

JOSHUA BACHARACH
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

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1 A The patrol car.

2 Q Okay. And then gunfire erupted. Could you tell where the gunfire was
3 coming from?

4 A The first four shots came from the east of me at that point because I
5 was facing the front of my property.

6 Q Excuse me. I'm going to go back to State's Exhibit 13.

7 A Okay. Where the police car is at that --

8 Q Is that about where the police car ended up in front of your home?

9 A I believe the police car was back a little further.

10 Q Okay. It was back a little further.

11 A The police car was more in front of my house.

12 Q Okay.

13 A When I opened my door the police car was right straight in front of my
14 door.

15 Q Okay. Could you tell where -- can you show on this map where you
16 heard the first shots?

17 A The first shots came from the east of me at that point.

18 Q Okay. Could you mark -- use your finger to mark that area?

19 A [No audible response - marking on monitor].

20 Q Okay. You're marking, for the record, near the corner of Dolly and
21 Carey.

22 A Right.

23 Q How many of the first shots did you hear?

24 A I heard four the first time. That was from a smaller caliber because
25 when the officer returned fire he fired three rounds that I heard at that point of a

1 larger caliber.

2 Q All right. And where was the officer at, if you could tell, when he fired?

3 A The officer was at his patrol car in front of my house.

4 Q So you say lighter caliber. Are you in fact a gun owner, sir?

5 A Yes, I am.

6 Q So you're familiar with the use of guns and different calibers of guns?

7 A Yes, I am.

8 Q And it sounded like two different guns?

9 A Yes.

10 Q And it sounded like they were coming from two different areas.

11 A Definitely.

12 Q And you believed you heard approximately three shots coming from the
13 area of the patrol car?

14 A Yes. Four prior to that.

15 Q And was the patrol car shots, they were louder?

16 A Yes.

17 Q Now when you looked out the window did you see anyone, either a
18 patrol officer or any other people?

19 A I was only looking at the patrol officer at the time of the first four rounds.
20 And then as soon as they went off I looked at direction but I didn't see anything. I
21 was getting ready to at the time, I opened my inside door which is a solid metal door
22 with a window in it, and as I went to open my security screen door that's when the
23 shots happened and --

24 Q The first shots?

25 A All seven of them at that point.

1 Q Okay.

2 A It all happened in a matter of seconds.

3 Q Okay.

4 A And I never went out the second door.

5 Q But you were able to view what you saw through your security door?

6 A Yes.

7 Q Were you able to see pretty clearly through the security door?

8 A Oh, yes. I paid dearly for this security door so that you can visibly see

9 anything that's on the other side of the door but they cannot see inside the house.

10 Q Did you see -- after the second volley of shots, the louder ones that

11 appeared to be coming near the patrol car, did you see the patrol officer or did you

12 leave that area of your front door?

13 A Well, no, I -- just prior to leaving the front door, as soon as the seven

14 shots were exchanged between the two pair at that point, the officer left the security

15 of the patrol car and proceeded to go after the suspect at that point. So I assumed

16 he was running down Dolly at that point. At that point --

17 Q Did you -- I don't want you to assume anything. Did you see where the

18 patrol officer went?

19 A Yes, he went --

20 Q The direction?

21 A He went east to Dolly.

22 Q Okay. You saw him run on Carey, east towards Dolly?

23 A Right.

24 Q After all of the shots?

25 A Yes.

1 Q Or the seven shots you described?

2 A Yes.

3 Q Okay. But then is it fair to say once he got near Dolly you lose track of
4 him, you can't see over there.

5 A At that point I closed the door, pushed the door closed at that point and
6 I went and retrieved my gun.

7 Q Okay. And then what did you do?

8 A I cocked the gun to make sure I was ready to go.

9 Q Okay. And then what did you do?

10 A Then I went back to the front, looked outside, did not see anything
11 outside, did not hear any more shots, and then returned to my sliding glass door in
12 my kitchen which is in the backyard and I lit up my backyard in case he tried to
13 come over the fence or anything at that point.

14 Q Okay. Then what did you do?

15 A Then I tried to go back out front. By that time all the police officers in
16 the whole department I think were arriving at that point.

17 Q Okay. And is it fair to say there was a lot of police that arrived in the
18 area?

19 A Oh yes.

20 Q And fair to say they came out there and cordoned off the area in front of
21 your home?

22 A Yes.

23 Q As well as other areas?

24 A For almost nine hours.

25 Q They were out there all night?

1 A Yes.

2 Q And you -- did you contact the police and let them know you had a
3 surveillance system?

4 A No. I contacted them the next day.

5 Q Okay. And did they come out and in fact interview you and your wife?

6 A Yes. I called the police department at that point and asked to speak to
7 the detective that was investigating the situation and wanted to let him know that I
8 did have camera surveillance. I had News 3 bugging me that they wanted to see it
9 at that point.

10 Q Okay. But you spoke to the police, fair to say?

11 A Yes, I spoke to the --

12 Q And then --

13 A -- and then he set up a time to come out to my house and view it
14 himself.

15 Q And you gave him a copy of the video?

16 A No. He then asked if I would take and allow them to come back at
17 11:00 that night and take a copy of it and take a written statement from me and my
18 wife at that point as to what we saw and everything that transpired.

19 Q And they did that?

20 A Yes.

21 Q Okay.

22 MR. FATTIG: Could I get the system switched over for surveillance video on
23 the computer?

24 Thank you. And this will be State's Proposed 86.

25 THE COURT: Has it been admitted?

1 MS. NGUYEN: No.

2 MR. FATTIG: No, I'll ask them --

3 [Colloquy between Counsel]

4 BY MR. FATTIG:

5 Q Sir, do you recognize what's shown on the screen here?

6 A Yes. It's my vehicle in my driveway and the camera on the east side of
7 my house pointing west.

8 Q And this is towards the northwest of your home?

9 A Yes.

10 Q So this would be Carey, is the far street, correct?

11 A Yes.

12 Q And is this a fair and accurate depiction of that particular view of that
13 previously camera on the front of your home?

14 A Yes, it is.

15 Q And do you recognize this as video taken on June 26th of 2014? This is
16 a still of it?

17 A I would assume it is. That's what it says at the top.

18 Q It's what it says at the top, correct, in terms of the date?

19 A Yes.

20 Q The time --

21 A And the time is off because I didn't change my times for that --

22 Q For daylight savings time?

23 A I didn't keep up with daylight savings and all that.

24 Q Okay. Do you remember --

25 A I am doing --

1 Q Do you remember that this --

2 A -- that now.

3 Q Do you remember that this event occurred around 10:45 in the
4 evening? Does that sound about right?

5 A Around there, yes.

6 Q Okay. I'm going to play a snippet.

7 [Citizen video starts playing]

8 BY MR. FATTIG:

9 Q So this captures cars as they go back and forth on Carey?

10 A Yes, it does.

11 Q And that was a car heading from the east -- excuse me, from the west
12 to the east in front of your residence?

13 A Yes.

14 Q Okay.

15 [Citizen video continues playing]

16 BY MR. FATTIG:

17 Q And we just saw a car going from the east to the west, correct?

18 A Yes.

19 [Citizen video continues playing]

20 BY MR. FATTIG:

21 Q Did you see what just crossed at 21:53 and approximately 21 seconds?

22 A Yes.

23 Q And that was a vehicle traveling from the west to the east?

24 A Yes.

25 Q Did it appear to have very bright headlights on?

1 A Yes, it did.

2 Q And did it appear to be travelling a little fast than normal?

3 A Actually they were stepping on their brakes to hang a right turn at Dolly.

4 Q Okay.

5 [Citizen video continues playing]

6 BY MR. FATTIG:

7 A This is where the police officer comes into scene the first time right
8 after.

9 Q Okay.

10 [Citizen video continues playing]

11 BY MR. FATTIG:

12 A That's the police car. As you see he came up and abruptly -- almost
13 stopped there. That got my attention, I went straight to the door and the next
14 clipping -- the second camera will show where I opened the door at that point.

15 Q Okay. So this view, the rest of the activities from that night, other than
16 the police arriving and cordoning off the scene, that will only show that, correct?
17 From this particular angle?

18 A Right.

19 Q Does this appear to be a fair and accurate depiction of this particular
20 camera from the front of your home from June 26th of 2014?

21 A Yes.

22 MR. FATTIG: Move to admit 186.

23 MS. NGUYEN: No objection.

24 THE COURT: It'll be admitted.

25 **[STATE'S EXHIBIT 186 ADMITTED]**

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[Citizen video starts playing]

BY MR. FATTIG:

Q Now I'll fast forward, sir, to the same point in time now that -- this is a different view, fair to say?

A Yes. This is the camera on the west side of the house, pointing east.

Q Okay. So this is sort of to the north and east across Carey in front of your home?

A Yes.

[Citizen video continues playing]

BY MR. FATTIG:

Q Now the timestamp on the video is the same between the two cameras, correct?

A Yes.

Q Okay.

[Citizen video continues playing]

BY MR. FATTIG:

A That's where he was slowing down to go around the corner.

MS. NGUYEN: Objection, Your Honor, speculation.

THE COURT: Overruled.

BY MR. FATTIG:

Q For the record that was 21:53 and approximately 25 seconds, correct?

A Yes.

Q Okay. And you observed the car on the far right side or south side of Carey, correct, traveling from west to east across the camera?

A Yes.

1 Q And it appeared to be slowing down as it got closer to Dolly?

2 A Yes.

3 Q And then did you see the car being to turn towards Dolly in that view or
4 no?

5 A Yes, just slightly.

6 Q Slightly, okay. Let's watch it again.

7 [Citizen video playing]

8 BY MR. FATTIG:

9 Q Does -- can you tell if the car has brake lights on?

10 A Yes, brake lights light up. That's how you know that they're turning
11 there.

12 [Citizen video continues playing]

13 BY MR. FATTIG:

14 Q Now we'll continue with the video.

15 [Citizen video continues playing]

16 BY MR. FATTIG:

17 A There's the police car.

18 [Citizen video continues playing]

19 BY MR. FATTIG:

20 Q And did it appear the police officer was moving out of the car towards
21 Dolly?

22 A Yes. The police officer got out of the car and it showed him running in
23 front of the car towards Dolly at that point.

24 [Citizen video continues playing]

25 BY MR. FATTIG:

1 Q And now at this point the car remains in front of your home, correct?

2 A Correct.

3 Q With the lights on?

4 A Yes.

5 Q For an extended period of time.

6 A Until 8:00 a.m. the next morning.

7 Q Okay. They left the car where it was.

8 A Left it in the street for --

9 [Citizen video continues playing]

10 BY MR. FATTIG:

11 Q And it's fair to say Carey is fairly busy in terms of cars going back and
12 forth?

13 A It wasn't that day.

14 Q Well we just saw a semi, for instance, travelling from --

15 A That's because it had just happened at that point.

16 Q -- east to west.

17 A And I was surprised that the semi even attempted to slow down like
18 that.

19 Q Now we see another car 21:54 and 45 seconds travelling from --
20 several cars, correct?

21 A Yes.

22 [Citizen video continues playing]

23 BY MR. FATTIG:

24 Q So -- I mean, until the area got cordoned off, cars were moving through
25 there?

1 A Yes.

2 Q Okay. Eventually within a number of minutes and the camera system,
3 you kept running, correct?

4 A Yes. It runs 24 hours a day.

5 Q So all of this -- all of that, in terms of when the officers came out and
6 they cordoned it off, will all be on the surveillance system?

7 A Yes.

8 Q Okay.

9 MR. FATTIG: I have no other questions at this time.

10 **CROSS-EXAMINATION**

11 BY MS. NGUYEN:

12 Q Mr. Wagner, is it -- what initially brought your attention to go out to your
13 door?

14 A The police car stopping in front of my house.

15 Q Okay. And did you hear the police car, like were the sirens on or the
16 lights on?

17 A I heard a siren I would assume at that point I heard the siren as they
18 came across Lamb Boulevard and then the sirens stopped, which is very unusual.
19 And as the police car proceeded down the street, once the police car arrived in front
20 of the ones camera at that point -- the first one, it appeared he was going to stop
21 there in front of my neighbor's house. So I immediately jumped up and ran to the
22 door to see at that point.

23 By that time he rolled it in front of my house -- excuse me. And as I
24 opened my solid metal door he jammed on the brakes, his door popped open, the
25 gunshots came from the east of me at that point and then he returned fire -- I was

1 getting ready to go outside to see why he was stopping.

2 Q So it wasn't gunshots that drew -- brought you outside -- or outside -- to
3 open your metal door, it was the police officer.

4 A Right.

5 Q The siren.

6 A Right.

7 Q Okay. The security system that you have in your house, does it alert
8 you when there's movement, or is it a bit like -- is it one of those things where you're
9 watching TV and you can switch on to your cameras, or is it a separate system?

10 A Actually it's situated in such a way, my computer is here, my monitor is
11 there. So all movement on the -- his -- basically draws your attention to it. If there's
12 sirens, then you automatically look to see who it is; whether it's an ambulance, fire,
13 or police.

14 Q And were you sitting at your computer --

15 A Yes, I was.

16 Q -- when you noticed that there were sirens there?

17 A When I heard the siren --

18 Q Okay. And then --

19 A -- to start with, yes.

20 Q -- did it pop up on the security screen or were you able to look at the
21 security screen and see the police officer there at that time?

22 A Yes.

23 Q Okay.

24 A Well not immediately, no.

25 Q Not immediately?

1 A No.

2 Q Why not immediately?

3 A Because the police officer hadn't arrived to where they -- I heard the
4 siren to where --

5 Q Okay. So you heard the sirens and then as you were sitting there the
6 image popped up of the police officer driving --

7 A Right.

8 Q -- into your frame, I guess. Is that fair to say?

9 A Yes.

10 Q Okay. And once you saw the police officer that's when you left your
11 computer and you left the monitors and walked out to see with your own eyes, is
12 that correct?

13 A Well I crossed the room.

14 Q Okay. From the door where you're standing looking out, can you also
15 see the monitors?

16 A Yes.

17 Q So they're in close proximity to each other?

18 A No. It'd be like that monitor that's on your desk there and my front door
19 would be here.

20 Q Okay. So it would be facing --

21 A I could still see --

22 Q -- against you?

23 A -- the monitor because it faces this direction.

24 Q Okay. So when you looked out, did you -- the only individual you saw
25 was the police officer, is that correct?

1 A Yes.

2 Q Okay. Did you see any other individuals at that time?

3 A No.

4 Q And it's fair to say that you were able to go back and review this video,
5 probably several times before coming to court today?

6 A No.

7 Q You've never reviewed this video?

8 A Actually no, I'm sorry to say.

9 Q Okay.

10 A I only saw -- looked at the video after the incident at that point that night
11 and then I notified the police officer and then I had to point out what I had noticed at
12 that point to him. And then after that everybody else took their -- my monitor only
13 holds month to month.

14 Q Okay.

15 A So after the first of the month it's gone. It's -- I don't know where it
16 goes.

17 Q So you viewed it that night, you viewed it the next day when the police
18 officers came to retrieve it, and then you're viewing it now. Is that correct?

19 A Right.

20 Q Okay. When you viewed it with the officers, did you have it queued up
21 to the time period that they were looking at because you had looked at it already?

22 A No. I had to explain to them that I did not change it due to the time
23 change at that point.

24 Q Okay. So you had to go back to the time that was listed on your
25 system?

1 A Correct.

2 Q Okay.

3 A Now I keep it updated, but at the time --

4 Q Okay.

5 A -- I could care less whether it was an hour, you know, one way or the
6 other.

7 Q Okay.

8 A I only got it for the sole purpose of catching the perpetrators that were
9 committing crimes in the neighborhood.

10 Q Okay. And then once you heard the shots being fired, that's when you
11 shut -- decided to shut the door and come into the house.

12 A My wife sitting next to the door and she's saying shut the door. Yes.

13 Q I believe she testified she was hiding behind you, is that a -- is that a --
14 is that correct?

15 A Yeah. For a second, but that was about it.

16 Q And then you shut the door and did the police come to your door or did
17 you get in contact with them later?

18 A No. The police never once contacted me.

19 Q Okay.

20 A I had to call the next day.

21 Q So you were the one inquiring and letting them know that you had
22 potential information for them?

23 A Yes.

24 Q Okay. You had indicated that you heard what you heard as two
25 different calibers of guns, is that correct?

1 A Yes.

2 Q Okay. And you said that you are a gun owner so you're familiar with
3 that, is that correct?

4 A Yes. Because I have a 9 millimeter, I have a .45 caliber, and two if you
5 fire them, the sounds are differently at that point.

6 Q Okay. And you also testified that the sounds also sounded -- you know,
7 one sounded more close up front, closer to your house and one sounded in the
8 distance, I think you said east, is that correct?

9 A It didn't sound in the distance. They both sounded like they were right
10 in front of my house --

11 Q Okay. So both of them --

12 A -- at that point, but --

13 Q -- sounded like they were right in front of your house?

14 A Yes.

15 Q Okay. And -- but they sounded like two different calibers to you?

16 A Definitely, yes.

17 Q Did you see the police officer shooting his gun?

18 A At that point I'd have to say yes, seeing as how I heard three shots from
19 him.

20 Q Okay. Did you see like the flash of the muzzle or anything like that?

21 A No.

22 Q Okay.

23 A At the time that the four shots were fired, I started to turn to see where
24 the shots were coming from --

25 Q Okay.

1 A -- and then the officer returned fire.

2 Q Okay.

3 A And then of course that's when I went back to him and he left the
4 security of the car, proceeded to chase.

5 Q Okay. And that's when you lost sight of him?

6 A That's when I went to retrieve my gun.

7 Q Okay. And that's when you lost sight of him.

8 A Definitely.

9 Q Okay.

10 MS. NGUYEN: Nothing further.

11 MR. FATTIG: Nothing further.

12 THE COURT: Jury have any questions of this witness? Seeing no hands.
13 Sir, you're free to go. Call your next witness, State.

14 MR. FATTIG: I think that's it for the day.

15 THE COURT: That's it for the evening?

16 MR. FATTIG: That was the seven, yeah.

17 THE COURT: All right. Ladies and gentlemen, we'll take our evening recess.
18 During the recess you're admonished not to talk or converse among yourselves or
19 with anyone else on any subject connected with the trial. Or read or watch or listen
20 to any report of or commentary on the trial or any person connected with this trial by
21 any medium of information including, without limitation, newspapers, television, the
22 radio, or the internet. Or form or express an opinion on any subject connected with
23 the trial until the case is finally submitted to you. Remember no *Twitter*, *Instagram*,
24 or social media, *Facebook*, anything, please.

25 See you in the morning at 9:00.

1 [Outside the presence of the jury]

2 THE COURT: All right. The jury is gone. The door is closed.

3 See you guys in the morning at 9:00. Okay. Here's what I want you to

4 do with jury instructions. You two are to get together -- you three are to get

5 together. Jury instructions, the ones that you agree on I want a clean copy of those.

6 The ones you want to fight about you can put jury -- or the cite to, and you'll provide

7 those -- and then we'll talk about those. But the ones you agree on, we don't need

8 to. And I want those by Wednesday morning.

9 MS. THOMSON: Yes, Your Honor.

10 THE COURT: How many witnesses do you have tomorrow?

11 MS. THOMSON: Thirteen.

12 MR. FATTIG: Depends how many we get through.

13 THE COURT: Fast or slow.

14 MS. THOMSON: Yes.

15 MR. FATTIG: I think we'll get through ten or so.

16 THE COURT: All right. Just have what you have and then --

17 MR. FATTIG: We might get through them all.

18 THE COURT: We might. I'm willing to go until 5:00.

19 MR. FATTIG: Okay.

20 THE COURT: And I don't take long breaks. See you guys in the morning.

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25 MS. THOMSON: Thank you, Judge.

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THE COURT: Okay.

[Evening recess at 4:54 p.m.]

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



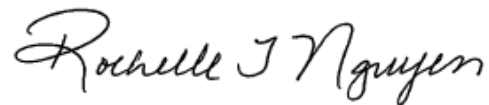
Brittany Mangelson
Independent Transcriber

CERTIFICATE OF ELECTRONIC TRANSMISSION

The undersigned hereby declares that on June 08, 2016, an electronic copy of the foregoing APPELLANT'S FAST TRACK APPENDIX VOLUME III was sent via the master transmission list with the Nevada Supreme Court to the following:

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A handwritten signature in cursive script that reads "Rochelle T. Nguyen".

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