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Real Party In Interest.

Electronically Filed
Aug 19 2014 08:41 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

**APPELLANT'S APPENDIX TO EMERGENCY WRIT OF
PROHIBITION/MANDAMUS**

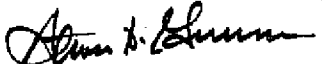
Counsel for Respondent

INDEX
LUIS PIMENTEL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PAGE NO.

Court Minutes of August 11, 2014	189-191
Criminal Information filed 02/28/14	175-177
Preliminary Hearing Transcript filed 04/02/14 Date of Hrg: 02/26/14	001-174
Pre-Trial Petition for Writ of Habeas Corpus Filed 07/09/14	178-188


CLERK OF THE COURT

1 CASE NO. C296234

2

3 IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP

4 CLARK COUNTY, STATE OF NEVADA

5

6 STATE OF NEVADA,

7 PLAINTIFF,

8 VS.

9 LUIS PIMENTEL,

10 DEFENDANT,

11

12 REPORTER'S TRANSCRIPT OF PRELIMINARY HEARING

13

14 BEFORE THE HONORABLE DIANA L. SULLIVAN, JUSTICE OF THE PEACE

15

16 WEDNESDAY, FEBRUARY 26, 2014

17 10:39 O'CLOCK A.M.

18

19 FOR THE PLAINTIFF:

SAMUEL G. BATEMAN,
DEPUTY DISTRICT ATTORNEY

20

21 FOR THE DEFENDANT:

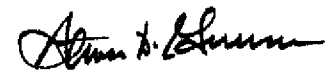
JOHN J. MOMOT, JR., ESQ.

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24 REPORTED BY: KIT MACDONALD, C.S.R.
25 CERTIFICATE NO. 65



CLERK OF THE COURT

1 CASE NO. C296234

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IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP

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* * * *

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CERTIFICATE NO. 65

25

I N D E X

3	<u>WITNESSES FOR THE STATE:</u>	<u>PAGE</u>
4	<u>LISA GAVIN</u>	
5	DIRECT EXAMINATION BY MR. BATEMAN	6
6	CROSS-EXAMINATION BY MR. MOMOT	18
7	REDIRECT EXAMINATION BY MR. BATEMAN	50
8	RECROSS-EXAMINATION BY MR. MOMOT	53
9	<u>TIMOTHY HILDEBRAND</u>	
10	DIRECT EXAMINATION BY MR. BATEMAN	59
11	ROSS-EXAMINATION BY MR. MOMOT	88
12	REDIRECT EXAMINATION BY MR. BATEMAN	118
13	RECROSS-EXAMINATION BY MR. MOMOT	120
14	<u>ROBERT HOLLAND, II</u>	
15	DIRECT EXAMINATION BY MR. BATEMAN	126
16	CROSS-EXAMINATION BY MR. MOMOT	140

E X H I B I T S

20	<u>STATE'S EXHIBITS:</u>	<u>MARKED</u>	<u>ADMITTED</u>
21	EXHIBIT NO. 1		70
22	EXHIBIT NO. 2		70
23	EXHIBIT NO. 3		62
24	EXHIBIT NO. 4 THROUGH 11		10

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
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23
24
25

E X H I B I T S

DEFENSE'S EXHIBITS:

MARKED

ADMITTED

EXHIBIT NO. A

149

EXHIBIT NO. B

108

108

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1 LAS VEGAS, CLARK COUNTY, NEVADA, WEDNESDAY, FEBRUARY 26, 2014

2

3

10:39 O'CLOCK A.M.

4

5

* * * * *

6

7 THE COURT: OKAY. TODAY IS THE DATE AND TIME SET

8 PRELIMINARY HEARING FOR LUIS PIMENTEL, 13F20476.

9 IS THE STATE READY TO PROCEED?

10 MR. BATEMAN: IT IS, YOUR HONOR.

11 THE COURT: IS THE DEFENSE READY TO PROCEED?

12 MR. MOMOT: YES, YOUR HONOR.

13 THE MARSHAL: I'M GONNA' GET MR. MOMOT SOME WATER.

14 THE COURT: OKAY. AND SOUNDS LIKE WE'VE MARKED -- LOOKS

15 LIKE WE'VE MARKED SOME EXHIBITS, MISS CLERK HAS MARKED SOME

16 EXHIBITS.

17 MR. BATEMAN: CORRECT.

18 THE COURT: OKAY. YOU CAN CALL YOUR FIRST WITNESS.

19 MR. BATEMAN: AND JUST FOR THE RECORD, I THINK BOTH

20 PARTIES INVOKE THE EXCLUSIONARY RULE.

21 MR. MOMOT: CORRECT.

22 MR. BATEMAN: HOWEVER, I BELIEVE THAT THERE'S SOME FAMILY

23 MEMBERS AND OTHER NON-WITNESSES THAT ARE INTERESTED IN THE

24 CASE THAT AREN'T TECHNICALLY GOING TO BE WITNESSES.

25 MY FIRST WITNESS WILL BE THE MEDICAL EXAMINER, AND I'VE

1 SPOKEN WITH MR. MOMOT ABOUT ALLOWING THE VICTIM'S MOTHER AND
2 SISTER TO COME IN AFTER THE MEDICAL EXAMINER FOR THE REMAINING
3 WITNESSES. I DON'T HAVE ANY REASON TO BELIEVE TODAY THAT THEY
4 SHOULD BE WITNESSES IN THE FUTURE, AS I SIT HERE TODAY, SO IF
5 I'M INCORRECT -- UM -- MR. MOMOT CAN --

6 **THE COURT:** IS THAT CORRECT?

7 **MR. MOMOT:** MR. BATEMAN ADVISED ME ACCORDINGLY, AND I HAD
8 NO PROBLEM WITH THAT.

9 I DO HAVE SOME RELATIVES OF THE DEFENDANT HERE, I DON'T
10 ANTICIPATE THEM TO BE WITNESSES EITHER, YOUR HONOR.

11 **THE COURT:** OKAY. SO YOU CAN CALL THE MEDICAL EXAMINER.

12 **MR. BATEMAN:** THANK YOU. THE STATE CALLS DR. GAVIN.

13 **THE COURT:** YEAH, SHE WENT TO GO GET MR. MOMOT SOME
14 WATER, SO IF YOU CAN DO THE HONORS, PLEASE.

15

16 **LISA GAVIN,**

17 CALLED AS A WITNESS BY THE STATE, AND HAVING BEEN FIRST DULY

18 SWORN TO TESTIFY TO THE TRUTH, THE WHOLE TRUTH, AND NOTHING

19 BUT THE TRUTH, TESTIFIED AS FOLLOWS:

20

21 **THE WITNESS:** I DO.

22 **THE CLERK:** THANK YOU, MA'AM. GO AHEAD AND HAVE A SEAT.

23 I DO NEED YOU TO STATE YOUR NAME AND TO SPELL BOTH FOR
24 THE RECORD.

25 **THE WITNESS:** I'M DR. LISA GAVIN, L-I-S-A, G-A-V-I-N.

1 THE COURT: THANK YOU. YOU CAN PROCEED.

2 MR. BATEMAN: THANK YOU.

3

4

DIRECT EXAMINATION

5 BY MR. BATEMAN:

6 Q MA'AM, ARE YOU A MEDICAL EXAMINER EMPLOYED WITH THE
7 CLARK COUNTY CORONER'S OFFICE?

8 A GOOD MORNING. YES.

9 Q OKAY. HOW LONG HAVE YOU BEEN EMPLOYED THERE?

10 A A LITTLE OVER FOUR YEARS.

11 Q ALL RIGHT. AND HOW LONG HAVE YOU BEEN A MEDICAL
12 EXAMINER?

13 A THAT PERIOD OF TIME.

14 Q OKAY. CAN YOU -- UM -- TESTIFY AS TO YOUR TRAINING
15 TO BE A MEDICAL EXAMINER?

16 A YES. I WENT TO MEDICAL SCHOOL THE THE UNIVERSITY OF
17 CONNECTICUT SCHOOL OF MEDICINE. I DID A RESIDENCY IN
18 PATHOLOGY AT HARTFORD HOSPITAL, ALSO IN CONNECTICUT. I WENT
19 ON TO DO A SURGICAL PATHOLOGY FELLOWSHIP IN HARTFORD HOSPITAL
20 IN CONNECTICUT. THEN I WENT UP TO A FORENSIC PATHOLOGY
21 FELLOWSHIP AT THE OFFICE OF THE MEDICAL INVESTIGATOR IN NEW
22 MEXICO. AND THEN I CAME TO WORK HERE IN LAS VEGAS, AND I HAVE
23 A MEDICAL LICENSE TO PRACTICE HERE IN THE STATE OF NEVADA.

24 Q OKAY. AND DURING EITHER YOUR TRAINING OR THE TIME
25 AS A MEDICAL EXAMINER AT THE CLARK COUNTY CORONER'S OFFICE,

1 HAVE YOU CONDUCTED AUTOPSIES?

2 A YES.

3 Q IS THAT YOUR PRIMARY DUTY?

4 A YES. WE DO INVESTIGATIONS INTO THE CAUSE AND MANNER
5 OF DEATH ON -- UM -- UNEXPECTED OR SUDDEN DEATHS.

6 Q AND DURING THAT PERIOD OF TIME, APPROXIMATELY HOW
7 MANY AUTOPSIES -- DO YOU KNOW HOW MANY YOU'VE DONE?

8 A I HAVE DONE OVER A THOUSAND.

9 Q ALL RIGHT. HAVE YOU TESTIFIED EITHER IN THE EIGHTH
10 JUDICIAL DISTRICT COURT OR THE JUSTICE COURT IN THE LAS VEGAS
11 TOWNSHIP PRIOR TO TODAY?

12 A YES, I HAVE.

13 Q ALL RIGHT. I'M GOING TO DIRECT YOUR ATTENTION TO
14 DECEMBER 23RD OF 2013, DID YOU HAVE OCCASION TO CONDUCT AN
15 AUTOPSY OF A ROBERT HOLLAND, THE THIRD?

16 A YES.

17 Q OKAY. AND -- UM -- JUST -- JUST BRIEFLY, CAN YOU

18 DESCRIBE HOW IT IS YOU BEGIN YOUR AUTOPSY OR HOW YOU DID IT ON

19 THIS PARTICULAR DAY?

20 A OKAY. WHEN -- UH -- WE DO AUTOPSIES, USUALLY AN
21 INVESTIGATOR GOES OUT TO THE SCENE WHERE THE BODY IS LOCATED.
22 IN THIS CASE IN PARTICULAR THE DECEDENT HAD BEEN BROUGHT TO
23 THE HOSPITAL, AND -- UH -- THEY GO AND TAKE PHOTOGRAPHS AT
24 THAT TIME. THEN THE BODY IS PLACED IN A BODY BAG AND THAT BAG
25 IS SEALED. UH -- ESSENTIALLY A SEAL IS WHEN YOU BRING THE TWO

1 ZIPPERS OF THE BAG TOGETHER AND PUT A PLASTIC LITTLE HOOK
2 BETWEEN OF TWO OF THEM AND SNAP IT TOGETHER. THE ONLY WAY TO
3 REMOVE IT IS LITERALLY TO BREAK IT, AND SO WE BREAK THAT
4 PLASTIC SEAL WHEN THE BODY ARRIVES INTO OUR OFFICE.

5 Q AND THAT'S WHAT OCCURRED IN THIS CASE?

6 A THAT IS CORRECT.

7 Q AND AS A PART OF YOUR CONDUCT -- UM -- AS PART OF
8 CONDUCTING YOUR AUTOPSY, DO YOU ALSO LATER CREATE AN AUTOPSY
9 REPORT OF YOUR SIGNIFICANT FINDINGS?

10 A YES.

11 Q AND DOES THAT AL -- THAT REPORT ALSO CONTAIN OR
12 DOCUMENT YOUR MEDICAL OPINION AS TO CAUSE AND MANNER OF DEATH?

13 A YES.

14 Q AND DID YOU DO THAT IN THIS PARTICULAR CASE?

15 A YES.

16 Q IS YOUR AUTOPSY REPORT CASE NO. 13-11851?

17 A YES.

18 Q OKAY. CAN YOU PLEASE DESCRIBE FOR JUDGE SULLIVAN
19 ANY -- UM -- EXTERNAL SIGNIFICANT FINDINGS THAT OCCURRED
20 DURING YOUR AUTOPSY IN THIS CASE?

21 A JUST TO FINISH. THAT ONCE THE BODY COMES IN --
22 UM -- WE TAKE PHOTOGRAPHS OF THE BODY AS IT IS, AND THEN WE
23 EVENTUALLY CLEAN THE BODY AND GET DOWN TO THE LEVEL WHERE WE
24 TAKE PHOTOGRAPHS OF ANY OF THE INJURIES.

25 AT THAT POINT IN TIME I VIEW THE BODY AND DOCUMENT

1 ANY INJURIES THAT I SEE ON THE BODY. IN THIS PARTICULAR CASE
2 I SAW TWO GUNSHOT WOUNDS PRESENT, AS WELL AS SOME BLUNT FORCE
3 INJURY.

4 MR. BATEMAN: ALL RIGHT. MAY I APPROACH THE WITNESS,
5 YOUR HONOR, WITH SOME EXHIBITS?

6 THE COURT: YES.

7 MR. BATEMAN: I'VE SHOWN COUNSEL.

8 Q YOU TALKED ABOUT PHOTOGRAPHS. HAVE YOU -- THERE
9 WERE PHOTOGRAPHS TAKEN OF THE INJURIES IN THIS PARTICULAR
10 CASE?

11 A YES.

12 Q ALL RIGHT. AND I'M GOING TO SHOW YOU WHAT'S BEEN
13 MARKED AS STATE'S PROPOSED EXHIBITS 4 THROUGH 11. CAN YOU
14 JUST PLEASE FLIP THROUGH THOSE PHOTOS REAL QUICK AND THEN LET
15 ME KNOW WHETHER -- UH -- WHEN YOU'RE DONE.

16 A FINISHED.

17 Q DO YOU RECOGNIZE THESE PHOTOGRAPHS?

18 A YES, I DO.

19 Q AND WHAT ARE THEY?

20 A THEY ARE PHOTOGRAPHS THAT ARE TAKEN AT THE TIME OF
21 AUTOPSY.

22 Q ALL RIGHT. AND YOU RECOGNIZE THOSE TO BE TRUE AND
23 ACCURATE DEPICTIONS OF MR. HOLLAND DURING THE COURSE OF HIS
24 AUTOPSY?

25 A YES.

1 **MR. BATEMAN:** ALL RIGHT. MOVE FOR THE ADMISSION OF
2 STATE'S 4 THROUGH 11.

3 **THE COURT:** ANY OBJECTION?

4 **MR. MOMOT:** NO, YOUR HONOR.

5 **THE COURT:** FOUR THROUGH ELEVEN WILL BE ADMITTED, THANK
6 YOU.

7 (WHEREUPON STATE'S EXHIBIT NOS. 4 THROUGH 11 WERE
8 ADMITTED INTO EVIDENCE.)

9 **BY MR. BATEMAN:**

10 **Q** JUST BRIEFLY, EXHIBIT NO. 4, WHAT IS THAT?

11 **A** UH -- THIS REPRESENTS THE SEAL THAT I SPOKE ABOUT.
12 IT HAS THE PLASTIC SEAL, THAT'S PRESENT HERE THAT'S BETWEEN
13 THE TWO ZIPPERS, THAT GETS BROKEN, AS WELL AS THE TOE TAG THAT
14 IDENTIFIES THE BODY.

15 **Q** AND HAS NAME AND INFORMATION ON THAT AS WELL?

16 **A** CORRECT.

17 **Q** ALL RIGHT. STATE'S EXHIBIT NO. 5?

18 **A** THIS IS WHAT WE CALL OUR IDENTIFICATION SHOT. UM --
19 WE PLACE TOWELS AROUND THE FACE AND THEN TAKE A PICTURE OF THE
20 FACE WITH OUR NUMBER THAT'S THE CASE NUMBER IN THIS CASE, AND
21 THAT'S WHAT WE USE IS THIS.

22 IN THIS PARTICULAR SHOT YOU CAN ALSO SEE THAT
23 THERE'S A CONTUSION PRESENT, A BRUISE PRESENT OF THE -- UH --
24 LEFT EYE.

25 **Q** OKAY. I WANT TO TALK ABOUT TWO GUNSHOT WOUNDS THAT

1 YOU'VE REFERRED TO. I'LL SHOW YOU EXHIBIT NO. 6, CAN YOU
2 PLEASE DESCRIBE WHAT'S IN THAT PHOTOGRAPH?

3 **A** EXHIBIT NO. 6 IS AN ENTRANCE GUNSHOT WOUND. THIS IS
4 A GUNSHOT WOUND THAT WAS PRESENT ON THE RIGHT CHEST JUST
5 ABOVE -- JUST ABOVE THE RIGHT NIPPLE.

6 **Q** OKAY. AND HOW DO YOU -- HOW DO YOU KNOW THAT IT'S
7 AN ENTRANCE WOUND? WHAT -- WHAT IS -- WHAT'S DEPICTED IN THIS
8 PHOTOGRAPH THAT TELLS YOU THAT?

9 **A** UM -- THERE'S A CIRCUMFERENTIAL ABRASION THAT'S
10 PRESENT. THERE'S NO ASSOCIATED LACERATION, AND IT'S ONE OF
11 THE QUALITIES OF A GUNSHOT WOUND THAT'S AN ENTRANCE WOUND.

12 **Q** OKAY. I'M GOING TO SHOW YOU --

13 **MR. MOMOT:** WHAT EXHIBIT IS THAT, PLEASE?

14 **MR. BATEMAN:** I'M SORRY, THAT WAS NO. 6 --

15 **THE WITNESS:** NUMBER 6, SIR.

16 **BY MR. BATEMAN:**

17 **Q** SHOWING YOU EXHIBIT NO. 7, DO YOU RECOGNIZE WHAT'S
18 DEPICTED IN THAT PHOTOGRAPH?

19 **A** YES.

20 **Q** WHAT IS THAT?

21 **A** THIS IS AN EXIT GUNSHOT WOUND. THIS IS THE ONE THAT
22 WAS PRESENT ON THE LEFT BACK THAT IS WITHIN THE PATH OF THE
23 ONE THAT I SHOWED YOU THAT WAS PRESENT ON THE CHEST.

24 THE QUALITIES OF THIS THAT MAKE IT AN EXIT WOUND IS
25 THAT THERE'S A TEAR OR A LACERATION THAT'S PRESENT TO IT, AND

1 THERE'S NO ABRASION IN THIS PARTICULAR ONE.

2 Q ALL RIGHT. BEFORE I GET TO THE NEXT GUNSHOT
3 WOUND -- UM -- I WANT TO ASK YOU SOME QUESTIONS ABOUT THIS
4 GUNSHOT WOUND. WERE YOU ABLE TO DETERMINE A TRAJECTORY OF
5 THIS GUNSHOT WOUND BASED UPON THE FACT OF WHERE THE ENTRY WAS
6 AND WHERE THE EXIT WAS?

7 A YES.

8 Q AND CAN YOU -- DID YOU DESCRIBE THAT IN YOUR REPORT?

9 A YES.

10 Q ALL RIGHT. DO YOU RECOLLECT IT, AS YOU SIT HERE
11 TODAY, WHAT THAT TRAJECTORY WAS?

12 A YES.

13 Q AND WHAT WAS THAT?

14 A THE TRAJECTORY WAS GOING FROM RIGHT TO LEFT, FROM
15 FRONT TO BACK AND DOWNWARD.

16 Q ALL RIGHT. UM -- ARE YOU FAMILIAR WITH -- UM -- ANY
17 FORENSIC PATHOLOGY FINDINGS THAT RELATE TO THE CLOSENESS OF A
18 GUNSHOT WOUND?

19 A YES.

20 Q OKAY. AND DESCRIBE THAT FOR ME, IF YOU COULD.

21 A IF YOU'RE TALKING ABOUT A CONTACT GUNSHOT WOUND, YOU
22 CAN SEE SOOT PRESENT AROUND THE WOUND ITSELF, AND SOMETIMES
23 SOOT PRESENT WITHIN THE WOUND IN THE TISSUES UNDERNEATH IT,
24 THOSE ARE CLOSE -- UH -- OR NEAR CONTACT GUNSHOT WOUNDS THAT
25 OFTEN HAVE THAT REPRESENTED.

1 AS THE MUZZLE OF THE GUN GOES FURTHER AWAY FROM THE
2 BODY -- UM -- YOU MAY SEE SOMETHING CALLED STIPPLING. AND
3 BASICALLY, AS THE GUN -- UH -- BULLET IS PROPELLED, THERE'S
4 GUN POWDER THAT'S PRESENT, AND THAT GUNPOWDER CAN EITHER BURN
5 OFF IN THE AIR BEFORE IT HITS THE BODY, OR IF THE MUZZLE IS
6 CLOSE ENOUGH TO THE BODY IT WILL ACTUALLY BURN INTO THE BODY
7 AND PRODUCE SMALL ABRASIONS, BURNS, THOSE WOULD BE CALLED
8 STIPPLING.

9 SO THAT'S IF THE MUZZLE IS PULLED AWAY FROM THE
10 BODY, YOU CAN SOMETIMES SEE STIPPLING UP TO 16 INCHES AWAY --
11 UM -- DEPENDING ON THE -- THE GUN OR HOW WELL IT'S CLEANED OR
12 THE GUNPOWDER, ITSELF.

13 ONCE YOU GET FURTHER AWAY FROM THAT YOU CAN -- UM --
14 TALK ABOUT AN INDETERMINATE RANGE, BECAUSE YOU DON'T END UP
15 SEEING THE STIPPLING, YOU DON'T END UP SEEING SOOT, SO NOW YOU
16 HAVE MOVED FAR ENOUGH AWAY.

17 THINGS THAT CAN INTERFERE WITH THAT DETERMINATION
18 MIGHT BE WHETHER OR NOT THE DECEDENT IS WEARING CLOTHING, FOR
19 EXAMPLE, OR WHETHER OR NOT THERE'S AN INTERMEDIARY OBJECT
20 BETWEEN THEM, LIKE A DOOR OR A SCREEN DOOR OR SOMETHING LIKE
21 THAT, FOR EXAMPLE.

22 Q IF THE DECEDENT IS WEARING CLOTHING, IS THERE EVER
23 AN INSTANCE IN WHICH -- AND ASSUMING, FOR THE SAKE OF A
24 HYPOTHETICAL THAT IT WAS VERY CLOSE IN RANGE, WOULD YOU STILL,
25 UNDER SOME CIRCUMSTANCES, SEE SOMETHING ALONG THE LINES OF

1 SOOT OR STIPPLING, SO THAT YOU COULD SAY IT'S A CLOSE RANGE
2 SHOT?

3 **A** USUALLY WITH THE -- UH -- CLOTHING BEING PRESENT,
4 THAT'S GOING TO BE WHERE THE SOOT ENDS UP BEING LOCATED.
5 IT'S -- SOMETIMES YOU CAN GET FRAGMENTS OF THE FABRIC GOING
6 INTO THE WOUND, BUT YOU DON'T ALWAYS GET THE SOOT GOING INTO
7 THE WOUND.

8 UM -- AND ALSO, PARTICULARLY WITH THE STIPPLING, YOU
9 MAY SEE SOME OF THAT BURN PATTERN ON THE CLOTHING, BUT NOT SEE
10 THAT PRESENT ON THE SKIN. SO ONCE YOU HAVE THAT INTERMEDIARY
11 IT'S NOT ALWAYS THAT YOU'RE GOING TO SEE THOSE RESULTS ON THE
12 SKIN, BECAUSE YOU'VE ADDED SOMETHING IN BETWEEN THE TWO.

13 **Q** DID YOU MAKE ANY DETERMINATIONS IN THIS CASE AS IT
14 RELATES TO CHEST WOUND -- UH -- AND THE NATURE OF HOW FAR THE
15 GUN WOULD HAVE BEEN AWAY FROM THE WOUND, IN THIS PARTICULAR
16 CASE?

17 **A** YES.

18 **Q** AND WHAT DID YOU DETERMINE?

19 **A** THIS IS AN INDETERMINATE RANGE. SO GREATER THAN 16
20 INCHES OR MORE AWAY FROM -- UM -- THE DECEDENT.

21 **Q** AND HOW DID YOU DETERMINE THAT?

22 **A** BASED ON THE ABSENCE OF THE SOOT AND THE ABSENCE OF
23 THE STIPPLING. IN ADDITION TO THIS PARTICULAR CASE, I TOOK --
24 UH -- SKIN SPECIMENS AND LOOK AT THEM UNDER THE MICROSCOPE OF
25 THAT PARTICULAR WOUND, THE ENTRANCE, AND I DID NOT SEE ANY

1 SOOT PRESENT WITHIN THE WOUND MICROSCOPICALLY.

2 Q OKAY. I'M GOING TO MOVE ONTO STATE'S EXHIBIT NO.
3 8 -- WELL, ACTUALLY LET ME -- UM -- STAY ON SIX AND SEVEN, THE
4 CHEST WOUND. UM -- WHAT -- I ASSUME YOU DID AN INTERNAL
5 FINDING AS IT RELATES TO THIS WOUND AS WELL; IS THAT RIGHT?

6 A YES.

7 Q AND WHAT WAS THE NATURE OF THE INTERNAL FINDING AS
8 IT RELATES TO THE CHEST WOUND?

9 A THE GUNSHOT WOUND PERFORATED THROUGH THE SKIN,
10 THROUGH THE SUBCUTANEOUS TISSUE, THEN WENT INTO THE RIGHT
11 LUNG, THEN HIT THE AORTA, WHICH IS ONE OF THE MAJOR VESSELS
12 THAT COMES OFF OF THE HEART. THEN WENT TO THE LEFT LUNG, AND
13 THEN WENT OUT THE LEFT BACK, LEFT MID BACK. UM -- THERE WAS
14 APPROXIMATELY TWO LITERS OF BLOOD PRESENT IN HIS RIGHT CHEST
15 CAVITY, AND ABOUT 150 MILLILITERS, ABOUT ONE-EIGHTH OF A
16 LITER, PRESENT IN HIS LEFT CHEST CAVITY.

17 Q WAS THIS A -- IN YOUR OPINION WOULD THIS BE A FATAL
18 SHOT?

19 A YES.

20 Q OKAY. IS THAT MOSTLY BECAUSE OF A BLOOD LOSS?

21 A UH -- CERTAINLY. AND THE DAMAGE TO THE AORTA,
22 ITSELF, WOULD -- UH -- EVEN IF HE WAS RIGHT THERE IN THE
23 OPERATING ROOM IT'S DIFFICULT, IF NOT IMPOSSIBLE TO REPAIR.

24 Q BASED UPON THE DAMAGE TO THE AORTA, DO YOU HAVE AN
25 OPINION AS TO HOW LONG BEFORE DEATH WOULD OCCUR AS A RESULT OF

1 THIS KIND OF DAMAGE INTERNALLY?

2 A SECONDS. THE -- THE -- THE LENGTH OF TIME IT WOULD
3 TAKE FOR THAT BLOOD TO EMPTY OUT INTO HIS CHEST.

4 Q ALL RIGHT. I'M GOING TO SHOW YOU NOW STATE'S
5 EXHIBIT NO. 8, DO YOU RECOGNIZE THAT?

6 A YES.

7 Q AND WHAT IS -- WHAT DO WE SEE IN EIGHT?

8 A UM -- IN EIGHT IT'S A PICTURE OF THE BUTTOCKS, AND
9 ON THE BUTTOCKS IS AN ENTRANCE GUNSHOT WOUND.

10 Q OKAY. SAME WAY YOU DETERMINE -- UM -- ENTRANCE
11 WOUNDS AND EXIT WOUNDS, AS WE TALKED ABOUT WITH THE CHEST?

12 A WE HAVE A CLOSE-UP.

13 Q OKAY. SHOWING YOU EXHIBIT NO. 9.

14 A THIS IS THE CLOSE-UP OF THAT WOUND THAT DEMONSTRATES
15 THE ABRASION THAT'S PRESENT AROUND THAT, WITH THE ABSENCE OF
16 THE LACERATION. IN ADDITION, THERE'S NO SOOT PRESENT HERE, AS
17 WELL AS NO STIPPLING.

18 Q OKAY. AND YOU SAID THAT'S IN THE LEFT BUTTOCKS?

19 A LEFT BUTTOCKS, ENTRANCE GUNSHOT WOUND.

20 Q OKAY. AND THEN SHOWING YOU EXHIBIT NO. 10, DO YOU
21 RECOGNIZE THAT?

22 A YES.

23 Q WHAT IS THAT?

24 A THIS IS A PHOTOGRAPH OF THE DECEDENT'S STOMACH. THE
25 BELLY BUTTON IS BELOW THE -- UM -- MONIKER OF THE NUMBER OF

1 THE CASE, AND THEN ABOVE THAT IS A NEAR EXIT WOUND.

2 Q WHEN YOU SAY NEAR EXIT WOUND, WHAT DO YOU MEAN?

3 A THAT THERE IS A LACERATION TO THE SURFACE, BUT -- IN
4 THE SUBCUTANEOUS TISSUE, A MISSILE OR BULLET WAS RECOVERED.

5 Q SO IT DIDN'T -- IT DIDN'T EXIT THE BODY?

6 A IT DIDN'T GET TO GO ALL THE WAY OUT, EXIT THE BODY.

7 Q AND I'M SHOWING YOU ELEVEN, IS THAT A CLOSER UP OF
8 THAT SAME -- UM -- NEAR EXIT THE WOUND?

9 A YES, IT'S A CLOSER UP OF THE NEAR EXIT WOUND, AND
10 IT'S A LITTLE ATYPICAL, BECAUSE THIS DOES END UP HAVING AN
11 ABRASION BECAUSE IT DIDN'T GET TO FULLY -- UH -- LACERATE OUT
12 OF THE BODY. ALSO IT HAS THE GREEN DISCOLORATION BECAUSE OF
13 THE PATHWAY THAT THIS PARTICULAR MISSILE TOOK. AFTER ENTERING
14 THE BUTTOCKS IT WENT INTO THE -- UH -- GROIN REGION THROUGH
15 THE COLON, THROUGH THE SMALL BOWEL, AND THEN EXITED OUT -- OR
16 NEARLY EXITED OUT THE ABDOMEN. UH -- BECAUSE OF THAT, ALL THE
17 ABDOMINAL CONTENTS WERE LOOSE AND OPENED UP INSIDE OF THE
18 BODY, INSIDE OF THE ABDOMEN.

19 Q OKAY. AND JUST TO CLARIFY, THE TRAJECTORY THEN
20 WOULD HAVE BEEN REPORTED HOW IN YOUR REPORT?

21 A THE TRAJECTORY OF THIS ONE GOES FROM -- UH -- LEFT
22 TO RIGHT AND BACK TO FRONT AND UPWARD.

23 Q OKAY. DID YOU MAKE A DETERMINATION AS TO THE --
24 WELL, I THINK YOU TESTIFIED TO IT, THE INTERNAL INJURIES AS A
25 RESULT OF THIS GUNSHOT WOUND TO THE BUTTOCKS?

1 A YES, I DID.

2 Q OKAY. AND JUST BRIEFLY -- UM -- HOW -- WELL, WOULD
3 THAT HAVE ALSO BEEN A FATAL SHOT STANDING ALONE?

4 A IT WOULDN'T HAVE BEEN AS IMMEDIATE AS THE OTHER SHOT
5 WE'VE JUST DESCRIBED; BUT THE EMPTYING OF THE STOMACH CONTENTS
6 AND THE INTESTINAL CONTENTS INTO THE ABDOMEN COULD RESULT IN
7 DEATH HOURS LATER.

8 Q AS A RESULT OF YOUR FINDINGS IN THIS PARTICULAR
9 CASE, DID YOU FORM AN OPINION, TO A REASONABLE DEGREE OF
10 MEDICAL CERTAINTY AS TO THE CAUSE OF DEATH?

11 A YES.

12 Q AND WHAT WAS THAT?

13 A MULTIPLE GUNSHOT WOUNDS IN TORSO.

14 Q ALL RIGHT. AND THE MANNER OF DEATH?

15 A IS A HOMICIDE.

16 MR. BATEMAN: I'LL PASS THE WITNESS, JUDGE.

17 THE COURT: CROSS-EXAMINATION?

18 MR. MOMOT: YES, YOUR HONOR.

19

20

CROSS-EXAMINATION

21 BY MR. MOMOT:

22 Q FIRST, YOU SAID THAT YOU HAD AN OPPORTUNITY TO
23 EXAMINE THE ENTIRE BODY OF THE DECEDENT, CORRECT?

24 A CORRECT.

25 Q AND YOU LOOKED FOR VARIOUS AREAS OF TRAUMA?

1 A CORRECT.

2 Q DURING THE COURSE OF YOUR DIRECT EXAMINATION YOU
3 NOTED THAT THERE WAS TRAUMA TO THE FOREHEAD.

4 A YES.

5 Q AND WHERE IS THAT AGAIN?

6 A ON THE LEFT UPPER EYELID.

7 Q AND THERE WAS A CUT?

8 A NO, THIS WAS A BRUISE.

9 Q AND CAN YOU TELL ME -- UH -- WHEN YOU LOOK AT A
10 BRUISE YOU CAN DETERMINE SOMEWHAT THE AGE OF A BRUISE,
11 CORRECT?

12 A IT'S CHALLENGING TO DETERMINE WHETHER OR NOT IT
13 OCCURRED -- UM -- WITHIN A SHORT PERIOD OF TIME. YOU CAN
14 USUALLY SAY THAT IT LOOKS LIKE IT'S AT OR AROUND THE TIME OF
15 DEATH. AND ONCE IT STARTS TO DEVELOP IT'S HEALING PATTERN,
16 HOW LONG THAT TAKES FOR THAT INDIVIDUAL VARIES FROM INDIVIDUAL
17 TO INDIVIDUAL.

18 Q AND WHAT PATTERNS DO YOU LOOK FOR? YOU LOOK FOR
19 COLOR, CORRECT?

20 A CORRECT.

21 Q AND COULD YOU PLEASE DESCRIBE THE COLORS THAT YOU'RE
22 LOOKING FOR IN THE DETERMINATION OF THE AGE OF A BRUISE?

23 A IT VARIES. THE FIRST WOULD BE WHETHER OR NOT IT
24 TURNS PURPLE OR BLUE, AND THEN MOVING ON FROM THAT EVENTUALLY
25 IT WILL TURN MORE YELLOW OR BROWN.

1 Q OKAY. AND IN THIS PARTICULAR CASE WAS THERE
2 A PARTICULAR COLOR?

3 A YES. THIS ONE WAS MORE PURPLE.

4 Q SO THAT WOULD MEAN IT WAS MORE RECENT?

5 A MORE RECENT, CORRECT.

6 Q AND WAS THERE A CUT, AS WELL?

7 A I DIDN'T SEE ONE ON THIS ONE, IT WAS MOSTLY A
8 CONTUSION.

9 Q OKAY. AND COULD YOU TELL -- UM -- WHETHER OR NOT
10 THAT OCCURRED AT THE TIME OF THE SHOOTING?

11 A IT'S QUITE POSSIBLE IT OCCUR AT THE TIME OF THE
12 SHOOTING?

13 Q SO IT'S A POSSIBILITY, BUT YOU'RE NOT SURE. IT
14 COULD HAVE HAPPENED PRIOR TO THE SHOOTING?

15 A IT COULD HAVE HAPPENED PRIOR TO THE SHOOTING.

16 Q OKAY. NOW, IS THERE ANY OTHER AREAS THAT YOU LOOKED
17 AT THAT YOU SAW A PARTICULAR TRAUMA?

18 A YES.

19 Q WHERE?

20 A ON THE EXTREMITIES.

21 Q AND WHAT DID YOU SEE, AND PLEASE DESCRIBE?

22 A UM -- THE KNUCKLES WAS AN AREA OF ABRASION THAT WAS
23 PRESENT, SO THE SCRAPES, AND THAT WAS ON THE LEFT KNUCKLES.
24 AND ON THE LEFT CALF THERE WAS ANOTHER CONTUSION, AND THEN ON
25 THE RIGHT KNEE WAS ANOTHER ABRASION.

1 Q NOW, YOU HAVE PHOTOGRAPHS OF THE HANDS, CORRECT?

2 A CORRECT.

3 Q DID YOU BRING THAT WITH YOU TODAY?

4 A I DID NOT.

5 MR. MOMOT: OKAY. I HAVE A MASTER LIST OF PHOTOGRAPHS --
6 UM -- THAT WERE PROVIDED TO ME IN DISCOVERY. I DON'T BELIEVE
7 THERE WOULD BE ANY OBJECTION TO ME UTILIZING THESE?

8 MR. BATEMAN: NOPE.

9 MR. MOMOT: POSSIBLY AT THE END OF THE HEARING, YOUR
10 HONOR, THAT I COULD JUST SUBMIT -- I CAN SUBMIT THE WHOLE
11 ENTIRE PACKAGE AS AN EXHIBIT, AS A DEFENSE EXHIBIT, WOULD THAT
12 BE ALL RIGHT?

13 THE COURT: SURE.

14 MR. MOMOT: IN THE MEANTIME MAY I APPROACH THE WITNESS?

15 THE COURT: YES.

16 MR. MOMOT: AND MAKE AN INQUIRY ACCORDINGLY?

17 MR. BATEMAN: (NO AUDIBLE RESPONSE.)

18 THE COURT: SO THIS WILL BE DEFENSE EXHIBIT A -- OR HAS
19 DEFENSE MARKED ANYTHING?

20 THE CLERK: NO, NOT YET.

21 (DISCUSSION BETWEEN MR. MOMOT AND THE DEFENDANT.)

22 THE COURT: DEFENSE EXHIBIT A WAS WHAT YOU'LL MARK IT?

23 MR. MOMOT: YES. YES, MA'AM.

24 THE COURT: OKAY. DEFENSE EXHIBIT A, HE'S APPROACHING.

25 MR. MOMOT: WE'LL MARK IT NOW OR LATER?

1 THE CLERK: LATER IS FINE.

2 MR. MOMOT: LATER, OKAY.

3 THE COURT: BUT SINCE IT'S MULTI PAGES, I DON'T KNOW IF
4 THEY'RE MARKED IN ANY FASHION AT ALL --

5 MR. BATEMAN: YOUR HONOR, I DON'T --

6 THE COURT: -- WITH A CODE.

7 MR. BATEMAN: I DON'T HAVE A PROBLEM WITH AT A LATER TIME
8 MR. MOMOT MAYBE JUST TAKING ONE PAGE, MAYBE A COPY AND MAKING
9 THAT THE EXHIBIT FOR THE RECORD. IF HE WANTS TO KEEP THE
10 PACKET I -- I WOULDN'T WANT HIM TO HAVE TO -- IT'S UP TO
11 MR. MOMOT, WHATEVER HE WANTS.

12 MR. MOMOT: I APPRECIATE WHAT COUNSEL IS SAYING, AND I'D
13 LIKE TO DO IT JUST THAT WAY. I THINK WE COULD TAKE OUT A
14 PARTICULAR PAGE AND MARK IT ACCORDINGLY AS EXHIBIT A DASH 1.

15 THE COURT: OKAY.

16 MR. MOMOT: AND DO IT ACCORDINGLY.

17 THE COURT: OKAY.

18 MR. MOMOT: OKAY?

19 THE COURT: SURE.

20 MR. MOMOT: WE CAN DO THAT AT THE END OF THE HEARING,
21 YOUR HONOR?

22 THE COURT: SURE.

23 BY MR. MOMOT:

24 Q NOW, I'M -- I'M SHOWING YOU WHAT PURPORTS TO BE A
25 PAGE OF PICTURES OF A HAND.

1 **A** CORRECT.

2 **Q** AND THIS WOULD BE THE HAND OF THE DECEDENT?

3 **A** YES, IT LOOKS LIKE IT.

4 **Q** OKAY. AND THERE'S NINE PHOTOGRAPHS, CORRECT?

5 **A** CORRECT.

6 **Q** IF YOU'D LIKE TO EXAMINE THE PACKAGE, I MEAN I'M

7 NOT -- I MEAN I WILL --

8 **MR. BATEMAN:** I'LL STIPULATE. I'LL STIPULATE.

9 **MR. MOMOT:** THANK YOU. OKAY.

10 **THE WITNESS:** I'M COMFORTABLE WITH THAT.

11 SOME PHOTOS ARE TAKEN BY LAW ENFORCEMENT, IS OF THE

12 BASE -- UH -- STIM -- THEY GO SIDE BY SIDE WHEN WE TAKE

13 PICTURES, SO I DON'T KNOW IF THESE CAME DIRECTLY FROM THEM OR

14 DIRECTLY FROM OUR OFFICE.

15 **BY MR. MOMOT:**

16 **Q** COULD YOU JUST TAKE A LOOK AND MAKE THAT -- IF YOU

17 COULD MAKE THAT DETERMINATION THAT WOULD BE FINE. IF YOU CAN,

18 MA'AM.

19 **A** THESE MIGHT BE TAKEN BY LAW ENFORCEMENT, BUT THEY DO

20 MIRROR WHAT IS ON OUR PHOTOS, AS WELL.

21 **Q** OKAY. SO THEY -- THEY'RE TRUE AND ACCURATE

22 PHOTOGRAPHS OF THE DECEDENT'S HAND AT THE TIME -- AT OR NEAR

23 THE TIME OF THE AUTOPSY THAT YOU'RE PERFORMING?

24 **A** CORRECT.

25 **Q** OKAY. AND SO THERE'S NO AGE, TIME DIFFERENTIAL THAT

1 THIS IS TAKEN SIX HOURS LATER OR SOMETHING OF THAT NATURE?
2 A NO. CORRECT.
3 Q OKAY. NOW, IN LOOKING AT THIS, IT DEPICTS THE RIGHT
4 HAND OF THE DECEDENT?
5 A THAT'S CORRECT.
6 Q COULD YOU PLEASE DESCRIBE THE MARKS THAT YOU SEE --
7 UH -- IF WE'RE LOOKING AT -- AS THIS IS PICTURE NO. 1 GOING
8 FROM LEFT TO RIGHT, ONE, TWO AND THREE. SECOND SET OF PHOTOS
9 FOUR, FIVE AND SIX, LEFT TO RIGHT, AND THEN FINALLY SEVEN,
10 EIGHT AND NINE AT THE BOTTOM OF THE PAGE.
11 A OKAY.
12 Q OKAY?
13 SO IF YOU LOOK AT PHOTO NO. 1, THE TOP LEFT, WHAT
14 DOES IT DEPICT?
15 A HE HAS SOME ABRASIONS PRESENT ON HIS DORSAL
16 SURFACES, THE BACK OF HIS HAND AND THE BACK OF HIS FINGERS.
17 Q HOW MANY FINGERS, PLEASE?
18 A FROM THIS PICTURE TWO FINGERS, AND THEN ALSO ON THE
19 BACK OF HIS HAND NEAR THE KNUCKLES..
20 Q OKAY.
21 THE COURT: NEAR THE WHAT, I'M SORRY?
22 THE WITNESS: THE KNUCKLES.
23 THE COURT: THANK YOU.
24 BY MR. MOMOT:
25 Q NOW -- AND THEN -- THEN THESE MARKS, ARE THEY OLD

1 BRUISES, FRESH BRUISES, RECENT CUTS, HOW WOULD YOU DESCRIBE
2 THEM?

3 A THESE ARE FRESH.

4 Q FRESH WHAT?

5 A ABRASIONS.

6 Q FRESH ABRASIONS. OKAY.

7 AS IF THAT HAND STRUCK SOMETHING?

8 A CORRECT.

9 Q OKAY. OR SOMETHING STRUCK THAT HAND?

10 A CORRECT.

11 Q OKAY. AND PHOTO NO. 2, GOING TO THE RIGHT OF THE
12 PHOTO NO. 1, WHAT DOES THAT DEPICT?

13 A IT'S A CLOSE-UP OF WHAT APPEARS TO BE AN ABRASION.

14 Q OKAY. COULD YOU -- WHEN YOU LOOKED AT THESE

15 ABRASIONS, WERE YOU ABLE TO NOTE WHAT HIT THE ABRASION OR WHAT
16 THE -- THAT HAND HIT -- UH -- AS FAR AS WAS IT A WALL, WAS IT
17 WOOD, WAS IT METAL, COULD YOU MAKE THAT DETERMINATION?

18 A NO, THERE'S NO PATTERN TO IT. THAT COULD BE -- UH --
19 ELUCIDATE WHAT WAS STRUCK OR STRUCK BY.

20 Q OKAY. AND THERE ARE -- THERE WAS NO OTHER FOREIGN
21 MATERIALS NOTED IN THESE ABRASIONS?

22 A CORRECT.

23 Q OKAY. AND -- UM -- AS FAR AS PHOTO NO. 3, GOING
24 FROM LEFT TO RIGHT -- UH -- THAT IS THE LEFT HAND, CORRECT?

25 A CORRECT.

1 Q AND THAT APPEARS TO HAVE VARIOUS CON -- CONTUSIONS
2 TO THE LEFT HAND, CORRECT?

3 A UH -- NO, THESE ARE ABRASIONS AGAIN.

4 Q ABRASIONS AGAIN?

5 A YES.

6 Q OKAY. WHAT'S THE DIFFERENCE BETWEEN A CONTUSION AND
7 AN ABRASION?

8 A A CONTUSION WOULD BE LIKE A BRUISE.

9 Q OKAY.

10 A AND AN ABRASION WOULD BE LIKE A SCRAPE.

11 Q OKAY. AND ON THIS PHOTO NO. 3 YOU NOTED THAT THERE
12 WERE ABRASIONS.

13 A CORRECT.

14 Q WHERE ARE THESE ABRASIONS?

15 A THESE ABRASIONS ARE ON THE -- THE KNUCKLES OF THE
16 LEFT HAND.

17 Q AND THE PREVIOUS TWO PHOTOS THAT YOU DESCRIBED WAS
18 THE RIGHT HAND, CORRECT?

19 A CORRECT.

20 Q THIS PHOTO NO. 3 ARE ABRASIONS TO THE LEFT HAND?

21 A CORRECT.

22 Q NOW, YOU MENTIONED THAT THERE WERE ABRASIONS TO THE
23 KNUCKLES. ARE THERE ALSO ABRASIONS TO THE LOWER EXTREMITIES,
24 THE FINGERS OF THE HAND?

25 A IT'S MOSTLY BLOOD DOWN -- UH -- TOWARDS THE TIPS,

1 AND THEN THERE'S ONE PRESENT ON THE -- UM -- SECOND KNUCKLES
2 THAT ARE PRESENT ON THE LEFT HAND, THE MIDDLE AND THE -- UH --
3 THE MIDDLE FINGER AND THE RING FINGER.

4 Q SO WE HAVE THE THREE FINGERS. WHAT KNUCKLE IS THIS?
5 COULD YOU DESCRIBE -- UH -- THE KNUCKLE BETWEEN -- AT THE TOP
6 WHERE THEY JOIN THE HAND AND THE FINGERTIPS, THE MIDDLE
7 KNUCKLES; IS THAT CORRECT?

8 A THAT IS CORRECT.

9 Q AND THERE ARE THREE OF THEM THAT HAVE ABRASIONS,
10 CORRECT?

11 A I SEE TWO.

12 Q OKAY. TWO YOU SAY?

13 A YES.

14 Q AND THEY'RE THE MIDDLE FINGERS?

15 A THE MIDDLE AND THE RING FINGER.

16 Q OKAY. AND THEN YOU ALSO HAVE AN ABRASION -- UH --
17 ON A KNUCKLE, WHERE WOULD YOU DESCRIBE THAT?

18 A THERE'S ONE THAT'S PRESENT ON THE KNUCKLE FOR THE
19 JOINT BETWEEN THE FIRST FINGER, THE INDEX FINGER, AND WHERE IT
20 JOINS THE HAND, AND ALSO ANOTHER ABRASION WHERE THE MIDDLE
21 FINGER JOINS THE HAND ON HIS KNUCKLE.

22 Q IS IT -- WOULD YOU REASONABLY -- UH -- DEDUCE THAT
23 THESE HANDS WERE IN A FIGHT?

24 A YES, THESE ARE COMMON INJURIES THAT I'VE SEEN IN
25 FISTICUFFS.

1 Q OKAY. NOW, AS FAR AS PHOTO NO. 4, WHAT'S THE
2 SIGNIFICANCE OF THAT PHOTO?

3 A WE ALSO TAKE PERTINENT NEGATIVES, AS WELL, SO WHEN
4 WE DO OUR HAND PHOTOGRAPHS WE'LL TAKE THE FRONT AND THEN THE
5 SIDE AND THEN THE BACK, AS WELL.

6 Q OKAY. SO OTHER THAN THAT THERE'S NOTHING -- NOTHING
7 NOTEWORTHY?

8 A NO INJURY, CORRECT.

9 Q NUMBER 5?

10 A UH -- IT'S AGAIN LOOKING AT THE -- WE'VE DISCUSSED
11 THIS ONE THAT HAD THE ABRASIONS PRESENT OF THE MIDDLE
12 KNUCKLES, THIS WAS THE ONE WE WERE TALKING ABOUT, NO. 5.

13 Q NUMBER 6?

14 A THE PALM AGAIN. UM -- PERTINENT NEGATIVE, IN THAT
15 THERE'S NO INJURY, ALTHOUGH THERE IS SOME BLOOD SMEAR PRESENT.

16 Q OKAY. BY THE WAY, DID YOU DO ANY FINGERNAIL
17 SCRAPINGS?

18 A I DON'T DO THEM PERSONALLY, THEY'RE DONE DURING THE
19 PROCESSING, AND THAT'S GENERALLY DONE BY THE CSA OR CSI THAT'S
20 PRESENT THERE, AND AS WELL AS OUR FORENSIC TECHNICIAN.

21 Q WELL, DOES IT COME TO YOUR KNOWLEDGE -- UH -- DURING
22 YOUR TIME OF THE EXAMINATION THAT THAT TEST HAD BEEN DONE?

23 A NOT ALWAYS DO THEY TELL ME THAT IT'S BEEN DONE. IF
24 I NOTICE THAT THE FINGERS HAVE BEEN CLIPPED IN SOMEWAY I WILL
25 MENTION THAT IN MY REPORT.

1 Q DID YOU NOTICE THAT IN THIS CASE?
2 A I DON'T RECALL, I'D HAVE TO LOOK.
3 Q DO YOU HAVE YOUR REPORT? WOULD YOU LIKE TO LOOK AT
4 IT?
5 A I DO, SURE.
6 Q GO RIGHT AHEAD. IF THAT WOULD HELP REFRESH YOUR
7 RECOLLECTION.
8 A YES.
9 THE COURT: SURE.
10 THE WITNESS: THANK YOU.
11 MR. MOMOT: JUST TO BE COMPLETE.
12 THE WITNESS: I SAID THAT -- UH -- THE FINGERNAILS HAD
13 BEEN CUT FOR PROCESSING.
14 BY MR. MOMOT:
15 Q DO YOU KNOW THE RESULTS OF THE PROCESSING?
16 A I DO NOT.
17 Q OKAY. WERE THE HANDS EXAMINED FOR ANY OTHER
18 SUBSTANCES, TO WIT: ANY NARCOTIC SUBSTANCES OR, IN THE
19 ALTERNATIVE, ANY OIL?
20 A I'M NOT AWARE.
21 Q OKAY. COULD YOU REPEAT THEN -- WOULD YOU HAVE THAT
22 IN YOUR REPORT?
23 A I WOULD NOT.
24 Q OKAY. AND THAT NEVER CAME TO YOUR ATTENTION?
25 A CORRECT.

1 Q AND THE OIL THAT I'M REFERRING TO, I'M TALKING ABOUT
2 OIL THAT WOULD BE RESIDUAL FROM A REVOLVER OR A GUN.

3 A NO, I'M NOT AWARE OF ANY OF THE TESTING IF IT WAS
4 DONE OR NOT.

5 Q OKAY.

6 NOW, PHOTO NO. 7, WHAT DOES THAT DEPICT, MA'AM?

7 A IT'S A CLOSER UP OF THE FINGERS THAT WE'VE DISCUSSED
8 EARLIER, THE BACK OF THEM. THE ABRASIONS THAT ARE PRESENT,
9 AND THAT WOULD BE THE MIDDLE FINGER ON THE LEFT HAND AND THE
10 RING FINGER OF THE LEFT HAND.

11 Q THAT IS THE SAME AS PHOTO NO. 8?

12 A NO. IN PHOTO NO. 8 IT'S A CLOSE-UP OF THE ABRASIONS
13 THAT ARE PRESENT ON THE KNUCKLES OF THE LEFT HAND.

14 Q OKAY. AND THE SIGNIFICANCE OF PHOTO NO. 9?

15 A THEY USUALLY TAKE A PICTURE IF THERE'S ANY MEDICAL
16 INTERVENTION PRESENT ON THE BODY, AND IN THIS CASE IT LOOKS
17 LIKE AN IDENTIFICATION TAG FROM A HOSPITAL.

18 Q WHAT DOES IT SAY?

19 A TRAUMA JOSH, AND THE DATE AND THEN THERE'S OTHER
20 INFORMATION ON HOSPITAL INFORMATION.

21 Q WELL, WHAT DOES THAT MEAN, "TRAUMA JOSH"?

22 A I DON'T KNOW HOW THEY CHOOSE THEIR NAMES AT THE
23 HOSPITAL. WE DIDN'T PUT THAT ON THERE.

24 Q AND DO YOU HAVE A --

25 A I DO KNOW THAT SOMETIMES IF HOSPITALS DON'T KNOW WHO

1 THE DECEDENT IS THEY START WORKING ON THEM AND THEY MAY ASSIGN
2 A NAME TO THEM.

3 Q OKAY.

4 A UM -- BUT SO THAT MAY BE WHAT HAPPENED IN THIS
5 INSTANCE.

6 Q OKAY. ALL RIGHT.

7 NOW, I WANT TO, ON THE FLIP SIDE, TURN THE PAGE --
8 UH -- OF THE PHOTOGRAPHS THAT I'M LOOKING AT, I SEE FROM --
9 FROM LEFT TO RIGHT ON THE TOP DESIGNATED ONE, TWO AND THREE,
10 OKAY? IT SEEMS LIKE THERE'S FURTHER EXAMINATION OF THE HANDS.

11 A CORRECT.

12 Q AND THE PHOTO ON THE TOP LEFT, WHAT DOES THAT SHOW?

13 A THE PALM OF THE RIGHT HAND.

14 Q AND ANYTHING -- ANYTHING NOTEWORTHY?

15 A NO. THERE'S SOME BLOOD SMEAR PRESENT.

16 Q THE SECOND PHOTO?

17 A THAT SHOWS THE FINGERS OF THE RIGHT HAND AND THEY
18 CONTAIN A COUPLE ABRASIONS.

19 Q OKAY. AND WERE THERE ANY FINGERNAIL CLIPPINGS TO
20 NOTE?

21 A UM -- YES, I NOTED IT THAT THEY WERE PRESENT --

22 UM -- THEY'RE NOT AS CLEAR TO ME IN THIS PHOTO.

23 Q AND HOW ABOUT PHOTO NO. 3?

24 A UH -- PHOTO NO. 3 IS A PICTURE OF THE RIGHT THUMB,
25 BUT YOU CAN ALSO SEE THE INJURY NEAR THE RIGHT KNUCKLE.

1 Q OKAY. AND PHOTO NO. 4?

2 A YOU CAN STILL SEE SOME OF THE INJURIES TO THE BACK
3 OF THE RIGHT HAND -- UH -- IN THIS PHOTO.

4 Q OKAY. NOW, YOU HAVE -- UH -- YOU HAVE VARIOUS
5 PHOTOGRAPHS OF CLOTHING IN THIS STACK OF PHOTOGRAPHS. DID YOU
6 EXAMINE THE CLOTHING YOURSELF?

7 A I DID LOOK AT THE CLOTHING.

8 Q OKAY. DID YOU NOTE ANY STIPPLING OR SOOT FROM ANY
9 GUN RESIDUE?

10 A NO, I -- I DON'T HAVE THE ABILITY TO NOTICE THAT
11 GROSSLY, AND PARTICULARLY DARK CLOTHING OR CLOTHING THAT HAS
12 BLOOD ON IT. WHAT'S EASIER TO NOTICE IS IF THERE'S A DEFECT,
13 AND IF THE DEFECT IN THE CLOTHING IS CONSISTENT WITH THE AREA
14 IN WHICH I IDENTIFIED A GUNSHOT WOUND.

15 Q OKAY. SO WHEN YOU LOOK AT THE CLOTHING, WHETHER IT
16 BE A SHIRT OR A JACKET OR WHATEVER, AND YOU CAN SEE THE BODY
17 WHERE THE GUNSHOT WOUND IS, YOU CAN, IN OTHER WORDS, MATCH IT
18 UP?

19 A CORRECT.

20 Q ALL RIGHT. AND THAT'S WHAT YOU DID IN THIS CASE?

21 A CORRECT.

22 Q BUT I'M GOING -- THAT ONE STEP FURTHER ABOUT LOOKING
23 AT THE -- AT THE -- UH -- ENTRANCE OR EXIT WOUND ON CLOTHING,
24 BECAUSE THAT COULD REFLECT SOOT OR STIPPLING, CORRECT?

25 A IT COULD, THAT'S CORRECT.

1 Q AND TO YOUR KNOWLEDGE WAS A TEST DONE TO MAKE THAT
2 DETERMINATION ON THE CLOTHING?

3 A TO MY KNOWLEDGE, I DO NOT KNOW.

4 Q YOU DON'T KNOW. YOU DIDN'T DO IT?

5 A I DIDN'T DO IT.

6 Q AND YOU DON'T KNOW THAT -- WHETHER OR NOT IT WAS
7 DONE?

8 A CORRECT.

9 Q AND YOUR AUTOPSY REPORT IS NOT GOING TO GIVE YOU ANY
10 INDICATION?

11 A CORRECT.

12 Q NOW, WHEN YOU, AS A MEDICAL EXAMINER, ARE
13 FORMULATING YOUR OPINION, YOU ARE NOT JUST RESTRICTED TO
14 LOOKING AT THE DECEDENT, CORRECT?

15 A CORRECT.

16 Q YOU CAN LOOK AT PHOTOGRAPHS FROM THE CRIME SCENE,
17 YOU CAN LOOK AT POLICE REPORTS, YOU CAN TALK TO THE DETECTIVES
18 AND FROM WHAT THEY'RE TELLING YOU FORMULATE YOUR -- HELP
19 FORMULATE YOUR OPINION, CORRECT?

20 A CORRECT.

21 Q NOW, IN THIS PARTICULAR CASE DID YOU DO ANY OF THE
22 ABOVE?

23 A THERE'S ALWAYS A LAW ENFORCEMENT PRESENCE ON THESE
24 PARTICULAR CASES. UM -- SO THEY WERE THERE, AND WE SPOKE AT
25 THE TIME OF THE AUTOPSY. UM -- THE -- EITHER CSA OR CSI, I'M

1 NOT SURE BY WHICH THEY GO BY, TITLE, WAS PROBABLY THERE, BUT I
2 DON'T THINK WE INTERACTED MORE THAN FOR ME TO ACKNOWLEDGE THAT
3 I WAS FINISHED LOOKING AT THE CLOTHES, OR SOMETHING TO THAT
4 NATURE.

5 UM -- IN TERMS OF INVESTIGATION, I LOOKED AT OUR
6 INVESTIGATOR'S REPORT ON THIS PARTICULAR CASE, AND I'VE
7 REVIEWED ALL THE PHOTOGRAPHS.

8 Q AND WHO'S REPORT WAS THAT THAT YOU LOOKED AT?

9 A IT'S THE INVESTIGATOR FOR CLARK COUNTY. AND IN THIS
10 CASE I BELIEVE IT'S -- UM -- INVESTIGATOR CHAVEZ THAT WAS ON
11 THIS PARTICULAR CASE.

12 Q OKAY. NOW -- BUT YOU ARE IN A POSITION AS A MEDICAL
13 EXAMINER TO DIRECT TRAFFIC FOR FURTHER INVESTIGATION ON
14 PARTICULAR ITEMS OF CLOTHING, OR LET'S SAY FINGERNAIL
15 SCRAPINGS, YOU CAN SAY I WANT THIS EXAMINED AS WELL, CORRECT?

16 A IT'S -- IT'S TRUE. AND MOST OF THE TIME, THOUGH,
17 THAT'S DONE BY LAW ENFORCEMENT AND THEIR INVESTIGATION, AND
18 THAT'S THE WAY IT'S WORKED HERE --

19 Q OKAY.

20 A -- UM -- IN CLARK COUNTY.

21 Q SO THAT -- ALL RIGHT, I'M SORRY, MA'AM. I'M SORRY
22 IF I INTERRUPTED YOU.

23 A THANK YOU.

24 Q SO THE HOMICIDE DETECTIVE WOULD SAY THAT HE WANTED
25 FURTHER INFORMATION, WHETHER IT BE ON CLOTHING OR FINGERNAILS?

1 A IT WOULD BE AN ASSUMPTION FOR ME TO SAY THAT HE'S
2 THE ONE THAT DIRECTS THEM TO DO SUCH INVESTIGATION, BUT I
3 ASSUME IT WOULD BE HIM.

4 Q OR COULD ANY ONE OF YOU ASK FOR THAT TO BE DONE?

5 A I COULD ASK FOR IT.

6 Q OKAY. SO IT COULD BE ANY ONE OF YOU, JUST NOT
7 RESTRICTED TO ONE PERSON?

8 A TRUE.

9 Q OKAY. NOW -- AND SO YOU DON'T HAVE ANY INFORMATION
10 REGARDING THE CLOTHING AS TO THE SOOT OR THE STIPPLING, RIGHT?

11 A THAT'S CORRECT.

12 Q SO WHEN YOU SAY THAT THE WEAPON WAS 16 INCHES OR
13 FURTHER AWAY AT THE TIME OF THE GUNSHOT, YOU'RE DOING THAT --
14 YOU'RE MAKING THAT STATEMENT ABSENT ANY INFORMATION TO THE
15 CONTRARY REGARDING SOOT OR STIPPLING IN -- IN CLOTHING?

16 A THAT'S CORRECT.

17 Q ALL RIGHT. NOW -- AND THAT IT COULD ALTER YOUR
18 OPINION IF THAT INFORMATION CAME OUT LATER ON --

19 A IT WOULD AL --

20 Q -- OR CALLED TO YOUR ATTENTION?

21 A IT WOULD ALTER MY RANGE OF FIRE.

22 Q RIGHT. OKAY.

23 NOW, THE TOXICOLOGY. YOU HAVE A TOXICOLOGY REPORT
24 DONE ON THIS CASE?

25 A YES.

1 Q AND THAT WAS DONE ON THE DECEDENT?
2 A YES.
3 Q AND WHAT WERE THE FINDINGS?
4 A THERE WAS METHAMPHETAMINE AND AMPHETAMINE PRESENT
5 WITHIN HIS BLOOD.
6 Q WHAT IS METHAMPHETAMINE?
7 A IT'S A STIMULANT.
8 Q AND HOW MUCH WAS FOUND IN THE DECEDENT'S BLOOD?
9 A I'D HAVE TO REFER TO MY REPORT TO KNOW THE EXACT.
10 Q PLEASE.
11 A METHAMPHETAMINE WAS 6,400 AND THE AMPHETAMINE WAS
12 410.
13 Q ALL RIGHT. SAY IF METH -- METHAMPHETAMINE WAS
14 6,400, 6,400 OF WHAT?
15 A OH, IT'S USUALLY REPORTED IN THE NANOGRAMS PER
16 MILLILITER.
17 Q WHAT DOES THAT MEAN, NANOGRAMS PER MILLILITER, FOR
18 THE RECORD?
19 A IT MEANS THE VOLUME OF THE DRUG RELATIVE TO --
20 EXCUSE ME -- THE AMOUNT OF THE DRUG RELATIVE TO THE VOLUME OF
21 BLOOD.
22 Q OKAY. AND -- UH -- IS THERE A TOXIC LEVEL OF
23 NANOGRAMS PER MILLILITER AS FAR AS METHAMPHETAMINE IS
24 CONCERNED?
25 A YES.

1 Q AND WHAT WOULD BE THAT TOXIC LEVEL?

2 A I DON'T KNOW THE TOXIC LEVEL -- UM -- RANGE, BUT
3 THIS IS ABOVE THE -- UM -- RANGE OF WHAT WOULD BE CONSIDERED
4 THERAPEUTIC, IF THERE IS SUCH A THING, REGARDING
5 METHAMPHETAMINE. METHAMPHETAMINE USUALLY IS AROUND THE LOW
6 DOUBLE DIGITS, AND THIS IS UP INTO THE FOUR DIGIT RANGE.

7 Q SIXTY FOUR HUNDRED NANOGRAMS PER MILLILITER IS A
8 HECK OF A LOT?

9 A YES, IT IS.

10 Q THAT'S WHAT YOU'RE SAYING?

11 A YES.

12 Q AND THAT'S IN THE LETHAL RANGE, ISN'T IT?

13 A YES, IT IS.

14 Q NOW, WHAT IS AMPHETAMINE?

15 A AMPHETAMINE CAN BE A METABOLITE OF METHAMPHETAMINE,
16 OR IT CAN BE PRESENT ON HIS OWN -- AS IT'S OWN DRUG, FOR
17 EXAMPLE IF PEOPLE TAKE IT FOR ATTENTION DEFICIT DISORDER, BUT
18 IN THIS CASE -- UH -- IT'S MY OPINION THAT THIS IS A
19 METABOLITE OF THE METHAMPHETAMINE.

20 Q AND -- AND THE AMOUNT NOTED IN -- IN THIS -- UH --
21 INDIVIDUAL'S BLOOD WAS HOW MUCH?

22 A FOUR -- REFERRING TO MY REPORT AGAIN, 410.

23 Q FOUR HUNDRED AND TEN NANOGRAMS PER MILLILITER,
24 CORRECT?

25 A THAT IS CORRECT.

1 Q NOW, WHAT IS -- IS THERE A TOXIC LEVEL, SOME RANGE
2 THAT IS ...
3 A YES. AGAIN, THIS WOULD BE CONSIDERED TO BE IN A
4 TOXIC LETHAL RANGE.
5 Q OKAY.
6 A FOR AMPHETAMINE AS IT -- ON IT'S OWN.
7 Q SO WHEN YOU HAVE -- UM -- THE AMPHETAMINE IN THE
8 BLOOD, IS IT SINGLE DIGIT NORMAL, OR TO SAY WHAT IS -- HOW DO
9 YOU PHRASE THIS --
10 A IT WOULD BE --
11 Q -- THE HIGH --
12 A IT WOULD BE MORE A SINGLE DIGIT TO A DOUBLE DIGIT
13 WOULD BE CONSIDERED MORE OF A THERAPEUTIC RANGE.
14 Q OKAY. SO WHEN YOU GET UP -- UP AND OVER INTO TRIPLE
15 DIGITS, YOU'RE IN LETHALITY RANGE?
16 A TOXIC LETHAL. AGAIN, IT DEPENDS ON THE LEVEL OF
17 TOLERANCE TO THE STIMULANT AS WELL.
18 Q ALL RIGHT.
19 NOW -- BUT YOU SAY HERE, LIKE YOU GOT -- THERE'S --
20 THERE ARE NUMBERS IN BOTH THE METHAMPHETAMINE AND THE
21 AMPHETAMINE OF 100, 200, 300, GETTING UP INTO TOXIC LETHAL
22 RANGE. WHERE WOULD BE THAT CUT OFF, AT A 100, 200?
23 A I DON'T HAVE THE NUMBERS WITH ME.
24 Q WHAT WOULD YOU OPINE ABOUT -- WHAT IS YOUR OPINION?
25 A UM -- I'D HAVE TO LOOK AT THE NUMBERS. I'M MORE

1 COMFORTABLE LOOKING AT THE NUMBERS TO ANSWER THAT QUESTION.

2 Q OKAY. BUT IF YOU HAVE 410 -- UH -- NANOGRAMS PER
3 MILLILITER OF AMPHETAMINE, THAT MEANS THAT IT'S ALREADY IN THE
4 SYSTEM FOR A PERIOD OF TIME, CORRECT?

5 A THAT IS CORRECT.

6 Q HOW LONG OF A PERIOD OF TIME?

7 A UM -- METHAMPHETAMINE METABOLIZES VERY QUICKLY,
8 WITHIN HOURS -- UM -- SO IT'S PROBABLY BEEN HOURS SINCE THE
9 INITIAL METHAMPHETAMINE WAS TAKEN.

10 Q AND -- AND SO YOU DON'T KNOW IF IT'S GOING UP OR
11 COMING DOWN, AS FAR AS THE AMPHETAMINE IS CONCERNED?

12 A UM -- I WOULD SPECULATE OR OPINE THAT THE
13 AMPHETAMINE IS GOING TO GO HIGHER, BECAUSE WE STILL HAVE A
14 HIGHER LEVEL OF METHAMPHETAMINE TO METABOLIZE, SO THE
15 AMPHETAMINE WOULD PROBABLY GO HIGHER AS THAT METHAMPHETAMINE
16 IS METABOLIZED.

17 Q OKAY, GOT IT.

18 AND WE'RE NOT DEALING WITH THE SYNERGISTIC EFFECT
19 OF -- OF THESE, BECAUSE IT IS THE METHAMPHETAMINE AND
20 AMPHETAMINE, THEY'RE JUST ONE DRUG?

21 A IN MY OPINION THIS IS ONE DRUG. IF I WAS MADE AWARE
22 THAT THIS INDIVIDUAL WAS TAKING SOMETHING FOR ATTENTION
23 DEFICIT DISORDER THAT WAS AMPHETAMINE IN PARTICULAR, THEN IT
24 COULD BE THAT IT'S RELATED TO BOTH. IT COULD BE A METABOLITE
25 OF THE METHAMPHETAMINE, AS WELL AS THE DRUG AMPHETAMINE ITSELF

1 RELATED TO SOME TREATMENT OF SOME ISSUE.

2 Q BUT NOBODY BROUGHT THAT TO YOUR ATTENTION?

3 A CORRECT.

4 Q SO FROM -- AS YOU'RE SITTING HERE TESTIFYING HERE
5 TODAY -- UH -- AND LOOKING AT THE RESULTS OF THIS TEST, THIS
6 INDIVIDUAL WAS TAKING METHAMPHETAMINE, PERIOD?

7 A CORRECT.

8 Q AND -- UM --

9 A WITH RESPECT -- I JUST THOUGHT OF SOMETHING WE CAN
10 LOOK AT FOR RANGES, IF YOU'D LIKE TO PURSUE THAT.

11 Q WELL, SURE, WHY NOT.

12 A IT'S IN THE -- UM -- TOXICOLOGY REPORT AGAIN. UM --
13 ON PAGE 2 OF THREE.

14 Q YES.

15 A THERE IS A NO. 2 THAT DICTATES METHAMPHETAMINE, AND
16 THEN THERE'S A SECOND PARAGRAPH UNDERNEATH THAT, THAT TALKS
17 ABOUT BLOOD LEVELS REPORTED BETWEEN 200 AND 600 NANOGRAMS PER
18 MILLILITER HAVE BEEN REPORTED TO METHAMPHETAMINE ABUSERS WHO
19 EXHIBIT VIOLENT OR IRRATIONAL BEHAVIOR.

20 Q SO IF YOU'RE -- IF YOU'RE 200 OR 600 NANOGRAMS PER
21 MILLILITER OF METH, THAT IS -- THAT WOULD BE THE ABUSER WOULD
22 ALSO HAVE EXHIBITED VIOLENT AND IRRATIONAL BEHAVIOR --

23 MR. BATEMAN: JUDGE, I WOULD --

24 MR. MOMOT: -- THAT WOULD BE CONSISTENT?

25 MR. BATEMAN: I'M GOING TO OBJECT AS TO, I DON'T KNOW

1 WHERE THIS INFORMATION COMES FROM OR IT'S VERACITY. IT LOOKS
2 LIKE THE -- THE MEDICAL EXAMINER IS READING FROM OTHER -- I'M
3 OKAY WITH -- WITH THAT COMING IN A TOX REPORT, BECAUSE
4 SOMEBODY DOES THE TOXO -- TOXI -- TOXICOLOGY. BUT THIS
5 ADDITIONAL INFORMATION AND HOW IT RELATES TO PEOPLE'S BEHAVIOR
6 WOULD COME FROM A DIFFERENT -- UM -- LOCATION OR DIFFERENT
7 FOLKS.

8 THE COURT: SO -- SO IS YOUR --

9 MR. BATEMAN: SO IT'S -- IT'S ESSENTIALLY RELIABLE --

10 THE COURT: -- OBJECTION FOUNDATIONAL?

11 MR. BATEMAN: IT'S EITHER FOUNDATIONAL, MAYBE -- MAYBE
12 THIS WITNESS DOES KNOW, IF MR. MOMOT WANTS TO ADD SOME
13 FOUNDATIONAL QUESTIONS, BUT OTHERWISE IT'S BEING -- IT'S JUST
14 KIND OF HEARSAY INFORMATION.

15 THE COURT: THERE'S A LACK OF FOUNDATION ARGUMENT OR --

16 MR. MOMOT: OH, OKAY.

17 THE COURT: -- OBJECTION.

18 MR. MOMOT: SO I CAN GO FURTHER AS FAR AS FOUNDATION?

19 THE COURT: IF YOU CAN LAY A FOUNDATION.

20 MR. MOMOT: YES.

21 Q WELL, FIRST OF ALL, I WAS PROVIDED NEW DISCOVERY
22 WITH THE AUTOPSY REPORT, THAT'S YOUR REPORT, CORRECT, MA'AM?

23 A CORRECT.

24 Q AND ATTACHED TO THAT REPORT -- UH -- BECAUSE YOU'RE
25 THOROUGH, IS THE TOXICOLOGY REPORT OF THE DECEDENT, CORRECT?

1 A CORRECT.

2 Q NOW -- AND THAT WAS THE -- UH -- SPECIMENS OBTAINED
3 SECTIONS OF YOUR REPORT, CORRECT, ON PAGE 9?

4 A CORRECT.

5 Q AND THEN IT GOES ON FOR SEVERAL OTHER PAGES OF WHAT
6 WAS -- UH -- FOUND IN THIS PARTICULAR INDIVIDUAL, CORRECT?

7 A CORRECT.

8 Q AND THEN YOU HAVE A SECTION OF YOUR REPORT THAT
9 INTERPRETS WHAT IS FOUND, CORRECT?

10 A CORRECT.

11 Q AND YOU RELY ON THIS REPORT, CORRECT?

12 A CORRECT.

13 Q NOW, WHAT IS M -- NMS LABS?

14 A THEY ARE A LABORATORY THAT WE SEND OUR SPECIMENS
15 TO -- UH -- FROM ALL SPECIMENS THAT WE OBTAIN AT THE OFFICE,
16 TO BE ABLE TO TEST FOR ANY DRUGS OR -- UM -- ALSO WE TEST
17 VITREOUS, WHICH WOULD BE LOOKING FOR THE ELECTROLYTE
18 IMBALANCES. WE SEND ALL OF THOSE MATERIALS TO THIS
19 ORGANIZATION, AND THEY GENERATE THE TESTING FOR US AND WE RELY
20 ON THEIR REPORTS TO DRAW CONCLUSIONS.

21 Q AND WHEN YOU SAY WE, WE'RE TALKING ABOUT THE CLARK
22 COUNTY MEDICAL EXAMINER'S OFFICE?

23 A THE OFFICE, AND IN PARTICULAR THE FORENSIC
24 PATHOLOGIST.

25 Q OKAY. AND SO YOU RELY ON THAT, CORRECT?

1 **A** YES.

2 **Q** AND YOU TAKE THIS AS A -- AS A WORTHY SCIENTIFIC
3 DOCUMENT IN THE FIELD, CORRECT?

4 **A** YES.

5 **Q** AND -- AND AS A RESULT THAT'S WHY IT'S ATTACHED TO
6 YOUR AUTOPSY REPORT, CORRECT?

7 **A** CORRECT.

8 **Q** AND TO YOUR KNOWLEDGE YOU DON'T KNOW OF ANY REASON
9 TO DISBELIEVE THE CONTENTS OF THIS REPORT, CORRECT?

10 **A** CORRECT.

11 **Q** SO YOU KNOW IT'S AUTHENTIC?

12 **A** CORRECT.

13 **Q** AND THEIR RANGES THAT THEY PUT IN THIS REPORT ARE
14 REASONABLE, CORRECT?

15 **A** IN MY OPINION, YES.

16 **Q** IN YOUR OPINION AS -- AS A MEDICAL EXAMINER,
17 CORRECT?

18 **A** CORRECT.

19 **Q** DO YOU KNOW OF ANY REASON WHY I SHOULD NOT RELY ON
20 THIS AS A SCIENTIFIC DOCUMENT HERE IN THE COURTROOM TODAY?

21 **A** I DO NOT.

22 **MR. MOMOT:** OKAY. NOW, GOING FURTHER, I THINK THAT'S
23 SUFFICIENT FOUNDATION, YOUR HONOR.

24 **THE COURT:** YEAH, I'LL -- IF SHE'S FORMULATING AN
25 OPINION, THEN SHE'S ALLOWED TO RELY ON IT IN FORMULATING AN

1 OPINION.

2 MR. MOMOT: CORRECT.

3 THE COURT: I DON'T KNOW -- I DON'T EVEN REMEMBER WHAT
4 THE ORIGINAL QUESTION WAS, IF IT WAS ABOUT OPINION OR NOT.

5 MR. BATEMAN: AND PERHAPS MR. MOMOT CAN ASK HER WHAT --
6 WHAT HE WAS GOING TO GO INTO HERE, WHAT -- HOW WOULD THAT BE
7 RELEVANT TO HER OPINION AS TO WHAT'S IN HER AUTOPSY REPORT?
8 DOES THAT MAKE SENSE?

9 MR. MOMOT: THAT'S EXACTLY -- THAT'S EXACTLY CORRECT.

10 MR. BATEMAN: ALL RIGHT.

11 THE COURT: OKAY. SO GO AHEAD.

12 BY MR. MOMOT:

13 Q NOW, AS FAR AS THE METHAMPHETAMINE SECTION OF THIS
14 REPORT, YOU SAY THAT A PERSON FROM 200 TO 600 NANOGRAM PER
15 MILLILITER -- UH -- DOSAGE IN THE -- THE LEVEL IN THE BODY FOR
16 THIS METHAMPHETAMINE ABUSER -- UH -- THEY WOULD EXHIBIT
17 VIOLENT OR IRRATIONAL BEHAVIOR, THAT WOULD BE CONSISTENT,
18 CORRECT?

19 A YES.

20 MR. BATEMAN: AND MY OBJECTION WOULD JUST BE AS TO THE
21 RELEVANCE TO HER EITHER TESTIMONY OR -- HER TESTIMONY HERE AS
22 A MEDICAL EXAMINER, THE INJURIES, THE AUTOPSY, AND HER
23 CONCLUSION AS TO CAUSE AND MANNER.

24 SO IF SHE CAN IDENTIFY A RELEVANCE TO WHAT THIS OTHER
25 INFORMATION IS, AS IT RELATES TO THAT OPINION, THEN THAT'S

1 FINE. I DON'T KNOW THAT I'VE HEARD THE RELEVANCE OF THE
2 VICTIM'S POTENTIAL CONDUCT BASED UPON HIS -- AS IT RELATES TO
3 WHETHER IT WAS SUICIDE, NATURAL CAUSES, HOMICIDE -- UM -- WHAT
4 ELSE AM I MISSING?

5 THE WITNESS: ACCIDENT.

6 MR. BATEMAN: ACCIDENT OR I GUESS UNDETERMINED, WHICH
7 ISN'T A REAL ONE, BUT THAT WOULD BE MY OBJECTION IS TO HOW IS
8 THIS TESTIMONY RELEVANT TO MAKING THAT DECISION.

9 MR. MOMOT: WELL --

10 THE COURT: ALL RIGHT. THE OBJECTION IS OVERRULED.

11 MR. MOMOT: OKAY.

12 Q GO AHEAD, MA'AM.

13 A THE -- I DID NOT WRITE THE WORDS THAT ARE PRESENT
14 WITHIN THE DOCUMENT.

15 Q RIGHT.

16 A THEY ARE WRITTEN BY THE LABORATORY TO AID THOSE --
17 THEIR CLIENTS, WHICH IN THIS CASE WOULD BE CLARK COUNTY AND
18 MYSELF IN THIS PARTICULAR CASE, IN EVALUATING THE RESULTS THAT
19 THEY OBTAINED.

20 SO WITH THAT SAID I WILL LOOK AT THOSE -- UH --
21 PIECES OF INFORMATION IN EVALUATING LEVELS THAT MAY OR MAY NOT
22 BE POSITIVE IN A PARTICULAR CASE OR A PARTICULAR INDIVIDUAL,
23 WHICH I DID HERE. HOWEVER, WITH THAT SAID -- UM -- I DON'T
24 THINK THAT THE METHAMPHETAMINE IS CONTRIBUTORY TO HIS DEATH.

25 Q OKAY. YOU DON'T SAY THAT IT'S CONTRIBUTORY TOWARD

1 HIS DEATH, YET THE RANGE OF 400 OR -- WHAT DID I SAY, 200 TO
2 600 MAY BE CONSISTENT OR RELEVANT TO AN ABUSIVE EXHIBITION OF
3 VIOLENCE OR IRRATIONAL BEHAVIOR, CORRECT?

4 A AND I DO AGREE WITH THAT.

5 Q OKAY. AND IN THIS PARTICULAR CASE WE HAVE -- UH --
6 AN AMOUNT OF 6,400 NANOGRAMS PER MILLILITER OF METHAMPHETAMINE
7 IN THE SYSTEM, CORRECT?

8 A CORRECT.

9 Q NOW, WOULD THAT BE CONSISTENT WITH VIOLENT BEHAVIOR?

10 A YES.

11 Q AND WOULD THAT BE CONSISTENT WITH VIOLENT BEHAVIOR
12 AS EVIDENCED BY THE CUTS AND BRUISES OR ABRASIONS THAT YOU
13 TESTIFIED TO REGARDING THE INDIVIDUAL'S HANDS?

14 A THE HAND INJURIES, AS I SAID BEFORE, ARE CONSISTENT
15 WITH THOSE THAT I'VE SEEN IN OTHER FISTICUFFS. AND IF WE
16 ARGUE THAT FISTICUFFS IS A MANNER OF AGGRESSIVE OR VIOLENT
17 BEHAVIOR, THEN YES.

18 Q OKAY. AND THOSE INJURIES LOOK LIKE THEY WERE AT AND
19 NEAR THE TIME OF THE DEATH OF THIS INDIVIDUAL, CORRECT?

20 A THAT'S CORRECT.

21 Q NOW, LET'S GO A LITTLE BIT FURTHER AS TO AN
22 AMPHETAMINE, THAT'S THE FIRST SECTION OF A REFERENCE COMMENTS,
23 THAT THERE THEY HAVE A RANGE AS WELL, CORRECT?

24 A REFERRING AGAIN TO MY REPORT?

25 Q PLEASE. METHAMPHETAMINE.

1 A YES, THEY DO.

2 Q AND WHAT ARE THE RANGES?

3 A THEY REFLECT ON A STEADY STATE BLOOD LEVEL OF 2,000
4 TO 3,000 HAS BEEN REPORTED IN AN ADDICT WHO CONSUMED
5 APPROXIMATELY A THOUSAND MILLIGRAMS PER DAY, AND THEN IT GOES
6 ON TO SAY, AN OVERDOSE WITH AMPHETAMINE CAN PRODUCE A VARIETY
7 OF SYMPTOMS THAT ARE LISTED HERE. AND A RANGE FOR THAT IS 500
8 TO 41,000, WITH A MEAN OF 9,000 FOR AMPHETAMINE.

9 Q OKAY.

10 A NOW, THEY SAY IN THAT SECOND PARAGRAPH OF
11 AMPHETAMINE, THAT FOLLOWING A SINGLE ORAL DOSE OF 10
12 MILLIGRAMS OF AMPHETAMINE SULFATE ARE REPORTED AT PEAK BLOOD
13 CONCENTRATION OF 40 NANOGRAMS PER MILLILITER WAS REACHED AT
14 TWO HOURS, CORRECT?

15 A CORRECT.

16 Q NOW, CAN YOU OPINE AT WHEN -- WHAT TIME THIS IS
17 PEAKING IN THIS INDIVIDUAL'S SYSTEM AT 410 NANOGRAMS PER
18 MILLILITER?

19 A UH, NO, I CAN'T OPINE ON THAT.

20 Q OKAY. SO WE DON'T KNOW THE TIME DIFFERENTIAL,
21 CORRECT?

22 A CORRECT.

23 Q BUT WE KNOW THAT IF YOU'RE GOING TO EXTRAPOLATE
24 BACKWARDS, YOU CAN -- YOU CAN, AS A REASONABLE PERSON, FIGURE
25 THAT IF HE HAS 6,400 NANOGRAMS PER MILLILITER OF METH IN HIS

1 SYSTEM, THAT'S GOT TO BE ON A UPWARD MOTION, IT'S GOING TO BE
2 ON AN UPSCALE METABOLITE -- TO METABOLITE IN THE INDIVIDUAL'S
3 SYSTEM TO AMPHETAMINE, CORRECT?

4 A I'M NOT SURE I UNDERSTAND WHAT YOU'RE SAYING.

5 Q WELL, IF YOU HAVE 6,400 NANOGRAMS PER MILLILITER IN
6 THE SYSTEM AS METHAMPHETAMINE, RIGHT?

7 A RIGHT.

8 Q THAT HAS GOT TO METABOLITE IN THE SYSTEM, CORRECT?

9 A IT WILL METABOLIZE IN THE SYSTEM, CORRECT.

10 Q AND SO THAT FIGURE OF 410 NANOGRAMS PER MILLILITER
11 IS GOING TO GO UP?

12 A OF THE AMPHETAMINE IS GOING TO GO UP?

13 Q YES. AND AT WHAT RATE?

14 A I DON'T KNOW THE RATE ON THE PARTICULAR METABOLISM
15 OF METHAMPHETAMINE. SPECIFICALLY I DO KNOW IT ONLY TAKES
16 HOURS, IT'S -- IT'S PRETTY SHORT.

17 Q OKAY. SHORT RANGE, THOUGH, WITHIN TWO TO THREE
18 HOURS?

19 A IT'S SHORT. I DON'T KNOW IF IT'S TWO TO THREE
20 HOURS, I'D HAVE TO LOOK IT UP.

21 Q OKAY. NOW, WERE THERE TESTS FOR ANY OTHER NARCOTICS
22 IN THE INDIVIDUAL'S SYSTEM?

23 A YES.

24 Q AND THE RESULTS?

25 A NEGATIVE.

1 Q HOW ABOUT ALCOHOL?

2 A NEGATIVE.

3 Q OKAY. SO YOU -- THIS INDIVIDUAL WAS STRICTLY ON
4 METHAMPHETAMINE AND AMPHETAMINE, CORRECT?

5 A METHAMPHETAMINE WAS DETECTED AND AMPHETAMINE WAS
6 DETECTED.

7 Q OKAY. IN A TOXIC LETHAL RANGE?

8 A CORRECT.

9 Q WHAT WAS THE HEIGHT OF THIS INDIVIDUAL?

10 A HE'S ABOUT 74 INCHES.

11 Q AND WHAT WAS THE WEIGHT OF THE INDIVIDUAL?

12 A ABOUT 292 POUNDS.

13 Q SO THE PERSON WAS A LARGE INDIVIDUAL?

14 A YES. CONSIDERED OBESE.

15 THE COURT: WHAT DID YOU SAY WAS THE HEIGHT?

16 THE WITNESS: IT WAS 74 INCHES.

17 MR. MOMOT: SO THAT'S SIX - TWO?

18 MR. BATEMAN: (NO AUDIBLE RESPONSE.)

19 THE WITNESS: SIX - TWO.

20 THE COURT: SIX - TWO. THANKS.

21 MR. MOMOT: COULD I GET THE COURT'S INDULGENCE, YOUR
22 HONOR?

23 THE COURT: YES.

24 (DISCUSSION BETWEEN MR. MOMOT AND THE DEFENDANT.)

25

1 BY MR. MOMOT:

2 Q MA'AM, YOU DID NOT OBSERVE OR -- DID YOU LOOK AT ANY
3 PHOTOGRAPHS OF THE DEFENDANT?

4 A NO.

5 MR. MOMOT: OKAY, NOTHING FURTHER.

6 THE COURT: REDIRECT?

7 MR. BATEMAN: JUST BRIEFLY.

8

9 REDIRECT EXAMINATION

10 BY MR. BATEMAN:

11 Q AS A HYPOTHETICAL, I'M GOING TO ASK YOU -- GIVE YOU
12 A HYPOTHETICAL SET OF FACTS AND SEE IF IT'S CONSISTENT OR
13 INCONSISTENT WITH ANY OF THE INJURIES THAT YOU OBSERVED AND
14 NOTED IN YOUR REPORT. UM -- YOU TALKED ABOUT THE GUNSHOT
15 WOUNDS BEING THE CAUSE AND MANNER OF DEATH IN THIS CASE; IS
16 THAT RIGHT?

17 A THAT IS CORRECT.

18 Q OKAY. AND IF SOMEONE WAS STANDING UP WHEN THEY WERE
19 AT LEAST SHOT WITH THE FIRST WOUND IN THE CHEST, WOULD THAT BE
20 THE TYPE OF GUNSHOT WOUND THAT WOULD CAUSE THAT PERSON TO FALL
21 DOWN?

22 A YES.

23 Q IF THAT PERSON FELL DOWN -- UM -- THE INJURIES THAT
24 WERE REPORTED IN YOUR REPORT UNDER SUBSECTION 3, WHICH I
25 BELIEVE -- UM -- REFER TO THE EYELID INJURY -- UH -- THE

1 INJURIES TO EXTREMITIES, THAT WOULD BE FOUR AS WELL, THREE AND
2 FOUR -- UM -- WOULD ANY OF THOSE INJURIES HAVE BEEN CONSISTENT
3 OR INCONSISTENT WITH THIS SIX-FOOT-TWO, 290 POUND MAN FALLING
4 DOWN AS A RESULT OF A GUNSHOT WOUND?

5 A YES.

6 Q ALL OF THEM?

7 A THE CONSISTENT ONES WITH HIM FALLING WOULD BE SOME
8 ABRASIONS WE DISCUSSED ON THE HANDS, AND THE ONE OF THE LEFT
9 EYE, THE CONTUSION THAT'S ON THE LEFT EYE. THE ONE OF THE
10 LEFT CALF, I BELIEVE IT WAS -- UM -- WOULD BE A LITTLE
11 UNUSUAL.

12 Q HOW ABOUT THE ABRASION ON THE RIGHT KNEE?

13 A THAT WOULD BE CONSISTENT WITH FALLING DOWN, ASSUMING
14 HE FELL FORWARD.

15 Q RIGHT. OKAY.

16 YOU WERE ASKED SOME QUESTIONS ABOUT YOUR ABILITY TO
17 ASK FOR TESTING OR FURTHER INVESTIGATION FROM EITHER THE
18 INVESTIGATORS OR PERHAPS THE DETECTIVES FROM THE LAS VEGAS
19 METROPOLITAN POLICE DEPARTMENT; DO YOU REMEMBER THOSE
20 QUESTIONS?

21 A YES.

22 Q AND I GUESS MY QUESTION WOULD BE, WHY WOULD YOU --
23 WOULD YOU ONLY ASK FOR FURTHER INVESTIGATION IF YOU NEEDED IT
24 TO MAKE A DETERMINATION AS TO CAUSE AND MANNER OF DEATH IN THE
25 CASE?

1 A YES.

2 Q ALL RIGHT. SO IF YOU DIDN'T ASK FOR ADDITIONAL
3 INVESTIGATION, IS IT BECAUSE YOU -- WHY WOULD THAT BE? WOULD
4 IT -- WOULD IT NOT EFFECT YOUR DETERMINATION OF CAUSE AND
5 MANNER IN THIS CASE?

6 A IT WOULD NOT HAVE EFFECTED MY CAUSE AND MANNER. ALL
7 IT WOULD HAVE EFFECTED WAS RANGE OF FIRE REGARDING SPECIFIC
8 QUESTIONS THAT WERE ASKED.

9 Q OKAY. AND YOU WERE ASKED QUESTIONS ABOUT THE
10 TOXICOLOGY RANGE.

11 AS IT RELATES TO YOUR DETERMINATION OF CAUSE AND
12 MANNER, WHAT ARE THE -- AGAIN, WHAT ARE THE FOUR
13 ESSENTIALLY -- UM -- I GUESS IT WOULD BE THE FOUR MANNERS OF
14 DEATH THAT YOU ULTIMATELY CAN OPINE IN AUTOPSIES, BESIDES
15 UNDETERMINED?

16 A FIVE IS VERY IMPORTANT TO US.

17 Q RIGHT. RIGHT. RIGHT.

18 A THANK YOU.

19 THE FIRST WE KNOW ABOUT, WE TALK ABOUT NATURAL. WE
20 TALK ABOUT -- UH -- ACCIDENT, WE TALK ABOUT SUICIDE AND WE
21 TALK ABOUT HOMICIDE. THOSE ARE THE FOUR MANNERS OF DEATH. IF
22 FOR SOME REASON WE CAN'T FIT SOMETHING INTO THAT CATEGORY, WE
23 CAN USE UNDETERMINED.

24 Q IS IT FAIR TO SAY THAT IF IT'S UNDETERMINED, IT'S
25 PROBABLY ONE OF THE FOUR, YOU JUST WEREN'T ABLE TO GET THERE?

1 A UM -- PROBABLY, OR THERE'S NOT ENOUGH INFORMATION TO
2 BE ABLE TO PUT IT TO ONE IN PARTICULAR.

3 Q OKAY. AND THE TOXICOLOGY IN THIS CASE, HOW WOULD IT
4 BE RELEVANT TO DETERMINING ONE OF THE -- BESIDES
5 INDETERMINATE, THE FOUR THAT YOU IDENTIFIED, SUICIDE,
6 ACCIDENT, NATURAL CAUSES AND HOMICIDE?

7 A IN THIS CASE THE GUNSHOT WOUNDS OVERRULE EVERYTHING.

8 MR. BATEMAN: OKAY. I HAVE NO FURTHER QUESTIONS.

9 THE COURT: ANY RECROSS?

10 MR. MOMOT: YES, I DO, YOUR HONOR. THANK YOU.

11

12 RECROSS-EXAMINATION

13 BY MR. MOMOT:

14 Q YOU INDICATED, MA'AM, THAT THE INJURY TO THE KNEE OR
15 TO THE CALF -- WELL, THE CALF MAY OR MAY NOT BE INVOLVED IN
16 THIS PARTICULAR CASE, CORRECT? IT MAY BE REMOTE?

17 A IT'S POSSIBLE.

18 Q OKAY. OR IT COULD BE RELATED TO THE CASE?

19 A IT COULD BE, YES.

20 Q ALL RIGHT. SO THE KNEE AND THE CALF COULD BE
21 RELATED, AS FAR AS AN INDIVIDUAL FALLING, CORRECT?

22 A YEAH, IT'S POSSIBLE.

23 Q IT'S POSSIBLE.

24 BUT THEN THE NATURE OF THE ABRASIONS TO THE HAND ARE
25 ON THE -- UH -- THEY'RE NOT ON THE PALM OF THE HAND, BUT

1 THEY'RE ON THE OTHER SIDE OF THE HAND, CORRECT?

2 A CORRECT.

3 Q AND IF ONE GETS SHOT AND FALLS DOWN, ONE USUALLY
4 REACHES OUT WITH THEIR HANDS, CORRECT?

5 A I DON'T KNOW, I HAVE NEVER BEEN SHOT.

6 Q WELL, IF YOU'RE GOING TO FALL DOWN, ONE NORMALLY
7 REACHES OUT WITH THEIR HANDS TO BRACE THE FALL, CORRECT?

8 A HE WAS SHOT THROUGH THE HEART, THE BIG VESSEL, SO
9 IT'S POSSIBLE THAT HE WOULDN'T HAVE BEEN ABLE TO DO THAT.

10 Q IT'S POSSIBLE THAT HE COULD HAVE, CORRECT?

11 A IT'S POSSIBLE HE COULD HAVE.

12 Q ALL RIGHT. AND THESE ABRASIONS ARE ON THE TOP
13 SURFACE OF THE HANDS, CORRECT?

14 A THAT'S CORRECT.

15 Q AND IT'S MORE CONSISTENT WITH A FISTICUFF THAN IT IS
16 WITH FALLING; ISN'T THAT TRUE?

17 A UM -- THESE INJURIES, AS I HAVE SAID BEFORE, I HAVE
18 SEEN MORE COMMONLY IN FISTICUFFS -- UM -- BUT I HAVE SEEN THEM
19 IN TERMS OF -- UM -- PEOPLE SCRAPING THEIR HANDS ON SOMETHING
20 ELSE, OF WHICH I DON'T KNOW, AND WE DISCUSSED THAT EARLIER IN
21 TERMS OF WHETHER THEY HIT SOMETHING OR SOMETHING HIT THEM.

22 Q HOW WOULD YOU DESCRIBE THESE KNUCKLE INJURIES ON
23 THE -- ON THE FINGERS? NOT ON THE KNUCKLE THAT'S ATTACHED TO
24 THE HAND ITSELF, BUT AS TO THE KNUCKLES?

25 A ABRASIONS.

1 Q THOSE ABRASIONS?

2 A YES.

3 Q AND WOULD THAT BE MORE CONSISTENT WITH THE FIST?

4 A UM -- IT MAY OR MAY NOT BE, I DON'T KNOW WHETHER OR
5 NOT HE SCRAPPED AGAINST SOMETHING AND GOT THEM IN THAT AREA.

6 Q OKAY. ALL RIGHT.

7 NOW, IF WE GO ONE STEP FURTHER, TO PUT IN DIFFERENT
8 FACTORS INTO YOUR OPINIONS TO CONSIDER, WOULD THE
9 METHAMPHETAMINE AND THE AMPHETAMINE, THE LEVELS THAT WERE IN
10 HIS SYSTEM, THE TOXIC LETHAL LEVELS WOULD BE -- UH -- WOULD
11 RESULT IN VIOLENT AGGRESSIVE BEHAVIOR OF AN INDIVIDUAL,
12 CORRECT?

13 A IT'S POSSIBLE THAT THEY WOULD EFFECT THIS INDIVIDUAL
14 IN THAT WAY. AGAIN, I DON'T KNOW HOW OFTEN HE TAKES IT, AND
15 WHAT -- WHAT -- WHAT HAPPENS WITH HIM, I DON'T KNOW.

16 Q WITH THIS PARTICULAR PERSON.

17 A RIGHT.

18 Q AND WE'RE TALKING ABOUT --

19 MR. BATEMAN: I'M GOING TO OBJECT, JUST TO --

20 THE COURT: HOLD ON.

21 MR. BATEMAN: -- I THINK WE'RE, AT THIS POINT, ASKING HER
22 TO SPECULATE.

23 MR. MOMOT: NO I'M NOT.

24 MR. BATEMAN: SO MY OBJECTION WOULD BE SPECULATION.

25 MR. MOMOT: I'M ASKING PER THE REPORT, YOUR HONOR.

1 **THE COURT:** UH -- I'LL OVERRULE, BUT -- FOR THE MOMENT,
2 BUT IF YOU'RE SPECULATING YOU NEED TO LET US KNOW.

3 **THE WITNESS:** OKAY.

4 **THE COURT:** OTHER THAN GIVING US YOUR EXPERIENCED AND
5 EXPERT OPINION.

6 **THE WITNESS:** OKAY.

7 **BY MR. MOMOT:**

8 **Q** THE REPORT FROM MN -- NMS INDICATES THAT THE LEVELS
9 IN THE INDIVIDUAL'S BODY WOULD RESULT IN -- UH -- AGGRESSIVE,
10 VIOLENT BEHAVIOR, CORRECT?

11 **MR. BATEMAN:** I THINK WE'VE -- I DON'T MEAN ANY
12 DISRESPECT. I THINK WE'VE KIND OF COVERED IT INITIALLY. I
13 THINK IT'S BEEN ASKED AND ANSWERED.

14 UH -- SHE ALSO TESTIFIED THAT THAT REPORT THAT MR. MOMOT
15 IS REFERRING TO IS NOT HER WRITING. I THINK SHE'S TESTIFIED
16 THAT, YES, THAT WOULD BE ACCURATE, BUT I THINK WE'VE KIND OF
17 COVERED ALL THIS AS WELL.

18 **THE COURT:** MR. MOMOT, I THINK WE'VE COVERED IT, TOO. IS
19 THERE ANY NEW TERRITORY OR TERRITORY THAT HE COVERED ON
20 REDIRECT THAT YOU'RE ATTEMPTING TO BRING OUT --

21 **MR. MOMOT:** WELL --

22 **THE COURT:** -- BECAUSE THAT WAS COVERED ON YOUR CROSS.

23 **MR. MOMOT:** ALL RIGHT. HOW ABOUT THIS QUESTION, IF I MAY
24 YOUR HONOR?

25 **Q** ON PARAGRAPH 2 ON THE METHAMPHETAMINE, HIGH DOSES OF

1 METHAMPHETAMINE. HIGH DOSES. SO I'M SAYING 6400 NANOGRAMS
2 PER MILLILITER IS A HIGH DOSE; WOULD YOU AGREE WITH THAT?

3 **A** THAT'S A LEVEL VERSUS A DOSE. THAT'S THE LEVEL
4 THAT'S MEASURED.

5 **Q** OKAY, THE LEVEL. IS THAT A HIGH LEVEL?

6 **A** THE LEVEL THAT WE REPORTED IN HIS BLOOD IS HIGH.

7 **Q** OKAY. SO HIGH DOSES OF METHAMPHETAMINE,
8 METHAMPHETAMINE CAN ALSO ELICIT RESTLESSNESS, CONFUSION,
9 HALLUCINATIONS, CIRCULATORY COLLAPSE AND CONVULSIONS.

10 DO YOU HAVE ANY REASON TO DISAGREE WITH THAT
11 CONCLUSION?

12 **A** NO.

13 **Q** AND -- AND THIS -- JUST ONE OTHER QUESTION HERE.

14 BLOOD LEVELS OF 200 TO 600 NANOGRAM PER MILLILITER
15 HAVE BEEN REPORTED IN METHAMPHETAMINE ABUSERS WHO EXHIBITED
16 VIOLENT AND IRRATIONAL BEHAVIOR.

17 DO YOU HAVE ANY REASON TO DISAGREE WITH THAT?

18 **A** NO.

19 **MR. MOMOT:** NO FURTHER QUESTIONS.

20 **MR. BATEMAN:** NOTHING ELSE, YOUR HONOR.

21 **THE COURT:** THANK YOU VERY MUCH, DOCTOR, APPRECIATE YOUR
22 TIME TODAY.

23 **THE WITNESS:** THANK YOU FOR CALLING ME DOCTOR.

24 **THE COURT:** WE'RE GOING TO TAKE JUST A FIVE MINUTE
25 RECESS.

1 **MR. BATEMAN:** THANK YOU.

2 **THE COURT:** OKAY.

3 **THE MARSHAL:** ALL RISE. COURT'S IN RECESS.

4 (WHEREUPON A RECESS WAS TAKEN.)

5 **THE COURT:** OKAY. MR. BATEMAN, YOU CAN CALL YOUR NEXT
6 WITNESS.

7 **MR. BATEMAN:** THANK YOU. STATE CALLS TIM HILDEBRAND.

8 **THE COURT:** SO YOU'VE MADE SURE THAT YOUR -- ANY FURTHER
9 WITNESSES ARE EXCLUDED, BECAUSE I DON'T KNOW WHO YOU'VE
10 SUBPOENAED AND WHO YOU HAVEN'T.

11 **MR. BATEMAN:** YES.

12 **THE COURT:** I KNOW WE DO HAVE MORE PEOPLE IN THE
13 COURTROOM, I UNDERSTAND THERE MIGHT BE SOME FAMILY MEMBERS, SO
14 I'M GOING TO LEAVE IT TO YOU GUYS TO KNOW WHO YOU'VE
15 SUBPOENAED AND WHO YOU'VE NOT, BECAUSE EVEN MY MARSHAL I DON'T
16 THINK KNOWS.

17 **MR. BATEMAN:** RIGHT. THE ONLY REMAINING WITNESS IS OUT
18 IN THE HALLWAY, I THINK, YOUR HONOR.

19 **THE COURT:** OKAY. ALL RIGHT. THANK YOU.

20 GO AHEAD AND RAISE YOUR RIGHT HAND, THANKS.

21

22 **TIMOTHY HILDEBRAND,**

23 CALLED AS A WITNESS BY THE STATE, AND HAVING BEEN FIRST DULY
24 SWORN TO TESTIFY TO THE TRUTH, THE WHOLE TRUTH, AND NOTHING
25 BUT THE TRUTH, TESTIFIED AS FOLLOWS:

1 THE WITNESS: YES.

2 THE CLERK: THANK YOU, SIR, GO AHEAD AND HAVE A SEAT.

3 I DO NEED YOU -- THERE'S A MICROPHONE RIGHT THERE. STATE
4 YOUR FIRST AND YOUR LAST NAME, AND SPELL BOTH FOR THE RECORD.

5 THE WITNESS: TIMOTHY HILDEBRAND, T-I-M-O-T-H-Y,
6 H-I-L-D-E-B-R-A-N-D.

7 THE COURT: THANK YOU. YOU CAN PROCEED.

8

9 DIRECT EXAMINATION

10 BY MR. BATEMAN:

11 Q SIR, DO YOU KNOW SOMEONE BY THE NAME OF LUIS OR
12 LORENZO PIMENTEL?

13 A YES.

14 Q AND DO YOU SEE THAT PERSON IN THE COURTROOM TODAY?

15 A YES, I DO.

16 Q WOULD YOU PLEASE POINT TO HIM AND DESCRIBE WHAT HE'S
17 WEARING?

18 A RIGHT THERE, BLUE.

19 Q THANK YOU.

20 A HE'S IN BLUE.

21 MR. BATEMAN: MAY THE RECORD REFLECT THE IDENTIFICATION
22 OF THE DEFENDANT, YOUR HONOR?

23 THE COURT: YES.

24 BY MR. BATEMAN:

25 Q SIR, I'M GOING TO DIRECT YOUR ATTENTION TO THE --

1 WELL, THE EARLY MORNING HOURS OF DECEMBER 22ND, I BELIEVE IT
2 WAS A SUNDAY -- UM -- DID YOU HAVE OCCASION TO COME INTO
3 CONTACT WITH THE DEFENDANT?

4 A YES.

5 Q ALL RIGHT. WHERE DID YOU FIRST, ON THAT MORNING,
6 COME INTO CONTACT WITH THE DEFENDANT?

7 A ARIZONA CHARLIE'S.

8 Q WHERE WAS THAT ARIZONA CHARLIE'S LOCATED?

9 A BOULDER HIGHWAY.

10 Q ALL RIGHT. WERE YOU WITH ANYBODY AT THAT TIME?

11 A YES, MY FIANCE.

12 Q ALL RIGHT. AND WHERE AT ARIZONA CHARLIE'S DID YOU
13 COME INTO CONTACT WITH THE DEFENDANT?

14 A IN THE CASINO.

15 Q WHY DID YOU GO INTO THE DEFENDANT -- WHY -- WHY DID
16 YOU GO INTO THE CASINO TO HAVE CONTACT WITH THE DEFENDANT?

17 A UM -- MY FRIEND BOBBY ASKED ME TO GO IN AND GET HIS
18 GIRLFRIEND, HAVE HER COME OUT AND TALK HIM.

19 Q WHEN YOU SAY BOBBY, IS HIS NAME ROBERT HOLLAND?

20 A YES.

21 Q HOW LONG HAVE YOU KNOWN ROBERT HOLLAND?

22 A RIGHT ABOUT FOUR YEARS.

23 Q OKAY. HAS HE BEEN -- FRIENDS WITH HIM FOR ABOUT
24 FOUR YEARS?

25 A YES.

1 Q I'M JUST HAVING A LITTLE HARD TIME HEARING YOU.
2 THERE'S A MICROPHONE RIGHT IN FRONT OF YOU --
3 A YES.
4 Q -- AND SHE'S GOING TO TAKE EVERYTHING DOWN YOU SAY,
5 OKAY?
6 A YES.
7 Q THANK YOU.
8 WHEN YOU GOT TO ARIZONA CHARLIE'S, WERE YOU DRIVING
9 IN A VEHICLE?
10 A YES.
11 Q AND YOU SAY YOU WERE WITH YOUR FIANCE?
12 A YES, MY FIANCE.
13 Q WHAT WAS HER NAME?
14 A SHANNON SALAZAR (PHONETIC).
15 Q AND WHERE IS IT THAT YOU FIRST SAW BOBBY?
16 A IN THE PARKING LOT.
17 MR. BATEMAN: ALL RIGHT.
18 MAY I APPROACH THE WITNESS REAL QUICK, YOUR HONOR?
19 THE COURT: YES.
20 BY MR. BATEMAN:
21 Q SHOWING YOU WHAT'S BEEN MARKED AS STATE'S PROPOSED
22 EXHIBIT NO. 3, IT APPEARS TO BE A NEVADA DRIVER'S LICENSE, DO
23 YOU RECOGNIZE THE PERSON ON THAT DRIVER'S LICENSE?
24 A YES.
25 Q WHO IS THAT?

1 A ROBERT.
2 MR. BATEMAN: OKAY. MOVE ADMISSION OF STATE'S 3?
3 THE COURT: ANY OBJECTION?
4 MR. MOMOT: NO, YOUR HONOR.
5 THE COURT: THREE WILL BE ADMITTED.
6 (WHEREUPON STATE'S EXHIBIT NO. 3 WAS ADMITTED INTO
7 EVIDENCE.)
8 BY MR. BATEMAN:
9 Q YOU SAW BOBBY IN THE PARKING LOT?
10 A YES.
11 Q DO YOU KNOW -- OR AT THAT TIME DID YOU HAVE ANY IDEA
12 HOW IT IS HE GOT TO THE PARKING LOT?
13 A NO.
14 Q ALL RIGHT. DID YOU SEE HIM IN A VEHICLE?
15 A NO.
16 Q YOU SAID YOU TALKED TO BOBBY; IS THAT RIGHT?
17 A YEAH.
18 Q AND WAS THERE A -- DID BOBBY HAVE, WHAT YOU THOUGHT
19 TO BE AT THE TIME, A GIRLFRIEND?
20 A YES.
21 Q WHO WAS THAT?
22 A AMANDA.
23 Q DO YOU KNOW HER LAST NAME?
24 A NO, I DON'T.
25 Q UM -- DID YOU SEE HER THERE?

1 **A** SHE WAS IN THE CASINO --

2 **MR. MOMOT:** I'M GOING TO OBJECT AS TO FOUNDATION AS TO

3 THE GIRLFRIEND ASPECT OF AMANDA.

4 **THE COURT:** OKAY.

5 **MR. BATEMAN:** I CAN FOLLOW UP.

6 **THE COURT:** LAY A FOUNDATION.

7 **MR. BATEMAN:** CORRECT.

8 **Q** HAD YOU EVER -- YOU KNEW SOMEONE BY THE NAME OF

9 AMANDA; IS THAT RIGHT?

10 **A** YES.

11 **Q** HAD YOU EVER -- UM -- SEEN OR BEEN IN -- IN THE

12 PRESENCE OF BOBBY AND AMANDA WHEN THEY WERE TOGETHER?

13 **A** ONCE.

14 **Q** OKAY. DID YOU KNOW, AS A RESULT OF THAT ONE TIME

15 CONTACT, THESE INDIVIDUALS TO KNOW EACH OTHER?

16 **A** BOBBY AND AMANDA?

17 **Q** YES.

18 **A** YES.

19 **Q** OKAY. WAS THAT, IN PART, BASED UPON YOUR

20 COMMUNICATION WITH BOBBY?

21 **A** YES.

22 **Q** ALL RIGHT. DID YOU HAVE SEPARATE COMMUNICATIONS --

23 AND DON'T TELL ME WHAT WAS SAID, BUT HAD YOU HAD AROUND THIS

24 PERIOD OF TIME SEPARATE COMMUNICATIONS WITH AMANDA? DID YOU

25 EVER TALK TO HER OR SEE HER ALONE?

1 A YES.

2 Q OKAY. SO WHEN YOU COME INTO CONTACT WITH BOBBY IN
3 THE PARKING LOT, DID YOU HAVE A -- WITHOUT TELLING ME WHAT HE
4 SAID, DID YOU HAVE A DISCUSSION WITH BOBBY?

5 A YES.

6 Q AND AS A RESULT OF THAT DISCUSSION DID YOU THEN GO
7 INTO ARIZONA CHARLIE'S?

8 A YES.

9 Q AND WHEN YOU WENT INTO ARIZONA CHARLIE'S, IS THAT
10 WHEN YOU FIRST CAME INTO CONTACT WITH THE DEFENDANT, WHO YOU
11 IDENTIFIED HERE IN COURT?

12 A YES, SIR.

13 Q WAS THERE ANYBODY WITH THE DEFENDANT AT THAT TIME?

14 A YES.

15 Q WHO WAS THAT?

16 A AMANDA.

17 Q AND WHERE IN ARIZONA CHARLIE'S WAS THIS?

18 A THEY WERE SITTING AT A MACHINE?

19 Q ALL RIGHT.

20 A PLAYING KENO.

21 Q AT SOME POINT -- WELL, DID YOU HAVE SOME SORT OF
22 COMMUNICATION WITH -- UM -- THE DEFENDANT AND/OR AMANDA AT
23 THIS TIME?

24 A YES.

25 Q OKAY. AND WAS IT AS A RESULT OF A CONVERSATION THAT

1 YOU HAD HAD IN THE PARKING LOT WITH BOBBY?

2 A YES.

3 Q DID YOU STAY LONG IN THAT PARTICULAR AREA OF THE
4 CASINO?

5 A A COUPLE MINUTES.

6 Q AND DID YOU ULTIMATELY LEAVE?

7 A YES.

8 Q AND WHERE IS IT YOU WERE GOING?

9 A I WAS GOING BACK TO -- UH -- WELL, SHE -- SHE WAS
10 GOING OUT TO TALK TO BOBBY AND I WAS WALKING OVER TO THE ROOM
11 WITH LORENZO.

12 Q OKAY. LET ME BREAK THAT DOWN.

13 AFTER YOU HAD THE CONVERSATION WITH AMANDA AND
14 LORENZO IN ARIZONA CHARLIE'S, DID YOU EXIT ARIZONA CHARLIE'S.

15 A YES.

16 Q AND DID YOU SEE AMANDA EXIT ARIZONA CHARLIE'S?

17 A YES.

18 Q AND WAS IT YOUR UNDERSTANDING SHE WAS GOING TO TALK
19 TO BOBBY?

20 A YES.

21 Q AND DID YOU THEN GO WITH THE DEFENDANT TO A ROOM AT
22 ARIZONA CHARLIE'S?

23 A YES.

24 Q OKAY. UM -- DID YOU EVER COME BACK INTO CONTACT
25 WITH BOBBY AT THE ARIZONA CHARLIE'S THAT NIGHT?

1 A NO.
2 Q ALL RIGHT. UM -- DID YOU, AT THAT TIME -- WELL, DID
3 YOU GO TO THE DEFENDANT'S ROOM?
4 A YES.
5 Q ALL RIGHT. HOW LONG WERE YOU IN THE DEFENDANT'S
6 ROOM?
7 A ABOUT FIVE, TEN MINUTES.
8 Q ALL RIGHT. HOW LONG HAD YOU KNOWN THE DEFENDANT AT
9 THIS TIME?
10 A NOT LONG.
11 Q OKAY. YOU'VE KNOWN BOBBY LONGER?
12 A YES.
13 Q AFTER YOU LEFT THE DEFENDANT'S ROOM, WHERE DID YOU
14 GO?
15 A I WENT UP TO VALET, I WAS GIVING LORENZO A RIDE
16 HOME.
17 Q OKAY. SO WAS YOUR CAR IN VALET?
18 A NO, IT WAS A FRIEND-OF MINE'S CAR.
19 Q YOU HAD GOTTEN THERE IN A FRIEND'S CAR?
20 A YEAH.
21 Q WERE YOU DRIVING THAT VEHICLE?
22 A YES.
23 Q SO YOU WENT TO VALET TO GO GET A VEHICLE?
24 A NO, I WENT TO VALET DOWN -- PARKED UP THERE BECAUSE
25 HE WAS CHECKING OUT.

1 Q OKAY.

2 A HE WAS GOING TO CHECK OUT OF HIS ROOM, SO I JUST
3 PULLED UP THERE SO HE COULD JUST COME OUT THE FRONT DOOR.

4 Q AND DID YOU EX -- END UP LEAVING ARIZONA CHARLIE'S
5 IN THAT VEHICLE?

6 A YES.

7 Q WHO WAS IN YOUR VEHICLE WITH YOU?

8 A ME -- UH -- THE DEFENDANT, AMANDA AND SHANNON.

9 Q OKAY. AND BEFORE YOU HAD LEFT, DID YOU HAVE ANY
10 FURTHER COMMUNICATION WITH BOBBY?

11 A NO.

12 Q ALL RIGHT. SO YOU DON'T KNOW AT THAT TIME WHAT HAD
13 HAPPENED WITH BOBBY AND AMANDA?

14 A BOBBY AND -- NO, I DON'T KNOW WHAT HAPPENED WITH
15 THEM. I KNOW THEY WERE OUTSIDE TALKING.

16 Q OKAY. UM -- DID YOU KNOW AT THAT TIME -- WELL, LET
17 ME ASK YOU THIS. WHERE IS IT THAT YOU THEN TOOK -- YOU SAID
18 YOU WERE TAKING THE DEFENDANT HOME, WHERE WAS THAT?

19 A UH -- SIEGEL SUITES ON THE BOULDER HIGHWAY.

20 Q DO YOU KNOW THE APPROXIMATE ADDRESS, OR IS IT JUST,
21 YOU KNOW, IT'S ON --

22 A I THINK IT'S 3625 OR SOMETHING LIKE THAT.

23 Q ALL RIGHT. IS THAT HERE IN CLARK COUNTY?

24 A YES.

25 Q IS IT QUITE A WAYS AWAY FROM ARIZONA CHARLIE'S OR

1 JUST A FEW BLOCKS?

2 A NOT REALLY. A COUPLE MILES.

3 Q OKAY. WHEN YOU GOT TO SIEGEL SUITES, DID YOU COME
4 IN -- WHERE DID YOU GO?

5 A I PULLED UP IN FRONT OF HIS APARTMENT.

6 Q HAD YOU BEEN TO THAT APARTMENT WITH THE DEFENDANT
7 BEFORE?

8 A YES.

9 Q WHAT CAR -- KIND OF CAR WERE YOU DRIVING?

10 A IT WAS A HYUNDAI ELANTRA.

11 Q ALL RIGHT. WHO GOT -- DID YOU -- DID YOU PARK THE
12 CAR AT THAT TIME?

13 A YES.

14 Q AND DID YOU EXIT THE VEHICLE?

15 A YES.

16 Q WHO -- WHO WAS -- AGAIN, WHO WAS IN THE CAR WITH YOU
17 AT THIS TIME? IT WAS --

18 A ME, LORENZO, AMANDA AND SHANNON.

19 Q OKAY. DID ALL FOUR OCCUPANTS EXIT THE VEHICLE?

20 A NO.

21 Q WHO STAYED IN THE VEHICLE?

22 A AMANDA AND SHANNON.

23 Q AND DID YOU AT THAT TIME SEE BOBBY SOMEWHERE IN THAT
24 AREA?

25 A YES.

1 Q OKAY. DID YOU -- LET ME BACK UP.
2 DURING THE COURSE OF LEAVING ARIZONA CHARLIE'S AND
3 GOING TO SIEGEL SUITES, DID YOU, IN THE CAR, HAVE ANY SORT OF
4 COMMUNICATION WITH AMANDA?
5 A NO.
6 Q ALL RIGHT. DID YOU KNOW THERE TO BE ANY SORT OF
7 ISSUES AT THAT TIME BETWEEN AMANDA AND BOBBY?
8 A NO.
9 Q OKAY. DID YOU KNOW PRIOR TO THE ARIZONA
10 CHARLIE'S -- UM -- OR GOING TO ARIZONA CHARLIE'S, THAT THERE
11 WAS SOME ISSUES GOING ON BETWEEN AMANDA --
12 A I DIDN'T KNOW.
13 Q -- AND BOBBY?
14 OKAY. YOU SAID YOU SAW BOBBY AT THE ARI -- AT
15 SIEGEL SUITES; IS THAT RIGHT?
16 A UM-HUM.
17 Q IS THAT A YES?
18 A YES. YES.
19 Q OKAY. AND YOU AND THE DEFENDANT GOT OUT OF THE
20 VEHICLE; IS THAT RIGHT?
21 A YES.
22 Q OKAY. WHAT HAPPENED WITH THE TWO GIRLS IN THE
23 VEHICLE THAT YOU CAME WITH?
24 A THEY STAYED IN THE CAR.
25 Q OKAY. DID THE VEHICLE LEAVE THE AREA?

1 **A** YES.

2 **MR. BATEMAN:** OKAY. MAY I APPROACH THE WITNESS, YOUR
3 HONOR?

4 **THE COURT:** YES.

5 **MR. BATEMAN:** SHOWING COUNSEL WHAT'S BEEN MARKED AS
6 STATE'S PROPOSED EXHIBITS NO. 1 AND NO. 2.

7 **Q** I WANT YOU TO TAKE A LOOK AT THESE TWO PHOTOS. DO
8 YOU RECOGNIZE THIS AREA?

9 **A** YES.

10 **Q** IS THAT THE AREA WHERE YOU GOT OUT AT THE SIEGEL
11 SUITES TO GO TO THE DEFENDANT'S SIEGEL SUITE ROOM?

12 **A** YES.

13 **Q** IS THAT A FAIR AND ACCURATE DEPICTION OF HOW IT
14 LOOKED THAT NIGHT?

15 **A** YES.

16 **MR. BATEMAN:** MOVE ADMISSION OF ONE AND TWO.

17 **THE COURT:** ANY OBJECTION?

18 **MR. MOMOT:** NO, YOUR HONOR.

19 **THE COURT:** ONE AND TWO WILL BE ADMITTED. THANK YOU.

20 (WHEREUPON STATE'S EXHIBIT NO. 1 AND 2 WERE ADMITTED INTO
21 EVIDENCE.)

22 **BY MR. BATEMAN:**

23 **Q** OKAY. DID YOU -- SO I'M GOING TO SHOW YOU NO. 2.
24 JUDGE, I'M GOING TO TRY TO HOLD IT UP FOR YOU. UM -- DID THE
25 CAR THAT YOU CAME IN, DID IT LEAVE THIS AREA?

1 A YES.
2 Q AND DID IT GO SOMEPLACE WHERE THE OCCUPANTS WOULDN'T
3 HAVE SEEN WHAT TRANSPIRED IN THIS AREA?
4 A YES.
5 Q OKAY. SO WHERE WAS THAT?
6 A I THINK THEY WENT AROUND THE OTHER SIDE OF THE
7 BUILDING.
8 Q IS THERE MULTIPLE BUILDINGS IN THIS AREA?
9 A WELL, IT'S ONE THAT GOES THIS WAY, AND THEN THE BACK
10 BUILDING GOES THIS WAY, AND THE OTHER ONE GOES THE SAME AS THE
11 ONE THAT HE LIVED IN BEHIND IT.
12 Q OKAY. WHEN YOU SAY THIS WAY AND THAT WAY, YOU'RE
13 KIND OF MAKING --
14 A ONE GOES NORTH AND SOUTH, ONE -- THE OTHER ONE GOES
15 EAST AND WEST.
16 Q YOU DIDN'T SEE THE VEHICLE OR THE GIRLS AGAIN DURING
17 THIS TIME PERIOD?
18 A NO.
19 Q ALL RIGHT. WHERE IS IT THAT YOU SAW BOBBY FIRST?
20 A FIRST? HE WAS UP ON THE STAIRS.
21 Q OKAY. AND IS THAT WHERE -- UM -- THE DEFENDANT'S
22 ROOM WAS?
23 A YEAH, HIS ROOM WAS ON THE THIRD FLOOR.
24 Q OKAY. AND THEN DID BOBBY -- DID YOU SEE BOBBY COME
25 DOWN THE STAIRS?

1 A YEAH, HE STARTED COMING DOWN THE STAIRS, THEY
2 STARTED ARGUING.
3 Q WHO STARTED ARGUING?
4 A LORENZO AND BOBBY.
5 Q OKAY. AND SO YOU COULD HEAR THIS ARGUMENT?
6 A YES.
7 Q AND WHAT WAS THE NATURE OF THE ARGUMENT ABOUT?
8 A AMANDA.
9 Q WHAT, IF ANYTHING, DID YOU HEAR THE DEFENDANT SAY
10 DURING THE COURSE OF THIS ARGUMENT?
11 A UM -- WELL, BOBBY TOLD HIM HE WASN'T GONNA', YOU
12 KNOW, DO HER OR WHATEVER.
13 Q HE WASN'T GONNA' WHAT?
14 A YOU KNOW, HAVE SEX WITH HER.
15 Q OKAY.
16 A AND HE TOLD HIM, WELL, YES, I AM, I'M GONNA' SHOW
17 HER WHAT A REAL MAN IS.
18 THE COURT: -- OKAY. WHEN -- SORRY. WHEN YOU SAY HE, WE
19 DON'T KNOW WHO --
20 THE WITNESS: LORENZO.
21 THE COURT: OKAY.
22 THE WITNESS: LORENZO.
23 THE COURT: SO CAN YOU START OVER --
24 THE WITNESS: OKAY.
25 THE COURT: -- USING NAMES?

1 **THE WITNESS:** BOBBY SAID -- BOBBY TOLD LORENZO THAT HE
2 WASN'T GONNA', YOU KNOW, SLEEP WITH HER, AND HE SAID, YOU
3 KNOW -- LORENZO, YEAH THE HELL I'M NOT, I'M GONNA' -- I'M
4 GONNA' SHOW HER WHAT A REAL MAN IS.

5 **MR. BATEMAN:** OKAY.

6 **Q** AND YOU OVERHEARD THIS CONVERSATION?

7 **A** YES.

8 **Q** WHERE WAS THIS CONVERSATION TAKING PLACE?

9 **A** ON THE STAIRS. LORENZO WAS AT THE BOTTOM AND BOBBY
10 WAS COMING DOWN THE STAIRS.

11 **Q** OKAY. AND THEN DID THE CONVERSATION CONTINUE?

12 **A** YES.

13 **Q** AND WAS IT JUST A -- KIND OF AN ARGUMENT ALONG THOSE
14 LINES, BACK AND FORTH?

15 **A** UH-HUH.

16 **Q** IS THAT YES OR NO?

17 **A** YES.

18 **Q** DID IT APPEAR THAT -- TO YOU THAT BOBBY WAS LOOKING
19 FOR THE DEFENDANT OR THAT HE WAS LOOKING FOR AMANDA?

20 **A** HE WAS BASICALLY LOOKING FOR AMANDA.

21 **Q** OKAY. AND WAS THAT BASED UPON THE CONVERSATION THAT
22 YOU WERE HEARING BETWEEN THE TWO INDIVIDUALS?

23 **A** BETWEEN THE TWO -- BETWEEN LORENZO AND BOBBY?

24 **Q** CORRECT.

25 **A** WELL, I THINK LORENZO WANTED TO FIGHT.

1 Q OKAY. WELL, TELL ME WHY YOU THOUGHT LORENZO WANTED
2 TO FIGHT?
3 A BECAUSE HE KEPT TELLING HIM HE WANTED TO FIGHT.
4 Q OKAY. WHEN -- WHEN DID THE DEFENDANT FIRST TELL
5 BOBBY THAT LORENZO WANTED TO FIGHT?
6 A ARIZONA CHARLIE'S.
7 Q OKAY. SO LET'S -- SORRY TO GO BACK THERE, BUT LET'S
8 GO BACK.
9 A AT ARIZONA CHARLIE'S THEY GOT IN AN ARGUMENT.
10 Q OKAY. WHERE WAS THAT ARGUMENT?
11 A SECURITY WAS THERE LIKE TEN -- LIKE SEVEN OR EIGHT
12 SECURITY GUARDS, AND THAT WAS IN -- RIGHT IN FRONT OF
13 LORENZO'S -- UH -- ROOM.
14 Q AND, AGAIN, WAS THIS ARGUMENT THE SAME ISSUE,
15 AMANDA?
16 A AMANDA.
17 Q OKAY. AND WHAT IS IT THAT -- SO LORENZO SAID THAT
18 HE WANTED TO FIGHT TO BOBBY; IS THAT RIGHT?
19 A YEAH, HE KEPT TELLING HIM, KIND OF MEET ME AT MY
20 HOUSE.
21 Q OKAY. HOW MANY TIMES DO YOU THINK HE TOLD THAT TO
22 BOBBY?
23 A LIKE TEN.
24 Q WHAT WAS BOBBY SAYING IN RETURN?
25 A YEAH, YEAH, I'LL MEET YOU THERE, I'LL MEET YOU

1 THERE.

2 Q OKAY. DID IT APPEAR TO YOU THAT BOBBY WAS ASKING
3 WHERE AMANDA WAS?

4 A YEAH, HE WAS LOOKING FOR -- HE KNEW WHERE SHE WAS.
5 SHE WOULDN'T -- SHE WOULDN'T COME OUT AND TALK TO HIM, AND I
6 THINK SECURITY ASKED HIM TO LEAVE, BECAUSE THEY GOT IN AN
7 ARGUMENT --

8 MR. MOMOT: I'M GOING TO OBJECT --

9 THE WITNESS: I'M NOT SURE --

10 MR. MOMOT: -- WHAT SECURITY SAID --

11 THE WITNESS: -- BECAUSE I WASN'T THERE.

12 THE COURT: OKAY, HOLD ON.

13 MR. MOMOT: IT'S HEARSAY. WE KNOW -- GOT TO GET TO THESE
14 OTHER STATEMENTS FOR -- TO GET THE TOTALITY OF THE
15 CONVERSATION, BUT WHAT SECURITY HAS TO SAY, I THINK, IS
16 HEARSAY.

17 THE COURT: WELL -- AND HE ALSO HAD JUST SAID, I'M NOT

18 SURE, SO I DON'T KNOW HOW MUCH OF THAT HE HAS PERSONAL

19 KNOWLEDGE OF --

20 MR. BATEMAN: OKAY.

21 THE COURT: -- SO IT'S STRICKEN. YOU CAN ASK HIM A
22 DIFFERENT QUESTION.

23 BY MR. BATEMAN:

24 Q DID YOU HAVE ANY CONTACT WITH BOBBY BEFORE HE --
25 AFTER THIS ARGUMENT -- UM -- BEFORE HE LEFT ARIZONA CHARLIE'S?

1 A NO.

2 Q OKAY. SO YOU DON'T KNOW HOW HE LEFT ARIZONA

3 CHARLIE'S?

4 A NO, I DON'T.

5 Q WHAT WAS YOUR INTENT, WAS IT TO -- TO --

6 A I THOUGHT HE WAS WALKING.

7 Q OKAY. WHAT WERE YOU TRYING TO DO? WERE YOU TRYING

8 TO LEAVE ARIZONA CHARLIE'S?

9 A YEAH, I WAS TRYING TO GET LORENZO OUT OF THERE.

10 Q OKAY. YOU WANTED TO DEFUSE THE SITUATION?

11 A YES.

12 Q SO THIS CONVERSATION, WE'RE BACK AT THE SIEGEL

13 SUITES, WAS THERE ANY OTHER CONVERSATION OR ANYTHING ELSE THAT

14 THE DEFENDANT SAID THAT MADE YOU THINK HE WANTED TO FIGHT AT

15 THAT TIME?

16 A YEAH. JUST WHEN HE TOLD HIM THAT -- UM -- HE SAID

17 HE WASN'T GOING TO SLEEP WITH HER, AND HE SAID, THE HELL I'M

18 NOT, I'M GONNA! SHOW HER WHAT A REAL MAN IS.

19 Q OKAY. AND WHAT HAPPENED AT THAT POINT?

20 A THEN -- UM -- BOBBY CAME DOWN TO THE BOTTOM, THEY

21 STARTED ARGUING BACK AND FORTH, AND WHEN HE SAID, YOU KNOW,

22 I'M GONNA' SHOW HER WHAT A REAL MAN IS, BOBBY, YOU KNOW, HIT

23 HIM, LUNGED AT HIM AND HIT HIM.

24 Q AND WHEN YOU SAY BOBBY HIT HIM, DO YOU KNOW WHAT

25 HAND HE USED?

1 A I THINK HIS RIGHT.
2 Q DO YOU KNOW WHETHER BOBBY WAS RIGHT OR LEFT HANDED?
3 A NO. I THINK HE WAS RIGHT-HANDED.
4 Q OKAY. WHERE DID BOBBY HIT THE DEFENDANT?
5 A IN THE EYE.
6 Q UM --
7 A SIDE OF THE FACE.
8 Q OKAY.
9 A WHICH WOULD HAVE BEEN --
10 Q DO YOU REMEMBER WHICH EYE OR DO YOU NOT REMEMBER?
11 A IT WOULD HAVE BEEN THIS ONE.
12 Q AND YOU'RE POINTING TO YOUR LEFT EYE?
13 A YEAH.
14 Q ALL RIGHT. WHAT OCCURRED AFTER -- WAS IT ONE PUNCH?
15 A YEAH.
16 Q IS THAT YES?
17 A YES.
18 Q OKAY. AND THEN WHAT HAPPENED AT THAT POINT?
19 A THAT'S WHEN LORENZO STAGGERED BACK AND LIFTED UP HIS
20 SHIRT AND PULLED OUT THE GUN --
21 Q OKAY.
22 A -- AND AIMED IT AT HIM AND MISFIRED -- IT MISFIRED
23 THE FIRST TIME.
24 Q I WANT TO FOLLOW UP ON THAT MORE SPECIFICALLY. YOU
25 SAID BOBBY PUNCHES THE DEFENDANT, RIGHT --

1 A YES.
2 Q -- IN THE LEFT EYE, AND THEN THE DEFENDANT STAGGERS
3 BACKWARDS?
4 A YEAH.
5 Q AND THEN YOU SAID HE -- AND DID A MOTION, HE PULLED
6 UP HIS --
7 A PULLED UP HIS SHIRT.
8 Q DEFENDANT PULL UP HIS SHIRT?
9 A PULLED THE GUN OUT, WAS AIMING AT HIM, AND IT
10 MISFIRED.
11 Q SO PRIOR TO HIM PULLING UP HIS SHIRT, COULD THE
12 FIREARM BE SEEN?
13 A NO.
14 Q AND YOU PUT YOUR HAND OUT; IS THAT RIGHT?
15 A YEAH.
16 Q AND WAS IT -- UM -- WAS IT UP -- THE GUN UP AND DOWN
17 OR WAS IT SIDEWAYS?
18 A I THINK HE HAD IT KIND OF TO THE SIDE.
19 Q OKAY. AND HOW -- YOU SAID HE PULLED THE TRIGGER?
20 A YES.
21 Q YOU HEARD IT?
22 A YES, AND IT MISFIRED.
23 Q HOW FAR AWAY WAS THE DEFENDANT FROM BOBBY WHEN HE
24 HELD UP THE GUN AND HE PULLED THE TRIGGER?
25 A PROBABLY ABOUT EIGHT FEET THE FIRST -- THE FIRST

1 TIME.

2 Q OKAY. WHAT OCCURRED AT THAT POINT?

3 A BOBBY STARTED GOING BACKWARDS, LIKE TRYING -- HE
4 SAID, "WHAT ARE YOU GONNA' DO, SHOOT ME, DUDE?"

5 Q OKAY. SO BOBBY SAID, WHAT ARE YOU GOING TO DO,
6 SHOOT ME?

7 A YEAH.

8 Q AND WAS BOBBY CONTINUING TO GO FORWARD?

9 A NO, HE WAS -- HE WAS GOING BACKWARDS.

10 Q ALL RIGHT. DID HE DO ANYTHING --

11 A TRYING TO GET AWAY FROM -- HE WAS TRYING TO GET AWAY
12 FROM HIM.

13 Q OKAY. SO -- AND DID YOU CONTINUE TO WATCH?

14 A YES.

15 Q ALL RIGHT. AND WHAT HAPPENED AT THAT POINT BETWEEN
16 BOBBY AND THE DEFENDANT?

17 A THAT'S WHEN HE PULLED THE TRIGGER THE SECOND TIME,
18 AND HE HIT BOBBY. TOOK THE GUN AND WENT, CHU-CHU, YOU KNOW
19 COCKED IT BACK, AND THEN YOU KNOW STUCK -- AIMED IT AT HIM
20 AGAIN AND SHOT HIM, AND BOBBY GRABBED HIS STOMACH AND
21 STAGGERED BACK AND FELL.

22 Q DID I LEAVE THE EXHIBITS UP THERE?

23 A NO.

24 MR. BATEMAN: OH, SORRY.

25 COULD I APPROACH THE WITNESS AGAIN?

1 THE COURT: YES.

2 BY MR. BATEMAN:

3 Q I'M GOING TO SHOW YOU WHAT'S BEEN MARK AS EXHIBIT

4 NO. 2, IS THIS A VIEW OF THE SIEGEL SUITES WHERE THE

5 DEFENDANT'S ROOM IS ON LIKE THE SECOND FLOOR?

6 A IT'S ON THE THIRD FLOOR.

7 Q OH, THIRD FLOOR?

8 A UH-HUH.

9 Q IS THAT RIGHT?

10 A YES.

11 Q OKAY. IS THIS WHERE -- THE AREA WHERE THE ARGUMENT

12 STARTED?

13 A YES, AT THE BOTTOM OF THE STAIRS.

14 Q OKAY. AND WAS IT AT THE BOTTOM OF THE STAIRS WHEN

15 THE DEFENDANT INITIALLY FIRED THE GUN AND IT MISFIRED?

16 A UM -- WELL, AFTER BOBBY HIT HIM, HE WENT BACK AND HE

17 CAME -- LIKE WENT THIS WAY.

18 Q OKAY. TO -- TO THE LEFT?

19 A LIKE THAT WAY TO THE LEFT.

20 Q THE DEFENDANT WENT TO THE LEFT?

21 A AND BOBBY WAS STANDING THERE, AND THEN WHEN HE

22 MIS -- WHEN HE SHOT AT HIM AND IT MISFIRED, BOBBY WENT

23 BACKWARDS AND WENT AROUND THE CARS, TRY TO GET AWAY FROM HIM,

24 AND HE WENT AFTER HIM.

25 Q OKAY. SO I JUST WANT TO CLARIFY FOR THE RECORD.

1 MR. MOMOT: COULD I SEE --
2 MR. BATEMAN: DO YOU WANT TO COME UP AND --
3 THE COURT: YES. YES.
4 MR. BATEMAN: COME ON UP.
5 MR. MOMOT: I'M LISTENING.
6 MR. BATEMAN: YEAH.
7 THE COURT: SO -- UM -- SIR, WHAT YOU HAVE TO UNDERSTAND
8 IS WE'RE TAKING DOWN A RECORD, AND MISS KIT ONLY TAKES DOWN
9 WORDS, SO WHEN YOU'RE POINTING AND SAYING OVER HERE, IT'S
10 REALLY HARD FOR THE RECORD -- I KNOW IT'S NORMAL --
11 THE WITNESS: SORRY.
12 THE COURT: -- BUT IF YOU CAN JUST TRY TO DESCRIBE USING
13 YOUR WORDS AS MUCH AS YOU'RE SHOWING WITH YOUR -- UM --
14 THE WITNESS: ALL RIGHT.
15 THE COURT: -- WITH YOUR HANDS AND YOUR GESTURES, OKAY?
16 THE WITNESS: YES, MA'AM.
17 MR. BATEMAN: AND I'LL TRY TO HELP.
18 THE WITNESS: OKAY.
19 BY MR. BATEMAN:
20 Q YOU SAID THAT BOB -- INITIALLY WHEN THE SHOT
21 OCCURRED, BOBBY WAS HEADING TO THE LEFT ON THIS PHOTOGRAPH; IS
22 THAT RIGHT?
23 A YES.
24 Q AND THE DEFENDANT WAS OVER TO THE RIGHT; IS THAT
25 RIGHT?

1 A YES.
2 Q AND THEN -- UM -- OR IS THAT WRONG?
3 A NO.
4 Q ACTUALLY YOU TELL ME --
5 A YEAH --
6 Q -- I COULD BE WRONG.
7 A RIGHT -- WHEN LOREZ -- WHEN BOBBY HIT HIM LORENZO
8 WENT TO THE LEFT.
9 Q OKAY. THE DEFENDANT WENT TO THE LEFT?
10 A BOBBY -- BOBBY WAS STANDING ABOUT HERE, AND THEN HE
11 WENT IN -- WHEN HE --
12 Q WHEN YOU SAY HERE --
13 A -- WENT IN BETWEEN --
14 Q -- UM -- IS THAT BY --
15 THE REPORTER: OKAY.
16 THE COURT: YOU GUYS ARE TALKING OVER EACH OTHER.
17 THE WITNESS: IN BETWEEN THE TWO --
18 THE COURT: OKAY, HOLD ON. SIR? SIR? YOU CAN'T TALK
19 OVER MR. BATEMAN EITHER. SO HE'S TRYING TO CLARIFY THE
20 RECORD, SO JUST LET HIM SPEAK, AND YOU RESPOND, OKAY?
21 THE WITNESS: YES, MA'AM.
22 THE COURT: TRY NOT TO TALK OVER HIM. OKAY.
23 BY MR. BATEMAN:
24 Q AND YOU WERE SAYING -- UM -- BOBBY WAS HERE, ARE YOU
25 REFERRING TO SOMEWHERE NEAR THIS CHEVROLET TRUCK?

1 A NO.

2 Q OKAY.

3 A YES, YES, YES, YES.

4 Q ALL RIGHT.

5 A THAT'S WHEN LORENZO PUT THE GUN -- PULLED THE GUN

6 OUT AND, YOU KNOW, IT MISFIRED.

7 Q OKAY.

8 A AND BOBBY WENT BACKWARDS AND AROUND THE VEHICLES.

9 Q OKAY. SO --

10 A TO THE RIGHT. HE WENT DOWN ARO -- DOWN AROUND TO

11 THE RIGHT, AND LORENZO WENT AFTER HIM.

12 Q OKAY. SO I'M GOING TO FOLLOW UP, BASED UPON THIS

13 EXHIBIT NO. 2. YOU SAID INITIALLY BOBBY WAS BY THIS CHEVROLET

14 TRUCK WHEN THE MISFIRE OCCURRED, RIGHT?

15 A YES.

16 Q AND THEN YOU SAID BOBBY WENT AROUND THE VEHICLES?

17 A YES.

18 Q ARE YOU REFERRING TO THESE VEHICLES THAT ARE NEXT TO

19 THE CHEVROLET TRUCK --

20 A YES.

21 Q -- ON EXHIBIT NO. 2?

22 A YES.

23 Q AND WHAT -- WHICH DIRECTION DID THE DEFENDANT GO

24 WHEN BOBBY WAS GOING AROUND THESE VEHICLES?

25 A WELL, WHEN BOBBY WENT AROUND THE VEHICLES, HE WAS

1 GOING AFTER BOBBY.

2 Q THE DEFENDANT WAS GOING AFTER BOBBY?

3 A YES.

4 Q WHICH DIRECTION DID THE DEFENDANT GO?

5 A THE SAME WAY BOBBY DID.

6 Q OKAY.

7 A BOBBY WENT -- WHEN BOBBY WENT -- UM -- WHICH WOULD
8 HAVE BEEN THE RIGHT, WHEN BOBBY WENT TO THE RIGHT HE WAS
9 COMING STRAIGHT AT HIM, AND THEN BOBBY WENT TO THE RIGHT
10 AROUND THE VEHICLES, AND THEN HE WENT TO THE RIGHT.

11 Q OKAY. DID BOBBY EVER END UP COMING BACK TO THE
12 LEFT?

13 A YES.

14 Q OKAY. AND WAS THE DEFENDANT COMING BACK TO THE
15 LEFT?

16 A YES.

17 Q AND YOU SAID THAT THERE WAS SOME ADDITIONAL
18 GUNSHOTS; IS THAT RIGHT?

19 A YES. THAT'S WHEN HE SHOT THE SECOND TIME, AND I
20 THINK HE SHOT HIM IN THE STOMACH, AND BOBBY GRABBED HIMSELF
21 AND SAID, OOH --

22 Q OKAY.

23 A -- AND WENT DOWN AND FELL ON HIS FACE.

24 Q SO THE DEFENDANT THEN SHOT -- UM -- BOBBY, YOU SAID
25 SOMEWHERE IN THE STOMACH AREA?

1 A YES. THAT'S WHAT I THOUGHT, ANYWAY.
2 Q DO YOU KNOW APPROXIMATELY, ON THIS EXHIBIT NO. 2,
3 WHERE BOBBY WAS?
4 A YES, HE WAS LAYING ON -- ON THE SIDEWALK IN FRONT OF
5 THE TRUCK.
6 Q IN FRONT OF THIS CHEVROLET TRUCK?
7 A YES.
8 Q DO YOU KNOW APPROXIMATELY WHERE THE DEFENDANT WAS
9 WHEN HE SHOT HIM THE FIRST TIME, AND YOU SAID IN THE STOMACH?
10 A FIRST TIME? WHAT, LIKE HOW FAR AWAY?
11 Q YES.
12 A PROBABLY ABOUT TEN FEET, TWELVE FEET.
13 Q OKAY. WAS THE DEFENDANT SAYING ANYTHING WHEN THIS
14 WAS OCCURRING?
15 A NO.
16 Q ALL RIGHT. UM -- DID BOBBY, AFTER THAT FIRST SHOT,
17 DID HE STAY STANDING OR DID HE FALL DOWN?
18 A NO, HE FELL ON HIS FACE.
19 Q FELL FORWARD?
20 A FORWARD.
21 Q WAS HE STILL --
22 A ON -- GO AHEAD.
23 Q WAS HE STILL ON THE SIDEWALK?
24 A YES.
25 Q WHAT, IF ANYTHING, DID THE DEFENDANT DO AT THAT

1 TIME?

2 **A** WENT UP TO HIM AND SHOT HIM IN THE -- THE SECOND
3 TIME IN THE BACK, STOOD OVER THE TOP OF HIM.

4 **Q** DID HE SAY ANYTHING AT THAT TIME, THE DEFENDANT?

5 **A** YEAH, HE JUST -- WHEN -- WHEN -- AFTER HE SHOT HIM
6 THE SECOND TIME HE SAID, "I'M OUT OF HERE NIGGER", AND THREW
7 HIS ARMS UP.

8 **Q** THREW HIS ARMS UP TO THE SIDE?

9 **A** YEAH.

10 **Q** OKAY. AND WHERE, IF ANYWHERE, DID THE DEFENDANT GO?
11 DID YOU WATCH HIM GO ANYWHERE?

12 **A** HE WENT -- HE STARTED GOING UP THE PARKING LOT.

13 **Q** OKAY. WHEN YOU SAY --

14 **A** TOWARDS BOULDER HIGHWAY.

15 **Q** AND ON THIS EXHIBIT NO. 2, IS BOULDER HIGHWAY --
16 WOULD THAT BE TO THE RIGHT?

17 **A** THAT WOULD BE TO THE RIGHT.

18 **Q** OKAY. WHAT, IF ANYTHING, DID YOU DO AT THAT TIME?

19 **A** I MEAN I WAS FREAKING.

20 **Q** OKAY.

21 **A** UM -- THEN HIS DAD CAME UP. I DIDN'T KNOW IT WAS
22 HIS DAD AT FIRST.

23 **THE COURT:** WHO'S DAD?

24 **THE WITNESS:** BOBBY'S DAD. AND WE TRIED TO ROLL HIM
25 OVER, AND THEN THE BLOOD CAME OUT AND IT GOT ALL OVER MY HAND,

1 AND I JUST -- I FREAKED OUT.

2 BY MR. BATEMAN:

3 Q DID YOU LEAVE THE AREA?

4 A YES.

5 Q WHERE DID YOU GO?

6 A I WENT AND GOT THE CAR. THE GIRLS WENT TO THE BAR.

7 Q WHICH --

8 A WENT ACROSS THE STREET TO THE BAR, THE FOUR MILE
9 BAR, THEY WERE IN THE PARKING LOT. I WENT OVER AND GOT THE
10 CAR AND WENT HOME.

11 Q ALL RIGHT.

12 WHEN YOU WERE OUT AT THIS LOCATION, WHEN THIS
13 CONFRONTATION WAS OCCURRING -- UM -- DID THE DEFENDANT EVER
14 SAY ANYTHING TO YOU?

15 A NO.

16 Q OKAY. DID HE EVER DIRECT HIS ATTENTION TO YOU AT
17 THIS TIME?

18 A I DON'T REALLY KNOW... I DON'T REMEMBER ANYTHING TOO
19 MUCH AFTER THAT.

20 Q THE DEFENDANT DIDN'T END UP AT THE FOUR MILE BAR OR
21 ANYTHING LIKE THAT?

22 A NO.

23 Q AND YOU SAID YOU DIDN'T KNOW WHERE BOBBY'S DAD CAME
24 FROM, YOU DIDN'T KNOW HE WAS THERE?

25 A NO.

1 Q DURING THIS CONFRONTATION -- UM -- OR EVEN BACK AT
2 THE ARIZONA CHARLIE'S, DID YOU EVER SEE BOBBY HAVE A FIREARM
3 WITH HIM?

4 A NO.

5 Q OKAY. DID -- DURING THIS CONFRONTATION DID BOBBY
6 EVER PULL OUT A GUN?

7 A NO.

8 Q DO YOU KNOW WHAT, IF ANYTHING, THE DEFENDANT DID
9 WITH THE GUN THAT HE USED?

10 A NO, I DON'T.

11 MR. BATEMAN: OKAY. I'LL PASS THE WITNESS, JUDGE.

12 THE COURT: CROSS-EXAMINATION.

13 MR. MOMOT: THANK YOU, YOUR HONOR. JUST ONE SECOND,
14 PLEASE, YOUR HONOR.

15 THE COURT: SURE.

16 (DISCUSSION BETWEEN MR. MOMOT AND THE DEFENDANT.)

17

18 CROSS-EXAMINATION

19 BY MR. MOMOT:

20 Q SIR, THAT NIGHT, DECEMBER -- THE NIGHT OF DECEMBER
21 22ND, I GUESS THE MORNING OF DECEMBER 23RD IS WHEN THIS
22 INCIDENT OCCURRED, CORRECT?

23 A I THINK SO.

24 Q OKAY. AND DID YOU MAKE A HANDWRITTEN STATEMENT?

25 A UH -- A COUPLE OF WEEKS LATER, LIKE A WEEK LATER.

1 Q A HANDWRITTEN STATEMENT?
2 A NO. NO, JUST -- UM -- TWO DETECTIVES CAME AND
3 TALKED TO ME.
4 Q OKAY. SO THEN YOU JUST MADE AN ORAL STATEMENT TO
5 THE DETECTIVES, CORRECT?
6 A YES.
7 Q AND THEY TAPED YOUR STATEMENT, CORRECT?
8 A YES, SIR.
9 Q ALL RIGHT. AND THEY, AS A MATTER OF FACT, DID THIS
10 ON JANUARY 2ND, 2014 -- UH -- ABOUT 4 O'CLOCK IN THE
11 AFTERNOON, CORRECT?
12 A YES, SIR.
13 Q AND WHERE WAS IT THAT THEY TOOK YOUR STATEMENT?
14 A WAL-MART PARKING LOT.
15 Q IS THAT NEARBY THIS ADDRESS?
16 A IT'S ON BOULDER HIGHWAY AND NELLIS.
17 Q WAS THAT AN ARRANGED MEETING PLACE THAT YOU WERE
18 GOING TO MEET THE COPS?
19 A YES.
20 Q OKAY. AND DID YOU STICK AROUND AFTER THIS INCIDENT
21 WHERE THE SHOOTING OCCURRED?
22 A NO. I WAS --
23 Q YOU TOOK --
24 A -- DISTRAUGHT.
25 Q YOU TOOK OFF?

1 A YEAH. I DIDN'T TAKE OFF, I JUST, YOU KNOW, I -- I--
2 Q YOU LEFT?
3 A YEAH.
4 Q WHERE DID YOU GO, TO A BAR?
5 A NO. I WENT TO THE BAR TO GET THE CAR, AND THEN I
6 WENT HOME.
7 Q ALL RIGHT. SO YOU WENT TO THE BAR -- YOU WENT TO
8 THE BAR, WHICH BAR DID YOU GO TO?
9 A FOUR MILE. I DIDN'T GO TO --
10 Q THE FOUR MILE BAR ON BOULDER HIGHWAY?
11 THE COURT: HOLD ON. HOLD ON. JUST ANSWER HIS
12 QUESTIONS. OKAY.
13 BY MR. MOMOT:
14 Q THE FOUR MILE BAR ON BOULDER HIGHWAY?
15 A YES, SIR.
16 Q AND HOW FAR AWAY IS THAT FROM THIS SCENE?
17 A UM -- A COUPLE HUNDRED YARDS.
18 Q A COUPLE HUNDRED YARDS?
19 A IT'S ACROSS THE STREET.
20 Q HUH?
21 A IT'S RIGHT ACROSS THE STREET FROM WHERE IT HAPPENED.
22 Q RIGHT ACROSS THE STREET? OKAY.
23 AND YOU WALKED OVER THERE?
24 A YES.
25 Q OF COURSE BECAUSE THE -- WHERE WAS YOUR VEHICLE?

1 A ACROSS THE STREET AT THE BAR. THE GIRLS TOOK IT TO
2 THE BAR.

3 Q ACROSS THE STREET AT THE BAR?

4 A YES.

5 Q OKAY. AND YOU DIDN'T STICK AROUND -- YOU DIDN'T
6 WAIT AROUND AFTER THE SHOOTING WITH -- UM -- BOBBY OR HIS DAD,
7 DID YOU?

8 A I WAS THERE WITH BOBBY'S DAD, WE TRIED TO ROLL BOBBY
9 OVER.

10 Q AND THEN -- AND THEN DID YOU WAIT THERE UNTIL THE
11 AMBULANCE --

12 A WHEN THE BLOOD --

13 Q -- TO ARRIVE?

14 A -- GOT ALL OVER MY HAND I FREAKED OUT.

15 Q OKAY. BUT --

16 A WHAT DO YOU WANT ME TO SAY?

17 Q DID YOU WAIT THERE UNTIL THE AMBULANCE ARRIVED?

18 A NO, I DIDN'T.

19 Q DID YOU WAIT THERE UNTIL THE POLICE ARRIVED?

20 A NO. THERE WAS A LOT OF POLICE THERE.

21 Q SIR, DID YOU WAIT UNTIL THE POLICE ARRIVED?

22 A NO.

23 Q OKAY. DID YOU CALL 9-1-1?

24 A I DIDN'T HAVE A PHONE.

25 Q QUESTION, DID YOU CALL 9-1-1?

1 A I DIDN'T HAVE A PHONE.
2 THE COURT: JUST ANSWER THE QUESTION?
3 THE WITNESS: I DIDN'T HAVE A PHONE.
4 THE COURT: SO IS THAT A NO OR A YES?
5 THE WITNESS: NO.
6 MR. MOMOT: THANKS.
7 Q OKAY. NOW, DID BOBBY HAVE A PHONE?
8 A I DON'T KNOW. I DON'T THINK SO.
9 Q DID YOU SEE BOBBY'S FATHER CALL 9-1-1?
10 A UH -- I'M NOT SURE. I THINK HE DID.
11 Q HUH?
12 A I THINK HE DID, I'M NOT SURE.
13 Q OKAY. NOW -- SO BETWEEN DECEMBER 22ND AND -- AND
14 JANUARY 2ND, DID YOU HAVE OCCASION TO TALK TO BOBBY'S FATHER?
15 A UH -- NO.
16 Q DID YOU TALK TO ANYBODY ABOUT THIS?
17 A NO, NOT REALLY, JUST ME AND MY FIANCE TALKED.
18 Q AND THAT IS WHO?
19 A SHANNON.
20 Q SHANNON. AND THAT'S THE GIRL THAT WAS AT THE BAR
21 WITH AMANDA?
22 A YES.
23 Q OKAY. AND -- UM -- ALL RIGHT.
24 PRIOR TO MAKING THIS -- THIS STATEMENT, THIS AUDIO
25 STATEMENT, YOU TALKED TO THE POLICE OFFICERS IN GENERAL ABOUT

1 WHAT YOU OBSERVED?

2 A THEY CALLED AND LEFT A MESSAGE, AND THEN WE SET UP A
3 MEETING, AND THEN I MET THEM AT WAL-MART. THAT'S THE ONLY
4 TIME I TALKED TO THEM.

5 Q OKAY. BUT WHEN YOU MET THEM AT WAL-MART, DID YOU
6 TALK TO -- UH -- DETECTIVE WILLIAMS, YOU KNOW, IN
7 GENERALIZATION, PRIOR TO MAKING THE STATEMENT?

8 A WHEN I MADE THE STATEMENT WAS THE ONLY TIME I TALKED
9 TO THEM, THE TWO DETECTIVES.

10 Q OKAY. SO THIS IS --

11 A THAT WAS THE ONLY TIME.

12 Q YOU DIDN'T HAVE A CONVERSATION BEFORE MAKING THIS
13 STATEMENT?

14 A NO. JUST WHERE WE -- WHERE WE WERE GOING TO MEET.
15 HE SAID HE NEEDED TO TALK TO ME ABOUT WHAT HAPPENED THAT
16 NIGHT, AND WE MET AT WAL-MART.

17 Q OKAY.

18 Q SIR, DO YOU HAVE A FELONY CONVICTION?

19 A YES, I DO.

20 Q ONE OR MORE?

21 A ONE.

22 Q HOW OLD?

23 A UM -- PROBABLY ABOUT FIVE YEARS. FOUR YEARS, FIVE
24 YEARS.

25 Q OKAY. NOW -- BUT YOU'RE NOT ON ANY KIND OF

1 PROBATION, PAROLE OR ANYTHING RIGHT NOW?

2 A NO, SIR. NO.

3 Q OKAY. AND YOU DON'T OWN ANY FIREARMS, DO YOU?

4 A NO.

5 Q AND YOU SAID YOU KNOW -- UH -- THE DECEDENT MR.

6 HOLLAND FOR APPROXIMATELY ABOUT FOUR YEARS?

7 A FOUR YEARS. ABOUT THREE, FOUR YEARS.

8 Q DID YOU WORK TOGETHER?

9 A NO.

10 Q DO YOU LIVE IN THE SAME COMPLEX AS MR. HOLLAND?

11 A NO.

12 Q DOES HE LIVE AT THIS COMPLEX WHERE --

13 A NO.

14 Q -- THIS INCIDENT OCCURRED?

15 A NO.

16 Q WHERE -- WHERE DID HE LIVE AT THIS TIME?

17 A HE LIVED, I THINK, OFF OF VIKING/FLAMINGO.

18 Q VIKING AND FLAMINGO?

19 A AND FLAMINGO.

20 Q HOW FAR AWAY IS THAT, SIR?

21 A UM -- TEN MILES, NINE MILES, EIGHT MILES, SOMETHING

22 LIKE THAT.

23 Q OKAY. NOW, WHEN YOU -- YOU WERE AT ARIZONA

24 CHARLIE'S WITH BOBBY EARLIER THAT EVENING, RIGHT?

25 A NO.

1 Q WELL, DID YOU SEE BOBBY EARLIER THAT EVENING?
2 A NO. THAT WAS THE FIRST TIME I SEEN HIM WAS THAT
3 NIGHT HE ASKED ME TO GO IN AND GET AMANDA TO COME OUT AND TALK
4 TO HIM.
5 Q THAT WAS AT ARIZONA CHARLIE'S, WASN'T IT?
6 A YES, SIR.
7 Q THAT'S WHAT I'M SAYING, EARLIER THAT EVENING, PRIOR
8 TO THIS INCIDENT --
9 THE COURT: HE -- I THINK HE THOUGHT YOU MEANT EARLIER
10 THAN ARIZONA CHARLIE'S.
11 MR. MOMOT: OH, I'M SORRY. I'M SORRY IF I CONFUSED YOU.
12 THE COURT: IS THAT --
13 THE WITNESS: YEAH.
14 BY MR. MOMOT:
15 Q LET'S -- LET'S TALK ABOUT ARIZONA CHARLIE'S. YOU --
16 YOU -- YOU MET BOBBY THERE?
17 A YEAH, I RUN INTO HIM. HE WAS IN THE PARKING LOT.
18 Q DID YOU -- HOW DID -- WHEN YOU GOT THERE DID YOU
19 JUST GO THERE WITH SHANNON?
20 A YES.
21 Q YOU WERE ALONE?
22 A ME AND SHANNON.
23 Q RIGHT.
24 A YEAH.
25 Q AND WHAT WAS THE PURPOSE? WHO WERE YOU INTENDING TO

1 MEET THERE AT ARIZONA CHARLIE'S?
2 A NO ONE. I WAS GOING TO GAMBLE.
3 Q YOU WERE JUST GOING TO GO THERE YOURSELVES?
4 A YES.
5 Q AT WHAT TIME DID YOU ARRIVE THERE?
6 A I DON'T EVEN KNOW, LIKE 2 O'CLOCK, SOMETHING LIKE
7 THAT.
8 Q TWO IN THE AFTERNOON?
9 A NO, EVENING -- OR MOR -- MORNING.
10 Q TWO IN THE MORNING?
11 A (NO AUDIBLE RESPONSE.)
12 Q OKAY. NOW, WHO IS THE FIRST PERSON THAT YOU SEE OUT
13 OF THIS GROUP, BOBBY OR THE DEFENDANT?
14 A BOBBY.
15 Q BOBBY. WHERE DID YOU FIRST SEE HIM?
16 A IN THE PARKING LOT.
17 Q WHAT TIME?
18 A I DON'T REALLY KNOW. I WASN'T LOOKING AT THE TIME.
19 Q ESTIMATE, FOUR, FIVE IN THE MORNING?
20 A I DON'T KNOW. IT WAS TWO.
21 Q TWO IN THE MORNING?
22 A ONE, TWO, THREE, I DON'T -- I REALLY DON'T KNOW.
23 Q WELL, YOU SAY YOU ARRIVED THERE AT TWO IN THE
24 MORNING. HOW SOON, THEREAFTER, DID YOU SEE BOBBY?
25 A AS SOON AS I PULLED IN THE PARKING LOT.

1 Q OH, OKAY. AND WHAT WAS HE DOING?
2 A STANDING THERE. WALKING -- YOU KNOW, GOING BACK AND
3 FORTH, PACING, YOU KNOW.
4 Q AND -- OKAY.
5 A I GUESS THEY THREW HIM OUT OF THE CASINO, SO --
6 AND HE WANTED TO TALK TO AMANDA.
7 Q SO -- ALL RIGHT. SO THAT'S WHAT HE TELLS YOU THAT
8 HE WANTS TO TALK TO AMANDA, AND AMANDA'S IN THE CASINO WITH
9 LORENZO?
10 A YES.
11 Q AND LORENZO IS THE DEFENDANT?
12 A YES.
13 Q OKAY. NOW -- AND WAS IT JUST LORENZO AND AMANDA IN
14 THE CASINO, OR WAS THERE SOMEBODY ELSE WITH LORENZO AND AMANDA
15 IN THE CASINO?
16 A LORENZO AND AMANDA WERE SITTING DOWN AT THE
17 MACHINES, AND THERE WAS SOMEONE STANDING ALONG SIDE OF IT, I
18 DON'T KNOW WHO IT WAS, THOUGH.
19 Q WAS IT THAT --
20 A I DON'T KNOW IF HE WAS WITH THEM --
21 Q DO YOU KNOW WHETHER --
22 A -- OR JUST TALKING.
23 Q -- OR NOT THAT INDIVIDUAL WAS WITH LORENZO OR
24 AMANDA, YOU KNOW, BY -- BY THE WAY THEY MAY OR MAY NOT HAVE
25 BEEN TALKING OR ASSOCIATING?

1 A NO, I DON'T KNOW IF HE WAS OR NOT, BUT HE NEVER
2 GOT -- LEFT THE CASINO WITH THEM, SO ...
3 Q HE NEVER DID?
4 A NO.
5 Q WAS IT YOUR UNDERSTANDING THAT LORENZO HAD A ROOM UP
6 IN THE CASINO?
7 A YES.
8 Q AND YOU WENT UP TO THAT ROOM?
9 A YES.
10 Q AND WHAT WAS THE PURPOSE OF YOU GOING UP TO THAT
11 ROOM?
12 A I WAS GOING TO GIVE HIM A RIDE HOME.
13 Q YOU WERE GOING TO GIVE LORENZO A RIDE?
14 A YES.
15 Q AND WHERE WERE YOU GOING TO GO?
16 A I WAS GOING TO TAKE HIM HOME TO THE SIEGEL SUITES.
17 Q CORRECT.
18 A BUT WAS YOU -- WHAT WAS YOUR UNDERSTANDING OF WHEN
19 LORENZO GOT THAT -- THAT SUITE AT ARIZONA CHARLIE'S?
20 A I DIDN'T KNOW HE HAD ONE TILL I GOT THERE.
21 Q AND THAT -- DID YOU ASK HIM WHEN DID YOU GET THIS
22 ROOM, LORENZO?
23 A NO.
24 Q DID YOU ASK HIM ANYTHING ABOUT THE ROOM?
25 A NO.

1 Q WAS HIS CLOTHES IN THE ROOM?
2 A YEAH, HIS BAG WAS.
3 Q HE HAD A BAG IN THE ROOM?
4 A YEAH.
5 Q OKAY. WAS ANYTHING ELSE IN THE ROOM?
6 A NOT THAT I KNOW OF.
7 Q OKAY. ANYBODY ELSE IN THE ROOM?
8 A UH -- AMANDA -- UM -- TWO OTHER --
9 Q SHE --
10 A -- TWO OTHER FRIENDS.
11 Q SHE WALKED UP FROM THE CASINO WITH LORENZO --
12 A SHE --
13 Q -- AND YOU, CORRECT?
14 A ME, HER AND LORENZO, YES.
15 Q SHE -- SHE WASN'T STAYING IN THE ROOM WAS SHE?
16 A I DON'T KNOW.
17 Q YOU DON'T KNOW THAT?
18 A NO.
19 Q YOU DIDN'T HEAR ANY DISCUSSION ABOUT THAT, DID YOU?
20 A NO.
21 Q ALL RIGHT.
22 SO NOW -- SO AS I UNDERSTAND IT, YOU'RE IN THE
23 CASINO WITH AMANDA AND LORENZO, YOU GO UP TO THE ROOM, AND YOU
24 LEAVE BOBBY OUT IN THE PARKING LOT AND HE'S PACING BACK AND
25 FORTH BECAUSE HE WANTS HIS AMANDA TO COME OUT OF ARIZONA

1 CHARLIE'S, CORRECT?

2 A WHEN WE CAME OUT OF ARIZONA CHARLIE'S WE WENT BACK
3 TO LORENZO'S ROOM, AMANDA STAYED OUTSIDE AND TALKED TO BOBBY
4 ON THE SIDE OF THE BUILDING.

5 Q SO AMANDA STAYED OUTSIDE WITH LORENZO --

6 A NO, WITH BOBBY.

7 Q -- WHILE YOU WENT UP TO THE ROOM WITH LORENZO?

8 A THAT -- YES. SHE STAYED OUTSIDE OF THE ROOM WITH
9 BOBBY, TALKING TO BOBBY, WHEN ME AND LORENZO WENT TO THE ROOM.

10 Q OKAY. NOW, WHEN YOU SAY OUTSIDE, THAT'S OUTSIDE THE
11 BUILDING?

12 A YES.

13 Q OKAY. NOW, NATURALLY YOU DON'T KNOW WHAT THAT
14 CONVERSATION IS?

15 A NO.

16 Q NOW, THEY WEREN'T MARRIED, WERE THEY?

17 A NO.

18 Q AND THEY -- TO YOUR KNOWLEDGE OR INFORMATION AND
19 BELIEF, AMANDA WAS NOT LIVING WITH BOBBY, RIGHT?

20 A NO.

21 Q AND DO YOU KNOW WHERE AMANDA WAS LIVING?

22 A NO, I DON'T.

23 Q OKAY. BUT SHE WASN'T LIVING WITH BOBBY?

24 A NO.

25 Q AND SHE WASN'T LIVING WITH THE DEFENDANT?

1 A NO.
2 Q AND SHE HAS A CHILD, CORRECT?
3 A YES.
4 Q ALL RIGHT. DO YOU KNOW HOW OLD THAT CHILD IS?
5 A NO, I DON'T.
6 Q AND SHANNON AND AMANDA ARE FRIENDS?
7 A NO.
8 Q THEY JUST KNEW EACH OTHER --
9 A AMANDA JUST --
10 Q -- FROM THAT EVENING?
11 A NO, SHANNON JUST MET HER, TOO.
12 Q THAT EVENING?
13 A YES.
14 Q OKAY. NOW, THIS CONVERSATION THAT YOU HAD WITH THE
15 DEFENDANT AT ARIZONA CHARLIE'S REGARDING HIS RELATIONSHIP WITH
16 AMANDA, CORRECT?
17 A EXCUSE ME? SAY THAT AGAIN?
18 Q THERE WAS A CONVERSATION THAT YOU HAD WITH THE
19 DEFENDANT AT ARIZONA CHARLIE'S REGARDING THE DEFENDANT'S
20 RELATIONSHIP WITH AMANDA, RIGHT?
21 A WELL, I ASKED HIM WHAT HE WAS DOING.
22 Q AND IT CAME DOWN TO LORENZO TELLING YOU THAT HE WAS
23 NOT HAVING SEX WITH AMANDA, CORRECT?
24 A WELL THAT'S WHAT HE SAYS. THAT'S WHAT HE SAID
25 ANYWAY.

1 Q THAT'S WHAT HE SAID, RIGHT?
2 A YES.
3 Q OKAY. DID YOU EVER TELL THAT TO BOBBY?
4 A I DIDN'T SEE BOBBY. I DIDN'T TALK TO BOBBY. ME AND
5 LORENZO WENT IN THE ROOM, AND THEN SECURITY MADE BOBBY LEAVE.
6 Q DID YOU EVER HAVE AN OPPORTUNITY TO TELL THAT TO
7 BOBBY?
8 A NO, I DIDN'T.
9 Q OKAY. SO NOW YOU WALK UP TO THE ROOM WITH LORENZO,
10 AND THEN LORENZO IS GOING TO MEET YOU, WHAT, AT VALET TO GET
11 INTO YOUR VEHICLE?
12 A YES.
13 Q AND DOES THERE COME A TIME --- WHEN YOU LEFT LORENZO,
14 DID YOU SEE BOBBY AT ALL?
15 A THE SECURITY WAS ESCORTING HIM OFF THE PROPERTY.
16 THEY WERE ARGUING BACK AND FORTH, LORENZO AND BOBBY.
17 Q WELL NOW WAIT A MINUTE, YOU JUMPED AHEAD OF ME A
18 LITTLE BIT HERE. ---
19 I GOT LORENZO UP IN A ROOM GETTING HIS STUFF. HE'S
20 GONNA' MEET YOU IN VALET TO LEAVE, CORRECT?
21 A YES.
22 Q BOBBY'S OUTSIDE WITH AMANDA?
23 A YES.
24 Q OKAY. YOU LEAVE AND YOU GO TO VALET?
25 A I DIDN'T LEAVE -- I DIDN'T LEAVE UNTIL AFTER -- I

1 DIDN'T LEAVE TO GO TO VALET UNTIL AFTER AMANDA CAME BACK.
2 SECURITY WAS TELLING BOBBY HE HAD TO LEAVE. LORENZO CAME OUT
3 THE DOOR OF THE ROOM AND THEY STARTED ARGUING BACK AND FORTH
4 ABOUT KICKING EACH OTHER'S ASS.

5 Q THAT'S LORENZO AND BOBBY?
6 A YES.
7 Q AND -- OKAY. DID YOU HAPPEN TO HAVE ANY
8 CONVERSATION WITH BOBBY AT THAT TIME?
9 A NO, I DIDN'T, SECURITY WAS ESCORTING HIM OFF.
10 Q OKAY. WAS LORENZO DRINKING?
11 A NOT THAT I KNOW OF.
12 Q OKAY. HOW DID BOBBY LOOK?
13 A HE -- HE DIDN'T LOOK LIKE HE WAS DRINKING NEITHER.
14 Q OH WAS HE -- DID HE LOOK LIKE HE WAS OKAY?
15 A YEAH.
16 Q HE DIDN'T LOOK LIKE HE WAS UNDER THE INFLUENCE OF
17 ANYTHING?
18 A NO.
19 Q HE WAS STRAIGHT?
20 A YES. HE LOOKED STRAIGHT TO ME.
21 Q OKAY. ALL RIGHT.
22 NOW, WHEN THEY GO TO VALET YOU'RE DRIVING THE
23 VEHICLE?
24 A YES.
25 Q AND THAT'S NOT YOUR VEHICLE?

1 A NO.

2 Q IT'S A VEHICLE THAT YOU BORROWED?

3 A YES, IT'S A FRIEND OF MINE'S.

4 Q FROM A FRIEND.

5 SO THEN -- UH -- SHANNON GETS INTO THAT VEHICLE,
6 AMANDA GETS INTO THAT VEHICLE, AND SO DOES LORENZO, CORRECT?

7 A YES.

8 Q AND WHAT -- AND AT THAT TIME YOU DECIDE TO TAKE
9 LORENZO BACK TO HIS APARTMENT?

10 A YES, HE WANTED TO GO HOME.

11 Q BUT YOU HEARD THE ARGUMENT PREVIOUSLY BETWEEN BOBBY
12 AND LORENZO THAT THEY WERE GOING TO MEET OVER AT LORENZO'S
13 PLACE, CORRECT?

14 A YES, LORENZO TOLD HIM, I'LL BE HOME IN 30 MINUTES.

15 Q DID HE -- HE'LL BE THERE IN 30 MINUTES?

16 A YES.

17 Q OKAY. SO YOU DROVE LORENZO TO THAT PLACE, CORRECT?

18 A YES.

19 Q ALL RIGHT. AND DID YOU GO DIRECTLY FROM VALET TO
20 LORENZO'S --

21 A YES.

22 Q -- PLACE?

23 A YES.

24 Q AND HOW FAR DISTANCE IS THAT?

25 A A COUPLE MILES.

1 Q ABOUT TWO OR THREE MILES?
2 A YEAH, SOMETHING LIKE THAT.
3 Q SO IT TAKES, WHAT, 10 OR 15 MINUTES?
4 A ABOUT FIVE MINUTES.
5 Q FIVE MINUTES?
6 A FIVE TO TEN MINUTES.
7 Q OKAY, FIVE MINUTES.
8 DID YOU SEE, AT ANY TIME, BOBBY'S FATHER?
9 A NO.
10 Q DO YOU KNOW WHETHER OR NOT BOBBY DROVE TO ARIZONA
11 CHARLIE'S?
12 A NO.
13 Q DO YOU KNOW HOW HE GOT THERE?
14 A NO, I DON'T.
15 Q DO YOU KNOW HOW HE LEFT?
16 A NO, I DON'T.
17 Q OKAY. SO THE NEXT THING YOU DO IS YOU JUST GO OVER
18 TO LORENZO'S PLACE, AND THEN THE TWO GIRLS LEAVE TO GO OVER TO
19 THE FOUR MILE BAR?
20 A YES.
21 Q WHO DID YOU GIVE THE KEYS TO?
22 A AMANDA.
23 Q AMANDA TO DRIVE YOUR FRIEND'S VEHICLE?
24 A YES. YEAH, I THOUGHT THEY WERE GONNA' FIGHT AND,
25 YOU KNOW, THEY DIDN'T NEED TO SEE IT.

1 Q OKAY. YOU DIDN'T GIVE THE KEYS TO SHANNON?
2 A NO.
3 Q WHY?
4 A SHE CAN'T DRIVE.
5 Q WHY?
6 A SHE DOESN'T KNOW HOW.
7 Q ALL RIGHT. OKAY. SO YOU GAVE IT TO AMANDA, AND THE
8 TWO GIRLS LEAVE IN THE CAR, RIGHT?
9 A YES.
10 Q AND THEN YOU STAY THERE?
11 A YEAH.
12 Q NOW, WHEN -- WHEN YOU GET THERE WITH AMANDA AND
13 SHANNON AND LORENZO, LORENZO STARTS TO GO TO HIS APARTMENT,
14 CORRECT?
15 A YEAH, HE GETS OUT OF THE CAR AND LOOKED UP AND SEEN
16 BOBBY ON THE STAIRS.
17 Q NOW, WHAT'S -- WHAT LEVEL OF APARTMENT DOES LORENZO
18 LIVE AT, DO YOU KNOW?
19 A THIRD FLOOR.
20 Q THIRD FLOOR?
21 A YES.
22 Q AND IT'S A WALK UP --
23 A YES.
24 Q -- CORRECT?
25 A IT'S THREE FLIGHTS OF STAIRS.

1 Q THREE FLIGHTS OF STAIRS. AND ON THE THIRD FLIGHT OR
2 ON THE THIRD FLOOR, IS THAT WHERE YOU SEE BOBBY?
3 A YES.
4 Q AND IS BOBBY ALONE?
5 A YES.
6 Q DO YOU SEE HIS FATHER ANYPLACE?
7 A NO.
8 Q AND YOU SEE BOBBY COMING DOWN THE STAIRS?
9 A YES.
10 Q AND IS THERE CONVERSATION BETWEEN THE BOTH OF THEM?
11 A YEAH, THEY WERE --
12 Q OR WERE --
13 A THEY WERE HAVING WORDS BACK AND FORTH.
14 Q THERE WERE WORDS BACK AND FORTH, OKAY.
15 SO THERE COMES A TIME THAT BOBBY COMES DOWN TO THE
16 GROUND FLOOR, RIGHT?
17 A YES.
18 Q AND THEN HE MEETS LORENZO?
19 A YES.
20 Q AND A FIGHT ENSUES?
21 A NOT -- NOT RIGHT AWAY, THEY WERE ARGUING.
22 Q THEY WERE ARGUING, AND THEN -- AND THEN BOBBY THROWS
23 THE PUNCH AND HITS LORENZO?
24 A YES.
25 Q DO YOU -- DO YOU SEE BOBBY'S FATHER AT ANY TIME?

1 A NO.

2 Q WHEN IS THE FIRST TIME YOU SEE BOBBY'S FATHER?

3 A WHEN WE -- WHEN BOBBY WAS LAYING ON THE GROUND.

4 Q DID YOU SEE HIM DRIVE UP?

5 A NO.

6 Q DO YOU KNOW WHAT KIND OF CAR BOBBY'S FATHER HAS?

7 A I THINK HE'S GOT A RED TRUCK.

8 (DISCUSSION BETWEEN MR. MOMOT AND MR. BATEMAN.)

9 MR. MOMOT: CAN I MARK THIS ONE? CAN I MARK THIS

10 EXHIBIT, YOUR HONOR?

11 THE COURT: YES. SO THIS IS GOING TO BE B?

12 MR. MOMOT: B.

13 THE COURT: OKAY.

14 MR. MOMOT: IS THERE ANY OBJECTION TO IT'S ADMISSIBILITY?

15 MR. BATEMAN: NOPE.

16 THE COURT: AND THERE'S NO OBJECTION TO THE ADMISSIBILITY

17 OF EXHIBIT B, B WILL BE ADMITTED.

18 (WHEREUPON DEFENSE'S EXHIBIT B WAS MARKED FOR

19 IDENTIFICATION AND ADMITTED INTO EVIDENCE.)

20 BY MR. MOMOT:

21 Q SIR, I'M SHOWING YOU WHAT'S MARKED AS DEFENSE

22 EXHIBIT B. YOU SEE A RED TRUCK?

23 A YES.

24 Q AND WHERE IS THAT?

25 A TO THE RIGHT.

1 Q RIGHT SIDE OF THE --
2 A BEHIND --
3 Q -- PHOTO?
4 A YES. IT'S RIGHT --
5 Q IS THAT BOBBY --
6 THE REPORTER: I'M SORRY, I CAN'T -- I'M SORRY, WAIT. I
7 DIDN'T HEAR THAT LAST PART, YOU SAID YES?
8 THE WITNESS: YES, IT'S TO THE RIGHT.
9 BY MR. MOMOT:
10 Q IS THAT BOBBY'S FATHER'S TRUCK?
11 A LOOKS LIKE IT.
12 Q OKAY. AND I SEE THESE OTHER VEHICLES WITH ALL THESE
13 YELLOW TAPES AROUND MARKING OFF THE -- THE AREA. I SEE A
14 SIDEWALK WITH SOME DEBRIS ON IT. IS THAT WHERE THE SHOOTING
15 OCCURRED?
16 A YES. THAT'S WHERE BOBBY WAS LAYING.
17 Q OKAY. SO THESE OTHER VEHICLES THAT WE SEE IN THE
18 PHOTO ARE FACED OPPOSITE THE RED TRUCK --
19 A YES.
20 Q -- CORRECT?
21 ALL RIGHT. YOU DIDN'T SEE -- DID YOU SEE AT ANY
22 TIME WHEN THAT RED TRUCK ARRIVED?
23 A NO.
24 THE COURT: I'LL TAKE THAT. THANK YOU, MR. MOMOT.
25 OKAY. I'M SORRY, HOLD ON, BECAUSE I WASN'T PAYING

1 ATTENTION. WHICH RED TRUCK ARE YOU TALKING ABOUT YOU BELIEVE
2 IS BOBBY'S FATHER'S?

3 THE WITNESS: IT'S THE ONE TO THE RIGHT?

4 THE COURT: OKAY.

5 THE WITNESS: IT'S BEHIND THE --

6 MR. BATEMAN: SO LIKE THAT S.U.V.?

7 THE WITNESS: YES.

8 THE COURT: OKAY.

9 BY MR. MOMOT:

10 Q THE FIGHT BETWEEN BOBBY AND -- UH -- LORENZO IS
11 ABOUT HAVING SEX WITH AMANDA, CORRECT?

12 A YES.

13 Q OKAY. AND -- AND THEN BOBBY SAYS TO LORENZO -- AND
14 THIS IS DURING THE COURSE, THEY'RE ARGUING OVER WHO'S GOING TO
15 HAVE SEX WITH HER, BOBBY SAYS, LOOK, MAN, I DON'T WANT TO
16 FIGHT YA?

17 A YES.

18 Q AND THAT'S JUST BEFORE HE PUNCHES LORENZO, CORRECT?

19 A YEAH. LORENZO'S TELLING ME, HE SAYS --

20 Q AND -- AND -- NO, PLEASE.

21 HE SAYS, LOOK MAN, I DON'T WANT TO FIGHT YA, AND
22 THEN SHORTLY THEREAFTER HE HITS LORENZO IN THE FACE, CORRECT?

23 A YEAH. BUT, YOU KNOW, WHAT --

24 Q OKAY. THAT'S ALL I ASKED, YES.

25 BUT AS A MATTER OF FACT HE SAYS, LOOK, MAN, I DON'T

1 WANT TO FIGHT YA, BUT YOU AIN'T FUCKING HER.

2 A YEAH. HE SAID -- HE SAID, YOU'RE NOT GOING TO F
3 HER, AND HE GOES, TO HELL I'M NOT, I'M GOING TO SHOW HER WHAT
4 A REAL MAN IS, AND THEN BOBBY --

5 Q OKAY. BUT I DIDN'T ASK -- I KNOW ABOUT THE REST OF
6 IT, I'M JUST ASKING AT THIS POINT IN TIME.

7 AND -- AND YOUR STATEMENT ON PAGE 7 TO THE POLICE,
8 YOU SAY, LOOK, MAN, I DON'T WANT TO FIGHT YA, AND HE SAID, BUT
9 YOU AIN'T FUCKING HER, RIGHT?

10 A YEAH. WOULD -- WOULD YOU -- WHAT -- WHAT LED UP TO
11 THAT, THOUGH? YOU SEE HER LEAVING THAT -- YOU'RE LEAVING
12 SOMETHING OUT THERE.

13 Q I'M NOT LEAVING --

14 A THAT'S THE ONLY REASON WHY I SAID THAT, IS WHY HE
15 SAID THAT.

16 Q WELL, THEY'RE GOING BACK AND FORTH OVER AN ARGUMENT,
17 CORRECT, LORENZO AND BOBBY?

18 A YEAH.

19 Q THEY'RE ARGUING, RIGHT?

20 A OKAY, YEAH.

21 Q AND IT'S ALL -- IT'S OVER A WOMAN, CORRECT?

22 A IT'S OVER A -- YEAH, IT'S OVER A --

23 Q IT'S OVER AMANDA, CORRECT?

24 A YEAH.

25 Q AND THAT'S WHAT -- AND THAT'S -- BUT BOBBY SAYS, I

1 DON'T WANT TO FIGHT YA, BUT YOU'RE NOT GONNA' -- BUT YOU'RE
2 NOT GONNA' F HER, RIGHT?
3 A YEAH.
4 Q AND -- BUT THEN RIGHT AFTER THAT HE PUNCHES LORENZO,
5 CORRECT?
6 A NO, NOT UNTIL AFTER LORENZO -- LORENZO SAID WHAT HE
7 SAID.
8 Q IS IT -- BUT HE'S GOT -- HE'S STILL GOING TO HAVE
9 SEX WITH HER?
10 A HE SAID, THE HELL I'M NOT, NIGGER, I'M GONNA' SHOW
11 HER WHAT A REAL MAN IS, AND THAT'S WHEN BOBBY HIT HIM.
12 Q OKAY. AND HE PUNCHED HIM RIGHT IN THE SIDE OF THE
13 FACE, CORRECT?
14 A YES.
15 Q ALL RIGHT. AND THAT'S WHEN LORENZO SPUN AROUND, AND
16 HE WAS STAGGERING, CORRECT?
17 A YEAH.
18 Q AND THEN HE LIFTED UP HIS SHIRT, ACCORDING TO YOU,
19 AND PULLED A GUN, RIGHT?
20 A YES.
21 Q AND THEN IT WENT CLICK, RIGHT?
22 A YES.
23 Q AND THAT'S ALL WITHIN A COUPLE OF SECONDS, RIGHT?
24 A YES.
25 Q AND THAT WAS THE MISFIRE, RIGHT?

1 A YES.

2 Q OKAY. THIS WHOLE THING ONLY TOOK A COUPLE OF
3 SECONDS, CORRECT?

4 A PRETTY MUCH.

5 Q THE ARGUING, THE HIT IN THE FACE, THE REACHING FOR
6 THE GUN AND -- AND THE SHOOTING TOOK ABOUT A COUPLE OF
7 SECONDS, RIGHT?

8 A COUPLE OF MINUTES.

9 Q MINUTES?

10 A YEAH. THEY ARGUED FOR A COUPLE OF MINUTES, OR ABOUT
11 A MINUTE OR TWO.

12 Q THEY WERE ARGUING FOR A COUPLE MINUTES? HOW -- HOW
13 MUCH TIME BETWEEN THE HIT IN THE FACE TO THE TIME OF THE
14 SHOOTING? A COUPLE OF SECONDS?

15 A YEAH, A COUPLE OF SECONDS.

16 Q SECONDS.

17 THEN AFTERWARDS YOU SAID, I THINK HE STUCK IT BACK
18 IN HIS WAIST, MEANING THE GUN?

19 A YEAH, I THOUGHT HE DID.

20 Q YOU THOUGHT HE DID. BUT IN REALITY THAT'S NOT THE
21 CASE, IS IT?

22 A I DON'T THINK SO.

23 MR. MOMOT: OKAY. BEGGING THE COURT'S INDULGENCE?

24 THE COURT: UM-HUM.

25 (DISCUSSION BETWEEN MR. MOMOT AND THE DEFENDANT.)

1 **MR. MOMOT:** MAY I APPROACH THE WITNESS, YOUR HONOR?
2 **THE COURT:** YES.
3 **BY MR. MOMOT:**
4 **Q** SHOWING YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT 2,
5 OKAY? AND THIS IS THE ONE THAT YOU REFERRED TO ON DIRECT
6 EXAMINATION WITH THE PROSECUTOR, RIGHT?
7 **A** YES, SIR.
8 **Q** OKAY. NOW, THIS SHOWS THE -- THE PARKING LOT
9 CORRECT?
10 **A** YES, SIR.
11 **Q** AND --
12 **MR. BATEMAN:** MAY I APPROACH, JUDGE?
13 **THE COURT:** YES.
14 **BY MR. MOMOT:**
15 **Q** THIS SHOWS THE THREE LEVELS OF THE APARTMENT COMPLEX
16 WITH THE STAIRCASES?
17 **A** YES.
18 **Q** AND WHEN YOU FIRST CAME THERE YOU SAW BOBBY UP ON
19 THE THIRD FLOOR?
20 **A** YEAH, LORENZO SEEN HIM ON THE THIRD FLOOR WHEN HE
21 GOT OUT OF THE CAR.
22 **THE COURT:** YOU HAVE TO SPEAK UP.
23 **MR. MOMOT:** YOU CAN'T SAY WHAT LORENZO SAW.
24 **Q** WHAT -- WHAT DID YOU SEE?
25 **A** I --

1 Q WHAT DID YOU SEE?
2 A I SEEN HIM ON THE STAIRS.
3 Q YOU SEEN HIM ON THE STAIRS. WHICH STAIRS, SIR?
4 A I THINK IT'S THE THIRD FLOOR, TOP.
5 Q TOP OF THE THIRD FLOOR STAIRS?
6 A YEAH.
7 Q OKAY. SO THEN HE STARTED TO COME DOWN?
8 A UM-HUM. YES.
9 Q OKAY. SO HE STARTS COMING DOWN, AND THEN -- UM --
10 TRY TO TAKE ME, AS BEST YOU CAN -- THE TWO GIRLS -- WHERE --
11 WHERE'S YOUR CAR?
12 A TO THE LEFT.
13 Q TO THE LEFT OF THIS PARKED CAR?
14 A YES.
15 Q SO THERE'S THE LEFT SIDE OF THIS PHOTOGRAPH, AND THE
16 EXTREME PARKING SLOT, CORRECT?
17 A YES.
18 Q SO THAT THE CAR IS -- YOUR CAR IS THERE, THE GIRLS
19 LEAVE.
20 A YES.
21 Q YOU GOT OUT OF THE CAR, AND WHERE WERE YOU STANDING
22 WHEN YOU SEE BOBBY AT THE TOP OF THE STAIRS?
23 A I'M ABOUT -- WHEN BOBBY IS AT THE TOP OF THE STAIRS
24 I WAS OVER HERE.
25 Q BY THE --

1 A WHEN HE WAS COMING DOWN --
2 Q -- LEFT REAR OF THIS SILVER CAR?
3 A YES.
4 Q AND THE LEFT REAR OF THE SILVER CAR IS TO THE
5 EXTREME LEFT OF THE CARS PARKED --
6 A YES.
7 Q -- IN THIS PHOTOGRAPH, CORRECT?
8 A YES.
9 Q OKAY. AND WHERE IS LORENZO AT THIS TIME?
10 A I WAS -- I WAS HERE TO THE LEFT, HE WAS HERE TO THE
11 RIGHT, BECAUSE HE STARTED WALKING TO GO UPSTAIRS, TO GO UP TO
12 HIS APARTMENT.
13 Q HE'S GOT TO GO TO HIS APARTMENT?
14 A YES.
15 Q OKAY. AND THEN -- UH -- DO YOU REMAIN IN THIS AREA?
16 A NO. I WAS WALKING --
17 Q WHERE WERE YOU?
18 A I WAS WALKING BEHIND LORENZO.
19 Q YOU'RE WALKING BEHIND LORENZO IN THE PARKING LOT,
20 CORRECT?
21 A NO, I WAS ON THE SIDEWALK.
22 Q YOU WERE ON THE SIDEWALK, TOO?
23 A YES.
24 Q OKAY. SO THEN BOBBY COMES DOWN TO THE BOTTOM OF THE
25 STAIRS, THE ARGUING, AND BOBBY HITS LORENZO. ARE YOU STILL

1 BEHIND LORENZO AT THAT TIME?

2 A YEAH, I WAS STANDING NEAR THE TREE TO THE LEFT OF
3 THE STAIRS.

4 Q YOU'RE STANDING NEAR THE TREE?

5 A YEAH.

6 Q IS THAT BEHIND LORENZO?

7 A WELL, TO THE SIDE OF HIM.

8 Q WHICH SIDE?

9 A I WAS TO THE LEFT OF HIM. HE WAS TO THE RIGHT AT
10 THE BOTTOM OF THE STAIRS WHERE YOU COME DOWN, IT COMES OUT TO
11 THE SIDEWALK.

12 Q OKAY.

13 A AND THEY'RE ARGUING BACK AND FORTH, I WAS JUST
14 STANDING THERE.

15 Q OKAY. AND THEN BOBBY HITS LORENZO. DOES LORENZO
16 GO BACK A COUPLE FEET, OR WHERE DOES HE --

17 A HE KIND OF SPUN, STAGGERED A LITTLE BIT, AND THEN --

18 Q IN FRONT OF THIS TRUCK?

19 A YEAH.

20 Q STILL IN FRONT OF THE TRUCK?

21 A YES. WELL, TO -- ABOUT TO THE RIGHT OF THE TRUCK,
22 BECAUSE --

23 Q TO THE RIGHT OF THE TRUCK?

24 HOW MANY FEET AWAY ARE YOU FROM LORENZO AT THAT
25 TIME?

1 A TEN FEET.
2 Q TEN FEET. AND THAT'S WHEN HE PULLS THE GUN?
3 A YEAH.
4 Q OKAY.
5 A AFTER BOBBY HIT HIM, YEAH.
6 Q AFTER BOBBY HITS HIM?
7 A YES.
8 Q YOU'RE TEN FEET AWAY FROM HIM?
9 A YEAH, ABOUT TEN -- YEAH, TEN FEET. TEN, TWELVE
10 FEET.
11 Q AND YOU'RE -- YOU'RE STILL BY THAT TREE?
12 A YEAH.
13 Q AND THAT'S TO THE LEFT FRONT --
14 A LEFT.
15 Q -- OF THE TRUCK?
16 A YES, SIR.
17 MR. MOMOT: OKAY. NOTHING FURTHER, YOUR HONOR.
18 THE COURT: REDIRECT?
19 MR. BATEMAN: JUST -- JUST BRIEFLY.
20

21 REDIRECT EXAMINATION

22 BY MR. BATEMAN:

23 Q MR. MOMOT ASKED YOU ABOUT THE SHOOTING THAT TOOK
24 PLACE, BETWEEN THE TIME OF THE ACTUAL PUNCH AND THE SHOOTING,
25 AND HE -- UM -- ASKED YOU THAT WAS A COUP -- A FEW SECONDS, DO

1 YOU REMEMBER THAT LINE OF QUESTIONING?

2 A YES.

3 Q OKAY. HOW MANY SECONDS PAST, BETWEEN THE TIME BOBBY
4 PUNCHED LORENZO AND LORENZO HAD THE MISFIRE? I WANT TO BE
5 MORE SPECIFIC.

6 A PROBABLY ABOUT FIVE, SIX SECONDS.

7 Q OKAY. AND YOU TESTIFIED THAT THERE WERE ACTUALLY
8 TWO MORE SHOTS --

9 A YES.

10 Q -- AFTER THAT?

11 I THINK YOU ALSO TESTIFIED THAT LORENZO ESSENTIALLY
12 CHASED BOBBY AROUND THOSE CARS; IS THAT RIGHT?

13 A YES.

14 Q SO AFTER THE MISFIRE, WHERE THE CHASING TOOK PLACE,
15 HOW MANY SECONDS PASSED BETWEEN THE MISFIRE AND THE FIRST SHOT
16 THAT HIT BOBBY IN THE CHEST?

17 A PROBABLY ABOUT 15, 20 SECONDS.

18 Q AND WAS THAT BECAUSE OF THE CHASING?

19 A YEAH, IT WAS -- BECAUSE BOBBY WENT AROUND VEHICLES.

20 Q OKAY. AND THEN AFTER THE FIRST SHOT THAT HIT BOBBY
21 IN THE CHEST -- WELL, THE SHOT THAT HIT BOBBY IN THE CHEST,
22 HOW MANY SECONDS PASSED BETWEEN THAT TIME AND THE TIME WHEN
23 THE DEFENDANT THEN WALKED OVER THE TOP OF BOBBY'S BODY AND
24 SHOT HIM IN THE BUTT?

25 A ABOUT 10 SECONDS.

1 MR. BATEMAN: OKAY. I DON'T HAVE ANY ADDITIONAL
2 QUESTIONS.

3 THE COURT: ANY RECROSS?

4 MR. MOMOT: I DO. I DO. I DO.

5

6 RECROSS-EXAMINATION

7 BY MR. MOMOT:

8 Q I'M LOOKING AT STATE'S EXHIBIT 2.

9 SIR, IF BOBBY'S COMING DOWN THE STAIRCASE, AND
10 YOU'RE OVER HERE BY THIS TREE, RIGHT?

11 A YEAH.

12 Q AND THAT'S IN FRONT OF THE PICKUP TRUCK, RIGHT?

13 A YES.

14 Q AND LORENZO IS TO THE RIGHT OF YOU, RIGHT?

15 A YES.

16 Q AND HERE'S THE FIRST ARGUMENT, RIGHT?

17 A YES. WELL THIS -- THE FIRST ONE WAS AT --

18 Q WELL, I'M SORRY -- I'M SORRY, I SHOULDN'T SAY FIRST
19 ARGUMENT. THEY'RE -- THEY'RE ARGUING.

20 A YEAH.

21 Q BOBBY HITS LORENZO IN THE FACE, RIGHT?

22 A YEAH.

23 Q YOU SAID LORENZO STAGGERED OVER HERE TO THE RIGHT OF
24 THE TRUCK --

25 A UM-HUM.

1 Q -- AND PULLED HIS GUN, OKAY?
2 A YEAH.
3 Q AND THEN THERE WAS?
4 A HE STA -- YEAH, HE STAGGERED BACK HERE TO THE LEFT.
5 Q LORENZO DID?
6 A YES.
7 Q THAT'S AFTER HE GETS SHOT?
8 A UM-HUM.
9 Q BUT IT'S ALL HAPPENING IN FRONT OF THIS TRUCK,
10 RIGHT?
11 A WELL, TO THE RIGHT OF THE TRUCK WHERE THE SIDEWALK
12 COMES OUT.
13 Q YEAH. IT'S ALL ON THE SIDEWALK IN FRONT OF THIS
14 TRUCK, RIGHT?
15 A YES.
16 Q NOBODY IS RUNNING AROUND IN THE BACK OF THIS TRUCK?
17 A IN FRONT OF THE TRUCK AND THE CAR.
18 NO, I DIDN'T SAY HE WENT AROUND THE TRUCK. HE WENT
19 AROUND THESE CARS, HE CHASED HIM AROUND THEM CARS, AND WHEN HE
20 GOT ABOUT HERE IS WHEN HE SHOT HIM THE FIRST TIME. HE
21 STAGGERED BACK ABOUT SIX -- FOUR OR FIVE STEPS, AND FELL ON
22 HIS FACE. SPUN AROUND --
23 Q HE FELL --
24 A -- AND FELL ON HIS FACE.
25 Q -- IN FRONT OF THE TRUCK?

1 A RIGHT NEXT TO THE LEFT OF THE TRUCK, WHERE HIS
2 CLOTHES ARE.
3 Q WHERE THE CLOTHES ARE DEPICTED IN THIS PHOTO?
4 A YEAH.
5 Q IT'S ON THE SIDEWALK?
6 A YES.
7 Q BY THE TREE?
8 A YES.
9 Q SO ARE YOU TESTIFYING THAT THE DEFENDANT CAME OUT
10 AND WAS RUNNING AROUND THESE CARS OUT IN THE PARKING LOT?
11 A WHEN HE -- AFTER BOBBY HITS HIM, HE WENT BACK THIS
12 WAY AND TOWARDS ME.
13 Q YOU SAY HE --
14 A TOWARDS ME --
15 Q -- BOBBY?
16 A LORENZO. LORENZO. AND THEN BOBBY WENT IN BETWEEN
17 THE CARS WHEN HE PULLED THE GUN, AND THEN WENT AROUND THEM,
18 AND THEN HE WENT AFTER HIM. LORENZO WENT AFTER HIM, AND THEN
19 HE CAME AROUND, HE WAS COMING DOWN THE SIDEWALK, HE SAID,
20 "WHAT ARE YOU GONNA' DO, SHOOT ME, DUDE?" AND THAT'S WHEN HE
21 SHOT HIM IN THE CHEST, AND HE STAGGERED BACK A -- A COUPLE
22 STEPS, SPUN AROUND AND FELL ON HIS FACE.
23 Q SO YOU'RE SAYING THAT -- NOW, LORENZO WAS BY THE
24 TREE WITH YOU?
25 A NO. LORENZO WAS CHASING HIM. LORENZO'S OVER HERE

1 BY THAT TIME, BECAUSE HE SHOT HIM, AND BOBBY FELL THERE. HE
2 STAGGERED BACK A COUPLE STEPS AND TURNED AROUND AND FELL ON
3 HIS FACE.

4 Q SO ALL OF THEIR POSITIONS ARE JUXTAPOSED OR CHANGED,
5 THEN, IS WHAT YOU'RE SAYING?

6 A THIS IS WHERE THE THING COMING OUT, THAT'S WHERE HE
7 HIT HIM. LORENZO STAGGERS BACK --

8 Q LOREN -- WHEN YOU SAY --

9 A -- THIS WAY, AND BOBBY WENT IN BETWEEN THE CARS WHEN
10 HE PULLED THE GUN.

11 Q ALL RIGHT, WAIT A MINUTE. WAIT A MINUTE, YOU WENT
12 FAST HERE.

13 THIS IS AT THE EDGE OF THE BUILDING, CORRECT?

14 A YES. YEAH, THIS IS -- THIS IS WHERE THE STAIRS COME
15 DOWN, IT'S THE LITTLE THING THAT GOES UP TO HOLD THE STAIR AT
16 THE BOTTOM OF THE STAIRS. THE STAIRS COME OUT RIGHT HERE AND
17 THEN IT'S A SIDEWALK --

18 Q OH.

19 A -- THAT COMES IN --

20 Q OH. OH.

21 A -- TO THE MAIN SIDEWALK.

22 Q ALL RIGHT. SO WHAT YOU'RE SAYING HERE IS, THAT THE
23 BOT -- THE STAIRCASE EMPTIES OUT BY THE RIGHT FRONT OF THE
24 TRUCK?

25 A YES.

1 Q OKAY. NOT THE LEFT FRONT?
2 A NO. THE RIGHT.
3 Q THE RIGHT FRONT OF THE TRUCK, AND THAT'S WHERE ALL
4 THIS ACTIVITY IS TAKING PLACE --
5 A YES.
6 Q -- IS BETWEEN THE TRUCK --
7 A THE TRUCK.
8 Q -- AND THIS --
9 A SILVER CAR.
10 Q -- SILVER CAR TO THE RIGHT OF THE TRUCK?
11 A YES.
12 Q ALL RIGHT. AND -- AND THAT'S WHERE BOBBY PUNCHES
13 LORENZO?
14 A YES.
15 Q IT'S IN BETWEEN -- IT'S ON THE SIDEWALK, BUT IN
16 BETWEEN THESE TWO VEHICLES?
17 A YES. IF THE VEHICLES WERE ON THE SIDEWALK IT WOULD
18 BE --
19 Q IT -- RIGHT IN BETWEEN --
20 A -- WOULD BE DIRECTLY IN BETWEEN THEM.
21 Q RIGHT. BUT THEY'RE NOT, SO --
22 A YEAH.
23 Q -- IT'S STILL -- BUT AREA WISE IT'S BETWEEN THE
24 VEHICLES?
25 A YES.

1 Q OKAY. THEN BOBBY BACKS UP BECAUSE LORENZO PULLS THE
2 GUN, AND THEN YOU HEAR THE CLICK AND THEN THE SHO --
3 A YEAH.
4 Q -- THEN THE SHOT?
5 A YES.
6 Q THEN BOBBY BACKS UP --
7 A AFTER THE CLICK BOBBY WENT IN BETWEEN THE CARS AND
8 STARTED TO GO THIS WAY TO THE RIGHT, AND HE -- LORENZO WENT
9 AFTER HIM, AND THEN HE WENT AROUND THE CARS AND HE SAID, WHAT
10 ARE YOU GONNA' DO -- GOT BACK ON THE SIDEWALK, HE SAID, "WHAT
11 ARE YOU GONNA' DO, SHOOT ME, DUDE", AND THAT'S WHEN HE SHOT
12 HIM THE FIRST TIME, AND HE STAGGERED BACK AND FELL THERE TO
13 THE LEFT OF THE FRONT OF THE TRUCK.
14 MR. MOMOT: OKAY. NO FURTHER QUESTIONS.
15 MR. BATEMAN: NOTHING ELSE.
16 THE COURT: THANK YOU VERY MUCH, APPRECIATE YOUR TIME,
17 MR. HILDEBRAND.
18 -- MR. BATEMAN: CAN WE APPROACH BRIEFLY?
19 THE COURT: SURE.
20 MR. BATEMAN: WAIT OUTSIDE.
21 (WHEREUPON COUNSEL APPROACHED THE BENCH.)
22 THE COURT: UM -- OKAY. GO AHEAD.
23 MR. BATEMAN: STATE CALLS ROBERT HOLLAND.
24 THE MARSHAL: ROBERT?
25 MR. BATEMAN: HOLLAND.

1 **THE MARSHAL:** SIR, COME ON UP HERE. PLEASE STEP UP TO
2 THE WITNESS STAND, SIR. FACE THE CLERK.

3 **THE CLERK:** PLEASE RAISE YOUR RIGHT HAND.

4

5 **ROBERT HOLLAND, II**

6 CALLED AS A WITNESS BY THE STATE, AND HAVING BEEN FIRST DULY
7 SWORN TO TESTIFY TO THE TRUTH, THE WHOLE TRUTH, AND NOTHING
8 BUT THE TRUTH, TESTIFIED AS FOLLOWS:

9

10 **THE WITNESS:** YES.

11 **THE CLERK:** I'M SORRY?

12 **THE WITNESS:** YES.

13 **THE CLERK:** THANK YOU. GO AHEAD AND HAVE A SEAT.

14 COULD YOU PLEASE STATE YOUR FIRST AND YOUR LAST NAME, AND
15 SPELL BOTH FOR THE RECORD?

16 **THE WITNESS:** FIRST NAME IS ROBERT, LAST NAME IS HOLLAND.
17 THAT'S H-O-L-L-A-N-D.

18 **THE COURT:** THANK YOU. YOU CAN PROCEED.

19 **MR. BATEMAN:** THANK YOU.

20

21 **DIRECT EXAMINATION**

22 **BY MR. BATEMAN:**

23 **Q** SIR, I'M GOING TO DIRECT YOUR ATTENTION TO THE EARLY
24 MORNING HOURS OF DECEMBER 22ND OF LAST YEAR, DO YOU REMEMBER
25 THAT TIME PERIOD?

1 A YES.

2 Q AND WERE YOU WITH YOUR SON?

3 A YES.

4 Q WHAT'S HIS NAME.

5 A ROBERT HOLLAND.

6 Q SAME AS YOURS?

7 A YES.

8 Q ARE YOU THE SECOND, AND HE'S THE THIRD?

9 A THAT'S CORRECT.

10 Q ALL RIGHT. WERE YOU WITH HIM AT ARIZONA CHARLIE'S

11 THAT NIGHT?

12 A I WASN'T WITH HIM, I PICKED HIM UP THERE.

13 Q OKAY. YOU DROVE THERE AND PICKED HIM UP?

14 A YES.

15 Q OKAY. AND WHERE DID YOU TAKE HIM?

16 A TO -- UM -- THE SUITES -- UM -- DOWN -- FURTHER DOWN

17 ON BOULDER HIGHWAY BY 95.

18 Q UNDERSTAND. HOW DID YOU KNOW TO GET TO ARIZONA

19 CHARLIE'S TO PICK HIM UP?

20 A HE HAD CALLED.

21 Q OKAY. DID HE HAVE A CELL PHONE AT THAT TIME?

22 A YES.

23 Q ALL RIGHT. AND HE CALLED YOU?

24 A YES.

25 Q WHAT CAR WERE YOU DRIVING?

1 A UM -- IT WAS MY MOM'S CAR.
2 Q WHAT KIND OF CAR?
3 A IT WAS A DODGE -- UM -- I CAN'T REMEMBER. A
4 DODGE -- UM --
5 Q IS IT A DURANGO?
6 A YES.
7 Q OKAY. IS IT RED?
8 A YES.
9 Q S.U.V.?
10 A YES.
11 Q SO YOU WENT AND PICKED HIM UP THAT EVENING; IS THAT
12 RIGHT, OR THE MORNING HOURS?
13 A YES, IT WAS AFTER TWELVE.
14 Q WAS HE WITH ANYBODY WHEN YOU PICKED HIM UP AT
15 ARIZONA CHARLIE'S?
16 A NO.
17 Q WHERE DID YOU PICK HIM UP AT ARIZONA CHARLIE'S?
18 A OUT IN THE PARKING LOT.
19 Q RIGHT. AND DID HE ASK YOU TO TAKE HIM SOME PLACE?
20 A YES.
21 Q AND WAS THAT THE SIEGEL SUITES?
22 A THE SIEGEL SUITES, YES.
23 Q OKAY. DID YOU KNOW AT THAT TIME WHETHER -- UM --
24 DID HE GO BY BOBBY?
25 A YES.

1 Q DID HE HAVE A GIRLFRIEND?
2 A YES.
3 Q WHAT WAS HER NAME?
4 A HER NAME WAS AMANDA.
5 Q OKAY. HAD YOU SEEN BOBBY AND AMANDA TOGETHER MORE
6 THAN ONCE?
7 A SEVERAL TIMES.
8 Q OKAY. THEY HELD THEMSELVES OUT TO YOU TO BE IN SOME
9 SORT OF RELATIONSHIP?
10 A YEAH. SHE CALLED ME POPS.
11 Q SHE HAD A CHILD?
12 A UH -- SHE HAD ONE, BUT I'VE NEVER MET HIM.
13 Q OKAY. UM -- YOU TOOK -- DID YOU GO DIRECTLY TO THE
14 SIEGEL SUITES FROM THE PARKING LOT OF ARIZONA CHARLIE'S?
15 A AFTER I PICKED UP BOBBY, YES.
16 Q CORRECT. AND THEN DID YOU PARK IN THE PARKING LOT?
17 A YES.
18 MR. BATEMAN: MAY I APPROACH, JUDGE?
19 THE COURT: YES.
20 BY MR. BATEMAN:
21 Q SHOWING YOU WHAT'S BEEN MARKED AND ADMITTED AS
22 STATE'S EXHIBIT 1, IS THIS A PICTURE OF THAT DODGE DURANGO?
23 A YES.
24 Q OKAY. SO WHEN YOU PARKED IN THE PARKING LOT --
25 UM -- WAS YOUR -- THE BACK WINDOW OF THE DODGE DURANGO FACING

1 THE BUILDING?

2 A THAT'S CORRECT.

3 Q DID YOU STAY IN YOUR DODGE DURANGO?

4 A YES.

5 Q WHAT DID BOBBY DO?

6 A HE -- UH -- TOLD ME TO WAIT THERE, AND THAT HE WENT
7 UP TO THE APARTMENTS.

8 Q OKAY. TO YOUR -- OKAY.

9 DID YOU OBSERVE WHAT, IF ANYTHING, WAS GOING ON, AND
10 IF SO, HOW DID YOU OBSERVE IT?

11 A UM -- THEY CAME AFTER BOBBY. WE WERE THERE BEFORE
12 THEY WERE, WHICH I DIDN'T KNOW AT THE TIME, BUT THEY PULLED UP
13 ACROSS FROM ME -- OR BEHIND ME AND PULLED IN AND GOT OUT. AND
14 THEN AMANDA AND SOMEONE ELSE, WHO I DON'T KNOW WHO IT WAS, GOT
15 BACK IN THE CAR AND LEFT, AND THE DEFENDANT HAD STAYED BEHIND
16 BY HIMSELF.

17 Q OKAY.

18 A AND THEN AT THIS TIME BOBBY WAS STILL UP -- UH --
19 NOT ON THE GROUND FLOOR, BECAUSE I COULDN'T SEE HIGHER THAN
20 THE FIRST FLOOR.

21 Q LET ME ASK YOU THIS. THE PEOPLE THAT SHOWED UP --
22 SO YOU GET THERE AND SOME -- DID YOU KNOW THAT BOBBY HAD SOME
23 SORT OF CONTACT -- CONTACT WITH SOME PEOPLE THAT THEN CAME
24 LATER; IS THAT WHAT HAPPENED?

25 A WELL, WHAT HAPPENED WAS THAT HE WENT UP TO THE

1 APARTMENT --

2 Q OKAY.

3 A -- WHICH I COULDN'T SEE.

4 Q HOW WERE YOU WATCHING? HOW WERE YOU WATCHING?

5 A MY REARVIEW MIRROR.

6 Q OKAY.

7 A I COULD JUST SEE THE STEPS ON THE FIRST FLOOR, AND

8 HE WENT UP TO THE STEPS AND WENT UPSTAIRS, AND THEN -- UM -- I

9 WOULD SAY ABOUT FIVE MINUTES LATER THEY PULLED UP.

10 Q THESE PEOPLE?

11 A YES.

12 Q DID YOU RECOGNIZE ALL -- ALL THE PEOPLE?

13 A I RECOGNIZED TWO OF THE THREE.

14 Q WHO DID YOU RECOGNIZE?

15 A THE DEFENDANT. I RECOGNIZED AMANDA -- AMANDA, AND A

16 THIRD-PARTY OF WHICH I DIDN'T KNOW WHO HE WAS.

17 Q OKAY. SO YOU SAID THE DEFENDANT. WAS THAT -- DO

18 YOU KNOW THAT PERSON'S NAME?

19 A I KNOW BY HIM -- I KNOW HIM BY LORENZO.

20 Q ALL RIGHT. AND -- UM -- HAD YOU MET THIS PERSON

21 BEFORE?

22 A YES.

23 Q AND WHERE HAD YOU MET HIM?

24 A AT BOBBY'S HOUSE.

25 Q OKAY. SO YOU SAW THAT PERSON, AND YOU RECOGNIZED

1 AMANDA, WERE THERE TWO OTHER INDIVIDUALS?

2 A JUST ONE. I ONLY SEEN ONE OTHER INDIVIDUAL.

3 Q AND THEN YOU SAW TWO OF THE INDIVIDUALS GET IN THE
4 VEHICLE AND DRIVE AWAY?

5 A AMANDA AND THE ONE I DIDN'T NOT KNOW, AND THE
6 VEHICLE THEN LEFT, AND LORENZO -- LORENZO WAS STILL THERE
7 BEFORE BOBBY EVEN CAME DOWN THE STAIRS.

8 Q OKAY. AND WERE YOU WATCHING WHAT WAS GOING ON THE
9 WHOLE TIME, OR WERE YOU KIND OF GLANCING BACK AND FORTH?

10 A I WAS NOT FULLY WATCHING, BUT BASICALLY -- UH --
11 MOST OF THE TIME I WAS WATCHING.

12 Q OKAY. AND WHAT, IF ANYTHING, DID YOU SEE WHILE YOU
13 WERE WATCHING?

14 A UM -- WHEN BOBBY FINALLY CAME DOWN THE STAIRS,
15 LORENZO'S BACK WAS TOWARDS ME, AND BOBBY WAS FACING ME, BUT
16 LORENZO WAS LIKE IN THE PARKING LOT, WHERE BOBBY WAS ON THE
17 SIDEWALK.

18 MR. BATEMAN: OKAY. I'M GOING TO SHOW YOU -- MAY I
19 APPROACH JUDGE?

20 THE COURT: UM-HUM.

21 BY MR. BATEMAN:

22 Q SHOW YOU EXHIBIT NO. 2. DOES THIS LOOK LIKE THE
23 VIEW YOU -- OR APPROXIMATELY THE VIEW YOU HAD FROM THE BACK OF
24 YOUR VEHICLE?

25 A CORRECT.

1 Q OKAY. AND THEN WHAT HAPPENED AT THAT POINT WHEN YOU
2 SAW BOBBY FACING YOU AND LORENZO WITH HIS BACK TOWARDS YOU?
3 A UH -- THEY WERE THERE JUST -- THEY WERE TALKING THE
4 WHOLE TIME FOR QUITE AWHILE, I'D SAY LIKE FOUR TO FIVE
5 MINUTES.
6 Q OKAY. FOUR TO FIVE?
7 A YEAH.
8 Q DID IT APPEAR TO BE SOME SORT OF AN ARGUMENT?
9 A UH -- NOT AN AGGRESSIVE ARGUMENT, BUT LIKE THEY WERE
10 DISCUSSING SOMETHING.
11 Q OKAY. AND WHAT -- DID YOU THEN WATCH WHAT HAPPENED
12 NEXT?
13 A THEN ALL OF A SUDDEN I SAW BOBBY PUNCH LORENZO IN
14 THE HEAD AREA, BECAUSE I COULDN'T REALLY SEE WHERE IT LANDED.
15 AND THEN I WENT TO GO GET OUT TO SEE WHAT WAS GOING ON.
16 WELL, FIRST OF ALL, THEY BACKED UP BEHIND THE TRUCK,
17 AND I DIDN'T KNOW WHY, BUT BOBBY BACKED UP AND THEN HE WENT
18 AF -- FOLLOWED HIM.
19 MR. BATEMAN: OKAY. CAN I APPROACH AGAIN, YOUR HONOR?
20 THE COURT: YES.
21 MR. BATEMAN: JUST FOR CLARIFICATION.
22 Q SO YOU'RE SITTING IN YOUR CAR. IS YOUR VEHICLE
23 STILL RUNNING?
24 A NO, IT WAS NOT RUNNING.
25 Q OKAY. COME ON UP. I'LL WAIT FOR MR. MOMOT.

1 OKAY. SO -- UM -- YOU SAW THEM -- INITIALLY WHERE
2 DID YOU SEE THEM?
3 A BOBBY WAS ON THE SIDEWALK RIGHT HERE.
4 Q OKAY. RIGHT HERE BY THAT TREE?
5 A WELL NO, BY THE FRONT OF THIS TRUCK.
6 Q OH, OKAY.
7 A AND LORENZO WAS RIGHT NEXT TO THE TRUCK ON THE
8 PAVEMENT. I THINK MY CAR WAS MORE THIS WAY.
9 Q OKAY.
10 A AND THEN BOBBY --
11 Q MORE TO THE RIGHT?
12 A RIGHT. BECAUSE I COULD SEE THE BACK OF THE TRUCK.
13 Q ALL RIGHT.
14 A AND ANYWAYS, THEN AFTER BOBBY HIT HIM, BOBBY BACKED
15 UP BEHIND THE TRUCK, AND THEN LORENZO FOLLOWED HIM.
16 Q OKAY. SO AT THAT POINT WERE YOU ABLE TO SEE WHAT
17 OCCURRED?
18 A NO. THEN I COULD NOT SEE EITHER ONE OF THEM.
19 Q OKAY. NOW, WERE YOU RUSHING TO GET OUT OF YOUR
20 VEHICLE AT THAT POINT?
21 A NO, I WAS JUST GOING TO SEE WHAT WAS GOING ON,
22 BECAUSE I COULDN'T -- I LOST SIGHT OF THEM.
23 Q ALL RIGHT.
24 A AND AS I WAS DOING THAT I HEARD SHOTS.
25 Q ALL RIGHT. UM -- YOU DIDN'T SEE THE SHOOTING?

1 A NO, I DID NOT.

2 Q OKAY. UM -- AND WHAT'S THE NEXT THING YOU SAW?

3 A THEN I SAW LORENZO COMING FROM THE OTHER SIDE OF THE

4 VEHICLE.

5 Q WHEN YOU SAY THE OTHER SIDE, WHICH SIDE?

6 A YEAH, THIS SIDE.

7 Q THE RIGHT SIDE?

8 A YES.

9 Q OKAY. AND WHEN YOU SAY COMING, IS HE MOVING --

10 A HE WAS WALKING -- UM -- I WOULD SAY WEST.

11 Q OKAY. WAS HE GOING -- WAS THIS BEFORE OR AFTER THE

12 SHOTS THAT YOU SAW THIS WALKING?

13 A AFTER THE SHOTS.

14 Q OKAY. AND TO THE RIGHT ON THIS PHOTOGRAPH, IS THAT

15 TO THE WEST OR TO BOULDER HIGHWAY?

16 A YEAH, TOWARDS BOULDER HIGHWAY.

17 Q ALL RIGHT.

18 A I SAW HIM WALKING TOWARDS BOULDER HIGHWAY, AND THEN

19 HOLDING A GUN AND FIRING TWICE AT SOMEONE RUNNING WEST OR

20 SOUTHWEST INTO THE APARTMENT COMPLEX.

21 Q OKAY. WAS THAT MORE SHOTS THAN THE FIRST ONES YOU

22 HEARD?

23 A RIGHT, TWO MORE SHOTS.

24 Q OKAY. BUT LET'S TALK ABOUT THE FIRST TWO SHOTS.

25 YOU SAW THERE -- I THINK IF I -- TELL ME IF I'M RIGHT, YOU SAW

1 BOBBY GOING WEST AND -- AND THEN LORENZO FOLLOWING HIM WEST
2 BEHIND THIS CHEVROLET TRUCK?
3 A THAT'S CORRECT.
4 Q AND THAT'S WHEN YOU LOST SIGHT OF WHATEVER WAS GOING
5 ON BETWEEN BOBBY AND LORENZO?
6 A THAT'S CORRECT.
7 Q AND THEN YOU STARTED GETTING OUT OF YOUR VEHICLE?
8 A THAT'S CORRECT.
9 Q SO WHEN YOU START GETTING OUT OF YOUR VEHICLE, I
10 ASSUME THAT YOU WEREN'T WATCHING WHAT WAS GOING ON BECAUSE YOU
11 WERE PREVIOUSLY WATCHING IT FROM YOUR REARVIEW MIRROR?
12 A CORRECT.
13 Q AND THEN SOME PERIOD OF TIME LATER YOU HEARD TWO
14 SHOTS; IS THAT RIGHT?
15 A THAT'S CORRECT.
16 Q YOU DIDN'T SEE THOSE TWO SHOTS OR WHAT OCCURRED?
17 A THAT'S CORRECT.
18 Q AND THEN YOU SAW THE DEFENDANT LORENZO GOING TOWARDS
19 THE WEST TOWARDS BOULDER HIGHWAY?
20 A THAT'S CORRECT.
21 Q AND YOU SAID YOU SAW HIM SHOOT TWICE MORE?
22 A THAT'S CORRECT.
23 Q OKAY. WHAT DID YOU DO AT THAT POINT?
24 A I HAD JUST STARTED WATCHING HIM IN MY SIDE REARVIEW
25 MIRROR.

1 Q OKAY. WATCHING WHO?
2 A LORENZO.
3 Q IS THAT HOW YOU SAW HIM DO THE SHOOTING TO THE WEST?
4 A RIGHT. BECAUSE I SEEN SOMEBODY THAT -- RUNNING INTO
5 THE BUILDING, WHICH I, AT THAT TIME, I THOUGHT WAS BOBBY.
6 Q OKAY.
7 A SO I WAS JUST KEEPING AN EYE ON HIM. AND THEN HE --
8 UH -- AFTER HE FIRED THE TWO SHOTS HE TURNED AROUND AND THEN
9 SHOT TOWARDS THE GROUND, AND THEN HE WALKED TOWARDS ME IN
10 BETWEEN THE TRUCK.
11 Q WHO DID?
12 A LORENZO.
13 Q OKAY.
14 A AND THE CAR, AND THREW THE GUN UNDERNEATH THE CAR.
15 Q ALL RIGHT.
16 A AND HE WALKED TOWARDS LIKE THE CENTER OF THE PARKING
17 LOT, AND WALKED TOWARDS BOULDER HIGHWAY.
18 Q SO ARE YOU TELLING ME YOU -- AS YOU SIT HERE TODAY,
19 YOU RECALL FOUR SHOTS OR TWO SHOTS TOTAL?
20 A TOTAL FIVE SHOTS.
21 Q OH, OKAY. BUT YOU'RE ALSO SAYING YOU SAW THE
22 DEFENDANT SHOOTING IN THE DIRECTION OF WHAT YOU THOUGHT TO BE
23 BOBBY?
24 A THAT'S CORRECT.
25 Q OKAY. WHERE DID BOBBY END UP IN THIS PARTICULAR

1 PHOTOGRAPH?

2 A BEHIND THE TRUCK ON THE SIDEWALK.

3 Q OKAY. AND YOU SAW THE DEFENDANT THEN, AT SOME POINT

4 AFTER THE SHOOTING, HEAD TOWARDS BOULDER HIGHWAY?

5 A THAT'S CORRECT.

6 Q AND THAT'S AFTER THE DEFENDANT THREW HIS GUN DOWN?

7 A HE THREW IT UNDERNEATH A CAR.

8 Q WHICH CAR, DO YOU REMEMBER?

9 A UM -- I BELIEVE IT WAS THIS CAR HERE.

10 Q OKAY. THE ONE NEXT TO THE CHEVROLET TRUCK TO THE --

11 A YES.

12 Q -- WEST?

13 A IT WAS EITHER THAT ONE OR THE ONE NEXT TO IT.

14 Q IT'S IN THIS AREA?

15 A RIGHT.

16 Q UM -- AND THEN WHAT DID YOU DO?

17 A I GOT OUT OF THE CAR AND WALKED -- STARTED WALKING

18 TOWARDS THE AREA WHERE I SAW THE PERSON RUNNING THAT HE WAS

19 SHOOTING AT.

20 Q OKAY.

21 A AND I GOT HALF WAY TO THE SIDEWALK, AND ON THE OTHER

22 SIDE OF THE BUILDING I SEE SOMEONE COME FROM THERE AND WALK ON

23 THE SIDEWALK AND CALL BOBBY'S NAME, WAS SAYING, "BOBBY, YOU

24 OKAY?" AND I SAW HIM LOOKING DOWN ON THE SIDEWALK. SO AT

25 THAT TIME I WALKED AROUND THE TRUCK AND SEEN BOBBY LAYING ON

1 THE SIDEWALK.

2 Q WAS THAT PERSON, HAVE YOU SINCE LEARNED, TIM?

3 A THAT'S CORRECT.

4 Q AND YOU SAW HIM HERE TODAY?

5 A THAT'S CORRECT.

6 Q OKAY. AND THEN DID YOU GIVE AID TO BOBBY?

7 A YEAH. I CALLED 9-1-1 -- WELL, OF COURSE I CHECKED
8 HIS PULSE, AND THEN I CALLED 9-1-1, AND THEY TOLD ME TO START
9 CPR.

10 Q AND EVENTUALLY DID THE POLICE COME?

11 A YEAH. I HAD -- WAS GIVING HIM CPR AND THE POLICE
12 SHOWED UP, AND THEN THE AMBULANCE SHOWED UP.

13 Q DO YOU SEE LORENZO IN THE COURTROOM TODAY?

14 A YES, I DO.

15 Q CAN YOU POINT TO HIM AND DESCRIBE WHAT HE'S WEARING?

16 A HE'S THE PERSON WITH THE BLUE -- UM --

17 MR. BATEMAN: MAY THE RECORD --

18 THE WITNESS: -- JUMPSUIT, WHATEVER.

19 MR. BATEMAN: OKAY. MAY THE RECORD REFLECT

20 IDENTIFICATION OF THE DEFENDANT, YOUR HONOR?

21 AND I'LL PASS THE WITNESS.

22 THE COURT: YES.

23 CROSS-EXAMINATION?

24 ///

25 ////

CROSS-EXAMINATION

1

2 BY MR. MOMOT:

3 Q SIR -- UH -- SHOWING YOU AGAIN STATE'S EXHIBIT NO.

4 2. YOU'RE IN A VEHICLE THAT'S PARKED OVER ON THIS SIDE OF THE
5 PARKING LOT?

6 A RIGHT.

7 Q OKAY. THE BACK OF IT IS TO THE REAR OF THE --

8 A BACK FACING THE APARTMENT COMPLEX.

9 Q APARTMENT COMPLEX. OKAY.

10 NOW, WHEN BOBBY COMES DOWN THE STAIRS, YOU SEE HIM
11 IN FRONT OF THIS CHEVROLET TRUCK, CORRECT?

12 A UH -- TO THE SIDE AND THE FRONT.

13 Q WHICH SIDE?

14 A THIS SIDE RIGHT HERE.

15 Q BY THE -- BETWEEN THE CHEVROLET TRUCK AND THE TREE?

16 A WELL, IN FRONT OF THE TREE ON THE SIDEWALK. THERE'S
17 A SIDEWALK THAT RUNS RIGHT IN FRONT OF THIS --

18 Q ALL RIGHT. OKAY.

19 A -- ON THE SIDEWALK, IN THE FRONT SIDE OF THE TRUCK.

20 Q DO YOU EVER SEE BOBBY OUT IN THIS PARKING LOT AREA?

21 A NO.

22 Q YOU NEVER SEE BOBBY RUNNING AROUND THESE CARS?

23 A NO.

24 Q DO YOU SEE THE DEFENDANT RUNNING AROUND THESE CARS
25 IN THE BACK OF THE PARKING LOT?

1 A AFTER THE SHOOTING.

2 Q AFTER THE SHOOTING OCCURRED WHEN HE LEFT TO GO --

3 A THAT'S CORRECT.

4 Q -- GO WEST TO BOULDER HIGHWAY, YOU SEEN HIM IN THE

5 PARK -- THIS PARKING LOT?

6 A THAT'S CORRECT.

7 Q BUT BEFORE THAT YOU DIDN'T SEE HIM ON THIS SIDE OF

8 THE CHEVROLET TRUCK OR THAT -- THIS SIDE OF THE CAR?

9 A THAT'S CORRECT. THAT'S CORRECT.

10 Q YOU NEVER SEEN HIM OUT HERE IN THE PARKING LOT?

11 A THAT'S CORRECT.

12 Q OKAY. YOU NEVER SEEN -- YOU NEVER SEEN THE

13 DEFENDANT CHASING BOBBY, YOU JUST HEARD THE SHOTS?

14 A NO, I SEEN -- UM -- AFTER BOBBY HAD PUNCHED HIM,

15 BOBBY HAD BACKED UP, AND I SEEN HIM FOLLOW BOBBY BEHIND THE

16 TRUCK, THAT'S ALL I SEEN.

17 Q BEHIND -- RIGHT. THAT'S THE FRONT OF THE TRUCK?

18 A THAT'S CORRECT.

19 Q OKAY. NOW, YOU -- YOU WAITED THERE FOR THE POLICE

20 TO COME, RIGHT?

21 A YES, I WAS GIVING CPR UNTIL THE POLICE COME.

22 Q AND THIS OTHER GUY THAT YOU JUST SAW TESTIFY HERE

23 TODAY, HE LEFT IMMEDIATELY AFTER THE SHOOTING, CORRECT?

24 A HE CAME BACK AFTER THE SHOOTING, BECAUSE THAT --

25 HE'S THE ONE THAT I HEARD CALL BOBBY TO SEE IF HE WAS OKAY.

1 Q RIGHT. BUT IMMEDIATELY AFTER THE SHOOTING, BUT THEN
2 HE LEAVES, CORRECT?
3 A I -- I LOST TRACK OF HIM AFTER THAT.
4 Q ALL RIGHT.
5 NOW, WHEN THE POLICE COME THEY ASK YOU TO MAKE OUT A
6 STATEMENT, RIGHT?
7 A THAT'S CORRECT.
8 Q AND THERE'S ONE THAT YOU DID IN A HANDWRITTEN
9 STATEMENT, CORRECT?
10 A YEAH. BRIEFLY, YEAH.
11 Q AND THEN YOU ALSO -- UH -- TALKED TO THE POLICE,
12 CORRECT?
13 A THAT'S CORRECT.
14 Q NOW, WHEN YOU TALKED TO THE DETECTIVES -- WHEN YOU
15 TALKED TO THE DETECTIVES, YOU TOLD THE DETECTIVES THAT YOU HAD
16 PICKED UP YOUR SON AND DROVE HIM OVER TO THIS LOCATION,
17 CORRECT?
18 A THAT'S CORRECT.
19 Q AND YOU PICKED UP YOUR SON UP AT ARIZONA CHARLIE'S
20 AND DROVE HIM OVER THERE, CORRECT?
21 A THAT'S CORRECT.
22 Q AND WHEN YOU GOT THERE YOUR SON GOT OUT OF YOUR
23 VEHICLE AND WENT UP THOSE STAIRS, CORRECT?
24 A THAT'S CORRECT.
25 Q THEN THIS OTHER VEHICLE ARRIVES?

1 A THAT'S CORRECT.

2 Q DO YOU SEE WHERE THAT VEHICLE WAS PARKED?

3 A YES, IT WAS -- IT PULLED UP NEXT TO THE TRUCK.

4 Q SHOWING YOU STATE'S EXHIBIT 2, WHERE DID THAT OTHER

5 VEHICLE --

6 A IT PULLED UP IN --

7 Q -- PULL INTO?

8 A -- BETWEEN THIS TRUCK AND THE CAR, IN THE SPOT RIGHT

9 HERE.

10 Q IN BETWEEN THE TRUCK AND THE CAR IS AN EMPTY SPOT.

11 A THAT'S CORRECT.

12 Q IT DID NOT PULL -- PULL INTO THE LEFT OF THIS CAR AT

13 THE END OF THE PARKING LOT?

14 A THAT'S CORRECT.

15 Q SO IT'S IN BETWEEN THE TRUCK AND THE CAR BY THE

16 STAIR -- BELOW THE STAIRCASE, RIGHT?

17 A THAT'S CORRECT.

18 Q NOW -- ALL RIGHT. THEN PEOPLE GOT OUT OF THAT

19 VEHICLE, CORRECT?

20 A YES.

21 Q ALL RIGHT. AND YOU KNOW WHO AMANDA IS, RIGHT?

22 A YES.

23 Q AND THE POLICE ASKED YOU ABOUT THIS, CORRECT?

24 A YES.

25 Q AND YOU'RE HOWARD HOLLAND -- MR. HOLLAND, THE 2ND,

1 CORRECT?

2 A THAT'S CORRECT.

3 Q AND YOUR SON IS MR. HOLLAND THE 3RD, RIGHT?

4 A THAT'S CORRECT.

5 Q AND THE PURPOSE OF MR. HOLLAND, YOUR SON, WAS TO

6 REQUEST YOU TO DRIVE HIM TO MR. PIMENTEL'S APARTMENT SO HE

7 COULD TALK TO AMANDA LOWE, CORRECT?

8 A THAT'S CORRECT.

9 Q AND THAT'S WHAT YOU TOLD THE POLICE, RIGHT?

10 A THAT'S CORRECT.

11 Q AND YOU DROVE TO 3625 SOUTH BOULDER HIGHWAY AND

12 PARKED ON THE NORTH SIDE OF BUILDING B, CORRECT?

13 A THAT'S CORRECT.

14 Q AND THEN YOU SAW YOUR SON GO UP THE STAIRS OF

15 BUILDING B, AND THEN -- UH -- YOU SAW -- YOU SAW AMANDA LOWE,

16 PIMENTEL AND THE OTHER MAN ARRIVE IN A CAR AND PARK NEAR HIM

17 ON THE NORTH SIDE OF BUILDING B? THAT'S WHAT YOU SAID TO THE

18 POLICE, CORRECT?

19 A THAT PARKED -- I DIDN'T HEAR THE LAST PART.

20 Q MR. HOLLAND, THE 2ND, THEN SAW LOWE, PIMENTEL AND

21 THE OTHER MAN ARRIVE IN A CAR; IS THAT CORRECT?

22 A THAT'S CORRECT, YES.

23 Q AND PARK NEAR HIM?

24 A NEAR WHO?

25 Q I DON'T KNOW -- AND NEAR HIM ON THE NORTH SIDE OF

1 BUILDING B. OKAY. SO HIS SON CAME BACK DOWN THE STAIRS AND
2 BEGAN SPEAKING WITH LOWE, PIMENTEL AND THE OTHER MAN, IS THAT
3 WHAT YOU TOLD THE POLICE?

4 A NO.

5 Q WHAT DID YOU -- YOU DIDN'T TELL THEM THAT?

6 A NO. AMANDA AND THE OTHER PERSON HAD LEFT, GOT BACK
7 IN THE CAR AND LEFT BEFORE HE CAME DOWN STAIRS.

8 Q ALL RIGHT. WELL WAIT A MINUTE.

9 OKAY. YOUR SON CAME BACK DOWN THE STAIRS AND BEGAN
10 SPEAKING WITH LOWE, PIMENTEL AND THE OTHER MAN. AT SOME POINT
11 LOWE AND THE OTHER MAN LEFT IN THE SAME CAR THAT THEY HAD
12 ARRIVED IN.

13 A YES. BEFORE BOBBY CAME DOWN THE STAIRS.

14 Q SO BEFORE BOBBY COMES DOWN THE STAIRS -- UH -- YOUR
15 SON IS THERE. BOBBY'S COMING DOWN THE STAIRS, THE DEFENDANT
16 IS THERE AND AMANDA AND THIS OTHER MAN GOT BACK IN THE CAR AND
17 LEFT, CORRECT?

18 A BOBBY'S STILL UPSTAIRS. THESE TWO GOT IN THE CAR
19 AND LEFT, AND LORENZO WAS JUST STANDING THERE BY HIMSELF --

20 Q RIGHT.

21 A -- WHEN BOBBY CAME DOWNSTAIRS, YES.

22 Q NOW WHAT I'M GETTING AT IS, WHAT YOU SAID TO THE
23 COPS, IS THAT AMANDA AND THIS OTHER MAN GOT BACK IN THE CAR
24 AND LEFT, CORRECT?

25 A THAT'S CORRECT.

1 **MR. MOMOT:** NO FURTHER QUESTIONS.
2 **THE COURT:** REDIRECT?
3 **MR. BATEMAN:** NOPE.
4 **THE COURT:** THANK YOU VERY MUCH, MR. HOLLAND, APPRECIATE
5 YOUR TIME TODAY.
6 ANY FURTHER WITNESSES OR EVIDENCE FROM THE STATE?
7 **MR. BATEMAN:** NO.
8 **THE COURT:** OKAY. SO TO RECAP BEFORE YOU REST, WE HAVE
9 EXHIBITS 4 THROUGH 11 AND -- FOR THE STATE, CORRECT?
10 **THE CLERK:** WE HAVE --
11 **MR. MOMOT:** I JUST HAVE --
12 **THE CLERK:** -- ONE THROUGH ELEVEN.
13 **THE COURT:** OH, 1 THROUGH 11, EXCUSE ME.
14 AND THEN WE NEED EXHIBIT A FROM YOU.
15 **MR. MOMOT:** YES, MA'AM.
16 **THE COURT:** AND WE HAVE EXHIBIT B. OKAY.
17 **THE CLERK:** JUST TO CLARIFY, HE SAID IT WOULD BE A1, 2 --
18 A1, A2 --
19 **THE COURT:** I THINK -- IS IT JUST GOING TO BE EXHIBIT A
20 MR. MOMOT? ARE YOU ONLY GIVING HER ONE PAGE WHEN WE MAKE A
21 COPY OF IT?
22 **MR. MOMOT:** WELL, THERE'S A FRONT AND A BACK TO IT, SO --
23 UH --
24 **THE COURT:** AND YOU QUESTIONED ABOUT BOTH?
25 **MR. MOMOT:** ABOUT THE FRONT AND THE BACK, YES.

1 **THE COURT:** OKAY. THEN WE NEED TO MAKE THIS A1 AND A2.
2 **MR. BATEMAN:** THAT'S FINE. AND WE'LL MAKE A COPY AFTER.
3 **THE COURT:** OKAY.
4 **MR. MOMOT:** WAIT, WHAT?
5 **MR. BATEMAN:** WE'LL MAKE A COPY AS SOON AS WE'RE DONE.
6 I'LL GO BACK AND I'LL MAKE A COPY.
7 **MR. MOMOT:** OKAY.
8 **THE COURT:** YES.
9 ALL RIGHT. DOES THE STATE REST?
10 **MR. BATEMAN:** IT DOES. WELL, WITH A COUPLE OF
11 AMENDMENTS, JUDGE.
12 **THE COURT:** OKAY. WELL, I NEED TO KNOW WHAT THE
13 AMENDMENTS ARE, YES.
14 **MR. BATEMAN:** I WAS GOING TO ADD A COUNT OF CARRYING
15 CONCEALED WEAPON, CATEGORY C FELONY, FOR THE TESTIMONY THAT
16 THE DEFENDANT WITHDREW A FIREARM FROM UNDER HIS SHIRT.
17 TESTIMONY WAS THAT HE COULDN'T SEE IT AHEAD OF TIME SO IT
18 WOULD BE CONCEALED.
19 I WAS ALSO GOING TO ADD ON LINE 14 CURRENTLY -- UM -- IT
20 SAYS AND -- WELL, 13 SAYS, FELONIOUSLY WITHOUT AUTHORITY OF
21 LAW AND WITH PREMEDITATION AND DELIBERATION AND WITH MALICE
22 AFORETHOUGHT. I WANT TO ADD AFTER MALICE AFORETHOUGHT, AND/OR
23 AFTER CHALLENGING ROBERT HOLLAND TO A FIGHT, COMMA, AND THEN
24 KILL ROBERT HOLLAND, SO THE REST OF IT WOULD BE THE SAME.
25 I THINK I'M ENTITLED, BASED UPON THE TESTIMONY FROM

1 TIMOTHY, THAT THE DEFENDANT CHALLENGED ROBERT HOLLAND TO A
2 FIGHT AT THE ARIZONA CHARLIE'S, AND I THINK I'M ENTITLED TO
3 THAT AS A THEORY OF MY CASE -- UM -- FOR THE JURY TO DECIDE.
4 BUT I WOULD INCLUDE THAT IN WHERE -- WHERE I STATED, AFTER
5 MALICE AFORETHOUGHT.

6 AT THAT POINT, YOUR HONOR, I'D REST.

7 THE COURT: AND WITH THOSE PROPOSED AMENDMENTS.

8 MR. MOMOT: I'M GOING TO OBJECT TO THAT LAST AMENDMENT.

9 THE COURT: OKAY, I'M GOING TO -- I'LL LET -- LET -- I
10 JUST MAKE HIM MAKE HIS PROPOSED AMENDMENTS BEFORE HE RESTS.
11 THEN I'LL ALLOW YOU TO ARGUE YOUR OPPOSITION TO THE AMENDMENTS
12 IN CLOSING.

13 MR. MOMOT: OKAY.

14 THE COURT: SO I HAVEN'T ALLOWED IT, IN OTHER WORDS. I
15 JUST MAKE HIM STATE HIS PROPOSED AMENDMENT BEFORE HE RESTS.

16 MR. MOMOT: OKAY. OKAY. OKAY.

17 THE COURT: OKAY. SO HE RESTS.

18 ANY WITNESSES OR EVIDENCE FROM THE DEFENSE?

19 MR. MOMOT: NO, YOUR HONOR.

20 THE COURT: HAVE YOU ADVISED YOUR CLIENT OF HIS RIGHT TO
21 TESTIFY?

22 MR. MOMOT: YES, YOUR HONOR. HE'S NOT GOING TO.

23 THE COURT: OKAY. AND YOU REST?

24 MR. MOMOT: WELL, AFTER I GET THAT ADMITTED, MY EXHIBIT,
25 INTO EVIDENCE --

1 THE COURT: YES.

2 MR. MOMOT: -- THEN I REST.

3 THE COURT: IT WILL BE ADMITTED, THANK YOU.

4 (WHEREUPON DEFENSE'S EXHIBIT A WAS ADMITTED INTO
5 EVIDENCE.)

6 THE COURT: ARGUMENT BY THE STATE?

7 MR. BATEMAN: I'LL WAIVE AND RESERVE.

8 THE COURT: OKAY. ARGUMENT BY THE DEFENSE AS TO THE
9 CHARGE, AND IF YOU WANT TO OPPOSE ANY -- EITHER OF THE TWO
10 PROPOSED AMENDMENTS.

11 MR. MOMOT: THE CARRYING CONCEALED WEAPON I'M NOT GOING
12 TO ARGUE THAT. I'LL SUBMIT THAT, YOUR HONOR.

13 THE COURT: OKAY.

14 MR. MOMOT: AS FAR AS THIS AMENDMENT ABOUT A CHALLENGE TO
15 FIGHT, IT'S -- THE DECEDENT GETS HIS FATHER TO DRIVE OVER
16 THERE SO FAST THAT HE BEATS EVERYBODY ELSE TO MR. PIMENTEL'S
17 APARTMENT, WHICH IS ONLY TWO TO THREE MILES AWAY FROM ARIZONA
18 CHARLIE'S, WHEN THEY ALL LEFT IMMEDIATELY FROM VALET AND GO
19 DIRECTLY TO THAT APARTMENT. SO TO SAY THAT HE'S CHALLENGING
20 TO FIGHT, IT WOULD APPEAR JUST THE OPPOSITE, THAT THE DECEDENT
21 IS THE AGGRESSOR LOOKING FOR MR. PIMENTEL, AND, IN FACT, FINDS
22 HIM UP OUTSIDE MR. PIMENTEL'S APARTMENT ON THE THIRD FLOOR
23 WHEN EVERYBODY ELSE ARRIVES.

24 THE COURT: YOU CAN CONTINUE, UNLESS YOU'RE DONE.

25 MR. MOMOT: WELL, I'M DONE. I MEAN, IT'S JUST -- IT'S

1 INCONSISTENT TO PUT THAT THEORY INTO THE PLEADING AT THIS
2 STAGE, IT'S GOING TO CAUSE CONFUSION.
3 THE COURT: OKAY.
4 MR. MOMOT: AND I DON'T THINK IT'S PROPERLY SUPPORTED BY
5 THE TESTIMONY.
6 THE COURT: ALL RIGHT. MR. BATEMAN?
7 MR. BATEMAN: I DON'T KNOW IF MR. MOMOT HAD WANTED TO
8 DISCUSS BINDOVER ON THE ACTUAL UNDERLYING CHARGE OR IF HE'S
9 SUBMITTING IT.
10 THE COURT: PARDON ME?
11 MR. BATEMAN: I DIDN'T KNOW IF MR. MOMOT IS SUBMITTING
12 IT, OTHERWISE, ON THE UNDERLYING CHARGE.
13 THE COURT: ARE YOU SUBMITTING ON THE UNDERLYING CHARGE?
14 I TAKE IT HE IS, HE SAT DOWN.
15 MR. MOMOT: I'LL -- I'LL -- I'M GOING TO SUBMIT IT ON
16 THAT, ON THE CHARGE, YOUR HONOR.
17 MR. BATEMAN: THE TESTIMONY WHERE THE CHALLENGE --
18 THE COURT: THERE WAS SOME TESTIMONY FROM TIMOTHY. SO
19 LET ME ASK YOU THIS. ARE YOU TALKING ABOUT THE CHALLENGE, SO
20 TO SPEAK, AT ARIZONA CHARLIE'S?
21 MR. BATEMAN: ABSOLUTELY.
22 THE COURT: OKAY. SO WHERE -- I HAVE TO FIND THAT,
23 BECAUSE I DO REMEMBER SOME TESTIMONY, SO ...
24 MR. BATEMAN: WOULD YOU LIKE ME TO GO ON OR DO YOU WANT
25 TO READ YOUR --

1 **THE COURT:** NO, HOLD ON, LET ME FIND IT.

2 OKAY. RECITE WHAT YOUR UNDERSTANDING OF THE TESTIMONY IS
3 TO THAT CHALLENGE THAT HAPPENED AT ARIZONA CHARLIE'S.

4 **MR. BATEMAN:** THE CHALLENGE TO FIGHT ACCORDING TO --
5 UM -- TIM WAS THAT -- I DON'T REMEMBER VERBATIM, MAYBE WE HAVE
6 TO PULL THE TRANSCRIPT, IS THAT THE DEFEN -- HE SAID THE
7 DEFENDANT WAS TELLING, LOOKING TO FIGHT AND WAS TELLING BOBBY
8 THAT HE WANTED TO FIGHT, AND THAT THE COMMUNICATION CONTINUED,
9 WE'LL HAVE THE FIGHT BACK AT -- UH -- SIEGEL SUITES.

10 BUT WHAT TIM TESTIFIED TO IS THAT LORENZO WAS THE ONE --
11 THE DEFENDANT WAS THE ONE WHO CHALLENGED INITIALLY BOBBY TO
12 THE FIGHT. THE FACT THAT THE FIGHT OCCURS FIVE MINUTES, TEN
13 MINUTES, 30 MINUTES DOWN THE ROAD, DOESN'T NEGATE THE FACT
14 THAT THIS CONFRONTATION OCCURRED INITIALLY, AT LEAST FACTUALLY
15 CAN BE ARGUED, BASED UPON THE DEFENDANT'S INITIAL CHALLENGE TO
16 FIGHT.

17 SO IT'S A THEORY OF THE PROSECUTION. THE STATE'S
18 ENTITLED TO IT BASED UPON THE EVIDENCE IN THIS PARTICULAR
19 CASE, THE FACTUAL ALLEGATIONS THAT WERE -- UM -- STATED BY THE
20 DEFENSE ARE FACTS THAT CAN BE ARGUED IN FRONT OF A JURY, BUT
21 THAT'S WHAT THE TESTIMONY WAS, IF MY RECOLLECTION IS CORRECT
22 AS TOO THAT THEORY.

23 IT'S SIMILAR, QUITE FRANKLY, TO THE PREMEDITATION AND
24 DELIBERATION, AND I'M ENTITLED, I THINK, TO MY -- MY THEORIES
25 OF THE CASE GOING FORWARD, AS LONG AS THE COURT'S GOING TO --

1 UM -- FIND PROBABLE CAUSE THAT THE KILLING OCCURRED, I CAN
2 NOTICE THAT THEORY, AND IT WILL BE THE SUBJECT OF TESTIMONY AT
3 THE TRIAL AND ARGUMENT OF COUNSEL.

4 MR. MOMOT: CAN I -- CAN I -- CAN I RESPOND TO THIS IN MY
5 ARGUMENT?

6 THE COURT: I USUALLY DON'T, BUT I'LL LET YOU RESPOND.

7 MR. MOMOT: YOUR HONOR, I -- YOUR HONOR, I GO THROUGH
8 THIS ALL THE TIME ON THESE TYPE OF CASES WITH THIS OPEN MURDER
9 CHARGE. THERE'S NO PREMEDITATION OR DELIBERATION ON THIS
10 CASE, WHATSOEVER.

11 WHAT HAPPENS HERE UNDER THIS PARTICULAR FACTUAL PATTERN,
12 IS THAT THERE'S AN ARGUMENT BETWEEN THESE TWO GUYS AT ARIZONA
13 CHARLIE'S OVER A WOMAN. SOBEIT, THAT'S GOING TO NEVER STOP
14 TODAY, TOMORROW OR ANYTIME SOON, BUT THAT'S WHAT HAPPENED.
15 AND THESE FELLAS, THE -- IT'S OBVIOUS, UNFORTUNATELY FOR
16 MR. HOLLAND, THE 3RD, HE GOT A RIDE FROM HIS DAD TO GET OVER
17 TO MR. PIMENTEL'S APARTMENT, BEAT THEM IN ARRIVAL OVER TO THAT
18 APARTMENT.

19 NOW, YOU HAVE THE OTHER FOLKS THAT CAME FROM ARIZONA
20 CHARLIE'S, THEY ARRIVE. MY CLIENT GETS OUT OF THE CAR, AND
21 THERE ARE WORDS BETWEEN THESE TWO. MEANWHILE, THE -- THE --
22 THE DECEDENT, HE'S THE ONE THAT'S UP ON THE THIRD FLOOR AT
23 PIMENTEL'S APARTMENT. HE'S COMING DOWN THE STAIRS. SO HE'S
24 LOOKING FOR MY GUY. HE'S THE AGGRESSOR.

25 THEN THE ARGUMENT ENSUES, AND FURTHER THEN PUNCHES MY GUY

1 IN THE MOUTH.

2 NOW, ACCORDING TO THIS TESTIMONY, WHICH I'M NOT AGREEING
3 TO, MY CLIENT IS -- SUPPOSABLY TAKES OUT A GUN AND SHOOTS THE
4 DECEDENT AT THAT TIME. NOW, WE'RE SUPPOSE TO INFER FROM THAT
5 CONDUCT, THAT IMMEDIATE CONDUCT, AFTER BEING PUNCHED IN THE
6 HEAD BY A SIX-FOOT-TWO, 290 POUND MAN, THAT HE -- HE -- HE --
7 HE TAKES OUT THIS GUN, AND THIS IS SUPPOSE TO BE PREMEDITATION
8 AND DELIBERATION IN THE CONDUCT HEREIN. WE SHOULD HAVE THIS
9 GOING UP ON A CHARGE OF A DEATH ON LESSER CHARGES THAN MURDER
10 ONE OR MURDER TWO.

11 THAT'S -- THAT'S WHAT MY ARGUMENT IS TO THIS COURT,
12 BECAUSE THERE IS NO PREMEDITATION OR DELIBERATION IT HAPPENED
13 SO QUICKLY.

14 THE COURT: ALL RIGHT.

15 MR. MOMOT: AND ALL THE FACTS JUST LEAD TO AN OPPOSITE
16 CONCLUSION BY THE -- YOU HAVE THE TESTIMONY OF THE SHOOTING,
17 THAT'S CORRECT. BUT THERE IS NO TIME FOR THE PREMEDITATION
18 AND DELIBERATION TO EXIST, BECAUSE HE'S GOING -- MY CLIENT'S
19 GOING BACK TO HIS HOME, HIS RESIDENCE, AND IS CONFRONTED BY
20 THE DECEDENT AT THAT TIME, WHO AMAZINGLY BEAT HIM THERE AFTER
21 GETTING PICKED UP BY HIS FATHER.

22 THE COURT: ARE YOU FINISHED?

23 MR. MOMOT: YES, MA'AM.

24 THE COURT: OKAY. SO, AS TO THE PROPOSED AMENDMENT OF
25 ADDING OF CARRYING CONCEALED WEAPON -- UM -- MR. MOMOT HAS

1 SUBMITTED ON THAT, AND I BELIEVE THERE IS FACTS OR TESTIMONY
2 TO SUPPORT THAT IT WAS FULLY CONCEALED UNTIL HE PULLED IT OUT,
3 I'M GOING TO ALLOW THAT AMENDED CHARGE.

4 AS TO THE AMENDED FACTS ABOUT CHALLENGING HIM TO THE
5 FIGHT, THERE WAS TESTIMONY BY MR. HILDEBRAND, BOTH AT ARIZONA
6 CHARLIE'S, THAT MR. PIMENTEL, THE DEFENDANT, WAS -- UM --
7 INSTIGATING OR CHALLENGING BOBBY TO A FIGHT, AND NOT THAT IT
8 WASN'T RECIPROCAL, BUT THAT THERE WAS SOME CHALLENGE TO A
9 FIGHT WITH BOBBY AT THAT TIME, AND THERE WAS ALSO TESTIMONY
10 THAT AT THE LOCATION OF THE SHOOTING THAT LORENZO KEPT TELLING
11 BOBBY HE WANTED TO FIGHT. SO I BELIEVE THAT THE TESTIMONY OF
12 MR. HILDEBRAND SUPPORTS -- UM -- THAT PROPOSED AMENDMENT OF
13 THE THEORY. SO I'M ALLOWING THAT AMENDMENT.

14 AS TO MR. MOMOT'S ARGUMENTS OF PREMEDITATION, I BELIEVE
15 ALL OF THOSE ARE MEANT FOR THE JURY, THEY GO TO PREMEDITATION,
16 THEY GO TO SELF-DEFENSE. THERE WAS TESTIMONY THAT AFTER THE
17 GUN MISFIRED THAT BOBBY STARTED TO BASICALLY RETREAT, AND THAT

18 MR. PIMENTEL FOLLOWED IN SUIT, AND THEN FIRED THE FATAL SHOT,
19 SO I THINK ALL OF MR. MOMOT'S ARGUMENTS ARE LEFT FOR A JURY.

20 BUT THERE IS SLIGHT OR MARGINAL EVIDENCE TO BELIEVE THAT
21 MURDER WITH USE OF A DEADLY WEAPON AND CARRYING CONCEALED
22 WEAPON HAVE BOTH BE COMMITTED, AND THAT THE NAMED DEFENDANT
23 HEREIN, LUIS PIMENTEL, COMMITTED SAID CRIMES. I HEREBY ORDER
24 MR. PIMENTEL TO ANSWER TO THESE CHARGES IN THE EIGHTH JUDICIAL
25 DISTRICT COURT ON THE DAY MY CLERK GIVES YOU.

1 **THE CLERK:** MARCH 6TH, 9:30, LOWER LEVEL ARRAIGNMENT A.
2 AND, STATE, I NEED THE NOC CODE FOR THAT.
3 **MR. BATEMAN:** I WILL GET IT.
4 **THE CLERK:** I HAVE A COUPLE, IF YOU WANT TO LOOK THROUGH
5 IT WITH ME.
6 **MR. BATEMAN:** IS THERE JUST A NOC CODE FOR OPEN MURDER?
7 **THE CLERK:** NO. NO, NOT FOR THE OPEN MURDER, THE
8 CARRYING CONCEALED WEAPON.
9 **MR. BATEMAN:** OH, I'M SORRY. I WILL -- I WILL COME OVER
10 THERE AND LOOK.
11 **THE CLERK:** I THINK I HAVE IT, BUT I WANT TO MAKE SURE.
12 AND I'LL MAKE A COPY OF THIS.
13 **MR. BATEMAN:** CAN I GET A COP -- CAN I GET THAT SO I CAN
14 HAVE MISS STEPHANIE MAKE A COPY FOR US.
15 **THE COURT:** OKAY. THANK YOU.
16 **MR. BATEMAN:** THANK YOU.
17 **THE MARSHAL:** COURT'S IN RECESS.

18
19 (AT 1:33 P.M. THE PROCEEDINGS WERE RECESSED.)

20 * * * *

21 ATTEST: FULL, TRUE AND CERTIFIED TRANSCRIPT.

22 /S/KIT MACDONALD
23 KIT MACDONALD, C.S.R.
24 COURT REPORTER
25 C.S.R. 65

/	7	ADMISSION [3] 10/1 62/2 70/16
/S/KIT [1] 155/22	70 [2] 2/21 2/22	ADMITTED [14] 2/20 3/3 10/5 10/8 62/5
1	74 [2] 49/10 49/16	62/6 70/19 70/20 108/17 108/19 129/21
10 [5] 2/24 16/20 47/11 105/3 119/25	8	148/24 149/3 149/4
100 [2] 38/21 38/22	88 [1] 2/11	ADVISED [2] 5/7 148/20
108 [2] 3/5 3/5	9	AF [1] 133/18
10:39 [2] 1/17 4/3	9,000 [1] 47/8	AFORETHOUGHT [3] 147/22 147/22
11 [6] 2/24 9/13 10/2 10/7 146/9 146/13	9-1-1 [5] 91/23 91/25 92/9 139/7 139/8	148/5
118 [1] 2/12	95 [1] 127/17	AFTER [55] 5/2 17/13 65/13 66/13 75/25
11851 [1] 8/16	9:30 [1] 155/1	77/14 80/16 80/24 83/11 84/1 84/2 85/16
120 [1] 2/13	A	86/5 87/19 89/20 91/6 102/25 103/1 112/4
126 [1] 2/15	A PARTICULAR [1] 20/2	112/6 118/5 118/6 119/10 119/14 119/20
13 [1] 147/20	A.M [2] 1/17 4/3	121/7 122/11 122/18 122/18 125/7 125/9
13-11851 [1] 8/16	A1 [3] 146/17 146/18 147/1	128/13 129/15 130/11 134/14 135/11 135/13
13F20476 [1] 4/8	A2 [2] 146/18 147/1	137/8 138/4 138/6 141/1 141/2 141/14
13F20476X [1] 1/7	ABDOMEN [3] 17/16 17/18 18/6	141/23 141/24 142/1 142/3 147/2 147/22
14 [1] 147/19	ABDOMINAL [1] 17/17	147/23 148/4 148/24 153/5 153/20 154/16
140 [1] 2/16	ABILITY [2] 32/10 51/16	AFTERNOON [2] 89/11 96/8
149 [1] 3/4	ABLE [7] 12/4 25/15 42/16 52/25 53/2 54/9	AFTERWARDS [1] 113/17
15 [2] 105/3 119/17	134/16	AGAIN [20] 19/5 26/3 26/4 28/10 28/14
150 [1] 15/15	ABOUT [74] 5/1 9/8 10/11 10/25 12/3 12/21	37/22 38/3 38/16 40/12 46/24 52/12 55/14
16 [3] 13/10 14/19 35/12	13/14 15/15 15/15 16/11 28/12 30/1 31/23	68/16 71/16 74/14 79/20 79/25 101/17
18 [1] 2/6	32/22 38/24 40/17 42/21 44/4 49/1 49/10	133/19 140/3
1:33 [1] 155/19	49/12 50/14 51/12 51/16 52/9 52/19 52/19	AGAINST [1] 55/5
2	52/20 52/20 52/21 55/18 56/23 60/22 60/23	AGE [3] 19/10 19/22 23/25
2,000 [1] 47/3	66/7 72/7 78/25 82/10 85/12 89/10 92/16	AGGRESSIVE [4] 46/16 55/11 56/9 133/9
20 [1] 119/17	92/25 93/15 93/23 94/6 94/7 95/15 98/24	AGGRESSOR [2] 149/21 152/24
200 [7] 38/21 38/22 40/17 40/20 44/14 46/1	99/19 103/4 105/1 105/4 110/1 110/11 111/5	AGREE [2] 46/4 57/2
57/14	113/6 113/10 115/23 117/21 118/9 118/23	AGREEING [1] 153/2
2013 [1] 7/14	119/6 119/17 119/25 121/20 121/21 131/9	AHEAD [11] 5/22 29/6 44/11 45/12 58/20
2014 [3] 1/16 4/1 89/10	135/24 143/23 146/24 146/25 149/14 150/19	59/2 85/22 102/17 125/22 126/13 147/17
22ND [4] 60/1 88/21 92/13 126/24	154/4	AID [2] 45/16 139/6
23RD [2] 7/14 88/21	ABOVE [5] 11/5 11/5 17/1 33/22 37/3	AIMED [2] 77/22 79/19
26 [2] 1/16 4/1	ABRASION [13] 11/9 12/1 16/15 17/11	AIMING [1] 78/9
290 [2] 51/3 153/6	20/22 20/25 25/13 25/15 26/7 26/10 27/16	AIN'T [2] 111/1 111/9
292 [1] 49/12	27/20 51/12	AIR [1] 13/5
2ND [4] 89/10 92/14 143/25 144/20	ABRASIONS [25] 13/7 24/15 25/5 25/6	AL [2] 8/11 35/19
3	25/15 25/21 26/3 26/4 26/12 26/14 26/15	ALCOHOL [1] 49/1
3,000 [1] 47/4	26/20 26/22 26/23 27/9 28/11 30/8 30/12	ALL [113] 6/11 7/9 7/13 9/4 9/12 9/22 10/1
30 [3] 104/14 104/15 151/13	31/18 46/12 51/8 53/24 54/12 54/25 55/1	10/17 12/2 12/10 12/16 16/4 17/6 17/16
300 [1] 38/21	ABSENCE [3] 14/22 14/22 16/15	18/14 21/12 22/4 31/6 32/20 34/7 34/21
3625 [2] 67/22 144/11	ABSENT [1] 35/14	35/17 36/13 38/18 41/21 42/15 42/18 44/10
3RD [2] 144/3 152/16	ABSOLUTELY [1] 150/21	45/10 51/6 52/2 52/6 53/20 54/12 55/6 56/17
4	ABUSER [2] 40/21 44/16	56/23 58/3 58/19 60/5 60/10 60/12 61/17
40 [1] 47/13	ABUSERS [2] 40/18 57/15	62/14 63/22 64/19 56/2 66/5 66/8 67/12
400 [1] 46/1	ABUSIVE [1] 46/2	67/23 68/11 68/19 69/6 71/19 77/14 79/10
41,000 [1] 47/8	ACCIDENT [4] 45/5 45/6 52/20 53/6	79/15 81/14 83/4 85/16 86/25 87/11 89/9
410 [5] 36/12 37/22 39/2 47/17 48/10	ACCORDING [3] 112/18 151/4 153/2	90/7 91/14 92/23 97/7 99/21 101/4 102/14
5	ACCORDINGLY [4] 5/7 21/16 22/14 22/16	103/21 104/19 106/7 109/12 109/21 110/24
50 [1] 2/7	ACCURATE [4] 9/23 23/21 56/16 70/13	111/21 112/15 112/23 121/9 121/13 123/4
500 [1] 47/7	ACKNOWLEDGE [1] 34/2	123/11 123/22 124/3 124/12 127/10 127/23
53 [1] 2/8	ACROSS [7] 87/8 90/19 90/21 90/22 91/1	131/12 131/12 131/20 133/13 133/16 134/13
59 [1] 2/10	91/3 130/13	134/23 134/25 135/17 137/15 140/18 141/16
6	ACTIVITY [1] 124/4	142/4 143/18 143/21 145/8 147/9 149/18
6,400 [6] 36/11 36/14 36/14 46/6 47/25 48/5	ACTUAL [2] 118/24 150/8	150/6 152/8 153/14 153/15 154/15 154/19
600 [5] 40/17 40/20 44/14 46/2 57/14	ACTUALLY [4] 13/6 15/3 82/4 119/7	ALLEGATIONS [1] 151/19
62 [1] 2/23	ADD [4] 41/12 147/14 147/19 147/22	ALLOW [2] 148/11 154/3
6400 [1] 57/1	ADDED [1] 14/12	ALLOWED [2] 43/25 148/14
65 [2] 1/24 155/23	ADDICT [1] 47/4	ALLOWING [2] 5/1 154/13
6TH [1] 155/1	ADDING [1] 153/25	ALONE [4] 18/3 63/25 95/21 107/4
	ADDITION [2] 14/23 16/16	ALONG [3] 13/25 73/13 97/17
	ADDITIONAL [4] 41/5 52/2 84/17 120/1	ALREADY [1] 39/3
	ADDRESS [2] 67/20 89/15	ALSO [23] 6/18 8/8 8/11 10/22 14/8 17/12
	ADMISSIBILITY [2] 108/14 108/16	18/3 24/18 26/23 27/16 27/20 28/3 31/25
		40/22 42/16 56/14 57/8 75/17 119/11 137/21
		142/11 147/19 154/9
		ALTER [2] 35/17 35/21
		ALTERNATIVE [1] 29/19

A	<p>ALTHOUGH [1] 28/15</p> <p>ALWAYS [4] 14/6 14/11 28/23 33/23</p> <p>AM [2] 45/4 72/16</p> <p>AMANDA [65] 62/22 63/3 63/9 63/12 63/16 63/24 64/16 64/22 65/13 65/16 67/8 67/13 68/18 68/22 69/4 69/7 69/11 72/8 73/19 73/20 74/15 74/16 75/3 92/21 95/3 97/6 97/8 97/13 97/14 97/16 97/24 99/8 99/23 99/25 100/3 100/5 100/19 100/21 101/6 101/9 101/16 101/20 101/23 102/22 103/1 104/6 105/22 105/23 106/7 106/12 110/11 111/23 129/4 129/5 130/14 131/15 131/15 132/1 132/5 143/21 144/7 144/15 145/6 145/16 145/23</p> <p>AMANDA'S [1] 97/8</p> <p>AMAZINGLY [1] 153/20</p> <p>AMBULANCE [3] 91/11 91/17 139/12</p> <p>AMENDED [2] 154/3 154/4</p> <p>AMENDMENT [6] 148/8 148/15 149/14 153/24 154/12 154/13</p> <p>AMENDMENTS [6] 147/11 147/13 148/7 148/10 148/11 149/10</p> <p>AMOUNT [3] 36/20 37/20 46/6</p> <p>AMPHETAMINE [24] 36/4 36/11 37/14 37/15 38/6 38/7 38/21 39/3 39/11 39/13 39/15 39/20 39/23 39/25 46/22 47/6 47/8 47/11 47/12 48/3 48/12 49/4 49/5 55/9</p> <p>AND/OR [2] 64/22 147/22</p> <p>ANOTHER [3] 20/24 20/25 27/20</p> <p>ANSWER [4] 39/1 90/11 92/2 154/24</p> <p>ANSWERED [1] 56/13</p> <p>ANTICIPATE [1] 5/10</p> <p>ANY [60] 5/3 8/19 8/24 9/1 10/3 12/16 14/13 14/25 20/16 21/7 22/4 28/16 29/17 29/18 29/19 30/3 30/15 31/19 32/8 32/8 33/9 33/21 35/4 35/6 35/9 35/14 42/16 43/8 43/19 48/21 50/2 50/13 51/2 53/9 56/11 56/19 57/10 57/17 58/8 62/3 62/11 67/9 69/3 69/6 70/17 75/24 76/13 93/25 94/3 99/19 103/7 105/8 107/25 108/14 109/21 120/1 120/3 146/6 148/18 149/9</p> <p>ANYBODY [5] 60/10 64/13 92/16 99/7 128/14</p> <p>ANYPLACE [1] 107/6</p> <p>ANYTHING [20] 21/19 31/14 31/14 72/9 76/13 79/10 85/13 85/25 86/4 86/18 87/14 87/18 87/21 88/8 94/1 98/24 99/5 103/17 130/9 132/12</p> <p>ANYTIME [1] 152/14</p> <p>ANYWAY [2] 85/1 101/25</p> <p>ANYWAYS [1] 134/14</p> <p>ANYWHERE [2] 86/10 86/11</p> <p>AORTA [3] 15/11 15/21 15/24</p> <p>APARTMENT [19] 68/5 68/6 104/9 106/13 106/17 114/15 116/12 116/13 131/1 135/20 140/8 140/9 144/6 149/17 149/19 149/22 152/17 152/18 152/23</p> <p>APARTMENTS [1] 130/7</p> <p>APPEAR [4] 73/18 75/2 133/8 149/20</p> <p>APPEARS [3] 25/13 26/1 61/22</p> <p>APPRECIATE [4] 22/12 57/21 125/16 146/4</p> <p>APPROACH [11] 9/4 21/14 61/18 70/2 79/25 114/1 114/12 125/18 129/18 132/19 133/19</p> <p>APPROACHED [1] 125/21</p>	<p>APPROACHING [1] 21/24</p> <p>APPROXIMATE [1] 67/20</p> <p>APPROXIMATELY [7] 7/6 15/14 47/5 85/2 85/8 94/6 132/23</p> <p>ARE [68] 4/23 6/6 9/19 9/20 9/20 12/16 12/24 23/11 24/25 25/3 25/20 26/3 26/14 26/15 26/20 26/23 27/2 27/9 27/24 30/8 30/13 33/12 33/13 34/12 38/20 42/14 43/13 45/13 45/16 46/14 47/2 47/7 47/12 52/12 52/12 52/21 53/24 54/12 58/9 79/4 79/5 82/16 82/24 83/18 83/18 101/6 109/18 110/1 116/25 117/24 122/2 122/3 122/9 122/20 123/4 125/10 125/11 127/8 137/18 146/20 147/13 150/13 150/19 151/20 152/21 153/22 154/15 154/19</p> <p>ARE THE [1] 52/12</p> <p>AREA [21] 20/22 32/13 55/5 65/3 68/24 69/25 70/8 70/10 70/25 71/3 71/8 80/11 84/25 87/3 109/13 116/15 124/23 133/14 138/14 138/18 140/20</p> <p>AREAS [2] 18/25 20/16</p> <p>AREN'T [1] 4/24</p> <p>ARGUE [3] 46/16 148/11 149/12</p> <p>ARGUED [3] 113/10 151/15 151/20</p> <p>ARGUING [14] 72/2 72/3 76/21 102/16 103/3 107/21 107/22 110/14 111/19 113/5 113/12 116/25 117/13 120/19</p> <p>ARGUMENT [24] 41/15 72/5 72/7 72/10 73/13 74/9 74/10 74/14 75/7 75/25 80/11 104/11 111/16 120/16 120/19 133/8 133/9 149/6 149/8 152/3 152/5 152/12 152/25 153/11</p> <p>ARGUMENTS [2] 154/14 154/19</p> <p>ARI [1] 69/14</p> <p>ARIZONA [47] 60/7 60/8 60/12 61/8 64/7 64/9 64/17 65/14 65/14 65/16 65/22 65/25 67/4 67/25 69/2 69/9 69/10 74/6 74/9 75/25 76/2 76/8 88/2 94/23 95/5 95/10 95/15 96/1 98/19 99/25 100/2 101/15 101/19 105/10 127/10 127/18 128/15 128/17 129/14 142/19 148/2 149/17 150/20 151/3 152/12 152/19 154/5</p> <p>ARMS [2] 86/7 86/8</p> <p>ARO [1] 83/10</p> <p>AROUND [36] 16/19 12/22 16/15 19/14 37/5 63/23 71/6 80/23 83/8 83/10 83/16 83/24 83/25 84/10 89/20 91/5 91/6 109/13 112/15 119/12 119/19 121/16 121/18 121/19 121/19 121/22 122/10 122/17 122/19 122/22 123/2 125/9 137/8 138/25 140/22 140/24</p> <p>ARRANGEMENT [1] 155/1</p> <p>ARRANGED [1] 89/17</p> <p>ARRIVAL [1] 152/17</p> <p>ARRIVE [5] 91/13 96/5 144/16 144/21 152/20</p> <p>ARRIVED [6] 91/17 91/19 91/21 96/23 109/22 145/12</p> <p>ARRIVES [3] 8/4 142/25 149/23</p> <p>AS [140] 5/4 5/17 5/19 6/14 6/25 8/7 8/7 8/12 8/22 9/2 9/2 9/13 10/13 10/13 10/13 10/15 12/10 13/1 13/3 14/13 15/5 15/5 15/7 15/25 15/25 16/11 16/16 16/17 17/23 17/24 18/4 18/4 18/8 18/10 20/6 21/11 21/11 22/14 23/20 24/7 25/7 25/16 25/16 25/23 25/23 28/1 28/1 28/3 28/5 28/20 28/20 30/11 31/22 33/12 34/12 34/15 35/10 36/23 36/23 37/16 38/6 38/17 39/11 39/11 39/15 39/25 39/25 40/4 40/25 41/18 41/18 43/2 43/2 43/5 43/16</p>	<p>43/16 43/20 44/7 44/13 44/13 44/20 44/21 44/23 44/25 45/2 46/12 46/14 46/21 46/23 47/24 48/6 50/11 51/1 51/4 51/24 52/11 53/21 53/21 54/17 54/24 56/17 58/23 58/25 61/21 63/2 63/2 63/14 64/6 64/25 70/5 71/10 80/3 81/13 81/13 89/9 94/10 96/25 96/25 99/22 108/21 110/25 114/4 115/10 126/6 126/8 127/6 129/21 134/24 137/18 147/5 147/5 148/3 149/8 149/14 149/14 151/22 151/25 151/25 153/24 154/4 154/14</p> <p>ASK [17] 12/3 35/4 35/5 44/5 50/11 51/17 51/23 52/2 67/17 75/21 98/21 98/24 111/5 128/19 130/21 142/5 150/19</p> <p>ASKED [12] 51/16 52/8 52/9 56/13 60/17 75/6 95/3 101/21 110/24 118/23 118/25 143/23</p> <p>ASKING [4] 55/21 55/25 75/2 111/6</p> <p>ASPECT [1] 63/3</p> <p>ASS [1] 103/4</p> <p>ASSIGN [1] 31/1</p> <p>ASSOCIATED [1] 11/10</p> <p>ASSOCIATING [1] 97/25</p> <p>ASSUME [3] 15/4 35/3 136/10</p> <p>ASSUMING [2] 13/23 51/13</p> <p>ASSUMPTION [1] 35/1</p> <p>ATTACHED [3] 41/24 43/5 54/23</p> <p>ATTEMPTING [1] 56/20</p> <p>ATTENTION [10] 7/13 29/24 35/20 37/17 39/22 40/2 59/25 87/16 110/1 126/23</p> <p>ATTEST [1] 155/21</p> <p>ATTORNEY [1] 1/19</p> <p>ATYPICAL [1] 17/10</p> <p>AUDIBLE [3] 21/17 49/18 96/11</p> <p>AUDIO [1] 92/24</p> <p>AUTHENTIC [1] 43/11</p> <p>AUTHORITY [1] 147/20</p> <p>AUTOPSIES [4] 7/1 7/7 7/20 52/14</p> <p>AUTOPSY [15] 7/15 7/18 8/8 8/8 8/16 8/20 9/21 9/24 23/23 33/9 33/25 41/22 43/6 44/7 44/22</p> <p>AWARE [3] 29/20 30/3 39/21</p> <p>AWAY [21] 13/1 13/9 13/10 13/13 13/16 14/15 14/20 35/13 67/25 78/23 79/11 79/11 80/23 85/10 90/16 94/20 107/21 117/24 118/8 132/4 149/17</p> <p>AWHILE [1] 133/4</p>
B	<p>BACK [71] 11/22 12/15 15/13 15/13 17/22 24/16 24/16 24/19 28/5 30/8 32/2 65/9 65/24 69/1 71/9 73/14 74/7 74/8 76/12 76/21 77/19 79/19 79/21 80/16 84/11 84/14 86/3 88/1 97/2 99/24 100/2 102/16 103/1 103/3 104/9 107/13 107/14 111/16 113/17 117/13 117/16 121/4 121/16 121/21 122/11 122/21 123/2 123/7 125/10 125/12 129/25 130/15 132/9 132/15 132/23 133/2 134/12 140/7 140/8 140/25 141/24 145/1 145/6 145/9 145/16 145/23 146/22 146/25 147/6 151/9 153/19</p> <p>BACKED [4] 133/16 133/17 134/14 141/15</p> <p>BACKS [2] 125/1 125/6</p> <p>BACKWARDS [6] 47/24 78/3 79/3 79/9 80/23 83/8</p> <p>BAG [5] 7/24 7/24 8/1 99/2 99/3</p> <p>BAR [16] 87/6 87/8 87/9 87/20 90/4 90/5 90/7 90/8 90/8 90/10 90/14 91/1 91/2 91/3 92/20 105/19</p> <p>BASE [1] 23/12</p>		

<p>B</p> <p>BASED [10] 12/5 14/22 15/24 45/2 63/19 73/21 83/12 147/25 151/15 151/18</p> <p>BASICALLY [4] 13/3 73/20 132/10 154/17</p> <p>BATEMAN [11] 1/19 2/5 2/7 2/10 2/12 2/15 5/7 58/5 82/19 108/8 150/6</p> <p>BE [110] 4/24 4/25 5/4 5/10 6/15 9/22 10/5 13/7 13/18 14/4 15/17 19/23 21/7 21/12 21/18 22/24 23/2 23/17 23/19 25/13 25/18 26/8 26/10 29/11 30/2 30/9 31/4 32/16 34/25 35/1 35/3 35/4 35/6 37/1 37/3 37/15 37/16 38/3 38/3 38/10 38/12 38/13 38/22 39/24 39/24 40/21 40/24 42/16 42/17 44/6 44/17 44/20 45/7 45/17 45/22 46/2 46/9 46/11 48/1 48/1 50/19 51/1 51/7 51/10 51/13 51/22 52/3 52/13 53/2 53/4 53/15 53/16 53/18 53/19 53/20 55/3 55/4 55/10 55/24 56/16 58/13 61/22 62/5 62/19 69/6 70/19 78/12 82/6 86/16 86/17 104/14 104/15 108/11 108/17 119/4 124/18 124/20 129/8 133/8 137/22 146/17 146/19 147/18 147/24 149/3 151/15 151/20 152/2 153/7 154/22</p> <p>BEAT [2] 152/17 153/20</p> <p>BEATS [1] 149/16</p> <p>BECAUSE [39] 13/14 14/12 15/20 17/10 17/11 17/12 17/16 32/24 39/13 39/19 41/3 41/24 52/3 56/22 58/9 58/15 66/24 74/3 75/6 75/11 90/25 99/25 109/25 116/11 117/22 119/18 119/19 123/1 125/1 130/19 133/14 134/12 134/22 136/10 137/4 141/24 150/23 153/12 153/18</p> <p>BEEN [35] 5/17 6/9 6/11 7/22 9/12 14/15 17/20 18/3 18/4 28/22 28/23 28/24 29/13 39/8 40/18 47/4 51/2 54/5 54/9 56/13 57/15 58/23 60/23 61/21 63/11 68/6 70/5 77/9 77/11 80/3 84/8 97/25 114/4 126/6 129/21</p> <p>BEFORE [23] 1/14 12/2 13/5 15/25 46/14 54/17 67/9 68/7 75/24 75/25 93/12 110/18 130/11 131/21 132/7 135/11 141/7 145/7 145/13 145/14 146/8 148/10 148/15</p> <p>BEGAN [2] 145/2 145/9</p> <p>BEGGING [1] 113/23</p> <p>BEGIN [1] 7/18</p> <p>BEHAVIOR [11] 40/19 40/22 41/5 44/17 46/3 46/9 46/11 46/17 55/11 56/10 57/16</p> <p>BEHIND [15] 71/11 109/2 110/5 116/18 116/19 117/1 117/6 130/13 130/15 133/16 134/15 136/2 138/2 141/15 141/17</p> <p>BEING [5] 14/3 14/4 41/13 50/15 153/5</p> <p>BELIEF [1] 100/19</p> <p>BELIEVE [13] 4/22 5/3 21/6 34/10 50/25 51/10 60/1 110/1 138/9 154/1 154/11 154/14 154/20</p> <p>BELLY [1] 16/25</p> <p>BELOW [2] 16/25 143/16</p> <p>BENCH [1] 125/21</p> <p>BESIDES [2] 52/14 53/4</p> <p>BEST [1] 115/10</p> <p>BETWEEN [47] 8/2 10/12 13/20 14/12 21/21 26/6 27/5 27/19 40/17 49/24 69/7 69/11 73/22 73/23 73/23 79/15 82/13 82/17 88/16 92/13 104/11 107/10 108/8 110/10 113/13 113/25 118/24 119/3 119/15 119/22 122/16 123/9 124/6 124/15 124/16 124/19 124/20 124/23 125/7 136/5 137/10 140/15 143/8 143/10 143/15 152/12 152/21</p> <p>BIG [1] 54/8</p>	<p>BINDOVER [1] 150/8</p> <p>BIT [3] 46/21 102/18 117/17</p> <p>BLOCKS [1] 68/1</p> <p>BLOOD [19] 15/14 15/20 16/3 26/25 28/15 31/15 32/12 36/5 36/8 36/21 37/21 38/8 40/17 47/3 47/12 57/6 57/14 86/25 91/12</p> <p>BLUE [4] 19/24 59/18 59/20 139/16</p> <p>BLUNT [1] 9/2</p> <p>BOB [1] 81/20</p> <p>BOBBY [192]</p> <p>BOBBY'S [18] 86/24 87/23 91/8 92/9 92/14 102/22 105/8 107/25 108/2 108/6 109/10 110/2 119/23 120/9 131/24 138/23 145/15 145/18</p> <p>BODY [25] 7/21 7/24 7/24 8/4 8/21 8/22 8/23 8/25 9/1 10/14 13/2 13/5 13/6 13/6 13/10 17/5 17/6 17/12 17/18 18/23 30/16 32/16 44/15 56/9 119/23</p> <p>BORROWED [1] 104/2</p> <p>BOT [1] 123/23</p> <p>BOTH [10] 4/19 5/23 38/20 39/24 59/4 107/10 126/15 146/24 154/5 154/22</p> <p>BOTTOM [8] 24/10 73/9 76/20 80/13 80/14 116/24 117/10 123/16</p> <p>BOULDER [16] 60/9 67/19 86/14 86/15 89/16 90/10 90/14 127/17 135/15 135/16 135/18 136/19 137/17 138/4 141/4 144/11</p> <p>BOWEL [1] 17/15</p> <p>BRACE [1] 54/7</p> <p>BREAK [3] 8/3 8/3 65/12</p> <p>BRIEFLY [7] 7/17 10/10 18/2 50/7 118/19 125/18 142/10</p> <p>BRING [3] 7/25 21/3 56/20</p> <p>BROKEN [1] 10/13</p> <p>BROUGHT [2] 7/22 40/2</p> <p>BROWN [1] 19/25</p> <p>BRUISE [6] 10/23 19/8 19/10 19/10 19/22 26/8</p> <p>BRUISES [3] 25/1 25/1 46/12</p> <p>BUILDING [12] 71/7 71/10 100/4 100/11 123/13 130/1 137/5 138/22 144/12 144/15 144/17 145/1</p> <p>BUILDINGS [1] 71/8</p> <p>BULLET [2] 13/3 17/4</p> <p>BURN [3] 13/4 13/6 14/9</p> <p>BURNS [1] 13/7</p> <p>BUTT [1] 119/24</p> <p>BUTTOCKS [6] 16/8 16/9 16/18 16/19 17/14 17/25</p> <p>BUTTON [1] 16/25</p> <p>C</p> <p>C.S.R [3] 1/24 155/22 155/23</p> <p>C296234 [1] 1/1</p> <p>CALF [5] 20/24 51/10 53/15 53/15 53/20</p> <p>CALL [9] 4/18 5/11 10/18 58/5 91/23 91/25 92/9 138/23 141/25</p> <p>CALLED [12] 5/17 13/2 13/7 35/20 58/23 93/2 126/6 127/20 127/23 129/10 139/7 139/8</p> <p>CALLING [1] 57/23</p> <p>CALLS [3] 5/12 58/7 125/23</p> <p>CAME [31] 6/22 23/13 29/24 35/18 64/10 69/23 70/25 76/20 80/17 86/21 86/25 87/23 89/2 100/2 101/22 103/1 103/2 114/18 122/9 122/19 130/11 130/23 132/7 132/14 141/24 145/1 145/7 145/9 145/13 145/21 152/19</p> <p>CAN [69] 4/18 5/5 5/11 5/14 6/1 6/14 7/17</p>	<p>8/18 9/13 10/22 11/1 12/8 12/22 13/4 13/10 13/13 13/17 14/5 19/9 19/10 19/13 21/10 22/20 23/17 31/25 32/2 32/16 32/17 33/16 33/17 33/17 34/15 37/15 37/16 40/9 41/18 41/19 44/5 44/24 47/6 47/16 47/24 47/24 52/14 52/23 57/8 58/5 59/7 63/5 72/23 75/21 81/12 108/9 108/9 115/10 125/18 126/18 133/19 139/15 149/24 151/15 151/20 152/1 152/4 152/4 152/4 155/13 155/13 155/13 CAN'T [7] 47/19 52/22 82/18 106/4 109/6 114/23 128/3</p> <p>CAR [52] 66/17 66/18 66/19 68/9 68/9 68/12 68/16 69/3 69/24 70/25 87/6 87/10 90/5 106/8 106/15 108/6 114/21 115/11 115/13 115/18 115/18 115/21 116/2 116/4 121/17 124/9 124/10 127/25 128/1 128/2 130/15 133/22 134/8 137/14 137/14 138/7 138/8 138/9 138/17 141/8 143/8 143/10 143/12 143/15 144/16 144/21 145/7 145/11 145/16 145/18 145/23 152/20</p> <p>CARRYING [5] 147/14 149/11 153/25 154/21 155/8</p> <p>CARS [12] 80/23 116/5 119/12 121/19 121/19 122/10 122/17 123/9 125/7 125/9 140/22 140/24</p> <p>CASE [43] 1/1 1/7 4/24 7/22 8/5 8/14 8/16 8/20 9/1 9/10 10/20 10/20 14/13 14/16 14/23 17/1 18/9 20/1 29/1 30/16 32/20 33/21 34/6 34/10 34/11 35/24 37/18 45/17 45/18 45/22 46/5 50/15 51/25 52/5 53/3 53/7 53/16 53/18 113/21 148/3 151/19 151/25 152/10</p> <p>CASES [2] 33/24 152/8</p> <p>CASINO [12] 60/14 60/16 63/1 65/4 97/5 97/8 97/14 97/15 98/2 98/6 99/11 99/23</p> <p>CATEGORY [2] 52/22 147/15</p> <p>CAUSE [12] 7/4 8/12 18/10 44/23 50/15 50/20 51/24 52/4 52/6 52/11 150/2 152/1</p> <p>CAUSES [2] 45/3 53/6</p> <p>CAVITY [2] 15/15 15/16</p> <p>CELL [1] 127/21</p> <p>CENTER [1] 137/16</p> <p>CERTAINLY [1] 15/21</p> <p>CERTAINTY [1] 18/10</p> <p>CERTIFICATE [1] 1/24</p> <p>CERTIFIED [1] 155/21</p> <p>CHALLENGE [7] 149/14 150/17 150/19 151/3 151/4 151/15 154/8</p> <p>CHALLENGED [2] 148/1 151/11</p> <p>CHALLENGING [5] 19/12 147/23 149/19 154/4 154/7</p> <p>CHANGED [1] 123/4</p> <p>CHARGE [8] 149/9 150/8 150/12 150/13 150/16 152/9 153/9 154/3</p> <p>CHARGES [2] 153/9 154/24</p> <p>CHARLIE'S [47] 60/7 60/8 60/12 61/8 64/7 64/9 64/17 65/14 65/14 65/16 65/22 65/25 67/4 67/25 69/2 69/10 69/10 74/6 74/9 75/25 76/3 76/8 88/2 94/24 95/5 95/10 95/15 96/1 98/19 100/1 100/2 101/15 101/19 105/11 127/10 127/19 128/15 128/17 129/14 142/19 148/2 149/18 150/20 151/3 152/13 152/20 154/6</p> <p>CHASED [2] 119/12 121/19</p> <p>CHASING [4] 119/14 119/18 122/25 141/13</p> <p>CHAVEZ [1] 34/10</p> <p>CHECK [1] 67/2</p> <p>CHECKED [1] 139/7</p> <p>CHECKING [1] 66/25</p>
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<p>C</p> <p>CHEST [14] 11/4 11/23 14/14 15/4 15/8 15/14 15/16 16/3 16/11 50/19 119/16 119/21 119/21 122/21</p> <p>CHEVROLET [9] 82/25 83/13 83/19 85/6 136/2 138/10 140/11 140/15 141/8</p> <p>CHILD [3] 101/2 101/4 129/11</p> <p>CHOOSE [1] 30/22</p> <p>CHU [2] 79/18 79/18</p> <p>CHU-CHU [1] 79/18</p> <p>CIRCULATORY [1] 57/9</p> <p>CIRCUMFERENTIAL [1] 11/9</p> <p>CIRCUMSTANCES [1] 13/25</p> <p>CLARIFICATION [1] 133/21</p> <p>CLARIFY [4] 17/19 80/25 82/19 146/17</p> <p>CLARK [9] 1/4 4/1 6/7 6/25 34/9 34/20 42/21 45/17 67/23</p> <p>CLEAN [1] 8/23</p> <p>CLEANED [1] 13/11</p> <p>CLEAR [1] 31/22</p> <p>CLERK [3] 4/15 126/2 154/25</p> <p>CLICK [3] 112/21 125/2 125/7</p> <p>CLIENT [3] 148/20 152/20 153/3</p> <p>CLIENT'S [1] 153/18</p> <p>CLIENTS [1] 45/17</p> <p>CLIPPED [1] 28/24</p> <p>CLIPPINGS [1] 31/19</p> <p>CLOSE [8] 12/24 13/6 13/24 14/1 16/12 16/14 25/13 30/12</p> <p>CLOSE-UP [4] 16/12 16/14 25/13 30/12</p> <p>CLOSENESS [1] 12/17</p> <p>CLOSER [3] 17/7 17/9 30/7</p> <p>CLOSING [1] 148/12</p> <p>CLOTHES [4] 34/3 99/1 122/2 122/3</p> <p>CLOTHING [17] 13/18 13/22 14/3 14/9 32/5 32/6 32/7 32/11 32/13 32/15 32/23 33/2 34/14 34/25 35/10 35/15</p> <p>COCKED [1] 79/19</p> <p>CODE [3] 22/6 155/2 155/6</p> <p>COLLAPSE [1] 57/9</p> <p>COLON [1] 17/15</p> <p>COLOR [2] 19/19 20/2</p> <p>COLORS [1] 19/21</p> <p>COME [30] 5/2 28/21 41/6 60/2 60/6 60/13 60/18 64/2 65/24 67/3 68/3 71/24 75/5 81/2 81/4 95/3 99/25 102/13 115/7 117/10 123/14 123/16 126/1 133/25 138/22 139/10 141/20 141/21 142/5 155/9</p> <p>COMES [11] 8/21 15/12 41/1 107/15 107/15 116/24 117/10 121/12 123/19 140/10 145/14</p> <p>COMFORTABLE [2] 23/10 39/1</p> <p>COMING [17] 39/11 41/3 72/1 73/10 84/9 84/11 84/14 107/8 115/9 116/1 120/9 122/19 123/6 135/3 135/9 145/15 152/23</p> <p>COMMA [1] 147/23</p> <p>COMMENTS [1] 46/22</p> <p>COMMITTED [2] 154/22 154/23</p> <p>COMMON [1] 27/24</p> <p>COMMONLY [1] 54/18</p> <p>COMMUNICATION [5] 63/20 64/22 67/10 69/4 151/8</p> <p>COMMUNICATIONS [2] 63/22 63/24</p> <p>COMPLETE [1] 29/11</p> <p>COMPLEX [6] 94/10 94/12 114/15 135/20 140/8 140/9</p> <p>CON [1] 26/1</p> <p>CONCEALED [7] 147/15 147/18 149/11</p>	<p>153/25 154/2 154/21 155/8</p> <p>CONCENTRATION [1] 47/13</p> <p>CONCERNED [2] 36/24 39/11</p> <p>CONCLUSION [3] 44/23 57/11 153/16</p> <p>CONCLUSIONS [1] 42/20</p> <p>CONDUCT [6] 7/14 8/7 45/2 153/5 153/5 153/8</p> <p>CONDUCTED [1] 7/1</p> <p>CONDUCTING [1] 8/8</p> <p>CONFRONTATION [4] 87/13 88/1 88/5 151/14</p> <p>CONFRONTED [1] 153/19</p> <p>CONFUSED [1] 95/11</p> <p>CONFUSION [2] 57/8 150/2</p> <p>CONNECTICUT [3] 6/17 6/18 6/20</p> <p>CONSIDER [1] 55/8</p> <p>CONSIDERED [4] 37/3 38/3 38/13 49/14</p> <p>CONSISTENT [13] 32/13 40/24 44/17 46/2 46/9 46/11 46/14 50/12 51/2 51/7 51/13 54/15 55/3</p> <p>CONSUMED [1] 47/4</p> <p>CONTACT [13] 12/21 12/24 60/3 60/6 60/13 60/16 63/15 64/2 64/10 65/24 75/24 130/23 130/23</p> <p>CONTAIN [2] 8/11 31/18</p> <p>CONTENTS [4] 17/17 18/5 18/6 43/9</p> <p>CONTINUE [3] 73/11 79/13 149/24</p> <p>CONTINUED [1] 151/8</p> <p>CONTINUING [1] 79/8</p> <p>CONTRARY [1] 35/15</p> <p>CONTRIBUTORY [2] 45/24 45/25</p> <p>CONTUSION [6] 10/23 20/8 20/24 26/6 26/8 51/9</p> <p>CONTUSIONS [1] 26/1</p> <p>CONVERSATION [15] 64/25 65/13 73/6 73/8 73/11 73/21 75/15 76/12 76/13 93/12 100/14 101/14 101/18 103/8 107/10</p> <p>CONVICTION [1] 93/18</p> <p>CONVULSIONS [1] 57/9</p> <p>COP [1] 155/13</p> <p>COPS [2] 89/18 145/23</p> <p>COPY [7] 22/8 146/21 147/2 147/5 147/6 155/12 155/14</p> <p>CORONER'S [2] 6/7 6/25</p> <p>CORRECT [199]</p> <p>COULD [42] 12/20 14/1 18/6 19/21 20/9 20/14 20/15 21/10 22/13 23/16 23/17 24/6 25/14 25/17 25/18 27/5 29/21 32/24 32/25 35/4 35/5 35/6 35/17 39/24 39/24 49/21 53/18 53/19 53/20 54/10 54/11 67/3 72/5 78/11 79/25 81/1 82/6 126/14 131/7 134/12 134/18 144/7</p> <p>COULDN'T [5] 130/19 131/3 133/14 134/22 147/17</p> <p>COUNSEL [5] 9/7 22/12 70/5 125/21 152/3</p> <p>COUNT [1] 147/14</p> <p>COUNTY [9] 1/4 4/1 6/7 6/25 34/9 34/20 42/22 45/17 67/23</p> <p>COUP [1] 118/25</p> <p>COUPLE [20] 31/18 65/5 68/2 88/25 90/17 90/18 104/25 112/23 113/2 113/6 113/8 113/10 113/12 113/14 113/15 117/16 122/21 123/2 147/10 155/4</p> <p>COURSE [7] 9/23 19/2 69/2 72/10 90/25 110/14 139/7</p> <p>COURT [7] 1/3 7/10 7/10 64/11 153/11 154/25 155/23</p> <p>COURT'S [5] 49/21 58/3 113/23 151/25</p>	<p>155/17</p> <p>COURTROOM [4] 43/20 58/13 59/14 139/13</p> <p>COVERED [5] 56/12 56/17 56/18 56/19 56/22</p> <p>CPR [3] 139/9 139/11 141/21</p> <p>CREATE [1] 8/8</p> <p>CRIME [1] 33/16</p> <p>CRIMES [1] 154/23</p> <p>CROSS [9] 2/6 2/16 18/17 18/20 56/22 88/12 88/18 139/23 140/1</p> <p>CROSS-EXAMINATION [8] 2/6 2/16 18/17 18/20 88/12 88/18 139/23 140/1</p> <p>CSA [2] 28/19 33/25</p> <p>CSI [2] 28/19 33/25</p> <p>CURRENTLY [1] 147/19</p> <p>CUT [4] 19/7 20/6 29/13 38/22</p> <p>CUTS [2] 25/1 46/12</p> <p>D</p> <p>DAD [8] 86/21 86/22 86/23 86/24 87/23 91/6 91/8 152/16</p> <p>DAMAGE [3] 15/21 15/24 16/1</p> <p>DARK [1] 32/11</p> <p>DASH [1] 22/14</p> <p>DATE [2] 4/7 30/19</p> <p>DAY [3] 7/19 47/5 154/25</p> <p>DEADLY [1] 154/21</p> <p>DEALING [1] 39/18</p> <p>DEATH [15] 7/5 8/12 15/25 18/7 18/10 18/14 19/15 45/24 46/1 46/19 50/15 51/24 52/14 52/21 153/9</p> <p>DEATHS [1] 7/5</p> <p>DEBRIS [1] 109/14</p> <p>DECEDENT [17] 7/22 13/18 13/22 14/20 18/23 23/2 24/4 31/1 33/14 36/1 41/25 94/5 149/15 149/20 152/22 153/4 153/20</p> <p>DECEDENT'S [3] 16/24 23/22 36/8</p> <p>DECEMBER [7] 7/14 60/1 88/20 88/20 88/21 92/13 126/24</p> <p>DECIDE [2] 104/8 148/3</p> <p>DECISION [1] 45/8</p> <p>DEDUCE [1] 27/22</p> <p>DEFECT [2] 32/12 32/13</p> <p>DEFEN [1] 151/6</p> <p>DEFENDANT [74] 1/10 1/21 5/9 21/21 49/24 50/3 59/22 60/3 60/6 60/13 60/15 60/16 64/10 64/13 64/22 65/21 66/8 67/8 67/18 68/6 69/19 72/9 73/19 74/4 76/14 77/4 77/25 78/2 78/8 78/23 79/16 80/15 80/20 81/24 82/9 83/23 84/2 84/4 84/14 84/24 85/8 85/13 85/25 86/4 86/10 87/13 87/20 88/8 88/16 96/13 97/11 100/25 101/15 101/19 113/25 119/23 122/9 130/15 131/15 131/17 136/18 137/22 138/3 138/6 139/20 140/24 141/13 145/15 147/16 148/1 151/7 151/11 154/6 154/22</p> <p>DEFENDANT'S [8] 66/3 66/5 66/13 70/11 71/21 80/5 101/19 151/15</p> <p>DEFENSE [11] 4/11 21/11 21/18 21/19 21/22 21/24 108/21 148/18 149/8 151/20 154/16</p> <p>DEFENSE'S [3] 3/3 108/18 149/4</p> <p>DEFICIT [2] 37/17 39/23</p> <p>DEFUSE [1] 76/10</p> <p>DEGREE [1] 18/9</p> <p>DELIBERATION [6] 147/21 151/24 152/9 153/8 153/12 153/18</p>
--	--	--

<p>D</p> <p>DEMONSTRATES [1] 16/14</p> <p>DEPARTMENT [1] 51/19</p> <p>DEPENDING [1] 13/11</p> <p>DEPENDS [1] 38/16</p> <p>DEPICT [3] 24/14 25/12 30/6</p> <p>DEPICTED [3] 11/7 11/18 122/3</p> <p>DEPICTION [1] 70/13</p> <p>DEPICTIONS [1] 9/23</p> <p>DEPICTS [1] 24/3</p> <p>DEPUTY [1] 1/19</p> <p>DESCRIBE [15] 7/18 8/18 11/2 12/8 12/20 19/21 20/21 24/6 25/1 27/5 27/17 54/22 59/16 81/12 139/15</p> <p>DESCRIBED [2] 18/5 26/17</p> <p>DESIGNATED [1] 31/9</p> <p>DETECTED [2] 49/5 49/6</p> <p>DETECTIVE [2] 34/24 93/6</p> <p>DETECTIVES [8] 33/17 51/18 89/2 89/5 93/9 142/14 142/15 142/15</p> <p>DETERMINATION [9] 13/17 17/23 19/22 23/17 25/17 33/2 51/24 52/4 52/11</p> <p>DETERMINATIONS [1] 14/13</p> <p>DETERMINE [6] 12/4 14/18 14/21 16/10 19/10 19/12</p> <p>DETERMINING [1] 53/4</p> <p>DEVELOP [1] 19/15</p> <p>DIANA [1] 1/14</p> <p>DICTATES [1] 40/15</p> <p>DID [188]</p> <p>DIDN'T [51] 17/5 17/5 17/6 17/11 20/7 30/23 33/4 33/5 52/2 69/12 71/16 86/21 87/20 87/23 87/24 90/1 90/9 91/5 91/5 91/18 91/24 92/1 92/3 93/12 98/20 99/19 102/4 102/4 102/8 102/25 102/25 103/1 103/9 103/13 103/16 105/25 106/1 109/7 109/21 111/5 121/18 130/12 131/16 132/5 133/17 134/25 136/16 141/7 144/19 145/5 150/11</p> <p>DIFFERENCE [1] 26/6</p> <p>DIFFERENT [4] 41/6 41/6 55/7 75/22</p> <p>DIFFERENTIAL [2] 23/25 47/20</p> <p>DIFFICULT [1] 15/23</p> <p>DIGIT [4] 37/6 38/8 38/12 38/12</p> <p>DIGITS [2] 37/6 38/15</p> <p>DIRECT [13] 2/5 2/10 2/15 6/4 7/13 19/2 34/13 59/9 59/25 87/16 114/5 126/21 126/23</p> <p>DIRECTION [3] 83/23 84/4 137/22</p> <p>DIRECTLY [6] 23/13 23/14 104/19 124/20 129/13 149/19</p> <p>DIRECTS [1] 35/2</p> <p>DISAGREE [2] 57/10 57/17</p> <p>DISBELIEVE [1] 43/9</p> <p>DISCOLORATION [1] 17/12</p> <p>DISCOVERY [2] 21/6 41/21</p> <p>DISCUSS [1] 150/8</p> <p>DISCUSSED [4] 28/10 30/7 51/8 54/20</p> <p>DISCUSSING [1] 133/10</p> <p>DISCUSSION [8] 21/21 49/24 64/4 64/6 88/16 99/19 108/8 113/25</p> <p>DISORDER [2] 37/17 39/23</p> <p>DISRESPECT [1] 56/12</p> <p>DISTANCE [1] 104/24</p> <p>DISTRAUGHT [1] 89/24</p> <p>DISTRICT [3] 1/19 7/10 154/25</p> <p>DO [117] 5/9 5/14 5/21 5/23 6/19 7/4 7/7 7/20 8/8 8/14 9/17 9/18 11/6 11/6 11/17 12/10 15/24 16/5 16/7 16/20 17/2 19/18</p>	<p>22/13 22/16 22/20 23/19 28/4 28/16 28/18 28/23 29/3 29/5 29/15 29/16 30/24 30/25 33/3 33/4 33/5 33/21 35/2 38/8 43/19 43/21 46/4 47/1 48/15 51/19 53/10 54/9 57/10 57/17 58/12 59/3 59/11 59/14 59/15 61/22 62/11 62/23 67/20 70/7 72/12 74/21 76/7 76/24 77/2 77/10 77/10 79/4 79/5 79/10 81/2 85/2 85/8 85/25 86/18 88/8 91/16 93/18 93/19 94/3 94/10 97/21 100/21 101/4 105/10 105/13 105/15 105/17 106/18 107/6 107/25 107/25 108/6 116/15 118/25 120/4 120/4 120/4 122/20 125/10 125/11 126/24 130/5 131/17 136/23 137/3 138/8 138/16 139/13 139/14 140/20 140/24 143/2 150/23 150/24</p> <p>DOCTOR [2] 57/21 57/23</p> <p>DOCUMENT [5] 8/12 8/25 43/3 43/20 45/14</p> <p>DODGE [5] 128/3 128/4 129/22 129/25 130/3</p> <p>DOES [22] 8/11 17/10 24/14 25/12 28/21 30/6 30/18 30/21 31/12 36/17 41/4 41/12 44/8 94/12 102/13 104/6 106/17 117/15 117/16 132/22 147/9 147/10</p> <p>DOESN'T [2] 106/6 151/13</p> <p>DOING [4] 35/13 97/1 101/21 134/24</p> <p>DON'T [82] 5/3 5/9 13/14 13/15 14/6 21/6 22/3 22/5 22/7 23/13 28/18 29/2 30/22 30/25 32/10 33/4 33/6 34/2 35/9 37/2 38/23 39/10 40/25 43/8 44/3 44/3 45/1 45/23 45/25 47/20 48/14 48/19 54/5 54/20 55/4 55/14 55/15 56/11 58/9 58/15 62/24 63/23 67/12 67/14 72/19 75/18 76/2 76/4 87/18 87/18 88/10 92/8 92/8 94/3 96/6 96/18 96/20 96/22 96/22 97/18 97/20 98/1 99/16 99/17 100/13 100/22 101/5 105/14 105/16 110/15 110/21 110/25 111/8 112/1 113/22 120/1 130/14 144/25 150/4 150/7 151/5 152/6</p> <p>DON'T KNOW [1] 44/3</p> <p>DONE [17] 7/7 7/8 9/15 28/18 28/19 28/22 28/23 30/4 33/1 33/7 34/17 35/4 35/24 36/1 147/5 149/24 149/25</p> <p>DOOR [4] 13/20 13/20 67/3 103/3</p> <p>DORSAL [1] 24/15</p> <p>DOSAGE [1] 44/15</p> <p>DOSE [3] 47/11 57/2 57/3</p> <p>DOSES [3] 56/25 57/1 57/7</p> <p>DOUBLE [2] 37/6 38/12</p> <p>DOWN [51] 8/23 26/25 39/11 50/21 50/23 51/4 51/13 54/3 54/6 61/4 65/12 66/24 71/25 72/1 73/10 76/20 78/16 81/8 81/8 83/10 83/10 84/23 85/17 97/16 101/22 107/8 107/15 115/7 115/9 116/1 116/24 117/10 120/9 122/19 123/15 127/16 127/16 132/7 132/14 138/6 138/24 140/10 145/1 145/7 145/9 145/13 145/14 145/15 150/14 151/13 152/23</p> <p>DOWN ARO [1] 83/10</p> <p>DOWNSTAIRS [1] 145/21</p> <p>DOWNWARD [1] 12/15</p> <p>DR [2] 5/12 5/25</p> <p>DRAW [1] 42/20</p> <p>DRINKING [2] 103/10 103/13</p> <p>DRIVE [6] 105/23 106/4 108/4 132/4 144/6 149/15</p> <p>DRIVER'S [2] 61/22 61/23</p> <p>DRIVING [5] 61/8 66/21 68/9 103/22 127/25</p> <p>DROVE [6] 104/17 105/10 127/13 142/16 142/20 144/11</p>	<p>DRUG [6] 36/19 36/20 37/16 39/20 39/21 39/25</p> <p>DRUGS [1] 42/16</p> <p>DUDE [3] 79/4 122/20 125/11</p> <p>DULY [3] 5/17 58/23 126/6</p> <p>DURANGO [4] 128/5 129/22 129/25 130/3</p> <p>DURING [13] 6/24 7/6 8/20 9/23 19/2 28/18 28/21 69/2 71/16 72/10 88/1 88/5 110/14</p> <p>DUTY [1] 7/3</p> <p>E</p> <p>EACH [4] 63/15 82/16 101/8 103/4</p> <p>EARLIER [6] 30/8 54/20 94/24 95/1 95/7 95/9</p> <p>EARLY [2] 60/1 126/23</p> <p>EASIER [1] 32/12</p> <p>EAST [1] 71/15</p> <p>EDGE [1] 123/13</p> <p>EFFECT [3] 39/18 52/4 55/13</p> <p>EFFECTED [2] 52/6 52/7</p> <p>EIGHT [6] 16/7 16/8 24/10 74/11 78/25 94/21</p> <p>EIGHTH [3] 7/9 15/15 154/24</p> <p>EITHER [12] 5/10 6/24 7/9 13/4 33/25 41/11 44/21 51/17 82/19 134/18 138/13 149/9</p> <p>ELANTRA [1] 68/10</p> <p>ELECTROLYTE [1] 42/17</p> <p>ELEVEN [3] 10/5 17/7 146/12</p> <p>ELICIT [1] 57/8</p> <p>ELSE [11] 45/4 54/20 57/20 76/13 97/14 99/5 99/7 125/15 130/14 149/16 149/23</p> <p>ELUCIDATE [1] 25/19</p> <p>EMPLOYED [2] 6/6 6/9</p> <p>EMPTIES [1] 123/23</p> <p>EMPTY [2] 16/3 143/10</p> <p>EMPTYING [1] 18/5</p> <p>END [10] 13/14 13/15 17/10 21/9 22/20 67/4 84/11 87/20 137/25 143/13</p> <p>ENDS [1] 14/4</p> <p>ENFORCEMENT [4] 23/11 23/19 33/23 34/17</p> <p>ENOUGH [3] 13/6 13/16 53/1</p> <p>ENSUES [2] 107/20 152/25</p> <p>ENTERING [1] 17/13</p> <p>ENTIRE [2] 18/23 21/11</p> <p>ENTITLED [4] 147/25 148/2 151/18 151/24</p> <p>ENTRANCE [8] 11/3 11/7 11/11 14/25 16/9 16/10 16/19 32/23</p> <p>ENTRY [1] 12/5</p> <p>ESCORTING [2] 102/15 103/9</p> <p>ESQ [1] 1/21</p> <p>ESSENTIALLY [4] 7/25 41/9 52/13 119/11</p> <p>ESTIMATE [1] 96/19</p> <p>EVALUATING [2] 45/18 45/21</p> <p>EVEN [6] 15/22 44/3 58/15 88/1 96/6 132/7</p> <p>EVENING [7] 94/24 95/1 95/7 96/9 101/10 101/12 128/11</p> <p>EVENTUALLY [3] 8/23 19/24 139/10</p> <p>EVER [13] 13/22 63/8 63/11 63/25 65/24 84/11 87/13 87/16 88/2 88/6 102/3 102/6 140/20</p> <p>EVERYBODY [2] 149/16 149/23</p> <p>EVERYTHING [2] 53/7 61/4</p> <p>EVIDENCE [10] 10/8 62/7 70/21 108/19 146/6 148/18 148/25 149/5 151/18 154/20</p> <p>EVIDENCED [1] 46/12</p> <p>EX [1] 67/4</p> <p>EXACT [1] 36/9</p>
---	--	---

E	<p>FATAL [3] 15/17 18/3 154/18 FATHER [9] 92/9 92/14 105/8 107/6 107/25 108/2 108/6 149/15 153/21 FATHER'S [2] 109/10 110/2 FEBRUARY [2] 1/16 4/1 FEET [10] 78/25 85/12 85/12 117/16 117/24 118/1 118/2 118/8 118/9 118/10 FELL [13] 50/23 51/14 79/21 84/23 85/18 85/19 121/21 121/23 121/24 122/22 123/1 123/2 125/12 FELLAS [1] 152/15 FELLOWSHIP [2] 6/19 6/21 FELONIOUSLY [1] 147/20 FELONY [2] 93/18 147/15 FEW [2] 68/1 118/25 FIANCE [4] 60/11 61/11 61/12 92/17 FIELD [1] 43/3 FIGHT [30] 27/23 73/25 74/2 74/3 74/5 74/18 76/14 105/24 107/20 110/10 110/16 110/21 111/1 111/8 112/1 147/23 148/2 149/15 149/20 151/4 151/7 151/8 151/9 151/12 151/12 151/16 154/5 154/7 154/9 154/11 FIGURE [2] 47/24 48/10 FINALLY [2] 24/9 132/14 FIND [3] 150/22 151/1 152/1 FINDING [2] 15/5 15/7 FINDINGS [5] 8/9 8/19 12/17 18/8 36/3 FINDS [1] 149/21 FINE [4] 22/1 23/17 45/1 147/2 FINGER [8] 27/3 27/3 27/15 27/19 27/19 27/21 30/9 30/10 FINGERNAIL [3] 28/16 31/19 34/14 FINGERNAILS [2] 29/12 34/25 FINGERS [10] 24/16 24/17 24/18 26/24 27/4 27/14 28/24 30/7 31/17 54/23 FINGERTIPS [1] 27/6 FINISH [1] 8/21 FINISHED [3] 9/16 34/3 153/22 FIRE [2] 35/21 52/7 FIREARM [3] 78/12 88/2 147/16 FIREARMS [1] 94/3 FIRED [3] 80/15 137/8 154/18 FIRING [1] 135/19 FIRST [45] 4/18 4/25 5/17 18/22 19/23 27/19 41/21 46/22 50/19 52/19 58/23 59/4 60/5 61/15 64/10 71/19 71/20 74/4 77/23 78/25 78/25 85/9 85/10 85/16 86/22 95/2 96/12 96/15 108/2 114/18 119/15 119/20 120/16 120/17 120/18 121/20 125/12 126/6 126/14 126/16 130/20 131/7 133/16 135/21 135/24 FIST [1] 55/3 FISTICUFF [1] 54/15 FISTICUFFS [4] 27/25 46/15 46/16 54/18 FIT [1] 52/22 FIVE [18] 24/9 52/16 57/24 66/7 93/23 93/23 96/19 105/4 105/5 105/6 105/7 119/6 121/21 131/9 133/4 133/6 137/20 151/12 FLAMINGO [3] 94/17 94/18 94/19 FLIGHT [1] 107/1 FLIGHTS [2] 106/25 107/1 FLIP [2] 9/14 31/7 FLOOR [17] 71/23 80/5 80/6 80/7 106/19 106/20 107/2 107/16 114/19 114/20 115/4 115/5 130/19 130/20 131/7 149/22 152/22 FOLKS [2] 41/7 152/19 FOLLOW [4] 63/5 77/24 83/12 141/15</p>	<p>FOLLOWED [3] 133/18 134/15 154/18 FOLLOWING [2] 47/11 136/1 FOLLOWS [3] 5/19 58/25 126/8 FOOT [2] 51/3 153/6 FORCE [1] 9/2 FOREHEAD [1] 19/3 FOREIGN [1] 25/20 FORENSIC [4] 6/20 12/17 28/20 42/23 FORM [1] 18/9 FORMULATE [2] 33/18 33/19 FORMULATING [3] 33/13 43/24 43/25 FORTH [11] 73/14 76/21 97/3 99/25 102/16 103/3 107/13 107/14 111/16 117/13 132/9 FORWARD [5] 51/14 79/8 85/19 85/20 151/25 FOUND [3] 36/8 42/6 42/9 FOUNDATION [6] 41/15 41/18 41/19 43/23 63/2 63/6 FOUNDATIONAL [3] 41/10 41/11 41/13 FOUR [32] 6/10 10/5 24/9 37/6 37/7 37/22 37/23 51/1 51/2 52/12 52/13 52/21 52/25 53/5 60/22 60/24 68/19 87/8 87/20 90/9 90/10 90/14 93/23 94/6 94/7 94/7 96/19 105/19 121/21 133/4 133/6 137/19 FRAGMENTS [1] 14/5 FRANKLY [1] 151/23 FREAKED [2] 87/1 91/14 FREAKING [1] 86/19 FRESH [4] 25/1 25/3 25/4 25/6 FRIEND [4] 60/17 66/18 104/3 104/4 FRIEND'S [2] 66/19 105/23 FRIENDS [3] 60/23 99/10 101/6 FRONT [31] 12/15 17/22 28/4 61/2 67/3 68/5 74/12 85/4 85/6 117/18 117/20 118/13 120/12 121/9 121/13 121/17 121/25 123/23 124/1 124/3 125/13 134/5 140/11 140/12 140/16 140/17 140/19 141/17 146/22 146/25 151/20 FUCKING [2] 111/1 111/9 FULL [1] 155/21 FULLY [3] 17/11 132/10 154/2 FURTHER [24] 13/1 13/13 31/10 32/22 34/13 34/25 35/13 41/18 43/22 46/21 50/5 51/17 51/23 53/8 55/7 57/19 58/8 67/10 118/17 125/14 127/16 146/1 146/6 152/25 FUTURE [1] 5/4</p>
F	<p>FABRIC [1] 14/5 FACE [15] 10/19 10/20 77/7 84/23 85/18 110/22 112/13 113/5 113/13 120/21 121/22 121/24 122/22 123/3 126/2 FACED [1] 109/18 FACING [4] 129/25 132/15 133/2 140/8 FACT [6] 12/5 89/9 110/25 149/21 151/12 151/13 FACTORS [1] 55/8 FACTS [5] 50/12 151/20 153/15 154/1 154/4 FACTUAL [2] 151/19 152/11 FACTUALLY [1] 151/14 FAIR [2] 52/24 70/13 FALL [4] 50/20 54/6 54/7 85/17 FALLING [5] 51/3 51/7 51/13 53/21 54/16 FALLS [1] 54/3 FAMILIAR [1] 12/16 FAMILY [2] 4/22 58/13 FAR [16] 13/16 14/14 25/16 25/23 28/1 36/23 39/11 41/18 44/13 53/21 78/23 85/10 90/16 94/20 104/24 149/14 FASHION [1] 22/4 FAST [2] 123/12 149/16</p>	<p>G G-A-V-I-N [1] 5/25 GAMBLE [1] 96/2 GAVE [1] 106/7 GAVIN [4] 2/4 5/12 5/16 5/25 GENERAL [1] 92/25 GENERALIZATION [1] 93/7 GENERALLY [1] 28/19 GENERATE [1] 42/19 GESTURES [1] 81/15 GET [35] 4/13 5/13 8/23 12/2 13/13 14/5 14/6 17/6 17/11 38/14 49/21 52/25 60/17 66/23 75/13 75/14 76/9 79/11 79/11 80/23 90/5 95/3 98/21 102/10 106/12 127/18 130/22 132/3 133/15 134/19 148/24 152/16 155/3 155/13 155/13 GETS [8] 10/13 54/3 104/5 104/6 106/15 121/7 149/15 152/20 GETTING [6] 38/21 102/19 136/7 136/9 145/22 153/21 GIRL [1] 92/20</p>

G	16/9 16/19 17/25 18/13 32/14 32/17 35/13 50/14 50/20 51/4 53/7 GUNSHOTS [1] 84/18 GUY [3] 141/22 152/24 152/25 GUYS [3] 58/14 82/16 152/12	153/18 HEAD [3] 133/14 138/4 153/6 HEADING [1] 81/21 HEALING [1] 19/15 HEAR [6] 72/5 72/9 99/19 109/7 125/2 144/19 HEARD [8] 45/1 78/21 104/11 134/24 135/22 136/13 141/13 141/25 HEARING [6] 1/12 4/8 21/9 22/20 61/1 73/22 HEARSAY [3] 41/14 75/13 75/16 HEART [2] 15/12 54/8 HECK [1] 37/8 HEIGHT [2] 49/9 49/15 HELD [2] 78/24 129/8 HELL [4] 73/3 76/17 111/3 112/10 HELP [3] 29/6 33/18 81/17 HER [36] 44/5 44/7 44/7 44/21 44/21 44/22 55/21 56/15 60/18 61/13 62/23 62/25 63/25 63/25 72/12 72/14 72/17 73/2 73/4 76/17 76/18 76/22 99/14 101/11 110/15 111/1 111/3 111/3 111/9 111/11 112/2 112/9 112/11 129/3 129/4 146/20 HERE [47] 5/4 5/9 6/22 6/23 10/12 12/10 16/16 34/18 38/19 40/4 40/4 43/20 44/6 44/21 45/23 47/7 57/13 64/11 67/23 81/9 82/10 82/12 82/24 86/6 102/18 115/24 116/10 116/10 120/10 120/23 121/4 121/20 122/25 123/12 123/16 123/22 126/1 134/3 134/4 137/18 138/9 139/4 140/14 141/10 141/22 143/9 152/11 HERE'S [1] 120/16 HEREBY [1] 154/23 HEREIN [2] 153/8 154/23 HIGH [7] 38/11 56/25 57/1 57/2 57/5 57/6 57/7 HIGHER [4] 39/13 39/14 39/15 130/19 HIGHWAY [16] 60/9 67/19 86/14 86/15 89/16 90/10 90/14 127/17 135/15 135/16 135/18 136/19 137/17 138/4 141/4 144/11 HILDEBRAND [7] 2/9 58/7 58/22 59/5 125/17 154/5 154/12 HIM [125] 22/10 35/3 51/7 55/15 59/16 60/18 60/23 62/14 72/11 72/16 74/3 74/19 75/5 75/6 75/21 76/16 76/23 76/23 76/23 76/24 77/22 78/9 78/11 79/12 79/19 79/20 80/16 80/22 80/23 80/24 82/7 82/20 82/22 83/11 84/9 84/20 85/9 86/2 86/2 86/3 86/5 86/11 86/24 88/3 95/2 95/4 95/17 96/15 97/5 98/12 98/16 98/21 98/24 101/21 102/15 103/9 104/14 108/4 112/11 112/12 114/20 115/2 115/3 117/7 117/9 118/5 118/6 118/8 119/24 121/19 121/20 122/11 122/18 122/18 122/21 122/25 123/1 123/7 125/9 125/12 127/10 127/12 127/12 127/13 127/15 127/19 128/11 128/14 128/17 128/19 129/12 131/19 131/19 131/23 133/18 134/14 134/15 135/18 136/1 136/21 136/24 137/3 137/7 138/24 139/4 139/11 139/15 140/10 141/4 141/7 141/10 141/14 141/15 142/3 142/16 142/20 144/6 144/16 144/23 144/25 148/10 148/15 149/22 153/20 154/4 HIMSELF [3] 84/20 130/16 145/19 HIS [70] 9/23 15/14 15/16 16/3 24/15 24/16 24/16 24/19 27/21 36/5 37/16 45/2 45/24 46/1 47/25 55/10 57/6 60/17 60/19 67/2 68/5 71/23 77/1 77/19 78/6 78/7 78/8 78/11 79/20 84/23 85/18 86/7 86/8 86/21 86/22 87/16
GIRLFRIEND [4] 60/18 62/19 63/3 129/1 GIRLS [8] 69/22 71/16 87/6 91/1 105/18 106/8 115/10 115/18 GIVE [7] 33/9 50/11 98/12 98/13 105/21 106/1 139/6 GIVES [1] 154/25 GIVING [5] 56/4 66/15 139/11 141/21 146/20 GLANCING [1] 132/9 GO [74] 5/13 5/22 7/23 17/6 23/12 29/6 34/1 39/13 39/15 41/18 44/6 44/11 45/12 46/21 48/11 48/12 55/7 58/20 59/2 60/15 60/16 60/17 64/6 65/21 66/3 66/14 66/23 68/4 70/11 71/2 74/7 74/8 79/8 83/23 84/4 85/22 86/10 86/11 87/5 90/4 90/8 90/9 95/3 95/19 96/3 98/15 99/23 102/24 103/1 103/22 104/10 104/19 105/17 105/18 106/13 116/11 116/11 116/13 117/16 125/8 125/22 126/13 128/24 129/13 133/15 141/2 141/4 144/14 147/6 149/18 150/24 152/7 154/15 154/16 GOES [12] 7/21 13/1 17/21 42/5 47/5 71/9 71/10 71/10 71/14 71/14 111/3 123/15 GOING [100] 4/24 7/13 9/12 11/12 12/14 14/4 14/5 14/6 14/11 15/2 16/4 24/7 25/11 25/23 32/22 33/9 39/10 39/13 40/25 43/22 44/6 47/23 48/1 48/11 48/12 50/11 54/6 55/19 57/24 58/14 59/25 61/4 63/2 65/8 65/9 65/10 65/18 67/2 69/3 69/10 69/11 70/23 70/24 75/8 76/17 79/3 79/5 79/9 80/3 83/12 83/24 84/1 84/2 86/12 89/18 93/14 96/2 96/3 97/2 98/10 98/12 98/13 98/15 98/16 102/10 104/12 108/11 110/14 111/2 111/3 111/16 112/8 126/23 130/9 132/8 132/18 133/15 134/21 134/21 135/11 136/1 136/4 136/10 136/18 146/19 147/14 147/19 148/8 148/9 148/22 149/11 150/2 150/15 151/25 151/25 152/13 153/9 153/18 153/19 154/3 GONNA [18] 4/13 72/11 72/13 72/16 73/2 73/3 73/4 76/18 76/22 79/4 102/20 105/24 112/1 112/2 112/10 122/20 125/10 125/11 GOOD [1] 6/8 GOT [43] 38/19 39/17 48/1 48/8 55/5 61/8 62/12 68/3 68/11 69/19 70/10 74/9 75/6 75/13 86/25 87/6 87/9 91/14 95/18 98/2 98/19 98/20 102/19 105/13 108/7 112/8 114/21 115/21 116/13 121/20 125/10 130/13 130/14 138/17 138/21 142/22 142/22 143/18 145/6 145/16 145/18 145/23 152/16 GOTTEN [1] 66/19 GRABBED [2] 79/20 84/20 GREATER [1] 14/19 GREEN [1] 17/12 GROIN [1] 17/14 GROSSLY [1] 32/11 GROUND [4] 107/16 108/3 130/19 137/9 GROUP [1] 96/13 GUARDS [1] 74/12 GUESS [5] 45/6 51/22 52/13 88/21 97/5 GUN [31] 13/1 13/3 13/4 13/11 14/15 30/2 32/9 77/20 78/9 78/16 78/24 79/18 80/15 83/5 83/5 88/6 88/9 112/19 113/6 113/18 118/2 121/1 122/17 123/10 125/2 135/19 137/14 138/6 153/3 153/7 154/17 GUNPOWDER [2] 13/4 13/12 GUNSHOT [24] 9/2 10/25 11/3 11/4 11/11 11/21 12/2 12/4 12/5 12/18 12/21 12/24 15/9	16/9 16/19 17/25 18/13 32/14 32/17 35/13 50/14 50/20 51/4 53/7 GUNSHOTS [1] 84/18 GUY [3] 141/22 152/24 152/25 GUYS [3] 58/14 82/16 152/12	
H	H-I-L-D-E-B-R-A-N-D [1] 59/6 H-O-L-L-A-N-D [1] 126/17 HAD [44] 5/7 7/22 18/22 28/11 28/22 29/12 63/8 63/11 63/23 63/23 65/1 65/1 65/13 66/8 66/19 67/9 67/12 68/6 75/17 78/18 98/5 98/20 99/3 101/14 101/18 103/2 119/4 127/20 129/5 129/11 129/12 130/15 130/22 131/20 131/23 132/23 136/24 139/11 141/14 141/15 142/15 145/6 145/11 150/7 HALF [1] 138/21 HALLUCINATIONS [1] 57/9 HALLWAY [1] 58/18 HAND [37] 22/25 23/2 23/22 24/4 24/16 24/19 25/7 25/9 25/16 25/24 26/2 26/16 26/18 26/20 26/24 27/2 27/6 27/20 27/21 28/4 30/9 30/10 30/13 31/13 31/17 32/3 46/14 53/24 53/25 54/1 54/24 58/20 76/25 78/14 86/25 91/14 126/3 HANDED [2] 77/2 77/3 HANDS [11] 21/1 27/23 29/17 31/10 46/13 51/8 54/4 54/7 54/13 54/19 81/15 HANDWRITTEN [3] 88/24 89/1 142/8 HAPPEN [1] 103/7 HAPPENED [18] 20/14 20/15 31/4 67/13 67/14 69/22 76/19 77/18 79/15 90/21 93/15 130/24 130/25 133/1 133/11 151/3 152/14 153/12 HAPPENING [1] 121/9 HAPPENS [2] 55/15 152/11 HARD [2] 61/1 81/10 HARTFORD [2] 6/18 6/19 HAS [16] 4/15 10/12 10/15 17/12 21/18 24/15 32/11 47/4 47/25 48/8 60/23 75/15 75/18 101/2 108/6 153/25 HAVE [123] 5/3 5/9 5/22 6/9 6/11 6/22 7/1 7/8 7/9 7/12 7/14 9/8 12/25 13/16 14/10 14/15 15/24 16/12 17/20 18/3 18/4 20/14 20/15 21/1 21/5 22/7 22/10 26/1 27/4 27/9 27/16 28/24 29/2 29/3 29/21 30/24 32/4 32/4 32/10 35/9 35/23 36/9 38/7 38/23 38/25 39/2 39/13 40/18 40/22 42/8 46/5 46/23 48/5 48/20 51/2 52/6 52/7 53/8 54/5 54/9 54/10 54/11 54/17 54/17 54/18 57/10 57/15 57/17 58/12 59/2 60/2 60/16 60/18 60/21 62/11 62/18 63/22 64/3 64/4 64/21 67/9 69/3 71/3 72/14 75/24 77/9 77/11 81/7 84/8 88/2 91/24 92/1 92/3 92/7 92/14 93/12 93/18 97/24 102/6 103/7 110/15 112/8 114/22 120/1 126/13 127/21 129/1 139/2 146/8 146/10 146/11 146/16 148/20 150/22 151/5 151/9 152/19 153/8 153/16 154/22 155/4 155/11 155/14 HAVEN'T [2] 58/10 148/14 HAVING [8] 5/17 17/10 58/23 61/1 101/23 107/13 110/11 126/6 HE [246] HE'LL [1] 104/15 HE'S [24] 21/24 35/1 49/10 59/16 59/20 82/19 99/24 102/19 108/7 112/8 112/8 116/13 127/8 139/15 139/16 141/25 148/22 149/19 150/8 152/22 152/23 152/23 152/24	

<p>H</p> <p>HIS... [34] 90/11 91/6 99/1 99/2 99/25 101/15 102/19 104/9 106/13 107/6 112/18 113/18 116/12 116/13 121/1 121/22 121/24 122/1 122/22 123/3 127/4 133/2 138/6 139/8 145/1 147/16 148/10 148/15 148/20 149/15 152/16 153/19 153/19 153/21 HIT [21] 15/11 25/15 25/16 54/21 54/21 76/22 76/23 76/24 77/4 79/18 80/16 82/7 112/11 113/5 113/13 118/5 119/16 119/20 119/21 123/7 134/14 HITS [8] 13/5 107/23 110/22 116/25 117/15 118/6 120/21 122/11 HOLD [9] 55/20 70/24 75/12 82/18 90/11 90/11 109/25 123/15 151/1 HOLDING [1] 135/19 HOLLAND [22] 2/14 7/15 9/23 60/19 60/21 94/6 94/10 125/23 125/25 126/5 126/16 127/5 143/25 143/25 144/3 144/5 144/20 146/4 147/23 147/24 148/1 152/16 HOME [9] 66/16 67/18 87/10 90/6 98/12 98/16 104/10 104/14 153/19 HOMICIDE [5] 18/15 34/24 45/3 52/21 53/6 HONOR [35] 4/10 4/12 5/10 9/5 10/4 18/18 21/10 22/5 22/21 43/23 49/22 53/10 55/25 56/24 57/20 58/18 59/22 61/18 62/4 70/3 70/18 88/13 88/14 108/10 114/1 118/17 133/19 139/20 148/6 148/19 148/22 149/12 150/16 152/7 152/7 HONORABLE [1] 1/14 HONORS [1] 5/14 HOOK [1] 8/1 HOSPITAL [6] 6/18 6/19 7/23 30/17 30/20 30/23 HOSPITALS [1] 30/25 HOURS [11] 18/7 24/1 39/8 39/8 47/14 48/16 48/18 48/20 60/1 126/24 128/12 HOUSE [2] 74/20 131/24 HOW [65] 6/9 6/11 7/6 7/7 7/18 7/18 11/6 11/6 13/11 14/14 14/21 15/25 17/20 18/2 19/16 24/17 25/1 30/22 31/23 36/8 37/21 38/8 39/6 41/5 44/6 45/7 49/1 51/12 53/3 54/22 55/14 56/23 60/21 62/12 66/5 66/8 70/13 74/21 75/18 76/2 78/19 78/23 85/10 90/16 93/22 94/20 95/18 96/24 101/4 103/12 104/24 105/13 105/15 106/6 113/12 113/12 117/24 119/3 119/15 119/22 127/18 130/10 131/4 131/4 137/3 HOWARD [1] 143/25 HOWEVER [2] 4/22 45/23 HUH [4] 73/15 80/8 90/20 92/11 HUM [6] 69/16 113/24 115/8 120/25 121/8 132/20 HUNDRED [4] 37/7 37/23 90/17 90/18 HYPOTHETICAL [3] 13/24 50/11 50/12 HYUNDAI [1] 68/10</p>	<p>34/21 38/25 40/25 41/2 48/4 50/11 55/19 55/23 55/25 57/1 58/14 59/25 61/1 63/2 70/23 70/24 72/16 73/3 73/3 73/3 75/8 75/9 75/17 76/17 76/18 76/22 80/3 81/5 83/12 86/6 92/10 92/12 95/7 95/11 95/11 108/21 109/6 109/6 109/25 111/3 111/3 111/6 111/13 112/10 112/10 115/23 120/8 120/18 120/18 126/11 126/23 132/18 135/25 145/22 147/25 148/2 148/8 148/9 149/11 149/25 150/15 151/24 153/2 154/3 154/13 155/9 I'VE [7] 4/25 9/7 27/24 34/6 45/1 46/15 129/12 IDEA [1] 62/11 IDENTIFICATION [5] 10/18 30/17 59/21 108/19 139/20 IDENTIFIED [3] 32/14 53/5 64/11 IDENTIFIES [1] 10/14 IDENTIFY [1] 44/24 II [2] 2/14 126/5 IMBALANCES [1] 42/18 IMMEDIATE [2] 18/4 153/5 IMMEDIATELY [3] 141/23 142/1 149/18 IMPORTANT [1] 52/16 IMPOSSIBLE [1] 15/23 INCHES [5] 13/10 14/20 35/12 49/10 49/16 INCIDENT [4] 88/22 89/20 94/14 95/8 INCLUDE [1] 148/4 INCONSISTENT [3] 50/13 51/3 150/1 INCORRECT [1] 5/5 INDETERMINATE [3] 13/14 14/19 53/5 INDEX [1] 27/19 INDICATED [1] 53/14 INDICATES [1] 56/8 INDICATION [1] 33/10 INDIVIDUAL [17] 19/16 19/16 19/17 39/22 40/6 42/6 45/22 46/19 49/3 49/9 49/11 49/13 53/21 55/11 55/13 97/23 132/2 INDIVIDUAL'S [6] 37/21 46/13 47/17 48/2 48/22 56/9 INDIVIDUALS [4] 63/15 73/22 132/1 132/3 INDULGENCE [2] 49/21 113/23 INFER [1] 153/4 INFLUENCE [1] 103/16 INFORMATION [14] 10/15 30/20 30/20 34/25 35/9 35/14 35/18 41/1 41/5 41/14 44/25 45/21 53/1 100/18 INITIAL [2] 39/9 151/15 INITIALLY [7] 56/12 80/15 81/20 83/13 134/1 151/11 151/14 INJURIES [15] 8/24 9/1 9/9 17/24 27/24 32/2 44/22 46/14 46/18 50/13 50/23 51/1 51/2 54/17 54/22 INJURY [6] 9/3 28/8 28/15 31/25 50/25 53/14 INQUIRY [1] 21/16 INSIDE [2] 17/17 17/18 INSTANCE [2] 13/23 31/5 INSTIGATING [1] 154/7 INTENDING [1] 95/25 INTENT [1] 76/5 INTERACTED [1] 34/2 INTERESTED [1] 4/23 INTERFERE [1] 13/17 INTERMEDIARY [2] 13/19 14/10 INTERNAL [3] 15/4 15/7 17/24 INTERNALLY [1] 16/1 INTERPRETS [1] 42/9 INTERRUPTED [1] 34/22</p>	<p>INTERVENTION [1] 30/16 INTESTINAL [1] 18/6 INVESTIGATION [7] 34/5 34/13 34/17 35/2 51/17 51/23 52/3 INVESTIGATIONS [1] 7/4 INVESTIGATOR [4] 6/21 7/21 34/9 34/10 INVESTIGATOR'S [1] 34/6 INVESTIGATORS [1] 51/18 INVOKE [1] 4/20 INVOLVED [1] 53/15 IRRATIONAL [5] 40/19 40/22 44/17 46/3 57/16 IS [257] ISN'T [3] 37/12 45/7 54/16 ISSUE [2] 40/1 74/14 ISSUES [2] 69/7 69/11 IT [239] IT'S [109] 11/6 11/10 13/11 14/1 14/5 14/11 15/23 16/8 17/9 17/10 19/12 19/14 19/15 20/11 20/13 22/3 22/10 25/13 26/25 28/10 28/23 30/7 30/12 34/9 34/10 34/16 34/16 34/18 36/7 36/15 37/16 37/18 38/6 39/3 39/8 39/10 39/24 40/12 41/1 41/9 41/9 41/11 41/13 41/13 43/5 43/11 45/25 48/1 48/16 48/16 48/19 48/19 50/12 52/24 52/24 53/17 53/22 53/23 54/9 54/10 54/11 54/15 55/13 56/13 67/21 67/22 71/9 75/13 75/21 80/6 81/9 81/10 89/16 90/19 90/21 104/2 104/3 106/22 106/25 108/14 109/4 109/8 110/3 110/5 111/21 111/21 111/22 111/22 111/23 115/4 121/9 121/13 122/5 123/15 123/17 124/15 124/15 124/23 124/23 138/14 143/15 149/15 149/25 149/25 150/2 150/4 151/17 151/23 152/15 ITEMS [1] 34/14 ITSELF [5] 12/22 13/12 15/22 39/25 54/24</p> <p>J</p> <p>JACKET [1] 32/16 JANUARY [2] 89/10 92/14 JOHN [1] 1/21 JOIN [1] 27/6 JOINS [2] 27/20 27/21 JOINT [1] 27/19 JOSH [2] 30/19 30/21 JR [1] 1/21 JUDGE [9] 8/18 18/16 40/23 70/24 88/11 114/12 129/18 132/19 147/11 JUDICIAL [2] 7/10 154/24 JUMPED [1] 102/17 JUMPSUIT [1] 139/18 JURY [4] 148/3 151/20 154/15 154/19 JUST [80] 4/19 7/17 7/17 8/21 9/14 10/10 11/4 11/5 17/19 18/2 18/5 21/10 22/8 22/13 23/16 29/11 33/13 35/6 39/20 40/9 41/13 44/20 50/7 52/25 55/19 57/13 57/24 61/1 67/2 67/3 67/20 68/1 73/13 75/17 76/16 80/25 81/12 82/20 86/5 87/1 88/13 89/2 89/4 90/1 90/11 92/2 92/17 93/14 95/19 96/3 97/13 97/22 101/8 101/9 101/11 105/17 110/18 111/6 117/13 118/19 118/19 131/7 132/2 133/3 133/21 134/21 136/24 137/7 141/13 141/22 145/19 146/11 146/17 146/19 148/10 148/15 149/20 149/25 153/15 155/6 JUSTICE [3] 1/3 1/14 7/10 JUXTAPOSED [1] 123/4</p>
---	--	--

K	111/13 LED [1] 111/10 LEFT [78] 10/24 11/22 12/14 15/12 15/13 15/13 15/16 16/18 16/19 17/21 19/6 20/23 20/24 24/8 24/9 24/13 25/24 25/24 26/2 26/16 26/20 27/2 30/9 30/10 30/13 31/9 31/12 51/8 51/9 51/10 66/13 67/9 75/25 76/2 77/2 77/12 78/2 80/18 80/19 80/20 81/21 82/8 82/9 84/12 84/15 90/2 93/2 98/2 102/13 105/15 115/12 115/13 115/15 116/2 116/4 116/5 116/10 117/2 117/9 118/13 118/14 121/4 122/1 124/1 125/13 130/15 132/6 141/2 141/23 143/12 145/6 145/7 145/11 145/17 145/19 145/24 149/18 154/19 LENGTH [1] 16/2 LESSER [1] 153/9 LET [13] 9/14 15/3 56/2 65/12 67/16 69/1 82/20 130/21 148/9 148/9 150/19 151/1 152/6 LET'S [7] 34/14 46/21 74/7 74/7 95/15 95/15 135/24 LETHAL [6] 37/12 38/4 38/16 38/21 49/7 55/10 LETHALITY [1] 38/15 LEVEL [16] 8/23 36/22 37/1 37/2 38/1 38/16 39/14 44/15 47/3 57/3 57/3 57/5 57/5 57/6 106/17 155/1 LEVELS [7] 40/17 45/21 55/9 55/10 56/8 57/14 114/15 LICENSE [3] 6/23 61/22 61/23 LIFTED [2] 77/19 112/18 LIKE [43] 4/14 4/15 13/20 13/20 19/14 22/13 23/3 23/6 26/8 26/10 29/3 30/17 31/10 38/19 40/10 41/2 46/18 67/22 74/11 74/11 74/23 79/3 80/5 80/17 80/19 85/10 87/21 88/25 94/22 96/6 96/6 103/13 103/14 103/16 105/2 109/11 110/6 132/16 132/22 133/4 133/9 137/16 150/24 LINE [2] 119/1 147/19 LINES [2] 13/25 73/14 LISA [3] 2/4 5/16 5/25 LIST [1] 21/5 LISTED [1] 47/7 LISTENING [1] 81/5 LITER [1] 15/16 LITERALLY [1] 8/3 LITERS [1] 15/14 LITTLE [9] 6/10 8/1 17/10 46/21 51/10 61/1 102/18 117/17 123/15 LIVE [4] 94/10 94/12 94/16 106/18 LIVED [2] 71/11 94/17 LIVING [4] 100/19 100/21 100/23 100/25 LOCATED [3] 7/21 14/4 60/8 LOCATION [4] 41/6 87/12 142/16 154/10 LONG [11] 6/9 6/11 15/25 19/16 39/6 60/21 65/3 66/5 66/8 66/10 151/25 LONGER [1] 66/11 LOOK [30] 14/24 19/9 19/18 19/18 23/16 24/13 29/2 29/3 32/7 32/15 33/16 33/17 38/25 40/10 45/20 46/18 48/20 50/2 70/7 103/12 103/13 103/14 103/16 110/15 110/21 110/25 111/8 132/22 155/4 155/10 LOOKED [8] 18/25 20/16 25/14 34/5 34/8 70/14 103/20 106/15 LOOKING [21] 19/22 24/3 24/7 28/10 31/8 32/22 33/14 34/3 39/1 40/5 42/17 73/18 73/19 73/20 75/4 96/18 120/8 138/24 149/21 151/7 152/24	LOOKING AT [1] 24/7 LOOKS [6] 4/14 19/14 23/3 30/16 41/1 109/11 LOOSE [1] 17/17 LOREN [1] 123/8 LORENZO [111] 59/12 65/11 65/14 66/15 68/18 72/4 72/20 72/22 73/1 73/3 73/9 73/23 73/25 74/1 74/5 74/17 76/9 77/19 82/7 83/5 83/11 97/9 97/11 97/13 97/14 97/16 97/23 98/5 98/13 98/19 98/22 99/11 99/14 99/23 100/5 100/7 100/9 101/22 102/5 102/9 102/10 102/13 102/16 102/19 103/2 103/5 103/10 104/6 104/9 104/12 104/14 104/17 106/13 106/13 106/17 107/18 107/23 110/10 110/13 110/18 110/22 111/17 112/4 112/6 112/6 112/15 114/20 114/23 116/9 116/18 116/19 116/25 117/1 117/6 117/15 117/15 117/24 119/4 119/4 119/11 120/14 120/21 120/23 121/5 122/16 122/16 122/18 122/23 122/25 123/7 124/13 125/1 125/8 131/19 132/6 132/6 132/16 133/2 133/13 134/7 134/15 135/3 136/1 136/5 136/18 137/2 137/12 139/13 145/19 151/10 154/10 LORENZO'S [8] 74/13 100/3 104/12 104/20 105/18 110/19 122/25 132/15 LOREZ [1] 82/7 LOSS [1] 15/20 LOST [3] 134/22 136/4 142/3 LOT [29] 37/8 61/16 62/9 62/12 64/3 65/1 86/12 87/9 89/14 91/20 95/17 96/16 96/25 99/24 114/8 116/19 122/10 128/18 129/14 129/16 129/24 132/16 137/17 140/5 140/20 140/25 141/5 141/10 143/13 LOW [1] 37/5 LOWE [6] 144/7 144/15 144/20 145/2 145/10 145/11 LOWER [2] 26/23 155/1 LUIS [4] 1/9 4/8 59/11 154/23 LUNG [2] 15/11 15/12 LUNGED [1] 76/23
L	M	
L-I-S-A [1] 5/25 LABORATORY [2] 42/14 45/16 LABS [1] 42/13 LACERATE [1] 17/11 LACERATION [4] 11/10 11/25 16/16 17/3 LACK [1] 41/15 LANDED [1] 133/14 LARGE [1] 49/13 LAS [5] 1/3 4/1 6/22 7/10 51/18 LAST [8] 59/4 62/23 109/7 126/14 126/16 126/24 144/19 148/8 LATER [13] 8/8 18/7 21/25 22/1 22/2 22/7 24/1 35/18 88/25 88/25 130/24 131/9 136/13 LAW [5] 23/11 23/19 33/23 34/17 147/21 LAY [2] 41/19 63/6 LAYING [4] 85/4 108/3 109/16 138/25 LEAD [1] 153/15 LEARNED [1] 139/2 LEAST [2] 50/19 151/14 LEAVE [19] 58/14 65/6 69/25 70/25 75/6 76/8 79/22 87/3 99/24 102/5 102/20 102/24 102/25 102/25 103/1 103/2 105/18 106/8 115/19 LEAVES [1] 142/2 LEAVING [5] 67/4 69/2 111/11 111/11	MA'AM [14] 5/22 6/6 21/23 23/18 30/6 34/21 41/22 45/12 50/2 53/14 81/16 82/21 146/15 153/23 MACDONALD [3] 1/24 155/22 155/22 MACHINE [1] 64/18 MACHINES [1] 97/17 MADE [6] 39/21 58/8 76/14 89/4 93/8 102/5 MAIN [1] 123/21 MAJOR [1] 15/11 MAKE [23] 11/24 14/13 17/23 21/16 23/16 23/17 25/17 33/1 44/8 51/24 88/24 142/5 146/20 147/1 147/2 147/5 147/6 148/10 148/10 148/15 155/11 155/12 155/14 MAKING [7] 22/8 35/14 45/8 71/13 92/24 93/7 93/12 MALICE [3] 147/21 147/22 148/5 MAN [19] 51/3 72/17 73/4 76/18 76/22 110/15 110/21 110/25 111/4 111/8 112/11 144/16 144/21 145/2 145/10 145/11 145/16 145/23 153/6 MANNER [10] 7/4 8/12 18/14 44/23 46/16 50/15 51/24 52/5 52/6 52/12 MANNERS [2] 52/13 52/21 MANY [8] 7/7 7/7 24/17 74/21 117/24 119/3 119/15 119/22 MARCH [1] 155/1	

<p>M</p> <p>MARGINAL [1] 154/20</p> <p>MARK [6] 21/22 21/25 22/14 80/3 108/9 108/9</p> <p>MARKED [14] 2/20 3/3 4/14 4/15 4/15 9/13 21/19 22/4 61/21 70/5 108/18 108/21 114/4 129/21</p> <p>MARKING [1] 109/13</p> <p>MARKS [2] 24/6 24/25</p> <p>MARRIED [1] 100/16</p> <p>MARSHAL [1] 58/15</p> <p>MART [4] 89/14 93/3 93/5 93/16</p> <p>MASTER [1] 21/5</p> <p>MATCH [1] 32/17</p> <p>MATERIALS [2] 25/21 42/18</p> <p>MATTER [2] 89/9 110/25</p> <p>MAY [26] 9/4 13/2 14/9 21/14 31/1 31/4 45/21 45/21 46/2 53/15 53/15 53/16 55/4 55/4 56/23 59/21 61/18 70/2 97/24 97/24 114/1 114/12 129/18 132/18 139/17 139/19</p> <p>MAYBE [5] 22/8 22/8 41/11 41/11 151/5</p> <p>ME [62] 5/7 9/15 12/20 15/3 19/9 21/6 21/7 28/23 31/22 34/2 35/1 36/20 38/23 57/23 60/17 63/23 64/3 65/12 67/8 67/17 68/18 69/1 74/1 74/19 79/4 79/6 82/4 89/3 91/16 92/17 93/15 95/3 95/22 99/14 100/9 101/17 102/4 102/17 103/20 110/19 115/10 122/12 122/14 122/20 125/11 129/10 130/6 130/13 130/13 130/21 132/15 132/15 135/25 137/9 137/18 139/8 146/13 150/10 150/19 150/24 151/1 155/5</p> <p>MEAN [10] 17/2 20/4 23/6 23/7 30/21 36/17 47/8 56/11 86/19 149/25</p> <p>MEANING [1] 113/18</p> <p>MEANS [2] 36/19 39/3</p> <p>MEANT [2] 95/9 154/15</p> <p>MEANTIME [1] 21/14</p> <p>MEANWHILE [1] 152/21</p> <p>MEASURED [1] 57/4</p> <p>MEDICAL [19] 4/25 5/2 5/11 6/6 6/11 6/15 6/16 6/21 6/23 6/25 8/12 18/10 30/15 33/12 34/12 41/2 42/22 43/16 44/22</p> <p>MEDICINE [1] 6/17</p> <p>MEET [9] 74/19 74/25 74/25 89/18 93/14 96/1 102/10 102/20 104/12</p> <p>MEETING [2] 89/17 93/3</p> <p>MEETS [1] 107/18</p> <p>MEMBERS [2] 4/23 58/13</p> <p>MENTION [1] 28/25</p> <p>MENTIONED [1] 26/22</p> <p>MESSAGE [1] 93/2</p> <p>MET [8] 93/3 93/5 93/16 95/16 101/11 129/12 131/20 131/23</p> <p>METABOLISM [1] 48/14</p> <p>METABOLITE [5] 37/15 37/19 39/24 48/2 48/2 48/8</p> <p>METABOLIZE [2] 39/14 48/9</p> <p>METABOLIZED [1] 39/16</p> <p>METABOLIZES [1] 39/7</p> <p>METAL [1] 25/17</p> <p>METH [3] 36/13 40/21 47/25</p> <p>METHAMPHETAMINE [34] 36/4 36/6 36/11 36/13 36/23 37/5 37/5 37/15 37/19 38/20 39/7 39/9 39/14 39/15 39/19 39/25 40/6 40/15 40/18 44/13 44/16 45/24 46/6 46/25 48/6 48/15 49/4 49/5 55/9 56/25 57/1 57/7 57/8 57/15</p>	<p>METROPOLITAN [1] 51/19</p> <p>MEXICO [1] 6/22</p> <p>MICROPHONE [2] 59/3 61/2</p> <p>MICROSCOPE [1] 14/24</p> <p>MICROSCOPICALLY [1] 15/1</p> <p>MID [1] 15/13</p> <p>MIDDLE [8] 27/2 27/3 27/6 27/14 27/15 27/20 28/11 30/9</p> <p>MIGHT [3] 13/18 23/19 58/13</p> <p>MILE [6] 87/8 87/20 90/9 90/10 90/14 105/19</p> <p>MILES [7] 68/2 94/21 94/21 94/21 104/25 105/1 149/17</p> <p>MILLIGRAMS [2] 47/5 47/12</p> <p>MILLILITER [17] 36/16 36/17 36/23 37/7 37/23 39/3 40/18 40/21 44/15 46/6 47/13 47/18 47/25 48/5 48/10 57/2 57/14</p> <p>MILLILITERS [1] 15/15</p> <p>MINE'S [2] 66/18 104/3</p> <p>MINUTE [6] 57/24 102/17 113/11 123/11 123/11 145/8</p> <p>MINUTES [18] 65/5 66/7 104/14 104/15 105/3 105/4 105/5 105/6 105/7 113/8 113/9 113/10 113/12 131/9 133/5 151/12 151/13 151/13</p> <p>MIRROR [4] 23/20 131/5 136/11 136/25</p> <p>MIS [1] 80/22</p> <p>MISFIRE [5] 83/14 112/25 119/4 119/14 119/15</p> <p>MISFIRE [8] 77/22 77/22 78/10 78/22 80/15 80/22 83/6 154/17</p> <p>MISS [3] 4/15 81/8 155/14</p> <p>MISSILE [2] 17/4 17/13</p> <p>MISSING [1] 45/4</p> <p>MN [1] 56/8</p> <p>MOM'S [1] 128/1</p> <p>MOMENT [1] 56/1</p> <p>MOMOT [28] 1/21 2/6 2/8 2/11 2/13 2/16 4/13 5/1 5/5 5/13 21/21 22/8 22/11 41/12 44/5 49/24 56/14 56/18 88/16 108/8 109/24 113/25 118/23 133/25 146/20 150/7 150/11 153/25</p> <p>MOMOT'S [2] 154/14 154/19</p> <p>MONIKER [1] 16/25</p> <p>MOR [1] 96/9</p> <p>MORE [23] 14/20 19/25 20/3 20/4 20/5 34/2 38/12 38/13 38/25 54/15 54/18 55/3 58/12 77/24 93/20 119/5 119/8 129/5 134/8 134/11 135/21 135/23 136/21</p> <p>MORNING [11] 6/8 60/1 60/5 88/21 96/9 96/10 96/19 96/21 96/24 126/24 128/12</p> <p>MOST [2] 34/16 132/11</p> <p>MOSTLY [3] 15/20 20/7 26/25</p> <p>MOTHER [1] 5/1</p> <p>MOTION [2] 48/1 78/5</p> <p>MOUTH [1] 153/1</p> <p>MOVE [4] 10/1 15/2 62/2 70/16</p> <p>MOVED [1] 13/16</p> <p>MOVING [2] 19/24 135/9</p> <p>MR [22] 2/5 2/6 2/7 2/8 2/10 2/11 2/12 2/13 2/15 2/16 9/23 21/21 22/8 49/24 88/16 94/5 108/8 108/8 113/25 144/5 150/6 154/12</p> <p>MR. [37] 4/13 5/1 5/5 5/7 5/13 22/11 41/12 44/5 56/14 56/18 58/5 82/19 94/10 109/24 118/23 125/17 133/25 143/25 144/3 144/6 144/20 146/4 146/20 149/16 149/21 149/22 150/7 150/11 152/16 152/17 153/25 154/5 154/6 154/14 154/18 154/19 154/24</p>	<p>MR. BATEMAN [3] 5/7 58/5 82/19</p> <p>MR. HILDEBRAND [2] 125/17 154/5</p> <p>MR. HOLLAND [6] 94/10 143/25 144/3 144/20 146/4 152/16</p> <p>MR. MOMOT [16] 4/13 5/1 5/5 5/13 22/11 41/12 44/5 56/14 56/18 109/24 118/23 133/25 146/20 150/7 150/11 153/25</p> <p>MR. MOMOT'S [2] 154/14 154/19</p> <p>MR. PIMENTEL [4] 149/21 154/6 154/18 154/24</p> <p>MR. PIMENTEL'S [4] 144/6 149/16 149/22 152/17</p> <p>MUCH [10] 36/8 37/21 57/21 75/18 81/13 87/19 113/4 113/13 125/16 146/4</p> <p>MULTI [1] 22/3</p> <p>MULTIPLE [2] 18/13 71/8</p> <p>MURDER [6] 152/8 153/9 153/10 154/21 155/6 155/7</p> <p>MUZZLE [3] 13/1 13/5 13/9</p> <p>MY [40] 4/25 28/25 33/3 35/21 36/9 37/18 37/22 39/21 43/15 44/20 45/7 46/24 51/22 52/6 55/24 58/15 60/11 60/17 61/12 74/19 86/25 91/14 92/17 128/1 131/5 134/8 136/24 148/3 148/24 151/21 151/24 151/24 152/4 152/20 152/24 152/25 153/3 153/11 153/18 154/25</p> <p>MYSELF [1] 45/18</p> <p>N</p> <p>NAME [17] 5/23 10/15 31/2 59/4 59/11 60/19 61/13 62/23 63/8 126/14 126/16 126/16 127/4 129/3 129/4 131/18 138/23</p> <p>NAMED [1] 154/22</p> <p>NAMES [2] 30/22 72/25</p> <p>NANOGRAM [2] 44/14 57/14</p> <p>NANOGRAMS [15] 36/15 36/17 36/23 37/7 37/23 39/2 40/17 40/20 46/6 47/13 47/17 47/25 48/5 48/10 57/1</p> <p>NARCOTIC [1] 29/18</p> <p>NARCOTICS [1] 48/21</p> <p>NATURAL [3] 45/3 52/19 53/6</p> <p>NATURALLY [1] 100/13</p> <p>NATURE [6] 14/14 15/7 24/1 34/4 53/24 72/7</p> <p>NEAR [17] 12/24 17/1 17/2 17/8 17/9 23/22 24/19 24/21 31/25 46/19 82/25 117/2 117/4 144/16 144/23 144/24 144/25</p> <p>NEARBY [1] 89/15</p> <p>NEARLY [1] 17/16</p> <p>NEED [8] 5/23 56/2 59/3 105/25 146/14 147/1 147/12 155/2</p> <p>NEEDED [2] 51/23 93/15</p> <p>NEGATE [1] 151/13</p> <p>NEGATIVE [3] 28/14 48/25 49/2</p> <p>NEGATIVES [1] 28/3</p> <p>NEITHER [1] 103/13</p> <p>NELLIS [1] 89/16</p> <p>NEVADA [5] 1/4 1/6 4/1 6/23 61/22</p> <p>NEVER [10] 29/24 54/5 98/1 98/3 129/12 140/22 141/10 141/12 141/12 152/13</p> <p>NEW [3] 6/21 41/21 56/19</p> <p>NEXT [11] 12/2 58/5 83/18 105/17 122/1 133/12 134/7 135/2 138/10 138/13 143/3</p> <p>NIGGER [2] 86/6 112/10</p> <p>NIGHT [7] 65/25 70/14 88/20 88/20 93/16 95/3 127/11</p> <p>NINE [3] 23/4 24/10 94/21</p> <p>NIPPLE [1] 11/5</p>
--	---	--

<p>N</p> <p>NMS [2] 42/13 56/8 NO [192] NOBODY [2] 40/2 121/16 NOC [2] 155/2 155/6 NON [1] 4/23 NON-WITNESSES [1] 4/23 NOPE [3] 21/8 108/15 146/3 NORMAL [2] 38/8 81/10 NORMALLY [1] 54/6 NORTH [4] 71/14 144/12 144/17 144/25 NOS [1] 10/7 NOT [92] 13/18 13/19 14/9 14/11 14/25 15/23 19/12 19/23 20/9 20/13 21/4 21/20 23/7 28/23 29/16 29/20 29/23 30/3 30/4 31/22 33/3 33/6 33/9 33/13 34/1 35/6 39/18 40/11 43/19 43/21 44/4 45/13 45/21 48/4 50/2 52/4 52/6 53/1 53/15 53/25 54/23 55/4 55/5 55/23 56/15 58/15 66/10 68/2 73/3 75/9 75/17 76/18 77/10 82/22 92/10 92/12 92/17 93/25 97/23 97/24 98/1 99/6 100/19 101/23 103/11 103/25 105/10 107/21 107/21 111/2 111/3 111/13 112/1 112/2 112/6 112/10 113/20 124/1 124/21 130/19 132/5 132/10 133/9 133/24 134/18 135/1 143/12 148/22 149/11 153/2 154/7 155/7 NOTE [3] 25/15 31/20 32/8 NOTED [6] 19/3 25/21 26/11 31/21 37/20 50/14 NOTEWORTHY [2] 28/7 31/14 NOTHING [9] 5/18 28/6 28/6 50/5 57/20 58/24 118/17 125/15 126/7 NOTICE [5] 28/24 29/1 32/10 32/12 152/2 NOW [61] 13/15 16/4 20/16 21/1 21/25 22/24 24/3 24/25 26/22 28/1 30/6 31/7 32/4 33/12 33/21 34/12 35/9 35/17 35/23 37/14 38/1 38/19 42/2 42/13 43/22 44/13 46/9 46/21 47/10 47/16 48/21 55/7 92/7 92/13 93/25 94/1 94/23 96/12 97/13 99/22 100/10 100/13 100/16 101/14 102/9 102/17 103/22 106/12 106/17 114/8 122/23 134/19 140/10 141/19 142/5 142/14 143/18 145/22 152/19 153/2 153/4 NUMBER [6] 10/20 10/20 11/15 16/25 28/9 28/13 NUMBERS [4] 38/20 38/23 38/25 39/1</p>	<p>OCCURS [1] 151/12 OFF [9] 13/5 15/12 38/22 89/25 90/1 94/17 102/15 103/9 109/13 OFFICE [8] 6/7 6/21 6/25 8/4 23/14 42/15 42/22 42/23 OFFICERS [1] 92/25 OFTEN [2] 12/25 55/14 OH [14] 36/15 41/16 79/24 80/7 95/11 97/1 103/14 123/18 123/20 123/20 134/6 137/21 146/13 155/9 OIL [3] 29/19 30/1 30/2 OKAY [342] OLD [3] 24/25 93/22 101/4 ONCE [6] 8/21 13/13 14/10 19/15 63/13 129/6 ONE [72] 11/10 11/21 11/23 12/1 15/11 15/15 17/21 20/3 20/7 20/7 22/8 24/8 27/1 27/18 28/11 28/12 31/9 32/22 35/2 35/4 35/6 35/7 39/20 39/21 45/7 51/8 51/9 52/25 53/2 53/4 54/3 54/3 54/6 55/7 57/13 63/14 70/16 70/19 71/9 71/10 71/11 71/14 71/14 71/14 77/11 77/14 88/13 93/20 93/21 96/2 96/22 98/20 108/9 110/3 114/5 120/17 129/12 132/2 132/2 132/5 134/18 138/10 138/13 138/13 141/25 142/8 146/12 146/20 151/10 151/11 152/22 153/10 ONE-EIGHTH [1] 15/15 ONES [2] 51/7 135/21 ONLY [13] 8/2 48/15 51/23 58/17 81/8 93/3 93/8 93/11 111/14 113/2 132/2 146/20 149/17 OOH [1] 84/21 OPEN [3] 152/8 155/6 155/7 OPENED [1] 17/17 OPERATING [1] 15/23 OPINE [5] 38/24 39/12 47/16 47/19 52/14 OPINION [18] 8/12 15/17 15/25 18/9 33/13 33/19 35/18 37/18 38/24 39/21 43/15 43/16 43/25 44/1 44/4 44/7 44/25 56/5 OPINIONS [1] 55/8 OPPORTUNITY [2] 18/22 102/6 OPPOSE [1] 149/9 OPPOSITE [3] 109/18 149/20 153/15 OPPOSITION [1] 148/11 ORAL [2] 47/11 89/4 ORDER [1] 154/23 ORGANIZATION [1] 42/19 ORIGINAL [1] 44/4 OTHER [46] 4/23 18/4 20/16 25/20 28/6 29/17 30/19 32/17 41/2 42/5 44/24 46/15 48/21 54/1 56/4 57/13 63/15 71/6 71/10 71/14 75/14 76/13 82/16 99/8 99/10 101/8 109/12 109/17 132/1 132/2 135/3 135/5 138/21 141/22 142/25 143/4 144/16 144/21 145/2 145/6 145/10 145/11 145/16 145/23 148/14 152/19 OTHER'S [1] 103/4 OTHERWISE [2] 41/13 150/12 OUR [9] 8/4 10/18 10/20 23/14 23/20 28/4 28/20 34/5 42/14 OUT [67] 7/21 15/13 16/3 17/6 17/11 17/15 17/16 22/13 35/18 54/4 54/7 56/20 58/17 60/18 65/10 66/25 67/2 67/3 69/19 70/10 75/5 76/9 77/20 78/9 78/14 83/6 86/6 86/25 87/1 87/12 88/6 91/14 95/3 96/12 97/5 99/24 99/25 100/2 103/2 106/15 111/12 114/21 115/21 117/10 121/12 122/9 122/10 123/6 123/16 123/23 128/18 129/8 130/13 133/15</p>	<p>134/19 136/7 136/9 138/17 140/20 141/10 142/5 142/22 143/18 152/20 153/3 153/7 154/2 OUTSIDE [9] 67/15 100/3 100/5 100/8 100/10 100/10 102/22 125/20 149/22 OVER [39] 6/10 7/8 38/14 65/10 72/23 81/9 81/24 82/16 82/19 82/22 86/3 86/25 86/25 87/9 90/23 91/9 91/14 104/12 105/17 105/18 110/14 111/16 111/21 111/22 111/22 111/23 115/24 119/23 120/10 120/23 122/25 140/4 142/16 142/20 149/15 152/13 152/16 152/17 155/9 OVERDOSE [1] 47/6 OVERHEARD [1] 73/6 OVERRULE [2] 53/7 56/1 OVERRULED [1] 45/10 OWN [4] 37/16 37/16 38/6 94/3</p> <p>P</p> <p>P.M [1] 155/19 PACING [2] 97/3 99/24 PACKAGE [2] 21/11 23/6 PACKET [1] 22/10 PAGE [10] 2/3 22/8 22/14 22/25 24/10 31/7 40/13 42/3 111/7 146/20 PAGES [2] 22/3 42/5 PALM [3] 28/14 31/13 53/25 PARAGRAPH [3] 40/16 47/10 56/25 PARDON [1] 150/10 PARK [5] 68/11 129/16 141/5 144/16 144/23 PARKED [8] 66/24 115/13 116/5 129/24 140/4 143/2 144/12 144/19 PARKING [28] 61/16 62/9 62/12 64/3 65/1 86/12 87/9 89/14 95/17 96/16 96/25 99/24 114/8 115/16 116/19 122/10 128/18 129/14 129/16 129/24 132/16 137/16 140/5 140/20 140/25 141/5 141/10 143/13 PAROLE [1] 94/1 PART [5] 8/7 8/7 63/19 109/7 144/19 PARTICULAR [36] 7/19 7/22 8/14 9/1 9/9 10/22 12/1 14/15 14/23 14/25 17/13 18/8 20/1 20/2 20/17 22/14 33/21 33/24 34/6 34/11 34/14 39/23 42/6 42/23 45/18 45/22 45/22 46/5 48/14 53/2 53/16 55/16 65/3 137/25 151/18 152/11 PARTICULARLY [2] 14/8 32/11 PARTIES [1] 4/20 PARTY [1] 131/16 PASS [3] 18/16 88/11 139/21 PASSED [2] 119/15 119/22 PAST [1] 119/3 PATH [1] 11/22 PATHOLOGIST [1] 42/24 PATHOLOGY [4] 6/18 6/19 6/20 12/17 PATHWAY [1] 17/13 PATTERN [4] 14/9 19/15 25/18 152/11 PATTERNS [1] 19/18 PAVEMENT [1] 134/8 PAYING [1] 109/25 PEACE [1] 1/14 PEAK [1] 47/12 PEAKING [1] 47/17 PEOPLE [8] 37/17 54/19 58/12 130/21 130/23 131/10 131/12 143/18 PEOPLE'S [1] 41/5 PER [19] 36/15 36/17 36/23 37/7 37/23 39/2 40/17 40/20 44/14 46/6 47/5 47/13 47/17 47/25 48/5 48/10 55/25 57/2 57/14</p>
--	--	---

P	POUNDS [1] 49/12 POWDER [1] 13/4 PRACTICE [1] 6/23 PRELIMINARY [2] 1/12 4/8 PREMEDITATION [8] 147/21 151/23 152/9 153/7 153/12 153/17 154/14 154/15 PRESENCE [2] 33/23 63/12 PRESENT [35] 9/2 10/12 10/23 10/23 11/4 11/10 11/22 11/23 11/25 12/22 12/23 13/4 14/3 14/10 15/1 15/14 15/16 16/15 16/16 20/23 24/15 27/1 27/2 27/18 28/11 28/15 28/20 30/8 30/13 30/16 31/15 31/21 36/4 37/16 45/13 PRETTY [2] 48/16 113/4 PREVIOUS [1] 26/17 PREVIOUSLY [2] 104/11 136/11 PRIMARY [1] 7/3 PRIOR [8] 7/11 20/14 20/15 69/9 78/11 92/24 93/7 95/7 PROBABLE [1] 152/1 PROBABLY [10] 34/1 39/8 39/15 52/25 53/1 78/25 85/12 93/23 119/6 119/17 PROBATION [1] 94/1 PROBLEM [2] 5/8 22/7 PROCEED [5] 4/9 4/11 6/1 59/7 126/18 PROCEEDINGS [1] 155/19 PROCESSING [3] 28/19 29/13 29/15 PRODUCE [2] 13/7 47/6 PROPELLED [1] 13/3 PROPERLY [1] 150/4 PROPERTY [1] 102/15 PROPOSED [9] 9/13 61/21 70/6 148/7 148/10 148/15 149/10 153/24 154/12 PROSECUTION [1] 151/17 PROSECUTOR [1] 114/6 PROVIDED [2] 21/6 41/21 PULL [6] 78/8 88/6 143/7 143/12 143/12 151/6 PULLED [22] 13/9 67/3 68/5 77/20 78/5 78/7 78/9 78/19 78/24 79/17 83/5 96/25 112/19 121/1 122/17 123/10 130/12 130/13 131/9 143/3 143/6 154/2 PULLING [1] 78/11 PULLS [2] 118/2 125/1 PULSE [1] 139/8 PUNCH [4] 77/14 107/23 118/24 133/13 PUNCHED [4] 112/12 119/4 141/14 153/5 PUNCHES [5] 77/25 110/18 112/4 124/12 152/25 PURPLE [2] 19/24 20/3 PURPORTS [1] 22/24 PURPOSE [3] 95/25 98/10 144/5 PURSUE [1] 40/10 PUT [8] 8/1 30/23 43/13 53/2 55/7 78/14 83/5 150/1	R
PERFORATED [1] 15/9 PERFORMING [1] 23/23 PERHAPS [2] 44/5 51/18 PERIOD [10] 6/13 7/6 19/13 39/4 39/6 40/6 63/24 71/17 126/25 136/13 PERSON [16] 35/7 44/14 47/24 49/13 50/20 50/23 55/16 59/14 61/23 96/12 131/20 131/25 138/18 139/2 139/16 145/6 PERSON'S [1] 131/18 PERSONAL [1] 75/18 PERSONALLY [1] 28/18 PERTINENT [2] 28/3 28/14 PHONE [5] 91/24 92/1 92/3 92/7 127/21 PHONETIC [1] 61/14 PHOTO [22] 24/13 25/11 25/12 25/23 26/11 26/20 28/1 28/2 30/6 30/11 30/12 30/14 31/12 31/16 31/22 31/23 31/24 32/1 32/3 109/3 109/18 122/3 PHOTOGRAPH [9] 11/2 11/8 11/18 16/24 81/21 115/15 116/7 135/14 138/1 PHOTOGRAPHS [18] 7/23 8/22 8/24 9/8 9/9 9/17 9/20 21/1 21/5 23/4 23/22 28/4 31/8 32/5 32/5 33/16 34/7 50/3 PHOTOS [6] 9/14 23/11 23/20 24/8 26/17 70/7 PHRASE [1] 38/9 PICK [2] 127/19 128/17 PICKED [8] 127/12 127/13 128/11 128/14 129/15 142/16 142/19 153/21 PICKUP [1] 120/12 PICTURE [7] 10/19 16/8 24/7 24/18 30/15 31/24 129/22 PICTURES [2] 22/25 23/13 PIECES [1] 45/21 PIMENTEL [12] 1/9 4/8 59/12 144/16 144/20 145/2 145/10 149/21 154/6 154/18 154/23 154/24 PIMENTEL'S [5] 144/6 149/16 149/22 152/17 152/23 PLACE [11] 10/19 73/8 89/17 104/13 104/17 104/22 105/18 118/24 119/14 124/4 128/19 PLACED [1] 7/24 PLAINTIFF [2] 1/7 1/19 PLASTIC [3] 8/1 8/4 10/12 PLAYING [1] 64/20 PLEADING [1] 150/1 PLEASE [17] 5/14 8/18 9/14 11/2 11/13 19/21 20/21 24/6 24/17 36/10 46/25 59/16 88/14 110/20 126/1 126/3 126/14 POINT [17] 8/25 55/21 59/16 64/21 76/19 77/18 79/2 79/15 111/6 133/1 134/16 134/20 136/23 138/3 139/15 145/10 148/6 POINTING [2] 77/12 81/9 POLICE [17] 33/17 51/19 51/19 91/20 91/21 92/25 111/7 139/10 139/11 141/19 141/21 142/5 142/11 143/23 144/9 144/18 145/3 POPS [1] 129/10 POSITION [1] 34/12 POSITIONS [1] 123/4 POSITIVE [1] 45/22 POSSIBILITY [1] 20/13 POSSIBLE [8] 20/11 53/17 53/22 53/23 54/9 54/10 54/11 55/13 POSSIBLY [1] 21/9 POTENTIAL [1] 45/2 POUND [2] 51/3 153/6	RAISE [2] 58/20 126/3 RANGE [21] 13/14 13/24 14/1 14/19 35/21 37/2 37/3 37/6 37/12 38/1 38/4 38/13 38/15 38/22 46/1 46/23 47/7 48/17 49/7 52/7 52/10 RANGES [3] 40/10 43/13 47/2 RATE [2] 48/13 48/14 REACHED [1] 47/13 REACHES [2] 54/4 54/7 REACHING [1] 113/5 READ [1] 150/25 READING [1] 41/2 READY [2] 4/9 4/11 REAL [9] 9/14 45/7 61/18 72/17 73/4 76/18 76/22 111/4 112/11 REALITY [1] 113/20 REALLY [7] 68/2 81/10 87/18 92/17 96/18 96/22 133/14 REAR [3] 116/2 116/4 140/7 REARVIEW [3] 131/5 136/11 136/24 REASON [7] 5/3 43/8 43/19 52/22 57/10 57/17 111/14 REASONABLE [3] 18/9 43/14 47/24 REASONABLY [1] 27/22 RECALL [2] 29/2 137/19 RECAP [1] 146/8 RECENT [3] 20/4 20/5 25/1 RECESS [4] 57/25 58/3 58/4 155/17 RECESSED [1] 155/19 RECIPROCAL [1] 154/8 RECITE [1] 151/2 RECOGNIZE [9] 9/17 9/22 11/17 16/5 16/21 61/23 70/8 131/12 131/14 RECOGNIZED [3] 131/13 131/15 131/25 RECOLLECT [1] 12/10 RECOLLECTION [2] 29/7 151/21 RECORD [13] 4/19 5/24 22/9 36/18 59/4 59/21 80/25 81/8 81/10 82/20 126/15 139/17 139/19 RECOVERED [1] 17/4 RECROSS [6] 2/8 2/13 53/9 53/12 120/3 120/6 RECROSS-EXAMINATION [4] 2/8 2/13 53/12 120/6 RED [6] 108/7 108/22 109/18 109/22 110/1 128/7 REDIRECT [8] 2/7 2/12 50/6 50/9 56/20 118/18 118/21 146/2 REFER [2] 36/9 50/25 REFERENCE [1] 46/22 REFERRED [2] 11/1 114/5 REFERRING [6] 30/1 37/22 46/24 56/15 82/25 83/18 REFLECT [4] 32/24 47/3 59/21 139/19 REFRESH [1] 29/6 REGARDING [7] 35/10 35/15 37/4 46/13 52/7 101/15 101/19 REGION [1] 17/14 RELATE [1] 12/17 RELATED [4] 39/24 40/1 53/18 53/21 RELATES [7] 14/14 15/5 15/8 41/5 44/25 45/2 52/11 RELATIONSHIP [3] 101/15 101/20 129/9 RELATIVE [2] 36/19 36/20 RELATIVES [1] 5/9 RELEVANCE [3] 44/21 44/24 45/1 RELEVANT [4] 44/7 45/8 46/2 53/4	
	Q QUALITIES [2] 11/11 11/24 QUESTION [8] 39/1 44/4 51/22 56/23 57/13 75/22 91/25 92/2 QUESTIONED [1] 146/24 QUESTIONING [1] 119/1 QUESTIONS [12] 12/3 41/13 51/16 51/20 52/8 52/9 53/8 57/19 90/12 120/2 125/14 146/1 QUICK [2] 9/14 61/18 QUICKLY [2] 39/7 153/13 QUITE [4] 20/11 67/25 133/4 151/23	

R	RUSHING [1] 134/19	
RELIABLE [1] 41/9	S	115/22 130/19 131/3 131/7 132/12 133/14
RELY [5] 42/11 42/19 42/25 43/19 43/25	S.U.V [2] 110/6 128/9	133/15 134/2 134/12 134/16 134/18 134/21
REMAIN [1] 116/15	SAID [60] 16/18 18/22 29/12 45/20 45/23	134/25 136/16 138/22 139/13 140/10 140/20
REMAINING [2] 5/2 58/17	46/14 54/17 62/16 63/23 64/4 67/17 69/14	140/22 140/24 141/7 141/25 143/2 147/17
REMEMBER [11] 44/3 51/19 77/10 77/10	73/1 73/2 74/17 75/10 75/17 76/14 76/16	SEEING [2] 13/15 13/15
87/18 119/1 126/24 128/3 138/8 150/23	76/17 76/21 77/25 78/5 78/19 79/4 79/5	SEEMS [1] 31/10
151/5	81/20 83/13 83/16 84/17 84/21 84/24 85/9	SEEN [23] 27/24 46/15 54/18 54/18 63/11
REMOTE [1] 53/16	86/6 87/23 93/15 94/5 101/24 102/1 109/7	71/3 78/12 95/2 106/15 114/20 115/2 115/3
REMOVE [1] 8/3	111/2 111/2 111/8 111/14 111/15 112/6	129/5 132/2 137/4 138/25 141/4 141/10
REPAIR [1] 15/23	112/7 112/10 113/17 120/23 122/19 125/9	141/12 141/12 141/14 141/15 141/16
REPEAT [1] 29/21	125/10 131/17 136/21 144/17 145/22 146/17	SELF [1] 154/16
REPORT [34] 8/9 8/11 8/16 12/8 17/20	151/6 154/23	SELF-DEFENSE [1] 154/16
28/25 29/3 29/22 33/9 34/6 34/8 35/23 36/9	SAKE [1] 13/23	SEND [2] 42/14 42/18
37/22 40/12 41/3 41/22 41/22 41/24 41/25	SALAZAR [1] 61/14	SENSE [1] 44/8
42/3 42/8 42/11 43/6 43/9 43/13 44/7 44/14	SAME [10] 16/10 17/8 30/11 71/10 74/14	SEPARATE [2] 63/22 63/24
46/24 50/14 50/24 55/25 56/8 56/14	84/5 94/10 127/6 145/11 147/24	SET [4] 4/7 24/8 50/12 93/2
REPORTED [10] 1/24 17/20 36/15 40/17	SAMUEL [1] 1/19	SEVEN [3] 15/3 24/9 74/11
40/18 47/4 47/12 50/24 57/6 57/15	SAT [1] 150/14	SEVERAL [2] 42/5 129/7
REPORTER [1] 155/23	SAW [32] 9/2 20/17 61/15 62/9 69/14 71/19	SEX [5] 72/14 101/23 110/11 110/15 112/9
REPORTER'S [1] 1/12	114/18 114/23 131/25 132/3 133/2 133/13	SHANNON [13] 61/14 67/8 68/18 68/22
REPORTS [2] 33/17 42/20	134/1 135/2 135/3 135/12 135/18 135/25	92/19 92/20 95/19 95/22 101/6 101/11 104/5
REPRESENTED [1] 12/25	135/25 136/18 136/21 137/3 137/21 138/3	106/1 106/13
REPRESENTS [1] 10/11	138/18 138/24 139/4 141/22 144/14 144/15	SHE [25] 5/13 44/24 56/14 63/1 65/9 65/9
REQUEST [1] 144/6	144/15 144/20	65/18 75/4 75/5 75/5 99/9 99/11 99/12 99/15
RESERVE [1] 149/7	SAY [49] 14/1 17/2 19/14 27/12 30/18 34/14	99/15 99/15 100/8 100/23 100/25 101/2
RESIDENCE [1] 153/19	34/15 34/24 35/1 35/12 36/13 38/8 38/19	106/4 106/6 129/10 129/11 129/12
RESIDENCY [1] 6/17	42/21 44/14 45/25 46/1 47/6 47/10 49/15	SHE'S [4] 43/24 43/25 56/15 61/4
RESIDUAL [1] 30/2	52/24 60/19 61/4 61/11 71/12 72/9 72/18	SHIRT [7] 32/16 77/20 78/7 78/8 78/11
RESIDUE [1] 32/9	75/15 76/24 82/12 86/4 86/13 87/14 91/16	112/18 147/16
RESPECT [1] 40/9	96/23 100/10 101/17 111/8 114/23 120/18	SHO [1] 125/2
RESPOND [3] 82/20 152/4 152/6	121/18 122/13 123/8 131/9 133/4 135/5	SHOOT [5] 79/4 79/6 122/20 125/11 136/21
RESPONSE [3] 21/17 49/18 96/11	135/9 135/10 149/19	SHOOTING [23] 20/10 20/12 20/14 20/15
REST [7] 111/5 146/8 147/9 147/24 148/6	SAYING [14] 22/12 37/10 48/4 57/1 74/24	89/21 91/6 109/14 113/6 113/14 118/23
148/23 149/2	81/9 82/24 85/13 95/7 122/23 123/5 123/22	118/24 134/25 137/3 137/22 138/4 138/19
RESTLESSNESS [1] 57/8	137/21 138/23	141/1 141/2 141/23 141/24 142/1 153/16
RESTRICTED [2] 33/13 35/7	SAYS [9] 101/24 110/13 110/15 110/19	154/10
RESTS [3] 148/10 148/15 148/17	110/21 110/25 111/25 147/20 147/20	SHOOTS [1] 153/3
RESULT [11] 15/25 17/25 18/6 18/8 43/5	SCENE [3] 7/21 33/16 90/16	SHORT [4] 19/13 48/16 48/17 48/19
51/4 55/11 56/9 63/14 64/6 64/25	SCHOOL [2] 6/16 6/17	SHORTLY [1] 110/22
RESULTS [5] 14/11 29/15 40/5 45/18 48/24	SCIENTIFIC [2] 43/2 43/20	SHOT [32] 10/18 10/22 14/2 15/18 18/3 18/4
RETREAT [1] 154/17	SCRAPE [1] 26/10	50/19 54/3 54/5 54/8 79/20 80/22 81/20
RETURN [1] 74/24	SCRAPED [1] 55/5	84/19 84/20 84/24 85/9 85/16 86/2 86/5
REVIEWED [1] 34/7	SCRAPES [4] 20/23	119/15 119/20 119/21 119/24 121/7 121/20
REVOLVER [1] 30/2	SCRAPING [1] 54/19	122/21 123/1 125/4 125/11 137/9 154/18
RIDE [4] 66/15 98/12 98/13 152/16	SCRAPINGS [2] 28/17 34/15	SHOTS [14] 119/8 134/24 135/12 135/13
RIGHT [226]	SCREEN [1] 13/20	135/21 135/23 135/24 136/14 136/16 137/8
RIGHT-HANDED [1] 77/3	SEAL [4] 7/25 8/4 10/11 10/12	137/19 137/19 137/20 141/13
RING [3] 27/3 27/15 30/10	SEALED [1] 7/25	SHOULD [3] 5/4 43/19 153/8
RISE [1] 58/3	SEAT [3] 5/22 59/2 126/13	SHOULDN'T [1] 120/18
ROAD [1] 151/13	SECOND [12] 24/8 27/1 31/16 40/16 47/10	SHOW [15] 9/12 11/1 11/12 16/4 31/12
ROBERT [13] 2/14 7/15 60/19 60/21 62/1	79/17 80/5 84/19 86/2 86/6 88/13 127/8	70/23 72/16 73/4 76/18 76/22 80/3 111/3
125/23 125/24 126/5 126/16 127/5 147/23	SECONDS [14] 16/2 112/23 113/3 113/7	112/10 132/18 132/22
147/24 148/1	113/14 113/15 113/16 118/25 119/3 119/6	SHOWED [4] 11/23 130/21 139/12 139/12
ROLL [2] 86/24 91/8	119/15 119/17 119/22 119/25	SHOWING [13] 11/17 16/13 16/20 17/7
ROOM [31] 15/23 65/10 65/21 66/3 66/6	SECTION [3] 42/8 44/13 46/22	22/24 61/21 70/5 81/13 108/21 114/4 129/21
66/13 67/2 70/11 71/22 71/23 74/13 80/5	SECTIONS [1] 42/3	140/3 143/4
98/5 98/8 98/11 98/22 98/24 99/1 99/3 99/5	SECURITY [9] 74/11 74/12 75/6 75/10	SHOWN [1] 9/7
99/7 99/15 99/23 100/3 100/7 100/8 100/9	75/15 102/5 102/15 103/2 103/9	SHOWS [3] 31/17 114/8 114/15
102/5 102/9 102/19 103/3	SEE [78] 9/1 10/22 12/22 13/2 13/10 13/25	SIDE [33] 23/12 23/12 28/5 31/7 54/1 71/6
ROSS [1] 2/11	14/9 14/9 14/11 14/25 16/7 20/7 20/21 24/6	77/7 78/18 86/8 97/17 100/4 109/1 112/12
ROSS-EXAMINATION [1] 2/11	27/11 31/8 31/25 32/2 32/16 50/12 59/14	115/15 117/7 117/8 135/3 135/5 135/5 135/6
RULE [1] 4/20	62/14 62/25 63/25 65/16 68/23 71/16 71/24	135/7 136/24 138/22 140/4 140/12 140/13
RUN [1] 95/17	81/1 88/2 92/9 95/1 96/12 96/15 96/24 102/4	140/14 140/19 141/7 141/8 144/12 144/17
RUNNING [9] 121/16 122/10 133/23 133/24	102/14 105/8 105/25 107/2 107/6 107/8	144/25
135/19 137/4 138/18 140/22 140/24	107/25 108/2 108/4 108/22 109/12 109/13	SIDEWALK [25] 85/4 85/23 109/14 116/21
RUNS [1] 140/17	109/17 109/21 109/21 111/11 114/24 115/1	116/22 117/11 121/11 121/13 122/5 122/19

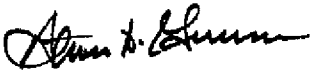
S		
SIDEWALK... [3] 140/16 140/17 140/19	SPEAKING [2] 145/2 145/10	STOOD [1] 86/3
SIDEWAYS [1] 78/17	SPECIFIC [2] 52/7 119/5	STOP [1] 152/13
SIEGEL [13] 67/19 68/3 69/3 69/15 70/10	SPECIFICALLY [2] 48/15 77/24	STRAIGHT [3] 84/9 103/19 103/20
70/11 76/12 80/4 98/16 128/21 128/22	SPECIMENS [4] 14/24 42/2 42/14 42/15	STREET [6] 87/8 90/19 90/21 90/22 91/1
129/14 151/9	SPECULATE [2] 39/12 55/22	91/3
SIGHT [2] 134/22 136/4	SPECULATING [1] 56/2	STRICKEN [1] 75/21
SIGNIFICANCE [2] 28/2 30/14	SPECULATION [1] 55/24	STRICTLY [1] 49/3
SIGNIFICANT [2] 8/9 8/19	SPELL [3] 5/23 59/4 126/15	STRUCK [4] 25/7 25/9 25/19 25/19
SILVER [4] 116/2 116/4 124/9 124/10	SPOKE [2] 10/11 33/24	STUCK [2] 79/19 113/17
SIMILAR [1] 151/23	SPOKEN [1] 5/1	STUFF [1] 102/19
SINCE [3] 22/3 39/8 139/2	SPOT [2] 143/8 143/10	SUBCUTANEOUS [2] 15/10 17/4
SINGLE [3] 38/8 38/12 47/11	SPUN [4] 112/15 117/17 121/22 122/22	SUBJECT [1] 152/2
SIR [27] 11/15 59/2 59/11 59/25 64/12 81/7	STA [1] 121/4	SUBMIT [4] 21/10 21/10 149/12 150/15
82/18 82/18 88/20 89/8 89/12 90/15 91/21	STACK [1] 32/5	SUBMITTED [1] 154/1
93/18 94/2 94/20 95/6 108/21 114/7 114/10	STAGE [1] 150/2	SUBMITTING [3] 150/9 150/11 150/13
115/3 118/16 120/9 126/1 126/2 126/23	STAGGERED [9] 77/19 79/21 117/17	SUBPOENAED [2] 58/10 58/15
140/3	120/23 121/4 121/21 122/21 123/2 125/12	SUBSECTION [1] 50/24
SISTER [1] 5/2	STAGGERING [1] 112/16	SUBSTANCES [2] 29/18 29/18
SIT [3] 5/4 12/10 137/18	STAGGERS [2] 78/2 123/7	SUCH [2] 35/2 37/4
SITTING [4] 40/4 64/18 97/16 133/22	STAIR [2] 123/15 143/16	SUDDEN [2] 7/5 133/13
SITUATION [1] 76/10	STAIRCASE [3] 120/9 123/23 143/16	SUFFICIENT [1] 43/23
SIX [10] 15/3 24/1 24/9 49/17 49/19 49/20	STAIRCASES [1] 114/16	SUICIDE [3] 45/3 52/20 53/5
51/3 119/6 121/21 153/6	STAIRS [35] 71/20 71/25 72/1 73/9 73/10	SUIT [1] 154/18
SIX-FOOT-TWO [2] 51/3 153/6	80/13 80/14 106/16 106/25 107/1 107/8	SUITE [2] 70/11 98/19
SIXTY [1] 37/7	115/2 115/3 115/3 115/5 115/22 115/23	SUITES [13] 67/19 68/3 69/3 69/15 70/11
SKIN [4] 14/10 14/12 14/24 15/9	116/25 117/3 117/10 123/14 123/16 123/16	76/13 80/4 98/16 127/16 128/21 128/22
SLEEP [2] 73/2 76/17	132/7 132/14 140/10 142/23 144/14 145/1	129/14 151/9
SLIGHT [1] 154/20	145/7 145/9 145/13 145/14 145/15 152/23	SULFATE [1] 47/12
SLOT [1] 115/16	STAND [1] 126/2	SULLIVAN [2] 1/14 8/18
SMALL [2] 13/7 17/15	STANDING [12] 18/3 50/18 80/21 82/10	SUNDAY [1] 60/2
SMEAR [2] 28/15 31/15	85/17 97/2 97/17 115/21 117/2 117/4 117/14	SUPPORT [1] 154/2
SNAP [1] 8/2	145/19	SUPPORTED [1] 150/4
SO [159]	START [4] 31/1 72/23 136/9 139/8	SUPPORTS [1] 154/12
SOBEIT [1] 152/13	STARTED [15] 72/1 72/2 72/3 76/21 79/3	SUPPOSABLY [1] 153/3
SOME [41] 4/13 4/15 4/15 4/22 5/9 5/13 9/2	80/12 86/12 103/3 115/7 116/11 125/8 136/7	SUPPOSE [2] 153/4 153/7
9/5 12/3 13/25 14/9 23/11 24/15 28/15 31/15	136/24 138/17 154/17	SURE [17] 20/13 21/13 22/19 22/22 29/5
32/2 38/1 40/1 40/1 41/12 51/7 51/16 52/22	STARTS [3] 19/15 106/13 115/9	29/9 34/1 40/11 48/4 58/8 75/9 75/18 88/15
58/13 64/21 64/21 69/11 84/17 109/14	STATE [21] 1/4 1/6 2/3 4/9 5/12 5/17 5/23	92/10 92/12 125/19 155/11
128/19 129/8 130/22 130/22 130/23 133/8	6/23 47/3 58/7 58/23 59/3 125/23 126/6	SURFACE [2] 17/3 54/13
136/13 138/3 145/10 150/18 150/23 154/8	126/14 146/6 146/9 147/9 148/15 149/6	SURFACES [1] 24/16
SOMEBODY [3] 41/4 97/14 137/4	155/2	SURGICAL [1] 6/19
SOMEONE [7] 50/18 59/11 63/8 97/17	STATE'S [18] 2/20 9/13 10/2 10/7 10/17	SWORN [3] 5/18 58/24 126/7
130/14 135/19 138/22	15/2 16/4 61/21 62/2 62/6 70/6 70/20 114/4	SYMPTOMS [1] 47/7
SOMEPLACE [1] 71/2	120/8 129/22 140/3 143/4 151/17	SYNERGISTIC [1] 39/18
SOMETHING [21] 13/2 13/20 13/25 14/12	STATED [3] 148/4 151/19	SYSTEM [10] 39/4 46/7 47/17 48/1 48/3
24/1 25/7 25/9 34/3 39/22 40/9 52/22 54/19	STATEMENT [14] 35/14 88/24 89/1 89/4	48/6 48/8 48/9 48/22 55/10
54/21 54/21 55/5 67/22 94/21 96/6 105/2	89/7 89/13 92/24 92/25 93/7 93/8 93/13	
111/12 133/10	111/7 142/6 142/9	T
SOMETIMES [4] 12/22 13/10 14/5 30/25	STATEMENTS [1] 75/14	T-I-M-O-T-H-Y [1] 59/5
SOMEWAY [1] 28/24	STAY [5] 15/3 65/3 85/17 106/10 130/3	TAG [2] 10/13 30/17
SOMEWHAT [1] 19/10	STAYED [6] 68/21 69/24 100/3 100/5 100/8	TAKE [24] 7/23 8/22 8/24 10/19 16/3 22/13
SOMEWHERE [3] 68/23 82/25 84/25	130/15	23/12 23/16 28/3 28/4 30/15 37/17 43/2
SON [10] 127/2 142/16 142/19 142/22 144/3	STAYING [1] 99/15	57/24 61/4 70/7 90/1 98/16 104/8 109/24
144/5 144/14 145/1 145/9 145/15	STEADY [1] 47/3	115/10 127/15 128/19 150/14
SOON [4] 96/24 96/25 147/5 152/14	STEP [3] 32/22 55/7 126/1	TAKEN [7] 9/9 9/20 23/11 23/19 24/1 39/9
SOOT [13] 12/22 12/23 13/15 14/1 14/4 14/6	STEPHANIE [1] 155/14	58/4
14/22 15/1 16/16 32/8 32/24 35/10 35/15	STEPS [5] 121/21 122/22 123/2 131/7 131/8	TAKES [7] 19/16 48/15 55/14 81/8 105/3
SORRY [17] 11/14 24/21 34/21 34/21 72/18	STICK [2] 89/20 91/5	153/3 153/7
74/7 79/24 81/11 95/11 95/11 109/6 109/6	STILL [14] 13/24 32/2 39/13 85/21 85/23	TAKING [7] 22/8 39/22 40/6 67/18 73/8
109/25 120/18 120/18 126/11 155/9	112/8 116/25 117/20 118/11 124/23 130/18	81/8 124/4
SORT [6] 64/21 69/3 69/6 129/9 130/23	132/6 133/23 145/18	TALK [25] 10/25 13/14 33/17 52/19 52/20
133/8	STIM [1] 23/12	52/20 52/21 60/18 63/25 65/10 65/18 75/5
SOUNDS [1] 4/14	STIMULANT [2] 36/7 38/17	82/18 82/22 92/14 92/16 93/6 93/15 95/3
SOUTH [2] 71/14 144/11	STIPLING [12] 13/2 13/8 13/10 13/15 14/1	95/15 97/6 97/8 102/4 135/24 144/7
SOUTHWEST [1] 135/20	14/8 14/23 16/17 32/8 32/24 35/10 35/15	TALKED [13] 9/8 16/11 50/14 62/16 89/3
SPEAK [3] 82/20 114/22 150/20	STIPULATE [2] 23/8 23/8	92/17 92/25 93/4 93/8 100/3 142/11 142/14
	STOMACH [6] 16/24 18/5 79/20 84/20	142/15
	84/25 85/9	TALKING [13] 12/21 28/12 30/1 42/21

T	134/2 134/18 134/22 145/5 152/17 THEMSELVES [1] 129/8 THEN [142] 6/20 6/22 7/24 8/22 9/14 10/19 15/10 15/11 15/12 15/13 16/20 17/1 17/15 17/19 19/24 20/24 24/9 24/18 24/25 24/25 27/1 27/16 28/4 28/5 29/21 30/19 39/23 40/16 42/5 42/8 43/25 44/25 46/17 47/5 53/24 64/6 65/21 67/17 71/9 71/24 73/11 76/20 77/18 78/2 78/5 79/19 80/21 82/2 82/10 83/16 84/9 84/10 84/24 86/21 86/25 89/4 90/5 91/10 91/10 93/2 93/3 102/5 102/10 104/5 105/18 106/10 107/18 107/22 107/22 110/13 110/22 111/4 112/4 112/18 112/21 113/17 115/7 115/9 116/15 116/24 117/15 117/17 119/20 119/23 121/3 122/16 122/17 122/18 122/18 123/5 123/17 125/1 125/2 125/2 125/4 125/6 125/9 129/16 130/14 130/18 130/23 131/8 132/3 132/6 133/1 133/11 133/13 133/15 133/17 134/10 134/14 134/15 134/18 135/3 135/18 136/1 136/7 136/13 136/18 137/7 137/8 137/9 138/3 138/16 139/6 139/8 139/12 142/1 142/11 142/25 143/18 144/14 144/15 144/20 146/14 147/1 147/23 148/11 149/2 152/25 152/25 154/18 THEORIES [1] 151/24 THEORY [6] 148/3 150/1 151/17 151/22 152/2 154/13 THERAPEUTIC [2] 37/4 38/13 THERE [124] 6/9 9/8 13/22 15/13 15/22 17/3 19/3 19/7 20/1 20/6 20/16 20/24 21/7 25/20 25/20 26/11 26/22 26/23 27/9 28/15 28/20 30/23 31/19 33/24 34/1 36/4 36/22 37/4 38/1 38/20 40/15 46/23 48/21 52/25 56/19 58/13 59/3 59/18 62/18 62/25 64/13 66/19 66/24 67/3 69/6 69/10 71/8 74/7 74/11 74/25 75/1 75/11 76/9 76/13 79/22 80/21 84/17 87/24 90/23 91/8 91/10 91/17 91/19 91/20 91/20 95/16 95/18 95/19 96/1 96/3 96/5 96/23 97/2 97/14 97/17 98/20 101/18 102/13 104/15 105/13 106/10 106/12 107/10 107/14 107/15 108/14 111/12 114/18 115/18 117/14 119/7 121/3 123/1 125/12 127/12 127/13 130/6 130/11 130/22 132/1 132/6 133/3 135/25 138/22 141/39 142/20 142/22 145/15 145/16 145/19 149/16 150/18 152/21 153/12 153/17 153/20 154/1 154/5 154/8 154/9 154/16 154/20 155/6 155/10 THERE'S [35] 4/22 10/23 11/9 11/10 11/25 12/1 13/3 13/19 16/16 23/4 23/25 25/18 27/1 27/18 28/6 28/15 30/15 30/19 31/10 31/15 32/12 33/23 38/19 40/16 41/15 53/1 59/3 61/2 108/16 115/15 140/16 142/8 146/22 152/9 152/12 THEREAFTER [2] 96/24 110/22 THESE [38] 9/17 21/7 23/13 23/19 24/25 25/3 25/14 25/21 26/3 26/14 26/15 27/23 27/24 33/23 39/19 54/12 54/17 54/22 63/15 70/7 75/13 83/18 83/24 109/12 109/12 109/17 121/19 122/10 124/16 131/10 140/22 140/24 145/18 152/8 152/12 152/15 152/21 154/24 THEY [80] 5/3 7/23 9/19 9/20 23/12 23/19 23/21 24/25 27/6 28/23 30/15 30/22 31/1 31/1 31/17 31/21 33/24 34/1 42/14 42/19 43/13 44/16 45/16 45/19 46/18 46/23 47/1 47/3 47/10 50/18 54/21 55/13 63/12 64/18 67/15 69/24 71/6 72/1 74/9 75/6 76/20 87/9	89/7 89/9 89/13 93/2 97/5 97/24 100/16 100/16 100/18 101/8 102/16 103/3 103/22 104/12 105/24 105/25 107/11 107/13 107/21 107/22 113/10 113/12 129/8 130/11 130/12 130/12 131/9 133/3 133/3 133/9 133/16 139/8 142/5 145/11 149/18 152/20 154/15 154/16 THEY'RE [16] 22/4 23/21 27/14 28/18 31/22 33/18 39/20 53/25 54/1 110/14 111/16 111/19 117/13 120/19 120/19 124/21 THING [6] 37/4 105/17 113/2 123/6 123/15 135/2 THINGS [1] 13/17 THINK [46] 4/19 17/24 22/13 34/2 43/22 45/24 55/21 56/11 56/12 56/13 56/15 56/16 56/18 58/16 58/18 67/22 71/6 73/25 74/21 75/6 75/15 76/14 77/1 77/3 78/18 84/20 88/23 92/8 92/10 92/12 94/17 95/9 108/7 113/17 113/22 115/4 119/11 134/8 135/25 146/19 147/25 148/2 150/4 151/24 154/19 155/11 THIRD [16] 7/15 71/23 80/6 80/7 106/19 106/20 107/1 107/2 114/19 114/20 115/4 115/5 127/8 131/16 149/22 152/22 THIRD-PARTY [1] 131/16 THIS [243] THOROUGH [1] 41/25 THOSE [20] 9/14 9/22 12/24 13/7 14/11 42/18 45/16 45/20 46/15 46/18 51/2 51/19 52/21 55/1 73/13 119/12 136/16 142/23 148/7 154/15 THOUGH [4] 34/16 48/17 97/18 111/11 THOUGHT [11] 40/9 62/18 74/1 76/6 85/1 95/9 105/24 113/19 113/20 137/5 137/22 THOUSAND [2] 7/8 47/5 THREE [17] 24/8 27/4 27/9 31/9 40/13 48/17 48/19 51/1 62/5 94/7 96/22 105/1 106/25 107/1 114/15 131/13 149/17 THREW [5] 86/6 86/8 137/14 138/6 138/7 THROUGH [16] 2/24 9/13 9/14 10/2 10/5 10/7 15/9 15/10 17/14 17/15 54/8 146/9 146/12 146/13 152/7 155/4 THROWED [1] 97/5 THROWS [1] 107/22 THUMB [3] 33/24 TILL [1] 98/20 TIM [4] 58/7 139/2 151/5 151/10 TIME [104] 4/7 6/13 6/24 7/6 7/24 8/25 9/20 16/2 19/13 19/14 20/10 20/11 22/7 23/22 23/23 23/25 28/22 33/25 34/16 35/13 39/4 39/6 46/19 47/16 47/20 57/22 60/10 61/1 62/11 62/19 63/14 63/24 64/13 64/23 66/2 66/9 67/12 67/16 68/12 68/17 68/23 69/7 71/17 76/15 77/23 79/1 79/17 84/19 85/9 85/10 86/1 86/3 86/4 86/6 86/18 87/17 93/4 93/8 93/11 94/16 95/2 96/5 96/17 96/18 102/13 103/8 104/8 105/8 107/15 107/25 108/2 109/22 111/6 113/13 113/13 116/9 117/1 117/25 118/24 119/3 119/22 119/22 121/20 123/1 125/12 125/16 126/25 127/21 128/23 130/12 130/18 132/9 132/11 133/4 136/13 137/5 138/25 146/5 147/17 152/8 153/4 153/17 153/20 154/9 TIMES [2] 74/21 129/7 TIMOTHY [5] 2/9 58/22 59/5 148/1 150/18 TIPS [1] 26/25 TISSUE [2] 15/10 17/4 TISSUES [1] 12/23
----------	---	--

T	URNS [1] 19/24	UNTIL [9] 91/10 91/17 91/19 91/21 102/25 103/1 112/6 141/21 154/2
TITLE [1] 34/1	TWELVE [3] 85/12 118/9 128/13	UNUSUAL [1] 51/11
TODAY [16] 4/7 5/3 5/4 7/11 12/11 21/3 40/5 43/20 57/22 59/14 137/18 139/4 139/13 141/23 146/5 152/14	TWICE [2] 135/19 136/21	UP [109] 6/20 13/10 13/14 13/15 14/4 16/12 16/14 17/7 17/9 17/10 17/17 22/10 25/13 30/7 30/12 32/18 37/6 38/14 38/14 38/21 39/10 48/11 48/12 48/20 50/18 63/5 66/15 66/24 67/3 67/4 68/5 69/1 70/24 71/20 77/19 77/24 78/6 78/7 78/8 78/11 78/16 78/16 78/24 79/22 81/2 81/4 83/12 84/11 86/2 86/7 86/8 86/12 86/21 87/20 93/2 98/5 98/8 98/10 99/11 99/23 100/7 102/9 102/19 106/15 106/22 108/4 111/10 112/18 114/18 114/22 116/11 123/15 125/1 125/6 126/1 126/1 127/12 127/13 127/19 128/11 128/14 128/17 129/15 130/7 130/12 130/18 130/21 130/25 131/8 131/9 133/16 133/17 133/25 134/15 137/25 139/12 139/12 141/15 142/16 142/19 142/19 142/23 143/3 143/6 144/14 149/22 152/22 153/9 153/21
TOE [1] 10/13	TWO [60] 7/25 8/2 9/2 10/13 10/25 14/12 15/14 24/8 24/18 26/17 27/11 27/12 31/9 47/14 48/17 48/19 49/17 49/19 49/20 51/3 69/22 70/7 70/16 70/19 73/22 73/23 82/17 89/2 93/9 96/8 96/10 96/20 96/21 96/22 96/23 99/8 99/10 105/1 105/18 106/8 113/11 115/10 119/8 124/16 131/13 132/1 132/3 135/23 135/24 136/13 136/16 137/8 137/19 145/18 149/9 149/17 152/12 152/21 153/6 153/10	UPON [9] 12/5 15/24 45/2 63/19 73/21 83/12 147/25 151/15 151/18
TOGETHER [5] 8/1 8/2 63/12 94/8 129/5	TYPE [2] 50/20 152/8	UPPER [1] 19/6
TOLD [11] 72/11 72/16 73/1 74/21 76/16 104/14 130/6 139/8 142/15 144/9 145/3	U	UPSCALE [1] 48/2
TOLERANCE [1] 38/17	UH [88] 7/20 7/23 7/25 9/15 10/11 10/23 12/24 13/3 14/3 14/14 14/24 15/21 15/22 17/11 17/14 17/16 17/21 19/9 23/12 24/7 25/16 25/18 25/24 26/3 26/25 27/2 27/5 27/16 27/22 28/10 28/21 29/12 31/8 31/24 32/3 32/4 32/23 36/22 37/18 37/20 39/2 40/5 41/24 42/2 42/6 42/15 44/15 44/16 45/20 46/5 47/19 50/25 52/20 53/25 55/10 56/1 56/9 56/14 65/9 67/8 67/19 73/15 74/13 80/8 88/25 89/10 92/10 92/15 93/6 94/5 99/8 104/5 110/10 116/15 129/12 130/6 130/18 132/10 133/3 133/9 137/8 140/3 140/12 142/11 144/15 145/14 146/23 151/9	UPSTAIRS [3] 116/11 131/8 145/18
TOMORROW [1] 152/14	UH-HUH [2] 73/15 80/8	UPWARD [2] 17/22 48/1
TOO [5] 56/18 87/18 101/11 116/22 151/22	ULTIMATELY [2] 52/14 65/6	US [5] 42/19 52/16 56/2 56/4 155/14
TOOK [13] 14/23 17/13 67/17 79/18 89/13 89/23 89/25 91/1 113/2 113/6 118/23 119/14 129/13	UM [138] 5/5 6/14 7/5 7/17 8/7 8/19 8/22 10/18 11/9 12/3 12/16 12/16 13/2 13/11 13/13 14/8 14/20 15/3 15/4 15/13 16/8 16/10 16/25 17/8 18/2 19/13 20/9 20/22 21/6 25/23 27/1 28/14 31/4 31/21 31/22 33/24 33/25 34/5 34/10 34/20 37/2 37/3 38/7 38/25 39/7 39/8 39/12 40/8 40/12 40/12 41/6 42/16 45/3 45/23 50/14 50/23 50/25 51/2 51/10 52/13 53/1 54/17 54/18 54/19 55/4 60/2 60/17 62/25 63/11 64/22 65/24 66/2 67/16 69/10 69/16 70/24 71/21 72/11 75/25 76/16 76/20 77/6 78/16 80/16 81/7 81/13 82/2 82/14 82/24 84/7 84/24 85/16 86/21 87/13 88/1 89/2 90/17 91/6 92/23 93/23 94/21 99/8 113/24 115/8 115/9 118/25 120/25 121/8 125/22 127/16 127/16 128/1 128/3 128/4 128/23 129/13 129/25 130/11 131/8 131/20 132/14 132/20 134/1 134/25 135/2 135/10 138/9 138/16 139/16 141/14 147/19 148/3 151/5 151/19 152/1 153/25 154/6 154/12	USE [3] 10/21 52/23 154/21
TOOK [13] 14/23 17/13 67/17 79/18 89/13 89/23 89/25 91/1 113/2 113/6 118/23 119/14 129/13	UM-HUM [6] 69/16 113/24 115/8 120/25 121/8 132/20	USED [2] 76/25 88/9
TOP [11] 24/13 27/5 31/9 31/12 54/12 86/3 115/4 115/5 115/22 115/23 119/23	UNDER [6] 13/25 14/24 50/24 103/16 147/16 152/11	USING [2] 72/25 81/12
TORSO [1] 18/13	UNDERLYING [3] 150/8 150/12 150/13	USUALLY [8] 7/20 14/3 19/14 30/15 36/15 37/5 54/3 152/6
TOTAL [2] 137/19 137/20	UNDERNEATH [4] 12/23 40/16 137/14 138/7	UTILIZING [1] 21/7
TOTALITY [1] 75/14	UNDERSTAND [5] 48/4 58/13 81/7 99/22 127/18	V
TOWARD [1] 45/25	UNDERSTANDING [4] 65/18 98/5 98/18 151/2	VALET [11] 66/15 66/17 66/23 66/24 102/10 102/20 102/24 103/1 103/22 104/19 149/18
TOWARDS [16] 26/25 86/14 122/12 122/14 132/15 133/2 135/16 135/18 136/18 136/19 137/9 137/9 137/16 137/17 138/4 138/18	UNDETERMINED [4] 45/6 52/15 52/23 52/24	VARIES [2] 19/16 19/23
TOWELS [1] 10/19	UNEXPECTED [1] 7/5	VARIETY [1] 47/6
TOWNSHIP [2] 1/3 7/11	UNFORTUNATELY [1] 152/15	VARIOUS [3] 18/25 26/1 32/4
TOX [1] 41/3	UNIVERSITY [1] 6/16	VEGAS [5] 1/3 4/1 6/22 7/10 51/18
TOXI [1] 41/4	UNLESS [1] 149/24	VEHICLE [35] 61/9 62/14 66/21 66/23 67/5 67/7 68/14 68/19 68/21 69/20 69/23 69/25 71/16 90/25 102/21 103/23 103/25 104/2 104/5 104/6 105/23 132/4 132/6 132/24 133/22 134/20 135/4 136/7 136/9 140/4 142/23 142/25 143/2 143/5 143/19
TOXIC [9] 36/22 37/1 37/2 38/1 38/4 38/16 38/21 49/7 55/10		VEHICLES [12] 83/8 83/16 83/18 83/24 83/25 84/10 109/12 109/17 119/19 124/16 124/17 124/24
TOXICOLOGY [7] 35/23 35/23 40/12 41/4 41/25 52/10 53/3		VERACITY [1] 41/1
TOXO [1] 41/4		VERBATIM [1] 151/5
TRACK [1] 142/3		VERSUS [1] 57/3
TRAFFIC [1] 34/13		VERY [6] 13/24 39/7 52/16 57/21 125/16 146/4
TRAINING [2] 6/14 6/24		VESSEL [1] 54/8
TRAJECTORY [5] 12/4 12/11 12/14 17/19 17/21		VESSELS [1] 15/11
TRANSCRIPT [3] 1/12 151/6 155/21		VICTIM'S [2] 5/1 45/2
TRANSPIRED [1] 71/3		VIEW [4] 8/25 80/4 132/23 132/23
TRAUMA [5] 18/25 19/3 20/17 30/19 30/21		VIKING [2] 94/17 94/18
TREATMENT [1] 40/1		VIKING/FLAMINGO [1] 94/17
TREE [9] 117/2 117/4 118/11 120/10 122/7 122/24 134/4 140/15 140/16		VIOLENCE [1] 46/3
TRIAL [1] 152/3		VIOLENT [9] 40/19 40/22 44/17 46/9 46/11 46/16 55/11 56/10 57/16
TRIED [2] 86/24 91/8		VITREOUS [1] 42/17
TRIGGER [3] 78/19 78/24 79/17		VOLUME [2] 36/19 36/20
TRIPLE [1] 38/14		VOLUME OF [1] 36/19
TRUCK [52] 82/25 83/14 83/19 85/5 85/6 108/7 108/22 109/10 109/18 109/22 110/1 117/18 117/20 117/21 117/23 118/15 120/12 120/24 121/9 121/11 121/14 121/16 121/17 121/18 121/25 122/1 123/24 124/3 124/6 124/7 124/10 125/13 133/16 134/5 134/7 134/12 134/15 136/2 137/10 138/2 138/10 138/25 140/11 140/15 140/19 141/8 141/16 141/17 143/3 143/8 143/10 143/15		
TRUE [6] 9/22 23/21 34/16 35/8 54/16 155/21		
TRUTH [9] 5/18 5/18 5/19 58/24 58/24 58/25 126/7 126/7 126/8		
TRY [6] 70/24 80/23 81/12 81/17 82/22 115/10		
TRYING [7] 76/7 76/7 76/9 79/3 79/11 79/11 82/19		
TURN [2] 19/25 31/7		
TURNED [2] 123/2 137/8		

W		
WAIST [1] 113/18	147/12 147/20 148/24 149/25	108/18 125/21 149/4
WAIT [14] 91/6 91/10 91/17 91/19 91/21	WENT [73] 5/13 6/16 6/18 6/20 15/10 15/12	WHETHER [16] 9/15 13/18 13/19 19/12
102/17 109/6 123/11 123/11 125/20 130/6	15/13 17/14 64/9 66/15 66/23 66/24 71/6	19/23 20/9 32/15 33/6 34/25 45/3 54/21 55/4
133/25 145/8 147/4	79/18 80/16 80/17 80/20 80/22 80/23 80/24	77/2 97/21 105/10 128/23
WAITED [1] 141/19	82/8 82/9 82/11 82/13 83/8 83/10 83/11	WHICH [29] 13/23 15/11 32/14 34/1 42/17
WAIVE [1] 149/7	83/16 83/25 84/7 84/7 84/8 84/9 84/10 84/23	45/6 45/17 45/23 50/24 54/20 77/9 77/10
WAL [4] 89/14 93/3 93/5 93/16	86/2 86/12 87/6 87/6 87/8 87/9 87/10 90/5	83/23 84/4 84/7 87/7 90/8 110/1 115/3 117/8
WAL-MART [4] 89/14 93/3 93/5 93/16	90/6 90/7 90/7 98/8 100/2 100/7 100/9 102/5	130/12 131/3 131/16 135/5 137/5 138/8
WALK [3] 102/9 106/22 138/22	112/21 119/19 121/18 121/18 122/11 122/16	140/13 149/17 153/2
WALKED [8] 90/23 99/11 119/23 137/9	122/17 122/18 122/18 123/9 123/11 125/7	WHILE [2] 100/7 132/12
137/16 137/17 138/17 138/25	125/8 125/9 128/11 130/6 130/25 131/8	WHO [35] 30/25 40/18 47/4 57/15 58/9
WALKING [11] 65/10 76/6 97/2 116/11	131/8 133/15 133/17 142/23	58/10 58/14 58/15 61/25 62/21 64/10 64/15
116/16 116/18 116/19 135/10 135/12 135/18	WERE [85] 9/9 10/7 12/4 17/17 21/6 25/15	67/7 68/11 68/16 68/16 68/16 68/21 72/3
138/17	26/12 26/22 27/23 28/12 29/17 31/19 31/21	72/19 92/18 95/25 96/12 97/18 105/21
WALL [1] 25/16	33/24 36/3 46/18 48/21 50/18 50/24 51/16	130/14 130/14 131/14 131/16 137/1 137/11
WANT [21] 10/25 12/3 22/10 31/7 34/15	52/8 52/9 55/9 60/10 61/8 61/11 63/12 64/18	143/21 144/24 151/11 153/20
70/7 77/24 80/25 81/2 91/16 110/15 110/21	65/8 66/5 66/21 67/15 67/18 68/9 70/20	WHO'S [3] 34/8 86/23 110/14
111/1 111/8 112/1 119/4 147/22 149/9	73/22 76/7 76/7 82/24 87/9 87/12 89/17	WHOLE [7] 5/18 21/10 58/24 113/2 126/7
150/24 155/4 155/11	93/14 94/23 95/21 95/25 96/3 97/16 98/13	132/9 133/4
WANTED [13] 34/24 73/25 74/1 74/3 74/5	98/15 100/16 102/16 104/12 105/24 107/11	WHY [14] 40/11 43/5 43/19 51/22 52/3
74/18 76/10 76/14 97/6 104/10 150/7 151/8	107/12 107/13 107/14 107/21 107/22 113/12	60/15 60/15 60/15 74/1 106/3 106/5 111/14
154/11	115/21 116/17 116/22 119/7 124/17 127/2	111/14 133/17
WANTS [5] 22/9 22/11 41/12 97/8 99/25	127/10 127/25 130/11 130/12 131/4 131/4	WILL [17] 4/25 10/5 13/6 19/25 21/18 23/7
WAS [314]	132/1 132/8 132/9 132/13 133/3 133/3 133/9	28/24 45/20 48/9 62/5 70/19 108/17 149/3
WASN'T [13] 72/11 72/13 73/2 75/11 76/17	134/16 134/19 136/11 151/19 155/19	152/2 155/3 155/9 155/9
95/5 96/18 99/15 100/23 100/25 109/25	WEREN'T [3] 52/25 100/16 136/10	WILLIAMS [1] 93/6
127/12 154/8	WEST [10] 71/15 135/10 135/15 135/19	WINDOW [1] 129/25
WATCH [3] 79/13 86/11 133/11	136/1 136/1 136/19 137/3 138/12 141/4	WISE [1] 124/23
WATCHING [10] 131/4 131/4 132/8 132/10	WHAT [185]	WIT [1] 29/18
132/11 132/13 136/10 136/11 136/24 137/1	WHAT'S [17] 9/12 11/2 11/7 11/17 26/6	WITHDREW [1] 147/16
WATER [2] 4/13 5/14	28/1 32/12 44/7 61/21 70/5 80/3 106/17	WITHIN [9] 11/22 12/23 15/1 19/13 36/5
WAY [20] 8/2 16/10 17/6 22/13 28/16 34/18	108/21 114/4 127/4 129/21 135/2	39/8 45/14 48/17 112/23
55/14 71/9 71/10 71/12 71/12 80/17 80/19	WHATEVER [5] 22/11 32/16 72/12 136/4	WITHOUT [2] 64/3 147/20
84/5 97/24 122/12 123/9 125/8 134/8 138/21	139/18	WITNESS [18] 4/18 4/25 5/17 9/4 18/16
WAYS [1] 67/25	WHATSOEVER [1] 152/10	21/14 41/12 58/6 58/17 58/23 61/18 70/2
WE [68] 7/4 7/20 8/3 8/22 8/22 8/23 10/18	WHEN [112] 7/20 7/25 8/4 9/15 17/2 19/9	79/25 88/11 114/1 126/2 126/6 139/21
10/19 10/21 16/7 16/11 16/12 22/13 22/20	23/12 25/14 28/3 32/15 33/12 35/12 38/7	WITNESSES [9] 2/3 4/23 4/24 5/3 5/4 5/10
23/12 27/4 28/3 28/4 28/12 30/23 33/24 34/2	38/14 42/21 47/16 50/18 60/19 61/8 63/12	58/9 146/6 148/18
39/13 40/9 42/14 42/15 42/16 42/18 42/19	64/2 64/9 64/10 68/3 71/12 72/18 72/18 74/4	WOMAN [2] 111/21 152/13
42/21 46/5 46/15 47/20 47/23 51/8 52/19	74/4 76/16 76/21 76/24 77/19 78/23 79/17	WOOD [1] 25/17
52/19 52/19 52/20 52/20 52/22 52/22 54/20	80/14 80/21 80/22 81/9 81/20 82/7 82/7	WORDS [8] 32/17 45/13 81/9 81/13 107/13
55/7 57/6 58/12 72/18 75/13 86/24 91/8 93/2	82/11 82/12 83/5 83/14 83/24 83/25 84/7	107/14 148/14 152/21
93/14 93/14 93/16 100/2 100/2 108/3 109/17	84/8 84/19 85/9 85/13 86/5 86/5 86/13 87/12	WORK [2] 6/22 94/8
125/18 130/11 146/8 146/10 146/14 146/16	87/12 88/21 91/12 93/5 93/8 94/23 95/18	WORKED [1] 34/18
146/20 147/1 151/5 153/8	98/18 98/21 100/2 100/9 100/10 102/13	WORKING [1] 31/1
WE'LL [5] 21/25 28/4 147/2 147/5 151/9	103/22 106/12 106/12 108/2 108/3 108/3	WORTHY [1] 43/2
WE'RE [10] 24/7 39/18 42/21 55/18 55/21	109/22 112/11 112/15 114/18 114/20 115/22	WOULD [100] 13/7 13/24 14/15 15/17 15/22
57/24 76/12 81/8 147/5 153/4	115/23 116/1 118/2 119/22 121/19 121/20	15/25 16/2 17/20 18/2 19/23 20/4 21/7 21/11
WE'VE [9] 4/14 4/15 18/5 28/10 30/7 56/11	122/11 122/17 122/20 123/8 123/9 125/11	23/2 23/17 25/1 26/8 26/10 27/17 27/22 29/3
56/12 56/16 56/18	128/14 129/24 132/14 133/1 135/5 135/9	29/6 29/21 29/23 30/2 30/9 34/24 35/1 35/3
WEAPON [7] 35/12 147/15 149/11 153/25	136/4 136/9 140/10 141/2 142/5 142/14	35/19 35/21 37/1 37/3 38/3 38/10 38/12
154/21 154/22 155/8	142/14 142/22 145/21 146/20 149/18 149/23	38/13 38/22 38/24 39/12 39/15 40/21 40/21
WEARING [4] 13/18 13/22 59/17 139/15	WHERE [89] 7/21 8/23 12/5 12/6 14/4 19/5	40/23 40/24 41/6 42/17 44/6 44/16 44/17
WEDNESDAY [2] 1/16 4/1	20/19 26/14 27/6 27/17 27/19 27/20 32/17	44/20 45/7 45/17 46/9 46/11 50/19 50/20
WEEK [1] 88/25	38/22 41/1 60/5 60/8 60/12 61/15 64/17 65/8	51/1 51/2 51/7 51/10 51/13 51/22 51/22
WEEKS [1] 88/25	66/13 67/17 67/18 68/4 70/10 71/2 71/5	51/23 52/3 52/3 52/4 52/6 52/7 52/13 53/3
WEIGHT [1] 49/11	71/19 71/21 73/8 74/10 75/3 75/4 77/4 80/4	54/22 55/3 55/8 55/10 55/10 55/13 55/24
WELL [66] 9/2 10/13 10/15 13/11 15/3 15/5	80/11 80/11 85/3 85/8 86/10 87/5 87/23	56/9 56/16 57/2 59/16 77/9 77/11 84/7 86/16
16/17 17/24 18/2 20/6 23/20 28/3 28/5 28/20	89/13 89/21 90/4 90/21 90/25 93/14 93/14	86/17 111/10 111/10 124/17 124/20 131/9
28/21 30/21 34/15 38/17 39/25 40/11 41/21	94/12 94/16 94/16 96/15 98/15 100/21 107/2	135/10 146/17 147/18 147/24 148/4 149/20
45/9 46/23 48/5 51/1 53/15 54/6 56/17 56/21	108/24 109/14 109/16 115/10 115/21 116/9	150/24
60/1 64/21 65/9 66/2 67/16 71/9 72/11 72/16	116/17 117/10 117/16 119/14 121/11 122/1	WOULDN'T [6] 18/4 22/10 54/9 71/2 75/5
73/25 74/1 75/17 80/16 83/25 95/1 96/23	122/3 123/6 123/6 123/14 124/3 124/12	75/5
101/21 101/24 102/17 111/16 117/7 117/21	127/15 128/17 131/23 132/16 133/14 134/1	WOUND [38] 11/3 11/4 11/7 11/11 11/11
119/21 120/17 120/18 121/11 130/25 133/16	137/25 138/18 143/2 143/4 148/4 148/4	11/21 11/24 12/3 12/4 12/5 12/18 12/21
134/5 139/7 140/16 145/8 146/22 147/10	150/17 150/22	12/22 12/23 14/6 14/7 14/14 14/15 14/25
	WHERE [1] 115/11	15/1 15/4 15/5 15/8 15/9 16/9 16/14 16/19
	WHEREUPON [7] 10/7 58/4 62/6 70/20	17/1 17/2 17/8 17/9 17/25 32/14 32/17 32/23

W	Z
<p>WOUND... [3] 50/19 50/20 51/4 WOUNDS [8] 9/2 10/25 12/24 16/11 16/11 18/13 50/15 53/7 WRITE [1] 45/13 WRITING [1] 56/15 WRITTEN [1] 45/16 WRONG [2] 82/2 82/6</p>	<p>ZIPPER [2] 8/1 10/13</p>
Y	
<p>YA [5] 110/16 110/21 111/1 111/8 112/1 YARDS [2] 90/17 90/18 YEAH [78] 5/13 43/24 53/22 62/17 66/20 71/23 72/1 73/3 74/19 74/25 74/25 75/4 76/9 76/16 77/13 77/15 78/4 78/15 79/7 81/6 82/5 86/5 86/9 90/1 90/3 95/13 95/17 95/24 99/2 99/4 103/15 105/2 105/24 106/11 106/15 107/11 110/19 110/23 111/2 111/10 111/18 111/20 111/22 111/24 112/3 112/17 113/10 113/15 113/19 114/20 115/6 117/2 117/5 117/19 118/3 118/5 118/9 118/9 118/12 119/19 120/11 120/20 120/22 121/2 121/4 121/13 122/4 123/14 124/22 125/3 129/10 133/7 135/6 135/16 139/7 139/11 142/10 142/10 YEAR [1] 126/24 YEARS [9] 6/10 60/22 60/24 93/23 93/23 93/24 94/6 94/7 94/7 YELLOW [2] 19/25 109/13 YES [305] YET [2] 21/20 46/1 YOU [738] YOU'D [2] 23/6 40/10 YOU'LL [1] 21/22 YOU'RE [44] 9/15 12/21 14/11 19/21 20/13 23/23 35/13 35/14 37/10 38/15 40/4 40/20 40/20 41/24 47/23 48/4 54/6 56/2 56/20 71/12 77/12 81/9 81/13 93/25 99/22 103/22 111/2 111/11 112/1 112/1 116/19 117/4 118/8 118/11 118/11 120/10 122/23 123/5 123/22 133/22 137/21 140/4 143/25 149/24 YOU'VE [8] 7/7 11/1 14/12 58/8 58/9 58/14 58/15 66/11 YOUR [144] 4/10 4/12 4/18 5/10 5/23 6/14 6/24 7/3 7/13 7/18 8/7 8/8 8/9 8/12 8/16 8/20 9/5 10/4 12/8 15/17 17/20 18/8 18/18 19/2 21/9 22/5 22/21 28/21 28/22 29/3 29/6 29/22 29/24 33/1 33/9 33/13 33/18 33/19 35/17 35/20 38/24 40/2 41/8 41/22 42/3 42/8 43/6 43/8 43/16 43/23 49/21 50/14 50/24 51/16 52/4 52/11 53/10 55/8 55/25 56/4 56/22 56/24 57/20 57/21 58/5 58/8 58/18 58/20 59/4 59/4 59/22 59/25 61/11 61/18 62/4 63/19 65/18 66/17 67/7 70/2 70/18 76/5 77/12 78/14 81/13 81/13 81/15 81/15 88/13 88/14 89/7 89/13 90/25 98/5 98/18 100/18 102/11 103/25 105/23 108/10 111/7 114/1 115/11 115/18 118/17 125/16 126/3 126/14 126/14 126/23 127/2 129/25 130/3 130/8 132/24 133/19 133/22 133/22 134/19 136/7 136/9 136/11 139/20 142/16 142/19 142/22 142/22 144/3 144/5 144/14 145/9 145/14 146/5 148/6 148/11 148/19 148/20 148/22 149/12 150/16 150/25 151/2 152/7 152/7 YOURS [1] 127/6 YOURSELF [1] 32/6 YOURSELVES [1] 96/3</p>	


CLERK OF THE COURT

INFM
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
SAMUEL G. BATEMAN
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DISTRICT COURT
CLARK COUNTY, NEVADA

I.A. 3/6/14
9:30 A.M.
J. MOMOT, ESQ.

THE STATE OF NEVADA,
Plaintiff,

-vs-

LUIS PIMENTEL, aka,
Luis Godofredo Pimentel, III,
#1444838

Defendant.

CASE NO: C-14-296234-1

DEPT NO: V

INFORMATION

STATE OF NEVADA }
COUNTY OF CLARK } ss.

STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

That LUIS PIMENTEL, aka, Luis Godofredo Pimentel, III, the Defendant(s) above named, having committed the crime of **MURDER WITH USE OF A DEADLY WEAPON (Category A Felony - NRS 200.010, 200.030.1, 193.165 - 50006)** and **CARRYING CONCEALED FIREARM OR OTHER DEADLY WEAPON (Category C Felony - NRS 202.350 (1)(d)(3) - 51459)**, on or about the 22nd day of December, 2013, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada,

///

///

///

1 COUNT 1 – MURDER WITH USE OF A DEADLY WEAPON


2 did then and there wilfully, unlawfully, feloniously, with premeditation and
3 deliberation, and with malice aforethought, and/or after challenging ROBERT HOLLAND to
4 a fight, kill the said ROBERT HOLLAND, a human being, by shooting at and/or into the body
5 of ROBERT HOLLAND, with a deadly weapon, to-wit: a firearm.

6 COUNT 2 – CARRYING CONCEALED FIREARM OR OTHER DEADLY WEAPON

7 did then and there wilfully, intentionally, unlawfully and feloniously carry concealed
8 upon his person, a firearm or other deadly weapon, to-wit: a firearm.

9 STEVEN B. WOLFSON
10 Clark County District Attorney
Nevada Bar #001565

11 BY


12 SAMUEL G. BATEMAN
13 Chief Deputy District Attorney
Nevada Bar #008764

14
15 Names of witnesses known to the District Attorney's Office at the time of filing this
16 Information are as follows:

17 <u>NAME</u>	<u>ADDRESS</u>
18 ARCHANGEL, TINA	Bus Driver, LV, NV
19 BATTELINI, DEBBIE	3822 Don Carlos Dr., LV, NV
20 CUSTODIAN OF RECORDS	CCDC
21 CUSTODIAN OF RECORDS	LVMPD COMMUNICATIONS
22 CUSTODIAN OF RECORDS	LVMPD RECORDS
23 DOUGHERTY, ED, or Designee	C/O CCDA'S OFFICE
24 GAVIN, LISA DR.	CORONER'S OFFICE, LV, NV
25 HILDEBRAND, TIM	Unknown Address
26 HOLLAND, ROBERT II	C/O CCDA'S OFFICE
27 JENSEN, B.	LVMPD P# 3662
28 MOMON, KRIS	Unknown Address

1 ORTIZ, BENJAMIN
2 VAANDERING, B.
3 VERWEY, STEVE
4 WASS, EDWARD
5 WILLIAMS, T.
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3625 Boulder Hwy., #3041, LV, NV
LVMPD P# 13575
Unknown Address
133 Voltaire Ave., Henderson, NV
LVMPD P# 3811

DA#13F20476X/erg
LVMPD EV#1312220648
(TK12)


CLERK OF THE COURT

PWHC
PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0536
NANCY L. LEMCKE
Deputy Public Defender
Nevada Bar No. 5416
CONOR M. SLIFE
Deputy Public Defender
Nevada Bar No. 11277
309 South Third Street, Suite #226
Las Vegas, Nevada 89155
(702) 455-4685
Attorneys for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Application of;

CASE NO. C-14-296234-1

Luis Pimentel,
for a Writ of Habeas Corpus.

DEPT. NO. V

DATE: July 23, 2014
TIME: 9:00 a.m.

PETITION FOR WRIT OF HABEAS CORPUS

TO: The Honorable Judge of the Eighth Judicial District Court of
The State of Nevada, in and for the County of Clark

The Petition of Luis Pimentel submitted by NANCY L. LEMCKE and CONOR M.
SLIFE, Deputy Public Defenders, as attorneys for the above-captioned individual, respectfully
affirms:

1. That they are duly qualified, practicing and licensed attorneys in the City of
Las Vegas, County of Clark, State of Nevada.

2. That Petitioner makes application for a Writ of Habeas Corpus; that the place
where the Petitioner is imprisoned actually or constructively imprisoned and restrained of his liberty
is the Clark County Detention Center; that the officer by whom he is imprisoned and restrained is
Doug Gillespie, Sheriff.

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1 3. That the imprisonment and restraint of said Petitioner is unlawful in that the
2 Information improperly charges a theory of First Degree Murder liability not authorized by Nevada
3 law, for which prosecutors failed to present sufficient evidence at preliminary hearing.

4 4. That Petitioner waives his right to be brought to trial within 60 days.

5 5. That Petitioner consents that if Petition is not decided within 15 days before
6 the date set for trial, the Court may, without notice of hearing, continue the trial indefinitely to a date
7 designated by the Court.


8 6. That Petitioner personally authorized his aforementioned attorney to
9 commence this action.

10 WHEREFORE, Petitioner prays that this Honorable Court make an order directing
11 the County of Clark to issue a Writ of Habeas Corpus directed to the said Doug Gillespie, Sheriff,
12 commanding him to bring the Petitioner before your Honor, and return the cause of his
13 imprisonment.

14 DATED this 9th day of July, 2014.

15 PHILIP J. KOHN
16 CLARK COUNTY PUBLIC DEFENDER

 PHILIP J. KOHN
 CLARK COUNTY PUBLIC DEFENDER

17
18 By: 
19 NANCY L. LEMCKE, #3416
 Deputy Public Defender

 By: 
 CONNOR MASLITT, #11277
 Deputy Public Defender

DECLARATION

NANCY L. LEMCKE makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada; I am the Deputy Public Defender assigned to represent the Defendant in the instant matter, and I am familiar with the facts and circumstances of this case.

2. That I am the attorney of record for Petitioner in the above matter; that I have read the foregoing Petition, know the contents thereof, and that the same is true of my own knowledge, except for those matters therein stated on information and belief; and as to those matters, I believe them to be true; that Petitioner, LUIS PIMENTEL, personally authorizes me to commence this Writ of Habeas Corpus action.

I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

DATED this 17 day of July, 2014.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: NANCY L. LEMCKE, #5416
Deputy Public Defender

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

COMES NOW the Petitioner, LUIS PIMENTEL, by and through his counsel, NANCY L. LEMCKE and CONOR M. SLIFE, Deputy Clark County Public Defenders, and submits the following Points and Authorities in Support of Defendant's Petition for a pre-trial Writ of Habeas Corpus or, in the Alternative, Motion to Dismiss "Challenge to Fight" Theory of Prosecution.

STATEMENT OF FACTS

In the early morning hours of December 2013, an argument ensued between Robert "Bobby" Holland, III, and his girlfriend, Amanda Lowe, at Arizona Charlie's. After Bobby became physical with Amanda, hotel security escorted him from the property. PHT p. 75; 97 (Attached hereto as Exhibit A). Instead of leaving, Bobby, having ingested lethal quantities of methamphetamine, paced back and forth in the parking lot, waiting for Amanda to leave the hotel. PHT p. 44-47; 65; 97.

While Bobby was pacing in the parking lot, his friend Timothy Hildebrand pulled up with Timothy's fiancé, Shannon Salazar. Since all were friends, Bobby asked Timothy and Shannon to find Amanda inside the casino and ask her to come out and speak with him. PHT p. 97; 64. Timothy and Shannon found Amanda playing keno the instant defendant, Luis "Lorenzo" Pimental. PHT 64-65; 97. Timothy explained to Amanda that Bobby was outside wanting to speak with her. PHT p. 65. Amanda eventually agreed to go outside and speak with Bobby. PHT p. 65; 100. While she was doing this, Timothy and Lorenzo went to Lorenzo's hotel room to gather his belongings. PHT p. 65-66. About the time the two men were ready to leave the room, Amanda showed up. PHT p. 103. They exited the hotel room to find Bobby outside being removed from the property by hotel security. PHT p. 103. At that point, Bobby and Lorenzo began "arguing back and forth about kicking each other's ass." PHT p. 103. According to Timothy, Lorenzo appeared as though he wanted to fight, and told Bobby "kind of meet me at my house." PHT p. 74. Timothy then went to get his car while Lorenzo checked out of the room, and the two men then left with Amanda and Shannon to leave. PHT p. 66-67. All four individuals drove to Lorenzo's apartment at a nearby Siegel Suites. PHT p. 67.

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1 Amanda and Shannon dropped Lorenzo and Timothy off at Lorenzo's apartment. PHT p. 68-70.
2 After the girls drove off to a nearby bar, Lorenzo and Timothy noticed Bobby standing atop the
3 stairs outside of Lorenzo's third floor apartment. PHT p. 68-71. Apparently, Bobby called his
4 father, Robert Holland, III, and requested a ride from Arizona Charlie's to Lorenzo's apartment in
5 order to find Amanda. PHT p. 129, 145. Bobby came down the stairs and approached Lorenzo.
6 PHT p. 107. The two men started arguing. PHT p. 107. At some point during the verbal exchange,
7 Bobby told Lorenzo he did not want to fight; then he drew back and punched Lorenzo in the face.
8 PHT p. 77, 107, 110. Lorenzo staggered back and, according to Timothy, pulled a gun from his
9 waist. PHT p. 77-78. Lorenzo pulled the trigger but the gun misfired. PHT p. 78. Bobby
10 responded by threatening: "What are you gonna do, shoot me dude?" PHT p. 79. Lorenzo then
11 shot Bobby in the stomach area. PHT p. 79. Bobby fell to the ground. PHT p. 79. According to
12 Timothy, Lorenzo then approached Bobby and fired a second shot into his backside. PHT p. 86.
13 Bobby died as a result of his wounds.

14 Based on the foregoing, prosecutors charged Luis Pimentel with Murder With Use of a Deadly
15 Weapon. At the conclusion of the preliminary hearing, prosecutors motioned the Justice of the
16 Peace to amend the Complaint to add a First Degree Murder liability theory of 'challenge to fight.'
17 PHT p. 149-55. Over defense objection, the Justice of the Peace granted the request. PHT p. 149-
18 55. Accordingly, the Information currently on file charges that Luis committed Murder With Use of
19 a Deadly Weapon by: "...wilfully, unlawfully, feloniously, with premeditation and deliberation and
20 with malice aforethought, *and/or after challenging ROBERT HOLLAND to a fight*, kill the said
21 ROBERT HOLLAND..." (emphasis added). See Criminal Information, attached hereto as Exhibit
22 B. For the reasons set forth below, the "challenge to fight allegation" must be dismissed.

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ARGUMENT

A. THE 'CHALLENGE TO FIGHT' THEORY OF FIRST DEGREE MURDER LIABILITY MUST BE DISMISSED AS IT IS NOT AUTHORIZED BY NEVADA LAW AND FAILS TO PROVIDE MR. PIMENTEL WITH ADEQUATE NOTICE OF THE CHARGED MISCONDUCT.

1. "Challenge to fight" is not a statutory theory of first-degree murder under NRS 200.030.

Prosecutors have charged Luis Pimentel with Murder with Use of a Deadly Weapon, a crime defined by NRS 200.030. NRS 200.030 defines First Degree Murder as murder which is:

(a) Perpetrated by means of poison, lying in wait or torture, or by any other kind of willful, deliberate and premeditated killing;

(b) Committed in the perpetration or attempted perpetration of sexual assault, kidnapping, arson, robbery, burglary, invasion of the home, sexual abuse of a child, sexual molestation of a child under the age of 14 years, child abuse or abuse of an older person or vulnerable person pursuant to NRS 200.5099;

(c) Committed to avoid or prevent the lawful arrest of any person by a peace officer or to effect the escape of any person from legal custody;

(d) Committed on the property of a public or private school, at an activity sponsored by a public or private school or on a school bus while the bus was engaged in its official duties by a person who intended to create a great risk of death or substantial bodily harm to more than one person by means of a weapon, device or course of action that would normally be hazardous to the lives of more than one person; or

(e) Committed in the perpetration or attempted perpetration of an act of terrorism.

These five theories are the exclusive means by which the legislature has authorized the prosecution of a violation of NRS 200.030. There is no statutory authority to prosecute a violation of NRS 200.030, Nevada's First-Degree Murder statute, under a "challenge to fight" theory.

The Information does not specify the statutory authority upon which the 'challenge to fight' liability theory is based. Presumably, the 'challenge to fight' allegation derives from one of two statutes criminalizing — as offenses separate and distinct from murder — dueling and fighting. NRS 200.410, an arcane 1959 statute, criminalizes dueling. It provides that: "If a person fights, by previous appointment or agreement, a duel with a rifle, shotgun, pistol, bowie knife, dirk,

1 smallsword, backsword, or other dangerous weapon, and in so doing kills his or her antagonist, or
2 any person, or inflicts such a wound that the party or parties injured die thereof, each such offender
3 is guilty of murder in the first degree, which is a category A felony, and upon conviction thereof
4 shall be punished as provided in subsection 4 of NRS 200.030." Similarly, NRS 200.450(1) makes
5 it unlawful for a person "...upon previous concert and agreement, [to] fight with any other person or
6 give, send or authorize any other person to give or send a challenge verbally or in writing to fight
7 any other person..." NRS 200.450(3) provides that, "should death ensue to a person in such a fight,
8 or should a person die from any injuries received in such a fight, the person causing or having any
9 agency in causing the death, either by fighting or by giving or sending for himself or herself or for
10 any other person, or in receiving for himself or herself or for any other person, the challenge to fight,
11 is guilty of murder in the first degree which is a category A felony and shall be punished as provided
12 in subsection 4 of NRS 200.030 [defining first degree murder]."

13 Both NRS 200.410 and NRS 200.450 amount to independent crimes separate and distinct
14 from First Degree Murder. They are not liability theories. So there is no statutory authority for
15 prosecutors to charge a violation of NRS 200.030 by relying on NRS 200.410 or NRS 200.450.
16 Additionally, both NRS 200.410 and NRS 200.450 contain a number of specific elements that
17 prosecutors must prove beyond a reasonable doubt: a prior appointment or agreement and the
18 existence of a dangerous weapon, for example. The Information fails to allege such offense
19 elements material to each crime. Correlatively, the Information fails to allege facts supporting those
20 elements. Since the 'challenge to fight' allegation is not a statutorily proscribed First Degree
21 Murder theory under NRS 200.030 but, rather, *a separate crime with separate elements* for which
22 the *punishment* happens to be the same as First Degree Murder, it must be dismissed.

23 *B. The 'challenge to fight' allegation fails to provide notice of the essential facts*
24 *constituting the charged theory.*

25 The Sixth Amendment to the U.S. Constitution guarantees a criminal defendant the right to
26 be informed of the nature and cause of any and all accusations against him/her. U.S.C.A. VI, XIV.
27 Codifying this, NRS 173.075(1) requires that an indictment or information contain a "plain, concise
28 and definite written statement of the essential facts constituting the offense charged." See also

1 Sheriff v. Levinson, 95 Nev. 436 (1979). The Nevada Supreme Court has long warned of the
2 "...threats to due process that indefinite indictments necessarily pose." Simpson v. Eighth Judicial
3 District Court, 88 Nev. 654, 655 (1972). Not surprisingly, the Court has held that a charging
4 document "...which alleges the commission of the offense solely in the conclusory language of the
5 statute is insufficient." Sheriff v. Levinson, 95 Nev. 436, 437 (1979).

6 Elaborating on the pleading requirements necessary for an Indictment to meet constitutional
7 muster, the Simpson Court held that:

8 Whether at common law or under statute, the accusation must include a
9 characterization of the crime and such description of the particular act alleged to have
10 been committed by the accused as will enable him properly to defend against the
11 accusation, and the description of the offense must be sufficiently full and complete
12 to accord to the accused his constitutional right to due process of law.

13 Id. At 660 (quoting 4 R. Anderson, Wharton's Criminal Law and Procedure, Section 1760, at 353
14 (1957)). The Simpson Court further noted that the fact an accused has access to transcripts of the
15 proceedings before the Grand Jury does not eliminate the necessity that an Indictment be definite.
16 Id. The Court reasoned that such indefinite pleading would necessarily allow the prosecution
17 absolute freedom to change theories at will, thus denying an accused the fundamental rights the
18 Nevada legislature intended a definite Indictment to secure. Id.

19 The Information filed here fails to articulate a plain, concise, and definite written statement
20 of the essential facts giving rise to the 'challenge to fight' liability theory. The Information merely
21 charges that Bobby's death occurred pursuant to a 'challenge to fight.' The Information fails to
22 allege any facts supporting that claim. As Simpson, supra, made clear, Mr. Pimentel's awareness of
23 the testimony presented at the preliminary hearing does not obviate the government's responsibility
24 to plead the allegation with sufficient specificity to give him notice of the charged [mis]conduct.
25 Accordingly, the 'challenge to fight' allegation contained in the Information fails to provide the
26 constitutionally required notice of the prohibited conduct and, as such, must be dismissed.

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1 B. PROSECUTORS PRESENTED INSUFFICIENT EVIDENCE TO HOLD MR.
2 PIMENTEL TO ANSWER ON THE 'CHALLENGE TO FIGHT' THEORY OF
3 FIRST DEGREE MURDER.

4 NRS 171.206 requires a finding that "... there is probable cause to believe that an offense has
5 been committed and that the defendant has committed it..." In order for a defendant to be held to
6 answer a criminal charge. The Nevada Supreme Court has held that, although the government's
7 burden at a preliminary hearing is "slight, it remains incumbent upon the state to produce some
8 evidence" that an offense has been committed and the defendant committed it. Woodall v. Sheriff,
9 95 Nev. 218, 220 (1979); See also Marcum v. Sheriff, 85 Nev. 175, 178 (1969) ("The state must
10 offer some competent evidence on those points to convince the magistrate that a trial should be
11 held"). If the State fails to meet its burden, "an accused is entitled to be discharged from custody
12 under a writ of habeas corpus." State v. Plas, 80 Nev. 251, 252 (1964).

13 The challenge to fight allegation presumably derives from Timothy Hildebrand's testimony that,
14 while at Arizona Charlie's, Bobby and Lorenzo began "arguing back and forth about kicking each
15 other's ass." PHT p. 103. Timothy testified that Lorenzo appeared as though he wanted to fight,
16 and told Bobby "kind of meet me at my house." PHT p. 74. In this regard, Timothy indicated:

17 Q: Okay. And what is it that -- so Lorenzo said that he wanted to fight Bobby; is
18 that right?

A: Yeah, he kept telling him, kind of meet me at my house.

19 Q: Okay. How many times do you think he told that to Bobby?

20 A: Like ten.

21 Q: What was Bobby saying in return?

A: Yeah, Yeah, I'll meet you there, I'll meet you there.

22 Q: Okay. Did it appear to you that Bobby was asking where Amanda was?

23 A: Yeah, he was looking for -- he knew where she was. She wouldn't -- she
24 wouldn't come out and talk to him, and I think security asked him [Bobby] to leave
because they [Bobby and Amanda] got in an argument --

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1 PHT p. 74-75. When Timothy and Lorenzo arrived at Lorenzo's apartment later that morning,
2 Bobby was there. According to Timothy, Bobby appeared as though he was looking for Amanda
3 (and not Lorenzo). PHT p. 73. Apparently, Bobby called his father and requested a ride from
4 Arizona Charlie's to Lorenzo's apartment in order to find Amanda. PHT p. 129, 145.

5 Again, since the Information fails to specify the statutory authority for the 'challenge to
6 fight' allegation, and fails to articulate the elements (and supporting facts) of the charged 'challenge
7 to fight' offense under which prosecutors intend to proceed, it is difficult to analyze the above-
8 referenced evidence as it relates to a particular statute. However, both NRS 200.410 and NRS
9 200.450 require a previous concert or agreement to fight that is ultimately acted upon. NRS
10 200.410 also appears to require the parties agree that weapons will be used in the fight (or duel).
11 Here, the evidence presented at preliminary hearing disclosed that Mr. Pimentel and Bobby
12 exchanged threats, but never specifically agreed to meet at a particular location *and time* for the
13 exclusive purpose of fighting. Indeed, the preliminary hearing testimony revealed that Bobby was
14 trying to locate Amanda, not fight Lorenzo, when he went to Lorenzo's apartment following the
15 encounters at Arizona Charlie's. This fails to amount to sufficient evidence of a 'challenge to fight'
16 under NRS 200.410 or NRS 200.450. Accordingly, the 'challenge to fight' allegation contained in
17 the Information on file herein cannot stand.

18 CONCLUSION

19 For the foregoing reasons Petitioner Luis Pimentel respectfully requests that the instant Writ
20 issue; and that he be discharged from the Information currently on file herein.

21 DATED this 9th of July, 2014.

22 PHILIP J. KOHN
23 CLARK COUNTY PUBLIC DEFENDER

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

24
25 By: [Signature]
26 NANCY L. LEMMON, #5416
Deputy Public Defender

By: [Signature]
CONOR M. SCIFE, #11277
Deputy Public Defender

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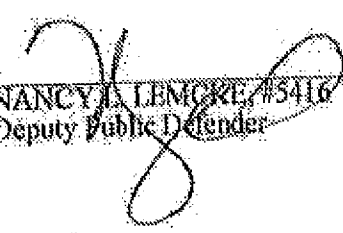
NOTICE

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff

YOU WILL PLEASE TAKE NOTICE that the foregoing PETITION FOR WRIT OF
HABEAS CORPUS will be heard on 23rd day of July, 2014, at 9:00 a.m., in Department No. V
District Court.

DATED this 21 day of July, 2014.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER


By: 
NANCY J. LEMORE #3416
Deputy Public Defender

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that service of PETITION FOR WRIT OF HABEAS CORPUS, was
made this 21 day of July, 2014, by Electronic Filing to:

CLARK COUNTY DISTRICT ATTORNEY'S OFFICE
Motions@clarkcountyyda.com

SAMUEL BATEMAN, Deputy District Attorney
E-Mail: samuel.bateman@clarkcountyyda.com

By: 
Sara Ruano
Secretary for the Public Defender's Office

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 11, 2014

C-14-296234-1 State of Nevada
 vs
 Luis Pimentel

August 11, 2014 9:00 AM All Pending Motions

HEARD BY: Ellsworth, Carolyn

COURTROOM: RJC Courtroom 03E

COURT CLERK: Denise Trujillo

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT:	Bateman, Samuel G.	Attorney
	Lemcke, Nancy L.	Attorney
	Pimentel, Luis	Defendant
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- DEFT'S MTN TO WITHDRAW AS COUNSEL...DEFT'S MOTION TO COMPEL PRODUCTION OF DISCOVERY...STATUS CHECK: WRIT

Deft. present in custody. COURT advised it reviewed affidavit and does not see any conflict in this case AND unless Ms. Lemcke refuses to take the case, ORDERED, Motion DENIED. Ms. Lemcke stated she is not going to refuse at this time. State would request a screen to keep Ms. Lemcke from getting into confidential files that an outside attorney would not have access to. COURT directed Ms. Lemcke to set up some sort of screen. Ms. Lemcke agreed, but noted at some point she may need to file on witness. Court advised that request would be addressed in a discovery motion. COURT noted motion is untimely as it should be filed within 30 days after arraignment and after they have looked at DA's file, and ORDERED, Discovery motion(s) as a follows:

1. All statements written or recorded: State will be required to comply with NRS 174.235, despite untimely, DENIED unless amounts to Brady material or it's progeny.
2. All Statements of potential witness: State will be required to comply with NRS 174.235, DENIED unless amounts to Brady material or it's progeny.

PRINT DATE: 08/14/2014

Page 1 of 3

Minutes Date: August 11, 2014

3. Requests for results, reports and crime scene analysis: State will be required to comply with NRS 174.235, DENIED unless amounts to Brady material or it's progeny;
4. Access to and preservation of all material collected: counsel needs to inspect evidence as Court is not sure what really wants, GRANTED and State DA to arrange said inspection.
5. All intercepted electronic or oral communications: GRANTED to extent it complies with Brady material or it's progeny.
6. Any and all data, recordings, reports: GRANTED to extent it complies with Brady material or it's progeny.
7. Any and all 911 and 311 recordings including car to car communications: Counsel to first review unit log and CAD log and make specific request, DENIED without prejudice as overly broad.
8. All information which shows Deft. did not commit alleged crime(s): GRANTED to extent it complies with Brady material or it's progeny.
9. All statements of identification or witnesses interviewed; GRANTED to extent it complies with Brady material or it's progeny.
10. All relevant reports of chain of custody: Counsel to coordinate with the DA's office for inspection and State will provide any report of destruction of evidence in this case;
11. Any documents used to prepare State's witnesses for preliminary hearing: To extent State complies with NRS 174.235; DENIED unless Brady material.
12. All updated witness contact information; State to provide updated information but not phone numbers.
13. Any and all records of LVMPD or other law enforcement agencies: GRANTED under NRS 174.235 and as to Government agencies to extent it is Brady Material.
14. Any and all information obtained by use of confidential informant(s): GRANTED to extent it complies with Brady material or it's progeny.
15. Disclosure of any compensation, express or implied to witnesses: DENIED unless benefit goes beyond statutory amounts for travel and lodging expenses.
16. Disclosure of all statements, tangible or intangible: GRANTED under NRS 164.235 and complies with Brady, DENIED as to unrecorded consistent statements, but GRANTED as to inconsistent statements to extent it complies with Brady.
17. All impeachment information located in personnel files of any police witness called to testify: GRANTED to extent it complies with Brady material or it's progeny.
18. Criminal history information on witnesses: DENIED, except felony last 10 years, crimes of moral turpitude, State not to run NCIC and defense must comply with FBI procedures.
- 19 - 34. As to U-Visa and related information: DENIED, except as it amounts to Brady material or it's progeny.

Court advised counsel of its tentative ruling as to Writ. Arguments by counsel. COURT ORDERED, Petition DENIED, Writ DISCHARGED. Ms. Lemcke to prepare order.

CUSTODY

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

2
3 LUIS PIMENTEL,)

4 Petitioner,)

5 vs.)

6 THE EIGHTH JUDICIAL DISTRICT COURT)
7 OF THE STATE OF NEVADA, COUNTY OF)
8 CLARK, THE HONORABLE CAROLYN)
 ELLSWORTH, DISTRICT COURT JUDGE,)
 Respondent,)

9)
10 THE STATE OF NEVADA,)
 Real Party In Interest.)

11 **APPELLANT'S APPENDIX TO EMERGENCY WRIT OF**
12 **PROHIBITION/MANDAMUS**

13 PHILIP J. KOHN
14 Clark County Public Defender
 309 South Third Street
 Las Vegas, Nevada 89155-2610

15 Attorney for Appellant

 STEVEN B. WOLFSON
 Clark County District Attorney
 200 Lewis Avenue, 3rd Floor
 Las Vegas, Nevada 89155

 CATHERINE CORTEZ MASTO
 Attorney General
 100 North Carson Street
 Carson City, Nevada 89701-4717
 (702) 687-3538
 Counsel for Respondent

16
17
18 **CERTIFICATE OF SERVICE**

19
20 I hereby certify that this document was filed electronically with the Nevada
21 Supreme Court on the 18th day of August, 2014. Electronic Service of the foregoing
22 document shall be made in accordance with the Master Service List as follows:

23 CATHERINE CORTEZ MASTO
 STEVEN S. OWENS

 NANCY L. LEMCKE
 CONOR M. SLIFE

24
25 I further certify that I served a copy of this document by mailing a true and
26 correct copy thereof, postage pre-paid, addressed to: Honorable Carolyn Ellsworth, Dept.
27 V, 200 Lewis Avenue, Las Vegas, NV 89101

28 BY /s/ Carrie M. Connolly
 Employee, Clark County Public Defender's Office