

1 Q. What was the purpose of that?

2 A. To brief it, you know, they do the recon,  
3 and do all the briefing.

4 Q. Okay. Had you asked them to be on the  
5 lookout for anybody who comes and goes from the residence?

6 A. Yes.

7 Q. And did they indicate to you whether or  
8 not anybody came or went from the residence while you  
9 were gone?

10 A. They didn't indicate that they had anybody  
11 leaving or not. But once we got to the scene with the  
12 police, then we immediately, Detective Hartshorn and I  
13 immediately went and sat, sat at the residence and put  
14 eyes on there, took up the surveillance and the vehicle  
15 was still parked there, and so we just sat there.

16 Q. Okay.

17 A. And we saw SWAT serve the warrant.

18 Q. And did you have SWAT serve the warrant?

19 A. Because of the nature of the crime, because  
20 there was a gun involved, that we had information that  
21 there was a gun involved, sexual assault, robbery.

22 Q. Did you watch SWAT serve the warrant?

23 A. Yes.

24 Q. And when they served the warrant, did  
25 they knock, announce and enter?

1 A. Yeah, we watched it from afar, I mean, we  
2 stayed away.

3 Q. Right, but you could see --

4 A. Yes.

5 Q. -- that it was happening?

6 A. Yes.

7 Q. Okay. And then what did you do?

8 A. Waited for them to clear the residence,  
9 and once they say it is okay, you know, then we go in.

10 And, basically, at that time, I was getting my  
11 stuff ready. I was out of the vehicle. I just pulled the  
12 vehicle up closer to the house, and I was at our car getting  
13 our stuff ready, and Narcus came out. They brought Narcus  
14 out, and that's where I began to do our interview, and  
15 everybody else went in and searched.

16 Q. Okay, you are pointing somebody out.

17 Was there an individual in the residence that  
18 physically walked outside that you see here in court  
19 today?

20 A. Yes.

21 Q. Can you describe where he is sitting and  
22 what he is wearing?

23 A. He is wearing a pants and suit jacket, a  
24 brown gray tie, sitting at the Defendant's table in the  
25 middle.

1 MS. LUZAICH: Your Honor, may the record reflect  
2 identification of the Defendant?

3 THE COURT: The record will so show.

4 MS. LUZAICH: Thank you.

5 Q. Was it your understanding that there were  
6 also other individuals in the house?

7 A. Yes.

8 Q. And did you ultimately speak with them as  
9 well?

10 A. Yes, I did.

11 Q. Okay. You spoke with the Defendant?

12 A. Yes.

13 Q. Did you give him his rights per Miranda?

14 A. Yes, I did.

15 Q. Did you do it by memory or from a card?

16 A. I believe I was handed a card.

17 Q. Okay. And did he express to you that he  
18 understood his rights?

19 A. Yes, he did.

20 Q. And then did he talk to you?

21 A. Yes, he did.

22 Q. Okay. Now, did some -- after you spoke  
23 with the Defendant, did something happen?

24 Did you find something out, relating to his  
25 father?

1           A.    Okay. With his father, you know, once we  
2   went back in there --

3           Q.    Okay. Maybe I should rephrase that. I  
4   don't know if it was after.

5           A.    Right.

6           Q.    Did something happen with his father?

7           A.    Yes.

8           Q.    What?

9           A.    Well, his father demanded -- his father  
10   and mother, I believe it's his mother, demanded a copy  
11   of the search warrant; and I said it's out in the car, I  
12   will get it in just a second, went out to the car and got  
13   it, gave it back to them, and while he was reading it,  
14   you know, I asked if there is any guns in the house, he  
15   said his nephew used to have them, and all of a sudden,  
16   he said;

17                "This is wrong. The power is in my name. It's  
18   not in Nascus's name."

19           A.    And I got his name, and his name is Narbis.

20           Q.    Could you spell that?

21           A.    Well, it's spelled two different ways, I  
22   mean, on record, in scope, it's N-a-r-b-i-s, or b-i-z,  
23   and I believe in Nevada Power it was N-a-r-b-i-z.

24           Q.    Okay.

25                So the Defendant's daddy indicated to you that



1 there was some incorrect information in the search warrant?

2 A. Yes.

3 Q. Once you found that out, did you do anything?

4 A. Not right at that moment.

5 We finished what we had there, got his stuff,  
6 and then transported him to the jail, booked him into the  
7 jail, and then the next morning when I came back in, I  
8 looked in my mailbox. We have a box there, and there was  
9 a copy of the subpoena. So I looked at that, and that's  
10 where it said:

11 An asterisk: "Please note..." I have to look  
12 at my notes, something to the effect:

13 "Please note. Individual's first name is  
14 different from your request."

15 Q. Okay.

16 Now, when you say there was a copy of the subpoena  
17 in your box, would that be the subpoena that you had sent  
18 to Nevada Power?

19 A. It was her reply. Her reply, I'm sorry.

20 Q. But pertaining to the subpoena?

21 A. To my subpoena.

22 Q. Okay. That you sent to Nevada Power?

23 A. Yes.

24 MS. LUZAICH: May I approach the Clerk?

25 THE COURT: Sure.

1 (Whereupon, four exhibits were marked for  
2 identification by the Clerk as State's Exhibits 1, 2,  
3 3 and 4, respectively.)

4 MS. LUZAICH: For the record, the Clerk is  
5 marking four pieces of paper State's Proposed Exhibits  
6 1, 2, 3, 4.

7 They have been shown and are reshowed to defense  
8 counsel, and I don't know that they are in the correct  
9 order, so 1, 2, 3, 4 are kind of just random number.

10 Q. Detective, I am showing you what has been  
11 marked as State's Proposed Exhibits 1, 2, 3, 4, and can  
12 you tell me, do you recognize these?

13 A. Yes, I do.

14 Q. What are they, understanding that 1, 2, 3,  
15 4 may be out of order?

16 A. A subpoena I sent, and her reply, Ms.  
17 Lamonte, I believe Ms. Lamonte sent them from Nevada Power.

18 MS. LUZAICH: Move into evidence.

19 MR. LANDIS: No objection.

20 THE COURT: Admitted.

21 THE CLERK: Which one?

22 MS. LUZAICH: All four.

23 THE CLERK: All four?

24 BY MS. LUZAICH:

25 Q. And for the record, on State's Proposed

1 Exhibit 2, is that where the asterisk with the note that  
2 you just described is?

3 A. Yes.

4 Q. And can you read it into the record for  
5 me?

6 A. "Please note. Individual's first name is  
7 different from your request."

8 Q. And on it -- okay. So from the time  
9 that you spoke with her on the phone, you immediately  
10 left, went, did your surveillance, for want of a better  
11 word, you looked to see what was there, and you were  
12 just doing things until you served the search warrant?

13 A. Yes.

14 MS. LUZAICH: Okay, thank you. I will pass the  
15 witness.

16 THE COURT: Cross.

17 MR. LANDIS: The Court's indulgence..

18 THE COURT: Sure.

19 CROSS-EXAMINATION

20 BY MR. LANDIS:

21 Q. Good morning.

22 A. Good morning.

23 Q. We can agree that throughout this process  
24 from when you got involved until your investigation  
25 concluded, that time was of the essence, yes?

1 A. Yes.

2 Q. And you proceeded in that fashion, with  
3 pretty much everything you did, correct?

4 A. Yes.

5 Q. And that included the drafting and issuance  
6 of the search warrant for Gay Lane?

7 A. Yes, I was gathering information from other  
8 detectives as well.

9 Q. To put it another way, you didn't want  
10 to wait three days to get that search warrant, is that  
11 correct?

12 A. Right.

13 Q. And before we get into that search warrant,  
14 I want to talk a little bit about the order of events  
15 involving the interrogation of Mr. Wilson, and the trip  
16 to UNLV, or at least you receiving the information from  
17 UNLV, the football roster, okay?

18 A. Yes.

19 Q. I think you testified on direct, and correct  
20 me if I am wrong, that the first of those two events was  
21 the interrogation of Wilson?

22 A. Yes.

23 Q. And then thereafter, sometime thereafter,  
24 a short matter later, you got the roster, correct?

25 A. Yes.

1 Q. Page 82 of the interrogation of Wilson,  
2 lines five and six.

3 Do you recall Detective Hartshorn saying during  
4 that interrogation:

5 "We already know who Narcus is, bro. He was  
6 on your football team. He played...  
7 (incomprehensible) right?"

8 A. We were going in and out of the room there  
9 so he may have said it, I may have been there. I'm not  
10 sure.

11 Q. All right. He did say it or he may have  
12 said it?

13 A. No, if it's in there, he said it.

14 Q. Okay.

15 A. But you would have to ask him.

16 Q. Would you agree that it is indicative that  
17 he knew Narcus was on the UNLV football roster during that  
18 interrogation?

19 A. He could have been lying, you know, because  
20 at that time Grant said that he played football, and so we  
21 were guessing that he was a football player with him, I  
22 mean, I don't know.

23 Q. Well, as to your search warrant, I only  
24 want to talk about what's in the search warrant. I don't  
25 want to talk about what you do that was not in the search

1 warrant, okay?

2 A. Yes.

3 Q. You said that somewhere during the interrogation  
4 of Wilson he told you guys that Narcus lived somewhere on the  
5 west side of town with his parents?

6 A. Yes.

7 Q. And that's during the interrogation that  
8 occurred at Circus Circus, correct?

9 A. No, there was a time when I went and showed  
10 him his picture at the jail, and that's when he told me.

11 Q. A little different than what you testified  
12 on direct, correct?

13 A. As far as what?

14 Q. Receiving that information, and let me  
15 clarify:

16 During the interrogation at Circus Circus, that  
17 was recorded, correct?

18 A. Yes.

19 Q. At that time, he didn't tell you where  
20 Narcus lived, did he?

21 A. I'm not sure if he told us on that or not.  
22 I have to look at the transcript.

23 Q. Would that refresh your recollection?

24 A. If I read the whole transcript, yes.

25 Q. May I approach, Judge?

1 THE COURT: Yes.

2 BY MR. LANDIS:

3 Q. When is it where you talked about Narcus?

4 A. Yeah, right here he says:

5 "Somewhere on the west side but I really don't  
6 know."

7 Q. But definitely not on the west side of  
8 town with his parents, correct?

9 A. No, I believe that the parents were probably  
10 at the jail.

11 Q. Very well. Well, we can agree nowhere in  
12 that statement, that recorded statement that occurred at  
13 Circus Circus did he say Narcus lives on the west side of  
14 town with his parents, is that right?

15 A. Just right here, right now.

16 Q. Okay.

17 A. We have Vegas, somewhere on the west side.

18 MS. LUZAICH: What page?

19 THE WITNESS: Page 83, page 82 and page 83. I  
20 believe that's it. Yes, sir.

21 BY MR. LANDIS:

22 Q. Reading that refreshes your recollection?

23 A. It refreshes that, you know, like I said,  
24 we were both in there, you know, he said, west side of  
25 Vegas on this.

1 Q. Okay. But nowhere in there does he say  
2 west side of town with his parents?

3 A. Not that I saw, no, sir.

4 Q. And you would agree this is accurate?

5 A. Yes, yes.

6 Q. Now, you mentioned a possible second time  
7 that you spoke to Mr. Wilson, correct?

8 A. Yes.

9 Q. You didn't talk about that on direct.  
10 Could you give me a little background of what occurred,  
11 why that occurred, and where it occurred?

12 A. It occurred at the Henderson jail, and I  
13 took a picture of Narcus's DMV photo over there and  
14 identified him.

15 Q. When did that occur in the order of events?

16 A. That occurred before the search warrant,  
17 and just before he went to the station or went to the  
18 jail.

19 Q. Was that before or after you conducted  
20 your first surveillance of the Gay Lane address and saw  
21 the white Chrysler?

22 A. That was after that.

23 Q. All right. And it's your testimony here  
24 that during that second interrogation or second interview  
25 with Wilson at the jail he told you that?



1 A. Yes.

2 Q. Was that interview transcribed? Was it  
3 recorded?

4 A. No, it wasn't. He was still up in booking.

5 Q. Did that second interrogation of Wilson  
6 occur before or after you drafted your search warrant?

7 A. That occurred before.

8 Q. Before?

9 A. Yes.

10 Q. In that search warrant, you go through a  
11 lot of the events that you testified to today, correct?

12 A. Yes.

13 Q. Do you inform the reviewing magistrate that  
14 Wilson said Wesley lived on the west side of town?

15 A. I would have to look at the search warrant.  
16 Yes, it is in the search warrant.

17 Q. What page?

18 A. It doesn't have a number. Next to the end.

19 MR. LANDIS: May I approach?

20 THE COURT: Yes.

21 BY MR. LANDIS:

22 Q. Does reviewing that refresh your recollection?

23 A. It says that I showed a photograph of Narcus  
24 Wesley to Wilson.

25 Q. I am going to keep that there. I understand

1 that's in there, but is the information about the location  
2 of where he lives and that he may live with his parents, is  
3 that in there?

4 A. No.

5 Q. So, obviously, the reviewing magistrate did  
6 not have that information at the time that he obviously  
7 reviewed the request?

8 A. No, sir.

9 Q. When you went to the Gay Lane address for  
10 the first time and observed that Chrysler, did you thereafter  
11 contact the DMV and check the registration?

12 A. Not DMV, our -- and I can't recall, this is  
13 a while ago, we either called dispatch at that point or we  
14 had laptops in our car, too.

15 Q. And that's where you gained the information?

16 A. Yes.

17 Q. And the information you gained was that that  
18 car was registered to Narcus?

19 A. Yes.

20 Q. And one other person?

21 A. Yes.

22 Q. And that it was registered to a Valley View  
23 address?

24 A. Yes, Valley, not Valley View.

25 Q. I'm sorry. Let me be more precise, Valley

1 Drive?

2 A. Valley Drive, yes.

3 Q. Okay. Did you learn at that time, communicating  
4 with whoever it is that you did communicate the dates of  
5 registration?

6 A. No.

7 Q. Did you learn that the car was currently  
8 registered?

9 A. Yes, I believe it was currently registered?  
10 Well, if you will look right there, and I have no  
11 recollection of it being expired, that registration.

12 Q. Did you learn the date that that registration  
13 began, that most current registration?

14 A. No.

15 Q. And you had that information at the time you  
16 drafted your search warrant request?

17 Yes?

18 A. I didn't have it with me. We obtained it.  
19 It was accessible to me, yes.

20 Q. You knew that though at the time you drafted  
21 your search warrant?

22 A. Yes, I knew that that vehicle was registered  
23 to him..

24 Q. And you knew it was to that Valley Drive  
25 address?

1 A. Yes, I believe so.

2 Q. And your search warrant request, you informed  
3 the magistrate --

4 A. Yes.

5 Q. Let me be more clear.

6 You informed the magistrate that the car is  
7 registered to Narcus, correct?

8 A. Yes.

9 Q. You informed the magistrate that the car was  
10 registered to Narcus at that Valley Drive address?

11 A. No, sir.

12 Q. There is police procedure on how you request  
13 information from administrative agencies, correct?

14 A. Sometimes, yes.

15 Q. And you know I couldn't call Nevada Power  
16 and get any information I wanted, correct?

17 A. I don't know. Some people can get it if  
18 they have contacts, and so forth, and once again, others  
19 can't get it.

20 Q. I understand. But we can agree that it  
21 is under the subpoena power that you get that information?

22 A. Sometimes. If there is emergencies, there  
23 are setup ways, where, hey, they get it to us within 72  
24 hours.

25 Q. Okay. You know people at Nevada Power is

001465

1 what you are saying?

2 A. This is the second time I ever talked with  
3 Donna.

4 Q. Okay. At the time that you called Donna  
5 at Nevada Power, had you drafted your Nevada Power subpoena  
6 yet?

7 A. No.

8 Q. How long after you communicated with Donna  
9 did you draft that subpoena?

10 A. Right after I phoned.

11 Q. As soon as you hung up the phone?

12 A. You just go on the computer, you have got  
13 a shell, and you turn it on, and print it, and that's it.

14 Q. And in relation to that, when did you send  
15 or fax a subpoena to Ms. Lamonte?

16 A. I believe I went and faxed it over to her  
17 before we left.

18 Q. All right. On that subpoena, you did send  
19 to Donna Lamonte, you list Narcus Wesley's name?

20 A. Yes.

21 Q. And you list a Social Security number?

22 A. I believe I had his Social Security and  
23 birth date on there, I believe.

24 MR. LANDIS: If I might approach, Judge?

25 THE COURT: Yes.

1 BY MR. LANDIS:

2 Q. Would reviewing your subpoena refresh your  
3 recollection?

4 A. Yes.

5 MR. LANDIS: May I approach?

6 THE COURT: Sure.

7 MR. LANDIS: Could we approach very briefly,  
8 Judge?

9 Sorry.

10 (Discussion off the record at the bench between  
11 the Court and counsel.)

12 THE COURT: All right. We are going to take a  
13 break at noon for at least 20 or 30 minutes, but right  
14 now, we are going to take a five minute break so we all  
15 can run to the restroom real quick. So we are going to  
16 be in recess for five minutes.

17 \*\*\*\*\*

18 (Whereupon, a brief recess was had.

19 After recess, all parties present, the following  
20 proceedings were had in open court:)

21 \*\*\*\*\*

22 THE COURT: All right. We are back on the record  
23 on the State of Nevada v. Narcus Wesley.

24 Go ahead.

25 MR. LANDIS: Thank you, Judge.

001467

1 Whereupon,

2 DETECTIVE CURTIS WESKY,  
3 resumed the witness stand, having been previously duly  
4 sworn, was examined and testified further as follows:

5 CROSS-EXAMINATION

6 BY MR. LANDIS: (Continuing)

7 Q. You got that subpoena, that you sent to  
8 Ms. Lamonte, correct?

9 A. No, the one I received I got. I don't  
10 have the -- you gave me this one.

11 Q. Okay, the Court's indulgence. Well, can  
12 we agree --

13 A. I'm sorry, yeah, you are right. This is  
14 the one, yes.

15 Q. It might be her fax return, but it is  
16 more or less the exact same thing as that, sir, right?

17 A. Right, yes, yes.

18 Q. And on that you have a name, you put  
19 Narcus Wesley, correct?

20 A. Yes.

21 Q. You put a Social Security number, correct?

22 A. Yes.

23 Q. Could you to protect identity just give us  
24 the last four digits of that Social Security number that  
25 you left on that subpoena?

001468

1 A. 3280.

2 Q. Do you list an address on that subpoena?

3 A. No, I don't.

4 Q. There is a number of vowels in Mr. Wesley's  
5 name, which is his D R number?

6 A. Yes.

7 Q. What is that?

8 A. That's our report number.

9 MR. LANDIS: Okay. May I approach, Judge?

10 THE COURT: Yes.

11 BY MR. LANDIS:

12 Q. Where in the world did you get that Social  
13 Security number from?

14 A. I believe it was given to me by Detective  
15 Bakalas.

16 Q. Detective Batkins?

17 A. Bakalas.

18 Q. Okay.

19 A. I believe from the UNLV records, I'm not --  
20 I'm not positive but --

21 Q. In your search warrant application, you  
22 also list a Social Security number, correct?

23 A. Yes, I believe so.

24 MR. LANDIS: May I approach, Judge?

25 THE COURT: Yes, of course.

001469



1 BY MR. LANDIS:

2 Q. I assume you don't remember that Social  
3 Security number offhand?

4 A. No.

5 MR. LANDIS: May I approach the witness, Judge?

6 THE COURT: Yes.

7 (Whereupon, Defendant's Exhibit A marked for  
8 identification by the Clerk.)

9 BY MR. LANDIS:

10 Q. Showing you what has been marked as Defendant's  
11 Proposed A?

12 A. Yes, sir.

13 Q. Does reviewing that refresh your recollection  
14 as to what Social Security number you listed in the search  
15 warrant?

16 A. Yes, it's a different one.

17 Q. Could you tell us the last four digits that  
18 you listed in your search warrant?

19 A. 8230.

20 MR. LANDIS: May I approach?

21 THE COURT: Yes.

22 BY MR. LANDIS:

23 Q. Where did you get that Social Security number  
24 from?

25 A. I said I thought I got it from Detective

001470

1 Bakalas, and there was a lot of papers and stuff, and I  
2 may have picked up the wrong one.

3 Q. Okay.

4 Now, I want to talk a little bit about your  
5 communications with Ms. Lamonte?

6 A. Okay.

7 Q. You testified on direct that the first thing  
8 you asked her for was an address?

9 A. Yes.

10 Q. Did you give her an address and a name, an  
11 address with a Social Security number or just an address?

12 A. I just gave her the address, and I said the  
13 name I am looking for is Narcus Wesley.

14 Q. And you gave her those two tidbits of  
15 information before she responded to any of your requests  
16 at all?

17 A. Yes.

18 Q. And that address you gave her was the Gay  
19 Lane address?

20 A. No, I gave her the Valley address.

21 Q. I'm sorry, the Valley Drive address?

22 A. Yes.

23 Q. What was her response to the best of your  
24 recollection to that?

25 A. The best of my recollection was, okay,

001471

1 there is no power at that address. Let me check something.

2 And then took a second, and the power was turned  
3 on in the same at this Gay address, 4232 Gay Avenue.

4 Q. Between the time that she said the power  
5 was turned off up until the time she gave you the Gay Lane  
6 address, did you give her any further information?

7 A. I don't believe so.

8 Q. While on the phone, was there any further  
9 communications by you or by Ms. Lamonte?

10 A. I believe about the subpoena, I said I am  
11 sending her a subpoena.

12 Q. Okay. How long after you hung up the phone  
13 with Ms. Lamonte did you start drafting your search warrant  
14 on that occasion? Identification?

15 A. Hours probably, I think, you know, we went  
16 out there. We had to -- we went out there, checked the  
17 address, found the vehicle, made a call to SWAT, sat there  
18 for a little bit, and then, as I said, I showed that  
19 photograph to Wilson, and then I went and started my  
20 affidavit based on, I think, you know, based on because  
21 everybody had a section of what they did.

22 So I am going by some of what was going on the  
23 other line so it was probably a few hours.

24 Q. Would it be fair to say that you sent SWAT  
25 to begin recon in anticipation of the search warrant being

001472

1 written?

2 A. Yes, I always call ahead of time and say I  
3 am applying for a search warrant.

4 Q. Okay.

5 When -- as a detective in Henderson, who do you  
6 tend to send your search warrants applications to, what  
7 Judge?

8 A. We have Judge George (phonetically) and Judge  
9 Berg (phonetically), and ideally, if they are not available,  
10 there is a Judge in Boulder City.

11 Q. Is it fair to say that the majority of them  
12 go to Burke or George, don't they?

13 A. Yes.

14 Q. This one went to George, correct?

15 A. I believe so.

16 Q. You were confident that the search warrant  
17 was being granted, and you sent SWAT out because George  
18 always grants your search warrant requests, doesn't he?

19 A. I have never had any declined. So, you  
20 know, that's not to say he won't.

21 Q. We are not talking about won't. He never  
22 has?

23 A. No.

24 MS. LUZAICH: Well, objection to the form of the  
25 question. I think Detective Weske hasn't had one declined,

001473

1 but he certainly can't testify whether anyone else has.

2 THE COURT: I think that is probably correct.

3 At some time, you don't know whether he has declined anybody  
4 else's applications, do you? You just never had one that's  
5 been declined?

6 THE WITNESS: Listen, I will tell you something  
7 about Judge George. He reads every piece of information on  
8 that form. You are there for a while.

9 MR. LANDIS: And I would object to that on  
10 foundation, Judge.

11 THE COURT: Overruled.

12 BY MR. LANDIS:

13 Q. When you arrived at the address to execute  
14 the search warrant, how long was SWAT in the house before  
15 you entered?

16 MS. LUZAICH: Well, that assumes facts not in  
17 evidence. He didn't enter.

18 THE COURT: Rephrase that. You may have misled  
19 what you are asking.

20 MR. LANDIS: Right.

21 Q. Is it your testimony that SWAT brought  
22 Narcus out of the house?

23 A. Yes.

24 Q. And that's before you ever entered the  
25 house?

001474

1 A. Yes.

2 Q. But there came a time that you entered  
3 the house?

4 A. Yes.

5 Q. When was that?

6 A. After our interview. I brought him back  
7 in there. We sat him on a chair, and someone sat and  
8 watched, and I gave dad the search warrant, and then I  
9 went back in the back bedroom.

10 Q. Who cuffed Narcus?

11 A. Well, I believe SWAT because he had zip  
12 cuffs on. We were trying to actually get those off but  
13 I don't carry cutters.

14 Q. Did you have any communications with SWAT  
15 about what occurred before you took custody of Narcus --?

16 A. Oh, they knew the case, yes.

17 Q. That's not what I am asking.

18 Did you have any conversations between -- with  
19 SWAT about what occurred in the house before you took  
20 possession of Narcus?

21 A. No.

22 Q. So you have no idea what may have been said  
23 between SWAT and Narcus?

24 A. No.

25 Q. Or what may have been said between SWAT

001475

1 and members of Narcus's family?

2 A. No.

3 Q. Where did this interview take place?

4 A. Outside in the car. I believe it was concluded  
5 in the car.

6 Q. A police issue car?

7 A. Yes.

8 MR. LANDIS: The Court's indulgence.

9 THE COURT: Sure.

10 MR. LANDIS: With the Court's permission, I will  
11 hand the torch to Mr. Banks for a few questions.

12 THE COURT: Go ahead.

13 MR. BANKS: Thank you.

14 CROSS-EXAMINATION

15 BY MR. BANKS:

16 Q. Thank you. Detective Weske?

17 A. Oh yes.

18 Q. How do you do, I'm Jeff Banks?

19 A. I'm fine, thank you.

20 Q. I believe, and I want to be fair, and I  
21 think it's actually your words in the interview with Mr.  
22 Wesley, did you explain to him that he was not free to  
23 leave, is that -- is that fair?

24 A. Yes, I believe so.

25 Q. Okay. And I want to take you back to your

001476

1 direct with Ms. Luzaich. I wrote it down. I don't want  
2 to misquote you, but she had asked you about some rights  
3 that were maybe relayed to Mr. Wesley?

4 A. Yes.

5 Q. And I think you said:

6 "I believe I was handed a card..."

7 When it came down to where when you were recalling  
8 the Miranda rights, is that fair?

9 A. I do it both ways, I mean, I don't carry a  
10 card with me.

11 Q. Okay.

12 A. I don't have a card with me. Sometimes it  
13 is handed to me, a card.

14 Q. Okay. And when somebody is not free to leave,  
15 it is very important at that point that those rights are  
16 communicated to that person, is that fair?

17 A. Before you do an interrogation, yes, sir.

18 Q. Okay.

19 And when somebody is not free to leave, it is  
20 of utmost importance that those rights are communicated  
21 to that person, is that fair?

22 A. It depends on the situation.

23 Q. Okay. And I am talking about the situation  
24 where someone is not free to leave, in a situation where  
25 somebody is not free to leave, it is of utmost importance

CC1477



1 that those rights are communicated to that person, is that  
2 fair?

3 A. Like I said, if you are on a traffic stop,  
4 you are not free to leave. I don't think you need to read  
5 Miranda so it depends on the situation.

6 If I am going to interrogate about a crime, yes.  
7 They are not free to leave, and they are in custody, yes,  
8 I do read them.

9 Q. Okay. He was not free to leave?

10 A. Right.

11 Q. And he was in custody, that's fair?

12 A. Yes.

13 Q. It was like a zip tie?

14 A. Yeah, I believe they have those plastic  
15 ties, yes, sir.

16 Q. Okay. So at that point, it was of utmost  
17 importance that he be given those rights, is that fair?

18 A. Not at that point. At the point where  
19 I start my interrogation is where he needs to be read  
20 Miranda from my training and experience.

21 If you just come out of a house handcuffed, I  
22 am not going to read him his Miranda rights right then  
23 and there.

24 MS. LUZAICH: Well, Your Honor I am going to  
25 object to that whole line right there because whether or

001478

1 not Miranda is required is a legal issue. It's not an  
2 opinion by the detective, I mean, what the detectives  
3 believes doesn't matter.

4 The bottom line is:

5 Did he or did he not do the right thing legally,  
6 and that's something the Court is going to decide, not  
7 the detective.

8 BY MR. BANKS:

9 Q. You gave him his Miranda rights one time in  
10 this whole interaction?

11 A. I believe so.

12 Q. Okay. And it was when he came out of the  
13 house, and he was in ties, and he was told he was not free  
14 to leave, is that fair?

15 A. Yes, I would have to look at the transcript  
16 of exactly when I read them to him.

17 MR. BANKS: Okay. May I approach?

18 THE COURT: Sure.

19 THE WITNESS: Okay.

20 BY MR. BANKS:

21 Q. Training and experience told you that that  
22 was the right time to communicate those rights to Mr.  
23 Wesley, is that a fair characterization?

24 A. After I made sure he was okay, yes.

25 Q. All right. And you said you believed

001479

1 you were handed a card, and you don't carry a card with  
2 you?

3 A. No.

4 Q. Okay. So it is not like you have one as  
5 you sit here today on you?

6 A. That's correct.

7 Q. On your person?

8 A. Correct.

9 Q. The card exists, and it is very specific  
10 with those rights -- let me back up.

11 That card is very specific with the rights that  
12 are read to the accused, is that fair?

13 A. Yes.

14 Q. Okay. And it's very thorough?

15 A. Yes.

16 Q. Okay. And the card exists so when somebody  
17 doesn't have it all memorized, the card exists so when  
18 somebody doesn't have it all memorized, you say the right  
19 things to the accused, right?

20 A. Yes, sir.

21 Q. And we can agree that's of paramount importance  
22 when you read those rights to somebody, tell them what their  
23 rights are before they start talking, you want to be satisfied  
24 that they know what you are talking about, is that fair?

25 A. Yes, that they understand their rights, yes.

001480

1 Q. And that they understand those rights, is  
2 that fair?

3 A. Yes.

4 Q. Okay. And you want to be comfortable, at  
5 least in your mind, that they are knowingly and intelligently  
6 giving up those rights and talking to you, is that fair?

7 A. Yes.

8 Q. I have been told, you know, that I want --  
9 I want to make sure that he understands his rights, yes.

10 Q. Okay.

11 A. He has a right to know them.

12 Q. Okay. And we can agree on that card, you  
13 have seen the card?

14 A. Yes.

15 Q. You are familiar with the card?

16 A. Yes.

17 Q. We can agree on the card that there is  
18 part of the card that there is a question, do you understand  
19 these rights, and you waive them and give them up.

20 Is that -- is that fair based on what you have  
21 seen on the card?

22 MS. LUZAICH: Objection, that is not the card.

23 THE COURT: Well, we haven't seen the card for  
24 that matter, and I'm not quite sure exactly what your  
25 point is, but we got to get there quicker.

001481

1 BY MR. BANKS:

2 Q. If you know.

3 A. Well, there is various cards.

4 Q. No, I don't. I am talking about the Henderson  
5 one.

6 A. The Henderson one.

7 Q. And if you don't know, you don't know?

8 A. I don't know what the bottom says.

9 Q. Okay. Where -- can you tell me where in  
10 the transcript you clarified it with Mr. Wesley whether  
11 he understood the rights that you read to him?

12 A. After each one I asked Mr. Wesley.

13 MS. LUZAICH: I ask him to just have him read  
14 the rights as he read them that day into the record.

15 THE WITNESS: The first thing that I say is the  
16 first thing is you have the right to remain silent. The  
17 first thing, you have the right to remain silent, do you  
18 understand that?

19 Yes, sir.

20 Anything you say can and will be used against  
21 you in a court of law. Do you understand that?

22 Uh-huh.

23 You have the right to have an attorney present  
24 when I am questioning you if you wish. If you cannot afford  
25 an attorney, one will be appointed to represent you before

001482

1 you answer any questions. Do you understand that?

2 Yeah.

3 MR. BANKS: Okay.

4 THE WITNESS: And any time you can stop answering  
5 these questions.

6 BY MR. BANKS:

7 Q. Okay.

8 And can you show me where in that transcript that  
9 you -- that Mr. Wesley made it clear that he was waiving  
10 and giving up those rights?

11 A. No, it doesn't.

12 I won't ask him about waiving his rights. I asked  
13 him if he understood those rights.

14 Q. Okay. And just so your testimony is clear,  
15 you never did ask him if he waives them and gives them up,  
16 is that fair?

17 A. I just asked him if he -- right, I just asked  
18 him if he understood those rights.

19 Q. Okay. And one more quick question:

20 Did you ever explain to him -- I know you  
21 explained to him he has a right to an attorney before  
22 questioning.

23 Did you ever explain to him that he has the right  
24 to an attorney during questioning?

25 A. No, I said one will be appointed to represent

001483

1 you at no cost to you before any questions. Do you understand  
2 that?

3 And he said: Yes.

4 MR. BANKS: Thank you. That's all I have, Judge.

5 MS. LUZAICH: I just have two.

6 THE COURT: All right.

7 REDIRECT EXAMINATION

8 BY MS. LUZAICH:

9 Q. Detective, did you ever intentionally leave  
10 any information out of your search warrant affidavit?

11 A. No, ma'am.

12 Q. Did you ever intentionally misstate any  
13 information in your search warrant affidavit?

14 A. No.

15 MS. LUZAICH: Thank you, nothing further.

16 MR. LANDIS: No further Recross-Examination.

17 THE COURT: Okay, thank you, Officer. I appreciate  
18 your testimony.

19 THE WITNESS: Thank you, Your Honor.

20 (Witness excused.)

21 THE COURT: Let's take a break until 12:30.

22 And we will come back, and you are going to call  
23 some people, and we are going to wrap this up.

24 We have got 80 people in the jury pool that's going  
25 to get here at one o'clock.

001484

1 And I want to stay on schedule. But I don't have  
2 room for 80 people.

3 THE BAILIFF: We are not going to be able to use  
4 that. So they are going to have to use it.

5 MS. LUZAICH: There are no other courtrooms.

6 THE COURT: Apparently they are doing something  
7 next door. They've got enough seats.

8 MS. LUZAICH: Can we switch with them?

9 THE COURT: I don't know. What's going on with  
10 them?

11 MS. LUZAICH: Is 20 in trial, Wall.

12 THE COURT: What?

13 MS. LUZAICH: Is 20 in trial, Judge Wall's court?

14 THE COURT: We haven't checked.

15 MS. LUZAICH: I mean, check with him, because  
16 that's what Togliatti uses is his courtroom when she has  
17 a big panel.

18 THE COURT: Okay. Anyway let's take a break for  
19 30 minutes.

20 Can everybody eat in 30 minutes?

21 Okay. Let's take a quick break for 30 minutes.  
22 We will be back. We will be in recess until 12:30, and  
23 then do you feel we can get through your witnesses, Mr.  
24 Landis, between 12:30 and one?

25 MR. LANDIS: Short. They should be short. My

001485



1 directs have been short.

2 THE COURT: Fine, very good. All right. We  
3 are in recess.

4 MR. BANKS: Thank you.

5 \*\*\*\*\*

6 (Whereupon, a recess was had until 12:35 p.m.  
7 April 9, 2008. Thereafter, after recess, all parties  
8 present, the following proceedings were had in open  
9 court:)

10 \*\*\*\*\*

11 THE BAILIFF: Everybody remain seated. We are  
12 back in session.

13 THE COURT: Back on the record in the matter of  
14 the State of Nevada v. Narcus Wesley.

15 Mr. Landis, your first witness?

16 MR. LANDIS: We are calling Donna Lamonte.

17 THE COURT: Okay.

18 THE CLERK: Come forward, please take the witness  
19 stand, remain standing, raise your right hand.

20 Whereupon,

21 DONNA LAMONTE,

22 called as a witness herein by the Defendant Wesley,  
23 having been first duly sworn, was examined and testified  
24 as follows:

25 THE CLERK: Thank you very much. You may be

001486

1 seated.

2 Please state your name and spell your first and  
3 last name for the record.

4 THE WITNESS: Donna J. Lamonte, D-o-n-n-a, last  
5 name is L-a-m-o-n-t-e.

6 THE CLERK: Thank you.

7 THE COURT: Go ahead.

8 DIRECT EXAMINATION

9 BY MR. LANDIS:

10 Q. How are you currently employed, Ms. Lamonte?

11 A. I am employed with Nevada Power Company.

12 Q. What do you do there?

13 A. I am a team investigator.

14 Q. What does that job entail?

15 A. Conducting internal investigations,  
16 conducting external investigations, subpoena process is  
17 done in my office. Some prosecution for the company is  
18 put together and submitted.

19 Q. Do you personally sometimes assist or directly  
20 assist in complying with subpoenas?

21 A. Sometimes I do, but it's not my main function  
22 though.

23 Q. Were you employed in that capacity in February  
24 of last year?

25 A. Yes, I was.

001487

1 Q. And I assume that quite a few subpoenas come  
2 across your office desk in the course of a given week or  
3 month, right?

4 A. There was 1,896 last month.

5 Q. You don't remember every one?

6 A. No.

7 Q. The case we are talking about occurred in  
8 February, of 2007.

9 You don't remember the specific details of complying  
10 with this subpoena in this case, do you?

11 A. No.

12 Q. But you, when you do file subpoenas, tend to  
13 follow a procedure or a protocol, correct?

14 A. Yes.

15 Q. And can John Q. Public call you from off the  
16 street and get information about about power records?

17 A. No.

18 Q. Now, does somebody need a subpoena before  
19 you guys hand over information regarding power records?

20 A. You need a subpoena in order to obtain  
21 information, yes.

22 Q. Okay. Are you able to run power records a  
23 variety of different ways?

24 Let me be more clear. Can you draw power records  
25 by name?

001488

1 A. Yes. .

2 Q. Can you run them by Social Security number?

3 A. Yes, I can.

4 Q. And can you run them by address?

5 A. Yes, I can.

6 Q. If a police officer calls you and asks you  
7 for information, is it normal procedure for them to send  
8 you a subpoena?

9 A. Yes.

10 Q. And that would occur before obviously you  
11 give them that information?

12 A. Yes, a subpoena is required.

13 MR. LANDIS: Can I approach, Judge?

14 THE COURT: Yes.

15 MR. LANDIS: Can I approach the witness?

16 THE COURT: Yes.

17 BY MR. LANDIS:

18 Q. I am going to show you State's Exhibit

19 1. In your normal course of business, do you ever receive  
20 that subpoena that has the name and the Social Security  
21 number, which of those items would you use to run a record?

22 A. We would run the Social Security number  
23 first.

24 MR. LANDIS: Okay, the Court's indulgence.

25 THE COURT: Certainly.

001489

1 BY MR. LANDIS:

2 Q. About two weeks ago, did you personally  
3 receive a subpoena from my office?

4 A. Yes, I did.

5 Q. And did you comply with that subpoena?

6 A. Yes, I did.

7 Let me clarify, it wasn't myself. It was the  
8 other gentleman who worked in my office who actually bring  
9 the subpoena.

10 MR. LANDIS: Okay.

11 MS. LUZAICH: Can we get a copy of that?

12 MR. LANDIS: Judge, the State wants me to go  
13 copy this for them.

14 THE COURT: Two copies.

15 MR. LANDIS: Can I approach the witness?

16 THE COURT: Yes.

17 (Whereupon, documents were marked by the Clerk  
18 as Defeandant's Exhibits B and C, respectively.)

19 BY MR. LANDIS:

20 Q. I'm showing you what has been marked as  
21 State's Proposed -- or Defense Proposed B and C.

22 Is B the subpoena that was sent to your office  
23 a week or so ago?

24 A. Yes, it appears so.

25 Q. And is C the information that you provided

001490

1 to comply with that subpoena?

2 A. Yes.

3 Q. What information did I provide you referencing  
4 an individual on my subpoena?

5 Did I provide you with a name?

6 MS. LUZAICH: I object. She didn't get a copy of  
7 your subpoena.

8 THE COURT: Do you want to submit a copy of that?

9 MS. LUZAICH: Yeah, make a copy of that.

10 THE CLERK: Just the subpoena.

11 MR. LANDIS: Two pages, Judge.

12 THE COURT: There you go. Thank you.

13 BY MR. LANDIS:

14 Q. I provided you with a name on that subpoena,  
15 correct?

16 A. Yes.

17 Q. And what is that name?

18 A. Narcus Wesley.

19 Q. And without saying the full Social Security  
20 number, did I provide with you a Social Security number on  
21 that subpoena?

22 A. Yes, you did.

23 Q. Could you tell us the last four digits?

24 A. 8230.

25 Q. Okay. And running that subpoena, turning

001491

1 to the State's -- or Defense Proposed C, was there any  
2 power records referencing Narcus Wesley?

3 A. Yes, there was.

4 Q. Before I ask you the next question, what  
5 dates did I ask you to run referencing Narcus Wesley?

6 A. You gave me the parameters of January 1,  
7 2006 through December 31, 2007.

8 Q. And did Narcus Wesley have power at any  
9 address in Clark County during that time?

10 A. Yes, he did.

11 Q. How many addresses?

12 A. One.

13 Q. What was that address?

14 A. The address was 1915 Simmons Street, building  
15 25, unit 2175.

16 Q. Were you able to determine the dates that he  
17 had power at that address?

18 A. Yes, and they were provided.

19 Q. And what were those dates?

20 A. He moved in on January 1 -- or excuse me,  
21 January 3, 2007, and he moved out on September the 12th,  
22 2007.

23 MR. LANDIS: Okay. I move for the admission of  
24 Defense B and C.

25 THE COURT: Any objection?

001492

1 MS. LUZAICH: No.

2 THE COURT: Defense Exhibits B and C are admitted.

3 MR. LANDIS: May I approach the witness?

4 THE COURT: Yes.

5 MR. LANDIS: I have nothing further.

6 CROSS-EXAMINATION

7 BY MS. LUZAICH:

8 Q. Is it possible for a police officer to call  
9 you and say, I have an emergency, I need to know if this  
10 person has power. I will get you a subpoena as soon as we  
11 hang up?

12 A. In an emergency situation, an officer can  
13 call, but they are instructed and do know ahead of time  
14 that the subpoena needs to be obtained in order to achieve  
15 the information they are requiring.

16 Q. Right.

17 So is it possible that Detective Weske called  
18 you, and said I have an emergency situation, sexual assault  
19 with a weapon, robbery with a weapon, I am looking for  
20 power under the name of Narcus Wesley, and I will send  
21 you a subpoena as soon as we hang up. Is it possible that  
22 you would have sent him information?

23 A. It is possible.

24 Q. Okay. And is it possible that you would  
25 have sent him, or told him over the phone Narcus Wesley

001493



1 has at X address, and this is his Social Security number  
2 so that he could include the correct Social Security number  
3 on the subpoena that he sent to you?

4 A. Is it possible?

5 Q. Yes.

6 A. Normally, they would call up the office and  
7 express what the emergency is.

8 Q. Right. I just told you it was possible --

9 A. (Interposing) Right, and he expresses what  
10 the emergency is, and a subpoena was on its way, yes, we  
11 would be able to communicate information.

12 Q. Right. So is it possible that you answered  
13 his request saying, yes, Narcus Wesley has power at such  
14 and such address, and this is his Social Security number,  
15 so that the detective could include the Social Security  
16 number in the subpoena that he sent to you?

17 A. I suppose it could be possible.

18 Q. Okay.

19 Now, have you seen any documents that indicate  
20 that you did send Detective -- or that Detective Weske did  
21 have a conversation with you?

22 A. Can you say that again?

23 Q. Can I have the other exhibit?

24 THE COURT: They are all up there. There is the  
25 one that had the handwritten notations on that fax, right,

001494

1 or whatever it was?

2 BY MS. LUZAICH:

3 Q. Okay.

4 I am showing you State's Exhibits 1, 2, 3, 4, and  
5 it's random order, don't worry about the numbers. Does any  
6 of that look familiar?

7 A. Well, this is what I saw a minute ago.

8 Q. No. You haven't seen that yet in this  
9 courtroom.

10 MR. LANDIS: I did show her State's --

11 MS. LUZAICH: Oh, you showed her ours? Oh, I'm  
12 sorry. Okay, I'm sorry, I'm sorry.

13 THE WITNESS: But I didn't see the attachments  
14 here.

15 BY MS. LUZAICH:

16 Q. Right.

17 Could this be your -- I am pointing you to State's  
18 Exhibit 2.

19 Could that be your handwriting?

20 A. That is my handwriting.

21 Q. Okay. So do you believe that you sent this  
22 to Detective Weske?

23 A. Yes.

24 Q. Pursuant to that subpoena, Number 1?

25 A. Involving that subpoena, yes.

001495

1 Q. Okay.

2 Q. And on the subpoena, it asks for Narcus Wesley,  
3 correct?

4 A. Correct.

5 Q. And it gives the essential Social Security  
6 number?

7 A. Correct.

8 Q. And so in response you did not send him  
9 Narcus Wesley information but you just discussed on Direct  
10 Examination.

11 Instead you sent him this (indicating)?

12 A. I sent him the information that involved  
13 the Social Security number that was provided on that  
14 subpoena.

15 Q. Okay.

16 Is there a reason that you would not have sent  
17 him this information that corresponded to the name?

18 A. We first run the Social Security number,  
19 and if there is a hit on it, that is the information that  
20 we provide.

21 If we notice that there is some differentiating  
22 information between what the subpoena is and what the  
23 information we are running is, sometimes people use their  
24 middle name as their first name.

25 We will note that on the subpoena so the officer

001496

1 or the office, whoever is subpoenaing the information, is  
2 aware that there is some discrepancies in the information.

3 Q. Okay.

4 But what you did was you sent him the information  
5 pertaining to the Social Security number?

6 A. Correct.

7 Q. And said the name is different, as opposed  
8 to sending the information pertaining to the name?

9 A. Right, because I ran the Social Security  
10 number, and there was a hit and a match on that.

11 Q. Okay.

12 And this says, and I am talking again about  
13 Exhibit 2, where your handwritten individual's name is  
14 different, it says: "Move in 11/1/06."

15 A. Correct.

16 Q. But does that say that anywhere on here?

17 A. No, that is information that's printed  
18 out. It is always handwritten in. There isn't a screen  
19 that says and in-out date. That is always handwritten  
20 on the subpoena.

21 And if there is an in date, and it's stamped,  
22 "active", obviously there is not an out date because  
23 it's still a current surveyu.

24 MS. LUZAICH: Okay. The Court's indulgence  
25 one second.

001497

1 Q. Is it possible that Detective Weske also  
2 told you, I'm looking for or asked you to look under an  
3 address, Valley Lane, Valley Avenue, Valley something,  
4 or other?

5 A. It is possible, but I don't remember.

6 Q. And you said that the power was off on  
7 Valley Lane under that name but turned on immediately  
8 thereafter on Gay Lane, and that was the information  
9 you sent to him?

10 A. Possible, but I don't remember.

11 Q. Because you have 1,900 subpoenas every  
12 month over the last year?

13 A. Well, 1,900 just last month.

14 Q. Right, just for the last month over the  
15 last year?

16 A. Yeah.

17 THE COURT: Can I -- can I ask her a question?

18 MS. LUZAICH: Can you? Of course. It is your  
19 court.

20 BY THE COURT:

21 Q. So is this a likely or a possible scenario  
22 that you are on the phone with the detective, who is  
23 requesting some information and telling you that a subpoena  
24 will follow. He gives you a name, a social, do you have  
25 power in that name, and maybe you even have an address,

001498

1 and you could immediately look up the name, the address  
2 the social, however you are going to do it, but you could  
3 do it all three ways couldn't you?

4 THE WITNESS: Yes I could.

5 THE COURT: So you have a name, you have the  
6 social, you have an address. Whatever would be the  
7 easiest way, your computer will tell you immediately  
8 while you are on the telephone at that address and that  
9 name, and that Social Security, there is no power at that  
10 address in that name with that Social Security.

11 But you would also be able to tell immediately  
12 that there is power in that name, maybe with a different  
13 Social Security and a different address, that coincided  
14 with the out date, and the in date at the new address.

15 Can you tell all that information immediately  
16 while you are on the telephone?

17 THE WITNESS: I can see an out date when somebody  
18 moves, yes, I can, instantly when I pull up the record.

19 THE COURT: Okay.

20 THE WITNESS: With some research.

21 THE COURT: Right. And you are obviously putting  
22 in different information into the computer, but it gives  
23 you immediate feedback, and it tells you all this?

24 THE WITNESS: Yes, it does.

25 THE COURT: So even in a short conversation with

001499

1 till the time they left, did number two ever express that  
2 he was surprised about what was going on?

3 A. No.

4 Q. Did he ever say Delarian, what the hell  
5 are you doing?

6 A. No.

7 MR. BANKS: Judge, I am going to object, and  
8 here's why.

9 Two grounds:

10 One, this is argumentative.

11 And two, it's leading. She needs to ask what  
12 did number two say?

13 MS. KOLLINS: Just because it's a yes or no  
14 question does not mean it's leading.

15 MR. BANKS: It's argumentative. That's why  
16 there is two grounds for the objection.

17 THE COURT: Come up here, counsel, approach  
18 the bench.

19 (Whereupon, a brief, informal discussion was  
20 had at the bench between the Court and counsel.)

21 THE COURT: All right. Go ahead.

22 BY MS. KOLLINS;

23 Q. So, Justin, the answer to my question  
24 would be no, number one never expressed any surprise  
25 as to what was going on, like what's going on here?

1           What are we doing with these kids?

2           A.    You mean number two?

3           Q.    Yes, excuse me, number two?

4           A.    Yes.

5           Q.    Never expressed any surprise as to what  
6   number one was commanding or asking for?

7           A.    That's correct.

8           Q.    Mr. Landis asked you about a statement  
9   you made describing number two while number one was gone  
10   with Ryan, and that statement was Narcus didn't mean  
11   nothing.

12           Do you remember him asking you those questions?  
13   Did you answer that?

14           A.    Yeah.

15           MR. LANDIS: Judge, I am going to object to  
16   the characterization that it was while they were at the  
17   ATM.

18           THE COURT: Just rephrase it. Make sure that  
19   it's clear.

20           MS. KOLLINS: Well that's -- on page five,  
21   and that's the page Mr. Landis just cross-examined him  
22   about, about his statement, he was describing the time  
23   that -- I can have him read the whole paragraph.

24           THE COURT: Just go ahead. Just restate it  
25   so we have a clear gist of what it was in the statement.



1 BY MS. KOLLINS:

2 Q. Do you still have a copy of your statement  
3 in front of you?

4 A. No, I don't.

5 MS. KOLLINS: May I approach, Judge?

6 THE COURT: Yes. Do you know which page she  
7 is referring to?

8 MR. LANDIS: Yes, Judge.

9 THE COURT: Okay.

10 BY MS. KOLLINS:

11 Q. I am referring to page five, if you  
12 could just read that second big paragraph to yourself,  
13 Justin.

14 The statement to the police officers, page  
15 five.

16 A. Okay.

17 Q. Would I be accurate in my characterization  
18 that you were talking about the period of time where  
19 number one was gone to the ATM with Ryan?

20 A. Yes.

21 Q. And was that where you were talking about  
22 there?

23 A. Yes.

24 Q. In that paragraph?

25 A. Yeah, I am talking about when he was gone.

1 Q. Okay. And that's where you used the  
2 phraseology, "Narcus didn't mean nothing."

3 A. Yeah.

4 Q. "He was just there."

5 Now, just prior to them departing, number one  
6 had said, if anybody moves, shoot them?

7 A. Yes, that's correct.

8 Q. Okay. And what was number two's response  
9 to that?

10 A. He said, yeah, if anybody moves, I will  
11 shoot you.

12 Q. Okay. So you had no way of knowing what  
13 was in his head or what he meant, did you?

14 A. No, I didn't.

15 Q. Mr. Lapdis asked you questions about  
16 describing number two as hesitant and not the one in  
17 charge. Do you remember those questions a few minutes  
18 ago?

19 A. Yes.

20 Q. Did you ever hear, and I may have previously  
21 asked you this but I don't recall any heated commands by  
22 number one to number two?

23 A. No.

24 Q. Any heated discussion between number one  
25 and number two?

1 A. No.

2 Q. Did you hear number one express any anger  
3 at number two or force him to do anything?

4 A. No.

5 Q. Did you hear number one hold a gun on  
6 number two during the course of any of these events?

7 A. No.

8 Q. All of the commands that were given in your  
9 room by number one, right, turn the light off, get up, put  
10 your hands on your head, all those things that Mr. Landis  
11 went through?

12 A. Yes.

13 Q. Number two was never in that room?

14 A. No, he wasn't.

15 Q. Where was number two?

16 MR. BANKS: Speculation, object.

17 MS. KOLLINS: If you know.

18 THE COURT: Overruled. The best -- your best  
19 recollection, use that, that's fine.

20 MR. LANDIS: Judge, just to be clear, she asked  
21 where was number two when he was in the bedroom.

22 MS. KOLLINS: Well, I can clarify it.

23 THE COURT: Okay. I think he already testified  
24 where everybody was.

25 Go ahead.

1 THE WITNESS: Well, he wasn't in the bedroom.  
2 I didn't know he was even anywhere else.

3 BY MS. KOLLINS:

4 Q. At that time you didn't know about number  
5 two?

6 A. I didn't know.

7 Q. But you soon learned about number two?

8 A. Yes.

9 Q. And he was out where?

10 A. Just out in the living room, front door  
11 entrance, right there.

12 Q. Where the rest of your friends lay face  
13 down on the floor?

14 A. Yes, kind of more in front of the door  
15 kind of.

16 Q. Divide and conquer?

17 A. Yeah.

18 MR. LANDIS: Objection.

19 THE COURT: Sustained.

20 BY MS. KOLLINS:

21 Q. And again, while writing this down, did  
22 number two ever show you guys where the back door was  
23 or --

24 A. No.

25 Q. Or ask you to leave?

1 A. No.

2 Q. Did he ever go out the front door?

3 MR. BANKS: Same objection, Judge, I mean,  
4 it's argumentative.

5 THE COURT: C'mon, let's move this along.

6 Counsel, come on.

7 BY MS. KOLLINS:

8 Q. During the course of the commands being  
9 made for each of you and Danielle to change sexual  
10 positions, and change things that were going on, the  
11 mutual oral sex, the cunnilingus, the fellatio, what,  
12 if anything, did you hear from number two in the  
13 background?

14 A. What I heard him say during all that  
15 was just let me do it. I can do it.

16 The same, basically, I couldn't, you know,  
17 if he can't do it, let him do it.

18 Q. Did he make any more specific reference  
19 to what it was?

20 A. Have sex. He used different words but --

21 Q. Can you use his words for us here today,  
22 Justin?

23 A. Yes, he said, "I'll F her."

24 Q. I'll fuck her?

25 A. Yeah.

1 Q. Okay.

2 Did you hear any other sexual comments that  
3 number two made to Danielle?

4 A. No, I didn't.

5 Q. Why did you, and Clint, and Justin Foucault,  
6 and Aitor, and Danielle not get up and leave when number  
7 one left with Ryan Tognotti?

8 A. They said they would shoot us. We thought  
9 he had a gun. The best we knew he had a gun.

10 Q. Did you believe number two when he said he  
11 had a gun?

12 A. Yes.

13 MR. LANDIS: Objection, Judge, there has never  
14 been a shred of testimony that he ever said he had a gun.

15 THE COURT: Well, I am going to sustain that.  
16 There is a reference to him shooting. I think that was  
17 the actual reference.

18 BY MS. KOLLINS:

19 Q. Did -- while number one was gone, did  
20 number two ever come to you and say, calm down, I don't  
21 have a gun?

22 MR. LANDIS: We are going to reraise that  
23 question, he gave us the leeway. There has got to be  
24 a point that --

25 THE COURT: Well, this is overruled.

1 BY MS. KOLLINS:

2 Q. Could you answer my question?

3 A. Oh, I'm sorry.

4 THE COURT: That's all right. Go ahead and  
5 answer.

6 THE WITNESS: Okay.

7 BY MS. KOLLINS:

8 Q. Did number two ever say to you, don't  
9 worry, guys, it's cool. I don't really have a gun?

10 MR. BANKS: Same objection, Judge, argumentative.

11 THE COURT: Overruled.

12 MR. BANKS: She can ask what did he say. It's  
13 also leading.

14 THE COURT: Overruled. Go ahead. You can answer  
15 that.

16 THE WITNESS: No, he never said anything.

17 BY MS. KOLLINS:

18 Q. Okay. He never said anything about not  
19 having a gun?

20 A. Right.

21 MR. BANKS: Misstates his testimony. He said  
22 he never said anything.

23 THE WITNESS: Towards that.

24 THE COURT: Ask the question again. Make sure  
25 it's clear what you are asking.

1 BY MS. KOLLINS:

2 Q. While number one was gone with Ryan to the  
3 ATM, and you guys were all on the floor, and number two  
4 was in the living room there, did number two ever during  
5 that 15, 20 minute period of time tell you kids face down  
6 on the floor, hey, don't worry, I don't have a gun or I  
7 don't really have a gun?

8 MR. BANKS: Same objection, argumentative.

9 THE COURT: Overruled. Let her finish asking  
10 the question.

11 MR. LANDIS: Judge, he has already testified  
12 to every single word that was said at the ATM.

13 THE COURT: All right, listen.

14 MR. BANKS: Asked and answered.

15 MS. KOLLINS: I didn't ask him at the time.

16 MR. BANKS: On a third ground why it's not  
17 appropriate, asked and answered.

18 MS. KOLLINS: It has never been answered.

19 THE COURT: No, and I agree with you. You  
20 got to -- I want her to be able to ask the question  
21 uninterrupted before you object, then you can object,  
22 then I will rule, and he will answer if that's what  
23 the ruling is. Let her finish her question first.

24 MR. BANKS: Yes, sir.

25 BY MS. KOLLINS:



1 Q. Okay. 'We are going to try this one more  
2 time, Justin.

3 During the 20 minutes span of time that number  
4 one was gone to the ATM with Ryan Tognotti, and number  
5 two was left with you and Aitor, and Danielle, and Justin  
6 Foucault, and Clint, did number two express to you kids  
7 that he didn't have a gun or didn't have -- that he really  
8 didn't have a weapon or a gun?

9 A. No.

10 MR. BANKS: Object.

11 THE COURT: Wait, let's hear your objection.

12 MR. BANKS: My objection is on the following  
13 grounds:

14 One, it's argumentative.

15 Two, it has been asked and answered.

16 Three, this is redirect, and it's leading.

17 Four, you have given her some leeway, and she  
18 has gone far beyond that leeway.

19 This is -- this is not proper. If she wants  
20 to raise these arguments in some sort of a closing  
21 argument instead of testifying, she is allowed to do  
22 that.

23 But to ask this form of this argumentative  
24 question on redirect is not appropriate, and I object.

25 THE COURT: Objection noted. It is going

1 to be overruled. I don't think, but this is the last  
2 question along these lines.

3 If you have any more, move along to something  
4 else.

5 I am going to let you ask the question, I will  
6 let him answer the question, and then we are going to  
7 move on.

8 MS. KOLLINS: Okay.

9 THE COURT: What was the answer?

10 THE WITNESS: No.

11 THE COURT: Okay.

12 BY MS. KOLLINS:

13 Q. You testified on direct, and it got a  
14 little fuzzy on cross. I just want to ask you the  
15 question again.

16 When you walked into the living room, did you  
17 see something in number two's hands, whether you know it  
18 to be a gun or not?

19 A. Yes.

20 MS. KOLLINS: No more questions, Judge.

21 THE COURT: Okay. Anything else?

22 MR. LANDIS: No questions, Judge.

23 THE COURT: Okay. Thank you very much for  
24 your testimony, I appreciate it.

25 You can go ahead and step down.

1 MR. LANDIS: One more question, Your Honor.

2 THE COURT: One more? I'm sorry, I thought you  
3 said no more.

4 RECROSS-EXAMINATION

5 BY MR. LANDIS:

6 Q. What statement came first, Justin? I can  
7 do it, let me do it?

8 Or if somebody doesn't perform, I am going to  
9 start shooting people?

10 A. I am going to start shooting people.

11 MR. LANDIS: Nothing further, Judge.

12 THE COURT: Okay. Is that it?

13 MS. KOLLINS: Yes.

14 THE COURT: All right. That's fine.

15 THE WITNESS: Thank you.

16 THE COURT: Thank you for your testimony.

17 You will be excused, and if it's necessary  
18 to make arrangements to have you come back, we'll let  
19 you know, but I don't think we will.

20 THE WITNESS: Okay.

21 THE COURT: Okay?

22 THE WITNESS: Thank you, I appreciate it.

23 THE COURT: Thank you very much.

24 (Witness excused.)

25 THE COURT: Okay. Now, we will have to decide

1 what we are going to do here.

2 MS. LUZAICH: May we approach?

3 THE COURT: Sure.

4 (Whereupon, a brief, informal discussion was  
5 had at the bench between the Court and counsel.)

6 THE COURT: There is really no sense in starting  
7 this next witness because we are not going to get done.

8 I kind of have told everybody, and I think I may  
9 have mentioned that to you, that it is Friday afternoon.  
10 We aren't going to go late like we may do on Monday, or  
11 next Tuesday, but that being the case, there is no sense  
12 to starting the next witness, and then stopping, and not  
13 having some continuity.

14 So we will eliminate that problem. We are just  
15 going to go ahead and take our recess until Monday morning,  
16 about five minutes till 10 on Monday morning.

17 I am going to ask you to reconvene, and you are  
18 going to meet Joe, and he is going to be taking you to the  
19 jury deliberation room.

20 Now, this is going to be a weekend break. You  
21 are going to have, you know, the rest of Friday, and Saturday  
22 and Sunday.

23 It is going to be real important that you pay  
24 attention to not doing any of the things that I tell you  
25 repeatedly not to do, which is, basically, is do not talk

001413

1 about this case.

2 Do not converse with anybody about this case.

3 Don't do anything that I have been telling you  
4 not to do, like looking anything up.

5 Do not read, or watch, or listen to any reports  
6 or commentaries on anything to do with this case, or anybody  
7 having anything to do with this case.

8 I don't want you to neither watch nor listen to  
9 any reports or commentaries from the newspapers, radio,  
10 television, or internet.

11 Don't form or express any opinion of any sort  
12 about any subject having to do with this case, or any person  
13 having anything to do with this case until this case has  
14 been finally submitted to you, okay?

15 I will see you Monday morning at five minutes  
16 till 10, okay?

17 We are off the record.

18 (Discussion off the record.)

19 (Whereupon, a recess was taken until the morning  
20 of April 14, 2008.)

21 \*\*\*\*\*

22 (End of Volume III, April 11, 2008.)

23 \*\*\*\*\*

24

25

## CERTIFICATE

STATE OF NEVADA )  
 ) ss.  
CLARK COUNTY )

I, LEE M. BAHR, CP, CCR 173, do hereby certify that I reported the foregoing proceedings; that the same is true and correct as reflected by my original machine shorthand notes taken at said time and place before the Hon. James M. Bixler, District Judge, presiding.

Dated at Las Vegas, Nevada, this  
5th of December, 2008.

  
LEE M. BAHR, CP, CCR 173

30

ORIGINAL FILED

Dec 5 11 16 AM '08

*E. M. Bahr*  
CLERK OF THE COURT

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF CLARK  
THE HON. JAMES M. BIXLER, DISTRICT COURT JUDGE, PRESIDING

THE STATE OF NEVADA,  
Plaintiff,

v.

NARCUS S. WESLEY,  
aka NARCUS SAMONE WESLEY,  
Defendant.

Case No. 07-C-232494-C  
Dept. 24  
Volume I

TRANSCRIPT OF PROCEEDINGS

JURY TRIAL

COURTHOUSE

April 9, 10 and 11, 2008

Las Vegas, Nevada

Reported by:

Lee M. Bahr, CP, CCR 173

CLERK OF THE COURT

RECEIVED  
DEC 05 2008

1 APPEARANCES:

2  
3 For the State:

LIZA LUZAICH, ESQ.  
Chief Deputy D. A.  
200 Lewis Ave.  
Las Vegas, NV. 89155  
and

6 STACY L. KOLLINS, ESQ.  
Chief Deputy D. A.  
200 Lewis Ave.  
Las Vegas, NV. 89155

8  
9  
10 Defendant present in court out of custody.

11 For the Defendant:

CASEY LANDIS ESQ.  
Deputy P. D.  
Las Vegas, NV.  
and

13 JEFFREY BANKS, ESQ.  
Deputy P. D.  
Las Vegas, NV.

14  
15  
16  
17  
18  
19  
20 No other appearances.

21  
22 \*\*\*\*\*  
23  
24  
25



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

# Index of Witnesses

NAME OF WITNESS	Page
Detective Curtis Allen Weske	
Direct Examination by Ms. Luzaich...	7
Cross-Examination by Mr. Landis...	40
Cross-Examination by Mr. Banks...	60
Redirect Examination by Ms. Luzaich...	68
Donna Lamonte	
Direct Examination by Mr. Landis...	71
Cross-Examination by Ms. Luzaich...	77
Redirect Examination by Mr. Landis...	87
Narviez Wesley	
Direct Examination by Mr. Landis...	89
Cross-Examination by Ms. Kollins...	95
Angela Wesley...	
Direct Examination by Mr. Landis...	97
Narcus Wesley	
Direct Examination by Mr. Landis...	99
Cross-Examination by Ms. Luzaich...	100
*****	
After Jury Selection, the following witnesses were called by the State on 4/11/08 as follows:	
Opening Statement by Ms. Luzaich...	609
Opening Statement by Mr. Landis...	626
DANIELLE BROWNING	
Direct Examination by Ms. Luzaich	639
Cross-Examination by Mr. Banks...	678
Redirect Examination by Ms. Luzaich...	696
Recross-Examination by Mr. Banks...	701

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

Index of Witnesses (page 2)

Name of Witness	Page
Justin Richardson	
Direct Examination by Ms. Kollins...	704
Cross-Examination by Mr. Landis...	762
Redirect Examination by Ms. Kollins...	784
Recross-Examination by Mr. Landis...	798

\*\*\*\*\*

## TRANSCRIPT OF PROCEEDINGS

(Whereupon, on April 9, 2008, the hearing on Defendant's Motion to Suppress was heard by the Court as follows:)

THE COURT: This is the time set for the State of Nevada v. -- this is Wilson, Delarion Wilson?

MS. LUZAICH: Wesley.

MR. LANDIS: Wesley.

THE COURT: Excuse me, Narcus Wesley, sorry.

All right. This is your motion to suppress, correct?

MR. LANDIS: Correct, Judge.

THE COURT: And I think that we have reached the point where we are going to call a detective, isn't that correct?

MR. LANDIS: Yes, Judge.

THE COURT: There is only one witness, right?

MR. LANDIS: No.

THE COURT: There is more than one witness. You are going to call a couple?

MR. LANDIS: Yes.

THE COURT: Okay.

THE COURT: The first witness then is?

1 MS. LUZAICH: First, Judge, I -- this all  
2 arises out of the service of the search warrant, and  
3 there is at least one individual here that was present  
4 during the service of the search warrant that I think  
5 should not be in the courtroom during the testimony.  
6 That would be the Defendant's mother, who is walking  
7 out of the room right now.

8 I don't know who the individual in the orange  
9 shirt is, but I am told that one of the Defendants and  
10 his mother and father were present.

11 MR. LANDIS: Two things, Judge.

12 One, I don't intend to call her as a witness.

13 Two, his stepmother was there. His biological  
14 mother, who that was, was not there during the search  
15 warrant. I do think they have a right to be here this  
16 morning.

17 THE COURT: Yes, if they aren't -- if they are  
18 not potential witnesses, they can, absolutely.

19 If they are potential witnesses, step outside.

20 Anybody that is a potential witness in regards  
21 to this case, and in specific, specifics, search the  
22 issuance -- the search, the actual search warrant as  
23 execution on the residence at -- what was the address?

24 MS. LUZAICH: Gay Lane, 1450 Gay Lane.

25 THE COURT: All right. Anybody who is a potential

1 witness in regards to that incident may step outside.

2 MR. LANDIS: And I can assure this Court that  
3 the witnesses I do intend to call have been asked to stay  
4 outside.

5 THE COURT: That's fine, all right. So --

6 MR. BANKS: And, Judge, I am going to tell mom  
7 that it is okay for her to be in here.

8 THE COURT: Sure, yeah, absolutely.

9 MR. BANKS: Thank you.

10 THE COURT: Absolutely. All right. We are going  
11 to call the detective, right?.

12 MS. LUZAICH: That's right. The State calls  
13 Curtis Weske.

14 THE CLERK: Come forward, sir.

15 Take the witness stand. Remain standing and  
16 raise your right hand,  
17 Whereupon,

18 DETECTIVE CURTIS WESKE,  
19 called as a witness herein by the State, having been  
20 first duly sworn, was examined and testified as follows:

21 THE CLERK: Thank you very much.

22 Please state your name, spell your first and  
23 last name for the record.

24 THE WITNESS: My name is Curtis Allen Weske,  
25 first name is C-u-r-t-i-s. The last name is W-e-s-k-e.

1 THE CLERK: And your middle name is A-l-a-n  
2 or A-l-l-e-n?

3 THE WITNESS: A-l-l-e-n.

4 THE CLERK: Thank you.

5 THE COURT: Go ahead.

6 DIRECT EXAMINATION

7 BY MS. LUZAICH:

8 Q. Sir, are you a police officer with the  
9 Henderson Police Department?

10 A. Yes, I am.

11 Q. How long have you been so employed?

12 A. Since August 30, of 1999.

13 Q. Of 1999?

14 A. Yes.

15 Q. And were you a peace officer before coming  
16 to the Henderson Police Department?

17 A. Yes, I was.

18 Q. And where was that?

19 A. In Juneau, Alaska.

20 Q. For how long were you a police officer  
21 there?

22 A. Almost five years.

23 Q. And while you were in Alaska, were you a  
24 patrol officer or were you a patrol officer and something  
25 else?

1 A. A patrol officer.

2 Q. Okay.

3 When you came to the Henderson Police Department,  
4 did you get in as a patrol officer?

5 A. Yes, I did.

6 Q. And did you become something else as well?

7 A. Yes.

8 Q. What else did you do?

9 A. I worked on the ATF Fighting Crime Task Force  
10 for a little while I was in the property section of the  
11 bureau. I went to robbery and major crimes, and now I  
12 am in what they call the Intel/Working to Target Repeat  
13 Offenders and gathering intelligence.

14 Q. Okay. Specifically, in February, of 2007,  
15 where were you assigned?

16 A. Major crimes.

17 Q. And the weekend of February like 17, 18,  
18 19, around there, was that what you believed to be All  
19 Star Weekend with NBA and their Allstar game?

20 A. Yes.

21 Q. And did you or were you asked to participate  
22 in an investigation of several offenses that occurred late  
23 at night, Sunday night, February 19, 18, whatever the Sunday  
24 night was was on Great Game Night?

25 A. Yes, ma'am.

1 Q. How was it that you particularly got involved?

2 A. Sergeant Dunaway called and asked me to  
3 respond to an apartment complex.

4 Q. Where was the the apartment complex that you --  
5 oh, and did you respond? Sorry.

6 A. I believe it was 2101 Warm Springs, Warm Springs  
7 is in the Green Valley area.

8 Q. Okay. That would be Henderson, Nevada, right?

9 A. Yes.

10 Q. And when you went to the Warm Springs  
11 Apartments, was that late at night, early in the morning?

12 A. Early in the morning.

13 Q. When you got there, were there other police  
14 officers already there?

15 A. Other police officers or other detectives,  
16 yes, ma'am.

17 Q. A lot of them, correct?

18 A. Yes.

19 Q. And were there also some young kids that  
20 you believed to be victims that were also there?

21 A. Yes, they were up in the apartment, I  
22 believe.

23 Q. And I swear when I say, "young kids",  
24 anybody younger than me is a young kid.

25 Did you personally contact with any of those



1 kids at that time?

2 A. No, I didn't.

3 Q. Was there a detective that was kind of in  
4 charge of the investigation at that point?

5 A. Yes, there was.

6 Q. Who was that?

7 A. Detective Niswonger.

8 Q. And could you spell for our wonderful court  
9 reporter Niswonger?

10 A. I believe it's N-i-s-w-o-n-g-e-r.

11 Q. If not, it's close enough, right?

12 A. Yes.

13 Q. Okay. And is it your understanding that  
14 Detective Niswonger kind of assigned certain tasks to  
15 certain detectives?

16 A. Yes.

17 Q. And is it your understanding that certain  
18 detectives were assigned to interview the victims of the  
19 offenses?

20 A. Yes.

21 Q. And that other detectives were asked to  
22 go find and do things?

23 A. Yes.

24 Q. And were you one of the detectives that  
25 were asked to go find and do things?

1 A. Yes.

2 Q. Did you find out the things by yourself  
3 or with somebody else?

4 A. With Detective Hartshorn, who was assigned  
5 to -- basically, we were riding together.

6 Q. And could you spell his name for the court  
7 reporter?

8 A. H-a-r-t-s-h-o-r-n, I believe. I believe  
9 that is right.

10 Q. Okay. And what were you and Detective  
11 Hartshorn assigned to do?

12 A. The first thing we were assigned to do is  
13 because information was passed on that they had went to  
14 two banks, were forced to take out money so they just  
15 tried to get ahold of the bank. They knew it was early  
16 in the morning, but there is numbers on the bank that  
17 we could call and try to get video surveillance lockdown.

18 Q. Okay.

19 Now, just for the record, and I'm not offering  
20 this for the truth, I'm just offering it to lay a foundation,  
21 and for purposes of what it was, what was your understanding  
22 of the offenses that had occurred?

23 A. One of the subjects had taken one of the  
24 victims around in a vehicle with a gun pointed at them and  
25 made them use their ATM card in the drive-through lanes,

1 and taken out money.

2 So we knew that most of these cams have cameras  
3 on there, so they were wanting to see, you know, if they  
4 can get that transaction lockdown and see if we could get  
5 photos.

6 Q. Okay.

7 And you talked about one suspect. How many  
8 suspects is it your understanding that there were?

9 A. I was told that there was two.

10 Q. And was there a description of the suspects  
11 given to you, generic descriptions?

12 A. Two black males, and one was taller and one  
13 was shorter.

14 Q. Okay. And in addition to going to the ATM,  
15 what else was your understanding?

16 A. As far as the crime?

17 Okay. I was told that they went into a house,  
18 held them at gunpoint, put them down at gunpoint, took  
19 one of them to the ATM to get cash. They wanted money.

20 And then after that, they attempted to make  
21 her perform sex on each other, and then actually one of  
22 them, or both of them may have touched one of the females  
23 when they couldn't perform sex. I asked for a guy named  
24 Grant.

25 It all happened at 690 Dane, and that's, based

1 on what we had at that point, it was kind of generic because  
2 they were still in the middle of the interviews, they were  
3 getting the sexual assault detectives to do what they were  
4 trained to do the interviews on that, and so then that's  
5 when we were assigned to go the first thing we were assigned  
6 to do at the bank.

7 Q. And when you were assigned to investigate  
8 the angle of the bank, did you have any idea who the suspects  
9 were other than that they were black males?

10 A. No.

11 Q. Okay. So, when you were assigned to investigate  
12 the bank, and go, what exactly did you do?

13 A. When I went to the bank, at that point all I  
14 had to do was get the numbers, and I got a recording on one --  
15 I can't remember which one -- and then the other one I talked  
16 to somebody, and said, hey, this is about the time it occurred  
17 but we would like it from this time, I think it was about  
18 midnight until five in the morning, and this probably was  
19 the number one lane, if you could just freeze everything,  
20 you should have a black male and a white male in the front  
21 seat, and I believe at that time they gave me the victim's  
22 name that used the ATM card.

23 I can't remember what his name was, but I believe  
24 I said this could be the account number that it was.

25 Q. Okay. Was the bank -- at the time that you

1 were specifically contacting the bank, was the bank open  
2 yet?

3 A. No, it was closed. It was just like an  
4 answering service that we used to check in on it, and then  
5 after that I had no more dealings with the bank.

6 Q. Okay. And about what time of the day was  
7 that?

8 A. Probably five o'clock in the morning, five,  
9 six o'clock in the morning. I think I got to the scene  
10 about three, something like that.

11 Q. Okay.

12 So after you called and left messages for the bank,  
13 what did you do?

14 A. After that the sergeant, Sergeant Dunaway  
15 said, hey, let's go up to 690 Great Dane. We want to get  
16 our crime scene continuum there so we need to clear the  
17 residence, we have got a protocol to make sure nobody else  
18 is in there. So that's what we did. We proceeded to 690  
19 Great Dane.

20 Q. Okay. And when you were at 690 Great Dane,  
21 did the crime scene come?

22 A. Yes, they did.

23 Q. And did they go in and do whatever it is  
24 that they do?

25 A. Yes, they did.

1 Q. Did you stay there the whole time at the  
2 crime scene or did you go do something else?

3 A. No, while they were in there, we knocked  
4 on doors to see if we could get any information which  
5 nothing really panned out, and then we looked up because  
6 we knew it was a rental, and we thought, okay, then maybe  
7 we would try to find where the renter lived before, so we  
8 had our laptop, and I think it was Hartshorn who looked  
9 up Clark County Assessor's file, looked up 690 Great Dane,  
10 and it came back to Victor Michalak, I'm not sure I'm  
11 saying it right.

12 But -- and he lived up near there in Southern  
13 Hills. So at that point we went up there and knocked on  
14 his residence door and talked with him.

15 Q. And when you talked with him -- when you  
16 talked with him, did you explain to him what had occurred  
17 and why you were there?

18 A. Yeah, we said that a pretty serious crime  
19 had occurred at that residence, and we were looking, you  
20 know, to see who rented the house before him, or if he  
21 knew a Grant.

22 At that time he said, well, the house was rented  
23 to a Brandon Preston, who worked for Country Insurance,  
24 or Countrywide, I believe, and that he had a roommate, he  
25 had some roommates, but he had a roommate that he believed

1 his name was grant.

2 Q. Okay.

3 While you were having this conversation with  
4 Victor whatever his name is, about what time of the day  
5 is it by now?

6 A. This is in the morning. This is getting  
7 closer, I think, to eight or nine.

8 Q. Okay.

9 And with the information about Brandon Preston,  
10 what did you then do?

11 A. We called Country -- Countrywide, and they  
12 told us they did have a Brandon Preston that worked there,  
13 and they gave us a phone number to contact him with, and  
14 so I called that phone number.

15 Q. Did you contact Brandon Preston personally?

16 A. Yes, I did.

17 Q. Did you have a conversation with him about  
18 what you knew?

19 A. Yes.

20 Q. And did you get information about an  
21 individual named Grant?

22 A. Yes.

23 Q. Did he give you actual like residence  
24 information, I know grant, and he lives at such and such?

25 A. Yes, he did. He told me he was still

1 roommates with him, however, they had moved, and so he  
2 gave me that address, and said that he should be at home  
3 right now, and so we proceeded over there.

4 Q. You physically went over to that location?

5 A. Yes.

6 Q. And is that still in Henderson?

7 A. Yes.

8 Q. And when you went to that location, what  
9 happened?

10 A. At the point we knocked on the door, I made  
11 a phone call because he gave me Grant's phone number. We  
12 knocked on the door, we called, and we saw his car in the  
13 driveway, and there was no answer.

14 And so I can't recall I called him back, and I  
15 said, well, this was actually targeted towards him so are  
16 you concerned for him, too, and he said, yes, he was.

17 Q. And, I'm sorry, when you say, "called him  
18 back", who is "him"?

19 A. Brandon.

20 Q. Okay.

21 A. And he said, yes, he should be there, and  
22 there is no reason why he shouldn't be answering the door.

23 So at that time we got the manager's key to open  
24 the door, stood at the bottom of the door and called out,  
25 "Henderson police, Brandon, are you okay? Henderson police,



1     Brandon, are you okay?"

2             At that time he woke up and came out, and he  
3     said, yeah, he was fine, and that is when we had our  
4     conversation.

5             Q.    Okay. And about what time of the day is  
6     it by now?

7             A.    Probably closer to noon, or so.

8             Q.    Okay.

9             A.    Or two o'clock.

10            Q.    And did you talk to Grant about what you  
11     knew?

12            A.    Yes.

13            Q.    Were you trying to -- well, what were you  
14     trying to find out from Grant?

15            A.    Trying to find out if he knew who would  
16     be asking for him, you know, who would be coming in there  
17     trying to use the bank. I go, you know, does he owe money?  
18     Is anybody after you?

19            Q.    Did you give any description of the individual  
20     who could be after him?

21            A.    Yes, I said there were two black males that  
22     came looking for you, and, you know, they called you by  
23     name, and they wanted some money. They said you owed some  
24     money.

25            Q.    Did he give you a name?

1 A. Yes, he did.

2 Q. What name did he give you?

3 A. He said Delarian Wilson.

4 Q. Okay. And is that the only name that he  
5 gave you?

6 A. Yes.

7 Q. Okay. So he didn't know who potentially the  
8 second person could be?

9 A. No, he didn't.

10 Q. And when he gave you the names, well, did  
11 he give you the name of Delarian Wilson or was there also  
12 another?

13 A. Cameron.

14 Q. Okay. And did he give you other information  
15 about Delarian and Cameron Wilson?

16 A. He said that he -- he used to work at -- not  
17 used to work, he used to play football at UNLV, he said that  
18 he worked out with him at the gym, but he had heard that he  
19 had transferred down to Colorado and out-of-state.

20 Q. And, I'm sorry, you keep saying "he" and  
21 "him", he who heard that he had transferred --

22 A. (Interposing) Grant heard this stuff.

23 Q. Grant heard that Wilson played and transferred?

24 A. Yes.

25 Q. Okay.

1 A. Well, he was friends with --

2 Q. Wilson?

3 A. Wilson, and he said that he worked out with  
4 him at the gym, you know, but a while ago he knew that he  
5 had been transferred to Adam State.

6 Grant said that Wilson moved to Adam State, and  
7 was playing football there and then he said that, you know,  
8 it is kind of funny you say that, but one of my friends  
9 called me -- Grant said one of his friends called him and  
10 said that Wilson is back in town, and that he asked about  
11 Grant.

12 Q. Recently?

13 A. Yes.

14 Q. Okay.

15 A. Maybe a day or two.

16 Q. Okay. And with that information, what did  
17 you do?

18 A. I asked him if he could come down to the  
19 station and talk to Detective Niswonger because his name  
20 is in this case, and see if he had more questions since  
21 they were interviewing the victims, if he would come down  
22 and give a taped statement and, you know, identify photos  
23 if we could find one.

24 Q. And did he agree to come down with you?

25 A. Yes, he did.

1 Q. And did you learn during the course of this  
2 that there was stuff -- Grant told you that?

3 A. Yes.

4 Q. Was it marijuana?

5 A. Yes.

6 Q. And did you actually find some of that stuff  
7 at Grant's house?

8 A. Yes, I did.

9 Q. And some money?

10 A. Yes.

11 Q. And did you seize all that?

12 A. Yes, I did.

13 Q. Okay. Now, at the station, did he actually  
14 give a taped interview?

15 A. Yes, he did.

16 Q. And that was audio and videotape?

17 A. Yes, it was.

18 Q. Did you get any more information from him  
19 regarding the individuals who might have committed the  
20 crime that you were investigating?

21 A. Just I believe he identified a 2005 booking  
22 photo for Delarian, and we didn't get any other suspect  
23 information.

24 Q. Okay. While he was at the station, is it  
25 your understanding that one of the detectives found a

1 booking photo of Delarian Wilson?

2 A. Yes.

3 Q. And were you present when grant -- and what's  
4 Grant's name, just for the record, his last name?

5 A. Heib.

6 Q. Is that H-i-e-b?

7 A. I think it's H-e-i-b.

8 Q. Oh, that's either way.

9 Okay.

10 And were you present when Grant Heib was shown  
11 the photo and said whether or not that was the person?

12 A. I believe I was. I'm pretty sure I was.

13 Q. Okay. Was it your understanding that he  
14 did identify --

15 A. Yes.

16 Q. -- that person as Delarian Wilson?

17 A. Yes.

18 Q. Okay. And once you had that information,  
19 then what did you do?

20 A. At that point, we had other detectives  
21 working on different things so we were now trying to scour,  
22 you know, basically Las Vegas, looking for Delarian Wilson,  
23 and I understand that a narcotics team was working on that  
24 end of it.

25 Q. Okay.

1           Were there -- earlier I had asked you if  
2 Detective Niswonger was assigning people to do certain  
3 things.

4           All of these people that were participating  
5 in the investigation, were you communicating with each  
6 other?

7           A.   Communicating with each other and, basically,  
8 the sergeant was basically our liaison, Sergeant Dunaway.  
9 So if we didn't talk to these people directly we talked to  
10 the sergeant once we completed a task and so it was Tony  
11 Niswonger now, I'm sorry, Detective Niswonger to Sergeant  
12 Dunaway, what have you heard, and so he was kind of the  
13 liaison.

14          Q.   Okay. And you were sharing information with  
15 others that way?

16          A.   Yes.

17          Q.   Through maybe Detective Dunaway?

18          A.   Yes.

19          Q.   And did Detective Dunaway give you information  
20 regarding the location of Delarian Wilson?

21          A.   Yes.

22          Q.   And do you know about what time of day? Are  
23 we still in the same day, that Monday?

24          A.   Yes, yes, we are, we are in the afternoon.  
25 I think that we were at three or four o'clock in the

001439

1 afternoon at this point.

2 Q. Okay.

3 And did you get information -- was there a time  
4 that Delarian Wilson was actually located?

5 A. Yes.

6 Q. And where was he located?

7 A. Circus Circus.

8 Q. Now, did you participate in actually locating  
9 Mr. Wilson?

10 A. No.

11 Q. Did you go to Circus Circus once you discovered  
12 covered that Wilson was located?

13 A. Later in the evening, yes.

14 Q. Did you do anything inbetween the time that  
15 you or that you recall inbetween the time that you had the  
16 conversation with Grant Heib and the time that you went to  
17 Circus Circus?

18 A. Yes.

19 Q. What did you do at that time?

20 A. They were trying to locate him, and once  
21 they said they located him, and they found out that he  
22 had a room there registered to him then I was assisting  
23 Detective Pena, and I believe Detective Hartshorn was  
24 there in gathering information to apply for a search  
25 warrant for that room at Circus Circus.

001440

1 Q. Okay.

2 But you are not the one who actually authored  
3 the search warrant, correct?

4 A. Not that one.

5 Q. So was that Detective Pena?

6 A. I believe so.

7 Q. Okay.

8 Do you know about what time of day it was that  
9 you got to Circus Circus?

10 A. I am going to have to say five or six. I  
11 know it was getting dark.

12 Q. Okay.

13 And did you participate in serving the search  
14 warrant, in and -- I'm sorry -- was the search warrant  
15 for the room that Delarian Wilson was registered to?

16 A. Yes, it was.

17 Q. Okay.

18 And at this point you still have no idea who  
19 the other suspect is, is that correct?

20 A. Correct.

21 Q. You don't have the name, nothing?

22 A. No.

23 Q. Okay.

24 And, I'm sorry, I asked the question, I wasn't  
25 listening to the answer, did you participate in serving

001441



1 the search warrant on Delarian Wilson's room?

2 A. No, I did not.

3 Q. Do you know while his room was being searched  
4 where he was?

5 A. Yes. At that point he was being detained  
6 at security downstairs, with security.

7 Q. Okay.

8 Was it it your understanding that one of the other  
9 detectives physically found him and took him into custody  
10 and brought him to security?

11 A. Yes, they took him into custody at a blackjack  
12 table.

13 Q. Okay. And when you went to security, was he  
14 there by himself or with others?

15 A. He was there with others.

16 Q. Police officers?

17 A. Police officers, and I think two others, a  
18 female and a male.

19 Q. Like friend type people?

20 A. Yes.

21 Q. As opposed to service type people?

22 A. Yes.

23 Q. Okay. And what did you do when you got  
24 there?

25 A. I talked to Detective Allison. He said he

001442

1 was playing blackjack.

2 You know, we just kind of talked about, okay,  
3 the other detectives that were across the room from him,  
4 we will wait for him to come back. We are going to serve  
5 a search warrant with Detective Pena. That was approved  
6 and then myself and Detective Hartshorn were assigned to  
7 interview Delarian.

8 Q. And did you do that?

9 A. Yes, we did.

10 Q. And where did you do that?

11 A. In a like security room. It had tables in  
12 there. I don't know if it was a break room or a security  
13 room, but it was right next to it.

14 Q. But it was in the Circus Circus?

15 A. Right.

16 Q. Okay. And did you read him his rights per  
17 Miranda?

18 A. Yes, I did.

19 Q. And did he admit or deny that he had been  
20 at the residence at 690 Great Dane?

21 A. He admitted.

22 Q. Did you talk to him about whether or not  
23 he was there alone or with another individual?

24 A. He said that he was with somebody.

25 Q. Did he give you the name of the person he

001443

1 was with?

2 A. Yes.

3 Q. What was the name he gave you?

4 A. Narcus.

5 Q. Did he give you any other information  
6 about Narcus?

7 A. He said that he played football for UNLV.  
8 He lived on the west side with his parents, and he drove  
9 a white Chrysler 300.

10 Q. Okay. When you had that information, what  
11 did you then do?

12 A. At that point, it was late at night, we  
13 wrapped up our interview.

14 We went through the details of everything, and  
15 wrapped up our interview, got with Sergeant Pena and took  
16 what he was going to take out of the room.

17 We had Delarian transported to the jail, took  
18 everything back to the station, and I completed my arrest  
19 report, and my witness stuff, and we were probably there  
20 until midnight, one o'clock in the morning.

21 Q. So you actually did arrest Delarian Wilson?

22 A. We arrested him, got all through the  
23 paperwork that we needed to have done that night so he  
24 was taken to jail, there was a certain amount that we had  
25 done. I believe we got done early in the morning, we were

1 told to get a couple of hours sleep, and come back, you  
2 know, mid morning, and so that's what we did. We come back  
3 mid morning.

4 Q. Now, I'm sorry, when you say you came back  
5 mid morning, would that by then be Tuesday?

6 A. The 20th, so this happened, I believe that's  
7 Tuesday, the 20th.

8 Q. Sunday night to Monday is the offense, and  
9 then Monday night you are working and come back Tuesday?

10 A. Right.

11 Q. Okay.

12 So when you came back Tuesday, you and Detective  
13 Hartshorn again?

14 A. Yes.

15 Q. And what did you do Tuesday when you came  
16 back?

17 A. Tuesday, I mean, the early detectives was  
18 already, Detective Niswonger, because he works the early  
19 shift, so they were already there, and then we briefed  
20 him on what we had, and what the second suspect we  
21 believed his name was, and so Detective Bakalas, who  
22 I work with, used to work at UNLV as a strength trainer  
23 for sports.

24 So he said he had somebody over there that he  
25 could talk to.

1           So he went over there, and he went down there  
2           and talked to, I believe, the director of athletics.

3           Q.    Okay. And can you spell his name for  
4           the court reporter?

5           A.    B-a-k-a-l-a-s.

6           Q.    Okay. And when he went down and talked  
7           to the athletic director at UNLV, or whoever it is that  
8           he talked to at UNLV, did he then give you information?

9           A.    Yes, a little while later he called and  
10          said they had a football roster in his hand, and he  
11          had the name Narcus Wesley.

12          Q.    Did he also give you information about  
13          where Narcus Wesley indicated at least to the football  
14          department where he was living at the time?

15          A.    Yes.

16          Q.    And where was that?

17          A.    I believe it was 2372 Valley Drive in  
18          Las Vegas.

19          Q.    Okay.

20          And did he give you any other information at  
21          that time, Detective Bakalas?

22          A.    Not at that time.

23          Q.    Okay. So what did you do once you had  
24          that information?

25          A.    Once I had that information, I called

1 Nevada Power and spoke to a Donna Lamonte, and I asked  
2 Donna, I would like to check a residence for power, and  
3 she said, okay.

4 I said it is 2372 Valley Drive, and I said the  
5 name that we are looking for is Narcus Wesley, and she  
6 said, okay.

7 A couple seconds later, a minute or two later  
8 she said, well, you know that power has been turned off  
9 there, hang on a second. Let me check another thing.

10 Okay. Well, that power is turned off, and now  
11 it's re-turned on at I think it's 4232, I would have to  
12 look at my notes, 4232 Gay Lane, if it was the same name.

13 I said, thanks a lot, we are sending you a  
14 subpoena, you know, I explained the case to her, you  
15 know, before, before we talked. I told her the seriousness  
16 of it, and so I faxed off a subpoena, and Detective Hartshorn  
17 immediately left and went to Gay Lane.

18 Q. And why did you go to Gay Lane?

19 A. Because that's where the power was turned  
20 on with that same name, and we wanted to go over and confirm  
21 if he lived there.

22 Q. Okay.

23 Was it your intention to get a search warrant for  
24 that location?

25 A. Yes.

1 Q. And if by confirming that he lived there,  
2 what were you looking for?

3 A. His vehicle, him out in the front yard, or  
4 anything, you know.

5 Q. About what time of day is it that you  
6 physically went there?

7 A. It was in the afternoon.

8 Q. So it was still light out?

9 A. Right, right.

10 Q. Okay. And when you went to Gay Lane, what  
11 did you see?

12 A. I saw his white Chrysler 300-N that I ran  
13 the registration on, and it came back to Narcus Wesley and  
14 a female that I can't recall.

15 Q. And a female's name?

16 A. Yes.

17 Q. Did you get any other information at that  
18 point?

19 A. I believe that the registration came back  
20 to the Valley address, but we sat there for a little while,  
21 watched the car. It didn't move, and at that time, I  
22 immediately called Sergeant Hart, H-a-r-t, who is the SWAT  
23 Sergeant, and I said, I think we have located the second  
24 suspect.

25 I have a vehicle here. I have got the house.

1 and I am going to fill out an affidavit for a search  
2 warrant. If you guys wanted to start to recon so when  
3 we get it done, you guys can decide what you want to  
4 do.

5 Q. Okay.

6 And did you then go and fill out an affidavit  
7 for a search warrant?

8 A. Yes.

9 Q. And where did you go to do that?

10 A. I went to the Henderson Police Department.

11 Q. Okay. And did you actually prepare a search  
12 warrant?

13 A. Yes, I did.

14 Q. Did you take it to get it signed by a  
15 Judge?

16 A. Yes, I did.

17 Q. And when you got it signed by a Judge,  
18 what did you do?

19 A. I notified Sergeant Hart that it was signed,  
20 we are good to go.

21 I believe we went back and made copies, and we  
22 have to leave one with the residence, and then after we  
23 did that, we went down and met -- I can't remember the  
24 name of the place, but it was a bar. We met behind a bar  
25 close to the residence with SWAT.



1 A. Okay.

2 MS. KOLLINS: Actually, Judge, while he is reading  
3 that, can we approach?

4 THE COURT: Sure.

5 (Whereupon, a brief, informal discussion was  
6 had at the bench between the Court and counsel.)

7 BY MS. KOLLINS:

8 Q. Justin, did you get a chance to read that?

9 A. Yes, I did.

10 Q. Okay.

11 Did reviewing that refresh your recollection  
12 about what you recalled that evening about Danielle being  
13 directed to remove her clothing?

14 A. Yeah, I remember after -- after they had  
15 told me to perform oral sex on her, while I was doing that,  
16 they were wanting me to still try to get hard myself, and  
17 when I still couldn't, they told me, you know, forget it,  
18 just roll over, and this is after they had tried to tell  
19 Ryan to do the same thing, and after that, I just rolled  
20 back over with my head down, and that's when number one  
21 had said, told Danielle to stand up and take off her clothes,  
22 and that was somewhere behind me.

23 Q. Okay.

24 Well, my question -- and I guess I have the  
25 chronology wrong because I didn't understand it from your

001350

1 statement, but specifically, what I am asking you about is  
2 on lines 15 and 16 of page six:

3 "They, both of them, told her to start taking her  
4 clothes off."

5 A. No.

6 Q. Do you see that?

7 A. Yeah, I do.

8 Q. Am I just ahead of the game in terms of my  
9 series of events?

10 A. Well, a little like number one was the one  
11 that told her to take her clothes off. Get up, take your  
12 clothes off. Number two was more excited about it happening.

13 Q. Okay. And by "excited", what do you mean?

14 A. Meaning like, yeah, like the whole time, he  
15 was kind of egging on number one, like during the whole  
16 time, me, I couldn't get hard, he was kind of in the back  
17 just saying, oh, I could do it, you know, give me the  
18 chance, I'll do it, and then when one told her to get her  
19 clothes off, he's like, yes, you know, like --

20 Q. Okay. So, so the direction to take her  
21 clothes off is after the series of events that takes place  
22 on the floor?

23 A. Yes.

24 Q. Okay. Well, I am going to back you up, and  
25 I'm sorry to keep jumping back and forth, okay?

1 A. No, that's all right.

2 Q. When he is frustrated with your -- with what's  
3 going on, and he has Danielle flip over, she remains clothed  
4 then at the time that she flips over on her back?

5 A. Yeah, I don't know that sure. I really don't  
6 know.

7 Q. But she had her underwear on?

8 A. Yes.

9 Q. Okay. And he tells you to perform oral sex  
10 on her, he being number one?

11 A. Yes.

12 Q. What are his words? He doesn't say oral sex,  
13 does he?

14 A. No.

15 Q. Does he say cunnilingus?

16 A. What's that?

17 Q. What words does he use?

18 A. He just said basically, start eating her out.

19 Q. Did you listen to him?

20 A. Yeah, yes.

21 Q. Did you want that to happen at that time?

22 A. No.

23 Q. At the time he is telling you to perform  
24 oral sex, that's my words, not his, is he still trying to  
25 get you to achieve or maintain an erection?

1 A. Yes.

2 Q. Does he direct you to use something in order  
3 to accomplish that?

4 A. Yes, there was a bottle of lotion out there,  
5 and he had grabbed it, and he didn't give it to me, he asked  
6 me if it would help, and I told him, you know, no, nothing  
7 is really going to help.

8 Q. And he being number one?

9 A. Yes.

10 Q. And what, did he pick up the bottle and show  
11 it to you or did he just ask you about it?

12 A. Yeah, he picked it up, and then he brought  
13 it over like he put it, I know he set it right next to me,  
14 but I didn't, you know.

15 Q. And I am showing you what has been admitted  
16 as State's 4, next to the television set, can you see that  
17 bottle?

18 A. Yes.

19 Q. Is that the lotion we are talking about?

20 A. Yes.

21 Q. Is that what you remember being set next  
22 to you?

23 A. Yeah.

24 Q. After you tell him that that's not going to  
25 help, what's the very next thing -- is number two still egging

1 on what's going on, on the floor?

2 A. Yes.

3 Q. Has number two had any commentary about your  
4 ability to achieve an erection? Is he saying anything about  
5 that?

6 A. Well, he's just saying he can't do it, let  
7 me do it.

8 Q. He's saying, number two is saying, let me do  
9 it?

10 A. Yeah.

11 Q. And what did you take let me do it to mean?

12 A. I took it as he wanted to have sex with my  
13 girlfriend.

14 Q. What's the very next thing that you were  
15 directed to do?

16 A. They were telling me to, you know, play with  
17 myself as well trying to get hard.

18 Q. And when you say "they"?

19 A. Number one.

20 Q. Okay.

21 A. He just told me that, and he told Ryan to  
22 roll over, and take some lotion and try to get himself  
23 hard as well.

24 Q. Could I get you some water, Justin?

25 A. Yes, please.

1 THE COURT: Here is some water.

2 THE WITNESS: Thank you.

3 BY MS. KOLLINS:

4 Q. Now, previously, you had mentioned that  
5 what was being threatened that if you don't get hard, and  
6 take care of business here, I am going to kill you, and  
7 I am going to move on to your friends so someone could F  
8 your girlfriend, right?

9 A. Yes.

10 Q. Was that his language?

11 A. Yes.

12 Q. So someone can fuck your girlfriend?

13 A. Yes.

14 Q. Okay. And he went to who with the lotion?

15 A. Ryan Tognotti.

16 Q. And what was Ryan's response to being asked  
17 to get an erection?

18 A. He said there is no way he could do it either.  
19 They still made him try, but that he said he couldn't do  
20 it either.

21 Q. Okay. What did number one do to make him  
22 try?

23 A. He gave him lotion.

24 Q. Okay. Is the gun still out as far as you  
25 knew?

1 A. Yeah, as far as I knew, it was still there.

2 Q. And what was number two saying about them  
3 trying -- about number one trying to make Ryan get an  
4 erection with the lotion?

5 A. He was saying none of them want to do it.  
6 He said I am the only one that can do it, I'm going to do  
7 it.

8 Q. Did he say I am the only one that can do  
9 it, let me do it more than one time?

10 A. Yeah.

11 Q. When Ryan couldn't get hard, what was the  
12 reaction of number one?

13 A. Just frustrated as can be.

14 Q. What about number two?

15 A. Number two wasn't really --- I wouldn't say  
16 he was mad. He was more along the lines kind of getting  
17 excited like, hey, you know, let me do it, you know, like --

18 Q. Not mad, maybe like eager?

19 A. Yeah, yeah, that's a good word.

20 Q. By this time, did you roll back down and  
21 were laying face down on the floor?

22 A. Yes.

23 Q. When number one was pissed off about Ryan  
24 and number two was ready to jump in, if you will, what  
25 happened immediately after that?

1 A. That's when number one had told Danielle to  
2 stand up.

3 Q. Did Danielle listen to him?

4 A. Yeah.

5 Q. Could you hear what was going on?

6 A. No, I couldn't tell what they were doing.  
7 They told her, you know, make sure all her clothes were  
8 off.

9 Q. Okay. I am going to stop you right there,  
10 Justin, when you say, "they".

11 A. Number one directed that.

12 Q. Number one directed that?

13 A. Yeah.

14 Q. Okay. And do you know what happened to  
15 Danielle's clothes at that point?

16 A. No, I didn't see.

17 Q. Okay. Was Danielle speaking with them  
18 at all?

19 A. Yeah, but it was real quietly, just like  
20 whispering.

21 Q. Okay. After number one told Danielle to  
22 take off her clothes, do you know whether or not he  
23 directed her to go anywhere?

24 A. Yeah, he said, come over here, and sit on  
25 the stairway, and I knew they were behind me for a little



1 bit.

2 Q. You couldn't see Danielle on the stairway?

3 A. No.

4 Q. Did you have any reason to believe that she  
5 did not listen to him?

6 A. No.

7 Q. After Danielle went and sat on the stairway,  
8 what was the next thing you heard?

9 A. I really couldn't tell anything for a little  
10 while, and then I really -- I couldn't hear anything.

11 Q. There -- is there a blue recliner in your  
12 front door area?

13 A. Yes, there is.

14 Q. Okay.

15 If you recall, do you know whether or not Danielle  
16 was directed to that blue recliner?

17 A. Yes, she was.

18 I don't know who, which one it was though. I  
19 can't say it was one or two that told her to do that.

20 Q. Okay. You can't tell whether it was one  
21 or two talking?

22 A. Okay.

23 Q. We've got it in evidence here. Talking  
24 about the chair, that's at the bottom left of State's 2.

25 Is that the chair?

1 A. Yes.

2 Q. Okay. And that still would have been behind  
3 you in the position you were laying in?

4 A. The way I was laying, that would be to, yeah,  
5 behind me and to the right a little bit.

6 Q. Would you have been laying then, and correct  
7 me if I am wrong, turning to State's 3, kind of in front of  
8 that coffee table?

9 A. I was about right here.

10 Q. All right. And where you indicated, if you  
11 hit the bottom right of that, that will erase.

12 A. Oh, okay.

13 Q. And that is out of view of State's 2, correct,  
14 where you were laying?

15 A. Yes.

16 Q. Okay.

17 When the period of time that you believed Danielle  
18 was in the chair, did she stay in that chair until they left  
19 or did something else happen?

20 A. No, after the stairway, I knew that they had  
21 moved over again. I didn't know where. I would guess it was  
22 the wood chair over there but --.

23 Q. Somewhere still behind you?

24 A. Yes, I still couldn't tell, and after, you  
25 know, whatever happened, they told her to put her clothes

1 back on, and then she could lay next to me again.

2 Q. Okay.

3 Now, and I don't think I asked you this, Justin,  
4 at some point did they have you perform mutual oral sex on  
5 each other?

6 A. Yes.

7 Q. Was that before?

8 A. That was at -- I'm sorry, she first -- first,  
9 she gave me oral sex, and then when I wasn't getting hard  
10 at first, they told her just to do that, flip around still  
11 on top of me, where we would, you know, at the same time,  
12 and then from that it went to me, just given a turn.

13 Q. So that you were on your back, her mouth was  
14 on your penis, and her vagina was on your mouth?

15 A. Yes.

16 Q. And did you want that to happen?

17 A. No.

18 Q. You heard someone tell her to get dressed?

19 A. Yes, number one told her to get dressed.

20 Q. Okay.

21 A. I know during -- before they told her to  
22 get dressed, before number one told her to get dressed,  
23 the only parts I did hear during, towards the end of it,  
24 I heard -- do you like that?

25 Q. Okay.

1 A. And that was -- that was a different voice  
2 but I couldn't tell which one it was of either of the two.

3 Q. Did it sound --

4 A. It sounded softer.

5 Q. So the one that had been primarily speaking  
6 during the course of things was number one?

7 A. Yes.

8 Q. You heard a voice say, do you like it or  
9 did you like that?

10 A. Yes. Do you like that?

11 Q. Do you like that?

12 A. Yes.

13 Q. And that voice did not sound like number  
14 one?

15 A. No, it was softer, and it was quiet, too.

16 I just kind of overheard it, and then it was  
17 more along the lines of not really telling her just to  
18 get up. Number one kind of took the lead at that time  
19 and said, hey, that's enough, you know, you can go put  
20 your clothes on.

21 Q. So at some time, at some point, number  
22 one cuts off whatever is going on and said, that's enough,  
23 you can go put your clothes on?

24 A. Yes.

25 Q. But the voice that you heard that said,

1 do you like that, was different from the voice that said,  
2 that's enough, you can put your clothes on?

3 A. Yes.

4 Q. Okay. At some point does Danielle end up  
5 back on the floor next to you?

6 A. Yes.

7 Q. What's the very next thing that happens after  
8 Danielle ends on the floor next to you?

9 A. Number one starts saying, you know, you guys  
10 have been real good, he said, before I go though, do you --  
11 does anybody here have any rubbers, any condoms?

12 And I said, you know, yeah, I do and number one  
13 told me to stand back up with my hands on my head, and walk  
14 back to my bedroom, and as number one followed me, he had  
15 the the gun to my back the whole time, and we got to the  
16 bedroom, and I walked around the bed, the front of the bed  
17 to my nightstand, and he stayed by the bed, opposite corner  
18 pretty much, and he told me just get them out, you know,  
19 dump it on the bed.

20 So I dumped the drawer on the bed, and I got the  
21 condoms, and I kind of reached them out, and he just took  
22 them from me, and quite a deal.

23 Q. Let me just stop you right there for a  
24 second.

25 A. All right.

1 Q. Justin, I am showing you what has been  
2 marked and admitted as State's 17. Does that look familiar  
3 to you?

4 A. No, that's -- I believe that's a different  
5 roommate so --

6 Q. Okay. You dump the drawer out. What kind  
7 of condoms did you give him?

8 A. They were Trojans. They were light blue  
9 covered.

10 Q. Different than the ones I just showed you  
11 in the picture?

12 A. Yes.

13 Q. Okay. Were your cell phones in that room  
14 to your knowledge at that time when you went back in for  
15 the condoms?

16 A. To my knowledge, yes. I really didn't know.

17 Q. Okay. After you gave number one the condoms,  
18 what did he do with them?

19 A. He put them in his pocket, and he told me  
20 to walk back over to him with my head down, and I did, and  
21 he told me to turn around, and I did, and he just, number  
22 one kind of whispered in my ear. He said, look, man, it's  
23 nothing personal but he said, you know, I got a reputation  
24 of being crazy, and he told me to get down on my knees, and  
25 he kind of put me down like execution style, and he held

1 the gun to my head for like maybe 10, 15 seconds, and then  
2 he started laughing, told me to get up, and he said he was  
3 just playing, and he said he didn't have nothing against  
4 me. He told me just to go back out to the living room.

5 Q. Now, when you got back out into the living  
6 room, was number two still there?

7 A. Yes.

8 Q. Hadn't left?

9 A. No.

10 Q. Okay. Obviously, still the police haven't  
11 been called?

12 A. No.

13 Q. Okay. During any of this time, you know,  
14 up until this point, you are going back out to the living  
15 room, did you hear number two saying he is scared?

16 A. No.

17 Q. Do you hear him telling number one I don't  
18 want to be here?

19 A. No.

20 Q. Did you hear him ever tell number one up  
21 to this point, I don't want to do this?

22 A. No.

23 Q. Ever hear him telling number one up to this  
24 point, these are a bunch of good kids, let's leave them  
25 alone?

1 A. No.

2 MS. KOLLINS: May I approach the witness with a  
3 statement, Judge?

4 THE COURT: Sure.

5 MS. KOLLINS: Thank you.

6 BY MS. KOLLINS:

7 Q. You get back out into the living room, and  
8 he has played HIS little execution game with you, did they  
9 hang around too much longer than that?

10 A. No, they told us, you know, we've been good,  
11 and they said just kind of wrong place, wrong time for us,  
12 and we didn't have what they were looking for, but they had  
13 to get something anyway, and they said they were going to  
14 leave us alone, and they instructed us to stay down on the  
15 floor.

16 Q. Okay, and I am going to stop you right there,  
17 Justin.

18 Did both number one and number two instruct you  
19 to stay down on the floor?

20 A. Yes.

21 Q. Both of them?

22 A. Yes.

23 Q. Did both one and two say that you kids were  
24 in the wrong place at the wrong time?

25 A. That was more along the line number one said



1 that.

2 Q. Did number one or number two give you  
3 instructions of what you all should be doing when they left?

4 A. Yes, number one had told us to keep our heads  
5 down, and as soon as they walk out the front door, they will  
6 say, you know, go, or start, and they wanted us to count out  
7 loud to two minutes, and they wanted us to count one 1,000,  
8 two 1,000, until we got to two minutes.

9 Q. Did number one or number two speak to you  
10 about cell phones?

11 A. Yes, number one had said that if we -- they  
12 said they were going to take the cell phones with them, and  
13 they were going to put them?

14 Q. Who?

15 A. Number one had said, they were going to take  
16 the cell phones with them, and as we were counting, he was  
17 going to put them outside in like our rocks, or the driveway,  
18 or somewhere outside he was going to put them all.

19 He said after those two minutes, we can go get  
20 them, and just go along, and he said that -- number one said  
21 if anyone moved, or talked, or anything during those two  
22 minutes, he would know and not to mess with him.

23 Q. Okay. Did number one or number two talk to  
24 you about calling the cops?

25 A. Yes, number one said, don't call the cops

1 whatever you do.

2 Q. Did you hear number one and two leave at  
3 that point?

4 A. Yes.

5 Q. When they left, did the door stay open or  
6 closed?

7 A. It stayed open.

8 Q. Okay. And what, if anything, did you hear  
9 going on outside?

10 A. I could hear them kind of walking through  
11 the rocks next to our house, and, you know, I guess they  
12 had thrown the cell phones in there, too, and we were  
13 counting out loud, and we hadn't made it too far, I mean,  
14 I really don't remember, maybe 20 at the most, 20 seconds,  
15 30, and all of a sudden number one came running back in,  
16 and he was just yelling, who was that? Who did that?

17 And just yelling, just really mean. He said,  
18 now, you all are going to die, and then he just starts  
19 laughing. No, I'm playing with you guys, but start over,  
20 and then that was the last time we heard him.

21 Q. Do you see anyone in the courtroom today  
22 that is similar in physical size and ethnicity to the  
23 person that we have been discussing as person number  
24 two?

25 A. Yes, I do.

1 Q. And where is that person seated and what  
2 are they wearing today?

3 A. He is sitting right here, wearing the brown  
4 vest, gray vest.

5 MS. KOLLINS: May the record reflect identification  
6 with those qualifications, Your Honor?

7 THE COURT: The record will so show.

8 MS. KOLLINS: Thank you.

9 Q. Did you and your friends wait what you  
10 thought was a sufficient time and go try to look for your  
11 cell phones?

12 A. We counted out the whole two minutes, and  
13 as soon as we got up, we just shut the door and locked it.  
14 We didn't even care about the cell phones at the time.

15 Q. Okay.

16 A. And we just went around the whole house,  
17 making sure everything was locked up.

18 Q. Correct me if I'm wrong, there was no land  
19 line in that house at the time?

20 A. No.

21 Q. Okay. So you kids all only just had cell  
22 phones?

23 A. Yes.

24 Q. So until you got a cell phone back, there  
25 was no way you could call the police at that time?

1 A. That's correct.

2 Q. Okay. After you get the doors locked and  
3 everybody kind of gathers their thoughts, what do you guys  
4 do next?

5 A. We all just kind of start, you know what  
6 do we do? Do we call the cops or what should we do?

7 And it was, you know, a lot of us were really  
8 scared, you know, I would say half of us didn't want to  
9 call the cops and half of us did because there is always,  
10 you know, what if they are still right outside, you know,  
11 just waiting to see what we do, and so we kind of went  
12 around, and like a couple of us grabbed some knives out  
13 of the kitchen, and what not, just to be safe.

14 Q. And did you guys make a decision to go outside  
15 and look for phones then at some point?

16 A. Yes, we decided we were going to go to Clint  
17 Tognotti's and Aitor Eskandon's apartment, and call the  
18 cops there. We felt it was best to just leave and --

19 Q. And that apartment was over on Warm Springs  
20 in Henderson, right?

21 A. Yes.

22 Q. Did you -- who went with who to get to the  
23 apartment on Warm Springs?

24 A. Me and Danielle rode with Justin Foucault.

25 Q. Okay.

1 A. And I'm really not sure who jumped in what  
2 cars, but we had a few cars.

3 Q. And by this time you had recovered cell  
4 phones?

5 A. Yeah, as soon as we walked outside, we  
6 just grabbed all the cell phones.

7 Q. Anyone's missing?

8 A. Yes, Danielle's was gone.

9 Q. Once you got over to the apartment, what  
10 did you do over there?

11 A. We called the -- I'm not sure who exactly  
12 did it, it was either Ryan or Justin, I think, called  
13 the cops, and basically, we just sat in the living room  
14 together, just quiet and just waited for the cops to  
15 arrive.

16 Q. Justin, did you remain a resident in that  
17 house after this all happened in February, of 2007?

18 A. No.

19 Q. When did you move out?

20 A. It was probably, might have been up to a  
21 month, because I left Vegas for a couple weeks. I just  
22 went back to my parents for a little while.

23 Q. Okay. Were your parents one of the first  
24 people that you called that night?

25 A. Yes.

1 MS. KOLLINS: The Court's indulgence.

2 Q. I am going to back up, back you up a  
3 little bit, Justin, my apologies.

4 When number one was telling you what you guys  
5 needed to do when they left, was there any discussion  
6 between number one and number two at that time as to what  
7 their plan was, where they were going to go or what they  
8 were going to do?

9 A. No, I really didn't catch any of it.

10 I know that they had said something, it was real  
11 brief, and I -- I didn't hear it.

12 Q. But there were portions of time where number  
13 one and number two were conversing back and forth?

14 A. Yes.

15 Q. Was there ever any raised voices by number  
16 one at number two?

17 A. No.

18 Q. Any anger by number one directed at number  
19 two that you heard?

20 A. No.

21 Q. And if you know this, Justin, I don't think  
22 I asked you this in the beginning, did number one have  
23 gloves on?

24 A. Did number one have gloves on?

25 Q. Yes.

1 A. No.

2 Q. How about number two?

3 A. No, I couldn't tell if he did. It didn't  
4 look like he did.

5 Q. And did you ever tell number one to tell  
6 number two to leave Danielle alone?

7 A. No.

8 MS. KOLLINS: Pass the witness.

9 THE COURT: Cross.

10 MR. LANDIS: Could we approach?

11 THE COURT: Sure.

12 (Whereupon, a brief, informal discussion was had  
13 at the bench between the Court and counsel.)

14 THE COURT: We are going to take about a 10 minute  
15 restroom break. It has been about an hour and 15 minutes.

16 So it's quarter till.

17 During in the next 12 minutes or so, I want to  
18 admonish the members of the jury not to talk or converse  
19 amongst yourselves, or with anyone else on any subject  
20 having to do with this trial.

21 I don't want you to watch, listen or read any  
22 reports or commentaries of any type through any medium of  
23 information, including radio, television, newspapers, or  
24 internet.

25 I don't want you to express -- form or express

001372

1 any opinion on any subject or about any person having  
2 anything to do with this trial until this case has been  
3 finally submitted to you. You are in recess.

4 You have got 12 minutes, okay?

5 (After the jury, and alternates, were excused,  
6 the following proceedings were had outside their presence.)

7 THE COURT: Take a restroom break. We will come  
8 back, and we will discuss it.

9 \*\*\*\*\*

10 (Whereupon, a brief recess was had.

11 After recess, all parties present, the following  
12 proceedings were had in open court in the absence of the  
13 jury, and alternates.)

14 \*\*\*\*\*

15 THE BAILIFF: Remain seated.

16 THE COURT: All right. We are back on the  
17 record in the matter of the State of Nevada v. Narcus  
18 Wesley.

19 For the benefit of your relatives and friends,  
20 Narcus, and also for anybody else, I know there is family  
21 members here for some of the witnesses.

22 Stepmom, you weren't here this morning when I  
23 tried to explained this to Mr. Wesley.

24 Everybody is certainly welcome to be here and  
25 watch this trial.



1           What I will not permit from anybody in the audience  
2   is any kind of animation, sound, visual, head shaking,  
3   hand waving of any sort.

4           Anybody that does that is going to get excluded  
5   from the courtroom in about three seconds.

6           So don't do it.

7           Mr. Wesley, you haven't done a single thing that  
8   I've noticed,, and I appreciate it.

9           Make sure that you don't make any sounds Ms.  
10   Wesley, okay? Otherwise you won't be allowed to stay.

11          That applies to everybody.

12          Counsel can't see. I can, and I won't wait  
13   for counsel to point anything out. I will do it on my  
14   own, okay?

15          Other than that, everyone is certainly welcome.

16          All right. Let's bring in -- where did Joe go?

17          MS. LUZAICH: To get the witness.

18          THE COURT: Oh, all right. You can go ahead  
19   and bring them in. Well, I will wait until the jury gets  
20   here.

21          MS. LUZAICH: And can you tell them what the  
22   schedule is, too?

23          THE COURT: Oh yeah.

24          MS. LUZAICH: I'll do it while Joe is getting  
25   the jury.

1 THE COURT: Okay. You can go ahead and bring  
2 them in. Well, I'll wait until the jurors get here.

3 \*\*\*\*\*

4 [Whereupon, the following proceedings were had  
5 in the presence of the jury, and alternates:]

6 \*\*\*\*\*

7 THE BAILIFF: All rise for the presence of the  
8 jury.

9 Please be seated.

10 THE COURT: Do the parties stipulate to the  
11 presence of the jury?

12 MS. KOLLINS: Yes, Your Honor.

13 MR. LANDIS: Yes, Your Honor.

14 THE COURT: A quick comment before we get going  
15 on cross-examination.

16 It is Friday afternoon.

17 We are going to try to wrap up today somewhere  
18 around 4:30ish.

19 We will try to fit it in the best we can. We  
20 will be finishing the examination of this witness, and  
21 then if we have enough time, the next witness. If not,  
22 we will just go ahead and break that then.

23 We will wait, we will decide that then, okay?

24 All right. Go ahead. Cross-examination.

25 MR. LANDIS: Thank you, Judge.

## CROSS-EXAMINATION

BY MR. LANDIS:

Q. Hi, Mr. Richardson.

A. Hi, how are you doing?

Q. Good, thank you. Would you mind if I call you Justin?

A. No, that's fine.

Q. On your direct, at the State's insistence, you used two labels, number one and number two?

A. Yes.

Q. And you have done that before when you talked to police in this case, correct?

A. Yeah.

Q. Number one, he has been described as the main guy, correct?

A. Correct.

Q. You have described him as the main guy before?

A. Yes, sir.

Q. As for number one, you said that it looked like he had done this before, do you remember that?

A. Yeah, I do remember that.

Q. Okay.

Do you also remember saying it was easy to

- 1 tell that he was running the show?
- 2 A. Yeah.
- 3 Q. And that would be number one?
- 4 A. Number one, correct.
- 5 Q. Only one of those people is here today,
- 6 right?
- 7 A. Yes.
- 8 Q. And that's?
- 9 A. Number two.
- 10 Q. This is number two?
- 11 A. Yes.
- 12 Q. You now know his name is Narcus Wesley,
- 13 right?
- 14 A. It's Wesley, yes, sir.
- 15 Q. And you also now know, even though he
- 16 is not here, that number one's name is Delarian Wilson?
- 17 A. Yes, sir.
- 18 Q. If you wouldn't mind, I would prefer to
- 19 use their names?
- 20 A. Okay.
- 21 Q. As we talk today?
- 22 A. Yeah, that's fine.
- 23 Q. As for Narcus, you have used some terms
- 24 to describe him as well?
- 25 A. Yes.

1 Q. At one point, you said, Narcus was just  
2 kind of there. Do you remember saying that?

3 MS. KOLLINS: Objection, foundation.

4 THE COURT: Do you know where that came from?

5 MR. LANDIS: I do, Judge.

6 THE COURT: Go ahead.

7 BY MR. LANDIS:

8 Q. Do you remember saying that one time?

9 A. Yeah.

10 MS. KOLLINS: Same objection, foundation.

11 MR. LANDIS: If he remembers it, Judge, I don't  
12 think there is a lack of foundation.

13 THE COURT: Do you remember where it was you  
14 said that, either in a statement or in testimony?

15 THE WITNESS: I don't remember where, but I  
16 have said that, yes.

17 THE COURT: All right. Go ahead.

18 BY MR. LANDIS:

19 Q. You have described him as just some other  
20 guy?

21 MS. KOLLINS: Objection, foundation.

22 THE COURT: Do you have a specific source?

23 MR. LANDIS: I do, Judge.

24 MR. BANKS: Can we approach, Judge?

25 THE COURT: Sure.

1 (Whereupon, a brief, informal discussion was  
2 had at the bench between the Court and counsel.)

3 MS. KOLLINS: The objection is sustained?

4 MR. LANDIS: No.

5 THE COURT: No, the objection is overruled at  
6 this point. But we understand that if the witness can't  
7 identify the exact time and place that this statement  
8 was made, then counsel is going to have to identify it.

9 BY MR. LANDIS:

10 Q. These comments that I have been asking  
11 you about, sometime in the morning after this occurred  
12 detectives from Henderson talked to you?

13 A. Yeah.

14 Q. That was at the Crystal Creek Apartments?

15 A. Yeah, that's correct.

16 Q. And I don't know this for sure, but I  
17 think it was in one of their squad cars, in one of their  
18 detective cars?

19 A. Yes.

20 Q. And you were alone at this time?

21 A. Yes.

22 Q. And kind of unlike today, they were letting  
23 you describe things as much as you could?

24 A. Yes.

25 Q. And they asked you some specific questions

1 after you gave a narrative of what happened?

2 A. Yeah.

3 Q. And during that statement you made to the  
4 Henderson police, do you remember saying that Narcus was  
5 just kind of there?

6 A. Something to that, yeah, to that effect,  
7 yes.

8 Q. And you described him as just some other  
9 guy, do you remember that?

10 A. Yeah, some, around those words, I -- yeah.

11 Q. And I am quoting, you said:

12 "That narcus didn't mean nothing."

13 Do you remember saying that, Justin?

14 A. No, I don't.

15 Q. Would referring you to your statement help  
16 refresh your recollection?

17 A. Yes, it would.

18 MR. LANDIS: It is going to be page five,  
19 counsel.

20 May I approach, Judge?

21 THE COURT: Yes.

22 BY MR. LANDIS:

23 Q. Just read it to yourself.

24 (Witness complies with above request.)

25 THE WITNESS: Just that part?

1 BY MR. LANDIS:

2 Q. Yes.

3 A. Okay, yes.

4 Q. Does that help refresh your recollection  
5 as to your statements with the police officers that  
6 day?

7 A. Yeah.

8 Q. And IN that statement, you told the police  
9 that as far as Narcus was concerned, it appeared that he  
10 didn't really didn't mean nothing?

11 A. Yeah, from what I had known at that point,  
12 yes.

13 Q. This was after everything had occurred,  
14 right?

15 A. Yeah.

16 Q. You never had any other personal contact  
17 with these two individuals?

18 A. No.

19 Q. During that same conversation with the  
20 Henderson detectives, you said that Narcus seemed kind  
21 of hesitant throughout this process?

22 A. Yeah, he seemed to be not as in charge.

23 Q. You used the word "hesitant", do you  
24 remember that?

25 A. I don't remember that. It is possible,



1 yes.

2 Q. All right. At one point when comparing  
3 and describing the two, do you remember telling them  
4 that he kind of just followed what Delarian did?

5 A. Yes, I remember saying that.

6 Q. And during that conversation, and also  
7 when you testified at a prior court hearing, you kind  
8 of described him, and you said, one of them did most of  
9 the talking?

10 A. Yes.

11 Q. And that -- that was obviously Delarian,  
12 right?

13 A. Yes, that's correct.

14 Q. And just so we are clear to match you up,  
15 a few specifics, Justin, who was the one that entered  
16 your room when you were sleeping?

17 A. Mr. Wilson.

18 Q. Delarian Wilson?

19 A. Yes.

20 Q. And this wasn't clear on direct. I think  
21 you said you reached for your glasses at that point?

22 A. Yes, I did.

23 Q. Were you able to actually put them on your  
24 face?

25 A. Yes, I did, and I actually had them on until

1 I hit the living room, and that's when I was instructed to  
2 take them off.

3 Q. Who ordered you to take them off?

4 A. Mr. Wilson.

5 Q. Delarian Wilson?

6 A. Yes.

7 Q. Prior to that, when Mr. Wilson was in your  
8 room, was it him who ordered you to turn your light off,  
9 and you tried to turn your ceiling fan light off?

10 A. Mr. Wilson, yes.

11 Q. And who was it that pulled you out of your  
12 bed, ordered you out of your bed?

13 A. Mr. Wilson.

14 Q. And it was also Mr. Wilson who ordered  
15 Danielle out of your bed?

16 A. Yes.

17 Q. After you both got out of your bed, who  
18 ordered you into the main room, for lack of a better  
19 term?

20 A. Mr. Wilson.

21 Q. And as you were proceeding down that hallway  
22 into the main room, who told you to keep your heads down  
23 and not look up?

24 A. Mr. Wilson did, and when I did look up, at  
25 one point I just kind of looked up, and then back down,

1 Mr. Wesley had said, keep your head down.

2 Q. At what point did you look up?

3 A. When I was just making my way before I exited  
4 out of the kitchen part of the hallway.

5 Q. How many feet would you have been from the  
6 main room at that point?

7 A. It was real close to the main room. It  
8 might have been maybe 10 feet, 15 feet to Mr. Wesley.

9 Q. When you guys reached that main room, you  
10 were told to get down on the ground like your friends?

11 A. Yes, that's correct.

12 Q. Who told you to do that?

13 A. Mr. Wilson.

14 Q. Soon after that, when you did get on the  
15 ground, the cell phones were demanded?

16 A. Yes.

17 Q. Who asked for the cell phones?

18 A. Mr. Wilson.

19 Q. Who asked for the wallets?

20 A. Mr. Wilson.

21 Q. Who was frustrated when he found out how  
22 much money was in the wallets?

23 A. Mr. Wilson.

24 Q. Do you know exactly how much money he got?

25 A. No, I don't.

1 Q. Who demanded the ATM cards?

2 A. Mr. Wilson.

3 Q. Who forced Ryan to get his car keys?

4 A. Mr. Wilson.

5 Q. And who forced Ryan out of the house?

6 A. Mr. Wilson.

7 Q. Who told Ryan he was going to drive to the  
8 ATM?

9 A. Mr. Wilson.

10 Q. When they were gone, when Ryan and Delarian  
11 Wilson were at the ATM, would you agree that was the quietest  
12 time of those two hours?

13 A. Yes.

14 Q. There was large periods of time where nothing  
15 was said?

16 A. Yeah, a large period was then --

17 Q. Five minutes?

18 A. 10 minutes at the most, yeah.

19 Q. During that time when Delarian Wilson was  
20 gone --

21 A. Yeah.

22 Q. -- did Narcus Wesley ever order you to go  
23 anywhere in the house?

24 A. No.

25 Q. Did he ever demand anything from you, any

1 property?

2 A. No.

3 Q. You have said that he seemed nervous, and  
4 he was getting increasingly nervous during that time?

5 A. Yeah, the longer it got, yes, the more  
6 nervous he seemed to be.

7 Q. And he expressed that by asking how far  
8 the closest store was?

9 A. Yeah.

10 Q. How many times did he ask that, if you  
11 remember, Justin?

12 A. He asked where the closest ATM was, and he  
13 asked that maybe once or twice, and just how long it would  
14 take. He asked that a couple of times.

15 Q. When Ryan and Delarian Wilson returned, Ryan  
16 was ordered back to the ground, correct?

17 A. Correct.

18 Q. And who did that?

19 A. Mr. Wilson.

20 Q. Who said, we're 90 percent done and we have  
21 10 percent left?

22 A. Mr. Wilson.

23 Q. Who was that comment directed at, if you know,  
24 Justin?

25 A. To me and Danielle.

1 Q. After that comment was made, who directed  
2 what you did next?

3 A. Mr. Wilson.

4 Q. Who made you roll over?

5 A. Mr. Wilson.

6 Q. Who made you put a pillow to your head?

7 A. Mr. Wilson.

8 Q. Who put a gun on the top of that pillow?

9 A. Mr. Wilson.

10 Q. At that point, you testified that Delarian  
11 Wilson was getting more and more frustrated?

12 A. Yes.

13 Q. Was he expressing that?

14 A. Yes.

15 Q. During that process, it was said, if you  
16 can't perform, I am going to shoot you, and then move to  
17 the next person?

18 A. Yes.

19 Q. Who said that?

20 A. Mr. Wilson.

21 Q. If you could give me the best estimate as  
22 to exactly when he said that in the process, Ryan -- or  
23 Justin? I'm sorry.

24 A. I'm sorry, what was that?

25 Q. Could you give me an estimate as to when

1 he said that in the process?

2 A. When he had told me that?

3 It was after -- it was just around when he --  
4 before I had to flip over onto her, it was right in that  
5 area sometime when he had said that for the first time.

6 Q. When he said that, was the pillow over your  
7 face?

8 A. Yes.

9 Q. And the gun was to your head?

10 A. Yes.

11 Q. Did that scare you?

12 A. Yes.

13 Q. Did you believe what he was saying?

14 A. Yes.

15 Q. Who told Ryan to start getting ready?

16 A. Mr. Wilson.

17 Q. When Danielle was lying next to you, who  
18 made her stand up?

19 A. Mr. Wilson.

20 Q. And who directed her to the stairway?

21 A. Mr. Wilson.

22 Q. And who told her to sit on the stairway?

23 A. To the best of my knowledge, I thought it  
24 was Mr. Wilson.

25 Q. How many times did Mr. Wilson express his

1 intention to kill somebody if one of you couldn't perform?

2 A. A handful of times.

3 Q. How many is a handful?

4 A. More than five.

5 Q. Was it obvious to you at least that each  
6 time he said that he was getting more and more frustrated?

7 A. Yes.

8 Q. Did each statement make you believe him more  
9 or believe him less?

10 A. More.

11 Q. And it was after he said that that handful  
12 of times, that Narcus said I'm the only one that can do it,  
13 let me do it?

14 A. I wouldn't say, no, it was just after a  
15 couple of times.

16 Q. It was during his saying that?

17 A. Yes.

18 Q. I want to talk to you a little bit about  
19 the statement you made on direct, and I apologize if I  
20 misquote you. I think what you said was -- and I am  
21 talking about Narcus only here -- based on the situation,  
22 you thought he had a gun?

23 A. Yes.

24 Q. Was that a fair characterization of what  
25 you said on direct?



1 A. Yes.

2 Q. When was it that you removed your glasses?

3 A. After I had laid down.

4 Q. In the main room?

5 A. Yes.

6 Q. How is your vision when you are not wearing  
7 glasses?

8 A. I have real poor vision.

9 Q. Okay. Nearsighted, farsighted?

10 A. If you are holding up your hand right now,  
11 your fingers, I probably wouldn't be able to tell.

12 Q. When you were walking from your room with  
13 Danielle to the main room, and you were being ordered to  
14 keep your head down, I think that you said that you did  
15 look up?

16 A. Yeah, I did peek up.

17 Q. When did you first notice that another person  
18 was there that you didn't know?

19 A. When I was coming out of my bedroom, after  
20 Delarian had told us to walk out and join our friends,  
21 just a couple feet outside of my bedroom is when I looked  
22 up, and then got told to look back down.

23 Q. A good 10 feet before you entered that main  
24 room?

25 A. No, it was maybe like five feet before entering

1 the room, 10, 15 from Mr. Wesley.

2 Q. Okay.

3 Do you remember when you were speaking to the  
4 detectives, the same conversation we talked about earlier,  
5 and they asked you:

6 "When you walked out, what did you see? How was  
7 everybody else?"

8 And your response was:

9 "Well, he told me to not look up."

10 He said:

11 "Keep looking down. So, as I got in there,  
12 I could just see all the other guys that  
13 were there on the floor in a kind of half  
14 circle."

15 A. Yeah.

16 Q. They asked you:

17 "Is it at that point that you realized there  
18 was a number two guy, or did you already know  
19 that?"

20 And you responded:

21 "Yeah. No, that's when I realized there was  
22 another guy."

23 A. Yes, when I was getting into the room,  
24 yes.

25 Q. And I'm sorry, counsel, that's page 26.

1           And do you remember during that same interview  
2 when they were asking to describe the two people the best  
3 you could so they could obviously try to find them, they  
4 asked you:

5           "And did you get a look to see what he was  
6 wearing at all?" Referring to Narcus.

7           And you responded:

8           "The only thing I seen on him was he was  
9 wearing real dark jeans and dark shoes. Yeah,  
10 I think they were black shoes. I don't know  
11 what kind of anything but just tennis shoes."

12           Do you remember saying that?

13           A. Yeah.

14           Q. And that's because your head was down, right,  
15 Justin?

16           A. That was the only thing I really looked down  
17 on my way down, because even with my head down, I could  
18 still see, you know, his feet level with my head down,  
19 looking up.

20           Q. You were never able to describe his shirt  
21 in any detail to the police, were you?

22           A. No, I couldn't.

23           Q. And that's because your head was down?

24           A. Yeah, and then when I did look up, it was  
25 just -- I wasn't standing.

1 Q. When you did enter that main room, Narcus  
2 never displayed a handgun, did he?

3 A. Not to me, no.

4 Q. You didn't see a handgun when you were in  
5 that main room, did you, in Narcus's hand?

6 A. After laying down, no.

7 Q. And at this --

8 A. (Interposing) I just know this, when I  
9 was walking in, he had something what appeared to me as  
10 a gun.

11 Q. Seemed like a gun?

12 A. Yeah, reality, I mean, it could have been  
13 anything, but to me it seemed like a gun.

14 Q. And you didn't see that gun when you were  
15 in the main room?

16 A. No.

17 Q. You didn't see anything in his hands when  
18 you were in that main room?

19 A. No, I didn't.

20 Q. And after you were ordered to the ground  
21 in that main room for the first time, when you left from  
22 your room and traveled there, you never saw Narcus again  
23 up until the time that Ryan left for the ATM?

24 A. Yes, that's correct.

25 Q. Obviously, you didn't see anything that was

1 in his hands during that time either?

2 A. No, I had my head straight down.

3 Q. And you testified to this, but as Ryan and  
4 Delarian left for the ATM, all of you were ordered to keep  
5 your heads down?

6 A. Yes.

7 Q. And told by Mr. Wilson if you didn't, it  
8 was Narcus's job to shoot you?

9 A. Yes.

10 Q. And, obviously, based on those orders,  
11 you did keep your head down the whole time that they  
12 were gone?

13 A. Yeah, and I assumed that he did have a  
14 gun on him, too. I am not going to test it.

15 Q. And since your head was down during that  
16 time that Ryan and Delarian were at the ATM, you didn't  
17 see anything in Narcus's hand?

18 A. No.

19 Q. You never really saw anything above Narcus's  
20 waist, did you?

21 A. No.

22 Q. Not his head?

23 A. No, real quick, but the least, the most I  
24 saw was his body then.

25 Q. At one point, when you were talking to the

1 police, they asked you to describe his head, or if you could  
2 describe his head?

3 A. Yes.

4 Q. Were you able to?

5 A. No, not to the best of my knowledge, no.

6 Q. They asked you if both Delarian or Narcus  
7 had gloves on, and as to Narcus, you weren't able to tell  
8 them if he had gloves on?

9 A. No.

10 Q. And you told the police that you were  
11 unable to give these details about the head, and shirt,  
12 gloves because in your words he never got around you too  
13 much?

14 A. Yeah, that's correct.

15 Q. When it is all said and done, Justin,  
16 all you could tell them about Narcus, about the number  
17 two guy, were the color of his jeans and the color of  
18 his shoes?

19 A. Yeah.

20 Q. The fact that he was taller than the other  
21 guy?

22 A. Yeah, that was just, you know, it seemed  
23 like he was.

24 Q. And probably skinnier?

25 A. Yes.

1 MR. LANDIS: The Court's indulgence.

2 THE COURT: Yes.

3 BY MR. LANDIS:

4 Q. After you guys went to those Crystal Creek  
5 Apartments, how long do you think it was until the police  
6 arrived?

7 A. It really didn't take too long. I never  
8 looked at a clock, but I would guesstimate 15, 20 minutes,  
9 half hour, but no more than that.

10 Q. Was 911 called from within that apartment  
11 or in transit, if you recall?

12 A. I don't remember. I'm not real positive  
13 who called.

14 Q. You don't remember the phone call?

15 A. No.

16 Q. When the first, for lack of a better  
17 term, wave of police officers came, how many of them  
18 were there?

19 A. Well, there was a few. I never knew for  
20 sure because as soon as they got there, they started asking,  
21 you know, kind of what happened a little bit with each of  
22 us, and telling us, you know, you guys shouldn't talk to  
23 each other about it, you know, like just kind of keeping  
24 us to sit still.

25 So it's hard to say. There was a handful that

1 were sitting downstairs, too.

2 Q. Okay.

3 A. There was at least four to, you know,  
4 six.

5 Q. They made it clear that they preferred if  
6 you guys didn't discuss it anymore?

7 A. Yes.

8 Q. There came a time after that first wave  
9 of officers came that the detectives, the plainclothes  
10 officers came in?

11 A. Yes.

12 Q. How long would you say that period was  
13 from when the first set arrived until the detectives got  
14 there?

15 A. I really don't know. It didn't seem that  
16 long to me.

17 Q. How long after they arrived did you give  
18 your statement in the patrol car?

19 A. I was one of the first ones so it wasn't  
20 very long.

21 Q. To the best of your ability, how long  
22 do you think it was from when you guys left the Great  
23 Dane household until you gave that recorded statement?

24 A. It could have been an hour.

25 MR. LANDIS: The Court's indulgence.



1 THE COURT: Sure.

2 BY MR. LANDIS:

3 Q. Who was it that said:

4 "It's nothing personal. I'm just a little  
5 crazy."

6 A. Mr. Wilson.

7 Q. And was that before or after he held the  
8 gun to your head and made you get on the ground?

9 A. I'm really -- I want to say it happened --  
10 I want to say it happened after, but I just remember him  
11 saying that.

12 At that time, I was just so scared, I don't  
13 remember if he said it before or after.

14 MR. LANDIS: I understand. I will pass the  
15 witness, Judge.

16 THE COURT: ANY redirect.

17 MS. KOLLINS: Yes, Judge.

18 THE COURT: Okay.

19 REDIRECT EXAMINATION

20 BY MS. KOLLINS:

21 Q. Justin, were you still scared when you  
22 got over to the apartment?

23 A. Yes.

24 Q. And it takes some time for that to wear  
25 off?

1 A. Yeah.

2 Q. You testified a few minutes ago that you  
3 thought you gave that statement about an hour after you  
4 left the Great Dane address?

5 A. That's what it seemed like, to the best  
6 of my knowledge.

7 Q. Would it surprise you to know that you  
8 actually gave that statement at five o'clock in the  
9 morning?

10 A. Yeah, yeah.

11 Q. I am just going to go over just a few  
12 things that Mr. Landis asked you about, so bear with me  
13 for just a moment.

14 I was asking you questions using number one  
15 and number two. Are you still comfortable using that  
16 designation?

17 A. Yes.

18 Q. Mr. Landis reiterated several times that  
19 number one was the main guy?

20 A. Yes.

21 Q. Yeah. And that's how you previously  
22 described him?

23 A. Yes.

24 Q. During the course of this event, from the  
25 time they got in the door, someone came in your bedroom,

- 1 A. No, he didn't say nothing.
- 2 Q. This fellow said nothing during that time?
- 3 A. No.
- 4 Q. Is it your testimony that he did say something  
5 during that time?
- 6 A. No, he didn't say anything.
- 7 Q. Okay. He was silent during that time?
- 8 A. Yes.
- 9 Q. Thank you. Somebody gets a pillow?
- 10 A. Yes.
- 11 Q. He puts it to somebody's face?
- 12 A. Yes.
- 13 Q. And he puts the gun to somebody's head?
- 14 A. Yes.
- 15 Q. And that was scary?
- 16 A. Yes.
- 17 Q. And that was horrifying?
- 18 A. Yes.
- 19 Q. And that was traumatic?
- 20 A. Yes.
- 21 Q. And that was the stockier guy that did that?
- 22 A. Yes.
- 23 Q. That wasn't encouraged by this gentleman?
- 24 A. No.
- 25 Q. He is still kind of off in the background

1 not saying anything?

2 A. Yes.

3 Q. A scary situation the whole, the whole time?

4 A. Yes.

5 Q. But it did get scarier once the stockier guy  
6 returned and made the 90 percent comment?

7 A. Yes.

8 Q. It got a lot scarier when the stockier guy  
9 put the pillow over Justin's head and put that gun to his  
10 head?

11 A. Yes.

12 Q. It was scarier for everybody in that room,  
13 I imagine.

14 A. Yes.

15 Q. It was scarier still --

16 A. Yes.

17 Q. When the stockier guy says, if someone does  
18 not perform, or get it on, someone is going to be killed.  
19 It got even scarier then, didn't it?

20 A. Yes.

21 Q. For everybody in that room, I imagine?

22 A. Yes.

23 Q. I am going to fast forward a little bit.  
24 There comes a time when the two fellows leave the house?

25 A. Yes.

001301

1 Q. And I believe with Ms. Luzaich that they  
2 left, and then it was the stockier guy that burst back in,  
3 and makes some comment like, who moved? And freaks everybody  
4 out even a little bit more?

5 A. Yes.

6 Q. You guys leave that house?

7 A. Yes.

8 Q. Everybody is horrified?

9 A. Yes.

10 Q. Everybody is scared?

11 A. Yes.

12 Q. Sometimes, a little scary and traumatic  
13 situations, talking about it can help?

14 A. Excuse me?

15 Q. Talking about those scary, traumatic situations  
16 can help sometimes?

17 A. Yes.

18 Q. And once you guys left the Great Dane residence  
19 and went to the apartment over on Warm Springs?

20 A. Yes.

21 Q. There was some talk amongst you guys about  
22 what happened in that house, wasn't there?

23 A. Yes.

24 Q. I guess everybody was still probably really  
25 fraked out about that whole thing, correct?

1 A. Yes.

2 Q. And everybody was discussing how horrified  
3 they were in discussing what went on in that house?

4 A. Yes.

5 Q. And the police were called?

6 A. Yes.

7 Q. And you all talked to the police?

8 A. Yes.

9 Q. Did the police sit you down as a group, or  
10 did they interview you one on one?

11 A. One on one.

12 Q. Okay.

13 And I am sure they explained to you that that's  
14 their procedure, and that's how they do these kinds of  
15 investigations?

16 A. Yes.

17 Q. Okay. I want to talk to you a little bit  
18 about your testimony regarding this gentleman having a gun,  
19 okay?

20 A. Yes.

21 Q. I believe you gave a gesture, you knew it  
22 was a gun because he was holding it out like so (indicating)?

23 A. Yes.

24 Q. And because he was holding it out --

25 MS. LUZAICH: (Interposing) Well, I'm sorry, that

1 misrepresents. He has his index finger out. She did not  
2 when she was demonstrating.

3 THE WITNESS: Yes.

4 THE COURT: That's more accurate as to her  
5 testimony.

6 MR. BANKS: Okay, I'm sorry.

7 THE COURT: Sure.

8 MR. BANKS: And I don't mean to miss -- I want  
9 to be perfectly clear here.

10 Q. Notwithstanding the index finger, his arm  
11 was extended from his body?

12 A. Yes.

13 Q. Like this (indicating)?

14 A. Yes.

15 Q. Okay. And because it was out like this,  
16 and away from his body, that's how you knew that it was  
17 a gun?

18 A. Yes.

19 Q. Okay. It was dark in the house?

20 A. Yes.

21 Q. Dark in that hallway?

22 A. Yes.

23 Q. Dark in that room where you and your guy,  
24 Justin, were sleeping in?

25 A. Yes.

001304

1 Q. You testified at that preliminary hearing?

2 A. Yes.

3 Q. And you were asked about the time that you  
4 first saw this gentleman with the gun?

5 A. Yes.

6 Q. Page 31, counsel, line four.

7 And you were asked at the time:

8 "How far..."

9 And we were talking about distance and how far  
10 away this gentleman was from you:

11 "How far away from you would that be?

12 Your answer was:

13 "The living room was really small like  
14 five feet."

15 And then you were asked the question:

16 It was your testimony that you could see he  
17 had a gun?"

18 A. Yes.

19 Q. And your answer was: "Yes."

20 And then the question was:

21 "Where was the gun?"

22 A. Yes.

23 Q. And your response at that time was:

24 "It was like he had it in his hands right  
25 by his chest."

001305



1 A. Yes.

2 Q. You saw this gentleman for maybe two or  
3 maybe three seconds, is that correct?

4 A. When he had the gun.

5 Q. In a dark room?

6 A. Yes.

7 Q. And a dark hallway?

8 A. Yes.

9 Q. You testified that you were on a chair?

10 A. Yes.

11 Q. And that there was some touching going  
12 on?

13 A. Yes.

14 Q. And you said that that touching going  
15 on, there was something in your side?

16 A. Yes.

17 Q. And you testified that what was on your  
18 side was a gun?

19 A. Yes.

20 Q. And that's what you testified here to today?

21 A. Yes.

22 Q. At the preliminary hearing?

23 A. Yes.

24 Q. And you were asked about, about that gun in  
25 your side at that time frame?

001306

1 A. Yes.  
2 Q. At the preliminary hearing in --  
3 A. April.  
4 Q. April, of '07?  
5 A. Yes.  
6 Q. And you were asked about that, and the  
7 question to you at that time was:  
8 "You are saying you felt something on your side?"  
9 A. Yes.  
10 Q. And you didn't see it, correct?  
11 A. No.  
12 Q. And you were asked:  
13 "You don't know if it was a gun?"  
14 And your answer was:  
15 "No."  
16 A. Yes.  
17 Q. And then the next question was:  
18 "You felt something, correct?"  
19 And your answer was:  
20 "Yes."  
21 A. Yes.  
22 Q. And then you were asked:  
23 "In fact, you don't even know what it was, do  
24 you?  
25 And your answer was:

001307

1 "No."

2 A. Yes.

3 Q. Then you were asked:

4 "So when counsel asked you about a gun being  
5 pointed in your side during this altercation?"

6 A. Yes.

7 Q. "You don't even know if it was a gun at  
8 that point. It was something in your side,  
9 correct?"

10 And your answer was:

11 "Yes."

12 A. Yes.

13 Q. Ryan masturbating?

14 A. Yes.

15 Q. That was done at the direction of the stockier  
16 guy?

17 A. Yes.

18 Q. Okay. Did you ever hear the name, Grant,  
19 this entire evening?

20 A. Huh?

21 Q. The whole, during the episode, did you hear  
22 the name, Grant?

23 A. Yes.

24 Q. And Grant, the word, the name, Grant, came  
25 out of the stockier guy's mouth, right?

001308

1 A. Yes.

2 Q. You didn't hear the phrase, "cough up the  
3 money", did you?

4 A. No.

5 Q. But if you did, it would have been the  
6 stockier guy?

7 MS. LUZAICH: Well, objection.

8 THE WITNESS: I didn't understand that.

9 THE COURT: Sustained, sustained.

10 BY MR. BANKS:

11 Q. You never heard this gentleman say anything  
12 even close to, "cough up the money", right?

13 A. No.

14 Q. Okay.

15 Would it be fair, based on your perception of  
16 the incident, if anybody was fixated on Grant, it would  
17 be the stockier guy?

18 A. No, it would have been both of them. They  
19 were both there for the same reason.

20 Q. And that's because you heard this gentleman  
21 say the name, Grant?

22 A. Yes.

23 Q. That's because this gentleman burst in  
24 there asking for Grant?

25 MS. LUZAICH: Well, objection, she wasn't asked..

1 THE WITNESS: No, I wasn't there in the beginning.

2 THE COURT: That's great. From the bedroom to  
3 a point, you can explore it with her.

4 BY MR. BANKS:

5 Q. Well, let me ask you this, Danielle, and  
6 that's based on everything that you said, that you heard  
7 and saw on that evening, correct?

8 A. Yes.

9 Q. And including that the stockier guy seemed  
10 to you to be in charge of the entire situation?

11 A. Yes.

12 Q. Hard to say what is going on in everybody's  
13 mind in that room?

14 A. Yes.

15 Q. But it's pretty fair to say that everybody  
16 was scared and traumatized?

17 A. Yes.

18 MR. BANKS: All right. Pass the witness.

19 THE COURT: Any redirect?

20 MS. LUZAICH: Thank you.

21 MS. LUZAICH: Thank you.

22 REDIRECT EXAMINATION

23 BY MS. LUZAICH:

24 Q. Danielle, you had talked about being dark  
25 in the room but when you say, "dark", it was not pitch

1 black, correct?

2 A. Correct.

3 Q. Was the TV on?

4 A. Yes.

5 Q. And, again, showing you State's Exhibit 3,  
6 is that in State's Exhibit 3 the photograph, is that the  
7 TV?

8 A. Yes.

9 THE COURT: Go ahead.

10 BY MS. LUZAICH:

11 Q. Thank you. I lost my train of thought.  
12 So this is the TV here?

13 A. Yes.

14 Q. Fairly large, would you agree, for the  
15 record?

16 A. Yes.

17 Q. And it's right in front of where you guys  
18 were staying -- or laying?

19 A. Yes.

20 Q. So while it was dark, you were still able  
21 to see what was happening as you walked down the hall,  
22 and as you were laying there, correct?

23 A. Yes.

24 Q. And, I'm sorry, maybe I missed it, but I  
25 think on cross-examination you said that the stockier guy

1 tells this guy when the stockier guy was leaving with Ryan,  
2 if anyone moves, shoot them?

3 A. Yes.

4 Q. Okay.

5 Now, you said something to the effect of it  
6 appeared that the stockier guy was the one, you know, that  
7 was in control or in charge?

8 A. Yes.

9 Q. But did this one participate?

10 A. Yes.

11 Q. Did this one at any one time -- at any time  
12 tell the first one, stop, don't do that?

13 A. No.

14 Q. Did he at any time, did this one tell the  
15 stockier guy they did enough, let's go?

16 A. No.

17 Q. Did this Defendant, this person at any time  
18 tell the stockier one, you really don't need to make them  
19 do that?

20 A. No.

21 Q. Did this one at any time tell the stockier  
22 guy, now why would you want them to do that?

23 A. No.

24 Q. In fact. Is he the one who volunteered to  
25 touch you?

1 A. Yes.

2 Q. And did you tell the police -- well, the  
3 police knew you within hours of this occurring, right?

4 A. Yes.

5 Q. And did you tell the police that while,  
6 after Ryan was asked to masturbate himself while you are  
7 laying back face down in the carpet at that point, the  
8 second guy told the first guy that he, the second guy, was  
9 ready to have sex with you, and that he was hard, and that  
10 he could do it?

11 A. Yes.

12 Q. When you talked about seeing the gun, you  
13 said, you said in here that he was holding his arm extended,  
14 and there was a point in the preliminary hearing that you  
15 said that it was by his chest. I mean, did he move at certain  
16 times, his body?

17 A. Yes.

18 Q. I mean, he wasn't just standing still like  
19 a tin soldier, correct?

20 A. No.

21 Q. And when you say that there were times that  
22 you couldn't really tell that it was actually a gun, were  
23 you sure that there was something in his hand?

24 A. Yes.

25 Q. Okay. You are not familiar with guns, right?



1 A. No.

2 Q. In fact, do you even know the difference  
3 between a revolver and an automatic or semiautomatic?

4 A. No.

5 Q. Okay. Was he, he, that person, when you  
6 say he was standing behind you guys, showing you again  
7 State's Exhibit 2, when you say, "behind you guys", that  
8 would be kind of in the wood area while you were on the  
9 carpet?

10 A. Yes.

11 Q. And because it is such a close area, while  
12 you might not have been able to see him the whole time,  
13 could you hear?

14 A. Yes.

15 Q. Okay. And in moving --

16 A. Standing in the wood area, they were.

17 Q. Okay. And, in fact, when he was standing  
18 in that wooded area, he and his gun are blocking all six  
19 of you from the door, is that right?

20 A. Yes.

21 Q. And then when the stockier one and Ryan  
22 left, and he was still there?

23 A. Yes.

24 Q. Still blocking the five of you from the  
25 door with his gun?

1 A. Yes.

2 MS. LUZAICH: Okay, thank you, no further  
3 questions.

4 THE COURT: Anything else?

5 RECROSS-EXAMINATION

6 BY MR. BANKS:

7 Q. You indicated that this gentleman volunteered  
8 to touch you?

9 A. Yes.

10 Q. We can agree that that was after you heard  
11 the statement that if someone does not perform, or get it  
12 on someone is going to be killed, isn't that true?

13 A. Yes.

14 MR. BANKS: Pass the witness.

15 THE COURT: Is that it?

16 MS. LUZAICH: Yes.

17 THE COURT: Okay. Thank you very much for your  
18 testimony. We appreciate it.

19 You will be excused, and if it's necessary to  
20 have you come back, we will let you know by whatever party.  
21 You are excused, okay?

22 THE WITNESS: Yes.

23 THE COURT: Thank you very much.

24 (Witness excused.)

25 THE COURT: All right. It's about seven till.

1 What do you want to do?

2 MS. LUZAICH: The Court's pleasure.

3 THE COURT: Why don't we break. If I say 1:15,  
4 that is not quite an hour and a half, is that all right?

5 MS. LUZAICH: Yes.

6 THE COURT: All right. We are going to take an  
7 hour and 22 minute break until 1:15 is when we will come  
8 back.

9 So it is about a few minutes to go before 1:15,  
10 I want you guys as a group to meet outside of the double  
11 doors, and I will have Joe will bring you back here to the  
12 jury deliberation room, and then continue on our quest.

13 During the next hour and 22 minute break, I am  
14 going to admonish the members of the jury.

15 I don't want you to talk or discuss with anyone,  
16 including each other, any subject matter having to do with  
17 this trial, or anybody having to do with this trial.

18 I don't want you to watch, listen or read any  
19 reports or commentaries on anything having to do with the  
20 trial through any medium of information which includes  
21 radio, television, network, newspapers or the internet.

22 Don't form or express any opinion on any subject  
23 or about any person having to do with this trial until  
24 such time as the case has been finally submitted to you.

25 We are in recess for an hour and 22 minutes.

1 There is nothing we need to put on the record, is there?

2 MR. LANDIS: No, Judge.

3 MS. LUZAICH: I don't think so, Judge.

4 THE COURT: We are on break.

5 \*\*\*\*\*

6 (Whereupon, a brief recess was had.

7 After recess, all parties present, the following  
8 proceedings were had in open court in the absence of the  
9 jury, and alternates:)

10 \*\*\*\*\*

11 THE COURT: Did you get your stuff all straightened  
12 out?

13 MR. BANKS: Yes, sir.

14 THE COURT: Anything that you want to put on the  
15 record before we start?

16 MR. BANKS: Nothing for the Defense.

17 MS. LUZAICH: No.

18 THE COURT: Okay. Bring them in.

19 \*\*\*\*\*

20 (Whereupon, the following proceedings were had  
21 in open court in the presence of the jury, and alternates:)

22 \*\*\*\*\*

23 THE BAILIFF: All rise for the presence of the  
24 jury.

25 Please be seated.

1 THE COURT: Do the parties stipulate to the presence  
2 of the jury?

3 MR. BANKS: Yes, Judge.

4 MS. KOLLINS: Yes, Your Honor.

5 THE COURT: The State's next witness.

6 MS. KOLLINS: The State calls Justin Richardson.

7 THE CLERK: Come forward, please, sir, take  
8 the witness stand, remain standing and raise your right  
9 hand.

10 Whereupon,

11 JUSTIN RICHARDSON,  
12 called as a witness herein by the State, having been  
13 first duly sworn, was examined and testified as follows:

14 THE CLERK: Thank you very much.

15 You may be seated, and then state your name and  
16 spell your first and last name for the record.

17 THE WITNESS: I'm Justin Richardson, J-u-s-t-i-n  
18 R-i-c-h-a-r-d-s-o-n.

19 THE CLERK: Thank you.

20 THE COURT: Go ahead.

21 DIRECT EXAMINATION

22 BY MS. KOLLINS:

23 Q. Good afternoon, Justin.

24 A. Hi.

25 Q. How are you doing today?

- 1 A. Doing good.
- 2 Q. Good. Justin, how old are you today?
- 3 A. 21.
- 4 Q. When is your birthday?
- 5 A. September 7.
- 6 Q. Okay. What do you do for a living right
- 7 now?
- 8 A. I'm a driver for UPS.
- 9 Q. So, in 2007, you were 19?
- 10 A. Yes.
- 11 Q. Do you have a girlfriend?
- 12 A. Yes, I do.
- 13 Q. What's her name?
- 14 A. Danielle Browning.
- 15 Q. She was here earlier today?
- 16 A. Yes.
- 17 Q. Back in February, of 2007, did you live
- 18 here in Las Vegas?
- 19 A. Yes.
- 20 Q. Where did you live?
- 21 A. 690 Great Dane Court.
- 22 Q. Is that here in Clark County Nevada?
- 23 A. Yeah.
- 24 Q. Specifically, in the township of Henderson?
- 25 A. Yes.

1 Q. Who did you live there with?

2 A. Ryan Tognotti, David Motchinbacher and Justin  
3 Foucault.

4 Q. David, what's his last name?

5 A. Machenbacher.

6 Q. Do you know how to spell that?

7 A. M-o-t-c-h-i-n-b-a-u-c-h-e-r.

8 Q. Thank you. When did you move into that  
9 residence?

10 A. It was the August before September, or  
11 before February, I mean. So just six months.

12 Q. So August, of 2006?

13 A. Yeah.

14 Q. And in February, of 2007, how were you  
15 employed?

16 A. I was with U P S but I was working in the  
17 warehouse. Not a driver yet.

18 Q. Is that what you do now?

19 A. Yes.

20 Q. Had you also been attending school down  
21 here in Las Vegas at some point?

22 A. Yes.

23 Q. Okay. And you moved here from another  
24 jurisdiction?

25 A. Yes.

001320

1 Q. Did you move here in August, of '06?

2 A. No, I moved back here in '04, June, '04.

3 Q. Turning your attention to the weekend --

4 Allstar Weekend back in 2007, August 17, 18, was Danielle  
5 visiting you?

6 A. Yes, she was.

7 Q. And why was she down here?

8 A. It was her birthday that weekend.

9 Q. Calling your attention to the Sunday evening  
10 of that weekend, what time did you go to bed?

11 A. It was early night. It had to be somewhere  
12 around eight, somewhere around eight, I think.

13 Q. And why did you retire so early?

14 A. I had to work the next morning, about three  
15 in the morning.

16 Q. Did Danielle go to bed with you at the same  
17 time?

18 A. Yes.

19 Q. Did you guys actually get to sleep?

20 A. Yes.

21 Q. Did something cause you to awaken?

22 A. Yeah, a loud knocking on my bedroom door.

23 Q. Okay. Was your bedroom door closed?

24 A. Yes.

25 Q. What did you do in response to the knocking

001321



1 at first?

2 A. I just yelled out, yeah, you know, like  
3 it's okay to come on in.

4 Q. And when you yelled out, yeah, come on in,  
5 what did you think was going on at that time?

6 A. I just figured one of my roommates, just  
7 had some question, or something to tell me.

8 Q. When you yelled out, yeah, come on in,  
9 what happened next?

10 A. The door just kind of peeked open, cracked  
11 open, and at that time I had turned my bedroom light on  
12 with a lamp, I had a little remote for it, and like before  
13 he finished coming in, he kind of yelled out, you know,  
14 turn off the light.

15 And at that time I was reaching over, grabbing  
16 my glasses and putting them on but I was still confused.

17 Q. Okay.

18 A. And the only thing that was coming up from  
19 the door was like his hand with the gun, just kind of turned  
20 off the door -- or turn off the light.

21 Q. Okay.

22 So somebody knocks on the door, they come in,  
23 if I understand you correctly, you had some kind of remote  
24 that turned the light on in your room?

25 A. Yes.

1 Q. Is that an overhead light?

2 A. Yeah, it's connected with the fan.

3 Q. Okay. And you said you reached over and  
4 grabbed for your glasses?

5 A. Uh-huh.

6 Q. Is that a "yes"?

7 A. Yes.

8 Q. And he can spell yes and no, but uh-huh  
9 and uh-uh are spelled the same way.

10 A. Okay, all right.

11 Q. Did you get your glasses on?

12 A. Yes, I did.

13 Q. Okay.

14 Did you get a look at the person -- you said you  
15 saw a hand coming through the door with a gun.

16 Did you get a look at the person's face at that  
17 time?

18 A. No, I didn't.

19 Q. Okay.

20 Could you tell by looking at the hand tha contained  
21 the gun the race or ethnicity of the person?

22 A. Yes.

23 Q. What was that?

24 A. It was black.

25 Q. You said the person screamed, turn out the

1 light?

2 A. Yeah.

3 Q. Once? Did he say that once or more than  
4 once?

5 A. He said it more than once.

6 Q. And I assume it was a male. Was it a male  
7 or a female?

8 A. Yes, it was a male.

9 Q. Okay. And did you listen to him and turn  
10 out the light?

11 A. At first, no, I really didn't know what was  
12 going on.

13 Q. Were you pretty sound asleep?

14 A. Yeah, I was in -- I was knocked out.

15 Q. Okay. What, did you eventually listen to  
16 them and turn out the light?

17 A. Yes, I did.

18 Q. Okay. And what happened after you turned  
19 out the light?

20 A. He came in, and he was saying my name, he  
21 said, Justin, get up, you need to stand up, and put your  
22 hands on your head, and come to the front of the bed.

23 Q. Up to this point, was this anyone you  
24 recognized, or had seen before, or had heard the voice  
25 of before?

001324

1 A. No.

2 Q. Okay.

3 When the person told you to get out of the bed  
4 and put your hands on your head, and come to the front of  
5 the bed, did you listen to them?

6 A. Yes, I did.

7 Q. Okay. What were you wearing?

8 A. I was just in my boxers and a white beater --

9 Q. You mean a sleeveless?

10 A. A sleeveless shirt, you know.

11 Q. Was Danielle in the room at the time?

12 A. Yes, she was.

13 Q. And what was Danielle doing?

14 A. She was in the bed next to me. She wasn't  
15 saying nothing, so I figured she was still sleeping.

16 Q. Okay.

17 After you got up and out of the bed, what happened  
18 after that?

19 A. After that, he came into the room, and  
20 he walked over to the bed, and he asked me, who is this  
21 in your bed?

22 And I told him, it was my girlfriend, and he told  
23 her to get up, and do the same thing, walk to the front of  
24 the bed with her hands up.

25 Q. Okay. And was Danielle clothed?

001325

1 A. Yes, she had her pajamas on.

2 Q. All right. Indulge me for just a minute,  
3 Ryan, I'm sorry, Justin.

4 Of course, I put these upside down before you  
5 came in here.

6 Showing you what has been marked and admitted,  
7 Justin, as State's 9, do you recognize State's 9?

8 A. Yes.

9 Q. What's that?

10 A. That's my bed. That's the remote to my  
11 fan and light on the bed. That's my bedroom.

12 Q. In your bedroom where you and Danielle were  
13 that we just have been discussing?

14 A. Yes.

15 Q. And that is the light that you turned on  
16 to take a look at the person?

17 A. Yes.

18 Q. And you are positive that was a gun in his  
19 hand that you saw?

20 A. Yes.

21 Q. State's admitted 10, Justin, different  
22 shot, same bedroom area. You said he had you step to  
23 the dresser.

24 Where is the dresser in relation to the bed  
25 that we see in that photo?

1 A. It's looking to the left of the picture,  
2 just in front of the bed.

3 THE COURT: Justin, you can take your finger,  
4 and just put it right on that screen, and draw a circle,  
5 and it will show up.

6 THE WITNESS: Oh, okay.

7 THE COURT: It will show up, you can put your  
8 finger to get rid of it in the lower right-hand corner.

9 THE WITNESS: It is right down there.

10 BY MS. KOLLINS:

11 Q. Okay.

12 Now, did the person have you face away from  
13 them or towards them?

14 A. I was facing straight ahead so he was  
15 to the left.

16 Q. So you were facing towards the wall  
17 then?

18 A. Yes.

19 Q. Okay. Was Danielle facing the same way?

20 A. Yes.

21 Q. After you got up and out of bed, did you  
22 put your hands on top of your head?

23 A. Yes.

24 Q. Did Danielle do the same thing?

25 A. Yes.

1 Q. What, if anything, did he have you do after  
2 you got your hands on your head?

3 A. After we were both standing next to each  
4 other, he told us to start walking out into the hallway,  
5 and he said walk to the living room and join your friends.

6 Q. I am going to show you, Justin, what has  
7 been marked State's Exhibit 11. Is this the dresser kind  
8 of that you are talking about?

9 A. Yes, that's it.

10 Q. Okay, to the left of State's 11? To the  
11 left of State's 11?

12 A. Yes.

13 Q. Okay. And the white mark that you put  
14 on the previous photos just happens to be almost in the  
15 same place?

16 A. Yes.

17 Q. You said he had you walk down the hallway.  
18 Where did that hallway lead to?

19 A. That leads to the living room and just the  
20 entrance way of our house.

21 Q. Okay.

22 And did -- when he had you walk to the living  
23 room, was he in front of you or behind you, or something  
24 different?

25 A. He was behind us.

001328

1 Q. Behind the both of you?

2 A. Yes.

3 Q. Did you and Danielle walk single file?

4 A. Yes.

5 Q. What kind of doors exit your bedroom?

6 A. Double doors.

7 Q. I'm showing you what has been marked and  
8 admitted as State's 5.

9 The double doors depicted at the top of that  
10 photograph, are those the double doors that exit your  
11 bedroom?

12 A. Yes.

13 Q. And is that the hallway that you walked  
14 down?

15 A. Yes.

16 Q. And that leads to a common area of the  
17 house?

18 A. Yes.

19 Q. Showing you what has been marked and admitted  
20 as State's 4, the hallway that we just looked at in State's  
21 5, is that to the left in State's 4?

22 A. Yes.

23 Q. Leading into the living room area?

24 A. Yes.

25 Q. What -- while he was walking you down the



1 hallway, was he speaking to you?

2 A. Yeah, he was saying, keep your heads down,  
3 and don't look up. He said, just join your friends in  
4 the living room.

5 Q. When you and Danielle arrived in the living  
6 room, what did you see?

7 A. I seen all my roommates that were there,  
8 and then my friends on the ground in a semi circle pattern,  
9 with their hands in the middle.

10 Q. Can you tell me who was there and who was  
11 on the floor?

12 A. Yeah, there was Justin Foucault, Ryan Tognotti,  
13 Aitor Eskandon, and Clint Tognotti.

14 Q. Okay. Were they laying face down?

15 A. Yes.

16 Q. What else, if anything, did you see in the  
17 front room?

18 A. I saw when I was coming down the hallway  
19 before I hit the living room, just looking straight ahead,  
20 I seen another man standing there, just right in front of  
21 the woodpile on the carpet.

22 Q. Okay. And can you describe that other man  
23 for me?

24 A. Yes, he was also -- he was also African  
25 American. He was pretty slender, a lot more slimmer than

001330

1 the first guy that came in my bedroom.

2 Q. Okay.

3 For purposes of our conversation today, can we  
4 call the guy that came into your bedroom number one, and  
5 the person you saw in the living room number two?

6 A. Yes.

7 Q. Did number two have anything in his possession  
8 that you could see when you entered the living room?

9 A. At this time, no, I couldn't tell of anything.  
10 As soon as I looked up at him, they yelled at me, you know,  
11 look back down, and I really didn't -- I wasn't staring.  
12 It was quick, a glance.

13 Q. Okay.

14 If you had to compare the size and description  
15 of number one and number two, how would you distinguish  
16 them?

17 A. I would say number one was more stockier,  
18 more muscle definition, you know, and number two, he just  
19 seemed -- he might have been maybe a little taller, but  
20 just slimmer for the most part.

21 Q. Okay. Do you recall testifying at a  
22 preliminary hearing back in April of last year?

23 A. Yes, I did.

24 Q. Do you recall discussing what you saw when  
25 you entered the living room? Do you recall pointing out

001331

1 anyone?

2 A. No, just what I said.

3 Q. Okay.

4 A. I'm a little fuzzy.

5 Q. Do you recall being asked the question of --

6 MR. BANKS: (Interposing) Judge, I think if she  
7 is going to refresh recollection, she needs to --

8 THE COURT: Needs to what?

9 MR. BANKS: Well, either indicate that his  
10 recollection has been exhausted, Judge. We need some  
11 confirmation.

12 MS. KOLLINS: Well, I am getting there.

13 THE COURT: All right. Go ahead.

14 BY MS. KOLLINS:

15 Q. And, I'm sorry, Justin, I misspoke.

16 Do you recall discussing this incident with two  
17 detectives shortly after it happened?

18 A. Oh, yes.

19 Q. Okay. Do you recall any questioning about  
20 whether you saw a weapon in the possession of the second  
21 person when you entered the living room?

22 A. Yes.

23 Q. Okay. Do you recall what you told them you  
24 saw as you sit there today or --

25 A. Well, yes, I do know -- he had something in

1 his possession, in his hand by his side. To me, with the  
2 situation I was in, you know, I would never imply anything  
3 else but, you know --

4 MR. BANKS: Objection, Your Honor.

5 THE COURT: Hold on.

6 MR. BANKS: Objection, speculation.

7 MS. KOLLINS: Well, he hasn't finished his answer  
8 so we don't know if we were to determine.

9 THE COURT: Yeah, I don't want you to guess,  
10 but you can certainly describe, you know, to the best of  
11 your recollection whatever you saw.

12 Go ahead.

13 THE WITNESS: Okay. I thought it was a gun.

14 MR. BANKS: Objection, speculation. Move to  
15 strike.

16 THE COURT: Overruled. Go ahead.

17 BY MS. KOLLINS:

18 Q. After you and Danielle got in the living  
19 room, did number one continue to speak to you?

20 A. Yeah, he told us to lay down with our  
21 friends and lay face down with our hands in the middle.

22 Q. Did number two say anything to you?

23 A. No, not at this time.

24 Q. What happened next?

25 A. They were asking for money. They were trying

001333

1 to get money from all of us.

2 Q. Okay.

3 And I am going to ask, there is some distinction  
4 between number one and number two?

5 A. Okay. Number one was -- he started asking  
6 for the money. He was pretty much the only one talking at  
7 that time. He was just the only one concerned about the  
8 money really.

9 Q. Did number one or number two express a concern  
10 about where another individual was that was nowhere present  
11 in the home? Does that make sense?

12 A. Yeah, they were mentioning, there is nobody  
13 else there upstairs, you know.

14 Q. Did they ask, number one or number two, where  
15 somebody was that you did not know?

16 A. Yeah, they had. They asked -- I don't recall  
17 the name, but they did ask for a name that I never heard  
18 of before.

19 Q. Okay. Could it be Grant?

20 A. Yes, yes, I think that was it.

21 Q. Okay. Was that number one asking for Grant?

22 A. Number one.

23 Q. What about number two?

24 A. Number two didn't say -- I didn't hear him  
25 say anything.

1 Q. Okay.

2 You said number one was asking for money. Where  
3 was he in -- is he still in the living room?

4 A. Yes.

5 Q. Okay. Where is he in relationship to where  
6 you are laying on the floor?

7 A. Number one?

8 Q. Yes.

9 A. He's, when we first laid down, he was standing  
10 pretty much right behind me, where my feet were on the floor,  
11 and he kind of walked around the whole circle pretty much,  
12 like he made his way past number two and back to the other  
13 side.

14 Q. And where was number two?

15 A. Number two was still where I seen him when  
16 he first came in.

17 Q. Okay. Standing on the wood floor?

18 A. Yes.

19 Q. Showing you what has been admitted, Justin,  
20 as State's 3, kind of a fuller perspective of your living  
21 room, the carpeted area that's depicted in the bottom left,  
22 is that where everybody was laying on the floor?

23 A. Yes.

24 Q. What was your -- first of all, and the second  
25 man that you saw in the living room, was that anyone that

1 you recognized?

2 A. No.

3 Q. Anyone that you had ever seen before?

4 A. No.

5 Q. And did either of these persons have permission  
6 to enter your home?

7 A. No.

8 Q. Okay. Did anybody turn over any money at that  
9 point?

10 A. I think we pulled out, you know, a couple of  
11 ones, and some change. We didn't have no cash. We were  
12 all going to college and didn't have any extra cash laying  
13 around.

14 Q. Was the TV still on when you got out there?

15 A. Yes, when I walked out there, it was still  
16 on.

17 Q. What was the reaction of number one when  
18 there was no money really, you had no cash?

19 A. He was pretty upset. He was -- you could  
20 tell he was getting frustrated, and was -- his temper was  
21 going pretty good.

22 Q. What about number two? What was his reaction  
23 when there was no money to be had?

24 A. He really -- he didn't have as much of an  
25 attitude, but he was kind of, you know, you could tell with

1 number one's frustration was kind of getting on him. He  
2 started walking around a little bit.

3 Q. Did number two started to pace around a  
4 little bit?

5 A. Yes.

6 Q. Did number two speak about there not being  
7 any money or anything to take at that time?

8 A. No, not to my recollection he didn't say  
9 anything.

10 Q. At some point, did number one or number two  
11 start asking you about bank accounts?

12 A. Yes, number one. He started asking if we had  
13 any ATM cards.

14 Q. Okay. Who in the group had an ATM card?

15 A. Justin Foucault and Ryan Tognotti.

16 Q. And did Justin and Ryan give up those ATM  
17 cards?

18 A. Yes.

19 Q. And where did they come from, those ATM  
20 cards?

21 A. They had them, their wallets, I am pretty  
22 sure, they hadn't been on the coffee table. I couldn't  
23 tell where they pulled them out from. I still had my head  
24 down, but they didn't go anywhere that I saw.

25 Q. But could you hear what was going on?



1 A. Yeah, I could hear the asking for the cards,  
2 and the pin numbers, and what not.

3 Q. Okay. And did Ryan give his pin number while  
4 he was standing there?

5 A. Yes.

6 Q. And what --

7 A. Ryan was the one that was taking the numbers  
8 and jotting them down.

9 Q. Ryan was writing them down?

10 A. Yeah, well, I think he was, or just putting  
11 them in his head, but he was saying it out loud so I, you  
12 know.

13 Q. Who was the next one to give out the pin  
14 number?

15 A. Justin Foucault.

16 Q. And who did he give that pin number to?

17 A. Ryan and number one.

18 Q. And what was number two doing while Ryan  
19 was --

20 A. (Interposing) He was more behind me and  
21 Danielle now, on the woodpile still, but more behind us.

22 Q. Okay. So he had moved a little bit?

23 A. A little bit, yeah.

24 Q. Okay.

25 Once number one learned about the ATM cards and

001328

1 the pin numbers, what happened after that?

2 A. He said -- he had asked Ryan to get up and  
3 they were going to -- or asking for, you know, if they had  
4 a car, or what not, and get his keys. He was going to take  
5 them to an ATM to get the money out, and he told -- he told  
6 all of us, he said, and if anything happens while I am gone,  
7 if any of you stand up, or anything, talk, number two will  
8 shoot you then.

9 Q. Okay. Did he call number two by name?

10 A. He said something. I couldn't make it out  
11 though. He did say a name but I couldn't make it out.

12 Q. Okay. After, did number one talk to number  
13 two before he left with Ryan?

14 A. No, they didn't talk separately, but he just  
15 said, make sure none of them move. Take care of it, I mean,  
16 number two was agreeing on it, and he said, yeah, none of  
17 you better move while I am here.

18 Q. So number two said, none of you better move  
19 while I'm here?

20 A. Yes.

21 Q. Did he say what -- did number two say what  
22 would happen if any one of them moved while he was left  
23 there?

24 A. Yes, he would say, I will shoot you guys.

25 Q. He said, none of you move or I will shoot

1 you guys?

2 A. Yes.

3 Q. And that's number two?

4 A. Yes.

5 Q. The one that you described as taller and  
6 thinner?

7 A. Yes.

8 Q. Okay. Ryan and number one leave, is that  
9 true?

10 A. Yes, that's correct.

11 Q. Did Ryan have to go anywhere else in the  
12 house before he was able to leave with number one?

13 A. No, not that I knew of. I didn't see or  
14 hear him go anywhere.

15 Q. Did they go out the front door?

16 A. Yes.

17 Q. Did they pull that door closed?

18 A. Yes.

19 Q. State's Admitted 2, is that the front door  
20 in State's 2??

21 A. Yes.

22 Q. Did you have a cell phone on that date?

23 A. I did have a cell phone. It wasn't on  
24 me though. It was in my bedroom.

25 Q. Okay. On a dresser, plugged in, or something?

001340

1 A. Yeah, it was on my computer desk.

2 Q. Okay. Did Danielle have a cell phone?

3 A. She did.

4 Q. And where was that at that time, if you  
5 know?

6 A. I'm not positive. I know it rang sometime  
7 during the incident though.

8 Q. How long -- well, let me back up.

9 What did number two do after Ryan left and went  
10 to the bank with number one?

11 A. He was just being calm. He was sitting --  
12 he sat down on the stairway for a little bit, and that  
13 was directly behind me. That would be where I was laying.

14 Q. The stairway that's depicted in --

15 A. Yeah, yeah, right there. He was just sitting  
16 on the bottom steps.

17 Q. All right, State's 2. He was sitting on the  
18 steps?

19 A. Yeah, and he really -- he wasn't saying  
20 nothing. He was quiet. Everything -- everybody was quiet.  
21 Nobody did anything, and after a little time went by, you  
22 could tell he was getting nervous a little bit because like  
23 he stood up and started kind of pacing around.

24 Q. Okay.

25 During the time that number one was gone to the

1 bank or to the ATM with Ryan, did number two ever say it's  
2 okay for you guys to get up and get out of here?

3 A. No.

4 Q. Did he ever say it's okay, nobody is going  
5 to get hurt here?

6 A. No.

7 Q. Did he ever tell you I don't have a gun so  
8 you are free to get out of here?

9 A. No.

10 Q. Did he ever attempt to call the police?

11 A. No.

12 Q. Did he ever tell any of you during that  
13 period of time that you were free to call the police?

14 A. No.

15 Q. Did he ever offer anybody any car keys for  
16 the cars that were in the driveway to leave?

17 A. No.

18 Q. Did he ever express to you that he was  
19 scared?

20 A. No.

21 Q. Did he ever express to any of you that he  
22 was there without a choice and against his will?

23 A. No.

24 Q. When he started -- you said he started to get  
25 nervous, and he started to pace around, did he speak when he

001342

1 started to pace around?

2 A. Yeah, he asked us if -- where the ATM was at,  
3 where the closest ATM was, and, you know, we told him it was,  
4 you know, it was a block, a couple of blocks away, and he  
5 was just kind of asking us, well, how long do you think that  
6 would take for them to go, you know, just asking questions  
7 kind of like that, like shouldn't they be back by now, you  
8 know.

9 Q. Did anyone answer him or did you just let him  
10 get kind of go on with the questions?

11 A. Yeah, it was someone. I really don't know  
12 who was just saying that. We have got an ATM that's pretty  
13 close.

14 Q. Okay. Did that calm him down or did he get  
15 more agitated?

16 A. I wouldn't say he got more agitated but he  
17 still, he walked around. He kept walking around.

18 Q. Number one and Ryan eventually get back?

19 A. Yes.

20 Q. Okay. And where did they come from when  
21 they got back?

22 A. Through the front door.

23 Q. What's the very first thing that happens  
24 when number one and Ryan come back?

25 A. They come in, and number one tells Ryan

1 to go lay back down in the circle.

2 Q. Did Ryan listen to him?

3 A. Yes, he came back and laid down. And then  
4 number one said, he started saying, well, hey, you guys,  
5 you know, you've been pretty good, you know, you didn't  
6 have everything we wanted, but came up with something,  
7 and he said you guys are 90 percent done now. You've  
8 just got 10 to go.

9 Q. He said that you guys had 10 percent to  
10 go?

11 A. Yes.

12 Q. Did number one then start directing some  
13 discussion to you and Danielle?

14 A. Yes.

15 Q. And did he go on to kind of tell you what  
16 the 10 percent was?

17 A. Yes.

18 Q. Did he ask you whether you are boyfriend and  
19 girlfriend?

20 A. Yeah, he had known that we were. He had  
21 asked us if we were in love, and we told him, yes.

22 Q. And how is Danielle doing at this point in  
23 terms of dealing with it? How is she doing?

24 A. She was, remained calm. You could tell she  
25 was scared though.

1 Q. After number one figures out that you are  
2 boyfriend and girlfriend, and you are in love, what does he  
3 say? What does he do?

4 A. He tells her to start performing oral sex  
5 on me.

6 Q. Okay. And by oral sex, you mean what?

7 A. Putting her mouth on my penis.

8 Q. Okay. So when he tells you this, are you  
9 laying face down on the floor?

10 A. Yes.

11 Q. Okay. And what does he direct you to do?

12 A. He tells me to roll over slowly, keep my  
13 eyes closed, and he told her basically the same thing, to  
14 just start.

15 Q. So, and I know this is tough material, okay,  
16 and I am just going to walk you through it just a little  
17 bit.

18 A. Okay.

19 Q. You listened to him, you roll over on your  
20 back?

21 A. Yes.

22 Q. Okay.

23 Does he talk to you, he, either number one or  
24 number two, about looking at them at that point?

25 A. Yes. Well, number one was saying, don't



1 open your eyes. Keep them closed, and as I was rolling  
2 over, he made sure I wasn't, and he put a pillow over my  
3 face, and he held it with his gun.

4 Q. So you were laying on your back, you have  
5 a pillow over your face, and you can feel something hard?

6 A. Yes.

7 Q. Through the pillow?

8 A. Yes.

9 Q. Do you still have your clothes on at that  
10 time?

11 A. Yeah, my boxers.

12 Q. And he told Danielle to roll over as well?

13 A. Yes.

14 Q. Okay. And does she listen to him?

15 A. Yes.

16 Q. He tells her to perform fellatio on you.

17 What are his words, I mean does he say oral sex?

18 A. No, he said, "Start sucking his dick."

19 Q. So a little more graphic?

20 A. Yeah.

21 Q. Okay. Does Danielle listen to him?

22 A. Yeah.

23 Q. Okay. Does she remove your boxers?

24 A. Yes.

25 Q. Does someone, either number one or number

1 two, direct her to remove your boxers?

2 A. Yes, number one told her to take off my  
3 boxers.

4 Q. At some point, number one and/or number  
5 two become frustrated by your ability to perform or not  
6 perform?

7 A. Yes.

8 Q. Okay. What is number one saying, and I am  
9 not trying to embarrass you. I just so that we all understand  
10 the gravity of the situation.

11 A. I understand. He was really upset, saying  
12 that how could I not get hard? And he started talking about  
13 Danielle, you know, like she is a really fine girl, and this  
14 and that, you should be able to do it, and he started saying,  
15 you know, pretty soon he started getting real mad.

16 He kept asking me, what's wrong, you know, and I  
17 told him I told him, I mean, it's a tough situation, you  
18 know, and he started telling me that if I couldn't get hard,  
19 then he would just kill me and go to the next guy, and if  
20 they couldn't, then they would kill him, and go to the next  
21 guy.

22 Q. Okay. Once he became frustrated with Danielle  
23 giving you oral sex, did he -- first of all did you want any  
24 of this to happen?

25 A. No.

1 Q. At this time in front of a roomful of friends  
2 at gunpoint?

3 A. No.

4 Q. Okay. After he became frustrated with this  
5 particular scenario that he had set up, if you will, did he  
6 command you, number one, to do something else?

7 A. Yes, he told us to pretty much switch  
8 positions.

9 Q. Okay. And by switching positions, what do  
10 you mean?

11 A. Her getting on her back, and me getting down  
12 and performing oral sex on her.

13 Q. Okay. I am going to stop you right there  
14 for just a second, Justin.

15 While they were having you receive oral sex  
16 from Danielle, was she clothed? Did she have her clothes  
17 on?

18 A. I couldn't tell.

19 Q. Okay.

20 A. I had my eyes covered, and I never saw.

21 Q. When they had you switch positions?

22 A. She did -- she did have her underwear on.  
23 I know I took them off.

24 Q. At some point, do you remember a direction  
25 or a command, if you will, for Danielle to take her clothes

1 off?

2 A. I do remember hearing that, yes.

3 Q. Okay. Did one say that?

4 A. Yes, number one told me to take her clothes  
5 off.

6 Q. Did number two say that?

7 A. Number one told her to take off her clothes.

8 Q. Okay. Do you recall again in that same  
9 interview with the police officers the night this happened?

10 A. Yes.

11 Q. Okay. Do you recall speaking to detectives  
12 about about who had directed Danielle to take her clothes  
13 off?

14 A. No, I don't recall, whoever.

15 Q. Okay. Would it refresh your recollection to  
16 review a portion of that statement?

17 A. Yes.

18 MS. KOLLINS: Page six of the February 19, 2007  
19 interview.

20 May I approach the witness, Your Honor?

21 THE COURT: Yes.

22 BY MS. KOLLINS:

23 Q. This is small print for young eyes, okay?

24 So I am going to ask you to read page six quietly  
25 to yourself and then I will have a few questions for you?

001349

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

2  
3       **DELARIAN K. WILSON,**  
4               **Appellant.**  
5       **vs.**  
6       **THE STATE OF NEVADA**  
              **Respondent.**

**Supreme Court No.:**  
**District Court Case No.:** C232494-1

Electronically Filed  
Nov 12 2015 10:16 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

7                   **APPELLANT'S APPENDIX - VOLUME VI - PAGES 1250-1499**

8       **MATTHEW D. CARLING**  
9       51 East 400 North, Bldg. #1  
10      Cedar City, Utah 84720  
11      (702) 419-7330 (Office)  
          *Attorney for Appellant*

**STEVEN B. WOLFSON**  
          Clark County District Attorney  
          200 Lewis Avenue, 3<sup>rd</sup> Floor  
          Las Vegas, Nevada 89155  
          *Counsel for Respondent*

12               **CATHERINE CORTEZ MASTO**  
13               Attorney General  
14               100 North Carson Street  
15               Carson City, Nevada 89701-4717  
16               *Counsel for Respondent*

**INDEX**  
**Wilson, Delarian**

<b>Document</b>	<b>Page No.</b>
Information filed on 04/20/07	0001-0009
Criminal Bindover filed on 04/25/07	0010-0103
Defendant's Motion for Release of Own Recognizance or in the Alternative Set Reasonable Bail filed on 05/17/07	0104-0126
Bond filed on 06/08/07	0334-0337
Bond filed on 06/08/07	0338-0341
Bond filed on 06/08/07	0342-0345
Ex Parte Motion to Appoint Investigator and for Fees in Excess of Statutory Limit filed on 08/16/07	0346-0349
Ex Parte Order filed on 08/29/07	0350-0357
Motion to Sever Defendants filed on 03/06/08	0358-0364
Motion to Suppress Fruits of Illegal Search filed on 03/11/08	0365-0392
Defendants Joinder in Co-Defendant Narcus Wesley's Motion to Sever Defendants filed on 03/11/08	0393-0394
Defendant's Motion to Suppress Statement filed on 03/17/08	0395-0434
State's Opposition to Defendant Wilson's Motion to Suppress Statement filed on 03/24/08	0435-0456
State's Opposition to Defendant Wesley's Motion to Suppress Fruits of Illegal Search filed on 03/24/08	0457-0478
Defendant's Motion to Continue Trial filed on 03/25/08	0479-0481
Guilty Plea Agreement filed on 03/28/08	0482-0490
Amended Information filed on 03/28/08	0491-0493
Notice of Witnesses and/or Expert Witnesses filed on 03/28/08	0494-0498
Defendant's Notice of Witnesses Pursuant to NRS 174.234 filed on 04/07/08	0519-0521
Second Amended Information filed on 04/10/08	0522-0531
District Court Jury List filed on 04/10/08	0532
Amended Criminal Jury List filed on 04/14/08	0649
Instructions to the Jury filed on 04/18/08	0650-0706
Verdict filed on 04/18/08	0707-0712
Order for Expedition of Transcript filed on 04/24/08	0723
Defendant Wesley's Motion for New Trial 04/28/08	0724-0731
Motion for Withdrawal of Counsel filed on 04/28/08	0732-0734
Motion for Extension of Time filed on 04/28/08	0735-0738
Notice of Motion filed on 04/28/08	0739-0742
Motion for Bail Pending Sentencing Appeal filed on 05/01/08	0743-0747
Supplemental Points and Authorities to Motion for New Trial filed on 06/05/08	0754-0759
Receipt of Copy filed on 06/10/08	0760
State's Opposition to Defendant's Motion for New Trial filed on 06/18/08	0761-0765

1	Sentencing Memorandum filed on 07/03/08	0787-0820
2	Judgment of Conviction (Plea of Guilty) filed on 07/16/08	0821-0822
3	Judgment of Conviction (Jury Trial) filed on 07/18/08	0823-0827
4	Notice of Appeal filed on 07/18/08	0828-0829
5	Case Appeal Statement filed on 07/21/08	0830-0831
6	Notice of Appeal filed on 07/22/08	0832-0833
7	Case Appeal Statement filed on 07/24/08	0834-0836
8	Notice of Appeal filed on 07/24/08	0837-0838
9	Case Appeal Statement filed on 07/24/08	0839-0840
10	Case Appeal Statement filed on 07/24/08	0841-0843
11	Notice of Appeal filed on 07/24/08	0844-0846
12	Notice of Appeal filed on 07/25/08	0847-0848
13	Notice of Appeal filed on 08/05/08	0849-0851
14	Case Appeal Statement filed on 08/06/08	0852-0853
15	Case Appeal Statement filed on 08/14/08	0854-0856
16	Notice of Motion and Motion to Correct Illegal Sentence filed on 09/05/08	0878-0881
17	Request for Rough Draft Transcript filed on 09/10/08	0882-0885
18	Order for Production of Inmate Narcus Samone Wesley filed on 09/13/08	0886-0887
19	Ex Parte Application to Appoint Attorney of Record to Represent Defendant Narcus S. Wesley During Appeal Process filed on 09/15/08	0888-0892
20	Request for Rough Draft Transcript filed on 09/17/08	0893-0896
21	Request for Transcript of Proceedings filed on 10/07/08	0897-0899
22	Amended Judgment of Conviction filed on 10/08/08	0900-0905
23	Certificate of Delivery to the Supreme Courthouse filed on 12/05/08	1996-1997
24	Certificate of Delivery to the Supreme Courthouse filed on 12/09/08	1998-2000
25	Clerk's Certificate Judgment Affirmed filed on 08/07/09	2021-2027
26	Clerk's Certificate Judgment Affirmed filed on 04/12/10	2028-2034
27	Attorney Time and Costs filed on 06/28/10	2035-2039
28	Motion for Order Instructing the Attorney of Record to Provide petitioner With a Complete and Copy of the Case in the Above Entitled Case Number filed on 08/05/10	2040-2052
	Certificate of Mailing filed on 08/20/10	2053
	Request for Transcripts/Court Proceedings filed on 10/01/10	2054-2071
	State's Opposition to Defendant's Request for Transcripts/Court Proceedings filed on 10/13/10	2072-2075
	Defendant's Motion to Appoint Post-Conviction Relief Counsel filed on 10/27/10	2076-2081
	Order Denying Defendant's Request for Transcripts/Court Proceedings filed on 11/01/10	2082-2083
	State's Opposition to Defendant's Motion to Appoint Post-Conviction Relief Counsel filed on 11/23/10	2084-2088
	Receipt filed on 12/17/10	2089
	Notice of Change of Hearing filed on 06/15/11	2090



1	Petition for Writ of Habeas Corpus (Post-Conviction) filed on 10/10/11	2091-2104
2	Application and Order for Transcripts filed on 10/13/11	2105
3	Application and Order for Transcripts filed on 10/13/11	2106
4	Response to Defendant's Petition for Writ of Habeas Corpus (Post-Conviction) and Motion to Dismiss filed on 11/01/11	2107-2115
5	Reply to State's Response to Defendant's Petition for Writ of Habeas Corpus (Post-Conviction) and Motion to Dismiss filed on 12/05/11	2121-2122
6	Findings of Fact, Conclusions of Law and Order filed on 01/06/12	2123-2130
7	Notice of Entry of Decision and Order filed on 01/18/12	2131-2139
8	Motion for Clarification and/or Reconsideration of Denial of Defendant's Petition for Writ of Habeas Corpus filed on 01/30/12	2140-2141
9	Order Staying the Findings of Fact, Conclusions of Law and Order filed on 02/21/12	2142
10	Notice of Appeal filed on 02/21/12	2143
11	Opposition to Defendant's Motion for Clarification and/or Reconsideration of Denial of Defendant's Petition for Writ of Habeas Corpus filed on 02/24/12	2149-2150
12	Order for Production of Inmate Delarian Kameron Wilson filed on 03/01/12	2163
13	Motion to Place on Calendar filed on 05/23/13	2164
14	Order for Transcripts filed on 08/06/13	2197
15	Findings of Fact and Conclusions of Law and Order filed on 11/12/13	2205
16	Notice of Entry of Findings of Fact, Conclusions of Law and Order filed on 11/19/13	2206-2215
17	Order for Transcript filed on 11/21/13	2216
18	Notice of Appeal filed on 12/10/13	2217
19	Case Appeal Statement filed on 12/10/13	2218-2220
20	Motion to Withdraw Due to Conflict filed on 08/06/14	2221-2223
21	Supplemental Petition for Writ of Habeas Corpus (Post-Conviction)	2224-2265
22	State's Response and Motion to Dismiss Defendant's "Supplemental" Petition for Writ of Habeas Corpus (Post-Conviction) filed on 03/06/15	2266-2276
23	Stipulation to Enlarge Briefing Schedule and Order filed on 03/26/15	2277-2278
24	Reply to State's Response and Motion to Dismiss Defendant's Supplemental Petition for Writ of Habeas Corpus (Post-Conviction) filed on 04/20/15	2279-2296
25	Findings of Fact, Conclusions of Law and Order filed on 07/22/15	2297-2303
26	Notice of Entry of Findings of Fact, Conclusions of Law and Order filed on 07/24/15	2304-2311
27	Notice of Appeal filed on 08/04/15	2312-2313
28	Case Appeal Statement filed on 08/04/15	2314-2316
	Request for Rough Draft Transcripts filed on 08/04/15	2317-2319



## TRANSCRIPTS

Document	Page No.
Transcript – Preliminary Hearing filed on 05/23/07	0127-0201
Transcript – Preliminary Hearing filed on 05/23/07	0202-0333
Transcript – Change of Plea as to Defendant Wilson filed on 04/01/08	0499-0518
Transcript – Defendant Wesley's Motion to Suppress filed on 04/11/08	0533-0648
Transcript – Opening Statement of Mr. Landis filed on 04/21/08	0713-0722
Transcript – Judgment and Sentencing and filed on 06/03/08	0748-0753
Transcript – Defendant's Pro Per Motion for Bail Pending Sentencing/Appeal Defendant's Motion for New Trial filed on 07/03/08	0766-0786
Transcript – Sentencing filed on 09/03/08	0857-0877
Transcript – Jury Trial filed on 11/12/08	0906-0988
Transcript – Jury Trial filed on 11/12/08	0989-1029
Transcript – Jury Trial filed on 11/12/08	1030-1034
Transcript – Sentencing filed on 11/12/08	1035-1040
Transcript – Jury Trial filed on 11/12/08	1041-1110
Transcript – Sentencing filed on 11/12/08	1111-1131
Transcript – Jury Trial filed on 11/12/08	1132-1171
Transcript – Sentencing filed on 11/12/08	1172-1192
Transcript – Jury Trial filed on 12/05/08	1193-1415
Transcript – Jury Trial filed on 12/05/08	1416-1700
Transcript – Jury Trial filed on 12/05/08	1701-1995
Transcript – Change of Plea as to Defendant Wilson filed on 12/09/08	2001-2020
Transcript – Status Check filed on 11/17/11	2116-2120
Transcript – Hearing filed on 09/27/12	2151-2156
Transcript – Hearing filed on 09/27/12	2157-2162
Transcript – Writ filed on 09/23/13	2165-2196
Transcript -	

1 MS. LUZAICH: Oh yeah, yeah.

2 THE BAILIFF: Are you going to use this one.  
3 too?

4 THE COURT: Go ahead.

5 MS. LUZAICH: No, I am not going to use this.  
6 I won't use that again until closing.

7 MS. KOLLINS: And if I am going to need a screen  
8 for closing. Is that something that I get from you guys,  
9 or do I need to arrange it from my office?

10 THE COURT: No. A screen in what -- what are  
11 you talking about?

12 MS. KOLLINS: Well, like a monitor for closing.

13 THE COURT: Are you going to use this, I mean,  
14 are you going to use your laptop?

15 MS. KOLLINS: I am going to have a power point  
16 presentation. I need a monitor for them here so I need it  
17 to put an exhibit on that.

18 THE COURT: Are you sure you can't -- can you use  
19 this?

20 MS. KOLLINS: Well, I can, but then the jury is  
21 going to be looking over here and not listening to me.

22 THE BAILIFF: We can order one.

23 THE COURT: We can schedule a screen. We get  
24 that from Javs, don't we?

25 THE BAILIFF: Yeah.

001250

1 MS. LUZAICH: Yes, Judge, I need to order one.

2 THE COURT: Okay.

3 THE BAILIFF: You don't need it right now so lay  
4 it right there.

5 MS. LUZAICH: Not right away though.

6 THE BAILIFF: Okay. I will just -- you just  
7 pull it out here.

8 THE COURT: And it is all plugged in, Joe?

9 THE BAILIFF: It's all set up.

10 THE COURT: But you won't be using laptops in  
11 addition to that?

12 MS. KOLLINS: Not today, but for closing, yes.  
13 But I always set that up here.

14 MS. LUZAICH: Although I have a 911 call. I  
15 kind of have to listen to it yet, and, therefore, the  
16 Defense has not either. It would not be this morning.  
17 It will be this afternoon. I have a laptop here with  
18 me so that we can listen to it when we break for lunch.

19 THE COURT: Okay.

20 MS. LUZAICH: And decide if we are going to  
21 use it, and if so, play it, and so, but that won't be  
22 until the afternoon witness.

23 THE COURT: Okay, all right.

24 We are on the record in the State of Nevada v.  
25 Narcus Wesley.

001251

1 For the record, Mr. Wesley, that's you, correct?  
2 Is that right?

3 MR. NARVIEZ WESLEY: Yes.

4 THE COURT: Okay. Throughout the course of the  
5 trial, at least during the State's portion of the trial,  
6 I am going to ask that you guys and families sit over on  
7 the right side as you come in rather than the left side  
8 only because there is a line of sight issue for the  
9 witnesses.

10 MR. NARVIEZ WESLEY: Okay.

11 THE COURT: So one other thing I want to say,  
12 Mr. Wesley.

13 I watched you so far during the opening arguments,  
14 and you are certainly welcome to be here and listen to  
15 this trial. This applies to you, and everybody.

16 But you are not allowed to be animated in any  
17 manner whatsoever. I am only going to tell you this once.

18 MR. NARVIEZ WESLEY: Yes.

19 THE COURT: Because these folks, these attorneys,  
20 have their back to you but I don't.

21 If I see you nodding your head, shaking your head,  
22 making any kind of hand motions, gestures, or if you are  
23 animated in any manner, or in any respect, I will exclude  
24 you from the courtroom.

25 So, welcome. Listen to the trial. But that's it.

1 Are we clear?

2 MR. NARVIEZ WESLEY: Yes.

3 THE COURT: All right. Anything we need to address?

4 MS. KOLLINS: No, Your Honor.

5 THE COURT: All right. Bring in the jury.

6 We anticipate like noonish, the break from like  
7 noon to 1:30.

8 MS. LUZAICH: Ish? Yeah, we have two witnesses  
9 here this morning. I mean it would be lovely if we could  
10 get through both of them before we broke for lunch. I just  
11 have no idea how long they are going to take.

12 THE COURT: If we are getting close, and it means  
13 we need to stay until 12:30, that's fine, I mean, we are  
14 not on any kind of absolute schedule.

15 MS. LUZAICH: Okay.

16 THE COURT: We will try to accommodate everybody  
17 the best we can.

18 MS. LUZAICH: Okay, thank you.

19 \*\*\*\*\*

20 (Whereupon, the following proceedings were had  
21 in the presence of the jury, and alternates:)

22 \*\*\*\*\*

23 THE BAILIFF: Please be seated.

24 THE COURT: Will the parties stipulate to the  
25 presence of the jury?

1 MS. LUZAICH: Yes, sir.

2 MR. LANDIS: Yes, Judge.

3 THE COURT: All right. The State may call your  
4 first witness.

5 MS. LUZAICH: The State calls Danielle Browning.

6 THE CLERK: Come forward, please.

7 Take the witness stand, remain standing, and  
8 raise your right hand. Raise your right hand, please.  
9 Whereupon,

10 DANIELLE BROWNING,  
11 called as a witness herein by the State, having been first  
12 duly sworn, was examined and testified as follows:

13 THE CLERK: Thank you very much.

14 You may be seated, and then state your name,  
15 spell your first and last name for us.

16 THE WITNESS: Danielle Browning, D-a-n-i-e-l-l-e  
17 B-r-o-w-n-i-n-g.

18 THE CLERK: Thank you.

19 THE COURT: Go ahead.

20 DIRECT EXAMINATION

21 BY MS. LUZAICH:

22 Q. Good morning, Danielle. How are you doing?

23 A. Pretty good. How are you?

24 Q. I'm fine, thanks. Are you a little nervous?

25 A. Yes.

1 Q. Okay, speak up. Danielle, do you live down  
2 here in Las Vegas?

3 A. Yes.

4 Q. All the time?

5 A. No.

6 Q. Do you kind of move commute periodically  
7 from somewhere else?

8 A. Yes.

9 Q. Up north?

10 A. Yes.

11 Q. Okay.

12 Do you live up north with your parents when you  
13 are up there?

14 A. Yes.

15 Q. And when you come down to stay down here,  
16 who do you come down to be with?

17 A. Justin.

18 Q. Who is Justin to you?

19 A. My boyfriend.

20 Q. And what is Justin's last name?

21 A. Richardson.

22 Q. And how long have you and Justin been  
23 together?

24 A. Almost two years.

25 Q. Okay. Were you and Justin together, therefore,

001255

1 on February 18, of 2007?

2 A. Yes.

3 Q. And that weekend, were you down here visiting  
4 with Justin?

5 A. Yes.

6 Q. Now, back in like February, of '07, did you  
7 come down here more often or less often than you do now?

8 A. Less often then.

9 Q. Okay. And you come here more often now why?

10 A. Because I partially live with him and because  
11 we are having a baby.

12 Q. Okay. Back in February, of 2007, did you  
13 work?

14 A. Yes, part-time.

15 Q. Up north?

16 A. Yes.

17 Q. And are you working now?

18 A. No.

19 Q. Because of the baby?

20 A. Yes.

21 Q. Okay. Does Justin work?

22 A. Yes.

23 Q. What does Justin do?

24 A. He is a driver.

25 Q. For?

001256



- 1 A. For UPS.
- 2 Q. Back in February, of 2007, where did Justin
- 3 live?
- 4 A. Great Dane. We lived in a house.
- 5 Q. And in that house, did he have roommates?
- 6 A. Yes.
- 7 Q. Who were his roommates?
- 8 A. David, Ryan and Justin Foucault.
- 9 Q. Okay, David?
- 10 A. Motchinbaucher.
- 11 Q. Can you spell that?
- 12 A. No.
- 13 Q. Okay. You say Justin Foucault?
- 14 A. Yes.
- 15 Q. Ryan, what's his last name?
- 16 A. Tognotti.
- 17 Q. And he is going to come here later, right?
- 18 A. Yes.
- 19 Q. And Justin Foucault?
- 20 A. Uh-huh.
- 21 Q. Okay. Is that a yes?
- 22 A. Yes.
- 23 Q. Back in February, of 2007, were you down
- 24 here Allstar Weekend?
- 25 A. Yes.

001257

1 Q. And when was it that you were planning on  
2 going back?

3 A. It would be through the end of that week  
4 so it was about four days after that.

5 Q. Okay. So on Sunday, February 18, 2007,  
6 were you and Justin at his home in the evening?

7 A. Yes.

8 Q. And was Justin getting ready to go to work  
9 Monday morning?

10 A. Yes.

11 Q. But you were going to stay here, correct?

12 A. Yes.

13 Q. Do you know about what time it was that  
14 you guys went to bed that night?

15 A. Maybe around eight or nine. It was really  
16 early because he had to go to work that night, two to  
17 three o'clock in the morning.

18 Q. When you guys went to bed, was anybody  
19 else in the home?

20 A. Yes.

21 Q. Who was home?

22 A. Ryan Tognotti, Justin Foucault, Ryan's  
23 little brother, Clint, and Clint spent the night with  
24 us.

25 Q. And that house that you guys were -- or

001258

1 that Justin was living in, is that a two story house?

2 A. Yes.

3 Q. Where in the house was Justin's bedroom?

4 A. The bottom story, right next to the entrance.

5 Q. Okay. And when you walk in the door, is  
6 there like a little hallway to go down there?

7 A. Yes.

8 Q. When you guys went to bed, what were Ryan,  
9 Clint, Justin and Aitor doing, do you remember?

10 A. Watching a movie.

11 Q. Okay. And where were they watching the  
12 movie?

13 A. In the living room.

14 Q. When you went into the bedroom, do you  
15 believe you guys actually fell asleep?

16 A. Yes.

17 Q. Okay. Did something happen that night?

18 A. Yes.

19 Q. Can you describe for me what happened?

20 A. We got a knock on the door, on the bedroom  
21 door, and we didn't answer it at first, and then we said,  
22 come in because we thought it was one of his roommates.

23 Someone came into the room and kept saying  
24 Justin's name, and we were just waking up, so Justin  
25 went to get up, and he didn't know who it was, and he

001259

1     couldn't see because he wears contacts, and then the guy  
2     came in, and he told us to -- he told Justin, he asked  
3     who I was.

4             Justin said, his girlfriend.

5             He asked Justin to stand up, and put our hands  
6     on our heads, and walk to the front room.

7             Q.    Can you describe the guy that came into  
8     the bedroom?

9             A.    Yes.

10            Q.    Describe him for me?

11            A.    He was kind of short, stocky. He was African  
12     American.

13            Q.    Did he have anything with him?

14            A.    Yeah, he had a gun.

15            Q.    Okay.

16            Now, when he came into Justin's bedroom, since  
17     you guys were sleeping, was it light or dark?

18            A.    It was dark.

19            Q.    Was the door opened, was it opened and  
20     bringing in at least enough light that you could see the  
21     person and the gun?

22            A.    Yes.

23            Q.    As you guys got out of bed, were you  
24     dressed?

25            A.    Yes.

1 Q. And do you know what you were wearing?

2 A. Yes.

3 Q. What were you wearing?

4 A. I was wearing a pair of pajamas on and a  
5 tank top.

6 Q. And was Justin also dressed?

7 A. He had a tank top on and his boxer shorts.

8 Q. And did you do what the guy with the gun  
9 told you to do?

10 A. Yes.

11 Q. And where did you go?

12 A. We went to the living room.

13 He kept telling us to put our heads down, so we  
14 had our head down, and when we got out there, the rest of  
15 the boys were out there, and they were laying on the ground,  
16 and he told us to get down with them.

17 Q. Okay. Where on the ground were they?  
18 Describe the area.

19 A. As you walked into the front room, there  
20 is a staircase, and then there is carpet, and then there  
21 is wood panel. We were all on the carpet in front of  
22 the TV in there.

23 Q. Okay. You know, Danielle, I am going to  
24 show you some photographs marked State's Proposed Exhibits  
25 1 through 20.

1 Can you leaf through them to just tell me if  
2 you recognize them?

3 For the record, State's Proposed 20 have been  
4 shown to counsel.

5 A. Yes.

6 Q. Are State's Proposed Exhibits 1 to 20  
7 photographs depicting the house that you are describing?

8 A. Yes.

9 MS. LUZAICH: Move into evidence.

10 Q. Well, do they fairly and accurately depict  
11 the house as it looked that night?

12 A. Pardon?

13 Q. Do they fairly and accurately depict the  
14 house as it looked that night?

15 A. Yes.

16 MS. LUZAICH: Move into evidence.

17 MR. LANDIS: No objection.

18 THE CLERK: Is that all of them, 1 through 20?

19 MS. LUZAICH: Yes.

20 THE COURT: 1 through 20 is admitted.

21 MS. LUZAICH: Thank you.

22 Q. Now, I am going to show you on the monitor,  
23 State's Exhibit 3. Is the one in front of you on?

24 A. Yes.

25 Q. Okay. Is this the area that you just

1 described to me?

2 THE COURT: Wait a minute. We don't have a  
3 separate monitor, so the jurors, when you can look at the  
4 monitor over here across the room, but if you want to turn  
5 and look at that up here, it might be a little closer.

6 MS. LUZAICH: And they both show the same thing.

7 THE COURT: Right, exactly.

8 MS. LUZAICH: For the record.

9 Q. State's Exhibit 3, does this show the area  
10 that you are talking about?

11 A. Yes.

12 Q. And that would be the carpet inbetween,  
13 just for the record, the TV, and the coffee table like  
14 thing?

15 A. Yes.

16 Q. That's where everybody was laying?

17 A. Yes.

18 Q. Okay.

19 You got there, or as you walked down the hall,  
20 showing you State's Exhibit 5, is that the hallway that  
21 you were talking about, and then the door that leads  
22 to Justin's room?

23 A. Yeah, the double door is his room.

24 Q. Okay. So you walk down the hallway,  
25 correct?

1 A. Yes.

2 Q. And when you walk down the hallway, where  
3 was the guy with the gun that came into the bedroom?

4 A. He was behind us when we were walking  
5 down.

6 Q. Okay. And you had your hands up doing  
7 whatever it was that he told you?

8 A. Yes.

9 Q. Okay. Now, when you got to, showing you  
10 again State's Exhibit 3, when you got to the front room,  
11 you said you saw the four guys laying face down, the  
12 friends. Was there anybody else in that room?

13 A. Yeah, there was another guy.

14 Q. Can you describe the other guy that you  
15 saw, describe him for me.

16 A. He was taller, skinnier, and he was African  
17 American.

18 Q. And could you tell if he had anything with  
19 him?

20 A. Yes.

21 Q. What did he have with him?

22 A. A gun.

23 Q. How could you tell that he had a gun?

24 A. Because he kept saying I have a gun right  
25 here, don't move around, and he always had his hand up



1 like he had a gun.

2 Q. When you say he had his hand up like he had  
3 a gun, can you describe what you mean by that?

4 A. He was always holding his hand up.

5 Q. Can you show us with your hands what you  
6 mean by that?

7 A. Yeah, he had his hand out like this.

8 Q. For the record, your right arm is extended  
9 with your fingers being down, with your thumb to the side,  
10 correct?

11 A. Uh-huh.

12 Q. Yes?

13 A. Yes.

14 Q. He has a yes button, a no button, but no  
15 uh-huh button.

16 Okay. So the taller, thinner one also had a  
17 gun, and he had in his hands would you say?

18 A. Yes.

19 Q. Okay. When you got out -- and oh, I'm  
20 sorry, when the four guys were laying on the ground,  
21 as you came out, where was the taller, thinner guy with  
22 the gun?

23 A. He was standing more not by the right  
24 side, he was on this side of the coffee table like facing  
25 towards me.

1 Q. Do you know what if you touch the screen  
2 and put an X, it will show up, in theory, yeah.

3 A. (Witness complies with above request.).

4 Q. Can you put an X, just like move your hand  
5 so that we can see.

6 Okay. So are you describing for the record  
7 the bottom of the coffee table closer to the bottom of  
8 the photograph?

9 A. Yeah, because I am -- that was more where  
10 the front door was.

11 Q. Okay. What was he doing when you got  
12 there?

13 A. Just standing there.

14 Q. Now, I am showing you State's Exhibit 2.

15 THE COURT: Just touch the screen on the right-hand  
16 corner. That will get it out.

17 BY MS. LUZAICH:

18 Q. If you touch the bottom right corner, it  
19 should erase.

20 THE COURT: Touch that right corner.

21 BY MS. LUZAICH:

22 Q. Isn't technology great? I'm sorry.

23 Showing you State's Exhibit 2, does this depict  
24 the front door?

25 A. Yes..

1 Q. And the wooden floor that is the hallway?

2 A. Yes.

3 Q. And where the wooden floor meets the carpet,  
4 correct?

5 A. Yes.

6 Q. And I am making a record about everything  
7 you say, I'm sorry.

8 And then the coffee table where you showed that  
9 he was standing there, the taller thinner one, the guy?

10 A. Yes.

11 Q. And just so that everybody is clear, when  
12 you put an X again on there, on the screen?

13 A. Yes.

14 Q. Put an X on the screen.

15 A. (Witness complies with above request.)

16 Q. Okay. So he was standing on the wooden  
17 part of the floor?

18 A. Somewhere right there, I mean, the carpet  
19 area is not a very big area.

20 Q. Okay. But somewhere between the door and  
21 the coffee table?

22 A. Yeah, he wasn't behind the table.

23 Q. Okay. I am going back to State's Exhibit  
24 3 again, just for the record, you can touch the bottom  
25 right of the screen? .

1 A. (Witness complies with above request.)

2 Q. Thank you.

3 So you get to this area, (indicating) and what  
4 do you and Justin do?

5 A. Get down in a circle with the rest of the  
6 boys.

7 Q. And you are saying that the shorter but  
8 heavier guy told you to do that?

9 A. Uh-huh.

10 Q. Is that a "yes"?

11 A. Yes.

12 Q. Okay.

13 Once you and Justin lay down, and there were  
14 six of you on the floor, what happened?

15 A. I guess they told him I need the other  
16 guy, they were for someone else that lived there  
17 previously.

18 Q. Did you personally ever hear a name  
19 mentioned?

20 A. Yeah.

21 Q. The person who previously lived there?

22 A. Yeah, afterward, after we were already out  
23 there for awhile.

24 Q. Okay, we will get there then. Okay, so  
25 what happened?

1           A.    The boys were giving them the cell phones,  
2           and the wallets, and everything else. They asked us if  
3           we had any money, and we didn't. So we told them, no.

4           Q.    When you say, "asked us", who is "us"?

5           A.    Me and Justin because they already asked --  
6           he already asked the boys previously before that, before  
7           we got there if they had any money.

8           We told them no, and he started talking to the  
9           other boys about their pin numbers, and stuff like that,  
10          because they wanted money. That's what they said.

11          Q.    Right. And what did the boys -- did the  
12          boys give up their pin numbers?

13          A.    Yes, Ryan Tognotti and Justin Foucault  
14          gave theirs because they were the only ones who had money  
15          in the account.

16          Q.    Okay. And what happened after they gave  
17          up their pin numbers?

18          A.    The stockier guy took Ryan to an ATM.

19          Q.    Did Ryan have to go somewhere to get his  
20          keys?

21          A.    Yes.

22          Q.    Where did he go?

23          A.    To his bedroom.

24          Q.    Where is Ryan's bedroom in the house?

25          A.    It would -- I don't know if they were --

1 when you showed the picture of the hallway to Justin's  
2 room, there is a little table there, and you can see that  
3 his keys were sitting on that table.

4 Q. Okay.

5 A. Because that's where all the boys put all  
6 their stuff down.

7 Q. Generally?

8 A. Yes.

9 Q. Okay. Did -- so did somebody actually leave  
10 the house?

11 A. Yes.

12 Q. Who left the house?

13 A. Ryan Tognotti and the stockier guy.

14 Q. Okay, the shorter, stockier one?

15 A. Uh-huh.

16 Q. Now, did -- is that a "yes"?

17 A. Yes.

18 Q. Did either one of them, the shorter stockier  
19 one or the taller, thinner one say anything other than what  
20 are your pin numbers before the shorter, stockier one left  
21 with Ryan?

22 A. I don't recall.

23 Q. Did they say -- do you remember anything  
24 said about what would happen while they were gone, or what  
25 you should do while they were gone?

1           A.   Yeah, the skinnier guy was going to stay  
2 there with us just to make sure that we didn't leave or  
3 call the cops, or do anything while they had Ryan.

4           He just said they would be gone for a little  
5 bit, and if we cooperate that everything will be okay.

6           Q.   Okay. Did the shorter, stockier guy actually  
7 leave with Ryan?

8           A.   Yes.

9           Q.   And what happened while they were gone?

10          A.   We basically just laid there, and he wasn't  
11 really talking to us that much.

12          He asked us where the ATM was because it was  
13 taking them a little bit to get the money, and he asked  
14 where the ATM was, and we told him -- I didn't know where  
15 it was. I didn't know my way around town.

16          Q.   Okay.

17          Did the taller, thinner one make any movements  
18 while you were there?

19          A.   No, he just stood above us, kind of pacing.

20          Q.   Okay. He didn't -- or did he let you just  
21 get up and walk around the house?

22          A.   No.

23          Q.   Did he let you go lay down?

24          A.   No.

25          Q.   Did he let you call the police?

1 A. No, we basically had to stay on the ground  
2 with our hands on our head on the carpet the whole time.

3 Q. Okay. Did he call the police?

4 A. No.

5 Q. Did he tell you, I'm sorry, I can't believe  
6 this is happening?

7 A. No.

8 Q. Did he have the gun out while you were laying  
9 on the ground?

10 A. Yes, I believe so.

11 Q. Do you know how long, about, Ryan and the  
12 other guy were gone?

13 A. About 20 minutes. It wasn't that long.

14 Q. When they came back, what happened?

15 A. Ryan got back down on the ground because  
16 the guy said, he told Ryan we have to get back down over  
17 and get back down on the ground. They told us that they  
18 got the money, and so the stockier guy came and stood  
19 over me and Justin, and he said, we are 90 percent of  
20 the way done.

21 Q. And then what did he do?

22 A. He told us the last 10 percent was up to  
23 me.

24 Q. And what happened?

25 A. He told me that basically they wanted me



1 to perform oral sex on Justin before they would leave.

2 So we did that.

3 And then they made Justin turn over on his back  
4 while I was above him. They made Justin put a pillow over  
5 his face so he couldn't look up to see any of them because  
6 my back was turned towards them, and they made me do that.

7 They made Justin perform oral sex on me.

8 They told us basically to get undressed, and so  
9 we did.

10 The stockier guy took my clothes, and he kind of  
11 threw them behind him.

12 They told us that they wanted us to have sex in  
13 front of them, that they wanted to see it before they left,  
14 or just, I don't know, and then we tried doing it, but  
15 Justin couldn't get hard because he was nervous. The rest  
16 of the boys were just kind of laying right next to us.

17 Q. Now, when you say that they were telling  
18 us to do all these things, were they both speaking or was  
19 one?

20 A. It was both of them, but the stockier guy  
21 was the main one. He was the one that took over.

22 Q. When they were telling you to do these  
23 things, were they saying what, if anything, would happen  
24 if you did not do it?

25 A. Yes.

1 Q. What did they say?

2 A. They said that they would shoot us if we  
3 didn't cooperate or if we didn't do what they were telling  
4 us to do..

5 Q. Were the guns visible while this was happening?

6 A. Not to me. I had my back turned towards  
7 them.

8 Q. Okay.

9 When you say that they made you perform oral sex  
10 on Justin does that mean that a part of his body entered  
11 a part of your body?

12 A. Yes.

13 Q. What part of his body?

14 A. His penis.

15 Q. Into what part of your body?

16 A. My vagina.

17 Q. And when you say that they made Justin  
18 perform oral sex on you, did a part of his body touch a  
19 part of your body?

20 A. Yes.

21 Q. What part of his body?

22 A. His penis.

23 Q. Touched what part of your body?

24 A. My vagina.

25 Q. Now, did you want that to happen at that

001274

1 time under these circumstances?

2 A. No.

3 Q. Did you do what they wanted?

4 A. Yes.

5 Q. Why did you do what they wanted?

6 A. I was scared.

7 Q. Were you afraid? What were you afraid would  
8 happen if you didn't?

9 A. They would shoot us.

10 Q. When you said that they put a pillow over  
11 Justin's head, could you tell who it was who put the pillow  
12 there?

13 A. Yeah, the stockier guy.

14 Q. And could you see him physically when he  
15 did that?

16 A. He just kind of -- because the pillow was  
17 just on the floor, they just kind of threw it on top of  
18 Justin, and told him to put it on his face.

19 Q. You said that you tried to get Justin hard  
20 but he was not able to get hard so what happened?

21 A. They started to get very nervous. The  
22 stockier guy was getting kind of impatient, he was getting  
23 mad.

24 The taller man said, if he can't get it up that  
25 they would do it, or one of the other boys would have to

001275

1 do it.

2 He picked Ryan out next, and he told Ryan to get  
3 hard so me and Ryan could have sex.

4 Q. When you say he told Ryan to get hard, did  
5 he tell him how to do it?

6 A. Yeah, he handed him a bottle of lotion.

7 Q. When he told Ryan to do that, and handed him  
8 the bottle, could you tell what position Ryan was in?

9 A. Yes, he was in the same position as Justin.  
10 They made him turn over on his back, and then they told  
11 him.

12 Q. And could you tell whether Ryan did what he  
13 was told to do?

14 A. And Ryan couldn't either.

15 Q. And then what happened?

16 A. And then Ryan couldn't do that, and then  
17 they were getting really impatient at that point, and they  
18 were just saying that none of them could do it, that they  
19 could do it so --

20 Q. Now, when you say "they were saying if  
21 none of them could do it, that they could do it," who said  
22 that?

23 A. Both of them. They were both just egging  
24 him on.

25 Q. Okay. What happened next?

001276

1           A.   After Ryan couldn't do anything, they told  
2 him to turn back over. At that point, I was over by Justin  
3 again.

4           Q.   Were you dressed or undressed?

5           A.   Undressed.

6           Q.   Still?

7           A.   Yes.

8           Q.   When you say you were over by Justin, were  
9 you laying down on the ground by Justin?

10          A.   Yes.

11          Q.   With your head down?

12          A.   Yes.

13          Q.   Was everybody by now with their head down?

14          A.   Yes.

15          Q.   Then what happened?

16          A.   And then they told me to get up and sit on  
17 the staircase.

18          Q.   Who told you to get up and sit on the  
19 staircase?

20          A.   The stockier guy.

21          Q.   Did you get up and sit on the staircase?

22          A.   Yes.

23          Q.   And showing you and going back to State's  
24 Exhibit 2, is that the staircase that you are talking  
25 about?

001277

1 A. Yes.

2 Q. Where on the staircase did you sit?

3 A. It was at the bottom. It was pretty close  
4 to the bottom.

5 Q. So it was something that was actually, or  
6 if you can see in that picture where you were sitting?

7 A. Yes.

8 Q. And I'm sorry to go back for a second,  
9 while you guys are on the floor, and whatever is going  
10 on between you and Justin, or Ryan, where were the two  
11 guys with the guns?

12 A. Behind. I didn't -- I didn't even go really  
13 over towards Ryan. I didn't really get up. I just kind  
14 of moved over to the other side of Justin while Ryan was  
15 doing what he was doing, and they were still behind me and  
16 Justin.

17 Q. Okay. Not like away from the door?  
18 Were their backs to the door or were they facing  
19 the door?

20 A. Their backs were to the door. They were  
21 looking down at the carpet at us.

22 Q. Okay.

23 So then when you went to the stairs that we can  
24 see in State's Exhibit 2?

25 A. Uh-huh.

001278

1 Q. Where were they?

2 A. The stockier guy was kind of close to the  
3 stairs, but he was right here (indicating), and towards  
4 the bottom, and the other guy was still kind of over here.  
5 He wasn't really close.

6 Q. Okay. For the record, you marked on the  
7 monitor with a mark at the bottom step, kind of halfway  
8 where the stockier guy was?

9 A. Uh-huh, yes.

10 Q. And then you made a mark in front door next  
11 to the kind of bluish chair where the taller, thinner guy  
12 was, is that correct?

13 A. Yes.

14 Q. Just for the record. Then what happened?

15 A. So I sat up on the stairs, and by that point,  
16 they were telling us that you know that he couldn't do  
17 anything about it, but they already gave him a chance to  
18 try to have sex with me so by then they were going to do  
19 that.

20 Q. Now, who was saying that?

21 A. The stockier guy.

22 Q. Okay. What happened?

23 A. And then I was up on the stairway. It was  
24 only for a couple of minutes, and then --

25 Q. (Interposing) Did the stockier guy touch

001279

1 you while you were on the stairs?

2 A. Yes.

3 Q. Where did he touch you?

4 A. Just in my chest area.

5 Q. Okay.

6 A. And then the skinnier guy came over, and he  
7 was just making kind of like sexual comments like yeah, I  
8 could do it if he can't do it, all this stuff, and so by  
9 then he was walking over to the staircase, and he told me  
10 to get on the blue recliner chair.

11 Q. And is that the blue recliner chair that is  
12 depicted in the photo?

13 A. Yes.

14 Q. Okay. For the record, that's State's  
15 Exhibit 2 still.

16 When he told you, the taller, skinnier one, to  
17 get on the chair, did you?

18 A. Yes.

19 Q. What happened when you got on this chair?

20 A. Then that's when he started to touching me.

21 Q. Was he saying anything to you?

22 A. Just sexual comments like, well, your  
23 boyfriend couldn't do it, but I can do it. He asked me  
24 if I liked it.

25 Q. What did you tell him when he asked you if

001280



1 you liked it?

2 A. No. .

3 Q. What else did he say to you? Did he comment  
4 on any part of your anatomy?

5 A. Not that I remember. I was only over there  
6 for a couple of minutes, and then when he was touching me,  
7 that only went on for -- it went on for a couple of minutes  
8 I think it was.

9 Q. And where did he touch you when you say he  
10 was touching you on your body?

11 A. My vagina.

12 Q. Okay. Is your vagina the only part of your  
13 body that he touched?

14 A. Yes.

15 Q. At all?

16 A. Yes, I think so. The stockier guy was the  
17 one that was touching my chest area.

18 Q. Okay. You don't think the taller, thinner  
19 guy touched your chest?

20 A. No.

21 Q. Okay. You said he touched your vagina,  
22 the taller, thinner one?

23 A. Yes.

24 Q. How did he do that?

25 A. With his hand.

001281

1 Q. Did it go inside your vagina?

2 A. Yes.

3 Q. Okay. Did he tell you to sit in any  
4 particular position?

5 A. I had my legs up on a chair.

6 Q. And why did you have your legs up on a  
7 chair?

8 A. That is basically what he told me to do.

9 Q. Okay. Were you nervous?

10 A. Yes.

11 Q. Did you do what they told you to do?

12 A. Yes.

13 Q. Why?

14 A. Because I was scared.

15 Q. While the second taller, thinner one was  
16 touching you, did he have something in his hands when he  
17 was touching you?

18 A. Yes.

19 Q. Could you tell what it was?

20 A. Yes.

21 Q. What was it?

22 A. The gun.

23 Q. Did he say anything about what would happen  
24 if you didn't do what he wanted?

25 A. Basically, they were both saying that if I

001282

1 didn't cooperate the last 10 percent they weren't going to  
2 leave, basically, if I would just cooperate, then they would  
3 leave sooner.

4 Q. Okay.

5 While the taller, thinner one was touching you,  
6 where was the other one?

7 A. Still kind of down below the staircase.

8 Q. And what was he doing?

9 A. Just keeping an eye on the boys and making  
10 sure that they didn't get off the floor.

11 Q. Did the shorter, stockier one touch your  
12 vagina at all?

13 A. No.

14 Q. How did that stop?

15 A. The stockier guy kind of was getting impatient,  
16 and it sounded like he wanted to get out of there pretty  
17 fast. So he told him to stop, and he gave me back my clothing  
18 and told me to lay back down on the carpet again. He told me  
19 to put on my pajama pants and my top.

20 Q. When the stockier one told the other to stop,  
21 did the other one -- do the other one -- what did the other  
22 one do?

23 A. He stopped.

24 Q. Okay. Did he seem perturbed that he had to  
25 stop?

001283

1 A. Yeah. .

2 Q. Can you remember anything else that the taller,  
3 thinner one said while that was happening?

4 A. No.

5 Q. You said the stockier one gave you your clothes  
6 back, and then what?

7 A. And then I got dressed. I put my top and my  
8 bottom back on, and I laid back down on the carpet.

9 Q. Okay. So when all six of you were back on the  
10 ground together, did they do anything?

11 A. They basically -- that was it.

12 They talked to us for a little bit telling us that  
13 it wasn't our fault, that it was this other guy's fault. We  
14 were in the wrong place at the wrong time, they didn't mean  
15 for us to be there, and they are very sorry it happened to  
16 us.

17 Q. Did they mention a name?

18 A. For the other guy? The other guy's name was  
19 Grant.

20 Q. Grant?

21 A. Yes.

22 Q. Okay.

23 And did you hear them say anything about Grant,  
24 what they wanted or what they --

25 A. He owed them money.

001284

1 Q. Okay.

2 So once they said, okay, you know, we are done,  
3 how did -- what happened when they were leaving?

4 A. Well, the boys kind of asked them if we  
5 could have our phones back.

6 I didn't know they had my phone because it was  
7 in Justin's room.

8 They wanted their phones back, you know, so they  
9 decided that he wasn't going to give them back at first,  
10 and then he said that he would put them outside after they  
11 left, and that if we called the cops, they knew where we  
12 lived, they would both come back, it was time to go, they  
13 would come back.

14 It was time to go, they would come back. It would  
15 just be easier if we didn't call the cops, and then they  
16 said that we had to count for two minutes before we could  
17 move. If we moved before the two minutes, they would shoot  
18 us.

19 Q. Okay. So did they leave?

20 A. They walked out, and then all of a sudden  
21 while we were waiting for the two minutes to be up, the  
22 stockier guy walked back through the door, and asked us  
23 who moved, but none of us had moved, and we told them no  
24 one had moved, then he said, he was just joking, and he  
25 said he put the phones outside, and then he shut the door,

001285

1 and then we started counting again, then he shut the door,  
2 and they were off.

3 Q. Did you actually count the two minutes?

4 A. Yes.

5 Q. Okay. When the two minutes were up, what  
6 did you guys do?

7 A. Actually, we had done it just a little bit  
8 longer just to make sure, but after the two minutes were up,  
9 we kind of got up, and Ryan went and locked the front door,  
10 and then they made sure all the other doors were locked,  
11 and they were, and a couple of minutes later, Clint went  
12 out -- I think it was Clint -- he went out and got the cell  
13 phones.

14 I went into Justin's room to look for our phones,  
15 and neither of the phones were in there.

16 Clint found Justin's outside, and then mine was  
17 still gone.

18 Q. Okay. What did you guys do when you discovered  
19 that?

20 A. We didn't want to call just to see if they  
21 had it, we didn't want to just call the phone, so I just let  
22 it go, and waited long enough until after, and then we left  
23 the house.

24 Q. Okay. So was it yours was the only phone  
25 that was missing, everybody else got theirs back?

001286

1 A. Yes.

2 Q. When you say you left the house, did everybody  
3 leave the house together?

4 A. Yes.

5 Q. Where did you go?

6 A. We went to Clint's and Aitor's apartment.

7 Q. And when you got to Clint and Aitor's apartment,  
8 what did you all do?

9 A. Well, before we left, we called the police  
10 already, and they told us to leave the house.

11 Q. Okay. Did the police come? Somebody told  
12 the police you were going to Clint's and Aitor's apartment?

13 A. Yes.

14 Q. So did the police show up at the apartment?

15 A. Yes.

16 Q. Did the patrol first, and then a uniform, a  
17 black and white of car kind of thing?

18 A. Uh-huh.

19 Q. Is that a "yes"?

20 A. Yes.

21 Q. You always have to answer out loud.

22 Did the patrol officer talk to you guys, and kind  
23 of get an idea of what had happened?

24 A. Yes.

25 Q. And then did the -- did it appear as though

001287

1 he called other people?

2 A. Yes.

3 Q. Did a whole ton of other people come?

4 A. Yes.

5 Q. And would that be detectives, plainclothes, no  
6 uniforms?

7 A. Yes.

8 Q. Lots?

9 A. Yes.

10 Q. Did they then interview all of you guys?

11 A. Yes.

12 Q. Did somebody take you somewhere?

13 A. Yeah, I got taken to a hospital.

14 Q. Do you remember which hospital, to UMC?

15 A. Yes.

16 Q. When you went to the hospital, what happened?

17 A. They did a sexual assault kit on me, and I  
18 had to go to a sexual assault counselor that was there.

19 Q. Okay. And when you were at UMC, was it a  
20 nurse?

21 A. Yes.

22 Q. A little grandmother type lady that did the  
23 exam? Yes?

24 A. Yes.

25 Q. And then were you able to go home after that?



1 A. Yes, my parents drove down.

2 Q. When you say they took a -- did a sexual  
3 assault kit, is that where you, you know, actually lay down,  
4 put your legs up in the stirrup?

5 A. Yes.

6 Q. And they do a full examination?

7 A. Yes.

8 Q. And kind of unpleasant?

9 A. Yes.

10 Q. Did they ask you a bunch of questions?

11 A. Yes.

12 Q. Were you honest answering the questions?

13 A. Yes.

14 Q. They took blood, and all of that?

15 A. Yes.

16 Q. You said your parents came down and got  
17 you?

18 A. Yes.

19 Q. Did you have contact with police again  
20 after that?

21 A. Yes, Justin was staying with his parents  
22 in a hotel because they were going to take him home the  
23 next day because we both come from the same town. My  
24 parents came and got me, but they called us to come over  
25 after we had already left, and then we had to come back.

001289

1 Q. And did you come back and meet detectives?

2 A. Yes.

3 Q. What did they want you to do?

4 A. Just to interview, and we had to point out  
5 people on a picture thing.

6 Q. Okay. They showed you what's calls a lineup?

7 A. Yes.

8 Q. And were they like just one picture, here,  
9 this is it, or was it --

10 A. No, it was six photos.

11 Q. Okay. Were you able tee pick somebody out?

12 A. Yes.

13 Q. Was it just like -- like were they looking  
14 for one individual, or two separate individuals at that  
15 point?

16 A. Two separate individuals.

17 Q. Okay.

18 Do you think that you would recognize the  
19 individuals again if you saw them by face?

20 A. Yes, mostly by body type.

21 Q. By body type. Okay, the short, stockier one,  
22 you would recognize him by body type?

23 A. Yes.

24 Q. What about his face?

25 A. Kind of, yeah. I could be able to tell.

001290

1 Q. Do you see him here in court?

2 A. No.

3 Q. The taller, thinner one, would you recognize  
4 him by body type?

5 A. Yes.

6 Q. By face?

7 A. Kind of.

8 Q. Maybe. Do you see somebody with a similar  
9 body type here in court today?

10 A. Yes.

11 Q. Can you describe where that person is sitting  
12 in the courtroom?

13 A. Yes, he is sitting right there in the gray  
14 sweater.

15 Q. The record reflect identification of the  
16 Defendant, and his body type.

17 THE COURT: The record will so show.

18 BY MS. LUZAICH:

19 Q. Danielle, do you want to do those those  
20 things?

21 A. No.

22 Q. And why did you accede to those issues?

23 A. Because I was scared.

24 Q. Because of the gun?

25 A. Yes.

001291

1 MS. LUZAICH: Thank you, I will pass the witness.

2 THE COURT: Cross-examination, please.

3 CROSS-EXAMINATION

4 BY MR. BANKS:

5 Q. Danielle, you were woken up that night?

6 A. Yes.

7 Q. By the stockier guy?

8 A. Yes.

9 Q. Okay. Not this gentleman?

10 A. No.

11 Q. Justin was woken up that night?

12 A. Yes.

13 Q. By the stockier guy?

14 A. Yes.

15 Q. It was dark in that room?

16 A. Yes.

17 Q. In that room were you, Justin, and the  
18 stockier guy?

19 A. Yes.

20 Q. The stockier guy has got the gun?

21 A. Yes.

22 Q. The stockier guy takes you and Justin at  
23 gunpoint down the hall?

24 A. Yes.

25 Q. The stockier guy orders you and Justin to

001292

1 the floor with the others?

2 A. Yes.

3 Q. Not this gentleman?

4 A. No.

5 Q. There were some orders to remove wallets  
6 and that kind of thing. That was the stockier guy?

7 A. Yes.

8 Q. No words out of this fellow's mouth at  
9 that point?

10 A. No.

11 Q. Just kind of off in the background?

12 A. Yes.

13 Q. There is some orders --

14 A. Yes.

15 Q. -- from the stockier guy?

16 A. Yes.

17 Q. Ryan is asked to get his keys to the car,  
18 and that was the stockier year guy who ordered him to do  
19 that?

20 A. Yes.

21 Q. Ryan was taken -- there is a demand for  
22 some pin numbers? Of course, you need a pin number to  
23 use an ATM card?

24 A. Yes.

25 Q. And it was the stockier guy who asked for

001293

1 those pin numbers?

2 A. Yes.

3 Q. Okay. This fellow didn't ask for the pin  
4 numbers?

5 A. No.

6 Q. He is still just kind of off in the background?

7 A. Yes.

8 Q. As I said earlier?

9 A. Yes.

10 Q. Ryan is taken at gunpoint to his car?

11 A. Yes.

12 Q. By the stockier guy?

13 A. Yes.

14 Q. A scary situation?

15 A. Yes.

16 Q. Terrifying?

17 A. Yes.

18 Q. You were 18 at the time?

19 A. Yes.

20 Q. Is it fair to say that's probably the  
21 scariest, most dramatic situation you had been in, in  
22 your life to that point?

23 A. Yes.

24 Q. Your perception of that situation, it  
25 seemed to you that the stockier guy was the one in charge

001294

1 of that situation, right?

2 A. Yes.

3 Q. And not this gentleman, correct?

4 A. No.

5 Q. He was really just kind of off in the  
6 background?

7 A. Yes.

8 Q. There is a 15 to 20 minute wait?

9 A. Yes.

10 Q. From the time that the stockier guy takes  
11 Ryan at gunpoint in the car to use the ATM's to take money  
12 out of the machine at gunpoint?

13 A. Yes.

14 Q. It was the stockier guy who uttered the words  
15 if anybody moves, shoot them, right?

16 A. Yes.

17 Q. I want to talk to you about that 15 to 20  
18 minute window while the stockier guy had Ryan at gunpoint,  
19 at the ATM machine in the car.

20 Do you understand me, ma'am?

21 A. Yes.

22 Q. During that 15 to 20 minutes, this fellow is  
23 just kind of pacing around?

24 A. Yes.

25 Q. He didn't make contact with anybody in that

001295

1 room?

2 A. No.

3 Q. He didn't make physical contact with anybody  
4 in that room?

5 MS. LUZAICH: Asked and answered.

6 THE COURT: All right.

7 THE WITNESS: No.

8 BY MR. BANKS:

9 Q. Technically not asked and answered but --

10 THE COURT: Go ahead, go ahead.

11 MR. BANKS: Okay.

12 Q. This gentlemen didn't order anybody to do  
13 anything?

14 A. No.

15 Q. Correct?

16 A. Correct.

17 Q. He didn't tell anybody to get up and move?

18 A. No.

19 Q. Ryan and the stockier guy come back?

20 A. Yes.

21 Q. And there is a statement made about 90 percent,  
22 10 percent?

23 A. Right.

24 Q. By the stockier guy?

25 A. Yes.

001296



1 Q. That is probably a lot scarier for you when  
2 the stockier guy said that?

3 A. Yes.

4 Q. This gentleman didn't make any response  
5 whatsoever to that statement?

6 A. No, not then.

7 Q. He hadn't said anything?

8 A. No.

9 Q. He was still kind of off in the background?

10 A. Yes.

11 Q. It was the stockier guy who made statements  
12 that you have sexual context between you and Justin?

13 A. Yes.

14 Q. At that point you really don't know what  
15 this gentleman's intent?

16 A. His body wasn't moving.

17 Q. He never left the spot at all?

18 A. He was walking. He didn't go around the  
19 room, no.

20 Q. But you have a very specific recollection,  
21 as you sit here today, that he was in the same spot as when  
22 you entered the room?

23 A. Yes, he was.

24 Q. Do you remember testifying at your preliminary  
25 hearing in this matter?

001297

1 A. Yes.

2 Q. That was on April 12, 2007?

3 A. Yes.

4 Q. And when you testified at that proceeding,  
5 you came into a courtroom, not this courtroom, but it was  
6 another courtroom?

7 A. Yes.

8 Q. In Henderson?

9 A. Yes.

10 Q. You took the witness stand?

11 A. Yes.

12 Q. And you raised your right hand?

13 A. Yes.

14 Q. Like today?

15 A. Yes.

16 Q. And you swore to tell the truth?

17 A. Yes.

18 Q. Page 46. And you were asked about this  
19 15, 20 minute window at that court?

20 A. Yes.

21 Q. And you were asked the question, line seven:  
22 "Where was my client when you first go in?"

23 A. Yes.

24 Q. And your response at that time was:

25 "I don't remember.

001298

1 A. He was' pacing back and forth.

2 Q. Your answer at that time was:

3 "I don't remember."

4 A. Yes.

5 Q. And you were asked the question:

6 "He was not in the immediate vicinity of where  
7 you were stopped?"

8 And your response was:

9 "He might have been on the other side, I don't  
10 know."

11 A. Yes.

12 Q. And then you were asked:

13 "But nowhere you can see?"

14 And your response was:

15 "No."

16 A. Yes.

17 Q. Do you need some water?

18 A. No.

19 Q. All of the sexual acts between you and  
20 Justin --

21 A. Yes.

22 Q. -- were done because the stockier guy ordered  
23 those sexual acts?

24 A. Yes.

25 Q. This fellow said nothing during that time?

001299