



**INDEX**  
**MATTHEW WASHINGTON**  
**Case No. 65998**

	<u>PAGE NO.</u>
1	
2	
3	Amended Criminal Complaint filed 11/20/2013 ..... 008-024
4	Amended Information filed 04/07/2014 ..... 658-671
5	Certificate of Service filed 03/11/2014 ..... 647
6	Criminal Complaint filed 11/06/2013..... 001-007
7	District Court Minutes from 12/23/2013 through 06/18/2014 ..... 797-831
8	Information filed 12/20/2013..... 426-440
9	Instructions to the Jury filed 04/16/2014..... 688-741
10	Instructions to the Jury filed 04/16/2014..... 750-767
11	Instructions to the Jury filed 04/17/2014..... 769-780
12	Judgment of Conviction filed 06/27/2014..... 786-789
13	Justice Court Minutes from 11/08/2013 through 12/09/2013 ..... 418-425
14	Memorandum of Ineffective Counsel and Notice of a Complete Breakdown in Communication Between Attorney and Client filed 05/19/2014..... 783-785
15	Notice of Appeal filed 06/30/2014 ..... 790-792
16	Notice of Appeal filed 07/17/2014 ..... 793-796
17	Notice of Association filed 03/05/2014..... 639-640
18	Notice of Department Reassignment filed 04/28/2014 ..... 782
19	Notice of Motion and Motion in Limine filed 03/10/2014..... 641-646
20	Notice of Motion and Motion to Sever Defendants filed 12/30/2013 ..... 441-444
21	Notice of Witnesses and/or Expert Witnesses filed 01/06/2014 ..... 445-588
22	Order Appointing Investigator filed 01/27/2014..... 626-627
23	Proposed Jury Instruction Not Used at Trial filed 04/15/2014..... 685-687
24	Reporter's Transcript of Preliminary A.M. Hearing heard 12/05/2013 ..... 025-122
25	Reporter's Transcript of Preliminary Hearing heard 12/09/2013..... 242-417
26	Reporter's Transcript of Preliminary P.M. Hearing heard 12/05/2013 ..... 123-241
27	Second Amended Information filed 04/11/2014 ..... 672-684
28	///

1	Second Amended Information filed 04/16/2014 .....	747-749
2	Second Supplemental Notice of Witnesses and/or Expert Witnesses filed 01/27/2014.....	614-625
3	.....	
3	State's Opposition to Defendant's Motion in Limine filed 03/21/2014 .....	648-657
4	Supplemental Notice of Witnesses and/or Expert Witnesses filed 01/21/2014 .....	603-613
5	The State of Nevada's Opposition to Defendant Washington's Motion to Sever and Opposition	
6	to Defendant Moten's Motion to Sever and Joinder in Defendant Washington's Motion to Sever	
6	filed 01/17/2014.....	589-602
7	Third Supplemental Notice of Witnesses and/or Expert Witnesses filed 01/30/2014 .....	628-638
8	.....	
9	Verdict filed 04/16/2014.....	742-746
10	Verdict filed 04/16/2014.....	768
11	Verdict filed 04/17/2014.....	781

**TRANSCRIPTS**

15	Transcript of Proceedings, <b>Jury Trial—Day One</b>	
16	Date of Hrg: 04/07/2014.....	888-1021
17	Transcript of Proceedings, <b>Jury Trial—Day Two</b>	
18	Date of Hrg: 04/08/2014.....	1022-1202
19	Transcript of Proceedings, <b>Jury Trial—Day Three</b>	
20	Date of Hrg: 04/09/2014.....	1203-1323
21	Transcript of Proceedings, <b>Jury Trial—Day Four</b>	
22	Date of Hrg: 04/10/2014.....	1324-1493
23	Transcript of Proceedings, <b>Jury Trial—Day Five</b>	
24	Date of Hrg: 04/11/2014.....	1494-1730
25	Transcript of Proceedings, <b>Jury Trial—Day Six</b>	
26	Date of Hrg: 04/14/2014.....	1731-1857
27	Transcript of Proceedings, <b>Jury Trial—Day Seven</b>	
28	Date of Hrg: 04/15/2014.....	1858-1906

1	Transcript of Proceedings, <b>Jury Trial—Day Eight</b>	1907-1951
2	Date of Hrg: 04/16/2014.....	
3	Transcript of Proceedings, <b>Jury Trial—Day Nine (Penalty Phase)</b>	1952-2039
4	Date of Hrg: 04/17/2014.....	
5	Recorder's Transcript, Calendar Call	858-863
6	Date of Hrg: 01/29/2014.....	
7	Recorder's Transcript, Calendar Call	864-869
8	Date of Hrg: 02/05/2014.....	
9	Recorder's Transcript, Calendar Call; Defendant's Motion in Limine	876-882
10	Date of Hrg: 04/02/2014.....	
11	Recorder's Transcript, Defendant's Motion in Limine	874-875
12	Date of Hrg: 03/24/2014.....	
13	Recorder's Transcript, Motions to Sever	850-857
14	Date of Hrg: 01/22/2014.....	
15	Recorder's Transcript, Motion to Sever Defendants; Status Check: Trial Setting and Death Penalty	840-849
16	Date of Hrg: 01/13/2014.....	
17	Recorder's Transcript, Sentencing	2040-2055
18	Date of Hrg: 06/18/2014.....	
19	Recorder's Transcript, Status Check: Trial Readiness	870-873
20	Date of Hrg: 03/05/2014.....	
21	Recorder's Transcript, Status Check – Trial Readiness (BOTH)	863-839
22	Date of Hrg: 12/30/2013.....	
23	Recorder's Transcript, Telephonic Conference RE: Trial Judge	883-887
24	Date of Hrg: 04/04/2014.....	
25	Recorder's Transcript of Hearing, Initial Arraignment	832-835
26	Date of Hrg: 12/23/2013.....	
27		
28		

*Anna D. Schuman*  
CLERK OF THE COURT

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

THE STATE OF NEVADA,	:	CASE NO. C-294695-1
	:	DEPT. NO. I
Plaintiff,	:	
vs.	:	
MATTHEW WASHINGTON,	:	<b>TRANSCRIPT OF</b>
	:	<b>PROCEEDINGS</b>
Defendant.	:	
.....	:	

BEFORE THE HONORABLE KENNETH CORY, DISTRICT COURT JUDGE

**JURY TRIAL - DAY 6**

MONDAY, APRIL 14, 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:

VERBATIM DIGITAL REPORTING, LLC  
Englewood, CO 80110  
(303) 798-0890

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INDEX

WITNESSES

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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STATE'S WITNESSES:

Jocelyn Maldonado	7			
Anya Lester	12	65	68	75

\* \* \* \* \*

EXHIBITS

DESCRIPTION:

ADMITTED

STATE'S EXHIBITS:

Exhibit 86 . . . . .	10
Exhibits 193 through 201 . . . . .	30

1 LAS VEGAS, NEVADA, MONDAY, APRIL 14, 2014, 1:20 P.M.

2 (Outside the presence of the jury)

3 MR. OTTO: At this point, I'd be making an oral  
4 motion for a mistrial based on something that occurred Friday  
5 afternoon.

6 As you will recall, we were here waiting for two  
7 jurors to come back and the C.O. -- and I'm not sure who -- to  
8 the State's attorney's credit, they jumped up and said we  
9 can't have this going on. And it was about one of the  
10 officers, either the C.O. -- I think the C.O. and maybe your  
11 marshal, talking about what time they got off.

12 And it may have led to an inference, if the jury  
13 heard it, that my client was in custody, which, as you know,  
14 under several cases, including Canape v. State, 109 Nevada 864  
15 at 859 -- I'm sorry, 864, and then 859 P.2d 1023, a 1993 case  
16 out of a Nevada Supreme Court, the defendant may be prejudiced  
17 by that knowledge with the jury. And for that reason, I make  
18 this motion.

19 MS. PIEPER: Judge, in regard to the case law that  
20 was just cited, one of the things that they talk about is that  
21 the defense has to show some type of prejudice to the  
22 defendant.

23 In regard to this case, the situation that Mr. Otto  
24 is speaking of is some of the members of the jury were inside  
25 of the courtroom, I think the majority of them, except for

1 two. We were not on the record. The marshal at the time made  
2 a comment to the corrections officer about, what time do you  
3 get off of work? The corrections officer responded, 4:30  
4 today, or 4:30 P.M. The marshal then said, we should be able  
5 to get you out of here by 4:30.

6 The jury -- I looked over at them. They were all  
7 talking amongst themselves. There was also other type of  
8 chatter going on in the courtroom at the time. Nobody that I  
9 saw in the jury panel even heard the conversation between the  
10 corrections officer and the marshal. And so, for those  
11 reasons, counsel for the defense hasn't even shown any type of  
12 prejudice prong, or prejudice that would result from that  
13 conversation.

14 I think just hearing those -- the conversation going  
15 back and forth between the corrections officer and the  
16 marshal, it may not be clear who these people are to the jury  
17 in the courtroom. They may not understand the difference,  
18 although counsel and this Court understand that there is a  
19 corrections officer that goes back and forth between the jail,  
20 there's also a marshal. And I think Ms. Schifalacqua wanted  
21 to add something else.

22 MS. SCHIFALACQUA: And Judge, I think even on its  
23 face, the first --

24 THE COURT: Wait, are you guys going to double team  
25 him?

1 MS. SCHIFALACQUA: Of course we are, Judge. The  
2 first thing I think we have to look at is really what was  
3 said, which was, what time do you get off, 4:30, I think we  
4 can get you out of here. I mean, that in and of itself has no  
5 inference whatsoever that the defendant happens to be in  
6 custody.

7 We would have to presume, one, that the jurors even  
8 understood the corrections officer -- who he is or what he  
9 does, that he would have to transport the defendant before he  
10 got off. Maybe he just gets off at 4:30 for whatever reason,  
11 because someone else is going to relieve him.

12 So, the idea that the statement itself is so  
13 innocuous, I don't think that you could even come close to  
14 having an inference that relates back to the defendant  
15 whatsoever, and I just wanted to make sure that that was  
16 highlighted. And obviously, we would oppose any motion for  
17 mistrial over something so far reaching, Judge.

18 THE COURT: Okay. Ms. Ohlinger, you want to weigh  
19 in on this?

20 MS. OHLINGER-JOHNSON: All right. Thank you, Your  
21 Honor. This is the first time you've actually heard from me  
22 this trial, so I'm proud to actually speak. I'd just like to  
23 be clear that under the holding of Canape, we actually don't  
24 bear the burden, so burden of the State. That's all.

25 THE COURT: Okay.

1 MR. OTTO: With that, I would submit it, Your Honor.

2 MS. PIEPER: The burden is to show --

3 THE COURT: Okay. The motion is denied. Anything  
4 else before we bring our jury?

5 MS. SCHIFALACQUA: Not by the State, Judge.

6 MR. OTTO: Not by defense, Your Honor.

7 THE COURT: Okay, let's bring our jury.

8 (Pause in the proceedings)

9 THE COURT: Do you have two or three witnesses?

10 MS. SCHIFALACQUA: Two, Judge.

11 THE COURT: Two witnesses? All right.

12 (Pause in the proceedings)

13 THE MARSHAL: All rise for the jury.

14 (Jury reconvened at 1:25 p.m.)

15 THE COURT: Will counsel stipulate to the presence  
16 of our jury?

17 MS. PIEPER: Yes, Your Honor.

18 MR. OTTO: Yes. There seems to be -- oh, no. Yes,  
19 they're here. Thank you, Your Honor.

20 THE COURT: He's getting some water. Thank you.  
21 Ladies and gentlemen, thank you for returning. I trust you  
22 passed a pleasant weekend, and we're ready to get back to  
23 work.

24 Did anyone have any problem with anyone approaching  
25 them, trying to talk to them during -- about the case at all?

1 Thank you.

2 All right, State may call your next witness.

3 MS. SCHIFALACQUA: Your Honor, the State calls  
4 Jocelyn Maldonado.

5 THE MARSHAL: Straight ahead to the stand. Watch  
6 your step. When you get up there, please remain standing and  
7 face the clerk.

8 JOCELYN MALDONADO, STATE'S WITNESS, SWORN

9 THE CLERK: Please be seated.

10 THE COURT RECORDER: That microphone is buried.

11 THE WITNESS: Is it okay to move it?

12 THE COURT RECORDER: To you, please.

13 MS. SCHIFALACQUA: If I may approach, Judge.

14 THE COURT: Yeah.

15 THE CLERK: Can I have you state your name and spell  
16 it for the record, please?

17 THE WITNESS: Jocelyn, J-c-c-e-l-y-n. Maldonado,  
18 M-a-l-d-o-n-a-d-o.

19 THE CLERK: Thank you.

20 MS. SCHIFALACQUA: May I?

21 THE COURT: You may proceed.

22 MS. SCHIFALACQUA: Thank you.

23 THE COURT: Um-hum.

24 DIRECT EXAMINATION

25 BY MS. SCHIFALACQUA:

1 Q Ms. Maldonado, can you let the members of the jury  
2 know how you're employed?

3 A I am a senior crime scene analyst with the Las Vegas  
4 Metropolitan Police Department.

5 Q And how long have you been a crime scene analyst  
6 with Metro?

7 A A little over 13-and-a-half years.

8 Q Okay. We've heard from a number of crime scene  
9 analysts in this particular case. Did you work in that  
10 capacity back on November 5th of 2013?

11 A Yes.

12 Q And on that particular day, what shift did you work?

13 A I worked swing shift that day, which is 14:00 hours  
14 to 24:00 hours, or 2:00 P.M. to midnight.

15 Q And did you have occasion to work with a Detective  
16 Rogers?

17 A Yes, I did.

18 Q And were you tasked with the duty of kind of doing  
19 some follow up collection of evidence for this particular  
20 case?

21 A Yes.

22 Q And that was under event number 131105-0479?

23 A Yes.

24 Q And on -- actually on November 5th of 2013, did you  
25 go to Ewing Brothers Tow Lot?

1 A Yes, I did.

2 Q And did you actually collect some items of evidence  
3 and impound those items into evidence for this case?

4 A Yes, I did.

5 Q What was that?

6 A They were two blue latex type gloves.

7 Q Okay.

8 MS. SCHIFALACQUA: And having shown Mr. Otto what's  
9 been previously marked as State's proposed 86, if I may  
10 approach, Judge?

11 THE COURT: You may.

12 BY MS. SCHIFALACQUA:

13 Q Ms. Maldonado, I'm going to show you what's been  
14 marked as State's proposed Exhibit 86. Do you recognize that?

15 A Yes.

16 Q How do you recognize it?

17 A This has a label on it with my initials and P  
18 number, the event number specific to this case, the address  
19 that I responded to, and a description of what's inside the  
20 package. It's also sealed on the back with my initials and P  
21 number, and the date.

22 Q And do you recall when you impounded those blue  
23 latex gloves impounding them in this package?

24 A Yes.

25 Q And is this in the same or substantially same

1 condition as it was when you impounded those gloves?

2 A Yes, except for the blue seals on here.

3 Q Okay. And are you familiar with those blue seals?

4 A Yes, I am.

5 Q And describe for the members of our jury, what does  
6 that signify to you?

7 A When the package is opened in our forensic lab and  
8 resealed, the forensic scientists use the blue seals to reseal  
9 the package and initial and date it, and also sign the chain  
10 of custody.

11 MS. SCHIFALACQUA: And Your Honor, at this point,  
12 I'd move for admission of State's proposed 86.

13 MR. OTTO: No objection.

14 THE COURT: 86 will be admitted.

15 (State's Exhibit 86 is admitted)

16 MS. SCHIFALACQUA: Permission to publish, Your  
17 Honor?

18 THE COURT: You may.

19 (Pause in the proceedings)

20 MS. SCHIFALACQUA: All right. Now that we're  
21 working -- thank you.

22 BY MS. SCHIFALACQUA:

23 Q Showing what's been admitted as State's 86. And is  
24 this the label that you were referring to, Ms. Maldonado, with  
25 regard to the identification of what you impounded in here?

1 A Yes.

2 Q And on the -- again, sorry this is a little  
3 difficult. But on the bottom, does it show the chain of  
4 custody and who would have opened that in this case, Ms. Beata  
5 Vida?

6 A Yes.

7 Q Okay.

8 MS. SCHIFALACQUA: I'd pass the witness, Judge.

9 THE COURT: Cross-examination?

10 MR. OTTO: I have no questions, Your Honor.

11 THE COURT: Thank you. You may step down. May this  
12 witness be excused?

13 MS. SCHIFALACQUA: Yes.

14 THE WITNESS: Thank you.

15 MR. OTTO: Yes, Your Honor.

16 THE COURT: Thank you, ma'am. You're excused.  
17 State may call your next witness.

18 MS. SCHIFALACQUA: Thank you. The State calls Anya  
19 Lester.

20 THE MARSHAL: Straight ahead to the stand. Watch  
21 your step as you go up. Please remain standing and face the  
22 clerk.

23 ANYA LESTER, STATE'S WITNESS, SWORN

24 THE CLERK: Please be seated. Please state your  
25 name and spell it for the record.

1 THE WITNESS: My name is Anya, A-n-y-a. Lester,  
2 L-e-s-t-e-r.

3 THE CLERK: Thank you.

4 THE COURT: You may proceed.

5 MS. SCHIFALACQUA: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MS. SCHIFALACQUA:

8 Q Ms. Lester, please tell the members of the jury how  
9 it is you're employed.

10 A I'm currently employed as a Forensic Scientist II  
11 with the Las Vegas Metropolitan Police Department forensic  
12 laboratory, currently assigned to the Firearms and Toolmarks  
13 Analysis Unit.

14 Q And let's start with what type of background, and  
15 let's start even with your education, Ms. Lester, of how it is  
16 you get to be a firearms and toolmark analyst.

17 A I have a bachelor of science degree in forensic  
18 science from Michigan State University. I was hired by the  
19 Las Vegas Metropolitan Police Department in December of 2008  
20 as a forensic lab aid. From that position, I promoted to the  
21 forensic scientist class in October of 2009, and at that  
22 point, I was assigned to the firearms and toolmarks analysis  
23 unit.

24 After being assigned to that unit, I completed a  
25 comprehensive 2,500-hour training program, which included

1 manufacturers tours of -- tours of manufacturer -- firearm and  
2 ammunition manufacturing facilities. Also, manufacturer's  
3 armorer's courses, training off-site and on-site in our lab,  
4 and training by completing a variety of mock cases underneath  
5 the supervision of another experienced examiner.

6           During those mock cases, I was given actual firearms  
7 to shoot, actual questioned ammunition components to compare  
8 to those firearms. I used the same software, the same  
9 comparison microscope, the same equipment that I use now to do  
10 those cases as mock cases, and come up with conclusions and  
11 write reports just as if they were actual cases.

12           After I finished that supervised casework, I  
13 completed a series of comprehensive proficiency and competency  
14 exams, which allowed me to begin my own independent casework  
15 in 2011 as a firearms and toolmarks analyst.

16           Q     And so, have you been working on your own in that  
17 capacity since then after the intensive training?

18           A     That is correct.

19           Q     Okay. With regard to cases that come before you, do  
20 you even have an approximate number of how many cases you've  
21 worked on?

22           A     Since I was released for independent casework, I've  
23 completed approximately 450 cases.

24           Q     Okay. And have you testified previously in the  
25 Eighth Judicial District in the area of firearms and

1 toolmarks?

2 A Yes, I have.

3 Q With regard to proficiency that you talked about, do  
4 you do an ongoing kind of proficiency with regard to being a  
5 firearms/toolmark analyst?

6 A Yes. I am required to complete a proficiency exam  
7 in the areas of firearms and toolmarks every year.

8 Q Okay. I want to take a step back, especially for  
9 our jurors, and talk about what it is a firearms and toolmarks  
10 analyst does generally before we get into the meat of kind of  
11 what you're going to be here for. If you could explain to  
12 them what it is you do.

13 A Certainly. Just in general, I examine firearms,  
14 ammunition, ammunition components that are booked as evidence,  
15 and I compare those ammunition components that are found at  
16 the scene to the test fires that I fire from the suspect  
17 firearms to determine if they came from that same firearm.

18 Q And so, generally speaking, if for example a  
19 detective, an officer, or a DA submits a request to take items  
20 of evidence collected at a scene and specifically have it  
21 compared to possibly a firearm, is that something that you  
22 generally do?

23 A Yes, that is correct.

24 Q Okay. In this particular case, did you have  
25 occasion -- or were you requested to actually do an analysis

1 on a number of different items of evidence that were impounded  
2 under our event number 131105-0479?

3 A May I refer to my case file?

4 Q Absolutely.

5 A Yes, I was requested to examine a number of items  
6 underneath that stated event number.

7 Q Okay. And you were checking on the event number, is  
8 that fair to say?

9 A That's correct.

10 Q Okay. With regard --

11 MS. SCHIFALACQUA: Judge, permission to republish  
12 some items of evidence already before the jury?

13 THE COURT: You may.

14 MS. SCHIFALACQUA: Thank you.

15 BY MS. SCHIFALACQUA:

16 Q Showing you what's been admitted as State's 78, Ms.  
17 Lester, do you recognize this generally?

18 A Yes, I do.

19 Q Okay. And on the bottom, do you see your signature?

20 A Yes, I do.

21 Q Okay. With regard to State's 70 -- there we go --  
22 8, what's inside State's 78?

23 A According to the package, there are six cartridge  
24 cases.

25 Q Okay. And you saw your signature on the bottom.

1 What does that blue seal signify?

2 A That's a laboratory seal that we as the examiner put  
3 on the package to seal it up when we're finished analyzing the  
4 evidence, and we sign across that seal with our initials,  
5 personnel number, and the date in which we sealed it.

6 Q So, I could go through -- for example, here's  
7 State's 80. Did you sign that and go examine evidence that  
8 was supplied to you under State's 80?

9 A Yes, I did.

10 Q And State's 79, the same?

11 A Yes.

12 Q And so, with regard to this case -- I'll show you  
13 physically, but did your analysis include two firearms?

14 A Yes, it did.

15 Q As well as cartridge casings?

16 A Yes.

17 Q As well as a number of either bullets or metal  
18 fragments?

19 A Yes, that is correct.

20 Q And were they all under the event number that we  
21 listed previously?

22 A Yes, they were.

23 Q When you -- well, let me back up. Can you describe  
24 for the members of our jury the difference between a  
25 semiautomatic handgun or a firearm and a revolver?

1           A     Certainly. A semiautomatic handgun is a type of gun  
2 that you hold in your hands, designed to be fired from the  
3 hand. And it's designed so that each pull of the trigger  
4 fires one cartridge, and one bullet goes down the barrel and  
5 out the muzzle. You have to pull the trigger for each shot to  
6 fire.

7                     The word "semiautomatic", it's semiautomatic because  
8 you don't hold down the trigger and it keeps cycling on its  
9 own, you have to pull that trigger. It's semiautomatic  
10 because it does use a part of the detonation of that cartridge  
11 to perform a cycle in the firing cycle of that gun. Usually,  
12 it's the unloading and loading of the next cartridge into the  
13 chamber of the gun.

14                    The difference between that and a revolver is, in a  
15 revolver, you don't have that cycling action. You have a gun  
16 that actually has a cylinder. In that cylinder, there are a  
17 number of chambers, and every time you pull the trigger, that  
18 cylinder rotates, and the next chamber is aligned with the  
19 barrel so that you can go ahead and fire. Those chambers  
20 aren't integral to that barrel. They have to be lined up when  
21 that cylinder revolves.

22           Q     And cartridge casings from an expended cartridge in  
23 a semiautomatic, where do they go if it's in functioning  
24 order?

25           A     What happens if it's in functioning order, you have

1 the firing process. You pull the trigger, the firing pin goes  
2 forward, hits the primer of that cartridge case. A spark is  
3 created. The powder that's inside that cartridge catches on  
4 fire and gas is released. When that gas is released, it  
5 pushes that bullet down the barrel and out of the muzzle of  
6 the gun. You have a great forward action when that's  
7 occurring.

8           And because of the fact, for every action, you have  
9 an equal and opposite reaction, you have the case that's  
10 remaining there in the chamber. Now, when that case gets  
11 loaded into the chamber when the slide goes forward, there's a  
12 little hook on the side that we call the extractor. It's  
13 caught around the rim of that cartridge case. You have the  
14 bullet going forward, and you have that blast action pushing  
15 that cartridge case backwards, and the slide of that gun  
16 pushing it backwards.

17           Because it's hooked to the slide, that cartridge  
18 case is pulled backward, and it hits a piece that we call the  
19 ejector. When that cartridge case -- that spent case hits the  
20 ejector, it's actually kicked out of the gun. There's usually  
21 a port called the ejection port on the gun where it's actually  
22 kicked out, and then it just leaves -- it ejects -- it goes  
23 out of the gun.

24           And then that slide, from that backwards position,  
25 it picks up that next cartridge out of the magazine. If you

1 have it loaded, that magazine, it's spring-loaded from the  
2 bottom. It's kind of like a Pez dispenser. That cartridge  
3 gets picked up by the slide and gets loaded right back into  
4 the chamber so that you can go ahead, pull the trigger, and  
5 fire it again.

6 Q Now, we're -- or you are, I should say, using some  
7 terminology that may not be familiar to the members of our  
8 jury, so I want to walk through some of it.

9 MS. SCHIFALACQUA: And also, I don't know if there's  
10 water up there, Judge.

11 THE MARSHAL: Yes, there is pitchers.

12 MS. SCHIFALACQUA: Okay.

13 THE MARSHAL: I did fill it up.

14 MS. SCHIFALACQUA: If you need some --

15 THE WITNESS: Great.

16 THE COURT: Yes.

17 MS. SCHIFALACQUA: -- Ms. Lester --

18 THE WITNESS: Thank you.

19 MS. SCHIFALACQUA: -- it is on this --

20 (Pause in the proceedings)

21 THE WITNESS: Thank you.

22 BY MS. SCHIFALACQUA:

23 Q What -- can you describe for the members of our jury  
24 what you're referring to? What's a cartridge?

25 A I have a model, if I may use it to help me describe.

1 Q Did you -- you brought it with you today?

2 A Yes.

3 Q Fantastic. If you could pull that out.

4 A Sure. I referred to it a couple times. This is a  
5 cartridge. It's a single unit of ammunition. This is what  
6 you would load into your gun. A lot of times, people think I  
7 load bullets into my gun, but it's not true. You actually  
8 load an entire cartridge.

9 There's four components in general. There's this  
10 primer. It's a chemical compound that when the firing pin  
11 hits it, it creates a spark, and that ignites the powder  
12 that's contained here inside this case. This we refer to as  
13 the cartridge case. It's the piece that holds the entire  
14 thing.

15 And the fourth component is your projectile. You  
16 may or may not have a projectile. If it was a blank round of  
17 ammunition, there would be no projectile. But in general,  
18 those are the four components; primer, cartridge case, powder,  
19 and your projectile, or in this case, bullet.

20 Q And so, when we refer to the cartridge case that's  
21 ejected out of a semiautomatic firearm, is it that separate  
22 part?

23 A Yes, it would be this piece, analogous to this piece  
24 right here. And like -- as I described, during the firing  
25 cycle, when you have your bullet going forward, your gas is

1 expanding. You have your extractor hooked alongside here,  
2 your slide going back. This is the piece that actually gets  
3 pulled out of the chamber and ejected from the gun.

4 Q So, when you or I refer to a bullet, it's not in  
5 fact what we load into a magazine of a firearm, it's a  
6 particular portion or projectile that is within that  
7 cartridge?

8 A That's correct.

9 Q And when we refer to a bullet or a projectile, is  
10 that the piece that gets expelled from the firearm when it  
11 cycles through its process?

12 A It's the piece that's propelled down the barrel by  
13 the gas, and it leaves the muzzle, and this is the part that  
14 flies at you if someone shoots toward you. The part -- it  
15 gets expelled and then it flies outward, but in a  
16 semiautomatic firearm, the cartridge case also in the slide  
17 cycles would be expelled from the firearm.

18 Q Fair enough. Both of them get expelled, and that  
19 was a poor term on my part. Thank you, Ms. Lester. Let me  
20 ask you this. With regard to cartridge casings and cartridges  
21 in general, what's a headstamp refer to?

22 A The headstamp is marks put by the manufacturer here  
23 on this area, it's called the headstamp area. Usually, it has  
24 a manufacturer's name or symbol, and it may also have the  
25 caliber of this particular cartridge on that area.

1 Q With regard to headstamps, are those significant at  
2 all with regard to whether or not a particular manufacturer's  
3 cartridge is used to shoot a firearm?

4 A Only in that you want to make sure that your caliber  
5 of your cartridge matches the caliber of the gun. But there  
6 can be a variety of different manufacturers that manufacture  
7 the same caliber of cartridge, and you would be able to use  
8 those all in your firearm.

9 Q Let's -- I want to turn your attention back to this  
10 particular case. With regard to the two firearms that were  
11 submitted for analysis in this particular case, Ms. Lester,  
12 did you have occasion to examine both of those firearms?

13 A Yes, I did.

14 Q What was -- let's start with -- was the first a  
15 Glock .40 caliber firearm?

16 A Yes, it was.

17 Q And what was the other?

18 A The other one was a Smith and Wesson 9 millimeter  
19 Luger caliber semiautomatic pistol.

20 Q Okay. Were both -- were both handguns or pistols?

21 A Pistols.

22 Q Were both of them -- yes? Okay, and were they both  
23 semiautomatics?

24 A Yes, they were.

25 Q And I want to start first talking about the Glock

1 .40 caliber. Describe for the members of our jury what it is  
2 you do first when you get this request with regard to the  
3 firearms?

4 A The first thing that was requested was for me to do  
5 a firearms exam and a function test on this particular  
6 firearm. When I do the firearms exam, there's a variety of  
7 different things that I do. I measure the overall length of  
8 the gun, I measure the length of the barrel, I look at any  
9 external safeties that it may have. I just sort of look it  
10 over to see what kind of condition it's in, if it's damaged,  
11 if there's any cracks, that type of thing.

12 I'd verify the serial number, take a photo of it,  
13 photograph the entire gun. And then I actually dry fire it,  
14 pull the trigger without actually loading it. I do all those  
15 things just to basically make sure that the gun is safe for me  
16 to go ahead and test fire it before I actually load it up and  
17 go ahead and test fire the gun.

18 Q With regard to this .40 caliber Glock, was the --  
19 did you do those first kind of initial examination for that  
20 particular -- this particular Glock?

21 A Yes, I did.

22 Q And thereafter, did you actually do a test fire of  
23 this firearm?

24 A Yes, I did.

25 Q Describe for the members of our jury what it is you

1 did when you do this more intensive test firing of the gun?

2       A     I test fired the gun first by -- I took the magazine  
3 that was submitted with the gun. I loaded it with -- I used  
4 six cartridges from our firearms laboratory general supply,  
5 loaded up that magazine.

6             And before I do that, I actually mark them. I mark  
7 them with an engraver. I mark the side of the cartridge case  
8 and the side of the bullet with the item number of the gun and  
9 a letter designator. So, for these ones, the item number of  
10 the gun was 6, so I numbered them 6A, 6B, 6C, et cetera, up  
11 through 6F.

12            The first three shots I fired into a water tank. We  
13 have a stainless steel tank, has a pneumatic lid, has a  
14 shooting port that I can shoot into. It's filled with  
15 approximately 600 gallons of water. Water, since it's denser  
16 than air, when you step up to the shooting port and shoot the  
17 gun, the bullet, it proceeds through the water and it just  
18 slows down, slows down, slows down, and then it just falls  
19 right down to the bottom of the tank.

20            That allows us to maintain a pristine sample test  
21 fired bullet from that particular gun so that I have those for  
22 comparison examination purposes. Also around that shooting  
23 port, there's a net, and that net catches the ejected  
24 cartridge cases as they come out of the gun.

25        Q     And do you also do any other firing with regard to

1 -- or in this particular case, with regard to the .40 caliber?

2 A In this particular case, I did shoot it three times  
3 into the water tank, and then it shot it three times  
4 downrange. We do have an indoor firing range in our  
5 laboratory. I shot it from a distance of approximately 18  
6 feet towards the target. Shot it three times just in general,  
7 just to make sure that the gun is really going the direction  
8 that you're shooting it in.

9 I'm not a sharp shooter, I'm not trying to get a  
10 bull's-eye, but all I'm trying to do is really just sort of  
11 see the directionality of the gun. Sometimes, I might shoot a  
12 gun again to test fire it for a variety of different reasons.  
13 This particular gun, I did shoot it initially on January 22nd,  
14 and I did shoot it again on the 24th three more times using a  
15 different kind of ammunition, just to look at a different  
16 ammunition and kind of see how it marked in relation to the  
17 gun.

18 Q With regard to the Glock .40 caliber that was  
19 impounded under this particular event number, did you find it  
20 to be operational?

21 A Yes, I did.

22 Q What was the trigger pull on this Glock .40 caliber  
23 firearm?

24 A The trigger pull per my measurements was found to be  
25 three-and-a-half to three-and-three-quarters pounds.

1 Q And describe for the members of our jury if --  
2 what's trigger pull mean? What does that mean?

3 A It's the actual pounds, the amount of pressure that  
4 it would take for you to pull the trigger to make the gun  
5 fire. The triggers sometimes have a little bit of give, you  
6 can put a little bit of pressure on and it won't give, but  
7 it's the actual amount of pressure that is required when you  
8 pull that trigger to make the gun fire.

9 Q Now, the magazine that was submitted with this  
10 firearm, what was the capacity of that magazine?

11 A That was a ten-cartridge capacity.

12 Q Okay. And when -- kind of going back to trigger  
13 pull, are there safeties on Glocks, and particularly the one  
14 that you examined, so that it doesn't just fire?

15 A There are actually -- on Glocks, there are three  
16 safeties. None of them are manual switch safeties. The two  
17 can move. There are three safeties a Glock has built into its  
18 firearms, they're sort of a passive safety system.

19 There is a trigger safety, and what that is is, on  
20 the trigger, it's not just one little curved piece, there's  
21 actually an additional part that kind of sticks out. And when  
22 you -- you have to pull on that little part, compress it, and  
23 compress the trigger in order to make that trigger actually  
24 fire the gun. If you just sort of press on the side of it, it  
25 won't go. You have to press on the whole thing.

1           Glock does also integrate a firing pin safety into  
2 its guns. And what that is, that is when you pull the  
3 trigger, there's a block that's located in the slide that's  
4 actuated by the trigger bar. When you actually pull the  
5 trigger, the bar hits it and it moves out of the way, and that  
6 allows a firing pin to go forward. It's actually a block so  
7 that that firing pin is blocked and can't actually go forward  
8 unless the trigger is pulled.

9           There's a third safety, which is a drop safety, and  
10 that safety actually holds the striker, the firing pin striker  
11 part. It holds it onto a shelf, holds it in place so that if  
12 you drop the gun, it can't go forward. Again, when you pull  
13 the trigger, there's a part that's moved out of the way, and  
14 that allows that striker to go forward.

15         Q     And in this case, were all of those safeties in  
16 working condition, if you will?

17         A     I did test the trigger safety and the firing pin  
18 safety. I did not actually do a drop test and test the drop  
19 safety on the gun, but those two safeties that I did check  
20 were in working order.

21         Q     With regard to this particular case, after you  
22 obtained pristine examples from firing the Glock, what do you  
23 do after that with regard to testing in this matter?

24         A     Well, what I always do when I first test fire a gun  
25 is I take the samples, the test fires that I actually shot

1 from the gun, and I compare them to each other. I use a  
2 microscope, it's called a comparison microscope. It's like  
3 two compound microscopes which are hooked together with what  
4 we call an optical bridge. It's lenses and mirrors that allow  
5 me to look down the microscope and see two items side by side  
6 together under the microscope at the same time.

7 Q Let me --

8 A So --

9 Q Before you go on to that -- I'm sorry, Ms. Lester,  
10 because we're going to get into some things. Were you also  
11 submitted, and we saw up here, but a number of cartridge  
12 casings from this case to do some analysis on?

13 A Yes, I was.

14 Q Okay. So I can take a step back, were you submitted  
15 seven .40 caliber cartridge casings?

16 A Yes, I was.

17 Q And six 9 millimeter cartridge casings?

18 A And that is correct.

19 Q With regard to either metal fragments, or maybe even  
20 some bullets, but metal fragments, were you submitted a number  
21 of those to see if you could do an analysis with regard to  
22 identity of those metal fragments in this case?

23 A Yes, I was.

24 Q Was there a total of 16 that were submitted to you?

25 A If I may refer to my notes for one moment.

1 Q Please do.

2 A Yes, that's correct. There were 16.

3 Q Okay.

4 MS. SCHIFALACQUA: And having already shown, so I  
5 can use some of these, Mr. Otto what's been marked as State's  
6 proposed Exhibits 193 to 201 that have been previously  
7 provided in discovery, if I may approach the witness, Your  
8 Honor?

9 THE COURT: You may.

10 BY MS. SCHIFALACQUA:

11 Q Ms. Lester, I'm going to show you what's been marked  
12 as State's proposed Exhibits 193 to 201. If you could look at  
13 each one of those, and when you're done, go ahead and look up  
14 at me.

15 A Yes.

16 Q And do you recognize all of those?

17 A Yes. Those are all photo collage sheets that I  
18 actually -- or copies of the photo collage sheets that I  
19 actually put together during my analysis in this case.

20 Q Okay. And then, those include all of the items that  
21 we referred to that you analyzed, including the firearms  
22 themselves, the metal fragments, as well as the cartridge  
23 casings, and photographs of the analysis that you did on a few  
24 of these submitted items?

25 A Yes, that is correct.

1 Q Do they fairly and accurately depict those that you  
2 did in real life when doing the analysis under this event  
3 number?

4 A Yes, they do.

5 MS. SCHIFALACQUA: I'd move for their admission at  
6 this time, Judge.

7 MR. OTTO: No objection.

8 THE COURT: 193 to 201 are admitted.

9 (State's Exhibits 193 through 201 are admitted)

10 MS. SCHIFALACQUA: Thank you, Your Honor.  
11 Permission to publish?

12 THE COURT: You may.

13 BY MS. SCHIFALACQUA:

14 Q Referring to -- I'll start with the Glock. Showing  
15 you what's been admitted as State's 193. Can you describe, or  
16 at least, let's see, maybe indicate on this -- the photograph  
17 of the Glock that you actually examined, can you show the  
18 members of our jury, first of all, where is the magazine on  
19 here?

20 A The photo of the magazine is down here at the  
21 bottom. There's a side view and a back view.

22 Q Okay. And the serial number on that firearm?

23 A The serial number photo is in this area right here,  
24 and I have an arrow pointing to it. That serial number photo  
25 was on the bottom front of the frame where that red arrow

1 points.

2 Q And there is a picture of a headstamp. Can you  
3 indicate where that is?

4 A There are two.

5 Q I'm sorry. There we go. If you can --

6 (Pause in the proceedings)

7 BY MS. SCHIFALACQUA:

8 Q If you can show the members of the jury what we're  
9 talking about when we're talking about headstamps?

10 A Um-hum. There's one right here in this area, and  
11 there's another one here in this area. This shows the  
12 manufacturer's markings, as well as the caliber.

13 Q And this particular firearm was submitted with that  
14 magazine, is that correct?

15 A Yes, they were in the same package.

16 Q Were there any cartridges submitted with that  
17 magazine?

18 A If I may just look at my notes for one moment.

19 Q Please do.

20 A With the Glock magazine, there was also one  
21 headstamp R-P 40 Smith and Wesson caliber cartridge submitted.

22 Q And was there anything else on this Glock when you  
23 examined it?

24 A I think you're referring to the laser -- laser sight  
25 in this area.

1 Q Okay. Describe for the members of our jury, what's  
2 a laser sight?

3 A It's a sight. It's something that someone can put  
4 on their gun. This is on the bottom rail, this part down  
5 here, this rail part of the gun. It's a sight. Has a button  
6 on it, and I'll point to it right here. This particular one,  
7 there was a button on both sides, so it's ambidextrous. If  
8 the shooter was right or left-handed, that laser could be  
9 actuated with either hand, either finger, and there's a button  
10 on both sides.

11 So, this one that I pointed to, this is the right  
12 side of the gun. If you look up here to the left side, you'll  
13 see there's a button here as well.

14 So, this particular laser, I wasn't requested to do  
15 an in-depth function test as far as was the laser accurate, or  
16 anything like that. So, all we usually do in this case is  
17 just check to see that the laser is functional. I did test in  
18 this case that the laser was functional. It did emit a green  
19 dot when you pushed the button.

20 Q Okay. So, you didn't do an analysis of whether or  
21 not, for example, it was sighted properly?

22 A That's correct, I did not.

23 Q But it was in working condition?

24 A Yes, it was.

25 Q Okay. With regard to the cartridge casings

1 submitted for analysis, the seven .40 caliber cartridge  
2 casings, I'm going to show you what's been admitted as State's  
3 195. Are we looking at what you physically had before you  
4 when you did the analysis of these cartridge casings?

5 A Yes. Those are my photos that I took of the  
6 evidence that I physically had before me when I did the  
7 analysis.

8 Q And with regard to the item numbers on here, we see  
9 item 8, 9, 10, and so on. Are those -- and I should show you.  
10 For example, they're not all in order. Are those item numbers  
11 that were designated by crime scene analysts on the scene?

12 A Those are actually laboratory designated item  
13 numbers.

14 Q And do those correspond then with the items that  
15 were submitted to you physically?

16 A They correspond with them. They may not necessarily  
17 have the same numbers because all of the evidence is  
18 renumbered when we get it into the laboratory. For example, a  
19 crime scene analyst may impound something that is not firearms  
20 related, and that might be number 4, and I wouldn't look at  
21 that. So, my numbers would just be 1, 2, 3, 5, that kind of a  
22 thing.

23 Q I understand. With regard to the pristine examples  
24 that -- and let's go back and talk about what it is you do in  
25 order to be able to make -- well, let me withdraw that. What

1 type of conclusions can you draw, if any, when you're  
2 submitted, for example, a firearm and cartridge casings? What  
3 are we asking you to do?

4 A I use a theory of identification that's put forth by  
5 the Association of Firearm and Toolmark Examiners. It's an  
6 international agency, of which I am a member of. And all  
7 firearm and toolmark examiners that work in accredited  
8 laboratories are only allowed to come up with the same  
9 conclusions.

10 There's three conclusions. I can either say that  
11 there is an identification, that is, I have identified this  
12 particular item to this particular firearm. I can say there  
13 is an elimination, which is where I can say it did not come  
14 from this firearm. Or there's an inconclusive. I can say, it  
15 may or may not have come from this firearm, I particularly am  
16 not able to tell at this time.

17 I can also discern that something is not suitable to  
18 be examined, it doesn't have any microscopic marks, the type  
19 that I'm looking for for my exam. But I only have a choice of  
20 three conclusions. It's either an ID, it's an elimination, or  
21 it's an inconclusive.

22 Q Now, going back to the .40 caliber pristine examples  
23 that you have, describe for the members of the jury, what's  
24 your first process or the first steps you take after you do  
25 that -- those test fires?

1           A     When I test fire, the first thing that I always do  
2 and that we all -- all of us do before we actually take that  
3 test fire and compare it to the evidence is I take the two  
4 test fires and I look at them in comparison to each other. I  
5 want to make sure that there is sufficient microscopic  
6 information on there for me to be able to determine an  
7 identification or an elimination.

8                     Some guns, they don't mark very well. Some types of  
9 ammo doesn't mark very well. I might put it under my  
10 microscope and not be able to see a lot of microscopic  
11 information.

12                    So, I use that comparison microscope like I was  
13 referring to before, which is the two microscopes that allow  
14 me to see two things side by side. And I'll take, say, for  
15 example, in this particular case, two bullets or two cartridge  
16 cases that I actually test fired myself from that submitted  
17 firearm. I know they came from that gun, I fired them myself  
18 from the gun.

19                    I'll take them, put them under the two different  
20 stages of my microscopes, and compare them to each other and  
21 determine, again, if there is enough sufficient microscopic  
22 information on there for me to be able to use them to do a  
23 comparison to an unknown.

24            Q     And when you first look at the two knowns, what are  
25 you looking for? Let's start with kind of the general -- the

1 class characteristics. Describe for the members of our jury  
2 what class characteristics are.

3 A Certainly. Class characteristics are the general  
4 overall characteristics. Those are put there by the  
5 manufacturer. I'm looking -- very first, you're looking for  
6 things such as caliber. I'm looking for the general shape of  
7 the firing pin impression, is it circular, is it rectangular,  
8 is it square.

9 I'm looking for the general types of markings that  
10 are here on this area. We call this the breech face area, or  
11 here in this primer area. Those markings might be parallel,  
12 they might be circular, they might be arcs. They might be  
13 what we call granular, which look like little pockmarks. So,  
14 I'm just looking at those sort of general overall  
15 characteristics.

16 Once I know that I have agreement in all those  
17 general overall characteristics, I then can take my  
18 magnification on my microscope and go up higher, and start  
19 looking at the smaller individual microscopic marks to see if  
20 those have significant agreement.

21 Q Those individual microscopic marks, are those unique  
22 then to the firearm that actually fired the cartridge?

23 A Yes. Those marks are actually imparted on the  
24 different pieces of the firearm during the manufacturing  
25 process. If you think about machines and manufacturing, you

1 have different kinds of tools. Tools might cut, they might  
2 sand. Those tools -- every time they actually make a mark,  
3 those tools are being changed on a very small microscopic  
4 level, because every time you have a harder object and a  
5 softer object and you make a mark, the harder object's going  
6 to leave its impression on that softer object. So, you have a  
7 tool. It's making parts, parts of a gun, and every time it  
8 makes a part, it changes a little bit microscopically.

9           Also, if that tool is cutting or sanding, in any way  
10 removing metal pieces of material, it's creating what we call  
11 chips, just little pieces, shards, like sawdust of metal when  
12 it cuts. Those are different every single time. When you're  
13 moving a tool along a piece of metal and those chips are  
14 forming, those chips are getting underneath the edge of the  
15 blade, they're moving around, and those contribute to that as  
16 well.

17           Those individual microscopic marks that are made  
18 during the manufacturing process of the parts of the firearm,  
19 those marks are the marks that get imparted to the cartridge  
20 cases and the bullets when they're fired in the gun, and those  
21 are the marks that we look for to identify these components  
22 back to the firearm.

23           Q     Now, with regard to the Glock and the Glock barrel,  
24 was there something significant to you, having dealt with  
25 firearms, that allowed you to be able to even come to any type

1 of analysis in this particular case?

2 A Well, the first thing is, this gun, the Glock, it  
3 did not have a Glock manufactured barrel on it. It had an  
4 aftermarket barrel. The barrel was manufactured by a company  
5 called -- I want to make sure I get it right. Storm Lake.

6 Q And why is that significant that this had an  
7 aftermarket barrel on it?

8 A Well, the first thing is, when you're looking at  
9 identifying a bullet to a barrel, you're looking at the  
10 riffling impressions. And as you may or may not know, when a  
11 bullet's going down that barrel, you want that bullet to spin.  
12 Inside that barrel, we have spiral grooves, kind of like a  
13 candy cane, called riffling, that's inside that barrel and  
14 that's imparting a spin on that bullet.

15 It's kind of like when you throw a football, if you  
16 don't spin it, it wobbles all over the place, but if you put  
17 spin on it, it provides stability as it's flying through the  
18 air. So, that rifling, as it's put inside the barrel by  
19 manufacturers with that tool, that creates class  
20 characteristics on the bullet as it's traveling down the  
21 barrel.

22 So, this particular barrel that was on this Glock,  
23 it did exhibit six lands and grooves, and it exhibited a  
24 left-handed twist, the spiral was going counterclockwise to  
25 the left as opposed to the right. And the riffling was what

1 we call conventional, which means it was cut. The riffling  
2 was actually cut with a tool which is called a broach, which  
3 is -- it's kind of a long rod, it has teeth on the edge of it.  
4 It gets pulled or pushed through a barrel blank, and it cuts  
5 those grooves inside that barrel to make that riffling.

6           So, this particular barrel, the Storm Lake barrel,  
7 was manufactured in that method. And Glock barrels are not  
8 particularly manufactured in that method, which sometimes  
9 makes it so that Glock bullets, which come from Glock barrels,  
10 are difficult to identify.

11           But this one, due to the fact that it did have this  
12 cut riffling inside the barrel, when I put the two tests  
13 together on my microscope, it did exhibit a large amount of  
14 microscopic information that I determined was sufficient  
15 enough for me to be able to take those tests and compare them  
16 to the evidence to see if I could determine if they came from  
17 that gun.

18           Q     So, with this Glock having an aftermarket barrel,  
19 and you being able to have specific microscopic detail that  
20 could relate back to the firearm, allowed you to do an  
21 analysis that maybe normally under a Glock barrel, you may or  
22 may not -- you may or not would have been able to complete,  
23 or?

24           A     I would always attempt to complete the analysis, of  
25 course. I would put the two bullets side by side on my

1 comparison microscope. But more often than not, with a Glock  
2 barrel, I would come up with a conclusion of inconclusive.

3 Q Let me ask you then to go back to, after you have  
4 your two knowns that are fired from our .40 caliber Glock,  
5 which we know is now using an aftermarket barrel that has  
6 microscopic detail, what do you do next, Ms. Lester?

7 A Just like I said, I'm going to take those -- are we  
8 starting with bullets? I'll take the bullets from that water  
9 tank, put those two knowns together on my microscope, again,  
10 looking for all the class characteristics.

11 I'm looking for six lands and grooves. I'm looking  
12 for a left-handed twist. I'm looking for the width of those  
13 impressions to see if it matches up. And again, I'm looking  
14 for a significant amount of that microscopic detail for me to  
15 be able to say, yeah, there's enough there for me to be able  
16 to compare an unknown to this one that I test fired myself.

17 Q Can we start -- and let me go back. I know we were  
18 talking about bullets. If we -- did you do the same getting  
19 the same pristine samples with cartridge casings?

20 A Yes, I did.

21 Q Can we start with those, and then --

22 A Sure.

23 Q -- go to bullets? With regard to cartridge casings,  
24 after -- were you able to determine that your known pristine  
25 cartridge casings had enough microscopic detail in order to

1 make an identification, or at least make a comparison to the  
2 unknowns?

3 A Yes. I did determine that my test fires did have  
4 significant microscopic detail for me to be able to perform  
5 the comparison.

6 Q What do you do physically, can you describe for the  
7 members of our jury, after you know you have enough  
8 microscopic detail to do the analysis?

9 A I have my microscope. And at first, I have my two  
10 knowns on the microscope, one cartridge case over here on the  
11 left, and one on the right. And then, what I do is you take  
12 off the one that's over here on the right, and I take an  
13 unknown and I put it on my microscope.

14 So, I go ahead and do the exact same comparison that  
15 I did with the test to test, but this time, I'm going with  
16 test to evidence. So, I do my microscopic comparison, look at  
17 the marks, make my determination, and then I remove that one  
18 and go to the next piece of evidence. So, I'm comparing that  
19 known to each individual unknown piece of evidence one at a  
20 time.

21 Q And in this particular case, showing you again  
22 State's 195, these are the -- the photograph of the cartridge  
23 casings, the unknowns that were submitted to you to do an  
24 analysis with regard to the known -- the pristine known, is  
25 that right?

1           A     Yes, that's correct.

2           Q     Okay. And did you do the analysis for each of these  
3 cartridge casings that are depicted here in State's 195?

4           A     Yes. I compared each one of those to one of the  
5 test fires that I test fired from the submitted Glock pistol.

6           Q     Okay. And I'm going to ask you to talk about, what  
7 are some of the things you look for? For example, you talked  
8 about the primer area, and other specific areas. Can you  
9 describe that for the members of our jury, what those areas  
10 are and what you're looking for?

11          A     Certainly. On cartridge cases, there's a variety of  
12 different areas that we can look at for marks. I talked about  
13 this primer area before, and I talked about how the cartridge  
14 case, when the cartridge was fired, it's pushed back against  
15 the back part of the slide. We call that the breech face  
16 area.

17                   There's marks here on that area that are imparted  
18 from the back of that slide from when it hits back there, so  
19 there's marks that we look at there. Also, inside the firing  
20 pin impression where that firing pin actually hits, depending  
21 on the wear on the end of that firing pin, there might be  
22 microscopic marks in there.

23                   I talked about that extractor. The hook which  
24 actually can pull the cartridge case -- the fired cartridge  
25 case out of the chamber, that hook -- that extractor

1 underneath the rim can make marks in that area as well. When  
2 the slide cycles back, the cartridge case is pulled put, and  
3 it hits against that item that we call the ejector to kick it  
4 out of the gun. That ejector can also make a mark here on  
5 this breech face area of the gun.

6           Around this side here of the cartridge case, you can  
7 get marks. These can be marks either from feeding, from when  
8 the unfired cartridge is fed into the chamber or extracted out  
9 of the chamber, scrapes, if you will, along the side when it's  
10 pushed or pulled.

11           Or there can be chamber marks which result from the  
12 expansion for when that firing pin hits and you get that  
13 spark, and your powder is burning and the gas is expanding,  
14 the sides, the actual walls of this cartridge case, expand  
15 against the inside walls of the chamber and you can get marks  
16 on it from there as well.

17           When the cartridge case is extracted and it's kicked  
18 out of the gun, when it goes out of that ejection port, that  
19 little cutout in the slide where it goes out, it can hit  
20 against the side of there and make a ding, and it can get an  
21 ejection port mark as well.

22           And finally, when you have that barrel and the slide  
23 together, when you -- when the firing pin hits and that firing  
24 process starts, that slide and that barrel are locked together  
25 for a quick second, just until that bullet has a chance to be

1 expelled from the muzzle, because you don't -- you don't want  
2 a gap right here because that would release your gas. You  
3 want all that gas to be behind the muzzle, propelling that  
4 bullet out.

5           So, that bullet and the slide are locked together  
6 for a quick moment. And after the bullet exits and the slide  
7 starts to travel backwards, the barrel actually moves. It  
8 tips just a tiny bit when the slide moves back, and you can  
9 get a scraping or a shear right on the primer area as well  
10 from that motion.

11           So, all those marks are different types of marks  
12 that I can look for on a cartridge case to see if I can ID it  
13 back to a firearm.

14           Q     And when we're talking about this, this is on a  
15 microscopic level, is that fair to say?

16           A     Yes, that's correct.

17           Q     So, we look at these, for example, you know, what's  
18 depicted as our cartridge casings here, and it's not something  
19 that I'm going to be able to look down and see, is that fair?

20           A     Not from this view here, no.

21           Q     Showing you what's been admitted as State's 194 --  
22 well, let me go back. Did you have occasion to take examples  
23 of these microscopic details and photograph them?

24           A     Yes, I did.

25           Q     Okay. Showing you what's been admitted as State's

1 194. And let's start --

2 MS. SCHIFALACQUA: Court's indulgence. Okay.

3 BY MS. SCHIFALACQUA:

4 Q Starting at the top, the primer area, can you  
5 describe for the members of our jury what we're looking at  
6 here?

7 A Um-hum. As you can see, this is a photo collage  
8 that I made. I actually took the photos from my microscope.  
9 And you'll see it says, All photos: test fire 6C from the  
10 Glock pistol on the left, and item 9 on the right.

11 So, in the photo, there's actually a line right down  
12 the middle. That's the dividing line in my microscope. On  
13 the lefthand side, you have the test fire letter C from item  
14 6, which was the Glock pistol on the lefthand side, and on the  
15 right hand side is the evidence submitted cartridge case item  
16 9.

17 What you're looking at is the overall primer area.  
18 This area that I've been describing here contains that firing  
19 pin impression, some shear, and some parallel marks. And  
20 again, you have your test fire on the left and the evidence on  
21 the right.

22 Q With regard to a firing pin, describe the type of  
23 marking that a firing pin makes for the members of our jury.

24 A A firing pin makes a mark that -- we call it an  
25 impressed mark. We look at different types of marks here in

1 our business. The impressed mark, it's just like a hammer  
2 hitting a nail. It's a one-dimensional mark. The firing pin,  
3 it's just a pin that goes forward and hits that primer,  
4 spring-loaded. Just pops that primer. So, it's just an  
5 impression. So, what you see here, you see this negative  
6 impression of what the tip of that firing pin actually looks  
7 like.

8 Q Now --

9 MS. SCHIFALACQUA: Ms. Pieper, if you could clear  
10 that. Okay.

11 BY MS. SCHIFALACQUA:

12 Q Let's then look at some of the other microscopic  
13 detail that you were looking at. What are we looking at here,  
14 Ms. Lester?

15 A This is a shear. And again, all the photos on this  
16 page are test fire 6, letter C from the Glock on the left, and  
17 item 9 on the right. Again, you'll see there is a dividing  
18 line right down the middle. Test fire on the left, evidence  
19 is on the right.

20 That shear, that comes from around the area where  
21 the firing pin protrudes through the slide. There's a little  
22 hole in the slide. The firing pin's contained in the slide.  
23 When you pull the trigger, that firing pin protrudes forward  
24 through that hole to hit that primer area of the cartridge.

25 That hole, it's called an aperture, firing pin

1 aperture. It's just a hole where the firing pin goes through.  
2 And on the edge of that -- around the edge of that hole,  
3 sometimes there can be some little rough spots from where it  
4 was cut.

5           And that shear that you're looking at there in the  
6 photo, that is the -- from the action that I described from  
7 where you have the barrel and the slide locked together during  
8 that shooting mechanism, and when the bullet comes out of the  
9 muzzle end of the barrel, before the slide moves backwards, it  
10 kind of moves back and tips down just a little bit, and it  
11 makes just a little shear, a little scrape right along the  
12 edge of that aperture. So, that's what you're seeing here on  
13 this photo.

14           Q     And when you're referring to your pristine test  
15 fires and comparing it to, microscopically, at least, item  
16 number 9, we see item number 9, all of these were items of  
17 evidence that were collected at 2655 Sherwood and submitted to  
18 you for analysis?

19           A     I can't testify as to where they were collected  
20 from. I just know they were submitted to me for analysis.  
21 But, again, like I described, I put each one on, one at a time  
22 and look at it against my test fire, and that these are the  
23 photos of the ones that I did actually look at.

24           Q     Okay. So, this -- what we're looking at is an  
25 example of one that you did. We're not going to put up -- you

1 know, there were 13 cartridge cases submitted to you for  
2 analysis. You did analysis on each one, is that fair to say?

3 A That's correct, and photos of all of them are in my  
4 case file.

5 Q Okay. Now, with regard to -- what are we looking at  
6 here that says "Ext"? What does that mean?

7 A This one over here, "Ext"?

8 Q Um-hum.

9 A This is an extractor mark. So, this is the mark,  
10 like I talked about from that hook, which is the extractor,  
11 which grabs the cartridge or cartridge case right underneath  
12 the rim side, and then pulls it backwards out of the chamber  
13 out of the barrel after the firing process.

14 So, that mark is actually located on the underside  
15 of the rim. And again, on the lefthand side, you have test  
16 fire 6C from the Glock. You'll see there is a line right down  
17 the middle, and then on the right hand side is item 9.

18 Q And so, if I do this, what we're seeing is the  
19 pristine test fire?

20 A Correct.

21 Q And that is then placed next to or shown of the  
22 actual cartridge case, and that was collected?

23 A That's correct.

24 Q And these are all of the microscopic detail that  
25 we're looking at for you to be able to make an identification,

1 or an exclusion, or be inconclusive, is that right?

2 A Yes, that's right.

3 Q And then I'm going to show you, what does "CM's"  
4 mean?

5 A Those are chamber marks. Those are marks like I  
6 talked about which you can get around this outside area of the  
7 cartridge case either during that feeding process into the  
8 chamber, out of the chamber, or during the firing process when  
9 the sides of the cartridge case expand against the inside of  
10 the chamber.

11 So, these are actually two different areas. Again,  
12 it's just like all the others. There's a centerline here and  
13 a centerline here, just like all the others. Test fire is on  
14 the lefthand side, and then the evidence is on the right hand  
15 side, and these are two different areas on the cartridge case.

16 Q So, again, for purposes of our jury, this is the  
17 test fire?

18 A That's correct.

19 Q And that is the actual cartridge casing that was  
20 submitted to you?

21 A Item 9, yes.

22 Q Correct. And again, this -- so our jurors can see,  
23 that's the test fire, and thereafter is the cartridge casing?

24 A That's correct.

25 Q And one more area. What is "EPM"?

1           A     This is what we've referred to as the ejection port  
2 mark. So, like I described earlier, when that cartridge case  
3 is being extracted, hits that ejector, flies out of the  
4 ejection port. Along that cutout on the slide, you have that  
5 ejection port, and it can hit against the side there and make  
6 a mark.

7                     This mark right here, it's very indicative of a  
8 Glock. Glocks for some reason tend to have these marks. They  
9 tend to hit on that ejection port when they're being extracted  
10 and ejected. But just like all the others, you see there's a  
11 centerline. On the lefthand side is the test fire from the  
12 Glock, and on the right hand side, you're looking at the  
13 magnified photo of the ejection port mark from item 9.

14           Q     With regard to then the seven cartridge casings,  
15 showing you 195, that were submitted to you for analysis and  
16 to be compared to the firearm that was also submitted in this  
17 case, were you able to draw any conclusions with regard to  
18 this State's 193, the Glock, and the evidence that was  
19 collected from our scene?

20           A     I was able to identify those seven cartridge cases  
21 as having been fired by the submitted Glock pistol.

22           Q     So, these cartridge casings were fired by this  
23 Glock?

24           A     Yes.

25           Q     Okay. Now, were you also asked to do an analysis

1 with regard to metal fragments that were collected, and there  
2 were a number of metal fragments and/or bullets that were  
3 collected?

4 A Yes, I was.

5 Q And we -- I know you indicated earlier that there  
6 were a total of -- 16 total either fragments and/or bullets  
7 that were submitted to you, is that right?

8 A Yes, that's correct.

9 Q And showing you what's been admitted as State's 196,  
10 Ms. Lester, what are we looking at here?

11 A These are bullets, or metal fragments, or bullet  
12 jacket fragments which were submitted to me for analysis under  
13 this case.

14 Q Describe the process that you took with regard to  
15 doing the analysis of the metal fragments or bullets that were  
16 submitted?

17 A It's the exact same thing like I did with the  
18 cartridge cases. I test fired the gun. I took the pristine  
19 samples, put them under my comparison microscope, did the  
20 comparison of the test to test to determine if there was  
21 sufficient agreement in the microscopic markings for me to be  
22 able to use those to make a comparison to the ones that were  
23 submitted by evidence. For these, I determined that there  
24 was, and I compared the test fired bullets, which I fired from  
25 the Glock, to the evidence ones that were submitted to me.

1 Q And specifically, describe for -- because we're  
2 about to see State's 197. What's the term "LIMP" or "GIMP"  
3 mean?

4 A I talked about the riffling impressions, and how the  
5 riffling is actually cut inside the barrel. And when the  
6 riffling is cut, you end up with a groove. It's -- inside the  
7 barrel, it's actually a groove that's cut to make that spiral,  
8 so that's called a groove. When the bullet travels down the  
9 barrel, you're getting a negative impression of that on your  
10 bullet.

11 So, the thing that's actually like cut down, it's a  
12 groove on the barrel that actually comes up on the bullet.  
13 And vice versa, the area that's in between those grooves, we  
14 call those lands. So, that area that kind of comes up inside  
15 the barrel, it transfers to a divotted area on the bullet.  
16 So, per our abbreviations, LIMP, that's a land impression, and  
17 GIMP, that's a groove impression.

18 Q So, showing you then and the members of our jury --  
19 let me go back up one. What are we looking at here, again,  
20 under these -- oops, excuse me. We have a blank page to make  
21 it helpful. Which portion are we showing the members of our  
22 jury now?

23 A And these are all photos that I took from my  
24 microscope -- copies of the photos that I took. And on the  
25 lefthand side is the test fire. It was number 6, letter A

1 from the Glock pistol, and compared it to on the right hand  
2 side item number 29. So, the -- right where you had the line,  
3 that's the line on the comparison microscope. I'm actually  
4 looking at two things side by side, test fire on the lefthand  
5 side and the submitted evidence item on the right hand side.

6 Q And again, showing the members of our jury the  
7 groove impressions. Is that again what we're looking at, Ms.  
8 Lester? The lefthand side --

9 A Yes.

10 Q -- is your pristine test fired recovered bullet?

11 A Yes.

12 Q And then, on the right hand side would be the item  
13 of evidence that was submitted for either identification or  
14 exclusion?

15 A Item 29 that was submitted for comparison to that  
16 pistol, yes.

17 Q With regard to -- and so we know which ones we're  
18 talking about -- what's been admitted as State's 196, with  
19 regard to metal fragment items number 21, 22, 23, item 27, 29,  
20 30, 31, and 33, were you able to draw any conclusions about  
21 these submitted fragments?

22 A I was able to draw conclusions about those  
23 fragments, yes.

24 Q And what was -- what were those conclusions?

25 A Seven of those items, item 21, 23, 27, 29, 30, 31,

1 and 33 -- just making sure -- were identified as having been  
2 fired from the submitted Glock pistol. Item 22, I determined  
3 that it was inconclusive, and I could not make a determination  
4 either way whether it was fired from or not fired from the  
5 submitted Glock pistol.

6 Q Okay. So, with regard to item 22 that's depicted  
7 here, you could not make an identification, or it did not have  
8 enough detail?

9 A That's correct.

10 Q So, it was inconclusive or not suitable to make the  
11 identification, is that fair?

12 A It was inconclusive due to damage and lack of  
13 microscopic information.

14 Q With regard to 21, 23, 27, 29, 30, 31, and 33, those  
15 items of evidence were all fired from the Glock that was  
16 submitted to you?

17 A Yes, that's correct.

18 Q Okay. Did you then move on to the 9 millimeter  
19 firearm that was submitted for analysis?

20 A Are we starting with the firearm?

21 Q Yes, the 9 -- I'm sorry, the 9 millimeter. Did you  
22 also do -- let me back up. Did you also do, first of all,  
23 that dry run of the firearm and make sure that it's safe and  
24 that it worked?

25 A Yes, I did a firearms function exam. Everything the

1 exact same thing I did with the Glock, where I measured it,  
2 measured its length, measured the barrel length, looked at the  
3 serial number, measured the trigger pull, looked at the  
4 safeties, made sure that it was safe in order -- dry fired it,  
5 all of those things before I actually went ahead and test  
6 fired it.

7 Q And showing you what's been admitted as State's 199,  
8 again, is that the Smith and Wesson 9 millimeter firearm that  
9 you ended up doing the analysis on?

10 A Yes. That's a photo of it, yes.

11 Q Okay. Yeah, fair to say it's not the actual gun.  
12 Sorry. That also had a magazine. Can you circle where that  
13 is in the photograph, Ms. Lester?

14 A Certainly. The magazine is here in this area.

15 Q Okay. With regard to that magazine, did that also  
16 have -- or were you submitted any cartridge -- 9 millimeter  
17 cartridges with this?

18 A That magazine was submitted with eight R-P 9  
19 millimeter Luger cartridges.

20 Q Okay. And what -- how -- what's the capacity of  
21 this magazine? For the 9 millimeter.

22 A That has a capacity of 15 cartridges.

23 Q Okay. And that is -- if you could read the serial  
24 number into the record.

25 A It's TBB2817.

1 Q And you have that blown up there, but it's actually  
2 depicted on the firearm, is that right?

3 A Yeah. This is from the left side of the frame. You  
4 see I have a red arrow right there. It's actually showing it  
5 from this part of the frame right here.

6 Q And what was the trigger pull of the Smith and  
7 Wesson 9 millimeter?

8 A If I can just look at my notes for one moment.

9 Q Please do.

10 A The Smith and Wesson was a type of gun that could be  
11 fired in two different actions, single-action or  
12 double-action. The trigger pull in single-action was measured  
13 to be five-and-a-half to five-and-three-quarter pounds, and  
14 double-action was measured to be 11-and-one-quarter to  
15 11-and-three-quarter pounds.

16 Q And was this also then operational and safe for you  
17 to do a further analysis?

18 A Yes, it was.

19 Q Did you perform -- you walked through with us that  
20 at first, you shot into the water tank, as it were. Did you  
21 do the same types of things with this that you did with the  
22 Glock pistol?

23 A I did. I took some ammunition from our firearms  
24 general supply, and I engraved it, the cartridge cases and the  
25 bullets, with item 4, letters A through F. The first three,

1 which I fired into our water tank, just like I described like  
2 I did with the Glock. The second -- the second two --  
3 actually, when I test fired it the first time, I had -- the  
4 fourth one didn't completely feed into the chamber, it  
5 actually fell out into the water tank.

6 So, I just did the first three into the tank. The  
7 fourth one didn't fire. The fifth one and the sixth one I  
8 shot downrange towards a target, just like I described with  
9 the Glock. And I did that on January 21st, and I shot it  
10 again three more times into the water tank on January 27th  
11 using a different brand of ammunition.

12 Q With regard to the 9 millimeter, were you also  
13 submitted -- showing what's been admitted as State's 200,  
14 cartridge casings -- six cartridge casings from this  
15 particular event number to do an analysis on with regard to  
16 this firearm?

17 A Yes, I was.

18 Q And did you in fact take the known or pristine  
19 cartridge casings from -- or cartridge cases from the 9  
20 millimeter and compare them ultimately to the evidence that  
21 was submitted to you?

22 A Yes, I did.

23 Q Prior to doing that, did you walk through the same  
24 process that we've told this jury about, taking the knowns  
25 first to see if there was enough detail in order to go on with

1 the analysis?

2 A Yes, I did.

3 Q And was there enough detail in this case?

4 A For the cartridge cases, yes, there was.

5 Q Okay. And describe then what you did after you had  
6 that known pristine example, and how it is you walked through  
7 the analysis of the unknowns or the items submitted to you.

8 A Same way that I did with the cartridge cases from  
9 the Glock. I took the two test fired cartridge cases that I  
10 had fired, put them side by side on my microscope, looked at  
11 them, looked at those general overall class characteristics,  
12 the general shape of the firing pin, shape of the marks on the  
13 breech face, and making sure that they're generally there,  
14 that they're repeating, which we test, and test, and test, and  
15 that, again, I had enough microscopic information for me to go  
16 ahead and compare it to the evidence.

17 So, from my microscope, if I had two test fires, one  
18 on each side, a test fire on the left, a test fire on the  
19 right, I would go ahead and remove the test fire from the  
20 right, take the evidence cartridge case and put it on the  
21 right hand side, and do a direct comparison to the test fire.  
22 And then I repeated that with each one of the submitted 9  
23 millimeter Luger cartridge cases.

24 Q And were you able to make any conclusions or  
25 identifications with regard to the six cartridge casings that

1 were collected from 2655 Sherwood and submitted to you under  
2 event number 131105-0479?

3 A Yes, I was.

4 Q And what conclusions, if any, did you make, Ms.  
5 Lester?

6 A I concluded that those six 9 millimeter Luger  
7 cartridge cases were submitted -- or, excuse me, were  
8 identified as having been fired by the submitted Smith and  
9 Wesson pistol.

10 Q So, the six that are depicted here in State's  
11 admitted 200 were fired by what's been admitted as State's  
12 199?

13 A That's correct.

14 Q Okay. Now, again, to show the comparison to the  
15 jury, did you also make examples of the comparisons that you  
16 did, just like you did with the .40 caliber cartridge casings?

17 A Yes, I did. I made a photo collage sheet, the exact  
18 same way like I did with the Glock cartridge cases, of some  
19 representative photos of the comparisons that I did between  
20 the test fires and the submitted evidence.

21 Q And showing you what's been admitted as State's 198,  
22 if we again look at the primer, which is the pristine example,  
23 and which is the comparison or the submitted evidence?

24 A Like it says on the top, you have the 9 millimeter  
25 Luger cartridge cases. Test fires from the Smith and Wesson

1 pistol, item 4, are on the lefthand side. You see there's a  
2 centerline. This says, "Test fire 4I" in red right here.  
3 This is item 16.

4           So, on this particular collage, everything is item  
5 16, but there's a couple of photos. One has item letter  
6 designator I, and two that have letter designator G of my test  
7 fires. But on here, what you're seeing is the primer area.  
8 Test fire from item 4, letter designator I primer area on the  
9 lefthand side, and the primer area from item 16 submitted  
10 cartridge case on the right hand side.

11           Q     And showing the members of the jury, you did the  
12 primer as well as -- are we looking at the breech face  
13 depicted here? Which area am I showing?

14           A     That's the -- it's an up close, magnified shot of  
15 that primer area. Just like before, the last photo was kind  
16 of the overall. This is -- the lefthand side over here, what  
17 you see is the test fire from item 4 with letter designator I.  
18 You see there's a line right down the middle where you had  
19 your paper. And on the right hand side, you have that breech  
20 face area, magnified primer area from item 16.

21           Q     And showing the members of our jury the chamber  
22 marks, what are we looking at here then, Ms. Lester?

23           A     Just like I described with the Glock, chamber marks  
24 are the ones that are located around this particular part on  
25 the cartridge case, either during the feeding or extracting

1 process, or during the expansion process when the cartridge is  
2 fired, and they're imparted all around this area here.

3           Here, there are two different areas of chamber  
4 marks. You see each one of them has a line right down the  
5 middle. It's a photo that I took -- thank you -- with the  
6 test fire from item 4, letter designator G on the lefthand  
7 side. On both of these photos, two different areas of chamber  
8 marks, and item 16 is depicted on the right hand side.

9           Q     And again, the "Ext" that we're looking at, what  
10 mark is that?

11          A     And that's the extractor mark. Again, that's the  
12 hook that goes underneath the rim that extracts that cartridge  
13 case from the chamber. And you see a line right down the  
14 middle from the photo. And test fire 4, letter designator I  
15 is depicted on the left, and item 16, the extractor mark, is  
16 on the right hand side.

17          Q     So, again, if I cover this, this is the pristine  
18 known example that you fired, and this is the submitted  
19 evidence?

20          A     Yes, that's correct.

21          Q     Okay. And you were able to make the conclusion that  
22 all of the 9 millimeter Luger cartridge casings that were  
23 submitted to you were fired by the Smith and Wesson 9  
24 millimeter firearm that was submitted to you for testing?

25          A     Yes, ma'am, that is correct.

1           Q     Now, with regard to the bullet fragments or metal  
2 fragments that were submitted to you, in total, there were 16.  
3 We talked about ones that you were able to identify having  
4 been fired from the .40 caliber pistol that was submitted.  
5 Showing you what's been admitted as State's 201. Let me zoom  
6 back out. Are these the additional fragments that were  
7 submitted to you for analysis?

8           A     Those are the photos of the additional bullets and  
9 fragments that were submitted to me for analysis, yes.

10          Q     Thank you, Ms. Lester. We are not looking at the  
11 actual items, we are looking at photographs of the items.  
12 With regard to these, walk through or tell the members of the  
13 jury the process you use to make either -- any conclusions  
14 with regard to these metal fragments or bullets that were  
15 submitted.

16          A     Same process that I described before with the Glock.  
17 I took the known test fires from the Smith and Wesson pistol  
18 that I actually fired into the water tank, put those together  
19 on my comparison microscope to compare them to each other to  
20 determine if there was enough microscopic information and  
21 enough repeatability in that information for me to be able to  
22 compare it to the evidence.

23                   I determined when I was doing that that my test  
24 fires from the Smith and Wesson pistol, that they did not have  
25 a lot of microscopic information on them. I was able to index

1 them, which means I could match up the correct land impression  
2 and the correct groove impression, but overall, there wasn't a  
3 lot of markings. So, that's kind of a red flag to me that I  
4 might not be able to come to a conclusion on my comparison.

5           So, I looked at the test fires to each other, and  
6 then I went ahead and -- same as before, with a test fire on  
7 the left and a test fire on the right. I would take off the  
8 test fire from the right and put each piece of evidence on the  
9 right hand side to go ahead and do the comparison. And I did  
10 that with those first five items there, 28, 32, 34, 35, and  
11 36.

12           Q     With regard to those items, were you able to make  
13 any conclusions or identifications?

14           A     I was able to make a conclusion of inconclusive. I  
15 determined that I was unable to be able to identify or  
16 eliminate those particular items from that Smith and Wesson  
17 pistol.

18           Q     Now, with regard -- does that have to do -- we look  
19 at some of these and there are some damages to the item. Is  
20 that partly because of that?

21           A     Yes. Due to the damage and the lack of microscopic  
22 information, I was unable to draw a conclusion as to one way  
23 or the other.

24           Q     With regard to -- and was that for all of these  
25 items? You talked about the first five. What about item 24,

1 25 and 26, those items?

2 A For -- yes. For the first five, I did say that they  
3 were inconclusive. And for the bottom three depicted there,  
4 24, 25 and 26, I determined that those were not suitable for  
5 comparison due to lack of microscopic marks.

6 Q Now, the last three you couldn't even compare, fair  
7 to say?

8 A That's correct.

9 Q With regard to item 28, 32, 34, 35 and 36, was there  
10 any general riffling impressions that -- anything that could  
11 be drawn, or conclusion could be drawn about that?

12 A Remember how when I talked about the riffling and I  
13 talked about how those grooves are cut in the barrel, and on  
14 the Glock barrel, particularly, there were six grooves and  
15 they twisted to the left. On the Smith and Wesson on the test  
16 fires, the test fires showed five grooves, and those actually  
17 twisted to the right. So, those were in a counterclockwise  
18 motion.

19 So, I was able to determine that these five did have  
20 those same matching class characteristics as the Smith and  
21 Wesson. They did show five land and groove impressions and a  
22 right-handed twist. And also, the widths of those land and  
23 groove impressions was consistent visually with the widths of  
24 the land and groove impressions from the test fires from that  
25 Smith and Wesson pistol.

1 Q But it's fair to say you couldn't make a conclusive  
2 identification, even though, generally speaking, they had the  
3 land and groove impressions twisting to the right that were  
4 consistent at least with the 9 millimeter?

5 A Right. They had matching class characteristics, but  
6 insufficient amount of matching individual microscopic detail  
7 for me to be able to draw a conclusion of identification or  
8 elimination.

9 MS. SCHIFALACQUA: Thank you, Ms. Lester. I'd pass  
10 the witness, Judge.

11 THE COURT: Okay. Cross-examination?

12 MR. OTTO: Yes, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. OTTO:

15 Q Good afternoon, Ms. Lester.

16 A Good afternoon.

17 Q My name is David Otto. I represent Mr. Washington  
18 in this case. You have -- you've testified in this judicial  
19 district before?

20 A Yes, sir, I have.

21 Q How many times, approximately?

22 A Five times.

23 Q Five times. Were some of the fragments you tested  
24 full metal jacket, or hollow point?

25 A If I may look at my notes for one moment. Yes.

1 There were some that were full metal jacket, some that were  
2 jacketed hollow point, and some which I said were either  
3 jacketed hollow point or soft point, that I was not able to  
4 tell.

5 Q And they were fragments of the bullets or  
6 projectiles, is that correct?

7 A Some of what I received were actual complete  
8 bullets, and I did also receive some fragments.

9 Q You mentioned a -- that you then -- you testified to  
10 a theory of identification.

11 A Um-hum.

12 Q Could you explain to us what the -- what a theory of  
13 identification is?

14 A Sure. Like I said, it's the theory that we as  
15 firearms examiners countrywide, nationwide, worldwide use to  
16 determine whether or not we can identify, eliminate, or make  
17 inconclusive decision.

18 Q And it's a theory? They're not established facts,  
19 is that correct?

20 A It's based on scientific research and scientific  
21 studies that have been done, but the last part of the  
22 conclusion is an opinion of identification that is made by me  
23 as the examiner.

24 Q Your examination and comparison of these cases and  
25 the projectiles, it's not able to tell you what bullet hit, if

1 anyone, in this case, is that true?

2 A No, I did not do any exam as towards what bullet hit  
3 who or what.

4 Q You also talked about general categories of marks on  
5 all -- that all guns leave on projectiles and cases. So, is  
6 it fair to say that these marks are very -- are similar to  
7 each other, one Glock .40 would leave a similar mark to  
8 another Glock .40?

9 A That's fair to say.

10 Q Now, you talked about a firing pin making an  
11 impression. And I'm showing you -- and I'm going to blow this  
12 up if I can get it right. I'm showing you State's Exhibit  
13 194. And at the top, two primer ends of a cartridge case,  
14 correct?

15 A That's correct.

16 Q And they look a little like soda cans almost, don't  
17 they, in that picture?

18 A You could say so.

19 Q The left is your exemplar, the one you fired into  
20 the water tank?

21 A Yes, that's correct.

22 Q And the right is one that was provided to you by the  
23 CSA's or evidence technicians in this case, correct?

24 A Yes. It was submitted to me, and I retrieved it  
25 from an evidence technician.

1 Q Fair to say those primer strike marks are somewhat  
2 different?

3 A I do expect them to be somewhat different. All  
4 these marks are made during motion. It's a very dynamic  
5 process, which is why when I make my identification, I'm not  
6 looking for 100 percent agreement in all those marks. As I  
7 testified, I'm just looking for sufficient agreement for me to  
8 make an opinion of identification.

9 Q Your opinion of identification?

10 A That's correct.

11 MR. OTTO: All right. I have nothing further.

12 THE COURT: Redirect?

13 MS. SCHIFALACQUA: Thank you, Your Honor.

14 REDIRECT EXAMINATION

15 BY MS. SCHIFALACQUA:

16 Q Ms. Lester, let me ask you this so -- the  
17 edification for our jurors. What happens after you make your  
18 conclusions with regard to your work? Does it just get  
19 submitted to me, or what happens next?

20 A After I make a microscopic identification, when I  
21 say, this piece of evidence, I've ID'ed it to this particular  
22 firearm, I make that conclusion, and then that conclusion has  
23 to be verified by a second independent examiner.

24 So, I go ahead and I submit that to another examiner  
25 in our laboratory, and they put those two actual pieces of

1 evidence on their microscope and do a microscopic examination,  
2 and determine what their conclusion would be and whether or  
3 not they agree with me as an -- that it's an identification.

4           So, before I can actually report out that this is an  
5 identification, a second examiner physically looks at the same  
6 evidence that I look at.

7           In addition to that, once I've completed those  
8 identifications -- and in this case, I had three different  
9 identifications, two sets of cartridge cases, one set of  
10 bullets. Once I've completed those and those have been  
11 verified by another examiner, then the entire case file goes  
12 through a technical review.

13           That is a review that's done by another qualified  
14 firearms examiner, and they check the entire case to make sure  
15 that all of our policies and procedures have been followed  
16 correctly, and that basically, the conclusions that I've drawn  
17 are supported by the data which is in my case file.

18           Once that technical review is completed, before the  
19 case and the report can be released, the entire case file goes  
20 through one final review. It's an administrative review.  
21 Those reviews are currently done by our manager. He is the  
22 person who is technically responsible for all of the work that  
23 comes out of our unit. He does one final administrative  
24 review. That is basically to check for misspellings,  
25 numberings, that you didn't transpose something. But he is a

1 technically qualified person, as well, and he's reviewing the  
2 case as a third time.

3           So, once he finally okays it, that is when the case  
4 can finally get released, and the report can finally be  
5 released to the requester.

6           Q     Is the lab that you work for, Metro's lab, an  
7 accredited lab?

8           A     Yes, it is.

9           Q     And does it have to have certain qualifications in  
10 order for you to continue make analyses under that  
11 accreditation?

12          A     Yes. Like we talked about earlier, I do have to  
13 continually take a proficiency exam on an annual basis in the  
14 field of firearms and in the field of toolmarks in order for  
15 me to be allowed to continue to go ahead and perform  
16 independent casework analysis.

17          Q     With regard to Mr. Otto asking a question about,  
18 generally, does a Glock have similar characteristics of an  
19 item being fired from it -- or a cartridge being fired from it  
20 as another Glock would, and you said, yes, generally speaking,  
21 that's correct, is that right?

22          A     Yeah, similar. We talked about class  
23 characteristics and individual class characteristics. The  
24 firing pin aperture that the firing pin goes through on a  
25 Glock slide, Glock, the manufacturer, makes that in a

1 rectangular shape. So, I expect to see that on another Glock  
2 .40.

3           The firing pin on a Glock is also kind of elongated.  
4 It's an oval shape and cross-section, so I expect to see that  
5 on another Glock. I don't expect to see a round firing pin  
6 impression or a round firing pin aperture. I expect to see  
7 those same general shapes. Again, those are class  
8 characteristics. Those are put there by the manufacturer, so  
9 I do expect to see them from one, to the other, to the other.

10           But I don't make an identification based on those  
11 characteristics. Those are just kind of the class  
12 characteristics. It's kind of like when you're looking for  
13 your car in a parking lot, you think, okay, I'm looking for  
14 all red cars. You know, there's 100 cars here and there's  
15 only 30 red cars, I know my car is in this group.

16           Those are things that can restrict it and allow you  
17 to narrow it down, but you don't make the identification until  
18 you look at those microscopic marks that are put there by that  
19 manufacturing process accidentally like I talked about. When  
20 those tools are making those marks, those are the marks that I  
21 actually use to make the identification.

22           Q     So, when Mr. Otto showed you State's 194 and he just  
23 looked at the primer -- the overall primer area, that's one  
24 area that you use as part of an identification, is that fair  
25 to say?

1           A     Yeah, it's just a class characteristic look. You  
2 can see it sort of has this rectangular shape here. So, in  
3 general, those shapes are the same, but I'm not using that  
4 overall shape. Again, I'm using those microscopic marks to  
5 make that identification.

6           Q     So, for example, if we look at the actual chamber  
7 marks here as depicted, are those some of the things that you  
8 look at, as well as all the others that are depicted on this  
9 exhibit?

10          A     Yes. And again, I'm not making marks just off that  
11 one area -- or making an identification just off that one  
12 area. I have several different areas on that cartridge case  
13 where there is agreement in the microscopic marks on those  
14 cartridge cases.

15          Q     And when you talk about -- just for purposes of our  
16 jury, showing 194, as well as 198, 194 shows the overall class  
17 primer area of the Glock that's depicted here, and I want to  
18 show -- let me zoom-out -- for example, below it, 198, which  
19 is the 9 millimeter. Are you -- when you were talking about  
20 some that had, for example, circular versus square or  
21 rectangular, is that depicted in these?

22          A     Yes. You can see on the top, those are primers --  
23 primer areas from the Glock firing pin impressions. And you  
24 can see how the overall shape is more rectangular, and down  
25 lower, on the ones from the Smith and Wesson 9 millimeter,

1 those have a round impression.

2           So, those are the things that are just class  
3 characteristics, and that's why I say that, you know, in  
4 general, firearms of the same manufacturer make/model might  
5 have similar overall appearance.

6           Q     Showing you, Ms. Lester, what's been previously  
7 admitted as State's 84, do you recognize your signature on the  
8 bottom there?

9           A     Yes, I do.

10          Q     And did you put the evidence tape on this?

11          A     Yes, I did.

12          Q     And what -- let me zoom-in. What item of evidence  
13 are we looking at in State's 84, at least the outside  
14 packaging?

15          A     That's impound item 16, which is said there to  
16 contain one bullet.

17          Q     Okay. And did it come from the autopsy in this  
18 case?

19          A     According to the package, it did come from the  
20 autopsy.

21          Q     Okay. So, item 16, you indicated that you had  
22 renumbered what had been submitted to you as item 16. Do you  
23 know what item number item 16 is when you renumbered it for  
24 your analysis?

25          A     Yes. It was impound item 16, laboratory item 23.

1 MS. SCHIFALACQUA: Court's indulgence.

2 THE COURT: Um-hum.

3 BY MS. SCHIFALACQUA:

4 Q Lab -- so item 16 was laboratory item number 23, is  
5 that right?

6 A Yes, that's correct.

7 THE COURT: And what --

8 MS. SCHIFALACQUA: Were you --

9 THE COURT: What exhibit number are we on now?

10 MS. SCHIFALACQUA: And I'm sorry, Judge. Thank you.  
11 Exhibit number 196, depicting item 23.

12 BY MS. SCHIFALACQUA:

13 Q Is that depicting item 23, along with other items?

14 A Yes, ma'am.

15 Q And that is what was in State's 84?

16 A Yes, that's correct.

17 Q What if any conclusion were you able to draw with  
18 regard to item 23?

19 A Lab item 23, the bullet, I identified it as having  
20 been fired by the submitted Glock pistol.

21 Q Okay. So, you don't know what bullet shot whom, but  
22 the evidence, if there is correlation, can be shown?

23 A Yes.

24 MS. SCHIFALACQUA: Nothing further, Judge.

25 THE COURT: Recross?

1 MR. OTTO: Ms. Lester, you -- excuse me.

2 MS. SCHIFALACQUA: Sorry, sorry.

3 RE-CROSS-EXAMINATION

4 BY MR. OTTO:

5 Q You mentioned that you fired both these pistols into  
6 a water barrel, and also downrange, correct?

7 A Yes, that's correct.

8 Q When you fired them, were you wearing gloves?

9 A No, I was not.

10 Q Barehanded?

11 A Yes.

12 Q Did you get gunshot residue on your hands?

13 A I may or may not have. I didn't specifically look  
14 for that.

15 Q It's common to get gunshot residue on your hand  
16 after firing a handgun, correct?

17 A In general, yes.

18 MR. OTTO: Thank you.

19 THE WITNESS: You're welcome.

20 MR. OTTO: Nothing further, Your Honor.

21 THE COURT: Thank you. You may step down. May this  
22 witness be excused?

23 MS. SCHIFALACQUA: Yes, Your Honor.

24 MR. OTTO: Yes, Your Honor.

25 THE COURT: And from the defense? Thank you, ma'am.

1 You're excused.

2 THE WITNESS: Thank you.

3 THE COURT: Does the State have another witness?

4 MS. PIEPER: Judge, we just want to make sure that  
5 all of the evidence has been admitted, except for State's 89.

6 THE COURT: Correct?

7 THE CLERK: Yes.

8 THE COURT: Apparently, everything but 89 has been  
9 admitted.

10 MS. PIEPER: And with that, the State will rest.

11 THE COURT: All right. The State rests its case in  
12 chief.

13 Ladies and gentlemen, we'll take a recess. While  
14 you're on this recess, I'll ask you to repeat to one another  
15 from memory the following -- I'm kidding.

16 But I will ask you to observe this admonishment.  
17 Please do not talk or converse among yourselves, or with  
18 anyone else on any subject or any person connected with this  
19 trial. Don't read, watch, or listen to any news report or  
20 commentary on the trial. Please do not form or express any  
21 opinion on any subject connected with this trial until the  
22 case is finally submitted to you.

23 We'll take a ten-minute recess.

24 THE MARSHAL: All rise for the jury.

25 THE COURT RECORDER: Off the record, Your Honor?

1 THE COURT: Off the record.

2 (Court recessed at 2:59 P.M. until 3:27 P.M.)

3 (Outside the presence of the jury)

4 THE COURT: Okay. Ladies and gentlemen, thank you  
5 for reporting what happened with one of the -- I guess several  
6 of the juror members. Who was the family member who was with  
7 them in the elevator? Ma'am, are you the -- you're related to  
8 the defendant, Mr. Washington?

9 MS. HINES: Yes, I'm his mother.

10 THE MARSHAL: Ma'am, stand up, please.

11 THE COURT: Okay. Thank you, ma'am, for reporting  
12 that. We -- it's important to us, as you've heard me give  
13 instructions all the way through here to the jury not to talk  
14 to anybody, and it's important to us to know if any of the  
15 jury members are doing it.

16 It's also important to us to know if we have -- we  
17 have a situation develop where, even just getting in  
18 elevators, where we're just too close so that it's almost --  
19 it's kind of uncomfortable to stand on an elevator with  
20 somebody and not say anything.

21 So, here's what I would like to ask. First of all,  
22 the -- apparently, all it was was a comment about a -- or not  
23 a butterfly. A bee? A bumblebee? What was it, ma'am?

24 MS. HINES: It was this. I was walking and she was  
25 standing by the stairwell. And I -- I use a walker sometimes,

1 so I need to walk and hold the rail. So, I said, excuse me.  
2 I said -- I know we're not supposed to talk to each other, so  
3 I said excuse me so I could hold the silver thing.

4 And a bee was going into your stairwell as you walk  
5 down the long stairs. And something else. She said -- she  
6 said -- they thought it was a bee, and I said, oh, no, it was  
7 a wasp. And then I said, have a nice weekend.

8 THE COURT: Okay.

9 MS. HINES: And that was it.

10 THE COURT: All right. Well, it -- even though it  
11 seems like an innocuous, you know, conversation about a bee or  
12 a wasp, it's too close. We don't want a situation where we're  
13 getting any need to have any kind of conversation between any  
14 defendant or defendant's family and any of the jury members,  
15 anymore than we would if it was a witness for the State out  
16 there. We just don't -- we don't want any talking amongst  
17 them.

18 So, what I'm going to ask you folks to do is -- I  
19 don't want to reach a point where I have to wind up arresting  
20 a family member, and I don't want to reach a point where I  
21 wind up having to exclude family members from being able to  
22 watch this trial. So, I'm going to ask you all to use very  
23 good sense and caution. And any time the jury goes out of the  
24 courtroom, let them exit first. I think we've been doing  
25 that, have we not?

1 THE MARSHAL: Yes, Your Honor.

2 THE COURT: All right. Let them exit, and give them  
3 time and space. Do not get even close to the jury members.  
4 That way, we won't have an accidental conversation that will  
5 get somebody in trouble, or worse yet from my standpoint and  
6 the taxpayers' standpoint, wind up having a mistrial and  
7 having to start over.

8 It doesn't take a lot of contact in order for the  
9 Court to decide we're going to have to start over here, just  
10 because we -- we're cautious and we don't want there to be any  
11 chance of there being any conversation.

12 So, could I ask you all to please -- and don't even  
13 -- I mean, they'll know you're not being rude if you don't  
14 talk to them. Don't even talk about the time of day or about  
15 anything, because, you know, as much as we didn't want the  
16 jury members to say anything to you, we also didn't want you  
17 to say anything to them. Fair enough?

18 MS. HINES: Yes.

19 THE COURT: All right. Do you all understand?

20 MS. HINES: I do.

21 THE COURT: Everybody -- any questions about what I  
22 want you to do?

23 MS. HINES: No.

24 THE COURT: Okay. So, I shouldn't be having any  
25 reason from here on to find out that you guys have ever even

1 been close enough to a jury member for there to be any kind of  
2 conversation. Am I --

3 MS. HINES: No.

4 THE COURT: Are we clear?

5 MS. HINES: Yes.

6 MS. PIEPER: Judge, did this conversation happen  
7 today, or did this conversation happen on Friday?

8 MS. HINES: That was Friday when we were leaving.

9 THE COURT: Friday?

10 MS. HINES: Friday when we were leaving.

11 THE COURT: When we were leaving? Okay. And  
12 where's this handrail?

13 MS. HINES: You know, downstairs.

14 THE COURT: So, is it outside?

15 MS. HINES: Yeah.

16 THE COURT: Outside, going on that ramp that goes  
17 down to the --

18 MS. HINES: Yeah. You know, right where --

19 THE COURT: -- to the sidewalk?

20 MS. HINES: Yeah. Not where the handicapped ramp is  
21 at, because I don't park right there.

22 THE COURT: Oh.

23 MS. HINES: I park right in the front because I have  
24 a handicap placard.

25 THE COURT: Okay, I see.

1 MS. PIEPER: Which juror was it?

2 THE COURT: Do you know which juror it was?

3 MS. HINES: It was that lady who has asthma, and  
4 that lady who has a purse. Because everyone else was gone,  
5 but I guess they don't have a car. I don't know. Those two  
6 were standing there. Just those two.

7 THE COURT: And the lady with the asthma, can -- do  
8 you know which seat she sits in normally?

9 MS. HINES: That's the one who sits back here. And  
10 the other one, I don't know where she sits at. She sits  
11 somewhere else, like on this front row.

12 THE COURT: Well, when you say "sits back here," do  
13 you mean clear down at this end over here --

14 UNKNOWN FEMALE SPEAKER: It's in the middle --

15 THE COURT: -- or down at that end?

16 UNKNOWN FEMALE SPEAKER: -- like right here. The  
17 fourth seat, maybe.

18 MS. HINES: That one who has black hair.

19 THE COURT: 1, 2, 3 --

20 MS. HINES: She sits right here.

21 THE COURT: The fourth seat in?

22 MS. HINES: I don't -- I don't know.

23 THE COURT: So, that would be Patricia Dowell? I  
24 mean, the fourth seat --

25 MS. HINES: I don't know her name. She was

1 coughing. That's why I know --

2 THE COURT: -- because we're missing --

3 MS. HINES: -- she's the one with the asthma.

4 THE COURT: Okay. And I think the one with the  
5 asthma -- is that the one with the asthma?

6 MS. PIEPER: I don't know, Judge. We can bring the  
7 panel in and ask them.

8 THE COURT: All right. And the other lady, which  
9 one was it?

10 MS. HINES: Yeah, she had a Coach purse. I remember  
11 that.

12 UNKNOWN FEMALE SPEAKER: Backpack, actually. Duffel  
13 bag.

14 THE COURT: She had a?

15 MS. HINES: Coach purse.

16 THE COURT: Okay. That won't help me. All right.  
17 We're going to --

18 MS. HINES: My daughter says --

19 MS. SCHIFALACQUA: What did she say --

20 MS. HINES: -- she has it today.

21 MS. SCHIFALACQUA: -- about the Coach purse?

22 THE COURT: We're now going to pull the jury in and  
23 ask them, and admonish them again about this, because it's  
24 that important that we not have even passing the time of day  
25 between the family of a defendant and any jury member. Okay?

1 Everybody understand?

2 MS. HINES: Yes.

3 THE COURT: All right. Now, Marshal, just before  
4 you go out, understand, folks, that I am deadly serious about  
5 this. And if there is any further kind of interaction between  
6 a family member and the jury, you need to understand that it's  
7 not impossible for a Judge to arrest a family member and put  
8 them in jail until the end of a trial.

9 I mean, we take this very seriously. And while I  
10 understand that an innocent conversation may seem to be just,  
11 so what, it's a big deal. So, I trust that nobody's going to  
12 push me to that point, okay? Thank you all. Now, let's bring  
13 our jury and I'm going to ask them.

14 MS. PIEPER: Are we going to canvass the jury in  
15 front of the family? Is that what -- did you say you were  
16 going to --

17 THE COURT: Is that -- I was going to.

18 MS. PIEPER: No, Judge. I'm going to ask that if --

19 MS. SCHIFALACQUA: Yeah.

20 MS. PIEPER: -- you talk to the members of the jury  
21 that the family is not in the courtroom.

22 THE COURT: All right. Well, let's wait and see.  
23 Is he bringing them in?

24 THE CORRECTIONS OFFICER: Not yet. He hasn't come  
25 through the door yet.

1 THE COURT: All right. Folks, would you excuse us  
2 just a few minutes, and we'll have the marshal come get you  
3 and tell you when it's time to come in.

4 MS. PIEPER: And Judge, just for the record, you  
5 speaking to the defendant's family was done outside the  
6 presence of the jury.

7 THE COURT: Yes, thank you. Yeah, our record should  
8 reflect that.

9 MS. SCHIFALACQUA: Thank you, Your Honor.

10 (Pause in the proceedings)

11 THE MARSHAL: All rise for the jury.

12 (Jury reconvened at 3:35 p.m.)

13 THE COURT: Will counsel stipulate to the presence  
14 of the jury?

15 MS. PIEPER: Yes, Your Honor.

16 MS. SCHIFALACQUA: Yes, Your Honor.

17 MR. OTTO: Yes, Your Honor.

18 THE COURT: All right. Thank you, ladies and  
19 gentlemen. You have heard me, ladies and gentlemen,  
20 throughout this trial give you this constant admonition not to  
21 talk to people about the case or about the trial, and -- or  
22 about anyone connected with the trial.

23 We had an exchange. What probably will come as a  
24 surprise to any of you that may have been a part of it, but it  
25 causes us to need to ask some questions. And that was

1 apparently last Friday after we were finished, some of the  
2 family members were leaving the building, and they may have  
3 had a very brief exchange with some of the jury members,  
4 specifically, with two of the female jury members who were  
5 probably it sounds like amongst the last to leave the  
6 building.

7 Did anyone have a brief conversation -- not even  
8 conversation, but exchange of pleasantries with a family  
9 member? Yes, is this Ms. Dowell? Yes, ma'am. And Ms. Lucas?

10 JUROR NO. 7: Yes.

11 THE COURT: All right.

12 MS. SCHIFALACQUA: Judge, if we may approach.

13 MS. PIEPER: Approach.

14 THE COURT: All right.

15 (Off-record bench conference)

16 THE COURT: All right, thank you. Did anyone else  
17 -- anyone else involved in any exchange of pleasantries or  
18 anything with the family members? All right. I'm going to  
19 ask all of you, except Ms. Dowell, to step outside the  
20 courtroom. And in a minute, I'll have you come in, Ms. Lucas,  
21 but we'll talk just to Ms. Dowell for a moment. Will everyone  
22 else please leave the courtroom?

23 THE MARSHAL: All rise.

24 (Pause in the proceedings)

25 THE COURT: Ms. Dowell, will you stay with us,

1 please --

2 JUROR NO. 5: Oh.

3 THE COURT: -- for a moment?

4 JUROR NO. 5.: Okay.

5 THE COURT: Yeah, um-hum.

6 (Jury recessed at 3:39 p.m.)

7 (In the presence of Juror No. 5)

8 THE COURT: Do you want to just have a seat here,  
9 Ms. Dowell, in any one of the seats where the microphone is  
10 there? Do you see the microphone -- right there in the front  
11 row. Right there is a microphone. Just sit down right where  
12 you are.

13 JUROR NO. 5: Oh, this one?

14 THE COURT: Yeah.

15 JUROR NO. 5: Yes.

16 THE COURT: That way, we can pick up what you're  
17 saying. Would you tell us please, Ms. Dowell, what was this  
18 exchange of pleasantries or conversation?

19 JUROR NO. 5: Oh, yes. We were, you know, where you  
20 come out of the entrance.

21 THE COURT: Um-hum.

22 JUROR NO. 5: She and I were standing in the step.  
23 And I guess one other lady -- oh, we were in her way. And she  
24 -- you know, we moved. And she was saying, oh, yes, I have  
25 COPD, you know, and like, oh, yeah, I have asthma. And after

1 that, I just said, have a good weekend. That was it.

2 THE COURT: Okay. Was this -- when you say at the  
3 -- was it at a ramp, or where was this handrail?

4 JUROR NO. 5: It's outside when you come out of the  
5 door, you know, where the exit is.

6 THE COURT: Is it -- are you talking about out the  
7 north exit, the one you normally come in --

8 JUROR NO. 5: Yeah, where the parking lot is --

9 THE COURT: -- and out at?

10 JUROR NO. 5: -- before you go down the step.

11 THE COURT: Yeah, uh-huh. All right.

12 JUROR NO. 5: Because I Have to wait for my husband  
13 to pick me up, because --

14 THE COURT: I see.

15 JUROR NO. 5: -- you know, because I have a hard  
16 time with my asthma by the time we finish --

17 THE COURT: Yeah.

18 JUROR NO. 5: -- our session, so --

19 THE COURT: Okay.

20 JUROR NO. 5: -- he'd rather pick me up.

21 THE COURT: All right. And how are you doing with  
22 the asthma and our sessions?

23 JUROR NO. 5: Oh, I'm fine.

24 THE COURT: Doing all right?

25 JUROR NO. 5: It was just that first day, you know,

1 I was just having a hard time.

2 THE COURT: Today? You're having some trouble  
3 today?

4 JUROR NO. 5: Oh, no.

5 THE COURT: Oh.

6 JUROR NO. 5: No. I just act up like this all the  
7 -- you know, it's spring and summer.

8 THE COURT: I see. Okay. Was that the extent of  
9 the exchange between you?

10 JUROR NO. 5: Oh, yes, that was all the  
11 conversation. And I told the other lady -- I go, don't talk  
12 anymore, you know.

13 THE COURT: Which other lady? Ms. Lucas?

14 JUROR NO. 5: Yes.

15 THE COURT: The other juror member?

16 JUROR NO. 5: Yes, uh-huh.

17 THE COURT: Okay, well that was good advice. That  
18 was good advice.

19 JUROR NO. 5: It's just that we were -- like I said,  
20 we were in her way because she was going down the stairs.

21 THE COURT: Yeah. Well, these things can happen,  
22 and I will advise -- I will be advising all of the jury  
23 members that I have told the family members that they must  
24 stay completely away from all of you. So, we don't want any  
25 juror member to have that close of contact with any of you --

1 family members that are on either side, I mean, of a dispute.  
2 Okay?

3 MS. SCHIFALACQUA: And Judge, if I may.

4 THE COURT: Are there any questions from counsel?

5 MS. SCHIFALACQUA: I do.

6 THE COURT: Okay.

7 MS. SCHIFALACQUA: Ms. Dowell, where were you  
8 positioned in regard to Ms. Lucas? Where was she positioned?

9 JUROR NO. 5: Who's Mrs. Lucas?

10 MS. SCHIFALACQUA: The other juror member.

11 JUROR NO. 5: Oh, that's her last name.

12 MS. SCHIFALACQUA: Okay, sorry.

13 JUROR NO. 5: I think she was to the left. She was  
14 on the right.

15 MS. SCHIFALACQUA: Okay. Had you moved out of the  
16 family member's way, the woman that spoke with you?

17 JUROR NO. 5: Oh, yes. Uh-huh.

18 MS. SCHIFALACQUA: Okay. When you moved out of her  
19 way, she expressed to you that she had COPD, is that your  
20 understanding?

21 JUROR NO. 5: Oh, that was the beginning of the  
22 conversation. You know, like she was going down the step.  
23 [Indiscernible] she -- like coming back toward me, and that's  
24 when she mentioned it.

25 MS. SCHIFALACQUA: Okay.

1 JUROR NO. 5: Because we were just moving out so we  
2 wouldn't be on, you know, her way.

3 MS. SCHIFALACQUA: Okay. And when she mentioned  
4 that, what else did she say to you? You said it was the  
5 beginning of the conversation.

6 JUROR NO. 5: Beginning of the conversation. That  
7 was it until she was almost halfway down the step, and you  
8 know, she said, have a nice -- you know, have a good weekend.  
9 I go, you have the same, you know, have a nice weekend.

10 MS. SCHIFALACQUA: You said to the other juror,  
11 don't talk anymore. Was there any other exchanges that you  
12 observed?

13 THE COURT: Wait, wait. You said -- I -- did you  
14 say that you said to the other juror, don't talk anymore, or  
15 did she --

16 JUROR NO. 5: Yeah.

17 THE COURT: -- say it to you?

18 JUROR NO. 5: I said it to her, you know, because --

19 THE COURT: Okay. All right.

20 JUROR NO. 5: -- we're not supposed to talk.

21 THE COURT: I misunderstood. Okay.

22 JUROR NO. 5: We're not supposed to talk to anyone.

23 MS. SCHIFALACQUA: When you directed her not to talk  
24 anymore, had she said anything, or had this woman said  
25 anything else to you or to the other juror that you remember?

1 JUROR NO. 5: No.

2 MS. SCHIFALACQUA: Okay. And was it your  
3 understanding that she spoke with you about her COPD because  
4 you have expressed in open court that you have asthma?

5 JUROR NO. 5: Yeah. It's probably that day, you  
6 know, I was having a hard time, that first day.

7 MS. SCHIFALACQUA: Okay.

8 JUROR NO. 5: She probably noticed that.

9 THE COURT: Is that why you use that handrail? I  
10 mean, is it related to your asthma at all, or is it just --

11 JUROR NO. 5: Oh, no. I'm just --

12 THE COURT: -- a handrail you would normally use?

13 JUROR NO. 5: I'm just a clumsy person, you know. I  
14 don't want to trip.

15 THE COURT: Okay.

16 MS. SCHIFALACQUA: Ms. Dowell, is there anything  
17 about that exchange that causes you pause to be able to sit on  
18 this jury or make you uncomfortable? Is there anything about  
19 it that you need to express to us that we should be concerned  
20 about?

21 JUROR NO. 5: Oh, no. Not at all.

22 MS. SCHIFALACQUA: Okay.

23 THE COURT: Okay.

24 MS. SCHIFALACQUA: You understood not to talk to  
25 her. Did -- you did not initiate an exchange with her,

1 correct?

2 JUROR NO. 5: Oh, no way.

3 MS. SCHIFALACQUA: Okay. She initiated the exchange  
4 with you?

5 JUROR NO. 5: Yes.

6 MS. SCHIFALACQUA: This was after you had moved out  
7 of her way?

8 JUROR NO. 5: Yes.

9 MS. SCHIFALACQUA: Was there anything about a bee?

10 JUROR NO. 5: A bee?

11 MS. SCHIFALACQUA: A bee, like a bee that buzzes and  
12 flies in the air. An insect.

13 JUROR NO. 5: Oh, yeah. The other juror, when we  
14 were standing there before they even go down, and she goes,  
15 oh, what was that? Or something like that. And I go, it's  
16 probably a bee, because that day, I had bright clothes. It  
17 probably was attracted to the color of what I had on.

18 MS. SCHIFALACQUA: Okay.

19 JUROR NO. 5: So, that's why we also moved.

20 MS. SCHIFALACQUA: Did this woman say anything with  
21 regard to the insect to you at all?

22 JUROR NO. 5: Not that I can remember, because  
23 really, nothing's important to me about stuff like that. We  
24 shouldn't have been even, you know, exchanging words.

25 MS. SCHIFALACQUA: Okay. So, from your

1 understanding, she may have been present for this conversation  
2 about the bee, as well as her comment about COPD?

3 JUROR NO. 5: I think so. Um-hum.

4 MS. SCHIFALACQUA: Okay.

5 THE COURT: All right.

6 MS. SCHIFALACQUA: I have nothing further, Judge.

7 Thank you, Ms. Dowell.

8 THE COURT: Mr. Otto, any questions?

9 MR. OTTO: Nothing about the case was mentioned?

10 JUROR NO. 5: Oh, no way.

11 MR. OTTO: There's nothing about this incident that  
12 would keep you from -- that would cause you to have a less  
13 open mind than as we discussed at the beginning --

14 JUROR NO. 5: Oh, no.

15 MR. OTTO: -- of the trial? I have --

16 JUROR NO. 5: Not at all.

17 MR. OTTO: -- nothing further.

18 THE COURT: All right. Thank you, Ms. Dowell.

19 We'll have you go out in the hall again for a minute, and --

20 JUROR NO. 5: Okay.

21 THE COURT: -- we'll bring in Ms. Lucero.

22 JUROR NO. 5: You're welcome.

23 MS. SCHIFALACQUA: I thought it was Ms. Lucas.

24 THE COURT: I'm sorry. Wait a minute, I've got it  
25 wrong. Lucas. Ms. Lucas.

1 THE MARSHAL: Yes, Your Honor.

2 THE COURT: Okay.

3 (Outside the presence of Juror No. 5)

4 (In the presence of Juror No. 7)

5 THE COURT: Come in, Ms. Lucas, would you? Just  
6 have a seat on the front row, if you would, Ms. Lucas, in  
7 front of the microphone there in the middle. You see that --  
8 or that one. Either one. That's fine, yeah. Thank you.  
9 Have a seat there, Ms. Lucas.

10 Ms. Lucas, could you relate to us what you saw or  
11 heard on Friday?

12 JUROR NO. 7: I was standing by the rail walkway on  
13 this side of the courthouse, waiting for my husband. And one  
14 of the -- one of the -- one of them --

15 THE COURT: Okay.

16 JUROR NO. 7: -- kind of like said, excuse me to me,  
17 so I walk away.

18 THE COURT: Okay. Was it -- did it have something  
19 to do with the handrail?

20 JUROR NO. 7: Yes.

21 THE COURT: Okay.

22 JUROR NO. 7: She said she couldn't -- she wants  
23 that railway so she won't fall.

24 THE COURT: Okay. And did you say anything to her,  
25 or did she say anything to you?

1 JUROR NO. 7: She tried, yes.

2 THE COURT: What did she say to you?

3 JUROR NO. 7: She said that, I know I'm not supposed  
4 to talk to you, and I was with the other lady.

5 THE COURT: Uh-huh.

6 JUROR NO. 7: She said, I know, I have asthma, too,  
7 or something like that, but I didn't listen to their  
8 conversation.

9 THE COURT: Okay. Was there any other conversation  
10 going on, or are you saying you didn't listen to their  
11 conversation? Those are the words that you heard, but was  
12 there other conversation that you couldn't make out, or was  
13 that just all that was said?

14 JUROR NO. 7: That's the only one that I paid  
15 attention to. After that --

16 THE COURT: Okay.

17 JUROR NO. 7: Because I was talking -- you know, I  
18 was texting with my husband.

19 THE COURT: Okay, so you were --

20 JUROR NO. 7: I was waiting for him.

21 THE COURT: -- on your phone, texting?

22 JUROR NO. 7: Yes.

23 THE COURT: Okay. And so, if I'm understanding,  
24 this other woman said, excuse me, she -- and she wanted the  
25 handrail --

1 JUROR NO. 7: She needed the handrail.

2 THE COURT: -- that you were standing by?

3 JUROR NO. 7: Yes.

4 THE COURT: Okay. When that happened, where was Ms.  
5 Dowell to you? You know, was --

6 JUROR NO. 7: She was next to me.

7 THE COURT: Hm?

8 JUROR NO. 7: She was next to me, but away --

9 THE COURT: Next to you?

10 JUROR NO. 7: -- from the rail.

11 THE COURT: Okay.

12 JUROR NO. 7: I was the one closer to the rail.

13 THE COURT: So, you were the one that needed to move  
14 then?

15 JUROR NO. 7: Yes.

16 THE COURT: Okay. Ms. Dowell was to your left, or  
17 your right, or behind you, or --

18 JUROR NO. 7: To my left.

19 THE COURT: Your left?

20 JUROR NO. 7: Yes.

21 THE COURT: Okay. And so, the words that you heard  
22 were -- I'm sorry, relate those again if you would, please.

23 JUROR NO. 7: She said -- I'm not really particular  
24 on how she said, but I know --

25 THE COURT: Yeah.

1 JUROR NO. 7: -- she said, I need -- I'm sorry,  
2 excuse me, I need the railing --

3 THE COURT: Okay.

4 JUROR NO. 7: -- because I have asthma and I don't  
5 want to fall.

6 THE COURT: Okay. And then, did somebody say  
7 something about not supposed to talk to you?

8 JUROR NO. 7: Yes.

9 THE COURT: Who said that?

10 JUROR NO. 7: The other lady.

11 THE COURT: The -- are you talking about Ms.

12 Dowell --

13 JUROR NO. 7: No.

14 THE COURT: -- the juror, or the other lady?

15 JUROR NO. 7: The other lady.

16 THE COURT: She said she's not supposed to talk to  
17 you?

18 JUROR NO. 7: Yes.

19 THE COURT: Okay. Did you or Ms. Dowell say  
20 anything in response to that? Did you say anything back to  
21 her when she said that?

22 JUROR NO. 7: No.

23 THE COURT: Okay.

24 JUROR NO. 7: I didn't.

25 THE COURT: All right. And was that it?

1 JUROR NO. 7: Yes.

2 THE COURT: Was there any conversation that you  
3 heard about a bee?

4 JUROR NO. 7: No, that was after the fact, because  
5 there's like bee all around us.

6 THE COURT: Okay. And who said something about a  
7 bee?

8 JUROR NO. 7: I think Ms. Dowell.

9 THE COURT: Okay. Do you know what she said?

10 JUROR NO. 7: No, I said, there's a bee. I think  
11 it's a bee.

12 THE COURT: Okay.

13 JUROR NO. 7: So, I step away again.

14 THE COURT: Okay. And did anybody say anything more  
15 about that afterwards?

16 JUROR NO. 7: No.

17 THE COURT: That was it?

18 JUROR NO. 7: Yes.

19 THE COURT: Okay. Thank you, Ms. Lucas. Does that  
20 prompt any other questions from counsel?

21 MS. SCHIFALACQUA: Thank you. Ms. Lucas, with  
22 regard to this Friday, was it the persons that were out kind  
23 of observing, were they the ones who initiated speaking with  
24 you and the other juror?

25 JUROR NO. 7: Yes.

1 MS. SCHIFALACQUA: Okay. You didn't go out and  
2 speak to them first --

3 JUROR NO. 7: No.

4 MS. SCHIFALACQUA: -- is that right? Okay. When  
5 you indicated that you said it was the other lady that said, I  
6 know I'm not supposed to talk to you, was that the same lady  
7 that said, excuse me, I need the -- you know, the rail?

8 JUROR NO. 7: Yes.

9 MS. SCHIFALACQUA: Okay. So, it was just one woman  
10 that spoke with you --

11 JUROR NO. 7: Yes.

12 MS. SCHIFALACQUA: -- is that fair? Is it the --  
13 and that's the same woman? When she indicated, I know I'm not  
14 supposed to talk to you, she actually told you that, is that  
15 right?

16 JUROR NO. 7: I heard her, but I was starting to  
17 walk, you know, walk around, walk away.

18 MS. SCHIFALACQUA: Sure. So, you kind of exited  
19 yourself from the -- her initiation?

20 JUROR NO. 7: Yes.

21 MS. SCHIFALACQUA: And when she said that, you were  
22 about to say something else when Judge was asking you  
23 questions. What else happened?

24 JUROR NO. 7: When --

25 MS. SCHIFALACQUA: When she said, I know I'm not

1 supposed to talk to you, or something about that.

2 JUROR NO. 7: I said -- I was walking away. I  
3 turned around. I turned around with Ms. Dowell.

4 MS. SCHIFALACQUA: Okay.

5 JUROR NO. 7: I turned on her side, and facing that  
6 way.

7 MS. SCHIFALACQUA: Okay. When she made this  
8 contact, initiated this contact with you, were there any other  
9 persons that you've seen in the courtroom by her when she was  
10 talking to you, or was it just her?

11 JUROR NO. 7: There were a few of them, but they've  
12 already --

13 MS. SCHIFALACQUA: Kind of walking?

14 JUROR NO. 7: -- went ahead.

15 MS. SCHIFALACQUA: Okay. Is there anything about  
16 her talking to you that has had any impact on you being able  
17 to continue to sit on this panel?

18 JUROR NO. 7: No, but can I say something though?

19 THE COURT: Yes.

20 JUROR NO. 7: With the line of the job I have, I am  
21 scared now that I'm realizing that I'm dealing with a lot of  
22 people every single day on my job. And --

23 THE COURT: Remind me if you would what job you  
24 have.

25 JUROR NO. 7: I'm working as lead player's club at

1 Eastside Cannery.

2 THE COURT: All right. And what is your position  
3 there?

4 JUROR NO. 7: Lead player's club rep --  
5 representative.

6 THE COURT: Okay. And who -- I don't -- I don't  
7 know -- I don't recall what the conversation was that you may  
8 have told us at the beginning. Who do you deal with in that  
9 position?

10 JUROR NO. 7: A lot of people. Guests that comes in  
11 to the casino.

12 THE COURT: Guests come in? Okay.

13 JUROR NO. 7: We gave away the player's club.

14 MS. SCHIFALACQUA: And so, you see regular public --

15 JUROR NO. 7: Yes.

16 MS. SCHIFALACQUA: -- kind of coming in to gamble,  
17 is that fair to say --

18 JUROR NO. 7: Yes.

19 MS. SCHIFALACQUA: -- Ms. Lucas?

20 THE COURT: Well, when you say you're concerned, you  
21 mean -- what is it you're concerned about, ma'am?

22 JUROR NO. 7: I'm just -- because every day now --  
23 now, especially today, there's like a lot more people coming  
24 in the courthouse -- the courtroom.

25 THE COURT: More people coming in the courtroom?

1 JUROR NO. 7: Um-hum.

2 THE COURT: And does that concern you?

3 JUROR NO. 7: Yes.

4 THE COURT: Are you saying you find that  
5 intimidating?

6 JUROR NO. 7: Yes.

7 THE COURT: In what way, ma'am?

8 JUROR NO. 7: It doesn't intimidate me. It's just,  
9 I think it's -- when we make the decision and stuff like that,  
10 it might affect my decision, because like I said, I deal with  
11 people every single day, and what if I saw one of them that  
12 comes to my work?

13 THE COURT: Uh-huh. When you say --

14 JUROR NO. 7: Not saying that I see them now, you  
15 know, I've seen them before.

16 THE COURT: Uh-huh. When you say it might affect  
17 your decision, how would it affect your decision?

18 JUROR NO. 7: It might not be coming from what, like  
19 you said, you know, look at the evidence --

20 THE COURT: Right.

21 JUROR NO. 7: -- and all that stuff before you make  
22 a decision.

23 THE COURT: Um-hum.

24 JUROR NO. 7: It's just --

25 THE COURT: Are you saying that you would be afraid

1 to vote to find the defendant guilty of these charges out of  
2 fear?

3 JUROR NO. 7: Yes, Your Honor.

4 THE COURT: Okay. Have you expressed that to any of  
5 the other juror members --

6 JUROR NO. 7: No.

7 THE COURT: -- or to anyone else?

8 JUROR NO. 7: No.

9 THE COURT: Okay. Mr. Otto, any questions?

10 MR. OTTO: No, Your Honor.

11 THE COURT: Okay.

12 MS. SCHIFALACQUA: Judge, if I may follow up. When  
13 you indicated that you're afraid to do -- I mean, we haven't  
14 gotten to the close of, you know, the case yet. Obviously,  
15 you would have to follow the law, but you indicated that you'd  
16 be afraid to make a finding of guilt because of fear for the  
17 family members that you've seen in court?

18 JUROR NO. 7: Maybe, yes.

19 THE COURT: All right.

20 MS. PIEPER: We want you to be completely honest  
21 with us, so I think I'm trying to, and I think the Judge is,  
22 as well as defense counsel, trying to understand sort of what  
23 you're saying. So, can you just kind of be explicit and tell  
24 us? Because --

25 JUROR NO. 7: Since now I'm -- I want to be here.

1 Don't get me wrong. I was -- when I got my citizenship, I'm  
2 sworn to do this duty. I am not trying to get away from it.

3 THE COURT: Understood.

4 JUROR NO. 7: However, the line of job that I have,  
5 dealing with every -- different people every single day, I  
6 don't know -- I'm not saying that I'm not going to see them or  
7 may not -- may see them, but under that circumstances, what if  
8 one of them comes to my work --

9 MS. PIEPER: So, let me --

10 JUROR NO. 7: -- and recognized me?

11 MS. PIEPER: Okay. Let me ask you this. Are you  
12 afraid -- and correct me if I'm wrong in any of my statements  
13 -- are you afraid that if you find the defendant guilty, that  
14 the family members you have seen in the courtroom may try to  
15 find you at where you work?

16 JUROR NO. 7: Yes.

17 MS. PIEPER: Okay. And why are you afraid that they  
18 might try and find you at where you work if you've only had  
19 sort of one contact with them? Why are you afraid that that's  
20 going to happen?

21 JUROR NO. 7: Because, like I said, I -- it's my  
22 conscience.

23 THE COURT: It's your -- I'm sorry, it's your what?

24 JUROR NO. 7: My conscience.

25 THE COURT: Your conscience?

1 JUROR NO. 7: And my -- maybe I'm just being  
2 paranoic now.

3 THE COURT: Okay.

4 JUROR NO. 7: Only until today.

5 THE COURT: Have you -- have you been to work since  
6 this trial started?

7 JUROR NO. 7: Yes.

8 THE COURT: Okay.

9 JUROR NO. 7: I have been working since the first  
10 day.

11 THE COURT: And has this feeling built up while you  
12 -- you know, since the beginning of the trial? In other  
13 words, you find this --

14 JUROR NO. 7: Yes. After five days, I kind of --  
15 but today, especially, now that there's more people --

16 MS. PIEPER: Okay, so you're --

17 JUROR NO. 7: -- coming in.

18 MS. PIEPER: Okay.

19 THE COURT: All right.

20 MS. PIEPER: Are you afraid because the amount of  
21 people has grown from last week?

22 JUROR NO. 7: Yes.

23 MS. PIEPER: Okay. And because the amount of people  
24 has grown from last week, you're concerned that you will not  
25 base your decision based on the evidence in this case?

1 JUROR NO. 7: Yes.

2 MS. PIEPER: Okay. I guess I'm kind of confused  
3 maybe why the number of people would cause you that concern if  
4 you've never really had any contact with them.

5 JUROR NO. 7: Not contact, but they -- people come  
6 into my work.

7 MS. PIEPER: Okay.

8 JUROR NO. 7: And we get into the point to where we  
9 know them, I know their faces.

10 MS. PIEPER: Okay. But I guess what I'm trying to  
11 understand, and I -- please don't -- I'm not trying to offend  
12 you.

13 JUROR NO. 7: That's okay.

14 MS. PIEPER: I'm trying to figure out how the number  
15 of people sitting back here in the courtroom has suddenly  
16 caused you -- have you seen them doing something in the  
17 hallway? Have you heard them talking? Have you seen the way  
18 they act outside? What is it about more people sitting in the  
19 courtroom that causes you concern that as a juror now you're  
20 not sure you can follow through with the obligations that the  
21 Court has, you know, sort of given to you so far?

22 JUROR NO. 7: When we go out, especially.

23 MS. PIEPER: Okay.

24 JUROR NO. 7: Leaving the courthouse. Now sometimes  
25 I have my husband pick me up. I'll be standing outside. You

1 know, there is no way -- yeah, maybe sometimes that we -- I  
2 don't want to see them.

3 MS. PIEPER: Okay. The family -- are you saying  
4 that the family members --

5 JUROR NO. 7: Yes.

6 MS. PIEPER: -- scare you?

7 JUROR NO. 7: Yes.

8 MS. PIEPER: Okay. And they scare you because of  
9 what? I guess that's what the Court's trying to get to and  
10 I'm trying to get to.

11 JUROR NO. 7: How the case is going. I mean, I  
12 understand it is, you know, a homicide.

13 THE COURT: I -- counsel, I'm going to excuse her  
14 for a minute. But why don't you do this. Would you just use  
15 out little anteroom right there? Would you show her where the  
16 anteroom is?

17 THE MARSHAL: Yes, Your Honor.

18 THE COURT: And we'll talk, and we may ask you to  
19 come back. Thank you -- thank you, Ms. Lucas --

20 MS. PIEPER: Thank you.

21 MS. SCHIFALACQUA: Thank you, Ms. Lucas.

22 THE COURT: -- for coming in and speaking to us.

23 MS. PIEPER: Judge, do you want us to approach, or  
24 go in the back, or?

25 THE COURT: I'm sorry, do we want to what?

1 MS. PIEPER: Nothing.

2 (Outside the presence of Juror No. 7)

3 THE COURT: All right. I don't think there's much  
4 question but we're going to need to excuse this juror. Any --  
5 any -- Mr. Otto, do you disagree?

6 MR. OTTO: I don't.

7 THE COURT: Okay.

8 MS. SCHIFALACQUA: The bigger problem, Judge, is  
9 obviously the family. You know, the idea that -- and I'm  
10 sorry, but even the other juror, the idea that she's  
11 approaching them, I have COPD too, talking about her asthma,  
12 letting them know that they're watching what these jurors are  
13 saying and doing, Judge. It's unbelievable.

14 THE COURT: I think you're reading a little too much  
15 into that --

16 MS. SCHIFALACQUA: I don't --

17 THE COURT: -- Ms. Schifalacqua.

18 MS. SCHIFALACQUA: We have a woman here that's  
19 almost crying, Judge, before you, indicating her fear because  
20 of this family. I don't think I'm reading too much, with all  
21 due respect, Judge. I really don't.

22 THE COURT: Well, here's what I -- here's what I  
23 think. You have someone who has had this eat at her for the  
24 last week when she goes to work and she realizes how  
25 unprotected she is, and how the fact is that she might -- some

1 of these people might come into where she works. I mean,  
2 that's what I heard her expressing, and I think that's ample  
3 reason to excuse her. But what I hear you saying is that it's  
4 all the family members' fault, and --

5 MS. SCHIFALACQUA: Well, no, Judge -- I'm sorry.

6 THE COURT: -- all they've done is attend.

7 MS. SCHIFALACQUA: I --

8 THE COURT: All they've done is attend, other than  
9 that one exchange on Friday.

10 MS. SCHIFALACQUA: Sure. And Judge, I'm sorry. I  
11 don't want the record to reflect that I'm saying it's all of  
12 their fault. I'm saying that I've --

13 THE COURT: All right.

14 MS. SCHIFALACQUA: -- watched them walk out after  
15 our jurors. I've made, you know, obviously a record of that.  
16 It is very close. I've watched them approach and be the  
17 persons that initiate -- say the words, I know I'm not  
18 supposed to talk to you, violating this order of this Court.  
19 And so, my concern isn't that -- you know, with regard to Ms.  
20 Lucas, obviously she has things building that she might see,  
21 you know, family members in her line of work.

22 But that they are, you know, initiating contact is  
23 of great concern of the State, that they are watching and  
24 paying attention to what -- the things that the jurors are  
25 saying so that when they contact them they talk about personal

1 things, i.e., asthma and otherwise, and that they're making  
2 the initiation even when they outwardly can express that they  
3 know they're not supposed to. I guess that's my concern.

4           And watching them day after day walk out closely  
5 next to our jurors, et cetera, all of those things made my  
6 concern raise, Judge. So, I don't want it to reflect that Ms.  
7 Lucas -- she clearly has that on top of her own concerns, and  
8 I think she made that record clear.

9           But I absolutely -- you know, it's not all of the  
10 family's fault, but they know exactly what they're doing,  
11 Judge. They're outwardly expressing that they're defying a  
12 court order. I know I'm not supposed to talk to you, by the  
13 way, I'm going to talk to you about particular things to your  
14 own health. It's of concern for the State, Judge.

15           THE COURT: Okay. I frankly don't see -- read a  
16 whole lot into the brief exchange on Friday. It's very  
17 unfortunate, and it's true that she did make a comment that  
18 she knew she wasn't supposed to talk to her, but I mean, as  
19 far -- from what I've heard, that was it, and I don't think  
20 that that is a reason to do anything other than make sure that  
21 it doesn't happen again.

22           Mr. Otto, I hope that you will convey to the family  
23 members when you get a chance, that we are now losing a juror  
24 because of that -- in fact, bring the family in again --

25           THE MARSHAL: Yes, Your Honor.

1 THE COURT: -- will you?

2 (Pause in the proceedings)

3 THE COURT: Thank you for returning, ladies and  
4 gentlemen.

5 I want to be sure that you understand clearly what  
6 has happened, and why I am going to caution you all again.  
7 We're going to lose one of the members of this jury now partly  
8 over that brief exchange on Friday. We're going to have to  
9 excuse one of these jury members. It doesn't help that it's  
10 reported to me that one of you -- and I assume you were the  
11 only one that spoke to her, right? Were you the only one that  
12 spoke to her --

13 MS. HINES: I'm the one who --

14 THE COURT: -- ma'am?

15 MS. HINES: -- said, excuse me.

16 THE COURT: Yes, I'm sorry. I don't know your name,  
17 ma'am, or I would call you by name. You were the only one  
18 that spoke to the jury member?

19 MS. HINES: I'm the one who said, excuse me.

20 THE COURT: Yeah.

21 MS. HINES: Yes.

22 THE COURT: Well, it's reported you also said, I  
23 know I'm not supposed to talk to you.

24 MS. HINES: Yes.

25 THE COURT: Now, that seems so innocent to you, but

1 what it tells us is that you're violating the Court's order  
2 even by saying that. So, what I want you all to understand  
3 is, if I have to, I'll bar you from this courthouse for the  
4 remainder of this trial.

5 I hope you can tell I'm trying to bend over  
6 backwards not to do that. I understand that you are family,  
7 that you care about the defendant. But I'm not going to lose  
8 this jury in order to preserve to you the ability to come and  
9 watch this trial. I'm not going to do it. And unfortunately  
10 for you, I have to put the burden on you to make sure that  
11 there cannot be any circumstance where any question could be  
12 raised about communication of any sort.

13 So, I must caution you all again, stay very far  
14 clear of any jury member. I've raised a bunch of kids, and  
15 sometimes I like to say to other people the same thing I say  
16 to my kids. What would you do different next time?  
17 Hopefully, it would be to go use a different stair rail, go  
18 find a different place to wait until those people are gone.

19 Don't get anywhere near them, because -- because of  
20 your connection to the defendant. Again, it's the same as if  
21 it were one of our testifying police officers out there. If  
22 they approached one of these jury members, you can bet we'd be  
23 in here having this same conversation. Do not get anywhere  
24 near this jury.

25 MS. PIEPER: Judge, for the record, can we have the

1 defendant's mom or mother figure's name for the record?

2 THE COURT: Yeah.

3 MS. HINES: It's Yolanda Hines. Your Honor, I have  
4 a question for you.

5 THE COURT: Yeah, hang on one second. Did you get  
6 it? Yolanda? Is it Yolanda?

7 MS. HINES: Hines. Yolanda Hines.

8 THE COURT: Hines? Okay.

9 THE CLERK: Can you spell that for us?

10 MS. HINES: First and last?

11 THE CLERK: Just the last name.

12 MS. HINES: H-i-n-e-s.

13 THE COURT: Go ahead, Ms. Hines.

14 MS. HINES: Yes. When you release your jury and we  
15 wait, and we let them go in the first elevator, and we wait  
16 behind. And then they leave, and then we go in the next  
17 elevator, and then we wait, and we walk out. And then, when I  
18 go out -- because you guys have cameras here.

19 THE COURT: I'm sorry?

20 MS. HINES: You guys have cameras here.

21 THE COURT: Okay.

22 MS. HINES: And then we leave and we go out, and  
23 they're lagging behind. And I don't know what they were  
24 doing, but they were still here.

25 THE COURT: I understand that, and they told us

1 that.

2 MS. HINES: And then --

3 THE COURT: One lady said that she was waiting for  
4 her husband because she has asthma. She doesn't -- she  
5 doesn't walk very far.

6 MS. HINES: Yeah, and that's why I wasn't in court  
7 Friday morning, because I was at the doctor. And I'm very  
8 sick myself, so I come here to support my son.

9 THE COURT: Okay.

10 MS. HINES: And that's why I have to park so close,  
11 and that's the nearest stairwell for me to park by.

12 THE COURT: Okay.

13 MS. HINES: When I have to park far away -- that's  
14 why they ride with me, so I can have the car to be pulled up  
15 if we have to park far. That's really inconvenient for me.

16 THE COURT: Yes, it is.

17 MS. HINES: So, I didn't know they were going to be  
18 there.

19 THE COURT: Well, I understand that's it's --

20 MS. HINES: And I said, I know I'm not supposed --

21 THE COURT: Here's what I want you to understand --

22 MS. HINES: -- to speak to you, but excuse me.

23 THE COURT: -- though, Ms. Hines. Here's what I  
24 want you to understand. Your inconvenience is not going to  
25 cause me to throw this jury out and start this trial over.

1 Your inconvenience must give way to the inconvenience or the  
2 problems that some of our juror members have in getting their  
3 own transportation and dealing with their own medical  
4 problems.

5 That's the way it has to be in any trial. You  
6 cannot have the -- you cannot have contact and communication  
7 because it would be too inconvenient for a family member to go  
8 do something else. If it's going to be inconvenient, then I'm  
9 going to have to ask you not to come.

10 MS. HINES: Oh, I understand that now.

11 THE COURT: Okay. So, that's what I want you to  
12 understand. It's all on you guys to make sure we don't have  
13 anything more like this happen, or I will indeed order you all  
14 not to appear, and I don't want to do that. All right.  
15 Counsel, anything else?

16 MS. PIEPER: Not by the State, Your Honor.

17 THE COURT: Okay.

18 MR. OTTO: Not by defense, Your Honor. Thank you.

19 THE COURT: Thank you, folks. Now, counsel, I'm  
20 inclined to simply bring Ms. Lucero -- Lucas in and excuse  
21 her, bring the rest of the jury and admonish them.

22 MS. PIEPER: Okay.

23 THE COURT: Anything else?

24 MR. OTTO: After you excuse this juror, I would just  
25 like to approach briefly in terms of timing.

1 THE COURT: All right. Do you want to do it now?

2 MR. OTTO: Yeah, we can do it now.

3 THE COURT: Yeah, let's approach.

4 (Off-record bench conference)

5 THE COURT: Ms. Lucas?

6 THE MARSHAL: Yes, Your Honor.

7 (Pause in the proceedings)

8 (In the presence of Juror No. 7)

9 THE COURT: Ms. Lucas, thank you for rejoining us.

10 We are going to excuse you with our thanks at this time. We  
11 appreciate the time and effort you have put into this. I hope  
12 that you will get the opportunity soon to be able to serve on  
13 another jury.

14 Now, what we'd like to ask you to do is, after you  
15 turn in your badge and all that sort of stuff, and pick up  
16 your personal things, if you would exit through this door, our  
17 -- my law clerk will escort you down the back hall and release  
18 you out that door.

19 JUROR NO. 7: Thank you, Judge, for the support to  
20 me.

21 THE COURT: Oh. You will -- I'm sorry, you will  
22 need to go back to Jury Services also on the third floor.

23 JUROR NO. 7: Third floor?

24 THE COURT: Yeah. Thank you again, Ms. Lucas --

25 JUROR NO. 7: Thank you.

1 THE COURT: -- for the time you've spent.

2 (Outside the presence of Juror No. 7)

3 THE COURT: All right. We're ready to bring our  
4 jury?

5 THE MARSHAL: Yes, Your Honor.

6 MS. SCHIFALACQUA: Yes, Your Honor.

7 MR. OTTO: We were going to do that first?

8 MS. SCHIFALACQUA: After they're excused for the  
9 day.

10 THE COURT: I was going to bring the jury --

11 MR. OTTO: Oh, I -- yes, yes, I'm sorry. My  
12 apologies.

13 THE COURT: Here's the thing. I'll bring the jury.  
14 I will admonish them.

15 MR. OTTO: I understand.

16 MS. SCHIFALACQUA: Actually --

17 THE COURT: Then I will turn to you --

18 MS. SCHIFALACQUA: Yeah.

19 MR. OTTO: I understand.

20 THE COURT: And you -- yeah, go ahead. We'll bring  
21 the jury.

22 MS. PIEPER: And then you're going to rest.

23 THE COURT: And --

24 MS. SCHIFALACQUA: Mr. Otto will rest.

25 THE COURT: After I -- after I send the jury home --

1 MR. OTTO: I have to rest.

2 THE COURT: -- we'll make the record of your motion.

3 (Pause in the proceedings)

4 THE MARSHAL: All rise for the jury.

5 (Jury reconvened at 4:13 p.m.)

6 THE COURT: Counsel, stipulate to the presence of  
7 the jury?

8 THE MARSHAL: You may be seated.

9 MS. PIEPER: Yes, Your Honor.

10 MS. OHLINGER-JOHNSON: Yes, Your Honor.

11 THE COURT: Thank you, ladies and gentlemen. You  
12 will notice that we are one more jury member short. I have  
13 admonished the -- anyone who is family of the defendant not to  
14 be -- not to be anywhere close to you. While I understand  
15 that it was a seemingly innocuous conversation that took  
16 place, it has caused us to lose another juror member.

17 Please make sure that you do not have any  
18 conversations, not only with anyone about the case or about  
19 someone in the case, but have any conversations with anyone  
20 who may be related to anyone in the case. The same would be  
21 true if a police officer were to approach you, you know, about  
22 the case, someone who testified.

23 You're not supposed to talk to anybody that has any  
24 connection with the case, even remote connection, you should  
25 not be talking to them. Does everybody understand that? Any

1 questions? All right. Thank you.

2 We're ready now to proceed ahead. The State has  
3 rested. The defense may call your first witness.

4 MR. OTTO: The defense rests, Your Honor.

5 THE COURT: All right. The defense rests. Ladies  
6 and gentlemen, you've now heard the evidence portion of the  
7 trial. It remains for me to instruct you on the law and for  
8 you to hear the closing arguments of the attorneys. We will  
9 do that tomorrow, so I'm going to send you home today after a  
10 brief day.

11 While you're on this overnight recess -- first of  
12 all, counsel, is 1:00 o'clock -- do we want to start at 1:00  
13 or 1:30?

14 MS. PIEPER: 1:30 is fine.

15 THE COURT: 1:30 work for you? Let's make it 1:30  
16 tomorrow then, ladies and gentlemen.

17 While you're on this overnight recess, please recall  
18 the Court's admonition not to talk or converse among  
19 yourselves or with anyone else on any subject connected with  
20 the trial, or on any person connected with the trial. Please  
21 do not read, watch, or listen to any report of or commentary  
22 on the trial by any medium of information whatsoever.

23 Please don't do any internet research of facts or of  
24 law. Please do not visit any of the places that are made  
25 mention of during the trial. Please do not form or express

1 any opinion on any of the subjects that are connected with  
2 this trial until the case is finally submitted to you and  
3 you're able to deliberate amongst yourselves on the verdict.

4 We will begin at 1:30 tomorrow. The jury will be  
5 excused. Court will remain in session. Thank you.

6 THE MARSHAL: All rise for the jury. Guys, just go  
7 ahead and leave your notebooks on your chairs. I'll collect  
8 them.

9 (Jury recessed at 4:16 p.m.)

10 THE COURT: All right. The record will reflect the  
11 absence of the jury. Mr. Otto, you have a motion?

12 MR. OTTO: Yes, Your Honor. I have a motion to make  
13 for an advisory verdict of not guilty. Under -- it is my  
14 belief that under NRS 175.381, paren (1), close paren  
15 provides, "If at any time after the evidence on either side is  
16 closed the Court deems the evidence insufficient to warrant a  
17 conviction, it may advise the jury to acquit the defendant,  
18 but the jury is not bound by such advice."

19 That statute is supported in case law by the case of  
20 State v. Combs, C-o-m-b-s. That's at 116 Nevada, Advance  
21 Opinion No. 124. That's in the Nevada in the year 2000. It  
22 is also supported by an earlier case called State v. Wilson,  
23 W-i-l-s-o-n, and that can be found at 104 Nevada 405, 760 P.2d  
24 129. That's a Nevada Supreme Court case in 1988.

25 //

1 Both the State and the defense have rested. It is  
2 my position that there is insufficient evidence to find Mr.  
3 Washington guilty of any of the crimes charged in the  
4 Information. And for that reason, I would ask the Court to  
5 advise the jury of that fact in -- as pursuant to NRS  
6 175.381(1), and the case law cited.

7 THE COURT: All right, thank you. I disagree with  
8 the statement that there's any lack of sufficient evidence for  
9 this case to go to the jury as to all of the charges, and  
10 accordingly, the motion is denied.

11 MR. OTTO: Thank you, Your Honor.

12 MS. SCHIFALACQUA: Judge, the other thing I needed  
13 to make a record of, when we talked about the second portion  
14 of the trial, we talked about, depending on if the jurors come  
15 back with a first, that we would do a penalty, and then the  
16 ex-felon in possession of a firearm.

17 However, it would actually have to be reversed. We  
18 would have to do, no matter what the verdict is, the  
19 possession of firearm by an ex-felon, because that is also a  
20 guilt phase portion of the trial before they could ever hear  
21 any of the -- you know, any of the evidence with regard to  
22 penalty.

23 THE COURT: The penalty phase?

24 MS. SCHIFALACQUA: Right.

25 THE COURT: Okay.

1 MS. SCHIFALACQUA: So, I just wanted to say that,  
2 even though we do still have a potential of both, I mean, it  
3 depends on what the jurors do, outstanding, no matter what, we  
4 would have to do the possession of firearm by ex-felon  
5 first --

6 THE COURT: All right.

7 MS. SCHIFALACQUA: -- prior to any penalty  
8 information being brought before the jury.

9 THE COURT: Okay.

10 MR. OTTO: As I understand it, the State proposes  
11 correctly, that when and if the jury returns a verdict --  
12 whatever verdict --

13 MS. SCHIFALACQUA: Yeah, it doesn't matter.

14 MR. OTTO: -- the jury returns, guilty or not guilty  
15 on any charge, or all of the charges, the State will then  
16 before -- if there is a penalty phase under the murder in the  
17 first degree, the State will present further evidence on an  
18 Amended Information which will at this time contain ex-felon  
19 in possession of a firearm, which was not yet put in front of  
20 the jury because that would prejudice the guilt phase of this  
21 trial.

22 THE COURT: All right. Let's assume then that we  
23 have a verdict -- we never know, but if we were to for some  
24 reason have a verdict by the end of tomorrow, then we have a  
25 full day Wednesday. How long would you anticipate the

1 additional evidence would take?

2 MS. PIEPER: Judge, the ex-felon in possession of a  
3 firearm, essentially, we could -- I could probably do it or  
4 Ms. Schifalacqua. We stand up and we say, ladies and  
5 gentlemen, this is opening statements. Here are certified --

6 MS. SCHIFALACQUA: She reads the Information.

7 MS. PIEPER: -- Judgment of Convictions, the  
8 defendant has been convicted of these prior felony  
9 convictions, here is the law in regard to ex-felon in  
10 possession of a firearm, here's my closing arguments. Mr.  
11 Otto then gets up and makes his arguments, and then we do  
12 rebuttal. One person can probably do it in probably two  
13 hours.

14 MS. SCHIFALACQUA: I wouldn't even say that long.

15 MS. PIEPER: Right.

16 MR. OTTO: Two hours?

17 THE COURT: Okay.

18 MS. PIEPER: Well, I mean, I don't know what you're  
19 going to say.

20 MS. SCHIFALACQUA: Yeah. By the time you read the  
21 Information --

22 THE COURT: She's allowing for a long argument by  
23 the defense on it.

24 MS. SCHIFALACQUA: Well, she's --

25 MS. PIEPER: You got to read the --

1 MS. SCHIFALACQUA: You know, by the time you read  
2 the Information --

3 MS. PIEPER: -- information.

4 MS. SCHIFALACQUA: -- we stand up and say, you  
5 didn't know there was a second portion of the trial, we move  
6 our certified Judgements of Conviction into evidence, we then  
7 close.

8 THE COURT: Right.

9 MS. SCHIFALACQUA: We have to read the instructions  
10 again, but --

11 THE COURT: Right.

12 MS. SCHIFALACQUA: -- instead, the --

13 MS. PIEPER: Right.

14 MS. SCHIFALACQUA: -- ex-felon in possession  
15 instructions --

16 THE COURT: Right.

17 MS. SCHIFALACQUA: -- thereby we do a brief  
18 argument. If Mr. Otto wants to argue, we do -- I mean, I  
19 don't even think --

20 THE COURT: So --

21 MS. SCHIFALACQUA: -- it's two hours.

22 THE COURT: So, what I'm trying to avoid is a day in  
23 which we only spend, you know, an hour, two hours, send them  
24 out, they come back with a verdict on that, and we are not --  
25 we can't accomplish anything beyond that point. So --

1 MS. PIEPER: We'll be ready to move -- well, the  
2 only glitch is --

3 THE COURT: If we get a verdict back -- so that's  
4 all we need to all be aware of.

5 MS. PIEPER: Yeah.

6 THE COURT: If we get a verdict back on that second  
7 phase, on the felon -- ex-felon in possession, Wednesday  
8 afternoon, we need to be prepared to move straight forward --

9 MS. SCHIFALACQUA: Sure.

10 MS. PIEPER: Sure.

11 THE COURT: -- on the penalty phase.

12 MS. PIEPER: Yes.

13 MR. OTTO: If that's what we get back.

14 THE COURT: Yeah. And if that were the case --  
15 well, let's see, we still -- we have plenty of time in hand,  
16 it would appear.

17 MS. PIEPER: Yes. Yes.

18 THE COURT: Even if we didn't get started on the  
19 penalty phase itself until Friday morning.

20 MS. PIEPER: Not this Friday.

21 MS. SCHIFALACQUA: Not this Friday. It's Good  
22 Friday.

23 THE COURT: Oh, I -- oh, yeah. That puts us into  
24 Monday, and we've got Monday, Tuesday, and -- so we do need to  
25 be prepared to go forward Wednesday on the penalty phase if --

1 MR. OTTO: If we have a verdict.

2 THE COURT: If we -- yeah, if these things -- you  
3 know, the domino effect happens.

4 MS. PIEPER: We'll have the instructions and  
5 everything pulled for the ex-felon. We'll have the  
6 information, we'll have one ready to be filed. We'll also  
7 have instructions ready on the ex-felon in possession --

8 THE COURT: All right.

9 MS. PIEPER: -- of a firearm.

10 THE COURT: All right. Do we need anything else on  
11 the record before we settle instructions? I have received  
12 instructions from the State and from the defense, and I'm  
13 prepared to spend the rest of the afternoon with counsel. Is  
14 there anything else for the record before we --

15 MR. OTTO: No, Your Honor.

16 THE COURT: -- break for the day?

17 MS. SCHIFALACQUA: No, Judge.

18 THE COURT: All right, we're off the record. We  
19 will begin again tomorrow 1:30 on our instructions and final  
20 argument. Okay?

21 (Court recessed at 4:23 p.m., until Tuesday,  
22 April 15, 2014, at 2:02 p.m.)

23 \* \* \* \* \*

24  
25

**CERTIFICATION**

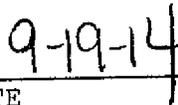
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TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

THE STATE OF NEVADA,	.	CASE NO. C-294695-1
	.	
Plaintiff,	.	DEPT. NO. I
	.	
vs.	.	
	.	
MATTHEW WASHINGTON,	.	<b>TRANSCRIPT OF</b>
	.	<b>PROCEEDINGS</b>
Defendant.	.	
.....	.	

BEFORE THE HONORABLE KENNETH CORY, DISTRICT COURT JUDGE

**JURY TRIAL - DAY 7**

TUESDAY, APRIL 15, 2014

APPEARANCES:

FOR THE STATE:	DANIELLE K. PIEPER, ESQ. BARBARA F. SCHIFALACQUA <i>Chief Deputy District Attorneys</i>
FOR THE DEFENDANT:	DAVID J. OTTO, ESQ. ROBERTA OHLINGER-JOHNSON, ESQ.

COURT RECORDER:  
BEVERLY SIGURNIK  
District Court

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INDEX

STATE'S CLOSING ARGUMENT BY MS. SCHIFALACQUA . . . . . 11  
DEFENDANT'S CLOSING ARGUMENT BY MR. OTTO . . . . . 30  
STATE'S REBUTTAL CLOSING ARGUMENT BY MS. PIEPER . . . . . 37

1 LAS VEGAS, NEVADA, TUESDAY, APRIL 15, 2014, 2:02 P.M.

2 (Outside the presence of the jury)

3 THE COURT: We're not pulling our jury in yet  
4 though, right?

5 THE MARSHAL: No, Your Honor.

6 THE COURT: All right, please be seated. Let's go  
7 on the record to settle instructions. Okay. Counsel are  
8 aware of the instructions which the Court intends to give. On  
9 behalf of the State, are there objections to any of the  
10 instructions?

11 MS. PIEPER: No, Your Honor.

12 THE COURT: Any additional instructions which the  
13 State proposes?

14 MS. PIEPER: No, Your Honor.

15 THE COURT: On behalf of the defense, are there  
16 objection to any of the instructions?

17 MR. OTTO: No, Your Honor.

18 THE COURT: Are there any additional instructions  
19 which the defense wishes to propose?

20 MR. OTTO: Yes, there are, Your Honor, two.

21 THE COURT: Okay.

22 MR. OTTO: And --

23 THE COURT: We've discussed those in chambers?

24 MR. OTTO: We have discussed those in chambers.

25 THE COURT: Any additional record you wish to make?

1 MR. OTTO: No. I just wish to file my proposed  
2 instructions and the citations along with them with the Court.

3 THE COURT: Very good. If you'll file those in open  
4 court. As I've indicated to counsel, you will have a separate  
5 copies of numbered instructions on which we'll have shortly.  
6 We're making the copies now. Once we have those, is there  
7 anything else that needs to be brought before the Court before  
8 we bring our jury in and I instruction the jury?

9 MS. PIEPER: Judge, I think the only thing is that  
10 Mr. Otto wanted to make a record in regard to his jury  
11 instructions and obviously the State will respond to that  
12 record for the record -- for the record.

13 THE COURT: He just did.

14 MS. PIEPER: Oh, he doesn't --

15 THE COURT: He just submitted the instructions.

16 MS. PIEPER: You don't want to argue?

17 THE COURT: Did you wish to make any further record  
18 in relation to those?

19 MR. OTTO: Except to say that I propose them, I  
20 believe that they are a correct statement of the law. The  
21 State has objected to them and the Court has ruled and  
22 excluded them from the instructions.

23 THE COURT: That's correct.

24 MS. SCHIFALACQUA: And, Judge, for the State's  
25 purposes, obviously, the one with regard to motive, we have

1 submitted a motive instruction that we think is an accurate  
2 statement of the law and gives Mr. Otto the opportunity to  
3 argue motive, but does not weigh in with regard to reasonable  
4 doubt which, for our position, obviously by statute, there is  
5 only one reasonable doubt instruction to be given.

6 And with regard to the battery with use of a deadly  
7 weapon being a lesser included offense of attempt murder,  
8 we've provided this Court and counsel obviously with the  
9 current case law that says it is certainly not, that they are  
10 separate offenses that have particular elements and therefore  
11 that's why we objected to those, Judge.

12 THE COURT: Okay.

13 MS. SCHIFALACQUA: Thank you.

14 THE COURT: Anything else? Any further record  
15 before we bring our jury and do the instructions and then  
16 closing argument?

17 MS. PIEPER: Not by the State.

18 THE COURT: How long does State anticipate your  
19 opening argument to be? Or your closing argument, whatever  
20 you want to call it.

21 MS. SCHIFALACQUA: Forty-five minutes to an hour,  
22 Judge.

23 THE COURT: And your final?

24 MS. PIEPER: That will all depend on Mr. Otto.

25 THE COURT: Uh-huh. Mr. Otto?

1 MR. OTTO: I did want to add to the record, Your  
2 Honor, that earlier and not too much earlier, I made a motion  
3 for -- for an advisory verdict of not guilty. I did that at  
4 the close of the State's evidence and just to keep the record  
5 clear, that's also --

6 THE COURT: That's been made, that's correct.

7 MR. OTTO: You -- you denied that motion.

8 THE COURT: And I've denied the motion, that's  
9 correct.

10 MS. SCHIFALACQUA: How long are you going to be in  
11 closing?

12 MR. OTTO: My closing, 30 minutes, 40 minutes.

13 THE COURT: Okay.

14 MS. PIEPER: And I will probably be 30 minutes or 40  
15 minutes. We'll finish today, Judge.

16 THE COURT: I am not intending to keep this jury  
17 tonight. As you know, we are pinching pennies everywhere. So  
18 my -- my assumption is that when we are finished with  
19 argument, generally speaking, they usually like to stay long  
20 enough to elect a foreman and then go home.

21 MS. SCHIFALACQUA: Okay.

22 THE COURT: And I'll have them come back at 9:00  
23 o'clock tomorrow. Even though I'll be doing other things,  
24 they can deliberate and then we would be prepared to -- oh,  
25 wait, tomorrow --

1 correct?

2 MS. PIEPER: Correct.

3 MS. SCHIFALACQUA: Correct.

4 THE COURT: And I will further advise them not to  
5 open any of the package which remain unopened.

6 THE CLERK: You mean the ammunition that's in with  
7 the guns?

8 MS. PIEPER: Yes.

9 MS. SCHIFALACQUA: Correct.

10 THE CLERK: (Inaudible).

11 MS. PIEPER: Yes.

12 THE COURT: And they're responsible to pull out --  
13 you know, to tell us which ones not to give them.

14 MS. PIEPER: I spoke to Michele already.

15 THE COURT: All right. Anything else?

16 MS. PIEPER: Not by the State, Your Honor.

17 THE COURT: All right then, let's bring the jury.

18 (Jury reconvened at 2:15 p.m.)

19 THE COURT: Will counsel stipulate to the presence  
20 of the jury?

21 MS. SCHIFALACQUA: Yes, Your Honor.

22 MR. OTTO: Yes, Your Honor.

23 THE COURT: Good afternoon, ladies and gentlemen.

24 Thank you once again for joining us. Has anyone have any  
25 problem with anyone inquiring into your official duties?

1 Okay. Go ahead.

2 (Pause in the proceedings)

3 THE COURT: As I indicated yesterday, ladies and  
4 gentlemen, you have heard all of the evidence in this case.  
5 It now remains for me to instruct you on the law and for you  
6 to hear the closing arguments of counsel.

7 I'm about to instruct you upon the laws that applies  
8 in this case. I would like to instruct you orally without  
9 reading to you, however, these instructions are of such  
10 importance that it is necessary for me to read to you these  
11 carefully prepared, written instructions.

12 If the instructions are long, and some are quite  
13 complicated, if they are not especially clear when I read them  
14 to you, please keep in mind that when you go to the jury room,  
15 you will be able to take these carefully prepared, written  
16 instructions with you so that you can read them and consider  
17 them carefully.

18 (Jury instructions read; not transcribed)

19 We will take a 10 minute recess during which you  
20 will, once again, please, recall and live by the Court's  
21 admonition which is that you are not to talk or converse among  
22 yourselves or with anyone else on any subject connected with  
23 the trial or on any person connected with the trial, do not  
24 form or express any opinion on any subject connected with the  
25 trial until the case is finally submitted to you.

1 We will take a 10 minute recess and when you are  
2 finished, please line up outside and the Bailiff will bring  
3 you in.

4 (Jury recessed at 3:17 p.m.)

5 THE COURT: The record will reflect the absence of  
6 the jury. Let me -- because we have some new people here who  
7 are viewing, may I repeat my admonition of yesterday. No one  
8 who is a spectator to this trial should go anywhere near the  
9 jury. There should be no communication with anyone in the  
10 jury, nor should anyone who is a spectator or any of us,  
11 obviously, the attorneys, the Court included, should any of us  
12 be anywhere near the jury.

13 Now, in a courthouse where there are not -- there's  
14 only a few restrooms and there's only a certain number of  
15 elevators, that may be a challenge. I expect everyone who's a  
16 spectator here to comply with that order.

17 So counsel, anything else?

18 MS. PIEPER: No, Your Honor.

19 MS. SCHIFALACQUA: No, Your Honor.

20 MR. OTTO: No, Your Honor.

21 THE COURT: Take a 10 minute recess.

22 (Court recessed at 3:18 p.m. until 3:37 p.m.)

23 (Outside the presence of the jury)

24 THE COURT: All right. Counsel ready?

25 MS. PIEPER: Yes, Your Honor.

1 MS. SCHIFALACQUA: Yes, Your Honor.

2 MR. OTTO: Yes, Your Honor.

3 THE COURT: Please be seated, we'll bring our jury.  
4 Well, be seated for a minute anyway.

5 (Jury reconvened at 3:37 p.m.)

6 THE COURT: Will counsel stipulate to the presence  
7 of the jury?

8 MS. SCHIFALACQUA: Yes, Your Honor.

9 MR. OTTO: Yes, Your Honor.

10 THE COURT: Thank you. All right, we'll be pleased  
11 to hear the closing argument on behalf of the State. Ms.  
12 Schifalacqua.

13 MS. SCHIFALACQUA: Thank you, Your Honor.

14 STATE'S CLOSING ARGUMENT

15 MS. SCHIFALACQUA: Ladies and gentlemen, over this  
16 last week or so you've heard the evidence proving the crimes  
17 that the defendant committed in this case, and they are  
18 conspiracy to commit murder, murder with use of a deadly  
19 weapon, attempt murder with use of a deadly weapon, battery  
20 with use of a deadly weapon, and discharging a firearm at or  
21 into a structure.

22 Now, on November 5th of 2013, that defendant, along  
23 with Martell Moten, took the life of Nathan Rawls and then  
24 tried to take the lives of Marque Hill, Laroy Thomas and  
25 Ashley Scott. It is on that day, on November 5th of 2013,

1 that the defendant, along with Martell Moten, began a  
2 coordinated series of acts to effectuate their specific intent  
3 to kill. And, ladies and gentlemen, they were, in part,  
4 successful.

5 On that date, as you know, they went to 2655  
6 Sherwood Street. Now, this apartment complex was in a  
7 residential area. It sat in -- apartment complex next to  
8 apartment complex and the walkway to get in was narrow. If  
9 you remember the testimony, you couldn't drive through, it was  
10 gated. And you had to walk through that gate to get to where  
11 apartment 18 was.

12 As well as, when they walked through, the area  
13 itself that made up the courtyard, was because it wasn't a  
14 full apartment complex. Apartment 18 was on the lower level  
15 and the apartment above it mirrored the exact same design. As  
16 well as, across the way, there was another apartment complex  
17 that mirrored the apartment complex of 2655. That made up, as  
18 you see, the courtyard in the middle which accessible only by  
19 foot and not by vehicle.

20 At approximately 4:30 in the morning, the defendant  
21 and Martell Moten shot up, multiple times, apartment 18. And  
22 this is the outline of not only the strikes, but where Nathan  
23 Rawls took his last breaths.

24 Now, Marque Hill, as you heard, along with Laroy  
25 Thomas, saw their friend take those last breaths. But before

1 that, at 4:34 in the morning, Marque Hill tried to save his  
2 friend's life and he called 911. And you heard his call and  
3 you have his call. At 4:34 in the morning is when he calls  
4 for help and the defendant, along with Martell Moten, have  
5 already shot up apartment 18.

6           Around that same time, not far from the apartment  
7 complex here, only a couple of apartment complexes over, the  
8 DeSotos were doing what presumably every single person in that  
9 entire complex was doing, sleeping. The DeSotos were also  
10 sleeping.

11           You heard from Lorraine, as well as Darrin, that  
12 they were awoke by gunfire. It's at that time that they  
13 testified they looked out their window and saw a vehicle  
14 driving down an alleyway, because as they described in every  
15 one of these complexes, this is gated, this is gated, this is  
16 gated and it's not accessible via driving. And that alleyway  
17 is where the defendant, along with Martell Moten, drove that  
18 silver Dodge Magnum.

19           Both Darrin and Lorraine DeSoto described the Silver  
20 Dodge Magnum. It had the limo tint, no chrome, low profile,  
21 and it drove down that alleyway. It is at, ladies and  
22 gentlemen, only 4:35 in the morning when Lorraine DeSoto makes  
23 her call to 911 and describes the car that the defendant is  
24 caught in. She gives that description.

25           And you heard testimony that Officer Parquette,

1 Officer Christian Parquette, working as a patrol officer in  
2 the Downtown Area Command hears the call in the South Central  
3 Area Command that borders the command that he works in. And  
4 he is made aware of, obviously, the descriptions that the  
5 DeSotos had given 911 operators.

6 He assigns himself to that call at 4:37, mere  
7 minutes after the call is placed. And he, driving in the  
8 area, spots the defendant and Mr. Moten in their vehicle at  
9 approximately 4:39. He first sees them, as he testified  
10 before all of you, that at four -- by 4:39 in the morning, he  
11 already had, at Eastern and St. Louis, the suspect vehicle, as  
12 well as the plate of 142LFP. And at 4:40 in the morning, it  
13 is at Eastern and Ogden that Officer Parquette pulls over the  
14 defendant and Martell Moten in that felony car stop.

15 The defendant is driving that silver Dodge Magnum,  
16 plate 142LFP. He is exited from that vehicle and, as you are  
17 well aware, Martell Moten's in the back seat.

18 Now, who is the registered owner of that vehicle?  
19 It is, and you have in evidence, the defendant's girlfriend.  
20 Dean Raetz talked you on the stand, he testified that it is  
21 the defendant's girlfriend that is the registered owner of  
22 that vehicle that he was driving on the date in question, oh,  
23 so early in the morning hours.

24 But what else do we know that ties him besides  
25 physically being in that vehicle? A latent print analysis.

1 David Johnson talked to you about the prints that were  
2 submitted by CSA Cromwell as well as CSA Taylor. They lifted  
3 prints from the vehicle after it was processed back at the  
4 lab.

5           And with regard to those prints, the exterior side  
6 surface of the front driver door was identified to the left  
7 middle finger of the defendants. The exterior surface of the  
8 rear driver side door window was identified to the left palm  
9 of the defendant, as well as the exterior window of the trunk  
10 door was identified to the right palm of the defendant.

11           In that vehicle, in that rear passenger seat, not  
12 only did Officer Parquette, but Detective Rogers who had then  
13 got on scene, once that they -- once they communicated that  
14 this was no longer just a shooting, but in fact, the defendant  
15 and Mr. Moten were successful in their intent to kill and took  
16 Nathan -- Nathan Rawls' life that the homicide detectives were  
17 on scene. And in that rear passenger seat, what was  
18 observable more readily than the photographs that were shown  
19 to you in court, was the butt of a firearm. Martell Moten had  
20 the best access to that 9 millimeter firearm, semiautomatic  
21 firearm that was collected and impounded in evidence.

22           What else do we know about that 9 millimeter firearm  
23 that was collected into evidence? It was sitting on top of  
24 blue gloves. And those gloves ultimately were tested and  
25 swabbed for DNA.

1           Beata Vida testified that the profile obtained from  
2 what she referred to as the outside of the gloves, though  
3 admittedly didn't know if Mr. Moten had frankly pulled the  
4 gloves off and turned them inside out or vice versa, but that  
5 the outside swabbing of that had a mixture profile. However,  
6 she was able to identify the major contributor as being  
7 Martell Moten.

8           The car obviously was transported and thereafter  
9 searched back at the lab. Ultimately, what was found hidden  
10 under the steering column where defendant was seated was  
11 another firearm. And you saw -- you heard Detective Rogers,  
12 as well as CSA Cromwell and Taylor, talk about where they  
13 found that firearm, right under where the defendant was  
14 seated. They pulled it down and found the firearm. Defendant  
15 is the person that had the best access to that firearm, the 40  
16 caliber semiautomatic Glock, if you recall, with a laser on  
17 it.

18           Now, the firearms that were collected in this case,  
19 as the Judge explained by the law, didn't have to be, but they  
20 were, and it's significant for a number of reasons, because it  
21 links the defendant and his co-conspirator to this crime. But  
22 let's first talk about some of the elements of a crime and one  
23 of them, very easily, is a deadly weapon.

24           In this case, the law instructs you a deadly weapon  
25 is any instrument which, if made by its design, can cause

1 substantial bodily harm or injury or death. And obviously, a  
2 firearm not only would meet that requirement, but by law,  
3 firearms are deadly weapons. So in this case, when asked if  
4 any of the crimes were committed with use of a deadly weapon,  
5 it is so very clear that the answer to that is, yes.

6 Now, using a deadly weapon, especially in an  
7 instance where somebody is working with another partner when  
8 they commit the crime, it doesn't mean that each person has to  
9 actually physically take that weapon and pull the trigger.  
10 But the law recognizes that when more than one person commits  
11 a crime and one uses a deadly weapon in the commission of the  
12 crime, each can be convicted of using the deadly weapon, even  
13 though they didn't personally pull the trigger. An unarmed  
14 offender uses the deadly weapon if they acknowledge of the use  
15 of the deadly weapon.

16 In this case, the Judge went on reading our Second  
17 Amended Information, and it's clear that obviously we've  
18 charged what we refer to as different theories of liability.  
19 And that includes directly committing a crime, aiding and  
20 abetting in the commission of a crime, or doing it pursuant to  
21 a conspiracy. And the law makes no distinction with regard to  
22 which theory is used to prove beyond a reasonable doubt that  
23 the defendant committed the crime. But let's talk about each  
24 one of those.

25 //

1           So what's a conspiracy? Well, really it's an  
2 agreement or mutual understanding between two or more people  
3 to commit a crime, but no formal contract is needed. And why?  
4 The law recognizes that it's not likely that you will know  
5 that someone met and had some sort of written agreement  
6 between each other to commit a crime, all right? We don't  
7 have to show that.

8           A conspiracy can be inferred from conduct. So what  
9 do you look to, ladies and gentlemen? You're going to look to  
10 the conduct of the defendant and Martell Moten before, during  
11 and after the commissions of a crime. And that conduct shows  
12 not only their intent, but whether or not they acted in a  
13 coordinated series of acts to show that conspiracy.

14           Who's liable under a conspiracy? Well it depends  
15 somewhat between a specific intent crime and a general intent  
16 crime. But the act of one co-conspirator is the act of all of  
17 the co-conspirators when it's done in furtherance of a  
18 conspiracy if, for a specific intent crime, the defendant  
19 specifically intends that crime to occur; and with regard to  
20 general intent crimes, that it follows as one of the probable  
21 and natural consequences of the object of the conspiracy.

22           Aiding and abetting is also charged. A person who  
23 knowingly and with criminal intent aids, promotes, encourages  
24 or instigates by act or advice, or act and advice the  
25 commission of such crime with the intention that a crime be

1 committed is aiding and abetting. But we don't have to prove  
2 which person actually aided and abetted and which person  
3 actually committed the offense with regard to being a  
4 principal.

5           And this makes sense, ladies and gentlemen. The law  
6 is wise. Why? Because when people get together to commit a  
7 crime, one, it's more likely to occur. Two, oftentimes  
8 different people play different roles when they want to  
9 effectuate a crime. And so the law recognizes that whether  
10 you're the getaway driver that knows somebody's going to get  
11 out of the car and shoot, whether or not you actually pull the  
12 trigger, or whether or not you spent and calculated the plan,  
13 you are -- each one is liable as a principal. And it makes  
14 sense, because when people act together, different people play  
15 different roles.

16           Now, in this case, we know that the defendant acted  
17 with Martell Moten because the evidence shows that. But we  
18 also know that he physically acted in shooting up apartment  
19 18. He conspired with Moten. If you look at his conduct  
20 before, during and after to commit the crime of murder, he  
21 conspired with Moten to kill. And, in fact, they were  
22 successful.

23           But one thing about theories of liability is -- and  
24 is very clear under the law, is that you do not have to agree  
25 amongst yourselves on a theory of liability. The defendant

1 can be liable as when directly committing the offense, aiding  
2 and abetting or as a co-conspirator. As long as you agree  
3 that the evidence establishes the defendant's guilt of the  
4 offense, your verdict shall be guilty as to that offense even  
5 if you disagree on the theory of liability.

6 Nathan Rawls' life was taken on November 5th of  
7 2013. He was sleeping. It was 4:30 in the morning. And Dr.  
8 Simms talked to you, the medical examiner, about the cause of  
9 his death, gunshot wounds to his body, and there were three.

10 Three gunshot wounds that Dr. Simms testified about.  
11 One, remember, entered that -- in his right upper back and  
12 that was lethal, it did damage to his aorta. It crossed his  
13 chest, it hit his lungs, and it exited the left upper chest.  
14 We refer to that as a through and through gunshot wound. That  
15 was a lethal injury.

16 The second entered the right side of Nathan Rawls.  
17 It was also lethal; went into his lungs and that's the bullet  
18 that was recovered by Dr. Simms.

19 And the third gunshot, if you recall, was a through  
20 and through wound to -- that fractured Nathan Rawls' knee  
21 which was not lethal.

22 Now, two of those three were lethal wounds. One Dr.  
23 Simms talked about being more lethal, if you will, not able to  
24 save Nathan Rawls life at all, no matter the medical  
25 intervention.

1           The bullet recovered from Nathan Rawls' body. The  
2 crime scene analyst, Shayla Joseph, actually impounded that.  
3 That was recovered from Dr. Simms. And it was forensic  
4 analyst, Anya Lester, identified that that bullet was fired by  
5 the .40 caliber Glock that was found in the defendant's car  
6 right under his steering wheel.

7           But this, the recovery of this bullet, does not make  
8 a difference with regard to whether the through and through  
9 bullet was from the .40 caliber or not. See, the defendant  
10 and Martell Moten acted together with the specific intent to  
11 kill. So it makes no difference which bullet actually killed  
12 Nathan Rawls, because they both acted with the specific  
13 intent. And so whether it was the 9 millimeter -- in this  
14 case we know one of them was the 40 caliber -- but it makes no  
15 difference under the law.

16           Let's talk about murder. It is the unlawful killing  
17 of a human being with malice aforethought and you're  
18 instructed that there are two types, first and second degree.

19           Malice aforethought; it's an intentional doing of a  
20 wrongful act without legal cause or excuse or what the law  
21 considers as adequate provocation. There's express and  
22 implied malice. Express malice is a deliberate intention,  
23 unlawfully, to take away the life of a human being which is  
24 manifested by external circumstances capable of proof. And  
25 implied malice is when no considerable provocation appears or

1 when all the circumstances of the killing show an abandon and  
2 malignant heart. And here it is clear by the nature of this  
3 offense, the number of shots fired, that the killing was  
4 wrongful and had no legal cause or adequate provocation.

5 First degree murder has three different elements  
6 that the State has proven in this case. The killing has to be  
7 willful, deliberate, and premeditated. What do those mean?  
8 Let's talk about it.

9 Willfulness is the intent to kill. An intention to  
10 kill, what do we look at? People don't go around necessarily  
11 expressing verbally their intent when they act. But their  
12 actions, and the law recognizes that their actions themselves  
13 tell us what the intent is. So the law says, you look at the  
14 facts and circumstances of the killing. The use of a weapon  
15 calculated to produce death and the manner of its use.

16 And in this case, we had more than one weapon  
17 calculated to produce death that were shot multiple times.  
18 The intent that the defendant and Martell Moten had that early  
19 morning is clear, and it was to kill, each time they pulled  
20 that trigger of either firearm.

21 Deliberate -- and I'm sorry, you look at the  
22 attendant circumstances characterizing the act. Let's talk  
23 about what deliberate means. It's determining upon a course  
24 of action to kill. And it may be arrived at in a short period  
25 of time.

1 Premeditated is the either design or determination  
2 to kill and it can be as instantaneous as successive thoughts  
3 of the mind.

4 So what's required with regard to the length of  
5 time? The law recognizes that every situation is going to  
6 vary and there is no specific time frame in order to show some  
7 premeditation and deliberation. The true test is not the  
8 duration of time, but rather the extent of the reflection.  
9 And a cold, calculated judgment and decision can be arrived at  
10 in a short period of time.

11 Did the defendant act willful, deliberate and  
12 premeditated? That's the question. Absolutely. The evidence  
13 proves that the answer is, yes. He, along with Martell Moten,  
14 committed the crime of first degree murder with use of a  
15 deadly weapon.

16 Defendant's deliberate actions. What were the  
17 course of action that he and his co-conspirator took? He  
18 coordinated with Martell Moten to go to a specific location.  
19 They had to procure a vehicle; firearms, multiple of them;  
20 ammunition; the evidence of gloves; the timing, 4:30 in the  
21 morning; as well as positioning themselves to get to the  
22 courtyard, walking in there.

23 What about his premeditated actions? Defendant's  
24 determination to kill was distinctly formed by the position,  
25 look at the position of the shooters; the number of shots

1 fired; there was no fight. This was cold and calculated  
2 action. The victims are unarmed, unaware, unable to escape.  
3 It was Marque Hill that said there was no other exit to that  
4 apartment and they were awoke to gunfire, having done nothing  
5 to provoke it.

6 We have charged, and as the Judge indicated, that  
7 first degree murder includes second degree murder. Well, what  
8 is that? That is murder with malice aforethought, but without  
9 the added mixture of premeditation and deliberation. And  
10 here, it is clear that the defendant committed the crime of  
11 first degree murder with the use of a deadly weapon.

12 Let's talk about the attempt murders. What's  
13 attempt murder? It's a performance of act or acts which tend,  
14 but fail, to kill a human being when such acts are done with  
15 express malice, namely, the deliberate intention unlawfully to  
16 kill.

17 And in this case, the defendant tried, but failed,  
18 to kill three other people. See, he was successful in killing  
19 Nathan Rawls, but he tried and failed to kill Marque Hill,  
20 Laroy Thomas, as well as Ashley Scott. And in this case, all  
21 of those persons were in that residence, but -- and there were  
22 multiple shots fired. The law recognizes what's called  
23 transferred intent, so let's talk about that.

24 Transferred intent means that it doesn't matter if  
25 the defendant had the specific intent to kill Nathan, Laroy,

1 Marque, Ashley and then -- or an unknown person frankly. The  
2 intention to kill transfers. So there are two things with  
3 regard to transferred intent that are important. If a person  
4 intends to kill another person, but accidentally kills a third  
5 or -- by accidentally, I mean their aim is off, but they  
6 intended to kill the first, the intent transfers. If they  
7 have the intent, it is formulated before the victim is hurt.

8           And there's another area that is very important in  
9 this case. It's that if it's in a group, a specific intent to  
10 kill can be at the group. It does not have to be at a named  
11 person because in this case, you heard that -- from Marque,  
12 from Ashley, from Laroy, there was no beef. They didn't know  
13 the defendant. But his intent to kill, along with Martell  
14 Moten's specific intent to kill was at the group. And it  
15 transfers from the second that they pulled the trigger.  
16 Follow that bullet because that's where the intent went. It  
17 doesn't matter where it lands.

18           Instruction No. 4, when you get the packet from the  
19 Judge, talks about intent and not to confuse intent with  
20 motive, because intent is not motive. And motive is not an  
21 element of any offense ever. Let me say it again, motive's to  
22 an element of a crime. And don't confuse the one with the  
23 other, because the State does not have to prove motive.

24           Now, Mr. Otto may get up before you and talk about  
25 motive. It is common experience to want to know the why's.

1 Sometimes we don't know the answer to why's. Mr. Otto may  
2 suggest that lack of motive has some sort of impact on the  
3 defendant's willful, deliberate and premeditated conduct.

4 But ask yourselves what it is and what inferences  
5 Mr. Otto may be asking you to draw and whether or not it  
6 really makes sense, because the State submits to you that lack  
7 of a motive actually further shows the defendant's specific,  
8 cold and calculated intent to kill.

9 Attempt murder with use of a deadly weapon. In this  
10 case, we have three different attempt murder with use of a  
11 deadly weapon crimes charged. Why? Well, you saw the  
12 trajectory, you heard from the crime scene analyst.

13 In this case, when the multiple bullets are flying  
14 through the apartment complex, in that apartment, it has  
15 killed or at least struck Nathan Rawls. And you know that  
16 Laroy as well as Ashley are seated on this loveseat. And  
17 their position is such that the bullets are literally flying  
18 overhead and that makes way into Marque Hill's bedroom. And  
19 they -- all of them, the defendant attempted, but failed to  
20 kill.

21 Marque Hill, he talked about and testified for you  
22 that he was laying asleep in his bed and frankly, quite  
23 luckily for him, he didn't have a traditional bed. He only  
24 had a box spring and a mattress. And he said if he would  
25 have, and I quote, had the rails on his bed, he would have

1 been dead, because he testified that when he woke up, the  
2 bullets were literally whizzing by his head when he crawled to  
3 the ground. As well as Laroy Thomas and Ashley Scott, that  
4 the loveseat that they were seated on had -- right above was  
5 riddled with the impacts of gunshots that the defendant and  
6 Martell Moten took on those early morning hours.

7           Attempt murder with use of a deadly weapon for each  
8 one of these victims is the defendant and/or Martell Moten  
9 shooting with this specific intent to kill, which is separate  
10 and apart from battery, a general intent crime with use of a  
11 deadly weapon. And there are two counts of battery with use  
12 of a deadly weapon for Laroy Thomas, as well as Ashley Scott.

13           So what's a battery? It's any willful and unlawful  
14 use of force or violence upon the person of another. And in  
15 this case, we know it was done with a deadly weapon. Why?  
16 Obviously, Ashley talked about being struck with one of the  
17 gunshots that flew through the apartment when she was asleep.  
18 And she went to Sunrise Hospital and they actually recovered a  
19 bullet from her body.

20           As well as for Laroy Thomas. He, too, was shot,  
21 battery, use of force or violence on the person of another,  
22 each one of them is a person of another. And was it done by a  
23 deadly weapon? Absolutely. Why? We know that they each had  
24 gunshot wounds, they testified to the same, they each went to  
25 Sunrise Hospital. Laroy to this day, in fact, you saw him on

1 crutches, after the bullet was removed, he's still going  
2 ongoing therapy for the injuries he sustained from this.

3 But attempt murder with use of a deadly weapon and  
4 battery with use of a deadly weapon are separate offenses.  
5 And the defendant is guilty of both. The attempt murder  
6 requires a specific intent to kill, but it does not require  
7 any unlawful use of force or violence.

8 And the best example of that is that Marque Hill was  
9 never actually struck with a bullet that night, but the  
10 defendant attempted to kill him as those bullets are whizzing  
11 by his face. And but for that rail, he would have, at least  
12 in his testimony, also been dead.

13 Battery with use of a deadly weapon doesn't require  
14 a specific intent to kill. It requires only the unlawful use  
15 of force or violence upon the person of another. And the  
16 defendant, it is clear, is guilty of both types of offenses,  
17 three counts of the attempt murder with use of a deadly weapon  
18 and two counts of the battery with use of a deadly weapon.

19 Discharging a firearm at or into a structure. The  
20 law tells us that it is the willful -- willfully and  
21 maliciously -- a person who willfully and maliciously  
22 discharges a firearm at or into an occupied structure. And an  
23 occupied structure, under the law, although in this case it  
24 was physically occupied, it just means that it hasn't been  
25 abandoned.

1           And with this and with all of the charges, the State  
2 has obviously alleged defendant directly committed this crime,  
3 aiding and abetting in the commission of this crime, or via  
4 co-conspiracy with him and Martell Moten. And in this case,  
5 we know that obviously this structure, having not been  
6 abandoned, was shot up, riddled with bullets from both that 9  
7 millimeter firearm as well as the Glock.

8           And part of why we know that is, Ms. Lester spent  
9 quite a long time on a very heady subject, but that is  
10 absolutely vital in this case, and that is, the guns that were  
11 taken from his car with Martell Moten, and the cartridge  
12 casings collected on scene at 2655 Sherwood were shown, and  
13 Ms. Lester testified, that there was microscopic evidence  
14 showing that the 9 millimeter cartridge casings were fired  
15 from that gun that was found in the backseat of the  
16 defendant's car where Martell Moten had the most access. And  
17 that the cartridge casings of the .40 caliber were fired from  
18 the gun that was underneath the defendant's steering wheel.

19           Ladies and gentlemen, you will go back and look at  
20 all of the evidence and we ask you to do so. There's a ton of  
21 it in. And when you look at all of the evidence, you can come  
22 to one conclusion and that's that the defendant is guilty of  
23 conspiracy to commit murder, first degree murder with use of a  
24 deadly weapon for willfully, deliberately, and with  
25 premeditation killing Nathan Rawls; for three counts of the

1 attempt murder with use of a deadly weapon for Ashley Scott,  
2 Laroy Thomas and Marque Hill; for two counts of battery with  
3 use of a deadly weapon for Laroy Thomas and Ashley Scott; and  
4 for ten counts of discharging a firearm at or into a structure  
5 because those are the crimes that that defendant committed on  
6 November 5th of 2013. Thank you.

7 THE COURT: All right, thank you. Now, we'll be  
8 pleased to hear the closing argument on behalf of the  
9 defendant. Mr. Otto.?

10 MR. OTTO: Thank you, Your Honor.

11 MS. SCHIFALACQUA: And Court's indulgence. Madame  
12 Clerk, if we could have this switched back over.

13 DEFENDANT'S CLOSING ARGUMENT

14 MR. OTTO: Good afternoon, ladies and gentlemen.

15 We, the defense, by law are not required to prove  
16 anything. Mr. Washington is considered not guilty. No matter  
17 how many times the State points its finger at Mr. Washington,  
18 he is considered not guilty. The -- just because the State  
19 accuses and points a finger and argues does not make Mr.  
20 Washington guilty.

21 The State must prove its case with evidence beyond a  
22 reasonable doubt. I submit to you, the State has not done so.  
23 Matthew Washington did not commit any of the crimes charged.  
24 The State has stacked a lot of charges expecting that you'll  
25 be overwhelmed. There is no evidence that Matthew Washington

1 was at apartment 18 at 2655 Sherwood at anytime ever.

2           The State mentions its theories. These are really  
3 just asking you to speculate on the guilt of Mr. Washington.  
4 The law does not allow you to speculate that a crime was  
5 committed and that Mr. Washington committed it. You must find  
6 the evidence and there is none.

7           Let's ask some questions. Where is the unnamed co-  
8 conspirator mentioned throughout the charging documents?  
9 Where are the fingerprints, the gunshot residue, the DNA. We  
10 know they're not on the gun. We know they're not on the  
11 bullets. We know that Martell Moten's DNA is on the gloves.

12           Where is it on the dash -- the under-dash panel  
13 showing that Mr. Washington went in there. They didn't even  
14 test it. They could have tested for touch DNA which you've  
15 heard is a sensitive test. They could have and they didn't.  
16 We would have more answers to these unanswered questions in  
17 this case if the State and the police had tested that part of  
18 the car. Ask yourselves, why didn't they?

19           These unanswered questions must give you pause. Why  
20 no fingerprints, why no gunshot residue, why no DNA, why  
21 didn't the police even test the panel for those things?

22           At the beginning of this trial, during the voir  
23 dire, we spoke to you about your willingness and your  
24 agreement to follow the law and the instructions which the  
25 Court just read to you. And now it is your opportunity to

1 look at the evidence presented and match it to the  
2 instructions. You will have these instructions in the jury  
3 room with you and I invite you to study them carefully and  
4 match them to the evidence.

5           Look first at Instruction No. 4, consider it, that  
6 Mr. Washington did not commit the crimes charged. The State  
7 has shown no evidence of a joint operation of an act forbidden  
8 by law.

9           No motive has been shown. The State just argued  
10 about motive and said I'd mention it and I would. Now, motive  
11 is not an element of the crime, but motive tends to show why.  
12 That's an unanswered question, why? We don't have the answer.  
13 The State simply has not shown any evidence that Matthew  
14 Washington fired a gun at anybody or anything at anytime and  
15 especially not on November 5th.

16           The State certainly has shown no evidence of a  
17 willful, deliberate and premeditated intent to kill by Matthew  
18 Washington. The State asks you to find Matthew Washington  
19 guilty based on speculation, based on guess. Where is the  
20 third unnamed co-conspirator? Where is the physical evidence?

21           In order to find Mr. Washington guilty, you must  
22 find that the State has proven each and every element of each  
23 and every charge. And you must find that beyond a reasonable  
24 doubt. I call your attention to Instruction No. 6.

25           Calling your attention to Instruction No. 12, you

1 can consider only the evidence in the case in reaching your  
2 verdict. You can use your common experience and your common  
3 sense, but you may not make inferences based on speculation or  
4 guess. That is what the State asks you to do. The State  
5 says, guilty, guilty. Where's the evidence?

6           There is no -- looking at the definition of  
7 conspiracy in Instruction 14, there is no evidence of an  
8 agreement that Matthew Washington made with anyone. Without  
9 an agreement, there can be no conspiracy. Matthew Washington  
10 did not agree with anyone to shoot, kill or injure any person.  
11 The State had presented -- has presented no evidence of such a  
12 conspiracy.

13           What proof of conspiracy has the State shown? What  
14 proof of an agreement? Instruction No. 17, persons alleged or  
15 proven to have been members of a conspiracy is not in itself  
16 sufficient to prove that such a person was a member of the  
17 alleged conspiracy. Where is the unnamed co-conspirator?  
18 People with other people who may have shot is not enough  
19 evidence to convict Mr. Washington beyond a reasonable doubt.

20           Has the State shown Matthew Washington was with the  
21 unnamed co-conspirator? No. Has the State shown that Matthew  
22 Washington touched that dashboard? It could have and it  
23 didn't show. It didn't even test. What evidence, calling --  
24 calling your attention to Instruction No. 18, what evidence of  
25 advice or encouragement, what evidence that Matthew Washington

1 acted as a lookout? What evidence has the State shown that  
2 Matthew Washington committed the crimes charged?

3 Yes, they have him in the car. Yes, they have him  
4 in his girlfriend's car. Yes, they have the gun under the  
5 panel. No evidence he ever even knew that gun was under the  
6 panel, none.

7 Instruction No. 19, mere presence at the scene of a  
8 crime or knowledge that a crime is being committed is not  
9 sufficient to establish guilt. The State has proven presence,  
10 as I just said. At least during the stop, but not at 2655  
11 Sherman (sic). The State has proven nothing more than  
12 presence at the stop.

13 Instruction No. 20, first degree murder. Requires  
14 -- it is a specific intent crime. What specific intent has  
15 the State shown you? What? What evidence of a conspiracy, of  
16 an agreement? None. What specific evidence of Matthew  
17 Washington's intent, premeditatedly, deliberately to kill has  
18 the State shown? It has shown none, and I'm sorry we sat here  
19 for a week.

20 Murder I is a specific intent time. Murder in the  
21 second degree is a general intent crime, that's Instruction  
22 No. 21.

23 Matthew Washington, as I've said many times, is not  
24 guilty of any offense. I can stand here and shout what  
25 evidence, what evidence, what evidence all afternoon, but I'll

1 call your attention to Instruction No. 23, second degree  
2 murder and first degree murder. The State must show  
3 competent, credible evidence and they cannot. You are not  
4 allowed to base your decision on speculation, conjecture or a  
5 theory that the State puts forth.

6 Motive, the victims in this case who testified,  
7 stated they did not know Mr. Washington. What motive? The  
8 victims in this case who testified, testified that there were  
9 no beefs, no disagreements, no reason at all, they knew that  
10 Mr. Washington would shoot through their window, through a  
11 curtain that night.

12 Ask yourselves when you go back there, is there any  
13 evidence of Matthew Washington shooting a gun? No. No  
14 gunshot residue, no fingerprints, no DNA, no -- none of those  
15 things on the dash panel.

16 Instruction No. 27, read this very carefully please.  
17 First degree murder is perpetrated by means of any kind of  
18 willful, deliberate and premeditated killing. All three  
19 elements; willfulness, deliberation, premeditation, must be  
20 proven beyond a reasonable doubt before an accused can be  
21 convicted of first degree murder, and I submit to you, there  
22 is no evidence Matthew Washington shot a gun or agreed with  
23 anybody to commit a crime. Certainly, not willful, deliberate  
24 and premeditated murder in the first degree.

25 //

1           Talked about the potentials of shooting into a  
2 group. Nobody could see into that apartment. The State  
3 concedes everybody in the apartment complex was asleep, or  
4 supposedly. The victims in this case testified that they were  
5 asleep. What evidence that Matthew Washington knew there was  
6 a group of people in there? What evidence that Matthew  
7 Washington picked up a gun and shot it? None. There is no  
8 evidence of willful, deliberation or malice aforethought.

9           The State has the burden of proof beyond a  
10 reasonable doubt for each and every element of all 17 charges  
11 in this Information, and after a week, we have conjecture, we  
12 have speculation. They ask you to make a leap and in your  
13 mind's eye, to see Matthew Washington there. There's no  
14 evidence of it, none. You must not based your decision,  
15 excuse me, on speculation or guess. The State has not proven  
16 its case.

17           Now, I'm going to sit down and I won't get a chance  
18 to speak to you again. The State will now have a chance to  
19 get up and finish its closing argument. As you listen to the  
20 State, ask yourself, what would I say if I got a chance to  
21 stand again? I would say, no matter how many times they point  
22 their finger, there is no evidence that Matthew Washington  
23 shot anybody or knew anyone was going to be shot. Thank you  
24 so much for listening. Thank you.

25           THE COURT: All right, thank you. Now, we'll hear

1 the final argument on behalf of the State. Ms. Pieper.

2 MS. PIEPER: Thank you. We need to switch over,  
3 please.

4 STATE'S REBUTTAL CLOSING ARGUMENT

5 MS. PIEPER: Mr. Otto just said to you don't be  
6 overwhelmed. Ladies and gentlemen, I don't want you to be  
7 overwhelmed at all. I don't want you to be overwhelmed by the  
8 evidence that we have. So what we're going to do is we're  
9 going to have an opportunity to talk to you about what  
10 happened at 2655 Sherwood.

11 He told you the State has no evidence in regard to  
12 the defendant being there. He asked you to speculate and I'm  
13 going to tell you we do not want you to speculate. The State  
14 of Nevada does to want you to speculate. We have evidence,  
15 it's not all direct, and we are going to ask you to infer.

16 One of the things that he did talk about was  
17 reasonable doubt and so I want you to know this is the  
18 reasonable doubt instruction. One of the things that I  
19 highlighted is that doubt to be reasonable must be actual, not  
20 mere possibility or speculation. That is the reasonable doubt  
21 instruction.

22 One of the things that the State of Nevada has to do  
23 is show two things. We have to show that the crimes are  
24 committed and that's what Ms. Schifalacqua did, she went to  
25 the crimes and the law. And that this defendant committed

1 those crimes. That's what we have to do, and that's what we  
2 have done.

3           Gunshot residue. We just heard Mr. Otto talk about  
4 gunshot residue. What did Detective Bob Rogers tell us?  
5 Detective Rogers got up here and he testified. One of the  
6 things he told you is that once somebody is put in handcuffs,  
7 they don't do gunshot residue tests. Why not? Because of  
8 contamination and they get false positives. Why is that?  
9 Because handcuffs are around guns all day. The handcuffs on  
10 the officers' belt are right next to the guns. So they don't  
11 do gunshot residue tests. And the State of Nevada doesn't  
12 want to have false positives. We don't want to have  
13 contamination. We want you to based your decision on the  
14 evidence in this case and not speculate.

15           The defendant committed these crimes. If you look  
16 at the timing, you'll see it. Don't speculate, we want you to  
17 infer.

18           Earlier in jury selection, you heard me talk about  
19 direct versus circumstantial. You heard me talk about the --  
20 you come into the courtroom and it's cold outside and it's  
21 gray skies and, you know, everybody a little bit cold, you  
22 have hot chocolate.

23           We're in court all day and you leave and as you  
24 leave, you can see rain droplets on the ground, you can see  
25 water rushing. And one of the jurors said, you have to have

1 direct evidence in order for me to convict. And some of you  
2 kind of looked like, what?

3           This is a circumstantial evidence case, and we are  
4 not afraid of that. We are not afraid of that. But if you  
5 look at the evidence, it will lead to you where you need to  
6 go. Look at the timing. Marque Hill calls 911 at 4:34 a.m.,  
7 and you heard that call. At 4:35, Lorraine DeSoto calls, and  
8 she describes the vehicle that she sees outside of her bedroom  
9 window. She says, silver Dodge Magnum, limo tint, leaving the  
10 scene slowly.

11           At 4:37 a.m., Officer Parquette logs onto the call.  
12 At 4:39, he sees the car at Eastern and St. Louis. And by  
13 4:40, he has stopped the car. Six minutes after Marque Hill  
14 has called, the car is stopped. You can wait in the Regional  
15 Justice Center for an elevator for longer than six minutes.  
16 From the time of the call to the time these defendants were  
17 pulled over.

18           What else do we know? The location of where the car  
19 is stopped and then where it was originally seen. You heard  
20 from Darrin DeSoto. Darrin DeSoto got in that chair and he  
21 told you, originally, he looked out his bedroom window, but  
22 then he couldn't really see, so he moved. He sort of went to  
23 the kitchen/livingroom area. And when he looked out, he told  
24 you that he could see a car where the lights were kind of  
25 coming around the corner. And what did both of the witnesses

1 say, the DeSotos? They saw the car slowly drive by, not fast,  
2 not going to draw attention, slowly and methodically drive by.

3 What else do we know? We know the location and the  
4 timings of when things happened. Marque Hill calls. Lorraine  
5 DeSoto calls at 4:35. By Eastern and St. Louis, Officer  
6 Parquette has already seen the vehicle and is following them.

7 You heard the testimony of all of the officers, or  
8 the officers that came, that told you they sort of had a plan,  
9 they were talking amongst each other. Behind the silver Dodge  
10 Magnum was Officer Parquette and other officers were sort of  
11 fanned out. You heard from Eric Sokolowski, he was at the  
12 area of Eastern and Stewart and he had stopped traffic in case  
13 there was a chase.

14 By 4:40, the car is stopped. So it's not -- we're  
15 not asking you to speculate. We're asking you to use your  
16 inference. Shots ring out and within minutes, there's a 911  
17 call, and then within minutes an officer sees it, and then  
18 within minutes a car is stopped.

19 But it's not just that. That's not the only thing  
20 that we have. We have guns inside of the vehicles. One of  
21 the things that was interesting that you heard is that when  
22 the car was stopped at Eastern and Ogden, Officer Parquette  
23 asked the defendant for consent to search, but he also said,  
24 is there anything illegal in the car. And what did the  
25 defendant say? There's nothing illegal in the car, it ain't

1 mine, it's his, and he points to his co-defendant, to his  
2 co-conspirator. Why? Because he didn't think we were going  
3 to find the gun under the panel.

4           You heard that they did one search of the car and  
5 when they were searching that car, they were sort of looking  
6 in areas where the plastic may have been pulled up and they  
7 didn't find it. It took a second search of the car to find  
8 the defendant's gun. He knew there was a gun in the car.  
9 That's why he said, oh, if there's anything illegal, it's his.

10           The defendant even places himself near the crime  
11 scene. He says, oh, I picked up my friend at the  
12 Stratosphere. What did the officers testify to? That the  
13 Stratosphere area was sort of near this crime scene. You  
14 don't have to go through the alleyway of the DeSotos in order  
15 to leave for the Stratosphere. The defendant places himself  
16 at the crime scene. Do not speculate, ladies and gentlemen,  
17 but use your ability to see the inferences.

18           You heard from defense counsel that potentially  
19 nobody knew that people were living at 2655 Sherwood. Does  
20 that look like an abandoned apartment building? We have  
21 landscape and greenery, we have trees.

22           Granted, maybe they're not as taken care of as our  
23 homes might be. We have a barbeque out there, we have bikes  
24 on the side. And the defendants were standing right there as  
25 they were shooting. It's not like they didn't see these

1 things. Does that look like an abandoned apartment? There's  
2 bikes. Do you see any sort of boarding up the walls, there's  
3 lights everywhere.

4 This wasn't abandoned. They knew what they were  
5 doing and they executed it. They had a plan and they executed  
6 it. They went there together, they stood outside and shot,  
7 and then they left together.

8 That, ladies and gentlemen, is a conspiracy. That  
9 is aiding and abetting, when you help someone. That is  
10 directly committing the crime when you stand there and you  
11 shoot time after time after time after time.

12 We have shown you that not only do we have three  
13 theories, but we also have shown you that defendant is guilty  
14 under each one of those three theories. But again, like the  
15 jury instructions tell you, you don't have to agree on it.  
16 Some of you may say it's a conspiracy. Some of you may say  
17 aiding and abetting. And others of you may say he directly  
18 committed it.

19 Intent to kill. Officer Weber testified that when  
20 he got to the scene, he could see that the window had bullet  
21 holes in it. And then, of course, after the crime analysts  
22 come, we find out that actually in that window area, there are  
23 ten discharges.

24 The intent to kill goes from outside in that  
25 courtyard, through the window to inside, through the curtains,

1 and then through this wall. And then you also heard testimony  
2 from Marque Hill that it sort of was whizzing past him as he  
3 was sleeping.

4 But what did we also hear from the crime scene  
5 analyst? That they actually recovered a bullet that went from  
6 the courtyard, all the way through the livingroom, all the way  
7 through the bedroom, all the way through the closet, into the  
8 back defect of the beginning of the apartment complex. That's  
9 how far these bullet travels.

10 To even suggest that this is abandoned is ridiculous  
11 because there's cars everywhere, there's people there. Maybe  
12 they're not up at 4:30 in the morning, but you can use your  
13 ability to use inferences.

14 First degree murder versus second degree murder.  
15 First degree murder has three additional elements;  
16 willfulness, deliberation and premeditation. Willfulness is  
17 the intent to kill. What I usually kind of explain to people  
18 in regard to this case is willfulness sometimes is the number  
19 of shots that we see.

20 Deliberation, I explain this way. You kind of have  
21 to think about, you know, weighing the consequences, and  
22 people usually go what does that mean? We're lawyers, we use  
23 all these big words sometimes we can't define. This is how I  
24 explain deliberation. You're driving to the courthouse this  
25 morning. You're driving in your car, you see a light coming

1 up maybe 50, 40, 30 feet. As you're driving, you see that the  
2 light turned yellow. Now, you got to make a choice. Most  
3 people in Nevada already know what choice they're going to  
4 make, but you got to make a choice. It's a yellow light and  
5 you know it's going to turn red.

6 So as you approach the intersection, you look  
7 around. Are there pedestrians on the side of the road that  
8 may walk in front of your car? Are there cars any other way  
9 that are going to drive in front of you? Usually if there  
10 aren't, you drive through the light and then you hit part of  
11 the yellow, maybe you hit part of the red.

12 But that's what deliberation is, it's sort of  
13 weighing things. It happens quickly because in that case,  
14 you're driving, you see a yellow light, you don't see people,  
15 you don't see cars, you go through the intersection. It's  
16 that deliberation. It's the weighing process. That is what  
17 deliberation is.

18 Premeditation. And the phrase I like to use out of  
19 this is, it may be as instantaneous as successive thoughts of  
20 the mind. Normally what we think of as premeditation is  
21 something maybe we -- has been thought out for maybe two  
22 weeks, three weeks, four weeks, five weeks. But premeditation  
23 can be quick.

24 It's similar to deliberation. You make a decision  
25 and you follow through with it. And what do we know in this

1 case? We know that they shot and then they left together.  
2 And the way that they left tells us something. They didn't  
3 rush, they didn't speed out of there, they didn't make a lot  
4 of noise. You heard the DeSotos say that although no cars can  
5 drive through, that there was no (inaudible). They made sure  
6 that they were quiet. They made sure that they needed to do  
7 what they intended to do.

8           You also heard a lot from Mr. Otto in regard to the  
9 unnamed co-conspirator. One of the things is the State looks  
10 at all the evidence in the case and sometimes we think maybe  
11 there was a third person. Why? Well, there's two guys in the  
12 car, right? Both in the driver's side. It's kind of odd.  
13 Normally, you think somebody might be in the passenger side.  
14 That's why we charged (inaudible). But you don't find the  
15 defendant not guilty because we haven't brought in evidence of  
16 a third unnamed co-conspirator.

17           Mr. Otto also said that the State has to show every  
18 element beyond a reasonable doubt. I would ask you to read  
19 that instruction. What it says is that we have to show every  
20 material element beyond a reasonable doubt. And I would  
21 submit to you, ladies and gentlemen, that we have in this  
22 case.

23           He also said a whole bunch of things about, you  
24 know, the unnamed co-conspirator and things to that event.  
25 You are asked to determine the guilt or innocence of this

1 defendant sitting in the courtroom. This is the person that  
2 you're asked to judge; not Martell Moten at this point, not  
3 somebody else, this defendant. Other people will have their  
4 days in court.

5 I am often asked sometimes how do you show  
6 willfulness, deliberation and premeditation? And we often  
7 hear the phrase, you know, a photo says a thousand words. In  
8 regard to this case, here's how we show it. That is the front  
9 door of apartment number 18. That is the window of apartment  
10 number 18. These defendants shot that many times. That's the  
11 amount of shots they shot into that apartment.

12 Ladies and gentlemen, based on the evidence in the  
13 case, based on all that you have heard, we are going to ask  
14 you to find this defendant guilty of first degree murder with  
15 use of a deadly weapon, three counts of attempt murder with  
16 use of a deadly weapon, two counts of battery with use of a  
17 deadly weapon and ten counts of discharging a firearm. Thank  
18 you.

19 THE COURT: All right, thank you. Ladies and  
20 gentlemen, you've heard the arguments of counsel. You will  
21 not retire to deliberate upon your verdict.

22 When you retire to deliberate upon your verdict, you  
23 will have all of the evidence that was admitted into evidence  
24 except we will not be sending any of the bullets or shells or  
25 magazines that were made mention of.

1           Additionally, ladies and gentlemen, I must advise  
2 you that, as you saw, several of the packages of evidence were  
3 admitted and testimony was elicited about the writing on the  
4 packages. Do not open any of the packaged evidence that was  
5 admitted. So those are the instructions of the Court on that.

6           Now, it is -- we will now swear the court officer to  
7 take charge of the jury. The jury in this case will consist  
8 of all of you except Ms. Perez in seat number 15. We hope  
9 that Ms. -- is it Ms. Perez?

10           JUROR NO. 15: Perez, yes.

11           THE COURT: Perez, thank you. We don't want anyone  
12 -- our alternate juror to feel left out, but it is necessary  
13 that we have alternate jurors in order to make sure that we  
14 have the requisite number for the verdict in the case.

15           In the event that one of the main jurors in this  
16 case were to fall ill or some such thing and not be able to  
17 complete, then the alternate juror would yet be called forward  
18 to deliberate with the jury in this matter. For that reason,  
19 we'll ask that our alternate juror please remain under the  
20 Court's admonition not to discuss anything about the case or  
21 any of the people connected with the case with anyone unless  
22 and until you know that the entire jury has been discharged.

23           We will swear the court officer then,

24                           COURT OFFICER SWORN

25           THE COURT: All right, thank you. Ladies and

1 gentlemen, if you will retire with our court officer through  
2 this door.

3 THE MARSHAL: All rise for the jury.

4 THE COURT: Ms. Perez, if you'll just wait a moment,  
5 then we'll have you exit and you'll be met outside so that we  
6 can excuse you from the courthouse.

7 (Jury retired to deliberate at 4:45 p.m.)

8 THE COURT: All right. Ms. Perez, if you will now  
9 follow through, you'll be met and excused from there. Thank  
10 you.

11 The Court will be in recess and awaiting the verdict  
12 of the -- of the jury. We've still got a door open there, so.

13 THE CLERK: It's closed between us.

14 THE COURT: Yeah. Anything else before we go off  
15 the record?

16 MS. PIEPER: No, Judge. Just one thing. Typically  
17 we give our laptops so that they can listen to the 911's, but  
18 our PowerPoint's on it. So we're going to go back to the  
19 office, clean it up, and then bring it back, like, maybe  
20 tomorrow.

21 THE COURT: All right. It will be a clean laptop  
22 with nothing but the 911 on it?

23 MS. SCHIFALACQUA: Well, they have it.

24 MS. PIEPER: They have it, but they can play it in  
25 here.

1 THE COURT: So they just play the CD. So the laptop  
2 itself is clean?

3 MS. PIEPER: Will not --

4 MS. SCHIFALACQUA: We have to get one.

5 THE COURT: All right.

6 MS. SCHIFALACQUA: So what time tomorrow will they  
7 come back so we can make sure that we drop --

8 THE COURT: Nine o'clock.

9 MS. SCHIFALACQUA: Okay. So we ensure we'll drop  
10 off the laptop.

11 THE COURT: Yeah.

12 MS. SCHIFALACQUA: Okay.

13 THE COURT: So if counsel would be available from  
14 9:00 o'clock on, no more than a few minutes from the  
15 courthouse with your -- on your cell phones. And do we have  
16 your cell phones from all four?

17 MR. OTTO: I hope so. I don't know.

18 MS. OHLINGER: I believe so.

19 THE CLERK: We'll get them right now.

20 THE COURT: Will you make sure you have all their  
21 cell phones?. Thank you.

22 (Court recessed at 4:47 p.m., until Wednesday,

23 April 16, 2014, at 10:27 a.m.)

24 \* \* \* \* \*

25

CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

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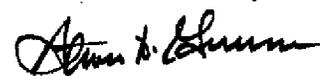
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\_\_\_\_\_

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 8

WEDNESDAY, APRIL 16, 2014

APPEARANCES:

FOR THE STATE:	DANIELLE K. PIEPER, ESQ. BARBARA F. SCHIFALACQUA <i>Chief Deputy District Attorneys</i>
FOR THE DEFENDANT:	DAVID J. OTTO, ESQ. ROBERTA OHLINGER-JOHNSON, ESQ.

COURT RECORDER:

BEVERLY SIGURNIK  
District Court

TRANSCRIPTION BY:

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(303) 798-0890

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INDEX

VERDICT . . . . . 11

RE: CHARGE OF POSSESSION OF A FIREARM

STATE'S OPENING STATEMENT BY MS. SCHIFALACQUA . . . . . 21  
STATE'S CLOSING ARGUMENT BY MS. SCHIFALACQUA . . . . . 34  
DEFENDANT'S CLOSING ARGUMENT BY MR. OTTO . . . . . 37  
VERDICT . . . . . 39

1 LAS VEGAS, NEVADA, WEDNESDAY, APRIL 16, 2014, 10:27 A.M.

2 (Outside the presence of the jury)

3 THE COURT: -- having conferred with counsel, we  
4 have -- I've indicated what responses I will give to questions  
5 one and two, which essentially are simply to refer back to the  
6 jury instructions, except that question two will also say,  
7 specifically, Instruction 43, as well as jury instructions,  
8 generally. Any other record that needs to be made by either  
9 side on this?

10 MS. PIEPER: Not by the State, Your Honor.

11 MR. OTTO: Not by the defense, Your Honor.

12 THE COURT: All right. The record will be  
13 supplemented with a copy of both the original note, as well as  
14 a copy of the typewritten question and answer, which is going  
15 back to the jury.

16 MS. PIEPER: Thank you.

17 MR. OTTO: Thanks.

18 THE COURT: Thank you.

19 MR. OTTO: Should we, like, wait here and see if  
20 they have another one?

21 MS. PIEPER: No.

22 THE COURT: Well, I would say this. Are we off the  
23 record?

24 (Court recessed at 10:28 a.m. to 3:00 p.m.)

25 (Outside the presence of the jury)

1 THE COURT: We have a verdict. We're on?

2 THE COURT RECORDER: We are now.

3 MS. SCHIFALACQUA: (Indiscernible). I don't believe  
4 there's any objections to the jury instructions that we  
5 provided to this Court, so they just need to be numbered so  
6 that, obviously, after the Amended Information is read, we  
7 will do a brief opening. We will basically submit the JOC's  
8 and then we will be prepared to close.

9 So, we just wanted to make sure that the Court had  
10 those and that on record, Mr. Otto didn't have any objection  
11 to the jury instructions for the second portion of this case.

12 THE COURT: Is that a correct statement?

13 MR. OTTO: That is a correct statement, Your Honor.

14 THE COURT: Okay. I thought I had one question when  
15 I went through.

16 MR. OTTO: Do you want to give me the JOC's so I can  
17 look at them (inaudible)?

18 MS. SCHIFALACQUA: They're up there.

19 MR. OTTO: Oh.

20 MS. SCHIFALACQUA: Oh, and I provided them, but go  
21 ahead and look.

22 MR. OTTO: I know, I saw them.

23 MS. SCHIFALACQUA: Yeah, I know, I just want to make  
24 sure.

25 (Pause in the proceedings)

1 THE COURT: And as I understand it, the State's  
2 evidence is simply the --

3 MS. SCHIFALACQUA: Right. They -- we'll talk to  
4 that, obviously, that all the other testimony is a part of  
5 this portion of the trial. We will move and admit, obviously,  
6 three certified Judgments of Convictions. I will say what  
7 they are and then we will rest, essentially, Judge, and move  
8 right into jury instructions and closing arguments.

9 THE COURT: Now, I do not know at this moment  
10 whether there will be any witness testimony; is that correct?

11 MS. SCHIFALACQUA: In regard to the ex-felon? I --  
12 well, I don't know if -- I guess, the defendant could take the  
13 stand. At -- you know --

14 THE COURT: If --

15 MS. SCHIFALACQUA: -- at that point, we're not going  
16 to have any additional unless he takes the stand, I guess.

17 THE COURT: Therefore, if that turns out to be the  
18 case, I would not give, credibility/believability of a  
19 witness; would I?

20 MS. SCHIFALACQUA: Well, they are still -- I -- if  
21 you don't want to give it, Judge, that's fine. But the  
22 entirety of the trial and why he's in possession is because of  
23 all of the witness testimony. So the credibility and  
24 believability, for example, or Officer Parquette, who saw the  
25 firearm --

1 THE COURT: Right.

2 MS. SCHIFALACQUA: -- et cetera, is applicable.

3 THE COURT: You're right. You're right, okay. And  
4 therefore, I would also give the expert instruction as well.

5 MS. SCHIFALACQUA: Correct. Because we know it was  
6 obviously tested. There were firearms that were --

7 (Pause in the proceedings)

8 THE COURT: All right. Mr. Otto, without holding  
9 you to it, do you know whether or not your client will be  
10 taking the stand to testify?

11 MR. OTTO: Without holding me to it, I would say,  
12 no.

13 THE COURT: Okay. Are counsel of the opinion that  
14 on the chance that the defendant elects to take the stand, I  
15 need to give the admonition once again?

16 MS. SCHIFALACQUA: I've --

17 THE COURT: The same one that I gave previously?  
18 Would you bring me my trial book? I left my criminal trial  
19 book on my bench.

20 MS. SCHIFALACQUA: And, Judge, after we rest, I  
21 think it would probably be prudent for you to canvass him  
22 again, that at the second portion of this trial, if he doesn't  
23 want to --

24 MS. PIEPER: Or do you want to canvas him now?

25 MS. SCHIFALACQUA: -- or you can canvass him now,

1 frankly.

2 THE COURT: Yeah. If we -- if your evidence is  
3 going to consist of nothing but the --

4 MS. SCHIFALACQUA: Correct.

5 THE COURT: -- certified copies of the previous  
6 convictions, I mean, we'll be to that point immediately.

7 MS. SCHIFALACQUA: Sure. Yes, Judge, we'd ask then  
8 that he be canvassed now.

9 THE COURT: I will -- I will do so. We're getting  
10 it right now. I left it in my chambers. Thank you.

11 Mr. Washington, you'll recall that during the last  
12 phase of the trial, I gave you, at one point, an admonition  
13 regarding your right to testify or not to testify during the  
14 trial. Do you recall that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Okay. I'm going to give you that --  
17 thank you. I'm going to give you that admonition again.

18 Under the Constitution of the United States and  
19 under the Constitution of the State of Nevada, you cannot be  
20 compelled to testify in this case; do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: You may at your own request give up this  
23 right and take the witness stand and testify. If you do, you  
24 will be subject to cross-examination by the Deputy District  
25 Attorney, and anything that you may say, be it on direct or

1 cross-examination, will be the subject of fair comment when  
2 the Deputy District Attorney speaks to the jury in her final  
3 argument; do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: If you choose not to testify, the Court  
6 will not permit the Deputy District Attorney to make any  
7 comments to the jury because you have not testified; do you  
8 understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: If you elect not to testify, the Court  
11 will instruct the jury -- and I do not have another copy of  
12 that instruction -- the Court will instruct the jury, but only  
13 if your attorney specifically requests as follows; "The law  
14 does not compel a defendant in a criminal case to take the  
15 stand and testify and no presumption may be raised and no  
16 inference of any kind may be drawn from the failure of a  
17 defendant to testify," the same thing that I advised them  
18 during the last phase of the trial.

19 Do you have any questions about any of these rights  
20 as I've explained them to you?

21 THE DEFENDANT: No, sir.

22 THE COURT: Okay. You are further advised that if  
23 you have a felony conviction and more than ten years has not  
24 elapsed from the date that you were convicted or discharged  
25 from prison, parole or probation, whichever date is later, and

1 if the defense has not sought to preclude that from coming  
2 before the jury, and if you elect to take the stand and  
3 testify, then the Deputy District Attorney, in the presence of  
4 the jury, will be permitted to ask you the following: (1)  
5 have you ever been convicted of a felony; (2) what was the  
6 felony; and (3) when did it happened, however, no details may  
7 be gone into; you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right.

10 Mr. Otto, do you know whether you would be  
11 requesting that instruction? On the chance that you are going  
12 to request that instruction again, it's the same one that I  
13 gave --

14 MR. OTTO: Yes.

15 THE COURT: -- in the last phase, I would need  
16 another -- another -- I don't have that one in this packet.

17 MR. OTTO: I would request it, Your Honor.

18 THE COURT: All right. Do we still have the last  
19 set of jury instructions? Get me a copy of those.

20 If it's all right with counsel, what I can do is I  
21 can use the copy from the last time, and before we send the  
22 original of the new set of instructions back --

23 MS. PIEPER: Judge?

24 THE COURT: -- we will insert the -- a new original.

25 MS. PIEPER: Judge, Ms. Schifalacqua and I have

1 copies of the jury instructions. We just have to see --

2 THE COURT: All right.

3 MS. PIEPER: May I approach?

4 THE COURT: You may.

5 MS. SCHIFALACQUA: Do you want me to white out the  
6 number? Court's indulgence.

7 THE COURT: Yeah, we will need to do that. Thank  
8 you.

9 (Pause in the proceedings)

10 MS. PIEPER: May I approach?

11 THE COURT: You may. Thank you. Does counsel need  
12 copies of the instructions that I'm going to give? If not,  
13 then I will simply number these while we are proceeding  
14 forward with this next phase and we can --

15 MR. OTTO: If we could take two minutes to make me a  
16 copy of them, I would appreciate it, Your Honor.

17 THE COURT: All right. I suppose we could do that.

18 (Pause in the proceedings)

19 THE COURT: All right. I will number these while we  
20 are proceeding and I will get a copy -- a couple of copies  
21 made, one for each side.

22 MS. PIEPER: Judge, can we approach just briefly?

23 THE COURT: Sure.

24 (Off-record bench conference)

25 THE COURT: All right. Are we ready for the jury,

1 then?

2 MS. SCHIFALACQUA: Yes, Your Honor.

3 MR. OTTO: Yes, Your Honor.

4 THE COURT: You may bring the jury.

5 (Pause in the proceedings)

6 (Jury reconvenes at 3:14 p.m.)

7 THE COURT: All right, please be seated. The record  
8 will reflect the presence of the jury. Who is the jury  
9 foreman? Or foreperson?

10 JUROR NO. 8: I am, Your Honor.

11 THE COURT: Mr. Roark?

12 JUROR NO. 8: Yes.

13 THE COURT: Has the jury arrived at a verdict?

14 JUROR NO. 8: Yes, we have.

15 THE COURT: Would you hand it to the Bailiff,  
16 please?

17 (Pause in the proceedings)

18 THE COURT: All right. The Clerk will read the jury  
19 (sic) and inquire of the -- read the verdict and inquire of  
20 the jury.

21 THE CLERK: District Court, Clark County, Nevada,  
22 the State of Nevada, plaintiff, vs. Matthew Washington,  
23 defendant, Case Number C-13-294695-1, Department I.

24 Verdict. We, the jury, in the above-entitled case,  
25 find the defendant, Matthew Washington, as follows:

1           Count 1. Conspiracy to commit murder; guilty of  
2 conspiracy to commit murder.

3           Count 2. Murder with the use of a deadly weapon,  
4 victim, Nathan Rawls; guilty of first degree murder with use  
5 of a deadly weapon.

6           Count 3. Attempt murder with the use of a deadly  
7 weapon, victim Ashely Scott; guilty of attempt murder with use  
8 of a deadly weapon.

9           Count 4. Battery with use of a deadly weapon,  
10 victim, Ashely Scott; guilty of battery with use of a deadly  
11 weapon.

12           Count 5. Attempt murder with use of a deadly  
13 weapon, victim, Laroy Thomas; guilty with attempt murder with  
14 use of a deadly weapon.

15           County 6. Attempt murder with use of a deadly  
16 weapon, victim, Marque Hill; guilty of attempt murder with use  
17 of a deadly weapon.

18           Count 7. Battery with use of a deadly weapon,  
19 victim, Laroy Thomas; guilty of battery with use of a deadly  
20 weapon.

21           Count 8. Discharging firearm at or into a  
22 structure, vehicle, aircraft or watercraft; guilty of  
23 discharging firearm at or into a structure, vehicle, aircraft  
24 or watercraft.

25           Count 9. Discharging firearm at or into a

1 structure, vehicle, aircraft or watercraft; guilty of  
2 discharging firearm at or into a structure, vehicle, aircraft  
3 or watercraft.

4 Count 10. Discharging firearm at or into a  
5 structure, vehicle, aircraft or watercraft; guilty of  
6 discharging firearm at or into a structure, vehicle, aircraft  
7 or watercraft.

8 Count 11. Discharging firearm at or into a  
9 structure, vehicle, aircraft or watercraft; guilty of  
10 discharging firearm at or into a structure, vehicle, aircraft  
11 or watercraft.

12 Count 12, Discharging firearm at or into a  
13 structure, vehicle, aircraft or watercraft; guilty of  
14 discharging firearm at or into a structure, vehicle, aircraft  
15 or watercraft;

16 Count 13. Discharging firearm at or into a  
17 structure, vehicle, aircraft or watercraft; guilty of  
18 discharging firearm at or into a structure, vehicle, aircraft  
19 or watercraft.

20 Count 14. Discharging firearm at or into a  
21 structure, vehicle, aircraft or watercraft; guilty of  
22 discharging firearm at or into a structure, vehicle, aircraft  
23 or watercraft.

24 Count 15. Discharging firearm at or into a  
25 structure, vehicle, aircraft or watercraft; guilty of

1 discharging firearm at or into a structure, vehicle, aircraft  
2 or watercraft.

3 Count 16. Discharging firearm at or into a  
4 structure, vehicle, aircraft or watercraft; guilty of  
5 discharging firearm at or into a structure, vehicle, aircraft  
6 or watercraft.

7 Count 17. Discharging firearm at or into a  
8 structure, vehicle, aircraft or watercraft; guilty of  
9 discharging firearm at or into a structure, vehicle, aircraft  
10 or watercraft.

11 Dated the 16th day of April, 2014, signed by  
12 Foreperson, Brian Roark.

13 Ladies and gentlemen of the jury, are these your  
14 verdicts as read, so say you one, so say you all?

15 THE JURY: Yes.

16 THE COURT: All right. Before the verdict is  
17 recorded, does either side wish the jury to be polled?

18 MS. PIEPER: Not by the State.

19 MR. OTTO: The defense wishes to poll the jury, Your  
20 Honor.

21 THE COURT: All right. The Clerk with poll the  
22 jury.

23 THE CLERK: Ms. Lahav, is this your verdict as read,  
24 (indiscernible)?

25 JUROR NO. 2: (Inaudible).

1 THE CLERK: Mr. Farley, are these your --

2 THE COURT RECORDER: I'm sorry, I didn't hear a  
3 response.

4 THE COURT: Can you speak up, please, folks, when  
5 you answer?

6 JUROR NO. 2: Yes.

7 THE CLERK: Mr. Farley, are these verdicts as read?

8 JUROR NO. 3: Yes, ma'am.

9 THE CLERK: Mr. Johns, is this your verdict --  
10 verdicts as read?

11 JUROR NO. 4: Yes.

12 THE CLERK: Ms. Dowell, are these your verdicts as  
13 read?

14 JUROR NO. 5: Yes, ma'am.

15 THE CLERK: Ms. Harakal, are these your verdicts as  
16 read?

17 JUROR NO. 6: Yes.

18 THE CLERK: Mr. Roark, are these your verdicts as  
19 read?

20 JUROR NO. 8: Yes.

21 THE CLERK: Ms. Morrison, are these your verdicts as  
22 read?

23 JUROR NO. 9: Yes.

24 THE CLERK: Ms. Lucero, are these your verdicts as  
25 read?

1 JUROR NO. 10: Yes.

2 THE CLERK: Ms. Yono, are these your verdicts as  
3 read?

4 JUROR NO. 11: Yes.

5 THE CLERK: Mr. Eslinger, are these your verdicts as  
6 read?

7 JUROR NO. 12: Yes.

8 THE CLERK: Mr. Andrews, are these your verdicts as  
9 read?

10 ALTERNATE JUROR NO. 1: Yes.

11 THE CLERK: Ms. Lynch, are these your verdicts as  
12 read?

13 ALTERNATE JUROR NO. 2: Yes.

14 THE CLERK: Thank you.

15 THE COURT: All right, thank you.

16 The verdicts will be recorded.

17 Ladies and gentlemen, in most of the trials that we  
18 do, this would be the point at -- in time in which I would  
19 thank you for your service and be discharging you. However,  
20 as you have gleaned previously, this is a trial in which there  
21 are stages and we will now proceed to the second stage of the  
22 trial.

23 I will not be giving you, again, the -- all of the  
24 instructions which I gave you at the beginning of the first  
25 phase of the trial. However, all of those instructions are as

1 binding and are as good to recall throughout the second stage  
2 as they were during the first. You will recall that I gave  
3 you instructions that had to do with how the case was based,  
4 on an Information. The purpose of the trial was to see  
5 whether the State would meet its burden of proving the  
6 defendant guilty beyond a reasonable doubt.

7 Now, for this stage, it is necessary for you to know  
8 of an additional charge. I will now ask the prosecutors, and  
9 I don't know whether --

10 MS. SCHIFALACQUA: Judge, I would just request the  
11 Clerk read the Second Amended Information for the second  
12 portion.

13 THE COURT: All right.

14 (Second Amended Information read; not transcribed)

15 MS. SCHIFALACQUA: To which the defendant?

16 THE COURT: To which the --

17 THE CLERK: To which the defendant has pled not  
18 guilty.

19 THE COURT: Thank you. All right.

20 All right. Ladies and gentlemen, this -- this case  
21 now is based on the Information which has been read to you by  
22 the Clerk. You should distinctly understand that the  
23 Information is simply a charge and it is not in any sense  
24 evidence of the allegations that it contains.

25 The defendant has pled not guilty to the

1 Information. The State, therefore, has the burden of proving  
2 each of the essential elements of the charge beyond a  
3 reasonable doubt. As the defendant sits there now, he is not  
4 guilty.

5 The purpose of the trial is to determine whether the  
6 State will meet its burden. It is your primary responsibility  
7 as jurors to find and determine the facts.

8 Under our system of criminal procedure, you are the  
9 sole judges of the facts. You are to determine the facts from  
10 the testimony and other evidence that will be presented to you  
11 as well as exhibits that are introduced in court. It is up to  
12 you to determine the inferences which you feel may be properly  
13 drawn from the evidence.

14 You must not be influenced in any degree by any  
15 personal feeling of sympathy for or prejudice against either  
16 the State or the defendant. Both sides are entitled to the  
17 same fair and impartial consideration.

18 Counsel, is counsel of the opinion that it's  
19 necessary for the record to contain the initial instructions,  
20 the same ones that were previously given?

21 MS. SCHIFALACQUA: Judge, we're -- you will instruct  
22 them that everything of the first portion of the trial is  
23 applicable to this portion, so I would submit.

24 MR. OTTO: I'd submit, Your Honor.

25 THE COURT: All right. In other words, ladies and

1 gentlemen, all the same rules apply, the same instructions  
2 which I previously gave you are in effect for this portion of  
3 the trial as well.

4 In order for you to understand a little bit more  
5 about what this charge is -- counsel, I'm going to go a little  
6 bit outside the order that I normally do. I'm going to ask  
7 the State to indicate to you what the nature is of the  
8 offense, not the opening statement, but simply the nature of  
9 the offense which is charged.

10 MS. SCHIFALACQUA: And, ladies and gentlemen, this  
11 portion of the trial, you will -- the State has alleged that  
12 on November 5th of 2013, that the defendant possessed a  
13 firearm and at that time, he was prohibited from doing so.

14 THE COURT: All right. Ladies and gentlemen, this  
15 phase of the trial will proceed entirely the same as it did  
16 before. First, the Deputy District Attorney will make an  
17 opening statement, which is an outline to help you to  
18 understand what the State expects to prove. Next, the  
19 defendant's attorney may, but does not have to, make an  
20 opening statement.

21 The State will then present its evidence and counsel  
22 for the defendant may object. Following the State's case, the  
23 defense may present evidence. However, as I've said, the  
24 defendant is not obligated to present any evidence.

25 //

1           And after all the evidence has been presented, I  
2 will instruct you on the law. After the instructions on the  
3 law have been read to you, each side has the opportunity to  
4 present oral argument. And as I've said before, what is said  
5 in closing argument is not evidence. The arguments are  
6 designed to summarize and interpret the evidence. After the  
7 arguments have been completed, you will retire to deliberate  
8 upon your verdict.

9           MR. OTTO: Your Honor, we have a question.

10          THE COURT: Does either side --

11          MR. OTTO: We have a question --

12          UNKNOWN FEMALE JUROR: There's some music out there.

13          MS. PIEPER: Oh, the door.

14          UNKNOWN FEMALE JUROR: Could we at least shut the  
15 door, please?

16          THE MARSHAL: Yes, sorry about that.

17          UNKNOWN FEMALE JUROR: Thank you.

18          THE COURT: Thank you, ma'am.

19          Does either side invoke the exclusionary rule?

20          MS. SCHIFALACQUA: Not at this time, Judge.

21          MR. OTTO: No, Your Honor.

22          THE COURT: All right. We'll now be pleased to hear  
23 the opening statement --

24          MS. SCHIFALACQUA: Thank you, Your Honor.

25          THE COURT: -- of the Deputy District Attorney, Ms.

1 Schifalacqua.

2 MS. SCHIFALACQUA: Schifalacqua, (inaudible).

3 THE COURT: Schifalacqua, sorry.

4 STATE'S OPENING STATEMENT

5 MS. SCHIFALACQUA: Ladies and gentlemen, all of the  
6 evidence that you heard in the first portion of the trial, and  
7 as the Judge said, that we're going to do this in stages,  
8 there's actually one more stage after this. But all of that  
9 evidence that was presented, all of the witnesses that came  
10 before you, all of the 200 plus exhibits, those are all still  
11 in evidence for you to consider.

12 The one thing that the State will give you in this  
13 portion of the trial that you didn't know at the last portion  
14 of the trial was that, on November 5th of 2013, the defendant  
15 had been convicted of three prior felonies. And so he  
16 obviously committed one further crime that you didn't know  
17 about.

18 And what we will present to you in this very limited  
19 portion of the trial, in combination with all of the other  
20 evidence that you already got, is certified Judgments of  
21 Conviction showing that the defendant was, in 2010, convicted  
22 of grand larceny in case C-263408; that in 2011, he had been  
23 convicted of an attempt carry a concealed firearm or other  
24 deadly weapon in case C-269722; and that also in 2011, he was  
25 convicted of the felony of burglary out of case C-274118.

1 We will present certified Judgments of Conviction  
2 showing that he was a felon on November 5th of 2013, and in  
3 combination of all the other evidence that has been presented  
4 to you, we will prove beyond a reasonable doubt that he was  
5 prohibited, therefore, from having a firearm on November 5th  
6 of 2013. Thank you.

7 THE COURT: Thank you, Ms. Schifalacqua.  
8 Does the defense wish to make an opening statement?

9 MR. OTTO: No, Your Honor.

10 THE COURT: All right. State may call your first  
11 witness.

12 MS. SCHIFALACQUA: And, Judge, we have marked  
13 Proposed Exhibits -- court's indulgence -- 202, 203 and 204,  
14 which have been shown to Mr. Otto and previously provided in  
15 discovery. They are certified Judgments of Conviction. We  
16 move for their admission at this time?

17 THE COURT: Any objection?

18 MR. OTTO: No, objection.

19 THE COURT: Okay, 202, 203 and 204; is that correct?

20 MS. SCHIFALACQUA: That is correct, Judge.

21 THE COURT: Are admitted.

22 (State's Exhibits 202, 203 and 204 are admitted)

23 MS. SCHIFALACQUA: And, Judge, with that, the State  
24 would rest.

25 THE COURT: All right. The State has rested. May I

1 see counsel, please?

2 (Off-record bench conference)

3 THE COURT: Ladies and gentlemen, we are going to  
4 take a brief recess while I take up a matter with counsel.

5 While you're on this recess -- and I will ask the  
6 Bailiff to escort you back to the jury room or -- and you will  
7 see where there are also facilities there for you.

8 While you're on this recess now, it is important for  
9 you to recall the Court's admonitions which I have given  
10 before. This is now a new and different charge. Therefore,  
11 you are not to talk or converse among yourselves or with  
12 anyone else on any subject connected with this trial or on any  
13 person connected with this trial. Please do not read, watch  
14 or listen to any commentary or report on the trial. Please do  
15 not form or express any opinion on any subject connected with  
16 the trial until the case is submitted to you.

17 We'll be in recess for ten minutes. The jury will  
18 be excused, court will remain in session.

19 (Pause in the proceedings)

20 (Jury recessed at 3:32 p.m.)

21 THE COURT: All right, thank you. The record will  
22 -- you may be seated, folks. The record will reflect the  
23 absence of the jury.

24 Counsel are aware of the instructions which the  
25 Court intends to give. Does the State object to any of its

1 own instructions?

2 MS. SCHIFALACQUA: No.

3 MS. PIEPER: No, Your Honor.

4 THE COURT: Does the State have any additional  
5 instructions to propose?

6 MS. PIEPER: No.

7 MS. SCHIFALACQUA: No.

8 THE COURT: Does the defense object to any of these  
9 instructions?

10 MR. OTTO: No, Your Honor.

11 THE COURT: Does the State have -- does the defense  
12 have any additional instructions to propose?

13 MR. OTTO: No, Your Honor.

14 MS. SCHIFALACQUA: And, Judge, we did also have the  
15 verdict form. I'm -- would just like --

16 THE COURT: Yes.

17 MS. SCHIFALACQUA: I know Mr. Otto had seen it  
18 previously, but I just want to make sure he sees it and makes  
19 -- we make the record of the same.

20 MR. OTTO: I have seen this previously --

21 THE COURT: Very good.

22 MR. OTTO: -- and have no objection.

23 THE COURT: I have that. Very good. We'll take the  
24 rest of this ten minute recess. We'll come back and then it  
25 will be time to for the defense case-in-chief.

1 (Court recessed at 3:33 p.m. until 3:46 p.m.)

2 (Outside the presence of the jury)

3 THE COURT: Do we need to make a record of anything  
4 before we bring our jury?

5 MR. OTTO: I think we're okay.

6 THE COURT: All right. We'll bring our jury.

7 (Jury reconvened at 3:47 p.m.)

8 THE COURT: Will counsel stipulate to the presence  
9 of the jury?

10 MS. PIEPER: Yes, Your Honor.

11 MS. SCHIFALACQUA: Yes, Your Honor.

12 MR. OTTO: Yes, Your Honor.

13 THE COURT: Thank you.

14 All right, thank you. Ladies and gentlemen, the  
15 State has rested. The defense may call your first witness.

16 MR. OTTO: The defense rests, Your Honor.

17 THE COURT: All right. Ladies and gentlemen, you've  
18 heard the evidence for this phase of the trial. It falls to  
19 me then, again, to instruct you on the law which you are to  
20 utilize in arriving at a verdict on this phase of the trial.

21 Once again, I would tell you that I would like to  
22 instruct you orally without reading to you. However, these  
23 instructions are of such importance, it's necessary for me to  
24 read to you these carefully prepared written instructions.  
25 These are not so long as the last ones. However, if they seem

1 complicated, please recall this; that when you retire to the  
2 jury room, you will be able to take these carefully prepared,  
3 written instructions with you.

4           It is my duty as Judge to instruct you in the law  
5 that applies to the case. It is your duty as jurors to follow  
6 these instructions and to apply the rules of law to the facts  
7 as you find them from the evidence. You must not be concerned  
8 with the wisdom of any rule of law stated in these  
9 instructions. Regardless of any opinion you may have as to  
10 what the law ought to be, it would be a violation of your oath  
11 to base a verdict upon any other view of the law than that  
12 which is given in the instructions of the Court.

13           If in the instructions, any rule, direction or idea  
14 is repeated or stated in different ways, no emphasis thereon  
15 is intended by me and none should be inferred by you. For  
16 that reason, you are not to single out any certain sentence or  
17 any individual point or instruction and ignore the others, but  
18 you are to consider all the instructions as a whole and regard  
19 each in the light of all the others. The order in which these  
20 instructions is given has no significance as to their relative  
21 importance.

22           An Information is but a formal method of accusing a  
23 person of a crime and is not of itself any evidence of his  
24 guilt. In this case, it is charged in an Amended Information  
25 that on or about the 5th day of November, 2013, the defendant

1 committed the offense of possession of a firearm by an ex-  
2 felon in the following manner, to wit: did then and there  
3 wilfully, unlawfully, and feloniously own or have in his  
4 possession or under his control a weapon, to wit: a firearm,  
5 the said defendant being an ex-felon, having in 2010 been  
6 convicted of grand larceny in Case No. C-263408, in the Eighth  
7 Judicial District Court, Clark County, Nevada, a felony under  
8 the laws of the State of Nevada; and/or having in 2011 been  
9 convicted of attempt to carry concealed firearm or other  
10 deadly weapon in Case No. C-269722-1, in the Eighth Judicial  
11 District Court, Clark County, Nevada, a felony under the laws  
12 of the State of Nevada; and/or having in 2011 been convicted  
13 of burglary in Case No. C-274118, in the Eighth Judicial  
14 District Court, Clark County, Nevada, a felony under the laws  
15 of the State of Nevada.

16           It is the duty of the jury to apply the rules of law  
17 contained in these instructions to the facts of the case and  
18 determine whether or not the defendant is guilty of the  
19 offense charged.

20           To constitute the crime charged, there must exist a  
21 union or joint operation of an act forbidden by the law and an  
22 intent to do the act. The intent with which an act is done is  
23 shown by the facts and circumstances surrounding the case.

24           Do not confuse "intent" with "motive". Motive is  
25 what prompts a person to act. Intent refers only to the state

1 of mind with which the act is done. Motive is not an element  
2 of the crime charged and the State is not required to prove a  
3 motive on the part of the defendant in order to convict.  
4 However, you may consider evidence of motive or lack of motive  
5 as a circumstance in the case.

6 The defendant is presumed innocent until the  
7 contrary is proved. This presumption places upon the State  
8 the burden of proving beyond a reasonable doubt every material  
9 element of the crime charged, and that the defendant is the  
10 person who committed the offense.

11 A reasonable doubt is one based on reason. It is  
12 not mere possible doubt, but is such a doubt as would govern  
13 or control a person in the more weighty affairs of life. If  
14 the minds of the jurors, after the entire comparison and  
15 consideration of all the evidence are in such a condition that  
16 they can say they feel an abiding conviction of the truth of  
17 the charge, there is not reasonable doubt. Doubt, to be  
18 reasonable, must be actual, not mere possibility, or  
19 speculation. If you have a reasonable doubt as to the guilt  
20 of the defendant, he is entitled to a verdict of, not guilty.

21 You are here to determine the guilt or innocence of  
22 the defendant from the evidence in the case. You are not  
23 called upon to return a verdict as to the guilt or innocence  
24 of any other person. So if the evidence in the case convinces  
25 you beyond a reasonable doubt of the guilt of the defendant,

1 you should so find, even though you may believe one or more  
2 persons are also guilty.

3           The evidence which you are to consider in this case  
4 consists of the testimony of the witnesses, the exhibits, and  
5 any facts admitted or agreed to by counsel. There are two  
6 types of evidence, direct and circumstantial. Direct evidence  
7 is the testimony of a person who claims to have personal  
8 knowledge of the commission of the crime which has been  
9 charged, such as, an eye witness.

10           Circumstantial evidence is the proof of a chain of  
11 facts and circumstances which tend to show whether the  
12 defendant is guilty or not guilty. The law makes no  
13 distinction between the weight to be given either direct or  
14 circumstantial evidence. Therefore, all of the evidence in  
15 the case, including the circumstantial evidence, should be  
16 considered by you in arriving at your verdict.

17           Statements, arguments and opinions of counsel are  
18 not evidence in the case. However, if the attorneys stipulate  
19 to the existence of a fact, you must accept the stipulation as  
20 evidence and regard that fact as proved. You must not  
21 speculate to be true any insinuation suggested by a question  
22 as to witness -- a witness's -- a question is not evidence and  
23 may be considered only as it supplies meaning to the answer.

24           You must disregard any evidence to which an  
25 objection was sustained by the Court and any evidence ordered

1 stricken by the Court. Anything you may have seen or heard  
2 outside the courtroom is not evidence and must also be  
3 disregarded.

4           The credibility or believability of a witness should  
5 be determined by his manner upon the stand, his relationship  
6 to the parties, his fears, motives, interests or feelings, his  
7 opportunity to have observed the matter to which he testified,  
8 the reasonableness of his statements and the strength or  
9 weakness of his recollections.

10           If you believe that a witness has lied about any  
11 material fact in the case, you may disregard the entire  
12 testimony of that witness, or any portion of his testimony  
13 which is not proved by other evidence.

14           A witness who has special knowledge, skill,  
15 experience, training or education in a particular science,  
16 profession or occupation is an expert witness. An expert  
17 witness may give his opinion as to any matter in which he is  
18 skilled. You should consider such expert opinion and weigh  
19 the reasons, if any, given for it. You're not bound, however,  
20 by such an opinion. Give it the weight to which you deem it  
21 entitled, whether that be great or slight, and you may reject  
22 it if in your judgment the reasons given for it are unsound.

23           A person who has been convicted of a felony in this  
24 or any other state, or in any political subdivision thereof,  
25 or of a felony in violation of the laws of the United States

1 of America, unless he has received a pardon, and the pardon  
2 does not restrict his right to bear arms, shall not own or  
3 have in his possession or under his custody or control any  
4 firearm. Neither the concealment of the firearm, nor the  
5 carrying of the weapon are necessary elements of the offense.  
6 Firearm includes any firearm that is loaded, or unloaded, and  
7 operable or inoperable.

8 Proof of actual physical possession of a firearm is  
9 not required. A person is in possession of a firearm when it  
10 is under his dominion and control, and to his knowledge either  
11 is carried on his person or is in his presence and custody.  
12 Or if not on his person or in his presence, the -- let me back  
13 up -- or if not on his person or in his presence, the  
14 possession is immediate, accessible and exclusive to him.

15 Two or more persons may have joint possession of a  
16 firearm if jointly and knowingly they have such dominion,  
17 control and exclusive possession.

18 A defendant's knowledge that the item he possessed  
19 was a firearm may be shown by direct evidence or by  
20 circumstantial evidence and reasonably draw an inference.

21 The law recognizes two kinds of possession; actual  
22 possession and constructive possession. A person who  
23 knowingly has direct physical control over a thing at a given  
24 time is then in actual possession of it. A person who,  
25 although not in actual possession, knowingly has both the

1 power and the intention at a given time to exercise dominion  
2 or control over a thing, either directly or through another  
3 person or persons, is then in constructive possession of it.

4           The law recognizes also that possession may be sole  
5 or joint. If one person alone has actual or constructive  
6 possession of a thing, possession is sole. If two or more  
7 persons share actual or constructive possession of a thing,  
8 possession is joint.

9           You may find that the element of possession as that  
10 term is used in these instructions, is present if you find  
11 beyond a reasonable doubt that a defendant had actual or  
12 constructive possession, either alone or jointly, with others.

13           Although you are to consider only the evidence in  
14 the case in reaching a verdict, you must bring to the  
15 consideration of the evidence your every day common sense and  
16 judgment as reasonable men and women. Thus, you are not  
17 limited solely to what you see and hear as the witnesses  
18 testify.

19           You may draw reasonable inferences from the evidence  
20 which you feel are justified in the light of common  
21 experience, keeping in mind that such inferences should not be  
22 based on speculation or guess.

23           A verdict may never be influenced by sympathy,  
24 prejudice or public opinion. Your decision should be the  
25 product of sincere judgment and sound discretion in accordance

1 with these rules of law.

2           It is a constitutional right of a defendant in a  
3 criminal trial that he may not be compelled to testify. Thus,  
4 the decision as to whether he should testify is left to the  
5 defendant on the advice and counsel of his attorney. You must  
6 not draw any inference of guilt from the fact that he does not  
7 testify, nor should this fact be discussed you or enter into  
8 your deliberations in any way.

9           In your deliberation you may not discuss or consider  
10 the subject of punishment as that is a matter which lies  
11 solely with the Court. Your duty is confined to the  
12 determination of the guilt or innocence of the defendant.

13           When you retire to consider your verdict you must  
14 select one of your members to act as foreperson who will  
15 preside over your deliberation and will be your spokesperson  
16 here in court. During your deliberation you will have all the  
17 exhibits which were admitted into evidence, these written  
18 instructions, and forms of verdict which have been prepared  
19 for your convenience.

20           Your verdict must be unanimous. As soon as you have  
21 agreed upon a verdict, have it signed and dated by your  
22 foreperson, and then return with it to this room.

23           Now, you will listen to the arguments of counsel who  
24 will endeavor to aid you to reach a proper verdict by  
25 refreshing in your minds the evidence and by showing the

1 application thereof to the law. But whatever counsel may say,  
2 you will bear in mind that it is your duty to be governed in  
3 your deliberation by the evidence as you understand it and  
4 remember it to be, and by the laws given to you in these  
5 instructions, with the sole, fixed and steadfast purpose of  
6 doing equal and exact justice between the defendant and the  
7 State of Nevada.

8 Now, we'll be pleased to hear the closing argument  
9 for the State, Ms. Schifalacqua.

10 MS. SCHIFALACQUA: Thank you, Your Honor.

11 STATE'S CLOSING ARGUMENT

12 MS. SCHIFALACQUA: Ladies and gentlemen of our jury,  
13 you've heard, obviously, over this past week a number of items  
14 -- have been shown, excuse me, a number of items of evidence  
15 and you've heard all the testimony. On November 5th, 2013,  
16 the State has proven this portion of the trial that you  
17 weren't aware which was the defendant was a felon at that time  
18 and he couldn't have a gun.

19 The elements of the crimes -- the crime charged for  
20 possession of a firearm by an ex-felon really have just three  
21 elements. The first is that the defendant, Matthew  
22 Washington, had to possess a gun. The second, that it has to  
23 be a firearm, loaded, unloaded; operable or inoperable. And  
24 the third is that he was a felon at the time, so he's  
25 prohibited and not allowed to do so.

1 Well, clearly, you have both guns in evidence.  
2 There was obviously the 9 millimeter as well as the .40  
3 caliber that he was in possession, constructive possession and  
4 possession, on November 5th of 2013. Obviously, you know that  
5 they are firearms, they were test fired, and we know that  
6 obviously the other complete portion of the trial, the guns  
7 were used and they're firearms. So that element is met.

8 With regard to him being a felon, you have now his  
9 certified judgments of convictions. He was a felon on  
10 November 5th. Actually, he was a felon three times over for  
11 grand larceny, attempt carrying a concealed firearm or other  
12 deadly weapon, and burglary. So, that element is met.

13 And the third is possession. Now, possession goes  
14 to both, the -- when the defendant obviously was at 2655  
15 shooting that firearm. And we charged different theories of  
16 liability, and we said you didn't have to agree, so possession  
17 also talks about when he was in that vehicle with Martell  
18 Moten and if -- the guns were found, one in the back seat and  
19 one in the front, and did he have possession over them?  
20 Absolutely.

21 What the law recognizes and what the Judge read to  
22 you is, this is the gun, he doesn't have to have it on his  
23 person, right, to have possession. What he can have is, for  
24 example, constructive possession, meaning, he can have  
25 dominion and control over that item. Obviously, the item

1 that's beneath his steering wheel, apart from the fact that  
2 obviously we have evidence that he shot the gun, but also that  
3 he had dominion and control over the 9 millimeter, as well,  
4 because that was in the back. And even though he did not have  
5 it on his person, he still possessed one of the two guns.

6 Now, the other thing that you might be asking  
7 yourself is, well, Martell Moten was in the back. And we  
8 obviously presented evidence that each one of them had a  
9 separate firearm. But when he stopped in the vehicle, as when  
10 I put my pen between Ms. Pieper and (inaudible), the law  
11 recognizes that possession can be joint, and it can be  
12 constructive.

13 And in this case, even the mere stop, if you don't  
14 take in all of the other -- which you have all the other  
15 evidence before you about the actual shooting. But even if  
16 you were to not take that into consideration, the stop itself,  
17 when Officer Parquette stops he and Martell Moten, they are  
18 both in constructive possession of actually more than one  
19 firearm.

20 And so, the State has proved that the defendant  
21 committed the crime of possession of firearm by an ex-felon on  
22 November 5, 2013 and we ask that you find him guilty of that  
23 count. Thank you.

24 THE COURT: All right, thank you. Now, we'll be  
25 pleased to hear the closing argument on behalf of the

1 defendant.

2 MR. OTTO: Yes, Your Honor.

3 DEFENDANT'S CLOSING ARGUMENT

4 MR. OTTO: Good afternoon, ladies and gentlemen. As  
5 the State has outlined, they have to prove that Mr. -- and the  
6 instructions have outlined, they have to prove that Mr.  
7 Washington was in -- knowingly had the power and the intention  
8 at a given time to exercise dominion and control over that  
9 firearm.

10 I call your attention to Instruction No. 13. And I  
11 would submit to you that there is no evidence in the case that  
12 Mr. Washington knew that that firearm was under the dashboard.

13 And for that reason, I would ask you to find him not  
14 guilty of this charge. Thank you.

15 THE COURT: All right, thank you. Final argument by  
16 the State?

17 MS. SCHIFALACQUA: Thank you, Your Honor. We're  
18 going to submit.

19 THE COURT: All right, thank you. Ladies and  
20 gentlemen, you've heard the evidence and the instructions and  
21 the closing argument of the attorneys. It now rests for you  
22 to retire to the jury room and deliberate upon your verdict.  
23 You will have the written instructions and the evidence.

24 Counsel, well they have, again, all of the same  
25 exhibits?

1 MS. SCHIFALACQUA: Correct, sure.

2 THE COURT: All of the same exhibits, and the  
3 additional exhibits that were admitted at this time. We will  
4 await your verdict. Jury will be excused to deliberate.

5 (Jury retires to deliberate at 4:07 p.m.)

6 THE COURT: Okay. The record will reflect the  
7 absence of the jury. Folks, I don't assume that we will need  
8 to stray very far. It's one count and we'll see how long it  
9 takes, but please do not go very far.

10 MS. PIEPER: Judge, if you don't mind, we're -- the  
11 State's probably going to stay.

12 THE COURT: Stay here? That's fine.

13 MR. OTTO: I'm just going to speak to some potential  
14 witnesses in the front room.

15 MS. SCHIFALACQUA: And, Judge, for purposes of  
16 tomorrow, we can start at 9:00 a.m.; is that right?

17 THE COURT: Yes.

18 MS. SCHIFALACQUA: For the penalty?

19 THE COURT: Yes.

20 MS. SCHIFALACQUA: Okay.

21 THE COURT: We'll start at 9:00 o'clock tomorrow.

22 MS. SCHIFALACQUA: We just want to make sure we have  
23 everyone here ready to go.

24 THE COURT: Yeah.

25 MS. SCHIFALACQUA: Okay.

1 THE COURT: Yeah, 9:00 o'clock. All right, we'll be  
2 in recess.

3 (Court recessed at 4:08 p.m. until 4:19 p.m.)

4 (Outside the presence of the jury)

5 THE COURT: It will be 9:00 o'clock tomorrow, then,  
6 counsel that I'll have the jury come back and we'll start.

7 MS. SCHIFALACQUA: Okay.

8 (Jury reconvenes at 4:20 p.m.)

9 THE COURT: Will counsel stipulate to the presence  
10 of the jury?

11 MS. PIEPER: Yes, Your Honor.

12 MS. SCHIFALACQUA: Yes, Your Honor.

13 MR. OTTO: Yes, Your Honor.

14 THE COURT: Please be seated. Mr. Roark, has the  
15 jury arrived at a verdict?

16 JUROR NO. 8: Yes, we have, Your Honor.

17 THE COURT: Would you hand it to the Marshal please.

18 THE MARSHAL: Thank you, sir.

19 THE COURT: The Clerk will read the verdict and  
20 inquire of the jury.

21 THE CLERK: District Court, Clark County, Nevada,  
22 the State of Nevada, plaintiff, vs. Matthew Washington,  
23 defendant, Case No. C-13-294695-1, Department I.

24 Verdict. We, the jury, in the above-entitled case,  
25 find the defendant, Matthew Washington as follows:

1 Count 1. Possession of firearm by ex-felon; guilty  
2 of possession of firearm by ex-felon.

3 Dated the 16th day of April, 2001 (sic), signed by  
4 Foreperson, Brian Roark.

5 Ladies and gentlemen of the jury, is this your  
6 verdicts as read, say one -- so say you one, so say you all?

7 THE JURY: Yes.

8 THE COURT: Thank you. Before the -- this verdict  
9 is recorded, does either side wish the jury to be polled?

10 MS. PIEPER: Not by the State.

11 MR. OTTO: Please, Your Honor.

12 THE COURT: All right. The Clerk will poll the  
13 jury.

14 THE CLERK: Ms. Lahav, is this your verdict as read?

15 JUROR NO. 2: Yes.

16 THE CLERK: Mr. Farley, is this your verdict as  
17 read?

18 JUROR NO. 3: Yes, ma'am.

19 THE CLERK: Mr. Johns, is this your verdict as read?

20 JUROR NO. 4: Yes.

21 THE CLERK: Ms. Dowell, is this your verdict as  
22 read?

23 JUROR NO. 5: Yes.

24 THE CLERK: Ms. Harakal, is this your verdict as  
25 read?

1 JUROR NO. 6: Yes.

2 THE CLERK: Mr. Roark, is this your verdict as read?

3 JUROR NO. 8: Yes.

4 THE CLERK: Ms. Morrison, is this your verdict as  
5 read?

6 JUROR NO. 9: Yes.

7 THE CLERK: Ms. Lucero, is this your verdict as  
8 read?

9 JUROR NO. 10: Yes.

10 THE CLERK: Ms. Yono, is this your verdict as read?

11 JUROR NO. 11: Yes.

12 THE CLERK: Ms. Eslinger, is this your -- Mr.  
13 Eslinger, is this your verdict as read?

14 JUROR NO. 12: Yes.

15 THE CLERK: Mr. Andrews, is this your verdict as  
16 read?

17 ALTERNATE JUROR NO. 1: Yes.

18 THE CLERK: Ms. Lynch, is this your verdict as read?

19 ALTERNATE JUROR NO. 2: Yes.

20 THE COURT: All right, thank you. Ladies and  
21 gentlemen, as you are already aware, we will begin another  
22 phase of the trial tomorrow morning. If you will return,  
23 please, outside of the courtroom at 9:00 a.m., we'll be able  
24 to begin that phase of the trial.

25 It is important that you bear the Court's admonition

1 in mind now, particularly as you go home at this point after  
2 having put the time and effort into this case that you have.  
3 And that is that you're not to read, watch or listen to any  
4 report of or commentary on the trial or on any person  
5 connected with this trial by any medium of information  
6 whatsoever, including, without limitation, newspapers,  
7 television, the internet and radio.

8           Please do to conduct any factual or legal research  
9 in this case. Please recall the Court's admonition not to  
10 talk or converse among yourselves or with anyone else on any  
11 subject or any person connected with this trial. And please  
12 do not form or express any opinion on any subject connected  
13 with the trial. Obviously, you already have it in the form of  
14 the verdicts that you have rendered, but please do not do --  
15 form or express any other opinions on any other subject  
16 connected with this trial until the case is finally submitted  
17 to you.

18           And please do not visit any of the places that have  
19 been made mention of during this trial. Please allow this to  
20 play out, as you have already, based upon the efforts of  
21 counsel to adduce witnesses and other evidence before you, and  
22 let your remaining verdict be based strictly and solely upon  
23 that.

24           Counsel, anything else before we adjourn for the  
25 evening?

1 MS. SCHIFALACQUA: Not by the State, Your Honor.

2 MR. OTTO: No, Your Honor.

3 THE COURT: Thank you. Ladies and gentlemen, you  
4 will be excused until 9:00 a.m. tomorrow morning.

5 (Jury recessed at 4:24 p.m.)

6 THE COURT: All right.

7 MS. SCHIFALACQUA: The door is still open, Judge.

8 THE COURT: Door's open, okay. Counsel, for  
9 tomorrow's purposes, what instruction?

10 MS. PIEPER: I have the instructions, so I will send  
11 the instructions to you tonight. They're -- there -- I think  
12 there's only like seven instructions.

13 THE COURT: Okay.

14 MS. PIEPER: So we --

15 MS. SCHIFALACQUA: And the verdict.

16 MS. PIEPER: Yeah. We, essentially -- you don't  
17 have to read an Information.

18 THE COURT: Right.

19 MS. PIEPER: We just get up and say, this is now  
20 penalty. We do an opening, we call our witnesses, and then we  
21 do a first close --

22 MS. SCHIFALACQUA: Defense calls any --

23 MS. PIEPER: Well, defense calls any witnesses -- we  
24 call witnesses, rest. Defense calls witnesses, they rest. We  
25 do a first close, defense closes, and then we do a rebuttal.

1 THE COURT: Same as every other phase.

2 MS. PIEPER: Correct.

3 THE COURT: Okay. If there are any defense  
4 instructions, I don't know if there will be, but if there are,  
5 please get those to me by tomorrow morning if you would.

6 MS. OHLINGER: I will.

7 THE COURT: So that we'll be ready to proceed ahead.  
8 Anything else, then?

9 MS. PIEPER: Not by the State, Your Honor.

10 MS. SCHIFALACQUA: No by the State, Judge.

11 MS. OHLINGER: Nothing by the defense.

12 THE COURT: Thank you.

13 MS. SCHIFALACQUA: Thank you, Your Honor.

14 (Court recessed at 4:26 p.m., until Thursday,  
15 April 17, 2014, at 9:34 a.m.)

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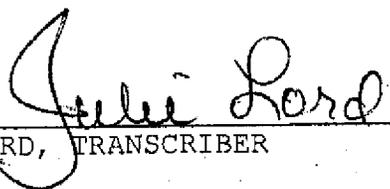
**CERTIFICATION**

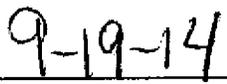
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1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2  
3 MATTHEW WASHINGTON,

No. 65998

4 Appellant,

5 vi.

6 THE STATE OF NEVADA,

7 Respondent.

8  
9 **APPELLANT'S APPENDIX VOLUME IX PAGES 1731-1951**

10 PHILIP J. KOHN  
11 Clark County Public Defender  
12 309 South Third Street  
13 Las Vegas, Nevada 89155-2610

STEVE WOLFSON  
Clark County District Attorney  
200 Lewis Avenue, 3<sup>rd</sup> Floor  
Las Vegas, Nevada 89155

14 Attorney for Appellant

CATHERINE CORTEZ MASTO  
Attorney General  
100 North Carson Street  
Carson City, Nevada 89701-4717  
(702) 687-3538

Counsel for Respondent

15  
16 **CERTIFICATE OF SERVICE**

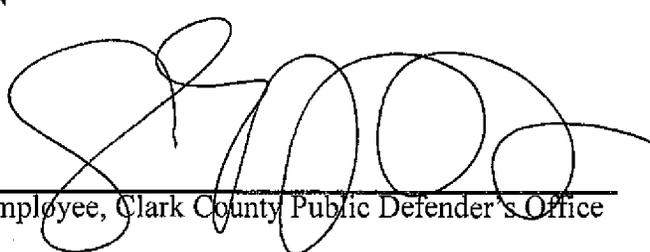
17 I hereby certify that this document was filed electronically with the Nevada  
18 Supreme Court on the 19<sup>th</sup> day of June, 2014 Electronic Service of the  
19 foregoing document shall be made in accordance with the Master Service List as follows:

20 CATHERINE CORTEZ MASTO  
21 STEVEN S. OWENS

HOWARD S. BROOKS  
SHARON DICKINSON

22 I further certify that I served a copy of this document by mailing a true and  
23 correct copy thereof, postage pre-paid, addressed to:

24 MATTHEW WASHINGTON  
25 NDOC # 1061467  
26 c/o High Desert State Prison  
27 PO Box 650  
28 Indian Springs, NV 89070

BY 

Employee, Clark County Public Defender's Office