

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

2
3 MATTHEW WASHINGTON,

4 Appellant,

5 v.

6 THE STATE OF NEVADA,

7 Respondent.

No. 65998

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9 **APPELLANT'S APPENDIX VOLUME VI PAGES 1105-1323**

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1 PROSPECTIVE JUROR NO. 107: Not a letter grade, but
2 each day, two absences equals a letter grade off, and if I
3 miss the dress rehearsal --

4 THE COURT: Is that true if I talk to the professor?

5 PROSPECTIVE JUROR NO. 107: Yes.

6 THE COURT: What's your professor's name?

7 PROSPECTIVE JUROR NO. 107: Professor LaBounty.

8 THE COURT: I'm sorry?

9 PROSPECTIVE JUROR NO. 107: LaBounty, Tony LaBounty.

10 THE COURT: Okay. I'm actually more concerned with,
11 you know, the fact that it -- since it is that big a deal, you
12 probably wouldn't feel prepared for the concert, I assume.

13 PROSPECTIVE JUROR NO. 107: Um-hum.

14 THE COURT: Although you're probably such a good
15 percussionist that you don't need practice.

16 PROSPECTIVE JUROR NO. 107: I'm -- I'm all right,
17 I'm up there.

18 THE COURT: Counsel, I'm of a mind to just call it
19 right there.

20 MR. OTTO: No objection.

21 MS. SCHIFALACQUA: We submit it, Your Honor.

22 THE COURT: We are going to excuse you. If
23 Professor LaBounty has any problem with you having been absent
24 for the last two days, please -- if you'll just give us a call
25 with his or her phone number, I'll be glad to take care of

1 that.

2 PROSPECTIVE JUROR NO. 107: Okay, thank you.

3 THE COURT: Thank you. The Clerk will call the name
4 of another juror.

5 THE CLERK: Betty Young.

6 THE COURT: Thank you for joining us, Ms. Young. Is
7 there any reason why you would not be able to serve on a jury
8 for two and a half weeks?

9 PROSPECTIVE JUROR NO. 115: Yes.

10 THE COURT: Okay. My husband has serious medical
11 issues.

12 THE COURT: Okay.

13 PROSPECTIVE JUROR NO. 115: And right now we're
14 waiting for the results of his latest biopsy. They called
15 yesterday and we have to go in in the morning.

16 THE COURT: Okay.

17 PROSPECTIVE JUROR NO. 115: If it's good, then it
18 probably wouldn't be a problem. But I have a long list of
19 serious medical issues that he has and our lives have
20 completely revolved around his health since '06.

21 THE COURT: All right. What is the nature of his
22 most serious condition?

23 PROSPECTIVE JUROR NO. 115: Heart attacks, eight
24 bypasses the first time he went in.

25 THE COURT: Okay.

1 PROSPECTIVE JUROR NO. 115: He's had open heard
2 surgery a couple more times. He's had heart attacks, strokes.
3 I got laid off in '06, and I was looking for another job until
4 I came home one day and found him in the middle of another
5 heart attack. So I decided to take early retirement.

6 THE COURT: And the biopsy, is that for some
7 other condition?

8 PROSPECTIVE JUROR NO. 115: He has cancer and
9 they're checking to see if his current problems are related to
10 that advancing.

11 THE COURT: Okay. Counsel, any objection?

12 MS. SCHIFALACQUA: Judge, the State is going to
13 submit.

14 MR. OTTO: Submit, Your Honor.

15 THE COURT: Thank you, ma'am, were going to excuse
16 you.

17 PROSPECTIVE JUROR NO. 115: Thank you.

18 THE COURT: You may -- you need to check out through
19 the Jury Commissioner's office.

20 PROSPECTIVE JUROR NO. 115: Okay, thank you.

21 THE COURT: Clerk will call the name of another
22 juror.

23 THE CLERK: Jack Maxon.

24 THE COURT: Thank you for joining us, Mr. Maxon.
25 Any reason why you would not be able to serve on a jury for

1 the next two and a half weeks?

2 PROSPECTIVE JUROR NO. 124: Yes and no. I should be
3 okay, but I've got gall bladder issues. I'm supposed to have
4 surgery within the next couple weeks.

5 THE COURT: Oh, within the next two weeks?

6 PROSPECTIVE JUROR NO. 124: So as long as I don't
7 have an attack, I mean, I'll be all right.

8 THE COURT: Are you scheduled?

9 PROSPECTIVE JUROR NO. 124: If I get in pain, you
10 can just kick me to the side or something.

11 THE COURT: Okay. Well, are you scheduled for
12 surgery?

13 PROSPECTIVE JUROR NO. 124: I'm still waiting. I'll
14 probably call them tomorrow. They're supposed to call me and
15 schedule me, but I haven't gotten any report yet.

16 THE COURT: Had the doctor told you they were going
17 to try to schedule it in the next two weeks?

18 PROSPECTIVE JUROR NO. 124: Well, I'm -- they put me
19 on the list for cancellations right now, but if not, they're
20 going to schedule me for the next soonest date, I guess. They
21 said it's usually about a month out, so.

22 THE COURT: And what -- what happens if you have an
23 attack? What --

24 PROSPECTIVE JUROR NO. 124: Just bad pain, stomach
25 pains.

1 THE COURT: We seem to have hit a bad run of --

2 PROSPECTIVE JUROR NO. 124: Like I said, as long as
3 I don't have any pains, I should be okay, but there's no
4 telling. It just kind of comes.

5 THE COURT: Counsel --

6 MS. SCHIFALACQUA: We'd submit, Judge, if there's a
7 cancellation and we could be in the middle of trial and he
8 needs to go into surgery.

9 MR. OTTO: And if he had pain in the middle of the
10 trial, it would to --

11 THE COURT: Of course, it could be the lawyers
12 making him sick.

13 MS. SCHIFALACQUA: Fair.

14 THE COURT: We'll excuse you, sir, thank you.

15 PROSPECTIVE JUROR NO. 124: Okay.

16 THE COURT: You may return to the Jury
17 Commissioner's office. The Clerk will call the name of
18 another juror.

19 THE CLERK: Shyla Lenox.

20 THE COURT: Ms. Lenox, all the good excuses are
21 gone. I'm sorry, it's just the luck of the draw. Is there
22 any reason why you wouldn't be able to serve on a jury the
23 next two and a half weeks?

24 PROSPECTIVE JUROR NO. 141: I'm -- I hope not, but I
25 am really sick with this pregnancy, so.

1 THE COURT: Oh, you are?

2 PROSPECTIVE JUROR NO. 141: Yes, so --

3 THE COURT: How far along are you?

4 PROSPECTIVE JUROR NO. 141: Right now I'm at four
5 months. But it's all day sickness. So some days are good,
6 some days are bad.

7 THE COURT: You don't know why they call it morning
8 sickness, huh?

9 PROSPECTIVE JUROR NO. 141: Exactly.

10 THE COURT: Okay.

11 PROSPECTIVE JUROR NO. 141: So I just take it day by
12 day, but I don't know, you know.

13 THE COURT: How bad does it get? I mean, queasy or?

14 PROSPECTIVE JUROR NO. 141: I've been hospitalized
15 for dehydration because I can't drink, can't eat anything, so.

16 THE COURT: During this pregnancy?

17 PROSPECTIVE JUROR NO. 141: Yes. They had me on
18 medication for it, so sometimes, you know, it just --

19 THE COURT: Okay. Are you -- may I ask what kind of
20 medication they put you one?

21 PROSPECTIVE JUROR NO. 141: It's a nausea medicine
22 that's supposed to help with the nausea --

23 THE COURT: Okay.

24 PROSPECTIVE JUROR NO. 141: -- and bring back an
25 appetite, so.

1 THE COURT: Uh-huh. Well, you wouldn't eat a lot of
2 the food that somebody's going to be providing. So that part
3 of it would be good. All right.

4 MS. PIEPER: Judge, the State will submit it.

5 MS. SCHIFALACQUA: Submit it.

6 MS. PIEPER: Not good in the middle of trial.

7 MR. OTTO: Submit, Your Honor.

8 THE COURT: Okay, I'm just going -- I'm just going
9 to say right now, unless the next person is pregnant, we're --
10 they're all gone. Thank you, Ms. Lenox, we appreciate you
11 being here. We'll excuse you.

12 THE CLERK: Serena Perez.

13 THE COURT: Ms. Perez, how are you feeling?

14 PROSPECTIVE JUROR NO. 146: I'm fine.

15 THE COURT: You're not a student?

16 PROSPECTIVE JUROR NO. 146: No, I'm not.

17 THE COURT: And when was the last time you were at
18 the doctor?

19 PROSPECTIVE JUROR NO. 146: Not anytime soon, so.

20 THE COURT: Okay. Now is there any other reason why
21 you wouldn't be able to serve on a jury for the next two and a
22 half weeks?

23 PROSPECTIVE JUROR NO. 146: There might be with work
24 issues. My boss is currently going on vacation and I'm the
25 second in lead.

1 THE COURT: And where do you work?

2 PROSPECTIVE JUROR NO. 146: Whole Foods, I'm the
3 head baker.

4 THE COURT: The head baker?

5 PROSPECTIVE JUROR NO. 146: Yes.

6 THE COURT: Hum.

7 PROSPECTIVE JUROR NO. 146: We do cater.

8 THE COURT: Okay. So I think the game just got
9 upped for some of the rest of you, you know. All right. And
10 you say that he -- he or she is scheduled to go?

11 PROSPECTIVE JUROR NO. 146: She is.

12 THE COURT: She is.

13 PROSPECTIVE JUROR NO. 146: And I'm not exactly sure
14 on the dates, but it's in the middle of April. So I would
15 have to check on that to see.

16 THE COURT: And --

17 PROSPECTIVE JUROR NO. 146: She's going to the
18 Philippines.

19 THE COURT: She's going to the Philippines?

20 PROSPECTIVE JUROR NO. 146: Um-hum.

21 THE COURT: And so how many people in your bakery?

22 PROSPECTIVE JUROR NO. 146: Well, there's me --
23 well, it's a whole department

24 THE COURT: Okay.

25 PROSPECTIVE JUROR NO. 146: And the thing is she had

1 an assistant, one below her, but he currently got a new
2 position at a different location. So right now it's just her.
3 So -- but she relies on me if she leaves. I'd have to speak
4 -- I don't know if anybody can cover for her besides me.

5 THE COURT: Do you have her name and phone number?

6 PROSPECTIVE JUROR NO. 146: Yes.

7 THE COURT: Okay. If you would, at the next break,
8 give me that name and phone number, I'll be glad to find out
9 or maybe if we --

10 PROSPECTIVE JUROR NO. 146: Yeah.

11 THE COURT: -- if it turns into that, maybe you'd
12 have a chance to find out overnight, as well, all right? Any
13 other reasons why you wouldn't be able to serve on the jury?

14 PROSPECTIVE JUROR NO. 146: Other than that, no.

15 THE COURT: All right, thank you. Would you tell us
16 a little bit about yourself?

17 PROSPECTIVE JUROR NO. 146: I've lived in Vegas for
18 20 years, I'm the head baker at Whole Foods. I live in the
19 north, by Aliante. Let's see.

20 THE COURT: The extent of your education.

21 PROSPECTIVE JUROR NO. 146: High school and some
22 college.

23 THE COURT: Okay. And is -- do you have a spouse or
24 significant other that works?

25 PROSPECTIVE JUROR NO. 146: No.

1 THE COURT: Well, that was short. Okay. Have you
2 ever been convicted of a felony?

3 PROSPECTIVE JUROR NO. 146: No.

4 THE COURT: Are you a United States citizen?

5 PROSPECTIVE JUROR NO. 146: Yes.

6 THE COURT: Do you have any sympathy, prejudice or
7 bias that relates to age, religion, race, gender or national
8 origin that you feel would affect your ability to be an open-
9 minded, a fair, and impartial juror?

10 PROSPECTIVE JUROR NO. 146: No.

11 THE COURT: Are you acquainted with the defendant or
12 either of his attorneys?

13 PROSPECTIVE JUROR NO. 146: No.

14 THE COURT: Or either prosecutor or those attorneys?

15 PROSPECTIVE JUROR NO. 146: No.

16 THE COURT: Or any of the witnesses whose names were
17 read off earlier?

18 PROSPECTIVE JUROR NO. 146: No.

19 THE COURT: Okay. Have you ever been engaged in law
20 enforcement work or have any family member or close friend who
21 has been?

22 PROSPECTIVE JUROR NO. 146: No.

23 THE COURT: Okay. Would you be able to follow all
24 of the Court's instructions on the law as they are given to
25 you?

1 PROSPECTIVE JUROR NO. 146: Yes.

2 THE COURT: Do you believe in the American
3 principles of justice that include that an Information filed
4 in a case is a mere accusation and is not evidence of guilt,
5 that a defendant is presumed innocent, and that the State must
6 prove a defendant guilty beyond a reasonable doubt?

7 PROSPECTIVE JUROR NO. 146: Yes.

8 THE COURT: Do you know anything about this case?

9 PROSPECTIVE JUROR NO. 146: No.

10 THE COURT: Okay. Have you ever served as a juror
11 before?

12 PROSPECTIVE JUROR NO. 146: No.

13 THE COURT: Have you or anyone close to you been --
14 ever been the victim of a crime?

15 PROSPECTIVE JUROR NO. 146: No.

16 THE COURT: Have you or anyone close to you ever
17 been accused of a crime?

18 PROSPECTIVE JUROR NO. 146: No.

19 THE COURT: Would you have the -- how would you
20 judge the testimony of a police officer; the same as everyone
21 else or would you tend to give more weight or credence to the
22 testimony of a police officer, or less weight or credence,
23 just because he or she is a police officer?

24 PROSPECTIVE JUROR NO. 146: No.

25 THE COURT: Okay. Since this is a murder trial, if

1 the jury finds guilt, the jury will determine the penalty for
2 that charge. There are there different possible penalties.
3 The first is a term of imprisonment for 20 to 50 years. The
4 second is a life with the possibility of parole after 20
5 years. And the third is life in prison without the
6 possibility of parole. Would you be able to consider all
7 three of those forms of punishment?

8 PROSPECTIVE JUROR NO. 146: Yes.

9 THE COURT: All right. Ms. Schifalacqua, it's back
10 to you.

11 MS. SCHIFALACQUA: Thank you, Your Honor.

12 Ms. Perez, how are you?

13 PROSPECTIVE JUROR NO. 146: Good.

14 MS. SCHIFALACQUA: Good. I just have a quick
15 question for you. You indicated that you had some college.
16 What area of study was it? For a culinary school or?

17 PROSPECTIVE JUROR NO. 146: Culinary Arts.

18 MS. SCHIFALACQUA: Okay. And did you get a degree
19 in --

20 PROSPECTIVE JUROR NO. 146: Just some classes.

21 MS. SCHIFALACQUA: Okay. And then how long have you
22 worked at Whole Foods?

23 PROSPECTIVE JUROR NO. 146: Two and a half years.

24 MS. SCHIFALACQUA: Okay, speak in that mike.

25 THE COURT RECORDER: Is she holding the microphone?

1 PROSPECTIVE JUROR NO. 146: Two and a half years,
2 sorry.

3 MS. SCHIFALACQUA: Yeah, well, let me go back. So
4 culinary school --

5 PROSPECTIVE JUROR NO. 146: Yeah.

6 MS. SCHIFALACQUA: -- you took some classes, but you
7 didn't have a --

8 PROSPECTIVE JUROR NO. 146: Degree.

9 MS. SCHIFALACQUA: -- a full degree. Two and a half
10 years you've been at Whole Foods and now you've kind of
11 graduated to head baker?

12 PROSPECTIVE JUROR NO. 146: Um-hum. Yes.

13 MS. SCHIFALACQUA: Is that a, yes?

14 PROSPECTIVE JUROR NO. 146: Yes.

15 MS. SCHIFALACQUA: Okay. And let me ask you this,
16 what was your reaction when you got your jury summons? Your
17 very first words? No?

18 PROSPECTIVE JUROR NO. 146: No.

19 MS. SCHIFALACQUA: No, okay, no. Just --

20 PROSPECTIVE JUROR NO. 146: I didn't -- I didn't
21 know what to expect, so yeah.

22 MS. SCHIFALACQUA: Do you think that you're going to
23 be able to -- I mean, obviously you're going to be able to
24 find out if you're needed at work or if someone can step in
25 that position?

1 PROSPECTIVE JUROR NO. 146: Yes.

2 MS. SCHIFALACQUA: If for whatever reason you're,
3 you know, chosen on this jury, do you think you're going to be
4 thinking about, you know, kind of oh, I've got these ordering
5 to do or this -- all that work and not be focused on the
6 evidence that comes before you?

7 PROSPECTIVE JUROR NO. 146: As long as I know that
8 it's not going to affect my payroll or anything like that,
9 absolutely it's fine.

10 MS. SCHIFALACQUA: Okay. And so I guess we'll kind
11 of get back to you once you make those calls, because I, you
12 know, in all seriousness, we will present before this jury
13 obviously a very serious case and we want to make sure that
14 everyone's paying attention, okay?

15 PROSPECTIVE JUROR NO. 146: Yeah.

16 MS. SCHIFALACQUA: Can you pass the mike right on
17 over to Ms. Lynch? How are you, Ms. Lynch?

18 PROSPECTIVE JUROR NO. 085: I'm good, how are you?

19 MS. SCHIFALACQUA: Good. Let me go back. My
20 question for you actually, Ms. Lynch, was that you said you
21 were supposed to begin bartending school next week, right?

22 PROSPECTIVE JUROR NO. 085: Yes.

23 MS. SCHIFALACQUA: Can you get a refund? Can you
24 make up classes? Tell me the situation with that.

25 PROSPECTIVE JUROR NO. 085: I -- I can -- actually I

1 started -- I need to -- I started last week.

2 MS. SCHIFALACQUA: Okay.

3 PROSPECTIVE JUROR NO. 085: So I can go either
4 daytime or nighttime, it doesn't matter.

5 MS. SCHIFALACQUA: Okay.

6 PROSPECTIVE JUROR NO. 085: My school has been paid
7 for, so.

8 MS. SCHIFALACQUA: Okay. And so you're able to kind
9 of --

10 PROSPECTIVE JUROR NO. 085: Yeah.

11 MS. SCHIFALACQUA: -- be able to choose when
12 you're --

13 PROSPECTIVE JUROR NO. 085: Yes.

14 MS. SCHIFALACQUA: Okay, able to take the classes.

15 PROSPECTIVE JUROR NO. 085: Yes.

16 MS. SCHIFALACQUA: So if you're chosen to be on this
17 jury, there's nothing about missing out school --

18 PROSPECTIVE JUROR NO. 085: No.

19 MS. SCHIFALACQUA: -- that's going to keep your
20 attention off the evidence?

21 PROSPECTIVE JUROR NO. 085: No.

22 MS. SCHIFALACQUA: Okay.

23 PROSPECTIVE JUROR NO. 085: I'll be good.

24 MS. SCHIFALACQUA: Thank you. Can you pass the mike
25 to Mr. Johnson?

1 PROSPECTIVE JUROR NO. 079: Hello.

2 MS. SCHIFALACQUA: How are you?

3 PROSPECTIVE JUROR NO. 079: Fine, thank you.

4 MS. SCHIFALACQUA: Good. Mr. Johnson, let me find
5 this because I wrote down obviously that you had some kind of
6 law enforcement'ish --

7 PROSPECTIVE JUROR NO. 079: Yeah.

8 MS. SCHIFALACQUA: -- experience, if you will?

9 PROSPECTIVE JUROR NO. 079: A little bit of playing
10 around in college, yes.

11 MS. SCHIFALACQUA: Okay. And all I remember was
12 then you got a date out of it, too, was that fair to say?

13 PROSPECTIVE JUROR NO. 079: Yes.

14 MS. SCHIFALACQUA: Okay. I -- one moment. Okay.
15 And I know the Judge had asked you kind of about that
16 experience, it seems like it was some time ago; is that fair
17 to say?

18 PROSPECTIVE JUROR NO. 079: Yes.

19 MS. SCHIFALACQUA: Anything about that experience
20 that would give you pause to sit on this jury?

21 PROSPECTIVE JUROR NO. 079: Not that at all. What
22 -- what does, though, is my current situation because I'm a
23 handyman now.

24 MS. SCHIFALACQUA: Okay.

25 PROSPECTIVE JUROR NO. 079: And I'm self-employed, I

1 have my own business.

2 MS. SCHIFALACQUA: That's right.

3 PROSPECTIVE JUROR NO. 079: And that's the issue.
4 The -- the length of the trial is what my concern is because
5 despite the wonderful Judge saying he'd call my customers,
6 I've been doing this for almost 20 years and it isn't going to
7 matter because they really don't care who calls them, they
8 want their job done when they said they want it done.

9 MS. SCHIFALACQUA: That's fair.

10 PROSPECTIVE JUROR NO. 079: And that's the end of
11 the story. And for me, you know, to lose income for two and a
12 half weeks would be pretty rough.

13 MS. SCHIFALACQUA: My question for you, Mr. Johnson,
14 then, is -- isn't so much -- I mean, you're sitting full -- in
15 a room full of people that are going to possibly lose
16 income --

17 PROSPECTIVE JUROR NO. 079: Right.

18 MS. SCHIFALACQUA: -- by nature of our justice
19 system, right? But being kind of a handyman, does your
20 reputation and being able to get further and future income
21 depend on, you know, really the work that you do currently?

22 PROSPECTIVE JUROR NO. 079: Yes.

23 MS. SCHIFALACQUA: The question I have for you in
24 all -- and I need you to be able to tell me this, is if you're
25 sitting here worrying about not getting that job done, do you

1 think that you'll have an issue giving your full attention to
2 the evidence that comes before you?

3 PROSPECTIVE JUROR NO. 079: It's funny, I actually
4 thought about this all night. It may, because -- in honesty
5 it may, because if the trial goes on for a long period of
6 time, I will be concerned about that and that's the truth.
7 You know, I -- I will be wondering what my customers think,
8 whether I still have that job, whether they're going to
9 replace me with somebody else, which, you know, one of my
10 customers actually right is kind of teetering on that right at
11 the moment, because I told him today that I would actually
12 have the Judge speak to him and he said that that wasn't
13 necessary, that, you know, just let him know what happens
14 today, whether I'm going to get called. Now I don't know
15 whether that means he's going to find somebody else or he's
16 going to just wait and see what happens.

17 MS. SCHIFALACQUA: For you?

18 PROSPECTIVE JUROR NO. 079: Yes. So I am a bit
19 concerned about that, but other than that, no.

20 MS. SCHIFALACQUA: Only you can tell me, you know --
21 and I know that it's, you know, kind of like Mr. Ennis, we
22 were going back and forth for a while.

23 PROSPECTIVE JUROR NO. 079: Yes.

24 MS. SCHIFALACQUA: I know he was, like, okay, I've
25 answered this question, Barbara. But you know, in reality,

1 only you can tell me whether or not you think it's going to be
2 such that, in the nature of this case, that your attention
3 will not be able to be fully focused on the presentation of
4 the evidence. And if so, only you can tell me that that's the
5 reality. And I know it might be difficult, but that's the
6 question I really need you to answer if you can.

7 PROSPECTIVE JUROR NO. 079: Yeah. That -- that's a
8 toughy.

9 MS. SCHIFALACQUA: Right.

10 PROSPECTIVE JUROR NO. 079: The only way I can
11 honestly answer would be, it would really, really depend on
12 the length of the trial. I mean, if we started rolling in the
13 two strong weeks, going into a third week, that -- that would
14 be a big problem. I couldn't honestly sit here. I would, in
15 the back of my mind, be thinking about, God, what am I going
16 to do, is this thing going to be over with soon. You know, I
17 can see myself asking that question. So, you know, if that's
18 a problem, then -- then it might be, you know.

19 MS. SCHIFALACQUA: When it comes to, then, if you
20 are in a panel and you'd have to deliberate, would that also
21 be in the back of your mind when making the analysis if it
22 takes into that third week?

23 PROSPECTIVE JUROR NO. 079: No, because I'm one of
24 those people when I got a job to do, I got a job to do. So I
25 focus on getting that job done at the best of my ability. So

1 once I've made the commitment, I'm in for the haul, but --

2 MS. SCHIFALACQUA: Yeah.

3 PROSPECTIVE JUROR NO. 079: -- you know, it's --
4 it's --

5 MS. SCHIFALACQUA: So right here is kind of our
6 breaking point, what -- the Judge told you we have a potential
7 of going into the third week, not the entire time.

8 PROSPECTIVE JUROR NO. 079: Right.

9 MS. SCHIFALACQUA: You know, we try to lay out for
10 your guys, everyone has real lives and this is very serious,
11 we try to lay out as best we can the length of the trial,
12 sometimes we can predict it, sometimes we can't.

13 PROSPECTIVE JUROR NO. 079: Right.

14 MS. SCHIFALACQUA: We don't anticipate going past
15 the date that the Judge told you into that -- the 24th, the
16 third week, we might not go that long. But that's -- you
17 know, that's the potential. And so from you, I just need to
18 know that if you're picked to be on this jury, at least you
19 told me something that if you are picked, you're all in and
20 you'll focus.

21 PROSPECTIVE JUROR NO. 079: That I would say, yes --

22 MS. SCHIFALACQUA: Is that what I'm hearing?

23 PROSPECTIVE JUROR NO. 079: Yes, I would say that.

24 But I would also say, to be fair to the defendant, that I
25 would rather you pick someone that could honestly give 120

1 percent into this, because of how important it is, other than
2 take someone that, okay, after three weeks, all right, we lost
3 Mr. Johnson over here. You know, I wouldn't want to do that
4 to anybody.

5 MS. SCHIFALACQUA: Sure.

6 PROSPECTIVE JUROR NO. 079: You know, because of my
7 respect for the systems and everything else, I -- you know, so
8 I know you guys couldn't say, well, it's going to last seven
9 days and it will be over, but you know, that's -- that's
10 really my only concern. I would honestly love to do this, but
11 you know, financially is the question I have to ask myself,
12 would I be able to endure two or three weeks of it and the
13 answer to that would be, no, I couldn't.

14 MS. SCHIFALACQUA: Judge, Court's indulgence.

15 (Pause in the proceedings)

16 MS. SCHIFALACQUA: Mr. Johnson, you brought up a
17 point and you said, to be fair, you know, obviously to the
18 defendant, to be fair to the State, the victims of crime, to
19 be fair to both sides --

20 PROSPECTIVE JUROR NO. 079: Right.

21 MS. SCHIFALACQUA: If you were sitting in the
22 position then of the defense or the defendant, would you want
23 yourself to be seated on this jury given the circumstance?

24 PROSPECTIVE JUROR NO. 079: No.

25 MS. SCHIFALACQUA: Judge, at this point, if we may

1 approach?

2 THE COURT: Okay.

3 (Off-record bench conference)

4 THE COURT: Well, Mr. Johnson, after consultation
5 with the attorneys, I am going to excuse you at this time.
6 Thank you, sir, for being here.

7 The Clerk will call the name of another juror.

8 THE CLERK: Jennifer Manuel.

9 THE COURT: Thank you for joining us, ma'am. Is
10 there any reason why you wouldn't be able to sit on a jury for
11 the next two and a half weeks?

12 PROSPECTIVE JUROR NO. 152: I don't think so.

13 THE COURT: Okay.

14 PROSPECTIVE JUROR NO. 152: It depends on how well
15 my back -- medical thing, again.

16 THE COURT: I'm sorry?

17 PROSPECTIVE JUROR NO. 152: My back.

18 THE COURT: Okay. You have a back condition?

19 PROSPECTIVE JUROR NO. 152: Yeah. It hits the
20 sciatic and it hits this hip and then it comes down the top of
21 the leg.

22 THE COURT: Does it help if you can stand up from
23 time-to-time?

24 PROSPECTIVE JUROR NO. 152: Sometimes, it just
25 depends. It's an on again/off again.

1 THE COURT: Okay. Do you feel that you'd be -- are
2 you on medication for it?

3 PROSPECTIVE JUROR NO. 152: When it gets really bad
4 I take medication and it makes me drowsy.

5 THE COURT: Okay. Do you think that you would be
6 able to give the evidence here your attention?

7 PROSPECTIVE JUROR NO. 152: As long as I'm not on
8 the pain med. I mean, it's -- it just makes me drowsy, but
9 it's the only thing that stops that sciatic from flaring up
10 and running down my leg. And my focus sits on that because it
11 hurts.

12 THE COURT: Yeah. How long have you been -- how
13 long have you been suffering from that?

14 PROSPECTIVE JUROR NO. 152: I fell in '09, and it's
15 been getting progressively worse. And I've been dealing with
16 it since '09.

17 THE COURT: Okay. Can I ask what is the pain
18 medication you take when it gets too bad?

19 PROSPECTIVE JUROR NO. 152: It's -- oh, dear, you
20 would ask that, hydrocontin with -- basically aspirin.

21 THE COURT: Hydrocodone or --

22 PROSPECTIVE JUROR NO. 152: Yeah, yeah.

23 THE COURT: Hydrocodone.

24 PROSPECTIVE JUROR NO. 152: Yeah, codone.

25 THE COURT: Okay. And if you take one of those, you

1 get --

2 PROSPECTIVE JUROR NO. 152: Oh, they make you
3 drowsy, they warn you on the label.

4 THE COURT: Okay. On the label it says don't be on
5 a jury if you --

6 PROSPECTIVE JUROR NO. 152: It doesn't say that, it
7 just says don't drive a vehicle.

8 THE COURT: All right. Counsel, any inclination
9 either way? Do you want to proceed ahead?

10 MR. OTTO: I submit, Your Honor.

11 MS. SCHIFALACQUA: We'll submit, Judge.

12 THE COURT: Okay. Thank you, ma'am. Maybe they'll
13 have one of those shorter trials down there, so.

14 MR. OTTO: For the record, the last two for cause
15 challenges were also submitted by the defense.

16 THE COURT: All right, thank you. Thank you, ma'am,
17 you may return to the Jury Commissioner's office. The Clerk
18 will call the name of another juror.

19 THE CLERK: Fred Ricker.

20 THE COURT: Good afternoon, Mr. Ricker, thank you
21 for joining us.

22 PROSPECTIVE JUROR NO. 162: Good afternoon.

23 THE COURT: Any reason why you wouldn't be able to
24 sit on a jury for the next two and a half weeks?

25 PROSPECTIVE JUROR NO. 162: No.

1 THE COURT: Okay. Would you tell us a little bit
2 about yourself?

3 PROSPECTIVE JUROR NO. 162: I've lived in Las Vegas
4 for 10 years, I'm married, have two kids, I'm retired.

5 THE COURT: What did you do before you retired?

6 PROSPECTIVE JUROR NO. 162: I worked for a large
7 natural gas utility based out of Salt Lake City.

8 THE COURT: Okay. What kind of work did you do for
9 them?

10 PROSPECTIVE JUROR NO. 162: I was an inspector
11 engineer.

12 THE COURT: Okay. Does your wife work or has she in
13 the past?

14 PROSPECTIVE JUROR NO. 162: She was a bookkeeper for
15 Albertson's. She's retired.

16 THE COURT: Okay. How about the kids, any of the
17 kids work?

18 PROSPECTIVE JUROR NO. 162: My son's a commercial
19 airline pilot for Delta Airlines and my daughter is a director
20 of lending for a large corporation in Salt Lake City.

21 THE COURT: Okay. And the extent of your education?

22 PROSPECTIVE JUROR NO. 162: High school, a couple
23 years of college.

24 THE COURT: Okay. What part of the Valley do you
25 live in?

1 PROSPECTIVE JUROR NO. 162: Summerlin.

2 THE COURT: Summerlin. Okay, thank you, sir. Have
3 you ever been convicted of a felony?

4 PROSPECTIVE JUROR NO. 162: No.

5 THE COURT: Are you a United States citizen?

6 PROSPECTIVE JUROR NO. 162: Yes.

7 THE COURT: Do you have any sympathy, prejudice or
8 bias that relates to age, religion, race, gender or national
9 origin that you feel would affect your ability to be open-
10 minded, a fair and impartial?

11 PROSPECTIVE JUROR NO. 162: No.

12 THE COURT: Are you acquainted with the defendant or
13 either of his attorneys?

14 PROSPECTIVE JUROR NO. 162: No.

15 THE COURT: Or either of the prosecutors, Deputy
16 District Attorneys?

17 PROSPECTIVE JUROR NO. 162: No.

18 THE COURT: Or any of the witnesses whose names were
19 read off earlier?

20 PROSPECTIVE JUROR NO. 162: No.

21 THE COURT: Okay. Have you ever been engaged in law
22 enforcement work or have a spouse or close relative who has
23 been engaged in law enforcement?

24 PROSPECTIVE JUROR NO. 162: No.

25 THE COURT: Okay. Would you be able to follow all

1 of the Court's instructions on the law even if they differed
2 from your personal concept of what the law ought to be?

3 PROSPECTIVE JUROR NO. 162: Yes.

4 THE COURT: Do you believe in the American system of
5 justice including the principles that the Information or
6 Indictment in a case is a mere accusation and not evidence of
7 guilt, that a defendant is presumed innocent, and that the
8 State must prove a defendant guilty beyond a reasonable doubt?

9 PROSPECTIVE JUROR NO. 162: Yes.

10 THE COURT: Do you know anything about this case
11 other than what you may have heard so far?

12 PROSPECTIVE JUROR NO. 162: No, I don't.

13 THE COURT: Okay. Have you ever served as a juror
14 before?

15 PROSPECTIVE JUROR NO. 162: No.

16 THE COURT: Have you or anyone close to you ever
17 been the victim of a crime?

18 PROSPECTIVE JUROR NO. 162: No.

19 THE COURT: Same question on the other side, ever
20 been accused of a crime?

21 PROSPECTIVE JUROR NO. 162: No.

22 THE COURT: Okay. Would you have the tendency to
23 give more weight or credence or less weight or credence to the
24 testimony of a police officer, just because he or she is a
25 police officer?

1 PROSPECTIVE JUROR NO. 162: No.

2 THE COURT: Okay. Can you wait in forming your
3 opinion as to the guilt or innocence of the defendant until
4 all of the evidence has been heard and after considering
5 instructions which I will give you on the law?

6 PROSPECTIVE JUROR NO. 162: Yes.

7 THE COURT: Do you know of any other reason why you
8 wouldn't be able to serve as a fair and an impartial juror in
9 this case?

10 PROSPECTIVE JUROR NO. 162: No.

11 THE COURT: As you have heard, because of the nature
12 of the offense charged here, in the event of a finding of
13 guilt, then the jury would also determine the penalty for the
14 charge. There are there separate penalties that could be
15 imposed. One is, a term of imprisonment for 20 to 50 years.
16 A second is a life with the possibility of parole after 20
17 years in prison. And the third is life without the
18 possibility of parole. Would you be able to consider all
19 three forms of punishment in the matter?

20 PROSPECTIVE JUROR NO. 162: Yes.

21 THE COURT: Okay, thank you. Ms. Schifalacqua?

22 MS. SCHIFALACQUA: Thank you, Your Honor. Hello,
23 Mr. Ricker.

24 PROSPECTIVE JUROR NO. 162: Hello.

25 MS. SCHIFALACQUA: How are you?

1 PROSPECTIVE JUROR NO. 162: Good.

2 MS. SCHIFALACQUA: Good. I just have a quick
3 question for you. You indicated that you have been in the
4 Valley for about 10 years, is that right?

5 PROSPECTIVE JUROR NO. 162: Um-hum.

6 MS. SCHIFALACQUA: Is that a, yes?

7 PROSPECTIVE JUROR NO. 162: Yes.

8 MS. SCHIFALACQUA: Okay, fantastic. She's taking
9 everything down.

10 PROSPECTIVE JUROR NO. 162: Got it.

11 MS. SCHIFALACQUA: Where did you come from? Before
12 10 years, where were you living?

13 PROSPECTIVE JUROR NO. 162: I lived in Logan, Utah
14 for 28 years.

15 MS. SCHIFALACQUA: Okay. And did you come out here
16 because of working at the gas utility?

17 PROSPECTIVE JUROR NO. 162: No. I came out here
18 right after I retired.

19 MS. SCHIFALACQUA: Ah, so this is the retirement?

20 PROSPECTIVE JUROR NO. 162: This is it.

21 MS. SCHIFALACQUA: Welcome to retirement.

22 PROSPECTIVE JUROR NO. 162: Yeah.

23 MS. SCHIFALACQUA: Thank you, sir. Thank you. If
24 you could --

25 PROSPECTIVE JUROR NO. 162: In fact, I played golf

1 this morning.

2 MS. SCHIFALACQUA: Oh, well, see, now you have to
3 rub it in, that's not even -- come on, come on. No, thank
4 you, Mr. Ricker. Can you pass the mike on over to Mr.
5 Andrews? How are you?

6 PROSPECTIVE JUROR NO. 070: Oh, fine.

7 MS. SCHIFALACQUA: Okay. Let me, Mr. Andrews, just
8 find my tab of information. I wanted to talk to you, it
9 sounded like it was a long time ago, but you indicated that
10 you had been arrested for a disorderly conduct and criminal
11 mischief when you were --

12 PROSPECTIVE JUROR NO. 070: Nineteen.

13 MS. SCHIFALACQUA: -- 19, I believe?

14 PROSPECTIVE JUROR NO. 070: Nineteen.

15 MS. SCHIFALACQUA: You indicated that you were
16 prosecuted. Were you -- was that a citation, I take it?

17 PROSPECTIVE JUROR NO. 070: Well, it's a long time
18 ago. I know I went -- I went and saw the Judge and basically
19 restitution and fines.

20 MS. SCHIFALACQUA: Had to -- did some hoops and then
21 you were able to go on into the military, there wasn't any
22 issue there?

23 PROSPECTIVE JUROR NO. 070: Well, they had to do
24 some waivers.

25 MS. SCHIFALACQUA: Okay.

1 PROSPECTIVE JUROR NO. 070: Yeah.

2 MS. SCHIFALACQUA: And you were able to get through
3 that, though, and kind of --

4 PROSPECTIVE JUROR NO. 070: Yeah.

5 MS. SCHIFALACQUA: -- or hasn't -- it hasn't been an
6 impediment --

7 PROSPECTIVE JUROR NO. 070: No.

8 MS. SCHIFALACQUA: -- for your future?

9 PROSPECTIVE JUROR NO. 070: No.

10 MS. SCHIFALACQUA: Okay. And you indicated there
11 wasn't anything about that that would give you pause to sit on
12 this jury, right?

13 PROSPECTIVE JUROR NO. 070: No.

14 MS. SCHIFALACQUA: You're not going to think back
15 to, you know, what happened when you were 19, or something
16 like that?

17 PROSPECTIVE JUROR NO. 070: No. I -- I really don't
18 even remember -- well, I don't remember being arrested at all,
19 but.

20 MS. SCHIFALACQUA: A little out there.

21 PROSPECTIVE JUROR NO. 070: My wild and crazy days.

22 THE COURT: Oh, that kind of mischief.

23 MS. SCHIFALACQUA: That kind of --

24 PROSPECTIVE JUROR NO. 070: That kind of mischief,
25 yes, sir.

1 MS. SCHIFALACQUA: Is that what criminal mischief --
2 no, I'm kidding. Thank you, Mr. Andrews. If you want to go
3 ahead and pass the mike to Mr. Bailey. How are you?

4 PROSPECTIVE JUROR NO. 065: Good, how are you.

5 MS. SCHIFALACQUA: Good. Mr. Bailey, you indicated
6 that you have your uncle on Metro; is that right?

7 PROSPECTIVE JUROR NO. 065: Yeah. Yes.

8 MS. SCHIFALACQUA: Is that a, yes?

9 PROSPECTIVE JUROR NO. 065: Yes, sorry about that.

10 MS. SCHIFALACQUA: And can you make sure you get the
11 mike in front of you?

12 PROSPECTIVE JUROR NO. 065: Okay.

13 MS. SCHIFALACQUA: Thanks, sorry. As the Judge
14 said, they're not -- it's not the best at picking up
15 everything. Are you close with your uncle?

16 PROSPECTIVE JUROR NO. 065: Yes. Actually, my whole
17 family's been in the military, too. My brother's actually in
18 the military, he's in the Navy, he's a corpsman.

19 MS. SCHIFALACQUA: Okay.

20 PROSPECTIVE JUROR NO. 065: And I have cousins
21 overseas and stuff like that. So I just hold -- you know, I
22 just kind of grew up in that way, they're there for us, the
23 fight for our freedom and stuff like that. So I support them
24 more, more than I support someone else next to me.

25 MS. SCHIFALACQUA: Okay. And, you know, I think I

1 want to kind of maybe clarify some things when answering that
2 question because it was -- it's pretty broad when the Judge
3 asked you, hey would you believe a police officer over just
4 some other person off the street.

5 PROSPECTIVE JUROR NO. 065: Yes.

6 MS. SCHIFALACQUA: You're aware, obviously, from
7 your own family, that police officers are trained?

8 PROSPECTIVE JUROR NO. 065: Yes.

9 MS. SCHIFALACQUA: Okay. And obviously they are
10 maybe trained in areas to look out for things, to be able to
11 report things. Does that play into why you answer the way you
12 do with regard to a police officer versus just some other
13 person?

14 PROSPECTIVE JUROR NO. 065: If I get what you're
15 saying, yes, in a way. Like they're -- I guess they have to,
16 like you're saying, take down what people -- what happens or
17 whatever. So they're going to report obviously and it's all
18 going to be filed and stuff, so you have paperwork to back
19 that up. But I don't know, if two stories came to me, I'd
20 believe a police officer any -- any day.

21 MS. SCHIFALACQUA: Now would you do that generally
22 or -- because let me go back and ask you this. Your uncle,
23 who's an officer --

24 PROSPECTIVE JUROR NO. 065: Yes.

25 MS. SCHIFALACQUA: -- who clearly you respect?

1 PROSPECTIVE JUROR NO. 065: Yes.

2 MS. SCHIFALACQUA: And you know that he works hard,
3 right?

4 PROSPECTIVE JUROR NO. 065: Yes, ma'am.

5 MS. SCHIFALACQUA: Okay. Do you agree with me that
6 he's -- he can make a mistake?

7 PROSPECTIVE JUROR NO. 065: Mistake, everyone makes
8 mistakes, but not when it comes to the job, no.

9 MS. SCHIFALACQUA: So -- and I, you know, need to
10 delve into this a little bit, because your first response is
11 everyone makes mistakes. That could be an officer, right?

12 PROSPECTIVE JUROR NO. 065: Yes.

13 MS. SCHIFALACQUA: Okay. And I think the difference
14 that I want to make, you know, clear and really find out from
15 you is, not that you can't hold people who do service in our
16 community or support them and think that their work is good
17 because clearly many people in the room probably do that.

18 PROSPECTIVE JUROR NO. 065: Um-hum.

19 MS. SCHIFALACQUA: But do you acknowledge that just
20 like any other person, even if you hold them in an esteemed
21 profession, that they can make mistakes?

22 PROSPECTIVE JUROR NO. 065: What kind of mistakes
23 are you talking about? Are you talking about --

24 MS. SCHIFALACQUA: Well, frankly, any kind, right?
25 I mean --

1 PROSPECTIVE JUROR NO. 065: I believe, yes, he can
2 make a mistake, but when it comes down to his job, I don't
3 think he will make a mistake as far as impacting a case or
4 something like that, if that's what you're trying to get to.

5 MS. SCHIFALACQUA: Well, and I think -- and I
6 appreciate that. I think maybe -- and I guess it could be any
7 type of mistake meaning their observations might not have been
8 as quick. Maybe they wrote down what they believed was
9 factually accurate, but it doesn't mean that it couldn't have
10 been a mistake. Bless you. Do you see the difference?

11 PROSPECTIVE JUROR NO. 065: I see what you're trying
12 to say, yes.

13 MS. SCHIFALACQUA: I'm not going to try to convince
14 you that, you know, police officers lie or do something
15 that, you know.

16 PROSPECTIVE JUROR NO. 065: Yes, I know what you're
17 trying to say. You're trying to get to saying that I would
18 also believe one side of the story instead of hearing both is
19 what you're trying to get at.

20 MS. SCHIFALACQUA: Right, would you do that?

21 PROSPECTIVE JUROR NO. 065: Well, I'd guess I'd go
22 off the police -- go off of what the police officer said. You
23 know, if another person or a police officer walked up and he
24 said he saw this and it was completely different, then I'd
25 kind of think. But that's (indiscernible).

1 MS. SCHIFALACQUA: Okay.

2 PROSPECTIVE JUROR NO. 065: But I would still back
3 up the police officer or anyone in that ranking.

4 MS. SCHIFALACQUA: So the question I have for you
5 really is, before you hear anything, right?

6 PROSPECTIVE JUROR NO. 065: Okay.

7 MS. SCHIFALACQUA: No one's sat down here.

8 PROSPECTIVE JUROR NO. 065: Okay.

9 MS. SCHIFALACQUA: Do -- will you already make up
10 your mind before you ever hear anything, or can you liste --
11 and believe me, Ms. Pieper got up here and read, how many, I
12 know, she's like, what -- read, you know, how many officers
13 that may or may not take that stand, right?

14 PROSPECTIVE JUROR NO. 065: Um-hum.

15 MS. SCHIFALACQUA: And so are you willing and able
16 to listen to what's presented before you or are you already
17 going to make up your mind?

18 PROSPECTIVE JUROR NO. 065: I think I would already
19 make up my mind in that kind of way.

20 MS. SCHIFALACQUA: Do you think that you can be
21 fair?

22 PROSPECTIVE JUROR NO. 065: I don't know how to
23 answer that honestly.

24 MS. SCHIFALACQUA: Okay. Well, as I -- you know,
25 Mr. Ennis is smirking at me, because we've danced this dance

1 before, but only you can -- you know, only really you can
2 answer that. And do you think --

3 PROSPECTIVE JUROR NO. 065: No.

4 MS. SCHIFALACQUA: You don't think that you'd be
5 able to be fair --

6 PROSPECTIVE JUROR NO. 065: No.

7 MS. SCHIFALACQUA: -- in listening to the testimony?

8 PROSPECTIVE JUROR NO. 065: No. I think I'd judge
9 it by the book and kind already make up my mind and stick to
10 it.

11 MS. SCHIFALACQUA: And I appreciate that, thank you.
12 Judge, may I approach?

13 THE COURT: Um-hum.

14 (Off-record bench conference)

15 THE COURT: Thank you. Mr. Bailey, we will excuse
16 you at this time. You'll need to return to the Jury
17 Commissioner's office.

18 PROSPECTIVE JUROR NO. 065: It's on the third floor?

19 THE COURT: Third floor, yes, uh-huh.

20 PROSPECTIVE JUROR NO. 065: Thank you.

21 THE COURT: The Clerk will call the name of another
22 juror.

23 THE CLERK: Tina Chan.

24 THE COURT: Good afternoon, Ms. Chan.

25 PROSPECTIVE JUROR NO. 165: Good afternoon.

1 THE COURT: Is there any reason why you wouldn't be
2 able to serve as a juror for the next two and a half weeks?

3 PROSPECTIVE JUROR NO. 165: Not physically, but I do
4 want to jump, and not waste anyone's time, but I do have a
5 bias.

6 THE COURT: You have a bias?

7 PROSPECTIVE JUROR NO. 165: Yes. Towards police
8 officers?

9 THE COURT: Is it against me?

10 PROSPECTIVE JUROR NO. 165: No.

11 THE COURT: Okay. What -- what sort of bias do you
12 think you have?

13 PROSPECTIVE JUROR NO. 165: Towards the credibility
14 of a police officer.

15 THE COURT: All right.

16 PROSPECTIVE JUROR NO. 165: And law enforcement.

17 THE COURT: So would you be just the opposite of the
18 gentleman that was just seated there?

19 PROSPECTIVE JUROR NO. 165: Correct.

20 THE COURT: You would tend not to believe a police
21 officer --

22 PROSPECTIVE JUROR NO. 165: Correct.

23 THE COURT: -- just because he's a police officer?

24 PROSPECTIVE JUROR NO. 165: I would have less
25 credibility, yes.

1 THE COURT: Is that based upon some past experience
2 in your life?

3 PROSPECTIVE JUROR NO. 165: It's based on a current
4 experience that I recently experienced firsthand with a police
5 officer.

6 THE COURT: I see. How long ago was that?

7 PROSPECTIVE JUROR NO. 165: It's still ongoing.
8 It's for a business license.

9 THE COURT: I see. And is it still an open matter?
10 It's something that's still going on?

11 PROSPECTIVE JUROR NO. 165: Yes.

12 THE COURT: Counsel, I don't -- I don't see much
13 reason to keep going.

14 MR. OTTO: Submit, Your Honor.

15 THE COURT: Yeah.

16 MS. SCHIFALACQUA: We submit as well.

17 THE COURT: Thank you, ma'am. You'll be excused at
18 this time. The Clerk will call the name of another juror.

19 THE CLERK: Chelsey Wood.

20 THE COURT: Good afternoon, Ms. Wood. Now we've
21 covered bias on both sides, so there's nothing else left, I'm
22 sorry.

23 PROSPECTIVE JUROR NO. 171: Right.

24 THE COURT: Any reason why you wouldn't be able to
25 serve as a juror for the next two and a half weeks?

1 PROSPECTIVE JUROR NO. 171: No, sir.

2 THE COURT: All right. Would you tell us a little
3 bit about yourself?

4 PROSPECTIVE JUROR NO. 171: I'm a leasing agent for
5 apartments in Las Vegas. I've been here for 15 years and I
6 live in the northwest.

7 THE COURT: Okay. The extent of your education?

8 PROSPECTIVE JUROR NO. 171: High school and a few
9 years of college.

10 THE COURT: Okay. Any spouse or significant other
11 that works?

12 PROSPECTIVE JUROR NO. 171: No, sir.

13 THE COURT: Okay. And the name of your -- of the --
14 of the company that you work for?

15 PROSPECTIVE JUROR NO. 171: Olen Properties.

16 THE COURT: Okay. All right, thank you. Same
17 questions that you've heard before; ever been convicted of a
18 felony?

19 PROSPECTIVE JUROR NO. 171: Yes, sir, but it got
20 changed to a gross misdemeanor -- or to a misdemeanor.

21 THE COURT: To a misdemeanor. How long ago was
22 that?

23 PROSPECTIVE JUROR NO. 171: 2009.

24 THE COURT: Okay. So as it now stands, there is no
25 conviction for a felony?

1 PROSPECTIVE JUROR NO. 171: Right.

2 THE COURT: All right, thank you. Are you a United
3 States citizen?

4 PROSPECTIVE JUROR NO. 171: Yes, sir.

5 THE COURT: Do you have sympathy, prejudice or bias
6 that relates to age, religion, race, gender or national origin
7 that you feel would affect your ability to be an open-minded,
8 fair and impartial as a juror?

9 PROSPECTIVE JUROR NO. 171: No, sir.

10 THE COURT: Are you acquainted with the defendant or
11 either of his attorneys or either Deputy District Attorneys?

12 PROSPECTIVE JUROR NO. 171: No, sir.

13 THE COURT: Or with any of the witnesses whose names
14 were read off previously?

15 PROSPECTIVE JUROR NO. 171: No, sir.

16 THE COURT: Have you ever been engaged in law
17 enforcement work or have a close relative or a close friend
18 who's ever been engaged in law enforcement?

19 PROSPECTIVE JUROR NO. 171: No, sir.

20 THE COURT: Okay. Would you be able to follow all
21 of the Court's instructions on the law even if those
22 instructions differed from your personal concept of what the
23 law ought to be?

24 PROSPECTIVE JUROR NO. 171: Yes, sir.

25 THE COURT: Okay. Do you believe in the principles

1 embedded in the American system of justice that include the
2 fact that the Information or Indictment filed in a case is a
3 mere accusation and is not evidence of guilt, that a defendant
4 is presumed innocent, and that the State must prove a
5 defendant is guilty beyond a reasonable doubt?

6 PROSPECTIVE JUROR NO. 171: Yes, sir.

7 THE COURT: Okay. Do you know anything about this
8 case other than what you've heard so far in the courtroom?

9 PROSPECTIVE JUROR NO. 171: No, sir.

10 THE COURT: Have you ever served on a jury before?

11 PROSPECTIVE JUROR NO. 171: No, sir.

12 THE COURT: Have you or anyone close to you such as
13 a family member or friend ever been the victim of a crime?

14 PROSPECTIVE JUROR NO. 171: No, sir.

15 THE COURT: Okay. You indicated that you've once
16 been accused of crime, that is cleared up, and is that the
17 only -- the only event?

18 PROSPECTIVE JUROR NO. 171: Yes, sir.

19 THE COURT: Okay. Would you have the -- a tendency
20 to give more weight or credence or less weight or credence to
21 the testimony of a police officer simply because he or she is
22 a police officer?

23 PROSPECTIVE JUROR NO. 171: No, sir.

24 THE COURT: You'd be able to judge the credibility
25 of all witnesses the same?

1 PROSPECTIVE JUROR NO. 171: Yes, sir.

2 THE COURT: Can you wait in forming your opinion as
3 to the guilt or innocence of a defendant until all of the
4 evidence has been heard and after considering the instructions
5 that I will give you on the law?

6 PROSPECTIVE JUROR NO. 171: Yes, sir.

7 THE COURT: Do you know of any other reason why you
8 couldn't be a completely fair and impartial juror if you were
9 selected on this case?

10 PROSPECTIVE JUROR NO. 171: No.

11 THE COURT: As you've heard me describe before,
12 because of the nature of the charge, there are three
13 penalties. The jury, if there is a finding of guilt, the jury
14 would have the determination of whether it would be one of
15 these three; a term of years in prison of 20 to 50 years; or
16 secondly life with the possibility of parole after 20 years in
17 prison; or third would be life without the possibility of
18 parole. Would you be able to consider all three forms of
19 punishment in coming to your verdict?

20 PROSPECTIVE JUROR NO. 171: Yes, sir.

21 THE COURT: All right, thank you. Ms. Schifalacqua?

22 MS. SCHIFALACQUA: Thank you, Your Honor.

23 Ms. Wood, how are you?

24 PROSPECTIVE JUROR NO. 171: Good, how are you.

25 MS. SCHIFALACQUA: Good. Let me first ask you

1 what's your length of living in Las Vegas or Clark County?

2 PROSPECTIVE JUROR NO. 171: I moved here in 1999.

3 MS. SCHIFALACQUA: Okay.

4 PROSPECTIVE JUROR NO. 171: So, 15.

5 MS. SCHIFALACQUA: And how long have you been with
6 the -- is it Olen Properties?

7 PROSPECTIVE JUROR NO. 171: Yes, for a year almost.

8 MS. SCHIFALACQUA: Okay, one year. What did you do
9 before that?

10 PROSPECTIVE JUROR NO. 171: I worked for AMC, it's
11 another apartment management company. And before that, I
12 worked for Starbucks for five years.

13 MS. SCHIFALACQUA: Okay. Now with regard to your
14 conviction, let me go back, what year -- or what was the
15 nature of the case? The crime?

16 PROSPECTIVE JUROR NO. 171: I was an accessory, I
17 got charged as an accessory for burglary. Then, I'd never
18 been in trouble before.

19 MS. SCHIFALACQUA: Okay.

20 PROSPECTIVE JUROR NO. 171: So I went through all
21 the motions and probation, all that stuff, went through all of
22 that and it got changed to a misdemeanor.

23 MS. SCHIFALACQUA: Okay. You originally said gross
24 misdemeanor. Was it actually reduced to a misdemeanor
25 offense?

1 PROSPECTIVE JUROR NO. 171: It was -- it's a
2 misdemeanor, yes.

3 MS. SCHIFALACQUA: Okay. And with regard to -- you
4 said you were an accessory to burglary. Was it a commercial
5 business or a residence?

6 PROSPECTIVE JUROR NO. 171: It was residential. I
7 gave someone a ride which resulted in them -- in a burglary,
8 so.

9 MS. SCHIFALACQUA: And it was prosecuted by the
10 District Attorney's office here? Is that a, yes?

11 PROSPECTIVE JUROR NO. 171: Yes, sir. Yes, ma'am.

12 MS. SCHIFALACQUA: Okay. She's taking down
13 everything. And who was your defense attorney? Do you
14 remember the name?

15 PROSPECTIVE JUROR NO. 171: His first name was Lynn
16 (phonetic), last name started with an "S", I can't remember
17 his last name.

18 MS. SCHIFALACQUA: Okay. And anything about, one,
19 you know, our office obviously prosecuted. It wasn't Ms.
20 Pieper, right?

21 PROSPECTIVE JUROR NO. 171: Right.

22 MS. SCHIFALACQUA: Okay. It wasn't myself?

23 PROSPECTIVE JUROR NO. 171: Right.

24 MS. SCHIFALACQUA: Okay. But anything about our
25 office having prosecuted you with regard to this residential

1 burglary that gives you any pause to sit on this jury panel?

2 PROSPECTIVE JUROR NO. 171: Not at all. It was
3 handled very fairly, so.

4 MS. SCHIFALACQUA: Okay. With regard to your --
5 maybe your -- I mean, you said you're satisfied, it was
6 handled fairly. But any issues with your attorney or the
7 justice system in general that we should be aware of?

8 PROSPECTIVE JUROR NO. 171: Not at all.

9 MS. SCHIFALACQUA: Okay. And what about the
10 officers that investigated it? Was it Metro's jurisdiction or
11 North Las Vegas or Henderson.

12 PROSPECTIVE JUROR NO. 171: Metro.

13 MS. SCHIFALACQUA: Okay. Anything about your
14 interactions with Metro officers that would have you have a
15 particular view of Metro officers?

16 PROSPECTIVE JUROR NO. 171: No, ma'am.

17 MS. SCHIFALACQUA: Okay. You heard Ms. Pieper
18 reading kind of a number of a list of witnesses. A lot of
19 them work for Metro. Anything about having Metro officers
20 testify, that in the back of your mind, you have some axe to
21 grind or some issue that only you would know about?

22 PROSPECTIVE JUROR NO. 171: No, I did not recognize
23 any of those names, and no.

24 MS. SCHIFALACQUA: Okay. And so my bigger question
25 is, isn't really if you recognized any of the names as a

1 person involved in your case, but whether the treatment of you
2 in your own case would have -- you have some, you know, view
3 of officers in general, and would hold it against the State of
4 Nevada, or being able to fairly assess the testimony?
5 Anything that would give you pause to sit on this jury?

6 PROSPECTIVE JUROR NO. 171: No. I had a wide
7 variety of experiences with officers throughout the court
8 system, Metro, jail and here. And there's nothing that stuck
9 by me to either pass judgment on them at all, so.

10 MS. SCHIFALACQUA: Okay.

11 PROSPECTIVE JUROR NO. 171: It was, I was always
12 treated very fairly, so.

13 MS. SCHIFALACQUA: And you think you can be fair and
14 impartial if you're chosen to sit on this jury?

15 PROSPECTIVE JUROR NO. 171: Yes, ma'am.

16 MS. SCHIFALACQUA: With regard to you job, what's
17 your specific -- I know that obviously there's a number of
18 apartments it sounds like that you deal with. If you have to
19 be gone for two and a half weeks, anything about you missing
20 work for that amount of time, not the finances, because
21 frankly, you know, everyone's kind of in that position, but
22 being able to have to your full attention. Is there any issue
23 that we should be aware of?

24 PROSPECTIVE JUROR NO. 171: No. I'm not the only
25 leasing agent. I work at a very busy property. There's a lot

1 of personnel there, so.

2 MS. SCHIFALACQUA: Okay, thank you. Thank you, Ms.
3 Wood. Can you go ahead and pass the mike to Mr. Narmi? How
4 are you?

5 PROSPECTIVE JUROR NO. 064: Good this morning.
6 Well, afternoon I should say.

7 MS. SCHIFALACQUA: Okay. Afternoon. I know you
8 indicated just that you had your brother that was a Highway
9 Patrolman; is that right?

10 PROSPECTIVE JUROR NO. 064: That's correct.

11 MS. SCHIFALACQUA: How close are you with your
12 brother?

13 PROSPECTIVE JUROR NO. 064: We talk a couple times a
14 year, probably not as much as we should, but we're on good
15 terms.

16 MS. SCHIFALACQUA: Does he talk shop with you? Does
17 he tell you stories?

18 PROSPECTIVE JUROR NO. 064: Nothing specific. He
19 likes his job, he's very happy in it, but nothing specific.

20 MS. SCHIFALACQUA: Okay. And so nothing about him
21 being a Highway Patrolman that would have any real impact on
22 you sitting on this jury?

23 PROSPECTIVE JUROR NO. 064: No.

24 MS. SCHIFALACQUA: Thank you. You can go ahead and
25 pass the mike to Ms. Plourde?

1 PROSPECTIVE JUROR NO. 099: Yeah.

2 MS. SCHIFALACQUA: All right. Is that a, yes?

3 PROSPECTIVE JUROR NO. 099: Yes.

4 MS. SCHIFALACQUA: Okay. Let me grab -- now you
5 indicated with regard to working in a food services --

6 PROSPECTIVE JUROR NO. 099: Yes.

7 MS. SCHIFALACQUA: -- in a school district --

8 PROSPECTIVE JUROR NO. 099: Yeah.

9 MS. SCHIFALACQUA: -- what exactly do you do?

10 PROSPECTIVE JUROR NO. 099: I prepare the food for
11 lunch and I serve the lunch.

12 MS. SCHIFALACQUA: Okay. And is that full-time? I
13 mean --

14 PROSPECTIVE JUROR NO. 099: It's only three hours a
15 day.

16 MS. SCHIFALACQUA: Okay. Because you're going to
17 school; is that right?

18 PROSPECTIVE JUROR NO. 099: No, I have to work three
19 hours a day because it's temporary food service, so they --
20 you're only allowed to work 700 hours a year and they divide
21 it up by three hours a day.

22 MS. SCHIFALACQUA: Are you also working on your
23 degree?

24 PROSPECTIVE JUROR NO. 099: Yes. I have been in
25 school for two years for cosmetology, but right now I'm taking

1 a -- sorry.

2 MS. SCHIFALACQUA: No problem.

3 PROSPECTIVE JUROR NO. 099: A ten-week break because
4 I'm transferring schools. So that's no problem.

5 MS. SCHIFALACQUA: Okay. That was going to be my
6 follow up question. There's no issue with you missing classes
7 or --

8 PROSPECTIVE JUROR NO. 099: No. And even if there
9 was, I could make them up, so.

10 MS. SCHIFALACQUA: With regard to your mom and dad,
11 one being the victim of an alleged crime, your dad looks like
12 being in that domestic violence situation, that was before you
13 were even born; is that right?

14 PROSPECTIVE JUROR NO. 099: Yes.

15 MS. SCHIFALACQUA: Okay. So you've kind of heard
16 stories trickle down through the family?

17 PROSPECTIVE JUROR NO. 099: Yes.

18 MS. SCHIFALACQUA: In those stories, how are
19 officers portrayed? In a good light or not in a good light?

20 PROSPECTIVE JUROR NO. 099: They don't really talk
21 about the police officers. They just -- my mom just told me,
22 like, my dad was abusive and that's it.

23 MS. SCHIFALACQUA: So is there anything about that
24 that would have an impact on you being able to fairly assess
25 the evidence that came before you if you're chosen to be on

1 this jury?

2 PROSPECTIVE JUROR NO. 099: No.

3 MS. SCHIFALACQUA: Thank you. Mr. -- if you want to
4 pass the mike, can you pronounce your last name for me?

5 PROSPECTIVE JUROR NO. 045: Brattander.

6 MS. SCHIFALACQUA: Brattander, okay, I got it. How
7 are you today, sir?

8 PROSPECTIVE JUROR NO. 045: Good, how are you?

9 MS. SCHIFALACQUA: Good. Let me find, because I
10 wrote down the group that you were a part of briefly and I
11 think I got it wrong. What's the name of it?

12 PROSPECTIVE JUROR NO. 045: It's called the
13 Infragard.

14 MS. SCHIFALACQUA: Infragard?

15 PROSPECTIVE JUROR NO. 045: Infragard, correct.

16 MS. SCHIFALACQUA: Okay. With regard to that, you
17 indicated that you kind of worked with local FBI. How so?

18 PROSPECTIVE JUROR NO. 045: Well, I signed a
19 confidentiality agreement, so. But it's -- it's -- they
20 formed a group of local business leaders.

21 MS. SCHIFALACQUA: Okay.

22 PROSPECTIVE JUROR NO. 045: For us to stand for them
23 when it comes to threats on our infrastructure.

24 MS. SCHIFALACQUA: So it's really -- talks about --
25 I mean, you're in the hotel business?

1 PROSPECTIVE JUROR NO. 045: Correct.

2 MS. SCHIFALACQUA: There are going to be concerns
3 with regard to operations --

4 PROSPECTIVE JUROR NO. 045: Regards to food and
5 beverage and the food system and processing and all that.

6 MS. SCHIFALACQUA: How often do you think you have
7 interactions with the FBI?

8 PROSPECTIVE JUROR NO. 045: Every two or three
9 months, yeah.

10 MS. SCHIFALACQUA: Anything about those interactions
11 that would have an impact on you being able to sit in this
12 panel?

13 PROSPECTIVE JUROR NO. 045: No, not at all.

14 MS. SCHIFALACQUA: Okay. So there's not, for
15 example, an FBI personnel that you're like, get this guy.

16 PROSPECTIVE JUROR NO. 045: No, no, no. No, no.

17 MS. SCHIFALACQUA: Okay. And you'll be able to
18 assess evidence as it comes before you if you're picked to be
19 on this jury?

20 PROSPECTIVE JUROR NO. 045: Sure, absolutely.

21 MS. SCHIFALACQUA: Thank you. I'm now going to
22 actually ask some general questions to the panel. First of
23 all, and either raise your hand or indicate so we can get the
24 information taken down. But does anybody on this potential
25 panel own a firearm? Okay. And why don't you go ahead and

1 start, Mr. --

2 PROSPECTIVE JUROR NO. 045: Peter -- Peter
3 Brattander.

4 MS. SCHIFALACQUA: Brattander. I don't know why
5 that's so -- thank you. You own a firearm?

6 PROSPECTIVE JUROR NO. 045: Yes, I do.

7 MS. SCHIFALACQUA: And what type?

8 PROSPECTIVE JUROR NO. 045: I have a -- four pistols
9 and two shotguns.

10 MS. SCHIFALACQUA: Okay. And are they -- do you
11 actually shoot normally, like at the range or what's --

12 PROSPECTIVE JUROR NO. 045: Yeah, I -- we -- I go to
13 the range, but I also have a CCW.

14 MS. SCHIFALACQUA: Okay, thank you. You want to
15 pass down? Who was next? That owns a firearm? And is it Mr.
16 Ricker?

17 PROSPECTIVE JUROR NO. 162: Yeah, I have a .30-30
18 Winchester, it's a saddle gun.

19 MS. SCHIFALACQUA: And was that -- do you actually
20 go shoot or --

21 PROSPECTIVE JUROR NO. 162: No.

22 MS. SCHIFALACQUA: No. Was that given down to you?

23 PROSPECTIVE JUROR NO. 162: It was given to my wife
24 by her grandpa.

25 MS. SCHIFALACQUA: Okay. So kind of a -- passed

1 down by the family?

2 PROSPECTIVE JUROR NO. 162: Yeah.

3 MS. SCHIFALACQUA: Thank you. Anyone else? Okay,
4 Ms. Lynch?

5 PROSPECTIVE JUROR NO. 085: I own a 9MM Luger and --
6 and a shotgun.

7 MS. SCHIFALACQUA: Sure.

8 PROSPECTIVE JUROR NO. 085: And a .22 rifle and
9 that's it.

10 MS. SCHIFALACQUA: Okay. And do you go shooting?

11 PROSPECTIVE JUROR NO. 085: Yes, I do. And I have
12 my CCW.

13 MS. SCHIFALACQUA: Okay, thank you. Anyone else?

14 PROSPECTIVE JUROR NO. 146: I have a question.

15 MS. SCHIFALACQUA: Sure. And Ms. Perez for the
16 record.

17 PROSPECTIVE JUROR NO. 146: Does it count if, like,
18 my fiancé owns a firearm?

19 MS. SCHIFALACQUA: Sure. Do you live with your
20 fiancé? He's --

21 PROSPECTIVE JUROR NO. 146: Yes.

22 MS. SCHIFALACQUA: Okay, sure. So what -- do you
23 know the type of firearm your fiancé owns?

24 PROSPECTIVE JUROR NO. 146: Yeah, a .22 long rifle
25 and a .223.

1 MS. SCHIFALACQUA: Okay. And have you shot both of
2 them?

3 PROSPECTIVE JUROR NO. 146: No.

4 MS. SCHIFALACQUA: No. Do you -- have you ever gone
5 shooting before?

6 PROSPECTIVE JUROR NO. 146: No.

7 MS. SCHIFALACQUA: Okay. Anyone else? Let's go to
8 the back and let me make sure -- Eslinger.

9 PROSPECTIVE JUROR NO. 017: Yes.

10 MS. SCHIFALACQUA: Are you Eslinger?

11 PROSPECTIVE JUROR NO. 017: Yes.

12 MS. SCHIFALACQUA: Thank you for the record. You
13 owned a firearm as well?

14 PROSPECTIVE JUROR NO. 017: A few.

15 MS. SCHIFALACQUA: Okay. And what types.

16 PROSPECTIVE JUROR NO. 017: Revolver, semi-automatic
17 pistols, hunting rifles.

18 MS. SCHIFALACQUA: And do you hunt?

19 PROSPECTIVE JUROR NO. 017: Yes.

20 MS. SCHIFALACQUA: Okay. And do you also go
21 shooting?

22 PROSPECTIVE JUROR NO. 017: Yes.

23 MS. SCHIFALACQUA: Okay, thank you. Anyone else in
24 this row? Down here, I think. Thank you. Is it Ms. Nunez?

25 PROSPECTIVE JUROR NO. 098: Yes. I don't own any,

1 but my son.

2 MS. SCHIFALACQUA: Okay.

3 PROSPECTIVE JUROR NO. 098: He has a lot, but I
4 don't know what kind or -- but I think he have, like, three
5 big ones. They're rifle and two --

6 MS. SCHIFALACQUA: Handguns?

7 PROSPECTIVE JUROR NO. 098: Yeah.

8 MS. SCHIFALACQUA: Okay. Is that a, yes?

9 PROSPECTIVE JUROR NO. 098: Yes.

10 MS. SCHIFALACQUA: Okay. She's taking down
11 everything that you say. Have you ever shot them?

12 PROSPECTIVE JUROR NO. 098: Long, long time ago when
13 it was legal, maybe 19 years in Mexico, my husband owned one.

14 MS. SCHIFALACQUA: Sure.

15 PROSPECTIVE JUROR NO. 098: And just one shot.

16 MS. SCHIFALACQUA: So just one time shooting a
17 firearm?

18 PROSPECTIVE JUROR NO. 098: Yeah, it was enough.

19 MS. SCHIFALACQUA: Okay.

20 PROSPECTIVE JUROR NO. 098: Yeah.

21 MS. SCHIFALACQUA: Thank you. Anyone else in this
22 row. Can we go to the row behind? Does anybody in -- oh, and
23 it looks like, let me make sure, Ms. Lucas?

24 PROSPECTIVE JUROR NO. 962: Yes, ma'am. It's not
25 mine, it's my husband's actually.

1 MS. SCHIFALACQUA: Okay. And what type of firearm
2 is it, do you know?

3 PROSPECTIVE JUROR NO. 962: I do not know. I know
4 there's three short and one shotgun.

5 MS. SCHIFALACQUA: Okay. And have you ever fired
6 them?

7 PROSPECTIVE JUROR NO. 962: No.

8 MS. SCHIFALACQUA: No. Thank you. Anyone else?
9 Seeing no response. How many of you in our potential panel
10 watch CSI? Come on, Miami, New York, the regular one. And it
11 looks like, so the record is clear, we have a vast majority of
12 our potential jurors that watch CSI.

13 Who -- those of you who watch CSI, which is most of
14 you, who has any problem with the fact that it is fake? All
15 right, does everybody know and agree with me that they
16 actually have camera, they have actors, they have scripts? In
17 other words, is there any person on this panel that thinks
18 what they see on television on CSI is real? Judge? Okay.

19 And I ask that because -- let me ask kind of a --
20 maybe a follow up question to that. It's easy to say, hey,
21 okay, we get this, Barbara, it's cameras -- lights, cameras,
22 action, Hollywood. But does anybody who watches TV and
23 especially shows like CSI think that they're going to see in
24 this courtroom what it is they see on TV? Does anybody expect
25 to see what they see on TV in this courtroom? Okay. Seeing

1 no response, I have everyone, it looks like, acknowledging for
2 the record that CSI is not real and they will not expect the
3 same to be presented before them. Thank you.

4 Does anybody know any local attorneys or defense
5 attorneys? Okay. Let's start -- where's our mike? And let
6 me make sure I have -- is it Ms. Ayoub?

7 PROSPECTIVE JUROR NO. 958: Yes, ma'am.

8 MS. SCHIFALACQUA: Okay. What attorneys do you know
9 here locally?

10 PROSPECTIVE JUROR NO. 958: Attorney Lucerini.

11 MS. SCHIFALACQUA: Lucherini?

12 PROSPECTIVE JUROR NO. 958: Lucherini.

13 MS. SCHIFALACQUA: Mr. Lucherini. How do you know
14 -- do you know the father or the son?

15 PROSPECTIVE JUROR NO. 958: The son.

16 MS. SCHIFALACQUA: Okay, and how is it you know him?

17 PROSPECTIVE JUROR NO. 958: Well, right now I'm
18 involved in a lawsuit.

19 MS. SCHIFALACQUA: Okay.

20 PROSPECTIVE JUROR NO. 958: And he was one of my
21 lawyers and for -- I had him for a year and after that, I was
22 transferred to attorney Ayon.

23 MS. SCHIFALACQUA: Ayon?

24 PROSPECTIVE JUROR NO. 958: Ayon.

25 MS. SCHIFALACQUA: Do you know how to spell that

1 name?

2 PROSPECTIVE JUROR NO. 958: A-y-o-n.

3 MS. SCHIFALACQUA: And --

4 PROSPECTIVE JUROR NO. 958: And he's involved in the
5 same case right now.

6 MS. SCHIFALACQUA: Anything about the relationship
7 or that ongoing kind of litigation that would have any impact
8 on you sitting in this jury panel?

9 PROSPECTIVE JUROR NO. 958: No, not really.

10 MS. SCHIFALACQUA: Thank you. Who else knew a local
11 attorney? Oh, why don't we go behind you first. And is it
12 Ms. Lahav?

13 PROSPECTIVE JUROR NO. 906: Lahav.

14 MS. SCHIFALACQUA: Got it, okay.

15 PROSPECTIVE JUROR NO. 906: Yeah, I -- I just know a
16 couple of attorneys socially.

17 MS. SCHIFALACQUA: Okay.

18 PROSPECTIVE JUROR NO. 906: And I'm drawing a blank
19 on last names, so.

20 MS. SCHIFALACQUA: No problem. Do you know --

21 PROSPECTIVE JUROR NO. 906: I can get those for you
22 if you need, but,

23 MS. SCHIFALACQUA: Do you know the area of law?

24 PROSPECTIVE JUROR NO. 906: I don't think its
25 criminal.

1 MS. SCHIFALACQUA: Okay. And clearly, in some of
2 those, you know, just social settings, anything about your
3 relationship with them that would impact you being able to
4 fairly assess the evidence as it came before you?

5 PROSPECTIVE JUROR NO. 906: No.

6 MS. SCHIFALACQUA: Okay, thank you so much. Who
7 else knows -- and Mr. Farley?

8 PROSPECTIVE JUROR NO. 916: Yes, ma'am.

9 MS. SCHIFALACQUA: Okay. Who is it?

10 PROSPECTIVE JUROR NO. 916: Mr. Gotti (phonetic).

11 MS. SCHIFALACQUA: Okay. And --

12 PROSPECTIVE JUROR NO. 916: He defended me in my
13 second DUI.

14 MS. SCHIFALACQUA: Anything about your relationship
15 with him that would have any --

16 PROSPECTIVE JUROR NO. 916: No, ma'am. It was
17 strictly professional.

18 MS. SCHIFALACQUA: Thank you so much.

19 PROSPECTIVE JUROR NO. 916: Um-hum.

20 MS. SCHIFALACQUA: Anyone else no any local
21 attorneys? Pass it down in front. And Mr. Eslinger.

22 PROSPECTIVE JUROR NO. 017: Elliott Yug, he's an
23 attorney with the family courts and he usually sits in as a
24 judge sometimes for them, too.

25 MS. SCHIFALACQUA: Okay. Anything about that

1 relationship that would have any impact on you sitting in this
2 panel?

3 PROSPECTIVE JUROR NO. 017: No.

4 MS. SCHIFALACQUA: Okay, thank you. I believe --
5 Ms. Yono.

6 PROSPECTIVE JUROR NO. 102: Delwyn Webber.

7 MS. SCHIFALACQUA: Okay.

8 PROSPECTIVE JUROR NO. 102: I don't know, she's my
9 neighbor and, like, my mom's best friend, so.

10 MS. SCHIFALACQUA: Ah, what type of law does do?

11 PROSPECTIVE JUROR NO. 102: But I -- I don't know.
12 Her partner's Robert something, I don't really know what they
13 do, but I know that they're lawyers, that's all I know.

14 MS. SCHIFALACQUA: Okay. Your mom's close with her.
15 Are you -- do you have a close relationship with her?

16 PROSPECTIVE JUROR NO. 102: I mean, we're like --
17 like hi, like how are you sort of thing, but we don't, like,
18 talk, like, about -- you know.

19 MS. SCHIFALACQUA: So it's fair to say that nothing
20 about that --

21 PROSPECTIVE JUROR NO. 102: Yeah.

22 MS. SCHIFALACQUA: -- relationship will have --

23 PROSPECTIVE JUROR NO. 102: No effect.

24 MS. SCHIFALACQUA: -- impact, okay.

25 PROSPECTIVE JUROR NO. 102: Yeah.

1 MS. SCHIFALACQUA: Thank you. Go ahead, Ms. Cholke.

2 PROSPECTIVE JUROR NO. 006: I'm in a car accident
3 case right now.

4 MS. SCHIFALACQUA: Sure.

5 PROSPECTIVE JUROR NO. 006: (Indiscernible) and
6 Bradley, they're handling that case.

7 MS. SCHIFALACQUA: Okay. And anything about that
8 ongoing litigation or you knowing those attorneys that would
9 impact you being able to assess evidence that comes before
10 you?

11 PROSPECTIVE JUROR NO. 006: No.

12 MS. SCHIFALACQUA: Okay, thank you. You want to
13 pass the mike on down? All right, Ms. Kuhlman.

14 PROSPECTIVE JUROR NO. 991: Where would you like me
15 to start?

16 MS. SCHIFALACQUA: Yes. Is it fair to say you know
17 a number of attorneys; is that right?

18 PROSPECTIVE JUROR NO. 991: I know probably hundreds
19 of attorneys.

20 MS. SCHIFALACQUA: Okay. Anything about you knowing
21 hundreds of attorneys that would impact your ability to fairly
22 assess the evidence that comes before you if you're chosen to
23 be on this panel?

24 PROSPECTIVE JUROR NO. 991: No.

25 MS. SCHIFALACQUA: Thank you, Ms. Kuhlman.

1 Anyone else know any local attorneys? No, seeing no
2 response.

3 The Judge had talked about, obviously, our
4 principles of the -- and burdens that the State has in a
5 criminal case and he is the one that will instruct you on the
6 law. I want to make sure everyone understands that as the
7 defendant sits here today, he's not guilty. Does anybody have
8 any pause or problem with that?

9 And to follow that up, you -- it would be fair to
10 say that nobody's heard any evidence, correct? I'm seeing all
11 yes's. And so does anybody have any issue whatsoever with the
12 fact that obviously it's our burden to prove the case beyond a
13 reasonable doubt based on evidence? And I see no -- no one
14 having a problem with that concept.

15 Let me -- since we're going to talk somewhat about
16 evidence that you'll have to assess, given the nature of this
17 case, although it's not for our purposes, overly graphic,
18 there will be photographs that may be perceived by some
19 persons as graphic in nature. Or at least they document a
20 crime scene. Only you who are sitting here know yourself, and
21 does anyone have any problem with viewing potentially graphic
22 photos of a crime scene, such that you would not be able to
23 fairly assess evidence? And I see -- okay. Let me go --
24 what?

25 PROSPECTIVE JUROR NO. 006: (Inaudible).

1 MS. SCHIFALACQUA: Let me -- we need the mike.

2 PROSPECTIVE JUROR NO. 006: Oh.

3 MS. SCHIFALACQUA: And Ms. Cholke.

4 PROSPECTIVE JUROR NO. 006: Yeah, Cholke.

5 MS. SCHIFALACQUA: Cholke, I keep doing that, I
6 apologize.

7 PROSPECTIVE JUROR NO. 006: No, that's okay.

8 MS. SCHIFALACQUA: Okay.

9 PROSPECTIVE JUROR NO. 006: I live -- I live by
10 myself and I'd be so scared seeing those scenes and I don't
11 know -- I might not be able to sleep.

12 MS. SCHIFALACQUA: Here's my kind of follow up
13 question to you. I don't think anyone wants to see
14 necessarily graphic photographs of a crime scene, but do you
15 think the impact of seeing that will have an affect on your
16 ability to be fair?

17 PROSPECTIVE JUROR NO. 006: No. It's just the
18 sleeping at night.

19 MS. SCHIFALACQUA: So do you think that if you are
20 up at night having -- after having viewed, let's say,
21 photographs of a crime scene, if you're up at night, do you
22 think that will impact your ability to do what you would need
23 to do in this case, meaning, assess the evidence?

24 PROSPECTIVE JUROR NO. 006: No.

25 MS. SCHIFALACQUA: No. You think that even though

1 it might have some problems, might keep you up at night, do
2 you think that you can still sit on this jury panel and be
3 fair?

4 PROSPECTIVE JUROR NO. 006: Yes Yes, I think.

5 MS. SCHIFALACQUA: Thank you. Does anybody else
6 have any issue? Okay. Let me -- Ms. Nunez.

7 PROSPECTIVE JUROR NO. 098: Maybe I have problem
8 with -- if I see pictures because when I was young and there
9 was a shooting in my hometown and I see --

10 MS. SCHIFALACQUA: I'm sorry, Ms. Nunez. Are you
11 okay?

12 THE COURT: You don't have to recount exactly what
13 happened, ma'am. Just -- just -- she's going to ask you a
14 question now, see if you can answer that.

15 PROSPECTIVE JUROR NO. 098: Um-hum.

16 MS. SCHIFALACQUA: And I can see, you know,
17 obviously you're getting choked up. You lived something that
18 was traumatic. Do you think that this is the type of case you
19 sit on or do you think that your emotions will be too much
20 to --

21 PROSPECTIVE JUROR NO. 098: Yeah.

22 MS. SCHIFALACQUA: It will be?

23 PROSPECTIVE JUROR NO. 098: Yeah.

24 MS. SCHIFALACQUA: And, Judge, at this point.

25 MR. OTTO: Submit.

1 THE COURT: Okay.

2 MS. SCHIFALACQUA: Thank you. Thank you, and I'm
3 sorry.

4 THE COURT: All right. We will excuse you at this
5 time, Ms. Nunez. Thank you for being with us. You'll need to
6 return to the Jury Commissioner's office to be checked out.
7 And the Clerk will call the name of another juror.

8 THE CLERK: Beth Picardi.

9 THE COURT: Thank you for joining us, Ms. Picardi.

10 PROSPECTIVE JUROR NO. 172: Thank you, Judge.

11 THE COURT: Is there any reason why you would not be
12 able to serve on a jury in the next two -- for the next two
13 and a half weeks?

14 PROSPECTIVE JUROR NO. 172: No.

15 THE COURT: Okay.

16 PROSPECTIVE JUROR NO. 172: Only my job, but I know
17 that's not an excuse, so.

18 THE COURT: Okay. What kind of work do you do?

19 PROSPECTIVE JUROR NO. 172: I'm an assistant hotel
20 manager at Primm and I do oversee the three properties. I'm
21 also in charge of the two valet/front service.

22 THE COURT: Okay.

23 PROSPECTIVE JUROR NO. 172: Yes.

24 THE COURT: And could you tell us a little bit more
25 about yourself, what -- where -- what part of the Valley you

1 live in and all that.

2 PROSPECTIVE JUROR NO. 172: Okay. Well, I live in
3 two. Believe it or not, I own a home on -- out here in Vegas,
4 the east side, and I live five days a week, sometimes six, at
5 Primm. I own a home here and I rent out of Primm because my
6 husband also works at Primm. He's an executive lead engineer.

7 THE COURT: Okay. And he works for the hotel,
8 right?

9 PROSPECTIVE JUROR NO. 172: He works for -- the
10 company now that owns it is Affinity Gaming. So we both work
11 for Affinity Gaming.

12 THE COURT: Okay. What's the extent of the -- of
13 your education?

14 PROSPECTIVE JUROR NO. 172: Some college. I did a
15 year and a term.

16 THE COURT: Okay. Any kids that work?

17 PROSPECTIVE JUROR NO. 172: No, no children. My
18 husband has a son, old, 30.

19 THE COURT: Does he work?

20 PROSPECTIVE JUROR NO. 172: His son? I believe
21 Aaron now is a correction officer in Florida.

22 THE COURT: Oh, okay. I'll ask you the question I'm
23 sure the attorneys would be asking you then.

24 PROSPECTIVE JUROR NO. 172: Okay.

25 THE COURT: Is there anything about that fact that

1 -- the fact that your husband's son is a correction officer,
2 that would cause you to be unable to an unbiased juror?

3 PROSPECTIVE JUROR NO. 172: Yes. Absolutely not.

4 THE COURT: Okay.

5 PROSPECTIVE JUROR NO. 172: I could also answer your
6 questions. I come from a family of cops, detectives, firemen,
7 you know, so.

8 THE COURT: All right. Well, we'll get into that in
9 just a minute. Let me take -- take care of some of these
10 others first. You've never been convicted of a felony?

11 PROSPECTIVE JUROR NO. 172: No, sir.

12 THE COURT: Are you a United States citizen?

13 PROSPECTIVE JUROR NO. 172: Yes, sir.

14 THE COURT: Do you have sympathy, prejudice or bias
15 that relates to age, religion, race, gender or national origin
16 that would affect your ability to be an open-minded and a fair
17 juror?

18 PROSPECTIVE JUROR NO. 172: No.

19 THE COURT: Are you acquainted with the defendant or
20 either of his attorneys?

21 PROSPECTIVE JUROR NO. 172: No, sir.

22 THE COURT: Or either of the Deputy District
23 Attorneys?

24 PROSPECTIVE JUROR NO. 172: No, sir.

25 THE COURT: Or any of the witnesses whose names have

1 been read off previously?

2 PROSPECTIVE JUROR NO. 172: No, sir.

3 THE COURT: Okay. Now -- now we come to have you or
4 any family member ever been engaged in law enforcement work?

5 PROSPECTIVE JUROR NO. 172: Yes, sir. Well, I mean,
6 it's many years ago and it's in New York. My uncle was a
7 detective, my cousin was a chief, my uncle is a chief fireman,
8 you know, so.

9 THE COURT: Is there anything about that that would
10 cause you to be biased or prejudiced as a juror in a case?

11 PROSPECTIVE JUROR NO. 172: No, sir.

12 THE COURT: In other words -- and again, I mean,
13 could you be fair to both sides? Could you be fair to the
14 State of Nevada?

15 PROSPECTIVE JUROR NO. 172: Yes, I can.

16 THE COURT: Could you be fair to the defendant?

17 PROSPECTIVE JUROR NO. 172: Absolutely.

18 THE COURT: Okay. Would you be able to follow the
19 Court's instructions on the law?

20 PROSPECTIVE JUROR NO. 172: Absolutely, yes.

21 THE COURT: And I assume, then, you believe in the
22 American system of justice that includes the fact that an
23 Information or Indictment is a mere accusation and is not
24 evidence of guilt, that a defendant is presumed innocent, and
25 that the State must prove a defendant is guilty beyond a

1 reasonable doubt?

2 PROSPECTIVE JUROR NO. 172: Yes.

3 THE COURT: Do you know anything about this case
4 other than what you've heard?

5 PROSPECTIVE JUROR NO. 172: No, sir.

6 THE COURT: Okay. Have you ever served as a jury
7 before?

8 PROSPECTIVE JUROR NO. 172: I was excused.

9 THE COURT: Okay.

10 PROSPECTIVE JUROR NO. 172: And that was in New
11 York.

12 THE COURT: Okay. Do they have juries in New York?
13 I guess they do.

14 PROSPECTIVE JUROR NO. 172: Oh, yeah. Oh, yeah.
15 You're much nicer.

16 THE COURT: I deserved it. Have you or anyone close
17 to you such as a family member or friend ever been the victim
18 of a crime?

19 PROSPECTIVE JUROR NO. 172: Yes.

20 THE COURT: Was it yourself?

21 PROSPECTIVE JUROR NO. 172: It was my niece. She
22 was brutally murdered from a domestic boyfriend.

23 THE COURT: How long ago did that happen?

24 PROSPECTIVE JUROR NO. 172: It's almost 12 years
25 now.

1 THE COURT: Was that here or --

2 PROSPECTIVE JUROR NO. 172: No, New York.

3 THE COURT: Aah.

4 PROSPECTIVE JUROR NO. 172: It did hit all the
5 papers.

6 THE COURT: Okay. Is there anything about that fact
7 that would cause you to be unable to be completely fair and
8 unbiased to both sides here?

9 PROSPECTIVE JUROR NO. 172: No, not at all. They
10 really did -- it was -- on both ends, it was very fair.

11 THE COURT: Did you feel the police did all that
12 they could then? And was --

13 PROSPECTIVE JUROR NO. 172: Absolutely.

14 THE COURT: Was someone, in fact, prosecuted?

15 PROSPECTIVE JUROR NO. 172: Absolutely. He's still
16 -- yes.

17 THE COURT: You were reasonably satisfied with the
18 result?

19 PROSPECTIVE JUROR NO. 172: Yes.

20 THE COURT: Okay. Have you or anyone close to you,
21 such as a family member or a friend, ever been accused of a
22 crime?

23 PROSPECTIVE JUROR NO. 172: Yes. That's why -- my
24 cousin, he was unfortunately convicted for almost two years
25 before they proved him innocent.

1 THE COURT: Okay. Where did that happen?

2 PROSPECTIVE JUROR NO. 172: New York. It was in New
3 York, so there was a lot of talk that it was biased because
4 his father was a very big detective and he had passed away.
5 So, you know, they thought maybe it had to do with something,
6 but it didn't. It was just false identity.

7 THE COURT: He was prosecuted. Was he convicted?

8 PROSPECTIVE JUROR NO. 172: Yes, yes.

9 THE COURT: And so then later, that was overturned
10 somehow?

11 PROSPECTIVE JUROR NO. 172: Yes, two -- after he
12 served two years, something had been where they took it off
13 the record, but I don't know too much about it.

14 THE COURT: Okay.

15 PROSPECTIVE JUROR NO. 172: I really don't. I know
16 he didn't, like, sue them or anything like that. It was just
17 taken off.

18 THE COURT: Is there anything about that that would
19 cause you to be biased, either against the State of Nevada or
20 against a defendant in a criminal case?

21 PROSPECTIVE JUROR NO. 172: No, not now. I mean,
22 way back, I just -- even though I come from law enforcement, I
23 went why, you know, did it take two years, you know? But you
24 know, I heard other things wasn't as, you know.

25 THE COURT: So that was how long ago did you say?

1 PROSPECTIVE JUROR NO. 172: I'm guessing it was
2 before my niece, so 12, 13 years ago.

3 THE COURT: But as you sit here today, you don't
4 think that will be any problem for you being fair and
5 unbaised?

6 PROSPECTIVE JUROR NO. 172: No. I truly, truly
7 believe, you know, you're innocent, you know, until proven.

8 THE COURT: Okay.

9 PROSPECTIVE JUROR NO. 172: And everyone has a
10 chance.

11 THE COURT: All right. Would you have a tendency to
12 give more weight or credence or less weight or credence to the
13 testimony of a police officer, simply because he or she is a
14 police officer?

15 PROSPECTIVE JUROR NO. 172: No.

16 THE COURT: You would be able to weigh the
17 credibility the same as anyone else?

18 PROSPECTIVE JUROR NO. 172: No, yes.

19 THE COURT: Can you wait in forming your opinion as
20 to guilt or the innocence of a defendant until all of the
21 evidence has been heard and after considering the instructions
22 on the law, which I will give?

23 PROSPECTIVE JUROR NO. 172: Yes.

24 THE COURT: You've heard me explain that because of
25 the nature of the offense here, that if -- in the event of a

1 conviction, the jury would also determine the penalty and that
2 there are three possible penalties. One is a term of
3 imprisonment for 20 to 50 years. The second is a term of life
4 imprisonment with the possibility of parole after 20 years.
5 And third would be life without the possibility of parole.
6 Would you be able to consider all three forms of punishment in
7 arriving at a verdict?

8 PROSPECTIVE JUROR NO. 172: Yes, sir.

9 THE COURT: Okay. Ms. Schifalacqua?

10 MS. SCHIFALACQUA: Thank you, Your Honor.

11 Ms. Picardi, how are you today? How are you, this
12 afternoon'ish?

13 PROSPECTIVE JUROR NO. 172: Good, and you?

14 MS. SCHIFALACQUA: Let me kind of go in reverse just
15 because of your particular family experiences. Anything about
16 graphic photos or other things that you think would impact you
17 such that you wouldn't be able to sit on this jury?

18 PROSPECTIVE JUROR NO. 172: Well, if they're really
19 graphic, it would upset me, if they're really bad. I'm not
20 great -- nobody's great at seeing that. I mean, as -- I mean,
21 if this -- I don't think anything could be as graphic as what
22 I went through..

23 MS. SCHIFALACQUA: Okay.

24 PROSPECTIVE JUROR NO. 172: That's how bad it was.

25 MS. SCHIFALACQUA: And I think my concern is, you

1 know, nobody wants to see a crime scene.

2 PROSPECTIVE JUROR NO. 172: Right, of course not.

3 MS. SCHIFALACQUA: Particularly, in this case, the
4 charges are murder. But I really need to get from you is what
5 you went through with your own family member, will seeing any
6 of this bring back so much --

7 PROSPECTIVE JUROR NO. 172: It depends on what it
8 is. I would have to talk with you to find out how graphic and
9 what I could -- I really do not want to say it in front of all
10 these people what happened to her.

11 MS. SCHIFALACQUA: Sure. And I don't want you to --

12 PROSPECTIVE JUROR NO. 172: But if it has anything
13 to do with that, I definitely wouldn't be able. Other than
14 that, I'm a very open.

15 MS. SCHIFALACQUA: Okay. And with regard to that,
16 you indicated that it was a domestic violence-type situation?

17 PROSPECTIVE JUROR NO. 172: Yes, it was.

18 MS. SCHIFALACQUA: On the flip side of that, with
19 regard to the instance of your other family member, I mean you
20 -- you know, you kind of -- people live real lives, right.
21 They have family members that kind of live real lives and what
22 we really need to get at is the things that only you can
23 answer.

24 PROSPECTIVE JUROR NO. 172: Yes.

25 MS. SCHIFALACQUA: Which if you are chosen to be on

1 this jury panel, can you assess the evidence as it comes
2 before you fairly?

3 PROSPECTIVE JUROR NO. 172: Yes, I can.

4 MS. SCHIFALACQUA: Okay, thank you. Do you own any
5 firearms?

6 PROSPECTIVE JUROR NO. 172: My husband does.

7 MS. SCHIFALACQUA: Okay. What is it?

8 PROSPECTIVE JUROR NO. 172: It's a handgun, I don't
9 know.

10 MS. SCHIFALACQUA: Have you ever fired a --

11 PROSPECTIVE JUROR NO. 172: He -- he took me to
12 the --

13 MS. SCHIFALACQUA: Shooting range?

14 PROSPECTIVE JUROR NO. 172: Yeah, one time because
15 they said being he owned it, I need to know how to -- yeah,
16 so.

17 MS. SCHIFALACQUA: So you shot that -- shot that
18 handgun one time?

19 PROSPECTIVE JUROR NO. 172: Yeah and I did pretty
20 good, but I don't like it.

21 MS. SCHIFALACQUA: Do you have -- do you watch CSI
22 kind of like everyone else?

23 PROSPECTIVE JUROR NO. 172: Yeah, but --

24 MS. SCHIFALACQUA: Any problems with the statements
25 I made earlier? Are you expecting based on --

1 PROSPECTIVE JUROR NO. 172: Not at all. But, you
2 know, sometimes they have real graphic, so.

3 MS. SCHIFALACQUA: Oh, sure. Absolutely.

4 PROSPECTIVE JUROR NO. 172: So.

5 MS. SCHIFALACQUA: Absolutely. Do you know any
6 local attorneys?

7 PROSPECTIVE JUROR NO. 172: I had one. I don't even
8 remember his name. It was for a -- a car thing.

9 MS. SCHIFALACQUA: Okay. So nothing about that --

10 PROSPECTIVE JUROR NO. 172: No.

11 MS. SCHIFALACQUA: -- relationship would have any
12 impact in you sitting on this panel?

13 PROSPECTIVE JUROR NO. 172: Absolute not.

14 MS. SCHIFALACQUA: Thank you. And I'm going to go
15 back and, first of all, make sure that no one else had any
16 issues with viewing graphic photos?

17 PROSPECTIVE JUROR NO. 006: I'm going to add
18 something to what I said.

19 MS. SCHIFALACQUA: Sure. Make sure you have, Ms. --

20 PROSPECTIVE JUROR NO. 006: Cholke.

21 MS. SCHIFALACQUA: Cholke, thank you.

22 PROSPECTIVE JUROR NO. 006: Because, like, when we
23 were talking about it, I'm already getting goosebumps about
24 the graphic pictures and I don't want to be biased to the
25 defendant, but once I see the victim with all those blood, I'm

1 going to feel sorry for the victim and right there, I have my
2 judgment already.

3 MS. SCHIFALACQUA: So you --

4 PROSPECTIVE JUROR NO. 006: I've --

5 MS. SCHIFALACQUA: Oh, go ahead.

6 PROSPECTIVE JUROR NO. 006: Yeah.

7 MS. SCHIFALACQUA: You think that viewing
8 photographs of the crime scene and the victim will have you
9 make your mind up before hearing all the evidence?

10 PROSPECTIVE JUROR NO. 006: Yes. I'll feel sorry
11 for the victim right away.

12 MS. SCHIFALACQUA: But do you understand that it's
13 the State's burden to prove its case?

14 PROSPECTIVE JUROR NO. 006: Yes, I know that.

15 MS. SCHIFALACQUA: Okay. You personally feel like
16 you would not be able to be fair to the defendant if you saw
17 those photographs of the victim?

18 PROSPECTIVE JUROR NO. 006: I'm not -- I'm not sure
19 about that. I just want to be honest, like --

20 MS. SCHIFALACQUA: Sure, and I appreciate that.

21 PROSPECTIVE JUROR NO. 006: -- I feel sorry for the
22 victim right away. It's like why did you guys do it to the --
23 to the person.

24 MS. SCHIFALACQUA: And Judge, at this point I would
25 move for cause at this time. Unless you'd like me to

1 approach.

2 MR. OTTO: I have a little conflict, may we
3 approach?

4 THE COURT: Yeah, yeah. Would counsel please
5 approach.

6 (Off-record bench conference)

7 THE COURT: Thank you, counsel, you may proceed.

8 MS. SCHIFALACQUA: Thank you. Let me ask the panel
9 this. Does anybody have any issue with the fact that the law
10 protects all persons regardless of their socioeconomic status,
11 race, gender, religion and otherwise?

12 Let me make a follow -- and I see no response with
13 anyone having a problem with that for the record. Let me make
14 kind of a follow up question. Does anybody here believe that
15 a person that has maybe done wrong in their past, is not
16 afforded the same type of protections as a person who maybe
17 hasn't done wrong in their past?

18 THE COURT: Is that --

19 UNKNOWN MALE PROSPECTIVE JUROR: Sorry, Your Honor.

20 THE COURT: -- phone waiting to join my collection?
21 Do you want to ask that again, counsel?

22 MS. SCHIFALACQUA: Absolutely. Does anybody think
23 that if a person's done wrong in their past, that they're not
24 afforded the protections of the laws in the State of Nevada?
25 I see no response.

1 Let me -- okay, do you want --

2 MS. PIEPER: Judge, I'm going to be quick, I
3 promise.

4 THE COURT: You know what? Anytime a lawyer tells
5 me they'll be quick --

6 MS. PIEPER: I know, I know. I know, but you can
7 throw me in jail and I don't want to go to jail.

8 THE COURT: All right.

9 MS. PIEPER: Just a couple of quick panel questions.
10 The Judge asked you all if you could follow the law and
11 everybody said yes, they could follow the law.

12 But usually, what I try to do is give some sort of
13 example. Some people believe that marijuana should be
14 legalized, okay. That's their personal belief. Obviously,
15 this is to a case where you're dealing with possession of
16 marijuana, but let's say you believe that marijuana should be
17 legalized and you are sitting on a jury where the State is
18 alleging that somebody has possession of marijuana. You
19 personally believe that it should be legal, but you are
20 sitting as a juror and the Court tells you that it is against
21 the law to possess marijuana. Is anybody going to have a hard
22 time following the law and convicting somebody even though
23 their personal beliefs are different from that of the law? No
24 hands.

25 The Judge will explain to you, if you get picked as

1 a juror, that there are different types of evidence, there's
2 direct and there's circumstantial evidence. I usually try to
3 give the example of direct evidence is when somebody sees a
4 crime happen or they are direct eyewitness to something. Most
5 people feel comfortable with that type of evidence.

6 Circumstantial evidence is something like this.
7 We're all sitting in the room. Prior to coming in the room it
8 was cold outside and there were clouds. We all have been
9 sitting in here and we don't know what's on. As we go
10 outside, we see that it's cool outside, the temperature had
11 dropped, there's water sort of running down the streets.

12 You go outside and you see your cars and there's
13 raindrops all over your car. That is circumstantial evidence
14 that it rained because you didn't see it, right? But you can
15 smell it in the air, you can sort of see it on the cars. Does
16 anybody have a problem or an issue with direct evidence versus
17 circumstantial evidence?

18 This kind of goes back to the CSI concept. Do they
19 want to have the forensic evidence in order for the State to
20 prove somebody guilty beyond a reasonable doubt? Does anybody
21 have a problem with circumstantial versus direct evidence?

22 PROSPECTIVE JUROR NO. 096: I would have a problem
23 with that.

24 MS. PIEPER: Okay. There's a microphone. And I
25 think you are Mr. Rucker.

1 PROSPECTIVE JUROR NO. 096: Mr. Rucker, yes.

2 MS. PIEPER: Okay.

3 PROSPECTIVE JUROR NO. 096: I need direct evidence.

4 MS. PIEPER: Okay.

5 PROSPECTIVE JUROR NO. 096: I'm not a circumstantial
6 guy. My world is black and white, you have to prove it to me.
7 I just feel there's too many possibilities for error on you
8 part with circumstantial.

9 MS. PIEPER: Okay. On my part?

10 PROSPECTIVE JUROR NO. 096: Well, on -- on a
11 prosecution.

12 MS. PIEPER: Okay.

13 PROSPECTIVE JUROR NO. 096: I'm going to give the
14 benefit of the doubt to the defendant if it's circumstantial.
15 I just -- I'm -- I'm not -- I need direct evidence, period.

16 MS. PIEPER: Okay. So if the Court -- if the Judge
17 tells you that you are to hold direct evidence [inaudible]
18 circumstantial evidence --

19 PROSPECTIVE JUROR NO. 096: I'm not going to weigh
20 circumstantial evidence as heavily as I would direct.

21 MS. PIEPER: Okay. So even though the Court directs
22 you and tells you that the law is telling you that they --

23 PROSPECTIVE JUROR NO. 096: If the Court directs me,
24 then yes, I will.

25 THE COURT: Well, let me -- just so that we can be

1 clear here, I'm going to weigh in on this then. As I recall,
2 and counsel correct if I'm wrong, the instruction on
3 circumstantial evidence is that the jury is entitled to
4 consider all kinds of evidence, both direct and
5 circumstantial.

6 MS. PIEPER: Correct.

7 THE COURT: I don't believe the Court is going to
8 direct the jury to outweigh on over the other.

9 MS. PIEPER: Correct.

10 THE COURT: Or tell you exactly how to --

11 MS. PIEPER: Correct. But it is --

12 THE COURT: -- consider the evidence.

13 MS. PIEPER: -- it is that the laws weighs it
14 equally.

15 PROSPECTIVE JUROR NO. 096: I mean, taking into
16 account your anecdote, there's no -- there's no telling that
17 somebody didn't come by that car and throw a bucket of water
18 on it either, but I mean, yes.

19 MS. PIEPER: Yes, yes.

20 PROSPECTIVE JUROR NO. 096: Okay. Yeah.

21 MS. PIEPER: Nobody came by and other cars
22 [inaudible].

23 PROSPECTIVE JUROR NO. 096: I didn't -- I didn't see
24 it rain, but I would assume it rained, and I would agree with
25 you. But we don't know.

1 MS. PIEPER: Okay. So are you telling me, then,
2 under my scenario, okay, let's say the State is prosecuting
3 somebody for raining, you didn't see it raining, but I told my
4 fact scenario, that you would find somebody not guilty --

5 PROSPECTIVE JUROR NO. 096: If you can convince me
6 it rained, then yes.

7 MS. PIEPER: Okay. But -- but I'm telling you what
8 my evidence is.

9 PROSPECTIVE JUROR NO. 096: Let me see the evidence.

10 MS. PIEPER: Okay. I understand that, but are you
11 -- I'm trying to figure out, and this is kind like -- and I
12 don't want to pick on Mr. Ennis because he's been picked on
13 probably for like two hours now. It's kind of like Mr. Ennis,
14 we kind of need you to make a decision. I'm telling you
15 that --

16 THE COURT: Well, let's be clear on what we're
17 making a decision on. The question is not do you agree that
18 circumstantial evidence outweighs direct evidence or that
19 direct evidence outweighs circumstantial evidence.

20 MS. PIEPER: Correct.

21 THE COURT: Simply, do you understand that under the
22 law, both kinds of evidence are admissible and both may be
23 considered by the jury?

24 PROSPECTIVE JUROR NO. 096: Yes.

25 THE COURT: All right.

1 MS. PIEPER: Correct.

2 THE COURT: Go ahead.

3 MS. PIEPER: But in light of your statement that you
4 need to have direct evidence, and that --

5 PROSPECTIVE JUROR NO. 096: To convince myself
6 beyond a shadow of a doubt, yes, I probably would.

7 THE COURT: Well, now let's talk about -- let's talk
8 about the burden of the State then. The Court will define for
9 you what the burden is on the State. You've already heard us
10 describe it several times as it must be proof beyond a
11 reasonable doubt. And the Court defines for you what a
12 reasonable doubt is, and defines for you what the burden of
13 proof is for the State. And those are the instructions which
14 the Court would give to the jury.

15 PROSPECTIVE JUROR NO. 096: And I would follow the
16 Court's instructions.

17 MS. PIEPER: Okay. Those instructions are given at
18 the end of the trial.

19 PROSPECTIVE JUROR NO. 096: All right.

20 MS. PIEPER: So you're saying that you can follow
21 the law?

22 PROSPECTIVE JUROR NO. 096: Absolutely. I do
23 everyday.

24 MS. PIEPER: I speed, so I'm not going to get around
25 that one. The last question I have is going to kind of tie

1 together. The Judge talked to you about penalty. If the jury
2 comes back with a first degree murder conviction, you will
3 also decide penalty in this case.

4 Does anybody in this panel, whether it's a religious
5 or a moral or some kind of spiritual or ethical reason, have a
6 problem or an issue passing judgment on another person? No
7 hands. Pass the panel for cause.

8 THE COURT: Pass for cause, all right. Mr. Otto,
9 are you going to be a few minutes?

10 MR. OTTO: I would like to finish tonight, but I
11 can't guarantee it.

12 THE COURT: Okay. Well, we've now gone an hour and
13 a half and I'm -- you know, so I guess it comes to this. I
14 think we'd better take our ten-minute recess, come back and
15 you may begin and if we get finished, fine; if we don't, we
16 don't. Okay.

17 Ladies and gentlemen, I'm going to give you a ten-
18 minute recess. I try to stay true to my 90 minute mark with
19 you. While you're on this recess and before anyone goes out
20 the door, please listen to my admonition. Once again, please
21 do not converse among yourselves or with anyone else on any
22 subject or person connected with the trial. Do not form or
23 express any opinion on any subject connected with the trial
24 until the case is finally submitted to the jury. Ten minute
25 recess.

1 (Court recessed at 4:38 p.m. to 4:51 p.m.)

2 (In the presence of the prospective jurors)

3 THE COURT: Thank you, please be seated.

4 Mr. Otto, you may proceed.

5 MR. OTTO: Indeed. Good afternoon. At long last, I
6 have a few minutes with you, ladies and gentlemen. And I want
7 to start, Mr. Rutananupab.

8 PROSPECTIVE JUROR NO. 097: Yes, sir.

9 MR. OTTO: I actually don't have any questions for
10 you, I wanted to prove that I could pronounce your name.
11 Sorry about that.

12 THE COURT: So -- so did he do it right? He did?
13 Okay.

14 MR. OTTO: Each of you has stated that you would
15 hear the evidence fairly and wait until the conclusion of the
16 case to make a decision; is that correct? Does anybody feel
17 that they would prejudge the case before the close of all the
18 evidence?

19 Has anybody on the panel ever had a job or a family
20 member or close friend had a job that involved investigating
21 anything, perhaps for an insurance company? Mr. Narmi is it,
22 correct?

23 PROSPECTIVE JUROR NO. 064: Yes, sir.

24 MR. OTTO: Could you describe that for me, please?

25 PROSPECTIVE JUROR NO. 064: I work at the Flamingo

1 in the capacity of a security officer and often I'm called
2 upon to conduct an investigation.

3 THE COURT RECORDER: I am not picking him up
4 clearly.

5 MR. OTTO: Oh, I'm sorry.

6 THE COURT: Could we have the microphone?

7 THE COURT RECORDER: There's something in the way.

8 MR. OTTO: If you could repeat your answer for me,
9 please.

10 PROSPECTIVE JUROR NO. 064: I work at the Flamingo
11 in the capacity of a security officer and often I'm called
12 upon to conduct an initial investigation whether it be missing
13 property or some sort of allegation of something that may have
14 occurred and to gather the facts regarding that incident.

15 MR. OTTO: Is there anything about your experience
16 in that regard that would cause you to believe the
17 investigators in this case more than anybody else?

18 PROSPECTIVE JUROR NO. 064: No.

19 MR. OTTO: Did you also say you were in Desert
20 Storm?

21 PROSPECTIVE JUROR NO. 064: Yes, sir.

22 MR. OTTO: And that was in the -- in the early '90s?

23 PROSPECTIVE JUROR NO. 064: Yes, sir.

24 MR. OTTO: And you were an -- tank gunner?

25 PROSPECTIVE JUROR NO. 064: Master gunner.

1 MR. OTTO: Master gunner. And does that mean you
2 fire projectiles from -- from the tank?

3 PROSPECTIVE JUROR NO. 064: In the capacity I served
4 in Desert Storm, I was a platoon sergeant, I directed the
5 fires of my platoon, as well as my own tank. Did I personally
6 shoot? No. I had a tank gunner who did that, but I directed
7 the fires.

8 MR. OTTO: Is there anything about that experience
9 that would -- would cause you to -- to favor one side over the
10 other in this case?

11 PROSPECTIVE JUROR NO. 064: No, sir.

12 MR. OTTO: All right, thank you.

13 If you could pass the microphone to Ms. Kuhlman,
14 please. Ms. Kuhlman, you work for the District Attorney's
15 Office; is that right?

16 PROSPECTIVE JUROR NO. 991: I do.

17 MR. OTTO: And you -- as we've asked you before, you
18 are familiar with the Deputy District Attorneys prosecuting
19 this case?

20 PROSPECTIVE JUROR NO. 991: In passing, in the
21 limited capacity of the Judicial Nomination Committee.

22 MR. OTTO: And would -- would you -- correct me if
23 I'm wrong, but the District Attorney's Office is like a law
24 firm; is that correct? It's a large law firm?

25 PROSPECTIVE JUROR NO. 991: Some people can

1 categorize it that way. I didn't -- I've never been in
2 private practice, so I'm not familiar with the inner-workings
3 of a private law firm.

4 MR. OTTO: Would you say that it appears to be a
5 conflict of interest for you to sit on a jury when you work
6 for the same agency, if you will, or law firm that is
7 prosecuting it?

8 PROSPECTIVE JUROR NO. 991: I don't think there's a
9 conflict of interest. The way the District Attorney's Office
10 is set up is into four separate divisions. There's the
11 criminal division, the civil division, the child support
12 division and then the juvenile division.

13 I am a member of the juvenile division. Our
14 interactions with the criminal division are very minimal. I'm
15 housed completely separately from the criminal division. I do
16 not have access to their case files or anything like that. We
17 are -- ultimately, we all report to the elected or appointed
18 District Attorney, in this case appointed District Attorney
19 Steve Wolfson and he's ultimately responsible for us all, but
20 we work as separate entities, if you will.

21 MR. OTTO: You have stated that you would be fair
22 and impartial and wait until the close of all the evidence in
23 this case?

24 PROSPECTIVE JUROR NO. 991: Absolutely.

25 MR. OTTO: Do you believe that, even though you have

1 stated that, there might be reason for some people to believe
2 that it would be improper for you to sit on this jury?

3 PROSPECTIVE JUROR NO. 991: I can't speak to what
4 other people might think or feel, that would be speculative.
5 I do not feel that I have any personal biases or have the
6 inability to judge the evidence fairly and impartially. I
7 believe that every person is entitled to a jury. I believe in
8 our judicial system and the way it is set up and I believe
9 that I am capable of fairly and impartially judging the
10 evidence as presented.

11 As a prosecutor, I believe that we have a higher
12 standard and burden than other attorneys, and these two
13 District Attorneys would have to be held to that standard in
14 proving their case beyond a reasonable doubt.

15 MR. OTTO: And that -- that higher standard is proof
16 beyond a reasonable doubt.

17 PROSPECTIVE JUROR NO. 991: Well, I believe in
18 acting ethic -- the burden of proof in the case, of course, is
19 by -- beyond a reasonable doubt. I believe that the
20 prosecutors are held to a higher standard than the remaining
21 members of the bar in their duties as prosecutors.

22 MR. OTTO: Thank you.

23 THE COURT: Now you've left me with a question. Are
24 you saying that you would hold the two Deputy District
25 Attorneys to any higher burden than you would another attorney

1 in presenting a case?

2 PROSPECTIVE JUROR NO. 991: No, Your Honor. What
3 I'm saying is that I believe the -- and I believe the Rules of
4 Ethics for lawyers hold District Attorneys or any prosecutor
5 to a higher ethical standard. And I believe just because I am
6 a prosecutor, that I would not view the evidence or the
7 parties in this case any differently or give the State any
8 deference just because I am also a District Attorney.

9 THE COURT: Okay. All right, go ahead.

10 MR. OTTO: Mr. Brattander, please. Right in front
11 of you, Ms. Kuhlman.

12 PROSPECTIVE JUROR NO. 045: Yes, sir.

13 MR. OTTO: You -- you are on a Committee, if you
14 will, that --

15 PROSPECTIVE JUROR NO. 045: It's an Association.

16 MR. OTTO: An Association --

17 PROSPECTIVE JUROR NO. 045: Yeah.

18 MR. OTTO: -- that assists the FBI.

19 PROSPECTIVE JUROR NO. 045: Correct.

20 MR. OTTO: You know FBI agents and --

21 PROSPECTIVE JUROR NO. 045: I -- I'm -- just through
22 the meetings.

23 MR. OTTO: At the meetings?

24 PROSPECTIVE JUROR NO. 045: Yeah, I'm not friends
25 with them.

1 MR. OTTO: Would you believe law enforcement more
2 than other people?

3 PROSPECTIVE JUROR NO. 045: No, not at all.

4 MR. OTTO: And you also would have no problem
5 waiting until the close of evidence to decide the case?

6 PROSPECTIVE JUROR NO. 045: Correct.

7 MR. OTTO: And listen to all the instructions and
8 make your decision based on those instructions?

9 PROSPECTIVE JUROR NO. 045: Absolutely.

10 MR. OTTO: All right, thank you. We are running out
11 of time, but I would like to speak at you, Mr. Ennis.

12 THE COURT: We have as much time as you feel is
13 necessary, Mr. Otto.

14 MR. OTTO: All right.

15 THE COURT: It may not be today.

16 MR. OTTO: Yes, I know, yeah.

17 Mr. Ennis, you've been picked on.

18 PROSPECTIVE JUROR NO. 902: Yes, I know that.

19 MR. OTTO: And I would like to thank everyone for
20 being so honest. And, you know, this is what we're here for.
21 Voir dire means see and say, so we know, to the extent we can
22 know, who you are. And I think you've been more than fair. I
23 just -- will you be able to listen to each and every witness
24 with an open mind?

25 PROSPECTIVE JUROR NO. 902: Yes.

1 MR. OTTO: Will you be able to listen to every
2 witness and wait until every witness and all the evidence is
3 in the case before making up your mind as to the guilt or
4 innocence of Mr. Washington?

5 PROSPECTIVE JUROR NO. 902: Yes.

6 MR. OTTO: Do you have any doubt that you'll be able
7 to do that?

8 PROSPECTIVE JUROR NO. 902: No.

9 MR. OTTO: All right. I think I would hand it back
10 to the Court at this point.

11 THE COURT: Pass for cause?

12 MR. OTTO: I would pass for cause, Yes, Your Honor.

13 THE COURT: All right. May I see counsel, please?

14 (Off-record bench conference)

15 THE COURT: All right. Thank you, ladies and
16 gentlemen, the attorneys have passed for cause any challenge
17 of jurors. There remains one other kind of challenge which is
18 known as a peremptory challenge and we will conduct -- we will
19 conduct that tomorrow.

20 Now, I've just conferred with the attorneys. We're
21 trying to keep from having to make a whole bunch of people
22 come back that we -- or feel fairly confident will not wind up
23 having to serve. Therefore, I'm going to have the Clerk read
24 off the names of the next ten individuals seated in the -- in
25 the spectator section who must indeed return tomorrow. If

1 your name is not read off now by the juror [sic], then you
2 will know that you are excused and you won't have to come back
3 tomorrow.

4 So now, Ms. Clerk, if you'll read off the names of
5 the next ten.

6 THE CLERK: Jamell Carter, Portia Flores, Scott
7 Olson, Diane Brundage, Tanya Landry, Suzan Johnson, Ellen
8 Roupp, Travis Gillespie, Darryn Rehart and John Pilot.

9 THE COURT: If your name was just read off by the
10 Clerk, would you please stand? All right, thank you. You may
11 sit down. Yes, ma'am?

12 PROSPECTIVE JUROR NO. 202: If I already know that I
13 -- I think I have an excuse, is there any chance I can present
14 it? Because coming back tomorrow [inaudible].

15 THE COURT: Why don't you come up, ma'am. Counsel,
16 come up.

17 THE CLERK: Who is she?

18 THE COURT: Don't know yet.

19 PROSPECTIVE JUROR NO. 202: Diane Brundage.

20 THE COURT: Okay.

21 PROSPECTIVE JUROR NO. 202: I was the fourth one you
22 called.

23 (Off record bench conference)

24 THE COURT: All right. The Clerk will read off one
25 other name.

1 THE CLERK: Jacqueline Houle.

2 PROSPECTIVE JUROR NO. 232: Judge?

3 THE COURT: Oh, boy.

4 PROSPECTIVE JUROR NO. 232: I have an excuse, I've
5 been the victim of a crime.

6 THE COURT: All right. I'm going to -- I can't keep
7 doing this.

8 PROSPECTIVE JUROR NO. 232: I have paperwork.

9 THE COURT: Okay. Well, it probably means that you
10 won't wind up having to sit, ma'am.

11 PROSPECTIVE JUROR NO. 232: I -- it's difficult for
12 me to be here.

13 THE COURT: All right. Well, I -- there's only so
14 far I can go to try to accommodate everybody. We now are
15 overtime and we're asking all of our juror members to come
16 back as well as the ten individuals. There is some chance
17 that we would never even get to your name anyway. If that's
18 the way it goes, then that's great.

19 Now, if your name was one of the ten who was read
20 off now, you must return tomorrow at 1:00 o'clock. The rest
21 of you will also be here tomorrow at 1:00 o'clock. Is that
22 what time we --

23 MS. PIEPER: Yes.

24 MS. SCHIFALACQUA: Yes, Your Honor.

25 THE COURT: -- are meeting? One o'clock tomorrow.

1 While you're on this overnight recess, please recall
2 the Court's admonition not to converse or talk to anyone else
3 on any -- or amongst yourselves on any subject or any person
4 connected with this trial. Please do not read, watch or
5 listen to any account or news story or commentary on the trial
6 or on any person connected with the trial by any medium of
7 information whatsoever. Please do not get on the Internet and
8 research anything. Please simply come back tomorrow at 1:00
9 o'clock.

10 We will be in recess until that time.

11 PROSPECTIVE JUROR NO. 232: Your Honor, am I excused
12 from tomorrow?

13 THE COURT: You'll need to come back at 1:00 o'clock
14 tomorrow, ma'am.

15 UNKNOWN MALE SPEAKER: The people that you didn't
16 read, can we just leave?

17 THE COURT: If your name was not read off, you are
18 excused.

19 UNKNOWN MALE SPEAKER: So we don't have to go to the
20 third floor and--

21 THE COURT: Yeah, you're supposed to go to the third
22 floor to check out, yeah.

23 Counsel, anything else on record for tomorrow?
24 Okay, we're done.

25 MR. OTTO: Nothing, Your Honor.

26 (Court recessed at 5:08 p.m., to April 9, 2014, at 1:21 p.m.)

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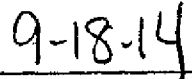
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DATE


CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,	.	CASE NO. C-294695-1
	.	
Plaintiff,	.	DEPT. NO. I
	.	
vs.	.	
	.	
MATTHEW WASHINGTON,	.	TRANSCRIPT OF
	.	PROCEEDINGS
Defendant.	.	
.....	.	

BEFORE THE HONORABLE KENNETH CORY, DISTRICT COURT JUDGE

JURY TRIAL - DAY 3

WEDNESDAY, APRIL 9, 2014

APPEARANCES:

FOR THE STATE:

DANIELLE K. PIEPER, ESQ.
BARBARA F. SCHIFALACQUA
Chief Deputy District Attorneys

FOR THE DEFENDANT:

DAVID J. OTTO, ESQ.
ROBERTA OHLINGER-JOHNSON, ESQ.

COURT RECORDER:

BEVERLY SIGURNIK
District Court

TRANSCRIPTION BY:

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WITNESSES

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
<u>STATE'S WITNESSES:</u>				
Daniel Weber	23	36		
Darren DeSoto	39	--		
Lorraine DeSoto	51	65		
Christian Parquette	67	87		
Eric Sokolowski	94	112		
* * * * *				

EXHIBITS

<u>DESCRIPTION:</u>	<u>ADMITTED</u>
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1 LAS VEGAS, NEVADA, WEDNESDAY, APRIL 9, 2014, 1:21 P.M.

2 (In the presence of prospective jurors)

3 THE COURT: While they're -- she's doing that, do
4 counsel agree we have the appropriate venire before us?

5 MS. PIEPER: Yes, Your Honor.

6 MS. SCHIFALACQUA: Yes, Your Honor.

7 MR. OTTO: Yes, Your Honor.

8 THE COURT: All right.

9 (Pause in the proceedings)

10 THE COURT: Ladies and gentlemen, what occurs next
11 is that the attorneys, as I indicated somewhat yesterday, have
12 the opportunity to ask that a certain number of jurors not
13 serve on the jury and that may be for any legal reason. It
14 may be that after speaking to you, that they have some
15 lingering doubts as to whether you could be fair to their side
16 of the case. Most often that's the reason.

17 They exercise these as peremptory challenges. Like
18 I said before, we hope no one feels slighted if they don't
19 wind up getting to serve on the jury. And I can honestly say,
20 I hope that if you don't get to serve on this one, that you do
21 get to serve on a future one, as I think it will greatly
22 deepen your appreciation for the country in which we live, and
23 for the criminal justice system that has evolved through the
24 years.

25 It takes them a few minutes to do that by simply

1 handing this piece of paper back and forth. There isn't
2 really much I can do to entertain you while it goes on, so I
3 won't try to.

4 If you -- anyone wants to stand and stretch while
5 they're doing it, you may, but please don't move away from
6 your seat because that's kind of how they keep track of who's
7 who is by the seating chart. It will probably take them maybe
8 -- anywhere from five to ten minutes to exercise that.

9 I used to think -- feel compelled to have some -- a
10 series of jokes to tell, but it didn't really seem to be the
11 right tone, particularly, when I had a criminal trial. So I
12 don't make any effort at doing that.

13 There is, as I indicted yesterday, there's water
14 down here if anybody needs some. Can we nominate you to be
15 the water distributor there, Ms. Aguilar? Oh, okay, Mr. --
16 Mr. Ennis, you be the water person. Thank you. Well, if
17 anybody wants water, just see Mr. Ennis and he'll take care of
18 that. We have spared no expenses here at the RJC, genuine
19 water.

20 (Pause in the proceedings)

21 THE COURT: All right. Ladies and gentlemen, it
22 appears that the peremptory challenges have now either been
23 exercised or waived. If your name is now read by the Clerk of
24 the Court, would you please return to the body of the
25 courtroom.

1 THE CLERK: James Stevens, Sharon Smith, Noemi
2 Aguilar, Maria Ayoub, Rodney Canning, Rushina Morrison, Angie
3 Lucero -- oh, I'm sorry, not Angie, I'm sorry. Kevin Rucker,
4 Jennifer Kuhlman, Shannon Martin, Beth Picardi, Leonardo
5 Cortez, Pauline Cholke, Daniel Sanchez, Rutananupab, Peter
6 Brattander, Jordan Plourde, Keith Narmi, Chelsey Wood, and
7 Fred Ricker.

8 MS. PIEPER: May we approach, Your Honor, briefly.

9 THE COURT: Did you read Sanchez? I don't think he
10 heard it. I don't think Sanchez heard it.

11 THE CLERK: Daniel Sanchez.

12 (Off-record Bench conference)

13 THE COURT: All right. Now, ladies and gentlemen,
14 as your name is read, would you please be reseated in the jury
15 box and the bailiff will assist you.

16 THE CLERK: Shawnta Ennis, you can stay there. Amy
17 Lahav -- he's already in the seat -- Keven Farley, James
18 Johns, Patricia Dowell, Maryann Harakal, Edith Lucas, Brian
19 Roark, Rushina Morrison, Angie Lucero, Madeleine Yono and
20 Jeffrey Eslinger, James Andrews, Octavia Lynch and Serena
21 Perez.

22 THE COURT: Do counsel concur?

23 MS. SCHIFALACQUA: Yes, Your Honor.

24 MS. PIEPER: Yes, Your Honor.

25 MR. OTTO: Yes, Your Honor.

1 THE COURT: All right, thank you. Ladies and
2 gentlemen, if -- if you weren't able to participate in this
3 trial, I do hope that you'll have the opportunity in the
4 future.

5 Those of you that were not selected to be on the
6 jury, we want to thank you for the time that you've devoted to
7 it. You may return to the Jury Commissioner's office now.
8 You'll need to check out through the Jury Commissioner's
9 office. Thank you all.

10 (Pause in the proceedings)

11 THE COURT: All right. Ladies and gentlemen, if you
12 will stand, we will swear you as members of our jury.

13 JURY SWORN BY CLERK

14 THE CLERK: Thank you. Please be seated.

15 THE COURT: Thank you, ladies and gentlemen. As
16 sworn members of the jury, it is -- it will be good for me to
17 give you some opening comments. These are some statements,
18 some introductory comments.

19 That I'm going to tell you now, however, will not be
20 a substitute for the more -- the lengthier jury instructions
21 which I will give you at the end of the trial and before you
22 retire to deliberate upon your verdict.

23 You are admonished that no juror may declare to a
24 fellow juror any fact relating to this case of his or her own
25 personal knowledge. And if any juror discovers during the

1 trial or after the jury's retired to deliberate, that he or
2 she or any other juror has personal knowledge of any of the
3 facts that are in controversy in this case, then he or she
4 shall disclose such situation to myself in the absence of the
5 other members of the jury.

6 This means that if you learn during the trial that
7 you were acquainted with the facts of the case or what
8 sometimes happens is you don't recognize a name, but when a
9 witness comes in to testify, you realize, oh, that's somebody
10 I see at the store or somewhere. Then -- we'll ask you then
11 to please declare that to me and the way you do it is simply
12 by telling the bailiff and the bailiff will take it from
13 there.

14 During the course of the trial, the attorneys for
15 both sides, the parties, the witnesses and the court personnel
16 other than the bailiff are not permitted to converse with
17 members of the jury. I mentioned this yesterday. We want you
18 to understand we're not just being antisocial, we're bound by
19 ethics and the law not to talk to you because to do so might
20 contaminate the verdict which is ultimately rendered in the
21 case.

22 You are admonished additionally that you're not to
23 visit the scene of any of the acts or occurrences that are
24 made mention of during this trial unless you're specifically
25 directed to do so by the Court.

1 Please do not investigate this case or any of the
2 facts or the law or anyone who has anything to do with the
3 case on your own. Do not undertake any legal research, do not
4 undertake any factual research. And as I've indicated before,
5 that means don't go home and Google something about the trial.

6 As it goes on, you'll hear evidence about the case,
7 you will learn some facts. Please don't go home and try to
8 Google some things or do whatever search engine you use to
9 find out more about this. Please allow the attorneys to
10 present the evidence to you here in the courtroom.

11 What I will now say as intended to be the
12 introduction to the trial, it's not to substitute for the
13 detailed instructions on the law which I will give you at the
14 close of the case.

15 This is a criminal case commenced by the State of
16 Nevada, which I generally refer to as, the State, against the
17 defendant Matthew Washington. The case is based on an
18 Information. The Clerk will now read the information to the
19 ladies and gentlemen of the jury and state the plea of the
20 defendant to that Information.

21 (Information read by Clerk, not transcribed)

22 THE COURT: Thank you, Ms. Clerk.

23 Ladies and gentlemen, I've already talked about the
24 water that's available to you. We also will have some
25 notebooks for you, and I will give you some instructions in

1 just a minute about those. The bailiff will hand out these
2 notebooks to you now. You will also have pens, there are pens
3 available up there.

4 Now, the case that you have is based on the
5 Information which has been read to you by the Clerk. And you
6 should distinctly understand that the Information is simply a
7 charge and that it is not in any sense evidence of the
8 allegations that it contains.

9 The defendant has pled "not guilty" to the
10 information. The State, therefore, has the burden of proving
11 each of the essential elements of the charges beyond a
12 reasonable doubt. As the defendant sits there now, he is not
13 guilty. The purpose of this trial is to determine whether the
14 State will meet that burden.

15 It is your primary responsibility as jurors to find
16 and determine the facts. I'm going to wait just a minute till
17 we get you all with your notebook there.

18 (Pause in the proceedings)

19 THE COURT: All right. As I just indicated, the
20 purpose of the trial is to determine whether the State will
21 meet its burden. It is your primary responsibility as jurors
22 to find and determine the facts. Under our system of criminal
23 procedure, you are the sole judges of the facts. You are to
24 determine the facts from the testimony you hear and the other
25 evidence including exhibits introduced in court. It is up to

1 you to determine the inferences which you feel may be properly
2 draw from the evidence.

3 At times I may sustain objections or direct that you
4 disregard certain testimony or exhibits. You must not
5 consider any evidence to which an objection has been sustained
6 or which I've instructed you to disregard. Anything you may
7 have seen or heard outside the courtroom is not evidence and
8 must also be disregarded.

9 You must not be influence in any degree by any
10 personal feeling of sympathy for or prejudice against either
11 the State or the defendant. Both sides are entitled to the
12 same fair and impartial consideration.

13 In considering the weight and value of the testimony
14 of any witness, you may take into consideration the
15 appearance; attitude and behavior of the witness, the interest
16 of the witness in the outcome of the case, if any, the
17 relation of the witness to the defendant or the State, the
18 inclination of the witness to speak truthfully or not, and the
19 probability or improbability of the witness's statements and
20 all of the facts and circumstances in evidence. Thus you may
21 give the testimony of any witness just such weight and value
22 as you believe the testimony of that witness is entitled to
23 receive.

24 There are two kinds of evidence, direct and
25 circumstantial. Direct evidence is testimony by a witness

1 about what that witness personally saw or heard or did.
2 Circumstantial evidence is testimony or exhibits which are
3 proof of a particular fact from which if proven, you may infer
4 the existence of a second fact. A overly simplistic example
5 of that would be if the lights suddenly went out in the
6 courtroom, you could infer that someone had cut the
7 electricity.

8 You may consider both direct and circumstantial
9 evidence in deciding this case. The law permits you to give
10 equal weight to both, but it is for you to decide how much
11 weight to give to any evidence.

12 The opening statements and the closing arguments of
13 the attorneys are intended to help you in understanding the
14 evidence and applying the law. But the opening statements and
15 closing arguments are not evidence.

16 Until this case is submitted to you, you must not
17 discuss it with anyone, even with your fellow jurors. After
18 it is submitted to you, you must discuss it only in the jury
19 room with your fellow jurors. It is important that you keep
20 an open mind and not decide any issue in the case until the
21 entire case has been submitted to you under instructions from
22 me.

23 If you cannot hear a witness, please raise your hand
24 as an indication. Also, if you need to use the restroom or
25 you feel ill, please let us know by raising your hand as an

1 indication.

2 We will continue to take intermittent breaks as the
3 Court sees fit. I try to do so about every 90 minutes or so.
4 Water is already provided, I showed you that, and you have
5 your notebooks.

6 I may during the trial take notes of the witnesses'
7 testimony. Please do not draw any inference from the fact
8 that I take notes. I'm required to prepare for legal
9 arguments of the attorneys during the trial and for that
10 reason, I may take a lot of notes.

11 The jury will not have a transcript to consult at
12 the close of the case. However, the jury has been furnished
13 the notepads and pencils and will be allowed to take notes.

14 The trial will proceed in the following manner. The
15 Deputy District Attorney will make an opening statement which
16 is an outline to help you to understand what the State expects
17 to prove. Next, the defense attorney may, but does not have
18 to make an opening statement. The opening statements serve as
19 an introduction to the evidence which the party making the
20 statement intends to prove.

21 The State will then present its evidence, and
22 counsel for the defendant may cross-examine the witnesses.
23 Following the State's case, the defendant may present evidence
24 and the Deputy District Attorney may cross-examine the
25 witnesses. However, as I have said, the defendant is not

1 obligated to present any evidence.

2 After all the evidence has been presented, I will
3 instruct you on the law. After the instructions on the law
4 has been read to you, each side has the opportunity to present
5 oral argument.

6 Again, what is said in closing argument is not
7 evidence. The arguments are designed to summarize and
8 interpret the evidence for you. Since the State has the
9 burden of proving the defendant guilty beyond a reasonable
10 doubt, the State has the right to open and close the
11 arguments.

12 After the arguments have been completed, you will
13 retire to deliberate upon your verdict. Again, let me remind
14 you that until the case is submitted to you, do not talk to
15 each other about it or to any -- anyone else about it until
16 you go to the jury room to decide the case and then you talk
17 about it together.

18 Do not talk with anyone else about the case or about
19 anyone who has anything to do with it until this trial has
20 ended and you have been discharged as jurors. Anyone else
21 includes, as I've indicated before, members of your family and
22 your friends.

23 Anyone have any problem with family members prying
24 into what's going on with your official duties? If you do,
25 please feel free to tell them that you've been threatened by a

1 judge if you talk about it until it's over, if that helps you.

2 Do not let anyone talk to you about the case or
3 about anyone who has anything to do with it. If someone
4 should try to talk to you, please do not talk to them, but
5 then do let the bailiff know and then we will take care of it
6 from there.

7 Do not read any news stories or articles or listen
8 to any radio or television reports about the case or about
9 anyone who has anything to do with it. And again, do not
10 visit the scene of any of the events that are mentioned during
11 the trial or undertake any investigation or research on your
12 own.

13 Now, it's going to take us a minute to set up before
14 we begin the opening statements by the District Attorney. And
15 while we're doing that, I'm going to give you an early break.
16 We don't do this very often, but it works out in this one.

17 We'll take a ten-minute recess. I am not only
18 required to repeat this admonition I'm about to give you every
19 single time we take a break, I'm required to do that by the
20 law. But when you think about it, this case is that
21 important, that I remind all of you of what your duties are as
22 a juror, which includes that while you are on this ten-minute
23 recess, do not talk or converse among yourselves or with
24 anyone else on any subject or person connected with this
25 trial. Please do not form or express an opinion on any

1 subject connected with the trial until the case is finally
2 submitted to you.

3 Let me also add to that, that there's to be no cell
4 phone texting about the case or about anyone that's in the
5 case. Some of the Judges have thought maybe we should just
6 take all the jury's cell phones at the beginning of a trial
7 and not give them back until the end. I sincerely hope that
8 will no be necessary here. So just -- just remember that when
9 I say don't talk to anybody, I include don't text anybody,
10 don't accept any texts about the case or about anyone
11 connected with the case.

12 We'll take a ten-minute recess.

13 (Court recessed at 2:25 p.m. until 2:50 p.m.)

14 THE COURT: Okay. All right, we'll now be pleased
15 to hear the opening statement on behalf of the State. Ms.
16 Pieper?

17 STATE'S OPENING STATEMENT

18 MS. PIEPER: Thank you, Your Honor.

19 At approximately 4:35 in the morning, Lorraine and
20 Darren DeSoto are awoken by gunshots. Each of them will
21 testify to you that they hear five gunshots. The DeSotos live
22 at 2635 Sherwood. The crime scene is 2660 -- 2655 Sherwood.
23 They live here, in this apartment. They hear five gunshots
24 each. They get up. You're going to hear that Lorraine puts
25 on some jeans and she goes and she looks out her window right

1 here. This is an alleyway in the back.

2 Darren DeSoto gets up, looks out the window, decides
3 he's going to go closer to where he kind of hears some noise
4 or hears where the shots came from, so he kind of comes closer
5 to this area. He will tell you that -- both of them will
6 testify to you that they hear -- and of course, this is after
7 the crime scene analysts have worked on the car, but they're
8 going to tell you that they see a silver Dodge Magnum, low
9 profile wheels, no chrome, no front license plate.

10 Darren's going to tell you that as he's looking out
11 the window, he sees the car sort of come around from this
12 direction and drive down the alley. And again, they live
13 right here.

14 The car drives at a slow rate of speed. Darren
15 looks at his wife and he says, call 911 and you will hear the
16 911 call. Lorraine DeSoto calls 911, gives a description of
17 the vehicle.

18 At around the same time, Officer Parquette is
19 driving and he works in the Downtown Area Command, he works
20 the graveyard shift, midnight to 8:00 a.m. He hears the call
21 come out at 4:34 or 4:35 of the DeSotos. He hears a
22 description of the car and he starts to drive to that area.

23 This area, technically, is a South Central Area
24 Command. Downtown Area Command, you will learn through
25 testimony, sort of borders it. So Officer Parquette starts to

1 drive towards the area.

2 The crime scene happens at 2655 Sherwood. Officer
3 Parquette is driving and at Eastern and St. Louis, at
4 approximately 4:39, he sees a silver Dodge Magnum, low profile
5 tires, headlights on and driving. He logs on, he lets the
6 other units know that he thinks that he sees the car matching
7 the description.

8 He continues -- he actually drives past the car,
9 turns around and now he's following the car as the car is
10 traveling from Eastern and St. Louis up to Eastern and Ogden.
11 He's telling other units, I have the car, I think it's the car
12 that was involved in the shooting.

13 You will also hear from Officer Sokolowski. While
14 they are sort of talking on the radio, Officer Sokolowski is
15 up here at Eastern and Stewart. All the units are sort of
16 talking that if this is the car, Officer Sokolowski says that
17 he is going to go up to Eastern and Stewart and he's going to
18 stop the traffic southbound, so in case that there is some
19 kind of high speed chase, they can set up the strips so that
20 if the car doesn't stop, they can get the car to stop.

21 Officer Parquette will testify that he then stops
22 the car. They do a felony car stop on the car and he'll
23 explain to you what that is. They stop the car at Eastern and
24 Ogden. Officer Parquette orders the driver out of the car
25 first. The driver is Matthew -- is identified as Matthew

1 Washington. Officer Parquette then orders the backseat
2 passenger who's sitting behind the driver's side out of the
3 car and that is Martell Moten.

4 As Officer Parquette is ordering these people out of
5 the car, what he sees is the butt of the gun in the backseat
6 behind the front passenger seat. So if this is the driver's
7 seat, Martell Moten's sitting here, the gun is right there
8 behind the front passenger seat. He orders them out of the
9 vehicle and they get taken into custody.

10 Now back at 2655 Sherwood, the 911 call has gone
11 out. Inside apartment number 18 is Nathan Rawls, Laroy
12 Thomas, Ashely Scott and Marque Hill. You are going to hear
13 that Nathan Rawls is sitting against this window. You're
14 going to hear that Ashely Scott and Laroy Thomas are also in
15 the livingroom. And at 4:30 in the morning, they're all
16 sleeping. Marque Hill is in the bedroom behind the
17 livingroom.

18 Marque Hill will testify that he hears shots rang
19 out and he's in the middle of asleep. As he's sleeping, he
20 looks over and he can see that there's holes coming through
21 his wall. He realizes it's gunshots. He rolls to the ground
22 and he starts yelling. The shots are still ringing out as he
23 hears Laroy -- Laroy Thomas come into his room and say I've
24 been shot, I've been shot. Marque says, get down on the
25 ground.

1 Marque crawls out to the livingroom and he can see
2 Nathan Rawls is lying there and he's sort of like making
3 gurgling noises.

4 Marque starts screaming out, is there anybody else
5 in here and he can hear Ashely screaming, I'm hit, I'm hit.
6 Nathan -- Marque Hill then calls 911 and you will hear that
7 call. He realizes that Nathan Rawls isn't moving and that he
8 needs to help somebody that he met.

9 Back at Eastern and Ogden, the DeSotos who called
10 911 at 4:35 are taken out to the crime scene. They're sort of
11 taken out in some vehicles and they're asked if they can
12 identify the vehicle. Both the DeSotos will tell you that
13 they identified the vehicle, this vehicle that the defendants
14 were taken out of -- or this defendant was taken out of as the
15 car that they saw drive by, no front plate, headlights on,
16 limo tint, no chrome, low profile tires.

17 That's the 9 millimeter gun that was taken out of
18 the vehicle, the one that I told you about when Martell Moten
19 sitting in the back driver's seat and it's sort of by the --
20 behind the front passenger seat.

21 Officers start to show up. They then get a search
22 warrant. The car is then towed to Metro's lab where they do a
23 further search. They then find a .40 caliber that was also in
24 the silver Dodge Magnum. The .40 caliber is found -- Matthew
25 Washington is sitting in the driver's seat, the .40 caliber is

1 found near the -- underneath the steering column, sort of in a
2 hidden compartment. They actually had to pull it down and it
3 was hidden inside.

4 Back at 2655 Sherwood Avenue, police have now shown
5 up. Officer Parquette is told at this time that there is a
6 homicide scene because Nathan Rawls has expired. So over at
7 Eastern and Ogden where the car is, they start to process it
8 and do different things.

9 At 2655 Sherwood, crime scene analysts show up and
10 they start -- physically start going through the evidence.
11 What you will learn is that 13 shots went through the front
12 window and door of 2655.

13 We have shell casings. The shell casings match the
14 two guns that were recovered in the defendant's vehicle. We
15 also recover some bullets, not only out of Nathan Rawls, but
16 out of the two victims, LaRoy Thomas and Ashely Scott, we
17 recovered those bullets. We recover other evidence in the car
18 as well as evidence that is inside of this apartment.

19 Ladies and gentlemen, at the end of this case, we
20 are going to ask you to find this defendant guilty based on
21 the testimony, the forensic evidence that we have linking him
22 to this crime. Thank you.

23 THE COURT: All right, thank you. Does the defense
24 wish to make an opening statement?

25 MR. OTTO: A very brief, Your Honor.

1 THE COURT: Okay.

2 DEFENDANT'S OPENING STATEMENT

3 MR. OTTO: Ladies and gentlemen, at the close of
4 this evidence, we will ask you to find Mr. Washington not
5 guilty based on the forensic and testimony you'll hear today.
6 Thank you.

7 THE COURT: All right, thank you. We'll now begin
8 the evidence portion of the trial, ladies and gentlemen. The
9 State will call their first witness.

10 MS. PIEPER: State calls Daniel Weber.

11 THE COURT: Ah, counsel, I'm sorry, I need to see
12 counsel for just a minute.

13 (Off-record bench conference)

14 THE COURT: Ladies and gentlemen, there's one
15 additional instruction for me to give you, and that is that
16 you will be given the opportunity to ask written questions of
17 any of the witnesses that are called to testify in this case.
18 You're not encouraged to ask a large number of questions,
19 because that's the primary responsibility of the attorneys.

20 The questions may be asked only in this manner.
21 After both lawyers have finished questioning the witness and
22 only at that time, if there are additional questions that
23 you'd like to ask, then you should ask permission to do so by
24 writing it down on a piece of paper, signing your name and
25 raise your hand so that the Bailiff can collect the -- the

1 question.

2 All questions from jurors must be factual in nature
3 and designed to clarify information already presented. In
4 addition, the jurors must not place undue weight on the
5 responses to the questions.

6 The Bailiff will pick up your question and give it
7 to me. After I have reviewed the question with the attorneys,
8 I will make the decision of whether or not it is an
9 appropriate question to be asked of the witness. If I
10 determine that your question may properly be asked, I will ask
11 it. No adverse inference should be drawn if the Court does
12 not allow a particular question.

13 All right. Now we're ready to begin with the
14 witnesses. The exclusionary rule has been invoked. If anyone
15 is present who expects to be called as a witness, please wait
16 outside, discuss their testimony with no one but the parties
17 or the attorneys, and I will rely upon counsel to enforce that
18 rule.

19 MS. PIEPER: Thank you, Your Honor.

20 THE COURT: You may call your first witness.

21 MS. PIEPER: State calls Daniel Weber.

22 OFFICER DANIEL WEBER, STATE'S WITNESS, SWORN

23 THE CLERK: Please be seated. Please state your
24 name and spell it or the record.

25 THE WITNESS: Daniel Weber, D-a-n-i-e-l, W-e-b-e-r.

1 THE CLERK: Thank you.

2 MS. PIEPER: May I proceed?

3 THE COURT: You may proceed.

4 DIRECT EXAMINATION

5 BY MS. PIEPER:

6 Q How are you employed?

7 A I'm a police officer with the Las Vegas Metropolitan
8 Police Department.

9 Q How long have you been employed with Metro?

10 A Approximately two and a half years.

11 Q And what unit are you a part of?

12 A I'm assigned to patrol out of the South Central Area
13 Command.

14 Q Okay. And what shift do you work?

15 A Graveyard.

16 Q Drawing your attention to November 5th, 2013, were
17 you working on that day?

18 A Yes, ma'am.

19 Q At approximately 4:34, did -- did you hear a call
20 that came out?

21 A Yes, ma'am. We had a -- well, it came out, I
22 believe, as a -- a battery with a deadly weapon call on
23 Sherwood.

24 Q Now let me ask you this. You're in a uniform today;
25 is that correct?

1 A Correct.

2 Q And you drive a black and white vehicle?

3 A Correct.

4 Q Is that the way that you arrived when you went to
5 2655 Sherwood here in Las Vegas, Clark County, Nevada?

6 A Yes, ma'am.

7 Q Once you got to the scene, what did you do first?

8 A When I arrived, I got out of my vehicle. Another
9 officer from my squad was arriving just after me. We both
10 drew our guns and then entered into -- off Sherwood into the
11 narrow, I guess, entranceway into the main quad area of the
12 apartment building. And then from there, we went to knock on
13 the door and try to make contact with the -- the apartment
14 question -- or apartment that we had been sent to.

15 Q Okay. Let me back up just -- you arrived. When you
16 arrive, do you arrive lights and sirens?

17 A Correct.

18 Q Okay. Once you get there, you say you draw your
19 weapon?

20 A Right.

21 Q Why is that?

22 A It's a battery with a deadly weapon call. So we're
23 not -- you know, we don't know the exact situation. We didn't
24 really have that many details when we arrived, so we're not
25 really sure what the situation is, if there's still a suspect

1 on scene, if anybody inside has a weapon still or what we're
2 going to encounter once we -- we make contact with the
3 residence.

4 Q Now let's talk a little bit about the apartment
5 complex that you go to. You described how there was sort of
6 like a narrow entrance area; is that correct?

7 A Correct.

8 Q And is there sort of like apartments and it's kind
9 of like in a little square?

10 A Right.

11 Q And is there also like two apartments sort of
12 stacked on top of each other?

13 A Yes, ma'am.

14 Q And it's sort of a low rise building; is that
15 correct?

16 A Correct.

17 Q Once you arrive there, you go to apartment number
18 18; is that correct?

19 A Correct.

20 Q And you get there and what do you do? You said you
21 knocked on the door and then -- or --

22 A We knocked on the door and announced, Metro police.
23 A gentleman had answered the door. I'm not sure if we
24 attempted to put him on the ground or not. He kept telling us
25 that he was the one who called us and kept walking towards us,

1 so we pulled him out of the apartment, passed him off to
2 another officer that was arriving, and then kept challenging
3 the apartment and calling out the other occupants of the
4 apartment.

5 We observed the one male who was laying on the
6 ground right inside the front door and then the other -- there
7 was two other occupants that we had called out in addition to
8 the first gentleman who were kind of hopping around and
9 informed us that they had been injured by a gunshot wound.

10 So once we pulled them out, we got them sat down and
11 passed off to other officers who were arriving. And then me
12 and that initial officer there with me, we went in and cleared
13 the apartment for anybody else or any other threats that could
14 possibly be inside the apartment.

15 Q You -- okay. You go inside and you cleared the
16 apartment. When you say you cleared the apartment, what does
17 that mean?

18 A It means we go from room-to-room ensuring that, one,
19 there's not anybody else inside the apartment who's possibly
20 injured and can't move, or there's nobody else inside the
21 apartment hiding, and then, you know, to look and make sure
22 that it's a safe environment.

23 Q When you go inside of the apartment and you're
24 clearing the apartment, do you see any firearms?

25 A No.

1 Q And are you looking inside of, like, in closets and
2 things like that where people could actually be hiding?

3 A Yes.

4 Q Okay. So you don't see any firearms when you clear
5 apartment number 18; is that correct?

6 A Correct.

7 Q And the people that come out of apartment 18 are
8 three total; is that correct?

9 A Correct.

10 Q Two males and one female?

11 A Correct.

12 Q Did you see any firearms on them?

13 A No.

14 Q Okay. Once you get everybody out of the apartment
15 and you clear the apartment, what happens next?

16 A Once we got everybody out and the apartment was
17 cleared we -- we requested that the Fire Department and
18 medical personnel expedite because we could tell that the
19 subject still laying on the ground in the apartment was
20 unresponsive.

21 Everybody was outside of the apartment. We kind of
22 -- I stood right by the door to ensure that nobody else
23 entered the apartment. Once the Fire Department arrived, we
24 had, you know, two of them go in and check on the male that
25 was laying on the ground and they pronounced him dead there.

1 And then from there, you know, they started tending
2 to the other two who were -- had gunshot wounds who were
3 outside the apartment. And then another ambulance company
4 arrived. They started working on the -- they started
5 assisting the Fire Department and then eventually transported
6 those two subjects to the hospital.

7 Q So two are transported to the hospital and one male
8 actually stayed on scene?

9 A Correct.

10 Q Okay. And when you arrived as the first responder,
11 do you guys tape off the area eventually or?

12 A Yes, ma'am. We -- after they started -- after the
13 two other subjects were transported, you know, we started
14 putting up crime scene tape up around and looking for any kind
15 of evidence on scene there because now it's switched from, you
16 know, assisting those who were injured to attempting to
17 preserve the crime scene as much as possible and preserve all
18 the -- all the evidence that's there.

19 Q And at this point, you realize that it's a homicide
20 investigation?

21 A Correct.

22 Q But the way the Las Vegas Metropolitan Police
23 Department works, as a first responder, are you going to do
24 the investigation?

25 A No. I mean, we'll do, like, the initial

1 investigation and just try to identify the people involved,
2 get a -- I guess, a brief kind of idea of what happened and
3 just, you know, the time of the call and where any kind of
4 evidence is located. But that's -- that's, I guess, the --

5 Q The job of the homicide detectives?

6 A Right.

7 Q So you realize at this point, once the two injured
8 people have been taken off scene and one of them -- one person
9 remains on scene. You've taped it off, you're marking where
10 the evidence, you now realize that homicide detectives will be
11 showing up and they'll be taking over the investigation?

12 A Right.

13 MS. PIEPER: Your Honor, may I approach the witness?

14 THE COURT: You may.

15 MS. PIEPER: I've previously showed counsel these
16 photographs.

17 BY MS. PIEPER:

18 Q I want you to look at these pictures and tell me if
19 you recognize them. Kind of just skim through them real
20 quick, but keep them in order.

21 A Yes, ma'am.

22 Q And is this how the crime scene looked on November
23 5th, 2013?

24 A Yes, ma'am.

25 MS. PIEPER: Your Honor, State moves for the --

1 Proposed Exhibits 1 through 13.

2 THE COURT: Any objection?

3 MR. OTTO: No objection, Your Honor.

4 MS. PIEPER: The State --

5 THE COURT: Exhibits 1 through 13 will be admitted.

6 (State's Exhibits 1 through 13 are admitted)

7 MS. PIEPER: The State asks permission to publish.

8 THE COURT: You may.

9 BY MS. PIEPER:

10 Q Showing you what's admitted State's 1, I've never
11 used this one. It's a new doc cam. What is that a photograph
12 of?

13 A That's a photograph of the outside of the apartment
14 building from Sherwood.

15 Q Okay. If I'm standing in the street taking a
16 picture of that, am I standing in Sherwood?

17 A Yes.

18 Q Showing you what's State's Admitted Number 2. What
19 is that a photograph of?

20 A That's the front gate entrance off of Sherwood
21 there.

22 Q Okay.

23 A Into the apartment complex.

24 Q Now I see that there's yellow tape in here. When
25 you arrive, was there yellow tape?

1 A No.

2 Q Okay. You earlier described how when you came on
3 scene, there was sort of like a narrow way that you had to
4 walk through. Is this the area you're talking about?

5 A Yes, ma'am.

6 Q Showing you State's Admitted 3. Is that sort of the
7 narrow walkway that you needed to go through?

8 A Yes, ma'am.

9 Q When you arrived, was it light or dark outside?

10 A It was dark out.

11 Q Showing you State's Admitted Number 6. What is that
12 a photograph of?

13 A The front door to apartment 18.

14 Q Is that the door that you knocked on?

15 A Yes, ma'am.

16 Q Showing you State's Admitted Number 7. I'm not sure
17 I can get the whole picture in here. I'm going to kind of
18 point on the picture. On the picture, it's going to be on the
19 far right side. This area right here that I'm pointing to,
20 what's that?

21 A That is the front entranceway that I came in from
22 off of Sherwood.

23 Q So once you sort of come into this area, did you
24 know immediately where apartment number 18 was or did you have
25 to sort of get situated by the way the rest of the apartments

1 were?

2 A Initially, I didn't know exactly where it was, but
3 when I came in and came around the corner, then I saw
4 apartment 18 was right there.

5 Q And earlier, we had described how the apartments
6 were sort of stacked on each other. Essentially, this is 18,
7 there's another apartment upstairs; is that correct?

8 A Correct.

9 Q And on this side there are more apartments?

10 A Correct.

11 Q Now the person that's taking the picture, behind
12 them, are there other apartments that sort of mirror these?

13 A Yes, ma'am.

14 Q Showing you State's Exhibit Number 9. Is that one
15 of the individuals that you pulled out of the apartment?

16 A Yes, ma'am.

17 Q Is that the first guy that got pulled out of the
18 apartment when you banged on the door?

19 A Yes, ma'am.

20 Q Okay. And he eventually came out of the house -- or
21 he came out of the house; is that correct?

22 A Correct.

23 Q Earlier you describe for us how you went into the
24 apartment after everybody had been taken out and you cleared
25 it. Do you remember that?

1 A Yes, ma'am.

2 Q Showing you State's Proposed -- or State's Exhibit
3 Number 11. What is that a photograph of?

4 A It's the front room right off of the door and --

5 Q Sort of like the livingroom area?

6 A Correct.

7 Q Okay. So if I'm standing right here, is that where
8 the front door is?

9 A Yes, ma'am.

10 Q Okay. So you come into the apartment and earlier we
11 had seen pictures sort of like a window that had curtains.

12 A Right.

13 Q Do you remember those? Okay. Were the curtains
14 open or closed when you went there?

15 A They were closed.

16 Q Okay. So the curtains that I just described, is
17 that the curtains that are over here?

18 A Yes, ma'am.

19 Q Okay. So on the other side of this wall would be
20 the outside area?

21 A Correct.

22 Q Okay. And this back wall where the TV is, is that
23 sort of the walkway area that you walk in to get into this
24 complex?

25 A Yes, ma'am.

1 Q Okay. You walk into the livingroom area. Obviously
2 you had described seeing somebody on the ground. Is this the
3 person that you saw?

4 A Yes, ma'am.

5 Q After you cleared the livingroom area, do you know
6 what room you go into next?

7 A I believe it was a back bedroom.

8 Q And you go to the back bedroom and you kind of look
9 around. And then I think you described how you also look in
10 closets; is that correct?

11 A Correct.

12 Q And then there's like a bathroom area; is that
13 correct?

14 A I believe so.

15 Q Did you go in by yourself or did you go in with
16 another officer?

17 A Another officer.

18 Q Okay. And I'm assuming that you guys are kind of
19 yelling out to each other as to what rooms you're going into?

20 A Right.

21 Q Okay. Showing you State's Exhibit Number 12.

22 Again, this is the window that you had earlier described it on
23 the outside, that would be the outside area courtyard; is that
24 correct?

25 A Correct.

1 Q Okay. Showing you State's Exhibit Number 13. These
2 were the curtains and those were in the condition that you saw
3 them; is that correct?

4 A Correct.

5 Q And I'm not sure -- oh, okay.

6 MS. PIEPER: Your Honor, may I approach the witness
7 again?

8 THE COURT: You may.

9 BY MS. PIEPER:

10 Q In looking at State's Exhibit Number 13, do you
11 notice something unusual in regard to those curtains?

12 A There's the holes from the impacts.

13 Q Okay. So the holes -- you can see holes actually in
14 the curtains; is that correct?

15 A Correct.

16 Q When you first arrived to the apartment and you sort
17 of walk into apartment number 18, your first concern is to see
18 the occupants inside; is that correct?

19 A Correct.

20 Q Okay. Once everybody's outside and you've cleared
21 the apartment and you're standing outside and you're looking
22 at apartment number 18 where all of the windows are, can you
23 see something unusual about the windows?

24 A Well, I mean, when we first arrived, we could see
25 all the impacts into the entire building.

1 Q So you could see --

2 A In the window and in the building wall.

3 Q Okay. So you could see, when you first walked up,
4 you could see all the different holes that were in that
5 window?

6 A Correct.

7 MS. PIEPER: Pass the witness, Your Honor.

8 THE COURT: Cross-examination.

9 MR. OTTO: Yes, Your Honor. If I could have a
10 moment, please?

11 THE COURT: You may.

12 (Pause in the proceedings)

13 CROSS-EXAMINATION

14 BY MR. OTTO:

15 Q Officer Weber, good afternoon. My name is David
16 Otto and I represent Matthew Washington, the defendant in this
17 case.

18 I'm showing you now, I hope -- yes, I am -- what is
19 marked as -- and admitted as State's Exhibit 8. And could you
20 tell us what we're seeing in that picture, please?

21 A That's the front of apartment 18.

22 Q And can you see the -- the abnormalities in the
23 window there?

24 A Yes, sir.

25 Q And what would you describe those abnormalities as?

1 A Impacts from bullets.

2 Q And is there -- we can't see through that window in
3 this picture. Is that how you found it when you walked up to
4 the apartment?

5 A Yes, sir.

6 Q You could not see in that window?

7 A Correct.

8 Q Showing you what has been marked as State's Exhibit
9 13 now and ask you to describe that, if you would.

10 A That would be the inside of the apartment, just on
11 the inside looking out towards the window.

12 Q So when you got there, that's what it looked like?

13 A Yes.

14 Q You didn't move the curtains or anything?

15 A No.

16 Q Fair to say that a person such as yourself or anyone
17 looking from the outside courtyard cannot see through those
18 curtains?

19 A Correct.

20 Q And again, this State's Exhibit 6. And that --
21 would you just describe briefly what that is?

22 A The front door to apartment 18.

23 Q And there's no windows or any viewing that a person
24 outside could see inside that apartment; is that correct?

25 A Besides the peephole.

1 Q But that would be to look out from in --

2 A Oh, correct.

3 Q Yes. And then showing you what's been marked as
4 State's Exhibit 7. That is a similar view to 13; is that
5 correct?

6 A Correct.

7 Q Seven is here now and that's just further away?

8 A Correct.

9 Q And none of these cones or yellow tape were there
10 when you arrived?

11 A Correct.

12 Q And again, the curtains were closed. And from this
13 view, you could not see inside; is that correct?

14 A Correct.

15 Q Looking at the concrete in this picture, which is 7,
16 were there shell -- shell cartridge casings there, bullet
17 cartridge casings in -- in the -- on the concrete there?

18 A Yes, sir.

19 Q And a number of them?

20 A Yes, sir.

21 Q And did it appear to you that the position of the
22 photographer taking this picture is a sum approximation of
23 where those shell casings would have been found? If you know?

24 A I'm not sure. I know there -- there was quite a few
25 on the --

1 MR. OTTO: Pass the witness, Your Honor.

2 THE COURT: Redirect?

3 MS. PIEPER: Nothing further, Your Honor.

4 THE COURT: Thank you, you may step down.

5 THE WITNESS: Thank you, Judge.

6 THE COURT: May this witness be excused?

7 MS. PIEPER: Yes, Your Honor.

8 MR. OTTO: Yes, Your Honor.

9 THE COURT: You are excused. Thank you, Officer.

10 You may call your next witness.

11 MS. SCHIFALACQUA: The State calls Darren DeSoto.

12 THE MARSHAL: If you'd remain standing and look at
13 our Clerk, she'll swear you in.

14 DARREN DESOTO, STATE'S WITNESS, SWORN

15 THE CLERK: Please be seated. State your name and
16 spell it for the record.

17 THE WITNESS: Darren DeSoto, D-a-r-r-e-n,
18 D-e-S-o-t-o.

19 MS. SCHIFALACQUA: May I, Your Honor?

20 THE COURT: You may proceed.

21 DIRECT EXAMINATION

22 BY MS. SCHIFALACQUA:

23 Q Mr. DeSoto, let me ask you this, do you want to be
24 here today?

25 A Not particularly.

1 Q Are you under a subpoena by the District Attorney's
2 Office to testify here today in open court?

3 A Yes.

4 Q I want to turn your attention back to May 5th of
5 2013. Do you remember that day?

6 A Yes, I do.

7 Q On that day, what -- where is it -- the apartment
8 complex that you lived? Where was it that you lived at that
9 time?

10 A On Sherwood Street.

11 Q And on that day, on November 5th of 2013, at
12 approximately 4:35 in the morning, did something happen that
13 causes you to testify here today?

14 A Yes.

15 Q Can you describe for the members of the jury what,
16 if anything, happened?

17 A I was woke from my sleep after hearing five
18 gunshots.

19 Q And when -- well, let me ask you this. Do you have
20 a spouse that you live with?

21 A Yes.

22 Q What's her name?

23 A Lorraine DeSoto.

24 Q And was she also in the residence?

25 A Yes.

1 Q When you said that you woke up and heard the five
2 gunshots, what did you do?

3 A I got up to see what was going on.

4 Q Okay. And by getting up to see what was going on,
5 did you stay in a particular location in your apartment?

6 A No. I went -- first I went from my bedroom and
7 looked out my window to see if I could see anything coming our
8 way.

9 MS. SCHIFALACQUA: Okay. And -- Court's indulgence.
10 I believe -- if I may approach the Clerk? This wasn't -- yes,
11 it was, Mr. Otto, I'm sorry.

12 MR. OTTO: Oh, yes.

13 MS. SCHIFALACQUA: Okay. And having shown, Judge,
14 for the record, Mr. Otto what's been marked as State's
15 Proposed Exhibits 14, 15, as well as 23. May I approach the
16 witness with State's Proposed 14 and 15 at this time, Judge?

17 THE COURT: You may.

18 MS. SCHIFALACQUA: Thank you.

19 BY MS. SCHIFALACQUA:

20 Q Mr. DeSoto, so we can get our bearings, I'm going to
21 show you what's been marked as State's Proposed Exhibits 14
22 and 15. Could you look at those briefly and tell me if you
23 recognize what -- what's depicted in each of those?

24 A A map that is wrong.

25 Q Okay. Is it --

1 A You have Sherwood Street labeled as an alley.

2 Q Oh, that's not the street, but we'll get there.

3 That's actually pointing.

4 A Okay, I'm sorry.

5 Q Okay. Is that -- let me back up. Starting with the
6 one that you signified was wrong, but we'll get a better view
7 of that, State's Proposed 15, is that an aerial map, if you
8 will, depicting your residence?

9 A Yes, it is.

10 Q As well as the Sherwood residence apartment complex?

11 A Yes, it is.

12 Q Okay. Does that fairly and accurately, with
13 recognizing those arrows, depict the overview map of that
14 area?

15 A Yes.

16 Q Thank you. Showing you what's been marked as
17 State's Proposed Exhibit 14, is that another aerial map
18 depicting the Sherwood apartment complex?

19 A Yes, it is.

20 Q And does that include the apartment complex to which
21 you reside in?

22 A Yes.

23 Q And does that fairly and accurately depict that?

24 A Yes.

25 Q Okay. As an overview?

1 A Right, yes.

2 MS. SCHIFALACQUA: I'd move for admission of State's
3 Proposed Exhibits 14 and 15 at this time, Your Honor.

4 MR. OTTO: No objection.

5 THE COURT: Fourteen and fifteen will be admitted.

6 (State's Exhibits 14 and 15 are admitted)

7 MS. SCHIFALACQUA: And, Your Honor, permission to
8 publish?

9 THE COURT: You may.

10 MS. SCHIFALACQUA: Okay, let's see if I can actually
11 get this to zoom out. Am I going the right way? No. There
12 we go, okay.

13 BY MS. SCHIFALACQUA:

14 Q It doesn't let me go any further out. So looking at
15 what's been admitted as State's 14, Mr. DeSoto, is this the
16 area in which you resided on November 5th of 2013?

17 A Yes, it is.

18 Q Okay. And were you at the 2635 Sherwood residence?

19 A Yes, I was.

20 Q With regard to you hearing the shots, you indicated
21 that you got up out of your bed; is that correct?

22 A Um-hum. Yes.

23 Q Did you live on a upper floor or a lower floor?

24 A Lower.

25 Q Okay. Showing you what's been admitted as State's

1 15, and so we can clear up for the jurors, this isn't the
2 street itself, correct?

3 A Correct.

4 Q It's pointing actually to a specific apartment; is
5 that right?

6 A Correct.

7 Q Are those accurately documented now that we look
8 at --

9 A Yes, they are.

10 Q Okay. With regard to where you resided, you
11 indicated that it was the lower level; is that right?

12 A Correct.

13 Q Is this a street?

14 A No. That is an alleyway.

15 Q Okay. Describe for the members of the jury, please,
16 what you did when you got up after hearing those shots?

17 A I looked out my window of my bedroom.

18 Q Okay.

19 A I didn't -- I didn't see anything at the time, so I
20 moved into my kitchen area to look out that window.

21 Q Can you -- is there a -- on this map -- and you can
22 touch the screen and it actually will write.

23 A Oh.

24 Q Can you show the members of our jury what area you
25 were looking out of? Or it should.

1 THE COURT: If you use your fingernail, it will sort
2 of do it.

3 MS. SCHIFALACQUA: Unless our screens aren't working
4 today.

5 THE COURT: Oh.

6 (Pause in the proceedings)

7 THE COURT: It may not have been -- may not have
8 been repaired properly.

9 MS. SCHIFALACQUA: Okay. Well if I may approach,
10 Judge?

11 THE COURT: You may.

12 MS. SCHIFALACQUA: Let's see if this will work and
13 if not, we will --

14 BY MS. SCHIFALACQUA:

15 Q Anything?

16 A Negative.

17 Q Okay. Well, let me ask you this. Absolutely. If
18 you could --

19 MS. SCHIFALACQUA: Judge, with your permission, if
20 he could out --

21 THE COURT: Sure.

22 MS. SCHIFALACQUA: -- on the large screen?

23 THE COURT: Um-hum. He may.

24 BY MS. SCHIFALACQUA:

25 Q Mr. DeSoto, would you mind coming down and pointing

1 out for the members of our jury on the large screen where it
2 is you looked out?

3 A Right here.

4 Q Okay. And where is that alleyway?

5 A That alleyway is -- my kitchen is right here and the
6 alleyway is hiding right outside my kitchen.

7 Q Okay. So outside of your kitchen window that you
8 were looking out of, you could see the alleyway?

9 A Yes.

10 Q Okay. And if you want to have a seat, thank you.
11 When you looked out your kitchen window, that's on the ground
12 level?

13 A Correct.

14 Q What, if anything, did you observe?

15 A I saw the glow of headlights coming from Sherwood,
16 which would be to my right when I'm looking out the window.

17 Q Can I have you -- I apologize, we'll do this old
18 school. If you could come down and show the members of the
19 jury which way --

20 A Okay. My kitchen window is here, this is Sherwood.
21 I looked down to the right and I saw the shine -- or
22 illumination of headlights. At that point --

23 Q And which direction did those headlights go?

24 A West.

25 Q Okay. Can you draw for the members of the jury what

1 you observed, or point?

2 A Okay. I saw the headlights coming through here.
3 And then as I continued watching, I saw a vehicle, very slow
4 and calmly drive past my window.

5 Q Thank you. You may sit down. When you saw that
6 vehicle driving past your window, approximately how far away
7 was the vehicle from where you were observing?

8 A Seven feet.

9 Q Okay. And describe for the members of our jury that
10 vehicle?

11 A It was a silver Dodge Magnum, limo tint windows,
12 after-market rims, no front license plate, no visible chrome.

13 Q And what, if anything, did you do next?

14 A I told my wife to call 911.

15 Q And did she call 911?

16 A Yes.

17 Q Thereafter were you made aware or did you have
18 contact with police?

19 A Yes.

20 Q Okay. And when you -- well, describe for the
21 members of the jury how it is you came into contact with
22 police?

23 A Once we called them, while we were still on the
24 phone, they started arriving with the different units and
25 then, at that time, they asked if we were the ones that had

1 witnessed this and proceeded to take a report.

2 Q Okay. At some point, do you get transported by
3 officers to see if you can make an identification of the
4 vehicle that you observed on November 5th, 2013 going down
5 that alleyway?

6 A Yes.

7 Q And do you do so?

8 A Yes.

9 Q Describe for the members of our jury how that
10 happens? Do you drive down there?

11 A No. After we took -- after they took the report,
12 they loaded both me and my wife up in one of the cruisers and
13 took us to wherever they had had this vehicle pulled over.

14 Q Okay. And when you are taken to that location, are
15 you able to identify the vehicle that you observed that seven
16 feet away from you on May --

17 A Yes.

18 Q Excuse me, on November 5th, 2013?

19 A Yes.

20 Q And do you give that information to police?

21 A Yes, I do.

22 Q Was the vehicle you observed the same vehicle that
23 you saw after being woken up by the gunshots?

24 A Yes, it was.

25 MS. SCHIFALACQUA: Showing -- having shown Mr. Otto

1 what's been marked as State's Proposed Exhibit 23, if I may
2 approach the witness, Your Honor?

3 THE COURT: You may.

4 MS. SCHIFALACQUA: Thank you.

5 BY MS. SCHIFALACQUA:

6 Q Mr. DeSoto, I'm going to show you what's been marked
7 as State's Proposed Exhibit 23. Do you recognize that?

8 A Yes.

9 Q And how do you recognize it to be --

10 A The rims, the lack of chrome and the tint.

11 Q Is that the vehicle that you were taken to and
12 identified on November 5th, 2013?

13 A Yes.

14 Q Is that a fair and accurate picture of the vehicle
15 as you observed it when you were taken by officers?

16 A Yes. The windows are down. When it had gone by,
17 all the windows were up, so I was not able to see inside the
18 vehicle.

19 MS. SCHIFALACQUA: Okay. I move for admission of
20 State's Proposed 23, Your Honor.

21 THE COURT: Any objection?

22 MR. OTTO: No objection.

23 THE COURT: Twenty-three will be admitted.

24 (State's Exhibit 23 is admitted)

25 MS. SCHIFALACQUA: Thank you. Permission to

1 publish, Judge?

2 THE COURT: You may.

3 MS. SCHIFALACQUA: Thank you.

4 BY MS. SCHIFALACQUA:

5 Q Showing you here, then, State's 23. This is how the
6 vehicle was when you were able to observe it with officers?

7 A Correct.

8 Q And so I can clarify the statement you made, when
9 the vehicle drove by your residence, were any of the windows
10 rolled down?

11 A No.

12 Q Could you see into the vehicle whatsoever?

13 A No.

14 Q Okay. Could you see how many people were in it?

15 A No.

16 Q You presumed there was a driver, I take it?

17 A Right.

18 MS. SCHIFALACQUA: Okay. Court's indulgence.

19 THE COURT: Um-hum.

20 MS. SCHIFALACQUA: I pass the witness, Judge.

21 THE COURT: Cross-examination.

22 MR. OTTO: No questions, Your Honor.

23 THE COURT: Thank you, you may step down. May this
24 witness be excused?

25 MS. SCHIFALACQUA: Yes, Your Honor.

1 MR. OTTO: Yes, Your Honor.

2 THE COURT: You're excused, sir, thank you.

3 State may call your next witness.

4 MS. PIEPER: State calls Lorraine DeSoto.

5 THE MARSHAL: If you could just step up there,
6 remain standing and raise your right hand, our Clerk will
7 swear you in.

8 LORRAINE DESOTO, STATE'S WITNESS, SWORN

9 THE CLERK: Please be seated. Please state your
10 name and spell it for the record.

11 THE WITNESS: Lorraine DeSoto, L-o-r-r-a-i-n-e,
12 D-e-S-o-t-o.

13 THE COURT: You may proceed.

14 MS. PIEPER: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY MS. PIEPER:

17 Q Good afternoon, Ms. DeSoto.

18 A Hello.

19 Q You don't want to be here, correct?

20 A I do not.

21 Q Okay. And you are here because we subpoenaed you to
22 be here.

23 A Right.

24 Q And you understand that that is a court order?

25 A Yes.

1 Q I need you to actually speak up so the members of
2 the jury can hear you.

3 A Okay.

4 Q And you realize that if you did not come to court,
5 there are other ramifications or implications if you don't
6 come, correct?

7 A Correct.

8 Q Okay. I want to draw your attention to November
9 5th, 2013 at approximately 4:30 in the morning. Did something
10 unusual happen?

11 A I was woke up out of sleep by five gunshots.

12 Q Once you heard the gunshots -- or let me ask you
13 this. When you heard them, did they sound like they were
14 close or far away?

15 A Sounded very close.

16 Q But not in your particular apartment; is that
17 correct?

18 A No, not within my apartment.

19 Q They sounded like they were close. You hear the
20 gunshots and what happens next?

21 A Once I heard them, I got out of bed, pulled on a
22 pair of jeans and went and looked out my window.

23 Q When you looked out your window, what did you see?

24 A A vehicle proceeding through the alley that's right
25 outside my window.

1 Q Okay. And can you describe for the members of the
2 jury what the vehicle looked like?

3 A A silver Dodge Magnum with very dark tinted windows.

4 Q What was the vehicle doing?

5 A Driving, moving.

6 Q Was it driving slow or fast?

7 A Normal rate of speed.

8 Q Okay. Was it unusual to see a vehicle like that in
9 that neighborhood?

10 A Yes.

11 Q Okay. And why's that?

12 A Just not the typical vehicle for that neighborhood.
13 I hadn't seen it there before.

14 Q Okay. You saw -- how many vehicles did you see
15 driving through the alleyway?

16 A Just that one.

17 Q And as it drives through the alleyway, are the
18 windows up or down?

19 A All -- excuse me, all windows were up.

20 Q Okay. As the vehicle proceeds through the alleyway,
21 what happens next?

22 A It just drove through the alleyway in front of my
23 window and kind of -- I couldn't really -- we'll say turned --

24 Q Okay.

25 A -- but turned right which would be heading north.

1 Q Okay. And then what -- okay. What happens next?
2 After you see the car drive through, what do you do next?

3 A I left my bedroom and went out into the livingroom
4 and dialed 911.

5 Q At the time that you heard the shots, was there
6 somebody else that was living in your home that also heard the
7 shots?

8 A My husband.

9 Q Okay. And how do you know he also heard the shots?

10 A We were both pretty much up at the same time.

11 Q Okay. And while you're in the bedroom looking out
12 the window, where's your husband?

13 A He had already left the bedroom and was in another
14 part of the apartment.

15 Q You call 911, and as you're on the phone with 911,
16 what do you tell them?

17 A I told them that we heard -- that I heard the five
18 gunshots and had seen a vehicle leaving the area. And I
19 described the vehicle.

20 Q Okay. And you described the same that you described
21 for the members of the jury today; is that correct?

22 A Correct.

23 Q Once you got off the phone with 911, how soon after
24 that did the police arrive?

25 A Quick. Probably a matter of minutes, it was very

1 quick.

2 Q Okay. While you were on the phone with 911, could
3 you hear lights and sirens? Or could you hear sirens?

4 A Yes.

5 Q Okay. Once you got off the phone, what did you do
6 next?

7 A I went back to my room, finished getting dressed and
8 waited for -- my husband had left the apartment, waited for
9 him to come back in.

10 Q Okay. When your husband came back in, what happened
11 next?

12 A By that time, all the police had arrived. So we
13 went out of the apartment and went towards the general area
14 where everything was going on.

15 Q Now let me ask you this. You said police arrived.
16 How did you know police had arrived just you're -- if you're
17 in your apartment?

18 A We -- you could hear them. And like I said, my
19 husband was in and out, so he saw them.

20 Q So you could hear, like, numerous sirens rolling to
21 the area?

22 A Yes.

23 Q Okay. You then go outside; is that correct? And
24 you sort of go where you think the sort of police activity is?

25 A Yes.

1 Q And when you get there, what do you see?

2 A It was blocked off by crime tape, so you couldn't
3 really see anything.

4 Q And when you walked outside, was it light or dark?

5 A It was dark.

6 Q Then what happens next?

7 A We went across, we spoke with some officers a little
8 bit about what was going on. And while we were over there, we
9 were approached by some other officers that said they had a
10 vehicle, they would like to take us to look at it.

11 Q From the time you called 911 until when the officers
12 said something about a vehicle, how long approximately was
13 that?

14 A Again, it was quick. We'll say 10 to 15 minutes.

15 Q Okay. And then I'm assuming that you and your
16 husband went into the vehicle with police?

17 A Yes.

18 Q And did they drive you to another area?

19 A Yes. They drove us to another location.

20 Q And they drove you to a location not where your
21 house was, correct?

22 A Correct.

23 Q Could you even describe for us where that area is?

24 A I -- I wasn't familiar with the area, but I know I
25 recall seeing Fremont Street, so that's --

1 Q So you drive to that area and once you get to the
2 area, what happens?

3 A They have the vehicle pulled over. We drove
4 directly past the vehicle and then we turned around and went
5 to the other side of the road and stopped.

6 Q Did you ever get outside of the --

7 A No.

8 Q -- the police vehicle?

9 A No.

10 Q Okay. And did you recognize that vehicle that was
11 pulled over?

12 A Yes.

13 Q And what type of vehicle was it?

14 A It was a silver Dodge Magnum.

15 Q Okay. Did it look a little bit different when you
16 saw it than obviously when it was driving by? Besides the
17 fact that it was stopped?

18 A Yes. When we drove by it, the windows of the
19 vehicle were down.

20 Q Okay. And when you saw it, the windows were up; is
21 that correct?

22 A All windows were up, yes.

23 Q When the car drove by you at approximately 4:30 --
24 or 4:34 in the morning, could you see inside of the vehicle?

25 A No.

1 Q Okay.

2 A It was completely dark.

3 Q Once you finished identifying the vehicle, what
4 happened next?

5 A They drove us back over to our apartment and then
6 sometime later we did a -- the verbal, what, statement?

7 Q You did a taped statement with the police; is that
8 correct?

9 A Right.

10 Q Where they actually put you on tape and they
11 recorded what you were saying?

12 A Correct.

13 Q Prior to that, had you done a written statement with
14 police?

15 A No. It was after that fact that the written was
16 done.

17 Q Okay. So first they did the tape and then they did
18 a written statement with you?

19 A Yes.

20 Q And besides having to come to court, did you ever
21 have contact with police in regard to this case after that?

22 A No.

23 MS. PIEPER: Judge, at this -- Court's indulgence.

24 THE COURT: Um-hum.

25 (Pause in the proceedings)

1 MS. PIEPER: Judge, at this time, both parties will
2 stipulate to the admittance of State's Proposed Exhibit Number
3 71 which is the 911 call from Ms. DeSoto.

4 THE COURT: Okay.

5 MR. OTTO: That is true, Your Honor.

6 THE COURT: Okay. Exhibit 71 will be admitted.

7 (State's Exhibit 71 is admitted)

8 (Pause in the proceedings)

9 MS. PIEPER: Your Honor, at this time, the State's
10 going to ask for the permission to publish 71 to the jury.

11 THE COURT: You may do so.

12
13 MR. OTTO: No objection.

14 THE COURT: Okay.

15 (State's Exhibit 71, 911 call, is played)

16 BY MS. PIEPER:

17 Q Showing you what's been admitted as State's 14 and
18 right in front of you, there's a little screen. Do you
19 recognize that?

20 A Yes.

21 Q I'm actually going to ask you -- you normally can
22 kind of draw on that, but I'm going to ask --

23 MS. PIEPER: Your Honor, may she come down?

24 THE COURT: She may.

25 BY MS. PIEPER:

1 Q Could you come down here? I'm going to ask you to
2 show -- make sure she's (inaudible). Do you want me to hold
3 this? Okay. I'm going to ask you to hold this.

4 Okay. Do you recognize what's been admitted as
5 State's 14?

6 A Yes.

7 Q Okay. I'm not going to ask you to mark, but can you
8 generally show the members o the jury -- and you said that you
9 lived at 2635 Sherwood on November 5th, 2013; is that correct?

10 A Correct.

11 Q And this is sort of that four-plex complex that you
12 live in; is that correct?

13 A Correct.

14 Q Out of the four of them, which apartment area do you
15 live in?

16 A Throws me off every time.

17 Q Here's the alleyway up here.

18 A (Demonstrates).

19 Q Okay. So you live in the -- out of the four, you
20 live in the left, left most left, top apartment; is that
21 correct?

22 A I live downstairs.

23 Q Downstairs, but in regard to these four, it would be
24 the left top as opposed to the left bottom; is that correct?
25 Where it says 2635 Sherwood?

1 A Yes, I believe so.

2 Q Okay. I don't even know if the jury can see, so you
3 might want to come where I am.

4 And you, earlier, marked -- or said that you sort of
5 lived in this bottom area; is that correct?

6 A Correct.

7 Q And you talked about how there's an alleyway back
8 here; is that correct?

9 A Correct.

10 Q And is that where you saw the car driving?

11 A Correct.

12 Q Okay. Can you show the members of the jury in
13 regard to your apartment, do you guys just have the windows
14 that face the alleyway or are there also windows on sort of
15 this other alleyway that you have?

16 A There's windows on both sides.

17 Q Okay. You got up and you said that you looked out
18 your bedroom window; is that correct?

19 A Correct.

20 Q And where is the bedroom window along this side?

21 A It's going to be towards this end.

22 Q Okay. So we're going to be sort of towards the end
23 part of that alleyway?

24 A Correct.

25 Q Okay. At what point do you see the vehicle when you

1 look out your window? What point -- I'm sorry, that was --

2 A It was --

3 Q -- a badly worded question. When you look out your
4 window, at what point do you see the car passing by?

5 A It was completely even with my window when I looked
6 out.

7 Q Okay. Now --

8 MS. PIEPER: Can you hear her? I'm sorry, Bev, can
9 you hear her?

10 THE COURT RECORDER: Oh, yes, very well.

11 MS. PIEPER: Thank you.

12 BY MS. PIEPER:

13 Q Your husband, you said, was in another room.

14 A Correct.

15 Q Where is that room along this sort of area?

16 A That would be towards the opposite end.

17 Q Okay. So towards Sherwood?

18 A Correct.

19 Q And when you looked out, you were saying that the
20 vehicle was literally right in front (inaudible)?

21 A Correct.

22 Q And where did you see the vehicle go, if you could,
23 once it passed by?

24 A The vehicle was moving in this direction, it came
25 this way, and went this direction.

1 Q Okay. So it sort of went -- took a right-hand turn?

2 A Correct.

3 Q Could you tell whether there was a license plate on
4 the vehicle?

5 A There was a rear plate.

6 Q Okay. Could you see it at all? Could you see it to
7 identify it at all?

8 A I -- I --

9 Q That's another badly worded question.

10 A I did see it. I wasn't thinking to write anything
11 down.

12 Q Okay, thank you. Now you said that after -- after
13 you called the police, your husband went out; remember that?
14 Is that a, yes?

15 A Yes.

16 Q And then you also said that you also -- you and your
17 husband went out of the apartment?

18 A Correct.

19 Q Okay. You come out of your apartment and where do
20 you go? Can you show the members of the jury where you go
21 once you come out of your apartment?

22 A Once we come out, we would have walked through here.
23 It goes directly through.

24 Q Okay. So let me ask you this. If you're in your
25 apartment over here and you're walking out, you can walk

1 directly through to 2655 Sherwood; is that correct?

2 A Correct.

3 Q In regard to this area, can you drive through this
4 area? So can you drive from the top of your alleyway all the
5 way to 2655 Sherwood?

6 A No, you cannot.

7 Q Okay. And why is that?

8 A First of all, it's gated.

9 Q Okay.

10 A And it's not wide enough. It's a walkway, it's a
11 sidewalk.

12 Q Okay. In regard to this area on each side of your
13 apartment complex, as well as their apartment complex, 2655
14 Sherwood, can cars drive through there?

15 A No, same thing.

16 Q Okay. And why is that?

17 A Same thing, it's a walkway and it has gates.

18 Q Okay. So the only way that a car can sort of get
19 into this area would have to be sort of around the peripheral?

20 A Correct.

21 Q Okay. When you walked out of your apartment, how
22 far into 2655 Sherwood did you get, if you know at all?

23 A You couldn't get in period. They had the tape set
24 up right here.

25 Q Okay.

1 A Right at the entrance to it.

2 Q Okay. So you could just sort of watch there and
3 kind of see what was going on?

4 A Correct.

5 Q Thank you. May I have that? Thank you.

6 You then described for the members of the jury that
7 approximately 10 to 15 minutes after the 911 call and you had
8 been outside, you would have been contacted by the police to
9 go to Eastern and Ogden; is that correct?

10 A Correct.

11 Q And once you did that, I'm showing you what's been
12 marked as State's Proposed -- State's Exhibit Number 23, you
13 went and you saw that vehicle; is that correct?

14 A Correct.

15 MS. PIEPER: Pass the witness, Your Honor.

16 THE COURT: Cross-examination.

17 CROSS-EXAMINATION

18 BY MR. OTTO:

19 Q Good afternoon, Ms. DeSoto. My name is David Otto
20 and I represent Mr. Washington in this case.

21 If you would look at your screen, your apartment is
22 that -- I believe that's north, that's the north side? The
23 arrow pointing --

24 A Yes, yes.

25 Q And are you on the left-hand side of that building

1 or the right-hand side of that building?

2 A Left-hand side.

3 Q So you face this back alley and the other alley?

4 A Correct.

5 Q And when you saw this silver Magnum drive by, it
6 wasn't speeding? It didn't impress you as running away or
7 anything?

8 A No, it didn't.

9 THE COURT: What was the exhibit number that we just
10 had up?

11 MR. OTTO: I'm sorry, Your Honor, that is Exhibit
12 Number 15.

13 THE COURT: Thank you.

14 MR. OTTO: Thank you. I have nothing further.

15 THE COURT: Redirect.

16 MS. PIEPER: No, Your Honor.

17 THE COURT: Thank you, ma'am, you may step down.
18 May this witness be excused?

19 MS. PIEPER: She may.

20 MR. OTTO: Yes, Your Honor.

21 THE COURT: Thank you, you're excused.

22 State may call your next witness.

23 MS. SCHIFALACQUA: The State calls Christian
24 Parquette.

25 THE MARSHAL: Just face our Clerk, she'll swear you

1 in.

2 CHRISTOPHER PARQUETTE, STATE'S WITNESS, SWORN

3 THE CLERK: Please be seated.

4 THE WITNESS: Thank you.

5 THE CLERK: Please state your name and spell it for
6 the record.

7 THE WITNESS: It's Christian Parquette,
8 C-h-r-i-s-t-i-a-n, Parquette, P-a-r-q-u-e-t-t-e.

9 MS. SCHIFALACQUA: May I, Your Honor?

10 THE COURT: You may proceed.

11 MS. SCHIFALACQUA: Thank you.

12 DIRECT EXAMINATION

13 BY MS. SCHIFALACQUA:

14 Q Can you please let the members of the jury know how
15 you are employed?

16 A I'm employed with Las Vegas Metropolitan Police
17 Department for five years. I work patrol in Downtown.

18 Q Okay. And when you say in Downtown, is that a
19 specific area command?

20 A Yes, it is.

21 Q Okay. And have you worked patrol or have you worked
22 at Downtown Area Command the entire time as being an officer
23 at -- with Metro?

24 A Not my entire time.

25 Q Okay. Is your most recent and current assignment

1 Downtown Area Command?

2 A Yes, it is.

3 Q With regard to being a patrol officer, kind of -- I
4 want to take a step back and have you explain to the members
5 of our jury what it is your general duties are as a patrol
6 officer.

7 A Respond to calls for service, help out with
8 investigations and --

9 Q So is it fair to say, when you say respond to calls
10 to service, are you generally the first person on some sort of
11 scene?

12 A Yes.

13 Q Okay. Were you working on November 5th, 2013 in
14 Downtown Area Command?

15 A Yes.

16 Q And were -- what shift were you working?

17 A Graveyard.

18 Q And what is the graveyard shift for purposes of our
19 jury?

20 A Ten o'clock at night until 8:00 in the morning.

21 Q And on that day, were you dressed in uniform?

22 A Yes.

23 Q Did you drive a patrol vehicle?

24 A Yes.

25 Q Were you working alone or with another officer in

1 your own vehicle?

2 A Alone.

3 Q Okay. So you were working alone. At approximately
4 4:35 in the morning, what, if anything, happened while working
5 on November 5th, 2013 that causes you to testify here today,
6 Officer Parquette?

7 A What had happened? I received -- there was a call
8 through dispatch of a shooting in our bordering area command
9 which we are allowed to go to if need be. So they had a
10 vehicle description, and at that point, I assigned myself at
11 4:37 to attempt to locate the vehicle that was broadcasted.

12 Q And what description of the vehicle did you get
13 dispatched over the radio?

14 A A silver Dodge Magnum.

15 Q Let me back up. And you said that you work in
16 Downtown Area Command. Does that have a particular radio with
17 that area command?

18 A Yes.

19 Q And the neighboring area command where the call
20 actually came out, from what area command is that?

21 A South Central.

22 Q And with regard to South Central, how is it are you
23 able to kind of keep updated on South Central Area Command's
24 radio of traffic?

25 A We have a radio in our car and a radio that we keep

1 on us. So I can listen to Downtown on myself and change our
2 car radio to a different area command so I can hear updated
3 information.

4 Q Okay. So on this particular occasion on November
5 5th, 2013, do you have a radio kind of in your ear as well as
6 your car radio and listening to traffic from both?

7 A Yes.

8 Q With regard to the description of the vehicle, the
9 silver Dodge Magnum, where -- what did you do after you
10 assigned yourself to this call?

11 A I began to drive southbound on Eastern towards
12 Sahara and at which point I observed a silver Dodge Magnum
13 heading northbound Eastern at St. Louis. So at which point, I
14 made a U-turn and began to follow the vehicle.

15 Q Okay. Let me go back and --

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

18 THE COURT: You may.

19 MS. SCHIFALACQUA: May I approach having shown Mr.
20 Otto what's been previously marked as State's Proposed Exhibit
21 16 and 17?

22 THE COURT: You may.

23 MS. SCHIFALACQUA: Thank you.

24 BY MS. SCHIFALACQUA:

25 Q Officer Parquette, I'm going to show what's been

1 marked as State's Proposed Exhibits 16 and 17. If you can
2 look at those and when you're done, go ahead and look up at
3 me.

4 A (Perusing photographs).

5 Q Do you recognize what's depicted in State's 16 and
6 17?

7 A Yes.

8 Q And what is depicted in each one of those?

9 A The time I observed the vehicle and the time that I
10 stopped the vehicle.

11 Q Is that an aerial map of the locations to which you
12 observed the vehicle and stopped the vehicle?

13 A Yes.

14 Q And does that aerial map include Eastern and St.
15 Louis as well as Eastern and Ogden?

16 A Yes, it does.

17 Q And do these fairly and accurately depict the aerial
18 views of the locations you have described?

19 A Yes.

20 Q And does, for purposes of our records, State 17 also
21 depict the location of the call with regard to the initial
22 call?

23 A Yes.

24 MS. SCHIFALACQUA: I'd move for admission of State's
25 Proposed 16 and 17.

1 MR. OTTO: No objection.

2 THE COURT: Sixteen and seventeen will be admitted.

3 (State's Exhibits 16 and 17 are admitted)

4 MS. SCHIFALACQUA: Permission to publish, Your
5 Honor?

6 THE COURT: You may.

7 BY MS. SCHIFALACQUA:

8 Q With regard to -- and I'm publishing State's 16. On
9 here, there is Eastern and St. Louis as well as Eastern and
10 Ogden. I want to kind of go back, Officer Parquette. Where
11 were you driving when you first assigned yourself to this
12 call?

13 A I was driving on Eastern.

14 Q Our screen isn't working. So, if you could, we're
15 going to do it old school, if you could kind of step on down
16 in front of our -- take that pen, step on down.

17 MS. SCHIFALACQUA: Can you hear him or --

18 THE COURT: Can you --

19 MS. SCHIFALACQUA: Sorry, Judge. Here we go.

20 BY MS. SCHIFALACQUA:

21 Q Officer Parquette, can you be cognizant that the
22 jurors need --

23 A Yeah.

24 Q Okay. Where is it -- if you could point to where it
25 is you were driving?

1 A I was driving on Eastern, right here, and I was
2 heading southbound.

3 Q Okay. And then at what point do you observe a
4 silver Dodge Magnum?

5 A Eastern and St. Louis.

6 Q Okay. And that's depicted on the aerial map; is
7 that correct?

8 A Correct.

9 Q Describe and point, if you need to, to the members
10 of the jury what it is you do next after observing that
11 vehicle?

12 A At this time, I make a U-turn at the intersection
13 and follow the vehicle at which point we're going northbound
14 on Eastern.

15 Q Okay. So the -- the vehicle, the silver Dodge
16 Magnum was going northbound on Eastern; is that correct?

17 A Correct.

18 Q And you were driving which direction when you first
19 observed it?

20 A Southbound.

21 Q Do you remember approximately what time when you --
22 you observed that vehicle?

23 A Approximately 4:39.

24 Q Okay. And so the call had come out at approximately
25 4:35; is that correct?

1 A Correct.

2 Q And you observed the vehicle at approximately 4:39;
3 is that correct?

4 A Correct.

5 Q Okay. What do you do, if anything, after you do
6 that U-turn? What do you do?

7 A I notify dispatch through the radio that I have a
8 possible vehicle located and I begin to follow it northbound
9 Eastern at which time I'm waiting for backup officers to
10 arrive where we conduct a stop at Eastern and Ogden.

11 Q Okay. And when you conduct that stop at Eastern and
12 Ogden, were there other patrol officers behind you?

13 A Yes, there was.

14 Q Okay. If you want, you can go ahead and sit down,
15 I'm finished.

16 Describe for the members of the jury, Officer
17 Parquette, what is it you do when you pull the silver Dodge
18 Magnum over?

19 A We conduct a felony vehicle stop.

20 Q And by "we" -- I'm going to have you be specific as
21 to what you do. By "we," do you mean there were other
22 officers assisting you in this felony vehicle stop?

23 A Yes, there was.

24 Q Okay. Describe for the members of our jury what a
25 felony vehicle stop is.

1 A There's a -- there's numerous patrol vehicles that
2 are found -- fanned out in a pattern behind the vehicle. So
3 I'm calling out commands to the vehicle after it stops to the
4 occupants to roll down the windows, put their hands in the air
5 so I can see them, at which point we direct each occupant to
6 exit the vehicle, come back towards us and we take each one
7 into custody for detaining.

8 Q Now, I'm going to start by asking you, first of all,
9 could you see inside the vehicle when you pulled it over?

10 A No.

11 Q Why is that?

12 A The windows were extremely dark tinted.

13 Q Okay. Did that match the description that had come
14 out over the dispatch?

15 A Yes.

16 Q Okay. Now when you talked about what a felony
17 vehicle stop is, describe for the members of our jury what it
18 is you actually do on November 5th, 2013? Are you the officer
19 making the commands?

20 A Yes, I was.

21 Q Describe for the members of our jury what happens.
22 What do you do?

23 A The vehicle pulls over to the right at which point I
24 exit my vehicle. And I have my firearm drawn due to the
25 severity of the crime. And I give orders initially to all the

1 occupants in the vehicle, "Occupants, put your hands up so I
2 can see them." I tell them again for the second time.

3 After that, when I could see the driver's hands come
4 out the window, I have them roll down the windows. I have
5 them take the vehicle keys and drop them outside of the window
6 so they can't take off in the vehicle, at which point I tell
7 the driver exit the vehicle, using your left hand to open the
8 door from the outside, step on out, face away from me so he's
9 not facing us, have his hands all the way up in the air so we
10 can see his waistband, if he has any weapons on him.

11 I have him turn around in a 360, I tell him to turn
12 around, keep your hands up in the air. When he's turned
13 around 360, I have him walk backwards and I tell him walk
14 backwards to the sound of my voice. Keep walking, keep
15 walking till he comes in contact with the patrol officers and
16 we take the subject into custody.

17 Q And the driver of the silver Dodge Magnum on
18 November 5th, 2013, do you see that person in the courtroom
19 here today?

20 A I do.

21 Q Can you please point to that person and identify
22 something that the person is wearing here today in court?

23 A He's the subject sitting at the table on the far
24 left in the light green shirt.

25 MS. SCHIFALACQUA: And, Your Honor, let the record

1 reflect that the witness has identified the defendant, Matthew
2 Washington.

3 THE COURT: The record will so reflect.

4 MS. SCHIFALACQUA: Thank you.

5 BY MS. SCHIFALACQUA:

6 Q Mr. Washington was driving the silver Dodge Magnum;
7 is that correct?

8 A Correct.

9 Q Did he comply with all of your orders when you told
10 him to exit the vehicle and walk backwards?

11 A Yes, he did.

12 Q What, if anything, happened next after Mr.
13 Washington had been commanded to exit the vehicle?

14 A I, again, gave instructions to the occupants in the
15 vehicle if there was any because I couldn't see through the
16 windows. Occupants, put your hands up. At which time, a back
17 passenger put his hands up through -- out the window. So I
18 knew there was a second person in the vehicle, which at that
19 time, I gave the same commands of the back passenger, exit the
20 vehicle from the outside opening the door, step outside, face
21 away from us, put your hands in the air and turn around 360 so
22 I can see his waistband, if he has any weapons on him. At
23 which point, I call him backwards, come back to the sound of
24 my voice and I keep telling him until he comes into contact
25 with us and we take him into custody.

1 Q After taking the passenger into custody -- let me
2 first ask you this. Where was that passenger seated in the
3 vehicle?

4 A The back left, behind the driver.

5 Q And thereafter, do you get identifying information
6 from both the defendant and the passenger?

7 A Yes.

8 Q And what type of information did you get? Did that
9 -- well, let me rephrase that. Did that include the name?

10 A Yes.

11 Q Okay. And what was the name of the passenger?

12 A Martell Moten.

13 Q Okay. After both persons have exited the silver
14 Dodge Magnum, describe for our members of our jury what, if
15 anything, you do next.

16 A We have -- the doors are left open from when the
17 occupants exited the vehicle. At which point, we have a group
18 of officers, we go up to each side of the vehicle with our
19 firearms drawn and we clear out the vehicle to make sure no
20 other persons are -- isn't inside there hiding or on the
21 floorboard.

22 Q Okay. At -- thereafter, what, if anything, do you
23 do?

24 A Well, we come back to the vehicle. We left the
25 vehicle as is and everyone outside of it and identified the

1 subjects.

2 Q With regard to the defendant, Matthew Washington,
3 did you ask him any questions?

4 A I did ask him a question.

5 Q And what was that?

6 A I asked him if there was anything illegal in the
7 vehicle that I needed to know about.

8 Q And what, if anything, did he respond?

9 A He said, "No, but if there is, it's his."

10 Q And who was he referring to when he said "his"?

11 A Martell Moten.

12 Q The passenger in the vehicle?

13 A Correct.

14 MS. SCHIFALACQUA: And if I may approach the
15 witness, Judge, with State's Proposed Exhibits 18 through --
16 Court's indulgence -- 18 through 22 and 24 and 25, Your Honor,
17 which have been previously shown to Mr. Otto.

18 THE COURT: You may.

19 MS. SCHIFALACQUA: Thank you.

20 BY MS. SCHIFALACQUA:

21 Q I'm going to show you what's been marked as State's
22 Proposed Exhibits 18 though 22, 24 and 25. If you could look
23 at those and when you're done, go ahead and look up at me.

24 A (Perusing photographs).

25 Q Do you recognize what's depicted in those

1 photographs?

2 A Yes.

3 Q And what is depicted in them?

4 A It's the intersection of where we conducted the
5 stop.

6 Q As well -- does it also depict the vehicle?

7 A Yes.

8 Q As you described it, with the doors open after
9 having challenged the vehicle?

10 A Correct.

11 Q Are those fair and accurate depictions of what you
12 just described?

13 A Yes.

14 MS. SCHIFALACQUA: I move for admission of State's
15 Proposed Exhibits 18 through 22, 24 and 25.

16 MR. OTTO: No objection.

17 THE COURT: Eighteen through 22 as well as 24 and 25
18 will be admitted.

19 (State's Exhibits 18 through 22, 24 and 25 are admitted)

20 MS. SCHIFALACQUA: Thank you, Your Honor.
21 Permission to publish?

22 THE COURT: You may.

23 MS. SCHIFALACQUA: Thank you.

24 BY MS. SCHIFALACQUA:

25 Q Officer Parquette, I'm showing you 18. What are we

1 looking at here?

2 A The street Eastern.

3 Q Okay. And showing you 19?

4 A Ogden.

5 Q And were you at, in fact, Eastern and Ogden?

6 A Yes, I was.

7 Q Is that here in Clark County, Nevada?

8 A Yes, it is.

9 Q Showing you 20, what, if anything, are we able to

10 view in this photograph?

11 A The vehicle, how it was stopped and how it was left
12 at that intersection.

13 Q I'm -- is this a -- showing you 22, is that a closer
14 up picture of that?

15 A Yes, it is.

16 Q Is there a plate on the front?

17 A No, there's not.

18 Q Showing you what's been admitted at State's 24. Is
19 that the back -- photograph of the back of the vehicle?

20 A Yes, it is.

21 Q And what is the plate on that vehicle?

22 A It's 142LFP.

23 Q With regard to the vehicle, did you observe anything
24 in the vehicle with regard to this case?

25 A Yes, I did.

1 Q Can you describe the circumstances of that for our
2 jury?

3 A The doors were left open on the vehicle, the left
4 side, the driver and the back left passenger. So at which
5 point, through plain view, we walked up to look inside the
6 vehicle to see if there was any evidentiary value at which
7 point I can see sticking out from the right front passenger,
8 underneath of the seat, was the butt of a handgun next to a
9 latex glove.

10 Q Did you -- and I want to make this clear for our
11 jurors -- did you ever make any entry into the vehicle with
12 regard to that butt of the firearm that you observed?

13 A No, I did not.

14 Q Okay. At any point, did Mr. Washington indicate
15 that you could search the vehicle?

16 A He did.

17 Q Describe for -- that for the members of the jury
18 please.

19 A When I asked him if there was anything illegal in
20 the vehicle and he said, "No, if it was, it was his," he said,
21 "You can search it."

22 Q Okay. Did you -- let me ask you this. While being
23 on this scene, were you cognizant that there was another scene
24 kind of being investigated, that initial call-out?

25 A Yes.

1 Q And were you constantly -- you talked about having
2 that radio in your ear -- were you constantly kind of getting
3 updates and working with the other area command?

4 A Yes.

5 Q At some point, did you realize this turned into not
6 just a shooting, but a homicide investigation?

7 A Yes.

8 Q Are you assigned to homicide?

9 A No, I'm not.

10 Q Did you at -- thereafter, then wait for homicide
11 detectives to arrive at Eastern and Ogden?

12 A Yes.

13 Q Do you recall the homicide detective that arrived on
14 scene at that location?

15 A Detective Rogers.

16 Q Okay. And did you give information or brief
17 Detective Rogers about the information you had gained in your
18 portion of this investigation?

19 A Yes, I did.

20 Q Okay. Did that include the information regarding
21 the butt of the gun?

22 A Yes.

23 Q And the blue latex gloves that you observed?

24 A Yes.

25 Q Did you at any point, you know, go in and search the

1 vehicle?

2 A No.

3 Q And did you at any point, you know, take out that
4 firearm?

5 A No.

6 Q Did you turn over the scene, if you will, to
7 Detective Rogers at some point?

8 A Yes, I did.

9 MS. SCHIFALACQUA: Court's indulgence.

10 (Pause in the proceedings)

11 MS. SCHIFALACQUA: Your Honor, if I may approach
12 with State's Proposed Exhibits 32 and 33? They were
13 previously shown to Mr. Otto, but I'll show again.

14 THE COURT: Okay.

15 MS. SCHIFALACQUA: Thank you.

16 THE COURT: 32 and 33.

17 BY MS. SCHIFALACQUA:

18 Q Officer Parquette, I'm showing you what's been
19 marked as State's Proposed Exhibits 32 and 33. Could you go
20 ahead and look at those and when you're done, look up at me.

21 A (Perusing photographs).

22 Q Do you recognize what's depicted in those?

23 A Yes, I do.

24 Q And what is that?

25 A It is the butt of a handgun and the blue latex

1 glove.

2 Q Are they depicted in both photographs?

3 A Yes.

4 Q Is that what you observed on November 5th, 2013?

5 A Yes.

6 Q Do those fairly and accurately depict those?

7 A Yes.

8 MS. SCHIFALACQUA: I move for State's -- admission
9 of State's Proposed Exhibits 32 and 33.

10 MR. OTTO: No objection.

11 THE COURT: 32 and 33 will be admitted.

12 (State's Exhibits 32 and 33 are admitted)

13 MS. SCHIFALACQUA: Permission to publish, Your
14 Honor.

15 THE COURT: You may.

16 MS. SCHIFALACQUA: Thank you.

17 BY MS. SCHIFALACQUA:

18 Q Officer Parquette, showing you State's 32, and it
19 just occurred to me that I'm going to ask you to step down,
20 due to a technology issue, and point out for members of our
21 jury what it is you observed.

22 A The blue latex glove and the butt of a handgun is
23 right there.

24 Q Now let me ask you this, does this photograph do,
25 what you're able to observe in person, justice, if you will,

1 to what you're able to observe on the day of?

2 A No.

3 Q Did you have a flashlight at the time?

4 A Yes.

5 Q Okay. And were you able to observe the butt of a
6 firearm?

7 A Yes.

8 Q Is it difficult to see, however, in this picture?

9 A Yes, it is.

10 Q Did it -- is it fair to say that it did not
11 translate as well in a photograph as it did when you're
12 actually there in person?

13 A Yes.

14 Q Showing you State's 33, is that just another picture
15 of the same area?

16 A Yes.

17 Q And can you also point to the members of our jury
18 again what it -- where it is you observed --

19 A The blue glove and the butt of a handgun.

20 Q And that is -- describe the location in the vehicle
21 of that?

22 A It's the front, right, passenger seat. This is the
23 backside of it on the floorboard.

24 Q Okay. So it is actually in the backseat behind the
25 passenger seat?

1 A Yes.

2 Q Thank you. Go ahead. Thank you.

3 MS. SCHIFALACQUA: I pass the witness, Your Honor.

4 THE COURT: Cross-examination.

5 MR. OTTO: Yes, briefly.

6 (Pause in the proceedings)

7 CROSS-EXAMINATION

8 BY MR. OTTO:

9 Q Good afternoon, Officer. My name is David Otto, I
10 represent Mr. Washington in this case and I just have a few
11 questions.

12 Did -- when you saw the silver Dodge Magnum at
13 approximately 4:39 on the morning of November 5th, 2013, did
14 that Dodge Magnum at anytime attempt to elude you?

15 A No.

16 Q You put on your siren and lights?

17 A Not at that time.

18 Q When did you do that?

19 A At Eastern and Ogden when I conducted the stop.

20 Q And as soon or as quickly as reasonably possible
21 thereafter, that Dodge Magnum pulled over to the right side of
22 the road?

23 A Correct.

24 Q And you -- you've explained the felony stop. Mr.
25 Washington came out of the driver's side?

1 A Correct.

2 Q And he complied with all your orders?

3 A Yes.

4 Q And you say you asked him if there was anything you
5 should be concerned about in the car; is that correct?

6 A I asked him if there was anything illegal in the
7 vehicle.

8 Q And he answered you that, "No, but if there is, it's
9 his"?

10 A Correct.

11 Q And when he said "his," he was referring to who?

12 A The passenger in the vehicle.

13 Q The man in the backseat?

14 A Correct.

15 Q And he would later be identified as -- as Martell
16 Moten?

17 A Correct.

18 Q He -- Mr. Washington also gave you consent to search
19 the car; is that correct?

20 A Correct.

21 Q But you didn't search it?

22 A No.

23 Q And then you could see, and these pictures show, a
24 spot of blue which on scene you could see as a latex glove?

25 A Correct.

1 Q And also the butt of a handgun, which, for the
2 record, I'm going to try to clarify using Exhibit 13. So
3 looking at Exhibit 13, we see that spot of blue?

4 A Correct.

5 Q And then we see a yellow or orange and red striped
6 box of some kind; is that correct?

7 A Correct.

8 Q Where in that picture are we seeing the butt of a
9 handgun?

10 A It's --

11 Q If you could describe it.

12 A It's the top left corner of that box.

13 Q Like the checkered, imprinted checkered black?

14 A Yes.

15 Q I see. All right. Mr. Martell Moten was sitting --
16 you don't know because -- exactly where in the backseat
17 because of the dark windows; is that correct?

18 A Correct.

19 Q Did he get out of the car on the passenger side of
20 the car or -- the right side, or on the left side, driver's
21 side?

22 A Left side, driver's side.

23 MR. OTTO: I have nothing further of this witness.

24 THE COURT: Thank you. Redirect.

25 MS. SCHIFALACQUA: None, Your Honor.

1 THE COURT: Thank you, you may step down. May this
2 witness be excused?

3 MS. SCHIFALACQUA: He may.

4 MS. PIEPER: Judge, can we approach briefly?

5 THE COURT: Yes, why don't you approach.

6 (Off-record bench conference)

7 THE COURT: Ladies and gentlemen, we'll do a quick
8 recess here and then come back and finish up for the day.

9 While you're on this ten-minute recess, please
10 recall the Court's admonition not to talk or converse among
11 yourselves or with anyone else on any subject or person
12 connected with the trial. Please do not form or express any
13 opinion on any subject connected with the trial until the case
14 is finally submitted to you. A ten-minute recess.

15 (Court recessed at 4:18 p.m. to 4:33 p.m.)

16 (Outside the presence of the jury)

17 MS. PIEPER: -- seems to be nodding off several
18 times during the trial. Obviously, that's a concern for the
19 State.

20 MS. SCHIFALACQUA: And for --

21 MS. PIEPER: And also for the defendant, quite
22 frankly, because I'm sure that, you know, we spent a lot of
23 time impaneling a fair and impartial jury and we'd like them
24 to pay attention.

25 THE COURT: Okay. I hadn't noticed, but we'll --

1 MS. PIEPER: Because you're riveted by our --

2 THE COURT: If not the direct, then the blistering
3 cross-examination probably, has me going. I'll -- I will
4 bring that up and caution them.

5 MS. PIEPER: The other thing -- concern we have is
6 there are a number of family members it seems of the defendant
7 here today in court, which we have no problem with.

8 We just want to make sure they're admonished not to
9 speak either with any witnesses and/or the jury itself. I
10 just don't think that's been done. And I have obviously my
11 own cases whereby family members go out and talk to members of
12 the jury, try to tell them about the defendant, and then we
13 have a mistrial. obviously, and we have to start all over
14 again. The State's not interested in doing that.

15 THE COURT: Okay. I will caution them. Are they --
16 well, you know, I can't force them to come back in I guess.

17 MR. OTTO: Oh, they'll come back in, I'm sure.

18 THE COURT: Okay.

19 MR. OTTO: If the bailiff would be kind enough to
20 bring them in.

21 THE COURT: All right. And before you do go out
22 though, Donna, juror number two said --

23 THE MARSHAL: Yes. Amy Lahav, juror number two,
24 caught me out on the break and just mentioned that she thought
25 she recognized one of the gentlemen in the gallery, thinks his

1 an attorney and --

2 MR. OTTO: He is.

3 THE MARSHAL: -- that was it. She was concerned
4 that it might be a witness and she needed to report --

5 MS. PIEPER: Oh, okay.

6 THE MARSHAL: -- that she recognized someone.

7 MS. PIEPER: And that would be probably Mr. Mann or
8 Mr. (Indiscernible).

9 MS. SCHIFALACQUA: And we're -- they're not
10 witnesses.

11 THE COURT: Okay.

12 MR. OTTO: Yeah.

13 THE COURT: So we're good. Let's go get the family
14 and we'll bring the family in and chat with them and then
15 we'll bring the jury.

16 (Pause in the proceedings)

17 THE COURT: Good afternoon, folks. This is the
18 family of the defendant? Okay. We just wanted to let you
19 know what we are -- one of the things we're concerned about,
20 of course, is having a jury that, during the trial, has
21 conversations with anyone about any -- about any of the
22 evidence or about any of the people.

23 And sometimes we have the family either of a
24 defendant or of a victim who shows up at the trial and they
25 don't know they're not supposed to talk to the jury and they

1 may have some conversation with them. And in either event, it
2 would be a bad thing to do.

3 So we've already cautioned the jury, but we just
4 wanted to let you know so that you'll know not to talk to them
5 and if none of them seem to be talking to you, that's probably
6 why. We caution them not to talk to anybody else, not even
7 amongst themselves about any subject or any person that's
8 involved with the trial, okay? Any questions about that?
9 Okay.

10 All right. We ready to bring our jury, then?

11 MS. SCHIFALACQUA: Yes, Your Honor.

12 MR. OTTO: Yes.

13 THE COURT: Okay.

14 (Jury reconvened at 4:38 p.m.)

15 THE COURT: Counsel stipulate to the presence of the
16 jury?

17 MS. PIEPER: Yes, Your Honor.

18 THE MARSHAL: Thank you. Please be seated.

19 THE COURT: And does the defense stipulate the jury
20 is present as well?

21 MR. OTTO: Yes.

22 THE COURT: Okay, thank you. Ladies and gentlemen,
23 thank you for returning. We will be finishing up with just
24 the few remaining minutes that we have.

25 Let me caution you about one thing though.

1 Sometimes we get to moving so fast and sometimes the testimony
2 may be repetitious. We hope that no one is having any trouble
3 staying awake. And if you are, please raise your hand so that
4 we can stop a minute and stand up, whatever you need to do so
5 that we don't have any dozing during the trial, all right.

6 Thank you. The State may call your next witness.

7 MS. PIEPER: The State calls Eric Sokolowski.

8 THE MARSHAL: Just remain standing and raise your
9 right hand, our Clerk will swear you in.

10 ERIC SOKOLOWSKI, STATE'S WITNESS, SWORN

11 THE CLERK: Please be seated. Please state your
12 name and spell it for the record.

13 THE WITNESS: Eric Sokolowski, E-r-i-c,
14 S-o-k-o-l-o-w-s-k-i.

15 MS. PIEPER: May I proceed?

16 THE COURT: You may proceed.

17 DIRECT EXAMINATION

18 BY MS. PIEPER:

19 Q How are you employed?

20 A With Las Vegas Metropolitan Police Department.

21 Q And how long have you been with Metro?

22 A Four years.

23 Q And what unit are you in?

24 A I work patrol, Downtown Area Command.

25 Q Okay. And when you work, are you working plain

1 clothes or do you -- do you wear a uniform?

2 A Marked patrol.

3 Q And do you know who Christian Parquette is?

4 A I do.

5 Q Did you see him just walk out of here?

6 A Yes.

7 Q And he was in a uniform. Are you in a similar type
8 uniform when you work?

9 A Yes.

10 Q And what shift do you work?

11 A Graveyard.

12 Q And I want to draw your attention to November 5th,
13 2013. Were you working on that day?

14 A I was.

15 Q And did something unusual happen that day?

16 A It did.

17 Q Officer Parquette talked about how he was -- or how
18 that you are able to hear what's going on in the traffic in
19 Downtown Area Command sort of in your earpiece, but you can
20 also change your radio to other sort of area commands?

21 A Correct.

22 Q Besides the Downtown Area Command, what other area
23 commands are near yours?

24 A We have Northeast, Southeast, Bolden and South
25 Central. And then CCAC or Convention Center.

1 Q Okay. In regard to the Downtown Area Command, what
2 borders it? Or what call did you hear that you said went into
3 an area, what area command is that?

4 A Out of South Central.

5 Q Okay. South Central borders you. What are the
6 borders of the Downtown Area Command?

7 A We run from Sahara north to Owens and then pretty
8 much the 15 to the 95 with a few pockets.

9 Q Okay. On this night -- or in this early morning
10 hours, did a call come out at around 4:35?

11 A Yes.

12 Q And when you heard the call, is that on your
13 earpiece or is that on the radio?

14 A It was on Downtown, the call came out that there was
15 a call in South Central, on our border. And -- so it was on
16 my earpiece if that's what you're asking.

17 Q So you could kind of hear that was going on, but you
18 could also hear it on the radio?

19 A Yes. Then I switched my radio to South Central.

20 Q Okay. Once you switched your radio to South
21 Central, do you get a description of a vehicle?

22 A Yes.

23 Q Okay. And once you get that information or once you
24 hear the call -- well, let me back up and ask you this.

25 Due to the nature of the call, does your car make

1 some kind of, like, noise in it that alerts you to different
2 types of calls?

3 A Yes, there's an alert tone that goes off.

4 Q Okay. In regards to this call, what -- did an alert
5 tone go off?

6 A Yes.

7 Q And --

8 A Well, no, it didn't go off in Downtown for South
9 Central.

10 Q Okay.

11 A It said, units, be advised there's a 415A which is
12 battery with another -- or a deadly weapon call.

13 Q Okay. So you hear a tone call --

14 A Yes.

15 Q -- for South Central Area Command even though you're
16 in Downtown Area Command?

17 A Yes.

18 Q And once you hear it in South Central, you then
19 change it so now you can hear the frequency of the South
20 Central Area Command?

21 A Correct.

22 Q Okay. Where are you at the time that you hear the
23 call come out?

24 A I believe I was on Charleston and the Boulevard,
25 starting to head that way.

1 Q Charleston and Las Vegas Boulevard?

2 A Yes, Las Vegas Boulevard.

3 Q Okay. Okay. You start heading in what direction?

4 A At that time, I'm going west on Charleston to take
5 the Las Vegas Boulevard south towards that area.

6 Q Now let me ask you this. You're driving in your
7 vehicle. Where are you going to?

8 A I was going to attempt to locate in the area of Van
9 Patten and Sahara, that's kind of like our borderline right
10 there. And Sherwood's just south of Sahara, and the call came
11 out on Sherwood, so.

12 Q So you hear that the call comes out at 2655 Sherwood
13 Avenue?

14 A Yes.

15 Q You're rolling to the Sherwood Avenue area?

16 A Yes. I assigned myself to the call to roll that
17 way.

18 Q And at 4:35 in the morning, is there a lot of
19 traffic?

20 A Normally there is not.

21 Q You start rolling to the call and what happens next?

22 A Officer Parquette, he assigns himself as well right
23 after I did. And he says, hey, I have a possible vehicle
24 going northbound on Eastern at St. Louis.

25 Q How soon after the 911 calling out or dispatch

1 alerting you of the car's description did you hear Officer
2 Parquette sort of assign him to the call?

3 A It was pretty quick. It was reasonably fast.

4 Q Do you remember exactly the time the call came or
5 when Officer Parquette assigned himself and when he said he
6 saw a vehicle?

7 A I believe it was -- I think it was like 4:37
8 possibly.

9 Q Okay. Let me ask you this.

10 A Yeah.

11 Q Is there something called the CAD?

12 A Yes, there's the CAD program.

13 Q And what is the CAD?

14 A It records all of our actions through dispatch and
15 the computer system.

16 Q And is there sort of like a paper that comes out
17 that sort of says where people are, when they assign
18 themselves a call and the times, correct?

19 A Absolutely.

20 Q Would looking at the CAD refresh your recollection
21 as to what time you assigned yourself to the call, Officer
22 Parquette assigned himself to the call, and what time he
23 noticed the vehicle?

24 A Absolutely.

25 MS. PIEPER: Your Honor, may I approach the witness?

1 THE COURT: You may.

2 BY MS. PIEPER:

3 Q Take a look at that --

4 THE COURT: We've seen this.

5 BY MS. PIEPER:

6 Q -- and when it refreshes your recollection, just let
7 me know.

8 A All right. I signed myself at 4:37, Officer
9 Parquette assigned himself at 4:37 as well.

10 Q Okay.

11 A It looks like five seconds after I did.

12 Q Okay.

13 A It looks like --

14 THE COURT: Was there a question pending?

15 THE WITNESS: It looks like it --

16 MS. PIEPER: Yeah, I asked him what time did he
17 assign himself, what time did Officer Parquette assign himself
18 and what time does it say on the CAD that Officer Parquette
19 saw the vehicle.

20 THE COURT: Okay.

21 THE WITNESS: It says at 4:39, according to the CAD.

22 BY MS. PIEPER:

23 Q Once Officer Parquette sort of notifies everyone
24 that he sees a vehicle matching the description, what happens
25 next?

1 A We start to head his way. The people who are
2 assigned to the call start to head his way either as backs and
3 also to bubble in case the vehicle decides to take off.

4 Q Did you say bubble?

5 A Yeah, it's a bubble.

6 Q Can you -- can you explain to us what that means?

7 A It's not -- there's paralleling and there's
8 bubbling. Bubbling's kind of keeping a -- technically a
9 bubble around the car, kind of. You have officers staged in
10 different areas where it's a bubble, where paralleling is like
11 just driving next to him, maybe a street or two over, just in
12 case they decide to cut down either one of the streets, you
13 would have the advantage of cutting them off before they were
14 able to do that.

15 Q So in this case, once Officer Parquette says the
16 location he is at, and then notifies everyone of the location
17 of the suspect vehicle, you guys say you sort of bubble around
18 it?

19 A Yes. I believe another unit assigned -- or there
20 were other units already headed to him, as was I. But I
21 decided not to go directly behind him, but try to get in front
22 of the vehicle just in case it was to take off.

23 Q Okay. When you say you decided to go in front of
24 the vehicle, how do you get in front of the vehicle?

25 A I took another street, I paralleled up another

1 street and then got in front of the vehicle technically from
2 where his radio traffic was, where he was following the
3 vehicle, to where I was a few streets ahead.

4 Q So Officer Parquette is updating everyone like I'm
5 driving past this -- Eastern on this street --

6 A Yes.

7 Q -- Eastern on this street, Eastern on this street
8 and so you have an idea of what location and which direction
9 the vehicle's going?

10 A Yes.

11 Q Okay. What area do you go in and you actually
12 physically stop your vehicle?

13 A I stop at Stewart and Eastern, which is right before
14 the freeway because I figured if we -- our best shot before
15 the car gets on the freeway, if it possible gets on the
16 freeway is prior to it, so.

17 Q Okay. When you stop your vehicle at Eastern and
18 Stewart what -- what do you do next?

19 A I'm also blocking off traffic, because it was at
20 that time that the vehicle had stopped at Eastern and Ogden
21 which is just one street, like, south. So I stopped the
22 southbound traffic just in case things go awry and then --
23 that we were not putting any citizens in danger.

24 Q Okay. At the same time that you were doing that,
25 did you do anything else or were you prepared to do anything

1 else while you're there?

2 A To spike -- to spike -- I think to spike the tires.
3 Throw out -- throw out stop sticks. They're -- we all carry
4 them. They're sticks and they have nails in them, hollow
5 nails. Once they're in the tires, they'll deflate the tires.

6 Q So have you put that out there? Are you going to
7 put that out there? Do you just sort of wait to see?

8 A You get -- you hold on, you get ready if the car's
9 coming because worse case scenario, you throw it out there and
10 a citizen runs over it and then they're useless, so.

11 Q So you sort of get ready and you --

12 A Yes.

13 Q Okay. You're at Eastern and Stewart and you're
14 looking down at Eastern and Ogden; is that correct?

15 A Correct.

16 Q And what do you see when you look down at Eastern
17 and Ogden?

18 A They're doing a felony car stop.

19 Q So you can see the silver Dodge Magnum. And then
20 how many police cars do you see behind it?

21 A I don't know the exact number. I know there was a
22 lot of units assigned to it which is why I didn't think I had
23 to get behind it. That's why I got in front of it.

24 Q When you see the suspect vehicle, the silver Dodge
25 Magnum, and you can see the police cars, are the lights on or

1 off, if you can recall?

2 A They're on.

3 Q Okay.

4 A Yeah.

5 Q Can you do -- when you're there at the scene, could
6 you hear the sirens behind the suspect vehicle?

7 A Once -- once you put a car in park, the lights will
8 stay on, but the siren turns off so it's not loud and
9 annoying.

10 Q All right. And where you're standing at, are your
11 lights and sirens on?

12 A They are, to block off traffic.

13 Q Okay. And from where your car is parked and you're
14 looking down at Eastern and Ogden, can the suspect vehicle see
15 you?

16 A If they were looking, sure, yeah. It's just one --
17 one block, one city block, so.

18 Q Okay. And how many cars are in the area at the time
19 that this is happening?

20 A I think pretty much every car that was clear in
21 Downtown Area came out at that time as --

22 Q I'm sorry, that was a bad rewording.

23 A Okay.

24 Q How much traffic was in the area?

25 A Oh -- oh --

1 Q At 4:39 in the morning?

2 A It's 4:39 in the morning so it's -- people are kind
3 of starting to wake up to go to work, not everybody. It's not
4 overly populated, it's not like 6:39 in the morning when you
5 can't get anywhere. But there's -- there's still vehicles.

6 Q But it's not like it was, like, clogged with people?

7 A No, absolutely not.

8 Q Okay. You see -- you stand where you are and what
9 do you do next?

10 A I stop traffic and then I wait for them to say that
11 the vehicle's all clear, that they have people in custody.

12 Q Okay. So while they're doing the felony car stop,
13 can you hear what's going on?

14 A Yeah, in my earpiece.

15 Q Okay. But you can't hear it because they're not
16 yelling it so loud that you can hear it that far?

17 A It's a block away. It's muffled, you know.

18 Q Okay. Once you see that the suspects are taken into
19 custody, the vehicle is cleared, what do you do next?

20 A Open traffic back up, just let people go back to
21 where they need to go.

22 Q And then do you actually stay physically where you
23 are or then do you go --

24 A No. I go to assist Officer Parquette.

25 Q Once you go down there, what is it that you do when

1 you go down there?

2 A I -- well, they're in custody already, so normally
3 once you have someone in custody, you have to take their
4 names, you have to run them, you have to figure out who --
5 who's in the car, the occupants, who the car is registered to,
6 things of that nature. So it's just investigative.

7 Q Did you actually see the felony car stop from where
8 you were?

9 A You can see it.

10 Q Okay. Did you see that somebody got out of, like,
11 the driver's side?

12 A Yes.

13 Q And did you see that somebody actually got out of
14 the back passenger side behind the driver?

15 A Yes.

16 Q Okay. In regard to the person that got out of the
17 driver's seat, do you see that person in court today?

18 A I do.

19 Q Can you point to him and describe an article of
20 clothing?

21 A A teal shirt, green shirt, I don't know.

22 MS. PIEPER: Your Honor, I ask the record to reflect
23 that the witness has identified the defendant, Matthew
24 Washington.

25 THE COURT: The record will so reflect.

1 BY MS. PIEPER:

2 Q Once you go down to where Officer Parquette is, what
3 do you do next?

4 A I help him out with -- because it's pretty much his
5 car stop, so I ask him, hey, what do you need help with and we
6 start talking to Mr. Washington.

7 Q Okay.

8 A We ask him -- oh, go ahead.

9 Q What happened next?

10 A We asked him, hey, is there anything in the car
11 you're not supposed to have. I believe his exact words or
12 around his exact words was there's nothing in the car. If
13 there is, it's -- it's his referring to the other person. He
14 gives --

15 Q Did he physically like point to him or nod to him
16 or --

17 A I think he may have just suggested it.

18 Q Okay.

19 A And then he said, you guys can search my car if you
20 want.

21 Q Okay. Did he say anything else?

22 A Not that I recall about --

23 Q Do you know if he said anything about he had just
24 picked up Martell Moten?

25 A Yes.

1 Q Okay.

2 A Yes.

3 Q And did -- when did that happen?

4 A When I asked, hey, where you coming from, where you
5 going, just normal investigative questions. He said that he
6 was by the Stratosphere and he just picked up his friend and
7 they were going home.

8 Q And where is the Stratosphere?

9 A The Stratosphere is at 2200 Boulevard -- Las Vegas
10 Boulevard South, so it's just north of Sahara.

11 Q And how close is it to Sherwood?

12 A It's -- it's fairly close.

13 Q After those statements were made, what happened
14 next? What did you do next?

15 A He was in custody. We opted out not to search the
16 car. Even though we had verbal consent, we didn't. He was in
17 custody and then the other passenger was in custody.

18 Q And he was identified as Martell Moten; is that
19 correct?

20 A Yes.

21 Q You also -- during this time do you learn that the
22 2655 Sherwood address, that somebody's actually died at that
23 location?

24 A Yes.

25 Q And once you learn that information, you realize

1 that this has turned into a homicide investigation, correct?

2 A Right.

3 Q And per protocol of the Las Vegas Metropolitan
4 Police Department, you realize that your initial investigation
5 will be handed over to other officers?

6 A Yep.

7 Q Detectives from homicide?

8 A Yes, ma'am.

9 Q Do you then wait for homicide to arrive on scene?

10 A We do.

11 Q Okay. And once homicide arrives on scene, do they
12 then take over the scene from you?

13 A Yes.

14 Q Do you stay there and assist?

15 A No. We give them a quick brief of what we did and
16 then that's it.

17 Q And is that because your shift ended?

18 A That was because our shift ended, yes.

19 Q But if it had not ended, you would have stayed and
20 talked to them, correct, or assisted them in whatever they
21 needed?

22 A Yes, absolutely.

23 Q Showing you what's been marked as State's Exhibit
24 17, let's see if I can figure out how to zoom in on this. I'm
25 going to ask you to come down --

1 MS. PIEPER: Your Honor, can he step down?

2 THE COURT: He may.

3 BY MS. PIEPER:

4 Q I'm going to ask that you hold this. Earlier you
5 had -- earlier you had described how you were driving on
6 Charleston at the Boulevard, you then got some information
7 that Officer Parquette had actually located them at Eastern
8 and St. Louis; is that correct?

9 A Yes.

10 Q And then so you started rolling to -- you started
11 rolling sort of in the bubble like area that you earlier
12 described?

13 A Correct.

14 Q Now I can't see because -- you also described how
15 you had stopped traffic at Eastern and Stewart?

16 A Correct.

17 Q Do you see that on this map?

18 A I do.

19 Q Okay. Can you show them (inaudible).

20 THE COURT RECORDER: Ms. Pieper, I'm not picking you
21 up over there.

22 BY MS. PIEPER:

23 Q Okay. Can you show us where -- you're going to have
24 to go this way so they can see.

25 A Okay.

1 Q Can you show us where Eastern and Stewart were that
2 you stopped traffic and you were sort of stopping everything?

3 A I was on the southwest corner right here --

4 Q Okay.

5 A -- stopping southbound traffic.

6 Q Okay. So you're there, parked, and your lights are
7 on; is that correct?

8 A Correct.

9 Q And this is Eastern and Ogden. So like you're
10 saying, it's only a block away from where Officer Parquette
11 has stopped the defendant?

12 A Correct.

13 Q Thank you. Could you have a seat?

14 UNKNOWN MALE SPEAKER: Could I have your microphone
15 back.

16 THE WITNESS: Yeah.

17 THE COURT: Or you could just set it there anywhere,
18 Officer. Thank you.

19 BY MS. PIEPER:

20 Q Showing you what's been marked as State's Exhibit
21 Number -- oh wait.

22 MS. SCHIFALACQUA: Those are admitted.

23 MR. OTTO: Yeah, they're admitted.

24 BY MS. PIEPER:

25 Q Showing you what's marked as State's admitted 21, do

1 you recognize that?

2 A Yes, that's the vehicle that we stopped. Or that
3 was stopped.

4 Q And State's 20? State's 20.

5 A Same vehicle.

6 MS. PIEPER: Pass the witness, Your Honor.

7 THE COURT: Cross-examination.

8 MR. OTTO: Yes, just a few.

9 CROSS-EXAMINATION

10 BY MR. OTTO:

11 Q Officer Sokolowski --

12 A Sure.

13 Q Sokolowski, I'll do my best. My name is David Otto,
14 I represent Mr. Washington in this case.

15 From your vantage point, just north of the stop, was
16 there any attempt by Mr. Washington, who you have testified
17 was driving the car, to elude the police?

18 A No, he pulled over. It -- oh, sorry, go ahead.

19 Q What were you going to say? Go ahead.

20 A I was just going to say it's just a precaution.

21 That's kind of --

22 Q Oh, I --

23 A That's how we do, so.

24 Q And was there any resistance given?

25 A (No audible response).

1 Q And he -- by the time you got there, he had
2 consented to search the car?

3 A Yes.

4 Q And he had stated that if there was anything in the
5 car, that it belonged to the other person in the car who was
6 Martell Moten; is that correct?

7 A Yes.

8 Q And he also told you that he had just picked Mr.
9 Moten up near the Stratosphere?

10 A Correct.

11 Q And the Stratosphere is just a few blocks from --
12 from the scene of this shooting; is that correct?

13 A Yes, just a few blocks south.

14 MR. OTTO: Okay. I have nothing further, thank you.

15 THE COURT: Redirect?

16 MS. PIEPER: No, Your Honor.

17 THE COURT: Thank you, you may step down. May this
18 witness be excused?

19 MS. PIEPER: Yes.

20 MR. OTTO: Yes, from the defense.

21 THE COURT: You're excused.

22 THE WITNESS: Thank you, Judge.

23 THE COURT: Does the State have a very quick one?

24 MS. SCHIFALACQUA: Well, Judge, that's my question.

25 My next witness we have to -- waiting out there, Judge, but

1 it's a crime scene analyst, so.

2 THE COURT: We'll -- we'll -- we'll do that
3 tomorrow.

4 Okay. Ladies and gentlemen, you'll recall that we
5 begin tomorrow morning fairly early, about 3:30 a.m. Just
6 checking. Just checking to see if you're listening. I want
7 to make sure nobody's asleep. We will begin at 9:00 a.m.
8 tomorrow.

9 Please also recall that even though I indicated that
10 most -- most of our weeks, we run -- so we start in the
11 afternoons on Monday, Tuesday, Wednesday. That on next week,
12 specifically on the 16th, which is Wednesday, we will begin at
13 9:00 a.m., and that we will not be in session on the 18th
14 which is Good Friday.

15 So 9:00 o'clock tomorrow morning. If you will
16 assemble yourselves outside the courtroom doors. And
17 meanwhile, while you are on your overnight recess, please
18 recall the Court's admonition not to visit any of the places
19 that are made mention of during the trial. Please do not
20 attempt to go any factual research of any kind. And please do
21 not attempt to do any legal research.

22 Do not talk or converse among yourselves or with
23 anyone else on any subject or on any person connected with
24 this trial. Please do not read, watch or listen to any report
25 of or commentary on the trial by any medium of information

1 whatsoever. Please do not form or express an opinion on any
2 subject connected with this trial until this case is finally
3 submitted to you.

4 The jury will be excused until 9:00 a.m. tomorrow
5 morning. The Court will remain in session.

6 (Jury recessed at 5:01 p.m.)

7 THE COURT: All right. The record will reflect the
8 absence of the jury. Is there anything else that we need to
9 go over for -- for today?

10 MS. PIEPER: Judge, just so you know, tomorrow at
11 9:00 o'clock, I'm going to call one witness out of order.
12 That's going to be Dr. Simms.

13 THE COURT: All right.

14 MS. PIEPER: The medical examiner. So we'll
15 probably call him first so we can get him --

16 MS. SCHIFALACQUA: Because that's the only time --

17 THE COURT: Okay. All right.

18 MS. PIEPER: And then we'll -- we'll bring in the
19 other witnesses.

20 THE COURT: And how many other witnesses after the
21 doctor do you anticipate tomorrow?

22 MS. SCHIFALACQUA: We have lined up, Your Honor,
23 well, these -- the two that we still had for today, a third
24 that we let go for today.

25 MS. PIEPER: Twelve.

1 MS. SCHIFALACQUA: So 12.

2 THE COURT: Twelve?

3 MS. SCHIFALACQUA: Correct.

4 THE COURT: That's besides the doctor?

5 MS. PIEPER: That's including the doctor.

6 THE COURT: Including the doctor, all right.

7 MS. PIEPER: We have a full day of witnesses to go
8 through.

9 THE COURT: All right. So we -- we will be busy
10 tomorrow. We'll see you at 9:00 a.m.

11 MS. PIEPER: Thank you, Your Honor.

12 THE COURT: Thank you.

13 (Court recessed at 5:03 p.m. until 5:19 p.m.)

14 THE COURT: I heard at 5:15 and I've asked my
15 bailiff to make a record of a conversation with one of the
16 jurors. If you would, please.

17 THE MARSHAL: After the jury was excused this
18 afternoon at 5:00 o'clock, Mr. Ennis, juror number one,
19 approached me to let me know that he thought he was possibly
20 related to the defendant, Mr. Washington.

21 He said that he recognized the family members in the
22 courtroom as being in a hospital room together, with he and
23 the family members over possibly a cousin that had died. He's
24 not 100 percent sure that he's related somehow to Mr.
25 Washington, but he felt he was somehow a cousin or a distant

1 relative.

2 THE COURT: All right. Does anyone have any
3 questions of our bailiff?

4 MS. SCHIFALACQUA: Just so the record is clear, were
5 there any other persons from the members of our panel present
6 when this conversation was being had with Mr. Ennis?

7 THE MARSHAL: No. Mr. Ennis waited till the entire
8 jury panel had left the area before he approached me and told
9 me.

10 THE COURT: And you admonished him again afterwards?

11 THE MARSHAL: Yes. He made mention that he was
12 going to make some phone calls to possibly an uncle to try to
13 verify whether he was related or not to Mr. Washington. And
14 at that point I stopped him and reminded him of the Judge's
15 admonishment not to discuss this case with anyone. He said he
16 understood.

17 THE COURT: Okay. Any discussion, counsel, from
18 either side about whether Mr. Ennis needs to go? Anyone
19 opposed?

20 MR. OTTO: I find it -- I'm not opposed, though I do
21 find it comforting to have a relative of my client on the
22 jury.

23 THE COURT: You do. Well, wouldn't we all.
24 Wouldn't we all, depending on the family. Actually some
25 families that could be the worst thing. We will --

1 MS. SCHIFALACQUA: Judge, you know, in all -- yeah.
2 I mean --

3 THE COURT: We will -- we excuse Mr. Ennis tomorrow
4 before we start just so that we don't have any further contact
5 even by accident between him and the rest. Now your
6 substitute tomorrow will not know about this, right?

7 THE MARSHAL: Right.

8 THE COURT: So --

9 MR. OTTO: We'll remember.

10 THE COURT: We'll -- we'll have to take it up with
11 the substitute bailiff. We don't know who it will be, do we?

12 THE MARSHAL: No, we don't.

13 THE COURT: Who the Marshal will be, who's assigned?

14 THE MARSHAL: I had one additional thing that he
15 mentioned. I asked him if anyone had been in contact with him
16 from the family or in the courtroom, and he said no.

17 THE COURT: All right, good. Then we will leave it
18 at that. Tomorrow we will instruct our bailiff to bring him
19 in first. We will excuse him, and I don't know whether
20 counsel thinks it's necessary, we could have him even go down
21 the hall. I don't know whether -- you know, to leave.

22 MR. OTTO: The back way?

23 THE COURT: So that the jury doesn't even see him.

24 MS. PIEPER: That might be smart actually.

25 THE COURT: Yeah.

1 MR. OTTO: Yeah.

2 THE COURT: So they don't see somebody getting
3 excused and leaving.

4 MS. PIEPER: Right. And then we have other
5 relatives.

6 THE COURT: Yeah, show up.

7 MR. OTTO: We're going to have -- and then what do
8 you do? Shuffle them that way?

9 THE COURT: We don't even -- we won't even do that
10 because I don't -- I don't want to do anything that starts to
11 alert the jurors --

12 MR. OTTO: Of ways to get out.

13 THE COURT: Well, of who might be the alternate as
14 well.

15 MR. OTTO: Hum.

16 THE COURT: So I think we leave our seating as is
17 and at the end is when we will --

18 MR. OTTO: Two through twelve and then three
19 alternates, okay.

20 THE COURT: Yeah. So now we're down to -- we will,
21 starting tomorrow, be down to two alternates.

22 MS. PIEPER: Thank you, Your Honor.

23 MS. SCHIFALACQUA: Thank you, Your Honor.

24 THE COURT: Okay, thank you.

25 MR. OTTO: Thank you.

1 MS. SCHIFALACQUA: See you in the morning.
2 (Court recessed at 5:23 p.m., until Thursday,
3 April 10, 2014, at 9:20 a.m.)

4 * * * * *

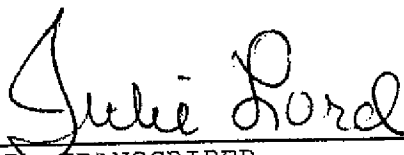
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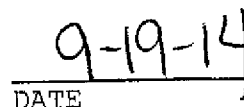
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1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3 MATTHEW WASHINGTON,
4 Appellant,
5 vi.
6 THE STATE OF NEVADA,
7 Respondent.

No. 65998

8
9 **APPELLANT'S APPENDIX VOLUME VI PAGES 1105-1323**

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16 **CERTIFICATE OF SERVICE**

17 I hereby certify that this document was filed electronically with the Nevada
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23 correct copy thereof, postage pre-paid, addressed to:

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