because you know what, maybe they
24 need to make law. Maybe they need to make it more clear.

25 But the statute does say specifically felonious --

1 felonies, felonious conduct.

2 And so I just think, you know, it's not the
3 prosecution's fault right now as far as, you know, you believed
4 he was in the gang up until now.

5 It's just the evidence as what I've heard, this
6 defendant's not technically in that gang.

7 And I don't think there's enough to present what you
8 want to present in this -- you know, if I thought there was
9 even, like, enough, I'd just give it to the jury, let them
10 decide.

11 My worry is it's so bad for the State right now on
12 the evidence of gang that, if he's convicted of Murder One --
13 and, P.S., if he's convicted of Murder One with use, okay, you
14 got --

15 THE REPORTER: One person at a time.

16 MS. PANDUKHT: You can't have a second enhancement.

17 THE COURT: What do you care? They already heard
18 all this gang nonsense anyway. Okay?

19 MS. PANDUKHT: Which is why I wanted to make sure
20 you made a ruling that that wasn't improper in any way by the
21 State.

22 THE COURT: I will. I mean these people flip like
23 fishes out of water. Okay? They're flippers. All right?
24 Depending on the day.

25 I think it's pretty obvious that they flip flopped

1 on their testimony all over the place, all of them.

2 So having said that and because of the number of
3 years that have gone by, people have changed their testimony.

4 MS. PANDUKHT: Yes.

5 THE COURT: Okay. That's not the State's fault.

6 I am going to make a finding that the State has not
7 in any way acted in bad faith, has brought this in good faith,
8 okay, but it's been presented.

9 At this point I'm going to stop any further
10 prejudice, and I'm not going to allow, based on their
11 objection, you know, and they're free, even though they can do
12 a motion in limine at any time they feel like they have to
13 object to something, to make an objection, and after reviewing
14 it and reviewing the case law, it's just not even close to
15 being enough to where it would be overly prejudicial, to allow
16 somebody to testify to gang expertise and to make a conclusion
17 in this case, which is ultimately what you're going to ask him
18 to say.

19 You're going to ask him to say, you know, is
20 Puros Locos a criminal street gang?

21 I can't allow him to legally say yes, because I
22 don't think legally, as a matter of law, that it's even close
23 to being what is in the definition. And so it would be too
24 prejudicial.

25 MR. FIGLER: Thank you, Your Honor.

1 MS. PANDUKHT: Um --

2 THE COURT: And whatever you want to do with it, you
3 can change your Information, do what you want, we can deal with
4 jury instructions and the pleadings later, but I can't allow
5 that testimony.

6 That testimony and what is contained, which will be
7 a Court's Exhibit, your -- your Power Point, you know, with all
8 due respect, is so prejudicial, listening -- after I've
9 listened to the facts of what's come out, to put that on, it's
10 just -- it's just beyond prejudicial.

11 MR. FIGLER: And, Your Honor, you understand we
12 brought this up --

13 THE COURT: And I can't even believe -- I don't know
14 what kind of Power Points are brought in these types of cases,
15 but, wow, it's just -- wow.

16 MR. FIGLER: And that's why we brought this to the
17 Court's attention, obviously, under NRS 47.080, if there is
18 going to be a question about admissibility, it's our obligation
19 to bring it to the Court, that's why we did it just now. So
20 thank you, Your Honor.

21 MS. PANDUKHT: And, Your Honor --

22 THE COURT: If it was just a matter of assisting the
23 jury, yeah, to terms what does "hit up" mean? You know, I have
24 no problem with that.

25 But what you're ultimately going to ask him, is

1 Puros Locos a criminal street gang; correct? Under the
2 definition in the statute, okay? It's not, not even close,
3 based on what I've seen and heard at trial.

4 I mean it's just not, and based on even the Power
5 Point.

6 Is it a gang? It's a gang.

7 MS. PANDUKHT: It is --

8 THE COURT: Is it a criminal street gang? It's just
9 not.

10 MS. PANDUKHT: Your Honor --

11 THE COURT: And to have a Metro say that is just --
12 not only error, it's just disingenuous in the Court's opinion.
13 It's just disingenuous based on what I heard. It really is.

14 I don't know how you make a statement otherwise.

15 MS. PANDUKHT: Your Honor, so you -- just so you
16 know, that Power Point was not -- was not prepared by me. It
17 was prepared by the detective. I just want to make that clear
18 for the record.

19 THE COURT: But that's what you were going to show
20 the jury.

21 MS. PANDUKHT: No, I know, I just wanted to say -- I
22 just want to make sure everything is here.

23 THE COURT: Oh, I see, you want to get off the hook;
24 right?

25 MS. PANDUKHT: No, no.

1 THE COURT: You're off the hook, Ms. Pandukht.

2 MS. PANDUKHT: I'm clear on the record because --
3 because I got it last night, and that's when I showed it to
4 defense counsel, so I just want to make it clear, I didn't
5 prepare it and then hide it from the defense.

6 THE COURT: No.

7 MR. FIGLER: We got this one first thing this
8 morning, very first thing she gave it to us.

9 THE COURT: All right. And at the end of the day,
10 you know, my biggest concern is having an officer testify, who
11 hasn't sat through a trial as an expert and to just conclude
12 legally, giving the jury a legal conclusion that based on,
13 quote, his opinion, Puros Locos is a criminal street gang under
14 the definition of an NRS, it's just -- it's not there.

15 MS. PANDUKHT: And in other trials, the gang
16 detective never does sit through the entire trial because he's
17 a witness, and so Judges preclude him from sitting through it.

18 THE COURT: But I bet other trials are about Crips
19 and Bloods and --

20 MS. PANDUKHT: A lot of them are.

21 THE COURT: Really, really big gangs that everybody
22 knows, like I could almost take judicial notice that they are,
23 you know, criminal street gangs --

24 MS. PANDUKHT: So --

25 THE COURT: -- under the definition of Nevada law.

1 MS. PANDUKHT: So your ruling is specific only to
2 the facts of this case?

3 THE COURT: Yeah, only as to Puros Locos and what
4 I've heard in this case.

5 MS. PANDUKHT: In this particular case.

6 THE COURT: You know, if another jury trial goes on
7 in, you know, the department down the hallway, and somebody
8 else testifies that these Puros Locos on a daily basis are
9 doing drive-by shootings on people, then that Judge should hold
10 that as a criminal street gang.

11 It's just not enough in this particular case.
12 That's all I'm saying.

13 MS. PANDUKHT: And at this point all the Judge is --

14 THE COURT: It doesn't even exist today because
15 how -- the three members that it had are in jail.

16 MS. PANDUKHT: You're absolutely --

17 THE COURT: This guy is going off. This guy is in
18 jail. The others guy's in jail.

19 So most of its members are gone.

20 MS. DEMONTE: Right.

21 MS. PANDUKHT: Your ruling today is only excluding
22 the gang expert, and then I would request, you know, tonight,
23 and I'll --

24 THE COURT: You figure it out tonight what you want
25 to do with the rest of it.

1 MS. PANDUKHT: Thank you.

2 THE COURT: But I can't let a gang expert take the
3 stand with that Power Point and testify.

4 MR. FIGLER: Thank you, Your Honor.

5 THE COURT: It would just be error. So --

6 MR. GOODMAN: Could we take a two-minute break,
7 Your Honor?

8 THE COURT: Yeah.

9 MS. PANDUKHT: I would appreciate that. I'll go
10 make a call.

11 (Recess in proceedings.)

12

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

15

16 THE COURT: All right. Please be seated.

17 All right. We're back on the record, State of
18 Nevada versus Evaristo Garcia, Case Number C262966.

19 Let the record reflect the defendant is present,
20 with his attorneys, Mr. Figler, Mr. Goodman; and for the State,
21 Ms. Pandukht and Ms. Demonte.

22 We're still on the State's case in chief, and the
23 State can call their next witness.

24 MS. DEMONTE: State calls Lary Sims.

25

LARY SIMS

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

THE WITNESS: I do.

THE CLERK: Please be seated.

State and spell your full name for the record,
please.

THE WITNESS: My first name is Lary, spelled
L-A-R-Y; my last name is Sims, spelled S-I-M-S.

THE COURT: Go ahead.

DIRECT EXAMINATION

BY MS. DEMONTE:

Q. Sir, how are you employed?

A. I'm a forensic pathologist at the Clark County
Coroner's Office.

Q. And how long have you been there?

A. Almost 15 years.

Q. And what are your job duties as a forensic
pathologist at the Coroner's Office?

A. Well, any case that comes under the jurisdiction of
the Coroner's Office can be assigned to one of the forensic
pathologists there in order to ascertain the cause and manner

1 of death.

2 Q. And is there any specific training that you've had
3 to undergo in order to get the job you do today?

4 A. Yes.

5 Q. And what training is that?

6 A. Well, I'm a licensed physician. I've done specialty
7 training in pathology, just general pathology at Michigan State
8 University. And then I did a fellowship of forensic pathology
9 at the Cook County Medical Examiner's Office in Chicago.

10 And I'm board certified in anatomic pathology,
11 clinical pathology and forensic pathology by the American Board
12 of Pathology.

13 MR. FIGLER: Your Honor, I've been doing homicide
14 cases with Dr. Sims for about 15 years, and so we'll stipulate
15 to his qualification as an expert in this field.

16 THE COURT: I don't know if the State wants to.

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

18 THE COURT: Okay.

19 MS. DEMONTE: May I proceed with the questions?

20 THE COURT: The State will -- with that stipulation
21 then, obviously, the -- the position is going to be a forensic
22 pathologist is an expert in that field.

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

24 THE COURT: All right.

25 THE WITNESS: Thank you.

1 MS. DEMONTE: May -- may I then proceed with the
2 questioning?

3 THE COURT: Yes.

4 MS. DEMONTE: Thank you.

5 BY MS. DEMONTE:

6 Q. Dr. Sims, I want to direct your attention to
7 February 6th of 2006. Did you yourself actually perform an
8 autopsy on the body of the person by the name of Victor Gamboa?

9 A. Yes.

10 Q. Okay. And -- and while you're conducting an
11 autopsy, are photographs taken to document your findings as
12 that is done?

13 A. Yes.

14 MS. DEMONTE: May I approach the witness,
15 Your Honor?

16 THE COURT: You may.

17 MS. DEMONTE: Thank you.

18 BY MS. DEMONTE:

19 Q. Dr. Sims, showing you what's been marked as State's
20 Proposed Exhibits 76 through 84, if you could please flip
21 through those.

22 A. (Witness complies.)

23 Q. Thank you.

24 And do those photographs fairly and accurately
25 depict how the autopsy was documented?

1 A. Yes.

2 MS. DEMONTE: Move for admission of 76 through 84.

3 MR. FIGLER: No objection to that.

4 THE COURT: With no objection, 76 through 84 are now
5 admitted.

6 (State's Exhibits 76 through 84, respectively,
7 were admitted into evidence.

8 MS. DEMONTE: Thank you.

9 BY MS. DEMONTE:

10 Q. Now, Dr. Sims, how does an autopsy -- actually, how
11 do you go about conducting an autopsy?

12 A. Well, start by inspecting the skin surfaces, from
13 the top of the head to the bottom of the feet.

14 And then there's some incisions that are made in
15 the front of the body and on the head, and the internal organs
16 are examined, and then the internal body surfaces are examined.

17 Q. Now, as you're -- as you're inspecting the skin
18 surfaces, are you looking to document injuries or abrasions of
19 that nature?

20 A. Yes.

21 Q. Okay. And were you able to find some on the body of
22 Victor Gamboa?

23 A. Yes.

24 Q. Okay. And you start from head to toe?

25 A. Yes.

1 Q. Beginning with the head what did you find?

2 MR. FIGLER: And just for the record, Dr. Sims is
3 referring to the Coroner's Report, the Autopsy Report.

4 THE COURT: All right.

5 THE WITNESS: His forehead had a linear abrasion at
6 the edge of the scalp. There was also some hemorrhage
7 underneath there.

8 There were several punctate abrasions on the bridge
9 of his nose.

10 He had blood coming out of his nose.

11 His upper lip had a small laceration.

12 And then his left knee had an abrasion.

13 BY MS. DEMONTE:

14 Q. All right. Now, starting with the head --

15 MS. DEMONTE: Your Honor, move to publish State's
16 Exhibit 76.

17 THE COURT: You may.

18 MS. DEMONTE: Thank you.

19 BY MS. DEMONTE:

20 Q. And do you see the injuries you just referred to
21 there?

22 A. Yes.

23 Q. Okay. The first being the top of the head?

24 A. Right. There's an abrasion right there, and then
25 there's some punctate abrasions here on the bridge of his nose,

1 and there's also blood from his -- from his nose.

2 Q. Okay. And then you mentioned an abrasion at his
3 knee. State's Exhibit 84, is that what we see there?

4 A. Right. Yes.

5 Q. Okay. Now, did you also take note of the appearance
6 of his hands?

7 A. Let's see. His fingernails anyway.

8 Q. Okay.

9 A. There was fingerprint -- there was a lot of
10 fingerprint ink on his hands also.

11 Q. Okay. And showing you State's Exhibit 83, do you
12 see what's being documented there?

13 A. It looks like an abrasion.

14 Q. Okay. And that's to the palm of the hand
15 (indicating)?

16 A. Correct.

17 Q. With some dirt?

18 A. Definitely dirt or fingerprint ink or something.

19 Q. Okay. And where else did you note injuries to
20 Mr. Gamboa's body?

21 A. He had a gunshot wound.

22 Q. Okay. And where was that gunshot wound?

23 A. The entrance was on the left back, and the exit was
24 on the abdomen.

25 Q. Now, the entrance on the left back, showing you

1 State's Exhibit 79 (indicating), is that what we're looking at
2 here?

3 A. Yes.

4 Q. Okay. And then the exit you said was on the lower
5 abdomen?

6 A. Let's see. Right, yes, on the right side of the
7 abdomen, correct.

8 Q. Showing you State's Exhibit 80, do you see that
9 depicted there?

10 A. Right. This is the exit wound right there
11 (indicating).

12 Q. Okay. Now, after you conduct the external
13 examination, what do you do next?

14 A. I do an internal examination.

15 Q. Okay. And what's the purpose of the internal
16 examination?

17 A. Oh, on this case would be to understand the
18 trajectory of the bullet.

19 Q. Okay. And how did you go about doing that in this
20 case?

21 A. Made some incisions on the body, removed the
22 internal organs.

23 Q. Okay. And what did you find with respect to the
24 trajectory of the bullet?

25 A. The bullet came in, in the left back. It went

1 through the diaphragm, the spleen, and then it went across the
2 body, went through the aorta and the inferior vena cava, and
3 then exited on the front of the right abdomen.

4 Q. And was this a fatal injury?

5 A. Going through the aorta and the inferior vena cava
6 would have caused a fairly rapid and significant blood loss.

7 Q. Okay. And what does the aorta do?

8 A. It's a main blood vessel that supplies blood to
9 almost the -- the entire body starting at the heart.

10 Q. Okay. And have you seen injuries to aortas before?

11 A. Yes.

12 Q. Okay. Are they, fair to say, fatal?

13 A. I would say probably the fatality rate is near a
14 hundred percent. I guess if you got shot in a surgical suite,
15 they might be able to save you.

16 Q. But that's probably --

17 A. About the only thing, yes.

18 Q. Now, is there anything significant that you found
19 about the -- well, let me ask you this, you made note in your
20 autopsy of a shored exit. What does that mean?

21 A. That means that the -- the -- when the bullet came
22 out in the abdomen, that there was either some heavy clothes or
23 there was some kind of surface that the skin slapped up against
24 and caused some damage to the skin that indicated that
25 something was in close proximity to the skin.

1 Q. And if I were to show you a close-up of that exit
2 wound, on Exhibit 82, can you explain to the members of the
3 jury what you're talking about?

4 A. You can see --

5 Q. You want me to zoom in?

6 A. Can you zoom out?

7 Q. Zoom out? Sure.

8 Or do you want a different photograph that's
9 more further back? Would Exhibit 80 help?

10 A. Yeah, that would probably be better.

11 Q. Okay.

12 A. Yeah. You can see around that there's a lot of
13 ecchymosis -- or contusion, bleeding, and there's also some
14 damage at the very edge, at the very edge of the -- of the
15 wound that that was an abrasion there.

16 So to me that indicated the possibility that it
17 wasn't just a typical exit wound, that it -- the skin had been
18 forced to slap up against something.

19 Q. Could it possibly be a brick wall?

20 A. Sure.

21 Q. Thank you.

22 Now, did I ask you this before, what was the age
23 of the decedent that you examined?

24 A. He was a young man, actually wasn't -- he was only
25 15.

1 Q. 15 years old?

2 A. 15 years of age.

3 Q. Okay. Now, after conducting your external and
4 internal examination, did you reach a conclusion as to the
5 cause of death of Victor Gamboa?

6 A. Yes.

7 Q. And what was that?

8 A. A gunshot wound to the back.

9 Q. And did you reach a conclusion as to the manner of
10 death of Victor Gamboa?

11 A. Yes.

12 Q. And what was that?

13 A. Homicide.

14 (Sotto voce at this time.)

15 BY MS. DEMONTE:

16 Q. What is the -- now, you mentioned the aorta, and I
17 asked you about that. What about the vena cava?

18 A. It's the main blood vessel that brings blood back to
19 the heart.

20 Q. Okay. So aorta out, vena cave in?

21 A. Correct.

22 Q. All right.

23 MS. DEMONTE: Thank you. I'll pass the witness.

24 THE COURT: Cross-examination.

25 MR. FIGLER: Sure.

CROSS-EXAMINATION

BY MR. FIGLER:

Q. Good afternoon, Doc.

A. Good afternoon.

Q. Hey, homicide as a manner, that's a scientific term; correct?

A. Well, it's a general term.

Q. General term?

A. Yeah. And --

Q. It just means by the agency of another person?

A. Correct.

Q. That's all it means?

A. Right.

Q. Okay. Just a couple questions about this, and then I'll let you get on your way.

 You noted that there was only one bullet injury to the body; correct?

A. Correct.

Q. And that's the one that went in and the one that eventually came out; correct?

A. Correct.

Q. Okay. You did note some other injuries. There were some abrasions to the head, face, knee, that sort of thing, you did note that?

1 A. Correct.

2 Q. And those would be consistent with someone who was
3 maybe just in a fight; would you agree?

4 A. Um, well, they're not in a specific pattern of that.

5 The one on the hand may be, but the -- the,
6 um -- and I guess the one on the head could possibly be, the
7 bloody nose.

8 Q. Sure.

9 A. I guess -- I guess probably the one I was thinking
10 about was the knee, which probably would happen when he fell,
11 but I think I would agree with you, the others could -- could
12 be associated with this.

13 Q. And you got one ahead me.

14 The knee is consistent with somebody falling,
15 you've seen that a million times, right?

16 A. Correct.

17 Q. Okay. There was no evidence of somebody then going
18 up to close range and -- and shooting him four additional
19 times, right?

20 A. No.

21 Q. Or three or two?

22 A. No.

23 MR. FIGLER: Okay. Court's indulgence.

24 BY MR. FIGLER:

25 Q. Here's a question: What happens to somebody's

1 clothes?

2 You said he probably came in with clothes at
3 some point, and then, obviously, the photos that we looked at,
4 he's -- he's nude. What happens to those clothes?

5 A. In cases like this, the police process the body
6 prior to me getting it, and they are involved in processing the
7 clothes.

8 Q. Okay. So they were to take it into custody, that
9 would be their business, not yours?

10 A. That is correct.

11 MR. FIGLER: Doc, that's it. Thanks so much.

12 THE COURT: Is there any redirect?

13 MS. DEMONTE: Just one very briefly, please.

14

15 REDIRECT EXAMINATION

16 BY MS. DEMONTE:

17 Q. Counsel had asked you about whether you saw any
18 evidence of close range, what -- what do you define as close
19 range?

20 A. For a handgun it would be within 24 inches.

21 MS. DEMONTE: Thank you. Nothing further.

22 THE COURT: Any recross?

23 MR. FIGLER: None.

24 THE COURT: Do the ladies and gentlemen of the jury
25 have any questions for this witness?

1
2 (Negative response from the jury panel.)
3

4 THE COURT: All right. With a negative response,
5 thank you very much, Dr. Sims. Have a good day. You are
6 excused.

7 THE WITNESS: Thank you.
8

9 (Whereupon, at this time the witness was excused.)
10

11 THE COURT: State, go ahead and call your next
12 witness.

13 MS. DEMONTE: The State calls Maria Lopez.

14 (Sotto voce at this time.)

15 THE CLERK: Could you raise your right hand, please.
16

17 MARIA LOPEZ

18 called as a witness on behalf of the State,
19 having been first duly sworn,
20 was examined and testified as follows:
21

22 THE WITNESS: I do.

23 THE CLERK: Please be seated.

24 State your name full name for the record please.

25 THE WITNESS: Maria Lopez.

1 THE CLERK: Spelled like it sounds?

2 THE WITNESS: Yes.

3 THE CLERK: Thank you.

4

5 DIRECT EXAMINATION

6 BY MS. DEMONTE:

7 Q. Ma'am, how are you employed?

8 A. I'm a crime scene investigator with Huntington Beach
9 Police Department in California.

10 Q. And how long have you been with Huntington Beach?

11 A. Approximately, five years.

12 Q. Prior to moving to Huntington Beach, how were you
13 employed?

14 A. I was a crime scene analyst with Las Vegas
15 Metropolitan Police Department.

16 Q. Okay. And how long were you with the Las Vegas
17 Metropolitan Police Department?

18 A. Approximately, 19 years.

19 Q. Okay. Now, directing your attention to February 6th
20 of 2006, were you employed with Metro at that time?

21 A. Yes, I was.

22 Q. Okay. And as a crime scene analyst?

23 A. Yes, I was.

24 Q. Okay. Now, is one of the duties of a crime scene
25 analyst to also respond to autopsies?

1 A. Yes. On day shifts particularly.

2 Q. And what is the purpose of that?

3 A. It's a continuation -- considered to be a
4 continuation of a crime scene where they're to document the
5 body and any evidence on the body or in the body.

6 Q. Now, I want to direct your attention to a specific
7 event that occurred on February 6th of 2006, did you, the
8 following day, at the direction of homicide detectives
9 Clifford Mogg and Ken Hardy, respond to an autopsy of a person
10 by the name of Victor Gamboa?

11 A. Yes, I did.

12 Q. And what did you do when you got there?

13 A. Take photographs of the -- the body bag, the seal
14 showing that the seal was intact on the body bag.

15 Then the bag was opened, along with personnel
16 from the Coroner's Office, they were also present. And I
17 documented the condition of the body as we found it when we
18 opened the bag and then as we removed the clothing, and
19 additional photographs as necessary or as required by the
20 coroner.

21 Q. Okay. So you documented the body when the bag was
22 first opened and -- and as well as the removal of the clothing.

23 With respect to the clothing, did you do
24 anything in particular with that?

25 A. Just photographs and then I recovered it and

1 impounded it as evidence.

2 Q. Okay.

3 MS. DEMONTE: May I approach the witness,
4 Your Honor?

5 THE COURT: You may.

6 BY MS. DEMONTE:

7 Q. Ma'am, showing you what's been marked as State's
8 Proposed Exhibits 64 through 75, do you recognize those?

9 A. Yes, the clothing found in the body bag.

10 Q. Okay. And are those -- are these photographs --
11 do -- you actually took these yourself, correct?

12 A. Yes.

13 Q. And do they fairly and accurately depict the
14 clothing that you were documenting and then later impounded?

15 A. Yes.

16 MS. DEMONTE: Move for admission of 64 through 75.

17 MR. FIGLER: No opposition.

18 THE COURT: All right. State's Proposed Exhibits 64
19 through 75 now admitted as State's exhibits.

20 (State's Exhibits 64 through 75, respectively,
21 were admitted into evidence.)

22 BY MS. DEMONTE:

23 Q. Now, I'm showing you State's Proposed Exhibit 102,
24 and I'm wondering -- hopefully, you can read through the
25 plastic bag that we placed on it.

1 A. Yes. This is the label that I placed on the bag
2 containing the clothing that I recovered at autopsy.

3 Q. Okay. So the photograph you just looked at document
4 what is inside this bag?

5 A. That's correct.

6 Q. And you -- you've actually -- you've placed this
7 label on here; correct?

8 A. Yes.

9 Q. And you placed this evidence number?

10 A. Yes.

11 Q. Sorry, this event number?

12 A. The report number.

13 Q. Okay.

14 A. Along with the evidence numbers.

15 Q. All right. And you've also got a sticker here that
16 says: Biohazard. Did you place that?

17 A. Yes.

18 Q. And why did you place that?

19 A. Because there appeared to be blood on the -- some of
20 the clothing.

21 Q. Okay. And is that a common thing that you would do?

22 A. Yes.

23 Q. Okay. And why is that?

24 A. The label?

25 Q. Yes.

1 A. It's placed on there to alert whomever is going to
2 be reviewing or analyzing the evidence that there's blood, and
3 so it could be contaminated, et cetera, so they have to take
4 certain precautions.

5 Q. Okay. Now, you yourself placed the clothes into
6 this bag?

7 A. Yes.

8 Q. And were those clothes in your sole care, custody
9 and control from the time they were removed from the body to
10 the time you placed them in the bag?

11 A. Yes, they were.

12 Q. And once you placed them in the bag and labeled the
13 bag, what did you then do with it?

14 A. It's placed in the evidence vault.

15 Q. Okay. And was this bag in your sole care, custody
16 and control from the time that you placed the items in it until
17 the time it was lodged in the evidence vault?

18 A. Yes.

19 Q. And did you place your own seals on this?

20 A. Yes, I did.

21 Q. And is that what we see up --

22 A. Across here.

23 Q. Up here?

24 A. Correct.

25 Q. Now, there's another seal down the side, is that

1 your seal?

2 A. No.

3 Q. Okay. Do you know whose seal that is?

4 A. I believe that's Joe Matvey.

5 MR. FIGLER: I'm sorry, I couldn't hear, Your Honor.

6 MS. DEMONTE: I'm sorry.

7 THE WITNESS: Actually, this one I do not know.

8 BY MS. DEMONTE:

9 Q. You don't know?

10 A. I do not know.

11 THE REPORTER: One person at a time, please.

12 MS. DEMONTE: Sorry.

13 BY MS. DEMONTE:

14 Q. But it says K and then it ends in an H; correct?

15 A. (No verbal response.)

16 Q. I know we're trying to read it through the bag.

17 A. Actually, this would be the personnel number, and
18 the initials are KH.

19 Q. Okay.

20 A. With a 3031 is their personnel number.

21 Q. Okay. And -- and when somebody does something with
22 the clothing at the evidence vault, do they have to sign a
23 chain of custody?

24 A. Yes, they do.

25 Q. Okay. And do you see a chain of custody label on

1 this evidence?

2 A. Yes.

3 Q. And it indicates that there were two signatures;
4 correct?

5 A. Correct.

6 Q. The first one being Joe Matvay (phonetic).

7 A. Correct.

8 Q. Okay. And the second one being -- do you know -- do
9 you recognize that one?

10 A. I do not recognize those initials.

11 Q. Okay. That's fine.

12 MS. DEMONTE: I believe there's not going to be a
13 chain of custody objection on State's Exhibit 102, so the State
14 will move to admit 102.

15 THE COURT: All right. State -- with no objection,
16 State's Proposed Exhibit 102 is now State's Exhibit 102.

17 MR. FIGLER: That's right, Your Honor, no objection.

18 (State's Exhibit 102

19 was admitted into evidence.)

20 MS. DEMONTE: I'll pass the witness, Your Honor.

21 THE COURT: Any cross?

22 MR. FIGLER: Just real briefly, Your Honor.

23 THE COURT: Sure.

24 MR. FIGLER: Do we have the photos that were just
25 admitted?

1 MS. DEMONTE: Yeah, I'm sorry.

2 MR. FIGLER: No, no problem.

3

4 CROSS-EXAMINATION

5 BY MR. FIGLER:

6 Q. So, ma'am, I'll keep it quick.

7 Directly from the body bag into the bag were the
8 items of clothing that were shown to you in these -- these
9 photos (indicating); correct?

10 In other words, these are the things that are
11 inside that bag right now -- this shirt, this shirt, this
12 shirt, these shorts, these shorts, jeans and those items;
13 correct?

14 A. Yes.

15 Q. Okay. And -- and it's important, this chain of
16 custody, because everything has to be preserved and there has
17 to be integrity as you move along the line; correct?

18 A. That's correct.

19 Q. You're trained that that's vital to preserve the
20 integrity of evidence for a case; correct?

21 A. That's correct.

22 Q. Okay. Now, there's also markings on this bag, so
23 when this goes into official evidence impound, people can refer
24 to it by -- by numbers; correct?

25 A. Correct.

1 Q. Okay. And if you do --

2 THE REPORTER: I can't hear when you make all that
3 noise. I'm sorry.

4 MR. FIGLER: I know. It's the bag.

5 THE REPORTER: I know. But it's really difficult.
6 I'm sorry.

7 MR. FIGLER: Got it. No problem.

8 BY MR. FIGLER:

9 Q. If I show you the bag right now, you will be able to
10 tell me that this is Package 11 for the purposes of impound;
11 correct?

12 A. May I refer to the bag?

13 Q. Sure, you can take the whole thing if you like.

14 A. Pack -- packaging in --

15 Q. On impound?

16 A. I don't know where you see Package 11 on there. If
17 I may refer to my report?

18 Q. Yeah, if you could refer to the report?

19 A. That -- that would be Package 2.

20 Q. Two?

21 A. Containing those items.

22 Q. Okay. Oh, I'm sorry, you know what I did, Number 11
23 there is what? I'm sorry.

24 A. Yes, Number 11 is the -- the belt.

25 Q. Oh, okay.

1 A. Yes, that was in the bag.

2 Q. 11 is the belt?

3 A. Yes.

4 Q. So 11 is that belt right there (indicating)?

5 A. Yes.

6 Q. Okay. So if we were to open this up, and I don't
7 think we need to open it up, you're going to find Number 11
8 inside there being the belt?

9 A. That's correct.

10 Q. Okay. Thanks.

11 And then this bag, to your knowledge, has been
12 opened twice and then resealed properly to maintain the chain
13 of custody after you put the items inside that bag; correct?

14 A. That's correct.

15 MR. FIGLER: Thank you. No further questions.

16 THE COURT: Any redirect?

17 MS. DEMONTE: No, Your Honor.

18 THE COURT: All right. Thank you very much. Wait.

19 Ladies and gentlemen of the jury, do you have any
20 questions for this witness?

21

22 (Negative response from the jury panel.)

23

24 THE COURT: Negative response.

25 Thank you very much for your testimony. You're

1 excused.

2

3 (Whereupon, at this time the Witness was excused.)

4

5 THE COURT: Call your next witness.

6

(Sotto voce at this time.)

7

MS. DEMONTE: State calls Ken Hardy.

8

9

KEN HARDY

10

called as a witness on behalf of the State,

11

having been first duly sworn,

12

was examined and testified as follows:

13

14

THE WITNESS: I do.

15

THE CLERK: Please be seated.

16

State and spell your full name for the record,

17

please.

18

THE WITNESS: Ken Hardy.

19

K-E-N, H-A-R-D-Y.

20

THE COURT: Go ahead and proceed.

21

MS. DEMONTE: Thank you.

22

23

DIRECT EXAMINATION

24

BY MS. DEMONTE:

25

Q. Sir, how are you employed?

1 A. I'm retired.

2 Q. And what are you retired from?

3 A. The Las Vegas Metropolitan Police Department.

4 Q. And how long did you work for the Las Vegas
5 Metropolitan Police Department?

6 A. 25 years and 9 months.

7 Q. Okay. And what was your last assignment at the
8 Las Vegas Metropolitan Police Department?

9 A. The homicide section.

10 Q. And how long were you with homicide section?

11 A. 16 years.

12 Q. And what was your job title with the homicide
13 section?

14 A. Detective.

15 Q. Now, I want to direct your attention to February 6th
16 of 2006, were you called out to investigate a shooting at the
17 Morris Sunset East High School?

18 A. Yes.

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

20 A. Yes.

21 Q. And did you have a partner at the time?

22 A. I did.

23 Q. And what was his name?

24 A. Detective Cliff Mogg.

25 Q. And is he still employed with the Las Vegas

1 Metropolitan Police Department?

2 A. Yes.

3 Q. All right. Now, when you respond to a homicide
4 scene, are the duties divvied up between the two detectives?

5 A. Yes.

6 Q. And how are they divided up?

7 A. They are divided up that when we arrive we are
8 briefed by the detectives that are on the scene already. And
9 one detective would be assigned to interview any witnesses, and
10 the other detective would be assigned to document the crime
11 scene.

12 Q. Okay. And who was assigned the task of interviewing
13 witnesses?

14 A. Detective Mogg.

15 Q. And so that left yourself with the crime scene;
16 correct?

17 A. Yes.

18 Q. Okay. Now, Detective, showing you what's already
19 been admitted as State's Exhibit 3, do you recognize this as
20 being the crime scene diagram?

21 A. Yes.

22 Q. Okay. Now, this involved a -- the -- the area of
23 Washington Street; correct?

24 A. Yes.

25 Q. Okay. And were you present when crime scene

1 analysts located various shells and casings on Washington and?

2 A. Yes, I was.

3 Q. Okay. Were you also present during the location and
4 retrieval of a firearm?

5 A. Yes.

6 Q. And where was that located?

7 A. The firearm?

8 Q. Yes.

9 A. It was to the street west of the Morris Academy on
10 Parkhurst, and it would have been south of Washington.

11 Q. And how were you notified that that firearm was
12 found?

13 A. I was notified by an officer at the scene that they
14 had located a firearm in some garbage that was put out to the
15 curb.

16 Q. And was that Officer Rich Moreno?

17 A. Yes.

18 Q. Okay. Now, showing you what's already been admitted
19 as State's Exhibit 36, do you recognize this (indicating)?

20 A. Yes.

21 Q. And what are we looking at there?

22 A. Two toilets that appear to be put out to the curb.

23 Q. And is that where you responded to?

24 A. Yes.

25 Q. Okay. And State's Exhibit 37, what do we see there?