

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIE MASON,
Appellant,

v.
THE STATE OF NEVADA,
Respondent.

)
)
)
)
)
)

Electronically Filed
Mar 08 2016 04:00 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

Case No. 68497

**RESPONDENT'S APPENDIX
VOL. III**

ROBERT L. LANGFORD, ESQ.
Robert L. Langford & Associates
Nevada Bar #003988
MATTHEW J. RASHBROOK, ESQ.
Robert L. Langford & Associates
Nevada Bar #012477
616 S. 8th Street
Las Vegas, Nevada 89101
(702) 960-0686

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar # 001565
Regional Justice Center
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 671-2500
State of Nevada

ADAM PAUL LAXALT
Nevada Attorney General
Nevada Bar #012426
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1265

Counsel for Appellant

Counsel for Respondent

INDEX

<u>Document</u>		<u>Vol.</u>	<u>Page No.</u>
1. Denial of Motion to Sever Minutes	9.5.2013	1	42-43
2. Entry of Plea Court Minutes	10.7.2010	1	9
3. Indictment	9.29.2010	1	1-8
4. Judgment of Conviction	6.26.2015	1	50-53
5. Jury Instructions	2.17.2015	3	648-705
6. Motion to Sever	8.22.2013	1	10-19
7. Opposition to Motion to Sever	8.23.2013	1	20-33
8. Order Denying Motion to Sever	9.23.2013	1	44-45
9. Reply to Opposition to Motion to Sever	9.3.2013	1	34-41
10. Trial Transcript Day 7	1.28.2015	1	54-168
11. Trial Transcript Day 10	2.5.2015	1-2	169-472
12. Trial Transcript Day 13	2.10.2015	2-3	473-647
13. Verdict	2.17.2015	1	46-49

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:

ADAM PAUL LAXALT
Nevada Attorney General

ROBERT L. LANGFORD, ESQ.
MATTHEW J. RASHBROOK, ESQ.
Counsels for Appellant

STEVEN S. OWENS
Chief Deputy District Attorney

/s/ E.Davis

Employee, Clark County
District Attorney's Office

SSO/Frank LoGrippto/ed

1 condition that she was in.

2 Q And the fact that she was a child, I mean, she's
3 probably not the youngest person that you've interviewed, but
4 given her age were there extra steps that you tried to take in
5 conducting the interview?

6 A Well, yeah. You try and -- I mean, in this
7 case, try and -- because it's -- once again, that recorder, I
8 was concerned that it wasn't going to pick up what she was
9 saying. So in an effort to ensure that I kind of knew what
10 she was saying and that it was going to be on the recorder, is
11 every time that she would say something, I would repeat that
12 back and -- and to confirm it, essentially. And sometimes she
13 didn't -- she would say yes, and other times if I misspoke she
14 would correct me.

15 Q And we'll play that interview which --
16 [indiscernible.]

17 MR. DiGIACOMO: 291.

18 BY MS. WECKERLY:

19 Q 291.

20 (Audio/Video played.)

21 BY MS. WECKERLY:

22 Q Okay. Why is it important to you to interview
23 her right away?

24 A I was concerned that she was going to pass away.

25 Q Were you concerned about her -- her memory at

1 all, her ability to recall events?

2 A Well, we want to talk to anybody as soon as
3 possible, the longer time goes by, the -- you know, the harder
4 it is for people to remember the account of what takes place.

5 Q Now, obviously, in the background we can hear
6 medical equipment. Is that the -- there's certain, like,
7 tones and sounds?

8 A Yes, ma'am.

9 Q Okay. And her -- there was points where you
10 were telling her to breathe. Can you describe why you were
11 doing that or to calm down or?

12 A Yeah. So there -- when you're in a hospital, a
13 lot of times they put up pole socks, which measures the amount
14 of oxygen in your blood. And as that decreases, the alarm
15 goes off to alert medical staff. I actually have history with
16 those, so I knew what it was doing. So I asked her to breathe
17 to increase that -- that oxygen in her blood, so that it would
18 stop that -- that alarm.

19 Q At the time you interviewed her, did you have
20 any of your pen register information yet showing the
21 information you later learned of -- from phone calls amongst
22 various individuals?

23 A By the time of Devonian's? No.

24 Q Did you have any video recovered from the Opera
25 House or Greyhound?

1 A No.

2 Q Anywhere in that interview did you hear Devonian
3 or take what she was saying to mean that Cornelius Mayo had
4 shot her?

5 A No. She says that she was in the bathroom with
6 him as she was struggling with a burn. So, no.

7 Q Okay. And at the -- can you describe her, I
8 guess her physical state at the end of the interview?

9 A Well, she was definitely fatigued. She was wore
10 out.

11 Q After -- after that interview, or sometime after
12 that interview, you made contact with Monica Martinez?

13 A Correct.

14 Q And sort of in the -- we'll talk about that in a
15 minute, but in the ensuing investigation, you -- you go back
16 to Devonian one more time later in the investigation; is that
17 fair?

18 A Yes, ma'am.

19 Q Can you describe approximately how much later
20 that was?

21 A I believe it was about three or, no, it would
22 have been about five -- about five weeks later, I believe.

23 Q How many times in this investigation did you
24 talk to her?

25 A Twice.

1 Q And when you went back the second time, we'll
2 get to it, but was that to show her a photographic lineup?

3 A Yes, ma'am.

4 Q Sir, I'm showing you what's been marked as
5 State's 277; do you recognize what that is?

6 A I do.

7 Q What is that?

8 A That's a drawing that Devonia drew for me.

9 Q And was that drawn in the hospital?

10 A It was.

11 Q And were you -- you were, I guess, you
12 witnessed, personally, her draw that?

13 A I did.

14 Q Would you have asked her to make that drawing or
15 do the drawing?

16 A Yes.

17 Q And what -- what were you asking her to draw?

18 A When she mentioned -- I just wanted to clarify
19 that we were talking about the same thing, when she mentioned
20 overalls, that I -- I just wanted her to describe those to me.

21 Q And did you provide her the piece of paper?

22 A I did.

23 Q And is this the actual piece of paper she drew
24 on?

25 A It is.

1 MS. WECKERLY: State moves to admit 277.

2 MR. LANGFORD: No objection, Your Honor.

3 MR. SGRO: No objection.

4 THE COURT: It'll be received.

5 (State's Exhibit 277 admitted.)

6 MS. WECKERLY: And may I have that switched over to
7 the overhead, please.

8 BY MS. WECKERLY:

9 Q So State's 277 is her drawing years and years
10 ago, I mean, back in August, September 2010 of the -- of the
11 overalls?

12 A Correct.

13 Q Now, after --

14 MR. SGRO: I'm sorry, exhibit number?

15 MS. WECKERLY: 277.

16 MR. SGRO: Thank you.

17 BY MS. WECKERLY:

18 Q After you make contact with Devonian, you later
19 talk to Monica Martinez; it's not the same day, but I guess a
20 few days later?

21 A Yes, ma'am.

22 Q Explain to us where you made contact with Ms.
23 Martinez?

24 A At her place of employment.

25 Q And was that, like, Novum Pharmaceuticals?

1 A Pharmaceutical, yes, ma'am.

2 Q When you got to that location, did you
3 immediately make contact with Ms. Martinez, or did you -- did
4 she have to be called up to the front and that sort of thing?

5 A She had to be called up to the front. We went
6 to the front desk and basically requested to speak with her.

7 Q Were -- and then you're saying we, so you were
8 with someone else?

9 A Detective Wildemann.

10 Q And were you dressed like you are today, or how
11 were you dressed?

12 A Similar. Probably without the jacket. A dress
13 shirt and slacks. Something along those lines.

14 Q Not as nice? When you made contact with Ms.
15 Martinez, did you ask her to come and speak with you and
16 Detective Wildemann?

17 A Yes, ma'am.

18 Q She agreed?

19 A She did.

20 Q How -- where did you go -- where did you take
21 her to talk to you all?

22 A We asked her to come back to our office to an
23 interview to -- to conduct the interview.

24 Q And did she drive her own car there?

25 A No. She drove with us.

1 Q Okay. When you got to the -- I guess it would
2 be the homicide offices?

3 A Correct.

4 Q And was she put in the interview room?

5 A She was.

6 Q Was she handcuffed?

7 A No.

8 Q When you -- when you first encountered Ms.
9 Martinez, I guess on the ride from her place of employment to
10 homicide, how would you describe her -- her demeanor?

11 A She was definitely nervous. She was a little
12 agitated, I would say, is a good word.

13 Q Is agitated like aggressive? Or is agitated --
14 I mean, what do you mean by that?

15 A Well, you know, she was in a bad situation,
16 because she knew what she did and she --

17 MR. SGRO: Objection, Your Honor. The question is
18 what was her --

19 THE COURT: Sustained.

20 BY MS. WECKERLY:

21 Q How would you describe -- like, was she
22 physically, I guess, moving around, or was she saying things?

23 A Defensive.

24 Q Defensive?

25 A Defensive.

1 Q When she gets to the homicide offices, is her
2 demeanor -- does it change at all initially?

3 A No.

4 Q Once you get -- once you get her in the
5 interview room, it's you and Detective Wildemann who conduct
6 an interview with her?

7 A Correct.

8 Q And we've actually seen that interview played.
9 In total, how much time was she there?

10 A I believe it was close to -- like, total time at
11 the office, maybe 11 hours.

12 Q Okay. And so it's --

13 A 12 hours.

14 Q -- it started during business hours and ends
15 later in the evening?

16 A Correct.

17 Q Is that an unusually long interview?

18 A That's pretty long.

19 Q During the interview, does she initially deny
20 having any knowledge about the events?

21 A She does.

22 Q And some time after that, she gives you I guess
23 what I would call varying accounts of what happened?

24 A Yeah. She -- she went through what I would
25 consider to be the typical process of an interview of any

1 suspect, for sure.

2 Q During the interview, we've seen the -- the
3 videotape of it, at -- later in the interview, you and
4 Detective Wildemann are showing her photographs of various
5 individuals; do you recall that?

6 A I do.

7 Q And who -- who were you showing her pictures of?

8 A There was a lot of people. I believe Mr. Mason,
9 Jerome Thomas, Albert Davis, I believe Ms. Cousins, as well.
10 I think Mr. Clinkscale. And I can't recall if there was
11 others in there.

12 Q And when you say Albert Davis, we now know --
13 like, you were showing the real Albert Davis, not who -- not
14 Jerome Thomas, right?

15 A Correct. Yes, ma'am.

16 Q Okay. And you also showed her a picture of
17 Jerome Thomas?

18 A I believe so. Yes, ma'am.

19 Q At that time did you have a picture of -- at all
20 of David Burns?

21 A Not during that interview, no.

22 Q At the conclusion of that interview, was she
23 arrested?

24 A She was.

25 Q And so she -- then she was booked into CCDC?

1 A Yes, ma'am.

2 Q Detention Center? Sometime after I guess that
3 she was booked in and she was appointed lawyers. Did you meet
4 with her again and myself and Mr. DiGiacomo and her attorneys?

5 A Yes, ma'am.

6 Q And what was the purpose of that meeting?

7 A Well, wanted more information on Jerome Thomas's
8 involvement in the incident.

9 Q Did you want to charge him with murder in this
10 case?

11 A I did.

12 Q And were you successful in doing that?

13 A Not for the murder charge. No, ma'am.

14 Q The murder. When you were speaking with her in
15 the first interview, the 12-hour -- the 12-hour one, did she
16 give any information about the location of the gun?

17 A No.

18 Q Did she give information about other locations
19 that weren't known to you yet in terms of the investigation?

20 A The Brittnae Pines Apartment, she had brought
21 that location up, saying that Mr. Thomas resided there and
22 that she believed that Burns and Mason would be there.

23 Q Did you know at the time you spoke to her that
24 there would be videotape at the Opera House?

25 A Did I know at the time I was initially speaking

1 to her?

2 Q Correct.

3 A No.

4 Q Okay. And that -- so that was something that
5 you didn't have in terms of your investigation?

6 A No. I had no idea about the video yet.

7 Q And did she tell you other locations that she,
8 Mr. Burns, and Mr. Mason went to shortly before the incident?

9 MR. SGRO: I'm sorry, we in her first one or the
10 second one?

11 MS. WECKERLY: I'm sorry.

12 BY MS. WECKERLY:

13 Q In her first interview --

14 A Right.

15 Q -- did -- did she give you various locations
16 that she said she went to with Mr. Burns and Mr. Mason?

17 A Yes, ma'am.

18 Q And were those known to you prior to that first
19 interview with her?

20 A Well, she -- during that interview, yes. Prior
21 to speaking with her, no.

22 Q Okay.

23 A No idea.

24 Q After she gives that interview and she's booked
25 into the detention center, did you make any effort as a

1 detective to try to verify what she had said?

2 A Pretty much everything that she said, yes,
3 ma'am.

4 Q Okay. So videotape was pulled, phone records
5 were requested, that sort of thing?

6 A Yes, ma'am. Essentially everything that she --
7 she stated, we were trying to confirm what she said. Whether
8 that was through video or cell tower or cell information.

9 Q Okay. And did she also -- did she also explain
10 that Mr. Thomas had changed his phone number?

11 A Yes, ma'am.

12 Q And did you go to her work and speak to a
13 colleague of hers?

14 A I did. I believe her name was Ms. Knight.

15 Q And that was to get the subsequent phone number
16 or verify that she had given it to her?

17 A Yes, ma'am.

18 Q Did you also get videotape from I guess the
19 Greyhound bus station based on what she had said?

20 A Yes.

21 Q At the point that you conclude the -- the
22 interview with -- the first interview with Ms. Martinez, who
23 was identified in the investigation?

24 A She did identify --

25 MR. SGRO: Objection. Your Honor, may we approach

1 briefly?

2 THE COURT: Sure.

3 (Bench conference.)

4 MR. SGRO: Your Honor, I don't necessarily want to
5 interrupt the flow. I'm assuming -- I had assumed until now
6 that these were simply foundational to go somewhere else. We
7 listened to -- painfully, by the way -- hours and hours of
8 this tape. To now go over again what we did in the --

9 THE COURT: The tape is the best evidence and that's
10 in evidence.

11 MR. SGRO: Exactly. But this is --

12 THE COURT: That's in evidence.

13 MR. SGRO: So it's --

14 THE COURT: You could ask him what he did next.

15 MS. WECKERLY: They're attacking her credibility, so
16 what she says that later turns out to be verified is relevant.

17 THE COURT: Then he can testify. It's easier if you
18 ask nonleading questions about, you know, based upon what she
19 told you, what did you do?

20 MR. SGRO: Exactly. So, I -- I --

21 MR. DiGIACOMO: As it relates to the [indiscernible].

22 MR. SGRO: I thought this was Ms. Weckerly's witness.

23 MR. DiGIACOMO: Sorry. That's just on video. He has
24 to say who [indiscernible].

25 THE COURT: I -- he's got to -- he's got to say where

1 -- where he went, what he did, and so on.

2 MR. SGRO: Our objection is that at this point it's
3 cumulative, it's violative of the best evidence rule.

4 MS. WECKERLY: I think it is, Judge.

5 MR. DiGIACOMO: The one thing that's not on the
6 videotape is when they're showing the pictures, who those
7 pictures are.

8 THE COURT: And that's fine. You can do that.

9 MR. DiGIACOMO: So that's what he's --

10 THE COURT: That isn't what you're doing.

11 MR. DiGIACOMO: -- testifying to right now, is who
12 does she identify to be in those pictures that you're putting
13 in front of her.

14 THE COURT: Okay. You can do that.

15 MR. DiGIACOMO: Who does she --

16 THE COURT: You can do that.

17 MS. WECKERLY: And if he can't tell who they are, he
18 can't tell who they are.

19 THE COURT: All right. Well, let's go.

20 MR. DiGIACOMO: Okay.

21 (End of bench conference.)

22 BY MS. WECKERLY:

23 Q So at the conclusion, after you've interviewed
24 Monica Martinez the first time, who are the suspects that
25 you've identified in this investigation, not based on her

1 interview, but in terms of your own investigation?

2 A Well, Cousins-- Ms. Cousins, Mr. Mason, and --
3 well, she confirms Jerome Thomas, so.

4 Q So you have his -- you have Mason's name, you
5 have Jerome Thomas's name, and you have Monica Martinez's
6 name?

7 A Correct.

8 Q And at that point in the investigation, had you
9 heard the nickname D-Shot?

10 A Yes.

11 Q And had you heard it from various witnesses in
12 different forms?

13 A Yes. There were various D-Shock, D-Shot, there
14 were -- yes.

15 Q Okay. Were efforts -- I mean, with that type of
16 nickname, or with that nickname, were you able to initially or
17 early on in the investigation associate that nickname with an
18 individual?

19 A Not initially, no.

20 Q And so what efforts were made to associate
21 D-Shot with an actual name?

22 A Well, we sent still photographs of the video.
23 We knew that the suspect --

24 MR. SGRO: Objection to what we knew, Your Honor.

25 THE COURT: Well, he's testifying what he on behalf

1 of his office did. So that's okay. Overruled.

2 Go ahead.

3 THE WITNESS: We sent those -- I sent those
4 photographs to the police department, members of the police
5 department in San Bernardino, where we knew -- I knew that --
6 that the suspects had come from in an effort for them to
7 locate associates of theirs in that area to see if we could
8 identify who was in that photo. We did a number of photo
9 lineups, as well. Some of which, a number -- a number were
10 negative that we did, and then ultimately were positive. And
11 that's how we identified him.

12 BY MS. WECKERLY:

13 Q Now, at -- okay. At some point you get a
14 photograph sent to you from San Bernardino essentially that
15 you put in a photographic lineup to show Monica Martinez,
16 Devonia, and Tyler Mitchell --

17 A Correct.

18 Q -- Monica's daughter. And -- and that was in an
19 -- that was an effort, I guess, to associate D-Shot with a
20 picture?

21 A Correct.

22 Q And showing you what's been admitted as State's
23 279. And then that one's 283, and State's Proposed 280.

24 With regard to 280, do you recognize what that is?

25 A I do.

1 Q And what is that?

2 A That's the photo lineup that was conducted with
3 Ms. Devonian Newman.

4 Q Okay. And there appears to be a signature on
5 the front of 280. Who -- who signed that?

6 A Devonian.

7 Q And there's other writing on the -- on the front
8 of it. Who wrote that?

9 A I wrote that.

10 Q On the second page, there is the photographic
11 lineup and then a circle and a name; who wrote that?

12 A Devonian.

13 MS. WECKERLY: State moves to admit 280.

14 MR. SGRO: No objection.

15 MR. LANGFORD: No objection.

16 THE COURT: Be received.

17 (State's Exhibit 280 admitted.)

18 BY MS. WECKERLY:

19 Q Now, I'm putting on the overhead, this would be
20 the photographic lineup, obviously, of Monica Martinez?

21 A Correct.

22 Q And there are instructions at the top of State's
23 283. Are those --

24 MR. SGRO: Your Honor, this is cumulative. Ms.
25 Martinez testified at length about this. Exhibit's already

1 been admitted.

2 THE COURT: It's an exhibit in -- in evidence. She
3 can testify -- he can testify to it. He took this
4 photographic lineup, I believe.

5 MS. WECKERLY: He did.

6 BY MS. WECKERLY:

7 Q Looking at 283, there are instructions that are
8 printed, I guess, on the actual -- the photographic lineup
9 document. Do you remember if Ms. Martinez read those or if
10 you read them to her?

11 A I don't recall which one of us read them.

12 Q Okay. And then there's a statement part of the
13 lineup where there's comments that says, "The picture I
14 circled and initialed by the person I know as D-Shot. I'm 100
15 percent sure."

16 A Correct.

17 Q Who wrote that?

18 A Ms. Martinez.

19 Q And then I'm going to flip to page 2 of that
20 document and there appears to be a circle and initials?

21 A Yes, ma'am.

22 Q Who would have written that?

23 A Ms. Martinez.

24 Q And so that's who she -- she circled as D-Shot?

25 A Correct.

1 Q And that was -- I'll just show you the date --
2 that was administered to her on the 16th of September --

3 A Yes, ma'am.

4 Q -- 2010? You also showed a photographic lineup
5 to Tyler Mitchell, her daughter?

6 A Correct.

7 Q And it looks like Tyler's was administered on
8 the 17th, so the next day?

9 A Yes, ma'am.

10 Q And then she would have -- we've gone over her
11 comments. But she -- she would have written the -- the
12 comments that are under the statement portion?

13 A Yes, ma'am.

14 Q Flipping to page 2 of State's 279; are those --
15 there's a circle and initials. Who wrote that?

16 A Ms. Mitchell -- Tyler.

17 Q Now, when you went to show Devonia the lineup,
18 were you by yourself or with another detective?

19 A Detective Kyger.

20 Q The top of Devonia's lineup has writing up here.
21 Would you have completed that?

22 A Yes, ma'am.

23 Q And it looks like it was shown to her on the
24 29th at 12:41, which is 10 --

25 A 12:41.

1 Q It's 12:41?

2 A On that one, yes, ma'am.

3 Q Okay. And then there's a statement that says
4 what?

5 A It says, "I believe it's Picture No. 5 because
6 of his eyes. I'm 10 percent sure he's the one who shot my
7 mom. I'm not sure."

8 Q Okay. And that -- and then it says that
9 "Statement written by Detective Bunting in Devonia Newman's
10 words, witnessed by Detective Kyger."

11 A Correct.

12 Q So did she say those actual words when she was
13 looking at the lineup?

14 A Yeah. Whenever we -- whenever we write somebody
15 else's statement on their behalf, we write it verbatim of
16 whatever it is that they say.

17 Q Okay. And when -- did she use the words "10
18 percent"?

19 A She did.

20 Q Okay. And did you ask her or have any further
21 conversation with her about what 10 percent meant?

22 A I did.

23 Q And what did she say?

24 A Well, she kind of struggled with what percent
25 was, which was -- honestly, was my mistake for asking her

1 percentage. That's just a habit we have with adults. So I
2 did that with her. And I could tell she really wasn't
3 grasping it. So I got into, well, that would be like an F in
4 grades. And -- and then she -- I believe she -- during the
5 course of this conversation, I think she said, Well, then 20
6 percent. I said, you don't have to change it. You know, just
7 kind of explained to her that, you know, you don't have to
8 change what you're saying. I just want to understand that you
9 understand. It was basically apparent to me that she didn't.
10 So we kind of stopped the whole percentage and grades issue.

11 Q Okay. But you wrote her comments about being 10
12 percent?

13 A I did.

14 Q At least initially?

15 A Yes.

16 Q And flipping to the second page of what's been
17 admitted as 280, that's -- is that her writing, the circle and
18 then the -- the name Devonia?

19 A It is.

20 Q Now, at some point you -- well, let me ask it
21 this way. Early on in the investigation, did you have any
22 possible murder weapon located?

23 A Early on? No.

24 Q There wasn't one at Monica's house?

25 A No.

1 Q Or at Job-Loc's Brittinae Pines apartment?

2 A No, ma'am.

3 Q And how did you go about locating the weapon?

4 A Well, we received a phone call, we being the
5 homicide office, received a phone call from I believe her name
6 is Ulonda Cooper. And she stated that Donovan Rowland had
7 come to her house, he was an acquaintance of her son, and had
8 attempted to sell them a firearm.

9 Q Based on that phone call, did you do any
10 investigative followup?

11 A I did.

12 Q What was that?

13 A Well, we identified Donovan Rowland.

14 Q And -- and up till that point in the
15 investigation, was Donovan Rowland a name that you had known?

16 A No, I don't believe so at that point.

17 Q Okay. Did you do any investigation, I guess,
18 prior to coming in contact with him to see if -- if you could
19 find out more about him?

20 A Well, we attempted to meet with Ms. Cooper.

21 Q Was that successful?

22 A No. No, it wasn't.

23 Q Okay. Did you eventually find a possible
24 residence for Mr. Rowland?

25 A We did.

1 Q Okay.

2 A Fountain Falls.

3 Q And was that where his -- a relative of his
4 lived?

5 A Yes. It was his grandmother and I believe his
6 father lived there, as well.

7 Q Okay.

8 A Definitely his grandmother.

9 Q Was the grandmother present when you went to
10 that location?

11 A She was.

12 Q Was Mr. Donovan Rowland present?

13 A He was not.

14 Q Later, do you get contacted about Mr. Rowland
15 being present, like, by his father?

16 A Correct. I believe his name is Terence, called
17 and notified us. We left -- we left our information there to
18 contact us in the event that Donovan returned to the
19 residence.

20 Q So eventually you get in contact with Mr.
21 Rowland?

22 A Yes, ma'am.

23 Q You interview him? Yes?

24 A Yes. Sorry.

25 Q Okay. Based on his interview, do you look

1 somewhere else for the -- for the gun?

2 A We did. He informed us that Anthony Lasseter
3 had possession of the gun, that -- that he had given it to
4 Lasseter.

5 Q And based on that information, did you try to
6 find an address for Anthony Lasseter?

7 A Yes, we did.

8 Q And once you had -- had that, did you -- did you
9 prepare a search warrant or did he give you consent to search?

10 A I think both his mother and he both gave us
11 consent --

12 Q And you were --

13 A -- to search the residence.

14 Q Then you searched the residence; does he tell
15 you where the gun is?

16 A Yes. He directs us to it. We didn't have to
17 search the whole residence. He directed us to his closet in
18 his room.

19 Q So he was cooperative in -- in some sense in
20 giving the gun?

21 A Yes, ma'am.

22 Q I mean, he didn't call initially, but...

23 A Right.

24 Q Detective, I'm showing you what's been marked as
25 State's 163 to 169. Could you just look through those and let

1 me know when you're done, please.

2 A Okay.

3 Q Do those photographs fairly and accurately
4 depict the gun itself and also its location at Mr. Lasseter's?

5 A Yes, ma'am.

6 MS. WECKERLY: The State moves to admit 163 to 169 --
7 169.

8 MR. SGRO: No objection.

9 MR. LANGFORD: No objection.

10 THE COURT: They'll be received.

11 (State's Exhibit 163 through 169 admitted.)

12 MS. WECKERLY: May I have this switched back over?
13 Thank you.

14 BY MS. WECKERLY:

15 Q I'm putting on the overhead 163. And can you
16 describe for the members of the jury what they're looking at
17 in that photograph?

18 A We're in -- inside Mr. Lasseter's residence
19 taking a photo of the room, the outside of the room where the
20 firearm's located.

21 Q And we'll put on 164 next.

22 A Just a closer --

23 Q We'll rotate it. Hold on one second.

24 A Sorry.

25 Q Now what are we looking at?

1 A Basically, the same thing, just a little bit
2 closer.

3 Q And where -- I think this will show it a little
4 better. This is 165. Does that show where the gun is? Can
5 you see it?

6 A Yes.

7 Q Can you circle for the members of the jury where
8 it was -- or where it is in that photograph?

9 And now we'll put on the overhead 167. That's the
10 gun once it was recovered?

11 A Yes, ma'am.

12 MS. WECKERLY: Would you put on 168, please.

13 Q And what type of gun is that?

14 A It's a .44 Ruger.

15 Q A revolver or automatic?

16 A Revolver. Sorry. It's a revolver.

17 Q During your investigation, did you have contact
18 with Mr. Mayo after the -- after the 7th, I guess?

19 A Yes.

20 Q And can you describe for the members of the jury
21 your contact with him I guess in relation to fragments or
22 firearms evidence?

23 A With Mr. Mayo?

24 Q With Mr. Mayo.

25 A I'm sorry, can you just ask that question --

1 Q Sure.

2 A -- one more time, please?

3 Q Did Mr. Mayo contact you about stuff found in
4 his TV?

5 A Correct. Yes, ma'am.

6 Q Can you describe how that went?

7 A He notified us and let us know that while he was
8 moving outside of the -- the Meikle address, that he had
9 located two holes in the wall, as well as two holes in the TV
10 that were in his master bedroom, which is the same ones in
11 reference to what I was speaking of earlier. But those were
12 -- we were notified of a later date.

13 Q Did you also see Mr. Mayo later on in family
14 court?

15 A I did.

16 Q And that -- the purpose of that was a proceeding
17 having to do with his parental rights?

18 A Correct.

19 Q Did Mr. Mayo contact you about text messages
20 that he had received, as well?

21 A He did.

22 Q And do you recall just approximately how long
23 after the August 7th, 2010, incident that would have been?

24 A On the text message? I'm not sure, ma'am --

25 Q Okay. Do you have that --

1 A -- of actual time.
2 Q -- in your report?
3 A Yes.
4 Q Could you refresh your recollection with that
5 and then if you could just tell us the page for counsel.
6 A Sorry. It's a big report. Bear with me,
7 please.
8 Q I -- yeah.
9 A Okay. It looks like 9/14/10.
10 Q Okay. So I guess maybe five or six week --
11 well, actually, really a month.
12 A Five?
13 Q Yeah.
14 A Five?
15 Q And he shows you messages on his phone that --
16 A Actually, I'm -- that's for the -- the TV.
17 Q Oh, okay.
18 A I apologize.
19 Q That's okay. I think it's on page 28.
20 A That second paragraph on 10 -- 10/1.
21 Q 10/1 of '10?
22 A Yes, ma'am. Do you want me to read that?
23 Q No. But that's when you have contact with him
24 where he shows you his phone, correct?
25 A Correct. Yes, ma'am.

1 Q And he shows you text messages from a 512
2 number?

3 A Which is identified as Jerome Thomas, yes,
4 ma'am.

5 Q Okay. And do you take any steps to memorialize
6 those messages?

7 A We do. We take the phone. We ask his
8 permission to have the phone. And -- and then we take it to
9 our electronic crimes unit so that they can document the
10 information in those text messages.

11 Q And is there -- was the documentation of this
12 phone unique because of the -- the age of the phone?

13 A I'm not -- I'm sorry. I'm not sure I follow
14 you.

15 Q The -- how -- how did the -- how did the images
16 or the text messages get documented by Metro?

17 A They're -- they're video'd, videotaped on -- at
18 the crime unit that --

19 Q And why were they videotaped and -- instead of,
20 like, documenting in another way?

21 A Well, I think it's by the mechanism of which
22 they do it. But I don't -- I don't have the technical answer
23 for you on that.

24 Q Okay. We'll play those, which has been admitted
25 as State's 294.

1 And looking at 294, are those the messages that he
2 showed you? And you can actually see the number that they're
3 from, that 512 number.

4 A Okay.

5 (Audio/Video played.)

6 Q Okay. They're all from that 512-629 --

7 A Yes. Yes, ma'am. Sorry, it just popped
8 through. So it was scrolling. So 512, yes, ma'am.

9 Q Okay.

10 MS. WECKERLY: Your Honor, may we approach?

11 THE COURT: Yes. You want a recess this morning,
12 ladies and -- yes, they do.

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

20 We'll be in recess for about 10 minutes. Court will
21 be at ease while the jury leaves.

22 (Jury recessed at 11:25 a.m.)

23 THE COURT: The record will reflect that the jury has
24 left the courtroom.

25 MS. WECKERLY: Your Honor, all I have left is playing

1 his statement with the detective. So I'll just ask him, like,
2 when he had contact and then we'll play the statement. That's
3 when the Court will have to give the jury the advisement that
4 it -- it's been edited.

5 THE COURT: Okay.

6 MS. WECKERLY: And then the statement is about --

7 MR. DiGIACOMO: 53 minutes.

8 MS. WECKERLY: So I don't know if you want us to
9 break in the middle of it or how you prefer to do that.

10 THE COURT: Well, let's see. What time it is here?

11 MS. WECKERLY: It's 11:30.

12 THE COURT: It's 11:30. Well, we could go till
13 12:30, I guess.

14 MS. WECKERLY: Okay.

15 THE COURT: If -- if that -- would that be
16 acceptable?

17 MS. WECKERLY: That's fine. I know the defense wants
18 to look at -- or argue about the letters when we come back
19 from the lunch break. And I -- that's the last thing I have
20 to do with the detective, so that timing will probably work.

21 THE COURT: Okay. Take a few minutes right now, then
22 we'll do the video, then we'll have lunch, and then we'll
23 argue about letters.

24 MR. DiGIACOMO: It's actually audio. But, yes.

25 THE COURT: Whatever.

1 (Court recessed at 11:27 a.m., until 11:44 a.m.)

2 (In the presence of the jury.)

3 THE COURT: All right. You may be seated. State of
4 Nevada vs. Burns and Mason. The record reflect the presence
5 of the defendants, their counsel, the district attorneys, and
6 all members of the jury.

7 Ladies and gentlemen, I'm -- I'm advised that the
8 State is going to play the interview now of -- with Mr. Burns.
9 Actually, the good news -- the interview that you're going to
10 hear is about an hour, they tell me. That's good news,
11 because the actual interview is much longer than that. They
12 have cut down a lot of the irrelevant parts that aren't
13 necessary for you to listen to, so it won't be as long. But
14 it's only about an hour this way.

15 So anyway, we're going to do that, then we're going
16 to have our luncheon. Okay.

17 BY MS. WECKERLY:

18 Q Detective Bunting, you mentioned earlier in
19 direct examination that you get the photograph of David Burns
20 from officers in San Bernardino?

21 A Correct.

22 Q And sometime after that a warrant is issued, and
23 you go down to San Bernardino and meet with Mr. Burns?

24 A Yes, ma'am.

25 Q And was Detective Wildemann with you?

1 A He was.

2 Q He was in custody at that point?

3 A Yes, ma'am.

4 Q And he was informed of his Miranda rights?

5 A Yes, ma'am.

6 Q After that, did he speak with you and Detective
7 Wildemann?

8 A He did.

9 Q And was that interview memorialized or recorded
10 in any way?

11 A Yes, ma'am. It was recorded.

12 MS. WECKERLY: And, Your Honor, now with the Court's
13 permission, we will publish 332, which is the recording.

14 THE COURT: Okay. Which is the edited portion of the
15 video. So don't be concerned that they're edits.

16 MS. WECKERLY: Audio.

17 (State's Exhibit No. 332 played.)

18 THE COURT: That concludes that exhibit?

19 MS. WECKERLY: Yes, Your Honor.

20 THE COURT: Okay. Let's take our recess now, ladies
21 and gentlemen.

22 During the recess it's again your duty not to
23 converse among yourselves or with anyone else on any subject
24 connected with this trial, or to read, watch, or listen to any
25 report of or commentary on the trial from any medium of

1 information including newspapers, television, or radio. You
2 may not form or express an opinion on any subject connected
3 with this case until it's finally submitted to you.

4 It's about 12:40. Let's make it 2:00, because I've
5 got to work with counsel on a couple of things. So you can
6 leave at this time. We'll see you at 2:00.

7 (Jury recessed at 12:40 p.m.)

8 THE COURT: All right. Record reflect that the jury
9 has exited the courtroom. You want to argue about letters
10 now?

11 MR. DiGIACOMO: Judge, there's two more letters that
12 we're going to grab at lunchtime. So I guess we'll be back at
13 1:40.

14 THE COURT: So you come back about 1:40. That'll
15 give us 20 minutes to --

16 MR. DiGIACOMO: We should have it all done by 2:00.

17 MR. SGRO: We're also thinking, Your Honor, because
18 this'll be close to the end of the day, that'll give us -- Mr.
19 Oram and I -- time to regroup tonight. So if we do have
20 anything, it'll be very brief, and we'll just come back
21 tomorrow at 9:30 prepared to either put people on or not, do
22 the jury instructions, and then start our --

23 MR. DiGIACOMO: We'll be able to argue about Mr.
24 Shoemaker and whether or not he'll be allowed to testify --

25 MR. SGRO: Right.

1 MR. DiGIACOMO: -- to what they want him to testify
2 to.

3 MR. SGRO: We can do all that at the end of the day.

4 MR. DiGIACOMO: Because if -- we have to take a break
5 between ours and --

6 THE COURT: Okay. And can we settle jury
7 instructions at the end of the day?

8 MR. SGRO: Yeah. We can do all --

9 MR. DiGIACOMO: I think we can do that, too.

10 MR. SGRO: -- all the logistics.

11 THE COURT: All right.

12 MR. SGRO: Thanks, Judge.

13 THE COURT: See you at 1:40.

14 (Court recessed at 12:42 p.m. until 1:59 p.m.)

15 (Outside the presence of the jury.)

16 THE COURT: All right. Back on the record. With
17 regard to the exhibits, and I had the numbers in front of me
18 and now counsel has them.

19 MR. DiGIACOMO: Yes, I will -- Judge, 337 is a
20 letter from Job-Loc to Monica Martinez.

21 MR. SGRO: So that's out.

22 MR. DiGIACOMO: 338 is a letter from Job-Loc to
23 Willie Mason.

24 MR. SGRO: Out.

25 MR. DiGIACOMO: 340 is a letter from Job-Loc to

1 Willie Mason.

2 THE COURT: I agree that the statements that each of
3 the defendants wrote would be admissible as to them.

4 MR. DiGIACOMO: The rest of these are -- I guess I
5 can put them in order for now. But 336, 339, 341, 342, 343,
6 344, and 345 are all letters either written by Mr. Mason or by
7 Mr. Burns.

8 THE COURT: Okay. I would agree that those are
9 admissible as against the person that wrote them.

10 MR. SGRO: Thank you, Your Honor. Just very
11 briefly, Your Honor. I know we had a colloquy before we got
12 on the record to try and get to the point of what we mean.

13 THE COURT: Well, I agreed with you as to Job-Loc.

14 MR. SGRO: Yes, sir.

15 THE COURT: And we're excluding those.

16 MR. SGRO: Yes, sir. And I think there were three
17 or four that Mr. DiGiacomo just rattled off, and those have
18 been excluded. The issue with Mr. Burns's letters, Your
19 Honor, is we don't believe them to be of anything beyond
20 marginal relevance. They are far more prejudicial than they
21 are probative. A proffer was made at the break that these
22 letters would go to impeach the statements that were made to
23 the detective by Mr. Burns about not being able to remember
24 anything. The letters --

25 THE COURT: Well, they do.

1 MR. SGRO: Well, the letters, though, according to
2 the proffer made by the State, reference activities that
3 occurred in the context of reviewing discovery. It -- it does
4 not begin with I snowed the police, this is what I actually
5 know. They're all written from the context of the discovery.
6 So given the marginal relevancy, we feel that they're far more
7 prejudicial than they are probative.

8 And I understand because of the nature of this case,
9 certain things have been discussed, but now -- relative to
10 custody status. But now we're clearly going to have a
11 continuum of time through which the jurors are going to
12 continue to be advised of Mr. Burns's custody status. And I
13 have a letter here of September of 2011, which is 336.

14 MR. DiGIACOMO: I think that's the only 2011.
15 Everything else is 2010. October 27, 2010.

16 MR. SGRO: 339 is 2010.

17 MR. DiGIACOMO: Sometimes the individual defendants
18 date them. Oh, this is the piggyback letter.

19 THE COURT: If you want it on the record, you're
20 going to have to speak up. They can't hear you.

21 MR. SGRO: Yes, sir. I'm just looking for the date.

22 THE COURT: And that goes to Mr. DiGiacomo, too.

23 MR. DiGIACOMO: I don't know if you can read the
24 time stamp. The time stamp --

25 MR. SGRO: Oh, there it is.

1 MR. DiGIACOMO: -- is November 17, 2010.

2 MR. SGRO: That's from Mason. There's another one
3 in December of 2010, and that one is 343. And that's --
4 that's the total of the ones of Mr. Burns. So we would object
5 to the 2011 letter, Your Honor, which is 336 on the basis of
6 more prejudicial than probative for the revelation of the
7 custody status as well as the marginal relevance the actual
8 statements he even possess because --

9 THE COURT: What's the objection to that -- what's
10 the purpose of that letter?

11 MS. WECKERLY: In the -- at the very bottom of the
12 letter on the first page he's writing to Willie Mason and he's
13 saying you have me wondering about you, like are you going to
14 take probation and go against me. I'm not questioning you,
15 certainly, I'm just lost without a curtain. And then he's --

16 THE COURT: I think we can exclude that letter, too.

17 MR. DiGIACOMO: And just for the record, Judge --

18 THE COURT: We can exclude that letter.

19 MR. DiGIACOMO: -- they put -- but they put in --

20 THE COURT: That's of no real --

21 MR. DiGIACOMO: -- David Burns's letters to Monica
22 Martinez during this time period and the jury is already aware
23 of Mr. Burns's custody status during this time period.

24 THE COURT: We'll just -- we'll use the other
25 letters, the 2010 letters.

1 MR. SGRO: Okay.

2 THE COURT: Okay.

3 MR. SGRO: And then as to -- may I borrow this. And
4 as to 334, 345, and 342, those three letters, Your Honor, are
5 from Willie Mason to David Burns. And it is --

6 MR. DiGIACOMO: No, they're all to David Burns,
7 aren't they?

8 MR. SGRO: Oh, I'm sorry.

9 MR. DiGIACOMO: Oh, there's one to Job-Loc.

10 MR. SGRO: Oh, then 345 -- 345 clearly, on behalf of
11 David Burns, has no relevancy to us. If we're here at a
12 separate trial, a letter from Willie Mason to Jerome Thomas
13 would be excluded.

14 THE COURT: I'll explain to the jurors that the
15 letters by Mason are only admissible as to the case against
16 Mason, and the letters by Burns are only admissible as to the
17 case against Burns.

18 MR. SGRO: Okay. So I appreciate the --

19 THE COURT: Okay.

20 MR. SGRO: -- the limiting instruction.

21 THE COURT: Is that agreeable?

22 MR. SGRO: Well, our -- obviously our position is
23 that they should be excluded because --

24 THE COURT: You want me to so instruct the jury?

25 MR. SGRO: Oh, yeah, assuming that my motion to

1 exclude them is denied, then, yes, as a fallback position.

2 THE COURT: Well, I've excluded all Job-Loc's. I've
3 excluded the 2011 letter from Burns.

4 MR. SGRO: Yes, sir.

5 THE COURT: All right. I think that that's -- the
6 rest of them, I think, are certainly admissible. They're
7 statements by the defendants.

8 MR. LANGFORD: And I have a 2011 letter, as well,
9 September 23, 2011.

10 THE COURT: What's the -- what's the relevancy of
11 that one?

12 MS. WECKERLY: Let me see it.

13 MR. LANGFORD: It's Mason to Burns, Your Honor.

14 MS. WECKERLY: It's Mason to Burns explaining to him
15 that he's not going to essentially testify against him.

16 MR. LANGFORD: So, I mean --

17 THE COURT: I'd like to exclude -- I don't like
18 that.

19 THE CLERK: What number is that?

20 MS. WECKERLY: That's 344.

21 THE COURT: Let's -- let's leave 344 out. I like --
22 I like leaving that out. I don't like that.

23 All right. Are we ready to bring the jury back?

24 MR. DiGIACOMO: We are.

25 MR. LANGFORD: Mr. Mason would also like a limiting

1 instruction, Your Honor.

2 THE COURT: Okay.

3 MR. LANGFORD: Just for the record.

4 THE COURT: When we get to the letters. Who's going
5 to put the letters in?

6 MS. WECKERLY: We're going to have the detective
7 read them.

8 THE COURT: Okay. He can read them?

9 MR. DiGIACOMO: We've just got to redate them for
10 just a second here.

11 THE COURT: Do you have to read them all? I mean,
12 can't you just read the portions that are relevant?

13 MR. DiGIACOMO: We are only reading the portions
14 that are relevant.

15 THE COURT: Okay.

16 MR. SGRO: I'll be back in two minutes, Your Honor,
17 literally. Maybe less.

18 MR. ORAM: Where are you going?

19 (Pause in the proceedings.)

20 (In the presence of the jury.)

21 THE COURT: All right. State versus Burns and
22 Mason. The record will reflect the presence of the
23 defendants, their counsel, the District Attorneys and all
24 members of the jury.

25 I think we need the detective back on the stand.

1 THE MARSHAL: Yes, sir.

2 THE COURT: Detective, you may be seated. And
3 you're still under oath.

4 THE WITNESS: Yes, sir.

5 THE COURT: All right. We're still on direct
6 examination, Ms. Weckerly.

7 MS. WECKERLY: Thank you.

8 BY MS. WECKERLY:

9 Q Detective, in the -- in the recording that we
10 just heard of the interview between yourself and Mr. Burns and
11 Detective Wildemann, Detective Wildemann mentions that -- or
12 tells Mr. Burns that Willie Mason had essentially blamed the
13 whole thing on him. Was that true?

14 A No.

15 Q Is that sort of an interviewing technique that
16 detectives use sometimes?

17 A It is.

18 Q During the interview there is a discussion
19 about a lick. What is a lick?

20 A A robbery.

21 Q And there's other points during the interview
22 where you or -- you or Detective Wildemann are telling Mr.
23 Burns to -- to sort of sit up or pay attention. Could you
24 describe what he was physically doing at the time?

25 A Well, he was slouching far into his chair.

1 And as you heard was -- was humming while we were asking him
2 questions. And then just kind of looking off or away. Just
3 disinterested for the most part, I guess.

4 Q And after your interview with Mr. Burns, did
5 you make a request that correspondence between the defendants
6 in this case be kept?

7 A I did.

8 Q And was that copied and given to you?

9 A Yes, ma'am.

10 MS. WECKERLY: Counsel, I think you saw these.

11 MR. SGRO: Yes.

12 BY MS. WECKERLY:

13 Q Detective, I'm going to show you what's been
14 marked as State's 345, 339, 341, 343, and 342. Do you
15 recognize those items?

16 A I do.

17 Q Are those correspondence between the
18 defendants in this case?

19 A It is.

20 Q And are they copies that you received based on
21 your request?

22 A Yes, ma'am.

23 MS. WECKERLY: State moves to admit those exhibits,
24 Your Honor.

25 THE COURT: All right.

1 MR. SGRO: Just what we previously discussed, Your
2 Honor.

3 MR. LANGFORD: Same.

4 THE COURT: All right. They'll be received.

5 (State's Exhibit 339, 341 - 343, and 345 admitted.)

6 THE COURT: Ladies and gentlemen, these are, as I
7 understand it, letters written by either Mr. Burns or Mr.
8 Mason. To the extent that the officer reads portions of it,
9 they're not going to read them all, but there are portions of
10 the letters they're going to read into evidence that may be
11 relevant. To the extent that they do anything that Mr. Burns
12 has said is admissible against Mr. Burns in the case against
13 him. Anything Mr. Mason has said is admissible in the case
14 against Mr. Mason. Okay.

15 BY MS. WECKERLY:

16 Q And the first one is -- appears to be a letter
17 from Mr. Mason to Jerome Thomas.

18 A Correct.

19 Q So Mr. Mason is the writer?

20 A Yes, ma'am.

21 Q And if you look on the second page of the
22 exhibit, is there a postmark on there?

23 A There is.

24 Q And what is that?

25 A It looks like possibly the 20th of October.

1 Q Okay. And just for -- it's a pretty light
2 copy.

3 MS. WECKERLY: For counsel's benefit, I'm going to
4 just concentrate on the first paragraph.

5 BY MS. WECKERLY:

6 Q And can you read that into the record? Or if
7 my copy is darker, you can use mine.

8 A I'll see if I can --

9 MR. DiGIACOMO: Counsel, do you want me to put what
10 we have up on the overhead?

11 MS. WECKERLY: Yes, and that's 345.

12 MR. DiGIACOMO: Page 3?

13 MS. WECKERLY: Page 1.

14 MR. DiGIACOMO: First page of the writing, but third
15 page of the exhibit?

16 MS. WECKERLY: Yes.

17 MR. DiGIACOMO: Okay.

18 THE WITNESS: Just here to here?

19 BY MS. WECKERLY:

20 Q Here to there.

21 A Okay. That's crazy. Despite the obstacles I
22 face, I continue to keep head high. I hope -- I hope this
23 either finds you in good health due to your unfortunate
24 situation with your leg and all. Let's get down to it now. I
25 was always told what don't come out in the wash, will in the

1 rinse. And what the washing machine can't catch, the lint
2 trap on the dryer will. It ain't about thinking at this
3 point, it's knowing and what's in black and white. Now I just
4 got my motion of the discovery and both chicks turned into
5 Mariah Carey. I always told you -- let's go to right there.

6 Q If you can't read the word, you can just skip
7 it.

8 A It hit the fan. It wouldn't remey (phonetic).
9 And once you get your motion of discovery -- and in
10 parentheses -- (in black and white) you will then know.

11 Q Okay. And now let's look at 339 is a letter
12 to Jerome Thomas from David Burns.

13 A From Burns to Thomas.

14 Q Yeah.

15 A Correct.

16 Q So David Burns is the writer of 339?

17 A Correct.

18 Q And we'll flip to page 2 of the letter.

19 MS. WECKERLY: Are you with me there, Marc?

20 MR. DiGIACOMO: So is it page 3 of the exhibit or
21 page 2 of the exhibit?

22 MS. WECKERLY: 2.

23 MR. DiGIACOMO: Page 2 of the exhibit?

24 MS. WECKERLY: 2.

25 MR. DiGIACOMO: Okay.

1 MS. WECKERLY: Yes.

2 BY MS. WECKERLY:

3 Q Can you read that, Detective, please?

4 A How far?

5 Q The whole way through.

6 A The whole letter?

7 Q Well, until the -- until the very top of page
8 2.

9 A Right here?

10 Q Yes. Thank you.

11 A The dog is solid. 34 of them things. What it
12 do, my Loc? I got my paperwork. Go mouth is not the culprit
13 and it is actually the black fucking ho -- or hope. We went
14 to court today. The Loc brought all his paperwork. The fuck
15 boy West put your name all through the shit and I seen it with
16 my own eyes. They added battery with a deadly weapon
17 resulting in substantial bodily harm. That is the eighth
18 count.

19 The stupid pinche heina, somehow her daughter taking
20 the stand along with that black piece of shit who's putting
21 you in the bullshit. They have something about some T-Mobile
22 shit and Metro PCS. I don't know all details. I'm just
23 keeping you updated. Donovan Rowland is the bitch ass nigga
24 name. He got in detail, which is all a lie. But bitch boy
25 got himself out of a firearm charge, so-called cooperating

1 with the alpha bitch boys.

2 Greyhound pictures of us which really don't mean
3 shit, but our weekend was over in Vegas. I got a new copy of
4 charges with you all through the shit. You can beat the punk
5 shit. After all, you didn't know and still don't got nothing
6 to do with it. Dogg got some good news with his shit. The
7 survivor is not IDing him, which is good. He didn't have shit
8 to do with it neither. The Mexico ho saying he get in
9 counting money, but that's the only thing against him.

10 He good and the nigga is smart. He gave me some
11 motions to file and shit to look up. I'm on the top of this,
12 bitch, on the ninth floor. So if you know someone with a
13 chopper, the one with propellers, tell them to come. Get you
14 a blitzer and bring some awa (phonetic), thoop, thoop, thoop.
15 Oh, yeah, they told Brody that he isn't eligible for the death
16 penalty. I think because he ain't got not front teeth.

17 Q Okay. Now we'll move to 341, which is written
18 by who?

19 A It's from David Burns to Willie Mason.

20 Q Okay. And it'll be page 3 at the bottom. And
21 if I could have you read starting here.

22 MR. DiGIACOMO: Is that the right one?

23 THE WITNESS: And how far?

24 BY MS. WECKERLY:

25 Q So to one of us on the second page.

1 A To right here?

2 Q Yes.

3 A I'm sorry, one more time. Right there?

4 Q And you start at they told me.

5 A They told me they just got pictures and DVDs
6 of us walking through casinos and on the strip. Damn, it's
7 true what they say. Conspiracy will railroad the clique.
8 That only shows what I was wearing, though, basically, and
9 that us three were together on the strip. They also got
10 pictures of you walking onto the Greyhound in L.A. which don't
11 mean shit. But they trying to say you basically was hoping to
12 get away of some sort. That -- that just means we were done
13 with our visit to LV.

14 So I don't go further, where again to stop?

15 Q Okay. And then I'll direct you to stop at --

16 A One of those?

17 Q Yes.

18 A The smoker got a gang of different stories
19 which all point me as El Capitan that had on blue overalls and
20 curly hair. The Dogg said it's possible to get her statement
21 ruled out -- to get her statement ruled out because she got
22 five of them. Little mama, the victim, says I had on blue
23 overalls, orange hat, white shirt under with curly hair. Some
24 way somehow I have a law book and it gives examples about
25 IDing witnesses, how stress levels can somehow differ what a

1 person sees or how she could have seen me before it happened
2 and thought it me somehow. Shit, I don't know. It's going to
3 have to play out some way, whether in my favor or not. Dogg
4 got news last time we went to court that he was not IDed,
5 which is good for at least one of us.

6 Q And on the next page of that letter, is there
7 a page he wrote that says at the top pertain to me?

8 A Correct.

9 Q And just read -- can you read what the top
10 line of that section is, or what -- what he wrote?

11 A Section 2: the psychology of eyewitness
12 identification. 5, what factors tend to cause eyewitnesses to
13 identify the wrong person.

14 Q Thank you. Let's look at Exhibit 343. And
15 who is the writer of that letter?

16 A David Burns.

17 Q And who is the letter directed to?

18 A Willie Mason.

19 Q And I'd like you to start on page 2. Starting
20 with he says -- or, yes, are you there?

21 A I am.

22 Q And ending with enough.

23 A He says so, for momo and moker are the only
24 things I got to worry about. And I nor he knows where that
25 bitch at. He asked me where she -- and there's a hole through

1 it, I can see that. I'm going to send her a Christmas card.
2 Ha ha. He says someone says that they seen my at her house
3 afterward, which is a lie. He probably gonna pay her daughter
4 or take some shit off her mom. If that bitch lie for these
5 mother fuckers, she's saying she only seen me once, which is
6 good and bad. I don't know what moker mommy going to do, but
7 if she was smart she would see that she's incriminating
8 herself enough on the bullshit.

9 Q Okay. And then lastly I'd like you to look at
10 342, which is written by who?

11 A From -- it says W. Mason to David Burns.

12 Q Okay. And looking at the next page, if you
13 could just read the -- the sentence where it says my --
14 starting with my personal experience.

15 A And to where?

16 Q Just to, I guess, the end of the paragraph.

17 A My personal experience has taught me that you
18 don't get bit by the snakes in the grass. You get bit by the
19 one you allow into your house. Sometimes the biggest snake in
20 the grass is the woman you're laying next to.

21 Q Thank you. Now, Detective, do you see David
22 Burns in the courtroom today?

23 A Yes, ma'am.

24 Q Could you point to him and describe what he's
25 wearing, please.

1 A He's the third gentleman over on the defense
2 side, black male adult with his hair pulled back in a ponytail
3 wearing a blue short.

4 Q And is there anything about his appearance
5 that's different than when you saw him in 2010?

6 A His hair is definitely longer.

7 MS. WECKERLY: Your Honor, may the record reflect
8 identification of Defendant Burns?

9 THE COURT: The record will so reflect.
10 BY MS. WECKERLY:

11 Q And, sir, do you see Willie Mason in the
12 courtroom?

13 A I do.

14 Q Could you point to him and describe what he's
15 wearing, please?

16 A He's the last gentleman to the right wearing a
17 plaid shirt, collared shirt, black male, and his hair is
18 short.

19 MS. WECKERLY: Your Honor, may the record reflect
20 identification of Defendant Mason?

21 THE COURT: The record will so reflect.

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

23 MR. SGRO: Thank you, sir.

24 CROSS-EXAMINATION

25 BY MR. SGRO:

1 Q Good afternoon, Detective.

2 A Good afternoon.

3 Q Just a couple preliminary things, first of
4 all, I know you may not understand why it's relevant, but how
5 tall are you, sir?

6 A 5'8 and a half.

7 Q 5'8 and a half. So if someone had described
8 you as 6'4, would that person be off?

9 A Slightly.

10 Q Yeah. Now, you were asked a number of
11 questions. And before we get into the specifics, you have
12 written reports in this case; correct?

13 A Correct.

14 Q You have testified in front of the grand jury
15 in this case twice?

16 A I recall testifying in front of the grand
17 jury. Yes, sir.

18 Q You remember two different days?

19 A Not off the top of my head, no.

20 Q May I approach, Your Honor?

21 A Sure.

22 Q You have a transcript on Tuesday, September
23 28, 2010. Does this look like that was you?

24 A Yes, sir.

25 Q And then we have a transcript on October 12,

1 2010.

2 A Yes, sir.

3 Q Okay. So you testified two times in front of
4 the grand jury; right?

5 A Yes, sir.

6 Q Now, we've had some description in this case
7 of the grand jury. You understand it's a proceeding something
8 like this where you testify, the DA asks you questions; right?

9 A Correct. Yes, sir.

10 Q There is no defense attorneys, though, that
11 are allowed to ask you questions; right?

12 A That is correct.

13 Q You also filled out a number of search
14 warrants in this case; is that right?

15 A I don't recall how many I -- I personally did
16 versus other detectives, no.

17 Q Each -- well, was it -- was it more than one
18 or two?

19 A Well, I know that the sergeant did the first
20 one. I don't know. I don't know how many of the four I did,
21 sir, off the top of my head.

22 Q The search warrant affidavits are all done
23 under oath; right?

24 A Correct.

25 Q Okay.

1 A If my name is on there, then I did them.

2 Q And you also did what you described as a very
3 lengthy officer report --

4 A Yes, sir.

5 Q -- right? Now, in addition to that you kept
6 what you call your case file or what's called a homicide
7 notebook?

8 A Yes, sir.

9 Q One of the questions I had for your is can you
10 point to me in all the paperwork that you've done or at any
11 time under oath prior to today ever discussing why you did not
12 do the gunshot residue, why you didn't pursue it relative to
13 Mr. Mayo. Can you show me anywhere?

14 A Probably not.

15 Q Now, you told the jury today that -- tell me
16 if I got this right. If you fired a weapon in this courtroom
17 you would expect all of us to have some gunshot residue on us?

18 A Well, maybe not a room this big but there's a
19 potential for that. But in a crime scene, in that particular
20 space, in that residence, absolutely. And throughout the
21 different areas that that gun was fired, it would not surprise
22 me that everybody in that residence would potentially have
23 residue.

24 Q What do you base that on?

25 A I'm sorry?

1 Q What -- what treatise, text, scientific
2 manual, what do you base that opinion on?

3 A Well, I base it on my own experience and what
4 I've been taught. But a specific text, I can't reference one.

5 Q Okay. What you've been taught. You get
6 taught things -- Metro receives FBI -- what they call the FBI
7 law enforcement bulletin; right?

8 A They might.

9 Q Metro police officers attend seminars relative
10 to gunshot residue testing from time to time, fair?

11 A Some might.

12 Q Have you?

13 A A gunshot residue in and of itself, no.

14 Q You've never gone to a seminar on it?

15 A I have been to many homicide seminars, yes,
16 sir.

17 Q That's not my question. My question is you
18 came in here and you -- you advance this opinion that gunshot
19 residue testing was not necessary because of the likelihood
20 that he probably has some on him due to the shots that were
21 fired in the residence.

22 A Not exactly. The likelihood that I already
23 knew that he was inside of the residence. So to test for
24 gunshot residue would prove that he was inside the residence
25 or around a firearm when it was being discharged.

1 Q It had nothing to do with the desire to test
2 whether or not he had fired a weapon. That's your testimony.

3 A That he was inside of the residence at the
4 time of the shooting was what I said.

5 Q Sir, would the administration of a gunshot
6 residue test have anything to do with law enforcement desire
7 to determine with some scientific resource whether or not a
8 specific individual fired a weapon?

9 A Yes, it helps. Yes.

10 Q It helps.

11 A Absolutely.

12 Q All right. And you elected to not pursue that
13 particular avenue of investigation; correct?

14 A That is correct.

15 Q Now, are you aware, sir, that once a gunshot
16 travels more than three feet from the site of the shooter,
17 that the effective gunshot residue evaporates, dissipates?
18 Have you ever heard that before?

19 A I'm not a gunshot residue expert, so --

20 Q Well, you know, that's funny because you
21 didn't say you weren't a gunshot residue expert when you told
22 the jury about, you know, powder that would explode in the
23 air; right? You didn't -- you didn't qualify your answer
24 then, did you?

25 A No.

1 Q No. Would you defer to someone else on why --
2 or strike that. Would you defer to someone that is an expert
3 as to the impact of gunshot residue, how the powder works,
4 where it goes, and the time it takes for it to evaporate,
5 etcetera? Would you defer to someone that's an expert?

6 A Sure.

7 Q You were asked --

8 MR. SGRO: Court's indulgence, Your Honor.

9 BY MR. SGRO:

10 Q -- some questions about bullet strikes.

11 A Yes, sir.

12 Q Now, you've already said you're not a gunshot
13 residue expert. Are you a ballistics expert?

14 A I wouldn't say that I'm an expert in anything.

15 Q Would you defer to crime scene analysts that
16 purport to have expertise in that field?

17 A Well, I work with crime scene analysts. I
18 would say that with them, along with the detectives that are
19 at the scene, whether they're primary or other detectives that
20 are there from homicide, collectively we would come to that
21 conclusion.

22 Q So you wouldn't defer to them. You'd work
23 with them to come to a conclusion?

24 A Yeah, I believe so.

25 Q Okay. So if they came in here and testified

1 as to certain things based on their own opinion and their own
2 expertise --

3 A Right.

4 Q -- you would take issue with that?

5 A Well, it would depend on what they said.

6 Q So if they agree with you, you don't take
7 issue with it. If they disagree with you, you take issue with
8 it?

9 A No, I wouldn't put it that way. I mean,
10 anytime that we go to a scene, when you have a group of crime
11 scene analysts along with detectives, you collectively work as
12 a team to come to the conclusion of what the evidence says at
13 the scene.

14 Q Okay.

15 A So no one individual at any homicide scene
16 that I've ever been to would ever be the definitive sole
17 answer as to what took place there.

18 Q Okay. So crime scene analysts come in.

19 A Correct.

20 Q They get proffered as experts. They testified
21 about bullet trajectories. Do you quarrel with what their
22 findings are?

23 A Well, I guess it would just depend on what the
24 situation was.

25 Q Let's start with this. There was a piece of

1 furniture in the hallway as you -- as you travel down the
2 hallway of the Meikle residence; correct?

3 A Which are you referring to? The one at the
4 north end of the hallway? The bookshelf?

5 Q The one that had a couple doors on the bottom
6 and it looked like an entertainment maybe, a wooden shelf.

7 A I believe I know which one you're referring
8 to. Yes, sir.

9 Q Okay. As you are traveling down the hallway
10 it's mounted against the wall, then on the other side of that
11 wall is the television.

12 A Correct.

13 Q All right. What -- what would you call that
14 piece of furniture so we can be on the same page?

15 A Well, I'd -- I'd have to see it. I believe
16 it's something similar to a bookshelf or something along those
17 lines.

18 Q All right. Let's call it a bookshelf. You
19 testified before the jury that the bookshelf at some point was
20 moved; correct?

21 A When he moved, yes. When Mr. Mayo moved.

22 Q At -- at some point law enforcement was
23 contacted to go reexamine that wall.

24 A Correct.

25 Q So while you were there performing your

1 evaluation of bullet paths, trajectories and that sort of
2 thing, you missed the bookshelf.

3 A The initial -- absolutely, yes.

4 Q Okay.

5 A We -- well, what do you mean we missed the
6 bookshelf?

7 Q Well, if the holes came at the time of the
8 homicide, that bookshelf should have had holes in it; right?

9 A Correct.

10 Q Bullets would have had to have gone through
11 the bookshelf to get to the wall; correct?

12 A That is correct.

13 Q All right. And so you missed two holes in the
14 bookshelf.

15 A That is correct.

16 Q Now, when you testified in front of the grand
17 jury --

18 MR. SGRO: May I approach the clerk briefly, Your
19 Honor.

20 THE COURT: Yes.

21 BY MR. SGRO:

22 Q Okay. Now, Defense Exhibit S, like Sam, is in
23 evidence and I want to get us orientated the same way.

24 MR. SGRO: Oh, can I have the Elmo, please?

25 THE MARSHAL: It's on.

1 MR. SGRO: Thank you.

2 BY MR. SGRO:

3 Q Now, this is what the crime scene analyst
4 testified to. See these holes marked A and B?

5 A Correct.

6 Q And you're familiar that trajectories of
7 different bullets each get allocated a different letter of the
8 alphabet; correct?

9 A Correct.

10 Q And on the first go around at the crime scene
11 there was an A1 through 6, B1 through 4, etcetera; right?

12 A Correct.

13 Q There was an A, B, and a C; right?

14 A I'll agree with that.

15 Q Well, do you know?

16 A I believe they were lettered that, yes.

17 Q Okay. And in addition to the A, B, and C,
18 there was a bullet that killed Derecia; right?

19 A Correct.

20 Q And there was a bullet that killed -- I'm
21 sorry, that was in the stomach of Devonina?

22 A Correct.

23 Q So that's five; right?

24 A Without -- you're talking about regardless of
25 these?

1 Q Regardless of these we have five; right?

2 A I believe so, yes.

3 Q At the time you left the scene -- well, strike
4 that. If a crime scene analyst would have testified under
5 oath that when -- when she had left the scene she had counted
6 for five shots, would you agree with that?

7 A If that's what she said, then, yeah,
8 absolutely.

9 Q And afterwards we have these two holes;
10 correct?

11 A Correct.

12 Q Now, did you go back and -- and take these
13 pictures?

14 A I believe I was there. I didn't take those
15 pictures, no.

16 Q Were you there?

17 A I believe so, yeah. During this, yes.

18 Q Okay. This is the second page of Exhibit S.
19 Did you put these poles in the wall?

20 A No.

21 Q Did you draft a report that said that -- well,
22 strike that. That attributed these travel paths to two
23 separate bullets?

24 A The crime scene analyst would have done that.

25 Q Okay. You didn't review that crime scene

1 analyst report and take issue with it; correct?

2 A Well, I don't recall what it says, so I didn't
3 take issue with it, I guess.

4 Q Well, let me ask you generally. Was there a
5 crime scene analyst report that you're aware of that
6 attributed two different bullets to A and B that you took
7 issue with?

8 A No.

9 Q And when you testified in front of the grand
10 jury about this particular section of this wall behind the
11 hallway, you told the grand jury under oath that there was
12 another bullet strike, another singular bullet strike;
13 correct?

14 A Well, I don't know if those were my exact
15 words, but I agree that that is a bullet strike. Yes, sir.

16 Q Well, let's start --

17 MR. SGRO: May I approach, Your Honor?

18 THE COURT: Yes.

19 MR. SGRO: This is page 41, counsel.

20 BY MR. SGRO:

21 Q Page 41, can you read line 12?

22 A Right. Period --

23 Q No, I'm sorry. Sorry. To yourself.

24 A Okay.

25 Q Have you done that?

1 A Yes.

2 Q You told the grand jury, did you not, that it
3 was, quote, another bullet strike.

4 A Correct.

5 Q You didn't explain to the grand jury that
6 there were two holes that you had attributed to one bullet;
7 right?

8 A That there were two holes that contributed to
9 one bullet?

10 Q Attributed to --

11 A Right. That did I say that?

12 Q You didn't say that, did you?

13 A Okay. No.

14 Q And did you show the grand jurors the photo of
15 this A and B with these two separate poles?

16 A Well, I wasn't in a position to show them
17 anything. That wouldn't have been me.

18 Q Now, at the time you testified before the
19 grand jury, testing was being done -- or strike that. The
20 time you testified before the grand jury in September of 2010
21 you had submitted requests for certain testing to be done on
22 the bullets that were recovered from the scene correct?

23 A Yes, sir.

24 Q And you had submitted comparison requests,
25 bullet to bullet, bullet to gun, remember those?

1 A Yes, sir.

2 Q And at the time you testified, you had not
3 received those results; correct?

4 A Probably not based on the dates that you gave
5 me, no.

6 Q Yet you told the grand jury --

7 A I'd have to see that, though. I don't know
8 whether -- I don't know what the dates were that I received
9 it, but I would assume not just based on the time that it
10 takes to get them.

11 Q You told the grand jurors in September of 2010
12 when asked by them, do you remember? Do you remember being
13 asked a question what was the caliber of the bullets that was
14 found and you answered, well, all of the testing on the
15 evidence that was found is still being conducted. Does that
16 ring a bell?

17 A If that's -- I agree. You don't have to show
18 me. If that's what I said, then that's what I said, sir.

19 Q Okay. And then the -- the grand juror -- a
20 juror says, well, were there six shots fired from the same
21 weapon; right?

22 A Right.

23 Q Have you determined that; right? And you say
24 due to the fact --

25 MR. SGRO: I'm sorry, counsel. 47.

1 BY MR. SGRO:

2 Q Due to the fact that there were no casings and
3 from witnesses and from witness statements, yes.

4 A That is my belief, absolutely.

5 Q The grand jury, though, they asked you about
6 testing that was done; right?

7 A Yes.

8 Q And you answered not relative to testing, but
9 based on witness statements, whatever you thinking of at that
10 time; right?

11 A And evidence at the scene.

12 Q Sir --

13 MR. SGRO: May I approach, Your Honor?

14 THE COURT: Yes.

15 BY MR. SGRO:

16 Q Showing you 47. I want to make sure.
17 Question, were you there six shots fired from the same weapon?
18 Have you determined that?

19 A Right.

20 Q This is in reference to testing; correct?

21 A Yes, sir.

22 Q That's the context. And what you answer --
23 let me ask it this way. You don't say, you know what, the
24 testing isn't finished yet. That's not what it says; right?

25 A I said exactly what I believe to be true.

1 Q Sir.

2 A Due to the fact that --

3 Q Sir, hold on.

4 A -- there were no casings --

5 Q The way this works, I ask the question, you
6 give me the answer, okay?

7 A Okay.

8 Q After the question relative to testing, were
9 there six shots fired from the same weapon, do you say the
10 testing isn't back yet?

11 A No.

12 Q Do you instead say due to the fact that there
13 were no casings and from witness statements, yes, sir.

14 A We believe --

15 Q Right.

16 A -- it was one single weapon that was used. I
17 absolutely said that.

18 Q Nobody in this case has ever told you that
19 whoever the assailant was walked into Meikle lane with all the
20 ammunition loaded in a single revolver, fair?

21 A That is fair.

22 Q At the time that you're at the scene, how long
23 had you been on homicide?

24 A I think it was -- well, it was 2010, August, a
25 little over -- around a year. Somewhere around a year.

1 Q It was actually a little bit less than a year,
2 wasn't it?

3 A It was around a year. I don't know if it was
4 a little less or a little more.

5 Q And now you're on search and rescue?

6 A That is correct.

7 Q When did you start search and rescue?

8 A In December.

9 Q Of?

10 A Last year.

11 Q Okay. You were in homicide for about four
12 years?

13 A Five years.

14 Q Five years. When you interact with people,
15 with witnesses, you turn on a tape recorder sometimes, all the
16 time, or most of the time? Which one of it would it be?

17 A Well, when you say interact, in what context
18 are you referring to?

19 Q When you're interviewing the witness, do you
20 turn the tape recorder on?

21 A Like a formal interview, yes.

22 Q Okay. If -- if it's not a formal interview,
23 if you're going to see Cornelius Mayo because he has a bullet
24 to give you --

25 A Right.

1 Q -- is that something that's where notes are
2 taken?

3 A Well, a CSA is going to do that, so probably
4 not. It just depends on the circumstance.

5 Q All right. Now, would you engage in tactical
6 decisions as to when you're going to take notes and when
7 you're not going to take notes?

8 A I don't understand your -- the phrase tactical
9 means something different to me, so --

10 Q In order to -- in order to ascertain a
11 conviction in a criminal case, would that ever be a driving
12 factor as to whether or not to take notes during an interview?

13 A It just depends on the circumstance.

14 Q So there's no yes or no to that?

15 A Well, there's no specific circumstances.
16 There's -- the context of the question which you're asking,
17 there's lots of variables in that. I don't always take notes,
18 lots of times I do take notes. It just depends on the
19 circumstance. In the case in which you're referring to, like
20 if somebody is providing like in the bullet situation, I may,
21 I may not. I mean, the CSA is going to do a crime scene
22 report, so there's not always a necessary need to do so.

23 Q What about in a case where you have
24 interviewed a woman for 10 or 15 hours, the time span is
25 varied in the case. So somewhere --

1 A It certainly seemed that long.

2 Q -- somewhere between 10 to 15 hours you
3 interview a woman; right?

4 A Yes.

5 Q You interviewed Monica Martinez in this case?

6 A Correct.

7 Q Monica Martinez sometime later would choose to
8 enter into a plea and cooperate with the State; right?

9 A Okay.

10 Q At that time that she chooses to cooperate and
11 -- and enter a plea she's debriefed; right?

12 A By who?

13 Q Well, I'm asking. Were you there?

14 A During the proffer?

15 Q Yes.

16 A Yes.

17 Q Did you take notes?

18 A I don't -- I don't know because I don't have
19 notes on it, so I'm assuming I did not.

20 Q You don't remember if you -- this only
21 happened in October of 2014. This is 90 days ago.

22 A Oh, wait. I'm sorry. Which one are you
23 talking about? I thought you were talking about years ago.
24 Which -- can you ask the question one more time?

25 Q Do you understand the word proffer to mean

1 when someone has agreed to work as a cooperating witness?

2 A Correct.

3 Q They come in, there's an interview; right?

4 A Correct.

5 Q Okay. At Monica Martinez's proffer, were you
6 present in October of 2014?

7 MS. WECKERLY: I'm going to object. There wasn't a
8 proffer then.

9 THE WITNESS: Yeah, I don't know what you're talking
10 about.

11 MS. WECKERLY: There was one in --

12 THE COURT: Well, there was some evidence --

13 MS. WECKERLY: October of '10.

14 THE COURT: -- that there was an interview with the
15 District Attorneys.

16 MR. SGRO: Yes, sir.

17 MS. WECKERLY: In December.

18 THE COURT: I don't remember the evidence that the
19 Metropolitan Police Department was present.

20 MR. SGRO: Well, that's why --

21 THE COURT: They may or may not have been.

22 MR. SGRO: That's why I'm asking, Your Honor.

23 MS. WECKERLY: That was --

24 THE COURT: Well, you need to ask him -- you need to
25 tell him that there was such an interview and ask him if he

1 was there.

2 MS. WECKERLY: And that was December, not October.

3 MR. SGRO: Okay.

4 THE COURT: It was December.

5 BY MR. SGRO:

6 Q So I apologize if I got the date wrong. In
7 December.

8 A This last December?

9 Q Yes, sir.

10 A No.

11 Q You weren't present?

12 A No, I was not.

13 Q Was Detective Wildemann present?

14 A Not that I'm aware of.

15 Q Were you asked to not attend, or is it just
16 you had a conflict?

17 A I don't -- I don't even know. I wasn't aware
18 that there -- I mean if they brought it up, it wasn't
19 important to me if I didn't need to be there, so --

20 Q Okay. So that was a meeting that occurred in
21 the absence of you knowing that it occurred?

22 A If they mentioned it, it was off the cuff that
23 they were doing it. I don't recall knowing that there was a
24 proffer. I don't -- I don't know. I don't know on that one.

25 Q You don't know?

1 A No.

2 MR. SGRO: Court's indulgence, Your Honor. I just
3 need to locate a photo.

4 MS. WECKERLY: I -- Mr. Sgro, I have a bunch of
5 photos here. I don't know if I --

6 MR. SGRO: Oh, okay.

7 MS. WECKERLY: Sorry.

8 THE COURT: She has some of the evidence over there?

9 THE CLERK: She has some of the pictures.

10 MR. SGRO: Yeah, she -- the State had them, Your
11 Honor.

12 BY MR. SGRO:

13 Q I want to show you a picture of inside of the
14 Meikle residence, okay?

15 A Okay.

16 Q This is Exhibit No. 87. And it's not the only
17 picture, but is this a picture of white rocks which would be
18 later determined to be crack cocaine that were located in the
19 residence?

20 A Yes, sir.

21 Q And are there photos of this same rock-like
22 crack cocaine substance in the residence?

23 A This -- say it one more time?

24 Q There's -- there's a number of photos from
25 different perspectives of the rock cocaine.

1 A Yes, sir.

2 Q And are you aware that when Mr. Mayo was given
3 his shoes there was some rock cocaine in his shoe?

4 A I am.

5 Q And was there any -- any suggestion or are you
6 aware of any police officer putting that cocaine in his
7 apartment prior to those photographs being taken?

8 A Of an officer putting cocaine in his
9 apartment?

10 Q Yes, sir. Was the cocaine planted, sir?

11 A No.

12 Q Okay. Did you have a conversation with Mr.
13 Mayo about him selling drugs from his residence?

14 A I didn't interview Mr. Mayo that day.

15 Q I didn't ask you if you interviewed him that
16 day.

17 A In just out of all of my interactions with
18 Mayo? Yes.

19 Q And he admitted to you that he did?

20 A Well, I don't know whether he admitted it. I
21 knew that he did. I believe that he did.

22 Q You were asked about some interactions you had
23 with Mr. Mayo and attended proceedings in family court;
24 correct?

25 A Yes, sir.

1 Q And you actually testified as a witness in
2 that case; correct?

3 A Yes, sir, I did.

4 Q And one of the issues that you testified about
5 was what you just told me, your belief that Mr. Mayo sold
6 drugs.

7 A Yes, for CPS for family court.

8 Q For CPS. Because all the way through those
9 CPS proceedings Mr. Mayo maintained that he did not sell
10 drugs.

11 A Okay.

12 Q Correct?

13 A I don't know what he did because I didn't
14 listen to his testimony.

15 Q Were you made privy to some bet that he had
16 met, a basketball bet, a large wager where he had won \$2,500?

17 A I don't recall that.

18 Q So do you recall the purpose of your testimony
19 in the family court proceeding to be to suggest that Mr.
20 Mayo's credibility was lacking?

21 A Well, I recall testifying in the court. And
22 obviously they wanted to know whether he sold drugs or not. I
23 don't know about his credibility. So are you referring as to
24 being a good parent or not because he's --

25 Q No, sir.

1 A -- selling drugs or --

2 Q No, sir. I'm saying Cornelius Mayo testified
3 and he said this story here.

4 A Right.

5 Q And you were called to testify and give a
6 story over here that contradicted what he had said. Do you
7 understand that to be the general nature of why you were
8 called as a witness?

9 A I know that they asked me to testify as to
10 what I located at the scene and the scenario of the case.
11 Yes, sir.

12 Q Did you participate in -- in the decision
13 making process to charge Mr. Mayo with the criminal charges he
14 faces as a result of that day's activities relative to drugs?

15 A Different agency. No.

16 Q Okay. So you didn't have anything to do with
17 charging him with putting kids in danger while drug
18 trafficking activity was going on?

19 A No, I think that was -- no, I don't believe
20 so.

21 Q How about the child abuse and neglect charges?

22 A I don't recall myself submitting those
23 charges, no.

24 Q As this case unfolds, do you do what are
25 called briefings about this case, like status checks amongst

1 law enforcement officers?

2 A You mean within our own unit?

3 Q Yes, sir.

4 A Sometimes, Yes, sir.

5 Q And do you know who Detective Shoemaker is?

6 A I do.

7 Q And who is he?

8 A At the time he was a sergeant in homicide.

9 Q And he would have been one of the persons in
10 those briefings that discussed the evolution of the case, how
11 things were going?

12 A He may have. He may not have been. It would
13 depend, but he would probably be informed of what was going on
14 in the case.

15 Q Do you recall him having a specific role in
16 the case relative to being a liaison between law enforcement
17 and what was going on in that case and CPS? Do you remember
18 him having that specific job role?

19 A I'm aware that he did, but I'm not aware of
20 his total involvement in that because it's a separate issue
21 from my investigation.

22 Q But at least relative to CPS, you do have that
23 recollection?

24 A I know that he spoke with CPS. Yes, sir.

25 Q Now, I asked you before -- well, before I get

1 there, he spoke to CPS over the course of time, not just on a
2 single day; right?

3 MS. WECKERLY: Objection. Foundation.

4 MR. SGRO: Well, I'm asking him --

5 THE COURT: If he knows.

6 MR. SGRO: -- if he knows. If he knows.

7 THE COURT: If he knows.

8 MR. SGRO: Yes.

9 THE WITNESS: I have no idea how many times he had
10 interaction with our agency.

11 BY MR. SGRO:

12 Q You wouldn't be surprised, though, that
13 because he did it once he continued to do it over the course
14 of the case that you were involved in as a witness in family
15 court?

16 A No, I think that's fair to say.

17 Q And as a person from that trial, from that
18 briefing group typically assigned a task like that, you're the
19 one that stays in touch with CPS, does that sound right to
20 you?

21 A Well, they would have contact with -- I mean,
22 obviously they had contact with me because they requested me
23 to testify. But my -- my -- the purpose of my investigation
24 was to -- was the murder. If CPS called and asked and had a
25 question, then I would be more than willing to give that

1 answer. But I -- I don't know that I would put it in the
2 context that you're saying it in.

3 Q You told the jury during direct examination
4 that you really wanted to charge Job-Loc with murder.

5 A Yeah, I believe -- I believe that he was
6 involved.

7 Q There was testimony adduced at the grand jury
8 that through the analysis --

9 MR. SGRO: And this is page 160, counsel.

10 BY MR. SGRO:

11 Q -- through the analysis of phone records that
12 it was learned that Job-Loc couldn't have been at the scene.

13 A Well, along with everything else --

14 Q Sir.

15 A -- with State's --

16 Q Sir, we're going to do a lot better if we just
17 stick with my questions, okay?

18 A Okay.

19 Q Was a question --

20 MR. SGRO: May I approach the witness, Your Honor?

21 THE COURT: Yes.

22 BY MR. SGRO:

23 Q Just the question and the answer to yourself,
24 please.

25 A No. 2 and 5? 2, 3, and 4 and 5?

1 Q 2 through 5, yeah. To yourself, please.

2 A Okay.

3 Q Do you have it?

4 A I do.

5 Q So the question specifically was posed through
6 the analysis of phone records did you learn that Job-Loc
7 couldn't have been at the scene; right?

8 A Yes, that's what it says.

9 MR. SGRO: Exhibit 304, please, Miss Clerk. Thank
10 you very much.

11 BY MR. SGRO:

12 Q Do you agree that an analysis of phone records
13 reveals that Job-Loc couldn't have been at the scene. Do you
14 agree with that?

15 A Well, there was a gap in the time for the --
16 the records, for sure.

17 Q No one said that to the grand jury, did they?

18 A Well, once again, the context of everything
19 else that's involved, so --

20 Q Sir.

21 A Okay. No.

22 Q Thank you.

23 A Sure.

24 Q You're aware as you sit here today there's a
25 gap in those records; right?

1 A There's not a gap -- let me rephrase that.
2 There's not a gap in the records.

3 Q There is a time from about 2:00 a.m., and I
4 think it's like 2:03, 2:06, but roughly 2:00 a.m. until 4:25
5 or 4:35 a.m. that Job-Loc's phone is not being used; right?

6 A Correct.

7 Q Now, what was adduced before the grand jury
8 was that Job-Loc's phone was hitting off the same tower,
9 quote, unquote, all night long; right?

10 A That is true.

11 Q And in a vacuum you'd agree with me that
12 that's true?

13 A I believe that it's true.

14 Q Okay. But that doesn't mean, as was adduced
15 before the grand jury, that an analysis of phone records
16 reveals that Job-Loc couldn't have been at the scene; right?

17 A In the context of that, absolutely, you're
18 correct.

19 Q All right. Brittnae Pines to Meikle at 3:45
20 in the morning is what, a ten minute drive?

21 A Well, it's on the northwest side of town.

22 Q Have you driven it?

23 A Meikle is on the northeast side of town.

24 Q Have you driven it?

25 A Yeah.

1 Q What did it take you to drive it?

2 A You're asking if I've driven between those
3 distance, yes, I have.

4 Q No, no, no. I'm asking you if you got in your
5 car as part of this case, you got in your car --

6 A No. No, I did not.

7 Q Okay. So you can only give us a ballpark of
8 what you think it might take to drive it.

9 A Fair.

10 Q Right? Would you be surprised if you could do
11 it in 10, 15 minutes at 3:30 in the morning?

12 A I don't know what it would take.

13 Q Focusing on Job-Loc for a minute, the same one
14 you wanted to charge with murder, you were involved in a
15 search warrant that was executed at the residence attributed
16 to him; correct?

17 A Say that one more time?

18 Q Were you involved in the execution of a search
19 warrant that was attributed to where Jerome Thomas lived?

20 A Well, I did not serve that search warrant.

21 Q I didn't ask you if you served it. Were you
22 there?

23 A I showed up at the tail end of it, yes, sir.

24 Q All right. Showing you Defense Exhibit Z.

25 This photograph shows three cell phones by an orange cone;

1 right?

2 A Correct.

3 Q Those three cell phones, do you remember
4 seizing them?

5 A No.

6 Q Did you seize them?

7 A I don't believe so.

8 Q Can you tell us anything about the SIM cards
9 in these phones, if they're transferable or not?

10 A In those phones themselves, I don't know.

11 Q This was a cell phone case in the sense that
12 cell phone records were going to be important in the
13 prosecution of this case; correct?

14 A Yes, sir.

15 Q And these phones in Job-Loc's apartment
16 remained untouched; right?

17 A Yes, sir.

18 Q But you took that disposable camera to the
19 left of those phones; right?

20 A I believe the camera was taken, yes, sir.

21 Q You were asked some questions about the
22 interview that you had with Devonian Newman. Do you remember
23 -- and do you remember listening to the tape?

24 A Yes, sir.

25 Q You are taught interview techniques as a

1 police officer, are you not?

2 A That's correct.

3 Q We talked for example, you are allowed to lie
4 to someone you're interviewing; right?

5 A That is correct.

6 Q You are trained how to be deceptive.

7 A I wouldn't say that we're trained to be
8 deceptive.

9 Q Not generally all day every day, but you are
10 trained how to interview someone, how to advance to -- like I
11 found your fingerprint on the murder weapon. You could say
12 that.

13 A But I have never been trained to be deceptive
14 in any training class I have ever taken.

15 Q You could say to a suspect hypothetically, I
16 found your fingerprint on the gun and you full well know it's
17 not true; right?

18 A Yes, we can do that. That's correct.

19 Q All right. That's fair game; correct?

20 A Correct.

21 Q And the objective of that, you're trying to
22 communicate that it's true to someone you're sitting across
23 the table from; right?

24 A Yes.

25 Q And you have success with that ability;

1 correct?

2 A Sometimes.

3 Q So someone that you've never met before can
4 sit across the table from you and believe that what you are
5 making up is actually true; right?

6 A Correct.

7 Q Now, let's talk about an interview style
8 called a cognitive interview. Do you know what that is?

9 A I've heard the term before.

10 Q Is the cognitive interview the type of
11 interview that is preferred with children in that it's tell me
12 what happened, they tell you the whole story before you ask
13 any questions? Does that make -- does that ring a bell?

14 A That sounds familiar, but I'm -- yes.

15 Q There are precautions to be taken when
16 interviewing children because of how impressionable they can
17 be, especially when they see a police officer; right?

18 A Yes, sir.

19 Q They can have a higher level of suggestibility
20 than an adult; right?

21 A Yes, sir.

22 Q You're going to treat a 10 year old boy
23 different than a 30 year old man?

24 A Yes, sir.

25 Q In this particular case, do you know the types

1 of medication that Devonia Newman had been administered prior
2 to your interview?

3 A I don't know what they were at this time, no.

4 Q Do you think it would have been prudent to
5 understand the types of medication that she was administered
6 so that you could gauge the ability of her to interact with
7 you and respond lucidly to questions?

8 A Well, I know, obviously, that she's on
9 medication because she's been shot in the stomach. But
10 there's many cases which I've talked to individuals that are
11 in the hospital. And as you can tell from listening to her
12 statement and the corrections that she even made to me that
13 she was able to have that conversation.

14 Q Not my question. Would it have been prudent
15 for you to understand the kinds of medication she had been
16 administered?

17 A It can be helpful, sure. Absolutely.

18 Q Do you know what Fentanyl is?

19 A No.

20 Q Do you know what the side effects of Fentanyl
21 are?

22 A No, sir.

23 Q Do you know what Versed is?

24 A I've heard of it. No, I don't know.

25 Q Do you know what the side effects of Versed

1 are?

2 A No.

3 Q At the time you conducted the interview with
4 Devonian Newman, that occurred on August 8th. This would be
5 about 36 hours after the events; right? Roughly? A day and a
6 half?

7 A Sure.

8 Q There came a time when Devonian was released
9 from the hospital; right?

10 A Yes, sir.

11 Q There came a time when she was no longer being
12 administered a Fentanyl drip and a Versed drip; right?

13 A I'm sure that's true. Yes, sir.

14 Q Did you ever go back and approach her again
15 with the a tape recorder and say, hey, you were heavily
16 medicated at the time, can we confirm or reaffirm what you
17 told me previously? Did you ever do that in this case?

18 A No, I did not.

19 Q You also, in speaking to Devonian, I want to
20 talk to you about the information that you had. You had
21 already spoken to Stephanie Cousins, or someone from law
22 enforcement had already spoken to Stephanie Cousins; right?

23 A Correct.

24 Q The -- do you know who Officer Houghton is?

25 A I don't know him personally, no.

1 Q But do you know him to be an officer in law
2 enforcement who happened to be present at the scene watching
3 over Cornelius Mayo as -- as detectives --

4 A I believe that was the officer. Yes, sir.

5 Q Okay. Officer Houghton spent several hours
6 with Mr. Mayo until you guys got there.

7 A Correct.

8 Q And you are aware that Officer Houghton was
9 overhearing threats to Stephanie Cousins, getting descriptive
10 information back and forth. Are you aware of that?

11 A Yes, sir.

12 Q And that became part of your large officer's
13 report that you referred to earlier; right?

14 A Yes, sir.

15 Q The interaction between and the -- the
16 information gleaned; correct?

17 A Yes, sir.

18 Q Before you got there, were you aware that
19 Cornelius Mayo had gone to the hospital to speak with Devonian?

20 A Before that -- that morning that an officer
21 was there?

22 Q Let me rephrase it. You went on August 8th at
23 4:15 in the afternoon. Are you aware that from August 7th at
24 4:00 roughly when Devonian gets transported up until the time
25 that you arrive, that in that intervening window of time

1 Cornelius Mayo had spoken to Devonia?

2 A I am aware of that.

3 Q And you had learned information by speaking to
4 other witnesses about possible descriptors of an assailant
5 that you believed you were looking for; correct?

6 A Yes.

7 Q And when you get to the hospital, you don't
8 turn the tape recorder on right away before you begin speaking
9 to Devonia; is that correct?

10 A Well, I introduced myself first and what I'm
11 there for.

12 Q Well, and you also talk a little bit about
13 what happened; right?

14 A I don't know what you're referring to.

15 Q Well, do you talk a little bit about what
16 happened to justify why there is a police officer there before
17 you turn on the tape?

18 A I explain who I am and why I am there, that
19 I'm there to conduct an interview with her.

20 Q Did you speak at all about the happenings that
21 occurred at the Meikle residence?

22 A I don't understand the text of what you're --
23 what you're asking.

24 Q Well, do you remember -- I mean, we just heard
25 the -- the taped statement. Do you remember saying in the

1 statement we've talked a little bit about what happened?

2 A Okay.

3 Q Does that ring a bell?

4 A Like as far as that her mother was shot?

5 Q Well, sir you said it. I didn't say it.

6 A Right. Well, at the beginning I'm explaining
7 while I'm there.

8 Q Right.

9 A So this is why I'm here. If you're asking me
10 if I laid out what took place, no, absolutely not.

11 Q Here's what I'm asking. The conversation that
12 occurs before you turn the tape recorder on --

13 A Right.

14 Q -- exists nowhere other than in your memory;
15 right?

16 A That's correct.

17 Q Okay. In Monica Martinez's situation you
18 picked her up from work, you drove her to the station, and
19 there's a blurb about that conversation in your report;
20 correct?

21 A Correct.

22 Q And you did talk to Monica Martinez about the
23 facts of the case on the way to the interview; right?

24 A There were general things that we spoke of,
25 yeah.

1 Q About the facts of the case; right?

2 A Why we're there to talk to her.

3 Q Pardon me?

4 A Well, when you say the facts of the case, I
5 mean --

6 Q You were asking her who Albert Davis is;
7 right? She says Albert Davis is my boyfriend. She's talking
8 about things that happened. And I think in your officer's
9 report was by the time you got to the police station, I think
10 the quote is we realized that she might be more involved than
11 we originally thought; right?

12 A Well, I'd have to read it, but that sounds --
13 but, yeah, she was -- she was definitely -- we knew that she
14 was being somewhat deceptive and kind of --

15 Q That all happens before you turn on the tape
16 recorder.

17 A We drove her to the -- yes, sir.

18 Q Okay. Now, I want to talk to you --

19 A That's why I put it in the report.

20 Q Sir, there's no question. Right. You put it
21 in the report.

22 A Right.

23 Q Where's the report that talks about what you
24 spoke with Devonian about prior to turning the tape recorder
25 on?

1 A Well, I didn't talk to her about the incident,
2 so --

3 Q I understand that's what your position is.

4 A -- that's why it's not in there.

5 Q But there's no note, there's no report,
6 there's no recording. We have your memory; correct?

7 A Absolutely.

8 Q Now, you start -- if I understand correctly,
9 you told the jury, you know, I just told her why I was there.
10 You start with on the night that this happened you were with
11 your mom; right?

12 A I'm sorry. Which are we referring to?

13 Q I'm -- I'm -- Devonia's statement. I
14 apologize. Page 2. The night that this happened you were
15 with your mom. You call her Ree. Remember asking that?

16 A Right.

17 Q Okay. And then you say does she go by Ree?
18 Answer, yes. You and your mom were in the living room area.
19 Do you remember saying that?

20 A Yes.

21 Q Okay. So would it be fair to say that at
22 least in the beginning of the interview it looks like you had
23 talked about where she was located when things happened?

24 A Well, you're suggesting that I said that. But
25 oftentimes when we, and in this case, if she starts telling me

1 a story, I say hold on a minute, we're going to put this on
2 tape. So --

3 MR. SGRO: May I approach?

4 THE COURT: Sure.

5 BY MR. SGRO:

6 Q The interview starts, it says I'm going to be
7 speaking with Devonian; right? Date, time, location; correct?

8 A Correct.

9 Q Devonian informed me it's Devonian. You're
10 saying that she's already told you how to pronounce her name;
11 correct?

12 A Okay.

13 Q Right?

14 A Correct.

15 Q I -- we're going to -- we've talked a little
16 bit about what happened, okay. Did I read that right?

17 A Correct.

18 Q And you want to take a couple deep breathes.
19 We'll wait for a second. Right?

20 A Right.

21 Q There you go. Doing a great job. I'm going
22 to ask you a couple questions. So far you're with me; right?

23 A Yes, sir.

24 Q On the night that this happened, you were with
25 your mom; right?

1 A Correct.

2 Q Now, according to the tape, there is no
3 predicate there. That's how you start. You were with your
4 mom; right?

5 A Correct.

6 Q Then she says, yeah, but -- right, Derecia
7 Newman. Are you still with me?

8 A Uh-huh.

9 Q Yes.

10 A Yes.

11 Q Unintelligible, unintelligible. Right. Now,
12 you and your mom were in the living room area. That's what
13 you say; right?

14 A Correct.

15 Q Okay. And I guess my point is this. You
16 don't say to her, hey, what's your mom's name?

17 A Right.

18 Q You don't say to her, hey, where were you?

19 A Correct.

20 Q Which is all --

21 A In the beginning I do not. Correct.

22 Q Which is all indicia of some factual banter
23 back and forth before the tape turns on. It may have lasted a
24 few seconds or a few minutes; right?

25 A Well, banter is different than her just saying

1 those things and my saying, well, hold on, we'll -- we'll put
2 it on tape. So in the context --

3 Q Just stick with --

4 A -- of what you're --

5 Q -- my question.

6 A Well, but I disagree with your context in what
7 you're saying.

8 Q Okay. So you disagree. You disagree.

9 A Correct.

10 Q All right. Now --

11 A Well, I disagree with -- like I said, yes,
12 that is what I said. But the context of what you're asking me
13 I disagree with.

14 Q Are you aware of Devonia Newman's complaint
15 after this tape recorded statement was taken that police
16 officers, quote, put words in her mouth. Are you aware of
17 that complaint?

18 A No.

19 Q Are you aware that after she reviewed this
20 taped statement she complained to someone in law enforcement
21 that it didn't sound like her?

22 A To who in law enforcement?

23 Q Well, let's start with you. Did she complain
24 to you?

25 A No.

1 Q You said you had visited with her once or
2 twice after this tape recorded statement?

3 A Well, we did the photo lineup.

4 Q And then is that the only time.

5 A I believe that's the only time.

6 Q Now, even in the -- even in the photo lineup,
7 she initially wrote down 10 percent; right?

8 A Correct.

9 Q By the way, there's only six people in that
10 photo lineup; right?

11 A Correct.

12 MR. SGRO: Can I have the photo lineup?

13 MS. WECKERLY: Yes.

14 BY MR. SGRO:

15 Q Now, if I have six pictures on a dart board
16 and I just throw a dart, I got a one in six chance of hitting
17 somebody; right?

18 A If we're going off the page.

19 Q Let's assume I hit one out of 6. That's a 16
20 percent chance of being right, one in six.

21 A Okay.

22 Q Agree?

23 A Sure.

24 Q She initially told you she is 10 percent sure;
25 correct?

1 A Correct.

2 Q Now, then after you have a conversation with
3 her she changes the 10 to a 20; right?

4 A Correct.

5 Q And -- and the conversation was ostensibly you
6 perceiving she may not understand percentages; right?

7 A Correct.

8 Q Now, would you agree that her movement, when
9 you -- when you confront her with, hey, you may not understand
10 percentages, let me tell you what an F means. Remember that
11 conversation?

12 A Right.

13 Q Would you agree that Devonian's change from 10
14 to 20 after you ask her are you sure you understand
15 percentages, that could be an example of a child trying to
16 please and authority figure, fair?

17 A Sure. Absolutely.

18 Q And if we look at this lineup, when you --
19 this is called a six pack; right?

20 A Correct.

21 Q And it's just a law enforcement term so
22 everyone knows what we're talking about; right?

23 A Correct.

24 Q We try and put people that look similar to one
25 another in a six pack?

1 A Similar.

2 Q In other words --

3 A You can't have -- obviously you can't have,
4 you know, somebody that looks completely different on the six
5 pack. So yes, in that context, yes, I agree with you.

6 Q If you're trying to identify David Burns, you
7 wouldn't put his picture and then five women; right?

8 A Correct.

9 Q That would be an extreme example, but you get
10 the point.

11 A Yes, sir.

12 Q All right. Now, in this case you do things in
13 order to allow the viewer of this six pack to believe that he
14 or she is in control of their own choice; right?

15 A I don't understand the way --

16 Q Well, you read that blurb, you know, I'm not
17 telling you the person is here or not, but, you know, you're
18 free to select one of these if someone looks familiar?

19 A Yeah, we give them instructions in the photo
20 lineup process to understand the variations and -- and, I
21 mean, I can certainly read it. In the texture --

22 Q Right.

23 A -- face or hair changes, stuff like that.
24 Correct.

25 Q You have had classes on six packs, training on

1 six packs, how to assemble them?

2 A I guess that would depend on your definition
3 on training. I haven't been to a formal seminar on it. But,
4 yes, I -- I know how to put together a six pack. Yes, sir.

5 Q Are you aware of studies that show that when
6 people look at six packs their attention is drawn towards the
7 middle of the six pack?

8 MS. WECKERLY: Objection. Assumes facts not in
9 evidence.

10 MR. SGRO: I'm asking if he's aware.

11 THE COURT: If he's aware of it.

12 BY MR. SGRO:

13 Q Are you aware of that kind of study?

14 A Well, these computers put the picture where it
15 goes. That's why we don't make --

16 Q Sir, that's --

17 A -- the decision.

18 Q -- not my question.

19 A Okay.

20 Q Are you aware of studies that suggest --

21 A No. No, I'm not.

22 Q Okay. In this particular six pack you've got
23 four close headshots around the exterior all in blue; right?

24 A Correct.

25 Q And then you have two in the middle that have

1 kind of a, I don't know, black or charcoal gray background.
2 Would that be fair?

3 A Yes, sir.

4 Q And of the two that are in the gray, only one
5 we could characterize as big bushy hair, fair?

6 A I don't know that I agree with that.

7 Q You would call the gentleman in slot No. 2,
8 you would describe him as having --

9 A I think there's --

10 Q -- big bushy hair?

11 A -- a couple in there that have similar
12 hairstyles to --

13 Q That's not my question. Does No. 2 have big
14 bushy hair in your opinion?

15 A Maybe on the sides. Not so much on the top.

16 Q All right. You -- did you participate in
17 Donovan Rowland's witness interview

18 A I did.

19 Q You never asked Donovan Rowland in his taped
20 statement if Jerome Thomas had any injury to his leg, did you?

21 A I don't recall if I did. I know that I did,
22 but I don't know that I asked him that.

23 Q You know that he did. So you must have, then,
24 gone to the hospital where he had treatment.

25 A Well, we have photos in our Metro computer

1 system --

2 Q Sir, did you go --

3 A -- with him with an injured leg, so --

4 Q Did you go -- what hospital did Jerome Thomas
5 treat at?

6 A I don't know.

7 Q What was the treatment for?

8 A We have the documents that are in the photos,
9 but I don't -- there was a fractured leg, or a bone in the leg
10 that was fractured.

11 Q What you have are photographs of treatment for
12 a fracture. That's what you have; right?

13 A Correct.

14 Q You didn't speak to a doctor that gave him or
15 administered him treatment; correct?

16 A No, I did not.

17 Q You didn't bother to go to the hospital to get
18 the full set of records ever, did you?

19 A I believe that we do have records. I don't --

20 Q You think you have them?

21 A Well, I don't know if I have them, but I know
22 the record -- I believe records were obtained.

23 Q Who -- who would have gotten them?

24 A I'm not sure if the DA's office has them, but
25 I think they might.

1 Q So you think that --

2 A I don't -- I do not have them. To answer your
3 question, no, I do not.

4 Q Okay. You don't have them. What was his --
5 what was the date of his injury?

6 A It was -- I believe it was in July.

7 Q Of?

8 A The same year.

9 Q 2010; right?

10 A Correct.

11 Q What was his prognosis? How much time did the
12 doctor say that it would take for Jerome Thomas to recover
13 from his injury?

14 A I would have no way --

15 MS. WECKERLY: Objection. Calls for hearsay.

16 BY MR. SGRO:

17 Q Did you investigate --

18 A I already told you I did not speak to his
19 doctor.

20 Q Did you do anything to investigate the amount
21 of time it would take Jerome Thomas to recover from his
22 injury?

23 A No.

24 THE COURT: I'll tell you what. I've got one
25 question on behalf of a juror that I was going to ask you.

1 Since Devonia was a minor when you interviewed her in the
2 hospital, was -- is there some reason that someone else such
3 as a nurse or a CPS worker wasn't present, as well?

4 THE WITNESS: Well, the nursing staff or the medical
5 staff come in consistently. I did not specifically ask for
6 one of them to sit in on the interview. It did not happen,
7 no. And I've never done that, whether it was an adult or a
8 child. That's not something we typically do for a couple
9 reasons. One is that they're not investigators, and the
10 second is they are performing their own duties as nursing
11 staff or, you know, whatever their role is in the hospital.
12 So that's not something that we would typically do.

13 THE COURT: All right. Let's take a brief recess,
14 ladies and gentlemen. During the recess it's again your duty
15 not to converse among yourselves or with anyone else on any
16 subject connected with this trial or to read, watch, or listen
17 to any commentary on the trial, from any medium of
18 information, including newspapers, television, and radio. And
19 you may not form or express an opinion on any subject
20 connected with this case until it is finally submitted to you.

21 We'll be in recess for about ten minutes. The court
22 will be at ease while the jury leaves.

23 (Jury recessed at 3:22 p.m.)

24 THE COURT: The record will reflect that the jury
25 has left the courtroom. Before you leave, I have three

1 additional questions from jurors. Two of them are from Juror
2 No. 6 and one is from Juror No. 12. They all pertain to the
3 same subject. They all want to know because there was a
4 mention in the interview about Burns being mentally ill or
5 having a problem, they want to know what evaluation was done
6 and what the results were of Mr. Burns' mental evaluation.

7 Now, I know I can't answer the question. I don't
8 know how you want to treat it. Do you want to look at the
9 questions? You're welcome to look at them.

10 MR. ORAM: Judge, we have had Mr. Burns analyzed,
11 and that is confidential and I --

12 THE COURT: I understand it is, but I don't know how
13 to answer the questions.

14 MR. SGRO: If the question comes from -- of this
15 detective to anything, the answer is going to be no, but I
16 think that's the best we can do.

17 THE COURT: You want me to ask the question of the
18 detective if he did anything?

19 MR. SGRO: Yeah, and I think he's just going to say
20 no. And then at least we get their question answered and we
21 keep the confidentiality of what we did.

22 THE COURT: Well, it also says did the State conduct
23 a mental evaluation.

24 MR. SGRO: That one I don't think you can answer
25 because I'm not sure they -- the jury --

1 THE COURT: Did you conduct -- did you do a mental?

2 MS. WECKERLY: We can't.

3 MR. SGRO: They can't.

4 THE COURT: Was he --

5 MS. WECKERLY: We can't. We're not allowed to.

6 MR. DiGIACOMO: We're not allowed to.

7 THE COURT: I know. Did -- did he go to competency
8 court?

9 MR. DiGIACOMO: No. We never had anything related
10 to the district court entering an order. The only thing is
11 defense activity, so--

12 THE COURT: You want me to indicate that he was --
13 he didn't go to competency court?

14 MR. SGRO: No.

15 MR. DiGIACOMO: No, I think you should just ignore
16 the questions you can't ask him. And I wouldn't ask Detective
17 Bunting that question unless the defense wants him asked that
18 question.

19 MR. ORAM: No.

20 THE COURT: Do you want me to ask anything?

21 MR. SGRO: No.

22 MR. DiGIACOMO: Because, I mean, the response from
23 Detective Bunting is going to be I don't have that ability --

24 THE COURT: I mean, the jurors are going to --

25 MR. ORAM: Judge, what can we do? They've asked a

1 question that's --

2 THE COURT: You tell me what you want me to do.

3 MR. ORAM: It's inadmissible.

4 MR. LANGFORD: Generally other judges in my
5 experience, Your Honor, have said that that question would
6 lead to inadmissible evidence.

7 THE COURT: I agree.

8 MR. LANGFORD: And that we can't answer that
9 question and they are to disregard it.

10 THE COURT: Can I tell them that I can't ask the
11 question?

12 MS. WECKERLY: Yes.

13 MR. DiGIACOMO: Yes.

14 MR. SGRO: Yes.

15 THE COURT: All right.

16 MS. WECKERLY: You say just like question from juror
17 whatever, we can't ask it.

18 THE COURT: Those won't be asked. All right. Five
19 minutes.

20 (Court recessed at 3:25 p.m. until 3:35 p.m.)

21 (In the presence of the jury.)

22 THE COURT: All right. State vs. Burns and Mason.
23 The record reflect the presence of the Defendants, their
24 counsel, district attorneys, all members of the jury.

25 Before we get going, Detective -- you're still under

1 oath -- did you ask the -- any questions of the defendant
2 about his competency? Mr. -- when you were interviewing Mr.
3 Burns about a mental evaluation?

4 THE WITNESS: During the interview?

5 THE COURT: Yeah.

6 THE WITNESS: Well, Detective Wildemann did, sir. I
7 think he asked him a couple questions in regards to that.

8 THE COURT: Okay. Did you do any -- did you do any
9 further inquiry about that?

10 THE WITNESS: No. I'm in no position to do that.
11 That wouldn't be a role that I would -- that I would --

12 THE COURT: A couple of the jurors asked questions
13 concerning the competency of the Defendants and any
14 examination. That's not a subject that I'm permitted to ask
15 questions about.

16 All right. You can continue your exam of him.

17 MR. SGRO: Thank you.

18 BY MR. SGRO:

19 Q Detective, just before I go further, relative to
20 Monica Martinez, right before the break did you say that
21 Monica Martinez was -- was proffered or interviewed once or
22 twice? Were there one proffer -- was there one proffer or
23 two?

24 A I don't know how many proffers there were, sir.
25 I -- the one that you are referring to in December, I don't

1 recollect having any part of that.

2 Q Was there one that you did have a part of?

3 A I believe there was one previously, yes, that --

4 Q When was that?

5 A I don't recall. It was a while ago.

6 Q Do you remember the calendar year?

7 A No.

8 Q Do you have any notes about it?

9 A No.

10 Q So was there a tactical decision that was made
11 that you were not to take notes?

12 A No.

13 Q How long did you speak with Ms. Martinez?

14 A Well, I didn't really speak with her. I was
15 there during the proffer.

16 Q Well, who was interviewing her?

17 A I don't recall who all was there. I believe the
18 -- the DAs were there that were in here.

19 Q Did anyone take notes during that first proffer
20 -- or during the proffer that you attended?

21 A Anyone? I don't know.

22 Q You didn't see anyone, though?

23 A If they did, I don't -- I don't know whether
24 people -- other people took notes, sir.

25 Q Was there -- you have participated in an

1 interview where someone has agreed to provide information for
2 the State, right? This is Monica Martinez, correct?

3 A Correct.

4 Q And you like to take no notes?

5 A Well, I'm not there to --

6 Q Sir, this is yes or no.

7 A No. No, I did not take notes.

8 Q Okay. Was that done to achieve a tactical --

9 A No.

10 Q -- advantage?

11 A No.

12 Q Relative to Devonia's interview, is there a part
13 in her statement --

14 A You said Monica's?

15 Q Devonia --

16 A Devonia?

17 Q Devonia's, yes, sir.

18 MR. SGRO: Well, I -- I can probably speed it up, if
19 I approach, Your Honor.

20 BY MR. SGRO:

21 Q At page 4, do you see the transcript here? Now,
22 what was he wearing? Do you remember what color of shirt he
23 was wearing?

24 A Correct.

25 Q Okay. And then there's an unintelligible there,

1 right?

2 A Correct.

3 Q Okay. Now, this is -- the jury just saw this
4 transcript, so I'll put it on the ELMO.

5 Now, the question is, what was he wearing? What
6 color shirt, right?

7 A Correct.

8 Q Now, the answer is, A blank line, correct?

9 A Correct.

10 Q And are blank lines representative of portions
11 of the interview that whatever transcriber happened to get
12 this tape, they couldn't make it out on the first pass?

13 A Correct.

14 Q Now, you then are attributed -- it says, Q, but
15 you're actually repeating, ostensibly, what she just said,
16 right?

17 A Correct.

18 Q Now, you see where you say there, A white
19 T-shirt with blue, do you remember realizing at that moment
20 that she never told you that they were blue overalls, that her
21 answer in fact was, Overalls; do you remember that?

22 A Do I remember -- no.

23 Q We just heard the tape. In this particular
24 passage of the tape, do you remember Devonia's answer being,
25 Overalls, and then you said, A white T-shirt with blue -- and

1 then you caught yourself -- here's what it sounded like. You
2 caught yourself and then it's Question: With blue overalls?

3 A Well, I can clearly see that that's what it
4 says, yes.

5 Q Okay. Do you remember, though, the answer from
6 Devonia not mentioning what color the overalls were?

7 A No. I don't remember a lot of -- because I
8 can't --

9 Q You just --

10 A -- see it on there.

11 Q Did you pay attention when the tape was being
12 played?

13 A Yes.

14 Q Did you follow along with the transcript?

15 A Yes.

16 Q Did you hear words where the lines exist on the
17 page?

18 A Some words, some not word, yes --

19 Q Okay.

20 A -- both --

21 Q As you sit here today, having just heard the --
22 though you can't tell the jury if the answer was only overalls
23 and it was your injection of the word, Blue, fair? The tape
24 will speak for itself.

25 A Fair enough.

1 Q All right. And then you go down and you say,
2 They were rolled up at the pant.

3 You mean, like, down here, down near the shoes?
4 You're still speaking about the overalls, right? The overalls
5 were rolled up at the pant, correct? Right?

6 A Yes.

7 Q And then she answers: Yeah, and I think they
8 were white.

9 In other words, she's attributing the color white to
10 overalls, correct?

11 A Hold on one second. Can I read it?

12 Q Sure.

13 A And then I say, Yeah, and I think they were
14 white -- or she says, excuse me --

15 Q Correct.

16 A -- and I say, What, the shoes?

17 Q Here's the -- Detective, please just stick with
18 my question.

19 After you say, A white T-shirt with blue -- blue
20 overalls, rolled up at the pant, you mean down near the shoes,
21 you're still referencing the overalls, correct?

22 A Well, I -- well, I say, You mean, like, down
23 here, the shoe -- here, the shoes.

24 Q It says, Down here, but the tape says, Down near
25 the shoes.

1 A Okay.

2 Q And she answers, Yeah, I think they were white.

3 When she says, I think they were white, she's referring to the
4 prior question, What color were the overalls, right?

5 A Well, obviously I didn't think --

6 MS. WECKERLY: Objection. Misstates the transcript.
7 Read the next two lines.

8 THE COURT: I guess the jurors will have to decide.

9 MS. WECKERLY: The --

10 THE COURT: I'll sustain the objection. Let them
11 decide.

12 BY MR. SGRO:

13 Q And then, after she says, They were white,
14 that's when you say, What, the shoes? Right?

15 A Right. I'm clarifying --

16 Q Sir, do you then say, What, the shoes?

17 A Yes, I do.

18 Q Okay. So would you agree with me that if you
19 listen to the tape, the tape speaks for itself, and it's
20 better than your interpretation of what she's telling you.

21 A Okay. The -- the tape, if --

22 Q Do you agree with that?

23 A If it's clearable, yeah. Clear. Or you can
24 hear actually what she says.

25 Q How old was David Burns at the time he was

1 arrested?

2 A Well, he said it was his birthday, 19, I
3 believe. His --

4 Q Okay. So he just turned 19?

5 A Yeah, I believe on that day is what he said.

6 Q So at the time of the offense, he would have
7 been 18?

8 A Correct.

9 Q So he was not 27 to 30?

10 A No. No, he was not.

11 Q Did you see the videotapes of the Opera House?

12 A I have.

13 Q And the person attributed to be David Burns is
14 wearing black shoes, right?

15 A I don't recall off the top of my head what he
16 was wearing.

17 Q You don't remember?

18 A I remember some of what he was wearing. I don't
19 recall the -- I don't remember what he was -- his shoes were,
20 though, no.

21 Q You remember overalls, though, don't you?

22 A Yeah.

23 Q Okay.

24 A I do.

25 Q Do you remember whether David Burns had a white

1 T-shirt on?

2 A He did not.

3 Q He had a blue one, right?

4 A Correct.

5 Q Okay. So did he have an orange hat on with a D?

6 A I don't know what the hat said.

7 Q Was it orange?

8 A I don't believe so. It didn't appear orange to
9 me.

10 Q Okay. Now, at page 5, there's a section in the
11 tape, this is right after we talk about the color white,
12 whether they're shoes or they're overalls. We just got past
13 that. Now we're on the orange hat, right?

14 A Correct.

15 Q Now, do you see where you say, Orange hat with
16 white writing? Did you see what the writing was?

17 A Yes.

18 Q And the answer says, Yeah, but -- and then
19 there's a line.

20 A Correct.

21 Q Did you hear at that point in time, on page 5,
22 his hair was cut?

23 A I didn't repeat that, so I'm assuming not.

24 Q I know you didn't repeat it, but that's not my
25 question.

1 A Okay. Well, then the answer is no.

2 Q All right. You're the one who repeated, His
3 hair was curly and down to his ear, right?

4 A Correct.

5 Q That's what you said, correct?

6 A Correct.

7 Q Is there anything that's in writing above where
8 you say, Curly hair --

9 A Right.

10 Q -- that says, Curly hair from Devonian?

11 A No.

12 Q And do you have a recollection right now within
13 those two lines that you cannot see on page 5 that she says
14 his hair was cut?

15 A I'm sorry, say that one more time.

16 Q In the two lines that appear in front of the
17 jury at page 5 of her statement --

18 A In the two --

19 Q -- above --

20 A -- lines --

21 Q You can write --

22 MR. SGRO: Can I write on this thing or no?

23 BY MR. SGRO:

24 Q This right here is where you say, His hair was
25 curly, right?

1 A Correct.

2 Q Up above it in this area here, do you remember
3 on the tape her saying, Devonian saying, His hair was cut?

4 A No.

5 Q All right. And would you again agree that we
6 should defer to the tape as opposed to your interpretation of
7 what she said?

8 A Sure.

9 Q Devonian made several statements about wrestling
10 with the assailant, correct?

11 A That's what it said on there on the statement,
12 yes, sir.

13 Q And do you remember a statement she made about
14 the assailant rifling through her pockets?

15 A Yes.

16 Q Now, Cornelius Mayo had told you that he was at
17 Devonian's side within seconds of her being shot in the
18 stomach, remember that?

19 A I know that he was in the bathroom, yes.

20 Q Sir --

21 A You said, He told me --

22 Q -- did he tell --

23 A -- I didn't -- I didn't do the interview, sir,
24 with Mayo, so --

25 Q Did you -- are you aware that Cornelius Mayo

1 maintains that he was by Devonia's side within seconds of her
2 being shot?

3 A I don't know whether he said that. I know that
4 that would be true, just based on his location, yes.

5 Q Do you agree if there's wrestling, a shot, and
6 some rifling through pockets going on, it's going to take a
7 few seconds for that to occur?

8 A Yes.

9 Q And you found it odd, did you not, that
10 Cornelius -- that his story didn't match up with Devonia's
11 relative to how that particular sequence of events went down,
12 fair?

13 A Well, you're going to have to point out where
14 that conflict is.

15 Q Did Cornelius Mayo ever tell you that he went to
16 the drawer to grab money before going to the bathroom?

17 A I don't know if he stated that in his statement
18 to the other detectives. I don't recall if he did that. I
19 don't believe so.

20 Q Did he ever tell you that?

21 A No, I don't think so.

22 Q And Devonia in fact says, He grabbed like a
23 hundred dollars, right?

24 A Right.

25 Q Any idea how --

1 A On the way to the bathroom, I believe, is what
2 she -- yeah.

3 Q Any idea how a 12 year-old little girl, as she
4 was running down a hallway, looking down into the bedroom, how
5 she'd have any idea as to the dollar amount that was being
6 grabbed out of the drawer?

7 A Not at that time, no, I don't know -- I mean, I
8 don't know where she was at at the time that she saw it.

9 MR. SGRO: Pam, the overall again?

10 MR. DIGIACOMO: I put it back up there. I believe
11 Exhibit 273.

12 MR. SGRO: Thank you very much.

13 BY MR. SGRO:

14 Q I'm showing you 277. What is the date that this
15 drawing was made by Devonia?

16 A I'm not positive because I didn't write it on
17 the paper.

18 Q Why didn't you write the date of that drawing on
19 the paper?

20 A Well, apparently I forgot to do that.

21 Q Can you show me in your report where you date
22 the fact that Devonia drew overalls for you?

23 A No, it's not in there.

24 Q So we have nothing to verify that this drawing
25 was done, other than the existence of the drawing, right? In

1 other words, we don't have the --

2 A It's --

3 Q -- date, time, location?

4 A Well, I know the location for sure.

5 Q What was the --

6 A It's at --

7 Q -- location?

8 A It was at the hospital.

9 Q And do we have the date? What we do have --

10 A No.

11 Q Do you have the month?

12 A It was one of the two visits that I did with
13 her. I believe it was the first, but I can't recall; and
14 since I didn't date it, I'm not going to say it was one or the
15 other.

16 Q I thought you just told the jury on direct that
17 this drawing was done on the second visit when you did the
18 photo lineup? Did I misunderstand that?

19 A No, I don't believe I said that.

20 Q So it could -- this could have happened on the
21 first visit or the second?

22 A I believe it was the first, but I didn't date
23 it, so I'm not going to say for sure which one it was.

24 Q What instrument did you give Devonia to write
25 this with?

1 A Whatever one I had on my possession.

2 Q Is she left handed or right handed?

3 A I don't recall.

4 Q Did she move her arms at the time of the --

5 A Yeah, absolutely because she actually signed the
6 photo lineup, so I know that she is --

7 Q Well, the photo lineup --

8 A -- capable of doing --

9 Q -- was visit --

10 A -- it.

11 Q -- two. You just said you think it was visit
12 one. So let's talk about --

13 A Right.

14 Q -- visit one. Could she move her arms?

15 A Well, I said I believe that it's visit one, but
16 I'm not going to say which one it is because I do not know for
17 sure because I did not date it.

18 Q Okay. So let's break it down. Could she move
19 her arms given her medical condition on visit one?

20 A I believe so.

21 Q Well --

22 A She was not shot in the arm, so I believe that
23 she had to -- I don't -- I don't know if she wrote it that
24 day, so I can't tell you.

25 Q I'm not asking --

1 A But there's nothing physically -- no injuries
2 that she sustained during the incident that would prevent her
3 from moving her arms.

4 Q She has IVs in her arms; she's on powerful
5 sedatives.

6 A Sir, I've been on IVs and I've given IVs --

7 Q I'm not asking you about you --

8 A -- and many people can write with their arms.

9 Q Officer, did you see IVs in her arms?

10 A I'm sure she had them in there based on her
11 condition.

12 Q Well, did she appear to be sedated?

13 A She was -- I'm sure she was medicated.

14 Q Did she appear to you to be able to ambulate, to
15 move around?

16 A Again -- when you say "ambulate," that means
17 "walk" to me. So was she able to walk? No.

18 Q Okay.

19 A Was she able to move, yes.

20 Q She was?

21 A I think so, yeah.

22 Q Well, why are you qualifying it?

23 A Well, I didn't -- we -- I didn't have her
24 manipulate and move around, so you're asking me something that
25 I'm -- just can't be for certain any more than I'm suggesting

1 the date.

2 Q In this case, by the time you got to the Grand
3 Jury proceedings on September 28, you had conducted a lot of
4 witness interviews, you had cell-phone records, you had the
5 statement from Devonian, correct?

6 A That sounds correct.

7 Q Did you have the videotapes already, too, from
8 the Opera House?

9 A I don't recall the date off the top of my head.
10 I'd have to look at the report on that.

11 Q Do you remember speaking with folks at the lab
12 -- the Metro DNA lab about some things that you wanted done
13 DNA-wise?

14 A In the request?

15 Q Did you -- did you make a request for DNA to be
16 done?

17 A Yes.

18 Q Did you have a conversation with someone at the
19 DNA lab about your concerns about putting the suspects in this
20 case at both residences, Newman and Thomas?

21 A You mean as to why I would want DNA?

22 Q No.

23 A I have to understand the context of the
24 question, so...

25 Q Did you speak to anyone at the DNA lab and

1 advise them that you wanted to put the suspects in the car and
2 in both residences?

3 A Right. Like getting DNA -- having DNA performed
4 so that we can get DNA at both of those locations?

5 Q Right.

6 A Yes.

7 Q You did that?

8 A Absolutely.

9 Q And this is BB, and I'm going to point --

10 A What's the document?

11 Q BD -- or BB, like boy.

12 A No, I'm -- sir -- I mean, the type of document
13 that we're looking at? Okay.

14 Q I want to point to a specific provision. Do you
15 see where it says here, I spoke? Where my pen is.

16 A Okay.

17 Q I spoke with Bunting at length about this case,
18 and they have to put the suspects in the car and in both
19 residences. Did I read that right?

20 A Yes, you did.

21 Q To corroborate the story. Did I read that
22 right?

23 A Yes.

24 Q And the date on this is September 30.

25 A Okay.

1 Q So despite all the evidence you had ascertained
2 prior to December 30, the Grand Jury testimony, the cell phone
3 records, Devonian's statement, videos that you had, you're
4 still calling the Metro Crime Lab saying, I have to put the
5 suspects in the car in both residences, right?

6 A Well, what context are we speaking of?

7 Q Sir, did I just read it to you?

8 A Yeah, you read it to me, but you're only reading
9 a sentence, so I don't know what the context -- if --

10 Q Sir --

11 A -- in regards to --

12 Q -- let me ask it --

13 A -- submitting --

14 Q -- this way.

15 A -- DNA?

16 Q Let me ask it --

17 A They're going to ask why you require to -- why
18 do you need all this DNA, so you would express to them why you
19 would give that, or why you need that DNA.

20 Q And your answer to that question was, Because I
21 have to put the suspects in the car in both residences to
22 corroborate the story, right?

23 A Because they want justification for all those
24 things to be processed.

25 Q Did I read your justification correctly?

1 MS. WECKERLY: I'm going to object. Those weren't
2 his statements. Those were written by --

3 THE COURT: Well, he can be --

4 MS. WECKERLY: -- someone else.

5 THE COURT: -- asked if those are his statements.

6 MR. SGRO: He just stated that they were.

7 BY MR. SGRO:

8 Q Are those your statements?

9 THE COURT: I don't think he said that they were.

10 THE WITNESS: No, I didn't. That's not what I said.
11 That's what's --

12 BY MR. SGRO:

13 Q Those aren't your statements?

14 A That's what it says is written. The context --

15 Q So was it written? Was it written?

16 A Well, hold on. Let me finish.

17 Q No, sir.

18 A You asked me a question --

19 Q Are those statements --

20 A -- I'm trying to answer you.

21 Q Hold on a second. Are those statements that I
22 read an accurate rendition of your conversation or --

23 A Not in the context of what you're speaking, no,
24 they are not.

25 Q Please -- please let me finish.

1 A I am letting you finish. They are not.

2 Q All right.

3 A That's somebody else's words, their version of
4 how -- what they're trying to portray.

5 Q Sir --

6 A That's not what I'm asking.

7 Q So that report, then, is inaccurate?

8 A No, I think it's accurate in the context of
9 which they are trying to express to their supervisor of why
10 they're justifying doing DNA on different items.

11 Q Accurate with an explanation, right?

12 A There usually needs to be one.

13 Q Okay. This is -- still trying to -- are we --
14 are you still wishing you could charge Jerome Thomas with
15 murder in September of 2011?

16 A I think that he's part of the conspiracy to do
17 that --

18 Q That's not my --

19 A -- robbery.

20 Q That's not my question. Do you still want to
21 charge Jerome Thomas with murder in September of 2011?

22 A Well, I submitted a warrant for his arrest.

23 Q Again, not an answer to my question.

24 A Yes, absolutely.

25 Q Okay.

1 A He is a part of --

2 Q See how much easier --

3 A -- of everyone.

4 Q -- it goes if you just say yes? Showing you AA.

5 The guy you want to charge with murder, you didn't collect
6 buccal swabs, did you?

7 A No.

8 Q Was Jerome Thomas's DNA ever tested against any
9 of the scenes?

10 A Not yet because he's out-of-state. So, no.

11 Q Oh, so they don't have DNA in California?

12 A No, they do, but even if you get a hit on DNA,
13 you're required or I'm required to get that DNA personally
14 through our agency and --

15 Q So it's too --

16 A -- then submit it.

17 Q -- much work? Too much work to go --

18 A No.

19 Q -- get a murder suspect if it's in California,
20 right?

21 A No, I did it twice.

22 Q Oh, so you --

23 A For the two --

24 Q -- could have done it?

25 MS. WECKERLY: Objection. Argumentative.

1 BY MR. SGRO:

2 Q Could you have got -- could you --

3 THE COURT: Overruled.

4 BY MR. SGRO:

5 Q Could you have gotten -- you just admitted to
6 the jury you got him twice. Could -- so you could have done
7 it three times, right?

8 A Right.

9 Q And the jury saw a tape with Monica Martinez
10 being interviewed, where from the time of the interview you
11 got a warrant and executed the warrant all while she's still
12 standing there -- sitting there?

13 A Correct. Absolutely.

14 Q Even if that -- that overall drawing, by the
15 way, would have occurred on the second visit, that second
16 visit where the photo lineup happened on September 29; do you
17 remember that? Does that seem about right?

18 A That sounds about right.

19 Q Do you remember interviewing Monica Martinez,
20 obviously, right?

21 A I do.

22 Q Monica Martinez was someone that was trying to
23 manipulate you; would you agree with that?

24 A I don't know that she was trying to manipulate
25 me. She was definitely deceptive and wasn't being honest

1 throughout her statement.

2 Q Do you remember a time in the interview where
3 she reached over and held your -- both of your hands?

4 A I do.

5 Q And do you remember when another detective
6 walked in she quickly let go and sort of sat back up in her
7 chair?

8 A I don't know if it was abrupt or not. I'd have
9 to watch it. I don't remember.

10 Q But you remember --

11 A Yes. I remember she removed her hands from
12 mine, yes.

13 Q Do you believe that that was an effort by her to
14 try to work you or manipulate you?

15 A Well, what I think it was --

16 Q This is just yes or no.

17 A Well, then the answer is no.

18 Q You were asked some questions about ballistics
19 in the -- or, I'm sorry, about how many shots could have been
20 fired in the residence at the Grand Jury, right?

21 A Yes, sir.

22 Q And you said, Well, it's consistent there were
23 six shots fired; do you remember saying that?

24 A Mm-hmm.

25 Q Yes?

1 A Yes.

2 Q Is it consistent with a different number of
3 shots being fired; in other words, could there have been fewer
4 shots fired than six?

5 A I believe that there were six shots fired, if
6 that's any --

7 Q That's not my question. You said in the Grand
8 Jury, It's consistent that there were six shots fire. Do you
9 remember saying that, or do you want me to show it to you?

10 A Yes.

11 Q Which one?

12 A Yes.

13 Q Do you want me to show it to you?

14 A No. Yes, I did say that.

15 Q All right. So if it's consistent with six, is
16 it also consistent based on what you saw that they were --
17 that there were fewer than six?

18 A I don't understand your question.

19 Q Could the scene as you observed it have been the
20 result of four shots being fired?

21 A Of four?

22 Q Yes, sir.

23 A I believe there were six, so, no.

24 Q Again, sir, could it have been four? I know
25 what you -- everyone in the room knows what you believe.

1 Could it have been four?

2 A I don't believe it was four.

3 Q Could it have been four?

4 A No.

5 Q Could it have been five?

6 A Once again, sir, my answer is the same.

7 Q I know what you believe, but will you concede
8 whether or not it's consistent that there were five shots that
9 were fired?

10 A No. It's consistent that there were six shots
11 that were fired.

12 Q So it couldn't have been five, right?

13 A I don't believe so.

14 Q It couldn't have been seven?

15 A I don't believe that it was.

16 Q Would it surprise you -- do you know who James
17 Crywell is?

18 A Yes.

19 Q Would it surprise you that he placed a minimum,
20 a maximum of 4 to 15 based on what he examined?

21 MS. WECKERLY: Objection. That's not the scene.
22 That's the actual fragment. It's a different analysis, so...
23 BY MR. SGRO:

24 Q Well, let me -- let me ask it a different way.
25 I'll --

1 THE COURT: Yeah, I mean -- I think you better
2 rephrase that.

3 MR. SGRO: I will. I will, Judge.

4 BY MR. SGRO:

5 Q I understand from you that it couldn't have been
6 four. Could it have been more than six? Could it have been
7 seven?

8 A You -- you're giving me hypotheticals. I --
9 there's no way for me to answer that because I believe that
10 there were six, so --

11 Q Sir, but what you said --

12 A -- I can't say that --

13 Q -- was --

14 A -- it could be seven if I believe it could be
15 six. I don't -- I don't know how you want me to answer that,
16 but I -- I don't believe that it was seven, so in my mind, no.

17 Q Okay. So impossible it could have been any
18 other number other than six, right?

19 A I believe that it was six shots.

20 Q And it's impossible that it could have been less
21 than six or more than six in your opinion?

22 THE COURT: I think we've covered it.

23 MR. SGRO: All right.

24 BY MR. SGRO:

25 Q Let me ask you about -- turning to Job-Loc here

1 just for a second about wanting to charge him. All right.
2 You knew that the murder weapon belonged to Job-Loc?

3 A I -- I knew that he had possession of it at one
4 time, yes. Or I believe that it was the same. Per Monica's
5 statement, she mentions that he has a large-frame revolver, so
6 I believe that it's possible that those were the same -- the
7 same, correct.

8 Q Did you trace the ownership of that revolver?

9 A Yes, there was a trace done.

10 Q Okay. Did you learn how long Jerome Thomas
11 owned that revolver?

12 A The -- the revolver that we have --

13 Q Yes, sir. The revolver --

14 A -- possession of?

15 Q -- that you have possession of now, how long did
16 Jerome Thomas own it?

17 A Oh, I have no idea. And --

18 Q Did you --

19 A -- how long he owned it, I have no idea.

20 Q It is an incriminating piece of evidence, is it
21 not, if someone possesses the murder weapon, fair?

22 A Sure.

23 Q It is an incriminating piece of evidence, is it
24 not, if someone is cleaning the murder weapon right after a
25 homicide takes place?

1 A That's why I charged him with it.

2 Q It is a -- it is an incriminating piece of
3 evidence, is it not, for someone to destroy the inside of the
4 barrel of a murder weapon?

5 A Yes.

6 Q It is incriminating if he -- if someone changes
7 their phone number right after a homicide occurs, right?

8 A I believe so. Depending on the circumstance,
9 absolutely.

10 Q It can be, right?

11 A Sure.

12 Q Was Job-Loc arrested in this case?

13 A Well, he's in custody. I submitted a warrant,
14 so technically we're just waiting for him to be extradited.

15 Q For accessory after the fact?

16 A Correct.

17 Q Not with murder?

18 A I had no choice in that one.

19 Q How was Job-Loc moving at the time of his
20 arrest? And by that I mean, was he walking on both legs? Did
21 he --

22 A I didn't arrest him.

23 Q -- have two -- hold on. Did he have two
24 crutches or did he have a crutch; do you know?

25 A I was not there. I can't answer that question.

1 Q Are you aware that at the time -- have you ever
2 been told that at the time of his arrest he was only using one
3 crutch?

4 MS. WECKERLY: Objection. Hearsay.

5 THE COURT: I'll allow it. Overruled.

6 BY MR. SGRO:

7 Q Are you aware of that, sir?

8 A I don't recall.

9 Q The search of his residence happened on August
10 13, six days after the homicide, right?

11 A The Brittinae Pines?

12 Q Yes, sir.

13 A Okay. Yes, sir.

14 Q At the search of Brittinae Pines you found a knee
15 brace, right?

16 A I believe there was one in there.

17 Q And you found pain meds, right?

18 A I believe there were, yes. I believe --

19 Q Were there --

20 A -- so.

21 Q Were there pills inside of those prescription
22 bottles?

23 A I wasn't -- I wasn't there during the whole
24 search warrant, so I don't recall.

25 Q But it -- did it -- did it appear to you as a

1 detective in the case that perhaps he was getting better
2 because he left a brace and his meds behind?

3 A Well, that doesn't mean he doesn't have another
4 brace or other meds.

5 Q That's not the answer to my question. Did it
6 appear to you -- strike that.

7 Did you consider it to be of any evidentiary value
8 that Job-Loc had left a knee brace at the residence?

9 A Yeah, the fact that he was there, absolutely.

10 Q Okay. How about relative to his ability to move
11 around, did it have any evidentiary value that his knee brace
12 was in his Las Vegas residence?

13 A No, because it could go either way on that. He
14 could --

15 Q How many -- how many of his legs were broken or
16 fractured or hurt?

17 A I believe one.

18 Q Just one?

19 A Correct.

20 Q So I -- if I heard you correctly, did you say he
21 has another leg -- you're not suggesting to the jury that he
22 injured both legs, are you?

23 A No.

24 Q All right. Did it have any evidentiary value
25 that he'd left his meds behind?

1 A That he was at the residence.

2 Q Other than that, none?

3 A That he left in a hurry.

4 Q Okay. And do you know that he was facing a life
5 sentence in California?

6 A I don't know what sentence he was facing. I
7 know -- I mean, I know that he was under investigation and he
8 had a case against him, but I don't --

9 Q So you're --

10 A -- know what his --

11 Q -- you're not familiar -- you're not familiar
12 with kidnapping, robbery, and --

13 A Yes, but you asked if I was familiar with a life
14 sentence. I don't know what that sentence is in California.

15 Q All right. When you recorded Mr. Burns, it
16 began with a sentence -- or a statement that said, This is
17 going to be a surreptitious recording, right?

18 A Yeah, I believe Wildemann did that, correct.

19 Q That means that the tape-recording device is
20 hidden so that the person doesn't know that he or she is being
21 recorded?

22 A Yes, sir.

23 Q Okay. So Mr. Burns didn't know he's being
24 recorded?

25 A We didn't put the recorder in front of him,

1 that's for sure.

2 Q Now, I want to talk to you about the interview
3 technique you used with Mr. Burns. During the course of the
4 interview, do you remember calling -- asking if he was
5 retarded?

6 A I did not ask that question.

7 Q Detective Wildemann did, right?

8 A Detective Wildemann did ask that question, yes.

9 Q Did Detective Wildemann call him a motherfucker?

10 A Yes, he did.

11 Q Did Detective Wildemann call him a bastard or
12 was that you?

13 A That one might have been me.

14 Q Who told -- who said, Cut the shit? Was that
15 you or Detective Wildemann?

16 A I think that was Detective Wildemann.

17 Q Was it you or Detective Wildemann that called
18 him a jackass?

19 A I believe that one was me.

20 Q And you started confronting him with sentences
21 that began with, We already know, right?

22 A Correct.

23 Q Right? So one of the interview techniques that
24 you used, aside from calling him a bunch of names, was telling
25 him that, We already know what happened, right?

1 A Yes, sir.

2 Q Okay. And when you say, We want to hear your
3 side, you're not really interested in hearing his side, such
4 that he can extricate himself out of harm's way? You'd
5 already decided what happened, right?

6 A Well, we asked him to give his side of the
7 story.

8 Q Sir, listen to my question.

9 A All right.

10 Q By the time you get to where David Burns is at,
11 you already decided what happened, right?

12 A I think we have a really -- yes. Yeah, I think
13 so.

14 Q And so when you say, We want to hear your side,
15 that's not because you want to hear that -- how he didn't have
16 anything to do with it, right? You're there already to effect
17 an arrest whether he speaks to you or not, fair?

18 A Yeah. We asked him, Why?

19 Q David Burns, despite being called all those
20 names by you, always refers to you as, Sir, right? Sir,
21 follows the end of his sentences, correct?

22 A I -- every sentence, I don't know one way.

23 Q Is it -- do you remember any time that David
24 Burns responds with, Sir?

25 A Yeah. I believe he did, yes, sir.

1 Q Are you aware of the jeopardy that attaches to
2 an individual in --

3 A I'm sorry, the what?

4 Q Jeopardy, harm --

5 A Okay.

6 Q -- that could potentially come to an individual
7 in California if they're seen speaking to a police officer?

8 A Just it gets -- potentially that's any inmate.

9 Q Have you heard this phrase, Snitches get
10 stitches? You ever heard of that?

11 A Sure.

12 Q Okay. And in California it's worse than it is
13 here even in Las Vegas; is that right?

14 A I have no idea what it's like in California.

15 Q Would you agree with me, sir, that the way that
16 Mr. Burns was confronted -- he was getting arrested no matter
17 what he told you?

18 A Yeah, he was definitely getting arrested.

19 MR. SGRO: Your Honor, do you want to -- this might
20 be a good time to take a break if the Court was inclined.

21 THE COURT: You want to take an evening recess now?

22 MR. SGRO: Yes, sir.

23 THE COURT: All right. I think that it's pretty
24 obvious we're going to go on tomorrow with this witness,
25 Ladies and gentlemen. So we'll take our evening recess now.

1 During the recess, it's again your duty not to
2 converse among yourselves or with anyone else on any subject
3 connected with this trial or to read, watch, or listen to any
4 report of, or commentary on the trial from any medium of
5 information, including newspapers, television, and radio, and
6 you're not to form or express an opinion on any subject
7 connected with this case until it's finally submitted to you.

8 We'll be in recess until 9:30 tomorrow morning.

9 (Jury recessed at 4:11 p.m.)

10 THE COURT: Let the record reflect that the jury's
11 left the courtroom. Anything further on the record?

12 MR. DIGIACOMO: Judge, it's my understanding that you
13 had to go because we still had to address a couple of
14 things --

15 THE COURT: Well, if you want --

16 MR. DIGIACOMO: -- before we broke at --

17 THE COURT: -- to address something --

18 MR. DIGIACOMO: -- 4:00?

19 THE COURT: -- I can do it.

20 MR. DIGIACOMO: Well, the only thing is this: Is if
21 we are going to argue a bunch of things and still have a
22 second cross of Detective Bunting and another --

23 THE COURT: I -- we've got -- he hasn't finished his
24 cross, and we -- we've got -- I'm sure Mr. Langford is going
25 to have some questions.

1 MR. DIGIACOMO: No. No, my only concern is this: Is
2 that we do not want to split the argument. So as -- as long
3 as we all have an agreement that we can just finish wherever
4 we finish and then argue Thursday the whole day so that we get
5 the whole thing in?

6 THE COURT: We can start arguments tomorrow if we can
7 finish.

8 MR. DIGIACOMO: I don't -- I don't think either side
9 necessarily wants to cut it in the middle, like, have them
10 here --

11 THE COURT: No, we're going to --

12 MR. DIGIACOMO: -- just to stay --

13 THE COURT: -- go as fast as we can. Let's -- so if
14 we do tomorrow -- if we finish tomorrow -- tomorrow morning
15 with evidence, we can start instructions and arguments in the
16 afternoon, maybe the State's opening and the defense can go on
17 Thursday.

18 MR. ORAM: That sounds fair.

19 THE COURT: And then you get your reply after theirs.
20 That's the way it goes.

21 MR. DIGIACOMO: Well, I want to -- I do not want --

22 THE COURT: I'm not --

23 MR. DIGIACOMO: -- to split them up is what I'm
24 saying. Because, like --

25 THE COURT: I'd like to get this to the jury as soon

1 as possible. I'd like to get a verdict this week. If we
2 don't this week, then we've got a problem of what are we going
3 to do next week. You guys have already told me that you want
4 to take Tuesday off.

5 MR. DIGIACOMO: Well, the jury's going to --

6 THE COURT: The jurors don't have --

7 MR. DIGIACOMO: -- deliberate.

8 THE COURT: -- to take Tuesday off.

9 MR. DIGIACOMO: Right. The jury can still
10 deliberate. And based on our agreement, only one lawyer needs
11 to be present for the verdict. So that's not an issue.

12 THE COURT: Well, that's true too. Somebody had to
13 be gone Tuesday. I can't remember which one --

14 MR. DIGIACOMO: Mr. Sgro.

15 THE COURT: -- of you though. Mr. Sgro? Okay.

16 MR. DIGIACOMO: But, I mean, to take a verdict --

17 THE COURT: To take a verdict --

18 MR. DIGIACOMO: -- but ultimately --

19 THE COURT: -- Mr. Oram could be present.

20 MR. DIGIACOMO: But the issue is --

21 THE COURT: I -- are you going to be available by
22 telephone, at least, if there's questions?

23 MR. SGRO: I'm flying on Tuesday, Your Honor.

24 MR. ORAM: I'll be okay.

25 MR. SGRO: But Mr. Oram will be available and --

1 MR. ORAM: We don't need Mr. Sgro.
2 MR. LANGFORD: I can help him out, Judge.
3 THE COURT: Thank you.
4 MR. ORAM: Thank you, Judge.
5 THE COURT: We'll see you tomorrow morning at 9:30.
6 MR. ORAM: Thank you.
7 MR. DIGIACOMO: Thank you, Your Honor.
8 (Court recessed for the evening at 4:14 p.m.)
9
10
11
12
13
14
15
16
17
18
19
20
21
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

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

**KARR REPORTING, INC.
Aurora, Colorado**


KIMBERLY LAWSON

1 INST

2 ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT
FEB 17 2015

3
4 BY Linda Skinner
LINDA SKINNER, DEPUTY 4:33pm

5
6 DISTRICT COURT
CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,)

9 Plaintiff,)

10 -vs-)

11 WILLIE DARNELL MASON and)
12 DAVID JAMES BURNS,)

13 Defendants.)

CASE NO: C267882-1, 2

DEPT NO: XX

14
15 INSTRUCTIONS TO THE JURY (INSTRUCTION NO. 1)

16 MEMBERS OF THE JURY:

17 It is now my duty as judge to instruct you in the law that applies to this case. It is
18 your duty as jurors to follow these instructions and to apply the rules of law to the facts as
19 you find them from the evidence.

20 You must not be concerned with the wisdom of any rule of law stated in these
21 instructions. Regardless of any opinion you may have as to what the law ought to be, it
22 would be a violation of your oath to base a verdict upon any other view of the law than that
23 given in the instructions of the Court.

If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

A Superseding Indictment is but a formal method of accusing a person of a crime and is not of itself any evidence of his guilt.

In this case, it is charged in a Superseding Indictment that on or about the 7th day of August, 2010, the Defendants committed the offenses of CONSPIRACY TO COMMIT ROBBERY (Felony - NRS 199.480; 200.380); BURGLARY WHILE IN POSSESSION OF A FIREARM (Felony - NRS 205.060); ROBBERY WITH USE OF A DEADLY WEAPON (Felony - NRS 200.380, 193.165); MURDER WITH USE OF A DEADLY WEAPON (Felony - NRS 200.010, 200.030, 193.165), ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Felony - 200.010, 200.030, 193.330, 193.165), and BATTERY WITH A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (Felony - 200.481) at and within the County of Clark, State of Nevada, as follows:

COUNT 1 – CONSPIRACY TO COMMIT ROBBERY

did then and there meet with each other and/or STEPHANIE JEAN COUSINS and/or MONICA LOUISE MARTINEZ 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, Defendants and/or their 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 each other and/or STEPHANIE JEAN COUSINS and/or MONICA LOUISE MARTINEZ 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, Defendants and/or their 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

1 firearm, with intent to commit larceny and/or assault and battery and/or a felony, to-wit:
2 robbery and/or murder, that certain building occupied by DEREZIA NEWMAN and/or
3 CORNELIUS MAYO and/or DEVONIA NEWMAN, located at 5662 Meikle Lane,
4 Apartment A, Las Vegas, Clark County, Nevada, the defendants being responsible under the
5 following principles of criminal liability, to-wit: 1) by directly or indirectly committing the
6 acts constituting the offense; and/or 2) by engaging in a conspiracy to commit larceny and/or
7 assault and/or battery and/or robbery and/or murder and/or burglary whereby Defendants had
8 the specific intent to commit burglary; and/or 3) by aiding or abetting each other in the
9 commission of the crime by Defendant WILLIE DARNELL MASON aka G-DOGG
10 accompanying Defendant STEPHANIE JEAN COUSINS and/or Defendant DAVID JAMES
11 BURNS aka D-SHOT to the residence while MONICA LOUISE MARTINEZ drove the
12 getaway vehicle and/or acted as a lookout, Defendant STEPHANIE JEAN COUSINS
13 creating a ruse for DEREZIA NEWMAN to open the door, Defendant WILLIE DARNELL
14 MASON aka G-DOGG and/or Defendant STEPHANIE JEAN COUSINS and/or Defendant
15 DAVID JAMES BURNS aka D-SHOT entering the residence with the intent to commit
16 larceny and/or assault and/or battery and/or robbery and/or murder, Defendant WILLIE
17 DARNELL MASON aka G-DOGG and/or Defendant DAVID JAMES BURNS aka D-
18 SHOT possessing the firearm, the Defendants and/or MONICA LOUISE MARTINEZ
19 and/or JEROME THOMAS aka JOB-LOC offering counsel and encouragement to each
20 other throughout.

21 COUNT 4 - ROBBERY WITH USE OF A DEADLY WEAPON

22 did then and there wilfully, unlawfully, and feloniously take personal property, to-wit:
23 cocaine and/or lawful money of the United States, from the person of DEREZIA
24 NEWMAN, or in her presence, by means of force or violence or fear of injury to, and
25 without the consent and against the will of the said DEREZIA NEWMAN, said defendant
26 using a deadly weapon, to-wit: a firearm, during the commission of said crime, the
27 defendants being responsible under the following principles of criminal liability, to-wit: 1)
28 by directly or indirectly committing the acts constituting the offense; and/or 2) by engaging

1 in a conspiracy to commit larceny and/or assault and/or battery and/or robbery and/or murder
2 and/or burglary; and/or 3) by aiding or abetting each other in the commission of the crime by
3 Defendant WILLIE DARNELL MASON aka G-DOGG accompanying Defendant
4 STEPHANIE JEAN COUSINS and/or Defendant 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, Defendant STEPHANIE JEAN COUSINS creating a ruse for DEREZIA
7 NEWMAN to open the door, Defendant WILLIE DARNELL MASON aka G-DOGG and/or
8 Defendant DAVID JAMES BURNS aka D-SHOT possessing the firearm, Defendant
9 WILLIE DARNELL MASON aka G-DOGG and/or Defendant DAVID JAMES BURNS
10 aka D-SHOT shooting DEREZIA NEWMAN in the head, Defendant WILLIE DARNELL
11 MASON aka G-DOGG and/or Defendant STEPHANIE JEAN COUSINS and/or Defendant
12 DAVID JAMES BURNS aka D-SHOT taking money or cocaine, the Defendants and/or
13 MONICA LOUISE MARTINEZ and/or JEROME THOMAS aka JOB-LOC offering
14 counsel and encouragement to each other throughout.

15 COUNT 5 - MURDER WITH USE OF A DEADLY WEAPON

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

1 as a lookout, Defendant STEPHANIE JEAN COUSINS creating a ruse for DEREZIA
2 NEWMAN to open the door, Defendant WILLIE DARNELL MASON aka G-DOGG and/or
3 Defendant STEPHANIE JEAN COUSINS and/or Defendant DAVID JAMES BURNS aka
4 D-SHOT entering the residence with the intent to commit larceny and/or assault and/or
5 battery and/or robbery and/or murder, Defendant WILLIE DARNELL MASON aka G-
6 DOGG and/or Defendant DAVID JAMES BURNS aka D-SHOT possessing the firearm,
7 Defendant WILLIE DARNELL MASON aka G-DOGG and/or Defendant DAVID JAMES
8 BURNS aka D-SHOT shooting DEREZIA NEWMAN in the head resulting in her death,
9 Defendant WILLIE DARNELL MASON aka G-DOGG and/or Defendant STEPHANIE
10 JEAN COUSINS and/or Defendant DAVID JAMES BURNS aka D-SHOT taking money or
11 cocaine, the Defendants and/or MONICA LOUISE MARTINEZ and/or JEROME THOMAS
12 aka JOB-LOC offering counsel and encouragement to each other throughout.

13 COUNT 6 - ROBBERY WITH USE OF A DEADLY WEAPON

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

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

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

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

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

28 did then and there wilfully, unlawfully, and feloniously use unlawful force or violence

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

18 It is the duty of the jury to apply the rules of law contained in these instructions to the
19 facts of the case and determine whether or not either or both of the Defendants are guilty of
20 one or more of the offenses charged.
21
22
23
24
25
26
27
28

To constitute a crime charged, there must exist a union or joint operation of an act forbidden by law and an intent to do the act.

The intent with which an act is done is shown by the facts and circumstances surrounding the case.

Do not confuse intent with motive. Motive is what prompts a person to act. Intent refers only to the state of mind with which the act is done.

Motive is not an element of the crime charged and the State is not required to prove a motive on the part of a Defendant in order to convict. However, you may consider evidence of motive or lack of motive as a circumstance in the case.

The Defendants are presumed innocent until the contrary is proved. This presumption places upon the State the burden of proving beyond a reasonable doubt every material element of each crime charged and that the Defendants are the persons who committed those offenses.

A reasonable doubt is one based on reason. It is not mere possible doubt but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.

If you have a reasonable doubt as to the guilt of a Defendant, he is entitled to a verdict of not guilty.

You are here to determine whether the Defendants are guilty or not guilty from the evidence in the case. You are not called upon to return a verdict as to the guilt or innocence of any other person. So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt of one or both of the Defendants, you should so find, even though you may believe one or more other persons are also guilty.

The statements, arguments and opinions of the attorneys are not evidence in the case. The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by the attorneys.

There are two types of evidence; direct and circumstantial. Direct evidence is the testimony of a person who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a chain of facts and circumstances which tend to show whether a Defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including the circumstantial evidence, should be considered by you in arriving at your verdict.

You must not speculate to be true any insinuations suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

You must disregard any evidence to which an objection was sustained by the court and any evidence ordered stricken by the court.

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

A conviction shall not be had on the testimony of an accomplice unless he is corroborated by other evidence which in itself, and without the aid of the testimony of the accomplice, tends to connect the defendant with the commission of the offense; and the corroboration shall not be sufficient if it merely shows the commission of the offense or the circumstances thereof.

An accomplice is defined as one who is liable for prosecution, for the identical offense charged against the defendant on trial in the cause in which the testimony of the accomplice is given.

To be an accomplice, the person must have aided, promoted, encouraged, or instigated by act or advice the commission of such offense with knowledge of the unlawful purpose of the person who committed the offense.

To corroborate the testimony of an accomplice there must be evidence of some act or fact related to the offense which, if believed, by itself and without any aid, interpretation or direction from the testimony of the accomplice, tends to connect the defendant with the commission of the offense charged.

However, it is not necessary that the evidence of the corroboration be sufficient in itself to establish every element of the offense charged, or that it corroborate every fact to which the accomplice testifies.

In determining whether an accomplice has been corroborated, you must first assume the testimony of the accomplice has been removed from the case. You must then determine whether there is any remaining evidence which tends to connect the defendant with the commission of the offense.

If there is not such independent evidence which tends to connect the defendant with the commission of the offense, the testimony of the accomplice is not corroborated.

The fact that a witness was given an inducement in exchange for his cooperation may be considered by you only for the purpose of determining the credibility of that witness. The existence of such an inducement does not necessarily destroy or impair the credibility of the witness. It is one of the circumstances that you may take into consideration in weighing the testimony of such a witness.

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it. If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of their testimony which is not proved by other evidence.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any other evidence that you believe.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify. The testimony of one witness worth of belief is sufficient for the proof of any fact and would justify a verdict in accordance with such testimony, even if a number of witnesses have testified to the contrary. If, from the whole case, considering the credibility of witnesses, and after weighing the various factors of evidence, you believe that there is a balance of probability pointing to the accuracy and honesty of one witness, you should accept his testimony.

A witness who has special knowledge, skill, experience, training or education in a particular science, profession or occupation is an expert witness. An expert witness may give his opinion as to any matter in which he is skilled.

You should consider such expert opinion and weigh the reasons, if any, given for it. You are not bound, however, by such an opinion. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it, if, in your judgment, the reasons given for it are unsound.

INSTRUCTION NO. 13

It is a constitutional right of a defendant in a criminal trial that he may not be compelled to testify. Thus, the decision as to whether he should testify is left to the defendant on the advice and counsel of his attorney. You must not draw any inference of guilt from the fact that he does not testify, nor should this fact be discussed by you or enter into your deliberations in any way.

The flight of a person immediately after the commission of a crime, or after he is accused of a crime, is not sufficient in itself to establish his guilt, but is a fact which, if proved, may be considered by you in light of all other proved facts in deciding the question of his guilt or innocence. Whether or not evidence of flight shows a consciousness of guilt and the significance to be attached to such a circumstance are matters for your deliberation

A conspiracy is an agreement between two or more persons for an unlawful purpose. To be guilty of conspiracy, a defendant must intend to commit, or to aid in the commission of, the specific crime agreed to. The crime is the agreement to do something unlawful; it does not matter whether it was successful or not.

A person who knowingly does any act to further the object of a conspiracy, or otherwise participates therein, is criminally liable as a conspirator. However, mere knowledge or approval of, or acquiescence in, the object and purpose of a conspiracy without an agreement to cooperate in achieving such object or purpose does not make one a party to conspiracy. Conspiracy is seldom susceptible of direct proof and is usually established by inference from the conduct of the parties. In particular, a conspiracy may be supported by a coordinated series of acts, in furtherance of the underlying offense, sufficient to infer the existence of an agreement.

A conspiracy to commit a crime does not end upon the completion of the crime. The conspiracy continues until the co-conspirators have successfully gotten away and concealed the crime.

It is not necessary in proving a conspiracy to show a meeting of the alleged conspirators or the making of an express or formal agreement. The formation and existence of a conspiracy may be inferred from all circumstances tending to show the common intent and may be proved in the same way as any other fact may be proved, either by direct testimony of the fact or by circumstantial evidence, or by both direct and circumstantial evidence.

Whenever there is slight evidence that a conspiracy existed, and that the defendant was one of the members of the conspiracy, then the statements and the acts by any person likewise a member may be considered by the jury as evidence in the case as to the defendant found to have been a member, even though the statements and acts may have occurred in the absence and without the knowledge of the defendant, provided such statements and acts were knowingly made and done during the continuance of such conspiracy, and in furtherance of some object or purpose of the conspiracy.

Each member of a criminal conspiracy is liable for each act and bound by each declaration of every other member of the conspiracy if the act or the declaration is in furtherance of the object of the conspiracy.

The act of one conspirator pursuant to or in furtherance of the common design of the conspiracy is the act of all conspirators. Every conspirator is legally responsible for a specific intent crime of a co-conspirator so long as the specific intent crime was intended by the Defendant. A conspirator is also legally responsible for a general intent crime that follows as one of the reasonably foreseeable consequence of the object of the conspiracy even if it was not intended as part of the original plan and even if he was not present at the time of the commission of such act.

Evidence that a person was in the company or associated with one or more other persons alleged or proven to have been members of a conspiracy is not, in itself, sufficient to prove that such person was a member of the alleged conspiracy. However, you are instructed that presence, companionship, and conduct before, during and after the offense are circumstances from which one's participation in the criminal intent may be inferred.

INSTRUCTION NO. 20

Where two or more persons are accused of committing a crime together, their guilt may be established without proof that each personally did every act constituting the offense charged.

All persons concerned in the commission of a crime who either directly and actively commit the act constituting the offense or who knowingly and with criminal intent aid and abet in its commission or, whether present or not, who advise and encourage its commission, with the intent that the crime be committed, are regarded by the law as principals in the crime thus committed and are equally guilty thereof.

A person aids and abets the commission of a crime if he knowingly and with criminal intent aids, promotes, encourages or instigates by act or advice, or by act and advice, the commission of such crime with the intention that the crime be committed.

The State is not required to prove precisely which defendant actually committed the crime and which defendant aided and abetted.

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

INSTRUCTION NO. 21

Mere presence at the scene of a crime or knowledge that a crime is being committed is not sufficient to establish that a defendant is guilty of an offense, unless you find beyond a reasonable doubt that the defendant was a participant and not a merely a knowing spectator.

However, the presence of a person at the scene of a crime and companionship with another person engaged in the commission of the crime and a course of conduct before and after the offense, are circumstances which may be considered in determining whether such person aided and abetted the commission of that crime.

INSTRUCTION NO. 22

Any person, who by day or night, enters any house, room, apartment, tenement, shop, warehouse, store, other building, automobile or other vehicle with the intent to commit larceny, robbery and/or murder is guilty of burglary.

INSTRUCTION NO. 13

When two or more persons participate in the commission of a burglary, and one or more of them enters the structure, it is not necessary to prove the other individual actually entered because one who aids and abets another in the commission of a burglary is equally guilty as a principal.

INSTRUCTION NO. 24

The intention with which an entry was made is a question of fact which may be inferred from the defendant's conduct and all other circumstances disclosed by the evidence.

It is not necessary that the State prove the defendant actually committed a larceny, robbery, or murder inside the house after he entered in order for you to find him guilty of burglary. The gist of the crime of burglary is the unlawful entry with criminal intent. Therefore, a burglary was committed if the defendant entered the house with the intent to commit a larceny, robbery or murder regardless of whether or not that crime occurred.

INSTRUCTION NO. 26

Consent to enter is not a defense to the crime of burglary so long as it is shown that entry was made with the specific intent to commit a larceny, robbery, or murder therein. Moreover, force or a "breaking" as such is not a necessary element of the crime.

INSTRUCTION NO. 27

Larceny is the stealing, taking and carrying away of the personal goods or property of another, with the specific intent to permanently deprive the owner thereof.

Every person who, in the commission of a burglary, commits any other crime may be prosecuted for each crime separately.

INSTRUCTION NO. 29

Every person who commits the crime of burglary, who has in his possession or gains possession of any firearm or deadly weapon at any time during the commission of the crime, at any time before leaving the structure, or upon leaving the structure, is guilty of burglary while in possession of a weapon.

Robbery is the unlawful taking of personal property from the person of another, or in his presence, against his will, by means of force or violence or fear of injury, immediate or future, to his person or property, or the person or property of a member of his family, or of anyone in his company at the time of the robbery. Such force or fear must be used to:

1. Obtain or retain possession of the property,
2. To prevent or overcome resistance to the taking of the property, or
3. To facilitate escape with the property.

In any case the degree of force is immaterial if used to compel acquiescence to the taking of or escaping with the property. Such taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear.

The value of property or money taken is not an element of the crime of Robbery, and it is only necessary that the State prove the taking of some property or money.

Robbery may spread over considerable and varying periods of time. All matters immediately prior to and having direct causal connection with the robbery are deemed so closely connected with it as to be a part of the occurrence. Thus, although acts of violence and intimidation preceded the actual taking of the property and may have been primarily intended for another purpose, it is enough to support the charge of robbery when a person takes the property by taking advantage of the terrifying situation he created.

Murder in the First Degree is a specific offense crime. A defendant cannot be liable under a conspiracy and/or an aiding and abetting theory for First Degree Murder for acts committed by a co-conspirator unless Defendant also had a premeditated and deliberate specific intent to kill and/or the intent to commit a robbery and/or the intent to commit burglary.

Murder in the Second Degree and Robbery are general intent crimes. As such, a defendant may be may liable under a conspiracy theory and/or aiding and abetting for Murder of the Second Degree and Robbery for acts committed by a co-conspirator if the killing or taking of property by force is a one of the reasonably foreseeable consequences of the object of the conspiracy.

Where several parties join together in a common design to commit any unlawful act, each is criminally responsible for the reasonably foreseeable general intent crimes committed furtherance of the common design. In contemplation of law, as it relates to general intent crimes, the act of one is the act of all. Robbery and battery are general intent crimes. Second Degree Murder is a general intent crime.

Additionally, a co-conspirator is guilty of the specific intent offenses which he specifically intended to be committed. Burglary and Attempt Murder are specific intent crimes. First Degree Murder is a specific intent crime unless the Felony-Murder Rule applies.

In this case the defendants are accused in a Superseding Indictment alleging an open charge of murder. This charge may include murder of the first degree or murder of the second degree.

The jury must decide if the defendant is guilty of any offense and, if so, of which offense.

Murder is the unlawful killing of a human being with malice aforethought, either express or implied. The unlawful killing may be effected by any of the various means by which death may be occasioned.

Malice aforethought means the intentional doing of a wrongful act without legal cause or excuse or what the law considers adequate provocation. The condition of mind described as malice aforethought may arise, from anger, hatred, revenge, or from particular ill will, spite or grudge toward the person killed. It may also arise from any unjustifiable or unlawful motive or purpose to injure another, proceeding from a heart fatally bent on mischief or with reckless disregard of consequences and social duty. Malice aforethought does not imply deliberation or the lapse of any considerable time between the malicious intention to injure another and the actual execution of the intent but denotes an unlawful purpose and design as opposed to accident and mischance.

Express malice is that deliberate intention unlawfully to take away the life of a human being, which is manifested by external circumstances capable of proof.

Malice may be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart.

Murder of the first degree is murder which is perpetrated by means of any kind of willful, deliberate, and premeditated killing. All three elements -- willfulness, deliberation, and premeditation -- must be proven beyond a reasonable doubt before an accused can be convicted of first-degree murder.

Willfulness is the intent to kill. There need be no appreciable space of time between formation of the intent to kill and the act of killing.

Deliberation is the process of determining upon a course of action to kill as a result of thought, including weighing the reasons for and against the action and considering the consequences of the actions.

A deliberate determination may be arrived at in a short period of time. But in all cases the determination must not be formed in passion, or if formed in passion, it must be carried out after there has been time for the passion to subside and deliberation to occur. A mere unconsidered and rash impulse is not deliberate, even though it includes the intent to kill.

Premeditation is a design, a determination to kill, distinctly formed in the mind by the time of the killing.

Premeditation need not be for a day, an hour, or even a minute. It may be as instantaneous as successive thoughts of the mind. For if the jury believes from the evidence that the act constituting the killing has been preceded by and has been the result of premeditation, no matter how rapidly the act follows the premeditation, it is premeditated.

The law does not undertake to measure in units of time the length of the period during which the thought must be pondered before it can ripen into an intent to kill which is truly deliberate and premeditated. The time will vary with different individuals and under varying circumstances.

The true test is not the duration of time, but rather the extent of the reflection. A cold, calculated judgment and decision may be arrived at in a short period of time, but a mere unconsidered and rash impulse, even though it includes an intent to kill, is not deliberation and premeditation as will fix an unlawful killing as murder of the first degree.

There are certain kinds of Murder in the First Degree which carry with them conclusive evidence of malice aforethought. One of these classes of First Degree Murder is a killing committed in the perpetration or attempted perpetration of a Burglary and/or Robbery. Therefore, a killing which is committed in the perpetration of a Burglary and/or Robbery is deemed to be Murder in the First Degree, whether the killing was intentional, unintentional, or accidental. This is called the Felony-Murder Rule.

The intent to perpetrate or attempt to perpetrate a Burglary and/or Robbery must be proven beyond a reasonable doubt. In order for the Felony-Murder Rule to apply under a robbery theory, the intent to take the property must be formed prior to the act constituting the killing.

Although your verdict must be unanimous as to the charge, you do not have to agree on the theory of guilt or liability. Therefore, even if you cannot agree on whether the facts establish the defendant is guilty of Premeditated and Deliberate Murder or Felony Murder or is liable as a principle, aider and abettor, or co-conspirator, so long as all of you agree that the evidence establishes the defendant's guilt of murder in the first degree, your verdict shall be Murder of the First Degree.

You are instructed that if you find that the State has established that the defendant has committed First Degree Murder you shall select First Degree Murder as your verdict. The crime of First Degree Murder includes the crime of Second Degree Murder.

The distinguishing feature between first and second degree murder is the presence or absence of premeditation and deliberation. If the unlawful killing is done with malice, but without deliberation and premeditation, that is, without the willful, deliberate and premeditated intent to take life which is an essential element of First Degree Murder, then the offense is Murder of the Second Degree.

In practical application this means that the unlawful killing of a human being with malice aforethought, but without a deliberately formed and premeditated intent to kill, is Murder of the Second Degree.

If you believe from the evidence beyond a reasonable doubt that a defendant is guilty of Murder, and there is in your minds a reasonable doubt as to which of the two degrees he is guilty, he must be convicted of the lesser offense which is Murder of the Second Degree.

Attempted murder is the performance of an act or acts which tend, but fail, to kill a human being, when such acts are done with express malice, namely, with the deliberate intention unlawfully to kill.

It is not necessary to prove the elements of premeditation and deliberation in order to prove attempted murder.

Battery with a Deadly Weapon means any willful and unlawful use of force or violence upon the person of another with the use of a deadly weapon. Any harmful or offensive unconsented touching with the deadly weapon, however slight, constitutes sufficient force or violence upon the person of another. If substantial bodily harm results to the victim of a battery, the crime committed is Battery with a Deadly Weapon Resulting in Substantial Bodily Harm.

"Substantial bodily harm" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any body member or organ, or prolonged physical pain.

You are instructed that if you find a defendant guilty of Robbery, 1st or 2nd Degree Murder, and/or Attempt Murder you must also determine whether or not a deadly weapon was used in the commission of this crime.

If you find beyond a reasonable doubt that a deadly weapon was used in the commission of such an offense, then you shall return the appropriate guilty verdict reflecting "With Use of a Deadly Weapon".

If, however, you find that a deadly weapon was not used in the commission of such an offense, but you find that it was committed, then you shall return the appropriate guilty verdict reflecting that a deadly weapon was not used.

"Deadly weapon" means any instrument which, if used in the ordinary manner contemplated by its design and construction, will or is likely to cause substantial bodily harm or death, or, any weapon, device, instrument, material or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing substantial bodily harm or death.

A firearm is a deadly weapon.

INSTRUCTION NO. 47

The State is not required to have recovered the deadly weapon used in an alleged crime, or to produce the deadly weapon in court at trial, to establish that a deadly weapon was used in the commission of the crime.

If more than one person commits a crime, and one of them uses a deadly weapon in the commission of that crime, each may be convicted of using the deadly weapon even though he did not personally himself/herself use the weapon.

An unarmed offender “uses” a deadly weapon when the unarmed offender is liable for the offense, another person liable to the offense is armed with and uses a deadly weapon in the commission of the offense, and the unarmed offender had knowledge of the use of the deadly weapon.

Although you are to consider only the evidence in the case in reaching a verdict, you must bring to the consideration of the evidence your everyday common sense and judgment as reasonable men and women. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may draw reasonable inferences from the evidence which you feel are justified in the light of common experience, keeping in mind that such inferences should not be based on speculation or guess.

A verdict may never be influenced by sympathy, prejudice or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

At this point in the proceedings you may not discuss or consider the subject of punishment. Your duty now is confined to a determination of the guilt or innocence of one or more of the defendants. If, and only if, you return a verdict of Murder in the First Degree, you will, at a later hearing, consider the subject of penalty or punishment.

When you retire to consider your verdict, you must select one of your number to act as foreperson who will preside over your deliberation and will be your spokesperson here in court.

During your deliberation, you will have all the exhibits which were admitted into evidence, these written instructions and forms of verdict which have been prepared for your convenience.

Your verdict must be unanimous. As soon as you have agreed upon a verdict, have it signed and dated by your foreperson and then return with it to this room.

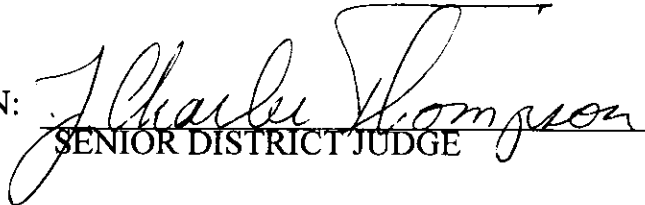
If, during your deliberations, you should desire to be further informed on any point of law or hear again portions of the testimony, you must reduce your request to writing signed by the foreperson. The officer will then return you to court where the information sought will be given you in the presence of the defendants and their attorneys.

The testimony in this trial was recorded. A playback of portions of the testimony is possible. However, playing back the testimony is time consuming and is not encouraged unless you deem it a necessity. Should you require a playback, you must carefully describe the testimony you want to hear so that the recorder can locate your request. Remember, the court is not at liberty to supplement the evidence.

INSTRUCTION NO. 53

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the Defendants and the State of Nevada.

GIVEN:


SENIOR DISTRICT JUDGE