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

3 EVARISTO JONATHAN GARCIA,

4 Appellant,

5 vs.

6 THE STATE OF NEVADA,

7 Respondent.  
8  
9

Supreme Court Case No.: 64221

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11 **APPELLANT'S APPENDIX**

12 **VOLUME 8 OF 11**

13 **(BATES 1391-1591)**  
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1           A.     That is a black semiautomatic handgun in the tank of  
2 one of the toilets.

3           Q.     Okay. Now, Detective, once you were notified by  
4 Officer Moreno that the firearm had been located there, what  
5 did you do?

6           A.     I notified the crime scene analyst, advised him of  
7 it. He came over and took pictures and recovered it.

8           Q.     Okay. And would that be Dan Proietto?

9           A.     Yes.

10          Q.     Okay. And were you present when Dan Proietto  
11 retrieved that firearm?

12          A.     Yes.

13          Q.     And did you observe anyone besides Dan Proietto  
14 touch that firearm?

15          A.     No.

16          Q.     And at your direction, did Dan Proietto then lodge  
17 that into the evidence vault?

18          A.     Yes.

19          Q.     Okay. Now showing you State's Exhibit 100, do you  
20 recognize this?

21          A.     Yes, I do.

22          Q.     Okay. And what is State's Exhibit 100?

23          A.     It is a semiautomatic handgun. It -- it's a box  
24 that appears to contain a semiautomatic handgun, and on the  
25 side of it, it has my initials on one of the seals.

1 Q. Okay. And how do you know that this box contains a  
2 semiautomatic handgun?

3 A. Under the item description, it has an Imez pistol  
4 with a serial number, the caliber, the color, the grip.

5 Q. Okay. And based on the description, is it the same  
6 item that was located by Officer Moreno?

7 A. Yes.

8 Q. Are there other indicia of identification as well  
9 that tell you that that's the same firearm?

10 Does it bear an event number specific to this  
11 case?

12 A. It -- it has the event number for the case, yes.

13 Q. Now you said it bears your seals.

14 Let me ask you this: When it's first lodged in  
15 the evidence vault, that's done by Crime Scene Analyst  
16 Proietto; correct?

17 A. That's correct.

18 Q. And is there a notation on the exhibit itself that  
19 that was done?

20 A. It -- it has his signature and his initials and  
21 P number, yes.

22 Q. And does the -- the evidence label contain also a  
23 chain of custody for that item?

24 A. Yes, it does.

25 Q. Are there names following Dan Proietto's on that

1 item?

2 A. Yes.

3 Q. What's the first name following Dan Proietto?

4 A. I believe it's Alice Maceo.

5 Q. And who is Alice Maceo?

6 A. Alice Maceo worked in our fingerprint section of the  
7 lab.

8 Q. And do you see her seals present on that box?

9 A. There's Dan's.

10 Yes.

11 Q. Okay. And who is the next person after Alice Maceo?

12 A. P number 8,002.

13 Q. And is that a forensic analyst in the firearms  
14 department?

15 A. I believe that's the firearms examiner that examined  
16 the firearm.

17 Q. Now, following the firearms examiner's notation on  
18 the chain of custody, what's the next name on there?

19 A. My name.

20 Q. Okay. And when was that item obtained by you?

21 A. This item I have dated it December 29th of 2010.

22 Q. Okay. And you actually retrieved that for -- from  
23 the evidence vault to open on that date; correct?

24 A. Yes.

25 Q. And what was the purpose of doing that?

1 A. It was an evidence view in preparation of trial.

2 Q. Okay. And who was doing the evidence view?

3 A. It would have been the prosecuting attorney, the  
4 defense attorney, and then myself.

5 Q. Okay. And it was for this case; was it not?

6 A. Yes.

7 Q. And is it fair to say that you actually opened all  
8 the evidence in the vault to show to not only myself but  
9 defense attorneys involved in this case?

10 A. All the evidence that was requested to be viewed,  
11 yes.

12 Q. And this was one item particularly that was  
13 requested to be viewed?

14 A. Yes.

15 Q. And who made that request?

16 A. I would -- I would imagine it was the defense  
17 attorney that wanted to view what was inside this box.

18 Q. Okay. And you actually opened it at the vault?

19 A. Yes.

20 Q. And once you opened it at the vault, did you touch  
21 it in any way?

22 A. Um, I -- I can't recall whether I touched it. When  
23 we do an evidence view, we have our gloves on, and we try to  
24 open the package but not touch it.

25 Whether I did or not I couldn't tell you.



1 Q. But you wore gloves?

2 A. Yes.

3 Q. Okay. And what was the purpose of you wearing  
4 gloves?

5 A. We always wear gloves when we're handling evidence  
6 for contamination, some of the evidence may have blood on it.

7 Q. And did you allow anyone else to touch the item?

8 A. No. We don't -- we don't allow anyone to touch the  
9 item.

10 Q. Okay. Now, after allowing the parties involved in  
11 this case to view this item, did you then reseal it and lodge  
12 it back in the vault?

13 A. Yes, I did.

14 Q. And do you see your seals on that box?

15 A. I do.

16 Q. Okay. Thank you.

17 Now, Detective, on the night of February 6th of  
18 2006, did you make any arrests?

19 A. No.

20 Q. Okay. Was this still an open case for several  
21 months?

22 A. Yes.

23 Q. Okay. I want to direct your attention to April 1st  
24 of 2006. Did you interview a person -- were you present at the  
25 interview of a person by the name of Jonathan Harper?

1 A. Yes, I was.

2 Q. And who also was present?

3 A. Cliff Mogg.

4 Q. Did either you or Detective Mogg give Jonathan  
5 Harper any information regarding the case?

6 A. No.

7 Q. Did either you or Detective Mogg tell Mr. Harper  
8 what to say?

9 A. No.

10 Q. Okay. At the time you interviewed Jonathan Harper,  
11 did you have an identity of the shooter?

12 A. Yes.

13 Q. Okay. And where did you get that information from?

14 A. I don't recall, but in the statement his name was --  
15 his name had been discussed and also a photo lineup had been  
16 prepared, I believe.

17 Q. Okay. I'm sorry.

18 Prior to interviewing Jonathan Harper, did you  
19 have an identification --

20 A. No.

21 Q. Okay.

22 A. I'm sorry.

23 Q. So Jonathan Harper is the person that initially  
24 supplied you with the name?

25 A. And that would have been more of a monicker, I

1 believe.

2 Q. Okay. Now, I want to fast-forward to July 26th of  
3 2006. Were you present at an interview of Edshel Calvillo?

4 A. Yes.

5 Q. Did you give any information about the case to  
6 Edshel Calvillo?

7 A. No.

8 Q. And who was present with you?

9 A. Detective Mogg.

10 Q. Did either you or Detective Mogg tell Edshel  
11 Calvillo what to say?

12 A. No.

13 Q. At some point was an arrest made of a person by the  
14 name of Evaristo Garcia?

15 A. Yes.

16 Q. And did that happen here in the United States?

17 A. No.

18 Q. When is the first time you laid eyes on  
19 Evaristo Garcia?

20 A. The first time was October 2008, I believe the 16th  
21 or the 18th, and it was at McCarran International Airport.

22 Q. And what was the purpose of going to McCarran  
23 International Airport?

24 A. We were to meet with the federal authorities that  
25 were transporting him back to the United States from Mexico.

1 Q. And is that the first time you saw Evaristo Garcia?

2 A. Yes.

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

4 A. Yes.

5 Q. Can you please point to him and describe something  
6 that he's wearing?

7 A. He's sitting behind the table with the blue  
8 long-sleeved shirt on.

9 MS. DEMONTE: Record reflect identification of the  
10 defendant?

11 THE COURT: It will. The record will so reflect.

12 MS. DEMONTE: May I approach the witness,  
13 Your Honor?

14 THE COURT: Yes.

15 BY MS. DEMONTE:

16 Q. Once you met with Evaristo Garcia at McCarran  
17 International Airport, was he then booked into custody for this  
18 case?

19 A. Yes.

20 Q. Okay. Showing you State's -- State's Proposed  
21 Exhibit 111, is that a fair and accurate depiction of Evaristo  
22 Garcia when he was booked into the Clark County Detention  
23 Center for this case?

24 A. Yes, in October of 2008.

25 MS. DEMONTE: Move for admission of State's

1 Exhibit 111.

2 MR. FIGLER: May I do a quick voir dire about that  
3 photo, Your Honor?

4 THE COURT: You may.

5 MR. FIGLER: Thank you.

6

7 VOIR DIRE EXAMINATION

8 BY MR. FIGLER:

9 Q. Sir, did you take the photo you are holding in your  
10 hand?

11 A. I did not.

12 Q. Do you know what the lighting conditions were in the  
13 room where that photo was taken?

14 A. The lighting conditions?

15 Q. In that room, do you know what they are, can you  
16 testify with personal knowledge what --

17 A. I was there when this picture was taken.

18 Q. You were there?

19 A. I was.

20 Q. Okay. Can you describe the lighting conditions?

21 A. They were brighter than in here. They're in the  
22 jail on the left-hand side where the processing counter is and  
23 the cameras, and that's where the booking pictures are taken.

24 Q. Okay. And did you take another photo of him two  
25 months later or three months later?

1 A. I did not, no.

2 Q. Okay. So this just reflects sometime in October of  
3 2008; correct?

4 A. Yes.

5 MR. FIGLER: We'll renew our objection.

6 THE COURT: No, or you have an objection?

7 MR. FIGLER: We do renew our objection.

8 THE COURT: All right. The objection is overruled.  
9 It will be admitted.

10 (State's Exhibit 111  
11 was admitted into evidence.)

12 MS. DEMONTE: Thank you.

13 Move to publish, Your Honor?

14 THE COURT: You may.

15 MS. DEMONTE: Court's indulgence.

16 (Sotto voce at this time.)

17 MS. DEMONTE: I'll pass the witness, Your Honor.

18 THE COURT: Cross-examination.

19 MR. FIGLER: Thanks.

20

21 CROSS-EXAMINATION

22 BY MR. FIGLER:

23 Q. Yes or no, Sergeant; am I correct?

24 A. No.

25 Q. Detective?

1 A. Yes.

2 Q. Thank you.

3 You're able to recognize that guy is this guy;  
4 correct?

5 A. Yes.

6 Q. Now, Detective, I just have a few questions about  
7 your investigation.

8 With regard to identifying ultimately Evaristo  
9 Garcia as a potential suspect in this case, you would say the  
10 first big break came with Jonathan Harper's April 1 recorded  
11 statement to you; correct?

12 A. Yes.

13 Q. And where was Jonathan Harper when he gave that  
14 statement?

15 A. In his apartment.

16 Q. In his apartment?

17 A. Yes.

18 (Sotto voce at this time.)

19 BY MR. FIGLER:

20 Q. And his mother was present at the time?

21 A. Yes.

22 Q. Okay. And you just walked in, turned on the tape  
23 recorder and just started asking questions right away, there  
24 was no preamble at all; correct?

25 A. I can't say that.

1 Q. Okay. And typically you've probably done, what, I  
2 mean we've been doing cases forever, you've probably done a  
3 couple of thousand interviews, if not 10,000 interviews, in  
4 your career, quite a bit; right?

5 A. Quite a few, I don't know the number.

6 Q. A lot though; right?

7 A. Yes.

8 Q. Okay. And it pretty much goes the same way every  
9 time. You go in, introduce yourself to the people, talk about  
10 what you're going to talk about, maybe feel them out a little  
11 bit, and then you say: I'm going to record you now, okay? And  
12 then you turn on the recorder; correct?

13 A. Not exactly like that, similar but not exactly.

14 Q. Okay. But there is some discussion that you have  
15 with the individual about the subject matter you're about to  
16 talk about; correct?

17 A. No, not necessarily.

18 We -- we try not to do a preinterview.

19 Q. Okay. So you're just going in there completely  
20 blind?

21 A. We -- we go in, explain that we're going to record  
22 it, have their permission. And then we turn the recorder on,  
23 everybody that's present, the date and the time, and then we  
24 start to ask the questions about what information they had.

25 Q. So you just randomly picked Jonathan Harper, showed



1 up at his house, turned on the tape recorder, about just  
2 started asking questions about this defense?

3 A. No. My partner, Detective Mogg, had learned that he  
4 may have information in reference to this case.

5 Q. Okay.

6 A. We were able to locate him, and we responded to  
7 gather what -- what information he had.

8 Q. And -- and how did your -- if you know, how did your  
9 partner figure out to talk to Jonathan Harper?

10 A. He had received information.

11 Q. Do you know from whom?

12 A. Other detectives.

13 Q. Do you know where they got it?

14 A. I don't know.

15 Q. Okay. You also know that Jonathan Harper was a  
16 victim of a gunshot head to -- at that same time; correct?

17 A. I had learned that that day at the apartment.

18 Q. And that had to be on Metropolitan Police  
19 Department's radar that the guy got admitted into a hospital  
20 with a gunshot wound to the head; correct?

21 A. Was it on Metro's radar?

22 Q. Yeah.

23 A. It could have been. I -- I'm not aware of it.

24 I wasn't aware of it at the time I -- that we  
25 talked to him that he was on the radar.

1 Q. Okay. So when you walked in there, you had no idea  
2 that the police knew about a gunshot to his head; is that your  
3 testimony today?

4 A. Are you saying the police?

5 Q. Yes.

6 A. I'm telling you I didn't.

7 Q. Okay. Do you know if your partner did?

8 A. I believe my partner had information prior to, that  
9 he was -- had sustained a head injury, yes.

10 Q. Okay. Do you remember what time you started your  
11 interview with Jonathan Harper on April 1st, 2006?

12 A. I can tell you it was in the afternoon, I believe.

13 Q. If I gave you a copy of his Voluntary Statement, do  
14 you think that would refresh your recollection as to when your  
15 interview started with Jonathan Harper?

16 A. Sure.

17 Q. Sure.

18 MR. FIGLER: May I approach, Your Honor?

19 THE COURT: You may.

20 BY MR. FIGLER:

21 Q. Detective, you can just review that. Make sure I'm  
22 giving you the right thing, that that's the Voluntary Statement  
23 of Jonathan Harper from that April date. Is it?

24 A. Yes, it appears to be.

25 Q. Okay. And now I want you to read that, see if it

1 refreshes your recollection as to when you began your interview  
2 with Jonathan Harper.

3 A. Yes, it does.

4 Q. Okay. And I'll take it back from you.

5 To your recollection, when did you start your  
6 interview with Jonathan Harper?

7 A. 1522 hours, which is 3:22 p.m.

8 Q. Okay. And then does it usually say at the end when  
9 it ends?

10 A. It usually does, yes.

11 Q. All right. Why don't you take a look and see if it  
12 says.

13 A. Okay. It does.

14 Q. Okay. And to your recollection then, Detective,  
15 when did the interview with Jonathan Harper on April 1st, 2006,  
16 end?

17 A. At 1545 hours, which would have been 3:45 p.m., and  
18 that would have been about 23 minutes later.

19 Q. Okay. And do you have knowledge that approximately  
20 an hour later, a detective went in there to talk to him about  
21 the gunshot wound to his head?

22 A. No, I do not.

23 Q. You have no knowledge of that at all?

24 A. I was not there when it happened. So what they  
25 talked about I don't know.

1 Q. Okay. So you're telling me that you had no idea  
2 that the gunshot wound was under investigation. You  
3 interviewed him, and you don't know if anyone interviewed him  
4 right after you in the same exact location?

5 A. I did not know that anybody came after us to  
6 interview him.

7 I was aware that he had been shot in the head.  
8 And whether that was still under investigation or not, I don't  
9 know, I was not handling that.

10 Q. Okay. Do you know who Detective Ericcson,  
11 P Number 6218, is? Have you ever heard of that person?

12 A. I do not know who that is.

13 (Sotto voce at this time.)

14 BY MR. FIGLER:

15 Q. All right. So during the course of your  
16 investigation, things are important for evidentiary value, like  
17 DNA, is that true?

18 A. Yes.

19 Q. All right. So if there is a possibility to test for  
20 DNA, especially in 2006, Metro would do that; correct?

21 A. That's a broad statement.

22 Q. It is?

23 A. They -- depending on the case, depending on the  
24 facts, whether they send it out for DNA analysis, it depends  
25 where the item was located, if it was contaminated. There's

1 many variables to -- is DNA evidence important? Yes.

2 When you want to say as far as the analyzation  
3 of it, that's -- that's the next step is to what needs to be  
4 analyzed.

5 Q. Okay. So here we have a murder case; correct?

6 A. Yes.

7 Q. So that is as high priority as cases get within  
8 Metropolitan Police Department; correct?

9 A. Yes.

10 Q. And you're assigned to the homicide division, you're  
11 Ken Hardy; correct?

12 A. Yes.

13 Q. And that is -- they don't just throw newbies on  
14 there, you work your way up to the homicide section; correct?

15 A. You test to get into the homicide section, yes.

16 Q. You have to pass tests to get on there; correct?

17 A. You have to pass an oral board, yes.

18 Q. Okay. And you were the sergeant at one point -- you  
19 were not?

20 A. I was not a sergeant.

21 Q. I keep thinking you were a sergeant.

22 A. Sorry.

23 Q. No problem. If it's up to me I'd promote you.

24 I'm showing you the exhibit, which was  
25 Number 100.

1 MR. FIGLER: May I approach, Your Honor?

2 THE COURT: You may.

3 BY MR. FIGLER:

4 Q. And -- and you talked about that gun. You were  
5 aware of that gun's existence in this case; correct?

6 A. Yes.

7 Q. Okay. And you knew that there was some red-brownish  
8 material on that gun; correct? You noted that in your report?

9 A. Yes.

10 Q. Okay. And sometimes red-brownish material turns out  
11 to be biological in your training and experience; correct?

12 A. Yes, it could be.

13 Q. Okay. And biological information is a good source  
14 for DNA; correct?

15 A. Yes.

16 Q. So if the brown -- and you remember the  
17 brownish-reddish material was on the grip of that -- of that  
18 gun; correct?

19 A. Yes.

20 Q. Okay. So if that DNA is tested, it could lead to a  
21 potential suspect in the case; correct?

22 A. Yes, it could.

23 Q. Okay. Now, the other end of the equation is you  
24 take people's DNA. It's something called a buccal or a buccal  
25 swab; is that correct?

1 A. Yes.

2 Q. And that's something that looks like a Q-Tip that  
3 could be administered to someone's mouth to get their -- their  
4 genetic material; correct?

5 A. Yes.

6 Q. Okay. And you did that for Evaristo Garcia;  
7 correct?

8 A. Yes.

9 Q. Okay. And you did that for Manuel Lopez; is that  
10 correct?

11 A. I believe so.

12 Q. Okay. He was another suspect in this case; correct?

13 A. Yes.

14 Q. And Giovanni Garcia, that was another suspect in  
15 this case?

16 A. He was another person we had spoken to, yes.

17 Q. Okay. And you took his genetic material as well;  
18 correct?

19 A. Whether I did or not, I don't recall.

20 Q. In the course of your investigation, do you have any  
21 recollection that his genetic material was taken?

22 A. I -- I don't recall.

23 Q. Okay.

24 A. I -- I know that Mr. Garcia, Evaristo Garcia's was.

25 Q. Okay.

1 A. Because I physically impounded that.

2 Q. Now, sometimes you also take fingerprints from  
3 people; correct?

4 A. Yes.

5 Q. Okay. There is a fellow you talked to named  
6 Edshel Calvillo, you testified on Direct; correct?

7 A. Yes.

8 Q. Did you ever take his fingerprints at all?

9 A. I don't recall.

10 Q. All right. How about his genetic material, did you  
11 ever take that?

12 A. I don't recall.

13 Q. Okay. A guy named Sal Garcia, did you ever  
14 interview him; do you remember?

15 A. Sal Garcia, I don't recall interviewing him. I'm  
16 not saying that I didn't, especially that night Detective Mogg  
17 was doing the interviews.

18 Q. But you did interview some people, you interviewed  
19 Jonathan Harper?

20 A. Correct.

21 Q. And you interviewed Edshel Calvillo; correct?

22 A. Correct.

23 Q. Okay. Do you remember taking any genetic material  
24 or fingerprints from Sal Garcia?

25 A. I don't recall that.



1 Q. How about Fabian (phonetic) Calvillo, did you take  
2 any fingerprints or DNA, genetic material from him?

3 A. I don't recall that.

4 Q. So now you got this gun, and it was found near the  
5 scene -- just one more question.

6 Are you sure that it was Dan Proietto who took  
7 the gun out of the tank?

8 A. I'm very sure that Dan Proietto recovered the gun  
9 from the tank.

10 Q. Okay. It wouldn't have been -- did you know a  
11 CSA Speas?

12 A. Bill Speas?

13 Q. Yeah, Bill Speas.

14 A. Yes.

15 Q. Was he there?

16 A. I -- I don't recall that. I recall Mr. Proietto  
17 impounding all the evidence from the scene.

18 Q. So you don't have personal knowledge one way or  
19 another if Bill Speas handled that weapon at any time?

20 A. I -- I don't.

21 Q. All right. So back to that weapon, it has obvious  
22 evidentiary value in this particular case to you; correct?

23 A. Yes.

24 Q. So everybody wants to make sure that's handled  
25 correctly.

1                   Back in 2006 how were you able to test the DNA  
2 of the weapon that -- potential DNA on the weapon, what would  
3 do you? Would you do it yourself?

4           A.     No.

5           Q.     Would you send it out to a lab?

6           A.     I would put a request in, and it would be up to the  
7 lab as to how they examined it.

8           Q.     Okay. And did this gun go to the lab to ever be  
9 tested for DNA?

10          A.     I don't recall that.

11          Q.     You don't recall it?

12          A.     I don't recall whether the -- whether it was -- the  
13 DNA was recovered from the gun.

14                   I don't recall if it had ever been sent out for  
15 DNA.

16          Q.     Do you have any recollection about potential DNA  
17 testing in this case?

18          A.     Today, no. I don't recall whether it was done or  
19 not.

20          Q.     Oh, okay.

21                   Was it ever a concern of yours that it wasn't  
22 done?

23          A.     No.

24          Q.     No?

25                   MR. FIGLER: May I approach, Your Honor?

1 THE COURT: You may.

2 (Sotto voce at this time.)

3 MR. FIGLER: You know what, Your Honor, I'm going to  
4 have this marked.

5 THE COURT: Sure.

6 (Defense Exhibit A  
7 was marked for identification.)

8 BY MR. FIGLER:

9 Q. Sir, how do you make DNA requests? Do you fill out  
10 any kind of paperwork or a form?

11 A. Yes, we do.

12 Q. Does this look like a form that you would use to  
13 request DNA?

14 A. Yes.

15 Q. And is that a form that you filled out?

16 A. Yes, it is.

17 Q. Is it in substantially the same condition as it was  
18 when you filled out that form?

19 A. What -- what do you mean by that?

20 Q. Are those the words that you typed on it? Is that  
21 the request that you made? That sort of thing.

22 A. Yes, it appears to be.

23 Q. Does it appear to be altered in any way?

24 A. Well, there's three punches on the left side.

25 Q. Okay, I'll give you that one.

1 Anything else?

2 A. It appears to be a copy of it. It's not the one I  
3 submitted.

4 Q. Okay. But it's the same content as the one you  
5 submitted; correct?

6 A. Yes.

7 Q. And it is -- has your name on the top there,  
8 K-H -- K. Hardy?

9 A. Yep.

10 Q. And it has your P number somewhere on there, I would  
11 imagine, somewhere, or at least it has your name?

12 A. It has my P number on the evidence, yes.

13 Q. Okay. And in this document, isn't it true that  
14 you're worried -- let me rephrase that. I can't say whether  
15 you're worried or not.

16 But you're definitely making a lab request for  
17 DNA on the gun because it looks like you might have sent out  
18 the wrong item to be tested for DNA; isn't that correct?

19 A. I -- I don't recall. I'd have to refresh my memory.

20 Q. In fact, in this document, sir, accidentally  
21 Package 11-A was sent out, which is the belt of the decedent,  
22 to test for DNA, when it was supposed to be the gun; isn't that  
23 correct?

24 A. Can you restate your question, please?

25 Q. It appears from that document, doesn't it,

1 Detective Hardy, that you're hoping that they actually tested  
2 DNA because it seems like somebody accidentally sent  
3 Package 11-A, which is the belt buckle, from the decedent?

4 A. No, that's not correct.

5 Q. Why don't you just read what it says?

6 A. Okay.

7 MR. FIGLER: Actually, can I move for its admission,  
8 Your Honor?

9 THE COURT: Is there any objection by the State?  
10 And is it -- is it Defense A?

11 MR. FIGLER: That's correct.

12 THE COURT: State, do you have any objection to  
13 Defense A being admitted?

14 MS. PANDUKHT: You know, normally documents like  
15 this are not admitted into evidence, but I think he should be  
16 asked about it first, so I'd ask for more foundation to be  
17 laid.

18 MR. FIGLER: Well, I don't know what else to say --

19 THE COURT: There is no other foundation to be laid.  
20 It's his request. You're saying foundation hasn't  
21 been laid?

22 Objection overruled.

23 MS. PANDUKHT: That's fine.

24 THE COURT: It will be admitted.

25 (Defense Exhibit A

1                   was admitted into evidence.)

2 BY MR. FIGLER:

3       Q.     Why don't you just read that into the record, sir.

4       A.     Under the details part?

5       Q.     Yes, please.

6       A.     A request was already submitted on this case, and  
7             the DNA was sent out to LabCorp.

8             If there is an unknown DNA profile, can you  
9             please compare it to the above?

10            It is unclear from the LabCorp results where the  
11            swab we sent them came from.

12            It says rear of slide Item 11-A, which the only  
13            Item 11 I see is from a belt of the victim in the  
14            body bag and a bullet that was recovered at the  
15            scene.

16            Also back in 2006, our lab did not do DNA for  
17            possession of the firearm. Is that still available  
18            to do since it was processed for latents, or was it  
19            done back then?

20            If you have any questions, contact me at  
21            828-3521.

22       Q.     And that was your number back then?

23       A.     Yes.

24       Q.     Sir, you said you opened up the gun for the -- for  
25             the defense attorneys and put it right back.

1 Did you open up the clothes for --

2 A. I -- I don't recall.

3 Q. There's a couple of extra stickers on here.

4 MR. GOODMAN: Dayvid, Dayvid --

5 BY MR. FIGLER:

6 Q. Do you remember opening up this package at all?

7 A. I -- I would have to look at it and see if it has my  
8 initials on the seals.

9 Q. Could you inspect that, please? And what I'm  
10 showing you is State's Exhibit -- oh, golly.

11 THE CLERK: 100.

12 MR. FIGLER: What is it?

13 THE CLERK: 100.

14 MR. FIGLER: 100. And I apologize to the court  
15 reporter for rustling this bag.

16 THE WITNESS: Yes, 100 is the gun.

17 THE COURT: I thought 100 was the gun.

18 MR. FIGLER: I thought so too.

19 THE CLERK: I'm sorry. Let me double-check.

20 Evidence -- yes, you're right.

21 This is 102.

22 MR. FIGLER: 102. Thank you.

23 THE WITNESS: Okay.

24 BY MR. FIGLER:

25 Q. Do you see that you opened this up?

1 A. I do.

2 Q. Okay. And is there another seal that's on there as  
3 well that appears to have been opened?

4 A. What do you mean, another seal?

5 Q. Well, when somebody opens up a package, we've  
6 already explained it to the jury, the person who opens it up,  
7 after they open it, they close it, and they put a seal with  
8 their initials on it; correct?

9 A. Correct. Yes.

10 Q. Okay. And so you opened up this package and put  
11 your initials on it; correct?

12 A. Yes.

13 Q. Do you see anyone else who has done that?

14 A. Right here, this is -- these aren't my initials.

15 Q. Okay. Do you know whose those are?

16 A. No.

17 Q. Okay. That's fine. Thank you, Detective.

18 All right. So where we left it, in 2010 --

19 (Sotto voce at this time.)

20 BY MR. FIGLER:

21 Q. As late as October 17th, 2008, I'm sorry, so that's  
22 over two years after the -- the shooting itself; correct?

23 A. Yes.

24 Q. You were still wondering if anyone did that DNA;  
25 correct?



1 A. Am I still wondering?

2 Q. No, were you back in 2008?

3 A. 2008, I was trying to get clarification as to the  
4 results.

5 Q. Gotcha.

6 Did you ever get that clarification, whether DNA  
7 testing was even done?

8 A. I don't recall.

9 Q. That's what I'm looking for.

10 If it was opened up again to do DNA testing or  
11 to do swabbing, would that be indicated on that box?

12 A. If what was?

13 Q. If DNA testing was done off of that gun, if it was  
14 re-swabbed or anything like that?

15 A. They would have signed a chain of custody.

16 Q. Okay. And the last opening of this was with you  
17 with the defense attorneys; correct?

18 A. Yes.

19 Q. And you put it right back in; correct?

20 A. Yes.

21 Q. You never sent this gun out to anyone to get DNA,  
22 did you?

23 A. Did I send it out to get DNA after 2010? No.

24 Q. At any time. At any time.

25 A. I -- from the -- from the request that you showed

1 me --

2 Q. Right.

3 A. -- it was to compare all the DNA already recovered,  
4 like now the buccal swab that we have from Mr. Garcia.

5 Q. Can you prove to me in any way or point me to any  
6 document that says that this gun was ever actually tested for  
7 DNA?

8 A. No.

9 Q. And in 2008 when you made that request, you were  
10 hoping to get some more information; correct?

11 A. We now had a sample from Mr. Garcia when he was  
12 brought back --

13 Q. Okay.

14 A. -- from Mexico.

15 Q. You never got an answer as to whether that DNA was  
16 done in the gun; correct?

17 A. On the gun, not that I recall.

18 Q. Now --

19 (Sotto voce at this time.)

20 BY MR. FIGLER:

21 Q. Now, there was some testimony that Jonathan Harper  
22 was offered immunity. Do you know anything about that?

23 A. No.

24 Q. Okay. And you were with Detective Mogg when that  
25 interview was done with Jonathan Harper?

1 A. The one on April 1st, yes.

2 Q. Okay. Now, let me see how this goes.

3 When you guys are working a case together, do  
4 you typically share information with each other?

5 A. Typically, yes.

6 (Sotto voce at this time.)

7 BY MR. FIGLER:

8 Q. When you first met Evaristo Garcia in McCarran  
9 Airport, do you -- do you know that he waived extradition to  
10 come back to the United States?

11 A. I don't know.

12 Q. You don't know one way or another?

13 A. No.

14 MR. FIGLER: Okay. Court's indulgence.

15 BY MR. FIGLER:

16 Q. Generally speaking, Detective, if someone admits to  
17 handling a murder weapon, is that an important fact for your  
18 investigation?

19 A. It could be, yes.

20 Q. Okay. So if a person suggests to you -- or not  
21 suggests, but admits to you that they handled the murder weapon  
22 minutes or an hour before the actual shooting, is that  
23 something you're going to look into?

24 A. You would know that if there were any prints  
25 recovered that -- that -- that there's an explanation as to why

1 the prints were there then.

2 Q. Okay. But would that be a person of interest to  
3 you, someone said: Oh, yeah, I -- I had that gun an hour  
4 before?

5 A. It -- would it be of interest, yes.

6 Q. Okay. And during the course of your investigation,  
7 you learned that multiple parties handled that gun; isn't that  
8 true?

9 A. I know that the gun was handled from one person to  
10 another.

11 Q. At least?

12 A. Yes, at least.

13 Q. Okay. Do you know that Edshel Calvillo handled that  
14 gun?

15 A. I don't recall.

16 Q. You don't recall. You're the one who did the  
17 interview with him; correct?

18 A. I believe I was there, yes.

19 Q. Okay. Let me ask you something about that.

20 MR. FIGLER: May I approach, Your Honor?

21 THE COURT: You may.

22 BY MR. FIGLER:

23 Q. I just want you to read this to yourself and see if  
24 it refreshes your recollection, Detective. You don't have to  
25 say what it is. It's Edshel Calvillo's interview. Does that

1 appear to be the transcript of that?

2 I want you to see that page because that's what  
3 I want you to look at.

4 A. It appears to be maybe a partial of it, but --

5 Q. Okay. Do you want the rest? I'll give you the  
6 whole thing. I just want to make it a little easier.

7 Here's the rest of that. Sorry, I didn't mean  
8 to leave that out.

9 A. Okay. Yes.

10 Q. So if I could direct your attention to, I think it's  
11 page 14 -- nope.

12 A. 14 is what you --

13 Q. No, 16 is the one I circled there for you.

14 Could you just review that to yourself for a  
15 second, then I'll have a question to see if that refreshes your  
16 recollection.

17 Tell me when you're done.

18 A. Okay.

19 Q. Okay. Now do you recall that Edshel Calvillo  
20 admitted to you that he handled that gun that night?

21 A. Yes.

22 Q. Okay. So that refreshed your recollection?

23 A. Yes.

24 Q. Did you arrest Edshel Calvillo?

25 A. No.

1 Q. Did you take any DNA from Edshe1 Calvillo?

2 A. I don't recall that.

3 Q. Did you take his fingerprints?

4 A. I don't recall that either.

5 Q. Now, there was a car impounded in this particular  
6 case. Do you remember that?

7 A. I do.

8 Q. Do you remember it being an El Camino?

9 A. Yes.

10 Q. Were you involved in the processing of that at all?

11 A. The processing of the vehicle?

12 Q. Well, let me rephrase that.

13 You're a detective, I know you're not out there  
14 doing the sweeping of dust, but they give you results to that,  
15 don't they?

16 A. They take the photographs --

17 Q. Okay.

18 A. -- and depending on what we're looking for, then  
19 it's usually done in a report from the crime scene analyst that  
20 did it, and what -- what, if any, evidence was recovered.

21 Q. Got it.

22 And that's usually at your direction, if you  
23 find anything of evidentiary value in this El Camino, let us  
24 know; right?

25 A. Yes.

1 Q. Okay. And so you directed that this El Camino,  
2 which you felt was related to the incident, be processed by the  
3 CSAs; correct?

4 A. Yes.

5 Q. Okay. Was there one piece of physical evidence in  
6 that El Camino linked to Evaristo Garcia?

7 A. I don't recall. I -- I don't recall the results of  
8 that. It's seven years now, I don't recall.

9 Q. If there was that would certainly be an important  
10 factor based on your investigation; correct?

11 A. Sure.

12 Q. Sure.

13 And by physical evidence, I mean one piece of  
14 DNA, one fingerprint, any proof of him being in that car, you  
15 understood what I meant by physical evidence; correct?

16 A. I -- yes.

17 Q. Okay. Did you process any other cars in this  
18 particular case, to your knowledge?

19 A. Not that I recall.

20 Q. Did you process a car belonging to Sal Garcia in  
21 this case?

22 A. I don't recall.

23 Q. Did you process a car that Edshei Calvillo said he  
24 was in?

25 A. I don't recall that either.

1 Q. Okay. Oh, wait, Edshe1 Calvillo told you he never  
2 even went over to the school; isn't that correct?

3 A. I'd have to look at his statement.

4 Q. Okay. If he did say he had went over there, that  
5 would be of importance to you, that night?

6 A. There were a lot of people there. Does that mean  
7 he's the one, no.

8 Q. I mean I don't know. Do you know?

9 A. Do I know whether he was there or not?

10 Q. Yeah.

11 A. I don't recall whether he was there or not. I  
12 didn't talk to him at the school. I don't recall whether he  
13 was there that night.

14 Q. All right. You probably would have asked him  
15 though; right?

16 A. I would have asked him what?

17 Q. If he was at the school that night?

18 A. At what point of the investigation whether he was  
19 there or not, yes. And depending on who had told us what the  
20 other stories were as far as corroboration, yes.

21 Q. Okay. And just to refresh your recollection --

22 MR. FIGLER: May I approach?

23 THE COURT: You may.

24 MR. FIGLER: Thank you.

25 BY MR. FIGLER:



1 Q. The statement that I just showed you, that's the  
2 question part.

3 A. Okay.

4 Q. After reviewing that, do you recall asking: Were  
5 you there that night?

6 A. Okay. And I will say that Detective Mogg is the one  
7 who asked him that.

8 Q. Okay. Did you hear that question though?

9 A. Yes.

10 Q. Okay. And he reaffirmed in the negative; is that  
11 correct?

12 A. That's right.

13 Q. Did you do anything to corroborate or prove that he  
14 was telling you the truth on that one?

15 A. There -- there wasn't much to corroborate it or not  
16 other than eyewitness testimony.

17 Q. Okay. Let's talk about the toilet bowls for a  
18 second. The prosecutor showed you pictures of the toilet  
19 bowls.

20 During the course of your investigation, did you  
21 learn that there had been a contractor who was dispatched to  
22 that house to do work on that house?

23 A. Yes.

24 Q. Okay. And you learned that that contractor came  
25 from Home Depot; isn't that correct?

1           A.     I don't know whether I knew the name of the company  
2 and that one of the people had done work on that house.

3           Q.     Okay. And isn't it true that someone of interest in  
4 this particular case was identified as being someone who had,  
5 prior to this night, been assigned to that house; isn't that  
6 correct?

7           A.     Yes.

8           Q.     And that wasn't Evaristo Garcia; was it?

9           A.     No.

10          Q.     Manuel Lopez; wasn't it?

11          A.     Yes.

12          Q.     So Manuel Lopez had previously worked at that house  
13 where that toilet bowl was; correct?

14          A.     Yes.

15                         (Sotto voce at this time.)

16          MR. FIGLER: Pass the witness.

17          THE COURT: Redirect?

18          MS. DEMONTE: Thank you.

19

20                         REDIRECT EXAMINATION

21          BY MS. DEMONTE:

22          Q.     I'll start with where we left off with Mr. Calvillo.

23                         Now, counsel showed you page 16 of

24 Mr. Calvillo's statement and asked you if Edshel told you he  
25 handled the gun that night.

1                   Do you remember if that night was the actual  
2 language used?

3           A.     No, it wasn't that night.  Nothing about the time  
4 specificness of it.

5           Q.     About the handling of the gun?

6           A.     Correct.

7           Q.     Okay.  It was just -- the question was just:  Had  
8 you ever handled it before?

9           A.     Yes.

10          Q.     All right.

11          MS. DEMONTE:  Do you have A?

12          MR. FIGLER:  I thought I --

13          MS. DEMONTE:  It's right there.

14                   (Sotto voce at this time.)

15          MS. DEMONTE:  Okay.  Move to publish?

16          THE COURT:  You may.

17 BY MS. DEMONTE:

18          Q.     Putting on the screen Defense Exhibit A, and I'm  
19 going to zoom in, and so based on this request, you had already  
20 sent DNA to LabCorp; is that correct?

21          A.     Yes.

22          Q.     And would that be the reddish-brown stain?

23          A.     Yes.

24          Q.     And that was swabbed for DNA?

25          A.     Yes.

1 Q. Okay. And you actually submitted a request to have  
2 that swab of that reddish-brown material sent out?

3 A. It would have had to be if it had gone to LabCorp.

4 Q. Okay. And why is that?

5 A. They wouldn't -- the lab would not just send it out  
6 on their own. The detective has to do the request to initiate  
7 the testing.

8 Q. Okay. And what was LabCorp?

9 A. LabCorp was a -- a company that we would send out  
10 our DNA analysis to be done at.

11 Q. Okay.

12 A. A vendor of Metro, say.

13 Q. Was -- back in 2006 was the capabilities of  
14 Las Vegas's Metro -- sorry, of Metro's DNA lab strained, for  
15 back of a letter word -- lack of a better word?

16 MR. FIGLER: Object, Your Honor.

17 That's an impossible question to answer based on  
18 the -- the wording of it, it lacks foundation. What does  
19 strange mean? What does --

20 MS. DEMONTE: I said strained but, okay.

21 MR. FIGLER: Oh, I'm sorry, strained. Anyway, I  
22 don't know what that means.

23 MS. DEMONTE: I'll just ask a different question.

24 BY MS. DEMONTE:

25 Q. Was it common for things to be sent to LabCorp

1 instead of Metro during this time period?

2 A. Back then, yes.

3 Q. And do you know why that is?

4 A. Specifically I know of incidents where they were  
5 either backlogged or they were going through the certification  
6 process again, and everything had to be sent out.

7 Q. Okay. And you're talking about staffing issues?

8 A. The backlog?

9 Q. Yes.

10 A. Yes.

11 Q. Okay. Now, further down -- so -- and you said it's  
12 unclear from the LabCorp results where the swab came from. Do  
13 you remember what you meant by that?

14 A. The only thing --

15 Q. Just off the top of your head do you remember?

16 A. No, other than the results that come back to us, if  
17 we don't understand exactly where that DNA profile was  
18 retrieved from, we would ask for clarification.

19 Q. Okay. So would it refresh your recollection as to  
20 what you meant by that if I showed you the actual LabCorp  
21 results (indicating)?

22 A. Yes.

23 Q. Okay.

24 MS. DEMONTE: May I approach the witness,  
25 Your Honor?

1 THE COURT: You may.

2 THE WITNESS: Okay.

3 BY MS. DEMONTE:

4 Q. Okay. Does that refresh your recollection as to why  
5 you worded your request this way?

6 A. Yes.

7 Q. Was the report that LabCorp sent to you clear?

8 A. No.

9 Q. Okay. Now, showing you State's Proposed Exhibit  
10 109, do you recognize that?

11 A. Yes. It appears to -- it's an evidence package that  
12 contains a swab of this reddish stain from the rear of the  
13 slide with the event number referencing the homicide.

14 Q. Okay. And is there evidence on this package that  
15 that indeed was examined by LabCorp?

16 A. Yes.

17 Q. So you didn't send the wrong thing to LabCorp?

18 MR. FIGLER: Objection, Your Honor. He doesn't  
19 know. He testified he doesn't know what he sent.

20 THE COURT: Sustained.

21 BY MS. DEMONTE:

22 Q. Okay. So you actually did send that that LabCorp?

23 A. This swab was sent to LabCorp to be analyzed, yes.

24 Q. So that did make it to LabCorp?

25 A. Yes.

1 Q. Okay. And that was analyzed by LabCorp?

2 A. Yes.

3 Q. Okay. Now, counsel was asking you about Item 11  
4 being the belt. Do you see any tape on here from LabCorp?

5 A. No.

6 Q. So LabCorp did not open this package and examine  
7 anything?

8 A. Correct.

9 Q. Okay. So in looking at LabCorp' report and in  
10 reading this, was the confusion based on the way the report was  
11 worded?

12 A. Yes.

13 Q. Okay. Now, you also said: Back in 2006 our lab did  
14 not do DNA for possession.

15 Do you know what that means?

16 A. Yes.

17 Q. What did you mean by that?

18 A. It meant that our lab, one of the analysis that is  
19 currently done, or was done when I was still working there, is  
20 that we could have a gun analyzed by DNA for possession,  
21 anybody that would have possessed a gun.

22 Back in 2006 our lab's rules were that they  
23 would not do it. We would have to then go to the fingerprint  
24 lab to try to prove the possession.

25 Q. Okay. So back in 2006 the method for proving

1 possession was fingerprints?

2 A. Yes.

3 Q. And was it solely fingerprints?

4 A. Yes.

5 Q. Now, your question is -- that follows, to your  
6 knowledge, is there something that could -- that happens to  
7 evidence once it's processed for latents?

8 A. It gets destroyed.

9 Q. Okay.

10 A. There has to -- they -- they normally will work in  
11 concert as to who's going to grab what -- if they swab -- if  
12 they swab the gun, it's going to destroy any fingerprint.

13 Q. Okay. And if they process for latents, do they use  
14 chemicals to do that?

15 A. Yes.

16 Q. And would that destroy any DNA?

17 A. It could. I don't recall, but I believe that they  
18 were -- every time we've had to do an analysis that way where  
19 we're asking for both, the latents works with the DNA to swab  
20 the appropriate areas together.

21 Q. Okay. All right. And so in a case where one had  
22 already been done, what's the -- in your experience, what's the  
23 likelihood of being able to do the second?

24 A. We wouldn't request it.

25 MS. DEMONTE: Okay. I'll pass the witness.



1 THE COURT: Any recross?

2 MR. FIGLER: Oh, yes.

3

4 RECROSS-EXAMINATION

5 BY MR. FIGLER:

6 Q. So let me get this straight.

7 A. Yes, sir.

8 Q. In 2006 you know that if you latent examine an item  
9 first before you do the DNA, you're destroying potential  
10 evidence?

11 A. That is my understanding from the lab's directions,  
12 yes.

13 Q. Okay. And that's why, on 2/08/06, you requested  
14 that the pistol --

15 A. I did not request it.

16 Q. Did your partner?

17 A. It says requested by Detective C. Mogg.

18 Q. That's your partner in this case; correct?

19 A. Yes.

20 Q. Why don't you read that document, see if it  
21 refreshes your recollection that specifically the lab was asked  
22 to do DNA before latent print testing was done.

23 A. Okay.

24 Q. Does that refresh your recollection whether that  
25 request was made?

1           A.     Yes, it does, but that doesn't -- that doesn't --  
2 that's the same date as the murder.

3           Q.     So that doesn't mean it was done?

4           A.     I'm telling you that they didn't -- they -- even  
5 though it was requested, they did not do the DNA process  
6 because they chose to go with the -- with the prints.

7           Q.     Your buddy is not asking -- your partner rather is  
8 not asking them to do the DNA?

9           A.     He asked for the DNA, but instead they went the  
10 print route because they didn't do DNA in 2006 for possession.

11          Q.     Well, it's your testimony that if there's biological  
12 material on an item of evidentiary value in 2006 that Metro  
13 does not do DNA testing; is that your testimony?

14          A.     Explain -- rephrase your questions, I guess,  
15 'cause --

16          Q.     If there are potential -- if there is potential  
17 biological evidence --

18          A.     Mm-hmm.

19          Q.     -- on a weapon, no matter what it is, are you  
20 telling me that the policy of Metro in 2006 was not to do DNA  
21 testing; is that your testimony?

22          A.     For possession, yes.

23          Q.     For possession.

24                   To do any DNA testing?

25          A.     No, I didn't say any DNA testing.

1                   Clearly from my -- from my request, in 2006,  
2 Metro was not doing DNA testing for possession.

3           Q.     I hear what you're saying now.

4           A.     Okay.

5           Q.     But if that reddish-brown material is blood, and it  
6 was the person who actually shot this guy's blood, you'd want  
7 to find that out, wouldn't you?  Wouldn't you?

8           A.     Yes.

9           Q.     Okay.  You don't know if it's possession DNA or if  
10 it's something else, you've got a reddish-brown stain on that  
11 gun, don't you?

12          A.     And they -- and they recovered the stain and had it  
13 analyzed, yes.

14          Q.     You keep saying that, but I'm looking for proof of  
15 that.  The prosecutor showed you -- that bag said:  Is there  
16 any evidence that anything was swabbed out of here since the  
17 landmark?  Did you see the landmark seal on there?

18          A.     The LabCorp?

19          Q.     The LabCorp seal.

20          A.     On the bag of clothes?

21          Q.     Right.

22          A.     Yeah, there is not a LabCorp seal on there.

23          Q.     Is this the gun (indicating)?

24          A.     Yes.

25          Q.     And do you see the LabCorp seal on there?

1 A. There wouldn't be.

2 Q. So if --

3 A. The swab was sent to LabCorp.

4 Q. Okay. So if something was swabbed from there by  
5 accident, there wouldn't be a LabCorp seal on there either,  
6 would there?

7 A. If there was something swabbed from that material in  
8 there (indicating)?

9 Q. If there was something swabbed from this bag  
10 (indicating) there would be no LabCorp sticker on there, would  
11 there?

12 A. Correct.

13 Q. Okay. So that was a nonsensical question from the  
14 prosecution; right?

15 MS. DEMONTE: Objection, argumentative.

16 THE COURT: Overruled.

17 BY MR. FIGLER:

18 Q. So that was -- that was an irrelevant question;  
19 correct?

20 A. That was a question. I -- I don't know whether it's  
21 irrelevant or not.

22 Q. Okay. And you could say right now with a hundred  
23 percent confidence that at some point that reddish-brown swab  
24 was taken from Package 10 there and sent to LabCorp, you could  
25 say that?

1 A. No, 'cause it's -- we're talking about Item 11.

2 Q. Yeah.

3 A. So whether it's Package 10, I -- I don't know what  
4 the package number is.

5 The question was the item number that it was  
6 recovered from.

7 Q. Got it. Got it.

8 A. That's the question.

9 Q. Got it.

10 MR. FIGLER: Where's my LabCorp? Thank you.

11 May I approach again, Your Honor?

12 THE COURT: You may.

13 BY MR. FIGLER:

14 Q. Does that look like a LabCorp report?

15 A. Yes.

16 Q. From November 20th, 2006?

17 A. November 27th.

18 Q. Where does it say 27th?

19 A. Right there, November 27th, 2006.

20 Q. Oh, that's when Metro entered it; correct?

21 A. Well, no, it's file stamped with LVMPD forensic lab,  
22 November 27th, 2006.

23 Q. So that's when your forensic lab got that LabCorp  
24 report; right?

25 A. I don't know. I can't answer that.

1 Q. Fair enough. But this looks like a document from  
2 2006, November; correct?

3 A. Yes.

4 Q. And it tells you that they tested one sealed  
5 envelope containing a swab listed as a swab of reddish stain  
6 from the rear of slide Item 11-A; isn't that correct?

7 A. Yes.

8 Q. So someone took a swab of Item 11-A, sent it out for  
9 testing, and it came back with no results to you; correct?

10 A. Correct.

11 Q. The belt buckle is 11 (indicating).

12 You admitted it in that report request saying  
13 that 11 is the belt buckle; correct?

14 A. Correct.

15 Q. So that's the swab we're talking about, a swab from  
16 a belt buckle.

17 No swab was ever taken from that gun to your  
18 knowledge today?

19 A. To my knowledge, that's correct.

20 MR. FIGLER: Thank you.

21 THE COURT: Are you done, Mr. Figler?

22 MR. FIGLER: Oh, yes.

23 THE COURT: Do the ladies and gentlemen of the Jury  
24 have any questions for this witness?

25 (Affirmative response from the jury panel.)

1 THE COURT: We do.

2 I'll see the attorneys at the bench. We will take  
3 our break as soon as we're done.

4 Did you write it down? Okay. Perfect, thank you.

5

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

7

8 THE COURT: How many questions are there?

9 THE MARSHAL: Two so far.

10 THE COURT: Oh, just two, okay.

11 THE MARSHAL: Three.

12 THE COURT: This is from Keith Trombetta, Number 7.

13 MR. FIGLER: We can't hear.

14 MS. DEMONTE: Keith Trombetta, Number 7.

15 MR. FIGLER: DA, he said DA.

16 THE COURT: This is from -- oh --

17 MR. FIGLER: I don't know what that means. I don't  
18 have a problem with any of those questions.

19 THE COURT: Do you have any objection?

20 MS. PANDUKHT: I have another witness that would  
21 probably be able to better answer that, so.

22 THE COURT: I'm -- I think he can answer that.

23 MS. DEMONTE: Okay.

24 THE COURT: I'm --

25 MS. PANDUKHT: Okay.

1 THE COURT: I'm just going to allow it. They have  
2 no objection.

3 This is Juror Number 6.

4 MS. DEMONTE: No objection.

5 MR. FIGLER: That's fine, if he knows.

6 THE COURT: This is from Kristina Beber, Number 8.

7 MS. DEMONTE: No objection.

8 MR. FIGLER: No objection.

9 MS. PANDUKHT: I'm sorry, could I finish reading it?  
10 I'm too slow.

11 No, Judge. That's a good question.

12

13 (Proceedings back inside the presence of the jury.)

14

15 THE COURT: Detective, this is from Number 7,  
16 Keith Trombetta: Can DNA testing and prints be done on same  
17 item of different areas of that item, would both be possible  
18 and both be valid.

19 THE WITNESS: I'm sorry, could DNA testing?

20 THE COURT: Let me say it one more time.

21 THE WITNESS: Please.

22 THE COURT: Could DNA testing and prints be done on  
23 same item on different areas of that item, would both be  
24 possible and both be valid?

25 THE WITNESS: Yes, they could be.



1 THE COURT: Second question from Mr. Trombetta:  
2 Could swab be taken from scene and no seal be added?

3 THE WITNESS: Could swab be taken from scene and no  
4 seal added?

5 THE COURT: Could swab be taken from scene and no  
6 seal be added?

7 THE WITNESS: There -- if the swab was taken from  
8 the scene itself, it would just be impounded -- like say there  
9 was a substance on a wall, they would swab it and they would  
10 impound it as a swab. And there would not be -- just the  
11 original seal would be applied to the evidence envelope.

12 If a package was opened, evidence package was opened  
13 and you had a DNA expert and a firearms expert, is it possible  
14 that they both took the swabs -- or I'm sorry, a latent print  
15 person and the DNA person, could they have removed what was  
16 requested and both of them -- I -- I don't know the answer to  
17 that.

18 But have they -- do they work at the same time to  
19 recover them away from the scene in a laboratory environment?  
20 Yes, they do.

21 So that could explain a seal not being added, I  
22 believe, if that's what the question referred to.

23 THE COURT: Juror Number 6, Angelica Numez: What  
24 number of item is the gun in your report?

25 THE WITNESS: I would have to look at the Property

1 Impound Report, which I don't have with me, as far as what that  
2 item number is.

3 THE COURT: Kristina Beber, Number 8: Would Item  
4 11-A be the same as Item 11, and can there be more than one  
5 Item 11 contained in all of the evidence for this case?

6 THE WITNESS: Normally the -- the evidence marking  
7 procedure is that if this is Item 11, and they remove something  
8 from it, including even like a -- if they were to test fire  
9 this item, it would be A-B-C based on what was recovered from  
10 this item at a later time.

11 And, yes, it's very -- it's very normal to have  
12 different item numbers depending on the different scenes.

13 You could have an Item 11 from the scene and an Item  
14 11 from autopsy, and an Item 11 from a car.

15 It's very common that those -- there could be  
16 multiple Item 11 numbers.

17 THE COURT: Is there anything further from the  
18 State?

19 MS. DEMONTE: Yes, Your Honor.

20

21 FURTHER REDIRECT EXAMINATION

22 BY MS. DEMONTE:

23 Q. With respect to their being multiple item numbers,  
24 to your knowledge, does the Las Vegas Metropolitan Police  
25 Department evidence vault have a different numbering system?

1 A. Yes.

2 Q. Do you know what the -- what number the Las Vegas  
3 Metropolitan Police Department's evidence vault assigned to the  
4 reddish-brown swab?

5 A. No. That's a computer-generated number. I don't  
6 know what that is.

7 Q. Okay. Would it refresh your recollection if I  
8 showed you a Property Return Receipt from the evidence vault?

9 A. Yes.

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

11 THE COURT: You may.

12 THE WITNESS: There's a Property Return Receipt  
13 dated November 17th, 2006.

14 And the -- there's AC numbers, Item 11-A is a swab  
15 of a reddish stain from rear of slide. Quantity is one.

16 Package 2, Item 10.

17 BY MS. DEMONTE:

18 Q. Okay. So 11-A is what the vault gave that numbering  
19 system to?

20 A. Eleven --

21 Q. In the way you read this?

22 A. In the -- in the way I read this, 11-A is assigned  
23 to the Property Return Form. They're calling it Item 11-A.

24 Q. Okay. But it actually has a --

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

1 argumentative and leading.

2 THE COURT: I didn't even hear all the question, so  
3 restate the question.

4 MS. DEMONTE: I'll just ask a different question.

5 BY MS. DEMONTE:

6 Q. So handing you back State's Proposed Exhibit 109,  
7 does this bear a -- a package, an item number?

8 A. This package is the package you showed me previously  
9 from LabCorp' forensic lab.

10 There is no item number right here (indicating)  
11 that would be assigned by the person that impounded it, but  
12 this number up here is 11-A, and this is the computer-generated  
13 from the vault sticker that's applied to it.

14 MS. DEMONTE: Thank you. Nothing further.

15 THE COURT: Any --

16 MR. FIGLER: Just one follow-up.

17 THE COURT: -- follow-up questions?

18 MR. FIGLER: Yeah.

19

20 FURTHER RECROSS-EXAMINATION

21 BY MR. FIGLER:

22 Q. October 17th, 2008, (indicating), you're just not  
23 sure where that reddish-brown stain came from; are you? You  
24 sent that request.

25 A. I'm going to say that the description was from the

1 rear of the slide, so my -- my -- my testimony would be it came  
2 from the back of the gun.

3 Q. Okay. But you didn't know that when you sent it out  
4 in '08, you're trying to figure out what's going on, why you  
5 don't have it?

6 A. No. I was trying to clarify the LabCorp' results.

7 MR. FIGLER: I'll pass.

8 THE COURT: All right. Ladies and gentlemen, we're  
9 going to take a recess, ten minutes.

10 During this recess -- thank you very much,  
11 Detective, for your testimony. You can go ahead and step down.

12

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

14

15 During this recess you are admonished not to  
16 talk or converse among yourselves or with anyone  
17 else on any subject connected with this trial;

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

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

1 THE COURT: Ten minutes.

2 (Recess in proceedings.)

3 MR. FIGLER: Could we have a little record?

4 THE COURT: Let's take a break.

5 THE REPORTER: Yeah.

6 (Recess in proceedings.)

7

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

10

11 THE COURT: State of Nevada versus Evaristo Garcia,  
12 Case Number C6 -- sorry, C262966.

13 Let the record reflect we're in the presence of the  
14 jurors with the defendant here, Mr. Figler and Mr. Goodman.  
15 And also for the State, Ms. Pandukht and Ms. Demonte.

16 And we are on the State's case in chief.

17 Go ahead and call your next witness.

18 MS. PANDUKHT: The State calls Dinnah Angel Moses.

19

20 DINNAH ANGEL MOSES

21 called as a witness on behalf of the State,

22 having been first duly sworn,

23 was examined and testified as follows:

24

25 THE WITNESS: I do.

1 THE CLERK: Please be seated.

2 State and spell your full name for the record,  
3 please.

4 THE WITNESS: Dinnah, D-I-N-N-A-H; Angel, A-N-G-E-L;  
5 Moses, M-O-S-E-S.

6 THE COURT: Go ahead.

7

8 DIRECT EXAMINATION

9 BY MS. PANDUKHT:

10 Q. What is your occupation?

11 A. I am employed by the -- by the Las Vegas  
12 Metropolitan Police Department as a forensic scientist assigned  
13 to the firearms identification unit.

14 Q. How long have you been in that unit?

15 A. In the -- for Metro, I've been working in that unit  
16 for ten years now.

17 Q. And what is your official title?

18 A. Forensic scientist.

19 Q. Did you work in another jurisdiction in your field?

20 A. Yes, I did.

21 Q. What jurisdiction?

22 A. For the Tennessee Bureau of Investigation, I was a  
23 special agent forensic scientist.

24 Q. Now, in terms of being a forensic scientist, what  
25 particular work do you do?

1       A.    My specialty is actually examining firearms -- it's  
2 firearms identification.

3               And I predominantly look at ammunition  
4 components and determine if they have been fired from a  
5 particular firearm.

6       Q.    Could you tell the jury about your education,  
7 training and experience that qualifies you to testify today?

8               MR. FIGLER: Your Honor, we would, at this time,  
9 stipulate to this witness's qualification to testify as an  
10 expert in ballistic analysis and forensic analysis of guns.

11              MS. PANDUKHT: It's basic --

12              THE COURT: If that's acceptable to the State.

13              MS. PANDUKHT: That would be fine because I  
14 understand we're up against a time limit, but it's actually  
15 firearms and toolmark identification.

16              MR. FIGLER: Oh, well, we'll stipulate it's a  
17 toolmark identification as well.

18              THE COURT: All right. All right. And you have no  
19 problem with that stipulation?

20              MS. PANDUKHT: No, that will be fine.

21              THE COURT: Okay. Then that will be the order.

22 BY MS. PANDUKHT:

23       Q.    Okay. So approximately -- I just want to ask one  
24 question about this, approximately how many times have you  
25 testified previously in your field?



1 A. Approximately, 95 times.

2 Q. Now, you were working in your field back in -- let's  
3 see, 2006?

4 A. Yes.

5 Q. Okay. First I'd like you to describe to this jury  
6 if you can explain to them what toolmark identification is.

7 A. Toolmark identification is the examination of marks  
8 that are transferred from one item to another.

9 Any time two surfaces come into contact, one or  
10 both change. Depending on the type of materials that they are,  
11 they can actually leave marks from one item to another.

12 So for a firearm it's any time an ammunition  
13 component touches a particular part of a firearm, it can  
14 actually leave an imprint that's unique to that firearm and can  
15 be identified to that particular gun.

16 Q. So how do you perform a firearm and toolmark  
17 comparison?

18 A. We actually use a comparison microscope.

19 What this comparison microscope is, is a  
20 compound microscope that has two stages so that two objects can  
21 be looked simultaneously through a binocular eyepiece.

22 This allows me to look for microscopic marks.  
23 Those marks -- when those two items touch and transfer marks, I  
24 can look at the microscopic detail to see if there's enough  
25 quality and quantity to make a conclusion.

1 Q. Do you -- are you able, when you have a firearm, to  
2 determine if bullets were fired from that particular firearm?

3 A. Yes. Any time a -- a bullet or a cartridge case is  
4 fired in a gun, it leaves markings because it touches it.  
5 That's part of the nature of when things are fired.

6 And regardless if I have a gun or not, there's  
7 always markings on the bullet. Depending on how much there  
8 are, I can give some type of information about the bullet in  
9 the cartridge case and, if I have a firearm, determine if  
10 that's the particular firearm responsible to firing those  
11 components.

12 Q. Can you explain to the jury how a semiautomatic  
13 firearm works?

14 A. For a semiautomatic firearm, ammunition components  
15 or a cartridge is actually placed in a magazine, and a top  
16 portion called a slide is actually pulled back beyond the  
17 magazine so it picks up a round from there and places into  
18 what's called a chamber of the gun.

19 This is now ready to fire. With the pull of the  
20 trigger, there is mechanisms inside that will actually cause an  
21 internal reaction in the cartridge that then pushes the bullet  
22 outside -- or down the barrel of the gun and out the muzzle of  
23 the -- or the front of the gun, and uses part of that energy to  
24 pull the slide backward so that it extracts and ejects the  
25 cartridge case or the other portion of the -- of the ammunition

1 component, goes forward, picks up a new round and is ready to  
2 fire. Okay.

3 Q. Okay. And could you explain to the jury what a  
4 cartridge is?

5 A. If I may use the demonstration aid?

6 MR. FIGLER: Your Honor, we've already gone over  
7 this evidence what a cartridge is and what a bullet is, and we  
8 would stipulate to all of this.

9 We'd even stipulate to the conclusions of this  
10 witness. I don't know why we need this again, it's redundant  
11 what a cartridge is.

12 THE COURT: Stipulation means both parties agree.

13 MR. FIGLER: Both sides.

14 THE COURT: So thank you for extending that, except  
15 for it's the State's case, and they're the ones that have the  
16 burden of proving it beyond a reasonable doubt.

17 So I'm going to leave it up to the State as to what  
18 evidence they want to put in.

19 And if you have any future stipulations, feel free  
20 to do it so that I can just advise the jury that it's been  
21 stipulated between the parties X, Y and Z.

22 MR. FIGLER: Thank you, Your Honor.

23 MS. PANDUKHT: And I appreciate counsel's offer, but  
24 I would like to present --

25 THE COURT: Right.

1 MS. PANDUKHT: -- this evidence to the jury on this  
2 issue.

3 THE COURT: It's your burden of proof.

4 MR. FIGLER: And I appreciate --

5 THE REPORTER: One person at a time.

6 MR. FIGLER: And I appreciate --

7 THE COURT: I know you're doing that as a courtesy,  
8 but they obviously have the burden, so unless there's -- you  
9 know, it would be easier if you guys do a stipulation in the  
10 future, and that way we don't have to go through this.

11 MR. FIGLER: No, I appreciate it. You understand we  
12 already had evidence about what a cartridge is, what a bullet  
13 is and all that, so that's why I raised it, that's all. But  
14 I'll sit down.

15 THE COURT: Thank you, Mr. Figler.

16 MR. FIGLER: Thank you, Your Honor.

17 THE COURT: Because I can remake my ruling again,  
18 too, but I won't.

19 MR. FIGLER: Sure.

20 THE COURT: Okay.

21 BY MS. PANDUKHT:

22 Q. Go ahead and show us.

23 A. Well, in this case, since it's been used, any time I  
24 want to make a clarification, I'll just look at the different  
25 components.

1                   But essentially, real quickly, a cartridge is an  
2 unfired round that has -- it's a single unit that has four  
3 pieces: It's got a bullet seated at the mouth of a cartridge  
4 case that holds everything together, a primer at the back,  
5 which kind of starts the detonation and gunpowder inside.

6           Q.     And then how do you determine the caliber of the  
7 cartridge?

8           A.     A caliber is actually kind of a difficult thing with  
9 a cartridge because the caliber is part of the name and like --  
10 such as 9-millimeter Luger or 9-millimeter Makarov.

11                   What that is to a person very familiar with  
12 ammunition is it gives an overall characteristic between the  
13 diameter of the bullet, the design of the cartridge case, and  
14 measurements of the cartridge case so that it fits into  
15 particular firearms.

16                   When you talk about 9-millimeter, it's actually  
17 talking about the approximate diameter of the bullet and the  
18 type of firearms that it can fit into.

19                   But once again, a full name designates not just  
20 that diameter, the whole design of the cartridge itself.

21           Q.     Now, what types of cartridges are put into a  
22 9-millimeter firearm, and are there differences amongst some  
23 9-millimeter firearms?

24           A.     9-millimeter firearms, there's actually a family of  
25 them, and they range for the semiautomatics, from .380 auto,

1 9-millimeter Makarov, 9-millimeter Luger, and then there's  
2 actually other ones that aren't as popular, but those are some  
3 of the more popular ones.

4 Q. So what is the difference between a 9-millimeter  
5 Luger and a 9-millimeter Makarov?

6 A. Well, actually, let's also talk about the .380.  
7 Although it says .380, it's -- that's more of -- an English --  
8 or a -- an -- an inches term, and 9-millimeter is in metric  
9 terms. Even though they are actually approximately the same  
10 measurement, okay, that's why one is called .380 because it's  
11 in the -- once again, in the English -- or inches, and then  
12 9-millimeter is in the metric.

13 But a .380 is actually one of the -- between the  
14 three is a little bit smaller because the cartridge case length  
15 is 9 by 17, which means it's 17 millimeters from the bottom to  
16 the edge of the mouth.

17 For a 9-millimeter Makarov, it's 9 -- it's  
18 actually 18 inch -- or millimeters in height, and 9-millimeter  
19 Luger is 19 inches.

20 So they're slightly different, not by a whole  
21 lot because it's really one millimeter, but it's -- depending  
22 on the firearm, may not actually load one or the other,  
23 depending on how it's measured in the caliber.

24 Q. So how similar are the 9-millimeter -- I mean, I'm  
25 sorry, how similar is a 9-millimeter Makarov to a .380 caliber

1 firearm?

2 A. It's actually more similar to the .380 than the  
3 9-millimeter because the bullets tend to be a little bit  
4 shorter and stouter, so they look -- if you're looking at them  
5 side by side very close to one another, where the 9-millimeter  
6 Luger tends to have larger bullets, so it sticks up a little  
7 bit more than the 9-millimeter Makarov or .380 auto.

8 Q. Now, specifically with regard to the Makarov, how  
9 many cartridges does a 9-millimeter Makarov gun hold?

10 A. It actually depends on the size of the gun and what  
11 type of magazine that it's fitted with.

12 Q. Now, say a firearm was not recovered at a scene,  
13 would you still be able to make comparisons among cartridge  
14 cases or bullets?

15 A. If there is enough reproducibility, if I have enough  
16 sample quality and the markings are -- have enough  
17 characteristics to them, that I can still make an  
18 identification that it was fired from a single firearm, it's  
19 just an unknown firearm.

20 Q. Now, are there some times when you cannot actually  
21 make a determination from reviewing and examining cartridge  
22 cases and bullets and test firing a gun?

23 A. That's correct.

24 Q. What could impact that?

25 A. Because of the way the gun fits and the tightness of

1 it, if it fits really well in there, it touches a lot more  
2 parts of the gun. And if the gun has a lot of characteristics  
3 to it, it will pick those up and allow me a lot of  
4 characteristics in microscopic detail to look at.

5 If the gun's not well made, and it's sloppily  
6 made and it has movement in there, then it may not touch it as  
7 well or in a consistent manner that I will be able to get  
8 consistent marks to look at.

9 So it makes it very difficult if there is play  
10 in there because when the cartridge is actually detonated, what  
11 happens is the powder actually increases a little bit but not  
12 enough that it will -- may fit in the whole chamber, picking up  
13 less marks that I can look at.

14 Q. Now, I'd like to direct your attention to an event  
15 number that you examined evidence under, 060206-2820, on or  
16 about June 21st, 2006. Do you recall that?

17 A. Yes, I do.

18 Q. And what evidence did you examine?

19 A. For this case I examined some bullets and cartridge  
20 cases and also was submitted a firearm with some cartridges.

21 Q. Was that firearm impounded as well as the rest of  
22 the cartridges and bullets, was all of that evidence impounded  
23 by Crime Scene Analyst Daniel Proietto?

24 A. Yes, he -- yes, it was.

25 Q. And did his -- like a personal identification



1 number, is that 8180?

2 A. That's correct.

3 Q. And is that number documented in your report?

4 A. Yes, it is.

5 Q. Now, I understand that defense counsel has now  
6 stipulated to the admission of State's Proposed Exhibit 100.

7 MR. FIGLER: This is last witness who touched it,  
8 so, yes, we would stipulate to its admission.

9 MS. PANDUKHT: Well, there's actually one more  
10 witness, the fingerprint expert, but she'll be here tomorrow.  
11 I promise.

12 MR. FIGLER: That's fine.

13 THE COURT: I didn't see a seal on that other one.

14 MS. PANDUKHT: This is State's Proposed Exhibit 100.

15 THE COURT: Oh, wait, no, I did see -- Alice --

16 THE WITNESS: Maceo (phonetic).

17 MS. PANDUKHT: Alice Maceo, yes.

18 THE COURT: It's up to you, I mean --

19 MR. FIGLER: If she wants to open it --

20 THE COURT: If you want to move to admit it right  
21 now, I'm just saying --

22 MR. FIGLER: Yeah, no objection based on the  
23 representations of counsel.

24 THE COURT: So you move to admit, right?

25 MS. PANDUKHT: Yes, I move to admit.

1 THE COURT: Okay. There will be no objection, it  
2 comes in now.

3 (State's Exhibit 100  
4 was admitted into evidence.)

5 MS. PANDUKHT: Okay. Thank you.

6 BY MS. PANDUKHT:

7 Q. And I have a photograph as well that I would like to  
8 show you, and I'm going to come up --

9 MS. PANDUKHT: First, if I may approach?

10 THE COURT: You may.

11 BY MS. PANDUKHT:

12 Q. I have a series of photographs that I want to see if  
13 you recognize, and they are State's Proposed Exhibit 94 --  
14 well, I've moved the order. Let's see here.

15 Okay. It looks like 90 to 95. Could you look  
16 through those.

17 A. (Witness complies.)

18 Q. Do you recognize these photographs?

19 A. Yes, I do.

20 Q. Who took them?

21 A. Actually, I did.

22 Q. Okay. And you took these photographs of what  
23 evidence?

24 A. The evidence that was actually associated to the  
25 Event Number 060206-2820.

1 Q. And what do they represent?

2 A. They represent four bullets and a photograph of the  
3 firearm that I examined as well as some close-ups up that  
4 firearm.

5 MS. PANDUKHT: At this time I move to admit State's  
6 Proposed Exhibits 90 through 95.

7 MR. FIGLER: No objection.

8 THE COURT: All right. 90 through 95 are now  
9 admitted into evidence.

10 (State's Exhibits 90 through 95, respectively,  
11 were admitted into evidence.)

12 MS. PANDUKHT: Now, move to publish, Your Honor?

13 THE COURT: You may.

14 MS. PANDUKHT: Thank you.

15 BY MS. PANDUKHT:

16 Q. State's Exhibit Number 94 is actually -- I'm going  
17 to go out of order here. What is this?

18 A. This is actually the firearm that I examined in this  
19 case.

20 Q. And could you describe the complete name of this  
21 firearm?

22 A. This is actually an Imez, I-M-E-Z, Model  
23 PM/IJ70-18A.

24 THE REPORTER: And A?

25 THE WITNESS: A as in apple.

1 BY MS. PANDUKHT:

2 Q. What type of firearm is this, just to be clear for  
3 the record?

4 A. This is a semiautomatic 9-millimeter Makarov pistol.

5 Q. Now, earlier you said there might be some  
6 differences in terms of how many cartridges, how many  
7 cartridges could this gun hold?

8 A. This cart -- this pistol can actually hold eight in  
9 the magazine and one in the chamber so that's a total or  
10 maximum capacity of nine cartridges.

11 Q. And I have a close-up in Number 95. Is this the  
12 information that identifies the gun?

13 A. Yes, it is.

14 Q. And for the record, it is?

15 A. Yes, it is.

16 Q. And there's also, I see, some initials on here  
17 (indicating). Do you recognize those?

18 A. The initials here are for -- for Alice Maceo, with  
19 the event number.

20 And you could just barely make it out, but this  
21 silver portion up here is my initials on there.

22 Q. Did you test fire that gun?

23 A. Yes, I did.

24 Q. Was it in normal operating condition?

25 A. Yes, it was.

1 Q. So it functioned properly?

2 A. Yes, it did.

3 Q. Okay. Now, after you analyzed that gun, did you  
4 analyst any other evidence?

5 A. I also looked at bullets and cartridge cases.

6 Q. First let me ask you about the cartridge cases.

7 Were you able to examine those?

8 A. Yes, I did.

9 Q. What did you determine?

10 A. I determined that, of the six cartridge cases, they  
11 bared the similar general characteristics of the Imez pistol;  
12 however, there was not sufficient characteristics in details to  
13 identify that particular firearm as having fired this firearm.

14 Although there are general characteristics, what  
15 this means is that this gun cannot be excluded or specifically  
16 identified as having fired these -- the cartridge cases.

17 Q. Does that conclusion have anything to do with what  
18 you were talking about earlier in terms of the size of the  
19 cartridge fitting inside the chamber?

20 A. Yes. And it just did not pick a lot of marks up, so  
21 it was such insufficient detail that I just could not  
22 conclusively say that it had fired these component -- these  
23 cartridge cases.

24 Q. Did you come to any conclusions about the  
25 similarities though amongst the six cartridge cases?

1       A.     They were similar to one another as well as to the  
2 test fire cartridge cases that I obtained from the Imez pistol.

3       Q.     And what were they labeled?

4       A.     The -- the item numbers?

5       Q.     No. What were the --

6       A.     Oh, I'm sorry.

7       Q.     Do cartridge cases have a label?

8       A.     The -- the head stamp on them, which is usually  
9 placed by the ammunition manufacturer is Wolf 9-millimeter  
10 Makarov.

11      Q.     Did all six cartridge cases have the Wolf  
12 9-millimeter Makarov head stamp?

13      A.     Yes, it did.

14      Q.     Now, specifically with regard to this Makarov gun,  
15 could other types of 9-millimeter ammunition have been put into  
16 that gun?

17      A.     Yes, it is. It's possible that a .380 can be fired  
18 in there, but it's definitely designed to shoot 9-millimeter  
19 Makarov.

20      Q.     What about, say, a common gun that we see here in  
21 Las Vegas, 9-millimeter Luger, could 9-millimeter Luger  
22 cartridges fit inside this Makarov?

23      A.     Most likely not because of the larger dimension, it  
24 probably wouldn't fit in there; however, I did not check this  
25 particular gun.

1 Q. Now I'd like to ask, did you examine the bullets?

2 A. Yes, I did.

3 Q. How many bullets did you examine?

4 A. I looked at four bullets that were booked under this  
5 event number.

6 Q. And what were your conclusions with regard to the  
7 four bullets?

8 A. Of the four bullets, there were two of them,  
9 specifically Items 1 and 9, that I could identify back to this  
10 firearm, meaning that I can say that this firearm actually  
11 fired these bullets.

12 Of the other two, 6 and 11, they actually were  
13 badly damaged, so I was not able to make a conclusive  
14 identification.

15 Of the characteristics I could see, they were  
16 similar in characteristics, and so similarly to the cartridge  
17 cases, they cannot be identified specifically -- excuse me,  
18 specifically to this firearm, but they cannot be excluded as  
19 having been fired by this firearm.

20 Q. I'd like to show you what has been admitted as  
21 State's Exhibit Number 90. Did you use the same numbering  
22 system on this photograph as the package that was impounded?

23 A. Yes. The DAC were my initials at the time from my  
24 Package Number 1, and the dash one is the same as the item  
25 number from the package by Dan Proietto, so this is Item 1.

1           Q.     So when you say Bullet Number 1, is the photograph  
2 here in this Exhibit 1-1, is that what we're talking about  
3 (indicating)?

4           A.     That's correct.

5           Q.     Okay. So again, could you explain to the jury what  
6 your results were with regard to this particular bullet in  
7 Photograph Number 90?

8           A.     This bullet was identified as having been fired by  
9 the Imez pistol.

10          Q.     And what was the condition of this bullet?

11          A.     There was some secondary damage. So when the bullet  
12 actually goes through the barrel of the firearm, it picks up  
13 characteristics and marks from there that help me identify it  
14 back to there.

15                     But once it leaves the barrel of the gun,  
16 anything else that it hits and impacts on can also leave marks  
17 on there.

18                     As you can see, there is additional marks that  
19 are long from the nose of it, along the sides, that were picked  
20 up from whatever it impacted on, and it also deformed itself  
21 because it's kind of mushroomed, and you could see the jacket  
22 going beyond the base.

23                     So there was secondary damage to this bullet;  
24 however, I -- I was still able to look beyond that damage and  
25 see the characteristics that were left from the gun and



1 identify it back.

2 Q. Now showing you State's Exhibit Number 92, is this  
3 Item Number 9?

4 A. That's correct.

5 Q. So again, the photograph DAC1-9 corresponds to what  
6 you said was Bullet Number 9?

7 A. That's correct.

8 Q. Again, tell us your results with regard to this  
9 particular bullet.

10 A. This bullet I also identified as having been fired  
11 by the Imez pistol.

12 Q. And this along with Number 1?

13 A. Yes.

14 Q. Now, what about Number 91, could you describe the  
15 condition of this bullet and what you've labeled it as?

16 A. This one also had some secondary damage as depicted  
17 here along this edge (indicating). These were not made from  
18 the gun itself but from impact.

19 And as you can see, it's distorted and  
20 flattened. So I could only -- my marks that I looked at was  
21 very limited, and I could not see beyond these marks to  
22 identify it back; however, the characteristics that I could see  
23 were consistent with the Imez pistol.

24 Q. What type of surface could cause these kinds of  
25 other damage?

1           A.     This is a very ungiving surface, probably a concrete  
2 wall or something that's very rough as that would actually  
3 leave that much mark on a very flattened area.

4           Q.     Or could it also be like the ground or asphalt,  
5 something hard?

6           A.     That's correct.

7           Q.     Now showing you State's Number 93, could you  
8 describe which bullet this is and, again, the condition of this  
9 bullet?

10          A.     This is Item 11. This also picked up some secondary  
11 marks and was flattened by these marks here, these not from the  
12 gun.

13                     This, I could not give a conclusive  
14 identification or determination on; however, the  
15 characteristics that I did see were similar to the Imez pistol.

16          Q.     Were there any other conclusions that you came to  
17 that I have not already asked you about?

18          A.     No, that was it.

19          Q.     And are all of your conclusions within the  
20 reasonable bound of scientific certainty?

21          A.     Yes, they are.

22                     (Sotto voce at this time.)

23                     MS. PANDUKHT: Pass the witness.

24                     THE COURT: Cross-examination.

25                     MR. FIGLER: Just a couple questions.

## CROSS-EXAMINATION

BY MR. FIGLER:

Q. Ma'am, that's the gun in this case; correct?

A. That's correct.

Q. And you referred to a slide at some point; correct?

A. Yes.

Q. Now, the slide is what the person who is about to shoot it pulls back before they discharge the weapon; correct?

A. Yes -- it needs to be pushed -- pulled back so that a cartridge can actually be placed in the chamber, that's correct.

Q. So that's part of the process, use the weapon, pull slide back?

A. It can be done at any point in time, but it has to be done prior to it.

Q. Prior to the firing?

A. Yes.

Q. Okay.

A. But that action can be done a week or so prior to the gun actually being pulled.

The gun actually goes --

Q. There's no question before you right now.

A. Okay.

Q. Thanks.

1 Now, you identified these as one-six; correct?

2 A. It's Item 6 -- same as Item 6 from Dan Proietto,  
3 yes.

4 Q. Okay. So you match up with what Dan Proietto marked  
5 as the evidence gatherer; correct?

6 A. That's correct.

7 Q. That's so there's no confusion down the road; right?

8 A. That's correct.

9 Q. That's the policy; correct?

10 A. It -- it allows me to put a nice unique identifier  
11 on each of my items, yes.

12 Q. Okay. And all these match up with Dan Proietto --  
13 11 -- one-one -- Proietto marks as 1, you mark it as 1;  
14 Proietto marks it as 11, you mark it as 11; Proietto marks it  
15 as a 6, you mark it as a 6; correct?

16 A. Yes, that's correct.

17 MR. FIGLER: Thank you, no further witnesses -- or  
18 sorry, no further questions for this witness.

19 THE COURT: Redirect.

20 MS. PANDUKHT: Based on that, nothing.

21 THE COURT: Any questions for this particular  
22 witness, ladies and gentlemen?

23

24 (Negative response from the jury panel.)

25

1 THE COURT: All right. That's a negative response.  
2 Thank you so much for your testimony. You're  
3 excused.

4  
5 (Whereupon, at this time the witness was excused.)  
6

7 THE COURT: Is there anybody else out there?

8 MS. PANDUKHT: No, we sent them away.

9 THE COURT: That's okay.

10 MS. PANDUKHT: I apologize.

11 THE COURT: Fine. It's all right.

12 MS. PANDUKHT: I didn't think we could get one more  
13 done.

14 THE COURT: No, it's all right. I think we're good.

15 MS. PANDUKHT: Okay.

16 THE COURT: I'm sure the jury would like to take a  
17 break.

18 So, ladies and gentlemen, this will be our evening  
19 recess.

20 We'll go nine to five tomorrow. I'll give you a  
21 better morning and afternoon break. I was trying to finish up  
22 with that one witness before breaking, so I'll -- hopefully it  
23 will be more mid section next time.

24 During this recess you are admonished not to  
25 talk or converse among yourselves or with anyone

1 else on any subject connected with this trial;

2 Or read, watch, or listen to any report of or  
3 commentary on the trial, or any person connected  
4 with this trial, by any medium of information,  
5 including, without limitation, newspapers,  
6 television, radio or internet;

7 Or form or express any opinion on any subject  
8 connected with the trial until the case is finally  
9 submitted to you.

10 Have a great evening, and then we'll see you at  
11 nine a.m. Thank you.

12 THE MARSHAL: All rise.

13  
14 (The following proceedings were had in open  
15 Court outside the presence of the jury panel:)

16  
17 THE COURT: We're still on the record.

18 Okay. We're outside the presence of the jurors.  
19 We're on the record still.

20 Tomorrow's Friday. I'm assuming you all got  
21 notified, but I had a media request, which I signed off on.  
22 Why, I don't know. It's only for Friday so I just wanted to  
23 let you know.

24 MS. PANDUKHT: Only for Friday?

25 MR. FIGLER: They must be bored.

1 THE COURT: I don't really know.

2 MR. FIGLER: Where were the day with my fiery cross?

3 THE COURT: Yeah. So I just wanted to let you guys  
4 know. I mean I did sign off on it a day ago so that will  
5 happen tomorrow.

6 The only other thing I was going to mention is  
7 that -- oh, you were going to make a motion.

8 MR. FIGLER: Thank you.

9 THE COURT: Go ahead. Sorry.

10 MR. FIGLER: No problem, Your Honor.

11 And Your Honor allowed me to make this  
12 contemporaneous to the time, we haven't waived anything, we're  
13 just doing it for the Court's convenience.

14 Your Honor, based on the fact that the prosecution  
15 proceeded with all that information about gangs and gang  
16 activity, and then we had the hearing, and Your Honor made the  
17 rulings that she did, the defense needs at this point to make a  
18 motion for mistrial. And we'll just leave it at that.

19 THE COURT: What I'm going to do is I did want  
20 something in writing. I'm going to give you the weekend to  
21 have something in writing to put together the reasons that you  
22 had proceeded on a gang theory. I'm sure, from your discovery,  
23 you know, just list it out and --

24 MS. PANDUKHT: We requested the transcript,  
25 Your Honor.

1 THE COURT: Of who?

2 MS. PANDUKHT: Of today's argument. It would be so  
3 helpful to get that transcript, but she wanted it ordered.

4 THE COURT: Oh, I can get it. I'll give them an  
5 order.

6 THE REPORTER: No problem, I can have it tomorrow.

7 MS. PANDUKHT: Oh, you can?

8 THE REPORTER: Yeah.

9 MS. PANDUKHT: Oh, thank you.

10 (Sotto voce at this time.)

11 MS. PANDUKHT: It's hard, our staff is gone now.

12 THE COURT: No problem. So we'll --

13 MR. FIGLER: That will be pending?

14 THE COURT: Yeah.

15 The only -- another thing I noticed -- yeah, so it's  
16 going to be pending, I'll rule on it on Monday, and that way I  
17 think there will be a better record of your proceeding anyway,  
18 where I had already found that it wasn't intentional.

19 MS. DEMONTE: Yeah.

20 THE COURT: Because you clearly have discovery that  
21 said he was a gang member, the defendant, and you said to me,  
22 on the record, that Jonathan Harper had previously testified  
23 that that defendant was in the gang of Puros Locos.

24 MS. PANDUKHT: That's what I believed.

25 THE COURT: So I'm going to -- you guys can go back



1 over and make sure that that's what your discovery said so that  
2 you can overcome a mistrial motion.

3 And, I mean, I -- I'm going to obviously deny it,  
4 but I don't want to formally do that until they put something  
5 in writing, because it gets helpful on the record because it's  
6 helpful not only to overcome a post-conviction issue, but if  
7 somebody was to second guess what Mr. Goodman and Mr. Figler  
8 did, which I get all day long having, you know, being  
9 Judge Mosley's predecessor in interest, I get a lot because --

10 MR. FIGLER: No, we appreciate you allowing us to  
11 make a full record.

12 There was one other motion that the defense needs to  
13 make.

14 THE COURT: Okay, go ahead.

15 MR. FIGLER: Based on the testimony of  
16 Detective Hardy, Your Honor, we're going to move to dismiss the  
17 charges for destruction of evidence. And I'll explain my  
18 theory.

19 Detective Hardy said, in no uncertain terms, that,  
20 in 2006, that Metro had full knowledge that doing latent prints  
21 before doing any DNA testing would destroy the evidence.

22 The evidence came out that Detective Hardy had no  
23 verification that any DNA testing had been done at any time on  
24 that gun.

25 He testified to that straight up.

1           This last witness testified that the slide of a  
2 handle, where allegedly there was some brownish reddish  
3 material that could have been bio material would be a place  
4 where a shooter, or the person who is cocking the gun  
5 (indicating), would have left potential DNA evidence, which  
6 could have excluded my client or implicated someone else.

7           We also know that there were multiple parties that  
8 handled this weapon, yet their fingerprints don't show up.

9           Additionally, my client's fingerprints show up in  
10 very unusual spots on this -- on this gun.

11           His right ring finger, which would be his fourth  
12 finger down, shows up at the very top, above the grip on the --  
13 on the gun itself, and then there's some webbing that's near  
14 the -- the handle of the gun, which the State is going to use  
15 as being extraordinarily incriminating evidence, and yet we  
16 don't have the ability to test for DNA because it's been  
17 destroyed by the detective.

18           We don't have any of that information which would  
19 include or exclude and, therefore, because they knew that that  
20 would happen if they did latent prints first, they  
21 intentionally destroyed that evidence, so it couldn't be  
22 tested, and we move to dismiss.

23           THE COURT: Here's what I'm going to do, I'm going  
24 to make it real easy on this one, okay?

25           It's -- it's interesting what you're posing, okay,

1 kind of.

2 It's -- it becomes more interesting if he's  
3 convicted. If he's not convicted it's a nonissue. Okay?

4 MR. FIGLER: Of course.

5 THE COURT: What I would rather do with that,  
6 because it just sprung up today, would be to wait until if, in  
7 fact, he's found guilty of murder in the first degree, have  
8 formal motions on destruction of evidence. Because my concern  
9 would be that, if you're fighting, you could get a cut on your  
10 hand, which could be important as to putting blood evidence on  
11 the firearm.

12 And if that blood evidence was not properly  
13 collected, it does rise to a level of a question of whether or  
14 not, you know, at first blush, you may think, well, all you  
15 need is one or the other. But maybe not because we heard that  
16 it was a big melee beforehand.

17 So it becomes much more relevant because of the  
18 fighting that occurred. And as I recall, I heard the coroner  
19 say that the decedent also had cuts on his hands.

20 MR. FIGLER: Correct, Your Honor.

21 THE COURT: Okay? So now cuts on the hand become  
22 important as far as DNA transfer. Okay?

23 So I think it's a very interesting question of  
24 what's gone on. I gotta tell you, I couldn't figure out what  
25 was going on with Hardy in 11-A. Good luck to all of you with

1 the jury because it was just a lot.

2 MS. DEMONTE: I can explain it.

3 THE COURT: Well, I'm going to let you all brief it.  
4 How about that?

5 MS. DEMONTE: Okay.

6 THE COURT: If he's actually convicted of it, then  
7 everybody can really sit down with it, because that's an --  
8 that's a very -- this is an ID case, and there's a destruction  
9 of evidence. You know, I just don't want to shoot from the hip  
10 is what I'm saying.

11 MS. PANDUKHT: There has been no destruction of  
12 evidence.

13 THE COURT: Okay? I don't want to shoot from the  
14 hip.

15 MS. PANDUKHT: But there has been no destruction of  
16 evidence. There -- the evidence --

17 THE COURT: Maybe you are just not understanding.

18 MS. PANDUKHT: Well, yeah, it got confusing, but  
19 there was no destruction of evidence, Your Honor, and that --  
20 that swab turned out to be negative. So it wasn't blood.  
21 So --

22 MR. FIGLER: We don't know what the swab came  
23 from --

24 THE COURT: Well, are you having somebody from DNA  
25 say that it's negative?

1 MS. DEMONTE: That's what the LabCorp report that  
2 Mr. Figler kept putting in Mr. Hardy's face was.

3 THE COURT: You're right, but you're having somebody  
4 from the lab say it's --

5 MS. DEMONTE: We have to make a phone call that we  
6 need someone from LabCorp now.

7 THE COURT: Because I never heard you were putting  
8 on DNA evidence.

9 MS. DEMONTE: No, we weren't going to --

10 THE REPORTER: Whoa, whoa.

11 MS. DEMONTE: Sorry. It wasn't blood.

12 THE COURT: You may want to put on your evidence  
13 then, and I'll determine this later, because if the swab was  
14 not blood, and it's something else, and then they still have an  
15 argument that it should have been swabbed first beforehand?

16 MS. PANDUKHT: It was.

17 MS. DEMONTE: It was.

18 MR. FIGLER: I mean, they keep saying it, but I  
19 haven't seen any proof of that.

20 THE COURT: Hold on, hold on.

21 Yeah, we're going to have more testimony. I think  
22 it's just premature.

23 MS. PANDUKHT: Yes.

24 THE COURT: And that's why I was going to wait  
25 anyway.

1 MS. PANDUKHT: Thank you, thank you.

2 THE COURT: Because I think it may be premature,  
3 they may be able to explain what happened better.

4 MS. DEMONTE: Yes.

5 THE COURT: So let's just continue this either way.  
6 It's a valid -- what you brought up is valid because what I was  
7 hearing on cross was there was some confusion as to whether it  
8 was swabbed first, whether the fingerprints went first, how it  
9 all went down. Maybe with more evidence we'll be able to  
10 figure that out.

11 MR. FIGLER: Sure.

12 THE COURT: So let's just put that one over.

13 And do not let me forget if, in fact, a verdict  
14 comes out, then I'll just have you brief it, and we'll have --  
15 I'll give you lots and lots of time, you can have all the trial  
16 transcripts and attach it, and I'll be able to make a better  
17 record.

18 MR. FIGLER: I appreciate that.

19 Only one other little thing, as Your Honor, I'm  
20 sure, is aware, under Sanborn and Sparks, it might have some  
21 impact on instruction, so the defense may offer some additional  
22 instructions based on how the record stands right now, but I  
23 appreciate what Your Honor is saying about --

24 THE COURT: I know what you're saying.

25 MR. FIGLER: Yeah, yeah, so I get where you're

1 going, and that's fine, but I just wanted to throw that out  
2 there too.

3 THE COURT: Well, even with Sanborn it's got to be  
4 intentional or grossly negligent.

5 MR. FIGLER: Yeah. Yeah.

6 MS. PANDUKHT: It just didn't happen.

7 THE COURT: Let's see how it comes out.

8 So if you're saying that it was swabbed first --

9 MS. PANDUKHT: It was swabbed for that stain, that  
10 reddish brown stain, it was swabbed.

11 THE COURT: So it was swabbed.

12 MS. PANDUKHT: Yes. And then they didn't swab the  
13 rest of the gun, they did the prints. It was confusing with  
14 Hardy because he really wasn't the proper witness to be asking  
15 all those questions to.

16 THE COURT: I understand.

17 MR. FIGLER: Except that --

18 MS. PANDUKHT: But he found that a little  
19 confusing --

20 MR. FIGLER: Except that Hardy was the one who  
21 resubmitted saying: If there's any DNA, I don't know.

22 And it looks like they might have accidentally taken  
23 it from the belt buckle. That's what our point was.

24 But this could have been a big oopsy by Metro, and  
25 now there's a problem. That's why Hardy's trying to clean it

1 up in 2008, two years after the swabbing was allegedly done.

2 THE COURT: Let's -- let's hear from that other  
3 expert tomorrow, and it may get cleared up. You need to clear  
4 it up.

5 MS. PANDUKHT: Yeah.

6 THE COURT: Because it's pretty confusing what went  
7 on with Hardy.

8 MS. PANDUKHT: I will.

9 THE COURT: And do you want all of you like can  
10 have, since Renee is not going to be here, not -- it's up to  
11 you, can -- can you get, you know, can you also get Hardy's  
12 testimony to them?

13 THE REPORTER: You bet. It won't be first think in  
14 the morning, but it will be tomorrow.

15 THE COURT: Yeah. You've got time. I'm just  
16 worried about instructions with Sanborn, if, in fact,  
17 Mr. Figler is somehow correct, and I'm -- it's not what you  
18 say, but you guys should know your case.

19 MS. PANDUKHT: We do. And we also know that the  
20 capability for DNA in 2006 were not touch DNA, like we have  
21 today. That didn't exist back then.

22 MR. FIGLER: I mean, as rebuttal, I could bring in  
23 every single transcript from every case in from 2006 beyond all  
24 the way back to 1998 where they're using DNA evidence to  
25 convict people.



1 I don't know that they had want to go down that path  
2 that DNA is not relevant before 2006.

3 MS. DEMONTE: I'm not saying DNA was relevant --

4 THE COURT: It's the touch.

5 MS. DEMONTE: -- what I'm saying is the touch.

6 MR. FIGLER: DNA is DNA is DNA.

7 THE COURT: But --

8 MR. FIGLER: It's blood --

9 THE REPORTER: One at a time, please.

10 THE COURT: If the protocol is not to do touch DNA  
11 like it is now, okay, then we all live with the protocol that  
12 was going on at that time.

13 MS. PANDUKHT: I would also like to raise the point  
14 that they gave us a report from their expert that said that  
15 Alice Maceo did everything correctly, and the swabs weren't  
16 taken from the grip of the gun.

17 So their own report from Jerry Dickerson (phonetic),  
18 their expert, said that swabs weren't taken from the grip of  
19 the gun, the sides that were textured, but she even said that  
20 swabs were taken and sent to LabCorp of the reddish brown  
21 stain. So every last stain that our witnesses would have  
22 testified to, Miss Dickerson agreed with, other than swabs  
23 weren't taken from the --

24 MR. GOODMAN: And she hasn't testified here,  
25 Your Honor.

1 MS. PANDUKHT: I know, but I'm just saying --

2 MR. GOODMAN: That's completely improper to suggest  
3 a report from an expert that hasn't testified yet.

4 MS. PANDUKHT: I'm just saying --

5 MR. GOODMAN: It's not evidence in the record.

6 MS. PANDUKHT: I agree it's not evidence in the  
7 record, I wanted to bring it up to the Court only because of  
8 the allegation of destruction of evidence. I thought it was  
9 important for that limited purpose. That's all I was saying.

10 THE COURT: So you've got your expert tomorrow.

11 Do you have some DNA expert too?

12 MR. FIGLER: No, because there was never any DNA  
13 taken by our knowledge or DNA tested one way or another.

14 We know that they didn't take DNA from all the  
15 people who I mentioned.

16 THE COURT: Right.

17 MR. FIGLER: We know that didn't happen.

18 I don't have a report back of DNA that is distinctly  
19 traceable chain of custody right now as we sit based on the  
20 evidence that came out, that goes to that gun versus that belt  
21 buckle. I just don't have that yet.

22 Now, maybe they can clean it up and they're saying  
23 that they can, but I'm just sitting here with what I got and  
24 what the record has so far, that's why I'm making this motion.

25 MS. PANDUKHT: They have the report from LabCorp and

1 that's the only report that --

2 MR. FIGLER: Yeah, the LabCorp report says no DNA on  
3 11-A. 11-A is a belt buckle.

4 MS. PANDUKHT: You have the report.

5 THE COURT: I have never seen the report so that  
6 could be a little helpful.

7 MR. FIGLER: The report says there's no DNA on 11-A.  
8 And 11-A, by all counts that we have so far, is a  
9 belt buckle that's in that bag.

10 MS. DEMONTE: That's not true.

11 THE COURT: I heard something else was 11-A too.

12 MS. DEMONTE: This is --

13 MR. FIGLER: 11.

14 MS. DEMONTE: No, no, no. Let me -- I'm going to  
15 say exactly what this is.

16 This is package -- I can't remember what Maria  
17 Thomas's pack number -- Package 1, Items 2, 3, 4, 5, 6, 7, 8,  
18 9, 10 and 11.

19 There are no As, Bs, Cs, Ds assigned to the victim's  
20 clothing.

21 Also in evidence is from Dan Proietto --

22 THE COURT: Where is the LabCorp result?

23 MS. PANDUKHT: Right here.

24 MS. DEMONTE: Which is Package 1, Items 1, 2, 3 --

25 THE COURT: Hold on. You know what, let me read the

1 LabCorp thing first.

2 MS. PANDUKHT: Okay.

3 THE COURT: And let me start looking at packages.

4 Hold on.

5 MR. GOODMAN: Is that Defense Exhibit A that you  
6 have, Your Honor?

7 THE COURT: This is LabCorp.

8 THE CLERK: It's right in front of her now.

9 THE COURT: I have 8 but I'm looking at LabCorp.

10 MR. FIGLER: Great.

11 THE COURT: LabCorp is what they actually tested.

12 MR. FIGLER: Right.

13 THE COURT: Well, it says Item 6 here. Item 6 is  
14 what the LabCorp talks about, it says: Reddish stain from rear  
15 slide of 11-A, Item 6, revealed negative results for presence  
16 of blood.

17 MR. FIGLER: Right.

18 THE COURT: Now, let me see what Item 6 is because  
19 that's that, and one sealed envelope containing a swab listed  
20 as a swab of reddish stain from the rear of slide, Item 11-A.

21 Wouldn't it be a slide that was sent to them?

22 MR. FIGLER: Yeah, you would think.

23 MS. DEMONTE: No, a swab.

24 MR. FIGLER: Swab.

25 MS. DEMONTE: Swab.

1 THE COURT: But I mean it's a slide -- swab of a  
2 slide.

3 MR. GOODMAN: It's a swab of a slide.

4 THE COURT: That's what it says. Swab of reddish  
5 stain from rear of slide.

6 MR. FIGLER: Right. But 11-A comes into the mix  
7 somewhere, and Hardy says, in '08, 11-A, that's the belt.

8 THE COURT: This is from B -- BL. Who is BL?

9 MS. DEMONTE: That's Burke Henry (phonetic).

10 THE COURT: So Burke Henry is on here.

11 MS. DEMONTE: Yes.

12 THE COURT: And who is SW?

13 MS. DEMONTE: That's LabCorp that worked for Metro.

14 MR. FIGLER: I have no doubt that LabCorp tested  
15 what's in that envelope. I have a huge doubt where that came  
16 from so far based on the record.

17 THE COURT: I see what you're saying.

18 You are saying that this is what they tested, but  
19 you don't know where this (indicating) came from.

20 MR. FIGLER: Right.

21 MS. DEMONTE: Alice Maceo is going to testify.

22 THE COURT: All right. So Alice Maceo will say  
23 tomorrow that --

24 MS. PANDUKHT: She's the fingerprint expert, and she  
25 requested that.

1 THE COURT: Okay. But somebody took a swab from an  
2 item of evidence, so who took the swab from the gun?

3 MS. DEMONTE: Burke Henry at Alice Maceo's request.  
4 Alice Maceo --

5 THE COURT: Burke Henry needs to say he took a swab  
6 and put it into here then.

7 MS. DEMONTE: Well, Alice Maceo watched him do it.

8 THE COURT: Oh, okay, Alice watched him do it.

9 MR. FIGLER: Really?

10 MS. DEMONTE: Yes.

11 MS. PANDUKHT: I'll ask her again but that's what I  
12 thought.

13 THE COURT: Well, here's the deal, where is  
14 Burke Henry?

15 MR. FIGLER: I want --

16 MS. DEMONTE: He's --

17 THE REPORTER: One person at a time, please.

18 THE COURT: Oh, my God. Here's the deal: They're  
19 still questioning where that came from, and there is a question  
20 because two items are 11-A.

21 So what I am saying is it's -- it's a mess, fix it,  
22 or you're going to get these motions, which makes it very, very  
23 complex that doesn't need to be complex. This is simple  
24 evidence here, people. Okay?

25 It shouldn't be where I'm figuring out your chain of

1 custody. All right?

2 So you've got to put somebody on the stand that said  
3 that they took the gun, Item -- which is my Exhibit 100, they  
4 took a little swab, they took the swab, they put it into that  
5 envelope.

6 If Henry Burke (sic) isn't around, if she was  
7 sitting there present and watched the whole thing and can  
8 testify under oath that she watched the whole thing, then  
9 that's fine, but she better -- I would think she has notes to  
10 that effect as well.

11 MS. PANDUKHT: Yeah, she does.

12 THE COURT: Okay. Well, Mr. Figler, if that's going  
13 to be the case tomorrow, if she takes the stand and says she  
14 watched Burke --

15 MR. FIGLER: We want Burke, but I get what you're  
16 saying.

17 MS. PANDUKHT: I'll try and find out.

18 THE COURT: You don't need Burke, all right?

19 If she did it and she did the testing, and she was  
20 standing right there and she can say: I watched Burke swab it,  
21 we're both forensic scientists, and put it in there, then it  
22 will be a nonissue, a non-Sanborn issue, which I don't  
23 personally need either.

24 MR. FIGLER: Right, I get it.

25 THE COURT: Okay? I agree, it's a weird issue,

1 but --

2 MR. FIGLER: You see where we're coming from at this  
3 point.

4 THE COURT: I do, and thanks for the heads-up  
5 because now I gotta sit and watch chain of custody like a hawk.

6 Okay. At least you gave me a heads-up, now I  
7 know -- I know we're on the same page because, you know, I was  
8 just bobbing in and out of consciousness on Ken Hardy's -- with  
9 whatever you guys were doing here.

10 MR. FIGLER: Right.

11 THE COURT: Because I gotta tell you, I really  
12 wasn't following the whole -- and I know -- I mean I know this  
13 stuff, and I wasn't following it. So we got it with the jury.

14 MS. DEMONTE: It got really confusing.

15 THE COURT: That's what I'm saying. All right? So  
16 I would clean it up big time tomorrow for that. Okay?

17 MS. DEMONTE: We're already going on it.

18 MS. PANDUKHT: On it.

19 THE COURT: Thanks. All right. We're off the  
20 record.

21 (Proceedings concluded.)

22 \* \* \* \* \*

23 ATTEST: Full, true and accurate transcript of proceedings.

24

25 /S/Renee Silvaggio  
RENEE SILVAGGIO, C.C.R. 122



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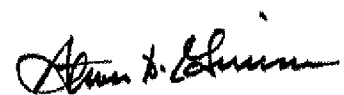
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CLERK OF THE COURT

CASE NO. C262966

DEPT. NO. XV

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,	)	
Plaintiff,	)	
	)	Reporter's Transcript
	)	of
vs.	)	Jury Trial
	)	
	)	
EVARISTO GARCIA,	)	
Defendant.	)	

BEFORE THE HON. ABBY SILVER, DISTRICT COURT JUDGE  
JULY 12, 2013  
10:30 A.M.

APPEARANCES:

For the Plaintiff:	Taleen Pandukht, Esq. Noreen Demonte, Esq. Deputies District Attorney
For the Defendant:	Ross Goodman, Esq. Dayvid Figler, Esq.

Reported by: JoAnn Melendez, CCR No. 370

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1 LAS VEGAS, CLARK COUNTY, NV, JULY 12, 2013

2 10:30 A.M.

3 -oOo-

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

5  
6 THE COURT: We're on the record now.  
7 State of Nevada versus Evaristo Garcia. Case No.  
8 C262966.

9 Let the record reflect the defendant  
10 is present with his attorneys Mr. Figler and Mr.  
11 Goodman. And for the State, Ms. Pandukht and Ms.  
12 Demonte.

13 We have a matter outside the  
14 presence of the jury right now and who wanted to  
15 bring that to my attention?

16 MR. FIGLER: I'll start it, Your Honor.

17 THE COURT: Sure.

18 MR. FIGLER: If that's okay. When  
19 counsel arrived this morning, I noted a difference  
20 in the routine in that the jurors were going back  
21 towards chambers in the jury room than being out in  
22 the hallway as they have since the very onset of the  
23 trial every day. So today is day five. Days one  
24 through four, they were out in the hallway.

25 Mr. Goodman was back there before it

1 happened, before they started being let back just as  
2 normally is as we all are.

3 THE COURT: Sure.

4 MR. FIGLER: And the jury saw Mr. Goodman  
5 and had a -- what Mr. Goodman would describe as a  
6 negative visceral reaction to seeing him and  
7 literally jumping back and away from him saying --  
8 did they say something or was it just --

9 MR. GOODMAN: That's defense.

10 MR. FIGLER: Oh, that's defense.

11 MS. PANDUKHT: Who said that? I didn't  
12 hear.

13 MR. FIGLER: One of the jurors.

14 MR. GOODMAN: A couple of the jurors.

15 MS. PANDUKHT: To you?

16 THE COURT: Well, they've been admonished  
17 not to talk to you guys, too.

18 MR. FIGLER: I appreciate that. So Ross  
19 came out and he goes, I just had a weird experience  
20 with the jurors back there. They looked at me like  
21 I was the plague, like something weird was going on.  
22 Then the marshal --

23 THE COURT: It's just Ross. That's  
24 everybody's reaction.

25 MR. GOODMAN: For the record, that is not

1 everyone's reaction.

2 MR. FIGLER: Yeah.

3 THE COURT: I'm teasing.

4 MR. GOODMAN: That's the whole point,  
5 Your Honor, is because most people are very  
6 gracious. During jury -- during a trial, jurors  
7 seem to like me for the most part.

8 This is the first time I've done a  
9 trial that I can remember where I had that type of  
10 overt reaction where they basically jumped up  
11 against the wall as I was walking back.

12 So I think it is significant.

13 MR. FIGLER: That said, we then asked the  
14 marshal what the reason for the difference was. The  
15 marshal said it's not that big, they had something,  
16 but it didn't have anything to do with the trial but  
17 they did have some questions.

18 So they've been communicating with  
19 the marshal which is absolutely proper. In fact,  
20 that's the best way to go is for them to communicate  
21 to the marshal, but the marshal felt based on the  
22 communications made to him that it would be best to  
23 not have them out there anymore.

24 When we further inquired with both  
25 parties here of the marshal, he indicated that there

1 was trepidation on the part of the jury, that  
2 they're afraid of people in the audience, that they  
3 were afraid to be asking questions this entire time  
4 because Your Honor announces their names. Because  
5 their names are known that some of them said  
6 something about they were being followed or that  
7 they felt in a threatened position.

8                   So obviously this has caused great  
9 concerns to both sides. We've been talking about it  
10 right before Your Honor took the bench. It's clear  
11 that there's more than just a question or two. It  
12 seems as though the jurors are expressing some great  
13 concerns to the marshal.

14                   So I think -- and I think the State  
15 agrees with me that the best course of action to  
16 protect the record is initially to inquire upon the  
17 marshal when he was first made aware of these  
18 concerns by the jurors, which jurors, if he can  
19 remember the concerns, what specific questions or  
20 comments were made and then what he said back.

21                   Then I think the appropriate step  
22 after that would be to make, if the Court deems it  
23 to be an issue that needs to be resolved based on  
24 the marshal's representations, that we do a canvass  
25 of the jury.

1                   I think both sides agree that the  
2 best way to do that, to make the cleanest record,  
3 would be to do that individually. But I'll leave it  
4 to the Court, how the Court wants to run that, if  
5 the Court even feels that that's necessary, but  
6 that's the position of the defense as consulted with  
7 the State.

8                   MS. PANDUKHT: And if I may just add a  
9 tiny bit to that, Your Honor. I agree with  
10 everything Mr. Figler said.

11                   And for the record, defense counsel  
12 has been courteous and I've not never seen them do  
13 anything inappropriate during the course of this  
14 trial.

15                   Secondly, I wanted to let the court  
16 know, which I've already let the defense know, that  
17 Ms. Nyikos and I -- Ms. Demonte and I -- see, I do  
18 it, too, we instructed all of our witnesses, as well  
19 as the family members that have been watching, not  
20 to talk about the facts of the case outside and to  
21 behave themselves. Obviously not make any looks. I  
22 specifically told the victim's family not to make  
23 any movements, gestures or looks or they would be  
24 thrown out of the courtroom.

25                   And I have had my victim advocate



1 Joanna Rash actually sitting with the victim's  
2 family throughout the entirety of this trial. And  
3 I'm sure Your Honor has seen her here in court.  
4 And, in fact, she's been sitting outside with them.

5                   So just before we even get  
6 started, I want to make a record of what the State  
7 has done to try and protect the record in this case.  
8 Thank you.

9                   THE COURT: Thank you. Okay. Well, I  
10 agree with everyone. My preliminary thoughts on,  
11 just when -- this is the first time they've been  
12 back in the hallway, it's very obvious that they can  
13 see judges, they can see attorneys. And of course,  
14 we encourage you guys to come back any time. I've  
15 always said that if you want coffee, water, whatever  
16 you need, my staff is always there for the attorneys  
17 to assist them.

18                   So it's gonna be normal that when  
19 they go back there, it was just in my view since I  
20 admonished them on two different occasions do not  
21 speak to the attorneys, that they might have been  
22 surprised to see an attorney there and them saying  
23 it's the defense may have been a way of commenting  
24 to the rest of their -- the group, you know, to be  
25 quiet, whatever, the defense is here.

1                   Now, it could be the other way that  
2 Mr. Ross thinks that, you know, they don't like him,  
3 I don't know, but I do know that they were  
4 admonished two times by the Court. So --

5                   MR. GOODMAN: And if I could just add,  
6 Your Honor, for the record, I'm been with this jury  
7 passing them, you know, a number of times. Some of  
8 them acknowledge me that I'm passing them. I've  
9 never had this negative reaction.

10                   And for the record, it wasn't that  
11 they said defense. It was the tone of their voice  
12 and how they said it. So it wasn't like a surprise  
13 motion -- a surprise that, that they saw me. The  
14 tone of their voice coupled with the fact that  
15 they -- basically if the wall wasn't right behind  
16 them, I think that they would have tripped over  
17 themselves and fell -- and fell down. I think that  
18 that is a dramatic change from when I walk passed  
19 them the other day.

20                   I don't know what precipitated it,  
21 but then I learned about this new development this  
22 morning. And so I think coupled together it does  
23 raise a concern.

24                   THE COURT: I appreciate your comments.  
25 Well, the record is what the record is. And what

1 I'm gonna do from here on out, we're gonna ask the  
2 marshal some questions. And either sides are free  
3 to ask questions of him.

4 MS. PANDUKHT: Thank you.

5 MS. DEMONTE: Thank you.

6 THE COURT: What I would like to do is we  
7 had the Desai trial going on for about four months  
8 and the jury used the conference room as a meeting  
9 spot.

10 I'm gonna have the marshal pick the  
11 jurors up in the morning down in the jury  
12 commissioner's office and have them escorted up here  
13 right back into the conference room. And they'll  
14 stay back in the hallway. So I'm just letting you  
15 guys know that they'll be back there from here on  
16 out.

17 If you want to use the restrooms,  
18 you might want to go down the hall or you guys might  
19 want to use the public ones to stay away from the  
20 jury because I'm gonna be keeping them back here and  
21 they'll be using those restrooms here along with the  
22 break stuff.

23 MS. DEMONTE: Okay.

24 THE COURT: So that might alleviate any  
25 more concerns with what the marshal is going to

1 discuss which obviously he talked with you about and  
2 what he discussed with me and so now we'll put on  
3 the record what occurred.

4 And if marshal -- it's Marshal David  
5 Ellis who's with us. And go ahead, Marshal Ellis.

6 MARSHAL ELLIS: Yes. When I went out to  
7 see if the jurors were here, that's when they  
8 expressed to me their safety concerns. And we  
9 went -- when we took them to the back -- because I  
10 asked Gail, I went back and talked to Gail about it  
11 because you weren't here yet, and she said that she  
12 felt it would be okay for me to secure them back in  
13 the jury deliberation room. And I did that. But we  
14 didn't see any attorneys when we were going down the  
15 hallway.

16 And when I instructed them we were  
17 going to the deliberation room, we didn't see  
18 anybody in the room. He -- attorney Goodman was  
19 over I guess by the sink area. And when they were  
20 going in, that's when I heard one of the jurors say  
21 he's a defense attorney. And I didn't get the  
22 underlying tone that attorney Goodman did. I, I, I  
23 perceived it as that they were warning the other  
24 jurors this is one of the defense attorneys. So,  
25 you know, not to make any contact.

1                   And then I told them just wait,  
2 he'll come out of the room because it looked like he  
3 was on his cell phone. I didn't know he was in the  
4 room. So he came out and we secured all the jurors  
5 in the room.

6                   But their main concerns were for  
7 their names being mentioned in court.

8                   THE COURT: Which by the way I'm not  
9 gonna say their names anymore. I'll make sure it's  
10 on the question, but I'll just say Juror No. 7.

11                  MS. PANDUKHT: Okay.

12                  THE COURT: And I'll make sure their  
13 names, I won't mention their names anymore.

14                  MARSHAL ELLIS: Yeah, it was specifically  
15 about five jurors that had concerns. The other  
16 jurors were just nodding their heads.

17                  THE COURT: They were all together when  
18 they were telling you this?

19                  MARSHAL ELLIS: Yes. Right out here.  
20 (Indicating.) And there were no witnesses outside  
21 when we were discussing this. I think one witness  
22 came up as we were going back to the deliberation  
23 room. So what we discussed, there was no parties to  
24 this case out there. Just the jurors. As a matter  
25 of fact, a couple of jurors weren't even there.

1                   And they were also concerned about  
2 some of the people that they've seen in the gallery  
3 like hanging around them outside the courtroom and  
4 looking at them and giving them looks.

5                   One of the jurors said that -- I  
6 think it was her nephew. His name --

7                   THE COURT: Who's nephew?

8                   MARSHAL ELLIS: One of the jurors.

9                   THE COURT: Okay.

10                  MARSHAL ELLIS: Has a nephew named --  
11 it's a nephew or son named Giovanny. And she was  
12 talking personal because she said that they've been  
13 instructed only to talk about personal matters.  
14 They haven't -- have not been discussing the case.

15                  So when they're discussing personal  
16 matters, a couple of the Hispanic people that were  
17 out there -- I think they were on this side of the  
18 room. (Indicating.)

19                  THE COURT: So possibly defense people.

20                  MARSHAL ELLIS: Right. Were kind of  
21 looking and trying to listen in to their  
22 conversation. So they were concerned about that.  
23 So those were the main issues.

24                  THE COURT: Well --

25                  MS. PANDUKHT: Your Honor, can I say

1 one --

2 THE COURT: For the record, there have  
3 been a lot of people in the courtroom. Who they  
4 belong to, we don't really know.

5 MR. FIGLER: Thank you, Your Honor.

6 THE COURT: Except for I would say that I  
7 have seen who belonged to the State's like family is  
8 with Joanna Rash and they've been sitting on the  
9 State's side of the room.

10 Who's on the defendant's side, I  
11 don't know. When I say defendant's side, I'm  
12 talking about from the defense table back. I don't  
13 know who they are. They could be defendant's  
14 family, they may not be defendant's family.  
15 Sometimes we've just had spectators in here.

16 MR. FIGLER: Right. Sometimes no one's  
17 been here at all.

18 THE COURT: Correct.

19 MR. FIGLER: And I have seen Ms. Rash  
20 here quite often, but she's not here the whole time.

21 THE COURT: She's not here the whole  
22 time.

23 MR. FIGLER: And they are a very large  
24 crowd on what we'll call the State's side, just that  
25 side of the courtroom. Sometimes in numbers of

1 eight or nine people. So we don't know.

2 MS. PANDUKHT: I just wanted to add --

3 THE COURT: Ms. Rash hasn't been here the  
4 entire time, so that's true, but she has been here  
5 most of the time.

6 MS. PANDUKHT: I just wanted to add one  
7 more thing. That the witnesses yesterday afternoon  
8 and this morning are all police personnel, not lay  
9 witnesses. I just wanted to add that for the  
10 record.

11 THE COURT: Well, I did notice, you know,  
12 he mentioned that they quit asking questions because  
13 their names are being called.

14 MS. PANDUKHT: Oh.

15 THE COURT: And they have stopped asking  
16 questions. Where they were asking more questions  
17 before. So it is a concern if they feel for their  
18 safety I need to address it with them.

19 MS. PANDUKHT: I agree.

20 THE COURT: I will --

21 MR. FIGLER: And especially --

22 THE COURT: I will ask them one by one or  
23 I can ask them -- I'll just -- you know, since some  
24 of the jurors were not there as he just said, they  
25 told him, perhaps I should do it by one by one.



1 MS. PANDUKHT: I would like that, Your  
2 Honor. I agree with Mr. Figler to do it one-on-one.

3 THE COURT: Okay.

4 MS. PANDUKHT: That would be our request.

5 THE COURT: Let's just do that.

6 MR. FIGLER: And just a couple more  
7 things to the record. Number one, we noticed, and  
8 it was very strange, that they were asking sort of  
9 the innocuous witnesses questions, but when it came  
10 to like Edshel who had a lot of testimony, they just  
11 wouldn't ask a question of him. And they didn't ask  
12 a question of Jonathan Harper.

13 THE COURT: Well, we can speculate to  
14 whatever.

15 MR. FIGLER: Well, they didn't ask none  
16 and we just were really -- we were wondering why  
17 they were asking questions of like a Metro officer  
18 that had really nothing to do with much and then  
19 weren't asking any questions to key witnesses who  
20 were up there for a really long time with a lot of  
21 different information coming out and some  
22 conflicting stuff. So that was a concern.

23 Number two, the marshal also  
24 indicated that someone said something about a fear  
25 of being followed to us.

1 MARSHAL ELLIS: No, it was one of the  
2 jurors. Yeah, a female juror.

3 THE COURT: Felt like she was being  
4 followed?

5 MARSHAL ELLIS: While she was waiting on  
6 her father to pick her up.

7 MR. FIGLER: And, and the other concern  
8 for the defense is are they talking to each other  
9 about this fear.

10 Now, I understand that they say that  
11 they're not gonna talk about the trial per say, but  
12 if this fear is starting to be spoken about, what  
13 impact it has on people, I don't know.

14 And then finally, I'm curious as to  
15 why whoever the individual who just happened to be  
16 talking about her nephew, who she happened to say  
17 was Giovanni, why that name came up. It seems  
18 fairly random.

19 Maybe it is random as opposed to  
20 saying well, that's really interesting, there's a  
21 guy named Giovanni in this case, I have a nephew  
22 named Giovanni and just start talking about it,  
23 which implies that they're --

24 THE COURT: Well, I don't want you to  
25 start grilling a bunch of jurors.

1 MR. FIGLER: And I don't want to.

2 THE COURT: I don't want them to be on  
3 the defense because then we're really gonna get a  
4 mistrial, okay. So really watch what you guys say  
5 to both sides. You know, you don't want to put  
6 people in like defense of themselves.

7 MR. FIGLER: No, no. And I, I've  
8 wanna -- I actually have a mindset that we leave the  
9 vast majority of any --

10 MR. GOODMAN: Yeah.

11 MR. FIGLER: -- questions to the Court.

12 MS. PANDUKHT: I think it should be the  
13 judge.

14 MR. FIGLER: That the parties, unless  
15 there's absolutely some necessary follow up wouldn't  
16 do that, that it would just be Your Honor doing it.  
17 So I don't --

18 MS. PANDUKHT: I agree.

19 MR. FIGLER: -- we have that concern.  
20 But you understand where we're going with this. And  
21 that is --

22 THE COURT: I understand.

23 MR. FIGLER: If they haven't been  
24 participating in the process because of some fear,  
25 because of all the gang information that's come in

1 so far, which is kind of petered out now for the  
2 State, but was kind of heavy in the beginning, has  
3 prejudiced my client that they have him already as a  
4 gang member or afraid of him or afraid what's gonna  
5 happen because of their perceptions or what's  
6 happening inside or outside.

7 And then the last point that I'll  
8 make is I understand that the State has tried to  
9 keep, you know, and instructed their witnesses to  
10 not be close to the jurors and vice versa, but we've  
11 really seen witnesses all other the place. I  
12 mean --

13 THE COURT: I agree.

14 MR. FIGLER: Yesterday Jonathan Harper  
15 was right there. The jurors were -- when Mr.  
16 Goodman and I went out and the State went out, I  
17 mean, the jurors were like two arm lengths away from  
18 where Mr. Harper was. They were right there.

19 And so actually Mr. Goodman asked me  
20 do you think that the, the jurors are seeing the  
21 prosecutors interact with Mr. Harper. And I'm like,  
22 well, how can they miss it, they're right there.

23 I don't know how that's playing.  
24 You know, there was some interesting stuff going on,  
25 but it was like right out there.

1                   And I know that's the -- they talked  
2 about this when they were building the RJC that this  
3 problem would be solved. And they built the RJC and  
4 it's the same problem we have in the old courtroom.

5                   THE COURT: Right. It's the same problem  
6 that occurs in every single trial throughout this  
7 courthouse.

8                   MR. FIGLER: But we don't --

9                   THE COURT: It is what it is.

10                  MR. FIGLER: And we don't usually get  
11 the --

12                  THE COURT: Here's the problem: If it  
13 goes over into where it's a problem, okay. Right  
14 now -- I mean, you know the logistics of the  
15 courthouse and how people talk to their witnesses  
16 and who's floating out there possibly intimidating a  
17 juror, you know, I need to just find out.

18                  But I mean, whether -- if he gets  
19 convicted, the supreme court who were most of them  
20 district court judges here or in the other  
21 courthouse, they get it. So they'll look at this  
22 record.

23                  And unless there's some bad play or  
24 intimidation or problem, you know, it is what it is.  
25 We all get how it, how trials go.

1 I'm gonna try to alleviate any  
2 further problems by putting these measures into  
3 place.

4 MR. FIGLER: Right.

5 THE COURT: But all we can do is ask  
6 them. So let's just start with Juror No. 1. So it  
7 doesn't look funny, we'll just go through 1 through  
8 14.

9 MR. FIGLER: Thank you, judge.

10 MS. PANDUKHT: Thank you.

11 THE COURT: Okay. Let's start bringing  
12 them in one by one.

13 Hi.

14 JUROR GRIFFIS: Hi.

15 THE COURT: Come on in. Go ahead and  
16 have a seat there. Just go ahead and sit in the  
17 first chair. It's fine.

18 JUROR GRIFFIS: Over here?

19 THE COURT: Yeah. The only two people in  
20 the courtroom besides the attorneys and the parties  
21 are my externs. And they're law clerks from --  
22 students. So there's nobody out for the record in  
23 the audience as we're doing this.

24 You're Juror No. 1. And can you  
25 state your name because I don't have my list in

1 front of me. Oh, here it is. You're Lisa Griffis,  
2 right?

3 JUROR GRIFFIS: Correct.

4 THE COURT: So we just have some  
5 questions because of some information. The  
6 questions are -- well, let me just say this: From  
7 now on I think what we're gonna do is I'm gonna have  
8 my marshal pick everybody up at the jury  
9 commissioner's office.

10 JUROR GRIFFIS: Okay.

11 THE COURT: And you guys will just go  
12 back there into the conference room and you'll stay  
13 there in and out of breaks. There's restrooms and  
14 everything else for you, okay?

15 JUROR GRIFFIS: Okay.

16 THE COURT: So having said that, there  
17 was some information related to my marshal and we  
18 were just gonna make some inquiries.

19 Were you at any time ever  
20 intimidated by anybody outside of the courtroom or  
21 inside of the courtroom? Have you been intimidated  
22 by anybody?

23 JUROR GRIFFIS: Not at all, but I've  
24 heard from other jurors that, you know, when we're  
25 talking out there and there's -- and we're laughing,

1 it's -- I think they were concerned that the other  
2 people involved with the trial were -- because we're  
3 talking about anything but the trial.

4 THE COURT: Right.

5 JUROR GRIFFIS: To just try to get our  
6 minds off of it. So I think they were thinking that  
7 maybe we're laughing at, at them. Or I don't know.  
8 But I never got threatened by anyone or anything.

9 THE COURT: Do you know the jurors or  
10 their numbers who felt worried about this?

11 JUROR GRIFFIS: I just heard it from  
12 Erika. She mentioned that to me that -- but she  
13 didn't mention names.

14 THE COURT: Okay.

15 JUROR GRIFFIS: But I don't know her  
16 number.

17 THE COURT: So Erika was worried. Okay.  
18 So anyway, you haven't felt intimidated or  
19 threatened by anybody in or outside the courtroom?

20 JUROR GRIFFIS: Not at all.

21 THE COURT: Okay, thank you so much. So  
22 do either sides have any questions?

23 MS. PANDUKHT: No, Your Honor.

24 THE COURT: Okay, great. Thank you so  
25 much.



1 MS. GRIFFIS: Okay.

2 THE COURT: We'll bring in Juror No. 2.

3 (Whereupon, the juror exited the  
4 courtroom.)

5 THE COURT: Okay. Outside the presence.  
6 Did you have a question?

7 MR. FIGLER: Yeah, I don't think --  
8 because she said she wasn't threatened or  
9 intimidated in any way. She seemed very forthright  
10 about that so.

11 THE COURT: Right.

12 MR. FIGLER: But I think maybe some kind  
13 of question is if -- just try to find out if they --  
14 they think there is any kind of prejudice or any  
15 kind of fear or fear to participate in the process  
16 or --

17 THE COURT: Okay.

18 MR. FIGLER: -- any prejudice against  
19 either, either side or any perceptions that are  
20 causing them grave concern that's on their mind.

21 THE COURT: I stopped with her because  
22 she clearly did not.

23 MR. FIGLER: No, that's why I didn't --

24 MS. PANDUKHT: And I don't want to create  
25 a problem.

1 MR. FIGLER: I don't want to create  
2 either.

3 THE COURT: Right.

4 MR. FIGLER: That's why I jumped up  
5 and --

6 THE COURT: I didn't want to start like a  
7 whole new jury selection process, can you be fair  
8 and impartial.

9 MR. FIGLER: Right.

10 THE COURT: I just didn't want to go  
11 there.

12 MR. FIGLER: But you get what I'm saying.  
13 So if we get --

14 THE COURT: I do. I'll go further if I  
15 feel like I need to I guess.

16 MR. FIGLER: Perfect.

17 THE COURT: I really felt like she was  
18 being forthright as you just --

19 MR. FIGLER: Right.

20 THE COURT: We're now in the presence of  
21 Juror 2, Mr. Bhatnagar. Good morning.

22 JUROR BHATNAGAR: Good morning.

23 THE COURT: Go ahead and just have a seat  
24 right there. It's fine. We want to let you know  
25 that with the jury what we're gonna start doing is I

1 have my marshal pick you guys up in the morning and  
2 just -- over at jury commission and just bring you  
3 guys up here. So from now on you guys will probably  
4 be back here in our conference rooms.

5 Having said that, have you felt any  
6 kind of intimidation from anybody inside or outside  
7 the courtroom in these proceedings?

8 JUROR BHATNAGAR: When I walk out the  
9 door, I mean, people do kind of tend -- I tend to  
10 not look at people when I walk out the door, but I  
11 do notice like certain stares and stuff.

12 THE COURT: Okay.

13 JUROR BHATNAGAR: So that's kind of --  
14 and then -- well, since you brought it up, I was --  
15 I wasn't gonna mention anything and it could have  
16 been I was hearing things, but it happened -- this  
17 happened on Wednesday when we were, when we were  
18 being dismissed. I was -- when I was walking out,  
19 like I was out the door, I could have sworn I heard  
20 somebody say --

21 THE COURT: I can't hear you.

22 JUROR BHATNAGAR: Oh.

23 THE COURT: I could have sworn I heard  
24 somebody say --

25 JUROR BHATNAGAR: I thought I heard

1 somebody say idiot. And I was like --

2 THE COURT: Like idiot to you?

3 JUROR BHATNAGAR: Well, I just -- it was  
4 just -- it was just kind of a coincidence. Like I  
5 was the last guy by the door and I just like heard  
6 it. And I heard it, I heard it enough where I can  
7 hear it. And it wasn't like he wasn't talking to  
8 any of you. So unless he was talking to himself, I  
9 know I was protected. I just heard it just as soon  
10 as I'm walking out the door. And I was all like I  
11 don't know if there's some people in the back. It  
12 happened like somewhere over there by the door.

13 THE COURT: So somebody more on -- here's  
14 the defense table, here's the State's table.  
15 There's been people throughout this trial coming in  
16 and sitting and listening. Which side of the  
17 courtroom would you say? More on the State's side  
18 you're saying? This side over here, right?

19 JUROR BHATNAGAR: Right. It was like  
20 somewhere by the door. And I was just getting out  
21 the door and I heard somebody say idiot. Like I  
22 guess I really didn't expect that I was gonna hear  
23 that. Maybe it wasn't directed at me, but it was  
24 just --

25 THE COURT: It was weird?

1 JUROR BHATNAGAR: Yeah, it was weird. I  
2 mean, I know people don't like us. So I mean.

3 THE COURT: Have you been in fear at all  
4 for your safety?

5 JUROR BHATNAGAR: No, no.

6 THE COURT: Okay. All right. Is there  
7 any -- is there any questions by either side?

8 MR. FIGLER: Your Honor, I think the  
9 juror just said "I know people don't like us." If  
10 you can follow up on that.

11 THE COURT: You said you think people  
12 don't like you, the jury?

13 JUROR BHATNAGAR: Oh, no. I mean like  
14 perception because we're the ones making the  
15 decision.

16 So I can understand how the people  
17 who are listening or watching or are involved in the  
18 family of the suspect or even on the plaintiff that,  
19 that they may say hey, this guy's, this guy's gonna  
20 make a decision. I mean, I wasn't -- I mean, it's  
21 all body language. So of course, you know, I can  
22 understand how they might see me as oh, he's a juror  
23 or, you know.

24 THE COURT: So it's more your perception  
25 do you think?

1 JUROR BHATNAGAR: I think it was more  
2 just the perception of the -- because of the, how  
3 big the case is and how important it is, you know.  
4 When people look at us, especially like witnesses, I  
5 can understand it's not gonna be a warm greeting.  
6 It's gonna be like oh, you know, he's a --  
7 especially if it's on the defendant's side, I mean,  
8 you know, they, they, you know, they're not gonna  
9 appreciate, they're not gonna give us like a warm  
10 greeting. It's gonna be more like a cold.

11 So I understand their, their point  
12 of view. So but I'm not, I'm not in fear. It's  
13 just, it's just a process so.

14 THE COURT: Okay. Well, I'm gonna start  
15 having the marshal bring you -- I mean, there has  
16 been larger crowds of people. Not knowing which  
17 side they're on, I mean, there's been large groups  
18 of people sitting and watching in here.

19 So to alleviate any kind of concern  
20 from the jurors, we'll just start having the marshal  
21 walk you guys up. You won't even be around any of  
22 the audience at all.

23 JUROR BHATNAGAR: Okay. That's cool.

24 THE COURT: All right. Have you heard  
25 other jurors, and specifically what jurors have you

1 heard, regarding has anybody said to you they're  
2 afraid or concerned for their safety? And if so,  
3 what jurors were they?

4 JUROR BHATNAGAR: I haven't heard anybody  
5 say that.

6 THE COURT: All right. Is there any  
7 follow up by either side or would like me to ask  
8 anymore questions?

9 MS. PANDUKHT: No.

10 THE COURT: Defense?

11 MR. FIGLER: Just about the  
12 participation. That one question we talked about.  
13 Participation of the process questions.

14 THE COURT: Is there anything about the  
15 process now that would prevent you from  
16 participating as a juror in this? Anything that's  
17 gone on?

18 JUROR BHATNAGAR: No, no. I'm fine.

19 THE COURT: Okay. Thank you so much.  
20 Anything further?

21 MR. FIGLER: None.

22 THE COURT: Okay. Thank you very much,  
23 sir.

24 (Whereupon, the juror exited the  
25 courtroom.)

1                   MR. FIGLER: Your Honor, Mr. Goodman's  
2 assistant's at the door to get some documents. Can  
3 he get them right now?

4                   THE COURT: Yeah, he can get the  
5 documents, but I prefer nobody else being in here  
6 during this process.

7                   THE COURT: One second, sir. We're just  
8 waiting for Mr. Goodman to be brought in. And these  
9 are my two law clerks, the two individuals sitting  
10 in the audience.

11                  MR. FIGLER: It looks like Mr. Goodman's  
12 preventing other people from trying to come in, too.

13                  THE COURT: I'll have the marshal do  
14 that.

15                  MR. GOODMAN: I didn't know you were  
16 waiting for me, Your Honor. Thank you.

17                  THE COURT: I'd prefer to have you here,  
18 too.

19                  MR. GOODMAN: I'm sorry.

20                  THE COURT: My marshal will keep out  
21 whoever else. This is Mr. Michael Arcana, No. 3.

22                         Sir, we are just taking each one of  
23 you one by one and we just want to let you know that  
24 from here on out my marshal's gonna pick you guys up  
25 at the jury commissioner's office and we're gonna



1 bring you guys back to the conference room.

2                   So you guys will be back here in the  
3 conference room. You'll take breaks in the  
4 conference room. Whatever you need, we'll  
5 accommodate you back here behind chambers.

6                   Having said that, is there  
7 anything that you have a concern about for your  
8 safety? Has anybody intimidated you inside or  
9 outside the courtroom or do you feel like you were  
10 intimidated at all?

11                  JUROR ARCANA: No, Your Honor.

12                  THE COURT: All right. So you're not  
13 concerned about anything or participating in the  
14 process?

15                  JUROR ARCANA: Not really.

16                  THE COURT: Okay. And have you heard  
17 anybody else, and if so, who have you heard being  
18 worried about their fear or safety?

19                  JUROR ARCANA: Some of the other jurors  
20 are a little anxious about taking off these tags as  
21 fast as they can, but.

22                  THE COURT: Okay.

23                  JUROR ARCANA: I don't share that  
24 anxiety.

25                  THE COURT: Who -- do you recall which

1 ones or who?

2 JUROR ARCANA: Juror with the short hair.

3 THE COURT: Where about does she sit?

4 JUROR ARCANA: Right here. (Indicating.)

5 She would be Juror No. 5.

6 THE COURT: No. 5. So Jackie Wiese,  
7 she's kind of like an older lady with blondish hair?

8 JUROR ARCANA: She's very nice, but she  
9 gets very nervous about having the tags on and she  
10 orders us to take them off as soon as we leave here.

11 THE COURT: All right.

12 JUROR ARCANA: And we are respectful to  
13 her and we do that for her.

14 THE COURT: Okay. Is there any further  
15 questions from the --

16 MR. FIGLER: (Negative nod of the head.)

17 THE COURT: Okay. Thank you very much,  
18 Mr. Arcana.

19 JUROR ARCANA: No problem.

20 (Whereupon, the juror exited the  
21 courtroom.)

22 MR. FIGLER: She orders them.

23 THE COURT: She's a nurse. She gives  
24 orders.

25 MR. FIGLER: We tried to challenge her

1 for cause. Just joking.

2 THE COURT: All right. Good morning,  
3 Mrs. Olson.

4 JUROR OLSON: Good morning.

5 THE COURT: These are my two law clerks  
6 out here in the audience. And just to let you know,  
7 from here on out we're basically gonna have you guys  
8 meet in the morning at the jury commission station  
9 and my marshal's gonna escort you guys up here.

10 And from here on out, we're just  
11 gonna keep you guys in the conference room where  
12 there's bathroom breaks. And anyway, you'll feel  
13 nice and comfortable out here.

14 Having said that, has there been  
15 anyone or anything that you've been intimidated  
16 inside or outside the courtroom that you feel is a  
17 concern that you want to let us know about?

18 JUROR OLSON: No.

19 THE COURT: Okay. So you feel confident  
20 that you are -- you know, you still are  
21 participating in the process and you're not --  
22 nobody's trying to intimidate you at all?

23 JUROR OLSON: No. They have not.

24 THE COURT: Have you heard from any of  
25 the jurors, and if so, which jurors have you heard

1 voice a concern about their safety?

2 JUROR OLSON: Not really. I think the --  
3 before the trial actually got started, when it was  
4 so unknown that maybe everybody had some concerns,  
5 but once the trial began, I don't feel that  
6 anybody's been concerned about their safety or.

7 THE COURT: Okay. Any further questions  
8 from either side?

9 MS. PANDUKHT: No, Your Honor.

10 THE COURT: No. Thank you so much.

11 JUROR OLSON: You welcome.

12 THE COURT: Okay. Bring in the next  
13 juror, No. 5.

14 (Whereupon, the juror exited the  
15 courtroom.)

16 THE COURT: Good morning, Ms. Wiese.

17 JUROR WIESE: Good morning.

18 THE COURT: This is just my two law  
19 clerks in the audience. And we just want to let you  
20 know from here on out with the jury we're gonna have  
21 you guys meet in the morning at the jury commission  
22 office.

23 My marshal's gonna escort you all up  
24 here and you all can basically -- we're gonna put  
25 you in the conference room from here on out. And

1 you'll have bathrooms back there and anything that  
2 you need we can take care of back here.

3           Having said that, is there anything  
4 that you've been worried about or concerned for your  
5 safety? Has anybody intimidated you inside or  
6 outside of the courtroom?

7           JUROR WIESE: No.

8           THE COURT: Okay. Have you been  
9 concerned at all about, you know, your safety?

10          JUROR WIESE: Yes.

11          THE COURT: And why is that?

12          JUROR WIESE: It just uncomfortable.  
13 You're in close proximity outside in those hallways.  
14 There's not really many places to go or leave, you  
15 know, when you just have 10 minutes.

16          THE COURT: Right.

17          JUROR WIESE: And of course you're not  
18 allowed to talk about the case, you don't talk about  
19 it. So if you're talking about other things and  
20 you're laughing, it's kind of they may feel it's  
21 disrespectful that we're laughing about, you know,  
22 something like, you know, serious as this and it's  
23 really not true.

24          THE COURT: So it's been --

25          JUROR WIESE: Misinterpret something.

1           THE COURT: And it's been uncomfortable  
2 having the people who have been sitting here in  
3 trial in the audience out there with you as you're  
4 waiting to come back in the courtroom?

5           JUROR WIESE: Yes.

6           THE COURT: Okay. Well, I'm gonna  
7 alleviate that because now we'll make sure that you  
8 guys are in the conference room during the breaks.

9           And again, we can get you guys any  
10 kind of sodas, whatever you guys need, we can get  
11 you.

12          JUROR WIESE: Okay, thank you.

13          THE COURT: Is that gonna -- will that  
14 alleviate any concerns that you might have, again,  
15 with the escorting back and forth with my marshal  
16 down to the jury commission room?

17          JUROR WIESE: Yes, that'd be fine. Thank  
18 you.

19          THE COURT: And you feel confident that  
20 you'll just continue to participate as you have  
21 been?

22          JUROR WIESE: Yes.

23          THE COURT: Okay. Does either side have  
24 any questions?

25          MS. PANDUKHT: No, Your Honor.

1           MR. FIGLER: Well, actually, can we all  
2 go -- because we were gonna talk about that one  
3 thing. May we come up?

4           THE COURT: Sure.

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

8           MR. FIGLER: The purpose for me in  
9 raising this issue was to ask whether or not there's  
10 a negative, a negative perception with any of the  
11 lawyers in the courtroom.

12          THE COURT: Oh, okay. Are you sure you  
13 want me to?

14          MS. PANDUKHT: May I have a suggestion?

15          THE COURT: On second thought, hold on.  
16 That's opening a can of worms, okay, because every  
17 time I go back after a jury verdict, they've got  
18 something to say about the lawyers, okay, and that's  
19 got nothing to do maybe with the evidence in the  
20 case. They may like the way, you know, something  
21 you just did yesterday, they may not like something  
22 you do. That doesn't mean they can't be fair and  
23 impartial in a case. I think that's opening a can,  
24 opening a can of worms.

25                 There's nothing that I need to get

1 into based on what she just said about lawyers  
2 because I'm just -- I'm not making that record. So  
3 I'm gonna, I'm gonna refrain from doing that.

4 Go ahead.

5 MR. FIGLER: Okay. Maybe more a general  
6 question, given the court's position, which would be  
7 something like is there anything that has been in or  
8 out of the courtroom that has caused you any bias or  
9 prejudice against either party.

10 MS. PANDUKHT: No.

11 THE COURT: No, I'm not getting into  
12 that. I'm not getting into that.

13 MR. FIGLER: Do you think that --

14 THE COURT: I'm not getting into it.

15 MR. FIGLER: How about do you think --

16 THE COURT: These people have -- so far  
17 nobody's said anything that I've got a concern for a  
18 mistrial, okay.

19 MR. FIGLER: Except that this gal is  
20 ordering other people to take a badge off.

21 THE COURT: So what. That doesn't mean  
22 she doesn't like you or you or if she does. She  
23 just may not like you and she's got every right.

24 MR. FIGLER: Unless it affects her  
25 ability to be a fair and impartial juror.



1 MS. PANDUKHT: No, she's not.

2 THE COURT: So respectfully you can make  
3 your objection. I'm not going into that. That's  
4 just opening up a can of worms.

5 MR. FIGLER: We just want to make sure  
6 everyone's fair and impartial.

7 MS. PANDUKHT: If she doesn't like me  
8 personally, I don't want to know that.

9 THE COURT: There isn't one time I go  
10 back to the jury room afterwards where they've got  
11 something to say about the lawyers. And that's all  
12 of them, okay. They've got something to say about  
13 everybody. And that doesn't mean that they have a  
14 wrong verdict or they were not fair and impartial.  
15 People just like to pick apart attorneys.

16 And I think that if I go into  
17 that --

18 MR. FIGLER: If a juror can hear  
19 everything that's being said here, is this defeating  
20 the purpose?

21 THE COURT: The juror can't hear  
22 everything that's being said.

23 MR. GOODMAN: Judge, it's pretty loud.

24 THE COURT: Well, then stand back unless  
25 you have something relevant to ask on prejudice.

1 MR. GOODMAN: No, we appreciate the  
2 judge's ruling.

3 (Whereupon, the bench conference ended.)

4 THE COURT: Thank you very much.

5 (Whereupon, the juror exited the  
6 courtroom.)

7 THE COURT: And we'll take Juror No. 6.  
8 By the way, there's whiteout noise throughout this  
9 courtroom. When we're having a bench conference,  
10 all you hear is static through this courtroom.

11 Good morning, Ms. Angelica  
12 Numez-Morarrez. These are just my two law clerks in  
13 here. And I just want -- we're bringing each juror  
14 in. We're gonna let you guys know that from here on  
15 out -- you can have a seat. From here on out, we're  
16 gonna get the jury at jury commissioner's office.

17 My marshal's gonna escort you guys  
18 up, and you guys will hang out during the breaks and  
19 stuff in the conference room, and then he'll escort  
20 you back at the end of the night.

21 What we want to make sure when we're  
22 bringing each juror in here is that you haven't felt  
23 intimidated at all by anything that's gone on inside  
24 the courtroom or outside the courtroom.

25 So my question is has anybody or

1 anything intimidated you inside or outside the  
2 courtroom?

3 JUROR NUMEZ-MORARREZ: No. I couldn't  
4 say in particular, but I do feel stares when we're  
5 in the lobby. So we, we told marshal.

6 THE COURT: Okay. Well, that should be  
7 alleviated with all of you coming back.

8 JUROR NUMEZ-MORARREZ: Okay.

9 THE COURT: It's close quarters out there  
10 and I think it's a lot easier because there is a  
11 larger audience to just bring you guys back instead  
12 of, you know, some cases nobody's in the audience.  
13 So it's a lot easier just to bring you guys back.

14 Would that alleviate your concerns?

15 JUROR NUMEZ-MORARREZ: It would at that  
16 point. Thank you.

17 THE COURT: Okay. And that you'll  
18 continue in your participation in this process,  
19 there's no hesitation?

20 JUROR NUMEZ-MORARREZ: Not at all, not on  
21 my part.

22 THE COURT: Okay. Anything further from  
23 either side?

24 MR. FIGLER: Any other jurors.

25 THE COURT: Oh. Have there been other

1 jurors that you've heard concerned for their safety  
2 or worried?

3 JUROR NUMEZ-MORARREZ: Not at all.

4 THE COURT: Okay. Thank you so much.  
5 Anything further?

6 MR. FIGLER: (Negative nod of the head.)

7 MS. PANDUKHT: No.

8 THE COURT: Okay, thank you.

9 JUROR NUMEZ-MORARREZ: Thank you, Your  
10 Honor.

11 (Whereupon, the juror exited the  
12 courtroom.)

13 THE COURT: Hi. Good morning, Mr.  
14 Trombetta. These are just my two law clerks in the  
15 audience.

16 What we're gonna start doing from  
17 here on out because of the close quarters out front  
18 is we're gonna have my marshal pick the jury up from  
19 jury selection, jury services.

20 We're gonna have you come back here  
21 into the conference room area so that you guys will  
22 be taking your breaks in the conference area. We'll  
23 get you whatever you need as far as refreshments,  
24 and there's bathrooms back there, to alleviate any  
25 kind of interaction with -- there's been a very

1 large audience in this case.

2 In any event, we wanted to ask each  
3 one of you have you been intimidated or concerned  
4 for your safety in any way?

5 I guess I'll ask you first: Have  
6 you been intimidated by anybody inside or outside  
7 the courtroom or have you felt intimidated or in  
8 fear for your safety?

9 JUROR TROMBETTA: No.

10 THE COURT: And do you feel like if we  
11 bring you guys back that would be a better situation  
12 for you guys?

13 JUROR TROMBETTA: That I would like  
14 because it is uncomfortable out there.

15 THE COURT: Yeah.

16 JUROR TROMBETTA: But yes, I would  
17 appreciate that.

18 THE COURT: Okay. And have you heard any  
19 other jurors, and specifically if you have, which  
20 jurors, relate any concerns or fears that they've  
21 had?

22 JUROR TROMBETTA: Just briefly. And that  
23 was just earlier when we were initially talking  
24 about seeing if we can go somewhere else.

25 THE COURT: Okay.

1 JUROR TROMBETTA: Just two jurors stated  
2 that they did get some funny looks or constantly  
3 being stared at.

4 One other was talking about well,  
5 waiting in front of the courthouse, waiting for a  
6 ride that she saw one person walk back and forth  
7 several times.

8 THE COURT: Who was that one? Which  
9 juror? Do you know? You can point to a chair if  
10 you can't remember their name.

11 JUROR TROMBETTA: I'm not sure. I'm not  
12 sure which chair. Either front row. You haven't  
13 seen her yet. I'm trying to remember her name. We  
14 were trying to talk about names the other day.  
15 Possibly Erika.

16 THE COURT: Okay.

17 JUROR TROMBETTA: Erika. I could be  
18 wrong.

19 THE COURT: Okay. And do you recall the  
20 ones that said that they felt like they were being  
21 stared at or looked at?

22 JUROR TROMBETTA: Well -- hum. No, she  
23 was just -- we were just talking about it here. You  
24 haven't spoken to her yet either.

25 THE COURT: Okay.

1 JUROR TROMBETTA: I'm sorry. I can't  
2 think of her name.

3 THE COURT: We've got -- I'll tell you  
4 who I haven't talked to yet. I haven't talked to  
5 Kristina Beber.

6 JUROR TROMBETTA: I believe it is her.

7 THE COURT: She's Juror No. 8 down here.

8 JUROR TROMBETTA: I believe so. Again,  
9 she was just talking about the fact that she was  
10 talking her foster children's pictures and one of  
11 the names is a name that's been mentioned in the  
12 courtroom.

13 THE COURT: Is that Giovanny?

14 JUROR TROMBETTA: Yes.

15 THE COURT: Okay.

16 JUROR TROMBETTA: So but it was her  
17 foster child's name. And so when she was talking to  
18 another juror about her foster child, other people  
19 that weren't part of the jury were looking at her  
20 strangely.

21 THE COURT: Like the audience, somebody  
22 from outside?

23 JUROR TROMBETTA: Yes.

24 THE COURT: And that's while you guys  
25 were waiting to come in here?

1 JUROR TROMBETTA: Well, that's when she  
2 just brought it up.

3 THE COURT: Okay.

4 JUROR TROMBETTA: We were --

5 THE COURT: Okay. And that's all you've  
6 heard or --

7 JUROR TROMBETTA: Correct.

8 THE COURT: -- or mentioned?

9 JUROR TROMBETTA: Correct.

10 THE COURT: All right. So you're gonna  
11 continue in participating in this process, you've  
12 got no fears?

13 JUROR TROMBETTA: No, not at this time.

14 THE COURT: All right. Anything further  
15 from anyone?

16 MS. PANDUKHT: No, Your Honor.

17 MR. FIGLER: The juror indicated that by  
18 moving it back he would either be less concerned  
19 or -- can you just follow up on that just a little  
20 bit? Something like that, there was less concern  
21 for him or he would feel more comfortable, something  
22 like that.

23 THE COURT: You'd be more comfortable  
24 being back here I'm assuming because of all the  
25 audience?



1 JUROR TROMBETTA: Yes.

2 THE COURT: Okay.

3 JUROR TROMBETTA: Again, it's  
4 uncomfortable being out there. You don't know who  
5 is out there. They're all connected in some way  
6 with the trial being here I would assume. So but  
7 you just feel uncomfortable with everyone else  
8 walking by knowing that you're here and especially  
9 with the type of trial it is. So yes, I would feel  
10 more comfortable in the back.

11 THE COURT: All right. Thank you so  
12 much.

13 JUROR TROMBETTA: You're welcome. Thank  
14 you.

15 (Whereupon, the juror exited the  
16 courtroom.)

17 THE COURT: I don't have my jury  
18 selection notes. Was Kristina Beber the one with  
19 the foster kids?

20 MR. FIGLER: Yes.

21 THE COURT: Okay.

22 MR. FIGLER: You know, judge, I think the  
23 big elephant --

24 THE COURT: We're outside the presence  
25 right now --

1 MR. FIGLER: Right.

2 THE COURT: -- as he's talking. Go  
3 ahead.

4 MR. FIGLER: Definitely. I think the big  
5 elephant in the room is, is the implied because this  
6 is a gang case we're afraid or because --

7 THE COURT: Well, I disagree with you. I  
8 think whenever you have a big audience of people,  
9 and they could be the victim's family or the  
10 defendant's family, it's uncomfortable because  
11 they're ultimately the finder of fact.

12 And we've had a very large audience.  
13 Sometimes you think it could be the victim's family  
14 or friends, it could be the defendant's family and  
15 friends, and it's an uncomfortable position for them  
16 to be outside, even when they're talking, that  
17 they're getting looked at by, you know, if they  
18 laugh about something, they feel like that the  
19 other, you know, the group thinks that they're being  
20 disrespectful because of course it's serious for the  
21 defendant.

22 Okay. We're back on the record and  
23 we're in the presence of Ms. Beber. Okay. Well,  
24 just to let you know, we just have my law clerks in  
25 here.

1                   And so from here on what we're gonna  
2 do is my marshal's gonna pick up the jury from jury  
3 services in the morning and escort you guys up.

4                   And we're gonna put you guys in the  
5 conference room from here on out. You'll have  
6 bathroom breaks. If you need something, we can get  
7 you refreshments, whatever.

8                   Because, you know, it's been a very  
9 large audience here in the courtroom and there's  
10 been some mention that you would more comfortable  
11 back there than out there with the audience.

12                  JUROR BEBER: Yes.

13                  THE COURT: And some jurors have brought  
14 up something about you're having a foster named  
15 Giovanny?

16                  JUROR BEBER: I have a foster son that's  
17 named Giovanny. And Erika and I were going through  
18 pictures on my phone and I'm like, oh here's my  
19 kids. And it just didn't -- that's Giovanny to me  
20 and this is something totally removed. And so I was  
21 showing her a picture.

22                  And there were two family members  
23 that were across the hall and I just remember them  
24 glancing up. And they looked -- you know what I  
25 mean? They were just like -- (indicating.) And so

1 I just went back to talking to her.

2 And it wasn't until the next morning  
3 I got up and I was in the bathroom getting ready and  
4 the little boy was doing something and I turned.  
5 And when I said his name, I was like oh, that could  
6 come across as, you know, something different to  
7 them.

8 THE COURT: Right. Like maybe you were  
9 talking about the trial or something and they gave  
10 you a look?

11 JUROR BEBER: (Positive nod of the head.)

12 THE COURT: Okay. Is there anything  
13 about that or any other instance that you felt  
14 intimidated or in fear of your safety either inside  
15 or outside this courtroom? Has anything happened to  
16 make you concerned?

17 JUROR BEBER: It's just very -- it's very  
18 uncomfortable out there. It's hard when our names  
19 are read out loud as --

20 THE COURT: I'm not gonna do that  
21 anymore. I'll ask you to put your badge number, but  
22 I won't say your names anymore.

23 JUROR BEBER: It's okay because you never  
24 pronounce my name correctly anyway.

25 THE COURT: I know, I never --

1 JUROR BEBER: It's Beber like the dumb  
2 little singing kid.

3 THE COURT: I know, but I never say his  
4 name right either.

5 JUROR BEBER: Well, then that's fair.

6 THE COURT: Beber, Biber (phonetic). I  
7 don't know.

8 JUROR BEBER: So it's very -- especially  
9 when we're all lined up at the front and they're all  
10 just, you know, they're sitting and they're just  
11 staring at you like this, (indicating), it is very  
12 uncomfortable.

13 We're trying very hard not to make  
14 eye contact or not to, you know. And there's times  
15 that they're sitting, you know, on benches right  
16 next to us whispering to one another, having  
17 conversations, and you're kind of like trying so  
18 hard -- how do you try not to hear. I mean, that's  
19 just hard.

20 THE COURT: Well, we're gonna alleviate  
21 that. Do you think that you'll feel much more  
22 comfortable --

23 JUROR BEBER: Oh, yeah, absolutely.

24 THE COURT: And none of this -- all of  
25 your concerns will be alleviated --

1 JUROR BEBER: Absolutely.

2 THE COURT: -- based on that?

3 JUROR BEBER: Absolutely. I feel much  
4 better that way.

5 THE COURT: And have you heard any other  
6 jurors worried about or concerns for their safety or  
7 fear?

8 JUROR BEBER: Yeah. I know that Erika  
9 that sits next to me, I started -- she doesn't have  
10 a car and so I started picking her up in the  
11 mornings and dropping her off at her house at night.  
12 She doesn't live that far from me. Because she  
13 would have to call her family when she left at night  
14 and she's standing outside in front of the  
15 courthouse. And so it was uncomfortable.

16 She had an incident one evening  
17 where she didn't know exactly who it was, she just  
18 knew it was one of the people that was actually  
19 inside the courtroom sitting and he had walked back  
20 and forth, you know, probably waiting for his car as  
21 well, but she's young and she's standing on the  
22 street corner by herself and it just made her  
23 uncomfortable.

24 So I started -- it's easier for me  
25 to pick her up and drop her off. She's not waiting

1 out there.

2 THE COURT: Okay. Any other people that  
3 you've heard any other concerns with?

4 JUROR BEBER: Not that I can think of.

5 THE COURT: All right. Does either side  
6 have anymore questions for this particular juror?

7 MS. PANDUKHT: No, Your Honor.

8 MR. FIGLER: No, Your Honor.

9 THE COURT: Thank you so much.

10 MS. BEBER: Are we allowed to say we're  
11 really glad she's back?

12 THE COURT: They like you, JoAnn.

13 JUROR BEBER: We appreciate you a lot  
14 more today.

15 (Whereupon, the juror exited the  
16 courtroom.)

17 THE COURT: Ms. Villanueva, good morning.  
18 Just to let you know, these are my law clerks in the  
19 courtroom. Nobody else is in here but the parties.

20 And what we're doing is letting all  
21 of you know that we are -- from here on out, we're  
22 gonna have you meet in the jury commissioner's  
23 services room. My marshal's gonna bring you up here  
24 to the conference room and that's where you guys are  
25 gonna pretty much hang out for the rest of the

1 trial, so that you don't necessarily have to be out  
2 there with the audience, okay.

3 So we'll have restrooms for you. If  
4 we need any refreshments, we'll have that for you.

5 And you, you just made what appears  
6 to be like a sigh of relief?

7 JUROR VILLANUEVA: Yes.

8 THE COURT: So would that make you more  
9 comfortable?

10 JUROR VILLANUEVA: Yes.

11 THE COURT: Okay.

12 JUROR VILLANUEVA: A lot more  
13 comfortable.

14 THE COURT: And we've learned that you've  
15 had some uncomfortable experiences.

16 Can you share those with us?

17 JUROR VILLANUEVA: Yes. Well, apparently  
18 the family -- I don't know if it's the family that  
19 sits here. (Indicating.)

20 THE COURT: Well, let me ask you: What  
21 side of the room are they sitting on? So where the  
22 State's desk is and the State's people. Okay.

23 JUROR VILLANUEVA: Yeah. Well, we go  
24 outside, we can't talk about this so we're just  
25 laughing at something else and they're just staring.



1                   And one of the jurors has a son  
2   named Giovanny. So she was showing me a picture of  
3   the baby. And as soon as they heard Giovanny, they  
4   were just (indicating) --

5                   THE COURT: They were listening.

6                   JUROR VILLANUEVA: Listening, yeah.

7                   THE COURT: They, they -- let the record  
8   reflect she moved in like as to listen.

9                   JUROR VILLANUEVA: Yes. And it's kind  
10   of --

11                  THE COURT: Or eavesdrop.

12                  JUROR VILLANUEVA: Yeah. And the first  
13   day we walked out of the court -- I don't have a car  
14   so I was waiting for my dad. I was outside in the  
15   front and all of a sudden one of the guys from this  
16   side. (Indicating.)

17                  THE COURT: Again, the State's -- more on  
18   the State's side of the room.

19                  JUROR VILLANUEVA: Yeah. One of them, he  
20   just walked past me once and then again and then  
21   again. And I was waiting for my dad and I thought  
22   oh, I've got to go home.

23                  THE COURT: That scared you?

24                  JUROR VILLANUEVA: He didn't say anything  
25   or do anything at all. He just passed by.

1 THE COURT: Did that scare you?

2 JUROR VILLANUEVA: Yeah. I was like I've  
3 got to go home.

4 THE COURT: But he didn't say anything --

5 JUROR VILLANUEVA: No, no.

6 THE COURT: -- or do anything?

7 JUROR VILLANUEVA: Nothing at all. No.

8 THE COURT: Just your perception?

9 JUROR VILLANUEVA: Just the way they look  
10 at you. That's, that's it.

11 THE COURT: And that makes you feel  
12 uncomfortable?

13 JUROR VILLANUEVA: But now I have a ride,  
14 they take me home.

15 THE COURT: So between the rides back and  
16 forth, so you don't have to stand outside --

17 JUROR VILLANUEVA: Yeah, I --

18 THE COURT: -- the courtroom?

19 JUROR VILLANUEVA: No, I don't.

20 THE COURT: And now you'll be back in the  
21 jury back in the conference room.

22 Do you think that will alleviate any  
23 concerns that you may have for your safety?

24 JUROR VILLANUEVA: Yes. A lot.

25 THE COURT: Okay. And you feel like you

1 can participate in this process much more confident  
2 now?

3 JUROR VILLANUEVA: Yes.

4 THE COURT: Is there any concerns you  
5 want to share with us right now besides that, now  
6 that I've told you we're gonna be putting you back  
7 there in the conference room?

8 JUROR VILLANUEVA: No, I think  
9 everybody's okay now. Oh, yeah, and the names.

10 THE COURT: Oh, yeah, we won't say the  
11 names anymore.

12 JUROR VILLANUEVA: Okay. Yeah, thank  
13 you.

14 THE COURT: We're not gonna say the names  
15 anymore. I'm just gonna say Juror No. 7 is asking a  
16 question. Just write your names on it, but I won't  
17 say your names anymore.

18 JUROR VILLANUEVA: Okay. Yeah, that's  
19 why I kind of hold back on like asking questions.

20 THE COURT: Okay.

21 JUROR VILLANUEVA: Because I don't like  
22 the whole mentioning the names, yeah.

23 THE COURT: Okay. We will make sure only  
24 to say numbers.

25 JUROR VILLANUEVA: Okay.

1 THE COURT: And if we say only numbers,  
2 you won't have any reservations, if you have a  
3 question, you'll ask it?

4 JUROR VILLANUEVA: Yes.

5 THE COURT: Okay. Is there anything  
6 further from either side?

7 MR. FIGLER: No, Your Honor.

8 MS. PANDUKHT: I just have one quick  
9 question.

10 THE COURT: Sure.

11 MS. PANDUKHT: The incident outside in  
12 front of the RJC, was that on Monday when we were  
13 picking a jury?

14 JUROR VILLANUEVA: Yes.

15 MS. PANDUKHT: Okay, thank you.

16 JUROR VILLANUEVA: No, no, no. That was  
17 Tuesday because this is when the family was in here.

18 MS. PANDUKHT: So Tuesday.

19 JUROR VILLANUEVA: Tuesday, yeah.

20 MS. PANDUKHT: Thank you.

21 THE COURT: Anything further from either  
22 side? Okay, thank you so much.

23 (Whereupon, the juror exited the  
24 courtroom.)

25 THE COURT: Hi. Good morning, sir.

1 These are my two law clerks. What we're gonna do  
2 from now on is have you all meet in jury services.  
3 My marshal will escort you out here.

4 We're gonna put you back in the  
5 conference room. We're gonna try to alleviate any  
6 uncomfortable feelings because I know it's been a  
7 large group up in the audience.

8 Also, even though you write your  
9 name on the questions, we're just gonna say in open  
10 court your number, not your names.

11 Having said that, do you think that  
12 will alleviate any fears or concerns you might have  
13 had --

14 JUROR CATELLO: Yeah.

15 THE COURT: -- in the trial?

16 JUROR CATELLO: Yeah, I definitely think  
17 so.

18 THE COURT: Okay. Has there been  
19 anything that you felt has intimidated or has  
20 anybody harassed you outside the courtroom that we  
21 need to know about or any concerns that you've had?

22 JUROR CATELLO: No. I just -- I made  
23 sure myself that I don't make eye contact with  
24 anybody. So no.

25 THE COURT: Okay. So you'll be able to

1 participate in this process with more -- more  
2 comfortable?

3 JUROR CATELLO: Absolutely, yeah.

4 THE COURT: Okay.

5 JUROR CATELLO: Yup.

6 THE COURT: Is there anything that you  
7 want to ask, either side?

8 MR. FIGLER: No, Your Honor.

9 MS. PANDUKHT: No, Your Honor.

10 THE COURT: Thank you so much, sir.  
11 Thank you.

12 (Whereupon, the juror exited the  
13 courtroom.)

14 THE COURT: We're outside the presence.  
15 It just appears one after another just the  
16 uncomfortableness with the audience. They just  
17 don't want to be in the same area because it's  
18 uncomfortable.

19 MR. FIGLER: I mean, in concern to the  
20 defense, Your Honor, is why the uncomfortableness.  
21 Do they think someone's gonna hurt them or if they  
22 rule a certain way it's gonna -- I know we can't get  
23 that deep.

24 THE COURT: I understand that. I'm not  
25 gonna go into it.

1 MR. FIGLER: No, I get that, but you  
2 understand that's where we're like --

3 THE COURT: Sure. We're making a record,  
4 I'm doing what you want. We're taking an hour and a  
5 half in the morning and we'll do it.

6 All right, sir. Good morning.  
7 These are my two law clerks in the courtroom. And  
8 basically just to let you guys know, all the jurors,  
9 we're gonna bring all of you in the morning, you'll  
10 meet in jury commission.

11 And we're gonna bring you guys up  
12 here into the conference room. And that way you  
13 guys can use the restrooms up here behind the  
14 conference room, get you refreshments, and you won't  
15 be necessarily out there with what's been the  
16 audience here during the trial, to make you guys  
17 feel more comfortable.

18 Has there been anybody -- and we're  
19 also, I'm not gonna call out your names in the  
20 courtroom. Just write your names on the question,  
21 but I'll just say Juror No. 7 or something like  
22 that.

23 Is there anything that you want to  
24 share with us that you have felt intimidated or  
25 harassed in any way by anyone inside or outside the

1 courtroom?

2 JUROR MCCALLUM: No, ma'am.

3 THE COURT: Do you think that by doing  
4 this, putting you guys back there in the conference  
5 room, it will make you feel more comfortable in this  
6 process and more willing to participate?

7 JUROR MCCALLUM: I basically go with the  
8 flow. I'm good.

9 THE COURT: Okay. So you have no -- you  
10 really didn't have much concerns anyway?

11 JUROR MCCALLUM: Oh, no.

12 THE COURT: Anything further from either  
13 side?

14 MS. PANDUKHT: Nothing.

15 MR. FIGLER: No, Your Honor.

16 THE COURT: Okay, thanks. All right.  
17 Thank you.

18 (Whereupon, the juror exited the  
19 courtroom.)

20 MS. PANDUKHT: Are you gonna ask the  
21 alternates as well, judge?

22 THE COURT: I'm sorry?

23 MS. PANDUKHT: Are you gonna ask the  
24 alternates as well?

25 THE COURT: Yes. For fear if we ever



1 need an alternate, we might as well get it out with  
2 making a record or anything.

3 MS. PANDUKHT: Thank you.

4 MR. FIGLER: Home stretch, though.

5 THE COURT: I'm just about there, right?  
6 I'm on 11. No, wait. I'm on 12.

7 MR. FIGLER: Yeah.

8 MS. PANDUKHT: I thought we were on 11,  
9 but I --

10 THE COURT: I'm had on 12. Yeah,  
11 Elizabeth Uhrle. What I'm gonna do is tell them all  
12 to take a really big bathroom break and then go into  
13 a two-hour session, okay?

14 MS. DEMONTE: Okay.

15 THE COURT: Hi, Ms. Uhrle. These are my  
16 two law clerks in the audience and nobody else is  
17 here.

18 What I'm gonna do from here on out  
19 is I'm gonna make sure you all meet -- go ahead and  
20 have a seat. You're all gonna meet in jury services  
21 from here on out and my marshal's gonna escort you  
22 up into the conference room in the back.

23 You can see use the restrooms,  
24 they'll be refreshments and that should alleviate  
25 you, the jury, having to mingle with what's the

1 audience in the gallery of what's going on, you  
2 know, during trial.

3 Do you think that will alleviate any  
4 concerns that you may have with any  
5 uncomfortableness with that large group of audience?

6 JUROR UHRLE: No.

7 THE COURT: It won't alleviate or you  
8 feel more comfortable?

9 JUROR UHRLE: Oh, I'm sorry. Yes, I  
10 would feel comfortable.

11 THE COURT: Okay. Has there been  
12 anything that you felt inside or outside the  
13 courtroom that anybody intimidated you or harassed  
14 you at all?

15 JUROR UHRLE: No.

16 THE COURT: And I won't be saying your  
17 names anymore. I'll just say your badge number.  
18 Just keep writing your names on it.

19 JUROR UHRLE: Okay.

20 THE COURT: Do you think that you'll be  
21 participating in the process even more if I do that  
22 or you'll feel comfortable?

23 JUROR UHRLE: I feel fine either way. It  
24 doesn't matter to me.

25 THE COURT: Okay. Anything further from

1 either side?

2 MS. PANDUKHT: No, Your Honor.

3 MR. FIGLER: No, Your Honor.

4 THE COURT: Thanks so much.

5 (Whereupon, the juror exited the  
6 courtroom.)

7 THE COURT: Good morning, ma'am. These  
8 are my two law clerks. And what we're gonna start  
9 doing is having all the jurors meet in the morning  
10 in the jury room, jury commissioners room.

11 My marshal's then gonna escort you  
12 up here and we're gonna keep you guys back here from  
13 here on out in the conference room.

14 ALTERNATE JUROR MORASCO: Uh-huh.

15 THE COURT: There's -- you can have  
16 refreshments, there's restrooms back there. We're  
17 just gonna keep you apart from the general audience  
18 that's been out there lately because of the close  
19 quarters so to speak.

20 ALTERNATE JUROR MORASCO: Uh-huh.

21 THE COURT: Do you think that will  
22 alleviate or make it more comfortable for you as a  
23 juror?

24 ALTERNATE JUROR MORASCO: Yes.

25 THE COURT: Okay. And has anybody -- oh,

1 we're also gonna make sure that if you have  
2 questions I just say you're No. 13. We won't say  
3 your names anymore.

4                   Having said that, has anybody inside  
5 or outside the courtroom intimidated you or harassed  
6 you in any way?

7                   ALTERNATE JUROR MORASCO: No.

8                   THE COURT: Okay. So you think you'll  
9 feel more comfortable once that's done?

10                  ALTERNATE JUROR MORASCO: Yes.

11                  THE COURT: Okay. Is there anything  
12 further then from either side?

13                  MS. PANDUKHT: No, Your Honor.

14                  MR. FIGLER: No, Your Honor.

15                  MS. DEMONTE: No, Your Honor.

16                  THE CLERK: Her badge number.

17                  THE COURT: Her badge number?

18                  THE CLERK: We're gonna use badge  
19 numbers.

20                  THE COURT: I did just say that to her.  
21 Okay. Thank you so much.

22                         (Whereupon, the juror exited the  
23 courtroom.)

24                  THE CLERK: Oh wait. Can you tell the  
25 rest of them to start going to the bathroom?

1 Because when I bring them in, we're gonna be like  
2 two hours. Okay. Let everybody start going thanks.

3 I guess you guys will use the public  
4 one. Sorry. Or if you want to go all the way  
5 around and use the other one, you can do that, too,  
6 at the end of the hallway. There's another set.

7 I just thought you probably  
8 shouldn't come right back here anymore. The  
9 attorneys should stay away from chambers. But Judge  
10 Barker and Judge Villani are really nice. So if you  
11 wanted to go back there and get coffee, you're more  
12 than welcome.

13 MS. PANDUKHT: Okay, thank you.

14 THE COURT: Good morning, Ms. Gomez.

15 ALTERNATE JUROR GOMEZ: Good morning.

16 THE COURT: These two individuals are my  
17 law clerks here. They're my law clerks. What we're  
18 gonna start doing is we're gonna have all the jurors  
19 meet in jury commissions each morning and then my  
20 marshal's gonna escort everybody back here to the  
21 conference room.

22 You can have refreshments and  
23 there's restrooms back here, but we're gonna keep  
24 you separated from the audience. There's been large  
25 groups of people sitting in the audience.

1                   And so do you think that that would  
2 make you feel more comfortable during this process?

3                   ALTERNATE JUROR GOMEZ: Yes.

4                   THE COURT: Also, instead of calling out  
5 your name's during questions, we'll just say your  
6 numbers. So No. 14, you know --

7                   ALTERNATE JUROR GOMEZ: Okay.

8                   THE COURT: -- on the record so that in  
9 court your name's won't be said.

10                  Do you think that will make you feel  
11 more comfortable as well?

12                  ALTERNATE JUROR GOMEZ: Yes.

13                  THE COURT: Has anybody or anything  
14 intimated or harassed you inside or outside the  
15 courtroom that you fear for your safety at all that  
16 we need to know?

17                  ALTERNATE JUROR GOMEZ: No, no.

18                  THE COURT: All right. So you'll feel  
19 more comfortable during this process?

20                  ALTERNATE JUROR GOMEZ: Yes.

21                  THE COURT: Is there anything further  
22 from either side?

23                  MS. PANDUKHT: No, Your Honor.

24                  MS. DEMONTE: No, Your Honor.

25                  MR. FIGLER: No, Your Honor.

1 THE COURT: All right. Thank you so  
2 much. We're getting ready to go back on the record.  
3 So take a restroom break before we come back, okay?

4 ALTERNATE JUROR GOMEZ: Okay, thank you.

5 THE COURT: Thank you. We're gonna go  
6 off the record for five minutes. Everybody take a  
7 little break and then we'll come back on and start  
8 our day. Thanks.

9 (Whereupon, a recess was had.)

10 THE COURT: All right. Please be seated.  
11 State of Nevada versus Evaristo Garcia. Case No.  
12 C262966.

13 Let the record reflect we're in the  
14 presence of the jurors, the defendant's present, Mr.  
15 Figler, Mr. Goodman's present. Ms. Pandukht and Ms.  
16 Demonte is present.

17 We're now still on the State's  
18 case-in-chief. State, go ahead and call your next  
19 witness.

20 MS. DEMONTE: The State calls Scott  
21 Hendricks.

22 THE COURT: Scott Bindrup?

23 MS. DEMONTE: Hendricks.

24 THE COURT: Okay.

25 (Whereupon, T. Scott Hendricks was duly

1                   sworn to tell the truth, the whole truth,  
2                   and nothing but the truth.)

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

5                   THE WITNESS: T. Scott Hendricks. First  
6 initial T, S-c-o-t-t, H-e-n-d-r-i-c-k-s.

7                   THE COURT: Okay. Go ahead and proceed.

8                   MS. DEMONTE: Thank you.

9                   DIRECT EXAMINATION

10 BY MS. DEMONTE:

11               Q.     Sir, how are you employed?

12               A.     I'm a special agent with the FBI.

13               Q.     And what is your job assignment as a  
14 special agent?

15               A.     I'm currently assigned to a violent  
16 crimes task force.

17               Q.     Back in 2006, did you have a different  
18 assignment?

19               A.     No, I did not.

20               Q.     Okay. Sorry. The violent crimes task  
21 force, is there a subgroup of that?

22               A.     Yes, there is. Commonly known as a  
23 criminal apprehension team. It's a violent crime  
24 fugitive task force.

25               Q.     Okay. And what is the job role of the



1 criminal apprehension team?

2 A. Our job is to locate and apprehend  
3 persons wanted for violent felonies.

4 Q. And you've mentioned this is a task  
5 force. What do you mean by that?

6 A. It's composed of officers and detectives  
7 and agents from the FBI, Las Vegas Metropolitan  
8 Police Department and Henderson Police Department.

9 Q. Okay. Now, directing your attention to  
10 2006, roughly June 21st of 2006, did you have a  
11 partner you were working with at the time?

12 A. Yes, I did.

13 Q. And who was that person?

14 A. Las Vegas Metropolitan Police Department  
15 Detective Steve Devore.

16 Q. And is that spelled D-e-v-o-r-e?

17 A. Yes, it is.

18 Q. And is that how it commonly works is it's  
19 one FBI agent and one metro officer?

20 A. Often times, yes.

21 Q. Now, directing your attention  
22 specifically to June of 2006, were you contacted by  
23 someone in the Las Vegas Metropolitan Police  
24 Department with regard to a person by the name of  
25 Evaristo Garcia?

1 A. Yes.

2 Q. And who contacted you?

3 A. Detective Cliff Mogg.

4 Q. And were you provided with any  
5 documentations to help you, to assist you with your  
6 investigation?

7 A. An arrest warrant for Evaristo Garcia.

8 Q. And to your knowledge when was that  
9 issued?

10 A. June of that year.

11 Q. June of that year?

12 A. I believe so.

13 Q. Okay. Now, once you have the arrest  
14 warrant for someone in hand, what do you do next?

15 A. We then conduct investigation to locate  
16 and hopefully apprehend.

17 Q. Okay. And in this particular case, did  
18 you conduct an investigation here in the United  
19 States?

20 A. Yes, we did.

21 Q. And without going into anything anyone  
22 said, what did you personally do on this case in --  
23 here in the United States?

24 A. Conducted database checks, conducted  
25 interviews, logical fugitive investigation.

1 Q. Okay. Now, based on what your  
2 investigation was giving you, did you then focus  
3 your investigation elsewhere?

4 A. Yes, we did.

5 Q. And where did you focus your  
6 investigation to?

7 A. To Mexico.

8 Q. Okay. Now, in order to conduct your  
9 investigation, is there something on the federal  
10 court level that you yourself have to do as an FBI  
11 agent?

12 A. Yes. Yes, we do.

13 Q. And in this particular case, I want to  
14 direct your attention to October of 2006.

15 What did you do within the federal  
16 courts?

17 A. Once we determined that somebody has fled  
18 the jurisdiction, we then obtain an arrest  
19 warrant --

20 MR. FIGLER: I'm gonna object, Your  
21 Honor, to the characterization of "fled the  
22 jurisdiction."

23 If there is a different  
24 jurisdiction, then that's --

25 THE COURT: Overruled.

1 MS. DEMONTE: Okay.

2 THE WITNESS: We then obtain a federal  
3 arrest warrant for unlawful flight to avoid  
4 prosecution.

5 MR. FIGLER: And, again, I'm gonna make a  
6 continuing objection to using the word fled or  
7 flight because the facts have not been established.

8 THE COURT: Overruled.

9 BY MS. DEMONTE:

10 Q. In this particular case, did you actually  
11 get a warrant issued by the United States District  
12 Court?

13 A. Yes, we did.

14 Q. And what date? Do you recall what date  
15 that was?

16 A. October of that same year. October 8th,  
17 I think.

18 Q. Okay. Would it is refresh your  
19 recollection if I showed you the warrant?

20 A. Yes, it would.

21 Q. In the interest of time, actually would  
22 it refresh your recollection if I showed you your  
23 affidavit for a subsequent warrant that you  
24 received?

25 A. That's fine.

1 Q. Okay.

2 A. On the 10th.

3 Q. October 10th?

4 A. October 10th, yes.

5 Q. So you received the federal -- and is  
6 that commonly referred to you as UFAP, U-F-A-P?

7 A. Yes.

8 Q. Okay. And what does that stand for?

9 A. Unlawful flight to avoid prosecution.

10 MR. FIGLER: And, again, we'll object,  
11 Your Honor.

12 THE COURT: Overruled.

13 BY MS. DEMONTE:

14 Q. And you obtained that warrant on October  
15 10th of 2006?

16 A. Yes, we did.

17 Q. Now, after you obtained that warrant, did  
18 you then do some more investigation into how to  
19 determine where exactly Evaristo Garcia was?

20 A. Yes, we did.

21 Q. And what type of investigation did you  
22 do?

23 A. We obtained a pen register.

24 Q. Okay. Now, what is a pen register?

25 A. A pen register is a -- we obtain a court