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Tracie K. Lindeman
Clerk of Supreme Court

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Respondent.

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Counsel for Respondent

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Case No. 68710

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1 a pretty good guy.

2 THE COURT: Okay, good. Well, sometimes it's the
3 fourth -- fourth time's the charm.

4 PROSPECTIVE JUROR NO. 541: Yeah, I guess.

5 THE COURT: So you -- you know, you have been paying
6 attention I know, because I can tell from your responses. Is
7 there anything that we should know about that bears upon your
8 ability to be fair and impartial?

9 PROSPECTIVE JUROR NO. 541: No. I think I'm a very
10 fair and impartial person in life in general.

11 THE COURT: And how long have you lived in Clark
12 County?

13 PROSPECTIVE JUROR NO. 541: I moved here in 1992, so
14 23 years.

15 THE COURT: A long time. And married, divorced,
16 partner, significant other?

17 PROSPECTIVE JUROR NO. 541: Well, I was divorced --
18 I was married from 1990 to 1992 to a man but that didn't work
19 out so after that marriage I moved out here and I basically
20 live an alternative lifestyle and my current partner and I
21 have been together 10 years.

22 THE COURT: And what does your partner do?

23 PROSPECTIVE JUROR NO. 541: She is currently not
24 working. In the past she was a phone sales person,
25 telemarketing type thing.

1 THE COURT: Any children?

2 PROSPECTIVE JUROR NO. 541: I have no children.

3 THE COURT: All right. Would the State like to
4 inquire further?

5 MS. DIGIACOMO: Yes, please. So what brought you to
6 Vegas 22 years ago?

7 PROSPECTIVE JUROR NO. 541: I was in my early 20s
8 and ready for a change from east Tennessee where I grew up and
9 it was so exciting out here with all the lights and fun and I
10 was like if there's any time to do this it's now so. And
11 there was a job prospect as well.

12 MS. DIGIACOMO: And have you always worked in the
13 video production?

14 PROSPECTIVE JUROR NO. 541: Yes. Actually, my first
15 job was with Eastman Kodak in 1985 in doing audio visual
16 slideshows and video pretty much ever since then in several
17 ways, in news for a short period of time, corporate, but my
18 favorite is commercial work.

19 MS. DIGIACOMO: So let me ask you, do you watch any
20 of the law shows?

21 PROSPECTIVE JUROR NO. 541: Yeah, I've seen them.
22 It's not my favorite thing but -- and I totally understand
23 what's going on. I watch TV differently than everyone
24 probably.

25 MS. DIGIACOMO: Right, because you know the behind

1 the scenes --

2 PROSPECTIVE JUROR NO. 541: Yeah.

3 MS. DIGIACOMO: -- on how --

4 PROSPECTIVE JUROR NO. 541: I make it so I know what
5 it can be.

6 MS. DIGIACOMO: Well, and you understand, we don't
7 have that behind the scenes here in the courtroom.

8 PROSPECTIVE JUROR NO. 541: Right, of course not.

9 MS. DIGIACOMO: Okay. So no expectations of what --

10 PROSPECTIVE JUROR NO. 541: Not at all, no.

11 MS. DIGIACOMO: -- you think we should do?

12 PROSPECTIVE JUROR NO. 541: And having served in
13 another jury I'm pretty familiar with what's going to happen.

14 MS. DIGIACOMO: Okay. Now your jury experience
15 before, was it a long jury?

16 PROSPECTIVE JUROR NO. 541: It seemed like it took
17 about a week and a half maybe to go through.

18 MS. DIGIACOMO: Okay. So -- so our estimate of two
19 to two and a half weeks here is fine?

20 PROSPECTIVE JUROR NO. 541: It's freaking people out
21 at the office but I'm fine with it.

22 MS. DIGIACOMO: Now, have you had any particularly
23 good experiences with the police or bad experiences with the
24 police?

25 PROSPECTIVE JUROR NO. 541: Well, all of my

1 experiences have been positive, you know, like in a work
2 environment mostly as I said, with just that one incident
3 where I filed a report on my truck, which was also positive.
4 You know, I watch some of the news today and that -- I'm kind
5 of saddened by what I see happening in some communities
6 between the police and people but that's the nature of our
7 society at the time.

8 MS. DIGIACOMO: Okay. And what about drug use, do
9 you have anybody --

10 PROSPECTIVE JUROR NO. 541: I've known many people
11 that use drugs on my different levels. I've known people that
12 recreationally use drugs and have no problem. I've known
13 people that have been taken out with, you know, really down to
14 a low place. Back to my sister again, that second husband, he
15 was a actual drug dealer back there in Tennessee so I -- a
16 little exposure to that and I was very young but I did know
17 it. So all kinds of different, I don't know, influences as
18 far as drugs go.

19 MS. DIGIACOMO: Right. But do you have any I guess
20 such strong opinions that it could affect your ability to be
21 fair and impartial here if you hear --

22 PROSPECTIVE JUROR NO. 541: No.

23 MS. DIGIACOMO: -- evidence about that?

24 PROSPECTIVE JUROR NO. 541: No.

25 MS. DIGIACOMO: I'll pass for cause, Your Honor.

1 THE COURT: Defense.

2 MR. SLIFE: Thank you, Your Honor. Ma'am, I know
3 you've been sitting here for two days now.

4 PROSPECTIVE JUROR NO. 541: Oh, I'm fine with it.

5 MR. SLIFE: Listening to us go through the same
6 topics so I'll just try to do the abbreviated version.

7 PROSPECTIVE JUROR NO. 541: No problem.

8 MR. SLIFE: And I -- appreciating that you've been
9 through this process. Presumption of innocence, any opinions
10 either way?

11 PROSPECTIVE JUROR NO. 541: I believe that you are
12 innocent until some attorneys can convince us all that -- that
13 the defendant isn't.

14 MR. SLIFE: Okay. With regard to speaking to
15 police, any reason why -- I mean would you hold it against
16 somebody if they didn't want to --

17 PROSPECTIVE JUROR NO. 541: Not at all. As a matter
18 of fact, I'm strongly for it. Like even if I were arrested I
19 would invoke my right for an attorney immediately whether I
20 was innocent or guilty or not.

21 MR. SLIFE: What -- what would be the rationale
22 behind that?

23 PROSPECTIVE JUROR NO. 541: Well, because it's my
24 right and, you know, bad things can happen. Coercions and all
25 of kinds of stress and weird things and you can say and do

1 things you don't mean to say and do. And it's better to just
2 go ahead and so oh, I think I'll get some help.

3 MR. SLIFE: Understood.

4 PROSPECTIVE JUROR NO. 541: Yeah.

5 MR. SLIFE: Understood.

6 PROSPECTIVE JUROR NO. 541: That's what I imagine I
7 would do, never been in that situation so.

8 MR. SLIFE: Absolutely. What about situations,
9 deadly force justified? Can you think of situations where
10 deadly force could be justified?

11 PROSPECTIVE JUROR NO. 541: Well, I am a gun owner.
12 I know that's kind of a weird mix but I am. And I can imagine
13 using it if I really felt like my life was in peril. If I
14 was, you know, had to, I think I could pull the trigger on
15 somebody.

16 MR. SLIFE: Do you have a rifle, handgun?

17 PROSPECTIVE JUROR NO. 541: No, I just have a
18 handgun that I had since I moved here. Actually my first
19 girlfriend here forced me to buy one.

20 MR. SLIFE: Understood, understood. What about
21 PTSD, any stories that you heard from Ms. Matsko and all the
22 questions --

23 PROSPECTIVE JUROR NO. 541: Yeah, I believe it's a
24 real condition. I have very little experience with it.

25 MR. SLIFE: Sure. And if you had some testimony on

1 that you'd be open to that then?

2 PROSPECTIVE JUROR NO. 541: Yes.

3 MR. SLIFE: Okay. I think that's all I have for
4 you, ma'am. Thank you very much.

5 PROSPECTIVE JUROR NO. 541: All right. Thank you.

6 MR. SLIFE: Pass for cause, Your Honor. Thank you.

7 THE COURT: Thank you. And it is the defense's
8 seventh peremptory challenge.

9 MR. SLIFE: And Your Honor, we'll -- we'll waive.

10 THE COURT: And it's the State's final peremptory
11 challenge.

12 MS. DIGIACOMO: Thank you, Your Honor. The State
13 will waive.

14 THE COURT: We have our jury. Great. So now we
15 need to pick three alternates. All right. So the last three
16 folks that are sitting back there, we're going to call you --

17 THE CLERK: Badge 543, Patricia Salesky; badge 568,
18 Matthew Warnick and badge 578, Margarita Morales.

19 THE COURT: All right. We need you to come up in
20 that order and sit. The first person whose name was called
21 next to juror number 12.

22 THE CLERK: Wait. Patricia was -- I thought the way
23 we were going to do it -- yes, you're right, I'm sorry. I'm
24 backwards.

25 THE COURT: Yep, all of you, come on up here. All

1 right. Next to juror number 12 and then who sits next to
2 Patricia?

3 THE CLERK: I'm sorry. Matthew sit next to her.

4 THE COURT: Yes.

5 THE CLERK: Margarita Morales is [indiscernible].

6 THE COURT: Okay. So we're now in the process of
7 picking the alternate jurors. Alternate jurors are very
8 important because especially in a trial that's -- we're
9 predicting could go two and a half weeks, you never know
10 what's going to happen. Someone could become ill, get -- get
11 into an accident. I mean there are things that happen and
12 many times in trials, in my courtroom, we've had to ask for an
13 alternate juror to substitute in either while the testimony is
14 going on or even after deliberations have started. It's
15 happened in both types of cases and so in either event it's
16 really important that the alternate juror is able to
17 immediately step in and sit as a regular juror.

18 And what that means is it's very important that the
19 alternate juror participates as if they expect that they will
20 serve and all the way through deliberation because it could
21 happen and oftentimes does happen. And so juror -- alternate
22 jurors sometimes think, oh, well I -- I don't really have to
23 pay attention. But that is completely far from the truth
24 because you could be, if you were chosen as an alternate
25 juror, expected to in fact deliberate with your fellow jurors

1 if you were placed into that situation.

2 And so with that being said, I'm going to now ask
3 you first some general questions that I want you to raise your
4 hand at and respond in that way and then we'll get to the
5 individual questions. So have any of you served as a juror
6 before? [inaudible]

7 All right. And go ahead, state -- state your name
8 and badge number.

9 PROSPECTIVE JUROR NO. 568: Matthew Warnick and I am
10 number 568.

11 THE COURT: All right. And what was your prior jury
12 service?

13 PROSPECTIVE JUROR NO. 568: It was a civil course --
14 a civil court case back in the Cook County, Chicago.

15 THE COURT: How long ago?

16 PROSPECTIVE JUROR NO. 568: Nineties, like mid-'90s.

17 THE COURT: Now, do you understand that the burden
18 of proof that is required that the plaintiff has to prove in a
19 civil case is not the same as the burden of proof that the
20 State has to prove in a criminal case? In other words, in a
21 civil case the burden is not as high, it's just a
22 preponderance of the evidence. Whereas in a criminal case,
23 the State must prove its case beyond a reasonable doubt.

24 PROSPECTIVE JUROR NO. 568: I understand.

25 THE COURT: So I know it's been a long time so you

1 probably don't remember a lot about the instructions that you
2 were given in that.

3 PROSPECTIVE JUROR NO. 568: I don't -- I'll be very
4 honest, I'm very impressed with Clark County compared to my
5 experience back there because I -- it was very much -- this is
6 very organized. Where you're sort of put into a room, brought
7 into the courtroom and it was very different, yeah.

8 THE COURT: So without telling us what the verdict
9 was, did the jury reach a verdict in their case?

10 PROSPECTIVE JUROR NO. 568: Yes.

11 THE COURT: Okay. Were you the foreperson on the
12 jury?

13 PROSPECTIVE JUROR NO. 568: No, I was not.

14 THE COURT: Anything about that experience that
15 would make you think, oh, I don't ever want to be a juror
16 again?

17 PROSPECTIVE JUROR NO. 568: No.

18 THE COURT: All right. And just hang onto the
19 microphone for now. And again, show of hands, is -- okay. Is
20 anyone -- any of the proposed three alternates ever been in
21 law enforcement? And the record will reflect a negative
22 response.

23 How about anyone in your family or closely
24 associated with you been in law enforcement? Mr. Warnick?

25 PROSPECTIVE JUROR NO. 568: Mr. Warnick. One of my

1 best friends works for vice here with Metro.

2 THE COURT: Okay. Works as a vice detective?

3 PROSPECTIVE JUROR NO. 568: Yes.

4 THE COURT: Okay. Do you speak to him often about
5 his work?

6 PROSPECTIVE JUROR NO. 568: I -- it's actually funny
7 is that I worked at the Cosmopolitan in Las Vegas here and I
8 work in the five o'clock hour and periodically I will see him
9 on duty walking through the hotel.

10 THE COURT: Okay. Any reason that you could not be
11 fair and impartial as a result of that relationship?

12 PROSPECTIVE JUROR NO. 568: Not at all.

13 THE COURT: Any -- any of you ever been the victim
14 of a crime?

15 PROSPECTIVE JUROR NO. 568: I've had my car broken
16 into several times and a car stolen out of my driveway.

17 THE COURT: Was that here in Clark County?

18 PROSPECTIVE JUROR NO. 568: The cars that were
19 broken into were back in the Chicagoland area. The car that
20 was stolen was here in Las Vegas.

21 THE COURT: Did you report all these instances to
22 the police?

23 PROSPECTIVE JUROR NO. 568: I did except for when --
24 when the cars were broken into, the first time I had reported
25 it I went to culinary school in the shadow of [indiscernible],

1 which is one of the projects in the Chicagoland area and I
2 came out the first time with a brick sitting on my driver's
3 side and all the loose change gone and the stereo gone and I
4 said, okay, I'll get that fixed. And I reported it and
5 whatnot. The second time I'm like okay, it's a theme. And
6 then at that point I decided to find an indoor garage because
7 the school was -- it was a choice of spending \$125 a month or
8 when the window repair got more than the cost of a garage stay
9 it was better to choose the -- do a garage.

10 THE COURT: All right. So I take it they didn't
11 ever find who had done this?

12 PROSPECTIVE JUROR NO. 568: No.

13 THE COURT: Okay. How about your car that was
14 stolen here out of a driveway, did they recover it?

15 PROSPECTIVE JUROR NO. 568: My only complaint at all
16 about that experience was is that they recovered it about 12
17 weeks after it was stolen. I had already purchased a new car.
18 And when I got this cryptic phone message of we found your
19 vehicle at the Rio I was very excited because there were
20 things in there that I was like oh, maybe I'll get back my
21 favorite scarf or whatever and I -- there was no message of
22 how to call back to receive those items. And it was a very --
23 it was a weird experience. So once that was done my wife and
24 I sort of just -- because it had been 12 weeks, we had already
25 washed our hands of it so we just washed our hands but it was

1 just a weird experience.

2 THE COURT: Could you set that aside though?

3 PROSPECTIVE JUROR NO. 568: Yes.

4 THE COURT: All right. Okay. Back to the group.

5 Anyone have in your family or closely associated with you been
6 the victim of a serious, like violent type crime? And the
7 record will reflect a negative response.

8 Any of you ever been accused of or convicted of a
9 crime? The record will reflect a negative response.

10 How about anyone in your family or closely
11 associated with you been convicted of or accused of a serious
12 crime? Mr. Warnick.

13 PROSPECTIVE JUROR NO. 568: I have two uncles that
14 spent some time in prison.

15 THE COURT: For what?

16 PROSPECTIVE JUROR NO. 568: One uncle was on a --
17 well, a gun running charge. They -- he was transporting guns
18 and I'm not even making it -- if you can believe that he was
19 running guns to rebels in South America, yes. And he ended up
20 in the federal court system and he was deported from our
21 country. Yeah.

22 THE COURT: And your other uncle?

23 PROSPECTIVE JUROR NO. 568: My other uncle decided
24 to -- he was -- he is a currently practicing physician but at
25 the time he used his prescription pad to make some extra

1 money.

2 THE COURT: Okay. Was -- and what came of that?

3 PROSPECTIVE JUROR NO. 568: He spent some time in
4 prison down in Texas.

5 THE COURT: Do you feel that both of your uncles
6 were treated fairly by the justice system?

7 PROSPECTIVE JUROR NO. 568: I believe so.

8 THE COURT: Do you believe in the -- our justice
9 system, that it works pretty well?

10 PROSPECTIVE JUROR NO. 568: Yes.

11 THE COURT: Thank you. Are there any of you who
12 feel that you could not follow the law as I instruct you? The
13 record will reflect a negative response.

14 Is there -- are there any of the three of you who
15 have a quarrel with the presumption of innocence? And again,
16 the record will reflect a negative response.

17 Let's hand -- Mr. Warnick, hand the microphone over
18 and for the record state your name and the last three digits
19 of your badge number.

20 PROSPECTIVE JUROR NO. 543: My name's Patricia
21 Salesky. My number is 543.

22 THE COURT: Ms. Salesky, tell us about yourself.

23 PROSPECTIVE JUROR NO. 543: I've lived here for
24 eight years, I'm originally from Michigan. And I moved here
25 because of the weather. And I work at Vons so I've worked

1 there for eight years. And back in Michigan I worked at
2 Greenfield Village and now it's called the Henry Ford Museum.
3 So it's the largest indoor/outdoor museum. I was a manger, I
4 had 70 employees underneath me and I had seven concession
5 stands that I was in charge of, as in like a hamburger stand,
6 a bakery, a burger stand.

7 THE COURT: Okay. All right. And so you've been
8 here eight years all the time working for Vons?

9 PROSPECTIVE JUROR NO. 543: Yes.

10 THE COURT: What is your job at Vons?

11 PROSPECTIVE JUROR NO. 543: A deli clerk.

12 THE COURT: So you don't have -- you don't supervise
13 anybody else in this current job?

14 PROSPECTIVE JUROR NO. 543: No. I didn't want to be
15 a manager anymore.

16 THE COURT: You were done with that. There's a lot
17 of work to managing other employees, isn't there?

18 PROSPECTIVE JUROR NO. 543: Yes, it is.

19 THE COURT: Is there -- are you married, single,
20 divorced, partner, significant other?

21 PROSPECTIVE JUROR NO. 543: I'm single, don't have
22 any children, I have two other sisters, one's back in Michigan
23 and one's here, the oldest lives here.

24 THE COURT: And is your sister being here what
25 brought you to Las Vegas?

1 PROSPECTIVE JUROR NO. 543: Yes, and I brought my
2 dad. My dad came with me and he passed away so now I'm here
3 with my sister.

4 THE COURT: All right. And any reason that you
5 think you could not be a fair and impartial juror in this
6 case?

7 PROSPECTIVE JUROR NO. 543: No.

8 THE COURT: Thank you. And would the State like to
9 inquire further?

10 MS. DIGIACOMO: All right. First question, CSI, law
11 shows, do you watch any of them?

12 PROSPECTIVE JUROR NO. 543: No. I watch Dancing
13 With the Stars and what else is on right now? American Idol.

14 MS. DIGIACOMO: Okay. The Voice?

15 PROSPECTIVE JUROR NO. 543: And The Voice, exactly.

16 MS. DIGIACOMO: Okay. So you don't have any
17 preconceived notions about what you expect the trial to go
18 like? Okay. And I can't remember, did the Judge ask you
19 about military service?

20 PROSPECTIVE JUROR NO. 543: No, she did not. My dad
21 was --

22 MS. DIGIACOMO: Okay. Anybody close to you --

23 PROSPECTIVE JUROR NO. 543: -- my dad was in the
24 Navy; World War II. He was a CB they called him. He worked
25 on construction, the road construction. And he wasn't in

1 there for like maybe three or four years and that was it.

2 MS. DIGIACOMO: Okay. Anyone else in your family?

3 PROSPECTIVE JUROR NO. 543: No.

4 MS. DIGIACOMO: Have you -- you said you haven't

5 been the victim of a crime. Anyone close to you?

6 PROSPECTIVE JUROR NO. 543: My sister had her house

7 broken into when we lived in Michigan.

8 MS. DIGIACOMO: Okay. But were you involved with

9 that?

10 PROSPECTIVE JUROR NO. 543: No, not at all.

11 MS. DIGIACOMO: Any particularly good experiences,

12 bad experiences with the police?

13 PROSPECTIVE JUROR NO. 543: Never had any bad or

14 good so --

15 MS. DIGIACOMO: All right. And what -- that is a

16 very good thing. What about any people that you know that use

17 controlled substances or addiction or?

18 PROSPECTIVE JUROR NO. 543: No. I have -- I don't

19 know anybody. I mean --

20 MS. DIGIACOMO: Do you have -- go ahead.

21 PROSPECTIVE JUROR NO. 543: -- back in Michigan, you

22 know, they might -- might have smoked marijuana but other than

23 that, not anybody here.

24 MS. DIGIACOMO: Do you have any strong feelings one

25 way or another about drug use?

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1 PROSPECTIVE JUROR NO. 543: No, I don't.

2 MS. DIGIACOMO: All right. So nothing --

3 PROSPECTIVE JUROR NO. 543: I don't -- I mean agree
4 with it but some people are -- they need it. I'm not saying
5 it's good but --

6 MS. DIGIACOMO: But you understand why some people
7 might have that addiction?

8 PROSPECTIVE JUROR NO. 543: Correct.

9 MS. DIGIACOMO: But nothing about that would affect
10 your ability to be fair and impartial here?

11 PROSPECTIVE JUROR NO. 543: No, it would not.

12 MS. DIGIACOMO: All right. And lastly, with regard
13 to the penalty, if we got to a penalty phase and you were
14 seated on the jury, could you consider all three penalties for
15 first-degree murder and make a decision?

16 PROSPECTIVE JUROR NO. 543: [inaudible]

17 MS. DIGIACOMO: I'll pass for cause, Your Honor.

18 THE COURT: Thank you. Defense.

19 MS. LEMCKE: Is it Ms. Salesky?

20 PROSPECTIVE JUROR NO. 543: Salesky, yes.

21 MS. LEMCKE: So you said that your dad served in the
22 Navy; is that right, in World War II?

23 PROSPECTIVE JUROR NO. 543: Yes.

24 MS. LEMCKE: But he never talked much -- I mean he
25 didn't see any -- or did he see combat?

1 PROSPECTIVE JUROR NO. 543: He saw combat but he
2 didn't really talk to us about it.

3 MS. LEMCKE: Was that -- do you know if that was by
4 choice or --

5 PROSPECTIVE JUROR NO. 543: It was by choice.

6 MS. LEMCKE: Okay. And he just never really felt
7 comfortable discussing those experiences?

8 PROSPECTIVE JUROR NO. 543: Right.

9 MS. LEMCKE: Okay. You heard us discuss a little
10 bit about post-traumatic stress disorder or PTSD. What were
11 your thoughts when you first heard about that?

12 PROSPECTIVE JUROR NO. 543: I -- I -- I agree that
13 people do have it and like some people might exaggerate that
14 they do -- they do have it but maybe they don't have it
15 really. But I agree -- I mean I think people do have it or
16 get it.

17 MS. LEMCKE: Okay. Okay. So you -- you believe
18 that there is such a thing as PTSD. Okay. You also heard us
19 talk a ton about the prosecution's burden of proof, the fact
20 that the defense technically doesn't have to do anything, a
21 defendant's right to testify or not testify. Tell me some of
22 your thoughts. What went through your mind when you started
23 hearing all those questions?

24 PROSPECTIVE JUROR NO. 543: Well, I knew that you're
25 innocent until you're proven guilty and I knew that both sides

1 are definitely going to speak and talk.

2 MS. LEMCKE: Would it bother you if, for example, an
3 accused in a really serious case such as a murder case, chose
4 not to get on the stand and speak to you, would that be
5 troublesome for you?

6 PROSPECTIVE JUROR NO. 543: No.

7 MS. LEMCKE: Okay. Could you understand why someone
8 maybe wouldn't want to talk even if they're innocent of
9 something as serious as murder?

10 PROSPECTIVE JUROR NO. 543: Uh-huh.

11 MS. LEMCKE: Why?

12 PROSPECTIVE JUROR NO. 543: Because they might say
13 the wrong thing or they're afraid to talk so that's -- that's
14 what they would do.

15 MS. LEMCKE: Okay. How about speaking to say law
16 enforcement, same thing. You're -- you know, you've been
17 wrongfully accused of something but you think, hey, I'd like
18 to have a lawyer present, is that reasonable? Do you think
19 that we should have the right to do that? Do you think they
20 should have to speak?

21 PROSPECTIVE JUROR NO. 543: I think it's reasonable.

22 MS. LEMCKE: Why?

23 PROSPECTIVE JUROR NO. 543: Because it's your right.

24 MS. LEMCKE: You've got to hold the microphone
25 closer to your mouth. Would you -- would you think that

1 somebody must be hiding something if they chose to exercise
2 that right and ask for a lawyer?

3 PROSPECTIVE JUROR NO. 543: No, I don't think
4 they're hiding something.

5 MS. LEMCKE: Okay. Can you think of reasons why
6 someone maybe would want to have a lawyer present and not
7 speak to police? Like some of your fellow jurors suggested
8 well, they might have their words twisted around or they
9 might --

10 PROSPECTIVE JUROR NO. 543: Right. They -- they
11 want someone to represent them.

12 MS. LEMCKE: Okay. Okay. If -- if you were seated
13 -- well, before I get to that. Is -- is there anything that
14 you've heard in the course of all these discussions in the
15 questions and the answers, that caused you to think, oh, you
16 know what, if I get up there I think I'll want to tell the
17 lawyers this about me? Did anything pop into your head that
18 you thought you wanted to express an opinion on or share a --
19 share with us about you that might bear on your ability to --
20 to fairly hear this case?

21 PROSPECTIVE JUROR NO. 543: [inaudible]

22 MS. LEMCKE: Okay. If you were seated where the
23 prosecutors are seated or where Mr. Pimentel, myself and Mr.
24 Slife are seated, would you want 12 people such as yourself on
25 a jury?

1 PROSPECTIVE JUROR NO. 543: Uh-huh, yes.

2 MS. LEMCKE: And why is that?

3 PROSPECTIVE JUROR NO. 543: Because I know I would
4 be fair and I'm going to listen to both sides and discuss with
5 the jurors and decide.

6 MS. LEMCKE: Okay. Would you feel comfortable
7 judging the credibility of witnesses who get up on the stand
8 and speak to you?

9 PROSPECTIVE JUROR NO. 543: Yes.

10 MS. LEMCKE: Okay. Let's see, did I -- I have
11 nothing further, Your Honor. I pass for cause. Thank you.

12 THE COURT: Thank you. If you'd pass the microphone
13 to Mr. Warnick. Mr. Warnick, tell us about yourself.

14 PROSPECTIVE JUROR NO. 568: I've lived in town
15 approximately 10 years. I've worked at the Cosmopolitan, Las
16 Vegas. I'm currently in a management development program so
17 I'm sort of a jack of all trades; working the front desk,
18 doing night audit, doing cashiering and as well as my main
19 role right now is rooms coordinator. I have a wife, two kids,
20 seven and nine year olds. And my wife is a revenue agent for
21 the IRS.

22 THE COURT: So what is your educational background
23 that got you into that management program?

24 PROSPECTIVE JUROR NO. 568: I have a bachelor's in
25 science in food and beverage management with minors in

1 business and nutrition. And I had worked in the culinary
2 world for about 12 years and sort of was done with it. And my
3 daughter actually, when she was about two and a half, fell
4 into the lap of the head trainer of the Cosmopolitan over at
5 the airport and she hit it off so we exchanged business cards
6 and she had my resume on Sunday, I had a job on Wednesday.

7 THE COURT: Okay. That sounds good.

8 PROSPECTIVE JUROR NO. 568: Yeah.

9 THE COURT: And are you enjoying it?

10 PROSPECTIVE JUROR NO. 568: I am.

11 THE COURT: Okay. You said you've got two kids --

12 PROSPECTIVE JUROR NO. 568: Yes.

13 THE COURT: -- they're young children?

14 PROSPECTIVE JUROR NO. 568: Yes.

15 THE COURT: How about wife? Are --

16 PROSPECTIVE JUROR NO. 568: Yeah.

17 THE COURT: -- does she work?

18 PROSPECTIVE JUROR NO. 568: Yeah, my wife is a --

19 THE COURT: Oh, the --

20 PROSPECTIVE JUROR NO. 568: -- IRS agent, yeah.

21 THE COURT: -- IRS revenue agent, yes. Here in --
22 here in Las Vegas?

23 PROSPECTIVE JUROR NO. 568: Yes.

24 THE COURT: Okay. And are they pretty short staffed
25 there at the IRS these days?

1 PROSPECTIVE JUROR NO. 568: It's a -- she's in a
2 different role. She does -- she writes the compliance
3 contracts for the casinos.

4 THE COURT: Oh, okay.

5 PROSPECTIVE JUROR NO. 568: And does employment tax
6 as well.

7 THE COURT: All right. So she has interaction with
8 sort of the -- a lot of the people that you work with or at
9 least in general.

10 PROSPECTIVE JUROR NO. 568: Since I've worked at the
11 Cosmopolitan she cannot walk in there.

12 THE COURT: Oh, okay. I see, okay.

13 PROSPECTIVE JUROR NO. 568: Yeah.

14 THE COURT: So you've -- any military in your family
15 or you yourself?

16 PROSPECTIVE JUROR NO. 568: My father was a -- was
17 in the Army, just did his three years and my grandfather and
18 his brother.

19 THE COURT: Combat?

20 PROSPECTIVE JUROR NO. 568: My -- my father did not
21 see combat. My -- my grandfather and his brother did.

22 THE COURT: Okay. World War II?

23 PROSPECTIVE JUROR NO. 568: World War II and my
24 grandfather was a pilot for the Royal Canadian Air Force. And
25 then his brother was stationed in Germany and all that, yeah.

1 THE COURT: So you've heard all the discussion about
2 PTSD. What are your thoughts on it?

3 PROSPECTIVE JUROR NO. 568: It -- it does exist. My
4 -- my great-uncle came back with what's considered shell shock
5 at the time, which is PTSD. And I had seen movies and
6 pictures of him before and after and he had like a nervous
7 tick all the time and he would -- he was very jumpy and
8 whatnot. And it was -- they said that that was from his time
9 in combat.

10 THE COURT: Did he ever receive any counseling or
11 anything for that, treatment --

12 PROSPECTIVE JUROR NO. 568: I'm not sure. I was --
13 I was quite young at the time. But -- but we would talk --
14 you know, war stories with grandparents and great-uncles are
15 more like the things that they saw and the -- and the positive
16 things. Even with my father, he would tell me stories of the
17 things that they did. He was a military policeman and the
18 things that they did to keep themselves awake at night watch
19 and whatnot. But it was more of a positive experience.

20 THE COURT: Okay. Do you agree with the presumption
21 of innocence?

22 PROSPECTIVE JUROR NO. 568: I do.

23 THE COURT: Anything -- any reason that you can
24 think of that you could not be a fair and impartial juror in
25 this case?

1 PROSPECTIVE JUROR NO. 568: The only thing that's
2 been coming to my mind since we've been here for two days is
3 that I have a belief that when drug use is involved and a
4 crime is committed under the use of whether it's controlled
5 substances or legal substances, I sort of feel that the person
6 had the choice to start taking those substances and if they've
7 lost control and they're trying to stand behind the use of the
8 drug, I feel that it's not a -- it's not a good defense, it's
9 not a true defense.

10 THE COURT: All right. So would you agree that
11 someone that's a drug user could be the victim of a crime?

12 PROSPECTIVE JUROR NO. 568: Yes.

13 THE COURT: Okay. And so not only a perpetrator but
14 a victim as well.

15 PROSPECTIVE JUROR NO. 568: Uh-huh.

16 THE COURT: All right. So obviously, you know, you
17 would be instructed on the law regarding if -- if that was
18 being attempted to be asserted as a defense, you'd be
19 instructed on the law. And would you be able to follow the
20 law?

21 PROSPECTIVE JUROR NO. 568: Yes.

22 THE COURT: Okay. Even if it's something that you
23 would disagree with you would still be able to follow it as I
24 instruct you?

25 PROSPECTIVE JUROR NO. 568: Yes.

1 THE COURT: Okay. All right. So I'm going to try
2 to make the first strike here. Do you watch any TV shows,
3 like criminal crime shows?

4 PROSPECTIVE JUROR NO. 568: I'm a sci-fi and Netflix
5 geek.

6 THE COURT: Netflix, okay.

7 PROSPECTIVE JUROR NO. 568: Yeah.

8 THE COURT: But any crime --

9 PROSPECTIVE JUROR NO. 568: No.

10 THE COURT: Law and Order, any of that?

11 PROSPECTIVE JUROR NO. 568: No.

12 THE COURT: Okay.

13 PROSPECTIVE JUROR NO. 568: No.

14 THE COURT: All right.

15 PROSPECTIVE JUROR NO. 568: I did hear CSI got
16 canceled. The first one just got canceled this season.

17 THE COURT: See, news to me. Okay. But they've
18 already replaced it with yet --

19 PROSPECTIVE JUROR NO. 568: I know, with several
20 million of them.

21 THE COURT: -- another iteration of it. Okay. And
22 all right. State.

23 MS. DIGIACOMO: Thank you. Any bad or good
24 experiences with the police?

25 PROSPECTIVE JUROR NO. 568: None other than what I

1 explained. Most of my experiences have been, you know,
2 positive. I just, I felt that the one phone call that could
3 have like brought us back to some of our items was not -- it
4 wasn't done very well.

5 MS. DIGIACOMO: Okay. But nothing that --

6 PROSPECTIVE JUROR NO. 568: No.

7 MS. DIGIACOMO: -- would keep you from being fair
8 and impartial here?

9 PROSPECTIVE JUROR NO. 568: No.

10 MS. DIGIACOMO: And now you mentioned about you --
11 drug use is kind of a choice?

12 PROSPECTIVE JUROR NO. 568: Uh-huh.

13 MS. DIGIACOMO: And that you said that it's -- that
14 you -- you don't agree with it being a defense. Do you mean
15 like a defense to a crime?

16 PROSPECTIVE JUROR NO. 568: Correct. If you want I
17 can elaborate. My -- my -- one of my best cousins, I saw him
18 the date he -- he was very excited and he told me -- I don't
19 know what he had taken but he had taken drugs with his buddies
20 or whatever and he was in high school. And from that point on
21 I saw him deteriorate into the person that he's become. And
22 it just -- it -- he made that -- that first choice and after
23 that first choice with him he's never gotten, you know, in
24 trouble with the law or whatever but I've seen him become a
25 person who has no expectations and has no future goals and he

1 sits -- yes, I believe his parents enable him and he sits in
2 this house and does nothing and whatever, plays video games,
3 whatever. But he's still a drug user and -- and I feel that
4 he had such great opportunity and after that first choice it
5 was done.

6 MS. DIGIACOMO: So is he more kind of a
7 disappointment from -- you know, because he's not -- he's not
8 achieved what he could have achieved?

9 PROSPECTIVE JUROR NO. 568: He's a -- he's a
10 disappointment but he also is one of those people that has
11 become -- I just feel he's just not -- to use the term
12 loosely, he's a loser, yeah.

13 MS. DIGIACOMO: Now, do you think your strong
14 opinions would affect your ability to be fair and impartial in
15 this case? Because we've mentioned that there might be drug
16 use mentioned --

17 PROSPECTIVE JUROR NO. 568: Uh-huh.

18 MS. DIGIACOMO: -- but you don't know who or what or
19 how.

20 PROSPECTIVE JUROR NO. 568: No, I don't know who or
21 what but at the end of the day my only concern was is that if
22 the defendant, you know, was -- if the -- if the drug use was
23 involved -- that's involved was particularly with the
24 defendant and the defendant performed -- if he did perform the
25 crime under the use of the drug use, I feel that it's -- it's

1 -- it's a non-question for me.

2 MS. DIGIACOMO: What do you mean it's a
3 non-question? Like your mind's already made up?

4 PROSPECTIVE JUROR NO. 568: No. I -- I guess what it
5 is, I can be -- I can hear the -- the -- the evidence in the
6 case, but if they're saying -- if the State -- if the defense
7 says to me, because of the use of -- of this particular drug
8 or narcotic or controlled substance, whether it was for his
9 PTSD or whatnot, my concern is that can I differentiate or
10 separate myself from that and I'm not sure. And that --
11 that's the honest truth, yeah.

12 MS. DIGIACOMO: You're not sure?

13 PROSPECTIVE JUROR NO. 568: Yeah.

14 MS. DIGIACOMO: Well, if -- well, I guess it would
15 also go back to at the end of the case, after you hear all the
16 evidence, you can keep an open mind as you hear everything.

17 PROSPECTIVE JUROR NO. 568: Yeah.

18 MS. DIGIACOMO: Okay. And then at the end of the
19 case the Judge will instruct you how the law is and then how
20 to apply what you've heard as evidence to that law.

21 PROSPECTIVE JUROR NO. 568: Okay.

22 MS. DIGIACOMO: Can you do that?

23 PROSPECTIVE JUROR NO. 568: I can do that but what I
24 question and I -- I don't know the law at this point, is that
25 what I question is what law protects someone under the

1 influence of a narcotic to possibly go out and perform the
2 crime.

3 MS. DIGIACOMO: Okay. And that's a fair -- that's a
4 fair concern and a fair question. What if I told you that
5 that's not even -- that could not even come into play. Would
6 that affect your ability --

7 PROSPECTIVE JUROR NO. 568: No, it wouldn't --

8 MS. DIGIACOMO: -- in this case to hear --

9 PROSPECTIVE JUROR NO. 568: -- it wouldn't affect me
10 at all.

11 MS. DIGIACOMO: You know, you have to agree as you
12 sit here today, you really don't know what happened.

13 PROSPECTIVE JUROR NO. 568: No, I have no idea. But
14 we -- I mean I'm sure all of us have sat there and gone and
15 said, hmm?

16 MS. DIGIACOMO: Right, because we're asking certain
17 questions --

18 PROSPECTIVE JUROR NO. 568: Yeah.

19 MS. DIGIACOMO: -- so -- and kind of give hints
20 maybe as to what to come -- is to come but can you keep an
21 open mind --

22 PROSPECTIVE JUROR NO. 568: Of course.

23 MS. DIGIACOMO: -- and listen to what evidence is
24 presented and then apply that to the law to make a
25 determination?

1 PROSPECTIVE JUROR NO. 568: Yes.
2 MS. DIGIACOMO: I'll pass for cause.
3 THE COURT: Defense.
4 MR. SLIFE: Thank you, Your Honor. Just one
5 question, sir. We've -- I think everybody kind of got most of
6 the -- most of the stuff we've been talking about. You used
7 the term shell shocked though.
8 PROSPECTIVE JUROR NO. 568: Uh-huh.
9 MR. SLIFE: Is that what it was?
10 PROSPECTIVE JUROR NO. 568: Yes.
11 MR. SLIFE: Could you describe more of what you
12 meant by that and when that was?
13 PROSPECTIVE JUROR NO. 568: That was back in -- just
14 to age me, I'm -- I was born in -- I was born in '72. My -- I
15 -- my uncle -- my great-uncle and I would hang out and if you
16 could imagine a nervous tick, he would like breathe in and he
17 would like to do stuff like that and they described that as
18 shell shock. But once he --
19 MR. SLIFE: Is that sort of a word that they used
20 before PTSD --
21 PROSPECTIVE JUROR NO. 568: Before, correct.
22 MR. SLIFE: -- the terminology became more common?
23 PROSPECTIVE JUROR NO. 568: Yes.
24 MR. SLIFE: What -- what were -- I think you were
25 about to describe and I cut you off, I apologize. What were

1 some of the symptoms that --

2 PROSPECTIVE JUROR NO. 568: One of the symptoms was
3 -- is that he was very -- he never got agitated but he was
4 very much -- like if you came up behind him and you touched
5 him on the shoulder you shouldn't do that. During discussion,
6 even a normal discussion, he would have a nervous tick, he
7 would suddenly inhale, his head would shake and whatnot.

8 MR. SLIFE: Okay. And at least from what you know
9 maybe about PTSD now, it sounds kind of like a similar but
10 it's called a different name?

11 PROSPECTIVE JUROR NO. 568: I have -- I've seen
12 different -- different experiences and stuff like that, yeah.
13 Okay.

14 MR. SLIFE: That's all I had, sir --

15 PROSPECTIVE JUROR NO. 568: Okay.

16 MR. SLIFE: -- thank you very much. Judge, we'll
17 pass for cause.

18 THE COURT: Thank you. If you'd pass the microphone
19 on up. I need you to state your name and badge number for the
20 record.

21 PROSPECTIVE JUROR NO. 578: Margarita Morales, badge
22 number 578.

23 THE COURT: Ms. Morales, tell us about yourself.

24 PROSPECTIVE JUROR NO. 578: I've been here in Vegas
25 about 25 years, I'm single, no kids. I work at the Office

1 Depot distribution center, it's a warehouse. I work at the
2 receiving department receiving the merchandise. I've been
3 working there for about seven years. And before that I worked
4 at a bakery as a cashier.

5 THE COURT: Do you have other family here in Las
6 Vegas?

7 PROSPECTIVE JUROR NO. 578: Yes, my parents and my
8 brothers and sisters.

9 THE COURT: So did you grow up here?

10 PROSPECTIVE JUROR NO. 578: I was born in California
11 and then about -- when we were about five years old we moved
12 down here.

13 THE COURT: Okay. So all of your growing up time
14 really and adult life has been here --

15 PROSPECTIVE JUROR NO. 578: Yes.

16 THE COURT: -- in Las Vegas? And your parents, what
17 do they do here in town?

18 PROSPECTIVE JUROR NO. 578: When we moved over here
19 we moved for my dad's job, which was construction, but right
20 now he's not working. My mom, she works at McDonald's.

21 THE COURT: Is there any reason that you could not
22 be a fair and impartial juror in this case?

23 PROSPECTIVE JUROR NO. 578: No.

24 THE COURT: Do you believe that you could follow the
25 law as I instruct?

1 PROSPECTIVE JUROR NO. 578: Yes.

2 THE COURT: Do you watch any crime shows?

3 PROSPECTIVE JUROR NO. 578: I have in the past, I
4 don't right now.

5 THE COURT: What kind of things did you watch when
6 you did watch?

7 PROSPECTIVE JUROR NO. 578: Just the Law and Order
8 shows, I used to watch them.

9 THE COURT: And you will be able -- you certainly
10 obviously know that it's not like it is on TV since you've
11 been here for two days and we're still picking the jury.

12 PROSPECTIVE JUROR NO. 578: Yes.

13 THE COURT: All right. So how about do you have any
14 thoughts about the questions that have been asked of the other
15 prospective jurors as to PTSD?

16 PROSPECTIVE JUROR NO. 578: I actually don't know
17 much about it but I do think that it does exist.

18 THE COURT: Okay. Anyone in your family been in
19 military?

20 PROSPECTIVE JUROR NO. 578: No.

21 THE COURT: Okay. No close friends or associates in
22 the military?

23 PROSPECTIVE JUROR NO. 578: No.

24 THE COURT: Okay. And do you have any strong
25 feelings one way or the other about law enforcement?

1 PROSPECTIVE JUROR NO. 578: No, I don't.
2 THE COURT: And no bad experiences with law
3 enforcement?
4 PROSPECTIVE JUROR NO. 578: No.
5 THE COURT: How about any positive experiences with
6 law enforcement?
7 PROSPECTIVE JUROR NO. 578: I haven't had either
8 one.
9 THE COURT: All right. Would the State like to
10 inquire further?
11 MS. DIGIACOMO: Thank you. Do you have any
12 experiences with I guess people that you know doing controlled
13 substances or any strong opinions about drugs?
14 PROSPECTIVE JUROR NO. 578: My brother, he had
15 problems with drugs.
16 MS. DIGIACOMO: He had? So he's okay now?
17 PROSPECTIVE JUROR NO. 578: Yeah, he's okay now.
18 MS. DIGIACOMO: Do you know what kind of drugs?
19 PROSPECTIVE JUROR NO. 578: The only one that I know
20 the name is marijuana, the other ones I don't really know
21 because I don't know much about drugs.
22 MS. DIGIACOMO: But it was more than one?
23 PROSPECTIVE JUROR NO. 578: Yes.
24 MS. DIGIACOMO: Okay. Now did he get help on his
25 own or what happened?

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1 PROSPECTIVE JUROR NO. 578: I think just after a
2 while, just seeing how my mom was suffering from it, how it
3 hurt her I think he decided to change.

4 MS. DIGIACOMO: Okay. So anything about I guess
5 your experience or your opinions regarding drug use would
6 affect your ability to be fair and impartial here?

7 PROSPECTIVE JUROR NO. 578: No.

8 MS. DIGIACOMO: And what about in this case if it
9 did get to a penalty and you were seated on the jury, would
10 you be able to consider all three?

11 PROSPECTIVE JUROR NO. 578: Yeah, I think I would be
12 able to consider all three. The only thing that comes to mind
13 is, I don't know, it just makes me nervous having to decide
14 how long someone goes to prison or jail for. You know, that's
15 the only thing I can think of.

16 MS. DIGIACOMO: Well, and -- and that's a legitimate
17 concern to have. I'm sure most people here have that same
18 concern. But if you were called upon to do it, would you be
19 able to do it?

20 PROSPECTIVE JUROR NO. 578: Yes.

21 MS. DIGIACOMO: Pass for cause, Your Honor.

22 THE COURT: Defense.

23 MS. LEMCKE: We talked a lot about the presumption
24 of innocence, the right to testify and not testify. What were
25 your thoughts when you heard all of that?

1 PROSPECTIVE JUROR NO. 578: I agree with it. I
2 think if they don't feel comfortable up in the stand and they
3 don't want to testify, I think I'm open to listening to what
4 it is brought up.

5 MS. LEMCKE: Okay. Do -- how do you feel about a
6 system, a justice system that basically requires one side to
7 prove a case and that the other side technically doesn't have
8 to do anything? Do you think that's right?

9 PROSPECTIVE JUROR NO. 578: Yeah. Actually before
10 coming here I didn't know that that's how it worked. I
11 thought both sides had to present something. But I don't have
12 a problem with that.

13 MS. LEMCKE: Okay. So you wouldn't have a problem
14 looking at -- analyzing the prosecution's case and just making
15 a determination? Even if we did nothing, just saying, uh, you
16 know, if they haven't proven it beyond a reasonable doubt,
17 even though the defense hasn't done something, I can return a
18 verdict of not guilty?

19 PROSPECTIVE JUROR NO. 578: Uh-huh, I would like to
20 probably hear both sides but if it's only just one I think I
21 would -- I would try my best just to make a decision from
22 that.

23 MS. LEMCKE: Would you -- do you think that you
24 would hold it against Mr. Slife and I and ultimately our
25 client, Mr. Pimentel, if we didn't do anything? You know, if

1 we just cross-examined the prosecution's witnesses or even we
2 didn't even do that, we just let them put on their witnesses
3 and then argued in closing they haven't met their burden.

4 PROSPECTIVE JUROR NO. 578: No.

5 MS. LEMCKE: Okay. And, you know, when we talked
6 about the -- the right of an accused in a criminal case to
7 testify or to not testify, we also had some conversations
8 about speaking to police. Could you understand why maybe an
9 innocent person would ask to have a lawyer present when
10 they're being interrogated by police?

11 PROSPECTIVE JUROR NO. 578: Yes. I think that's a
12 right and if they don't feel comfortable or they don't know
13 how to get their point across, I don't see nothing wrong with
14 them getting a lawyer.

15 MS. LEMCKE: Okay. Would you think that somebody
16 who wants to have a lawyer present has something to hide?

17 PROSPECTIVE JUROR NO. 578: No.

18 MS. LEMCKE: Okay. If you -- if you were seated
19 where either the prosecutors are seated or where Mr. Slife,
20 myself and most importantly, Mr. Pimentel are seated, would
21 you want 12 people such as yourself deciding this case?

22 PROSPECTIVE JUROR NO. 578: I think I would. I've
23 always been a very honest person and try to look at both sides
24 before I make a decision.

25 MS. LEMCKE: How would you feel about judging the

1 credibility of witnesses who get up on that stand and raise
2 their right hand and swear to tell the truth, the whole truth
3 and nothing but the truth, would you feel comfortable looking
4 at them and -- and judging each one's credibility
5 individually?

6 PROSPECTIVE JUROR NO. 578: Yes.

7 MS. LEMCKE: Okay. Is there anything about you that
8 you think we should know, as you've heard all the questions
9 that have been asked that might bear upon your ability to be
10 fair and impartial in this case?

11 PROSPECTIVE JUROR NO. 578: No, I don't think so.
12 Just maybe that everyone that knows me they've always said I'm
13 very indecisive so maybe that's the only thing. Like it's --
14 sometimes it is hard for me to come to a decision about
15 anything. And then when I do come to the decision, like 10
16 minutes later I'm like second guessing it. So I think that's
17 the only thing why I brought up that. It makes me nervous
18 like coming to a decision about someone's life.

19 MS. LEMCKE: How do you feel about -- in terms of
20 making a decision, kind of speaking to your fellow jurors
21 about kind of hearing everybody's opinions and thoughts and --
22 and taking all of that into consideration, would that be
23 something that would be more appealing to you in terms of
24 making a decision?

25 PROSPECTIVE JUROR NO. 578: Yes, I think it would.

1 MS. LEMCKE: Do you think you'd be somebody who
2 would be easily swayed or do you think that after you've heard
3 the evidence and you kind of come to a conclusion, you've
4 listened to some of the thoughts and opinions of your fellow
5 jurors, that you would say I understand what you folks are
6 saying but I'm of the opinion of this, would you stick by your
7 guns or do you think that you could be easily kind of pushed
8 around I guess for lack of a better term?

9 PROSPECTIVE JUROR NO. 578: I mean I have in the
10 past where I made my decision and even little small stuff and
11 other people tell me their opinion and I have changed mine
12 because of that. I think it's just my indecisiveness.

13 MS. LEMCKE: Okay. So -- so you'd be willing to
14 listen to everybody and maybe draw from that things that you
15 think, oh, maybe I didn't think of that or if you feel like
16 no, I've heard what you have to say but I think, you know, I'm
17 still right and you'd stick by your guns?

18 PROSPECTIVE JUROR NO. 578: Yeah, I'm willing to
19 listen to everyone and everyone's opinions so we can all come
20 to one decision.

21 MS. LEMCKE: Court's indulgence. I have nothing
22 further, Your Honor. Pass for cause.

23 THE COURT: Thank you. All right. We have
24 peremptory challenges for the alternates, each side has three.
25 State's first peremptory challenge.

1 MS. DIGIACOMO: The State will waive.

2 THE COURT: Thank you. Defense?

3 MR. SLIFE: Waive as well, Your Honor.

4 THE COURT: Thank you. I can't tell you how much
5 because we are out of jurors. All right. Ladies and
6 gentlemen, we have our jury and our three alternates. And I'm
7 going to have the clerk swear you in.

8 THE CLERK: If just the jury would stand for now and
9 raise your right hand.

10 (Jury panel sworn)

11 THE CLERK: If the alternates would please stand and
12 raise your right hand.

13 (Alternates sworn)

14 THE COURT: Thank you. All right. I'm going to
15 have counsel approach to talk about scheduling and then I'll
16 let you know what time I need you back.

17 (Off-record bench conference.)

18 THE COURT: All right. Ladies and gentlemen, we're
19 going to start at 1:30 tomorrow because I have my criminal
20 calendar and I have an evidentiary hearing in the morning. So
21 1:30 should be good timing. And we will -- I'm going to give
22 you some preinstructions about what to expect before you hear
23 the opening statements from the lawyers and then we'll start
24 taking evidence in the case.

25 So ladies and gentlemen, during this overnight

1 recess, it is your duty not to converse among yourselves or
2 with anyone else on any subject connected with the trial or to
3 read, watch or listen to any report of or commentary on the
4 trial by any person connected with the trial or by any medium
5 of information including, without limitation, newspaper,
6 television, radio or Internet and you are not to form or
7 express an opinion on any subject connected with this case
8 until it's finally submitted to you. And I will see you
9 tomorrow at 1:30. The Marshal's going to give your juror
10 badges that you need to wear whenever you're in the
11 courthouse. They're different than the ones you have. Yes,
12 ma'am?

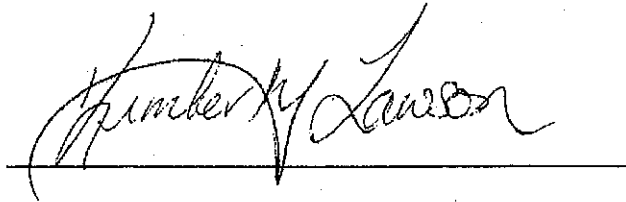
13 THE JUROR: Can we -- do we need take notes? And if
14 so do we --

15 THE COURT: We're going to give you -- yes, we're
16 going to give you pads and all that tomorrow, so don't worry.
17 We're waiting on the badges. All right. I think we can off
18 the record if we're still on.

19 (Court recessed for the evening at 4:41 p.m.)
20
21
22
23
24
25

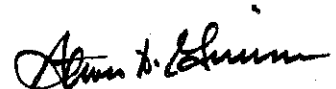
ACKNOWLEDGMENT:

Pursuant to Rule 3C(d) of Nevada Rules of Appellate Procedure, this is a rough draft transcript expeditiously prepared, not proofread, corrected or certified to be an accurate transcript.

A handwritten signature in cursive script, reading "Kimberly Lawson", is written over a horizontal line.

KIMBERLY LAWSON
TRANSCRIBER

UNCERTIFIED ROUGH DRAFT


CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,)
)
Plaintiff,)
)
vs.)
)
LUIS PIMENTEL, AKA,)
LUIS GODOFREDO PIMENTEL, III)
)
Defendant.)

CASE NO. C296234-1
DEPT NO. V

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

JURY TRIAL - DAY 3

WEDNESDAY, MAY 13, 2015

APPEARANCES:

For the State:

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SAMUEL G. BATEMAN, ESQ.
Chief Deputy District Attorneys

For the Defendant:

NANCY L. LEMCKE, ESQ.
CONOR M. SLIFE, ESQ.
Deputy Public Defenders

RECORDED BY LARA CORCORAN, COURT RECORDER
TRANSCRIBED BY: KARR Reporting, Inc.

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UNCERTIFIED ROUGH DRAFT

1 LAS VEGAS, NEVADA, WEDNESDAY, MAY 13, 2015, 1:35 P.M.

2 * * * * *

3 (Outside the presence of the jury.)

4 THE COURT: This is Case No. C296234, State of
5 Nevada vs. Luis Pimentel. And the record will reflect the
6 presence of the defendant with his counsel, the deputies
7 district attorney prosecuting the case, and all officers of
8 the court. We're outside the presence of the jury and the
9 alternates. There's a matter outside the presence.

10 MS. LEMCKE: Yeah. Your Honor, it's my
11 understanding, based on conversations that I had with the
12 prosecution just a few minutes ago, that they intend to
13 introduce a photo of the decedent in this case, Robert
14 Holland, and it has been marked for identification as State's
15 Proposed Exhibit 1.

16 It is a photograph of Mr. Holland standing like, you
17 know, overlooking a beach. And I have a couple of objections.
18 One, I don't think it's relevant because no one's disputing
19 his identity here. We would stipulate and have offered to do
20 so where identity is concerned.

21 Am I going too fast?

22 THE COURT RECORDER: No, no. It's just the
23 microphone was beeping.

24 MS. LEMCKE: Oh, I'm sorry. Do you want me to move
25 around a little bit, is that --

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1 THE COURT RECORDER: No, it's good. We just
2 fixed it.

3 MS. LEMCKE: Okay. And it's just interesting,
4 because it's -- you know, it is a, I would say, very clever
5 attempt to portray Mr. Holland in a most favorable light
6 considering he has a criminal record and my client does not,
7 and that he was the initial aggressor in this whole incident
8 and my client was not.

9 And so when you look at Mr. -- aside from the fact
10 that this photograph is not relevant to anything other than to
11 try to cast him in a less sinister light, when you look at the
12 way that the prosecution has oriented this photo in their
13 PowerPoint presentation, it's very interesting, because they
14 juxtapose this rather innocuous photograph of the decedent
15 with mugshots of my client and one of the witnesses who was
16 there that evening, Amanda Lowe.

17 So they take mugshots of my client and Ms. Lowe, and
18 they juxtapose that against this again kind of innocuous beach
19 photo of Mr. Holland, when they could have used a mugshot of
20 Mr. Holland because he does have a criminal history. But they
21 instead chose again the more innocuous photo to try to draw
22 this comparison, even though again, he was undisputedly the
23 initial aggressor in this whole matter.

24 So my objection to the photograph, State's Exhibit 1
25 or Proposed Exhibit 1, is that it's not relevant, identity's

1 not an issue. It's just an attempt to, you know, cast him in
2 as favorable light as possible given they know what the
3 defense is going to be in this case. And it's particularly
4 insidious in the manner in which it will be used in their
5 PowerPoint presentation; the nice photo of Mr. Holland versus
6 the two mugshots of my client and one of the other percipient
7 witnesses. So on that I'd submit it.

8 THE COURT: Okay. And State --

9 MR. BATEMAN: Do you want to see it, Your Honor?

10 THE COURT: Yeah.

11 MS. LEMCKE: Yeah.

12 MR. BATEMAN: Do you want to see the incipient
13 photo?

14 THE COURT: Okay.

15 MR. BATEMAN: It was at Disneyland, I might -- with
16 the children and, you know, a choir behind him. I might agree
17 with defense counsel.

18 MS. LEMCKE: Luis, you can sit.

19 MR. BATEMAN: But I think I'm entitled to show a
20 photograph of the victim in this case at some point to his
21 mother, who's alive, who's going to come in and testify that
22 her son's dead and that that's a photo of him. I hardly think
23 that's a prejudicial photo. I'm not adding a collage.

24 Because otherwise, the jury in this case isn't going
25 to see anything but a dead body. We took out -- pursuant to

1 Ms. Lemcke's request, I took out the face from the coroner's
2 photographs. I don't think there's any --

3 THE COURT: I was going to say, are you doing a
4 clean autopsy photo?

5 MR. BATEMAN: I took the face out pursuant to her
6 objection, so.

7 THE COURT: Well, okay. So I understand that you're
8 saying that you're willing to stipulate to identity, but as
9 you know, the State is not required to accept your
10 stipulation. They have to prove identity as part -- of the
11 victim as part of their case. I mean, they've alleged the
12 victim in the charging document. So they are going to have to
13 put on a witness to identify the person who was killed. If
14 you'd prefer that they put in a clean autopsy photo, they can
15 certainly do that.

16 MS. LEMCKE: Well, I mean, I don't think it's an
17 issue once I can see that, you know, the decedent in this case
18 is Robert Holland, that being the son of, you know, Debra
19 Battelini and Robert Holland, II. So I mean, that's what
20 eliminates the relevance of it. Because we're not making an
21 issue of it, it's therefore not relevant.

22 It certainly would be if we were contesting and
23 saying this isn't the decedent in this case. But it's not
24 relevant once we agree that we're going to concede identity.
25 They don't -- they no longer then need to do anything where

1 identity is concerned. We're conceding it.

2 THE COURT: Well, you're --

3 MR. BATEMAN: It's relevant because it's the victim.
4 It's the victim.

5 THE COURT: You're stipulating that you're willing
6 to stipulate to the identity of the victim as a fact for the
7 jury.

8 MS. LEMCKE: Right.

9 THE COURT: But as you know, lawyers don't have to
10 stipulate. They may stipulate. But you cannot force a
11 stipulation on the other side. As long as they have to prove
12 as part of their case that a person -- the victim was killed,
13 that it was a homicide, and not the other elements for the
14 charge that they've brought, then that's one of the things
15 they have to prove. So they're going to have to put a -- and
16 they don't have to take your stipulation. That's what I'm
17 saying.

18 So I understand that your objection is that this
19 particular photo is -- goes to -- is prejudicial, even
20 though -- I think this is what you're arguing, that it's
21 prejudicial, even though it may be relevant to their argument,
22 because it depicts him on a beach and therefore it's
23 appealing -- it's more prejudicial because it appeals to the
24 sympathy of the jury as opposed to the purpose of it, which is
25 for identity.

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1 Okay. And so that's why I inquired do you have a
2 clean copy or a clean photo of the medical examination that
3 was done, you know, post mortem, because that's -- that's a
4 common way of proving the identity of the victim. And the
5 prosecutor's saying that you don't want that photo.

6 MS. LEMCKE: And I particularly don't want that
7 photo displayed to the mother for purposes of identification
8 at all, so yeah. No. I think I've made my record. I
9 understand the Court's ruling but, you know, my position is
10 that once we concede identity, there's no longer any
11 relevance, understanding prejudicial value is outweighed by
12 any probative value at that point.

13 I think I've made my record, so we're good. And the
14 State has agreed to remove the facial photo from the autopsy
15 photos, which I would have objected to also, so.

16 THE COURT: And so the record will be fully clear
17 that had you not objected to the autopsy photo, then I
18 probably would have said no, that you can't use this photo
19 that has been -- well, I guess will be marked. It's not
20 marked right now as what, proposed?

21 MR. BATEMAN: I think it's one.

22 THE COURT: Is it one? Okay. Then I probably would
23 have granted that motion because, you know, there wouldn't be
24 any purpose to it other than to, you know, go to the
25 sympathies of the jury. But that not being the case, because

1 the other photo can't come in at your request, then we're
2 going -- I'll allow this photo. And here, I'll give it back
3 to you so you can have it marked by the clerk.

4 (Attorneys confer.)

5 MR. BATEMAN: Judge, can I approach real quick?

6 THE COURT: Yes.

7 MR. BATEMAN: I know you were asking for the copy of
8 my very short and not particularly well done PowerPoint.

9 THE CLERK: And is that going to be a court's
10 exhibit?

11 MR. BATEMAN: If you'd like.

12 THE COURT: I'll make it a court's exhibit after. I
13 just wanted to follow up with it first, just in case the
14 monitor doesn't work as represented.

15 All right. Are we ready to bring them in? Anything
16 else outside the presence? All right.

17 MS. LEMCKE: Not from me, Your Honor.

18 THE COURT: Let's bring in the jury.

19 (Jurors enter at 1:44 p.m.)

20 THE COURT: Thank you. Please be seated.

21 THE MARSHAL: Your Honor, I got one more.

22 THE COURT: Oh, I'm sorry. Okay. All right. Thank
23 you. And the record will reflect that we have now been joined
24 by all 12 members of the jury, as well as the three
25 alternates. Will counsel so stipulate?

UNCERTIFIED ROUGH DRAFT

1 MR. BATEMAN: Yes, Your Honor.

2 MS. LEMCKE: Yes, Your Honor.

3 THE COURT: Good afternoon, ladies and gentlemen.
4 How are you doing this morning? Your first day. Any problems
5 with parking or any of that? Good. All right. Ladies and
6 gentlemen, I'm going to take a few minutes now to talk to you
7 about what to expect as the case goes forward. And these
8 comments are basically for purposes of an introduction to the
9 trial.

10 Now, at the end of the trial I'm going to give you
11 more detailed instructions on the law. Those will be in
12 writing, and those instructions will control your
13 deliberations. But these preliminary instructions are just
14 something for you to keep in mind as you proceed through the
15 case.

16 Now, this is a criminal case that is brought by the
17 State of Nevada against the defendant, and it's based upon a
18 charging document that can be either an indictment or an
19 Information. And so I'm going to now have the court recorder
20 read to you the charging document in this case.

21 (Information read - not transcribed.)

22 THE COURT: Thank you. So now you should distinctly
23 understand, of course, that this Amended Information that was
24 just read to you is simply a charging document. It is not
25 evidence of anything. It doesn't prove anything. Therefore

1 defendant starts out with a clean slate and he's pled not
2 guilty and is presumed innocent.

3 Now, this is a criminal case and there are two basic
4 rules that you must keep in mind. First, the defendant is
5 presumed innocent unless and until proven guilty beyond a
6 reasonable doubt, and the defendant is not required to present
7 any evidence or prove his innocence. The law never imposes
8 upon a defendant in a criminal case the burden of calling any
9 witnesses or introducing any evidence. Second, to convict,
10 the State must prove beyond a reasonable doubt that the crime
11 was committed and that the defendant is the person who
12 committed the crime.

13 Now, it's going to be your duty to decide from the
14 evidence that's presented whether the defendant is guilty or
15 not guilty. You are the sole judges of the facts in the case.
16 You will decide what the facts are from the evidence which
17 will be presented in court.

18 And the evidence will consist of the testimony of
19 witnesses and documents and other things that will be received
20 into evidence as exhibits, and you must apply the facts to the
21 law that I will give you in those written instructions that
22 I've told you about and in that way you'll reach your verdict.
23 It's important for you to perform your duty of determining the
24 facts diligently and conscientiously, because normally there
25 is no way of correcting an erroneous determination of facts by

1 the jury.

2 Now, you shouldn't take anything that I may say or
3 do during the trial as indicating my opinion as to how you
4 should decide the facts of the case or influence you in any
5 way as to how you should decide this case. I don't have an
6 opinion on that. At times I might ask questions of witnesses.
7 But if I do that, it's for the purposes of bringing out
8 matters which should be brought out, and it's not in any way
9 to indicate my opinion about the facts or to indicate the
10 weight or the value you should give to the testimony of a
11 witness. Because again, I do not have an opinion on that.
12 That's your job.

13 In deciding the facts of this case, you may have to
14 decide which witnesses to believe and which witnesses not to
15 believe. You may believe everything a witness says, or none
16 of it, or just part of it. Now, when you consider the weight
17 or the value of the testimony of any particular witness, you
18 may consider the appearance, attitude and behavior of the
19 witness when the witness is testifying, and of course a number
20 of other things, including the witness's ability to see or
21 hear or know the things that the witness testifies to, the
22 quality of the witness's memory, the inclination of the
23 witness to speak truthfully, whether or not the witness has
24 any interest in the outcome of the case, or any motive, bias
25 or prejudice, whether the witness is contradicted by anything

1 the witness said or wrote before trial, and how reasonable is
2 the witness's testimony when you consider it with the other
3 evidence which you do believe.

4 In deciding whether or not to believe a witness,
5 keep in mind that people sometimes do forget things. You need
6 to consider whether a contradiction is an innocent lapse of
7 memory or an intentional falsehood, and that might depend on
8 whether it has to do with an important fact or just a small
9 detail.

10 The weight or the value of evidence does not
11 necessarily depend on the number of witnesses testifying for
12 one side. You must consider all of the evidence. And you may
13 decide the testimony of a smaller number of witnesses on one
14 side has more weight or value than that presented by the other
15 side, and of course keeping in mind that, as you've been told,
16 defendant doesn't have to present any witnesses. So you may
17 still decide the case, even if the defense does not present
18 any witnesses, you may still find that the State did not meet
19 its burden.

20 There are two kinds of evidence; direct and
21 circumstantial evidence. You might have heard about that on
22 television and have been misled about what those two kinds of
23 evidence are. So direct evidence is testimony about what a
24 witness personally saw or heard or did. Circumstantial
25 evidence is indirect evidence. It's proof of one or more

1 facts from which you can find another fact.

2 So let me give you an example of that. So let's say
3 you got up this morning and as you walked out your front door
4 you noticed that there was water dripping from the eaves of
5 your house, and the sidewalk leading out to the street was
6 also completely wet.

7 As you looked down the street, you saw that as far
8 as you could see it looked wet, there was water running down
9 the gutters and it smelled good, like rain maybe. From all of
10 those circumstantial facts you observe, you could deduce or
11 infer another fact, that it rained during the night. Now,
12 that's circumstantial evidence.

13 However, say you were awakened in the night and you
14 decided to go out and see what it was, and you walked out your
15 front door and you looked up and saw that it was raining. You
16 saw the water falling from the sky, with the clouds up there,
17 and you experienced it directly. That is direct evidence that
18 it rained in the night.

19 And that's the difference between those two types of
20 evidence. However, the law gives equal weight to both kinds
21 of evidence. So you may consider both direct and
22 circumstantial evidence in deciding the case. You may give
23 equal weight or value to both, but of course, it's always for
24 you to decide how much consideration you give to any evidence.

25 Certain things are not evidence, and you must not

1 consider them as evidence in deciding the facts of the case.
2 Statements and arguments by the attorneys. So all those
3 statements you heard from the attorneys during voir dire, not
4 evidence. Questions and objections by the attorneys, that's
5 not evidence either.

6 Testimony I instruct you to disregard and anything
7 that you may see or hear if court is not in session, even if
8 what you see or hear is actually said or done by one of the
9 parties or one of the witnesses. Remember that evidence for
10 the case that you may consider is sworn testimony by a witness
11 while court is in session, and documents and other evidence
12 which I allow to be received into evidence.

13 Now, there are rules of law which control what can
14 be received into evidence. When a lawyers asks a question or
15 offers an exhibit and the other lawyer on the other side
16 thinks that that question is improper or the exhibit is
17 improper under the law and rules, then that lawyer may object.
18 In fact, it's their job and duty to object.

19 So if I overrule an objection, then the question may
20 be answered or the exhibit received into evidence. Now, if I
21 sustain the objection, then the question can't be answered and
22 the evidence can't be received into -- or the exhibit can't be
23 received into evidence. Sometimes I might even tell you to
24 ignore, or I might strike something.

25 So for instance, if somebody -- if there's a

1 question, there's an objection, and the witness answers the
2 question before I can sustain the objection, and I then tell
3 you to disregard that, you must disregard it and not consider
4 it as part of the evidence in the case.

5 So whenever I do sustain an objection to a question,
6 please ignore the question. Don't try and guess what the
7 answer might have been. Because if I sustain it, it's an
8 improper question. But as I told you, it's the duty of
9 lawyers to object, and you shouldn't be prejudiced or hold it
10 against them in any way because they make objections on behalf
11 of their clients. That's their job and their duty, as I
12 stated.

13 Also from time to time I might find it necessary to
14 admonish or remind a lawyer about rules, and when I do that,
15 it's merely to remind them about something they might have
16 forgotten, and it's not something that you should hold against
17 that lawyer because I've found it necessary to remind them.

18 Now, you are not normally of course to concern
19 yourself with a sentence, but in this case, because first
20 degree murder has been charged, if the jury does decide the --
21 that the defendant is guilty of first degree murder, and only
22 if they -- if you do so find, then there are possible
23 sentences that may be -- that will be considered by you in a
24 separate penalty hearing immediately following the main part
25 of the trial.

1 At the end of the trial, when you go back to
2 consider all of the evidence that you've heard, you'll have to
3 make your decision based upon what you recall of the evidence.
4 You're not going to have a written transcript to consult, and
5 of course it's difficult and time consuming for our court
6 recorder to play back lengthy testimony that's recorded during
7 the trial. So I urge you to pay close attention and -- to the
8 testimony as it's given.

9 Of course you've been given pads and for the purpose
10 of taking notes. And you may in fact take notes that will
11 help you remember what witnesses said. So if you do take
12 notes, please keep them to yourself until you and your fellow
13 jurors go to the jury room to decide the case. You're not
14 allowed to share them in the meantime.

15 You're not allowed to discuss the case until it's
16 finally submitted to you, even with your fellow jurors. So
17 you don't -- when we're on breaks, you can't discuss the case.
18 You can talk about other things. What the lawyers are wearing
19 is often a favorite topic, but you can't discuss the case.
20 And so please don't do so.

21 Also, don't let the note-taking distract you from
22 listening. Sometimes when we're taking notes, and I've had it
23 happen to me, I'm taking a note and I don't hear the next
24 question, and then you've missed something. So make listening
25 be your primary thing. Try not to -- if you're going to take

1 a note, try and make it short as possible so you don't miss
2 the next five questions because you're concentrating on
3 writing a beautiful flawless note.

4 Okay. And also, don't be overly influenced by the
5 notes from other jurors when you do go back to deliberate,
6 because you should be relying also on your own notes and
7 memory. Of course [inaudible] discuss with each other, but
8 don't be overly influenced by any notes taken by others.

9 And as I told you, until the case is finally
10 submitted, don't talk to anyone else about it until you go
11 into the jury room to deliberate, then you may discuss it of
12 course with your fellow jurors. When I say don't talk about
13 it with anyone else, who do I mean? Well, that includes
14 members of your family.

15 They're all going to be very excited to know that
16 you are sitting on a criminal case, and they're going to want
17 to ask you about it because that's natural. They're curious.
18 But you can't talk to them about it. So just tell them I'm
19 not allowed to talk to you about it until after it's all over,
20 then I'd be happy to talk to you about it, but until then I
21 can't discuss it at all.

22 And don't let them continue to ask you questions
23 about it. Because sometimes people, the reason they want to
24 talk to you about it is they want to weigh in with their
25 opinion, and that would be improper because they are trying to

1 influence your opinion. So, you know, if somebody starts
2 bothering you or asking you questions, if it's somebody you
3 don't know, obviously report that to the marshal.

4 If it's a family member, just tell them, you know,
5 shut them down. Just say, I'm not talking to you about this
6 at all and the judge has told me that if you keep bothering me
7 she's going to haul you in to court on contempt. So that
8 ought to get them to leave you alone. All right. So also,
9 I'm not anticipating any media coverage on this case, but you
10 never know. We have in our system of justice the courtroom is
11 open. Anyone can come in and observe the proceedings.

12 So please do not do any research obviously. You've
13 already been told that, don't do any research in the case.
14 But also avoid reading any stories or blogs or anything of
15 that nature. You probably wouldn't see a blog unless you
16 searched for it. But, you know, to be in an abundance of
17 caution, if you take the newspaper or you tend to read the
18 newspaper each day, you could certainly have someone else
19 prescreen it for you just in case, to make sure that there's
20 nothing about our trial in there before you look at it.

21 And also, don't visit any of the scenes that you may
22 hear referenced as where things occurred. That would be
23 considered an unauthorized visit to the scene. If we make a
24 visit to a scene, it would be as a group and it would be
25 carefully monitored.

1 Oftentimes things have changed in the intervening
2 time. As you know if you live in Las Vegas, and you haven't
3 been down in a particular area of town in a couple months, it
4 could be completely changed because we build so much. So
5 please avoid those things, because it could give you an
6 erroneous impression.

7 Now, a juror may not declare to a fellow juror any
8 fact relating to the case of which the juror has knowledge.
9 If any juror discovers during the trial or after the jury has
10 retired that the juror or any other juror has personal
11 knowledge of any fact that's in controversy in the case, then
12 the juror shall disclose that situation to me in the absence
13 of the other jurors.

14 So what does that mean? That means if you learn
15 anything during the course of the trial that you discover
16 that, oh, I do have personal knowledge about this, I didn't
17 realize it before but now I do, you need to let me know about
18 that, and you do that through the marshal. Your contact in
19 this case with officers of the court is only through the
20 marshal. You may not discuss the case with the marshal
21 either.

22 So that there are things you can talk to the marshal
23 about. You know, your parking, you know, what time you need
24 to be here, directions. If it's too cold in the courtroom you
25 could complain to him. He won't be able to do anything about

1 it, because see those thermostats, I don't think they're
2 connected to anything. I'm always cold in here.

3 So layered clothing is always best. And even if
4 you're feeling chilly, you can bring a little lap blanket,
5 whatever, just so you're comfortable. But I really have
6 little to no control over -- I would say no control over the
7 temperature in the courtroom. Sometimes it's cold, sometimes
8 it's hot. I'm usually cold. My clerk's usually hot and she
9 gets her fan out. But we can't really do too much about it.
10 But you could complain to the marshal if you'd like.

11 But if you do discover that you've learned something
12 or you learn something in the course of the trial because you
13 see it outside the courtroom, then again, you would report
14 that to the marshal. He would bring it to my attention. I
15 would bring it to the attention of the lawyers, and we would
16 handle it in the appropriate manner.

17 All right. So don't make up your mind about what
18 the verdict should be until after you have gone to the jury
19 room to decide the case, and you and your fellow jurors have
20 had the opportunity to discuss the evidence. It's really
21 important that you do keep an open mind.

22 Now, the trial is going to proceed in the following
23 manner. The deputy district attorney will make an opening
24 statement. Opening statements are an outline of the case to
25 help you understand what the State expects to prove. It's not

1 argument or the summation at the end of the case. It's really
2 intended to be a presentation of a guideline, if you will, of
3 what to expect, and that's the purpose of them.

4 So after the State then makes its opening statement,
5 the counsel for the defense may also make an opening
6 statement, but they may -- they may not. You know, they may
7 choose not to or they may reserve to make it later in the
8 case. It's up to the lawyers.

9 After opening statements, then the State will
10 make -- will present its evidence by calling witnesses, and
11 counsel for the defense may cross-examine those witnesses.
12 And following the State's case, the defense may present
13 evidence and the deputies district attorney could
14 cross-examine those witnesses. Again, as I've said to you I
15 think many times, the defendant is not obligated however to
16 present any evidence.

17 After all of the evidence has been presented, then
18 I'll instruct you on the law. And after the instruction on
19 the law has been read to you, each side will have the
20 opportunity to present oral closing arguments. And what's
21 said in these closing arguments is not evidence.

22 The arguments in closing are designed again, to
23 summarize what you heard in the courtroom as evidence, and
24 interpret that evidence and show you how it applies to the
25 instructions that I will give to you. And I will give you

1 those instructions before the closing arguments are made.

2 Now, after the arguments have been completed, then
3 you'll retire to deliberate on your verdict. And again,
4 another reminder that during the course of the trial,
5 attorneys for both sides as well as court personnel other than
6 the marshal are not permitted to converse with you because
7 it's not allowed under the rules. They're not being
8 antisocial or rude. They're just not permitted to talk to you
9 because to do so might contaminate your verdict.

10 So ladies and gentlemen, the State is now allowed to
11 make the first opening statement.

12 MR. BATEMAN: Thank you, Your Honor.

13 STATE'S OPENING STATEMENT

14 MR. BATEMAN: Good afternoon, ladies and gentlemen
15 of the jury. I'm going to show you about a three minute video
16 that you will hear testimony regarding in this particular
17 case. It's from 3625 Siegel Suites -- or excuse me, 3625
18 Boulder Highway. It's a Siegel Suites on Boulder Highway and
19 it comes from December, the early morning hours of December
20 22, 2013, approximately 4:25. It was taken on a camera by a
21 witness, and it occurs just after the defendant in this
22 particular case, Luis Pimentel, shoots Robert Bobby Holland
23 twice, once in the upper right-hand shoulder and once in the
24 left buttocks.

25 (Video plays for the jury.)

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1 MR. BATEMAN: The person on the ground again, as I
2 said, was Robert Bobby Holland, the person getting CPR. The
3 person giving him CPR was his father, also by the name of
4 Robert Holland. He'll appear in a little bit [inaudible].
5 Again, Siegel Suites, 3625 Boulder Highway, 4:25 a.m.,
6 December 22, 2013.

7 This is a photograph after Bobby had been taken for
8 medical intervention. He ultimately died and succumbed to his
9 wounds. This result came about because of a fight between the
10 defendant and Bobby Holland over a girl by the name of Amanda
11 Lowe.

12 Ultimately, as you saw there in the video, the
13 defendant was no longer at the scene when police arrived, and
14 was ultimately -- we'll talk about that a little bit later.
15 Before he left, this is the gun that he used to shoot Robert
16 Holland again, in the chest and in the buttocks, and he threw
17 it under a car in the parking lot before he took off running
18 away.

19 You'll hear from the medical examiner in this
20 particular case, ladies and gentlemen, about what I just told
21 you were the wounds. There was an upper right chest wound,
22 which was the first gunshot wound you can see in the
23 photograph on your left, and then ultimately a wound to the
24 left buttocks of Bobby Holland. And I'll tell you a little
25 bit about the witnesses that are going to testify about how

1 those wounds came about.

2 It's important, as you saw in that video, when you
3 see an actual scene of the immediate aftermath of a shooting
4 and ultimately a homicide, to understand this case, you have
5 to understand the relationships involved. Bobby Holland lived
6 here in Clark County with his mom, Debra. His dad is no
7 longer with his mom, lived a short distance away. He lived in
8 her house. They converted the garage to an apartment, and he
9 lived there with her.

10 You will hear that Bobby is not a perfect person.
11 He has a methamphetamine addiction. You'll hear on the night
12 in question that he was in fact -- had significant
13 methamphetamine in his body. You'll also hear however, that
14 the defendant on the right, Luis Pimentel, where most of the
15 witnesses in this particular case know him by the name of
16 Lorenzo.

17 You'll find out that for some months Bobby and
18 Lorenzo were associates and were friends. You will hear
19 testimony that Lorenzo had been to Bobby's house from both his
20 mother and his father, that they had seen him there, that they
21 had talked to him and to their knowledge they were friends.
22 You'll also hear that from another witness by the name of Tim
23 Hildebrand, and another witness by the name of Shannon
24 Salazar. So these are not strangers to each other at all.

25 The person at the middle of this controversy, Amanda

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1 Lowe, had been known by Bobby Holland for quite some time and
2 was a girlfriend at the end of the day. She -- you will hear
3 from again, Bobby's mother and her father -- and his father
4 that she would routinely stay with Bobby at his house, that
5 they held themselves out in appearance to be boyfriend and
6 girlfriend. Again, she would stay over at the particular
7 house.

8 She called -- even called Bobby Holland's dad,
9 Robert, Pops. So for up until December 22, 2013, these two
10 appeared to be for all intents and purposes in a relationship.
11 That particular night you will hear from Bobby's mom, Debra,
12 that these two individuals, her son and Amanda, were at her
13 house in the early morning hours of December 22, 2013.

14 You will hear that Amanda has clientele that she
15 services, that she occasionally engages in prostitution, and
16 you will hear that all things otherwise were normal. To Debra
17 these two were still in a relationship, they were behaving
18 normally. And at about 1:30 in the morning they had to
19 take -- they being Debra and Bobby had to take her to a local
20 gas station to then ultimately meet up with her client, or at
21 least that was their understanding.

22 They drove in Debra's car over to the gas station.
23 There was a hug and a kiss goodbye, and Debra and -- well, and
24 Amanda told Bobby and Debra that she would be done in about an
25 hour and a half. Again, that was the early morning hours of

1 December 22, 2013.

2 Well, at Arizona Charlie's, at about that same time
3 in the morning, on 4575 Boulder Highway, you'll find out that
4 in fact Amanda Lowe was with the defendant. That's the
5 defendant there, and had apparently begun a relationship with
6 the defendant. Somehow later in that evening, as these two
7 were gambling at the Arizona Charlie's, somehow Bobby finds
8 out that Amanda is at the Boulder -- is at the Arizona
9 Charlie's on Boulder Highway.

10 You'll see ultimately Bobby on the left of the
11 screen, you'll see the defendant in the middle, and you'll see
12 in that green shirt Amanda sitting and playing slots. Bobby,
13 when you watch this video -- and you'll see it. Security
14 guards will come in and testify what happened at the Arizona
15 Charlie's. Bobby immediately arrives and focuses in on
16 Amanda, and spends some time in what appears to be a difficult
17 conversation with her.

18 He -- you'll see on the video, primarily he directs
19 his attention to her and has very little attention towards the
20 defendant. In fact, when he comes in, he walks right past the
21 defendant. The defendant comes out of the screen and then
22 ultimately comes back.

23 At some point the discussion between Bobby and
24 Amanda gets heated. Bobby's asked to leave, and he goes out
25 into the parking lot. He calls his dad and he call -- well,

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1 first he calls his dad, and he says to his dad that if his dad
2 didn't get over there he was going to get -- he might end up
3 going to jail, because he had already kind of gotten into it
4 with security, so he needed to come over.

5 His dad, Bobby Holland -- Robert Holland, gets in
6 his red Dodge, drives over to the Arizona Charlie's and talks
7 to Bobby, and Bobby says, I need you to go in and talk to
8 Amanda and ask her to come out and talk to me. So that's what
9 ultimately Robert goes in and does. He sees Amanda inside the
10 Arizona Charlie's with the defendant. Ultimately Amanda does
11 not want to come out and talk to Bobby.

12 In this particular photograph, again you'll see from
13 the surveillance video, Bobby is actually speaking to two
14 individuals, Tim Hildebrand and Shannon Salazar. You'll hear
15 from these two people as witnesses in this particular case.
16 He knows them. They are coming to the Arizona Charlie's by
17 happenstance, and they run in to each other out in the parking
18 lot.

19 Bobby again tells Tim and Shannon that he's having a
20 fight with Amanda, she's inside with the defendant, and would
21 you please go in and talk to Amanda and have her come out and
22 talk to me. So they also go into the Arizona Charlie's, Tim
23 and Shannon, and again Amanda doesn't want to come out and
24 talk with Bobby.

25 Later on they ultimately do come out of the Arizona

1 Charlie's. You'll see kind of in a vague picture here, this
2 is the defendant along with Bobby and Tim, some other folks.
3 And after this particular photograph, and I didn't want to
4 play the whole video for you right now, Bobby ends up going to
5 this left side of this photograph and speaking with Amanda.
6 That does not go well ultimately and Bobby gets angrier with
7 Amanda. I think he throws some sort of item at her.

8 She's walking back to Pimentel's, the defendant's
9 room here at the Arizona Charlie's. On the left you can see
10 the defendant coming out, and this is when ultimately they get
11 into a heated argument about what was going on that particular
12 night. Again, you remember these two individuals know each
13 other and have had a lot of contact with each other.

14 Ultimately you'll hear Shannon Salazar say that
15 Pimentel was taunting Bobby. He says, I'll be home in 30
16 minutes. Tim Hildebrand says Pimentel's response to Bobby,
17 that Bobby was going to beat up -- the defendant was be at my
18 house.

19 So ultimately these two go at it for awhile, and it
20 ends with the understanding that the defendant is heading back
21 to where he lived, which was the Siegel Suites. Obviously
22 again, like I said, the defendant and Bobby knew each other,
23 so Bobby knew where the Siegel Suites was.

24 Bobby ends up leaving the parking area and meeting
25 up with his dad. His dad picks him up at the local 7-Eleven,

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1 which is next door. The defendant leaves with Amanda. The
2 defendant doesn't have a car with him, so the defendant asks
3 Tim Hildebrand and Shannon Salazar, you'll see Tim in the
4 video when we play it during trial, to give them a ride.

5 So ultimately Tim, Shannon, Shannon is Tim's
6 girlfriend, and the defendant and Amanda Lowe all get into
7 Tim's Hyundai, and they drive down the road just a little ways
8 down to the Siegel Suites. This takes a little bit of time.
9 So ultimately Bobby actually with his dad, with the help of
10 his dad, end up back at the Siegel Suites. His dad will tell
11 you on the ride over that obviously Bobby was upset, but Bobby
12 was directing his attention to speaking with Amanda Lowe.

13 In this particular photograph you'll see the Durango
14 on the right. The red Durango, that is Robert Holland's
15 vehicle. He pulls into the parking lot, faces northbound.
16 You're looking southbound down Boulder Highway. The
17 defendant -- excuse me, Bobby gets out, goes up to the third
18 floor where the defendant has his room. As he's getting up
19 there ultimately, that's when the defendant, Tim, Shannon and
20 Amanda roll into the parking lot.

21 At that point in time Tim and the defendant get out,
22 and there's a confrontation down at the bottom of the stairs
23 on the left-hand side of this particular photograph. Amanda
24 and Shannon drive away back behind this particular building.
25 Shannon will tell you she did hear some back and forth between

1 the two that was similar to what she was hearing at the
2 Arizona Charlie's earlier and ongoing fighting.

3 So basically you've got two eyewitnesses to what
4 ultimately transpires. You have Tim -- excuse me, Bobby's dad
5 sitting in the Durango on the right looking in his rear-view
6 mirror and his side-view mirror is how he's watching this
7 occur. And you can see where ultimately this event takes
8 place in that photograph that I showed you earlier. The
9 aftermath of the shooting is right here next to the -- that
10 brown Chevrolet that's parked.

11 So Robert Holland's view is a little bit obscured by
12 that Chevy truck. Tim however is also out on the scene. And
13 what first Robert Holland will tell you is that he sees an
14 argument going on, and he ultimately sees Bobby make -- swing
15 one punch and hit the defendant in the left eye.

16 He then sees Bobby backing up, and then they go out
17 of sight behind the cars, and he hears two gunshots. He gets
18 out of his car only to see the defendant throw the gun down
19 underneath the Chevrolet truck and run off towards Boulder
20 Highway, which is to the right.

21 Tim will tell you in a little bit more detail the
22 story. Tim will tell you that there continued to be an
23 argument, and I think what ends up happening is that Tim hears
24 the defendant finally say -- well, ultimately Bobby says,
25 You're not going to have sex with Amanda tonight, and

1 defendant says, Yes, I am, and I'm going to show her what a
2 real man is like.

3 Upon saying that to Bobby at the bottom of the
4 stairs, Bobby -- that's when the punch occurs, the right hand
5 to the defendant's left eye. What Tim will then tell you is
6 that Pimentel pulls out a gun from underneath his clothes that
7 you couldn't see before and points it at Bobby. Bobby says,
8 What are you going to do and shoot me -- what are you going to
9 do, shoot me? He then starts backing up.

10 And Tim will tell you that Pimentel actually pulls
11 the trigger and the gun doesn't fire. So he ultimately has to
12 rack a round in the gun, and chases Bobby around one of those
13 cars that's parked right there in the parking lot, ultimately
14 ending up shooting Bobby in the upper left -- upper right
15 chest.

16 After that happens, Bobby turns around, falls face
17 first onto the ground on his stomach, and the defendant walks
18 up to him as he's face-first on his stomach, and shoots him
19 one time in the left buttocks. You'll hear from the medical
20 examiner that that gunshot wound, the bullet traveled through
21 his left buttocks into his stomach. And you'll actually see a
22 hole in his stomach on those photographs that I showed you,
23 where the bullet tried to exit but couldn't because it hit
24 into the cement at that point.

25 Again, the two injuries, you'll see the stomach shot

1 is not an actual shot to his stomach up here in the corner,
2 but as a result of the gunshot wound that the defendant
3 inflicted on Bobby as he was laying face-first on the ground.
4 He then -- the defendant throws the gun under a vehicle, says,
5 I'm out, according to Tim, and walks out towards Boulder
6 Highway.

7 You'll hear from some additional witnesses that were
8 at the scene. Sean Nelson is the person that was taking that
9 video that we saw early on. And he also will tell you he
10 hears two gunshots, and he'll tell you what he heard right
11 before those two gunshots were fired.

12 James Tabele says he sees a chase around a vehicle,
13 which is consistent to what Tim will tell you. And then Steve
14 Verwey's actually coming into the Siegel Suites when the
15 defendant is taking off out towards Boulder Highway. And
16 he'll tell you his contact with the defendant, that he
17 appeared to be startled that he saw Mr. Verwey and was
18 nervous.

19 Interestingly, Mr. Verwey had just come from a bar
20 across the street, and his friend had gone down to the bus
21 stop, the CAT bus on Boulder Highway, which is just south.
22 And so he actually watched the defendant take off running
23 towards the CAT bus and called his friend, his name's Kris
24 Momon, who had gone down to the bus stop, let him know, hey, I
25 think a guy -- I just heard two gunshots, I think a guy that

1 did it is coming your way.

2 (Video plays for the jury.)

3 MR. BATEMAN: That, ladies and gentlemen, was the
4 defendant running towards the CAT bus. You'll hear from the
5 bus driver about the surveillance video on the CAT bus, and
6 that she was driving this bus and saw the defendant come
7 running up and get on the bus. Just north of this is the
8 Siegel Suites.

9 Very shortly thereafter, because you heard all these
10 witnesses who identified the defendant heading towards the CAT
11 bus, the CAT bus was stopped at about Fremont and Bruce up
12 north on Boulder Highway, and the defendant was pulled off the
13 CAT bus, placed in custody until such time as he could be
14 taken to the homicide office to be interviewed.

15 And that particular night he denied being with
16 anyone that was relevant to this particular case, and denied
17 knowing anything about the case whatsoever. Ultimately, as I
18 said, that same night Bobby Holland ended up having some
19 medical intervention, but ultimately died as a result of the
20 gunshot wounds.

21 So in this particular case we've charged the
22 defendant with murder with use of a deadly weapon, and we
23 charged him with carrying a concealed weapon. After you hear
24 all of the evidence in this case, ladies and gentlemen, you'll
25 decide the facts of this case. You'll hear the law at the end

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1 of the case from Your Honor.

2 We'll have a chance to address you one additional
3 time as to how the facts in this case were presented, what you
4 heard, and what their relevancy is to the law. And what
5 you'll find at the end of the day is that the defendant
6 committed murder with use of a deadly weapon, and he committed
7 carrying a concealed weapon. Thank you.

8 THE COURT: Defense.

9 MR. SLIFE: Thank you, Your Honor.

10 DEFENSE'S OPENING STATEMENT

11 MR. SLIFE: Good afternoon, ladies and gentlemen,
12 once again.

13 "I'm going to kick your ass. I'm going to kill you,
14 mother fucker." That's what Robert Holland said to Luis
15 Pimentel right before he called his dad and told him to pick
16 him up or he was going to jail. That's also what Robert said
17 to Luis after he had beaten his ex-girlfriend, Amanda, and
18 become so violent at the Arizona Charlie's casino that he was
19 escorted off the premises by security officers in the early
20 morning of December 22. I'm going to kick your ass, I'm going
21 to kill you mother fucker.

22 A short time after making that statement and other
23 threats, Robert, who stood six-three, 300 pounds, that's me
24 plus 80 pounds, stalks Luis to his apartment, pounds wildly on
25 Luis's door, confronts Luis as he's walking to his door, and

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1 punches him in the face. And when Luis actually fights back,
2 Robert pulls a gun. But that's not where this story starts.

3 Let's all go back to April of 2003, over a decade
4 before. At that time it's just a few years after 9/11, and
5 Luis joins the Army out of a patriotic sense of duty to his
6 country. And he serves proudly in the Army for seven years as
7 a medic until he's honorably discharged in 2010.

8 And during his time in the Army, you'll find out he
9 is deployed two different times to Afghanistan. He has to
10 endure combat. And even though he's a medic, he is a soldier
11 first, and he's forced to take part in some very serious
12 firefights, firefights where he's forced to do terrible things
13 and to see terrible things. Terrible things you'll hear
14 including killing people, and sees his friends and fellow
15 soldiers die.

16 And at some point Luis can't handle it anymore and
17 he is shipped from Afghanistan to Italy. And while in Italy,
18 you'll hear that he struggles with nightmares. He struggles
19 with flashbacks. He can't make it stop. It's overwhelming
20 him. And at some point it gets so bad that he tries to commit
21 suicide. Fortunately he's not successful in his suicide
22 attempt.

23 But the Army recognizes that he has a problem and
24 he's shipped to the Walter Reed Medical Center just outside of
25 Washington, D.C., and he's treated for what we all know

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1 through jury selection is post traumatic stress disorder. He
2 stays at Walter Reed for about a year and a half, and during
3 that time he gets married, and in 2010 he's honorably
4 discharged from the Army.

5 Now, when he gets out of the military, you'll hear
6 that he lives in Virginia for a time. He has a child. He
7 tries to go back to school. He tries different jobs. But
8 something is wrong. And his wife sees that something is
9 wrong. Some nights he wakes up screaming. He continues to
10 have nightmares. He continues to have flashbacks. And it's
11 not only tough on him; it's tough on his marriage, it's tough
12 on his family, it's tough on his child, and he and his wife
13 decide to separate.

14 And he goes to Las Vegas where he's from originally,
15 where he has family, to try to get himself together. And when
16 he gets here he lives with his mother for a while. You'll
17 hear that he lives with his brother for about a year. His
18 brother then gets engaged and he decides it's time to get his
19 own place.

20 During that time his wife and his child come out to
21 visit him, but he's still having a hard time. He still
22 suffers with nightmares, still suffers with flashbacks. And
23 to cope he tries to stay busy and he starts to hang out with
24 some questionable people, and his life sort of goes off the
25 rails at that time.

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1 Now, that brings us to December of 2013,
2 specifically December 21, 2013. And on that night we find
3 Luis hanging out with a girl named Amanda Lowe, hanging out at
4 the Arizona Charlie's casino. Amanda has an on again sort of
5 off again ex-boyfriend named Robert. Luis has known Robert
6 for a few months. And while Luis has known Robert for a few
7 months, he doesn't know the full extent of Robert's jealousy
8 and obsession over Amanda, but he's about to find out.

9 Robert learns on this day that as Amanda -- Amanda
10 is hanging out with Luis, and he doesn't like it. It makes
11 him angry. He comes to the Arizona Charlie's casino. Robert
12 confronts Amanda inside the casino. He starts to get loud.
13 He won't leave her alone. And you'll see video of this. At
14 some point Luis walks over. You'll see that Luis walks up and
15 Robert kind of stares him down, and Luis kind of backs off out
16 of the picture.

17 At some point you'll see on the video security
18 starts to hover around. You could tell that they're concerned
19 about Robert's behavior. And at some point Amanda and Robert
20 go outside and Mr. Bateman noticed that it gets heated. It
21 doesn't just get heated outside. Robert actually hits Amanda
22 in the face. Again, six-three, 300 pounds.

23 Shortly after this a bike patrol officer sees Amanda
24 crying, sees her terrified, and asks her if Robert puts his
25 hands on her. And she says yes. So he trespasses Robert off

1 of the property. Robert goes to the sidewalk just outside the
2 property line, but he doesn't leave. Instead he stands there,
3 sort of lying in wait to see where Amanda's going to go.

4 Knowing this, you'll hear that Amanda's friend
5 actually goes to hotel security and makes it clear that she
6 and Amanda are afraid of Robert, and that Amanda wants to go
7 to her hotel room to get her things, and they want the
8 security officer's help protecting them as they go to their
9 room. So security agrees to protect them from Robert lurking
10 on the sidewalk, at which point security actually sees Amanda
11 come out from a pillar where she had been hiding.

12 She was so scared she was hiding while her friend
13 spoke to security officers. And they all began to walk over
14 to their hotel room. And as Amanda and her girlfriend walked
15 to the hotel room, Robert sees them, starts screaming at them.
16 Amanda is begging him to leave them alone. And then you'll
17 see on video that Robert just charges at them, charges and
18 tries to attack them, despite the fact that he had already
19 been trespassed.

20 And luckily, thankfully the security officers are
21 there and they're able to jump in between and kind of break it
22 up. But you'll hear the security officer say that if he had
23 not intervened he's convinced Robert would have seriously hurt
24 Amanda. And after this Robert actually throws his cellphone
25 at Amanda.

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1 At some point during all of this, Luis comes out of
2 the hotel to see what's going on and he tries to protect
3 Amanda, and he tries to deescalate the situation you'll hear.
4 And when he does that, Bobby immediately, Robert turns his
5 anger onto Luis, and he starts screaming at Luis things like
6 I'm going to kick your ass, I'm going to kill you, I'm going
7 to kill you, threatens him multiple times.

8 Luis tries to be calm, tells Robert he doesn't --
9 excuse me, tells Robert just to leave Amanda alone. But he
10 also lets Robert know that he shouldn't be hitting women, and
11 he also lets Robert know that he's not scared of him. And
12 Robert continues to threaten him, continues to threaten him,
13 I'll kill you. And Luis, to show Robert that he's not scared
14 of him, says something to the effect of, hey, you know where I
15 live.

16 You'll hear that Luis is not escorted off the
17 property because he didn't do anything wrong. In fact, you'll
18 hear that Luis is very calm. You'll hear that he's very
19 respectful of the officers. But at this point it's obvious
20 Robert's not going to leave, and so in an attempt to calm
21 everything down, Luis offers to leave himself after telling
22 security, hey, I don't want anymore problems. So he gathers
23 his belongings, gets a ride home from a few people, including
24 Amanda, and they drive to Luis's apartment.

25 And you'll hear that during that short drive Luis is

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1 not acting angry. He's not talking about Robert. There's no
2 talk of any gun. He just wants to be home. He just wants to
3 leave this drama with Robert behind. And so the car pulls up
4 to his house, he thanks them for the ride, but when he gets
5 out of the car, everyone's attention is turned to Robert, who
6 is screaming and pounding on Luis's third floor apartment
7 door.

8 Luis doesn't want any trouble. Again, he just wants
9 to go home. So he walks up to Robert and tries to calm down
10 the situation. Among other things Luis says something to the
11 effect of, hey, man, can't we just deal with this later. But
12 at that moment Robert makes it very clear that he doesn't want
13 to deal with it later. He wants to finish this now.

14 Robert marches down the stairs, goes right toward
15 Luis still screaming at him, and Luis yells back, there's some
16 back and forth. But he goes right down the stairs, uses all
17 300, six-three pounds and punches Luis in the face with
18 everything he has. But Luis doesn't fall down. Luis actually
19 punches back, and they start to fight and struggle close to
20 the parked cars.

21 And at some point Robert realizes that Luis is
22 actually going to fight back. He's not just going to be able
23 to beat him up. And when he realizes this, Robert pulls out
24 his gun and he points it at Luis. And when that happens, Luis
25 realizes this isn't just some angry guy who's going to leave

1 after a few punches. This is someone who wants to kill him.

2 He realizes that this is a life or death situation,
3 and he goes into a state of mind where he's capable of
4 handling life or death situations, where he's handled life or
5 death situations before. He gets into this state of mind that
6 he would get into in Afghanistan when he was in a life or
7 death situation. And you'll hear that everything after that
8 happens really fast.

9 Luis is able to punch Robert's hand holding the gun,
10 get the gun and shoot back, and the gun goes off twice. The
11 first bullet hits Robert in the chest. The second bullet goes
12 into the left side of Robert's back side. You'll hear some
13 witnesses say there were three to four seconds between the
14 shot. Some say 10 to 15 seconds. It all happened very fast.

15 And after that second shot, Luis sees that there is
16 another man there that he hadn't seen before, and he
17 recognizes that man to be Robert's father. It is dark in the
18 parking lot, and Luis thinks Robert's dad may have a gun.
19 He's not necessarily sure. But Luis doesn't want anymore
20 trouble, so he drops Robert's gun in the street and he goes
21 down the street and he gets on the bus.

22 And at this point in time Luis is in shock. He just
23 shot Robert. He's not sure what to do. He's scared. He
24 tries to call Amanda. And then he just sits there on the bus.
25 He's wishing that this hadn't happened, wishing that Robert

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1 wouldn't have come to his apartment, wishing that Robert
2 wouldn't have punched him or pulled a gun, thinking to himself
3 why wouldn't Robert just leave me alone.

4 And one thing Luis doesn't know at the time that you
5 will see is that Robert actually had, Mr. Bateman said,
6 significant amounts -- he had lethal or toxic amounts of
7 methamphetamine in his system. You'll hear it's 10 to 20
8 times the level that leads to violent behavior.

9 But there's Luis just sitting on this bus not quite
10 knowing what to do, and at some point police are made aware
11 what bus Luis is on and they take him off the bus and they put
12 him in handcuffs. And when Luis is arrested, he knows why the
13 police are there. He knows why he's being arrested based on
14 what just happened. He doesn't say, hey, what's this all
15 about, you have the wrong guy. He knows what's going on.

16 But you'll see that he's immediately put in
17 handcuffs, he's taken to do an interview with detectives at
18 the detective bureau. He's handcuffed to the table. Luis
19 doesn't feel that police are necessarily on his side. So when
20 he's interviewed by detectives awhile later, he tells them
21 some things, but he doesn't tell them the whole story. And
22 afterward he's charged with murder and this case is set for
23 trial.

24 And that's what we're here to do now, to have a
25 trial, and that's why you are all here. You will see the

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1 whole story in this case. You will see what happened and you
2 will see that this is not murder, what happened. You will
3 ultimately see that based on Robert's behavior that night and
4 early morning what Luis Pimentel did was justifiable, legally
5 justifiable and that he's not guilty of murder. And I thank
6 you all very much for your time.

7 THE COURT: Thank you. The State may call its first
8 witness.

9 MR. BATEMAN: Can I have one moment, Your Honor?

10 THE COURT: Okay.

11 (Pause in proceeding.)

12 MR. BATEMAN: The State calls -- I'm sorry, Your
13 Honor, Debra Battelini.

14 THE COURT: Thank you.

15 DEBRA BATTELINI, STATE'S WITNESS, SWORN

16 THE CLERK: Please state and spell your first and
17 last name.

18 THE WITNESS: Debra Battelini, D-e-b-r-a.
19 Battelini, B-a-t-t-e-l-i-n-i.

20 THE COURT: You may proceed.

21 MR. BATEMAN: Thank you. May I approach the clerk
22 briefly, Your Honor.

23 THE COURT: Yes.

24 (Mr. Bateman confers with the clerk.)

25 DIRECT EXAMINATION

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1 BY MR. BATEMAN:
2 Q Good afternoon, ma'am.
3 A Good afternoon.
4 Q Do you know someone by the name of Bobby Holland?
5 A Yes, I do.
6 Q Is that your son?
7 A Yes.
8 Q How old -- when was he born?
9 A 8/14/84.
10 Q And at that time were you with his father?
11 A Yes.
12 Q And what was his name?
13 A Robert Holland.
14 Q So they're both named Robert; is that right?
15 A Right. Bobby was the third.
16 Q You call him Bobby?
17 A Yes.
18 Q Everybody else call him Bobby?
19 A Yes.
20 Q Okay. Has Bobby always lived with you?
21 A Yes.
22 Q At some point did you ultimately end up divorcing
23 Robert?
24 A Yes, I have.
25 Q And did you end up in a house on 3822 Don Carlos

1 Drive?

2 A Yes.

3 Q That was some time later?

4 A Oh, yeah. Years later.

5 MR. BATEMAN: May I approach the witness, Your
6 Honor?

7 THE COURT: You may.

8 BY MR. BATEMAN:

9 Q I show you exhibit -- State's Proposed Exhibit No.

10 1. Do you recognize that person?

11 A Yes.

12 Q Who is that?

13 A My son.

14 MR. BATEMAN: Move admission of Exhibit 1
15 [inaudible].

16 MS. LEMCKE: I'm sorry?

17 THE COURT: He's moved for the admission --

18 MR. BATEMAN: Move for the admission of one.

19 THE COURT: Any objection?

20 MS. LEMCKE: Well, just subject to our earlier
21 conversations.

22 THE COURT: It will be admitted.

23 (State's Exhibit 1 admitted.)

24 MR. BATEMAN: May I publish briefly?

25 THE COURT: [No audible response.]

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1 BY MR. BATEMAN:

2 Q At the house at 3822 Don Carlos, you lived there
3 with Bobby?

4 A Yes.

5 Q Who else did you live there with?

6 A My mother, my daughter, my older son, my two
7 grandsons and my granddaughter.

8 Q Did you ultimately convert a portion of the house to
9 something like an apartment for Bobby?

10 A Yes.

11 Q What was that?

12 A The garage.

13 Q And that's where he lived?

14 A Yeah.

15 Q Did he have access --

16 A To the house, yeah.

17 Q Do you currently work?

18 A Yes.

19 Q Where do you work?

20 A Las Vegas Skin & Cancer.

21 Q And Bobby's dad, Robert, does he live close by?

22 A He lives -- I don't know the name of the street.
23 It's down on the other side of Boulder Highway.

24 Q This 3822 Don Carlos Drive, is that -- give me the
25 major cross-streets.

1 A Sandhill and Flamingo. It's between Viking and
2 Twain.

3 Q Not too far from Boulder Highway?

4 A No.

5 Q Now, did you have occasion to, as you lived with
6 Bobby, meet some of his friends?

7 A Oh, yeah. A lot of them.

8 Q Do you know someone by the name of Luis Pimentel?

9 A Yes.

10 Q Did he go by a different name when you met him?

11 A Yes.

12 Q What name was that?

13 A Lorenzo.

14 Q Do you see him here in the courtroom?

15 A Yes.

16 Q Could you please point to him and describe what he's
17 wearing?

18 A Right there [indicating]. He's in a suit and a tie.

19 Q And can you be a little bit more specific about the
20 color of the suit?

21 A It's a gray suit [indicating].

22 MR. BATEMAN: May the record reflect the
23 identification of the defendant, Your Honor?

24 THE COURT: It will.

25

1 BY MR. BATEMAN:

2 Q When did you first meet the defendant?

3 A It was only like a couple months before that.

4 Q Ultimately, I'll base my questions around December
5 22, 2013. You remember that date, correct?

6 A Yeah.

7 Q So about two months prior to that date?

8 A About that.

9 Q And how did you meet him?

10 A He came over the house.

11 Q Okay. And did you meet him with your son Bobby?

12 A Yeah. Bobby introduced him. He picked Bobby up.

13 Q How many times between that -- during that couple
14 month period of time, before December 22, 2013, did you meet
15 or see the defendant?

16 A He came over to pick him up quite a few times that
17 I'm aware of. I can't estimate how many, no. But he picked
18 him up. I think he was actually even in Bobby's room a couple
19 times.

20 Q You had seen him pick him up quite a few times?

21 A Yeah.

22 Q What's quite a few, weekly?

23 A He came over one time, it was like daily for a few
24 times and was picking him up.

25 Q Did you know someone by the name of Amanda Lowe?

1 A Yes.

2 MR. BATEMAN: May I approach the witness, Your
3 Honor?

4 THE COURT: Yes.

5 BY MR. BATEMAN:

6 Q Showing you State's Proposed Exhibit No. 2, do you
7 know that person?

8 A Yes.

9 Q Who is that?

10 A Amanda Lowe.

11 MR. BATEMAN: Move admission of two [inaudible].

12 THE COURT: Granted.

13 (State's Exhibit 2 admitted.)

14 BY MR. BATEMAN:

15 Q When did you first -- in relationship to December
16 22, 2013, when did you first meet Amanda Lowe?

17 A A couple years prior.

18 Q And again, was it at the house that you met her?

19 A Yes.

20 Q And did you know her -- you said a couple years?

21 A Yeah.

22 Q Did you know her for that two year period of time
23 then? Did she come over often?

24 A She started not coming over much, and then she
25 gradually was coming over a lot, and then she gradually

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1 basically was staying there.

2 Q So over that two year period she ended up at the
3 end, you said, stay -- when you say staying there, what do you
4 mean?

5 A She was there every day.

6 Q At some point during this two year period, did it
7 appear to you that there was some sort of relationship between
8 Amanda and Bobby?

9 A Yeah.

10 Q So she started out as Bobby's friend?

11 A I think so.

12 Q And when you say in a relationship, what do you mean
13 by that?

14 A Like a boyfriend girlfriend thing.

15 Q What types of things would you see that would
16 suggest to you that they were in a relationship?

17 A She stayed over a lot. They took showers. They
18 went everywhere together, you know.

19 Q Did you see affection?

20 A Yeah.

21 Q Did she --

22 A The little huggy snuggy stuff.

23 Q When you said she stayed over, did she stay in
24 Bobby's room?

25 A Yeah.

1 Q When you say she was staying over all the time, you
2 mean basically living there?

3 A Yeah, sleeping there. She had clothes there and
4 stuff like that. She took showers there. She ate there.

5 Q What did she call you?

6 A Mom.

7 Q Are you aware of what she called Robert, your
8 husband -- ex-husband?

9 A She either called him Dad or Pops. I'm not sure.

10 Q Did she have any children?

11 A Yes.

12 Q Did you ever meet them?

13 A Her daughter, yes.

14 Q She'd bring her daughter by?

15 A Kirsten [phonetic].

16 Q Did you know where her relatives lived?

17 A Her mom lived here in Vegas at the time, and then
18 her grandparents lived here, but then they moved to Pahrump.
19 And because Bobby helped them to move there. And then the
20 grandfather bought a house in Utah, and the mother and the
21 grandparents went out there with her daughter and that.

22 Q Were there times when Bobby would go see her in Utah
23 with her --

24 A Right. He went down there.

25 Q In fact, was it close in time to December 22, 2013?

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1 A Yeah. It was the end of September, beginning of
2 October Bobby went down there for about ten days.

3 Q Did you know her the -- did you know her to have the
4 occupation occasionally of being a prostitute?

5 A Yes.

6 Q And that's just from your being in contact with her
7 and Bobby?

8 A She was very open about having clients, you know.
9 She didn't go out and look for it, but she had clients that --
10 yeah.

11 Q Did you -- getting back to Bobby, did you know Bobby
12 to have a substance abuse problem?

13 A Not abuse. I knew that he was doing something. We
14 had a talk and I wanted him to quit or get help.

15 Q For the methamphetamine?

16 A Yeah. And I didn't think it was major because he
17 acted normal.

18 Q So you -- did you ever actually see him do
19 methamphetamine?

20 A No.

21 Q Could you tell occasionally when he appeared to be
22 on drugs?

23 A Yeah. Him and her would be a little more happy.

24 Q So they were around each other and they both would
25 behave differently?

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1 A Yeah.

2 Q Did that lead you to believe that Amanda was also
3 partaking of drugs?

4 A Oh, yeah. She -- she admitted to that she was and
5 that she had to quit.

6 MS. LEMCKE: I'd object to this as being hearsay,
7 Your Honor.

8 THE WITNESS: No, this is what she told me.

9 THE COURT: All right. Well, sustained.

10 BY MR. BATEMAN:

11 Q And you advised them that you thought they should
12 quit?

13 A What?

14 Q Did you advise them you thought that they should
15 quit?

16 A Yeah.

17 Q Up until -- I'm going to take you closer to
18 December 22, 2013, did it appear to you that the two of them
19 were still involved in a relationship?

20 A Yes.

21 Q Were they living at your home?

22 A Yeah.

23 Q And up to December 22, 2013, were you still
24 occasionally seeing the defendant come over to the house?

25 A Yeah. A few times, yeah.

1 Q Did it appear to you that there was any sort of --
2 well, did it appear normal, how --

3 A Yeah. Everything appeared fine.

4 Q On December -- in the early morning hours of
5 December 22, 2013, did you have occasion to be with Bobby and
6 Amanda?

7 A Yes.

8 Q Was anything abnormal that particular evening and
9 into the morning hours?

10 A No.

11 Q Again, you had said that Amanda had been living
12 there?

13 A She had been staying there, yes.

14 Q Did they ask you to take them anywhere?

15 A Yes.

16 Q About what time?

17 A It had to be about 1:00.

18 Q In the morning?

19 A Roughly around 1:00. Yeah.

20 Q Do you have a vehicle?

21 A Yes.

22 Q And where did -- when I say they, did Amanda ask you
23 to take her somewhere, or did Bobby ask you to take her
24 somewhere?

25 A Bobby asked me, but Amanda was standing there with

1 him -- with him.

2 Q Did they ask you to take them somewhere?

3 A Yeah.

4 Q And where were you --

5 A Amanda needed the ride.

6 Q Amanda needed a ride where?

7 A To meet a client.

8 Q You understood that she was going to meet --

9 A Yes.

10 Q -- one of her clients for prostitution?

11 A Yeah.

12 Q And where is it that they requested you to take her?

13 A To the Sinclair gas station on Indios and Boulder
14 Highway.

15 Q Is that very far from your house?

16 A No.

17 Q And did you want to take her?

18 A Yeah. I didn't have a problem with it.

19 Q Did you approve of what she was doing?

20 A No.

21 Q So ultimately did you take her and Bobby to that
22 particular gas station?

23 A Yes.

24 Q That was about 1:30 in the morning?

25 A About 1:00, 1:30, somewhere around there.

1 Q Did there appear to be again, any sort of a fight
2 going on between -- or anything different between Bobby and
3 Amanda that you could see?

4 A No. No.

5 Q When you got to the gas station, what happened at
6 that point?

7 A She told Bobby to get out and give her a kiss, and
8 she gave -- they gave -- she gave him a hug and a kiss and she
9 told him that she'd be about an hour and a half.

10 Q And then what happened at that point?

11 A She said she was going to wait there, and me and
12 Bobby went back to the house.

13 Q You got back in the -- Bobby got back in the
14 vehicle?

15 A Yes.

16 Q And you go back to your house with Bobby?

17 A Yes.

18 Q And when you got back to the house, where did
19 Bobby go?

20 A To his room. I went in the house and then I went to
21 lay down.

22 Q Is that the last time you saw Bobby?

23 A Yeah.

24 Q Did you know that Bobby had left your house that
25 night?

1 A No.

2 Q What's the next thing you learned about Bobby?

3 A Somebody called the house, and my older son answered
4 the phone and came and got me and said Bobby's been shot. And
5 I jumped out of bed and tried to find out where he was. I
6 called 911.

7 Q Did you ultimately find out where he ended up?

8 A Yeah. The 911 operator, I told her where I lived,
9 and the next thing I know I had the detective call me. I kept
10 screaming at him, Where is my son, I got to -- I want to go
11 see him. He informed me on the phone that my son didn't make
12 it.

13 MR. BATEMAN: I'll pass the witness, Your Honor.

14 THE COURT: Cross.

15 MS. LEMCKE: Your Honor, can we approach?

16 THE COURT: Yes.

17 (Bench conference - not transcribed.)

18 THE COURT: All right. Ladies and gentlemen, we're
19 going to take a restroom break at this time because it's
20 already 3:00 o'clock, and the witness can have a break too.

21 THE WITNESS: Okay.

22 THE COURT: And so during this 10 minute recess, it
23 is your duty not to converse among yourselves or with anyone
24 else on any subject connected with the trial, or to read,
25 watch or listen to any report of or commentary on the trial by

1 any person connected with the trial or by any medium of
2 information, including without limitation newspaper,
3 television, radio or Internet, and you are not to form or
4 express an opinion on any subject connected with this case
5 until it's finally submitted to you.

6 We'll be in recess until ten after 3:00.

7 (Jurors recessed at 3:02 p.m.)

8 THE WITNESS: Am I allowed to -- do I get to go?

9 THE COURT: Yes.

10 THE WITNESS: Or do I wait here?

11 THE COURT: The record will reflect that the jury
12 has departed the courtroom. And do you need to use the
13 restroom?

14 THE WITNESS: Well, I can just wait. I was going to
15 go have a cigarette.

16 THE COURT: Oh, okay. Marshal --

17 MR. BATEMAN: Can we just put her in the anteroom?

18 THE COURT: Well, she wants to smoke.

19 MR. BATEMAN: Oh.

20 THE COURT: So you need to show her where she can do
21 that.

22 You can step down.

23 THE WITNESS: Okay.

24 (Court recessed at 3:03 p.m. until 3:17 p.m.)

25 (Debra Battelini resumes the stand.)

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1 (Jurors reconvene at 3:17 p.m.)

2 THE COURT: The record will reflect we are back
3 within the presence of the jury. The defendant is present
4 with his counsel. The deputies district attorney prosecuting
5 the case are present, as are all officers of the court. Will
6 counsel so stipulate?

7 MS. LEMCKE: Yes, Your Honor.

8 MR. BATEMAN: Yes.

9 THE COURT: Thank you. You may proceed.

10 CROSS-EXAMINATION

11 BY MS. LEMCKE:

12 Q Ma'am, you indicated that you had several family
13 members that lived in the house with you.

14 A Yes.

15 Q That was your mother?

16 A Yes.

17 Q And your -- and Bobby?

18 A Yes.

19 Q And your other son?

20 A Yes.

21 Q And then two grandchildren?

22 A Two grandchildren, my daughter and my granddaughter.

23 Q And then obviously yourself?

24 A Yes.

25 Q And so Bobby occupied what was the garage; is that

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1 right?

2 A Yes.

3 Q He had actually converted that to his own room?

4 A Right. But cooking and everything, his bathroom, it
5 was all in the house.

6 Q Okay. So there was common area space in the house,
7 yes?

8 A Yeah.

9 Q And then the garage that Bobby converted to his room
10 was his bedroom?

11 A Right.

12 Q And that's where he stayed when he slept?

13 A Yes.

14 Q That's where he would change clothes?

15 A Yes.

16 Q He made -- in fact, he kind of fashioned a closet
17 even into that garage as well?

18 A Yes.

19 Q And that's where he would keep his personal
20 belongings?

21 A Yeah.

22 Q That was kind of his private space then was the
23 garage, that was his essentially bedroom and his room?

24 A Yeah.

25 Q You indicated, if I understood you correctly, that

1 he had some friends who would come over from time to time?

2 A Yes.

3 Q So you would see friends of his come to the house?

4 A Mm-hmm.

5 Q And they would hang out with him?

6 A Yeah.

7 Q And leave with him?

8 A Yeah.

9 Q One of those individuals you indicated was

10 Mr. Pimentel?

11 A Yeah. But he usually came himself, yeah.

12 Q Okay. He would come by himself?

13 A [No audible response.]

14 Q And you indicated that he would pick Bobby up; is

15 that right?

16 A Yes.

17 Q He would pick him up in a car?

18 A Yes.

19 Q And that car was?

20 A I don't know what kind of car it was. It was like a

21 silver bluish. I don't remember.

22 Q Did you actually see it?

23 A Yeah. I seen him in it -- one time in it, yeah.

24 Q Okay. And then if I understand you correctly, about

25 two years or so before this incident was about the time that

1 Bobby introduced you to Amanda or that you met Amanda Lowe?
2 A Yes.
3 Q And initially you could tell that Bobby and Amanda
4 were friends?
5 A Yeah.
6 Q And they would hang out together?
7 A Yes.
8 Q Amanda would come over to the house?
9 A Yes.
10 Q And she would spend time at your house?
11 A [No audible response.]
12 Q Is that a yes? I'm sorry.
13 A Yes. I'm sorry.
14 Q You just have to say yes for the record.
15 A I'm sorry.
16 Q It's all right. And over time she spent more time
17 with you?
18 A Yes.
19 Q But she had -- she lived with her mom?
20 A Sometimes, yeah.
21 Q And her grandma?
22 A Their mom lived separately for awhile. And then her
23 mom moved in with the grandparents.
24 Q Okay. So her -- all right. Let me back up. So her
25 mom and her grandma lived at different places for a while?

UNCERTIFIED ROUGH DRAFT

1 A Right.

2 Q And sometimes she would live with her mom?

3 A Right.

4 Q Sometimes she would live with her grandma?

5 A Yeah.

6 Q And then sometimes she would stay at your house over
7 time; is that right?

8 A Yeah.

9 Q And so sometimes she and Bobby, I think, if I
10 understood you correctly, would spend time alone together at
11 your house?

12 A Yes.

13 Q In his bedroom?

14 A Yeah.

15 Q So you weren't necessarily aware of every single
16 thing that they were doing together when they were at home?

17 A No.

18 Q If I understood you correctly also, you said that
19 Amanda worked as a prostitute?

20 A No. [Unintelligible] says is that she had clients,
21 but she didn't like go out and, you know, stand on a corner or
22 nothing like that. She would just say she had clients, that's
23 all I would -- that's all I knew.

24 Q And you took clients to mean that they were
25 individuals that would pay her to have sex with them?

UNCERTIFIED ROUGH DRAFT

1 A Well, yeah. She said that.
2 Q She made it very clear?
3 A Yeah. She didn't hide it. That was not a hidden
4 thing with her.
5 Q She didn't hide it from you?
6 A No.
7 Q Didn't hide it from Bobby?
8 A No.
9 Q So Bobby was aware that this is what she was doing
10 to make money?
11 A Yeah. I mean, it wasn't like she did it every
12 night, no.
13 Q But that this was how she --
14 A Yeah.
15 Q -- made money?
16 A Yeah.
17 Q And Bobby was aware of that?
18 A Yes.
19 Q During this time, this -- say this rough two year or
20 so period that Amanda was living there and making money as a
21 prostitute, Bobby wasn't working at that time?
22 A No. No. I don't think so.
23 Q And on the early morning hours of December 22, 2013,
24 my understanding is, is that Bobby came to you and asked you
25 to give Amanda a ride to the 7-Eleven?

UNCERTIFIED ROUGH DRAFT

1 A The Sinclair.

2 Q I'm sorry. The Sinclair.

3 A Yeah.

4 Q Forgive me.

5 A But she -- yeah, he asked me to give her a ride and
6 she said she just had to go to the Sinclair.

7 Q And that was because she was going to meet one of
8 her clients?

9 A Yes.

10 Q And Bobby was aware of that?

11 A Yes.

12 Q And he rode in the car with you to take her to the
13 Sinclair --

14 A Yes.

15 Q -- to meet one of her clients?

16 A Yes. But we didn't meet the person though.

17 Q Right. But for her to meet up with one of her
18 clients?

19 A Right.

20 MS. LEMCKE: All right. The Court's indulgence.

21 (Attorneys confer.)

22 MS. LEMCKE: I have nothing further, Your Honor.

23 THE COURT: Redirect.

24 REDIRECT EXAMINATION

25

UNCERTIFIED ROUGH DRAFT

1 BY MR. BATEMAN:

2 Q Just on the ride, you talked about the ride over to
3 drop her off to see the client.

4 A Yes.

5 Q To your knowledge, they were still boyfriend and
6 girlfriend at that time?

7 A Yeah. They were getting along fine. There was
8 nothing going — you know, yeah.

9 Q Normal?

10 A Normal.

11 Q Okay. There was a kiss good —

12 A Just like they acted every day.

13 Q A kiss goodbye?

14 A Yeah. She told him to get out and give her a kiss
15 and a hug, and she'd see him in an hour and a half.

16 Q Thank you.

17 MS. LEMCKE: The Court's indulgence.

18 (Attorneys confer.)

19 MS. LEMCKE: Nothing further, Your Honor.

20 THE COURT: May this witness be excused?

21 MR. BATEMAN: Yes, Your Honor.

22 THE COURT: Thank you very much for your testimony,
23 ma'am.

24 THE WITNESS: Thank you.

25 MR. BATEMAN: The State calls Robert Holland with

1 your permission, Your Honor.

2 THE COURT: Thank you.

3 MR. BATEMAN: May I approach the clerk, Your Honor?

4 THE COURT: Of course.

5 (Mr. Bateman confers with the clerk.)

6 ROBERT HOLLAND, STATE'S WITNESS, SWORN

7 THE CLERK: Please state and spell your first and
8 last name.

9 THE WITNESS: Robert Holland. It's R-o-b-e-r-t,
10 H-o-l-l-a-n-d.

11 MR. BATEMAN: May I proceed?

12 THE COURT: Yes, you may.

13 DIRECT EXAMINATION

14 BY MR. BATEMAN:

15 Q Sir, I'm going to have you speak clearly into that
16 microphone. You have kind of a quiet voice. So we're taking
17 everything down. It's being typed down, okay?

18 A Okay.

19 Q You go by Robert?

20 A Yes. Or Rob.

21 Q Rob. Do you have a son by the name of -- the same
22 name?

23 A Yes.

24 Q Did he have a nickname?

25 A We called him Bobby.

UNCERTIFIED ROUGH DRAFT

1 Q And you had Bobby with his mom, Debra?
2 A Yes.
3 Q Back in the early '80s?
4 A Yes.
5 Q Ultimately you separated from his mother back in the
6 '80s as well; is that right?
7 A That's correct.
8 Q You stayed a part of the family though?
9 A Yes.
10 Q Where do you currently live in town?
11 A I live -- 4948 Segunda [phonetic] Way, which is
12 by -- behind Arizona Charlie's.
13 Q And did you have regular contact with Bobby up until
14 December 22, 2013?
15 A Yes.
16 Q How often would you see him?
17 A I would see him at least once or twice a week. The
18 car he was driving broke down like a couple months before, so
19 he would call me even more for rides.
20 Q Were you pretty close to where his -- he was living
21 with Mom?
22 A Yes.
23 Q Did you spend time at Debra's house where Bobby was
24 living?
25 A Yes.

UNCERTIFIED ROUGH DRAFT

1 Q Pretty regularly?

2 A Yes. Once or twice a week.

3 Q Did you have occasion to meet, prior to December 22,
4 2013, some of Bobby's friends?

5 A Yes.

6 Q And one in particular, did you have occasion to meet
7 someone by the name of Luis Pimentel?

8 A Yeah. I knew him as Lorenzo.

9 Q I'm sorry?

10 A I knew him as Lorenzo.

11 Q Do you see him in the courtroom today?

12 A Yes.

13 Q Would you please point to him and describe what he's
14 wearing?

15 A A suit.

16 Q What color?

17 A Black. Or gray.

18 Q Gray.

19 MR. BATEMAN: May the record reflect identification
20 of the defendant, Your Honor?

21 THE COURT: What -- where at the table is he
22 sitting?

23 THE WITNESS: In the center.

24 THE COURT: It will.

25 MR. BATEMAN: Thank you.

UNCERTIFIED ROUGH DRAFT

1 BY MR. BATEMAN:

2 Q When did you first meet Lorenzo, or do you
3 remember -- well, had you met Lorenzo a few times before
4 December 22, 2013?

5 A I met him, I believe it was like nine months before.

6 Q Okay. So --

7 A He was staying at Bobby's regularly at that time.

8 Q So you would see Lorenzo, the defendant, at
9 Bobby's -- when you say Bobby's, is his room in the garage?

10 A That's correct.

11 Q And when you say staying there, was he living there
12 for a period of time?

13 A I believe he was staying there for a few weeks. But
14 and also Bobby brought him over to my trailer once.

15 Q Once?

16 A Yeah.

17 Q And so that was in this period of time before
18 December 22, 2013?

19 A That's correct.

20 Q How many times do you think you saw Bobby and the
21 defendant together?

22 A Like I said, about nine months before, quite often.
23 After that, only like once or twice.

24 Q Did you know them to be friends?

25 A Yes.

1 Q Is that how it appeared to you?

2 A Yeah. They seemed like they hung out together a
3 lot.

4 Q Were you familiar with someone by the name of Amanda
5 Lowe?

6 A Yes.

7 MR. BATEMAN: Can I approach your clerk briefly?

8 THE COURT: Yes.

9 (Mr. Bateman confers with the clerk.)

10 BY MR. BATEMAN:

11 Q Showing you what's been marked and admitted as
12 State's Exhibit 2, is that Amanda?

13 A Yes.

14 Q And how long prior to December 22, 2013 had you
15 known Amanda?

16 A For a couple years.

17 Q And when did you first -- well, how did you know
18 her?

19 A As Bobby's girlfriend.

20 Q And was she his girlfriend that full two years, or
21 was it --

22 A Well, her -- she was living up in Utah for about --
23 at the end. So when she came down she would stay with him,
24 and then she'd go back up to Utah.

25 Q So you knew her to stay with Bobby?

UNCERTIFIED ROUGH DRAFT

1 A Yes.

2 Q What did she call you? Did she have a nickname for
3 you?

4 A Yes.

5 Q What was that?

6 A She'd call me Pops.

7 Q You saw her quite a bit over that two year period?

8 A Yes.

9 Q And based on your observations, did it appear they
10 held themselves out in some sort of relationship?

11 A Yes.

12 Q Boyfriend girlfriend?

13 A Yes.

14 Q Did you know her to have a child?

15 A Yes.

16 Q Had you met the child ever?

17 A No, I don't think I have.

18 Q You knew her family to be in Utah?

19 A Yes.

20 Q Did you occasionally know Bobby to go to Utah to see
21 her up there?

22 A I know he went up there at least once or twice.

23 Q In the late evening hours and into -- well, late
24 evening hours of December 21st into the morning hours of
25 December 22nd of 2013, did you have a vehicle that you were

1 using at that time?

2 A Yes.

3 Q Was it a Dodge?

4 A Yeah. A Dodge Durango.

5 Q Red?

6 A Yes.

7 Q And you had a cellphone?

8 A Yes.

9 Q At some point in the early morning hours of
10 December 22, 2015 [sic], did you get a call from Bobby?

11 A Yes.

12 Q Let me back you up a little bit. Did you know Bobby
13 to occasionally use methamphetamine?

14 A Yes.

15 Q Did you see him do it, or did you just know he
16 did it?

17 A I think I saw him a couple times over at his place.

18 Q That particular evening when he gave you -- he
19 called you?

20 A Yes.

21 Q All right. And was he in fact at the Arizona
22 Charlie's on Boulder Highway?

23 A That's where he stated he was at.

24 Q And did he need you to -- or did he ask you to do
25 something?

UNCERTIFIED ROUGH DRAFT

1 A He asked me to come and get him.

2 Q Okay. Was he worried about getting in trouble while
3 he was there?

4 A Well, he said he was in the parking lot, that the
5 security had told him to leave.

6 Q Was he worried about going to jail?

7 A I was.

8 Q Do you remember him saying that to you?

9 A Yeah. He just said to come and get him. He didn't
10 really state whether he was going to go to jail or not.

11 Q And did you in fact drive to the Arizona Charlie's?

12 A Yes.

13 Q And did you come into contact with him at the
14 Arizona Charlie's?

15 A When I got in the parking lot, I called him on the
16 cell and asked him where he was. And he asked me to go inside
17 Arizona Charlie's and find Amanda and have her talk to him on
18 the cell. So --

19 Q Did he say that he had gotten -- was he having some
20 sort of a fight with Amanda?

21 A That's correct.

22 Q Did he say he had slapped Amanda?

23 A I believe so.

24 Q And when you talked to him, he told you he wanted
25 you to go talk to Amanda for him?

1 A Yes, and that -- and try to get her to talk to him
2 on the cellphone.

3 Q Did you -- did he say anything at that time about
4 the defendant, Lorenzo?

5 A No, not at all.

6 Q Not a word?

7 A No.

8 Q Did you in fact go into the Arizona Charlie's?

9 A Yes.

10 Q Were you able to find Amanda?

11 A Yes.

12 Q Do you remember who if anyone she was with?

13 A Yes. She was playing on the machine next to
14 Lorenzo, and there was another guy that was with them that I
15 didn't know.

16 Q And did you in fact talk to her?

17 A Yes. And she didn't want to talk to him. She just
18 said she didn't want to talk to him. And at that time I went
19 to the machine opposite them and played it to see if she was
20 going to change her mind or not, and then after a few minutes
21 they got up and left with the other person that was with them.

22 Q Who got up and left?

23 A Amanda, Lorenzo and another person.

24 Q Did you stay in the Arizona Charlie's for some
25 period of time?

1 A No. After that I called him and told him that
2 Amanda had left, and he told me he was over at the 7-Eleven
3 next to Arizona Charlie's, so I went out and got in the car
4 and went down there and picked him up.

5 Q Was there some period of time between the time in
6 which Amanda and the defendant left Arizona Charlie's and that
7 you ultimately ended up picking up Bobby?

8 A Yes. They left, it was about two or three minutes
9 before I left out of there, and another three or four minutes
10 before I picked him up.

11 Q Did she say that -- well, let me ask you this. He
12 had called you and said to pick him up at the 7-Eleven
13 again --

14 A No. I called him and told him that she had left,
15 and he said to come get him at the 7-Eleven.

16 Q Did you tell him that Amanda had left with Lorenzo?

17 A Yes.

18 Q Eventually you pick Bobby up at the 7-Eleven?

19 A That's correct.

20 Q Did you get there first, or do you remember?

21 A No. I was going towards the 7-Eleven, because it's
22 right next to Arizona Charlie's, and he walked from the
23 7-Eleven towards me.

24 Q And at that point did he state to you what he --
25 what it is he -- where it is he wanted to go?

1 A He said he wanted to go to Lorenzo's.

2 Q What did you mean by that -- what did he mean by
3 that, Lorenzo's?

4 A Because he had an apartment up at the suites that
5 I've dropped him off before at those apartments.

6 Q You had actually dropped Bobby off at --

7 A Lorenzo's apartments.

8 Q -- those same apartment --

9 A Yeah. I'd never been in them, but I dropped him off
10 at the apartment.

11 Q To see Lorenzo?

12 A Right.

13 Q That was sometime prior to obviously this night?

14 A Right.

15 Q Did you talk to him -- well, what was his mood
16 between you picking him up at the 7-Eleven and heading over to
17 the Siegel Suites?

18 A Well, he was sort of like depressed and he was being
19 very quiet. But I picked him up and he wanted me to go there,
20 and I told him just why don't you go home and deal with it in
21 the morning, you know.

22 Q Did it seem to you that he still -- why did he want
23 to go over there?

24 A He wanted to talk to Amanda.

25 Q Did he say anything about Lorenzo?

1 A No.

2 Q You told him drop it?

3 A Yeah. I said, Take care of it in the morning, you
4 know.

5 Q But he didn't want to?

6 A No. He wanted -- he said that if I wouldn't take
7 him that he would walk.

8 Q So you went to the Siegel Suites?

9 A Yes.

10 MR. BATEMAN: Okay. May I approach the clerk, Your
11 Honor?

12 THE COURT: You may.

13 (Mr. Bateman confers with the clerk.)

14 MR. BATEMAN: May I approach -- I've shown counsel
15 Proposed Exhibits 3, 4 and 5. May I approach the witness?

16 THE COURT: Yes, you may.

17 MR. BATEMAN: Thank you.

18 BY MR. BATEMAN:

19 Q I'm going to show you some overhead maps to see if
20 you recognize the area. Showing you Exhibit No. 3, does that
21 appear to be the Arizona Charlie's on Boulder Highway?

22 A That's correct.

23 Q And Exhibit No. 4, does that appear to be an
24 overhead of the Siegel Suites that you had dropped Bobby off
25 at Lorenzo's before?

1 A That's correct.

2 Q And then a little bit bigger one, Exhibit No. 5,
3 does that show Boulder Highway and both of these locations?

4 A That's correct.

5 MR. BATEMAN: Okay. I'd move admission of 3, 4
6 and 5, and ask to publish, Your Honor.

7 THE COURT: Any objection?

8 MR. SLIFE: No objection, Your Honor.

9 THE COURT: They will be admitted.

10 (State's Exhibit 3 through 5 admitted.)

11 THE COURT: You may publish.

12 BY MR. BATEMAN:

13 Q Showing you Number 5 now, is the Siegel Suites
14 actually north of Arizona Charlie's?

15 A Yes.

16 Q So you left the Arizona Charlie's down here on the
17 bottom right of this exhibit; is that correct?

18 A That's correct.

19 Q And this exhibit shows Boulder Highway and the 95;
20 is that correct?

21 A Yes.

22 Q And you drove him northbound to the Siegel Suites;
23 is that right?

24 A That's correct.

25 Q About how long did that drive take?

UNCERTIFIED ROUGH DRAFT

1 A About four or five minutes.

2 Q When you got to the Siegel Suites, what did you do?

3 A I pulled in and parked, and he got out and went
4 upstairs to the apartment. I couldn't see from my rear-view
5 mirror. I just seen him go up the stairs. I didn't know what
6 apartment or see him after that.

7 MR. BATEMAN: May I approach the witness, Your
8 Honor? Shown counsel State's Proposed Exhibits 6 and 7.

9 THE COURT: Okay.

10 BY MR. BATEMAN:

11 Q Show you six and seven. Do these appear to be your
12 car parked in the parking lot at the Siegel Suites at issue?

13 A That's correct.

14 Q Is that a fair and accurate depiction of how it
15 looked that night?

16 A Yes.

17 MR. BATEMAN: Move admission of six and seven, Your
18 Honor, and ask to publish.

19 MR. SLIFE: No objection, Your Honor.

20 THE COURT: They'll be admitted.

21 (State's Exhibit 6 and 7 admitted.)

22 THE COURT: You may publish.

23 BY MR. BATEMAN:

24 Q Showing you seven first, is this a copy of -- or a
25 photograph of your Durango?

1 A That's correct.

2 Q Is that how you pulled it in the stall that
3 particular evening?

4 A Yes.

5 Q Is that facing kind of northeast?

6 A It's -- that's correct.

7 Q Showing you Exhibit No. 6, is this a different view
8 of where you parked?

9 A Yes.

10 Q That's a view more kind of south?

11 A Mm-hmm.

12 Q You have to answer yes or no.

13 A Yes.

14 Q Does this have approximately where Lorenzo's
15 apartment is in this photograph?

16 A I didn't know exactly where it was, but he went
17 upstairs and I couldn't see. I just knew it was that
18 apartment building.

19 Q If you touch your screen --

20 MR. BATEMAN: Do the screens work, Your Honor?

21 THE COURT: Yes.

22 BY MR. BATEMAN:

23 Q Okay. If you touch your screen, sir, you can -- can
24 you point on there approximately where it is that Bobby went?

25 A He went up --

1 Q You actually touch the screen.

2 A He went up the stairs right here.

3 Q Okay. Go a little higher, if you could.

4 A Right here.

5 Q Oh, okay. On the left, where -- by that Chevy
6 truck, for the record?

7 A That's correct.

8 Q There's a staircase?

9 A There's a staircase, and I could just see him go up
10 the stairs and that's it.

11 MR. BATEMAN: May I approach the witness, Your
12 Honor?

13 THE COURT: You may.

14 BY MR. BATEMAN:

15 Q Showing you State's Proposed Exhibit 8, does that
16 appear to be a closer-up of the Chevy truck and that
17 staircase?

18 A That's correct.

19 MR. BATEMAN: Move admission of eight and ask to
20 publish.

21 MR. SLIFE: No objection, Your Honor.

22 THE COURT: Eight will be admitted.

23 (State's Exhibit 8 admitted.)

24 THE COURT: And you may publish.

25

1 BY MR. BATEMAN:

2 Q Over on the bottom right-hand portion of Exhibit
3 No. 8, is that the back of your Durango?

4 A That's correct.

5 Q And was that Chevy truck there when you pulled in?

6 A Yes.

7 Q So are you basically in direct line to that Chevy
8 truck?

9 A Yes.

10 Q And you said that that staircase that we see at the
11 upper left-hand side, for the record, is the staircase that
12 Bobby went up?

13 A Yes.

14 Q On the way over, did Bobby have a gun?

15 A No.

16 Q What do you see next?

17 A There was -- I'm not sure how long that -- I would
18 say about five minutes, the car pulled in and Amanda, Lorenzo
19 and some other persons or person got out of the car, and they
20 walked around a little bit, and then Amanda and the other
21 person got in the car and left and Lorenzo stayed.

22 Q Did you watch where it is that car went?

23 A No. They just pulled out. I didn't pay attention.

24 Q You didn't pay attention to where it went?

25 A No.

1 Q You don't know whether it stopped later on or what
2 happened?

3 A No, I do not. I didn't really pay attention.

4 Q At this particular time had you ever met an
5 individual by the name of Tim Hildebrand?

6 A No.

7 Q Okay. So when Lorenzo got out of the car and this
8 car kind of drove off, which direction did it go?

9 A I believe it went, which would be east.

10 Q Can you point kind of the direction on this map?

11 A This way.

12 Q So to the left of the -- of photograph --

13 A Yeah. I think they backed up and went that way.

14 Q Could you -- how are you watching what was going on?

15 A Through my rear-view mirror.

16 Q And at this particular time were you particularly
17 concerned?

18 A No, not at all. Once Amanda left I really wasn't
19 worried, because I figured that's the only problem was them
20 arguing.

21 Q And did you continue to watch Lorenzo?

22 A Yes.

23 Q Did you watch Bobby?

24 A I couldn't see Bobby at the time.

25 Q Did there come a point in time in which you could

1 see Bobby?

2 A Yeah. After awhile Bobby came down the steps and
3 went over to Lorenzo and they started talking.

4 Q Can you point -- I'm going to put Exhibit No. 8 back
5 up on the overhead. Can you kind of circle where it is they
6 were talking?

7 A Lorenzo was right about here, and Bobby --

8 Q And for the record, that's in the open parking space
9 left of the Chevrolet?

10 A Yeah. And Bobby was like on the sidewalk right
11 about here.

12 Q By that tree on the left-hand side?

13 A Well, he was more by the front of the truck, on the
14 edge of the truck.

15 Q The front of the Chevrolet?

16 A Yes.

17 Q And were they talking?

18 A Yes.

19 Q Did it appear they were arguing?

20 A No. They just seemed like they were talking. I
21 thought Lorenzo was, you know, trying to patch things up or
22 something, because I knew they were friends, so I wasn't
23 really worried at that time.

24 Q Did it turn to arguing at some point, or louder
25 talking?

1 A A little bit, but not really that much. I didn't
2 know -- I couldn't hear. I didn't hear none of their
3 conversation, so it wasn't that loud.

4 Q You were sitting in your truck?

5 A Right.

6 Q You had the windows up?

7 A No. I had my window down.

8 Q But you couldn't hear the conversation?

9 A That's correct.

10 Q Did there come -- again, you still weren't overly
11 concerned?

12 A No. I wasn't worried at all at that time.

13 Q You thought that the argument or the issue was with
14 Amanda, not with Lorenzo?

15 A That's correct.

16 Q Did there come a point in time in which you saw
17 Bobby do something to Lorenzo?

18 A Yes. I was looking at the -- in the rear-view
19 mirror, and all the sudden I seen Bobby punch Lorenzo
20 somewhere on the side of the face [indicating].

21 Q Was Bobby right-handed?

22 A I believe so, yeah.

23 Q And for the record, you picked up your right hand
24 and did a punching motion, right?

25 A Yes.

1 Q And for the record, you also lifted -- kind of made
2 a motion to the left side of your face?

3 A Yes.

4 Q Okay. So you think he threw a right-hand punch that
5 hit Lorenzo in the left-hand side of his face?

6 A That's correct.

7 Q When Bobby swung, did it appear to you that he hit
8 Lorenzo?

9 A Yes.

10 Q And then what if anything did Bobby do at that
11 point?

12 A Bobby just stood where he was and Lorenzo like
13 stepped back a pace or two.

14 Q Then what happened?

15 A And then all the sudden Bobby just backed up behind
16 the truck --

17 Q Point in the direction.

18 A He went from here and went behind the truck and then
19 Lorenzo followed him. And at that time I could not see him
20 because the truck here blocked my view.

21 Q After the punch, Lorenzo stepped back and the next
22 thing you saw was, if I understand you, Bobby moving towards
23 the west --

24 A Backing up.

25 Q -- which would be Boulder Highway?

1 A Yeah. He was back-stepping behind the truck.
2 Q And Lorenzo was following him?
3 A Yeah.
4 Q And then you couldn't see the two because they
5 were --
6 A They disappeared behind the cab of the truck.
7 Q What if anything did you decide to do at that point?
8 A I thought I should, you know, get out and break it
9 up and get Bobby out of there before the police show up or
10 something. So I went to open the door, and then I heard a gun
11 fire.
12 Q Did it appear to you they were having some sort of a
13 fistfight or something?
14 A At first, yeah, until I heard the gun fire. I
15 didn't know what was going on then.
16 Q So as you were trying to get out, you were no longer
17 looking at what was going on?
18 A That's correct.
19 Q When you say you heard gunfire, what did you hear?
20 A I heard a loud, you know, firecracker sound.
21 Q Was there some period of time between the shots?
22 A No.
23 Q You don't remember?
24 A No, I don't remember.
25 Q How many shots did you initially hear?

UNCERTIFIED ROUGH DRAFT

1 A I don't know whether it was one or two at the time.
2 I can't remember.

3 Q Startle you?

4 A Yeah, because I couldn't figure out what it was at
5 first.

6 Q So as you walk -- did you walk towards this truck?

7 A No. I never even got out of the car at that time.
8 I had my hand on the handle and then I heard the shots, and I
9 stopped and I looked in my driver's side rear-view mirror and
10 I seen Lorenzo step out.

11 Q Step out where?

12 A On this side of the truck here.

13 Q Okay. So you pointed to between the Chevrolet and
14 what appears to be a silver car next to it?

15 A Yes. On the sidewalk.

16 Q So he was on the sidewalk?

17 A Yeah.

18 Q Okay.

19 A And so I turned my head and I seen him put his arm
20 out pointing this way, and carve out a silhouette in the
21 distance glowing in the darkness.

22 Q Do you remember whether you told the detectives that
23 in your first statement --

24 A No.

25 Q -- or is that something that came to you --

1 A I don't remember.

2 Q Okay. Is it possible you didn't tell them about
3 that in the first statement to the detectives?

4 A It's -- I couldn't even remember what I was writing.

5 Q What did you do at that point?

6 A I just sat there and watched, and I thought that was
7 Bobby running off in the distance, so I just sat there to see
8 what he was going to do. And he turned around back towards
9 the truck and shot towards the ground, and I couldn't figure
10 out why he was doing that.

11 Q Were you excited at this point? Were you --

12 A I was just -- yeah, because I didn't know whether he
13 knew I was sitting in the truck or not. So I didn't know
14 whether he'd come towards me, so.

15 Q You saw him still in this area between the Chevrolet
16 and the car?

17 A Yeah. He had turned around and then went towards
18 the front of the truck and shot towards the ground. And then
19 after that, he came between the cars and threw the gun
20 underneath the car here, and then started walking towards the
21 front of the apartments.

22 Q Did you see which car he threw the gun underneath?

23 A I believe it was this one right here.

24 Q You thought it was underneath the silver truck --
25 car?

1 A Yeah.

2 Q And then what happened at that point?

3 A Then at -- when he walked off, I got out of the car
4 and started walking towards -- there's an opening right here
5 that goes in towards the center of the apartments. I started
6 walking towards that way where I saw the shadow or the
7 silhouette disappear to.

8 Q And you thought it was Bobby?

9 A That's correct.

10 Q And then you, on the Exhibit No. 8, you put the
11 top -- you circled the top right; is that right?

12 A Pardon me?

13 Q You circled the area in the top right as the place
14 where you went?

15 A Yeah. And I got about, I'd say just about right
16 here and then somebody came, which is Tim, I believe, came
17 around this side of the apartment building and was looking
18 down at the ground and said, Bobby, are you okay. And at that
19 time I figured out, you know, what was going on and realized
20 why he was shooting at the ground. And so I came around the
21 truck here and saw Bobby laying on the ground.

22 Q Let me just make a little bit of a record. You
23 originally stopped, on the drawing that you did there, just in
24 front of the silver car; is that right?

25 A That's right. I had not -- I only got to about that

1 far before I seen Tim come around the building.

2 Q Okay. And Tim said something to Bobby; is that
3 right?

4 A Yes. He was over here and he was looking downwards.
5 At this time I still haven't seen Bobby.

6 Q So you saw Tim come from your left?

7 A Right. He must have ran around the building.

8 Q When the shots occurred?

9 A Yes.

10 Q And what did you do at that point?

11 A I came around the car and saw Bobby and walked over
12 there, and he was laying on his stomach and I could see the
13 blood coming from underneath him. And first I checked his
14 pulse, which was really rapid, and then I called 911.

15 Q And after you called 911, did you do anything with
16 regard to Bobby?

17 A Yes. They told me to -- or the lady that was on the
18 thing told me to start giving CPR, and that's -- I had to turn
19 him over and then I started giving him CPR.

20 Q And was it -- this was occurring right there on the
21 left-hand side of that Chevrolet?

22 A Yeah, in front of that truck right here.

23 Q You gave him CPR?

24 A Yes.

25 Q Ultimately did you stop at some point?

1 A Not until the ambulance got there.

2 Q The ambulance.

3 MR. BATEMAN: There's some tissue right there if you
4 need it. Give you a second.

5 (Pause in proceeding.)

6 BY MR. BATEMAN:

7 Q Did Lorenzo stick around, or did you see him leave?

8 A He left. When I got out of the car I didn't see him
9 anymore.

10 Q Did you see which direction he went?

11 A He just walked towards the front of the buildings --

12 Q Is that towards Boulder --

13 A -- towards Boulder Highway.

14 Q I'm going to show you what's been marked as four,
15 which was the overhead map. Are you in this area over here on
16 the left?

17 A That's correct.

18 Q And then would -- you saw Lorenzo, would he have
19 gone down --

20 A Down this --

21 Q Is this a channel with a bridge over here on the
22 left of this photograph?

23 A Yes.

24 Q Would he have run towards Boulder Highway this way?

25 A That's correct.

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1 Q Were people coming out? Was there people around
2 when you were giving CPR?

3 A Yes. There was a few people out.

4 Q And was Tim still there for some period of time?

5 A Yes.

6 Q Did eventually Tim leave?

7 A Yes.

8 Q You didn't know it was Tim at the time?

9 A That's correct.

10 Q And you said the ambulance came?

11 A Yes. Well, first an officer showed up, and he asked
12 me where the gun was and I told him it was underneath the car.
13 And then after that, the ambulance came.

14 Q And were you ever asked to go anywhere else by
15 police?

16 A To identify him, yes.

17 Q Identify Lorenzo?

18 A Yes.

19 Q Do you remember where you went?

20 A I believe it was at Charleston and Fremont, or
21 pretty close to that area.

22 Q Did you see Lorenzo?

23 A Yes.

24 Q Did you identify him?

25 A Yes.

1 MR. BATEMAN: The Court's indulgence.

2 (Attorneys confer.)

3 MR. BATEMAN: I'll pass the witness, Your Honor.

4 May I approach your clerk?

5 THE COURT: Yes. Cross.

6 MR. SLIFE: Thank you, Your Honor.

7 THE COURT: Mr. Slife, are you going to ask him to
8 write on the screen at all?

9 MR. SLIFE: I don't believe so.

10 THE COURT: Okay. I want to change the color.

11 (Pause in proceeding.)

12 MR. SLIFE: May I proceed, Your Honor?

13 THE COURT: Yes, you may.

14 MR. SLIFE: Thank you.

15 CROSS-EXAMINATION

16 BY MR. SLIFE:

17 Q Sir, just a few questions about this ride you gave
18 to Robert to the Siegel Suites, okay?

19 A Yes.

20 Q And we're talking about obviously the early morning
21 hours of December 22?

22 A That's correct.

23 Q And at some point Robert called you?

24 A Yes.

25 Q And he asked you specifically to come over to

1 Arizona Charlie's?

2 A That's correct.

3 Q And he told you that he and Amanda were having
4 problems?

5 A That's correct.

6 Q And he told you that he was going to go to jail if
7 you didn't get over there?

8 A I believe so. It's possible.

9 Q Well, let's do this. Let me ask you a little bit
10 about a statement you gave to police. Do you remember
11 speaking -- you probably don't remember the detective's name.
12 Do you remember speaking to Detective Williams on this early
13 morning at about 7:13 in the morning?

14 A Not -- I don't remember. I mean, I talked to
15 somebody. I don't know who it was.

16 Q Okay. But you remember speaking to someone that
17 morning?

18 A That's correct.

19 Q A few hours after the shooting?

20 A Yes.

21 Q And that person was a representative of the police
22 department?

23 A Yes.

24 Q Okay. And when you gave that statement, that was
25 obviously just a few hours after the shooting.

1 A That's correct.

2 Q And when you spoke to them, that was recorded.

3 A Okay.

4 Q Is that right?

5 A Pardon me?

6 Q That was recorded?

7 A I don't know if it was recorded or not.

8 Q At the time you were speaking to someone, everything

9 was fresh in your mind at that time.

10 A Okay.

11 Q Is that right?

12 A I don't know. I was in shock at that time.

13 Q Sure. But everything, it was just a few hours

14 after --

15 A That's correct.

16 Q -- so it was fresh in your mind.

17 A Okay.

18 Q And when you gave that statement, you wanted to be

19 truthful, right?

20 A That's correct.

21 Q You wanted to help the person interviewing you?

22 A Right.

23 Q You wanted to be accurate in what you saw?

24 A Right.

25 Q You wanted to be detailed?

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1 A Mm-hmm.

2 Q Is that yes?

3 A Yes.

4 Q And you wanted to be complete in all the details you
5 gave, right?

6 A As possible, yeah.

7 Q All right. And do you remember specifically telling
8 that detective, if you don't -- that Robert had told you if
9 you don't come over, I'm going to jail?

10 A Yes. I thought he was saying at Arizona Charlie's
11 because security was going to have him arrested.

12 Q Correct. Okay. And he specifically told you if you
13 don't come to Arizona Charlie's --

14 A Yeah, that the security's going to get him or
15 have -- get him thrown in jail, yeah.

16 Q That he was going to start trouble over there.

17 A No. He didn't say that. He said that the security
18 was going to --

19 Q Okay. You don't remember saying -- telling the
20 detective at seven --

21 A In other words, if I didn't pick him up, that
22 they're going to call the cops on him.

23 Q Well, do you remember telling the detective when he
24 asked what did that mean to you, and you specifically said --

25 And Counsel, this is page 3 of the voluntary

1 statement.

2 "What did that mean to you?" You told the detective
3 that he was going to start trouble over there.

4 A No. I don't remember that.

5 Q You don't remember that?

6 A No.

7 Q Would it help you remember what you told the
8 detective if you saw a transcript of that early morning
9 interview?

10 A No. I don't remember telling him that.

11 Q Would you like to see a transcript of that?

12 A Sure.

13 MR. SLIFE: Okay. May I approach, Your Honor?

14 THE COURT: Okay. But he just said he won't
15 remember it, that it won't help his memory, so.

16 BY MR. SLIFE:

17 Q You don't think you'll remember to see a transcript
18 of the --

19 A No.

20 Q -- recorded statement?

21 A No.

22 Q Okay. You don't doubt that the transcript is
23 correct though, as to what you said?

24 A Or what to believe. The officer was -- what I was
25 trying to say to him, I was in shock at the time, so I really

UNCERTIFIED ROUGH DRAFT

1 don't recall even talking to the guy.

2 Q Okay. So you don't remember what you said?

3 A That's correct.

4 Q Okay. Do you remember saying that he had slapped

5 his girlfriend; meaning that Robert had told you --

6 A Yes.

7 Q -- that he had slapped his girlfriend?

8 A I remember that.

9 Q Okay. And the purpose of you driving Robert to that

10 apartment was so he could talk to Amanda?

11 A That's correct.

12 Q In general, Bobby had strong feelings for Amanda?

13 A That's true.

14 Q You would agree that he loved Amanda?

15 A That's true.

16 Q A few questions about what you saw at the

17 apartments, okay?

18 A Okay.

19 Q Prior to the shooting, you were parked on the north

20 side of the Budget Suites [sic]?

21 A That's true.

22 Q You said Robert got out?

23 A Yes, and went upstairs.

24 Q Went up the stairs, came back down --

25 A No, he never -- he came back down to talk to

1 Lorenzo. I didn't see him until he came down and was talking
2 to Lorenzo.

3 Q Okay. And you saw specifically Robert swing on
4 Luis --

5 A Yes.

6 Q -- Lorenzo?

7 A Yes.

8 Q And you said that was with the right hand?

9 A Yes.

10 Q And specifically you think Bobby was right-handed?

11 A Yes.

12 Q Okay. And then you testified that Bobby then backed
13 up; is that right?

14 A That's right.

15 Q Now I'm going to refer back to that recorded
16 statement you did with Detective Williams.

17 And this is page 10, Counsel.

18 Do you remember the detective saying, "Okay. And
19 then what happened? And then I believe, because I was looking
20 in the rear-view of the car, Bobby swung on Lorenzo and then
21 they sort of backed up behind the car, and then I just heard
22 gunshots." Do you remember that?

23 A I could have said that.

24 Q You don't remember though?

25 A No. I don't remember the statement at the time.

1 Q You don't remember using the word --
2 A At that time --
3 Q -- "they" as opposed to Bobby individually?
4 A Well, they both went back behind the car.
5 Q Okay.
6 A That's what I'm saying. When I was talking at the
7 time I was worried about my son, and I don't know whether I
8 was stating or explaining myself correctly when I was talking
9 to the guy. I don't even remember talking to him.
10 Q You don't even remember talking to him?
11 A No.
12 Q Okay. And you testified that you didn't know if it
13 was one shot or two shots.
14 A That's true.
15 Q Okay. And you didn't actually see the shooting?
16 A No, I didn't.
17 Q And you never saw Robert run around any of the cars
18 in the parking lot, right?
19 A No.
20 Q Now, you testified today that there were some -- two
21 extra shots after everything was over?
22 A There was three actually all total. There was two
23 that he was firing at the silhouette running away, and one
24 that he had turned around and shot into the ground --
25 Q Okay.

UNCERTIFIED ROUGH DRAFT

1 A -- which I thought was the ground anyways.

2 Q You don't remember if you ever told that to
3 detectives in the early morning hours?

4 A I don't know.

5 Q Okay. In fact, do you remember testifying for the
6 first time at a hearing about a year and three months after?

7 A Yes, I remember that.

8 Q And that was the first time that you remembered
9 these extra shots, that's the first time that you testified to
10 those extra shots?

11 A No. I remembered -- I remembered that night. I
12 just don't remember what I said to the detectives.

13 Q Okay. You said that you knew Bobby used meth on
14 occasion.

15 A Yes.

16 Q Do you know if he used meth that night?

17 A No, I don't.

18 Q Did you ever use meth with Bobby?

19 MR. BATEMAN: Objection. Relevance.

20 THE COURT: Sustained.

21 MR. SLIFE: It goes to the witness's ability to
22 perceive and recall events, Your Honor, if he's using meth
23 with his son.

24 THE COURT: Approach.

25 (Bench conference - not transcribed.)

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1 MR. BATEMAN: Judge, if you'll rule on my objection.

2 THE COURT: Yes. I had sustained your objection as
3 to relevance. We discussed at the bench. So did you have a
4 motion?

5 MR. BATEMAN: I move to strike whatever the answer
6 was because you sustained my objection. Thank you.

7 THE COURT: That's stricken. You may ask your next
8 question.

9 BY MR. SLIFE:

10 Q Sir, did you do any crystal meth in the 24 hours
11 preceding the time of this shooting?

12 A No.

13 Q Okay. You testified that you had dropped off
14 Lorenzo at this apartment before.

15 A No. I dropped Bobby off at Lorenzo's apartment.

16 Q You dropped Bobby off at Lorenzo's apartment?

17 A Yes.

18 Q Do you remember telling officers, "Question. Have
19 you ever talked to Lorenzo --"

20 And Counsel, this is page 14.

21 "-- in general?" Your answer, "At Bobby's house I
22 have."

23 A Yeah. That was months earlier, which I stated
24 before he was over at Bobby's.

25 Q Do you remember if you ever told officers in that

1 interview a few hours after that you had dropped Bobby off at
2 Lorenzo's apartment before?

3 A No, I don't remember.

4 Q Do you remember telling officers --

5 And Counsel, this is page 13 at the bottom.

6 "And you -- you've seen Lorenzo before? Yes. About
7 how many times? About five." Do you remember telling
8 officers that?

9 A Yes. I don't remember saying it, but that's
10 possible I said that. I don't know.

11 Q Did you mean that you'd seen him five times in a
12 nine-month period?

13 A It could have been, yeah.

14 Q So you do remember saying that?

15 A No, I don't remember saying it.

16 Q You don't remember saying that.

17 A No.

18 Q Okay. Let me ask you this. You knew that Robert
19 was awaiting sentencing on a felony charge of attempt
20 forgery --

21 MR. BATEMAN: Judge, objection.

22 THE WITNESS: No, I didn't.

23 BY MR. SLIFE:

24 Q -- is that right?

25 A No. I didn't know.

1 THE COURT: Objection. Don't answer if --

2 MR. BATEMAN: Move to strike.

3 THE COURT: -- there's an objection.

4 Sustained. Counsel, approach.

5 (Bench conference - not transcribed.)

6 THE COURT: Counsel, you know that's irrelevant
7 question. The objection's sustained.

8 MR. BATEMAN: Thank you, Your Honor.

9 BY MR. SLIFE:

10 Q Sir, in July of 2008, you were convicted of
11 conspiracy to commit theft, correct?

12 A That's correct.

13 Q And that was for cutting off a lock to a storage
14 bin --

15 MR. BATEMAN: Judge, objection. I don't think you
16 can get into the underlying facts of the issue.

17 THE COURT: That's correct.

18 MR. SLIFE: Okay.

19 BY MR. SLIFE:

20 Q All right. You were also convicted of conspiracy to
21 commit theft in May of 2012; is that right?

22 A That's correct.

23 Q And you testified that you know Amanda Lowe?

24 A Yes.

25 Q On January 13, 2014, you made a post on her Facebook

1 account that read --

2 MR. BATEMAN: Objection. What's the relevance?

3 THE COURT: Sustained. Approach.

4 (Bench conference -- not transcribed.)

5 MR. SLIFE: All right, sir. Apologize for that.

6 May I approach, Your Honor?

7 THE COURT: Yes.

8 BY MR. SLIFE:

9 Q Sir, I'm showing you a piece of paper that hasn't
10 been marked as an exhibit. I'm directing you to the bottom.
11 Is that a picture of you?

12 A Yes.

13 Q Is that your name?

14 A Yes.

15 Q Did you write this --

16 A Yes.

17 Q -- entry?

18 A Yes.

19 Q Did you mean that as a threat to the person whose --
20 who owns this Facebook account?

21 A No.

22 MR. SLIFE: Okay. I don't have anything further,
23 Your Honor. Thank you.

24 THE COURT: All right. Any redirect?

25 MR. BATEMAN: Just real quick.

1 REDIRECT EXAMINATION

2 BY MR. BATEMAN:

3 Q Do you remember coming in and testifying at a
4 preliminary hearing in this case?

5 A Yes.

6 Q Do you remember that to being in February of 2014?

7 A Yes.

8 Q Shortly after the incident?

9 A Yes.

10 Q And do you remember being asked some questions about
11 who was backing up after Bobby threw the punch? Do you
12 remember those questions?

13 A Yes.

14 Q And were you asked those questions at the
15 preliminary hearing as well?

16 A Yes.

17 Q Do you remember that better than you remember the
18 statement you gave to police the night of?

19 A I really don't remember, because at the time I
20 didn't know whether Bobby was dead or not and I was worried
21 about that. I was worried about calling his mom. Because I
22 didn't have my phone because it was part of the crime scene,
23 so I couldn't even call his mom to let her know. And so I
24 don't even remember what I said to the police.

25 Q Do you remember when you came to court for the

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1 preliminary hearing and testified in a courtroom?

2 A Yes, I do.

3 Q In February of 2014?

4 A Yes.

5 Q You remember that, right?

6 A Yes.

7 Q Do you remember that better than the statement you
8 gave --

9 A I don't even remember talking clearly what I said to
10 the police [inaudible].

11 Q So you remember the testimony you gave at the
12 preliminary hearing?

13 A Yes, I do.

14 Q And do you remember actually me asking you the
15 question about who backed up?

16 A Right.

17 Q Do you remember that?

18 A Mm-hmm.

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

21 THE COURT: You may.

22 BY MR. BATEMAN:

23 Q Showing you Exhibit 133. Do you remember me asking
24 you this question, "Did you then watch what happened next"?

25 Do you remember -- does that appear on page 133?

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1 A Yes.

2 Q Can you just read out loud your answer, which is
3 right here, lines 13 through 18.

4 A "When all the sudden I saw Bobby punch Lorenzo in
5 the head area, because I couldn't really see where it landed.
6 And then I went to get out of the car, or get out and see what
7 was going on, but first of all, they backed up behind the
8 truck and I didn't know why, but Bobby backed up and then he
9 went -- then he went following him."

10 Q So you stated at the time when you testified in
11 court that they backed up; is that right?

12 A That's correct.

13 Q And then you stated in the same sentence, But Bobby
14 backed up, and then there's a break in the transcript and it
15 said, Followed him.

16 A Yeah.

17 Q Do you remember saying that?

18 A Yes.

19 Q Okay. So when you -- you testified that Bobby
20 backed up; is that right?

21 A That's correct.

22 Q And as you testified here today, you've also said
23 Lorenzo followed him; is that right?

24 A That's correct.

25 Q When you said they both backed up, were you meaning

1 that Bobby backed up and Lorenzo followed towards him?

2 A That's correct.

3 MR. BATEMAN: Okay. I don't have any other
4 questions, Your Honor. Actually, the Court's indulgence one
5 second.

6 (Attorneys confer.)

7 MR. BATEMAN: Just may I approach again with
8 page 134?

9 THE COURT: You may.

10 BY MR. BATEMAN:

11 Q And then also here in the middle of the page, could
12 you read your answer to my question which is on lines 14
13 and 15.

14 A Okay. "And anyways, after Bobby hit him, Bobby
15 backed up behind the truck and then Lorenzo followed him."

16 Q Okay. Thank you.

17 (Attorneys confer.)

18 MR. BATEMAN: Can I approach the clerk for one
19 second?

20 THE COURT: Yes.

21 (Mr. Bateman confers with the clerk.)

22 MR. BATEMAN: May I approach the witness, Your
23 Honor?

24 THE COURT: Yes, you may.

25

UNCERTIFIED ROUGH DRAFT

1 BY MR. BATEMAN:

2 Q Showing you what's been marked as State's Proposed
3 Exhibit 11, you were talk — asked about the cellphone
4 previously. Do you remember that?

5 A Yes.

6 Q Do you see the cellphone in that particular picture?

7 A Yes.

8 Q Whose cellphone was that?

9 A That's mine.

10 Q Okay. And is this a photograph of the crime scene
11 that we looked at earlier?

12 A Yes.

13 MR. BATEMAN: Okay. Move admission of 11.

14 MR. SLIFE: No objection, Your Honor.

15 THE COURT: It will be admitted.

16 (State's Exhibit 11 admitted.)

17 MR. BATEMAN: Quickly, if I can publish, Your Honor.

18 THE COURT: You may.

19 BY MR. BATEMAN:

20 Q Is that your cellphone there on the right?

21 A Yes.

22 Q Can you circle it on the screen?

23 A [Complies.]

24 MR. BATEMAN: I have no further questions, Your
25 Honor.

1 THE COURT: Any recross?

2 RECROSS-EXAMINATION

3 BY MR. SLIFE:

4 Q Sir, this prelim that you're reading from, that was
5 about a year and three months after the shooting; is that
6 right?

7 A Nah.

8 MR. BATEMAN: No. It's February 26, 2014, for the
9 record.

10 BY MR. SLIFE:

11 Q Okay. So that's several months after the time of
12 the shooting?

13 A That's correct.

14 Q And before that hearing you had a chance to talk to
15 Mr. Bateman about the case, right?

16 A No.

17 Q All right. You said that you didn't see a gun on
18 Bobby?

19 A No.

20 Q That night when you gave him a ride?

21 A I've never seen Bobby with a gun.

22 Q Okay. That night though, you didn't pat him down or
23 anything, right?

24 A No. He was wearing shorts, the loose shorts, you
25 know, like basketball shorts.

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1 Q You didn't know that he had a meth pipe in his
2 pocket?

3 MR. BATEMAN: Judge. Objection.

4 THE WITNESS: No.

5 THE COURT: Sustained.

6 BY MR. SLIFE:

7 Q And I think when you said when Bobby was up on the
8 stairs close to Lorenzo's apartment, did you see him yelling
9 and pounding on the door?

10 MR. BATEMAN: Judge, I'm going to object --

11 THE WITNESS: No. I could not see it.

12 MR. BATEMAN: -- as to beyond the scope.

13 THE WITNESS: I couldn't see the door. I couldn't
14 even see the --

15 THE COURT: Wait. Shh. Wait, wait.

16 MR. SLIFE: Well, Judge, there was a photograph of
17 the apartment complex.

18 THE COURT: Overruled. Go ahead. You may answer
19 now.

20 BY MR. SLIFE:

21 Q Did you ever see Bobby standing on the third floor
22 yelling and pounding --

23 A I couldn't see the third floor.

24 Q Okay. And just the last thing, you said that this
25 argument didn't really get heated right away.

1 A Even when he punched him it didn't even look like
2 they were arguing that much.

3 Q Okay. Lorenzo seemed calm?

4 A Both of them seemed calm.

5 MR. SLIFE: Okay. Nothing further, Your Honor.
6 Thank you.

7 THE COURT: May this witness be excused?

8 MR. BATEMAN: Yes, Your Honor.

9 THE COURT: Thank you very much for your testimony,
10 sir.

11 MR. BATEMAN: May I approach just for scheduling
12 real quick?

13 THE COURT: Yes.

14 (Bench conference - not transcribed.)

15 MR. BATEMAN: The State calls, with Your Honor's
16 permission, Beata Vida. I'll grab her.

17 THE COURT: All right.

18 (Pause in proceeding.)

19 BEATA VIDA, STATE'S WITNESS, SWORN

20 THE CLERK: Please state and spell your first and
21 last name for the record.

22 THE WITNESS: My name is Beata Vida, and it's
23 spelled B-e-a-t-a, V-i-d-a.

24 MR. BATEMAN: Your Honor, may I proceed?

25 THE COURT: You may.

1 DIRECT EXAMINATION

2 BY MR. BATEMAN:

3 Q Are you a forensic scientist with the Las Vegas
4 Metropolitan Police Department?

5 A Yes, I am.

6 Q And do you work in the DNA lab?

7 A Yes.

8 Q What do you do?

9 A I'm a forensic scientist in the biology DNA section.
10 So basically what that involves is I examine various items for
11 evidence that comes into the laboratory for biological
12 materials. Most often I look for things such as blood, semen
13 or saliva, and once a stain is identified as such, I perform
14 DNA analysis on it to either include or exclude specific
15 individuals.

16 In addition to body fluids, I can also examine
17 hairs, tissues or touch DNA, which is basically DNA that is
18 transferred from the skin by touching an item or wearing an
19 item.

20 Q And so is that items of evidence that are impounded
21 at a scene eventually come to you for to do your analysis?

22 A Yes.

23 Q And to start your analysis, do you start by
24 determining whether a particular item has DNA that can be
25 tested?

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1 A Yes. So a request is usually submitted, and it's
2 the case is randomly assigned to me. And normally the request
3 will say what evidence the Detective or the CSI analysts want
4 me to look at. And I will request the evidence and based on
5 the case scenario and what they tell me they want me to look
6 for, I will examine the evidence.

7 Q In this particular case, are you familiar with
8 what's called an event number?

9 A Yes.

10 Q Does this case have an Event No. 1312220648?

11 A May I look at my report?

12 Q Do you have your report with you?

13 A Yes.

14 Q Did you do a report in this case?

15 A Yes, I did.

16 Q Okay. If you could open that up for me.

17 A Yes, that's correct.

18 Q So you know that that report and anything you did
19 with this case relates to -- or in your testing relates to
20 this case?

21 A Yes.

22 Q And you did a report; is that right?

23 A Yes.

24 Q Did you have profiles from two individuals that you
25 were asked to see to compare to some evidence?

1 A Yes.

2 Q And in fact, were those DNA samples from Robert
3 Holland and Luis Pimentel?

4 A Yes.

5 Q And how do those come to you normally? What is the
6 item of DNA?

7 A It is called a buccal swab, and it's basically a
8 swab from the inside cheek of a person, and we use that as a
9 standard. So we compare that DNA profile from that known
10 individual to the questioned stain, which would be anything
11 from the crime scene, blood stains, things like that.

12 Q And in this particular case, were you asked to
13 compare those two DNA profiles with some evidence?

14 A Yes.

15 Q In particular did you compare it with some evidence,
16 a swab from a Ruger SR9, 9mm handgun?

17 A Yes.

18 Q And did you also compare those profiles of Robert
19 Holland and Luis Pimentel with the magazine from that gun?

20 A Yes.

21 Q And does the gun and the magazine come to you in one
22 evidence bag?

23 A Not always. In this case it was in the same
24 package, but I believe it was in separate envelopes within
25 that package.

1 Q So there was one package and it came to you and they
2 were separated within the package?

3 A Yes.

4 Q And did you actually test the gun and the magazine,
5 or swabs from the gun and the magazine?

6 THE COURT RECORDER: Mr. Bateman --

7 MR. BATEMAN: I'm sorry. I'll ask the question
8 again.

9 BY MR. BATEMAN:

10 Q Did you compare the -- did you do anything with the
11 gun and the magazine, or were there swabs in the package from
12 the gun and the magazine that you compared to the DNA profile?

13 A In this case I only received the swabs, not the
14 actual items.

15 Q Who does the swab?

16 A It depends. It can be the crime scene analyst at
17 the scene, or sometimes whoever is booking the evidence can
18 also do it. I'm not sure who did it in this case.

19 Q Would it be whoever has P Number 13575?

20 A Yes.

21 Q So you -- when you take the swab, do you try to
22 create a DNA profile that's of sufficient quality that you can
23 compare to someone?

24 A I don't know what you mean by try to create.

25 Q Okay. Well, fair enough. What do you do with the

1 swab?

2 A So I visually examine the swab to see if there is
3 any kind of staining on it. And when I'm talking about a
4 swab, it basically looks like a Q-Tip. So the item is
5 swabbed. I get the swab and then I look at it, and there's
6 usually some sort of discoloration. In this case there was
7 some gray staining on the swab.

8 So I take a large portion of that staining, place it
9 in a tube, and then that sample gets taken on through DNA. So
10 that's what happened in this case. And if I see any kind of
11 discoloration such as red and brown staining that would
12 indicate to me that it may be the possible presence of blood,
13 I will test it for that.

14 Q You didn't know in this case what that stain was?

15 A There was no staining. Just the gray staining.

16 Q Gray stain.

17 A I knew it was the swabbing from the gun, because
18 that's how it was represented to me.

19 Q With regard to the swab from the gun, were you able
20 to make any determinations?

21 A I was able to get a DNA profile, yes.

22 Q And was it of sufficient detail or did you have
23 sufficient information from that DNA profile to be able to
24 compare it to a different DNA profile?

25 A No.

1 Q Explain that to me.

2 A So if -- if we have let's say a sample of blood,
3 that usually has a lot of DNA and I'm pretty certain that I
4 will get a DNA profile from that. In touch evidence cases,
5 when I'm for example swabbing for a wearer or an item that
6 somebody touched, sometimes it's very difficult to get a DNA
7 profile from that item, because we're only getting DNA from
8 skin cells and there's not a lot of transfer.

9 So in this case --- and I can also --- sometimes we
10 get good profiles from one individual such as from a blood
11 stain, or sometimes we have DNA profiles from multiple
12 individuals, which we call a mixture, where multiple people
13 have handled the item or touched it and so there is a mixture
14 DNA profile.

15 So in this case the DNA profile obtained was not
16 very good, and I -- it was actually the amount of DNA that I
17 obtained was so low that I couldn't make any conclusions other
18 than there were -- would you like me to go into what I
19 actually found?

20 Q Go ahead.

21 A That there was a mixture of two people and there was
22 at least one male, but I couldn't make any comparisons because
23 the data was so poor.

24 Q Do you compare it to any other people to say who
25 would have left that sample on the gun?

1 A Yes.

2 Q The other person could have been a female?

3 A Yes.

4 Q As far as DNA, can it stay on a gun for a period of
5 time?

6 A It can. It depends on the quality of the DNA
7 deposited. There is a lot of things that play a role in
8 whether DNA will be obtained from an item. Things such as
9 heat, humidity and sunlight will destroy DNA to the point
10 where we won't be able to get DNA from those items.

11 Also, whether DNA sticks to an item or not depends
12 on the type of surface. Rough areas usually hold DNA better
13 versus smooth areas. It also depends on the person that
14 handles the item. If the person that touches something has
15 very sweaty palms, they will be more likely to leave DNA than
16 somebody who just washed their hands and then wiped it.

17 Q So in this particular case, when you have a mixture,
18 all you can say is there's more than one person?

19 A Yes.

20 Q And you don't know when it was put there or by whom
21 it was put there?

22 A No.

23 Q The swab from the Ruger magazine, what if any
24 findings did you conclude from that?

25 A So that one went through the same process by opening

1 the swab. I looked at it. There was staining on it. I took
2 a cutting of it, but in this case I was not able to obtain any
3 kind of DNA profile from it.

4 MR. BATEMAN: I don't have any additional questions.
5 I'll pass the witness.

6 THE COURT: Any cross?

7 CROSS-EXAMINATION

8 BY MS. LEMCKE:

9 Q Just so the jury's clear on this, so you mentioned
10 epithelial DNA. That's like skin cells, right?

11 A Yes.

12 Q So you can touch something and actually leave your
13 DNA profile on that thing that you've touched?

14 A Yes.

15 Q And the likelihood of getting a DNA profile kind of
16 depends, like you said, on whether or not there's -- the
17 person maybe is sweaty?

18 A Correct.

19 Q Yes?

20 Or whether the surface is rough versus smooth?

21 A Yes.

22 Q Okay. But you can oftentimes when you touch
23 something leave a DNA sample just by virtue of your skin
24 cells?

25 A Yes, it is possible to get a DNA profile from that.

1 Q And in this particular case you looked at swabs that
2 were submitted to you?

3 A Yes.

4 Q And you know where the swabs came from, a gun and a
5 magazine; is that right?

6 A Based on the package I knew that one swab came from
7 a gun and the other from the magazine.

8 Q And when you say based on the package, that's
9 because there's writing on the package?

10 A Yes.

11 Q By the officers who have impounded the material?

12 A Yes. It usually has the event number that was given
13 at the time it was booked. There's also the person usually
14 that impounded it. And there's additional information such as
15 our lab number, item number and who booked it and the date,
16 things like that on there.

17 Q And those were the only things that you saw that had
18 been submitted for swabbing for DNA?

19 A Those are the only two things that were requested
20 for me to look at.

21 Q No bullets, anything like that?

22 A No.

23 Q And if I understand you correctly, you were able --
24 you weren't able to identify any -- any particular individual
25 as having deposited the DNA on the swabs that you looked at;

1 is that right?

2 A Yes.

3 Q But you could tell there was more than one person's
4 profile present?

5 A Yes.

6 Q And at least one of those two people that was
7 present in the swab that you looked at was a male?

8 A Yes.

9 Q Both could have been male?

10 A Yes.

11 MS. LEMCKE: The Court's indulgence.

12 (Attorneys confer.)

13 MS. LEMCKE: Nothing further.

14 MR. BATEMAN: Nothing else.

15 THE COURT: Okay. Thank you very much for your
16 testimony.

17 You may call your next witness.

18 MR. BATEMAN: Your Honor, the State would call as
19 our last witness today Officer Pacifico.

20 VINCENT PACIFICO, STATE'S WITNESS, SWORN

21 THE CLERK: Please state and spell your first and
22 last name.

23 THE WITNESS: Vincent Pacifico, V-i-n-c-e-n-t,
24 P-a-c-i-f-i-c-o.

25 THE COURT: You may proceed.

UNCERTIFIED ROUGH DRAFT

1 MR. BATEMAN: Thank you.

2 DIRECT EXAMINATION

3 BY MR. BATEMAN:

4 Q Are you an officer with the Metropolitan Police
5 Department?

6 A Yes, I am.

7 Q How long have you been employed with Metro?

8 A Fifteen years now.

9 Q I'm going to direct your attention back to
10 December 20 --- early morning hours of December 22, 2013. Were
11 you working that morning?

12 A I was, yes.

13 Q And in what capacity?

14 A I was a patrol officer with Southeast Area Command.

15 Q What is Southeast Area Command?

16 A It's basically everything east of Maryland Parkway
17 and south of Sahara.

18 Q Boulder Highway?

19 A Boulder Highway, correct.

20 Q And patrol officers, what do they do?

21 A Answer calls for service, conduct traffic
22 enforcement, things like that.

23 Q Are you oftentimes the first responding officer on
24 certain crimes?

25 A Yes.

UNCERTIFIED ROUGH DRAFT

1 Q And in fact, that morning at about 4:25 in the
2 morning, did you respond to the Siegel Suites on Boulder
3 Highway, 3625?

4 A Correct. I did, yes.

5 Q Are you familiar with that location?

6 A Yes, I am.

7 Q And when you arrived there, how long did it take you
8 to get once you heard the call out at 4:25?

9 A Excuse me. About two minutes.

10 Q When you got there, what did you see?

11 A Well, because of the nature of the call, being that
12 it was a shooting, I kind of slow rolled through the back,
13 came around through the back and came along the north side of
14 the property. And there were a few people gathered outside
15 and I got out of my car. People were kind of pointing in
16 every different direction, if you will, and there was a man
17 laying down on his back, blood on his chest, and there was
18 another man leaning over him doing mouth-to-mouth
19 resuscitation.

20 MR. BATEMAN: May I approach your clerk, Your Honor?

21 THE COURT: You may.

22 (Mr. Bateman confers with the clerk.)

23 BY MR. BATEMAN:

24 Q I'm going to show you what's been marked and
25 admitted into evidence. It's an overhead map, Exhibit No. 4.

1 Do you recognize what's in that overhead map?

2 A Yes, I do.

3 Q What is that?

4 A This is the Siegel Suites at 4625 [sic] Boulder
5 Highway. And right about -- can I write on it?

6 Q I think you can touch it and it'll come up.

7 MR. BATEMAN: Do we need to change the color?

8 THE COURT: Yeah, change it, because it's black
9 right now.

10 BY MR. BATEMAN:

11 Q We can do it over here. All right. There we go.
12 Try it now.

13 A So right about over here in this area was where the
14 shooting had happened.

15 Q So you entered where?

16 A I came in -- this is the driveway, the only way in
17 and out. And I came in through this way, and I drove around
18 the back here and came to here and stopped my car just shy of
19 where it actually happened at.

20 Q When you come in that entrance, can you go left
21 toward --

22 A Yes. Yes. There's a marquee sign here. There's
23 a -- I'm sorry. There's an overhead kind of a roof where the
24 office is. And then the driveway splits, so I could have gone
25 that way. I think, if I remember correctly, the call came in

1 at Building C, and if I remember correctly, this one is
2 Building C right here.

3 So that's why I chose to come around the back of it
4 again, not knowing -- excuse me -- the nature of the call,
5 what type of -- I knew it was a shooting call, but just based
6 on the circumstances, the severity of it, that's why I chose
7 to come around the back.

8 Q And you said you saw some witnesses out with a
9 person on the ground; is that right?

10 A Correct.

11 MR. BATEMAN: May I approach the witness, Your
12 Honor?

13 THE COURT: You may.

14 MR. BATEMAN: I'm sorry. Thank you.

15 BY MR. BATEMAN:

16 Q Sir, I'm going to show you what's been marked as
17 State's Proposed Exhibits 9, 10, 12 and 13. Will you just
18 flip through those and when you're done flipping through them,
19 let me know.

20 A Okay.

21 Q Do you recognize what's depicted in those
22 photographs?

23 A Yes, I do.

24 Q Is that the scene in question?

25 A Yes, it is.

1 Q Is it a fair and accurate depiction of what you saw
2 that night?

3 A Yes, it is.

4 MR. BATEMAN: Move admission of 9, 10, 12 and 13,
5 Your Honor.

6 MS. LEMCKE: No objection, Your Honor.

7 THE COURT: Those will be admitted.

8 (State's Exhibit 9, 10, 12 and 13 admitted.)

9 BY MR. BATEMAN:

10 Q Ultimately you said someone was on the ground giving
11 CPR; is that right?

12 A Correct.

13 Q I'm going to show you Exhibit No. 10.

14 MR. BATEMAN: May I publish, if I didn't ask, Your
15 Honor?

16 THE COURT: You may.

17 BY MR. BATEMAN:

18 Q Is this approximately -- well, we see a cone there.
19 Was that cone there when you arrived?

20 A No, they were not. The cones were not there.

21 Q Who had put that cone there?

22 A I believe I directed other officers to do such.

23 Q And was there some clothing in that photograph?

24 A Yes, there is.

25 Q I'm going to show you a closer-up, 13. Is this

1 where the individual was that was getting CPR?

2 A That is correct.

3 Q Could you tell what -- what could you tell was
4 transpiring at this particular time?

5 A Well, it appeared that he had gunshot wounds, I
6 believe, and if I remember correctly, at least one to the
7 chest, perhaps two. And it appeared to me that he had been
8 deceased. The gentleman again leaning over him doing
9 mouth-to-mouth resuscitation, I believed his efforts to be,
10 you know, kind of in vain, if you will.

11 Q Normally if you arrived on a scene, would you let
12 someone continue to give CPR like was being -- like what was
13 happening?

14 A Well, I asked him who he was, like because again, I
15 believed the guy to be deceased. I wouldn't -- I wouldn't
16 certainly would pull somebody off if they were doing CPR
17 trying to save his life.

18 But as you can imagine from the blood on there,
19 there was blood on the victim's mouth and it was basically
20 going onto the person doing CPR, his mouth and face. And so I
21 asked him, you know, who are you, and then he -- or I asked
22 him a question about who are you or who -- and he said, I'm
23 his father, is what he said.

24 Q So the person giving CPR was his father?

25 A Correct.

UNCERTIFIED ROUGH DRAFT

1 Q You let him continue?

2 A Absolutely.

3 Q Okay. Were you -- was there a crowd developing?

4 A There were. There were -- right along here are all
5 the rooms, so.

6 Q And here being to the right, so up near the rooms?

7 A Correct. And so there were already probably five to
8 maybe six or eight people outside already, and then of course
9 more started -- I had my flashing lights on and things like
10 that, you know. The gunshots in and of themselves don't draw
11 the attention, certainly the flashing lights do.

12 Q Were you trying to, while you were out there, keep
13 some sort of control and actually try to find out what was
14 going on?

15 A Absolutely. I mean, as you can imagine, it is -- it
16 is sort of kind of a hectic scene trying to figure out what
17 happened, who is the suspect, who is the victim, who is what,
18 who is where. And I've got people pointing this and telling
19 me that and absolutely trying to kind of remain calm and keep
20 order and get help to this individual.

21 Q Ultimately did medical, like an EMT or an ambulance
22 arrive to take the person that had been shot?

23 A Yes. I believe it was Clark County Fire Department
24 and Medic West which would normally respond to that part of
25 town.

1 Q Did you learn that somebody had seen a firearm in
2 the area?

3 A Yes. While this was going on, somebody advised me
4 that the suspect threw the gun underneath, I believe it was
5 this pickup truck right here.

6 Q Were you able to see a firearm underneath that
7 truck?

8 A I was, yes. I just walked a little kind of in this
9 direction, if you will, and I was able to see the gun. It was
10 under the right side of the vehicle.

11 Q The passenger side?

12 A The passenger side of the vehicle, correct, maybe
13 just, I don't know, a foot or 2 feet underneath the -- yeah.

14 Q Showing you eight, can you just circle approximately
15 where?

16 A Right. It was right about here, I suppose, on --
17 again, on the passenger side of the vehicle, but in front of
18 the back tire there.

19 Q So one of your responsibilities when you're out on
20 the scene, is it to preserve the evidence where it's at?

21 A Correct. I mean, now I've got -- I've got a victim
22 laying down, CPR being performed. I've got people which I
23 don't know who's who, and now somebody tells me there's a gun.
24 So now I've got to keep an eye on this gun. I've got to keep
25 an eye on what's going on here, make sure nothing gets

1 tampered with and of course the gun doesn't get, you know,
2 taken or used against any of us.

3 Q Did you obtain information while you were out there
4 about where a suspect may have gone?

5 A Yes. I was approached by an individual who advised
6 me that his friend was on the bus and he's sitting right
7 across from the suspect that just committed this shooting.

8 Q As you sit there, you have no idea whether that's
9 true or not; is that correct?

10 A Correct.

11 Q And as a result of receiving that information, do
12 you do something so that other officers can investigate
13 further?

14 A Correct. I get on my portable radio, I speak to
15 dispatch, advise dispatch what I was just told, and basically
16 letting other units know that were in route there look for
17 this bus, because it would have been a northbound bus off of
18 Boulder Highway.

19 Q Did you know that some -- one of these witnesses out
20 there, one of these people that were out when you got there
21 were video-taping what was going on?

22 A I didn't until a few minutes later, or after it kind
23 of calmed down a little bit.

24 MR. BATEMAN: May I approach the witness, Your
25 Honor?

1 THE COURT: You may.

2 BY MR. BATEMAN:

3 Q Showing you what's been marked as State's Proposed
4 Exhibit 14, it's a CD ROM. Do you recognize this CD?

5 A Yes.

6 Q How do you recognize it?

7 A That's my initials and the date.

8 Q Have you watched this CD before?

9 A I have, yes.

10 Q And does it depict you arriving and what's going on
11 at the scene?

12 A It does, yes.

13 MR. BATEMAN: Move admission of 14 and request to
14 publish, Your Honor.

15 MS. LEMCKE: Your Honor, can we approach?

16 THE COURT: Yes.

17 (Bench conference - not transcribed.)

18 MR. BATEMAN: May I publish without the audio, Your
19 Honor?

20 THE COURT: Yes.

21 MR. BATEMAN: Thank you.

22 BY MR. BATEMAN:

23 Q I just want you, sir, to identify a little bit if
24 you can what's going on before we finish tonight.

25 A Yes, sir.

UNCERTIFIED ROUGH DRAFT

1 Q If I can turn my computer on.

2 THE COURT: Are we admitting it as to the video?

3 MS. LEMCKE: As to the video, yes, Your Honor.

4 THE COURT: Okay. It will be admitted as to the
5 video at this time.

6 (State's Exhibit 14 admitted.)

7

8 (Pause in proceeding.)

9 (Video plays in open court.)

10 BY MR. BATEMAN:

11 Q Can you see that on your screen?

12 A I can, yes.

13 Q Are you there in this area?

14 A I am, yes. Difficult to see me with that lighting.
15 That's me right there just to the right. I'm kind of looking
16 back towards the truck holding my left hand on my mike right
17 now.

18 Q And to your left is where the CPR is being given?

19 THE COURT: Can you circle where you are?

20 THE WITNESS: Yes. This is me right here. This is
21 my left hand holding the mike, and I'm looking back towards
22 the pickup truck. I think that's about the point somebody
23 told me that the gun was under the truck.

24 BY MR. BATEMAN:

25 Q Yeah. You're looking there; is that right?

UNCERTIFIED ROUGH DRAFT

1 A Correct.

2 Q Is that a photograph of where the CPR was being done
3 with the person shot?

4 A Yes, it is.

5 Q During this time were people telling you things?

6 A Yes. Obviously you cannot see it on the video, but
7 most of the people were pretty much where the gentleman taking
8 the video was standing, in that area along the building. And
9 the people were shouting out all different things in different
10 directions at this point.

11 Q Is this approximately when you're receiving
12 information that he may have gone to the -- the suspect may
13 have gone to Boulder?

14 A I believe so, yes.

15 Q You have a radio on your shoulder like you do today?

16 A Correct. Yes.

17 Q When you call out, does that go into a dispatch?

18 A Correct. It does.

19 Q Other officers can hear what you're saying?

20 A Yes. Yes. It appeared he was trying to focus in on
21 the gun, because that's the area that it is at.

22 Q Well, stopping it here, do you see -- is that you
23 talking to a witness?

24 A No. That's Sergeant Dana Pickerel.

25 Q Okay.

1 A And I believe that that's the gentleman that told me
2 that the suspect had gotten on the bus.

3 Q This is the person that said that he saw someone
4 going in that direction towards the bus?

5 A Correct.

6 Q And this was the person that said he had a friend on
7 the bus?

8 A I believe so, yes.

9 MR. BATEMAN: Judge, I don't believe I have any
10 additional questions for this witness.

11 THE COURT: Cross.

12 MR. SLIFE: No questions, Judge. Thank you.

13 THE COURT: I have just one question. So you viewed
14 this CD as well as heard the audio that's also on it?

15 THE WITNESS: Yes, I have.

16 THE COURT: And does the audio portion, to the best
17 of your recollection, truly and accurately depict what it
18 sounded like to you?

19 THE WITNESS: Oh, yes. Absolutely.

20 THE COURT: Okay. Any questions as a result of my
21 questions?

22 MR. BATEMAN: No, Your Honor.

23 MR. SLIFE: No, Your Honor.

24 THE WITNESS: Thank you, Your Honor.

25 THE COURT: And I believe that concludes the

1 witnesses for today; is that correct?

2 MR. BATEMAN: That does, Your Honor.

3 THE COURT: All right. And ladies and gentlemen,
4 we're going to start at 9:00 o'clock tomorrow morning,
5 Thursday. Our afternoon is going to be somewhat
6 foreshortened. You get an early out tomorrow at 3:15, because
7 there is something that needs to be attended to and that's why
8 we have to end a little early.

9 So ladies and gentlemen, during this overnight
10 recess, it is your duty not to converse among yourselves or
11 with anyone else on any subject connected with the trial, or
12 to read, watch or listen to any report of or commentary on the
13 trial by any person connected with the trial or by any medium
14 of information, including without limitation newspaper,
15 television, radio or Internet, and you are not to form or
16 express an opinion on any subject connected with this case
17 until it's finally submitted to you.

18 We'll be in recess until tomorrow at 9:00 o'clock,
19 when I'll see you.

20 (Jurors recessed at 5:05 p.m.)

21 THE COURT: Okay. The record will reflect the jury
22 has now departed the courtroom. Okay. So we had just at the
23 bench just before we played the video portion, Counsel, you
24 were concerned about the audio, you wanted to listen to it.
25 Do you want to listen to it now?

UNCERTIFIED ROUGH DRAFT

1 MS. LEMCKE: Yeah. I'm going to go -- I'm going to
2 go listen to it now, unless you want me to do it right here.

3 THE COURT: I mean --

4 MS. LEMCKE: I actually have a 5:30 appointment, so
5 I prefer to run back to my office.

6 THE COURT: That's fine. I just didn't want the
7 officer to have to come back.

8 MS. LEMCKE: Right. Totally understandable. I
9 think what Your Honor did was totally reasonable. I just need
10 to -- do you want me to make a record, or -- do you record
11 bench conferences?

12 THE COURT: No. You didn't ask for it, so we're
13 not. If you had we would have. But you can go ahead and make
14 the record tomorrow after you've listened to it.

15 MS. LEMCKE: Okay.

16 THE COURT: And if you have any objections, you'll
17 make them then. If you don't, then the State can play the
18 audio. Right now obviously we have a disk that we want to be
19 able to go to the jury, so both pieces need to be admitted.
20 Right now I've only admitted the video, and I anticipate if
21 you have no objection admitting the audio tomorrow so that
22 that disk can go back to the jury room in its entirety.

23 MS. LEMCKE: Yeah. I will --

24 MR. BATEMAN: She'll take it home and listen to it
25 at home.

1 MS. LEMCKE: Correct. And then just so that we're
2 clear, I was thinking the bench conferences were recorded just
3 because you have the microphone up at Your Honor's bench. So
4 to the extent that they are not, I would ask that they be
5 recorded. You can't do it? We have to do it at the
6 beginning?

7 THE COURT RECORDER: [Inaudible.]

8 MS. LEMCKE: Okay. Yeah. I'll just have to make a
9 record. I just -- I know it's my -- having been on the
10 appellate team, I know better. I know to ask and I know to
11 have them recorded. I should have. I made assumptions based
12 on the placement of the microphones at Your Honor's bench that
13 I shouldn't have, and it's my first trial in here and
14 ultimately it's my fault.

15 THE COURT RECORDER: [Inaudible.]

16 MS. LEMCKE: I know. It's just my, you know,
17 assumptions that were errant and I have nobody to blame but
18 myself. But --

19 THE COURT: We'll make all the records you want to
20 make tomorrow before the --

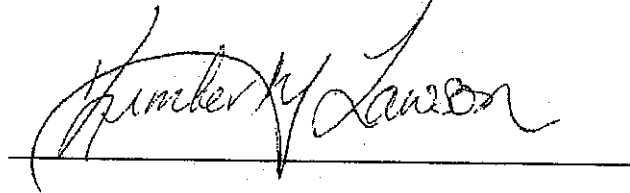
21 MS. LEMCKE: Yeah. I'll just have to -- I'll make
22 my records in between, you know. To the extent that there are
23 objections that are ruled upon at the bench, I'll make sure
24 that -- in fact, I have a note to make a record on some of the
25 bench conferences we had today.

1 THE COURT: Right. Okay. All right. I'll see you
2 tomorrow at 9:00.

3 (Court recessed for the evening at 5:09 p.m.)
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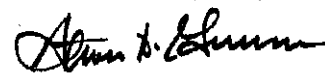
ACKNOWLEDGMENT:

Pursuant to Rule 3C(d) of Nevada Rules of Appellate Procedure, this is a rough draft transcript expeditiously prepared, not proofread, corrected or certified to be an accurate transcript.

A handwritten signature in cursive script, reading "Kimberly Lawson", is written over a horizontal line.

KIMBERLY LAWSON
TRANSCRIBER

UNCERTIFIED ROUGH DRAFT



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DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,

Plaintiff,

vs.

LUIS PIMENTEL, AKA,
LUIS GODOFREDO PIMENTEL, III

Defendant.

CASE NO. C296234-1

DEPT NO. V

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

JURY TRIAL - DAY 4

THURSDAY, MAY 14, 2015

APPEARANCES:

For the State:

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Chief Deputy District Attorneys

For the Defendant:

NANCY L. LEMCKE, ESQ.
CONOR M. SLIFE, ESQ.
Deputy Public Defenders

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1 LAS VEGAS, NEVADA, THURSDAY, MAY 14, 2015, 9:03 A.M.

2 * * * * *

3 (Outside the presence of the jury.)

4 THE COURT: We're on the record. Case No. C296234,
5 State of Nevada vs. Luis Pimentel, and this is day four of the
6 jury trial. We're outside the presence of the jury.
7 Defendant's present with his counsel. Deputies district
8 attorney prosecuting the case are present, as are all officers
9 of the court. Will counsel so stipulate?

10 MR. BATEMAN: Yes.

11 MS. LEMCKE: Yes.

12 THE COURT: And there's some matters outside the
13 presence we want to make a record of concerning bench
14 conferences.

15 MS. LEMCKE: Yes, Your Honor. Yesterday we had two
16 issues. I'll start with the first one was the issue of Robert
17 Holland, II's methamphetamine use as it relates to his ability
18 to perceive and recall events, particularly the critical
19 events of the -- at the time of the shooting and the times
20 just preceding that.

21 It was our position, based on Fortino Sanchez vs.
22 State, which I understand is an unpublished decision. I made
23 that clear to the Court and to the parties, but I did provide
24 a copy of the case to the Court and to the parties. That case
25 stands for the proposition that it's error for a trial court

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1 to prevent defense counsel from cross-examining a witness
2 regarding prior drug use as it relates to ability to perceive
3 and recall.

4 And so having heard that issue at the bench, Your
5 Honor had indicated that you did not think that there was any
6 concerns with methamphetamine having impairing an individual's
7 ability to recall and perceive events. And Your Honor
8 indicated that the pilots in the Air Force are given
9 methamphetamine to enhance their alertness and awareness.

10 Just for the record, I did last night contact a
11 friend of mine who's a lieutenant colonel in the Air Force
12 retired, who was the commander of the weapons school out at
13 Creech, which is basically the elite kind of top gun Air
14 Force's version of the Navy's Topgun, where they train their
15 elite pilots. And he said in no uncertain terms is
16 methamphetamine given to pilots to enhance alertness or
17 awareness.

18 And so to that end -- and we have a coroner who I
19 believe, based on the toxicology report that was done, and the
20 reporting kind of delineates the effects that methamphetamine
21 can have in terms of causing hallucinations and other -- and
22 other issues such as that. So to that end, we believe that we
23 were entitled to delve into the issue of Mr. Holland's drug
24 abuse and explore that to the extent that it may bear on his
25 credibility and his ability to perceive and recall events.

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1 THE COURT: All right. And so the case that you
2 cited to the Court, the unpublished decision, which of course
3 is not precedential, however, you know, sometimes it gives
4 guidance to a trial court. In fact, I believe that the
5 Supreme Court is currently considering whether to change the
6 rule to allow citation to unpublished decisions.

7 So just for the record, that Westlaw cite is 2014
8 Westlaw 4804058, and it is Fortino Sanchez vs. State of
9 Nevada. I was able to review the opinion at the bench
10 yesterday. And the facts of that case, although they're not
11 listed in a lot of detail relevant, you know, as they bear on
12 this issue, do indicate that this was a child sexual assault
13 case where the victim witness, M, who is identified as M in
14 the case, had been seven or eight years old at the time the
15 events she's describing occurred.

16 And the court noted that those events were ten
17 years, a full decade before the testimony, and that in fact
18 the court was concerned about the discretion, the exercise of
19 the court's discretion in limiting cross-examination and said:

20 Although a district court has wide discretion to
21 control cross-examination that attacks a witness's general
22 credibility when examining a witness's bias or motive, it goes
23 on, the only proper restriction should be those inquiries
24 which are repetitive, irrelevant, vague, speculative or
25 designed merely to harass, annoy or humiliate the witness.

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1 And that cites to Lobato vs. State.

2 And of course the objection at the bench by the
3 State was that it was irrelevant testimony, and that it was
4 designed basically to just muddy up the witness, the father of
5 the victim. And I indicated at the bench that I believe that
6 it was in fact relevant concerning the 24 hour period when
7 this occurred, as to whether or not if he had in fact used
8 some type of illicit drug, that it in fact could relate to
9 his -- or have an impact on his ability to perceive, and so I
10 would allow that question.

11 The question was in fact asked on cross-examination.
12 What I said could not happen was that there couldn't be an
13 unending exploration of -- because as I believe the question
14 was originally posited, it was going to be have you ever used
15 in your lifetime methamphetamine, which would not be relevant
16 to whether or not he perceived.

17 There was no -- and certainly there is no expert
18 testimony and anecdotal testimony -- or anecdotal items from
19 either this court or defense counsel's friends in the Air
20 Force. I was actually a friend to the Navy. But it's neither
21 here nor there. You need to have some expert testimony that
22 in fact drug use that may -- might have occurred God knows
23 when.

24 This man, I don't know how old he is. He looks, I
25 think, probably a lot older than his true age frankly. But

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1 that it would permanently affect his ability to perceive if
2 he'd used ten years earlier, 20 years earlier, three years
3 earlier, a year, I don't know. There's absolutely no
4 testimony about that. And you need to come in with more than
5 just, oh, it must be.

6 And I think that the facts of this case are
7 distinguishable from a case where first of all, we're dealing
8 with a witness who at the time she perceived these things was
9 seven or eight, which of course doesn't by law make her
10 automatically incompetent under statute or caselaw. However,
11 when we're talking about her ability to recollect things that
12 happened to her when she was seven or eight and to recall them
13 ten years later, additionally drug use even more so would be
14 relevant in that context.

15 But of course sadly, because the facts are -- don't
16 go into it as to what the parameters of the questioning was,
17 what those parameters were I should say, nor what evidence the
18 defense had to say they were aware of drug use or to what
19 extent it was, I don't have any of those facts. And so that
20 was somewhat limiting as far as this case assisting. Maybe
21 that's part why it was not published, you know. I don't know.

22 And would the State like to additionally add
23 anything? That was the basis of my ruling, but I'd like the
24 State to make a record, if they wish to.

25 MR. BATEMAN: No, Your Honor. I think that

1 covers it.

2 THE COURT: Okay. Was there another matter?

3 MS. LEMCKE: Yeah, Your Honor. And then we were
4 also wanting to solicit information from Mr. Holland regarding
5 the fact that his son, the decedent in this case, was awaiting
6 sentencing on a felony offense, and the prosecutors objected,
7 and Your Honor sustained the objection, disallowing further
8 inquiry into that.

9 And the reason that we wanted to get into that is
10 because, as Your Honor knows, as a standard in every plea
11 agreement, as was the case with the decedent in this
12 particular matter, you know, the plea agreement had that
13 standard verbiage that talks about, you know, if between the
14 time of entry of plea and sentencing you're arrested on any
15 new offense or, you know, there's anything -- well, basically
16 a new arrest that you sustain, then to the extent that there
17 is an agreement regarding sentencing, that could impact
18 whatever negotiation might have been in place regarding
19 sentencing.

20 And if there -- even if there isn't a negotiation
21 pending sentencing, as Your Honor well knows, you know, should
22 an individual, while they're out of custody awaiting
23 sentencing, sustain an arrest or incur any kind of infraction
24 while they're awaiting sentencing, certainly that can bear
25 upon what sentence that individual ultimately receives.

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1 It's our position and our defense theory that this
2 decedent was actually the initial aggressor from beginning to
3 end in this whole -- in the entire time leading -- at Arizona
4 Charlie's and then again at the Siegel Suites where the
5 shooting ultimately occurred. And it's our position that
6 his -- the fact of his being out of custody awaiting
7 sentencing on this felony case was relevant to show just how
8 determined he was to be aggressive, even knowing that it would
9 jeopardize what sentence he might receive when he appeared in
10 court for sentencing.

11 As Your Honor heard, he indicated -- his father
12 testified that he received a call from him, that is the
13 decedent, just before he took him over to the Siegel Suites,
14 where he then assaulted my client. And in that phone call he
15 says to his father, You better come get me because if you
16 don't, I'm probably going to jail.

17 So the fact that he was willing to put at risk his
18 liberty on a felony sentencing is relevant to show just how
19 determined he was to go after Amanda and my client. And so to
20 that end we felt it was relevant that -- and that we be
21 allowed to pursue that line of inquiry.

22 THE COURT: Okay. And the State -- well, do you
23 want to go ahead and make your response and all?

24 MR. BATEMAN: We objected, I believe, as to
25 relevance. Everything that Ms. Lemcke just stated, I don't

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1 know how any of that would actually --- even if the Court would
2 say, oh, sure, we'll go down that road, how would any of that
3 explanation of its relevancy ever come before the Court --
4 before the jury?

5 How would you explain guilty plea agreement and what
6 courts normally do and what he's facing and all -- you know
7 what I mean? How would any of that, what witness would
8 testify as to all of that to the jury? I don't -- it's so
9 tenuous and not relevant. I mean, it's almost -- it's I'm
10 actually shocked that the question was even asked, because I
11 don't know how you would ever then follow up with explanation
12 that Ms. Lemcke just gave.

13 What witness is on anybody's witness notice that
14 would come in and explain, well, here's all the -- here's all
15 the things that might happen or would be going through Bobby's
16 head as a result of taking a plea on a wobbler? I mean, could
17 you imagine how that would even be presented to the jury.
18 Under what circumstance could that possibly be given to them
19 in a coherent explanation, and then tied back to what she just
20 said the relevancy of it was in this case. I'm kind of
21 shocked by it quite frankly.

22 So that was our objection. You know, it could just
23 as well be argued that that's why he was trying to not have a
24 fight with Lorenzo, which you will hear from our witnesses.
25 So, you know, I don't even know how to respond other than the

1 description I just heard was -- I don't know how it would ever
2 be presented.

3 THE COURT: Okay. Well, the question was: Were you
4 aware that your son was awaiting sentencing on a felony.
5 Okay. So to get from there to what was in the decedent's head
6 is completely, I mean, it's like A to Z with no steps in
7 between. It's collateral to the issues before the Court.

8 Even if he -- the question itself was irrelevant as
9 to whether that if he was aware. So what even if he was.
10 That doesn't get to the point that -- where you're arguing,
11 that it was relevant because it would somehow show the
12 decedent's state of mind as to the aggressive -- to show how
13 aggressive he was to me is completely irrelevant, that
14 question.

15 I mean, the answer that you were looking for would
16 not have borne on what you claim to now be the -- or that
17 yesterday in fact at the bench said, you know, was the basis
18 for it being relevant. So what if he knew or didn't know.
19 Then as the State indicates, even if he knew, that doesn't
20 mean that he knew what his son understood or knew.

21 Because frankly, yes, under the guilty -- under most
22 guilty plea agreements, it says if you are arrested and
23 probable cause is found on a new charge, the State will regain
24 the right to argue, that basically, you know, the deal is off
25 as far as any favorable points of we're not going to make a

1 recommendation or we're going to recommend something
2 favorable, or if the habitual criminal treatment was on the
3 table. But that's not binding at all on the Court.

4 And sometimes that makes a difference to a
5 sentencing court, sometimes it does to me, and sometimes it
6 does not. And it's completely an individualized thing in
7 every single case. And to do otherwise, the Court wouldn't
8 probably be exercising its reasonable discretion in a
9 sentencing. We wouldn't need judges to do sentencings if
10 judges didn't have discretion, and we just had to if this
11 happens they get this.

12 I mean, every time I do a sentencing, I look at the
13 individual person involved, what their background was, the
14 facts and circumstances of the case, all of the mitigating
15 circumstances and, you know, aggravating circumstances
16 concerning the crime, all of the things that the statutes lay
17 out for us as to what we need to consider and come up with the
18 sentence.

19 And what happens as far as whether someone shows up
20 to P and P or gets a misdemeanor conviction for battery may or
21 may not affect a sentence. So that's all speculative and it's
22 collateral to the issues that are before the Court, and that's
23 why I sustained the objection.

24 MR. BATEMAN: And just if I may, it's basically a
25 way ultimately to announce to the jury that the victim in the

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1 case has pled guilty to a crime. I mean, that's functionally
2 what it was. And so, you know, if we had done something like
3 that, you know, I think we all know what the reaction would
4 have been.

5 MR. SLIFE: And Judge, just so the record's clear,
6 while it's a wobbler, it would specifically stipulate to
7 felony treatment. So just so you know.

8 THE COURT: Again, again, many times totally ignore
9 that, you know, because -- as a sentencing judge, and so we as
10 sentencing judges can. This stipulated language irritates me
11 every time I see it, because it should say we stipulate to
12 recommend, or we agree to recommend to the court, because the
13 court's not bound by that either way.

14 You can stipulate to recommend a gross misdemeanor
15 treatment and the court can say no, it's felony. You could
16 stipulate to recommend it, that it be felony treatment and the
17 court could say no, I don't think so. So again, that's all --
18 and I've done it both ways and I continue every time. And I
19 assume every judge should do that, because it's not binding on
20 the court. If it was binding on the court, it would take away
21 the sentencing discretion and it would be an improper plea
22 negotiation.

23 And so for all those reasons, and but in particular
24 that I do believe that the only real purpose for that question
25 was to make the victim look like, yeah, he's, you know, he's a

1 bad guy and, you know, so you don't need to worry about the
2 fact that he got shot.

3 Anything else?

4 MS. LEMCKE: The Court's indulgence.

5 (Attorneys confer.)

6 MS. LEMCKE: Your Honor, I just wanted to say with
7 respect to the earlier argument, just so that the record's
8 clear, that in Fortino Sanchez, I know that the defense did
9 not have an expert available to testify as to the effects of
10 the drug use that was at issue there, and that the Supreme
11 Court still said that we should have been able to
12 cross-examine on it.

13 And although the Supreme Court didn't say why, I
14 think the reason is that because inferentially the jury can
15 draw the conclusion as were, you know, they get instructed at
16 the close of the case that you can draw any reasonable
17 inferences from the evidence presented, and they can
18 inferentially take that into consideration when assessing
19 credibility.

20 And so to the extent that they didn't have an expert
21 there, the fact that we don't have an expert at least at this
22 point, although I think you will hear some testimony from the
23 coroner that affect to that end, I don't think that that
24 should be the standard by which you determine, at least at
25 this point, that the evidence is not properly put before the

1 jury. So I just wanted to make that clear where Sanchez is
2 concerned. And I think that's it. Thank you.

3 MR. BATEMAN: I think we have a -- probably this is
4 the reason it's unpublished, because there's no information
5 in it. And so I think to your earlier point, I hope the
6 Supreme Court doesn't go down the road of saying, oh, these
7 are suddenly, you know, worthwhile opinions, you know, for
8 precedential value.

9 Because we're sitting here arguing about facts in a
10 case that we don't know anything about because they're not in
11 the actual decision. We've spent a lot of time arguing about
12 an unpublished decision that was sprung in the middle of a
13 cross-examination.

14 THE COURT: Well, I certainly agree with that, that
15 we don't have sufficient facts in this case and that's -- so
16 it's not as helpful to the court. My other concern is really
17 if this is to be the new standard, where this -- are we
18 suggesting then that every witness you should be able to
19 examine without any basis?

20 Because apparently there appears that there was some
21 basis to believe that this woman, who I think she would have
22 been an adult by the time she testified, 18, 17 or 18, had
23 used drugs. And so if we go down the road of we just get to,
24 every witness that comes up, you get to ask them so have you
25 ever used drugs, illicit drugs.

1 You know, I mean, that's just -- I just don't think
2 that the Supreme Court intends to do that and may -- certainly
3 may if they wish to, but I'm not going there, not until the
4 Supreme Court tells me otherwise, so. Okay. That's the end
5 of that. I've ruled.

6 MR. BATEMAN: I think we were waiting -- I don't
7 know if you've gotten all the jurors. Did he? Can I just
8 briefly --

9 THE COURT: Yes.

10 MR. BATEMAN: -- Your Honor?

11 I think what I may want to do with the gun box is
12 just open the top flap. Not pull the gun out, but just be
13 able to open it and show it. So I don't know if your marshal
14 would want -- I don't know if it's zip-locked in. Nancy, do
15 you want to --

16 THE COURT: Has it been --

17 MS. LEMCKE: I'm sorry. Forgive me.

18 THE COURT: They haven't been opened at all by
19 the --

20 MR. BATEMAN: No, because I -- no, we haven't opened
21 them at all. I wasn't going to go through all of it and
22 open it. I just think we can probably cut around the flap, if
23 you have two minutes.

24 THE COURT: Okay. Don't -- didn't you want the
25 officer who impounded it to do that, no?

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1 MR. BATEMAN: I'd kind of like to do it ahead of
2 time so we're not up here spending five minutes with scissors,
3 as long as defense, you know -- I can do it. My problem is I
4 don't know what is zip-locked in there, and usually your
5 marshal probably doesn't want us opening a box with a gun
6 in it, but who knows how it's secured.

7 THE COURT: Well, I'm fine with -- you know, I
8 really think the jury should see that. I know sometimes you
9 don't do that anymore, or you just do it, you know, with
10 everybody, usually an officer opens it, the person that
11 impounded it, and so there's no question about a chain of
12 custody.

13 And, you know, I know we voir dired the jury a lot
14 about this issue but, you know, when things happen, they don't
15 see what -- there's not that chain of custody established.
16 I'm always concerned that they're worrying about that --

17 MR. BATEMAN: I'm happy to cut it, yeah.

18 THE COURT: -- somehow.

19 MR. BATEMAN: If we open it, can I just have maybe
20 the marshal come up?

21 THE COURT: Oh, yeah. We'll have the marshal come
22 up while --

23 MR. BATEMAN: Okay. That's fine.

24 THE COURT: -- we do that. But I think it's a good
25 idea to do it in front of the jury.

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1 All right. Otherwise we're ready to go? Would
2 you --

3 (Pause in proceeding.)

4 (Jurors enter at 9:27 a.m.)

5 THE COURT: And the record will reflect the presence
6 of all 12 members of the jury, as well as the three
7 alternates. And will counsel so stipulate?

8 MR. BATEMAN: Yes, Your Honor.

9 MS. LEMCKE: Yes, Your Honor.

10 THE COURT: Good morning, ladies and gentlemen. You
11 see it's almost 9:30, and I understand that we had somebody
12 delayed, didn't get here until 9:20. So 9:00 o'clock means
13 9:00 o'clock. Don't be late.

14 Okay. The State may call its next witness.

15 MR. BATEMAN: The State calls Brenda Vaandering.

16 BRENDA VAANDERING, STATE'S WITNESS, SWORN

17 THE CLERK: Please state and spell your first and
18 last name.

19 THE WITNESS: Brenda Vaandering, B-r-e-n-d-a,
20 V-a-a-n-d-e-r-i-n-g.

21 MR. BATEMAN: May I proceed, Your Honor?

22 THE COURT: Yes, you may.

23 MR. BATEMAN: Thank you.

24 DIRECT EXAMINATION

25

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1 BY MR. BATEMAN:

2 Q Ma'am, do you work for the Las Vegas Metropolitan
3 Police Department?

4 A Yes, I do.

5 Q And in what capacity?

6 A I am a senior crime scene analyst.

7 Q All right. What are your job duties as a crime
8 scene analyst?

9 A As a crime scene analyst, it's my job to document
10 the crime scene. We do this through note taking, report
11 writing, diagrams, photographs, as well as developing, lifting
12 and recovering latent prints, and collection and preservation
13 of any and all evidence.

14 Q Do you get training or education in order to do your
15 job?

16 A Yes. I have a bachelor's degree in forensic
17 chemistry. When I was hired by the Las Vegas Metropolitan
18 Police Department, I successfully completed a ten week crime
19 scene analyst academy, which was followed by 12 weeks of field
20 training, where I was in the field being trained by a senior
21 crime scene analyst. Since that time I have completed over
22 500 hours of additional training in the field of crime scene
23 investigation, as well as forensic science.

24 Q And how long have you been working for Las Vegas
25 Metropolitan Police Department?

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1 A I've been employed for approximately 6 1/2 years.

2 Q Did you work in the same capacity anywhere else
3 before Metro?

4 A No.

5 Q Okay. Are you familiar with shows like CSI?

6 A Yes.

7 Q Have you watched them?

8 A Rarely.

9 MS. LEMCKE: I object to the relevance of her
10 watching CSI.

11 THE COURT: Well, overruled. I think that I
12 understand the relevance. Go ahead.

13 BY MR. BATEMAN:

14 Q And how would you compare what you do to what you
15 see on television?

16 A As far as the TV show, they do the job of several
17 people. They do the job of a law enforcement officer, they do
18 the job of a lab technician. Alls we do is go out to the
19 crime scene and process that crime scene and then we book the
20 evidence, and any further processing besides fingerprint
21 process is done by the lab.

22 Q When you say process the scene, what does that mean?

23 A Take notes, take photographs, process for any latent
24 prints at the scene, as well as collect any evidence that is
25 there.

1 Q Now, did you have occasion to be called out to a
2 homicide scene on December 22, 2013, at around 5:00 in the
3 morning?

4 A Yes.

5 Q Were you working graves at that time?

6 A Correct.

7 Q And did you go out there with any other crime scene
8 analysts?

9 A Yes.

10 Q Who did you go out there with?

11 A Kristen Tucker was out there, as well as our
12 supervisor, Jeffrey Smink.

13 Q And if multiple crime scene analysts go out to a
14 scene, do you divide up duties?

15 A Yes.

16 Q And in this particular case, how did you divide up
17 duties?

18 A I did the diagram and collected the evidence, and
19 Kristen Tucker took photographs and wrote the report.

20 Q And I assume you communicate during this process
21 with your other crime scene analysts. So if you're finding
22 something, you're telling the other crime scene analyst --

23 A Yes.

24 Q -- so they can put in a report?

25 A Yes.

1 Q You said you did a -- well, when you got out there,
2 was there crime scene tape up?

3 A Yes.

4 Q And what else did you see when you got out there?

5 A There was crime scene up around the perimeter --
6 crime scene tape up around the perimeter, as well as officers,
7 patrol vehicles, as well as the officers standing by to secure
8 the scene.

9 Q It appeared to you that the scene had been secured
10 at least for your purposes?

11 A Yes.

12 Q What is it -- how do you first decide what you're
13 going to do?

14 A When we arrive, we get briefed by the patrol
15 officers that are there, as well as homicide detectives, and
16 from there overall photographs are taken of the scene as it
17 appeared when we arrived, and then from there sketches are
18 done, as well as any collection of evidence. But photographs
19 are taken first.

20 Q And you said Tucker did the photographs, or you did?

21 A Tucker.

22 Q Tucker. Okay. And then you were tasked with doing
23 a diagram and collecting the evidence that you found
24 potentially relevant to the case?

25 A That's correct.

1 MR. BATEMAN: May I approach your clerk, Your Honor?

2 THE COURT: You may.

3 (Mr. Bateman confers with the clerk.)

4 MR. BATEMAN: May I approach the witness, Your
5 Honor?

6 THE COURT: You may.

7 BY MR. BATEMAN:

8 Q I'm going to show you what's been marked as
9 exhibit -- State's Proposed Exhibit 46. Do you recognize that
10 document?

11 A Yes.

12 Q What is that?

13 A That is the finished computerized diagram of the
14 scene.

15 THE COURT: I can't hear you.

16 MR. BATEMAN: I just need you to speak up a little
17 bit.

18 THE WITNESS: Sorry. It's the computerized diagram
19 of the scene.

20 BY MR. BATEMAN:

21 Q And did you create that?

22 A Yes, I did.

23 Q So this is how you saw the scene on that particular
24 morning, and has some information about relative -- relevant
25 evidence?

1 A That's correct.

2 MR. BATEMAN: Move admission of State's Proposed 46,
3 and request to publish, Your Honor.

4 MS. LEMCKE: No objection.

5 THE COURT: It will be admitted.

6 (State's Exhibit 46 admitted.)

7 THE COURT: And you may publish.

8 BY MR. BATEMAN:

9 Q So you, when you go out to the scene, do you like
10 hand-write a picture of the scene and then go back and use
11 computers to create this?

12 A That's correct. A rough sketch is done and all the
13 measurements are made so that the diagram can be completed on
14 the computer when we get back to the -- to our office.

15 Q This particular scene was where?

16 A It was located at Siegel Suites on Boulder Highway.

17 Q And what are we seeing on this particular scene that
18 you documented?

19 A The scene was located north of Building B.
20 Building B is labeled "Building B." There was an east-west
21 sidewalk that ran in front of the building, as well as parking
22 spaces to the north of it.

23 Q Now, on this particular diagram, do you identify
24 items of evidence that you determined to process or recover
25 and impound?

1 A Yes.

2 Q Specifically what were some of those items? And I
3 guess we can go -- you've actually written it on your crime
4 scene diagram; is that right?

5 A That's correct.

6 Q So Item 1 up in the left, you have an Item 1; is
7 that right?

8 A Yes.

9 Q What was that?

10 A That is the Ruger SR9 handgun, and it was a 9mm
11 semiautomatic handgun. And it's located actually under
12 Vehicle 2. There is a typo on that diagram that says under
13 Vehicle 1, but it was under Vehicle 2.

14 MR. BATEMAN: May I approach the witness with some
15 photographs, Your Honor?

16 THE COURT: Yes.

17 BY MR. BATEMAN:

18 Q I've shown to counsel these little [inaudible]. I'm
19 going to have you flip -- look at these photographs, flip
20 through them. And I'm showing you State's proposed -- State's
21 Proposed Exhibit 17 through 31. So just look through these
22 photos for me and when you're done looking at them, let me
23 know.

24 A [Complies.]

25 Q Do you recognize those photographs?

UNCERTIFIED ROUGH DRAFT

1 A Yes.

2 Q And are those photographs of the scene that we're
3 talking about?

4 A Yes, they are.

5 Q Fair and accurate depiction of what you saw that
6 particular night?

7 A Yes.

8 Q Okay. I'm going to show you one additional. It's
9 State's Proposed Exhibit 47. If you -- is that also a picture
10 of the scene?

11 A Yes, it is.

12 Q Fair and accurate depiction of what you saw?

13 A Yes.

14 MR. BATEMAN: Move admission, Your Honor, of 19
15 through 31.

16 MS. LEMCKE: No objection.

17 THE COURT: 17?

18 MR. BATEMAN: I'm sorry, 17 through 31.

19 THE COURT: Okay. 17 through 31.

20 MS. LEMCKE: No objection.

21 MR. BATEMAN: And 47.

22 THE COURT: And 47.

23 MS. LEMCKE: No objection.

24 THE COURT: Okay. No objection. They'll be
25 admitted.

1 (State's Exhibit 17 through 31 and 47 admitted.)

2 THE COURT: And you may publish at your leisure.

3 BY MR. BATEMAN:

4 Q All right. As we're talking about you on this
5 diagram, you marked a vehicle up here as Vehicle 1; is that
6 right?

7 A That's correct.

8 Q And your Item 1, you said Ruger SR9 handgun under
9 Vehicle 1; is that right?

10 A It's actually under Vehicle 2. That's a typo. I'm
11 sorry.

12 Q And then Vehicle 2 is right here; is that right?

13 A That's correct.

14 Q And it has a little one in the bed of the truck; is
15 that right?

16 A That's correct.

17 Q Is that where the gun would be found?

18 A It was actually underneath the truck.

19 Q I'm going to show you --

20 MR. BATEMAN: And did I request to publish, Your
21 Honor?

22 THE COURT: Yes, you did, and I granted that.

23 MR. BATEMAN: Thank you, Your Honor.

24 BY MR. BATEMAN:

25 Q I'm going to show you picture number -- Exhibit

1 No. 17. This is the truck that is Vehicle No. 2 in your
2 diagram?

3 A That's correct.

4 Q Okay. And showing you already in evidence now
5 State's Exhibit 18, is this the firearm underneath that
6 particular truck?

7 A Yes. It's a picture.

8 Q And you put a -- there's a cone there. Is that
9 something you put there, or is that something that the patrol
10 officers would put there?

11 A Those cones were already placed there by patrol
12 officers before we arrived.

13 Q Is that to identify potential evidence?

14 A That's correct.

15 Q Okay. Showing you 19, is that a closer-up of that
16 firearm?

17 A Yes, it is.

18 Q Now, you recovered the firearm; is that right?

19 A That's correct.

20 Q And can you describe what type of fire -- it was an
21 SR9 handgun, Ruger; is that right?

22 A That's correct.

23 Q And what do you do when you recover a firearm?

24 A The gun is made safe at the scene, so it is unloaded
25 and its condition is photographed. In this case there was a

1 cartridge in the chamber, as well as four cartridges in the
2 magazine that was in the gun.

3 Q You say a cartridge, is that like an unspent
4 cartridge?

5 A That's correct. It's an unfired cartridge.

6 Q Once a cartridge is fired, what happens on a gun
7 like this?

8 A The cartridge case is ejected from the gun and the
9 bullet is fired from the gun.

10 Q And in this particular case, did you also locate any
11 cartridge cases?

12 A We did. We located one cartridge case.

13 Q And is that shown as Item 2 on your diagram? And
14 I'm looking at again, Exhibit 46.

15 A That is correct.

16 Q And you see the two right there on the sidewalk; is
17 that where it was found?

18 A Yes, it was.

19 Q Have you -- you've processed a lot of scenes before;
20 is that right?

21 A Yes.

22 Q And you've probably gone to scenes where multiple
23 shots were fired based upon the evidence; is that right?

24 A Yes.

25 Q Do you always find or is it consistent -- how often

1 do you find a cartridge case or multiple cartridge cases to
2 match the number of shots that were fired?

3 A We always do a thorough search to try to find all
4 cartridges that were fired. In this case we did know that two
5 shots were fired. We -- however, we were only able to locate
6 one cartridge case. And the cartridge cases can be picked up
7 in people's shoes or in tires before the scene is secure,
8 before police arrive. So it's not -- you know, it's not
9 untypical for us not to find every cartridge case.

10 Q In Item 1, I'm going to show you -- excuse me. It's
11 Item 2, Exhibit No. 20. Does that appear to be the sidewalk
12 where the cartridge case was located?

13 A Yes.

14 Q It's got a cone by it already?

15 A That's correct. Patrol placed that cone there.

16 Q Showing you Exhibit 21, is that a closer-up?

17 A Yes, it is.

18 Q And then later on, do you, in Exhibit 31, do
19 something with that cartridge case?

20 A That's correct. After the original photographs are
21 taken, then we mark the evidence with our own placards. So
22 this is showing the cartridge case marked as Item No. 2.

23 Q Exhibit 21 is when you put down your item or your
24 placard where it's located; is that right?

25 A That's correct.

1 Q So you would have also put a number one like this
2 where the gun was located?

3 A Correct.

4 Q Back to the firearm, showing you Exhibit 22, is this
5 a different view of the truck where you found -- Vehicle No.
6 2, where you found the firearm?

7 A Correct. That's the right side of the vehicle.

8 Q Passenger side?

9 A Yes.

10 Q Exhibit 23, is that just closer up?

11 A Correct.

12 Q And then 24, closer up of that firearm?

13 A That's correct.

14 Q And as I stated before, Exhibit 26 is where you put
15 your Placard No. 1?

16 A Yes. And it is actually not under the vehicle so
17 that we can see it when it's photographed.

18 Q The placard?

19 A Correct.

20 Q And with regard to the cartridge case, did you also
21 go through the same process of collection?

22 A Yes.

23 Q And I think you already testified you put it in some
24 sort of an evidence bag or box?

25 A Correct.

1 Q When you say made safe the firearm, how do you do
2 that? Did you already testify to that?

3 A The -- well, the magazine is taken out of the gun
4 and then the slide is racked back so that if there is a
5 chamber in the cartridge, that that -- or a cartridge in the
6 chamber, sorry, then that is ejected from the gun.

7 Q And then as far as the gun and your collection of
8 the magazine and the gun, is it sometimes your practice to
9 either swab a gun for DNA or look for fingerprints on a
10 firearm?

11 A Yes. That processing is typically done back at our
12 office. And the gun is first swabbed for DNA from the
13 textured parts, which would be the grips, the striations on
14 the -- or not the striations, but the part of the slide where
15 you would pull it back, where you would leave DNA most likely,
16 and then also the trigger. And the magazine is also swabbed.
17 And the feed part, where you feed in the cartridge is swabbed,
18 as well as the base of the magazine.

19 Q And you said you do that normally back at your
20 office?

21 A That's correct.

22 Q So how do you collect the evidence so that you don't
23 disturb that?

24 A They are placed in bags and then taken back to the
25 lab.

1 Q Are you wearing gloves when you're doing this?

2 A Correct.

3 Q So you're trying not to touch -- are you trying not
4 to touch the gun in places where it might disturb any
5 evidence?

6 A Correct.

7 Q Now, did you, pursuant to subpoena, bring the gun
8 and the cartridge case and all that to court today?

9 A Yes, I did.

10 MR. BATEMAN: May I approach your clerk, Your Honor?

11 THE COURT: You may.

12 (Mr. Bateman confers with the clerk.)

13 MR. BATEMAN: May I approach your -- the witness,
14 Your Honor?

15 THE COURT: Marshal, do you want to...

16 MR. BATEMAN: Yeah.

17 BY MR. BATEMAN:

18 Q All right. First I'm going to show you what's been
19 marked -- well, let me ask you this. When you collect the
20 firearm, the evidence that's at the scene and you process it
21 for whatever processing you do, what happens to the item of
22 evidence at that point?

23 A It is then packaged and it is transferred to the
24 evidence vault. We put labels on it indicating what's in the
25 package marked with the event number from the case, where the

1 scene was, and what items are in that package. And then that
2 is sealed and placed in a secured area for the evidence vault
3 to come and pick it up and transfer it to them for storage.

4 Q And then on this particular evidence bags or boxes,
5 you label it with your information; is that right?

6 A That's correct.

7 Q And so every -- does every time someone takes
8 possession of this box, they're supposed to put their
9 information on it to keep the chain of custody; is that right?

10 A That's correct.

11 Q I'm going to show you what's been marked as State's
12 Proposed Exhibit 55. Do you recognize that box?

13 A Yes, I do.

14 Q And what is that?

15 A This is Package 1 from Event 131222-0648, and it
16 contains the Ruger SR9 semiautomatic handgun, one cartridge,
17 as well as the magazine and four cartridges.

18 Q And you know that how?

19 A I know that based on the label that is on the
20 package.

21 Q And did you put that label on there?

22 A Yes, I did.

23 Q And it's got your signature?

24 A Correct.

25 Q P number?

1 A Correct.

2 Q And the event number you read is the event number
3 associated with this case?

4 A That's correct.

5 Q There's some blue and red tape on this box; is that
6 right?

7 A That's correct.

8 Q What does that signify?

9 A Some of the red tape is the initial tape that I put
10 on there. The blue tape is what the forensic lab uses once
11 they open the package and reseal it.

12 Q So this appears to you to be having been sent to a
13 forensic lab for testing?

14 A That's correct.

15 Q You're familiar with that, right?

16 A Yes.

17 MR. BATEMAN: Okay. I'd move admission of State's
18 Proposed Exhibit 55. And if I can follow up -- well, that's
19 my motion.

20 THE COURT: Any objection?

21 MS. LEMCKE: No, Your Honor.

22 THE COURT: 55 is the box.

23 BY MR. BATEMAN:

24 Q Okay. And I'm looking at the back of the box and
25 it's got some orange ties; is that right?

1 A That's correct.

2 Q Is that how you secure the gun in the box?

3 A Correct. That's used to secure the firearm into the
4 box.

5 Q And so when we open this box, the gun's not going to
6 fall out?

7 A No.

8 Q And when you put it in this box, the gun's been made
9 safe; is that right?

10 A That's correct.

11 Q So I'm going to ask you to just cut open the portion
12 of the box so that we can lift up the flap, if you don't mind.

13 A [Complies.]

14 Q Okay. Now you've got it open.

15 A Correct.

16 Q Can you pull out for me -- there's another bag in
17 here; is that right?

18 A That's correct.

19 Q And it says -- what does it say on it?

20 A It says, Items No. 1A and 1B.

21 Q And what would be in that bag that's in the box?

22 A This is the cartridge that was in the chamber, as
23 well as the magazine and the cartridges that were in the
24 magazine.

25 Q Now, are they in bags within that bag, or are they

1 loose?

2 A They should be.

3 Q Can we cut the top of that as well?

4 A [Complies.]

5 MR. BATEMAN: So I'm going to -- I moved admission
6 of the total, so what I'm just going to ask is later on if we
7 can mark the -- the items inside as 1A, B and C, as I go
8 through --

9 THE COURT: How about 55A, B and C?

10 MR. BATEMAN: I'm sorry. 55A, B and C.

11 THE COURT: Okay. So 55's been admitted.

12 (State's Exhibit 55 admitted.)

13 THE COURT: And do you want to -- are you moving for
14 A, B and C yet?

15 MR. BATEMAN: Not just yet.

16 THE COURT: Okay.

17 BY MR. BATEMAN:

18 Q Okay. So first I'm going to have you just hold that
19 up if I could. 55, that's the firearm; is that right?

20 A That's correct.

21 Q And is that an automatic or a revolver?

22 A It's a semiautomatic.

23 Q It's a semiautomatic.

24 THE COURT RECORDER: Mr. Bateman.

25 THE COURT: Mr. Bateman, you're in the dead zone

UNCERTIFIED ROUGH DRAFT

1 there.

2 MR. BATEMAN: Sorry.

3 THE COURT: Yeah.

4 BY MR. BATEMAN:

5 Q What's the difference between a semiautomatic and a
6 revolver?

7 A A semiautomatic has a magazine that feeds ammunition
8 into the firearm. A revolver has a chamber where it rotates.

9 Q And with regard to when a shot is fired, that
10 cartridge that you talked about that you found, what's the
11 difference between with cartridges that are expended, the
12 difference between a semiautomatic and a revolver?

13 A The cartridge case will automatically be ejected
14 from a semiautomatic firearm, whereas a revolver, it will stay
15 in that chamber once it's fired.

16 Q And with regard to this gun, you swab -- what did
17 you do to process this gun for either prints or DNA?

18 A The grips were swabbed for DNA, the trigger was
19 swabbed for DNA, as well as this area of the slide. And then
20 the rest of the firearm was processed for fingerprints.

21 Q Okay. As far as the DNA, why did you choose the
22 locations that you did to swab?

23 A We swab the textured areas of the gun because that's
24 the most likely area where you would leave skin cells behind
25 that we could get DNA from.

1 Q And the prints, you did what to process for prints?

2 A I processed it using cyanoacrylate fuming, as
3 well -- which was followed by rhodamine 6G, which is a
4 chemical dye.

5 Q And do you know whether you found --

6 THE COURT: I need you to keep your voice up,
7 because you're facing away from the mike.

8 THE WITNESS: Sorry.

9 BY MR. BATEMAN:

10 Q Did you find any -- when you processed the firearm,
11 were you finding any positive results for prints?

12 A No prints were found on the firearm.

13 Q Now, you talked about the magazine before as
14 something different than the revolver. I'm going to show
15 you -- actually, first let me show you -- this is item -- the
16 bag is marked 1A.

17 MR. BATEMAN: But it will be 55A, Your Honor --

18 THE COURT: All right.

19 MR. BATEMAN: -- as State's proposed exhibit.

20 BY MR. BATEMAN:

21 Q What is that?

22 A This is the cartridge that was in the chamber of the
23 firearm.

24 Q So you had to eject that to make the firearm safe?

25 A That's correct.

1 Q By having a cartridge in the firearm chamber, could
2 some -- the next time someone pulled the trigger, would it
3 fire that cartridge?

4 A Yes, it would.

5 MR. BATEMAN: Okay. Move admission of 55A, Your
6 Honor.

7 THE COURT: Any objection?

8 MS. LEMCKE: No, Your Honor.

9 THE COURT: It will be admitted.

10 (State's Exhibit 55A admitted.)

11 BY MR. BATEMAN:

12 Q I'm going to show you this particular bag. It says
13 Item No. 1B. You've written ammunition magazine on it; is
14 that right?

15 A That's correct.

16 Q So is that exactly what it is?

17 A This is the ammunition magazine that was taken out
18 of the firearm.

19 Q And it had four additional cartridges in it; is that
20 right?

21 A That's correct.

22 Q Now, what did you do to process, if anything, this
23 particular item of evidence?

24 A This item was also swabbed for DNA, and we swabbed
25 the upper feeding part right here, as well as the base of the

1 magazine where you would put it into the gun. And then it was
2 processed for latent prints in the same way the gun was, with
3 cyanoacrylate fuming followed by rhodamine 6G.

4 Q And did you have any positive results with regard to
5 the latent print processing?

6 A Yes. One latent print was photographed that was
7 found on this magazine.

8 Q Are you the person that would do any sort of
9 comparisons with regard to that print?

10 A No.

11 Q What -- did you take photographs of that print?

12 A Yes.

13 MR. BATEMAN: I'd move admission of the magazine,
14 Your Honor, as 55B.

15 THE COURT: Any objection?

16 MS. LEMCKE: No objection.

17 THE COURT: It will be admitted.

18 (State's Exhibit 55B admitted.)

19 BY MR. BATEMAN:

20 Q Lastly from this box you have this bag, which is
21 also marked Item 1B, but you described it as four cartridges
22 from the magazine; is that right?

23 A That's correct.

24 Q And that's exactly what you've written on it is?

25 A Yes.

1 Q Same as the one that was in the chamber?

2 A That's correct. These are the four that were taken
3 out of that magazine.

4 Q Now, can you tell from the top of those cartridge
5 cases what type of cartridge case they are, what maker?

6 A The head stamp is FC 9mm Luger.

7 Q Is that similar to the cartridge, the actual
8 cartridge case that was found at the scene?

9 A Yes. That was head stamped FC 9mm Luger as well.

10 MR. BATEMAN: I'd move admission of this package,
11 Your Honor, as 55C.

12 THE COURT: Any objection?

13 MS. LEMCKE: No, Your Honor.

14 THE COURT: It will be admitted. Thank you.

15 (State's Exhibit 55C admitted.)

16 BY MR. BATEMAN:

17 Q Now, did you process any of the actual unspent
18 cartridges?

19 A No.

20 Q And why not?

21 A We have done testing prior, and because of its --
22 it's a smaller surface, and the action used to put that into
23 the gun, latent prints are typically not recovered on them.

24 Q What about DNA?

25 A It's not in our policy to swab them for DNA.

1 Q Is that because you generally don't find it?

2 A I would assume so. It's just been in our policy
3 that we don't swab those for DNA. We swab the parts of the
4 gun that would be handled the most.

5 Q Okay. I got you.

6 MR. BATEMAN: All right. I'm going to give this to
7 the marshal, if you don't mind.

8 BY MR. BATEMAN:

9 Q I'm going to show you what's also been marked as
10 State's Proposed Exhibit 56. Do you recognize that?

11 A Yes, I do.

12 Q What is that?

13 A This is Package No. 2 from the scene, which is the
14 cartridge case that was recovered.

15 Q And just have you [indicating], if you don't mind.

16 MR. BATEMAN: Actually, I'll move admission of --
17 well, let me follow up.

18 BY MR. BATEMAN:

19 Q Same type of procedure with regard to this bag as
20 far as the label, the same event number, your information on
21 it and the blue and red tape; is that right?

22 A Correct.

23 MR. BATEMAN: Move admission of Proposed 56, Your
24 Honor.

25 MS. LEMCKE: No objection, Your Honor.

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1 THE COURT: It will be admitted.
2 (State's Exhibit 56 admitted.)
3 MR. BATEMAN: I'll ask if I can have permission to
4 have her open.
5 THE COURT: All right. Please do.
6 THE WITNESS: [Complies.]
7 BY MR. BATEMAN:
8 Q And what is included or what do we have in -- as the
9 item in evidence?
10 A This is Item No. 2, and it is the cartridge case
11 that was recovered from [inaudible].
12 Q And that's the one that was photographed as well; is
13 that right?
14 A Correct.
15 Q Okay. And this matches the cartridges that we
16 talked about --
17 A Correct.
18 Q -- earlier?
19 THE COURT: Do you want to mark that separately?
20 MR. BATEMAN: I think it's fine just because it's
21 the one that's in there, Your Honor.
22 THE COURT: Okay. So 56 will be the envelope and
23 contents, which is the recovered cartridge case.
24 THE CLERK: I have it already marked as A, so that's
25 how it's admitted.

1 MR. BATEMAN: That's fine. She's way ahead of me.

2 THE COURT: Okay. We'll mark that as 56A, and that
3 will be admitted unless there's an objection.

4 MS. LEMCKE: [No audible response.]

5 THE COURT: No. It will be admitted. Thank you.

6 (State's Exhibit 56A admitted.)

7 BY MR. BATEMAN:

8 Q I'm going to show you State's Proposed Exhibit 57.
9 What is that?

10 A This is Package 5, from the same event, and it has
11 the location of the incident, as well as my initials, P number
12 and signature on it.

13 Q And what do we expect to find in that bag?

14 A It contains two swabs for possible DNA, two
15 different items.

16 Q So what's in there is the swab that you used to --
17 on that firearm to swab the locations that you swabbed?

18 A That's correct.

19 Q As well as the magazine?

20 A Yeah. There's a swab for the gun as well as a swab
21 for the magazine.

22 Q So there's two different swabs in there --

23 A That's correct.

24 Q -- is that right?

25 Okay. And then same process, it has your label, has

1 the two different types of stickers on it; is that right?

2 A Correct.

3 Q And on the bottom here, do you know that name there?
4 Does that say Beata Vida?

5 A It appears so.

6 Q Okay. Would that be someone from the forensic lab?

7 A Yes.

8 Q And that's where they put the blue tape back on
9 after they process?

10 A Correct.

11 MR. BATEMAN: I'll move admission of 57, Your Honor.
12 I'm not going to open 57.

13 THE COURT: Any objection?

14 MS. LEMCKE: No.

15 THE COURT: It will be admitted.

16 (State's Exhibit 57 admitted.)

17 BY MR. BATEMAN:

18 Q The last one, State's Proposed Exhibit 58, let me
19 show you that bag. What's in that bag?

20 A This is our latent print envelopes. Again, it is
21 marked in the same way with the event number, as well as my
22 name, my P number and the location of the scene. And in here
23 are the photographs of the latent prints that were taken from
24 that ammunition magazine.

25 Q And what's a latent print?

UNCERTIFIED ROUGH DRAFT

1 A A latent fingerprint is the friction ridges on your
2 fingers and palms. When you handle an item, the oils in your
3 skin will leave behind the friction ridges on that item, and
4 that is what we consider a latent print if it is invisible to
5 the naked eye.

6 Q And so how do you --- how do you document that print;
7 is it in a photograph, is it on a card, what do you do?

8 A In this case, because a chemical process was used,
9 the cyanoacrylate fuming makes the print white, and that is
10 photographed. And then a dye stain is used to enhance it, and
11 a laser is used to view that dye stain, and then that is also
12 photographed.

13 Q And from the photograph, is that what the forensic
14 analysts then compares to known fingerprints?

15 A Correct.

16 Q And that's what should be in here?

17 A The photographs that I took are what should be in
18 here.

19 Q Okay. And that's from just the --- the only print
20 you found was on the magazine; is that right?

21 A Yes. There was only one print on the magazine. But
22 several exposures were taken, and it was taken just with the
23 cyanoacrylate on there and then also with the rhodamine 6G.
24 So it's just one print, but there will be several photos.

25 MR. BATEMAN: I'll move admission of Proposed

1 [inaudible].

2 THE CLERK: Of which one?

3 THE COURT: 58.

4 MR. BATEMAN: Proposed 58.

5 THE COURT: Any objection?

6 MS. LEMCKE: No, Your Honor.

7 THE COURT: It will be admitted.

8 (State's Exhibit 58 admitted.)

9 MR. BATEMAN: The Court's indulgence.

10 (Attorneys confer.)

11 BY MR. BATEMAN:

12 Q All right. I'm going to show you some items already
13 in evidence, just generally of the crime scene, if you don't
14 mind. And Exhibit No. 6, is the crime scene over to the left
15 of the crime scene tape?

16 A That's correct.

17 Q And we'll show you a closer-up. State's Exhibit
18 No. 8. The crime scene generally is where?

19 A Is on the sidewalk right in front of that vehicle.

20 Q In front of the Chevrolet?

21 A Correct.

22 Q Can you just circle it on the screen?

23 A [Complies.]

24 Q We already talked about you found the -- the cone
25 that's on the left, is that where the cartridge case was?

1 A Correct.

2 Q And then the cones near the Chevrolet is where the
3 gun was ultimately found; is that right?

4 A Correct.

5 Q And it's actually closer to the passenger's side of
6 the Chevrolet?

7 A Correct. Yes.

8 Q I want to show you Exhibit No. 10. Is that a
9 closer-up of the crime scene as well?

10 A Yeah. It's a view from down the sidewalk.

11 Q Then Exhibit No. 13, a little bit closer up as well,
12 right?

13 A That's correct.

14 Q What do we see in that particular photograph? I'm
15 sorry. I don't think I identified it as Exhibit No. 13.

16 A You can again see the cone where the cartridge case
17 is, as well as items of clothing that were cut off when
18 medical arrived.

19 THE COURT: If you'd circle where the cone is.

20 THE WITNESS: [Complies.]

21 BY MR. BATEMAN:

22 Q There were some items down here in the bottom that
23 appear to be white. Do you know what those are?

24 A That's medical debris from when medical attended to
25 the victim.

UNCERTIFIED ROUGH DRAFT

1 Q Okay. And then there appears to be an item right
2 here.
3 A Yeah. That is a cellphone.
4 Q And you recovered that as well?
5 A That was recovered by detectives.
6 Q Detectives took it?
7 A Yes.
8 Q Homicide detectives?
9 A Correct.
10 Q And then this, is this clothing here in the middle?
11 A That's correct.
12 Q And did you recover that clothing to photograph it?
13 A Yes, I did.
14 Q And what do you do to recover and photograph the
15 clothing?
16 A The photograph -- or the clothing was laid out and
17 photographed, and any defects in the clothing are indicated on
18 those photographs, and then they are packaged and impounded
19 once they are dried.
20 Q So you spread out the clothing to try to find
21 defects; is that what you said?
22 A That's correct.
23 Q And when you say defects, what are you referring to?
24 A In this case it would be bullet hole defects.
25 Q I'm going to show you -- actually, I don't know that

UNCERTIFIED ROUGH DRAFT

1 I've --

2 MR. BATEMAN: May I approach the witness, Your
3 Honor?

4 THE COURT: Yes.

5 BY MR. BATEMAN:

6 Q Showing you State's Proposed Exhibits 48, 49 --
7 sorry, 48 through 54. Will you flip through those for me real
8 quick, tell me when you're done.

9 A [Complies.]

10 Q Do you recognize those photographs?

11 A Yes.

12 Q And are those photographs of what?

13 A Those are photographs of the clothing that were
14 taken at the scene.

15 Q And true and accurate depiction of -- well, are
16 these photo -- is the clothing laid out in such a way that it
17 can be photographed?

18 A Yes.

19 Q So it's not in the pile that we see on that previous
20 Number 13?

21 A Correct. It's laid out on paper bags and photos are
22 taken of it.

23 Q Speak up for me.

24 A They're laid out on paper bags and then photos are
25 taken to show the defects and to show the clothing in its

1 entirety.

2 MR. BATEMAN: Okay. Move admission of 48 through
3 54, and request to publish.

4 MS. LEMCKE: No objection.

5 THE COURT: They'll be admitted.

6 (State's Exhibit 48 through 54 admitted.)

7 THE COURT: And you may publish.

8 BY MR. BATEMAN:

9 Q Can you just describe the -- were there three items
10 of clothing that you found?

11 A Yes.

12 Q And what were the three?

13 A It was a white tank top style shirt, a blue T-shirt,
14 as well as a long sleeve black hooded jacket.

15 Q I'm going to show you 48. Is that the undershirt?

16 A Yes. That is the white tank top.

17 Q It was supposed to be white; is that right?

18 A That's correct.

19 Q So any of the red would presumably be?

20 A It's apparent blood.

21 Q You didn't test it for blood?

22 A No.

23 Q Just kind of obvious?

24 A Yeah. It came from the victim who was bleeding at
25 the time.

1 Q Right. You have a mark on here, this pink, was that
2 there when you find it, or is that something you put on there?

3 A That is a scale and a label that we put on there to
4 indicate where the defects are on the shirt.

5 Q And is that in the upper right shoulder or upper
6 left shoulder?

7 A Upper right shoulder.

8 Q Showing you Exhibit 49, is that just a closer-up, or
9 is that a different view?

10 A That, I believe, is the back of the shirt.

11 Q Showing you exhibit number -- well, do you have your
12 report as to the defects in the -- in the shirts?

13 A I just stated that there were hole defects in the
14 shirt. In the tank top there was one in the front and one in
15 the back.

16 Q Oh, I got you. In the back shoulder, got you.

17 Okay. Showing you Exhibit No. 50, what is that?

18 A That is the blue T-shirt that was also in that pile
19 of clothing.

20 Q So does this appear to be apparent blood on that as
21 well?

22 A That's correct.

23 Q Okay. And you've marked two defects as well; is
24 that right?

25 A That's correct.

1 Q Where are those?

2 A That is in the front of the shirt. So the front
3 right and then front center.

4 Q Showing you Exhibit 51, what is that?

5 A That is the front of the long sleeve jacket.

6 Q And when you found it, was it unzipped as a result
7 of the -- well, you don't know why it was unzipped, but it was
8 unzipped?

9 A Yeah. This is how we found it. Once we
10 straightened it out, it was unzipped.

11 Q Showing you Exhibit 54, is that -- what are those?

12 A That is the back of the black jacket.

13 Q And what are the pink marks?

14 A They indicate hole defects in the clothing.

15 Q Showing you Exhibit 52, what do we see in 52?

16 A That is just showing that in the right front pocket
17 there was an iPod.

18 Q So the right -- did this particular jacket have
19 pockets towards both sides of the front?

20 A Yes.

21 Q Kind of lower?

22 A Mm-hmm.

23 Q Is that yes?

24 A Yes. Sorry.

25 Q And would that iPod be the only thing that was found

1 in the pockets?

2 A Yeah. That's the only thing that was recovered from
3 the pockets of the jacket.

4 Q And it was recovered from the right pocket?

5 A Correct.

6 Q And it appears to have a cord on it; is that right?

7 A Yes.

8 Q So it was -- showing you 53, is this a closer-up?

9 A Yes, it is.

10 Q Have blood on it, or apparent blood?

11 A Yes, it does.

12 Q And that's how you found it in the pocket?

13 A Correct.

14 Q Loose?

15 A Yes.

16 MR. BATEMAN: The Court's indulgence.

17 (Attorneys confer.)

18 BY MR. BATEMAN:

19 Q Let me follow up with one last question on the
20 swabbing of the firearm. Did you use one swab for the
21 entirety of the gun?

22 A Yes.

23 Q So the swab you used, you talked about swabbing the
24 handle and some of the ridges on the slide; is that right?

25 A Correct.

UNCERTIFIED ROUGH DRAFT

1 Q So you would have just used the one swab for
2 everything?

3 A Yes.

4 Q And would that be the same for the magazine, you
5 used one swab for whatever you're swabbing on the magazine?

6 A Correct.

7 Q Okay. Did you -- did you do any -- when you go out
8 to the scene, do you -- are all of the items of potential
9 evidence identified for you, or do you make some effort to
10 kind of look for evidence?

11 A We do a thorough search of the scene to identify
12 evidence.

13 Q Did you find any other firearms or any evidence of
14 other firearms at the scene?

15 A No other items of firearm evidence or firearms were
16 found at the scene.

17 MR. BATEMAN: I'll pass the witness, Your Honor.

18 THE COURT: Cross.

19 MS. LEMCKE: Could we approach, Your Honor?

20 THE COURT: Of course.

21 (Bench conference - not transcribed.)

22 THE COURT: Ladies and gentlemen, we're going to
23 take a restroom recess at this time, 15 minutes, and so I'll
24 need you back here at 10:25.

25 So during this recess, it is your duty not to

1 converse among yourselves or with anyone else on any subject
2 connected with the trial, or read, watch or listen to any
3 report of or commentary on the trial by any person connected
4 with the trial or by any medium of information, including
5 without limitation newspaper, television, radio or Internet,
6 and you are not to form or express an opinion on any subject
7 connected with this case until it's finally submitted to you.

8 We'll be in recess until 10:25.

9 (Jurors recessed at 10:09 a.m.)

10 THE COURT: Thank you. We're off the record.

11 (Court recessed at 10:10 a.m. until 10:30 a.m.)

12 (Jurors reconvene at 10:30 a.m.)

13 THE COURT: The record will reflect the presence of
14 the defendant with his counsel, the deputies district attorney
15 prosecuting the case, all officers of the court, all 12
16 members of the jury, as well as the three alternates. Will
17 counsel so stipulate?

18 MS. LEMCKE: Yes, Your Honor.

19 MR. BATEMAN: Yes.

20 THE COURT: Thank you. You may proceed.

21 MS. LEMCKE: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MS. LEMCKE:

24 Q So Ms. Vaandering, so when a crime scene is
25 identified, Metro generally first responds; is that right?

UNCERTIFIED ROUGH DRAFT

1 A That's correct.

2 Q And when they go out, they'll actually cordon

3 off a -- the area around the crime scene?

4 A Correct.

5 Q They'll put up tape?

6 A Yes.

7 Q Yellow tape?

8 A Yes.

9 Q That's what we commonly see in TV and in real life?

10 A That's correct.

11 Q And they do that so that they can secure the scene?

12 A Yes.

13 Q Preserve it as well as they can?

14 A Yes.

15 Q Make sure that the evidence is photographed and

16 collected in the state that it is found right after the

17 offense?

18 A Correct.

19 Q And they did that in this case?

20 A Yes, they did.

21 Q The responding officers responded relatively

22 quickly?

23 A Yes.

24 Q And they secured the scene?

25 A Yes.

UNCERTIFIED ROUGH DRAFT

1 Q Put the yellow tape up and around the area?

2 A That's correct.

3 Q And that allowed you to come in and do your kind of
4 canvass to look for evidence and impound things that might be
5 relevant to the matter?

6 A Correct.

7 Q And so when you indicated that you had information
8 that there were two shots fired --

9 A Yes.

10 Q -- not three shots?

11 A From what we indicated it was two, from what I had
12 heard.

13 Q Okay. So let me rephrase. Not more than two, just
14 two?

15 A That's what I recall, yes.

16 Q And so you were looking for evidence of those shots,
17 those two shots that had been fired?

18 A Correct.

19 Q And one of the things that you might find would be
20 casings that are ejected from the gun?

21 A That's correct.

22 Q And you indicated that you found one?

23 A Correct.

24 Q But you didn't find two?

25 A No.

1 Q And but you did search the area to try to find that
2 second casing?

3 A Yes, we did.

4 Q Now, you did a diagram of the crime scene, and I'm
5 going to show you, it's up on the ELMO, been marked and
6 admitted as State's Exhibit 46. That's your diagram, right?

7 A Yes.

8 Q And I just want to point a couple things just for
9 clarification for the jury. You -- the lower part of the
10 diagram where it says "Building B," that is part of the Siegel
11 Suites, is it not?

12 A That's correct.

13 Q And it's one of the buildings that comprises the
14 Siegel Suites?

15 A Correct.

16 Q It's one of the buildings that has the rooms in it?

17 A Yes.

18 Q And this particular diagram where you see this
19 Building B, it does not represent the entirety of that one
20 side of Siegel Suites?

21 A No.

22 Q It's only a portion of it?

23 A Correct.

24 Q And in fact, when you were doing this diagram, what
25 you were really trying to diagram for the most part was the

1 scene where the shooting actually took place?

2 A That's correct.

3 Q And not the full length of the Siegel Suites itself?

4 A Correct.

5 Q And now, just for clarification, there is a little
6 typo, and I just kind of wanted to clarify that with you. On
7 the diagram you indicate that Item No. 1, which is the Ruger
8 SR9 handgun, was found under Vehicle 1; is that right?

9 A That is what the diagram says, yes.

10 Q And Vehicle 1, that would be the Dodge Durango
11 that's parked actually kind of across the parking lot from
12 the -- from where the shooting actually took place?

13 A Correct.

14 Q And the gun that you recovered was actually around
15 Vehicle 2; is that right?

16 A It was under Vehicle 2, correct.

17 Q And so when it says on the diagram that the handgun
18 was under Vehicle 1, it -- you actually meant Vehicle 2?

19 A That's correct.

20 Q I just wanted to clarify so the jury knows. And
21 then I'm going to --

22 MS. LEMCKE: If I may approach.

23 THE COURT: You may.

24 BY MS. LEMCKE:

25 Q I'm going to show you what's been marked for

1 identification as Defense C and Defense A and Defense B.
2 Thank you for keeping those in order. Defense F, Defense S as
3 in Sam, Defense Q, Defense R, Defense D, and then Defense E,
4 and ask you to look at those photographs for me.

5 Do those fairly and accurately depict the crime
6 scene as you recall it that evening?

7 A Yes.

8 Q And into the early morning hours --

9 A Well, that morning.

10 Q Morning, I guess I should say.

11 And then same thing with the photographs of the gun
12 and the bullets, does that fairly and accurately depict the
13 gun and the bullets that you recovered?

14 A Yes.

15 Q As well as the magazine?

16 A Yes.

17 MS. LEMCKE: Okay. Your Honor, I'd move for the
18 admission of those exhibits.

19 THE COURT: Any objection?

20 MR. BATEMAN: No.

21 THE CLERK: A, B, C, D, E, F, S, Q?

22 MS. LEMCKE: Yes.

23 THE COURT: R, D and E.

24 THE CLERK: Oh, okay. I have those too.

25 THE COURT: Those will all be admitted.

UNCERTIFIED ROUGH DRAFT

1 (Defendant's Exhibit A THROUGH F admitted.)

2 (Defendant's Exhibit Q, R, S admitted.)

3 BY MS. LEMCKE:

4 Q Okay. Now I'm going to show you -- so we have this
5 diagram up here which diagrams the scene and the immediate
6 area. I just wanted to show you this Defense Proposed
7 Exhibit C. Does that depict that scene that's in that
8 diagram?

9 A Yeah. It's a -- it's a view from up on the -- on a
10 higher story of Building B. So it's an elevated view.

11 Q Okay. And so it's just looking down on the vehicles
12 that are diagrammed in your diagram?

13 A Correct.

14 Q And then -- okay. Then going to Defense B as in
15 boy, and I'll take those down. This is a photograph of the
16 scene itself kind of from across the parking lot; is that
17 right?

18 A That's correct. It's looking at Building B.

19 Q And it's also looking at that Chevrolet truck which
20 is the vehicle under which the gun was found?

21 A Correct.

22 Q And then going to Defense Exhibit F, that's a
23 close-up view of that vehicle depicted in the previous
24 photograph that has the gun underneath it?

25 A That's correct.

1 Q And then moving on to Defense Exhibit S, again, this
2 is a closer-up view kind of moving in now toward that scene;
3 is that right?

4 A That's correct.

5 Q And you can see that Building B behind -- behind
6 where the cone is; is that right?

7 A That's correct.

8 Q And then going on to Defense Q, again, just for
9 orientation now, so this is kind -- this is still at the
10 scene, correct?

11 A Correct.

12 Q And it's actually looking kind of westward-ish down
13 the length of that Siegel Suites Building B?

14 A That's correct.

15 Q And again just for orientation, the truck that you
16 see in the photograph that is the grayish one with the cone in
17 front of it, again, that's the vehicle where the gun was
18 recovered?

19 A Correct.

20 Q And then in Defense R, I'm going to show you now,
21 this is looking just the opposite direction, so it would be
22 looking eastwardly down the side of Building B; is that right?

23 A Yes.

24 Q And then last but not least, and I think we've seen
25 these before, but I just have a couple questions. In Defense

1 D, I'm showing you, that is the gun that was recovered from
2 underneath the truck?

3 A That's correct.

4 Q And the cartridge or the bullet that is sitting
5 above the weapon, that's the one that was in the chamber; is
6 that right?

7 A The cartridge, yes.

8 Q Cartridge, yes. And then the four that you see to
9 the left of the gun, those were the four cartridges that were
10 actually in the magazine?

11 A That's correct.

12 Q That were taken from the magazine?

13 A Yes.

14 Q And then in Defense E, again, this is a closer-up
15 shot of the magazine, correct?

16 A That's correct.

17 Q And the four cartridges that were found within the
18 magazine?

19 A Correct.

20 Q Now, it's my understanding that the magazine was --
21 you did a DNA swab from the magazine?

22 A That's correct.

23 Q And you did two DNA swabs from the handgun?

24 A I did one swab from the handgun and one from the
25 magazine.

1 Q Okay. But there -- I'm sorry. So there were two
2 locations that you swabbed on the handgun?

3 A Three locations.

4 Q Three locations.

5 A Yes.

6 Q But it was done with a single swab?

7 A Correct.

8 Q And then on the magazine, that was a different swab
9 that was used?

10 A Correct.

11 Q And those were the only items that were swabbed for
12 DNA?

13 A Correct.

14 Q The bullets were not swabbed for DNA?

15 A No.

16 THE COURT: Is that cartridges?

17 THE WITNESS: Cartridges, yes.

18 MS. LEMCKE: Cartridges. I call them bullets.

19 Forgive me. Cartridges, yes.

20 The Court's indulgence.

21 (Pause in proceeding.)

22 MS. LEMCKE: I have nothing else, Your Honor.

23 MR. BATEMAN: I just need two quick questions.

24 REDIRECT EXAMINATION

25

1 BY MR. BATEMAN:

2 Q Were any -- Ms. Lemcke was referring to bullets.

3 Can you describe what a bullet is --

4 A A bullet --

5 Q -- in your terms?

6 A A bullet is the projectile that comes out of the
7 firearm. So a cartridge is composed of the cartridge case
8 which has the gunpowder in it which is used when it's fired,
9 and then the bullet sits on top of that. So the cartridge is
10 the full -- it includes the cartridge case and also the
11 bullet.

12 Q The cartridge case has the powder in it?

13 A Yes.

14 Q That's what's ignited and it shoots the bullet out
15 the gun?

16 A Correct.

17 Q And then the cartridge case is ejected?

18 A Yes, on a semiautomatic handgun.

19 Q Did you look for bullets? You heard -- you said
20 there was two shots. Did you look for bullets while you were
21 out there?

22 A Yeah. A search was conducted for bullets as well.

23 Q So the bullet again, is the thing that shoots out of
24 the gun?

25 A Correct.

UNCERTIFIED ROUGH DRAFT

1 Q So is it sometimes hard to find bullets?

2 A It is. It depends, you know, if you have landscaped
3 areas and rock areas, it's really hard to find the bullets in
4 those -- in that media.

5 Q The magazine, you were shown pictures of the
6 magazine and the remaining cartridges.

7 A Correct.

8 Q One was in the chamber and you had four in the
9 magazine; is that right?

10 A That is right.

11 Q Do you remember how many total cartridges, unspent
12 fire shot -- unspent cartridges that magazine could hold?

13 A I can refer to my report.

14 Q Would you have that in your report?

15 A Yes.

16 Q Okay. Please look and let me know if it refreshes
17 your recollection.

18 A Yes, it does.

19 Q How many total cartridges could be held in that
20 magazine that was in the Ruger?

21 A It's a 17 round capacity magazine.

22 Q The magazine's 17, so then you can put one more in
23 the chamber?

24 A Yes, if that's how it's loaded.

25 MR. BATEMAN: I don't have any other questions, Your

UNCERTIFIED ROUGH DRAFT

1 Honor.

2 THE COURT: Any recross?

3 MS. LEMCKE: No, Your Honor.

4 THE COURT: May this witness be excused?

5 MR. BATEMAN: Yes, Your Honor.

6 THE COURT: Thank you very much for your testimony.

7 THE WITNESS: Thank you.

8 THE COURT: You may call your next witness.

9 MS. DiGIACOMO: The State calls Timothy Hildebrand.

10 May I approach the clerk, Your Honor?

11 THE COURT: You may.

12 (Ms. DiGiacomo confers with the clerk.)

13 TIMOTHY HILDEBRAND, STATE'S WITNESS, SWORN

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

16 THE WITNESS: Timothy Hildebrand, T-i-m-o-t-h-y,
17 H-i-l-d-e-b-r-a-n-d.

18 THE COURT: You may proceed.

19 MS. DiGIACOMO: Thank you, Your Honor.

20 I apologize. The Court's indulgence.

21 (Pause in proceeding.)

22 DIRECT EXAMINATION

23 BY MS. DiGIACOMO:

24 Q All right. Sir, I want to ask you, I want to direct
25 your attention back to December 22, 2013. At that time did

UNCERTIFIED ROUGH DRAFT

1 you know a person by the name of Luis or Lorenzo Pimentel?

2 A Yes.

3 Q Do you see that person that you knew back then in
4 the courtroom here today?

5 A Yes.

6 Q Would you point to that person and identify the
7 clothing that they're wearing right now, describe the
8 clothing.

9 A Gray -- white shirt, gray jacket [indicating].

10 MS. DiGIACOMO: Your Honor, would the record reflect
11 identification of the defendant?

12 THE COURT: It will.

13 BY MS. DiGIACOMO:

14 Q All right. Back at that time, how long had you
15 known the defendant?

16 A A few months.

17 Q And did you also know a person back then that went
18 by Bobby Holland?

19 A Yes.

20 Q And how long had you known Bobby at that time?

21 A About five, six years.

22 Q Would you consider yourself at that time friends
23 with both Bobby and the defendant?

24 A Yes.

25 Q Now, at that time in December of 2013, do you know

1 whether or not Bobby had a girlfriend at that time?

2 A Yes.

3 Q And who was that?

4 A Amanda.

5 Q Do you know Amanda's last name?

6 A No.

7 Q Do you know about how long that they had been
8 together?

9 A From what I know of, like a year or two.

10 Q Did you ever -- well, were you ever around Bobby and
11 Amanda when they were together?

12 A No.

13 Q So you heard about it more from Amanda or Bobby?

14 A From Bobby.

15 Q How much -- or I guess, how well did you know Amanda
16 at that time?

17 A I didn't know her at all. I only seen her like
18 twice.

19 Q So was one of the times that you saw Amanda on the
20 early morning hours of December 22, 2013?

21 A Yes.

22 Q What was the other time you had seen Amanda?

23 A She was with Bobby a couple months before that.

24 Q So everything you learned about the relationship you
25 learned from Bobby?

UNCERTIFIED ROUGH DRAFT

1 A Yeah.

2 Q Were you able to gather an impression about how
3 Bobby felt about her?

4 A He was in love with her.

5 Q Now, did you know whether or not Bobby and the
6 defendant were friends?

7 A Yes.

8 Q Do you know about how long they were friends?

9 A Probably about the same amount of time I knew him.

10 Q A few months --

11 A Yeah.

12 Q -- before December?

13 All right. So let's talk about the early morning
14 hours of December 22, 2013. In the early morning hours, do
15 you recall where you were?

16 A I was -- I went to Arizona Charlie's.

17 Q Who did you go there with?

18 A My girlfriend, fiancée.

19 Q What's her name?

20 A Shannon Salazar.

21 Q So at the time that you go to Arizona Charlie's on
22 that morning, how do you get there?

23 A Drove.

24 Q In what car?

25 A A friend of mine's silver Hyundai Elantra.

1 Q And did you drive, or did Shannon drive?

2 A I did.

3 Q And why did you drive the car?

4 A My friend lent it to me.

5 Q Now, does Shannon drive?

6 A No.

7 Q I guess I should ask in December 2013, did she
8 drive?

9 A No.

10 MS. LEMCKE: By she, I'm sorry, who are we referring
11 to with the she?

12 MS. DiGIACOMO: Shannon.

13 MS. LEMCKE: Okay.

14 BY MS. DiGIACOMO:

15 Q So when you get to Arizona Charlie's, did you have
16 any idea that anybody else was there that night?

17 A No.

18 Q So the two of you go there just to gamble?

19 A Yes.

20 Q When you go to Arizona Charlie's, how do you, I
21 guess, what parking lot do you pull into, or where do you go?

22 A I pulled into the -- well, when you come off of
23 Indios, I pulled into the first spot, the first entrance.

24 Q When you pulled in, did you see anybody you knew?

25 A Yes.

1 Q Who was that?
2 A Bobby.
3 Q Can you describe Bobby to the jury?
4 A He's tall, pretty husky.
5 Q Big guy?
6 A Yeah. He's a big guy.
7 Q Is he taller than you?
8 A Yes.
9 Q How tall are you?
10 A Six-two.
11 Q So he's -- how much taller than you would you say he
12 was?
13 A By 2 inches, 2, 3 inches.
14 Q So he's at least six-four, six-five?
15 A Yes.
16 Q And you said he's a big husky guy. How much would
17 you estimate he weighed?
18 A Probably 280, 300 maybe.
19 Q So you see -- you pull into the parking lot. Where
20 is Bobby? Where do you see him?
21 A He was standing in the parking lot.
22 Q And what happened at that point?
23 A He asked me -- he stopped me and asked me if I would
24 go into Arizona Charlie's and ask Amanda to come out and talk
25 to him.

1 Q Now, what was his demeanor at this time?
2 A He was kind of agitated.
3 Q Seem upset?
4 A Yeah.
5 Q And was he doing anything that made you think he was
6 upset?
7 A Yeah. He was pacing back and forth.
8 Q So he's pacing back and forth, and then he says will
9 you go in and ask Amanda to come out and talk to him?
10 A Yes.
11 Q So he was concerned about Amanda?
12 A Yes.
13 Q Did he tell you why he wanted to talk to Amanda?
14 A No.
15 Q What did you tell him when he said, hey, can you go
16 in and get Amanda for me?
17 A I told him, Man, don't worry, forget about her.
18 Q Now, why did you say forget about her?
19 A Because she wasn't worth it.
20 Q Because you could tell he was upset?
21 A She just used his -- she just used him.
22 MS. LEMCKE: Well, I would object to that.
23 THE WITNESS: I think. That's my opinion.
24 THE COURT: What's the basis of your objection?
25 MS. LEMCKE: Speculation.

1 THE COURT: Overruled.

2 BY MS. DiGIACOMO:

3 Q So is it fair to say that you didn't think that
4 Amanda was good for Bobby?

5 A No.

6 Q Okay. So you said, hey, just leave her alone?

7 A Yeah.

8 Q Or leave it alone, and --

9 A I said, Yeah, just leave it alone.

10 Q And what did Bobby say?

11 A He said, Nah, I just want to talk to her, tell her
12 to come out here.

13 Q When you saw Bobby, did he appear -- like could you
14 tell whether or not he might have been drinking or was under
15 the influence of anything?

16 A [No audible response.]

17 Q No?

18 A No.

19 Q You couldn't tell?

20 A No. He wasn't drinking.

21 Q Okay. Did he appear --

22 A He didn't look like he was under the influence
23 either.

24 Q So he just seemed normal?

25 A Yeah.

1 Q So does Bobby take your advice and just leave it
2 alone?

3 A No.

4 Q So do you go inside and find Amanda?

5 A Yes.

6 Q When you go inside, where is she?

7 A Sitting at the machines with Lorenzo.

8 Q And by Lorenzo, when you refer to him, it's the same
9 person you identified in court today?

10 A Yes.

11 Q Do you recall when you walked up how she was
12 sitting?

13 A She had her feet up on his stool, Lorenzo's stool,
14 and he had his hand on her leg, on her knee.

15 Q And what was the impression you got?

16 A That something was going on.

17 Q Between the two of them?

18 A Yes.

19 Q So who did you talk to first, Lorenzo or Amanda?

20 A Lorenzo.

21 Q What'd you tell him?

22 A I told him, I said, Hey, Bobby wants her to come out
23 and talk to him. And he said --

24 Q What did he say?

25 A F Bobby.

1 Q Well, I don't want you to give us the clean version.
2 Just tell us exactly what Lorenzo said.

3 A He said, "Fuck Bobby."

4 Q What was his demeanor like when he said that?

5 A Kind of agitated. He was pissed off.

6 Q And when he said, Fuck Bobby, did you say anything?

7 A Yeah. I told him, I said, What do you mean fuck
8 Bobby.

9 Q What did he say?

10 A He said that -- he said, Fuck Bobby. I said, What
11 do you mean fuck Bobby, man, you know that's his girlfriend,
12 you know, she's off limits.

13 Q And what did -- what did he respond?

14 A He said, Fuck Bobby.

15 Q Did he say anything about whether or not he was in a
16 relationship with her at that time?

17 A No.

18 Q Do you recall giving statement to police a few weeks
19 after this incident?

20 A Yes.

21 Q Do you recall telling the police that he said, Man,
22 fuck that, I ain't fucking her anyway?

23 A Yeah. Yes.

24 Q Did Lorenzo say that?

25 A Yeah.

1 Q And what was your response when he says, I ain't
2 fucking her anyway?

3 A I was just like, yeah, right, okay.

4 Q You didn't believe it based on what you saw?

5 A No. No, I didn't believe it.

6 Q So at this point, is this the end of the
7 conversation you have with Lorenzo?

8 A Yeah. Well, he asked me -- well, we went and walked
9 outside and they both got up and --

10 Q Well, don't -- I'm just talking about right there
11 when they're at the machines, was that kind of the end of the
12 conversation?

13 A Yes.

14 Q Okay. When you're having this conversation with the
15 defendant, was Amanda there?

16 A Yes.

17 Q Was she listening or saying anything?

18 A She was listening.

19 Q But she didn't make any comments?

20 A No.

21 Q All right.

22 A Except I think she said she didn't want to talk to
23 him.

24 Q Okay. So at this point what happens?

25 A We got up and walked outside, and then we got

1 outside and Lorenzo and Bobby started arguing back and forth.

2 Q So did you walk out with Amanda and Lorenzo?

3 A Yes.

4 Q Was there anyone else with them?

5 A I don't think so.

6 Q When you walk outside -- well, let me ask -- I guess
7 back up. Did you go in alone, or did Shannon come in with
8 you?

9 A She went in -- oh, no. I went in by myself.

10 Q Okay. So Shannon stayed in the car?

11 A Yes.

12 Q And where was that car parked?

13 A I don't -- I can't remember. I think I parked on
14 the -- in front of the like Building 6 or whatever.

15 Q Building 6 of rooms for the hotel?

16 A Yes.

17 Q So you walk out with them and you said -- is Bobby
18 outside?

19 A Yeah. He was in the parking lot.

20 Q And so what happens at that point?

21 A Him and Lorenzo started arguing back and forth.

22 Q What were they arguing about?

23 A Her. Amanda.

24 Q Do you recall what they were saying about Amanda?

25 A They wasn't saying anything about her. Bobby just

