

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIE MASON,
Appellant,

v.

THE STATE OF NEVADA,
Respondent.

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)
)

Case No. 68497

Electronically Filed
Mar 08 2016 03:59 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

**RESPONDENT'S APPENDIX
VOL. I**

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on March 8, 2016. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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FILED

SEP 29 2010

John A. Blum
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

11 THE STATE OF NEVADA,

12 Plaintiff,

13 -vs-

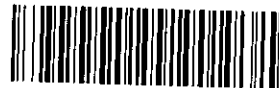
14 WILLIE DARNELL MASON, aka
15 Willie Darnell Mason Jr., aka
16 G-DOGG, #1856118

17 Defendant(s).

Case No. C-10-267882-1
Dept. No. IV

INDICTMENT

C-10-267882-1
IND
Indictment
958595



18 STATE OF NEVADA }
19 COUNTY OF CLARK } ss.

20 The Defendant(s) above named, WILLIE DARNELL MASON, aka Willie Darnell
21 Mason Jr., aka G-DOGG, accused by the Clark County Grand Jury of the crime(s) of
22 CONSPIRACY TO COMMIT ROBBERY (Felony - NRS 199.480; 200.380);
23 CONSPIRACY TO COMMIT MURDER (Felony - NRS 199.480, 200.010, 200.030);
24 BURGLARY WHILE IN POSSESSION OF A FIREARM (Felony - NRS 205.060);
25 ROBBERY WITH USE OF A DEADLY WEAPON (Felony - NRS 200.380, 193.165);
26 MURDER WITH USE OF A DEADLY WEAPON (Felony - NRS 200.010, 200.030,
27 193.165); ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Felony - NRS
28 200.010, 200.030, 193.165, 193.330) and BATTERY WITH USE OF A DEADLY

1 RA 000001

MC

RECEIVED
SEP 29 2010
CLERK OF THE COURT

WEAPON WITH SUBSTANTIAL BODILY HARM (Felony - NRS 200.481), committed at and within the County of Clark, State of Nevada, on or about the 7th day of August, 2010, as follows:

COUNT 1 – CONSPIRACY TO COMMIT ROBBERY

did then and there meet with STEPHANIE COUSINS and/or MONICA LOUISE MARTINEZ and/or DAVID JAMES BURNS aka D-SHOT and/or JEROME THOMAS aka JOB-LOC and between themselves, and each of them with the other, wilfully, unlawfully, and feloniously conspire and agree to commit a crime, to-wit: robbery, and in furtherance of said conspiracy, Defendant WILLIE DARNELL MASON aka G-DOGG and/or his co-conspirators committed the acts as set forth in Counts 3 thru 8, those acts incorporated by reference as if fully set forth herein.

COUNT 2 – CONSPIRACY TO COMMIT MURDER

did then and there meet with STEPHANIE COUSINS and/or MONICA LOUISE MARTINEZ and/or DAVID JAMES BURNS aka D-SHOT and/or Jerome Thomas aka JOB-LOC and between themselves, and each of them with the other, wilfully, unlawfully, and feloniously conspire and agree to commit a crime, to-wit: murder, and in furtherance of said conspiracy, Defendant WILLIE DARNELL MASON aka G-DOGG and/or his co-conspirators committed the acts as set forth in Counts 3 thru 8, those acts incorporated by reference as if fully set forth herein.

COUNT 3 - BURGLARY WHILE IN POSSESSION OF A FIREARM

did then and there wilfully, unlawfully, and feloniously enter, while in possession of a firearm, with intent to commit larceny and/or assault and battery and/or a felony, to-wit: robbery and/or murder, that certain building occupied by DERECA NEWMAN and/or CORNELIUS MAYO and/or DEVONIA NEWMAN, located at 5662 Meikle Lane, Apartment A, Las Vegas, Clark County, Nevada, and/or JEROME THOMAS aka JOB-LOC, the defendant being responsible under the following principles of criminal liability, to-wit: 1) by directly or indirectly committing the acts constituting the offense; and/or 2) by engaging in a conspiracy to commit larceny and/or assault and/or battery and/or robbery and/or murder

1 and/or burglary whereby Defendant WILLIE DARNELL MASON aka G-DOGG had the
2 specific intent to commit burglary; and/or 3) by aiding or abetting each other in the
3 commission of the crime by Defendant WILLIE DARNELL MASON aka G-DOGG
4 accompanying STEPHANIE COUSINS and/or DAVID JAMES BURNS aka D-SHOT to
5 the residence while MONICA LOUISE MARTINEZ drove the getaway vehicle and/or acted
6 as a lookout, STEPHANIE COUSINS creating a ruse for DERECA NEWMAN to open the
7 door, Defendant WILLIE DARNELL MASON aka G-DOGG and/or STEPHANIE
8 COUSINS and/or DAVID JAMES BURNS aka D-SHOT entering the residence with the
9 intent to commit larceny and/or assault and/or battery and/or robbery and/or murder,
10 Defendant WILLIE DARNELL MASON aka G-DOGG and/or DAVID JAMES BURNS
11 aka D-SHOT possessing the firearm, the Defendant WILLIE DARNELL MASON aka G-
12 DOGG and/or MONICA LOUISE MARTINEZ and/or STEPHANIE COUSINS and/or
13 DAVID JAMES BURNS aka D-SHOT and/or JEROME THOMAS aka JOB-LOC offering
14 counsel and encouragement to each other throughout.

15 COUNT 4 - ROBBERY WITH USE OF A DEADLY WEAPON

16 did then and there wilfully, unlawfully, and feloniously take personal property, to-
17 wit: cocaine and/or lawful money of the United States, from the person of DERECA
18 NEWMAN, or in her presence, by means of force or violence or fear of injury to, and
19 without the consent and against the will of the said DERECA NEWMAN, said defendant
20 using a deadly weapon, to-wit: a firearm, during the commission of said crime, the defendant
21 being responsible under the following principles of criminal liability, to-wit: 1) by directly or
22 indirectly committing the acts constituting the offense; and/or 2) by engaging in a conspiracy
23 to commit larceny and/or assault and/or battery and/or robbery and/or murder and/or
24 burglary; and/or 3) by aiding or abetting each other in the commission of the crime by
25 Defendant WILLIE DARNELL MASON aka G-DOGG accompanying STEPHANIE
26 COUSINS and/or DAVID JAMES BURNS aka D-SHOT to the residence while MONICA
27 LOUISE MARTINEZ drove the getaway vehicle and/or acted as a lookout, STEPHANIE
28 COUSINS creating a ruse for DERECA NEWMAN to open the door, Defendant WILLIE

1 DARNELL MASON aka G-DOGG and/or DAVID JAMES BURNS aka D-SHOT
2 possessing the firearm, Defendant WILLIE DARNELL MASON aka G-DOGG and/or
3 DAVID JAMES BURNS aka D-SHOT shooting DERECA NEWMAN in the head,
4 Defendant WILLIE DARNELL MASON aka G-DOGG and/or STEPHANIE COUSINS
5 and/or DAVID JAMES BURNS aka D-SHOT taking money or cocaine, the Defendant
6 WILLIE DARNELL MASON aka G-DOGG and/or MONICA LOUISE MARTINEZ and/or
7 STEPHANIE COUSINS and/or DAVID JAMES BURNS aka D-SHOT and/or JEROME
8 THOMAS aka JOB-LOC offering counsel and encouragement to each other throughout.

9 COUNT 5 - MURDER WITH USE OF A DEADLY WEAPON

10 did then and there wilfully, feloniously, without authority of law, and with malice
11 aforethought, kill DERECA NEWMAN, a human being, by shooting at and into the head
12 and/or body of said DERECA NEWMAN, with a firearm, the actions of defendant and his
13 accomplices, an unidentified male and/or STEPHANIE COUSINS and/or MONICA
14 LOUISE MARTINEZ resulting in the death of the said DERECA NEWMAN, the killing
15 having been (1) done with premeditation and deliberation, and/or (2) committed during the
16 perpetration or attempted perpetration of robbery and/or burglary; the defendant being
17 responsible under one or more of the following principles of criminal liability, to-wit: 1) by
18 directly or indirectly committing the acts constituting the offense; and/or 2) by engaging in a
19 conspiracy to commit robbery and/or murder and/or burglary; and/or 3) by aiding or abetting
20 each other in the commission of the crime with the intent a killing occur by Defendant
21 WILLIE DARNELL MASON aka G-DOGG accompanying STEPHANIE COUSINS and/or
22 DAVID JAMES BURNS aka D-SHOT to the residence while MONICA LOUISE
23 MARTINEZ drove the getaway vehicle and/or acted as a lookout, STEPHANIE COUSINS
24 creating a ruse for DERECA NEWMAN to open the door, Defendant WILLIE DARNELL
25 MASON aka G-DOGG and/or STEPHANIE COUSINS and/or DAVID JAMES BURNS
26 aka D-SHOT entering the residence with the intent to commit larceny and/or assault and/or
27 battery and/or robbery and/or murder, Defendant WILLIE DARNELL MASON aka G-
28 DOGG and/or DAVID JAMES BURNS aka D-SHOT possessing the firearm, Defendant

1 WILLIE DARNELL MASON aka G-DOGG and/or DAVID JAMES BURNS aka D-SHOT
2 shooting DERECA NEWMAN in the head resulting in her death, Defendant WILLIE
3 DARNELL MASON aka G-DOGG and/or STEPHANIE COUSINS and/or DAVID JAMES
4 BURNS aka D-SHOT taking money or cocaine, the Defendant WILLIE DARNELL
5 MASON aka G-DOGG and/or MONICA LOUISE MARTINEZ and/or STEPHANIE
6 COUSINS and/or DAVID JAMES BURNS aka D-SHOT and/or JEROME THOMAS aka
7 JOB-LOC offering counsel and encouragement to each other throughout.

8 COUNT 6 - ROBBERY WITH USE OF A DEADLY WEAPON

9 did then and there wilfully, unlawfully, and feloniously take personal property, to-
10 wit: cocaine and/or lawful money of the United States, from the person of DEVONIA
11 NEWMAN, a twelve (12) year old child, or in her presence, by means of force or violence or
12 fear of injury to, and without the consent and against the will of the said DEVONIA
13 NEWMAN, said defendant using a deadly weapon, to-wit: a firearm, during the commission
14 of said crime, the defendant being responsible under the following principles of criminal
15 liability, to-wit: 1) by directly or indirectly committing the acts constituting the offense;
16 and/or 2) by engaging in a conspiracy to commit larceny and/or assault and/or battery and/or
17 robbery and/or murder and/or burglary; and/or 3) by aiding or abetting each other in the
18 commission of the crime by Defendant WILLIE DARNELL MASON aka G-DOGG
19 accompanying STEPHANIE COUSINS and/or DAVID JAMES BURNS aka D-SHOT to
20 the residence while MONICA LOUISE MARTINEZ drove the getaway vehicle and/or acted
21 as a lookout, STEPHANIE COUSINS creating a ruse for DERECA NEWMAN to open the
22 door, Defendant WILLIE DARNELL MASON aka G-DOGG and/or DAVID JAMES
23 BURNS aka D-SHOT possessing the firearm, Defendant WILLIE DARNELL MASON aka
24 G-DOGG and/or DAVID JAMES BURNS aka D-SHOT shooting DEVONIA NEWMAN
25 in the stomach, Defendant WILLIE DARNELL MASON aka G-DOGG and/or STEPHANIE
26 COUSINS and/or DAVID JAMES BURNS aka D-SHOT taking money or cocaine, the
27 Defendant WILLIE DARNELL MASON aka G-DOGG and/or MONICA LOUISE
28 MARTINEZ and/or STEPHANIE COUSINS and/or DAVID JAMES BURNS aka D-SHOT

1 and/or JEROME THOMAS aka JOB-LOC offering counsel and encouragement to each
2 other throughout.

3 COUNT 7 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

4 did then and there, without authority of law, and with malice aforethought, willfully
5 and feloniously attempt to kill DEVONIA NEWAN, a twelve (12) year old child, by
6 shooting at or into the body of the said DEVONIA NEWMAN, with a deadly weapon, to-
7 wit: a firearm, during the commission of said crime, the defendant being responsible under
8 the following principles of criminal liability, to-wit: 1) by directly or indirectly committing
9 the acts constituting the offense; and/or 2) by engaging in a conspiracy to commit assault
10 and/or battery and/or robbery and/or murder and/or burglary with the specific intent to kill;
11 and/or 3) by aiding or abetting each other in the commission of the crime with the intent a
12 killing would occur by Defendant WILLIE DARNELL MASON aka G-DOGG
13 accompanying STEPHANIE COUSINS and/or DAVID JAMES BURNS aka D-SHOT to
14 the residence while MONICA LOUISE MARTINEZ drove the getaway vehicle and/or acted
15 as a lookout, STEPHANIE COUSINS creating a ruse for DEREZIA NEWMAN to open the
16 door, Defendant WILLIE DARNELL MASON aka G-DOGG and/or DAVID JAMES
17 BURNS aka D-SHOT possessing the firearm, Defendant WILLIE DARNELL MASON aka
18 G-DOGG and/or DAVID JAMES BURNS aka D-SHOT shooting DEVONIA NEWMAN
19 in the stomach, the Defendant WILLIE DARNELL MASON aka G-DOGG and/or
20 MONICA LOUISE MARTINEZ and/or STEPHANIE COUSINS and/or DAVID JAMES
21 BURNS aka D-SHOT and/or JEROME THOMAS aka JOB-LOC offering counsel and
22 encouragement to each other throughout.

23 COUNT 8 - BATTERY WITH USE OF A DEADLY WEAPON WITH SUBSTANTIAL
24 BODILY HARM


25 did then and there wilfully, unlawfully, and feloniously use unlawful force or violence
26 upon the person of DEVONIA NEWMAN, a twelve (12) year old child, with use of a deadly
27 weapon, to wit: by shooting into the body of DEVONIA NEWMAN with a firearm, causing
28 substantial bodily harm to the said DEVONIA NEWMAN; the defendant being responsible

1 under the following principles of criminal liability, to-wit: 1) by directly or indirectly
2 committing the acts constituting the offense; and/or 2) by engaging in a conspiracy to
3 commit assault and/or battery and/or robbery and/or murder and/or burglary; and/or 3) by
4 aiding or abetting each other in the commission of the crime by Defendant WILLIE
5 DARNELL MASON aka G-DOGG accompanying STEPHANIE COUSINS and/or DAVID
6 JAMES BURNS aka D-SHOT to the residence while MONICA LOUISE MARTINEZ
7 drove the getaway vehicle and/or acted as a lookout, STEPHANIE COUSINS creating a ruse
8 for DERECA NEWMAN to open the door, Defendant WILLIE DARNELL MASON aka
9 G-DOGG and/or DAVID JAMES BURNS aka D-SHOT possessing the firearm, Defendant
10 WILLIE DARNELL MASON aka G-DOGG and/or DAVID JAMES BURNS aka D-SHOT
11 shooting DEVONIA NEWMAN in the stomach resulting in substantial bodily harm, the
12 Defendant WILLIE DARNELL MASON aka G-DOGG and/or MONICA LOUISE
13 MARTINEZ and/or STEPHANIE COUSINS and/or DAVID JAMES BURNS aka D-SHOT
14 and/or JEROME THOMAS aka JOB-LOC offering counsel and encouragement to each
15 other throughout.

16 DATED this 28th day of September, 2010.

17
18 DAVID ROGER
19 DISTRICT ATTORNEY
20 Nevada Bar #002781

21 BY


22 PAMELA WECKERLY
23 Chief Deputy District Attorney
24 Nevada Bar #006163

25 ENDORSEMENT: A True Bill

26 
27 Foreperson, Clark County Grand Jury
28

Names of witnesses testifying before the Grand Jury:

BAINES, BENJAMIN, c/o CCDA, 200 Lewis Ave, LV, NV

BUNTING, CHRISTOPHER, LVMPD #6484

HENDRICKS, T. SCOTT - FBI

JOHNSON, SUSAN, c/o CCDA, 200 Lewis Ave, LV, NV

MAYO, CORNELIUS, c/o CCDA, 200 Lewis Ave, LV, NV

MITCHELL, TYLER, c/o CCDA, 200 Lewis Ave, LV, NV

PHALER, MICHAEL, c/o CCDA, 200 Lewis Ave, LV, NV

OLSON, ALANE, CLARK COUNTY CORONER

ROWLAND, DONOVAN, c/o CCDA, 200 Lewis Ave, LV, NV

WILDEMANN, MARTIN, LVMPD #3516

Additional witnesses known to the District Attorney at time of filing the Indictment:

COUSINS, STEPHANIE, c/o CCDA, 200 Lewis Ave, LV, NV

CUSTODIAN OF RECORDS, CCDC

CUSTODIAN OF RECORDS, CLARK COUNTY CORONER

CUSTODIAN OF RECORDS, GREYHOUND BUS

CUSTODIAN OF RECORDS, LVMPD COMMUNICATIONS

CUSTODIAN OF RECORDS, LVMPD RECORDS

CUSTODIAN OF RECORDS, METRO PCS

CUSTODIAN OF RECORDS, OPERA HOUSE

CUSTODIAN OF RECORDS, T-MOBILE

DAHN, ROBBIE, LVMPD #5947

HARDY, KENNETH, LVMPD #3031

NEWMAN, DEVONIA, c/o CCDA, 200 Lewis Ave, LV, NV

NEWMAN, WANDA, c/o CCDA, 200 Lewis Ave, LV, NV

10AGJ054X/10F15563X/sam
LVMPD EV#1008070732
(TK11)

REGISTER OF ACTIONS

CASE NO. C-10-267882-1

State of Nevada vs Willie Mason

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§

Case Type: **Felony/Gross Misdemeanor**
Date Filed: **09/29/2010**
Location: **Department 20**
Cross-Reference Case Number: **C267882**
Defendant's Scope ID #: **1856118**
Grand Jury Case Number: **10GJ054**
Supreme Court No.: **68497**

RELATED CASE INFORMATION

Related Cases

C-10-267882-2 (Multi-Defendant Case)
C-10-267882-3 (Multi-Defendant Case)

PARTY INFORMATION

Defendant	Mason, Willie	Lead Attorneys Robert L Langford <i>Retained</i> 7024716535(W)
Plaintiff	State of Nevada	Steven B Wolfson 702-671-2700(W)

CHARGE INFORMATION

Charges: Mason, Willie	Statute	Level	Date
1. CONSP ROBBERY	200.380	Felony	08/07/2010
2. CONSP MURDER	200.010	Felony	08/07/2010
3. BURGLARY WHILE IN POSSESSION OF DEADLY WEAPON	205.060	Felony	08/07/2010
4. ROBBERY WITH A DEADLY WEAPON	200.380	Felony	08/07/2010
5. MURDER WITH A DEADLY WEAPON	200.030	Felony	08/07/2010
6. ROBBERY WITH A DEADLY WEAPON	200.380	Felony	08/07/2010
7. ATT. MURDER WITH A DEADLY WEAPON	200.030	Felony	08/07/2010
8. BATTERY WITH A DEADLY WEAPON W/ SUBSTANTIAL BH	200.481	Felony	08/07/2010

EVENTS & ORDERS OF THE COURT

10/07/2010 [All Pending Motions](#) (9:00 AM) (Judicial Officer Hardcastle, Kathy)

Minutes

10/07/2010 9:00 AM
- INDICTMENT WARRANT RETURN...INITIAL ARRAIGNMENT DEFT. MASON ARRAIGNED, PLED NOT GUILTY, and WAIVED the 60-DAY RULE. COURT ORDERED, matter set for trial. Counsel requested this matter be CONTINUED for status check on trial setting in two weeks as there will be co-defendants being indicted this Friday. COURT SO ORDERED. Upon request by counsel, COURT ORDERED, counsel has 21 days from filing of grand jury transcript to file a Writ. CUSTODY 10/21/10 9:00 AM STATUS CHECK: TRIAL SETTING

[Parties Present](#)

[Return to Register of Actions](#)

1 RA 000009

1 **MOT**
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4 616 S. 8th Street
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6 (702) 384-2396
7 Attorney for WILLIE DARNELL MASON

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

AUG 22 2013

BY Linda Skinner
LINDA SKINNER, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

WILLIE DARNELL MASON,

Accused.

Case No. 10-C267882-1
Dept. No. XX

Date of Hearing: Sept. 5

Time of Hearing: 8:30

MOTION TO SEVER MASON FOR TRIAL

Comes now the accused, WILLIE DARNELL MASON, by and through his attorney, SUSAN D. BURKE, and files his Motion to Sever Mason for Trial. This motion is based on the pleadings and papers on file herein, the following Points and Authorities, the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and concomitant provisions of the Nevada Constitution, as well as any argument which may be had at the hearing hereon.

DATED this 22nd day of August, 2013.

Respectfully submitted,

/s/ Susan D. Burke

SUSAN D. BURKE
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616 S. Eighth St.
Las Vegas, NV 89101
(702) 384-2396
Attorney for Willie Mason

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1 into the apartment and shot indiscriminately, killing Derecia and seriously wounding her daughter
2 Devonia. No one in the apartment saw Mr. Mason, but it appears that the State will attempt to place
3 him there. Therefore, his severance argument is directed primarily toward any proceedings related
4 to the penalty phase and the death penalty. He also wishes to make it clear that in filing this motion,
5 he in no way is indicating that he was involved in the charged offenses at all.

6 ARGUMENT

7 **NRS 174.165** provides that:

8 1. If it appears that a defendant or the State of Nevada is prejudiced by a joinder
9 of offenses or of defendants in an indictment or information, or by such joinder
10 for trial together, the court may order an election or separate trials of counts,
11 grant a severance of defendants or provide whatever other relief justice requires.

12 2. In ruling on a motion by a defendant for severance the court may order the
13 district attorney to deliver to the court for inspection in chambers any statements
14 or confessions made by the defendants which the state intends to introduce in
15 evidence at the trial.

16 “[D]istrict courts must determine the risk of prejudice from a joint trial based on the facts of each
17 case.” *Chartier v. State*, 124 Nev. 760, 765, 191 P.3d 1182, 1185 (2008), citing to *Marshall v.*
18 *State*, 118 Nev. 642, 647, 56 P.3d 376, 379 (2002) (citing *Middleton v. State*, 114 Nev. 1089, 1108,
19 968 P.2d 296, 309 (1998)). A severance should be granted if

20 there is a serious risk that a joint trial would compromise a specific trial right of
21 one of the defendants, or prevent the jury from making a reliable judgment about
22 guilt or innocence.

23 *Chartier, id.*, citing to *Marshall* at 647 (quoting *Zafiro v. United States*, 506 U.S. 534, 539, 113
24 S.Ct. 933, 122 L.Ed. 2d 317 (1993)). Further, the trial court’s pretrial ruling on a motion to sever
25 must be reconsidered at all stages of the trial if prejudice appears. *Chartier, id.* It is therefore clear
26 that the reception of evidence and testimony during a trial may indicate a need for severance, even if
27 not initially obvious.

28 The decisive factor in any severance analysis remains prejudice to the defendant.
NRS 174.165(1) provides in relevant part: “If it appears that a defendant . . . is
prejudiced by a joinder . . . of defendants . . . for trial together, the court may order
an election or separate trials of counts, grant a severance of defendants or provide
whatever other relief justice requires.”

1 *Marshall*, 118 Nev. at 646.

2 While there may be some problems with joinder based on statements made to authorities, it
3 appears that the biggest problem in this case is the use of “death qualification” in jury selection, and
4 other factors related to the State’s goal of seeking death if Mr. Burns is convicted. As noted by the
5 court in *Chartier*,

6 Chartier claims that the two men had critical tactical differences in jury selection
7 whereby Wilcox sought jurors who were not inclined to give the death penalty,
while Chartier was concerned primarily with selecting jurors based on the guilt phase.

8 *Chartier*, 124 Nev. at 766. This particular problem was brought up in *United States v. Lujan*,
9 *Lamunyon, and Medina*, 529 F.Supp. 2d 1315 (D.N.M. 2007). In that case, two of the defendants
10 were not charged capitally, but Lujan was. The court noted that in addition to problems with
11 redaction of statements, that Lamunyon and Medina argued “that the court should sever their trial
12 from Mr. Lujan’s because of the prejudice from being tried by a death-qualified jury, which they
13 argue is more prone to convict.” *U.S. v. Lujan, Lamunyon, and Medina*, 529 F.Supp. 2d at 1319.
14 Although this case was federal in nature, it appears that the federal and local rules regarding
15 severance are essentially identical. After noting the strong burden on a defendant seeking
16 severance, the court proceeded with its analysis in this case. *U.S. v. Lujan, Lamunyon, and*
17 *Medina*, 529 F.Supp. 2d at 1320-21.

18 The court first discussed judicial economy, and noted that

19 I acknowledge that requiring victims and witnesses to repeat the inconvenience and
20 potential trauma of testifying in two separate trials weighs in favor of denying
21 severance. Nevertheless, I do not believe that these judicial economy considerations
outweigh the concerns regarding the likelihood of prejudice in a joint trial in the
extraordinary context of this case.

22 *Id.* at 1321. The court next discussed various problems based on the confrontation clause and the
23 recorded statements governed by *Bruton v. United States*, 391 U.S. 123, 88 S.Ct. 1620, 20 L.Ed. 2d
24 476 (1968), something that does not appear to be at issue here. Should the State feel that it has such
25 *Bruton* material that it will attempt to admit at trial, Mr. Mason will address that issue as well. He
26 certainly does not intend to allow for the admission of any statements by Mr. Burns or non-testifying

1 others which refer in any way to Mr. Mason, and he herein declares his intention that these
2 statements must be revealed promptly so that they can be dealt with, both in terms of severance and
3 general preclusion of the same.

4 The court next considered the “spillover prejudice” by failure to sever Lamunyon and
5 Medina from Lujan at trial, because there was going to be evidence produced that Mr. Lujan
6 committed two other brutal murders. The court noted that

7 I agree that the introduction of the double murder allegedly committed by Mr. Lujan
8 increases the likelihood of prejudice against Mr. Lamunyon and Mr. Medina, because
9 such evidence would not be admissible against them in a separate trial. The possibility
exists that a jury might infer Mr. Medina's and Mr. Lamunyon's guilt because of the
enhanced likelihood of Mr. Lujan's guilt.

10 *U.S. v. Lujan, Lamunyon, and Medina*, 529 F.Supp. 2d at 1326.

11 Of most importance to the instant case is the court’s discussion regarding death
12 qualification. The court first noted that

13 A death-qualified jury is one from which prospective jurors have been excluded for
14 cause based on their inability to set aside their views about the death penalty that
15 would prevent or substantially impair the performance of their duties in accordance
16 with their instructions and oath. *Buchanan v. Kentucky*, 483 U.S. 402, 407 n.6, 107 S.
17 Ct. 2906, 97 L. Ed. 2d 336 (1987). The process of winnowing out such potential
jurors is known as death qualification. *United States v. Green*, 407 F.3d 434, 436
(1st Cir. 2005). The non-capital defendants argue that the death-qualification process
prejudices their right to a fair trial, because death-qualified juries are more conviction-
prone than other juries.

18 *Id.*, at 1326. The court then discussed the Supreme Court’s explanation for not finding error in not
19 severing capital-charged and non-capital charged defendants, even assuming the validity of
20 studies establishing that capital charged juries are more conviction-prone. *Id.*, at 1326-27. The
21 court noted that although *Buchanan* did not require severance of non-capital defendants from those
22 charged capital, the courts still had discretion to sever defendants if they found prejudice. *Id.*, at
23 1327. The court ultimately found grounds to sever the individual non-capital defendants from the
24 one charged capital, although it did not find grounds to sever the two non-capital defendants.

25 It is also interesting to note that the *Buchanan* case was issued in 1987, and therefore is
26 twenty-six (26) years old and precedes *Payne v. Tennessee*, 501 U.S. 808, 111 S.Ct. 2597, 115

1 L.Ed. 2d 720 (1991), allowing for victim-impact evidence. The court in *Payne*, however, noted that
2 such type of evidence may be so unfair that its admission denies due process. The *Buchanan* case,
3 also specifically noted that “[t]he accused did not request that his trial be severed from his
4 codefendant’s.” *Buchanan*, 483 U.S. 402, 107 S.Ct. 2906, 97 L.Ed. 2d 336 (1987), summary. It is
5 also important to note the length of time since the decision in *Buchanan*, and the number of states
6 which have eliminated the death penalty since then. It is also significant to note the cases from the
7 Supreme Court restricting the death penalty’s applicability in a number of cases.

8 While *Zafiro et al. v. United States*, 506 U.S. 534, 539, 113 S.Ct. 933, 122 L.Ed. 2d 317
9 (1993)) did not involve defendants charged with murder, and found that severance was not required
10 in that case, it did discuss situations where severance should be granted.

11 We believe that, when defendants properly have been joined under *Rule 8(b)*, a district
12 court should grant a severance under *Rule 14* only if there is a serious risk that a joint
13 trial would compromise a specific trial right of one of the defendants, or prevent the
14 jury from making a reliable judgment about guilt or innocence. Such a risk might
15 occur when evidence that the jury should not consider against a defendant and that
16 would not be admissible if a defendant were tried alone is admitted against a
17 codefendant. For example, evidence of a codefendant’s wrongdoing in some
18 circumstances erroneously could lead a jury to conclude that a defendant was guilty.
19 When many defendants are tried together in a complex case and they have markedly
20 different degrees of culpability, this risk of prejudice is heightened. See *Kotteakos v.*
21 *United States*, 328 U.S. 750, 774-775, 90 L. Ed. 1557, 66 S. Ct. 1239 (1946). Evidence
22 that is probative of a defendant’s guilt but technically admissible only against a
23 codefendant also might present a risk of prejudice. See *Bruton v. United States*, 391
24 U.S. 123, 20 L. Ed. 2d 476, 88 S. Ct. 1620 (1968). Conversely, a defendant might
25 suffer prejudice if essential exculpatory evidence that would be available to a defendant
26 tried alone were unavailable in a joint trial. See, e. g., *Tifford v. Wainwright*, 588 F.2d
27 954 (CA5 1979) (*per curiam*). The risk of prejudice will vary with the facts in each
28 case, and district courts may find prejudice in situations not discussed here.

1 *Id.*, at 506 U.S. 539. Mr. Mason submits that in this case, these factors lead to granting his request.
2 For example, if a penalty phase occurs in this case, it is certainly clear that evidence that would not
3 be admissible against him would be admitted against Mr. Burns, and could contaminate the jury’s
4 determinations. Additionally, evidence of Burns’ wrongdoing could also lead a jury to conclude
5 that Mr. Mason was guilty, especially when none of people in the apartment saw him in there. This
6 factor would also relate to evidence probative of Mr. Mason’s guilt, but admissible only against Mr.
7 Burns, presenting a risk of prejudice. Therefore, it may well “prevent the jury from making a

1 reliable judgment about guilt or innocence.” *Marshall*, 118 Nev. at 647.

2 Mr. Mason does not yet know exactly what Mr. Burns theory of defense is, but it is certainly
3 possible that it might reflect possible “mutual antagonism” a factor leading to severance.
4 Additionally, should this case proceed to a penalty phase, the presentation of mitigation evidence by
5 Mr. Burns might well lead to an undue enhanced sentence for Mr. Mason. He would also argue that
6 because Ms. Cousins’ case was severed, his should be as well, to avoid a violation of due process.
7 Clearly she was in the apartment, and there is a real question as to whether he was there. There is
8 also no evidence that Mr. Mason wanted the killing and injury in this case to take place.

9 A few additional comments are relevant to this motion. In *United States v. Catalan-Roman*
10 *and Villegas*, 376 F. Supp. 2d 96 (DC PR 2005), the court, after denying two previous severance
11 motions, in the mid-penalty phase granted a severance and found that “the evolution of the evidence
12 warranted sequential proceedings before the same jury in order to protect both defendants’ 8th
13 amendment right to an individualized sentence.” *Id.*, at 97. Of import to the current case is the fact
14 that the court had previously severed the trials of the capital defendants from the non-capital ones.
15 *Id.*, at 98. In reaching its severance conclusion, the court made a number of comments which are
16 relevant.

17 The death penalty is “unique in its severity and irrevocability.” *Gregg v. Georgia*,
18 428 U.S. 153, 187, 49 L. Ed. 2d 859, 96 S. Ct. 2909 (1976)(internal citations omitted).
19 Its finality therefore requires a greater degree of reliability when it is imposed. *See*
20 *Lockett v. Ohio* 438 U.S. 586, 604, 57 L. Ed. 2d 973, 98 S. Ct. 2954 (1978); *Furman*
21 *v. Georgia*, 408 U.S. 238, 290-98, 33 L. Ed. 2d 346, 92 S. Ct. 2726 (1972)(Brennan, J.,
22 concurring). Because there are no corrective or modifying mechanisms available with
23 respect to an executed capital sentence, a capital defendant has an 8th amendment right
24 to an individualized determination. *See Lockett*, 438 U.S., at 604-605. The Supreme
25 Court has directed that “the fundamental respect for humanity underlying the *Eighth*
26 *Amendment*, requires consideration of the character and record of the individual
27 offender and the circumstances of the particular offense as a constitutionally
28 indispensable part of the process of inflicting the penalty of death.” *Woodson v. North*
Carolina, 428 U.S. 280, 304, 49 L. Ed. 2d 944, 96 S. Ct. 2978 (1976)(internal
quotations omitted); *see also Stringer v. Black*, 503 U.S. 222, 230, 117 L. Ed. 2d 367,
112 S. Ct. 1130 (1992). Accordingly, the Court must instruct the jury on the need to
give each defendant an “individualized determination.” *Zant v. Stephens*, 462 U.S. 862,
879, 77 L. Ed. 2d 235, 103 S. Ct. 2733 (1983).
To achieve an individualized determination, the jury must have “all possible relevant
information about the individual defendant whose fate it must determine.” *United*
States v. Fell, 360 F.3d 135, 143 (2nd Cir. 2004)(quoting *Jurek v. Texas*, 428 U.S.

1 262, 276, 49 L. Ed. 2d 929, 96 S. Ct. 2950 (1976)). See *Woodson*, 428 U.S. at 304.
2 Thus, in keeping with the commands of the *Eighth* and *Fourteenth Amendments* that
3 the death penalty should not be imposed without consideration of those factors which
4 may call for a less severe penalty, the more information, the better. *Id.* at 605.

5 *Id.*, at 99.

6 Multi-defendant capital cases indeed give rise to a range of unfamiliar legal issues
7 some of which favor severance even during the guilt phase. These considerations that
8 favor of severance may become more acute in the sentencing phase in light of the
9 constitutionally mandated fact-finding procedures necessary to impose the death
10 penalty with a higher degree of reliability. The *Eighth Amendment's* requirement of
11 an individualized determination, a consideration not present in the guilt phase,
12 demands a weighing of the defendant's character, background, mental and physical
13 state, motivation, and precise role in the offense, among many other factors which are
14 foreign to the jury's consideration on guilt.

15 *Id.*, at 100. Therefore, in addition to the fact that capital and non-capital defendants were not being
16 tried together, the court eventually recognized that even those charged capitally should not go
17 through penalty together.

18 In *United States v. Green et al.*, 324 F. Supp. 2d 311 (U.S. Dist., 2004), the court also issued
19 a severance. While this case was very complex and involved multiple defendants, there are a couple
20 of things that the court observed which are important to the instant motion. The court noted that

21 On the one hand, joint trials are often more efficient than individual trials, and avoid
22 having victims and witnesses repeat the inconvenience and sometimes the trauma of
23 testifying. Moreover, severed trials could "randomly favor the last-tried defendants
24 who have the advantage of knowing the prosecution's case beforehand." *Richardson v.*
25 *Marsh*, 481 U.S. 200, 210, 95 L. Ed. 2d 176, 107 S. Ct. 1702 (1987). At the same time,
26 *Rule 14* directs the court to ask, in effect -- at what price judicial economy? --
27 particularly with respect to individual defendants. There is no question that joint trials,
28 involving defendants with different degrees of culpability, can raise a substantial risk
of prejudice, that evidence of a codefendant's wrongdoing might erroneously lead the
jury to convict the defendant, that exculpatory evidence that would be available to a
defendant tried alone may well be unavailable in a joint trial. See *Zafiro v. United*
States, 506 U.S. 534, 539, 122 L. Ed. 2d 317, 113 S. Ct. 933 (1993).

29 *Id.*, *U.S. v. Green* at 319. The *Green* court also noted that

30 There is no way of determining what *actually* affected the guilty verdict. The
31 defendants can only speculate and that speculation is rarely sufficient in the face of
32 the trial court's considerable discretion in granting a motion to sever only when
33 "there is a serious risk that a joint trial would compromise a specific trial right of
34 one of the defendants, or prevent the jury from making a reliable judgment about
35 guilt or innocence." *Zafiro*, 506 U.S. at 539.

36 *Id.*, at 320. The court also noted the heightened scrutiny that should be applied to potential

1 prejudice in death penalty cases. *Id.* It appears that both of these cases support increased analysis
2 and thought when the death penalty is involved. Although Mr. Mason is not subject to that
3 sanction, he submits that the same considerations apply to him.

4 Lastly, a severance should be granted if a substantial right is at risk or the jury might be
5 prevented from making a reliable judgment concerning guilt or innocence. *Chartier*, 124 Nev. at
6 765. Mr. Mason submits that that is the situation presented here, as set forth previously. It seems
7 highly likely that Mr. Burns may attempt to place liability for the actions upon Mr. Mason, thus
8 clouding his right to a reliable jury judgment in both the guilt and penalty phases, if required. He
9 should be allowed to select a fair and impartial jury to evaluate the evidence against him and
10 determine any appropriate sentence if convicted.

11 CONCLUSION

12 There is little doubt that Mr. Mason will suffer prejudice if he is tried with Mr. Burns, as set
13 forth previously. Therefore, he respectfully prays this Court to grant his Motion to Sever Mason for
14 Trial.

15 Dated this 22nd day of August, 2013.

17 /s/ Susan D. Burke

18 SUSAN D. BURKE
19 Nevada Bar No. 8006
20 616 S. Eighth St.
21 Las Vegas, NV 89101
(702) 384-2396
Attorney for Willie Mason

22 NOTICE OF MOTION

23 TO: Pamela Weckerly, Marc DiGiacomo, Anthony Sgro, Christopher Oram,

24 YOU AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will
25 bring the foregoing Motion on for hearing in DC 20 on the ____ day of September, 2013, at the hour
26
27
28

1 of 8:30 a.m., or as soon thereafter as counsel may be heard.

2 DATED this 22nd day of August, 2013.

3 Respectfully submitted,

4 */s/ Susan D. Burke*

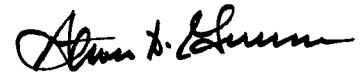
5 _____
6 SUSAN D. BURKE
7 Nevada Bar No. 8006
8 616 S. Eighth St.
9 Las Vegas, NV 89101
10 (702) 384-2396
11 Attorney for Willie Mason

9 CERTIFICATE OF SERVICE

10 I hereby certify that a true and accurate copy of this Motion was served on
11 Marc DiGiacomo and Pamela Weckerly, the Court, Anthony Sgro, counsel for David Burns,
12 Christopher Oram, counsel for David Burns, by personal service on this 22nd day of August, 2013.

13 */s/ Susan D. Burke*

14 _____
15 Susan D. Burke
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CLERK OF THE COURT

OPPM

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
MARC DIGIACOMO
Chief Deputy District Attorney
Nevada Bar #006955
200 Lewis Avenue
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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

CASE NO: C-10-267882-1

DEPT NO: XX

WILLIE DARNELL MASON, aka
Willie Darnell Mason, Jr.,
#1856118

Defendant.

STATE'S OPPOSITION TO DEFENDANT'S MOTION TO SEVER DEFENDANTS

DATE OF HEARING: 9/5/13
TIME OF HEARING: 8:30 A.M.

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through MARC DIGIACOMO, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion to Sever Defendants.

This opposition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF FACTS**

3 On August 7, 2010, Cornelius Mayo lived at 5662 Mickle Lane Apartment A, Las
4 Vegas, Clark County, Nevada. GJ 9-28-10 9-28-10 at 14. He resided with his girlfriend,
5 Derecia Newman, her twelve year old daughter, Devonia Newman, and his and Derecia's
6 three young children, Cashmere Mayo (6), Cornelius Mayo Junior (5), and Cordaja Mayo
7 (3). GJ 9-28-10 9-28-10 at 15. On August 6, 2010, Derecia's sister, Erica Newman, was
8 also staying with the family. In the early morning hours of August 7, 2010, the household
9 received a phone call on their landline phone. The number for that landline phone was 702-
10 444-9446. GJ 9-28-10 9-28-10 at 16. The phone had a caller-identification feature.
11 Cornelius Mayo heard Derecia answer the phone. GJ 9-28-10 9-28-10 at 16. The call was at
12 3:39 am. GJ 9-28-10 9-28-10 at 17. About 10 minutes later, there was another call. At the
13 time, Cornelius was in the bathroom, but he heard his girlfriend, Derecia, answer the front
14 door. GJ 9-28-10 9-28-10 at 19. Cornelius then heard a "commotion;" he heard Derecia
15 scream and then he heard two gunshots. GJ 9-28-10 9-28-10 at 19. Cornelius also heard
16 someone he knew to be Stephanie Cousins screaming. GJ 9-28-10 9-28-10 at 20. He heard
17 three more gunshots and then saw 12 year old Devonia run into the bathroom. GJ 9-28-10 9-
18 28-10 at 20.

19 Cornelius told Devonia to sit quietly. GJ 9-28-10 9-28-10 at 21. A bullet came
20 through the bathroom door. GJ 9-28-10 9-28-10 at 22. Cornelius saw Devonia get up and
21 try to run from the bathroom. At that point, Cornelius saw Devonia get shot. GJ 9-28-10 9-
22 28-10 at 22. He could not see who fired the shot. GJ 9-28-10 9-28-10 at 22. He could see
23 that Devonia had been shot in the stomach. GJ 9-28-10 9-28-10 at 23. Cornelius told
24 Devonia to be still and left the bathroom. GJ 9-28-10 9-28-10 at 24. He checked the
25 bedroom where Erica Newman and the small children were sleeping and they were
26 undisturbed. GJ 9-28-10 9-28-10 at 24. He called 911 from his cell phone which was
27 number 702-609-4483. GJ 9-28-10 9-28-10 at 25. Police and paramedics arrived.
28 Paramedics took Devonia to the hospital. GJ 9-28-10 at 25.

1 From looking at the landline phone's caller-identification feature, Cornelius saw that
2 the two calls before the shooting were from "S. Cousins." GJ 9-28-10 9-28-10 at 17.
3 Cornelius had known Stephanie Cousins for six or seven years. GJ 9-28-10 9-28-10 at 17.
4 According to Cornelius, Derecia had sold marijuana to Stephanie Cousins in the past. GJ 9-
5 28-10 9-28-10 at 18. After the police had arrived, Cornelius called Stephanie Cousins. GJ
6 9-28-10 9-28-10 at 26. He was extremely angry when he called. Stephanie Cousins told him
7 that when she knocked on the door, two men happened to be waiting around the corner and
8 forced their way in when Derecia opened the door. GJ 9-28-10 9-28-10 at 27. Cornelius
9 told Cousins that he believed she was lying. GJ 9-28-10 9-28-10 at 27.

10 After the police arrived, Cornelius noticed that \$450 had been taken from the
11 residence as well as a sack of marijuana and other minor property. GJ 9-28-10 9-28-10 at
12 28.

13 Homicide Detective Christopher Bunting was one of the detectives assigned to the
14 case. GJ 9-28-10 9-28-10 at 32. He responded to the scene around 5:00 am. The apartment
15 itself was a two bedroom, two bathroom apartment. It also had a living room and kitchen.
16 GJ 9-28-10 9-28-10 at 33. Immediately inside the front door of the apartment was the living
17 room. On the couch in the living room, detectives observed Derecia Newman. GJ 9-28-10
18 9-28-10 at 35. She was in nearly a sitting position on the couch with a \$20 clutched in her
19 hand. GJ 9-28-10 9-28-10 at 35. She had an obvious, massive gunshot wound to her head.
20 GJ 9-28-10 9-28-10 at 35. From Derecia's location, detectives examined the scene for
21 evidence of additional gunshots or bullet strikes. The found a bullet strike in the hallway.
22 GJ 9-28-10 9-28-10 at 36. This shot hit the refrigerator. GJ 9-28-10 9-28-10 at 37. The
23 third shot went down the hallway of the residence. GJ 9-28-10 9-28-10 at 40. The fourth
24 was through the bathroom. GJ 9-28-10 9-28-10 at 40. The fifth went into Devonia
25 Newman. GJ 9-28-10 9-28-10 at 40. Later, detectives found another impact site, accounting
26 for a sixth shot. GJ 9-28-10 9-28-10 at 41-2. There were no cartridge casings observed at the
27 scene, leading detectives to believe that the weapon used was a revolver. GJ 9-28-10 at 42.

28 //

1 At autopsy, Dr. Alane Olson testified that Derecia Newman sustained a gunshot
2 wound to the head. Upon examination, Dr. Olson could see that the barrel of the gun had
3 actually been pressed against her head when the trigger was pulled. GJ 9-28-10 at 76.

4 In the course of the investigation, detectives became aware of a woman named
5 Monica Martinez. GJ 9-28-10 at 43. Martinez has a teenaged daughter named Tyler. GJ 9-
6 28-10 at 44. Detectives met with Tyler and showed her a photographic line-up of several
7 individuals, one of whom was David Burns. GJ 9-28-10 at 45. Burns's nickname is "D-
8 Shot." GJ 9-28-10 at 45.

9 Tyler Mitchell lived with her mom and younger siblings in August 2010. At the
10 beginning of August, weeks before this incident, Tyler's mom, Monica Martinez, brought
11 three men to the home. GJ 9-28-10 at 50. One of the men was "Job-Loc," Monica
12 Martinez's boyfriend. GJ 9-28-10 at 51. The other two were (Willie) Darnell Mason and
13 David Burns. GJ 9-28-10 at 51. Mason's nickname was "G-Dogg." GJ 9-28-10 at 51. The
14 three stayed for one night. GJ 9-28-10 at 52. During this time period, Monica had a silver,
15 gray Crown Victoria sedan type car. GJ 9-28-10 at 53. Tyler knew Job-Loc's cell phone
16 number to be (512)629-0041. GJ 9-28-10 at 54. Her mother's cell phone number was (702)-
17 927-8742. GJ 9-28-10 at 54. Mason's cell phone number was (909)233-0860. GJ 9-28-10
18 at 54. After being shown three photographic line-ups, Tyler was able to identify Job-Loc.
19 GJ 9-28-10 at 56. She also identified G-Dogg or Petitioner Willie Darnell Mason. GJ 9-28-
20 10 at 57. And she identified D-Shot or David Burns. GJ 9-28-10 at 45. Tyler also knew
21 where Job-Loc lived during this time period: at the Brittany Pines Apartments between Lake
22 Mead and Torrey Pines. GJ 9-28-10 at 57.

23 Detectives also interviewed Donovan Rowland. Rowland knew Job-Loc by a
24 different nickname: Slick. GJ 9-28-10 at 89. He became friends with him. GJ 9-28-10 at
25 90. Through the course of his relationship with Slick, Rowland came to know Slick's
26 girlfriend, Monica Martinez. GJ 9-28-10 at 91. At some point after Rowland met Slick,
27 Slick broke his leg. GJ 9-28-10 at 92. Rowland also knew G-Dogg (Petitioner Mason)
28 through Slick or saw him at Slick's apartment while Monica Martinez was also present. GJ

1 9-28-10 at 93. One morning, Rowland was at Slick's apartment, as was Monica. G-Dogg
2 (Petitioner Mason) was there too. GJ 9-28-10 at 97. Another person was also present,
3 although Rowland could not identify him. GJ 9-28-10 at 97. G-Dogg (Petitioner Mason)
4 was the person who opened the door for Rowland. GJ 9-28-10 at 100. The door was
5 blocked from the inside by a chair and a box. GJ 9-28-10 at 100. G-Dogg (Petitioner
6 Mason) even looked out the window before he opened the door for Rowland. GJ 9-28-10 at
7 101. Rowland saw and recognized Monica and Slick. GJ 9-28-10 at 101. The fourth
8 individual was named, "like D-Shot or D-Shock." GJ 9-28-10 at 102. Monica and Slick
9 were arguing. GJ 9-28-10 at 103.

10 Rowland testified at the grand jury that he did not see Slick holding a gun. GJ 9-28-
11 10 at 103. The State impeached Rowland with his statements to detectives. Rowland
12 commented that he was "highly intoxicated" at the time. GJ 9-28-10 at 104. In fact,
13 Rowland admitted that twice he had told the police that he saw Slick cleaning a gun, but at
14 grand jury suggested that he actually did not see that. GJ 9-28-10 at 106. Eventually, Slick
15 handed the gun to Rowland. GJ 9-28-10 at 107. Upon being impeached with his statement
16 to detectives, Rowland acknowledged that he told the police that Slick had asked him to hold
17 a gun for him and that he had to leave. GJ 9-28-10 at 108. The next morning, Slick called
18 Rowland and told him to look at the newspaper and Rowland saw a story about a mother
19 killed and a daughter being critically injured in a shooting. GJ 9-28-10 at 110. Rowland
20 called Slick back and Slick told him that G-Dogg (Petitioner Mason), Monica, and D-
21 Shot/David Burns had done something. GJ 9-28-10 at 111. He said there was a "crack-
22 head" who set up the whole thing. GJ 9-28-10 at 112. Slick also asked Rowland to sell the
23 gun or bury it. GJ 9-28-10 at 113. Instead, Rowland left the gun at a friend's house and
24 later tried to sell it. GJ 9-28-10 at 114. Slick had told Rowland he could keep the money
25 from selling the gun. GJ 9-28-10 at 115. The gun was a revolver. GJ 9-28-10 at 115. It was
26 also empty of bullets. GJ 9-28-10 at 115.

27 Detectives were able to obtain video surveillance tape from the Opera House, located
28 in North Las Vegas. GJ 9-28-10 at 67. The relevant tape was from 2:37 am on the morning

1 of August 7, 2010 to approximately 3:00 am, less than an hour before the homicide. GJ 9-
2 28-10 at 70.

3 Through investigation, detectives were able to get in contact with Stephanie Cousins.
4 They also were able to contact Monica Martinez. Through investigation, detectives learned
5 that Martinez had a cell phone registered under the name "Wineford Hill." GJ 9-28-10 at 54,
6 61. The carrier was T-Mobile. GJ 9-28-10 at 61. At grand jury, a representative from T-
7 Mobile testified regarding Martinez's cell phone records and history. GJ 9-28-10 at 62. The
8 representative explained how cell site towers work, or how the cell phone essentially looks
9 for the closest tower for use. GJ 9-28-10 at 64.

10 With assistance from the FBI, detectives were able to identify Job-Loc as Jerome
11 Thomas. GJ 9-28-10 at 127. From Tyler, detectives knew his cell phone number was
12 (512)629-0041. GJ 9-28-10 at 128. Investigators learned that this number was no longer
13 used as of August 9th or 10th, just a couple of days after the murder. GJ 9-28-10 at 128.
14 Tyler also knew G-Dogg or Willie Darnell Mason's number to be (909) 233-0860. GJ 9-28-
15 10 at 54. From Cornelius Mayo, detectives knew Stephanie Cousins had cell number (702)
16 542-4661. GJ 9-28-10 at 129. With those known numbers, the FBI obtained cell site
17 records for August 7, 2010. GJ 9-28-10 at 129.

18 Records indicated that Job-Loc (Jerome Thomas) was in the area of Teneya and Lake
19 Mean from the night of August 6, 2010 through the early morning of August 7, 2010. GJ 9-
20 28-10 at 130. This corresponded with the location of his apartment. GJ 9-28-10 at 130.
21 Cell phone records of Donovan Rowland indicated that he was not in the area of Meikle
22 Lane during the time of the murder. GJ 9-28-10 at 130. Conversely, records of Monica
23 Martinez, Stephanie Cousins, and Willie Darnell Mason did indicate that they were near the
24 crime scene when the murder was committed. GJ 9-28-10 at 131. The address associated
25 with Petitioner Mason's phone was in Rialto, California, just outside of San Bernardino. GJ
26 9-28-10 at 134. Job-Loc is also from San Bernardino. GJ 9-28-10 at 135. D-Shot/David
27 Burns is also from San Bernardino. GJ 9-28-10 at 135.

28 //

1 When Special Agent Hendricks examined Petitioner Mason's phone on August 1,
2 2010, records indicated that Mason was in Rialto, California. GJ 9-28-10 at 136. Records
3 from that phone also indicated that the phone was dialed to family members and associates
4 of Willie Mason. GJ 9-28-10 at 138. On the night of August 1, 2010, just days before the
5 murder, Mason's phone was hitting off towers heading northbound on I-15. GJ 9-28-10 at
6 138. The phone hit off a tower in Baker, California. GJ 9-28-10 at 139. Later it hit off a
7 tower on Tropicana and I-15. GJ 9-28-10 at 139. Later, it hit off a tower in the area of the
8 Brittany Pines Apartments, Job-Loc's residence. GJ 9-28-10 at 139. On the night of the
9 murder, August 7, 2010, his phone hit off a tower near the Brittany Pines Apartments. GJ 9-
10 28-10 at 140. Later, the phone hits off a tower near Rancho and Bonanza. GJ 9-28-10 at 140.
11 Later, the phone hit off a tower in the area of Vegas Valley and Nellis. GJ 9-28-10 at 140.
12 At just before 3:00 am, it hit off a tower north of downtown Las Vegas. GJ 9-28-10 at 141.
13 Next, the phone hit off a tower near the Opera House in North Las Vegas. GJ 9-28-10 at
14 141. Detectives obtained video surveillance tape from the Opera House for that same time
15 period which depicted Mason with Monica Martinez and D-Shot/David Burns. GJ 9-28-10
16 at 67-70, 164.

17 After that, at 3:24 am, Mason's phone was in the area of Nellis and Vegas Valley. GJ
18 9-28-10 at 142. At 3:51 am, the phone hit off the tower by Meikle Lane, the time and
19 location of the murder. GJ 9-28-10 at 143. By 4:24 am, the phone was hitting off towers
20 back by the Brittany Pines Apartments, or Job-Loc's residence. GJ 9-28-10 at 143.

21 Special Agent Hendricks also examined Stephanie Cousins' phone. Throughout the
22 early morning hours of August 7, 2010, her cell phone hit off the same towers as Mason's
23 phone. GJ 9-28-10 at 144. In fact, at 3:24 am, Cousins' phone calls Mason and then Mason
24 calls Cousins. GJ 9-28-10 at 145. At 3:37 am, Cousins calls the landline of Derecia
25 Newman two times. GJ 9-28-10 at 145. Shortly after that, at 3:51 am, Mason calls Cousins.
26 GJ 9-28-10 at 145-46. After that, Cousins received the incoming call from Cornelius Mayo.
27 GJ 9-28-10 at 146.

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1 Special Agent Hendricks also examined Monica Martinez's phone. Throughout the
2 early morning hours, her phone was hitting off towers in the same area as Mason's and
3 Cousins. GJ 9-28-10 at 147. In fact, when Cousins is calling Derecia Newman's land line,
4 Martinez's phone is hitting off the same tower. GJ 9-28-10 at 148.

5 Detectives also obtained video surveillance tape from Greyhound. GJ 9-28-10 at 83-
6 87, 165. On August 8, 2010, at 11:33 pm, detectives identified Petitioner Mason, D-
7 Shot/David Burns and Job-Loc getting off the bus that traveled from Las Vegas to Los
8 Angeles. GJ 9-28-10 at 165, about 24 hours after the crime. Thereafter, they traveled to San
9 Bernardino, California. None used their real names for travel.

10 **ARGUMENT**

11 Defendant Mason asserts that his trial should be severed from that of his co-defendant
12 due to the potential that a specific trial right would be violated or a reliable judgment about
13 his guilt or innocence could not be made in a joint trial. However, Defendant Mason does
14 not make one specific allegation related to a specific trial right being denied. Thus, none of
15 these assertions, alone or in combination, are sufficient to warrant severance.

16 **I. JOINT TRIALS ARE OVERWHELMINGLY FAVORED**

17 NRS 173.135 allows for two or more defendants to be charged under the same
18 indictment or information if they participated in the same criminal conduct. Persons who
19 have been jointly indicted should be tried jointly, absent compelling reasons to the contrary.
20 Jones v. State, 111 Nev. 848, 853, 899 P.2d 544 (1995). NRS 174.165, however, provides
21 that "[i]f it appears that a defendant or the State of Nevada is prejudiced by a joinder of
22 offenses or of defendants in an indictment or information . . . the court may . . . grant a
23 severance of defendants or provide what other relief justice requires." In order to obtain a
24 severance, a defendant **must demonstrate** that substantial prejudice would result from a
25 joint trial. The decision to sever is left to the discretion of the trial court and such decision
26 will not be reversed absent an abuse of discretion. Amen v. State, 106 Nev. 749, 801 P.2d
27 1354 (1990). Broad allegations of prejudice are not enough to require a trial court to grant
28 severance. United States v. Baker, 10 F.3d 1374, 1389 (9th Cir. 1993), cert. denied, 513

1 U.S. 934, 115 S. Ct. 330 (1994), overruled on other grounds by United States v. Nordby, 225
2 F.3d 1053 (9th Cir. 2000). Finally, even if prejudice is shown, the trial court is not required
3 to sever; rather, it must grant relief tailored to alleviate the prejudice. See, e.g., Zafiro v.
4 United States, 506 U.S. 534, 540-41, 113 S. Ct. 933 (1993).

5 Within the federal system, and specifically the Ninth Circuit, the presumption is
6 heavily in favor of joint trials. “[C]o-defendants jointly charged, are, prima facie, to be
7 jointly tried.” United States v. Gay, 567 F.2d 916, 919 (9th Cir.), cert. denied, 435 U.S. 999,
8 98 S. Ct. 1655 (1978); United States v. Silla, 555 F.2d 703, 707 (9th Cir. 1977) (“compelling
9 circumstances” are generally necessary to show need for separate trials). The trial court has
10 the broad discretion to join or sever trials and severance is not required unless a joint trial
11 would be manifestly prejudicial. See Gay, 567 F.2d at 919. Federal appellate courts review
12 a denial of a motion to sever for abuse of discretion and “[t]o satisfy this heavy burden, an
13 appellant must show that the joint trial was so prejudicial as to require the exercise of the
14 district judge’s discretion in only one way: by ordering a separate trial.” United States v.
15 Ford, 632 F.2d 1354, 1373 (9th Cir. 1980), cert. denied, 450 U.S. 934, 101 S. Ct. 1399
16 (1981), cert. denied, 450 U.S. 934, 101 S. Ct. (1981), overruled on other grounds by United
17 States v. DeBright, 730 F.2d 1263 (9th Cir. 1984).

18 In both the state and federal system, the general rule favoring joinder has evolved for
19 a specific reason—there is a substantial public interest in joint trials of persons charged
20 together because of judicial economy. Jones, 111 Nev. at 854, 899 P.2d at 547. Joint trials
21 of persons charged with committing the same offense expedites the administration of justice,
22 relieves trial docket congestion, conserves judicial time, lessens the burden on citizens called
23 to sacrifice time and money while serving as jurors, and avoids the necessity of calling
24 witnesses more than one time. Id. at 853-54, 899 P.2d at 547, see also United States v.
25 Brady, 579 F.2d 1121 (9th Cir. 1978), cert. denied, 439 U.S. 1074, 99 S. Ct. 849 (1979).
26 Therefore, the legal presumption is in favor of a joint trial among co-defendants.

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1 **I. THERE WILL BE NO SUBSTANTIAL SPILLOVER THAT WILL AFFECT**
2 **DEFENDANT MASON'S TRIAL RIGHTS**

3 Defendant Mason asserts in the most broad sense that the "spillover" or "rub-off"
4 effect may prejudice his rights. The gist of the Defendant's argument is that the evidence
5 against his codefendants is so greater that he will be found guilty merely by being tried with
6 him. Such a statement is an overbroad (in not false) characterization, however, such a claim
7 is not sufficient for severance. Severance is unwarranted "if based on 'guilt by association'
8 alone." Lyles v. State, 113 Nev. 679, 689 (1997), limited on other grounds by Middleton v.
9 State, 114 Nev. 1089, 1117 n.9 (1998), cert denied, 528 U.S. 927 (1999) (citing United
10 States v. Boffa, 513 F. Supp. 444, 487 (D. Del. 1980)). A defendant is not entitled to
11 severance merely because one has a better chance at acquittal being tried alone or because
12 certain evidence may be more damaging against the other. Id. (citing United States v. Baker,
13 10 F.3d 1374, 1388 (9th Cir. 1993)).

14 Defendant Mason appears to argue that because his co-defendant was identified in a
15 photo-lineup, that fact requires severance. How the fact that is admissible at both Defendant
16 Mason's and Defendant Burns's trials would require severance is not discussed. Moreover,
17 how a photolineup conducted for one of the perpetrators being admitted is a deprivation of a
18 trial right is not even alleged. All the evidence admitted against Defendant Burns in the
19 instant matter is equally admissible against Defendant Mason. Thus, there is no basis for
20 severance.

21 **II. THE FACT THAT A CO-DEFENDANT IS FACING CAPITAL**
22 **PUNISHMENT IS NOT A BASIS FOR SEVERANCE**

23 Defendant Mason will not be prejudiced by the fact that the State is seeking the death
24 penalty against his codefendant. The Nevada Supreme Court has specifically rejected the
25 theory that a death penalty jury is more conviction prone. McKenna v. State, 101 Nev. 338,
26 343-44 (1985), cert. denied, 474 U.S. 1093 (1986). Equally significant, the United States
27 Supreme Court has recognized that a "death qualified" jury is not unfair to a non-capital
28 codefendant. The Court explained: "Before turning to the legal issues in the case, we are

1 constrained to point out what we believe to be several serious flaws in the evidence upon
2 which the courts below reached the conclusion that ‘death qualification’ produces
3 ‘conviction-prone’ juries.” Lockhart v. McCree, 476 U.S. 162, 168 (1986); see also
4 Buchanan v. Kentucky, 483 U.S. 402, 426 (1987) (holding that petitioner’s claim that a
5 “death qualified” jury lacks impartiality is unpersuasive and explaining that the Constitution
6 presupposes that a jury selected from a fair cross section of the community is impartial,
7 regardless of the mix of individual viewpoints actually represented on the jury). Thus, the
8 fact that Defendant Mason is a non-capital defendant is not a basis for severance.

9 **III. DEFENDANT MASON MAKES NO SHOWING OF A DEFENSE**
10 **ANTAGONISTIC TO HIM WHICH WILL BE PRESENTED**

11 Defendant Mason makes a broad claim of antagonistic defenses being a basis for
12 severance. Defendant Mason makes no statement as to how any defense is antagonistic to
13 his. Thus, he fails to shoulder his burden for severance.

14 Significantly, severance is not warranted or justified simply because each defendant
15 seeks to blame the other for the crime. Marshall v. State, 118 Nev. 642, 56 P.3d 376 (2002).
16 In Marshall, co-defendants Marshall and Currington were tried and convicted together of
17 first degree murder, robbery, and conspiracy to commit robbery. At trial, Marshall’s strategy
18 was to exclusively blame Currington; Currington’s strategy was to blame Marshall. Id. at
19 644-45, 56 P.3d at 377-78.

20 On appeal, Marshall claimed that the district court erred in not severing his trial from
21 Currington’s. Id. at 645, 56 P.3d at 378. He maintained that he and Currington had
22 “antagonistic defenses” in that each argued that the other was responsible for the murder.
23 Id., 56 P.3d at 378. Marshall relied on the standard the Nevada Supreme Court articulated in
24 Rowland v. State, 118 Nev. 31, 39 P.3d 114 (2002). In Rowland, the Nevada Supreme Court
25 stated that “defenses must be antagonistic to the point that they are ‘mutually exclusive’
26 before they are to be considered prejudicial,” and necessitate severance. Id. at 45, 39 P.3d at
27 122. The court further noted in Rowland that defenses are mutually exclusive when the core
28 of the co-defendant’s defense is so irreconcilable with the core of the defendant’s own

1 defense that the acceptance of the co-defendant's theory by the jury precludes acquittal of
2 the defendant. Id. at 45, 39 P.3d at 123.

3 In Marshall, the Nevada Supreme Court expressed concern that the Rowland decision
4 implied severance was justified in too broad of circumstances. The court explained the
5 Rowland holding and limited the circumstances in which severance is appropriate. It stated:

6 To the extent that this language suggests that prejudice requiring
7 severance is presumed whenever acceptance of one defendant's
8 defense theory logically compels rejection of another defendant's
9 theory, it is too broadly stated. As we have explained elsewhere,
10 where there are situations in which inconsistent defenses may
11 support a motion for severance, the doctrine is a very limited
12 one. A defendant seeking severance must show that the
13 codefendants have conflicting and irreconcilable defenses and
14 that there is a danger that the jury will unjustifiably infer that this
15 conflict alone demonstrates that both are guilty. We take this
16 opportunity to further clarify this issue.

17 Id. at 646, 56 P.3d at 378. The Court then explained the standard for severance.

18 The decisive factor in any severance analysis remains prejudice
19 to the defendant. NRS 174.165(1) provides in relevant part: "If it
20 appears that a defendant . . . is prejudiced by a joinder . . . of
21 defendants . . . for trial together, the court may order an election
22 or separate trials of counts, grant a severance of defendants or
23 provide whatever other relief justice requires." Nevertheless,
24 prejudice to the defendant is not the only relevant factor: a court
25 must consider not only the possible prejudice to the defendant
26 but also the possible prejudice to the State resulting from
27 expensive, duplicative trials. Joinder promotes judicial economy
28 and efficiency as well as consistent verdicts and is preferred as
long as it does not compromise a defendant's right to a fair trial.
Despite the concern for efficiency and consistency, the district
court has a continuing duty at all stages of the trial to grant a
severance if prejudice does appear. Joinder of defendants is
within the discretion of the district court, and its decision will not
be reversed absent an abuse of discretion. To establish that
joinder was prejudicial requires more than simply showing that
severance made acquittal more likely; misjoinder requires
reversal only if it has a substantial and injurious effect on the
verdict.

29 Marshall, 118 Nev. at 646-47, 56 P.3d at 378-79 (citations omitted).

30 Significantly, the Nevada Supreme Court specifically held that antagonistic defenses
31 are a factor, but not, in themselves, sufficient grounds upon which to grant severance of
32 defendants. Indeed, in Marshall, even though the defenses offered by Marshall and co-

1 defendant Currington were antagonistic, the Nevada Supreme Court held that the joinder of
2 the defendants at trial was proper. Id. at 648, 56 P.3d at 378. Finding Marshall's assertion
3 that his and Currington's defenses were prejudicial by virtue of their antagonistic nature
4 unpersuasive, the court explained that to prevail on the ground that severance was warranted,
5 Marshall had to show that the "joint trial compromised a specific trial right or prevented the
6 jury from making a reliable judgment about guilt or innocence." Id. at 648, 56 P.3d at 380.
7 The court also noted that the State's case was not dependent on either defendant's statement
8 and did not use joinder to unfairly bolster a marginal case. Id., 56 P.3d at 380. Moreover,
9 the State argued both defendants were guilty and presented evidence to establish their
10 separate guilt. Id., 56 P.3d at 380. The court affirmed Marshall's conviction.

11 The United States Supreme Court conducted a similar analysis in Zafiro v. United
12 States, 506 U.S. 534, 113 S. Ct. 933 (1993). In that case, defendants contended that it was
13 prejudicial whenever two defendants each claim innocence and accuse the other of the crime.
14 506 U.S. at 538, 113 S. Ct at 938. The United States Supreme Court rejected this contention,
15 holding that "mutually antagonistic defenses are not prejudicial per se." Id., 113 S. Ct. at
16 938. The Court explained that severance should only be granted if there is a serious risk that
17 a joint trial would compromise a specific trial right of one of the defendants or prevent the
18 jury from making a reliable judgment about guilt or innocence. Id. at 539, 113 S. Ct. at 938.
19 It is not prejudicial for a co-defendant to introduce relevant, competent evidence that would
20 be admissible against defendant at a severed trial. Id. at 540, 113 S. Ct. at 938. The Court
21 also noted that the trial court can cure any potential of prejudice by properly instructing the
22 jury that it must consider the case against each defendant separately. See id. at 540-41, 113
23 S. Ct. at 939.

24 In all plausible situations, Defendant Mason can present his defense independent of
25 the other Defendants. Defendant Mason is free to argue he wasn't present, or if he was
26 present, he was merely present and did not actively participate. Defendant Mason provides
27 no basis for the assertion that joinder would preclude him from presenting either defense in
28 any way. Thus, he fails to establish any basis under antagonistic defenses for severance.

1 CONCLUSION

2 Defendant Mason makes broad assertions that his "trial rights" will be prejudiced
3 from a joint trial with his co-defendant. Defendant Mason fails to making any showing,
4 either on individual grounds, or in its totality, of an substantial undue prejudice upon which
5 to demand severance where a joint trial is presumptively required. Thus, this Court should
6 deny Defendant Mason's request for severance.

7 DATED this 23rd day of August, 2013.

8 Respectfully submitted,

9 STEVEN B. WOLFSON
10 Clark County District Attorney
11 Nevada Bar #001565

12 BY 

13 MARC DIGIACOMO
14 Chief Deputy District Attorney
Nevada Bar #006955

15 CERTIFICATE OF FACSIMILE TRANSMISSION AND/OR ELECTRONIC MAIL

16 I hereby certify that service of State's Opposition to Defendant's Motion to Sever
17 Defendants, was made this 23rd day of August, 2013, by facsimile transmission and/or
18 e-mail to:

19 SUSAN D. BURKE, ESQ.
20 sburkelaw@gmail.com

21 BY: 

22 J. Robertson
23 Employee of the District Attorney's Office
24
25
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28 10F15563X/jr-mvu


CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	
)	Case No. 10-C267882-1
Plaintiff,)	Dept. No. XX
)	
vs.)	
)	
WILLIE DARNELL MASON,)	Date of Hearing: <u>September 5, 2013</u>
)	
Accused.)	Time of Hearing: <u>8:30 A.M.</u>
)	

REPLY TO STATES OPPOSITION TO MOTION TO SEVER DEFENDANTS

Comes now the accused, WILLIE DARNELL MASON, by and through his attorney, SUSAN D. BURKE, and files his Reply to State's Opposition to Motion to Sever Defendants. This motion is based on the pleadings and papers on file herein, the following Points and Authorities, the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and concomitant provisions of the Nevada Constitution, as well as any argument which may be had at the hearing hereon.

DATED this 3rd day of September, 2013.

Respectfully submitted,

/s/ Susan D. Burke

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The next case cited by the State, *United States v. Baker*, 10 F.3d 1374 (9th Cir. 1993), is twenty years old, and also does not involve a murder charge. It involved multiple defendants and drug charges. *Id.*, at 1386. The statement given by the State coming from this case is actually, [b]road and general allegations of prejudice from the length of the trial are not enough to require the district court to grant a severance.” *Id.*, at 1389. This was largely due to the fact that the trial in this case involved fifteen defendants and took over sixteen months to try. The appellate court noted that the judge in this case issued nearly 200 limiting instructions, and that a less experienced judge might well have resulted in an unfair trial, resulting in a reversal. *Id.*, 1388, 1389. While in the circumstances of the case, the appellate court did not find error in the failure to sever defendants, it also clearly expressed a desire that they had been. The court began a significant discussion as to how severance would have been warranted by stating that “[a]s discussed above, there are several frequently cited advantages of proceedings against all defendants in a single trial. **We believe, however, that most of these purported advantages are overstated when a trial of this nature is involved.**” *Id.*, at 1389 (emphasis added). The court then proceeded to spend four pages discussing how this case could have been better tried with some severances.

The State also cites to *United States v. Gay*, 567 F.2d 916 (9th Cir. 1978) *cert. denied*, 435 U.S. 999, 98 S.Ct. 1655 (1978) and *United States v. Silla*, 555 F.2d 703 (9th Cir, 1977) in support of its position. Again, it should be noted that neither of these cases involved murder charges. Both involved drug charges. While Mr. Mason does not contest that the quote cited by the State from *Gay* is included in that case, it is important to note the circumstances presented in that case. The issue involved in that case was one defendant's desire to call another defendant as a witness, and the second defendant's willingness to testify favorably for the first defendant, if severance were granted and the second defendant went to trial first. The trial court said it would sever the defendants for trial, but only if the first defendant went to trial first, leaving the second defendant open to forfeiting his Fifth Amendment privilege. Under those circumstances, the second defendant elected not to give up his privilege and the court denied the severance. The court also noted that ""Motions for

1 severance so that a defendant may be able to call a codefendant to the stand are usually denied.””
2 *Id.*, at 919 (citation omitted). It is not anticipated that this situation will arise in Mr. Mason’s case,
3 and therefore, this decision is neither determinative nor persuasive.

4 The section in *Silla* concerning severance contains nine lines, and does not discuss the
5 circumstances leading to the severance request, except to say that it was based on a disparity in the
6 weight of the evidence. *Id.*, at 707. Silla received a sentence of only six months pursuant to the
7 Federal Youth Corrections Act and the largest sentence any defendant received was three years. *Id.*,
8 at 705. Therefore, the concerns expressed in this case are far from those at issue in Mr. Mason’s.

9 The decision in *United States v. Ford*, 632 F.2d 1354, 1373 (9th Cir. 1980), *cert. denied*, 450
10 U.S. 934, 101 S.Ct. 1399 (1981), overruled on other grounds by *United States v. DeBright*, 730
11 F.2d 1263 (9th Cir. 1984) also does not involve a murder charge, but instead various trust related
12 counts. It also appears that the decision in *Ford* involved primarily an issue related to the joinder of
13 various counts, as opposed to defendants. Although there was discussion about the law of both, and
14 the quote cited by the State is present, it is generally a situation very different from that present in
15 the instant case. *Id.*, 1370-74. It is also of note that the cite by the State to *Jones* at 111 Nev. 853-
16 54, is actually a cite in that case to *United States v. Brady*, 579 F.2d 1121, 1128 (9th Cir. 1978), *cert.*
17 *denied*, 439 U.S. 1074, 99 S.Ct. 849 (1979). While there might be a legal presumption in favor of
18 joint trials among co-defendants, Mr. Mason again submits that in this case, severance is much more
19 warranted, especially because of the impact of the death penalty.

20 The “Spillover” Effect

21 The State alleges that Mr. Mason has asserted that the “spillover” effect will prejudice his
22 rights, and then puts in two sentences which clearly have some grammatical problems. The State
23 then asserts that severance is unwarranted “if based on ‘guilt by association’ alone,” citing to *Lisle*
24 *v. State*, 113 Nev. 679, 689 (1997), limited on other grounds by *Middleton v. State*, 114 Nev. 1089,
25 1117 n. 9 (1998), *cert. denied*, 528 U.S. 927 (1999) (citing *United States v. Boffa*, 513 F. Supp.
26 444, 487 (D. Del. 1980)). While Mr. Mason did not really make a large issue concerning the
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1 “spillover” effect, he would submit that the evidence admissible against him is significantly less
2 than that admissible against Mr. Burns. For example, there were no witnesses within the apartment
3 who saw him there, or commit any criminal acts there, aside from possibly co-defendants. If the
4 State is able to convince the jurors that he was present with Mr. Burns, however, the likelihood of
5 his conviction gets much higher. While the State also cites to *Lisle* for the proposition that
6 severance is not required because one defendant has a better chance of acquittal being tried alone,
7 this does not mean that the Court cannot sever the defendants for this reason. The *Lisle* court noted
8 that the ultimate issue involved in a severance is “whether the jury can reasonably be expected to
9 compartmentalize the evidence as it relates to separate defendants.” The court also held that “[t]he
10 ‘spillover’ or ‘rub-off’ theory involves the question of whether a jury’s unfavorable impression of
11 [one] defendant against whom the evidence is properly admitted will influence the way the jurors
12 view the other defendant.”” *Id.*, at 689.

13 The State also asserts that Mr. Mason appears to argue that because his co-defendant was
14 identified in a photo-lineup, severance is required. Mr. Mason has no idea where this statement
15 comes from, as this was not an issue he ever raised. The State further asserts that all of the evidence
16 admitted against Burns is equally admissible against Mr. Mason. He would disagree with this
17 statement, and submits that it cannot be determined at this time as to the guilt phase. He would
18 certainly submit that there would be significant evidence which would be inadmissible against him
19 if the case were to proceed to a penalty phase.

20 The State next notes that the Nevada Supreme Court has specifically rejected the theory that
21 a death penalty jury is more conviction prone, citing to *McKenna v. State*, 101 Nev. 338, 343-44
22 (1985), *cert. denied*, 474 U.S. 1093 (1986). He would submit that this statement from a twenty-
23 eight year old case is no longer good law. In *United States v. Lujan, Lamunyon, and Medina*, 529
24 F. Supp. 2d 1315, 1326-27, (D.N.M. 2007) the Court noted that there were a number of studies
25 pointing to capitally charged juries being more conviction prone. Mr. Mason also submits that there
26 have been a number of judicial decisions where considerable evidence about conviction proneness
27

1 of capitally charged juries has been shown. He would also point out that the other two cases cited
2 by the State in this regard, *Lockhart v. McCree*, 476 U.S. 162 (1986) and *Buchanan v. Kentucky*,
3 483 U.S. 402, 426 (1987), are both at least twenty-seven (27) years old, and Mr. Mason would
4 submit that there has been a significant shift in death penalty law in that ensuing time. This type of
5 change can be seen in the cases cited in his Motion to Sever, as it relates to those facing a potential
6 death penalty, and those in the same cases not facing that severe sanction. (Motion to Sever, pp. 7-9)

7 Additionally, in 2000, the Supreme Court issued its decision in *Apprendi v. New Jersey*, 530
8 U.S. 466, 120 S.Ct. 2348, 147 L.Ed. 2d 435 (2000), where it held that any fact which increases the
9 penalty for an offense, other than a prior conviction, must be proven beyond a reasonable doubt. In
10 2002, the Court issued its decision in *Ring v. Arizona*, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed. 2d
11 556 (2002) holding that the jury must make the determination of any fact leading to the death
12 penalty. Also in 2002, in *Atkins v Virginia*, 536 U.S. 335, 122 S.Ct. 2242, 153 L.Ed. 2d 335
13 (2002), it was determined that those suffering from mental retardation could not be put to death. In
14 2004, the Court issued its opinion in *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354, 158
15 L.Ed. 2d 177 (2004) holding that out of court statements of non-testifying prosecution witnesses
16 were not admissible at trial. In *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed. 2d 1
17 (2005) the Court held that defendants under eighteen (18) were not eligible for the death penalty. In
18 *Kennedy v. Louisiana*, 554 U.S. 407, 128 S.Ct. 2641, 171 L.Ed. 2d 525 (2008) the Court held that
19 the death penalty was not available for a child's rape. The *Kennedy* Court additionally noted that
20 "[w]hen the law punishes by death, it risks its own sudden descent into brutality, transgressing the
21 constitutional commitment to decency and restraint." 554 U.S. at 420. The *Kennedy* Court also
22 discussed various studies and publications in reference to its determination. It should also be
23 recognized that there are a number of jurisdictions which have abolished the death penalty since the
24 majority of the decisions cited by the State were entered, including Connecticut, Illinois, Maryland,
25 New Jersey, New Mexico, and New York. Other jurisdictions are close to making the same
26 decision.

1 The State lastly addresses the issue of antagonistic defenses, and states that Mr. Mason
2 makes no statement as to how his defense is antagonistic to Mr. Burns. Mr. Mason submits that he
3 has addressed this situation in his motion, as well as setting forth additional grounds for severance.
4 He has also specifically addressed the two cases set forth by the State in this section, ***Marshall v.***
5 ***State***, 118 Nev. 642, 56 P.3d 376 (2002), and ***Zafiro v. United States***, 506 U.S. 534, 113 S.Ct. 933
6 (1993). He would also point out that they were decided before all but one of the cases cited
7 previously in this reply concerning the death penalty. He would also submit that Ms. Cousins' case
8 was severed without objection by the State, and that she was equally involved in this case.

9 While Mr. Mason is not subject to the death penalty, the fact that his co-defendant, David
10 Burns is, raises the issue of death penalty law. Without severance, Mr. Mason will face a death-
11 qualified jury, and potentially a great deal of discussion about the death penalty. This makes his
12 situation proceeding to trial with Mr. Burns even worse, because it will be very difficult to
13 determine the effect of these proceedings on any sentence given to him. The penalty phase of the
14 trial is not really discussed by the State, but contains considerable potential prejudice to Mr. Mason,
15 as was previously discussed in his motion.

16 CONCLUSION

17 There is little doubt that Mr. Mason will suffer prejudice if he is tried with Mr. Burns, as set
18 forth previously and in his Motion to Sever. Therefore, he respectfully prays this Court to grant his
19 Motion to Sever Mason for Trial.

20 Dated this 3rd day of September, 2013.

21
22 /s/ Susan D. Burke

23 SUSAN D. BURKE
24 Nevada Bar No. 8006
25 616 S. Eighth St.
26 Las Vegas, NV 89101
27 (702) 384-2396
28 Attorney for Willie Mason

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of this Reply to States Opposition to Motion to Sever Defendants was served on:
Marc DiGiacomo and Pamela Weckerly, the Court, Anthony Sgro, counsel for David Burns, Christopher Oram, counsel for David Burns, by electronic service on this 3rd day of September, 2013.

/s/ Susan D. Burke

Susan D. Burke

REGISTER OF ACTIONS

CASE NO. C-10-267882-1

State of Nevada vs Willie Mason

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Case Type: **Felony/Gross Misdemeanor**
Date Filed: **09/29/2010**
Location: **Department 20**
Cross-Reference Case Number: **C267882**
Defendant's Scope ID #: **1856118**
Grand Jury Case Number: **10GJ054**
Supreme Court No.: **68497**

RELATED CASE INFORMATION

Related Cases

C-10-267882-2 (Multi-Defendant Case)
C-10-267882-3 (Multi-Defendant Case)

PARTY INFORMATION

Defendant	Mason, Willie	Lead Attorneys Robert L Langford <i>Retained</i> 7024716535(W)
Plaintiff	State of Nevada	Steven B Wolfson 702-671-2700(W)

CHARGE INFORMATION

Charges: Mason, Willie	Statute	Level	Date
1. CONSP ROBBERY	200.380	Felony	08/07/2010
2. CONSP MURDER	200.010	Felony	08/07/2010
3. BURGLARY WHILE IN POSSESSION OF DEADLY WEAPON	205.060	Felony	08/07/2010
4. ROBBERY WITH A DEADLY WEAPON	200.380	Felony	08/07/2010
5. MURDER WITH A DEADLY WEAPON	200.030	Felony	08/07/2010
6. ROBBERY WITH A DEADLY WEAPON	200.380	Felony	08/07/2010
7. ATT. MURDER WITH A DEADLY WEAPON	200.030	Felony	08/07/2010
8. BATTERY WITH A DEADLY WEAPON W/ SUBSTANTIAL BH	200.481	Felony	08/07/2010

EVENTS & ORDERS OF THE COURT

09/05/2013 [Motion](#) (8:30 AM) (Judicial Officer Tao, Jerome T.)
Deft's Motion to Sever Mason For Trial

Minutes

09/05/2013 8:30 AM

- Arguments by Ms. Burke in support of her Motion including that in her Motion and Reply, she pointed out situations where the Court had already separated the death and non-death people and noted the State did not address this at all in their response. Court advised if it had been granted, there would not be an opinion. Ms. Burke stated there are a number of grounds in which to grant this Motion other than an antagonistic defense. Continued arguments by Ms. Burke including that death penalty juries are more conviction prone. Statements by Mr. Sgro as to the antagonistic defense. Statements by Mr. DiGiacomo. Mr. Sgro requested to join in this Motion. Continued argument in support of the Motion by Mr. Sgro. Conference at the Bench. Following, COURT ORDERED, Deft's Motion to Sever Trial is DENIED WITHOUT PREJUDICE and noted this can be revisited at the time of trial or at penalty, if need be. As to Deft Burns Motion, Court directed Mr. Sgro provide the power point prior to the hearing next week and to give a copy to the State especially if there is anything new. Mr. Sgro

1 RA 000042

advised that it tracks the brief and does not believe there is anything new. Ms. Burke advised she does not have the medical records for the victim nor the gang records. Mr. DiGiacomo advised he has given everyone the medical records and that he is in the process of getting the gang records from San Bernardino. Following colloquy, Court directed Mr. DiGiacomo copy the disk of medical records again for Ms. Burke. Additionally, Ms. Burke advised that yesterday she received the Notice of Witnesses with 26 names and that while some are the same, she does not know if this will impede her being ready for trial. Court so noted. CUSTODY

[Parties Present](#)

[Return to Register of Actions](#)


CLERK OF THE COURT

ORDR

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
MARC DIGIACOMO
Chief Deputy District Attorney
Nevada Bar #006955
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

WILLIE DARNELL MASON, aka
Willie Darnell Mason, Jr., aka
G-DOGG,
#1856118

Defendant.

CASE NO: C-10-267882-1

DEPT NO: XX

ORDER DENYING DEFENDANT'S MOTION TO SEVER MASON FOR TRIAL

DATE OF HEARING: 9/5/13
TIME OF HEARING: 8:30 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 5th day of September, 2013, the Defendant being present, represented by SUSAN D. BURKE, ESQ., the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through MARC DIGIACOMO, Chief Deputy District Attorney, and the Court having heard the arguments of counsel and good cause appearing therefor,

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SEP 13 2013

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1 RA 000044


1 IT IS HEREBY ORDERED that the Defendant's Motion to Sever Mason for Trial,
2 shall be, and it is denied without prejudice.

3 DATED this 19th day of September, 2013.

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5 
6 DISTRICT JUDGE

7 STEVEN B. WOLFSON
8 Clark County District Attorney
9 Nevada Bar #001565

10 BY


11 MARC DIGIACOMO
12 Chief Deputy District Attorney
13 Nevada Bar #006955
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28 10F17607X/jr/MVU

FEB 17 2015

ORIGINAL

BY Linda Skinner
LINDA SKINNER, DEPUTY 4:33pm

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

WILLIE DARNELL MASON,

Defendant.

CASE NO: C267882-1

DEPT NO: XX

VERDICT

We, the jury in the above entitled case, find the Defendant WILLIE DARNELL MASON, as follows:

COUNT 1 - CONSPIRACY TO COMMIT ROBBERY

(please check the appropriate box, select only one)

☒ Guilty of Conspiracy To Commit Robbery

☐ Not Guilty

COUNT 2 - CONSPIRACY TO COMMIT MURDER

(please check the appropriate box, select only one)

☒ Guilty of Conspiracy To Commit Murder

☐ Not Guilty

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COUNT 3 – BURGLARY WHILE IN POSSESSION OF A FIREARM

(please check the appropriate box, select only one)

☒ Guilty of Burglary While in Possession of a Firearm

☐ Guilty of Burglary

☐ Not Guilty

COUNT 4 - ROBBERY WITH USE OF A DEADLY WEAPON

(please check the appropriate box, select only one)

☒ Guilty of Robbery With Use Of A Deadly Weapon

☐ Guilty of Robbery

☐ Not Guilty

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COUNT 5 – MURDER WITH USE OF A DEADLY WEAPON

(please check the appropriate box, select only one)

☒ First Degree Murder with Use of a Deadly Weapon

SPECIAL VERDICT

(please check the appropriate box or boxes)

☐ The jury unanimously finds the murder willful, deliberate, and premeditated.

☒ The jury unanimously finds the murder was committed during the perpetration of a robbery and/or burglary

☐ The jury does not unanimously find the defendant guilty under a single theory of murder of the first degree.

☐ First Degree Murder

SPECIAL VERDICT

(please check the appropriate box or boxes)

☐ The jury unanimously finds the murder willful, deliberate, and premeditated.

☐ The jury unanimously finds the murder was committed during the perpetration of a robbery and/or burglary

☐ The jury does not unanimously find the defendant guilty under a single theory of murder of the first degree.

☐ Second Degree Murder with Use of a Deadly Weapon

☐ Second Degree Murder

☐ Not Guilty

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COUNT 6 - ROBBERY WITH USE OF A DEADLY WEAPON (DeVonia Newman)

(please check the appropriate box, select only one)

☒ Guilty of Robbery With Use Of A Deadly Weapon

☐ Guilty of Robbery

☐ Not Guilty

COUNT 7 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

(please check the appropriate box, select only one)

☒ Guilty of Attempt Murder with Use of a Deadly Weapon

☐ Guilty of Attempt Murder

☐ Not Guilty

**COUNT 8 - BATTERY WITH A DEADLY WEAPON RESULTING IN SUBSTANTIAL
BODILY HARM**

(please check the appropriate box, select only one)

☒ Guilty of Battery with Use of a Deadly Weapon Resulting in Substantial
Bodily Harm

☐ Guilty of Battery with Use of a Deadly Weapon

☐ Guilty of Battery with Substantial Bodily Harm

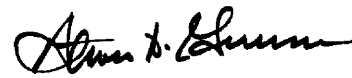
☐ Guilty of Battery

☐ Not Guilty

DATED this 17 day of February, 2015



FOREPERSON



CLERK OF THE COURT

JOC

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

CASE NO. C267882-1

-vs-

DEPT. NO. XX

WILLIE DARNELL MASON
aka Willie Darnell Mason, Jr.
aka G-DOGG
#1856118

Defendant.

JUDGMENT OF CONVICTION

(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1
– CONSPIRACY TO COMMIT ROBBERY (Category B Felony) in violation of NRS
199.480, 200.380; COUNT 2 – CONSPIRACY TO COMMIT MURDER (Category B
Felony) in violation of NRS 199.480, 200.010, 200.030; COUNT 3 – BURGLARY
WHILE IN POSSESSION OF A FIREARM (Category B Felony) in violation of NRS
205.060; COUNTS 4 and 6 – ROBBERY WITH USE OF DEADLY WEAPON (Category
B Felony) in violation of NRS 200.380, 193.165; COUNT 5 – MURDER WITH USE OF

1 DEADLY WEAPON (Category A Felony) in violation of NRS 200.010, 200.030; COUNT
2 7 – ATTEMPT MURDER WITH USE OF DEADLY WEAPON (Category B Felony) in
3 violation of NRS 200.010, 200.030, 193.165, 193.330; COUNT 8 – BATTERY WITH
4 USE OF DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (Category
5 B Felony) in violation of NRS 200.481; and the matter having been tried before a jury
6 and the Defendant having been found guilty of the crimes of COUNT 1 – CONSPIRACY
7 TO COMMIT ROBBERY (Category B Felony) in violation of NRS 199.480, 200.380;
8 COUNT 2 – CONSPIRACY TO COMMIT MURDER (Category B Felony) in violation of
9 NRS 199.480, 200.010, 200.030; COUNT 3 – BURGLARY WHILE IN POSSESSION
10 OF A FIREARM (Category B Felony) in violation of NRS 205.060; COUNTS 4 and 6 –
11 ROBBERY WITH USE OF DEADLY WEAPON (Category B Felony) in violation of NRS
12 200.380, 193.165; COUNT 5 – FIRST DEGREE MURDER WITH USE OF DEADLY
13 WEAPON (Category A Felony) in violation of NRS 200.010, 200.030; COUNT 7 –
14 ATTEMPT MURDER WITH USE OF DEADLY WEAPON (Category B Felony) in
15 violation of NRS 200.010, 200.030, 193.165, 193.330; COUNT 8 – BATTERY WITH
16 USE OF DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (Category
17 B Felony) in violation of NRS 200.481; thereafter, on the 23rd day of June, 2015, the
18 Defendant was present in court for sentencing with counsel ROBERT L. LANGFORD,
19 ESQ., and good cause appearing,

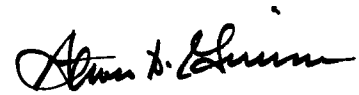
20 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in
21 addition to the \$25.00 Administrative Assessment Fee and \$35.00 Domestic Violence
22 Fee, the Defendant is SENTENCED to the Nevada Department of Corrections (NDC) as
23 follows: **COUNT 1** - a MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM
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1 Parole Eligibility of SIXTEEN (16) MONTHS; **COUNT 2** - a MAXIMUM of ONE
2 HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of TWENTY-
3 SIX (26) MONTHS, CONSECUTIVE to COUNT 1; **COUNT 3** - a MAXIMUM of ONE
4 HUNDRED EIGHTY (180) MONTHS with a MINIMUM Parole Eligibility of FORTY (40)
5 MONTHS, CONCURRENT with COUNT 2; **COUNT 4** - a MAXIMUM of ONE
6 HUNDRED EIGHTY (180) MONTHS with a MINIMUM Parole Eligibility of FORTY (40)
7 MONTHS, plus a CONSECUTIVE term of ONE HUNDRED EIGHTY (180) MONTHS
8 with a MINIMUM parole eligibility of FORTY (40) MONTHS for the Use of a Deadly
9 Weapon, CONCURRENT with COUNT 3; **COUNT 5** – LIFE WITHOUT PAROLE, plus a
10 CONSECUTIVE term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM
11 parole eligibility of FORTY (40) MONTHS for the Use of a Deadly Weapon,
12 CONSECUTIVE to COUNT 4; **COUNT 6** – a MAXIMUM of ONE HUNDRED EIGHTY
13 (180) MONTHS with a MINIMUM Parole Eligibility of FORTY (40) MONTHS, plus a
14 CONSECUTIVE term of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM
15 parole eligibility of FORTY (40) MONTHS for the Use of a Deadly Weapon,
16 CONSECUTIVE to COUNT 5; **COUNT 7** – a MAXIMUM of TWO HUNDRED FORTY
17 (240) MONTHS with a MINIMUM Parole Eligibility of FIFTY-THREE (53) MONTHS, plus
18 a CONSECUTIVE term of TWO HUNDRED FORTY (240) MONTHS with a MINIMUM
19 parole eligibility of FIFTY-THREE (53) MONTHS for the Use of a Deadly Weapon,
20 CONCURRENT with COUNT 6; **COUNT 8** – a MAXIMUM of ONE HUNDRED EIGHTY
21 (180) MONTHS with a MINIMUM Parole Eligibility of FORTY (40) MONTHS,
22 CONCURRENT with COUNT 7; with ONE THOUSAND SEVEN HUNDRED FORTY-
23 THREE (1,743) DAYS credit for time served. As the \$150.00 DNA Analysis Fee and
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1 Genetic Testing have been previously imposed, the Fee and Testing in the current case
2 are WAIVED.

3 DATED this 24 day of June, 2015

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7 ERIC JOHNSON
8 DISTRICT COURT JUDGE
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CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
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THE STATE OF NEVADA,)	
)	
Plaintiff,)	CASE NO. C-10-267882-1
)	C-10-267882-2
vs.)	DEPT NO. XX
)	
WILLIE DARNELL MASON, AKA)	
WILLIE DARNELL MASON, JR.,)	TRANSCRIPT OF
AKA G-DOGG,)	PROCEEDING
DAVID JAMES BURNS, AKA)	
D-SHOT,)	
)	
Defendants.)	

BEFORE THE HONORABLE CHARLES THOMPSON, SENIOR DISTRICT JUDGE

JURY TRIAL - DAY 7

WEDNESDAY, JANUARY 28, 2015

APPEARANCES:

For the State:	MARC P. DIGIACOMO, ESQ. PAMELA C. WECKERLY, ESQ. Chief Deputy District Attorneys
For Defendant Mason:	ROBERT L. LANGFORD, ESQ.
For Defendant Burns:	CHRISTOPHER R. ORAM, ESQ. ANTHONY P. SGRO, ESQ.

RECORDED BY SUSAN DOLORFINO, COURT RECORDER
TRANSCRIBED BY: KARR Reporting, Inc.

KARR REPORTING, INC.

1 RA 000054

I N D E X

WITNESSES FOR THE STATE:

ALANE OLSON

Direct Examination By Ms. Weckerly 9

Cross-Examination By Mr. Oram 23

MONICA MARTINEZ

Direct Examination By Mr. DiGiacomo 26

E X H I B I T S

STATE'S EXHIBITS ADMITTED:

PAGE

157 through 162 Photographs 14

1 and 2 Map/Photograph 77

274 CD - Interview of Monica Martinez 110

1 **LAS VEGAS, NEVADA, WEDNESDAY, JANUARY 28, 2015, 9:27 A.M.**

2 * * * * *

3 (Outside the presence of the jury.)

4 THE COURT: On the record. State of Nevada vs. Mason
5 and Burns. The record will reflect the presence of the
6 defendants and their respective counsel. Mr. -- Counsel.

7 MR. SGRO: Thank you, Judge. Just very briefly, we
8 wanted to make a record that Ms. Martinez's attorneys have
9 been present through much of the court proceedings. I saw --
10 I saw them during jury selection. I made a point of telling
11 the jury that they were here for the opening statements, and
12 they were here for Ms. Weckerly's presentation as well as
13 mine.

14 I don't recall how much they stayed in the afternoon,
15 and they're in the back right now. When I say in the back,
16 behind the hallway where chambers is there's a room where they
17 are visiting with their client as we speak. And I just don't
18 want there to be an argument.

19 I'm going to predict some modification from testimony
20 right from her police statement where she said no one had
21 nothing to do with anything, and I'm obviously being
22 over-general. I don't want her modifications -- let me strike
23 that.

24 I don't want to be precluded from arguing that her
25 lawyers were here, they had conversations, and that could be a

1 basis of modification.

2 In other words, if the lawyers heard my opening or
3 Ms. Weckerly's opening, they can now go back there and say,
4 hey, this is what they said, and prepare her for how to best
5 deal with either what I said or what Ms. Weckerly said. So
6 I'm making a record of it because I want judicial notice to be
7 taken that they have been here, they were here for openings,
8 and they're in the back room right now.

9 I can't get into what conversations were had, but
10 just the presence and the opportunity to instruct Ms. Martinez
11 on what occurred, and I don't want the State to say she wasn't
12 here, you know, that sort of thing. So I wanted to make that
13 record and not have the State argue anything different than
14 what the actual facts are.

15 MR. DiGIACOMO: Well, I mean, I don't know. I know
16 that at some periods of time they were present in the
17 courtroom. You know, if Mr. Sgro wants to allege you have
18 lawyers that -- and because you have a lawyer you might be
19 able to change your story, that seems like a dangerous
20 argument from a defense attorney to me.

21 But ultimately, if he can establish their presence in
22 the courtroom -- I mean, if he asks the witness, are you aware
23 whether or not they're there, she would have no way of knowing
24 unless she was told --

25 THE COURT: Gentlemen, I don't even know who her

1 lawyers are.

2 MR. SGRO: Then if that's the position, then I want
3 to get them out of the back room and ask them, and let's make
4 a quick record that they were here. Because --

5 THE COURT: We're not calling them as witnesses.

6 MR. SGRO: Exactly. Exactly. I don't --

7 THE COURT: And besides, I'm not going to -- you
8 would be asking them to reveal confidential communications --

9 MR. SGRO: No, no. No, sir.

10 THE COURT: -- and I'm not going to let you do that.

11 MR. SGRO: Sir, I'm not. I'm asking them were you
12 here during opening statements. If Mr. DiGiacomo is not
13 prepared to stipulate to that, then I want to ask them.

14 THE COURT: Well, we can do it later, but I --

15 MR. SGRO: Well, they're here right now, Your Honor,
16 is why I bring it up. They're literally 5 feet away in the
17 back room.

18 THE COURT: I don't even know who their lawyers are.

19 MR. SGRO: Andi Luem and Julia Murray.

20 THE COURT: Andi --

21 MR. SGRO: Luem. I think she spells it L-e-u-m
22 [sic], if I -- I think I got that --

23 THE COURT: L-e-u --

24 MR. SGRO: M.

25 THE COURT: M.

1 MR. SGRO: And Julia --

2 THE COURT: That's a female?

3 MR. SGRO: Yes, sir.

4 THE COURT: I don't know her.

5 MR. SGRO: And Julia Murray.

6 THE COURT: They're Nevada counsel?

7 MR. SGRO: Pardon me?

8 THE COURT: They're Nevada counsel?

9 MR. SGRO: Yes, sir. Ms. Luem was at the public
10 defender's office. Ms. Murray still is at the public
11 defender's office and Ms. Luem recently left, but apparently
12 she still has this particular case. And Ms. Murray I've seen.
13 Ms. Luem I saw -- specifically I saw Ms. Luem during jury
14 selection. I specifically saw her during my opening.

15 THE COURT: I'll accept your representations that
16 they were here. That's okay.

17 MR. SGRO: Okay.

18 THE COURT: I'm sure you're not lying to me. I mean,
19 if they were here, they were here.

20 MR. SGRO: The only reason I say it is because of the
21 equivocated response we got; well, if -- we can't ask Monica
22 Martinez are you aware your lawyers were here, because how is
23 she going to know. She was in custody. Her lawyers were
24 here.

25 THE COURT: If you tell me that her lawyers were

1 here, that's fine. I don't know what difference it makes,
2 but --

3 MR. SGRO: Okay.

4 MR. LANGFORD: For the record, it's L-u-e-m.

5 MR. ORAM: Judge, one other fact. I'm sure that the
6 State would have turned it over. I just want to make
7 abundantly clear, I presume that Ms. Martinez went over to the
8 district attorney's office and probably provided them
9 information, conversation, a proffer. And we have not been
10 provided any reports or any video or any audio from that. I
11 presume that there is none. And so I just want them to state
12 on the record that there is none.

13 THE COURT: If they have made an arrangement with the
14 district attorney's office for their testimony as part of a
15 plea bargain, certainly anything that's in writing has to be
16 provided to you that would be Brady material. Is there
17 anything in writing?

18 MR. DiGIACOMO: Well, we've turned over the guilty
19 plea agreement -- with the agreement to testify.

20 THE COURT: Oh, okay.

21 MR. DiGIACOMO: What he's requesting is an audio, a
22 video recording of the interview. There isn't one.

23 MR. ORAM: And there --

24 THE COURT: If there isn't one, then --

25 MR. ORAM: And that's what I wanted to do. Here's

1 what we didn't want. We didn't want questions to Ms. Martinez
2 and then the State say, well, we have video. And so that's
3 all I'm doing. And another --

4 THE COURT: Obviously if they haven't turned it over
5 to you they can't use it.

6 MR. ORAM: And also there's no notes, there's nothing
7 along those lines; is that fair, Mr. DiGiacomo?

8 THE COURT: Well, there may be attorney-client --
9 there may be some work product stuff.

10 MR. DiGIACOMO: Yeah. I don't want to speak for her
11 attorneys, whether or not they have something that --

12 THE COURT: Well, you can't ask her attorney for
13 anything.

14 MR. ORAM: No, I don't -- I'm more talking about I
15 imagine homicide detectives were there or --

16 MR. DiGIACOMO: It's my understanding that there is
17 no notes from any investigator who was present at the meeting.

18 MR. ORAM: And so there's nothing -- there's nothing
19 discoverable, and that's what I wanted to make sure --

20 THE COURT: Okay.

21 MR. ORAM: -- so we're not doing it when she's on the
22 witness stand. There's nothing discoverable; is that right?

23 MR. DiGIACOMO: Correct. There is nothing -- we have
24 turned over everything that's discoverable and there is
25 nothing else discoverable to provide.

1 THE COURT: All right. Well, we're waiting for the
2 marshal to come in and tell me that we've got enough jurors.

3 (Pause in proceeding.)

4 (Jurors enter at 9:37 a.m.)

5 THE COURT: State of Nevada vs. Burns and Mason. The
6 record will reflect the presence of the defendants, their
7 counsel, the district attorneys and all members of the jury.

8 Good morning, ladies and gentlemen. We're still on
9 the State's case in chief. Mr. DiGiacomo or Ms. Weckerly.

10 MS. WECKERLY: Your Honor, the State calls Dr. Alane
11 Olson.

12 ALANE OLSON, STATE'S WITNESS, SWORN

13 THE CLERK: Please state your name and spell your
14 first and last name for the record.

15 THE WITNESS: My name is Alane Olson. My first name
16 is spelled A-l-a-n-e. My last name is spelled O-l-s-o-n.

17 DIRECT EXAMINATION

18 BY MS. WECKERLY:

19 Q How are you employed?

20 A I'm employed as a medical examiner at the Clark
21 County Coroner's Office.

22 Q How long have you worked at the coroner's
23 office?

24 A I've worked in Las Vegas since September of
25 2005.

1 Q And what is your position at the coroner's
2 office?

3 A I'm a medical examiner.

4 Q Can you describe your educational background
5 that allows you to work as a medical examiner?

6 A Sure. I have a bachelor's degree in
7 microbiology from the University of Idaho. I spent one year
8 at the University of Chicago in a PhD program and decided I
9 didn't want to spend the rest of my life in a research lab, so
10 I applied to medical school. I was accepted at the University
11 of Nevada school of medicine, which is based in Reno, and
12 that's where I did my MD degree.

13 Once I graduated from medical school, I moved to
14 Portland, Oregon and spent five years at Oregon Health
15 Sciences University in a residency program for anatomic and
16 clinical pathology. In essence, pathology is the study of
17 disease, and pathologists are the doctors who do autopsies.

18 We also look at the specimens, organs and tissues
19 that are removed during surgery so we can make diagnoses that
20 help clinicians, doctors who see living patients, decide about
21 therapy and treatment. We also generally run the clinical
22 laboratory. So if you've ever had a blood test done, a
23 pathologist was probably involved in validating the results.

24 Once I finished my residency at Oregon Health
25 Sciences University, I moved to Milwaukee, Wisconsin and spent

1 one year at the Milwaukee County Medical Examiner's Office.
2 That's where I specialized in forensic pathology.

3 Forensic pathology is essentially investigations of
4 deaths, and every jurisdiction has different rules about the
5 types of death that must be reported. But oftentimes there
6 are deaths that are the result of violence, and we do
7 autopsies and other types of examinations with the goal of
8 determining cause and manner of death.

9 I have a license to practice medicine in the state of
10 Nevada. I'm also board certified by the American Board of
11 Pathology in anatomic, clinical and forensic pathology, and
12 I've been in practice for almost 15 years.

13 Q Do you have any estimate of how many autopsies
14 you've personally performed or participated in?

15 A Somewhere between 2 and 3,000.

16 Q And you've testified obviously in the area of
17 forensic pathology?

18 A Yes, I have.

19 Q Were you working as a pathologist on August 8,
20 2010?

21 A Yes, I was.

22 Q And did you conduct an autopsy of an individual
23 identified to you as Derecia Newman?

24 A I did.

25 Q How is it that you were the doctor that got

1 assigned this autopsy? How does it work?

2 A On any particular day we have a doctor who is on
3 call, and that doctor has the responsibility of assigning who
4 does which case. Since Ms. Newman's death was the result of
5 violence, I was likely on call that day and so I decided that
6 I would do the case.

7 Q And when you conduct an autopsy or when you did
8 this particular autopsy, is there a procedure that you go
9 through in the process of doing the autopsy?

10 A Yes, there is.

11 Q And can you describe that for the jury, please.

12 A Sure. In general, an autopsy consists of two
13 parts. There's an external examination and an internal
14 examination. And the external part consists of everything
15 from how much does the person weigh, how long they are. We
16 don't call it height because they're not standing up. Hair
17 color, eye color, marks, scars, tattoos, whether there's been
18 attempts to resuscitate them, and we also look at evidence of
19 injury.

20 Prior to an autopsy, in some cases we also do what we
21 call process on the body. And that means we take photographs
22 from when they're in the body bag to get an idea of what they
23 look like when they arrived at the coroner's office. The body
24 is then sequentially photographed as it is undressed, and any
25 evidence is collected usually with the help of crime scene

1 analysts from Metro or whichever jurisdiction is involved. We
2 do x-rays, particularly in cases where someone has been shot,
3 so that we have an idea of where the bullets are, and then I
4 do my examination.

5 Once I've done the external examination, then we do
6 an internal examination. That starts with a Y-shaped incision
7 on the front of the body going from shoulder to shoulder down
8 to the bottom of the chest, and then down to the bottom of the
9 abdomen.

10 We use a saw to take off the front of the rib cage,
11 and that allows me to look at the body as all of the organs
12 lie. And again, I'm looking for evidence of injury as well as
13 natural disease. Once we've opened the body, all of the
14 organs are removed one by one and I weigh them and I examine
15 them individually.

16 We also look at the contents of the head. We make a
17 cut in the scalp across the top of the head from ear to ear.
18 We move the scalp to the side. We use a saw to take off the
19 top of the skull and remove that. And again, I have the
20 opportunity to look at the brain, see if there are any
21 injuries or evidence of natural disease. The brain's then
22 removed from the head and weighed and again, individually
23 examined. We also look at the neck to see if there are any
24 evidence of injury or natural disease there.

25 During the course of an autopsy we collect samples

1 for toxicology testing and other types of testing depending on
2 the nature of the case, and in cases where someone has been
3 shot, we attempt to recover the bullets if we can.

4 MS. WECKERLY: Your Honor, may I approach the
5 witness?

6 THE COURT: Yes.

7 BY MS. WECKERLY:

8 Q Doctor, I'm showing you what's been previously
9 shown to defense counsel. These are photographs marked 157 to
10 162. Can you look through all those and just let me know when
11 you're done, please.

12 A Yes. I'm done.

13 Q Were those photographs taken in the course of
14 the autopsy of Derecia Newman?

15 A Yes, they were.

16 Q And are they a fair and accurate depiction?

17 A Yes, they are.

18 MS. WECKERLY: State moves to admit 157 to 162.

19 MR. SGRO: No objection.

20 MR. LANGFORD: No objection, Your Honor.

21 THE COURT: They'll be received.

22 (State's Exhibit 157 through 162 admitted.)

23 BY MS. WECKERLY:

24 Q Dr. Olson, in the process of the autopsy, are
25 there ever x-rays taken of the decedent?

1 A Yes, there are.

2 Q And could I ask you to put on State's 157,
3 please.

4 And looking at -- do you want that turned?

5 A Yes, please.

6 Q Okay.

7 A It's a little bit easier for the jury to figure
8 out what they're looking at.

9 Q Does that work?

10 A Yes.

11 Q Okay. Looking at what now is on our monitor as
12 State's 157, obviously that's an x-ray, but can you describe
13 how you would use this image in your work.

14 A Sure. So what you're looking at is an x-ray,
15 and it was taken not from front to back, but it was taken from
16 side to side. So you can see her jaw down here and the back
17 of her head is back here, just so you know where things are.
18 When I look at x-rays, particularly when someone has been
19 shot, what I'm looking for is where the bullet is or where the
20 fragments are, so that I can go in and recover them.

21 In this particular instance she has fillings in her
22 teeth, and she has a tongue piercing which you can see here.
23 But she also has some metal fragments that basically ended up
24 not quite in the roof of her mouth, but just above that. So
25 those are the bullet fragments that I went in and recovered

1 during the course of the autopsy.

2 Q And I'm just putting on the monitor now State's
3 158. What are we looking at in this photograph?

4 A This photograph is a picture of the tag,
5 identification tag. So it lists Ms. Newman's name here as
6 well as the case number that she was assigned at the coroner's
7 office. Every death that's reported to the coroner's office
8 is assigned a specific and unique case number. So in this
9 case it was 10, which represents 2010, and then 6545.

10 This is -- this photograph also contains some
11 portions of the bag in which her body was received at the
12 coroner's office, and there's a little blue tag which is a
13 seal. So that closes the body bag so that no one can tamper
14 with it until it's time for us to officially open it and start
15 our examination.

16 Q And that placard with the -- the gray placard
17 with the Number 106545, would that be a unique number assigned
18 to every autopsy?

19 A Well, that was the unique number assigned to
20 Derecia Newman's case and her autopsy. So that photo tag is
21 in most of the photographs that were taken of her during the
22 course of the autopsy.

23 Q And in that way you're able to make sure that
24 the photographs are -- belong to this particular autopsy?

25 A Yes. That's correct.

1 Q Now we're going to put on the overhead State's
2 159.

3 And because obviously the injury's to the right side
4 and part of that was cut off in the larger view, we're going
5 to work with it, if it's okay with you, Doctor, in this
6 smaller format.

7 A Sure.

8 Q Okay. And describe what we're looking at in
9 this exhibit.

10 A This particular photograph was taken before I
11 started my examination during the course of processing. So
12 she's still wearing the clothing that she wore when she died.
13 And in this particular case, in this photograph it's taken
14 from the left side of her body, so you can see the left side
15 of her face, the left side of her chest.

16 You can see her left arm. You can see her abdomen,
17 and you can see part of her pelvis. And in this particular
18 photograph you can see that she has a very large injury that
19 involves the majority of her left forehead and upper face.

20 Q Now, when you conduct an autopsy, do you take
21 note of how the decedent presents before you conduct the
22 autopsy?

23 A Sometimes it's important, sometimes it's not.
24 I -- if I have the opportunity, I usually try and describe the
25 clothing. Sometimes that's key, because if an article of

1 clothing is present over the skin where someone was shot, that
2 can represent a barrier to certain parts of a gunshot wound
3 that help determine what the range was.

4 In this particular case she didn't have any clothing
5 that was present, that I knew to be present on her face, so it
6 wasn't of prime importance for me to look at her clothing and
7 look at her as she was received.

8 Q And obviously in this particular case the injury
9 that she suffered is -- it's obvious.

10 A Yes, it is obvious.

11 Q Okay. We'll put on the overhead now 160,
12 please.

13 And then in State's 160, what do you take note of in
14 that photograph as a forensic pathologist?

15 A I take note of the appearance of the gunshot
16 wound. And in this particular instance the appearance of the
17 gunshot wound tells me that the end of the barrel was in
18 contact with her forehead when the shot was fired.

19 Q How are you able to tell that the barrel of the
20 gun was in contact with her forehead at the time the gun was
21 fired?

22 A Because of the characteristics of the wound.
23 When a gun is fired, a bullet isn't the only thing that comes
24 out the end of the barrel. There is hot gas which comes from
25 the gunpowder burning. There is soot from the burned

1 gunpowder, and sometimes there are particles of unburned
2 gunpowder. And what you see on the skin's surface can tell
3 you a lot about how much distance there was between the end of
4 the barrel and the skin surface when the gun was fired.

5 In this particular instance the wound tells me that
6 the barrel was pressed against her skin. And the reason I say
7 that is because when the barrel is pressed against the skin,
8 particularly on gunshot wounds of the head, when that gas
9 comes out of the end of the barrel, it basically -- it can't
10 escape out into the air. It goes into and around and under
11 the skin. And it basically balloons the skin out and it tears
12 it.

13 Another reason that I can say it was a contact wound
14 is because if you were to see a photograph of the -- a
15 close-up photograph of the wound, the entry wound, there's
16 actually black soot that's deposited in the wound and also on
17 the skull underlying this injury. That tells me that again,
18 the barrel was in contact with her skin when the gun was
19 fired.

20 Q And when you were explaining your last answer,
21 you actually pointed to your forehead, and her injury goes
22 below her eye. Were you able to tell from looking at her
23 injury where the barrel was in contact with on her face as
24 well --

25 A Yes.

1 Q -- because of the soot?

2 A It was basically in the mid portion of the left
3 side of her forehead.

4 Q And I think you explained because of the energy
5 that escapes from the barrel of the gun, that that makes
6 the -- sort of the skin expand. When she presented or when
7 you examined her at autopsy, how, I guess, deep did that type
8 of injury go into her head? I mean, all the structures appear
9 to be damaged; would that be fair?

10 A She had extensive injuries. She had skull
11 fractures which went down into the -- there's a bony roof over
12 the top of the eyes. Those areas were fractured. The base of
13 her skull was fractured. The front of her brain was
14 extensively torn. Her left eye globe had been damaged, so it
15 was deflated.

16 She had fractures in the bones of her face, and I
17 actually recovered two fragments of the missile from deep in
18 her face, basically at the junction of her nose and her -- the
19 roof of her mouth.

20 Q And this may be a silly question. If you suffer
21 an injury like that, are you immediately -- are you
22 immediately dead?

23 A Someone with this type of injury, they might
24 take a few breaths, they might have a heartbeat for maybe a
25 few minutes, but it would be rapidly fatal.

1 Q And Doctor, I'm now putting on the overhead
2 State's 161. And obviously that's her hand. What's the
3 purpose of documenting how a decedent's hands appear at
4 autopsy?

5 A Well, we take photographs of their entire body,
6 but we do take specific photographs of their hands because
7 we're interested in whether they tried to fend someone off or
8 whether there was a fight before this person died. And in her
9 particular instance there's a little bit of blood. You can
10 see it on her thumb. But she didn't have any injuries on her
11 hands.

12 Q And I'm going to just put on the photograph of
13 her other hand, which is 162. And neither of her hands had
14 any what we would call defensive injuries?

15 A That's correct.

16 Q Is a toxicology performed in the course of an
17 autopsy?

18 A Yes.

19 Q And was that done in this case?

20 A It was.

21 Q Do you recall what your findings were, what the
22 findings were?

23 A Sure. The toxicology report indicated that she
24 had marijuana and one of its metabolites present in her blood
25 at the time that she died.

1 Q And did the toxicology, in your opinion, have
2 any bearing at all as to the cause or manner of death in this
3 case?

4 A No.

5 Q Besides the big injury on her head, were there
6 any other notable findings on the rest of her body showing
7 evidence of injury, or was it unremarkable?

8 A It was basically unremarkable. She didn't have
9 any other significant injuries.

10 Q Based on your -- the totality of your
11 examination of her, did you reach an opinion regarding the
12 cause of death?

13 A I did.

14 Q And what was that?

15 A She died as the result of a gunshot wound at the
16 head.

17 Q And did you reach a conclusion regarding the
18 manner?

19 A I did.

20 Q And what was that?

21 A The manner of death is listed as homicide.

22 Q Thank you.

23 MS. WECKERLY: I'll pass the witness, Your Honor.

24 THE COURT: Mr. Oram.

25 MR. ORAM: Thank you.

CROSS-EXAMINATION

BY MR. ORAM:

Q Good morning, Dr. Olson.

A Good morning.

Q Just a couple questions for you. You talked briefly about bullet fragments. Do you recall that?

A I do.

Q And were there multiple bullet fragments that you found, or was this mostly an entire bullet?

A I recovered two fragments.

Q Do you recall how large they were, or is that something you didn't pay much attention to?

A I didn't record it in my report and I don't recall at this point.

Q But you noted it just because you saw it as this is the bullet that killed her; is that right?

A Yes. We make a habit of recovering bullets and we turn them over to the crime scene analyst.

Q Also, there appears to be quite a lot of blood at the scene connected with the victim in this case. That doesn't seem unusual to you at all, does it?

A No, it doesn't.

Q In fact, she would have bled quite rapidly and profusely?

A Given the extent of her injuries, yes.

1 Q And since you said it was a contact wound, you
2 find that as a result of stippling; is that right?

3 A No. In fact, she didn't have any stippling, and
4 that's one of the reasons why I say it was a contact wound.

5 Q Okay. So she didn't have stippling, so what you
6 conclude is that the gun was pressed against her head?

7 A Correct.

8 Q And I don't know if you've ever seen the gun in
9 this case, but I think they say it's about 11 inches long.
10 Okay. It's the size of a large gun. Okay. So my question to
11 you would be the hand or the arm at the end of that gun could
12 easily have obtained blood on the --

13 A Possible.

14 Q Possible or plausible?

15 A I'll stick with possible.

16 Q And in fact, blood could have come out all over
17 the shooter?

18 A Possible.

19 Q But no reason to dispute that? In other words,
20 it could be, maybe it's true, maybe it's not; is that what
21 you're saying?

22 A Yes.

23 Q And I don't know -- strike that.

24 There was another victim inside the home, and she was
25 shot in the stomach. Okay. Would a stomach wound bleed a

1 lot?

2 A Sometimes they do and sometimes they don't.

3 Q If a person -- when you say that, is it more
4 common or not for a wound like that to bleed profusely, a
5 stomach wound?

6 A Again, it's depending on where the injury is and
7 what the bullet hit as to whether someone bleeds a lot from --
8 well, if someone bleeds a lot outside of their abdomen when
9 they are shot in the abdomen.

10 Q So fair to say that the perpetrator may have had
11 blood on him or her, or they may not; is that fair to say?

12 A Yes.

13 Q And no reason to dispute that whatsoever, that
14 it could happen and maybe it did happen and maybe it didn't?

15 A Correct.

16 Q If a person was shot in the stomach with a large
17 caliber bullet, and then somebody other than the victim was
18 going through the pockets of that person, that would perhaps
19 expose the person to blood?

20 A Possibly.

21 Q And you sound again unsure. Is that because you
22 just don't know enough facts to make that determination?

23 A Yes. I don't know anything about the other
24 victim aside from the fact that someone else was shot.

25 MR. ORAM: Nothing further.

1 MR. LANGFORD: Nothing from Mr. Mason.

2 THE COURT: Any redirect?

3 MS. WECKERLY: No, Your Honor. Thank you.

4 THE COURT: Thank you for being a witness, Doctor.
5 You'll be excused.

6 THE WITNESS: Thank you, Your Honor.

7 THE COURT: Have a good day.

8 MR. DiGIACOMO: Judge, our next witness is in the
9 back. It's Monica Martinez.

10 (Pause in proceeding.)

11 MONICA MARTINEZ, STATE'S WITNESS, SWORN

12 THE CLERK: Please state your name and spell your
13 first and last name for the record.

14 THE MARSHAL: You need to speak directly into the
15 microphone.

16 THE COURT: Move your chair up there a little bit.
17 Thank you.

18 THE WITNESS: Monica Martinez, M-o-n-i-c-a,
19 M-a-r-t-i-n-e-z.

20 MR. DiGIACOMO: May I inquire, Judge?

21 THE COURT: Yes.

22 DIRECT EXAMINATION

23 BY MR. DiGIACOMO:

24 Q Ma'am, how old are you?

25 A Forty-three.

1 Q Where do you currently reside?

2 A Clark County.

3 Q Right now. Where'd you wake up this morning?

4 A At Clark County Detention Center.

5 Q The Clark County Detention Center. How long
6 have you been there?

7 A About 4 1/2 years.

8 Q I'm going to direct your attention to before you
9 went to the Clark County Detention Center, so early 2010. Did
10 you meet an individual that ultimately you learned his name
11 was Jerome Thomas?

12 A Yes.

13 Q What did you call him?

14 A Job-Loc.

15 Q Job-Loc?

16 A Yes.

17 Q Would that be J-o-b, L-o-c?

18 A Yes.

19 Q How do you meet Job-Loc?

20 A I was seeing another guy that knew him.

21 MR. SGRO: Judge, I can't hear her.

22 THE COURT: Can you pick her up all right?

23 THE MARSHAL: I'll raise the microphone up, Judge.

24 MR. DiGIACOMO: Give us just a second. We're going
25 to move that microphone up in front of you, okay?

1 THE COURT: Can you pick her up all right?

2 BY MR. DiGIACOMO:

3 Q Ms. Martinez, at times you have a soft voice.
4 Everybody's got to hear you. That's why I'm going to stand
5 back here, because if I can't hear you, then they can't hear
6 you, okay?

7 A Okay.

8 Q You said that you met Job through somebody else.
9 Who is the person that you met him from?

10 A Shawn Clinkscale.

11 Q And did Shawn have a nickname?

12 A S-Loc.

13 Q S-Loc?

14 A Yes.

15 Q And did Shawn and Job know each other?

16 A Yes.

17 Q And were they from a particular state?

18 A Yes.

19 Q What state is that?

20 A California.

21 Q And was there a particular neighborhood in that
22 state that they were from?

23 A When you mean neighborhood, what are you talking
24 about?

25 Q Is there a town? Let's go with that.

1 A San Bernardino.

2 Q About when do you meet Job-Loc?

3 A It was either January of 2010 --

4 Q If this incident occurred in August of 2010,

5 it's seven, eight months, somewhere in that range?

6 A Yes.

7 Q When do you -- do you eventually start a

8 relationship with Job-Loc?

9 A Yes.

10 Q When do you start the relationship with Job-Loc?

11 A Probably about March or April 2010.

12 Q And how does that come about? How do you wind

13 up in a relationship with Job?

14 A An argument between me and Shawn and we had

15 broke up. He had made a pass at my daughter, and then I

16 went -- I went running, crying to Job-Loc.

17 Q You mentioned you have a daughter. What's her

18 name?

19 A Tyler.

20 Q Do you have other children as well?

21 A Yes.

22 Q Who are your other children?

23 A Willie and Deangela [phonetic].

24 Q And how old are Willie and Deangela?

25 A Nineteen and 16.

1 Q Today they're 19 and 16. So we're talking four
2 or five years ago, 15 and 12, somewhere in that range?

3 A Yes.

4 Q Where -- well, when you meet Job, do you have a
5 job? Do you have a regular job?

6 A Yes.

7 Q And how were you employed?

8 A You mean my title?

9 Q Who were you working for?

10 A Novum Pharmaceutical Research Company.

11 Q And what does that mean you do for a living --
12 or did for a living?

13 A I was a recruiter, a receptionist, appointment
14 setter.

15 Q And was this a regular 9:00 to 5:00 type job?

16 A Yes.

17 Q How long had you been there when you met Job?

18 A Three and a half years.

19 Q At some point do you and Job start having a
20 discussion about needing more money?

21 A Yes.

22 Q Describe that for the ladies and gentlemen of
23 the jury.

24 A I'm sorry?

25 Q Describe that for the ladies and gentlemen of

1 the jury, the discussion.

2 A He said that --

3 MR. ORAM: Judge, objection as to what Job-Loc said.
4 It's hearsay.

5 MR. DiGIACOMO: It goes directly to her state of
6 mind.

7 THE COURT: If it goes to why she did what she did,
8 the objection's overruled.

9 MR. DiGIACOMO: Thank you, Judge.

10 THE WITNESS: He said that he needed an attorney,
11 that he was on the run, that he needed an attorney.

12 BY MR. DiGIACOMO:

13 Q And did he ask you for anything?

14 A He always asked me for money.

15 Q Did Job have a regular employment? I don't want
16 to say did Job have a job. So did Job have a regular
17 employer?

18 A No.

19 Q How was Job making his money?

20 A Basically off of me.

21 Q Were you and Job -- you or Job engaged in any
22 sort of illegal activity in order to acquire money?

23 A Yes.

24 Q Which one, you or Job?

25 A Both.

1 Q Let's start with Job. What was Job doing?

2 A Selling pills or weed.

3 Q When you say pills, you mean prescription
4 medication?

5 A And also on street. Yes, both.

6 Q Street drugs as well?

7 A Yes.

8 Q Do you remember what street drugs he was into?

9 A Ecstasy.

10 Q Along with selling drugs, Job ever use them?

11 A Yes.

12 Q And let me ask you this. Was he making any
13 money off of his selling business?

14 A A little bit. He did -- whatever he did make he
15 would just drink or buy food.

16 Q Well, it wasn't --

17 A I don't know what he did when I wasn't there.

18 Q From your perception, was Job's drug business a
19 lucrative business?

20 A No.

21 Q At some point does he ask you to do something?

22 A Yes.

23 Q What did he ask you to do?

24 A You mean outside of selling the pills and the
25 marijuana?

1 Q Well, does he ask you to sell the pills and
2 marijuana as well?

3 A Yes.

4 Q And do you do so?

5 A The marijuana.

6 Q What'd you do with the money that you would make
7 from selling the marijuana?

8 A Give it to him.

9 Q With the exception of your household expenses,
10 what'd you do with your other extra money?

11 A It just went to my kids or to what I had to pay.

12 Q Did Job ever ask you to do anything else?

13 A Yes.

14 Q What did he ask you to do?

15 A Prostitution.

16 Q When Job asks you to engage in prostitution,
17 describe for the ladies and gentlemen of the jury the nature
18 of that conversation.

19 A He said, Mon, he said, I really need this money
20 for an attorney. I know I can beat this case, and you don't
21 have to do it. He just came like real subtle with it. He
22 didn't just point blank tell me to do it. And he said, But
23 you know what, I just need this money. So I kind of
24 volunteered to. I brought it up, about prostituting.

25 Q And did you in fact turn tricks?

1 A Yes.

2 Q When did that start?

3 A Probably around July of 2010.

4 Q In July of 2010, does Job also wind up getting
5 injured somehow?

6 A Yes.

7 Q Explain to the ladies and gentlemen of the jury
8 what you know about that.

9 MR. ORAM: Judge, objection. Foundation.

10 THE COURT: Well, all right. Lay a foundation as to
11 how she knows of it.

12 BY MR. DiGIACOMO:

13 Q The day that Job got injured, where were you?

14 A I was at work.

15 Q Had you loaned your car to anybody?

16 A Yes. I loaned it to Job.

17 Q And at some point do you find out that Job is
18 injured?

19 A Yes.

20 Q And did you go and see Job?

21 A Yes.

22 Q Where is he?

23 A At UMC hospital.

24 Q At UMC -- well, let me ask you this. Before he
25 ever goes to UMC, had you done anything to help Job with his

1 identity?

2 A No. Prior to the UMC?

3 Q Yes.

4 A No.

5 Q At some point do you help him with his identity?

6 A Yes.

7 Q What do you do?

8 A I had access at my job, I had access to clients
9 that do the studies there, and I found somebody that fit his
10 age and height, weight description, and got the name and
11 Social Security and gave it to him.

12 Q How many people did you write down?

13 A About three or four.

14 Q What name ultimately does Job take from the
15 group that you provided him?

16 A Albert Davis.

17 Q After Job's injury where he goes to UMC, do you
18 ever try and get him additional medical treatment?

19 A Yes.

20 Q What do you do?

21 A I drove him to Utah. I took him to an emergency
22 room out there.

23 Q Why'd you drive him to Utah?

24 A He was afraid that he would be arrested, like
25 he -- that they would find out because he was on the run. He

1 wanted to avoid that.

2 Q So you helped him by taking him to Utah?

3 A Yes.

4 Q Did he get much in the way of medical assistance
5 in Utah?

6 A No.

7 Q So what'd you do?

8 A Took him to -- well, they did the x-rays and
9 everything in Utah, and they told him that he definitely
10 needed surgery. There was -- there was no way around it from
11 the break that he had in his leg. And so they said that it
12 was best that he --

13 MR. ORAM: Judge, objection as to what doctors said.
14 It's hearsay.

15 THE COURT: It probably is. Sustained.

16 BY MR. DiGIACOMO:

17 Q Based on what the doctors told you, did you make
18 a decision as to what you were going to do in order to help
19 Job get the surgery he needed?

20 A Yes. I took him to Sunrise Hospital and under
21 the name of Albert Davis.

22 Q Did he actually have the surgery there?

23 A Yes.

24 Q Describe for the ladies and gentlemen of the
25 jury the nature of that surgery.

1 MR. ORAM: Judge, objection. Foundation.

2 MR. LANGFORD: Relevance, Your Honor.

3 THE COURT: Well, does it make any difference?

4 MR. DiGIACOMO: Well, it's highly relevant that the
5 injury still exists as of August 7 --

6 THE COURT: Well, if she knows what was done because
7 she observed his healing, I suppose it's -- she can describe
8 what she saw, not what she heard, because that would be
9 hearsay.

10 BY MR. DiGIACOMO:

11 Q Do you in fact -- let me ask you this. Do you
12 get the medical -- or some of the medical records and x-rays
13 from both Utah and Sunrise?

14 A I don't remember for Utah. Well, I remember
15 having the x-rays, but I don't remember from which one. And
16 the medical, yes.

17 Q And did you have an understanding in your mind
18 as to what type of injury he had to his leg?

19 MR. ORAM: Same objection. Foundation.

20 THE COURT: That was a yes or no question. All
21 right. Overruled.

22 BY MR. DiGIACOMO:

23 Q Do you have an understanding of the severity of
24 his injury?

25 A Yes.

1 Q And did he in fact get surgery on his leg?

2 A Yes.

3 Q After the surgery, who cared for him?

4 A Mostly me. But when I was at work, he had
5 friends.

6 Q Did he have any sort of devices he had to wear
7 after the surgery?

8 A It was a -- it wasn't a cast. It was something
9 that was Velcro that he could adjust. And it had the things
10 on the side to adjust the angle of his leg.

11 Q Did he have to use anything to help him move
12 around?

13 A Crutches.

14 Q And was he able to or did you ever see him able
15 to put weight on the knee that was injured?

16 A Seldom. He was in too much pain to do that. He
17 couldn't do it.

18 Q Coming up to August 7th and thereafter, did Job
19 still have the medical brace on his knee?

20 A Yes.

21 Q And was he still in need of crutches?

22 A Yes.

23 Q Now, did you have a residence?

24 A Yes.

25 Q Who lived at that residence?

1 A My children and myself.

2 Q Do you remember where that residence was
3 located?

4 A Off Cinnabar. I had just moved there.

5 Q Where is that in town?

6 A The east.

7 Q The east part of town?

8 A Yes.

9 Q Did Job have his own place?

10 A He stayed at his -- it was a relative's
11 apartment that he stayed at.

12 Q What -- do you know what relative it was?

13 A I think it was his cousin. I don't know the
14 name.

15 Q Male or female?

16 A Male.

17 Q And what apartment was that? Like where is that
18 apartment?

19 A Off of Torrey Pines and -- I don't remember.

20 Q But Torrey Pines?

21 A Area.

22 Q Was it some distance from your house?

23 A Yes.

24 Q Do you remember the name of the apartment
25 complex?

1 A Brittnae Pines.

2 Q The Brittnae Pines apartments?

3 A Yes.

4 MR. SGRO: Your Honor, I'm sorry. May we approach
5 very briefly?

6 THE COURT: Yes.

7 (Bench conference.)

8 MR. SGRO: I apologize for the interruption. But
9 there is a witness in the back, some -- Monica Martinez has
10 some family here. We noticed Manny Meara [phonetic], who's
11 her cousin, as a witness in this case. When they walked in I
12 didn't recognize them, so I had Ms. Weaver go through and
13 figure out who everyone was. Now there's a gentleman back
14 there who refused to give us his name.

15 They all are sitting together and came in around the
16 same time, so I'm assuming they're all associated with
17 Ms. Martinez. And just so you know, Your Honor, Ms. Martinez,
18 while she's in custody, communicated and continues to
19 communicate with family and in some of those cases discusses
20 the case, which is why they are subpoenaed witnesses, just to
21 give you some context.

22 Long story short, if they're witnesses, they can't be
23 here while she's testifying. And I know I have one subpoenaed
24 and one I just don't know what his name is.

25 THE COURT: Your witness, State. You haven't invoked

1 the exclusionary rule to the best of my knowledge.

2 MR. DiGIACOMO: [Inaudible] for them to be able to
3 call any witness they need to call. [Inaudible.]

4 MR. SGRO: Yeah. We don't want them sitting here
5 through all witnesses.

6 MR. DiGIACOMO: They're subpoenaed?

7 MR. SGRO: Yeah.

8 (Inaudible.)

9 THE COURT: Sure. If they're witnesses, they can be
10 excluded.

11 MR. SGRO: [Inaudible] from this point forward. I
12 mean --

13 THE COURT: Tell the marshal to exclude them.

14 (Inaudible.)

15 MR. SGRO: He won't give me his name.

16 MR. DiGIACOMO: He doesn't have to give you his name.

17 MR. LANGFORD: It's only in an abundance of caution
18 we should exclude him.

19 MR. ORAM: If he's going to be --

20 MS. WECKERLY: Well, if he's not subpoenaed --

21 THE COURT: If they're witnesses, they can be
22 excluded. Now, if he's not a witness, he can sit here.

23 MR. SGRO: Right. But I don't know. I can't -- I
24 don't know him, Your Honor.

25 MS. WECKERLY: So just say who you subpoenaed and

1 then we'll figure out if that's him.

2 MR. SGRO: So everyone but the man has to go.

3 THE COURT: Yeah.

4 (End bench conference.)

5 THE COURT: All right.

6 (Pause in proceeding.)

7 THE COURT: All right. Mr. DiGiacomo.

8 MR. DiGIACOMO: Thank you.

9 BY MR. DiGIACOMO:

10 Q Ma'am, I apologize. I forgot where I was. So
11 let me back up. We were talking about Job and Job's injury to
12 his leg. Oh, no. I'm sorry. Now I'm at the apartments, and
13 you were at the -- he said you -- he stayed at the Brittnae
14 Pines apartments.

15 A Correct.

16 Q Is that a multiple story apartment complex?

17 A Yes.

18 Q What floor was he on?

19 A He was upstairs.

20 Q And did anybody else live there with Job on a
21 permanent basis?

22 A No.

23 Q So that was his apartment?

24 A Pretty much his.

25 Q Did Job ever live with you?

1 A He didn't live with me, but he was there
2 frequently. He was there a lot.

3 Q Had Job met your daughter, Tyler?

4 A Yes.

5 Q Had he met your two sons?

6 A Yes.

7 Q I want to direct your attention sometime July,
8 August. Is there any point in time when you take a trip to
9 California with Job?

10 A Yes.

11 Q How many times did you drive Job to California?

12 A I drove him twice, and another time he went out
13 there on his own and I picked him up. I drove out there to
14 pick him up. So I was out there about three times.

15 Q So let's talk about that. You said twice you
16 drove him and once you picked him up in California --

17 A Yes.

18 Q -- is that what you just said?

19 A Yes.

20 Q Let's talk about those times. Can you remember
21 generally when the first time you went to California was with
22 him?

23 A Around -- you mean the time, month?

24 Q Yes.

25 A No, I don't remember.

1 Q When you went to California with Job, did you
2 ever go with anybody else in the car to California?

3 A Yes.

4 Q Who?

5 A I don't remember both their names. One of them
6 was Blue, but I don't remember. I don't remember their names.

7 Q When you picked Job up and came back or you
8 drove there with Job and came back, did you ever come back
9 with anybody from California?

10 A Yes.

11 Q Let's talk about there's three separate times
12 you've now driven back from California. The first time, do
13 you remember anybody being in the car with you and Job?

14 A The very first time was my daughter. My
15 daughter drove out there with us. Well, now, actually, when
16 she -- she drove with me when I went to go pick him up.

17 Q And then she stayed there?

18 A No. It was just we went to pick him up and come
19 back.

20 Q So the time that you didn't drive him there,
21 just to go pick him up, you took Tyler with you?

22 A Yes.

23 Q Any other time that you drove anybody back?

24 A Yes. And that was the last -- the last time I
25 was out there, the last trip.

1 Q The last trip you were out there?

2 A Yes.

3 Q And how many people did you bring back with you?

4 A Two.

5 Q Do you remember either one of those people's

6 names?

7 A Yes.

8 Q What were their names?

9 A What I -- what I know them as?

10 Q Well, let me ask you this. Do you now know

11 their names?

12 A Yes.

13 Q Okay. At the time that you're driving them

14 back, did you know one or both of their names?

15 A Their legal names, no.

16 Q So let's talk about what you called them back

17 then. You tell me what the -- the two people that were in the

18 car, what the names that you knew them as.

19 A G-Dogg and D-Shock.

20 Q Did you say Shock, S-h-o-c-k?

21 A I believe so. That's how I say it, yeah.

22 Q Now, this is 4 1/2 years later. Four and a half

23 years later do you know the true names or the given names of

24 G-Dogg and D-Shock, as you call him?

25 A Yes.

1 Q So let's start with G-Dogg. Who is G-Dogg?

2 A Willie Mason.

3 Q And then D-Shock, what's his true name?

4 A David Burns.

5 Q Now, up until you get arrested for this case,
6 did you know their true names?

7 A No.

8 Q So during the time period you knew them, you
9 knew them just by their nicknames?

10 A Yes.

11 Q Let's talk about Mr. Mason. And I know there's
12 a lot of monitors in this courtroom, but do you see Mr. Mason
13 here in court today?

14 A Yes.

15 Q Can you -- I know it's hard to point with your
16 shackles on, but generally can you point in the direction and
17 describe some article of clothing he's wearing?

18 A Black shirt with glasses hanging.

19 MR. DiGIACOMO: May the record reflect identification
20 of Defendant Mason, Judge?

21 THE COURT: The record will so reflect.

22 BY MR. DiGIACOMO:

23 Q And then do you see the person that you knew as
24 D-Shock here in court?

25 A Yes.

1 Q Can you point him out and describe some sort of
2 article of clothing he's wearing?

3 A It looks like a blue shirt. He has long hair.

4 Q He's the gentleman with long hair at the table
5 next to me?

6 A Yes.

7 MR. DiGIACOMO: May the record reflect identification
8 of Mr. Burns?

9 THE COURT: The record will so reflect.
10 BY MR. DiGIACOMO:

11 Q The time that you were driving, was Job in the
12 car too?

13 A Yes.

14 Q You got Job, you have G-Dogg and you got D-Shock
15 in the car. Had you ever met G-Dogg or D-Shock before they
16 got in your vehicle?

17 A I think I met Willie before, G-Dogg.

18 Q You think you had met G-Dogg before?

19 A Yes.

20 Q And --

21 A I know him a little bit longer than prior to
22 when I met --

23 MR. LANGFORD: I can't understand about half of what
24 she's saying, Your Honor.

25 THE COURT: Can you just lean a little forward so

1 that it picks up your voice, please. Thank you.

2 BY MR. DiGIACOMO:

3 Q When had you met G-Dogg before?

4 A I don't remember. It's probably at -- I
5 honestly can't say when. I don't remember.

6 Q Was it here in Las Vegas, or was it in
7 California with one of the times with Job? Do you remember
8 that?

9 A I don't remember.

10 Q How long prior to the incident we're here to
11 talk about today, how long before that is this trip where you
12 drive G-Dogg and D-Shock back to Las Vegas?

13 A Maybe two weeks prior to the incident.

14 Q When you bring them back, where do G-Dogg and
15 D-Shock stay?

16 A At my house.

17 Q What about Job, does he stay at your house at
18 that point in time too?

19 A Yes.

20 Q Do G-Dogg and D-Shock meet your family?

21 A Yes.

22 Q Including your daughter, Tyler?

23 A Yes.

24 Q How long did they stay at your house for?

25 A A few days. Maybe three or four days at the

1 most.

2 Q Three or four days at the most, and then where
3 do they go?

4 A Back to the Brittnae Pines apartments.

5 Q With Job?

6 A Yes.

7 Q Are you continuing to work during this time
8 period?

9 A At Novum?

10 Q Yes.

11 A Yes.

12 Q Okay. And I apologize. When I use the term
13 "work," I'm talking legitimate activity. And I'm sorry. Is
14 that a yes for the record?

15 A Yes.

16 Q Were you also continuing to engage in the
17 illicit conduct you've described to the jury previously?

18 A Yes.

19 Q During the time period other than the time
20 period that D-Shock and G-Dogg are at your house, do you see
21 D-Shock and G-Dogg prior to the evening of August 6 into the
22 early morning hours of August 7?

23 A No, not that I -- no. I don't remember.

24 Q On the evening of August 6, somehow you wind up
25 coming into contact with G-Dogg and D-Shock?

1 A Okay. You're saying the August 7, because the
2 after midnight time, right?

3 Q Yeah. Let me clarify it for you.

4 A Okay.

5 Q The homicide, if I will represent to you,
6 occurred at shortly before 4:00 a.m. on the 7th. The 6th
7 would have been that night into the early morning would have
8 been the 7th. So when I'm talking about the 6th, I'm talking
9 the evening before the homicide.

10 A The evening of the 6th I did have contact with
11 Job.

12 Q And how is it that -- well, let me ask you this.
13 On the day of the 6th did you work?

14 A Yes.

15 Q Did you have a car?

16 A Yes.

17 Q What kind of car was it?

18 A A Ford Crown Victoria.

19 Q What color was it?

20 A Silver-ish gray.

21 Q Was that the same car you had loaned Job on the
22 day that he winded up getting the injury to his knee?

23 A Yes.

24 Q After work, what happens? Just describe it for
25 the ladies and gentlemen of the jury. How is it you wind up

1 coming into contact with G-Dogg and D-Shock?

2 A After I got off of work I stopped and grabbed
3 some alcohol, and I went home and relaxed and spent time with
4 the kids and fell asleep. And earlier that day when I was at
5 work, Job asked if I was going to go out soliciting that night
6 and I told him yes. It was -- I had fell asleep, and he just
7 kept --

8 MR. ORAM: Judge, I wouldn't normally object to
9 hearsay. However, it seems to me that if she is just telling
10 us that based upon what she did next, that's fine. But I just
11 want the Court to recognize it sounds like hearsay. But if
12 that's what it's coming in for, then that --

13 THE COURT: It sounded like he had called her to tell
14 her something to do, which is not hearsay.

15 MR. ORAM: Fine, as long as it's what she does next
16 as opposed to anything [inaudible].

17 THE COURT: Yeah.

18 BY MR. DiGIACOMO:

19 Q So Job had asked you earlier in the day whether
20 or not you were going to go out soliciting that night?

21 A Yes.

22 Q To make money?

23 A Yes.

24 Q And what was your answer to him when he asked
25 you that?

1 A I told him yes, I would.

2 Q When you went home and you picked up the alcohol
3 and you got home, you said you fell asleep?

4 A Yes.

5 Q So how is it that you wind up waking up that
6 night?

7 A He kept calling me and calling me. He was upset
8 because I wasn't out yet. And it was probably around
9 11:00-ish the last time he called. I told him I was on my way
10 over there. And that's when he told me that his homies needed
11 a ride to go meet their people. And I said, Well, what do you
12 want me to do.

13 I offered to pick them up and I said, I don't know if
14 they have ID's or anything because, you know, I'm going to be
15 downtown freelancing. And he told me just to go swing by,
16 that they had -- that his homie had been trying to get ahold
17 of his people for the last three days and he needed to go get
18 ahold of him, so I went over there and I picked them up.

19 Q I'm sorry. I didn't hear that last part. He
20 said his homie's been trying to get ahold of his people for
21 the last three days and what?

22 A And so I went over there to go -- to go pick up
23 his homies.

24 Q So you physically drive your car to the Brittnae
25 Pines apartments?

1 A Yes.

2 Q And do you go inside the apartment?

3 A Yes.

4 Q And is there any discussion with G-Dogg and
5 D-Shock, kind of what's going to happen that night?

6 A No.

7 Q What happens? What do you do?

8 A We leave from there and I go to a downtown area,
9 because I had been to the Golden Nugget before freelancing.

10 Q That's the second time I've heard you use the
11 term "freelancing." It may be somewhat obvious to some
12 people, but explain what freelancing is to the ladies and
13 gentlemen of the jury.

14 A Just sitting in the casino area waiting for
15 potential trick, a john, I don't know what to say, to approach
16 you for solicitation, prostitution.

17 Q So your plan was to go downtown and hopefully
18 make some money?

19 A Yes.

20 Q Who's in the car with you when you leave the
21 Brittinae Pines apartments?

22 A Willie and David.

23 Q G-Dogg and D-Shock?

24 A Correct.

25 Q And where do you first go? Where do you park?

1 A I park at the Horseshoe parking garage.

2 Q And then just describe to the ladies and
3 gentlemen of the jury once you park your car, what does
4 everybody do?

5 A We get out and walk through the casino to get to
6 the Golden Nugget. It's like right across from the Horseshoe.

7 Q Do D-Shock and G-Dogg stay with you?

8 A Yes. At that point, yes.

9 Q You said at that point yes. At some point do
10 you guys separate?

11 A Yes.

12 Q Where do you separate?

13 A They -- I was going in to prostitute, to
14 solicit. I was going into the Golden Nugget, and I gave them
15 \$10 to go buy drinks or go do whatever. At that point, when I
16 had picked him up, his -- his people weren't ready to meet up
17 yet.

18 Q Whose people weren't ready?

19 A G-Dogg's.

20 Q And did that come from G-Dogg, or did that come
21 from Job-Loc?

22 A I don't remember.

23 Q So his people weren't ready yet, you give him
24 \$10, and then where do you go?

25 A I go inside the Golden Nugget.

1 Q And how long do you think -- well, do you do
2 anything inside the Golden Nugget other than just go sit at
3 the machines?

4 A Yeah. I went to the ATM and pulled out some
5 money so I can gamble, to make it look like I wasn't just
6 soliciting.

7 Q Were you able to get a trick?

8 A No.

9 Q So what happens at that point, when you don't
10 get a trick?

11 A I don't remember if G-Dogg called me or if I
12 called him. I told him nothing was going on, so we can go
13 ahead and go to meet his people or do whatever.

14 Q And do you know approximately what time this is?
15 Is it before midnight, after midnight, do you remember?

16 A After midnight.

17 Q After midnight.

18 A Yes.

19 Q So it's late.

20 A Yes. Early morning, yes.

21 Q Early morning hours of August 7, 2010.

22 A Correct.

23 Q Do you eventually get -- meet up with G-Dogg and
24 D-Shock again?

25 A Yes.

1 Q Where do you meet up with them at?

2 A Still in the downtown area where the Fremont
3 Experience is.

4 Q So outside the Nugget, but on the Fremont
5 Experience?

6 A Yes.

7 Q And when you meet up with G-Dogg and D-Shock, is
8 either one of them talking about anything?

9 A Yes. They had mentioned there was a guy in a
10 green shirt with gold chains that they should have got.

11 Q When you say they, who's doing the talking?

12 A I don't remember.

13 Q Were they both present at the time?

14 A Yes.

15 Q And they said there's a guy in a green shirt
16 with gold --

17 MR. ORAM: Objection as to they said, Judge.

18 THE COURT: Well, it's okay. Overruled.

19 BY MR. DiGIACOMO:

20 Q There is a guy with a green shirt with gold
21 chains that they should have got; is that what they said?

22 A Yes.

23 Q Did you know at that point what they were
24 talking about?

25 A Yes.

1 Q Okay. How is it that you knew?

2 A It's just I've been around street people before.
3 I know the lingo.

4 Q What does it mean?

5 A Like they should have robbed him.

6 Q They should have robbed him. Is that the first
7 time that the discussion of robbery comes up in your presence
8 that night?

9 A Yes.

10 Q Do they actually rob the guy in the green shirt?

11 A No. We leave.

12 Q When you leave, where do you drive to?

13 A Las Vegas Boulevard. I think I stopped at the
14 7-Eleven there on Bonanza Boulevard for some cigarettes, and
15 from there we continued down to Jerry's Nugget.

16 Q And what were you guys going to Jerry's Nugget
17 for?

18 A On the way -- on the way there, D-Shock said
19 that -- that they were just at that point looking for anybody,
20 somebody in a bus stop or whatever. So we parked in the
21 Jerry's Nugget and they seen the security guard, and they had
22 talked about robbing the security guard for his gun.

23 Q At this point have you seen anybody with a
24 weapon?

25 A No.

1 Q Had you had any indication though, that somebody
2 had a weapon on them?

3 A Yes.

4 Q How did -- what indication did you have that
5 somebody had a weapon on them?

6 A Initially when we got to the Horseshoe parking
7 lot and we were coming -- walking towards the casino from the
8 Horseshoe parking lot, D-Shock had his hands in his overalls
9 and G-Dogg told him to relax, take one out so it doesn't make
10 it so obvious.

11 Q What from that made you draw the conclusion,
12 hey, one of these people may be armed?

13 A Because I knew that Job-Loc carried a weapon and
14 if he didn't have it his friends would have it.

15 Q Do you remember what kind of gun Job-Loc owned?

16 A It was a big -- a big gun, a .45 revolver.

17 Q So it was a big revolver?

18 A Yes.

19 Q Do you remember what it looked like at all?

20 A It had a wood grain handle.

21 Q Do you remember what the metal part of it looked
22 like; was it black, was it silver, was it chrome?

23 A I don't remember.

24 Q Had you seen Job with that gun before?

25 A Yes.

1 Q Where did Job normally keep that gun?

2 A When he was at the house or his apartment it
3 would be right next to him, or if like he was sleeping it
4 would be under his pillow. If we were out and about it would
5 be in a -- in a designer bag.

6 Q So now you've driven to Jerry's Nugget and
7 there's a discussion or at least D-Shock has said we're
8 looking for somebody, and you're now parked at Jerry's Nugget
9 and there's a discussion about robbing a security guard for
10 his gun. Does it happen?

11 A No.

12 Q Does anybody actually get out of the car at
13 Jerry's Nugget?

14 A We all three stepped out of the car, but we
15 didn't leave the surrounding the car. We got back in.

16 Q And you drove off?

17 A Yes.

18 Q Where do you go after you go to Jerry's Nugget?

19 A Opera House.

20 Q Did you know the Opera House?

21 A Yes. I used to work there.

22 Q Where generally is the Opera House located?

23 A North Las Vegas Boulevard.

24 Q North Las Vegas Boulevard?

25 A Yes.

1 Q And what kind of establishment is the Opera
2 House?

3 A It's a very small casino for locals. Very
4 small.

5 Q Do you enter the Opera House?

6 A Yeah. All three of us did.

7 Q You, G-Dogg and D-Shock?

8 A Yes.

9 Q Why do you stop at the Opera House?

10 A I was looking for to pick up a potential trick
11 there.

12 Q So you're still looking to make money?

13 A Yes.

14 Q What about G-Dogg's people?

15 A Still weren't ready at that time to meet up.

16 Q So when you enter the Opera House, where do you
17 go?

18 A I go to the bar and buy a drink.

19 Q Do you buy just one or more?

20 A Just one.

21 Q What about the other two, G-Dogg and D-Shock,
22 what do they do?

23 A They continued towards the back of the casino
24 and sit down at the machines.

25 Q Do you ever meet up with them in the casino

1 area?

2 A Yeah. After I bought my drink I went over there
3 and shared it.

4 Q You shared your drink with them?

5 A Yes.

6 Q Is there any discussion about G-Dogg's people
7 while you're at the Opera House?

8 A No. We sat there gambling for a little bit.
9 And G-Dogg stepped up and walked away and I asked D-Shock, you
10 know, where he went, and he said to answer his phone. And
11 then when I looked to my left I saw him and he was on the
12 phone. And then he approached and he said, We can go, go
13 meet -- go meet my people now.

14 Q So G-Dogg says we can go meet the people now.
15 Do you -- the three of you leave the Opera House?

16 A Yes.

17 Q Where do you go from the Opera House?

18 A Back to the east part of town on Nellis and
19 Vegas Valley.

20 Q Did you know who you were going to meet?

21 A No.

22 Q So describe -- well, how do you get there?
23 Who's directing you?

24 A G-Dogg.

25 Q Where do you -- where do you go? Nellis and

1 Vegas Valley, is there a particular location you go to?

2 A She was at a 7-Eleven. She had an older man
3 with her, the female that he was meeting. And then --

4 THE COURT: I'm sorry. Repeat that, because I didn't
5 understand that.

6 THE WITNESS: It was a 7-Eleven on the corner, and
7 he -- she was with another gentleman. They were -- they were
8 walking.

9 THE COURT: Who is she?

10 THE WITNESS: The person that we were supposed to
11 meet.

12 THE COURT: Oh.

13 MR. DiGIACOMO: I was just getting to that.

14 BY MR. DiGIACOMO:

15 Q So the person that you're supposed to meet was a
16 woman?

17 A Yes.

18 Q Can you describe the woman at all for us?

19 A She's an older black lady.

20 Q At the time do you physically get introduced to
21 her for name to name?

22 A No.

23 Q Do you now know 4 1/2 years later what her name
24 is?

25 A Yes.

1 Q What's her name?

2 A Stephanie Cousins.

3 Q You said when you first see Stephanie she's with
4 an older black male near a 7-Eleven. What happens?

5 A We turn up Vegas Valley towards the apartments
6 where she resides, and they walk up and meet us at the gate.
7 And there was some discussion between Stephanie and G-Dogg at
8 the window, but I wasn't paying attention to what they were
9 saying. And then the older man went to the keypad to enter
10 the gate code so that we can go through the gate.

11 Q And then do you drive into the apartment
12 complex?

13 A Yes.

14 Q Do you park in front of anyone's apartment?

15 A At the time I didn't know, but it was
16 Stephanie's apartment.

17 Q At the time you didn't know, but you now know
18 that to be Stephanie's apartment?

19 A Yes.

20 Q Was it upstairs or downstairs?

21 A Downstairs.

22 Q And when you pulled in, do you remember what the
23 parking was like? Was there covered parking, uncovered
24 parking, anything like that?

25 A There was both. I parked on the right, and so

1 it was under the awning.

2 Q And when you pulled into the parking space, did
3 you pull straight in or did you back in?

4 A Straight in.

5 Q Do you get out of the car at this point?

6 A No.

7 Q Who does?

8 A G-Dogg and D-Shock.

9 Q And before they got out of the car, I haven't
10 asked you this, when you're driving around with them, are they
11 always sitting in the same seats of your car?

12 A Yes.

13 Q So where is G-Dogg sitting?

14 A Front passenger.

15 Q And where is D-Shock sitting?

16 A Behind me.

17 Q Behind you?

18 A Yes.

19 Q So Willie and -- or sorry. G-Dogg and D-Shock,
20 they get out of the vehicle and where do they go?

21 A They went inside Stephanie's apartment.

22 Q How long were they gone for?

23 A Maybe ten minutes, five, ten minutes.

24 Q Do they eventually come out?

25 A Yes.

1 Q Does anybody explain to you what's going on?

2 A No.

3 Q Does anybody else come out with them?

4 A Stephanie and her companion.

5 Q They both came out?

6 A Mm-hmm.

7 Q Is that a yes?

8 A Yes.

9 Q So when Stephanie and her companion come out,
10 and I'm assuming G-Dogg and D-Shock came out as well?

11 A Yes.

12 Q Okay. What's going on?

13 A Can I refer to them as Willie and David?

14 Q Sure.

15 A Okay. They both get in the car, Willie and
16 David both get in the car and we leave, but I don't
17 remember -- I don't remember where we went.

18 Q So you leave that apartment complex. And how
19 long do you think you were gone for?

20 A I don't remember how long. It wasn't that long
21 that we were gone before we met back up with Stephanie,
22 because she didn't get in the car. So I want to say it's just
23 to get rid of the guy, the gentleman that she was with.

24 Q Do you meet back up with Stephanie?

25 A Yes.

1 Q Where do you meet back up with Stephanie?

2 A At her apartment, but not in -- not in front of
3 her apartment like where we were though.

4 Q Do you have to go back through the gate, or does
5 she meet you on the street?

6 A On the street.

7 Q Does Stephanie get in the car?

8 A Yes.

9 Q And where does she get in the car?

10 A In the back passenger.

11 Q So behind Willie?

12 A Yes.

13 Q Is there some discussion going on as to what's
14 happening at this point or what's supposed to be happening at
15 this point?

16 A Yes. There was --

17 Q Let me stop you first. Who's having this
18 conversation?

19 A Willie and Stephanie.

20 Q And what are Willie and Stephanie discussing?

21 A Doing robberies.

22 Q And is there a particular robbery that they're
23 discussing first?

24 A She was telling them about a guy, a white guy
25 that stayed in the apartment complex, in her apartment

1 complex. She was telling him that -- basically he was a
2 baller. He had a lot of -- a lot of money. And but she said
3 she didn't want to -- she didn't want to do that, she knew a
4 couple other places, because he lived -- he lived in her
5 apartment complex.

6 Q She says there's a -- there's a discussion about
7 a white guy and you said a baller, he has a lot of money.
8 What does a baller mean on the street?

9 A He sells a lot of weight.

10 Q He sells a lot of weight. What does selling a
11 lot of weight mean?

12 A Well, it's not just like nickel and dime.
13 It's -- I don't know how to explain it. He's just a -- he's a
14 big time dope dealer.

15 Q That's what I'm getting to.

16 A Okay.

17 Q He makes his money by selling drugs?

18 A Yes.

19 Q Okay. And he's a baller, meaning that he makes
20 good money from the drugs that he sells?

21 A Correct.

22 Q What is Willie's reaction to Stephanie saying
23 not in my apartment complex?

24 A Well, he was still adamant. He wanted to --
25 that's the one that he wanted to do. But she kept telling him

1 no, so we drove out of the apartment complex and went around
2 the corner of -- not literally around the corner, but went
3 towards Nellis and made a right on Nellis and then a left into
4 another apartment complex. And --

5 Q And do you know why you were going to this
6 apartment complex?

7 A She said that there was another -- another dope
8 dealer in there.

9 Q There's another dope dealer in that apartment
10 complex?

11 A Yes.

12 Q And was this dope dealer on the first floor or
13 the second floor?

14 A Second.

15 Q And when you pull in, are you directed to park
16 in any particular place or way or manner or anything like
17 that?

18 A Yeah. When we pull in, she had me pull up --

19 MR. ORAM: Judge, objection as to what Ms. Cousins is
20 saying. It's a violation of the confrontation clause. And
21 they keep introducing information that Ms. Cousins says.
22 We're not able to cross-examine her.

23 MR. DiGIACOMO: It's a statement by a co-conspirator
24 in the course or in furtherance of the conspiracy.

25 THE COURT: That's non-hearsay. Objection's

1 overruled.

2 MR. DiGIACOMO: Thank you, Judge.

3 BY MR. DiGIACOMO:

4 Q Let me back up just a second. I think I was at
5 the point where Stephanie has directed you to another
6 apartment complex where there's another drug dealer that could
7 be robbed?

8 A Yes.

9 Q And I was asking you about whether or not you
10 were instructed to park in a certain manner.

11 A Yes.

12 Q Can you explain that?

13 A His apartment was close to the driveway, so we
14 pulled up close to where his apartment was at parallel. And
15 three of them got out so she could show them which apartment
16 it was, and they told me to go park towards the end of the
17 buildings and just wait for them there.

18 Q And did you park down by the end of the
19 buildings?

20 A Yes.

21 Q So could you see the apartment that they were
22 going up to, to commit this robbery?

23 A No.

24 Q All three of them got out of the vehicle at this
25 location?

1 A Yes.

2 Q Who do you see first come back to the vehicle?

3 A Stephanie came back.

4 Q And did she have anything with her when she came
5 back?

6 A Yeah. She had Willie's cellphone. She told me
7 that he wanted me to have it. I don't know for what reason.

8 Q So Willie wanted you to hold on to his
9 cellphone?

10 A Yes.

11 Q You -- Stephanie comes back to the vehicle. How
12 long is she back at the vehicle before you see G-Dogg or
13 D-Shock again, or Willie and David again?

14 A Five minutes or so.

15 Q And eventually do they return to the vehicle?

16 A Yes.

17 Q Is there a discussion about what happened up at
18 that apartment?

19 A Yeah. Willie said that they didn't do anything
20 because they seen a gun through the window, and Stephanie kept
21 saying no, that he doesn't have a gun.

22 Q So there's a discussion back and forth about why
23 they didn't commit the robbery and Stephanie is telling them,
24 no, there's no gun there, and there's an argument?

25 A No. Just discussion.

1 Q So what's the conversation at that point?

2 A We leave from -- we're leaving from there and --
3 well, it was, I guess, a debate, not so much like a loud
4 argument, but she just was really persistent in saying that
5 there wasn't a gun there and they said that they weren't going
6 back up there.

7 MR. ORAM: Judge, I just want to make sure there's a
8 continuing objection. I'll stop as long as we understand that
9 there's a continuing objection to what anything Ms. Cousins
10 says. If the Court has found that it's not hearsay, then I
11 just want to make sure that I don't have to keep standing up
12 and objecting.

13 THE COURT: If you're objecting to non-hearsay
14 because it's hearsay, your objection is overruled.

15 MR. ORAM: I'm objecting to it being a violation of
16 the confrontation clause. But I understand the Court's
17 ruling. I just don't want to continue to stand up and object
18 each and every time, just so that there's preservation for the
19 objection for the record. Does that make sense, Judge, what
20 I'm saying?

21 THE COURT: It makes sense.

22 MR. DiGIACOMO: May I proceed?

23 THE COURT: Yes.

24 MR. DiGIACOMO: Thank you.

25

1 BY MR. DiGIACOMO:

2 Q So there's a discussion as you're leaving
3 between Willie and Stephanie about the gun and whether or not
4 there is a gun or not a gun inside this apartment?

5 A Yes. And Willie said that he wanted to go back
6 and rob the white guy. She kept telling him no, that there
7 was another place that she can go. There was a -- there
8 wasn't definitely any weapons there. It was women and
9 children and one guy, boyfriend to one of the girls.

10 Q So as there's the argument about, or the
11 discussion about the gun being in that apartment that they
12 went to, Willie's desire is to go back and now go get the
13 baller dope boy white guy in Stephanie's apartment, and she
14 offers up an alternative?

15 A Yes.

16 Q And you said something about she described why
17 this was a better alternative than going back to the white
18 boy. And what is it that Stephanie says about why this is a
19 better place to go?

20 A There aren't any weapons, that there was women
21 and children and only one guy in there.

22 Q And is there an agreement at some point to go
23 there?

24 A I guess so. That's where we went. They just
25 told me to drive down -- Stephanie told me to drive down

1 Nellis towards Lake Mead.

2 Q As you're driving down Nellis to Lake Mead, does
3 anybody make a statement about what's going to happen inside
4 this apartment that you're driving to with the women and the
5 children and no weapons?

6 A Yes. David said he wasn't going empty -- going
7 home empty-handed, and he was basically going to go in there
8 shooting.

9 Q Did he use the term "I'm going to go in
10 shooting"?

11 A Yes.

12 Q Did he use any other term?

13 A He said that he was going to go in there
14 shooting and just merk whoever was in there, he was going to
15 kill whoever was in there.

16 Q And you are a 39-year-old woman who has a job.
17 What are you thinking at this point?

18 A Well, I had just barely met him, so I -- I
19 wasn't really judging his character. You know, I didn't know
20 him well enough to believe that he was going to do anything
21 like that.

22 Q Would you acknowledge that you're aiding these
23 people at least in a robbery at this point?

24 A Yes.

25 Q Why?

1 A I don't know.

2 Q Where do you go?

3 A On Nellis towards Lake Mead.

4 Q And do you turn before or after you get to Lake
5 Mead?

6 A Make a right before Lake Mead.

7 Q Describe the condition of that street, the
8 lighting condition.

9 A It's very dark. It was a very dark street.

10 Q And how far do you drive down there?

11 A Quite a bit a ways from Nellis. It was far off
12 from Nellis.

13 Q Ma'am, I'm going to show you what has previously
14 been shown to counsel as State's Proposed Exhibits 1 and 2,
15 and ask you do you generally recognize the aerial view of the
16 Valley here in Clark County?

17 A Yes.

18 Q And there's a pin on here that marks the -- on
19 the Google map 5662 Meikle Lane. Do you see that pin on
20 there?

21 A Yes.

22 Q Does that generally fit your recollection of the
23 general location of where that apartment is?

24 A Yes.

25 Q Does it appear to fairly and accurately reflect

1 what Google Earth has for pictures of Clark County?

2 A Yes.

3 MR. DiGIACOMO: Move to admit one and two.

4 MR. ORAM: I have no objection. Can I see it very
5 quickly?

6 THE COURT: Sure.

7 MR. LANGFORD: I have no objection, Your Honor.

8 THE COURT: While we're looking at photographs, it's
9 about 11:00 o'clock, ladies and gentlemen. Does anybody like
10 a recess this mid-morning? Okay. We got a couple of them.
11 We're going to take a brief recess.

12 Ladies and gentlemen, during the recess, it's again
13 your duty not to converse among yourselves or with anyone else
14 on any subject connected with this trial, or read, watch or
15 listen to any report of or commentary on the trial from any
16 medium of information, including newspapers, television and
17 radio, and you're not -- you may not form or express an
18 opinion on any subject connected with this case until the time
19 it's submitted to you.

20 Be in recess for about ten minutes. The court will
21 be at ease while the jury leaves.

22 (Jurors recessed at 10:57 a.m.)

23 THE WITNESS: Your Honor, am I supposed to be
24 standing?

25 THE COURT: The record will reflect that the jury has

1 exited the courtroom. For the record, Monica indicates she
2 needs to go to the restroom too, so I don't know which
3 officers are in charge of Monica.

4 MR. DiGIACOMO: Our investigator.

5 MS. WECKERLY: Our investigator will --

6 THE COURT: Are you in charge of Monica?

7 THE INVESTIGATOR: Yes.

8 THE COURT: Good morning.

9 THE INVESTIGATOR: Good morning. How are you?

10 THE COURT: I'm great. She says she needs to go to
11 the restroom too.

12 THE INVESTIGATOR: We'll wait until the jurors are
13 out of the hallway.

14 THE COURT: Yeah. Make sure the jurors are back in
15 their room. Where are you going to go? Is there a place to
16 take her?

17 THE INVESTIGATOR: Right back here.

18 THE COURT: Okay.

19 MR. ORAM: Judge, if we -- can I make just a very
20 brief record so it's clear?

21 THE COURT: Okay.

22 MR. ORAM: What I'm saying is we're going to hear, I
23 think, a lot about Stephanie Cousins. And I write a lot of
24 appeals, Judge, and one thing the State does in response to
25 those appeals is they say, oh, we didn't object. And we get

1 that a lot, then they go to plain error standard.

2 I want to be able to raise this on appeal without --
3 in the event of an appeal, without the State being able to say
4 you didn't object. And so every time Stephanie Cousins is
5 speaking, I don't want to stand up and object and make the
6 same kind of record when I know what the Court's ruling is.
7 So that's all I wanted to do is make sure that this was
8 considered a continuing objection.

9 THE COURT: I have no problem with continuing
10 objection. Let me talk to counsel in chambers for a moment.
11 We're off the record.

12 (Court recessed at 10:59 a.m. until 11:10 a.m.)

13 (In the presence of the jury.)

14 THE COURT: All right. State of Nevada vs. Burns and
15 Mason. The record reflect the presence of the defendants,
16 their counsel, and the district attorneys. Also all members
17 of the jury.

18 Ms. Martinez, you're still under oath.

19 And Mr. DiGiacomo, you may proceed.

20 MR. DiGIACOMO: Thank you, Judge. I think I just
21 moved to admit 1 and 2, and Mr. Oram was going to answer
22 whether or not he had an objection.

23 MR. ORAM: No objection.

24 THE COURT: Be received.

25 (State's Exhibit 1 and 2 admitted.)

1 MR. DiGIACOMO: Thank you, Judge.

2 BY MR. DiGIACOMO:

3 Q Ma'am, I'm going to put on the screen in front
4 of you there State's Exhibit No. 2. That's kind of an
5 overhead of the valley. And can you see the -- the yellow
6 mark for 5662 Meikle Lane?

7 A Yes.

8 Q Okay.

9 THE COURT: Was that a yes?

10 THE WITNESS: Yes.

11 MR. DiGIACOMO: I don't know that she's going to be
12 able to reach that screen to draw on.

13 THE COURT: No. She isn't going to be able to.
14 Don't ask her.

15 MR. DiGIACOMO: So maybe I'll do it from back here.

16 THE COURT: You can do it for her.

17 BY MR. DiGIACOMO:

18 Q You indicated you went up Nellis and then turned
19 on Meikle before you -- you drove down -- or you drove down a
20 dark street before Lake Mead; is that fair?

21 A Yes.

22 Q Okay. So let's see if this thing's going to
23 draw. So up Nellis and then down the dark street?

24 A Yes.

25 Q When you got down to generally the area where

1 the -- well, describe what the location looked like to you;
2 home, apartment, what is it?

3 A Apartments.

4 Q I'm going to put up Exhibit No. 1 and represent
5 to you that that yellow tag there is 5662 Meikle Lane.

6 When you get there, where do you park? And can you
7 see it from here or do you need a different photograph?

8 A If you have a different photograph, something
9 closer?

10 Q Let me ask you a couple of questions first.

11 A Okay.

12 Q Do you drive -- do you stop before you get to
13 the apartment? Do you park directly in front of the
14 apartment, or do you go past the apartment?

15 A I pull into the parking area in front of the
16 apartments.

17 Q And then, do you -- where -- generally, do you
18 remember anything you were near when you parked?

19 A The trash bin, a green trash bin.

20 Q A green trash bin? I'm going to put up State's
21 Exhibit No. -- I'm going to start with 20. I'm going to
22 represent to you that this is the front entrance to that
23 apartment complex at 5662. There's kind of a cement dumpster
24 area here with the green trash bin and then in front of the
25 next apartment building there's a green trash bin that doesn't

1 have a cement dumpster enclosure around it. Do you recall
2 where you parked, which one of those green dumpsters we're
3 talking about?

4 A No.

5 Q Could you see inside the front entrance of the
6 apartment?

7 A No. I was sitting back a ways, probably between
8 the two apartments, not close, but, I mean -- because I -- I
9 could only see at a angle.

10 Q You could only see the angle? Could you see the
11 -- the front door?

12 A No.

13 Q Did you park pulled in or did you park in a
14 different way?

15 A I -- I pulled in opposite of what that white
16 pickup truck is.

17 Q Opposite of this white pickup truck? So you
18 were facing -- the front would have where the back is?

19 A Correct.

20 Q Okay. So you're facing, in order -- now, back
21 down Meikle?

22 A Towards Nellis, facing Nellis.

23 Q And does anybody get out of the vehicle?

24 A Stephanie, Willie, and David.

25 Q Why did you back in?

1 A Stephanie told me to back in.

2 Q Stephanie told you to back in?

3 A Yeah.

4 Q Stephanie, Willie, and David. Now, prior to
5 them getting out of the vehicle, is there any discussion about
6 how it is that these individuals are going to get inside the
7 crime scene?

8 A Stephanie had mentioned that this was her drug
9 connect, and Willie asked me for \$20 so that it'd make it look
10 like a buy.

11 Q Willie asked you for \$20 so that you can -- so
12 that --

13 A They can make it look like a drug buy.

14 Q So do you get \$20 out of your purse?

15 A Yes.

16 Q Did you give it to Willie?

17 A Yes.

18 Q What does Willie do with that money?

19 A He gives it to Stephanie.

20 Q And you said Stephanie can make it look like a
21 buy. Was there any discussion about how it was supposed to go
22 down that you recall?

23 A Not that I recall. They just all three got out.

24 Q Prior to you arriving at the apartment complex,
25 did you see Stephanie on the phone at all?

1 A Yes.

2 Q And did you know what she was doing?

3 A She had called the peoples who -- who resided in
4 the apartment and told them that she was going to be on her
5 way over there to go buy some crack. She was going to --
6 well, she didn't say crack, but she was going over there --
7 she was on her way over there, that's what she told them.

8 Q So she called the target's apartment and let
9 them know that she's on her way over?

10 A Yes.

11 Q You said Willie, Stephanie, and David all got
12 out of the vehicle. Where do you see them go?

13 A Again, it was dark. Where that stairwell is,
14 where that person is standing, in -- in that general area.

15 Q Do you remember who was going -- who was first,
16 who was second, who's third, anything like that?

17 A No.

18 Q What's the next thing that you see or hear?

19 A Screaming.

20 Q Describe the screaming, male or female?

21 A Female.

22 Q And what kind of screaming are we talking about?

23 A It was life-threatening screaming.

24 Q Associated with that screaming, do you hear
25 anything else?

1 A Gunshots.

2 Q How many do you think you heard?

3 A Four.

4 Q After the initial screaming, do you hear -- does
5 that screaming continue throughout the gunshots?

6 A No. It was dead silent. It -- it was dead
7 silent. It was eerie, quiet.

8 Q So, screaming, gunshots, then dead silence?

9 A Yes.

10 Q How long after you saw Stephanie, Willie, and
11 David get out of the car till the time period you hear the
12 screaming and hear the gunshots?

13 A I couldn't give a time. It just -- it seemed
14 like everything happened so fast.

15 Q After the gunshots, do you see Willie, David, or
16 Stephanie again?

17 A Willie and David come running to my car, like in
18 a duck.

19 Q Ducked down?

20 A Yes.

21 Q And do they get in the vehicle?

22 A Yes.

23 Q Where does Willie get in?

24 A In the front passenger.

25 Q Where's David get in?

1 A Again, behind me.

2 Q Throughout the night has Willie and David always
3 been in those two positions in your vehicle?

4 A Yes.

5 Q What about Stephanie, do you see her at this
6 point?

7 A No.

8 Q What about -- what do you do at this point once
9 they jump in the vehicle?

10 A I don't remember who it was, but they were just
11 saying, Go, go. And so I pulled out and made a left on the
12 street. And then -- and then a right onto another dark
13 street. Willie was concerned about where Stephanie was, so he
14 called her.

15 Q Willie called Stephanie?

16 A Yes, to find out where she was. And David said,
17 Just leave her. And he said no, he couldn't leave her.

18 Q Did Willie say why he couldn't leave her?

19 A He said that was -- he -- I just remember him
20 saying something about being his homey's mom or something.

21 Q Saying, That's my homey's mom? Is that a yes?

22 A Yes. Sorry.

23 Q Okay. Does Willie ever get a hold of Stephanie
24 on his phone?

25 A Yes. And he told me to make the -- I made the

1 U-turn going back towards Lake Mead, and then he told me she
2 was on Christy. I was familiar with the area.

3 Q Why were you familiar with this area?

4 A Well, I -- I lived all the way from -- anywhere
5 from Lake Mead to Charleston. So I was -- I knew the streets.

6 Q How far is Cinnabar from this apartment, do you
7 think?

8 A Probably about two major lights over. Because I
9 lived right by El Dorado High School.

10 Q So do you drive back to Christy Lane?

11 A Yeah. I made the left on Lake Mead and headed
12 back towards Nellis. Christy -- she -- she was walking on the
13 left side and Willie told me just to kind of pull over. So I
14 pulled to the left in the median. And Stephanie came and got
15 back in the car.

16 Q Describe her demeanor at this point.

17 A She was breathing heavily and, like, panicked.
18 Like, hyperventilating, kind of.

19 Q What about Willie's demeanor; had it changed at
20 all from prior to the robbery to after the robbery?

21 A Not really that I could tell. They -- the --
22 their demeanor just -- they seemed calm, quiet.

23 Q What about David, did his demeanor change at
24 all?

25 A He seemed a little irritated. Stephanie kept

1 asking for a cigarette and he -- he told her to shut the fuck
2 up.

3 Q Does David make any other statements while he's
4 in the car?

5 A He said that he had blood on him.

6 Q Did he say where on him the blood was?

7 A No.

8 Q What happens -- where are you guys going at this
9 point?

10 A Towards Nellis. Stephanie wanted to be dropped
11 off at the -- the Food4Less was near her apartments.

12 Q And do you drop her off at the Food4Less?

13 A No.

14 Q Where do you drop her off?

15 A There's some houses across from her apartment,
16 dropped her off there.

17 Q So outside of her apartment complex, but near
18 her apartment?

19 A Yes.

20 Q So Vegas Valley and Nellis, correct?

21 A Correct.

22 Q After you drop her off, where do you go?

23 A Back to the Brittinae Pines.

24 Q On the way to the Brittinae Pines, is there any
25 discussion by anybody about Stephanie and what should have

1 happened with Stephanie?

2 A David said he -- he should have shot her. David
3 said he should have killed her. And Willie said no, that
4 that's the homey's mom.

5 Q David's reaction to Stephanie's behavior was I
6 should have killed her, too?

7 A Yes.

8 Q At this point do you know exactly what happened
9 inside that apartment? I'm talking in 2010 at 4:00 in the
10 morning, do you know exactly what happened inside that
11 apartment?

12 A No.

13 Q Do you have a general idea?

14 A From the sounds of the screaming and the -- the
15 quietness, I thought the worst.

16 Q Where do you go -- where do the three of you
17 drive to?

18 A I'm sorry?

19 Q Where do the three of you drive to at this
20 point?

21 A Back to Job's apartment.

22 Q Do you go into Job's apartment?

23 A No.

24 Q Who -- does anybody get out of the vehicle?

25 A Willie and David get out at -- at the Rebel.

1 Q The Rebel gas station that's near Torrey Pines
2 and whatever the cross-street is with Job's apartment?

3 A Yes.

4 Q Do you see how they get into the apartment
5 complex?

6 A They jumped the wall.

7 Q Behind the Rebel?

8 A Correct.

9 Q What are you thinking at this point?

10 A I mean, I was panicked. I -- I really didn't
11 want to be -- I didn't know what was going on from that point.
12 So my concern was, you know, for my kids. I -- I knew
13 something bad happened and I left from there and drove down
14 Lake Mead towards the Texas, and I went in the Texan. I tried
15 kept trying to call Job.

16 Q Was Job answering as you were trying to call
17 him?

18 A No, not at first. It took a while for me to get
19 through.

20 Q Do you eventually wind up at the Texas Station?

21 A Yes.

22 Q What do you do when you get to the Texas
23 Station?

24 A Used the bathroom in there and threw up.

25 Q While you're in the bathroom, did you hear

1 anything else going on inside that bathroom?

2 A Yeah. There was another female in there getting
3 sick, as well, throwing up, as well.

4 Q And do you do anything about that female that
5 was getting sick?

6 A Yes. I -- I let a security guard --

7 MR. ORAM: Objection. Relevance.

8 THE COURT: Is that important in this case?

9 MR. DiGIACOMO: Well, it's going to factually match
10 some of the physical evidence or some of the evidence that's
11 going to come.

12 THE COURT: It will?

13 MR. ORAM: That -- that a woman's getting sick in the
14 bathroom? It --

15 THE COURT: I don't know. I --

16 MR. ORAM: -- seems like a completely unrelated
17 incident.

18 THE COURT: It seems unrelated. I -- I -- if there's
19 something -- if he represents that it's going to be related,
20 I'll overrule the objection.

21 MR. DiGIACOMO: Thank you.

22 MR. ORAM: Could I just get a offer of proof as to
23 how it's relevant?

24 THE COURT: No, let's go on.

25 BY MR. DiGIACOMO:

1 Q Before leaving the Texas Station, do you contact
2 anybody?

3 A Yeah. I got a hold of Job.

4 Q What about anybody that works at the Texas
5 Station?

6 A Oh, well, I was in there, I let a security
7 officer know that there was a -- a lady in the bathroom
8 getting sick. Who --

9 Q While you're at the Texas Station you finally
10 get a hold of Job by phone?

11 A Yes.

12 Q Do you have a conversation with Job?

13 A Yeah. I -- I told him I didn't want to be
14 alone, that I didn't want to go home. And he told me to go
15 ahead and come back.

16 Q Do you have any concerns about going back to the
17 apartment considering Willie and David were there?

18 MR. ORAM: Judge, objection. Leading.

19 THE COURT: Sustained.

20 BY MR. DiGIACOMO:

21 Q Why would you go back to that apartment?

22 A Because I didn't know what was going on. And --
23 and I felt safer being there so that I could hear what's going
24 on. I didn't know -- Job had already made threats to me
25 before, prior. He pulled his gun out on me before. And I

1 just felt safer being there so I could know what was going on,
2 and versus me going home with my kids being alone there. A
3 week before this incident some -- somebody tried to break into
4 my house. My daughter was home and --

5 MR. ORAM: Judge, this is nonresponsive and seems --

6 THE COURT: Well --

7 MR. ORAM: -- highly irrelevant.

8 THE COURT: -- I think we're getting kind of
9 rambling.

10 MR. ORAM: Yeah.

11 THE COURT: Sustained.

12 BY MR. DiGIACOMO:

13 Q But you do go back to that apartment?

14 A Yes.

15 Q Do you actually go inside the apartment?

16 A Yes.

17 Q When you get to the apartment door, is there
18 some sort of security measure in place at the door?

19 A Yes. There was a chair and some boxes up
20 against the front door.

21 Q And that have to get moved to let you in?

22 A Yes.

23 Q When you get inside the apartment, who's at the
24 apartment at that point?

25 A Job, Willie, and David.

1 Q Is there any conversation about what happened at
2 the apartment or anything?

3 A Job had told David to take a shower.

4 MR. ORAM: Judge, objection as to what he's --

5 THE COURT: Sustained. It's hearsay.

6 MR. DiGIACOMO: That's a statement of a coconspirator
7 in the course [indiscernible].

8 THE COURT: I'm not sure Job's a coconspirator.

9 MR. DiGIACOMO: He -- he provided the weapon. She
10 already testified to that. He provided the weapon to David
11 Burns to commit the murder.

12 MR. ORAM: And how is it in furtherance of the crime,
13 Judge?

14 MR. DiGIACOMO: Telling her to take a -- he's telling
15 David to take a shower.

16 THE COURT: All right.

17 MR. DiGIACOMO: Reference to take the blood off.

18 THE COURT: Okay. Overrule the objection.

19 MR. DiGIACOMO: Thank you.

20 BY MR. DiGIACOMO:

21 Q Job told David to do what?

22 A To take a shower and he told him to use bleach.

23 Q Did he say why to use the bleach?

24 A To get rid of any blood that was on him.

25 Q What about the gun; did you see the gun

1 afterwards?

2 A Not until later.

3 Q Where did you see the gun at?

4 A Job was wiping it down.

5 Q What was he wiping it down with?

6 A A blue rag.

7 Q While you were at that apartment, do you ever
8 see anybody else come over to that apartment?

9 A Yes. A younger guy named Wes, he goes by Wes.
10 Well, that's what I know him as.

11 Q Wes?

12 A Wes.

13 Q How do you know Wes?

14 A Through Job.

15 Q How many times have you met Wes?

16 A Quite a few during the three and a half, four
17 months that I was with Job.

18 Q How would you describe your relationship with
19 Wes?

20 A I didn't like him.

21 Q Why didn't you like him?

22 MR. ORAM: Objection as to relevance.

23 THE COURT: Overruled.

24 THE WITNESS: I just didn't like his personality, his
25 demeanor. It just -- he -- he would just talk shit a lot

1 about me being Job's ho' or he made -- he was trying to get
2 with my daughter. I just didn't like him. I mean, I didn't
3 like his personality at all.

4 BY MR. DiGIACOMO:

5 Q When Wes comes over, is there any discussion
6 about anything related to the crime that occurred?

7 A You said when Wes comes over?

8 Q Yeah.

9 A I just remember Job telling him to get rid of
10 the gun, either sell it or do whatever just to get rid of it.

11 Q Does Job give him the gun?

12 A Yeah.

13 Q How does he give him the gun?

14 A In that bag that he would carry with him.

15 Q That who would carry with him? Job or Wes would
16 carry it with them?

17 A Whoever had the gun, whenever, it was always in
18 a bag when we were out if it wasn't under his pillow or with
19 him.

20 Q So Job provides the gun to Wes?

21 A Yes.

22 Q Did you see, other than Job wiping the gun down,
23 Job do anything else to that gun?

24 A No.

25 Q Did you see anybody else do anything to that

1 gun?

2 A No.

3 Q After Job gives Wes the gun, where do you go?

4 Well, let me ask this: Does Wes leave with the gun?

5 A Yes.

6 Q Where do you go -- or do -- how long do you stay
7 at that apartment?

8 A Till late afternoon.

9 Q And then where do you go?

10 A I -- I walked down to my cousin's house.

11 Q Where's your car?

12 A I leave it parked across the street in another
13 apartment complex from the Brittnae Pines.

14 Q Why don't you drive your car over to your
15 cousin's house?

16 A I was scared.

17 Q Scared of what?

18 A Being pulled over, that the car may have been
19 being looked out, you know, by the police, if they were
20 looking for it.

21 Q What do you do at your cousin's house?

22 A I -- I -- my intentions were to go over there
23 and watch the news to see what -- what had happened, what they
24 were saying on the news. But I ended up falling asleep there.
25 And I was charging my phone.

1 Q Do you have any more contact with Job, Willie,
2 or David that day?

3 A Yeah. I -- I had to go back over there and pick
4 up my car.

5 Q Are they still in the -- at the apartment?

6 A Yes.

7 Q Anything noteworthy while you're at the
8 apartment when you have to go back to get your car?

9 A There was just phone conversations. Willie was
10 getting -- he said that he was getting calls from his family.

11 Q Willie was getting calls from his family?

12 A Uh-huh.

13 Q That a yes?

14 A Yes.

15 Q About what?

16 A I -- I wasn't paying attention to the phone
17 call. I -- I just remember Job telling him just to turn off
18 their phones and Job, I don't know who he was talking to, I
19 think it was Sean, and he had mentioned that something
20 happened between the three of us. And he said no longer.

21 Q You said Willie was getting texts from his
22 family. Were you aware of Willie receiving information from
23 anybody else? Or phone calls from his family? Were you aware
24 of Willie receiving information from anybody else?

25 A No.

1 Q Did you know whether or not Sean and Willie knew
2 each other?

3 A Yes.

4 Q Do you leave or do you stay the night at the
5 apartment on Saturday, or on the night of the 7th?

6 A I left.

7 Q And where do you go?

8 A I -- I went back home.

9 Q Do you drive your car home?

10 A Yes.

11 Q After you drive your car home that day, do you
12 drive your car anymore?

13 A No.

14 Q Why not?

15 A Well, again, because I was scared that, you
16 know, police were going to be looking for it, but also because
17 my plates expired.

18 Q Do you -- do you make any sort of plans on
19 getting out of town, doing anything else like that?

20 A No.

21 Q Well, when's the next time you have to go to
22 work?

23 A Tuesday.

24 Q How do you get to work?

25 A I had my supervisor pick me up.

1 Q And what's her name?

2 A Samantha Knight.

3 Q And why do you have her pick you up?

4 A My -- my plates are expired. I -- I didn't want
5 to drive the car anymore at all.

6 Q Prior to Tuesday when Samantha picks you up, do
7 you have any idea where Job or Willie or David is?

8 A They were at the apartment, but Job had called
9 and said that they were leaving, I want to say Sunday, Sunday
10 night.

11 Q So Job had called and said he was leaving on
12 Sunday sometime?

13 A That -- that they had left, that they were
14 getting ready to leave, yeah.

15 Q And do you know where -- where they were going?

16 A To California.

17 Q San Bernardino?

18 A Yes.

19 Q Now, at some point in time in this general time
20 period, does Job change phone numbers?

21 A Yes.

22 Q What kind of phone number did he have
23 previously?

24 A I think it was Texas.

25 Q So he had a phone number from a different state?

1 A Yes.

2 Q And then what does he change his phone number
3 to?

4 A I don't remember what the area code was.

5 Q When you were at work on Tuesday, you make some
6 sort of plan if you get contacted by the police?

7 A Yes. I asked Samantha to call my grandmother
8 and call Job.

9 Q And did you provide Samantha Job's new phone
10 number?

11 A Yes.

12 MR. DiGIACOMO: May I approach, Judge?

13 THE COURT: Yes.

14 BY MR. DiGIACOMO:

15 Q Ma'am, I'm showing you what's been marked as
16 State's Proposed Exhibit No. 281, and ask you if you recognize
17 that little piece of Post-It?

18 A Yes.

19 Q What is that?

20 A It's a 404-519-3377.

21 Q Is that the number you wrote down for Job's new
22 phone?

23 A Yes -- I -- don't remember.

24 Q If you don't remember, you don't remember.

25 A I don't remember.

1 Q That's fine.

2 A It was a new phone number, so I don't...

3 Q Now, it's been a number of years. Do you
4 remember what your phone number was way back when?

5 A No.

6 Q You've seen the discovery in this case, I'm
7 assuming?

8 A Yes.

9 Q Okay. And if your number was a 702 and started
10 with 927, does that sound right to you?

11 A I couldn't remember. It's been so long.

12 Q It's been so long? Let's talk about when the
13 police arrive -- well, how do you come into contact with them?

14 A I was up at the front desk working that day
15 training a new guy, and the receptionist from the main area, I
16 guess she had kept calling my line, but we were so busy. And
17 then Samantha came up and said to call the front desk. So I
18 called up there and receptionist said that there was some
19 detectives there that wanted to speak to me.

20 Q Do you go talk to them?

21 A Well, I went to the back. I had Chris cover for
22 a minute, and I got him caught up. And then I went to the
23 back and told my manager, Sandy, that there were detectives
24 were there to speak to me. And she said okay. She was on the
25 phone. And I said, Well, do you want me to have Samantha go

1 up with Chris, because it's busy? And she said yeah.

2 Q Before the cops had come talked to you, other
3 than obviously Job, David, and Willie, had you told anybody
4 about what had happened out there in any manner?

5 A No.

6 Q Did the cops -- when you contact the cops, what
7 do they ask you?

8 A They -- they -- what did you say? I'm sorry.

9 Q When the cops contact you, what did they ask
10 you?

11 A They said they wanted to speak to me in regards
12 to a shooting, and I volunteered to go with them.

13 Q And how many cops were there?

14 A There was two detectives.

15 Q Do you remember either of their names?

16 A Chris and Marty.

17 Q Chris and Marty?

18 A Yes.

19 Q Where do you go?

20 A Off of Oakley in Decatur.

21 Q A police station?

22 A Yeah. It was a building. Didn't look like a
23 regular police station. But yeah.

24 Q Okay. But it was a -- it was a law enforcement
25 location?

1 A Yes. I had been there before.

2 Q Do they conduct an interview with you?

3 A Yes. Yes, they do.

4 Q And how long do you think that you were there at
5 the detective bureau talking with the detectives?

6 A There was -- I hadn't had lunch yet when they
7 came, so it was around noon that Tuesday. And it went well
8 into the early morning, Wednesday morning that I was there.

9 Q What took so long to get that information?

10 A I was lying at the beginning.

11 Q Why'd you lie?

12 A I was scared.

13 Q Scared of what?

14 A I was scared of the detectives, I'd never been
15 in a situation like that before. It was -- I was scared of
16 Job, scared of David and Willie, what was going to happen to
17 me.

18 Q Do you -- let me ask you this. At the time were
19 you still -- well, at the time did you have feelings for
20 Job-Loc?

21 A Yes.

22 Q Did you want to protect anybody?

23 A To an extent, yes.

24 Q Okay. Let me ask this, did you want to protect
25 yourself?

1 A Yes.

2 Q Did you want to protect Job to a certain extent?

3 A Yes.

4 Q Did you want to protect anybody else?

5 A Yes.

6 Q Who?

7 A Willie and David.

8 Q At some point during the course of the
9 interview, do you get told that you're being arrested for
10 murder?

11 A Yes.

12 Q When you find out that you're being arrested for
13 murder, you get handcuffed; is that fair?

14 A Yes.

15 Q Read your rights? Yes?

16 A Yes.

17 Q And on the way to -- on the way to be taken to
18 jail, do you tell the police anything?

19 A I told them that I was scared and, I mean, I was
20 going to jail either way. So I gave them another attempt of
21 what happened.

22 Q And you used the term another attempt of what
23 happened. Even after you tell them, Hey, I want to be more
24 truthful with you, do you still continue to hold certain
25 things back?

1 A Yes.

2 Q And does that go on throughout your interview?

3 A Yes.

4 Q Even when the interview is over, are there still
5 things you haven't told them?

6 MR. ORAM: Judge, he's leading this witness.

7 THE COURT: Yes, it's leading. Sustained.

8 BY MR. DiGIACOMO:

9 Q Well, let me ask you this. I'm assuming you've
10 seen at least the portions of the interview where you're
11 actually speaking; would that be fair?

12 A Yes, I have.

13 Q Is there anything in the interview or after
14 you've watched the whole interview that there's some things
15 that you didn't fully come clean about or not?

16 A Yes, I did.

17 Q At the end of your -- the wee morning hours of
18 that Wednesday morning, do you get arrested for murder?

19 A Brought down to booking, is that what you mean?

20 Q Yeah.

21 A Yes. I was brought down to booking.

22 Q You were booked into the Clark County Detention
23 Center?

24 A Correct.

25 Q And have you remained an inmate of the Clark

1 County Detention Center up until this day?

2 A Yes, I have. Yes, I am.

3 MR. DiGIACOMO: Judge, I don't know if this is
4 probably a pretty good time for a break? I don't know if the
5 Court wants to take it now or if you want me to go for another
6 17 minutes?

7 THE COURT: If you want to recess for an hour for
8 lunch, is that what you want?

9 MR. DiGIACOMO: Yeah. I was going to say 1:00 would
10 be -- would be perfect.

11 THE COURT: Okay.

12 MR. DiGIACOMO: That'd be good.

13 THE COURT: Ladies and gentlemen, during the recess
14 it's again your duty not to converse amongst yourselves or
15 with anyone else on any subject connected with this trial, or
16 to read, watch, or listen to any report of or commentary on
17 the trial by any medium of information, including newspapers,
18 television and radio, and you may not form or express an
19 opinion on any subject connected with this case till it is
20 finally submitted to you. We'll be in recess until 1:00.

21 (Jury recessed at 11:46 a.m.)

22 THE COURT: All right. The record will reflect that
23 the jury has executed the -- exited the courtroom. Anything
24 further on the record?

25 MR. DiGIACOMO: Yes, you --

1 MR. LANGFORD: Briefly, yes. Go ahead.

2 MR. DiGIACOMO: I intend as the -- the next thing,
3 and I wanted to make a record before I did it, that's why I
4 asked to take a break. I was going to offer State's Proposed
5 Exhibit 274. It's the -- it's the video portion of Ms.
6 Martinez when she's in the interview room where she's talking
7 to detectives. So the blank periods where she sits alone in
8 the room have been removed. I also last night redacted the --
9 the portion that the Court ordered redacted based upon Mr.
10 Oram's request.

11 And for the record, to the extent that it's
12 inconsistent with what Ms. Martinez has testified to here,
13 it's a prior inconsistent statement, and therefore admissible.
14 Then to the extent that it occurred prior to the entry of her
15 plea, which is throughout this case, actually, at this point
16 has been suggested as a basis for a reason for recent
17 fabrication as a prior consistent statement. As such it is
18 completely admissible, and I was going to offer it. I just
19 wanted to make sure there was a record of that before I did so
20 in front of the jury.

21 THE COURT: Any objections?

22 MR. LANGFORD: I have no objection.

23 MR. ORAM: We object.

24 THE COURT: On what basis?

25 MR. SGRO: We don't think it's admissible.

1 THE COURT: Excuse me?

2 MR. ORAM: We don't think it's admissible.

3 THE COURT: Why?

4 MR. ORAM: For the reasons that the State said, we're
5 not sure that it's admissible.

6 THE COURT: Why isn't it admissible? It's either
7 inconsistent with her statement, right? I -- I haven't seen
8 it. So are -- is it inconsistent with her statement?

9 MR. ORAM: I'll just -- I just -- that's all I have
10 at this point, Your Honor. I have nothing more.

11 MR. DiGIACOMO: I believe it's for the record, Judge.

12 THE COURT: Okay. Well, objection's overruled.

13 MR. ORAM: Yes, Your Honor.

14 MR. LANGFORD: I also, Judge, wanted to join in Mr.
15 Oram's ongoing objection to the confrontation clause quasi
16 hearsay issue regarding Stephanie Cousins and all of
17 everything that she continues to say, Stephanie said this and
18 Stephanie said that. I think it's objectionable --

19 THE COURT: As I understand it, the Crawford case
20 doesn't exclude the statements of coconspirators made in the
21 course and in furtherance of the conspiracy. If that is the
22 case, then the statements that she has related that were said
23 by these two defendants and Stephanie Cousins are all
24 statements of coconspirators in the course and scope of the
25 conspiracy and admissible as non hearsay.

1 MR. DiGIACOMO: That's correct. And just for the
2 record. Mr. Oram made one objection, or maybe more than one,
3 I have to remember, as it relates to Job. Certainly by the
4 time Job is helping as an accessory after the fact, he has
5 joined the conspiracy. Now, he may not be liable for the
6 underlying charges because they have occurred, but certainly
7 at that point he had joined in the conspiracy and --

8 THE COURT: It does sound like he becomes an
9 accessory after the fact.

10 MR. DiGIACOMO: Correct. And under Crew, that
11 means --

12 THE COURT: Is he in custody -- is he in custody in
13 this case?

14 MR. DiGIACOMO: He has an active warrant in Nevada
15 because he's serving a dozen years in California for the cases
16 of which they were trying to get money to get a lawyer for.

17 THE COURT: So he's going to be brought eventually
18 back here for trial --

19 MR. DiGIACOMO: Correct.

20 THE COURT: -- as an accessory?

21 MS. WECKERLY: At least.

22 MR. DiGIACOMO: At the very least, accessory. He may
23 be more.

24 THE COURT: Okay.

25 MR. SGRO: Your Honor, there's one more housekeeping

1 matter. As we reported at the bench, we have subpoenaed a
2 number of Ms. Martinez's family members. And I don't
3 recognize everyone by face as well as I know the names. If we
4 could just have the gentleman in the back of the courtroom
5 identify himself just to make sure there's no exclusionary
6 rule problems. I'd ask --

7 THE COURT: That's up to him.

8 UNIDENTIFIED SPEAKER: It's Ms. Martinez's uncle.
9 Tell the judge your name.

10 UNIDENTIFIED SPEAKER: [Indiscernible.]

11 MR. SGRO: Thank you, Your Honor.

12 THE COURT: All right. Anything further on the
13 record before we have lunch?

14 MR. LANGFORD: No.

15 MR. DiGIACOMO: No.

16 MR. ORAM: No, sir.

17 MR. SGRO: No.

18 THE COURT: 1:00.

19 (Court recessed at 11:50 a.m. until 1:08 p.m.)

20 (In the presence of the jury.)

21 THE COURT: All right. State versus Mason and Burns.
22 The record will reflect the presence of both defendants, their
23 counsel, the district attorneys and all members of the jury.

24 Please be seated. We're still on examination of Ms.
25 Martinez.

1 Ms. Martinez, you're still under oath, and you may
2 proceed.

3 MR. DIGIACOMO: Thank you, Judge. Judge, I've had
4 marked as State's Proposed Exhibit No. 274, which is a video
5 recording of the interview of Ms. Martinez. For the record,
6 it has the portion that when she's not speaking removed, as
7 well as some other portions upon agreement of counsel. I'd
8 like to offer it now.

9 THE COURT: Are you okay? When Randy coughs, Randy
10 coughs. All right. And you want to play it. Has it been
11 admitted?

12 MR. DIGIACOMO: Well I'm offering it at this point.

13 THE COURT: Oh, okay. Any objection?

14 MR. ORAM: Judge, just --

15 THE COURT: Subject to the objections previously
16 made, it'll be received.

17 (State's Exhibit 274 admitted.)

18 MR. DIGIACOMO: Thank you, Your Honor. Judge, may I
19 publish?

20 THE COURT: Yes.

21 (State's Exhibit No. 274 played.)

22 MR. DIGIACOMO: Judge, would now be a good time for a
23 break?

24 THE COURT: All right. Yes, I think it would be a
25 good time for a break.

1 Ladies and gentlemen, during the recess, you are
2 again admonished not to converse among yourselves or with
3 anyone else on any subject connected with this trial or to
4 read, watch or listen to any report of or commentary on the
5 trial from any medium of information including newspapers,
6 television, radio, and you may not form or express an opinion
7 on any subject connected with this case until it is finally
8 submitted to you.

9 We'll be in recess for about 10 minutes for break.

10 (Jury recessed 2:43 p.m.)

11 THE COURT: The record will reflect that the jury has
12 exited the courtroom.

13 MR. SGRO: I have a quick question, Your Honor. Can
14 we make arrangements over the break or even before the
15 examination starts, once the tape has concluded, that Ms.
16 Martinez's hands get unshackled?

17 THE COURT: That's up to the officers.

18 MR. SGRO: So here's -- here's the dilemma, and I
19 just heard the officer say, Absolutely not. We spent an
20 inordinate amount of time on tone and demeanor of witnesses,
21 and unshackled as she appears in the tape is her natural tone
22 and demeanor, and I have -- I've had lots of witnesses from
23 the jail come in in multiple cases. The jury is entitled to
24 see her tone and demeanor, Your Honor.

25 There is a United States Supreme Court case called US

1 versus Riggins, and it's a case that talks about the ability
2 of the jury to observe tone and demeanor in person's
3 natural state. The Riggins case was a defendant who was
4 medicated so that he could be competent to stand trial. Now,
5 the bottom line is --

6 THE COURT: I'm familiar with Riggins. It has
7 nothing to do with this case.

8 MR. SGRO: It does -- it does relative to the jury's
9 ability to observe people in their natural state and their
10 natural tone and demeanor. So the only case that --

11 THE COURT: Riggins was a case Judge Brennan had,
12 wasn't it?

13 MR. SGRO: Yes, with Mace Yampolsky.

14 THE COURT: It went to the United States Supreme
15 Court with Judge Brennan. I think it was.

16 MR. SGRO: It may well have been. It went all the
17 way through --

18 THE COURT: I'm not running the jail. If they say
19 she has to remain shackled, she has to remain shackled.

20 We'll be in recess for 10 minutes.

21 MR. DIGIACOMO: Thank you, Judge.

22 MR. SGRO: Thank you.

23 (Court recessed at 2:45 p.m. until 3:01 p.m.)

24 (Outside the presence of the jury.)

25 THE COURT: Do you have to sit there through this?

1 MR. DiGIACOMO: What?

2 THE COURT: Does she need to sit here through this?

3 MR. DiGIACOMO: Yep.

4 THE COURT: Okay. Sorry. I was going to try.

5 THE WITNESS: Thanks.

6 THE COURT: Are you ready?

7 THE MARSHAL: I'm ready when you are.

8 THE COURT: Let's go.

9 (In the presence of the jury.)

10 THE COURT: All right. State versus Burns and
11 Mason. The record will reflect the presence of the
12 defendants, their attorneys, the District Attorneys, all
13 members of the jury. We're back with direct examination.

14 And you're on a video, as I recall.

15 MR. DiGIACOMO: That's correct, Judge. I'm just
16 going to back it up a couple of seconds so the jury kind of
17 gets the same spot we were in.

18 (State's Exhibit No. 274 played.)

19 MR. DiGIACOMO: Judge, that might be a good breaking
20 point for the day.

21 THE COURT: All right. Ladies and gentlemen, during
22 the recess it's again your duty not to converse among
23 yourselves or with anyone else on any subject connected with
24 this trial, to read, watch, or listen to any report of or
25 commentary on the trial by any medium of information,

1 including newspapers, television, radio, and you may not form
2 or express an opinion on any subject connected with this case
3 until it is finally submitted to you.

4 I've got a very brief criminal motion calendar
5 tomorrow morning, so we're going to get back at 9:30 tomorrow
6 morning to resume the trial. We'll see you then. Have a good
7 evening.

8 Did we lose the marshal? Holly, you want to help us
9 out? Thanks.

10 (Jury recessed at 4:29 p.m.)

11 THE COURT: Let the record will reflect that the
12 jury left the courtroom. Anything further on the record?

13 MR. LANGFORD: Judge, I would just like to join in
14 Mr. Sgro's request that Ms. Martinez be unshackled during her
15 testimony. I just want to put that on the record.

16 THE COURT: We'll see you tomorrow morning at 9:30.

17 MR. LANGFORD: Thank you, Your Honor.

18 THE COURT: Be here a few minutes early, please.

19 MR. ORAM: Yes, Your Honor.

20 MR. DiGIACOMO: Of course.

21 (Court recessed for the evening at 4:30 p.m.)
22
23
24
25

CERTIFICATION

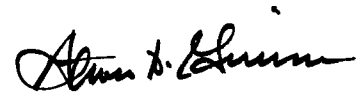
I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

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TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,)	
)	
Plaintiff,)	CASE NO. C-10-267882-1
)	C-10-267882-2
vs.)	DEPT NO. XX
)	
WILLIE DARNELL MASON, AKA)	
WILLIE DARNELL MASON, JR.,)	TRANSCRIPT OF
AKA G-DOGG,)	PROCEEDING
DAVID JAMES BURNS, AKA)	
D-SHOT,)	
)	
Defendants.)	

BEFORE THE HONORABLE CHARLES THOMPSON, SENIOR DISTRICT JUDGE

JURY TRIAL - DAY 10

THURSDAY, FEBRUARY 5, 2015

APPEARANCES:

For the State:	MARC P. DIGIACOMO, ESQ. PAMELA C. WECKERLY, ESQ. Chief Deputy District Attorneys
For Defendant Mason:	ROBERT L. LANGFORD, ESQ.
For Defendant Burns:	CHRISTOPHER R. ORAM, ESQ. ANTHONY P. SGRO, ESQ.

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1 RA 000169

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1 **LAS VEGAS, NEVADA, THURSDAY, FEBRUARY 5, 2015, 9:44 A.M.**

2 *** * * * ***

3 (Outside the presence of the jury.)

4 THE COURT: All right. State of Nevada versus Burns
5 and Mason. The record will reflect that we're back on the
6 record with the defendants and all counsel in the absence of
7 the jury.

8 Mr. Sgro.

9 MR. SGRO: Your Honor, two -- two quick matters.
10 One is that today we expect two kids of two of the defendants
11 to testify, Tyler Mitchell and Christine Tamika Pierce. And I
12 did speak with the State.

13 THE COURT: Two of the defendants' kids?

14 MR. SGRO: Monica Martinez has a daughter. Her name
15 is Tyler Mitchell.

16 THE COURT: Yeah, I know it's Monica Martinez's
17 kids. Not the defendants' kids.

18 MR. SGRO: Well, and Stephanie Cousins that you've
19 obviously heard a lot about, she has a kid and -- and her name
20 is Tamika Pierce.

21 THE COURT: But they're not defendants.

22 MR. SGRO: No, it's daughters of defendants. It's
23 the daughters of --

24 MS. WECKERLY: The co-defendants of these two.
25 There's four people charged in this case, so it's Stephanie's

1 daughter and Monica's daughter.

2 THE COURT: Oh, well, right now only Burns and Mason
3 are charged as far as we're concerned.

4 MS. WECKERLY: Well, I mean, the other two are
5 charged. They're just not --

6 THE COURT: They're not charged in -- okay. Anyway,
7 I know what you're talking about now.

8 MR. SGRO: Okay. The bottom line, Your Honor, is
9 our concern was relative to the eliciting of any hearsay
10 statements because we are joined at this trial. And one of
11 the -- one of the individuals, specifically Ms. Cousins'
12 daughter is going to talk about some conversations that she
13 had with Mr. Mason.

14 Now, I am assured, I am assured, that there is no
15 responses that are going to be gleaned from the witness stand
16 where the answer would be Mason told me we did this and we did
17 that, which would be violative of the confrontation clause,
18 violative of the Ducksworth decision, etcetera. So I'm told
19 that there is -- none of that is going to occur, so I want to
20 put that on the record.

21 And relative to Ms. Mitchell, Monica Martinez's
22 daughter, that's Mr. DiGiacomo's witness, he also assures me
23 he is not intending on eliciting any hearsay information.
24 Now, Ms. Mitchell did testify before the grand jury. She did
25 go through a photo lineup and she did some affirmative things

1 which we don't quarrel with.

2 It's -- I want to caution the Court that if anything
3 starts to look like hearsay, we're immediately going to ask
4 for a break to make sure we don't have a problem, a
5 confrontation clause problem. So that's number one is that I
6 want to make those representations that we had those
7 conversations.

8 THE COURT: Statements by the defendants would be
9 admissible.

10 MR. SGRO: Not to the extent Mr. Mason -- a
11 statement by Mr. Mason that inculcates Mr. Burns would not be
12 admissible at a joint trial delivered through another witness.

13 THE COURT: That would pose a problem.

14 MR. SGRO: Yes, sir. And I'm assured that that's
15 not going to happen.

16 THE COURT: Okay. But statements by a defendant as
17 to what they did --

18 MR. SGRO: Of course.

19 THE COURT: -- is admissible.

20 MR. SGRO: Of course. And we're not -- again, our
21 only problem on behalf of Burns was just the hearsay if Mr.
22 Mason --

23 THE COURT: I understand.

24 MR. SGRO: Okay. Secondly, the State has endorsed
25 and has told me they're calling today an individual named

1 James Krylo, K-R-Y-L-O. He is a tool mark examiner that's
2 been at Metro for a long time. And so just -- just to give
3 some context, there has been an attack that has been lodged on
4 forensic science relative to tool mark and firearm
5 examination. And -- and some on an extreme level have equated
6 it to a junk science like bite marks.

7 And I'll tell you why, Your Honor. The attack stems
8 from the subjectivity employed by the individual tool mark
9 examiner as he or she views evidence. In other words, they're
10 use -- they're using their vision and their training and
11 experience. They don't have databases. They don't have
12 quantifying data. It's not like a fingerprint where you need
13 so many points of comparison before you say, yes, I have a
14 match. It's completely subjective as to whether you have a
15 match or not.

16 So here's what happens. In 2005 there begins some
17 litigation and it starts in Boston where attorneys begin to
18 challenge the science of the forensics. A few judges -- a few
19 judges exclude and limit the testimony of forensic scientists.
20 Congress in 2009 commissions a study, and it's by the National
21 Academy of Science.

22 Now, the National Academy of Science is someone
23 that's often relied on by our government to validate certain
24 scientific genres, DNA, fingerprints, etcetera. And
25 essentially it's touching base in, hey, where are we at today

1 in DNA? Because in 1980 it was a lot different than 1990,
2 which is a lot different than 2000.

3 So the Academy of Science goes out and they do a
4 450-page report going through and breaking down the sciences
5 that they were tasked to investigate objectively. Are they --
6 are they good or bad? And obviously they're a lot more artful
7 than how I'm delivering it to you. So in 2009 they came back
8 with this 450-page report. A chapter of this report was
9 dedicated to the pitfalls and unreliability of tool mark
10 examination.

11 Now, this just happened in 2009. The challenge --
12 the challenge becomes now how are different states dealing
13 with these proposed admission of quote, unquote, expert
14 testimony in a science that has so much subjectivity attached
15 to it, okay. So some states have Daubert, some states have
16 Frei, some have a combination. In Nevada -- and admittedly in
17 Nevada we don't adopt the Daubert federal standard.

18 THE COURT: Sort of a modified Daubert.

19 MR. SGRO: Yes, sir. And there is an expert statute
20 and it is left to -- it is left to the discretion of the
21 Court. There are some things, though, that the Court does
22 have to find. Will it aid the jury in its assistance of
23 actual predicate, is it something that's generally relied
24 upon, etcetera.

25 And I guess what I'm suggesting to the Court is the

1 temperature relative to tool mark examination is changing
2 because it has nationally become under attack. So now how
3 does Nevada handle it? And as the Court points out, we have a
4 modified Daubert test. So I only could find -- I only could
5 find one case and it was filed in 2014. And the --

6 MR. DiGIACOMO: Would that be an unpublished order
7 you're talking about?

8 MR. SGRO: Yeah, it's an unpublished order.

9 MR. DiGIACOMO: Okay.

10 MR. SGRO: And this is -- this is the only thing I
11 can find. So if we're going to agree it has no precedence
12 because it's unpublished, that's great, because the Supreme
13 Court came down in favor of the State. So I'll -- I'll
14 stipulate that this has no authority. What I'm telling the
15 Court, though, as an officer of the Court, I wanted you to be
16 fully aware of what's going on in this science because it's
17 evolving every day.

18 So in Nevada, Dan Albregts, a trial lawyer here in
19 our district, has a case. He challenges -- he challenges the
20 science that was admitted relative to tool mark examinations
21 just based on some of the Daubert and the Frei things and he
22 calls it junk science in his brief, etcetera, etcetera. He
23 does not cite -- for whatever reason, he does not cite the
24 report that was established and published in 2009.

25 The Nevada Supreme Court apparently in a

1 non-authoritative opinion issues an order saying we're not
2 going to accept your version of this being junk science. He
3 then does a petition for rehearing, and he now has located the
4 study which I have been telling the Court about.

5 And in May of 2014, the Nevada Supreme Court denies
6 it based on -- based on NRAP 40(c) which says that matters in
7 the briefs and oral argument may not be reargued in the
8 petition for a rehearing. And this is the part they denied it
9 on, no point may be raised for the first time on rehearing.
10 So what he did is he got it denied on procedural grounds.

11 So I give you that long-winded predicate. And I
12 apologize. However, I would ask that Mr. Krylo be precluded
13 from testifying as an expert witness relative to comparisons
14 he made based on the non-scientific nature of the testing --
15 testing mechanisms he employs insofar as they are not
16 scientifically accepted standards.

17 And I'm happy to -- and I would actually like to
18 make it a part of the record, Your Honor. The chapter that I
19 referenced in the study is Chapter 3 of the National Academy
20 of Science. And I don't see your clerk here, but if I may
21 approach the clerk. I just want to give you the Thompson
22 unpublished decision, the thing -- the order that says we
23 can't consider the study because it wasn't raised initially,
24 and then the chapter which is controlling relative to this
25 issue.

1 Now, I do understand we have a little bit of
2 evidence we're going to -- we're going to go through before we
3 get to Mr. Krylo. I just wanted the opportunity to make the
4 record. May I approach?

5 THE COURT: You may approach and give it to me.

6 MR. SGRO: Thank you, sir.

7 THE COURT: Thank you.

8 MR. SGRO: Sure.

9 MR. DiGIACOMO: Would you like to hear from me?

10 THE COURT: Do you want to respond?

11 MR. DiGIACOMO: Just briefly, which is actually Mr.
12 Sgro is wrong. It's the exact same argument that was made
13 about fingerprints. And we've actually had those hearings
14 here in Clark County at least as it relates, I know I've done
15 one, as it relates to fingerprints.

16 And, ultimately, the question under our statute is
17 whether or not the testimony will assist the trier of fact, he
18 has a specialized knowledge skill or other thing that will
19 assist the trier of fact in making a determination as to the
20 -- as a fact in issue.

21 What the argument from everybody is, and it's been
22 going around for ten years now, is that ultimately at the end
23 of the day there is an opinion by the expert as to whether or
24 not there is a conclusive identification. And based upon some
25 of these studies, the experts actually changed their -- their

1 opinion.

2 They used to say this was fired from this gun and no
3 other gun on earth, and now they say, you know, my opinion is
4 it was fired from this gun, I wouldn't expect to find another
5 gun that would leave the same rifling characteristics as -- as
6 this one. And that was in conformance to this study not only
7 on fingerprints, but as well as on all the other ballistic
8 ones.

9 I'm certain that had this been a timely raised
10 motion, the Court would have held very lengthy evidentiary
11 hearings. There's experts from all over the country that fly
12 out and they testify to them. It's being raised the morning
13 we're calling the witness in trial after they've already
14 opened with some of the conclusions that Mr. Krylo is going to
15 testify.

16 And for the record, I would suggest that, you know,
17 if there is some concern after we lay the foundation with Mr.
18 Krylo that he's not qualified to give the opinions that he's
19 not qualified to, the Court won't allow him to issue his
20 opinions. But to suggest that the underlying science is not
21 valid, they're wrong in the fact that there is empirical data
22 that can be checked, which is they fire guns and then they
23 give blind tests to the experts and they have to qualify and
24 go through the certification process. And I'm sure Mr. Krylo
25 is going to testify to all of that.

1 And so ultimately, unless the Court wants to take
2 five, six days and call in experts from all over the country
3 to hear the testimony, most courts that I am aware of,
4 certainly every court in Nevada, has determined this is
5 admissible evidence in trials here in Nevada.

6 THE COURT: Well, I will wait to hear the expert's
7 qualifications, background, and what he did and why he did
8 what he did before I make the decision.

9 All right. The only other thing -- well, we've got
10 two other things on the -- that we have to discuss. I have a
11 motion that was on calendar this morning at 8:30. It was the
12 -- Mr. Burns's motion to prohibit the presentation of a
13 summary regarding the course of the investigation.

14 MR. ORAM: Yes, Your Honor. I raised this several
15 times on appeal, but I've never done it pretrial. I was a
16 little concerned when I saw the grand jury in this case and
17 the prosecution asked the detective, you know, sort of
18 summarize what happened. I think they can ask -- on the
19 witness stand should be able to ask questions, obviously, but
20 to sort of stand back and say why don't you just sort of
21 summarize everything I think is problematic.

22 And here is why, and then I'll just submit it to the
23 Court's discretion. If we were to call our investigator and
24 say tell us, you know, what happened in this case, what have
25 you done, and they just sort of summarize the case up with the

1 conclusion that Mr. Burns and Mr. Mason must be innocent based
2 upon his or her determinations and investigations, I don't
3 think that would be permitted. And it --

4 THE COURT: I don't know what they're doing, but I
5 -- I have heard occasions where the prosecution with their
6 investigator on the stand has said, well, what did you do
7 next? And he explains what next happened, and then after
8 that, what did you do next? Now, if that's what you're
9 talking about, I don't find that offensive.

10 MR. ORAM: No, I think -- I don't -- I don't think
11 that's the problem. I think it's sort of when they just sort
12 of give a -- it's almost like a closing argument. I think if
13 the Court heard it it would recognize it.

14 THE COURT: Well, if it's -- if it's wandering, we
15 won't let them do that. On the other hand, if they try to
16 elicit anything that isn't admissible, you object and I'll
17 sustain the objection.

18 MR. ORAM: Yes, Your Honor.

19 MR. LANGFORD: Here's --

20 THE COURT: Okay.

21 MR. LANGFORD: Here's my problem. I joined in this
22 motion, Your Honor. Here's my problem with this. And that is
23 that what did you do next? Well, we called and talked to --
24 objection, hearsay. The Court is about to sustain it. And
25 they'll say, well, it's not offered for the truth of the

1 matter asserted. So there's no substantive evidence to it at
2 that point. And we run all the way through it, and every time
3 the person says what they did, it's because they're doing that
4 because of hearsay, or, you know, we ordered the finger -- we
5 -- whatever. And then at the --

6 THE COURT: That's okay.

7 MR. LANGFORD: At the very end what they say, and
8 I'd at least ask the Court to preclude them from the
9 following, at the very end they say what did you do next? We
10 arrested them for first degree murder.

11 THE COURT: If that's what he did next, that's okay.

12 MR. LANGFORD: I think it is prejudicial. It's not
13 probative of anything. That's for the jury to decide whether
14 they committed first degree murder.

15 THE COURT: Well, it shows the time and date of
16 arrest.

17 MR. LANGFORD: It's irrelevant --

18 THE COURT: I'm going to overrule the objection and
19 deny the motion.

20 Now, there's one additional thing we need to put on
21 the record. Over the weekend we -- my office received a call
22 from Juror Kelly Rowan, who was Badge No. 93 sitting in Seat
23 No. 1. You'll recall when we did voir dire she explained that
24 her husband was going to have surgery for bladder cancer. And
25 I understand that that surgery did occur, things have not gone

1 well, and the bottom line is she was hysterical on the phone
2 when she talked to staff. And I told staff that she was to be
3 excused and so I am substituting Alternate No. 1 who is Mr.
4 Nunez in place of Juror Kelly Rowan.

5 Anything further on the record before we bring the
6 jurors in?

7 MR. LANGFORD: Nothing from Mr. Mason, Your Honor.

8 MR. SGRO: No, sir.

9 MR. DIGIACOMO: No, Your Honor.

10 (In the presence of the jury.)

11 THE COURT: All right. State of Nevada versus Burns
12 and Mason. The record will reflect the presence of the
13 defendants, their counsel, the District Attorneys, and all
14 members of the jury except Juror Ms. Rowan.

15 Good morning, ladies and gentlemen.

16 JURY PANEL: Good morning.

17 THE COURT: First of all, let me apologize for being
18 a little late today. We had some other matters we had to take
19 care of out of your presence. One of the matters had to do
20 with Juror Ms. Rowan. You'll -- I don't know those of you who
21 were here when she was voir dired, she explained that her
22 husband was going in for a surgery. Apparently, that has
23 happened but has not gone real well. And the short story is I
24 have excused her. And so alternate No. 1, Mr. Nunez, has been
25 assigned to replace her. That's why we have the alternates.

1 So, Mr. Nunez, you're now one of the regular jurors
2 and before you continue we have to ask you to stand, raise
3 your right hand, and the clerk will administer the oath for
4 the regular jurors.

5 (Juror Nunez sworn.)

6 THE COURT: Please be seated.

7 All right. We're still in the State's case in chief
8 and the State can call their next witness.

9 MR. DiGIACOMO: It's the custodian of records for
10 Metro PCS.

11 KENNETH LECESNE, STATE'S WITNESS, SWORN

12 THE CLERK: Please be seated.

13 THE WITNESS: Thank you, ma'am.

14 THE CLERK: Please state your name and spell your
15 first and last name for the record.

16 THE WITNESS: Kenneth LeCesne; K-E-N-N-E-T-H L-E
17 Capital C-E-S-N-E.

18 MR. DiGIACOMO: May I inquire, Judge?

19 THE COURT: Yes.

20 DIRECT EXAMINATION

21 BY MR. DiGIACOMO:

22 Q Sir, how are you employed?

23 A I'm a custodian of records for Metro PCS
24 cellular telephone company in Richardson, Texas.

25 Q In addition to being the custodian of records,

1 do you have an understanding essentially how Metro PCS cell
2 phones work and how the records are generated?

3 A Yes, sir.

4 Q And can you explain to the ladies and
5 gentlemen of the jury -- well, first, how does a cell phone
6 work with Metro PCS?

7 A Well, a cell phone works with -- basically any
8 cell phone works when an individual makes a call, a signal
9 goes out from the phone. It usually goes to the nearest tower
10 with the strongest signal. That information is actually
11 picked up and it's in the call logs, the actual call detail
12 records. When an individual answers a call, you hit the send
13 button, the signal will go out from that phone and it'll go to
14 the nearest tower with the strongest signal.

15 Q And are the information about a particular
16 phone connecting to a particular tower, are those records
17 maintained by Metro PCS in the ordinary course of their
18 business?

19 A Yes, ma'am. Yes, sir. I'm sorry.

20 Q Let me ask you this, at Metro PCS is there a
21 general distance that the phone needs to be in relationship to
22 a tower to connect to a particular tower?

23 A With regards to Metro PCS towers and the Metro
24 PCS phones, the range is not a finite range. It's an
25 estimated range. The phone can be up to a half mile on in to

1 the tower up to a mile and a half on in to the tower.

2 Q So the phone is generally -- can be right at
3 the tower, I guess. You could physically be standing at the
4 tower, but it could be anywhere from a half mile to a mile and
5 a half away from the tower when it connects?

6 A That's correct.

7 Q Were you asked to come and testify and
8 authenticate certain records from Metro PCS in this case?

9 A Yes, sir.

10 Q And this morning did you have a chance to
11 review those records to confirm they are, in fact, Metro PCS
12 records?

13 A Yes, sir.

14 MR. DiGIACOMO: May I approach, Judge?

15 THE COURT: Yes.

16 BY MR. DiGIACOMO:

17 Q Sir, I'm going to start with State's Proposed
18 Exhibit No. 295. Can you explain to the ladies and gentlemen
19 of the jury basically what is 295.

20 A Exhibit 295 is actually subscriber records
21 that were created at the time the individual customer when
22 into a Metro PCS store or went online and actually purchased a
23 cell phone and/or the service.

24 Q And are those records kept in the ordinary
25 course of business of Metro PCS?

1 A Yes, sir.

2 Q And does that appear to be a true, fair, and
3 accurate copy of the records?

4 A Yes, sir.

5 MR. DiGIACOMO: Move to admit 295.

6 MR. SGRO: No objection, Your Honor.

7 MR. LANGFORD: No objection, Judge.

8 THE COURT: It'll be received.

9 (State's Exhibit 295 admitted.)

10 BY MR. DiGIACOMO:

11 Q I want to start with -- is there two different
12 subscriber information on this record?

13 A Yes, sir, there is.

14 Q Okay. And let's start with the top
15 subscriber. What's the phone number for this subscriber?

16 A The phone number is 702-542-4661.

17 Q And the subscriber?

18 A The subscriber name given is a Stephanie
19 Cousins.

20 Q That phone, can you tell from those records
21 whether or not that phone is, the term I would use, prepaid
22 versus somebody who is paying their monthly bill to Metro PCS?

23 A Metro PCS is an advance pay company. When a
24 customer comes in, they pay \$40 for 30 days of service. On
25 the 29th day of that service they will get a text message to

1 their phone telling them pay your bill tomorrow. If they
2 don't pay that bill, they can't use their phone. The do give
3 another 30 days before they cancel your account to pay that
4 bill. If you don't do it then, the account is cancelled,
5 you've got to back in and start all over again or go online
6 and start all over again with your account.

7 Q Based on the fact that it's an advance pay, is
8 there any investigation or a credit check or anything that
9 happens with somebody who comes into a store and wants to
10 utilize Metro PCS cell phone service?

11 A There's no credit check done, so there's no
12 verification of the identity of the person that comes in and
13 purchases a phone and/or service.

14 Q So I could walk in, get a phone in the name of
15 Mickey Mouse, and ultimately there wouldn't be -- there is no
16 check to make sure my license says my legal name is Mickey
17 Mouse?

18 A There is no check of your -- your
19 identification or your social security number.

20 Q What is the second phone subscriber
21 information on this record?

22 A The second phone number is a 909-233-0860.

23 Q And who is the -- what is the name associated
24 with that account?

25 A The name is -- I'll spell the first name,

1 R-I-C-C, and the last name is James.

2 Q So Ricc James. And is that also the same way
3 that the previous phone was, there had been no verification or
4 there would be no verification of the name that was provided
5 for that cell phone?

6 A That's correct.

7 Q Is there an address associated with both of
8 those cell phones? Let's start with the phone in Stephanie
9 Cousins' name. Is there an address?

10 A Yes, they search number ending in 4661, the
11 subscriber address given is a 4640 Vegas Valley Drive,
12 Apartment 1031, Las Vegas, Nevada, and the zip code.

13 Q How about for Ricc James, is there an address
14 that was provided?

15 A For that particular phone number ending 0860,
16 the subscriber address given is 1258 North Riverside Avenue,
17 Rial -- R-I-A-L -- Rialto, California, and the zip code.

18 Q Now I want to move on to the individual
19 records themselves, so let me start with -- actually, I'm
20 going to start with State's Proposed Exhibit No. 298.

21 A Yes, sir.

22 Q Do you recognize what that document is?

23 A Yes, sir.

24 Q And what is it?

25 A These are called detail records or phone logs

1 for the search number 702-542 -- I'm sorry, 702-542-4661. And
2 the specific dates to be searched are -- is 8/1/2010 through
3 8/23/2010.

4 Q And then those records, it's a 52-page record
5 of --

6 A Yes, they're called detail records. They're
7 phone logs for that specific phone number.

8 Q And much like the last record, is this a
9 business record kept in the ordinary course of business of
10 Metro PCS?

11 A Yes, sir, it is.

12 Q And does this appear to be a true, fair, and
13 accurate copy of those records?

14 A Yes, sir, it does.

15 Q Now I'm going to show you State's Proposed
16 Exhibit 297.

17 A Yes, sir. State's Exhibit 297 is 23 pages of
18 call detail records for the phone number 909-233-0860. And
19 the search dates are from 8/1/2010 through 8/23/2010.

20 Q And those -- once again, those appear to be
21 business records kept in the ordinary course of business and a
22 true, fair, and accurate copy of those records?

23 A Yes, sir.

24 MR. DiGIACOMO: Move to admit 297 and 298.

25 MR. SGRO: No objection.

1 MR. LANGFORD: No objection.

2 THE COURT: It'll be received.

3 (State's Exhibit 297 and 298 admitted.)

4 BY MR. DiGIACOMO:

5 Q Now, lastly I'm going to show you 296 and ask
6 you do you recognize what's depicted in 296.

7 A Yes, sir. This is eight pages of Metro PCS
8 cell sites, specifically Metro PCS cell sites in the greater
9 Las Vegas area.

10 Q And is that record, once again, a record kept
11 in the ordinary course of business of the Las Vegas Metro --
12 sorry, of the Metro PCS company?

13 A Yes, sir.

14 Q And does it appear to be a true, fair, and
15 accurate copy of that record?

16 A Yes, sir, a partial. It's not all of the cell
17 sites because there are a lot more cell sites.

18 Q Right. There's thousands and thousands --

19 A Yeah.

20 Q -- of cell sites --

21 A Yeah.

22 Q -- across the country.

23 A It actually -- it actually says all Metro PCS
24 cell sites, but it's specifically in the Las Vegas area.

25 MR. DiGIACOMO: Move to admit 296.

1 MR. SGRO: I'm sorry. Just to make sure I
2 understand, is the witness saying that the cell site record is
3 complete relative to Las Vegas? Was that the testimony?

4 BY MR. DiGIACOMO:

5 Q Do you have any way of knowing whether or not
6 it's complete as to Las Vegas or are those towers that are in
7 Las Vegas?

8 A These are towers that are in Las Vegas. I'm
9 not sure that it's all of the towers that are in Las Vegas.
10 It's eight pages of -- of towers and it's --

11 MR. SGRO: I mean, I'll submit it, I guess.

12 THE COURT: For what it's -- for what it's worth.

13 MR. SGRO: For what it's worth. Okay. Fair enough.

14 THE COURT: It'll be received.

15 (State's Exhibit 296 admitted.)

16 MR. DiGIACOMO: Thank you.

17 BY MR. DiGIACOMO:

18 Q So let me start with --

19 MR. DiGIACOMO: Actually, Madam Reporter, can we put
20 this on the overhead for just a second?

21 BY MR. DiGIACOMO:

22 Q And I'm going to go to 296. I'm just going to
23 zoom in on one -- each portion of it. I'm going to start off
24 with what information do you receive -- or what information is
25 on 296?

1 A The information on 296, actually over here,
2 the first column it's Broadcast SID. I'm not seeing that
3 particular column on this document. The next is NID. I'm not
4 seeing that on this. What usually comes up is the switch.
5 The switch is the computer that created the call detail
6 records for those specific phone numbers. The next column is
7 the cell. That is the cell tower number of the tower that
8 actually received the signal with the actual phone call when
9 each individual phone call was made.

10 The next column is the sector. The sector is the
11 side of the tower the antenna is on that picked up the signal.
12 And then the next column is the antenna orientation, or it's
13 also commonly referred to as the ASMIT (phonetic). It's in
14 degrees. That sector is 120 degrees. That's going to be the
15 midpoint of that particular sector on that particular tower.

16 The next column is the physical address of Tower
17 701. The next column is the city that Tower 701 on the switch
18 49 is actually located. The next column is the county, the
19 next column is the state, and then the next column is the zip
20 code of that particular address. At the very end you see an
21 abbreviation LAT and LONG. That is the latitude and longitude
22 in decimal form of the exact location of where that tower is
23 located.

24 Q So there is a mailing address back here, but
25 ultimately the exact location is measured in latitude and

1 longitude and put on a record so if, for example, I were to go
2 to a Google map I could stick in the latitude and longitude
3 for Tower 701 and see on the map exactly where in the world
4 this tower is?

5 A It would give you the exact location. Yes,
6 sir.

7 MR. DiGIACOMO: Madam Reporter, can we go back to
8 me?

9 BY MR. DiGIACOMO:

10 Q I just want to ask you a couple of questions
11 about the call detail records, as well, and I'll start with
12 297. This is the first page of 297; is that correct?

13 A That's correct.

14 Q Okay. And so I'm going to zoom in onto each
15 kind of side of this so that the jury can kind of see. And I
16 will do the first half of it here. If you could tell us --

17 A Okay.

18 Q -- what information is on 297.

19 A Again, at the very top you're going to have
20 the search number. In this case it's the search number ending
21 in 0860, and there were specific dates for that number to be
22 searched, 8/1/2010 through 8/23/2010. The first column on the
23 left is the date. That is the date a specific call is made.
24 The second column is the time a specific call is made. The
25 time is listed in the 24-hour clock commonly referred to as

1 military time.

2 The next column is the duration in minutes and
3 seconds, the duration of each individual phone call. The next
4 column is DIR. That is an abbreviation for direction. A
5 phone call with either be outgoing from the target number to
6 another phone, or incoming to the target number or search
7 number from the other phone.

8 The next number is dialed number. The dialed number
9 is the number dialed by the caller. In an instance of an
10 incoming call, if there's a special feature involved, in other
11 words if the phone call was handled by the voicemail platform
12 of the search number, there will be three additional numbers
13 in front of the phone number that's actually dialed. That is
14 dialed by the computer, by the switch, not the caller.

15 The next column is destination number. The
16 destination number is the number reached by the specific
17 caller. The next column is status. The status of a phone
18 call will either be answered or not answered. An answered
19 phone call can be answered by a person, or in an instance
20 where the voicemail platform picked up the phone call from the
21 search number, it could be answered by the voicemail. If you
22 go over a little bit more --

23 Q Now I'm going to jump to the other --

24 A Yeah.

25 Q -- side of the columns.

1 A Okay.

2 Q And I'll just grab it from where we started
3 from and pull over to the other side.

4 A The next column is special features. The
5 special features will show if the call was actually handled by
6 a -- by the voicemail platform on an incoming call to the
7 target number. The next column is called an ID. If there is
8 an incoming call to the target number, the number that called
9 the target number or search number will be listed in the
10 caller ID on the incoming phone call.

11 At the very end you have two larger columns, the
12 beginning cell and ending cell. The switch is the computer
13 that handled a specific phone call that created the call
14 detail records. You will have the tower number of that
15 particular tower that's associated with that particular
16 switch, and you will also have the sector of the side of the
17 tower the antenna was on from that particular tower that
18 handled the beginning of that phone call.

19 At the very end you see ending cell. It will also
20 show the same switch will handle the call at the beginning and
21 at the end. In other words, the same computer will create the
22 call detail records at the beginning and the end of the call.
23 It then will show which tower where the call ended and the
24 sector of that specific tower where each individual call
25 ended.

1 Q So in this case the switch was located in
2 Anaheim, California, and it's Tower 254 with SW1, Anaheim 1
3 switch?

4 A Yes, the -- the Anaheim 1 SW1 is just an
5 abbreviation for that particular switch.

6 Q Okay. And then I'm just going to put up for
7 the ladies and gentlemen of the jury 298. And this is the 702
8 number, and I'm going to just zoom into a portion of this. I
9 don't know how much bigger it's going to get for the screen
10 there. But it's the same similar information that was on 297,
11 as well, they're in the same sort of format?

12 A Same information. The columns are exactly the
13 same on that as they were in the other, the headings of the
14 columns.

15 Q It says on August 1st this phone was hitting
16 off a switch in Las Vegas. I'm going to ask you about Tower
17 811 on August 1st. Could you then take this list of Tower
18 locations and find --

19 A Whenever you get the records with the cell
20 tower information, you will get a list of all of the towers
21 that Metro PCS owns or controls for Metro PCS customers as
22 close to the time as the search time for the number that
23 you're searching. What I'm doing here is I'm going to the
24 specific cell tower 811 on the Las Vegas switch, and there's a
25 physical address of that particular tower. It is at 2425

1 South Nellis in Las Vegas, Clark County, Nevada, and the zip
2 code, and there is also a latitude and longitude in decimal
3 form.

4 Q So if somebody wanted to track either one of
5 these phones' general location in the country, I guess, you
6 could go through each individual call, find the location of
7 that tower, and then plot where that tower is in town in
8 relationship to the call and the phone should be generally
9 within a half mile to a mile and a half of that tower?

10 A That's correct. Nobody can tell you the exact
11 location of the phone. It just tells you which tower handled
12 each individual phone call from the start of the phone call
13 until the end of the phone call, what happened in the middle,
14 the records don't indicate that.

15 Q And if you wanted to get really technical, you
16 could even go to the sector and on the 360 degrees, based upon
17 the sector lists that are on those records, you could even
18 find in which direction from a cell tower a particular phone
19 generally is?

20 A That's correct.

21 MR. DiGIACOMO: Thank you, Judge. I pass the
22 witness.

23 Do you want this down or up?

24 MR. SGRO: What's that?

25 MR. DiGIACOMO: Do you want this down or up?

1 MR. SGRO: You can leave it up.

2 MR. DiGIACOMO: Okay.

3 MR. SGRO: Thank you.

4 CROSS-EXAMINATION

5 BY MR. SGRO:

6 Q Good morning, sir.

7 A Good morning, sir. How are you?

8 Q Excellent. Thank you. LeCesne, is that how
9 you --

10 A LeCesne.

11 Q LeCesne.

12 A Yes, sir.

13 Q Okay. Mr. LeCesne, you came from Texas to
14 talk about some specific Metro PCS records; correct?

15 A That's correct.

16 Q All right. So I want to ask you a couple
17 questions just on how cell phone records work, okay, relative
18 to accuracy. So first of all, would you expect if you have
19 one Metro PCS record -- and let me give you a hypothetical.
20 You and I have Metro PCS phones. I call you -- I called you
21 this morning at 8:00 a.m. You would expect to see on my bill
22 me calling you at 8:00 a.m., would that be right?

23 A There's no billing with Metro PCS.

24 Q On my record.

25 A On your particular phone records --

1 Q Yes.

2 A -- if your number was searched, it would show
3 where your phone was.

4 Q Right.

5 A Okay.

6 Q And then you'd want to have -- or you would
7 expect to have a corresponding entry on your phone receiving
8 the call at 8:00 a.m.

9 A If the records were actually requested by a
10 search warrant or court order, yes, sir.

11 Q Correct. And what I think I hear you saying
12 is you would expect the records to match. If the records are
13 requested, the records should match; right? My call to you
14 should be on my search and on your search; right?

15 A If both records were searched --

16 Q Right.

17 A -- depending on where you were. If you're in
18 the same location, they may match. If you're in a different
19 location, it'll show where the phone was on one record, where
20 that phone was and the call that was made to on the other
21 person's record. The records only indicate the number that is
22 searched, not the number that is called.

23 Q Right. I understand. I'm looking for clarity
24 whether or not if both of our numbers were searched in my
25 hypothetical, you would expect to see both my -- my outgoing

1 call to you and your incoming call from me; right?

2 A That's correct.

3 Q Okay. The towers certainly could be different
4 if I'm calling you and we're not together; right? The tower
5 information could be different; right?

6 A They could be.

7 Q Okay. And that tower information could be the
8 same; right?

9 A That's correct.

10 Q Okay. So do you -- strike that. Did you
11 examine these records to do any comparisons? And by that I
12 mean did you go through the records to see if an outgoing call
13 from one search record matched the incoming call on the other
14 or vice versa?

15 A No, sir, I did not.

16 Q All right. Do you know what a pen register
17 is?

18 A Of course I do.

19 Q Okay. What's -- can you -- can you tell the
20 ladies and gentlemen what a pen register is?

21 A A pen register is when -- that's the first
22 step when you're doing a Title III or a wiretap on a phone.
23 And what you do is you would get all of the phone calls that
24 are made and you compare those phone calls. And that's
25 basically to get an idea on the locations that the phone is on

1 the pen register that you're looking at.

2 Q Okay. Are you aware of any pen registers
3 being done in this case?

4 A No, sir, I'm not.

5 Q All right. Have you been asked to compare
6 phone bills to pen registers in this case?

7 A No, sir. There is no billing with Metro PCS,
8 and that's not my job to do that.

9 Q I apologize.

10 A Yes, that's -- that's law enforcement's job to
11 do that.

12 Q Were you asked to compare search records that
13 you -- can we call these search records?

14 A Call detail records.

15 Q Call detail records. Were you asked to
16 compare call detail records to a pen register?

17 A No, sir, I wasn't.

18 Q All right. Now, let's talk about this tower
19 for a minute, okay. Cell phone towers, I heard Mr. DiGiacomo
20 just state some of them have a 360 degree ability; is that
21 right?

22 A All of them have a 360 degree.

23 Q All of them do.

24 A All Metro PCS.

25 Q Okay. Metro PCS has 360 degree capability?

1 A On a conventional tower.

2 Q What's a -- what's a conventional tower?

3 A 360 degree coverage.

4 Q Okay. Are there towers that are not
5 conventional towers?

6 A There is something called directional antenna
7 system, which is an individual antenna. Those individual
8 antennas pick up a call. And the difference between the
9 individual antennas on DAS system, the directional antenna
10 systems, is that the phone is actually a quarter mile to a
11 half mile from that antenna.

12 Q So the differences would be reflected
13 differently?

14 A If it's a DAS as opposed to a conventional
15 tower.

16 Q Okay. And relative to the tower you gave a
17 range of one to one and a half miles per tower; is that right?

18 A Half mile to one a half miles, and that is the
19 range that was given to me during training by the engineers
20 who actually set up the towers and work on those towers.

21 Q And you're aware, sir, sometimes towers can
22 have a greater range than that?

23 A Yes, but according to the Metro PCS engineers
24 that set up the Metro PCS towers, the range for the Metro PCS
25 towers are between half mile to a mile and a half.

1 Q Right. I understand what you just said about
2 the training. I'm talking about going from the training to
3 real life. In real life you know that those towers can reach
4 more than a mile and a half; right?

5 A In real life, my training from the Metro PCS
6 engineers who set up the Metro PCS towers, this is what I was
7 trained and told by those individuals during my training
8 process. I don't -- I don't deal in real life. I don't get
9 up and climb on towers. I don't do that.

10 Q Okay. So --

11 A I only do what these records show, what they
12 indicate, and the training that I was given by Metro PCS.

13 Q Okay. Did you just say you don't deal in real
14 life when it comes to this stuff?

15 A I don't follow --

16 Q Is that what you just said, sir?

17 A -- cell phones. Yes, in real life.

18 Q Okay.

19 A Using your term.

20 Q Okay. Now, let me ask you this question. You
21 brought with you a sheet of paper that lists a number of
22 towers in Clark County that Metro PCS had; right?

23 A That's correct.

24 Q All right. How many of those power -- or
25 towers were functioning that day.

1 A I don't have that information. I can only
2 tell you what the records indicated on the specific dates and
3 the specific times of each individual phone call. The records
4 only show what happened. The records do not show something
5 that didn't happen.

6 Q Okay. Sir, just try and bear with me and
7 stick with my questions, okay. The point of the extended
8 range beyond a mile and a half comes into play if you have a
9 series of towers going down a street and one of them doesn't
10 work, one of them is being repaired, whatever the reason is,
11 the towers on both ends of it might extend their range or pick
12 it up sooner than expected, fair?

13 A That could -- that could happen, but that does
14 not indicate -- the records do not indicate that. They only
15 indicate which tower handled which call.

16 Q Okay. Trust me. Everyone gets what the
17 records say, okay.

18 A Well, that's all I'm here to talk about are
19 the records, the business records, the --

20 Q You were asked --

21 A -- Metro PCS business records.

22 Q You were asked a bunch of questions, though,
23 about what the columns mean. You defined some things. I'm
24 not -- you and I aren't fighting right now. You understand
25 that?

1 A Oh, no, sir.

2 THE COURT: Just ask questions, though.

3 BY MR. SGRO:

4 Q Can you tell the jury if when a cell tower is
5 being repaired or down for maintenance if that expands the
6 range of other surrounding towers. Do you know that?

7 A I don't know that.

8 Q All right. Can you -- can you -- do you have
9 Exhibit 296 in front of you still?

10 A Yes, sir.

11 MR. SGRO: May I approach the witness, please, Your
12 Honor.

13 THE COURT: Yes.

14 BY MR. SGRO:

15 Q Exhibit 296 is the one that you said names the
16 towers that were in Las Vegas.

17 A Some of the towers in Las Vegas.

18 Q Okay. So how is it that on Exhibit 296 a
19 document can be generated that lists some, but not all of the
20 towers? How does that happen?

21 A I'm not sure if -- if the prosecution got the
22 full list of towers, or law enforcement did. Usually they get
23 the full list. It can be sometimes 500 pages, 1,000 pages.
24 That's why I don't print them. You'd have to ask the law
25 enforcement person why there's only a portion. Whoever

1 received the document from the search warrant that was issued,
2 why there's only eight pages over here. Probably because it's
3 only the pertinent towers that they were looking for in this
4 records. I don't know. You've got to ask them that.

5 Q So someone before you filtered the information
6 that's in 296; correct?

7 A This is eight pages of the cell towers in Las
8 Vegas. I know there's more than eight pages of cell towers in
9 Las Vegas. That's all I can tell you. What they did with it,
10 they probably got the pertinent towers from there. I don't
11 know. You'll have to ask them that.

12 Q All right. Now, the exhibits 296, when was
13 that document created?

14 A 10/23 of 2009.

15 Q 10/23 or 2009?

16 A That's correct.

17 Q So in our case, we're dealing with some events
18 that happened in August of 2010.

19 A That's correct.

20 Q So just to give you some context, so the cell
21 tower information that you brought with you predates the
22 events we're talking about here by about a year?

23 A 10/23 of 2009.

24 Q So 10 months.

25 A 10/23/2009. You have to do the math.

1 Q Okay. How many towers had been added from
2 October of 2009 until August of 2010?

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

4 Q And you were asked some questions about
5 tracking a phone. Do you remember that, those questions just
6 a minute ago?

7 A Not -- refresh my memory, please, about
8 tracking a phone.

9 Q Okay. You were asked if you wanted to track a
10 phone. Do you remember that?

11 A If -- if the investigators wanted to find out
12 where a specific phone call was during a specific phone --
13 during a specific call in a specific date and time, there is a
14 way by looking at the tower information that's on the call
15 detail records and comparing that tower information to the
16 tower listings to figure out where the phone was. Nobody can
17 tell you exactly where the phone was.

18 Q Okay. And that -- and that, I guess, is my
19 point. All the towers in these records can do is -- is give
20 us an educated guess. We can approximate; right?

21 A It tells you which tower handled the call.

22 Q Okay.

23 A I can tell you this. The call detail records
24 will show that this phone on the specific -- some of these
25 specific phone calls was in Las Vegas. It wasn't in New York.

1 It wasn't in Dallas. It was in the Las Vegas area. And on
2 the other phone, some of those phone calls were in the Los
3 Angeles area. It wasn't in New York, it wasn't in Dallas.
4 The records only indicate what happened, not something that
5 didn't happen.

6 Q Okay.

7 MR. SGRO: Nothing else.

8 MR. LANGFORD: Nothing, Your Honor.

9 REDIRECT EXAMINATION

10 BY MR. DiGIACOMO:

11 Q I just to clarify something.

12 A Yes, sir.

13 Q Mr. Sgro kind of gave you a hypothetical if
14 his PCS phone calls your Metro PCS phone, you would expect to
15 see record on both his call detail records and your call
16 detail records; correct?

17 A That -- that's correct.

18 Q Okay.

19 A If I had a Metro PCS phone and he had a Metro
20 PCS phone and both records were actually requested by search
21 warrant or a court order, yes.

22 Q There are some things that Mr. Sgro was
23 assuming from that, like if I call your phone that your phone
24 is on; correct?

25 A Well, you've got to ask Mr. Sgro what he was

1 assuming. I don't know what he was assuming.

2 Q But if your phone is off, it can't connect to
3 a tower, would that be fair?

4 A It shows which phone is being searched. In
5 other words, the records for the phone ending in 0860 shows
6 that happened on a specific phone call for that phone. The
7 records 4661 only show what happened on a specific date and
8 time with the phone records for that phone. By looking at the
9 other records, you can't tell what happened with the other
10 phone. You have to have both.

11 Q You have to have both in order to know --

12 A Yeah.

13 Q -- what happened with both phones?

14 A With both phones. Right.

15 Q Okay. There was some questions asked to you
16 about, I think you called it DAS towers.

17 A DAS system, yes, sir.

18 Q The DAS system. The DAS system -- first of
19 all, are any of these records related to DAS system towers?

20 A On your document on 296 I only see one DAS
21 system, and that was for Tower 830, and I don't know if that's
22 one of your pertinent towers or not that you were asking
23 about.

24 Q Okay. Well, that's my next question.

25 A Right.

1 Q If 830 is the DAS system tower that's in those
2 records, if you don't see 830 on those phone records, and I'm
3 not going to make you go through all 75 pages there, there
4 isn't a DAS system tower associated with this particular
5 event?

6 A These particular --

7 Q Or those particular records.

8 A These particular phone records, that's
9 correct.

10 Q There were some questions asked about -- there
11 were some timing questions asked. Let me ask you this. The
12 date and time of the call on these records, are they tied to
13 any -- well, I mean, is that Pacific Standard time? How do we
14 know what time that is, where in the world it is?

15 A It's Pacific Standard time because Las Vegas
16 is in Pacific Standard time and Los Angeles is in Pacific
17 Standard time.

18 Q Okay. So the location of the switch defines
19 what the time on those records are for?

20 A The location of the tower and the switch
21 defines the time zone.

22 Q Okay. Lastly, Mr. Sgro asked you some
23 questions about the list being from October of 2009. Does
24 Metro PCS periodically update their list as required by
25 federal law to provide lists of towers that are in the

1 country?

2 A That's correct. And -- and when this document
3 is sent out, this huge document is sent out in electronic
4 form, they're going to give you the -- the -- the latest
5 update as close to the time of the call detail records, the
6 search times, as possible.

7 Q Okay. So that is called -- or a list of
8 towers that predates August of 2010; correct?

9 A That's correct.

10 Q There may be other lists that are generated,
11 you know, October of 2010, but that's after the event of those
12 records.

13 A That's correct.

14 Q I have nothing further. Thank you, sir.

15 THE COURT: Anything further, Mr. Sgro?

16 MR. SGRO: No.

17 THE COURT: Mr. Langford?

18 MR. LANGFORD: No, Your Honor.

19 THE COURT: All right. Thank you, Mr. LeCesne, for
20 being here.

21 THE WITNESS: Thank you, sir.

22 THE COURT: You'll be excused, sir.

23 THE WITNESS: Thank you, sir. I'll be back next
24 week.

25 MR. DiGIACOMO: Sergeant Maines. I guess retired

1 sergeant.

2 MR. SGRO: Sergeant who?

3 MR. DiGIACOMO: Maines.

4 MICHAEL MAINES, STATE'S WITNESS, SWORN

5 THE CLERK: Please be seated. Please state your
6 name and spell your first and last name for the record.

7 THE WITNESS: Michael Maines, Michael,
8 M-I-C-H-A-E-L, Maines, M-A-I-N-E-S.

9 DIRECT EXAMINATION

10 BY MR. DiGIACOMO:

11 Q Sir, I want to direct your attention back to
12 2010. How were you employed?

13 A As a detective sergeant with the Las Vegas
14 Metropolitan Police Department.

15 Q What was your assignment back then?

16 A As a major crime sergeant.

17 Q How long were you with the Las Vegas
18 Metropolitan Police Department?

19 A 23.8 years.

20 Q And are you now retired?

21 A Yes.

22 Q In the early morning hours of August 7th of
23 2010, did you respond to a location generally near Nellis and
24 Vegas Valley here in Clark County, Las Vegas, Nevada?

25 A Yes, I did.

1 Q And when you got there, did you come into
2 contact with a woman named Stephanie Cousins, as well as her
3 daughter Christine Pierce?

4 A Yes. Prior to that I responded to a scene of
5 a shooting and then I was alerted to the presence of Ms.
6 Cousins at an address over on, I believe it was Aloha.

7 Q Let me back up. Did you initially respond to
8 the homicide that occurred at 5662 Meikle Lane?

9 A Correct.

10 Q During the time period you were at the
11 homicide, do you receive information that there may be some
12 relevant witnesses or information down in the area of Nellis
13 and Vegas Valley?

14 A That's correct.

15 Q And was that based upon a 911 call made by
16 Christine Pierce?

17 A To the best of my knowledge, yes.

18 Q When you got to the area of Vegas Valley and
19 Nellis, did you come into contact with a woman identified to
20 you as Stephanie Cousins?

21 A Yes, I did.

22 Q And without telling us what she said, did you
23 ultimately look into her phone to identify the phone number
24 associated with a person known as Willie and/or G-Dogg?

25 A That's correct.

1 Q And did you gather the information as to what
2 that cell phone number was and then report it to the homicide
3 detective?

4 A Yes, I did.

5 Q Have you had an opportunity to review the
6 report of Detectives Bunting and Wildemann to familiarize
7 yourself with the phone number for Willie and/or G-Dogg?

8 A Yes, I did.

9 Q Okay. Do you remember it off the top of your
10 head right now?

11 A It was a 909 area code. That's about all I
12 can --

13 Q Would it help you to refresh your recollection
14 to look at page 15 of that officer's report?

15 A Yes.

16 Q Do you have that up there with you?

17 A Yes, I do.

18 Q Okay.

19 MR. DiGIACOMO: Second paragraph, counsel.

20 THE WITNESS: 909-233-0860.

21 BY MR. DiGIACOMO:

22 Q And thank you, sir.

23 MR. DiGIACOMO: I pass the witness.

24 MR. SGRO: Court's indulgence, Your Honor. No
25 questions.

1 MR. LANGFORD: No questions, Your Honor.

2 THE COURT: Thank you for being a witness,
3 Detective. You'll be excused.

4 THE WITNESS: Thank you.

5 MS. WECKERLY: Erin Taylor.

6 ERIN TAYLOR, STATE'S WITNESS, SWORN

7 THE CLERK: Please be seated. Please state your
8 name, and spell your first and last name for the record.

9 THE WITNESS: It's Erin Taylor; E-R-I-N T-A-Y-L-O-R.

10 DIRECT EXAMINATION

11 BY MS. WECKERLY:

12 Q How are you employed?

13 A I am a senior crime scene analyst with Las
14 Vegas Metropolitan Police Department.

15 Q And how long have you worked as a crime scene
16 analyst?

17 A I have been employed in that capacity a little
18 over eight years.

19 Q And you said you're a senior crime scene
20 analyst?

21 A Yes, I am.

22 Q And how do you get that qualification?

23 A So when you hire on at Metro as a crime scene
24 analyst, you -- you enter as a crime scene analyst I. And
25 then when you've been there for two years, you become a II.

1 And then at the four year mark you can test to become a
2 senior. So that involves a written portion, a practical
3 examination, and then an oral board. And if you pass that,
4 you promote to become a senior.

5 Q Okay. And you obviously went through that
6 process?

7 A I did.

8 Q You -- when you were first brought on as a
9 crime scene analyst for Metro, what kind of training do you
10 undergo?

11 A Well, I hired one, I had a bachelor of science
12 in forensic science from Baylor University with a minor in
13 criminal justice. And then when I hired on with Metro, we go
14 through a crime scene analyst academy. And then after that
15 we're in a field training program where we train with a senior
16 crime scene analyst and ride along with them for 12 weeks and
17 perform job duties with them. And then from there we get
18 various training after that in different aspects of crime
19 scene processing.

20 Q Now, we're all TV watchers, so what does a
21 crime scene analyst do?

22 A Generally, I respond to crime scenes and then
23 I document those scenes through reports, photographs, latent
24 print processing if necessary, evidence collection, and
25 diagrams.

1 Q And you were obviously working as a crime
2 scene analyst back in 2010.

3 A Yes, I was.

4 Q And you were involved in the homicide
5 investigation with the victim by the name of Derecia Newman?

6 A Yes.

7 Q Now, did you respond to the original scene
8 right after it happened?

9 A No, I did not.

10 Q Okay. So your involvement was after that
11 first call out?

12 A Correct.

13 Q Can you describe for the members of the jury
14 what your first task was with regard to this investigation?

15 A Of course. So on August 10th I was requested
16 to the ISD building, which is like the Investigative Services
17 Division building, where I photographed a female by the name
18 of Monica Martinez. And then -- do you want me to keep going?

19 Q Sure.

20 A Okay. And then after that I responded to a
21 residence to document a vehicle at that residence and the
22 residence itself.

23 Q And was there a search warrant served at that
24 residence?

25 A Thee was.

1 Q And so there were detectives there, along with
2 yourself and other crime scene analysts to document that --
3 that residence, as well as the vehicle that you mentioned?

4 A Correct.

5 Q Was the vehicle at the residence?

6 A It was. It was inside the attached garage.

7 MS. WECKERLY: May I approach, Your Honor?

8 THE COURT: Yes.

9 BY MS. WECKERLY:

10 Q Ms. Taylor, I'm showing you what's been marked
11 as State's 183 to 190.

12 A Okay.

13 Q Could you look through those. And I should
14 have said this in a different order. And then I'm also going
15 to show you 170 to 182.

16 A Okay.

17 MS. WECKERLY: Your Honor, the State moves to admit
18 170 to 190.

19 MR. SGRO: No objection.

20 MR. LANGFORD: No objection, Your Honor.

21 THE COURT: They'll be received.

22 (State's Exhibit 170 through 190 admitted.)

23 MS. WECKERLY: Thank you.

24 BY MS. WECKERLY:

25 Q If it's okay with you, Ms. Taylor, I'm going

1 to start with the residence, okay?

2 A Okay.

3 Q And I'll put these on the --

4 MS. WECKERLY: Ready?

5 MR. DiGIACOMO: Yeah.

6 BY MS. WECKERLY:

7 Q -- on the overhead. Let's start with what's
8 been admitted as State's 183. What are -- obviously, what are
9 we looking at in that photograph?

10 A This is the residence I responded to.

11 Q And that's where the search warrant was
12 served?

13 A Correct.

14 Q Let me put on the overhead -- this would be
15 State's 190. And what are we looking at in that?

16 A That's a gas bill that was inside the master
17 bedroom of the residence with the -- the name of the people
18 that lived there, and then the address which was the 5824
19 Cinnabar Avenue.

20 Q And, I mean, what's the purpose of impounding
21 or taking the gas bill?

22 A It's to document who is recorded as living
23 there. That's one way they do it is that homicide detectives
24 will find bills with the name of a person and the address to
25 show the residency.

1 Q So who is there and who turned on the power,
2 at least.

3 A Yes, correct.

4 Q And now I'm going to show you 185. And what
5 are we looking at there?

6 A That's inside the -- the open garage door, and
7 that was the vehicle that I photographed and then it was
8 sealed and -- and towed.

9 Q In terms of the residence itself, were there
10 any weapons that you saw or weapons that were impounded?

11 A No.

12 Q What items were impounded or taken, if you
13 recall?

14 A The gas bill that we just saw, a spiral
15 Spiderman notebook with writing in it, there were two condom
16 wrappers and two condoms, and I believe that was everything.

17 Q Okay. But no -- no gun was found?

18 A No, no weapons.

19 Q Now, this vehicle, what happened to that?

20 A That vehicle, after I photographed it in
21 place, I affixed orange seals on it and then it was towed back
22 to the CSI office and it was followed by Detective Sanborn to
23 the office.

24 Q And now I'm going to show you State's 170. Is
25 that the vehicle back at the CSI offices?

1 A Correct.

2 Q And what's done -- what's done to the vehicle
3 either by yourself or other analysts with you at this
4 location?

5 A The next day I -- I photographed the vehicle
6 again to show that the seals on the vehicle were still
7 affixed. And then after all the photographs were taken, I
8 processed it for latent fingerprints and did a search with the
9 homicide detectives for items of evidence, and then did an
10 additional search for the presence of blood using Leuco
11 Crystal Violet.

12 Q Okay. Now, in terms of the fingerprints --

13 A Yes.

14 Q -- when you collect the fingerprints, how do
15 you preserve them?

16 A I preserve them -- so basically apply a
17 powder. And once a print is developed, a piece of clear tape
18 is affixed over it. And then we take a photo of it to show
19 where that tape was on an item. And then we lift the tape and
20 then put it on a white -- almost like a photo paper, a piece
21 of photo paper, a plain white card. Then all of the latent
22 prints are labeled and put into an envelope that's then
23 submitted to the latent print section.

24 Q Now, are you the person that does the
25 comparison of the latent print that is developed from the

1 vehicle to known prints?

2 A No, I am not.

3 Q That's done by a fingerprint expert?

4 A Yes. Correct.

5 Q Okay. Now, you also mentioned that you
6 processed the vehicle with Leuco Crystal Violet?

7 A Yes.

8 Q Describe for the members of the jury what that
9 is and how that's done.

10 A So Leuco Crystal Violet, or LCV, it's a
11 colorless chemical that we mix together and then put basically
12 in a spray bottle. And then you spray it on surfaces and in
13 the presence of blood it'll change from a clear color to
14 purple.

15 Q And what were the results or what did you see
16 when that was applied to the vehicle?

17 A Negative results, so there was no blood using
18 LCV recovered from the vehicle.

19 Q Were there swabs taken for DNA purposes in the
20 vehicle?

21 A Yes, there were.

22 Q Okay. And where -- what types of locations
23 would you typically be kind of looking for to swab for DNA?

24 A For -- for DNA, I took samples from the door
25 handles, the steering wheel, the gear shift, the rearview

1 mirror, surfaces that would have been touched and that are
2 more rough in texture that would be more suitable for DNA as
3 opposed to fingerprint processing.

4 Q And that would be the texture like some skin
5 cells may come off onto an objection?

6 A Exactly. Yes.

7 Q And, again, are you the person that later does
8 the DNA analysis or --

9 A No, I'm not.

10 Q Okay. And you submit all of those for later
11 testing?

12 A Correct.

13 Q And is that -- that -- the Leuco Crystal
14 Violet, the prints, and the DNA. Did you do a footwear in the
15 car?

16 A There was an envelope in the back floorboard
17 on one of the rear floorboards that had a partial footwear on
18 it, and I did photograph that and impound it, and then that
19 was -- that can be submitted to a footwear examiner. That
20 would be who would look at that.

21 Q For later testing?

22 A Correct.

23 Q Okay. Now, after you did that work, did you
24 ever respond to the original crime scene on Meikle Lane?

25 A I did a little over a month later.

1 Q And what was the purpose of going back to that
2 location?

3 A Homicide detectives requested us back to
4 document bullet holes that were in a hallway wall.

5 Q And I'm going to show you now State's 135 to
6 147 and ask you to look through those photographs, please.

7 MR. SGRO: The numbers, Counsel? I'm sorry.

8 MS. WECKERLY: 135 to 147.

9 BY MS. WECKERLY:

10 Q Do you recognize those photographs?

11 A I do. I took those photographs.

12 Q Okay. And do they reflect accurately the
13 later processing you did, as well as the collection of a
14 bullet fragment?

15 A Yes.

16 MR. SGRO: Objection. Leading.

17 MS. WECKERLY: Well, it's foundational.

18 THE COURT: Okay. What do they reflect.

19 BY MS. WECKERLY:

20 Q What do they reflect?

21 A Those photographs show the apartment that I
22 responded to and the bullet holes inside. And then it also
23 shows another apartment that I responded to with a big screen
24 TV that I recovered a bullet fragment from.

25 Q Let's look at, first, State's 136.

1 THE CLERK: Are they admitted?

2 MS. WECKERLY: Mark can do it, thank you.

3 Or can you?

4 MR. DiGIACOMO: Did you offer them?

5 MS. WECKERLY: Oh, well, State moves -- thank you.

6 Now I know what you said. State moves to admit 135 to 147.

7 MR. SGRO: No problem.

8 MR. LANGFORD: No objection.

9 THE COURT: They'll be received.

10 (State's Exhibit 135 through 147 admitted.)

11 BY MS. WECKERLY:

12 Q Okay. So looking at 136, can you explain to
13 the members of the jury what we're looking at in that
14 photograph?

15 A This is the interior of the apartment, and
16 this is a hallway, north/south hallway, and this is the north
17 wall of that hallway.

18 Q And this is in -- in September at this point;
19 correct?

20 A Yes.

21 Q So it's a couple months after the homicide?

22 A Yes. I believe five or six weeks later.

23 Q Okay. And so things have been cleared out
24 that were there, obviously, earlier?

25 A Yes. When I went there the apartment was

1 unfurnished.

2 Q Okay. Now, looking back at the wall in the
3 back of 136 there appears to be like defects in the wall. Can
4 you explain what that is?

5 A Yes. The -- these right here are the -- the
6 bullet holes that I documented that were in the wall.

7 Q And I'm going to ask --

8 MS. WECKERLY: Can you put on 138, please.

9 BY MS. WECKERLY:

10 Q And if you touch the bottom corner of your --
11 yeah.

12 A Oh, sorry.

13 Q That's okay. So is that a closer view of
14 those bullet holes?

15 A It is. They're turned on their side, but
16 that's -- yes, that's them.

17 Q So now it's oriented correctly?

18 A Correct.

19 Q And those -- when we saw the prior cutouts,
20 that was done by other crime scene analysts?

21 A Yes, those were there when I arrived, and I
22 don't know what they were there from.

23 Q Okay. But these bullet holes, which if we go
24 back to 136, I'm going to just have you circle where those
25 were.

1 A They were right down here.

2 Q Okay. And close up is 137 and you were
3 documenting those?

4 A Correct.

5 Q Now, did you make any effort to -- to like
6 recover a projectile or anything like that in the apartment?

7 A I did. I did a search and I did not recovery
8 any bullet fragments or bullets from the apartment.

9 Q Okay. Associated with what you saw there?

10 A Correct. Yes.

11 Q Later that day did you do something else in
12 terms of the investigation?

13 A Yes, I -- after we were done here, we went to
14 an apartment on Owens Avenue. I can't remember the exact
15 address off the top of my head. But that is where reportedly
16 the big screen TV that was in the bedroom was moved to. And I
17 recovered -- I documented a hole I the TV and recovered a
18 bullet fragment from inside.

19 Q Now I'm putting on State's 142. please. And
20 what are we -- is that the second location that you just spoke
21 of?

22 A That is. This is the Owens address and this
23 is the TV that was reportedly in -- in the bedroom of that
24 original apartment.

25 Q Okay. And 144, what are we looking at in that

1 one?

2 MS. WECKERLY: Well, can we just turn it, please?

3 MR. DiGIACOMO: Oh, sure.

4 THE WITNESS: This here is the side of the
5 television, and right here is where the apparent bullet hole
6 is in it.

7 MS. WECKERLY: Can we put on 145, please.

8 BY MS. WECKERLY:

9 Q What are -- is that a closer view?

10 A It is. Right here is the bullet hole that I
11 was documenting.

12 Q Okay. And now lastly, 147. What is that?

13 A That right there is the bullet fragment that I
14 recovered from inside the television. We opened it up and
15 there was a bullet fragment inside.

16 Q And what did you do with that fragment?

17 A That was impounded. After I -- I photographed
18 it, I put it in a vial and impounded it. And that could be
19 sent to a firearm's examiner for later testing.

20 Q And so you're obviously not the person who
21 does that later testing?

22 A No, I do not.

23 Q Okay. Thank you.

24 MS. WECKERLY: I'll pass the witness, Your Honor.

25 MR. SGRO: May I approach the clerk briefly, Your

1 Honor.

2 THE COURT: Certainly.

3 MR. SGRO: And could I have the Elmo, please.

4 May I proceed, Your Honor?

5 THE COURT: Certainly.

6 CROSS-EXAMINATION

7 BY MR. SGRO:

8 Q Good morning. How are you doing?

9 A Good morning. I'm well, thank you.

10 Q I want to ask you -- I'm going to go in the
11 same order.

12 A Okay.

13 Q So first of all let's talk about your
14 qualifications, all right?

15 A Okay.

16 Q How long have you been in Metro?

17 A Over eight years.

18 Q And have you -- well, strike that. Were you
19 in 2010, in August, someone that other law enforcement
20 officials could rely upon in terms of the quality and accuracy
21 of your work?

22 A Yes.

23 Q Have you come to be known as someone who does
24 a good job, who is accurate?

25 A Yes.

1 Q Pardon me?

2 A Yes.

3 Q Okay. And you continued your training even
4 beyond August of 2010; right? You're still going to classes.
5 I see in your resume here you're still going to seminars; is
6 that right?

7 A Correct. Yes.

8 Q Now, one of the things that you do as part of
9 your job is you create reports; right?

10 A Yes.

11 Q And these reports -- and let's just take an
12 example. You were asked about -- you know, you recovered a
13 fire -- or a bullet or a fragment. That gets sent off; right?

14 A Correct. Yes.

15 Q Now, whoever that person is that it gets sent
16 off to is going to rely on what you tell them in your report;
17 right?

18 A Yes.

19 Q Where you got it, what time it was, the
20 circumstances, all those things; correct?

21 A Correct.

22 Q And you're trained in the discipline not only
23 of the science, but also how to draft a report that people can
24 rely on.

25 A Yes, that's correct.

1 Q And you told the jury that one of the --
2 another thing that you did was you lifted some prints and you
3 sent those off, as well.

4 A Yes.

5 Q And, again, same questions, same answers.
6 That person receiving those fingerprint cards needs to be able
7 to trust you, rely on you, and believe that you're accurate?

8 A Yes.

9 Q All right.

10 A Correct.

11 Q Now, when we get to the issue of the car,
12 first of all, do you remember the condition of the car as you
13 photographed it?

14 A The -- do you just -- the doors were closed,
15 the windows were up, the seals were affixed.

16 Q Okay. Did you look inside the car?

17 A Yes. After the photographs were taken from
18 outside, then we proceed inside the car.

19 Q Right. And you took picture of the inside of
20 the car, too?

21 A Yes.

22 Q And would you agree with me that the car was
23 dirty?

24 A It wasn't -- do you mean the outside or the
25 inside? I'm sorry.

1 Q The inside. I'm sorry.

2 A The inside --

3 Q The inside of the car has stuff all over it;
4 right?

5 A Not items. It wasn't cluttered with items,
6 but --

7 Q What does it have?

8 A -- it wasn't clean. There was a towel on the
9 rear floorboard, an envelope. But it wasn't cluttered with
10 items.

11 Q Do you recall any clothing in the back seat?

12 A In the back seat I believe there are a pair of
13 shoes, a pair of heels.

14 Q Okay. Now, let's start with the -- is the
15 acronym LCV?

16 A Yes.

17 Q Okay. Can you say that again, the word?

18 A Leuco Crystal Violet.

19 Q All right. That is a chemical agent that is
20 going to react to blood; right?

21 A Correct.

22 Q And it also reacts to cleaning agents, doesn't
23 it?

24 A Yes, it can.

25 Q Was there a reaction from the LCV to a

1 cleaning agent in the backseat?

2 A No, there was no reaction of LCV at all.

3 Q Okay. So just to put it to bed, do you know
4 the name of the individual, the names, of the defendants in
5 this case?

6 A I do now that I have the -- the subpoena and
7 -- yes.

8 Q Okay. So let's go from the generic to the
9 specific.

10 A All right.

11 Q David Burns's DNA was not in the left side of
12 the back seat; right?

13 A Well, I don't know if his DNA was or not. I
14 took DNA swabs, but I don't know the results.

15 Q Blood.

16 A Okay, blood. No. No blood.

17 Q All right. You spoke to the jurors about some
18 footwear impressions that you got from the backseat of the
19 car; right?

20 A Correct.

21 Q What side of the backseat?

22 A It was the -- the left side.

23 Q The driver side?

24 A Yes

25 Q Are you aware that those footwear impressions

1 that you obtained were compared to someone named Job-Loc?

2 A No.

3 Q So I guess let me ask a more broader question.
4 When you tell -- when you come in and you testify and you say,
5 hey, we sent these things out, do you ever circle back and
6 determine what the results are or what the findings were?

7 A No, not usually, only if I find out about
8 them. So I submit them as items of evidence. And if a
9 request is put in for them to be examined, then they are.

10 Q So let me ask it this way. Relative to the
11 footwear impression that you obtained from the driver side
12 backseat of the car, does the name Job-Loc ring a bell to you
13 at all?

14 A No.

15 Q Jerome Thomas?

16 A No.

17 Q Okay. I asked you a number of questions about
18 your qualifications. Would one of your qualifications be to
19 be able to do something like take apart a big screen TV and
20 locate a fragment?

21 A Yes.

22 Q And are you trained how to look for things
23 like that?

24 A Yes.

25 Q And do you do the best that you can so you

1 don't miss anything?

2 A Yes, of course.

3 Q And you understand how important, especially
4 in a homicide case, bullets and bullet fragments can be;
5 correct?

6 A Yes.

7 Q In this case did you take pains to go through
8 and dismantle that TV?

9 A Yes, we -- so it was one of those big TVs with
10 the back on it, so we took the back off and the bullet
11 fragment was recovered. And then we even looked in the base
12 under the TV portion, and that was searched with -- with
13 negative results. There were no other bullets or bullet
14 fragments found in it.

15 Q Were you comfortable when you left that you
16 had adequately searched that television and that you recovered
17 the one and only fragment that was in there?

18 A Yes.

19 Q And that's the same kind of comfort you have
20 in terms of allowing people beyond you to rely on you on what
21 you found; right? Things that you submit to other people.

22 A Yes.

23 Q Okay. Now, I have here some photos I want to
24 flip through.

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

1 THE COURT: Certainly.

2 BY MR. SGRO:

3 Q And I'm showing you -- they're all grouped
4 together. Defense Exhibit S, like Sam. Right? You see that
5 there?

6 A Yes.

7 MR. SGRO: And I believe the State has no objection.

8 MS. WECKERLY: That's correct.

9 THE COURT: All right. They'll be received.

10 (Defendant's Exhibit S admitted.)

11 MR. SGRO: Thank you, Your Honor.

12 BY MR. SGRO:

13 Q Have you had a chance to flip through them?

14 A Yes.

15 Q And do they appear to reflect the -- the two
16 bullet holes that you testified on direct examination?

17 A Yes.

18 Q Now, I want to show -- I want to go through a
19 couple of them. Let's see here. Just so we have some
20 context. To the left it's black. Is that the end of the
21 wall, is that an open door? Can you orientate the jury to
22 what this hole is?

23 A Yes, this is not going to be in the hallway
24 anymore. This is inside the master bedroom. And so this is
25 small wall. It's like a cutout along the West side of the

1 bedroom. So on the other side of this wall is the hallway
2 wall.

3 Q So we've had some testimony earlier in this
4 case about how crime scene analysts mark travel paths of
5 bullets. You're familiar with that; right?

6 A Yes.

7 Q And it's very common to take a travel path and
8 -- and -- of one bullet and call it A, and do the next one B,
9 C, etcetera; right?

10 A Yes, that's correct.

11 Q Okay. And that's what you did here; right?
12 You have an A and a B?

13 A Yes. These ones are actually A-2 and B-2
14 because these are the -- the other side.

15 Q Right. Right. This is the -- from the master
16 bedroom perspective.

17 A Correct. Yes.

18 Q All right. Can you orientate us as to this
19 one?

20 A Yes, this right here, now we're back in the
21 hallway and this is the ones that we saw before. And then so
22 this doorway to the right is opening into that master bedroom.

23 Q All right. Now, this is A-1 and B-1; right?

24 A Yes.

25 Q This is the entry of each bullet?

1 A Yes.

2 Q And you also have, I don't know what the term
3 of art is, but tools or instruments that allow you to
4 calculate flight paths of projectiles, would that be fair?

5 A Yes, that's correct.

6 Q And would this photo within the packet of
7 Defense Exhibit S, would this be an example of some of the
8 things you can use to have ideas of flight paths?

9 A Yes, they are. Those are trajectory cards --
10 sorry, trajectory rods with centering cones.

11 Q All right. And then this photo here is simply
12 a close up, would that be fair?

13 A Yes, that's -- that's right.

14 Q The same wall looking in the hallway?

15 A Yes, this is the hall wall again.

16 Q All right. So you go -- you go to this
17 residence. You, amongst other things, memorialize these holes
18 in the wall and you -- and you create a report about it;
19 right?

20 A That's correct.

21 Q And in your report you describe two bullets
22 creating the holes in that wall; right?

23 A Yes.

24 Q Do you have your report?

25 A I do. It's right here.

1 Q Okay. Do you need to refresh your
2 recollection or no?

3 A Not at this point.

4 Q Okay.

5 A Possibly after.

6 Q If you need to refresh your recollection, let
7 me know.

8 A Okay.

9 Q Did you recall in your report also -- well,
10 strike that. Let me ask you first, do you recall the
11 direction of the trajectory of Bullet A?

12 A Do you mean the -- just the flight path that
13 they were in a down -- mostly downward angle?

14 Q Do you remember which direction, north, south,
15 east, west?

16 A Oh, north.

17 Q Okay.

18 A Generally north directions.

19 Q Generally northwest, does that sound right?

20 A Generally northwest.

21 Q Would it refresh your recollection?

22 A Yes, it would.

23 MR. SGRO: Your Honor, may I approach? I have it
24 highlighted here.

25 BY MR. SGRO:

1 Q Do you see here it says the flight path of the
2 bullet that created the west hole in the north hallway wall
3 labeled A traveled in a generally northwest direction.

4 A Okay. Yes.

5 Q Is that right?

6 A Yes.

7 Q And then as to the second bullet, the flight
8 path of the bullet that created the east hole labeled B
9 traveled in generally north.

10 A Yes.

11 Q So one of those bullets when northwest
12 generally; right?

13 A Yes.

14 Q And one of them went north.

15 A Yes.

16 Q Were you ever shown the media console or the
17 niche? I'm not a big --

18 A Oh.

19 Q -- furniture person, but you know the shelving
20 unit that was in front of that wall?

21 A No, I never saw any other furniture besides
22 the TV.

23 Q So I guess what I'm asking is this. You were
24 sent to a different location to examine the big screen
25 television.

1 A Correct.

2 Q All right. Did anyone ever send you to a
3 location to look at that piece of furniture that was in front
4 of the two bullet paths that you --

5 A No. I wouldn't have known what -- I didn't
6 even know what type of furniture was in that hallway.

7 Q Now, you were asked if you looked for any
8 other evidence related to bullets or fragments. Do you
9 remember that?

10 A Yes.

11 Q And did you do that?

12 A Yes, I did.

13 Q What did you do relative to efforts to seek
14 those materials out?

15 A A -- excuse me. A visual search, and I also
16 cut a hole in that hallway wall.

17 Q When you say a visual search, you just looked
18 around the residence to see if you could see anything?

19 A Yes, in that bedroom area.

20 Q And this search that you did, the visual
21 search, would have been about seven weeks after the tenants
22 had relocated?

23 A I don't know when they relocated, but seven
24 weeks since the original incident, yes.

25 Q Seven weeks. Okay. Let's stick with that.

1 Seven weeks since the incident, that's when they -- that's
2 when you found yourself seeing if there was additional
3 evidence?

4 A Correct.

5 Q In the same residence that's the scene of the
6 homicide?

7 A Yes.

8 MR. SGRO: Court's indulgence, Your Honor. Pass the
9 witness.

10 MR. LANGFORD: Nothing, Your Honor.

11 THE COURT: Redirect.

12 MS. WECKERLY: Just briefly.

13 REDIRECT EXAMINATION

14 BY MS. WECKERLY:

15 Q When you say you did a visual search in the --

16 A Yes.

17 Q -- residence, is it -- can you describe what
18 you do?

19 A Yes, like I -- I look in all the areas. So as
20 I saw where the bullet holes went through that master bedroom
21 wall, I looked on the carpeting area just to -- made sure
22 there was no other bullet holes in another wall. There
23 wasn't. There was some items in there, not -- not very many.
24 I just -- I just checked all of those.

25 Q Now, when you say in your report bullet holes,

1 what do you mean by that?

2 A The bullet holes -- I'm sorry. I don't
3 understand.

4 Q Well, do you know -- I mean, I guess you've
5 seen bullet holes before; correct?

6 A Yes.

7 Q In your work. And do you in your report
8 writing, do you distinguish between something that could be
9 caused by an intact bullet or a fragment of the bullet?

10 A No, I don't, so I just call them bullet -- so
11 when I refer to bullet and those bullet holes, it could be the
12 bullet broke apart first and those are fragments making both
13 these holes, or they're two separate -- separate bullets. I
14 don't distinguish that. I just say the flight path of
15 basically whatever part of the bullet that went through the
16 wall created that hole and traveled at those directions.

17 Q And would there be any way to tell to your
18 knowledge and your experience and training and work, when you
19 looked at those two holes that -- that were marked A and B to
20 ever tell if it was a bullet or a fragment?

21 A I couldn't tell on those.

22 Q And when you said you looked at -- in the
23 secondary part of that day when you go and look at the TV --

24 A Yes.

25 Q -- and there's sort of the defects in the

1 bottom.

2 A Yes.

3 Q What -- what did you physically take apart of
4 the TV

5 A We took the -- the back plastic backing, I
6 guess you'd call it. of the TV off. And then we also -- it
7 was on one of those big wooden bases, and lifted it off of
8 there just to check underneath.

9 Q Okay. And that -- and you didn't see anything
10 in either of those places?

11 A No.

12 Q Okay. Thank you.

13 RECROSS-EXAMINATION

14 BY MR. SGRO:

15 Q Ma'am, did I hear you just tell the jury that
16 you didn't distinguish between bullets and bullet fragments in
17 the report?

18 A I don't know. I don't.

19 Q Then why did you just tell the jury that you
20 didn't?

21 A I -- I don't distinguish between them.

22 Q You don't?

23 A And that's what you just --

24 Q Can you go to --

25 A I'm sorry. I'm confused.

1 Q Can you go -- well, let's clear it up.

2 A Okay.

3 Q Do you have your report?

4 A I do.

5 MR. SGRO: May I approach, Your Honor?

6 THE COURT: Yes.

7 BY MR. SGRO:

8 Q Does it say here in your report relative to
9 the television the back of the television was removed and a
10 bullet fragment --

11 A Yes.

12 Q -- was located -- let me finish.

13 A Okay.

14 Q Was located inside the television. Does it
15 say that?

16 A Yes.

17 Q Do you in your report distinguish between
18 bullets and bullet fragments?

19 A On items of evidence, yes.

20 Q Did you qualify that when the prosecutor asked
21 you the question?

22 A No, I'm sorry. She was discussing the holes,
23 so I was talking about the holes at that time.

24 Q Ma'am, are you aware that there is an issue in
25 this case relative to the amount of shots that were fired in

1 the residence?

2 A No.

3 Q Okay. Are you answering in conformity with
4 what you believe the prosecutor wants to hear?

5 A No.

6 Q You were asked a very general question. Do
7 you in your report, in your report, distinguish between bullet
8 and bullet fragment, do you remember that question?

9 A I do.

10 Q All right. And you told the jury, no, I
11 don't; right?

12 A I did.

13 Q You did. So your prior answer was a mistake;
14 right?

15 A In relation to that, yes.

16 Q And when it comes to in relation to the wall,
17 clearly at the time of the report that you drafted you knew
18 the difference between what a bullet was and what a fragment
19 was; correct?

20 A To look at them as items of evidence, yes.

21 Q Okay. Do you at any point in your report that
22 you drafted at the time you're at the scene characterize the
23 two holes that I showed you, the A and the B, as anything
24 other than bullet holes?

25 A No.

1 Q Do you ever in your report suggest anything
2 along the line of this could have been caused by a fragment?

3 A In relating to holes, no.

4 Q Okay. That's all.

5 MR. LANGFORD: Nothing.

6 THE COURT: Thank you for being a witness, Ms.
7 Taylor. You'll be excused.

8 THE WITNESS: Thanks.

9 THE COURT: Do any of the jurors want a recess
10 before we continue on this morning? I'm seeing -- oh, we've
11 got one back here. All right. Let's take a ten minute
12 recess, ladies and gentlemen.

13 During the recess you're again admonished it's your
14 duty not to converse among yourselves or with anyone else on
15 any subject connected with this trial. You may not read,
16 watch, or listen to any report of or commentary on the trial
17 from any medium of information, including newspapers,
18 television, and radio, and you may not form or express an
19 opinion on any subject connected with this case until it is
20 finally submitted to you. We'll be in recess for about ten
21 minutes.

22 The Court will be at ease while the jury --

23 (Jury recessed at 11:22 a.m.)

24 THE COURT: Ten minutes.

25 MR. ORAM: Thank you, sir.

1 MR. DiGIACOMO: Just -- just for the record, or
2 maybe off the record, the first witness, Erica Newman, we
3 offered 262 and you said if you make the disc of the actual
4 audio itself, which is now marked as 262A, I just want to make
5 sure the record is clear that the Court admitted that based
6 upon the request of the defense that the audio be admitted.

7 THE COURT: That was my understanding.

8 MR. ORAM: Yes, sir.

9 THE COURT: It will be received.

10 (State's Exhibit 262A admitted.)

11 (Court recessed at 11:23 a.m., until 11:36 a.m.)

12 (In the presence of the jury)

13 THE COURT: All right. We're back on the record.
14 All right. State versus Burns and Mason. The record will
15 reflect the presence of the defendants, their counsel, and the
16 District Attorneys, and all members of the jury.

17 You can call your next witness.

18 MR. DiGIACOMO: Tyler Mitchell.

19 TYLER MITCHELL, STATE'S WITNESS, SWORN

20 THE CLERK: Please be seated. Please state your
21 name and spell your first and last name for the record.

22 THE WITNESS: Tyler Mitchell; T-Y-L-E-R
23 M-I-T-C-H-E-L-L.

24 MR. DiGIACOMO: May I inquire, Judge?

25 THE COURT: Yes.